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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
  Environmental Protection Agency
Banks, Banking
  Defense Department
Customs Duties and Inspection
  Customs Service
Endangered and Threatened Species
  Fish and Wildlife Service
Fisheries
  National Oceanic and Atmospheric Administration
Food Stamps
  Food and Nutrition Service
Grant Programs—Agriculture
  Agriculture Department
  Cooperative State Research Service
Hazardous Waste
  Environmental Protection Agency
Mortgage Insurance
  Housing and Urban Development Department
National Parks
  National Park Service
Nuclear Power Plants and Reactors
  Nuclear Regulatory Commission
Public Lands—Rights-of-Way
  Land Management Bureau

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO	WASHINGTON, DC	DENVER, CO	DALLAS, TX
WHEN: March 11; 9 am.	**WHEN:** March 20; 9 am and 1 pm. (identical sessions)	**WHEN:** March 24; 9 am.	**WHEN:** April 23; 1:30 pm.
WHERE: Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.	**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC	**WHERE:** Room 239, Federal Building, 1961 Stout Street, Denver, CO.	**WHERE:** Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
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Title 3—

The President

Executive Order 12550 of February 19, 1986

Amendments to the Manual for Courts-Martial, United States, 1984

By the authority vested in me as President by the Constitution of the United States and by Chapter 47 of Title 10 of the United States Code (Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 707(a) is amended to read as follows:

"(a) *In general.* The accused shall be brought to trial within 120 days after the earlier of:

"(1) Notice to the accused of preferral of charges under R.C.M. 308; or

"(2) The imposition of restraint under R.C.M. 304(a)(2)–(4).".

b. R.C.M. 805(b) is amended by striking out "911" each time it appears and inserting "912" in lieu thereof.

c. R.C.M. 903(c)(3) is amended by inserting "a request" after "or".

d. R.C.M. 909 is amended—

(1) by amending subsection (a) to read as follows:

"(a) *In general.* No person may be brought to trail by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.";

(2) in subsection (b) by striking out "appears" and inserting in lieu thereof "is established"; and

(3) by amending subsection (c)(2) to read as follows:

"(2) *Standard.* Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense of the case.".

e. R.C.M. 916(e)(3) is amended by striking out "(c)(1)" and inserting in lieu thereof "(e)(1)".

f. R.C.M. 920(e)(2) is amended by inserting, "unless trial of a lesser included offense is barred by the statute of limitations (Article 43) and the accused refuses to waive the bar" after "issue".

g. R.C.M. 921(d) is amended by striking out "sentence" and inserting in lieu thereof "findings".

h. R.C.M. 922(b) is amended—

(1) by redesignating the second sentence as paragraph (1); and

(2) by inserting the following new paragraph at the end thereof:

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"(2) In a capital case, if a finding of guilty is unanimous with respect to a capital offense, the president shall so state. This provision shall not apply during reconsideration under R.C.M. 924(a) of a finding of guilty previously announced in open court unless the prior finding was announced as unanimous.".

i. R.C.M. 1001 is amended—

(1) in subsection (b)(1) by striking out "age, pay," and inserting in lieu thereof "pay"; and

(2) in subsection (b)(3)(B) by striking out "65(c)" and inserting in lieu thereof "64".

j. R.C.M. 1003(b)(10)(B) is amended by inserting "Regardless of the maximum punishment specified for an offense in Part IV of this Manual, a dishonorable discharge may be adjudged for any offense of which a warrant officer who is not commissioned has been found guilty." after the first sentence.

k. R.C.M. 1004 is amended—

(1) by striking out "circumstance" and "circumstances" each time these words appear and inserting in lieu thereof "factor" and "factors", respectively;

(2) in subsection (a) by—

(A) striking out "and" at the end of paragraph (1); and

(B) redesignating paragraph (2) as paragraph (3) and inserting the following as paragraph (2):

"(2) The accused was convicted of such an offense by the concurrence of all the members of the court-martial present at the time the vote was taken; and";

(3) by amending subsection (b)(4) to read as follows:

"(4) *Necessary findings.* Death may not be adjudged unless—

"(A) The members find that at least one of the aggravating factors under subsection (c) existed;

"(B) Notice of such factor was provided in accordance with paragraph (1) of this subsection and all members concur in the finding with respect to such factor; and

"(C) All members concur that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under subsection (c) of this Rule.";

"(4) by amending subsection (c)(2) to read as follows:

"(2) That in committing the offense the accused—

"(A) Knowingly created a grave risk of substantial damage to the national security of the United States; or

"(B) Knowingly created a grave risk of substantial damage to a mission, system, or function of the United States, provided that this subparagraph shall apply only if substantial damage to the national security of the United States would have resulted had the intended damage been effected;";

(5) in subsection (c)(4) by striking out "Article 120" and inserting in lieu thereof "Articles 104, 106a, or 120";

(6) in subsection (c)(7)(F) by—

(A) inserting "(including a Delegate to, or Resident Commissioner in, the Congress)" after "Member of Congress"; and

(B) striking out "or any judge of the United States." and inserting in lieu thereof "justice or judge of the United States, a chief of state or head of government (or the political equivalent) of a foreign nation, or a foreign official (as such term is defined in section 1116(b)(3)(A) of title 18, United States Code), if the official was on official business at the time of the offense and

was in the United States or in a place described in Mil. R. Evid. 315(c)(2) or 315(c)(3);";

(7) in subsection (c)(9)(B) by striking out "or";

(8) in subsection (c)(10) by striking out the period and inserting "; or" in lieu thereof; and

(9) by inserting the following new subsection after subsection (c)(10):

"(11) That, only in the case of a violation of Article 104 or 106a:

"(A) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

"(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.".

l. R.C.M. 1010 is amended—

(1) by striking out "ADVICE" and inserting in lieu thereof "NOTICE" in the rule title;

(2) by striking out "(a) *Advice.*" at the beginning of the rule;

(3) by redesignating subsections (1), (2), (3), and (4) as subsections (a), (b), (c), and (d), respectively; and

(4) by striking out subsection (b), "*Inquiry*", in its entirety.

m. R.C.M. 1106(b) is amended by striking out "or any reviewing" and inserting in lieu thereof "to any reviewing".

n. R.C.M. 1114(c)(1) is amended by striking out "actions" in the last sentence and inserting in lieu thereof "orders".

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil.R.Evid. 304 is amended as follows:

(1) Subdivision (a) is amended by striking out "An involuntary" and inserting in lieu thereof "Except as provided in subsection (b), an involuntary".

(2) Subdivision (b) is amended by—

(A) striking out "*Exception*" and inserting in lieu thereof "*Exceptions*";

(B) designating the first sentence as subsection (1); and

(C) adding the following new subsection at the end thereof:

"(2) Evidence that was obtained as a result of an involuntary statement may be used when the evidence would have been obtained even if the involuntary statement had not been made.".

(3) Paragraph (e)(3) is amended by—

(A) striking out "either";

(B) striking out "or" and inserting in lieu thereof a comma; and

(C) inserting ", or that the evidence would have been obtained even if the statement had not been made" after "use of the statement".

b. Mil.R.Evid. 311 is amended as follows:

(1) Subdivision (b) is amended to read as follows:

"b. *Exceptions.*

"(1) Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

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"(2) Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

"(3) Evidence that was obtained as a result of an unlawful search or seizure may be used if:

"(A) The search or seizure resulted from an authorization to search, seize, or apprehend issued by an individual competent to issue the authorization under Mil.R.Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

"(B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

"(C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith shall be determined on an objective standard.".

(2) Paragraph (e)(1) is amended by striking out the period at the end thereof and inserting in lieu thereof ", that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.".

(3) Paragraph (e)(2) is amended by striking out the period at the end thereof and inserting in lieu thereof ", that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.".

c. Mil.R.Evid. 609(e) is amended by deleting "65(c)" and inserting in lieu thereof "64".

d. Mil.R.Evid. 804(a) is amended by striking out "claim or lack of memory" and inserting in lieu thereof "claim of lack of memory".

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 16 is amended—

(1) in subparagraph b(3)(b) by striking out "had knowledge" and inserting in lieu thereof "knew or reasonably should have known";

(2) by amending subparagraph c(3)(b) to read as follows:

"(b) *Knowledge.* Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence."; and

(3) by amending subparagraph f(4) to read as follows:

"(4) *Dereliction in the performance of duties.*

"In that ______, (personal jurisdiction data), who (knew) (should have known) of his/her duties (at/on board—location) (subject-matter jurisdiction data, if required), (on or about ______ 19__) (from about ______ 19__ to about ______ 19__), was derelict in the performance of those duties in that he/she (negligently) (willfully) (by culpable inefficiency) failed to ______, as it was his/her duty to do."

b. Part IV is amended by inserting the following new paragraph after paragraph 30:

"30a. Article 106a—Espionage

"a. *Text.*

"(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, any thing described in paragraph (3), shall be punished as a court-martial may direct, except that if the accused is found guilty of any offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

"(2) An entity referred to in paragraph (1) is—

"(A) a foreign government;

"(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

"(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

"(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

"(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

"(A) The members of the court-martial unanimously find at least one of the aggravating factors set out under subsection (c); and

"(B) The members unanimously determine that any extenuating or mitigating factors are substantially outweighed by any aggravating circumstances, including the aggravating factors set out under subsection (c).

"(2) Findings under this subsection may be based on—

"(A) evidence introduced on the issue of guilt or innocence;

"(B) evidence introduced during the sentencing proceeding; or

"(C) all such evidence.

"(3) the accused shall be given broad latitude to present matters in extenuation and mitigation.

"(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

"(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

"(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

"(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

"(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (Article 36).".

"b. *Elements.*

"(1) *Espionage.*

"(a) That the accused communicated, delivered, or transmitted any document, writing, code book, signal book, sketch, photograph, photographic negative,

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blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense;

"(b) That this matter was communicated, delivered, or transmitted to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly; and

"(c) That the accused did so with intent or reason to believe that such matter would be used to the injury of the United States or to the advantage of a foreign nation.

"(2) *Attempted espionage.*

"(a) That the accused did a certain overt act;

"(b) That the act was done with the intent to commit the offense of espionage;

"(c) That the act amounted to more than mere preparation; and

"(d) That the act apparently tended to bring about the offense of espionage.

"(3) *Espionage as a capital offense*

"(a) That the accused committed espionage or attempted espionage; and

"(b) That the offense directly concerned (1) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (2) war plans, (3) communications intelligence or cryptographic information, or (4) any other major weapons system or major element of defense strategy.

"c. *Explanation*

"(1) *Intent.* 'Intent or reason to believe' that the information 'is to be used to the injury of the United States or to the advantage of a foreign nation' means that the accused acted in bad faith or otherwise without authority with respect to information that is not lawfully accessible to the public.

"(2) *National defense information.* 'Instrument, appliance, or information relating to the national defense' includes the full range of modern technology and matter that may be developed in the future, including chemical or biological agents, computer technology, and other matter related to the national defense.

"(3) *Espionage as a capital offense.* Capital punishment is authorized if the government alleges and proves that the offense directly concerned (1) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (2) war plans, (3) communications intelligence or cryptographic information, or (4) any other major weapons system or major element of defense strategy. *See* R.C.M. 1004 concerning sentencing proceedings in capital cases.

"d. *Lesser included offense.* Although no lesser included offenses are set forth in the code, federal civilian offenses on this matter may be incorporated through the third clause of Article 134.

"e. *Maximum punishment*

"(1) *Espionage as a capital offense.* Death or such other punishment as a court-martial may direct. *See* R.C.M. 1003 and R.C.M. 1004.

"(2) *Espionage or attempted espionage.* Any punishment, other than death, that a court-martial may direct. *See* R.C.M. 1003.

"f. *Sample specifications*

In that ______ (personal jurisdiction data), did, (at/on board—location), on or about ____, 19__, with intent or reason to believe it would be used to the injury of the United States or to the advantage of ____, a foreign nation, (attempt to) (communicate) (deliver) (transmit) ____ (description of item), (a document) (a writing) (a code book) (a signal book) (a sketch) (a photograph) (a photographic negative) (a blueprint) (a plan) (a map) (a model) (a note) (an instrument) (an appliance) (information) relating to the national defense, [which directly concerned (nuclear weaponry) (military spacecraft) (military satellites) (early warning systems) (______, a means of defense or retaliation against a large scale attack) (war plans) (communications intelligence) (cryptographic information) (______, a major weapons system) (______, a major element of defense strategy)] to ______ [(a representative of) (an officer of) (an agent of) (an employee of) (a subject of) (a citizen of)] [(a foreign government) (a faction within a foreign country) (a party within a foreign country) (a military force within a foreign country) (a naval force within a foreign country)] (indirectly by ______].".

c. Part IV is amended by adding the following new sentence at the end of paragraph 105e:

"However, any person subject to the code who is found guilty of soliciting or advising another person to commit the offense of aiding the enemy, spying, or espionage (Articles 104, 106, or 106a) shall be subject to any punishment, other than death, that a court-martial may direct.".

Sec. 4. Part V of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. The text of paragraph 2 is amended by inserting the following new paragraph at the beginning thereof:

"The following persons may serve as a nonjudicial punishment authority for the purposes of administering nonjudicial punishment proceedings under this Part:".

b. Paragraph 4a is amended by striking out "commander" each time it appears and inserting in lieu thereof "nonjudicial punishment authority".

c. Paragraph 4b(2) is amended by striking out "commander" and inserting in lieu thereof "nonjudicial punishment authority".

d. Paragraph 4c(1) is amended by—

(1) striking out "commander—or the commander's delegee (*see* paragraph 2c of this Part)—who offered nonjudicial punishment" and inserting in lieu thereof "nonjudicial punishment authority";

and

(2) striking out "commander" the second, third, and fourth time it appears in the first sentence and in subparagraphs (B), (D), and (G), and inserting in lieu thereof "nonjudicial punishment authority".

e. Paragraph 4c(2) is amended to read as follows:

"(2) *Personal appearance waived; procedure.* Subject to the approval of the nonjudicial punishment authority, the servicemember may request not to appear personally under subparagraph 4(c)(1) of this Part. If such request is granted, the servicemember may submit written matters for consideration by the nonjudicial punishment authority before such authority's decision under subparagraph 4c(4) of this Part. The servicemember shall be informed of the right to remain silent and that matters submitted may be used against the member in a trial by court-martial.".

f. Paragraph 4c(4) is amended by—

(1) striking out "*Commander's decision*" and inserting in lieu thereof "*Decision*"; and

(2) striking out "commander" each time it appears and inserting in lieu thereof "nonjudicial punishment authority".

g. Paragraph 5(b) is amended by striking out "by the following commanders".

h. The introductory clause of paragraph 5b(1)(B) is amended to read as follows:

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"(B) If imposed by an officer exercising general court-martial jurisdiction, an officer of general or flag rank in command, or a principal assistant as defined in paragraph 2c of this Part—".

i. Paragraph 5b(2)(A) is amended by striking out "commander" and inserting in lieu thereof "nonjudicial punishment authority".

j. The introductory clause of paragraph 5b(2)(B) is amended by inserting "or a principal assistant to such a commanding officer as defined in paragraph 2c of this Part" after "above".

k. Paragraph 5c(2) is amended by striking out "commander imposing this form of punishment" and inserting in lieu thereof "nonjudicial punishment authority".

l. Paragraph 6a is amended by striking out "commander" and inserting in lieu thereof "nonjudicial punishment authority who imposes nonjudicial punishment, the commander".

m. Paragraph 6a(4) is amended by inserting "nonjudicial punishment authority or" after "A suspension may be vacated by any" in the first sentence.

n. Paragraph 6b is amended by—

(1) striking out "commander" in the third sentence and inserting in lieu thereof "nonjudicial punishment authority who imposed nonjudicial punishment, the commander,"; and

(2) striking out "commander" in the fourth sentence and inserting in lieu thereof "nonjudicial punishment authority who imposes nonjudicial punishment, the commander who imposes nonjudicial punishment, or a successor in command".

o. Paragraph 6c is amended by striking out "commander" in the second sentence and inserting in lieu thereof "nonjudicial punishment authority who imposes nonjudicial punishment, the commander".

p. Paragraph 6d is amended by striking out "commander who imposes nonjudicial punishment" in the second sentence and inserting in lieu thereof "nonjudicial punishment authority who imposes nonjudicial punishment, the commander who imposes nonjudicial punishment,".

q. Paragraph 7f(3) is amended by inserting "the commander," after "the officer who imposed the nonjudicial punishment,".

Sec. 5. The amendments to Mil.R.Evid. 704, which were implemented on 10 April 1985 pursuant to Mil.R.Evid. 1102, are hereby rescinded; *Provided,* That this recision shall not apply in the trial of any case in which arraignment occurred while such amendments were in effect.

Sec. 6. These amendments shall take effect on March 1, 1986, with respect to all court-martial processes taken on and after that date: *Provided,* That nothing contained in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial, in which arraignment occurred, or other action begun prior to that date, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed; *Provided further,* That the amendments made in Rule for Court-Martial 1004(c) shall apply in the trial of offenses committed on or after March 1, 1986; *Provided further,* That nothing contained in these amendments shall be construed to invalidate any capital sentencing proceeding conducted prior to March 1, 1986, and any such proceeding shall be completed and reviewed in the same manner and with the same effect as if these amendments had not been prescribed; *Provided further,* That amendments to Rule for Court-Martial 707(a) shall not apply to any condition on liberty imposed before March 1, 1986, and the effect of such a condition on liberty shall be considered under Rule for Court-Martial 707(a) as it existed before March 1, 1986; *Provided further,* That the amendments made in paragraph 16 of Part IV shall apply in trials of offenses committed on or after March 1, 1986; *Provided further,* That the amendments made in paragraph 30a of Part IV shall apply in the trials of offenses committed under Article 106a on or after March 1, 1986; *And provided further,* That the amendments made in paragraph 30a of Part IV authorizing capital punishment shall apply with respect to offenses under Article 106a committed on or after March 1, 1986.

Sec. 7. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of Title 10 of the United States Code.

Ronald Reagan

THE WHITE HOUSE,
February 19, 1986.

[FR Doc. 86-3965
Filed 2-19-86; 4:28 pm]
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Presidential Documents

Proclamation 5442 of February 21, 1986

National Hemophilia Month, 1986

By the President of the United States of America

A Proclamation

Hemophilia is a genetic disease in which the blood will not clot properly because a specific clotting factor is missing or defective. It is almost exclusively a male disease, affecting one of every four thousand live male births, regardless of race, nationality, or family economic status.

Significant advances have been made in the diagnosis and treatment of hemophilia. Methods of early diagnosis provide the means to institute preventive measures at an early age. Modern blood fractionation technology provides a moderately priced, readily available supply of the needed clotting component for those who must have regular infusions. Still, hemophiliacs face a life of unpredictable medical complications that may result in disability or death.

Proper medical treatment for the hemophiliac, and public awareness and acceptance of this medical condition, will allow the individual to live a normal, productive, and independent life and will dispel many of the common misconceptions of the disease.

To stimulate public awareness about hemophilia and to encourage the development of improved techniques of diagnosis and treatment, the Congress, by Senate Joint Resolution 150, has designated the month of March 1986 as "National Hemophilia Month" and authorized and requested the President to issue a proclamation in observance of this period.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of March 1986 as National Hemophilia Month. I invite the Governors of each State, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to finding better ways of helping those afflicted with hemophilia.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-4208
Filed 2-24-86; 10:21 am]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12551 of February 21, 1986

The President's Export Council

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to expand the membership of the President's Export Council, it is hereby ordered that Section 1-102(b) of Executive Order No. 12131 of May 4, 1979, is amended to read as follows:

"(b) Five members of the United States Senate, designated by the President of the Senate, and five members of the United States House of Representatives, designated by the Speaker of the House, to serve for a two-year term."

Ronald Reagan

THE WHITE HOUSE,
February 21, 1986.

[FR Doc. 86-4205
Filed 2-24-86; 10:22 am]
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Rules and Regulations

Federal Register
Vol. 51, No. 37
Tuesday, February 25, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274 and 278

[Amdt. 267]

Food Stamp Program; Community Mental Health Centers, Credit Unions, and Farm Self-Employment Losses

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rulemaking implements three provisions of the Food Security Act of 1985 which revise sections 3 (f) and (i), section 5(d) and section 10 of the Food Stamp Act of 1977, as amended. The first provision will allow Food Stamp Program participation by publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics pursuant to part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). The second provision allows certain federally insured credit unions to redeem food stamps and the third provision permits farm self-employment losses to be offset against other household income.

DATES: This rule is effective on February 25, 1986. State agencies shall implement the provisions not later than 30 days after February 25, 1986. Comments must be received on or before April 28, 1986 to be assured of consideration.

ADDRESS: Comments should be submitted to Bruce A. Clutter, Chief, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Judith Seymour, Supervisor, Certification Rulemaking Section, at the above address. Phone (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The proposed rule would affect the economy by less than $100 million a year. The rule would not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There would not be significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule Related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Interim Rule

Robert E. Leard, Administrator of the Food and Nutrition Service (FNS), has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable and contrary to public interest and, additionally, that good cause exists for making this rule effective earlier than thirty days after publication. Allowing, but not requiring, implementation earlier than thirty days after publication will allow State agencies which want to implement as soon as possible to do so but will not place an undue burden on those State agencies which need more time to implement. The language contained in the regulations is drawn from the language of the Food Security Act of 1985 which authorized these changes. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 90 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Regulatory Flexibility Act

This interim rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the Program. Publicly operated community mental health centers will be affected because of changes to allow for the residents' participation in the Program. Self-employed farmers whose farm operations show losses will be affected because of changes in policy to determine eligibility and benefits for these farmers. The rule will also affect retail food stores and wholesale food concerns and credit unions which accept and redeem food stamps, respectively. Thus, while the rule may affect a substantial number of small entities, the effect on any one entity will not be significant.

Paperwork Reduction Act

The provisions in this regulation concerning mental health centers and offsetting losses for farmers do not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The reporting requirements relating to the provision on the redemption of food stamps have been approved by OMB under OMB number 0584–0085.

Background

Community Mental Health Centers

The Food Stamp Act of 1977, as amended, has, historically, allowed drug addicts or alcoholics who live in private nonprofit centers which operate drug addiction or alcoholic rehabilitation programs to participate in the Food Stamp Program and also has allowed private nonprofit centers which operate

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drug addiction or alcoholic rehabilitation programs to redeem food stamps for their residents who would otherwise be eligible for food stamps were they not living in those centers. Drug addicts or alcoholics who live in such private nonprofit centers for the purpose of regular participation in a drug or alcoholic treatment program are considered individual households instead of residents of institutions. These centers meet the definition of a retail food store and can be authorized to use food coupons at a designated wholesale concern.

Prior to 1982, residents of twelve community mental health centers in Mississippi, which operated halfway houses for alcoholics, participated in the Food Stamp Program.

In 1982, the Department notified these community mental health centers that they could no longer accept food stamps for their residents. The Department ruled that all but one of the programs in Mississippi were ineligible to participate in the program on the grounds that they were public, not private agencies.

The Department reached the conclusion that the agencies were public, rather than private, operations based on information from the Mississippi Tax Commission which indicated that the institutions were State-owned and operated public institutions. The centers were established by the State under regional commissions whose boards are appointed by the boards of supervisors in the counties. In this sense, the centers are public. However, the commissioners that supervise the centers are private citizens; the employees are not public employees, and the centers are not directly supervised by any agency of Mississippi's State or county governments. Additionally, the programs are identical to those in other States that are privately incorporated and that have self-perpetuating boards of directors.

In the Continuing Resolution enacted on October 1, 1983 (Pub. L. 98–107), Congress included language to allow public operated community health centers which operate drug addition and alcoholic rehabilitation programs to redeem food stamps for residents of their centers. This change was intended to address the situation in Mississippi. On November 14, 1983, the Department issued FNS Notice 84–17 to inform State and local welfare agencies and FNS regional and field offices of the expanded definition of drug addiction and alcoholic treatment centers. As a result, drug addicts or alcoholics who lived under the supervision of these public or private nonprofit institutions, for the purpose of regular participation in a drug or alcoholic treatment program, were considered individual households instead of residents of institutions. In addition, these institutions met the definition of a retail food store and were authorized to use food coupons at a designated wholesale concern.

The legislative history of the first 1983 Continuing Resolution was not clear enough to determine unequivocally if the change in the law to allow the participation of residents of publicly operated community health centers was a permanent action or if Congress intended for it to expire at the end of the fiscal year, September 30, 1984. After reviewing the provision, the Department interpreted the language to mean that the authority to allow residents of publicly operated community health centers to participate in the Program expired on September 30, 1984. As a result, on December 14, 1984, the Department issued a memorandum to all State and local welfare agencies through Food and Nutrition Service Regional Offices informing them that there was no longer a legislative basis for the participation of the residents of publicly operated community health centers in the Program. The memorandum requested that State agencies remove the recipients in these centers from the Program and stop certifying new applicants as of January 1, 1985. Field offices were notified to remove these publicly operated centers from their list of retail food stores, to cease authorization of these centers immediately, and to withdraw authorizations previously issued, effective March 1, 1985.

Congress also addressed this issue in the Fiscal Year 1985 Supplemental Appropriations Act, Pub. L. 99–88 (99 Stat. 293) which was signed on August 15, 1985. The Act stated that the treatment accorded private nonprofit drug addiction or alcohol treatment and rehabilitation programs, "shall henceforth also be applicable to publicly operated community health centers." In the accompanying legislative history (Senate Report Number 99–82), the Senate Appropriations Committee indicated that it intended that the authority which makes publicly operated community health centers eligible to be a permanent change in law.

Congress again addressed this issue in the Food Security Act of 1985, Pub. L. 99–198, this time amending the Food Stamp Act of 1977 to specify that publicly operated community mental health centers (such as those identified in Mississippi)—which provide the same type of residential programs for alcoholic or drug rehabilitation as in the case of private, nonprofit institutions—can participate in the Food Stamp Program. Inclusion of this provision in the Food Stamp Act clearly makes the change a part of permanent law. The language in the Food Security Act of 1985 identifies such centers as publicly operated community mental health centers under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.).

Consistent with this permanent change in law made in the Food Security Act, this rule provides that each narcotic addict or alcoholic who lives under the supervision of a publicly operated community mental health center for the purpose of regular participation in a drug or alcoholic treatment program will be considered an individual household instead of a resident of an institution and may again participate in the Program if otherwise eligible. In addition, publicly operated community mental health centers which treat drug addicts or alcoholics now meet the definition of a retail food store and can be authorized to use food stamps at a designated wholesale food concern.

The Department would like to point out that the Food Security Act of 1985 also makes a technical revision to the existing Food Stamp Act by removing references to now repealed laws dealing with food stamp eligibility for residents of private, nonprofit treatment programs and subsituting a reference to the Alcohol, Drug Abuse, and Mental Health Services Block Grant. Accordingly, these citations have been omitted in the regulations as well.

The regulatory language changes needed to effect this expansion are contained in § § 271.2, 272.1(g), 273.1(f)(2)(i), 273.11(e)(1), 274.10(d)(1) and 278.1(e) of the regulations.

Redemption of Food Stamps by Credit Unions

Currently, the Food Stamp Program regulations provide that only those financial institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) may redeem food stamps for retail food stores and wholesale food concerns participating in the program. Credit unions have not been allowed to redeem food stamps because they are not insured by either the FDIC or the FSLIC. However, in some areas credit unions serve as the only financial institutions in a community. As a result, some grocers have had to seek approved financial institutions outside their communities to

redeem food stamps. In order to afford these firms more convenience in redeeming food stamps, Congress amended the Food Stamp Act of 1977, as amended to allow the redemption of food stamps by certain federally insured credit unions. The Food Security Act of 1985 (section 1522 of Title XV of Pub. L. 99–198) provides that financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may also redeem food stamps. This rule revises the regulations accordingly to allow redemption of food stamps by those federally insured credit unions specified in Pub. L. 99–198.

The regulatory changes required to allow credit unions to redeem food stamps are contained in §§ 271.2, and 278.5(a)(1) of the regulations.

Offsetting Losses of Self-Employed Farmers

Current rules do not allow offsetting net losses from farm self-employment income against other household income. If another household member works outside the home and the farm operation shows a net loss, the Food Stamp Program currently looks only at the gain from this outside income, and does not offset the net farm income loss against other income. It is Congress' view that determining income in such a manner does not accurately reflect such a household's available income. (House Report 99–271, Part 1, p. 144.)

To address this concern, the Food Security Act of 1985 enacted on December 23, 1985 (section 1509 of Pub. L. 99–198) requires farm self-employment losses to be offset against other countable income in a household. It is Congress' intent that whatever base is used to determine income from self-employed farm operations, the previous year's tax return or current income, the same base be used in determining any net loss. In addition, losses should be prorated over the year in a manner comparable to that used to prorate farm self-employment income. In order to ensure uniform implementation of this provision we are stating in the rule that to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise.

This "definition" is from the 1982 Census of Agriculture, Volume 1, Geographic Area Series, Part 51, United States Summary and State Data, Introduction, p. V, published by the U.S. Department of Commerce, Bureau of the Census.

The regulatory changes required to permit farm self-employment losses to be offset against other household income are contained in §§ 273.10(e)(1)(i)(A) and 273.11(a)(2)(iii) of the regulations.

Implementation

State agencies shall implement the requirements regarding publicly operated community mental health centers and offsetting farm self-employment losses not later than thirty days after the effective date of this interim rule. State agencies may implement these changes upon publication February 25, 1986. This allows implementation earlier than thirty days after publication for those State agencies that want and are able to do so, while allowing State agencies which need more time up to thirty days to implement. Consequently, State agencies must begin taking applications from residents of publicly operated community mental health centers not later than thirty days after the rule's effective date. FNS field offices may authorize these centers to act as retail food stores on the effective date of this rule. Since the expanded definition of eligible centers was implemented prior to 1982 and for a one-year period as a result of the first 1983 Continuing Resolution, the Department does not expect problems with implementation. Also, the Department does not anticipate problems with implementation of the offset of farm self-employment losses since there is only a minor change in determining eligibility and benefits and this only affects one portion of the food stamp caseload.

The federally insured credit unions authorized to redeem food stamps under this rule may begin accepting food stamps for redemption not later than thirty days after the effective date of this rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking claims, Food stamps, Groceries—retail groceries, general line—wholesaler, Penalties.

Therefore, 7 CFR Parts 271, 272, 273, 274 and 278 are amended as follows:

1. The authority citation for Parts 271, 273, 274 and 278 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

2. The authority citation for Part 272 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 271—GENERAL INFORMATION AND DEFINITIONS

3. In § 271.2, Definitions, the definition of "Insured financial institution" is amended by adding after "FSLIC" the phrase "or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership".

4. In § 271.2, Definitions, the definition of "Retail food store" is amended by adding to clause (2) the words "publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics;" after the semicolon following the words "drug addict or alcoholic treatment and rehabilitation programs;".

5. In § 271.2, Definitions, the definition of "Drug addiction or alcoholic treatment and rehabilitation program" is revised to read as follows:

§ 271.2 Definitions.

* * * * *

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.).

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

6. In § 272.1, a new paragraph (g)(72) is added to read as follows:

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§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(72) *Amendment No. 267.* State agencies shall implement the eligibility requirements of this rulemaking as they apply to offsetting farm self-employment losses and publicly operated community mental health centers not later than March 27, 1986. State agencies must begin taking applications from residents of publicly operated community mental health centers (as defined in § 271.2) not later than March 27, 1986. FNS field offices may authorize these centers to act as retail food stores on February 25, 1986.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

7. In § 273.1(f)(2)(i), the first sentence is amended by adding the words "the publicly operated community mental health center or" before the words "the private nonprofit".

8. In § 273.10, paragraph (e)(1)(i)(A) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels.*—(1) *Net monthly income.*
(i) * * *

(A) * * * Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

* * * * *

9. In § 273.11, paragraph (a)(2)(iii) is amended by adding a new sentence after the second sentence to read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

(2) *Determining monthly income from self-employment.* * * *

(iii) * * * If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. * * *

* * * * *

10. In §273.11(e)(1), the first sentence is amended by adding the words "publicly operated or private nonprofit" after the words "participate in" and before the words "drug or alcoholic" and the last sentence is amended by removing everything after "FNS as a retailer" and inserting the words "or is funded under part B of Title XIX of the Public Health Service Act (42 U.S.C.300x et seq.)."

PART 274—ISSUANCE AND USE OF FOOD COUPONS

§ 274.10 [Amended]

11. In § 274.10, paragraph (d)(1) is amended by adding the words "or a publicly operated community mental health center" after the words "private nonprofit organization or institution".

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

12. In § 278.1(e) the first sentence is amended by removing the word "certified" and the remainder of the sentence and adding in its place the words "funded under part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.)." The second and third sentences are removed, and the fourth sentence is revised to read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(e) *Treatment programs.* * * * Approval to participate is automatically withdrawn once funding under Part B of Title XIX is discontinued.

* * * * *

§ 278.5 [Amended]

13. In § 278.5(e)(1), the first sentence is amended by adding after "(FSLIC)" and before the word "may" the phrase "or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership".

14. In § 278.9, a new paragraph (c) is added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(c) *Amendment No. 267.* The federally insured credit unions authorized to redeem food stamps under this amendment may begin accepting food stamps for redemption not later than March 27, 1986.

Dated: February 19, 1986.

Robert E. Leard,
Administrator.

[FR Doc. 86-3960 Filed 2-24-86; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Limiting the Use of Highly Enriched Uranium in Domestically Licensed Research and Test Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to limit the use of highly enriched uranium (HEU) fuel in domestically licensed research and test reactors (non-power reactors). The amendments generally would require that newly licensed non-power reactors use low enriched uranium (LEU) fuel and, contingent on Federal Government funding for conversion-related costs, that licensees of existing non-power reactors replace HEU fuel with LEU fuel acceptable to the Commission. The amendments are intended to promote the common defense and security by reducing the risk of theft or diversion of HEU fuel used in non-power reactors and the consequences to public health, safety and the environment from such theft or diversion. The reduction in use of HEU should encourage similar action by foreign operators of non-power reactors and, thereby, reduce the amount of HEU fuel in international use.

EFFECTIVE DATE: March 27, 1986.

FOR FURTHER INFORMATION CONTACT: F.P. Gillespie, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 443-7936.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Response to Public Comments on the Proposed Rule
III. Revisions to the Proposed Rule

I. Background

On July 6, 1984 (49 FR 27769), the Commission published a proposed rule which would implement Commission policy (expressed in 47 FR 37007, dated August 24, 1982) to reduce, to the maximum extent possible, the use of highly enriched uranium (HEU) in domestic and foreign research and test reactors (non-power reactors). The

proposed rule was intended to implement this policy by generally requiring newly licensed non-power reactors to use low enriched uranium (LEU) fuel and licensees of existing non-power reactors to replace HEU fuel with LEU fuel when available. Use of LEU fuel rather than HEU fuel reduces the possibility that fuel from non-power reactors would be diverted or stolen for the ultimate purpose of making "Weapons-usable" material.

In the supplementary information accompanying the publication of the proposed rule, the Commission acknowledged its concerns about the costs of conversion to its licensees, including costs attendant to the licensing process. The Commission, therefore, invited comments on (1) the extent that economics of conversions should influence its actions and (2) the approach of using "generic envelopes" of safety limits (explained below) and limiting conditions of operation to facilitate conversion safety reviews. Both of these issues were addressed in many comment letters, and the final rule includes provisions which the Commission believes respond in a reasonable and prudent manner to the legitimate concerns about these subjects.

II. Responses to Public Comments on the Proposed Rule

Over 130 comment letters were received from members of Congress, public interest groups, members of the research and test reactor community, special interest groups, the Departments of Energy (DOE) and State, the Arms Control and Disarmament Agency, and individual members of the public. The extensive comments on this proposal were separated into nine categories. (1) International Significance of NRC-Mandated Conversion; (2) Value/Impacts of Proposed Conversion; (3) Technical Feasibility and Safety Issues; (4) Licensing Issues Attendant to Conversion; (5) Funding for Proposed Conversions; (6) Risk of Theft or Diversion of HEU Fuel; (7) Evaluation of the Threat of Theft or Diversion of HEU—Adequacy of Security; (8) Implementation Options and Alternatives; and (9) Miscellaneous Comments.

Three categories of comments were most relevant to the underlying basis for the changes incorporated into the final rule. These were Category 4—Licensing Issues Attendance to Conversion; Category 5—Funding for Proposed Conversions; and Category 8—Implementation Options and Alternatives. Two other categories were considered to be most relevant to the decision to promulgate final rule. These were Category 1—International Significance of NRC-Mandated Conversions and Category 6—Risk of Theft or Diversion of HEU Fuel. The Commission's positions on the topics addressed in these five categories of comments are summarized below. Copies of all public comments and the complete Commission staff responses are available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street NW, Washington, DC 20555. Single copies are available without charge from the contact person.

Funding for Proposed Conversions

In publishing the proposed rule for public comments, the Commission indicated in the Supplementary information section that it shares the licensees' expressed views that conversion costs should largely or entirely be financed by the Federal Government. Currently, the Federal Government, through the DOE, is providing funding for the Reduced Enrichment for Research and Test Reactor (RERTR) and other fuel research programs. The objective of these programs is to develop and demonstrate non-power reactor fuels which can be operated safely and will allow substitution of LEU for HEU fuel in such reactors. These programs have been successful to date, and their continued success is expected to result in technological developments which could lead to a significant reduction of HEU inventories both in the United States and abroad.

It was recognized that additional operational and support costs associated with physical replacement of HEU fuel with LEU fuel would be incurred in the domestic conversion of licensed facilities. A number of commenters stated that the NRC statement on costs did not constitute a firm commitment for funding expensive fuel changes and did not specify what costs would or would not be covered. Cost of transportation (both of new and old fuel), costs caused by the differences in fuel cycles for LEU and HEU fuels, and costs associated with insurance, disposal, licensing support and potential litigation were specifically identified by commenters. It was also pointed out that the proposed rule did not establish a vital link between Federal funding and implementation, that is, it did not make clear whether or not implementation could be delayed if Federal funding did not materialize. One comment letter discussed the apparently conflicting views of NRC and DOE on conversion funding, especially for "lifetime cores," and questioned Congressional willingness to provide funding. Resolution of the funding question was considered necessary before issuance of a final rule.

Many commenters supporting the proposed rule implied that economics should not be used as a reason to avoid the changeover. Comments from two members of Congress indicated their belief that Congress would continue to provide funding for development of reduced enrichment fuels and would defray the cost of their use in *university* research reactors. Others also stated their belief that funding for conversion would be provided by Congress.

After reviewing these comments, the Commission is of the view that conversion costs of *all* domestic non-power reactors directed to convert should be financed fully by the Federal Government. The domestic conversion actions it has proposed are based on the determination that the residual risks of theft or diversion of HEU fuel from non-power reactors would be further reduced in a cost/effective manner and that these actions are consistent with the U.S. policy of setting an example to encourage conversion by foreign users of HEU in non-power reactors. Full Federal financing would also permit the Commission to meet the dictates of section 104c. of the Atomic Energy Act of 1954, as amended. Such financing would allow the Commission to impose only the minimum amount of regulation on non-power reactor licensees to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the continued conduct of widespread and diverse research and development activities by these licensees.

As noted in the background material accompanying publication of the proposed rule, DOE historically has provided significant support to research and test reactor programs. In fact, fuel for university reactors is currently supplied and paid for by DOE (i.e., U.S. taxpayers) and "loaned" to the universities. It is anticipated that the funding necessary for conversion activities for both university and other licensees could be provided through DOE or another Federal agency. The Commission has requested that Congress appropriate the necessary funding to cover licensees' conversion-related costs.

To reflect its determinations and views with respect to the funding issue, the Commission has added the following features to the final rule. First, in the definitions in § 50.2, the Commission sets forth its views on elements to be

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considered in determining the Federal Government's obligations to provide funding for conversion-related activities. That funding could include, but is not necessarily limited or extend to (1) costs attendant to the procurement of LEU fuel; (2) costs attendant to "lost HEU fuel value" (i.e., residual value of HEU fuel being used by commercial licensees); (3) licensee cost attendant to operations necessary to replace HEU fuel with LEU fuel; (4) reasonable lost revenue costs attendant to (a) facility shutdowns necessary to accomplish the conversion process, and (b) the difference in fuel cycle costs, such as more frequent refueling resulting from the use of LEU fuel rather than HEU fuel; (5) costs attendant to both transporation of HEU fuel from and LEU fuel to the licensed facility undergoing conversion; (6) reasonable costs attendant to preparing analyses and presenting documentation required by the final rule or necessary to obtain NRC approval for the conversion process; and (7) reasonable costs associated with safeguarding HEU fuel being replaced in the process of conversion until it has been transferred to an appropriate facility. Final determination of conversion costs under the provisions of this rule and certification thereof to the Commission shall rest with the Department of Energy or other agency responsible for disbursing conversion funds, in consultation with the licensee.

Second, the paragraph on implementation, § 50.64(c), has been modified to require licensees to submit proposals for conversion which would include a certification from DOE or other appropriate Federal agency that Federal Government funding for conversion is available. Only if the certification is obtained would a licensee be required to include a schedule for conversion in the required proposal. If Federal Government funding for conversion cannot be certified, the proposal's contents may be limited to a statement of this fact; however, the licensee would be required to resubmit a proposal for conversion at 12-month intervals thereafter, until certification is obtained. This provision applies to all non-power reactor licensees.

Finally, under the provisions of § 170.11(b)(1), the Commission hereby grants to non-power reactor licensees a one-time exemption from application fees, license fees, amendment fees, renewal fees, approval fees and inspection fees associated solely with the conversion processes required by § 50.64. Aside from inspection fees, the exemption for the other fees would apply to four commercial licensees affected by § 50.64 (the other facilities are already exempt under § 170.11(a) (4), (5), and (9)). The exemption of inspection fees would apply to 28 licensees, and is expected to be limited to any single non-routine safety inspection performed by NRC following a facility's conversion to assure that a licensee is complying with its stated or approved conversion plans and operations.

Through these provisions, the Commission believes that the costs of conversion to its licensees can be virtually eliminated.

Implementation Options and Alternatives

A large fraction of the comment letters focused on the implementation features of the proposed rule. Two views held by commenters supporting the proposed rule were that a specific deadline should be imposed on conversion actions and that the conversion exemptions, under the proposed rule's unique purpose provisions, should be eliminated or tightened. In counter-point, several commenters stated that, since it is at present uncertain what fuel would be acceptable to the Commission, the issues of funding and for license amendments should be resolved before any final rule is issued.

As to the deadline issue, the Commission has determined that establishing a specific deadline for conversion actions is not generally justified. This is in keeping with the Commission's view that funding for conversions should be available, that HEU to LEU fuel conversion addresses the potential reduction of the residual risk posed by the use of HEU fuel at licensed non-power reactors and thus does not require a specific deadline, and that domestic conversions are intended to be put on solid footing by setting a strong, resolute and sensible example, consistent with U.S. national policy, to encourage foreign operators of non-power reactors to convert to the use of LEU fuel. The Commission, however, does want to initiate the overall conversion process at the earliest possible date, and, therefore, has provided in § 50.64 for 12 months for the initial submission by affected licensees of their conversion proposals. To further assist licensees and the DOE, a definition of fuel acceptable to the Commission has been added to § 50.2. The Commission believes that, for several non-power reactors, fuels can be made available which would be capable of meeting this definition.

Turning to the issue of conversion exemptions which could be granted under the unique purpose provisions of the proposed rule, the Commission believes that these exemptions are needed under section 104c. of the Atomic Energy Act to permit the continued conduct of widespread and diverse research and development; however, the definition of unique purpose in § 50.2 has been expanded to define more precisely the nature and purpose of the experiment, program, or commercial activity necessitating the use of HEU fuel.

The funding issue has been addressed already and the amendment issue is discussed later with respect to § 50.64. The remaining issue in this subgroup of implementation options involves the question of licensing uncertainties (i.e., the possibility that licensees may become involved in protracted adjudicatory hearings as a result of their conversion activities). This issue is addressed in the following section.

Licensing Issues Attendant to Conversion

In the supplementary information section of the proposed rule, the Commission stated that it is considering the development of "generic envelopes" of safety limits for several types of non-power reactors. The Commission believed that these envelopes could be developed by (1) defining the licensing needs for various classes of reactors (e.g., for both normal operating conditions and potential accident scenarios); (2) reviewing the domestic and foreign data available through the RERTR and other fuel development and demonstration programs; and (3) assessing the feasibility of generic safety evaluation of safety analysis reports. The development of these generic envelopes could facilitate safety reviews attendant to the HEU/LEU fuel conversion process. Comments were invited on this approach and many were received from both supporters and opponents of the proposed rule. These comments can be divided into two general classes.

One class argued that conversion would require, in almost all cases, either a reactor "relicensing" (or new operating license) or a licensing amendment. The possibility of implementing conversion under § 50.59 without amendment was generally considered unrealistic. Concerns were expressed that this "relicensing" or license amendment process could lead to extensive licensing hearings brought about by intervenors and that costs related to such hearings could exceed

the hardware costs of conversion. Some of these commenters cited the recent shutdown of the UCLA reactors as a pertinent example. Many commenters, including several involved with the operation of non-power reactors at universities, indicated that they could not afford to engage in litigation against determined opponents and that even the perception of uncertainties about such litigation could influence decisions on continued reactor operation.

Following this line of argument, a few commenters recommended that the NRC undertake a rulemaking proceeding on the issue of generic licensing and that any changeover be contingent on a finding that safe operation of a non-power reactor would not be affected significantly by a conversion from HEU to LEU fuel. It was also suggested that the requirement in the proposed rule regarding the acquisition (or fabrication) of additional HEU fuel should be contingent on completion of the license changes necessary to accommodate use of LEU fuel. The potential need for the rule to provide, in any conversion process, for stepwise refueling to keep the reactor within present 10 CFR Part 73 requirements was also identified.

The other class of comments presented an opposite viewpoint, arguing that, even if conversion requires a license amendment, challenges can raise questions only on the narrowest of matters relevant to the subject of the amendment. Further, many commenters in this class opposed the idea of generic envelopes of safety limits for several types of non-power reactors, although some of them recognized the need for generic safety analysis of fuels. These commenters stated that if there are any questions about the safety of reactors due to conversion, the public should be allowed to address these safety questions in a public hearing. Others emphasized that safety margins should increase or remain equal to those currently approved by the NRC and that a license amendment should be required if margins are reduced. On the other hand, several commenters noted that interventions against the amendments required to accomplish conversion would be unlikely but that, indeed, failure to convert could lead to intervention in license renewal and license amendment proceedings.

The Commission has decided to forego, at least for the near term, any "generic envelope" safety rulemaking. While this rule resolves all issues as to need for conversion to LEU, it does not provide any generic resolution for any safety issues that may arise, in individual cases, in connection with changes in the license, facility or procedures made necessary by the conversion to a different fuel type from HEU to LEU.

After receipt of a licensee proposal for implementation of the conversion to LEU, NRC staff will conduct an appropriate evaluation for both implementation of the rule and for assuring the protection of the public health and safety in connection with any licensee-proposed changes in the license, facility, and procedures made necessary by the conversion. After the NRC staff evaluation, an appropriate enforcement order will be issued directing both the conversion and any necessary changes in the license, facility and procedures. It is expected that in most cases, if not all, that enforcement order will be in the form of an order to modify the license under 10 CFR 2.204.

In the event that any interested person should, in accordance with section 189a. of the Atomic Energy Act, request a hearing on the enforcement order, NRC staff will participate fully in the proceeding and will have the burden of defending the order. Thus, in the event a hearing is requested, the licensee need not participate in the hearing and may therefore avoid litigative expenses associated with the conversion and hearing. The Commission believes that this NRC staff role is consistent with the general policy that the costs of conversion to LEU should, to the maximum practical extent, be borne by the Federal Government.

International Significance of NRC-Mandated Conversions

The Commission's view on the international and nonproliferation significance of the proposed domestic conversions was reflected in the Policy Statement of August 1982 (47 FR 37007, dated August 24, 1982). The Commission discussed in this Statement its interest in reducing, to the maximum extent possible, the use of HEU in domestic research and test reactors and, thereby, encouraging conversion by foreign reactor operators. To assist in accomplishing this policy goal, the Commission made two commitments: First, to provide full support for DOE's RERTR program; and second, as part of the policy to strongly encourage conversion by foreign operators, to take steps to encourage similar action by U.S. non-power reactor operators. Subsequently, the Commission considered the proposed rule to limit the use of HEU fuel in domestic non-power reactors as such a step.

As to international and nonproliferation implications, the State Department stated that the proposed action could have some marginal effect on future negotiations with foreign non-power reactor operators regarding the need and timing for converting their own reactors. It also suggested to the NRC that converting some reactors might impose an undue technical or economic penalty. The Commission has responded to this comment by closely coupling conversion to Federal Government funding of conversion-related activities. Through this action, the Commission believes it has brought the criteria for the domestic conversion program in line with the no undue economic penalty criterion suggested by the Executive Branch for foreign non-power reactor operators. The Commission also recognizes that the development and demonstration of acceptable LEU replacement fuel and the conversion of larger DOE facilities can have a significant influence on foreign non-power reactor operators.

The proposed rule implied that HEU fuel at all licensed non-power reactors, whether in a facility's inventory or in transit, has relatively equal proliferation significance. The State Department view is that no significant nonproliferation benefits are associated with conversion of "lifetime core" reactors, i.e., those reactors that were designed and built to operate over their entire life with the initial fuel load. Currently, 16 of 28 (originally 20 of 31) licensed facilities potentially affected by the final rule can be characterized as having lifetime cores. The Commission concludes that conversion of domestic non-power reactors will promote the common defense and security by reducing the risk of theft or diversion of HEU fuel at these reactors and the consequences to public health, safety and environment from such theft or diversion. Additionally, domestic conversions should generally encourage, in a symbolic way, conversions of foreign non-power reactors.

Risk of Theft or Diversion of HEU Fuel

Although the proposed rule to limit the use of HEU in non-power reactors was based primarily on international policy and nonproliferation considerations, the comments necessitated a reexamination of the "values" and "impacts" associated with further reductions in the domestic risk of theft or diversion of HEU fuel from NRC-licensed non-power reactors. This reexamination is summarized here. The complete responses to public comments are available from the NRC Public Document Room, under the title, "Limiting the Use of Highly Enriched Uranium in Domestic Research and Test

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Reactors, Responses to Public Comments," July 22, 1985. As stated above and explained below, the Commission concludes that the final rule is based on domestic common defense and security and public health and safety considerations as well as on international and nonproliferation considerations.

In assessing the "value" of conversions in terms of residual risk reduction, the conservatisms in the current operating assumption of the likelihood of clandestine fission explosive (CFE) fabrication must be considered. Specifically, consideration must be given not only to the level of security provided, but also to: (1) The theat; (2) the ability of the intelligence community to give advance warning of a developing event or a planned malevolent act in sufficient time to implement additional countermeasures; (3) the deterrent value of irradiated fuel; (4) the length of time it would take to remove fresh or irradiated fuel from a facility (irradiated fuel would normally take longer); (5) the likelihood that an adversary would successfully process either fresh or irradiated fuel to obtain material which potentially could be used to construct a nuclear explosive device, and the time and resources required (processing of irradiated fuel is significantly more difficult); (6) the ability to find and retrieve nuclear material, if stolen (irradiated fuel would be easier to find); (7) the conservatism built into the 5-kilogram formula quantity for U–235—see generally §§ 73.1(a) and 73.2(bb)(the presence of fission products would increase the conservatism of this number); and (8) the likelihood that an adversary could successfully construct a nuclear explosive device (the presence of fission products would make this more difficult). All of these factors have an impact on the assessment of the likelihood that an adversary could construct a CFE through diversion or theft of HEU fuel from non-power reactors. To complete the evaluation of risk, the range of consequences has been considered in the event of a successful theft or diversion of any quantity of HEU fuel from licensed non-power reactors. The resultant reduction of risks can be balanced against the incurred costs. As explained above, the costs of conversion for all affected licensees includes a quantifiable component, currently estimated as $12–16 million. In addition, nonquantifiable costs have been identified, including any licensing cost associated with potential hearings and potential losses in functional capabilities at affected facilities. As discussed above, virtually all costs will be borne by the Federal Government. The Commission also believes, based on comments received on the proposed rule, that promulgation of this final rule will involve a benefit to licensees. The Commission's conclusion, based on the cost/benefit evaluation, is to proceed with promulgation of this final rule, in order to fulfill its obligations under the Atomic Energy Act to promote the common defense and security and to protect the health and safety of the public, as well as to permit the continued conduct of widespread and diverse research and development.

III. Revisions to the Proposed Rule

1. Section 50.2—Formerly § 50.64(b) of the Proposed Rule

This section has been expanded to include definitions of "Federal Government funding for conversion," "Fuel acceptable to the Commission," and several other definitions identified in § 50.64(b) of the proposed rule. These definitions have not been included in § 50.2 for easy and consistent reference. The first definition was necessary to couple conversion actions by licensees to the funds necessary to accomplish the conversion process. The second definition was needed to indicate that those non-power reactors meeting the unique purpose provision of the rule must use HEU fuel of enrichment as close to 20% as is available and acceptable to the Commission.

In addition, the unique purpose definition, stated in § 50.64(b)(5)(1) of the proposed rule, has been expanded to define more precisely the specific experiment, program or commercial activity that justifies continued use of HEU fuel. The change is also intended to limit consideration of activities to those having merit for research purposes, and not because they may have some economic benefit. The Commission itself will make the final decision on any conversion requirement based upon a finding of unique purpose.

Section 50.64(b)—Formerly § 50.64(c) of the Proposed Rule

The changes to § 50.64(c), now § 50.64(b), include minor word changes in § 50.64(b) (1) and (2) and two clarifications in § 50.64(b)(2). The proposed rule would not have allowed a licensee to acquire additional HEU fuel if LEU fuel acceptable to the Commission for that reactor were available. Since a few of the affected non-power reactors refuel frequently enough to require "lead times" for fuel acquisition, the wording could have caused an unnecessary shutdown of these facilities until acceptable LEU fuel was available for use in the reactor. The background statement to the proposed rule indicated that the conversion schedule could include consideration of reactor usage which could apply to these situations. To clarify the final rule's intent, § 50.64(b)(2)(1) has been modified so that a licensee is required not to initiate acquisition of additional HEU fuel if LEU fuel acceptable to the Commission is available.

The change in § 50.64(b)(3) is intended to limit the scope of use of HEU fuel while allowing the use of fuel that is acceptable to the Commission but is slightly different from that needed to meet the strict definition of LEU weight percent of U–235. Such fuel might be required, in isolated instances, because of non-power reactor's core geometry and conditions for operation. However, the Commission wishes to see all licensees go to fuel as close to 20% enrichment as possible.

4. Section 50.64(c)—Formerly § 50.64(d) of the Proposed Rule

The changes in § 50.64(c)(2)(i) and the inclusion of § 50.64(c)(2)(ii) have been made to couple implementation of the rule to the availability of Federal Government funding in order to cover the costs of conversion.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and that, therefore, an environmental impact statement is not required. Basically, the rule places limitations on the use of HEU fuel in domestic research and test reactors. In so doing, the risk of theft or diversion of HEU will be reduced. Neither the safe operation, nor any routine release of radioactivity from the affected reactors will be changed in any significant manner. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from F.P. Gillespie, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 443–7936.

Paperwork Reduction Act Statement

The final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits considered by the Commission. The analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from F.P. Gillespie, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555, (301) 443–7936.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects nonpower reactor licensees that own and operate facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—[AMENDED]

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2701, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54 and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50. 54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 50.2 [Amended]

2. In § 50.2, add the following new definitions in the proper alphabetical sequence.

"Federal Government funding for conversion" means funds appropriated to the Department of Energy or to any other Federal Agency to pay directly to or to reimburse non-power reactor licensees for costs attendant to conversion.

"Fuel acceptable to the Commission" means that the fuel replacing the existing HEU fuel in a specific non-power reactor (1) meets the operating requirements of the existing license or, through appropriate NRC safety review and approval, can be used in a manner which protects public health and safety and promotes the common defense and security; and (2) meets the Commission's policy of limiting, to the maximum extent possible, the use of HEU fuel in that reactor.

"Highly enriched uranium (HEU) fuel" means fuel in which the weight percent of U–235 in the uranium is 20% or greater. Target material, special instrumentation, or experimental devices using HEU are not included.

"Low enriched uranium (LEU) fuel" means fuel in which the weight percent of U–235 in the uranium is less than 20%.

"Non-power reactor" means a research or test reactor licensed under §§ 50.21(c) or 50.22 of this part for research and development.

"Unique purpose" means a project, program, or commercial activity which cannot reasonably be accomplished without the use of HEU fuel, and may include: (1) A specific experiment, program, or commercial activity (typically long-term) that significantly serves the U.S. national interest and cannot be accomplished without the use of HEU fuel; (2) Reactor physics or reactor development based explicitly on the use of HEU fuel, (3) Research projects based on neutron flux levels or spectra attainable only with HEU fuel; or (4) A reactor core of special design that could not perform its intended function without using HEU fuel.

3. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.64, 50.71, 50.72, 50.80, 50.82, 50.90, 50.91, and Appendixes A, B, E, G, H, J, K, M, N, and R.

4. A new § 50.64 is added to read as follows:

§ 50.64 Limitations on the use of highly enriched uranium (HEU) in domestic non-power reactors.

(a) *Applicability.* The requirements of this section apply to all non-power reactors.

(b) *Requirements.* (1) The Commission will not issue a construction permit after March 27, 1986 for a non-power reactor where the applicant proposes to use highly enriched uranium (HEU) fuel, unless the applicant demonstrates that the proposed reactor will have a unique purpose as defined in § 50.2.

(2) Unless the Commission has determined, based on a request submitted in accordance with paragraph (c)(1) of this section, that the non-power reactor has a unique purpose, each licensee authorized to possess and use HEU fuel in connection with the reactor's operation shall:

(i) Not initiate acquisition of additional HEU fuel, if low enriched uranium (LEU) fuel acceptable to the Commission for that reactor is available when it proposes that acquisition; and

(ii) Replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor, in accordance with a schedule determined pursuant to paragraph (c)(2) of this section.

(3) If not required by paragraphs (b) (1) and (2) of this section to use LEU fuel, the applicant or licensee must use HEU fuel of enrichment as close to 20% as is available and acceptable to the Commisson.

(c) *Implementation.* (1) Any request by a licensee for a determination that a non-power reactor has a unique purpose as defined in § 50.2 should be submitted with supporting documentation to the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory

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Commission, Washington, DC 20555, by September 29, 1986.

(2) (i) By March 27, 1987 and at 12-month intervals thereafter, each licensee of a non-power reactor authorized to possess and use HEU fuel shall develop and submit to the Director of the Office of Nuclear Reactor Regulation a written proposal for meeting the requirements of paragraphs (b) (2) or (3) of this section. The licensee shall include in the proposal a certification that Federal Government funding for conversion is available through the Department of Energy (DOE) or other appropriate Federal Agency. The licensee shall also include in the proposal a schedule for conversion, based upon availability of replacement fuel acceptable to the Commisson for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for the available financial support, and reactor usage.

(ii) If Federal Government funding for conversion cannot be certified, the proposal's contents may be limited to a statement of this fact. If a statement of non-availability of Federal Government funding for conversion is submitted by a licensee, then it shall be required to resubmit a proposal for meeting the requirements of paragraphs (b) (2) or (3) of this section at 12-month intervals.

(iii) The proposal shall include, to the extent required to effect the conversion, all necessary changes in the license, facility, or procedures. Supporting safety analyses should be provided so as to meet the schedule established for conversion. As long as Federal Government funding for conversion is not available, the resubmittal may be a reiteration of the original proposal. The Director of the Office of Nuclear Reactor Regulation shall review the proposal and confirm the status of Federal Government funding for conversion and, if a schedule for conversion has been submitted by the licensee, will then determine a final schedule.

(3) After review of the safety analysis required by paragraph (c)(2), the Director of the Office of Nuclear Reactor Regulation will issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of the public health and safety, any necessary changes to the license, facility, or procedures.

Separate Views

Chairman Palladino supports Federal funding for all conversion. However, in the event that no Federal funds are provided, the view of Chairman Palladino is that no conversion should be required. The Chairman also believes that, in the event that Federal funds are provided for university reactors but not for commercial non-power reactors, then the latter should still be required to convert to LEU, notwithstanding the lack of Federal funds.

Commissoner Asselstine believes that the conversion of commercial non-power reactors should not be contingent upon federal funding. The Federal government historically has provided significant support to *university* research and test reactor programs. In fact, it was this longstanding relationship with the university non-power reactors, coupled with the concern on the part of the university reactor operators of excessive costs and protracted litigation, which led the Commisson to support federal funding for conversion. There was never any discussion on the part of the Commission of how requiring conversions of the commercial non-power reactors would create a severe financial hardship for the commercial concerns. Commissioner Asselstine believes that if federal funds are not provided for the conversion of commercial non-power reactors, then the rule should require these licensees to convert to LEU notwithstanding the lack of federal funding. He believes that it is most unfortunate that the Commission has created a loophole in its rule whereby these commercial non-power reactors will never be required to convert to LEU if Federal funding is not provided.

Dated at Washington, DC this 20th day of February, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-4031 Filed 2-24-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 178

[Docket No. 80F-0154]

Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

Correction

In FR Doc. 86-3150 beginning on page 5316 in the issue of Thursday, February 13, 1986, make the following correction:

In the second column, thirteenth line, insert "methyl]" before "-4-".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8067]

Income Tax; Accounting for Long-Term Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to Treasury Decision 8067, which was published in the Federal Register on January 6, 1986 (51 FR 376). T.D. 8067 issued final regulations relating to accounting for long-term contracts.

EFFECTIVE DATE: These corrections are effective January 6, 1986.

FOR FURTHER INFORMATION CONTACT: Paulette Chernyshev of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3288 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1986, the Federal Register published (51 FR 367) Treasury Decision 8067 which set forth final regulations that amended existing regulations relating to accounting for long-term contracts. The amendments were necessary because of provisions contained in the Tax Equity and Fiscal Responsibility Act of 1982.

Need for Correction

As published, T.D. 8067 contains typographical errors and one format error in the following locations: page 381, first column, paragraph numbered (3)(i), line 37; page 381, third column, paragraph (iii), line 12; page 383, second column, paragraph (C), line 1; page 385, first column, paragraph (I), line 7; page 388, third column, continuing to page 389, first column, paragraph (v); page 390, third column, line 2.

Correction of Publication

Accordingly, the publication of Treasury Decision 8067, which was the subject of FR Doc. 85.30814 (51 FR 376), is corrected as follows:

§ 1.451-3 [Corrected]

Par. 1. In § 1.451-3, on page 381, first column, paragraph (b)(3)(i), line 37, the word "costs" is removed and the word "cost" is added in its place.

Par. 2. In § 1.451-3, on page 381, third column, paragraph (b)(3)(iii), line 12, the word "has" is added immediately following the word "taxpayer".

Par. 3. In § 1.451-3, on page 383, second column, paragraph (C), line 1, the language "(C) *Short taxable years.* For any" is removed and the language "(D) *Short taxable years.* For any" is added in its place.

Par. 4. In § 1.451-3, on page 385, first column, paragraph (d)(5)(iii)(I), line 7, the word "contruction" is removed and the word "construction" is added in its place.

Par. 5. In § 1.451-3, on page 389, first column, lines 6 through 8, the language "performed no further allocation of that type of cost shall be required at the jobsite, and (C) For each taxable year" is removed and the language "performed at that jobsite, and no further allocation of that type of cost shall be required. (C) For each taxable year" is added in its place.

Par. 6. In § 1.451-3, on page 388, third column, continuing to page 389, first column, paragraph (d)(9)(v), subparagraphs (A), (B), and (C) are separate, indented components of paragraph (d)(9)(v) instead of a continuous string.

Par. 7. In § 1.451-3, on page 390, third column, line 2, the comma following the word "office" is removed.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-4061 Filed 2-24-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 230

[DoD Instruction 1000.12]

Procedures Governing Banking Offices on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part updates Department of Defense (DoD) policies and procedures concerning banking institutions and savings associations that may operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions. In so doing, it contemplates a more active role by the Assistant Secretary of Defense (Comptroller) in coordinating related DoD Component actions. In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings associations were applied, wherever possible, to the other types of institutions. The revision streamlines approval procedures for installations of automated teller machines and clarifies procedures for onbase office construction. Policies governing permissible service charges and fees are made less restrictive; for example, while Treasury checks must be cashed for all DoD personnel, institutions may determine the charge to non-accountholders for providing this service. The revision modifies provisions for establishment of onbase offices to permit service by more than one institution under singular circumstances, as indicated.

EFFECTIVE DATE: February 3, 1986.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A650, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, telephone (202) 697-8281, AUTOVON: 227-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19140 amended Title 32, CFR, Part 230, which contains the existing Office of the Secretary of Defense (OSD) procedures for the operation of onbase banking institutions. On September 9, 1985, 50 FR 36610 proposed revision to those procedures. Accompanying policies are contained at Part 231. Comments were received from the DoD Components, Treasury Department, U.S. Small Business Administration, trade associations representing affected institutions, and two financial institutions operating at several DoD installations. All comments were fully considered and a majority were accepted in this final rule. A new provision precludes performance of commercial banking operations by DoD activities; DoD Components are to rely upon commercially available sources. DoD Components are required to forward requests for establishment of military banking facilities (MBFs) to the Deputy Assistant Secretary of Defense (Management Systems). At Treasury Department requests, a provision was added stating that where authorization is required to have the institution act as a Treasury General Account (TGA) domestic depositary, the institution's rating from a Treasury approved rating service shall be "C" or better, and the average daily TGA balance shall normally not exceed five percent of the institution's total assets. Reference to the $1.00 charge for domestic encashment of Treasury checks for non-accountholders was eliminated. Domestic banking institutions may adjust services and fees to maintain consistency with competing institutions or the onbase institution's branch-wide service offerings and fee schedules. Procedures are clarified for nonself-sustaining banking office construction of a building or renovation of government space. Lease duration is for the stated term or upon determining that the office is self-sustaining, whichever occurs first. The counting of dependents is prohibited when seeking to qualify under the 250 or 1,000 population rules for part- or full-time MBFs overseas. Component implementing regulations are to provide for support of overseas MBFs under terms of DoD contracts, thereby reducing procedural details formerly in the issuances. Overseas commanders having onbase MBFs are required to "accept" services rendered and report service shortfalls under identified procedures. DoD personnel may not serve as directors of banking institutions that operate banking offices on installations to which assigned. Numerous editorial improvements also were made in the final rule. Procedures contained herein also were reviewed for compliance with the Regulatory Flexibility Act, Pub. L. 96-354. It was determined that this final rule will not have a significant economic impact on a substantial number of small entities since its provisions apply mainly to the DoD Components and do not alter existing relationships with financial institutions chartered by Federal and State regulatory agencies to operate on DoD installations.

List of Subjects in 32 CFR Part 230

Banks, Military banking facilities, Savings and loan associations.

Accordingly, 32 CFR Part 230 is revised to read as follows:

PART 230—PROCEDURES GOVERNING BANKING OFFICES ON DOD INSTALLATIONS

Sec.
230.1 Reissuance and purpose.
230.2 Applicability and scope.
230.3 Definitions.
230.4 Responsibilities.
230.5 General operating policies and procedures.
Appendix A—Procedures for Establishing, Supporting, and Terminating Onbase Banking Offices.
Appendix B—Operating on Onbase Banking Offices.

Authority: 10 U.S.C. 136.

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§ 230.1 Reissuance and purpose.

This part reissues DoD Instruction 1000.12[1] and provides procedural guidance to supplement DoD Directive 1000.11 concerning relations with banking offices serving on DoD installations.

§ 230.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

(b) Its provisions also pertain to all banking institutions that operate on DoD installations.

§ 230.3 Definitions.

Terms used in this part are defined in 32 CFR Part 231.

§ 230.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD domestic and overseas banking programs, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel).

(2) In coordination with affected DoD Components, authorize the specific types of banking services that will be provided by overseas banking facilities and specify the charges or fees, or the basis for these, to be levied on users of these services.

(3) Coordinate with the Fiscal Assistant Secretary of the Treasury on the designation of domestic and overseas banking facilities as depositaries and financial agents of the U.S. Government.

(4) Maintain liaison, as necessary, with Federal and equivalent State bank regulatory agencies as defined at enclosure 2 of DoD Directive 1000.11.

(5) Designate a technical representative to provide policy direction for the procuring and administrative contracting officer(s) responsible under the Federal Acquisition Regulation (FAR) for acquiring banking services required at overseas DoD installations.

(6) Serve as principal liaison with banking institutions having offices on overseas DoD installations. In this capacity, monitor banking facility managerial and operational policies, procedures, and operating results and take action as appropriate.

(7) Coordinate on DoD Component actions that contemplate a banking institution's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(8) As necessary, negotiate government-to-government agreements for the provision of banking services on overseas DoD installations, in accordance with DoD Instruction 2050.1.

(9) Take final action on requests for exception to the provisions of this Part.

(b) The *Assistant Secretary of Defense (Acquisition and Logistics)* (ASD(A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Secretaries of the Military Departments and Directors of Defense Agencies* shall:

(1) Prescribe procedures for soliciting banking institutions to establish banking offices on respective domestic DoD installations. Such procedures shall prohibit DoD personnel from subjecting banking institutions to any form of coercion either while banking arrangements are under consideration or after banking offices are established.

(2) Review proposals to establish banking offices on respective domestic DoD installations, select the banking institution making the best offer and recommend designation of that institution to the appropriate regulatory agency.

(3) Forward proposals to establish banking facilities to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

(4) Provide for liaison to banking institutions operating banking offices on respective domestic DoD installations.

(5) Supervise the use of banking offices on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11

(6) Evaluate the services provided by banking offices to ensure that they fulfill the requirements upon which establishment and retention of those services were justified.

(7) Monitor practices and procedures of respective onbase banking offices to ensure that the welfare and interests of DoD personnel as consumers are protected.

(8) Assist respective onbase banking offices in developing and expanding necessary services for DoD personnel consistent with the provisions stated herein.

(9) Determine the level of logistic support to be provided to respective domestic banking institutions that submit reports reflecting nonself-sustaining status.

(10) Encourage the conversion of existing domestic banking facilities on respective installations to independent or branch bank status where feasible.

(11) Provide logistic support to overseas banking facilities under terms and conditions identified in respective contracts.

(12) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas banking service or related actions emanating from Component commands overseas.

(13) Refer matters requiring policy decisions or proposed changes to this Part or DoD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish banking offices in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Totally eliminate banking offices in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate military banking operations within the command area. Personnel assigned to security assistance positions shall not perform this function without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 230.5 General operating policies and procedures.

(a) *Limitation on Service.* Under singular circumstances, more than one banking institution may be permitted to operate on a DoD installation to ensure that personnel on the installation receive adequate financial services.

(1) If a particular installation demonstrably needs more services, the existing banking office shall first be given the opportunity to meet those needs.

(2) When conditions warrant consideration of a second banking institution on the installation, a request providing full details shall be forwarded through channels to the DoD Component headquarters concerned for evaluation and appropriate action. The Head of the DoD Component or designee may approve and forward such requests to the appropriate regulatory agency after coordination with the DASD(MS).

(b) *Uniformity of Service.* Financial services provided on DoD installations shall be as uniform as possible for all DoD personnel. Similarly, service charges and fee schedules shall, wherever possible, be uniform at overseas DoD installations.

(c) *Establishing Banking Offices.* (1) Banking offices on domestic DoD installations shall be established only with prior approval of the DoD Component concerned and the appropriate regulatory agency. Specific procedures are identified at Appendix 1. No commitment may be made to any banking institution regarding its proposal until a designation is made by the appropriate regulatory agency.

(2) Only banking institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) shall operate on domestic DoD installations.

(3) Except under singular circumstances, DoD Components may establish banking facilities only overseas and in those states that prohibit branch banking.

(4) Where domestic DoD installations are unable to obtain onbase banking services, the DoD Component concerned may contact the financial community about installing automated teller machines (ATMs).

(i) Proposals that offer shared-access ATMs shall receive preference.

(ii) The financial institution selected must secure regulatory agency approval, where necessary, before commencing ATM service.

(iii) Action taken in response to such proposals shall be exempt from the limitation in paragraph (a) of this section. The availability of ATM service shall not preclude the later establishment of a banking office if conditions on an installation should change.

(5) The provision of banking services by means other than duly chartered public sector banking offices or ATM service is subject to prior review and approval by the DASD(MS).

(6) In those cases where authorization will be required for the banking institution to act as a Treasury General Account domestic depositary, the banking institution shall satisfy the risk management standards established by the Treasury Department.

(d) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and onbase banking institution. A sample format is contained in DoD 4000.19–R. At a minimum, each agreement shall include the following provisions:

(1) Services to be rendered and the conditions therefor. To the extent feasible, full financial services shall be provided; however, agreements entered into under this provision may not restrict the banking institution's right to adjust services and fees to maintain consistency with competing institutions or the banking institution's branch-wide service offerings and fee schedules.

(2) Banking institution agreement to:

(i) Comply with this part, DoD Directive 1000.11, DoD Component regulations that implement these issuances;

(ii) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component caused in whole or in part by agents or employees of the banking institution; and

(iii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Banking office personnel invited to participate in such programs shall not use the occasion to promote the exclusive services of a particular financial institution.

(3) Agreement that neither the DoD Component concerned nor its representatives will be responsible or liable for the financial operation of the banking office or for any loss (including criminal losses), expense, or claim for damages arising from banking office operation.

(4) Installation (community) commander's agreement to provide support as specified at Appendix 1 of this part.

(e) *Liaison Officers.* In the interest of maintaining effective lines of communication, each commander of an installation with an onbase banking office shall appoint a bank liaison officer as defined at enclosure 2 of DoD Directive 1000.11.

(1) The bank liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase banking office.

(2) The liaison officer shall maintain regular contact with the banking office manager to confer, help resolve customer complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in the internal operations of the banking office.

(3) No one on the board of directors or serving the banking institution in another official capacity may serve as bank or credit union liaison officer.

(f) *DoD Personnel as Directors of Banking Institutions.* (1) DoD personnel may not serve as directors of banking institutions that operate on installations where they are currently assigned.

(2) Members of DoD reserve components called to active duty while serving as directors of banking institutions with onbase banking offices need not resign those directorships because of their changed status.

(g) *Complaints Processing.* (1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase banking institution shall try to resolve any such problem by negotiation. Failing this, in accordance with implementing DoD Component regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report to the appropriate regulatory agency evidence suggesting malpractice by banking office personnel, in accordance with implementing DoD Component regulations.

(3) *Follow-up.* A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DASD(MS). The DASD(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic Support.* (1) *Categories of Domestic Banking Offices.* For the purpose of authorizing logistic support, banking offices are categorized either as self-sustaining or nonself-sustaining.

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[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

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(i) A domestic banking office is considered to be self-sustaining until, based upon financial data provided by the banking institution, the DoD Component concerned determines it to be nonself-sustaining. Payment of rent for space and reimbursement for utilities furnished shall be required from self-sustaining banking offices. Nonself-sustaining banking offices may receive building space and utilities free of charge under procedures prescribed by the DoD Component concerned.

(ii) Normally, a domestic banking office shall have nonself-sustaining status for at least four consecutive calendar quarters before qualifying for logistic support. Conversely, a nonself-sustaining banking office would not be designated as self-sustaining until it has experienced four consecutive quarters of profitable operation.

(2) *Detailed Procedures.* Details of required and authorized support for onbase banking offices are provided by Appendix 1.

(i) *Termination of Banking Service.* (1) *Termination of Operations by the Banking Institution.* An onbase banking office planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede any public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the banking office to continue operations until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of banking services is justified, action to establish another banking office shall be taken in accordance with paragraph (c) of this section.

(2) *Termination for Cause.* If, after discussion with banking institution officials, the installation commander determines that the operating policies of the banking office are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. Removal of a banking office from the installation shall be made only with approval by the DoD Component headquarters, after coordination with the DASD(MS) and the appropriate regulatory agency.

Appendix A—Procedures for Establishing, Supporting, and Terminating Onbase Banking Offices

A. Establishing Banking Offices

1. *General.* DoD Components shall review banking institution proposals and recommend selections in accordance with § 230.5(c). Banking institutions selected for domestic onbase operations must obtain authority from the appropriate regulatory agency before commencing such operation.

a. In the case of State-chartered institutions that are members of the Federal Reserve System, approval shall also be obtained from the Federal Reserve Bank for the district in which the proposed banking office is located.

b. In the case of State-chartered savings associations, approval shall be obtained from appropriate State regulatory agencies.

c. In the case of federally chartered savings associations, the determination shall be made by the Federal Home Loan Bank Board or its principal supervisory agent for the district in which the association does business.

2. *Domestic Banking Offices.* a. Each DoD Component shall develop internal instructions that govern the submission and justification of requests to establish banking facilities on respecitive installations. The following information shall be included in requests to the DoD Component headquarters for banking facility establishment:

(1) Justification for establishment of a banking facility as opposed to another type of banking office.

(2) Such other supporting data as deemed necessary by the DoD Component concerned.

b. Proposals received by installation commanders to establish an independent or branch bank or a savings association office shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

c. The DoD Component headquarters concerned shall evaluate each proposal to establish such offices and, if acceptable, recommend designation by the appropriate regulatory agency.

(1) If there is no existing banking office on the installation and it is determined that one is needed, the DoD Component concerned shall solicit proposals from other nearby banking institutions before making a determination.

(2) If a banking office other than a banking facility already is operating on the DoD installation, the provisions of § 230.5(a)(1) apply.

(3) If the proposal offers to replace an existing banking facility with an independent or branch bank, the DoD Component concerned shall offer the banking institution currently operating the facility an opportunity to submit a proposal to convert the facility.

(4) With respect to a proposed independent or branch bank, preference shall be given to the banking institution that has operated the banking facility, provided that prior banking service has been satisfactory and that the institution's proposal is deemed adequate.

(5) Proposals to establish new banking facilities shall be forwarded to the DASD(MS) for determination in conjunction with the Fiscal Assistant Secretary of the Treasury.

3. *Conversions of Domestic Banking Facilities to Independent or Branch Banks.* DoD Components shall encourage banking institutions that operate banking facilities to convert them to independent or branch banks, if consistent with State law. Proposals from a banking institution to convert an existing banking facility to an independent or branch bank shall be forwarded to the DoD Component headquarters concerned for its approval after coordination with the DASD(MS) and Treasury Department.

4. *Domestic Automated Teller Machine (ATM) Service.* a. ATMs may be used to augment service provided by an onbase banking office.

(1) An onbase banking facility may be authorized to site ATMs on the installation if it conforms to the following requirements. Further approval by the Treasury Department is not required.

(2) An onbase branch or independent bank may site ATMs on the installation after obtaining the approval of the appropriate regulatory agency, if required to do so by the regulations of that agency, and by conforming to the following requirements.

b. A banking institution proposing to augment onbase banking office service by installing one or more ATMs shall:

(1) Coordinate the ATM proposal through the installation commander according to DoD Component regulations;

(2) Provide a statement that the cost of ATM installation and maintenance shall be borne by the banking institution alone or in conjunction with other financial institutions; and

(3) Provide for access through debit transaction cards, rather than restricting access to holders of a financial institution's credit cards.

c. Upon approval, appropriate leases shall be negotiated in accordance with this Instruction.

(1) No lease is needed to site an ATM within the existing banking office.

(2) When a banking office requests up to 100 square feet of additional floor space in an existing structure, and the banking office agrees to bear all expenses for modifying the structure, a lease providing for an annual rental fee of $1.00 shall be locally negotiated and approved. This lease provision also shall be offered if the banking office requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the cost of any maintenance, utilities, and services provided by the installation shall be borne by the banking office.

(3) Leases pertaining to other situations shall be negotiated in accordance with section C., below.

5. *Overseas Banking Facilities Operated under Contract.* a. In implementing this Instruction, each DoD Component shall develop internal instructions governing the submission of requests justifying the need for banking facilities proposed for particular overseas installations. Upon favorable review by the DoD Component headquarters concerned, such requests shall be submitted to the DASD(MS) with a recommendation for inclusion in the appropriate contract, subject to the conditions set forth below.

b. As a general rule, banking facilities may be established when the installation (community) population meets the following criteria:

(1) *Full-Time Banking Facility.* Except in unusual circumstances, a total of at least 1,000 permanent party military personnel and DoD civilian employees is necessary to qualify for a full-time banking facility.

(2) *Part-Time Banking Facility.* Except in unusual circumstances, a total of at least 250 permanent party military personnel and DoD civilian employees is necessary to qualify for a part-time banking facility.

c. If the population at certain remote areas is not sufficient to qualify under the criteria for full- or part-time banking facilities, the installation (community) commander shall explore all other alternatives for acquiring limited banking services (such as check-cashing and accommodation exchange service by disbursing officers and their agents) before requesting establishment of a banking facility as an exception to these provisions.

d. The data used to justify establishment of overseas banking facilities shall include but not be limited to:

(1) The approximate number of DoD personnel at the installation and any other persons who may be authorized to use the banking facility.

(2) The distances between the installation and the nearest banking facility and credit union offices, the operators of those institutions, and the installations (military communities) at which they are located.

(3) The availability of official and public transportation between the installation and the nearest banking facility and credit union office.

(4) The approximate loss of duty time as a result of DoD personnel leaving the installation to obtain banking services.

(5) The number of DoD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

(6) Source(s) from which the military disbursing officer presently obtains operating and payroll cash, the frequency of these cash acquisitions, and the approximate dollar value obtained monthly.

(7) The name and location of the depositary now being used by the military disbursing officer to make official deposits for credit to the U.S. Treasury's General Account.

(8) The estimated savings to the military disbursing officer if a banking facility is established on the installation.

(9) A list of organizational and nonappropriated fund accounts, the name(s) and location(s) of the banking institution where presently deposited, and the average daily activity and balance of each account.

(10) A written description and photographs of drawings of the space proposed for banking facility use. The extent and approximate cost of required alterations, including the construction of counters and teller cages, shall be included.

(11) A statement detailing the requirements of the proposed banking facility for safes, a vault, or both; appropriate alarm systems; and camera surveillance equipment, where deemed necessary. The statement shall include the costs of such equipment and the manner in which it will be acquired.

(12) In countries without U.S.-operated banking facilities, a statement as required by § 230.4(e)(1).

e. Establishment of an overseas banking facility is predicated upon: (1) Designation of the facility contractor as a depositary and financial agent of the U.S. Government by the Fiscal Assistant Secretary of the Treasury;

(2) The availability of proposed banking contractors able and willing to bid for the operation of the facility, and the reasonableness of such proposals; and

(3) The availability of appropriated funds to underwrite such banking services.

6. *Other Overseas Banking Offices.* The banking and currency control laws of certain host countries do not permit U.S. banking institutions to operate banking facilities on DoD installations.

a. Commanders of installations (communities) in such countries where there is a demonstrated need for additional banking service and the population meets the above criterion shall forward requests for banking services, or unsolicited proposals from local banks, through command channels with supporting data as required in paragraph A.5.d., above.

b. If the DoD Component concerned concurs in the request, it shall be forwarded to the DASD(MS) for approval and coordination with the Fiscal Assistant Secretary of the Treasury for designation of the parent banking institution as a depositary and financial agent of the U.S. Government.

c. Banking offices in this category shall become operational only after Treasury designation of the parent banking institution and an indication of the institution's willingness and ability to provide collateral backing for any official and nonappropriated fund U.S. dollar deposits in a form acceptable to the DASD(MS) and the Fiscal Assistant Secretary of the Treasury.

B. Support of Onbase Banking Offices

1. *General.* DoD Component regulations that implement this Instruction shall provide for installation support to all onbase banking offices, including:

a. Military or civilian guards (the latter to be used within the installation only), military police, or other protective services to accompany shipments of money from the parent banking institution or other source when such monies are primarily for use by the military disbursing officer, on paydays and when required to avoid undue risks or insurance costs on the part of the onbase banking office. In this regard, overall security precautions normally present shall be considered.

b. Central locator service, under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by onbase banking offices. This service shall be provided at no cost in accordance with DoD Instruction 7230.7.

c. Debt processing assistance in accordance with DoD Directive 1344.9 as limited by the Privacy Act guidelines set forth in enclosure 3 DoD Directive 1000.11. If delinquent loans or dishonored checks are not recouped within 48 hours, banking institutions operating on DoD installations may bring them to the attention of the local commander, bank liaison officer or other designee, for assistance in effecting restitution of the amount due, if not otherwise prohibited by law.

d. Clearance procedures for military personnel departing their installations which provide the onbase banking office with adequate notice of its customers' impending departure. Clearance involves reporting a change of address, reaffirming allotments or notes payable and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the financial institution and its departing customers. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian personnel.

e. Prohibition of traveler's check and money order sales by organizations other than the onbase banking office, post office, and credit union during times when the banking office is open for business.

2. *Domestic Nonself-Sustaining Banking Offices.* When a DoD Component determines that a banking office has nonself-sustaining status, it may furnish logistic support, as provided herein, without charge.

a. Through no-cost permits or licenses, a nonself-sustaining banking office may be provided space on a DoD installation at one or more locations for up to 5 years, as prescribed in DoD Directive 4165.6. The cumulative total of space authorized for one or more locations is subject to the limitations contained in DoD 4270.1–M.

b. All space assigned by the GSA, whether leased or in Federal office buildings, is reimbursable to the GSA at the standard level user charge, under Pub. L. 92–313. Consequently, the GSA shall charge the benefiting DoD Component for any GSA space assigned for banking office operations.

c. In those exceptional cases when a nonself-sustaining banking office is authorized to construct its own building or use its funds to expend, modify, or renovate Government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the banking office is determined to be self-sustaining, whichever occurs first. The provisions of section C., below, apply in the latter case.

d. The term "logistic support" shall include:

(1) Customer and work areas, in accordance with DoD 4270.1–M. It is important that the banking office be housed in a building accessible to most DoD personnel on the installation, in a location permitting maximum security.

(2) Steel bars, grillwork, security doors, a vault or safe (or both), burglar alarm system, other security features normally used by banking institutions, construction of counters and teller cages, and other necessary modifications and alterations to existing buildings delimited in DoD Directive 4270.24.

(3) Utilities, custodial and janitorial services, and intrastation telephone service. The banking office shall pay costs for long-distance toll calls, however.

(4) Air-conditioning, which is considered a normal utility for banking offices located on installations qualifying for air-conditioning

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under DoD Component regulations. Banking space is classified as administrative space on DoD installations.

(5) When available from local stock, lease of the following at nominal cost, i.e., $1.00 per year, under authority of 10 U.S.C. 2667: typewriters, adding machines, other office equipment, and office furniture.

e. All maintenance, repair, rehabilitation, alterations, or construction for onbase banking offices shall comply with DoD Instruction 4165.64.

f. Upon determination that a banking office has become self-sustaining, its no-cost lease or permit shall be canceled and a lease negotiated in accordance with section C., below.

3. *Additional Support in Overseas Areas.* a. *Banking Facilities Operated Under Contract.* In addition to the logistic support identified above, the following shall be made available to banking facilities operating under DoD contract at overseas installations:

(1) U.S. Military Postal Service under DoD Directive 4525.6. Mail must bear necessary postage.

(2) AUTOVON and AUTODIN as approved on a case-by-case basis.

(3) Certificates of nonavailability, if required by the designated property administrator, when items of office equipment or furniture requested by the banking facility are unavailable for loan on memorandum receipt.

(4) Vehicle registration and purchase of fuel from Government-owned facilities for bank-operated vehicles if not in conflict with host country agreements. Vehicle registrations shall be subject to normal fees.

(5) Public quarters under DoD Instruction 4165.44 to key banking facility personnel unable to find suitable, reasonably priced housing in the vicinity of the DoD installation. Rent charged shall be in accordance with DoD Instruction 4165.42.

(6) Travel of a U.S.-based banking institution officials to their overseas onbase offices as set forth in DoD Directive 4000.6. Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(7) Other support as required under the terms and conditions established during annual contract negotiations and confirmed in respective contracts. Suggestions for change may be forwarded through military channels to the DASD(MS).

b. *Other Overseas Banking Offices.* (1) Logistic support shall be negotiated with the parent banking institution and the resulting provisions incorporated into written operating agreements.

(2) Logistic support should not exceed that provided to banking offices in the United States. Whenever possible, parent banking institutions shall reimburse the DoD Component concerned for logistic support.

C. Leases of Government Real Property

1. *Government-Owned Buildings.* The lease of an existing structure to house a self-sustaining banking office shall be at appraised fair market rental value under the following terms and considerations:

a. The lease term shall not exceed 5 years, subject to renewal by mutual agreement, with the head of the DoD Component concerned reserving the right to terminate the lease under conditions specified in paragraph C.2.a., below. The banking institution shall reimburse the DoD Component concerned for GSA-assigned space at the standard level user charge.

b. When the banking institution uses its own funds to modify or renovate government building space, a lease may be negotiated for a period not to exceed 25 years. Duration of the lease shall be commensurate with the extent of the improvements as determined by the DoD Component concerned.

c. The lessee shall perform any required interior alteration and maintenance and shall pay for utilities and custodial, janitorial, and other services furnished.

2. *Government-Owned Land.* a. Except as provided in paragraph B.2.c., above, land required for approved building construction at bank expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease.

b. When a banking institution participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the banking office.

c. When, under the terms of a lease, title to improvements passes to the Government, arrangements shall normally be made:

(1) By no-cost permit or license for the continued occupancy of those improvements by a nonself-sustaining banking office if it continues to be nonself-sustaining. When the square footage involved exceeds that authorized in DoD 4270.1–M the banking office shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that excess space; or

(2) By lease for continued occupancy of those improvements by a self-sustaining banking office at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and pay the cost of utilities and services furnished, in accordance with DoD Directive 4000.6.

3. *Other Lease Considerations.* a. The term of a lease may exceed 5 years only when a Military Department Secretary, or designee, determines that such an extended term will promote the national defense or be in the public interest, per 10 U.S.C. 2667(b)(1).

b. Leases shall include the provision that, in the event of national emergency or the following events, at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition:

(1) Installation inactivation, closing, or other disposal action;

or

(2) Termination of the banking institution's lease under § 230.5(i).

c. Leases executed before this part takes effect shall not be altered unless a lessee specifically requests a renegotiation under these provisions. No lease contract may be negotiated or renegotiated, nor may any rights thereunder be waived or surrendered, without compensation to the Government, except as provided in § 230.5(h).

D. Construction of Bank Buildings

Banking institution proposals to finance construction of buildings on domestic DoD installations must be processed in accordance with the DoD Instruction 7700.18. In support of each construction proposal, the banking institution shall provide written assurance that:

1. Management understands its potential loss of the building in the event of installation closure or other delimiting condition identified in paragraph C.3.b., above;

2. The proposed building will serve only the needs of the banking office and will not be used to house other activities; and

3. Management accepts financial responsibility for and will reimburse the U.S. Government for all costs of construction and maintenance, utilities, and other services furnished. Rates shall be established per DoD Directive 4000.6 and confirmed by a written agreement between the DoD installation and the banking institution.

E. Banking Office Termination

1. *Domestic Banking Facilities.* a. The installation commander shall notify the DoD Component headquarters concerned when a banking facility has been placed in an inactive status and when personnel reductions at the DoD installation have reduced banking facility operations to below a justifiable level. The DoD Component shall advise the DASD (MS) and the Fiscal Assistant Secretary of the Treasury so that the banking institution's authority to operate the banking facility may be terminated.

b. In general, the parent banking institution may close a banking facility after sending written notification to the Treasury Department and the installation commander not less than 90 days before the closing date. The Treasury Department will then terminate the banking institution's authority to operate the banking facility, and the DoD Component concerned shall determine the feasibility of requesting another banking institution to operate at the installation.

2. *Other Domestic Banking Offices.* a. Requests for termination for cause shall be processed in accordance with § 230.5(i)(2).

b. Banking offices other than banking facilities may be terminated by the parent banking institution provided written notice is furnished to the installation commander not less than 90 days before the closing date.

3. *Overseas Banking Facilities Operated Under Contract.* a. The installation (community) commander shall, through DoD Component channels, notify the DASD(MS) when personnel reductions or other situations at the DoD installation (military community) have reduced banking activity to below a level justifying continued operation.

b. Such notifications shall indicate whether a part-time facility should be established and the number of hours and days per week that such an operation is justified.

4. *Other Overseas Banking Offices.* Terminations shall be effected under termination clauses in respective operating agreements. Notice of intent to terminate, including the closing date, shall be forwarded by the overseas component commander per DoD Component implementing instructions. The DoD Component shall so notify the DASD(MS) and Fiscal Assistant Secretary of the Treasury so that the banking institution's authority as a depositary and financial agent of the U.S. Government may be revoked.

F. Notification of Banking Offices

Each DoD Component shall ensure that every banking institution with an office at its installations receives a copy of the document that implements this Instruction and DoD Directive 1000.11.

Appendix B—Operations of Onbase Banking Offices

A. Services Rendered

1. *To Individuals and Nonappropriated Fund Instrumentalities.* a. Normally, banking offices shall provide the same services at DoD installations as available locally. Service charges or fees levied for such services may not exceed those customary for the banking institution that operates the banking office, with the following exceptions:

(1) Treasury checks shall be cashed for all DoD personnel and there will be no charge to the banking office's accountholders.

(2) A reasonable charge may be made for cashing personal checks; however, checks drawn on the banking institution operating the banking office shall be cashed without charge provided sufficient collected funds are on deposit to cover such checks.

b. Counseling service shall be made available without charge to individual accountholders. Such services shall include helping customers to budget and solve financial problems. Military members in junior enlisted grades or newly married couples who apply for loans shall receive special attention and counseling.

c. In accordance with accepted banking practice, policies on loans to individuals are expected to be as liberal as possible while remaining consistent with the overall interests of the banking institution and its stockholders.

(1) Onbase banking offices must strive to provide the best possible service to all customers. Offices that evidence a policy of discrimination in their loan services are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in § 230.5(g)(1).

(2) Onbase banking offices shall conform to the Standards of Fairness principles as set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase banking office refer a prospective borrower to an offbase office of the same institution, it shall advise the latter office that the DoD requires compliance with the Standards of Fairness before executing the loan or credit agreement.

2. *To Disbursing Officers.* a. Banking offices are expected to provide payroll cash to military disbursing offices, upon request. Local operating funds may be expended if the banking office requests reimbursement for costs incurred.

b. When so authorized, banking offices shall accept deposits for credit to the Treasury's General Account.

B. Staffing

1. Onbase banking offices are expected to be adequately staffed commensurate with banking industry standards for similar numbers of accountholders and financial services rendered. Staffing at overseas banking facilities operated under contract shall be maintained within negotiated ceilings.

2. Remote service locations at the same installation may be staffed with one person alone, provided that there is a direct courier or message service to the main onbase banking office.

3. All staffing shall fully comply with the spirit and intent of the DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1100.15.

4. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase banking office. However, off-duty DoD personnel may be employed by a banking office if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

C. Hours of Operation

1. *General.* Onbase banking offices may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Banking offices should set operating hours that meet the needs of all concerned. ATMs may be used to provide expanded service and operating hours.

2. *Overseas Banking Facilities Operated Under Contract.* Although respective contracts limit the number of operating hours per week, installation (community) commanders and banking facility managers are encouraged to agree on the specific days and hours of operation that best meet local needs.

a. Operating days negotiated locally may include Saturdays and operating hours may include evening hours when necessary to complement or parallel other retail services available to DoD personnel, provided the contractor agrees to provide such service at no additional cost to the Government.

b. When cost implications are involved, the installation (community) commander shall forward his request for expanded or modified days or hours of operation, with a justification therefor, through military channels for consideration by the DASD(MS).

D. Deposit Insurance

Domestic onbase banking offices must provide insurance coverage by the FDIC (for commercial banks and certain savings banks) or FSLIC (for certain savings banks and all other savings associations as defined in DoD Directive 1000.11. A banking office not maintaining such insurance shall be suspended from onbase operation.

E. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through onbase banking offices.

1. The banking institution shall credit customer accounts not later than the value date of the allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the banking office's customer. Allotments voluntarily consigned to a banking office shall continue at the option of the allotter.

F. Advertising

1. Advertising of onbase banking services shall be in harmony with applicable policies continued in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited with the exception of insert advertising in the *Stars and Stripes* overseas.

3. DoD Instruction 5120.20 precludes use of the Armed Forces Radio and Television Service to promote a specific financial institution.

4. Onbase banking offices may use the unofficial section of the installation daily bulletin, provided space is available, to inform DoD personnel of financial services and announce seminars, consumer information programs, and other matters of broad general interest. Announcements of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings or loans.

5. Onbase banking offices may use onbase information bulletin boards for announcements of a broad general nature that complement the installation's financial counseling and thrift promotion programs. Onbase banking offices may use installation message center services to distribute, with moderation, announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installations, to include military exchange outlets or concessionaires, shall not permit the distribution of competitive literature from other banking institutions at locations served by onbase banking offices. This does not preclude a banking institution from using commercial advertising or mailings to serve its customers.

G. Supplemental Conditions for Overseas Operation

1. *General.* Overseas banking facilities shall operate under terms and conditions established at the time of annual contract negotiations and confirmed in respective contracts or contracting officer determinations.

2. *Authorized Customers.* Respective banking contracts specify personnel authorized to receive service. Additionally, overseas major commanders may approve banking services for other individuals and

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organizations that qualify for individual logistic support under the regulations of the DoD Component concerned, provided that use of banking services is not precluded by status of forces agreement, other intergovernmental agreement, or local law.

3. *Services Rendered.* Services to be rendered and related charges shall be specified in respective contracts. Suggestions for expansion or modification of authorized services, fees, or charges may be forwarded through military channels to the DASD(MS). Proposals for any new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to make certain that the proposal does not conflict with status of forces agreements or host-country law.

4. *Acceptance of Services Rendered.* DoD Component regulations implementing this Instruction shall require each commander of an installation (military community) with a banking facility, or designee, to:

a. Review monthly income, expense, and activity statements provided by full-time banking facilities.

b. Report to the banking facility manager within 7 calendar days of discovery, and deficiency in the delivery of contractual banking services. If the deficiency is not remedied within 30 calendar days, the commander shall report the matter through military channels to the DASD(MS).

5. *Other Operating Conditions.* a. Both the banking facility contractor and DoD disbursing offices shall ensure that cash management practices minimize the cash required to conduct business.

b. Banking facility provision of foreign currencies shall be in accordance with DoD Directive 7360.11.

c. When military payment certificates are prescribed for the area in which the overseas banking facility is operating, they shall be used in accordance with DoD Instruction 7360.5 and DoD Component regulations which implement that Instruction.

d. Overseas major commanders shall cooperate with banking facility contractors in planning for the provision or termination of banking services in the event of hostilities or other emergencies.

6. *Other Overseas Banking Offices.* a. Operating agreements executed under § 230.5(d) shall specify authorized customers, services rendered and related charges, and conditions of operation. To the extent feasible, services and charges shall be negotiated to parallel those provided by banking facilities operated under the DoD banking contracts.

b. Before such agreements are executed, they shall be coordinated with the Unified Commander, or designee and the DoD Component concerned. Upon approval, copies shall be provided to the DASD(MS).

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 20, 1986.

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32 CFR Part 231

[DoD Directive 1000.11]

Financial Institutions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This part updates Department of Defense (DoD) policies and procedures concerning banking institutions, credit unions, and savings associations that may operate on DoD domestic and overseas installations. The revision provides specific guidance to the Heads of DoD Components on the establishment, operation and termination of these onbase institutions. In so doing, it contemplates a more active role by the Assistant Secretary of Defense (Comptroller) in coordinating related DoD Component actions. In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings associations have been applied, wherever possible, to the other types of institutions. The rule now specifies that failure of a financial institution to maintain an adequate rating under the Treasury Department risk management program is grounds for termination of onbase operations. The rule streamlines approval procedures for installation of automated teller machines and clarifies procedures for onbase office construction. Policies governing permissible service charges and fees were made restrictive.

EFFECTIVE DATE: February 3, 1986.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A658, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Adolphi, telephone (202)-697-8281.

SUPPLEMENTARY INFORMATION: On April 27, 1983, 48 FR 19130 amended Title 32, CFR, Part 231, which contains the existing Office of the Secretary of Defense (OSD) policies for the operation of onbase institutions. Accompanying procedures were contained at Part 230. On September 9, 1985, FR 36819 proposed revision of these policies. Certain provisions, formerly applicable only to credit unions were, wherever possible, made applicable, to banking institutions and savings associations. Comments were received from the DoD Components, Treasury Department, U.S. Small Business Administration, trade associations representing affected institutions, and two financial institutions operating at several DoD installations. All comments were fully considered and a majority were accepted in this final rule. Numerous editorial improvements also were made. Policies contained herein also were reviewed for compliance with the Regulatory Flexibility Act, Pub. L. 96-354. It was determined that this final rule will not have a significant economic impact on a substantial number of small entities since its provisions apply mainly to the DoD Components and do not alter existing relationships with financial institutions chartered by Federal and State regulatory agencies to operate on DoD installations.

List of Subjects in 32 CFR Part 231

Banks, Military banking facilities, Savings and Loan Associations.

Accordingly, 32 CFR Part 231 is revised to read as follows:

PART 231—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS

Sec.
231.1 Purpose.
231.2 Applicability.
231.3 Definitions.
231.4 Objectives.
231.5 Policies.
231.6 Responsibilities.
Appendix—Guidelines for Application of the Privacy Act to Financial Institutions on DoD Installations.

Authority: 10 U.S.C. 136.

§ 231.1 Purpose.

This part replaces DoD Directive 1000.10[1] (Dec. 23, 81) and DoD Directive 1000.11. It consolidates and clarifies policies for financial institutions that serve DoD personnel on DoD installations worldwide. Associated procedures are contained in DoD Instruction 1000.10 (Feb. 3, 86) and DoD Instruction 1000.12.

§ 231.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

§ 231.3 Definitions.

Automated Teller Machine (ATM). An electronic machine that dispenses cash, accepts deposits, and transfers funds among a customer's various accounts. Equipment generally is activated by a plastic debit card in combination with pushbuttons and a personal identification number (PIN). Also known as a customer-bank communication terminal. Shared access to ATMs refers to the customer's ability to use the ATM of more than one cooperating institution.

Bank/Credit Union Liaison Officer. A commissioned officer or DoD civilian employee of equivalent grade appointed by an installation (military community) commander to work with officials of the servicing financial institution and its clients. A noncommissioned officer may be appointed if he or she is the senior financial management official at the installation.

Banking Facility. A banking office located on a DoD installation and operated by a banking institution that the Treasury Department has specifically authorized, under its designation as a "depository and financial agent of the U.S. Government," to provide certain banking services at the installation. Such offices may be either self-sustaining or nonself-sustaining. Also known as a military (or community) banking facility.

Banking Institution. The organization that is chartered to operate a banking office on a DoD installation. For purposes of this part and DoD Instructions 1000.10 and 1000.12 the term also includes savings associations as defined herein.

Banking Office. A banking facility, branch bank, or independent bank operated by a banking institution on a DoD installation. Also includes savings associations and their branches operated on a DoD installation.

Branch Bank. A separate unit chartered to operate at an on-base location geographically remote from its parent banking institution.

Credit Union. A cooperative nonprofit association, incorporated under the Federal Credit Union Act, 12 U.S.C. 1751 et seq., or similar state statute, for the purposes of encouraging thrift among its members and creating a source of credit at a fair and reasonable rate of interest.

Credit Union Branch. A subsidiary office of an existing full-service credit union.

Credit Union Facility. A facility employing a communications system with the parent credit union to conduct business at remote locations where a full-service credit union or credit union branch is impractical. Credit union facilities need not provide case transaction services, but must disburse loans and shares via check or draft and provide competent financial counseling during normal working hours.

Defense Credit Union. A state or federally chartered credit union with a field of membership composed primarily of DoD personnel.

Discrimination. Any differential treatment in provision of services, including loan services, by a financial institution to DoD personnel and their dependents on the basis of race, color, religion, national origin, sex, marital status, age, rank, or grade. However, if uniformly applied, the amount of credit extended may be directly based upon an applicant's total income.

DoD Personnel. All military personnel; civil service employees; other civilian employees, including special Government employees of all offices, agencies, and departments performing functions on a DoD installation (including non-appropriated fund instrumentalities); and their dependents. On domestic DoD installations, retired U.S. military personnel and their dependents are included.

Domestic DoD Installation. A military installation located within a state of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Fair Market Rental. A reasonable charge for onbase land, buildings, or building space (i.e., property). Rental is determined by a Government appraisal, based on comparable properties in the local civilian economy. However, the appraiser shall consider that onbase property may not always be comparable to similar property in the local commercial geographic area: for example, limitation of usage and access to the financial institution by persons other than those on the installation, proximity to the community center or installation business district, the Government's right to terminate the lease or take title to improvements constructed at the financial institution's expense, and the limited consumer environment of a DoD installation.

Federal Credit Union. A credit union established and operated under authority granted by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and chartered, supervised, and periodically examined by the National Credit Union Administration.

Field of Membership. The group of people entitled to credit union membership because of a common bond of occupation or association; or employment or residence within a well-defined neighborhood, community, or rural district. The field of membership is defined in the credit union's charter by the Federal or State regulatory agency.

Financial Institution. This term encompasses any banking institution, credit union, and subordinate office or facility, each as separately defined herein.

Financial Services. Those services commonly associated with financial institutions in the United States, such as checking, share and savings accounts; funds transfers; sales of official checks, money orders, and travelers checks; loan services; safe deposit boxes; trust services; sale and redemption of U.S. Savings Bonds; and acceptance of utility payments.

Full-Service Credit Union. A credit union that provides normal counter transaction services and is staffed with a loan officer, a person authorized to sign checks, and a qualified financial counselor.

Full-Time Banking Facility. A banking facility that operates at least 5 days a week.

Independent Bank. A bank specifically chartered to operate on a DoD installation, whose directors and officers usually come from the local business and professional community. Such operations are thus differentiated from countywide or statewide branch systems consisting of a head office and one or more geographically separate branch offices.

Malpractice. Any unreasonable lack of skill or fidelity in fiduciary duties, or the intentional violation of an applicable law or regulation, or both, that governs the operations of the financial institution. A violation shall be considered intentional if the responsible officials know that an action or inaction violated a law or regulation.

National Bank. An association approved and chartered by the Comptroller of the Currency to operate a banking business.

Onbase. Refers to physical presence on a domestic or overseas DoD installation.

Operating Agreement. A mutual agreement between the DoD installation commander and onbase financial institution regarding their relationships.

Overseas DoD Installation. A military installation (or community) located outside the states of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Part-Time Banking Facility. A banking facility that operates fewer than 5 days a week, exclusive of additional payday service. When only payday service is provided, the banking facility may be termed a "payday service facility."

Regulatory Agency. Includes the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Federal Home Loan

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[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Forms Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

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Bank Board; the several Federal Reserve Banks and the Board of Governors of the Federal Reserve System; the National Credit Union Administration; the various state agencies and commissions that oversee financial institutions; and, for banking facilities, the Fiscal Assistant Secretary of the Treasury.

Savings Association. A state or federally chartered mutual or stock savings institution, to include savings and loan associations, building and loan associations, homestead associations, and savings banks.

Share Draft. A negotiable or nonnegotiable draft or other order prepared by a credit union member and used to withdraw shares from a share draft account, normally through the commercial banking system.

State Bank. An institution, organized and chartered under the laws of a state of the United States, to operate a banking business within that state.

State Credit Union. An institution, organized and chartered under the laws of a state of the United States, that operates under the same general principles as a Federal credit union and is supervised and examined by a state regulatory agency or commission.

§ 231.4 Objectives.

The objectives of this part are to ensure that:

(a) Arrangements for the provision of services by financial institutions are consistent among the DoD Components.

(b) Financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated herein.

§ 231.5 Policies.

(a) Duly chartered financial institutions may be authorized to provide services, where demonstrated and justified needs exist, to facilitate the administration of public and quasi-public monies and enhance the morale and welfare of DoD personnel.

(b) Financial institutions shall be established on DoD installations only after approval by the appropriate regulatory agency and the DoD Component concerned.

(1) Independent or branch banks, full-service credit unions, and savings associations are the preferred sources of onbase service at domestic installations.

(2) Banking facilities shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. Normally, banking facilities shall be used only at overseas locations and in states that prohibit branch banking. In times of mobilization, it may become necessary to designate additional banking facilities as an emergency measure. Upon recommendation by a DoD Component, banking facilities are designated by the Treasury Department under authority contained in 12 U.S.C. 265.

(3) The extension of banking facility and credit union services overseas is encouraged, consistent with the policies stated herein and with pertinent status of forces agreements, bilateral arrangements, and local laws.

(4) Retail banking operations shall not be performed by DoD activities. DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.

(c) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in DoD Instruction 1000.10 and DoD Instruction 1000.12.

(d) Military disbursing offices, nonappropriated fund instrumentalities, and other DoD installation activities shall use onbase financial institutions to the maximum extent feasible and consistent with sound management practice.

(e) The termination of operations by an onbase financial institution shall be initiated by a DoD Component only under one of the following conditions:

(1) The mission of the installation has changed, or is scheduled to be changed, thereby eliminating or substantially reducing the requirement for financial services.

(2) Active military operations preclude continuation of onbase financial services.

(3) The performance of the financial institution in providing services is not satisfactory according to standards ordinarily associated with the financial services industry or is inconsistent with the procedures prescribed in DoD Instruction 1000.10 and DoD Instruction 1000.12. Termination actions begun on the basis of inadequate performance shall be substantiated by sufficient evidence. Such actions shall be coordinated with the appropriate regulatory agency and the Assistant Secretary of Defense (Comptroller) before being carried out.

(4) Where the financial institution has also been designated as a Treasury General Account (TGA) domestic depository, its authorization as a TGA depositary may be withdrawn by the Treasury Department if the financial institution's rating, from a Treasury Department approved rating service, is "D" or lower. In those cases where TGA authorization is withdrawn, the DoD Component may initiate termination of operations under provisions of paragraph (e)(3) of this section.

(f) DoD personnel who tender uncollectible checks, overdraw their accounts or fail to meet their financial obligations in a proper and timely manner damage their credit reputation and affect the public image of all DoD personnel. Furthermore, losses sustained by financial institutions on DoD installations as a result of these actions increase operating costs and may reduce the institutions' viability. Such added operating costs must be borne by other customers and, in some cases, may increase the cost to the Government of providing onbase financial services. Military financial counselors or legal advisers shall recommend workable repayment plans that avoid further endangering credit ratings and careers of affected personnel. Counselors shall ensure that such personnel are aware of the stigma associated with bankruptcy and shall recommend its use only as a last resort, when no other alternative will alleviate the situation.

§ 231.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) shall:

(1) Develop and monitor policies and procedures governing establishment, operation, and termination of financial institutions on DoD installations.

(2) Monitor industry trends, conduct studies and surveys, and facilitate appropriate dialogues on banking and credit union arrangements and cost-benefit relationships, coordinating as necessary with DoD Components, financial institutions, and trade associations.

(3) Maintain liaison, as appropriate, with financial institution regulatory agencies at Federal and State levels.

(4) Maintain liaison with financial institution trade associations, leagues, and councils in order to interpret DoD policies toward respective memberships and to aid in resolving mutual concerns affecting provision of financial services.

(5) Coordinate with the Assistant Secretary of Defense (Force Management and Personnel) on all aspects of morale and welfare and Assistant Secretary of Defense (Acquisition and Logistics) on all aspects of logistic support for onbase financial institutions.

(6) Take final action on requests for exceptions to this Directive.

(b) *The Assistant Secretary of Defense (Acquisition and Logistics)* (ASD(A&L)) shall develop and monitor policies and procedures governing logistic support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall advise the ASD(C) of all aspects of onbase financial institution services that affect the morale and welfare of DoD personnel.

(d) The *Heads of DoD Components* shall:

(1) Take action on requests to establish or terminate financial institution operations on respective installations subject to the provisions of DoD Instructions 1000.10 and 1000.12.

(2) Supervise and encourage the use of financial institutions on DoD installations as a means to:

(i) Facilitate convenient, effective management of the appropriated, nonappropriated, and private funds of onbase activities.

(ii) Assist DoD personnel in managing their personal finances by participating in direct deposit programs and regular savings plans. Use of onbase financial institutions shall be on a voluntary basis and should not be urged in preference to, or to the exclusion of, other financial institutions.

(3) Recognize the right of military personnel and civilian employees to organize and join credit unions formed under duly constituted authority, and encourage the application and expansion of the principles of the credit union movement throughout the DoD establishment.

(4) Encourage and assist duly chartered financial institutions to provide complete financial services on DoD installations where there is a demonstrated need for such services.

(5) Establish liaison, as appropriate, with Federal and State regulatory agencies and financial institution trade associations, leagues, and councils.

(6) Provide debt processing assistance to onbase financial institutions in accordance with the Privacy Act guidelines set forth in Appendix of this part.

APPENDIX—GUIDELINES FOR APPLICATION OF THE PRIVACY ACT TO FINANCIAL INSTITUTIONS IN DOD INSTALLATIONS

A. The following guidelines govern application of DoD Directive 5400.11 to those financial institutions that operate under this part.

1. Financial institutions and their branches and facilities operating on DoD military installations do not fall within the purview of 12 U.S.C. 1751 et seq.

a. These financial institutions do not fit the definition of "agency" to which the Privacy Act applies: ". . . any executive department, Military Department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or an independent regulatory agency" (5 U.S.C. 552(e) and 552a(a)(1)).

b. Nor are they "government contractors" within the meaning of section 552a(m), as they do not operate a system of records on behalf of an agency ". . . to accomplish an agency function." According to the Office of Management and Budget Privacy Act Guidelines, the provision relating to Government contractors applies only to systems of records ". . . actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act." Clearly, the subject institutions do not meet these criteria.

c. Since the Act does not apply to them, these financial institutions are not required to comply with the provision of Section 552(e)(3) in obtaining and making use of personal information in their relationships with personnel authorized to use such institutions. Thus, these institutions are not required to inform individuals from whom information is requested of the authority for its solicitation, the principal purpose for which it is intended to be used, the routine uses that may be made of it, or the effects of not providing the information. There also is no requirement to post information of this nature within onbase banking and credit union offices.

2. The financial institutions concerned hold the same position and relationship to their accountholders and members and to the Government as they did before enactment. Within their usual business relationships, they still are responsible for safeguarding the information provided by their accountholders or members and for obtaining only such information as is reasonable and necessary to conduct business. This includes credit information and proper indentification, which may include social security number, as a precondition for the cashing of checks.

3. Financial institutions may incorporate the following conditions of disclosure of personal identification in all contracts, including loan agreements, account signature cards, certificates of deposit agreements, and any other agreements signed by their accountholders or members:

I hereby authorize the Department of Defence and its various Departments and Commands to verify my social security number or other identifier and disclose my home address to authorized (name of financial institution) officials so that they may contact me in connection with my business with (name of financial institution). All information furnished will be used solely in connection with my financial relationship with (name of financial institution).

When the financial institution presents such signed authorizations, the Military Commands or installations shall provide the appropriate information.

4. Even though the agreement described in subsection A.3., has not been obtained, the Department of Defense may provide these financial institutions with salary information and, when pertinent, the length or type of civilian or military appointment, consistent with the Privacy Act and Freedom of Information Act, DoD Directives 5400.11 and 5400.7. Some examples of personal information pertaining to DoD personnel that can normally be released without creating and unwarranted invasion of personal privacy are name, rank, date of rank, salary, present and past duty assignments, future assignments that have been finalized, office phone number, source of commission, and promotion sequence number.

5. When DoD personnel with financial obligations are reassigned and fail to inform the financial institution of their whereabouts, they should be located by contacting the individual's last known commander or supervisor at the official position or duty station within that particular DoD Component. That commander or supervisor shall either furnish the individual's new official duty location address to the financial institution, or shall forward, through official channels, any correspondence received pertaining thereto to the individual's new commander or supervisor for appropriate assistance and response. Correspondence addressed to the individual concerned at his or her last official place of business or duty station shall be forwarded as provided by postal regulations to the new location, but the individual may choose not to respond. However, once an individual's affiliation with the Department of Defense is terminated through separation or retirement, the locator assistance the Department may render in the disclosure of home address is severely curtailed unless the public interest dictates disclosure of the last known home address. The Department of Defense may, at its discretion, forward correspondence to the individual's last known home address. The individual may choose not to respond and the Department may not act as an intermediary for private matters concerning former DoD personnel who are no longer affiliated with it.

B. Questions concerning this guidance should be forwarded through channels to the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), The Pentagon, Washington, DC 20301.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 20, 1986.

[FR Doc. 86-3992 Filed 2-24-86; 8:45 am]

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32 CFR Part 231a

[DoD Instruction 1000.10]

Procedures Governing Credit Unions on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This part codifies, for the first time, provisions concerning the operation of credit unions on DoD installations. On September 9, 1985, 50 FR 36622 proposed the rule for comment. The rule replaces former DoD Directive

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1000.10 and provides specific guidance to the Head of DoD Components on the establishment, operation and termination of these onbase institutions. In so doing, it contemplates a more active role by the Assistant Secretary of Defense (Comptroller) in coordinating related DoD Component actions. In order to assure consistent treatment, some rules formerly applicable only to credit unions or to banks and savings associations were applied, wherever possible, to the other types of institutions. The rule streamlines approval procedures for installation of automated teller machines and clarifies use of the ninety-five percent membership criterion with respect to the provision of logistic and other support to onbase credit unions.

EFFECTIVE DATE: February 3, 1986.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), OASD(C), The Pentagon, Room 1A658, Washington, DC 20301–1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, (202) 697–8281.

SUPPLEMENTARY INFORMATION: Title 32, Code of Federal Regulations, contains the existing Office of the Secretary of Defense (OSD) procedures (Part 230) and policies (Part 231) for the operation of onbase banking institutions. On September 9, 1985, 50 FR 36622 proposed procedures covering onbase credit unions. Comments were received from the DoD Components, National Credit Union Administration, U.S. Small Business Administration, trade associations representing affected institutions, and several financial institutions operating on DoD installations. All comments were fully considered and a majority were accepted in this final rule. Data requirements to justify establishment of domestic onbase financial institutions were reduced. A new provision permits, subject to local negotiation and nominal consideration of $1.00 per annum, the lease of 100 square feet or less additional government building space or less than 250 square feet of land for bank or credit union installation of automated teller machines. Onbase financial institutions are asked to give installation commanders advance notice before public disclosure of planned termination. Use of the 95 percent membership criterion is clarified. Certification is required initially upon formation of the credit union, at 3-year intervals and upon renewal of each no-cost lease or license. Rent-free lease duration is for the stated term or upon failure to meet the 95 percent criterion, whichever occurs first. A proposed goal for all onbase credit unions to acquire Federal share insurance was eliminated from the final rule. Numerous editorial improvements also were made. Procedures contained herein also were reviewed for compliance with the Regulatory Flexibility Act, Pub. L. 96–354. It was determined that this final rule will not have a significant economic impact on a substantial number of small entities since its provisions apply mainly to the DoD Components and do not alter existing relationships with financial institutions chartered by Federal and State regulatory agencies to operate on DoD installations.

List of Subjects in 32 CFR Part 231a

Credit Unions, Defense Credit Unions.

Accordingly, 32 CFR is amended to add Part 231a to read as follows:

PART 231a—PROCEDURES GOVERNING CREDIT UNIONS ON DoD INSTALLATIONS

Sec.
231a.1 Purpose.
231a.2 Applicability and scope.
231a.3 Definitions.
231a.4 Responsibilities.
231a.5 General operating policies and procedures.
Appendix-Operations of Defense Credit Unions.

Authority: 10 U.S.C. 136.

§ 231a.1 Purpose.

This part provides procedural guidance to supplement DoD Directive 1000.11 [1] concerning relations with credit unions serving on DoD installations.

§ 231a.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), and Unified and Specified Commands, the Defense Agencies, and Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

(b) Its provisions also pertain to all credit unions that operate on DoD installations.

§ 231a.3 Definitions.

Terms used in this part are defined in 32 CFR Part 231.

§ 231a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) or designee, the Deputy Assistant Secretary of Defense (Management Systems) (DASD(MS)), shall:

(1) Coordinate the DoD credit union program, consulting on aspects that pertain to the morale and welfare of DoD personnel with the Assistant Secretary of Defense (Force Management and Personnel).

(2) Maintain liaison, as necessary, with the National Credit Union Administration (NCUA) and equivalent State regulatory agencies.

(3) Coordinate on DoD Component actions that propose a credit union's removal for cause from an installation before final decision and referral to the appropriate regulatory agency.

(4) Take final action on requests for exception to the provisions of this Part.

(b) The *Assistant Secretary of Defense (Acquisition and Logistics)* (ASD (A&L)) shall carry out responsibilities outlined in subsection F.2. of DoD Directive 1000.11.

(c) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD (FM&P)) shall carry out responsibilities outlined in subsection F.3. of DoD Directive 1000.11.

(d) The *Secretaries of the Military Departments and Director of Defense Agencies* shall:

(1) Supervise the use of credit unions on respective DoD installations within the guidance contained herein and in DoD Directive 1000.11.

(2) Assist respective onbase credit unions in developing and expanding necessary services for DoD personnel, consistent with the provisions stated herein.

(3) Encourage DoD personnel to serve on credit union boards and committees on a voluntary basis, without compensation, when neither conflict of duty nor conflict of interest is involved, as stated in DoD Directive 5500.7. Such personnel may be allowed to attend credit union conferences and meetings in accordance with DoD Directive 1327.5, Civilian Personnel Manual (CPM) Supplement 990–2, and CompGen Decision B–212457.

(4) Ensure that the recommendations of the Unified or Specified Command concerned are considered before processing requests for overseas credit union service or related actions emanating from overseas component commands.

(5) Refer matters requiring policy decisions or proposed changes to the provisions of this Part or DoD Directive 1000.11 to the DASD(MS).

(e) The *Commanders of Unified and Specified Commands*, or designees, shall:

(1) Ensure the appropriate coordination of requests to:

(i) Establish credit union service in countries not presently served. Such requests shall include a statement that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation.

(ii) Totally eliminate credit union service in a country. Such requests shall include a statement that the U.S. Chief of Diplomatic Mission has been informed and that appropriate arrangements to coordinate local termination announcements and procedures have been made with the U.S. Embassy.

(2) Monitor and coordinate credit union operations within the command area. Personnel assigned to security assistance positions shall not serve in this capacity without the prior approval of the Director, Defense Security Assistance Agency (DSAA).

§ 231a.5 General operating policies and procedures.

(a) *General.* Given their unique role in promoting morale and welfare, credit unions operating on DoD installations shall be recognized and assisted by DoD Components at all echelons. These credit unions shall provide services to DoD personnel of all ranks and grades within their respective fields of membership.

(b) *Limitation on Service.* (1) Only one credit union shall establish a branch or facility on a DoD installation, and its field of membership normally shall include all assigned DoD personnel. However, on installations where more than one credit union already exists, each is entitled to the benefits defined in this part.

(2) As described in section G., Appendix commanders of installations served by onbase credit unions shall ensure that installation activities do not disseminate literature from competing credit unions.

(c) *Establishing Domestic Credit Union Service.* (1) A demonstrated need for credit union services may be addressed by establishing a new full-service credit union or by opening a branch office or facility of an existing credit union under the common bond principle.

(2) Each DoD Component shall develop internal instructions, consistent with the following, that govern the submission and justification of requests to establish credit unions on respective installations.

(i) DoD personnel seeking to establish a new full-service credit union or a branch or facility of an existing credit union shall submit a proposal to the installation commander. Such proposals shall be forwarded through channels to the DoD Component headquarters concerned, together with recommendations for acceptance or rejection.

(ii) The DoD Component shall notify credit unions that operate on DoD installations of the need for service; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and recommend for approval the designation of a credit union to the appropriate regulatory agency, providing an information copy to the DASD(MS). No specific NCUA approval is required for a federal credit union to open a branch office.

(iii) No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has announced a selection.

(d) *Establishing Overseas Credit Union Service.* (1) When the installation (community) commander determines that credit union services are needed, the DoD Component headquarters may request an existing Defense credit union to establish a branch or facility. However, it must be recognized that the basic decision concerning such extensions of service rests with the credit union.

(2) In addition to the requirements stated in paragraph (c)(2) of this section, installation commanders shall provide the following information in support of requests to their DoD Component headquarters for overseas credit union service:

(i) In countries not presently served, a statement concurred in by the Unified Commander that the requirement has been coordinated with the U.S. Chief of Diplomatic Mission or U.S. Embassy and that the host country will permit the operation, with any conditions imposed by the host-country identified.

(ii) The name and location of the nearest credit union branch or facility.

(iii) The distance between the installation and the nearest credit union branch or facility and the availability of any official or public transportation.

(iv) The number of DoD personnel in duty assignments that confine them to the installation, or who cannot obtain transportation (such as hospital patients).

(3) The DoD Component shall notify Federal credit unions that operate on DoD installations of this need; review the specific proposals of interested credit unions; coordinate with its field commands as appropriate; and, after coordination with the DASD(MS), recommend designation of a particular credit union to the NCUA for approval.

(4) Recommendations to the NCUA shall include identification of the primary installation from which the proposed branch would operate and the geographical territory in which any additional branches, facilities, or mobile outlets would operate.

(5) No commitment may be made to a credit union regarding its proposal until the NCUA announces its selection. The DoD Component shall then notify the DASD(MS) of NCUA approval and arrange for operations to begin.

(e) *Operating Agreements.* An operating agreement, conforming to the guidelines set forth herein, shall be executed and maintained between each installation (community) commander and the onbase credit union.

(1) Each agreement shall be confined to basic relationships and mutual support activities and may not involve internal operations of the credit union. The installation commander shall agree to provide support as specified in this Instruction. A sample format is contained in DoD 4000.19–R.

(2) Each credit union operating on a DoD installation shall agree to:

(i) Comply with this part, DoD Directive 1000.11 and DoD Component regulations that implement these issuances;

(ii) Keep the installation commander advised of credit union operations;

(iii) Give the installation commander a copy of its monthly financial report and other local credit union publications;

(iv) Invite command representatives to attend its annual meetings and other appropriate functions;

(v) Indemnify and hold harmless the U.S. Government from (and against) any loss, expense, claim, or demand to which the Government may be subjected as a result of death, loss, destruction, or damage in conjunction with the use and occupancy of premises of the DoD Component in any way caused by agents or employees of the credit union;

(vi) Maintain physical security of cash and negotiable items in a manner consistent with the requirements of the credit union's fidelity insurer. A copy of these requirements shall be provided to the installation commander upon request.

(vii) Accommodate, whenever possible, local command requests for lecturers and printed materials for consumer credit education programs. Credit union personnel invited to participate in such programs shall not use the occasion to promote the

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[1] All DoD Directives and/or Instructions may be obtained, if needed, from the Naval Publications and Form Center, 5801 Tabor Avenue, Code 301, Philadelphia, PA 19120.

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exclusive services of a particular financial institution;

(viii) Provide that neither the DoD Component concerned nor its representatives shall be responsible for the financial operation of a credit union or for any expense, loss (including criminal losses), or claim for damages arising from credit union operations; and

(ix) Operate in accordance with the guidelines at Appendix and comply with other provisions of this part, with DoD Directive 1000.11, and with their DoD Component implementing regulations.

(f) *Liaison Officers.* To maintain effective lines of communication, each commander of an installation with an onbase credit union shall appoint a credit union liaison officer as defined at enclosure 2 of DoD Directive 1000.11.

(1) The credit union liaison officer's name and duty telephone number shall be displayed in the lobby of each onbase credit union location.

(2) The liaison officer shall maintain regular contact with the credit union manager to confer, help resolve member complaints, and discuss quantitative and qualitative improvements in the services provided. However, neither liaison officers nor their superiors shall become involved in the internal operations of the credit union.

(3) No one on the board of directors serving the credit union in another official capacity may serve as the credit union or bank liaison officer.

(g) *Complaints Processing.*—(1) *Discrimination.* Any installation commander who suspects or receives complaints of discrimination by the onbase credit union shall try to resolve any such problem by negotiation. The installation commander should consider using the credit union's supervisory committee in resolving the complaint. Failing resolution, and in accordance with DoD Component implementing regulations, a written request for investigation shall be forwarded to the appropriate regulatory agency. The request must document the problem and local command efforts toward resolution. Information copies of all related correspondence shall be sent through channels to the DoD Component concerned for transmittal to the DASD(MS).

(2) *Malpractice.* The installation commander shall report to the appropriate regulatory agency any evidence suggesting malpractice by credit union personnel, in accordance with DoD Component regulations.

(3) *Follow-up.* A DoD Component unsatisfied with action taken by the appropriate regulatory agency shall submit a full report with recommendations to the DASD(MS). The DASD(MS) shall pursue the matter with the appropriate regulatory agency and apprise the respective DoD Component of progress or resolution.

(h) *Logistic Support.*—

(1) *Membership Criterion.* (i) In accordance with Section 124 of the Federal Credit Union Act, the provision of no-cost office space and other real property is limited to onbase credit unions with at least 95 percent of their membership composed of current or former military and Federal civilian personnel and their families. This percentage criterion applies to the total credit union membership, not just to members who use the onbase office.

(ii) At 3-year intervals and upon renewal of each no-cost lease or license, the credit union shall provide a written certification, prepared on credit union letterhead and signed either by its president or general manager, that the credit union continues to meet the 95 percent criterion. A certification also is required whenever there is a merger, takeover or significant change in a field of membership. This certification shall serve as justification and documentation for the continued allocation of free Government space, including space renovated or constructed with credit union funds.

(2) *Criteria for Use of Space in Government-Owned Buildings.* (i) A credit union may be provided space on a DoD installation at one or more locations by no-cost permits or licenses for periods not to exceed 5 years, as prescribed in DoD Directive 4165.6. The cumulative total of space authorized at one or more locations is subject to the limitations contained in DoD 4270.1–M.

(ii) A credit union that fails to meet the 95 percent criterion shall be charged fair market rent for space provided. No credit union whose field of membership excludes any DoD personnel assigned on the installation shall receive free Government space. This latter limitation is waived in cases when an installation is served by more than one credit union.

(iii) All space assigned by the GSA, whether leased or in Federal office buildings, is reimbusable to the GSA at the standard level user charge under Pub. L. 92–313. Consequently, the GSA shall charge the benefiting DoD Component for any space assigned for credit union operations. Such space is then subject to the provisions of paragraph (h)(2) (i) and (ii) of this section.

(iv) When a credit union uses its own funds to expand, modify, or renovate Government-owned space, a no-cost permit or license may be provided for a period not to exceed 25 years. Duration of the permit or license shall be commensurate with the extent of the improvements as determined by the DoD Component concerned. It shall be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In this latter case, the no-cost permit shall be cancelled in favor of a lease immediately negotiated at fair market value under the provisions of paragraph (h)(2)(ii) of this section.

(3) *Utilities, Base Services, and Equipment.* (i) When available, janitorial services, utilities (such as air-conditioning, heat, and light), fixtures, and maintenance shall be furnished at no cost to a credit union occupying free space in a Government building. The credit union shall pay for other services, such as telephone lines, long-distance calls and space alterations. Should a credit union fail to meet the 95 percent membership criterion, any logistic support furnished shall be on a reimbursable basis.

(ii) When available from local stock, typewriters, adding machines, other office equipment and office furniture may be leased to an onbase credit union at nominal cost, i.e., $1.00 per year, under authority of 10 U.S.C. 2667.

(iii) Central locator service shall be provided under conditions identified at enclosure 3 of DoD Directive 1000.11 when requested by Defense credit unions. This service shall be provided at no cost, in accordance with DoD instruction 7230.7.

(iv) DoD Components shall provide debt processing assistance to Defense credit unions, in accordance with DoD Directive 1344.9, as limited by the Privacy Act Guidelines set forth in enclosure 3 of DoD Directive 1000.11. Unless otherwise prohibited, Defense credit unions seeking restitution for delinquent loans or dishonored checks may request the assistance of local commanders, credit union liaison officers, or other officials.

(v) DoD Components shall prescribe clearance procedures for departing military personnel which provide the onbase credit union with adequate notice of such membership changes. Clearance involves reporting a change of address, reaffirming allotments or notes payable and arranging for counseling, if appropriate. Clearance shall not be denied to facilitate the collection of debts or the resolution of disputes between the credit union and its departing members. Where administratively feasible, similar clearance procedures shall be used for departing DoD civilian employees.

(4) *Additional Support in Overseas Areas.* In addition to the logistic support identified above, the following may be made available to Defense credit unions operating at overseas installations:

(i) Military postal service may be authorized, in accordance with DoD Directive 4525.6.

(ii) AUTOVON and AUTODIN may be provided on a case-by-case reimbursable basis.

(iii) Travel of U.S.-based credit union officials to their overseas offices shall be as set forth in DoD Directive 4000.6. Invitational travel orders that authorize travel at no expense to the U.S. Government may be issued by the local commander for official onsite visits.

(i) *Construction of Credit Union Building.* (1) Credit union proposals to finance construction of buildings on domestic DoD installations at their own expense must be processed in accordance with DoD Instruction 7700.18. In support of each construction proposal, the credit union shall provide written assurance that:

(i) Management understands its potential loss of the building in the event of installation closure or other delimiting condition specified in paragraph (j)(1) of this section.

(ii) The proposed building will serve only the needs of the credit union and will not be used to house other activities; and

(iii) Management accepts financial responsibility and will reimburse the U.S. Government for all costs of construction and any maintenance, utilities and other services furnished. Rates shall be established per DoD Directive 4000.6 and confirmed by a written agreement between the DoD installation and the credit union; and

(2) Credit unions that finance building construction at their own expense do not have to meet the space criteria contained in DoD 4270.1–M.

(j) *Leases of Government Land.* (1) Except as provided in paragraph (h)(iv) of this section land required for approved building construction at credit union expense shall be made available at appraised fair market rental by real estate lease, not to exceed 25 years, in accordance with DoD Directive 4165.6. Once determined, the charges shall be applicable for the term of the lease. Leases shall include the provision that, in the event of national emergency or any other event cited in paragraph (l)(3) of this section, and at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement or removed and the land restored to its original condition.

(2) When a credit union participates in the construction of a complex, such as an installation shopping mall, it shall be provided a lease at fair market rental not to exceed 25 years. The lease shall cover only underlying land for the specific space to be occupied by the credit union.

(3) When, under the terms of a lease, title to improvements passes to the Government, arrangements shall be made by:

(i) No-cost permit or license for the continued occupancy of those improvements by the credit union if it continues to meet the 95 percent membership criterion cited in paragraph (h)(1). When the square footage exceeds that authorized in DoD 4270.1–M, the credit union shall be given first choice to continue occupying the excess space under a lease that provides for fair market rental for the land underlying that space and associated maintenance of the premises and reimbursement for utilities and services furnished in accordance with DoD Directive 4000.6; or

(ii) Lease for continued occupancy of those improvements should the credit union no longer qualify under the 95 percent rule. The lease shall be at fair market rental value only for the land associated therewith. The lessee shall continue to maintain the premises and pay for utilities and services furnished in accordance with DoD Directive 4000.6.

(k) *Automated Teller Machine (ATM) Service.* (1) ATMs may be used to augment service provided by an onbase credit union.

(2) An onbase credit union that proposes to agument its service by installing one or more ATMs shall:

(i) Coordinate the ATM proposal through the installation commander under provisions of applicable DoD Component regulations;

(ii) Provide a statement that the cost of ATM installation and maintenance shall be borne by the credit union alone or in conjunction with other financial institutions; and

(iii) Provide for access through debit transaction cards, rather than restricting access to holders of a financial institution's credit cards.

(3) Before service begins, regulatory agency approval, as necessary, must be obtained, and leases must be negotiated in accordance with this Instruction.

(i) No lease is needed to site an ATM within an existing credit union office.

(ii) When a credit union requests up to 100 square feet of additional floor space in an existing structure and the credit union agrees to bear all expenses for modifying the structure, a lease providing for an annual rental fee of $1.00 shall be locally negotiated and approved. This lease provision also shall be offered if a credit union requests up to 250 square feet of land to construct, at its expense, a kiosk or other structure to house an ATM. In either case, the charge for any maintenance, utilities and services shall be consistent with that applied to the onbase credit union office.

(iii) Leases pertaining to other situations shall be negotiated in accordance with paragraph (h)(2) and paragraph (i) of this section.

(l) *Termination of Credit Union Service.*—(1) *Termination of Operations by the Credit Union.* An onbase credit union planning to terminate its operations should notify the installation commander at least 90 days before the closing date. This notification should precede public announcement of the planned closure. When appropriate, the commander shall attempt to negotiate an agreement permitting the credit union to continue operation until the installation has made other arrangements. Immediately upon notification of a closing, the commander shall advise the DoD Component headquarters concerned. If it is determined that continuation of credit union services is justified, action to establish another credit union shall comply with paragraph (c) or (d) of this section

(2) *Termination for Cause.* If, after discussion with credit union officials, the installation commander determines that the operating policies of the credit union are inconsistent with this Instruction, a recommendation for termination of logistic support and space arrangements may be made through DoD Component channels. A credit union shall be removed from the installation only with approval by the DoD Component headquarters, after coordination with the DASD(MS) and the appropriate regulatory agency.

(3) *Termination in Interest of National Defense.* At the option of the Government, leases may be terminated in the event of national emergency or as a result of installation inactivation, closing or other disposal action.

APPENDIX—OPERATIONS OF DEFENSE CREDIT UNION

A. Staffing

1. Full service shall be provided by onbase credit unions that are staffed by:

a. A loan officer authorized to act for the credit committee;

b. An individual authorized to sign checks; and

c. A qualified financial counselor available to serve members during operating hours.

2. Exceptions to A.1., above, may be approved by the DoD Component concerned in the case of newly organized credit unions.

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3. When an onbase credit union can support only minimum staffing, one of the other positions required in A.1., above, may be subsumed under the counselor duties.

4. Remote service locations at the same installation may be staffed with one person alone, provided that a direct courier or message service links them to the credit union's onbase main office.

5. All staffing shall fully comply with the spirit and intent of DoD equal employment opportunity policies and programs, in accordance with DoD Directive 1100.15.

6. Neither active duty military personnel nor DoD civilian employees may be detailed to duty or employment with an onbase credit union. However, off-duty DoD personnel may be employed by a credit union if approved by the installation commander following a determination that such employment will not interfere with the full performance of the individual's official duties.

B. Counseling

Members of Defense credit unions shall have access to free counseling service. Members (particularly youthful or inexperienced personnel and young married families) shall receive help in budgeting and solving financial problems. Military members in junior enlisted grades who apply for loans shall receive special attention.

C. Lending

1. In accordance with accepted credit union practice, lending policies are expected to be as liberal as possible while remaining consistent with the best interests of the overall credit union membership. Credit unions must strive to provide the best possible service to all members.

2. Defense credit unions evidencing a policy of discrimination in their loan services are in violation of this Instruction. In resolving complaints of discrimination, the installation commander shall follow procedures specified in § 231a.5(g)(1).

3. Defense credit unions shall conform to the Standards of Fairness principles set forth in DoD Directive 1344.9 before executing loan or credit agreements. Should an onbase credit union branch refer a prospective borrower to an offbase office of the same credit union, it shall advise the latter office that the Department of Defense requires compliance with the Standards of Fairness.

D. Hours of Operation

Onbase credit unions may conduct operations during normal duty hours provided they do not disrupt the performance of official duties. Credit unions should set operating hours that meet the needs of all concerned. ATMs may be used to provide expended service and operating hours.

E. Share Insurance

Credit unions serving on DoD installations must maintain adequate share insurance. Any share insurance that is at least equal to that required by the NCUA for Federal credit unions may be obtained through the NCUA, a State-sponsored insurance program, or a private insurance plan to satisfy this requirement. A credit union not maintaining share insurance shall be suspended from onbase operations.

F. Allotments of Pay

DoD personnel may use their allotment of pay privileges as authorized by DoD Directives 7330.1 and 1418.4 to establish sound credit and savings practices through Defense credit unions.

1. The credit union shall credit member accounts not later than the value date of allotment check or electronic funds transfer.

2. Under no circumstances shall the initiation of an allotment of pay become a prerequisite for loan approval or disbursement to the credit union member. Allotments voluntarily consigned to a credit union shall continue at the option of the member.

G. Advertising

1. Advertising of onbase credit union services shall be in accordance with policies set forth in DoD Directive 1344.7.

2. Advertising in official Armed Forces newspapers and periodicals (DoD Instruction 5120.4 and DoD Directive 5120.43) is prohibited, with the exception of inserts in the *Stars and Stripes* overseas.

3. DoD Instruction 5120.20 precludes use of the Armed Forces Radio and Television Service to promote a specific credit union.

4. Onbase credit unions may use the unofficial section of the installation daily bulletins, provided space is available, to inform DoD personnel of financial services and announce membership meetings, seminars, consumer information programs, and other matters of broad general interest. Announcement of free financial counseling services are encouraged. Such media may not be used for competitive or comparative advertising of, for example, specific interest rates on savings of loans.

5. Defense credit unions may use onbase information bulletin boards for announcements of membership meetings and promotional materials generally complementing the installation's financial counseling and thrift promotion programs. Onbase credit unions may, with moderation, use installation message center services to distribute announcements for display on informational bulletin boards, provided this does not overburden the distribution system.

6. Installation, to include military exchange outlets or concessionaires, shall not permit the distribution of competitive literature from other credit unions at locations served by onbase credit unions. This does not preclude a credit union from using a direct mail approach to serve its field of membership or commercial advertising in another credit union's area.

H. Overseas Operations

1. An overseas credit union branch or facility shall be limited to onbase operations. It shall confine its field of membership to individuals or organizations eligible by law or regulation to receive services and benefits from the installation, not precluded from receiving these services by intergovernmental agreement or host-country law.

2. Credit unions serving overseas shall have a prescribed territorial franchise. However, any credit union may continue to serve its members stationed overseas by direct mail.

3. Any proposal for a new service must be coordinated with the appropriate Unified Commander and U.S. Chief of Diplomatic Mission or U.S. Embassy to ensure that it does not conflict with status of force agreements or host-country law.

4. Credit unions may purchase *foreign* currency from the servicing military banking facility (MBF) at the bulk rate when used for internal vendor of payroll payments. The rate of exchange for sales to individuals must be no more favorable than that available from the MBF, in accordance with DoD Directive 7360.11.

5. Overseas credit unions operating in military payment certificate areas shall comply with DoD Instruction 7360.5 and any DoD Component regulations implementing that instruction.

6. In accordance with NCUA rules and regulations, no credit union loans may be made for the purpose of purchasing real property or purchasing or erecting any type of residence in any country outside the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

7. The recommendations and direction of the NCUA through its rules, regulations, procedural forms, reports, and manuals directly apply to all Defense credit union branches and facilities operating overseas.

8. Funds shall be deposited and invested in accordance with the authority applicable to federal credit unions. Overseas Defense credit union branches and facilities shall deposit funds in accordance with instructions issued by the NCUA, giving full consideration to using the servicing MBFs.

9. Operation of overseas Defense credit union branches and facilities shall be reviewed by the NCUA during examination of the parent credit union or as the NCUA determines necessary.

I. Notification of Credit Unions

Each DoD Component shall ensure that every credit union with an office at its installations receives a copy of the document that implements this part and DoD Directive 1000.11.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 20, 1986.

[FR Doc. 86-[illegible] Filed 2-24-86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[[illegible]; FRL-[illegible]]

Pesticide Tolerance for Diclofop-Methyl

Correction

In FR Doc. 86-[illegible] beginning on page 3596 in the issue of Wednesday, January 29, 1986, make the following correction:

On page 3596 in the eighth line of the **SUPPLEMENTARY INFORMATION** in the second column, "s" should read "as".

BILLING CODE 1505-01-M

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40 CFR Parts 261 and 271

[SWH-FRL-2973-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four spent solvents and still bottoms from the recovery of these solvents. Wastes that result from the use of these individual solvents as well as wastes that result from the use of solvent mixtures containing 10 percent or more of any of the listed solvents (before use) will be hazardous wastes. Also, the Agency is amending the list of commercial chemical products which are hazardous wastes when discarded by adding one of these solvents, and amending the hazardous property of another of these solvents to include toxicity. Finally, two of these solvents are being added to the list of hazardous constituents in Appendix VIII of Part 261. The effect of this regulation is that all of these wastes will be subject to regulation as hazardous wastes under 40 CFR Parts 262–266, and Parts 270, 271, and 124.

DATES: *Effective Date:* This regulation becomes effective on August 25, 1986.

Compliance Dates. *Notification*—The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. Three of the solvents listed in today's notice (benzene, 2-ethoxyethanol, and 2-nitropropane) exhibit the characteristic of ignitability. Furthermore, two of these solvents (benzene and 1,1,2-trichloroethane) previously have been included on the list of commercial chemical products which are hazardous wastes, if and when they are discarded, due to their toxicity. The Agency views the notification requirement to be unnecessary in this case, since we believe that most, it not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, he must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

Interim Status—All existing hazardous waste management facilities (as defined in 40 CFR 270.2) which treat, store, or dispose of hazardous wastes covered by today's rule, and which quality to manage these wastes under interim status under section 3005(e) of RCRA, must file with EPA an amended Part A permit application by August 25, 1986, and meet the criteria in 40 CFR 270.72. Under the Hazardous and Solid Waste Amendments of 1984, a facility also is eligible for interim status if it was in existence on the effective date of any statutory or regulatory change under RCRA that requires it to obtain a section 3005 permit. See RCRA (amended) section 3005(e)(1)(A)(ii). Facilities which have qualified for interim status under section 3005(e)(1)(A)(ii) will not be allowed to manage the wastes covered by today's rule after August 25, 1986, unless they have an EPA identification number and they submit an amended Part A permit application with EPA by August 25, 1986.

If the facility has received a permit pursuant to section 3005, however, it will not be allowed to treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store or dispose of these wastes.

ADDRESSES: The offical public docket for this rulemaking is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Mr. Robert Scarberry, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4761.

SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 1985, EPA proposed to amend the regulations for hazardous waste management under RCRA by adding spent 1,1,2-trichloroethane and the still bottoms from the recovery of this spent solvent to the generic F002 listing, and benzene, 2-ethoxyethanol, and 2-nitropropane, as well as still bottoms from the recovery of these spent solvents to the generic F005 listing (See 50 FR 30908–30914). The hazardous constituents in these wastes are the solvents themselves, which are known to cause either carcinogenic, teratogenic, adverse reproductive, or other chronic toxic effects in laboratory animals. Also, benzene has been determined to cause leukemia in humans.

These solvents typically are present at concentrations ranging from 1 to 20 percent in the still bottoms and from 50 to 95 percent in the spent solvents. They are moderately to highly mobile in air and water, expected to be persistent in ground water, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. In addition, these solvents tend to degrade liners and, thus, may leach from land disposal facilities into ground or surface water, or form solutions of other hazardous substances, thereby rendering those compounds more mobile in the environment. Furthermore, three of these solvents (benzene, 2-ethoxyethanol, and 2-nitropropane) are also ignitable in their pure form and it is expected that the corresponding spent solvent will also exhibit the characteristic of ignitability, as these wastes typically contain significant concentrations of the solvent. On the other hand, the still bottoms from the recovery of the subject solvents typically contain a much lower concentration of these toxic solvents, and in general, are not expected to be ignitable. (See preamble to proposal (50 CFR 30908–30914) and listing background document [1] for a more detailed explanation on the basis for listing these wastes.)

EPA has evaluated these wastes against the criteria for listing hazardous wastes provided in 40 CFR 261.11(a)(3), and has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Also, it should be noted that the Hazardous and Solid Waste Amendments of 1984 require the Agency to determine whether or not to list wastes from a number of industrial sectors and operations, including the use of solvents (see section 3001(e)(2)). This regulation responds to Congress' request to consider listing additional solvents.

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[1] The listing background document is available in the public docket at the address cited above.

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Today's listings cover the subject solvents when they are used for their solvent properties, that is, to solubilize (dissolve) or mobilize other constituents. For example, solvents used as a cleaning or degreasing agent, a medium for chemical reactions, an extraction agent, a diluent, and similar uses are covered under this listing when spent. These solvents are considered "spent" and are regulated under Subtitle C of RCRA when they no longer can be used because they have become contaminated with physical or chemical impurities and are no longer fit for use without being regenerated, reclaimed, or otherwise re-processed. This listing does not cover manufacturing process wastes that are contaminated with solvents when the solvents are used as reactants or ingredients in the formulation of commercial chemical products. Such wastes, if determined to be hazardous, would be listed individually.

These spent solvent listings apply to wastes that result from use of the subject solvents in the following situations:

- As pure or technical grade solvents;
- In mixtures or blends that contain, in total, 10 percent (or more) of one (or more) of the subject solvents (before use); and
- In mixtures or blends that contain, in total, 10 percent (or more) of one (or more) of the subject solvents and any of the solvents currently listed in F001, F002, or F005 (before use).

The Agency received no comments on our proposal to list spent benzene, 2-ethoxyethanol, and 1,1,2-trichloroethane; therefore, we are making the listing of these spent solvents final in today's notice. The Agency did receive several comments on the waste listing proposed for 2-nitropropane from the principal manufacturer of this solvent. These comments did not refute our decision to list this solvent; however, a number of minor changes were made in the supporting documentation. Consequently, this notice makes final the regulation as proposed on July 30, 1985, and outlines EPA's response to the comments received on that proposal.

II. Response to Comments

Comments were received on the proposed rule regarding the production rate, waste generation rate, and end uses of 2-nitropropane as well as its toxic effects, mobility, and persistence. This section summarizes these comments and presents the Agency's response.

A. Comments on Production Rate, Waste Generation Rate, and End Uses of 2-Nitropropane

The principal manufacturer of 2-nitropropane has commented that recent projected market demand indicates approximately 2270 kkg/year of 2-nitropropane were manufactured in 1985. This represents a decline of one-third in the production level estimated by the Agency. Also, the commenter stated that since the Agency calculates waste generation rates based on production levels, there would be a corresponding decrease in the amount of spent 2-nitropropane solvent generated. Furthermore, the commenter stated that they were unaware of any user who currently recovers 2-nitropropane from wastes; therefore, no still bottoms are generated. Finally, the commenter reported that the use of 2-nitropropane in inks has been discontinued, except in a few specialized applications, and that 2-nitropropane is no longer used in azeotropic distillation.

The Agency has revised the listing background document to reflect this recent information on production rate, waste generation rate, and end uses of 2-nitropropane.

In regard to the comment that no users of 2-nitropropane can be identified who generate still bottoms from 2-nitropropane recovery, the Agency cannot be certain that none of the hundreds of users of 2-nitropropane are not generating this waste stream or that they will not generate it in the future. Therefore, the Agency is making final the listing of still bottoms from 2-nitropropane recovery.

B. Comments on Effects of Concern

One commenter, noting that evidence of the carcinogenicity of 2-nitropropane was derived from animal studies involving inhalation exposure, argued that postulated exposure via drinking water should not be considered as a health effect of concern.

The Agency agrees that data obtained regarding toxic effects resulting from one exposure route (*e.g.*, via inhalation exposure) cannot automatically be assumed to result in equivalent toxicity when exposure occurs by a different route (*e.g.*, oral exposure). In the case of 2-nitropropane, however, there are sound reasons to expect that this substance, which has been demonstrated to be an inhalation carcinogen, may also be carcinogenic when ingested.

2-nitropropane is readily absorbed both from the lungs and from the gastrointestinal tract, and is metabolized, in part, in the liver (U.S. EPA, 1977). Also, it has been speculated that N-nitrosocompounds (many of which are potent carcinogens) may be formed as metabolic intermediates. Furthermore, inhalation exposure to 2-nitropropane caused liver (rather than respiratory tract) tumors in animals in several studies (NIOSH, 1978; Griffin *et al.*, 1978). Therefore, it is reasonable to expect that ingestion of 2-nitropropane may result in carcinogenicity of the liver in much the same way as inhalation exposure.

C. Comments on Mobility of 2-Nitropropane

The commenter agreed with EPA that the high mobility of 2-nitropropane can be construed to imply rapid migration to potential receptors; however, the commenter also stated that the high mobility of 2-nitropropane means that it would rapidly disperse to levels low enough to be of no concern to said receptors. Further, the commenter argued that due to its high mobility, 2-nitropropane would be rapidly reduced to concentrations at which it is known to be easily assimilated by microorganisms.

The Agency disagrees with the commenter's conclusion that high mobility (due to relatively high solubility) means rapid dispersion of 2-nitropropane in ground water. The Agency maintains that substances with high solubilities, once released to the environment due to improper management at a disposal site or due to a spill, are more likely to leach out of the wastes, potentially contaminating ground water. The major factors which affect the migration of leachate plumes in ground water are hydraulic and lithologic conditions and leachate density, not solubility. Moreover, one of the basic hydrologic principles regarding the migration of leachate plumes in ground water is that the plume does not become diluted with the entire body of ground water, but tends to remain as an intact body with only slight dispersion and diffusion along the edges. Therefore, we continue to believe that 2-nitropropane's high mobility is an important basis for listing this spent solvent.

D. Comments on Persistence of 2-Nitropropane

A manufacturer who operates a nitroparaffins plant stated that they discharge wastewater containing "some 2-nitropropane" to their biological wastewater treatment plant and that it is subsequently degraded to a concentration less than the detection limit (the detection limit and analytical method used are not specified). Furthermore, citing an eight-day residence time for biological degradation of 2-nitropropane in their system, the commenter states, ". . . there can be little reason to doubt that this rapid assimilation can be duplicated in the nature (sic) environment . . ."

The Agency disagrees with this conclusion regarding the assimilation of 2-nitropropane in the environment for several reasons. First, the subject waste (*i.e.*, still bottoms and spent solvent) would release 2-nitropropane to the environment at a concentration many times greater than the concentration found in the wastewater and, at such concentrations, the substance could reasonably be expected to kill many, if not all, species of microorganisms that would be able to metabolize it at lower concentrations. Second, the residence time of a substance in a biological wastewater treatment system comprised of acclimated microorganisms is not an appropriate standard by which to estimate the rate at which unacclimated microorganisms would develop the ability to metabolize a substance. Third, were 2-nitropropane to enter the environment through ground water, the biodegradation of the compound in that medium would be very slow, since the concentration of microorganisms in ground water is many orders of magnitude less than that found in a biological treatment system. Also, the metabolic rates of microorganisms in ground water are significantly slower than those in other, more biologically active, media.

Finally, under the conditions known to prevail in ground water, hydrolysis would be the major mechanism of degradation. However, nitroparaffins do not readily undergo hydrolysis in the pH range associated with ground water. In fact, the routine manufacture of nitroparaffins such as 2-nitropropane involves steam distillation during purification and even contact with heated neutral water does not hydrolyze them significantly. Thus, the Agency predicts that 2-nitropropane will persist in ground water for years, allowing an ample period of time for migration to receptors.

III. Substances Added to 40.CFR 261.33(f)

On July 30, 1985, the Agency also proposed to add 2-ethoxyethanol to 40 CFR 261.33(f). There were no comments received on this proposed action; therefore, the Agency is making final the addition of 2-ethoxyethanol to § 261.33(f), the list of commercial chemical products or manufacturing chemical intermediates which are identified as hazardous wastes when discarded.

IV. Toxicants Added to 40 CFR Part 261, Appendix VIII

In addition, the Agency proposed to add 2-nitropropane and 2-ethoxyethanol to Appendix VIII. There were no comments received on this part of the proposal; therefore, the Agency is making final this action.

V. Test Methods for New Appendices VII and VIII Compounds

In the July 30, 1985 proposal, the Agency proposed Method Number 8030, which involves the use of a gas chromatograph with a flame ionization detector (GC/FID), and Method Number 8240, which involves the use of a gas chromatograph with mass spectrometric detection (GC/MS), for use in analyzing both 2-ethoxyethanol and 2-nitropropane. The proposed rule also stated that previously established test methods for benzene (Method Numbers 8020 and 8240) and 1,1,2-trichloroethane (Method Numbers 8010 and 8240) would be appropriate for the subject wastes. No comments were received on this part of the proposal; therefore, the Agency is making final this action.

The methods cited above are described in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; copies are available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238, Document Number: 055–002–81001–2.

Persons wishing to submit delisting petitions are to use the methods listed in Appendix III to demonstrate the concentration of these toxicants in the waste.[8] See 40 CFR 260.22(d)(1) and 50 FR 28742. Among other things, petitioners should submit quality control data demonstrating that the methods they have used yield acceptable recovery (*i.e.*, >50% recovery at concentrations above 1μg/g) on spiked aliquots of their waste.

VI. CERCLA Impacts

All hazardous wastes designated by today's rule will, upon the effective date, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

RQs have already been promulgated for three of the four solvents addressed in today's rule: Benzene has an RQ of 1000 pounds, while 1,1,2-trichloroethane and 2-nitropropane have RQs of 1 pound. (50 FR 13456–13522). (Since the methodology is currently being assessed for carcinogens, the RQ's for 2-nitropropane, benzene, and 1,1,2-trichloroethane and the RQs of the listed wastes are subject to change when the assessment is completed.) In the July 30, 1985 proposal, the Agency stated that statutory RQ's of 1 pound would be imposed pursuant to CERCLA section 102(b) for spent 2-ethoxyethanol and the still bottoms from its recovery as well as for the commercial chemical product 2-ethoxyethanol (which were proposed to be added to 40 CFR 261.33(f)). The Agency received no comments on these proposed RQs.

Although this rule is not changing Table 302.4 of 40 CFR 302.4, the RQs as stated here are effective upon the effective date of today's action, pursuant to the statutory requirements of CERCLA section 102(b). These listed wastes, as well as the commercial chemical product, 2-ethoxyethanol, and their RQs, will be added to Table 302.4 of § 302.4 at the time of its next publication in the Federal Register.

Finally, the Agency wishes to clarify that, except as noted below, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of one pound until adjusted by regulation under CERCLA. See CERCLA section 102. If a newly listed hazardous waste stream has only one constituent of concern, the waste will have the same RQ as that of the constituent. (The RQ to be considered for this purpose would be the final RQ of the constituent, whether statutorily imposed or by regulation.) On the other hand, because the generic solvent listings now apply to mixtures of listed hazardous solvents (see 50 FR 53315, December 31, 1985), the wastes may contain more than one CERCLA hazardous substance. In these cases, the lowest RQ assigned to any one of the constituents present in the waste represents the RQ for the waste stream.

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[8] Petitioners may use other test methods to analyze for these toxicants if they submit their quality control and quality assurance information along with their analytical data.

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VII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain authorization, the HSWA applies in authorized States in the interim.

Today's rule is being added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which regulations implement HSWA since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement promulgates regulations that are effective in all States since the requirements are imposed pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Thus, EPA will implement the regulations in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State revision under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these listings in lieu of EPA until the State program revision is approved. As a result, the regulations promulgated in today's rule apply in all States, including States with standards similar to those in today's rule. States with existing requirements may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. Once authorized, however, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not a major rule because it is not expected to result in an effect on the economy of $100 million or more. The Agency's preliminary screening analysis of the potential impacts of today's rule indicates that the total impact will be less than $7.5 million.[3] This cost will be borne by approximately 1200 manufacturers of paint and coatings, inks, and organic chemicals. The analysis considered each of these industrial segments separately and found that today's rule will not result in either a significant increase in prices or a significant decrease in profits.

A worst-case scenario was used to provide a conservative cost estimate of the economic impact. The analysis included the costs associated with the following: Establishment of a manifest system, the maintenance of an on-site hazardous waste storage area, off-site incineration and transportation of the waste 250 miles to an incinerator, and initial costs of conducting chemical waste analysis and rewriting waste analysis plans.

The addition of the new hazardous constituents to Appendix VIII also will not result in any significant increased burden in groundwater monitoring or incineration monitoring requirements because the analytical techniques currently employed to test for the presence and concentration of other Appendix VIII hazardous constituents also would detect and quantify these additional compounds.

The cost of adding 2-ethoxyethanol to 40 CFR 261.33(f), the list of commercial chemical products which are hazardous wastes when discarded, also will be minimal because these commercial chemical products are rarely discarded, due to their inherent value. In addition, the Agency stated in the proposed rule that although some generators may be newly regulated, data from the RCRA notification data base indicate that many solvent generators also generate other RCRA hazardous wastes. Also, the Agency stated that it believes that many of the generators of the spent solvents in today's notice already manage these wastes in compliance with RCRA as three of the four solvents listed today's exhibit the characteristic of ignitability. Furthermore, the Agency stated that this rule will minimize the competitive advantage experienced by those facilities that presently are not managing these solvent wastes as hazardous. The Agency did not receive any comments regarding these statements or on the preliminary screening analysis of the impact associated with today's rule.

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[3] A copy of the regulatory impact analysis is available in the public docket at the address cited above.

Finally, the Agency does not expect that there will be an adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is not a major regulation; therefore, no regulatory Impact Analysis has been conducted.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator certifies that the rule will not have a significant impact on small entities.

Although some generators will be newly regulated and some will experience an increased regulatory burden, this amendment is not expected to have a significant economic impact on a substantial number of small entities. The Agency received no comments that small entities will dispose of these wastes in significant quantities. The largest costs are more likely to be borne by generators with large quantities of difficult-to-manage wastes (*i.e.*, wastes not suitable for land disposal or recycling). Accordingly, I hereby certify that this regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

X. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated February 12, 1986.

Lee M. Thomas,

Administrator.

References

Griffin, *et al.* 1978. Chronic inhalation toxicity of 2-nitropropane in rats. *Pharmacologist* 20(3): 145.

NIOSH. 1978. NIOSH Current Intelligence Bulletin 17. National Institute for Occupational Safety and Health, U.S. Dept. of Health and Human Services. Rockville, MD.

U.S. EPA. 1977. Chemical hazard information profile: 2-nitropropane. Washington, DC.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.31, revise the following waste streams as shown in the subgroup 'Generic':

§ 261.31 [Amended]

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
* * * * *		
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1, 1, 1-trichloroethane, chlorobenzene, 1, 1, 2-trichloro-1, 2, 2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1, 1, 2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
* * * * *		
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
* * * * *		

§ 261.33 [Amended]

3. In § 261.33(f), add the following compounds in alphabetical order:

* * * * *

Hazardous waste No.	Substance
* * * * *	
U359	2-Ethoxyethanol.
U359	Ethylene glycol monoethyl ether.
* * * * *	

4. In § 261.33(f) change both entries for Hazardous Waste No. U171 from "2-Nitropropane (I)" and "Propane, 2-nitro-(I)" to: "2-Nitropropane (I,T)" and "Propane, 2-nitro- (I,T)", respectively.

5. Add the following hazardous constituents in alphabetical order to Table 1 of Appendix III of Part 261:

Appendix III—[Amended]

* * * * *

Compound	Method Nos.
* * * * *	
2-Ethoxyethanol	8030, 8240
2-Nitropropane	8030, 8240
* * * * *	

6. Revise the following entries in Appendix VII of Part 261 to read as follows:

Appendix VII—[Amended]

* * * * *

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * *	
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1, 1, 1-trichloroethane, 1, 1, 2-trichloroethane, chlorobenzene, 1, 1, 2-trichloro-1, 2, 2-trichlorofluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
* * * * *	

7. Add the following hazardous constituents in alphabetical order to Appendix VIII of Part 261:

Appendix VIII—Hazardous Constituents

* * * * *

Ethylene glycol monoethyl ether (Ethanol, 2-ethoxy)

* * * * *

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2-Nitropropane (Propane, 2-nitro)

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

8. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

9. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

Table 1—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984

Date	Title or regulation
* * *	* *
February 25, 1986	Listing of four spent solvents and the still bottoms from their recovery.
* * *	* *

[FR Doc. 86-3940 Filed 2-24-86; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2575]

Principles and Procedures for Rights-of-Way Granted Prior to October 21, 1976

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations in 43 CFR Part 2800 to clarify that its procedures are applicable to rights-of-way granted prior to October 21, 1976, under statutory provisions repealed by the Federal Land Policy and Management Act of 1976. This amendment will resolve questions raised since the promulgation of the existing regulations in 43 CFR Part 2800 on the administration of rights-of-way issued under the repealed statutes.

EFFECTIVE DATE: March 27, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Theodore G. Bingham, (202) 343-5441.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the existing regulations in 43 CFR Part 2800—Rights-of-Way, Principles and Procedures—was published in the **Federal Register** on July 2, 1985 (50 FR 27322), with a 60-day comment period. During the comment period, comments were received from seven sources, four from industry, one from an industry association, one from a local governmental entity and one from a Federal governmental entity.

All of the comments raised the issue of the need for the regulatory change contained in the proposed rulemaking. The comments expressed concern that the proposed rulemaking would, if adopted as a final rulemaking, diminish or reduce the rights conferred upon a holder of a right-of-way granted prior to October 21, 1976. as stated in the preamble to the proposed rulemaking, the procedures set forth in the proposed rulemaking would not be applicable in those instances where they are inconsistent with the provisions of a specific right-of-way grant or the statute under which it was granted. It was not the intent of the proposed rulemaking, nor is it the intent of this final rulemaking, to diminish or reduce the rights conferred by a right-of-way granted prior to October 21, 1976. This is clearly stated in the new section 2801.4 that is added to 43 CFR Part 2800 by the proposed rulemaking. However, in an effort to further clarify this point, the final rulemaking has adopted a change to § 2801.4 using a combination of language from a couple of comments. The change adopted by the final rulemaking directly addresses the question of rights conferred by a right-of-way grant and should answer the objections raised in several of the comments. In addition, if questions should arise regarding the rights of a right-of-way grant holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain availabe to assist in interpretation of the rights conferred by the grant or earlier statute.

One comment suggested that the Bureau of Land Management was in a better position than would be a holder of one or more of these right-of-way grants to identify each of the right-of-way grants and the statutes under which they were granted and describe the impact that the provisions promulgated by this final rulemaking might have on those grants. The comment suggested that this review should be made before the final rulemaking is issued. In order to comply with this suggestion, the Bureau would have to examine the files on several thousand right-of-way grants, comparing each with various statutory provisions. On the other hand, a holder of a right-of-way grant would only have to deal with one or a few grants that are familiar because of use to determine whether the actions of the Bureau are diminishing or reducing the rights conferred by their particular grant(s). This suggestion has not been adopted.

The management procedures contained in the existing regulations in part 2800 will be used by the Department of the Interior to properly manage existing right-of-way grants and to meet its statutory responsibility to protect the public lands and their resources. Many of the provisions in the existing regulations are a restatement of those contained in the regulations they replaced and are those needed to properly administer the right-of-way. In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976. Further, it is obvious that the holder of a right-of-way grant issued prior to October 21, 1976, will be alert to any action that appears to diminish or reduce the rights conferred by the grant and will challenge any such action. Therefore, the final rulemaking has adopted the provisions of the proposed rulemaking with certain changes to clarify the rights of holders of right-of-way grants issued prior to October 21, 1976.

The principal author of this final Rulemaking is Sheldon Weil, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The final rulemaking will clarify the Bureau of Land Management's authority to manage rights-of-way granted on or before October 21, 1976, removing questions that have arisen about that authority. The final rulemaking will

affect equally all holders of rights-of-way granted on or before October 21, 1976.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

Under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

February 2, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 2800—[AMENDED]

1. The authority citation for 43 CFR Part 2800 continues to read:

Authority: 43 U.S.C. 1761-1771.

§ 2800.0-1 [Amended]

2. Section 2800.0-1 is amended by removing the period at the end thereof and adding the phrase "and for the administration, assignment, monitoring and termination of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority."

3. Section 2800.0-3 is revised to read:

§ 2800.0-3 Authority.

The regulations in this part are issued under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761-1771).

4. Section 2800.0-5(h) is revised to read:

§ 2800.0-5 Definitions.

* * * * *

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

* * * * *

5. A new § 2801.4 is added to read:

§ 2801.4 Right-of-way grants issued on or before October 21, 1976.

A right-of-way grant issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply.

[FR Doc. 86-4024 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950-5182]

Tanner Crab off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the North Mainland Section of the Kodiak District of Registration Area J must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in the North Mainland Section. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective at noon, Alaska Standard Time (AST), February 21, 1986. Public comments on this notice of closure are invited until March 10, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing regulations at §671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

As of February 12, approximately 30 vessels have delivered 700,000 pounds of Tanner crabs from the North Mainland Section. Most of the catch reported to date has been concentrated in the traditionally less productive inshore fishing grounds that are protected from strong currents. In the offshore, normally more productive waters, unanticipated severe currents caused by high winds and extreme tides have pulled under many of the crab buoys that are used to mark the location of the pots to retrieve them. Therefore, a large amount of the gear that was set at the beginning of the fishing season has not been retrieved and many fishermen have chosen to fish inshore areas. Catch per unit of effort (CPUE), mostly from the inshore areas, on January 16 was about 40 crabs per pot. The CPUE fluctuated until the end of January, when it increased to over 60 crabs per pot. Since then, it has declined to approximately 20 crabs per pot on February 9. These unexpected wind and tide conditions, which forced an unanticipated increased fishing effort in the inshore areas, resulted in declining CPUE and will have a detrimental effect on the nearshore stocks unless the fishery is closed.

Based on the relative availability of inshore and offshore Tanner crab stocks to the fishery, it is highly likely that fishing pressure will be concentrated on the inshore stocks, thereby threatening harm to those stocks. Consequently, the Regional Director has determined that the condition of the Tanner crab stocks in the North Mainland Section of the Kodiak District is substantially different from the conditions anticipated on November 1, the beginning of the fishing year, and that this difference reasonably supports the need to protect the Tanner crab stocks. The North Mainland Section, as defined in §671.26(f)(1)(i), is closed by this notice until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this section prescribed in Table 1 of §671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the

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Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the North Mainland Section of the Kodiak District will be subject to damage by overfishing unless this closure takes effect promptly. NOAA therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under 50 CFR Part 671, and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 21, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-4182 Filed 2-21-86; 4:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 37
Tuesday, February 25, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 526, 531, 532, 545, 555, 561, 563, 564 and 571

[No. 86-156]

Deposit, Share, and Withdrawable Accounts

Dated: February 19, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations governing payment of interest on deposits and related matters. This action is proposed because the expiration of the Depository Institutions Deregulation Committee ("DIDC") and regulations adopted by it on March 31, 1986, mandate updating and clarification of various Board regulations by deleting outdated references, authorizing Money Market Deposit Accounts ("MMDA") and Negotiable Order of Withdrawal ("NOW") accounts and clarifying the prohibition of the payment of interest on demand accounts. The Board also is seeking comment on the retention or deletion of mandatory penalties for withdrawal of funds from fixed-term accounts prior to maturity.

DATE: Comments must be received by March 17, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Wendy Samuel, Deputy Director, (202) 377-6445; Jerome Edelstein, Attorney, (202) 377-7057; Stuart Feldstein, Attorney, (202) 377-6460; or Carol Rosa, Paralegal Specialist, (202) 377-6464, Regulations and Legislation Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: As of March 31, 1986, the DIDC ceases to exist; many, if not all, of its regulations expire; and the Board's authority, under Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b), to regulate payment of interest, including the authority to prescribe different limitations for different classes of accounts of Federal Home Loan Bank System members, expires. *See* 12 U.S.C. 3506(b)(7), (8), (9); 3508; 3509.

However, prohibitions on payment of interest on demand accounts in federally chartered savings and loan associations and savings banks ("Federal associations") will remain. *See* 12 U.S.C. 1464(b)(1)(B). (Similar prohibitions of interest on demand deposits apply to Federal Reserve System member banks (12 U.S.C. 371a) and nonmember banks insured by the Federal Deposit Insurance Corporation ("FDIC") (12 U.S.C. 1828(g)(1)).)

In addition to the expiration of DIDC provisions directly relating to payment of interest on accounts, other DIDC regulations also expire. These include provisions relating to early withdrawal penalties (12 CFR 1204.101, 1204.103, 1204.107, 1204.113); premiums (12 CFR 1204.109); and finders' fees (12 CFR 1204.110, 1204.202).

Consequently, with the expiration of the DIDC and various of its regulations, current Board regulations will be severely outdated with the inclusion of provisions relating to interest rate ceilings which no longer exist, or which reference DIDC provisions which no longer exist, or other obsolete provisions. The Board's Part 526, except to the extent it relates to advertising, also will be outdated because of the expiration of its underlying authority in the Bank Act; and other regulations which refer to expired statutes as authority also require updating. Moreover, the Board may impose the substance of certain DIDC regulations under other authority. This includes requiring early withdrawal penalties, and regulations governing premiums and finders' fees on demand accounts.

Finally, issues arise regarding the continued authority of Federal associations and institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") to offer MMDA and NOW accounts in light of the scheduled expiration of DIDC regulations governing such accounts.

As discussed more fully below, the Board is today proposing a number of amendments to address these issues.

A. Revisions to 12 CFR Part 526

Title 12 CFR Part 526 was adopted, in part, pursuant to the Board's authority under 12 U.S.C. 1425b to regulate generally the payment and advertisement of interest on deposits, shares, or withdrawable accounts of Federal Home Loan Bank System members.

Sections 526.2, 526.2-1, 526.3, and 526.3-1, as adopted originally, established rules to regulate interest rates payable on certain accounts. Subsequent amendments conformed these sections to the DIDC regulations. These sections were relevant when interest ceilings existed because they set forth the maximum rates of return and prevented circumvention of these limitations. However, with the scheduled expiration of DIDC authority and the transition to market interest rates, the provisions contain numerous outdated references to interest rate ceilings and methods of determining the applicable rate. Therefore, the Board is proposing to rescind them.

Moreover, the Board's authority pursuant to 12 U.S.C. 1425b will be limited after March 31, 1986, to the regulation of advertising of deposit accounts. *See* 12 U.S.C. 3506(b) (7), (8), (9). Consequently, the Board proposes to remove the provisions in Part 526 concerning early withdrawal penalties, 12 CFR 526.7, and payment of interest in gold, 12 CFR 526.9. As will be discussed in more detail, the Board is seeking comment on the retention or deletion, under other Board authority, of the current provisions relating to early withdrawal penalties. The proposal would also retain, under other Board authority, current provisions relating to gold and move them to §§ 532.1 and 545.79.

Consequently, the surviving provisions of Part 526 set out in the proposal concern advertising requirements and existing definitions pertinent to those requirements. The Board notes that the Federal Reserve Board ("FRB") has proposed changes to its advertising regulations. 51 FR 1379 (Jan. 13, 1986). However, the Board, at this time, is leaving its advertising regulations unchanged except for the deletion or modification of provisions

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that would be obsolete after March 31, 1986. The Board may later consider substantive revisions to its advertising regulations after assessing the need for such changes based on experience with rate deregulation on nondemand accounts after March 31.

B. Early Withdrawal Penalties

Since early in the history of interest rate regulation, the federal financial regulatory agencies have required institutions to impose substantial minimum penalties on certificate account withdrawals prior to maturity. This approach reflected the concern of the regulatory agencies that unless such penalties were required, depositors could circumvent the lower rate ceilings applicable to passbook accounts, obtaining the higher rates intended to compensate depositors for committing their funds for longer periods. Indeed, in the absence of early withdrawal penalties, the distinction among certificates with different terms to maturity has little operational significance. Widespread early withdrawals of funds deposited for a specified period could also have detrimental effects on institutions' operational planning and safety and soundness, since institutions would invest deposited funds with a stated maturity date in the expectation that they would have the use of the funds for the stated term.

In 1980 when Congress created the DIDC, it placed in the hands of this body the authority to set rate ceilings on nondemand deposits. In exercising this authority, the DIDC adopted regulations setting maximum rates that could be paid on deposits, and also imposed minimum early withdrawal penalties. These penalties, like those included in the Board's regulations at Part 526, were intended to prevent circumvention of rate control by depositors who deposited funds at long-term rates. However, with the expiration of the DIDC and its rate control authority on March 31, 1986, the DIDC's authority to impose early withdrawal penalties will also lapse.

Because the prudent use of early withdrawal penalties may contribute to the safe and sound operation of insured institutions, the Board could continue to require minimum early withdrawal penalties pursuant to its plenary authority to regulate Federal associations and the FSLIC's powers under the National Housing Act. 12 U.S.C. 1464(a), 1729 *et seq.* However, the FDIC and the FRB have recently proposed regulations deleting this requirement for banks, preferring to let the market determine the need for early withdrawal penalties. The FRB in its notice of proposed rulemaking, however, did recognize the importance of early withdrawal penalties for safety and soundness purposes and indicated that it would explore the possibility of imposing such penalties. 51 FR at 29. The Board is therefore considering whether the mandatory early withdrawal penalties set forth in 12 CFR 526.7 and 1204.103 should be retained, deleted or modified after March 31, 1986.

Deleting the requirement for early withdrawal penalties would be consistent with interest rate deregulation, especially because the bank regulatory agencies already have indicated their intent to cease requiring imposition by banks of early withdrawal penalties. To require imposition by thrifts may place these institutions at a competitive disadvantage at a time when the end of statutorily mandated interest ceilings is expected to precipitate additional competition for funds. In such a deregulated environment, the Board believes that thrifts must be as free to compete for funds as is consistent with safe and sound operation, and that to require early withdrawal penalties at a time when thrifts' primary competitors for deposits are no longer required to impose such penalties may work to thrifts' disadvantage.

The Board recognizes that ending mandatory early withdrawal penalties would not preclude Federal associations and insured institutions from requiring such penalties and incorporating them in their account documents, consistent with applicable law. Because this practice may contribute to safety and soundness, the board could encourage thrifts to consider retaining such penalties consistent with management's prudent judgment as to the needs of the particular thrift. Without federal minimums, penalties could be as little or as much as the institution deems appropriate, taking market considerations into account.

On the other hand, the Board may determine that the retention of early withdrawal penalties is necessary to assure safety and soundness. This approach would give thrifts some assurance that funds deposited for a certain time in return for a favorable rate would be retained for the stated term and contribute to the asset-liability maturity matching that the Board has found so crucial to prudent management within the thrift industry.

Several factors will be taken into account in the Board's decision on whether to continue to require early withdrawal penalties. If the requirement is deleted, the board would have to monitor Federal associations' and insured institutions' deposit offerings to assure that the rates offered by individual institutions are realistic in terms of the thrift's financial position, market and competition, and to determine the effect of the absence of a mandatory penalty on the ability of the thrift to balance effectively the maturities of assets and liabilities and, thereby, to manage interest rate risk. The Board would also have to consider whether the stated maturity of an account without such a penalty can be considered its effective maturity when analyzing interest rate risk.

The Board will also consider the effect of deleting the early withdrawal penalty requirement on existing accounts. Deleting required minimum early withdrawal penalties would have the immediate effect of making inapplicable to outstanding certificates the mandatory penalties set by regulation. To the extent that minimum early withdrawal penalties have been incorporated in account agreements for outstanding certificates, the thrift would have the option of enforcing its contractual right to collect the specified penalty or waiving it. Provided that such a waiver is not unsafe or unsound given the condition of the institution or contrary to state law if applicable, the Board believes this approach might be acceptable. On the other hand, such waivers could cause confusion among consumers, could easily be abused by selective application, and would be difficult to monitor. Therefore, the board will consider what action, if any, to take with respect to outstanding accounts.

The Board notes that deleting mandatory penalties, as proposed by the FRB and the FDIC, includes eliminating mandatory exceptions to imposition of penalties following the death or determination of incompetency of an accountholder. Similarly, deleting required penalties raises the question of removing the current requirement that advertising disclose the existence of a penalty. The Board believes that these deletions could result in a loss to consumers of significant rights and information, and such effects might outweigh the advantages to consumers from total deregulation of mandatory early withdrawal penalties.

The Board specifically seeks comment on whether mandatory early withdrawal penalties should be retained and, if so, whether the penalties currently imposed in 12 CFR 526.7 and 1204.103 or a modification of those penalties would constitute appropriate penalties. The Board also seeks comment on what

situations, including but not limited to the current exceptions for death and incompetency, require exceptions to penalties, and whether the board should adopt amendments to require such exceptions if the final rule eliminates mandatory penalties. The Board also request comment on the appropriate characterization for reporting purposes of certificates of deposit without any meaningful early withdrawal penalties. Finally, the Board requests comment on whether the final amendments should retain advertising disclosure requirements for institutions that elect to retain penalties.

C. NOW Accounts and MMDA Accounts

Pursuant to its authority, the DIDC promulgated regulations providing for the establishment by depository institutions, including Federal associations and insured institutions of NOW accounts (12 CFR 1204.108) and MMDA accounts (12 CFR 1204.122). Because of uncertainty about the status of these regulations following the scheduled expiration of the DIDC on March 31, 1986, the Board is proposing regulations and interpretations, under surviving authority, which would clarify the ability of Federal associations and insured institutions to continue to offer such accounts following the expiration of the DIDC.

1. NOW Accounts

Current DIDC regulations provide that depository institutions may offer NOW accounts as authorized under 12 U.S.C. 1832, subject to the reservation of the right to require at least seven days notice prior to withdrawal or transfer of funds in the account. Moreover, notice, if required, must be required of all depositors. 12 CFR 1204.108 (effective Jan. 1, 1986).

The Board is proposing provisions which would clarify the availability of such accounts after March 31, 1986, even if 12 CFR 1204.108 expires on March 31, 1986. The proposal would retain the current requirement that the institution offering the account retain the right to require seven days notice of withdrawal, while deleting the requirement that notice, if required, must be required of all depositors.

The Board's authority to permit Federal associations to offer such accounts is found at 12 U.S.C. 1464(b)(1)(A), (C), (E), which provides for savings accounts which may be "subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the association, as the Board may by regulation provide" and "subject to the right of the association to require such advance notice . . . as . . . provided for by . . . the regulations of the Board." The authority under section 1464 independently supplements the terms of 12 U.S.C. 1832, which allows federally regulated deapesitory institutions to provide interest bearing accounts which can be accessed by negotiable or transferable instruments for certain depositors. Depositors holding accounts established pursuant to the provisions of 12 U.S.C. 1832 are limited to individuals, governmental units, and organizations operated primarily for religious, philanthropic, charitable, educational, or similar purposes and not for profit. 12 U.S.C. 1832(a)(2).

The proposed regulations also clarify that 12 U.S.C. 1832 authorizes state-chartered insured institutions to offer such accounts and that such accounts must be subject to the reservation of the right to require seven days notice of withdrawal.

In proposing this regulation, the Board notes that continuing the requirement that the institution offering the account retain the right to require seven days notice prior to withdrawal, while deleting the requirement that notice, if required, must be required of all depositors, is consistent with the definition of NOW account which the FRB has proposed to include in its revised Regulation Q. *See* 51 FR 31, 33 (Jan. 2, 1986). The definition is also consistent with the definition of NOW account included by the FDIC in it first alternative proposal to its Part 329 of Title 12 of the Code of Federal Regulations. *See* 51 FR 4376, 4380 (Feb. 4, 1986). However, the Board notes that the FDIC's second alternative proposal requires institutions neither to establish a minimum of seven days for the reservation of notice, nor to reserve the right to require such notice if the depositor is eligible to hold a NOW account under 12 U.S.C. 1832. *Id.* 4381.

The Board also notes that, absent regulations on the issue, Federal associations must reserve a right to fourteen days notice of withdrawal, 12 U.S.C. 1464(b)(1)(C), absent a charter provision otherwise. Application of this requirement could place Federal associations in a competitively disadvantageous position if the FRB adopt their proposals.

Consequently, the Board specifically seeks comments on the issue of what would constitute an appropriate reservation of right of notice requirement and whether such notice should be imposed only if applied to all holders of such accounts.

2. MMDA Acocounts

Current DIDC regulations, 12 CFR 1204.122, provide that depository institutions may offer MMDS accounts if the institution:

(a) Limits the number of transactions;

(b) Reserves the right to require at least seven days notice of withdrawal;

(c) Requires notice of all depositors if notice is required;

(d) Provides methods of enforcing the limitations on transactions;

(e) Limits the rate of interest or other charges imposed on an overdraft credit arrangement on an account to which withdrawals from the MMDA can be paid to a rate not less than those imposed on overdrafts for customers who do not maintain such an account;

(f) Provides that maturities and guaranteed interest rates cannot exceed one month; and

(g) Calculates the average daily balance in accord with the regulation.

The Board is proposing provisions which would clarify the availability of such accounts for all types of depositors, even if 12 CFR 1204.122 expires on March 31, 1986.

As to the limitation on the number of transactions, the Board is aware that regulations proposed by the FRB and the FDIC take widely varying positions. *Compare* 51 FR 31, 33 (Jan. 2, 1986) (FRB proposal) *with* 51 FR 4376, 4381 (Feb. 4, 1986) (FDIC second alternative proposal).

Specifically, the FRB proposal would prohibit the payment of interest on demand deposits. *See* 51 FR at 31. Demand deposits would include deposits commonly known as MMDA accounts if the depositor is authorized or permitted to exceed limitations of six transfers per month, unless the depositor is eligible to hold a NOW account (*i.e.*, is an individual, governmental unit, or nonprofit entity of the type described in 12 U.S.C. 1832). *Id.*

In contrast, the FDIC's second alternative proposal, which is proposed under statutory authority similar to that under which the FRB has acted, prohibits interest on demand accounts, but narrowly defines demand accounts as accounts held by those ineligible to hold NOW accounts under 12 U.S.C. 1832 if the depositor "as a matter of legal right, [may] withdraw the funds . . . upon demand." 51 FR at 4381. The FDIC's preamble states that the rule would permit institutions to "pay interest on all reserved notice deposits—even when the accounts offer unlimited third-party transfer powers

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and even when the accounts are owned by businesses." *Id.* at 4374.[1]

Implicit in the FDIC's second alternative proposal is the interpretation that unlimited transaction MMDAs for for-profit entities do not violate the prohibition on payment of interest on demand accounts under 12 U.S.C. 1828(g)(1) (prohibiting payment of interest by insured nonmember banks on demand deposits) or the provisions of 12 U.S.C. 1832 (governing interest-bearing transaction accounts). This position contrasts with the FRB's apparent interpretation that 12 U.S.C. 371a (prohibiting payment of interest by member banks on demand accounts) and 12 U.S.C. 1832 bar paying interest on commercial MMDAs with unlimited transaction features.

The provisions of 12 U.S.C. 1464(b)(1), governing deposit accounts of Federal associations and prohibiting payment of interest on demand accounts, do not define demand deposits. Additionally, there is no counterpart in federal law to 12 U.S.C. 371a, 1464(b)(1), or 1928(g)(1) applicable to state-chartered insured institutions. In view of these considerations, and the FDIC's second alternative proposal, the Board is proposing to permit Federal associations to offer interest-bearing MMDA-type accounts to all depositors without transaction limitations. Such accounts may be authorized for Federal associations by Board regulation as savings accounts (12 U.S.C. 1464(b)(1)(A)), subject to a notice of withdrawal as the Board provides by regulation (12 U.S.C. 1464(b)(1)(C)), and subject to withdrawals or transfer by negotiable or transferable order or authorization (12 U.S.C. 1464(b)(1)(E)).

The Board also proposes to clarify that federal laws and regulations do not preclude state-chartered insured institutions, as well as Federal associations, from offering such accounts by clarifying that if the institution reserves a right of notice of withdrawal, such accounts are not prohibited by 12 CFR 563.6, which limits demand accounts to checking accounts, tax and loan accounts, note accounts, and United States Treasury General Accounts.

The Board invites comment on the issue of the availability of interest-bearing MMDAs with unlimited transaction privileges to for-profit entities, particularly in light of the difference of opinion between the FDIC and the FRB on what transaction limitations should be placed on such accounts, and which approach best implements the intent of Congress in establishing the statutory scheme which will be in place following the expiration of the DIDC on March 31, 1986.

The Board also is proposing to retain the requirement that institutions reserve the right to require at least seven days notice of withdrawal. This is consistent with the FRB's proposal, *see* 51 FR at 33, and the FDIC's proposed first alternative, *see id.* at 4380. It is inconsistent, however, with the FDIC's proposed second alternative, which does not specify a required number of days for which an institution must reserve a right of notice of withdrawal and does not require reservation of right of notice if the depositor is eligible to hold an account under 12 U.S.C. 1832. *Id.* at 4381. The Board invites comment on the differences in approach represented, whether they need to be reconciled, and what reservation of notice requirement would be appropriate.

The Board also is proposing to delete the requirement set forth in (c)—requiring notice of all depositors if notice is required—in an effort to retain uniformity with proposals of the FDIC, (51 FR at 4376) and the FRB (51 FR at 27).

The Board is proposing to delete the provisions referred to in (d) and (e) because they were initially adopted to preserve the exemption under Regulation D (12 CFR Part 204) from the reserve requirements applicable to MMDA accounts. Because the FRB, in its proposed revision to Regulation D, 51 FR at 27, has not proposed retention of these provisions, the Board believes it would be inappropriate to adopt such limitations for reserve requirement purposes.

The Board also is proposing to delete the provisions referred to in (f) and (g) because they appear to be obsolete in light of deregulation of interest rate ceilings and minimum deposit balances as to such accounts.

The deletions of the requirements referred to in (d), (e) and (f), and (g) are consistent with the FRB and FDIC proposals. *See* 51 FR 27 (Jan. 2, 1986) and 51 FR 4376 (Feb. 4, 1986).

The Board requests comment on the advisability of retaining or deleting all of the limitations currently imposed on MMDA accounts.

D. Demand Deposits

While expiration of DIDC authority will remove limitations on the rate of return on nondemand deposit accounts, the statutory prohibition against the offering of interest on demand deposits by Federal associations will remain in force. 12 U.S.C. 1464(b)(1)(B). Consequently, the Board is proposing to codify this prohibition at 12 CFR 545.12. The Board is also proposing to incorporate a definition of demand account in 12 CFR 563.6 for both Federal associations and insured institutions in accord with its preliminary determination that MMDA and NOW accounts subject to a reservation of right to require notice of withdrawal are not demand accounts. This information would state that an account from which depositors are paid on demand includes only those accounts from which the depositors as a matter of legal right may withdraw funds on demand or for which the Federal association or insured institution either requires or reserves the right to require less than seven days notice of withdrawal. The Board specifically seeks comment on this definition.

The Board also is soliciting comments concerning the application of premium and finders' fee rules to demand deposits.

Under current DIDC regulations, premiums include merchandise, cash, or credit offered to the depositor in return for establishing an account. Finders' fees are paid to an individual who introduces the depositor to the institution. Premiums and finders' fees are characterized as interest payments, with certain exceptions, to prevent circumvention of the interest rate ceilings and the prohibitions on paying interest on demand deposits at 12 U.S.C. 371a, 1464(b)(1), 1828(g). Under the DIDC regulations, premiums are not considered payment of interest if given at the time an account is opened or renewed, and if they do not exceed in value $10 for deposits of less than $5,000, or $20 for deposits of $5,000 or more. A limit of two premiums per account within a 12 month period is also imposed. See 12 CFR 1204.109. Finders' fees are characterized as interest, except if provided in the form of bonuses paid to employees for an account drive when such bonuses are tied to the total amount of deposits. 12 CFR 1204.110. Payments to bona fide deposit brokers also are not considered to be payments of interest. 12 CFR 1204.202.

The Board notes that the FDIC is proposing to remove a policy statement that premiums are not regarded as payment of interest. The FRB has proposed to retain regulations permitting de minimis premiums on demand accounts. *See* 51 FR at 33. Neither the FDIC nor the FRB proposals discuss finders' fees.

Absent regulatory clarification of existing limited authority for Federal associations and insured institutions to pay premiums and finders' fees for demand deposits, *see* 12 CFR 526.2(f), (h), (i), 545.21, 563.24, such payments could be viewed as impermissible payments of interest on demand deposits. *See* 12 CFR 561.11a, 583.4; *cf.* 12 U.S.C. 371a. De minimis exceptions might no longer exist. The Board is specifically requesting comment on the advisability of adopting regulations governing premiums and finders' fees related to demand deposits, and if so, whether the substance of the regulations currently set forth in 12 CFR 1204.109, 1204.110 and 1204.202 should be retained or adopted with modifications.

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[1] The FDIC's first alternative proposal would limit transactions on MMDAs in accord with current restrictions. 51 FR at 4380.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small institutions to which the proposed rule would apply.* The proposed rule would apply to Federal associations and insured institutions.

3. *Impact of the proposed rule on small institutions.* The proposal would affect all Federal associations equally and all insured institutions equally and will not have an adverse impact on small institutions. Differences in regulatory treatment between Federal associations and state-chartered insured institutions arise from the differences in authority pursuant to which the Board regulates these institutions. The proposed rule would not have a disproportionate impact on small institutions because the proposal seeks to delete outdated regulatory provisions and update regulatory provisions to preserve the authority of all Federal associations and insured institutions to offer all accounts which had been authorized by regulations of the DIDC. Further, the proposal would not involve any significant new reporting or compliance costs that could impose a disproportionate burden on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap, or conflict with this proposal. However, the FRB has proposed to require early withdrawal penalties for certain time deposits of institutions subject to the reserve requirements of Regulation D. *See* 51 FR 27 (Jan. 2, 1986).

5. *Alternatives to the proposed rule.* There are no alternatives that would have less impact on small institutions, consistent with the intended result, the concerns expressed in the supplementary information set forth above, and the existing statutory requirements concerning regulation of deposit accounts.

The Board had determined to provide less than a 60-day comment period, with comments due by March 17, 1986, because: (1) A longer comment period would not permit the Board to have a final rule in effect by March 31, 1986, the date the DIDC and its regulations expire; (2) the Board wishes to make a final rule effective upon publication in the Federal Register as much before March 31, 1986, as possible to give affected entities as much notice as possible of the provisions of the final rule; and (3) many of the provisions of the proposal are technical and conforming amendments to the Board's rules necessitated by the expiration of the DIDC's regulations.

List of Subjects in 12 CFR Parts 526, 531, 532, 545, 555, 561, 563, 564, and 571

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Federal Home Loan Banks, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 526, 531, and 532, Subchapter B, Chapter V; Parts 545 and 555, Subchapter C, Chapter V; and Parts 561, 563, 564, and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

1. Revise Part 526 to read as follows:

PART 526—ADVERTISING OF ACCOUNTS

Sec.
526.1 Definitions.
526.2 Advertising interest or dividends on savings accounts.
526.3 Disclosure of acceptance.

Authority: Sec. 4, 59 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, Stat. 132, as amended (12 U.S.C. 1464); sec. 401, Pub. L. 96-221, 94 Stat. 132; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 526.1 Definitions.

(a) *Member.* A member as defined in § 521.7 of this subchapter, other than a savings bank whose accounts are insured by the Federal Deposit Insurance Corporation of an institution whose home office is located on Guam.

(b) *Certificate account.* A savings account evidenced by certificate which must be held for a fixed or minimum term.

(c) *Savings account.* Any withdrawable account except a demand account as defined in § 563.6 of this subchapter, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

(d) *Tax and loan account.* An account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations; such accounts are not savings accounts or savings deposits.

(e) *Note account.* A note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable United States Treasury Department regulations. Note accounts are not savings accounts or savings deposits.

(f) *United States Treasury general account.* An account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

(g) *United States Treasury time deposit-open account.* A noninterest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts of savings deposits.

§ 526.2 Advertising interest or dividends on savings accounts.

The following rules apply to advertisements, announcements, or solicitations made by a member, or any person or organization soliciting savings accounts on a member's behalf, relating to interest or dividends paid on a member's savings accounts:

(a) *Annual rate of simple interest.* Interest or dividend rates shall be stated in terms of annual rates of simple interest or dividends.

(b) *Percentage yield based on 1 year.* If a percentage yield achieved by compounding interest or dividends during one year is stated, the annual rate of simple interest shall be stated with equal prominence, with reference to the basis of compounding. A percentage yield based on the effect of grace periods shall not be stated.

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(c) *Percentage yield based on more than 1 year.* A total percentage yield, compounded or simple, based on more than 1 year, or an average annual percentage yield achieved by compounding during more than 1 year, shall not be indicated.

(d) *Time or amount requirements.* If a stated rate is payable only on savings accounts that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. If the time requirement for a stated rate exceeds 1 year, the required number of years shall be stated with equal prominence, with an indication of any lower rate(s) applicable if the savings account is withdrawn earlier.

(e) *Penalty for early withdrawals.* A members shall include a clear and conspicuous notice stating whether the institution will or may impose a penalty for withdrawal from an account before maturity. Such notice may state, "A substantial penalty will (or may) be imposed for early withdrawal."

(f) *Profit.* Interest or dividends paid on a savings account shall not be called "profit."

(g) *Accuracy of advertising.* No representation shall be inaccurate or misleading.

(h) *Gold.* Any statement that any portion of interest or dividends is payable in gold (including gold coin), gold-related instruments or securities, or an amount of money determined in any manner related to gold is prohibited.

§ 526.3 Disclosure on acceptance.

A member accepting a certificate account deposit shall give the depositor a written description of any premature withdrawal penalty. Such statement need not be given on renewal of an existing certificate account.

PART 531—STATEMENTS OF POLICY

2. The authority citation for Part 531 is revised to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C.1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.; 3 CFR 1943–48 Comp., p. 1071, unless otherwise noted.

3. Remove § 531.10; redesignate § 531.11 as § 531.10; and amend the redesignated § 531.10 by removing the authority citation reference located at the end of the section.

PART 532—BOARD RULINGS

4. The authority citation for Part 532 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–44 Comp., p. 1071.

§ 532.1 [Amended]

5. Amend § 532.1 by inserting a comma after the word "principal" in the last sentance thereof and by adding "or interest or dividends earned on," following the newly inserted comma.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

6. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

7. Amend § 545.11 by revising paragraph (a) to read as follows:

§ 545.11 Insured accounts.

(a) Pursuant to 12 U.S.C. 1464(b)(1)(A), (B), a Federal association may issue insured accounts as defined in § 561.3 of this chapter in the form of demand accounts and savings accounts for indefinite or fixed terms ("certificate accounts") in the form of shares or deposits. An association may establish classes of accounts and specify terms and conditions for such classes of accounts. Amounts deposited in insured accounts may be in cash or porperty in which the association is authorized to invest. The authority of an association to issue insured accounts pursuant to this subject to any applicable provision of Part 563 of this chapter.

* * * * *

8. Amend § 545.12 by adding new paragraphs (c) and (d) to read as follows:

§ 545.12 Demand deposit accounts.

* * * * *

(c) Pursuant to 12 U.S.C. 1464(b)(1)(B), a Federal association shall not pay interest on demand deposits.

(d) For purposes of this section, demand deposits include only those accounts which are payable on demand within the meaning of § 563.6(b) of Subchapter D of Chapter 5 of this title.

9. Amend § 545.14 by revising paragraph (a) to read as follows:

§ 545.14 Determination and distribution of earnings.

(a) *Rates of return.* An association may issue savings accounts earning interest at different rates of return, which may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted.

* * * * *

10 Amend § 545.16 by revising paragraph (c) to read as follows:

§ 545.16 Public deposits, depositaries, and fiscal agents.

* * * * *

(c) *Depositaries and fiscal agents.* Subject to regulation of the United States Treasury Department, an association may serve as a depositary for Federal taxes, as a Treasury tax and loan depository, or as a depository of public money and fiscal agent of the Government or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Board, and may satisfy any requirement in connection therewith, including: maintaining accounts described in § 526.1(d), (e), (f), and (g) of this chapter; pleading collateral; and performing the services outlined in 31 CFR 202.3(b) (1981) or any section that supersedes or amends § 202.3(b).

11. Amend § 545.21 by revising paragraph (a)(1) to read as follows:

§ 545.21 Give-aways.

(a) *Definitions.* (1) "Give-aways" means any thing of value, or service performed in any part outside an association's premises, given without adequate payment, but not including (i) providing safety deposit facilities at reduced rental to members of the association, (ii) repaying to members of any part of amounts paid by them for safe deposit facilities located outside the association's facilities, or (iii) providing any service or thing of value as payment of interest.

* * * * *

12. Revise § 545.79 to read as follows:

§ 545.79 Gold transactions.

No Federal association shall engage in any transaction or activity, including the payment of interest or dividends, involving gold (including gold coins) or gold-related instruments or securities. Interest or dividends shall not be paid in an amount of money determined in any manner related to gold.

PART 555—BOARD RULINGS

13. The authority citation for Part 555 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended, 80 Stat. 383, 388; 12 U.S.C. 1464, 5 U.S.C. 552, 559, Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 Comp., p. 1071.

14. Amend § 555.8 by revising paragraph (c) to read as follows:

§ 555.8 Savings accounts.

* * * * *

(c) *Sale of merchandise in connection with soliciting savings accounts.* Even though a Federal association may (under § 563.24 of Subchapter D) give away merchandise in connection with opening or increasing savings accounts, it may not, as an incident to powers prescribed in its charter, sell, except in connection with a promotional campaign, merchandise other than coin banks and similar coin-savings devices.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

15. The authority citation for Part 561 is revised to read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977, Sec. 4, 82 Stat. 856, sec. 4, 80 stat. 824, and Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437); Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 401–407 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

16. Revise § 561.11 to read as follows:

§ 561.11 Savings accounts.

The term "savings accounts" means withdrawable or repurchasable shares, investment certificates, or deposits or other savings accounts, including money market deposit accounts and negotiable order of withdrawal accounts, held by insured members in an institution issued by the Corporation, or held by insured depositors in a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation.

§ 561.11b [Amended]

17. Amend § 561.11b by removing "§ 526.1(n)" and inserting in its place "§ 526.1(d)".

§ 561.11c [Amended]

18. Amend § 561.11c by removing "§ 526.1(o)" and inserting in its place "§ 526.1(e)".

§ 561.11d [Amended]

19. Amend § 561.11d by removing "§ 526.1(p)" and inserting in its place "§ 526.1(f)".

§ 561.11e [Amended]

20. Amend § 561.11e by removing "§ 526.1(g)" and inserting in its place "§ 526.1(g)".

21. Add a new § 561.11f to read as follows:

§ 561.11f Money Market Deposit Accounts.

(a) Money Market Deposit Accounts ("MMDAs") are accounts authorized for Federal associations pursuant to 12 U.S.C. 1464(b)(1) and for state-chartered insured institutions pursuant to applicable state law, and which otherwise meet the definition of savings accounts and on which the insured institutions reserves the right to require at least seven days notice prior to withdrawal of transfers of any funds in the account.

(b) Federal associations may offer MMDAs to any depositor and state-chartered insured institutions may offer MMDAs to any depositor as authorized by applicable state law.

22. Add a new § 561.11g to read as follows:

§ 561.11g Negotiable Order of Withdrawal Accounts.

(a) Negotiable Order of Withdrawable ("NOW") accounts are savings accounts authorized by 12 U.S.C. 1832 on which the insured institution reserves the right to require at least seven days notice prior to withdrawal or transfer of any funds in the account.

(b) For purposes of 12 U.S.C. 1832:

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes . . . . and not for . . . profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code; and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

PART 563—OPERATIONS

23. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 526.1 [Amended]

24. Amend § 563.1(a) by removing "§ 526.1" and inserting in its place "§ 561.11g".

§ 563.1 [Amended]

25. Amend § 563.1(b) by removing "§ 545.14(a)(3)" and inserting in its place "§ 561.35" and by removing the authority citation located at the end of the section.

26. Revise § 563.3–1 to read as follows:

§ 563.3–1 Fixed-term accounts (certificate accounts).

(a) *General.* Subject to the requirements of this section, an insured institution may offer certificate accounts, as defined in § 526.1(b) of this chapter, in such form as the board of directors of the institution may authorize by resolution.

(b) *Payment of interest or other earnings.* An institution may pay earnings on a certificate account at a rate or anticipated rate of return determined at the time that the account is accepted. The rate or anticipated rate on a certificate account either may be fixed or may vary according to a schedule, index, or formula specified at the time that the account is accepted.

(c) *Limitations.* In issuing certificate accounts, no institution shall:

(1) Accept any fixed-term account for a term of less than seven days; or

(2) Issue any form of certificate account, unless the institution has complied with the requirements of § 563.1.

(d) *Disclosure.* Each certificate account shall include in its provisions and display in easily read type:

(1) The rate or anticipated rate of earnings to be paid, the basis, frequency, extent and limits of any variation in the rate over the term of the account, and the dates or frequency at which earnings are distributable;

(2) The amount of the account and the date of its issuance;

(3) The minimum term (or for a savings deposit, the term) and minimum-balance requirement;

(4) Any provisions limiting the right of the holder to make additions to the account or to withdraw all or any portion of the account prior to its maturity;

(5) Any penalty or penalties for withdrawal prior to expiration of the term;

(6) Any provisions relating to redemption, call, or repurchase;

(7) Any provisions relating to a renewal when the term expires;

(8) Any provisions relating to earning after expiration of the term or any renewal period; and

(9) Any provisions converting the rate of return on the certificate account, whenever the minimum balance requirement may cease to be met, to another rate of return.

(e) A certificate account may provide that an owner cannot withdraw any portion of such account prior to maturity except under such circumstances as may be set forth therein: *Provided,* That no

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certificate may prohibit withdrawal in the event of death or adjudication of incompetence of an account owner.

§ 563.3-1 [Amended]

27. Amend § 563.3-1 by removing the authority citation located at the end of the section.

28. Add a new § 563.3-2 to read as follows:

§ 563.3-2 Negotiable Order of Withdrawal Accounts Authorized.

Insured institutions may offer negotiable order of withdrawal accounts as are authorized by 12 U.S.C. 1832.

§ 563.3-3 [Amended]

29. Amend § 563.3-3 by removing paragraph (d)(3) and redesignating paragraph (d)(4) as paragraph (d)(3); by removing paragraph (f) and redesignating paragraph (g) as paragraph (f); and by amending redesignated paragraph (f) by removing "§ 531.11" and inserting in its place "§ 531.10".

30. Revise § 563.6 to read as follows:

§ 563.6 Payment of insured accounts on demand.

(a) Except for checking accounts, tax and loan accounts, note accounts, and United States Treasury general accounts, no insured institution shall issue any insured account, or advertise or represent that it will pay holders of its insured accouts, on demand.

(b) As used in paragraph (a), an account which is payable on demand includes only those accounts from which the depositor may, as a matter of legal right, withdraw funds on demand or where the insured institution either requires or reserves the right to require less than seven days notice of withdrawal.

§ 563.3-3 [Amended]

31. Amend § 563.3-3, § 563.7-2, and § 563.31 by removing the authority citations located at the end of the sections.

PART 564—SETTLEMENT OF INSURANCE

32. The authority citation for Part 564 is revised to read as follows:

Authority: Sec. 308, Pub. L. 96-221; sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, 1259, as amended (12 U.S.C. 1724, 1725, 1526, 1728); Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071, unless otherwise noted.

§§ 564.1 and 564.2 [Amended]

33. Amend § 564.1 and § 564.2 by removing the authority citations located at the end of the sections.

PART 571—STATEMENTS OF POLICY

34. The authority citation for Part 571 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1729, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); sec. 408, 94 Stat. 160; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071, unless otherwise noted.

35. Amend § 571.5 by revising paragraph (f) to read as follows:

§ 571.5 Mergers and transfers of assets and liabilities.

* * * * *

(f) *Liquidating dividends.* In acting on any application under § 546.2 or § 563.22 of this chapter, the Board will consider relevant to the insurance risk of the Federal Savings and Loan Insurance Corporation the effect on the financial condition of a member of any payment by a disappearing nonmember institution to holders of its savings accounts in contemplation of a merger with a member but before execution of a merger commitment.

* * * * *

§ 571.5 [Amended]

36. Amend § 571.5 by removing the authority citation located at the end of the section.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3929 Filed 2-24-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 841 0181]

Champion International Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Stamford, Conn. paper company to sell within nine months the Tacoma, Wash. linerboard mill acquired from St. Regis Corp. to a Commission-approved buyer. The Tacoma mill was sold to Simpson Paper Co. pursuant to a previously-issued "Agreement to Hold Separate."

DATE: Comments must be received on or before April 28, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/G-402, Ernest Nagata, Washington, D.C. 20580. (202) 254-5038.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Linerboard, Trade practices.

Agreement Containing Consent Order To Divest

The Federal Trade Commission having initiated an investigation into the proposed acquisition of the voting securities and certain assets of St. Regis Corporation ("St. Regis") by Champion International Corporation ("Champion"), and it now appearing that Champion is willing to enter into an agreement containing an order to divest certain assets;

It is hereby agreed by and between Champion, by its duly authorized officer and its attonery, and counsel for the Commission that:

1. St. Regis Corporation is a corporation organized under the laws of the State of New York with its office and principal place of business located at 237 Park Avenue, New York, New York 10017.

2. Champion is a corporation organized under the laws of the State of New York with its office and principal place of business located at One Champion Plaza, Stamford, Connecticut 06921.

3. Champion admits all jurisdictional facts set forth in the draft of complaint here attached.

4. Champion waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it and the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding. Commission determination whether to give final acceptance to this agreement may be postponed until after the Commission's final decision in *Weyerhaeuser Co.,* Docket No. 9150.

6. This agreement is for settlement purposes only and does not constitute an admission by Champion that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Champion: (a) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Champion's address as stated in this agreement shall constitute service. Champion waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Champion has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Champion further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

(A) "Champion" means Champion International Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and their directors, officers, employees, agents and representatives, and their successors and assigns.

(B) "St. Regis" means St. Regis Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and their directors, officers, employees, agents and representatives, and their successors and assigns.

(C) The "Merger" means Champion's acquisition of the voting securities of St. Regis.

(D) "Tacoma mill" means the Tacoma, Washington linerboard mill acquired by Champion from St. Regis, together with all its assets, title and properties, tangible and intangible, and its associated interests, rights and privileges, including without limitation all buildings, machinery, equipment, raw material resources (excluding timberlands and timber rights), inventory, customer lists, patents, trade names, trademarks, and other property of whatever description, together with all additions and improvements thereto, whether made before or after the Merger.

(E) "Commission" means the Federal Trade Commission.

It is ordered that:

(A) Within nine (9) months of the date of service of this order, Champion shall divest, absolutely and in good faith, the Tacoma mill.

(B) Divestiture of the Tacoma mill shall be made only to an acquirer or acquirers, and only in a manner, that receive the prior approval of the Commission. The purpose of the divestiture of the Tacoma mill is to ensure the continuation of the Tacoma mill as an ongoing, viable enterprise engaged in the same business in which it is presently employed and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

(C) If Champion has not divested the Tacoma mill within the 9-month period, Champion shall consent to the appointment of a trustee in any action that the Commission may bring pursuant to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, Champion shall consent to the appointment of a trustee by the Commission pursuant to this order. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Champion to comply with paragraphs II(A) through VI of this order.

(D) If a trustee is appointed by a court or the Commission pursuant to Paragraph II(C) of this order, Champion shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Champion's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have exclusive power and authority to divest, at the trustee's discretion, the Tacoma mill. The trustee shall have nine (9) months from the date of appointment to find an acquirer, except that such period may be extended by the Commission, or if appointed by a court, by the court for an additional period of time if the trustee represents that negotiations are ongoing that are likely to lead to the execution of a purchase agreement. Any extension of time granted under this Paragraph in order to complete ongoing negotiations with a prospective acquirer shall be limited to that period of time necessary to execute a purchase agreement and in no event shall be longer than thirty (30) days. Any delays in divestiture caused by Champion shall extend the trustee's time for divestiture in accordance with the delay caused. The divestiture shall be subject to the prior approval of the Commission.

3. The trustee shall have full and complete access to the personnel, books, records and facilities of Champion, St. Regis, and the Tacoma mill as the trustee may deem necessary. Champion shall develop such financial or other information as such trustee may reasonably request. Champion shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

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4. The power and authority of the trustee to divest shall be at the most favorable price and terms available, but at no minimum price, consistent with the Order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(B).

5. The trustee shall serve at the cost and expense of Champion on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Champion and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission and if the trustee was appointed by a court, subject also to the prior approval of the court, Champion shall, subject to the Commission's and, if appropriate, the court's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

8. The trustee shall report in writing to Champion and the Commission and, if the trustee was appointed by a court, the court every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

III

It is further ordered that, pursuant to the requirements of Paragraph II, the Tacoma mill shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of Champion, or anyone who is not approved in advance by the Commission.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Champion shall not acquire, or acquire and hold, directly or indirectly, through subsidiaries or otherwise the prior approval of the Commission, the whole or any part of the stock, share capital, assets, any interest in or any interest of, any concern, corporate or non-corporate, engaged in the business of manufacturing linerboard in the West Coast market (as defined in the complaint), nor shall Champion for a period of ten (10) years from the date this order becomes final enter into any agreement, understanding or arrangement, without the prior approval of the Commission, with any such concern by which Champion obtains the market share, in whole or in part, of such concern in the above described product line and geographic market. For a period of ten (10) years from the date this order becomes final, Champion shall annually submit a verified report in writing to the Commission of compliance with this paragraph.

V

It is further ordered that, within sixty (60) days from the date of this order becomes final and every sixty (60) days thereafter until it has fully complied with Paragraph II of this order, Champion shall submit a verified report in writing to the Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith.

All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by Champion to make public its desire to divest the Tacoma mill, (b) a list of all persons or organizations to whom notice of divestiture has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all reports, internal memoranda, offers, counteroffers, communications and correspondence concerning said divestiture.

VI

It is further ordered that, Champion shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or other change that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, a consent agreement with Champion International Corporation of Stamford, Connecticut ("Champion"). The proposed complaint alleges that Champion's acquisition of St. Regis Corporation ("St. Regis") violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The consent agreement, as modified by a subsequent agreement entered into by Champion, would require Champion to sell within nine months the Tacoma, Washington linerboard mill acquired from St. Regis to a buyer approved by the Commission, unless Champion already has sold the mill to Simpson Paper Company or to any other person approved in advance by the Commission.

The consent order would also prohibit Champion for ten years from acquiring, without prior Commission approval, any interest in any corporation or business engaged in the manufacture of linerboard in the area west of the Rocky Mountains.

On August 28, 1984, the Commission entered into an "Agreement to Hold Separate" with Champion requiring that Champion hold separate the Tacoma, Washington linerboard mill until the Commission orders Champion to divest the mill (as required by the consent agreement) or until the Commission determines that divestiture is unwarranted. On August 27, 1985, the Commission modified that agreement to permit the sale of the Tacoma mill to Simpson Paper Company or to any other person approved in advance by the Commission. Subsequent to that date, the mill was sold to Simpson Paper Company.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-3877 Filed 2-24-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 171

Proposed Customs Regulations Amendments Relating to Liens

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Tariff Act of 1930 authorizes Customs officers to refuse to permit delivery of certain merchandise when notified in writing of the existence of a lien for freight, charges, or contribution in general average until proof has been produced that the lien has been satisfied or discharged. The Trade and Tariff Act of 1984 amended the Tariff Act of 1930 to allow licensed customs brokers to file a lien for freight, charges or contribution in general average to the same extent that a carrier may file such a lien. This document proposes to amend the Customs Regulations to implement the statutory provisions.

DATES: Comments must be received on or before April 28, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Entry, Licensing, and Restricted Merchandise Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; 202-566-5765.

SUPPLEMENTARY INFORMATION:

Background

Section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564), provides that whenever a Customs officer is notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehouse or taken possession of by him, he will refuse to permit delivery thereof from the public store or bonded warehouse until proof is produced that the lien has been satisfied or discharged.

For purposes of § 564, § 141.112(a)(1), Customs Regulations (19 CFR 141.112(a)(1)), defines "freight" to mean the carrier's charge for the transportation of the goods from the place of shipment in the foreign country to the final destination in the U.S. "Charges" are defined in § 141.112(a)(2), Customs Regulations (19 CFR 141.112(a)(2)), to mean the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the U.S., but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods. Section 141.112(a)(3), Customs Regulations (19 CFR 141.112(a)(3)), defines "general average" as the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of the cargo has been made for the preservation of the residue or when money is expended to preserve the whole. A lien for contribution in general average only arises from actions impelled by necessity.

A customs broker is a person licensed by Customs under the provisions of section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641) and Part 111, Customs Regulations (19 CFR Part 111), to transact Customs business on behalf of importers and other persons. Section 212(b)(7), Trade and Tariff Act of 1984, Pub. L. 98-573, amended section 564 by adding a sentence to that provision which stated that the section will apply to licensed customs brokers who otherwise possess a lien for the purposes states in section 564 upon merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any state. By virtue of this provision Congress has authorized customs brokers possessing a lien for freight, charges or contribution in general average upon merchandise held by Customs to file that lien with the proper Customs officer so that the merchandise will not be released from Customs custody until the lien is satisfied or discharged.

Prior to the passage of the Trade and Tariff Act, section 564 had been limited to liens filed by carriers or their agents. By amending section 564, Congress specifically provided that brokers may file liens with Customs for the purposes stated in the law. Because brokers now stand in the same position as carriers with respect to filing liens, it is proposed to add a definition of the word "claimant" to § 141.112(a). It is proposed to define "claimant" in a new § 141.112(a)(4) as a carrier, customs broker or the successors or assigns of either. In addition, it is proposed to amend § 141.112(a)(1), which defines "freight", by removing the reference to the "carrier's charge" and substituting, in its place, the word "charges" without any reference to whose charges they might be. It is further proposed to amend § 141.112(b), relating to notice of lien, and § 141.112(d), relating to merchandise entered for immediate transportation, to remove the reference to the carrier signing the notice of lien and filing the notice of lien and substitute a reference to the claimant.

Finally, it is proposed to correct certain clerical errors in § 171.44, Customs Regulations (19 CFR 171.44), relating to satisfaction on liens of forfeited property authorized for official use. Section 171.44 refers to the "satisfaction of liens for freight charges and contributions in general average." It is proposed to place a comma between the words "freight" and "charges" to reflect the statutory language and eliminate any confusion or limitation on the type of charges covered. It is further proposed to remove the "s" from the word "contributions."

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that, if adopted, the proposed regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed regulation is not subject to the regulatory analysis requirement of 5 U.S.C. 603 and 604.

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Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 141 and 171

Brokers, Customs duties and inspection, Imports, Liens.

Proposed Amendments to the Regulations

It is proposed to amend Parts 141 and 171, Customs Regulations (19 CFR Parts 141, 171), as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. It is proposed that the general authority citation for Part 141 continue to read as set forth below:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 141.112(a)(1) by removing the words "carrier's charge" and inserting, in their place, the word "charges".

3. It is proposed to further amend § 141.112(a) by adding a new paragraph (4) to read as follows:

§ 141.112 Liens for freight, charges, or contribution in general average.

(a) * * *

(4) *Claimant.* "Claimant" means a carrier, customs broker or the successors or assigns of either.

4. It is proposed to amend §§ 141.112(b) and (d) by removing the word "carrier" and, in each instance, inserting, in its place, the word "claimant".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. It is proposed that the general authority citation for Part 171 continue to read as set forth below:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

2. It is proposed to amend § 171.44 by placing a comma after the word "freight" in the second sentence of the paragraph and by removing the letter "s" from the word "contributions".

Approved: February 3, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

William von Raab,
Commissioner of Customs.

[FR Doc. 86-4026 Filed 2-24-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-86-1233; FR-2004]

Mutual Mortgage Insurance and Rehabilitation Loans; Conveyance of One- to Four-Family Properties Occupied by Tenants or Former Mortgagors

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current regulations at 24 CFR 203.670 through 203.683 under the general heading of Occupied Conveyance. Included in this proposed rule are revised criteria for determining when HUD will accept conveyance of a one- to four-family property by a mortgagee when there are tenants or former mortgagors in occupancy. The purposes of this proposed rule include: (1) Clarification of the habitability and eligibility criteria for occupied conveyance in accordance with the Department's current policy to maximize its ability to reduce its inventory of acquired properties, in addition to providing necessary protections for the occupants of acquired properties; (2) revision of the notice and occupant appeal procedures for departmental decisions involving occupied conveyance; and (3) streamlining of departmental procedures for the disposition of HUD-acquired properties.

DATE: Comment due date: April 28, 1986.

ADDRESS: Interested parties are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755-5740. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the Department's single family mortgage insurance programs, HUD insures a mortgage securing a loan for the purchase of a one- to four-family property. See, e.g., sections 203, 204 and 221(d)(2) of the National Housing Act, 12 U.S.C. 1709, 1710 and 1715*l*(d)(2). The insurance contract provides that HUD will pay an insurance claim to a mortgagee upon the assignment of the mortgage or conveyance of the property to HUD after a default. As a condition to the receipt of mortgage insurance benefits in connection with a foreclosure or a deed in lieu of foreclosure, a mortgagee must ensure that the property is vacant, and must transfer good marketable title to the property to the Secretary of HUD. HUD regulations at 24 CFR Part 203, Subpart B contain the terms of the contract of mortgage insurance, as well as provisions for the conveyance of a one- to four-family property to HUD upon the foreclosure of a HUD-insured mortgage.

In certain circumstances, HUD will accept transfer of the property with tenants or former mortgagors in occupancy. The criteria and procedures governing the "occupied conveyance" are set out at 24 CFR 203.670 through § 203.683. This rule proposes to make a number of changes to these criteria and procedures.

II. Proposed Amendments

A. Properties Eligible for Occupied Conveyance

Current §§ 203.670 and 203.671 provide for occupied conveyance in the following cases:

1. (a) Occupancy of the property is essential to protect it from vandalism; *or* HUD owns a number of vacant homes in the area; *or* (in the case of two- to four-unit dwellings) the property's marketability would be enhanced by occupied conveyance; *or*

(b) A resident suffers from a temporary illness or injury that would be aggravated by the process of moving from the property; *and*

2. The property is habitable; *and*

3. The occupant meets specified eligibility criteria.

The proposed rule would eliminate the criteria pertaining to vandalism and the presence of HUD-owned vacant properties. In the peramble accompanying publication of HUD's current regulations (45 FR 59561, September 10, 1980), HUD stated that occupied conveyance could make a positive contribution to property disposition where it significantly reduces vandalism or the adverse effect

of a large number of vacant properties in a given area. Hence, the Department included consideration of the effect of vandalism and numerous vacant, HUD-owned properties in an area under its property disposition function in § 203.671 of the current regulations.

The Department's current policy is the same as it was in 1980—to reduce the inventory of acquired properties, in order to ensure the maximum return to the insurance funds under the National Housing Act, consistent with the need to maintain urban residential areas and communities. At the time the current regulations became effective in 1980, HUD's turnover rate for acquired one- to four-family properties was approximately 20 months. (The turnover rate approximates the average time that a property stays in HUD's inventory.) By September 30, 1985, the turnover rate had been reduced to approximately five months. In addition, the size of HUD's inventory of acquired properties has decreased in absolute terms nationwide (from approximately 22,000 in September 1980 to 16,000 in September 1985, including approximately 7,000 properties under contract of sale but not yet closed) and in individual areas where the inventory had been particularly large (e.g., from approximately 4,200 properties to 700 in Detroit, 3,000 to 1,200 in Chicago, 1,800 to 700 in Philadelphia, 1,900 to 400 in New York City, 1,700 to 200 in Atlanta). This change has been accompanied by a significant shift in the location of HUD's inventory of acquired properties from concentrations in large central cities of older metropolitan areas of the eastern United States to less densely populated communities and suburban areas in the western United States. This trend is seen in the fact that in September 1980, 93 percent of HUD's inventory was located in Regions I–V; in September 1985, those eastern regions accounted for 50 percent of the national inventory.

As a result of these trends, vandalism and concentrations of vacant, unsold HUD properties have decreased to the point that there is a decreased need for occupied conveyance as a means of protecting HUD's interest in acquired properties and preventing the decline of neighborhoods, which suggests the elimination from occupied conveyance determinations of the criteria with respect to vandalism and the presence of other HUD-owned properties.

At the same time, the significant incidence and magnitude of rental delinquencies in HUD-owned properties impel HUD to minimize the occurrence of occupied conveyances. In September 1985, more than 40 percent of the current occupants of HUD-owned properties were delinquent in their rent. Further, delinquent accounts of former tenants of HUD-owned properties totalled more than $2.75 million, after a write-off of $1 million of delinquent accounts as uncollectible.

Under § 203.670(c) of the proposed rule, occupied conveyance of a two- to four-family dwelling would be permitted if an otherwise eligible resident suffers from a temporary illness or injury that would be aggravated by moving, or if all of the following conditions are met: (1) The property's marketability would be enhanced by retaining occupancy in one or more of the units, (2) the property is habitable, and (3) the occupant is eligible. Section 203.607(d) would make clear that the conveyance of properties with one or more units occupied would be allowed only to the extent each unit or its occupants (as appropriate) meet the relevant occupied conveyance criteria.

The proposed rule (§ 203.670(b)) would limit the occupied conveyance of one-family properties to situations involving a temporary illness or injury. This limitation and the proposed different treatment to two- to four-family dwellings reflect HUD's experience that occupied one-family properties result in decreased marketability. Despite the favorable general trend in HUD's turnover rate for acquired properties, the Department continues to experience difficulty in selling occupied one-family properties. Unlike two- to four-family properties, the principal purchasers of one-family properties are potential mortgagors who desire to reside in the property, rather than use it for investment purposes.

Section 203.672(a) would limit occupancy based on illness or injury to three months (unless extended by the Secretary). Given the temporary nature of this ground for occupied conveyance, the Department believes that it is not appropriate to mandate that each property meet all the habitability requirements in proposed § 203.671 as a condition of occupied conveyance. The Department intends, however, to issue instructions to its field offices to assure that any habitability deficiency that could have an adverse impact on the occupants of the unit will be repaired, within the otherwise applicable dollar limitations.

The proposed rule would remove current §§ 203.671 and 203.672 as unnecessary under the revised occupied conveyance criteria.

B. Modification of the Habitability and Eligibility Criteria for Occupied Conveyances

Concerning the habitability criterion, the proposed rule would prohibit the occupied conveyance of properties requiring repair costs in excess of $500 for each residential unit and $500 for the external or common area (including the cost of abating any lead-based paint hazards) to bring the property up to minimum standards of habitability. These standards would be defined in terms of a list of structural, utility, and health and safety factors that is similar to the current regulations. The proposed rule reflects the Department's concern that occupied HUD-acquired properties should be conveyed by the mortgagee without the need for expensive repairs. HUD's experience under the current regulations is that the amount spent on repairs has been excessive and has resulted in unwarranted demands on the insurance funds. The current regulations (§ 203.673) set the maximum repair cost at 15 percent of the repaired value of the property (excluding the abatement of lead-based paint hazards). For two- to four-family dwellings, the current regulations (§ 203.681) state that the repair cost to be conveyed occupied may not exceed five percent of the estimated value of the property and, for the common areas, the cost of repair may not exceed 10 percent.

Section 203.673(b) of the current regulations provides for various assurances under the habitability criterion for mechanical systems in acquired properties. HUD has determined that the protections in proposed § 203.671(b)—requiring that the property be free from hazards that may adversely affect the health and safety of the occupants—are adequate to meet necessary habitability concerns. This protection would be sufficient to protect against hazards ensuing from defective mechanical systems, but would not be as far-reaching as the current regulation's provision that mechanical systems "have reasonable durability and economy, and have adequate capacity and quality" (§ 203.673(b)). Because the Department believes that such protections primarily relate to the long-term soundness of the mechanical systems of a residence and may not be necessary to provide for a habitable dwelling, proposed § 203.671 would not continue this feature.

Concerning the eligibility criterion, proposed § 203.672 would continue the substance of current § 203.674. Thus, those remaining in occupancy after conveyance would be required to

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execute a month-to-month lease with HUD, to pay a "fair market rent" determined by HUD based on comparable properties, and to permit access to HUD staff or contractors for inspections and repairs.

The proposed rule would also continue use of an affordability test for all occupied conveyances. Current § 203.674(c) requires that the rent to be charged not exceed 40 percent of the occupant's total income, unless the occupant has been paying the required rental amount for the dwelling unit or there are other "compensating factors". Section 203.672(a)(3) of the proposed rule would reduce this percentage to 35 percent of the occupant's net effective income, defined as gross income, less city, State, and Federal income and Social Security taxes. The proposed standard is similar to one of the measures in § 203.33 of the Department's mortgage insurance eligibility regulations. The Department believes that the 35 percent standard is more consistent with current policy on an occupant's ability to afford a dwelling unit than the current 40 percent standard. In addition, the rule includes, as a possible "compensating factor" for a higher percentage of the occupant's net effective income to meet housing costs, situations where the occupant is able to rely on cash savings or contributions from family members. The rule also would make clear that the affordability test is to be applied against "total housing cost", defined as rent plus tenant-purchased utilities, rather than just "rent".

Because occupied conveyance on grounds of illness or injury if for a brief period (three months, unless extended by HUD), the proposed rule would not require the occupant to pay one month's rent in advance for this type of occupied conveyance. Unlike other occupied conveyances, there is no anticipated long-term tenancy that would warrant additional security protection against property damages during the term of the lease. Similarly, the proposed rule would not require an ill or injured occupant to have occupied the property for 60 days before HUD acquired it; the Department believes that such a requirement would impose an undue hardship on the occupant.

C. Procedural Requirements for Notice of Pending Acquisition, Requests for Continued Occupancy, and the Department's Final Decision on Requests

The proposed rule would retain, in modified form, the procedural guarantees of the current regulations for full notice and participation by occupants of HUD-acquired properties. Under proposed 24 CFR 203.673, notice of pending acquisition must be transmitted by the mortgagee to the mortgagor or to the person (head of household) who is actually occupying each unit of the property of the affected property 60 to 90 days before acquisition, and to the HUD Field Office. (Under the current regulations (§ 203.675) this 60- to 90-day advance notification is only required to be given to the HUD Field Office.) HUD believes that direct notification from the mortgagee to the occupant would generally provide more expeditious actual notice than the current practice of the HUD Field Office's contacting the occupant. The Department will provide guidance on the appropriate format for this notice by the mortgagee.

Currently, HUD procedures require that title to property be acquired by the mortgagee, and thereafter conveyed to HUD, as a prerequsite to the payment of a mortgage insurance claim. In 1983, Congress authorized the payment of mortgage insurance benefits on foreclosed single family properties without acquisition of title to the properties by the Secretary (see section 426, Housing and Urgan-Rural Recovery Act of 1983, amending section 204(a) of the National Housing Act, 12 U.S.C. 1710(a)). On Janaury 10, 1985, HUD published a proposed rule which would implement this authority (see 50 FR 1233). The aspect of such authority which is relevant to this proposed rule is that it would increase the potential for foreclosed HUD-insured properties to be purchased at the foreclosure sale by a party other than the foreclosing lender, thereby lessening the certainty of acquisition of the property by HUD. HUD anticipates publication of a final rule regarding payment of insurance claims without acquisition of title in the near future. The potential for acquisition of title at foreclosure by a party other than the mortgagee would be reflected in the notice given to the occupant under proposed § 203.673.

The proposed rule would maintain the substance of other procedural safeguards in the current regulations providing for full participation of occupants in HUD's determination whether to grant occupied conveyances (see proposed §§ 203.674 and 203.675). Included amoung these procedures are: (1) Provision for the request by an occupant for continued occupancy in the event of acquisition of the property by the Secretary; (2) a requirement that HUD inform a requesting occupant if the request is denied, with a statement of the reason or reasons for the decision and of the occupant's right to appeal the decision, including the right to an informal conference on the matter; (3) availability of pertinent material in HUD's possession for the occupant's review for purposes of an appeal of the Department's denail of a request for continued occupancy; (4) required consideration by HUD in its final decision of all issues raised by an occupant; and (5) procedural due process protections in § 203.677(c) of the current regulations.

The current regulations (§ 203.677(a)) permit occupants to review relevant information in HUD's possession after a request for continued occupancy is denied, without regard to whether an appeal is filed. The proposed rule (§ 203.675) would limit access to material that directly pertains to the conditions for continued occupancy, and would make it available only after an appeal or request for a conference has been filed. The Department believes that these provisions would continue basis due process protections contained in the current regulations, while focusing the scope and time of occupants' review to avoid unnecessary burdens on HUD Field Offices.

D. Procedures for the Disposition of HUD-Acquired Properties

Proposed §§ 203.676 and 203.677 would provide for a streamlined process for the disposition of HUD-acquired one- to four-family properties. Proposed § 203.676 provides for the conveyance of vacant HUD-acquired property where the occupant fails to request permission for continued occupancy within the time period specified in the rule. Proposed § 203.677 substantially maintains the grounds set out in the current regulations for the Department's commencement of eviction action.

E. Notice Requirements for the Inspection of HUD-Acquired Properties

Sections 203.672(a)(4) and §§ 203.672(b)(4) of the proposed rule would provide that, as a part of the eligibility requirements for continued occupancy, occupants must agree to allow access to the property, during normal business hours upon two days' advance notice, of HUD Field Office staff or by a HUD contractor, so that the property may be inspected and any necessary repairs accomplished. This notice may consist of a telephone communication with the occupant or a member of the occupant's family, a letter addressed to the occupant, or other method of actual notice. The proposed change in the timing of the notice (from 15 days in advance to two

days) would provide adequate notice to the occupant and would facilitate the HUD Field Office's scheduling of inspections and repairs.

III. Miscellaneous

This rule does not constitute a "major rule" as that term is defined in § 1(b) of the Executive Order on Federal Regulations issued by the President of February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has determined that this rule would not have a significant economic impact on a substantial number of small entities. The rule would set a revised structure for the Department's decisions on occupied conveyances and does not have a significant economic impact on small business as mortgagors or mortgagees.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0266.

This rule was listed as item number 768 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166) under Executive Order 12291 and the Regulatory Flexibiltiy Act.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.130, 14.132, 14.133, 14.140, 14.154, 14.159, 14.161, 14.163, 14.165, 14.166, 14.172, and 14.175.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs, Housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is proposed to be amended as follows:

1. The authority citation for Part 203 would continue to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. The Table of Contents for Part 203 would be amended by revising the §§ 203.670 through 203.679 to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

* * * * *

Subpart C—Servicing Responsibilities

* * * * *

OCCUPIED CONVEYANCE

Sec.
203.670 Conveyance of occupied property.
203.671 Habitability.
203.672 Eligibility for continued occupancy.
203.673 Notice to occupants of pending acquisition.
203.674 Request for continued occupancy.
203.675 Decision to approve or deny a request.
203.676 Conveyance of vacant property.
203.677 Continued occupancy after conveyance.
203.678 Approval of occupancy after conveyance.
203.679 Authority of HUD field office managers.

* * * * *

Subpart C—Servicing Responsibilities Occupied Conveyance

3. Sections 203.670 through 230.679 would be reissued to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds, consistent with the need to preserve and maintain urban residential areas and communities.

(b) The Secretary shall accept conveyance of an occupied one-family residence only if the Secretary finds that an individual residing in the property: (1) Suffers from a temporary illness or injury that would be aggravated by the process of moving from the property and (2) meets the eligibility criteria set forth in § 203.672(a).

(c) The Secretary shall accept conveyance of a property containing two to four residential units with one or more of the units occupied if the Secretary finds that:

(1) An individual residing in the property: (i) Suffers from a temporary illness or injury that would be severely aggravated by the process of moving from the property and (ii) meets the eligibility criteria set forth in § 203.672(a); or

(2) All of the following conditions are satisfied:

(i) The property's marketability would be enhanced by retaining occupancy in one or more of the units;

(ii) The property is habitable as defined in § 203.671; and

(iii) The occupant or occupants meet the eligibility criteria set forth in § 203.672(b).

(d) Conveyance of a property under paragraph (c) with one or more units occupied shall be allowed only to the extent that each unit or its occupants (as appropriate) meet the criteria of that paragraph.

§ 203.671 Habitability.

(a) For purposes of § 203.670, a property is "habitable" if it meets the requirements of this section in its present condition, or will meet such requirements with the expenditure of not more than $500 per residential unit and $500 for external and common areas.

(b)(1) Each residential unit must contain:

(i) Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;

(ii) Adequate electrical supply for lighting and for equipment used in the residential unit;

(iii) Adequate cooking facilities;

(iv) A continuing supply of hot and cold water; and

(v) Adequate sanitary facilities and a safe method of sewage disposal.

(2) The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards.

(c) If repairs are to be made while the property is occupied, the occupant must hold the Secretary harmless from any personal injury or property damage that may occur during the process of making

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repairs. If temporary relocation of the occupant is necessary during the process of repair, no reimbursement for relocation expenses will be provided to the occupant.

§ 203.672 Eligibility for continued occupancy.

(a) Temporary occupancy because of illness or injury of an individual residing in the property will be limited to three months (unless extended by the Secretary), and will be permitted only if:

(1) A timely request is made in accordance with § 203.674, including documentation as required by § 203.673(b)(4).

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, and to pay fair market rent as determined by the Secretary. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) does not exceed 35 percent of the occupant's net effective income (gross income, less city, State and Federal income and Social Security taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or contributions from family members to cover total housing costs).

(4) The occupant agrees to allow access to the property, during normal business hours and upon a minimum of two days' advance notice, by HUD Field Office staff or by a HUD contractor, so that the property may be inspected and any necessary repairs accomplished.

(b) For a property with two to four units, an occupant who does not meet the temporary illness or injury criteria is eligible for continued occupancy only if:

(1) A timely request is made in accordance with § 203.674;

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD to pay fair market rent as determined by the Secretary and to pay the rent for the first month in advance at the time the lease is executed. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any);

(3) The occupant will have been in occupancy at least 60 days before the date the mortgage acquires title to the property;

(4) The occupant agrees to allow access to the property, during normal business hours and upon a minimum of two days' advance notice, by HUD Field Office staff or by a HUD contractor, so that the property may be inspected and any necessary repairs accomplished; and

(5) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) does not exceed 35 percent of the occupant's net effective income (gross income, less city, State, and Federal income and Social Security taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or contributions from family members to cover total housing costs).

§ 203.673 Notice to occupants of pending acquisition.

(a) At least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property, the mortgagee shall notify the mortgagor or the person (head of household) who is actually occupying each unit of the property of its potential acquisition by HUD. The mortgagee shall send a copy of this notification to the appropriate HUD Field Office.

(b) The notice shall provide occupants with a brief summary of the conditions under which continued occupancy is permissible and advise them that:

(1) Potential acquisition of the property by the Secretary is pending;

(2) The Secretary requires that properties be vacant at the time of conveyance to the Secretary, unless the mortgagor or other occupant can meet the conditions for continued occupancy in §§ 203.670 through 203.672;

(3) The occupant may request permission to remain in occupancy in the event of acquisition of the property by the Secretary by notifying the HUD Field Office in writing, with any required documentation, within 20 days of the date of the mortgagee's notice to the occupant;

(4) If the occupant seeks to qualify for continued occupancy under the temporary illness or injury provisions of § 203.670, the occupant shall provide to the HUD Field Office, at the time of the occupant's request for permission to remain in occupancy, documentation to support this claim. Documentation shall include an estimate of the time when the patient could be moved without severely aggravating the illness or injury, and a statement by a State-certified physician establishing the validity of the occupant's claim. HUD may require more than one medical opinion or may arrange an examination by a physician approved by HUD; and

(5) If the occupant fails to make a timely request, the property must be vacated before the scheduled time of acquisition.

(Approved by the Office of Management and Budget under OMB control number 2502-0268.)

§ 203.674 Request for continued occupancy.

An occupant may request permission to continue to occupy the property following conveyance to the Secretary by notifying the HUD Field Office in writing, within 20 days after the date of the mortgagee's notice of pending acquisition. Where appropriate, verification of temporary illness or injury as described in § 203.673(b)(4) shall be submitted within this time period. The HUD Field Office shall notify the mortgagee in writing that an occupied conveyance has been requested.

(Approved by the Office of Management and Budget under OMB control number 2502-0268.)

§ 203.675 Decision to approve or deny a request.

(a) HUD shall provide written notification of its decision to an occupant who makes a timely request to continue to occupy the property. If the decision is to deny the request, the notice to the occupant shall include a statement of the reason or reasons for the decision and of the occupant's right to appeal. The occupant may appeal HUD's decision within 20 days after the date of HUD's notice. The appeal shall be in writing, and the occupant may provide documentation intended to refute the reasons given for HUD's decision. The occupant may also request an informal conference with a representative of the HUD Field Office Manager. A request for an informal conference shall be made in writing within 10 days after the date of HUD's notice. The occupant may be represented at the conference by counsel or by other persons with pertinent expert knowledge or experience.

(b) After notification that HUD had denied a request for continued occupancy, the occupant, on his or her request, shall be permitted to review all appropriate material in HUD's possession (including a copy of the inspection report if the request is denied because the property is not habitable as defined in § 203.671). Only material in HUD's possession that directly pertains to conditions for continued occupancy under §§ 203.670 through 203.672 may be considered material appropriate for an occupant's review under this paragraph. This review shall be limited to a review of material for purposes of the informal conference or the appeal of the Department's decision.

(c) After consideration of an appeal, the HUD Field Office shall notify the applicant in writing of HUD's final decision. If the decision is to deny the occupant's request, the notice to the occupant shall reflect consideration of the issues raised by the occupant.

(d) If, after consideration of an appeal, the Field Office Manager denies the request for new or additional reasons, the occupant shall be afforded an opportunity to appeal the Field Office Manager's decision under the procedures of paragraphs (a)–(c) of this section.

§ 203.676 Conveyance of vacant property.

(a) HUD shall require that the property be conveyed vacant if the occupant fails to request permission to continue to occupy within the time period specified in § 203.674, or fails to appeal a decision to deny occupied conveyance within the time period specified in § 203.675(a).

(b) If the mortgagee has not been notified by HUD within 45 days of the date of the notification of pending acquisition that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant.

§ 203.677 Continued occupancy after conveyance.

(a) Occupancy of HUD-owned property is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(b) HUD shall notify the occupant to vacate the property and, if necessary, will take appropriate eviction action in any of the following cases:

(1) Failure of the occupant to execute the lease required by § 203.672, or failure to pay the rental amount required and to comply with the terms of the lease;

(2) Failure of the occupant to allow access to the property upon request in accordance with § 203.672;

(3) Necessity to prepare the property for sale; or

(4) Assignment of the property by the Secretary to a different use or program.

§ 203.678 Approval of occupancy after conveyance.

Where HUD has accepted an occupied conveyance, HUD may, at any time after conveyance of the property, make a determination regarding continued occupancy in accordance with the conditions for the initial approval of occupied conveyance. This determination shall be in accordance with HUD's obligations under the terms of the month-to-month lease.

§ 203.679 Authority of HUD Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to assignment and occupied conveyance determinations. The decision of the Field Office Manager shall be final and not subject to further administrative review.

2. Sections 203.680 through 203.683 would be removed.

Dated: February 12, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing-Deputy, Federal Housing Commissioner.

[FR Doc. 86-3906 Filed 2-24-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 34

Yosemite National Park, CA; El Portal Administrative Site Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: These regulations are proposed to provide for use and management, protection of natural and cultural resources and fire protection within the El Portal Administrative Site. The action will promote the orderly use and management of the administrative site in furtherance of the implementation of the Yosemite General Management Plan and assure a timely and effective official response to law enforcement and fire emergencies in this isolated rural community.

DATES: Written comments, suggestions, or objections will be accepted until March 27, 1986.

ADDRESS: Comments should be addressed to: Superintendent, NPS Administration Building, Room No. 6, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389.

FOR FURTHER INFORMATION CONTACT: Robert O. Binnewies, Superintendent, Yosemite National Park, Telephone: (209) 372-4461.

SUPPLEMENTARY INFORMATION:

Background

The Act of September 2, 1958, (72 Stat. 1772; 16 U.S.C. 47-1(*e*)) established the El Portal Administrative Site, west of Yosemite National Park, directing the Secretary of the Interior to administer the site so that certain facilities and services could be located outside the park. The legislation provided that the administrative site would not be subject to the laws and regulations governing the park. To this end, the legislation further provided that the Secretary shall have supervision, management and control of the area and shall make and publish such rules and regulations as he/she may deem necessary and proper for its use and management.

The proposed regulations set forth below are the product of a process that began with the Yosemite General Management Plan. As currently envisioned, El Portal will serve as a combined residential area, administrative site and visitor information area. The concepts for the development of the El Portal Administrative Site have been considered and, as appropriate, incorporated into the regulations.

Generally, the proposed rules for the administrative site follow the intent of the regulations used within other National Park Service areas.

Natural and cultural resource protection rules, such as those relating to camping, the use of firearms, fishing, sanitation, scientific specimens and wildlife use, follow closely the wording of similar regulations in effect within park boundaries or are adopted from the general regulations. The proposed section on fire prevention and fire protection is being promulgated to protect residents, visitors, property and resources within the administrative site. Visitor protection rules, keeping of the peace, orderly management, special events, property security, controlled substances, and boating also follow the rules in effect within other National Park Service areas or adopt the same. The El Portal Administrative Site is not part of the park so the level of restriction is generally lower than would apply within Yosemite National Park.

Boating regulations are those necessary to provide for the protection of aquatic resources, safety of persons and orderly management of boating activities.

Protective custody regulations parallel those applicable elsewhere in the state

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of California and assure that the National Park Service will handle these situations in a manner consistent with California codes which are necessary to provide for the safety and protection of juveniles and mentally impaired persons.

Vehicle and traffic rules are those necessary to provide for the safe and orderly management of the administrative site road system and the vehicular traffic thereon.

The adopted regulations for commercial and private operations are those necessary only to achieve the objectives of the Act of September 2, 1958; namely, to support and provide necessary services for the administration of Yosemite National Park. Accordingly, a permit is required for certain business activities.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this proposed rulemaking.

Drafting Information

The following individuals participated in the drafting of these regulations: Steve Hickman, Harry Steed, James Tucker and Don Cross; all of Yosemite National Park.

Paperwork Reduction Act

The information collection requirements needed to issue permits under this Part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance with Other Laws

The Department of the Interior has determined that this is not a major rule under Exective Order 12291 (February 19, 1981), and certifies that the document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that while several businesses already operate within El Portal under permit or contract from the National Park Service, little should change under the proposed regulations. Security and fire protection should be enhanced, creating a more secure business environment. The National Park Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent owners or occupants; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 CFR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 34

National parks, Administrative site, Penalties, Traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I by adding a new Part 34, to read as follows:

PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS

Sec.
34.1 Purpose.
34.2 Applicability and scope.
34.3 Definitions.
34.4 Applicable regulations.
34.5 Fires.
34.6 Cultivation of controlled substances.
34.7 Preservation of natural, cultural and archeological resources.
34.8 Protective custody.
34.9 Saddle and pack animals.
34.10 Boating operations.
34.11 Information collection.

Authority: 16 U.S.C. 1, 3, 47–1.

§ 34.1 Purpose.

These regulations provide for the protection of persons, property and natural and cultural resources within the El Portal Administrative Site.

§ 34.2 Applicability and scope.

(a) The regulations in this part apply to all persons entering, using, visiting, residing on or otherwise within the boundaries of the El Portal Administrative Site. All regulations apply throughout the site, with certain specific exceptions provided for leased lands.

(b) The regulations in this part may be enforced only by persons authorized to enforce the other provisions of this chapter.

§ 34.3 Definitions.

When used in regulations in this part: "Administrative site" means all of the federally owned or controlled lands and waters administered by the National Park Service pursuant to 16 U.S.C. 47–1 (72 Stat. 1772), in the vicinity of El Portal, California.

"Leased lands" means all lands within the administrative site in when there is a lawful possessory interest in addition to that of the National Park Service, which have been leased, permitted or otherwise assigned by the Superintendent. All other lands within the administrative site are nonleased lands.

§ 34.4 Applicable regulations.

The following sections and paragraphs of this chapter apply to the administrative site and are hereby incorporated and made a part of this part except as modified by the regulations in this part:

(a) General Provisions.

(1) 1.2(e) Applicability and scope; exception for administrative activities.
(2) 1.3 (a) and (d) Penalties.
(3) 1.4 Definitions.
(4) 1.5 Closures and public use limits.
(5) 1.6 Permits.
(6) 1.7 Public notice.
(7) 1.8 Information collection.

(b) Resource Protection, Public Use and Recreation.

(1) 2.1 Preservation of natural, cultural and archeological resources.
(2) 2.2 Wildlife protection.
(3) 2.3 (a), (c) and (f) Fishing.
(4) 2.4 Weapons, traps and nets.
(5) 2.5 Research specimens.
(6) 2.10 Camping and food storage.
(7) 2.11 Picnicking.
(8) 2.12 Audio disturbances.
(9) 2.13 Fires.
(10) 2.14 Sanitation.
(11) 2.15 (a) (1), (3), (4) and (5); (c); (d); (e) and (f) Pets.
(12) 2.17 Aircraft and air delivery.
(13) 2.21 Smoking.
(14) 2.22 Property.
(15) 2.23 Recreation fees.
(16) 2.30 Misappropriation of property and services.
(17) 2.31 Trespassing, tampering and vandalism.
(18) 2.32 Interfering with agency function.
(19) 2.33 Report of injury or damage.
(20) 2.34 Disorderly conduct.
(22) 2.35 Alcoholic beverages and controlled substances.
(23) 2.36(a) Gambling.
(24) 2.37 Noncommercial soliciting.

(25) 2.38 Explosives.
(26) 2.50 Special events.
(27) 2.51 Public assemblies, meetings.
(28) 2.52 Sale or distribution of printed matter.
(29) 2.61 Residing on Federal lands.
(30) 2.62 Memorialization.

(c) Boating and Water Use Activities.

(1) 3.1 Applicable regulations.
(2) 3.3 Permits.
(3) 3.4 Accidents.
(4) 3.5 Inspections.
(5) 3.6 (a) and (b) Prohibited operations.
(6) 3.21 (a) (1), (2) and (b) Swimming and bathing.

(d) Vehicles and Traffic Safety.

(1) 4.1 State law applicable.
(2) 4.11 (a) and (b) Load, weight, length, and width limitations.
(3) 4.14 Reckless or careless driving.
(4) 4.15 Report of vehicle accident.
(5) 4.17 Speed limits.
(6) 4.18 Traffic control and signs.
(7) 4.19 (a) and (c)(2) Travel on roads and designated routes.

(e) Commercial and Private Operations.

(1) 5.1 Advertisements.
(2) 5.2 Alcoholic beverages; sale of intoxicants.
(3) 5.3 Business operations.
(4) 5.5 Commercial photography.
(5) 5.7 Construction of buildings or other facilities.
(6) 5.8 Discrimination in employment practices.
(7) 5.9 Discrimination in furnishing public accommodations and transportation services.
(8) 5.13 Nuisances.
(9) 5.14 Prospecting, mining, and mineral leasing.

§ 34.5 Fires.

(a) All wildland, vehicular or structural fires shall be reported to the Superintendent immediately.

(b) Nonconflicting provisions of the California State Forest and Fire Laws and Regulations are adopted as a part of this Part. Violation of any of these regulations is prohibited.

(c) The kindling of any open fire, including the burning of debris, is prohibited without a permit from the Superintendent. Designated burning days and burning procedures may be established by the Superintendent.

(d) On undeveloped, untended or otherwise open land, operating any equipment powered by an internal combustion engine without a spark arrestor maintained in effective working order is prohibited. Such spark arrestor shall also meet either the USDA Forest Service Standard 5100-1*a* or the Society of Automotive Engineers Recommended Practice J335 or J350.

(e) The Superintendent may, during periods of high fire danger or diminished water supply, temporarily limit use and consumption of domestic water. These limitations shall be published. Violation of a limitation established by the Superintendent is prohibited.

(f) An owner or operator of a commercial establishment located within the administrative site shall comply with applicable standards prescribed by the National Fire Codes, Federal OSHA, CAL OSHA and other applicable laws, regulations and standards.

§ 34.6 Cultivation of controlled substances.

In addition to the provisions of § 2.35 of this chapter, the planting, cultivating, harvesting, drying or processing of a controlled substance, or any part thereof, is prohibited.

§ 34.7 Preservation of natural, cultural and archeological resources.

In addition to the provisions of § 2.1 of this chapter, the following are in effect:

(a) Upon nonleased lands, the cutting or removal of any tree, plant, or shrub or part thereof is prohibited without a permit from the Superintendent.

(b) Upon leased lands, the cutting or removal of any tree, plant, shrub or part thereof that is six inches or less in diameter, for the purpose of maintaining its proper health and appearance or for reasons of public safety, is allowed. Cutting or removing any vegetation exceeding six inches in diameter without a permit from the Superintendent is prohibited.

(c) Upon leased lands, the planting of personal gardens or domestic trees is allowed subject to all applicable Federal, State, and County agricultural regulations. *Provided, however:* the Superintendent may temporarily suspend this general privilege in the event of a water shortage or agricultural pest or disease emergency.

(d) Wood gathering is prohibited except in accordance with conditions and within areas designated by the Superintendent. Violation of such conditions or gathering wood outside of designated areas is prohibited.

§ 34.8 Protective custody.

(a) An authorized person, with reasonable cause to believe that a juvenile found within the administrative site has been unlawfully abused or neglected by any person living in the juvenile's place of residence, may take such juvenile into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the appropriate state or local authorities.

(b) An authorized person, with reasonable cause to believe that a person found within the administrative site is either temporarily or permanently psychologically or mentally impaired to a degree that the person is gravely disabled or that presents a clear danger to that person or another, may take such person into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the person to the care of the Mariposa County Mental Health Authorities for an initial 72-hour evaluation in accordance with applicable provisions of the California Welfare and Institutions Code.

(c) An authorized person may take into protective custody any juvenile found within the administrative site who is deemed to be a runaway according to applicable provisions of the California Welfare and Institutions Code. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

(d) An authorized person may take into protective custody any adult person found within the administrative site who is under the influence of alcohol only. Such persons shall be detoxified and upon attaining a blood alcohol reading of less than .05, may be released without further proceeding in a manner consistent with applicable sections of the California Penal Code.

§ 34.9 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

§ 34.10 Boating operations.

The launching or operation of a motor boat is prohibited.

§ 34.11 Information collection.

The information collection requirements contained in §§ 34.5, 34.7 and 34.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

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Dated: January 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-3967 Filed 2-24-86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2974-2]

South Dakota; New Source Review in Nonattainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: In this action EPA proposes to disapprove South Dakota Regulations for New Source Review in nonattainment areas and to re-impose a moratorium on the issuance of permits for major new sources of particulates in the Rapid City nonattainment area. These actions are necessary because the South Dakota regulations do not meet the requriements of Part D of the Clean Air Act. The effect of the proposed actions would be that no sources of particulate matter greater than 100 tons per year may be constructed, or modified to increase emissions by more than 25 tons per year within the Rapid City nonattainment area.

DATES: Comments are due March 27, 1986.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202-2413.

Copies of the state submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following location: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, 999 18th Street, Denver, Colorado 80202-2413.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Program Branch, One Denver Place, 999 18th Street, Denver, Colorado 80202-2413, (303) 293-1773.

SUPPLEMENTARY INFORMATION:

In 1977, Congress amended the Clean Air Act to remedy widespread persistence of violations of national ambient air quality standards. Congress called upon EPA in a new section 107(d), 42 USC 7407(d), to designate those areas of the country that were still experiencing violations, and then upon the States in a new Part D, 42 USC 7501-07, to revise their state implementation plans (SIPs) to assure attainment as expeditiously as practicable but no later than certain deadlines. Under sections 172(b)(6) and 173 of new Part D, these SIP revisions were also to include permit programs for the preconstruction review of new stationary sources. Congress further provided that a ban on construction was to take effect in a designated nonattainment area on July 1, 1979, if the State had not submitted and received approval of the necessary Part D SIP revision before then. *See* section 110(a)(2)(I), 42 USC 7410(a)(2)(I); 40 CFR 52.24 (1985).

In 1978, EPA designated the Rapid City area of South Dakota as nonattainment for particulate matter. It designated no other area in South Dakota as nonattainment. 43 FR 8962 (March 3, 1978); 43 FR 40412 (September 11, 1978). The Rapid City area continues to be the only nonattainment area in the State. 40 CFR 81.342 (1985).

In July 1, 1979, the construction ban came into effect, because the State had not received full EPA approval for its Part D SIP for the Rapid City area. Shortly thereafter, on July 30, EPA disapproved a new source review (NSR) program that the State had submitted to meet the requirements of sections 172(b)(6) and 173. 44 FR 44494.

The State subsequently adopted a new NSR program, which took effect on July 28, 1980. About a week later, on August 7, 1980 (45 FR 52676), EPA promulgated extensive revisions to its regulations governing new source review in nonattainment areas. States were to submit by May 1981 such amendments to their NSR programs as would conform them to the new federal provisions.

In April 1981 (46 FR 21199), EPA proposed action on the new NSR program. Evaluating it against the federal requirements in effect prior to August 1980, EPA found several deficiencies. Nevertheless, it proposed to approve the program on an interim basis, inasmuch as the State was under an obligation to conform it shortly to the new federal requirements and the program would operate only in one narrow area, the Rapid City area. EPA warned, however, that, if the State failed to submit any necessary conforming amendments, it would propose to disapprove the program. 46 FR 21200 (col. 2).

On November 3, 1981 (46 FR 54542), EPA, having received no comments on the proposal, approved the NSR program and consequently lifted the ban on construction in the Rapid City area. EPA repeated its rationale, as follows:

> EPA is approving the South Dakota submittal in spite of minor deficiencies in the New Source Review rules which were identified in EPA's proposed rulemaking notice. The State is in the process of revising these regulations to comply with EPA's August 7, 1980 rulemaking and EPA believes that use of the rules being approved today in the interim will have no adverse impact on air quality. [46 FR 54542 (col. 1).]

On December 21, 1981, the State submitted revisions to its NSR program that it had adopted to conform them to the new federal requirements. These revisions also contained several deficiencies in relation to the new requirements, namely: 1) The definition of "contemporaneous" did not include a specific time period for crediting decreases in emissions; 2) there was no requirement pursuant to 40 CFR 51.18(j)(5)(ii) concerning the relaxation of enforcement limitations established after August 7, 1980 (such as restrictions on the hours of operation of sources) which would make sources with relaxed limitations major sources and thus subject to New Source Review; and 3) emission credits for shutdown sources were not limited to those with replacement units and those which were shut down after August 7, 1977.

Following identification of the above deficiencies, the State agreed by letter to administer its NSR regulations in conformity with EPA requirements and to address the deficiencies in a subsequent rulemaking. With respect to the relaxation of operating limitations identified in (2) above, the State concluded that the relaxation language was not necessary since no existing source had escaped NSR review as a result of such a relaxation and the State had committed to administer its program to avoid the problem in the future. However, the state's regulation also included a plant-wide definition of source, as promulgated by EPA on October 14, 1981 (46 FR 50771). As a result, EPA's action on the December 21, 1981, submittal was delayed by litigation relating to this definition. On June 25, 1984, the Supreme Court unanimously ruled that EPA has the discretion to allow states to use a single, plantwide definition of source for new source review purposes in nonattainment areas. *Chevron U.S.A., Inc. v. NRDC*, 104 S.Ct. 2778 (1984). As a result of this ruling, EPA is now able to act on South Dakota's submittal.

A reanalysis of the State's NSR regulation and actual program operation since the revision was submitted indicates that the previously identified problems are more serious than originally thought. For instance, the State has issued a permit to a source located in the Rapid City nonattainment

area and has classified the source as minor by limiting the operating hours to hold particulate emissions under 100 tons per year. The source now wants to amend the permit to increase the hours of operation, and nothing in the State regulation appears to prevent such a relaxation. This permit action would conflict with the EPA requirements that a source becoming a major source as a result of a relaxation be subject to NSR as if it were a new source. Without New Source Review of such relaxation, the increased emissions may interfere with attainment or maintenance of the National Ambient Air Quality Standards. Furthermore, the other minor problems EPA identified with the State's regulation (for example, the definition of "contemporaneous") were never corrected. While these deficiencies may have been acceptable on an interim basis, they are not acceptable for the long run.

As a result, EPA is now proposing to disapprove the South Dakota nonattainment area NSR regulations because they do not meet the requirements of 40 CFR 51.18. Section 110(a)(2)(I) of the Clean Air Act requires that unless there is an approvable NSR regulation for nonattainment areas, no major stationary sources of the nonattainment pollutant may be constructed or modified within such areas. A moratorium on the issuance of permits for major stationary sources of particulates (sources emitting 100 tons per year or more) in the Rapid City nonattainment area is, therefore, proposed to be re-established until an acceptable NSR regulation is approved or the area is redesignated as attainment for particulates.

Under the Regulatory Flexibility Act 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. If EPA takes final action as proposed today, a moratorium on the construction and modification of major stationary sources will go into effect in the nonattainment areas of the State affected. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the CAA, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the CAA.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

This rulemaking is being proposed pursuant to sections 110(a)(2)(A)-(K), 110(a)(3), 172, 173, and 301(a) of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401-7642.

List of Subjects in 40 CFR Part 52

Air pollution control and particulate matter.

Dated: September 19, 1985.

Alexandra B. Smith,

Acting Regional Administrator.

[FR Doc. 86-4004 Filed 2-24-86; 8:45 am]

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40 CFR Part 261

[SW-FRL-2970-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three wastes generated during the production of diphenylamine by the condensation of aniline. The Agency also is proposing to add diphenylamine and quinoline to the list of commercial chemical products which are hazardous wastes when discarded and to add quinoline to the list of hazardous constituents identified in Appendix VIII of Part 261. The effect of this proposed regulation, if promulgated, is that all of these wastes would be subject to regulation as hazardous under 40 CFR Parts 262-266, and Parts 270, 271, and 124.

DATES: EPA will accept public comments on this proposed rule until April 11, 1986. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by March 12, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should identify the regulatory docket "Listing Diphenylamine." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public docket for this amendment is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Edwin F. Abrams, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4787.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times and is published in 40 CFR 261.32. EPA today is proposing to add to the list three wastes from the production of diphenylamine by the condensation of aniline. The hazardous wastes from the process described below are wastewaters from catalyst regeneration, an ammonia by-product stream from the condenser in the aniline recycle loop, and a heavy and light ends stream from the distillation process.

The hazardous constituents in these wastes (aniline, benzene, diphenylamine, and quinoline) are carcinogenic, teratogenic, and are otherwise chronically toxic organic compounds. They typically are present in the wastes at significant concentrations. The hazardous constituents also are mobile and persistent, to varying extents, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. Evaluated against the criteria for listing hazardous wastes (40 CFR 261.11(a)), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

II. Summary of the Regulation

A. List of Wastes

The proposed regulation would list as hazardous three wastes generated

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during the production of diphenylamine by the condensation of aniline. These wastes are:

- K122—Wastewater from steam regeneration of activated alumina catalyst used in the production of diphenylamine by the condensation of aniline.
- K133—Ammonia produced as a by-product in the production of diphenylamine by the condensation of aniline.
- K134—Heavy and light ends [1] from the distillation/purification of diphenylamine by the condensation of aniline.

In 1983, one domestic company produced diphenylamine on a regular basis at one location; the annual production volume is confidential. The total annual volume of the organic residual wastes generated from diphenylamine production by the process described here is approximately 3750 kkg: 1800 kkg of waste K122, 650 kkg of waste K133, and 1300 kkg of waste K134. These wastes are formed as residuals at several points in the production process.

Diphenylamine production is typically a continuous process involving one distinct chemical step—the condensation of two moles of aniline to form one mole of diphenylamine and one mole of ammonia. The wastes are formed as residuals at three points in the production of diphenylamine by the condensation of aniline. The by-product stream (K133) is formed during the condensation of aniline in the aniline recovery and recycle loop while the wastewater stream (K122) is formed when the catalyst is regenerated with steam. The distillation/purification of diphenylamine results in both heavy and light ends from the still, and this constitutes the third residual (K134).

The listing background document (available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries) and the sources cited there describe this production process in detail. Sections of the background document, however, are confidential business information (CBI); these CBI sections are not available to the public.

As derived from industry-supplied data and sampling and analysis data, these wastes typically contain significant concentrations of the hazardous constituents: aniline, benzene, diphenylamine, and quinoline. Table 1 lists the constituents of concern in each waste stream along with their effects of concern, concentrations in the waste, exposure pathways of concern, water solubility, mobility in soil, log octanol/water partition coefficient (K_{ow}), soil adsorption coefficient (K_{oc}), and their persistence in the medium of concern; these parameters enable the Agency to estimate a chemical's mobility and persistence in the environment.

TABLE 1.—CONSTITUENTS OF CONCERN IN WASTE STREAMS

Waste stream	Const. of concern	Effects of concern	Conc. range (ppm)	Exposure pathway of concern	Water solub. mg/L	Mobility [a] (soil)	Log K_{ow} [b]	K_{oc} [b]	Persistence [a] (ground water)
K122	Aniline	Carcinogenic Toxic	10,000–100,000	gw	36,000	High	0.9	12.3	Moderate.
K133	Aniline	Carcinogenic Toxic	100–1000	gw	36,000	High	0.9	12.3	Moderate.
	Benzene	Carcinogenic	100–1000	gw	1,800	Moderate	2.15	56	Moderate.
K134	Aniline	Carcinogenic Toxic	10,000–100,000	gw	36,000	High	0.9	12.3	Moderate.
	Diphenylamine	Teratogenic	100,000–500,000	gw	36	Moderate	3.45	266	Moderate.
	Quinoline	Carcinogenic	10,000–100,000	gw	6,000	Moderate	2.04	49	Moderate.

[a] See Appendix A of the listing background document for the descriptors for solubility, mobility in soil, and persistence in ground water.
[b] Lyman, 1982.

1. Effects of Concern

These hazardous constituents have carcinogenic or other chronic systemic effects on laboratory animals or humans. In particular, the hydrochloride salt of aniline has been shown to be carcinogenic in long-term feeding studies on female Fisher 344 rats, producing unusual splenic tumors (NCI, 1978). In humans, aniline absorption causes anoxia due to the formation of methemoglobin. Symptoms of methemoglobinemia include fatigue, headache, irritability, and dizziness (Proctor and Hughes, 1979). In addition, direct effects of aniline on the human nervous system have been observed, including insomnia and paresthesia, as well as cardiotoxic effects (Patty, 1979; Sax, 1979). Splenic hemosiderosis also has been observed in Fisher 344 rats after chronic oral administration of aniline hydrochloride (NCI, 1978). Quinoline has been shown to be carcinogenic to Sprague-Dawley rats (Hirao *et al.*, 1976) and to be carcinogenic to Wistar rats and ddY mice (Shinohara *et al.*, 1977). Benzene has been identified by the Agency's Carcinogen Assessment Group as a human carcinogen (USEPA, 1985). Chronic exposure of humans to benzene also has caused pancytopenia (reduction of blood erythrocytes, leukocytes, and platelets) (Browing, 1965; Goldstein, 1977b; International Labour Office, 1968; Snyder and Kocsis, 1975) and can impair the immunological system (Lange *et al.*, 1973a; Smolik *et al.*, 1973). Diphenylamine is a teratogen, causing cystic abnormalities of the kidneys in the offspring of Sprague-Dawley rats, when administered by gavage or in food seven days before delivery (Crocker and Vernier, 1970). These compounds, therefore, exhibit toxicological properties of regulatory concern. (For additional information on the toxicity of the hazardous constituents see the Health and Environmental Effects Profiles (HEEPs), available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries.)

The Agency has determined that these constituents are present in the wastes at significant concentrations which are capable of posing a substantial present or potential threat to human health and the environment. For example, Ambient Water Quality Criteria (AWQC) have been established for benzene (see 45 FR 79318, November 28, 1980). The benzene concentration which may result in an incremental increase of cancer risk, over a lifetime, of 10^{-6} is calculated as 0.66 μg/. As seen above, this constituent is present in the wastes at concentrations up to one and one-half million times as high as the AWQC; in addition, its solubility in water is 2.7 million times

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[1] The one company that uses this process combines the heavy and light ends and uses the mixed wastes as a fuel on-site. The individual streams were not characterized.

greater than the AWQC. Although aniline and quinoline do not have AWQC established at the present time, their 10^{-6} upper limit of risk estimates (ULORE) were calculated from their $q1^{*}$ [2] values. In the case of diphenylamine, which is not a carcinogen, an allowable daily intake (ADI) was calculated. EPA's estimates for the 10^{-6} ULORE's and ADI are given in column 6 of Table 2. Based on these values, diphenylamine, aniline, and quinoline are present in the wastes in concentrations ranging up to 280,000, to 100 million, to 30 billion times, their estimated allowable drinking water concentrations, respectively. Thus, even though soil attenuation factors, such as soil binding, biodegradation, and other environmental degradative processes are expected to decrease the amount of these constituents available for migration, they are expected to present a substantial hazard since only a small fraction need migrate from the wastes and reach environmental receptors to pose the potential for substantial harm. To illustrate this point, consider a general disposal scenario [3] in which exposure occurs only through consumption of contaminated ground water and the concentration of the constituents in the drinking water well has been reduced to 0.1 percent of what it was in the waste by such factors as soil binding, biodegradation, hydrolysis, etc. Column 4 presents the concentrations of the constituents of concern in a drinking water well, using this assumption. The allowable drinking water concentration estimates, assuming a 70 kg person drinks 2 liters per day, are shown in column 7. Column 8 shows the ratio of the assumed drinking well concentrations of the constituents of concern to their respective estimates of allowable drinking water concentrations. The concentrations of aniline, benzene, diphenylamine, and quinoline present in these wastes are of concern to the Agency because they suggest that, if mismanaged, these constituents could pose a present or future hazard to human health.

TABLE 2.—10^{-6} ULOREs AND ADIs

Waste stream No.	Constituent of concern	Maximum waste concentration (mg/L)	Assumed drinking well concentration (mg/L) [a]	Q_1^* (mg/kg/day)	10^{-6} ULORE dose (mg/day)	Allowable drinking water concentration (mg/L) [b]	Column 4 [c] / Column 7
K122	Aniline	100,000	100	0.026	0.0027	0.001	100,000
K133	Aniline	1,000	1	0.026	0.0027	0.001	1,000
	Benzene	1,000	1	0.053	0.00132	0.00066	2,000
K134	Aniline	100,000	100	0.026	0.0027	0.001	100,000
	Diphenylamine	500,000	[d]36	N/A	[e]3.5	1.8	20
	Quinoline	100,000	100	12.5	5.6×10^{-6}	3×10^{-6}	30,000,000

[a] Assumes that the concentration of the constituent in the drinking well is 0.1 percent of its concentration in the waste.
[b] Assumes that a 70 kg person drinks 2 liters of water per day.
[c] Values presented to one significant figure.
[d] Concentration limited by solubility.
[e] 3.5 mg/day is the allowable daily intake (ADI) for diphenylamine.

NOTE.—q_1^* is an estimate of the limit of the slope of the dose-response data obtained from an animal cancer assay, and/or epidemiological studies. It enables an assessment of the excess cancer risk to humans resulting from life-time exposure to a carcinogen.

In addition to the constituents of concern listed in Table 1, there are other contaminants present in the waste streams. The Agency, however, has elected at this time not to consider them as constituents of concern. For example, waste stream K122 may contain up to 1000 mg/L of diphenylamine. Largely because of diphenylamine's relatively low solubility in water (36 mg/L; Lyman, 1982), the estimated concentration that would be expected to reach a drinking water well would be less than the allowable drinking water standard. Waste stream K133 may contain up to 1000 mg/L of acetonitrile, which is teratogenic to Syrian hamsters both by ingestion and by inhalation when administered on the eighth day of gestation in relatively high concentrations (5000 ppm *via* inhalation or 100 mg/kg by gavage) (Willhite, 1983). Although acetonitrile is miscible with water, it hydrolyzes and biodegrades so as to limit its concentration in water to a level below that of concern to the Agency. Waste stream K134 also may contain up to 500,000 ppm of carbazole. The Agency has examined the toxicological data (Tsuda *et al.*, 1982) available on this chemical, and has concluded that currently there is insufficient information on its toxicity to list it as a constituent of concern in this waste. If further studies are more substantive and adequately demonstrate the chronic toxicity of carbazole, the Agency may include this chemical as a constituent of concern at a later date.

2. Mobility of Constituents of Concern

These constituents have mobilities through soil that range from moderate to high, as indicated in Table 1. The exposure pathway of principal concern is leaching to ground water. The water solubility of a given hazardous constituent is indicative of its mobility potential (*i.e.* the likelihood that it will be released from a management site and become dissolved in a water resource of concern). The water solubilities of the hazardous constituents range from 36 mg/L for diphenylamine, to 1,800 mg/L for benzene, to 6,000 mg/L for quinoline, to 36,000 mg/L for aniline (Windholz, 1976; Lyman, 1982; and Verschueren, 1983). The mobility of non-polar organic compounds also can be estimated by their soil adsorption coefficients (see Appendix A to listing background document). The soil adsorption coefficients for benzene (56), aniline (12.3), diphenylamine (266), and quinoline (49) indicate that soil and sediment binding would be insufficient to immobilize these constituents. Accordingly, these constituents are mobile enough to leach out of the wastes, potentially contaminating ground water.

3. Persistence of the Constituents of Concern

The Agency considers a material to be persistent if it persists in the environment long enough to be detected since it also may result in exposure to

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[2] $q1^{*}$ is an estimate of the limit of the slope of the dose-response data obtained from an animal cancer assay, and/or epidemiological studies. It enables an assessment of the excess cancer risk to humans resulting from life-time exposure to a carcinogen.

[3] The Agency is currently developing a more sophisticated disposal and ground-water dispersion model as part of the land disposal restrictions rule and the extension of the toxicity characteristics to organic constituents. This model is not yet ready for use. This model, when available, may be adopted and used in decisions to list certain waste streams.

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humans in the same period of time. All the constituents of concern in waste streams K122, K133, and K134 are adequately persistent to result in human exposure if they are released into ground water. The principal processes that limit the persistence (half-life) of chemicals in ground water are hydroloysis and biodegradation. None of the constituents are expected to hydrolyze in water between pH 2 and 12 at ambient temperature at a rate fast enough to be a factor in limiting human exposure. This is because none of the constituents of concern have molecules attached to their structure that would be expected to react with water under those conditions.

Biodegradation is probably the most important pathway of degradation for each of the constituents of concern. Under aerobic conditions (*i.e.*, conditions in which oxididing microorganisms are capable of metabolism), benzene (Callahan *et al.*, 1979), aniline (Engelhardt *et al.*, 1977; Kauffman *et al.*, 1973; Kao *et al.*, 1978); and quinoline (Grant and Al-Najjar, 1976; Bohonos *et al.*, 1977; Chou and Bohonos, 1979) are all know to be biodegradable. Because of the large and varied microbial population and aerobic environment in surface water, these compounds are not expected to persist for more than a few days or weeks in streams or lakes.

Little is known, however, about the degradation of these compounds in anaerobic environments. Under anaerobic conditions (*i.e.* those in which microorganisms capable only of oxidative metabolism cannot survive), these compounds may persist for very long periods. For example, Furlong and Carpenter (1982) presented evidence that quinoline has persisted in Puget Sound sediments for over a hundred years, although Grant and Al-Najjar (1976) showed that it is rapidly degraded by soil bacteria. In ground water, where microbial populations, sunlight, and oxygen are all limited, biodegradation of these constituents is expected to be slow or non-existent.

In substantiation of the persistence of these compounds in water, it is noted that:

- Benzene is frequently detected in water, and has been designated as a priority pollutant by EPA (Callahan *et al.*, 1979); furthermore, benzene mismanagement has been widespread and it has been detected at numerous sites of toxic waste mismanagement.
- Aniline has been found in soil (Nelson and Hites, 1980) and waste water (Jungclaus *et al.*, 1978).
- Quinoline has been detected in ground water (Leenheer and Stuber, 1981).
- Diphenylamine has been found in sediments from the Buffalo River in New York (Parris and Poppiti, 1980).

In summary, because of the significant concentrations of the hazardous constituents in these wastes, the toxic effects of these constituents, their potential to migrate from the waste and reach environment receptors at levels of regulatory concern (*i.e.*, above a health-based standard), and their persistence in ground water, the Agency has determined that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

B. Addition of Diphenylamine and Quinoline to 40 CFR 261.33(f)

40 CFR 261.33(f) is a list of commercial chemical products or manufacturing chemical intermediates which are identified as hazardous wastes when discarded. Substances are listed as hazardous in § 261.33(f) if they exhibit one or more of the hazardous waste characteristics identified in 40 CFR 261.21, 261.22, 261.23, and 261.24, or have been shown in reputable scientific studies to be toxic, carcinogenic, mutagenic, or teratogenic to humans or other life forms, unless the Administrator concludes after considering certain factors that the waste is not capable of posing a substantial present or potential hazard to human health or the environment even when improperly managed (see 40 CFR 261.11(a)(3)). These commercial chemicals satisfy the criteria for listing contained in § 261.11(a)(3). (See the discussion of diphenylamine and quinoline as constituents of concern). When sold as commercial products, diphenylamine and quinoline have a purity generally in excess of 85% (technical grade). They are moderately mobile and moderately persistent.

Therefore, the unsupervised disposal of diphenylamine and quinoline could pose a substantial threat to human health and the environment. (Indeed, these chemicals could present a far greater hazard when disposed of in a commercial form than when disposed of in lower concentrations, such as in the waste stream we are proposing to list today.) Accordingly, we are proposing to add them to the list of commercial chemical products in 40 CFR 261.33(f) that are hazardous wastes when discarded.

C. Hazardous Constituent Added to Appendix VIII

This action also proposes to add quinoline to Appendix VIII of Part 261. As noted above, in the listing background document, and in the Health and Environmental Effects Profiles, this substance is carcinogenic to humans and other life forms (see 40 CFR 261.11(a)(3)); this forms the basis for adding it to Appendix VIII of Part 261.

D. Test Methods for Compounds Added to Appendices VII and VIII

In 49 FR 38786–38809, Monday, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. In the October 1, 1984 proposal, Method Number 8250 was designated for testing for aniline and diphenylamine. Benzene already is included in 40 CFR Part 261, Appendix III; the methods to use for detecting the presence and concentration of benzene are Method Numbers 8020 and 8024.

Quinoline is the only constituent of concern in today's proposed listing that does not already have a designated or previously proposed Agency method for its determination. Quinoline may be separated by gas chromatographic (GC) methods with subsequent mass spectrometric (MS) or flame ionization detection (FID). Method Numbers 8280, 8250, and 8100 are considered appropriate methods for the determination of quinoline. Its polynuclear aromatic structure suggests that this compound also may be amenable to determination by method 8310, high pressure also may be amendable to determination by method 8310, high pressure liquid chromatographic separation and ultraviolet detection. The Agency is proposing that these existing analysis methods be used for the detection of quinoline. The Agency is requesting comments on industrial experience with the determination of quinoline in industrial and environmental media.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238, Document number: 055–002–81001–2.

III. CERCLA Impacts

All hazardous wastes designated by today's proposed rule will, upon the effective date of promulgation, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985).

Except as noted below, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of one pound under section 102 of CERCLA until adjusted by regulation. If the newly listed F or K hazardous waste stream has only one constituent of concern, the waste will have the same RQ as that of the constituent. (The RQ to be considered for this purpose would be the final RQ of the constituent as promulgated on April 4, 1985, whether statutorily imposed or adjusted by regulation.) If the waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste represents the RQ for the waste stream.

Although CERCLA does not require that persons in charge of vessels or facilities test spilled wastes, if a person does completely analyze the waste spilled and determines that the amount spilled of each constituent is below the RQ established for each of those compounds, no notification is required (see 50 FR 13463 and 40 CFR 302.6(b)).

Finally, it should be noted that this action is not proposing to change Table 302.4 of 40 CFR 302.4; however, the RQs stated in the table below are those that will be assigned at the time of its next publication in the **Federal Register**. Since the methodology for carcinogens is currently being assessed, both benzene's RQ and the RQ for waste K133 are subject to change when the assessment is completed.

Waste No.	Constituent of concern	RQ of constituent (pounds)	RQ of waste (pounds)
K122	Aniline	5,000	5,000
K133	Aniline	5,000	1,000
K134	Benzene	1,000	1
	Aniline	5,000	
	Diphenylamine	1	
	Quinoline	5,000	

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes hazardous waste listings that would not be effective in authorized States since the requirements would not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those proposed in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must modify its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in 40 CFR 271.21.

V. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste water regulations, tanks that are treating or storing hazardous wastewater are exempt from the Parts 264 and 265 management standards/when the treatment unit is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. Treatment units, such as concrete basins, which may or may not be in-ground, routinely provide for certain steps in a wastewater treatment process such as equalization, neutralization, aeration (in biological treatment facilities), settling (in both biological and physical/chemical treatment facilities), flocculation or treated wastewater storage before recycling. Where such units are constructed primarily of non-earthern materials designed to provide structural support,

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they are defined as tanks for purposes of the hazardous waste regulations. See 40 CFR 260.10 (definition of "tank"). In applying this definition, the Agency has provided guidance that a unit is to be evaluated as if it were free-standing and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit is considered to be a tank. Alternatively, if the unit is not capable of retaining its structural integrity without supporting earthern materials, it is considered to be a surface impoundment.

When wastewaters, including those covered by the listings proposed today, are stored or treated in containment devices which qualify as tanks, they are presently exempt from the Parts 264 and 265 management standards.

VI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The additional incurred annualized cost of disposal of these wastes as hazardous is less than $1,000, well under the $100 million constituting a major regulation. This cost is insignificant, and results from minimal additional compliance requirements, such as reporting, waste analyses, and permit modification for these wastes.

The addition of the new hazardous constituents to Appendix VIII also will not result in any significant increased burden in ground-water monitoring or incineration monitoring requirements since the analytical techniques currently employed to test for the presence and concentration of other Appendix VIII hazardous constituents also would detect these additional compounds.

Furthermore, the cost of adding diphenylamine and quinoline to 40 CFR 261.33(f), the list of commercial chemical products which are hazardous wastes when discarded, also will be minimal, since commercial chemical products are rarely discarded because of their inherent value.

In addition, we do not expect that there will be an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is being conducted.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes proposed for listing here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency believes that small entities will not dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 8, 1986.

Lee M. Thomas,

Administrator.

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.32 [Amended]

2. In 2§ 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * *	
Organic chemicals:		
	* * * *	
K122	Wastewater from steam regeneration of activated alumina catalyst used in the production of diphenylamine by the condensation of aniline.	
K133	Ammonia produced as a by-product in the production of diphenylamine by the condensation of aniline.	(T)
K134	Heavy and light ends from the distillation/purification of diphenylamine produced by the condensation of aniline.	(T)
*	* * * *	

§ 261.33 [Amended]

3. In § 261.33(f), add the following listings to the table in alphabetical order by substance:

Hazardous waste No.	Substance
* * *	* *
U368	1-Azanaphthalene.
U367	Diphenylamine.
U368	Quinoline.
* * *	* *

Appendix III—[Amended]

4. Add the following hazardous constituents in alphabetical order to Table 1 of Appendix III of Part 261:

TABLE 1—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW—846

Compounds	Method No.
* * * *	*
Quinoline	8100, 8250, 8260, 8310
* * * *	*

Appendix VII—[Amended]

5. Add the following entries in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
* * *	* *
K122	Aniline.
K133	Aniline, benzene.
K134	Aniline, diphenylamine, quinoline.
* * *	* *

Appendix VIII—Hazardous Constituents [Amended]

6. Add the following hazardous constituent in alphabetical order, to Appendix VIII of Part 261:

Quinoline (1-Azanaphthalene)

[FR Doc. 86–3833 Filed 2–24–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS–62036; FRL 2947–3]

Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation, and Processing Prohibitions

Correction

In FR Doc. 86–1661 beginning on page 3738 in the issue of Wednesday, January 29, 1986, make the following corrections:

1. On page 3746, second column, first complete paragraph, third line, "replaced" should read "replace".

2. On page 3747, first column, first complete paragraph, second line from the bottom, "then" should read "than".

3. On page 3750, third column, third complete paragraph, fifth line, "reguirement" should read "requirement".

4. On page 3755, first column, third line from the bottom of the column, "the" should read "that". On the same page, second column, fourth paragraph, third line from the bottom, "of" should read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 60229-6029]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement a revised Amendment 6 (amendment) to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries, which was submitted following partial disapproval by the Secretary. The rule establishes quarterly quotas and effort control measures for Nantucket Shoals surf clams, clarifies the quota adjustment provisions for the Nantucket Shoals and Georges Bank Areas between quarterly periods and years, and prohibits more than one surf clam trip during an authorized surf clam fishing period in the Mid-Atlantic Area. The intended effect of the rule is to augment the management program for surf clams on Nantucket Shoals and Georges Bank, and to foreclose opportunities for fishing outside of authorized Mid-Atlantic surf clam fishing periods.

DATE: Comments on the proposed rule must be received on or before March 11, 1986.

ADDRESSES: Comments on the proposed rule, the revised amendment, or supporting documents should be sent to Bruce Nicholls, Surf Clam Management Coordinator, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, Massachusetts 01930–3097. Clearly mark the outside of the envelope "Comments on Surf Clam and Ocean Quahog Amendment 6."

Copies of the revised amendment, environmental assessment, and the draft regulatory impact review/initial regulatory flexibility analysis are available from Mr John C. Bryson, Executive Director, Mid-Atlantic Fishery

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Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600, ext. 283.

SUPPLEMENTARY INFORMATION: Amendment 6 to the FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England Fishery Management Council. A notice of availability for Amendment 6 was published in the Federal Register on April 25, 1985 (50 FR 16326). A proposed rule with request for comments was published in the Federal Register on May 29, 1985 (50 FR 21910). A final rule implementing approved portions of Amendment 6 was published in the Federal Register on August 14, 1985 (50 FR 32700). The Council has reviewed the reasons for partial disapproval and has submitted a revised amendment. This proposed rule would implement three provisions of Amendment 6 which were partially disapproved.

The regulations implementing the approved portions of Amendment 6 establish surf clam quotas for the Nantucket Shoals Area at § 652.21(b) and provisions for management of the surf clam fishery in the Nantucket Shoals Area at § 652.22(b). The quota range for the Nantucket Shoals Area is 25,000 to 200,000 bushels annually. Quotas are set following procedures established in § 652.21(a).

This proposed rule divides the annual quota for the Nantucket Shoals Area into quarterly quotas, and allows the Regional Director to impose trip landing limits after fifty percent of a quarterly harvest quota has been caught to minimize the possibility of fishery closures. The first and fourth quarters (January–March and October–December) are each allocated 20 percent of the annual quota; the second and third quarters (April–June and July–September) are each allocated 30 percent of the annual quota. The unused portion of any quarterly quota is transferred into the next quarter, except no more than 10 percent of the annual quota may be carried over from one year to the next if it has not been harvested.

These regulations continue management of the Mid-Atlantic Area surf clam fishery unchanged, with the exception that § 652.7(n) and § 652.22(a)(2)(iii) are revised to add a provision prohibiting vessels from making more than one surf clam trip during an authorized surf clam fishing period in the Mid-Atlantic Area. The Council has included this measure as part of its revised amendment to foreclose opportunities to fish outside of authorized surf clam fishing periods. If operators can make more than one surf clam fishing trip during an authorized fishing period, they may be enconuraged to fish earlier or later than that period. The prohibition on more than one trip per authorized fishing period will make enforcement of the fishing time restrictions more direct by limiting the number of contacts required between enforcement agents and vessels.

By limiting fishing trips to one per authorized period, the Regional Director may be able to establish longer fishing periods, which should tend to promote selective fishing and reduce harvest and mortality of undersized surf clams.

The regulatory language implementing this limit on fishing trips prohibits harvesting or landing of surf clams during an authorized period if the vessel has already landed surf clams during that period. The provision does not, and is not intended to, require that fishermen land their catch during their authorized period. The provision merely prohibits fishermen from engaging in harvesting or landing after the completion of their first trip during an authorized period.

The regulations continue management of the Georges Bank Area surf clam fishery unchanged, with the exception that § 652.21(c) is reorganized by placing its present, undivided text into new paragraphs (1), (2), and (3). Section 652.21(c)(3) was added to eliminate the reference to § 652.21(a) in the present rule and to make quarterly quota adjustments consistent throughout the fisheries.

The regulatory changes included in the revised amendment required reorganization and subdivision of existing regulatory text in §§ 652.7, 652.21, and 652.22. This reorganization has not resulted in any substantive changes beyond those discussed in this preamble and the revised amendment.

Classification

Section 304(b)(3)(B) of the Magnuson Act, as amended, requires the Secretary, after partial disapproval of a plan or amendment, to publish regulations proposed by a Council upon receipt of a revised amendment and proposed regulations. At this time the Secretary has not determined that the revised amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment for this revised amendment which analyzes the consequences of this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the assessment is available from the Council at the address listed above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the draft regulatory impact review prepared by the Council, which demonstrates positive net short-term and long-term economic benefits to the fishery under the proposed management measures. A copy of the review can be obtained from the Council at the address listed above.

The review procedures of E.O. 12291 do not apply to this proposed rule under Section 8(a)(2) of that order because of the deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453. The proposed rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow review procedures of the order.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review. NOAA has concluded that this proposed rule, if adopted, could have a significant effect on small entities. A copy of this analysis may be obtained from the Council at the address listed above.

This existing rule contains collection of information requirements previously approved by the Office of Management and Budget (OMB) under control numbers 0648–0013, –0016, –0097, and –0014. This rule does not contain any additional collection of information requirements for purposes of the Paperwork Reduction Act.

The Council determined that this rule wil be implemented in a manner that is consistent to the maximum extent practicable State agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Dated: February 20, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 652 as set forth below:

PART 652—[AMENDED]

1. The authority citation for 50 CFR Part 652 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 652.7 is amended by revising paragraphs (a)(3) and (a)(4), adding a new paragraph (a)(5), redesignating paragraph (n) as (o), and adding a new paragraph (n), to read as follows:

652.7 Prohibitions.

(a) * * *

(3) On days of the week in which fishing for these species is not authorized;

(4) Without having provided the notice required by § 652.5(b)(7); or

(5) In excess of applicable trip landing limits.

* * * * *

(n) No person or vessel may harvest or land surf clams in the Mid-Atlantic Area during or after an authorized surf clam fishing period if they have landed surf clams during that authorized period.

* * * * *

3. In § 652.21, paragraphs (b) and (c) are revised to read as follows:

§ 652.21 Catch quotas.

* * * * *

(b) *Surf Clams: Nantucket Shoals Area.* (1) *Annual quota.* The amount of surf clams which may be harvested in the Nantucket Shoals Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 to 200,000 bushels, using the procedures and criteria set forth in § 652.21(a) (1), (2) and (4).

(2) *Quarterly quotas.* This annual quota will be divided into quarterly quotas in the following proportions: January 1—March 31, 20 percent; April 1—June 30, 30 percent; July 1—September 30, 30 percent; and October 1—December 31, 20 percent. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(3) *Adjustments.* If the actual catch of surf clams falls more than 5,000 bushels short of a quarterly quota, the Regional Director will add the amount of the shortfall to the succeeding quarterly quota. If the actual catch of surf clams exceeds a quarterly quota, the Regional Director will subtract the amount of the excess from the succeeding quarterly quota. The last quarterly period would be carried over to the first quarterly period of the next year, except that no more than 10 percent of the annual quota may be carried over into the next year.

(c) *Surf Clams: Georges Bank Area.* (1) *Annual quota.* The amount of surf clams which may be harvested in the Georges Bank Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 to 300,000 bushels, using the procedures and criteria set forth in § 652.21(a) (1), (2) and (4).

(2) *Quarterly quotas.* This annual quota will be divided into quarterly quotas, the quarters and proportion of the quota being January 1–March 31, 10 percent; April 1–June 30, 40 percent; July 1–September 30, 40 percent; and October 1–December 31, 10 percent. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(3) *Adjustments.* If the actual catch of surf clams falls more than 5,000 bushels short of a quarterly quota, the Regional Director will add the amount of the shortfall to the succeeding quarterly quota. If the actual catch of surf clams exceeds a quarterly quota, the Regional Director will subtract the amount of the excess from the succeeding quarterly quota. The last quarterly period would be carried over to the first quarterly period of the next year, except that no more than 10 percent of the annual quota may be carried over into the next year.

* * * * *

4. In § 652.22, paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 652.22 Effort restrictions.

(a) * * *

(2) *Hours.* (i) *Selection.* The Regional Director will notify each owner or operator of a fishing vessel engaged in the Mid-Atlantic Area surf clam fishery concerning the allowable combinations of fishing periods for varying levels of allowable fishing time. The vessel owner or operator must send the Regional Director written notice of the owner or operator's selection or cancellation of allowable surf clam fishing periods for that vessel. All selections or cancellations must be provided to the Regional Director no less than 15 days prior to the intended effective date.

(ii) *Letter of authorization.* The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization must be kept aboard the vessel at all times. Fishing may be conducted only during the times and under those conditions authorized by the Regional Director in the letter of authorization.

(iii) *Authorized periods.* fishing for any part of an authorized period will be counted as one day of fishing. Only one surf clam fishing trip is allowed per authorized fishing period. Fishermen who land surf clams during an authorized period may not continue to harvest or land surf clams during or after that authorized period.

(iv) *Fishing activity.* In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period will be *prima facie* evidence that the vessel is fishing in violation of these regulations.

* * * * *

(b) * * *

(2) *Management measure adjustments.* The Regional Director will monitor the rate of harvest using logbook and other information.

(i) If the Regional Director determines that harvests will remain within the quarterly quotas, no action will be taken.

(ii) When harvest reaches, or is likely to reach, 50 percent of any quarterly quota, the Regional Director will consult with the Councils to determine the range of trip landing limits to control catch adequately to keep the fishery open for the balance of the quarter. The Secretary may impose trip landing limits, provided those limits are not less than the following:

(A) For vessels between 0 and 50 gross registered tons (Class I), 224 bushels/trip.

(B) For vessels between 51 and 100 gross registered tons (Class II), 416 bushels/trip.

(C) For vessels greater than 101 gross registered tons (Class III), 768 bushels/trip.

(iii) The closure provisions specified in paragraph (d) of this section may be invoked by the Secretary, as required, without consulting the Council.

(iv) Once initial trip limits have been established in consultation with the Councils, the Regional Director will notify the Councils in advance of any proposed action to further specify trip limits or close the fishery.

(v) The Regional Director will consider any comments received from the Councils or the public before implementing any adjustments in the management program.

* * * * *

[FR Doc. 86–4037 Filed 2–20–86; 4:31 pm]

BILLING CODE 3510-22-M

VOL 51 ISS 37 FE 25 1986 UMI

Notices

Federal Register
Vol. 51, No. 37
Tuesday, February 25, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States, to be held at 9:30 a.m. on Wednesday, March 5, 1986, at Cadwalader, Wickersham & Taft, 1333 New Hampshire Avenue, NW., 7th Floor Conference Room, Washington, DC.

The Committee will meet to discuss the following projects:

(a) The desirability and feasibility of establishing an administrative tribunal to resolve Freedom of Information Act and other public access disputes, studied by Professor Mark Grunewald, Washington and Lee University School of Law;

(b) The use of specialized courts for judicial review of administrative action, studied by Leland E. Beck, Esq.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference by Tuesday, March 4. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC. (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
February 21, 1986.

[FR Doc. 86–4165 Filed 2–24–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Cooperative Agreement; Colorado

AGENCY: Department of Agriculture.

ACTION: Notice of Intent to Award a Cooperative Agreement.

Activity: The Office of International Cooperation and Development intends to award a cooperative agreement to Colorado State University to provide partial support funding for collaborative international agricultural research on "Soil Interactions of Chlorsulfuron."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with Colorado State University to collaborate on international research on "Soil Interactions of Chlorsulfuron." Approximately $10,000 will be available in fiscal year 1986 to Colorado State University to conduct collaborative research with Italy's University of Bologna, National Research Council.

Assistance with be provided only to Colorado State University which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for supplies, a research technician, computer time, and international travel. Italy's University of Bologna and National Research Council will support their portion of the research.

Based on the above, this is not a formal request for applications. It is estimated that approximately $10,000 will be available in fiscal year 1986 to support this work. A total of $20,036 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Ms. Calvina Dupre, International Research Division, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319R–6–023).

Dated: February 20, 1986.

Allen Wilder,
Chief, Management Services Branch.

[FR Doc. 86–4011 Filed 2–24–86; 8:45 am]
BILLING CODE 3410–DP–M

Cooperative Agreement; Langston University

AGENCY: Department of Agriculture.

ACTION: Notice of Intent to Award a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development intends to award a cooperative agreement to Langston University to provide partial support funding for collaborative international agricultural research on "Utilization of Crop Residues and Agro-Industrial By-products by Goats".

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with Langston University to collaborate on international research on "Utilization of Crop Residues and Agro-Industrial By-products by Goats." Approximately $20,000 will be available in fiscal year 1986 to Langston University's American Institute for Goat Research to conduct collaborative research with the Brazilian National Goat Research Center.

Assistance will be provided only to Langston University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, materials, a lab technician, and international travel. Brazil's National Goat Research Center will support their portion of the research.

Based on the above, this is not a formal request for applications. It is estimated that approximately $20,000 will be available in fiscal year 1986 to support this work. A total of $60,000 is anticipated to be provided for this cooperative research effort over a three year period, subject to the availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Ms. Calvina Dupre, International Research Division, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319R–6–022).

Dated: February 20, 1986.

Allen Wilder,
Chief, Management Service Branch.

[FR Doc. 86–4012 Filed 2–24–86; 8:45 am]
BILLING CODE 3410–DP–M

Cooperative Agreement; University of Georgia

AGENCY: Department of Agriculture.

ACTION: Notice of Intent to Award a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development intends to award a cooperative agreement to the University of Georgia to provide partial support funding for collaborative international agricultural research on "Biological Control: Investigations of Beneficial Insect Foraging Behavior Mediated by Semiochemicals."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the University of Georgia for collaboration on international research on "Biological Control: Investigations of Beneficial Insect Foraging Behavior Mediated by Semiochemicals." Approximately $12,000 will be available in fiscal year 1986 to the University of Georgia to include collaborative research with France's National Institute for Agronomic Research. Assistance will be provided only to the University of Georgia to be used for additional research assistants, and international and domestic travel.

Based on the above, this is not a formal request for applications. It is estimated that approximately $12,000 will be available in fiscal year 1986 to support this work. A total of $23,000 is anticipated to be provided over a two-year period for this amended cooperative research effort, subject to the availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Ms. Calvina Dupre, International Research Division, Office of International Cooperation and Development, U.S. Department of Agriculture. (58–319R–6–021).

Dated: February 20, 1986.

Allen Wilder,
Chief, Management Services Branch.

[FR Doc. 86–4013 Filed 22–24–86; 8:45 am]
BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council; Meeting

A meeting of the President's Export Council's Trade Laws and Distincentives Subcommittee will be held March 10, 1986, 8:00 a.m., at the Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks; extraterritoriality: export controls, antitrust, environmental issues, Foreign Corrupt Practices Act; international tax issues; omnibus trade legislation; and discussion of future meeting plans.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Amy Dale (202) 377–1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: February 19, 1986.

Henry Misisco,
Director, Office of Planning and Coordination.

[FR Doc. 86–4009 Filed 2–24–86; 8:45 am]
BILLING CODE 3510–DR–M

President's Export Council; Partially Closed Meeting

A meeting of the President's Export Council (PEC) will be held March 10, 1986, 10:00 a.m.–3:00 p.m., Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

General Session: 10:00 a.m.–11:50 a.m. Opening remarks; discussion of federal budget impacts on trade development programs, including an overview of agency budgets with respect to the Gramm-Rudman-Hollings bill, and impacts on specific agencies; presentation of PEC subcommittees' status reports.

Executive Session: 1:15 p.m.–3:00 p.m. discussion of matters properly classified under Executive Order 12356, dealing with unfair trade practices, multilateral negotiations, and relations with trading partners in view of Legislative or Executive Branch initiatives, and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b (c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Sylvia Lino, (202) 377–1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: February 13, 1986.

Henry P. Misisco,
Acting Director, Office of Planning and Coordination.

[FR Doc. 86–4008 Filed 2–24–86; 8:45 am]
BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments; University of Wyoming, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85–084R. Applicant: University of Wyoming, University Station, Laramie, WY 82071. Instrument: Thermal Ionization Mass Spectrometer, Model IS 117. Manufacturer: VG-Isotopes, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of February 27, 1985.

Docket No.: 85–145R. Applicant: University of Oklahoma, 660 Parrington

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Oval, Norman, OK 73019. Instrument: Gas Chromatograph/Mass Spectrometer with Data System, Model ZAB-HS (11/250). Manufacturer: VG Analytical Instruments, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of May 8, 1985.

Docket No.: 85-160R. Applicant: U.S. Department of Agriculture, Agricultural Research Service, W-321 Turner Hall, 1102 S. Goodwin, Urbana, IL 61801. Instrument: Oxygen Electrode Unit, Model DWI. Manufacturer: Hansatech Limited, United Kingdom. Intended Use: The instrument will be used to measure the oxygen exchange of chloroplasts, leaf protoplasts, and algae to better understand photosynthesis. Original notice of this resubmitted application was published in the **Federal Register** of May 24, 1985.

Docket No.: 86-100. Applicant: State University of New York, College of Environmental Science and Forestry, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM-2000EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used to conduct investigations of the following: wood structure function relationships, synthetic membranes, polymer-polymer interactions, biodegradable macromolecules, structure of crown ether polymers, conformational analysis of polysaccharides, structure of imperfect fungi, reaction wood, plant virology, source apportionment of air particulates, morphophysiology of neuromuscular junctions, intercellular communication, and hepatic disposition of xenobiotics. The specific objectives of these studies vary but each is an attempt to improve the environment through an understanding of the relationships of ultrastructure and function. In addition, the instrument will be used for educational purposes in the courses Transmission Electron Microscopy and Special Topics. Application Received by Commissioner of Customs: January 24, 1986.

Docket No.: 86-110. Applicant: Ohio State University, Department of Geology and Mineralogy, 125 South Oval Mall, Room 107 Mendenhall Laboratory, Columbus, OH 43210. Instrument: Mass Spectrometer, Model 261V with Accessories. Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument will be used by geochemists to study the isotopic compositions of natural and experimental materials and phenomena which range from the history and evolution of the Earth and solar system to the ages of rocks and minerals to the processes by which natural materials are formed. In addition, the instrument will be used to teach the theory, practice, and application of isotope geochemistry in the following courses: Introduction to Isotope Geology; Isotope Geology of Sedimentary Rocks; Isotope Geology of Igneous and Metamorphic Systems; Independent Study in Geochemistry, and Thesis Research.

Application Received by Commissioner of Customs: February 4, 1986.

Docket No.: 86-112. Applicant: Northwestern University, 633 Clark Street, Evanston, IL 60201. Instrument: Stopped-Flow Fluorescence Spectrophotometer, Model SF-51. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: Studies of the kinetics of association or dissociation of the protein and nucleic acid components. These investigations are to learn the basic biochemical mechanism by which this protein (recA protein) catalyses various reactions such as DNA renaturation and DNA strand assimilation. The instrument will also be used in Post-candidacy Research (E-99), a research course for students accepted to Ph.D. program. Application Received by Commissioner of Customs: February 4, 1986.

Docket No.: 86-113. Applicant: Georgetown University, 3800 Reservoir Road, NW., Washington, DC 20007. Instrument: Kidney Lithotripter. Manufacturer: Dornier System, GmbH, West Germany. Intended Use: The instrument will be used in the training programs of medical students and Urology and Radiology residents. In addition, the instrument will be used for research on causes, diagnosis, and treatment or kidney stone disease. Application Received by Commissioner of Customs: February 4, 1986.

Docket No.: 86-115. Applicant: University of Maine at Orono, Laboratory for Surface Science and Technology, Barrows Hall, Orono, ME 04469. Instrument: Custom Surface Analysis System, Model LHS-10. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended Use: The instrument is to be used in research programs which focus on (1) the thermodynamic properties of weakly chemisorbed adsorbate phase up to high temperatures, (2) the pressure dependence of heterogeneous catalytic reactions, (3) the study of liquid metals and alloys having a low vapor pressure (4) the chemical characterization of model membranes and biological membranes, and (5) the influence of gas pressures on the stability and performance of very large scale integrated circuit devices. Application Received by Commissioner of Customs: February 4, 1986.

Docket No: 86-118. Applicant: Johns Hopkins University, School of Medicine, 720 Rutland Avenue, Baltimore, MD 21205. Instrument: NMR Spectrometer, Model AM 360 WB. Manufacturer: Bruker Instruments, West Germany. Intended Use: The instrument is intended to be used for study of the following: (1) Cardiac high energy metabolism, function, and myocardial ischemia; (2) cardiotoxicity induced by specific antineoplastic agents; (3) tumors and tumor response to therapy; (4) tumor metabolism; (5) human corneas by NMR spectroscopy, microscopy, and imaging in order to improve corneal transplantation; (6) intraocular malignancy; (7) conformation-activity and structure-activity relationships of various biomolecules as well as pharmacologically active agents; and (8) mechansims of action of both metal-activated enzymes and metalloenzymes. The instrument will be an integral part of both the thesis research of graduate students and the training of postdoctoral fellows. Application Received by Commissioner of Customs: February 5, 1986.

Docket No: 86-119. Applicant: The Regents of the University of California, Physics Department, Davis, CA 95616. Instrument: Far infrared spectrometer with Accessories. Manufacturer: SPECAC, Analytical Accessories Ltd., United Kingdom. Intended Use: Research focused on the effects of extrinsic disorder on the paraelectric to ferroelectric phase transition, conduction mechanisms in fast ionic conductors, and the effects of disorder and reduced dimensionality on lattice dynamics and intermolecular interactions in polymeric ultra-thin films. Specifically, the instument will be used to measure the reflectance and transmission spectra of single crystal and polycrystalline samples of materials. Graduate student will use the intrument for doctoral thesis research in Physics 299—Independent Research. Application Received by Commissioner of Customs: February 5, 1986.

Docket No: 86-120. Applicant: Colorado State Univesity, Department of Pathology, Fort Collins, CO 80523. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany, Intended Use: The instrument will be used for examination of diseased and normal animal tissue and fluid specimens, as well as bacterial and viral culture fluids. Experiments will be conducted to identify infectious agents, particularly viruses, determine the structural features of infectious agents and investgate antigens in virus and bacterial agents. The instrument will also be used for educational purposes in the Professional Veterinary Curriculum course, VM 786, which contains a segment of Infectious Disease Agents. Application Received by Commissioner of Customs: February 6, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-4051 Filed 2-24-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will convene a public meeting, February 20–21, 1986 at 9 a.m. at the Conference Center, Southwest Fisheries Center, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI. The SSC will: (1) Discuss progress on a limited entry concept for the bottomfish fisheries of the Northwestern Hawaiian Islands (NWHI); (2) review recommendations of the Lobster Planning Team on management of the NWHI fisheries, i.e., measuring for slipper lobsters, restructuring the fishery management plan into a framework document, closed season and, (3) review the 1985 lobster annual report, make recommendations to the Council, as well as discuss other SSC business. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: February 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3994 Filed 2-24-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Mr. Brendan P. Kelly (P101A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Mr. Brendan P. Kelly

b. Address Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775-1080.

2. Type of Permit: Scientific Research.

3. Name of Marine Mammals:

Ringed seals (*Phoca hispida*)
Bearded seals (*Erignathus barbatus*)
Harbor seals (*Phoca vitulina*)

4. Type of Take and Number: Up to 60 ringed seals, 30 bearded seals, and 30 harbor seals will be taken annually for scientific research. The ringed and bearded seals will be captured, filmed, instrumented with radio-tags and/or time depth recorders, tagged between hind flipper digits and released. Harbor seals will be captured, filmed and released.

5. Location of Activity: Ringed and Bearded seals—Bering, Chukchi and/or Beaufort Seas. Harbor seals—Gulf of Alaska and/or Bering Sea.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4036 Filed 2-24-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Dr. Warren M. Zapol, Dr. Robert C. Schneider, and Dr. Donald B. Siniff; Modification No. 2 to Permit No. 526

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 526 issued to Drs. Warren M. Zapol and Robert C. Schneider, Department of Anesthesia, Massachusetts General Hospital, Boston, Massachusetts 02114, and Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, 108 Zoology Building, University of Minnesota, Minneapolis, Minnesota 55455, on October 11, 1985 (50 FR 42747), as modified on January 23, 1986 (51 FR 3643) is further modified as follows:

Section B is modified by deleting Conditions B.5 through B.9 issued in Modification No. 1 and substituting therefor the following:

5. In addition to the drugs described in the application, animals may be immobilized using the Taser device described in the modification request and subsequent telephone conversations.

6. Of the animals authorized in Sections A and B.5, up to four (4) of each species may be taken initially to determine the probable utility and possible adverse effects. This initial testing shall be conducted under as carefully controlled conditions as possible. The testing shall include observations to compare the behavior, activity patterns, and movements of animals immobilized by physical restraint, by drugs, and by the Taser device.

7. The Holders shall submit a report of the initial testing of the device on each species authorized as soon as possible to the National Marine Fisheries Service (NMFS). The report may be made by radio and may be oral. This report shall describe the nature and results of, and conclusions drawn from the initial test, and the proposed plan and rationale for additional testing or operational use of the Taser device. The report will serve as a basis for NMFS, in consultation with the Commission, to authorize continued use.

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8. No attempt to use the Taser immobilization device shall be made on animals that have been actively pursued and are in a stressed or excited condition. Attempts shall be made to remove the barbed electrodes to avoid infection, and to disentangle animals that have become entangled in the wires.

9. Testing of the Taser device must be suspended if any animal dies or is seriously injured during testing, pending submission of a report and subsequent authorization by the Service, in consultation with the Commission, to continue testing.

10. Animals killed as a result of the use of the Taser device shall be counted against the number of animals authorized in Sections A.1.b., A.2.b and A.3.b.

11. The summary report requried by Section B.2 shall include a detailed description of the use the Taser immobilization device.

This modification is effective as of January 31, 1986.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3790.

Dated: February 19, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–4039 Filed 2–24–86; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Application for Permit; Lawler, Matusky & Skelly Engineers (P291A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–22).

1. Applicant:

a. Name: Lawler, Matusky & Skelly Engineers.

b. Address: One Blue Hill Plaza, Pearl River, New York 10965.

2. Type of Permit: Scientific Purposes under the Endangered Species Act.

3. Name of Fish: Shortnose Sturgeon (*Acipenser brevirostrum*)

4. Type of Take: Up to 75 shortnose sturgeon will be gill netted, tagged with an Atkins tag on a dorsal scute and immediately released to identify the reproductive population in the study area which is a known spawning site.

5. Location of Activity: Connecticut River, immediately downstream of the Holyoke Dam.

6. Period of Activity: 2 Years.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–4040 Filed 2–24–86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Cetus Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, Intends to Grant to Cetus Corporation, having a place of business at 1400 Fifty-Third Street, Emeryville, CA 94608 an exclusive right in the United States and selected foreign countries to manufacture, use, and sell products embodied in the inventions entitled "Adoptive Immunotherapy As A Treatment Modality in Humans," U.S. Patent Application S.N. 6–763,657, and "Human Monocytes Cultured in Suspension in Serum Free Medium," U.S. Patent Application S.N. 6–743,570. The patent rights in these inventions are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed licenses must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Public Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–3979 Filed 2–24–86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Bilateral Textile Consultations With the Government of Malaysia

Dated: February 20, 1986.

On January 30, 1986, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 337 (cotton playsuits and sunsuits). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on January 30, 1986 and extends through April 29, 1986 at a level of 9,948 dozen. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 22,989 dozen for Category 337 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on April 30, 1986 and extending through December 31, 1986.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 337 under the agreement with Malaysia, or on any other aspect thereof, or to comment on

domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Category 337—Cotton Playsuits, Sunsuits and Washsuits—Malaysia

January, 1986.

Summary and Conclusions

U.S. Imports of Category 337 from Malaysia were 43,539 dozens for the year ending November 1985, compared with 4,488 dozens during year ending November 1984. Full year 1984 imports from Malaysia totalled 6,893 dozens, a 138 percent increase over 1983.

The sharp and substantial increase of low-valued imports of Category 337 from Malaysia is disrupting the U.S. market for cotton playsuits.

U.S. Production and Market

U.S. production of Category 337 has declined steadily and significantly in the past decade. Between 1981 and 1984, U.S. production went from 3,550,000 dozens to 2,531,000 dozens, a 29 percent decline.

The U.S. market for domestically produced and imported playsuits remained relatively flat between 1981 and 1984. However, the domestic producer's share of that market dropped from 67.4 percent to 47.8 percent.

U.S. Imports and Import Penetration

Until 1984, U.S. imports of Category 337 had been growing at a moderate pace from 1,718,000 dozens in 1981 to 1,829,000 dozens in 1983. However, in 1984, imports soared to 2,768,000 dozens, a 51 percent increase in one year. The import to production ratio reflects this surge, increasing from 61.3 percent in 1983 to 109.4 percent in 1984.

Import Values and Domestic Prices

Approximately 78 percent of Malaysia's January–October 1985 imports entered under TSUSA No. 384.3428 (previously 383.3030)—WGI cotton knit other play, sun and wash suits, not ornamented. These garments entered the U.S. at duty-paid values below U.S. producers' prices for comparable items.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

February 20, 1986.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 337, produced or manufactured in Malaysia and exported during the ninety-day period which began on January 30, 1986 and extends through April 29, 1986, in excess of 9,948 dozen.[1]

Textile products in Category 337 which have been exported to the United States prior to January 30, 1986 shall not be subject to this directive.

Textile products in Category 337 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–4010 Filed 2–24–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare Environmental Impact Statement; Biological Aerosol Test Facility, Dugway, UT

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the (Proposed) Construction and Operation of a Biological Aerosol Test Facility (BATF) in an existing building at Dugway Proving Ground, Dugway, Utah.

1. On January 31, 1985, the Army completed an Environmental Assessment for construction of a Biological Aerosol Test Facility (BATF) at Dugway Proving Ground (DPG), Utah. A U.S. District Court later ruled that the assessment was not adequate (U.S. District Court for the District of Columbia, Civil Action No. 84–3542, May 31, 1985). The Army has decided to address the deficiencies by preparing an Environmental Impact Statement (EIS).

2. The Department of the Army, as Executive Agent for the Department of Defense, is responsible for research, development, test, and evaluation for biological defense. The BATF will be used to test and evaluate the effectiveness of protective equipment such as detection/warning devices, and decontamination techniques against known and suspected Soviet and other threat biological materials, and to conduct other protection testing as may be necessary.

3. The BATF is a small aerosol chamber consisting of 18 cubic feet volume in an immediate work area of 400 square feet. The total facility, including entry and exit areas, change rooms, and support equipment will occupy 1,400 square feet. The entire facility will be constructed in an existing building of 4,000 square feet. It will be designed and constructed to National Institutes of Health Bio-Safety Level 4 (BL4) guidelines for occupational safety reasons and to maximize mission support flexibility, but this EIS will limit operation of the facility to level 3 (BL3) or below. The Army has no plans to include recombinant DNA (genetic

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[1] The limit has not been adjusted to account for any imports exported after January 29, 1986.

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engineering) research and/or testing with genetically engineered microorganisms. If any such testing becomes necessary the Army will prepare the appropriate environmental analysis and documentation.

4. Dugway Proving Ground will obtain the services of a contractor with demonstrated expertise to prepare the EIS in its behalf. Alternatives to be developed in the document include, but are not limited to, the following:

a. The "no action" alternative which is considered to be continued use of the present facilities at DPG.

b. The use of biological simulants instead of pathogenic microorganisms.

c. The use of existing facilities within the Department of Defense.

d. Construction and operation of a BATF elsewhere.

5. The Army will conduct a scoping process to aid in determining the significant issues related to the proposed action. Public as well as Federal, State, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the EIS. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with the proposed action.

6. Individuals or agencies can express their concern either by writing or participating in a public scoping meeting which will be held approximately May 1986. Adequate notice will be published in local area newspapers to inform the interested public of when and where the meeting will be conducted. The notice will also be mailed to select groups and individuals, agencies, and anyone responding to this Notice of Intent desiring to be informed on the details of this upcoming public participation meeting. Questions and comments regarding the scope of the environmental analyses should be submitted to Commander, U.S. Army Dugway Proving Ground, ATTN: STEDP-PA, Dugway, Utah 84022-5000. Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered in the Draft EIS (DEIS).

7. The DEIS is expected to be available to the public in December 1986. When the DEIS is completed, a public notice of its availability for review will be announced in order that interested persons may comment on the document. Comments received will be considered in preparation of the Final Environmental Impact Statement (FEIS). Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the DEIS and FEIS may contact Mr. Dave Easter at the address above.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 86-4002 Filed 2-24-86; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management; Minimum Levels of Security for Arms, Ammunition, and Explosives Shipments

AGENCY: Department of the Army, Military Traffic Management Command, DOD.

ACTION: Notice of Revision to Minimum Levels of Security for DOD Shipments of Arms, Ammunition and Explosives within the Continental United States.

SUMMARY: Effective June 1, 1986, carriers transporting sensitive arms, ammunition and explosives for the DOD will be required to provide new levels of transportation protective service. Definitions for these services must be reflected in the carrier's Uniform Tender of Rates and/or Charges for Transportation Service (Optional Form 280) or governing tariff. Qualified carriers must submit a new tender or amend their existing tender or tariff containing the revised definitions prior to the effective date in order to be considered for shipments of sensitive arms, ammunition or explosives. Tenders should be submitted to: Headquarters, Military Traffic Management Command, Attn: Mt-INNT, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Copies of transportation protective service definitions may be obtained by writing to same or by calling Ms. Betty Yanowsky at (202) 756-1565 or Mr. Kirby at (202) 756-1149.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-3975 Filed 2-24-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Soviet Submarine Threat will meet on March 13-14, 1986 at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 A.M. and terminate at 6:00 P.M. on March 13, and commence at 8:00 A.M. and terminate at 3:00 P.M. on March 14. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to assess the potential of U.S. defensive systems now in the pipeline to meet the Soviet submarine threat, as well as from an overall system approach, determine the major elements required to match the threat and recommend modifications, if required, to current Navy programs in order to maintain technological superiority. The agenda of the meeting will consist of technical briefings addressing the Soviet submarine threat. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: February 20, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-4034 Filed 2-24-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Application Notice Inviting Requests for Noncompeting Continuation Awards for Certain Projects of Transitional Bilingual Education for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

Programmatic and Fiscal Information

The Secretary invites requests for certain fiscal year 1986 noncompeting continuation awards under the program of Transitional Bilingual Education (TBE) administered by the Department of Education, Office of Bilingual Education and Minority Languages Affairs. The name of each grantee and current grant number covered by this notice are listed in a chart at the end of the notice. A separate notice inviting requests for all other noncompeting continuation awards under the TBE program will be announced in the future. (Requests for noncompeting continuation awards under the TBE program are treated as continuation award applications under 34 CFR 75.100).

An estimated $4.6 million will be authorized for noncompeting continuation awards for the 32 grantees covered by this notice, in FY 1986. The estimated average continuation award is $144.000. These estimates do not bind the U.S. Department of Education to a specific number of noncompeting continuation awards or the amount of any award, unless the amounts are otherwise specified by state or regulations.

Closing Date for Transmittal of Requests

To be assured of consideration for funding, requests for noncompeting continuation awards should be mailed or hand delivered on or before March 27, 1986.

If a request is late, the Department of Education may lack sufficient time to review it with other requests for noncompeting continuation awards and may decline to accept it.

Requests sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.003B, 400 Maryland Avenue, SW., Washington, DC 20202.

Requests that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program are the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 28, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA No. 84.003B), 400 Maryland Avenue, SW., Washington, DC 20202.

Proof of mailing will be determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Noncompeting continuation awards for the following projects are covered by this application notice:

1986 CONTINUATIONS LISTING FOR THE 32 TRANSITIONAL BILINGUAL EDUCATION PROJECTS CFDA NO: 84.003B

Grant No.	State	Local educational agency
G008525024	AK	Lower Kuskokwim School District.
G008525011	CA	Alum Rock School District.
G008525028	CA	Arvin Union School District.
G008525005	CA	Bassett Unified School District.
G008525018	CA	Brawley Unified School District.
G008525006	CA	Davis Joint Unified School District.
G008525020	CA	Glendale Unified School District.
G008525004	CA	Holtville Unified School District.
G008525007	CA	Lennox School District.
G008525002	CA	Orange Unified School District.
G008525016	CA	Pomona Unified School District.
G008525029	CA	Rio School District.
G008525017	CA	San Francisco Unified School District.
G008525001	FL	Sarasota County School Board.
G008525013	GA	Atlanta Public Schools.
G008525021	IL	Chicago Public Schools.
G008525008	LA	East Baton Rouge Parish School Board.
G008525019	MT	Busby School of Northern Cheyenne.
G008525025	NJ	Newark Board of Education.
G008525015	NJ	Vineland Board of Education.
G008525027	NM	Chama Valley Independent School District.
G008525009	NM	San Juan Pueblo School District.
G008525010	NV	Duckwater Shoshone School Board.
G008525014	NY	C.S.D. #17/Fordham University.
G008525032	NY	C.S.D. #25.
G008525023	NY	NYC Bd./Project: COM-TECH.
G008525030	NY	NYC Bd./Office of High Schools.
G008525031	NY	NYC Bd./Newtown High School.
G008525012	TX	Austin Independent School District.
G008525003	TX	Cotulla Independent School District.
G008525022	TX	San Diego Independent School District.
G008525026	UT	Jordan School District.

Application Forms

Application forms and program information packages will be mailed to each grantee listed in this notice.

Further Information

For further information contact Dr. R. Rudy Cordova, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2609.

Program Authority: 20 U.S.C. 3221-3262

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Dated February 20, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-4052 Filed 2-24-86; 8:45 am]

BILLING CODE 4000-01-M

Application Notice for New Awards Under the Migrant Education Basic State Formula Grant Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

Programmatic and Fiscal Information

Applications are invited for new grants under the Migrant Education Basic State Formula Grant Program, which provides financial assistance to State educational agencies (SEAs) for State and local projects designed to meet the special educational needs of migratory children of migratory agricultural workers and migratory fishers.

The Secretary awards grants to SEAs to establish or improve State educational programs designed to meet the special educational needs of migratory children or migratory agricultural workers and migratory fishers. Information to be submitted in the application is contained in 34 CFR 201.11 and 201.12.

The original 1986 amount of $257,458,000 made available for this activity has been reduced by $11,071,000 pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177. As a result, $246,387,000 will be available for fiscal year 1986 to support 51 State ongoing programs during the program year 1986-1987. These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered by April 28, 1986, unless the Secretary has given the SEA an extension of the deadline. In the event that a SEA is unable to mail or hand deliver its application by April 15, 1986, the SEA should request an extension of time as soon as possible, stating in the request the reason that an extension is necessary.

The SEA is advised, however, that any delay in submitting its application may defer the processing and awarding of its fiscal year 1986 grant.

Applications sent by mail must be addressed to Dr. John F. Staehle, Acting Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5044, ROB-3), Washington, DC 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Services.

(3) A dated shipping label, invoice, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant SEA should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. Each late applicant will be notified that its application may not be considered unless that SEA has been granted an extension of the closing date.

Applications that are hand delivered must be taken to the Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, Room 5044, ROB-3, 7th and D Streets, SW., Washington, DC. The Office of Migrant Education will accept a hand-delivered application between 8:00 a.m and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

The Office of Migrant Education may not accept an application that is hand delivered after 4:30 p.m. on the closing date—unless the SEA has been granted an extension of the closing date.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Chapter 1, Migrant Education Program Regulations in 34 CFR Part 201.

(b) General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs in 34 CFR Part 204.

(c) 34 CFR 74.62 of the Education Department General Administrative Regulations (EDGAR) concerning fiscal accountability.

(d) 34 CFR Part 79 of EDGAR (Intergovernmental Review of Department of Education Programs and Activities).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by June 27, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA No. 84.011), 400 Maryland Avenue, SW., Washington, DC 20202. Proof of mailing will be determined on the same basis as for applications.

Please note that the above address is not the same address as the one to which the applicant submits its complete application. *Do not send applications to the above address.*

Application Forms

The U.S Department of Education's Office of Migrant Education will mail application forms and instructions to all eligible SEAs. A SEA may obtain additional forms and instructions by writing to the Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5044, ROB-3), Washington, DC 20202.

Further Information: For further information, contact Dr. John F. Staehle, Acting Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5044, ROB-3), Washington, DC 20202. Telephone (202) 245-2722.

Program Authority: 20 U.S.C. 3803(a).

(Catalog of Federal Domestic Assistance No. 84.011; Migrant Education—Basic State Formula Grant Progam)

Dated: February 20, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 86-4053 Filed 2-24-86; 8:45 am]

BILLING CODE 4000-01-M

Pell Grant Program; Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1985-86 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from persons applying for financial assistance under, and from institutions participating in, the Pell Grant Program during the 1985-86 award year.

SUPPLEMENTARY INFORMATION: The purpose of the Pell Grant Program is to assist students in the continuation of their training and education at the postsecondary level by providing financial aid to help pay for their educational costs. Authority for the Pell Grant Program is contained in section 411 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a). The regulations for the Pell Grant Program are codified in 34 CFR Part 690.

I. Applications for Determination of Expected Family Contribution—Table I

As a prerequisite to receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education—or to the Secretary of Education in the case of institutions participating under the Alternate Disbursement System (ADS)—A valid Student Aid Report (SAR) that states the amount of the student's expected family contribution (referred to on the SAR as the "SAI" [student aid index]) and the information used in calculating that amount. Therefore, each applicant must first submit to an agency listed in Table I of this notice his or her application for determining the expected family contribution. That application—referred to in this notice as the original application—must be submitted on one of the forms shown in Table I and be received by the designated agency at the agency's address shown in Table I no later than the deadline date, May 1, 1986, shown in Table I.

It should be noted that an application sent to the Federal Student Aid Programs must be received at the U.S. Postal facility indicated in the table. Indivduals at the processing center are not authorized to personally accept hand delivered documents.

(Approved by the Office of Management and Budget under these OMB Control Numbers—Application: 1840-0110; Special Condition Application; 1840-0111)

TABLE I.—DEADLINE DATE FOR RECEIPT OF APPLICATION FORMS FOR DETERMINING EXPECTED FAMILY CONTRIBUTION: MAY 1, 1986

Type of form	Address for submission
Application for Federal Student Aid (AFSA).	Federal Student Aid Programs, P.O. Box 4150, Iowa City, IA 52244.
Special condition application for Federal Student Aid.	Federal Student Aid Programs, P.O. Box 4151, Iowa City, IA 52244.
Spanish application for Federal Student Aid and Spanish special condition application for Federal Student Aid.	Federal Student Aid Programs, P.O. Box 4155, Iowa City, IA 52244.
Family Financial Statement (FFS).	ACT Student Need Analysis Services, P.O. Box 4005, Iowa City, IA 52243.
Financial Aid Form (FAF)	College Scholarship Service, Box 6300, Princeton, NJ 08541, or College Scholarship Service, Box 380 Berkeley, CA 94701.
Pennsylvania Higher Education Assistance Agency (PHEAA).	Pennsylvania Higher Education Assistance Agency, P.O. Box 3157, Harrisburg, PA 17105.
Student aid application for California (SAAC).	College Scholarship Service, Box 70 Berkely, CA 94701-0070.

(34 CFR 690.12)

II. Other Documents—Table II

Once an applicant has filed his or her original application, additional information may be necessary. In some cases the agency receiving the original application (the processing agency) may request the information. In other cases, the applicant is responsible for initiating a request that additional or alternative information be considered.

The type of information and the forms to be used to report that information are listed in Table II of this notice. Each category designates an address to which the specified information or request must be sent, and the deadline date by which that information or request must be received at that address. The applicant must submit to the Federal Student Aid Programs, any changes that he or she wants to be reflected on his or her SAR. The following explains each category:

Correction Application—If an original application lacks sufficient information for it to be processed, the Secretary will send a correction application to the applicant. In addition, if an applicant has misreported his or her dependency status on the original application, the applicant has the responsibility for requesting a correction application either from the processing agency or through the financial aid administrator. The correction application must be returned to the address listed in Table II and received at that address no later than the deadline date, July 30, 1986, shown in Table II.

Student Aid Report (SAR)

- *Correction/Verification of Information Requested by the Secretary*—If the Secretary returns an SAR to an applicant for correction or verification of correct information on the SAR, the SAR, either corrected or with the verification statement checked, must be returned to the appropriate address listed in Table II and received at that address no later than the deadline date, July 30, 1986, shown in Table II. A student attending an institution participating in the Pell Grant Electronic Pilot Program must submit that SAR, either corrected or with the verification statement checked, to the institution by July 30, 1986.
- *Correction of Inaccurate Information*—If the SAR reflects information that was inaccurate when the application was signed, the applicant must correct that information on the SAR and send the SAR to the address listed in Table II. The SAR must be received no later than the July 30, 1986 deadline date shown in Table II. A student attending an institution participating in the Pell Grant Electronic Pilot Program must be submit that SAR, with the information corrected, to the institution by July 30, 1986.
- *Recomputation of Student Aid Index*—An applicant may request on the SAR, that the Secretary recompute his or her student aid index, if—(1) The student believes a clerical or arithmetic error has occurred or (2) The student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States. The applicant must send the SAR to the address listed in Table II. The SAR must be received no later than the July 30, 1986 deadline date. A student attending an institution participating in the Pell Grant Electronic Pilot Program must submit a request for recomputation to the institution by July 30, 1986.
- *Request for Duplicate SAR*—If an applicant wishes to receive a duplicate SAR, the applicant may write to one of the addresses listed in Table II, or call one of the phone numbers listed in Table II. A written request must be

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received at either address no later than July 30, 1986 deadline date. All telephone requests must also be made no later than July 30, 1986. It should be noted that a written request sent to the Iowa City application processing center must be received at the U.S. Postal facility indicated in Table II. Individuals at that site are not authorized to personally accept hand delivered documents.

(Approved by the Office of Management and Budget under OMB Control Number 1840-0132)

TABLE II.—DEADLINE DATES FOR RECEIPT OF OTHER DOCUMENTS

Type of form/information	Address for submission	Deadline date
Correction Application: Application for Federal Student Aid correction application.	Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244.	July 30, 1986.
Student Aid Report (SAR):		
Correction/Verification of Information Requested by the Secretary: Request for verification of corrected information.	Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244.	July 30, 1986.
Correction of Inaccurate Information: Request for correction of inaccurate information.	Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244.	July 30, 1986.
Recomputation of Student Aid Index: Request for recomputation of a student aid index because of (1) clerical or arithmetic errors or (2) loss of or damage to assets in Presidentially-declared national disaster area.	Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244.	July 30, 1986.
Request for Duplicate SAR: Request in writing or request by phone.	Federal Student Aid Programs, P.O. Box 4154, Iowa City, IA 52244 (319) 337-3736 or Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044 (301) 984-4070.	July 30, 1986.

Note.—Although the Pell application processing site will accept and process corrections through July 30, 1986, this does not extend the deadline by which the student must submit his or her valid SAR to the institution's financial aid office. If the student does not submit a valid SAR to the financial aid office, showing that he or she is eligible (an SAI between 0 and 1900), by his or her last date of enrollment or June 30, 1986, whichever is earlier, he or she will not be eligible for a Pell Grant payment.

III. Verification (Validation) Procedures and Deadline Dates—Regular Disbursement System (RDS) and Alternate Disbursement System (ADS)

The information provided on an application and included on an SAR may be subject to verification (validation). In that case, in order to receive a Pell Grant award for the 1985-86 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures. The documents must be received no later than the deadline dates specified below. These dates do not conflict with nor supersede the deadline dates specified in Tables I and II of this notice.

Verification (Validation) of Information on Application. If an applicant is selected to have the information on his or her application verified under the validation procedures set forth in § 690.77 of the Pell Grant Program regulations, and if the applicant attends an institution that participates in the Pell Grant Program under the Regular Disbursement System (RDS) or Alternate Disbursement System (ADS), he or she must submit the requested documents as specified below. The deadline date for completing the validation process is the earlier of 60 days from the applicant's last date of enrollment in the case of an applicant who leaves school because of graduation, completion of an academic term, or withdrawal, or September 2, 1986. A student who will still be enrolled in a course of study in the 1985–86 award year after September 2, 1986 must submit the requested documents by September 2, 1986.

This process is complete when the applicant has:

(1) Submitted all requested verification documents to his or her institution;

(2) Made all necessary corrections on Part 2 of the SAR;

(3) Signed & submitted the corrected Part 2 of the SAR to the Department of Education's processing center at the address indicated in the lower left hand corner on the back of Part 2 of the SAR—the same address indicated under the first four categories shown in Table II—by the deadline date listed for these categories in Table II; and

(4) Submitted to the institution the corrected/reprocessed SAR received from the Department of Education's processing center. (34 CFR 690.77)

IV. ADS Payment Procedures—Table III

Initial Request for Payment for an Award Year. The applicant who attends an institution participating in the Pell Grant Program under the Alternate Disbursement System (ADS) must comply with the deadline dates shown in Tables I and II. Additionally, in order to receive an initial Pell Grant payment for an award year, the applicant must submit a completed ED Form 304 and Part 3 (Pell Grant Payment Document) of the valid SAR, (and a copy of the applicant's financial aid transcript or ED Form 304-1, if applicable), to the address listed in Table III. The documents must be received no later than the July 15, 1986 deadline date.

Additional or Corrected Request for Payment. A student attending an ADS institution must submit an additional or corrected request for payment on ED Form 304-1, and submit the form to the address listed in Table III. The document must be received by no later than the August 26, 1986 deadline date.

(Approved by the Office of Management and Budget under OMB Control Number 1840-0008.)

Receipt of Payment by Validated Students Attending ADS Institutions. If a student completes the validation process on or before June 16, 1986:

(1) The student's completed ED Form 304, Part 3 of the validated SAR, (and a copy of the student's financial aid transcript, if applicable), must be received at the ADS payment processing site, as stated in § 690.61, on or before July 15, 1986,

(2) All corrections to prior payment requests and/or additional payment requests (completed ED Forms 304-1) must be received at the ADS payment processing site as stated in § 690.61, on or before August 26, 1986.

If a student completes the validation process after June 16, 1986: The student's completed ED Form 304, Part 3 of the validated SAR, (and a copy of the student's financial aid transcript, if applicable) and all additional payment requests must be received at the ADS payment processing site within 30 days after the date the student completed validation, or September 30, 1986, whichever is earlier. (34 CFR 690.77, 690.96)

Note.—If a student has been unable to file an ED Form 304 because of delays caused by the verification process and the student has completed the first term or payment period at the institution, ADS procedures allow the student to apply for more than one disbursement at the same time. See pages 51–53 of the *1985–86 Alternate Disbursement System Handbook* for instructions.

TABLE III.—DEADLINE DATES FOR RECEIPT OF ALTERNATE DISBURSEMENT SYSTEM FORMS

Type of form/information	Address for submission	Deadline date
Initial Request for Payment for an Award Year: ED Form 304 "Request for Payment" and Part 3 of SAR (Payment Document) and a copy of the student's financial aid transcript or ED Form 304-1 (if applicable).	ADS Payment Processing Center, P.O. Box 8547, Silver Spring, MD 20907.	July 15, 1986.
Additional and/or Corrected Request for Payment for an Award Year: ED Form 304-1.	ADS Payment Processing Center, P.O. Box 8547, Silver Spring, MD 20907.	Aug. 26, 1986.

(34 CFR 690.14, 690.61 and 690.95.)

Note.—ED Forms 304 and 304-1 do not apply to students enrolled in institutions that participate in the Pell Grant Program under the Regular Disbursement System (RDS).

V. Institutional Payment Summary (IPS)—Table IV

An institution participating in the Pell Grant Program under the Regular Disbursement System (RDS) is required to provide the Secretary with an Institutional Payment Summary (IPS) and Part 3 of the SARs (Payment Documents) by the deadline dates established in Table IV. This material should be sent to the following address, in the manner described below: Pell Grant Program, P.O. Box 1400, Merrifield, Virginia 22116-1400.

- Each institution must submit an IPS either with Student Payment Documents or with SAR Data Tapes reflecting the information contained on Part 3 of the SAR.
- An institution may submit an IPS withour a batch of Payment Documents or SAR Data Tape, only under one of these circumstances:

(1) The institution has no Pell recipients, or

(2) The institution has no new Pell recipients or payment data changes to submit within a given reporting period for previously reported students.

An institution must submit two signed Institutional Payment Summaries. Photocopies of the IPS may be submitted provided that each copy contains the original handwritten signature of the institutional administrator officially responsible for the accuracy and completeness of the IPS. Although an institution may make a submission as often as necessary during each of the required reporting periods shown in Table IV, it must make *at least* one submission within each of those periods, even if it submits only an IPS. Submissions must be made no later than the deadline date for each reporting period noted in Table IV.

An institution participating in the Pell Grant Electronic Pilot must either:

(1) Submit the documents to the above address in the manner described above; or

(2) Provide to the Pell Grant Central Disbursement System a properly certified and acceptable electronic payment data submission via the Pell Grant Electronic Pilot. This submission must be made at least once during each of the stated periods.

TABLE IV.—DEADLINE DATES FOR RECEIPT OF INSTITUTIONAL PAYMENT SUMMARY (IPS) DOCUMENTS

Reporting periods	Deadline date
Institutions with a 1984–85 Pell Grant Authorization of $750,000 or more:	
July 1, 1985 thru Oct. 15, 1985	Oct. 15, 1985.
Oct. 16, 1985, thru Dec. 15, 1985	Dec. 16, 1985.
Dec. 16, 1985 thru Feb. 15, 1986	Feb. 17, 1986.
Feb. 16, 1986 thru Apr. 15, 1986	Apr. 15, 1986.
Apr. 16, 1986 thru June 15, 1986	June 16, 1986.
June 16, 1986 thru Aug. 15, 1986	Aug. 15, 1986.
Institutions with a 1984–85 Pell Grant Authorization under $750,000:	
July 1, 1985 thru Dec. 15, 1985	Dec. 16, 1985.
Dec. 16, 1985 thru Apr. 15, 1986	Apr. 15, 1986.
Apr. 16, 1986 thru Aug. 15, 1986	Aug. 15, 1986.

(34 CFR 690.12.)

(Approved by the Office of Management and Budget under OMB Control Number IPS Form 1840-0540.)

Failure of an institution to comply with these requirements may result in the initiation of a proceeding to fine, suspend, limit, or terminate the institution in accordance with Subpart G of the Student Assistance General Provisions regulations in 34 CFR Part 668.

VI. Submission to the Secretary of Student Aid Reports by Institutions

As noted above, Table IV requires an institution to submit at least one IPS (and SAR Payment Documents, if applicable) within each of the required reporting periods. However, because 34 CFR 690.83 requires an institution to submit 1985–86 SAR Payment Documents to the Secretary of Education by December 31, 1986, an institution with additional IPS's and Payment Documents may submit them until the end of the year.

Institutions will not be permitted to adjust their Pell Grant accounts after December 31, 1986 for award year 1985–86 or any award years prior to 1985–86 except under the circumstances listed below. This deadline has been established to permit an orderly closing of accounts from previous years.

- Adjustments are required after a program review of the institution's records by an official or employee of the Department of Education.
- Adjustments are required by an audit conducted under the requirements of 34 CFR 690.84.
- The institution is required to adjust a student's award because of a court order.
- The institution discovers that a student has been overpaid.
- Validation cases referred to the Department where the student has only received partial payment or no payment, and validation cannot be completed in time to meet the December 31 deadline.

Note.—This means that an institution will not be allowed to adjust its accounts for any underpayment it discovers after December 31 *unless* the case meets the conditions described above. If an institution discovers and underpayment, and submits to the Secretary 1985–86 Payment Documents or SAR's for years prior to 1985–86, no adjustment will be made; that is, the institution will not receive additional Pell Grant funds. If it appears that an adjustment must be made because of the above circumstances, the institution should contact an area desk representative at (202) 245-1271.

Application Forms and Information

Student aid application forms, correction application forms, and information brochures may be obtained through college and university financial aid administrators, Educational Opportunity Center counselors, or by writing to: Federal Student Aid Programs, P.O. Box 84, Washington, D.C. 20044.

Applicable Regulations

The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR Part 690 as published in the **Federal Register** on March 15, 1985 (50 FR 10710-10731), and the Student Assistance General Provisions regulations in 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah S. Cohen, Pell Grant Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue, SW., (ROB-3, Room 4318), Washington, D.C: 20202. Telephone (202) 472-4300.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. [illegible]063, Pell Grant Program)

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Dated: February 20, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86-4062 Filed 2-24-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Amendment to Announcement of a Program Opportunity Notice for a Clean Coal Technology Program

AGENCY: Office of Fossil Energy, DOE.

ACTION: Amendment to Program Announcement for a Program Opportunity Notice for a Clean Coal Technology Program.

Introduction

On January 27, 1986, the United States Department of Energy (DOE), Office of Fossil Energy (FE), published in the **Federal Register** (51 FR 3398) a Program Announcement for a Program Opportunity Notice for a Clean Coal Technology Program. The present Notice amends that Program Announcement as follows:

The date of the Preproposal Conference for the Clean Coal Technology program is amended to March 6, 1986, at 10:00 a.m., local Washington DC time.

The location of the Preproposal Conference for the Clean Coal Technology program is amended to the Departmental Auditorium, 1301 Constitution Avenue, NW., located midway between 12th and 14th Streets, NW., Washington, DC., 20024.

FOR FURTHER INFORMATION CONTACT: Mr. E. Stephen Logan, Tel (202) 252-1028.

Dated: February 20, 1986.

Barton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 86-4058 Filed 2-24-86; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver of Divestiture Requirements

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. John E. Notestein is under consideration for the position of Associate Director of the Office of Basic and Applied Sciences in the Morgantown Energy Technology Center of the Department of Energy. Mr. Notestein has an interest in the General Electric Company Pension Plan as a result of his past employment by the company.

It has been established to my satisfaction that Mr. Notestein's interest in the General Electric Pension Plan is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Notestein a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment as a supervisory employee of the Department of Energy, with respect to his interest in the General Electric Pension Plan.

In accordance with section 208 of title 18, United States Code, Mr. Notestein will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the General Electric Company unless his supervisory and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: February 19, 1986.

John S. Herrington,

Secretary of Energy.

[FR Doc. 86-4056 Filed 2-24-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, U.S. Refinery Capability Task Group; Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in March 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its twelfth meeting on Tuesday, March 18, 1986, starting at 8:30 a.m., in the Pecos Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
3. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 19, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-4060 Filed 2-24-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, U.S. Petroleum Refining, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in March 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address

previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its tenth meeting on Friday, March 14, 1986, starting at 8:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 19, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-4055 Filed 2-24-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-09-NG]

Receipt of Application To Import Natural Gas From Canada for Short-Term and Spot Sales; HNG/InterNorth Gas Marketing, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 6, 1986, of an application from HNG/InterNorth Gas Marketing, Inc. (HNGMI), a wholly-owned subsidiary of InterNorth, Inc., for blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 250 Bcf of Canadian natural gas annually and a maximum of 500 Bcf for a two-year term beginning on the date of first delivery of the import. HNGMI proposes to purchase individual volumes of natural gas from various reliable Canadian suppliers and producer associations and arrange for delivery of the gas to U.S. border points of entry. Since HNGMI intends to utilize existing pipeline facilities for the transportation of the volumes imported, the proposal does not contemplate the construction of any new domestic facilities. HNGMI proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 27, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-8162

Michael T. Skinker, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: HNGMI requests that its application be considered on an expedited basis by not providing an opportunity for additional written comments because the application essentially duplicates other existing blanket authorizations. An ERA decision on whether addition written comments or other procedures will be necessary in this case will not be made until all responses to this notice have been received.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public comment procedures: In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., March 27, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request

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for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of HNGMI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m, Monday through Friday, except holidays.

Issued in Washington, DC, February 19, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4057 Filed 2-24-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-291-000, et al.]

Electric Rate and Corporate Regulation Filings; the Cleveland Electric Illuminating Co., et al.

February 19, 1986.

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company

[Docket No. ER86-291-000]

Take notice that on Feb. 10, 1986, The Cleveland Electric Illuminating Company (CEI) tendered for filing certain revisions to its FERC Electric Tariff, Original Volume No. 1, pursuant to which CEI provides transmission service to municipalities and rural electric cooperatives in the Combined CAPCO Company Territories. CEI states that the revisions, which eliminate the requirement that it file a Service Agreement with the FERC for each separate reservation of transmission service, is necessary because of the increase in filing fees recently adopted by the FERC. CEI has proposed to make these revisions effective on October 1, 1985.

Comment date: February 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. ER 86-72-002]

Take notice that on February 6, 1986, El Paso Electric Company tendered for filing its refund report pursuant to Commission order dated December 27, 1985. The report details the refund computation for Texas-New Mexico Power Company (TNP), Rio Grande Electric Cooperative, Inc. (Rio Grande) and Imperial Irrigation District (IID).

By letter date January 27, 1986, EPE refunded by check to TNP and Rio Grande all mounts at issue with interest calculated through January 27, 1986. El Paso and IID also agreed on the method of calculating interest through January 27, 1986.

The refund encompasses the period June 10 through December 28, 1985, the period the proposed fuel clause was to be in effect. The refund computation includes a December 1985 nuclear fuel amount that was excluded in computing the fuel adjustment factor. In light of the pending refund, EPE did not factor in either the actual December nuclear fuel cost or displacement cost fuel in fuel adjustment factor computation.

Comment date: February 28, 1986, in accordance with Standard Paragraph H at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER 86-290-000]

Take notice that on February 10, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Eighteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Fort Pierce Utilities Authority (Fort Pierce) (Rate Schedule FERC No. 68).

FPL states that under Amendment Number Eighteen, FPL will transmit power and energy for Fort Pierce as is required in the implementation of its interchange agreement with Seminole Electric Cooperative, Inc.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served upon Fort Pierce Utilities Authority.

Comment date: February 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER 86-292-000]

Take notice that on February 10, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Eleven to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Tampa Electric Company (TECO) (Rate Schedule FERC No. 57).

FPL states that under Amendment Number Eleven, FPL will transmit power and energy for TECO as is required in the implementation of its interchange agreement with City of Lake Worth, Florida.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served upon Tampa Electric Company.

Comment date: February 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire

[Docket No. ER85-655-001]

Take notice that on December 24, 1985, Public Service, Company of New Hampshire (the Company) tendered for filing a request for an extension of a previously granted waiver of the fuel adjustment clause regulations. The relief sought and basis for relief are stated as follows:

On July 30, 1985, PSNH tendered for filing revisions to its fuel adjustment clause to defer the pass-through of fuel cost savings from generation of test power by treating such savings as a reduction in plant investment rather than as a reduction in current fuel costs, in accordance with Commission policy. The Company requested waiver of the fuel clause regulations to permit the deferral. The filing was unopposed and was accepted to become finally effective by letter order of September 27, 1985 in Docket No. ER85-655-000.

The revisions to the fuel adjustment clause are cast in broad enough terms to permit deferral of fuel cost savings from any test generation regardless of source. However, the request for waiver was related to test generation at the Company's Schiller Station upon conversion of three oil-burning units to coal.

The Company is a joint owner of the Millstone No. 3 and Seabrook No. 1 nuclear units which are expected to comence generating test power in January and June of 1986, respectively.

The Company wishes to continue to defer fuel cost savings from test generation at those units under the same revisions to its fuel adjustment clause which are already in effect. It is here requesting the Commission to extend the waiver of the regulations allowed in Docket No. ER85-655-000 to permit the Company to calculate its fuel adjustment according to those revision.

Comment date: February 28, 1986, in accordance with Standard Paragraph E at the end of this document.

6. San Diego Gas & Electric

[Docket No. ER86-40-000]

Take notice that on February 10, 1986, San Diego Gas & Electric (SDG&E) tendered for filing information intended to supplement language contained in an Interconnection Agreement between Public Service Company of New Mexico and SDG&E submitted for filing in the above docket number.

Additionally, SDG&E included in this amended filing fully allocated cost information regarding SDG&E's generating stations.

Comment date: February 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER86-294-000]

Take notice that on February 11, 1986, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J providing for negotiated interchange service between Tampa Electric and Florida Power Corporation (Florida Power). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement under the existing contract for interchange service between Tampa Electric and Florida Power, designated as Tampa Electric's Rate Schedule FPC No. 6, and Florida Power's Rate Schedule FPC No. 80. Tampa Electric's filing includes a Certificate of Concurrence submitted by Florida Power in lieu of an independent filing.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J under its rate schedule, a Letter of Commitment providing for the sale by Tampa Electric to Florida Power of energy from up to 300 megawatts of reserved, coal-fired capacity. Tampa Electric states that the energy thus provided would assist in meeting Florida Power's need for another source of low-cost energy. The commitment of reserved capacity and energy is for the period February 6 through March 31, 1986, and from month to month thereafter unless canceled by either party.

Tampa Electric proposes an effective date of February 6, 1986 for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: February 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4014, Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-295-000, et al.]

Electric Rate and Corporate Regulation Filings, Dayton Power & Light Co., et al.

February 19, 1986.

Take notice that the following filings have been made with the Commisison:

1. Dayton Power and Light Company

[Docket No. ER86-295-000]

Take notice that on February 12, 1986, the Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Arcanum (Arcanum], Ohio.

The proposed agreement allows Arcanum to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requiremens to DP&L for delivery to Arcanum.

Comment date: March 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Dayton Power and Light Company

[Docket No. ER86-296-000]

Take notice that on February 12, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Jackson Center (Jackson Center), Ohio.

The proposed Agreement allows Jackson Center to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Jackson Center.

Comment date: March 5, 1986, in accordance with Standard Paragraph E at the end of the this notice.

3. Idaho Power Company

[Docket No ER86-297-000]

Take notice that on February 13, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summay of sales under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during December 1985, along with cost justification for the rate charged. This filing includes the following supplements:

Sierra Pacific Power Company, Supplement 46
Portland General Electric Company, Supplement 42
Southern California Edison Company, Supplement 38
San Diego Gas & Electric Company, Supplement 31
Washington Water Power Company, Supplement 35
Los Angeles Water & Power Company, Supplement 31
Pacific Gas & Electric Company, Supplement 17
Western Area Power Administration, Supplement 10
City of Burbank, Supplement 27

Comment date: March 5, 1986, in accordance with Standard Paragraph H at the end of this noitce.

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4. Iowa Southern Utilities Company

[Docket No. EC86-14-000]

Take notice that Iowa Southern Utilities Company (Iowa Southern) on January 31, 1986, filed an application for an order of the Commission approving a merger and disclaiming jurisdiction under Section 203 of the Federal Power Act with respect to a corporate reorganization under which Iowa Southern will become a wholly-owned subsidiary of Iowa Southern Inc., a newly created holding company, and for an order of the Commission alternatively approving issuance of Preferred Stock and common stock by a newly formed company into which Iowa Southern will be merged.

Iowa Southern is engaged in the generation, distribution and sale of electirc energy and in the distribution of natural gas in Iowa. Iowa Southern's rates and charges are subject to regulation by the Iowa State Commerce Commission and by this Commission. Iowa Southern is a "public utility" as that term is defined in section 201(e) of the Federal Power Act.

Iowa Southern states that the only element of corporate reorganization that may be suject to Commission jurisdiction under section 203 of the Federal Power Act is the merger of Iowa Southern with an Iowa corporation for the sole purpose of reincorporating Iowa Southern's interests in Iowa. Otherwise the transactions do not involve any disposition by Iowa Southern of its jurisdictional facilities, nor any merger or consolidation of Iowa Southern's jurisdictional facilities with those of any other person, and no acquisition of Iowa Southern's securities by another "public utility." Iowa Southern states that apart from the first step merger, the type of corporate reorganization involved in this case is the same type that was involved in *Texas-New Mexico Power Company*, Docket No. ES84-46-000, 28 FERC ¶ 61,079 (1984); *Sierra Pacific Power Company*, Docket No. EL84-5-000, 27 FERC¶ 61,081 (1984); and *Iowa Power & Light Company*, Docket No. EL79-13, 9 FERC ¶ 61,099, at p. 61198 (1979), where the Commission granted the utilities' requests for disclaimer of jurisdiction under section 203.

Iowa Southern states that the corporate reorganization will not impair effective regulatory control in the public interest. Iowa Southern also states that the securities transactions will not adversely affect the rights or interests of its shareholders or the public interest.

Comment date: March 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-4015 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-317-000, et al.]

Natural Gas Certificate Filings; Panhandle Eastern Pipe Line Co., et al.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP86-317-000]

February 14, 1986.

Take notice that on February 11, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-317-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Yankee International Company (Yankee) and amendment, if necessary, of Applicant's permit authorizing its River Rouge, Michigan, facilities to export natural gas to Canada, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a transportation agreement dated February 4, 1986, Applicant has agreed to transport up to 50,000 Mcf of natural gas per day on behalf of Yankee. Applicant would transport up to 50,000 Mcf of gas per day from existing points of receipt in Kansas, Oklahoma and Texas to the existing interconnection of Applicant's facilities and the facilities of Union Gas Ltd. (Union) at the international boundary between the United States and Canada, in River Rouge, Wayne County, Michigan (River Rouge).

Applicant proposes to provide the service on an interruptible basis for a term of two years from the date of the agreement and month to month thereafter unless terminated. Applicant requests authorization to continue transportation for Yankee consistent with the authorization granted to Yankee to export natural gas for sale to Union by the Economic Regulatory Administration (ERA).

It is stated that Yankee has received export authorization from ERA under section 3 of the Natural Gas Act in ERA Docket No. 85-38-NG in Order No. 99, dated December 30, 1985.

Applicant states that the proposed transportation would not displace sales by United States companies since Applicant would provide this service on an interruptible basis. It is further stated that Applicant filed in Docket No. CP86-232-000 for authorization to transport up to 67,000 Mcf of gas per day on an interruptible basis on behalf of National Steel Corporation (National Steel) which utilizes common portions of Applicant's system. Article VI of Applicant's transport agreement with Yankee is said to provide expressly that in the event of capacity limitations, Applicant would have the right to interrupt service to Yankee prior to interrupting National Steel.

Applicant also requests a determination by the Commission whether an amendment is required to the existing Presidential Permit for Applicant's River Rouge border facilities connecting with Union pursuant to Executive Orders 10485 and 12038 and Delegation Order 0204-55 of the Secretary of Energy.

It is stated that by orders issued April 23 and August 20, 1946 (5 FPC 472 and 718 (1946)), the FPC issued a Presidential Permit to Applicant to construct, operate, maintain and connect natural gas transmission facilities at the international boundary between Canada and the United States at River Rouge as part of the authorization for sales to Union of up to 5,500,000 Mcf per year

pursuant to the 1944 contract. It is explained that the exportation of gas for sale to Union concluded with the expiration of a 1954 contract on November 5, 1976.

It is explained that the original Presidential Permit was amended from time to time to increase deliveries and facilitate additional agreements, most recently for the import of gas on behalf of Transcontinental Gas Pipe Line Corporation. Such importation terminated on October 31, 1985 as conditioned in the order dated December 19, 1980, in Docket No. CP80-521.

Applicant submits that the existing Presidential Permit already covers the transaction proposed herein—the physical exportation of gas for sale to Union within the existing capacity of Applicant's border facilities and that the Commission should conclude, therefore, that further amendment of Applicant's Presidential Permit is not required.

If the Commission determines that amendment of the Presidential Permit is required, Applicant requests an amended general authorization to use its River Rouge border facilities for export or import, up to the design capacity of facilities, 86,000 Mcf per day. It is alleged that Applicant has received several other requests to use these facilities for exports for sale to Union or for imports into the United States on a short-term or "spot market" basis, similar to the Yankee transaction described herein. Applicant states that the actual use of the facilities under a generally amended Presidential Permit would be subject to an explicit condition that each underlying transaction has received all necessary authorizations from the Commission and ERA and would be performed subject to the terms and conditions of those authorizations.

If amendment of the Presidential Permit is required, Applicant also requests that it be issued initially on an interim basis to be effective on the date of issuance of the Commission's order herein. It is alleged that this interim permit would be conditioned upon examination and concurrence by the Departments of State and Defense. It is further alleged that use of the interim permit procedure will enable the export to proceed expeditiously pending final approvals by those Departments.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP86-310-000]

February 13, 1986.

Take notice that on February 7, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-310-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to a maximum of 85 billion Btu equivalent of natural gas per day on an interruptible basis for Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that it is presently performing a limited-term transportation service for Columbia Gas pursuant to Subpart G of Part 284 of the Commission's Regulations as reported in Docket No. ST84-694-000 and that such transportation service would terminate on March 1, 1986.

Natural requests authority to provide an interruptible transportation service for Columbia Gas for a period of 2 years from the date of first delivery and month-to-month thereafter, pursuant to the terms and conditions contained in a gas transportation agreement between Natural and Columbia Gas, dated February 3, 1986. It is explained that Columbia Gas has informed Natural that said gas is to be used for either Columbia Gas' system supply or to be delivered on behalf of various local distribution companies which have purchased or would be purchasing gas from Columbia Gas under a settlement agreement between Columbia Gas and such local distribution companies dated April 4, 1985.

Natural states that gas for Columbia Gas' account would be delivered to Natural at the existing point of interconnection between the measurement facilities of Columbia Gas' designee, Ozark Gas Transmission System, at the suction side of Natural's compressor station No. 307 in White County, Arkansas.

Natural proposes to redeliver gas for the account of Columbia Gas less 0.5%, initially, for lost and unaccounted-for gas. It is explained that redelivery would occur at the following points of delivery: (1) The existing point of interconnection between the measurement facilities of Natural and the pipeline facilities of Columbia Gas' designee, Columbia Gulf Transmission Company (Columbia Gulf), near Pecan Lake in Cameron Parish, Louisiana, (2) the existing point of interconnection between the measurement facilities of Natural and the pipeline facilities of Columbia Gulf at the inlet of Texaco's Henry gas plant in Vermilion Parish, Louisiana (Columbia Gas would cause Texaco Inc. to deliver the gas to Columbia Gulf for Columbia Gas' account) and (3) at a proposed point of interconnection between the measurement facilities of Natural and the pipeline facilities of Columbia Gulf near Erath in Vermilion Parish, Louisiana.

Natural proposes to charge Columbia Gas a negotiated transportation rate of 15.1 cents for each million Btu equivalent of gas received in White County, Arkansas, for transportation and redelivery to Cameron and Vermilion Parishes, Louisiana.

Natural states that new facilities required at Natural's proposed delivery point near Erath in Vermilion Parish, Louisiana, would be constructed pursuant to Natural's blanket certificate issued in Docket No. CP82-402. Natural requests authorization to add and delete additional receipt and/or delivery points in the future that may be necessary to support this service.

Comment date: February 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.

[Docket No. CP83-452-047]

February 12, 1986.

Take notice that on February 5, 1986, [1] Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP83-452-047 on behalf of itself and its producer-suppliers a petition to amend the order issued November 15, 1985, in Docket No. CP83-452-033 pursuant to section 7 of the Natural Gas Act so as to continue the authorization to abandon sales temporarily to Petitioner for resale and to make sales of natural gas for resale, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

On behalf of its producer-suppliers Petitioner proposes to extend, until March 31, 1987, the authority to make sales for resale in interstate commerce of gas of which the maximum lawful

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[1] The petition to amend was tendered for filing on January 31, 1986; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until February 5, 1986. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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price is higher than the Natural Gas Policy Act of 1978 (NGPA) section 109 price, and to abandon sales temporarily to Petitioner for resale of gas for which the maximum lawful price is higher than the NGPA section 109 price and which were previously authorized by the Commission, to the extent that such gas is released by Petitioner pursuant to such conditions as may be imposed by the Commission.

It is claimed that the one-year extension would provide Petitioner with take-or-pay relief, provide lower-cost gas to consumers, and provide producers of certain higher-priced NGPA categories of gas additional market outlets.

It is stated that on November 15, 1985, the proposed activity was authorized for the period beginning November 1, 1985, and ending March 31, 1986. It is claimed that during November and December 1985, Petitioner released approximately 3,200,000 Mcf of gas from Appalachian take-or-pay contracts and that during November 1985 approximately 3,800,000 Mcf of gas was released from Southwest take-or-pay contracts. It is contended that substantial take-or-pay relief has been realized from the release of this gas and that released gas has in turn been sold on the spot market at substantial cost savings to Petitioner's purchasers.

It is asserted that without the authority granted by the November 15, 1985, order, producers would have been subject to substantially reduced takes under Petitioner's least-cost purchasing policy. It is claimed that producers have received the benefit of market outlets for gas they would have otherwise been unable to sell and increased cash flow generated from these sales. The release program has also facilitated the settlement of take-or-pay and other contractual disputes between Petitioner and its producer-suppliers, as well as the renegotiation of these contracts to provide more flexible and market responsive terms, it is stated.

It is further asserted that under the authority heretofore granted, released gas has been sold directly to resale customers and end-users at market clearing prices, furthering the goal of enhancing direct communication of market signals between the wellhead and burnertip.

It is stated that Columbia Gulf Transmission Company and Petitioner have filed in Docket Nos. CP86-239-000 and CP86-240-000, respectively, applications to transport gas pursuant to the terms of Order No. 436. It is claimed that all such released gas would be transported by Petitioner to its wholesale customers, end-users and other parties on a non-discriminatory basis.

Petitioner avers that because substantial benefits would accrue to all sectors of the economy from the wellhead to the burnertip, the public convenience and necessity requires that the limited-term abandonment and sales authority previously granted continue for an additional term. It is claimed that even a short-term interruption would be harmful because take-or-pay liabilities would again be incurred and end-users and customers would not have access to lower cost suppliers.

Comment date: March 3, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4016 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18303-002, et al.]

Sun Exploration & Production Co.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

February 19, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 5, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure base
G-18303-002, D, Feb. 11, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	El Paso Natural Gas Company, Justis, Jalmat *et al.* Fields, Lea County, New Mexico.	(2)	
CI61-1425-001, D, Feb. 10, 1986	do	El Paso Natural Gas Company, Jalmat *et al.* Fields, Lea County, New Mexico.	(3)	
CI61-1429-003, D, Feb. 7, 1986	do	El Paso Natural Gas Company, Blinebry, Jalmat, Drinkard *et al.* Fields, Lea County, New Mexico.	(4)	
CI61-1429-004, D, Feb. 7, 1986	do	El Paso Natural Gas Company, Rhodes, Jalmat, Blinebry, Drinkard *et al.* Fields, Lea County, New Mexico.	(5)	
CI61-1429-005, D, Feb. 7, 1986	do	El Paso Natural Gas Company, Eumont, Jalmat, Blinebry, Drinkard *et al.* Fields, Lea County, New Mexico.	(6)	
CI61-1429-006, D, Feb. 10, 1986	do	El Paso Natural Gas Company, Langlie-Mattix, South Leonard *et al.* Fields, Lea County, New Mexico.	(7)	
CI61-1429-007, D, Feb. 11, 1986	do	El Paso Natural Gas Company, Jalmat and Rhodes Fields, Lea County, New Mexico.	(2)	
CI62-3-000, D, Feb. 10, 1986	do	El Paso Natural Gas Company, Jalmat *et al.* Fields, Lea County, New Mexico.	(2)	
CI64-1139-000, E, Feb. 6, 1986	Belco Development Corp. (Succ. to Belco Petroleum Corporation), 10,000 Old Katy Road, Houston, Texas 77055.	K N Energy, Inc., North Shawnee—Flat Top Field, Converse County, Wyoming.	(8)	
CI72-163-000, D, Feb. 10, 1986	Sun Exploration & Production Co.	El Paso Natural Gas Company, Spraberry Trend Area, Reagan County, Texas.	(9)	
CI72-163-001, D, Feb. 10, 1986	do	do	(10)	
CI72-163-002, D, Feb. 10, 1986	do	do	(10)	
CI86-129-001, C, Feb. 7, 1986	Tenneco Oil Company (Succ. in Interest to Forest Oil Corp.), P.O. Box 2511, Houston, Texas 77001.	Natural Gas Pipeline Company of America, West Cameron Block 229, Offshore Louisiana.	(11)	
CI86-172-000, (CI64-1071), B, Jan. 17, 1986.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	United Gas Pipe Line Company, Greenwood-Waskom Field, Caddo Parish, Louisiana.	(12)	
CI86-186-000, D, Jan. 29, 1986	Samedan Oil Corporation, P.O. Box 909, Ardmore, Okla. 73402.	Transwestern Pipeline Company, King Field, Lipscomb County, Texas.	(13)	
CI86-196-000 (CI65-1205), B, Feb. 6, 1986.	Union Texas Petroleum Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Cities Service Gas Company, Northeast Nurse Field, Barber County, Kansas.	(14)	
CI86-197-000 (CI77-621), B, Feb. 6, 1986.	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	ANR Pipeline Company, West Cameron Block 265, Offshore Louisiana.	(15)	
CI86-200-000 (CI69-1204), B, Feb. 10, 1986.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Natural Gas Pipeline Company of America, Frost Field, Cass County, Texas.	(16)	
CI86-202-000 (CI64-1203), B, Feb. 11, 1986.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Panhandle Eastern Pipe Line Company, Rauh Unit, Southeast Alva Field, Woods County, Oklahoma.	(17)	
CI65-851-000, D, Feb. 12, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Panhandle Eastern Pipeline, Oakdale Field, Woods County, Oklahoma.	(18)	
CI86-201-000 (G-6036) (CI65-646), B, Feb. 10, 1986.	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	United Gas Pipeline Company, Iowa Field, Calcasieu and Jefferson Davis Parishes, Louisiana.	(19)	

[1] Not used.
[2] Property sold to Union Texas Petroleum.
[3] Property sold to Dovie Hermen.
[4] Property sold to American International Energy Corp.
[5] Property sold to Texaco, Inc.
[6] Property sold to Highland Production Company.
[7] Property sold to Wood, McShane & Thams.
[8] By Assignment dated 7-15-83, effective 7-29-83, Belco Petroleum assigned all of its rights and interest in certain properties in Converse County, Wyoming to Belco Development.
[9] Property sold to Petroleum Equities Corp.
[10] Property sold to McDaniel Oil Co.
[11] By Assignment dated 7-24-85 to Tenneco Oil Company of Forest Oil Corporation's remaining 20% interest in West Cameron Block 229, Offshore Louisiana.
[12] Surrender of all dedicated leases; Tenneco no longer has an interest in the acreage dedicated to its contract dated 2-20-74.
[13] Due to limited reserves and necessity to replace and install production equipment.
[14] The contract expired in April, 1985, one producing well on the lease was plugged and abandoned on 3-11-67. The other well and the leases were sold on 2-22-83.
[15] Acreage subject to Rate Schedule 712 was assigned to Walters Oil and Gas Corporation effective 7-23-85.
[16] On 8-30-84, TPI (Getting Oil Company) released and relinquished all its right, title and interest to the two oil, gas and mineral leases committed to the contract.
[17] Acreage subject to Gas Rate Schedule No. 254 has been surrendered back to the lessor.
[18] Property sold to Kenworthy Operating Company.
[19] All acreage has been assigned to Rosewood Resources Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-4017 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-12-000]

Distrigas of Massachusetts Corp.; Technical Conference

February 19, 1986.

Take notice that a second technical conference will be held to resolve the issues concerning the rate decrease in the filing in the above-captioned proceeding. The conference will be held on Monday, March 3, 1986 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 4018 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI68-1103-000]

A.G. Hill; Application for Partial Limited-Term Abandonment Authorization

February 10, 1986.

Take notice that on February 11, 1986, A.G. Hill (Applicant), Thanksgiving Tower, Dallas, Texas 75201 filed an application for an expedited partial limited-term abandonment of a sale of gas to Natural Gas Pipeline Company of America (Natural) certificated in Docket No. CI68-1103 pursuant to a September 1, 1967, contract, on file as Applicants' FERC Gas Rate Schedule No. 7. Applicant proposes to abandon for a limited-term sales of gas from its interest in the following wells:

ARCO Operated Tubb Estate #1-25
Heritage Resources Operated Tubb Estate #1-22
Heritage Resources Operated Tubb Estate #1-22R

Applicant states that although the Tubb Estate #1-25 has been completed for over 15 months and the other wells have been completed for quite some time, Natural has not hooked them into its system. Applicant further states that

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the gas is coming out sour and Natural has applied for an EPA permit for a 1.5 MMcf/d sweetening facility. However, a local land owner has protested the proposed facility and it is unknown when, if ever, Natural will be granted a permit for such facility. Applicant states that the Tubb Estate #1–25 is an NGPA section 104 recompletion well with an expected optimal flow rate of 18–24 MMcf/d. The Tubb Estate #1–22R is an NGPA section 104 flowing gas well and is expected to flow 2 MMcf/d. The Tubb Estate #1–22 is expected to flow 3 MMcf/d. This well is an NGPA section 107(c)(1) deep new well below 15,000 feet and is not subject to the Commission's Natural Gas Act jurisdiction under NGPA section 601(a)(1)(B). Applicant states that this filing is being made with Natural's knowledge and consent and is pursuant to a part of the seller's reservations section of the referenced contract that reads:

> Seller shall have the right to take gas from the gas reserves for the sale of gas to others on an interim basis, provided that any arrangement entered into by Seller pursuant thereto shall be intra-state in nature, and shall, by its terms, be expressly terminable by Seller and shall be terminated by Seller on or before the date Pipeline completes the construction of facilities adequate to enable the receipt of the applicable quantity hereunder.

Applicant further states that the Urantia Corporation has a transportation line already hooked up to the Tubb Estate #1–22 and the Tubb Estate #1–22R. It is also within 25 to 50 feet of the Tubb Estate #1–25, and they have informed Applicant that hooking up to that well would take approximately eight hours. Applicant states that the interim purchasers to which Applicant proposes to sell are Lone Star Gas Company and Enserch Gas Company, both of which are intrastate purchasers. The agreements with both provide that they are terminable by Applicant as required in the above-quoted section of the referenced contract. Applicant states that it is in the public interest that, on an iterim basis, the expedited partial release be granted so that this gas can flow to market.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4019 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-59-000 (Phase II)]

Northwest Pipeline Corp. v. Colorado Interstate Gas Co.; Denying Motion for Extension of Time and Motion To Suspend Procedural Schedule

February 14, 1986.

On February 11, 1986, Northwest Pipeline Corporation (Northwest) filed a motion for a suspension of the dates for filing briefs on exceptions to the Initial Decision issued December 16, 1985, in the above-docketed proceeding. In its motion, Northwest further requests an extension of time to file briefs opposing any exceptions which have already been filed in this docket. Northwest requests that the dates for filing briefs on exceptions and briefs opposing any such exceptions be suspended pending Commission consideration of a Joint Offer of Settlement filed February 11, 1986, in this docket. Northwest further states that because of the lengthy nature of one of the briefs on exceptions which was already filed in this docket and because of the press of other business, the company requires additional time to file a brief opposing those exceptions. Northwest finally states that Colorado Interstate Gas Company and Commission Staff support this motion.

Upon consideration, notice is hereby given that the motion is denied.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4020 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-9-000 (Phase II)]

Southwest Gas Corp.; Informal Technical Conference

February 19, 1986.

On March 5, 1986, at 10:00 a.m., an informal technical conference will be convened in the above-docketed proceeding at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4021 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-199-000]

Stephens Production Co., Application by Stephens Production Company To Abandon Service

February 19, 1986.

Take notice that on February 11, 1986 Stephens Production Company (Applicant), 623 Garrison Avenue, Fort Smith, Arkansas, filed, pursuant to section 7(b) of the Natural Gas Act (NGA) and §§ 157.30 and 250.7 of the Commission's regulations, 18 CFR 157.30 and 250.7, an application for abandonment of sales service to Arkla Energy Resources, a division of Arkla, Inc. (Arkla) from the Kinta Field (Moffett Area), Sequoyah County, Oklahoma, all as more fully described in the application and exhibits filed therewith which are on file with the Commission and open to public inspection.

Applicant states that the acreage which is the subject of its abandonment application had previously been subject to a gas sales contract, dated August 12, 1966, between Continental Oil Corporation, now Conoco, Inc. (Conoco), as seller, and Arkla, as purchaser. Applicant further states that by order issued November 22, 1966 in Docket No. CI67-332, the Commission granted Conoco a certificate of public convenience and necessity authorizing Conoco's sale to Arkla, and designated the August 12, 1966 contract as Conoco's Rate Schedule No. 319.

It is further asserted by Applicant that the subject acreage was transferred by Conoco to Applicant by way of assignment dated January 21, 1969. However, Applicant also states that until recently, it did not know, and had no reason to believe, that the subject acreage may have been subject to Conoco's certificate and rate schedule. Accordingly, Applicant states that in 1969 it commenced sales of the gas produced from the E. Coan #2 Well located in the subject acreage to Arkansas Oklahoma Gas Corporation (AOG).

Applicant states that Arkla has agreed to release the well from the August 12, 1966 contract. Applicant has attached a copy of the release as Attachment A to its application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4022 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-257-000]

Tapoco, Inc.; Filing

February 21, 1986.

Take notice that on February 11, 1986, Tapoco tendered for filing six copies of an October 7, 1985 letter from Robert C. Steffy, Manager of Power and Engineering of the Tennessee Valley Authority (TVA) addressed to George J. Myers, President of Tapoco.

The October 7th letter relates to the exchange agreement between TVA and Tapoco dated December 22, 1982, which has been designated as Tapoco FERC Rate Schedule No. 6 and is under review in Dockets ER83-209-000, *et al.* The October 7th letter interprets section 2 of Article I of the exchange agreement and extends Tapoco's exercise of its termination rights thereunder to July 2, 1988. No other provision of the exchange agreement is in any way affected by the October 7th letter.

The October 7th letter does not in any way affect service, charges, classifications or rates provided in Rate Schedule No. 6. Therefore, Tapoco believes that it requires no action by the Commission. In the event that the Commission determines that the letter constitutes a change or modification in the filed Rate Schedule, Tapoco respectfully submits that all necessary information has been supplied and would request a waiver of any additional filing requirements.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4023 Filed 2-24-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66127; FRL-2955-1]

Certain Pesticide Products; Intent To Cancel Registrations; Bonide Chemical Co. et al.

Correction

In FR Doc. 86-850, beginning on page 2959 in the issue of Wednesday, January 22, 1986, make the following corrections in the table of product registration cancellations:

1. On page 2960, the twenty-first entry under "Date registered" should read "Nov. 13, 1967".
2. On the same page, in the forty-first entry under "Registrant", "Shenandoah" was misspelled.
3. On page 2961, the twenty-fifth from last entry under "Product Name" should read "Aerosol Concentrate".
4. On the same page, in the forty-first entry under "Registrant", "740 S. Alabama St." should not appear.
5. On the same page, in the forty-second entry under "Registrant", "740 S. Alabama St." should appear between "Co." and "Indianapolis".
6. On the same page, in the thirtieth from last entry under "Registrant", "Boonton" was misspelled.
7. On page 2962, the twenty-ninth entry under "Registration No." should read "6772-5".
8. On the same page, in the fourth from last entry under "Registrant", "Nashville, TN 37214" should appear after the post office box number.
9. On page 2963, in the second entry under "Product name", the word "Insecticide" should appear after "Carbaryl".
10. On the same page, the sixth from last entry under "Registration No." should read "48516-5".

BILLING CODE [illegible]

[OPPE-FRL-2974-8]

Farmworker Protection Standards for Agricultural Pesticides Negotiated Rulemaking Advisory Committee; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of a two-day open meeting of the Advisory Committee negotiating Farmworker Protection Standards for Agricultural Pesticides.

The two-day meeting will be held on Thursday, March 6, and Friday, March 7, 1986. The meeting was tentatively scheduled and was later confirmed for these dates less than 15 days prior to the meeting itself. The Agency issued this Notice promptly once the meeting dates were confirmed. The Committee has notified interested parties on its mailing list of the meeting dates.

Both March 6th and 7th, the meeting will be held in Conference Room No. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. Both days, the meeting will start at 10:00 a.m. and run until completion.

The purpose of the meeting is to address any procedural matters that have arisen since the last meeting, and to continue work, as appropriate, on the substantive issues which the Committee has identified for resolution.

If interested in attending, or in receiving more information, please contact Chris Kirtz at (202) 382-7565.

Dated: February 20, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-4096 Filed 2-24-86; 8:45 am]

BILLING CODE [illegible]

[OPP-66126; FRL-2954-8]

Certain Pesticide Products; Intent To Cancel Registrations; Empire International et al.

Correction

In FR Doc. 86-848 beginning on page 2953 in the issue of Wednesday, January 22, 1986, make the following corrections:

1. On page 2953, in the table, in entry "5-40", in the second column, "8260" should read "8263"; in entry "239-67", in the third column, "94808" should read "94804".

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2. On page 2954, in the table, in entry "2342-822", the fourth column should read "Do."

3. On page 2955, in the table, in entry "5351-6", in the second column, "Preservation-O" should read "Preservative-O"; in entry "53551-7", in the second column, "Preservation-R" should read "Preservative-R"; in entry "8590-203", in the third column, "Adway" should read "Agway".

BILLING CODE 1505-01-M

[OPTS-51606; FRL-2963-2]

Certain Chemicals Premanufacture, Notices

Correction

In FR Doc. 86-2049 beginning on page 4030 in the issue of Friday, January 31, 1986, make the following corrections:

1. On page 4031, in the second column, in entry "P 86-402", in the seventh line, "<2.0" should read ">2.0"; in the tenth line, "LC^{50}" should read "LC_{50}"; in the eleventh line, "<1,000" should read ">1,000", and LC^{50}" should read "LC_{50}"; and in the twelfth line, "<1,000" should read ">1,000".

2. On page 4032, in entry "P86-414", in the tenth line, "workers should read "worker".

3. On page 4033, in the second column, in entry "P86-426", in the fifth line, "Commerical" should read "Commercial".

BILLING CODE 1505-01-M

[OPP-36106; FRL-2961-1]

Availability of Applicator Exposure Monitoring Guidelines

Correction

In FR Doc. 86-1812 beginning of page 3505 in the issue of Tuesday, January 28, 1986, make the following correction on page 3506.

In the first column in the **ADDRESS** section, second paragraph, in the eighth line, "49 CFR 158.10(c)" should read "40 CFR 158.10(c)."

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-24]

Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's investigation of Docket No. 85-24 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Docket No. 85-24 is a Commission investigation of Matson Navigation Company, Inc.'s proposed overall rate increase of 2.5 percent between United States Pacific Coast ports and Hawaii ports.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

John Robert Ewers,
Secretary.

[FR Doc. 86-4035 Filed 2-25-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Encore Cargo Services, Inc., and Kelly International

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Encore Cargo Services, Incorporated, 1079 Carriage Hill Parkway, Annapolis, MD 21401, Officers: Peter Lunde Johnson, President, Kim Hue Johnson, Director, Gilbert Leroy Johnson, Director, Gilda Lynn Johnson, Vice President/Treasurer/Secretary

Kelly International Forwarding Co., Inc. International, 153-40 Rockaway Blvd., Jamaica, NY 11434, Officers: Martin J. Kelly, President, Linda Masciello, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: February 20, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86-3995 Filed 2-24-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Research and Demonstration Grants Relating to Occupational Safety and Health; Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds in Fiscal Year 1986 for research and demonstration project grants relating to occupational safety and health. The objective of this program is to award funds to eligible institutions or agencies to establish, discover, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. The Catalog of Federal Domestic Assistance number is 13.262.

Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations.

Eligibility Requirements

Eligible applicants include non-profit and for-profit organizations. Thus universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for these research and demonstration grants. For-profit organizations will be required to submit a certification as to their status as part of their application.

Availability of Funds

There is $6,221,000 available in Fiscal Year 1986 to fund individual project grants, Special Emphasis Career Award (SERCA) grants, small grants, and Small Business Innovation Research (SBIR) grants. For individual project grants, it is expected that 33 continuation grants will

be awarded totaling approximately $4.116 million and ranging from approximately $42,000 to $200,000 with the average award being approximately $120,000; and that approximately 10 new and competing renewal project grants will be awarded totaling approximately $1.1 million and ranging from approximately $50,000 to $180,000 with the average award being approximately $120,000. For SERCA grants, it is expected that approximately $350,000 will be awarded for continuation grants and $120,000 for new grants. For small grants, it is expected that approximately $150,000 will be awarded for continuation grants and $250,000 for new grants. For SBIR grants, the total available funds for phase I and II awards is approximately $135,000.

Grants are usually funded for 12 months in project periods of up to 5 years for individual project grants, 3 years for SERCA grants, and 2 years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds.

Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and are not subject to review under regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning Resources Development Act of 1974.

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Extent of cooperation expected from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, evidence of demonstrated commitment to a research career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from adviser(s) which should accompany the application).

Small grant applications will be reviewed additionally on the basis of the following criterion:

- The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review of all grant applications will also be conducted in which the factors to be considered will include:

- The results of the initial review.
- The significance of the proposed study to the research programs of NIOSH.
- National needs and program balance.
- Policy and budgetary considerations.

Information

Information on business matters and copies of application forms may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, CDC, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6572.

Information on programmatic interest may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, CDC, Atlanta, Georgia 30333, or by calling (404) 329-3343 or FTS 236-3343.

Dated: February 18, 1986.

L.W. Sparks,
Executive Officer, NIOSH.

[FR Doc. 86-3976 Filed 2-24-86; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, Evaluation of Competitive Bidding for Durable Medical Equipment Demonstration, HHS/HCFA/ORD No. 09-70-0036. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice. Please note that comments with respect to routine uses must be received by March 27, 1986.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 20, 1986. The new system of records, including routine uses, will become effective April 21, 1986, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. De Meo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jeff McCombs, Ph.D., Division of Hospital Experimentation, Office of Research and Demonstrations, Health Care Financing Administration, Room 2302 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-597-2363.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 402 of the 1967 Amendments to the Social Security Act, Pub. L. 90-248 as amended by section 222(b) of the Amendments to the Social Security Act, Pub. L. 92-603. The purpose of this system of records is to provide data necessary to evaluate HCFA's demonstration of competitive bidding for durable medical equipment (DME). The demonstration will assess the effects of competitive bidding systems for DME. It will be conducted for 5 years in approximately six demonstration sites. The system will furnish information necessary to study the effects of the bidding systems on the costs, utilization and quality of DME services. The system of records will include data collected from the claims files, Medicare Statistical Systems, and a patient survey. The States that are

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scheduled to participate in the demonstration are to be determined.

HCFA signed a contract in September 1985 with Abt Associates, Inc., Suite 500, 4250 Connecticut Avenue, NW, Washington, D.C. 20008.

In order to fulfill the objective and complete tasks in this project, the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: February 14, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

09-70-0036

SYSTEM NAME

Evaluation of Competitive Bidding for Durable Medical Equipment Demonstration.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Abt Associates, Inc., Suite 500, 4250 Connecticut Avenue, NW., Washington, D.C. 20008

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Medicare beneficiaries residing in approximately six demonstration sites and three control sites who receive DME services.

CATEGORIES OF RECORDS IN THE SYSTEM

Demographic characteristics (e.g., age, education, income), measures of health and functional status, cost and utilization of health services, and satisfaction with services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Section 402 of the Social Security Amendments of 1967, Pub. L. 90-248, as amended by section 222(b) of the Social Security Amendments of 1972, Pub. L. 92-603, 42 U.S.C. 1395b-1.

PURPOSE OF THE SYSTEM

To provide data necessary to evaluate the impact of HCFA's competitive bidding for durable medical equipment demonstration on the cost, utilization, and quality of DME services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

Disclosure may be made:

1. To the evaluation contractor, to be selected by HCFA, who will use this information to evaluate HCFA's competitive bidding for durable medical equipment demonstration. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) any HHS employee in his or her official capacity; or

(c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for a reseach, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals,

(ii) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA.

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit, or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the DHHS *ADP Systems Manual,* Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in December 1989. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES

Same as notification procedures. Requestors should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current).

RECORD SOURCE CATEGORIES

Information contained in these records is obtained from surveys to be conducted of Medicare beneficiaries by HCFA's evaluation contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

[FR Doc. 86-3966 Filed 2-24-86; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Tetlin National Refuge Comprehensive Conservation Plan; Environmental Impact Statement and Wilderness Review

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability; supplement to the draft plan.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a supplement to the draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Tetlin National Wildlife Refuge, Alaska, pursuant to section 304(g)(1) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) and section 102(2)(C) of the National Environmental Policy Act of 1969. The supplement to the draft CCP/EIS focuses on the impacts of allowing geologic and geophysical studies (including seismic) throughout the refuge under all four alternatives analyzed in the plan and on the impacts of leasing in areas of the refuge under intensive and moderate management. This supplement was required in order to incorporate the Fish and Wildlife Service's policy on oil and gas studies and leasing on Alaska refuges under sections 1008 of the Alaska National Interest Lands Conservation Act into the draft CCP/EIS for the Tetlin National Wildlife Refuge. The draft CCP/EIS, as initially released in July, 1985, allowed seismic activities in all alternatives. Oil and gas leasing was not addressed in the draft.

Remarks on the supplement be must submitted on or before April 1, 1986, to receive consideration by the Regional Director in preparing the final CCP/EIS.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A supplement to the draft CCP/EIS has been prepared for general distribution. Copies of the supplement will be sent to all persons, organizations, and agencies which participated in either scoping, the alternative workshop, and/or the public review process. Copies of the supplement will be sent to all agencies and persons who have already requested copies. Those wishing to review the supplement and the draft CCP/EIS may obtain copies by contacting Mr. Knauer.

Copies of the supplement and the draft CCP/EIS are available for public review at the above location, at the Tetlin National Wildlife Refuge Office, at the Federal Building, 101-12th Avenue, Fairbanks, Alaska and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, Interior Building, 18th and C Streets, NW, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The supplement contains only those sections of the draft CCP/EIS where changes or additions were necessary to reflect the oil and gas policy. Where necessary to completely rewrite sections or where numerous substantial changes were made in the original text, the sections have been included in their entirety, replacing the section as it was printed in the draft CCP/EIS.

Due to the fact that oil and gas potential is probably very low on Tetlin Refuge, the Draft CCP/EIS did not address leasing for oil and gas, and dealt only minimally with oil and gas studies. Current Fish and Wildlife Service policy requires that geophysical and geological studies of potential be permitted on all parts of the refuge where stipulations can ensure compatibility with refuge purposes. A decision on whether to permit oil and gas leasing will only be made after several further steps have been taken to evaluate potential on the refuge, determine the national interest in any leasing program, and determine the compatibility of such a program with Refuge purposes. These steps will not be completed for Tetlin Refuge until after the Final CCP/EIS has been issued; in the meantime, no oil and gas leasing will be permitted on the refuge. The supplement explains the Fish and Wildlife Service policy on studies of potential and on oil and gas leasing.

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Dated: February 6, 1986.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86-3986 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Minatome Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Minatome Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1812, Block 71, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on February 7, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3990 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 15, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 12, 1986.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ARIZONA

Navajo County

Holbrook, *Sapp, Sidney, House,* 215 W. Hopi

ARKANSAS

Conway County

Morrilton, *St. Anthony's Hospital,* 202 E. Green St.

CONNECTICUT

New London County

Fort Shantok

GEORGIA

Chattahoochee County

Cusseta, *Chattahoochee County Jail,* Mt. Olive and Boyd Sts.

Effingham County

Guyton, *New Hope AME Church,* Alexander St.

Fulton County

Atlanta, *Central Presbyterian,* 201 Washington St. SW

INDIANA

Gibson County

Mussel Knoll Archeological Site (12 Gi 11)

Henry County

Knightstown, *Knightstown Historic District,* Roughly bounded by Morgan, Adams, Third, and McCullum Sts.

Marion County

Indianapolis, *Holy Rosary—Danish Church Historic District,* Roughly bounded by Virginia Ave., Interstate 65/70, and S. East St.

Tippecanoe County

Lafayette, *Farmers Institute,* 4626 W. Six-Hundred-Sixty S

Wayne County

Richmond, *East Main Street—Glen Miller Park Historic District,* Both Sides of E. Main St. from Eighteenth to Thirtieth Sts., and Glen Miller Park E of Thirtieth St.

KENTUCKY

Boyle County

Danville, *Roselawn,* US 127

Daviess County

Owensboro, *Ames Building (Owensboro MRA),* 401 W. Third
Owensboro, *Breidenbach Building (DAOB 87) (Owensboro MRA),* 208 W. Third St.
Owensboro, *Callas Sweet Shop (DAOB 13) (Owensboro MRA),* 420 Frederica Ave.
Owensboro, *Carnegie Free Library (DAOB 41) (Owensboro MRA), 901 Frederica Ave.*
Owensboro, *Clements, La Vega, House (DAOB 10) (Owensboro MRA),* 1530 E. Forth
Owensboro, *Doctors' Row Historic District (Owensboro MRA),* W. Forth St. between Frederica and St. Ann Sts.
Owensboro, *Gillim House (DAOB 57) (Owensboro MRA),* 517 Frederica Ave.
Owensboro, *Mischel, George, and Sons, Building (DAOB 102) (Owensboro MRA),* 412 E. Second St.
Owensboro, *Monarch-Payne House (Owensboro MRA),* 1432 E. Forth
Owensboro, *Moore, J.Z. Historic District (Owensboro MRA),* Roughly bounded by W. and E. Twelfth, Daviess, E. and W. Fourteenth, and St. Ann Sts.
Owensboro, *Odd Fellows Building (DAOB 86) (Owensboro MRA),* 200-204 W. Third St.
Owensboro, *Phillip's Court District (Owensboro MRA),* Roughly bounded by Technical High School, Cruze Dr., W. Eighteenth St., and Frederica Ave.
Owensboro, *Riley, Camden, House (DAOB 72) (Owensboro MRA),* 122 E. Forth St.
Owensboro, *Stillman's Folly (DAOB 110) (Owensboro MRA),* 519 Locust St.
Owensboro, *Temple Adath Isreal) (DA-OB-81) (Owensboro MRA),* 429 Daviess St.
Owensboro, *Yewell House (DA-OB-40) (Owensboro MRA),* 630 Clay St.

Knox County

Corbin, *Corbin Bank Building (Corbin MRA),* 101 Center St.
Corbin, *East Main Street Bridge (Corbin MRA),* Engineers St. and Lynn Camp Creek
Corbin, *First Christian Church (Corbin MRA),* S. Kentucky and W. First St.
Corbin, *Gordon Hill Road Historic District (Corbin MRA),* Nos. 309—501 Gordon Hill Rd.
Corbin, *Mershon Building (Corbin MRA),* E. Center St.

Whitley County

Corbin, *Carnegie Library (Corbin MRA),* E. Center St.
Corbin, *St. Camillus Academy (Corbin MRA),* Center St.

MARYLAND

Montgomery County

Boyds, *Drury—Austin House,* 16112 Barnesville Rd.

MASSACHUSETTS

Essex County

Marblehead, *Story Grammar School,* 140 Elm St.

Middlesex County

Boston, *Monument Square Historic District,* Monument Sq.

Norfolk County

Foxboro, *Cary, Otis, House,* 242 South St.

Suffolk County

Boston, *Harriswood Crescent,* 60-86 Harold St.

MICHIGAN

Midland County

Midland, *Midland County Courthouse,* 301 W. Main St.

MINNESOTA

Morrison County

Little Falls, *Burton-Rosenmeier House,* 606 First St. SE
Motley, *White, Almond A., House,* Cleveland and Beaulieu Sts.

MISSISSIPPI

Pontotoc County

Pontotoc Vicinity, *Lochinvar,* Highway 15 S of Pontotoc

MONTANA

Beaverhead County

Dillon, *Dillon Post Office (US Post Offices in Montana, 1900-1941 TR),* 117 S. Idaho St.

Cascade County

Great Falls, *Great Falls Post Office and Courthouse (US Post Offices in Montana 1900-1941 TR),* 215 First Ave. N

Custer County

Miles City, *Miles City Main Post Office (US Post Offices in Montana, 1900-1941 TR),* 106 N. Seventh St.

Deer Lodge County

Anaconda, *Anaconda Post Office (US Post Offices in Montana, 1900-1941 TR),* 218 Main St.

Fergus County

Lewistown, *Lewistown Federal Building and Post Office (US Post Offices in Montana, 1900-1941 TR), 204 Third Ave. N*

Hill County

Havre, *Havre Post Office and Courthouse (US Post Offices in Montana, 1900-1941 TR),* 306 Third Ave.

Missoula County

Lolo National Forest, *Camp Paxson Scout Camp (24 MO77),* Seeley Lake

Park County

Livingston, *Livingston Post Office (US Post Offices in Montana, 1900-1941 TR),* 105 N. Second St.

Valley County

Glasgow, *Glasgow Post Office and Courthouse (US Post Offices in Montana, 1900-1941 TR),* 605 Second Ave. S

Yellowstone County

Billings, *Billings Post Office and Courthouse (US Post Offices in Montana, 1900-1941 TR),* 2602 First Ave. N

NEBRASKA

Burt County

Tekamah, *Houston E.C., House,* 319 N. Thirteenth St.

Dakota County

South Sioux City, *Meisch House,* 213 Seventeenth St.

Douglas County

Omaha, *Mason School (Do09:0205-009),* 1012 S. Twenty-fourth St.
Omaha, *Saunders School,* 415 N. Fourty-first Ave.
Omaha, *The Sherman (DO09:0137-004),* 2501 N. Sixteenth St.

Hall County

Grand Island, *Hamilton-Donald House,* 820 W. Second St.

NEW JERSEY

Somerset County

Basking Ridge, *Alward Farmhouse,* 40 Mount Airy Rd.

Union County

Elizabeth, *Fowler, Charles N., House,* 518 Salem Ave.

NORTH CAROLINA

Rockingham County

Wentworth, *Wentworth Methodis Episcopal Church and Cemetery,* NC 65 W of SR 2124

Wayne County

Mount Olive, *Perry-Cherry House,* 308 W. Main St.

TENNESSEE

Bradley County

Cleveland, *First Presbyterian Church,* 433 Ocoee St. NW

Carter County

Roan Mountain, *Wilder, John T., House,* 202 Main St.

Dickson County

Dickson, *First National Bank of Dickson,* 106 N. Main St.

Grundy County

Monteagle, *Wrenn's Nest,* Eagle Cliff Rd.

Humphreys County

Waverly, *Nolan, James N., House,* Highway 13 N

Maury County

Columbia, *Columbia West End Historic District,* Roughly along W. Seventh St. between Frierson St. and the Seaboard System Railroad
Columbia Vicinity, *Elm Springs,* Mooresville Pike

Polk County

Reliance, *Reliance Historic District,* Roughly bounded by New Reliance and Power House Rds., TN 30, and Hiwassee River

Shelby County

Memphis, *Anderson-Coward House,* 919 Coward Pl.

Williamson County

Brentwood Vicinity, *Oak Hall,* 1704 Wilson Pike

VIRGINIA

Pulaski County

Pulaski, *Pulaski Historic Commercial District,* Roughly bounded by Third St., Madison Ave., Norfolk & Western Railroad Tracks, and Randolph Ave.

[FR Doc. 86-3961 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-70-M

Management Plans; Upper Delaware Scenic and Recreational River

AGENCY: National Park Service, Interior.

ACTION: Notice of Public Hearings and Opportunity to Comment on Draft River Management Plan, Incorporating the Revised Guidelines for Land and Water Use Controls and the Land Protection Plan.

SUMMARY: This notice sets forth the schedule of public hearings and opportunity for written comment on the draft River Management Plan and on the revised Guidelines for Land and Water Use Controls. Public hearings are required pursuant to the Upper Delaware Segment Special Provisions (section 704 (b) to (j) of Pub. L. 95-625). The draft River Management Plan also incorporates a land protection plan for the area, in conformance with National Park Service rules (48 FR 21121, May 11, 1983).

DATES AND ADDRESSES:

March 5, 1986, 7:30 pm, Damascus School, Damascus, Pennsylvania
March 6, 1986, 7:30 pm, Delaware Valley Central School, Route 97, Callicoon, New York
March 7, 1986, 7:30 pm, Eldred School, Eldred, New York
March 8, 1986, 1:00 pm, Shohola Firehouse, Shohola, Pennsylvania

Written comments should be submitted to either James W. Coleman, Jr., Regional Director, National Park Service, 143 South Third Street,

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Philadelphia, Pennsylvania 19106 (215/597–7013) or Craig Stewart, Chairman, Conference of Upper Delaware Townships, P.O. Box 41, Fosterdale, New York 12735 (914/932-8707) and must be received by April 30, 1986.

FOR FURTHER INFORMATION CONTACT: J. Glenn Eugster, Chief, Park and Resource Planning, National Park Service, Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, Pennsylvania 19106 (215/597–7386).

SUPPLEMENTARY INFORMATION: The draft River Management Plan and the revised Guidelines for Land and Water Use Controls have been prepared pursuant to the National Wild and Scenic Rivers Act of 1968 (Pub L. 90–542, as amended) and the 1978 special provisions for management of the Upper Delaware defined in section 704 of Pub. L. 95–625. The draft plan and the revised Guidelines were prepared by the Conference of Upper Delaware Townships and the National Park Service, with the advice and participation of the Commonwealth of Pennsylvania, the State of New York, the Delaware River Basin Commission, the Upper Delaware Citizens' Advisory Council, and many other interested parties. Copies of the draft plan and the revised Guidelines are available on request.

The draft River Management Plan contains detailed maps showing the boundaries of the Upper Delaware Scenic and Recreational River, a program for the management of existing and future land and water uses, an assessment of the impacts of the plan on the revenues and cost of local government, and a program providing for coordinated implementation and administration of the plan. The draft document also includes proposed revisions to the existing Land and Water Use Guidelines for the Upper Delaware (published in 46 FR 45433, September 11, 1981). Additionally, the draft plan incorporates, through its "land management program" a land protection plan for the area, as required by National Park Service rules (48 FR 21121, May 11, 1983).

A draft Enviromental Impact Statement (EIS) is also being prepared by the National Park Service for this draft plan. The EIS will describe in detail the environment of the Upper Delaware and will identify environmental impacts of the proposed plan and alternatives. Comment opportunity will also be provided on the draft EIS when it is released for review. The final River Management Plan and final EIS will be issued simultaneously.

The draft plan will be revised based upon comments received during public review. Upon completion of the plan and EIS both will then be submitted to the Secretary of the Interior for consideration and decision, following which the plan will be transmitted to the Governors of New York and Pennsylvania, and to the House Interior and Insular Affairs Committee, and the Senate Committee on Energy and Natural Resources of the Congress. The plan will become effective ninety days after its transmittal to the Congress.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86-3984 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-70-M

Illinois & Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois & Michigan Canal National Heritage Corridor Commission will be held March 10, 1986, at 10 a.m. The meeting will be held at the John C. Kluczynski Building, Room 220, 230 South Dearborn Street, Chicago Illinois 60603.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois & Michigan Canal National Heritage Corridor Commission Amendments Act of 1984, 98 Stat. 1469, 16 U.S.C. 450jj-6, to implement and support the conceptual plan.

Matters to be discussed at the March 10 meeting will include the discussion of the Graphic Solutions contract to develop signs, logos, and interpretive displays; the hiring of a Director; and the discussion of official I&M Canal boundaries.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: February 12, 1986.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 86-3982 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-70-M

Jefferson National Expansion Memorial Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Jefferson National Expansion Memorial Commission will be held March 24, 1986, at 9:30 a.m. The meeting will be held at the Old Courthouse, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis, Missouri 63102.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Jefferson National Expansion Memorial Amendments Act of 1984, 98 Stat. 1469, 16 U.S.C. 450jj–6, to implement and support the conceptual plan.

Matters to be discussed at the March 24 meeting will include the selection of a firm or agency that will conduct the development and management plan for the East St. Louis expansion site, the establishment of site boundaries, the discussion of the architectural/design competition for the site, and the update on efforts to extend the time for planning and to modify the charter of the commission.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: February 12, 1986.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 86-3983 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-16,452]

Bara, Inc., Newark, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 1985 in response to a worker petition received on June 19, 1985 which was filed on behalf of workers at Bara, Incorporated, Newark, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 13th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-4049 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-203-C]

Big Hill Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Hill Coal Company, H.C. 61, Box 1310, Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine (I.D. No. 1511612) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The mining height ranges from 38" to 54" with rolls and dips which cause both visibility and safety problems.
3. For the reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the petition are available for inspection at that address.

Dated: February 13, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4043 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Dokect No. M-81-252-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896, has filed an amendment to a petition for modification. On December 9, 1981, Freeman United Coal Mining Company submitted a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment maintenance) to its Orient No. 4 Mine (I.D. No. 11–00628) located in Williamson County, Illinois, its Crown No. 2 Mine (I.D. No. 11–02236) located in Macoupin County, Illinois, its Crown No. 3 Mine (I.D. No. 11–02632) located in Montgomery County, Illinois, and its Orient No. 6 Mine (I.D. No. 11–00599) located in Jefferson County, Illinois. On February 5, 1982, MSHA published notice of the petition in the **Federal Register** (47 FR 5493), allowing interested parties 30 days to submit comments. On August 13, 1982, MSHA granted the petition with conditions. On February 4, 1986, the petitioner submitted a request to amend the original petition for modification to extend the proposed alternate method of compliance.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to lock the battery plug to the receptacle on mobile battery powered machines.
2. On August 13, 1982, MSHA granted the petition allowing the petitioner to use the following fasteners in lieu of the locked padlock: (a) Threaded bolt and nut or wing nut, (b) Safety snap ring, (c) Metal pin, and (d) Hair pin device. The petitioner wants to extend the provisions to include the "OBOE Plug Box Option".
3. Petitioner states that the "OBOE Plug Box Option" has been designed so that when the battery plugs have been secured, and when the plug door is subsequently closed, the threaded rings securing the battery plugs cannot become loose.
4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: February 14, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4044 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-200-C]

Mathies Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mathies Coal Company, One Riverfront Center, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (water sprinkler systems; arrangement of sprinklers) to its Mathies Mine (I.D. No. 36–00963) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that at least one sprinkler be installed above each belt drive, belt takeup, electrical control, and gear-reducing unit, and individual sprinklers be installed at intervals of no more than 8 feet along all conveyor branch lines.
2. Petitioner states that providing a sprinkler over the electrical belt starter box would result in a diminution of safety to the miners affected in that it would increase the likelihood of electrical shock.
3. In support of this petition, petitioner states that:
   - a. The belt starter controls are fully enclosed in fireproof steel housings that are located in well rockdusted areas more than four feet from any combustible materials.
   - b. All belt starter boxes that transform power are properly ventilated with the intake air coursed directly into the return aircourse.
   - c. Every belt starter box is provided with at least one ABC type dry chemical

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fire extinguisher and at least 240 pounds of dry rockdust.

d. Every belt starter box is provided with under current, over current and short circuit protection to insure the integrity of the electrical components.

e. Each belt starter box is examined, tested and properly maintained, with a record of each examination kept in a book provided for that purpose.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the petition are available for inspection at that address.

Dated: February 13, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4045 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-29-M]

Pea Ridge Iron Ore Co.; Petition for Modification of Application of Mandatory Safety Standard

Pea Ridge Iron Ore Company, Route 4, Sullivan, Missouri 63080 has filed a petition to modify the application of 30 CFR 57.4760 (shaft mines) to its Pea Ridge Mine (I.D. No. 23-00454) located in Washington County, Missouri. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shaft mines by provided with control doors to control the spread of fire, smoke, and toxic gases underground in the event of a fire.

2. The petitioner states that if the control doors are closed at the No. 2 shaft on the 1375 and 1675 levels it would be endangering the lives of employees in the rest of the mine by cutting off the mine exhaust air system.

3. As an alternate method, petitioner proposes to have a temporary room adjacent to the No. 2 shaft on the 1375 and 1675 levels. The room would provide employees a safe environment until the rescue personnel's arrival. The room would be supplied with compressed air which would provide an air supply and pressurize the room, thus eliminating inflow of smoke and gas.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the petition are available for inspection at that address.

Dated: February 13, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4046 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-197-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, R.R. #5, P.O. Box 550, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Camp No. 2 Mine (I.D. No. 15-02705) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. The conditions in the return air courses and seals have deteriorated, resulting in adverse roof conditions which have made these return air courses hazardous to travel and examine. Rehabilitation of the affected area would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to monitor the seals and air courses on a daily basis from a safe location between the seals and the exhaust shaft.

4. There is adequate ventilation passing by these seals to prevent any gas build up. There is minimal liberation from these seals and any gasses from these seals would go directly to the exhaust airshaft.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the petition are available for inspection at that address.

Dated: February 13, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4047 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-30-M]

Western Nuclear, Inc., Petition for Modification of Application of Mandatory Safety Standard

Western Nuclear, Inc., P.O. Box 630, Jeffrey City, Wyoming 82310 has filed a petition to modify the application of 30 CFR 57.19023 (examinations) to its Sheep Mountain Operations Mine (I.D. No. 48-00969) located in Fremont County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least once every fourteen calendar days, each wire rope in service be visually examined along its entire active length for visible structural damage, corrosion, and improper lubrication or dressing.

2. As an alternated method, petitioner proposes a visual inspection on a bi-monthly basis in lieu of every fourteen calendar days.

3. Petitioner operates four mine shafts. The only activity at the mines consists of pumping water from the four mine shafts and related service and maintenance. The primary use of the hoist is for these activities since there is no ore production or transportation.

4. The mines operate one shift per day, four days a week. By inspecting the hoist ropes every other month on this schedule, the frequency by operating shifts will be comparable to a fourteen day frequency for a shaft which

operates three shifts per day, five or six days per week.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 27, 1986. Copies of the petition are available for inspection at that address.

Dated: February 13, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-4048 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-19-M

Wage and Hour Division

[Administrative Order No. 658]

Special Industry Committee for All Industry in American Samoa; Appointment, Convention, Hearing

1. Pursuant to section 5 and 6(a(3) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949-53 Comp., p. 1004) and 29 CFR Part 511, I hereby appoint special Industry Committee No. 17 for American Samoa.

2. Pursuant to section 6(a)(3) and section 8 of the Act, as amended (29 U.S.C. 206(a)(3), 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

(a) Convene the above-appointed industry committee.

(b) Refer to the industry committee the question of the minimum rate or rates for all industry in American Samoa to be paid under section 6(a)(3) of the Act, as amended.

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industry, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

The committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on April 28, 1986, in the Senate Chambers, Fono Building, Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by sections 6(a) and 6(b) of the Act, as amended by the Fair Labor Standards Amendments of 1977, currently $3.35 an hour.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR 511.10, which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within industry, in making such classifications and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (a) Competitive conditions as affected by transportation, living, and production costs; (b) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (c) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. The Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information which has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, as soon as it is completed. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of Title 29, Code of Federal Regulations, Part 511. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each prehearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than April 18, 1986. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if post-marked within the time provided.

Signed at Washington, D.C. this 14th day of February 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-4050 Filed 2-24-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-13]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space.

DATE: Date and time: February 28-March 1, 1986, 8:30 a.m. to 5:30 p.m. each day.

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ADDRESS: 490 L'Enfant Plaza East SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Hartman, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW, Washington, DC 20024 (202/453/8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members.

The meeting must be held at this time in order to meet the published deadline of the final report. This is the earliest opportunity to assemble the Commissioners subsequent to the distribution of the final draft report for review. The meeting will be closed to the public in order to control the premature disclosure of information in the case of the Commission report that would be likely to significantly frustrate the implementation of the proposed Commission action pursuant to the exemption contained in 5 U.S.C. 552b(c)(9)(B).

Type of Meeting: Closed.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
February 10, 1986.

[FR Doc. 86-3978 Filed 2-24-86; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published January 21, 1986 (51 FR 2778). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk(*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the March 1986 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Class 9 Accidents (Severe Accident Phenomena), February 24, 1986, Washington, DC. The Subcommittee will review the NRR implementation plan for the Severe Accident Policy.

Advanced Reactors, February 25, 1986, Washington, DC. The Subcommittee will review the advanced liquid metal reactor (LMR) design concept submitted by DOE and its contractors.

B&W Water Reactors, February 25, 1986—POSTPONED to early April.

Emergency Core Cooling Systems, February 26, 1986—CANCELLED.

Metal Components, February 27 and 28, 1986, Washington, DC. The Subcommittee will review, but not necessarily be limited to, the following items: (1) NUREG-0313, Revision 2, entitled, "Technical Report on Material Selection and Processing Guidelines for BWR Coolant Pressure Boundary Piping," and (2) Regulatory Guide XXX entitled, "Guide for License Preparation and NRC Staff Review of Plant Specific Analysis Required by PTS Rule," (if available). The Subcommittee will also review a report of GDC-4 (leak-before-break broad scope rule, which is applicable to all LWR high energy piping systems).

Standard Plant Design, March 12, 1986, Washington, DC. The Subcommittee will continue its discussion of standard plants. Particularly, FAA certification, GE power worthiness, industry perceptions, DOE views, and an update on a policy statement.

Joint Safety Philosophy, Technology, and Criteria (SPTC) and Extreme External Phenomena (EEP), March 12, 1986, Washington, DC. The Subcommittee on SPTC will discuss the status of the EDO's review of the two-year trial use of the 1983 proposed Safety Goal Policy and recommendations for the future use of a safety goal policy. The Subcommittee will also review the NRC Staff's proposed resolution for USI A-17, "Systems Interaction in Nuclear Power Plants." The EEP Subcommittee will discuss the 1986 Ohio earthquake and the implications for the Perry Nuclear Power Plant.

Spent Fuel Storage Facility Design, March 12, 1986, Washington, DC. The Subcommittee will review a proposed revision to 10 CFR 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

Decay Heat Removal Systems, March 18, 1986, Washington, DC. The Subcommittee will continue its review of NRR resolution position for USI A-45, "Shutdown Decay Heat Removal Requirements."

Human Factors, March 19 and 20, 1986, Washington, DC. The Subcommittee will meet to: (1) Examine the potential for automating more of the monitoring and control functions in nuclear power plants to relieve the work burden on plant operators, (2) review 1985 progress on the Human Factors Program Plan, and (3) be briefed on the status of EOP implementation.

Ad Hoc Subcommittee on TVA, March 27, 1986 (tentative), Washington, DC. The Subcommittee will discuss TVA reorganization and related technical and management issues.

Reliability Assurance, April 1, 1986, Washington, DC. The Subcommittee will prepare a report on its investigation into motor-operated valves. An update of Oak Ridge work on MOV as well as a presentation on check valves is expected.

Fort St. Vrain, April 2 and 3, 1986, near Longmont, CO. The Subcommittee will tour the facility, explore technical problems addressed during the recent extended outage, and discuss management changes made as a result of the licensee's independent assessment of management controls.

Long Range Plan for the NRC, April 9, 1986, Washington, DC. The Subcommittee will review the proposed NRC Five Year Plan and prepare to address Committee comments to the Commission.

Reactor Operations, April 9, 1986, Washington, DC. The Subcommittee will review recent significant events.

Waste Management, April 24 and 25, 1986, Washington, DC. The Subcommittee will review various topics in the High-Level and Low-Level Radioactive Waste Programs agreeable to the ACRS, the NMSS Division of Waste Management and the RES Waste

Management Branch. Topics currently identified for review at the April meeting are: Staff Reviews and Generic Technical Positions on Modeling Strategy and Quality Assurance, and the Salvaging of Contaminated Smelted Alloys.

Emergency Core Cooling Systems, April 29 and 30, 1986, Washington, DC. The Subcommittee will: (1) Continue its review of the NRC's proposal to revise 10 CFR 50.46 and Appendix K and (2) continue discussions on defining the thermal hydraulic safety issues of most importance that need to be addressed in the future.

Scram Systems Reliability, May 6, 1986, Washington, DC. The Subcommittee will continue its review of the ATWS Rule implementation effort.

Safety Research Program, May 7, 1986, Washington, DC. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1988 and 1989, and gather information for use by the ACRS in its preparation of the annual report to the Commission on the related matter.

Safety Research Program, June 4, 1986, Washington, DC. The Subcommittee will continue its discussion on the proposed NRC Safety Research Program and Budget for FY 1988 and 1989. It will discuss also a Draft ACRS report to the Commission on this matter.

South Texas Units 1 and 2, Date to be determined (March, Bay City, TX. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Metal Components, Date to be determined (March/April, tentative), Pittsburgh, PA or Charlotte, NC. The Subcommittee will review the status of NDE of cast stainless steel.

B&W Water Reactors, Date to be determined (early April), Washington, DC. The Subcommittee will consider the implications of operating experience on the adequacy of B&W plant designs, including consideration of the severe overcooling event at Rancho Seco on October 2, 1985. The Subcommittee will review the B&W Owner Group's plans to reassess the long-term safety of B&W reactors.

Davis-Besse (Restart), Date to be determined (April), Washington, DC. The Subcommittee will continue its review of the Davis-Besse restart.

Decay Heat Removal Systems, Date to be determined (May/June), Washington, DC. The Subcommittee will reveiw NRR's Action Plan to address concerns with the reliability of certain plants' AFW systems.

Emergency Core Cooling Systems, Date to be determined (May/June), Washington, DC. The Subcommittee will review General Electric's application for use of the SAFER/CORECOOL ECCS Code on BWR nonjet pump plants.

Reliability and Probabilistic Assessment, Date and location to be determined. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

ACRS Full Committee Meeting

March 13-15, 1986: Items are *tentatively* scheduled.

*A. *Quantitative Safety Goals*—Evaluation of 2-year trial use period of proposed NRC quantitative safety goals.

*B. *ACRS Effectiveness*—Discuss proposed ACRS report regarding implementation of the recommendations of the panel to improve ACRS effectiveness as an advisory body to the NRC.

*C. *Revisions to NRC Rules*—Discuss proposed revision of NRC rules and practices related to the integrity of primary system piping.

*D. *Advanced Reactor Designs*—Discuss advanced reactor designs being proposed by the U.S. Department of Energy.

*E. *Perry Nuclear Power Plant Unit 1*—Discuss impact of nearby seismic event on plant operability.

*F. *Meeting with NRC Commissioners (tentative)*—Discuss ACRS comments and recommendations regarding regulatory and safety related matters such as standardized nuclear power plant designs for the future, the NRC safety research program, anticipated ACRS activities, and training facilities for nuclear power plant operators.

*G. *ACRS Subcommittee Activities*—Discuss status of assigned subcommittee activities including proposed revisions of 10 CFR Part 20, Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Facility, nomination of candidates for appointment to the ACRS, emergency core cooling systems, requirements for standard plant designs and safety features for future standardized nuclear power plant designs, and USI A-46, Seismic Qualification of Equipment in Operating Nuclear Power Plants.

*H. *Future Activities*—Discuss anticipated ACRS subcommittee activity and proposed items for consideration by the full Committee.

*I. *Activities of Members*—Discuss non-ACRS activities of ACRS members.

April 10-12, 1986—Agenda to be announced.

May 8-10, 1986—Agenda to be announced.

Dated: February 19, 1986.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 86-4033 Filed 2-24-86; 8:45 am]
BILLING CODE 7590-01-M

OMB Review of Documents Containing Reporting or Recordkeeping Requirements

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Request for Visit or Access Approval.

3. The form number if applicable: NRC-277.

4. How often the collection is required: Occasionally.

5. Who will be required or asked to report: Approximately 22 NRC licensees and 35 contractors.

6. An estimate of the number of responses: 30.

7. An estimate of the total number of hours needed to complete the requirement of request: 5.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The NRC Form 277 affects employees of licensees and contractors who: (1) Hold an NRC access authorization; and (2) need to make a visit to NRC, other contractors/licensees or government agencies involving access to classified information. The completed NRC Form 277 contains a signature certification of the individual's official need-to-know and NRC access authorization. The use of the NRC Form 277 affords some assurance that only properly cleared and authorized individuals, who require access as part of their official duties, will have such access during visits to other facilities and agencies

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585. Dated at

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Bethesda, Maryland this Nineteenth day of February 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-4029 Filed 2-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL, 50-444-OL (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]

Public Service Co. of New Hampshire et al.; (Seabrook Station Units 1 and 2); Extension of Time in Board's Schedule for Offsite Emergency Planning Contentions—New Hampshire Plans Denied and Prehearing Conference Location Established

February 19, 1986.

Before Administrative Judges: Helen F. Hoyt, Chairperson, Emmeth A. Luebke, Jerry Harbour.

This Board's Order of January 17, 1986 established a schedule for filing of new contentions based on the revised State of New Hampshire Plans transmitted to the Board and the parties by the NRC Staff on January 10, 1986. Various objections to the schedule have been filed by both the political representatives of the New Hampshire towns, parties and their counsel [1] in addition to intervenors NECNP and SAPL.[2]

Applicants' Response [3] refuted the various objections and concluded the Board schedule should not be altered. NRC Staff opposes the various objections and requests for schedule modification and urged denial.

The Board agrees with the NRC Staff and the Applicant. The Board had set a previous schedule for this proceeding on May 23, 1983, and there was no objection to similar time frames from these same parties at that time. As it is readily apparent to all, the Board's Order issued on January 17, 1986 provided nearly five weeks for interested parties to revise or file contentions based on these New Hampshire State Plans. Absent *any showing* that additional time is needed as opposed to desirable, the Board finds that the time provided is sufficient for the parties to file contentions.

The Board advises that the Prehearing Conference scheduled for 9:00 a.m. (EST), March 25-28, 1986 will be held at Howard Johnson's Lodge, Interstate Traffic Circle, Salons A and B, Portsmouth, NH 03801.

It is so ordered.

Dated at Bethesda, Maryland this 19th day of February, 1986.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson.

[FR Doc. 86-4032 Filed 2-24-86; 8:45 am]

BILLING CODE 7590-01-M

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[1] For Hampton Falls, New Hampshire—State Representative Pevear and Robert Backus. On January 24, 1986, Attorney Backus had filed with this Board a notice of appearance on behalf of the Town of Hampton Falls. The Board has considered both pleadings in this case. The Board will, however, in future pleadings accept only one pleading filed by a party of record.

[2] In *NRC Staff's Response to Objections filed by Towns of Rye, Hampton and Hampton Falls, and SALP and NECNP* filed February 11, 1986, the Staff listed these pleading at p. 2 in nn. 3-7. We will not repeat them here.

[3] Filed February 5, 1986, *Applicants' Response to (1) Objection to Motion for Establishment of a Schedule filed by Town of Rye; (2) Hampton Falls Joinder and Objection; (3) Request filed on behalf of Hampton and Hampton Falls by 4 New Hampshire Representatives; and (4) New England Coalition on Nuclear Pollution's Objection to Board Order of January 17, 1986 and Motion for Reconsideration.*

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Section 15 Reporting System Advisory Committee; Meeting

AGENCY: Urban Mass Transportation, DOT.

ACTION: Notice of Section 15 Reporting System Advisory Committee Meeting.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) announces a meeting of the Section 15 Reporting System Advisory Committee. The Committee provides advice concerning the quality and usefulness of the Section 15 Reporting System.

DATE: March 13-14, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Office of Information Services, Room 6419, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-9157.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611), requires the development of a national reporting system for public mass transportation financial and operating data. On August 27, 1981, UMTA issued a Notice in the **Federal Register** (46 FR 43352) announcing the establishment of the Section 15 Reporting System Advisory Committee. The Committee reviews the quality and usefulness of the Section 15 Reporting System to assure that it provides meaningful information for the analysis of the transit industry.

All Committee meetings are open to the public. With the Chairman's approval, members of the public may speak at meetings in accordance with procedures established by the Committee. A written statement may be filed with the Committee at any time.

Meeting Information:

Dates: Thursday, March 13, 1986; Friday, March 14, 1986
Time: 8:30 a.m.—5:00 p.m.
Place: James L. Knights International Center, 400 SE. Second Avenue, Miami, Florida 33131.

Issued on: February 19, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 86-4064 Filed 2-24-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-51]

Guidelines for Release of Seized and Forfeited Property to State and Local Law Enforcement Agencies

AGENCY: Customs Service, the Treasury.

ACTION: Notice of guidelines for disposition of seized and forfeited property.

SUMMARY: This document sets forth the Customs policy regarding the disposition of seized and foreited property. This action is necessary to implement those provisions of the Comprehensive Crime Control Act of 1984 and the Trade and Tariff Act of 1984 concerning the transfer of seized and forfeited property to state and local law enforcement agencies that assisted Customs in the seizure or forfeiture. This action is consistent with Customs efforts to enhance and promote cooperation with state and local law enforcement agencies.

EFFECTIVE DATE: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Assistant Chief Counsel (Enforcement and Operations), Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 ((202) 566-2482.

SUPPLEMENTARY INFORMATION:

Background

I. Statement of Policy

Customs is authorized by various

laws enforced or administered by the Customs Service to seize property for violations of the Customs, navigation and related laws. Pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), any person with an interest in the seized property may petition for relief and the Secretary of the Treasury may mitigate or remit any fine, penalty or forfeiture incurred with respect to the violation. Property which is not released in response to a petition under 19 U.S.C. 1618 or other provisions of law may be disposed of in accordance with the provisions of section 616, Tariff Act of 1930 (19 U.S.C. 1616, 1616a), which was added to the United States Code by the Comprehensive Crime Control Act of 1984 (Pub. L. 98-473) and the Trade and Tariff Act of 1984 (Pub. L. 98-573). The guidelines contained in this document implement the asset forfeiture provisions of section 616.

Customs statutory authority regarding releasing seized and forfeited property to state and local agencies is nearly identical to that of the Department of Justice. Customs participated in the drafting of the Department of Justice guidelines which were published in the **Federal Register** on June 7, 1985 (50 FR 24052), and the following guidelines and procedures correspond to the Justice guidelines and procedures as closely as possible.

Section 616 directs the Secretary of the Treasury to "ensure the equitable transfer * * * of any forfeited property to the appropriate state or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property."

This authority is consistent with Customs purpose of promoting cooperative law enforcement efforts. Customs intends to manage it asset forfeiture program in a manner designed to enhance this federal, state and local cooperation.

Customs is authorized to dispose of forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any federal, state of local agency pursuant to section 616 or (3) placing the forfeited cash or proceeds of sale of forfeited property in a special Customs forfeiture fund. A decision of the appropriate Customs offical regarding placing the forfeited property into official use or transferring the property to another agency is not subject to judicial review.

Local Customs officials will inform state and local law enforcement agencies as to the procedures for requesting an equitable transfer of forfeited property, help facilitate the application for transfer of such property, and see that the spirit and letter of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 and the Trade and Tariff Act of 1984 are implemented.

II. Definitions

A. *"Commissioner"* means the Commissioner of Customs or his designee.

B. *"Local Customs official"* means the special agent in charge if the Customs officers participating in the seizure were assigned to the Office of Enforcement, or the district director if the Customs officers participating in the seizure were assigned to the Office of Inspection and Control. In rare cases, if the participating Customs officers are from offices which do not report to the special agent in charge or the district director, the term refers to the equivalent field office (if there is one) or the regional or Headquarters office which supervises the participating Customs officers. In case of doubt, requests for equitable distribution may be submitted by other law enforcement agencies directly to Customs Headquarters, but no action will be taken until the local Customs official has reviewed the request.

C. *"Regional Customs official"* means the Regional Commissioner of Customs or the individual designated by the Regional Commissioner (usually the Assistant Regional Commissioner (Enforcement)) to review requests for equitable distribution of seized property.

D. *"Appropriate Headquarters official"* means the Assistant Commissioner of Customs who supervises the Customs officers participating in the seizure. If the seizure involved Customs officers in different functional areas, the Assistant Commissioners for the concerned functional areas must jointly approve any transfer.

E. *"Property or assets"* means tangible property and cash.

F. *"Cash"* means currency, negotiable instruments and securities.

G. *"State and local agencies"* means law enforcement agencies of a state, the District of Columbia, Puerto Rico or any territory or possession of the U.S. or of any local government within the listed governments.

H. *"Appraised value"* means fair market value.

III. Transfer of Seized and Forfeited Property to State and Local Law Enforcement Agencies

A. Customs Service Seizures

1. Commissioner's Authority for Equitable Transfer of Seized Property:

a. Section 616, Tariff Act of 1930, as amended, authorizes the Commissioner to transfer property seized by Customs officers to any other Federal agency, or to state or local law enforcement agencies that directly participated in the act which led to the seizure and forfeiture.

b. Tangible property not retained for official use by the federal seizing agency may be equitably transferred.

c. Where a participating law enforcement agency petitions for a share in the forefeited property, the Commissioner shall determine an equitable transfer of the property that generally reflects the relative contribution of the participating agencies.

2. Procedure for Determining Equitable Transfer:

a. Any state or local law enforcement agency that participates in the acts leading to a Customs seizure for forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Commissioner.

3. Requests from Participating Law Enforcement Agencies:

a. Within 30 days following the seizure for forfeiture, the state or local agency should submit a written request for an equitable transfer of the property subject to forfeiture to the local Customs official responsible for the Customs law enforcement effort resulting in the seizure for forfeiture.

b. If more than one local Customs office was involved in the law enforcement effort resulting in the seizure, the request should be forwarded by the local office receiving the request to the appropriate regional Customs official. If more than one region was involved, the request should be forwarded by the local office receiving the request through his regional office to the appropriate Customs Headquarters official.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower

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expended by the state or local agency in pursuing the case;

(3) A statement of the intended use for the property;

(4) A designation of the proper fiscal officer to whom cash or check disbursements can be made;

(5) A designation of the proper official to whom transfer documents should be delivered by the U.S.;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement indicating that the transfer is not prohibited under the applicable state or local law;

(8) In instances of a joint application by several state or local agencies, the relative share of each state or local agency;

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer; and

(10) The extent to which transferred funds will be credited directly to the budget of the state or local agency involved, resulting in an increase of law enforcement resources for that state or local agency.

d. The requesting agency must certify that the information contained in items 3.c. (4) and (7) above is true and correct.

e. An information copy of the request for an equitable transfer will be forwarded by the local Customs official to the Fines, Penalties and Forfeitures Officer in the district office responsible for processing for forfeiture and a copy to the Seized Property Division in the Office of the Comptroller at Headquarters.

f. If a request for the property has been made, no report of seizure should be made by Customs to the General Services Administration.

4. Procedure for Processing Requests for Equitable Transfer:

a. In all cases, the local Customs official receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying law enforcement action resulting in the seizure for forfeiture. Where more than one local or regional office participated, the request should be expeditiously sent through the other Customs participants for their approval or comment.

b. The equitable share for a participating state or local agency should generally reflect the contribution of the agency participating directly in any of the acts which led to the seizure for forfeiture of the property including, but not limited to, the following factors:

(1) Which agency initiated the case;

(2) Which agency identified the asset;

(3) The amount of money and manpower expended by the state or local agency in pursuing the case;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which would have forfeited the asset(s) on its own but joined forces with the U.S. to make a more effective investigation.

c. In cases in which a state or local agency has filed a request for an equitable share of that property, the Commissioner may still decide to place property forfeited administratively or judicially into official use or transfer the property to any other federal agency.

(1) In making this decision, the following factors must be considered:

(a) The relative needs of the requesting law enforcement agency, Customs, and any other federal agency for the particular asset;

(b) The uniqueness of the asset and the likelihood of securing such an asset through other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all other factors pertinent to the determination of equitable distribution as set forth in item 4.b. above;

(d) The likelihood that the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future;

(e) The impact that a decision to place the property into official use might have on federal, state or local relations; and

(f) Any extraordinary expenses associated with the seizure, including any informants awards which may be payable.

5. Decision-Making Authority for Determining Equitable Transfer.

a. Except as indicated in item 5.c. below, the equitable distribution of a forfeited asset with an appraised value of $250,000 or less will be determined by the appropriate Headquarters official.

(1) The local Customs official receiving a request shall forward his report and recommendation through the appropriate regional official to the appropriate Headquarters official.

(2) In making this decision, consideration will be given to the report and recommendation forwarded by the local Customs official, and a written ruling on the request will be issued by the appropriate Headquarters official through the appropriate regional official and the local Customs official to the requesting party.

(3) A copy of the written ruling will be forwarded to the district director having custody of the seized or forfeited asset and the Seized Property Division in the Office of the Comptroller at Headquarters.

b. In the case of property valued at greater than $250,000, the evaluation and recommendation will be forwarded to the appropriate Headquarters official who will forward a final recommendation to the Commissioner. The Commissioner will determine the equitable distribution of those assets.

(1) In making this decision, the Commissioner will consider the reports and recommendations forwarded by the appropriate Headquarters official and, in the case of assets with an appraised value of $750,000 or greater, will consult with the Assistant Secretary of the Treasury (Enforcement and Operations). A written ruling on the request will be prepared by the Assistant Commissioner (Enforcement) and, after signature by the Commissioner, will be issued through the appropriate regional official and sent to the local Customs official for delivery to the requesting party.

(2) A copy of the written ruling will be forwarded to the district director having custody of the seized or forfeited asset and the Seized Property Division in the Office of the Comptroller at Headquarters.

c. The appropriate regional Customs official may make an equitable distribution of a forfeited conveyance with an appraised value of $25,000 or less if the participating Customs officers were assigned to his/her region.

(1) In making this decision, the regional Customs official will consider the reports and recommendations forwarded by the local Customs official and issue a decision through that official to the requesting party.

(2) A copy of the decision document will be forwarded to the district director having custody of the seized or forfeited asset and to the Seized Property Division in the Office of the Comptroller at Headquarters.

6. Proceeds Placed in the Customs Forfeiture Fund:

a. If the federal forfeiture action is not deferred, and the property is not placed into official use or transferred to a state or local agency, it will be sold and the proceeds of sale, after deducting expenses, etc., will be placed in the Customs Forfeiture Fund.

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b. Forfeited cash will be placed in a suspense account pending deposit in the Customs Forfeiture Fund.

7. Disposition of Forfeited Property:

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash. In the case of seized and forfeited cash, the equitable share of any state or local agency shall be determined after applying the criteria in items 4.b. and 4.c. above.

b. Any property that cannot be used for official Customs, federal, state or local purposes must be destroyed or sold or otherwise disposed of in accordance with law.

c. Where tangible property is transferred to qualifying state or local agencies, the Customs Forfeiture Fund and appropriated monies will not be used to pay liens or mortgages on the transferred property, to equip the property for law enforcement purposes, or to pay salaries.

d. The recipient state or local agency must pay the valid liens and mortgages on the forfeited tangible property prior to the transfer of such property.

e. The recipient state or local agency may be required to pay expenses pertaining directly to the seizure prior to the transfer of tangible property.

f. Prior to any interlocutory or immediate sale of property pending forfeiture, the district director having custody of the property must consult with any other involved local Customs official and the U.S. Attorney, Criminal Division section chief, or the Director of the Asset Forfeiture Office, Department of Justice, to determine the evidentiary status of the property and the status of any state or local law enforcement agency requests for equitable sharing.

g. All Customs officers will promptly notify the district director having custody of seized property of any facts affecting such seized property. Relevant facts would include bills, invoices, orders of mitigation and remission, orders of designation for official use, and appraisals. Based upon these and other factors, the district director's office should ensure the proper disposition of the property.

B. *Seizures involving the participation of other federal agencies.*

1. Where a state or local agency requests equitable distribution of property which was seized through the participation of a federal agency other than Customs, the local Customs official shall send a copy of the request to the other agency for its review and recommendation.

2. Where a state or local agency requests equitable distribution of property which was seized as part of an OCDETF (Organized Crime/Drug Enforcement Task Force) or joint Customs/DOJ (Department of Justice) case, the request should be reviewed by the U.S. Attorney (or DOJ attorney-in-charge) and submitted to Customs Headquarters with their recommendations. If Customs Headquarters disagrees with the U.S. Attorney (or DOJ attorney-in-charge) recommendations, the matter shall be referred to the Assistant Secretary of the Treasury (Enforcement and Operations). If necessary, the Assistant Secretary and the appropriate Justice Department official shall review the recommendations and make the decision.

3. Where the only participating federal agency is an agency other than Customs (the Coast Guard, for example), and Customs is merely the custodian, the other agency shall review the request and make the recommendation to Customs Headquarters.

Inapplicability of Public Notice and Delayed Effective Date Provisions

This document provides guidelines concerning internal Customs procedures and is designed to promote efficient use of personnel, facilities, and resources and to promote cooperative law enforcement efforts. It has no effect on the general public. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), notice and solicitation of comments is unnecessary and good cause is found for dispensing with a delayed effective date for adoption of the new guidelines.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

John P. Simpson,
Acting Commissioner of Customs.

Approved: January 14, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-4027 Filed 2-24-86; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 86-53]

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Reclassification of Operatic and Theatrical Costumes

AGENCY: Customs Service, Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of an interested party to contest Customs decision denying its petition requesting reclassification of certain imported operatic and theatrical costumes rented to U.S. opera and theater companies. The petitioner has advised Customs of its intention to file an action in the U.S. Court of International Trade.

DATE: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1984, a notice was published in the Federal Register (49 FR 46162) indicating that Customs had received a petition from a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that imported operatic and theatrical costumes rented to U.S. opera and theater companies be classified as dutiable under the appropriate provisions of Schedule 3, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), for wearing apparel.

The costumes are imported for the use of certain opera and theater companies in the U.S. They are rented by the U.S. companies for the duration of a particular production, and then returned to the foreign exporter. They are currently classifiable under the provision for "regalia" in item 851.30, TSUS, and entitled to entry free of duty. This provision exempts from duty any articles imported for the use of any public library, any other public institution, or any nonprofit institution established for educational, scientific, literary, or philosophical purposes, or for the encouragement of the fine arts. It is Customs opinion that opera and theater companies are such nonprofit institutions established to encourage the fine arts.

In support of its position that imported operatic and theatrical costumes are not classifiable as "regalia" under item 851.30, TSUS, the petitioner made the argument that past Customs rulings do not support the use of item 851.30, TSUS, for the duty-free importation of the costumes. The petitioner stated that these rulings apply item 851.30, TSUS, specifically to situations in which: (1) The costumes are the property of the non-profit institution using them; (2) only a nominal admission admission fee to defray expenses will be charged; or

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(3) the performers using the costumers are not reimbursed for their services. The costumes, it was claimed, cannot therefore be used in any commercial activity. The petitioner contended that the costumes are the property of the foreign rental companies, not the opera and theater companies using them, that more than nominal fees to defray expenses are charged for opera and theater performances, that the opera and theater performers are often handsomely reimbursed for their services, and that the costumes are used in a commercial activity. Petitioner therefore concluded that the importation of the costumes under the duty-free provisions of item 851.30, TSUS, was a misapplication of that provision.

Six comments were received in response to the November 23, 1984, notice. Three of the commenters supported the current classification of opera and theater costumes as regalia. The arguments of the other commenters, including the petitioner's, challenging Customs current classification, are as follows:

(1) Operatic and theatrical costumes do not meet the plain and ordinary definition of "regalia";

(2) The term "regalia" is defined by Headnote 2, Part 4, Schedule 8, TSUS, as "only such insignia of rank or office, emblems or other articles as may be worn upon the person or borne in the hand during public exercises of the institution . . ." and commercial performances of operas and plays, albeit by a nonprofit organization, for which substantial admission charges are made, cannot be equated with "public exercises";

(3) The legislative history of item 851.30, TSUS, indicates that regalia is to symbolize a given organization as an institution and costumes rented out to different organizations do not symbolize any particular organization;

(4) Most imported costumes are used in profit-making theatrical productions for which performers receive enormous salaries and for which ticket prices are very expensive; and

(5) The requirement under item 851.30, TSUS, that regalia may be imported as the property of a nonprofit institution is not met where the costumes re rented.

Decision on Petition and Notice of Petitioner's Desire To Contest

After careful analysis of the comments received in response to the notice and further review of the matter, by letter dated November 6, 1985 (CLA-2 CO:R:CV:V, 553575 HS), the petitioner was informed through its counsel that Customs is of the opinion that the current classification is correct, and that the petition was therefore denied.

Item 851.30, TSUS, provides for the duty-free treatment of regalia imported for the use of "any library, any other public institution, or any nonprofit institution established for educational, scientific, literary or philosophical purposes, or for the encouragement of the fine arts. In reaching its decision affirming the classification of the costumes as regalia, Customs found the petitioner's and the other commenters' arguments challenging the current classification to be unpersuasive. First, it was noted that the definition of regalia in Headnote 2, Part 4, Schedule 8, TSUS, rather than the plain and ordinary definition, governs the use of the term in term 851.30, TSUS. That headnote specifically includes articles other than insignia or emblems and, according to the Tariff Classification Study of 1960, "almost any article which is worn upon the person or borne in hand during public exercises of the institution is regalia if it is not an article of furniture or fixtures, regular wearing apparel, or personal property of individuals." While some performances may require clothing that is indistinguishable from ordinary wearing apparel, it is clear that these types of costumes should not be treated as regalia as the headnote specifically excludes regular wearing apparel.

Secondly, it is clear to us that a nonprofit opera or theatrical company is a nonprofit institution for the encouragement of the fine arts and that performances of such organizations are "public exercises" of such institutions. If performances of such organizations are not "public exercises" of such organizations, we are at a loss at determining what would be considered a public exercise of these organizations. The regalia provisions would have no meaning for nonprofit theatrical and opera companies if their performances were not considered public exercises.

Thirdly, the cost of tickets for a performance and payments made by opera companies to outstanding performers who further the nonprofit objectives of the institution are irrelevant to the question of whether an institution is engaged in commercial activity as long as the institution is nonprofit. We do emphasize, however, that for an opera or theatrical company to take advantage of the regalia provision, it msust be shown that the institution is registered as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

Fourthly, regarding the argument that the legislative history of item 851.30, TSUS, indicates that regalia is to symbolize a given organization as an institution, we could find no language in the legislative history that supports this assertion.

Finally, regarding the comment that regalia that is rented is not the property of the nonprofit institution, the requirement set forth in the TSUS entitling regalia to duty-free treatment is that the articles be imported for the use of the nonprofit institution. It is our view that rental use is sufficient and purchase is not necessary as long as the importer acquires the proprietary economic interest in the articles.

In response to Customs decision to deny the petition, on December 5, 1985, the petitioner filed notice of its desire to contest the decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of the petitioner's letter of notice off its desire to contest the November 6, 1985, decision. We remain of the opinion that the decision is correct. That decision will stand in the absence of a contrary judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

Approved February 3, 1986.

William von Raab,
Commissioner of Customs.

[FR Doc. 86-4028 Filed 2-24-86; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 37
Tuesday, February 25, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, March 3, 1986

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting

Dated: February 21, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4154 Filed 2-21-86; 3:56 pm]

BILLING CODE 6210-01-M

2

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, March 5, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of February, 1986.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

Date of notice: February 19, 1986.

Rowland K. Quinn, Jr.,
Executive Director, National Mediation Board.

[FR Doc. 86-4118 Filed 2-21-86; 1:10 pm]

BILLING CODE 7550-01-M

3

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *Pennsylvania Steel Foundry & Machine Co.*, OSHRC Docket No. 78-0638.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

Dated: February 20, 1986.

Earl R. Ohman, Jr.,
General Counsel.

[FR Doc. 86-4095 Filed 2-21-86; 10:33 am]

BILLING CODE 7600-01-M

4

SECURITIES AND EXCHANGE COMMISSION

(Agency Meetings)

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 24, 1986.

Closed meetings will be held on Tuesday, February 25, 1986, at 2:30 p.m. and on Thursday, February 27, 1986, following the 2:30 p.m. open meeting.

Open meetings will be held on Wednesday, February 26, 1986, at 2:00 p.m. and on Thursday, February 27, 1986, at 10:00 a.m. and 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 25, 1986, at 2:30 p.m., will be:

Formal orders of investigation.
To amend formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, February 26, 1986, at 2:00 p.m., will be:

The Commission will meet with representatives of self-regulatory organizations and state securities commissions to discuss issues of mutual interest and concern, including, but not limited to, coordination of enforcement and surveillance programs. For further information, please contact Alan D. Dye at (202) 272-2014.

The subject matter of the open meeting scheduled for Thursday, February 27, 1986, at 10:00 a.m., will be:

1. Consideration of whether to grant an application filed by David Lerner Associates, Inc. for an order exempting it from the provisions of Section 9(a) of the Investment Company Act. For further information, contact Gary Sundick at (202) 272-2344.
2. Consideration of whether to adopt rules to require registrants to: (1) Present certain industry segment information for interim periods; and (2) focus on reportable segments within Management's Discussion and Analysis of Financial Condition and Results of Operations. The Commission will also consider whether to adopt certain other amendments to its requirements for interim financial reporting. For further information, please contact John W. Albert at (202) 272-2130.

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The subject matter of the open meeting scheduled for Thursday, February 27, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by Owen V. Kane, the vice president of a registered broker-dealer, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, February 27, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

John Wheeler,
Secretary.
February 20, 1986.

[FR Doc. 86-4100 Filed 2-21-86; 11:09 am]

BILLING CODE 8010-01-M

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federal register

Tuesday
February 25, 1986

Part II

Department of the Interior

National Park Service

National Registry of Natural Landmarks; Annual Supplemental Listing of Natural Landmarks; Notice

VOL 51 ISS 37 FE 25 1986 UMI

DEPARTMENT OF THE INTERIOR

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This notice lists all natural landmarks designated by the Secretary of the Interior between October 1, 1984 and September 30, 1985 and included on the National Registry of Natural Landmarks. The listing published in the **Federal Register** on March 1, 1983 (48 FR 8682) contains all natural landmarks designated prior to that date and should be retained for reference purposes. The listing published in the **Federal Register** on February 7, 1984 (49 FR 4605) contains all natural landmarks designated between March 1, 1983 and September 30, 1983. The listing published in the **Federal Register** on March 5, 1985 (50 FR 8846) contains all natural landmarks designated between October 1, 1983 and September 30, 1984. All listings provide information on each landmark's location, natural values, designation date, ownership, and the owner's voluntary commitment to protect the landmark's natural resources. Federal agencies should consider the existence and location of natural landmarks when assessing the impact of their actions on the environment under Section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 42 U.S.C. 4321).

FOR FURTHER INFORMATION CONTACT: Mr. Arthur L. Stewart, Acting Chief, Natural Areas Survey Branch, Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9525.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the National Natural Landmarks Program in 1962 to identify and encourage the preservation of nationally significant examples of the full array of ecological and geological features that represent the Nation's natural heritage. Potential natural landmarks are identified through studies conducted by the National Park Service, evaluated by natural scientists, and, if judged nationally significant, designated as National Natural Landmarks by the Secretary of the Interior. Areas so designated are included on the National Registry of Natural Landmarks. Through September 30, 1985 there were 562 sites listed on the National Registry of Natural Landmarks. The National Natural Landmarks Program is administered by the National Park Service.

Natural landmark designation is not a land withdrawal and affects neither the ownership nor management and use of a site. Natural landmark preservation is often ensured through cooperative commitment of public and private owners toward protection of the area's nationally significant features. This commitment is voluntary and is exercised through a nonbinding agreement with the National Park Service to protect the National Natural Landmark. Owners who elect to enter into such an agreement are eligible to receive a certificate signed by the Secretary of the Interior which recognizes the special status of the area. A bronze plaque may also be presented for appropriate display on the site.

In addition, Federal agencies must consider the existence and location of National Natural Landmarks when they assess the effects of their actions on the environment under Section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321).

The Secretary of the Interior transmits annually to the Congress a report on those National Natural Landmarks with known damage or threats to the integrity of their nationally significant features (90 Stat. 1940; 16 U.S.C. 1a–5). This report is prepared for the Secretary by the National Park Service.

National Registry of Natural Landmarks

The National Registry of Natural Landmarks is the Nation's official list of those nationally significant natural areas representative of the ecological and geological heritage of this country. Of the 562 sites listed on the National Registry of Natural Landmarks, over one-half are administered solely by public agencies at the Federal, State, county, or municipal government levels. Almost one-third of the National Natural Landmarks are owned entirely by private parties. The remaining National Natural Landmarks are owned or administered by a mixture of public and private owners.

The following list contains all National Natural Landmarks added to the National Registry of Natural Landmarks between October 1, 1984 and September 30, 1985. The sites are arranged alphabetically by State and county. A description of each landmark's location, significance, designation date and ownership is provided. Designation dates are enclosed in parentheses. Ownership data are arranged in the following arbitrary order and do not reflect the relative amount of land owned by any party: Federal, State, County, Municipal, Private. An asterisk (*) indicates that the owner(s) of a landmark have voluntarily agreed to protect the nationally significant features.

Because many natural landmarks are privately owned and/or not managed for public access, landowner permission must first be obtained before visits are planned to those areas. The specific locations of certain landmarks are not provided because of owner requests for minimum publicity and/or because of the fragility of the natural features.

Dated: November 29, 1985.

Jerry L. Rogers,

Acting Director, National Park Service.

CALIFORNIA

Shasta County

Burney Falls—60 miles northeast of Redding within the McArthur-Burney Falls State Park. It is one of the best examples in the western United States of river drainage regulated by stratigraphically-controlled springs, and also of waterfall due to undercutting of horizontal rock layers. (December 1984) Owner: State

Kern County

Sand Ridge Wildflower Preserve—Located 10 miles southeast of Bakersfield. It is significant due to its botanical diversity. Native Bakersfield cactus is becoming increasingly rare in this locality. The site is a remnant natural area displaying scores of spectacular floral species. (December 1984) Owner: Private

INDIANA

Crawford County

Marengo Cave—Textbook example of a cave in its middle stage of development. It is the most profusely decorated cave known in the Interior Lowlands with cave features of the highest quality. This cave is the location where five organisms were first identified. It has had an extensive and continuous history research, as well as protective custody over the last century. (December 1984) Owner: Private

MICHIGAN

Ontonagon and Gogebic Counties

Porcupine Mountain—Large tract of White Pine containing the best and largest stand of virgin northern hemlock in the Lake states, and is the largest relatively undisturbed northern hemlock hardwood forest west of the Adirondacks. Lake of the Clouds is nestled within the virgin forest and presents a spectactular view from the escarpment. Mirror and Lily Pond lakes remain unspoiled. The Presque Isle River, which cascades over falls and rapids into Lake Superior, adds outstanding scenic beauty. The area contains excellent examples of wavecut beaches marking former glacial lake shorelines. (December 1984) Owner: State

NEBRASKA

Grant County

Nebraska Sand Hills—Located immediately south of Hyannis. It is the largest sand dunes complex in the Western Hemisphere. The site differs from other large dunes of the world because it is almost completely stabilized by vegetation. (December 1984) Owner: State, Private

OREGON

Wasco County

Lawrence Memorial Grassland Preserve—Located 27 miles northeast of Madras, this site is an excellent illustration of topography known as "biscuit and scabland," formed in the Columbia Plateau by frost action during the Wisconsin glaciation period of the Pleistocene. This area is also known for its diverse plant communities. (December 1984) Owner: Private

WASHINGTON

Whitman County

Rose Creek Preserve—10 miles northwest of Pullman, this site is considered to be the only protected site of rare successional stands of quaking aspen and hawthorn, is therefore highly valuable for scientific research. (December 1984) Owner: Private

WYOMING AND COLORADO

Albany County, WY and Larimer County, CO

Sand Creek—Located some 20 miles southwest of Laramie, this site possesses the most spectacular examples of cross-bedded sandstone and "topple blocks" in North America. Excellent geological, paleontological and botanical features mark this area as an important national natural resource. (December 1984) Owner: State, Private

The following is a correction to the list of natural landmarks included on the National Registry of Natural Landmarks and published in the **Federal Register**, Part III, March 1, 1983.

ALASKA

*Clarence Rhode National Wildlife Range—Owner: Federal, State, Private—(previously listed as—Owner: Federal)

ARIZONA

Mohave County

Grapevine Mesa Joshua Trees—(previously listed as Hualapai Valley Joshua Trees)

GUAM

*Mount Lamlam—Owner: Federal, Government of Guam—(previously listed as Owner: Government of Guam)

ILLINOIS

Johnson County

Lower Cache River Swamp—Owner: State, Private—(previously listed as Buttonland Swamp)

INDIANA

Montgomery County

Calvert and Porter Woods Nature Preserve—(previously listed as Beckville Woods)

The following is a list of natural landmarks which should be added because they were not included on the National Registry of Natural Landmarks and published in the **Federal Register**, Part III, March 1, 1983.

ARIZONA

Coconino County

Kaibab Squirrel Area—Located 30 miles south of Fredonia, the Kaibab Plateau Pine Forest contains approximately 200,000 acres of pure ponderosa pine in the north section of Kaibab National Forest and provides habitat for the Kaibab Squirrel. This rare and restricted species represents a unique form that evolved by geographic isolation, and so is found nowhere else in the world. (October 1965) Owner: Federal

MISSOURI

Oregon County

Grand Gulf—A spectacular dolomite chasm located 6 miles west of Thayer, formed by the roof collapse of a ¾-mile long cave passage as a result of coalescence of adjacent sinkholes. Illustrates a variety of processes through which karst topography develops, including subterranean stream piracy. (June 1971) Owner: Private

NORTH CAROLINA

Brunswick and New Hanover Counties

Smith Island—A 12,000-acre barrier island complex representing one of the wildest and most primitive areas remaining on the Atlantic Coast. Contains a relict live oak forest, which is one of the best unaltered examples of sand strand forest in existence, and a system of stable sand dunes. Salt marshes, tidal creeks, bays, and mudflats are used extensively by aquatic birds, and island beaches provide breeding habitat for loggerhead turtles. (October 1967) Owner: State, Private

[FR Doc. 86–3713 Filed 2–24–86; 8:45 am]

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federal register

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Part III

Department of the Interior

National Park Service

National Register of Historic Places; Annual Supplemental Listing of Historic Properties; Notice

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DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Annual Listing of Historic Properties

The National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq.), authorizes the Secretary of the Interior to expand and to maintain a National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture. The National Park Service expands and maintains the National Register of Historic Places for the Secretary.

It is the purpose of this notice, through publication of the information included herein, to apprise the public, as well as governmental agencies, associations, and all other organizations and individuals interested in historic preservation, of the properties added to the National Register between October 1, 1984 and September 30, 1985, and those omitted from the list published March 5, 1985.

For a cumulative listing comprising all properties on the National Register, we recommend that users retain the Federal Register listings from February 6, 1979 (Vol. 44, No. 26, Part II); March 18, 1980 (Vol. 45, No. 54, Part II); February 3, 1981 (Vol. 46, No. 22, Part II); February 2, 1982 (Vol. 47, No. 22, Part III); March 1, 1983 (Vol. 48, No. 41, Part II); February 7, 1984 (Vol. 49, No. 26, Part IV) and March 5, 1985 (Vol. 50, No. 43, Part III). Together, these listings provide information for all National Register properties and for properties determined eligible for inclusion on the National Register through September 1985. A limited number of copies of the 1979, 1980, 1981, 1982, 1983, 1984, and 1985 issues of the Federal Register are available from the Department of the Interior, National Park Service, National Register of Historic Places, P.O. Box 37127, Washington DC 20013–7127.

Dated: November 29, 1985.

Jerry L. Rogers,
Acting Director.

ALABAMA

Baldwin County

Fairhope, *Whittier Hall*, 201 Magnolia Ave. (03/07/85)

Silverhill, *Svea Land Company Office*, S. Sixth St. (03/07/85)

Colbert County

Tuscumbia, *Tuscumbia Historic District*, Roughly bounded by N. & E. Commons, Eight St. & Spring Rd., Hooks, W. Fifth & S. Milton including Steel Bridge (05/23/85)

Cullman County

Cullman, *Cullman Downtown Commercial Historic District*, Roughly bounded by Fourth & First Aves., Second & Fifth Sts. SE (04/11/85)

Dekalb County

Fort Payne, *Cherokee Plantation*, 100 Cherokee Dr. NE (11/29/84)

Houston County

Ashford, *Alabama Midland Railway Depot*, Midland St. (09/12/85)

Jefferson County

Birmingham vicinity, *Heaviest Corner on Earth*, First Ave., N & Twentieth St., N (07/11/85)

Birmingham, *Avalon*, 3005–3015 Highland Ave. & 3000–3029 Thirteenth Ave. S (03/07/85)

Birmingham, *Downtown Birmingham Historic District (Boundary Increase)*, Roughly bounded by First and Fourth Aves., Twentieth and Twenty-fifth Sts. (02/21/85)

Birmingham, Ideal Department Store Building, 111 Nineteenth St. N (05/02/85)

Limestone County

Athens, *Athens State College Historic District*, 202–212 & 311 N. Beaty St., central campus area roughly bounded by Beaty, Pryor & Hobbs Sts. (02/14/85)

Macon County

Tuskegee, *North Main Street Historic District*, 600, 615, 616 N. Main, 101, 110 E. Water, 700 Water, 701 Maple & 811 N. Maple Sts. (03/07/85)

Mobile County

Mobile, *Beal—Gaillard House (19th Century Spring Hill Neighborhood TR)*, 111 Myrtlewood La. (10/18/84)

Mobile, *Center—Gaillard House (19th Century Spring Hill Neighborhood TR)*, 3500 The Cedars (10/18/84)

Mobile, *Collins—Marston House (19th Century Spring Hill Neighborhood TR)*, 4703 Old Shell Rd. (10/18/84)

Mobile, *Collins—Robinson House (19th Century Spring Hill Neighborhood TR)*, 56 Oakland Ave. (10/18/84)

Mobile, *Hunter House*, 504 St. Francis St. (03/07/85)

Mobile, *Pfau—Creighton Cottage (19th Century Spring Hill Neighborhood TR)*, 3703 Old Shell Rd. (10/18/84)

Mobile, *Sodality Chapel (19th Century Spring Hill Neighborhood TR)*, 4307 Old Shell Rd. (10/18/84)

Mobile, *St. Paul's Episcopal Chapel (19th Century Spring Hill Neighborhood TR)*, 4051 Old Shell Rd. (10/18/84)

Mobile, *Stewartfield (19th Century Spring Hill Neighborhood TR)*, 4307 Old Shell Rd. (10/18/84)

Mobile, *Stone Street Baptist Church*, 311 Tunstall St. (06/06/85)

St. Elmo, *Bishop Manor Estate*, Argyl Rd. (02/14/85)

Montgomery County

Montgomery, *Cloverdale Historic District*, Roughly bounded by Norman Bridge & Cloverdale Rd., Fairview & Felder Aves. & Boultier St. (09/12/85)

Montgomery, *Smith—Joseph—Stratton House*, 302 Alabama St. (04/11/85)

Morgan County

Decatur, *Bank Street—Old Decatur Historic District (Boundary Increase)*, Roughly bounded by Bank, Market, Well & Lee Sts. (05/16/85)

Perry County

Uniontown, *Westwood Plantation (Boundary Increase)*, Roughly bounded by Hwy. 80, Hwy. 61, Rabbit Yard Rd., & Old Uniontown RR Spur (12/10/84)

Pickens County

Carrollton, *Stewart—Blanton House*, AL 86 (05/23/85)

Tuscaloosa County

Northport vicinity, *Hassell, John, House*, Rt. 1 Watermelon Rd. (03/07/85)

Northport, *Wilson—Clements House*, 1802 Twentieth Ave. (04/11/85)

Tuscaloosa, *Audubon Place Historic District*, 1515—1707 (odd) University Blvd. & #6—37 Audubon Pl. (07/11/85)

Tuscaloosa, *Caplewood Drive Historic District*, Roughly bounded by Caplewood Dr. & University Blvd. (05/30/85)

Tuscaloosa, *Carson Place*, 610 Thirty-sixth Ave. (03/07/85)

Tuscaloosa, *City National Bank*, 2301 University Blvd. (03/07/85)

Tuscaloosa, *Foster Home—Sylvan Plantation*, Off US 11 (03/07/85)

Walker County

Jasper, *First United Methodist Church*, 1800 Third Ave. (02/14/85)

Jasper, *Walker County Hospital*, 1100 Seventh Ave. (05/30/85)

Wilcox County

Camden vicinity, *Bethea, Tristram, House*, AL 28 & CR 22 (07/11/85)

Pine Apple, *Hawthorn House*, 9 N. Broad St. (03/07/85)

ALASKA

Aleutian Islands Division

Attu Island, *Attu Battlefield and US Army and Navy Airfields* (NHL) (02/04/85)

Kiska Island, *Japanese Occupation Site* (NHL) (02/04/85)

Unalaska, *Dutch Harbor Naval Operating Base and Fort Mears, US Army* Dutch Harbor (NHL) (02/04/85)

Bristol Bay Division

King Salmon vicinity, *Fure's Cabin* Katmai National Park & Preserve (02/07/85)

Fairbanks North Star Division

Fairbanks vicinity, *Ladd Field*, Fort Wainwright (NHL) (02/04/85)

Fairbanks, *Goldstream Dredge No. 8*, Mile Nine, Steese Hwy., Goldstream Valley (05/23/85)

Juneau Division

Juneau, *Frances House*, 137 Sixth St. (06/07/85)

Juneau, *Valentine Building*, 202 Front St. (05/30/85)

Kenai Peninsula Division

Ketchikan, *Ziegler House*, 823 Grant St. (05/20/85)

Kodiak Island Division

Kodiak vicinity, *Kodiak Naval Operating Base and Forts Greely and Abercrombie*, (NHL) (02/04/85)

ARIZONA

Cochise County

Bisbee, *Bisbee Woman's Club Clubhouse*, 74 Quality Hill (01/31/85)

Douglas, *Douglas Historic District*, Roughly bounded by Pan American, H & F Aves. from Eighth to Thirteenth Sts., & G Ave. (01/31/85)

Coconino County

Flagstaff, *Ashurst House (US Weather Bureau)*, 417–421 W. Aspen Ave. (11/29/84)

Flagstaff, *Clark, J.M., House*, 503 N. Humphreys St. (12/05/84)

Flagstaff, *La Iglesia Metodista Mexicana, El Divino Redentor*, 319 S. San Francisco St. (01/30/85)

Flagstaff, *Milligan House*, 323 W. Aspen (11/29/84)

Sedona, *Taylor Cabin Line Camp*, Sycamore Canyon Wilderness Area (07/16/85)

Williams, *First Methodist Episcopal Church and Parsonage*, 127 W. Sherman St. (11/29/84)

Williams, *Williams Historic Business District*, Roughly bounded by Grant & Railroad Aves., & First & Fourth Sts. (12/20/84)

Maricopa County

Phoenix, *Sixth Avenue Hotel-Windsor Hotel (Phoenix Commercial MRA)*, 546 W. Adams (09/04/85)

Phoenix, *Anchor Manufacturing Co. (Phoenix Commercial MRA)*, 551 S. Central (09/04/85)

Phoenix, *Arizona Citrus Growers Association Warehouse (Phoenix Commercial MRA)*, 601 E. Jackson (09/04/85)

Phoenix, *Arizona Compress & Warehouse Co. Warehouse (Phoenix Commercial MRA)*, 215 S. Thirteenth St. (09/04/85)

Phoenix, *Arizona Orange Association Packing House (Phoenix Commercial MRA)*, 520 W. Jackson (09/04/85)

Phoenix, *Arvizu's El Fresnal Grocery Store (Phoenix Commercial MRA)*, 310 E. Buchanon (09/04/85)

Phoenix, *Baird, F.S., Machine Shop (Phoenix Commercial MRA)*, 623 E. Adams (09/04/85)

Phoenix, *Bayless, J.B., Store No. 7 (Phoenix Commercial MRA)*, 825 N. 7th St. (09/04/85)

Phoenix, *Brown's Pharmacy (Phoenix Commercial MRA)*, 1030 E. Pierce (09/04/85)

Phoenix, *Central Wholesale Terminal (Phoenix Commercial MRA)*, 315 E. Madison & 227 S. Third St. (09/04/85)

Phoenix, *Chambers Transfer & Storage Co.—Central Warehouse (Phoenix Commercial MRA)*, 15–39 E. Jackson (09/04/85)

Phoenix, *Chambers Transfer & Storage Co. (Phoenix Commercial MRA)*, 309 S. Fourth Ave. (09/04/85)

Phoenix, *Coca Cola Bottling Works (Phoenix Commercial MRA)*, 647 W. Jefferson (09/04/85)

Phoenix, *Copeland & Tracht Service Station (Phoenix Commercial MRA)*, 1702 W. Van Buren (09/04/85)

Phoenix, *Douglas, Lewis, House*, 815 E. Orangewood Ave. (02/08/85)

Phoenix, *Ellingson Building (Phoenix Commercial MRA)*, 19 E. Washington (09/04/85)

Phoenix, *Fry Building-Baxter Block (Phoenix Commercial MRA)*, 146 E. Washington (09/04/85)

Phoenix, *Gerardo's Building (Phoenix Commercial MRA)*, 421 S. Third St. (09/04/85)

Phoenix, *Grunow, Lois, Memorial Clinic (Phoenix Commercial MRA)*, 926 E. McDowell (09/04/85)

Phoenix, *Hanny's (Phoenix Commercial MRA)*, 44 N. First St. (09/06/85)

Phoenix, *Heard Building (Phoenix Commercial MRA)*, 112 N. Central (09/04/85)

Phoenix, *High Class Food Company (Phoenix Commercial MRA)*, 1410 E. Washington (09/04/85)

Phoenix, *Hotel St. James (Phoenix Commercial MRA)*, 21 E. Madison (09/04/85)

Phoenix, *Hurley Building (Phoenix Commercial MRA)*, 536, 544–548 W. McDowell & 1601 N. Seventh Ave. (09/04/85)

Phoenix, *Knights of Pythias Building (Phoenix Commercial MRA)*, 829 N. First Ave. (09/04/85)

Phoenix, *Lightning Delivery Co. Warehouse (Phoenix Commercial MRA)*, 425 E. Jackson (09/04/85)

Phoenix, *Ong Yut Geong Wholesale Market (Phoenix Commercial MRA)*, 802 S. Second St. (09/04/85)

Phoenix, *Orpheum Theater (Phoenix Commercial MRA)*, 209 W. Adams (09/04/85)

Phoenix, *Pay'n Takit #13 (Phoenix Commercial MRA)*, 1402 E. Van Buren (09/04/85)

Phoenix, *Pay'n Takit #25 (Phoenix Commercial MRA)*, 1753–1755 W. Van Buren (09/05/85)

Phoenix, *Pay'n Takit #5 (Phoenix Commercial MRA)*, 1012 N. Seventh Ave. (09/04/85)

Phoenix, *Phoenix Seed & Feed Company (Phoenix Commercial MRA)*, 411 S. Second St. (09/04/85)

Phoenix, *Rose Tourist Camp (Phoenix Commercial MRA)*, 1555 W. Van Buren (09/04/85)

Phoenix, *Security Building (Phoenix Commercial MRA)*, 234 N. Central (09/12/85)

Phoenix, *Shell Oil Co. (Phoenix Commercial MRA)*, 425 S. Sixteenth Ave. (09/04/85)

Phoenix, *Storage Warehouse (Phoenix Commercial MRA)*, 429 W. Jackson (09/04/85)

Phoenix, *Stoughton, Ralph H., Estate*, 605 W. South Mountain Ave. (07/03/85)

Phoenix, *Sun Mercantile Building (Phoenix Commercial MRA)*, 232 S. Third St. (09/04/85)

Phoenix, *Title and Trust Building (Phoenix Commercial MRA)*, 112 N. First Ave. (09/04/85)

Phoenix, *Walker, J.W., Building—Central Arizona Light & Power (Phoenix Commercial MRA)*, 10 N. Third Ave. & 300 W. Washington (09/04/85)

Phoenix, *Western Wholesale Drug Co. Warehouse (Phoenix Commercial MRA)*, 101 E. Jackson (09/04/85)

Phoenix, *Whitney, J.T., Funeral Chapel (Phoenix Commercial MRA)*, 330 N. Second Ave. (09/04/85)

Phoenix, *Winters Building—Craig Building (Phoenix Commercial MRA)*, 39 W. Adams (09/04/85)

Tempe, *Administration—Science Building (Tempe MRA)*, ASU Campus (Bldg. 11) (09/04/85)

Tempe, *B.B. Moeur Activity Building (Tempe MRA)*, ASU Campus (Bldg. 37) (09/11/85)

Tempe, *Bankhead Highway (Tempe MRA)*, Rural Rd. to Hayden Rd. (01/07/85)

Tempe, *Borden Milk Co. Creamery and Ice Factory (Tempe MRA)*, 1300—1380 E. Eighth St. (10/10/84)

Tempe, *Ellingson Warehouse (Tempe MRA)*, 24 W. Seventh St. (08/28/85)

Tempe, *Grady Gammage Memorial Auditorium (Tempe MRA)*, NE Corner of Mill and Apache (09/11/85)

Tempe, *Green, Mary and Moses, House (Tempe MRA)*, W of Carver St. (02/13/85)

Tempe, *Hayden, C.T., House (La Casa Vieja) (Tempe MRA)*, 3 W. First St. (10/10/84)

Tempe, *Industrial Arts Building (Tempe MRA)*, ASU Campus (Bldg. 4) (09/04/85)

Tempe, *Johnson, Joseph E., House (Tempe MRA)*, 729 Mill Ave. (10/10/84)

Tempe, *Main Building, Tempe Normal School (Tempe MRA)*, ASU campus (01/07/85)

Tempe, *Matthews Hall (Tempe MRA)*, ASU Campus (Bldg. 172) (01/11/85)

Tempe, *President's House (Tempe MRA)*, ASU campus (01/07/85)

Tempe, *Redden, Lowell, House (Tempe MRA)*, 333 Carver St. (02/13/85)

Tempe, *Rohrig School (Tempe MRA)*, 2325 E. University Dr. (10/10/84)

Tempe, *Tempe Beach Stadium (Tempe MRA)*, Ash at First St. (01/07/85)

Tempe, *White, E.M., Dairy Barn (Tempe MRA)*, 1610 E. Apache (10/10/84)

Mohave County

Hoover Dam (Boulder Dam), Black Canyon of the Colorado River on the Nevada-Arizona boundary (see also: Nevada) (NHL) (08/20/85)

Pima County

Tucson, *Wright, Harold Bell, Estate*, 850 N. Barbara Worth (01/16/85)

Pinal County

Casa Grande, *Bayless, Earl, House (Casa Grande MRA)*, 211 N. Cameron (04/16/85)

Casa Grande, *Baylis, Wilbur O—Grasty House (Casa Grande MRA)*, 221 N. Cameron (04/16/85)

Casa Grande, *Bias—McNatt House (Casa Grande MRA)*, 300A W. First St. (04/16/85)

Casa Grande, *Casa Grande Hotel (Casa Grande MRA)*, 201 W. Main Ave. (04/16/85)

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Casa Grande, *Central Creditors Association Building (Casa Grande MRA)*, 118 N. Sacaton (04/16/85)
Casa Grande, *Cruz Trading Post (Casa Grande MRA)*, 200 W. Main St. (04/16/85)
Casa Grande, *Fisher Memorial Home (Casa Grande MRA)*, 300 E. Eighth St. (04/16/85)
Casa Grande, *Johnson's Grocery Store (Casa Grande MRA)*, 301 N. Picacho (04/16/85)
Casa Grande, *Kratzka, Gus, House (Casa Grande MRA)*, N. Maricopa and Third St. (04/16/85)
Casa Grande, *Laundry Building (Casa Grande MRA)*, Rear of 309 W. Eighth (04/16/85)
Casa Grande, *Lehmberg, Dr. H.B., House (Casa Grande MRA)*, 929 N. Lehmberg (04/16/85)
Casa Grande, *Loss, John C., House (Casa Grande MRA)*, 107 W. Main Ave. (04/16/85)
Casa Grande, *Meehan—Gaar House (Casa Grande MRA)*, 202 W. First St. (04/16/85)
Casa Grande, *Period Revival House (Casa Grande MRA)*, 905 N. Lehmberg (07/25/85)
Casa Grande, *Pioneer Market (Casa Grande MRA)*, 119 Florence St. (04/16/85)
Casa Grande, *Prettyman's Meat Market and Grocery—Brigg's Jeweler (Casa Grande MRA)*, 114 W. Main St. (04/16/85)
Casa Grande, *Saint Anthony's Church and Rectory (Casa Grande MRA)*, 215 N. Picacho (04/16/85)
Casa Grande, *Shonessy Building—Don Chun Wo Store (Casa Grande MRA)*, 121 W. Main Ave. (04/16/85)
Casa Grande, *Shonessy House (Casa Grande MRA)*, 115 W. Main Ave. (04/16/85)
Casa Grande, *Stone Bungalow (Casa Grande MRA)*, 515 E. Third St. (04/16/85)
Casa Grande, *Stone Warehouse (Casa Grande MRA)*, 119 Florence St. in rear (04/16/85)
Casa Grande, *Vasquez House (Casa Grande MRA)*, 114 E. Florence Blvd. (04/16/85)
Casa Grande, *Ward's Variety Store (Casa Grande MRA)*, 112 N. Sacaton (04/16/85)
Casa Grande, *White House (Casa Grande MRA)*, 901 N. Morrison (04/16/85)
Casa Grande, *Wilson, C.J. (Blinky), House (Casa Grande MRA)*, 223 W. Tenth (04/16/85)
Casa Grande, *Day, Judge William T., House (Casa Grande MRA)*, 310 West First St. (07/25/85)

Santa Cruz County

Nogales, *10 Cottages on Short Street (Nogales MRA)*, 117—126 Short (08/29/85)
Nogales, *Arizona-Sonora Manufacturing Company Machine Shop (Nogales MRA)*, Grand Ave. at Arroyo Blvd. (08/29/85)
Nogales, *Bowman Hotel (Nogales MRA)*, 314—316 Grand Ave. (08/29/85)
Nogales, *Bowman, W.G., House (Nogales MRA)*, 112 Sierra (08/29/85)
Nogales, *Burton Building (Nogales MRA)*, 322—324 (08/29/85)
Nogales, *Crans, Frank F., House (Nogales MRA)*, 406 Arroyo (08/29/85)
Nogales, *Crawford Hill Historic Residential District (Nogales MRA)*, Roughly bounded by Oak St., Terrace Ave., Compound St., & I-19 & Grindell (08/29/85)
Nogales, *Dunbar, George, House (Nogales MRA)*, 118 Sierra (08/29/85)
Nogales, *Harrison, Sen. James A., House (Nogales MRA)*, 449 Morley (08/29/85)
Nogales, *Hotel Blanca (Nogales MRA)*, 701 Morley (08/29/85)
Nogales, *House at 220 Walnut Street (Nogales MRA)*, 220 Walnut St. (08/29/85)
Nogales, *House at 334—336 Walnut Street (Nogales MRA)*, 334—336 Walnut St. (08/29/85)
Nogales, *House at 665 Morley Avenue (Nogales MRA)*, 665 Morley Ave. (08/29/85)
Nogales, *Kress, S.H., & Co., Building (Nogales MRA)*, 119—121 Morley (08/29/85)
Nogales, *Las Dos Naciones Cigar Factory (Nogales MRA)*, 331 Morley (08/29/85)
Nogales, *Marsh, George B., Building (Nogales MRA)*, 213—225 Grand (08/29/85)
Nogales, *Mediterranean Style House (Nogales MRA)*, 124 Walnut (08/29/85)
Nogales, *Mediterranean Style House (Nogales MRA)*, 116 Walnut (08/29/85)
Nogales, *Miller, Hugo, House (Nogales MRA)*, 750 Petrero (08/29/85)
Nogales, *Montezuma Hotel (Nogales MRA)*, 217 Morley (08/29/85)
Nogales, *Nogales Electric Light, Ice & Water Company Power House (Nogales MRA)*, 496 Grand (08/29/85)
Nogales, *Nogales High School (Nogales MRA)*, 209 Plum (08/29/85)
Nogales, *Nogales Steam Laundry Building (Nogales MRA)*, 223—219 East (08/29/85)
Nogales, *Noon, A.S., Building (Nogales MRA)*, 246 Grande (08/29/85)
Nogales, *Piscorski, Jose, Building (Nogales MRA)*, 315 Morley (08/29/85)
Nogales, *Three Mediterranean Cottages on Parjarito Street (Nogales MRA)*, 102—104 Parjarito (08/29/85)
Nogales, *Wise, J.E., Building (Nogales MRA)*, 134 Grande (08/29/85)

Yavapai County

Prescott, *Gardner, James L., Store (Prescott Territorial Buildings MRA)*, 201 N. Cortez (01/09/85)

ARKANSAS

Ashley County

Parkdale, *Williams, Dr. Robert George, House*, AR 8 & 209 (10/04/84)

Benton County

Bentonville, *Rice, James A., House*, 204 S.E. Third St. (11/01/84)
Siloam Springs, *Alfrey—Brown House*, 1001 S. Washington St. (10/04/84)

Carroll County

Carrollton, *Yell Masonic Lodge Hall*, Off AR 68 (11/01/84)

Clark County

Ross Site (10/10/85)

Cleburne County

Heber Springs vicinity, *Winkley Bridge*, E of Heber Springs at Little Red River (10/09/84)

Cleveland County

Rison vicinity, *Mt. Carmel Methodist Church*, N of Rison off US 79 (10/04/84)

Desha County

Arkansas City, *Arkansas City High School*, Robert S. Moore & President Sts. (10/04/84)

Garland County

Hot Springs, *Hot Springs Central Avenue Historic District*, Central Ave., from Prospect to Park Sts. (06/25/85)

Lonoke County

Lonoke, *Rock Island Depot*, US 70 & Center St. (10/04/84)

Mississippi County

Chickasawba Mound (3MS5) (11/16/84)

Monroe County

Clarendon, *Anderson Boarding House (Clarendon MRA)*, 201 Main St. (11/01/84)
Clarendon, *Bank of Clarendon (Clarendon MRA)*, 125 Court St. (11/01/84)
Clarendon, *Bateman—Griffith House (Clarendon MRA)*, 316 Jefferson St. (11/01/84)
Clarendon, *Bondi Brothers Store (Clarendon MRA)*, 104 Madison St. (11/01/84)
Clarendon, *Bounds Building (Clarendon MRA)*, 105 Second St. (11/01/84)
Clarendon, *Clarendon Methodist-Episcopal Church South (Clarendon MRA)*, 121 Third St. (11/01/84)
Clarendon, *Ewan Building (Clarendon MRA)*, 124–128 Second St. (11/01/84)
Clarendon, *Goldman and Son Store (Clarendon MRA)*, 101 Main St. (11/01/84)
Clarendon, *Highway 79 Bridge (Clarendon MRA)*, US 79 and White River (11/01/84)
Clarendon, *Jefferies Building (Clarendon MRA)*, 122 Madison St. (11/01/84)
Clarendon, *Jefferies—Craptree House (Clarendon MRA)*, 300 Jefferson St. (11/01/84)
Clarendon, *Manning, Lee and Moore Law Office (Clarendon MRA)*, 109 Court St. (11/01/84)
Clarendon, *Marston House (Clarendon MRA)*, 429 Main St. (11/01/84)
Clarendon, *Midland Depot (Clarendon MRA)*, 205 Midland St. (11/01/84)
Clarendon, *New South Inn (Clarendon MRA)*, 132–164 Second St. (11/01/84)

Montgomery County

Pine Ridge, *Huddleston Store and McKinzie Store*, AR 88 (10/04/84)

Phillips County

Helena, *Short, William A., House*, 317 Biscoe St. (04/18/85)
Helena, *Straub, William Nicholas, House*, 531 Perry St. (04/18/85)

Pulaski County

Little Rock, *Farrell House (Thompson, Charles L., Design Collection TR)*, 2109 Louisiana (10/11/84)
Little Rock, *First Church of Christ, Scientist*, Twentieth & Louisiana Sts. (10/04/84)
Little Rock, *Williamson House (Thompson, Charles L., Design Collection TR)*, 325 Fairfax St. (11/15/84)

Stone County

Big Springs, *Anderson, George, House (Stone County MRA)*, W of Big Springs (09/17/85)

Big Springs, *Avey, John, Barn (Stone County MRA)*, Off AR 66 (09/17/85)
Big Springs, *Gammill, Orvall, Barn (Stone County MRA)*, NW of Big Springs (09/17/85)
East Richwoods, *Mabry, H.S., Barn (Stone County MRA)*, Near Johnson Creek (09/17/85)
Marcella vicinity, *Taylor-Stokes House (Stone County MRA)*, Off AR 14 (09/17/85)
Marcella, *Abernathy, Jessie, House (Stone County MRA)*, Off AR 14 (09/17/85)
Marcella, *Doughtery, H.J., House (Stone County MRA)*, AR 14 (09/17/85)
Marcella, *Hess, Binks, House and Barn (Stone County MRA)*, Off AR 14 (09/17/85)
Marcella, *Hess, Thomas M., House (Stone County MRA)*, Off AR 14 (09/17/85)
Marcella, *Marcella Church & School (Stone County MRA)*, AR 14 (09/17/85)
Melrose, *Gray, Walter, House (Stone County MRA)*, Off AR 14 (09/17/85)
Mountain View vicinity, *Clark—King House (Stone County MRA)*, NE of Mountain View (09/17/85)
Mountain View vicinity, *McCarn, Noah, House (Stone County MRA)*, AR 5 (09/17/85)
Mountain View, *Brewer's Mill (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Case, C.B., Motor Co. Building (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Commercial Hotel (Stone County MRA)*, Off AR 66 (09/17/85)
Mountain View, *Dew Drop Inn (Stone County MRA)*, Off AR 66 (09/17/85)
Mountain View, *Farmers and Merchants Bank (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Lackey General Merchandise and Warehouse (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Lancaster, John L., House (Stone County MRA)*, Off AR 66 (09/17/85)
Mountain View, *Smith, C.L., & Son General Store (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Stegall General Store (Stone County MRA)*, AR 66 (09/17/85)
Mountain View, *Stone County Recorder Building (Stone County MRA)*, Off AR 66 (09/17/85)
Newnata, *Anderson, Clarence, Barn (Stone County MRA)*, AR 66 (09/17/85)
Old Lexington, *Guffey, Joe, House (Stone County MRA)*, AR 110 (09/17/85)
Onia vicinity, *Bluff Springs Church and School (Stone County MRA)*, 3.5 miles W of Onia (09/17/85)
Onia vicinity, *Roasting Ear Church and School (Stone County MRA)*, NE of Onia (09/17/85)
Optimus vicinity, *Jeffery, Miles, Barn (Stone County MRA)*, Off AR 5 (09/17/85)
Pleasant Grove vicinity, *Davis Barn (Stone County MRA)*, W of Pleasant Grove (09/17/85)
Pleasant Grove vicinity, *Ford, Zachariah, House (Stone County MRA)*, Near White River (09/17/85)
Pleasant Grove, *Bettis, John, House (Stone County MRA)*, AR 14 (09/17/85)
Pleasant Grove, *Copeland, Henry, House (Stone County MRA)*, AR 14 (09/17/85)
Round Bottom, *Dillard, William, Homestead (Stone County MRA)*, Near White River (09/17/85)
Round Bottom, *Lancaster, Fred, Barn (Stone County MRA)*, Near White River (09/17/85)
St. James, *Pruitt, Pinky, Barn (Stone County MRA)*, AR 14 (09/17/85)
Timbo vicinity, *Copeland, Wesley, House (Stone County MRA)*, SE of Timbo (09/17/85)
Timbo, *Morris, Jim, Barn (Stone County MRA)*, AR 66 (09/17/85)
West Richwoods, *Brown, Samuel, House (Stone County MRA)*, Off AR 9 (09/17/85)
West Richwoods, *West Richwoods Church & School (Stone County MRA)*, AR 9 (09/17/85)

White County

Searcy, *Hicks—Dugan—Deener House*, 306 E. Center (04/18/85)

CALIFORNIA

Alameda County

Berkeley, *Chamber of Commerce Building*, 2140—2144 Shattuck Ave & 2071—2089 Center St. (08/29/85)
Pleasanton, *Kottinger, John W., Adobe Barn*, 200 Ray St. (09/12/85)
Sunol, *Elliston*, 463 & Kilkare Rd. (06/19/85)

Butte County

Chico, *US Post Office (Chico Midtown Station) (US Post Office in California 1900–1941 TR)*, 141 W. Fifth St. (01/11/85)
Oroville, *US Post Office (Oroville Main Post Office) (US Post Office in California 1900–1941 TR)*, 1735 Robinson St. (01/11/85)

Calaveras County

Angels Camp, *Calaveras County Bank*, 1239 Main St. (08/01/85)

Contra Costa County

Walnut Creek, *Shadelands Ranch House*, 2660 Ygnacio Valley Rd. (08/29/85)

El Dorado County

Placerville, *Combellack—Blair House*, 3059 Cedar Ravine (02/14/85)

Fresno County

Reedley, *Reedley National Bank*, 1100 G St. (02/28/85)

Glenn County

Willows, *US Post Office (Willows Main Post Office) (US Post Office in California 1900–1941 TR)*, 315 W. Sycamore St. (01/11/85)

Humboldt County

Bayside, *Old Jacoby Creek School*, 2212 Jacoby Creek Rd. (02/28/85)
Hoopa vicinity, *De-No-To Cultural District*, Vicinity of N. Trinity Mtn. & Trinity Summit, Six Rivers National Forest (04/24/85)
Loleta, *Bank of Loleta*, 358 Main St. (02/28/85)

Imperial County

El Centro, *US Post Office (El Centro Main Post Office) (US Post Office in California 1900–1941 TR)*, 230 S. Fifth St. (01/11/85)

Inyo County

Lone Pine vicinity, *Manzanar War Relocation Camp* (NHL) (02/04/85)

Los Angeles County

Avalon, *Wrigley, William Jr., Summer Cottage*, 76 Wrigley Rd. (06/15/85)
Beverly Hills, *US Post Office (Beverly Hills Main Post Office) (US Post Office in California 1900–1941 TR)*, 469 N. Crescent Dr. (01/11/85)
Burbank, *US Post Office (Burbank Downtown Station) (US Post Office in California 1900–1941 TR)*, 125 E. Olive Ave. (01/11/85)
Glendale, *US Post Office (Glendale Main Post Office—Federal Building) (US Post Office in California 1900–1941 TR)*, 125 E. Olive Ave. (01/11/85)
Hollywood, *Hollywood Masonic Temple*, 6840 Hollywood Blvd. (02/28/85)
Long Beach, *US Post Office (Long Beach Main Post Office) (US Post Office in California 1900–1941 TR)*, 300 Long Beach Blvd. (01/11/85)
Los Angeles, *Engine Co. No. 27*, 1355 N. Cahuenga Blvd. (09/24/85)
Los Angeles, *Hollywood Boulevard Commercial and Entertainment District*, 6200–7000 Hollywood Blvd., N. Vine St., N. Highland Ave, & N. Ivar St. (04/04/85)
Los Angeles, *Los Angeles Memorial Coliseum*, 3911 S. Figueroa St. (NHL) (07/27/85)
Los Angeles, *Montecito Apartments*, 6650 Franklin Ave. (07/18/85)
Los Angeles, *US Post Office (Hollywood Station) (US Post Offices in California 1900–1941 TR)*, 1615 N. Wilcox Ave. (01/11/85)
Los Angeles, *US Post Office (Los Angeles Terminal Annex) (US Post Offices in California 1900–1941 TR)*, 900 Alameda St. (01/11/85)
Pasadena, *Culbertson, Cordelia A., House*, 1188 Hillcrest Ave. (09/12/85)
Pasadena, *Fenyes Estate*, 470 W. Walnut St. & 160 N. Orange Grove Blvd. (09/05/85)
Pasadena, *Odd Fellows Temple*, 175 N. Los Robles Ave. (08/01/85)
Pasadena, *Singer Building*, 16 S. Oakland Ave. & 520 E. Colorado Blvd. (05/16/85)
Redondo Beach, *Sweetser Residence*, 417 E. Beryl St. (09/05/85)
San Pedro, *US Post Office (San Pedro Main Post Office) (US Post Office in California 1900–1941 TR)*, 839 S. Beacon St. (01/11/85)
West Hollywood, *Ronda*, 1400–1414 Havenhurst Dr. (02/28/85)

Marin County

Sausalito, *Griswold House*, 639 Main St. (09/12/85)

Modoc County

Alturas, *NCO Railway Depot*, East & Third Sts. (02/28/85)

Monterey County

Big Sur vicinity, *Post, Joseph W., House*, CA 1 (09/12/85)

Napa County

Napa, *Gordon Building*, 1130 First St. (09/12/85)
Napa, *US Post Office (Napa Franklin Station) (US Post Office in California 1900–1941 TR)*, 1352 Second St. (01/11/85)
St. Helena, *Helios Ranch*, 1875 St. Helena Hwy. (05/09/85)

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Nevada County

Nevada City, *Nevada Brewery*, 107 Sacramento St. (09/12/85)

Nevada City, *Nevada City Downtown Historic District*, Roughly bounded by Spring, Bridge, Commercial, York, Washington, Coyote, & Main Sts. (09/23/85)

Orange County

Anaheim, *Kroeger—Melrose District*, Roughly bounded by Lincoln Ave., S. Kroeger, W. Broadway & S. Philadelphia (06/19/85)

Santa Ana, *Downtown Santa Ana Historic Districts (North, Government—Institutional and South, Retail)*, Roughly bounded by Civic Center Dr., First, Ross, & Spurgeon Sts. (12/19/84)

Santa Ana, *US Post Office (Spurgeon Station) (US Post Office in California 1900–1941 TR)*, 605 Bush St. (01/11/85)

Sacramento County

Sacramento, *Lais, Charles, House*, 1301 H St. (02/28/85)

San Bernardino County

Redlands, *US Post Office (Redlands Main Post Office) (US Post Office in California 1900–1941 TR), 201 Brookside Ave. (01/11/85)*

San Bernardino, *US Post Office (Downtown Station) (US Post Office in California 1900–1941 TR), 390 W. Fifth St. (01/11/85)*

San Diego County

San Diego, *US Post Office (Downtown Station) (US Post Office in California 1900–1941 TR)*, 815 E. St. (01/11/85)

Santee, *Edgemoor Farm Dairy Barn*, 9064 Edgemoor Dr., Edgemoor Geriatric Hospital (05/16/85)

San Francisco County

San Francisco, *EUREKA (ferryboat) (formerly Ukiah)*, Historic Ships Unit, Hyde St. National Maritime Museum (NHL) (02/04/85)

San Francisco, *House at 584 Page Street*, 584 Page St. (09/12/85)

San Francisco, *Krotoszyner, Dr. Martin M., Medical Offices and House*, 995–999 Sutter St. (08/15/85)

San Francisco, *BALCLUTHA (sailing ship)*, Foot of Powell St. & Embarcadero, Pier 43 E (NHL) (02/04/85)

San Francisco, *San Francisco Port of Embarkation, US Army*, Fort Mason, Golden Gate National Recreation Area (NHL) (02/04/85)

San Francisco, *Scott, Irving Murray, School*, 1060 Tennessee St. (04/11/85)

San Francisco, *St. Joseph's Hospital*, 355 Buena Vista Ave. E (06/09/85)

San Francisco, *The Real Estate Associates (TREA) Houses*, 2503, 2524, 2530 & 2536 Clay Sts. (04/04/85)

San Francisco, *Wilford, Albert, Houses*, 2121 & 2127 Vallejo St. (08/29/85)

San Joaquin County

Tracy, *Bank of Italy*, 628 Central Ave. (07/18/85)

San Mateo County

Woodside, *Woodside Store*, 471 Kings Mountain Rd. (07/18/85)

Santa Barbara County

Santa Barbara, *US Post Office (Santa Barbara Main Post Office) (US Post Offices in California 1900–1941 TR)*, 836 Anacapa St. (01/11/85)

Santa Clara County

Palo Alto, *Hoover House*, 623 Mirada Road, Leland Stanford, Jr. University (NHL) (02/04/85)

Palo Alto, *Kee House*, 2310 Yale St. (04/11/85)

Santa Clara, *Santa Clara Depot*, 1 Railroad Ave. (02/28/85)

Santa Cruz County

Santa Cruz, *US Post Office (Santa Cruz Main Post Office) (US Post Office in California 1900–1941 TR)*, 850 Front St. (01/11/85)

Sonoma County

Petaluma, *US Post Office (Petaluma Post Office) (US Post Office in California 1900–1941 TR)*, 120 Fourth St. (01/11/85)

Tulare County

Porterville, *US Post Office (Porterville Main Post Office) (US Post Office in California 1900–1941 TR)*, 65 W. Mill Ave. (01/11/85)

Visalia, *US Post Office (Visalia Town Center Station) (US Post Office in California 1900–1941 TR)*, 11 W. Acequia St. (01/11/85)

Yuba County

Marysville, *US Post Office (Marysville Main Post Office) (US Post Office in California 1900–1941 TR)*, 407 C St. (01/11/85)

COLORADO

Arapahoe County

Aurora, *Smith, William, House*, 412 Oswego Ct. (09/26/85)

Archuleta County

Arboles vicinity, *Labo Del Rio Bridge (Vehicular Bridges in Colorado TR)*, CR F40 over Piedra River (06/24/85)

Bent County

Prowers vicinity, *Prowers Bridge (Vehicular Bridges in Colorado TR)*, CR 34 (02/04/85)

Boulder County

Longmont, *Callahan, T.M., House*, 312 Terry St. (05/16/85)

Longmont, *Longmont Fire Department*, 667 Fourth Ave. (05/16/85)

Chaffee County

Buena Vista vicinity, *Bridge over Arkansas River (Vehicular Bridges in Colorado TR)*, US Hwy. 24 (02/04/85)

Nathrop vicinity, *Hortense Bridge (Vehicular Bridges in Colorado TR)*, CO 162 (02/04/85)

Salida vicinity, *Chaffee County Poor Farm*, 8495 CR 160 (05/16/85)

Salida, *F Street Bridge (Vehicular Bridges in Colorado TR)*, F St. (02/04/85)

Clear Creek County

Idaho Springs, *Miner Street Bridge (Vehicular Bridges in Colorado TR)*, Miner St. (02/04/85)

Conejos County

Antonito vicinity, *Costilla Crossing Bridge (Vehicular Bridges in Colorado TR)*, CR over Rio Grande River (02/04/85)

Costilla County

San Luis, *San Luis Bridge (Vehicular Bridges in Colorado TR)*, Off CO 159 (02/04/85)

Crowley County

Manzanola vicinity, *Manzanola Bridge (Vehicular Bridges in Colorado TR)*, CO 207 (06/24/85)

Delta County

Delta vicinity, *Escalante Canon Bridge (Vehicular Bridges in Colorado TR)*, CR 650R (02/04/85)

Delta vicinity, *Roubideau Bridge (Vehicular Bridges in Colorado TR)*, CR G50R (02/04/85)

Delta, *Delta Bridge (Vehicular Bridges in Colorado TR)*, US 50 (02/04/85)

Hotchkiss, *Hotchkiss Bridge (Vehicular Bridges in Colorado TR)*, CR 3400R (02/04/85)

Denver County

Denver, *Fourteenth Street Viaduct (Vehicular Bridges in Colorado TR)*, Fourteenth St. (02/04/85)

Denver, *Nineteenth Street Bridge (Vehicular Bridges in Colorado TR)*, Nineteenth St. (02/04/85)

Denver, *Twentieth Street Viaduct (Vehicular Bridges in Colorado TR)*, Twentieth St. (02/04/85)

Denver, *Broadway Bridge (Vehicular Bridges in Colorado TR)*, Broadway Ave. (02/04/85)

Denver, *Country Club Historic District (Boundary Increase)*, Between Downing & University, E. Fourth Ave., & N. of Alameda Ave. (09/27/85)

Denver, *Ford, Justina, House*, 3091 California St. (11/23/84)

Denver, *Highland Park (Scottish Village) Historic District*, Bounded by Zuni St., Dunkeld Pl., Clay St., & Thirty-second Ave. (01/18/85)

Denver, *Littleton Creamery—Beatrice Foods Cold Storage Warehouse*, 1801 Wynkoop St. (09/06/85)

Denver, *Midwest Steel and Iron Works Company Complex*, 25 Larimer St. (04/10/85)

Denver, *Pierce—Haley House*, 857 Grant St. (10/03/84)

Denver, *Smith House*, 1801 York St. (09/26/85)

Eagle County

Red Cliff vicinity, *Red Cliff Bridge (Vehicular Bridges in Colorado TR)*, US 24 (02/04/85)

State Bridge, *State Bridge (Vehicular Bridges in Colorado TR)*, Off CO 131 (06/24/85)

El Paso County

Colorado Springs, *North Weber Street—Wahsatch Avenue Historic Residential District*, N. Weber St. between Boulder & Del Norte St., & N. Wahsatch Ave. between St. Vrain & Columbia St. (02/08/85)

Manitou Springs, *Bridge over Fountain Creek (Vehicular Bridges in Colorado TR)*, Rt. 24 (02/04/85)

Manitou Springs, *Manitou Springs Bridges (Vehicular Bridges in Colorado TR)*, Park Ave. & Cannon Ave. over Fountain Creek (06/24/85)

Fremont County

Cannon City, *Robison Mansion*, 12 Riverside Dr. (10/11/84)

Canon City, *Fourth Street Bridge (Vehicular Bridges in Colorado TR)*, Fourth St. (02/04/85)

Florence vicinity, *Bridge No. Ten—Adelaide Bridge (Vehicular Bridges in Colorado TR)*, Fremont County Rd. (02/04/85)

Howard, *Howard Bridge (Vehicular Bridges in Colorado TR)*, Off US 50 (02/04/85)

Portland, *Portland Bridge (Vehicular Bridges in Colorado TR)*, SR 120 (02/04/85)

Garfield County

Carbondale vicinity, *Satank Bridge (Vehicular Bridges in Colorado TR)*, CR 106 (02/04/85)

Glenwood Springs vicinity, *South Canon Bridge (Vehicular Bridges in Colorado TR)*, CR 134 (02/04/85)

Rifle, *Rifle Bridge (Vehicular Bridges in Colorado TR)*, Off SR 6/24 over Colorado River (02/04/85)

Grand County

Estes Park vicinity, *Trail Ridge Road*, Rocky Mountain National Park (also in Larimer County) (11/14/84)

Gunnison County

Crystal vicinity, *Crystal Mill*, CR 3, 7 Miles SE of Marble (07/05/85)

La Plata County

Durango vicinity, *Durango Rock Shelters Archeology Site* (02/11/85)

Durango, *East Third Avenue Historic Residential District*, E. Third Ave. between Fifth & Fifteenth Sts. (10/11/84)

Larimer County

Estes Park, *Stanley Hotel District (Boundary Increase)*, 333 Wonder View Ave. (06/20/85)

Fort Collins, *Kissock Block Building*, 115–121 E. Mountain Ave. (05/16/85)

Fort Collins, *Opera House Block—Central Block Building*, 117–131 N. College Ave. (02/08/85)

Virginia Dale, *Virginia Dale Stage Station*, Off US 287 (09/26/85)

Las Animas County

Cokedale, *Cokedale Historic District*, Roughly bounded by Church, Maple, Pine, Elm & Spruce Sts. (01/18/85)

El Moro vicinity, *Elson Bridge (Vehicular Bridges in Colorado TR)*, CR 36 (02/04/85)

Hoehne and Aguilar vicinity, *Avery Bridges (Vehicular Bridges in Colorado TR)*, CR over Leitensdorfer Arroyo & Apishapa River (06/24/85)

Ludlow, *Ludlow Tent Colony Site*, Del Aqua Canyon Rd. (06/19/85)

Madrid vicinity, *Bridge over Burro Canon (Vehicular Bridges in Colorado TR)*, CO 12 (02/04/85)

Trinidad, *Commercial Street Bridge* (Vehicular Bridges in Colorado TR), Commercial St. (02/04/85)

Mesa County

Fruita vicinity, *Fruita Bridge (Vehicular Bridges in Colorado TR)*, CR 17.50 over Colorado River (02/04/85)

Grand Junction, *Black Bridge (Vehicular Bridges in Colorado TR)*, 25.30 Rd. over Gunnison River (02/04/85)

Grand Junction, *Fifth Street Bridge (Vehicular Bridges in Colorado TR)*, US 50 (02/04/85)

Mineral County

Creede, *Sevenmile Bridge (Vehicular Bridges in Colorado TR)*, CR 6 Miles SW of Creede (07/11/85)

Montezuma County

Yellowjacket Pueblo (5–MT–5) (09/28/85)

Morgan County

Fort Morgan vicinity, *Rainbow Arch Bridge (Vehicular Bridges in Colorado TR)*, CO 52 (02/04/85)

Otero County

La Junta vicinity, *Bent's Old Fort*, CO 194 (07/05/85)

Park County

Bailey vicinity, *Glenisle*, Off US 285 (01/18/85)

Tarryall, *Tarryall School*, 31000 CR 77 (05/16/85)

Pitkin County

Aspen vicinity, *Maroon Creek Bridge (Vehicular Bridges in Colorado TR)*, CO 82 (02/04/85)

Aspen, *Hyman—Brand Building*, 203 S. Galena St. (01/18/85)

Aspen, *Sheely Bridge (Vehicular Bridges in Colorado TR)*, Mill Street Park (02/04/85)

Prowers County

Granada vicinity, *Douglas Crossing Bridge (Vehicular Bridges in Colorado TR)*, CR 28 (02/04/85)

Pueblo County

Avondale, *Avondale Bridge (Vehicular Bridges in Colorado TR)*, CR 327 (02/04/85)

Boone vicinity, *Huerfano Bridge (Vehicular Bridges in Colorado TR)*, US 50 (02/04/85)

Boone vicinity, *Nepesta Bridge (Vehicular Bridges in Colorado TR)*, CR 613 (02/04/85)

Pueblo vicinity, *St. Charles Bridge (Vehicular Bridges in Colorado TR)*, CR 65 (02/04/85)

Pueblo, *Carlile, James N., House*, 44 Carlile Pl. (02/08/85)

Pueblo, *Colorado State Hospital Superintendent's House*, Thirteenth & Francisco Sts. (09/26/85)

Pueblo, *Duke, Nathaniel W., House*, 1409 Craig St. (02/08/85)

Pueblo, *Edison School*, 900 West Mesa (06/19/85)

Pueblo, *First Congregational Church*, 225 W. Evans (02/08/85)

Pueblo, *Frazier, R.T., House*, 2121 N. Elizabeth St. (06/19/85)

Pueblo, *Pryor, Frank, House*, 1325 Greenwood St. (02/08/85)

Pueblo, *Stickney, Charles H., House*, 101 E. Orman Ave. (02/08/85)

Pueblo, *White, Asbury, House*, 417 W. Eleventh St. (10/11/84)

Rio Blanco County

Meeker vicinity, *Hay's Ranch Bridge (Vehicular Bridges in Colorado TR)*, CR 127 (02/04/85)

Rio Grande County

Del Norte vicinity, *Sutherland Bridge (Vehicular Bridges in Colorado TR)*, Off US 160 (02/04/85)

Del Norte vicinity, *Wheeler Bridge (Vehicular Bridges in Colorado TR)*, Off US 160 (02/04/85)

South Fork vicinity, *Masonic Park Bridge (Vehicular Bridges in Colorado TR)*, Off CO 149 (02/04/85)

Routt County

Steamboat Springs vicinity, *Four Mile Bridge (Vehicular Bridges in Colorado TR)*, CR 42 (02/04/85)

Summit County

Frisco, *Wildhack's Grocery Store—Post Office*, 510 Main St. (05/16/85)

Slate Creek, *Slate Creek Bridge (Vehicular Bridges in Colorado TR)*, CR 1450 over Blue River (06/24/85)

Teller County

Victor, *Victor Downtown Historic District*, Roughly bounded by Diamond Ave., Second, Portland & Fifth Sts. (07/03/85)

Yuma County

Eckley, *Boggs Lumber and Hardware Building*, 125 N. Main St. (01/16/85)

CONNECTICUT

Fairfield County

Bridgeport, *East Main Street Historic District*, Bounded by Walters & Nichols Sts. from 371–377, 741–747, 388–394 to 774 E. Main St. (02/21/85)

Bridgeport, *Fairfield County Jail*, 1106 North Ave (04/18/85)

Bridgeport, *Nathaniel Wheeler Memorial Fountain*, Park & Fairfield Aves. (04/04/85)

Bridgeport, *Railroad Avenue Industrial District*, Roughly bounded by State & Cherry Sts., Fairfield & Wordin Aves. (09/30/85)

Bridgeport, *United Illuminating Company Building*, 1115—1119 Broad St. (02/21/85)

Danbury, *Locust Avenue School*, Locust Ave. (05/30/85)

Fairfield, *Sturges, Jonathan, House*, 449 Mill Plain Rd. (11/23/84)

Ridgefield, *Hugh Cain Fulling Mill and Elias Glover Woolen Mill Archeological Site*, US 7 (09/19/85/)

Stamford, *Downtown Stamford Historic District (Boundary Increase)*, Bounded by Atlantic, Main, Bank, Bedford, Summer between Broad & Main Sts., & Summer Pl. (02/21/85)

Stratford, *Boothe Homestead*, Main St. Putney (05/01/85)

Hartford County

East Windsor, *Broad Brook Company*, Main St. (05/02/85)

Glastonbury, *South Glastonbury Historic District*, High, Hopewell, Main & Water Sts. (11/23/84)

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Hartford & West Hartford, *West End South Historic District,* Roughly bounded by Farmington Ave., Whitney & S. Whitney Sts., West Blvd. & Prospect Ave. (08/11/85)
Hartford, *BPO Elks Lodge (Hartford Downtown MRA),* 34 Prospect St. (12/23/84)
Hartford, *Batterson Block (Hartford Downtown MRA),* 20—30 High St. (12/23/84)
Hartford, *Capitol Building (Hartford Downtown MRA),* 402—410 Asylum St. (12/23/84)
Hartford, *First National Bank Building (Hartford Downtown MRA),* 50 State St. (12/23/84)
Hartford, *Footguard Hall (Hartford Downtown MRA),* Footguard & High Sts. (12/23/84)
Hartford, *Hartford Club (Hartford Downtown MRA),* 46 Prospect St. (12/23/84)
Hartford, *Judd and Root Building (Hartford Downtown MRA),* 175—189 Allyn St. & 5—23 High St. (12/23/84)
Hartford, *Main Street Historic District No. 2 (Hartford Downtown MRA),* W. Main, N. Central Row, E. Prospect Sts., & N. Atheneum Sq. (12/23/84)
Hartford, *Prospect Avenue Historic District,* Roughly bounded by Albany Ave., N. Branch Park River, Elizabeth & Fern Sts., Prospect & Asylum Aves. & Sycamore Rd. (08/29/85)
Hartford, *Saint Anthony Hall, 340 Summit St. (05/09/85)*
Hartford, *Stone Bridge (Hartford Downtown MRA),* 500 Main St. (03/28/85)
Hartford, *West End North Historic District,* Roughly bounded by Farmington Ave., Lorraine, Elizabeth, & Highland Sts. (07/25/85)
South Windsor, *Elmore Houses,* 78 & 87 Long Hill Rd. (08/23/85)
Suffield, *Farmington Canal—New Haven and Northampton Canal,* Roughly from Suffield in Hartford Cty. to New Haven in New Haven Cty. (09/12/85)
Windsor, *Bissell Tavern—Bissell's Stage House,* 1022 Palisado Ave. (08/23/85)
Windsor, *Mills Elijah, House,* 45 Deerfield Rd (08/23/85)

Litchfield County

Barkhamsted vicinity, *Union Church—St. Paul's Church,* Riverton Rd. (02/21/85)
Harwinton, *Skinner, Jason, House,* Off South Rd. (08/19/85)
Plymouth, *East Plymouth Historic District,* E. Plymouth & Marsh Rd. (02/21/85)
Washington, *New Preston Hill Historic District,* New Preston Hill, Findley & Gunn Hill Rds. (08/28/85)
Winchester vicinity, *Gilbert Clock Factory,* Wallens St. (12/13/84)
Winchester vicinity, *Winsted Hosiery Mill,* Whiting at Holabird St. (02/21/85)

Middlesex County

Clinton, *Stevens, William, House,* 131 Cow Hill Rd. (05/30/85)
Essex, *Hill's Academy,* 22 Prospect St. (08/23/85)
Essex, *Pratt House,* 19 West Ave. (08/23/85)
Middlesex, *Old Middletown High School,* Pearl & Court Sts. (08/23/85)
Middletown, *Connecticut General Hospital for the Insane,* Silver St. E of Eastern Dr. (08/29/85)
Middletown, *Washington Street Historic District,* Roughly bounded by Washington & Main Sts., Washington Terrace & Vine St. (05/09/85)
Old Saybrook, *Whittlesey, Ambrose, House,* 14 Main St. (08/29/85)
Old Saybrook, *Whittlesey, John Jr., House,* 40 Ferry Rd. (10/26/84)
Westbrook and Deep River, *Doane's Sawmill—Deep River Manufacturing Company,* Horse Hill & Winthrop Rds. (02/21/85)

New Haven County

Ansonia, *Ansonia Library,* 53 South Cliff St. (08/23/85)
Beacon Falls vicinity, *Home Woollen Company (Beacon Falls Rubber Shoe Factory),* Main St. (11/29/84)
Branford, *Frisbie, Edward, Homestead,* 240 Stoney Creek Rd. (05/16/85)
Middlebury, *Middlebury Center Historic District,* Roughly bounded by Library Rd., North & South Sts. & Whittemore Rd. (05/09/85)
New Haven, *Hillhouse Avenue Historic District,* Roughly bounded by Sachem, Temple, Trumbull, & Prospect Sts., Whitney & Hillhouse Aves., & RR tracks (09/13/85)
New Haven, *Howard Avenue Historic District,* Properties along Howard Ave. between I-95 & Cassius St. (09/12/85)
New Haven, *Orange Street Historic District,* Roughly bounded by Whitney Ave., State, Eagle & Trumbull Sts. (09/12/85)
New Haven, *Pinto, William, House,* 275 Orange St. (09/12/85)
New Haven, *Trowbridge Square Historic District,* Roughly bounded by Columbus & Howard Aves., Loop Rd., Liberty St. & RR tracks (09/12/85)
Northford, *Fourth District School,* Old Post Rd. (08/29/85)

New London County

Jewett, *Wilson, John, House,* 11 Ashland St. (08/23/85)
Norwich, *Downtown Norwich Historic District,* Roughly bounded by Union Sq., Park, Main & Shetucket Sts., & Washington Sq. (04/04/85)

Windham County

Brooklyn—Killingly, *Quinebaug Mill—Quebec Square Historic District,* Roughly bounded by Quinebaug River, Quebec Square, Elm & S. Main Sts. (08/29/85)
Central Village, *Plainfield Woolen Company Mill,* Main St. (08/29/85)
Pomfret, *Putnam, Israel, Wolf Den,* Off Wolf Den Dr. (05/02/85)
Putnam, *Israel Putnam School,* School & Oak Sts. (12/13/84)
Windham, *Willimantic Armory,* Pleasant St. (09/12/85)

DELAWARE

Kent County

Dover vicinity, *Mifflin—Marim Agricultural Complex,* DE 9 (11/07/84)
Little Creek, *Little Creek Hundred Rural Historic District,* DE 9 (11/07/84)

New Castle County

Middletown vicinity, *Armstrong—Walker House (Rebuilding St. Georges Hundred 1850—1880 TR),* DE 71 (09/13/85)
Middletown vicinity, *Belleview (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 428 (09/13/85)
Middletown vicinity, *Holton, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 435 (09/13/85)
Middletown vicinity, *Maple Grove Farm (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 299 (09/13/85)
Middletown vicinity, *Rosedale (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 437 (09/13/85)
Middletown, *Choptank (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 435 (09/13/85)
Middletown, *Fields Heirs (Rebuilding St. Georges Hundred 1850—1880 TR),* Off DE 71 (09/13/85)
Mt. Pleasant vicinity, *Eliason, A., House (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 896 (09/13/85)
Mt. Pleasant vicinity, *Idalia Manor (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 13 (09/13/85)
Mt. Pleasant vicinity, *Woodside (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 435 (09/13/85)
New Castle, *New Castle Historic District,* Roughly bounded by the Delaware River, Broad Dike, Fourth, Sixth, Seventh & Penn Sts. (11/08/84)
Odessa vicinity, *Elm Grange (Rebuilding St. Georges Hundred 1850—1880 TR),* US 13 (09/13/85)
Odessa vicinity, *Gordon, J.M., House (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 44 (09/13/85)
Odessa vicinity, *Higgins, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 423 (09/13/85)
Odessa vicinity, *McWhorter House (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 412 (09/13/85)
Odessa vicinity, *Misty Vale (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 423 (09/13/85)
Odessa vicinity, *Old Ford Dairy (Rebuilding St. Georges Hundred 1850—1880 TR),* US 13 (09/13/85)
Odessa vicinity, *Retirement Farm (Rebuilding St. Georges Hundred 1850—1880 TR),* US 13 (09/13/85)
Odessa vicinity, *Vandegrift, J., House (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 44 (09/13/85)
Odessa vicinity, *Williams, J.K., House (Rebuilding St. Georges Hundred 1850—1880 TR),* DE 4 (09/13/85)
Odessa, *Vail, A.M., House (Rebuilding St. Georges Hundred 1850—1880 TR),* Rt. 299 (09/13/85)
Port Penn vicinity, *Cleaver House (Rebuilding St. Georges Hundred 1850—1880 TR),* Off Biddle's Corner Rd. (09/13/85)
St. Georges, *St. Georges Presbyterian Church,* Main St. (11/07/84)
Wilmington, *Bancroft and Sons Cotton Mills (Brandywine Cotton Mills),* Rockford Rd. (12/20/84)

Wilmington, *Crosby and Hill Building (Market Street MRA),* 605 N. Market St. (01/30/85)
Wilmington, *Delmarva Power and Light Building (Market Street MRA),* 600 N. Market St. (01/30/85)
Wilmington, *Govatos'—McVey Building (Market Street MRA), 800 N. Market St. (01/30/85)*
Wilmington, *Gray, Charles, Printing Shop (Market Street MRA),* 11 E. Eighth St. (01/30/85)
Wilmington, *Howard High School,* Thirteenth & Poplar Sts. (02/21/85)
Wilmington, *Keil, Max, Building (Market Street MRA),* 712 N. Market St. (01/30/85)
Wilmington, *Keil, Max, Building (Market Street MRA),* 700 N. Market St. (01/30/85)
Wilmington, *Lower Market Street Historic District (Boundary Increase),* Bounded by Second, Fifth, King & Shipley Sts. (02/21/85)
Wilmington, *Old Town Hall Commercial Historic District (Market Street MRA),* Roughly bounded by Fifth, N. King, N. Ninth & Shipley Sts. (01/30/85)
Wilmington, *Public School No. Nineteen,* 801 S. Harrison St. (12/20/84)
Wilmington, *Reynold's Candy Company Building (Market Street MRA),* 703 N. Market St. (01/30/85)
Wilmington, *Schagrin, Charles, Building (Market Street MRA),* 608 N. Market St. (01/30/85)
Wilmington, *Talley, William, House,* 1613 Foulk Rd. (02/21/85)
Wilmington, *Townsend, Henry, Building (Market Street MRA),* 709 N. Market St. (01/30/85)
Wilmington, *Wilmington Savings Fund Society (Market Street MRA),* 838 N. Market St. (01/30/85)

Sussex County

Georgetown, *Faucett, Peter S., House,* W. Laurel St. (09/05/85)
Georgetown, *Georgetown Coal Gasification Plant,* N. Railroad Ave. (09/30/85)
Georgetown, *Sipple, Thomas, House,* N. Bedford & New Sts. (09/05/85)
Millsboro, *Perry—Shockley House,* 219 Washington St. (09/05/85)

DISTRICT OF COLUMBIA

Constitution Hall, 311 Eighteenth St., NW (NHL) (09/16/85)
Fuller House, 2317 Ashmead Pl., NW (02/21/85)
Pension Building, Fourth, Fifth, F & G Sts., NW (NHL) (02/04/85)
Sun Building (American Bank Building), 1317 F St. NW (03/27/85)
Tivoli Theater, 3301—3325 Fourteenth St. NW (04/10/85)
Dupont Circle Historic District (Boundary Increase), Roughly bounded by Florida Ave., Sixteenth, Twenty-second & T Sts., Rhode Island Ave., & N St. (02/06/85)
Strivers' Section Historic District, Roughly bounded by New Hampshire and Florida Aves., Seventeenth & Eighteenth Sts. along T, U & Willard Sts. NW. (02/06/85)

FLORIDA

Alachua County

Gainesville, *Boulware Spring Waterworks,* 3400 S.E. Fifteenth St. (06/20/85)

Broward County

Forth Lauderdale, *US Car No. 1,* 3398 S.W. Ninth Ave. (NHL) (02/04/85)

Dade County

Coral Gables, *Coral Gables Police and Fire Station,* 2325 Salzedo St. (11/08/84)
Miami, *Congress Building,* 111 N.E. Second Ave. (03/14/85)
Miami, *Florida East Coast Railway Locomotive No. 153,* 12400 S.W. One hundred fifty-second St. (02/21/85)

Dural County

Jacksonville, *House at 3325 Via De La Reina (San Josė Estates TR),* 3325 Via De La Reina (04/10/85)
Jacksonville, *House at 3335 Via De La Reina (San Jose Estates TR),* 3335 Via De La Reina (04/10/85)
Jacksonville, *House at 3500 Via De La Reina (San Jose Estates TR),* 3500 Via De La Reina (04/10/85)
Jacksonville, *House at 3609 Via De La Reina (San Jose Estates TR),* 3609 Via De La Reina (04/10/85)
Jacksonville, *House at 3685 Via De La Reina (San Jose Estates TR),* 3685 Via De La Reina (04/10/85)
Jacksonville, *House at 3703 Via De La Reina (San Jose Estates TR),* 3703 Via De La Reina (04/10/85)
Jacksonville, *House at 3764 Ponce De Leon Avenue (San Jose Estates TR),* 3764 Ponce De Leon Ave. (04/10/85)
Jacksonville, *House at 7144 Madrid Avenue (San Jose Estates TR),* 7144 Madrid Ave. (04/10/85)
Jacksonville, *House at 7207 Ventura Avenue (San Jose Estates TR),* 7207 Ventura Ave. (04/10/85)
Jacksonville, *House at 7217 Ventura Avenue (San Jose Estates TR),* 7217 Ventura Ave. (04/10/85)
Jacksonville, *House at 7227 San Pedro (San Jose Estates TR),* 7227 San Pedro Rd. (04/10/85)
Jacksonville, *House at 7245 San Jose Boulevard (San Jose Estates TR),* 7245 San Jose Blvd. (04/10/85)
Jacksonville, *House at 7246 San Carlos (San Jose Estates TR),* 7246 San Carlos (04/10/85)
Jacksonville, *House at 7246 St. Augustine Road (Truman House) (San Jose Estates TR),* 7246 St. Augustine Rd. (04/10/85)
Jacksonville, *House at 7249 San Pedro (San Jose Estates TR),* 7249 San Pedro Rd. (04/10/85)
Jacksonville, *House at 7288 San Jose Boulevard (San Jose Estates TR), 7288 San Jose Blvd. (04/10/85)*
Jacksonville, *House at 7306 St. Augustine Road (San Jose Estates TR),* 7306 St. Augustine Rd. (04/10/85)
Jacksonville, *House at 7317 San Jose Boulevard (San Jose Estates TR),* 7317 San Jose Blvd. (04/10/85)
Jacksonville, *House at 7330 Ventura Avenue (San Jose Estates TR),* 7330 Ventura Ave. (04/10/85)
Jacksonville, *House at 7356 San Jose Boulevard (San Jose Estates TR), 7356 San Jose Blvd.* (04/10/85)
Jacksonville, *House at 7400 San Jose Boulevard (San Jose Estates TR),* 7400 San Jose Blvd. (04/10/85)
Jacksonville, *Riverside Historic District,* Roughly bounded by Seaboard Coastline RR, Riverside & Memorial Pks., St. Johns River & Seminole (03/22/85)
Jacksonville, *San Jose Administration Building (San Jose Estates TR),* 7423 San Jose Blvd. (04/10/85)
Jacksonville, *San Jose County Club (San Jose Estates TR),* 7529 San Jose Blvd. (04/10/85)
Jacksonville, *San Jose Hotel (San Jose Estates TR),* 7400 San Jose Blvd. (04/10/85)

Hillsborough County

Brandon, *Moseley Homestead,* (1820 W. Brandon Blvd. (01/31/85)
Tampa, *Hayden Estate Building,* 1016–1016½ N. Franklin St. (11/01/84)
Tampa, *Hyde Park Historic Districts,* Roughly bounded by Hillsborough River & Bay, Howard Ave., & Kennedy Blvd. (03/04/85)
Tampa, *Tampania House,* 4611 N. A St. (09/12/85)

Jefferson County

Lloyd, *Lloyd–Bond House,* Bond St. (11/01/84)

Lee County

Boca Grande, *Journey's End,* Beachfront at Eighteenth St. (03/14/85)

Leon County

Tallahassee, *Exchange Bank Building,* 201 S. Monroe (11/29/84)
Tallahassee, *Hotel Floridan,* 204 N. Monroe St. (11/29/84)

Levy County

Cedar Key, *Island Hotel,* 224 Second St. (11/23/84)

Monroe County

Key Largo vicinity, *Carysfort Lighthouse,* Key Largo National Marine Sanctuary (10/31/84)

Okeechobee County

Okeechobee, *Freedman–Raulerson House,* 600 S. Parrott Ave. (04/11/85)

Palm Beach County

Boca Raton, *Administration Buildings,* Dixie Hwy. & Camino Real (06/27/85)
West Palm Beach, *Mickens House,* 801 Fourth St. (04/11/85)

Pinellas County

St. Petersburg, *Alexander Hotel,* 535 Central Ave. (11/01/84)
St. Petersburg, *Casa De Muchas Flores,* 1446 Park St. N (01/31/85)
St. Petersburg, *Studebaker Building,* 600 Fourth St. S (07/05/85)

Sarasota County

Sarasota, *Reagin, L.D., House (Sarasota MRA),* 1213 N. Palm Ave. (10/25/84)
Sarasota, *Sarasota Women's Club (Sarasota MRA),* 1241 N. Palm Ave. (01/18/85)
Sarasota, *Whitfield, J.G., Estate,* 2704 Bayshore Dr. (09/12/85)

Seminole County

Sanford, *Sanford Grammer School,* Seventh & Myrtle Sts. (11/23/84)

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St. Lucie County

Ft. Pierce, *Cresthaven,* 350 S. Indian River Dr. (04/11/85)

Suwannee County

Live Oak, *Blackwell, Bishop A., House,* 120 Parshley St. (/02/28/85)

Volusia County

Ormond Beach, *Lippincott Mansion* (150 S. Beach St. (02/21/85)

GEORGIA

Appling County

Baxley, *Citizens Banking Company,* 112–110 N. Main St. (05/02/85)

Banks County (also in Hall County)

Gillsville, *Gillsville Historic District,* GA 52 (08/30/85)

Banks County

Commerce vicinity, *Hebron Church, Cemetery, and Academy,* CR 3 (09/12/85)
Maysville, *Maysville Historic District,* Along E. Main, W. Main & Homer Sts. (09/12/85)

Barrow County

Winder vicinity, *Rockwell Universalist Church,* GA 53 & Rockwell Church Rd. (05/02/85)
Winder, *Jackson—Johns House,* 116 Candler St. (04/18/85)

Bartow County

Cartersville, *Jones, Sam, Memorial United Methodist Church,* 100 W. Church St. (09/05/85)

Camden County

St. Marys vicinity, *Plum Orchard Historic District (Cumberland Island National Seashore MRA),* Cumberland Island (11/23/84)
St. Marys vicinity, *Stafford Plantation Historic District (Cumberland Island National Seashore MRA),* Cumberland Island (11/23/84)
St. Marys vicinity, *Table Point Archeological District (Cumberland Island National Seashore MRA),* Cumberland Island (11/23/84)

Chatham County

Savannah, *Ardsley Park—Chatham Crescent Historic District,* Roughly bounded by Ardsley Pk., Chatham Crescent, Bull St., Baldwin Pk. & Ardmore (08/15/85)
Savannah, *Charity Hospital,* 644 W. Thirty-sixth St. (05/02/85)

Cherokee County

Ball Ground, *Roberts, Alfred W., House,* GA 372 (09/11/85)

Clarke County

Athens, *Bloomfield Street Historic District,* Roughly bounded by Bloomfield & Peabody Sts., University of Georgia campus, Rutherford St. & Milledge Ave. (04/18/85)
Athens, *Boulevard Historic District,* Roughly bounded by the Seaboard Coastline RR tracks, Pulaski St., Prince Ave., & Hiawassee St. (04/18/85)
Athens, *Milledge Avenue Historic District,* Milledge Ave. from Broad St. to Five Points (04/18/85)
Athens, *Milledge Circle Historic District,* Milledge Park, Lumpkin St., Milledge Circle & Milledge Ave. (04/18/85)

Dawson County

Dawsonville, *Dawson County Jail (County Jails of the Georgia Mountains Area TR),* HW 53 (09/13/85)

DeKalb County

Atlanta, *Gentry, William T., House,* 132 E. Lake Dr. SE (05/02/85)
Decatur, *Lee, Agnes, Chapter House of the United Daughters of the Confederacy,* 120 Avery St. (07/25/85)

Floyd County

Rome, *East Rome Historic District,* Roughly bounded by Walnut Ave., McCall Blvd., E. Eighth & Tenth Sts. (07/25/85)
Rome, *Thankful Baptist Church,* 935 Spiderwebb Dr. (09/05/85)

Franklin County

Canon, *Canon Commercial Historic District,* Depot St. between Bond Ave. & Broad St. (08/01/85)
Canon, *Historic Churches of Canon Historic District,* Broad St. at Canon Ave. (08/01/85)
Royston, *Royston Commercial Historic District,* Along Church & Railroad Sts. (09/05/85)

Fulton County

Atlanta, *Castleberry Hill Historic District,* Roughly bounded by Nelson St., Southern & Central of Georgia RR, McDaniel, Peters & Walker Sts. (08/08/85)
East Point, *East Point Industrial District,* Roughly bounded by Martin & Taylor Sts., Norman Berry Dr. & RR tracks (09/05/85)

Greene County

Union Point vicinity, *Printup, Peter W., Plantation,* GA 44 (09/05/85)

Hall County

Clermont, *Clermont Residential Historic District,* Main, Harris, Martin, & Railroad Sts. (09/05/85)
Flowery Branch, *Flowery Branch Commercial Historic District,* Main St. & Railroad Ave. (08/30/85)
Gainesville, *Chicopee Mill and Village Historic District,* Roughly bounded by Fourth & Fifth Sts., North, K, Eighth, H, G & F Aves. on US 23 (07/25/85)
Gainesville, *Dixie Hunt Hotel,* 209 Spring St. SW (05/16/85)
Gainesville, *Green Street—Brenau Historic District,* Properties on Green, Candler, Park, Brenau, Boulevard & Prior Sts., Green St. Circle, City Park & much of Brenau College Campus (09/05/85)
Gainesville, *Hall County Jail (County Jails of the Georgia Mountains Area TR),* Bradford St. (09/13/85)
Gainesville, *Jackson Building,* 112 Washington St. NE (08/01/85)
Lulu, *Lulu Residential Historic District,* Cobb, Carter, Chattahoochee & Toombs Sts. (09/11/85)

Hart County

Bowersville, *Bowersville Historic District,* E. & W. Main Sts. (09/05/85)
Hartwell, *Hart County Jail (County Jails of the Georgia Mountains Area TR),* Johnson St. (09/13/85)

Henry County

McDonough, *Globe Hotel,* 20 Jonesboro St. (09/05/85)

Jackson County

Hoschton, *Hillcrest—Allen Clinic and Hospital,* GA 53 & Peachtree Rd. (05/02/85)

Liberty County

Hinesville, *Bacon—Fraser House,* 306 E. Court St. (04/18/85)

Lowndes County

Valdosta, *Dasher High School,* 900 S. Troup St. (04/18/85)

Lumpkin County

Dahlonega, *Lumpkin County Jail (County Jails of the Georgia Mountains Area TR),* Clarksville St. (09/13/85)

Macon County

Montezuma, *DeVaughn—Lewis House,* 310 S. Dooly St. (05/02/85)

McDuffie County

Thompson vicinity, *Sweetwater Inn,* Off GA 17 on Old Milledgeville Rd. (05/02/85)

McIntosh County

Darien, *Vernon Square—Columbus Square Historic District,* Roughly bounded by Market, Trumbull, Rittenhouse & Ft. King George Dr. (03/14/85)
Ridgeville, *Ridge, The,* Old Shell Rd. GA 99 (04/18/85)

Mitchell County

Camilla, *Camilla Commercial Historic District,* Roughly bounded by Broad, S. Scott & N. Scott Sts. (04/18/85)

Oglethorpe County

Vesta, *Smith—Harris House,* CR 207 (07/25/85)

Randolph County

Shellman, *Shellman Historic District,* Roughly bounded by Dean, Church, Mary Lou, Ward, Pecan & Pine Sts. (08/29/85)

Richmond County

Augusta, *Laney—Walker North Historic District,* Bounded by D'Antignac, Seventh, Twiggs, Phillips & Harrison Sts., Walton Way & Laney-Walker Blvd. (09/05/85)

Stewart County

Richland vicinity, *Prothro, Nathaniel, Plantation,* Old Americus Rd. (05/02/85)

Sumter County

Sumter, *Webb Family Farms,* US 19 (09/05/85)

Thomas County

Thomasville, *Bethany Congregational Church,* 112 Lester St. (03/07/85)
Thomasville, *Fletcherville Historic District,* Roughly bouded by Siexas, Wright, S. College & W. Jackson St. (04/18/85)
Thomasville, *Gordon Avenue Historic District,* Gordon Ave. (04/18/85)

Toombs County

Lyons, *Lyons Woman's Club House,* E. Liberty St. (05/02/85)

Towns County

Hiawassee, *Towns County Jail (County Jails of the Georgia Mountains Area TR),* Courthouse Sq. (09/13/85)

Union County

Blairsville, *Union County Jail (County Jails of the Georgia Mountains Area TR),* Blue Ridge Rd. (09/13/85)

White County

Cleveland, *White County Jail (County Jails of the Georgia Mountains Area TR),* Main St. (09/13/85)

GUAM

Agana, *Agana Historic District (Agana Houses TR),* Roughly bounded by Second S, Third S, & Ninth W, Santa Cruz & Legaspi Sts. (02/08/85)
Agana, *Mesa House,* Maxwell St. (02/08/85)
Agana, *Ungacta House,* 334 Hernan Cortez (02/08/85)
Anigua, *Toves House,* Marine Dr. (02/08/85)

HAWAII

Honolulu County

Honolulu vicinity, *Hickam Field,* (NHL) (09/16/85)
Honolulu, *Dickey, C.W., House,* 3030 Kalakaua Ave. (11/01/84)
Honolulu, *Henriques, Edgar and Lucy, House,* 29 Old Pali Pl. (11/01/84)
Honolulu, *Hocking, Alfred, House,* 1302 Nehoa St. (11/15/84)
Honolulu, *Oakley, George D., House,* 2110 Kakela Pl. (11/15/84)
Honolulu, *Palm Circle Historic District,* Roughly bounded by Carter Dr., Richardson & Funston Rds., A & B Sts. (10/26/84)
Kailua vicinity, *Kukuipilau Heiau,* Kalanianaole Hwy. (11/16/84)

Kauai County

Hanalei vicinity, *Haena Archeological Complex,* Kuhio Hwy (11/16/84)
Hanalei vicinity, *Na Pali Coast Archeological District,* Na Pali Coast (11/16/84)
Waimea, *Gay, Charles, House,* Gay Rd. (11/01/84)
Waimea, *Kikiaola,* Waimea Rd. (11/16/84)

Maui County

Makawao, *Hardy House,* 808 Makawao Ave. (11/08/84)

IDAHO

Bannock County

Pocatello, *Quinn Apartments,* 580 W. Clark St. (01/11/85)
Pocatello, *Rice—Packard House,* 454 N. Hayes Ave. (09/12/85)

Blaine County

Hailey, *Werthheimer Building,* 101 S. Main St. (09/12/85)

Canyon County

Nampa, *Nampa City Hall,* 203 Twelfth Ave. S (05/09/85)

Gooding County

Gooding, *Kelly's Hotel,* 112 Main (09/12/85)

Kootenai County

Athol vicinity, *Cedar Mountain School (Kootenai County Rural Schools TR),* Parks & Lewellyn Creek Rd. (09/12/85)
Bayview, *Bayview School II (Kootenai County Rural Schools TR),* Careywood Rd. (09/12/85)
Camp Mivoden vicinity, *East Hayden Lake School II (Kootenai County Rural Schools TR), Hayden Lake Rd.* (09/12/85)
Coeur d'Alene vicinity, *Prairie School II (Kootenai County Rural Schools TR),* Prairie Ave. (09/12/85)
Coeur d'Alene, *Davey, Harvey M., House,* 315 Wallace Ave. (05/23/85)
Hayden Lake vicinity, *Thunborg, Jacob and Cristina, House,* Chicken Point (09/12/85)
Lane, *Lane School II (Kootenai County Rural Schools TR),* Lanz Rd. (09/12/85)
McGuire, *McGuires School (Kootenai County Rural Schools TR),* Corbin Rd. & Old Hwy. 10 (09/12/85)
Medimont vicinity, *Cave Lake School (Kootenai County Rural Schools TR),* ID 3 (09/12/85)
Medimont vicinity, *Indian Springs School II (Kootenai County Rural Schools TR),* ID 3 (09/12/85)
Pleasant View vicinity, *Pleasant View School II (Kootenai County Rural Schools TR),* Pleasant View Rd. (09/12/85)
Post Falls vicinity, *Cougar Gulch School III (Kootenai County Rural Schools TR),* Cougar Gulch Rd. (09/12/85)
Rockford Bay vicinity, *Belgrove School II (Kootenai County Rural Schools TR),* Hamaker Rd. (09/12/85)
Rose Lake, *Rose Lake School II (Kootenai County Rural Schools TR),* Queen St. & ID 3 (09/12/85)
Silver Sands Beach vicinity, *Upper Twin Lakes School (Kootenai County Rural Schools TR),* Twin Lakes Rd. (09/12/85)

Twin Falls County

Buhl, *Buhl IOOF Building,* 1014–1016 Main St. (12/27/84)
Buhl, *Hotel Buhl,* 1004 Main St. (09/12/85)

Valley County

Thunder City vicinity, *Broddock Gold Mining and Milling Company Log Building and Forge Ruins,* Off Pack Trail near Suicide Rock (09/12/85)

ILLINOIS

Carroll County

Milledgeville vicinity, *Steffens, Joseph, House,* Off Elkhorn Rd. (04/10/85)

Cook County

Chicago, *Austin Historic District,* Roughly bounded by W. Ohio St., N. Waller, Parkside, W. West End & N. Mayfield Aves. & W. Corcoran Pl. (08/08/85)
Chicago, *Burlingham Building,* 104 W. Oak St. (02/14/85)
Chicago, *Cook County Criminal Court Building,* 54 W. Hubbard St. (11/13/84)
Chicago, *Dawson Brothers Plant,* 517–519 N. Halsted St. (02/14/85)
Chicago, *Emmel Building,* 1357 N. Wells St. (11/13/84)
Chicago, *Foley, Jennie, Building,* 626—628 S. Racine Av. (08/19/85)
Chicago, *Guyon Hotel,* 4000 W. Washington Bldv. (05/09/85)
Chicago, *Hermitage Apartments,* 4606 N. Hermitage Ave. (02/14/85)
Chicago, *Lake-Side Terrace Apartments,* 7425–7427 South Shore Dr. (11/13/84)
Chicago, *Midwest Athletic Club,* 6 N. Hamlin Ave. (10/18/84)
Chicago, *Municipal Courts Building,* 116 S. Michigan Ave. (08/29/85)
Chicago, *Old Town Triangle Historic District,* Roughly bounded by Armitage & North Aves., Clark & Mohawk Sts. (11/08/84)
Chicago, *Peoples Gas Building,* 122 S. Michigan Ave. (11/13/84)
Chicago, *Ropp—Grabill House,* 4132 N. Keeler Ave. (04/15/85)
Chicago, *Sheffield Historic District (Boundary Increase II),* Roughly bounded by W. Altgeld & W. Montana Sts., N. Lakewood & N. Southport Aves. (08/19/85)
Chicago, *Swedish American Telephone Company Building,* 5235–5257 N. Ravenswood (08/13/85)
Chicago, *Yondorf Block and Hall,* 758 W. North Ave. (11/13/84)
Evanston, *Perkins, Dwight House,* 2319 Lincoln St. (08/29/85)
Kenilworth, *Wild Flower and Bird Sanctuary in Mahoney Park,* Sheridan Rd. (04/10/85)
Lansing, *Ford Airport Hanger,* Glenwood-Lansing Rd. & Burnham Ave. (05/09/85)

DeKalb County

Sandwich, *von KleinSmid Mansion,* 216 W. Center (05/09/85)

DuPage County

Glen Ellyn, *Glen Ellyn Main Street Historic District,* Main St. between Cottage Ave. and Maple St. (10/29/84)

Effingham County

Effingham, *Effingham County Courthouse,* 110 E. Jefferson St. (09/11/85)

Ford County

Paxton, *Paxton Water Tower and Pump House,* 145 S. Market St. (11/13/84)

Gallatin County

Equality, *Crenshaw House,* Off Rt. 1 (05/29/85)

Greene County

Carrollton, *Carrollton Courthouse Square Historic District,* Roughly bounded by S. Main, W. Fifth, N. Main & W. Sixth Sts. (08/01/85)

Hancock County

Niota vicinity, *Cambre House and Farm,* SW of Niota (11/13/84)

Jackson County

Carbondale vicinity, *Giant City State Park Lodge and Cabins (Illinois State Parks Lodges and Cabins TR),* RR 1, Makanda (03/04/85)
Murphysboro, *Mobile and Ohio Railroad Depot,* 1701 Walnut St. (11/13/84)

Jersey County

Alton vicinity, *Pere Marquette State Park Lodge and Cabins (Illinois State Parks

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Lodges and Cabins TR), Box 159, Grafton (03/04/85)

Kane County

Aurora, *Healy Chapel*, 332 W. Downer Pl. (02/28/85)
Batavia, *Wilson, Judge Isaac, House*, 406 E. Wilson St. (05/09/85)
Elgin, *Elgin Milk Condensing Co.—Illinois Condensing Co.*, Brook & Water Sts. (02/14/85)

LaSalle County

LaSalle, *LaSalle City Building*, 745 Second St. (08/29/85)
LaSalle-Peru vicinity, *Starved Rock Lodge and Cabins (Illinois State Parks Lodges and Cabins TR)*, Box 116, Utica (05/08/85)

Lake County

Highland Park, *Becker, A.G., Property (Highland Park MRA)*, 405 Sheridan Rd. (11/15/84)
North Chicago, *Dewey House*, Veterans Administration Medical Center (05/08/85)

Lee County

Dixon, *Brookner, Christopher, House*, 222 N. Dixon Ave. (11/13/84)

Macon County

Decatur, *Decatur Downtown Historic District*, Merchant St., roughly bounded by North, Water, Wood & Church Sts. (05/09/85)

Madison County

Collinsville, *Miners Institute Building*, 204 W. Main (08/29/85)

McDonough County

Adair vicinity, *Welling—Everly Horse Barn*, Off US 136 (08/29/85)

McHenry County

Crystal Lake, *Palmer, Col. Gustavius A., House*, 5516 Terra Cotta Rd. (05/24/85)

McLean County

Bloomington, *Bloomington Central Business District*, Roughly bounded by Main, Center & Front Sts. (02/28/85)

Ogle County

Byron, *Soldier's Monument*, Chestnut & Second Sts. (02/14/85)
Dixon, *White Pines State Park Lodge and Cabins (Illinois State Parks Lodges and Cabins TR)*, RR 1, Mt. Morris (03/04/85)

Rock Island County

Rock Island vicinity, *Black Hawk Museum and Lodge (Illinois State Parks Lodges and Cabins TR)*, 1510 Forty-sixth Ave. (03/04/85)
Rock Island, *Fort Armstrong Hotel*, Third Ave. & Nineteenth St. (11/13/84)
Rock Island, *Lincoln School*, Seventh Ave. & Twenty-second St. (08/29/85)

Sangamon County

Riverton vicinity, *Wheeland Haven*, E of Riverton on I-72 (03/12/85)
Springfield, *Camp Lincoln Commissary Building*, 1301 N. MacArthur Blvd. (11/13/84)
Springfield, *Gottschalk, Fred, Grocery Store*, 301 W. Edwards St. (03/18/85)
Springfield, *Hickox Apartments*, Fourth & Cook Sts. (11/13/84)
Springfield, *Illinois Department of Mines and Minerals—Springfield Mine Rescue Station*, 609 Princeton Ave. (07/05/85)
Springfield, *Price—Wheeler House*, 618 S. Seventh St. (02/14/85)

Schuyler County

Rushville, *Phoenix Opera House Block*, 112–122 W. Lafayette St. (05/09/85)

St. Clair County

East St. Louis, *Majestic Theatre*, 240–246 Collinsville Ave. (05/09/85)

Vermilion County

Hoopeston, *Hoopes—Cunningham Mansion*, 424 E. Penn St. (09/11/85)

Washington County

Nashville, *Louisville and Nashville Depot*, 101 E. Railroad St. (03/01/85)

Will County

Plainfield, *Standard Oil Gasoline Station*, 600 W. Lockport St. (11/13/84)

INDIANA

Allen County

Fort Wayne vicinity, *Robinson, Horney, House*, 7320 Lower Huntington Rd. (03/21/85)
Fort Wayne, *St. Mary's Catholic Church*, 1101 S. Lafayette St. (12/27/84)
Fort Wayne, *West End Historic District*, Roughly bounded by Main, Webster, Jefferson, Broadway, Jones & St. Mary's River (11/15/84)
Huntertown vicinity, *West, Fisher, Farm*, 17936 West Rd. (06/06/85)
New Haven vicinity, *Craigville Depot*, Ryan & Edgerton Rds. (10/10/84)

Brown County

Stone Head, *Hendricks, Thomas A., House and Stone Head Road Marker*, IN 135 & Bellsville Rd. (12/06/84)

Carrol County

Cutler vicinity, *Adams Mill*, Off SR 50 (11/23/84)
Camden, *Thomas Andrew, House*, W. Main St. (12/27/84)

Cass County

Logansport, *Jerolaman—Long House*, 1004 E. Market St. (03/28/85)

Clark County

Charlestown, *Downs, Thomas, House*, 1045 Main St. (12/06/84)

Daviess County

Glendale Ridge Archeological Site (12 Da 86) (05/30/85)

Delaware County

Muncie, *Hamilton Township Schoolhouse No. Four*, IN 67 (12/27/84)
Muncie, *Roots, Francis T., Building*, 115–119 E. Charles St. (03/21/85)

Dubois County

Jasper vicinity, *Opel, John, House (Green Tree Hotel)*, St. James St. (10/04/84)

Fountain County

Covington, Sewell, William C.B., House, 602 E. Washington St. (10/11/84)

Gibson County

Weber Village Archeological Site (12 Gi 13), (09/12/85)
Haubstadt, *Haubstadt State Bank*, 101 S. Main St. (12/27/84)

Grant County

Fairmounty, *Patterson, J.W., House and Office (Boundary Increase)*, 203 & 209 E. Washington St. (01/18/85)

Hamilton County

Sheridan, *Davenport—Bradfield House*, 106 E. Second St. (01/18/85)

Hancock County

Greenfield, *Greenfield Courthouse Square Historic District*, Roughly bounded by North, Hinchman, South & Pennsylvania Sts. (03/07/85)

Henry County

Middletown, *Hedrick, John W., House*, 506 High St. (12/27/84)

Huntington County

Huntington vicinity, *Chief Richardville House and Miami Treaty Grounds*, W of Huntington on US 24 & IN 9/37 (09/16/85)
Huntington, *German Reformed Church*, 202 Etna Ave. (04/11/85)

Knox County

Vincennes, *Ebner—Free House*, 120 Locust (03/21/85)

LaPorte County

LaPorte, *Morrison, Francis H., House*, 1217 Michigan Ave. (12/06/84)

Lake County

Lowell vicinity, *Buckley Homestead*, 3606 Belshaw Rd. (12/06/84)

Lawrence County

Bono Archeological Site (12 Lr 194) (05/30/85)

Madison County

Anderson, *Carnegie Public Library*, 32 W. Tenth St. (03/21/85)
Anderson, *West Central Historic District*, Roughly bounded by Brown-Delaware, Tenth, John, & Thirteenth Sts. (12/06/84)
Chesterfield, *Makepeace, George, House*, 5 W. Main St. (03/21/85)

Marion County

Beech Grove, *Nickel Plate Road Steam Locomotive No. 587*, Off First Ave. (11/28/84)
Indianapolis, *Christamore House*, 502 N. Tremont St. (03/21/85)
Indianapolis, *Indianapolis Chair Manufacturing Company*, 330 W. New York St. (11/15/84)
Indianapolis, *Jackson Buildings*, 419 & 425 E. Washington St. (12/13/84)

Montgomery County

Crawfordsville vicinity, *McClelland—Layne House*, 602 Cherry St. (09/12/85)
Crawfordsville, *Saint John's Episcopal Church*, 212 S. Green St. (03/21/85)

Orange County

Paoli, *Lindley, Thomas Elwood, House*, Willow Creek Rd. (09/12/85)

Owen County

Ennis Archeological Site (12 OW 229) (05/30/85)

Porter County

Valparaiso, *Loring, Dr. David J., Residence and Clinic*, 102 Washington St. (12/06/84)

Posey County

Ashworth Archeological Site (12 Po 7), (09/12/85)
Hovey Lake Archeological District, (09/12/85)
Mt. Vernon, *IOOF and Barker Buildings*, 402–406 Main St. (09/12/85)

Putnam County

Greencastle vicinity, *Stoner, Lycurgus, House*, Manhattan Rd. (09/12/85)

St. Joseph County

New Carlisle vicinity, *Studebaker Clubhouse and Tree Sign*, 32132 IN 2 (09/16/85)
South Bend vicinity, *Water Street—Darden Road Bridge*, Over St. Joseph River at Darden Rd. (03/21/85)
South Bend, *All American Bank Building (Downtown South Bend Historic MRA)*, 111 W. Washington (06/05/85)
South Bend, *Berteling Building (Downtown South Bend Historic MRA)*, 228 W. Colfax (06/05/85)
South Bend, *Blackstone—State Theater (Downtown South Bend Historic MRA)*, 212 S. Michigan (06/05/85)
South Bend, *Cathedral of St. James and Parish Hall (Downtown South Bend Historic MRA)*, 117 N. Lafayette & 115 N. Lafayette (06/05/85)
South Bend, *Central High School & Boys Vocational School (Downtown South Bend Historic MRA)*, 115 N. St. James Court (06/05/85)
South Bend, *Citizens Bank (Downtown South Bend Historic MRA)*, 112 W. Jefferson (06/05/85)
South Bend, *Colfax Theater (Downtown South Bend Historic MRA)*, 213 W. Colfax (06/05/85)
South Bend, *Commercial Building (Downtown South Bend Historic MRA)*, 226 W. Colfax (06/05/85)
South Bend, *Farmers Security Bank (Downtown South Bend Historic MRA)*, 133 S. Main St. (06/05/85)
South Bend, *Former First Presbyterian Church (Downtown South Bend Historic MRA)*, 101 S. Lafayette (06/05/85)
South Bend, *Hager House (Downtown South Bend Historic MRA)*, 415 W. Wayne (06/05/85)
South Bend, *Hinkle, W.R., and Co. (Downtown South Bend Historic MRA)*, 225 N. Lafayette (06/05/85)
South Bend, *Hoffman Hotel (Downtown South Bend Historic MRA)*, 120 W. LaSalle (06/05/85)
South Bend, *I & M Building (Downtown South Bend Historic MRA)*, 220 W. Colfax (06/05/85)
South Bend, *J.M.S. Building (Downtown South Bend Historic MRA)*, 108 N. Main (06/05/85)
South Bend, *Kerr, John G., Company (Downtown South Bend Historic MRA)*, 121 W. Colfax (06/05/85)
South Bend, *Knights of Columbus—Indiana Club (Downtown South Bend Historic MRA)*, 320 W. Jefferson Blvd. (06/05/85)
South Bend, *Knights of Pythias Lodge (Downtown South Bend Historic MRA)*, 224 W. Jefferson (06/05/85)
South Bend, *LaSalle Annex (Downtown South Bend Historic MRA)*, 306 N. Michigan (06/05/85)
South Bend, *LaSalle Hotel (Downtown South Bend Historic MRA)*, 237 N. Michigan (06/05/85)
South Bend, *Leeper, Samuel, Jr., House*, 113 W. North Shore Dr. (03/21/85)
South Bend, *Morey House (Downtown South Bend Historic MRA)*, 110–112 Franklin Pl. (06/05/85)
South Bend, *Morey—Lampert House (Downtown South Bend Historic MRA)*, 322 Washington (06/05/85)
South Bend, *Morningside Club Residence (Downtown South Bend Historic MRA)*, 413 W. Colfax (06/05/85)
South Bend, *Northern Indiana Gas and Electric Company (Downtown South Bend Historic MRA)*, 221 N. Michigan (06/05/85)
South Bend, *Palace Theater (Downtown South Bend Historic MRA)*, 211 N. Michigan (06/05/85)
South Bend, *Second St. Joseph Hotel (Downtown South Bend Historic MRA)*, 117–119 W. Colfax (06/05/85)
South Bend, *South Bend Remedy Company (Downtown South Bend Historic MRA)*, 220 W. LaSalle (06/05/85)
South Bend, *Summers—Longley House—Building (Downtown South Bend Historic MRA)*, 312–314 W. Colfax (06/05/85)
South Bend, *Third St. Joseph County Courthouse (Downtown South Bend Historic MRA)*, 105 S. Main St. (06/05/85)
South Bend, *Tower Building (Downtown South Bend Historic MRA)*, 216 W. Washington (06/05/85)

Sullivan County

Daugherty—Monroe Archeological Site (12 Su 13) (06/12/85)

Tippecanoe County

Battle Ground, *Battle Ground Historic District*, Roughly bounded by Burnett Creek, Sherman Dr. & an open ridge on the SE (07/23/85)

Vanderburgh County

Evansville, *Bayard Park Historic District*, Roughly bounded by Gum, Kentucky, Blackford & Garvin Sts. (06/27/85)
Evansville, *Mead Johnson River-Rail-Truck Terminal and Warehouse*, 1830 W. Ohio St. (12/27/84)

Vigo County

St. Mary-of-the-Woods, *Foley Hall*, St. Mary of the Woods College Campus, Off US 150 (03/21/85)

Washington County

Salem, *First Baptist Church*, 201 N. High St. (03/21/85)
Salem, *Washington County Jail and Sheriff's Residence*, 108 S. Main St. (11/23/84)

Wayne County

Richmond, *Leland Hotel*, 900 S. A St. (02/28/85)

Wells County

Bluffton, *Villa North Historic District*, 706–760 & 707–731 N. Main St. (06/04/85)

White County

Monticello, *South Grade School Building*, 505 S. Main St. (09/12/85)

IOWA

Allamakee County

Waukon, *Hager, Otto J., House*, 402 Allamakee St. (06/27/85)

Buchanan County

Aurora vicinity, *Richardson—Jakway House*, RR 1 (06/27/85)

Calhoun County

Lake City, *Central School*, 201 S. Center (01/03/85)

Cedar County

Durant, *St. Paul's Episcopal Church and Parish Hall*, 208 Sixth Ave. (01/03/85)

Cherokee County

Cherokee, *Cherokee Public Library (Public Library Buildings in Iowa TR)*, 215 S. Second St. (04/09/85)

Clarke County

Osceola, *Brady—Bolibaugh House*, 217 W. Washington (01/03/85)

Des Moines County

Des Moines, *Warfield, Pratt and Howell Company Warehouse*, 100 W. Court Ave. (05/15/85)

Dubuque County

Dubuque, *Andrew—Ryan House*, 1375 Locust (04/11/85)
Dubuque, *Cathedral Historic District*, Roughly bounded by a bluffline running W of Bluff St., W. Seventh, Locust & Jones Sts. (09/25/85)

Greene County

Jefferson, *Gallup, George H., House*, 703 S. Chestnut St. (07/18/85)

Harrison County

Logan, *State Savings Bank*, 312 E. Seventh St. (04/18/85)

Henry County

Mt. Pleasant, *Allen, G.W.S., House*, 207 E. Henry St. (04/11/85)

Iowa County

North English vicinity, *Turner, Fred G., House*, IA 149 (06/27/85)

Jackson County

Springbrook, *Kegler—Gonner Store and Post Office*, 100 E. Main (06/27/85)

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Jefferson County

Fairfield, *Ball, W.C., House,* RR 2 (04/04/86)

Johnson County

Solon, *Cottage at Rock and Dubuque Streets,* Rt. 4, Box 3 (01/03/85)

Jones County

Monticello, *Odd Fellows Hall,* 303 W. First St. (06/27/86)

Scotch Grove vicinity, *Corbett's—Eby's Mill Bridge,* Spans Maquoketa River (04/11/85)

Keokuk County

Sigourney vicinity, *Lancaster School,* SE of Sigourney (10/04/84)

Linn County

Cedar Rapids, *St. Paul Methodist Episcopal Church,* 1340 Third Ave. SE (06/27/85)

Mt. Vernon, *West, Wesley, House,* Palisades Rd. (06/27/85)

Madison County

Winterset, *Wallace, Henry C., House,* 422 W. Jefferson (01/03/85)

Mahaska County

Oskaloosa, *McMullin, Major James W., House,* 403 First Ave., E (04/11/85)

Marion County

Bussey, *Ellis, Evan F., Farmhouse,* Off Hwy. 156 (01/03/85)

Monroe County

Albia, *Albia Square and Central Commercial Historic District,* Roughly bounded by the alley of S. & N. Clinton, E. & W. A Ave., N. & S. Second St., & E. & W. Second Ave. (01/03/85)

Albia, *Elbert—Bates House,* 106 Second Ave. W (06/27/85)

Polk County

Des Moines, *Des Moines Saddlery Company Building,* 307–311 Court Ave. (06/27/85)

Des Moines, *Stevenson, Samuel A. and Margaret, House,* 2940 Cottage Grove Ave. (01/03/85)

Pottawattamie County

Council Bluffs, *Haymarket Commercial Historic District,* S. Main St. (04/11/85)

Poweshiek County

Malcom, *Raymond, P.P., House,* Fourth St. (04/24/85)

Scott County

Davenport, *Columbia Avenue Historic District (Davenport MRA),* Roughly bounded by W. Columbia Ave., Harrison, Ripley & W. Haynes Sts. (11/01/84)

Davenport, *Dessaint, Marie Clare, House (Davenport MRA),* 4806 Northwest Blvd. (11/01/84)

Davenport, *Hoersch, John, House (Davenport MRA),* 716 Vine St. (11/01/84)

Davenport, *House at 2212 W. River Drive (Davenport MRA),* 2212 W. River Dr. (11/01/84)

Davenport, *Littig, John, House (Davenport MRA),* 6035 Northwest Blvd. (11/01/84)

Davenport, *McClellan Heights Historic District (Davenport MRA),* Roughly bounded by city limits, E. River Dr., East St., Jersey Ridge & Middle Rds. (11/01/84)

Davenport, *McHarg, Joseph S., House (Davenport MRA),* 5906 Chapel Hill Rd. (04/09/85)

Davenport, *Oak Lane Historic District (Davenport MRA),* Oak Lane between High & Locust Sts. (11/01/84)

Davenport, *Prospect Park Historic District (Davenport MRA),* Roughly bounded by E. River Dr., Mississippi Ave., Prospect Terr., Eleventh & Adams Sts. (11/01/84)

Davenport, *Riverview Terrace Historic District (Davenport MRA),* Roughly bounded by Riverview Terr., Clay & Marquette Sts. (11/01/84)

Davenport, *Schricker, John, House (Davenport MRA),* 5418 Chapel Hill Rd. (04/09/85)

Davenport, *Vander Veer Park Historic District (Davenport MRA),* Roughly bounded by Temple Lane, W. Central Park Ave., Brady, High, & Harrison Sts. (04/09/85)

Davenport, *Whitaker, Charles, House (Davenport MRA),* 1530 E. Twelfth St. (01/14/85)

Davenport, *Woods, Oscar C., House (Davenport MRA),* 1825 Grand Ave. (11/01/84)

Shelby County

Harlan, *Floral Hall,* 314 Fourth St. on Shelby County Fairgrounds (04/11/85)

Story County

Ames, *Agricultural Hall,* Iowa State University (06/27/85)

Wapello County

Ottumwa, *Benson Block,* 109–112 N. Market (01/03/85)

Woodbury County

Sioux City, *Boston Block* 1005–1013 E. Fourth St. (01/03/85)

Sioux City, *Evans Block* 1120–1128 Fourth St. (01/03/85)

Sioux City, *Warrior Hotel,* Sixth & Nebraska Sts. (06/27/85)

KANSAS

Atchison County

Atchison, *Howard, Frank, House,* 305 N. Terrace (10/15/84)

Atchison, *Trinity Episcopal Church,* 300 S. Fifth St. (04/04/85)

Brown County

Hiawatha, *Hiawatha Memorial Auditorium,* 611 Utah St. (09/05/85)

Butler County

Douglass Vicinity, *Muddy Creek Bridge (Masonry Arch Bridges of Kansas TR),* Off US 77 (07/02/85)

Douglass vicinity, *Polecat Creek Bridge (Masonry Arch Bridges of Kansas TR),* 5 miles W & 2 miles S of Douglass (07/02/85)

Chase County

Cottonwood Falls, *Cottonwood River Bridge (Masonry Arch Bridges of Kansas TR),* KS 177 (07/02/85)

Cloud County

Clyde, *Van De Mark, Charles W., House,* 504 Washington (07/05/85)

Cowley County

Dexter vicinity, *Esch's Spur Bridge (Masonry Arch Bridges of Kansas TR),* 3 miles S & 3 miles W of Dexter (07/02/85)

Rock, *Bucher Bridge (Masonry Arch Bridges of Kansas TR),* Off US 177 (07/02/85)

Crawford County

Girard vicinity, *Hudgeon Bridge (Masonry Arch Bridges of Kansas TR),* 10 miles S & 3.2 miles W of Girard (07/02/85)

Ford County

Dodge City, *Lora Locke Hotel,* Central & Gunsmoke Sts. (01/03/85)

Franklin County

Princeton Vicinity, *Middle Creek Tributary Bridge (Masonry Arch Bridges of Kansas TR),* 5.8 miles W of Princeton (07/02/85)

Wellsville vicinity, *Walnut Creek Bridge (Masonry Arch Bridges of Kansas TR),* Off KS 33 one mile S of Wellsville (07/02/85)

Greenwood County

Madison vicinity, *Verdigris River Bridge (Masonry Arch Bridges of Kansas TR),* .5 miles N of Madison (07/02/85)

Piedmont vicinity, *North Branch Otter Creek Bridge (Masonry Arch Bridges of Kansas TR),* 1 mile W & 5 miles N of Piedmont (07/02/85)

Harper County

Harper vicinity, *Thompson—Wohlschlegel Round Barn,* Off US 160, S on CR 1485 (02/21/85)

Harvey County

Newton, *Santa Fe Depot,* 414 N. Main (04/11/85)

Hodgeman County

Jetmore vicinity, *Hackberry Creek Bridge (Masonry Arch Bridges of Kansas TR),* 13 miles W & 11 miles N of Jetmore (07/02/85)

Kingman County

Kingman, *Kingman County Courthouse,* 120 Spruce St. (09/11/85)

Kiowa County

Belvidere vicinity, *Belvidere Medicine River Bridge (Masonry Arch Bridges of Kansas TR),* .25 miles N of Belvidere (07/02/85)

Labette County

Mound Valley vicinity *Pumpkin Creek Tributary Bridge (Masonry Arch Bridges of Kansas TR),* Off KS 22 two miles W of Mound Valley (07/02/85)

Parsons vicinity, *Labette Creek Tributary Bridge (Masonry Arch Bridges of Kansas TR),* Off US 160 2.3 miles W of Parsons (07/02/85)

Parsons vicinity, *Parsons Filled Arch Bridge (Masonry Arch Bridges of Kansas TR),* Off US 160, 1 mile East & 1.2 miles S of Parsons (07/02/85)

Lincoln County

Lincoln vicinity, *Spring Creek Tributary Bridge (Masonry Arch Bridges of Kansas TR),* 8 miles S & 5 miles W of Lincoln (07/02/85)

Vesper vicinity, *Bullfoot Creek Bridge (Masonry Arch Bridges of Kansas TR),* 4 miles S & .9 miles E of Vesper (07/02/85)

Linn County

Goodrich vicinity, *Landers Creek Bridge (Masonry Arch Bridges of Kansas TR),* S edge of Goodrich (07/02/85)

Lyon County

Americus vicinity, *Harris Bridge (Masonry Arch Bridges of Kansas TR),* 3 miles N & 4 miles W of Americus (07/02/85)

Emporia, *Granada Theater,* 809 Commercial (04/04/85)

Emporia, *Plumb, Mrs. Preston B., House,* 224 E. Sixth Ave. (10/04/84)

Miami County

Louisburg vicinity, *Jake's Branch of Middle Creek Bridge (Masonry Arch Bridges of Kansas TR),* Off US 69 (07/02/85)

Montgomery County

Independence, *Pennsylvania Avenue Rock Creek Bridge (Masonry Arch Bridges of Kansas TR),* Pennsylvania Ave. over Rock Creek (07/02/85)

Neosho County

Erie, *State Street Bridge (Masonry Arch Bridges of Kansas TR),* State St. over Neosho River Tributary (07/02/85)

St. Paul vicinity, *Maxwell's Slough Bridge (Masonry Arch Bridges of Kansas TR),* Off KS 57 .5 miles W & 1 miles S of St. Paul (07/02/85)

Ness County

Bazine vicinity, *Pawnee River Tributary Bridge (Masonry Arch Bridges of Kansas TR),* 8 miles S of Bazine (07/02/85)

Pawnee County

Rozel vicinity, *Township Line Bridge (Masonry Arch Bridges of Kansas TR),* Off US 156 3 miles W of Rozel (07/02/85)

Reno County

Hutchinson, *Kansas Sugar Refining Company Mill,* 600 E. First St. (01/03/85)

Rush County

Nekoma vicinity, *Old Maids Fork Bridge (Masonry Arch Bridges of Kansas TR),* .5 mile N & 2.5 miles W of Nekoma (07/02/85)

Sedgwick County

Wichita, *Fairmount Cottage,* 1717 Fairmount Ave. (09/05/85)

Wichita, *Kress, S.H., Company Building,* 224 E. Douglas (06/24/85)

Wichita, *Lassen Hotel,* Market Ave. & First St. (10/04/84)

Shawnee County

Auburn vicinity, *McCauley Bridge (Masonry Arch Bridges of Kansas TR),* .5 miles S of Auburn (07/02/85)

Topeka, *St. John's Lutheran School (Johannes Arms Apartments),* 315 W. Fourth St. (01/03/85)

Sherman County

Goodland, *Goodland City Library,* 120 W. Twelfth St. (09/13/85)

Trego County

Collyer, *Walsh Archeological District* (01/15/85)

Wilson County

Coyville vicinity, *Brush Creek Bridge (Masonry Arch Bridges of Kansas TR),* .5 miles S of Coyville off KS 105 (07/02/85)

Wyandotte County

Kansas City, *Fire Station No. 9,* 2 S. Fourteenth St. (09/05/85)

Kansas City, *Scottish Rite Temple,* 803 N. Seventh St. (09/11/85)

Kansas City, *Soldiers and Sailors Memorial Building,* 600 N. Seventh St. (09/05/85)

KENTUCKY

Ballard County

Wickliffe, *Wickliffe Site 15 BA 4* (12/06/84)

Bath County

Owingsville, *Owingsville Commercial District and Courthouse Square (Boundary Increase),* 122 E. Main St. (08/01/85)

Bell County

Middlesboro, *Mt. Moriah Baptist Church,* 314 N. Main St. (06/06/85)

Middlesboro, *St. Mary's Episcopal Church,* 131 Edgewood Rd. (11/15/84)

Boyle County

Danville vicinity, *Pleasant Vale,* Lexington Rd. (11/15/84)

Butler County

Morgantown, *Butler County Jail,* S. Warren & E. Logan Sts. (11/01/84)

Caldwell County

Fredonia, *Fredonia Cumberland Presbyterian Church,* US 641 (06/06/85)

Calloway County

Backusburg vicinity, *Archeological Site 15CW64* (07/11/85)

Campbell County

Dayton, *Dayton High School,* Eighth & Walnut Sts. (07/18/85)

Newport, *Mansion Hill Historic District (Boundary Increase),* Roughly bounded by Washington Ave., Sixth, Saratoga & Third Sts. (08/01/85)

Clark County

Athens vicinity, *Boot Hill Farm,* Athens-Boonesboro Pike, Rt. 7 (03/01/85)

Fleming County

Flemingsburg, *Flemingsburg Historic District,* Roughly bounded by Stockwell, Hunt, East Elm, Fox Springs, Mt. Sterling, Main Cross & Rhoades (07/05/85)

Franklin County

Archeological Site 15 FR 368 (09/12/85)

Fulton County

Hickman, *Sassafras Ridge (Site 15 Fu 3)* (11/23/84)

Garrard County

Bryantsville vicinity, *Spring Garden—John Leavell House (Garrard County MRA),* Ballard Lane-Tanyard Branch (06/17/85)

Bryantsville, *Bryantsville Post Office and Store (Garrard County MRA),* Off US 27 (06/17/85)

Lancaster vicinity, *Barlow House (Garrard County MRA),* Danville Rd. (06/17/85)

Lancaster vicinity, *Blakeman, Calvin, House (Garrard County MRA),* Polly's Bend Rd. (06/17/85)

Lancaster vicinity, *Bonta—Owsley House (Garrard County MRA),* Jct. of Boone's Creek & KY 52 (06/17/85)

Lancaster vicinity, *Bryantsville Methodist Church (Garrard County MRA),* US 27 (06/17/85)

Lancaster vicinity, *Dalton House (Garrard County MRA),* KY 39 (06/17/85)

Lancaster vicinity, *Dunn-Watkins House (Garrard County MRA),* Danville Rd. (06/17/85)

Lancaster vicinity, *Gulley Farm (Garrard County MRA),* US 27 (06/17/85)

Lancaster vicinity, *Hamilton, Roscoe, House (Garrard County MRA),* Buena Vista Rd. (06/17/85)

Lancaster vicinity, *Lane Farm (Garrard County MRA),* Polly's Bend Rd. (06/17/85)

Lancaster vicinity, *Metcalf, Isaac, House (Garrard County MRA),* Broadus Branch Rd. (06/17/85)

Lancaster vicinity, *Mt. Olivet Methodist Church (Garrard County MRA),* Off KY 152 (06/17/85)

Lancaster vicinity, *Parks—Moore House (Garrard County MRA),* US 27 (06/17/85)

Lancaster vicinity, *Parks, William, House (Garrard County MRA),* Locust Lane (06/17/85)

Lancaster vicinity, *Perkins—Daniel House (Garrard County MRA),* Gilbert's Creek (06/17/85)

Lancaster vicinity, *Rankin Place (Garrard County MRA),* Old Danville Rd. (06/17/85)

Lancaster vicinity, *Ray House (Garrard County MRA),* Jess Ray Rd. (06/17/85)

Lancaster vicinity, *Salter, Tom, House (Garrard County MRA),* KY 39 (06/17/85)

Lancaster vicinity, *Sebastian Log House (Garrard County MRA),* Nina Ridge (06/17/85)

Lancaster vicinity, *Sharp House (Garrard County MRA),* Fisher Ford Rd. (06/17/85)

Lancaster vicinity, *Stapp Homeplace (Garrard County MRA),* KY 39 (06/17/85)

Lancaster vicinity, *Teater, Paris, House (Garrard County MRA),* KY 39 (06/17/85)

Lancaster vicinity, *Thompson, Smith, Log House (Garrard County MRA),* Wolf Trail Rt. 563 (06/17/85)

Lancaster vicinity, *Walden Place (Garrard County MRA),* Sugar Creek (06/17/85)

Lancaster vicinity, *Walker House (Garrard County MRA),* SR 1295 (06/17/85)

Lancaster vicinity, *Wilson, Paul, Place (Garrard County MRA),* Off Polly's Bend Rd. (06/17/85)

Paint Lick vicinity, *Smith House (Garrard County MRA),* Jct. of KY 52 & SR 1647 (06/17/85)

Paint Lick, *Calico & Brown General Store (Garrard County MRA),* KY 52 (06/17/85)

Paint Lick, *Miller, William, Place (Garrard County MRA),* Jct. of KY 52 & KY 21 (06/17/85)

Paint Lick, Paint Lick Presbyterian Church (Garrard County MRA), KY 52 (06/17/85)

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Teatersville, *Teater, William, House (Garrard County MRA)*, KY 39 (08/17/85)

Grayson County

Leitchfield, *Court Square Historic District*, Court House Sq. between Walnut & Market Sts. (11/23/84)
Leitchfield, *Hunter House*, 118 W. Walnut St. (05/16/85)

Green County

Exie vicinity, *Philpot House (Green County MRA)*, KY 729 (04/19/85)
Greensburg vicinity, *Cowherd, Francis, House (Green County MRA)*, Off US 68 (04/19/85)
Greensburg, *Barrett—Blakeman House (Green County MRA)*, Hodgenville Rd. (04/19/85)
Greensburg, *Federal House (Green County MRA)*, S. Main & E. Columbia (04/19/85)
Greensburg, *Goose Creek Foot Bridge (Green County MRA)*, Court & Depot Sts. (04/19/85)
Greensburg, *Greensburg Cumberland Presbyterian Church (Green County MRA)*, Hodgenville Ave. & N. First St. (04/19/85)
Greensburg, *Herndon, William H., House (Green County MRA)*, 203 S. Main St. (04/19/85)
Greensburg, *Hobson, William, House (Green County MRA)*, 102 S. Depot St. (04/19/85)
Greensburg, *Lewis, Woodson, House (Green County MRA)*, Main St. & Hodgenville Ave. (04/19/85)
Greensburg, *White—Penick House (Green County MRA)*, 106 S. Depot St. (04/19/85)
Summersville vicinity, *Allen, John C., House (Green County MRA)*, KY 61 (04/19/85)

Jefferson County

Jeffersontown, *Jeffersontown Colored School (Jefferson County MRA)*, 10400 Shelby St. (03/29/85)
Louisville, *Electric Building*, 619 S. Fourth Ave. (03/14/85)
Louisville, *German Bank Building*, 150 S. Fifth St. (10/11/84)
Louisville, *German Insurance Bank*, 207 W. Market St. (03/14/85)
Louisville, *Grove, Benjamin, House (West Louisville MRA)*, 518 N. Twenty-sixth St. (11/15/84)
Louisville, *Madrid Building*, 545 S. Third St. (07/11/85)
Louisville, *Preston—St. Catherine Street Historic District*, Roughly bounded by Roland, Preston, Jackson, St. Catherine & Floyd Sts. (05/02/85)
Louisville, *Shawnee Elementary School (West Louisville MRA)*, 4151 Herman St. (11/02/84)
Louisville, *Shawnee High School (West Louisiana MRA)*, 4015 Herman St. (11/02/84)
Louisville, *St. Vincent DePaul Church, Rectory, School, St. Ursula Home and Convent*, Oak & Shelby Sts., & 1214 Logan St. (11/15/84)
Louisville, *Starks Building*, 455 S. Fourth Ave. (07/11/85)
Louisville, *Stuart Building*, 601 W. Oak St. (03/14/85)
Louisville, *Sunnyside*, 3020 Poppy Way (03/14/85)
Louisville, *Temple Bodley Summer House, (Jefferson County MRA)*, Off Rive Ridge Rd. SW of Palatka Rd. (08/29/85)
Louisville, *Wright and Taylor Building*, 611—617 S. Fourth St. (11/15/84)
Lyndon vicinity, *Lynnford—Lyndon Hall (Jefferson County MRA)*, 8222 Shelbyville Rd. (04/18/85)
Prospect vicinity, *Clore, James, House (Jefferson County MRA)*, N of Prospect off KY 329 (11/15/84)

Jessamine County

Logana vicinity, *Federal House on Hickman Creek (Jessamine County MRA)*, W of Logana (07/06/85)
Logana vicinity, *Hunter, John, House (Jessamine County MRA)*, S of Logana (07/06/85)
Nicholasville vicinity, *Bryant House (Jessamine County MRA)*, US 27 (07/06/85)
Nicholasville vicinity, *O'Neal, George, House (Jessamine County MRA)*, Off US 68 (07/06/85)
Nicholasville vicinity, *O'Neal, James, House (Jessamine County MRA)*, Off KY 169 (07/06/85)
Nicholasville vicinity, *Shady Grove (Jessamine County MRA)*, Off US 27 (07/06/85)
Nicholasville vicinity, *Shanklin House (Jessamine County MRA)*, KY 169 (07/06/85)
Nicholasville vicinity, *Taylor, Ridge, Farm (Jessamine County MRA)*, Off KY 595 (07/06/85)
Nicholasville vicinity, *Young, A.M., House (Jessamine County MRA)*, W of Ash Grove Pike (07/06/85)
Wilmore, *Asbury College Administration Building (Jessamine County MRA)*, KY 29 (07/06/85)
Wilmore, *Morrison—Kenyon Library (Jessamine County MRA)*, KY 29 (07/06/85)

Kenton County

Ludlow, *Central Ludlow Historic District (Ludlow MRA)*, Roughly bounded by Glenwood, Church, Adela & Carneal Sts. (11/29/84)
Ludlow, *House at 855–857 Oak Street (Ludlow MRA)*, 855–857 Oak St. (11/28/84)
Ludlow, *House at 859 Oak Street (Ludlow MRA)*, 859 Oak St. (11/28/84)
Ludlow, *Ludlow Lagoon Clubhouse (Ludlow MRA)*, 312 Lake St. (11/28/84)
Ludlow, *Maxwell House (Ludlow MRA)*, 27 River Rd. (11/28/84)

Laurel County

London, *Poynter Building*, Main St. (08/08/85)

Lawrence County

Louisa, *First United Methodist Church*, 204 W., Main St. (11/15/84)

Logan County

Auburn, *McCutchen Meadows*, PO Box 466 (11/23/84)

Mason County

Maysville, *Point Au View*, 721 Hillcrest Rd. (01/04/85)

McCracken County

Paducah vicinity, *Archeological Site 15McN51* (07/11/85)
Paducah, *Paducah Downtown Commercial District (Boundary Increase)*, Roughly bounded by First, Clark, Seventh & Monroe Sts. (06/02/85)

Menifee County

Frenchburg vicinity, *Archeological Site 15MF355* (07/11/85)

Mercer County

Harrodsburg vicinity, *Archeological Site 15ME15* Dry Branch Rd. (07/11/85)

Muhlenberg County

Greenville, *Greenville City Hall (Greenville Kentucky MRA)*, Court St. (08/26/85)
Greenville, *Greenville Commercial Historic District (Greenville Kentucky MRA)*, 100 blks. of N. Main & E. Main Cross Sts. (08/15/85)
Greenville, *Martin House (Greenville Kentucky MRA)*, 144 E. Main Cross St. (08/15/85)
Greenville, *North Main Street Historic District (Greenville Kentucky MRA)*, 100 & 200 blks. of N. Main St. (08/15/85)
Greenville, *Old Muhlenberg County Jail (Greenville Kentucky MRA)*, Court Row (08/15/85)
Greenville, *Rice Tobacco Factory (Greenville Kentucky MRA)*, 112 N. Cherry St. (08/15/85)
Greenville, *South Cherry Street Historic District (Greenville Kentucky MRA)*, Roughly bounded by S. Cherry, Hopkinsville, W. Main Cross & N. Cherry Sts. (08/15/85)

Nelson County

Bardstown, *Beechwold*, 500 E. Stephen Foster St. (11/29/84)

Pulaski County

Bronston, *Beatty—Newell House (Pulaski County MRA)*, Off KY 90 (08/16/85)
Bronston, *Bronston Post Office (Pulaski County MRA)*, KY 790 (08/16/85)
Burnside, *Burnside Methodist Church (Pulaski County MRA)*, Off US 27 (08/16/85)
Eubank, *Payne House (Pulaski County MRA)*, Off SR 1247 (08/16/85)
Shopville vicinity, *Evans House (Pulaski County MRA)*, KY 461 (08/16/85)
Shopville, *James—Hansford House (Pulaski County MRA)*, On KY 80 (08/16/85)
Shopville, *James—Owens House (Pulaski County MRA)*, Off KY 80 (08/16/85)

Rockcastle County

Renfro Valley vicinity, *Hiatt, Bennett, Log House*, US 25 (11/15/84)

Scott County

Georgetown vicinity, *Smith, Dr. William Addison, House*, 1589 Newton Pike (11/29/84)
Georgetown vicinity, *Ward Hall (Boundary Increase)*, 1782 Frankfort Pike (08/23/85)
Sadieville vicinity, *Burgess, Joseph Fields, House*, Off US 25 & SW corner of SR 608 (11/29/84)
Stamping Ground vicinity, *Campbell, William, House (Josiah Gayle House)*, Off US 227 (11/29/84)

Shelby County

Shelbyville, *Carnegie Public Library (Shelbyville MRA)*, Eighth & Washington Sts. (06/12/85)
Shelbyville, *East Shelbyville District (Shelbyville MRA)*, Roughly E. Third St. from Washington to Bradshaw St. (06/12/85)
Shelbyville, *Seventh Street Historic District (Shelbyville MRA)*, Main and Seventh St. (06/12/85)
Shelbyville, *Shelby County Courthouse and Main Street Commercial District (Boundary Increase) (Shelbyville MRA)*, Sixth St. from Washington to Main St. (04/12/85)
Shelbyville, *West Shelbyville District (Shelbyville MRA)*, Roughly bounded by Main from Adair to Eighth, Magnolia to Linden, Seventh, Eighth, Ninth, Tenth & Bland Sts. (06/12/85)
Simpsonville, *Sturgeon—Gregg House*, US 60 (11/29/84)

Warren County

Bowling Green, *Fort C.F. Smith (Warren County MRA)*, E. Main St. (12/05/84)
Bowling Green, *Fort Lytle (Warren County MRA)*, Western Kentucky University (12/05/84)
Bowling Green, *Fort Webb (Warren County MRA)*, Country Club Dr. (12/05/84)

LOUISIANA

Allen Parish

Elizabeth, *Elizabeth Hospital Building*, Mimosa Dr. (01/18/85)

Avoyelles Parish

Bunkie vicinity, *Frithland*, LA 29 (05/09/85)
Evergreen vicinity, *Clarendon Plantation House*, LA 29 (05/09/85)
Hamburg, *Lemoine, Thomas A., House*, LA 451 (07/18/85)
Mansura, *Roy, Dr. Thomas A., Sr., House*, L'Eglise St. (05/09/85)
Moreauville, *Lemoine, Thomas A., House*, LA 451 (07/18/85)

Caddo Parish

Shreveport, *Shreveport Woman's Department Club Building*, 802 Margaret Pl. (07/18/85)
Shreveport, *St. Paul's Bottoms*, Roughly bounded by Western & Pierre Aves., Alston, Christian, Oakland, & Snow Sts. (10/11/84)

Claiborne Parish

Summerfield, *Wasson, Alberry, Homeplace*, S of Summerfield (11/20/84)

East Baton Rouge Parish

Baton Rouge vicinity, *Lee Site (16 EBR 51)*, W end of Buccaneer Dr. (12/27/84)
Baton Rouge, *Roumain Building*, 343 Riverside Mall (04/11/85)
Baton Rouge, *Magnolia Cemetery*, Bounded by Main, Nineteenth, Florida & Twenty-second Sts. (01/31/85)

East Feliciana Parish

Clinton, *Woodside*, St. Helena St. (10/04/84)

Iberville Parish

Plaquemine, *Gay, Andrew H., House*, 1010 McDuffie St. (07/18/85)

Jefferson Davis Parish

Jennings, *Sunny Meade*, 819 Cary Ave. (04/18/85)

Jefferson Parish

Gretna, *Gretna Historic District*, Roughly bounded by First, Amelia & Ninth Sts., Gulf Dr., Fourth, & Huey P. Long Ave. (05/02/85)
Kenner, *Felix—Block Building*, 303 Williams Blvd. (07/18/85)

Lafayette Parish

Lafayette, *Latiolais, Alexandre, House*, 900 E. Butcher Switch Rd. (05/09/85)
Lafayette, *Martin, Sidney, House*, 310 Sidney Martin Rd. (11/08/84)
Youngsville, *Dupleix House*, 106 Lafayette St. (10/04/84)

Lincoln Parish

Ruston, *James, T.L., House*, 504 N. Vienna St. (10/18/84)
Simsboro vicinity, *Walnut Creek Baptist Church*, NW of Simsboro Off I–20 (10/04/84)

Madison Parish

Tallulah vicinity, *Crescent Plantation*, S of Tallulah off LA 602 (10/18/84)
Tallulah vicinity, *Shirley Field*, Off US 80 (02/14/85)

Orleans Parish

New Orleans, *Saenger Theatre (Boundary Increase)*, 1101–1111 Canal St. (04/01/85)
New Orleans, *Uptown New Orleans Historic District*, Roughly bounded by Louisiana, Claiborne, Lowerline & the Mississippi River (07/03/85)
New Orleans, *Whitney National Bank (Poydras Branch)*, Poydras & Camp Sts. (01/18/85)

Ouachita Parish

Monroe, *Lower Pargoud*, 2111 S. Grand St. (10/04/84)
Monroe, *Neville High School*, 600 Forsythe Ave. (05/09/85)

Pointe Coupee Parish

Jarreau vicinity, *LeBeau House and Kitchen*, LA 414 (05/09/85)

Rapides Parish

Alexandria vicinity, *Conerly House (Neo-Classical Architecture of Bayou Rapides TR)*, Off US 71 (12/05/84)
Alexandria vicinity, *Geneva (Neo-Classical Architecture of Bayou Rapides TR)*, Hwy 496 (12/05/84)
Alexandria vicinity, *Hopson House (Neo-Classical Architecture of Bayou Rapides TR)*, Brown's Bend Rd. (12/05/84)
Alexandria vicinity, *Oxland (Neo-Classical Architecture of Bayou Rapides TR)*, Hwy 1202 (12/05/84)
Alexandria, *Overton, Senator John H., House*, 1128 Eighth St. (07/18/85)
Gardner vicinity, *China Grove (Neo-Classical Architecture of Bayou Rapides TR)*, Hwy. 496 (12/05/84)
Gardner vicinity, *Eden (Neo-Classical Architecture of Bayou Rapides TR)*, Off Hwy. 121 (12/05/84)
Gardner vicinity, *Island Home (Neo-Classical Architecture of Bayou Rapides TR)*, Across Bayou Rapides off Hwy. 121 (12/05/84)
Gardner vicinity, *Longview (Neo-Classical Architecture of Bayou Rapides TR)*, Across Bayou Rapides from Hwy. 121 near intersection with Hwy. 121 (12/05/84)
Gardner, *Hope (Neo-Classical Architecture of Bayou Rapides TR)*, Off Hwy. 121 & Mill Race Rd. (12/13/84)
Kolin, *Welcek Farmstead*, LA 107 (07/18/85)

Richland Parish

Mangham, *Mangham State Bank Building*, Main & Horace Sts. (05/09/85)

St. Charles Parish

Kenner vicinity, *LaBranche Plantation Dependency*, SW of Kenner off LA 48 (10/18/84)

St. James Parish

Convent vicinity, *Manresa House of Retreats—Jefferson College*, LA 44 (01/31/85)

St. Mary Parish

Patterson vicinity, *Calumet Plantation House*, W of Patterson on LA 182 (10/18/84)

Tangipahoa Parish

Hammond, *McGehee Hall—Southeastern Louisiana State University*, Southeastern Louisiana University (01/18/85)
Loranger vicinity, *Zemurray Gardens Lodge Complex (Boundary Increase)*, LA 40 (07/18/85)
Ponchatoula vicinity, *Mount's Villa*, Off LA 22 (01/31/85)

Vermilion Parish

Abbeville vicinity, *A La Bonne Veillee*, NE of Abbeville (10/25/84)
Lake Arthur vicinity, *Narrows Plantation House*, Off Hwy. 717 on S shore of Lake Arthur (05/09/85)

Vernon Parish

Leesville, *Kansas City Southern Depot*, Louisiana Ave. and Third St. (10/25/84)

Webster Parish

Minden, *Drake House*, 1202 Broadway (07/18/85)

West Feliciana Parish

Laurel Hill, *St. John's Episcopal Church*, Old Laurel Hill Rd. (10/04/84)

MAINE

Androscoggin County

Durham, *Osgood, Nathaniel, House*, ME 136 (03/21/85)
Lewiston, *Cowan Mill*, Island Mill St. (08/01/85)
Lewiston, *Holland, Captain, House*, 142 College St. (03/21/85)
Lewiston, *Lower Lisbon Street Historic District*, Lisbon St. between Ceder & Chestnut (05/21/85)
Lisbon, *Farwell Mill*, ME 196 (06/20/85)
Mechanic Falls, *Elms*, Elm St. (03/21/85)
Mechanic Falls, *Seaverns, George, House*, 8 High St. (09/12/85)

Cumberland County

Cundy's Harbor vicinity, *Union Hotel*, Cundy's Harbor Rd. (09/12/85)

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Falmouth, *Purington, Elisha, House,* 71 Mast Rd. (02/14/85)
Portland, *Cathedral of the Immaculate Conception,* Cumberland Ave. & Congress Sts. (06/20/85)
Portland, *Fort McKinley Historic District,* Great Diamond Island (03/21/85)
Portland, *Portland City Hospital,* Brighton Ave. (03/21/85)
Portland, *Portland High School,* 284 Cumberland Ave. (11/23/84)
Portland, *Portland Waterfront Historic District (Boundary Increase),* 79—85 & 295—309 Commercial & 3 Center Sts. (12/23/84)
South Harpswell, *Auburn—Harpswell Association Historic District,* ME 123 (03/21/85)
South Portland, *State Reform School Historic District,* Westbrook St. (04/11/85)
Standish, *Paine Neighborhood Historic Distict,* ME 113 (04/11/85)

Franklin County

New Sharon, *New Sharon Congregational Church,* ME 134 (06/20/85)
Temple, *Temple Intervale School,* Temple Intervale (02/08/85)

Hancock County

Bar Harbor, *Nannau,* Lower Main St. (11/08/84)
Brooklin vicinity, *Flye Point 2 (Site 42.43),* (04/15/85)
Ellsworth, *Ellsworth Powerhouse and Dam,* Union River (06/20/85)
Seal Harbor, *Seal Harbor Congregational Church,* ME 3 (02/14/85)
Verona, *Waldo—Hancock Bridge,* US 1 (06/28/85)

Kennebec County

Augusta, *Cony, Gov. Samuel, House,* 71 Stone St. (04/11/85)
Belgrade, *Chandler Store,* ME 27 (06/20/85)
Mount Vernon, *Williams, John, House,* Church St. (12/08/84)
Winthrop Center, *Bailey, Moses, House,* ME 135 (11/08/84)
Winthrop, *Bailey, Charles M., Library,* Bowdoin St. (06/20/85)

Knox County

Union, *Lermond Mill,* Union Village (12/27/84)

Lincoln County

Bristol, *Pemaquid Point Light,* Pemaquid Point (04/16/85)
Damariscotta, *Damariscotta Baptist Church,* King's Square (06/20/85)
Damariscotta, *Huston House,* Bristol Rd. (02/08/85)
South Bristol, *Means, Emily, House,* Birch Island (02/08/85)
Westport, *Squire Tarbox House,* ME 144 (04/11/85)

Oxford County

Rumford, *Rumford Point Congregational Church,* Jct. ME 5 & US 2 (06/20/85)

Penobscot County

Bradley vicinity, *Collins Bridge Site (74.16),* ME 178 (10/27/85)
Dexter, *Dexter Universalist Church,* Church St. (06/20/85)
Orono, *Old Fire Engine House,* N. Main St. (09/12/85)

Piscataquis County

Brownville, *Brown House,* High St. (02/14/85)

Sagadahoc County

Bath, *Merritt, Captain, House,* 919 High St. (02/08/85)
Georgetown, *Grey Havens Inn,* Reid Park Rd. (03/21/85)
Phippsburg, *Cold Spring Farm,* Off Fiddler's Reach Rd. (02/14/85)

Somerset County

Skowhegan, *Somerset County Courthouse,* Court St. (11/08/84)

Waldo County

Islesboro, *Drexel Estate,* The Bluff (03/21/85)
Islesboro, *Philler Cottage,* Main Rd., Dark Harbor (04/11/85)
Stockton Springs, *Stockton Springs Community Church,* ME 3 & US 1 (06/20/85)

Washington County

Atkinson—Koskinen Site 45.13 (11/23/84)
Calais, *Jellison, Theodore, House,* River Rd. (11/23/84)

York County

Limerick, *Sunnycroft,* Locust Hill (11/08/84)
Newfield, *Newfield Historic District,* Elm St. (02/14/85)
North Berwick, *Prescott, J.L., House,* High St. (06/20/85)
York, *Cape Neddick Light Station,* Cape Neddick (04/16/85)

MARYLAND

Allegany County

Barton, *Shaw Mansion,* Laurel Run Rd. (09/19/85)

Anne Arundel County

Annapolis, *Fort Nonsense* (10/25/84)
Davidsonville vicinity, *OLIVER'S GIFT (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* 3473 Ranger Rd. (09/18/85)
Millersville vicinity, *Bunker Hill,* MD 178 and Millersville Rd. (10/11/84)
Millersville vicinity, *Rising Sun Farm,* 1090 Generals' Hwy. (09/12/85)

Baltimore (Independent City)

Bachrach, David, House, 2406—2408 Linden Ave. (09/05/85)
Brewers Exchange, 20 Park Ave. (03/28/85)
Buildings at 1601—1830 St. Paul Street and 12—20 E. Lafayette Street, 1601—1830 St. Paul St., & 12—20 E. Lafayette St. (12/27/84).
Fifth Regiment Armory (Maryland National Guard Armories TR), 219—247 W. Hoffman St. (09/25/85)
Gandy Belting Company Building, 726—734 W. Pratt St. (10/25/84)
Gompers School, 1701 E. North Ave. (06/20/85)
Loft Historic District North, Roughly bounded by Paca, Redwood, Eutaw, & Lombard Sts. (01/03/85)
Loft Historic District South, Along 600 Blk. W. Pratt St. bounded by Green St. & 100 Blk. S. Paca St. (01/03/85)
Old Pine Street Station, 214 N. Pine St. (01/03/85)
Schuler, Hans, Studio and Residence, 5 E. Lafayette Ave. (09/27/85)
Schwartze Mansion, 4208 Euclid Ave. (09/12/85)
Swiss Steam Laundry Building, 100-102 N. Green St. (06/20/85)

Baltimore County

Baltimore vicinity, *Tyrconnell,* 120 Woodbrook Lane (03/14/85)
Catonsville vicinity, *The Wilderness,* 2 Thistle Rd. (09/12/85)
Monkton vicinity, *Corbett Historic District,* 1618-1827 Corbett Rd. & 16200-16225 Corbett Village La. (09/12/85)
Pikesville vicinity, *Wester Ogle,* 8848-8860 Reisterstown Rd. (01/11/85)
Pikesville, *Pikesville Armory (Maryland National Guard Armories TR),* 610 Reisterstown Rd. (09/25/85)
Towson, *Towson Academy (Maryland National Guard Armories TR),* Washington St. & Chesapeake Ave. (09/25/85)
Woodlawn vicinity, *Lorraine Park Cemetery Gate Lodge,* 5808 Dogwood Rd. (07/25/85)
Woodlawn vicinity *St. Mary's Episcopal Church—Woodlawn,* 5610 Dogwood Rd. (03/14/85)

Caroline County

Denton, *Denton Armory (Maryland National Guard Armories TR),* Maple Ave. & Randolph St. (09/25/85)

Carroll County

Houcksville vicinity, *Hoffman, Issac, House,* 364 Shamer Lane (07/25/85)
Silver Run vicinity, *Erb, Christopher, House,* 3333 Flickinger Rd. (08/19/85)
Sykesville, *Sykesville Historic District,* Main St., Springfield, Norwood & Mellor Aves. (09/25/85)
Union Bridge vicinity, *Wilson's Inheritance,* 4400 Green Valley Rd. (08/19/85)
Westminster vicinity, *Meadow Brook Farm,* 1006 Taneytown Pike (07/25/85)

Cecil County

Elkton, *Elkton Armory (Maryland National Guard Armories TR),* Railroad Ave. & Bow St. (09/25/85)

Charles County

Bryantown, *Bryantown Historic District,* MD 5 & CR 232 (03/14/85)
Pomfret vicinity, *McPherson's Purchase,* MD 227 (01/03/85)

Dorchester County

Cambridge, *PATRICIA (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* 903 Roslyn Ave. (09/18/85)

Frederick County

Frederick vicinity, *Widrick, George, House,* Ballenger Creek Pk. (09/12/85)
Frederick, *Frederick Armory (Maryland National Guard Armories TR),* Bentz & Second Sts. (09/25/85)

Garrett County

Accident vicinity, *Drane, James, House,* Accident-Bittinger Rd. (01/11/85)

Mountain Lake Park, *Creedmore,* 510 G St. (12/27/84)

Harford County

Bel Air, *Bel Air Armory (Maryland National Guard Armories TR),* N. Main St. (09/25/85)
Bel Air, *Bel Air Courthouse Historic District,* Office, Courtland & Main Sts. (07/25/85)

Howard County

Elkridge, *Lawn, The,* 6036 Old Lawyers Hill Rd. (10/29/84)

Kent County

Chestertown vicinity, *ISLAND IMAGE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Walnut Point Rd. (09/18/85)
Chestertown vicinity *SILVER HILL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Quaker Neck Landing (09/18/85)
Chestertown, *BERNICE J. (Skipjack) (Chesapeake Bay Skipjack Fleet TR),* Town Dock (09/05/85)
Chestertown, *Chestertown Armory (Maryland National Guard Armories TR),* Quaker Neck Rd. (09/25/85)

Montgomery County

Gaithersburg, *Gaithersburg Latitude Observatory,* 100 DeSellum Ave. (07/12/85)
Poolesville vicinity, *Mt. Nebo,* 14510 Mt. Nebo Rd. (03/28/85)
Rockville, *Dawson Farm,* 1070 & 1080 Copperstone Ct. (01/11/85)

Queen Anne's County

Centreville, *Centreville Armory (Maryland National Guard Armories TR),* S. Commerce St. (09/25/85)
Centreville, *Ozmon, Capt. John H., Store,* Centreville Wharf (02/14/85)
Church Hill vicinity, *Bishopton,* Pinder Hill Rd. (09/12/85)
Kingstown vicinity, *MYSTERY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Round Top Rd. (09/18/85)
Ruthsburg vicinity, *Hawkins Pharsalia,* MD 304 (12/20/84)
Stevensville, *Stevensville Bank,* Love Point Rd. (01/03/85)
Wye Mills, *Wye Mill,* MD 662 (04/09/85)

Somerset County

Chance, *IDA MAY (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Upper thorofare (05/16/85)
Crisfield vicinity, *Nelson Homestead,* Cash Corner & Hopewell-Bedsworth Rds. (09/12/85)
Crisfield, *Crisfield Armory (Maryland National Guard Armories TR),* Main St. Extended (09/25/85)
Deal Island, *SEA GULL (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Manokin vicinity, *Maddox, George, Farm,* River Rd. (09/17/85)
Wellington vicinity, *Costen, William, House,* Courthouse Hill Rd. (03/28/85)
Wenona, *CLARENCE CROCKETT (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Wenona, *F.C. LEWIS, JR (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Wenona, *FANNIE L. DOUGHERTY, (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Wenona, *HOWARD (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Wenona, *SUSAN MAY (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)
Wenona, *THOMAS W. CLYDE (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Lower thorofare (05/16/85)

St. Mary's County

Mattapany—Sewall Archeological Site (02/01/85)
Lexington Park vicinity, *St. Richard's Manor,* Millstone Landing Rd. (03/28/85)

Talbot County

Clairborne, *CLAUDE W. SOMERS (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Old Ferry Terminal, Washington St. (05/16/85)
Oxford vicinity, *BILLIE P. HALL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Evergreen Rd. (09/18/85)
Oxford vicinity, *S.C. DOBSON (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Peach Blossom Rd. (09/18/85)
Sherwood, *SANDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Sherwood Rd. (09/18/85)
St. Michaels vicinity, *ISLAND BIRD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Miles River Yacht Club (09/18/85)
St. Michaels vicinity, *ISLAND BLOSSOM (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Miles River Yacht Club (09/18/85)
St. Michaels vicinity, *JAY DEE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Miles River Yacht Club (09/18/85)
St Michaels vicinity, *NODDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Deepwater Point Rd. (09/18/85)
St. Michaels, *EDMEE S. (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Mill St. (09/18/85)
St. Michaels, *ISLAND LARK (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Carpenter St. (09/18/85)
St. Michaels, *MAGIC (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* St. Michaels Marina (09/18/85)
St. Michaels, *PERSISTENCE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* St Michaels Marina (09/18/85)
St. Michaels, *ROVER (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* St. Michaels Marina (09/18/85)
St. Michaels, *STANLEY NORMAN (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Edgar Cove (05/16/85)
Tilghman, *E.C. COLLIER (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *ELSWORTH (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *HILDA M. WILLING (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *KATHRYN (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *MAGGIE LEE (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *MINNIE V (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *NELLIE L. BYRD (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *RALPH T. WEBSTER (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *REBECCA T. RUARK (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/17/85)
Tilghman, *RUBY G. FORD (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Gibsontown Rd. (05/16/85)
Tilghman, *SIGSBEE (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Knapps Narrows (05/16/85)
Tilghman, *VIRGINIA W (skipjack) (Chesapeake Bay Skipjack Fleet TR),* Knapps Narrows (05/16/85)
Wittman vicinity, *FLYING CLOUD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR),* Magee Rd. (09/18/85)

Washington County

Hagerstown, *Hagerstown Armory (Maryland National Guard Armories TR),* 328 N. Potomac St. (09/25/85)

MASSACHUSETTS

Barnstable County

North Truro vicinity, *Higgins, Jedediah, House,* Higgins Hollow Rd. (11/21/84)
Wellfleet, *Ahearn House and Summer House,* Pamet Point Rd. (11/21/84)

Berkshire County

Adams, *Anthony House,* 67 East Rd. (01/03/85)
Adams, *Summer Street Historic District,* Crandall, Center, East, Liberty, Orchard and Summer Sts. (09/05/85)
Pittsfield, *Arrowhead, The Herman Melville Home (Boundary Increase),* 780 Holmes Rd. (NHL) (02/04/85)

Bristol County

Attleboro, *East Attleborough Academy,* 28 Sanford St. (04/04/85)
Attleboro, *Makepeace, D.E., Company,* 46 Pine St. (07/18/85)
Dartmouth, *Padanaram Village Historic District,* Elm, Water, Middle, High, Pleasant, Prospect, Hill, School, Fremont, & Bridge Sts. (09/05/85)
Dartmouth, *Russells Mills Village Historic District,* Russells Mills, Rock O' Dundee, Slades Corner, Horseneck & Fisher Rds. (09/05/85)
New Bedfort, *ERNESTINA (schooner),* Steamship Wharf (01/03/85)
Taunton, *Lawrence, William, House (Taunton MRA),* 101 Somerset Ave. (07/10/85)
Taunton, *Neck of Land Cemetery (Taunton MRA),* Summer St. (07/10/85)
Taunton, *Taunton Green Historic District (Taunton MRA),* Broadway, Taunton Green, Main & Court Sts. (03/01/85)

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Taunton, *Woodward, William, House (Taunton MRA)*, 117 Arlington St. (07/18/85)

Essex County

Amesbury, *Amesbury and Salisbury Mills Village Historic District*, Market Sq. roughly bounded by Boardman, Water, Main & Pond Sts. (05/16/85)

Lawrence and Methuen, *Arlington Mills Historic District*, Broadway between Manchester, Stafford & Chase Sts. (01/09/85)

Lawrence, *Arlington—Basswood Historic District*, Roughly bounded by Lawrence, Alder, Arlington & Juniper Sts. (11/13/84)

Lawrence, *Jackson Terrace Historic District*, 43–59 Jackson St., Jackson Court, Jackson Terr., & 58–62 Newbury St. (11/13/85)

Lawrence, *North Canal Historic District*, Roughly bounded by Merrimack & Spicket Rivers, North Canal & Broadway (11/13/84)

Lynn, *Newhall, Lucian, House*, 281 Ocean St. (07/18/85)

Peabody, *Hickey—Osborne Block*, 38–60 Main St. (09/19/85)

Peabody, *Sutton Block, 76–78 Main St.* (09/05/85)

Peabody, *Washington Street Historic District*, Washington, Main, Holton & Sewall Sts. (09/12/85)

Saugus, *Saugus Town Hall*, Central St. (06/20/85)

Swampscott, *Swampscott Fish House*, Humphrey St. (05/16/85)

Hampden County

Springfield, *Myrtle Street School*, 84 Myrtle St. (01/03/85)

Springfield, *South Main Street School*, 11 Acushnet Ave. (01/03/85)

Hampshire County

Amherst, *Baird House*, 38 Shays St. (01/03/85)

Northhampton, *Northhampton Downtown Historic District (Boundary Increase)*, E of RR Tracks including 2—10 Bridge & 1—30 Market Sts. (07/03/85)

Middlesex County

Arlington, *Allyn House (Arlington MRA)*, 94 Oakland Ave. (09/27/85)

Arlington, *Arlington Center Historic District (Boundary Increase) (Arlington MRA)*, Roughly bounded by Jason St., Massachusetts Ave., Pleasant & Gray Sts. (09/27/85)

Arlington, *Arlington Coal & Lumber (Arlington MRA)* 41 Park Ave. (04/18/85)

Arlington, *Arlington Gaslight Company (Arlington MRA)*, Grove St. Town Yard (04/18/85)

Arlington, *Arlington Pumping Station (Arlington MRA)*, Brattle Ct. off Brattle St. (04/18/85)

Arlington, *Arlington Reservoir (Arlington MRA)*, Park Circle (09/27/85)

Arlington, *Baptist Society Meeting House (Arlington MRA)*, 3–5 Brattle St. (04/18/85)

Arlington, *Bassett, Maria, House (Arlington MRA)*, 8 College Ave. (09/27/85)

Arlington, *Call—Bartlett House (Arlington MRA)*, 216 Pleasant St. (04/18/85)

Arlington, *Capitol Theater Building (Arlington MRA)*, 202–208 Massachusetts Ave. (04/18/85)

Arlington, *Chapel of St. Anne (Arlington MRA)*, Claremont Ave. (04/18/85)

Arlington, *Cushman House (Arlington MRA)*, 104 Bartlett Ave. (04/18/85)

Arlington, *Cutter, Jefferson, House (Arlington MRA)*, 1146 Massachusetts Ave. (04/18/85)

Arlington, *Cutter, Second A.P., House (Arlington MRA)*, 89 Summer St. (04/18/85)

Arlington, *Damon House (Arlington MRA)*, 275 Broadway (04/18/85)

Arlington, *Farmer, Kimball, House (Arlington MRA)*, 1173 Massachusetts Ave. (04/18/85)

Arlington, *First Parish Church Parsonage (Arlington MRA)*, 232–234 Pleasant St. (04/18/85)

Arlington, *Hall, Edward, House (Arlington MRA)*, 187 Pleasant St. (04/18/85)

Arlington, *Highland Hose House (Arlington MRA)*, 1007 Massachusetts Ave. (04/18/85)

Arlington, *Hill, Addison, House (Arlington MRA)*, 83 Appleton St. (09/27/85)

Arlington, *Hornblower, Edward, House and Barn (Arlington MRA)*, 200 Pleasant St. (04/18/85)

Arlington, *House at 45 Claremont Avenue (Arlington MRA)*, 45 Claremont Ave. (04/18/85)

Arlington, *House at 5 Willow Court (Arlington MRA)*, 5 Willow Ct. (04/18/85)

Arlington, *House at 5–7 Winter Street (Arlington MRA)*, 5–7 Winter St. (04/18/85)

Arlington, *Kensington Park Historic District (Arlington MRA)*, Roughly bounded by Kensington Park, Brantwood & Kensington Rds. (09/27/85)

Arlington, *Kimball, W.W., House (Arlington MRA)*, 13 Winter St. (04/18/85)

Arlington, *Locke School (Arlington MRA)*, 88 Parke Ave. (04/18/85)

Arlington, *Locke, Lt. Benjamin, Store (Arlington MRA)*, 11—13 Lowell St. (04/18/85)

Arlington, *Milestone (Arlington MRA)*, Appleton St. & Paul Revere Rd. (09/27/85)

Arlington, *Orvis Road Historic District (Arlington MRA)*, Roughly bounded by Massachusetts Ave., Freeman, Randolph & Newcomb Sts. on Orvis Rd. (09/27/85)

Arlington, *Pierce Farm Historic District (Arlington MRA)*, Roughly bounded by Claremont & Oakland Aves. (09/27/85)

Arlington, *Prentiss, William, House (Arlington MRA)*, 252 Gray St. (09/27/85)

Arlington, *Prentiss—Payson House (Arlington MRA)*, 224–226 Pleasant St. (04/18/85)

Arlington, *Proctor, William, House (Arlington MRA)*, 390 Massachusetts Ave. (04/18/85)

Arlington, *Rawson, Warren, Building (Arlington MRA)*, 68–74 Franklin St. (09/27/85)

Arlington, *Rawson, Warren, House (Arlington MRA)*, 37–49 Park St. (04/18/85)

Arlington, *Robindreau, Alfred E., House (Arlington MRA)*, 28 Lafayette St. (04/18/85)

Arlington, *Robinson House (Arlington MRA)*, 19 Winter St. (04/18/85)

Arlington, *Robinson—Lewis—Fessenden, G.F., House (Arlington MRA)*, 40 Westminster Ave. (04/18/85)

Arlington, *Russell Common (Arlington MRA)*, 2–10 Park Terrace (04/18/85)

Arlington, *Shattuck, Ralph W., House (Arlington MRA)*, 274—276 Broadway (09/27/85)

Arlington, *Sterling—Cutter House (Arlington MRA)*, 93 Summer St. (04/18/85)

Arlington, *Swadkins, Thomas, House (Arlington MRA)*, 160 Westminster Ave. (04/18/85)

Arlington, *Swan, Henry, House (Arlington MRA)*, 418 Massachusetts Ave. (09/27/85)

Arlington, *Symmes, Jr., House (Arlington MRA)*, 215 Crosby St. (04/18/85)

Arlington, *Taylor—Dallin House (Arlington MRA)*, 69 Oakland Ave. (09/27/85)

Arlington, *Wayside Inn (Arlington MRA)*, 393 Massachusetts Ave. (09/27/85)

Arlington, *Whittemore House (Arlington MRA)*, 267 Broadway (04/18/85)

Arlington, *Winn Farm (Arlington MRA)*, 57 Summer St. (04/18/85)

Cambridge, *Reversible Collar Company Building (Cambridge MRA)* 25—27 Mt. Auburn & 10—12 Arrow Sts. (09/27/85)

Chelmsford, *Hutchins, Oliver, House*, 79 Elm St. (09/05/85)

Concord, *Wayside, The*, 455 Lexington Rd. (NHL) (02/04/85)

Lincoln, *Lincoln Center Historic District*, Bedford, Lincoln, Old Lexington, Sandy Pond, Trapelo & Weston Rds. (07/18/85)

Lowell, *St. Patrick's Church*, 284 Suffolk St. (01/03/85)

Malden, *Converse Memorial Building*, 36 Salem St. (09/05/85)

Newton, *Warren, Dr. Samuel, House*, 432 Cherry St. (01/09/85)

Newton, *Weeks Junior High School*, 7 Hereward Rd. (10/23/84)

Reading, *Ace Art Company (Reading MRA)*, 24 Gould St. (02/01/85)

Reading, *Common Historic District (Reading MRA)*, Roughly bounded by Main, Highland, and Federal Sts. (02/01/85)

Reading, *Harnden—Browne House (Reading MRA)*, 60—62 Salem St. (02/01/85)

Reading, *Haverhill Street Milestone (Reading MRA)*, Haverhill St. (02/01/85)

Reading, *Reading Standpipe (Reading MRA)*, Auburn & Beacon Sts. (02/01/85)

Reading, *Smith Shoe Shop (Reading MRA)*, 273 Haverhill St. (02/01/85)

Reading, *Woburn Street Historic District (Reading MRA)*, Woburn St. from Temple St. to Summer Ave. (02/01/85)

Watertown, *Pratt, Miles, House*, 106 Mt. Auburn St. (05/09/85)

Norfolk County

Brookline, *Richmond Court*, 1209–1217 Beacon St. (07/18/85)

Foxborough, *Carpenter, Ezra, House*, 168 South St. (01/03/85)

Suffolk County

Boston, *Bigelow School*, 350 W. Fourth St. (02/21/85)

Boston, *Building 138–142 Portland Street*, 138–142 Portland St. (09/05/85)

Boston, *Dimock Community Health Center Complex*, 41 & 55 Dimock St. (02/21/85)

Boston, *Dorchester Pottery Works*, 101–105 Victory Rd. (02/21/85)

Boston, *Vermont Building*, 6–12 Thacher St. (11/13/84)

Charlestown, *Hoosac Stores One & Two—Hoosac Stores Three*, 25 & 115 Water St. (08/14/85)

Chelsea, *Bellingham Square Historic District*, Roughly bounded by Broadway, Shawmut, Chestnut & Shurtleff Sts. (01/03/85)

Revere, *Church of Christ*, 265 Beach St. (11/13/85)

Worcester County

Clinton, *Downtown Clinton Historic District*, Roughly bounded by Union & Prospect Sts. on High & Church Sts. (02/22/85)

Dudley, *Black Tavern*, Dudley Center Rd. (05/09/85)

Fitchburg, *Duck Mill Rd.*, 60 Duck Mill Rd. (05/09/85)

Milford, *Memorial Hall*, School St. (05/09/85)

Millville vicinity, *Chestnut Hill Meetinghouse*, Chestnut & Thayer Sts. (11/13/84)

Sutton, *Waters Farm*, 53 Waters Rd. (08/08/85)

Worcester, *Malvern Road School (Worcester MRA)*, Malvern Rd. & Southbridge St. (10/04/84)

Worcester, *Worcester Corset Company Factory (Worcester MRA)*, 30 Wyman St. (10/04/84)

MICHIGAN

Alger County

Munising vicinity, *Grand Island North Light Station*, Grand Island (09/12/85)

Allegan County

Plainwell, *Sherwood, James Noble, House*, 768 Riverview Dr. (12/27/84)

Saugatuck, *All Saints' Episcopal Church*, 252 Grand St. (12/27/84)

Barry County

Shelbyville, *Dwight, Austin H. and Frankie A., Summer House*, 11456 Marsh Rd. (03/28/85)

Bay County

Bay City, *Bay City Downtown Historic District*, Roughly bounded by Saginaw River, Second & Adams Sts. & Center Ave. (09/11/85)

Benzie County

Niles, *Old US Post Office*, 322 E. Main St. (09/12/85)

Calhoun County

Battle Creek, *Kellogg, W.K., House*, 256 W. Van Buren St. (04/18/85)

Cass County

Edwardsburg, *Mason District No. Five Schoolhouse*, 12049 US 12 (09/12/85)

Chippewa County

Sault Ste. Marie, *Central Methodist Episcopal Church*, 111 E. Spruce St. (12/27/84)

Sault Ste. Marie, *First United Presbyterian Church*, 309 Lyon St. (12/27/84)

Sault Ste. Marie, *St. Mary's Pro-Cathedral*, 320 E. Portage Ave. (12/27/84)

Genesee County

Flint, *Capitol Theatre Building*, 140 E. Second St. (01/31/85)

Gogebic County

Ironwood, *Chicago and Northwestern Railroad Depot*, Between Suffolk & Lowell Sts. (06/14/85)

Ironwood, *Ironwood Theatre Complex*, Aurora St. (01/11/85)

Gratiot County

Brown Site (20 GR21) (09/18/85)

Conservation Park Site (20GR33) (09/30/85)

Ingham County

Lansing, *Moores, J.H., Memorial Natatorium*, 2700 Moores River Dr. (01/14/85)

Mason, *Courthouse Square Historic District (Mason Michigan Historic MRA)*, Bounded by Park, E. Columbia, Rodgers & South (06/06/85)

Mason, *Maple Grove Cemetery (Mason Michigan Historic MRA)*, W. Columbia St. (06/06/85)

Mason, *Merrylees—Post House (Mason Michigan Historic MRA)*, 519 W. Ash St. (06/06/85)

Mason, *Michigan Central Railroad Mason Depot (Mason Michigan Historic MRA)*, 111 N. Mason St. (06/06/85)

Mason, *Nice, Philip, House (Mason Michigan Historic MRA)*, 321 Center St. (06/06/85)

Mason, *Rayner, John, House (Mason Michigan Historic MRA)*, 725 E. Ash St., (06/06/85)

Mason, *Westside Neighborhood Historic District (Mason Michigan Historic MRA)*, Roughly bounded by W. Maple, W. Ash, Lansing & McRoberts Sts. (06/06/85)

Ionia County

Belding, *Richardson Silk Mill*, 101 Front St. (09/26/85)

Ionia vicinity, *Sessions Schoolhouse*, Riverside Dr. (02/11/85)

Portland, *Portland First Congregational Church*, 421 E. Bridge St. (12/27/84)

Kalamazoo County

Kalamazoo, *Portage Street Fire Station*, 1249 Portage St. (09/12/85)

Kent County

Grand Rapids, *Paddock, Augustus, House*, 1033 Lake Dr. SE (09/12/85)

Keweenaw County

Eagle River, *Eagle River Historic District*, Roughly bounded by Front, Second, Third, Fourth, Fifth & Main Sts.

Lapeer County

Imlay City, *Fairweather, James F.—Lamb, Jacob C., House*, 540, S. Almont Ave. (09/26/85)

Lapeer, *Armstrong, Joseph, House (Lapeer MRA)*, 707 Monroe St. (07/26/85)

Lapeer, *Dutton, James B., House (Lapeer MRA)*, 606 Calhoun St. (07/26/85)

Lapeer, *Hart, Rodney G., House (Lapeer MRA)*, 328 W. Park St. (07/26/85)

Lapeer, *Hevener, John and Julia, House (Lapeer MRA)*, 1444 W. Genesee (07/26/85)

Lapeer, *Lee, John and Rosetta, House (Lapeer MRA)*, 823 Calhoun St. (07/26/85)

Lapeer, *Perry, Warren, House (Lapeer MRA)*, 892 Saginaw St. (07/26/85)

Lapeer, *Piety Hill Historic District (Lapeer MRA)*, Roughly bounded by Park, Calhoun, Nepressing, Cramton & Main (07/26/85)

Lapeer, *Tomlinson, Samuel J., House (Lapeer MRA)*, 641 Calhoun St. (07/26/85)

Lapeer, *Tuttle, Columbus, House (Lapeer MRA)*, 610 N. Main St. (07/26/85)

Lapeer, *Van Dyke, Peter, House (Lapeer MRA)*, 1091 Pine St. (07/26/85)

Lapeer, *Watson, William H. and Sabrina, House (Lapeer MRA)*, 507 Cedar St. (07/26/85)

Lapeer, *White, Jay, House (Lapeer MRA)*, 1188 W. Genesee St. (07/26/85)

Lenawee County

Adrian, *Adrian Union Hall—Croswell Opera House* (04/18/85)

Adrian, *Clark Memorial Hall*, 120–124 S. Winter St. (01/14/85)

Adrian, *St. John's Lutheran Church*, 121 S. Locust St. (12/27/84)

Livingston County

Brighton vicinity, *Westphal, August, Farmstead*, 6430 Brighton Rd. (09/12/85)

Oakland County

Birmingham, *Grand Trunk Western Railroad Birmingham Depot*, 245 S. Eton St. (09/12/85)

Milford, *Foote, Dr. Henry K., House*, 213 W. Huron St. (01/11/85)

Pontiac, *Fairgrove Avenue Historic District*, Along Fairgrove Ave. between N. Saginaw & Edison Sts. (01/31/85)

Pontiac, *Howard, Horatio N., House*, 403 N. Saginaw (12/27/84)

Ottawa County

Holland, *Gold, Egbert H., Estate*, 1116 Hazel Ave. (12/27/84)

Holland, *Holland Old City Hall and Fire Station*, 108 E. 8th St. (01/11/85)

Sanilac County

Lexington, *Divine, John, Law Office—Moore Public Library*, 7239 Huron Ave. (01/31/85)

Lexington, *Moore, Charles, H.—Sleeper, Albert E., House*, 7277 Simons St. (01/11/85)

Lexington, *Nims, William Reuben, House*, 7156 Huron Ave. (04/11/85)

Shiawassee County

Owosso, *Duff Building (Owosso MRA)*, 116 W. Exchange St. (01/31/85)

Owosso, *Grow Block (Owosso MRA)*, 120–122 W. Exchange St. (01/31/85)

St. Clair County

Yale, *McColl, James, House*, 205 S. Main St. (08/31/85)

St. Joseph County

Constantine, *Constantine Historic Commercial District*, Washington St. between Second & Water, & Water St. between White Pigeon & 125 W. Water (09/17/85)

Washtenaw County

Dexter, *Litchfield, James, House*, 3512 Central St. (12/27/84)

Ypsilanti, *Eastern Michigan University Historic District*, Cross St., Washtenaw & Forest Aves. (10/04/84)

Ypsilanti, *Pease Auditorium*, College Pl. (10/04/84)

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Wayne County

Detroit, *Century Building and Little Theatre,* 58–62 E. Columbia (05/09/85)
Detroit, *Elwood Bar,* 2100 Woodward (05/15/85)
Detroit, *Fox Theater Building,* 2111 Woodward (02/14/85)
Detroit, *Globe Tobacco Building,* 407 E. Fort St. (11/13/84)
Detroit, *Palms, Francis, Building and State Theater,* 2111 Woodward Ave. (10/25/84)
Detroit, *Redford Theatre Building,* 17354 Lahser Ave. (01/31/85)
Detroit, *River Place Complex,* Bounded by Joseph Campau Ave., Wight St., & McDougal Ave. (09/16/85)

MINNESOTA

Big Stone County

Artichoke Township, *District 13 School,* CR 25 (08/15/85)
Graceville, *Shannon Hotel,* Studdart Ave. & Second St. (08/15/85)
Ortonville, *Big Stone County Courthouse,* 20 S.E. Second St. (08/15/85)
Ortonville, *Columbian Hotel,* 305 N.W. Second St. (08/15/85)
Ortonville, *Ortonville Commercial Historic District,* Madison & Monroe Aves. & Second St. between Jefferson & Jackson Aves. (08/15/85)
Ortonville, *Ortonville Free Library,* 412 N.W. Second St. (08/15/85)

Carlton County

Lindholm Oil Company Service Station, (09/11/85)
Carlton, *Carlton County Courthouse,* 3rd St. & Walnut Ave. (08/29/85)
Cloquet, *Cloquet City Hall,* Ave. B & Arch St. (09/11/85)
Cloquet, *Cloquet—Northern Office Building,* Avenue C & Arch St. (08/29/85)
Cloquet, *Northeastern Hotel,* 115 St. Louis Ave. (11/08/84)
Cloquet, *Park Place Historic District,* 1, 512, 520 & 528 Park Pl. (08/29/85)
Cloquet, *Shaw Memorial Library,* 406 Cloquet Ave. (08/29/85)

Chippewa County

Watson vicinity, *Gippe, Henry, Farmstead,* US 59 (09/25/85)

Crow Wing County

Sebre Lake Site (21–CW–55) (11/16/84)

Douglas County

Alexandria, *Alexandria Public Library,* Seventh Ave. W & Fillmore St. (08/23/85)
Alexandria, *Cowing, Thomas F., House,* 316 Jefferson St. (08/23/85)
Alexandria, *Douglas County Courthouse,* 320 Seventh Ave. W (08/23/85)
Alexandria, *Great Northern Passenger Depot,* N. Broadway & Agnes Blvd. (08/15/85)
Alexandria, *Ward, Noah P., House,* 422 Seventh Ave. W (08/23/85)
Brandon, *Brandon Auditorium and Fire Hall,* Holmes Ave. (08/29/85)
Carlos vicinity, *Tonn, August, Farmstead,* CR 65 (09/25/85)

Fillmore County

Chatfield, *Dickson, Samuel Thompson, House,* 225 S.W. Third St. (08/15/85)

Grant County

Barrett, *Roosevelt Hall,* Hawkins Ave. (08/23/85)
Elbow Lake, *Grant County Courthouse,* Second St. & Central Ave. (09/06/85)

Hennepin County

Minneapolis, *Minneapolis Armory,* 500—530 Sixth St. S (09/26/85)

Jackson County

Heron Lake, *Heron Lake Public School,* Sixth Ave. & Tenth St. (08/15/85)

Lac qui Parle County

Dawson, *Dawson Carnegie Library,* 677 Pine St. (08/15/85)
Madison, *Lac qui Parle County Courthouse,* 600 Sixth St. (08/15/85)
Madison, *Madison Carnegie Library,* 401 Sixth Ave. (08/23/85)
Madison, *Madison City Hall,* 404 Sixth Ave. (08/23/85)

McLeod County

Hutchinson, *Goodnow, Merton S., House,* 446 S. Main St. (08/15/85)

Meeker County

Dassel, *West End Elevator,* Fourth St. & Atlantic Ave. (03/14/85)
Litchfield, *Litchfield Opera House,* 126 N. Marshall Ave. (10/04/84)

Mille Lacs County

Milaca, *Milaca Municipal Hall,* 145 Central Ave. S (09/11/85)
Onamia, *Onamia Municipal Hall,* Main & Birch Sts. (09/10/85)
Princeton, *Dunn, Robert C., House,* 708 S. Fourth St. (08/29/85)
Princeton, *Gile, Ephriam C., House,* 311 Eighth Ave. S (08/29/85)
Wahkon, *ELLEN RUTH (launch),* Main St. between Lake Shore Blvd. & Fifth St. (08/29/85)

Morrison County

Fort Duquesne (21–MO–20) (11/15/84)
Little Falls, *Churchill, O.A., Store,* 55 Bay St. (09/05/85)
Little Falls, *Northern Pacific Railway Depot,* 200 First St. NW (09/05/85)
Little Falls, *Pine Tree Lumber Company Office Building,* 735 First St. NW (09/05/85)
Little Falls, *Weyerhaeuser, Charles A., and Musser, Richard Drew, Houses,* Highland Ave. (09/05/85)
Pierz, *St. Joseph's Church,* Main St. (09/05/85)
Randall vicinity, *Clough Town Hall,* CR 10 (09/05/85)

Nicollet County

North Mankato, *Stewart, William E., House,* 733 Range St. (11/08/84)

Norman County

Ada, *Congregational Church of Ada,* E. Second Ave. & First St. (11/08/84)

Otter Tail County

Fergus Falls, *Park Region Luther College,* 715 W. Vernon Ave. (11/08/84)

Polk County

Crookston, *Crookston Commercial Historic District,* Main St. & Broadway between Fletcher & W. Second St. (11/23/84)

Ramsey County

St. Paul, *St. Matthew's School,* 7 W. Robie St. (11/08/84)

Roseau County

Roseau, *Roseau County Courthouse,* 216 Center St. W. (08/15/85)

Saint Louis County

Duluth, *DeWitt—Seitz Building,* 394 Lake Ave. S (09/05/85)
Gibert vicinity, *St. Louis County 4–H Club Camp,* 100 Pine Lane (03/04/85)

Swift County

Benson vicinity, *Uytendale, Christian F., Farmstead,* Off CR 25 (09/05/85)
Benson, *Christ Church,* 310 Thirteenth St. N (08/15/85)
Benson, *Church of St. Francis Xavier,* Thirteenth St. N & Montana Ave. (08/15/85)
DeGraff, *Church of St. Bridget,* Third St. & Ireland Ave. (08/15/85)
Murdock, *Murdock, Sabin S., House,* Clara Ave. (08/15/85)

Todd County

Brownerville, *Kahlert Mercantile Store,* Main St. (09/05/85)
Brownerville, *St. Joseph's Catholic Church, Rectory and School,* Main St. between Seventh & Eighth Sts. (09/05/85)
Grey Eagle, *Grey Eagle Village Hall,* Spruce & Woodman St. (09/05/85)
Long Prairie, *Bank of Long Prairie,* 262 Central Ave. (09/05/85)
Long Prairie, *Hotel Reichert,* 20 Third St. N (09/05/85)
Long Prairie, Todd County Courthouse, *Sheriff's House and Jail,* 215 First Ave. S (09/05/85)

Traverse County

Browns Valley, Browns Valley Carnegie *Public Library,* Broadway Ave. & Second St. (08/15/85)
Lake Valley Township, *Larson's Hunters Resort—Larson, Andrew and Bertha, Farm,* CR 76 (08/15/85)
Wheaton, *Chicago, Milwaukee, and St. Paul Depot,* Broadway Ave. & Front St. (08/23/85)

Washington County

Afton, *Cushing Hotel,* 3291 St. Croix Trail Ave. S (01/17/85)

Winona County

Winona, *Gallagher, Dr. J.W.S., House,* 451 W. Broadway St. (11/08/84)
Winona, *Hodgins Abner F., House,* 275 Harriet St. (11/08/84)
Winona, *St. Stanislaus Polish Catholic Church,* 601 E. Fourth St. (11/08/84)
Winona, *Watkins, Paul, House,* 175 E. Wabasha St. (11/08/84)

MISSISSIPPI

Adams County

Natchez vicinity, *Glen Aubin,* Off US 61 (08/29/85)
Natchez vicinity, *Oakwood,* Off Kingston Rd. (05/09/85)

Amite County

Liberty, *Liberty Presbyterian Church,* N. Church St. (05/16/85)

Copiah County

Hazlehurst vicinity, *Mount Hope,* Off Rt. 2 across from Mt. Hope Cemetery (03/21/85)

Grenada County

Grenada, *Granada Post Office,* 176 S. Main St. (01/08/85)

Harrison County

Gulfport, *Harbor Square Historic District,* Roughly bounded by L & N Railroad, Twenty-third Ave., Thirteenth St. & Twenty-seventh Ave. (08/19/85)

Hinds County

Brownsville vicinity, *Cates, John E., House,* MS 22 (05/10/85)
Jackson, *Greenwood Cemetery,* Bounded by West, Davis, Lamar & George Sts. (12/20/84)

Jackson County

Applestreet Site (22Ja387) (08/12/85)

Jefferson County

Church Hill vicinity, *Wyolah Plantation,* Off MS 553 (05/30/85)

Leflore County

Greenwood, *Four Corners Historic District,* Washington & Henderson Sts. (02/14/85)

Lowndes County

Columbus, *Sykes—Leigh House,* 719 Seventh St. N (03/14/85)

Noxubee County

Macon, *Maudwin,* 101 Washington St. (08/29/85)

Oktibbeha County

Starkville, *Hotel Chester,* 217–223 E. Main St. (01/18/85)

Pearl River County

Tiger Hammock Site 22 PR 591 (05/01/85)

Pike County

Magnolia, *Annex, The (Magnolia MRA),* 226 Magnolia St. (10/11/84)
Magnolia, *Berryhill House (Magnolia MRA),* 265 W. Railroad Ave. (10/11/84)
Magnolia, *Bee Building (Magnolia MRA),* 119 E. Railroad Ave. (10/11/84)
Magnolia, *Carraway House (Magnolia MRA),* 429 N. Clark St. (10/11/84)
Magnolia, *Chadwick, George, House (Magnolia MRA),* 560 N. Cherry St. (10/11/84)
Magnolia, *Depot (Magnolia MRA),* 101 E. Railroad Ave. (10/11/84)
Magnolia, *Everette—Gottig—Bilbo House (Magnolia MRA),* 109 E. Myrtle St. (10/11/84)
Magnolia, *Holmes House (Magnolia MRA),* 405 N. Cherry St. (10/11/84)
Magnolia, *Lanier House (Magnolia MRA),* 400 N. Clark St. (10/11/84)
Magnolia, *Lieb—Rawls House (Magnolia MRA),* 303 Magnolia St. (10/11/84)
Magnolia, *Mullen House (Magnolia MRA),* 515 N. Cherry St. (10/11/84)
Magnolia, *Myrtle Street Historic District (Magnolia MRA),* W. Myrtle St. between N. Clark & N. Prewitt Sts. (10/11/84)
Magnolia, *Norwood—TWB Building (Magnolia MRA),* 131 W. Railroad Ave. (10/11/84)
Magnolia, *Simmons House (Magnolia MRA),* 489 Prewitt St. (10/11/84)
Magnolia, *Southtown Historic District (Magnolia MRA),* Roughly bounded by Minnehaha Creek, Illinois Central RR, Bay, Laurel & Prewitt Sts. (10/11/84)
Magnolia, *Stegner House (Magnolia MRA),* 559 N. Cherry St. (10/11/84)

Simpson County

Mendenhall, *Simpson County Courthouse,* Courthouse Sq. (08/29/85)

Yalobusha County

Water Valley, *Water Valley Post Office,* 2322 Main St. (04/18/85)

MISSOURI

Barry County

Cassville vicinity, *Camp Smokey—Company 1713 Historic District (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (02/26/85)
Cassville vicinity, *Roaring River State Park Bath House (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (03/04/85)
Cassville vicinity, *Roaring River State Park Dam—Spillway (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (02/26/85)
Cassville vicinity, *Roaring River State Park Deer Leap Trail (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (02/26/85)
Cassville vicinity, *Roaring River State Park Honeymoon Cabin (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (02/26/85)
Cassville vicinity, *Roaring River State Park Hotel (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. [illegible]
Cassville vicinity, *Roaring River State Park Shelter Kitchen No. Two and Rest Room (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off Park Rd. (02/26/85)
Monett vicinity, *Waldensian Church and Cemetery of Stone Prairie,* Rt. 2 (01/18/85)

Buchanan County

Rushville vicinity, *Sugar Lake State Park Open Shelter (ECW Architecture in Missouri State Parks 1933–1942 TR),* Off MO 138 (02/26/85)
St. Joseph vicinity, *Pleasant Ridge School,* RFD 4 (05/02/85)

Camden County

Camdenton vicinity, *Camp Hawthorne Central Area District (ECW Architecture in Missouri State Parks 1933–1942 TR),* NE of Camdenton in State Park (02/28/85)
Camdenton vicinity, *Camp Pin Oak Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* NE of Camdenton in State Park (06/27/85)
Camdenton vicinity, *Lake of the Ozarks Recreational Demonstration Area Barn—Garage in Kaiser Area (ECW Architecture in Missouri State Parks 1933–1942 TR),* NE of Camdenton in State Park (02/28/85)
Camdenton vicinity, *Lake of the Ozarks Recreational Demonstration Area Rising Sun Shelter (ECW Architecture in Missouri State Parks 1933—1942 TR),* NE of Camdenton in State Park (02/26/85)
Camdenton vicinity, *Lake of the Ozarks Recreational Demonstration Area Shelter at McCubbin Point (ECW Architecture in Missouri State Parks 1933—1942 TR),* NE of Camdenton in State Park (02/28/85)
Camdenton vicinity, *Lake of the Ozarks State Park Camp Clover Point Recreation Hall (ECW Architecture in Missouri State Parks 1933—1942 TR),* NE of Camdenton in State Park (03/04/85)
Camdenton vicinity, *Lake of the Ozarks State Park Camp Rising Sun Recreation Hall (ECW Architecture in Missouri State Parks 1933—1942 TR),* NE of Camdenton in State Park (03/04/85)
Pin Oak Hollow, *Pin Oak Hollow Bridge (ECW Architecture in Missouri State Parks 1933—1942 TR),* Lake of the Ozarks State Park (09/13/85)

Cape Girardeau County

Jackson, *Bennett—Tobler—Pace—Oliver House,* 224 E. Adams (04/16/85)

Clay County

Excelsior Springs, *Elms Hotel,* Regent & Elms Blvd. (03/29/85)

Cole County

Jefferson City, *Villa Panorama,* 1310 Swifts Hwy. (01/03/85)

Dallas County

Bennett Spring, *Bennett Spring State Park Shelter House and Water Gauge Station (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 64 (02/28/85)

Dent County

Salem vicinity, *Dam and Spillway in the Hatchery Area at Montauk State Park (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 119 (02/26/85)
Salem vicinity, *Montauk State Park Open Shelter (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 119 (02/28/85)
Salem vicinity, *Old Mill at Montauk State Park (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 119 (09/27/85)

Franklin County

Sullivan vicinity, *Meramec State Park Lookout House—Observation Tower (ECW Architecture in Missouri State Parks 1933—1942 TR),* E of Sullivan off MO 185 (02/28/85)
Sullivan vicinity, *Meramec State Park Pump House (ECW Architecture in Missouri State Parks 1933—1942 TR),* E of Sullivan off MO 185 (02/28/85)
Sullivan vicinity, *Meramec State Park Shelter House (ECW Architecture in Missouri State Parks 1933—1942 TR),* E of Sullivan off MO 185 (02/26/85)

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Greene County

Springfield, *Walnut Street Historic District,* Roughly bounded by McDaniel, Walnut & Elm Sts. & Sherman Pkwy. (03/21/85)

Grundy County

Trenton vicinity, *Crowder State Park Vehicle Bridge (ECW Architecture in Missouri State Parks 1933—1942 TR),* MO 128 (03/04/85)

Harrison County

Bethany, *Hamilton House,* 1226 W. Main (04/11/85)

Jackson County

Grandview, *Truman, Harry S., Farm Home,* 12301 Blue Ridge Blvd., Extension (NHL) (02/04/85)

Independence, *Kritser House,* 115 E. Walnut (04/10/85)

Independence, *Truman, Harry S., National Historic Site,* 219 N. Delaware St. (08/31/85)

Kansas City, *Gloyd Building,* 921 Walnut (07/25/85)

Kansas City, *Grand Avenue Temple and Grand Avenue Temple Building,* 205 E. Ninth St. & 903 Grand Ave. (05/08/85)

Kansas City, *Howe, Frank M., Residence,* 1707 Jefferson St. (04/18/85)

Kansas City, *Ivanhoe Masonic Temple,* 2301 E. Linwood Blvd. & 3201 Park Ave. (05/02/85)

Kansas City, *Jensen—Salsbery Laboratories,* 520 W. Twenty-first St. (07/16/85)

Kansas City, *Land Bank Building,* 15 W. Tenth St. (01/18/85)

Kansas City, *Palace Clothing Company Building,* 1126—1128 Grand Ave. (01/18/85)

Kansas City, *Peppard, Joseph Grear, House,* 1704 Jefferson St. (03/26/85)

Kansas City, *Row House Buildings,* 3401 Main, 1—7 & 9—23 E. Thirty-fourth St. (01/15/85)

Kansas City, *Temple Block Building,* 531 Walnut (06/19/85)

Jasper County

Joplin, *Elks Club Lodge #501,* 318–320 W. Fourth St. (06/03/85)

Johnson County

Knob Noster, *Camp Shawnee Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR), SW of Knob Noster (03/04/85)*

Knob Noster, *Montserrat Recreation Demonstration Area Bridge (ECW Architecture in Missouri State Parks 1933—1942 TR),* MO 132 (03/04/85)

Knob Noster, *Montserrat Recreation Demonstration Area Dam and Spillway (ECW Architecture in Missouri State Parks 1933—1942 TR),* SW of Knob Noster (03/04/85)

Knob Noster, *Montserrat Recreation Demonstration Area Entrance Portal (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 132 (03/04/85)

Knob Noster, *Montserrat Recreational Demonstration Area Rock Bath House (ECW Architecture in Missouri State Parks 1933—1942 TR),* SW of Knob Noster (03/04/85)

Knob Noster, *Montserrat Recreational Demonstration Area Warehouse #2 and Workshop (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 132 (03/04/85)

Laclede and Dallas Counties

Bennett Spring, *Bennett Spring State Park Hatchery—Lodge Area Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* MO A64 (03/04/85)

Lincoln County

Elsberry vicinity, *Camp Sherwood Forest Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* SW of Elsberry in Cuivre State Park (03/04/85)

Elsberry Vicinity, *Cuivre River State Park Administrative Area Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* SW of Elsberry in Cuivre State Park (03/04/85)

Marion County

Palmyra, *Dryden—Louthan House,* 402 E. Ross St. (01/16/85)

Palmyra, *Sowers, Peter J., House,* 221 Home St. (01/16/85)

Palmyra, *Speigle House,* 408 S. Dickerson (02/14/85)

Miller County

Brumley vicinity, *Lake of the Ozarks State Park Highway 134 Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* W of Brumley along MO 134 (02/26/85)

Monroe County

Santa Fe vicinity, *Mark Twain State Park Picnic Shelter at Buzzard's Roost (ECW Architecture in Missouri State Parks 1933—1942 TR),* Off MO 107 (03/04/85)

Saline County

Arrow Rock vicinity, *Arrow Rock State Historic Site Bridge (ECW Architecture in Missouri State Parks 1933—1942 TR),* SE of Arrow Rock (03/04/85)

Arrow Rock vicinity, *Arrow Rock State Historic Site Grave Shelter (ECW Architecture in Missouri State Parks 1933—1942 TR),* SE of Arrow Rock (02/27/85)

Arrow Rock vicinity, *Arrow Rock State Historic Site Lookout Shelter (ECW Architecture in Missouri State Parks 1933—1942 TR),* E of Arrow Rock (02/27/85)

Arrow Rock vicinity, *Arrow Rock State Historic Site Open Shelter (ECW Architecture in Missouri State Parks 1933—1942 TR),* SE of Arrow Rock (02/28/85)

Marshall vicinity, *Van Meter State Park Combination Building (ECW Architecture in Missouri State Parks 1933—1942 TR),* Van Meter State Park (02/27/85)

Marshall vicinity, *Van Meter State Park Shelter Building (ECW Architecture in Missouri State Parks 1933—1942 TR),* Van Meter State Park (02/28/85)

St. Louis (Independent City)

Immaculate Conception School, 2912 Lafayette (05/08/85)

Winston Churchill Apartments, 5475 Cabanne (04/04/85)

Advertising Building, 1627—1629 Locust St. (01/18/85)

American Theater, 416 N. Ninth St. (03/18/85)

Hickory Street District, roughly bounded by Lasalle, Missouri, Rutger, & Jefferson Sts., & along Hickory St. (01/18/85)

Marquette Hotel, 1734 Washington Ave. (09/26/85)

Mount Pleasant School, 4528 Nebraska Ave. (06/02/85)

Plaza Hotel Complex, 307 N. Leonard, 3301—3321 Olive, 3300—3322 & 3301–3339 Lindell, 3322—3334 Locust & 306—310 Channing (05/07/85)

Scruggs—Vandervoort—Barney Warehouse, 917 Locust St. (02/21/86)

Tiffany Neighborhood Historic District (Boundary Increase), W side Thirty-ninth St. between Park & Lafayette Aves. (07/26/85)

Winkelmeyer Building, Eleventh & Walnut Sts. (07/11/85)

Union Station Post Office Annex, 329 S. Eighteenth St. (09/26/85)

St. Louis County

Clayton, *Seven Gables Building,* 18—26 N. Meramec (07/16/85)

Grover vicinity, *Dr. Edmund A. Babler Memorial State Park Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* NW of Grover (02/27/85)

Kirkwood, *Kirkwood Missouri Pacific Depot,* W. Argonne Dr. at Kirkwood Rd. (07/05/85)

Ladue, *Price School,* Price School Lane (02/14/85)

Oakville vicinity, *Koch, Robert, Hospital,* 4101 Koch Rd. (10/31/85)

University City, *University City Education District,* 7400 & 7401 Balson Ave., & 951 N. Hanley Rd. (01/31/85)

Webster Groves, *Gorlock Building,* 101—113 W. Lockwood Ave. (11/08/85)

Sullivan County

Milan vicinity, *Camp Ground Church and Cemetery,* W of Milan (09/23/85)

Washington County

Potosi Vicinity, *Washington State Park CCC Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* Roughly bounded by MO 102 & MO 104 (03/04/85)

Wayne County

Patterson vicinity, *Sam A. Baker State Park Historic District (ECW Architecture in Missouri State Parks 1933—1942 TR),* St. Francis Mountains. Roughly bounded by Cedar Creek, Big Creek & Mudlick Canyon off MO 143 (02/27/85)

Webster County

Seymour vicinity, *Love, Col. Thomas C., House,* Off Rt. 1 (01/16/85)

MONTANA

Beaverhead County

Dillon, *Barrett Hospital,* Chapman & S. Atlantic Sts. (01/18/85)

Big Horn County

Hardin, *Commercial District (Hardin MRA),* Roughly bounded by Fourth, Crook, Burlington Northern RR, First & Crow Sts. (08/14/85)

Hardin, *Residential District (Hardin MRA),* Roughly bounded by Fifth, Fourth, Crow & Cody (08/14/85)

Cascade County

Fort Shaw, *Fort Shaw Historic District and Cemetery,* One Mile NW of town of Fort Shaw (01/11/85)

Great Falls, *Roberts Building,* 520—526 Central Ave. (09/12/85)

Fergus County

Lewistown, *Fergus County High School (Lewistown MRA),* 412 Sixth Ave. S (06/27/85)

Lewistown, *Huntoon Residence (Lewistown MRA),* 722 W. Water (06 /27/85)

Lewistown, *Lewistown Central Business Historic District (Lewistown MRA),* Roughly bounded by Washington, St., First Ave., Janeaux St. & Eighth Ave. (06/27/85)

Lewistown, *Lewistown Courthouse Historic District (Lewistown MRA),* Roughly bounded by Washington St., Sixth Ave, Main & Broadway Sts. (06/27/85)

Lewistown, *Lewistown Silk Stocking District (Lewistown MRA),* Roughly bounded by Second Ave., Boulevard & Washington Sts. & Third Ave. (06/27/85)

Gallatin County

Bozeman, *Fisher, Burr, House,* 712 S. Willson Ave. (03/28/85)

Jefferson County

Boulder, *Montana Deaf and Dumb Asylum,* Off MT 281 (05/10/85)

Lewis and Clark County

Helena, *Western Clay Manufacturing Company,* 2915 Country Club Rd. (05/09/85)

Helena, *Young Women's Christian Association (Independent),* 501 N. Park St. (12/27/84)

Missoula County

Missoula, *Forkenbrock Funeral Home,* 234 E. Pine St. (12/27/84)

Missoula, *Herzog, J.M., House,* 1210 Toole Ave. (09/12/85)

Missoula, *Northern Pacific Railroad Depot,* Railroad & Higgins Ave. (03/28/85)

Missoula, *Prescott, Clarence R., House,* University of Montana (09/26/85)

Missoula, *University Apartments,* 400—422 Roosevelt Ave. (03/28/85)

Pondera County

Valier, *Valier Public School,* 820 Third St. (03/28/85)

Sweetgrass County

Big Timber, *Grand Hotel,* 139 McLeod St. (09/19/85)

NEBRASKA

Banner County

Harrisburg vicinity, *Hampton, C.C., Homestead* (12/13/84)

Cass County

Avoca vicinity, *Kehlbeck Farmstead,* Off NE 50 & US 34 (09/26/86)

Plattsmouth, *Plattsmouth Main Street Historic District,* Main St. bounded by Avenue A, S. & N. Third Sts., First Ave. & S. & N. Seventh St. (09/26/85)

Cedar County

Menominee vicinity, *Zavadil, Franz, Farmstead* (01/31/85)

Clay County

DeWeese vicinity, *Saint Martin's Catholic Church,* NW of DeWeese (09/26/85)

Custer County

Broken Bow, *Arrow Hotel,* 509 S. Ninth Ave. (09/12/85)

Dawes County

Crawford, *Co-operative Block Building,* 435—445 Second (09/12/85)

Dodge County

Fremont, *Bullock, Samuel, House,* 508 W. Military Ave. (09/12/85)

Uehling vicinity, *Uehling, Frank, Barn,* Off US 77 (08/01/85)

Douglas County

Boys Town, *Father Flanagan's Boys' Home,* Boys Town campus (NHL) (02/04/85)

Omaha, *Bemis Omaha Bag Company Building,* 614—624 S. Eleventh St. & 1102—1118 Jones St. (01/11/85)

Omaha, *Blackstone Hotel,* 302 S. Thirty-sixth St. (01/11/85)

Omaha, *Center School,* 1730 S. Eleventh St. (08/23/85)

Omaha, *Kennedy Building,* 1517 Jackson St. (08/23/85)

Omaha, *Leone, Florentine, and Carpathia Apartment Buildings,* 832 S. 24th St., 834 S. Twenty-fourth St. & 907—911 S. Twenty-fifth St. (05/16/85)

Omaha, *Nash Block,* 902—912 Farnam (05/16/85)

Omaha, *Packer's National Bank Building,* 4939 S. Twenty-fourth St. (05/16/85)

Omaha, *Rosewater School,* 3764 S. Thriteenth St. (05/16/85)

Omaha, *Sanford Hotel,* 1913 Farnum St. (09/26/85)

Franklin County

Franklin, *Dupee Music Hall,* 1402 P St. (09/26/85)

Gage County

Beatrice, *Kilpatrick, Samuel D., House,* 701 N. Seventh St. (12/20/84)

Garfield County

Burwell vicinity, *Garfield County Frontier Fairgrounds,* Off NE 91 (05/09/85)

Hall County

Grand Island, *Glade—Donald House,* 1004 W. Division (09/12/85)

Grand Island, *Hotel Yancey (The),* 123 N. Locust St. (12/13/85)

Hamilton County

Aurora, *Hamilton County Courthouse,* Courthouse Sq. (07/29/85)

Aurora, *Royal Highlanders Building,* 1235 M St. (09/12/85)

Hayes County

St. John's Envangelical Lutheran German Church and Cemetery (05/16/85)

Hamlet vicinity, *Daniel, J.M., House* (05/30/85)

Hamlet vicinity, *Daniel, J.M., School—District No. Three* (05/30/85)

Jefferson County

Diller, *People's State Bank,* NE 103 (12/13/84)

Fairbury, *Fairbury Public—Carnegie Library,* 601 Seventh St. (09/12/85)

Kearney County

Minden, *Thorne, W.T.,* Fifth St. (09/12/85)

Lancaster County

Lincoln, *Hayward School,* 1215 N. Ninth St. (08/23/85)

Lincoln, *St. Charles Apartments,* 4717 Baldwin Ave. (09/12/85)

Lincoln, *Tifereth Israel Synagogue,* 344 S. Eighteenth St. (05/09/85)

Lincoln, *Townsend Photography Studio,* 226 S. Eleventh St. (12/20/84)

Lincoln County

North Platte, *Fox Theatre,* 301 E. Fifth (05/09/85)

North Platte, *Hotel Yancey,* 221 E. Fifth St. (05/09/85)

Platte County

Hill—Rupp Site (09/30/85)

Red Willow County

McCook, *McCook Public—Carnegie Library,* 423 Norris Ave. (09/12/85)

Saline County

Dorchester vicinity, *ZCBJ Rad Tabor No. Seventy-four,* RFD (08/23/85)

Friend, *Kiddle, Richard R., House,* 819 Eighth St. (09/12/85)

Wilber vicinity, *Telocvicna Jednota Sokol,* (01/16/85)

Saunders County

Wahoo, *Wahoo Burlington Depot,* 431 W. Third (05/09/85)

Seward County

Garland, *Germantown State Bank Building,* Main St. (12/13/84)

NEVADA

Carson City (Independent City)

Spence, William, House, 306 S. Thompson St. (07/18/85)

Stewart Indian School, S of Carson off US 395 (09/18/85)

Leport—Toupin House, 503 E. Telegraph St. (09/16/85)

Smaill, David, House, 313 W. Ann St. (09/16/85)

Clark County

Grapevine Canyon Petroglyphs (AZ:F:14:98 ASM) (12/15/84)

Homestake Mine (26CK3126) (07/17/85)

Boulder City vicinity, *Hoover Dam,* Black Canyon of the Colorado River on the Nevada-Arizona boundary (see also: Arizona) (NHL) (08/20/85)

Washoe County

Reno, *Francovich House,* 557 Washington St. (10/26/84)

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Reno, *McKinley Park School*, Riverside Dr. & Keystone Ave. (09/16/85)
Reno, *Pincolini Hotel*, 214 Lake St. (10/11/84)
Washoe Valley, *Cliff, Walter, Ranch District*, 7635 Old Hwy. 395 (08/16/85)

NEW HAMPSHIRE

Belknap County

Belmont, *Belmont Public Library*, Main St. (09/12/85)
Laconia, *Evangelical Baptist Church*, Veterans Sq. (09/12/85)
Laconia, *Gale Memorial Library*, 695 Main St. (09/12/85)
Laconia, *United Baptist Church of Lakeport*, 23 Park St. (06/06/85)
Meredith, *Meredith Public Library*, 80 Main St. (12/13/84)
New Hampton, *Dana Meeting House*, Dana Hill Rd. (12/13/84)
New Hampton, *New Hampton Community Church*, Main St. (03/07/85)

Carroll County

Brookfield, *Brookfield Town Hall*, NH 109 (06/06/85)
Effingham, *Lord's Hill Historic District*, NH 153, Plantation & Hobbs Rds. (09/12/85)
Wolfeborough, *Cotton Mountain Community Church*, Stoneham Rd. (03/07/85)

Cheshire County

Dublin, *Amory Ballroom (Dublin MRA)*, Off Old Troy Rd. (05/02/85)
Dublin, *Amory-Appel Cottage (Dublin MRA)*, Off Old Troy Rd. (05/02/85)
Keene, *Grace United Methodist Church*, 34 Court St. (03/07/85)
Westmoreland, *High Tops School*, Reynolds & River Rds. (12/13/84)

Coos County

Crawford House Artist's Studio (09/12/85)
Lancaster, *Weeks Estate*, NH 3 (06/06/85)

Grafton County

Ashland, *St. Mark's Episcopal Church*, 6–8 Highland St. (12/13/84)
Dorchester, *Dorchester Common Historic District*, Roughly bounded by N. Dorchester 2 mile NW of intersection with NH 118 (03/07/85)
Enfield, *Centre Village Meeting House*, NH 4A (06/06/85)
Hebron, *Hebron Village Historic District*, Roughly bounded by Hebron Village Cemetery, N. & W. Shore Rds., Hobart Hill & Groton Rds. (03/07/85)
Holderness, *Holderness Free Library*, Junction of US 3 & NH 113 (03/07/85)
Holderness, *Holderness Inn*, Rt. 3 (12/13/84)
Lebanon, *Stone Arch Underpass*, Glen Rd. (09/12/85)

Hillsborough County

Antrim, *Flint Estate (The)*, Old Keene & Old Center Rd. (12/13/84)
Bedford, *Bedford Town Hall*, 70 Bedford Center Rd. (12/13/84)
Manchester, *St. George's School and Convent*, 12 Orange St. (09/12/85)
Nashua, *Hillsborough County Courthouse*, 19 Temple St. (06/06/85)
Nashua, *Nashville Historic District*, Roughly bounded by Nashua River, Merrimack River, & Rt. 3 (12/13/84)
New Ipswich, *New Ipswich Town Hall*, Main St. (12/13/84)
Temple, *Birchwood Inn*, NH 45 (06/06/85)

Merrimack County

Concord, *2½ Beacon Street*, 2½ Beacon St. (12/17/84)
Danbury, *South Danbury Christian Church*, US 4 (06/06/85)
Hill vicinity, *Hill Center Church*, Hill Center Rd. (09/12/85)
New London, *Whipple, Dr. Solomon M., House*, Main St. (09/12/85)
Pembroke, *Pembroke Mill*, 100 Main St. (09/12/85)
Webster, *Old Webster Meeting House*, Off NH 127 on Battle St. (03/07/85)
Webster, *Webster Congregational Church*, Off NH 127 on Long St. (03/07/85)

Rockingham County

Exeter, *Moses—Kent House*, 1 Pine St. (09/12/85)
Hampton Falls vicinity, *Unitarian Church*, Exeter Rd. (12/13/84)
Portsmouth, *Haven—White House*, 229 Pleasant St. (06/06/85)

Strafford County

Dover, *Public Market*, 93 Washington St. (03/07/85)
Somersworth, *Green Street School*, 104 Green St. (03/07/85)

Sullivan County

Goshen, *Backside Inn (Plank Houses of Goshen New Hampshire TR)*, Brook Rd. (06/21/85)
Goshen, *Burford House (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Cote House (Plank Houses of Goshen New Hampshire TR)*, Goshen Center Rd. (06/21/85)
Goshen, *Covit House (Plank Houses of Goshen New Hampshire TR)*, Goshen Center Rd. (06/21/85)
Goshen, *Durham House (Plank Houses of Goshen New Hampshire TR)*, Ball Park Rd. (06/21/85)
Goshen, *Garber House (Plank Houses of Goshen New Hampshire TR)*, Willey Hill Rd. (06/21/85)
Goshen, *Giffen House (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Janicke House (Plank Houses of Goshen New Hampshire TR)*, Goshen Center Rd. (06/21/85)
Goshen, *Knights—Morey House (Plank Houses of Goshen New Hampshire TR)*, Province Rd. (06/21/85)
Goshen, *Lear House (Plank Houses of Goshen New Hampshire TR)*, Province Rd. (06/21/85)
Goshen, *Pike House (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Purnell House (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Scranton House (Plank Houses of Goshen New Hampshire TR)*, Brook Rd. (06/21/85)
Goshen, *Seavey House (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Stelljes House (Plank Houses of Goshen New Hampshire TR)*, NH 31 (06/21/85)
Goshen, *Welcome Acres (Plank Houses of Goshen New Hampshire TR)*, NH 10 (06/21/85)
Goshen, *Williamson House (Plank Houses of Goshen New Hampshire TR)*, Messer Rd. (06/21/85)
Goshen, *Windswept Acres—Powers House (Plank Houses of Goshen New Hampshire TR)*, NH 31 (06/21/85)
Newport, *Newport Downtown Historic District*, Main St., roughly bounded by Depot, Sunapee, Central & West Sts. (06/06/85)
Plainfield, *Plainfield Town Hall*, NH 12A (06/06/85)
Unity, *Unity Town Hall*, Off Unity Rd. & Old NH Tnpk. (06/06/85)

NEW JERSEY

Atlantic County

Atlantic City, *Madison Hotel*, 123 S. Illinois Ave. (12/20/84)
Hamilton Township, *WEYMOUTH (schooner)* (04/25/85)
Linwood, *Linwood Borough School No. One*, 16 W. Poplar Ave. (12/20/84)

Bergen County

Alpine, *Upper Closter—Alpine Historic District*, Roughly bounded by Forest St., Old Dock Rd., School House Lane, Church St. & Closter Dock Rd. (05/08/85)
Franklin Lakes, *Blauvelt House (Stone Houses of Bergen County TR)*, 205 Woodside Ave. (06/06/85)
Hackensack, *Anderson Outkitchen (Stone Houses of Bergen County TR)*, 18 E. Camden St. (06/06/85)
Mahwah, *Dutch Reformed Church at Romopock*, Island Rd. at W. Ramapo Ave. (09/05/85)
Oradell *Cooper, Thunise & Richard, House*, 608—610 Brookside Ave. (09/12/85)
Rockleigh, *Haring—Corning House (Stone Houses of Bergen County TR)*, Rockleigh Rd. (06/06/85)

Essex County

Newark, *Ballantine, John, House*, 43 Washington St. (NHL) (02/04/85)

Hudson County

Hoboken, *Keuffel and Esser Manufacturing Complex*, Third, Grand & Adams Sts. (09/12/85)
Jersey City, *Paulus Hook Historic District (Boundary Increase)*, Roughly bounded by York, Green, Essex & Henderson (05/13/85)
Jersey City, *Pohlmann's Hall*, 154 Ogden Ave. (09/05/85)
Jersey City, *Van Vorst Park Historic District (Boundary Increase)*, Roughly bounded by Railroad Ave., Henderson, Bright, Varick & Monmouth Sts. (10/11/84)

Mercer County

Princeton, *Prospect*, Princeton University Campus, W of Washington Rd. (NHL) (02/04/85)

Middlesex County

Metuchen, *Ayers—Allen House*, 16 Durham Ave. (09/05/85)

Monmouth County

Cream Ridge vicinity, *Coward—Hendrickson House*, (03/21/85)
Upper Freehold Township, *Imalaystown Historic District*, Roughly Imlaystown—Davis Station Rd., & Imlaystown—Red Valley Rd. (01/03/85)
West Long Branch, *MacGregor—Tallman House*, 407 Monmouth Rd. (09/05/85)
West Long Branch, *Shadow Lawn*, Cedar Ave. & Norwood Ave. (NHL) (02/04/85)

Morris County

Ledgewood, *Cary Station*, 239 Emmans Rd. (09/05/85)
Mendham Borough, *Mendham Historic District*, Roughly bounded by Halstead St. & County La. on W. & E. Main Sts., Mountain Ave., Hilltop Rd., Prospect & New St. (04/18/85)
Morris Township, *Alnwick Hall*, 355 Madison Ave. (04/11/85)

Ocean County

Lakewood, *Georgian Court*, Lakewood Ave. (NHL) (02/04/85)

Passaic County

Little Falls, *Speer, Reynier, House*, 612 Upper Mountain Ave. (07/18/85)

Somerset County

Blawenburg, *Reformed Dutch Church of Blawenburg*, 424 CR 518 (09/05/85)

Sussex County

Newton, *Hill Memorial*, 82 Main St. (07/18/85)

Union County

Plainfield, *Saint Mary's Catholic Church Complex*, Liberty & W. Sixth Sts. (04/11/85)

Warren County

Oxford, *Shippen Manor*, Belvidere Rd. (12/20/84)

NEW MEXICO

Bernalillo County

Albuquerque, *Building at 701 Roma NW*, 701 Roma NW (02/28/85)
Albuquerque, *Our Lady of the Angels School*, 320 Romero St. NW (11/29/84)
Albuquerque, *Second United Presbyterian Church*, 812 Edith Blvd. NE (12/06/84)

Chaves County

Roswell, *Downtown Roswell Historic District (Roswell, New Mexico MRA)*, Roughly bounded by Eighth St., Richardson Ave., Albuquerque St. & Missouri Ave. (05/16/85)
Roswell, *Massey, Louise, House (Roswell, New Mexico MRA)*, 209 W. Alameda St. (05/16/85)
Roswell, *Saunders—Crosby House (Roswell, New Mexico MRA)*, 200 E. Deming (05/16/85)

Curry County

Clovis, *Hotel Clovis*, 210 Main St. (12/27/84)
Clovis, *Old Clovis Post Office*, Fourth & Mitchell Sts. (12/27/84)

Dona Ana County

Dona Ana, *Our Lady of Purification Catholic Church*, Camino Real & Second St. (06/27/85)
Las Cruces, *Alameda—Depot Historic District*, Includes properties centered around Pioneer Park & extending up Alameda Blvd. (04/11/85)
Las Cruces, *Mesquite Street Original Townsite Historic District*, Roughly bounded by E. Texas, Campo, Tornillo & E. Court (08/01/85)

Guadalupe County

Santa Rosa, *Moise, J. Julian, House*, 400 Capitan (12/27/84)

McKinley County

Archeological Site # LA 15278 (Reservoir Site; CM 100) (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,780 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,781 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,782 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,784 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,785 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,786 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 45,789 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,000 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,001 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,013 (CM 101)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,014 (CM 102)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,015 (CM 102A)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,016 (CM 103)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,017 (CM 104)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,018 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,019 (CM 105)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,020 (CM 106)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,021 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,022 (CM 107)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,023 (CM 118)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,024 (CM 108)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,025 (CM 109)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,026 (CM 110)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,027 (CM 111)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,028 (CM 112)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,030 (CM 114)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,031 (CM 115)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,033 (CM 117)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,034 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,036 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,037 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,038 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,044 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,071 (CM 148) (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,072 (CM 94) (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,074 (CM 181)(Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,077 (Chaco Mesa Pueblo III TR) (08/02/85)
Archeological Site # LA 50,080 (Chaco Mesa Pueblo III TR) (08/02/85)
Bee Burrow Archeological District (Anasazi Sites Within the Chacoan Interaction Sphere TR) (12/10/84)

Rio Arriba County

Los Ojos vicinity, *Becker, George, House, Bunk House and Barn (La Tierra Amarilla MRA)*, E of La Puente Rd. & S of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Blanton [illegible]ouse (La Tierra Amarilla MRA)*, E of La Puente Rd & S of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Burns Lake Bungalow (La Tierra Amarilla MRA)*, ½ mile S of E end of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Casados House (La Tierra Amarilla MRA)*, Off junction of US 84 & NM Rd. 95 (04/04/85)
Los Ojos vicinity, *La Puente Historic District (La Tierra Amarilla MRA)*, Roughly bounded by Main Rd. in La Puente from drop-off of Second, to First plateau E to Church on W. (04/04/85)
Los Ojos vicinity, *Los Brazos Historic District (La Tierra Amarilla MRA)*, Roughly bounded by US 84, North Rd., fence line and drop-off to Rio Brazos (04/04/85)
Los Ojos vicinity, *Los Ojos (Parkview) Fish Hatchery (La Tierra Amarilla MRA)*, E end of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Los Ojos (Parkview) Historic District (La Tierra Amarilla MRA)*, Roughly bounded by US 84, jct. of Old Hwy. W/US 84, drop-off from First plateau to Chama R. Valley & East-West Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Manzanares, Tony, House (La Tierra Amarilla MRA)*, E of Los Ojos Rd. & N of La Puente Church (04/04/85)
Los Ojos vicinity, *Martinez, Gilbert, Barn (La Tierra Amarilla MRA)*, E of La Puente Rd & S of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Martinez, Teodoro, House (La Tierra Amarilla MRA)*, E of La Puente Rd & N of Hatchery Rd. (04/04/85)
Los Ojos vicinity, *Sanchez—March House (La Tierra Amarilla MRA)*, W of US 84 and N of NM 95 (04/04/85)
Los Ojos vicinity, *Trujillo, Manuelita, House (La Tierra Amarilla MRA)*, Off US 84 S of Los Brazos River (04/04/85)

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Los Ojos vicinity, *Trujillo, Sr., Fernando, House (La Tierra Amarilla MRA)*, W of US 84 & N of NM 95 (04/04/85)

Ojo Caliente vicinity, *Hupobi-ouinge* (01/18/85)

Roosevelt County

Portales, *Bank of Portales*, 123 Main (12/27/84)

San Juan County

Aztec, *Abrams, H.D., House (Aztec New Mexico Historic MRA)*, 403 N. Church (02/21/85)

Aztec, *American Hotel (Aztec New Mexico Historic MRA)*, 300 S. Main (02/21/85)

Aztec, *Austin—McDonald House (Aztec New Mexico Historic MRA)*, 301 Rio Grande (02/21/85)

Aztec, *Aztec Main Street Historic District (Aztec New Mexico Historic MRA)*, Bounded by Main E, Chuska S, alley between Park & Main W, & Chaco N (02/21/85)

Aztec, *Aztec Motor Company Building (Aztec New Mexico Historic MRA)*, 301 S. Main (02/21/85)

Aztec, *Ball, D.C., House (Aztec New Mexico Historic MRA)*, 300 San Juan (02/21/85)

Aztec, *Building at 202 Park Avenue (Aztec, New Mexico Historic MRA)* 202 Park Ave. (02/21/85)

Aztec, *Building at 500 White Avenue (Aztec New Mexico Historic MRA)*, 500 White Avenue (02/21/85)

Aztec, *Church Avenue—Lovers Lane Historic District (Aztec New Mexico Historic MRA)*, Bounded by Rio Grande E, Zia S, Park W & NM Hwy. 550 (02/21/85)

Aztec, *Daws—Keys House (Aztec New Mexico Historic MRA)*, 421 N. Church (02/21/85)

Aztec, *Denver and Rio Grande Western Railway Depot (Aztec New Mexico Historic MRA)*, 314 Rio Grande (02/21/85)

Aztec, *Engleman—Thomas Building (Old Post Office) (Aztec New Mexico Historic MRA)*, 200 S. Main (02/21/85)

Aztec, *McCoy, Harvey, House (Aztec New Mexico Historic MRA)*, 725 Pioneer (02/21/85)

Aztec, *McCoy—Maddox (Spargo) House (Aztec New Mexico Historic MRA)*, NW corner of Maddox & N.E. Aztec Blvd. (02/21/85)

Aztec, *McGee House (Aztec New Mexico Historic MRA)*, 501 Sabena St. (02/21/85)

Farmington vicinity, *Jaquez Site Ruin*, SE of Farmington (12/10/84)

San Miguel County

Las Vegas, *AT & SF Roundhouse (Las Vegas New Mexico MRA)*, NE of Grand Ave. (09/26/85)

Las Vegas, *Angel, Arturo, House (Las Vegas New Mexico MRA)*, 926 S. Pacific (09/26/85)

Las Vegas, *Arthur, Charles and Lewis, E.N., House (Las Vegas New Mexico MRA)*, Douglas Ave. (09/26/85)

Las Vegas, *Baca—Korte House (Las Vegas New Mexico MRA)*, 615 S. Pacific (09/26/85)

Las Vegas, *Bean—Newlee House (Las Vegas New Mexico MRA)*, 1045 Fifth St. (09/26/85)

Las Vegas, *Building at 1202 Ninth Street (Las Vegas New Mexico MRA)*, 1202 Ninth St. (09/26/85)

Las Vegas, *Building at 1214 Bridge (Las Vegas New Mexico MRA)*, 1214 Bridge (09/26/85)

Las Vegas, *Building at 1406 Romero (Las Vegas New Mexico MRA)*, 1406 Romero (09/26/85)

Las Vegas, *Building at 2005 Montezuma (Las Vegas New Mexico MRA)*, 2005 Montezuma (09/26/85)

Las Vegas, *Clevenger, Lowery, House (Las Vegas New Mexico MRA)*, 1013 Second (09/26/85)

Las Vegas, *Cook, James, House (Las Vegas New Mexico MRA)*, 1017 Eleventh (09/26/85)

Las Vegas, *Eldorado Hotel (Las Vegas New Mexico MRA)*, 514 Grand (09/26/85)

Las Vegas, *Elks Lodge Building*, 819 Douglas Ave. (02/28/85)

Las Vegas, *First Baptist Church (Las Vegas New Mexico MRA)*, 700 University (09/26/85)

Las Vegas, *Gatignole, Eugenio, House (Las Vegas New Mexico MRA)*, 1114 S. Gonzales (09/26/85)

Las Vegas, *Herrera, Esperansa, House (Las Vegas New Mexico MRA)*, 2231 Church (09/26/85)

Las Vegas, *House at 1007 Eleventh Street (Las Vegas New Mexico MRA)*, 1007 Eleventh St. (09/26/85)

Las Vegas, *House at 1025 Railroad (Las Vegas New Mexico MRA)*, 1025 Railroad (09/26/85)

Las Vegas, *House at 1114 Tenth (Las Vegas New Mexico MRA)*, 1114 Tenth (09/26/85)

Las Vegas, *House at 1116 Comumbia (Las Vegas New Mexico MRA)*, 1116 Columbia (09/26/85)

Las Vegas, *House at 119 Railroad (Las Vegas New Mexico MRA)*, 119 Railroad (09/26/85)

Las Vegas, *House at 12 Grand (Las Vegas New Mexico MRA)*, 12 Grand (09/26/85)

Las Vegas, *House at 1221 San Francisco (Las Vegas New Mexico MRA)*, 1221 San Francisco (09/26/85)

Las Vegas, *House at 1513 Eighth (Las Vegas New Mexico MRA)*, 1513 Eighth (09/26/85)

Las Vegas, *House at 16 Grand (Las Vegas New Mexico MRA)*, 16 Grand (09/26/85)

Las Vegas, *House at 1616 Eighth (Las Vegas New Mexico MRA)*, 1616 Eighth (09/26/85)

Las Vegas, *House at 1717 Eighth (Las Vegas New Mexico MRA)*, 1717 Eighth (09/26/85)

Las Vegas, *House at 2203 New Mexico (Las Vegas New Mexico MRA)*, 2203 New Mexico (09/26/85)

Las Vegas, *House at 2501 Taos Alley (Las Vegas New Mexico MRA)*, 2501 Taos Alley (09/26/85)

Las Vegas, *House at 309 Railroad (Las Vegas New Mexico MRA)*, 309 Railroad (09/26/85)

Las Vegas, *House at 312 Tecolote (Las Vegas New Mexico MRA)*, 312 Tecolote (09/26/85)

Las Vegas, *House at 508 University (Las Vegas New Mexico MRA)*, 508 University (09/26/85)

Las Vegas, *House at 514 University (Las Vegas New Mexico MRA)*, 514 University (09/26/85)

Las Vegas, *House at 821 S. Pacific (Las Vegas New Mexico MRA)*, 821 S. Pacific (09/26/85)

Las Vegas, *House at 613 Mora (Las Vegas New Mexico MRA)*, 613 Mora (09/26/85)

Las Vegas, *House at 618 Mora (Las Vegas New Mexico MRA)*, 618 Mora (09/26/85)

Las Vegas, *House at 733 Railroad (Las Vegas New Mexico MRA)*, 733 Railroad (09/26/85)

Las Vegas, *House at 800 Pecos (Las Vegas New Mexico MRA)*, 800 Pecos (09/26/85)

Las Vegas, *House at 810 Douglas (Las Vegas New Mexico MRA)*, 810 Douglas (09/26/85)

Las Vegas, *House at 812 Douglas (Las Vegas New Mexico MRA)*, 812 Douglas (09/26/85)

Las Vegas, *House at 814 Douglas (Las Vegas New Mexico MRA)*, 814 Douglas (09/26/85)

Las Vegas, *House at 818 Douglas (Las Vegas New Mexico MRA)*, 818 Douglas (09/26/85)

Las Vegas, *House at 821 Twelfth (Las Vegas New Mexico MRA)*, 821 Twelfth (09/26/85)

Las Vegas, *House at 822 Douglas (Las Vegas New Mexico MRA)*, 822 Douglas (09/26/85)

Las Vegas, *House at 913 Second (Las Vegas New Mexico MRA)*, 913 Second (09/26/85)

Las Vegas, *House at 915 Second (Las Vegas New Mexico MRA)*, 915 Second (09/26/85)

Las Vegas, *House at 919 Second (Las Vegas New Mexico MRA)*, 919 Second (09/26/85)

Las Vegas, *House at 919 Railroad (Las Vegas New Mexico MRA)*, 919 Railroad (09/26/85)

Las Vegas, *House at 921 Chavez (Las Vegas New Mexico MRA)*, 921 Chavez (09/26/85)

Las Vegas, *House at 921 S. Pacific (Las Vegas New Mexico MRA)*, 921 S. Pacific (09/26/85)

Las Vegas, *House at 931 Prince (Las Vegas New Mexico MRA)*, 931 Prince (09/26/85)

Las Vegas, *House at 933 Twelfth (Las Vegas New Mexico MRA)*, 933 Twelfth (09/26/85)

Las Vegas, *Ilfeld, Charles, Memorial Chapel (Las Vegas New Mexico MRA)*, Colonias & Romero (09/26/85)

Las Vegas, *Johnsen House (Las Vegas New Mexico MRA)*, 1523 Eighth (09/26/85)

Las Vegas, *Johnsen Mortuary (Las Vegas New Mexico MRA)*, 801 Douglas (09/26/85)

Las Vegas, *Las Vegas Iron Works (Las Vegas New Mexico MRA)*, Off NM 65/104 (09/26/85)

Las Vegas, *Las Vegas Railroad and Power Company Building (Las Vegas New Mexico MRA)*, Twelfth and San Francisco (09/26/85)

Las Vegas, *Nolan House (Las Vegas New Mexico MRA)*, 110 Tenth St. (09/26/85)

Las Vegas, *Old Las Vegas Post Office (Las Vegas New Mexico MRA)*, 901 Douglas (09/26/85)

Las Vegas, *Pimtar O'Neil Rooming House (Las Vegas New Mexico MRA)*, 313 Railroad (09/26/85)

Las Vegas, *Salazar, Vidal and Elisa, House (Las Vegas New Mexico MRA)*, 624 Railroad (09/26/85)

Las Vegas, *Schmitt—Loemmle House (Las Vegas New Mexico MRA)*, 1106 Columbia (09/26/85)

Las Vegas, *Sarna—Blanchard House (Las Vegas New Mexico MRA)*, 1208 N. Gonzales (09/26/85)

Las Vegas, *Shawn—Guerin House (Las Vegas New Mexico MRA)*, 140 Delgado (09/26/85)

Las Vegas, *St. Anthony's Hospital Annex (Las Vegas New Mexico MRA)*, 700 Friedman (09/26/85)

Las Vegas, *Sundt, M.M., House (Las Vegas New Mexico MRA)*, 1607 Eighth (09/26/85)

Las Vegas, *Taichert Building (Las Vegas New Mexico MRA)*, 1201 National (09/26/85)

Las Vegas, *Taichert Warehouse (Las Vegas New Mexico MRA)*, 623 Twelfth (09/26/85)

Las Vegas, *Truder Park (Las Vegas New Mexico MRA)*, Roughly bounded by Second, Washington & Grand (09/26/85)

Las Vegas, *Trujillo-Gonzales (Las Vegas New Mexico MRA)*, 935 New Mexico (09/26/85)

Las Vegas, *Ward, C.W.G., House (Las Vegas New Mexico MRA)*, 1301 Eighth (09/26/85)

Sante Fe County

Sant Fe, *Allison Dormitory* 433 Paseo de Peralta (11/29/84)

NEW YORK

Allegany County

Alfred, *Alfred Village Historic District*, Sections of N. & S. Main, Ford, Glenn, Park, Sayles, Terrace & W. University Sts. (09/11/85)

Alfred, *Alumni Hall*, Alfred University (09/12/85)

Broome County

Binghamton, *Dunk, Alfred, House*, 4 Pine St. (03/21/85)

Cattaraugus County

Olean, *Olean Public Library* 116 S. Union St. (07/11/85)

Chautauqua County

Jamestown, *Euclid Avenue School*, 28 Euclid Ave. (03/21/85)

Chenango County

Oxford, *Oxford Village Historic District*, Roughly bounded by Washington Ave., State St., Chenango River, Merchant & Green Sts., Washington Park, Albany & Pleasant Sts. (09/17/85)

Columbia County

Canaan, *Lace House (Edwards, Uriah, House)*, NY 22 & Miller Rd. (02/21/85)

Linlithgo, *Livingston Memorial Church and Burial Ground*, CR 10 & Wire Rd. (09/12/85)

New Concord, *Knollcroft*, CR 9 (09/12/85)

Stuyvesant vicinity, *Scott, R. and W., Ice Company Powerhouse and Ice House Site*, River Rd. (02/21/85)

Dutchess County

Millerton vicinity, *Clark, Ezra, House*, Mill Rd. (02/21/85)

Fulton County

Gloversville, *Downtown Gloversville Historic District*, Roughly bounded by Spring, Prospect, E. Fulton, S. & N. Main & Elm Sts. (09/12/85)

Genesee County

Village of Bergen, *Lake Street Historic District*, 10 & 12 St. Lake St. & 11—27 N. Lake S. (09/05/85)

Greene County

Greenville, *Greenville Presbyterian Church Complex*, North St., NY 32 (03/28/85)

Jefferson County

Cape Vincent, *Anthony, Levi, Building (Cape Vincent Town and Village MRA)*, Broadway (09/27/85)

Cape Vincent, *Aubertine Building (Cape Vincent Town and Village MRA)*, Broadway (09/27/85)

Cape Vincent, *Borland, John, House (Cape Vincent Town and Village MRA)*, Market St. (09/27/85)

Cape Vincent, *Broadway Historic District (Cape Vincent Town and Village MRA)*, St. Lawrence River, W edge of Village of Cape Vincent, on Broadway & Tibbetts Point (09/27/85)

Cape Vincent, *Buckley, James, House (Cape Vincent Town and Village MRA)*, Joseph St. (09/27/85)

Cape Vincent, *Burnham, E.K., House (Cape Vincent Town and Village MRA)*, 565 Broadway (09/27/85)

Cape Vincent, *Chevalier, Xavier, House (Cape Vincent Town and Village MRA)*, Gosier Rd. (09/27/85)

Cape Vincent, *Cocaigne, Nicholas, House (Cape Vincent Town and Village MRA)*, Favret Rd. (09/27/85)

Cape Vincent, *Dezengremel, Remy, House (Cape Vincent Town and Village MRA)*, Rosiere Rd. (09/27/85)

Cape Vincent, *Docteur, Joseph, House (Cape Vincent Town and Village MRA)*, Rosiere Rd. (09/27/85)

Cape Vincent, *Duvillard Mill (Cape Vincent Town and Village MRA)*, Broadway (09/27/85)

Cape Vincent, *Dyer, Reuter, House (Cape Vincent Town and Village MRA)*, Rosiere Rd. (09/27/85)

Cape Vincent, *Galband du Fort, Jean Philippe, House (Cape Vincent Town and Village MRA)*, James St. (09/27/85)

Cape Vincent, *General Sacket House (Cape Vincent Town and Village MRA)*, 4407 James St. (09/27/85)

Cape Vincent, *Glen Building (Cape Vincent Town and Village MRA)*, Broadway (09/27/85)

Cape Vincent, *Johnson House (Cape Vincent Town and Village MRA)*, Tibbetts Point Rd (09/27/85)

Cape Vincent, *Lewis House (Cape Vincent Town and Village MRA)*, Market St. (09/27/85)

Cape Vincent, *Peugnet, Captain Louis, House (Cape Vincent Town and Village MRA)*, Tibbetts Point Rd. (09/27/85)

Cape Vincent, *Reynolds, George, House (Cape Vincent Town and Village MRA)*, River Rd. (09/27/85)

Cape Vincent, *Roxy Hotel (Cape Vincent Town and Village MRA)*, 310 Broadway (09/27/85)

Cape Vincent, *Sacket, Cornelius, House (Cape Vincent Town and Village MRA)*, 571 Broadway (09/27/85)

Cape Vincent, *St. John's Episcopal Church (Cape Vincent Town and Village MRA)*, Market St. (09/27/85)

Cape Vincent, *St. Vincent of Paul Catholic Church (Cape Vincent Town and Village MRA)*, Kanady St. (09/27/85)

Cape Vincent, *Starkey, Otis, House (Cape Vincent Town and Village MRA)*, Point St. (09/27/85)

Cape Vincent, *Union Meeting House (Cape Vincent Town and Village MRA)*, Millens Bay Rd. (09/27/85)

Cape Vincent, *Vautrin, Claude, House (Cape Vincent Town and Village MRA)*, Mason Rd. (09/27/85)

Cape Vincent, *Wilson, Warren, House (Cape Vincent Town and Village MRA)*, Favret Rd. (09/27/85)

Clayton, *Clayton Historic District*, 203–215 & 200–326 James St., 500–544 & 507–537 Riverside Dr. (09/12/85)

Kings County

Brooklyn, *Clinton Hill Historic District*, Roughly bounded by Willoughby & Grand Aves., Fulton St. & Vanderbilt Ave. (06/19/85)

Brooklyn, *Lefferts—Laidlaw House*, 136 Clinton Ave. (09/12/85)

Brooklyn, *Public Bath No. Seven*, 227–231 Fourth Ave. (09/12/85)

Livingston County

Geneseo, *Main Street Historic District (Boundary Increase)*, Roughly bounded by NY 39, Temple Hills Cemetery, South St. & Main (03/21/85)

Madison County

Morrisville, *First National Bank of Morrisville*, Main St. (09/12/85)

Monroe County

Adams Basin, *Adams—Ryan House*, 425 Washington St. (09/05/85)

Rochester, *Andrews Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Andrews St. at Genesee River (10/11/84)

Rochester, *Bridge Square Historic District (Inner Loop MRA)*, Roughly bounded by Inner Loop, Centre Park, Washington & W. Main Sts. (10/11/84)

Rochester, *Court Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Court St. at Genesee River (10/11/84)

Rochester, *Cox Building (Department Store TR) (Inner Loop MRA)*, 36–48 St. Paul St. (10/11/84)

Rochester, *Duffy—Powers Building (Department Store TR) (Inner Loop MRA)*, 50 W. Main St. (10/11/84)

Rochester, *Edwards Building (Department Store TR) (Inner Loop MRA)*, 26–34 St. Paul St. (10/11/84)

Rochester, *Granite Building (Department Store TR) (Inner Loop MRA)*, 124 E. Main St. (10/11/84)

Rochester, *Grove Place Historic District (Inner Loop MRA)*, Gibbs, Selden, Grove, & Windsor Sts. (10/11/84)

Rochester, *House at 235–237 Reynolds Street*, 235–237 Reynolds St. (09/12/85)

Rochester, *Main Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Main St. at Genesee River (10/11/84)

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Rochester, *National Company Building (Department Store TR) (Inner Loop MRA)*, 159 E. Main St. (10/11/84)
Rochester, *O'Kane Market and O'Kane Building*, 104–108 Bartlett St. & 239–255 Reynolds St. (09/12/85)
Rochester, *St. Paul-North Water Streets Historic District (Inner Loop MRA)*, St. Paul, N. Water & Andrews Sts. (10/11/84)
Rochester, *State Street Historic District (Inner Loop MRA)*, 109–173 State St. (10/11/84)
Sibleyville, *Sibley, Hiram, Homestead*, 29 Sibley Rd. (09/12/85)

Nassau County

East Williston, *East Williston Village Historic District*, Roughly bounded by E. Williston Ave., Roslyn Rd., Atlanta Ave. & Village Green (07/18/85)
Flower Hill, *Denton, George W., House*, West Shore Rd. (06/29/85)
Port Washington, *Sand—Willets Homestead*, 336 Port Washington Blvd. (09/19/85)

New York County

New York, *Governors Island*, Governors Island (NHL) (02/04/85)
New York, *Merchants Refrigerating Company Warehouse*, 501 W. Sixteenth St. (05/31/85)
New York, *Minton's Playhouse*, 206–210 W. One Hundred Eighteenth St. (09/18/85)
New York, *Saint Mark's Historic District (Boundary Increase)*, E. Ninth, Tenth & N & S sides of Stuyvesant Sts. (09/05/85)
New York, *Sidewalk Clock at 1501 Third Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 1501 Third Ave. (04/18/85)
New York, *Sidewalk Clock at 200 Fifth Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 200 Fifth Ave. (04/18/85)
New York, *Sidewalk Clock at 519 Third Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 519 Third Ave. (04/18/85)
New York, *Sidewalk Clock at 522 Fifth Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 522 Fifth Ave. (04/18/85)
New York, *Sidewalk Clock at 783 Fifth Avenue, Manhattan (Sidewalk Clocks of New York City TR)*, 783 Fifth Ave. (04/18/85)
New York, *Sutton Place Historic District*, 1—21 Sutton Pl. & 4—16 Sutton Sq. (09/12/85)
New York, *United Charities Building Complex*, 105 E. Twenty-second St., 289 Park Ave. S & 111—113 E. Twenty-second St. (03/28/85)
New York, *West Sixty-seventh Street Artists' Colony Historic District*, 1—39 & 40—50 W. Sixty-seventh St. (07/11/85)
New York, *Yiddish Art Theatre*, 189 Second Ave. (09/19/85)

Niagara County

North Tonawanda, *Allan Herschell Carousel Factory*, 180 Thompson St. (04/18/85)

Oneida County

Kirkland vicinity, *Norton, Rev. Asahel, Homestead*, Norton Rd. (07/11/85)
Utica, *First Baptist Church of Deerfield*, Herkimer Rd. (07/11/85)
Utica, *New Century Club*, 253 Genesee St. (09/12/85)
Vernon, *Vernon Center Green Historic District*, Roughly bounded by Park St. (09/19/85)

Onondaga County

Cicero, Brewerton vicinity, *Robinson Site (NYSDHP Unique Site No. AO67-03-0001)*, Kathan Rd. (03/28/85)
Jamesville, *Ives, Dr. John, House*, 6575 E. Seneca Turnpike (08/29/85)
Syracuse, *North Salina Street Historic District*, 517—519 to 947—951 & 522—534 to 850—854 N. Salina St., 1121 N. Townsend St. & 504—518 Prospect Ave. (09/19/85)
Syracuse, *Pi Chapter House of Psi Upsilon Fraternity*, 101 College Pl. (05/16/85)

Orange County

Maybrook (Village), *Blake, John, House*, 924 Homestead Ave. (12/20/85)
Newburgh, *East End Historic District*, Roughly bounded by Robinson Ave., LeRoy Pl., Water St., Bay View Terr., Monument & Renwick Sts. (09/12/85)

Otsego County

Middlefield, *Middlefield Hamlet Historic District*, CR 35, Rezen, Whiteman, & Long Patent Rds. (07/11/85)
Middlefield, *North, Benjamin D., House*, NY 166, The Plank Rd. (07/11/85)

Queens County

New York, *Sidewalk Clock 161–11 Jamaica Avenue, New York, NY (Sidewalk Clocks of New York City TR)*, 161–11 Jamaica Ave. (04/18/85)

Rensselaer County

Troy, *Oakwood Cemetery*, One Hundred First St. (10/04/84)

Richmond County

Staten Island, *Gardiner—Tyler House*, 27 Tyler St. (11/23/84)

Rockland County

New City, *Blauvelt House*, Zukor Rd. (03/28/85)
Piermont, *Sparkill Creek Drawbridge*, Bridge St. over Sparkill Creek (03/28/85)

Saratoga County

Saratoga Springs, *Saratoga Spa State Park District*, US 9 & NY 50 (09/12/85)

Schenectady County

Delanson, *Jenkins House (Duanesburg MRA)*, 57 Main St. (10/11/84)
Duanesburg, *Abrahams Farmhouse (Duanesburg MRA)*, Hardin Rd. (10/11/84)
Duanesburg, *Avery Farmhouse (Boss Jones TR) (Duanesburg MRA)*, NY 30 (10/11/84)
Duanesburg, *Becker Farmhouse (Duanesburg MRA)*, Creek Rd. (10/11/84)
Duanesburg, *Chadwick Farmhouse (Duanesburg MRA)*, Schoharie Tpk. (10/11/84)
Duanesburg, *Chapman Farmhouse (Duanesburg MRA)*, Miller's Corners Rd. (10/11/84)
Duanesburg, *Delanson Historic District (Duanesburg MRA)*, Main St. (10/11/84)
Duanesburg, *Duanesburg—Florida Baptist Church (Duanesburg MRA)*, NY 30 (10/11/84)
Duanesburg, *Eatons Corners Historic District (Duanesburg MRA)*, Eatons Corners Rd. (10/11/84)
Duanesburg, *Gaige Homestead (Duanesburg MRA)*, Weaver Rd. (10/11/84)
Duanesburg, *Gilbert Farmhouse (Duanesburg MRA)*, Thousand Acre Rd. (10/11/84)
Duanesburg, *Green, Joseph, Farmhouse (Duanesburg MRA)*, NY 159 (10/11/84)
Duanesburg, *Halladay Farmhouse (Duanesburg MRA)*, US 20 (10/11/84)
Duanesburg, *Hawes Homestead (Duanesburg MRA)*, Herrick Rd. (10/11/84)
Duanesburg, *Howard Homestead (Duanesburg MRA)*, McGuire School Rd. (10/11/84)
Duanesburg, *Jenkins Octagon House (Boss Jones TR) (Duanesburg MRA)*, NY 395 (10/11/84)
Duanesburg, *Jones, A.D. (Boss), House (Boss Jones TR) (Duanesburg MRA)*, McGuire School Rd. (10/11/84)
Duanesburg, *Ladd Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Dare Rd. (10/11/84)
Duanesburg, *Lasher, George, House (Duanesburg MRA)*, Levey Rd. (10/11/84)
Duanesburg, *Liddle, Alexander, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Gamsey Rd. (10/11/84)
Duanesburg, *Liddle, Robert, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Little Dale Farm Rd. (10/11/84)
Duanesburg, *Liddle, Thomas, Farm Complex (Duanesburg MRA)*, Eaton Corners Rd. (10/11/84)
Duanesburg, *Macomber Stone House (Duanesburg MRA)*, Barton Hill Rd. (10/11/84)
Duanesburg, *Mariaville Historic District (Duanesburg MRA)*, NY 159 (10/11/84)
Duanesburg, *Quaker Street Historic District (Duanesburg MRA)*, Schoharie Tpk., Gallupville & Darby Hill Rds. (10/11/84)
Duanesburg, *Reformed Presbyterian Church Parsonage (Duanesburg MRA)*, Duanesburg Churches Rd. (10/11/84)
Duanesburg, *Sheldon Farmhouse (Duanesburg MRA)*, NY 7 (10/11/84)
Duanesburg, *Shute Octagon House (Boss Jones TR) (Duanesburg MRA)*, McGuire School Rd. (10/11/84)
Duanesburg, *Wing, Joseph, Farm Complex (Duanesburg MRA)*, NY 30 (10/11/84)
Duanesburg, *Wing, William R., Farm Complex (Duanesburg MRA)*, US 20 (10/11/84)
Schenectady, *Central Fire Station*, Erie Blvd. (04/11/85)
Schenectady, *Hotel Van Curler*, 78 Washington Ave. (09/12/85)

Schoharie County

Charlotteville vicinity, *Bute—Warner—Truax Farm*, Truax Rd. (07/25/85)
Schoharie vicinity, *Sternbergh House*, Oak Hill Rd. (03/21/85)

Suffolk County

Cutchogue, *Tuthill, David, Farmstead*, New Suffolk Lane (11/23/84)
Huntington, *Bay Crest Historic District (Huntington Town MRA)*, Beech Ave., Valley Rd., Woodside & Valley Drs. (09/26/85)

Huntington, *Baylis, M., House (Huntington Town MRA)*, 530 Sweet Hollow Rd. (09/26/85)
Huntington, *Beaux Arts Park Historic District (Huntington Town MRA)*, Locust La., Upper & Lower Drs. (09/26/85)
Huntington, *Bethel AME Church and Manse (Huntington Town MRA)*, 291 Park Ave. (09/26/85)
Huntington, *Bowes House (Huntington Town MRA)*, 15 Harbor Hill Dr. (09/26/85)
Huntington, *Brown, George McKesson, Estate—Coindre Hall (Huntington Town MRA)*, Brown's Rd. (09/26/85)
Huntington, *Brush Farmstead (Huntington Town MRA)*, 344 Greenlawn Rd. (09/26/85)
Huntington, *Buffett, Eliphas, House (Huntington Town MRA)*, 159 W. Rogues Path (09/26/85)
Huntington, *Buffett, Joseph, House (Huntington Town MRA)*, 169 W. Rogues Path (09/26/85)
Huntington, *Bumpstead, John, House (Huntington Town MRA)*, 473 Woodbury Rd. (09/26/85)
Huntington, *Burr, Carll, S., Mansion (Huntington Town MRA)*, 304 Burr Rd. (09/26/85)
Huntington, *Burr Carll, Jr., House (Huntington Town MRA)*, 293 Burr Rd. (09/26/85)
Huntington, *Carll House (Huntington Town MRA)*, 380 Deer Park Rd. (09/26/85)
Huntington, *Carll House (Huntington Town MRA)*, 79 Wall St. (09/26/85)
Huntington, *Carll, Ezra, Homestead (Huntington Town MRA)*, 49 Melville Rd. (09/26/85)
Huntington, *Chichester's Inn (Huntington Town MRA)*, 97 Chichester Rd. (09/26/85)
Huntington, *Cold Spring Harbor Library (Huntington Town MRA)*, 1 Shore Rd. (09/26/85)
Huntington, *Commack Methodist Church and Cemetery (Huntington Town MRA)*, 486 Townline Rd. (09/26/85)
Huntington, *Conklin, David, House (Huntington Town MRA)*, 2 High St. (09/26/85)
Huntington, *Delamater—Bevin Mansion (Huntington Town MRA)*, Bevins La. (09/26/85)
Huntington, *Donnell, Harry E., House (Huntington Town MRA)*, 71 Locust La. (09/26/85)
Huntington, *Dowden Tannery (Huntington Town MRA)*, 210 W. Rogues Path (09/26/85)
Huntington, *East Shore Road Historic District (Huntington Town MRA)*, East Shore Rd. (09/26/85)
Huntington, *Everit, John, House (Huntington Town MRA)*, 130 Old Country Rd. (09/26/85)
Huntington, *Felix, N.J., House (Huntington Town MRA)*, 225 Asharoken Ave. (09/26/85)
Huntington, *Geoghagen, Charles, House (Huntington Town MRA)*, 9 Harbor Hill Dr. (09/26/85)
Huntington, *Gilsey Mansion (Huntington Town MRA)*, 36 Browns Rd. (09/26/85)
Huntington, *Goose Hill Road Historic District (Huntington Town MRA)*, Goose Hill Rd. (09/26/85)
Huntington, *Greene, John, House (Huntington Town MRA)*, 107 E. Shore Rd. (09/26/85)
Huntington, *Halsey Estate—Tallwood (Huntington Town MRA)*, Sweet Hollow Rd. (09/26/85)
Huntington, *Harbor Road Historic District (Huntington Town MRA)*, Harbor Rd. (09/26/85)
Huntington, *Horned, John House (Huntington Town MRA)*, 23 Little Neck Rd. (09/26/85)
Huntington, *Harrison, Wallace K., Estate (Huntington Town MRA)*, 140 Round Swamp Rd. (09/26/85)
Huntington, *Heckscher Park (Huntington Town MRA)*, Bounded by Madison St., Sabbath Day Path, Main St. & Prince Ave. (09/26/85)
Huntington, *Hewlett House (Huntington Town MRA)*, 559 Woodbury Rd. (09/26/85)
Huntington, *House at 290 Bay Avenue (Huntington Town MRA)*, 200 Bay Ave. (09/26/85)
Huntington, *House at 244 Park Avenue (Huntington Town MRA)*, 244 Park Ave. (09/26/85)
Huntington, *Hubbs—Burr House (Huntington Town MRA)*, 399 Burr Rd. (09/26/85)
Huntington, *Ireland—Gardiner Farm (Huntington Town MRA)*, 663 Lake Rd. (09/26/85)
Huntington, *Jarvis—Fleet House (Huntington Town MRA)*, 138 Cove Rd. (09/26/85)
Huntington, *Kane, John P., Mansion (Huntington Town MRA)*, 37 Kanes La. (09/26/85)
Huntington, *Ketcham, B., House (Huntington Town MRA)*, 237 Middleville Rd. (09/26/85)
Huntington, *Losee, Issac, House (Huntington Town MRA)*, 299 Park Ave. (09/26/85)
Huntington, *Main Street Historic District (Huntington Town MRA)*, Main St. (09/26/85)
Huntington, *O'Donohue, C.A., House (Huntington Town MRA)*, 158 Shore Rd. (09/26/85)
Huntington, *Old Town Green Historic District (Huntington Town MRA)*, Park Ave. (09/26/85)
Huntington, *Old Town Historic District (Huntington Town MRA)*, Main St. & Nassau Rd. (09/26/85)
Huntington, *Potter—Williams House (Huntington Town MRA)*, 165 Wall St. (09/26/85)
Huntington, *Prime House (Huntington Town MRA)*, 35 Prime Ave. (09/26/85)
Huntington, *Prime—Octagon House (Huntington Town MRA)*, 41 Prime Ave. (09/26/85)
Huntington, *Remp, Michael, House (Huntington Town MRA)*, 42 Godfrey La. (09/26/85)
Huntington, *Rogers House (Huntington Town MRA)*, 136 Spring Rd. (09/26/85)
Huntington, *Rogers, John, House (Huntington Town MRA)*, 627 Half Hollow Rd. (09/26/85)
Huntington, *Sammis, Silas, House (Huntington Town MRA)*, 302 W. Neck Rd. (09/26/85)
Huntington, *Seaman Farm (Huntington Town MRA)*, 1378 Carlls Straight Path (09/26/85)
Huntington, *Shore Road Historic District (Huntington Town MRA)*, Shore Rd. (09/26/85)
Huntington, *Smith, Daniel, House (Huntington Town MRA)*, 117 W. Shore Rd. (09/26/85)
Huntington, *Smith, Henry, Farmstead (Huntington Town MRA)*, 909 Park Ave. (09/26/85)
Huntington, *Smith, Jacob, House (Huntington Town MRA)*, High Hold Dr. (09/26/85)
Huntington, *Sweet Hollow Presbyterian Church Parsonage (Huntington Town MRA)*, 152 Old Country Rd. (09/26/85)
Huntington, *Titus—Bunce House (Huntington Town MRA)*, 7 Goose Hill Rd. (09/26/85)
Huntington, *Townsend, Henry, House (Huntington Town MRA)*, 231 W. Neck Rd. (09/26/85)
Huntington, *Van Iderstine, Charles, Mansion (Huntington Town MRA)*, Idle Day Dr. (09/26/85)
Huntington, *Vanderbilt, William K., Estate—Eagles Nest (Huntington Town MRA)*, Little Neck Rd. (09/26/85)
Huntington, *Velzer, N., House and Caretaker's cottage (Huntington Town MRA)*, 22 Fort Salonga Rd. (09/26/85)
Huntington, *Weeks, Charles M., House (Huntington Town MRA)*, 76 Mills La. (09/26/85)
Huntington, *West Neck Road Historic District (Huntington Town MRA)*, West Neck Rd. (09/26/85)
Huntington, *Whitman, Joseph, House (Huntington Town MRA)*, 365 W. Hills Rd. (09/26/85)
Huntington, *Whitman, Walt, House (Huntington Town MRA)*, 246 Walt Whitman Rd. (09/26/85)
Huntington, *Whitman—Place House (Huntington Town MRA)*, 69 Chichester Rd. (09/26/85)
Huntington, *Wiggins—Rolph House (Huntington Town MRA)*, 518 Park Ave. (09/26/85)
Huntington, *Williams, Henry, House (Huntington Town MRA)*, 43 Mills La. (09/26/85)
Huntington, *Wood, Harry, House (Huntington Town MRA)*, 481 W. Main St. (09/26/85)
Huntington, *Wood, John, House (Huntington Town MRA)*, 121 McKay Rd. (09/26/85)
Huntington, *Wood, William Wooden, House (Huntington Town MRA)*, 90 Preston St. (09/26/85)
Huntington, *Woodhull, Charles, House (Huntington Town MRA)*, 70 Main St. (09/26/85)
Shelter Island Heights, *Union Chaple*, The Grove (11/23/84)
Westhampton Beach, *Crowther House*, 97 Beach La. (03/21/85)

Ulster County

Kingston, *Chestnut Street Historic District*, Roughly bounded by W. Chestnut St., Broadway, E. Chestnut, Livingston & Stuyvesant Sts. (09/19/85)
Lew Beach vicinity, *Beaverkill Valley Inn*, Beaverkill Rd. (09/12/85)
Saugerties vicinity, *Trumpbour Homestead Farm*, 1789 Old Kings Hwy. (09/23/85)

Warren County

Warrensburg, *MaGee, Merrill, House*, 2 Hudson St. (04/11/85)

Wayne County

Pultneyville, *Pultneyville Historic District*, Sections of Lake Rd. & Jay St. (09/11/85)

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Westchester County

Irvington, *Irvington Town Hall,* 85 Main St. (11/01/84)
Somers, *Crane, Gerard, House,* Old Croton Falls Rd. (09/05/85)
Village of Port Chester, *Life Savers Building,* N. Main St. (07/11/85)
Yonkers, *Bell Place—Locust Hill Avenue Historic District* Roughly bounded by Cromwell Pl., Locust Hill Ave., Baldwin Pl. & N. Broadway (08/29/85)
Yonkers, *Copcutt, John, Mansion,* 239 Nepperhan Ave. (09/12/85)

Wyoming County

Silver Lake, *Silver Lake Institute Historic District,* Roughly bounded by Wesley, Embury, Thompson, Haven, Lakeside & Lakeview Aves. (09/19/85)

Yates County

Penn Yan, *Penn Yan Historic District,* Roughtly bounded by Water, Seneca, Elm, Wagener, Court, Clinton, North & Main Sts. (03/14/85)

NORTH CAROLINA

Alamance County

Altamahaw, *Altamahaw Mill Office,* SR 1002 and SR 1567 (11/20/84)
Burlington, *West Davis Street—Fountain Place Historic District,* Roughly bounded by Front, W. Webb, S. Fisher, E. Willowbrook, W. Davis, & Fountain Pl (11/05/84)

Ashe County

Tuckerdale vicinity, *Tucker, John W., House,* SR 1353 (07/29/85)

Beaufort County

Pantego, *Pantego Academy,* Academy St. (10/25/84)

Buncombe County

Asheville vicinity, *Church of the Redeemer,* 1220 Riverside Dr. (09/19/85)
Leicester vicinity, *Camp Academy,* NC 63 (09/19/85)

Burke County

Morganton, *Gaston Chapel,* 100 Bouchelle St. (10/11/84)
Morganton, *Mountain View,* 604 W. Union St. (10/11/84)
Morganton *Riddle, Dr. Joseph Bennett, House,* 411 W. Union St. (12/20/84)
Salem vicinity *Gilboa Methodist Church,* US 64 (10/11/84)
Valdese, *Valdese Elementary School,* 400 Main St. (10/25/84)
Valdese, *Waldensian Presbyterian Church,* 104 E. Main St. (10/25/84)

Cabarrus County

Concord, *Barber-Scotia College,* 145 Cabarrus Ave. W (02/28/85)

Carteret County

Beaufort, *Carteret County Home,* NC 101 (12/20/84)

Caswell County

Yanceyville Township vicinity, *Melrose-Williamson House,* Off NC 62 (02/28/85)

Catawba County

Hickory, *Elliott-Carnegie Library (Hickory MRA),* 415 First Ave. NW (03/15/85)
Hickory, *First Presbyterian Church (Hickory MRA),* Second St. & Third Ave. NW (03/15/85)
Hickory, *Geitner, Clement, House (Hickory MRA),* 436 Main Ave. NW (03/15/85)
Hickory, *Houck's Chapel (Hickory MRA),* Ninth Ave. & Seventeenth St. NW (03/15/85)
Hickory, *Kenworth Historic District (Hickory MRA),* Roughly bounded by Second Ave., Fifth St. & Third Ave. Dr. SE (05/09/85)
Hickory, *Lentz, John A., House (Hickory MRA),* 321 Ninth St. NW (03/15/85)
Hickory, *Moretz, Joseph Alfred, House (Hickory MRA),* 1437 Sixth St. Circle NW (03/15/85)
Hickory, *Piedmont Wagon Company (Hickory MRA),* Main Ave. NW (03/15/85)
Hickory, *Second Street Place Southwest Historic District (Hickory MRA),* Roughly bounded by Main Ave. Pl., Second Ave. Pl. & First Ave. SW (06/11/85)

Chatham County

New Hope Rural Historical Archeological District (02/25/85)
Bells vicinity, *Ebenezer Methodist Church (Chatham MRA),* SR 1008 (07/05/85)
Bells vicinity, *Goodwin Farm Complex (Chatham MRA),* SR 1900 (07/05/85)
Bynum vicinity, *Ward, Dr. E.H., Farm (Chatham MRA),* SR 1700 (07/05/85)
Crutchfield Crossroads vicinity, *Whitehead-Fogleman Farm (Chatham MRA),* SR 1352 & SR 1351 jct. (07/05/85)
Farrington vicinity, *O'Kelly's Chapel (Chatham MRA),* NC 751 (07/05/85)
Goldston vicinity, *Rives, William Alston, House (Chatham MRA),* End of SR 2183 off SR 2187 (07/05/85)
Gulf, *Haughton—McIver House (Chatham MRA),* SR 1007 (07/05/85)
Moncure, *Lockville Dam, Canal and Powerhouse,* W of Moncure at Deep River & US 1 (11/20/84)
Pittsboro vicinity, *Thomas, James A., Farm (Chatham MRA),* SR 1941 (07/05/85)
Siler City vicinity, *Bowen—Jordan Farm (Chatham MRA),* SR 1100 (07/05/85)
Siler City vicinity, *Teague, William, House (Chatham MRA),* SR 1004 (07/05/85)
Siler City, *Gregson—Hadley House (Chatham MRA), 322 E. Raleigh St. (07/05/85)*
Siler City, Hotel Hadley (Chatham MRA), 103 N. Chatham St. (07/05/85)
Silk Hope vicinity, *DeGraffenreidt—Johnson House (Chatham MRA),* SR 1346 (07/05/85)

Cherokee County

Bell View vicinity, *Cobb, John Franklin, House,* US 19–129 (10/11/84)

Chowan County

Edenton vicinity, *Sandy Point,* Off NC 32 E of NC 1114 (04/25/85)

Cumberland County

Carvers Creek vicinity, *Cool Springs,* Off SR 1607 at Cumberland (09/19/85)
Hope Mills, *Hope Mills Historic District* Roughtly bounded by Seaboard Coastline RR tracks, Lakeview Rd., Little Creek & Cross St. (07/09/85)
Stedman vicinity, *Maxwell House,* Off NC 24 (02/28/85)

Dare County

Kitty Hawk, *Kitty Hawk Life-Saving Station,* US 158 (10/11/84)

Durham County

Little Creek Site (31 Dh 351) 01/11/85
Chapel Hill vicinity, *Meadowmont,* Off NC 54 (07/11/85)
Durham, *Cleveland Street District (Durham MRA),* Roughly Cleveland St. between Seminary & Gray Aves. & Mallard St. (09/20/85)
Durham, *Duke Memorial United Methodist Church (Durham MRA),* 504 W. Chapel Hill St. (06/11/85)
Durham, *Durham Cotton Mills Village Historic District (Durham MRA),* Roughly bounded by Byrd & Middle Sts., E. Frontage Rd. & Reservoir St. (08/11/85)
Durham, *Durham Cotton Mills Village Historic District (Durham MRA),* Roughly bounded by Byrd & Middle Sts., W. Frontage Rd. & Reservoir St. (08/09/85)
Durham, *Emmanuel AME Church (Durham MRA),* 710 Kent St. (08/09/85)
Durham, *Ephphatha Church (Durham MRA),* 220 W. Geer St. (08/09/85)
Durham, *Erwin Cotton Mills Company Mill No. One Headquarters Building,* W. Main & Ninth Sts. (11/20/84)
Durham, *Golden Belt Historic District (Durham MRA),* Roughly bounded by N & W RR, Taylor, Holman Sts. Morning Glory Ave. & Main St. (08/09/85)
Durham, *Holloway Street District (Durham MRA),* Roughly bounded by Holloway, Railroad & Liberty Sts., Peachtree Pl. & Dillard St. (09/20/85)
Durham, *Morehead Hill Historic District (Durham MRA),* Roughly bounded by Jackson St., East-West Expressway, S. Duke St., Lakewood Ave., Shephard St. & Arnette Ave. (08/11/85)
Durham, *North Durham—Duke Park District,* Roughly bounded by Glendale Ave., W. Knox St., Roxboro Rd., Trinity Ave., Magnum & Broadway Sts. (08/20/85)
Durham, *O'Brien, William Thomas, House (Durham MRA),* 820 Wilkerson Ave. (08/09/85)
Durham, *Pearl Mill Village Historic District (Durham MRA),* 900 Blk. of Washington, & Orient Sts. between Trinity & Dacian Aves. (08/09/85)
Durham, *Powe House (Durham MRA),* 1503 W. Pettigrew St. (08/09/85)
Durham, *Scarborough House (Durham MRA),* 1406 Fayetteville St. (08/09/85)
Durham, *Smith Warehouse (Durham MRA),* 100 N. Buchanan Blvd. (09/16/85)
Durham, *Venable Tobacco Company Warehouse (Durham MRA),* 302—304 E. Pettigrew St. (08/09/85)
Durham, *West Point on the Eno (Durham MRA),* Roxboro Rd. (08/09/85)

Edgecombe County

Tarboro vicinity, *Howell Homeplace,* SR 1517 (12/20/84)

Forsyth County

Winston-Salem, *Blair, William Allen, House,* 210 S. Cherry St. (04/25/85)

Winston-Salem, *Lowe, Cicero Francis, House,* 204 Cascade Ave. (12/20/84)

Guilford County

Colfax vicinity, *Endsley—Morgan House,* Off US 421 (10/25/84)
Greensboro, *Greensboro Historical Museum,* 130 Summit Ave. (04/25/85)

Halifax County

Enfield vicinity, *Myrtle Lawn,* SR 1003 (09/30/85)

Harnett County

Lillington vicinity, *Summer Villa and the McKay—Salmon House,* SR 1291 (04/25/85)
Lillington vicinity, *Summerville Presbyterian Church and Cemetery,* Off SR 1291 (04/25/85)

Hertford County

Ahoskie, *Ahoskie Downtown Historic District,* Roughly bounded by W. North St., Seaboard Coastline RR, W. Main St., S. & N. Mitchell Sts. (04/25/85)
Ahoskie, *Newsome, James, House,* NC 11 at jct. NC 42 (12/28/84)
Winton, *Brown, C.S., School Auditorium,* Off NC 45 (07/29/85)

Hyde County

Fairfield, *Fairfield Historic District,* SR 1308, 1309, 1305 & NC 94 (07/05/85)
Rose Bay vicinity, *Credle, George V., House and Cemetery,* US 264 (07/29/85)

Johnston County

Benson, *Benson Historic District,* Roughly bounded by E. Hill, N. Lee, E. Parish & Farmers Dr. on Main & Church Sts. (05/09/85)

Jones County

Pollocksville, *Lavender, Bryan, House,* Off US 17 South of Trent River Bridge (04/25/85)

Lee County

Sanford, *Downtown Sanford Historic District,* Roughly bounded by Gordon St., Horner Blvd., Cole & Chatham Sts. (09/28/85)

Macon County

Franklin, *Bryson, Albert Swain, House,* Pine Lane (12/20/84)

Martin County

Hamilton vicinity, *Hickory Hill,* NC 903 (12/20/84)
Hamilton vicinity, *Sherrod Farm,* W side of NC 125/903 (12/20/84)
Jamesville, *Jamesville Primitive Baptist Church and Cemetery,* E side of NC 171 (12/20/84)
Robersonville, *Little, W.J., House,* 109 N. Main St. (09/19/85)

Mecklenburg County

Charlotte, *Trotter, Thomas, Building,* 106 S. Tryon St. (05/23/85)

Montgomery County

Site 31Mg22 (08/05/85)

Moore County

Pine Bluff vicinity, *McLeod Family Rural Complex,* .4 miles west of US 1 (12/20/84)

Nash County

Nashville, *Bissette—Cooley House,* W. First & E. Washington Sts. (09/19/85)

Northampton County

Garysburg, *Garysburg United Methodist Church and Cemetery,* SR 1207 (06/20/85)

Orange County

Carrboro, *Carrboro Commercial Historic District* 100 Blk. of E. Main St. between Greensboro Rd. & Roberson St. (06/20/85)

Pitt County

Farmville vicinity, *May—Lewis, Benjamin, House,* US 264–A (06/20/85)
Greenville, *Ficklen, E.B., House,* 508 W. Fifth St. (12/20/84)

Randolph County

Franklinville, *Franklinville Historic District,* Roughly bounded by Deep River, Sunrise Ave., Clark St., & Greensboro Rd. (12/20/84)

Richmond County

Little's Mills vicinity, *Little, John Phillips, House,* Off NC 73 (12/20/84)

Robeson County

Lumberton, *US Post Office,* 606 N. Elm St. (03/06/86)

Rockingham County

Eden vicinity, *Lower Sauratown Plantation,* (10/11/84)
Eden, *King, Dr. Franklin, House—Idlewild,* 700 blk. of Bridge St. (09/19/85)

Rowan County

Kannapolis vicinity, *Stigerwalt, John, House,* E of Kannapolis off SR 1221 (Old Beatty Ford Rd.) (12/20/84)
Salisbury, *Brooklyn—South Square Historic District,* Roughly bounded by Fisher, Shaver, Walls & Lee Sts. (07/05/85)
Salisbury, *Kesler Manufacturing Co.—Cannon Mills Co. Plant No. Seven Historic District,* Park Ave. & Boundary St. (08/20/85)
Salisbury, *North Long Street-Park Avenue Historic District,* North Long St. & Park Ave. (06/20/85)
Salisbury, *North Main Street Historic District,* Roughly bounded by N. Main, Seventeenth, Lee & Lafayette Sts. (07/29/85)
Spencer, *Spencer Historic District,* Roughly bounded by N. to S. Salisbury Ave., Eighth St., Whitehead Ave., & Jefferson St. (12/20/84)

Rutherford County

Golden Valley vicinity, *Melton—Fortune Farmstead,* SR 1006 S of NC 226 (07/11/85)

Union County

Monroe, *US Post Office,* 407 N. Main St. (09/06/85)

Wake County

Forestville, *Forestville Baptist Church,* US 1-A (10/25/84)
Raleigh, *Boylan Heights (Early Twentieth Century Raleigh Neighborhoods TR),* Roughly bounded by Norfolk & Southern RR, Mountford, Martin & Florence Sts. & Dorothea Dr. (07/29/85)
Raleigh, *Cameron Park (Early Twentieth Century Raleigh Neighborhoods TR),* Roughly bounded by Clark Ave., W. Peace & Saint Mary's Sts., College Pl., Hillsborough St. & Oberlin Rd. (07/29/85)
Raleigh, *Glenwood (Early Twentieth Century Raleigh Neighborhoods TR),* Roughly bounded by Wade Ave., Norfolk & Southern Railway, Belmont St. & Glenwood Ave. (07/29/85)
Wake Crossroads vicinity, *Rogers—Whitaker—Haywood House,* SR 2044 & US 401 (09/19/85)

Washington County

Plymouth, *Perry—Spruill House,* 328 Washington, St. (04/25/85)

Wilkes County

Ronda vicinity, *Claymont Hill,* W side of SR 2303 along Ronda-Clingman Rd. (09/12/85)

Wilson County

Wilson, *Old Wilson Historic District,* Roughly bounded by Nash, N. Cone, Gold & Railroad Sts. & Maplewood Cemetery (12/20/84)
Wilson, *West Nash Street Historic District,* West Nash St. (12/20/84)
Wilson, *Wilson Central Business—Tobacco Warehouse Historic District,* Roughly bounded by Pender, Green, Pine, S. Jackson, & Hines Sts. (12/20/84)

NORTH DAKOTA

Benson County

York vicinity, *Pierson Farm,* 3.5 miles S of York off US 2 (08/29/85)

Morton County

Mandan, *Mandan Commercial Historic District,* Roughly bounded by Main & First Sts. between First Ave. NE & Fourth Ave. NW (02/21/86)

Slope County

Amidon vicinity, *H-T Ranch,* 10 miles W of Amidon (07/05/85)

Traill County

Hillsboro vicinity, *Ellingson Farm District,* 1 mile N & 2.5 miles W of Hillsboro (09/12/85)
Hillsboro, *Sarles, O.C., House,* Second Ave. & Third St. NE (03/12/85)

Walsh County

Grafton, *Elmwood,* PO Box 654 (02/21/85)

Williams County

Williston, *Old Armory,* 320 First Ave. E (04/11/85)

NORTHERN MARIANA ISLANDS

Managaha Island

Saipan vicinity, *Managaha Island Historic District,* W of Saipan (11/05/84)

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Rota Island

Songsong vicinity, *Dugi Archeological Site*, E of Songsong (02/11/85)
Songsong vicinity, *Japanese Coastal Defense Gun*, SE of Songsong (11/02/84)

Roth

Songsong, *Mochong* (08/11/85)

Saipan Island

Chalan Kanoa vicinity, *Unai Obyan Latte Site*, SE of Chalan Kanoa (02/05/85)
Chalan Kanoa, *Landing Beaches, Aslito—Isley Field, and Marpi Point*, (NHL) (02/04/85)
Garapan vicinity, *Sabanetan Toro Latte Site*, NE of Garapan (11/08/84)
Garapan, *Campaneyan Kristo Rai*, Beach Rd. (10/30/84)

OHIO

Ashtabula County

Ashtabula, *Hotel Ashatbula*, 4726 Main Ave. (06/20/85)
Ashtabula, *West Fifth Street Bridge*, SR 531 over Ashtabula River (08/23/85)

Auglaize County

Wapakoneta, *First Presbyterian Church of Wapakoneta*, 106 W. Main St. (08/23/85)

Belmont County

Barnesville, *Barnesville Baltimore and Ohio Railroad Depot*, 300 E. Church St. (08/08/85)

Brown County

Georgetown, *Grant, U.S., Boyhood Home*, 219 E. Grant Ave. (NHL) (02/04/85)
Ripley, *Ripley Historic District*, Roughly bounded by Main, Front, Second, Third & Fourth Sts. (03/07/85).

Butler County

Trenton vicinity, *Augspurger, John, Farm No. Two (Augspurger Amish/Mennonite Settlement TR)*, 3046 Pierson Rd. (11/01/84)
Trenton vicinity, *Augspurger, Samuel, Farm (Augspurger Amish/Mennonite Settlement TR)*, 2070 Woodsdale Rd. (11/01/84)
Trenton vicinity, *Schrock, Peter Jr., Farm (Augspurger Amish/Mennonite Settlement TR)*, Edgewood Dr. (11/01/84)
Woodsdale, *Augspurger Grist Mill (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison Rd. (11/01/84)
Woodsdale, *Augspurger Schoolhouse (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison Rd. (11/01/84)
Woodsdale, *Augspurger, Samuel, House (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison & Kennedy Rds. (11/01/84)
Woodsdale, *Mill Office and Post Office (Augspurger Amish/Mennonite Settlement TR)*, Woodsdale Rd. (11/01/84)
Woodsdale, *Mill Worker Row House (Augspurger Amish/Mennonite Settlement TR)*, Kennedy Rd. (11/01/84)
Woodsdale, *Mill Worker Row Houses (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison Rd. (11/01/84)

Champaign County

Mechanicsburg, *Baker, Major John C., House (Mechanicsburg MRA)*, 202 W. Main St. (08/29/85)
Mechanicsburg, *Barr House (Mechanicsburg MRA)*, Locust & Sandusky Sts. (08/29/85)
Mechanicsburg, *Burnham, Henry, House (Mechanicsburg MRA)*, N. Main St. & Rt. 559 (08/29/85)
Mechanicsburg, *Church of Our Savior (Mechanicsburg MRA)*, S. Main St. (08/29/85)
Mechanicsburg, *Clark, Dr., House (Mechanicsburg MRA)*, 21 N. Main St. (08/29/85)
Mechanicsburg, *Culbertson, William, House (Mechanicsburg MRA)*, 108 Race St. (08/29/85)
Mechanicsburg, *Demand-Gest House (Mechanicsburg MRA)*, 37 N. Main St. (08/29/85)
Mechanicsburg, *Hamer's General Store (Mechanicsburg MRA)*, 86 S. Main St. (08/29/85)
Mechanicsburg, *Hunter, Norvall, Farm (Mechanicsburg MRA)*, S. Main St. (08/29/85)
Mechanicsburg, *Kimball House (Mechanicsburg MRA)*, 115 N. Main St. (08/29/85)
Mechanicsburg, *Lowler's Tavern (Mechanicsburg MRA)*, N. Main St. (08/29/85)
Mechanicsburg, *Magruder Building (Mechanicsburg MRA)*, 16 S. Main St. (08/29/85)
Mechanicsburg, *Masonic Temple (Mechanicsburg MRA)*, N. Main St. (08/29/85)
Mechanicsburg, *Mechanicsburg Baptist Church (Mechanicsburg MRA)*, Walnut & Sandusky Sts. (08/29/85)
Mechanicsburg, *Mechanicsburg Commercial Historic District (Mechanicsburg MRA)*, 1–11 S. Main St. (08/29/85)
Mechanicsburg, *Ninchelser, Dr., House (Mechanicsburg MRA)*, 28 N. Main St. (08/29/85)
Mechanicsburg, *Rathburn, Levi, House (Mechanicsburg MRA)*, Locust & Sandusky Sts. (08/29/85)
Mechanicsburg, *Second Baptist Church (Mechanicsburg MRA)*, Sandusky St. (08/29/85)
Mechanicsburg, *St. Michael Catholic Church (Mechanicsburg MRA)*, 40 Walnut St. (08/29/85)
Mechanicsburg, *United Methodist Church (Mechanicsburg MRA)*, N. Main & Race Sts. (08/29/85)
Mechanicsburg, *Village Hobby Shop (Mechanicsburg MRA)*, N. Main St. (08/29/85)

Coshocton County

Canal Lewisville, *Lamberson-Markley Houses*, 713 Main St. (10/18/84)
Coshocton, *Meek, J.F., Buildings*, 546 Chestnut St. & 213–215 N. Sixth St. (01/02/85)
Coshocton, *Old Union School*, 310 Sycamore St. (10/18/85)

Crawford County

Bucyrus, *Bucyrus Commercial Historic District*, Sandusky Ave. & Mansfield St. (02/28/85)

Cuyahoga County

Cleveland, *Benedict, Sarah, House (Upper Prospect MRA)*, 3751 Prospect Ave. (11/01/84)
Cleveland, *Central YMCA (Upper Prospect MRA)*, 2200 Prospect Ave. (11/01/84)
Cleveland, *Cermak Building*, 3603 E. Ninety-third St. (10/18/84)
Cleveland, *Cleveland Packard Building (Upper Prospect MRA)*, 5100–5208 Prospect Ave. (11/01/84)
Cleveland, *Cleveland Worsted Mills Company*, 5946–6116 Broadway (08/08/85)
Cleveland, *Cook Building (Upper Prospect MRA)*, 4600–4800 Prospect Ave. (11/01/84)
Cleveland, *Dixon Hall Apartments (Upper Prospect MRA)* 3614 Prospect Ave. (11/01/84)
Cleveland, *Ensworth, Jeremiah, House (Upper Prospect MRA)*, 3214 Prospect Ave. (11/01/84)
Cleveland, *Goensslen, Phillip, House (Upper Prospect MRA)*, 3056 Prospect Ave. (11/01/84)
Cleveland, *Gifford, Dr. William, House (Upper Prospect MRA)*, 3047 Prospect Ave. (11/01/84)
Cleveland, *Gordon Square Building*, 6500–6616 Detroit Ave. & 1390–1490 W. Sixty-fifth St. Ave (04/30/85)
Cleveland, *Ireland, Joseph, House (Upper Prospect MRA)*, 2074 E. Thirty-sixth St. (11/01/84)
Cleveland, *McKinley Terrace*, 1406–1426 W. Eighty-first St. (07/09/85)
Cleveland, *Medical Centre Building*, 1001 Huron Rd. (12/20/84)
Cleveland, *Montana Apartments (Upper Prospect MRA)*, 2061 E. Thirty-sixth St. (11/01/84)
Cleveland, *Neff Apartments (Upper Prospect MRA)*, 3606 Prospect Ave. (11/01/84)
Cleveland, *Ohio Bell Henderson—Endicott Exchange Building (Upper Prospect MRA)*, 5400–5420 Prospect Ave. (11/01/84)
Cleveland, *Plaza Apartments (Upper Prospect MRA)*, 3206 Prospect Ave. (11/01/84)
Cleveland, *Southworth House (Upper Prospect MRA)*, 3334 Prospect Ave. (11/01/84)
Cleveland, *Stockbridge Apartment Building*, 3328 Euclid Ave. (01/08/85)
Cleveland, *Tavern Club (Upper Prospect MRA)*, 3522 Prospect Ave. (11/01/84)
Cleveland, *Templar—Farrell Motor Sales Building (Upper Prospect MRA)*, 3134 Prospect Ave. (11/01/84)
Cleveland, *Trinity Cathedral Church Home (Upper Prospect MRA)*, 2227 Prospect Ave. (11/01/84)
Cleveland, *United Motor Service Building (Upper Prospect MRA)*, 4019 Prospect Ave. (11/01/84)
Cleveland, *Walker and Weeks Office Building (Upper Prospect MRA)*, 2341 Carnegie Ave. (11/01/84)
Cleveland, *Zion Lutheran Church (Upper Prospect MRA)*, 2062 E. Thirtieth St. (11/01/84)
East Cleveland, *St. Paul's Episcopal Church of East Cleveland*, 15837 Euclid Ave. (10/18/84)

Cuyahoga and Summit Counties

Independence to Akron, *Valley Railway Historic District*, Cuyahoga Valley between Rockside Rd. at Cuyahoga National Recreation Area & Howard St. at Little Cuyahoga Valley (05/17/85)

Delaware County

Delaware, *Austin Hall (Ohio Wesleyan University TR)*, Ohio Wesleyan University, W. Central Ave. & Elizabeth St. (03/18/85)
Delaware, *Edwards Gymnasium-Pfeiffer Natatorium (Ohio Wesleyan University TR)*, Ohio Wesleyan University, Main Campus, S. Sandusky St. (03/18/85)
Delaware, *Ohio Wesleyan University Student Observatory (Ohio Wesleyan University TR)*, Ohio Wesleyan University, W. William St. (03/18/85)
Delaware, *Sanborn Hall (Ohio Wesleyan University TR)*, Ohio Wesleyan University, W. Campus (03/18/85)
Delaware, *Selby Field (Ohio Wesleyan University TR)*, Ohio Wesleyan University, Henry St. (03/18/85)
Delaware, *Slocum Hall (Ohio Wesleyan University TR)*, Ohio Wesleyan University, Main Campus, Sandusky St. (03/18/85)
Delaware, *Styvesant Hall (Ohio Wesleyan University TR)*, Ohio Wesleyan University, W. William St. (03/18/85)
Delaware, *University Hall—Gray's Chapel (Ohio Wesleyan University TR)*, Ohio Wesleyan University, Main Campus, Sandusky St. (03/18/85

Erie County

Kelleys Island, *Beatty, Louis, House*, South Shore Dr. (10/25/84)

Fairfield County

West Rushville, *Dilger Store*, 7640 Main St. (08/08/85)

Fayette County

Washington Court House, *Washington Court House Commercial Historic District*, Roughly bounded by N. North, East, Hinde & Market Sts. (09/12/85)

Franklin County

Columbus vicinity, *McCracken—Sells House*, 3983 Dublin Rd. (11/29/84)
Columbus, *Central High School*, 75 S. Washington Blvd. (03/07/85)
Columbus, *Miller, Frederick, A., House—Broad Gables*, 2065 Barton Pl. & 140 Park Dr. (08/08/85)
Columbus, *New Indianola Historic District*, Roughly bounded by Chittenden & Grant Aves., Fifth St., Seventh Ave. & Fourth St. (04/30/85)
Columbus, *Ohio Institution for the Education of the Deaf and Dumb*, 406 E. Town St. (10/25/84)
Columbus, *Plaza Hotel*, 736—740 E. Long St. (12/20/84)
Columbus, *Welsbach Building*, 116—118 E. Chestnut St. (11/27/84)
Upper Arlington, *Upper Arlington Historic District*, Roughly bounded by Lane Ave., Andover Rd., Fifth Ave., Cambridge Blvd. & Riverside Dr. (09/30/85)

Guernsey County

Cambridge Vicinity, *National Road*, Center Township Rd. 650 (08/23/85)

Hamilton County

Cincinnati, *Cote Bonneville*, 4650 Colerain Ave. (11/29/84)
Cincinnati, *Courtland Flats*, 117—121 E. Court St. (12/20/84)
Cincinnati, *Lunkenheimer, Frederick, House*, 2133 Luray (08/08/85)
Cincinnati, *Melbourne Flats*, 39 W. McMillan St. (10/18/84)
Cincinnati, *Peters—Kupferschmid House*, 2167 Grandin Rd. (10/18/84)
Cincinnati, *Phoenix Building—Cincinnati Club*, 30 Garfield Pl. & 812 Race St. (01/11/85)
Cincinnati, *Procter and Collier—Beau Brummell Building*, 440 E. McMillan St. (10/18/84)
Mt Healthy, *Mt. Healthy Public School*, Compton & Harrison Aves. (05/02/85)

Hancock County

Findlay, *Findlay Downtown Historic District*, Roughly along Main, W. Sandusky & W. Main Cross Sts. (02/28/85)
Findlay, *Jones, Elijah Pelton, House*, 313 E. Sandusky St. (03/14/85)

Hardin County

Kenton, *North Main—North Detroit Street Historic District*, Roughly, Main St. bounded by Marie, Cherry, Carroll & Detroit Sts. (04/18/85)

Hocking County

Logan, *McCarthy—Blosser—Dillon Building*, 4 W. Main St. (11/29/84)

Holmes County

Holmesville vicinity, *Croco House*, OH 83 (06/20/85)

Knox County

Gambier, *Kokosing House*, 221 Kokosing Dr. (02/19/85)

Licking County

Alexandria Vicinity, *Shaub, Martin, Mill Site—House*, 8259 Duncan Plains Rd. (01/23/85)

Lorain County

Amherst Township, *South Ridge Schoolhouse*, OH 113 & Betchtel Rd. (08/08/85)

Lucas County

Toledo, *Bronson Place*, Roughly bounded by Cherry St., Central & Franklin Aves. (11/29/84)

Mahoning County

Poland, *South Main Street District (Boundary Increase)*, 101 & 111 S. Main St. (10/18/84)
Youngstown, *Jones Hall, Youngstown State University*, 410 Wick Ave. (10/18/84)

Miami County

Casstown vicinity, *Plainview Farm*, 535—545 Weddle Rd. (04/18/85)
Piqua, *Piqua—Caldwell Historic District*, N. Main, Wayne, Downing, Caldwell Sts, & W. Ash to Camp St. (01/11/85)

Montgomery County

Dayton, *Independent Order of Oddfellows, Dayton Lodge No. 273*, 8 LaBelle St. (10/25/84)
Dayton, *Lindsey Building*, 25 S. Main St. (03/14/85)

Muskingum County

Locust Site (33MU160) (08/01/85)

Ottawa County

Middle Bass Island, *Middle Bass Club Historic District*, Grape & Grove Aves. (08/23/85)

Pickaway County

Circleville, *Watt—Groce—Fickhardt House*, 360 E. Main St. (08/23/85)
Groveport vicinity, *Perrill —Goodman Farm House*, Rt. 1, Box 106 (03/14/85)

Portage County

Ravenna, *Etna House (Ravenna Commercial Center MRA)*, 219½ W. Main St. (07/25/85)
Ravenna, *Griffin, A.B., House*, 409 S. Walnut St. (03/07/85)
Ravenna, *Phoenix Block (Ravenna Commercial Center MRA)*, NE corner of Main & Chestnut Sts. (03/18/85)
Ravenna, *Riddle Block No. Eleven (Ravenna Commercial Center MRA)*, 133—137 E. Main St. (03/18/85)
Ravenna, *Riddle Block No. Five (Ravenna Commercial Center MRA)*, 141—145 E. Main St. (07/25/85)
Ravenna, *Riddle Block No. Nine (Ravenna Commercial Center MRA)*, 113—115 W. Main St. (03/18/85)

Preble County

Eaton, *Acton House*, 115 W. Main St. (09/05/85)

Stark County

Alliance, *First Methodist Episcopal Church of Alliance, Ohio*, 470 E. Broadway St. (05/02/85)
Brewster, *Brewster Railroad YMCA—Wandle House*, 45 S. Wabash Ave. (03/07/85)
Canton, *Trinity Lutheran Church*, 415 W. Tuscarawas St. (08/23/85)
Massillon, *First Methodist Episcopal Church*, 301 Lincoln Way E (08/22/85)

Summit County

Akron, *Gayer, Jacob M., House*, 406 Sumner St. (10/18/84)
Northfield Center vicinity, *Wallace Farm*, 8230 Brandywine Rd. (08/27/85)
Peninsula, *Tilden, Daniel, House*, 2325 Stine Rd. (08/20/85)

Warren County

Lebanon, *Coffeen, Goldsmith, House (Lebanon MRA)*, 419 Cincinnati Ave. (10/10/84)
Lebanon, *Corwin House (Lebanon MRA)*, 1255 OH 48 (10/10/84)
Lebanon, *Corwin—Bolin House (Lebanon MRA)* 1443 OH 48 (10/10/84)
Lebanon, *East End Historic District (Lebanon MRA)*, Roughly bounded by South, Mound, Pleasant, & Cherry Sts. (10/10/84)
Lebanon, *Ferney, John, House (Lebanon MRA)*, 475 Glosser Rd. (10/10/84)
Lebanon, *Floraville Historic District (Lebanon MRA)*, Roughly bounded by Cincinnati & Orchard Aves., East & Keever Sts. (10/10/84)

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Lebanon, *Lebanon Academy (Lebanon MRA)*, 100 New St. (10/10/84)
Lebanon, *Lebanon Cemetery Entrance Arch (Lebanon MRA)*, Hunter St. (10/18/84)
Lebanon, *Lebanon Cemetery Superintendent's House (Lebanon MRA)*, 416 W. Silver St. (10/18/84)
Lebanon, *Lebanon Commercial District (Lebanon MRA)*, Roughly Broadway, Mechanic, Silver, Mulberry, & Main Sts. (10/10/84)
Lebanon, *Maplewood Sanitorium (Lebanon MRA)*, Maple & Deerfield Sts. (10/10/84)
Lebanon, *Mohrman-Jack-Evans House (Lebanon MRA)*, 342 Columbus Ave. (10/10/84)
Lebanon, *North Broadway Historic District (Lebanon MRA)*, Roughly Broadway, Warren, Pleasant, New & Mechanic Sts. (10/18/84)
Lebanon, *Smith—Davis House (Lebanon MRA)*, 206 W. Silver St. (02/06/85)
Lebanon, *West Baptist Church (Lebanon MRA)*, 500 W. Mulberry St. (10/18/84)

Washington County

Little Hocking, *Sawyer—Curtis House*, Off US 50 (10/18/84)

Wood County

Perrysburg, *Yeager, John J., House*, 343 W. Indiana Ave. (03/19/85)

OKLAHOMA

Carter County

Ardmore, *Carter County Courthouse (County Courthouses of Oklahoma TR)*, First & B Sts. SW (03/22/85)
Healdton vicinity, *Zaneis School Teacher's Dormitory*, Off US 70 (08/15/85)
Wilson vicinity, *Healdton Oil Field Bunk House*, N of Wilson (09/26/85)

Cherokee County

Tahlequah, *French—Parks House*, 209 W. Keetoowah St. (03/18/85)

Cleveland County

Moore, *Moore Public School Building*, N.W. First & Broadway (11/08/84)

Comanche County

Lawton, *First Christian Church*, 701 D Ave. (03/12/85)
Lawton, *Methodist Episcopal Church South*, 702 D Ave. (03/12/85)

Creek County

Sapulpa, *Creek County Courthouse (County Courthouses of Oklahoma TR)*, 222 E. Dewey Ave. (03/22/85)

Custer County

Custer, *Broadway Hotel (Custer City Commercial Buildings TR)*, Off OK 33 (03/06/85)
Custer, *Pyeatt's J.J., General Store (Custer City Commercial Buildings TR)*, Off OK 33 (03/06/85)

Dewey County

Taloga, *Dewey County Courthouse (County Courthouses of Oklahoma TR)*, Broadway & Ruble St. (03/22/85)

Ellis County

Arnett, *Ellis County Courthouse (County Courthouses of Oklahoma TR)*, Town Sq. (03/22/85)
Camargo vicinity, *Carr, George, Ranch House (Ranching Properties in Northwestern Oklahoma TR)*, NW of Camargo (04/10/85)

Grady County

Chickasha, *Rock Island Depot*, Chickasha Ave. (03/29/85)

Greer County

Mangum, *Greer County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (03/22/85)

Kay County

Ponca City, *Poncan Theatre*, 104 E. Grand Ave. (11/13/84)

Lincoln County

Stroud, *Hadley House*, 622 N. Fourth Ave. (11/13/84)

Marshall County

Madill, *Worth Hotel*, 203 E. Main St. (04/12/85)

McCurtain County

Davis, Grobin, Mound Group (11/23/84)

McIntosh County

Checotah, *Methodist Episcopal Church, South*, 419 W. Gentry St. (11/13/84)
Eufaula, *Cooper, C.L., Building*, 5B & Harrison (03/22/85)
Eufaula, *McIntosh County Courthouse (County Courthouses of Oklahoma TR)*, 110 N. First St. (03/22/85)

Okmulgee County

Okmulgee, *Eastside Baptist Church (Black Baptist Churches in Okmulgee TR)*, 219 N. Osage Ave. (11/23/84)
Okmulgee, *First Baptist Central Church (Black Baptist Churches in Okmulgee TR)*, 521 N. Central Ave. (11/23/84)

Osage County

Barnsdall *Bank of Bigheart (Richardsonian Romanesque Banks of Osage County TR)*, 308 W. Main St. (11/23/84)
Burbank, *Bank of Burbank (Richardsonian Romanesque Banks of Osage County TR)*, McCorkle & First Sts. (11/23/84)
Fairfax, *Osage Bank of Fairfax (Richardsonian Romanesque Banks of Osage County TR)*, 250 N. Main St. (11/23/84)
Hominy, *Bank of Hominy (Richardsonian Romanesque Banks of Osage County TR)*, 102 W. Main St. (11/23/84)

Pontotoc County

Ada vicinity, *Bebee Field Round House*, Off OK 13 (08/05/85)
Ada vicinity, *Mijo Camp Industrial District*, N side of Pontotoc CR 148 (09/26/85)

Pottawatomie County

Shawnee, *Billington Building*, 23 E. Ninth (09/26/85)
Shawnee, *Douglas, H.T., Mansion and Garage*, 100 E. Federal (09/26/85)

Seminole County

Seminole vicinity, *Sinclair Loading Rack*, US 270 (08/05/85)
Wewoka, *Brown, Silas L., House*, 107 S. Seminole (08/05/85)
Wewoka, *Johnson, J. Coody, Building*, 124 N. Wewoka St. (08/05/85)
Wewoka, *Wewoka Switch and Side Tracks*, OK 56 (09/26/85)

Tillman County

Frederick, *Ramona Theatre*, 114 S. Ninth St. (11/08/84)

Wagoner County

Tullahassee, *Mason, A.J., Building*, Lincoln St. (08/05/85)

OREGON

Benton County

Corvallis vicinity, *Fiechter, John, House*, William L. Finley National Wildlife Refuge (04/11/85)
Corvallis, *Fairbanks, J. Leo, House*, 316 N.W. Thirty-second (02/14/85)
Corvallis, *Helm—Hout House*, 844 S.W. Fifth St. (08/06/85)

Clackamas County

Oregon City, *Gray—Hackett House*, 415 Seventeenth St. (02/14/85)
Timberline Lodge vicinity, *Silcox Hut*, Timberline Rd. (01/10/85)

Clatsop County

Astoria, *Astoria Victory Monument*, Columbia St., Bond & W. Marine Dr. (11/15/84)
Astoria, *Griffin, John N., House*, 1643 Grand Ave. (10/25/84)
Astoria, *Holmes, Gustavus, House*, 682 Thirty-fourth St. (10/25/84)
Astoria, *Page, Judge C. H., House*, 1393 Franklin Ave. (06/06/85)
Astoria, *Staples, Norris, House*, 1031 Fourteenth St. (10/25/84)
Astoria, *Stevens, Charles, House*, 1388 Franklin Ave. (06/06/85)
Astoria, *US Post Office and Custom House (Significant US Post Offices in Oregon 1900—1941 TR)*, 750 Commercial St. (03/04/85)

Columbia County

St. Helens, *St. Helens Downtown Historic District*, Roughly bounded by Strand, First, Second, Third, Fourth, Cowlitz, St. Helens Sts. & Columbia Blvd. (10/25/84)

Deschutes County

Bend, *Old United States Post Office*, 745 N.W. Wall (02/14/85)

Douglas County

Roseburg vicinity, *Miller's Mountain House*, 1196 Roberts Mountain Rd. (10/25/84)
Roseburg, *Methodist Episcopal South Church*, 909 S.E. Main St. (06/06/85)
Roseburg, *Mill—Pine Neighborhood Historic District*, Roughly bounded by Short St., Mosher Ave., Stephens St. & Rice Ave. (06/20/85)
Sutherlin vicinity, *Stephens Community Historic District*, Fort McKay & Scott Henry Rds. (10/25/84)

Harney County

Frenchglen, *Frenchglen Hotel*, OR 205 (11/15/84)

Jackson County

Ashland, *Citizen's Banking & Trust Co. Building*, 232—242 E. Main St. (02/28/85)
Ashland, *Silsby, Colonel William H., House*, 111 Third St. (02/28/85)
Medford, *Medford Hotel*, 406 W. Main (06/06/85)
Medford, *Shone—Charley House*, 305 N. Grape St. (10/25/84)

Lake County

Lakeview, *Bailey and Massingill General Store*, 4 N. E St. (10/25/84)
Eugene, *Johnson Hall*, E. Thirteenth between University & Kincaid Sts. (06/20/85)
Eugene, *US Post Office (Significant US Post Offices in Oregon 1900—1941 TR)*, 520 Willamette St. (08/14/85)

Lane County

Florence vicinity, *Honeyman, Jessie M., Memorial State Park Historic District*, US 101 (11/28/84)

Marion County

Salem, *Daue, Alexander, House*, 1095 Saginaw St. (06/06/85)
Salem, *Stratton, C.C., House*, 1599 State St. (11/15/84)
Silverton, *Calvary Lutheran Church & Parsonage*, 314 Jersey St. (06/06/85)

Morrow County

Heppner, *Morrow County Courthouse*, 100 Court St. (02/28/85)

Multnomah County

Corbett, *View Point Inn*, 40301 N.E. Larch Mountain Rd. (02/28/85)
Portland, *Albers Brothers Milling Company*, 1118—1130 Front Ave. (11/15/84)
Portland, *Eastman—Shaver House*, 2645 N.W. Beuhla Vista Terrace (07/09/85)
Portland, *Frye, J.O., House*, 2997 S.W. Fairview Blvd. (06/06/85)
Portland, *Haseltine, Edward Knox, House*, 1616 S.W. Spring St. (11/15/84)
Portland, *Markle—Pittock House*, 1816 S.W. Hawthorne Terr. (02/28/85)
Portland, *Monastery of the Precious Blood*, 1208 S.E. Seventy-sixth (02/14/85)
Portland, *Montgomery Ward & Company*, 2741 N.W. Vaughn (06/06/85)
Portland, *Multnomah Hotel*, 319 S.W. Pine (02/28/85)
Portland, *Portland Police Block* (06/06/85)
Portland, *Seward Hotel*, 611 S.W. Tenth Ave. (02/28/85)
Portland, *US Post Office (St. John's Station) (Significant US Post Offices in Oregon 1900–1941 TR)*, 8720 N. Ivanhoe St. (03/04/85)

Polk County

Independence, *Davidson, Dr. John E. and Mary D., House*, 887 Monmouth St (02/28/85)
Monmouth, *Graves—Fisher—Strong House*, 391 E. Jackson St. (08/02/85)

Tillamook County

Tillamook, *US Post Office (Significant US Post Offices in Oregon 1900–1941 TR)*, 210 Laurel Ave. (03/01/85)

Umatilla County

Pendleton, *US Post Office and Courthouse (Significant US Post Offices in Oregon 1900–1941 TR)*, 104 S.W. Dorian Ave. (03/04/85)

Union County

La Grande, *Anthony—Buckley House*, 1602 Sixth St. (02/28/85)

Wallowa County

Hells Canyon Archeological District, Both sides of Sanke River from Hells Canyon Dam to Cougar Rapids (see also: Idaho) (08/10/84)
Enterprise, *Warnock, William P., House*, 501 S. Fifth St. (11/15/84)
Wallowa, *Hunter—Morelock House*, 104 Holmes St. (02/28/85)

Wasco County

Dalles, *US Post Office (Significant US Post Offices in Oregon 1900–1941 TR)*, 100 W. Second St. (03/04/85)

Washington County

Gaston vicinity, *Dundee Lodge*, Rt. 1, Box 311 06/06/85)

Yamhill County

Newberg, *Smith, John T., House*, 414 N. College St. (11/15/84)

PENNSYLVANIA

Adams County

East Berlin, *East Berlin Historic District*, Portions of King, Harrisburg & Abbottstown St. (09/30/85)

Allegheny County

Aspinwall, *Sauer Buildings Historic District*, 607–717 Center Ave. (09/11/85)
Natrona, *Pennsalt Historic District*, Roughly bounded by Federal, Penn & Pond Sts., Philadelphia & Blue Ridge Aves. (07/18/85)
Pittsburgh, *Alpha Terrace Historic District*, 716–740 & 721–743 N. Beatty St. (07/18/85)
Pittsburgh, *Byrnes & Kiefer Building*, 1127–1133 Penn Ave. (03/07/85)
Pittsburgh, *Bindley Hardware Company Building*, 401 Amberson Ave. (08/08/85)
Pittsburgh, *Fourth Avenue Historic District*, Fourth Ave. & Wood St. (09/05/85)
Pittsburgh, *Hoene—Werle House*, 1313–1315 Allegheny Ave. (11/15/84)
Pittsburgh, *Old Allegheny Rows Historic District*, Roughly bounded by Sedgwick, California, Marquis, Mero, Brighton, & Moorison Sts. (11/01/84)
Pittsburgh, *Osterling, Frederick J., Office and Studio*, 228 Isabella St. (09/05/85)
Pittsburgh, *William Penn Hotel*, Mellon Sq. between Sixth & Oliver Sts. (03/07/85)
Wilkinsburg, *Pennsylvania Railroad Station—Wilkinsburg*, Hay St. at Ross Ave. (07/18/85)

Beaver County

Ambridge, *Economy Historic District*, Old Economy Village roughly bounded by PA 65, Twelfth, Merchant & Sixteenth Sts. (05/21/85)
Beaver Falls, *Carnegie Free Library, Beaver Fall*, 1301 Seventh Ave. (09/05/85)

Bedford County

Bedford Borough vicinity, *Chalybeate Springs Hotel*, Chalybeate Rd. (07/18/85)
Bedford, *Bedford Springs Hotel Historic District*, US 220 (12/20/84)

Berks County

Tulpehocken Creek Historic District, Tulpehocken & Mill Creeks from Berks-Lebanon line to Blue March Dam between Millardsville & Bernville (03/28/85)
Kutztown, *Deisher, H.K., Knitting Mill*, 98 Noble St. (09/05/85)
Reading vicinity, *Bishop, John, House*, Perkiomen Ave. (08/27/85)
Reading, *Grimshaw Silk Mill*, 1200 N. One Thousand One Hundred St. (01/31/85)
Reading, *Liberty Fire Company No. Five*, 501 S. Fifth St. (01/18/85)
Reading, *Meinig Glove Factory—Meinig, E. Richard, Co.*, 612–632 & 621–641 McKnight St. (08/30/85)
Stouchsburg, *Stouchsburg Historic District*, 12 to 153 Main St., & Water St. (01/08/85)

Blair County

Altoona, *Central Trust Company Buildings*, 1210–1218 Eleventh Ave. (11/01/84)

Bucks County

Bristol, *Jefferson Avenue School*, Jefferson Ave. & Pond St. (07/18/85)
Buckingham and Wrightstown Townships, *Wycombe Village Historic District*, Roughly bounded by Township Line, Mill Creek & Forest Grove Rds. Cherry Lane, Washington & Park Aves. (01/31/85)
Center Bridge, *Center Bridge Historic District*, Bounded by Ely & Laurel Rds. on River Rd. (03/28/85)
Doylestown Borough, *Doylestown Historic District*, Roughly bounded by Union, Cottage & E. Ashland Sts. Hillside Ave. & S. & N. West Sts. (05/10/85)
Doylestown vicinity, *Fretz Farm*, Almshouse Rd. & PA 611 (03/07/85)
Doylestown, *Fonthill, Mercer Museum and Moravian Pottery and Tile Works*, Fronthill & Moravian Pottery Ct. St. & Dwamp Rd. (NHL) (02/04/85)
New Hope, *Cintra (New Hope MRA)*, 181 W. Bridge St. (03/06/85)
New Hope, *Ely, Joshua, House (New Hope MRA)*, Rittenhouse Circle (03/06/85)
New Hope, *Kitchen, William, House (New Hope MRA)*, 332 S. Sugan Rd. (03/06/85)
New Hope, *New Hope Village District (New Hope MRA)*, Old Mill Rd., Stockton Ave., Ferry, Bridge, Mechanic, Randolph, Main, Coryell, & Waterloo Sts. (03/06/85)
New Hope, *Springdale Historic District (New Hope MRA)*, Mechanic St., Old York, S. Sugan, & Stoney Hill Rds. (03/06/85)
Penn's Park, *Penn's Park General Store Complex*, 2310–2324 Second St. Pike (01/08/85)

Carbon County

Jim Thorpe, *Packer, Asa, Mansion*, Packer Rd. (NHL) (02/04/85)

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Chester County

Coatesville vicinity, *Bailey, John, Farm (East Fallowfield Township MRA)*, Springdell Rd. (05/20/85)
Coatesville vicinity, *Brandywine Building and Loan Assoc. Rowhouses (East Fallowfield Township MRA)*, Hephzibah Hill Rd. (05/20/85)
Coatesville vicinity, *DeHaven, Harry, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Dougherty, Edward, House (East Fallowfield Township MRA)*, Mt. Carmel Rd. (05/20/85)
Coatesville vicinity, *Dougherty, Philip, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Dougherty, Philip, Tavern (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Drovers Inn (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Ercildoun Historic District (East Fallowfield Township MRA)*, PA 82 SRs T368, 15236, T371 & 182 (05/20/85)
Coatesville vicinity, *Gladden, Joseph, House (East Fallowfield Township MRA)*, West Chester Rd. (05/20/85)
Coatesville vicinity, *Glen Rose Historic District (East Fallowfield Township MRA)*, SRs 15178 & T371 (09/18/85)
Coatesville vicinity, *Hanna, John, Farm (East Fallowfield Township MRA)*, Fairview Rd. (05/20/85)
Coatesville vicinity, *Mortonville Bridge (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Mortonville Hotel (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Passmore, Mansel, House (East Fallowfield Township MRA)*, Glen Rose Rd. (05/20/85)
Coatesville vicinity, *Pawling, Isaac, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Pennock, Martha, House (East Fallowfield Township MRA)*, PA 82 (05/20/85)
Coatesville vicinity, *Powell Farm (East Fallowfield Township MRA)*, Dupont Rd. (05/20/85)
Coatesville vicinity, *Powell, John, House (East Fallowfield Township MRA)*, Hephzibah Hill Rd. (05/20/85)
Coatesville vicinity, *Pusey, Joshua, House (East Fallowfield Township MRA)*, Saw Mill Rd. (05/20/85)
Coatesville vicinity, *Scott, David, House (East Fallowfield Township MRA)*, Mt. Carmel Rd. (05/20/85)
Coatesville vicinity, *Scott, Thomas, House (East Fallowfield Township MRA)*, Park Ave. (05/20/85)
Coatesville vicinity, *Steen, Robert, House (East Fallowfield Township MRA)*, Fairview Rd. (05/20/85)
Coatesville vicinity, *Vaughan, Rev. Joshua, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Walton, Asa, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg & Old Wilmington Rds. (09/18/85)
Coatesville vicinity, *Wentz, John, House (East Fallowfield Township MRA)*, PA 82 (05/20/85)
Coatesville vicinity, *White Horse Tavern (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Wilson, Robert, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Coatesville vicinity, *Young, Robert, House (Strasburg Road TR) (East Fallowfield Township MRA)*, Strasburg Rd. (09/18/85)
Devon, *Roughwood*, 107 Old Lancaster Rd. (11/23/84)
E. Bradford Twp., *Hance House and Barn (West Branch Brandywine Creek MRA)*, Rt. 842 (09/16/85)
Embreeville vicinity, *Harlan House*, PA 162 & Star Gazer Rd. (05/09/85)
Knauertown, *Knauer, John, House and Mill*, PA 23 (05/30/85)
Londonderry Twp., *Ross, Moses, House (West Branch Brandywine Creek MRA)*, Doe Run Valley (09/16/85)
Londonderry Twp., *St. Malachi Church (West Branch Brandywine Creek MRA)*, St. Malachi Rd. (09/16/85)
Marshallton vicinity, *Cope's Bridge*, (03/07/85)
Newlin & E. Marlborough Twps., *Green Valley Historic District (West Branch Brandywine Creek MRA)*, Green Valley Rd. (09/16/85)
Newlin, Pocopson & W. Bradford Twps., *Northbrook Historic District (West Branch Brandywine Creek MRA)*, Northbrook, Indian Hannah & Bragg Hill Rds. (09/16/85)
Newlin Twp., *Embreeville Historic District (West Branch Brandywine Creek MRA)*, Rt. 162 (09/16/85)
Newlin Twp., *Hayes Homestead (West Branch Brandywine Creek MRA)*, Rt. 162 & Harvey's Bridge Rd. (09/16/85)
Newlin Twp., *Hayes Mill House (West Branch Brandywine Creek MRA)*, Star Gazer Rd. (09/16/85)
Newlin Twp., *Hayes, Jacob, House (West Branch Brandywine Creek MRA)*, Rt. 162 (09/16/85)
Newlin Twp., *House at Upper Laurel Iron Works (West Branch Brandywine Creek MRA)*, McCorkel's Rock Rd. (09/16/85)
Newlin Twp., *Indian Deep Farm (West Branch Brandywine Creek MRA)*, Glenhall & Groundhog College Rds. (09/16/85)
Newlin Twp., *Mountain Meadow Farm (West Branch Brandywine Creek MRA)*, Harvey's Bridge Rd. (09/16/85)
Newlin Twp., *Spruce Grove School House (West Branch Brandywine Creek MRA)*, Brandywine Creek Rd. (09/16/85)
Newlin Twp., *Worker's House at Lower Laurel Iron Works (West Branch Brandywine Creek MRA)*, Creek Rd. (09/16/85)
Newlin Twp., *Young, Joseph, House (West Branch Brandywine Creek MRA)*, Creek Rd. (09/16/85)
Pocopson & West Bradford Twps., *Trimbleville Historic District (West Branch Brandywine Creek MRA)*, Northbrook, Broad Run, & Camp Linden Rds. (09/16/85)
Pocopson Twp., *Wilkinson House (West Branch Brandywine Creek MRA)*, Rt. 842 (09/16/85)
Spring City, *Vincent Forge Mansion*, Cook's Glen Rd. R.D. (05/09/85)
W. Bradford Twp., *Baily Farm (West Branch Brandywine Creek MRA)*, Strasburg & Broad Run Rds. (09/16/85)
W. Bradford Twp., *Como Farm (West Branch Brandywine Creek MRA)*, Broad Run Rd. (09/16/85)
W. Marlborough Twp., *Doe Run Village Historic District (West Branch Brandywine Creek MRA)*, Highland Dairy, DuPont & Chapel Rds. & Rts. 82 & 841 (09/16/85)
W. Marlborough Twp., *House at Springdell (West Branch Brandywine Creek MRA)*, Rt. 841 (09/16/85)
West Chester, *Ashbridge, David, Log House (West Whiteland Township MRA)*, 1181 King Rd. (11/08/84)
West Chester, *Sharples Homestead*, 22 Dean St. (09/19/85)
West Chester, *West Chester Downtown Historic District*, Roughly bounded by Biddle, Matlick, Bernard & New Sts. (07/02/85)
West Whiteland, *Church Farm School (West Whiteland Township MRA)*, US 30 (10/26/84)

Clinton County

Mill Hall, *Harvey, Nathan, House*, 425–427 S. Water St. (01/03/86)
Woolrich vicinity, *Rich—McCormick Woolen Factory*, Little Plum Run Rd. (09/05/85)

Columbia County

Berwick, *Jackson Mansion and Carriage House*, 344 Market St. (09/05/85)

Crawford County

Meadville, *Meadville Downtown Historic District*, Roughly bounded by Chancery Lane, Mulberry, Walnut & Chestnut Sts. (10/02/84)
Titusville, *Titusville Historic District*, Roughly bounded by Petroleum, Spruce, Franklin, Perry, Monroe, Main & Spring Sts. (01/31/85)

Cumberland County

Boiling Springs, *Boiling Springs Historic District*, Roughly bounded by High & First Sts., Boiling Springs Lake, & Yellow Britches Creek (12/03/84)
Shippensburg, *Cumberland Valley State Normal School Historic District*, Roughly bounded by N. Prince St., Stewart, Old Main, Gilbert & Henderson Drives (01/11/85)

Dauphin County

Harrisburg, *Harrisburg Cemetery*, Thirteenth & Liberty Sts. (03/07/85)
Harrisburg, *Mount Pleasant Historic District*, Sylvan Terr. to Nineteenth St., Market to Brookwood Sts. (01/11/85)
Hummelstown, *Keystone Hotel*, 40 East Main St. (05/09/85)
Middletown, *B'Nai Jacob Synagogue*, Nissley & Water Sts. (09/19/85)

Delaware County

Wayne, *North Wayne Historic District*, Roughly bounded by Eagle Rd., Woodland Ct., Radnor St., Poplar & N. Wayne Ave. (07/25/85)

Erie County

Erie, *Nicholson House and Inn*, 4838 W. Ridge Rd. (02/28/85)
Erie, *West Sixth Street Historic District*, W. Sixth St. from Poplar to Peach St. (11/01/84)

Jefferson County

Punxsutawney, *Jefferson Theater*, 230 N. Findley St. (05/09/85)

Lancaster County

East Donegal Township, *Donegal Presbyterian Church Complex*, Donegal Springs Rd. (07/02/85)
Ephrata, *Mentzer Building*, 3 W. Main St. (03/07/85)
Lancaster, *B.F. Good & Company Leaf Tobacco Warehouse*, 49—53 W. James St. (01/03/85)
Lancaster, *Park Site 36La96*, Lancaster County Park, 1050 Rockford Rd. (04/04/85)
Oregon, *Oregon Mill Complex*, 1415 Oregon Rd. (06/27/85)

Lawrence County

New Wilmington, *Thompson, S.R., House*, Market St. (03/07/85)

Lehigh County

Allentown, *Dime Savings and Trust Company*, 12 N. Seventh St. (01/03/85)
Allentown, *Gauff—Roth House*, 427—443 Auburn St. (09/05/85)

Luzerne County

Wilkes-Barre, *River Street Historic District*, Franklin, River, W. River, W. Jackson, W. Union, W. Market, W. Northampton, W. South & W. Ross Sts. & Barnum Pl. (09/10/85)

Lycoming County

Williamsport, *Millionaire's Row Historic District*, Roughly bounded by Nichols Pl., W. Third Elmira & Seventh Sts. (01/24/85)

Montgomery County

Abington, *Abington Township High School*, 1801 Susquehanna Rd. (08/02/85)
Ambler vicinity, *Gwynedd Hall*, 1244 Meetinghouse Rd. (09/24/85)
Collegeville, *Perkiomen Bridge Hotel*, Main St. & Rt. 29 (01/03/85)
Glenside, *Grey Towers (William Welsh Harrison House)*, Easton Rd. & Limekiln Pike (NHL) (02/04/85)
Norristown, *Central Norristown Historic District*, Roughly bounded by Stoney Creek, Walnut, Lafayette, & Fornace Sts. (11/23/84)
Pottstown, *Old Pottstown Historic District*, Roughly bounded by South, Race, Bailey, Adams, Lincoln, Beech, & Manatawny Sts. (09/05/85)
West Norristown, *West Norristown Historic District*, Roughly bounded by Stoney Creek, Selma, & N. Elm Sts. (11/23/84)
Wyndmoor, *Stotesbury Club House*, 7830 Eastern Ave. (03/07/85)

Montour County

Danville, *Danville West Market Street Historic District*, Bounded By Courthouse Alley E, Front St. S, Haney's Alley W & Mahoning St. N (05/29/85)

Northumberland County

Augustaville, *Zion Stone Church*, Tulpehocken Rd. (11/01/84)

Philadelphia County

Chestnut Hill, *Chestnut Hill Historic District*, Roughly bounded by Fairmount Park & Montgomery Co. Line (06/20/85)
Philadelphia, *Bergdoll, Louis, House*, 929 N. Twenty-ninth St. (01/03/85)
Philadelphia, *Church of St. James-the-Less*, Hunting Park Ave. at Clearfield St. (NHL) (02/04/85)
Philadelphia, *Franklin Institute Science Museum*, Twentieth St. & the Benjamin Franklin Pkwy. (01/03/85)
Philadelphia, *Furness Library, School of Fine Arts, University of Pennsylvania*, Thirty-fourth St. below Walnut St. (NHL) (02/04/85)
Philadelphia, *Globe Ticket Company Building*, 112 N. Twelfth St. (11/01/84)
Philadelphia, *Goodman Brothers and Hinlein Company*, 1238 Callowhill St. (03/07/85)
Philadelphia, *Haines, Hanson, House*, 4801 Springfield Ave. (01/29/85)
Philadelphia, *La Blanche Apartments*, 5100 Walnut St. (03/07/85)
Philadelphia, *McCallum Manor*, 6653 McCallum Ave. (05/09/85)
Philadelphia, *National Bank of North Philadelphia*, 3701 N. Broad St. (05/20/85)
Philadelphia, *North Broad Street Mansion District*, Roughly bounded by Broad, Jefferson, Willington, & Oxford Sts. (03/29/85)
Philadelphia, *Northern National Bank*, 2300 Germantown Ave. (06/27/85)
Philadelphia, *Overbrook Farms*, Roughly bounded by City Line Ave., Fifty-eighth St., Woodbine Ave. and Sixty-fourth St. (03/21/85)
Philadelphia, *Pennsylvania Institute for the Deaf and Dumb*, 7500 Germantown Ave. (05/09/85)
Philadelphia, *Philadelphia's Masonic Temple*, 1 N. Broad St. (NHL) (02/04/85)
Philadelphia, *Powelton Historic District*, Roughly bounded by Brandywine St., Thirty-second to Thirty-ninth Sts. & Lancaster Ave. (05/09/85)
Philadelphia, *Regent—Rennoc Court*, 5100 blk. Regent St. & 1311—1327 S. Fifty-second St. (09/12/85)
Philadelphia, *St. Mark's Episcopal Church*, 1625 Locust St. (NHL) (02/04/85)
Philadelphia, *St. Peter's Episcopal Church of Germantown*, 6000 Wayne Ave. (09/05/85)
Philadelphia, *Suburban Station Building*, 1617 John F. Kennedy Blvd. (09/05/85)

Pike County

Dingman Township, *Shanna House*, US 209 (01/08/85)

Potter County

Coudersport, *Coudersport Historic District*, Roughly bounded by Seventh, East, Water, & Main Sts. (05/09/85)

Schuylkill County

Pottsville, *Yuengling, D.G., and Son Brewing Complex*, Fifth & Mahantongo Sts. (02/01/85)

Warren County

Warren, *Jefferson, John P., House*, 119 Market St. (05/09/85)

Washington County

East Washington, *East Washington Historic District*, Roughly Bounded by North, East, & Wade Aves., Wheeling, Beau, & Chestnut Sts. (11/15/84)
Marianna, *Marianna Historic District*, Roughly bounded by Ten Mile Creek, Beeson Ave., Hill, Sixth & Seventh Sts. (11/15/84)
Taylorstown, *Taylorstown Historic District*, Main St. (09/05/85)
West Alexander Borough, *West Alexander Historic District*, Roughly bounded by Main, N. Liberty & Mechanic Sts. (03/07/85)
West Middletown Borough, *West Middletown Historic District*, Main St. (08/08/85)

Westmoreland County

East Huntingdon Township, *West Overton Historic District*, Frick Ave. (07/18/85)
New Alexandria, *Patterson, Samuel House*, RD 1, Box 156 on PA 981 (03/07/85)
New Kensington, *Byerly House*, 115 Menk Rd. (07/18/85)

York County

Delta, *Coulsontown Cottages Historic District*, Ridge Rd. & Main (01/31/85)
North Codorus Township, *York Iron Company Mine*, N. of Green Valley Rd. between Jefferson & Seven Valleys (03/15/85)

PUERTO RICO

Aguadilla County

Aguadilla, *Cardona Residence*, Betances St. No. 55 (01/02/85)
Aguadilla, *District Courthouse*, Progreso (01/02/85)
Aguadilla, *Old Urban Cemetery*, Cuesta Vieja (01/02/85)
Aguadilla, *Residence Lopez*, Progreso St. No. 67 (01/02/85)
Camuy vicinity, *Hacienda La Sabana*, PR 119 (02/14/85)
Hatillo, *Church Nuestra Senora del Carmen of Hatillo (Historic Churches of Puerto Rico TR)*, Luis M. Lacombe St. (12/10/84)

Arecibo County

Utuado, *Church San Miguel Arcangel of Utuado (Historic Churches of Puerto Rico TR)*, Dr. Barbosa St. (12/10/84)

Guayama County

Aibonito, *Church San Jose of Aibonito (Historic Churches of Puerto Rico TR)*, Emeterio Betances St. (12/10/84)
Cayey, *Church Nuestra Senora de la Asuncion of Cayey (Historic Churches of Puerto Rico TR)*, Munoz Rivera St. (12/10/84)

Humacao County

Naguabo, *Church Nuestra Senora del Rosario of Naguabo (Historic Churches of Puerto Rico TR)*, Town Plaza (12/10/84)

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Mayaguez County

Sabana Grande, *Church of San Isidro Labrador and Santa Maria de la Cabeza of Sabana Grande (Historic Churches of Puerto Rico TR),* Angel G. Martinez St. (12/10/84)
San German, *Church San German Auxerre of San German (Historic Churches of Puerto Rico TR),* De la Cruz St. (12/10/84)
Yauco, *Casa Franceschi Antongiorgi,* 25 de Julio St. (01/16/85)
Yauco, *Casona Cesari (Cesari Manor),* 25th of July & Matienzo Cintron Sts. (01/16/85)
Yauco, *Chalet Amill,* No. 33 Mattei Lluberas St. (01/16/85)
Yauco, *Filardi House,* 25 de Julio St. & corner of Baldorioty St. (01/16/85)

Ponce County

Coamo, *Church San Blas de Illescas of Coamo (Historic Churches of Puerto Rico TR),* Mario Braschi St. (12/10/84)
Juana Diaz, *Church San Juan Bautista y San Ramon Nonato of Juana Diaz (Historic Churches of Puerto Rico TR),* Town Plaza (12/10/84)
Ponce, *Cathedral Nuestra Senora de Guadalupe of Ponce (Historic Churches of Puerto Rico TR),* Town Plaza (12/10/84)

San Juan County

Santurce, *Church of San Mateo de Cangrejos of Santurce,* Corner of San Jorge St. and Eduardo Conde Ave. (01/02/85)

RHODE ISLAND

Kent County

Carbuncle Hill Archeological District (09/28/85)

Newport County

Carr, Thomas, Farmstead Site (Keeler Site RI-707) (11/01/84)
Gardiner Pond Shell Midden (04/12/85)
Hazard Farmstead (Joyner Site RI-706) (11/01/84)

Providence County

Breezy Hill Site (RI-957) (09/20/85)
Cherry Valley Archeological Site, RI 279 (11/01/84)
Double L Site (RI-958) (09/12/85)
McGonagle Site (RI-1227) (09/12/85)
Millrace Site (RI-1039) (09/12/85)
Moswansicut Pond Site (RI-960) (09/12/85)
Sassafras Site, RI-55 (11/01/84)
Three Dog Site, RI-151 (11/01/84)
Woonasquatucket River Site, RI-163 (11/01/84)
Cumberland, *Ashton Historic District,* Roughly Mendon, Scott, & Old Angell Rds., Store Hill Rd., Front & Middle Sts. (11/01/84)
Lincoln, *Jenckes House (Lincoln MRA),* 1730 Old Louisquisset Pike (10/10/84)
Pawtucket, *Crandall, Lorenzo, House,* 221 High St. (12/10/84)
Providence, *Oakland Avenue Historic District,* Roughly bounded by Pembroke Ave., Eaton, Malbone, & Dickens Sts. (11/01/84)
Providence, *Pekin Street Historic District,* Roughly bounded by Pekin & Candace Sts., Douglas & Chalkstone Aves. (11/01/84)
Scituate, *Andrews—Luther Farm,* Elmdale Rd. (08/19/85)

Washington County

Bouchard Archeological Site, RI-1025 (11/01/84)
Devils' Foot Cemetery Archeological Site, RI-694 (11/15/84)
Fayerweather, George, Blacksmith Shop (11/29/84)
Fernwood Archeological Site, RI-702 (09/12/85)
Lambda Chi Site, RI-704 (11/01/84)
Ministerial Road Site, RI-781 (11/15/84)
Mumford, Silas, Site, RI-705 (11/01/84)
Nursery Site, RI-273 (11/01/84)
North Kingstown, *Crowfield Historic District (North Kingstown MRA),* Boston Neck Rd. (07/19/85)
North Kingstown, *Davisville Historic District (North Kingstown MRA),* Davisville Rd. (07/19/85)
North Kingstown, *Gardner, Ezekial, House (North Kingstown MRA),* 297 Pender Rd. (07/19/85)
North Kingstown, *Northrup, Stephen, House (North Kingstown MRA),* 99 Featherbed Lane (07/19/85)
North Kingstown, *Old Narragansett Cemetery (North Kingstown MRA),* Shermantown Rd. (07/19/85)
North Kingstown, *Pierce, Joseph, Farm (North Kingstown MRA),* 933 Gilbert Stuart Rd. (07/19/85)
North Kingstown, *Rathbun House (North Kingstown MRA),* 343 Beacon Dr. (07/19/85)
North Kingstown, *Sanford, Esbon, House (North Kingstown MRA),* 88 Featherbed Lane (07/19/85)
North Kingstown, *Saunderstown Historic District (North Kingstown MRA),* Roughly bounded by Stillman, Waterway, Willet, Boston Neck & Ferry Rds. (07/19/85)
North Kingstown, *Scrabbletown Historic and Archeological District,* Scrabbletown Rd., Stony Lane & S. County Trail (04/11/85)
North Kingstown, *Shady Lea Historic District (North Kingstown MRA),* Shady Lea & Tower Hill Rds. (07/19/85)
North Kingstown, *Slocum, Joseph, House (North Kingstown MRA),* Slocum Rd. (07/19/85)
North Kingstown, *Spink Farm (North Kingstown MRA),* 1325 Shermantown Rd. (07/19/85)
Wakefield, South Kingstown, *Miller, William, Davis, House,* 130 Main St. (03/21/85)
Westerly, *Watch Hill Historic District,* Roughly bounded by Breen, Watch Hill & E. Hill Rds., Block Island Sound, Little Narragansett Bay & Pawtucket River (09/05/85)

SOUTH CAROLINA

Aiken County

Aiken, *Aiken Mile Track (Aiken Winter Colony TR),* Banks Mill Rd. (05/09/85)
Aiken, *Aiken Training Track (Aiken Winter Colony TR),* Two Notch Rd. (05/09/85)
Aiken, *Aiken Winter Colony Historic District I (Aiken Winter Colony TR),* Off US 1/78 (11/27/84)
Aiken, *Aiken Winter Colony Historic District II (Aiken Winter Colony TR),* Roughly bounded by RR track, Colleton & 3rd Aves., Laurens, South Boundary & Marion Sts. (11/27/84)
Aiken, *Aiken Winter Colony Historic District III (Aiken Winter Colony TR),* Roughly bounded by Edgefield Ave., Highland Park Dr., Fauburg & Greenville St. (11/27/84)
Aiken, *Court Tennis Building (Aiken Winter Colony TR),* Newberry & Park Sts. (11/27/84)
Aiken, *St. Thaddeus Episcopal Church (Aiken Winter Colony TR),* Pendleton & Richland Sts. (11/27/84)
Aiken, *Whitehall (Aiken Winter Colony TR),* 902 Magnolia St. (11/27/84)

Allendale County

Allendale Chert Quarries Archeological District (09/28/85)

Charleston County

Charleston, *Charleston Old and Historic District (Boundary Increase),* 25 Warren—114 St. Phillip Sts. & 25 ½ Warren St. (08/13/85)
McClellanville vicinity, *Laurel Hill,* Off US 17 (09/12/85)

Dillon County

Floydale vicinity, *Smith Barn (Flue-Cured Tobacco Production Properties TR),* E of Floydale (12/04/84)

Fairfield County

Jenkinsville vicinity, *Glenn, Dr. John, House (Fairfield County MRA),* SC 215 (12/06/84)
Jenkinsville vicinity, *High Point (Fairfield County MRA),* SC 215 (12/06/84)
Jenkinsville, *Mayfair (Fairfield County MRA),* Off SC 215 (02/06/85)
Monticello, *Monticello Methodist Church (Fairfield County MRA),* Off SC 215 (12/06/84)
Monticello, *Monticello Store and Post Office (Fairfield County MRA),* Off SC 215 (12/06/84)
Ridgeway vicinity, *Beard, James, House (Fairfield County MRA),* W of Ridgeway (12/06/84)
Ridgeway vicinity, *Camp Welfare (Fairfield County MRA),* Off US 21 (12/06/84)
Ridgeway vicinity, *Hunter House (Fairfield County MRA),* NE of Ridgeway (12/06/84)
Ridgeway vicinity, *Mount Hope (Fairfield County MRA),* SC 34 (12/06/84)
Ridgeway vicinity, *Vaughn's Stage Coach Stop (Fairfield County MRA),* SC 34 (12/06/84)
Winnsboro vicinity, *New Hope ARP Church and Session House (Fairfield County MRA),* NW of Winnsboro (12/06/84)
Winnsboro vicinity, *Albion (Fairfield County MRA),* W of Winnsboro off SC 34 (12/06/84)
Winnsboro vicinity, *Balwearie (Fairfield County MRA),* W of Winnsboro off SC 34 (12/06/84)
Winnsboro vicinity, *Brice, Dr. Walter, House and Office (Fairfield County MRA),* NW of Winnsboro (12/06/84)
Winnsboro vicinity, *Concord Presbyterian Church (Fairfield County MRA),* US 321 (12/06/84)
Winnsboro vicinity, *Furman Institution Academic Building (Fairfield County MRA),* SW of Winnsboro (12/06/84)
Winnsboro vicinity, *Furman Institution Faculty Residence (Fairfield County MRA),* SW of Winnsboro (12/06/84)

Winnsboro vicinity, *Hunstanton (Fairfield County MRA),* US 321 (12/06/84)
Winnsboro vicinity, *Lemmon, Bob, House (Fairfield County MRA),* Off SC 213 (12/06/84)
Winnsboro vicinity, *Libert Universalist Church and Feasterville Academy Historic District (Fairfield County MRA),* SC 215 (12/06/84)
Winnsboro vicinity, *Old Stone House (Fairfield County MRA),* Off SC 34 (12/06/84)
Winnsboro vicinity, *Rockton and Rion Railroad Historic District (Fairfield County MRA),* S of Winnsboro from SC 34 W to SC 213 (12/06/84)
Winnsboro vicinity, *Shivar Springs Bottling Company Cisterns (Fairfield County MRA),* W of Winnsboro (12/06/84)
Winnsboro vicinity, *The Oaks (Fairfield County MRA),* SC 213 (12/06/84)
Winnsboro vicinity, *Tocaland (Fairfield County MRA),* Off SC 34 (12/06/84)
Winnsboro vicinity, *White Oak Historic District (Fairfield County MRA),* Off US 321 (12/06/84)

Greenville County

Greenville, *Imperial Hotel (Greenville MRA),* 201 W. Washington St. (09/12/85)

Greenwood County

Greenwood vicinity, *Barratt House,* SC 67 & Bryan Dorn Rd. (09/12/85)

Kershaw County

Camden, *Bethesda Presbyterian Church,* 502 Dekalb St. (NHL) (02/04/85)

Lancaster County

Lancaster vicinity, *North Carolina-South Carolina Cornerstone,* Off US 521 (12/20/84)

Laurens County

Clinton, *Clinton Commercial Historic District,* Main, Broad, Pitts, Musgrove & Gary Sts. (11/15/84)

Orangeburg County

Orangeburg, *Amelia Street Historic District (Orangeburg MRA),* Amelia St. between Treadwell St. & Summers Ave. (09/20/85)
Orangeburg, *Briggmann, F.H.W., House (Orangeburg MRA),* 186 Amelia St. (09/20/85)
Orangeburg, *Claflin College Historic District (Orangeburg MRA),* On a portion of Claflin College campus (09/20/85)
Orangeburg, *Dixie Library Building (Orangeburg MRA),* Bull St. (09/20/85)
Orangeburg, *Dukes Gymnasium (Orangeburg MRA),* South Carolina State College campus (09/20/85)
Orangeburg, *East Russell Street Area Historic District (Orangeburg MRA),* Along sections of E. Russell St. between Watson & Clarendon Sts. & along portions of Oakland Pl., Dickson & Whitman Sts. (09/20/85)
Orangeburg, *Ellis Avenue Historic District (Orangeburg MRA),* Along portion of Ellis Ave. between Summers Ave. & Wilson St. (09/20/85)
Orangeburg, *Enterprise Cotton Mills Building (Orangeburg MRA),* US 21 (09/20/85)
Orangeburg, *Fordham, Major John Hammond, House (Orangeburg MRA),* 415 Boulevard (09/20/85)
Orangeburg, *Hodge Hall (Orangeburg MRA),* South Carolina State College campus (09/20/85)
Orangeburg, *Hotel Eutaw (Orangeburg MRA),* Russell & Centre Sts. (09/20/85)
Orangeburg, *Lowman Hall, South Carolina State College (Orangeburg MRA),* South Carolina State College campus (09/20/85)
Orangeburg, *Mt. Pisgah Baptist Church (Orangeburg MRA),* 310 Green (09/20/85)
Orangeburg, *Orangeburg County Fair Main Exhibit Building (Orangeburg MRA),* US 21 (09/20/85)
Orangeburg, *Orangeburg Downtown Historic District (Orangeburg MRA),* Russell, Broughton, Middleton, Church, Meeting, St. John, Hampton, & Amelia Sts. around public square (09/20/85)
Orangeburg, *Treadwell Street Historic District (Orangeburg MRA),* Along portions of Treadwell & Amelia Sts. (09/20/85)
Orangeburg, *Whitman Street Area Historic District (Orangeburg MRA),* Along sections of Whitman, Elliot & E. Russell Sts. (09/20/85)
Orangeburg, *Williams Chapel AME Church (Orangeburg MRA),* 1908 Glover St. (09/20/85)

Spartanburg County

Spartanburg, *Montgomery, Walter Scott, House,* 314 S. Pine St. (11/01/84)

Union County

Union, *Fair Forest Hotel,* 221 E. Main St. (11/01/84)

York County

Fort Mill vicinity, *Springfield Plantation House,* US 21 (09/12/85)
Fort Mill, *White, John M., House,* White & Skipper Sts. (09/12/85)

SOUTH DAKOTA

Bon Homme County

Cihak Farmstead (German-Russian Folk Architecture TR) (11/28/84)
Tabor, *St. Wenceslaus Catholic Church and Parish House,* Yanktown & Lidice Sts. (12/13/84)
Tyndall, *Bon Homme County Courthouse,* Walnut & Washington Sts. (12/13/84)
Tyndall, *ZCBJ Hall,* Nebraska & Washington Sts. (01/31/85)
Tyndall, *Carnegie Public Library of Tyndall,* State & Main Sts. (12/13/84)

Day County

Webster, *Havens, William, House,* 915 E. First St. (01/31/85)

Edmunds County

Strouckel, John, House (German-Russian Folk Architecture TR) (11/28/84)
Bowdle, *Bank of Bowdle,* 3036 Main St. (01/31/85)

Hutchinson County

Hofer, Enoch, House—Barn (German-Russian Folk Architecture TR) (11/28/84)
Holzworth—Lang House (German-Russian Folk Architecture TR) (11/28/84)
Stern, Gottlieb, House (German-Russian Folk Architecture TR) (11/28/84)
Wollman, Joseph, House (German-Russian Folk Architecture TR) (11/28/84)

McCook County

Salem, *St. Mary's Catholic Church,* Vermont & Idaho Sts. (08/19/85)

Miner County

Howard, *Wheeler Hotel,* 101 N. Main St. (08/19/85)

Union County

Beresford, *Chicago and Northwestern Railroad Depot,* 1 Depot Square (01/31/85)
Beresford, *Reedy, J.W., House,* 309 N. Second (12/13/84)

Walworth County

Moser, Wilhelm, House—Barn (German-Russian Folk Architecture TR) (11/28/84)

Yankton County

Yankton, *Schnauber, Fred, House,* 717 Walnut St. (01/31/85)

TENNESSEE

Bedford County

Palmetto vicinity, *Palmetto Farm,* TN 64 (08/28/85)
Wartrace vicinity, *Clark, Henry A., House,* Fairfield Rd. (08/30/85)

Davidson County

Antioch vicinity, *Gray, Benajah, Log House,* 446 Battle Rd. (07/11/85)
Goodlettsville vicinity, *Shaw, Abner T., House,* 4866 Brick Church Pike (08/28/85)
Lakewood, *Lakewood Commercial District (Old Hickory MRA),* Roughly bounded by Twenty-second St. & Old Hickory Blvd. (05/24/85)
Nashville, vicinity *Howe—Madden House,* US 70 (11/23/84)
Nashville, *Berger Building,* 164 N. Eighth Ave. (11/08/84)
Nashville, *Capers CME Church (McKissack and McKissack Bldgs. TR),* 319 Fifteenth Ave. N (01/02/85)
Nashville, *Carnegie Library (McKissack and McKissack Bldgs. TR),* Fisk University, Seventeenth Ave. N (01/02/85)
Nashville, *Doctor's Building,* 706 Church St. (07/25/85)
Nashville, *Federal Reserve Bank of Atlanta (Marr and Holman Buildings in Downtown Nashville TR),* 226 N. Third Ave. (10/10/84)
Nashville, *Hubbard House (McKissack and McKissack Bldgs. TR),* 1109 First Ave. S (01/02/85)
Nashville, *Little Sisters of the Poor Home for the Aged,* 1400 Eighteenth Ave., S (07/25/85)
Nashville, *Morris Memorial Building (McKissack and McKissack Bldgs. TR),* 330 Charlotte Ave. (01/02/85)
Nashville, *Noel Hotel (Marr and Holman Buildings in Downtown Nashville TR),* 200–204 N. Fourth Ave. (10/10/84)
Nashville, *Rich—Schwartz Building (Marr and Holman Buildings in Downtown Nashville TR),* 202–204 N. Sixth Ave. (10/10/84)
Nashville, *Robertson, James, Hotel (Marr and Holman Buildings in Downtown Nashville TR),* 118 N. Seventh Ave. (10/10/84)

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Nashville, *US Post Office*, 901 Broadway (11/15/84)
Nashville, *Waverly Place Historic District*, Roughly bounded by Beech, Douglas & Bradford Aves., Tenth Ave. S & Acklen Ave. (08/28/85)
Old Hickory, *DuPont Fire Hall (Old Hickory MRA)*, 1010 Hadley Ave. (05/24/85)
Old Hickory, *Old Hickory Historic District (Old Hickory MRA)*, Bordered by Hadley Ave., Jones St., Eighth St., Riverside Dr. & Fifteenth Ave. (05/24/85)
Old Hickory, *Old Hickory Methodist Church (Old Hickory MRA)*, 1216 Hadley Ave. (05/24/85)
Old Hickory, *Old Hickory Post Office (Old Hickory MRA)*, 1010 Donelson Ave. (08/08/85)

Franklin County

Winchester, *Valentine Square*, 112 N. Cedar St. (11/08/84)

Gibson County

Milan vicinity, *Union Central School*, Union Central Rd. (07/05/85)
Trenton, *Peabody High School*, S. College St. (11/23/84)

Giles County

Pisgah vicinity, *Pisgah United Methodist Church and Cemetery*, Pisgah Rd. (11/23/84)
Pulaski vicinity, *Tillery, George W., House*, US 31 N. (07/05/85)
Pulaski, *Hewitt, Austin, Home*, 322 E. Washington St. (12/13/84)

Greene County

Afton vicinity, *Brown-Neas House*, Old Johnson City Rd. (11/08/84)

Hamilton County

Chattanooga, *Maclellan Building (Buildings in Hamilton County Designed by R.H. Hunt TR)*, 721 Broad St. (04/04/85)

Hancock County

Sneedville vicinity, *Vardy School Community Historic District*, Blackwater Rd. (11/08/84)

Hickman County

Primm Springs, *Primm Springs Historic District*, Irregular pattern along the Puppy Branch of Dog Creek between House & Baker Rds. & Mineral Springs (07/08/85)

Knox County

Knoxville, *Bleak House*, 3148 Kingston Pike (11/08/84)
Knoxville, *Fourth and Gill Historic District*, Roughly bounded by I-40, Broadway, Central & Fifth Ave. (04/29/85)
Knoxville, *Market Square Commercial Historic District*, Market Sq. Mall (12/20/84)
Knoxville, *Ossoli Circle Clubhouse*, 2511 W. Cumberland Ave. (03/21/85)
Knoxville, *St. John's Lutheran Church*, 544 Broadway NW. (04/04/85)
Knoxville, *Westwood*, 3425 Kingston Pike (11/08/84)

Lawrence County

Lawrenceburg, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Berger St. (10/10/84)
Loretto, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Church St. (10/10/84)
Rascal Town vicinity, *St. Mary's Cemetery (German Catholic Churches and Cemeteries of Lawrence County TR)*, Rascal Town Rd. (10/10/84)
St. Joseph, *St. Joseph Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Spring St. (10/10/84)

Lewis County

Gordonsburg vicinity, *Blackburn, Ambrose, Farmstead*, Gordonsburg Rd. (03/28/85)

Lincoln County

Coldwater vicinity, *Lincoln County Poor House Farm*, Yukon Rd. (07/11/85)

Marshall County

Chapel Hill, *Chapel Hill Cumberland Presbyterian Church*, Main St. (08/30/85)
Cornersville, *Baird—Welch House*, Water St. (03/21/85)
Mooresville vicinity, *Bear Creek Cumberland Presbyterian Church*, Bear Creek Rd. (03/28/85)

Maury County

Culleoka vicinity, *Booker, Merritt H., House*, Scott Hollow Rd. (07/18/85)
Mt. Pleasant, *Breckenridge Hatter's Shop*, N. Main St. (12/13/84)

Moore County

Tullahoma vicinity, *Ledfords Mill*, Ledford Mill Rd. (01/10/85)

Perry County

Linden vicinity, *Dickson, James, House*, Lower Lick Creek Rd. (03/28/85)

Rutherford County

Eagleville, *McCord, William Harrison, House*, US 41A (12/20/84)
Murfreesboro vicinity, *Boxwood*, Old Salem Pike (10/25/84)
Murfreesboro, *East Main Street Historic District*, Roughly bounded by E. Main, E. Lytle, College, University & E. Vine Sts. (07/11/85)
Murfreesboro, *North Maney Avenue Historic District*, Roughly bounded by N. Maney & N. Highland Aves., E. College St. & N. Academy Ave. (04/04/85)

Scott County

Huntsville, *First National Bank of Huntsville*, No. Four Courthouse Sq. (07/11/85)

Sequatchie County

Dunlap, *Dunlap Coke Ovens*, Hickory St. & Cordell Rd. (07/05/85)

Shelby County

Memphis, *Evergreen Historic District*, Roughly bounded by N. Parkway, Kenilworth, Watkins Sts., & Court Ave. (01/11/85)

Smith County

Carthage, *Carthage United Methodist Church*, 609 South Main St. (07/05/85)

Sullivan County

Bristol, *First National Bank of Bristol*, 500 State St. (07/25/85)
Bristol, *Paramount Theatre and Office Building*, 516 State St. (04/04/85)
Kingsport, *Grass Dale*, 774 Bloomingdale Pike (10/25/84)
Kingsport, *Stone—Penn House*, 1306 Watauga St. (11/15/84)
Piney Flats, *DeVault-Massengill House*, Andrew Johnson Hwy. US 11E (03/28/85)

Sumner County

Castalian Springs vicinity, *Brown—Chenault House*, Chenault Lane (07/25/85)
Gallatin vicinity, *Oakley*, 2243 Nashville Pike (07/25/85)

Van Buren County

Crain Hill, *Crain Hill School and Church*, Crain Hill Rd. (03/21/85)

Warren County

McMinnville vicinity, *My Grandfather's House*, US 70 S (04/04/85)

Washington County

Gray, *Kitzmiller, Martin, House*, US 23, Boon's Creek (07/25/85)
Jonesboro vicinity, *Plum Grove Archeological Site (40WG17)*, Jackson Bridge Rd. (09/05/85)
Washington vicinity, *Broylesville Historic District*, Roughly bounded by TN 34, Taylor Mill & Gravel Hill Rds. along Little Limestone Creek (03/28/85)

Wilson County

Lebanon, *Fite—Fessenden House*, 326 W. Main St. (07/05/85)

TEXAS

Bell County

Belton, *Carnegie Public Library*, 201 N. Main St. (08/04/85)
Salado, *Salado College Archeological Site (Salado MRA)*, Main St. (03/01/85)

Bexar County

San Antonio, *Barr Building*, 213–219 Broadway (04/11/85)
San Antonio, *South Alamo Street—South St. Mary's Street Historic District*, Bounded by the San Antonio River, S. Alamo, S. St. Mary's & Temple Sts. (10/04/84)

Brewster County

Burro Mesa Archeological District (41BS187, 41BS220, 41BS221, 41BS630) (09/11/85)

Comal County

New Braunfels, *Hotel Faust*, 240 S. Seguin St. (05/02/85)

Dallas County

Cedar Hill, *Angle, D.M., House (Cedar Hill Texas MRA)*, 800 Beltline (03/27/85)
Cedar Hill, *Bryant, Jr., William, House (Cedar Hill Texas MRA)*, S. Broad & Cooper (03/27/85)
Cedar Hill, *Hawkes, Z.T. (Tip), House (Cedar Hill Texas MRA)*, 132 N. Potter St. (03/27/85)
Cedar Hill, *Roberts, Dr. Rufus A., House (Cedar Hill Texas MRA)*, 210 S. Broad St. (03/27/85)
Cedar Hill, *Straus House (Cedar Hill Texas MRA)*, 400 Cedar (07/12/85)

Dimmit County

Catarina vicinity, *Valenzuela Ranch Headquarters*, Valenzuela Creek (07/18/85)

Eastland County

Cisco, *Cisco Historic District*, Roughly bounded by Conrad Hilton Ave., W. Third St., Ave. K, W. Eighth & Ninth St. (11/20/84)

El Paso County

El Paso, *Old San Francisco Historic District*, Missouri St. between No. 325 & 527 (05/21/85)

Ellis County

Waxahachie, *Strickland-Sawyer House*, 500 Oldham St. (10/18/84)

Galveston County

Galveston, *Merimax Building (Central Business District MRA)*, 521 Twenty-second St. (01/24/85)

Goliad County

Goliad, *Baker, Charles H. and Catherine B., House*, 401 South Commercial St. (07/25/85)

Harris County

Houston, *Freedmen's Town Historic District*, Roughly bounded by Genesee, W. Dallas, Arthur & W. Gray Sts. (01/17/85)
Houston, *Palmer, Edward Albert, Memorial Chapel and Autry House*, 6221 & 6265 Main St. (10/31/84)

Hartley County

Channing, *XIT General Office*, Railroad Ave. & Fifth St. (05/06/85)

Jefferson County

Beaumont, *Duke, Holmes, House*, 894 Forrest St. (10/18/84)
Port Arthur, *Port Arthur Federated Women's Clubhouse*, 1924 Lakeshore Dr. (07/18/85)

Kaufman County

Terrell, *First National Bank Building*, 101 E. Moore (01/11/85)
Terrell, *Terrell Times Star Building*, 108 S. Catherine St. (05/02/85)

Lubbock County

Lubbock, *Lubbock High School*, 2004 Nineteenth St. (05/01/85)

Nueces County

Oso Dune Site (41NU37) (08/23/85)
Tucker Site (41NU46) (08/29/85)

Potter County

McBride Canyon Ruin (41PT87) (07/08/85)

Runnels County

Ballinger, *Day, Edwin and Hattie House*, 302 N. Broadway (01/03/85)

Tarrant County

Fort Worth, *Allen Chapel AME Church*, 116 Elm St. (10/18/84)
Fort Worth, *Rogers-O'Daniel House*, 2230 Warner Rd. (07/05/85)
Fort Worth, *Saint Patrick Cathedral Complex*, 1206 Throckmorton (01/07/85)
Fort Worth, *South Side Masonic Lodge No. 1114*, 1301 W. Magnolia (01/03/85)
Fort Worth, *US Post Office (Fort Worth Main)*, Lancaster & Jennings Ave. (04/15/85)

Travis County

Austin, *Bailetti House (East Austin MRA)*, 1006 Waller St. (09/17/85)
Austin, *Barnes, Charles W., House (East Austin MRA)*, 1105 E. Twelfth St. (09/17/85)
Austin, City Cemetery (East Austin MRA), Sixteenth & Navasota (09/17/85)
Austin, *Community Center (East Austin MRA)*, 1192 Angelina St. (09/17/85)
Austin, *Hoehnel Building (East Austin MRA)*, 1101 E. Eleventh St. (09/17/85)
Austin, *House at 1170 San Bernard Street (East Austin MRA)*, 1170 San Bernard St. (09/17/85)
Austin, *House at 1400 Canterbury Street (East Austin MRA)*, 1400 Canterbury St. (09/17/85)
Austin, *Irvin, Robert, House (East Austin MRA)*, 1008 E. Ninth St. (09/17/85)
Austin, *Jobe, Phillip W., House (East Austin MRA)*, 1113 E. Ninth St. (09/17/85)
Austin, *Johnson, C.E., House (East Austin MRA)*, 1022 E. Seventh St. (09/17/85)
Austin, *Maddox, John W., House (East Austin MRA)*, 1115 E. Third St. (09/17/85)
Austin, *McGown, Floyd, House (East Austin MRA)*, 1202 Garden St. (09/17/85)
Austin, *Moreland, Charles B., House (East Austin MRA)*, 1301 E. First St. (09/17/85)
Austin, *Peterson, George A., House (East Austin MRA)*, 1012 E. Eighth St. (09/17/85)
Austin, *Polhemus, Joseph O., House (East Austin MRA)*, 912 E. Second St. (09/17/85)
Austin, *Rainey Street Historic District (East Austin MRA)*, 70–97 Rainey St. (09/17/85)
Austin, *Robinson-Macken House*, 702 Rio Grande St. (09/12/85)
Austin, *Shotgun at 1206 Canterbury Street (East Austin MRA)*, 1206 Canterbury St. (09/17/85)
Austin, *Shotgun at 1203–1205 Bob Harrison (East Austin MRA)*, 1203–1205 Bob Harrison (09/17/85)
Austin, *Southgate—Lewis House (East Austin MRA)*, 1501 E. Twelfth St. (09/17/85)
Austin, *Wesley United Methodist Church (East Austin MRA)*, 1164 San Bernard St. (09/17/85)
Austin, *Willow—Spence Streets Historic District (East Austin MRA)*, Portions of Willow, Spence, Canterbury, San Marcos & Waller Sts. (09/17/85)

Uvalde County

Fort Inge Archeological Site (41UV76) (09/12/85)

Washington County

Chappell Hill, *Applewhite, Isaac, House (Chappell Hill MRA)*, Church St. (02/20/85)
Chappell Hill, *Chappell Hill Circulating Library (Chappell Hill MRA)*, Cedar St. (02/20/85)
Chappell Hill, *Chappell Hill Methodist Episcopal Church (Chappell Hill MRA)*, Church St. (02/20/85)
Chappell Hill, *Chappell Hill Public School and Chappell Hill Female College Bell (Chappell Hill MRA)*, Poplar St. (02/20/85)
Chappell Hill, *Felder, E. King, House (Chappell Hill MRA)*, Haller St. (02/20/85)
Chappell Hill, *Main Street Historic District (Chappell Hill MRA)*, Main St. (05/15/85)
Chappell Hill, *Rogers, William S., House (Chappell Hill MRA)*, Cedar St. (02/20/85)
Chappell Hill, *Routt, J.R., House (Chappell Hill MRA)*, Chestnut St. (02/20/85)
Chappell Hill, *Smith, John Sterling, Jr., House (Chappell Hill MRA)*, Chestnut St. (02/20/85)

Wichita County

Wichita Falls, *Morningside Historic District*, Roughly bounded by Ninth St., Morningside Dr., Pembroke Lane & Buchanan St. (05/16/85)
Wichita Falls, *Hodges—Hardy—Chambers House*, 1100 Travis St. (05/02/85)

TRUST TERRITORIES

Marshall Islands District

Kwajalein Atoll vicinity, *Kwajalein Island Battlefield*, Republic of the Marshall Islands (NHL) (02/04/85)
Kwajalein Atoll vicinity, *Roi-Namur Battlefield*, Roi-Namur Islands, Republic of the Marshall Islands (NHL) (02/04/85)

Palau District

Peleliu, *Peleliu Battlefield*, Palau Islands (NHL) (02/04/85)

Ponape District

Micronesia, *Nan Madol*, Temwen Island (NHL) (09/16/85)

Truk State District

Truk Lagoon Underwater Fleet, Federated States of Micronesia (NHL) (02/04/85)

Wake Island

Wake Island, Pacific Ocean (NHL) (09/16/85)

UTAH

Beaver County

Mud Spring (Great Basin Style Rock Art TR) (06/04/85)
Ryan Ranch (42 BE 618) (Great Basin Style Rock Art TR) (06/04/85)
Minersville, *Jenner—Griffiths House*, 10 N. Three Hundred E (06/16/85)
Minersville, *Minersville City Hall (Public Works Buildings TR)*, 600 W. Main St. (04/01/85)

Box Elder County

Brigham City, *Box Elder High School Gymnasium* (Public Works Buildings TR), 16 N. Four Hundred E (04/01/85)
Brigham City, *Brigham City Carnegie Library (Carnegie Library TR)*, 26 E. Forest St. (10/25/84)
Garland, *Bear River High School Science Building (Public Works Building TR)*, 1450 S. Main St. (04/01/85)
Garland, *Garland Carnegie Library (Carnegie Library TR)*, 86 W. Factory St. (10/25/84)

Cache County

Benson, *Benson Elementary School (Public Works Buildings TR)*, 3440 N. Three Thousand W (04/01/85)
Clarkston, *Clarkston Tithing Granary (Tithing Offices and Granaries of the Mormon Church TR)*, 10212 N. Eight Thousand Seven Hundred W (01/25/85)

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Hyrum, *Hyrum Stake Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 36 W. Main St. (01/25/85)

Lewiston, *Lewiston Community Building (Public Works Buildings TR)*, 29 S. Main St. (04/01/85)

Lewiston, *Lewiston Tithing Office and Granary (Tithing Offices and Granaries of the Mormon Church TR)*, 67 E. Eight Hundred S (01/25/85)

Logan, *Home Economics—Commons Building (Public Works Buildings TR)*, Off US 89, Utah State University (04/01/85)

Logan, *Logan Fish Hatchery Caretaker's Residence (Public Works Buildings TR)*, 1469 W. Two Hundred N (04/01/85)

Logan, *Logan High School Gymnasium (Public Works Buildings TR)*, 162 W. One Hundred S (08/07/85)

Logan, *Logan Municipal Slaughterhouse (Public Works Buildings TR)*, 265 N, Six Hundred W (04/01/85)

Mendon, *Mendon Elementary School (Public Works Buildings TR)*, Off UT 23 (04/01/85)

Paradise, *Paradise Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 8970 S. Two Hundred W. (01/25/85)

Richmond, *Richmond Carnegie Library (Carnegie Library TR)*, 6 W. Main St. (10/25/84)

Richmond, *Richmond Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 31 S. State St. (01/25/85)

Smithfield, *Smithfield Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 35 W. Center (01/25/85)

Davis County

Farmington, *Farmington Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 108 N. Main St. (03/28/85)

Farmington, *Haight, Hector C., House (Union Hotel)*, 206 N. Main St. (05/17/85)

Emery County

Castle Dale, *Castle Dale High School Shop (Public Works Buildings TR)*, 300 N. Center St. (04/01/85)

Huntington, *Huntington Tithing Granary (Tithing Offices and Granaries of the Mormon Church TR)*, 65 W. Three Hundred N (01/25/85)

Garfield County

Boulder, *Boulder Elementary School (Public Works Buildings TR)*, Off UT 51 (04/01/85)

Panguitch, *Panguitch Carnegie Library (Carnegie Library TR)*, 75 E. Center St. (10/25/84)

Iron County

Modena, *Modena Elementary School (Public Works Buildings TR)*, Off UT 56 (04/01/85)

Page Ranch vicinity, *Page, Daniel R. and Sophia G., House*, Richie Flat at W. edge of Harmony Mountains (05/09/85)

Kane County

Orderville, *Valley School (Public Works Buildings TR)*, Off US 89 (04/01/85)

Millard County

Cottonwood Wash (42 MD 183) (Great Basin Style Rock Art TR) (06/04/85)

Deseret (42 MD 55) (Great Basin Style Rock Art TR) (06/04/85)

Mountain Home Wash (Great Basin Style Rock Art TR) (06/04/85)

Site 42 MD 294 (Great Basin Style Rock Art TR) (06/04/85)

Fillmore, *Millard High School Gymnasium (Public Works Buildings TR)*, 36 N. Two Hundred W (04/01/85)

Hinckley, *Hinckley High School Gymnasium (Public Works Buildings TR)*, Off US 6/50 (04/01/85)

Kanosh, *Kanosh Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, Off US 91 (01/25/85)

Meadow, *Meadow Tithing Granary (Tithing Offices and Granaries of the Mormon Church TR)*, Off US 91 (01/25/85)

Salt Lake County

Magna, *Empress Theatre*, 9104 W. Two Thousand Seven Hundred S (05/09/85)

Salt Lake City vicinity, *Baldwin, Nathaniel, House*, 2374 Evergreen Ave. (05/09/85)

Salt Lake City, *Congregation Montefiore (Jewish Synagogue TR)*, 355 S. Three Hundred E (06/27/85)

Salt Lake City, *Congregation Sharey Tsedek Synagogue (Jewish Synagogue TR)*, 833 S. Two Hundred E (06/27/85)

Sandy, *Jordan School District Administration Building (Public Works Buildings TR)*, 9361 W. Four Hundred E (04/01/85)

Sandy, *Sandy Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 326 S. Two Hundred Eighty E (01/25/85)

Sanpete County

Ephraim, *Dorius, John, Jr., House*, 46 W. One Hundred N (05/09/85)

Ephraim, *Ephraim Carnegie Library (Carnegie Library TR)*, 30 S. Main St. (10/25/84)

Fairview, *Fairview Tithing Office/Bishop's Storehouse (Tithing Offices and Granaries of the Mormon Church TR)*, 60 W. One Hundred S (01/25/85)

Manti, *Manti Carnegie Library (Carnegie Library TR)*, 12 S. Main St. (10/25/84)

Manti, *Manti City Hall*, 191 N. Main (06/27/85)

Manti, *Sanpete County Courthouse (Public Works Buildings TR)*, 160 N. Main St. (04/01/85)

Moroni, *Moroni High School Mechanical Arts Building (Public Works Buildings TR)*, 850 N. Center St. (04/01/85)

Mount Pleasant, *Mount Pleasant Carnegie Library (Carnegie Library TR)*, 24 E. Main St. (10/25/84)

Mount Pleasant, *Mount Pleasant High School Mechanical Arts Building (Public Works Buildings TR)*, 150 N. State St. (04/01/85)

Sevier County

Monroe, *Monroe City Hall (Public Works Buildings TR)*, 10 N. Main St. (04/01/85)

Richfield, *Richfield Carnegie Library (Carnegie Library TR)*, 83 E. Center St. (10/25/84)

Richfield, *Richfield Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 190 W. Center (01/25/85)

Summit County

Hoytsville vicinity, *Birch, Annie, House (Scandinavian-American Pair-Houses TR)*, Off I–80 (10/22/84)

Park City, *Bogan Boarding House (Mining Boom Era Houses TR)*, 221 Main St. (10/22/84)

Park City, *Diem, John, House (Mining Boom Era Houses TR)*, 401 Park Ave. (10/22/84)

Park City, *House at 101 Prospect Street (Mining Boom Era Houses TR)*, 101 Prospect St. (10/22/84)

Park City, *Marsac Elementary School (Public Works Buildings TR)*, 431 Marsac (04/01/85)

Park City, *Rowe, Nicholas, House (Mining Boom Era Houses TR)*, 150 Main St. (10/22/84)

Park City, *Whitehead, Charles C., House (Mining Boom Era Houses TR)*, 937 Park Ave. (10/22/84)

Woodland, *Hewlett, Verner O., Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Tooele County

Stockton, *Stockton Jail*, Off UT 36 (05/09/85)

Tooele, *Tooele Carnegie Library (Carnegie Library TR)*, 47 E. Vine St. (10/29/84)

Uintah County

Vernal, *St. Paul's Episcopal Church and Lodge*, 226 W. Main St. (01/03/85)

Vernal, *Vernal Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, NW Corner of Five Hundred W & Two Hundred S (01/25/85)

Utah County

Camp W.G. Williams, *Camp Williams Hostess House—Officer's Club (Public Works Buildings TR)*, Off UT 68 (04/01/85)

Pleasant Grove, *Johnson, Peter Axel, House (Scandinavian-American Pair-Houses TR)*, 1075 N. One Hundred E (10/22/84)

Pleasant Grove, *Pleasant Grove Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 7 S. Three Hundred E (01/25/85)

Pleasant Grove, *Pleasant Grove Town Hall*, 107 S. One Hundred E (06/27/85)

Provo, *Lakeview Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, Off UT 114 (01/25/85)

Santaquin, *Santaquin Junior High School (Public Works Buildings TR)*, 75 W. One Hundred S (04/01/85)

Spanish Fork, *Spanish Fork Fire Station (Public Works Buildings TR)*, 365 N. Main St. (04/01/85)

Spanish, *Spanish Fork High School Gymnasium (Public Works Buildings TR)*, 300 S. Main St. (04/01/85)

Springville, *Reynolds, John T. and Henry T., Jr., House*, 101 E. Two Hundred S (06/27/85)

Wasatch County

Heber City, *Blackley, George, House*, 421 E. Two Hundred N (06/27/85)

Woodland vicinity, *Hewlett, Lester F. and Margaret Stewart, Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *Stewart Ranch Foreman's House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *Stewart, Barnard J., Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *Stewart, Charles B., Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *Stewart, Samuel W., Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *Stewart—Hewlett Ranch Dairy Barn (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Woodland vicinity, *White, Ethelbert and Stewart, William M., Ranch House (Stewart Ranch TR)*, Off UT 35 (05/23/85)

Washington County

Leeds, *Leeds Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, SW Corner One Hundred W & One Hundred N (01/25/85)

St. George, *St. George Elementary School (Public Works Buildings TR)*, 120 S. One Hundred W (04/01/85)

Wayne County

Bicknell, *Wayne County High School (Public Works Buildings TR)*, 55 N. Center St. (04/01/85)

Loa, *Loa Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, One Hundred W & Center St. (03/28/85)

Teasdale, *Teasdale Tithing Granary (Tithing Offices and Granaries of the Mormon Church TR)*, Off UT 117 (03/28/85)

Weber County

North Ogden, *North Ogden Elementary School (Public Works Buildings TR)*, 474 E. Two Thousand Six Hundred Fifty N (04/01/85)

Ogden, *Congregation B'rith Sholem Synagogue (Jewish Synagogue TR)*, 2750 Grant (06/27/85)

Ogden, *El Monte Golf Course Clubhouse (Public Works Buildings TR)*, 1300 Valley Dr. (04/01/85)

Ogden, *Utah School for the Deaf and Blind Boys' Dormitory (Public Works Buildings TR)*, 846 Twentieth St. (04/01/85/)

VERMONT

Addison County

Leicester, *Stagecoach Inn*, US 7 (11/15/84)

Bennington County

Bennington vicinity, *Old Bennington Historic District*, Roughly bounded by Rutland RR, Monument Ave. & Circle, West Rd., Seminary Lane, Elm & Fairview Sts. (10/04/84)

Dorset, *Dorset Village Historic District*, Roughly bounded by Main & Church Sts. & Dorset Hollow Rd. (04/18/85)

Manchester, *Lawrence, Amos, House*, Richville Rd. (05/21/85)

Chittenden County

Burlington, *Pearl Street Historic District*, Roughly 184 to 415 Pearl St., Orchard Terr., & Winooski Ave. (11/01/84)

Orange County

Randolph, *Kimball Public Library*, 67 Main St. (03/14/85)

Orleans County

Newport, *Orleans County Courthouse and Jail Complex*, Main St. (11/23/84)

Rutland County

Wallingford, *Wallingford Main Street Historic District*, Main & School Sts. (11/01/84)

Washington County

Plainfield, *Gale—Bancroft House*, Brook Rd. (11/15/84)

Windham County

Vernon, *Pond Road Chapel*, Pond Rd., Town Hwy. No. 2 (05/09/85)

Windham, *Windham Village Historic District*, Town Hill Rd. (11/01/84/)

Windsor County

Chester, *Chester Village Historic District*, Roughly bounded by Lovers Lane Brook, Maple St., Williams River, Middle Branch & Lovers Lane (08/08/85)

Weston, *Weston Village Historic District*, Roughly bounded by Main, Park & School Sts., Lawrence Hill, Landgrove & Trout Club Rds., Mill Lane & Chester Mountain Rd. (08/29/85)

VIRGINIA

Accomack County

Scarborough House Archeological Site (44AC4) (05/16/85)

Alexandria (Independent City)

St. Paul's Episcopal Church, 228 S. Pitt St. (05/09/85)

Amelia & Prince Edward Counties

Farmville and Burkeville vicinity, *Sayler's Creek Battlefield*, VA 617, 618, & 619 (NHL) (02/04/85)

Augusta County

Craigsville, *Craigsville School (Public Schools in Augusta County, Virginia 1870–1940 TR)*, Railroad Ave. (02/27/85)

Crimora, *Crimora School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 612 (02/27/85)

Estaline Valley, *Estaline Schoolhouse (Public Schools in Augusta County Virginia 1870–1940)*, VA 601 (02/27/85)

Middlebrook, *Middlebrook High School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 670 (02/27/85)

Middlebrook *Middlebrook School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 670 (02/27/85)

Moscow, *North River High School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 42 (02/27/85)

Mt. Meridian, *Mt. Meridian Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR* VA 865 (02/27/85)

Mt. Sidney, *Mt Sidney School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 11 (02/27/85)

Mt. Solon, *Mt. Zion Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 747 (02/27/85)

New Hope, *New Hope High School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 608 (02/27/85)

Newport, *Moffett's Creek Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 661 (02/27/85)

Newport, *Walker's Creek Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 602 (02/27/85)

Summerdean, *Globe Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 876 (02/27/85)

Swoope, *Intervale*, VA 720 (02/14/85)

Verona, *Verona School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 11 (02/27/85)

Weyers Cave, *West View Schoolhouse (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 774 & 773 (02/27/85)

Weyers Cave, *Weyers Cave School (Public Schools in Augusta County Virginia 1870–1940 TR)*, VA 276 (02/27/85

Bedford (Independent City)

Bedford Historic District, Roughly bounded by Longwood, Bedford, & Mountain Aves., Peaks, Oak, Grove, & Washington Sts. (10/04/84)

Botetourt County

Eagle Rock vicinity, *Bessemer Archeological Site (44 BO 26)*, (12/15/84)

Bristol (Independent City)

Virginia Intermont College, Moore & Harmeling Sts. (10/04/84)

Buckingham County

Gravel Hill *Buckingham Female Collegiate Institute Historic District*, VA 617 (10/04/84)

Charlottesville (Independent City)

Wertland Street Historic District (Charlottesville MRA), Wertland St. between Tenth & Fourteenth Sts. (02/14/85)

Danville (Independent City)

Danville, *Hotel Danville (Municipal Building and City Market)*, 600 Main St. (12/06/84)

Dinwiddie County

Carson vicinity, *Conover Archeological Site* (03/28/85)

Fairfax County

Clifton, *Clifton Historic District*, Roughly bounded by Popes Head Creek, Water St., Dell Ave., Chestnut & Chapel Rds. (08/15/85)

Falls Church (Independent City)

Mount Hope, 203 Oak St. (10/04/84)

Franklin (Independent City)

Franklin Historic District, US 58 & US 258 (05/09/85)

Franklin County

Otter Creek Archeological Site (44F R31) (05/09/85)

Gloucester County

Gloucester Point, *Gloucester Point Archeological District* (08/10/85)

Greensville County

Green, John, Archeological Sites (44 GV1 and 44GV2) (05/09/85)

Hampton (Independent City)

Victoria Boulevard Historic District, Roughly bounded by Sunset Creek, Armistead & Linden Aves., & Bridge St. (10/04/84)

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Henrico County

Glen Allen vicinity, *Walkerton,* Mountain Rd. (12/06/84)

Henry County

Martinsville vicinity *Beaver Creek Plantation,* VA 108 (05/09/85)

Isle of Wight County

Fort Boykin Archeological Site (44IW29) (06/01/85)

Louisa County

Bumpas vicinity, *Jerdone Castle,* N of Bumpas (10/04/84)

Mecklenburg County

Castle Heights vicinity, *Elm Hill Archeological Site* (03/14/85)

Newport News (Independent City)

Hotel Warwick, Twenty-fifth St. & West Ave. (10/04/84)
SS JOHN W. BROWN (steamship), Fort Eustis (03/01/85)

Norfolk (Independent City)

US Post Office and Courthouse, 600 Granby St. (10/10/84)

Portsmouth (Independent City)

Park View Historic District, Roughly bounded by Elm & Parkview Aves., Fort Lane, Blair, & Harrell Sts. (10/04/84)

Richmond (Independent City)

Fan Area Historic District, Roughly bounded by N. Harrison, W. Main, W. Grace & N. Mulberry Sts. (09/12/85)
Randolph School, 300 S. Randolph St. (10/04/84)
Virginia War Memorial Carillon, 1300 Blanton Ave. (10/04/84)

Roanoke (Independent City)

Southwest Historic District, Roughly bounded by Salem Ave., Jefferson St., Roanoke River & Twentieth St. (06/19/85)

Rockingham County

Bridgewater, *Bridgewater Historic District,* Roughly Main St. from North River to Crawford Ave., E. College from Dice St. to College, Gravel Lane & Bank St. (11/01/84)
Broadway, *Bethlehem Church,* VA 798 (06/25/85)
Harrisonburg vicinity, *Inglewood,* VA 753 (05/30/85)

Scott County

Maces Spring vicinity, *Carter, A.P. and Sara, House (Carter Family TR),* Rt. 614 (06/12/85)
Maces Spring vicinity, *Carter A.P., Store (Carter Family TR),* Rt. 614 (06/14/85)
Maces Spring vicinity, *Carter, Maybelle and Ezra, House (Carter Family TR),* Rt. 614 (06/12/85)
Maces Spring vicinity, *Mt. Vernon Methodist Church (Carter Family TR),* Rt. 614 (06/12/85)

Staunton (Independent City)

Gospel Hill Historic District, Roughly bounded by E. Beverly, N. Market, E. Frederick & Kalorama Sts. (02/14/85)

Tazewell County

Cedar Bluff, *Clinch Valley Roller Mills,* River Street Dr. (10/04/84)

Waynesboro (Independent City)

Fishburne Military School, 225 S. Wayne Ave. (10/04/84)

Wythe County

Fosters Falls vicinity, *Graham, Maj. David, House,* VA 619 & 620 (02/14/85)

WASHINGTON

Douglas County

Waterville, *Waterville Hotel,* 102 S. Central St. (10/18/84)
Palouse Canyon Archeological District (10/29/84)

Franklin County

Tri-Cities Archeological District (10/29/84)

Franklin-Walla Walla Counties

Lower Snake River Archeological District (10/29/84)
Windust Caves Archeological District (10/29/84)

Grays Harbor County

Hoquiam, *McTaggart, Lachlin, House,* 224 L St. (08/29/85)

Jefferson County

Seal Rock Shell Mounds 45JE15 (06/12/85)
Chimacum, *Bishop, Senator William, House and Office (Eastern Jefferson County MRA),* Chimacum-Center Rd. (10/10/84)
Chimacum, *Van Trojen House (Eastern Jefferson County MRA),* Van Trojen Rd. (10/10/84)
Nordland vicinity, *Nelson House (Eastern Jefferson County MRA),* Freeman Rd. (10/10/84)
Port Townsend, *Bash, Henry, House (Victorian Residences in Port Townsend TR),* 718 F St. (05/16/85)
Port Townsend, *Coleman—Furlong House (Victorian Residences in Port Townsend TR),* 1253 Umatilla Ave. (05/16/85)
Port Townsend, *Edwards, Joel, House (Victorian Residences in Port Townsend TR),* 913 Twenty-fifth St. (05/16/85)
Port Townsend, *Fitzgerald, Thomas, House (Victorian Residences in Port Townsend TR),* 862 T St. (05/16/85)
Port Townsend, *Griffiths, J.W., House (Victorian Residences in Port Townsend TR),* 2030 Monroe St. (05/16/85)
Port Townsend, *Harper, F.C., House (Victorian Residences in Port Townsend TR),* 502 Reed St. (05/16/85)
Port Townsend, *House at 1723 Holcomb Street (Victorian Residences in Port Townsend TR),* 1723 Holcomb St. (05/16/85)
Port Townsend, *House at 30 Tremont Street (Victorian Residences in Port Townsend TR),* 30 Tremont St. (05/16/85)
Port Townsend, *House at 503 Fir Street (Victorian Residences in Port Townsend TR),* 503 Fir St. (05/16/85)
Port Townsend, *Lake—Little House (Victorian Residences in Port Townsend TR),* 1667 Sheridan St. (05/16/85)
Port Townsend, *Laubach, J.N., House (Victorian Residences in Port Townsend TR),* 613 F St. (05/16/85)
Port Townsend, *Morgan, O. L. and Josephine, House (Victorian Residences in Port Townsend TR),* 1033 Pierce St. (05/16/85)
Port Townsend, *Pearson House (Victorian Residences in Port Townsend TR),* 1930 Twenty-seventh St. (05/16/85)
Port Townsend, *Petersen, H.S., House (Victorian Residences in Port Townsend TR),* Fiftieth & Kuhn St. (05/16/85)
Port Townsend, *Pettygrove, Benjamin S., House (Victorian Residences in Port Townsend TR),* 1000 G St. (09/25/85)
Port Townsend, *Ralston, Judge, House (Victorian Residences in Port Townsend TR),* 1523 Madison St. (05/16/85)
Port Townsend, *Schlager, Ferdinand, House (Victorian Residences in Port Townsend TR),* 819 Rose St. (05/16/85)
Port Townsend, *Stegerwald, Andrew, House (Victorian Residences in Port Townsend TR),* 1710 Fir St. (05/16/85)
Port Townsend, *Trumbull, John, House (Victorian Residences in Port Townsend TR),* 925 Wilson St. (05/16/85)
Port Townsend, *Ward, Milo P., House (Victorian Residences in Port Townsend TR),* 1707 Jackson St. (05/16/85)

King County

Seattle, *Guiry and Schillestad Buildings,* 2101–2111 First Ave. (08/28/85)
Seattle, *Seattle Electric Company Georgetown Steam Plant,* King County Airport (NHL) (07/05/84)

Pierce County

Sumner, *Williams, Herbert, House,* 1711 E. Elm St. (10/18/84)
Sumner, *Williams, Sidney, House,* 15006 E. Elm St. (10/18/84)
Tacoma, *Engine House No. Four,* 220–224 E. Twenty-sixth St. (10/18/84)
Tacoma, *Murray, Frederick H., House,* 402 N. Sheridan Ave. (08/23/85)
Tacoma, *Pythian Temple,* 924–926 ½ Broadway (08/23/85)
Tacoma, *Rust, William Ross, House,* 1001 N. I St. (08/23/85)
Tacoma, *Sunset Telephone & Telegraph Building,* 1101 Fawcett Ave. (08/23/85)
Tacoma, *Yuncker, John F., House,* 519 S. G St. (08/23/85)

Spokane County

Upper Kepple Rockshelters (45SP7) (07/28/85)
Spokane, *Smith, Edwin A., House,* North 1414 Summit Blvd. (08/23/85)
Spokane, *Spokane City Hall Building,* N. 221 Wall St. & W. 711 Spokane Falls Blvd. (02/21/85)

Thurston County

Olympia, *Meyer House,* 1136 E. Bay Dr. (02/21/85)

Yakima County

Yakima, *Gilbert, H.M., House,* 2109 W. Yakima Ave. (08/23/85)
Yakima, *LaFramboise Farmstead,* 5204 Mieras Rd. (02/28/85)
Zillah vicinity, *Teapot Dome Service Station,* Old WA Hwy. 12 (08/29/85)

WEST VIRGINIA

Berkeley County

Baker Heights vicinity, *Kearfott—Bane House,* SR 36/1 (07/08/85)
Bunker Hill vicinity, *Morgan—Gold House,* SR 26 (07/08/85)
Gerrardstown vicinity, *Wilson, Mary Park, House,* SR 51/2 (07/08/85)
Gerrardstown, *Hays—Gerrard House,* Congress St. (09/16/85)
Hedgesville vicinity, *Hughes—Cunningham House,* Harlan Springs Rd. (07/08/85)
Martinsburg vicinity, *Seibert, Henry J., II, House,* Off WV 45 (07/08/85)
Smoketown vicinity, *Rush—Miller House,* Off WV 45 (07/08/85)

Cabell County

Huntington, *Campbell—Hicks House,* 1102 Fifth Ave. (08/19/85)

Fayette County

Ansted, *Page—Vawter House,* Rt. 2, Box 20 (08/21/85)

Hampshire County

Romney vicinity, *Kuykendall Polygonal Barn (Round and Polygonal Barns of West Virginia TR),* River Rd. (07/09/85)

Hardy County

Moorefield vicinity, *Oakland Hall (South Branch Valley MRA),* US 220 (07/10/85)
Moorefield vicinity, *Westfall Place (South Branch Valley MRA),* US 220 (07/10/85)
Moorefield vicinity, *Wilson—Kuykendall Farm (South Branch Valley MRA),* US 220 (07/10/85)
Moorefield, *Inskeep, P.W., House (South Branch Valley MRA),* WV 55 (07/10/85)
Old Fields vicinity, *Buena Vista Farms (South Branch Valley MRA),* US 220 (07/10/85)
Petersburg vicinity, *Hickory Hill (South Branch Valley MRA),* US 220 (07/10/85)

Harrison County

Clarksburg, *Quality Hill Historic District,* East Main St. (08/22/85)

Jackson County

Silverton vicinity, *Rankin Octagonal Barn (Round and Polygonal Barns of West Virginia TR),* CR 3 (07/09/85)

Jefferson County

Harper's Ferry vicinity, *Allstadt House and Ordinary,* Off US 340 (04/09/85)
Harpers Ferry, *Lee—Longsworth House,* 1141 Washington St. (09/23/85)

Kanawha County

Charleston, *Barnes—Wallford House (South Hills MRA),* 66 Abney Circle (10/26/84)
Charleston, *Bird Haven (South Hills MRA),* 733 Myrtle Rd. (10/26/84)
Charleston, *Bougemont Complex (South Hills MRA),* Bougemont Dr. (10/26/84)
Charleston, *Briarwood (South Hills MRA),* 1240 Staunton Rd. (10/11/84)
Charleston, *Chesapeake and Ohio Depot (South Hills MRA),* 305 MacCorkle Ave. (10/26/84)
Charleston, *Chilton, W.E. II, House (South Hills MRA),* 1266 Louden Heights Rd. (10/26/84)
Charleston, *Cox—Morton House (South Hills MRA),* 640 Holley Rd. (10/26/84)
Charleston, *Cox—Parks House (South Hills MRA),* 710 Myrtle Rd. (10/26/84)
Charleston, *Crawford—Gardner House (South Hills MRA),* 743 Myrtle Rd. (10/26/84)
Charleston, *Dalgain (South Hills MRA),* 1223 Staunton Rd. (10/26/84)
Charleston, *Danner—Fletcher House (South Hills MRA),* 626 Holley Rd. (10/26/84)
Charleston, *Gilliland, William S., Log Cabin and Cemetery (South Hills MRA),* Louden Heights & Bridge Rd. (10/26/84)
Charleston, *McAndrews—Galloher House (South Hills MRA),* 601 Briarwood Rd. (10/26/84)
Charleston, *Stoneleigh (South Hills MRA),* 909 Ridgeway Rd. (10/26/84)
Charleston, *Thomas—McJunkin—Love House (South Hills MRA),* 920 Newton Rd. (10/26/84)

Lewis County

Camden vicinity, *St. Bernard Church and Cemetery,* CR 20/6 & CR 17/2 (07/12/85)
Weston, *Weston Downtown Historic District,* Parts of Main, Center & Court Aves., Second & Third Sts., (09/26/85)

Marion County

Mannington vicinity, *Hamilton Round Barn (Round and Polygonal Barns of West Virginia TR),* CR 11 (07/09/85)

Mason County

Point Pleasant, *Point Pleasant Historic District,* Main St. between First & Eleventh & Viand St. between Eighth & Tenth (07/01/85)

Monongalia County

Morgantown, *Brown Building,* 295 High St. (07/08/85)
Morgantown, *Monongalia County Courthouse,* 243 High St. (07/08/85)
Morgantown, *Rogers House,* 293 Willey St. (12/04/84)
Smithtown, *Old Watson Homestead House,* SR 73 (12/07/84)

Monroe County

Union, *Echols, Brigadier General John, House,* Elmwood & Second St. N (06/27/85)

Pendleton County

Sugar Grove, *Bowers House (South Branch Valley MRA),* Brandywine-Sugar Grove Rd. (07/10/85)
Upper Tract, *Cunningham—Hevener House (South Branch Valley MRA),* US 220 (07/10/85)

Pocahontas County

Mill Point, *McNeel Mill,* US 219 (08/08/85)

Randolph County

Elkins vicinity, *Elkins Round Barn (Round and Polygonal Barns of West Virginia TR),* US 219 (07/09/85)

Summers County

Pence Springs, *Pence Springs Hotel Historic District,* Roughly bounded by Buggy Branch, Buggy Branch Rd., WV 3 & Pence Springs Access Rd. (02/27/85)

WISCONSIN

Barron County

Haugen, *ZCBJ Hall,* 320 W. Third St. (04/11/85)

Burnett County

Webster vicinity, *Yellow River Swamp Site 47-Bt-36* (02/28/85)

Chippewa County

Chippewa Falls, *Sheeley House,* 236 W. River St. (09/05/85)

Clark County

Neillsville, *Grand Avenue Bridge,* Grand Ave. (12/06/84)

Columbia County

Wisconsin Dells, *Wawbeek—Upham, Horace A.J., House,* WI 13 (06/19/85)

Crawford County

Prairie du Chien, *Folsom, W.H.C., House,* 109 Blackhawk Ave. (12/06/84)

Dane County

Madison, *Agricultural Chemistry Building,* 420 Henry Mall on University of Wisconsin Campus (06/19/85)
Madison, *Agricultural Engineering Building,* 460 Henry Mall, University of Wisconsin Campus (06/27/85)
Madison, *Agricultural Heating Station,* 1535 Observatory Dr., University of Wisconsin (03/14/85)
Madison, *Agriculture Hall,* 1450 Linden Dr., University of Wisconsin (03/14/85)
Madison, *Commons, John R., House,* 1645 Norman Way (03/14/85)
Madison, *Hiram Smith Hall and Annex,* 1545 Observatory Dr., University of Wisconsin (03/14/85)
Madison, *Horticulture and Agricultural Physics and Soil Science Building,* 1525 Observatory Dr., University of Wisconsin (03/14/85)
Madison, *Lathrop Hall,* 1050 University Ave., University of Wisconsin Campus (07/11/85)
Madison, *Old US Forest Products Laboratory,* 1509 University of Wisconsin Campus (09/12/85)
Madison, *Stock Pavilion,* 1675 Linden Dr., University of Wisconsin Campus (07/11/85)
Madison, *Washburn Observatory and Observatory Director's Residence,* 1401 & 1225 Observatory Dr., University of Wisconsin (03/14/85)
Madison, *West Madison Depot, Chicago, Milwaukee, and St. Paul Railway,* 640 W. Washington Ave. (05/09/85)
McFarland, *Lewis Mound Group (47–Da–74),* Burma Rd. (12/15/84)
McFarland, *Siggelkow Park Mound Group (47–Da–504),* Siggelkow Rd. (03/14/85)
Stoughton, *Naeset, Jens, House,* 126 E. Washington (03/14/85)
Stoughton, *South School,* 1009 Summit Ave. (09/12/85)

Door County

Ephraim, *Anderson Dock Historic District (Ephraim MRA),* Roughly bounded by

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Anderson Lane & North Water St. (06/11/85)

Ephraim, *Ephraim Moravian Church (Ephraim MRA)*, 9970 Moravia St. (03/27/85)

Ephraim, *Ephraim Village Hall (Ephraim MRA)*, 9996 S. Water St. (03/27/85)

Ephraim, *Free Evangelical Lutheran Church (Ephraim MRA)*, 3028 Church St. (03/27/85)

Ephraim, *Gibraltar District School No. Two and Goodletson, Thomas, Cabin (Ephraim MRA)*, 9988 Moravia St. (06/11/85)

Ephraim, *Hillside Hotel (Ephraim MRA)*, 9980 S. Water St. (03/27/85)

Ephraim, *Peterson, Peter, House (Ephraim MRA)*, 10029 N. Water St. (03/27/85)

Fish Creek, *Church of the Atonement*, Fire No. 9410 (03/07/85)

Sturgeon Bay, *Larson, L.A., & Co. Store*, 308 S. Third Ave. (06/19/85)

Washington Island vicinity, *Thordarson Estate Historic District (Chester H. Thordarson Estate TR)*, Rock Island State Park (03/21/85)

Washington Island vicinity, *Water Tower (Chester H. Thordarson Estate TR)*, Rock Island State Park (03/21/85)

Douglas County

Superior, *Barshire Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 917–927 Tower Ave. (06/27/85)

Superior, *Empire Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1208–1298 Tower Ave. (06/27/85)

Superior, *Maryland Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1221–1227 Tower Ave. (06/27/85)

Superior, *Massachusetts Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1525–1531 Tower Ave. (06/27/85)

Superior, *Minnesota Block—Board of Trade Bldg. (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1501–1511 Tower Ave. (06/27/85)

Superior, *New York Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1408–1412 Tower Ave. (06/27/85)

Superior, *Northern Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 2229 East Fifth St. (06/27/85)

Superior, *Washington Block (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1517–1523 Tower Ave. (06/27/85)

Superior, *Wemyss Building (Speculative Commercial Blocks of Superior's Boom Period 1888–1892 TR)*, 1301–1305 Tower Ave. (06/27/85)

Eau Claire County

Eau Claire, *Merrill, Levi, House (Eau Claire MRA)*, 120 Ferry St. (06/20/85)

Grant County

Lancaster, *Arthur, L.J., House*, 210 N. Jefferson St. (09/06/85)

Platteville,, *Agriculture and Manual Arts Building—Platteville State Normal School*, University of Wisconsin, Platteville (03/14/85)

Platteville, *First Congregational Church*, 80 Market (06/18/85)

Green County

Brodhead, *Exchange Square Historic District*, Roughly bounded by Tenth, RR tracks, E. Second, & W. Third Aves. (11/15/84)

Jefferson County

Haight Creek Mound Group (47–Je–38) (06/05/85)

Jefferson, *Jefferson Fire Station*, 146 E. Milwaukee St. (12/06/84)

Palmyra, *McKenzie, Monroe, House*, 228 Main St. (06/19/85)

Watertown, *Beals and Torrey Shoe Co. Building*, 100 W. Milwaukee St. (12/06/84)

La Crosse County

Swennes Archeological District (07/18/85)

LaCrosse, *Physical Education Building—La Crosse State Normal School*, University of Wisconsin, La Crosse Campus off US 16 (04/11/85)

LaCrosse, *Main Hall—La Crosse State Normal School*, 1724 State St., University of Wisconsin, La Crosse (03/14/85)

LaCrosse, *Wisconsin Telephone Company Building*, 125 N. Fourth St. (03/07/85)

LaCrosse, *Barron, E.R., Building*, 426–430 Main St. (06/19/85)

LaCrosse, *Christ Church of LaCrosse*, 831 Main St. (06/19/85)

Milwaukee County

Fox Point, *Meyer, Starke, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7896 N. Club Circle (09/12/85)

Milwaukee, *American System Built Homes—Burnham Street District*, W. Burnham St. (09/12/85)

Milwaukee, *Concordia Historic District (West Side Area MRA)*, Roughly bounded by West State, N. Twenty-seventh, W. Killbourn Ave. & N. Thirty-fifth St. (07/30/85)

Milwaukee, *Fiebing, Otto F., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 302 N. Hawley Rd. (09/12/85)

Milwaukee, *Highland Boulevard Historic District (West Side Area MRA)*, W. Highland Blvd. roughly bounded by N. Thirty-third & N. Twenty-ninth Sts. (07/30/85)

Milwaukee, *Hoelz, Alfred M., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 3449–3451 Frederick Ave. (09/12/85)

Milwaukee, *McKinley Boulevard Historic District (West Side Area MRA)*, W. McKinley Blvd. between N. Thirty-fourth & N. Twenty-seventh Sts. (07/30/85)

Milwaukee, *Milwaukee County Dispensary and Emergency Hospital*, 2430 W. Wisconsin Ave. (03/21/85)

Milwaukee, *Oneida Street Station*, 108 W. Wells & 810 N. Edison Sts. (12/06/84)

Milwaukee, *Steinmeyer, William, Houses (Brewers' Hill MRA)*, 1710–1722 N. Fifth St. (10/11/84)

Shorewood, *Bossert, Thomas, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 2814 E. Menlo Blvd. (09/12/85)

Shorewood, *Cards, Erwin, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1913 E. Olive St. (09/12/85)

Shorewood, *Hatch, Seneca W. & Bertha, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 3821 N. Prospect Ave. (09/12/85)

Shorewood, *Meyer, Henry A., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 3559 N. Summit Ave. (09/12/85)

Shorewood, *Morgan, George E., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4448 N. Maryland Ave. (09/12/85)

Wauwatosa, *Bovis, H.R., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 6839 Cedar St. (09/12/85)

Wauwatosa, *Fiebing, J.H., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7707 Stickney (09/12/85)

Wauwatosa, *George, Warren B., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 7105 Grand Pkwy. (09/12/85)

Wauwatosa, *Hopkins, Willis, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 325 Glenview (09/12/85)

Wauwatosa, *Norton, Pearl C., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 2811 Church St. (09/12/85)

Whitefish Bay, *Arndt, Rufus, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4924 N. Cramer St. (09/12/85)

Whitefish Bay, *Barfield—Staples House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 5461–5469 Danbury Rd. (09/12/85)

Whitefish Bay, *Gabel, George, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4600 N. Cramer St. (09/12/85)

Whitefish Bay, *Grant, Paul S., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 984 E. Circle Dr. (09/12/85)

Whitefish Bay, *Hardie, Harrison, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4540 N. Cramer St. (09/12/85)

Whitefish Bay, *Hatch, Horace W., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 739 E. Beaumont (09/12/85)

Whitefish Bay, *Jenkins, Halbert D., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1029 E. Lexington Blvd. (09/12/85)

Whitefish Bay, *McEwens, John F., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 829 E. Lake Forest (09/12/85)

Whitefish Bay, *Sperling, Frederick, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1016 E. Lexington Blvd. (09/12/85)

Whitefish Bay, *Van Altena, William, House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 1919 E. Glendale (09/12/85)

Whitefish Bay, *Van Devan, G.B., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 4601 N. Murray Ave. (09/12/85)

Whitefish Bay, *Williams, Frank J., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR)*, 912 E. Lexington Blvd. (09/12/85)

Oconto County

Oconto, *St. Mark's Episcopal Church, Guild Hall and Vicarage*, 408 Park Ave. (09/01/85)

Outagamie County

Appleton, *Masonic Temple*, 330 E. College Ave. (09/12/85)

Price County

Park Falls, *Flambeau Paper Company Office Building*, 200 N. First Ave. (09/12/85)

Phillips, *Bloom's Tavern, Store and House*, 396 S. Avon Ave. (03/07/85)

Prentice, *Prentice Co-operative Creamery Company*, 700 Main St. (09/12/85)

Racine County

Racine, *US Office—Racine*, 603 Main St. (05/08/85

Rock County

Beloit, *Clark—Brown House (Cobblestone Buildings of Rock County TR)*, 3457 Riverside Dr. (09/13/85)

Beloit, *Murray—George House (Cobblestone Buildings of Rock County TR)*, SR P (09/13/85)

Clinton, *Citizens Bank (Clinton MRA)*, Front & Allen Sts. (08/01/85)

Clinton, *Clinton Village Hall (Clinton MRA)*, 301 Cross St. (08/01/85)

Clinton, *Clinton Water Tower (Water Works Structures of Rock County—19th Century TR)*, High St. (03/07/85)

Clinton, *Crosby Block (Clinton MRA)*, 102 Allen St. (08/01/85)

Clinton, *DeLong, Homer B., House (Clinton MRA)*, 500 Milwaukee Rd. (08/01/85)

Clinton, *Pangborn, J.L., House (Clinton MRA)*, 300 Allen St. (08/01/85)

Clinton, *Smith, John, House (Clinton MRA)*, 312 Pleasant St. (08/01/85)

Clinton, *Taylor, A.E., House (Clinton MRA)*, 318 Durand St. (08/01/85)

Janesville, *Janesville Pumping Station (Water Works Structures of Rock County—19th Century TR)*, 500 blk. River St. (03/07/85)

Tiffany, *Stark—Clint House (Cobblestone Buildings of Rock County TR)*, Creek Rd. (09/13/85)

Sauk County

Reedsburg, *Chicago and North Western Depot (Reedsburg MRA)*, Railroad St. (12/26/84)

Reedsburg, *City Hotel (Reedsburg MRA)*, 125 Main St. (12/26/84)

Reedsburg, *Hackett, Edward M., House (Reedsburg MRA)*, 612 E. Main St. (12/26/84)

Reedsburg, *Harris, Abner L., House (Reedsburg MRA)*, 226 N. Pine St. (12/26/84)

Reedsburg, *Main Street Commercial Historic District (Reedsburg MRA)*, Roughly bounded by N. Park, S. Park, N. Walnut, & S. Walnut Sts. on Main (12/26/84)

Reedsburg, *Park Street Historic District (Reedsburg MRA)*, On N. Park St. roughly bounded by Sixth, Locust, N. Pine & Main St. (12/26/84)

Reedsburg, *Reedsburg Brewery (Reedsburg MRA)*, 401 N. Walnut St. (12/26/84)

Reedsburg, *Reedsburg Woolen Mill Office (Reedsburg MRA)*, 26 Main St. (12/26/84)

Reedsburg, *Riggert, William, House (Reedsburg MRA)*, 547 S. Park St. (12/26/84)

Reedsburg, *Stolte, William, Jr., House (Reedsburg MRA)*, 432 S. Walnut St. (12/26/84)

Reedsburg, *Stolte, William, Sr., House (Reedsburg MRA)*, 444 S. Walnut St. (12/26/84)

Sheboygan County

Adell, *Gooseville Mill—Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Silver Creek—Cascade Rd. (12/27/84)

Franklin, *Franklin Feed Mill (19th Century Grist and Flour Mills of Sheboygan County TR)*, Franklin Rd. (04/11/85)

Glenbeulah, *Glenbeulah Mill—Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Gardner St. (12/27/84)

Greenbush, *Robinson, Charles, House*, Center St., Old Wade House State Park (12/20/84)

Greenbush, *Robinson—Herrling Sawmill*, Old Wade House State Park (12/27/84)

Sheboygan Falls, *Downtown Historic District*, Roughly bounded by Broadway, Monroe, Pine, & Buffalo Sts., & the Sheboygan River (12/27/84)

Town Herman, *Mission House Historic District*, County Trunk M (12/20/84)

Waldo, *Onion River Flouring Mill—Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Hwy. 57 (12/27/84)

St. Croix County

Hudson, *Darling, Frederick L., House (Hudson and North Hudson MRA)*, 617 Third St. (10/04/84)

Hudson, *Dwelley, William, House (Hudson and North Hudson MRA)*, 1002 Fourth St. (10/04/84)

Hudson, *Hudson Public Library (Hudson and North Hudson MRA)*, 304 Locust St. (10/04/84)

Hudson, *Humphrey, Herman L., House (Hudson and North Hudson MRA)*, 803 Orange St. (10/04/84)

Hudson, *Johnson, August, House (Hudson and North Hudson MRA)*, 427 St. Croix St. (10/04/84)

Hudson, *Johnson, Dr. Samuel C., House (Hudson and North Hudson MRA)*, 405 Locust St. (10/04/84)

Hudson, *Lewis—Williams House (Hudson and North Hudson MRA)*, 101 Third St. (01/02/85)

Hudson, *Merritt, Samuel T., House (Hudson and North Hudson MRA)*, 904 Seventh St. (10/04/84)

Hudson, *Second Street Commercial District (Hudson and North Hudson MRA)*, Roughly bounded by First, Second, Walnut, & Locust Sts. (10/04/84)

Hudson, *Sixth Street Historic District (Hudson and North Hudson MRA)*, Roughly, Sixth St. between Myrtle & Vine Sts. (10/04/84)

Hudson, *Williams, T.E., Block (Hudson and North Hudson MRA)*, 321 Second St. (10/04/84)

North Hudson, *Chicago, St. Paul, Minneapolis and Omaha Railroad Car Shop Historic District (Hudson and North Hudson MRA)*, Roughly bounded by Gallahad Rd., Summer, Fourth & St. Croix Sts. (10/04/84)

Trempealeau County

Galesville, *Second Street Bridge (Galesville MRA)*, Second St. (12/12/84)

Trempealeau, *Coman House (Trempealeau MRA)*, 561 Third St. (11/15/84)

Trempealeau, *Main Street Historic District (Trempealeau MRA)*, Roughly Main St. between First & Third Sts. (11/15/84)

Trempealeau, *Melchoir Hotel and Brewery Ruins (Trempealeau MRA)*, First St. (11/15/84)

Walworth County

Delavan, *Allyn, A.H., House*, 513 E. Walworth Ave. (09/05/85)

Whitewater, *East Wing—Old Main*, University of Wisconsin (12/13/84)

Whitewater, *Halverson Log Cabin*, University of Wisconsin, Whitewater Campus (01/08/85)

Washington County

West Bend, *Frisby, Leander F., House* (304 S. Main St. (06/19/85)

Waukesha County

Oconomowoc, *National Guard Armory 127th Regiment Infantry Company G*, 108 E. Jefferson & Main Sts. (12/06/84)

Waupaca County

King, *Commandant's Residence Home (Wisconsin Home for Veterans TR)*, Off WI 22 (06/19/85)

King, *Old Hospital (Wisconsin Home for Veterans TR)*, Off WI 22 (06/19/85)

King, *Veterans Cottages Historic District (Wisconsin Home for Veterans TR)*, Off WI 22 (06/19/85)

King, *Veterans Home Chapel (Wisconsin Home for Veterans TR)*, Off WI 22 (06/19/85)

Winnebago County

Menasha, *Doty Island (47–WN–30)*, Smith Park Off WI 114 (06/20/85)

Menasha, *Upper Main Street Historic District*, 163–340 Main, 3 Mill, 56 Racine, & 406 Water Sts. (12/06/84)

Omro, *Omro High School, Annex and Webster Manual Training School*, 515 S. Webster St. (06/19/85)

Oshkosh, *Orville Beach Memorial Manual Training School*, 240 Algoma Blvd. (09/12/85)

Oshkosh, *Oshkosh State Normal School Historic District*, Buildings at 800, 842, & 912 Algoma Blvd., & 845 Elmwood Ave. (12/06/84)

Oshkosh, *Pollock, William E., Residence*, 765 Algoma Blvd. (12/06/84)

Oshkosh, *Wall, Thomas R., Residence*, 751 Algoma Blvd. (12/06/84)

WYOMING

Albany County

Bosler vicinity, *DOE Bridge over Laramie River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CNA–740 (02/22/85)

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Big Horn County

Greybull vicinity, *Lower Shell School House*, US 14 (02/07/85)
Hyattville vicinity, *EJP County Line Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, Rd. CN9-60 (02/22/85)
Lovell vicinity, *EJZ Bridge over Shoshone River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN9-111 (02/22/85)
Manderson vicinity, *Rairden Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, S of Big Horn, CR CN9-30 (02/22/85)
Shell vicinity, *EJE Bridge over Shell Creek (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN9-57 (02/22/85)

Carbon County

Elk Mountain vicinity, *DFU Elk Mountain Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR 120-1 (02/22/85)
Encampment vicinity, *DML Butler Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN6-208 (02/22/85)
Rawlins, *Downtown Rawlins Historic District*, Roughly Second to Sixth Sts. & Front to Buffalo Sts. (05/16/85)
Saratoga vicinity, *DMJ Pick Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, Rd. CN6-608 (Pick Bridge Rd.) (02/22/85)

Crook County

Hulett vicinity, *DXN Bridge over Missouri River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR 18-200 (02/22/85)

Fremont County

Atlantic City, *Atlantic City Mercantile*, Rt. 62, Box 260 (04/25/85)
Dubois vicinity, *ELS Bridge over Big Wind River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN10-21 (02/22/85)
Ethete vicinity, *BMU Bridge over Wind River (Vehicular Truss and Arch Bridges in Wyoming TR)*, WY 132 (02/22/85)
Morton vicinity, *ELY Wind River Diversion Dam Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN10-24 (02/22/85)

Hot Springs County

Thermopolis vicinity, *CQA Four Mile Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, WY 173 (02/22/85)
Thermopolis vicinity, *EFP Bridge over Owl Creek (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN 15-28 (02/22/85)

Johnson County

Buffalo vicinity, *EDL Peloux Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN16-40 (02/22/85)
Buffalo vicinity, *HF Bar Ranch Historic District*, NW of Buffalo (11/07/84)
Buffalo, *Union Congregational Church and Parsonage*, 110 Bennett St. (02/07/85)
Kaycee vicinity, *AJX Bridge over South Fork and Powder River (Vehicular Truss and Arch Bridges in Wyoming TR)*, 1-25 W. Service Rd. (old hwy. 87) (02/22/85)
Sussex vicinity, *EDZ Irigary Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN16-254 (02/22/85)

Laramie County

Cheyenne, *Boeing—United Airlines Terminal Building, Hangar and Fountain*, 200 E. Eight Ave. (02/07/85)
Cheyenne, *Masonic Temple*, 1820 Capitol Ave. (10/25/84)
Cheyenne, *Rainsford Historic District*, Roughly bounded by Morrie, Twentieth, Warren, & Seventeenth Sts. (11/06/84)

Lincoln County

Kemmerer, *Lincoln County Courthouse*, Sage & Garnet Sts. (11/08/84)

Natrona County

Bessemer Bend, *DUX Bessemer Bend Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN1-58 (02/22/85)

Niobrara County

Riverview vicinity, *DSD Bridge over Cheyenne River (Vehicular Truss and Arch Bridges in Wyoming)* CR CN14-40 (02/22/85)

Park County

Canyon Village, *Lake Fish Hatchery Historic District (Yellowstone National Park MRA)*, Yellowstone National Park (06/25/85)
Cody vicinity, *Hayden Arch Bridge (Vehicular Truss and Arch Bridges in Wyoming)* Old US 14/16 (02/22/85)

Platte County

Wheatland vicinity, *EWZ Bridge over East Channel of Laramie River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN8-204 (02/22/85)

Sheridan County

Arvada vicinity, *CKW Bridge over Powder River (Vehicular Truss and Arch Bridges in Wyoming TR)*, US 14/16 (02/22/85)
Arvada vicinity, *EAU Arvada Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN3-38 (02/22/85)
Leiter vicinity, *EBF Bridge over Powder River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN3-289 (02/22/85)
Monarch vicinity, *ECR Kooi Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN3-63 (02/22/85)
Sheridan vicinity, *ECS Bridge over Big Goose Creek (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN3-93 (02/22/85)
Ucross, *Big Red Ranch Complex*, Off US 14/16 (10/11/84)

Sublette County

Boulder vicinity, *DDZ Bridge over New Fork River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR 136 (02/22/85)
Boulder vicinity, *Steele Homestead*, WY 191 (04/25/85)
Daniel vicinity, *ENP Bridge over Green River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN23-145 (02/22/85)

Sweetwater County

Fontenelle, *ETD Bridge over Green River (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN4-8SS (02/22/85)
Green River vicinity, *ETR Big Island Bridge (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN4-4 (02/22/85)
McKinnon vicinity, *Stewart, Elinore Pruitt, Homestead*, off WY 414 (04/25/85)

Uinta County

Evanston vicinity, *Young, Brigham, Oil Well*, (04/25/85)
Evanston, *Union Pacific Railroad Complex*, Main & Fifteenth Sts. (02/06/85)
Fort Bridger vicinity, *ERT Bridge over Black's Fork (Vehicular Truss and Arch Bridges in Wyoming TR)*, CR CN19-217 (02/22/85)

The following properties have been demolished and/or removed from the National Register of Historic Places.

ARIZONA

Apache County

St. Johns, *Barth Hotel*, 187 E. Commercial (02/25/85)

Pima County

Tucson, *Hotel Heidel*, 345 E. Toole Ave. (12/13/85)

DISTRICT OF COLUMBIA

Washington, *Bank of Columbia*, 3210 M St., NW (04/06/83)

FLORIDA

Pinellas County

Tarpon Springs, *Tarpon Springs Sponge Exchange*, Dodecanese St. (11/05/84)

INDIANA

Cass County

Logansport, *Washington School*, 101 N. Cicott St. (02/01/85)

Madison County

Elwood, *Elwood Passenger and Freight Depot*, Sixteenth & S. B Sts. (03/05/84)

Marshall County

Plymouth, *Marshall County Jail*, 601 N. Center St. (11/01/84)

Owen County

Gosport, *New Albany and Salem Railroad Station*, E end of North St., along White River (10/13/83)

Union County

Liberty, *Grove, Dr. John, House and Office*, 23, 25, & 27 S. Market St. (07/19/85)

Vanderburgh County

Evansville, *Louisville and Nashville Railroad Station*, 300 Fulton Ave. (06/14/85)

KANSAS

Ellis County

Hays, *Madden Elevator*, 117 E. Ninth (01/02/85)

MAINE

Penobscot County

Bangor, *Pierce Building*, 23—37 Franklin St. (03/09/84)

RHODE ISLAND

Washington County

North Kingstown, *Lischio Archeological Site RI-1000* (06/28/85)

TENNESSEE

Maury County

Columbia vicinity, *Cherry Glen*, SW of Columbia off US 43 (06/10/85)

Monroe County

Vonore, *McGhee Mansion*, E of Vonore on Fort Loudoun Rd. (01/25/85)

Shelby County

Memphis, *Stephens-Cochran House*, Poplar Ave. (01/17/85)

WISCONSIN

Bayfield County

Bayfield, *Reitan Boatyard*, Broad St. at the waterfront (06/15/84)

Kewaunee County

Casco vicinity, *Massart Farmstead*, N of Casco on SR C (12/30/84)

LaCrosse County

West Salem, *West Salem Village Hall*, 103 S. Leonard St. (06/15/84)

Rock County

Milton, *Goodrich, Elijah, Wheat Warehouse (Grout Buidings in Milton TR)*, 602 E. Madison Ave. (06/15/84)

The following properties have been determined to be eligible for inclusion in the "National Register". Determinations of eligibility are made at the request of the concerned Federal Agency under the authority in section 2(b) and 1(3) of Executive Order 11593, and the National Historic Preservation Act of 1966, as amended. Determinations of eligibility are also made on nominations for privately owned property where the owner or a majority of owners for properties with multiple owners object to listing.

Historic properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council of Historic Preservation, 36 CFR, Part 800. Before an agency of the Federal Government may undertake any project which may have an affect on such an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

ALASKA

Anchorage Division

Alaska Engineering Commission Cottage No. Twenty-five (10/22/84)

Southeast Fairbanks Division

Chisana, *Chisana Historic District*, Wrangell Street—Elian National Park & Preserve (11/16/84)

Yukon—Koyukuk Division

Wiseman Historic District (06/05/85)

ARIZONA

Coconino County

Archeological Site AR-03-07-03-104 (11/13/84)
Archeological Site AR-03-07-03-708 (11/13/84)
Archeological Site AR-03-07-03-709 (11/13/84)
Archeological Site AR-03-07-03-710 (11/13/84)
Archeological Site AR-03-07-03-711 (11/13/84)
Archeological Site AR-03-07-03-712 (11/13/84)
Archeological Site AR-03-07-03-713 (11/13/84)
Archeological Site AR-03-07-03-714 (11/13/84)
Archeological Site AR-03-07-03-715 (11/13/84)
Archeological Site AR-03-07-03-716 (11/13/84)
Archeological Site AR-03-07-03-717 (11/13/84)
Archeological Site AR-03-07-03-718 (11/13/84)
Archeological Site AR-03-07-03-719 (11/13/84)
Archeological Site AR-03-07-03-720 (11/13/84)
Archeological Site AR-03-07-03-721 (11/13/84)
Archeological Site AR-03-07-03-723 (11/13/84)
Archeological Site AR-03-07-03-724 (11/13/84)
Archeological Site AR-03-07-03-725 (11/13/84)

Maricopa County

Luhrs Building (Phoenix Commercial MRA) (09/03/85)
Luhrs Central Building (Phoenix Commercial MRA) (09/04/85)
Luhrs Post Office Station (Phoenix Commercial MRA) (09/04/85)
Luhrs Tower (Phoenix Commercial MRA) (09/03/85)
Moore & McLellan Mortuary—Moore, A.L., & Sons Mortuary (Phoenix Commercial MRA) (09/04/85)
Professional Building (Phoenix Commercial MRA) (09/03/85)
Publix Market (Phoenix Commercial MRA) (09/04/85)
Phoenix, *Thomas House*, (04/08/85)
Tempe, *Brown—Strong House (Tempe MRA)* (04/22/85)
Tempe, *Diner, Dr. J.A.—Hight, Dr. R.J., House (Tempe MRA)* (04/22/85)
Tempe, *Eisendrath House (Tempe MRA)* (01/07/85)
Tempe, *Ellingson Warehouse (Tempe MRA)* (10/10/84)
Tempe, *Frankenberg, D.J., House (Tempe MRA)* (02/13/85)
Tempe, *Gage, George H., House (Tempe MRA)* (01/07/85)
Tempe, *Hayden Flour Mill (Tempe MRA)* (10/10/84)
Tempe, *Hotel Casa Loma (Tempe MRA)* (04/22/85)
Tempe, *Poil House (Tempe MRA)* (01/07/85)
Tempe, *Salt River Southern Pacific RR Bridge (Tempe MRA)* (09/04/85)
Tempe, *Tempe Depot (Tempe MRA)* Third & Railroad Ave. (01/07/85)
Tempe, *Wetmore Ranch (Tempe MRA)* (09/04/85)

Navajo County

Archeological Site CE 11 (3/14/85)
Archeological Site CE 13 (3/14/85)
Archeological Site CE 15 (3/14/85)
Archeological Site CE 17 (3/14/85)
Archeological Site CE 2 (3/14/85)
Archeological Site CE 33 (3/14/85)
Archeological Site CE 34 (3/14/85)
Archeological Site CE 35 (3/14/85)
Archeological Site CE 36 (3/14/85)
Archeological Site CE 7 (3/14/85)

Pima County

Tuscon Aqueduct Archeological District (06/10/85)

Pinal County

Casa Grande, *Southern Pacific Railroad Depot (Casa Grande MRA)*, Washington & Main Sts. (04/16/85)

Santa Cruz County

Southern Pacific Co. & Freight Depot (Nogales MRA) (08/29/85)

CALIFORNIA

Alameda County

Oakland, *Highland Hospital* (05/02/85)

Amador County

Five Mile Drive—Sutter Creek Bridge (08/10/85)

Fresno County

Archeological Site CA-Fre-1671 (04/17/85)
Reedley, *Old Bank of America Building* (12/16/85)

Los Angeles County

Beverly Gardens Park (04/15/85)
Elks Club Lodge No. Six Hundred Seventy-two (05/16/85)
Brea, *Laurel School Building* (09/04/85)
Claremont, *Pitzer Ranch* (05/15/85)
Pasadena, *Scottish Rite Cathedral*, 150 N. Madison Ave. (10/03/84)

Marin County

Pierce Point Ranch, Point Reyes National Seashore (01/24/85)
Point Reyes Lifeboat Station, Point Reyes National Seashore (08/29/85)

Mendicino County

CA-Men-1002 (boundary increase) (10/05/84)

Monterey County

Archeological Site CA-Mnt-229 (02/08/85)

Plumas County

Archeological Site CA-Plu-607 (06/28/85)
Archeological Site CA-Plu-608 (05/13/85)

San Diego County

Site SDi-8534, Laguna Mountain Recreation Area (09/24/85)

San Joaquin County

House at 229 Della St., 229 Della St. (11/21/84)
Stockton, *Magnolia Historic Preservation District* (08/20/85)
Stockton, *Sperry Corn Elevator* (03/25/85)

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Santa Clara County

Archeological Site CA–SCL–6E–447 (12/04/84)

San Jose, *Greenwalt, David, House* (08/10/85)

San Jose, *Hutton, Warner, House* (08/10/85)

San Jose, *LeFevre House & Farm* (08/10/85)

Tuolumne County

CA–Tuo–1377 (10/31/84)

CA–Tuo–1378 (10/31/84)

CA–Tuo–1379 (10/31/84)

CA–Tuo–1380 (10/31/84)

CA–Tuo–1381 (10/31/84)

Yuba County

Site YUB–1157, Beale Air Force Base (12/20/84)

Site YUB–1161, Beale Air Force Base (12/20/84)

COLORADO

Adams County

Baseline Bridge (AD01) (05/08/85)

Boulder County

Bluebird Dam, Rocky Mountain National Park (12/19/84)

Chaffee County

Brown's Canon Bridge (CA08) (05/08/85)

Fourmile Bridge (CA09) (05/08/85)

Granite Bridge (CA01) (05/08/85)

Crowley County

Manzanola Bridge (12/03/84)

Delta County

Delta, *Site 5DT851*, 728 One Thousand Five Hundred Sixty-fifth Rd. (12/05/84)

Denver County

Epworth Church, 1130 Thirty-first St. (08/08/85)

Garfield County

Una Bridge (GA02) (05/08/85)

Grand County

Horseshoe Ranger Station Complex (12/28/84)

Las Animas County

Linden Ave. Bridge (LS01) (05/08/85)

Otero County

LaJunta, *Building at First & Santa Fe Ave.*, First & Santa Fe Ave. (03/29/85)

Ouray County

Dallas Bridge (OU02) (05/08/85)

Rio Grande County

State Bridge (RG04) (05/08/85)

Weld County

Greeley No. Three Canal (10/22/84)

Loveland & Greeley Canal (10/22/84)

CONNECTICUT

Coventry County

Archeological Site 32–55 (07/08/85)

Archeological Site 32–58 (07/08/85)

Archeological Site 32–59 (07/08/85)

Archeological Site 32–60 (07/08/85)

Archeological Site 32–61 (07/08/85)

Tremont Mill (07/08/85)

Fairfield County

Fairfield, *Fairfield & Southport Railroad Stations* (07/30/85)

Greenwich, *Bryam School* (02/13/85)

Hartford County

Hartford & New Haven RR Depot & Freight Depot (02/28/85)

Hartford, *Asylum—Trumbull—Pearl Sts. Historic District (Hartford Downtown MRA)* (08/28/85)

Hartford, *Hartford Times Building (Hartford Downtown MRA)*, 10 Prospect St. (12/23/84)

Hartford, *Main Street Historic District No. One (Hartford Downtown MRA)* (12/23/84)

West Hartford, *Whiting Homestead*, 291 N. Main St. (09/20/85)

Litchfield County

Terryville, *House at 36—38 Main St.*, 36—38 Main St. (02/13/85)

Torrington, *Buildings at 122—126—128 Franklin St.*, 122—126—128 Franklin St. (08/25/85)

Middlesex County

Woodrow Wilson School (08/16/85)

Old Saybrook, *Valley Railroad Roundhouse Archeological Site* (04/08/85)

New Haven County

New Haven, *Powell Building*, 157 Church St. (12/06/84)

Waterbury, *Mad River II Prehistoric Archeological Site* (10/29/84)

Windham County

Putnam, *Church Street Mill Housing Complex (two structures)*, Ballow & Church Sts. (11/28/84)

DELAWARE

New Castle County

Brady, George, Farm Manager's Dwelling (Rebuilding St. Georges Hundred 1850—1880 TR) (09/13/85)

Cochran, R.W., House (Rebuilding St. Georges Hundred 1850—1880 TR) (09/13/85)

Morrison House (N–486) (06/11/85)

Tenacy, N. Grant, Site (7 NC–B–6x) (06/10/85)

Whitten Site (7 NC–D–100) (05/30/85)

Stanton, *Stanton Arms Hotel Site (7 NC–E–63)* (10/15/84)

Wilmington, *Aldine Theatre (Market Street MRA)* (01/30/85)

Wilmington, *Dure, Frank, Building (Market Street MRA)* (01/30/85)

Wilmington, *Garrett, Elwood, Building (Market Street MRA)* (01/30/85)

Wilmington, *Robelen Piano Company Building (Market Street MRA)* (01/30/85)

DISTRICT OF COLUMBIA

Downtown Historic District, F St. & Seventh St. (10/18/84)

Fifteenth Street Financial District (10/18/84)

FLORIDA

Alachua County

Bethel GULF Service Station (Site 12), 203 SE First Ave. (08/15/85)

Cox's Furniture (Site 5), 19 SE First Ave. (08/15/85)

Lillian's Music Store—Mike's Book Store (Site 6), 112—116 SE First St. (08/15/85)

Star Garage (Site 11), 119 SE First Ave. (08/18/85)

Dade County

Miami, *Chapman, Dr. William, House* (03/28/85)

Miami, *Sears, Roebuck & Company Department Store*, 1300 Biscayne Blvd. (12/04/84)

Hernando County

Masaryktown, *Masaryk Hotel* (06/25/85)

Hillsborough County

Brandon, *Brandon House* (07/21/85)

Lee County

Fort Myers, *Englehardt Funeral Home*, 2017 McGregor Blvd. (03/28/85)

Fort Myers, *Henley Place Historic District* (07/26/85)

Fort Myers, *Miles Building*, 2052 McGregor Blvd. (02/20/85)

Fort Myers, *Tonnelier House*, 2300 McGregor Blvd. (07/26/85)

Leon County

Tallahassee, *Masonic—Odd Fellows Hall*, 202 S. Adams (12/06/84)

Pinellas County

St. Petersburg, *Barbara Ann Apartments* (01/15/85)

St. Petersburg, *Black, Henrietta, House* (08/21/85)

St. Petersburg, *Church of God* (01/15/85)

St. Petersburg, *City Hall Annex* (01/15/85)

St. Petersburg, *Coliseum* (01/15/85)

St. Petersburg, *Colonial Hotel Annex* (01/15/85)

St. Petersburg, *Comfort Station* (01/15/85)

St. Petersburg, *Crislip Aracade* (01/15/85)

St. Petersburg, *Dennis Hotel* (01/15/85)

St. Petersburg, *Fire Station No. One* (01/15/85)

St. Petersburg, *First Baptist Church* (01/15/85)

St. Petersburg, *First Congregational Church* (01/15/85)

St. Petersburg, *First United Methodist* (01/15/85)

St. Petersburg, *Flori de Leon* (01/15/85)

St. Petersburg, *Florida Power Plant* (01/15/85)

St. Petersburg, *Kress Building* (01/15/85)

St. Petersburg, *Liquor Store* (01/15/85)

St. Petersburg, *Mirror Lake Adult Center* (01/15/85)

St. Petersburg, *Mirror Lake Public Library* (01/15/85)

St. Petersburg, *Potter House* (08/21/85)

St. Petersburg, *Princess Martha Hotel* (01/15/85)

St. Petersburg, *Soreno Hotel* (01/15/85)

St. Petersburg, *St. Mary's Roman Catholic Church* (01/15/85)

St. Petersburg, *St. Peter's Cathedral* (01/15/85)

St. Petersburg, *State Theatre* (01/15/85)

St. Petersburg, *Studebaker Building* (01/15/85)

St. Petersburg, *Tomlinson Adult Education Center* (01/15/85)

St. Petersburg, *Tramor Cafeteria* (01/15/85)

St. Petersburg, *Y.M.C.A.* (01/15/85)

ILLINOIS

Cook County

Evanston, *Raymond Park Apartments (Suburban Apartment Buildings in Evanston TR)* (03/01/85)

Kankakee County

Archeological Site 11 Ka 179 (11/12/84)

Kankakee, *Bradley House*, 701 S. Harrison Ave. (06/12/85)

Pike County

Dunham House, TR 171 (10/01/84)

Rock Island County

Moline, *Archeological Site 11-Ri-220 (Ray Gordon Site)* (01/07/85)

Vermilion County

Danville, *Stone Arch Bridge* (10/19/84)

INDIANA

Dubois County

McCain Archeological Site (12 Du 14) (06/05/85)

Elkhart County

Elkhart, *Main—Division Street Historic District* (03/26/85)

Covington, *CR Seventy-three Bridge* (02/14/85)

Richmond County

Augusta, *Archeological Site 9 Ri (DOT) 29* (04/08/85)

Augusta, *Boston—Skinner—Macky House* (04/08/85)

Augusta, *Harrisburg—West End Historic District* (04/08/85)

Stewart County

Site 9 SW(SAS)25 (06/25/85)

Site 9 SW(SAS)27 (06/25/85)

Site 9 SW(SAS)29 (06/25/85)

Talfair & Coffee Counties

J.H. Milholjn Memorial Bridge (01/15/85)

GUAM

Agana, Dungca House (Agana Houses TR) (02/13/85)

IDAHO

Elmore County

Glenns Ferry, *Oregon National Historical Trail (Alkali Creek Segment)* (01/02/85)

Seminole County

Lake Monroe Bridge (07/09/85)

St. John's County

St. Augustine, *Lincolnville Area* (09/19/85)

Volusia County

New Smyrna Beach Woman's Club, 403 Lytle Ave. (10/16/84)

GEORGIA

Chatham County

Still—DeLoach Wreck (Rib Wreck), Savannah Harbor (11/05/84)

Decatur County

Climax, *Climax Depot* (08/19/85)

Fulton County

College Park, *Buildings at 3808, 3810, 3814, 3816, 3818 E. Main St. (Metropolitan Atlanta Transit Authority—South Rail Line)*, 3808, 3810, 3814, 3816, 3818 E. Main St. (04/18/85)

Lee County

Archeological Site 9LE(SAS)1 (06/06/85)

Newton County

Covington, *CR 228 Bridge over Yellow River* (06/26/85)

Greene County

Bushrod, *Beehunter Archeological Site (12-Gr-315)* (04/26/85)

LaPorte County

Michigan City East Pierhead Light Tower & Elevated Walk (06/24/85)

Marion County

Indianapolis, *Indiana Central Canal* (04/25/85)

Posey County

Hovey Lake—Klein Archeological Site (12 Po 10) (04/04/85)

Saint Joseph County

South Bend, *Union Station*, 326 W. South St. (10/03/84)

South Bend, *Dean Building (Downtown South Bend Historic MRA)*, 115 S. Lafayette (06/05/85)

South Bend, *Telephone Building (Downtown South Bend Historic MRA)*, 227 W. Main St. (06/05/85)

South Bend, *Tribune Building (Downtown South Bend Historic MRA)*, 225 W. Colfax (06/06/85)

IOWA

Black Hawk County

Cedar Falls, *Rownd, Samuel, Property* (05/15/85)

Cherokee County

Archeological Site 13CK86 (02/14/85)

Des Moines County

Burlington, *MacArthur Bridge* (06/20/85)

Fayette County

Little Turkey River Warren Truss Bridge (11/21/84)

Twin Span Concrete Arch Bridge (04/16/85)

Scott County

Davenport, *Garner, John, House (Davenport MRA)*, 5300 Northwest Blvd. (11/01/84)

Wright County

Grant Township Bridge, Over the Iowa River (05/21/85)

KANSAS

Bourbon County

Fulton, *Long Shoals Bridge (Osage River Bridge)* (04/19/85)

Chautauqua County

Peru, *Ernie's Rockshelter* (06/17/85)

Dickinson County

Enterprise, *Enterprise Parker Truss Bridge (01/10/85)*

Greenwood County

Archeological Site 14 GR 325 (12/08/84)

Miami County

North Wea Creek Bowstring Bridge (12/03/84)

Montgomery County

Coffeyville, *Onion Creek Bridge* (04/19/85)

Ottawa County

Minneapolis, *Minneapolis Pipe Creek Bridge* (01/10/85)

Riley County

Manhattan, *Riley County Courthouse & Annex (Carnegie Library)* (08/06/85)

KENTUCKY

Butler County

Archeological Site 15Bt75 (07/17/85)

Green County

Greensburg, *Creel, Elijah, House (Green County MRA* (04/19/85)

Kenton County

Covington, *Buildings at 117 & 119 Ash St. (Ludlow MRA)*, 117 & 119 Ash St. (11/28/84)

Ludlow, *Southern Railroad Freighthouse (Ludlow MRA)*, Oak & Carneal Sts. (10/28/84)

LOUISIANA

Orleans Parish

New Orleans, *Maritime Building*, 203 Carondelet (01/10/85)

New Orleans, *Saenger Theatre*, 1113—1117 Canal St. (04/01/85)

West Feliciana Parish

West Feliciana Railroad, Illinois Central Gulf RR right-of-way between Hardwood & Bayou Sara (01/29/85)

MAINE

York County

North Berwick, *Prescott, J.L., House* (01/10/85)

MARYLAND

Baltimore County

Fowlbesburg, *Baumann House* (06/24/85)

Fowlbesburg, *Fringer, Henry, House*, MD 30 (06/24/85)

Fowlbesburg, *Wolfrom House*, MD 30 (06/24/85)

Carroll County

Hampstead, *Bank House*, Off MD 30 (06/24/85)

Hampstead, *Dwelling & Farm Buildings*, MD 30 & 482 (06/24/85)

Hampstead, *Garrett Farm*, MD 30 (06/24/85)

Hampstead, *Houck—Leister Farm*, 3620 Houcksville Rd. (06/24/85)

Hartford & Baltimore Counties

Aberdeen, *Building E-5032* (08/07/85)

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Montgomery County

Taylor Site (23 Mo 243) (08/22/85)

MASSACHUSETTS

Barnstable County

Orleans, *Oak Ridge Prehistoric Site* (01/22/85)

Berkshire County

Adams, *Hoosac Street School* (01/10/85)

Bristol County

Attleboro, *Knell C Archeological Site* (10/26/84)

Essex County

Peabody, *Southwick—Strouse Tannery*, 145—157 Lowell St. (10/26/84)

Hampshire County

Ware, *Methodist Episcopal Church (Ware Senior Drop-in Center)* (03/20/85)

Middlesex County

Lowell, *Federal Building—Lowell* (04/09/85)
Reading, *Pratt, Joseph L., House (Reading MRA)*, 453 Haverhill St. (02/04/85)

Suffolk County

Boston, *Commercial Palace Historic District*, Roughly bounded by Bedford, Sumner, Devonshire, Franklin, Hawley & Chaunchy Sts. (07/03/85)

MICHIGAN

Allegan County

Thirty-sixth Street Bridge, Over the Rabbit River (07/03/85)

Barry County

McCann Road Bridge (03/25/85)

Bay County

Archeological Sites 20 BY 153 & 20 BY 154 (07/19/85)

Branch County

Cowell-Smith House, Along US 12 (04/23/85)
Fisk, Abram C., House, Along US 12 (04/23/85)
Lusk Schoolhouse, Along US 12 (04/23/85)
Wing House or Tavern, Along US 12 (04/23/85)

Eaton County

Petrieville Road Bridge (03/25/85)

Huron County

Site 20 HU 184 (Caseville Township Airport) (10/16/84)

Kent County

Grand Rapids, *Steketee's Department Store*, 86 Monroe Center NW (06/27/85)

Lapeer County

Lapeer, *Hungerford, Robert A., House (Lapeer MRA)* (07/26/85)

Lenawee County

Adrian, *Old Masonic Temple Building*, 202 W. Maumee St. (01/07/85)

Montcalm County

Greenville, *Shearer House (Greenville Inn,)* 317 S. Lafayette St. (08/06/85)

Muskegon County

Muskegon, *Ruddiman Creek—Lake Shore Drive Bridge* (04/17/85)

Washtenaw County

Dexter, *Webster Presbyterian Church*, 5484 Webster Church Rd. (01/22/85)

MINNESOTA

Beltrami County

Bemidji, *Lake Irving Site (Bemidji Sewage Plant Site)* (04/26/85)

Crow Wing County

Round Lake Outlet Site (21 CW 40) (11/16/84)

Hennepin County

State Theater (09/11/85)

Morrison County

Soo Line Depot (09/11/85)
St. Francis Convent (09/11/85)

Ramsey County

Dam One (Ford Dam), Mississippi River (12/19/84)

Todd County

Northern Pacific Railway Depot & Freighthouse (09/11/85)

Winona County

Winona, *Chicago, Milwaukee & St. Paul RR Co. Station*, Mark St. (11/13/84)
Winona, *Watkins, J.R., Medical Company Complex* (11/13/84)
Winona, *Winona Bridge Railway Company Swing Bridge*, Off Third St. (09/11/85)

MISSISSIPPI

Lee County

Mullins House (08/22/85)

MISSOURI

Buchanan County

St. Joseph, *Lafayette Street Rowhouses*, 1116, 1118, 1122 & 1124 Lafayette St. (03/28/85)

Butler County

Archeological Site 23 BU 239 (12/26/84)
Archeological Site 23 BU 241 (12/26/84)

Jackson County

Kansas City, *Scarritt Point Historic District (CHD)*, Roughly bounded by Troost Ave. on the west, Belmont Blvd. on the east, the bluffs overlooking the Missouri River on the north & Truman Rd. on the south (02/27/85)
Kansas City, *Southmoreland Historic District (CHD)*, Roughly bounded by E. Forty-fourth St., Warwick Blvd., E. Forty-third St., Gillham Park & Rock Hill Rd. (01/30/85)

Jasper County

American Mill Bridge (Center Creek Bridge) (01/14/85)
Carl Junction, *Archeological Site 23JP172* (08/26/85)

Livingston County

Chillicothe, *Burlington Northern Railroads Depot—Chillicothe*, 1 Elm St. (12/31/84)

Perry County

Perryville, *Roth, Emma, House*, 12 S. Spring St. (04/18/85)

St. Charles County

St. Charles Rt. 115 Bridge (Old Rt. 40) (07/12/85)

St. Louis (Independent City)

St. Louis, *Expanded Compton Hill Historic District (Fox Park neighborhood expansion to Compton Hill HD) (CHD)*, Roughly bounded by S. Grand Blvd., Geyer, Jefferson & Victor Sts. (06/27/85)
St. Louis, *Post Office Annex Building* (03/12/85)
St. Louis, *Shaw Neighborhood Historic District (CHD)*, Roughly bounded by Grand Ave., the Compton Hill Reservoir Park, the Missouri Botanical Garden, Interstate 44 & Tower Grove Park (06/27/85)
St. Louis, *St. Louis Union Station Power House* (03/12/85)

MONTANA

Beaverhead, Big Horn, Blaine Counties; et al

Historic Bridges of Montana Thematic Resources (forty-eight bridges) (06/07/85)

Carbon County

Bridger, *Teesdale Homestead* (04/03/85)

Cascade & Teton Counties

Prehistoric Sites 24CA194 & 24TT83 (03/15/85)

Jefferson County

Elkhorn Historic District, Deer Lodge National Park (07/02/85)

Liberty County

Pugsley Bridge No. Fifty-one (06/07/85)

Lincoln County

Libby—Troy Highway (24LN237) (06/26/85)
Fortine, *Reinwand Service Station (24LN745)* (06/26/85)
Fortine, *Sutphin Homestead (24LN744)* (07/26/85)

McCone County

Wolf Point, *Site 24 MC1* (04/19/85)

Richland County

Sidney vicinity, *Ridgelawn Reclamation Camp (Site 24 RL 80)* (12/19/84)

Teton County

Historic Sites 24TT88, 24TT94, 24TT96, 24TT100 & 24TT102 (06/20/85)

Teton & Pondera Counties

Historic Site 24TT99 (06/20/85)

NEBRASKA

Douglas County

Omaha, *Drake Court Apartments & the Dartmore Apartments Historic District (amended)*, Roughly bounded by Twentieth St., Leavenworth, Twenty-fourth St. & Saint Mary's Ave. (12/12/84)

NEW HAMPSHIRE

Hillsborough County

Danforth Archeological District (11/21/84)

Thebodeau Archeological Site (11/21/84)
Hudson, *Jasper (Greeley) Farm* (11/21/84)
Litchfield, *Broadview Farm* (11/21/84)
Litchfield, *Leary (Center) House* (11/21/84)
Manchester, *Federal Building (US Post Office)*, 120 Hanover St. (09/04/85)
Manchester, *Harrington—Smith Block*, 18–52 Hanover St. (09/04/85)
Manchester, *Old Post Office Block (Daily Mirror Building)*, 54–72 Hanover St. (09/04/85)
Nashau, *LaBombard Residence* (11/21/84)

Rockingham County

Brentwood, *Woods Corner Residential Historic District* (09/04/85)
Exeter, *Exeter Waterfront Commercial Historic District (boundary increase)* (12/21/84)
Portsmouth, *Dyer Foss Farm* (08/22/85)

Strafford County

Durham, *Oyster River Bridge* (01/11/85)

NEW JERSEY

Hudson County

Pier Seven Grain Elevator & Extension Pier (12/10/84)

Mercer County

Princeton, *House at 10 Cleveland La. (Site lu)*, 10 Cleveland La. (02/12/85)
Princeton, *House at 94 Bayard La. (Site 1s)*, 94 Bayard La. (02/12/85)

Monmouth County

Abature Prehistoric Site 28MO134 (01/03/85)
Field Prehistoric Site 28MO135 (01/03/85)

Somerset County

Brokaw—Gulick Farmstead (Site 24) (07/05/85)
Harlingen Historic District (07/05/85)
Hillsborough, *Bergen, Zaccheus, Farmstead (Site 35)* (02/12/85)
Hillsborough, *Burrough Farmstead (Site 31)* (07/05/85)
Hillsborough, *Ditmars—Polhemus Farmstead (Site 28)* (02/12/85)
Hillsborough, *Duke Estate (Site 44)* (02/12/85)
Hillsborough, *Liberty School (Site 36)* (02/12/85)
Hillsborough, *Woods Tavern Site (Site 29a)* (02/12/85)
Montgomery, *Cain Farmstead (Site 15a)* (02/12/85)
Montgomery, *Fox Brook Bridge* (02/12/85)
Montgomery, *Harlingen New School (Site 15f)* (02/12/85)
Montgomery, *Houghton Farmstead (Site 8)* (02/12/85)
Montgomery, *Mettler, Wilson, Farmstead* (02/12/85)
Montgomery, *Schomp Hotel Site & Barn (Site 15p—Barn)* (02/12/85)
Montgomery, *Skillman—Applegate Farmstead (Site 4)* (02/12/85)
Montgomery, *Stryker, John B., Farmstead* (02/12/85)
Montgomery, *Voorhees—Vreeland Structure (Site 49)* (02/12/85)
Montgomery, *Washington Well Farm (Site 10)* (02/12/85)

NEW MEXICO

Bernalillo County

Albuquerque, *Sunshine Building*, 120 Central Ave., SW (05/06/85)

Rio Arriba County

Officer's House (La Tierra Amarilla MRA) (04/04/85)

San Juan County

Archeological Site LA 12953 & 12954, Along Navajo Route 36 (4) near Farmington (12/17/84)
Archeological Site LA 12955 (12/24/84)
Archeological Site LA 8263 (12/24/84)
Archeological Site NH H 64 3 (10/26/84)

NEW YORK

Erie County

Creekview Drive Archeological Site (09/11/85)

Kings County

Terminal Pier (Gowanus Bay Terminal) (12/10/84)
Brooklyn, *House at 964 Park Place*, 964 Park Pl. (01/10/85)
Brooklyn, *Building at 243 Brooklyn Ave.*, 243 Brooklyn Ave. (01/10/85)

Monroe County

Rochester, *Eastman Historic District (Inner Loop MRA)* (10/11/84)
Rochester, *Sibley, Lindsay & Curr Building (Department Store TR) (Inner Loop MRA)*, 228 E. Main St. (10/11/84)

New York County

Building at 712 Fifth Ave., 712 Fifth Ave. (09/27/85)
Coty Building (09/27/85)
New York, *Chatsworth Apartments & Annex* (03/09/85)

Richmond County

Endicott—Era Batteries (Fort Wadsworth TR) (07/05/85)

Saratoga County

Arrowhead Road Prehistoric Site (04/10/85)

Schenectady County

Duanesburg, *Howard, George, Farmhouse (Boss Jones TR) (Duanesburg MRA)* (10/11/84)
Duanesburg, *Vought Farmhouse (Duanesburg MRA)* (10/11/84)

St. Lawrence County

Canton-Pierrepont, *LaBrake Farm Complex* (01/10/85)

Suffolk County

Brush, George W., House (Huntington Town MRA) (09/26/85)
Lewis, E.G., House (Huntington Town MRA) (09/26/85)
Lloyd Harbor Lighthouse (09/06/85)
Robb, J.T., House No. 1 (Huntington Town MRA) (09/26/85)
Robb, J.T., House No. 2 (Huntington Town MRA) (09/26/85)
Robinson House (Huntington Town MRA) (09/26/85)
Skidmore House (Huntington Town MRA) (09/26/85)
Valentine, Philip, House (Huntington Town MRA) (09/26/85)

Washington County

Hill Street Bridge (Hegeman Bridge) (02/26/85)

NORTH CAROLINA

Camden County

Widow's Son Masonic Lodge No. Seventy-five, NC 343 Camden (03/06/85)

Forsyth County

Winston-Salem, *Forsyth County Courthouse* (07/24/85)
Winston-Salem, *Pepper Building* (07/24/85)
Winston-Salem, *Reynolds, R.J., Building* (07/24/85)

Wayne County

Goldsboro, *Goldsboro Historic District (CHD)*, Roughly bounded by Vine, John, Beech, Jackson, Ash, William, Elm, Center & Spruce Sts., Georgia Ave., Mulberry & Vine Sts. (03/13/85)

NORTH DAKOTA

Barnes County

Baldhill Dam Site (32BA3) (01/22/85)

Ramsey County

Devils Lake, *Carnegie Library*, 623 Fourth St. (06/17/85)

OHIO

Butler County

Trenton vicinity, *Augspurger, Christian, Farm (Augspurger Amish/Mennonite Settlement TR)* (11/01/84)

Cuyahoga County

Abbey Avenue Bridge (10/31/84)
Cleveland, *Center Street Bridge* (06/19/85)
Cleveland, *First Methodist Church (Upper Prospect MRA)* (11/01/84)

Hamilton County

Cincinnati, *Buildings at 2145, 2149, 2153 Queen City Ave.*, 2145, 2149, 2153, Queen City Ave. (02/12/85)
Cincinnati, *Enquirer Building* (09/06/85)
Milford, *Milford Bridge* (10/31/84)

Hocking County

Logan, *US Post Office—Logan* (09/30/85)

Huron County

Norwalk, *US Post Office—Norwalk* (03/14/85)

Jackson County

Jackson, *US Post Office—Jackson* (03/14/85)

Jefferson County

Steubenville, *Fort Steuben Hotel* (08/30/85)
Steubenville, *US Post Office—Steubenville* (03/14/85)

Lake County

Painesville, *US Post Office—Painesville* (09/30/85)

Lorain County

Oberlin, *US Post Office—Oberlin* (01/02/85)

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Lucas County

Lucas County Nurses Home (Victorian Hall)—Maumee Valley Hospital (Building A) (11/13/85)
Toledo, *Lion Store Block* (06/27/85)

Mahoning County

Poland, *SR 170 Bridge* (04/22/85)

Medina County

Wadsworth, *Masonic Temple* (01/30/85)

Meigs County

Pomeroy, *US Post Office—Pomeroy* (03/14/85)

Miami County

Pleasant Hill, *Newton Township Hall* (06/12/85)
Troy, *US Post Office—Troy* (08/14/85)

Montgomery County

Dayton, *Zion Baptist Church*, 40 Sprague St. (01/28/85)

Morgan County

Stockport, *Stockport Historic District* (03/06/85)

Portage County

Ravenna, *US Post Office—Ravenna* (01/02/85)

Richland County

Shelby, *US Post Office—Shelby* (01/02/85)

Sandusky County

Fremont, *US Post Office—Fremont* (03/14/85)

Scioto County

Scioto River Bridge (10/31/84)

Trumbull County

Niles, *US Post Office—Niles* (01/02/85)
Warren, *US Post Office—Warren* (03/14/85)

Tuscarawas County

Dover, *US Post Office—Dover* (09/30/85)
New Philadelphia, *US Post Office—New Philadelphia* (01/02/85)

OKLAHOMA

Garfield County

Enid, *Kaufman, H.L., House*, 1708 W. Maine (11/13/84)

Garvin County

Santa Fe Depot of Lindsay (Territorial Era Santa Fe Depots in South Central Oklahoma TR) (09/30/85)
Santa Fe Depot of Pauls Valley (Territorial Era Santa Fe Depots in South Central Oklahoma TR) (09/30/85)

Kiowa County

Snyder, *Snyder Frisco Depot*, 800 E St. (03/29/85)

Oklahoma County

Oklahoma City, *Maywood Presbyterian Church* (04/25/85)

OREGON

Clackamas County

Bagby Guard Station (FS Site #665 EA 27), Estacada Ranger District (12/13/84)

Clackamas, Multnomah Counties, et al

Historic Highway Bridges of Oregon TR (sixty bridges) (05/02/85)

Columbia County

Archeological Site 35 CO34 ("Ede Site") (07/12/85)

Douglas County

Pass Creek Covered Bridge, S. First St. (02/28/85)
Roseburg, *Archeological Site 35 DO 274* (12/20/84)
Roseburg, *Archeological Site 35 DO 275* (12/20/84)

Jackson County

Elk Creek Prehistoric Archeological District (02/28/85)

Marion County

Connelly Site (35 MA 59) (10/25/84)

Umatilla County

Milton Freewater, *Burlington Northern Depot—Milton Freewater* (02/14/85)
Pendleton, *Umatilla River Bridge*, SW Tenth St. (04/03/85)

PENNSYLVANIA

Bucks County

Buckman, John, House (04/18/85)
Buckman, Levi, House (04/18/85)
Cary—Tomlinson House (04/18/85)
Cunningham, G., House (04/18/85)
Eastburn House ("Willow Shade") (04/18/85)
Hopkins, Elizabeth, House (04/18/85)
Hulmeville Historic District (04/25/85)
Janney, Jacob, House ("Shady Brook") (04/18/85)
Janney, Richard, House ("Edgewood Farm") (04/18/85)
Linton, Penquite, House ("Woodside") (04/18/85)
Middle Core Creek Historic District (04/18/85)
Pitner, John, House (04/18/85)
Stapler House (04/18/85)
Upper Core Creek Historic District (04/18/85)
Willson—Tate House (04/18/85)
Hulmeville, *Canby, Joshua, House* (04/25/85)
Hulmeville, *Farmers Bank of Bucks County* (04/25/85)
Hulmeville, *Hulme, Isaac, House* (04/25/85)
Hulmeville, *Hulme, William, House* (04/25/85)
Hulmeville, *Johnson Hall* (04/25/85)
Hulmeville, *Marek's Cafe* (04/25/85)
New Hope, *Rhoads Homestead (New Hope MRA)*, 104 W. Bridge St. (03/06/85)
Sellersville, *US Post Office—Sellersville* (12/23/85)

Chester County

Boyer, Nelson P., Barn (East Fallowfield Township MRA) (05/20/85)
McPeak, Daniel, House (Strasburg Rd. TR) (East Fallowfield Township MRA) ((09/18/85)
Runnymede (West Branch Brandywine Creek MRA) (09/06/85)
Young Farm (East Fallowfield Township MRA) (05/20/85)
Young, Robert, Store (Strasburg Rd. TR) (East Fallowfield Township MRA) (09/18/85)

Chester & Montgomery Counties

Schuylkill Navigation Canal—Oakes Reach Section (02/14/85)

Columbia County

East Bloomsburg River Bridge (04/09/85)

Huntingdon County

Mount Union, *Sharrar, John, House—Pennsylvania Canal Site* (06/21/85)

Lycoming County

Memorial Avenue Bridge (06/06/85)

Montgomery County

Norristown, *Norristown High Speed Line Terminal Building & Trestle* (05/08/85)

Northampton County

Freemansburg Historic District (02/05/85)

PUERTO RICO

Ponce County

Site PO-18 (Estancita Los Fondos) Portugues and Bucana (Cerillos) River Project Sugar Production District (08/20/85)
Site PO-18 (Estancita Los Fondos) Portugues and Bucana (Cerillos) River Project Coffee Production District (08/20/85)
Site PO-19 (Finca Reyes) Portugues and Bucana (Cerillos) River Project Coffee Production District (08/20/85)
Site PO-20 (Finca Silem) Portugues and Bucana (Cerillos) River Project Coffee Production District (08/20/85)
Site PO-21 (08/20/85)
Site PO-22 (Hacienda La Victoria) Portugues and Bucana (Cerillos) River Project Sugar Production District (08/20/85)
Site PO-23 (08/20/85)
Site PO-24 (Hacienda Maria Andrea) Portugues and Bucana (Cerillos) River Project Sugar Production District (08/20/85)
Site PO-25 (Hacienda Tibes) Portugues and Bucana (Cerillos) River Project Sugar Production District (08/20/85)

RHODE ISLAND

Newport County

Newport, *Rose Island Lighthouse* (10/22/84)

Providence County

Breezy Hill Site (RI-957) (06/05/85)
Double L Site (RI-958) (06/05/85)
McGonagle Site (RI-1227) (06/05/85)
Millrace Site (RI-1039) (06/05/85)
Moswansicut Site (RI-960) (06/05/85)
Rush Brook Site (RI-959) (06/05/85)
Walker Point Site (RI-653) (11/08/84)
Johnston, *Eddy Homestead* (06/14/85)
Pawtucket, *Royal Weaving Company Mill Complex*, 300 Cottage St. (04/09/85)
Providence, *Jefferson Street Baptist Church*, 68 Jefferson St. (04/09/85)

SOUTH CAROLINA

Florence County

Florence, *Atlantic Coast Line Depot*, Day St. (11/20/84)

SOUTH DAKOTA

Campbell County

Herreid vicinity, *Weinzirl, Michael, House (German—Russian Folk Architecture TR)* (11/28/84)

Hutchinson County

Tripp vicinity, *Vetter, John, Barn (German—Russian Folk Architecture TR)* (11/28/84)

Lawrence County

Site 39LA150 (05/02/85)
Site 39LA177 (05/30/85)
Site 39LA247 (05/02/85)
Site 39LA257 (05/02/85)
Site 39LA259 (05/30/85)

Minnehaha County

Split Rock Creek (Brandon) Mounds (08/17/85)

Todd County

Hollow Horn Bear Site (39 TD 32) (08/02/85)

TENNESSEE

Davidson County

Newsom's Station Historic District (11/01/84)

Dyer County

Lenox Bridge (01/29/85)

Knox County

Knoxville, *Asylum Avenue Viaduct* (05/09/85)

Lincoln County

Coldwater Bridge (11/01/84)

Montgomery County

Clarksville, *Cunningham Bridge*, Over the Cumberland River (12/12/84)

Smith County

Buena Vista Ford Bridge (11/01/84)

Washington County

Gibson Bridge (11/01/84)

TEXAS

Bastrop County

Archeological Site 41 BP 19 (10/13/84)

Bee County

Normanna, *Medio Creek Bridge*, CR 241 crossing (04/24/85)

Bell County

Killeen, *Santa Fe Depot—Killeen* (11/29/84)

Bexar County

San Antonio, *Aztec Theatre* (09/18/85)
San Antonio, *Building at 1317 Guadalupe St.*, 1317 Guadalupe St. (04/03/85)
San Antonio, *Building at 1408 El Paso St.*, 1408 El Paso St. (04/03/85)
San Antonio, *Building at 1412 El Paso St.*, 1412 El Paso St. (04/03/85)
San Antonio, *Building at 1426 El Paso St.*, 1426 El Paso St. (04/03/85)
San Antonio, *Building at 812 S. San Jacinto St.*, 812 S. San Jacinto St. (04/03/85)

Brazos County

Bridge Replacement on Bird Pond Road at Carter Creek, CR 104 (07/15/85)

Brown & McCulloch Counties

US 377—Bridge Replacement at the Colorado River near Winchell (07/31/85)

Caldwell County

West Fork of Plum Creek Bridge, CR 242 (07/03/85)

Chambers County

Archeological Site 41CH242—J.J. Mayes Farm Site (08/30/85)

Crosby County

Mackenzie Supply Camp Site (41-CB-1) (04/23/85)

Dallas County

Hilton Hotel (09/16/85)
Dallas, *State—Thomas Historic District (CHD)*, Roughly bounded by Hibernia, Fairmont, Colby & Boll (09/01/85)

Falls County

Marlin, *Marlin Federal Building (formerly US Post Office)* (09/11/85)

Fayette County

Fayette Power—Robbs Cummins Creek Mine Historic District (08/19/85)

Ft. Bend County

Archeological Site 14FB70 (05/02/85)
Archeological Site 14FB71 (05/02/85)
Archeological Site 14FB72 (05/02/85)

Goliad County

Archeological Site 41 GD 12 (10/06/84)
Riverdale Bridge (41G D 12) (11/26/84)

Harrison County

Site 41 HS 282 (06/27/85)

Hays County

San Marcos, *Thompson—Cape Dam & Ditch Engineering Structure* (05/21/85)

Jackson County

Edna, *Lavaca River Bridge on US 59*, On US 59 (04/17/85)
Lake Texana, *Brackenridge Site (41JK108)* (03/13/85)

Kimble County

Junction, *Llano River Bridge*, On US 377 (05/22/85)

McLennan County

Waco vicinity, *Eichelberger Bridge* (11/15/84)

Panola County

Archeological Site 41 PN 14 (02/25/85)

San Patricio County

41 SP 72 (boundary increase) (10/14/84)

Tarrant County

Forth Worth, *Lake Worth Bridge on SH 199*, SH 199 (12/05/84)

Taylor County

Abilene, *Hilton—Windsor Hotel*, 986 N. Fourth St. (05/29/85)

Titus County

Archeological Site 41 TT 12 (10/22/84)
Archeological Site 41 TT 135 (10/22/84)

Travis County

Buratti Brothers (East Austin MRA) (09/17/85)
Industrial Structure (East Austin MRA) (09/17/85)
Lindeman House (East Austin MRA) (09/17/85)
Waters Park Site (Site 41TV286), Loop 1: North extension on MoPac from US 183 to just north of Parmer La. (08/08/85)

Wilbarger County

Vernon, *US Post Office—Vernon* (11/26/84)

Williamson County

Archeological Site 41 WM 570 & Historic Site 41 WM 575 (07/18/85)
West-Adkisson Site (41 WM 568) (02/07/85)

UTAH

Beaver County

Black Rock Station Petroglyph Sites (42ND, 43, 47, 485, 593 & an isolated boulder) (Great Basin Style Rock Art TR) (08/04/85)

Box Elder County

Garland, *Garland Tithing Office—Bishops Storehouse (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)
Grouse Creek, *Grouse Creek Tithing Office (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)

Duchesne & Uintah Counties

Irrigation Canals in the Uinta Basin TR (three canals) (11/23/84)

Garfield County

Escalante, *Escalante Tithing Office (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)
Panguitch, *Panguitch Tithing Office—Bishops Storehouse (Tithing Offices & Granaries of the Mormon TR)* (01/25/85)

Iron County

Parowan, *Parowan Tithing Office (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)

Millard County

Fillmore, *Fillmore Tithing Office (Tithing Offices & Granaries of the Mormon Church TR)* (03/28/85)
Oak City, *Oak City Tithing Granary (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)

San Juan County

Archeological Site 42SA16367 (02/07/85)

Sanpete County

Ephraim, *Dorius Building*, 98 Main St. (05/16/85)
Ephraim, *Ephraim Tithing Office—Bishops Storehouse (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)
Fountain Green, *Fountain Green Tithing Office—Bishops Storehouse (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)
Manti, *Manti Tithing Office (Tithing Offices & Granaries of the Mormon Church TR)* (01/25/85)

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Sevier County

Glenwood *(42 Sv 1377) (Great Basin Style Rock Art TR)* (06/04/85)

Summit County

Park City, *Mahoney, Josie, House (Mining Boom Era Houses TR),* 97 Daly (10/22/84)
Park City, *Nimmo, John P., House (Mining Boom Era TR),* 334 Marsac (10/22/84)
Park City, *Rolfe, Charles, House (Mining Boom Era Houses TR),* 1130 Park (10/22/84)
Park City, *Watson, Patrick B., House (Mining Boom Era Houses TR),* 962 Norfork (10/22/84)

Uintah County

LaPoint, *Caldwell Village (42 Un 95)* (06/15/85)

Weber County

Ogden, *Patterson Building,* 2422—2426 Washington Blvd. (05/16/85)
Ogden, *US Forest Service Building* (01/22/85)
Uintah, *Uintah Bridge* (02/07/85)

VERMONT

Chittenden County

Essex, *Pearl Street Recreation Park (Vt-CH-234, 235)* (06/19/85)

Franklin County

Richford, *US Post Office & Custom House* (09/02/85)

VIRGINIA

Augusta County

Fisherville, *Kiddsville Colored Schoolhouse (Public Schools in Augusta County VA 1870—1940 TR),* Rt. 796 (02/27/85)

Lynchburg (ind. city)

Allied Arts Building, 725 Church St. (06/25/85)

Norfolk (ind. city)

Poplar Hall (03/06/85)

Hampton County

PENTRAN Administration & Maintenance Building, Intersection of Victoria Blvd. & Algonquin Rd. (08/21/85)

WASHINGTON

Chelan County

Stehekin, *Rainbow Lodge & Cabins,* North Cascades National Park (06/11/85)

Clark County

Vancouver, *Artillery Stables* (03/01/85)
Vancouver, *St. James Mission Site* (02/28/85)

King County

Seattle, *Baillargeon Building (Rainier Bank Building)* (03/07/85)
Seattle, *Beacon Hill School* (12/26/84)
Seattle, *Foster & Marshall Building (Seattle National Bank Building)* (03/07/85)
Seattle, *Hadfield Building (Brooklyn Building)* (03/07/85)
Seattle, *Josephinum—New Washington Hotel,* 1902 Second Ave. (01/24/85)
Seattle, *Seattle Trust & Savings Bank (Boston Co. Building)* (03/07/85)

Walla Walla County

Walla Walla, *Burlington Northern Engine House* (02/14/85)

Yakima County

Yakima, *Yakima Valley Transportation Company,* Corner of Third Ave. & Pine St. (11/01/84)

Yakima & Benton Counties

Grandview Irrigation District (07/16/85)

WEST VIRGINIA

Kanawha County

Charleston, *Abney—Alexander House (South Hills MRA)* (10/26/84)

Marion County

Fairmont, *Club Deluxe,* 214 Madison St. (04/04/85)
Fairmont, *Golden Brothers Building,* 329—331 Adams St. (04/04/85)
Fairmont, *Madison Hotel,* 312 Madison St. (04/04/85)

WISCONSIN

Crawford & Grant Counties

Bridgeport Bridge (11/21/84)

Dane County

Madison, *Building at 14—24 E. Mifflin St.,* 14—24 E. Mifflin St. (05/13/85)
Madison, *Manchester's Department Store Building* (05/13/85)

Door County

Iverson, Andreas, House & First Public School (Ephraim MRA) (03/27/85)

Douglas County

Archeological Site Prevost (47 DG 12–18) (02/07/85)
Archeological Site Sucies (47 DG 11) (02/07/85)
Superior, *St. Joseph Orphan Home,* 1200 Fifteenth Ave., E (12/17/84)

LaCrosse County

Pammel Creek Site (47–LC–61) (03/21/85)
State Road Coulee Site (47–LC–176) (03/21/85)

Milwaukee County

Milwaukee, *North Point Historic District (CHD)* (04/10/85)
Milwaukee, *Steinmeyer, William, House (Brewers' Hill MRA),* 1724–1730 N. Fifth St. (10/11/84)

Pierce County

Prescott Bridge (12/31/84)

Racine County

Racine, *Fish Brothers Wagon Co. Building (State Street Redevelopment Area)* (06/06/85)
Racine, *Garfield School (State Street Redevelopment Area)* (06/06/85)
Racine, *Haven, William, House (State Street Redevelopment Area)* (06/06/85)
Racine, *Hofmeister—Ellinger Residence (State Street Redevelopment Area)* (06/06/85)
Racine, *J.I. Case Company Historic District (State Street Redevelopment Area)* (06/06/85)
Racine, *Sage, Sidney, House (State Street Redevelopment Area)* (06/06/85)
Racine, *Sage, Stephen, House (State Street Redevelopment Area)* (06/06/85)
Racine, *State Street Historic District (State Street Redevelopment Area)* (06/06/85)

Richland County

Rockbridge, *Cunningham Lane Bridge,* Over the Pine River (07/16/85)

Rock County

Vanderlyn, Nate, House (Clinton MRA) (08/01/85)
Janesville, *Courthouse Park Historic District (Janesville MRA)* (01/17/85)
Janesville, *House at 1006 Sutherland (Janesville MRA),* 1005 Sutherland (01/17/85)
Janesville, *House at 102—106 N. Atwood Ave. (Janesville MRA),* 102—106 N. Atwood Ave. (01/17/85)
Janesville, *House at 120 Cherry St. (Janesville MRA),* 120 Cherry St. (01/17/85)
Janesville, *House at 120 S. Academy St. (Janesville MRA),* 120 S. Academy St. (01/17/85)
Janesville, *House at 121 S. Academy St. (Janesville MRA),* 121 S. Academy St. (01/17/85)
Janesville, *House at 1218 Ruger Ave. (Janesville MRA),* 1218 Ruger Ave. (01/17/85)
Janesville, *House at 1412 Ruger Ave. (Janesville MRA),* 1412 Ruger Ave. (01/17/85)
Janesville, *House at 169 S. Academy St. (Janesville MRA),* 169 S. Academy St. (01/17/85)
Janesville, *House at 173–175 S. Jackson St. (Janesville MRA),* 173–175 S. Jackson St. (01/17/85)
Janesville, *House at 200 S. Garfield Ave. (Janesville MRA),* 200 S. Garfield Ave. (01/17/85)
Janesville, *House at 202 Jackman St. (Janesville MRA),* 202 Jackman St. (01/17/85)
Janesville, *House at 202 S. Franklin St. (Janesville MRA),* 202 S. Franklin St. (01/17/85)
Janesville, *House at 208 S. Locust St. (Janesville MRA),* 208 S. Locust St. (01/17/85)
Janesville, *House at 209–211 S. Atwood Ave. (Janesville MRA),* 209–211 S. Atwood Ave. (01/17/85)
Janesville, *House at 211 S. Main St. (Janesville MRA),* 211 S. Main St. (01/17/85)
Janesville, *House at 212–214 Cherry St. (Janesville MRA),* 212–214 Cherry St. (01/17/85)
Janesville, *House at 219 W. Milwaukee St. (Janesville MRA),* 219 W. Milwaukee St. (01/17/85)
Janesville, *House at 220 S. Academy St. (Janesville MRA),* 220 S. Academy St. (01/17/85)
Janesville, *House at 220 S. Jackson St. (Janesville MRA),* 220 S. Jackson St. (01/17/85)
Janesville, *House at 225 Madison St. (Janesville MRA),* 225 Madison St. (01/17/85)

Janesville, *House at 235 Milton Ave. (Janesville MRA),* 235 Milton Ave. (01/17/85)
Janesville, *House at 252 S. Franklin St. (Janesville MRA),* 252 S. Franklin St. (01/17/85)
Janesville, *House at 301 Cherry St. (Janesville MRA),* 301 Cherry St. (01/17/85)
Janesville, *House at 301 W. Milwaukee St. (Janesville MRA),* 301 W. Milwaukee St. (01/17/85)
Janesville, *House at 302 S. Locust St. (Janesville MRA),* 302 S. Locust St. (01/17/85)
Janesville, *House at 303 Cornelia St. (Janesville MRA),* 303 Cornelia St. (01/17/85)
Janesville, *House at 303 E. Court St. (Janesville MRA),* 303 E. Court St. (01/17/85)
Janesville, *House at 305 Madison St. (Janesville MRA),* 305 Madison St. (01/17/85)
Janesville, *House at 305–307 W. Milwaukee St. (Janesville MRA),* 305–307 W. Milwaukee St. (01/17/85)
Janesville, *House at 309 Cornelia St. (Janesville MRA),* 309 Cornelia St. (01/17/85)
Janesville, *House at 313 E. Wall St. (Janesville MRA),* 313 E. Wall St. (01/17/85)
Janesville, *House at 315 S. Parker Dr. (Janesville MRA),* 315 S. Parker Dr. (01/17/85)
Janesville, *House at 317 Madison St. (Janesville MRA),* 317 Madison St. (01/17/85)
Janesville, *House at 321 E. Milwaukee St. (Janesville MRA),* 321 E. Milwaukee St. (01/17/85)
Janesville, *House at 327 S. Parker Dr. (Janesville MRA),* 327 S. Parker Dr. (01/17/85)
Janesville, *House at 345 S. Main St. (Janesville MRA),* 345 S. Main St. (01/17/85)
Janesville, *House at 402 Prospect Ave. (Janesville MRA),* 402 Prospect Ave. (01/17/85)
Janesville, *House at 420 High St. (Janesville MRA),* 420 High St. (01/17/85)
Janesville, *House at 424 S. Academy St. (Janesville MRA),* 424 S. Academy St. (01/17/85)
Janesville, *House at 441 Madison St. (Janesville MRA),* 441 Madison St. (01/17/85)
Janesville, *House at 455 N. Parker Dr. (Janesville MRA),* 455 N. Parker Dr. (01/17/85)
Janesville, *House at 475 Madison St. (Janesville MRA),* 475 Madison St. (01/17/85)
Janesville, *House at 5 S. High St. (Janesville MRA),* 5 S. High St. (01/17/85)
Janesville, *House at 50 S. Main St. (Janesville MRA),* 50 S. Main St. (01/17/85)
Janesville, *House at 51 S. Franklin St. (Janesville MRA),* 51 S. Franklin St. (01/17/85)
Janesville, *House at 538 S. Main St. (Janesville MRA),* 538 S. Main St. (01/17/85)
Janesville, *House at 54 S. Franklin St. (Janesville MRA),* 54 S. Franklin St. (01/17/85)
Janesville, *House at 54 S. Jackson St. (Janesville MRA),* 54 S. Jackson St. (01/17/85)
Janesville, *House at 620 E. Holmes St. (Janesville MRA),* 620 E. Holmes St. (01/17/85)
Janesville, *House at 704 E. Milwaukee St. (Janesville MRA),* 704 E. Milwaukee St. (01/17/85)
Janesville, *House at 802 E. Court St. (Janesville MRA),* 802 E. Court St. (01/17/85)
Janesville, *House at 823 E. Milwaukee St. (Janesville MRA),* 823 E. Milwaukee St. (01/17/85)
Janesville, *House at 904 E. Court St. (Janesville MRA),* 904 E. Court St. (01/17/85)
Janesville, *House at 922 Rockport Rd. (Janesville MRA),* 922 Rockport Rd. (01/17/85)
Janesville, *W. Milwaukee St. District No. One (Janesville MRA)* (01/17/85)
Janesville, *W. Milwaukee St. District No. Two (Janesville MRA)* (01/17/85)

Sauk County

Baraboo, *Manchester Street Bridge* (03/18/85)
Reedsburg, *Central Wisconsin Creamery (Reedsburg MRA)* (12/26/84)
Reedsburg, *Corwith, J.W., Livery (Reedsburg MRA)* (12/26/84)
Reedsburg, *Perry, Ralph P., House (Reedsburg MRA)* (12/26/84)

Sheboygan County

Sheboygan, *Armira Leather Co. Complex* (08/20/85)

St. Croix County

Hudson, *Seventh Street Bridge (Chicago Northwestern Railroad Bridge)* (03/18/85)

Trempealeau County

Kiep's Island Site I (47Tr66) (07/10/85)

Vernon County

Bridge No. Sixteen (Riverside Park Bridge) (01/24/85)
Bridge No. Eighteen (Hudson Toll Bridge) (01/24/85)

Walworth & Kenosha Counties

Cinko—Kirchner Property (12/18/84)

WYOMING

Carbon County

Saratoga, *Jack Creek Guard Station (48 CR4074)* (06/05/85)

Natrona County

Richard's Trading Post (12/11/84)

Park County

Ralston, *Heart Mountain Relocation Center* (07/12/85)

The following properties have been demolished and/or removed from the determination of eligibility list.

CALIFORNIA

Sonoma County

Schlake, Frederick H., Ranch

GEORGIA

Tift County

Georgia Project F–026–2(43)A

ILLINOIS

Fulton County

Indian Ford Bridge

IOWA

Marshall County

Rainbow Arch Bridge

KENTUCKY

Jefferson County

O'Doherty Building

NEW HAMPSHIRE

Hillsborough County

Ferretti Building
Salty Dog Tavern

NEW JERSEY

Camden County

Dudley Mansion Complex

NORTH CAROLINA

Alleghany County

Alleghany County Bridge No. 107

Bladen County

Bladen County Bridge No. 701–42–20

Davidson County

Davidson County Bridge No. 249

Guilford County

Guilford County Bridge No. 53

Mitchell County

Mitchell County Bridge No. 229

Randolph County

Randolph County Bridge No. 19

Rowan County

Rowan County Bridge No. 27

OKLAHOMA

Pittsburg County

Site PS 90

[FR Doc. 86–3714 Filed 2–24–85; 8:45 am]

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February 25, 1986

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Northern Aplomado Falcon and Canby's Dropwort; Final Rules

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of the Northern Aplomado Falcon To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the northern aplomado falcon, *Falco femoralis septentrionalis*, to be an endangered species under provisions of the Endangered Species Act of 1973, as amended. This subspecies historically occurred in southeastern Arizona, southern New Mexico, southern Texas, much of Mexico, and the western coast of Guatemala. It has been extirpated as a breeding species from the United States, and at present is known to nest only in portions of eastern Mexico. This falcon is threatened by continued habitat loss and by contamination with organochlorine pesticides. No critical habitat has been proposed. This rule will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Falco femoralis septentrionalis*.

DATE: The effective date of this rule is March 27, 1986.

ADDRESSES: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, S.W., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Hoffman, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The northern aplomado falcon is perhaps one of our most colorful birds of prey. ("Aplomado" in Spanish means gray or lead-colored.) Adults are characterized by rufous underparts, a gray dorsum, a long and banded tail, long legs, and a distinctive black and white facial pattern. *Falco femoralis septentrionalis* (family Falconidae) was first described by Todd in 1916; the type specimen had been taken in 1887 near Ft. Huachuca, Arizona. This subspecies is the largest form of *Falco femoralis* and weighs about 9–14 ounces (250–400 grams) (Hector 1981). Aplomados are intermediate in size between American kestrels (*Falco sparverius*) and peregrine falcons (*Falco peregrinus*). The northern aplomado falcon does not seem to be migratory, since most collected adults were taken in winter months in the United States (Hector 1981). Hector (1980, 1981, 1982, 1983) summarized the literature dealing with the northern aplomado falcon and reported on the historic and recent distributions of the species, and on its habitat, diet, and behavior. Kiff *et al.* (1978) documented eggshell thinning and pesticide contamination in the subspecies.

Egg laying has been recorded between the months of January and September; eggs are usually laid in April or May. Aplomado falcons feed on birds, insects, rodents, small snakes, and lizards (Hector 1981). In eastern Mexico, the majority of prey items are insects; however, birds make up over 90 percent of the dietary biomass (Hector 1981).

Typical northern aplomado falcon habitat is open rangeland and tropical savanna containing scattered mesquites (*Prosopis juliflora*), yuccas (*Yucca elata* and *Yucca treculeana*), oaks (*Quercus oleoides*), acacias (*Acacia farnesiana*), or palms (*Sabal mexicana*). In central Mexico, the falcon has also been found in open pine woodland (*Pinus montezumae*). The most recent reported United States nesting occurred in yucca/mesquite grassland near Deming, New Mexico, in 1952. In the same year, a second nest was found in northern Chihuahua, Mexico; this is the most recent documented nesting attempt for northern Mexico. The essential components of northern aplomado falcon habitat are open terrain with scattered trees, relatively low ground cover, an abundance of small to medium-sized birds, and a supply of nesting platforms (stick nests or large bromeliads) (Hector 1983).

The historic breeding range of the northern aplomado falcon, as represented by museum specimens or eggs, included southeastern Arizona, southern New Mexico, and southern Texas in the United States, the States of Tamaulipas, Chiapas, Campeche, Tabasco, Chihuahua, Coahuila, Sinaloa, Jalisco, Guerrero, Veracruz, Yucatan, and San Luis Potosi in Mexico, and the western coast of Guatemala. It is now extirpated as a breeding species from the United States and is presently known to nest regularly only in portions of northern and central Veracruz, northern Chiapas, western Campeche, and eastern Tabasco, mostly in palm and oak savanna (Hector 1981.).

Considered together, the habitat preferences of the subspecies and the timing of its decline in the United States implicate habitat degradation due to brush encroachment as the main factor responsible for the disappearance of the subspecies from the United States. Secondarily, overcollecting of the falcons and their eggs may have temporarily reduced their numbers in some parts of the United States. However, collecting pressure, by itself, could not account for the continued absence of the aplomado falcon north of Mexico. Currently, the most serious threat to this falcon is the continued use of DDT and other persistent pesticides within the ranges of the falcon and some of its prey species.

Falco femoralis septentrionalis was first considered by the Service in 1973 as a possible candidate for endangered status (United States Department of the Interior 1973); however, more information was needed to support such a determination. Additional information is now available to the Service to support a determination of endangered (Kiff *et al.* 1978, Hector 1980, 1981, 1982, 1983). The northern aplomado falcon is presently listed by the State of Arizona as extirpated from that State (Arizona Game and Fish Commission 1982) and by the State of Texas as a protected nongame species (Texas Park and Wildlife Code 127.70.12.001–.008). A 1983 status report for this subspecies was prepared by Dean P. Hector of the University of California at Los Angeles, under contract with the Service. Upon evaluation of that report, the Service has concluded that the status of this species most closely fits endangered as defined in Section 3 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Falco femoralis septentrionalis was included in category 2 of the December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 2 includes those taxa that are thought to possibly warrant listing, but for which more information is needed to determine biological status and to support listing. That information is now available for this subspecies in the current status report (Hector 1983) and the Service published a proposed rule to list this subspecies as endangered on May 20, 1985 (50 FR 20810).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports on information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested

parties, including the government of Mexico, were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Sun-News* in Las Cruces, New Mexico, on June 7, 1985; *The Brownsville Herald* in Brownsville, Texas, on June 14, 1985; the *Arizona Daily Star* in Tucson, Arizona, on June 13, 1985; and the *Hudspeth County Herald-Dell Valley Review* in Del Rio, Texas, on June 21, 1985.

Sixteen letters were received in support of the proposal and one letter expressed neither support nor opposition. Summaries of the comments follow:

The Arizona State Clearinghouse had no comments on the proposal. The New Mexico Wildlife Federation, the Raptor Research Foundation, the Texas Natural Heritage Program, Fort Huachuca (U.S. Army), and Roland Wauer (Assistant Superintendent, Great Smoky Mountains National Park) supported the proposal. The Arizona Game and Fish Department, W. Grainger Hunt (Senior Ecologist, BioSystems Analysis, Inc.), and the Rob and Bessie Welder Wildlife Foundation supported the proposal and offered comments and/or suggestions for recovery efforts. Gale Monson supported the proposal and stated that there are no records of this falcon for the Mexican State of Sonora.

The Texas Department of Water Resources stated that review of planned and/or potential water resource projects located in the species's habitat indicated no significant conflicts with the Service's proposal to list this species.

The Texas Parks and Wildlife Department stated that this species has been listed as the equivalent of threatened by the State of Texas since 1977 and is recommended for elevation to State endangered status. It also stated that there have been recent reports of isolated aplomado falcons occasionally being seen along the barrier islands adjacent to the Laguna Madre in south Texas.

The National Wildlife Federation supported the proposal and attached a copy of biological information that it had earlier supplied during preparation of the proposal. That information had been incorporated as part of the proposal.

The National Audubon Society supported the listing and offered suggestions for recovery efforts. In addition, it commented that reasons for the species decline could be identified as follows: (1) the loss of open grassland habitat due to overgrazing and other excessive range practices; and (2) reduced breeding success due to organochlorine contamination. This society also stated that it appears unlikely that pesticide contamination played a major role in the northern aplomado falcon's extirpation in the U.S., because the heavy use of pesticides such as DDT began shortly after World War II and did not receive widespread application in the Southwest until after 1952. The proposed rule stated that the reasons for decline were mainly habitat degradation due to brush encroachment and secondarily overcollecting of the falcons and their eggs. The rule stated that currently, the most serious threat to the falcon is the continued use of DDT and other persistent pesticides.

Dean P. Hector supported listing of the northern aplomado falcon but believed that it should be listed as threatened rather than endangered. His comments and the Service's responses follow.

1. Agricultural development probably improves availability of prey such as doves, cowbirds, blackbirds, grackles, etc., that are common in farming areas. Agricultural development, however, was certainly detrimental in that it led to increased contamination of prey species by pesticide residues. Service response: Some birds do increase, but most species decrease. A large portion of the prey of this falcon is composed of insects, most of which are eliminated in farming operations (e.g., cotton). The Service could find no reports for this species being regularly found in or around agricultural fields, only in open rangelands. It has not adapted to such alterations in the habitat, while the two other falcons in the same area (American kestrel, *Falco sparvarius*, and prairie falcon, *Falco mexicanus*) regularly are found in and around agricultural areas within the former range of the aplomado falcon.

2. There is little or no evidence regarding the occurrence of the aplomado falcon on the Central Plateau of Mexico. In addition, nothing is known about the effect of brush encroachment on the habitat of the aplomado falcon on the Central Plateau of Mexico. Service response: More research is needed. There have been no reports of active nests in this area for several decades.

3. "No data presently exist that show conclusively that '. . . remaining populations *are* threatened by reproductive failure due to pesticide contamination.' At present, we know only that the species is showing signs of heavy contamination in eastern Mexico. It seems likely, however, that pesticide contamination is having a detrimental effect on reproductive output, in view of the effect of DDT on other upper-trophic-level raptors." Service response: Levels of DDE and DDT in aplomado eggs (Kiff *et al.* 1978) and data on eggshell thinning in the aplomado (Hector 1981), when compared with the occurrence of eggshell thinning in peregrine falcon populations that declined due to pesticide contamination (Peakall and Kiff 1979), offer sufficient evidence to indicate that aplomado populations are threatened by reproductive failure due to pesticide contamination. Actual reproductive failure in the past or now taking place has not been documented, but the threat clearly remains so long as such contaminants remain in the ecosystem.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the northern aplomado falcon, *Falco femoralis septentrionalis*, should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the northern aplomado falcon are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The northern aplomado falcon has suffered severe population declines in the United States (Hector 1981). These declines appear to have resulted primarily from brush encroachment on open rangelands, which eliminated the open grasslands with scattered trees preferred by this species and provided better concealment for prey species. Brush encroachment involves the proliferation in open savanna or grassland of woody vegetation, such as mesquite and creosote bush, and has been fostered by severe overgrazing, suppression of range fires, and other vegetative disturbances (Humphrey 1958). Such encroachment has been well documented for southeastern Arizona (Hastings and Turner 1965), for south-central New Mexico (Buffington and Herbel 1967), and for the southern Texas coastal plains (Johnston 1973). Brush encroachment is probably still a factor limiting the distribution of the northern aplomado falcon. In addition, agriculture development may have also contributed to the decline of the falcon by eliminating nesting sites.

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B. Overutilization for commercial, recreational, scientific, or educational purposes. The collection of northern aplomado falcons for scientific purposes has been minimal for the past 50 years. In addition, the species has rarely been used for falconry purposes. Falconry is not known to have had much effect on the aplomado falcon due to the difficulty of obtaining the species in the United States. Some overcollecting of northern aplomado falcons and their eggs may have occurred in the early 1900s and may have contributed to a temporary decline of the species in the United States, but collecting is not likely to be a significant factor now and cannot account for the continued absence of the aplomado north of north-central Mexico. At least one falcon has been found shot in eastern Mexico (Hector pers. comm.). The frequency with which this occurs is unknown.

C. Disease or predation. Nothing is known about the effect of disease or predation on population productivity. One parasite, a botfly, has been reported (Hector 1982). This fly infests young aplomado falcons; however, it is not known under what conditions this insect could cause high mortality rates among nestlings. It is very unlikely that botfly parasitism has played a role in past declines of the aplomado. No instances of animal predation on northern aplomado falcons have been documented.

D. The inadequacy of existing regulatory mechanisms. The Migratory Bird Treaty Act (16 U.S.C. 701–711) establishes provisions regulating the taking, killing, possessing, transporting, and importing of migratory birds, including all subspecies of *Falco femoralis.* The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) includes all members of the family Falconidae, including *Falco femoralis,* on Appendix II that are not on Appendix I. CITES provides for regulation of import and export of its listed species.

In Texas, *Falco femoralis septentrionalis* is classified by the State as a protected nongame species (Texas Parks and Wildlife Code 127.70.12.001–.008). In Arizona, it is included in Group 1 of the State list of threatened native wildlife, which comprises those species that are known to be extirpated from Arizona, but that still exist elsewhere (Arizona Game and Fish Commission 1982). This species is not listed in New Mexico (New Mexico State Game Commission 1985).

These classifications call attention to the plight of this subspecies in the United States. They also provide some protection by regulating taking and exploitation of the aplomado; however, they do not provide any protection to the habitat of the subspecies. The northern aplomado falcon is not subject to damaging levels of direct exploitation. Instead, the species is sensitive to habitat degradation and chemical contamination, and needs the type of active management and protective measures provided for in the Endangered Species Act.

E. Other natural or manmade factors affecting its continued existance. The most important threat to the present survival of the northern aplomado falcon is the continued use of persistent organochlorine pesticides within the range of this falcon and some of its prey species. Recent data strongly suggest that such pesticide use is causing extreme eggshell thinning in some populations of northern aplomado falcons (Kiff *et al.* 1978). Levels of DDE and DDT in membranes of 20 clutches of aplomado eggs collected in Veracruz (1957–1966) averaged 390 parts per million. In a more recent sample (1977), collected along a 500-mile transect from northern Veracruz to western Campeche, DDE (DDT not reported) residue levels averaged 297 parts per million for seven samples of eggshell fragments (Kiff *et al.* 1978). The eggshell thickness index for eggs in these 1957–66 and 1977 samples averaged 25 and 24 percent less, respectively, than pre-DDT eggs from the same populations. Eggshell thinning of greater than 20 percent of pre-DDT levels is likely to result in nesting failure. In 1977, two nestings in Veracruz were observed to have failed due to eggshell breakage during incubation (Hector 1981). On the average, eggs of the northern aplomado falcon collected in eastern Mexico are proportionately thinner than eggs collected from peregrine falcon populations that declined due to pesticide contamination (Peakall and Kiff 1979).

The aplomado falcon has undergone severe losses in range and numbers in the past, and remaining populations are threatened by reproductive failure due to pesticide contamination. Experiences with the endangered peregrine falcon show that pesticide contamination can lead to severe, rapid population declines, and to the eventual extirpation of such populations of the affected species. The levels of pesticide contamination and rates of eggshell thinning found in the remaining populations of the northern aplomado falcon exceed those found to have been the cause of nesting failure in populations of the peregrine falcon in the 1960's and 1970's.

The Service has carefully assessed the best scientific and commercial information available, as well as the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the northern aplomado falcon as endangered throughout its historic range. The above factors make it apparent that this subspecies is in danger of extinction throughout all or a significant portion of its range and, consequently, that the appropriate status for this subspecies is endangered, as defined in Section 3 of the Act. Therefore, either no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the northern aplomado falcon at this time, because there are no known active nesting areas within the past 25 years in the United States. Critical habitat is not designated in areas outside U.S. jurisdiction (50 CFR 424.12(h)).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983).

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No Federal involvement is known or expected.

The northern aplomado falcon is already covered under the provisions of the Migratory Bird Treaty Act (16 U.S.C. 701–711), that regulate the taking, killing, possession, transport, and import of covered species. It is also included on Appendix II (as a member of the family Falconidae) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which controls the import and export of subject species. International trade of this species and its products is minimal.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since this falcon is not in commercial trade to any extent, such hardship permits are not expected to be issued.

The Service will determine whether this species should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The author of this final rule is Alisa M. Shull, Endangered Species Staff, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "BIRDS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and Threatened wildlife.

* * * * *

(h) * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
*	*	*	*	*	*	*	
Falcon, northern aplomado	Falco femoralis septentrionalis	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	Entire	E	218	NA	NA
*	*	*	*	*	*	*	

Dated: February 8, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-3973 Filed 2-24-86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Oxypolis Canbyi (Canby's Dropwort) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Oxypolis canbyi* (Canby's dropwort) to be an endangered species. This plant will now be provided the protection of the Endangered Species Act of 1973, as amended. This species is known from one site in Maryland, one site in North Carolina, five sites in South Carolina, and three sites in Georgia. Its continued existence is threatened by the loss of wetland habitats in the coastal plain of the mid-Atlantic region, highway improvements, and insect predation. Critical habitat is not being designated.

DATES: The effective date of this rule is March 27, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION:

Background

Canby's dropwort is a plant of the parsley family (Apiaceae) found at only ten locations in Maryland, Georgia, North Carolina, and South Carolina. The perennial plants have a slight dill fragrance, stand 0.8–1.2 meters (2.6–3.9 feet) tall, have slender "quill-like" leaves, and bear compound umbels of small flowers. The five-parted flowers appear from May through early August and have white petals and pale green sepals, some of which are tinged with red. The species' habitats include swamps, shallow pineland ponds, and wet pine savannas.

Oxypolis canbyi was originally described as a variety of a more common species, *Oxypolis filiformis*, by Coulter and Rose in 1900; however, Meritt L. Fernald elevated the taxon to a full species in 1939. Recent studies by Tucker *et al.* (1983) and Kral (1981) support Fernald's treatment. Although superficial examination has been cause for some confusion between the two taxa, *Oxypolis canbyi* is clearly distinguishable from *Oxypolis filiformis* on analysis of the mature fruit, leaves, and, most notably, the rootstock. *Oxypolis canbyi* has a strong colonizing habitat and spreads vigorously by a pale, fleshy rhizome. The most significant threat to *Oxypolis canbyi* has been and continues to be the loss of wetland habitats on the lowland plain of the mid-Atlantic coast. Several populations have been lost as shallow ponds and wetlands were ditched and drained for conversion to lowland pasture, pine plantations, soybean fields, and other agricultural uses. Alteration of groundwater tables as a result of suburban development, road construction, and other forms of human encroachment is also believed to be a cause of the species' decline.

Ten populations are known to occur in the States of Maryland, North Carolina, South Carolina, and Georgia; the species is believed extirpated from Delaware. A brief State-by-State summary of the species' status follows.

Delaware: Oxypolis canbyi has not been known to occur in the State since 1894. At least seven visits to collect specimens of the plant were made in the "swamps and meadows" east of Ellendale in Sussex County between the years 1867 and 1894. No other historical collections are known to exist from the State. Much of the area east of Ellendale, where the population is believed to have occurred, have been ditched and drained for agricultural purposes. Recent intensive field searches of the historical site and other suitable sites have failed to locate any *Oxypolis canbyi*. The ditching and draining with subsequent changes in vegetative succession and land use has greatly modified the area, and the plant is now considered extirpated from the State.

Maryland: One population of approximately 36 stems (Boone *et al.* 1984) was found within the Chester River watershed in Queen Annes County in 1982. Previously, the species had not been known to occur in the State. The population, however, is within the area of the proposed Upper Chester River Watershed Channelization Project. The Soil Conservation Service (SCS) has been officially advised of the species' occurrence in the project area and of the proposed status of the species. The U.S. Fish and Wildlife Service (FWS) and SCS are optimistic that proper project design and implementation will provide solutions to protecting the species and its habitat. The site of this single extant Maryland population was acquired by the Maryland Chapter of The Nature Conservancy in early 1984.

Georgia: Oxypolis canbyi is officially listed by the State of Georgia as an endangered species. Extant populations are known in Burke, Lee, and Sumter Counties. There is a record for Dooly County near Unadilla but the last known collection from that site was in 1953. Two Burke County records exist from the vicinity of Waynesboro.

North Carolina: Oxypolis canbyi is recorded for one site in North Carolina. The population occurs in a Carolina bay (a physiographic land form that typically appears as a shallow egg-shaped depression) in Scotland County. The site was first discovered in 1984 and is owned in part by The Nature Conservancy.

South Carolina: Five extant populations of *Oxypolis canbyi* are known to occur in the State. There are two additional, historical, sites where the species no longer exists. A vigorous population of approximately 600 stems occurs on private land in Bamberg County and a second population of about 500 stems in colonies of 10–20 stems each, exists in Colleton County. The Colleton site is now owned by The Nature Conservancy. Protection efforts are also underway for the Bamberg site; however, both populations could be threatened by possible roadside maintenance or improvements. Three new populations were found in 1984 as a result of intensive field work. One population was discovered in Richland County and two were found in Barnwell County. The South Carolina Heritage Trust Program is working to protect the sites.

The historical Hampton County population is along a railroad near Luray. It has not been observed since 1956 and is believed extirpated. The former Berkeley County population near Pineville was last confirmed in 1961. The Berkeley County habitat, a grass-sedge Carolina bay, is now bisected by a small secondary road. Although *Oxypolis canbyi* was positively identified at the site in 1961, recent investigations have determined that only *Oxypolis filiformis* now occurs there. Road construction may have possibly altered the hydrology and vegetative succession of the site, as the area is no longer suitable for *Oxypolis canbyi*.

Oxypolis canbyi was first recommended for Federal listing as a threatened plant species by the Smithsonian Institution in its December 15, 1974, report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published a notice of review in the Federal Register (40 FR 27823-27924) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now covered by Section 4(b)(3) of the Act, as amended). Canby's dropwort was recognized as a "category-2" candidate in the Service's Federal Register notice of December 15, 1980 (45 FR 82480). Category-2 candidates are defined as taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

In recent years, intensive field investigations have been undertaken by State natural resource agencies, private conservation groups, and professional botanists to more thoroughly assess this species' status throughout its range. As a result of this work, *Oxypolis canbyi* was determined to be a "category-1" plant in the Service's November 28, 1983, supplement (48 FR 53640) to the 1980 notice. Category 1 taxa are defined as species for which sufficient information is on hand to support the biological appropriateness of proposing to list.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, Notice of Review were considered to be petitioned and the deadline for a finding on those species, including *Oxypolis canbyi* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Oxypolis canbyi* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such findings require a recycling of the petition, pursuant to Section 4(b)(3)(C)(i) of the Act. The proposed rule of March 28, 1985 (50 FR 12345), constituted the Service's most recent positive finding on this species.

Summary of Comments and Recommendations

In the March 28, 1985, proposed rule (50 FR 12345) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, conservation and scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comments were published in six different papers in the vicinity of known populations. Fifteen comments were received, all of which supported the proposed rule. The comments are discussed below.

Favorable comments were received from each of the five State natural resource agencies. The Delaware Department of Natural Resources and Environmental Control stated that, although *Oxypolis canbyi* is believed to be extirpated from the State, it would continue to conduct periodic surveys for the plant. The Maryland Forest, Park and Wildlife Service supported the rule, suggesting that establishing additional populations on State-owned land within the species' potential range be considered as part of the species' recovery strategy. The North Carolina Department of Agriculture and Department of Natural Resources and Community Development expressed strong support for the Service's proposed rule and indicated they anticipate the plant soon being added to the official North Carolina Protected Plant List. The South Carolina Wildlife and Marine Resources Department stated it has looked at many potential sites for the species but has found very few new populations. It also commented that insect predation by the larvae of the black swallowtail butterfly may be seriously limiting the species' reproductive success.

Two Federal agencies commented. The Department of the Army submitted comments from two Corps of Engineers divisions. Their comments were supportive and indicated their willingness to consider the dropwort with regard to the Upper Chester River Watershed (UCRW) project. The U.S. Department of Agriculture's Soil Conservation Service commented that it is aware of the occurrence of the dropwort in the UCRW project area and will continue to work with the Service and the State of Maryland to protect the plant.

The Nature Conservancy Chapters in Maryland, North Carolina, and South Carolina all favored the proposed rule and stated they were actively working to protect the known sites in their respective States. Three other comments were received, all supportive and from conservation organizations and private individuals. All comments are now incorporated into this rule and the Service greatly appreciates the assistance of all parties.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Oxypolis canbyi* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Oxypolis canbyi* (Coulter and Rose) Fernald (Canby's dropwort) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most significant threat to *Oxypolis canbyi* is the direct loss or alteration of its wetland habitats. Ditching and draining of lowland areas has altered the groundwater table and changed the vegetative composition in many areas of the mid-Atlantic coastal plain where the species historically occurred. Most of the ditching and draining has been for agricultural purposes, including increasing acreage for soybean production, lowland pasture, and pine plantations. Some shallow ponds and depressions have also been dredged to create small reservoirs and "tanks" for watering livestock. In addition to causing direct loss of wetland habitats, the lowering of the water table enables other plants to become established, modifies vegetative succession, and

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makes sites less conducive to the growth and reproduction of *Oxypolis canbyi*. Road construction at the Berkeley County, South Carolina, site may have altered the water table and thus eliminated the dropwort. Roadside maintenance or improvements could also threaten other remaining South Carolina populations.

The only known Maryland population is within the area of the SCS Channelization Project for the Upper Chester River Watershed. The purposes of the project are to provide watershed protection, flood protection, and agricultural drainage on approximately 12,141 hectares (30,000 acres) of farmland, forests, and wetlands in both Maryland and Delaware. The project is evaluating 327 kilometers (203 miles) of drainage channel and would be completed over a seven-year period. Flexibility in final project design and fulfillment of the provisions of an interagency agreement signed by the SCS and the FWS on January 13, 1983, will assist in developing solutions to potential conflicts.

The extant populations in southwestern Georgia and North Carolina are also threatened by the continued loss or drainage of shallow wetlands and wet pineland savannas. The draining of areas for pine plantations and soybean fields causes the most significant impacts. Although The Nature Conservancy has acquired or in some way protected the sites of four extant populations, activities beyond the boundaries of the sites could still have serious adverse impacts on these areas.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Many collections were made for educational and scientific purposes at the now extirpated Ellendale, Delaware, site. Scientific collecting does not appear to have been the major cause of the species' decline. However, since only ten populations are now known to occur and most of these are located in easily accessible sites, the existing populations could be harmed if exploited for educational or scientific purposes.

C. *Disease or predation.* Canby's dropwort appears to be a favored food plant for the larvae of the black swallowtail butterfly. Some of the South Carolina sites have been subject to predation, but the degree of predation among populations and its overall effects on seed set and plant viability are not yet clear. Recent work by a graduate student has suggested that predation by the butterfly larvae might have a major adverse impact on the viability of known populations.

D. *The inadequacy of existing regulatory mechanisms.* Georgia presently lists *Oxypolis canbyi* as an endangered species under protection of the Georgia Wild Flower Preservation Act of 1973, which prohibits digging, removal, or sale of State-listed plants from public lands without the approval of the State management authority (Georgia Department of Natural Resources). North Carolina's legislation to protect rare plants (N.C. General Statute 19–B, 202.12–202.19) provides protection from intrastate trade and provisions for monitoring and proper management. The State of North Carolina anticipates that the dropwort will soon be added to the official State list.

Section 404 of the Federal Water Pollution Control Act could potentially provide some protection to the species' habitats; however, many of the sites where the plants occur do not meet "wetlands" criteria under Section 404. South Carolina, Maryland, and Delaware do not have State legislation officially protecting rare and endangered plants. The Endangered Species Act will provide additional protection.

E. *Other natural or manmade factors affecting its continued existence.* Alteration or modification of groundwater by increasing suburban development and resultant drawdowns for water supply, and site drainages could indirectly impact the species' habitats. There are indications that roads and highways have altered the groundwater regime where *Oxypolis canbyi* historically occurred. Although it is difficult to state with certainty that one specific factor caused the plant's demise, the impacted areas no longer provide the plant's needed life requirements.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Oxypolis canbyi* as endangered. Due to the immediate and continuing loss of wetland habitats, the remaining populations are particularly vulnerable and in need of protection. In addition, the protection of the local areas where the plants occur may not provide sufficient protection if development or actions in other areas of the watershed (i.e., tributary streams) affect the local flow regime or groundwater table. An understanding of the groundwater flow regime and total watershed management considerations, therefore, become particularly crucial to properly protecting existing *Oxypolis* sites.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Service, the natural resource agencies of the States in which the species occur, and The Nature Conservancy believe that publication of specific areas in which *Oxypolis canbyi* occurs would likely subject the species to increased disturbance by curiosity seekers and vandals. These potential threats are of particular significance since the sites are easily accessible, the habitats are fragile, and increased public access would be difficult to control under existing authorities. Consequently, no critical habitat is proposed for this plant species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations, and individuals. Because of the precarious status of *Oxypolis canbyi*, The Nature Conservancy has already made significant contributions to conserving the species by acquiring the habitat of three of the known populations, and is actively working to protect other sites as well. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely

modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The only known current Federal action that may affect *Oxypolis canbyi* is the SCS Channelization Project for the Upper Chester River Watershed. Cooperative discussions between the FWS and the SCS have been initiated and field inspections are currently being planned.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Oxypolis canbyi*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions in part make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Oxypolis canbyi* and the Service therefore anticipates few, if any, requests for such permits.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681, to be codified at 50 CFR 17.62). This prohibition will apply to *Oxypolis canbyi*, although no known populations exist on Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Boone, D.D., G.H. Fenwick, and F. Hirst. 1984. The Rediscovery of *Oxypolis canbyi* on the Delmarva Peninsula. Bartonia 50:21–22.

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Author

The author of this final rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Apiaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Apiaceae—Parsley family: *Oxypolis canbyi*	Canby's dropwort	U.S.A. (DE, GA, MD, NC, SC)	E	217	NA	NA
*	*	*	*	*	*	*

Dated: February 9, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–3974 Filed 2–24–86; 8:45 am]

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Part V

Department of Agriculture

7 CFR Part 3201

Competitive Research Grants Program for Forest and Rangeland Renewable Resources; Administrative Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

7 CFR Part 3201

Competitive Research Grants Program for Forest and Rangeland Renewable Resources; Administrative Provisions

AGENCY: Office of Grants and Program Systems, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish Part 3201 of Title 7, Subtitle B, Chapter XXXII of the Code of Federal Regulations, for the purpose of administering the Competitive Research Grants Program for Forest and Rangeland Renewable Resources conducted under authority of section 5 of the Forest and Rangeland Renewable Resources Research Act of 1978, as amended (16 U.S.C. 1644). The issuance of this rule will establish the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program.

DATE: Written comments concerning this proposed regulation are invited from interested individuals and organizations. To be considered, all relevant material must be received on or before March 27, 1986.

ADDRESS: Written comments must be submitted to: Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 112, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251. All comments received will be available for public inspection at said office on weekdays between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, (202) 475-5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule have been approved under OMB Document No. 0525-0001.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program/activity is scheduled to appear in the 1986 edition of the Catalog of Federal Domestic Assistance as 10.213, Competitive Research Grants Program for Forest and Rangeland Renewable Resources. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 CFR 29115, June 24, 1983, when the authority to administer this program resided in the Forest Service, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 5 of the Forest and Rangeland Renewable Resources Research Act of 1978, as amended, the Secretary of Agriculture is authorized to make competitive research grants to further research activities related to the protection, management and utilization of forest and rangeland renewable resources to Federal, State, and other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States.

This proposed rule will establish Part 3201 of Title 7, Subtitle B, Chapter XXXII of the Code of Federal Regulations, for the purpose of administering the Competitive Research Grants Program for Forest and Rangeland Renewable Resources.

List of Subjects in 7 CFR Part 3201

Grant programs—agriculture, Grant administration.

It is therefore proposed to amend Title 7, Subtitle B, Chapter XXXII of the Code of Federal Regulations by adding Part 3201 to read as follows:

CHAPTER XXXII—OFFICE OF GRANTS AND PROGRAM SYSTEMS, DEPARTMENT OF AGRICULTURE

PART 3201—COMPETITIVE RESEARCH GRANTS PROGRAM FOR FOREST AND RANGELAND RENEWABLE RESOURCES

Sec.
3201.1 Applicability of regulations.
3201.2 General regulations.
3201.3 Eligibility requirements.
3201.4 Signatures required on grant application.

Authority: Sec. 5 of the Forest and Rangeland Renewable Resources Act of 1978, as amended (16 U.S.C. 1644).

§ 3201.1 Applicability of regulations.

(a) The regulations of this part apply to competitive research grants awarded under the provisions of section 5 of the Forest and Rangeland Renewable Resources Research Act of 1978, as amended (16 U.S.C. 1644), to Federal, State, or other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States. The Secretary, or his or her designee, shall determine and announce, through publication of a Notice in the Federal Register each year, research program areas for which proposals will be solicited to the extent that funds are available. Research under this program will be in those areas having a significant impact on the protection, management and utilization of forest and rangeland renewable resources.

(b) The regulations of this part do not apply to research grants awarded under any other authorization.

§ 3201.2 General regulations.

For purposes of this part, the provisions found at Part 3200 of this chapter, excluding the provisions listed in (a) through (e) below, are applicable to the administration of this research program.

(a) Section 3200.1.

(b) Section 3200.3(a).

(c) Section 3200.4(c).

(d) The material found in the second sentence of 3200.6(c)(3) beginning with "the results of which" and ending with "food and agricultural sciences,."

(e) The parenthetical phrase in the last sentence of 3200.7(c).

§ 3201.3 Eligibility requirements.

Except where otherwise prohibited by law, any Federal, State or other governmental agency, public or private

agency, institution, university, or organization, and business or individual in the United States shall be eligible to apply for and receive a project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in § 3200.3(b).

§ 3201.4 Signatures required on grant application.

(a) Any research proposal submitted by an agency, institution, university, organization, or business must be signed by the principal investigator(s) and endorsed by the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources.

(b) Any research proposal submitted by an individual who lacks organizational affiliation need only be signed by the principal investigator.

Done at Washington, DC, this 11th day of February 1986.

John Patrick Jordan,

Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 86-4042 Filed 2-24-86; 8:45 am]

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Part VI

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3401
Rangeland Research Grants Program Administrative Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3401

Rangeland Research Grants Program Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish Part 3401 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Rangeland Research Grants Program conducted under authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, (7 U.S.C. 3333). The issuance of this rule will establish the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of research grants under this program.

DATE: Written comments concerning this proposed regulation are invited from interested individuals and organizations. To be considered, all relevant material must be received on or before March 27, 1986.

ADDRESS: Written comments must be submitted to: Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 112, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251. All comments received will be available for public inspection at said office on weekdays between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, (202) 475-5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule have been approved under OMB Document No. 0525-0001.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of Section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, (7 U.S.C. 3333), the Secretary of Agriculture is authorized to make grants to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research.

This proposed rule will establish Part 3401 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Rangeland Research Grants Program.

List of Subjects in 7 CFR Part 3401

Grant programs—agriculture, Grant administration.

It is therefore proposed to amend Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations by adding Part 3401 to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

Sec.
3401.1 Applicability of regulations.
3401.2 General regulations.
3401.3 Eligibility requirements.
3401.4 Matching fund requirement.
3401.5 Indirect costs and tuition remission costs.

Authority: Sec. 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316)

§ 3401.1 Applicability or regulations.

(a) The regulations of this part apply to rangeland research grants awarded under the provisions of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. The Secretary, or his or her designee, shall determine and announce, through publication of a Notice in the **Federal Register** each year, research program areas for which proposals will be solicited to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded under any other authorization.

§ 3401.2 General regulations.

For purposes of this part, the provisions found at Part 3400 of this chapter, excluding the provisions listed in (a) through (g) below, are applicable to the administration of this research program.

(a) Section 3400.1.

(b) Paragraph 3400.3(a).

(c) The last sentence of Paragraph 3400.4(c)(11).

(d) The parenthetical phrase in the last sentence of Paragraph 3400.7(c).

(e) Paragraph 3400.7(d)(1).

(f) Paragraph 3400.7(d)(2).

(g) Paragraph 3400.7(d)(3).

§ 3401.3 Eligibility requirements.

Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university, and Federal laboratory having a demonstrable capacity in rangeland research shall be eligible to apply for and receive a project grant under this part, provided that the applicant

qualifies as a responsible grantee under the criteria set forth in Paragraph 3400.3(b).

§ 3401.4 Matching fund requirement.

In accordance with section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

§ 3401.5 Indirect costs and tuition remission costs.

Pursuant to Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program shall not be subject to reduction for indirect costs or for tuition remission. Indirect costs and tuition remission costs are not allowable costs for purposes of this program.

Done at Washington, DC this 11th day of February 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-4041 Filed 2-24-86; 8:45 am]

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Part VII

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1900, 1924, and 1980

Administrative Appeal Procedure Revisions and Interest Rate Buydown Program and Appeals for FHA's Guaranteed Operating, Farm Ownership, and Soil and Water Loans To Implement Applicable Provisions of the Food Security Act of 1985; Interim Rules

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900, 1924, and 1980

Administrative Appeal Procedure Revisions and Interest Rate Buydown Program and Appeals for Farmers Home Administration's Guaranteed Operating, Farm Ownership, and Soil and Water Loans To Implement Applicable Provisions of the Food Security Act of 1985

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments and finalization of previously published interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to: (1) Provide for revised time periods for handling appeals; (2) provide that farmer program borrowers who fail to attend a scheduled conference or supply necessary information still can appeal an adverse action; (3) provide for guarantees for operating, farm ownership, and soil and water loans for joint operations; (4) provide for family farm restrictions except for applicants related by blood and marriage for certain farmer program guaranteed loans; (5) provide for prompt approval of certain guaranteed farmer program loans; (6) provide for a different appeal procedure for guaranteed farmer program, economic emergency, emergency livestock, and rural housing loans; and (7) provide for interest rate buydown for guaranteed operating, farm ownership, and soil and water loans. The amendments are necessary to implement applicable provisions of the "Food Security Act of 1985" (Pub. L. 99-198). The major effects will be to ensure that the Agency provides for prompt handling by FmHA of appeals by most FmHA borrowers; provides for prompt service to applicants and borrowers of guaranteed farmer program loans; provide for additional ways that borrowers may continue to farm through a reduction in interest rates for guaranteed operating, farm ownership, and soil and water loans; provides an incentive to lenders to provide operating credit to farmers; and provides for appeal procedures for guaranteed operating, farm ownership, and soil and water loans for lenders and applicants similar to the insured program. These changes should assist in preserving the family farm, protect the national food supply, and strengthen rural farming communities.

DATES: Interim rule effective February 25, 1986. Comments must be submitted on or before March 27, 1986. The interim rule published September 30, 1985 (50 FR 39660) and adopted as final in this document is effective as of September 30, 1985.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this date will be available for public inspection under regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382-1632.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Environmental Impact Statement is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act and 5 CFR Part 1320, the Farmers Home Administration has submitted the information collection requirements contained in this regulation for review by the Office of Management and Budget (OMB). The OMB has approved the information collection request and assigned OMB Control Nos. 0575-0024 and 0575-0079.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The "Food Security Act of 1985," Pub. L. 99-198, required these provisions. They were effective on enactment into law. Field offices are already receiving inquiries regarding those provisions that were effective upon enactment of the law. The agency must provide immediate guidance by revising the regulations.

It is urgent that these regulations become effective on publication so that farmers and lenders can make plans for financing the spring planting. It will allow the lender to continue with many borrowers. It will allow many farmers to obtain credit through commercial lenders and continue their farming operations. It should be another valuable tool at a reduced cost to the Government.

Further, pursuant to the administrative procedure provisions in 5

U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impractical, and good cause is found for making this interim rule effective less than 30 days after publication in the Federal Register.

Background

The loan making, supervision, and servicing of FmHA farm borrowers is governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921—*et seq.*) The major purpose for revising the FmHA regulations at this time is to implement various sections of the Food Security Act of 1985 (Pub. L. 99-198) mandating the handling of adminsitrative appeals and to certain actions relating to farmer program guaranteed loans. The sections are as follows:

1. Section 1301—Joint Operations.
2. Section 1303—Family Farm Restriction.
3. Section 1312—Prompt Approval of Loans and Loan Guarantees.
4. Section 1313—Appeals.
5. Section 1320—Interest Rate Reduction Program.

Due to the urgent need of the guarantee for operating and farm ownership loans by both lenders and farmers for credit for spring planting, FmHA has expedited the implementation of these changes. The suspension continues on the guaranteed emergency loan program. Therefore, no changes are being made in the guaranteed emergency loan regulations at this time.

Background—Guaranteed Loans

On September 30, 1985, FmHA published in the Federal Register (50 FR 39660) an interim rule giving interested parties until October 30, 1985, to submit comments on regulations of subparts A, B, C, D, E, and F of Part 1980 of this chapter.

Discussion of Comments Received

In response to the interim rule, 9 written comments were received. All comments were considered in developing the final rule. The following is a discussion of the comments received from 1 farmer, 6 lenders, 1 Banker's Association, and 1 FmHA employee.

One lender wrote that the line of credit should be expanded to restructure real estate equity, machinery, and breeding livestock. The primary purpose of implementing the line of credit authority is to recognize that lines of credit are widely used to finance annual production purposes and to prevent farmers going through a repetitive loan process if they were to receive several guaranteed annual production loans. The refinancing of real estate equity, machinery, and breeding livestock are inconsistent with this intention. After due consideration, we have decided not to adopt this change.

Other lenders wrote that they "welcome most of our proposals." However, FmHA should strive to give lenders quicker settlements in claims and modifying approved lender status in order to expedite application processing. Present regulations provide that FmHA may make an estimated loss payment to the lender prior to liquidation. In addition, we believe the time requirements set forth in the regulations to notify lenders of the status of their applications and the time frames required for approval will expedite processing.

A lender wrote that the 1% guarantee fee assessed upon the lender is excessive, and made it prohibitive for lenders to participate in the program. FmHA believes that the 1% fee should be charged to the lender to cover administrative costs of processing and monitoring the loan. The lender may pass this fee on to the borrower.

Two lenders wrote that the interest rate should be determined by a lender on the "basis of a risk rating system" rather than that charged the lender's average farm customer. FmHA believes that the interim rule adequately addressed this issue. Regulations provide that average farm customers do not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders, or those low risk customers who obtain financing on a secured or unsecured basis who have as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan.

Another lender wrote with concern that the requirement that variable interest rates be tied to a "base rate" which is published periodically in a financial publication was construed to mean that this rate would be based on the prime rate. This is not the case. The lender may tie the base rate to a rate reflecting the lending institution's cost of funds as long as the based rate is published periodically in a financial publication.

A Banker's Association wrote that FmHA regulations as set forth in the interim rule "will provide a far more effective set of guaranteed loan programs that will assist both farms and agriculture lenders through these difficult times." The respondent also suggested regulations should be revised to provide estimated loss payments to lenders equal to 75% of the loan guaranteed or 100% of the guaranteed portion of the estimated loss, whichever is less. FmHA regulations currently allow an estimated loss payment to the lender prior to liquidation of 100% of the estimated loss on the guaranteed portion of the loan, not to exceed however the guaranteed portion of principal advanced plus interest. Therefore, the suggested change would not be of benefit to lenders.

An FmHA employee wrote that the method calculating yields in connection with loan requests set forth in the interim rule should stipulate that this method will be used if the farm is an average farm in the county. FmHA believes that it would be difficult to determine what is considered an average farm in a county. Further, the requirements that ASCS proven yields be considered would virtually eliminate this situation.

The employee further wrote that the regulations would allow a borrower to have two applications on hand at one time, one insured and one guaranteed. This is not correct. The interim rule stipulates that the review for an insured loan would be consistent with the appropriate insured loan regulation. Therefore, the possibility of two simultaneous applications, one insured and one guaranteed is not possible.

The employee also commented that the requirement that Approved Lenders are notified of application completeness within 3 working days be changed to 5 working days to account for mail turnaround. The interim rule states that FmHA will notify applicants within 3 working days, not that applicants will receive such notification within 3 working days. FmHA does not believe it necessary to adopt this change.

Finally, the employee was concerned that lenders were authorized by the interim rule to charge 1% above the average interest rate. The employee stated that his experience indicates lenders will charge guarantee customers 1-1½ percent below the average farm customer rate to offset the guarantee fee and the benefit to the lender of the guarantee. FmHA believes that this provision will not change these situations since the lender is charging the borrower less than the average interest rate which he is authorized to charge. This change was made to encourage greater lender participation in the program. FmHA elects not to change this provision.

Therefore, FmHA is adopting as final without change the interim rule for

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guaranteed loans published on September 30, 1985.

Background—Recreation Loans

This is a minor program. Since 1969 only 460 insured loans and three guaranteed loans for a total of $20,527,880 were made. As of October 21, 1985, only 210 loans for a total of $13,325,000 remain outstanding. The program has not been funded since Fiscal Year 1981. Indications are that it will not receive funding in the foreseeable future. Therefore, the Agency is not amending the guaranteed regulations or the Code of Federal Regulations to save the time and expense of updating the regulations.

Part 1900—General

Subpart B—Farmers Home Administration Appeal Procedure

Revisions required to comply with Pub. L. 99–198.

§ 1900.51 is partially revised to allow guaranteed Farmer Program, Emergency Livestock, and Rural Housing loans to be appealed under this Part and to require the lender and the applicant to jointly participate in an appeal of a guaranteed loan denial. Business and Industrial guaranteed loans will be covered by regulations which will be issued in the near future.

§ 1900.52 is partially revised to include an applicant or lender applying for or having a guaranteed loan or a line of credit loan in the definition of an appellant for farmer program, emergency livestock or rural housing loans.

§ 1900.53(a)(5) is revised for clarification only.

§ 1900.55(c) is revised to refer only to Rural Housing, Rural Rental Housing, Rural Cooperative Housing, Rural Housing Site, and Labor Housing Loans and Grants.

§ 1900.55(d) is revised to give the borrower the opportunity for a conference and/or hearing. Failure to attend the conference will not cancel the borrower's right to a hearing.

§ 1900.55(e) is revised to apply only to situations covered in §§ 1900.55 (c) and (d).

§ 1900.55(f) is added to apply to all appeals not covered under § 1900.55 (c) and (d) of this subpart and requires FmHA to give the appellant the opportunity for a conference and/or a hearing. Failure to schedule/attend the conference does not cancel the appellant's right to a hearing, if requested. FmHA cannot waive the right to a meeting or conference.

§ 1900.56(a) is revised to specify what Exhibits are used to advise borrowers of their appeal rights and to correct an error for a reference to Subpart A of Part 1965 of this chapter.

§ 1900.56(b) changes the time allowed the decision maker to notify the applicant of an adverse action.

§ 1900.56(e) this section now only applies to Rural Housing, Rural Rental Housing, Rural Cooperative Housing, Rural Housing Site, and Labor Housing Loan and Grant cases originating in Samoa, Guam, Alaska, and the Western Pacific Territories for appeal hearings.

§ 1900.59(c) is added to require the decisionmaker to resume processing of an application within 15 days after the decisionmaker is notified that the loan denial is reversed or modified as a result of the appeal and to notify the applicant.

Exhibit B–6 is revised so that borrowers who do not schedule or attend a meeting or conference do not forfeit their appeal rights.

Exhibit B–7 is added for use in informing certain borrowers and applicants of their appeal rights when a meeting with FmHA is optional prior to a hearing.

Part 1924—Construction and Repair

Subpart B—Management Advice to Individual Borrowers and Applicants

§ 1924.72(b) is revised to require FmHA to inform borrowers of their appeal rights even if they fail to attend the scheduled conference or provide the necessary information in connection with their request for servicing actions.

§ 1924.72(c) is revised to require FmHA to advise borrowers of their right to a conference in addition to a hearing when appealing FmHA's intended adverse action.

Part 1980—General

Subpart A—General

This regulation is partially revised to incorporate the applicable provisions of the Pub L. 99–198.

§ 1980.20 is revised to refer to § 1980.80 of this subpart for appeal rights when FmHA reduces the percentage of guarantee requested by the lender.

§ 1980.47 is added to stipulate various time requirements for taking actions on applications for Farmer Program loan guarantees.

§ 1980.60(a)(9) is revised to include joint operations for farmer program loans only.

§ 1980.61(e) is revised to refer to § 1980.80 of this subpart for appeal rights when FmHA determines it cannot execute the Loan Note Guarantee or Contract of Guarantee. This revision is for clarification only.

§ 1980.80 is revised to refer appeals for Farmer Program, Economic Emergency, Emergency Livestock, and Rural Housing loans to FmHA regulation 1900–B.

§ 1980.83 is revised to include FmHA Form 1980–58, "Interest Rate Buydown Agreement," and Form FmHA 1980–24, "Request for Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

Appendix H is added for Form FmHA 1980–58, "Interest Rate Buydown Agreement."

Appendix I is added for Form FmHA 1980–24, "Request for Interest Rate Buydown/Subsidy Payment to Guaranteed Lender."

Subpart B—Farmer Program Loans

This regulation is revised to conform with Pub. L. 99–198. Revisions are:

§ 1980.101(a) is revised to reference Exhibit D to 1980–B for the Interest Rate Buydown Program.

§ 1980.106(b)(10) is revised to include joint operations.

§ 1980.106(b)(16) is added to define joint operations.

§ 1980.106(21)(b)(ii) is revised to correct a reference.

§ 1980.106(b)(28) is added to define related by blood and marriage.

§ 1980.108(a)(1)(iii) is added to clarify that guaranteed loans may be made to indebted FmHA insured borrowers when separate and identifiable security can be obtained by the guaranteed lender. This change is necessary because of the economic conditions for farming and the critical need to expand the availability of credit to financially distressed farmers.

§ 1980.108(a)(2)(i) is revised to require personal guarantees of individuals involved in joint operations and the rest of the paragraph is renumbered.

§ 1980.108(c) is revised to require the property of joint operations and joint operators as individuals to be considered to determine if credit elsewhere is available.

§ 1980.108(d) is revised only to clarify the relationship between FmHA insured and guaranteed loans.

§ 1980.109(a)(1) is added to require personal guarantees of individuals involved in joint operations and redesignate the numbers for the paragraph.

§ 1980.113(a)(5) is revised to add the provision for joint operators.

§ 1980.113(b) is revised to require a list of the names of joint operators, current financial statement from the joint operation and joint operators and a joint operation agreement.

§ 1980.113(c) is revised to delete the use of Form FmHA 449–18, and to require prompt FmHA review of the preliminary application and written notification of the applicant's and lender's right to appeal any unfavorable decision.

§ 1980.113 Administrative Section A is revised to require the County Supervisor to give joint operation applicants Form FmHA 410–9, "Statement Required by the Privacy Act." Section B is printed for convenience.

§ 1980.113 Administrative Section C is added to require County Supervisors to notify the borrower and lender of the Interest Rate Buydown Program.

§ 1980.114(a) is revised to provide for an appeal for the lender and applicant of the indication that a guarantee cannot be approved.

§ 1980.115 is revised to delete the use of Form FmHA 449–18 when informing the lender and the applicant of the County Committee's unfavorable action on their loan request, and to require prompt FmHA County Committee and FmHA loan approval or disapproval and written notification of their right to appeal any disapproval.

§ 1980.115 Administrative Section B is revised to require FmHA loan approval or disapproval not later than 60 days of receipt of completed applications and to clarify that approval determination will be made within 14 working days of County Committee certification for approved lenders and 30 days of County Committee certification for non-approved lenders.

§ 1980.119 is revised to require FmHA to inform the lender and applicant in writing within 10 days of a decision of the reasons for the decision and of their appeal rights in connection with a Conditional Commitment for Guarantee.

§ 1980.145(b) is revised to require notification of borrowers of the Interest Rate Buydown Program.

§ 1980.146, Part B of the Administrative section, is revised to clarify that if FmHA liquidates a guaranteed loan, it must follow the insured loan regulations.

§ 1980.146, Part E of the Administrative section, is revised to require FmHA to promptly advise the lender of its appeal rights when FmHA denies or reduces the amount of loss claims submitted by the lender.

§ 1980.148 is revised to refer to Part 1900, Subpart B for the method of appealing adverse actions by FmHA in connection with guaranteed farmer program loans.

§ 1980.175(b)(1)(i) is revised to correct a cross-reference.

§ 1980.175(b)(2) is revised to correct a cross-reference and to include joint operations.

§ 1980.175(b)(2)(vi) is added to allow entities to exceed a family size farm if certain conditions are met.

§ 1980.175(d)(1) is revised for clarification that the operating line of credit principal balance must never exceed the ceiling set out on the Contract of Guarantee. Also, the principal indebtedness cannot exceed $400,000 rather than principal and interest indebtedness to conform with insured loan regulations on this point.

§ 1980.175(e) is revised to add provisions relating to the Interest Rate Buydown Program.

§ 1980.175(f)(4) is revised to add provisions of the Emergency Agricultural Credit Act of 1984 which allows for rescheduling of loans other than NFE loans for up to 15 years.

§ 1980.180 (b)(1) and (c)(1) are revised to correct a cross-reference.

§ 1980.180(c)(2) is revised to correct a cross-reference and amended to include joint operations.

§ 1980.180(c)(2)(vi) is added to allow entities to exceed a family size farm providing certain conditions will be met.

§§ 1980.180(f)(2) is revised to add provisions relating to the Interest Rate Buydown Program.

§ 1980.180(f)(3) is revised to correctly refer to § 1980.124 (d) for deferrals.

§ 1980.185(b) and (c)(1)(i) are revised to correct a cross-reference.

§ 1980.185(c)(2) is revised to correct a cross-reference and amended to include joint operations.

§ 1980.185(f)(2) is revised to add provisions relating to the Interest Rate Buydown Program.

§ 1980.185(f)(3) is revised to correctly refer to § 1980.124 (d) for deferrals.

Exhibit A, Section II A is is revised to require prompt action by FmHA on a request for Approved Lender status. Exhibit C is being revised to include a reference to the "Request for Interest Rate Buydown."

Exhibit D is added to prescribe the policies and procedures for an Interest Rate Buydown Program. A brief summary of the "buydown" program is as follows:

Under the Interest Rate Buydown Program, FmHA may pay the lender up to 50 percent of the cost of reducing the interest rate to the borrower (not to exceed two percentage points) on guaranteed operating loans and lines of credit, farm ownership loans and soil and water loans. This could reduce the interest rate to the borrower by as much as four percent. A "buydown" will only be approved when there is no other means which will project a positive cash flow for a borrower's farm business. The "buydown" will be for a period not to exceed three years or the term of the loan, whichever is less, with a fixed interest rate for the buydown period. New loans, existing nonguaranteed loans, and existing FmHA guaranteed loans may be considered for the program. All "buydowns" must be approved by FmHA on or before September 30, 1988. The terms and conditions of the "buydown" are set out in the Form FmHA 1980–58, "Interest Rate Buydown Agreement." Congress has appropriated 490 million dollars for this program for over the next three years.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan Programs—Housing and community development.

7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

7 CFR Part 1980

Agriculture, Loan Programs—Agriculture, Loan programs—Business and Industry—Rural development assistance, Loan Programs—Housing and community development.

Accordingly, the interim rule published September 30, 1985, (50 FR 39880) is adopted as a final rule with some changes and Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

2. § 1900.51 is revised to read as follows:

§ 1900.51 General.

This subpart provides a uniform procedure whereby a person or organization may appeal any program administrative decision made by Farmers Home Administration (FmHA) which directly affects that person or organization. If an adverse decision is made by FmHA on a guaranteed loan application, the borower *and* the lender must participate jointly in any appeal. In cases where FmHA has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender

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only. This subpart does not replace any existing procedures for handling discrimination complaints. This procedure does not apply to:

(a) Guaranteed loans made under Subpart E of Part 1980 of this chapter (Business and Industrial Loans).

(b) Debt settlement action found in Part 1864 of this chapter (FmHA Instruction 456.1).

(c) Freedom of Information Act appeals.

(d) Privacy Act appeals.

(e) Suspension and Debarment procedure in Subpart E of Part 1924 of this chapter.

(f) Procurement activity that may be appealed to the Department of Agriculture Board of Contract Appeals.

(g) Tenant appeals which are covered in Subpart L of Part 1944 of this chapter.

(h) Tax refunds offset based on Section 2653 of the Deficit Reduction Act of 1984 (P.L. 98–369).

(i) This procedure superocedes all other FmHA appeals procedures affecting applicants, borrowers, or grantees.

(j) The provisions of 5 U.S.C. 551–559, Administrative Procedure Act, as amended, are not applicable to proceedings under this subpart except for the requirements concerning public information. Accordingly, the Equal Access to Justice Act (Pub. L. 96–481) does not apply to these proceedings.

FmHA officials may not deny or delay approved assistance pending the outcome of an appeal of a partial adverse action. For borrowers with farmer program loans, as defined in § 1900.52(d) of this subpart, releases for certain family living and farm operating expenses cannot be terminated until the borrower has received Form FmHA 1924–25, "Notice of Intent to take Adverse Action," and Form FmHA 1924–26. "Borrower Acknowledgment of Notice to Take Adverse Action," in accordance with Subpart A of Part 1962 of this chapter *and* any appeal has been concluded *and* Exhibit D or E of Subpart A of Part 1955 of this chapter has been sent to the borrower.

3. §1900.52 is amended by revising paragraph (a) to read as follows:

§ 1900.52 Definitions.

(a) *Appellant* is an applicant for FmHA assistance or an FmHA borrower or grantee, either individual or organizational, that is directly and adversely affected by an administrative decision by FmHA. The appellant may also be a lender, which is an applicant or recipient of a farmer program, Emergency Livestock or Rural Housing guaranteed loan or line of credit, or the guaranteed loan applicant or borrower and such programs.

* * * * *

4. § 1900.53 is amended by revising paragraph (a)(5) to read as follows:

§1900.53 Decisions which are not appealable.

(a) * * *

(5) Decision not to release proceeds from the sale of security for unauthorized purpose.

* * * * *

5. § 1900.55 is amended by revising paragraphs (c), (d), and (e), and by adding paragraph (f) to read as follows:

§ 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(c) For Rural Housing (RH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) loans and grants, a meeting must be held between the affected parties and the decision maker to explain the adverse decision before the appeals process will begin. The required meeting may be waived by the decision maker if the decision maker previously met with or advised the affected parties of the specific reasons for the denial or the decision maker determines that a meeting would likely not avoid an appeal. The decision maker will document in the affected party's file the reasons for deciding to waive the meeting. In such cases, Exhibit B–2 with attachment Exhibit B–4 will be used without revision, except in cases involving acceleration of accounts which are provided for in § 1900.56(a) of this subpart. When a meeting is required, Exhibit B–1 will be used without revision to inform the appellant. If the appellant or appellant's representative (or legal counsel) without good cause, fails to schedule/attend this meeting, there will be no appeal.

(d) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Parts I, III, and IV of Form FmHA 1924–26 are entitled to a conference with the decision maker before the appeals process begins. The conference cannot be waived by FmHA. If the borrower or the borrower's representative fails to schedule or attend the conference, or if the borrower fails to bring the information requested, the borrower is still entitled to a hearing. If the borrower or the borrower's representative attends the conference but the request for servicing relief cannot be granted, Exhibit B–3 with attachment B–4 will be used to notify the borrower of the appeal rights. If the borrower or borrower's representative fails to attend the conference, Exhibit B–2 with attachment B–4 will be used.

(e) This paragraph applies only to those situations covered by § 1900.55 (c) and (d). When the person or organization officials attend a meeting or conference with the decision making official and the meeting or conference results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting or conference, setting forth the conclusions reached. If the meeting or conference does not result in a resolution of the matter, Exhibit B–3 with attachment Exhibit B–4 will be sent without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting or conference. If the person or organization has returned Form FmHA 1924–26 indicating no appeal is desired, Exhibit B–6 will be sent.

(f) Except in situations covered by § 1900.55 (c) and (d) of this subpart, FmHA must offer to meet with the affected parties to explain the adverse decision before the appeal process will begin. Exhibit B–7 with attachment Exhibit B–4 will be used for this purpose, except in cases involving acceleration of accounts which are provided for in § 1900.56 of this subpart. This meeting cannot be waived by FmHA. If the appellant or the appellant's representative requests a meeting and hearing but fails to schedule/attend this meeting, the appellant is still entitled to a hearing.

6. § 1900.56 is amended by revising paragraph (a), the introductory text of paragraph (b), and paragraph (e) to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) Farmer program loan borrowers who are sent Forms FmHA 1924–25 and FmHA 1924–26 (in accordance with Subpart A of Part 1965, Subpart B of Part 1924, Subpart A of Part 1962, or Subpart C of Part 1950 of this chapter) are given an opportunity to appeal before the adverse action is taken unless Part II E or Parts III or IV of Form FmHA 1924–26 were completed. If the borrower requested servicing relief and such relief cannot be granted, the borrower will be sent Exhibit B–3 with attachment Exhibit B–4. If an appeal is taken and the decision to take adverse action is upheld, the final letter upholding the initial decision will contain the following statements:

This review concludes the administrative appeal of your case. FmHA will proceed to take the adverse action noted on Form FmHA 1924–25, "Notice of Intent to Take Adverse Action." You are not entitled to any further appeal in connection with the adverse action.

(b) If an applicant for FmHA assistance, an FmHA borrower (except those farmer program loan borrowers who are sent Forms FmHA 1924–25 and 1924–26), or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking action or making the decision will inform that person or organization by letter of the action taken within 10 calendar days of the decision. The term "directly and adversely affected" means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, cancelled, or not renewed. Letters, as indicated in § 1900.53 or § 1900.55 of this subpart, as appropriate, will be used to notify the applicant. The following actions will also be taken if the adverse action is an acceleration of an FmHA loan:

* * * * *

(e) This paragraph applies only to RH, RRH, RCH, RHS, and LH loans and grants. Cases originating in Samoa, Guam, remote areas of Alaska, and the Western Pacific Territories and submitted to the State Office for a hearing, may be acted upon without a hearing when circumstances due to travel and time involved preclude it. In those cases, the decision maker will allow a reasonable period of time for the appellant or the appellant's representative [or legal counsel] to, upon request, examine or copy documents pertaining to the case. The decision maker will advise the appellant within 7 calendar days of the request for appeal to provide written documentation to support the allegations and/or any written statements from other witnesses which support the appellant's position. Appellant is to provide the information to the decision maker within 30 calendar days from the date of request for appeal. Exhibit B–1 will be modified as necessary. The decision maker must obtain and mail to the hearing officer the complete FmHA file for the case, together with any available documents from the appellant supporting the appeal, and written statements from other witnesses who would have appeared at a hearing.

7. § 1900.59 is amended by adding paragraph (c) to read as follows:

§ 1900.59 Effect of appeal decision.

* * * * *

(c) *Timeliness.* Whenever an adverse decision concerning a loan or loan guarantee (except for RH, RRH, RCH, RHS, or LH loans and grants) is appealed and the hearing officer or review officer reverses or modifies the initial decision, the decision maker shall resume processing of the application and notify the applicant of this within 15 days after the decision maker is notified of the decision of the hearing or review officer. The decision maker will inform the applicant of any further information needed.

8. Part 1900, Exhibit B–6 to Subpart B is revised to read as follows:

Exhibit B–6 to Subpart B of Part 1900—Letter for Notifying Borrowers Who Received Form FmHA 1924–25 But Who Have Waived or Forfeited Their Appeal Rights

---

U.S. Department of Agriculture
Farmers Home Administration
[Insert Address]

[Date]

Dear ——————:

Your were sent Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and attachments, on [date]. You have [waived] [forfeited] your opportunity for an appeal hearing concerning the adverse action the Farmers Home Administration intends to take as indicated on Form FmHA 1924–25 because

[you failed to return Form FmHA 1924–26, "Borrower Acknowledgment of Notice of Intent to take Adverse Action," in response to Form FmHA 1924–25 during the time period provided.]

[you indicated on Form FmHA 1924–26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," you did not wish to appeal.]

This is notice that FmHA is proceeding to take the adverse action shown on the Form FmHA 1924–25. You will receive no further appeal rights in connection with this adverse action.

Sincerely,
(County Supervisor) ——————————

9. Part 1900, Exhibit B–7 to Subpart B is added to read as follows:

Exhibit B–7 to Subpart B of Part 1900—Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision Is Appealable

(Use when meeting with decision maker is the option of the appellant.)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
(Insert Address)
Date

Dear ——————:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are canceling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call the County Office (insert phone number) to request a meeting with [this office] [the County Committee] within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative (or legal counsel) with you. You also have the right to appeal this decision to a hearing officer in lieu of or in addition to meeting with [this office] [the County Committee]. See attachment for your appeal rights.

The hearing officer will be (name and title). A request for a hearing should be sent to the hearing officer in care of this office:

(address)

(Use the following paragraph for individual applicants only): The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,
(Decision maker) (County Supervisor for County Committee)——————————
(Title)——————————

PART 1924—CONSTRUCTION AND REPAIR

10. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Management Advice to Individual Borrowers and Applicants

11. Section 1924.72 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1924.72 Borrowers who receive Forms FmHA 1924–25 and 1924–26.

* * * * *

(b) *Borrower checks blocks in Part I.* Part I of Form FmHA 1924–26 contains a list of available servicing actions including rescheduling, reamortization, consolidation, deferral, subordination, limited resource loans, and the restructuring of the debt and business by selling a portion of the assets. If the borrower checks one or more of these blocks, the borrower must attend a conference with FmHA to develop

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financial statements and proposed operating plans which FmHA will use as a basis for granting or denying the requested servicing relief. If the borrower attends the conference and the County Supervisor approves the request for servicing relief, then the notice of intent to take adverse actions will be considered terminated. If the borrower attends the conference but the County Supervisor denies the servicing request, then the County Supervisor will notify the borrower in writing of the denial with the reasons and facts supporting the denial. The borrower will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter, and the appeal will cover both the denial of the request for servicing and the other adverse action FmHA intends to take. If the borrower (or representative) fails to attend the scheduled conference or fails to provide the necessary information, the borrower will be advised of the appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(c) *Borrower checks blocks in Part II.* The borrower who does not want to be considered for any servicing options but who wants to request a conference with FmHA and/or an administrative appeal of FmHA's intended adverse action must so indicate by checking one of the appropriate blocks in Part II of Form FmHA 1924–26. Any appeal will be handled under Subpart B of Part 1900 of this chapter. If the borrower wants an appeal hearing, the borrower can be represented by counsel or by any other representative, and the hearing officer will be an FmHA employee who has not been previously involved in the borrower's case. The borrower can choose to have FmHA make a review on the record rather than hold a hearing. If the borrower prevails in the administrative appeal, no adverse action will be taken by FmHA. If instead the borrower completes Part II to show that no appeal is desired, then FmHA will take the adverse action.

* * * * *

PART 1980—GENERAL

12. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

13. Section 1980.20 is amended by revising the introductory text to read as follows:

§ 1980.20 Loan guarantee limits.

The maximum loss covered by the Loan Note Guarantee, Form FmHA 449–34 or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of: (a) 90 percent of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and 90 percent of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or (b) 90 percent of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicant will propose the percentage of guarantee. The lender and applicant will be informed in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefor. (See § 1980.80 of this subpart regarding appeals.) FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

* * * * *

14. Section 1980.47 is added to read as follows:

§ 1980.47 Time frame for processing loan guarantee applications.

All guaranteed loan applications must be approved or disapproved, and the lender notified in writing, not later than 60 days after receipt of a completed application.

(a) If an application is not complete, the lender will be notified, in writing, not later than 20 days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(b) When an application is disapproved, the written notification to the lender will state the reasons(s) for disapproval.

(c) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the lender of such action within 15 days after the reversal/revision decision is made.

15. Section 1980.60 is amended by revising paragraph (a)(9) to read as follows:

§ 1980.60 Conditions precedent to issuance of the loan note guarantee or contract of guarantee.

(a) * * *

(9) When required personal, joint operation (for Farmer Program loans only), partnership, or corporate guarantees have been obtained. Copies of the guarantees will be provided to FmHA.

* * * * *

16. Section 1980.61 is amended by revising paragraph (e) to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

* * * * *

(e) *Refusal to execute contract.* If FmHA determines that it cannot execute the Loan Note Guarantee or Contract of Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA 449–13, "Denial Letter," of the reasons, and give the lender a reasonable period within which to satisfy FmHA objections. If the lender is unable to satisfy FmHA objections, then the lender will be informed of the appeal rights as set out in § 1980.80 of this subpart. If the lender writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections with the time allowed and otherwise complies with these regulations, the guarantee will be issued.

* * * * *

17. Section 1980.80 is revised to read as follows:

§ 1980.80 Appeals.

Any adverse decision made by FmHA which affects the borrower or lender may be appealed upon written request of the aggrieved parties in accordance with Subpart E of this part for Business and Industrial loans. Only the borrower and the lender can appeal an FmHA decision and they must jointly participate in the written request for review of the alleged adverse decision made by FmHA. In cases where FmHA has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. Appeals from decisions involving Rural Housing, Farmer Program, Emergency Livestock, or Economic Emergency loan guarantees will be handled in accordance with directions set out in Subpart B of Part 1900 of this chapter.

18. Section 1980.83 is amended by revising paragraph (a) to read as follows and by removing the information regarding the third form, Form FmHA 1980–24, from all of the columns in the table of forms in paragraph (b):

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449–34, "Loan Note Guarantee," FmHA 449–35, "Lender's Agreement," and FmHA 449–36, "Assignment Guarantee Agreement," are incorporated in this Subpart A, made a part hereof, and appear as Appendices A, B, and C in the Federal Register. Forms FmHA 1980–27, "Contract of Guarantee (Line of Credit)," FmHA 1980–38, "Lender's Agreement (Line of Credit)," FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)," Form FmHA 1980–58, "Interest Rate Buydown Agreement," and Form FmHA 1080–24, "Request for Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," are incorporated in this Subpart A and are made a part hereof and appear as Appendices D, E, F, G, H and I of 7 CFR Part 1980, Subpart A in the Federal Register. Copies of the forms may be obtained from any FmHA office.

* * * * *

19. Appendix H is added to Part 1980, Subpart A to read as follows:

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Appendix H

Position 5

USDA-FmHA
Form FmHA 1980-58
(2-86)

FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request.

☐Loan Note Guarantee
☐Contract of Guarantee

Type of Loan ________
7 CFR Part 1980
Subpart B

INTEREST RATE BUYDOWN AGREEMENT

State	
County	
Date of Note	

Borrower	FmHA Loan ID No.
Lender	Lender's IRS ID Tax No.
Lender's Address	Principal Amount of Loan

The principal amount of loan or line of credit is evidenced by ________________ note(s) or line of credit agreement(s) described below. This instrument is attached to note or line of credit agreement ________________ in the face amount (ceiling amount for a line of credit) and is number ________________ of ________________.

Copies of the lender's Loan Note Guarantee, or Contract of Guarantee for a line(s) of credit, and any Assignment Guarantee Agreement, if applicable (Loan Note Guarantee cases only) are attached to this Agreement as a part of it.

Lender's ID No.	*Face Amount of Note/Line of Credit Agreement*	*Interest Rate (If variable calculate in accordance with Part 1980, Subpart B Exhibit D, Paragraph IV I)*	*Lender Write Down*	*FmHA Interest Rate Buydown*

This agreement is effective beginning ________________ and expires on ________________.

In consideration of the subject lender's write down of interest rate on the above borrower's account by ________ percentage points, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for ________ percentage points of the write down.

CONDITIONS OF INTEREST RATE BUYDOWN

1. **Buydown Rates**
The buydown rate set forth in this agreement will remain constant during the term of this agreement.

2. **Interest Rate Buydown Payments**
FmHA's payments made in connection with the interest rate buydown will be calculated using 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980-19, "Guaranteed Loan Closing Report," the preferred method, which may not change once established.

3. **Annual Interest Rate Buydown Claims and Payments**
The initial Interest Rate Buydown claim will be prepared by the lender using form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about a date 12 months from the date of this agreement, unless it is the first or last claim which may be submitted in accordance with the first and last due date on the borrower's promissory note. Subsequent claims will be filed by the lender on or about a date 12 months thereafter but no later than the anniversary date of filing of the initial interest rate buydown claim. Upon full payment of the note or line of credit agreement the lender will immediately prepare Form FmHA 1980-24 and mail a copy to the FmHA servicing office.

4. **When Interest Rate Buydown Payments Cease**
For Loan Note Guarantee cases, when FmHA purchases a portion of a loan, interest buydown payments on that portion will cease. Interest rate buydown payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, when the lender accelerates the borrower's account, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government.

5. **Cash Flow**
The lender certifies that the interest rate reduction to the borrower results in a reduced, equally amortized payment schedule for the term of this agreement so that the borrower's operation projects a positive cash flow on all income and expenses including debt service for the term of this agreement. A loan/line of credit with a term greater than one year must show that a positive cash flow on all income and expenses including debt service can be demonstrated during each year of the buydown. In cases where the term of the loan or line of credit agreement exceeds the term of this agreement, the lender certifies that the borrower is projected to have a positive cash flow on all income and expenses including debt service after this agreement expires. Cash flow and positive cash flow are defined in Exhibit D to Subpart B of Part 1980 and must be calculated in accordance with §1980.113(d)(8) of Subpart B of Part 1980.

6. **Cancellation of Interest**
Lender certifies that the amount of interest written down on subject borrower's account will be permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

7. **Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown.** (Loan Note Guarantee Cases Only). **See also item 10 of Form FmHA 449-36.**

In the case of converting a guaranteed loan without an interest rate buydown to one with such a buydown, the lender must obtain the holder's consent in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. Any repurchase will only be made after the lender obtains FmHA's written approval. In the event the lender assigns the guaranteed portion of the loan to a holder(s) the Assignment Guarantee Agreement (Form FmHA 449-36) will be amended as provided in 7 CFR, Part 1980, Subpart B, Exhibit D, paragraph VI B2 to reflect the reduced interest rate.

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8. **Regulatory Changes**
This Agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provisions of this agreement.

9. **Cancellation**
The Interest Rate Buydown Agreement is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this Agreement is executed or for which the lender participates in or condones.

10. **Excessive Interest Rate Buydown**
The Government may amend or cancel this agreement and collect from the lender any amount of reduction granted as a result of incomplete or inaccurate information, computation errors, or other circumstances which resulted in interest rate buydown payments that the lender was not entitled to receive.

11. **Access to Lender's Files**
Lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining interest rate buydown claims.

LENDER:

ATTEST: ______________________ *(SEAL)*

By ______________________

Title ______________________

Address: ______________________
____
____

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By ______________________

Title ______________________

ACKNOWLEDGED

ATTEST: ______________________ *(SEAL)*

Borrower ______________________

Co-Borrower ______________________

BILLING CODE 3410-07-C

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20. Appendix I is added to Part 1980, Subpart A to read as follows:

Appendix I

FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request.

UNITED STATES DEPARTMENT OF AGRICULTURE – Farmers Home Administration

Form FmHA 1980-24
(Rev. 2-86)

REQUEST INTEREST RATE BUYDOWN/SUBSIDY PAYMENT TO GUARANTEED LOAN LENDER

TRANSACTION 4931

INSTRUCTIONS – TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED
Complete all items. See reverse.) TAB 4 SPACES.

1. CASE NO. ST CO BORROWER'S ID	2. LENDER ID NO. *(IRS Tax No.)*
3. LOAN NO.	4. BRANCH NO.
5. BORROWER NAME	6. LENDER NAME
7. BEGINNING CURRENT BUYDOWN/SUBSIDY PERIOD. MO DA YR	8. END CURRENT BUYDOWN/SUBSIDY PERIOD. MO DA YR
9. PRINCIPAL BALANCE AT BEGINNING OF CURRENT BUYDOWN/SUBSIDY PERIOD. $	10. ACCRUED INTEREST AT BEGINNING OF CURRENT BUYDOWN/SUBSIDY PERIOD. $
11. AMOUNT OF PRINCIPAL ADVANCED DURING CURRENT BUYDOWN/SUBSIDY PERIOD. $	12. INTEREST PAYMENTS DURING CURRENT BUYDOWN/SUBSIDY PERIOD. $
13. PRINCIPAL PAYMENTS DURING CURRENT BUYDOWN/SUBSIDY PERIOD. $	14. ACCRUED INTEREST AT END OF CURRENT BUYDOWN/SUBSIDY PERIOD. $
15. PRINCIPAL BALANCE AT END OF CURRENT BUYDOWN/SUBSIDY PERIOD. *(Item 9 + Item 11 –Item 13)* $	16. INTEREST RATE BUYDOWN/SUBSIDY. *(SEE REVERSE)* *Assumption Agreement* $
17. CHECK ISSUE CODE (2142) 1 = SYSTEM GENERATED CHECK *(Finance Office Only)* 2 = MANUAL CHECK 3 = NO CHECK ISSUED	18. DATE MANUAL CHECK ISSUED (74) MO DA YR *(Finance Office Only)*
[illegible]	
20. AUTHORIZED LENDER'S SIGNATURE	22. DATE
[illegible]	23. DATE

LENDER

FmHA 1980-24 (Rev. 2-86)

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Subpart B—Farmer Program Loans

21. Section 1980.101 is amended by revising paragraph (a) to read as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart supplemented by Subpart A of this part contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), and Emergency (EM) loans. It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract. The regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans and Guaranteed Farm Ownership (FO) loans. Exhibit B provides policies and procedures for the Guaranteed Debt Adjustment Program (DAP), for Guaranteed Operating (OL) loans (Loan Note Guarantee cases only), and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Rate Buydown Program for Guaranteed Operating (OL) loans including lines of credit, Guaranteed Farm Ownership (FO) loans and Guaranteed Soil and Water (SW) loans.

* * * * *

22. Section 1980.106 is amended by revising paragraph (b)(10), by redesignating current paragraphs (b)(27) through (b)(31) as new paragraphs (b)(29) through (b)(33) respectively, by adding a new paragraph (b)(28), by redesignating current paragraphs (b)(16) through (b)(26) as new paragraphs (b)(17) through (b)(27) respectively, and by adding a new paragraph (b)(16), by revising the new paragarph (b)(21)(ii) to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

(10) *Family farm.* A farm which:

(i) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(ii) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(A) Pay necessary family living and operating expenses;

(B) Maintain essential chattel and real property; and

(C) Pay debts.

(iii) Is managed by:

(A) The borrower when a loan is made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(iv) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(A) The borrower and the borrower's family for a loan made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(v) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

* * * * *

(16) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and/or income.

* * * * *

(21) * * *

(ii) If an applicant presents actual reliable records for at least 4 of the 5 years immediately preceding the disaster which verify a higher normal production than that established in accordance with paragraph (b)(21)(i) of this section, the higher normal year's production may be used in calculating loss.

* * * * *

(28) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parents, children, brother and sister.

* * * * *

23. Section 1980.108 is amended by adding paragraph (a)(1)(iii), by redesignating current paragraphs (a)(2)(i) through (a)(2)(iii) as new paragraphs (a)(2)(ii) through (a)(2)(iv) respectively, by adding a new paragraph (a)(2)(i), and by revising paragraphs (c) and (d) to read as follows:

§ 1980.108 General provisions.

(a) * * *

(1) * * *

(iii) When FmHA and a guaranteed lender are involved in separate loans to the same borrower, separate collateral must be clearly identified for both the FmHA and the lender's loans.

(2) * * *

(i) For EM, FO, RL, SW, and OL loans/lines of credit, personal guarantees of all joint operators of a joint operation entity are required.

* * * * *

(c) *Determining whether credit elsewhere is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loan/lines of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, a joint operation and the joint operators as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans and guaranteed or insured economic emergency loans.* (1) If an applicant qualifies for an insured LM loan in an authorized area, the applicant's total credit needs will be considered under EM loan authorities.

(2) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO, RL, SW guaranteed loans or OL guaranteed loans/lines of credit provided the total outstanding principal indebtedness to FmHA and/or an FmHA guaranteed lender would not exceed *$650,000.*

* * * * *

24. Section 1980.109 is amended by redesignating current paragraphs (a)(1) through (a)(3) as new paragraphs (a)(2) through (a)(4) respectively and by adding a new paragraph (a)(1) to read as follows:

§ 1980.109 Promissory notes, line of Credit Agreements, security instruments, and financing statements.

(a) * * *

(1) For EM, FO, RL, SW and OL loans/lines of credit, personal guarantees of all joint operators of a joint operation entity are required.

* * * * *

25. Section 1980.113 is amended by revising paragraphs (a)(5), (b), (c), and the administrative text to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

(a) * * *

(5) For a cooperative, corporation, partnership, or joint operation, those additional items listed below in § 1980.113(b) of this subpart.

* * * * *

(b) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation, the following additional information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(2) A current personal financial statement from each joint operator of a joint operation entity.

(3) A current personal financial statement from each of the principal members of a cooperative, partners of a partnership or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 20 percent of the ownership, stock or interest of a cooperative, corporation, or partnership. If no member, partner, or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation, or partnership will also be required to provide personal financial statements.

(4) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(5) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members of stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(c) *Preliminary determination by FmHA.* If it appears, after a review of the preliminary application, that the applicant is not eligible, the County Supervisor will notify the loan applicant and the lender in writing within 10 days of FmHA's decision of all of the reasons for the decision, and advise them of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter, if applicable. If it appears that the applicant is eligible and loan guarantee authority is available, the County Supervisor will inform the lender and applicant not later than 20 days after receipt of the preliminary application and request the lender to submit a complete application.

* * * * *

Administrative:

(A) Regardless of whether the appplicant is acting as an individual or as a representative of a cooperative, corporation, partnership, or joint operation, when FmHA solicits personal information, the individual will be given Form FmHA 410-9, "Statement Required by the Privacy Act."

(B) If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410-10, "Privacy Act Statement to References."

(C) Immediately after a preliminary or complete application is received, and prior to County Committee action, the County Supervisor will send Attachment 1 to Exhibit D of this subpart to the borrower and lender describing the Interest Rate Buydown Program.

26. Section 1980.114 is amended by revising paragraph (a) to read as follows:

§ 1980.114 FmHA evaluation of applications.

* * * * *

(a) *Indication of unacceptability.* If the evaluation indicates that the guarantee cannot be approved for reasons that would not be affected by the County Committee certification, the County Supervisor will inform the lender and the loan applicant in writing within 10 days of the decision of these reasons, discuss with them ways to overcome the denial of the guarantee, and inform them of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

* * * * *

27. Section 1980.115 is amended by revising the introductory text, paragraph (b) and the administrative paragraph B to read as follows:

§ 1980.115 County Committee review.

The County Supervisor will have the County Committee to review all loan applications within 30 days after receipt of completed applications to determine whether the applicants meet FmHA eligibility requirements. The County Supervisor will promptly notify the lender and applicant in writing of the County Committee's determination. (See Section 1980.115 Administrative paragraph B.)

* * * * *

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440-2 and the County Supervisor will inform the lender and the loan applicant in writing within 10 days of FmHA's decision of the reasons for disapproval of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

Administrative: * * *

B. *The approval official will:*

1. Approve or disapprove all loan applications not later than 60 days after receipt of completed applications, and promptly notify the lender and applicant in accordance with the provisions of this subpart.

2. Set forth in the space provided on Form FmHA 449-14 (A.1., above) or Form FmHA 1980-15 (A.1., above) any special conditions of approval, including requirements for security, improved management practices, and type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be used if necessary. Return Forms FmHA 449-14 or FmHA 1980-15 to the County Supervisor for execution and proper distribution.

3. Sign original and one copy of Form FmHA 1940-1 distributing copies in accordance with the FMI, making sure the lender receives a signed copy.

4. Forward the docket to the National Office for approval when the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

5. In addition to the requirements in Paragraph B.1., above, approval determinations will be made within 14 working days of County Committee Certification for Approved Lenders, and within 30 days of County Committee Certification for nonapproved lenders.

28. Section 1980.116 is revised to read as follows:

§ 1980.116 Review of requirements.

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449-14 or Form FmHA 1980-15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449-14 or Form FmHA 1980-15 will be so revised. If rejected, the County Supervisor will notify the loan applicant and the lender in writing within 10 days of the FmHA's decision, of all the reasons for the decision, and

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advise them of their opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

29. Section 1980.145 is amended by revising paragraph (b) to read as follows:

§ 1980.145 Defaults by borrower.

* * * * *

(b) The lender will arrange with the County Supervisor to meet with the borrower to resolve the problems. At least 3 working days prior to the meeting, the County Supervisor will mail Attachment 1 to Exhibit D of the subpart to the lender and the borrower.

* * * * *

30. Section 1980.146 is amended by revising the administrative paragraphs B and E to read as follows:

§ 1980.146 Liquidation.

* * * * *

Administrative:

* * * * *

B. Form FmHA 449-35, paragraph XI B or paragraph XI B of Form FmHA 1980-36. FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all the requirements for liquidating an insured loan will be followed (see Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter). The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, submit Form FmHA 1980-45, "Notice of Liquidation Responsibility," to the Finance Office.

* * * * *

E. Form FmHA 449-35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980-36. Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced if necessary after considering the Conditions of Guarantee in Form FmHA 449-34 or Form FmHA 1980-27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss payment does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any review. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

31. Section 1980.148 is revised to read as follows:

§ 1980.148 Appeal procedure.

Refer to Subpart B of Part 1900 of this chapter for the method of appealing adverse decisions of County Committees, County Supervisors, District Directors and State Directors.

§ 1980.170 [Temporarily suspended]

32. The program under § 1980.170 of Subpart B of Part 1980 relating to guaranteed EM loans continues to be suspended. Accordingly, authority to approve guaranteed EM loans continues to be suspended.

33. Section 1980.175 is amended by revising paragraph (b)(1)(i), the introductory text of paragraph (b)(2), paragraphs (b)(2)(i) and (b)(2)(iii), the introductory text of paragraph (b)(2)(iv), paragraphs (b)(2)(iv) (A) and (E), the introductory text of paragraph (b)(2)(v), and paragraphs (d)(1), (e), and (f)(4) and by adding paragraph (b)(2)(vi) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) * * *

(1) * * *

(i) Be a citizen of the United States (See § 1980.106(b)(30) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(2) A cooperative, corporation, partnership, or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as individuals.

* * * * *

(iii) Consist of members, stockholders, partners, or joint operators who do not, as individuals, have either a guaranteed or insured FO, SW, RL, or OL loan and are not members of another entity or have interest in another entity that has either a guaranteed or insured, FO, SW, RL, or OL loan.

(iv) If the members, stockholders, partners, or joint operators holding a majority interest are related by marriage or blood (A) They must be citizens of the United States (see § 1980.106 (b)(30) of this Subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If authenticity of the information shown on the aliens's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(E) At least one member, stockholder, partner, or joint operator must operate the family farm.

* * * * *

(v) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by marriage or blood:

* * * * *

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interest can exceed the family farm definition limits only if: (1) All of the members of the entity are related by blood or marriage, (2) All of the members are or will be operators of the entity, and (3) The majority interest holders of the entity meet the requirements of subparagraphs (b)(2)(iv) (A) through (D) and (F) of this section.

* * * * *

(d) * * *

(1) The total outstanding guaranteed OL principal balance may not exceed $400,000 at loan closing. The amount of principal outstanding at any one time on a guaranteed line of credit must never

exceed the ceiling set out on the Contract of Guarantee.

* * * * *

(e) *Interest rates.* The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument. The lender, borrower, and holder (if any) may collectively effect a temporary reduction in the interest rate of the OL loan/line of credit when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line or credit agreement or other legally effective amendment of the interest rate, however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line or credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days plus one percent (1%). Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral, items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented adminstrative differential rate schedule formulas used by the lender. Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) * * *

(4) When conditions warrant, installments scheduled in accordance with paragraph (f)(2) of this section may include equal, unequal, or balloon installments. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 15 year period except for NFE loans, which will be a maximum additional 7 years. The applicant must be advised before the loan is closed that the lender will review each case at the end of the initial loan term to determine if such rescheduling is warranted. (See § 1980.124 of this subpart.)

* * * * *

34. Section 1980.180 is amended by revising paragraphs (b)(1), (c)(1)(i), the introductory text of paragraph (c)(2), paragraphs (c)(2)(i), and (c)(2)(iii), the introductory text of paragraph (c)(2)(iv), paragraphs (c)(2)(iv) (A) and (E), the introductory text of paragraph (c)(2)(v), and paragraphs (f)(2), and (f)(3) and by adding paragraph (c)(2)(vi) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(b) * * *

(1) An application from a veteran, as defined in § 1980.106

(b) (33) of this subpart, will be given preference over one from a nonveteran.

* * * * *

(c) * * *

(1) * * *

(i) Be a citizen of the United States (see § 1980.106(b)(30) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(2) A cooperative, corporation, partnership, or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as indivduals.

* * * * *

(iii) Consist of members, stockholders, partners, or joint operators who do not, as individuals, have either a guaranteed or insured FO, SW, RL, or OL loan and are not members of another entity or have an interest in another entity that has either a guaranteed or insured FO, SW, RL, or OL loan.

(iv) If the members, stockholders, partners, or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States (see § 1980.106(b)(30) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(E) At least one member, stockholder, partner, or joint operator must operate the family farm.

* * * * *

(v) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by marriage or blood:

* * * * *

(vi) If each member's, partner's, stockholder's or joint operator's

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ownership interest does not exceed the family farm definition limits, their collective interest can exceed the family farm definition limits only if: (1) All of the members of the entity are related by blood or marriage, (2) all of the members are or will be operators of the entity, and (3) the majority interest holders of the entity meet the requirements of subparagraphs (c)(2)(iv) (A) through (D) and (F) of this section.

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. Variable rates may change according to the practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. The lender, borrower, and holder (if any) may collectively effect a temporary reduction in the interest rate of the FO loan when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or other legally effective amendment of the interest rate; however, no new note(s) may be issued. If the amendment is attached to a variable rate note, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days plus one percent (1%). Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral, such items as savings accounts, time deposits, certificates of deposit, stocks and bonds and life insurance which they are able to pledge for the loan.

(3) Installments on loans may be deferred in accordance with § 1980.124(d) of this subpart.

* * * * *

35. Section 1980.185 is amended by revising paragraphs (b) and (c)(1)(i), the introductory text to paragraph (c)(2), paragraphs (c)(2)(iii), (c)(2)(v), (c)(2)(ix), (f)(2), and (f)(3) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(b) *Preference.* An application on hand from a veteran as defined in § 1980.106(b)(33) of this subpart will be given preference by the lender over an application from a nonveteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants.

(c) * * *

(1) * * *

(i) Be a citizen of the United States (see § 1980.106(b)(30) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration an Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(2) A cooperative, corporation, partnership, or joint operation must:

* * * * *

(iii) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1980.106(b)(30) of this subpart for the definition of "United States"), or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(v) Be unable to obtain sufficient credit without a guarantee, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

* * * * *

(ix) Consist of members, stockholders, partners, or joint operators who do not, as individuals, have either a guaranteed or insured FO, SW, RL, or OL loan and are not members of another entity or have an interest in another entity that has either a guaranteed or an insured FO, SW, RL, or OL loan.

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. The lender, borrower, and holder (if any) may collectively effect a temporary reduction in the interest rate on the SW loan when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note or other legally effective amendment of the interest rate; however, no new note(s) may be issued. If the amendment is attached to a variable rate note, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days plus one percent (1%). Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral such items as savings accounts, time deposit, certificates of deposits, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative differential rate schedule formulas used by the lender.

(3) Installments may be deferred in accordance with § 1980.124(d).

* * * * *

36. Exhibit A to Part 1980, Subpart B is amended by revising the introductory text of paragraph II A to read as follows:

Exhibit A of Subpart B of Part 1980—Approved Lender Program—Farm Ownership and Operating Loans

* * * * *

(II) * * *

(A) *Lender approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of Part 1980 of this chapter. Except for FCS member institutions having an acceptable loan loss percentage as specified in the introductory text of paragraph II, lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "optional criteria" contained in paragraph II A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State Office may provide a lender who desires to apply for ALP status, a complete copy of Part 1980, Subparts A and B of this chapter, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

* * * * *

37. Exhibit C to Part 1980, Subpart B is revised to read as follows:

Exhibit C of Subpart B of Part 1980

Application Processing for Guaranteed Farmer Program Loans

FmHA form No.	Title	Requirement
440-6	Application for Guaranteed Loan (Farmer Programs).	Use of this form is optional for Approved Lenders, see FmHA 1980-B, 1980.110(a). All applicants must complete the required certifications on this form.
Exhibit D Attachment 2.	Request for Interest Rate Buydown.	1980-B, Exhibit D.
	Commercial Credit Report.	1980-B, § 1980.113(d)(3).
	Evidence Required of Entity, Applicants Organization.	1980-B, § 1980.113(d)(5).
410-5 (optional).	Verification of Off-farm Employment and Income.	1980-B, § 1980.113(d)(2).
410-9 (required).	Statement Required by the Privacy Act.	
440-13 (optional).	Report of Lien Search.	Optional at this point in processing, may be used to Supplement Credit Report.
440-32 (optional).	Request for Statement of Debts and Collateral.	1980-B § 1980.113(d)(6).
1940-22 (required).	Environmental Checklist for Categorical Exclusions.	1980-A, § 1980.40. See also § 1980.42, 1980.43, § 1980.44.
	Leases and/or Contracts (Evidence of Ownership).	1980-B, § 1980.113(d)(4).
440-12, or Exhibit A, Attachment 3 or 1980-25 (required forms).	Request for Loan Note Guarantee, or Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan), and the following attachments.	1980-B, § 1980.113(d)(1).
431-1, 431-2, or 1939-1, 1939-2 (optional forms).	Projected Plan of Operation and Cash Flow Statement, Substantiated by readily available production and financial history.	1980-B, § 1980.113(d)(8).
	Applicable drawings and specifications	
	Appraisal Reports	
422-1, 440-21.	Farm Tract Appraisal of Chattel Property.	Appraisal/Appraiser requirements are outlined in FmHA 1980-B, § 1980.113(d)(9).
	Loan Agreement	1980-B, § 1980.113(d)(7), paragraph VIII of Form FmHA 449-35 Lenders Agreement or paragraph VIII of 1980-38 Lenders Agreement.
	Lenders Plan for Servicing the Loan and Providing Management Assistance to the Borrower.	1980-B, § 1980.113(d)(10).

38. Exhibit D of Subpart B of Part 1980 is added to read as follows:

Exhibit D—Interest Rate Buydown Program

I. General

This exhibit contains the policies and procedures pertaining to an Interest Rate Buydown Program for guaranteed Operating (OL) loans and lines of credit, described in § 1980.175 of this subpart, guaranteed Farm Ownership (FO) loans described in § 1980.180 of this subpart and guaranteed Soil and Water (SW) loans described in § 1980.185 of this subpart. Subparts A and B of Part 1980 are applicable to this exhibit except as modified by Exhibit A and Exhibit B of this subpart and this exhibit. Authority to enter into Interest Rate Buydown agreements expires September 30, 1988.

II. Introduction

The authorities contained in this exhibit provide lenders with a tool to enable them to continue to provide credit to operations of not larger than family farms who are temporarily unable to project a positive cash flow on all income and expenses including debt service without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan/line of credit. In return, FmHA will make annual interest rate buydown payments to the lender in an amount not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this exhibit will in no case exceed 2 percentage points.

III. Definitions

A. *Cash flow*—a projection listing on an annual basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cashflow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

B. *Interest Rate Buydown Agreement*—(Form FmHA 1980-58.) The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate buydown.

C. *Positive Cash Flow*—a cash flow projection, as defined in this exhibit, where cash income (including all farm and non-farm income) equals or exceeds total estimated cash expenses to be incurred by the borrower (including all farm and non-farm debt service and other expenses).

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IV. Program Administration

County Supervisors are authorized to approve interest rate buydown agreements providing the following requirements are met by the lender:

A. The measures for assessing borrower's financial viability will include considerations based on debt to asset ratios and returns on assets, and, where applicable, returns on equity.

B. For those borrowers currently indebted for an FmHA guaranteed loan(s) of line(s) of credit where the guaranteed loan/OL line of credit is to be considered for an interest rate buydown under this exhibit, the lender must demonstrate that a positive cash flow projection on all income and expenses, including debt service, is not possible by rescheduling or reamortizing the account in equally amortized installments as descibed in Section 1980.124 of this subpart. If a positive cash flow can be achieved using rescheduling or reamortizing authorities, subject to the requirements outlined in § 1980.124, the borrower's account will be rescheduled or reamortized. If a positive cash flow projection is then possible, the borrower is not eligible for an interest rate buydown.

1. For borrowers currently indebted for an FmHA guaranteed loan/line of credit who wish consideration under this exhibit, the lender will submit Attachment 2 of this exhibit with all requests for all interest rate buydowns.

2. In addition, the following information will be submitted by the lender:

(a) Verification of off-farm employment, if any.

(b) Form FmHA 440-32, "Request for Statement of Debts and Collateral," or similar documentation provided by approved lenders.

C. Applications from individuals who are not presently indebted for an FmHA guaranteed loan/line of credit shall be processed in accordance with § 1980.113 of this subpart and this exhibit. In addition, the lender will submit Attachment 2 of this exhibit with the application. The lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate on the borrower's loan(s)/line(s) of credit.

D. In all cases, the lender and County Supervisor must determine whether the borrower owns any assets which do not contribute to essential family living expenses or to the maintenance of a sound farming operation. The lender must determine whether the borrower could sell these assets and, if so, for how much. The lender will then prepare new cash flow projections which take into account the sale of these assets. If a positive cash flow can then be achieved, the borrower is not eligible for a interest rate buydown.

E. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other creditors adjust their debts and the proposed interest rate buydown results in a positive cash flow, interest rate buydown may be approved.

F. If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and the interest rate buydown, the interest rate buydown will not be approved.

G. In order for a borrower's loan to be eligible for an interest rate buydown, a typical plan of operation must show that a positive cash flow can be expected all during the buydown period. A loan/line of credit with a term greater than one year must show that a positive cash flow on all income and expenses, including debt service, can be demonstrated during each year of the buydown. All loans/lines of credit with terms exceeding the buydown period must demonstrate that the borrower will be able to project a postive cash flow on all income and expenses, including debt service, after the buydown agreement expires. Further, if the lender proposes a term for the interest rate buydown which exceeds one year, the lender will provide FmHA with future financial statements documenting the necessity for the increased term. In no case will the Federal buydown period exceed three years.

H. Any holder(s) must agree to the interest rate reduction in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. When FmHA purchases a portion of a guaranteed loan, buydown payments on that portion shall cease.

I. The Interest Rate Buydown Agreement will be attached to the promissory note(s) or line of credit agreement. The promissory note(s) or line of credit agreement, cannot exceed the interest rate the lender charges its average farm customer, *prior* to any writedown by the lender, as outlined in §§ 1980.175(e), 1980.180(f), or 1980.185(f) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new notes or line of credit agreements may be issued. If the lender elects to use a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated *not to exceed* the average variable rate charged the lender's average farm customer (as defined in §§ 1980.175(e), 198.180(f) or 1980.185(f) over the past 90 days, plus one percent (1%)). The promissory note(s), line of credit agreements and any attachments to these agreements, must schedule repayment in equally amortized installments, except for the first and last installments which must be prorated installments.

J. FmHA will pay the lender any interest buydown equal to one-half of the lender's writedown of interest percentage points, except that such payments will in no case exceed the cost of reducing such interest by more than two percentage points. The lender will adjust its interest rate in increments of .25%, rounded to the nearest .25% necessary to achieve a positive cash flow on any individual borrower's account.

V. Approval of interest rate buydown

If the approval official determines the buydown will be approved in accordance with paragraph IV of this exhibit, in addition to the determinations required in Section 1980.115 Administrative A and B, *the approval official will:*

A. Prepare Form FmHA 1940-1, "Request for Obligation of Funds." This form will be used to obligate the buydown portion for those loans presently guaranteed where the interest rate is subsequently bought down, and to obligate the loan and interest rate buydown for initial loans.

B. The approval official will execute Form FmHA 1940-1 and distribute copies in accordance with the FMI. The Finance Office will enter the obligation of funds on their records for the interest rate buydown and/or loan and notify the approval official by forwarding the original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

C. A loan or line of credit for which the interest rate was previously reduced under this exhibit, may receive a subsequent buydown provided the total buydown term(s) over the life of the loan does not exceed 3 years and the buydown is approved on or before September 30, 1988.

IV. Interest Rate Buydown Closing

A. The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit in which the interest rate is bought down under this exhibit.

B. See §§ 1980.761(b)(1) and 1980.118(c) Administrative B.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the borrower will execute Form FmHA 1980-58, "Interest Rate Buydown Agreement." In NO CASE will Form FmHA 1980-58 be executed prior to the determination of availability of funds for the loan/line of credit and buydown as evidenced on Form FmHA 440-57, "Acknowledgement of Obligation of Funds/Check Request."

2. An original Form FmHA 1980-58 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980-58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract of Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), or the holder(s) agree(s) to any reduction in interest rate, a copy of Form FmHA 1980-58 will be attached to the original Form FmHA 449-36, along with a copy of the borrower's note(s) with "allonge" and Loan Note Guarantee. Form FmHA 449-36 will b revised to reflect the note amounts. At the top of the face of the document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated ——— and Form FmHA 1980-58, "Interest Rate Buydown Agreement," which temporarily reduces the interest rate on the promissory note to an effective interest rate of ———%." This revision will be initialed and dated by the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown

Agreement will be kept in the County Office, attached to the appropriate Loan Note Guarantee or Contract of Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown (Loan Note Guarantee cases only).

See Item number 10 of Form FmHA 449-36 and Item number 6 of Form FmHA 1980-58. When FmHA purchases a portion of the guaranteed loan, buydown payments on that portion shall cease. The interest rate reduction shall remain in effect.

VII. Interest Rate Buydown Claims and Payments

Claims and payments will be processed in accordance with paragraph 3 of Form FmHA 1980-58, "Interest Rate Buydown Agreement." Such claims and payments will be processed in accordance with paragraph 2 of Form FmHA 1980-58.

VIII. Term of Buydown Agreement

The term of a buydown agreement entered into under this exhibit shall not exceed 3 years or the outstanding term of the loan involving the interest rate buydown, whichever is less.

IX. Cancellation of Interest Rate Buydown

Form FmHA 1980-58, "Interest Rate Buydown Agreement," is incontestable except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. Excessive Interest Rate Buydown

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. Transfer and Assumption of Loans Involving Interest Rate Buydown

Transfers will be processed in accordance with Section 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Rate Buydown Agreement only in cases where the transferee was liable for the debt at the time the buydown was granted. Under no other circumstances will the buydown be transferred. If the buydown is necessary for the transferee to achieve a positive cash flow, the lender must make application for an initial buydown under this exhibit.

XII. Review by FmHA Employees

The lender will submit FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," annually along with detailed calculations and a statement of acitivity on the borrower's account to support the claim. The County Supervisor will approve, if correct, and forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when buydown clams are involved.

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration (Location)

Dear ———————:

The Farmers Home Administration (FmHA) has authority under the Food and Security Act of 1985 (Pub. L. 99-198) to temporarily make payments to lenders to reduce borrower interest rates on a guaranteed loan to eligible applicants and borrowers. The Interest Rate Buydown Program provides lenders with a tool to enable them to continue to provide credit to family farm operators who are temporarily unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual payments to the lender in an amount of not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this authority may not exceed two percentage points.

Borrowers with existing guaranteed Farm Operating (OL), Farm Ownership (FO), and Soil and Water (SW) guaranteed loans, may have the interest rate on their loans bought down by FmHA.

If you would like additional information regarding the Interest Rate Buydown Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

County Supervisor To: County Supervisor, FmHA

———————————————

———————————————

Subject: Request for Interest Rate Buydown
Borrower's name: ———————————

In connection with the subject application for an interest rate buydown, this lending institution certifies:

(1) The loan balance of $——— is the amount requested for an interest rate buydown. If a line of credit, the line of credit balance is $———, and the line of credit ceiling amount of $——— is the amount requested for an interest rate buydown.

(2)(a) This interest rate charged the lender's average farm customer, plus one percent, determined in accordance with Section 1980.175(e), Section 1980.180(f) or Section 1980.185(f)(2) of this subpart, is $———%. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

(b) The lender's interest rate to the subject borrower prior to writedown is ———% (may not exceed (2)(a)).

(c) The lender's writedown is $———%.

(d) The interest rate to be charged with the writedown to the borrower is $———%.

(3) The amount of interest written down is permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

(4) The lender's interest rate reduction to the borrower will result in a reduced payment schedule for the term of the buydown and that a positive cash flow on all income and expenses, including debt service, will be expected during the buydown period. A loan/line of credit with a term greater than one year must show that a positive cash flow can be demonstrated during each year of the buydown. In cases where the term of the loan exceed the term of the buydown, the borrower is projected to have a positive cash flow on all income and expenses, including debt service, after the buydown period terminates.

(5) The borrower's cash flow projections have been prepared in accordance with Part 1980, Subpart B, Section 1980.113(d)(18), and are attached to this document.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falisfies, conceals or covers up . . . a meterial fact, or makes any false, fictitious or fraudulant statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulant statement or entry, shall be fined not more that $10,000 or imprisoned not more than 5 years, or both."

(Name of lender) ———————————
By ———————————
Title ———————————
Lender's IRS ID No.———————————
Date ———————————

Dated: February 21, 1986.

Kathleen W. Lawrence

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 86-4200 Filed 2-24-86; 11:09 am]

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Selected Subjects

- **Administrative Practice and Procedure**
  - Merit Systems Protection Board
- **Air Pollution Control**
  - Environmental Protection Agency
- **Animal Diseases**
  - Animal and Plant Health Inspection Service
- **Government Procurement**
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Federal Communications Commission

Reporting and Recordkeeping Requirements
Federal Maritime Commission

Space Transportation and Exploration
Transportation Department

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

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	ST. LOUIS, MO	WASHINGTON, DC	DENVER, CO	DALLAS, TX
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WHERE:	Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.	Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC	Room 239, Federal Building, 1961 Stout Street, Denver, CO.	Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
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Federal Register
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Wednesday, February 26, 1986

Presidential Documents

Title 3—

The President

Proclamation 5443 of February 24, 1986

National Black (Afro-American) History Month, 1986

By the President of the United States of America

A Proclamation

Black history is a book rich with the American experience but with many pages yet unexplored. A chapter once beautiful and tragic was brilliantly illuminated this very year with the first celebration of the birthday of Dr. Martin Luther King, Jr., as a national holiday. This new holiday symbolizes the trail he blazed for others and the struggle of many Americans for full and unfettered recognition of the constitutional rights of all Americans, regardless of race or color.

Black history in the United States has been a proving ground for America's ideals. A great test of these ideals came with the Civil War and the elimination of slavery. Another test came a century later, in the struggle for practical recognition of the rights already won in principle—the abolition of legalized segregation and second-class citizenship.

The foremost purpose of Black History Month is to make all Americans aware of this struggle for freedom and equal opportunity. It is also a time to celebrate the many achievements of blacks in every field, from science and the arts to politics and religion. It not only offers black Americans an occasion to explore their heritage, but it also offers all Americans an occasion and opportunity to gain a fuller perspective of the contributions of black Americans to our Nation. The American experience and character can never be fully grasped until the knowledge of black history assumes its rightful place in our schools and our scholarship.

The Congress, by Senate Joint Resolution 74, has designated the month of February 1986 as "National Black (Afro-American) History Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 1986 as National Black (Afro-American) History Month. I invite the Governors of the several States, and our schools, colleges, universities, and libraries, the stewards of our national consciousness, and all Americans to observe this month with appropriate activities to heighten awareness of black history and to stimulate continuing inquiry into this rich vein of the American experience.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-4334
Filed 2-25-86; 10:57 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5444 of February 24, 1986

Hugo Lafayette Black Day, 1986

By the President of the United States of America

A Proclamation

February 27, 1986 marks the one hundredth anniversary of the birth of Hugo Lafayette Black, one of the most respected and influential Justices to serve on the Supreme Court in this century.

Hugo Black's tenure on the Supreme Court lasted for 34 years, from 1937 to 1971, from the days in which America was struggling to free itself from the effects of the Depression, through World War II and its aftermath, and through the turbulent decade of the 1960s. At the time of his appointment to the Court, Hugo Black was serving as a Senator from Alabama.

Justice Black was a strong believer in a written Constitution, as an instrument to assure control of the government by the people, by virtue of restraints specifically embodied in the document to limit governmental power and protect minorities of whatever race, creed, or ideological persuasion. He once called the Constitution his "legal bible." He cherished every word of it, he said, because it is our surest guarantee that this Nation will endure "strong and great through countless ages."

Throughout his tenure, Justice Black fought to maintain the vital principle of separation of powers. He strongly resisted what he regarded as unauthorized efforts of judges to supersede the judgment of the elected representatives of the people and to substitute their own views of appropriate social and economic policy.

This proud Son of the South played a leading role in the Supreme Court's effort to eliminate racial segregation from our society and ensure equal rights for all persons.

Justice Black's long and distinguished career also was marked by his commitment to the Bill of Rights, including most notably a strong belief in freedom of speech, and the importance of a free press to the governance of a democracy. He also was a strong believer in unhindered access to the political process for all persons and to the core procedural protections afforded by the Constitution.

Hugo Black's formal accomplishments as Senator and Justice and his contributions to American jurisprudence cannot overshadow his warmth as a human being, the intimate collegial relationships he developed with colleagues, and remarkable gift for friendship that helped the Supreme Court function effectively through some of the most turbulent episodes in its history.

In order to honor Hugo Lafayette Black as a defender of freedom and dedicated public servant, the Congress of the United States, by Senate Joint Resolution 59, has designated February 27, 1986 as "Hugo Lafayette Black Day" and authorized and requested the President to issue a proclamation in observance of the one hundredth anniversary of his birth.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 27, 1986 as Hugo Lafayette Black Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-4325
Filed 2-25-86; 10:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 38
Wednesday, February 26, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures; Request for Comments

AGENCY: Merit Systems Protection Board.

ACTION: Interim Rule; Request for comment.

SUMMARY: This rule amends the procedures of the Merit Systems Protection Board with respect to compliance and enforcement. This action clarifies that authority and duty of the Board and explains that the parties have a responsibility to cooperate to assure that compliance is obtained promptly and completely. It also improves the process and shortens the time frame for the settlement and adjudication of disputes among the parties and the enforcement of the final decision by the Board.

DATES: Effective February 26, 1986; comments should be submitted in writing on or before March 28, 1986.

ADDRESS: Comments should be submitted in writing and addressed to Robert E. Taylor, Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8900.

SUPPLEMENTARY INFORMATION: This amendment of 5 CFR Subpart E makes it clear that the parties are expected to cooperate with each other to assure that the Board's final decisions are complied with promptly and in accord with applicable laws, rules, and regulations. Moreover, it recognizes that not all aspects of compliance can reasonably be ascertained and resolved immediately. Finally, it directs the Board's resources and involvement in compliance matters to the issues in dispute and provides an expedited procedure for the adjudication of those issues and ultimately, when necessary, the enforcement of the Board's final decision.

1. Subpart E—Enforcement of Final Order. A new § 1201.181 containing explanatory paragraphs has been added in advance of the procedural sections to clarify the roles of the parties preliminary to invoking enforcement.

2. § 1201.181 Petition for Enforcement has been changed to § 1201.182 and paragraph (a) has been revised to emphasize that a petition should be filed promptly and should contain a statement of the results of any attempt to obtain compliance.

Paragraph (b) has been revised to conform with changes in this subpart.

3. § 1201.182 Compliance; § 1201.183 Referral to the Board; and § 1201.184 Enforcement Action by the Board have been eliminated as separate sections and incorporated in a new § *1201.183 Enforcement Action by the Board* to more clearly describe the enforcement process and to set forth the obligations of the persons involved and to set the time frames required to complete the compliance and/or enforcement process.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of the proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of his determination that this rule would have a significant economic impact on a substantial number of small entities, including small business, small organizational units, and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, civil rights, government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR Part 1201 as follows:

1. Authority for 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205.

2. Subpart E is revised to read as follows:

Subpart E—Enforcement of Final Order

Sec.
1201.181 Authority and Explanation
1201.182 Petition for Enforcement
1201.183 Enforcement Action by the Board

Subpart E—Enforcement of Final Order

§ 1201.181 Authority and explanation.

(a) Pursuant to 5 U.S.C. 1205(a)(2) the Board has the authority to order any Federal agency or employee to comply with decisions and orders issued under its jurisdiction. The Board also has the authority and duty to enforce compliance with its orders and decisions and will do so when necessary as described in this subpart. The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accord with laws, rules, and regulations applicable to the individual case. The Board's decisions and orders shall contain a notice of the Board's enforcement authority.

(b) In order to avoid unnecessary petitions under this subpart, the agency shall promptly communicate with the appellant its actions to comply, and shall advise the appellant when it considers compliance to have been accomplished. The appellant must provide all necessary information requested by the agency in furtherance of compliance and should, from time to time, inquire as to the agency's progress, if not otherwise notified.

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. The petition shall be filed promptly with the regional office which issued the initial decision and shall set forth specifically the reasons why the petitioning party believes there is noncompliance. The date and results of any communications with respect to compliance should be stated. Any petition for enforcement filed more than 30 days after the Agency's Notice that compliance has been accomplished shall contain a statement of the reasons for delay and a request for an extension of time to file.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction shall submit a petition for enforcement to the Clerk of the Board. The petition shall set forth specifically the reasons why the petitioning party believes there is noncompliance. The petition will be processed by the Presiding Official

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under the procedures set forth in § 1201.183 of this subpart.

§ 1201.183 Enforcement action by the Board.

(a) *Regional Office processing.* (1) When a petition has been filed in a regional office for enforcement of a final appellate decision, the Regional Director or a designated presiding official will promptly issue an enforcement order reminding the agency of its burden of proof and requiring the agency respondent to file within 10 days: evidence of compliance; a statement of actions completed, actions in process, and actions remaining and a reasonable schedule for full compliance; or otherwise show good cause why there was noncompliance or compliance is incomplete. The appellant will have 10 days from the date of service of the agency's reply in which to file a response to the agency submission. The parties are required to serve each other as required under § 1201.26(b)(2).

(2) A hearing may be convened when necessary to resolve matters at issue.

(3) If the agency is found to have been in compliance with the required corrective action or is making a good faith effort and reasonable progress to comply, the Regional Director or presiding official will issue a *Decision* so finding, which will be subject to the procedure for a petition for review by the Board pursuant to § 1201.114, *et seq.*, and for judicial review pursuant to § 1201.118 of this Part.

(4) If the agency is found not in compliance and is not making a good faith effort to comply, the Regional Director or presiding official will issue a *Recommendation* that the Board enforce the final decision. The agency respondent will have 10 days from the date of service of the *Recommendation* in which to file with the Clerk of the Board, proof of the required compliance. If satisfactory compliance evidence is not filed within that 10-day period, the *Recommendation* will be processed in accordance with (b) of this section.

(b) *Referral to the Board.* (1) Where an agency has failed to submit satisfactory evidence of compliance as required by paragraph (a)(4) of this section, the agency respondent must file a brief with the Clerk of the Board within 20 days of the date of service of the *Recommendation* identifying by name, title and grade the agency official responsible for the failure to comply and explaining why it disagrees with the Recommendation. The appellant may file with the Clerk of the Board a brief in response within 15 days of the date of service of the agency's brief. The Board may require the respondent agency official or his/her representative to appear before the Board and/or to respond in writing to show cause why sanctions pursuant to 5 U.S.C. 1205 (a)(2) and (d)(2) should not be imposed against the person responsible for the agency's failure to comply.

(2) The Board may hold a hearing on an order to show cause, or it may issue a decision without a hearing.

(c) *Certification to the Comptroller General.* Where appropriate, the Board may, under 5 U.S.C. § 1205(d)(2), certify to the Comptroller General of the United States that no payment shall be made to any Federal employee found to be in noncompliance with the Board's order, other than a Presidential appointee subject to confirmation by the Senate.

(d) *Effect of Special Counsel's action or failure to act.* No proceeding under this subpart shall be precluded because the Special Counsel did not file a complaint under 5 U.S.C. 1206(g)(1)(B) and Subpart D of this part.

Dated: February 18, 1986.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 86-4187 Filed 2-25-86; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Temporary Revision of a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of a rule.

SUMMARY: This action extends the application of a lower pooling standard for plants operated by a cooperative association under the Southwest Plains milk order. It is based on the record of a public hearing held in Tulsa, Oklahoma, on November 6, 1985. At the hearing, a cooperative association asked that the lower 40-percent delivery standard, which has been revised downward by 10 percentage points since May 1985, continue to apply for pool plants operated by a cooperative association until the hearing proceeding is concluded. A proposal to lower the minimum delivery standard was considered at the November 6 hearing. An extension of the lower pooling requirements for plants operated by a cooperative is warranted on an interim basis to enable the cooperative to continue the orderly disposition of the reserve milk supplies now associated with the market while the hearing proposals are evaluated on the basis of the record evidence and the proceeding advances toward completion.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued September 20, 1985; published September 26, 1985 (50 FR 39017).

The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the Southwest Plains milk order.

It is hereby found and determined that the current temporary revision, which expires at the end of February, should be extended beginning for the month of March 1986 and continuing until the hearing proceeding on proposed amendments to the order has been completed. A proposal to reduce the delivery percentage that a cooperative must meet to qualify its plants was considered at a public hearing held on November 6, 1985, at Tulsa, Oklahoma. Interested parties had an opportunity to testify about the proposal and no opposition testimony was presented at the hearing.

Statement of Consideraton

This action is based on the record of a public hearing held on November 6, 1985, at Tulsa, Oklahoma, to consider several proposed amendments to the Southwest Plains order. This action continues the effect of a prior temporary revision and applies a lower delivery percentage for plants operated by a cooperative association. Under the continuing action, the percentage of milk marketed by a cooperative association that must be delivered to and physically received at pool distributing plants during the month would be reduced by 10 percentage points, from 50 to 40 percent, for pool plants operated by a cooperative association. Section

1106.7(d) of the order provides that the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points to obtain needed shipments or to prevent uneconomic shipments of milk.

Due to the significant shift of milk to the Southwest Plains market and the resulting changes in the market's supply-demand relationship that took place when the St. Louis-Ozarks order was terminated on April 1, 1985, the delivery percentage was reduced from 50 to 40 percent for the months of May through August 1985. The downward revision of the delivery percentage was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates plants and represents producers supplying the Southwest Plains market. At Mid-Am's request the 40-percent pooling standard was extended through February 1986 to accommodate the efficient pooling of the additional reserve milk supplies associated with the market.

When Mid-Am asked that the lower delivery percentage continue to apply through February 1986, the cooperative requested a hearing on this issue and proposed that such percentage be reduced. At the hearing, Mid-Am testified that the lower standard is needed to reflect current marketing conditions. There was no opposition to the proposed lower standard. Mid-Am also asked that the lower delivery percentage for plants operated by a cooperative be further extended if the hearing proceeding has not been completed by the end of February 1986 when the current revision expires.

Testimony and statistics presented at the hearing indicated that the scope of regulation under the Southwest Plains order was extended considerably by the April 1 termination of the St. Louis-Ozarks order. For example, several distributing plants and supply plants regulated under the former St. Louis-Ozarks order and located in southwest Missouri and northwest Arkansas became regulated under the Southwest Plains order. The regulation of these plans under the Southwest Plains order had a dramatic impact of the market's supply-demand relationship. For example, from March to April 1985, Class I use of producer milk increased by 58 percent while producer supplies more than doubled. As a result, the Class I utilization of producer milk declined from 57 percent in March to 44 percent in April. Record data also show that during the months of April through September 1985, the Class I use of producer milk ranged from 6.9 to 10.8 percentage points below the market's Class I utilization for the same month of 1984. For the entire period of April through September 1985, such Class I utilization was 8.6 percentage points below the use during the same six-month period in 1984.

In view of the changes in the market's supply-demand relationship, it is concluded that a reduction of 10 percentage points in the pooling standard for plants operated by a cooperative association should be continued until the hearing proceeding, which involves consideration of this issue, is concluded. If the present downward revision expired at the end of February, more milk would have to be delivered to distributing plants than is necessary to meet the fluid milk needs of the market. A continuation of the lower pooling standard will prevent costly and inefficient movements of milk to distributing plants solely to qualify for pooling the milk of dairy farmers who supply the market's fluid needs.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon and 30 days' notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without this action costly and inefficient movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who supply the market;

(b) This continuing action does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing conditions that provide the basis for this continuing action were fully explored at a public hearing held on November 6, 1985, where all interested parties had an opportunity to testify on the proposals in the notice. No opposition testimony to the proposed lower pooling requirement for a cooperative's plants was presented at the hearing.

Therefore, it is appropriate to reduce the delivery percentage specified in § 1106.7(c) by 10 percentage points beginning with the month of March 1986 and continuing until the hearing proceeding concerning this issue is concluded.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

It is therefore ordered, That the 50-percent delivery requirement specified in § 1106.7(c) of the order be reduced to 40 percent until the hearing proceeding on this issue is completed.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

§ 1106.7 [Amended]

In CFR Part 1106 is § 1106.7(c) the 50-percent delivery requirement is reduced to 40 percent beginning with the month of March 1986 and continuing until completion of the hearing proceeding on this issue.

Effective date: February 26, 1986.

Signed at Washington, DC, on: February 20, 1986.

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 86-4110 Filed 2-25-86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1822, 1823, 1941, 1943, 1944, 1945, 1955, 1962 and 1965

Single and Multiple Family Housing and Farmer Program Loan; Interest Rates

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans for Single Family Housing, Multiple Family Housing and Farmer Program loans. This action is taken by FmHA to comply with Pub. L. 99-88 dated August 15, 1985. A provision of Pub. L. 99-88 provides that applicants requesting FmHA assistance have the right to request that their FmHA loan close at the lower of the interest rates in effect at the time of loan closing or loan approval. The intended effect of this action is to bring existing FmHA regulations into compliance with Pub. L. 99-88.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250. Telephone: (202) 382-1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental

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Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under:

10.404	Emergency Loans
10.405	Farm Labor Housing Loans and Grants
10.406	Farm Operating Loans
10.407	Farm Ownership Loans
10.410	Low Income Housing loans
10.411	Rural Housing Site Loans
10.415	Rual Rental Housing Loans
10.416	Soil and Water Loans
10.421	Indian Tribes and Tribal Corporation Loans

Catalog Nos. 10.405, 10.411, 10.415 and 10.416 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Catalog Nos. 10.404, 10.406, 10.407, 10.410 and 10.421 are excluded from Executive Order 12372.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with a mandatory statute in Pub. L. 99-88 and any delay would be contrary to the public interest.

Pub. L. 99-88 requires that effective November 12, 1983, and thereafter, upon request of the applicant, the interest rate charged by FmHA to housing, farm, water and waste disposal, and community facility applicants shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated with such loans shall be set in the amount based upon the interest rate in effect at the time of loan approval.

The provisions of Pub. L. 99-88 regarding the right of applicants to request that their FmHA loan be closed at the lower of the interest rates in effect at the time of loan approval or loan closing does not specifically address applicants requesting the transfer by assumption of an existing FmHA debt at new rates and terms, or a credit sale made to an applicant requesting credit on eligible terms to purchase a property from FmHA inventory. In many cases involving transfers by assumption and credit sales, a subsequent loan is made. It would be inconsistent with the intent of the law to provide that an applicant have the right to request the lower interest rate on a newly made FmHA loan but not on an FmHA loan they will assume or incur to purchase a property from FmHA inventory on the same day. Therefore, FmHA has determined that Public Law 99-88 does apply to transfers by assumption and credit sales for consistency within the loan program and to ensure that equal rights are provided for all FmHA applicants. Further, FmHA has determined that Pub. L. 99-88 does not apply to credit extended by the agency to individuals that are not eligible for program assistance. Credit of this nature is provided to facilitate the sale of Government inventory property or security servicing and such individuals applying for this type of credit are not considered program applicants.

Existing FmHA regulations do not give applicants the right to request that their FmHA loan close at the lower of the interest rates in effect at either the time of loan approval or loan closing. The interest rate is currently established on the date of loan approval and the loan is closed at that interest rate.

FmHA amends Subpart G of Part 1822, Subparts I and N of Part 1823, Subpart A of Part 1941, Subparts A, B and C of Part 1943, Subparts A, D and E of Part 1944, Subpart D of Part 1945, Subpart C of Part 1955, Subpart A of Part 1962, and Subparts A and C of Part 1965 by authorizing that Single Family Housing (SFH), Multiple Family Housing (MFH), and Farmer Program (FP) applicants shall have a choice as to the interest rate charged by FmHA on their loans. This action will bring existing FmHA SFH, MFH, and FP regulations into compliance with Pub. L. 99-88.

List of Subjects

7 CFR Part 1822

Loan program—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant Programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsides.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan program—Agriculture.

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. § 1822.266 (a) is revised to read as follows:

§ 1822.266 Rates, terms, and source of funds.

(a) *Interest Rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

§ 1822.270 [Amended]

3. § 1822.270 (c) is amended by replacing the word "him" with the words "the State Director" in the second sentence.

4. § 1822.270 (d) is amended by replacing the word "him" with the words "the State Director" in the second sentence.

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

5. The authority citation for Subpart I and N is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

6. § 1823.256 (d) is revised to read as follows:

§ 1823.256 Loan Terms.

* * * * *

(d) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.401 [Amended]

7. § 1823.401 is amended by removing the word "his" from the last sentence.

§ 1823.406 [Amended]

8. § 1823.406 is amended by removing the last sentence and adding the following to the end of the section:

Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

PART 1941—OPERATING LOANS

9. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

10. § 1941.18 introductory paragraph (a) is revised to read as follows:

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

11. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

12. § 1943.16 introductory paragraph (c) is revised to read as follows:

§ 1943.16 Rates and terms.

* * * * *

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

13. § 1943.66(c) is revised to read as follows:

§ 1943.66 Rates and terms.

* * * * *

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

14. § 1943.116 (c) is revised to read as follows:

§ 1943.116 Rates and terms.

* * * * *

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

PART 1944—HOUSING

15. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

16. § 1944.25(b) is revised to read as follows:

§ 1944.25 Rates, terms, and source of funds.

* * * * *

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the rates in effect at the time of loan approval or loan closing. If the applicant does not

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indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

17. § 1944.159(b) is revised to read as follows:

§ 1944.159 Rates and terms.

* * * * *

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

18. § 1944.214(a) is revised to read as follows:

§ 1944.214 Rates and terms.

(a) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

* * * * *

PART 1945—EMERGENCY

19. The authority citation for Part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

20. § 1945.168(a) is revised to read as follows:

§ 1945.168 Rates and terms.

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

* * * * *

PART 1955—PROPERTY MANAGEMENT

21. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

22. § 1955.106(d)(2) is revised to read as follows:

§ 1955.106 Sale of suitable property (CONACT).

* * * * *

(d) * * *

(2) Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

* * * * *

23. § 1955.107(a) is revised to read as follows:

§ 1955.107 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Surplus property will be offered for cash or on ineligible terms of not less than a ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the market rate for Community Programs. The interest rate for all other surplus property will be the current Farmer Program ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a downpayment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

24. § 1955.117(e) is revised to read as follows:

§ 1955.117 Processing credit sales on eligible terms (housing).

* * * * *

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

* * * * *

§ 1955.118 [Amended]

25. § 1955.118(c) is amended by adding the following to the end of the paragraph:

Loans made on ineligible terms will be closed at the interest rate which is in effect at the time the loan was approved.

PART 1962—PERSONAL PROPERTY

26. The authority citation for Part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

27. § 1962.34(a)(2) is amended by removing the last two sentences and adding the following to the end of the paragraph:

§ 1962. 34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(a) * * *

(2) * * * If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

* * * * *

PART 1965—REAL PROPERTY

28. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

29. § 1965.27(c)(2) is amended by removing the first sentence and adding the following sentences in its place:

§ 1965.27 Transfer of real estate security.

(c) * * *

(2) * * * Except as provided in paragraph (b)(5) of this section and in this paragraph, an applicant may request the interest rate charged by FmHA to be the lower of the rate in effect at either the time the assumption is approved or closed. If the applicant does not indicate a choice, the assumption will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type loan involved.

* * * * *

30. § 1965.27(d)(2) is amended by replacing the words "current rate" with the words "interest rate in effect at the time of loan approval" in the third sentence.

31. § 1965.27(d)(3) is amended by inserting the words "in effect at the time of loan approval" to the end of the last sentence.

Subpart C—Security Servicing for Single Family Rural Housing Loans

32. § 1965.126(c)(1) is revised to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) of this section, the applicant may request the interest rate charged by FmHA to be the lower of the rate in effect at either the time the assumption is approved or closed. If the applicant does not indicate a choice, the assumption will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type loan involved. The repayment period may be up to the maximum legal limit for the type loan involved.

* * * * *

Dated: January 22, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-3969 Filed 2-25-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 79-14]

Order Prescribing Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978

[Docket No. RM79-14]

Order of the Director, OPPR

Issued February 21, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incemental pricing acquisition cost threshold prices for the month of March 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The threshold price for March which is based upon 130% of the cost of No. 2 fuel oil landed in New York City reflects data gathered by the Energy Information Administration (EIA) during December 1985. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for those two areas for the ten trading days ending February 14, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of December 1985. This lag adjustment factor was applied to the December price to determine the price for March. This procedure will be followed in all subsequent months.

List of Subjects in 18 CFR Part 282

Natural Gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

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TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1985]

	Jan.	Feb.	Mar	Apr	May	June	July	Aug.	Sept.	Oct.	Nov	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.952	3.992	4.022	4.045	4.066	4.091	4.116	4.141
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 percent of No. 2 fuel oil in New York city threshold	7.170	7.310	7.080	6.920	7.210	7.120	7.400	7.800	6.520	6.690	6.940	7.140

[Calendar year 1986]

	Jan.	Feb.	Mar									
Incremental pricing threshold	$2.460	$2.467	$2.474									
NGPA section 102 threshold	4.166	4.191	4.216									
NGPA section 109 threshold	2.539	2.546	2.553									
130 percent of No. 2 fuel oil in New York City threshold	7.370	7.930	5.040									

[FR Doc. 86-4180 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8039]

Employment Taxes and Collection of Income Tax at Source; OMB Control Numbers Under the Paperwork Reduction Act; Employee Tip Reporting and Substantiation Requirements

Correction

In FR Doc. 85-17456, beginning on page 29964, in the issue of Thursday, July 23, 1985, make the following corrections:

1. On page 29964, first column, under DATES, in the sixth line, "§ 31.6053-3(j)(g)(9)" should read "§ 31.6053-3(j)(9)", and in the thirteenth line, "§ 31.6053—(b)(5)" should read "§ 31.6053-3(b)(5)".

2. On page 29967, first column, in § 31.6053-4T(b), in the fifth line, "of" should read "or".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-10-FRL-2974-5]

Standard of Performance for New Stationary Sources; Delegation of Authority of Local Air Agency in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of Authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standard of Performance for New Stationary Sources (NSPS).

The State of Oregon Department of Ecology (ODEQ) requested EPA to delegate to the Lane Regional Air Pollution Authority (LRAPA) the authority to implement and enforce 22 NSPS categories on December 17, 1985. EPA granted the request on February 12, 1986. LRAPA now has the authority to enforce these 22 NSPS source categories as set forth in 40 CFR Part 60.

EFFECTIVE DATE: February 12, 1986.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A-85-23), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Mark Hooper, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1949 FTS: 399-1949.

SUPPLEMENTARY INFORMATION: Pursuant to Section 111(c) of the Clean Air Act, as amended, the Regional Administrator of Region 10, EPA, delegated to the State of Oregon Department of Environmental Quality (ODEQ) on November 10, 1975, the authority to enforce the Standards of Performance for New Stationary Sources (NSPS). The delegation was announced in the **Federal Register** on February 20, 1976 (41 FR 7749). Subsequently, on April 23, 1982 (47 FR 20305), EPA concurred in a delegation by ODEQ to LRAPA for certain categories of the NSPS program. An additional delegation was made on February 10, 1983 (48 FR 8571).

On December 17, 1985, ODEQ requested approval of a delegation to LRAPA the authority to enforce 22 additional source categories under NSPS and on February 12, 1986, the Regional Administrator concurred in the following letter:

M/S 532

Fred Hansen, Director,
Department of Environmental Quality, P.O. Box 1760, Portland, Oregon 97207.

Dear Mr. Hansen: On December 17, 1985, you requested that EPA extend the subdelegation of authority to enforce 22 additional New Source Performance Standards (NSPS) to the Lane Regional Air Pollution Control Authority (LRAPA). We have reviewed that request and hereby grant the subdelegation to LRAPA with the authority to enforce the following categories:

Nitric Acid Plants (Subpart G)
Sulfuric Acid Plants (Subpart H)
Secondary Lead Smelters (Subpart L)
Secondary Brass & Bronze Production Plants (Subpart M)
Steel Plants-Electric Arc Furnaces (Subpart AAa)
Surface Coating of Metal Furniture (Subpart EE)
Lime Manufacturing Plants (Subpart HH)
Lead-Acid Battery Manufacturing Plants (Subpart KK)
Automobile & Light-Duty Truck Surface Coating Operations (Subpart MM)
Graphic Arts Industry-Publ. Rotogravure Printing (Subpart QQ)
Pressure-Sensitive Tape & Label Surface Coating Operations (Subpart RR)
Industrial Surface Coating-Large Appliances (Subpart SS)
Metal Coil Surface Coating (Subpart TT)
Asphalt Processing & Asphalt Roofing Manufacturing (Subpart UU)
Equipment Leaks of VOC in Synthetic Organic Chem. Mfg. (Subpart VV)
Beverage Can Surface Coating Industry (Subpart WW)
Bulk Gasoline Terminals (Subpart XX)
Flexible Vinyl Urethane Coating & Painting (Subpart FFF)
Synthetic Fiber Production Facilities (Subpart HHH)
Petroleum Dry Cleaners (Subpart JJJ)
Wool Fiberglass Insulation Manufacturing Plants (Subpart PPP)

In addition to the subdelegation of the 21 above listed categories, EPA grants authority directly to LRAPA to enforce the following category: Nonmetallic Mineral Processing Plants (Subpart OOO).

This delegation is subject to the conditions outlined in the original letter of delegation dated November 10, 1975 and published in the Federal Register (40 FR 7749) to the Oregon State Department of Environmental Quality. A Notice announcing this subdelegation will be published in the Federal Register in the near future.

The Notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS from sources located in Lane County which were previously sent to the Director, Oregon State Department of Environmental Quality will now be sent to the Director, Lane Regional Air Pollution Authority. Additionally, LRAPA agrees to submit until further notice copies of reports required pursuant to 40 CFR 60.7(c) relating to excess emissions to EPA Region 10, Attention: Chief, Air Operations Section.

Since this subdelegation is effective immediately, there is no requirement that the state or local agency notify EPA of its acceptance. Unless EPA receives from the state or local agency written notice of objections within ten days of the date of receipt of this letter, the state or local agency will be deemed to have accepted all the terms of the subdelegation.

An advance copy of the **Federal Register** is enclosed for your information.

Sincerely,

Ernesta B. Barnes,
Regional Administrator.

Enclosure
cc: D. Arkell, LRAPA

This notice is being published to notify the public that a delegation of authority under NSPS has occurred.

Authority: Sec. 111(c) of the Clean Air Act, as amended. (42 U.S.C. 7401-7642.)

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: February 12, 1986.

James R. Elder,
Acting Regional Administrator.

[FR Doc. 86-4096 Filed 2-25-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL-2971-2]

Air Quality Implementation Plans; Delayed Compliance Order; C.W. Zumbiel Co., Norwood, OH

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: The Administrator of U.S. EPA hereby issues a Delayed Compliance Order (DCO) to C.W. Zumbiel Company. The Order requires the Company to bring volatile organic compound (VOC) emissions from its rotogravure printing lines into compliance with Ohio Rule 3745-21-09(Y), part of the federally approved Ohio State Implementation Plan (SIP). Compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This Final Rulemaking becomes effective on February 26, 1986.

FOR FURTHER INFORMATION CONTACT: Brent Marable, U.S. Environmental Protection Agency, Air Compliance Branch (5AC-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6812.

SUPPLEMENTARY INFORMATION: On April 12, 1985, the Regional Administrator of U.S. EPA's Region V office published in the **Federal Register** (50 FR 14396) a notice setting out the provisions of a proposed federal Delayed Compliance Order for C.W. Zumbiel Company. The Order requires the Company to comply with the volatile organic compound emission limitations of Ohio Rule 3745-21-09(Y) by November 1, 1985, by the installation of add-on control equipment. The notice asked for public comments by May 13, 1985. No public comments were received. Therefore, effective this date, a Delayed Compliance Order is issued to C.W. Zumbiel Company by the Administrator of the U.S. EPA, pursuant to the authority of section 113(d) of the Clean Air Act. Compliance with the Order by the Company will preclude federal enforcement action under Section 113 of he Clean Air Act for violations of the SIP requirements covered by the Order. Citizen suits are similarly precluded.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by April 28, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 65

Air pollution control.

This notice is issued under authority of section 113 of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Dated: February 6, 1986.

Lee M. Thomas,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

§ 65.400 [Amended]

1. By adding an entry to the Table in § 65.400—Federal Delayed Compliance Orders issued under sections 113(d) (1), (3), and (4) of the Act, to read as follows:

Source	Location	Order No.	SIP regulation(s) involved	Date of Federal Register Promulgation	Final compliance date
C.W. Zumbiel Co.	Norwood, Ohio		Rule 3745-21-09(Y)	2-26-86	11/1/85

United States Environmental Protection Agency, Region V

[Order No. EPA-5-85-113-A(a)-3]

Proceeding Pursuant to Sections 113(d) and 114 of the Clean Air Act, as Amended [42 U.S.C. 7413(d), 7414]

In the matter of C. W. Zumbiel Company, 2339 Harris Avenue, Norwood, Ohio, Respondent.

This Order is entered into between the C.W. Zumbiel Company ("Zumbiel") and the United States Environmental Protection Agency ("USEPA") and is issued this date pursuant to Sections 113(d) and 114 of the Clean Air Act, as amended, 42 U.S.C. 7413(d), 7414 (hereinafter, "Act"). This Order contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for public comment, and thirty days notice to the State of Ohio have been provided by USEPA in accordance with section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1).

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To effectuate the mutual objectives of USEPA and Zumbiel and to resolve the matter constructively and without litigation. Zumbiel consents to the actions required by this Order. Zumbiel agrees that USEPA has the right to enforce this Order under the Act in a court of competent jurisdiction.

Findings

1. On November 1, 1984, USEPA issued a Notice of Violation pursuant to section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), to Zumbiel for violation of Ohio State Implementation Plan (SIP) Rule 3745-21-09(Y) by Press #50 and Press #51 at the company's facility located at 2339 Harris Avenue in Norwood, Ohio ("facility"). Rule 3745-21-09(Y)(1) prohibits any owner or operator of a rotogravure printing line from causing, allowing, or permitting the discharge of volatile organic compounds (VOCs) from each such line unless: (a) No coating used on the line has a VOC content of greater than forty percent by volume, excluding water; or twenty five percent by volume of the volatile content; or (b) the line is equipped with a capture system which operates at an efficiency of seventy percent by weight, and a control efficiency which is at least ninety percent by weight. Rule 3745-21-04(C)(32) requires that these limitations be achieved by December 31, 1982.

2. Zumbiel owns and operates two color rotogravure printing lines. One is a Bobst Champlain 6 Rotogravure color printer with an inline cutter, designated as Press #50 (P001). The other is a Bobst Champlain 7 Rotogravure color printer, designated as Press #51 (P002). Both presses are subject to Rule 3745-21-09(Y)(1)(a) or, alternatively, Rule 3745-21-09(Y)(1)(b)(i)(b).

3. Pursuant to Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), an opportunity to confer with USEPA representatives was extended to Zumbiel, and a conference was held on December 5, 1984. During the conference Zumbiel explained the results of its investigations of compliance methods and efforts to come into compliance.

4. The violations of Rule 3745-21-09(Y) have continued beyond the thirtieth day after the date that Zumbiel received the Notice of Violation.

5. The Administrator has determined that, although Zumbiel has made significant efforts to achieve compliance with Rule 3745-21-09(Y), it was not able to do so by December 31, 1982. The Administrator has also determined that Zumbiel will be unable to achieve compliance prior to the dates set forth in the Compliance Program section of this Order.

6. After a thorough investigation of all relevant facts, including the seriousness of the violations and Zumbiel's good faith efforts to comply, and after opportunity for public comment, the Administrator has determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of the Order comply with section 113(d) of the Act, 42 U.S.C. 7413(d).

Therefore, the following terms are ordered and agreed:

Compliance Program

1. Zumbiel shall achieve and demonstrate compliance with Rule 3745-21-09(Y) at the facility. After November 1, 1985, Zumbiel shall not operate the facility in violation of Rule 3745-21-09(Y).

2. Zumbiel shall achieve and demonstrate compliance with Rule 3745-21-09(Y)(1)(b) in accordance with the following schedule:

A. Zumbiel has proposed to comply with Rule 3745-21-09(Y)(1)(b) by means of installation of a catalytic converter/heat recovery system manufactured by Pillar Corporation ("controls").

B. Zumbiel shall execute all necessary contracts for the purchase and installation of the controls not later than March 1, 1985.

C. Zumbiel shall acquire delivery of the controls by July 15, 1985.

D. Zumbiel shall complete installation of the controls, including collection equipment and all necessary auxiliaries, by September 30, 1985.

E. Zumbiel shall achieve and demonstrate compliance with Rule 3745-21-09(Y)(1)(b) not later than November 1, 1985. Compliance shall be demonstrated according to the test described in 40 CFR Part 60, Appendix A, Method 25 or, in the alternative, by a method determined by USEPA to be acceptable. Zumbiel shall notify USEPA of the date and time established for the test not less than fourteen days prior to such date. A written report of the test and its results shall be delivered to USEPA not later than fourteen days following the date of the test.

3. During such time that Zubiel is working toward compliance as outlined in paragraph 2 of the Compliance Program, above, Zumbiel shall also minimize VOC emissions in the following manner:

A. By not later than July 15, 1985, Zumbiel shall reduce the VOC content of its coatings and inks to a daily average of not more than 3.22 lbs VOC/lbs. solids on each of Presses #50 (P001) and #51 (P002); and

B. Effective immediately, Zumbiel shall substitute any reasonably available water-based coating and/or ink, for each solvent-based coating and/or ink used on each of Presses #50 (P001) and #51 (P002), provided that the substituted coating is first accepted by Zumbiel's customer. Customer acceptance shall be determined for each product affected by such substitution within fourteen days of such substitution.

4. The capture and control efficiencies of the controls shall meet the requirements of Rule 3745-21-09(Y)(1)(b)(i)(b) and Rule 3745-21-09(Y)(1)(b)(ii). Those sections require, *inter alia,* a capture efficiency that is at least seventy percent by weight, and a control efficiency that is at least ninety percent by weight.

5. With respect to the controls, Zumbiel shall:

A. Submit to USEPA not later than May 15, 1985, specifications, prints, and designs of the controls (including all hoods and collection equipment).

B. Maintain a continuous record of the operating temperature of the controls.

C. Submit to USEPA all information that USEPA may reasonably request in order to evaluate the controls, and/or operation thereof, by such date as USEPA shall establish.

6. USEPA shall have the right to reject any plans, specifications, or designs of the controls if in USEPA's judgment the controls will not meet the appropriate emission limitations.

7. In the event that Zumbiel fails to achieve compliance with Rule 3745-21-09(Y) by November 1, 1985, then it shall submit to USEPA in writing the following information for each coating, and/or ink used on each of presses #50 (P0001) and #51 (P002):

A. The identification of each coating and/or ink used on the press, as given by Zumbiel, and as given by the manufacturer of such coating or ink.

B. The VOC content, in percent by volume.

C. The water content, in percent by volume.

D. The density, in pounds per gallon.

E. The daily usage, in pounds per gallon.

F. The VOC content, as determined under Rule 3745-21-10(B) in:

i. percent by volume, excluding water; and

ii. percent by volume of the volatile content.

The information required by this paragraph 7 shall be submitted by January 15, 1986, for the fourth quarter of 1985, and for each quarter of 1986 if compliance with Rule 3745-21-09(Y) is not achieved by November 1, 1985. Any information reported hereunder for 1986 shall be reported to USEPA not later than 15 days after the close of the preceding quarter.

8. Not later than fourteen days after the scheduled completion date of any interim or final compliance schedule increment Zumbiel shall submit to USEPA a status report stating whether or not such compliance schedule milestone was achieved, and explaining any failure to meet such date.

9. All submittals, notifications and reports to USEPA pursuant to this Order shall be made to the Chief, Air Compliance Branch, Air Management Division, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. A copy of each document submitted to USEPA shall be sent to the Ohio Environmental Protection Agency, Office of Air Pollution Control, Box 1049, 361 East Broad Street, Columbus, Ohio 43216.

10. Nothing contained in this Order shall affect the responsibility of Zumbiel to comply with State or local laws or regulations or other Federal laws or regulations.

11. The provisions of this Order in no way address Zumbiel's potential liability under Section 120 of the Act, As amended, 42 U.S.C. 7420, nor is this Order a "notice of noncompliance" as that term is applied in section 120(b)(3) of the Act. Zumbiel acknowledges that it has been notified that it may be subject to penalties under section 120 of the Act, but reserves all rights to contest the assessment and attempted collection of noncompliance penalties under that Section. 42 U.S.C. 7413(d)(1)(E).

12. This Order shall be terminated in accordance with section 113(d)(8) of the Act, 42 U.S.C. 7413(d)(8), if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with the applicable Ohio State Implementation Plan no longer exists.

13. Zumbiel is protected by section 113(d)(10) of the Act, 42 U.S.C. 7413(d)(10), from Federal enforcement action, and from citizen suits under section 304 of the Act, 42 U.S.C. 7604, for noncompliance with those parts of the Ohio State Implementation Plan covered by this Order until November 1, 1985, where Zumbiel is in compliance with the terms of this Order.

14. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Act, including, but not limited to, section 303 of the Act, 42 U.S.C. 7503.

15. This Order is effective upon publication in the Federal Register.

Dated: February 8, 1986.

U.S. Environmental Protection Agency.
Lee M. Thomas,
Administrator, United States Environmental Protection Agency.

Zumbiel, by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which the facility can achieve compliance with the Ohio State Implementation Plan. Zumbiel further waives any and all rights under any provisions of law to challenge this Order or its validity, but reserves all rights it may have to object to or contest any allegation of violation of this Order.

Dated: March 12, 1985.

C.W. Zumbiel Company.
Robert W. Zumbiel,
President.

[FR Doc. 86-3829 Filed 2-25-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 162

[OPP-36107; FRL-2972-1]

Cross References; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This document revises cross references in 40 CFR Part 162 to reflect changes made by the removal of §§ 162.9-1 through 162.9-8 and the addition of Part 152 to the Code of Federal Regulations, as published in the Federal Register of August 1, 1984 (49 FR 30903). The removal of those sections and the addition of Part 152 became effective on April 25, 1985, as published in the Federal Register of April 25, 1985 (50 FR 16234). This regulation is a technical amendment which requires no opportunity for comment or public participation.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460.

Office location and telephone number: Rm 1114B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0944).

List of Subjects in 40 CFR Part 162

Administrative practice and procedure, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests.

Dated: February 10, 1986.

John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 162 is amended as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 is revised to read as follows:

Authority: 7 U.S.C. 136a, 136d, 136q, 136s, 136v, and 136w.

§ 162.2 [Amended]

2. In § 162.2(g)(2), the reference in the last line to "§§ 162.9-1 through 162.9-8" is revised to read "Subpart E of Part 152 of this chapter."

§ 162.6 [Amended]

3. In § 162.6(b)(1), the reference in the last line to "§§ 162.9-1 through 162.9-8" is revised to read "Subpart E of Part 152 of this chapter."

§ 162.41 [Amended]

4. In § 162.41, the language "and Subpart E of Part 152 of this chapter" is added to the end of the second sentence of the introductory text.

§ 162.45 [Amended]

5. In § 162.45(b), the reference in the heading to "§§ 162.9-1 through 162.9-8" is revised to read "40 CFR Part 152, Subpart E".

§ 162.160 [Amended]

6. In § 162.160(b)(2), the reference to § 162.9-1(b) is revised to read "§ 152.81(b)(4) of this chapter".

§ 162.165 [Amended]

7. In § 162.165(a), the language "and Subpart E of Part 152 of this chapter" is added after "162.17" in the introductory text.

[FR Doc. 86-3832 Filed 2-25-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 5F3214, 6F3305/R810; FRL-2973-7]

Pesticide Chemicals in or on Raw Agricultural Commodities; Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide iprodione, its isomer and

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metabolite, in or on certain raw agricultural commodities. This regulation, to permit the maximum levels of residues in or on the commodities, was requested in petitions submitted by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on February 26, 1986.

ADDRESS: Written objections, identified by the document control number (PP 5F3214, 6F3305/R810), may be submitted to the:

Hearing Clerk (A–110), Environmental Protection Agency, Rm. M–3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register**, which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, submitted the following pesticide petitions to the EPA, requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on certain raw agricultural commodities as follows:

1. *PP 5E3214*. 50 FR 9123, March 6, 1985. Blueberries, boysenberries, currants, and raspberries at 15.0 parts per million (ppm).

2. *PP 6F3305*. 50 FR 46178, November 6, 1985. Broccoli at 25.0 ppm.

No comments were received in response to the notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg body weight/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg body weight/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg body weight/day).

2. A rabbit teratology study in which the following doses were administered by gavage, 0, 100, 200 and 400 mg/kg body weight, resulting in a teratogenic NOEL equal to or greater than 400 mg/kg body weight. This study is considered unacceptable under current guidelines because no NOEL for fetotoxic effects were demonstrated.

3. A rat teratology study in which the following doses were administered by gavage, 0, 100, 200, 400 mg/kg body weight, resulting in a teratogenic NOEL greater than 400 mg/kg body weight.

4. A 24-month rat feeding/oncogenicity study using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study and resulted in a systemic NOEL equal to or greater than 1,000 ppm.

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, 178.6 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 100, 600, and 3,600 ppm (2.5, 15, and 90 mg/kg body weight/day) with a NOEL of 100 ppm (2.5 mg/kg body weight/day) and a LEL of 600 ppm (15 mg/kg body weight/day).

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg body weight/day) with a NOEL of 2,400 ppm (60 mg/kg body weight/day) and a LED of 7,200 ppm (180 mg/kg body weight/day).

8. A mammalian cell forward mutation study, Chinese hamster ovary (CHO) metaphase analysis study, and sister chromatid exchange study were negative for mutagenic effects and a DNA damage study was positive.

Data currently lacking include a second teratology study using gastric intubation, and an acute dermal study. The second teratology study was required under section 3(c)(2)(B) of FIFRA (7 U.S.C. 136(c)(2)(B)). The study has been received and is under evaluation by the Agency.

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 25 mg/kg/day) and using a 100 fold safety factor, is calculated to be 0.2500 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 15.00 mg/day. The theoretical maximum residue contribution (TMRC) from the tolerances is .065 mg/day and utilizes 0.44 percent of the MPI. These tolerances and the published tolerances utilize a total of 12.74% of the MPI.

The nature of the residues is adequately understood and an adequate analytical method, gas liquid chromatography using an electron capture detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of the chemical.

Based on the information and data considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation, may within 30 days after the publication in the **Federal Register**, may file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12211, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that the regulations establishing tolerance levels or establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 11, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399 is amended by adding and alphabetically inserting the commodities to read as follows:

§ 180.399 Iprodione: tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Blueberries	15.0
Boysenberries	15.0
Broccoli	25.0
Currants	15.0
* * * * *	
Raspberries	15.0
* * * * *	

[FR Doc. 86–3939 Filed 2–25–86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Secretary

48 CFR Part 1033

Acquisition Regulations; Protests, Disputes, and Appeals

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on protests, disputes, and appeals, to revise the citation for the Rules of the General Services Administration Board of Contract Appeals.

FOR FURTHER INFORMATION CONTACT: Thomas P. O'Malley, Director, Office of Procurement, or Robert E. Lloyd, Procurement Analyst, 1500 Pennsylvania Avenue NW., Washington, DC 20220, telephone (202) 566–2115.

Make the following correction to FR Doc. 85–18682 beginning on page 31844 in the issue of Wednesday, August 7, 1985:

§ 1033.270 [Corrected]

In § 1033.270, on page 31845, in the first column, in the fourth and fifth lines, "48 CFR Chapter 5, Appendix B" should read "48 CFR Chapter 61 (Part 6101)."

Dated: February 18, 1986.

Thomas P. O'Malley,

Director, Office of Procurement.

[FR Doc. 86–4111 Filed 2–25–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 38
Wednesday, February 26, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas

Correction

In FR Doc. 86-2657, beginning on page 4605, in the issue of Thursday, February 6, 1986, make the following correction:

1. On page 4605, third column, in the table of contents, § 52.6429, "Samples" should read "Sample".
2. On page 4606, first column, § 52.6423(c), in the sixth line, "bean" should read "beans".

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Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-092]

Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 92 concerning the importation into the United States of cattle from Canada. It is proposed to amend the regulations by designating the Canadian provinces of Ontario and Quebec as brucellosis certified free provinces and by allowing cattle classified as cattle from brucellosis certified free provinces of Canada to enter into the United States at certain existing ports of entry. It appears that this action is necessary to relieve restrictions on the importation of certain cattle from Canada since it has been determined that these provinces are free of brucellosis.

DATE: Written comments must be received on or before April 28, 1986.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-092. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday though Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Chief Staff Veterinarian, Import—Export Animals and products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road Hyattsville, MD 20782. 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20 of the regulations contains specific provisions concerning the importation into the United States of cattle from Canada. These provisions include, as a condition of importation, that cattle from Canada six months of age or older, except steers and cattle for immediate slaugher, must be accompanied by a brucellosis test certificate or brucellosis vaccination certificate.

Brucellosis Certified Free Provinces of Canada

To qualify for a brucellosis test certificate or brucellosis vaccination certificate, cattle from Canada six month of age or older, except steers and cattle for immediate slaughter, must meet one of the alternative sets of requirements set forth in § 92.20(c) of the regulations. One alternative set of requirements allows such cattle to qualify for a brucellosis test certificate if they originated from brucellosis certified free provisnces of Canada, if they have been tested for brucellosis with negative results within 30 days prior to their date of entry, and if they originated from a herd that had been maintained as a herd unit for at least one year prior to their exportation. Also, it should be noted that a herd unit is defined as:

> a herd in which all the cattle were born and raised within the herd or were moved directly from another herd located within the brucellosis certified free provinces of Canada, or were moved directly from a brucellosis certified free herd in accordance with Canadian requirements for movement into brucellosis certified free provinces of Canada.

The brucellosis certified free provinces of Canada are listed in § 92.1(w) of the regulations. Section 92.1(w) states as follows:

> (w) *Brucellosis certified free provinces of Canada.* Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland (including Labrador), Nova Scotia, Prince Edward Island, and Saskatchewan, known in Canada as brucellosis accredited free provinces.

This document proposes to amend § 92.1(w) adding the provinces of Ontario and Quebec to the list of brucellosis certified free provinces of Canada.

Based to the results of disease control surveillance and testing programs conducted by animal health authorities of the Canadian government, these two provinces have been accredited by the Canadian government as brucellosis free. Animal health authorities of the Canadian government have advised the Department that the last province was declared officially free of brucellosis in September 1985 and that there are no brucellosis-quarantined herds in these provinces.

Under Canadian law, as a condition to maintain status as a brucellosis accredited free province (as noted above in § 92.1(w), brucellosis certified free provinces are known in Canada as brucellosis accredited free provinces), dairy herds in the province must be subjected to a minimum of three milk ring tests for brucellosis each year. Also, non-dairy herds must have had a rate of a least 5 percent market cattle tests conducted each year or a complete herd test at the end of each 3-year period. Further, cattle for breeding purposes originating from provinces of Canada other than brucellosis accredited free provinces must comply with testing requirements for movement into the brucellosis accredited free provinces. If this proposal is adopted as a rule, all of the Canadian provinces will be included in the list of brucellosis certified free provinces.

Ports of Entry

Section 92.20(c)(2) provides, in part, that:

> Cattle to be imported into the United States from brucellosis certified free provinces of Canada shall be (A) moved entirely within the boundaries of the brucellosis certified free provinces of Canada from the farm of origin directly to the United States ports of entry of Eastport, Idaho; Houlton, Maine; Raymond, Opheim, and Sweetgrass, Montana; Pembina, Portal, and Dunseith, North Dakota; and Blaine, Sumas, Lyndon, and Oroville, Washington; or (B) such cattle shall be moved in a vehicle sealed with Canadian Government seals. If the cattle to be imported are shipped in sealed vehicles, the seal numbers shall be recorded on the certificate, and the seals may only be broken by a United States port veterinarian at the United States port of entry.

This document proposes to amend § 92.20(c)(2) by adding the existing Canadian border ports of Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Alexandria Bay, Buffalo, Champlain, Ogdensburg, and Rooseveltown, New York; and Derby Line and Highgate Springs, Vermont; to the list of United States ports of entry through which cattle to be imported into the United States from brucellosis certified free provinces of Canada may be shipped. These port of entry provisions are designed to help ensure that cattle are transported only through brucellosis certified free provinces and thereby avoid contact with animals affected with or exposed to brucellosis. If these border ports are added to the list in § 92.20(c)(2), the list wil include all the Canadian border ports, since all of the Canadian provinces will be included in the list of brucellosis certified free provinces.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and should have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that if the proposed rule is adopted, there will be no significant change in the number of cattle imported into the United States from Canada and that there will be no significant change with respect to the cost of importing cattle into the United States from Canada.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, it is proposed to amend the regulations in 9 CFR Part 92 as follows:

1. The authority citation for Part 92 would continue to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.1(w) would be revised to read:

§ 92.1 Definitions.

* * * * *

(w) *Brucellosis certified free provinces of Canada.* Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland (including Labrador), Nova Scotia, Ontario, Quebec, Prince Edward Island, and Saskatchewan, known in Canada as brucellosis accredited free provinces.

* * * * *

§ 92.20 Cattle from Canada.

3. The sixth sentence of paragraph (c)(2) of § 92.20 would be changed to: "Cattle to be imported into the United States from brucellosis certified free provinces of Canada shall be moved entirely within the boundaries of the brucellosis certified free provinces of Canada from the farm of origin directly to the United States ports of entry of Eastport, Idaho, Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, Champlain, Ogdensburg, and Rooseveltown, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; and Blaine, Lynden, Oroville, and Sumas, Washington, or such cattle shall be moved in a vehicle sealed with Canadian governmental seals.

Done at Washington, DC, this 20th day of February 1986.

Gerald J. Fichtner,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-4150 Filed 2-25-86; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 322

[Docket No. 85-011P]

Delivery of Export Certificates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend Part 322 (9 CFR Part 322) of the Federal meat inspection regulations by adding a provision to § 322.2(e) that would permit the filing of a duplicate export certificate with the U.S. Customs Service within four days of the clearance of a vessel carrying a shipment of meat products. This action is consistent with regulations of the United States Customs Service that allow a 4-day delay in the filing of the Complete Cargo Declaration. In the interim period, Customs has agreed to clear the vessel on the basis of a statement containing information as to the export certificate number. This action is necessary so that vessels carrying meat products can depart on schedule even though certain export certificates are not on file at the time of departure.

DATES: Comments must be received on or before: April 28, 1986.

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Policy Office, Attention: Annie Johnson, Room 3863,

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South Agriculture Building, Washington, DC 20250. (See also "COMMENTS" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed rule would make more flexible and less burdensome certain paperwork requirements imposed by the Department.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). The proposed rule would make more flexible and less burdensome certain paperwork requirements imposed by the Department.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Policy Office and should refer to the docket number located in the heading of this document. All comments received in response to this proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Under the provisions of the Federal Meat Inspection Act (FMIA), an export certificate must be issued by an inspector covering meat products intended for export to and sale in a foreign country indicating that the products were sound and wholesome at the time of inspection. In addition, the FMIA prohibits the clearance for departure of any vessel carrying meat products unless and until an export certificate has been issued (21 U.S.C. 617). Section 322.2(e) of the Federal meat inspection regulations (9 CFR 322.2(e)) requires that the duplicate of the export certificate be delivered to the shipper for filing with the United States Customs Service (Customs) at the time the master's manifest or supplemental manifest is filed by the chief officer of the vessel with Customs, that is, on the day of departure (9 CFR 322.2(e)). However, Customs' laws and regulations allow shippers a 4-day delay in the filing of a Complete Cargo Declaration (manifest) if the vessel's cargo declaration is not complete (or if certain required shipper's export declarations are not on file), and a General Declaration is filed at departure time (46 U.S.C. 91, 19 CFR 4.75).

Recently, there have been several instances where a vessel carrying meat products has been denied clearance by Customs because the export certificate, covering meat products on board, was not available at the time the vessel was due to depart. This frequently occurs because certain importing countries require that a veterinarian sign the export certificate. All such products would be certified as being sound and wholesome, and the certificate would be prepared and the boxes stamped with the number of the export certificate. However, if the veterinarian is on an assignment covering more than one establishment, or if the product is being shipped from an establishment without veterinary coverage, then the veterinarian may not be able to send the signed certificate, verifying completion of inspection, in a timely manner. In these cases, if the veterinarian notifies plant management that product may be shipped, then the product may be moved from the establishment even without a signed certificate.

This proposed rule would permit the shipper, shipper's agent or the vessel's agent to provide to Customs a statement under the shipper's or agent's letterhead signed by the shipper briefly describing the shipment of the product, in those instances where the export certificate is not available at departure time. This description would include the number of boxes covered, number of pounds covered, type of product, and the number of the export certificate that covers the shipment of the product. For example, the following statement would be acceptable: "The *600* boxes, *36,000* pounds of *Beef Tenderloins* in the shipment are covered by *USDA Export Certificate No. MPA 52983.*" The export certificate number is readily available to the shipper because the outside of each container is required to be stamped with the number of the export certificate covering it before the shipment leaves the establishment. Customs has agreed to then clear the vessel for departure on the basis of the statement. The duplicate of the signed export certificate would be delivered to Customs by the shipper, shipper's agent or vessel's agent within four business days of the vessel's departure. The 4-day time frame is consistent with Customs' regulations that allow a Complete Cargo Declaration (manifest) or shipper's export declarations to be filed within four business days after clearance.

This proposed rule is expected to impact positively on all shippers and exporters, and on FSIS and the Customs Service, as it immediately relieves an unnecessary, FSIS-imposed restriction that conflicts with Customs' procedures and is currently causing enforcement problems for Customs and vessel delays for shippers transporting meat products as part of or all of their cargo. Since the product has been inspected and certified for export (the export stamp provides this assurance), unavoidable delay in the delivery of the certificate to Customs should not delay a vessel's departure.

List of Subjects in 9 CFR Part 322

Meat inspection, Exports.

Proposed Rule

PART 322—[AMENDED]

1. The authority citation for Part 322 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Paragraph (e) of § 322.2 of the Federal meat inspection regulations (9 CFR 322.2(e)) would be amended by revising it to read as follows:

§ 322.2 Export certificates; instructions concerning issuance.

* * * * *

(e) The duplicate of the certificate shall be delivered to the shipper and shall be delivered by him to the agent of the railroad or other carrier which transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent, and shall be used only by such carrier and only for the purpose of effecting the transportation of the consignment certified. The chief officer of the vessel or the vessel's agent, shipper or shipper's agent shall file such duplicate with the Customs officer within four (4) days of the clearance of the vessel at the time of filing the complete manifest. In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead, containing the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product.

* * * * *

Done at Washington, DC on February 7, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

FR Doc. 86–4151 Filed 2–25–86; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842-3109]

C&D Electronics, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Jenison, Mich. manufacturer and marketer of cable television decoders to cease selling or distributing the decoders to any unauthorized purchasers. Additionally, respondents would be required to cease representing that: (1) Consumers can lawfully own or use decoders; (2) the use of decoders is legal without authorization from a cable company; or (3) ownership or use of a cable decoder is similar to the ownership or use of a telephone. Further, respondents would be required to make an affirmative disclosure with the sale of any of their cable television decoders.

DATE: Comments must be received on or before April 28, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William MacLeod, Director, Chicago, Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353–4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having being filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Cable television decoders, Trade practices.

Before Federal Trade Commission

[File No. 842–3109]

Agreement Containing Consent Order to Cease and Desist

In the Matter of C&D Electronics, Inc., a corporation, and David Barwacz, and Larry Bostelaar, individually and as officers of the corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of said corporation, and it now appearing that C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between C&D Electronics, Inc., by its duly authorized officer, and David Barwacz and Larry Bostelaar, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent C&D Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 2026 Chicago Avenue, Jenison, Michigan 49428.

Proposed respondents David Barwacz and Larry Bostelaar are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute and admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other order. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement

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may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order, the following definitions will apply:

"Authorized person(s)" shall mean any person that is a cable operator or a cable system operator, operating a cable system, as defined herein, pursuant to a franchise issued by a cable franchising authority, or any person manufacturing or distributing cable television decoders, descramblers converter-decoders, or converter-descrablers pursuant to a contract, agreement, license or other arrangement with a cable operator or a cable system operator to provide, furnish or supply such products to a cable system.

"Cable operator" or "cable system operator" shall mean any person, partnership, or corporation that provides cable service over a cable system or that, directly of through one or more affiliates, owns a significant interest in any cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"Cable system" shall mean a facility or combination of facilities, constructed or operated pursuant to a franchise, that consists of a set of closed transmission paths and associated signal generation, reception and control equipment and that is designed to provide cable service to multiple subscribers within a community or a satellite master antenna system (SMATV), that serves subscribers in one or more multiple unit dwellings under common ownership, control or management.

"Franchise" shall mean an initial authorization or renewal thereof, issued by a franchising authority, whether designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of facilities designed to provide cable service.

"Franchising authority" shall mean any state, political subdivision, or agency thereof, or any governmental entity empowered by Federal, State of local law to grant a franchise.

I

It is ordered that respondents C&D Electronics, Inc., a corporation, its successors and assigns, and its officers, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for decoding, descrambling, and/or intercepting in any manner whatsoever of all or any part of any cable television transmission do forthwith cease and desist from selling or distributing, any such product to any person that is not an authorized person hereunder.

II

It is ordered that respondents C&D Electronics, Inc., its successors and assigns, and its officers, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for decoding, descrambling, and/or intercepting in any manner whatsoever of all or any part of any cable television transmission, do forthwith cease and desist from representing, directly or by implication that:

1. Any consumer may lawfully own or use such a product.

2. The ownership and use of any such product is the same as or similar to the ownership or use of telephone equipment.

3. Any consumer may lawfully use any such product without first obtaining authorization from a cable company and paying the required fees.

III

It is further ordered that respondents shall, for a period of five years after the date this Order becomes final, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All sales invoices showing sales of any cable television decoder, descrambler, converter-decoder or converter-descrambler with the invoices showing the name of the person or persons, to whom the sale was made, along with their address(es) and the quantity of such products sold to such person(s).

2. Documents verifying that for each such sale the buyer was an authorized person hereunder.

IV

It is further ordered that respondents shall, in connection with the sale of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for the decoding, descrambling, and/or intercepting in any manner whatsoever of all or any part of any cable television transmission, disclose clearly and conspicuously in writing to the buyer the following statement:

> The possession and use of cable TV equipment on any cable TV system without specific authorization from a cable company and the payment of required fees is strictly prohibited in most states. C&D sells its products only to authorized persons.

V

It is further ordered that respondents shall forthwith distribute a copy of this Order to each of its agents, representatives and employees having advertising, marketing, sales or corporate policy responsibilities with respect to the subject matter of this Order and secure from each such person a signed statement acknowledging receipt of a copy of the Order.

VI

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII

It is further ordered that respondents David Barwacz and Larry Bostelaar shall, for a period of five (5) years after the date of service of this Order, notify the Commission of the discontinuance of their present employment and of their affiliation with any new business or employment, involving the manufacture, advertising, sale, offering for sale or distribution in commerce of any cable

television equipment or accessories, or of their affiliation with any new business or employment in which their duties or responsibilities would involve the manufacture, advertising, sale, offering for sale or distribution of cable television equipment or accessories, with each such notice to include respondent's new business address and a statement as to the nature of the new business or employment, as well as a description of their duties and responsibilities.

VIII

It is further ordered that respondents, within sixty (60) days from the date of service of this Order, shall file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the alleged sale of unauthorized cable television decoders, descramblers, converter-decoders or converter-descramblers (hereinafter collectively referred to as "decoders") to cable television subscribers. Cable companies provide the decoders to their subscribers in order to determine and charge for the level of programming service used. By purchasing a decoder from an unauthorized source, a cable subscriber could avoid payment of the required fees to the cable company.

The complaint accompanying the proposed order alleges that C&D Electronics and the individuals sold cable television decoders designed and used to allow unauthorized viewing by cable subscribers of certain cable television programming. According to the complaint the sale and use of C&D's decoders resulted in the loss to cable companies of potential or present subscription revenues, resulting in legitimate cable subscribers paying higher prices or receiving reduced services from cable companies. In addition, municipalities granting cable system franchises received reduced fees from the cable systems to the detriment of all residents of the municipality. These acts and practices were to the prejudice and injury of the public and constituted unfair acts or practices in violation of section 5 of the Federal Trade Commission Act.

The consent order defines the meaning of the terms "Authorized Person", "cable operator" or "cable system operator", "cable system", "Franchise" and "Franchising Authority" as those terms are used in the order. The rest of the consent order contains provisions designed to remedy the company's and the individual's alleged violations of section 5.

Part I of the order prohibits respondents from selling or distributing cable television decoders to any person that is not an authorized person under the order.

Part II requires respondents to cease representing directly or by implication that any consumer can lawfully own or use a decoder; that the use of such a device is legal without first obtaining authorization from, and paying the required fees to, a cable company; or that ownership and use of a cable decoder is the same or similar to the ownership or use of a telephone.

In addition, respondents must make the following affirmative disclosure in connection with the sale of any cable television decoder:

> The possession and use of cable-TV equipment on any cable-TV system without specific authorization from a cable company and the payment of required fees is strictly prohibited in most states. C&D sells its products only to authorized persons.

The Commission is interested in public comment on the appropriateness of revising this disclosure to reference the recently enacted Cable Communication Policy Act of 1984, 47 U.S.C. 521 *et. seq.*, which prohibits the manufacture and distribution of cable equipment intended for the unauthorized reception of any cable communications.

Respondents must also maintain, for a period of five (5) years, such sales records as will show their compliance with the terms and provisions of the order. Respondents must also distribute a copy of the order to appropriate employees, and provide the Commission at least thirty (30) days notice of any proposed changes in the corporate Respondent. Furthermore, the individual respondents, for a period of five (5) years, must notify the Commission of the discontinuance of their present employment and their affiliation with any new business or employment that would involve the manufacture, advertising, sale, offering for sale or distribution of any cable television equipment or accessories.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 86-4109 Filed 2-25-86; 8:45 am]

BILLING CODE 6750-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Proposed rule; Notice of Extension of Time for Comments.

SUMMARY: The United States Information Agency announces that the proposed rulemaking, Rulemaking No. 1, regarding the Exchange-Visitor Program notice in 50 FR 52938, December 27, 1985, is extending the time for response. Parties wishing to participate were to notify the Agency in writing no later than February 25, 1986. The date is extended to March 28, 1986.

DATE: Parties wishing to participate should notify the Agency in writing no later than March 28, 1986.

ADDRESS: Send notice of desire to participate to: Merry Lymn, Attorney-Advisor, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney-Advisor, United States Information Agency, 301 4th Street, SW., Washington, DC 20547 (202) 485-7976.

SUPPLEMENTARY INFORMATION: By notice published at 50 FR 52938, December 27, 1985, the United States Information Agency announced a new rulemaking, Rulemaking No. 1. By that announcement, the Agency invited comments from the public. Parties wishing to participate in the rulemaking were asked to notify the Agency in writing no later than February 25, 1986. It has come to the attention of the Agency that there are parties who wish to participate in the rulemaking and were unable to notify the Agency in time. Therefore, the time for notification

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to Agency of an interest in participation is extended until March 28, 1986. The Agency is notifying the public of its intent to extend the time limitation by publication in the Federal Register, by mailing copies of this notice to all teenage exchange sponsors, to school administration organizations and to others known or thought to be interested in this proceeding.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Authority: Sec. 4, 63 Stat. 111; secs. 102, 109(a)(b)(d), 75 Stat. 527, 534, 535; secs 101(a)(15)(J), 104(a), 212(e), 66 Stat. 166, 174, 182, 184; sec. 2, 84 Stat. 116, 117 (22 U.S.C. 2656, 2452); (8 U.S.C. 1101(a)(15)(J), 1104(a), 1182(e), 1258); Reorganization Plan No. 2 of 1977; Executive Order 12048 of March 27, 1978; the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983, Pub. L. 97–241, Title III, August 24, 1982; Pub. L. 97–116, 75 Stat. 1611, 1612, 1613 (8 U.S.C. 1182(a)(15)(J)). Pub. L. 97–241, 96 Stat. 291, Pub. L. 87–256, 75 Stat. 527, as amended; Delegation Order No. 85–5, June 27, 1985, 50 FR 27393.

Dated: February 21, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86–4190 Filed 2–25–86; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-040]

Health and Safety Standards; Occupational Exposure to 4,4'-Methylenedianiline (MDA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice. Response to the Environmental Protection Agency (EPA) under section 9(a) of the Toxic Substances Control Act (TSCA).

SUMMARY: This notice was prepared in response to the EPA notice of July 5, 1985 (50 FR 27674) which announced that EPA was referring MDA to OSHA under section 9(a) of TSCA. OSHA has determined, on the basis of the evidence available, that the risk described by EPA may be eliminated or reduced to a significant extent by a workplace standard which regulates worker exposure. Further, OSHA believes, on the basis of preliminary data, that the adoption of an occupational standard for worker exposure to MDA is economically and technologically feasible. The Agency is therefore examining various exposure scenarios which might serve as the basis for a proposed regulation. OSHA has also concluded that there is a reasonable basis to believe that the manufacture and use of MDA presents a significant risk to the health of exposed workers. This notice also describes the regulatory activities initiated by OSHA including negotiated rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Room N-3641, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA announced its intention to study and possibly regulate workplace exposure to the chemical, MDA, in an Advance Notice of Proposed Rulemaking (ANPR) [48 FR 42836; September 20, 1983], published jointly with EPA. The comments and information received in response to the ANPR were submitted to the EPA Docket No. OPTS–64000A. All relevant materials from this docket are now a part of the OSHA Docket (H–040). All citations herein refer to this docket.

OSHA has analyzed the material submitted in response to the ANPR, including the risk assessment developed by EPA and the technological and economic feasibility documents. As a result of this analysis, the Agency has determined that a significant risk may be associated with worker exposure to MDA. This determination supports the evaluation of risk by EPA.

OSHA and EPA examined the docket information and made regulatory determinations simultaneously. On July 5, 1985, EPA published a Federal Register notice which indicated that MDA rulemaking would be referred to OSHA in accordance with EPA's section 9 TSCA provisions (90 Stat. 2030; 15 U.S.C. 2608) (50 FR 27674). This notice gave OSHA 180 days (later extended 45 days) to respond. Specifically, the EPA referral notice states that the unregulated manufacture and use of MDA presents an unreasonable risk of injury to human health, and that the risk may be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act (OSH Act). EPA, following the procedural requirements of section 9(a) of TSCA, requested OSHA to determine if the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination is made, then OSHA was requested to issue an order declaring whether the manufacture and use described in the report present the risk therein described (50 FR 27675).

In this notice, OSHA is responding to the EPA referral by making a preliminary determination that an OSHA standard limiting occupational exposure to MDA could sufficiently prevent or reduce the risk to exposure, and that such risk has been accurately described by EPA in its report.

II. OSHA's Evaluation; Findings

Health Effects Associated With Exposure to MDA

Both chronic and acute adverse health effects are associated with occupational exposure to MDA. The available evidence suggests that the most severe chronic effect resulting from occupational exposure to MDA is cancer. Both primary and secondary information in the record were used to estimate the risk of cancer among workers exposed to MDA. The primary information consisted of long-term animal studies and epidemiological data. The available secondary information consisted of structure-activity relationships, the results of short-term tests, pharmacokinetic studies, comparative metabolic studies, and data on other relevant toxicological responses.

The most persuasive study has been conducted by National Toxicology Program (NTP) (Ex. 18b; 18c). The study involved the oral administration of MDA dihydrocholoride in drinking water to 50 Fischer 344 rats and 50 B6C3F1 mice of each sex. Significantly increased incidences of tumors were observed in the thyroid and the liver in both sexes of both species. Cancers of the adrenal glands, lung and lymph nodes were also induced in mice and rare tumors such as transitional cell papillomas of the urinary bladder were induced in female rats. Other studies, in addition to the NTP study, have also demonstrated the induction of tumors in experimental animals (Ex. 14; Ex. 151).

In 1983, the National Institute for Occupational Safety and Health (NIOSH) conducted a Health Hazard Evaluation (the only available epidemiological study) (Ex. 232) of MDA on exposed workers employed at a helicopter manufacturing plant. This study demonstrated an association between occupational exposure to MDA and a significant proportional increase in the risk of mortality from certain site-specific cancers. NIOSH noted a significant elevation in the proportion of

deaths due to cancers of the bladder, large intestine, skin and lymphosarcoma. When proportional mortality was based only on cancer deaths, the excess of bladder cancer deaths remained significantly elevated. In addition to the bladder cancer deaths, there were two bladder cancers observed among the MDA exposed workers who were still alive.

For some time, investigators have demonstrated carcinogenicity with several analogues of the class of bis-benzenamines including MDA. These analogues induce cancer of the liver and thyroid glands of rodents.

MDA is also structurally related to benzidine, a recognized bladder carcinogen in humans (IARC, 1979). Even though the limitations of the PMR method of study are well known, the results obtained in the NIOSH epidemiological study undoubtedly heighten concern that MDA, like its analogue benzidine, may cause bladder cancer in humans.

In summary, the strongly positive results demonstrated by MDA in the NTP cancer bioassay, evidence that the structural analogues cause similar cancers in animals and that one analogue (benzidine) causes bladder cancer in humans, plus data suggesting the ability of MDA to interact with genetic material, all lead to the conclusion that this chemical is carcinogenic in animals and may be carcinogenic to humans. This conclusion is further heightened by the observation of a significant proportional increase in bladder cancer mortality as demonstrated by the NIOSH study. In animals, MDA has also been associated with neurotoxicity, potential adverse reproductive effects, and disturbances in metabolism. A characteristic acute toxic hepatitis also has been observed in several studies of workers following accidental exposure to MDA.

Quantitative Risk Assessment for MDA

Details of the data used by EPA to estimate the risks from exposure to MDA, and the conclusions based on that evidence are presented in the EPA support document "Risk Characterization for 4,4'-Methylenedianiline" (Ex. 3a, b, c). OSHA analyzed these data and the accompanying conclusions and agrees with the evaluation provided by EPA. The EPA assumptions that the risk to workers exposed under the conditions of a work place standard, based on 10 hours per week of dermal exposure and 40 hours per week of inhalation exposure at 0.001 ppm (0.008 mg/m^3) (accounting for the use of protective clothing and good industrial hygiene practices), would result in an estimated excess lifetime cancer risk of about 1 in 100,000 to about 2 in 10,000 is consistent with OSHA's findings.

OSHA adjusted the data furnished by EPA to estimate excess occupational lifetime cancer risks for workers exposed to various airborne and dermal concentrations of MDA for 8 hours per day, 5 days per week, 46 weeks per year, for 45 years starting at age 20. Total daily doses are received through inhalation, dermal exposures, or a combination of both.

Estimates based on current exposure situations indicate that workers exposed to airborne concentrations ranging from 0.57 mg/m^3 (0.07 ppm) to 0.38 mg/m^3 (0.05 ppm) and dermal exposure ranging from 9.0–250 mg/cm^2-hr demonstrate an excess cancer risk ranging from 60 to 200 extra cancer deaths per 1,000 workers.

OSHA also examined the effect that dermal exposure has on the worker. Hypothetical estimates were constructed (based on actual work place data) which assumed zero inhalation exposure. Dermal exposures ranged from 2.1 to 4.2 μg/cm^2/hr (palms of the hands). The estimated occupational lifetime excess cancer risk is 1 to 2 per 1,000 workers. Assuming zero dermal exposure and an inhalation exposure of 0.01 mg/m^3 per 8-hours per day over a 40 hour work week, the estimated excess cancer risk associated with this exposure limit would be 3 per 10,000. Estimated risks associated with other combinations of inhalation and dermal exposure were also examined (See Ex. 247).

The results of the NTP bioassay, the evidence of the NIOSH proportional cancer mortality ratio study, and the structural relationship between MDA and other recognized human carcinogens, combined with generally accepted methods of estimating human risk based on well designed and well executed animal studies, allow OSHA to make a preliminary estimate of the risks that may result from various combinations of dermal and atmospheric exposures (See Ex. 247). The results of the preliminary risk assessment indicate that MDA may present a carcinogenic risk to workers occupationally exposed and that establishing a permissible exposure limit and prohibiting dermal exposure will likely result in a significant reduction in the cancer risk.

Significance of Risk

OSHA has reviewed the toxicological and epidemiological literature and the record evidence on MDA described in the Health Effects section. The record, as summarized herein, shows that MDA exposure may be associated with a wide range of adverse health effects. The ability of MDA to induce tumors in animals, suggestive evidence that MDA may induce bladder tumors in humans, and data indicating that MDA interacts with genetic material lead to the conclusion that this chemical is an animal carcinogen and may be carcinogenic to humans. The NTP study clearly indicates that MDA is carcinogenic in both rats and mice when orally administered.

In animals, MDA has also been associated with neurotoxicity, potential adverse reproductive effects, and disturbances in metabolism. In addition, human studies strongly indicate that MDA causes a characteristic acute toxic hepatitis.

In evaluating the observed risks predicted by EPA and those anticipated by OSHA's review of the data in terms of OSHA's "significant risk" requirements. OSHA relied upon "best estimates" of current occupational levels, in that there is currently no permissible exposure limit for MDA. According to EPA data, the current atmospheric occupational exposure levels are approximately 0.05 to 0.07 ppm with dermal exposures ranging from 9.0–250 mg/cm^2-hr. A preliminary risk assessement based on the NTP Study suggests that, as these limits, there may exist an excess cancer risk ranging from 60 to 200 extra cancer deaths per 1,000 workers respectively. OSHA used these levels in examining risk rather than the existing ACGIH TLV of 0.1 ppm because some of the industry appears already to have reduced occupational exposures. However, as indicated previously, not all of the companies responded to the CMA survey and provided current exposure data. Therefore, although OSHA used "best estimates" in making baseline determinations, OSHA does realize that many of the companies providing and using MDA may be following ACGIH limits. In this case, the potential risk of cancer at 0.1 ppm (.81 mg/m^3) (inhalation only) is 20 per 1,000. Further, because there is currently no existing permissible exposure limit for MDA, there are no requirements to achieve any exposure limit. Therefore, some employers may exceed even the ACGIH limit resulting in an even greater potential risk.

OSHA will examine these permissible exposure limits in accordance with the OSH Act as interpreted by the Courts. In addition, the estimates of risk only consider the standard's exposure level and do not take into account the other

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protective provisions of the standard which may be included such as respirators and medical surveillance. The decrease in risk to be achievd by these additional provisions cannot be adequately quantified beyond a determination that they will add to the protection provided by the PEL alone. Compliance with an occupational health standard which provides for medical surveillance, monitoring, recordkeeping, workpractices, use of personal protective equipment, etc., will provide protection beyond that of merely establishing a permissible exposure limit.

As a result of these preliminary assessments, the Agency has selected MDA for rulemaking. OSHA has also decided that negotiated rulemaking will be used to assist in the development of a proposed rule for MDA (50 FR 42789).

OSHA has initiated rulemaking activities which include the development of a risk assessment, a technological and economic feasibility analysis, a health effects summary, and a summary of the components needed in a proposed standard. These material is being generated for use by the Negotiated Rulemaking Committee, although OSHA also intends to utilize this information in developing a proposed ruel for MDA exposure. Furthermore, should the negotiated rulemaking process fail. OSHA intends to proceed with rulemaking under section 6(b) of the OSH Act. The following section discusses the regulatory measures that could be used to control exposure in the workplace. OSHA agrees with EPA and has concluded that workplace control methods appear both technologically and economically feasible. OSHA is considering various exposure scenarios which are discussed below.

Regulatory Approach and Feasibility

OSHA's overall analytic approach for setting worker health standards is a four step process consistent with recent court interpretations of the OSH Act and rational objective policy formulation. In the first step, quantitative risk assessments are performed where possible and considered with other relevant factors to determine whether the substance to be regulated poses a significant risk to workers. In the second step, OSHA considers which, if any, of the proposed standards being considered for the substance will substantially reduce the risk. In the third step, OSHA looks at the best available data to set the most protective exposure limit that is both technologically and economically feasible. In the fourth and final step, OSHA considers the most cost-effective way to achieve the objective. In the following sections, OSHA examines the technological and economic feasibility of extablishing a standard regulating occupational exposure to MDA. For purposes of determining the feasibility of regulating occupational exposure to MDA and to determine the likely of intended regulations, OSHA has examined five possible exposure scenarios associated with significant occupational risk which are (1) PEL-0.06 mg/m^3; (2) 0.03 mg/m^3; (3) 0.01 mg/m^3; (4) 0.001mg/m^3; and (5) do not regulate. The industries examined where surveyed to determine the baseline exposures and what controls were currently in place. Additional controls to achieve the proposed PEL's were estimated.

MDA is a large-volume industrial chemical used primarily as an intermediate in the production of polyurethane foams and other polyurethane and isocyanate-based products. About 98% of the MDA produced is used as an intermediate in the production of methlylene-bis-phenylisocyanate (MDI). The non-MDI uses include epoxy curing, urethane curing, MOCA production, Ketimine production, production of coatings for P.C. boards and aircraft parts, rubber processing chemical, Qiana® intermediate, dyes and pigments, antioxidant in lubricating oil, corrosion inhibitor, pharmaceutical, pesticide intermediate.

MDA is normally handled as a liquid or in the form of flakes, granules, or lumps. It has an extremely low vapor pressure. Exposure usually occurs as a result of a spill or loss during handling operations such as filling or emptying of containers, rather than from the release of vapors or airborne dusts.

Local exhaust ventilation is used rather than higher volume general dilution air systems. Effective control requires minimizing air motion at the source (thermal currents, machinery motion, material motion, operator movements, room air current, etc.) and capturing the contaminants on a filter through an exhaust hood. Ideally the operation should be completely enclosed, providing access and working openings only as needed. The number of openings should be kept to a minimum and located away from the natural path of the contaminant travel.

The filing of containers (drums, barrels, bags, etc.) with dry MDA represents a potentially significant source of exposure. Both inhalation and skin contact could result from dusting and spills. Relatively standardized engineering designs and other workplace controls are available to control these problems.

The handling of dry MDA is expected to present the greatest potential source of workplace exposures. Various hooding arrangements are in use in industry to draw dust particles away from the worker during material handling operations (i.e., transport, mixing with other chemicals, and small packaging operations). One common method is the use of restricted area rooms with a slotted ventilation opening on one wall facing the wall with the door.

Personal protective equipment and workpractices will also limit employee exposure to MDA. Equipment consists of chemical splash goggles, impervious gloves, protective clothing (including footwear, and respirators. The respirator used will depend upon the concentrations to which the employee may be exposed.

Depending upon the industrial hygiene measures, protective equipment, and engineering controls being employed, risks can range from approximately 2 in 10 in uncontrolled circumstances to 3 in 100,000 in very tightly controlled circumstances. Considering that probably less than 10,000 workers are potentially exposed to MDA most for less than 40 hours per week, the actual risk will be lower.

The Agency has conducted a feasibility analysis which provides the best estimate of the costs of requiring a workplace standard throughout the industry (including capital and operating and maintenance costs for engineering controls, dermal protection, and all other compliance elements) (Ex. 246). The Agency does not anticipate that the costs of controls will have significant impact on the national economy or on small business. OSHA therefore believes that the existing manufacturing and uses of MDS present a significant risk of injury to the health of exposed workers.

Reduction of Risk to a Sufficient Extent by Action Taken Under OSH Act

Exposure to MDA appears to occur primarily in the workplace. The OSH Act is the primary statute for protecting the health and safety of workers and allows OSHA to regulate chemicals in the workplace. In this document, OSHA preliminarily has determined that the existing risks are significant and that the promulgation of a health standard regulating control to MDA will reduce these anticipated risks. Through the establishment of a permissible exposure limit which appears to be technologically and economically

feasible. OSHA can reduce the potential exposure which might occur through inhalation. Further, through the use of personal protective equipment, labeling, worker exposure monitoring, medical surveillance, and other industrial hygiene practices the exposure resulting from both inhalation and dermal absorption can be reduced.

III. Determination and Order

After careful consideration of: (1) The EPA report; (2) the relevant materials regarding occupational exposure to MDA in both the EPA and OSHA dockets; (3) the preliminary regulatory impact assessment conducted by OSHA regarding the technological and economic impact of an MDA standard; and (4) an independent risk assessment conducted by OSHA which generally confirmed EPA's estimates of risk, OSHA hereby makes the following Determination and Order:

> Occupational exposure to MDA presents a significant risk to workers that can be prevented or reduced to a sufficient extent by a workplace standard promulgated and enforced by OSHA.

The above Determination and Order is issued pursuant to section 9(a) of TSCA and is based on all of the information available to OSHA at this time. However, the rulemaking authority found in section 6 of the OSH Act provides the procedures and requirements for promulgating occupational safety and health standards. These procedures and requirements allow for the development of a complete rulemaking record, affording full participation by interested parties. Nothing in this document shall serve to diminish any right, requirement, or procedure established by the OSH Act, including the right to a hearing and the obligation to base a standard on substantial evidence in the record considered as a whole.

This Notice was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 9(a) of the Toxic Substances Control Act (90 Stat. 2030; 15 U.S.C. 2608), and Secretary's Order No. 9–83 (48 FR 35736).

Signed at Washington, DC, this 20 day of February, 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 86–4063 Filed 2–25–86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments submitted by the State on January 31, 1986, would amend the Indiana regulations concerning civil penalties, incidental boundary revisions and use of explosives.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. March 28, 1986, will not necessarily be considered.

If requested, a public hearing will be held on March 24, 1986, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSMRE Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 45204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below:

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Office of Surface Minning Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana.

Indianapolis Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments not received by March 28, 1986 or received at locations other than the OSMRE Indianapolis, Indiana Field Office, will not be necessarily considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business March 18, 1986. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to

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do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "**ADDRESSES**" by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108).

On January 31, 1986, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, proposed State program amendments for approval. Briefly, the proposed amendments and cities are as follows:

1. Indiana proposes to amend its requirements for when a civil penalty shall be assessed. 310 IAC 12–6–11.
2. Indiana proposes to amend its provisions for assigning points for civil penalty amount determinations. 310–IAC 12–6–12.
3. Indiana proposes to add a point system for determining the dollar amount of civil penalties according to the points assigned. 310 IAC 12–6–12.5.
4. Indiana proposes to amend its rules for permit revisions to establish which boundary revisions are incidential boundary revisions. 310 IAC 12–3–121.
5. Changes are proposed concerning pre-blast surveys in response to a required program amendment in 30 CFR 914.16(b)(1). 310 IAC 12–5–34 and 12–5–100.
6. Changes are proposed concerning use of explosives requirements in response to required program amendments in 30 CFR 914.16 (b)(2), (b)(3) and (b)(4). 310 IAC 12–5–36 and 310 IAC 12–5–101.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 19, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86–4155 Filed 2–25–86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program modifications submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Ohio regulations at 1513–3–01, 1513–3–02, 1513–3–03, 1513–3–04, 1513–3–16, 1513–3–17, and 1513–3–21. These rules govern the procedures used by the Reclamation Board of Review.

This notice sets forth the time and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comment on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., March 28, 1986, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendments has been scheduled for March 18, 1986. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by March 13, 1986. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be canceled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982, **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Ohio program can be found in August 10, 1983 **Federal Register**.

II. Submission of Revision

By letter dated January 15, 1986, Ohio submitted proposed amendments to the rules of procedures for the Reclamation Board of Review (RBR).

The proposed amendments consist of the following:

(1) Revisions to 1513–3–01 *Definitions*, "burden of persuasion" and "proffer";

(2) Revisions to 1513–3–02 *Internal regulations*, rules for a quorum, deciding tie votes, keeping records of the RBR's actions, issuance of subpoenas, and governing proceedings following amendment of the RBR's rules;

(3) Revisions to 1513–3–03 *Appearance and practice before the board*, concerning ethical standards of persons appearing before the board and representation before the RBR;

(4) Revisions to 1513–3–04 *Appeals to the RBR*, concerning identification of counsel, if counsel is used, contents of an appeal, and grounds for dismissing an appeal;

(5) Revisions to 1513–3–16 *Conduct of evidentiary hearings*, rules concerning evidence, stipulation, written testimony, witnesses, post-hearing briefs, and additional oral arguments;

(6) Revisions to 1513–3–17 *Voluntary dismissal and settlement* setting forth rules for a settlement prior to a final order by the RBR; and

(7) Revisions to 1513–3–21 *Award of costs and expenses.*

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks public comment on whether the proposed amendments are no less stringent than SMCRA and no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paper Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 19, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–4156 Filed 2–25–86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2974-8]

Air Quality Implementation Plans; Delayed Compliance Orders; Pennsylvania Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resources to ACF Industries Inc. The Order requires the company to bring air emissions from its two railroad car manufacturing facilities located in Milton Township, Northumberland County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Compliance shall be achieved by April 21, 1986 utilizing low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before March 28, 1986.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management

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Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: ACF Industries, Inc. operates two railroad car manufacturing facilities in Milton Township, Northumberland County, Pennsylvania. The Order under consideration addresses emissions from the metal surface coating processes, which are subject to § 129.52, Miscellaneous Metal Parts and Products, of Title 25 of the Pennsylvania Code. The regulations limit the emissions of volatile organic compounds (VOC), and are part of the federally-approved Pennsylvania State Implementation Plan for the control of ozone. The Order requires final compliance with the regulation by April 21, 1986 through the use of low solvent technology (LST) and April 21, 1987 should LST be abandoned and add-on controls installed.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the two railroad car manufacturing facilities of ACF are a major source of VOC emissions. The facility is located in the Central Pennsylvania Interstate Air Quality Control Region, essentially a non-attainment area for the National Ambient Air Quality Standard for ozone, excluding the attainment counties of Fulton, Huntingdon, Mifflin, Union, Montour, Columbia, Lycoming, and Clinton. The facility as presently constructed is unable to comply with regulations limiting emissions of VOC's codified at § 129.52 of Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for Commonwealth public hearing were received by the State. The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7)(A) of the Clean Air Act. The first four increment(s) of progress, which require bimonthly progress reports, on the reformulation on low solvent coatings, have been completed. The 1984 estimated VOC emissions of 117.2 Ton/Year (T/Y) from AMCAR Division of ACF Industries and 48.4 T/Y from Shippers Division of ACF Industries will be reduced to 58.0 T/Y, and 17.9 T/Y, respectively by April 21, 1986 if low solvent coatings are chosen, but in any event no later than April 21, 1987.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides substantial emission reduction in a manner which permits the Company to move toward the use of either low solvent coatings or facility alterations to install add-on control.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). The Order notifies ACF Industries, Inc. of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420 as required by section 113(D)(1)(E) of the Act.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2)(B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601

Dated: February 14, 1986.

James M. Seif,

Regional Administrator.

[FR Doc. 86–4099 Filed 2–25–86; 8:45 am]

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40 CFR Parts 796, 797, and 798

[OPTS–42079; FRL–2946–5]

Revision of TSCA Test Guidelines

Correction

In FR Doc. 86–625 beginning on page 1522 in the issue of Tuesday, January 14, 1986, make the following corrections:

1. On page 1523, in the second column, in the twelfth line, "(b)(1)(i)" should read "(b)(1)(ii)". In the third column, in paragraph (A), in the eleventh line, "reversibly" was misspelled.

2. On page 1524, in the second column, in the fourth line from the bottom, insert "cells/ml of" before "test".

3. On page 1525, in the first column, in the fourth line from the bottom, "or" should read "of".

4. On page 1527, in the third column, in the eleventh line from the bottom, the fourth and fifth words should read "fathead minnows".

5. On page 1528, in the second column, in paragraph (B), in the seventh and eighth lines, the formula should read "(N=30)".

6. On page 1529, in the first column, in paragraph (A), in the fifth line, "during a" should read "during the". In the third column, in amendatory instruction b, "Paragraph (b)" should read "Paragraph (d)".

7. On page 1533, in the third column, in the second paragraph (A), in the last line, the first word should read "can".

8. On page 1536, in the second column, in the sixth line from the bottom, "(d)(1)," should read "(d)(1)(ii),".

9. On page 1537, in the first column, in amendatory instruction xi, delete the word "be" in the first line. In the ninth line from the bottom, the second word should read "nasopharyngeal."

10. On page 1538, in the first column, in paragraph (A), in the tenth and fifteenth line, "treat" should read "test". In the third column, in the ninth line from the bottom, insert "in" after "shall".

11. On page 1540, in the first column, in amendatory instruction iii, in the third line, delete "A".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC–376–P]

Medicare Program; Payment for Indirect Costs of Medical Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We propose to eliminate an inaccuracy in the application of the formula used to calculate payment for the indirect costs of medical education for hospitals under the prospective payment system. In doing so, we are not proposing to change the basic method of estimating the effect of graduate medical education on hospital operating costs.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on March 28, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–376–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–376–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare program provides payment for both the direct and indirect costs of medical education incurred by teaching hospitals. The direct costs of approved medical education programs (for example, salaries for interns and residents and overhead costs) are not included in hospital-specific, regional, or national payment rates to hospitals subject to the prospective payment system, but are reimbursed on a reasonable cost basis. The special provisions governing reimbursement for the services of interns and residents appear at sections 1832(a)(2)(B)(i) and 1861(b)(6) of the Act. The indirect costs of medical education are increased operating costs, that is, patient care costs, associated with teaching programs. These increased costs may reflect a number of factors, for example, an increase in the number of tests and procedures ordered by interns and residents relative to the number ordered by more experienced physicians or the need of hospitals with teaching programs to maintain more detailed medical records.

A. The 1983 Legislation

Section 1886(d)(5)(B) of the Social Security Act (the Act) provides that prospective payment hospitals receive an additional payment for the indirect costs of medical education.

In 1983, during the debate on passage of legislation establishing the prospective payment system, Congress expressed concerns that the system not have an adverse impact on teaching hospitals. To mitigate against such an adverse impact, Congress mandated that the education adjustment factor be doubled for the purpose of determining the additional payment for the indirect costs of graduate medical education programs to hospitals. That is, except that it was multiplied by two, this factor was derived in the same manner as for the limit on hospital inpatient operating costs in effect on January, 1, 1983. The doubling was not based on any empirical evidence; rather, it was a safeguard to protect teaching hospitals from any unintended, negative effects of the prospective payment system.

Because the indirect costs of medical education are defined in terms of increased operating costs, they are not separately identifiable on the cost report or in other financial or accounting records. Rather, these incremental costs have been statistically estimated as a function of teaching intensity, and a proxy measure (the hospital's ratio of the number of interns and residents to the number of beds) has been used to measure teaching intensity. The coefficient describing this statistical relationship has been expressed as a percentage and applied as the indirect medical education factor. This factor was first used as an adjustment to the routine operating cost limits and the total operating cost limits under the reasonable cost reimbursement system. The regulations governing this matter under the prospective payment system are found at 42 CFR 412.118 (Determination of indirect medical education costs).

Currently, § 412.118(d) provides that each hospital's indirect medical education payment is determined by multiplying the following three factors:

(1) Total diagnosis-related group (DRG) revenue based on the Federal rates.

(2) A factor for each ten percent increment above zero in the hospital's ratio of full-time equivalent interns and residents to beds.

(3) An education adjustment factor, expressed as a percentage, that represents double the statistically-estimated effect of teaching activity on operating costs.

B. Disparity between hospital operating costs and Medicare payment

This proposed rule would eliminate an inaccuracy in the formula used to calculate payments for the indirect costs of medical education. The factor for indirect medical teaching costs was introduced in connection with the limits for routine inpatient operating costs and was used at the time to recognize the higher costs teaching hospitals incurred that could not be separately indentified on the cost report used for Medicare reimbursement purposes (or in other financial or accounting records). When we examine the effect of teaching intensity on hospital operating costs, we found a logarithmic relationship between costs and the measure of teaching intensity (intern and resident to bed ratio). Strictly speaking, the coefficient of the teaching intensity measure (when the antilogarithm was taken) was an exponent of the teaching intensity measure. Thus, the function that described the effect of teaching intensity on hospital costs when the teaching adjustment factor was originally developed is consistent with the one we are now proposing to apply under the prospective payment system.

Since we first used a teaching adjustment factor to recognize indirect medical education costs in connection with the hospital routine operating cost limits effective July 1, 1980, we have applied the factor as a fixed percentage add-on to a hospital's otherwise applicable cost limit or prospective payment rate. While the proportional nature of this adjustment was consistent

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with the manner in which other adjustments for variables known to influence hospital costs were applied (for example, the wage index and the fewer covered days of care factor), the result was an overstatement in both the cost limits and prospective payment rates for the indirect effects of medical education programs. This occurred because we used the regression coefficient for the logarithm of the teaching variable incorporated in the hospital cost functions that we had developed as a constant percentage add-on for each incremental increase in the intern and resident to bed ratio, rather than as and exponent. While we believe that applying the adjustment in this manner has administrative advantages, it also had the effect of only linearly approximating the true underlying logarithmic relationship between teaching intensity and Medicare operating costs. The bias was upward and increased significantly as the intern and resident to bed ratio increased. Thus, the application of the adjustment overstated both the cost limits and the prospective payments with respect to indirect medical education costs.

The reason for this bias is that the current payment formula treats each ten-percent increment in the ratio of interns and residents to beds equally, whereas in fact the change in the teaching variable [1] from, for example, 1.5 to 1.6 is not a ten-percent increase, but rather a 6.67 percent increase [(1.6 minus 1.5) divided by 1.5], whereas the change from 1.0 to 1.1 is a ten-percent increase [(1.1 minus 1.0 divided by 1.0)]. For example, on average, the indirect medical education costs of a hospital whose ratio of interns and residents to beds is 0.5 are not five times as great as those of an otherwide similar hospital whose intern and resident to bed ratio is 0.1.

The following graph shows how Medicare operating costs increase as the intern and resident to bed ratio increases. The lowest line, representing the estimated effect of indirect medical education on hospital operating costs, demonstrates how, as the intern and resident to bed ratio increases, the Medicare operating costs per discharge also increase but at a slower rate. The estimated indirect medical education cost effect is the statistically estimated relationship between the change in the intern and resident to bed ratio and Medicare operating costs per case. The middle line, representing the proposed Medicare payment rate for the indirect cost of medical education, was derived by doubling the estimated indirect medical education cost effect represented by the lowest line. The highest line represents the current Medicare payments for the indirect costs of medical education (using double the current education adjustment factor).

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[1] The teaching variable is 1.00 for non-teaching hospitals, since the variables in the hospital operating cost function are transformed to logarithms and the logarithm of zero is underfined.

For a detailed discussion of the regression analysis, see Pettengill and Vertrees, *Health Care Financing Review*, December 1982.

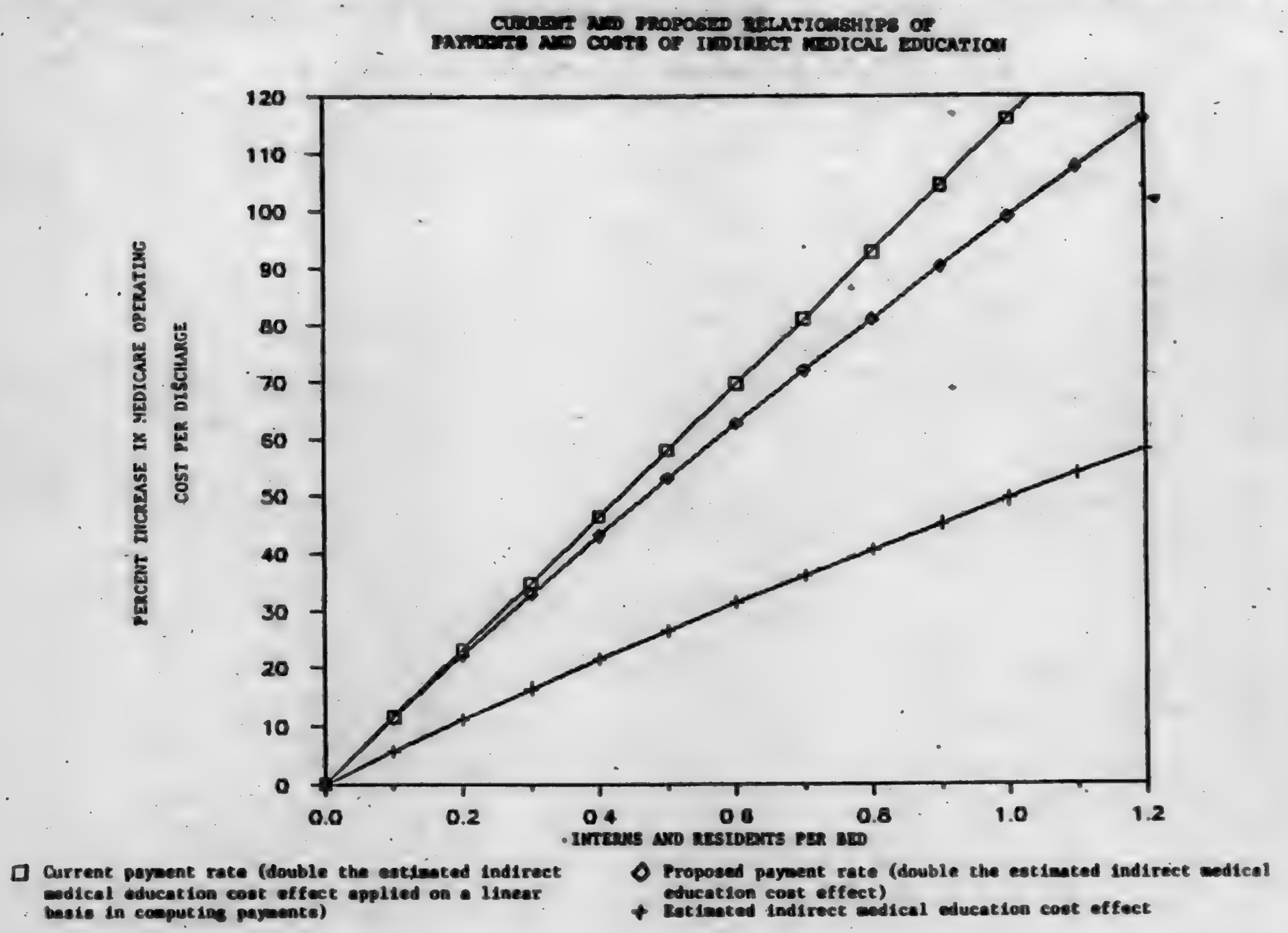

C. Pending Legislation

It should be noted that both houses of Congress have also concluded that the current payment formula for indirect costs of medical education results in payments that exceed the actual incremental costs of teaching hospitals and, consequently, have included in the Consolidated Omnibus Budget Reconciliation Act of 1985, H.R. 3128, a provision to lower these payments. The Conference Report accompanying H.R. 3128, H.R. Rep. No. 453, 99th Cong., 1st Sess. 456 (1985), explained that Congress intends to move from payment on a linear basis to payment on a curvilinear basis because "each increase in residents-to-bed ratio does not result in a proportional increase in costs."

That both houses of Congress have passed legislation similar to this proposal reinforces our view that it is appropriate the correct the inaccuracy in the payment formula to more realistically reflect the actual increment costs of teaching hospitals.

II. Proposed Changes

We are proposing to eliminate an inaccuracy in application of the education adjustment factor, although we are not proposing to change the basic method for estimating the statistical relationship between operating costs and teaching intensity (that is, the regression coefficient). This proposed change would have the effect of more closely reflecting the marginal contribution of increased teaching intensity to the operating costs of teaching hospitals.

We would reduce the payment for the indirect costs of graduate medical education by changing the application of the current factor used to derive the indirect medical education payment. Under the proposed revision, the payment would continue to increase as the hospital's ratio of interns and residents to beds increases, but the rate of increase would be smaller for successive equal increments in the ratio of interns and residents to beds. This means that a slightly smaller education adjustment factor would be applied to each incremental increase in the ratio. This "curvilinear" or variable application of the education adjustment factor would yield a smaller increase in payments per discharge as teaching intensity increases, thus reflecting more accurately that this indirect costs do not increase on a linear basis.

For hospital discharges on or after June 1, 1986, we propose to apply the current education adjustment factor in a corrected payment formula as follows:

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Current formula

2 x .5795 x Adjusted intern and resident to bed ratio x DRG revenue based on Federal rates

where the adjusted intern and resident to bed ratio = intern and resident to bed ratio divided by .1.

Proposed new formula

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right] \times \text{DRG revenue based on Federal rates.}$$

The table that follows contains examples of the effect of this proposed change on teaching hospitals under the prospective payment system:

Ratio of interns and residents to beds	Doubled indirect medical education factor under—		Percent difference
	Current rule	Proposed rule	
.01	.0116	.0116	0.00
.02	.0232	.0231	0.43
.05	.0580	.0574	1.05
.10	.1159	.1136	2.02
.15	.1739	.1687	3.08
.20	.2318	.2228	4.04
.25	.2898	.2761	4.96
.30	.3478	.3284	5.91
.40	.4636	.4306	7.66
.50	.5795	.5298	9.40
.60	.6954	.6262	11.05
.70	.8114	.7200	12.69
.80	.9272	.8116	14.24
.90	1.0432	.9012	15.76
1.00	1.1590	.9886	17.24
1.25	1.4488	1.1998	20.75
1.50	1.7385	1.4012	24.06
1.75	2.0282	1.5944	27.21
1.90	2.2022	1.7068	29.03

For the purpose of clarity, we would also make several technical changes in § 412.118.

III. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule".

A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on available data, we expect this regulation to have an annual effect on the economy in excess of $100 million. Therefore we are providing an impact analysis.

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. (For purposes of the RFA, we consider all hospitals to be small entities.)

Since the proposed rule would affect all of the 1,035 prospective payment hospitals that receive payment for the indirect costs of Medical education, and would have an effect on payments made to those hospitals in excess of $100 million over the next five years, we are also performing a regulatory flexibility analysis.

B. Objectives

Our proposed adjustment corrects for this deficiency in the current payment formula. We believe that now is an appropriate time to initiate this refinement because the cost limits constituted only an upper ceiling on provider costs. Providers whose costs were below the limits were reimbursed their actual reasonable costs and did not receive any additional payments because of their indirect medical education adjustment. However, under the prospective payment system, the indirect medical education adjustment is an integral part of the formula for computing Medicare payment for each discharge in a teaching hospital. That is, a teaching hospital automatically receives an extra payment based on the adjustment factor regardless of the hospital's actual cost experience. Therefore, it is more crucial now that the indirect medical education factor be as precise as possible under the prospective payment system than it was previously under cost-based reimbursement.

C. Estimated impact on program expenditures

Under the reasonable cost reimbursement system, a linear formula, which approximated the actual indirect cost function, sufficed for purposes of setting operating cost limits. However, under the prospective payment system, the upward bias resulting from the current method of computing the teaching adjustment factor results in unreasonably high payments to hospitals with large teaching programs.

As a result of adopting the proposal to refine the method of computing payments for indirect teaching costs, we estimate that total payments to teaching hospitals would be reduced by the following amounts over the next five fiscal years (FYs):

Savings Estimates

Rounded to the Nearest $5 Million

FY 1986, $20; FY 1987, $120; FY 1988, $170; FY 1989, $175; FY 1990, $180; FY 1991, $200.

The expected reduction in payments to teaching hospitals will not affect all hospitals and all regions of the country equally. By using the proposed formula for computing payments for indirect teaching costs, hospitals with the most teaching activity would experience the largest reductions in their indirect medical education payments.

Hospitals with large teaching programs (teaching hospitals with an intern and resident to bed ratio of .25 or more) would experience a reduction in their total prospective payments, including reimbursement for indirect medical education costs, of 1.55 percent while teaching hospitals with small teaching programs (teaching hospitals with an intern and resident to bed ratio of less than .25) would have their total prospective payments reduced by .17 percent. Currently, there are only 183 teaching hospitals with resident to bed ratios of .25 or higher and 852 hospitals with resident to bed ratios of less than .25. Teaching hospitals constitute less than 20 percent of all prospective payment hospitals. Teaching hospitals would have an average reduction in total prospective payments of .51 percent as a consequence of this change in payment for the indirect costs of medical education.

In addition, urban teaching hospitals with 685 beds or more would have their total payments reduced by .84 percent. In contrast, large rural teaching hospitals with 170 beds or more would have their total payments reduced by .29 percent. However, total prospective payments for rural teaching hospitals with between 100 beds and 169 beds would decline .75 percent. As a group, all urban teaching hospitals would experience a decline in total Medicare prospective payment by .51 percent, while rural hospitals would sustain an average reduction of only .33 percent.

Effect on Teaching Hospitals by Census Division

Payments to teaching hospitals in the different census divisions would be reduced under the proposed rule depending on the intensity of teaching programs in a particular census division. As previously stated, the reduction in total prospective payments to teaching hospitals across the country is approximately .51 percent. However, the average reductions in total prospective payments to teaching hospitals would range from a high of .66 percent in the Middle Atlantic census division to a low of .19 percent in the East South Central census division.

The following table shows the estimated average reduction in total payments to teaching hospitals according to census division:

Census division	Percent of decrease
New England	0.65
Middle Atlantic	0.66
South Atlantic	0.58
East North Central	0.41
East South Central	0.19
West North Central	0.38
West South Central	0.23
Mountain	0.41
Pacific	0.57
National average	0.51

Assumptions Used in Estimating Savings and Impact

In estimating savings and the effect of this proposed rule on teaching hospitals, we assumed that hospitals would be paid on the basis of the standardized rates and the blend of hospital-specific and Federal rates that would have become effective on October 1, 1985 except for the fact that Congress extended through March 14, 1986 the payments rules in effect on September 30, 1985 (see the **Federal Register** of February 3, 1986, 51 FR 4166). For these estimates, we used a hospital data base that has 5,672 hospitals and includes hospitals in Massachusetts and New York that recently have come under the prospective payment system.

D. Effects on Graduate Teaching Programs

Currently, there are approximately 1,000 hospitals that receive payments for indirect medical education costs. We do not expect any of these programs to be curtailed or to be affected in any significant manner as a result of this proposed rule. Teaching hospitals would still receive the doubled teaching adjustment, although the factor itself would be reduced slightly for hospitals with small teaching programs, and by as much as 17 percent for a hospital with an intern and resident to bed ratio equal to one. (Currently, no hospital in our data base has an intern and resident to bed ratio of one. Thus, no hospital's teaching adjustment factor would actually be reduced by 17 percent.)

The most likely consequences of the proposed rule may be in the form of altering plans hospitals may have for expanding their teaching programs. As explained elsewhere in this document, the effect of correcting the teaching adjustment payment forumla is to make curvilinear the percentage increase in the Medicare payments for the indirect costs of medical education. Therefore, as a hospital's intern and resident to bed ration increases, the factor increases, but at a diminishing rate.

E. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 412, Subpart H would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 is revised to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww).

2. In § 412.118, the introductory language and paragraphs (a)(1), (c) and (d) are revised; current paragraphs (e), (f) and (g) are redesignated as paragraphs (f), (g), and (h), respectively; a new paragraph (e) is added; and newly redesignated paragraph (g) is revised to read as follows:

§ 412.118 Determination of indirect medical education costs.

For hospital discharges occurring on or after June 1, 1986, to determine the indirect medical education costs, HCFA uses the following procedures:

(a) *Basic data.* HCFA determines for each hospital its—

(1) Ratio of full-time equivalent interns and residents, except as limited under paragraph (g) of this section to number of beds (as determined in paragraph (b) of this section); and

* * * * *

(c) *Measurement for teaching activity.* Based on a comparison of the inpatient operating costs (as defined in § 412.2(c)) of all hospitals, HCFA statistically estimates a factor representing the effect of teaching activity on operating costs in the same manner as for the limit on hospital inpatient operating costs in effect on January 1, 1983.

(d) *Determination of education adjustment factor.* Each hospital's education adjustment factor is calculated as follows:

(1) *Step one*—A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent interns and residents to beds, as determined under

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paragraph (a)(1) of this section, is raised to an exponential power equal to the factor derived in paragraph (c) of this section.

(2) *Step two*—The factor derived from step one is reduced by 1.00.

(e) *Determination of payment amount.* Each hospital's indirect medical education payment is determined by multiplying the following two factors:

(1) *Education adjustment factor.* Twice the education adjustment factor derived in paragraph (d) of this section.

(2) *Total DRG revenue.* Total DRG revenue, as determined under paragraph (a)(2) of this section.

* * * * *

(g) *Limits on count of interns and residents.*—(1) Interns and residents who are assigned to a freestanding family practice center or an excluded distinct part hospital unit on the day that the count of interns and residents (as described in paragraph (f)(2)(i)) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day the count is made is used to determine the indirect medical education adjustment.

(2) Interns and residents in anesthesiology who are employed to replace anesthetists are not counted as full-time equivalents.

(3) For cost reporting periods beginning on or after October 1, 1985, interns and residents who are assigned to the outpatient department of the hospital on the day the count is made are subject to the provisions of paragraph (g)(1) of this section.

(4) For cost reporting periods beginning on or after October 1, 1985, the number of interns and residents assigned to ancillary departments of the hospital will be apportioned between inpatients and outpatient settings based on the ratio of each ancillary department's inpatient and outpatient charges to total department charges, respectively. In determining the indirect medical education adjustment, only that percentage attributable to furnishing inpatient services will be included in the computation of the intern and resident-to-bed ratio.

* * * * *

(Catalog of Federal Domestic Assistance Program: No. 13.773, Medicare—Hospital Insurance)

Dated: February 18, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: February 19, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-4149 Filed 2-21-86; 4:30 pm]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6696]

Proposed Flood Elevation Determinations; Alabama et al.

Correction

In FR Doc. 86-1073 beginning on page 2529 in the issue of Friday, January 17, 1986, make the following correction: On page 2533, in the third column, insert "South Dakota" before "Custer County (Unincorporated Areas)."

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket No. R-102]

Subsidized Vessels and Operators; Bulk Cargo Vessels Engaged in Worldwide Services; Operating-Differential Subsidy; Extension of Deadline for Comments

AGENCY: Maritime Administration, DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 23, 1985, the Maritime Administration (MARAD) published in the **Federal Register** (50 FR 52338) a notice of proposed rulemaking (NPRM) proposing to amend its regulations governing the calculation and payment of operating-differential subsidy (ODS) for bulk cargo vessels engaged in world-wide services. These amendments would provide for the payment of ODS as a fixed and final daily amount encompassing all items of expense authorized by the ODS contracts.

The law firm of Kominers, Fort, Schlefer & Boyer has requested on behalf of Moore McCormack Bulk Transport, the Berger Group of Subsidized Vessels, and the Keystone Group of Subsidized Vessels, a thirty-day extension of time to file comments. It cited as the reasons for requesting an extension were the complexity of the matter, the time required to prepare a textual comparison of the existing and proposed regulations, and the difficulty in coordinating meetings among the affected subsidized operators represented by the law firm. MARAD will grant this request.

DATES: The deadline for submitting comments concerning this proposal is extended to 5 p.m. on March 26, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC. 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Department of Transportation, Washington, DC. 20590. Telephone. (202) 382-0036.

(Catalog of Federal Domestic Assistance Program No. 20804 Operating-Differential Subsidies.)

By Order of the Maritime Administrator.

Dated: February 24, 1986.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86-4268 Filed 2-24-86; 4:02 pm]

BILLING CODE 4910-81-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 86-8]

Financial Reports of Tug and Barge Operators in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule and request for comments.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing financial reports required of vessel operating common carriers in the domestic offshore waterborne commerce of the United States. Tug and barge operators have been completing the reporting form (Form FMC-377) based on the accounts prescribed by the Interstate Commerce Commission (ICC) for Carriers by Inland and Coastal Waterways. Since the ICC no longer requires reports from such carriers, it is necessary to define the terms used in the report form.

DATE: Comments due by March 28, 1986.

ADDRESS: Comments (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is required to evaluate the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers. To provide for the orderly acquisition of data essential to this evaluation, the Commission promulgated what is now 46 CFR Part 552. Tug and barge operators report the required financial and operating data on Form RMC 377, "Statements of Financial and Operating Data". It had been the policy of the Commission to base these statements on the accounts prescribed by the Interstate Commerce Commission (ICC) for Carriers by Inland and Coastal Waterways. The ICC no longer requires reports from such carriers. Consequently, Form FMC-377 will now contain a glossary.

These amendments, which do not result in any substantive modification of the financial reporting requirements, reflect new terminology and the consolidation of certain schedules and are summarized as follows:

1. *Section 552.5(o)(2)*—New terminology is used to define voyage expense

2. *Section 552.6(a)(2)*—The new basis for the Form FMC-377 is substituted for the reference to ICC accounts.

3. *Section 552.6(b)(4)*—The title is amended to reflect the consolidation of schedules A-IV(A) and A-V(A).

4. *Section 552.6(b)(6)*—The title is amended to reflect the renumbering in Item 3 above, and the term "Vessel Operating Expense" is changed to "Voyage Expense" and the term "Administrative and General Expense—Net" is changed to "Administrative and general Expense."

5. *Section 552.6(b)(7)* is deleted. This information is to be included in Schedule A-IV(A)—Other Property and Equipment.

6. *Section 552.6(b)(8)* is renumbered section 552.6(b)(7) and reference to paragraph (b)(7) is removed.

7. *Section 552.6(b)(9)* is renumbered section 556.6(b)(8) and the title and subparagraph (iii) references to Schedule A-IX(A) are changed to A-VI(A).

8. *Section 552.6(b)(10)* is renumbered section 552.6(b)(9) and the references to Schedule A-X(A) are changed to A-VII(A).

9. *Section 552.6(c)(2)*—The applicability of this provision to vessel operators is stated, and the reference to "vessel operating expense" is changed "voyage expense" in subparagraph (iii).

10. *Section 552.6(c)(3)*—The title is changed to read "Voyage Expense" and the paragraph is revised to define this term.

11. *Section 552.6(c)(9)*—The term "income" in the title and subparagraph (i) is changed to "revenue" and Schedule B-VIII(A) is renumbered to Schedule B-VII(A).

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or;

(3) Significant adverse effect on competition, employment, investment productivity, innovations, or on the ability of the United States to compete with foreign-based enterprises in domestic or export market.

The Chairman of the Federal Maritime Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small governmental jurisdictions. The primary economic impact of this rule would be on ocean common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities, but that impact is not considered to be significant.

The collection of information requirements contained in original Part 552 were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned control numbers 3072-0008, 3072-0029 and 3072-0030. Those requirements were submitted to OMB for an extension of clearance on January 31, 1986. The amendments in this proposed rulemaking are technical in nature and will not result in any substantive modification of the financial reporting requirements contained in the Commission's request for extension of clearance.

List of Subjects in 46 CFR Part 552

Cargo vessels, Freight, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Uniform system of accounts.

Therefore, for the foregoing reasons, Part 552 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 552—[AMENDED]

1. The Authority Citation of Part 552 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a, and 847.

2. Paragraph (o) of § 522.5 is revised to read as follows:

§ 552.5 Definitions.

* * * * *

(o) "*Voyage Expense*" means:

(1) For carriers required to file Form FMC-378: the total of Vessel Operating, Vessel Port Call and Cargo Handling Expenses less Other Shipping Operations Revenue.

(2) For carriers required to file Form FMC-377: the total of Transportation, Terminal and Traffic Expenses.

* * * * *

3. Section 552.6 is amended by revising paragraphs (a)(2), (b)(6), and the heading of paragraph (b)(4) to read as follows:

§ 552.6 Forms

(a) *General.*

(1) * * *

(2) Statements containing the required exhibits and schedules, are described in paragraphs (b), (c), (d), (e), and (f) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in Forms FMC-377 and FMC-378. For carriers required to file Form FMC-378, the statements are based on the *Uniform Financial Reporting Requirements* prescribed by the Maritime Administration, U.S. Department of Transportation. For carriers required to file Form FMC-377, the statements are based on definitions contained therein. The schedules contained in these statements are distinguished from those contained in the Form FMC-378 statements by the suffix "A" (e.g., Schedule A-IV(A)).

(b) *Rate Base (Exhibits A and A(A)).* * * *

(1)-(3)

(4) *Investment in Other Property and Equipment; Accumulated Depreciation*

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Other Property and Equipment (Schedules A–IV and A–IV(A)).

* * * * *

(6) *Working Capital (Schedule A–V(A)).* Working capital for tug and barge operators shall be determined as the average monthly expense. Average monthly expense shall be equal to one-twelfth of the expense of the carrier during the relevant 12-month period, computed by adding Voyage Expense, Administrative and General Expense, Interest Expense, and Inactive Vessel Expense, each as allocated to the Trade, and dividing the total by 12.

4. Section 552.6 is further amended by removing paragraph (b)(7); redesignating paragraphs (b) (8)–(10) as paragraphs (b) (7)–(9) and revising newly redesignated paragraph (b)(7), the heading of paragraph (b)(8), paragraphs (b)(8) (iii) and (iv), (b)(9), (c)(2) introductory text, (c)(2)(iii), (c)(3), and (c)(9) to read as follows:

(7) *Property and Equipment of Related Companies.* Property and equipment of related companies used by the filing carrier in the Trade shall be reported in accordance with paragraphs (b)(1), (b)(2), and (b)(4) of this section. The cost of such assets shall be that which is recorded on the books of the related company. Where such assets are included in the rate based, the profits or losses from intercompany transactions related to such assets are to be eliminated in accordance with paragraph (c)(11) of this section.

(8) *Capitalization of Interest During Construction (Schedules A–VI and A–VI(A)).*

* * * * *

(iii) A detailed description of the interest calculations shall be submitted for each capital asset included in the rate based on the carrier in the first year of its inclusion. Such description shall be set forth on Schedule A–VI or A–VI(A), "Capitalization of Interest During Construction." Capitalized interest shall be included in the rate base when the asset is included in the rate base, in accordance with paragraph (b) of this section, and in the same allocable amounts as the asset. A schedule shall be provided each time a rate base statement is submitted, setting forth the year in which an interest calculation statement was submitted for each asset which included capitalized construction interest in the rate base.

(iv) The effects of the interest-during construction provisions shall be applicable to all work completed after December 31, 1977.

(9) *Capitalization of Leases (Schedules (A–VII and A–VII(A)).* Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A–VII or A–VII(A), "Capitalization of Leases", shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization schedule. Allocations to the Trade shall follow the requirements of paragraphs (b)(1) and (b)(4) of this section.

(c) *Income Account (Exhibits B and B(A)).*

(2) *Voyage expense (Schedule B–II).* This schedule shall be submitted by vessel operators for any period in which any cargo was carried in the Service. Allocations to the Trade shall be on the following basis:

(iii) Other Shipping Operations Revenue shall be deducted from Gross Voyage Expense. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

(3) *Voyage Expense (Schedule B–II(A))* This schedule shall be submitted by tug and barge operators:

(i) For all voyages in the Service, Transportation expense shall be allocated to the Trade in the cargo-cube mile or cargo-cube relationship, as appropriate. Should any elements of transportation expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Terminal and traffic expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Where multiple barge units are towed by a single tug, voyage expense shall be allocated on the basis of the cargo-cube relationship.

(4)–(8) * * *

(9) *Other Revenue or Expense (Schedules B–VIII and B–VII(A)).*

(i) Any other elements of revenue or expense, wholly or partially applicable to the Trade, shall be fully explained by a schedule showing details of allocation.

(ii) Operating-differential subsidy refunds under section 605(a) of the Merchant Marine Act, 1936, shall not be allocated to the Trade.

* * * * *

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4036 Filed 2-25-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[Gen. Docket No. 85-305]

Subscription Video Services

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of Comment/Reply Comment Period.

SUMMARY: The Notice of Proposed Rulemaking in Gen. Docket 85–305, concerning the classification of subscription video services, was published in the Federal Register on January 15, 1986 (51 FR 1817). The National Association for Better Broadcasting requests an extension of the comment dates in that proceeding until after the Court's decision in *Telecommunications Research and Action Center et al* v. *FCC (TRAC* v. *FCC)*, concerning the classification of nonsubscription teletext. The Commission has requested a remand of that case, Under the circumstances, the Commission will extend the date for comments on the classification of nonsubscription teletext only until thirty days after the Court's decision in the Motion for Remand.

DATES: If the Court grants the motion, comments that pertain to non-subscription teletext will be due 30 days after the Court's ruling, and reply comments will be due 30 days after that comment date. Notice of the Court's ruling will be published in the Federal Register.

All other comments in Docket 85–305 should be filed by the originally established dates, February 28, 1986 and March 28, 1986.

ADDRESS: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel (202) 632–6990.

SUPPLEMENTARY INFORMATION: If the Court grants the Motion for Remand, the Commission will issue a public notice of that decision, and parties will have thirty days from the release of the Court's decision to file comments on the classification of nonsubscription teletext.

Order

In the Matter of Subscription Video Services; Gen. Docket 85–305.

Adopted: February 14, 1986.
Released: February 18, 1986.

By the General Counsel.

1. The National Association for Better Broadcasting ("NABB") has filed a motion requesting that the Commission extend for all parties the date for filing comments in the above-captioned proceeding from February 28, 1986 to 30 days after the ruling of the United States Court of Appeals for the District of Columbia Circuit in *Telecommunications Research and Action Center, et al.* v. *Federal Communications Commission ("TRAC* v. FCC") No. 85–1160. The Commission has sought comments on the regulatory status of non-subscription teletext in the context of this docket, but only in the event the court consents to remand the pending appeal in *TRAC* v. *FCC.*

2. The court has deferred a ruling on the Commission's *Motion for Remand* in *TRAC* v. *FCC* until after oral argument, scheduled for February 20, 1986. Therefore, it is appropriate to extend the time for comments concerning non-subscription teletext until after the court rules on the Commission's *Motion for Remand.* If the court grants the motion, comments that pertain to non-subscription teletext will be due 30 days after the court's ruling and reply comments will be due 30 days after that comment date. If the court denies the motion, however, the regulatory status of non-subscription teletext will not be addressed in this proceeding unless upon further order of the Commission.

3. All comments in this proceeding that do not pertain to non-subscription teletext remain due on or before February 28, 1986.

4. Accordingly, it is ordered, that the Motion of National Association of Better Broadcasting for Extension of Time filed February 13, 1986 is granted in part and otherwise denied.

Jack D. Smith,

General Counsel.

[FR Doc. 86-4086 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–66; RM–4802]

FM Broadcast Station in Sierra Vista, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of noncommercial educational FM Channel 210A to Sierra Vista, Arizona, as requested by the Shiloh Educational Broadcasting Foundation, and requests infomation regarding interference to TV Channel 6 in Tucson, Arizona.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations (Sierra Vista, Arizona); MM Docket No. 86–66, RM–4802.

Adopted: January 29, 1986.
Released: February 20, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed on behalf of Shiloh Educational Broadcasting Foundation ("petitioner") requesting the allotment of Channel 210A to Sierra Vista, Arizona, as that community's first local noncommercial educational FM service. In accordance with Commission policy, petitioner indicates that it will apply for the channel if its proposal is adopted.

2. A staff engineering study reveals that Channel 210A can be allotted to Sierra Vista in conformity with the minimum distance separation requirements of §§ 73.207 and 73.504 of the Commission's Rules, provided a site restriction 2.1 kilometers southeast of the community is imposed to avoid short-spacing to Station KUAT–FM (Channel 213), Tucson Arizona. Moreover, since the proposal is located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain approval by the Mexican government to the proposed allotment.

3. Due to the proximity of Station KUAT–TV (Channel 6), Tucson, Arizona petitioner is requested to submit showings relating to television Channel 6 interference protection, in accordance with the standards set forth in Section 73.525 of the Commission's Rules, (*Memorandum Opinion and Order* adopted June 20, 1985, Docket No. 20735). Such showings should describe the extent of predicted interference to Station KUAT–TV, and the proposed remedial measures.

PART 73—[AMENDED]

4. In light of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the Noncommercial Educational FM Table of Allotments, § 73.504(a) of the Commission's Rules, with regard to Sierra Vista, Arizona, as follows:

City	Channel No.	
	Present	Proposed
Sierra Vista, Arizona		210A

5. It is ordered, that the Secretary of the Commission shall send a copy of this *Order* to the licensee of Station KUAT (TV), at the address listed below, to provide it an opportunity to respond accordingly. Arizona Board of Regents, Modern Language Building, University of Arizona, Tucson, Arizona 86721.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: F. Joseph Brinig, Fortas and Hardman, 1200 29th Street, NW., Washington, D.C. 20007–3385, (counsel for petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Noncommercial Educational FM Table of Allotments, § 73.504(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not*

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Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the noncommercial educational FM Table of Allotments, § 73.504(a) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceedings, and Public Notice to this effect will given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4087 Filed 2–25–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–64; RM–5010]

FM Broadcast Station in Auberry, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot FR Channel 286B1 to Auberry, California, as that community's first local service, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Auberry, California); MM Docket No. 86–64, RM–5010.

Adopted: January 29, 1986.
Released: February 20, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Eric R. Hilding ("petitioner") seeking the allotment of Channel 286B1 to Auberry, California, as that community's first local service. Petitioner has failed to state specifically that he will apply for the channel and should correct that deficiency in his comments herein.

2. A staff engineering study has determined that Channel 286B1 can be allotted to Auberry, California, consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Since the proposal could provide a first local service to Auberry, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with regard to that community, as follows:

City	Channel No.	
	Present	Proposed
Auberry, California		286B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

PART 73—[AMENDED]

5. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows Eric R. Hilding, P.O. Box 1300, Freedom, California 95019–1300.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC

[FR Doc. 86–4089 Filed 2–25–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–61; RM–4970]

FM Broadcast Station in Valley Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein proposes the allotment of Channel 259A to Valley Springs, California, as that community's first local FM broadcast service, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions

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authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Valley Springs, California); MM Docket No. 86–61, RM–4970.

Adopted: January 29, 1986.
Released: February 19, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Eric R. Hilding ("petitioner") requesting the allotment of Channel 259A to Valley Springs, California, as that community's first local FM service. Petitioner failed to specifically indicate that he will apply for the channel, if allotted. He should do so in his comments to this *Notice*.

2. A staff engineering study reveals that Channel 259A can be allotted to Valley Springs, California, consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is sited approximately 12.6 kilometers (7.8 miles) northeast of the community to avoid co-channel interference to Station KYUU(FM) (Channel 259), San Francisco, California.[1] Due to the substantial site restriction involved in this proposal, petitioner must demonstrate in his comments that he could indeed provide the required 70 dBu city grade signal over Valley Springs.

PART 73—[AMENDED]

3. In view of the fact that Valley Springs could receive a first local FM broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Valley Springs, California		259A

4. As indicated above, it is ordered, That the Secretary shall send a copy of this *Notice* by certified mail, return receipt requested, to the Mt. Bullion, California, applicants for Channel 260, as follows:

AJB Broadcasting, Inc., 7564 Buckingham, Clayton, Missouri 63105
New Life Enterprises, Inc., 3636 N. First, Suite 142, Fresno, California 93726
Edward E. Abramson, Rte. 2, Box 96, Chico, CA 95928
Mount Bullion Community Broadcasting, Inc., P.O. Box 1300, Freedom, CA 95019
Rosalie Lopez Bustos, 3430 Jefferson Avenue, Redwood City, CA 94062
Peter E. Baird P.O. Box 2631 Livonia, MI 48151

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eric R. Hilding, P.O. Box 1300, Freedom, California 95019–1300.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4068 Filed 2–25–86; 8:45 am]
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[1] We note that the proposal herein is short spaced to all applications for Channel 260 at Mt. Bullion, California. However, the proposal is not deficient to the Mt. Bullion center city coordinates. Accordingly, a copy of this *Notice* will be served on the applicants to afford them an opportunity to comment on the proposal.

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47 CFR Part 73

[MM Docket No. 86–65; RM–5136]

FM Broadcast Station in Havelock, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 286C2 for Channel 285A at Havelock, North Carolina, and the modification of Station WMSQ (FM)'s license to specify operation on the higher powered channel, at the request of Musicradio of North Carolina, Inc. The new allocation could provide expanded service to the Havelock area.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Havelock, North Carolina); MM Docket No. 86–65, RM–5136.

Adopted: January 29, 1986.
Released: February 20, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Musicradio of North Carolina, Inc. ("petitioner") requesting the substitution of FM Channel 286C2 for Channel 285A at Havelock, North Carolina, and modification of its license for Station WMSQ(FM) to specify operation on the higher powered channel.

2. Channel 286C2 can be allocated to Havelock in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 16.7 kilometers (10.4 miles) southeast to avoid a short-spacing to Station WDCG at Durham, North Carolina.[1] Petitioner believes that a suitable site is available within this restricted area. Petitioner states that the public interest would benefit from the substitution of channels as it could provide Havelock and nearby Cherry Point Military Reservation with a first wide coverage area FM service.

3. In accordance with Commission policy, we shall propose to modify the license of Station WMSQ(FM) to specify operation on the new channel. However, pursuant to § 1.420(g) of the Commission's Rules, modification of the license may not be imlemented if another party expresses an interest in the proposes allotment unless an additional equivalent channel is available for Havelock.[2] See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984). See also *Notice of Propsed Rule Making*, MM Docket No. 85–313, which proposed to make adjacent channel upgrades, such as this one, without requiring the showing of the availability of a second equivalent channel.

PART 73—[AMENDED]

4. We believe the public interest would be served by proposing the channel substitution as it could provide Havelock with expanded FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below, to read as folllows:

Channel No.	City	Proposed
	Present	
Havelock, North Carolina	285A	286C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, D.C. 20036 (counsel to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings,

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[1] The use of Channel 286C2 at Havelock originally conflicted with the petition of Marine Broadcasting Corporation seeking the substitution of Channel 287C2 for its present Channel 288A at Jacksonville, North Carolina. However, the Jacksonville upgrade required the deletion of newly allocated Docket 84–231 channels at Wilmington and Fairbluff, North Carolina. Marine's petition has been dismissed as unacceptable since it did not comply with the compelling showing of need or Commission error required for the deletion of a Docket 84–231 channel. See *Memorandum Opinion and Order*, 50 FR 47391, published November 18, 1985. Marine Broadcasting Corporation has filed a petition for reconsideration of the dismissal.

[2] Petitioner states that additional Class C2 channels are available for allocation at Havelock.

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such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the noncommercial educational FM Table of Allotments, § 73.504(a) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in ititial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than than, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the committees involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied be a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4090 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-67; RM-5070]

FM Broadcast Station in Georgetown, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Werlinger Communication Company, proposes the allotment of Channel 299A to Georgetown, Texas, as that community's second FM service.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 308, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Georgetown, Texas; MM Docket No. 86-67 and RM-5070.

Adopted: January 29, 1986.
Released: February 20, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Werlinger Communication Company ("petitioner"), seeking the allotment of Channel 299A to Georgetown, Texas, as that community's second FM service. Petitioner has expressed an intention to apply for the channel.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction 8.0 kilometers (5.0 miles) north of the community. This site restriction is necessary to avoid short spacing to Station KBUC-FM, Channel 298, San Antonio, Texas.

PART 73—[AMENDED]

3. In view of the fact that Georgetown, Texas, could receive its second local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Georgetown, Texas	244A	244A, 299A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Don Werlinger, Werlinger Communication Company, 602 Stueve Lane, Lockhart, Texas 78644.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex partè* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4092 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-60; RM-5152]

FM Broadcast Station in Huntington, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Robert D. Tindle, proposes the allotment of Channel 270A to Huntington, Texas, as that community's first FM service.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 308, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Huntington, Texas; MM Docket No. 86-60 and RM-5152.

Adopted: January 29, 1986.
Released: February 19, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Robert D. Tindle ("petitioner"), seeking the allotment of FM Channel 297A to Huntington, Texas, as that community's first FM service. Although

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the petitioner submitted information in support of the proposal he failed to express an intention to apply for the channel, if allotted. Therefore, he is requested to do so in his comments.

2. Also pending before the Commission is a proposal requesting Channel 297C2 as a substitute for Channel 257A at Whitehouse, Texas (RM–5243). However, Channel 297 cannot be allotted consistent with the minimum spacing requirements to Huntington and Whitehouse. Therefore, in order to resolve the conflict between the instant request and RM–5243, we have determined that Channel 270A can be allotted to Huntington in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Therefore, we will herein propose the allotment of Channel 270A to Huntington, Texas.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotment could provide a first FM channel to Huntington, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Huntington, Texas		270A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, 715 G Street, SE., Washington, DC 20003 (Counsel for petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634–6530. However, member of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4091 Filed 2–25–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–62; RM–5149]

TV Broadcast Station in Bishop, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 20 to Bishop, California, as that community's first local commercial television service, in response to a petition filed by Pappas Telecasting Inc.

DATES: Comments must be filed on or before April 14, 1986, and reply comments on or before April 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, Bishop, California; MM Docket No. 86–62 and RM–5149.

Adopted: January 29, 1986.
Released: February 19, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Pappas Telecasting, Incorporated ("petitioner"),[1] seeking the reassignment of UHF television Channel 61 from Porterville to Bishop, California, as that community's first local commercial television service. Petitioner indicates that it will apply for the channel, if assigned.

2. Bishop (population 3,333),[2] in Inyo County (population 17,895), is located in east central California, approximately 145 kilometers (90 miles) northeast of Fresno, California. Currently educational Channel *14 (vacant) is assigned to Bishop.

3. Petitioner advises that Bishop is located near serveral resort areas, and as such, has a diversity of services available to fulfill the needs of its many tourists. In further support of its proposal, petitioner asserts that the origninal proponent for the Porterville channel assignment has since died, thus rendering it unlikley that the channel will be applied for there in the near future.

4. We believe the petitioner has demonstrated the need for a commercial television channel at Bishop. However, we do not believe the public interest would be served by reassigning Channel 61 to Bishop since the effective date of the assignment to Porterville occurred approximately seven months ago. Therefore, in an effort to accommodate petitioner's proposal, a staff engineering study reveals that Channel 20 can be assigned to Bishop consistent with the minumum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. We believe our proposed action can satisfy both the petitioner's demonstrated need and its expressed interest in constructing and operating a commercial television station at Bishop. Accordingly, on our own motion, we will propose to substitute Channel 20 at Bishop.

5. Although petitioner has stated an intention to apply for an authorization on Channel 61, in light of our action herein, it is requested to specify in its comments that it will now apply for Channel 20 at Bishop, if it is assigned.

PART 73—[AMENDED]

6. In view of the above, we believe it is appropriate to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Bishop, California	*14–	*14–, 20+

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest in required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before April 14, 1986, and reply comments on or before April 29, 1986, and are advised to read the Appendix for the proper Procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Richard Hildreth, Esquire, Frank R. Jazzo, Esquire, Fletcher, Heald and Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel for petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46b F.R. 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Cmmunications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Propoed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly.

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[1] Petitioner is the licensee of Station KMPH(TV), Visalia, CA.

[2] Population figures were extracted from the 1980 U.S. Census.

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Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4093 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Department of Defense Federal Acquisition Regulation Supplement Contracting Officer Determination Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council is considering the promulgation of a new rule in Part 242 of the DoD FAR Supplement. The purpose of this rule is to implement paragraphs 2324(f) (2), (3), and (4) of section 911 of the FY 1986 DoD Authorization Act (Pub. L. 99-145).

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than 28 March 1986, to be considered in the formulation of the final rule. Please cite DAR Case 85-289 in all correspondence related to this issue.

ADDRESS: Interest parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202)697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Paragraphs 2324(f) (2), (3) and (4) of section 911 of the FY 1986 DoD Authorization Act (Pub. L. 99-145) established procedures to be followed by DoD contracting officers in determining allowability of cost rates. The Defense Acquisition Regulatory Council is considering changes to the DoD FAR Supplement, Section 242.705-1, Contracting Officer determination procedures, to implement the above-cited statute. These proposed changes will provide clarifying instructions to contracting officers with respect to determination procedures in the resolution of questioned costs. In addition, a requirement is included for the contracting officer to notify the contractor of the specific costs which were disallowed.

These proposed changes do not have a significant effect beyond the internal operating procedures of the Department of Defense and are therefore not required, by Pub. L. 98-577, to be published for public comment. However, any comments submitted by the date shown above will be considered in the promulgation of a final rule.

B. Regulatory Flexibility Act.

As the proposed coverage is not required to be published for public comment pursuant to Pub. L. 98-577, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 242

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 242 be amended as follows:

PART 242—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 242.705-1 is amended by adding paragraph (b)(5)(i) to read as follows:

242.705-1 Contracting Officer determination procedure.

* * * * *

(b)(5)(i) The Contracting Officer shall:

(A) Not resolve any questioned costs until he has obtained—

(1) Adequate documentation with respect to such costs; and

(2.) The opinion of the defense contract auditor on the allowability of such costs;

(B) Ensure that the defense contract auditor, to the maximum extent practicable, is present at any negotiation or meeting with the contractor regarding a determination of final indirect cost rates of the contractor;

(C) Ensure that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are considered allowable will be reflected in the negotiation memorandum; and

(D) Notify the contractor which individual costs were considered unallowable and the respective amounts of the disallowance.

[FR Doc. 86-4232 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 677

Bering Sea King Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change of date for a public hearing.

SUMMARY: In reference to a notice of a public hearing that was published February 20, 1986, the North Pacific Fishery Management Council and the Alaska Board of Fisheries hearing date on crab proposals has been changed and the room where the hearing will be held has been added. All other information given in the hearing notice published February 20, 1986, is correct.

FOR FURTHER INFORMATION CONTACT: Jim Glock, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-274-4563.

In FR Doc. 86-38512 appearing on page 6151 in the issue of February 20, 1986, the following changes are made:

1. Under the "DATE" heading, the date, "March 7, 1986," is corrected to "Saturday, March 1, 1986."

2. Under the "ADDRESS" heading, the hearing will be held in the auditorium of the Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE, Seattle, Washington.

Dated: February 24, 1986.

Richard B. Roe,

Director, Office Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4277 Filed 2-24-86; 4:45 pm]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 38
Wednesday, February 26, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 21, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

M.O. 929 Cranberries Grown in states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York
Not agency forms but committee forms
Recordkeeping; on occasion; annually
Businesses or other for-profit; 1,400 responses; 641 hours; not applicable under 3504(h)
Jay Guerber, (202) 475–5992

New

- Agricultural Stabilization and Conservation Service

Form CRP–1, Conservation Reserve Program Contract and 7 CFR Part 704
Conservation Reserve Program (CRP) Regulations
CRP–1
Recordkeeping; On occasion; Annually
Individuals or households; State or local governments; Farms; 40,000 responses; 3,333 hours not applicable under 3504(h)
Jack Webb, (202) 447–6825

Revision

- Farmers Home Administration

7 CFR 1980–B, Guaranteed Farmers Program Loans
FmHA 449–11, 449–12, 1980–15, –24, –25, –38, –58
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; 52,790 responses; 46,125 hours; not applicable under 3504(h)
Pandor Hadjy, (202) 475–4017

- Farmers Home Administration

Borrower Acknowledgement of Notice of intent to Take Adverse Action and Agreement for the Use of Proceeds/Release of Chattel Security and/or Farm Income
FmHA 1924–26, 1962–1
On occasion
Individuals or households; Farms; 220,000 responses; 65,400 hours; not applicable under 3504(h)
John Gleason, (202) 382–1642

- Farmers Home Administration

7 CFR 1980–A
FmHA 449–14, –30, –35, –36, 1980–19, –41, –43, –44
On occasion
Businesses or other for-profit; 29,356 responses; 45,127 hours; not applicable under 3504(h)
Pandor Hadjy, (202) 475–4017

Reinstatement

- Food and Nutrition Service

7 CFR Part 235—State Administrative Expense Funds (Reporting)
Monthly; Semi-annually; Annually
State or local governments; 2,006 responses; 6,491 hours; not applicable under 3504(h)
Marian Stroud, (703) 756–3600.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86–4152 Filed 2–25–86; 8:45 am]

BILLING CODE 3410-01-M

CIVIL RIGHTS COMMISSION

Minnesota Advisory Committee; Agenda Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on March 10, 1986, at the Hennepin County Government Center, Commissioners Conference Room, 300 S. 6th Street, Minneapolis, Minnesota. The purpose of the meeting is to conduct a community forum on civil rights, focusing on the affirmative action plans for the State, the cities of St. Paul and Minneapolis, and the counties of Hennepin and Ramsey.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge Bartelle or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 21, 1986.

Yvonne E. Schumacher,
Program Specialist for Regional Programs.

[FR Doc. 4066 Filed 2–25–86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Foreign Fishing Vessel Permit Application
Form Number: Agency—NOAA 88–120; OMB—0648–0089
Type of Request: Required to obtain or retain a benefit
Burden: 1,200 respondents; 360 reporting hours
Needs and Uses: Information is used to determine if permits should be issued to foreign vessels for fishing in U.S. waters. The information is also used for enforcement purposes.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Office: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Survey of Inshore Shrimp Fishery in the Gulf of Mexico
Form Number: Agency—N/A; OMB—N/A
Type of Request: New collection
Burden: 300 respondents; 460 reporting hours
Needs and Uses: The information collected will be used to refine management strategies for the Gulf of Mexico shrimp fishery.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: One background interview and semi-monthly intercept survey
Respondent's Obligation: Voluntary
OMB Desk Office: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Scientific Research/Public Display Permit Application
Form Number: Agency—N/A; OMB—0648–0084
Type of Request: Extension of the expiration date
Burden: 75 respondents; 2,175 reporting hours
Needs and Uses: Information is used to determine if permits should be issued for scientific research and/or public display of animals protected under the Marine Mammal Protection Act, the Endangered Species Act and the Fur Seal Act.
Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Office: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Application for the President's "E" or "E Star" Awards for Export Expansion
Form Number: Agency—ITA 725P; OMB—0625–0065
Type of Request: Extension of the expiration date
Burden: 100 respondents; 2,000 reporting hours
Needs and Uses: In 1961 Executive Order 10978 established Presidential awards for significant contributions to the export expansion program. The application form is the vehicle used to evaluate candidates for the awards.
Affected Public: State or local governments, farms, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations.
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Office: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 1986.

Edward Michals,
Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–4131 Filed 2–25–86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A–122–004]

Steel Reinforcing Bars From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On April 26, 1985 the Department of Commerce published preliminary results of its administrative review and a tentative determination to revoke in part the antidumping finding on steel reinforcing bars from Canada. The review covered the only manufacturer covered by this finding, Western Canada Steel Limited, and the two other known exporters to the United States of this merchandise manufactured by Western Canada Steel Limited and the period April 1, 1983, through March 31, 1984.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. We also determined that there were no shipments of this merchandise to the United States by Western Canada Steel Limited during the period April 1, 1984, through the date of the tentative determination to revoke in part. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment. Again, we received no comments. In accordance with § 353.53a(a) of the Commerce Regulations, Western Canada Steel Limited requested that we complete the administrative review for that firm. Based on our analysis, the final results of our review for that firm are the same as the preliminary results, and we revoke the finding for merchandise manufactured and exported to the United States by Western Canada Steel Limited.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 16529) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on steel reinforcing bars from Canada produced by Western Canada Steel Limited (29 FR 5941, April 21, 1964). The preliminary results covered Western Canada Steel Limited and the two other known exporters to the United States of this merchandise

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manufactured by Western Canada Steel Limited and the period April 1, 1983, through March 31, 1984. The tentative determination to revoke applied to merchandise produced and exported by Western Canada Steel Limited. In accordance with §353.53a(a) of the Commerce Regulations, Western Canada Steel Limited requested that we complete the administrative review for that firm. The Department has now completed the administrative review for that firm.

Scope of the Review

Imports covered by the review are shipments of steel reinforcing bars from Canada, currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated.

The review covers Western Canada Steel, Ltd., the only manufacturer of Canadian steel reinforcing bars to the United States covered by this finding, and the period April 1, 1983, through April 26, 1985.

Final Results of Review and Revocation in Part

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. We also determined that there were no shipments of this merchandise to the United States by Western Canada Steel Ltd. during the period April 1, 1984, through April 26, 1985, the date of the tentative determination to revoke in part. We advised interested parties that there were no shipments and we provided and additional opportunity to comment. Again, we received no comments. Based on our analysis, the final result of our review are the same as those presented in the preliminary results of review with respect to Western Canada Steel Ltd.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Western Canada Steel Ltd. Accordingly, we revoke in part the antidumping finding on steel reinforcing bars from Canada. This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Western Canada Steel Ltd. entered, or withdrawn from warehouse, for consumption on or after April 26, 1985. The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 6.40 percent shall be required on all shipments of Canadian steel reinforcing bars manufactured by Western Canada Steel Ltd. and exported by firms remaining in the finding. This deposit requirement is effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next requested administrative review.

This administrative review, partial revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)), §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985; 353.54).

Dated: February 18, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-4133 Filed 2-25-86; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an amended export trade certificate of review to U.S. Export & Trading Company (USEXP). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

(a) High-impact ultraviolet-resistant polyvinyl chloride (UVR-PVC) irrigation pipes, fittings, and related products (the "Products").

(b) High-impact ultraviolet-resistant polyvinyl chloride (UVR-PVC) resin compounds (the "Compounds").

Export Trade Facilitation Services (as They Relate to the Export of Goods and Services)

Export Trade Services include consulting; international market research; product research and design exclusively for export; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; foreign exchange; financing and collection; and taking title to goods in connection with the foregoing Compounds and Products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in the Export Trade in the Export Markets, USEXP may:

(a) Enter into an agreement with each Supplier to serve as that Supplier's sales representative in the Export Markets by providing Export Trade Services. Each agreement may provide that:

(1) The Supplier agrees not to sell, directly or through any intermediary other than USEXP, into the Export Markets, nor to any purchaser in the United States for resale in the Export Markets; and/or

(2) The Supplier agrees to authorize USEXP to appoint, after consultation with and approval by the Supplier, exclusive agents and distributors ("distributors") in the Export Markets.

(b) Enter into agreements with distributors in the Export Markets that USEXP will not sell into a territory in the Export Markets assigned to a distributor except through that distributor nor sell to any purchaser in the United States for resale in the distributor's assigned territory.

(c) Independently or with each Supplier individually.

(1) Establish prices at which the Supplier's Products and/or Compounds will be sold in the Export Markets,

(2) Establish quantities of the Supplier's Products and/or Compounds will to be sold in the Export Markets, and/or

(3) Allocate territories or customers among distributors in the Export Markets.

(d) Enter into agreements with foreign buyers in the Exports Markets by which USEXP will be the buyer's exclusive or non-exclusive supplier of Products and/or Compounds and the technology to make Products from the Compounds. Such agreements may include price, quantity, territory and/or customer restrictions for the Export Markets on the sale in the Export Markets of the Products, Compounds and/or Products made from the Compounds.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230.

Dated: February 20, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-4157 Filed 2-25-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

ADA Board; Meeting Location Change

AGENCY: Ada Joint Program Office.

ACTION: Change in location of meeting.

SUMMARY: On Wednesday, January 29, 1986, a notice of meeting was published in the **Federal Register** (51 FR 3643). The location of the meeting is changed as follows: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia. All other information remain unchanged.

Dated: February 21, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4184 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Activities for Potential Conversion to Contract

ACTION: Notice.

The Air Force recently announced that the Rivet Mile Cycle II function will be evaluated for possible conversion to contract. This activity is to undergo a cost comparison to determine whether in-house or contract operations is more economical at Malmstrom AFB, MT; Whiteman AFB, MO; Minot AFB, ND; Ellsworth AFB, SD; Grand Forks AFB, ND; and F.E. Warren AFB, WY.

FOR FURTHER INFORMATION CONTACT: Mr. Steely, HQ AFLC/MP (Contracting Office), Wright-Patterson AFB OH 45433, telephone (513) 257-6005.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4067 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

February 18, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology Efforts to Complement the Strategic Defense Initiative (SDI) Program will conduct a closed meeting at the Pentagon, Washington, DC, on March 12, 1986, from 8:30 am to 5:00 pm and on March 13, 1986 from 8:30 am to 3:30 am.

The purpose of the meeting will be to receive classified briefings on Air Force space programs related to the Strategic Defense Initiative.

The meeting concerns matters listed on section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4147 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

February 18, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee to Review Options/Technology for Reliable Identification of Airborne Targets beyond Visual Range in Combat will conduct a closed meeting at the Pentagon, Washington, DC, on March 13-14, 1986, from 8:30 am to 5:00 pm.

The purpose of the meeting will be to examine possible solutions to the problem of positive target identification beyond visual range.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4148 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Addition of Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of addition of systems of records.

SUMMARY: The Department of the Navy proposes to add four new systems of records in its inventory of systems of records subject to the Privacy Act of 1974. One of which is an exempted system.

DATES: The proposed actions will be effective without further notice March 28, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the particular system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the **Federal Register** as follows:

FR Doc 85-10237 (50 FR 22735) May 29, 1985
FR Doc 85-16564 (50 FR 28442) July 12, 1985
FR Doc 85-20719 (50 FR 35290) August 30, 1985
FR Doc 85-21577 (50 FR 36914) September 10, 1985
FR Doc 85-30596 (50 FR 52997) December 27, 1985.

A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on January 24, 1986. Record system identified as N05300-3 is an

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exempted system under the provision of 5 U.S.C. 552a(k)(5) of the Privacy Act.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 21, 1986.

N01500-6

SYSTEM NAME:

Personnel and Training Evaluation Program Automated System.

SYSTEM LOCATION:

Strategic Systems Programs Office, Navy Department, Washington, DC 20376.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted technicians who have been trained to operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. These individuals are identified by a Navy Enlisted Classification Code in the series 3301–3349.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number, NEC codes, current duty station and projected rotation date, duty station assignment history, Armed Services Vocational Aptitude Battery or Basic Test Battery scores, completion data for Navy schools, civilian education, promotion history (present and past rate), enlistment data (dates of service entry and expiration of enlistment/extension), patrol experience and scores on the Personnel and Training Evaluation Program examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To maintain a data base which will permit the Strategic Systems Programs Office to record achievement test scores of enlisted members who operate and maintain the Strategic Weapon System on Fleet Ballistic Missile Submarines. This information will be used to assess the adequacy of training received and the need for additional training.

Internal Navy users: Director, Strategic Systems Programs, Chief of Naval Technical Training and assigned schools, Type Commanders and assigned units in the performance of their duties relating to training on the Strategic Weapon System. Commander, Naval Military Personnel Command and Type Commanders and assigned units in the performance of their duties related to personnel assignment. Navy Personnel Research and Development Center who may, from time to time, validate service selection criteria for the DOD. It may be provided to such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on computer media, disks or magnetic tape. Hard copy reports are distributed to authorized user activities. These reports are stored in notebooks or file folders in drawers, cabinets or other filing equipment.

RETRIEVABILITY:

SSN, name and duty station.

SAFEGUARDS:

Access is provided to authorized personnel only on a "need-to-know" basis. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and password. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring is the responsibility of the systems manager.

RETENTION AND DISPOSAL:

Records are retained for five years after an individual leaves the Fleet Ballistic Missile program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Training Systems Branch, Strategic Systems Programs, Navy Department, Washington, DC 20376.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requester should provide his/her full name, social security number and military duty status. Visitors should present military identification card, civilian drivers license or other similar identification.

RECORD ACCESS PROCEDURE:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, their supervisors, Naval Military Personnel Command, schools assigned to the Chief of Naval Technical Training.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N03900-1

SYSTEM NAME:

Naval Air Test Center Technology Data File.

SYSTEM LOCATION:

Office of Staff Assistant for Research and Technology, Naval Air Test Center, Patuxent River, Maryland 20670. Included in this notice are those records duplicated for maintenance at a site closer to where the technical specialists and technology representatives work.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian and military technical managers, directors, technical directors, chief test pilots, chief engineers, program managers, department heads, department chief engineers, technical specialists and technicians who work at the Naval Air Test Center (NAVAIRTESTCEN). It also includes personnel who are considered a technical resource by directorate management.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, date of birth; status (military or civilian); classification (i.e., GS–0855/12/05 for civilians or 06/1510 for military); formal education; technical courses/operational training; test and evaluation, research and development, and military experience; current RDT&E activity contacts; membership in professional organizations and societies; level of responsibility in NAVAIRTESTCEN organization/organizational code; office telephone number; naval aviation technology preference and a listing of any unique technical skills, experience or knowledge the individual may possess.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To develop an on-line information network which provides project personnel a means to fully exploit NAVAIRTESTCEN technical resources and provide technical managers a real-time assessment of NAVAIRTESTCEN technical depth in the areas of education, training, experience and professional interface associated with emerging naval aviation technologies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Users that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICE FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk and hard-copy forms.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

During working hours the NAVAIRTESTECEN staff building is open to official visitors and civilian, military and contractor personnel employed by NAVAIRTESTECEN. After working hours the building is secured. Access to the staff building after working hours can only be obtained by securing assistance from the base Command Duty Officer. The system is protected by the following software features: user identification number, password sign-on and procedure name.

RETENTION AND DISPOSAL:

Records are retained in the current data base until he/she is no longer an employee of NAVAIRTESTECEN. When an employee leaves NAVAIRTESTECEN, the record is removed from the current data base. After ten years, the record will be erased from tape.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Assistant for Research and Technology, Naval Air Test Center, Patuxent River, MD 20670.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager,

RECORD SOURCE CATEGORIES:

All data contained in the NAVAIRTESTECEN Technology Data File is obtained from the individuals in the data file. Data is collected by means of an annual questionnaire.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N05300-3

SYSTEM NAME:

Faculty Professional Files.

SYSTEM LOCATION:

Superintendent, Naval Postgraduate School, Monterey, CA 93943–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Faculty personnel employed by the Naval Postgraduate School and individuals applying for positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Faculty academic promotion/tenure case evaluation files and faculty professional status and accomplishment file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

Records are used by Department Chairmen, Deans, and the Superintendent to determine the ranking, promotion, tenure, reappointment and evaluation of faculty personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To potential/future employers who inquire concerning a faculty member's qualifications, status and accomplishments and who have an interest in hiring the member.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICE FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

During work hours, records are secured within locked file drawers within departmental offices to which only authorized personnel have access. After working hours, records are kept within locked files drawers within secured offices located within a locked building which is part of a naval facility to which entry is restricted.

RETENTION AND DISPOSAL:

Records are retained during the faculty member's period of employment. Records are destroyed upon termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Provost, Code 01, Naval Postgraduate School, Monterey, CA 93943–5100.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from previous employers, education background, correspondence, peer evaluations, supervisory evaluations and student evaluations of teaching.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system are exempt under 5 U.S.C. 552a(k)(5).

N5300-6

SYSTEM NAME:

Armed Forces Staff College Administrative Data System.

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SYSTEM LOCATION:

Armed Forces Staff College (AFSC), 7800 Hampton Blvd., Norfolk, VA 23511-6097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have attended or will attend AFSC and those who are assigned to staff or faculty at AFSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name; SSN; age; sex; service specialty; engineering, logistics, or intelligence experience; rank; work room assignment; marital status; spouse's name; number, names and ages of dependents; seminar assignments; date or rank; years commissioned service; aero rating; Vietnam experience; smoker indicator; source of commission; examination results; education level; auditorium seat; address and telephone number of student while attending course; next duty assignment; major writing exercise grade; and recommendation for faculty assignment. The data items maintained on the historical file are name, SSN, military service, class number, major writing exercise grade, and recommendation for future faculty assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To maintain a data base that will permit the Armed Forces Staff College to keep track of student's examinations, evaluations and grades; to assign base housing; to achieve a uniform distribution of students at seminars based upon student's experience and military service affiliation; and to maintain a historical file of recommendations for future faculty assignments of students.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICE FOR STORING, RETRIEVING/ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and hard copy forms.

RETRIEVABILITY:

AFSC users obtain information by means of standard reports or update programs.

SAFEGUARDS:

Access to building is protected by uniformed guards who require positive identification for admission after hours. System information is protected by port access restrictions and user password sign-on software.

RETENTION AND DISPOSAL:

The record of an individual in the current class is retained on disk and will be available for on-line access. Student information is kept in a historical file for all past classes. The historical file is also retained on disk and will be available for on-line access. An individual's class record will be retained for one year after graduation and then destroyed. There are currently no plans to discard the historical file information.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Naval Administrative Command, and Dean, Department of Academic Support, Armed Forces Staff College, 7800 Hampton Blvd., Norfolk, VA 23511-6097.

NOTIFICATION PROCEDURE:

Information should be obtained from the systems manager. Requesting individuals should specify their full names. Visitors should be able to identify themselves by a commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies and from the individual's seminar chairman.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-4185 Filed 2-25-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Grants, Availability, etc.; Bilingual Education—State Educational Agency Program

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the Bilingual Education: State Educational Agency Program for Fiscal Year 1986.

Programmatic and Fiscal Information

Applications are invited for new projects under the Bilingual Education: State Educational Agency Program.

The purpose of the awards is to provide financial assistance to State educational agencies (SEAs) to collect, aggregate, analyze, and report data and information on each State's population of limited English proficient persons, and the educational services provided or available to those persons. The program further provides assistance for activities designed to improve the effectiveness of programs for limited English proficient persons in their States.

State education agencies (SEAs) are eligible for assistance under the State Educational Agency Program. It is expected that approximately $4,785,000 will be available for this program for fiscal year 1986.

An award to an SEA shall not be less than $50,000 nor greater than 5 percent of the aggregate amount paid to local educational agencies within the State under Part A of Title VII during fiscal year 1985.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applications will be approved for a period of one year.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before April 14, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.003Q, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Each late applicant will be notified that its application will not be considered.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations in 34 CFR Parts 500 and 548.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74, 75, 77, 78, and 79.

Intergovernmental review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by June 13, 1986, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.003Q), 400 Maryland Avenue, SW. Washington, DC 20202.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Application Forms

Application forms and program information packages are expected to be available by February 28, 1986.

These may be obtained by writing to Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2922.

Program authority: 20 U.S.C. 3242.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: February 21, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education, and Minority Languages Affairs.

[FR Doc. 86-4142 Filed 2-25-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Grants, Availability, etc.; School Construction in Areas Affected by Federal Activity

AGENCY: Department of Education.

ACTION: Application Notice for Transmittal of Applications for Increase Periods Ending June 1986 or June 1987.

Programmatic and Fiscal Information

Notice is given that the Secretary of Education has established a cutoff date for the transmittal of applications for increase periods ending June 1986 or June 1987 for assistance under sections 5 and 9 of Pub. L. 81-815. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This cutoff date also applies to applications for new projects under section 14 of Pub. L. 81-815, and to new applications for supplemental assistance under section 8 of Pub. L. 81-815. (Section 14 authorizes assistance for certain school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property. Section 8 authorizes assistance that supplements certain awards made under sections 5, 9, and 14 of Pub. L. 81-815.)

Approval of these applications is subject to availability of funds.

Federal funds are provided for the construction or temporary provision of urgently needed minimum school facilities in school districts which have had substantial increases in school membership of children who reside on Federal property or reside with a parent who is either in the Uniformed Services of the United States or who is employed on Federal property. Federal funds are provided for construction of needed minimum school facilities in school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property.

Cutoff Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before June 30, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107A, Washington, DC 20202-6272.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Room 2107A, 400 Maryland Avenue, SW., Washington, DC.

A hand-delivered application will be accepted between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal Holidays.

Applicable Regulations

Regulations applicable to this program inlcude the following:

(a) The regulations governing the School Construction Program (34 CFR Part 221).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 79).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes developed by State and local government coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's

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process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by August 29, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.040), 400 Maryland Avenue, SW., Washington, DC 20202.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Forms

Application forms and program information packages are available. These may be obtained from the appropriate State educational agency which serves the applicant local educational agency.

FOR FURTHER INFORMATION CONTACT: Dr. Walter Steidle, School Construction Program, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2069, Washington, DC 20202–6272 Telephone: (202) 245–8412.

Program authority: 20 U.S.C. 631–647.

(Catalog of Federal Domestic Assistance No. 84.040, School Assistance in Federally Affected Areas—Construction)

Dated: February 21, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 86–4143 Filed 2–25–86; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Guaranteed Student Loan Program and PLUS Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowance for Quarter Ending December 31, 1985.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1). Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending December 31, 1985, the special allowance will be paid at the following rates:

	Applicable interest rate (percent)	Annual special allowance rate (percent)	Special allowance rate percent for quarter ending Dec. 31, 1985
GSLP loans or PLUS loans made prior to Oct. 1, 1981.	7	4.00	1.00
	8	2.00	0.50
GSLP loans or PLUS loans made on or after Oct. 1, 1981.	7	3.88	0.97
	8	2.88	0.72
	9	1.88	0.47
	12	0.00	0.00
	14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies.

(b) *Step 2.*

Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder; and

(2) In the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent;

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Nancy Eakin, Program Specialist, or Ralph Madden, Acting Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: February 21, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–4144 Filed 2–25–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

District Heating and Cooling Systems: Extension of Closing Date for Applications

AGENCY: Department of Energy.

ACTION: Extension of Solicitation Number DE–PSOI–86CE28546.

New Closing Date: The date by which applications must be received has been extended from February 28, 1986 by four weeks until March 28, 1986. Applications must be received by 4:30 p.m. local prevailing time on that date.

Synopsis of Solicitation: Solicitation is for grant applications for the purpose of assessing the potential for using District Heating and Cooling (DHC) systems in communities where such systems could substantially increase the efficiency of energy delivery and/or substitute abundant and renewable resources for the use of scarce premium fuels while enhancing the economic viability of the community.

Written requests for solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room IJ–005, 1000 Independence Ave., SW., Washington, DC. 20585, Attn.: Document Control Specialist, MA–451.1.

Point of contact: Lynn Warner, telephone number (202) 252–1061.

Issued in Washington, D.C. on February 21, 1986.

Edward T. Lovett,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86–4192 Filed 2–25–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86–10–NG]

NATGAS (U.S.) Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) gives notice of receipt on February 10, 1986, of an application filed by Natgas (U.S.) Inc. (Natgas), an affiliate of Pan-Alberta Gas Ltd. (Pan-Alberta), for a blanket authorization to import up to 730 Bcf for a two-year period beginning on the date of first delivery. The gas would be supplied by Pan-Alberta or other Canadian suppliers and sold on a short-term or spot basis to U.S. purchasers, including gas distribution companies, pipelines, electric utilities, and industrial or agricultural users. Natgas would also act as a broker or agent on behalf of U.S. purchasers and/or Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. Natgas proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on March 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Norman Breckner, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482;

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures: In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., March 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Natgas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–4189 Filed 2–25–86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–C&E–86–32]; OFP Case No. 61059–9312–20–24]

Acceptance of Petition for Exemption and Availability of Certification by Champlin Energy Co. & South Coast Energy Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Champlin Energy Company & South Coast Energy Company.

SUMMARY: On February 3, 1986, Champlin Energy Company & South Coast Energy Company (Champlin—South Coast or CSC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their Harbor Cogeneration Project which is jointly owned by CSC a wholly owned subsidiary of Southern California Edison located in Wilmington, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in certain new powerplants and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person

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may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before April 14, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-C&E-86-32 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The principal purpose of the proposed facility is the generation of steam for enhanced oil recovery. The Harbor Cogeneration Project will occupy an area of approximately 450 x 250 feet and be located on the Champlin Petroleum Company Wilmington Oil Field property.

The Harbor Cogeneration Project will be designed to produce approximately 500 × 10^6 Btu per hour of 80% quality process steam at approximately 1,000-1,600 psig and 546 °F to 606 °F and to generate approximately 80 MW of electric power. The steam will be used for thermally enhanced oil recovery.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibition of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), CSC has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), CSC has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environment impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that CSC is entitled to the exemption requested.

That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on February 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4193 Filed 2-25-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-033; OFF Case No. 66910-9293-01, 03-12]

Order Granting to Pennwalt Corp. an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Pennwalt Corporation an exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Pennwalt Corporation (Pennwalt) a permanent site limitation exemption for a major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), for a facility to be located in Riverview, Michigan. The exemption granted permits the use of natural gas as the primary energy source for its proposed gas-fired boilers.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on April 27, 1986.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The proposed MFBI would consist of two Babcock & Wilcox type boilers with a rated output of 120,00 lb/hr steam at 450 psig each. The new boilers will be installed in Pennwalt's West Plant which is in Riverview, Michigan.

Pennwalt has certified that due to the specific physical limitation enumerated below, the criteria for a permanent

exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned facility were furnished.

Use of coal for this facility at this site is not feasible. The primary barriers to the use of coal at this site is the size and location of the facility. A coal-fired facility was evaluated for the site, including equipment for coal receiving, coal handling, ash collection, water treatment, boilers and auxiliary equipment. It was determined that no location could reasonably be found to provide adequate space for coal-fired configuration.

Pennwalt certified that:

1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boilers for which exemption is sought and the plant where they will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boilers for which the exemption is sought and the plant at which it will be installed.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed facility in the Federal Register on October 25, 1985 (50 FR 43435), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act.

During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed December 9, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Site Limitation Exemption

Based upon the entire record of this proceeding, ERA has determined that Pennwalt has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.33. Therefore, pursuant to section 212(a) of FUA, ERA hereby grants a permanent site limitation exemption to Pennwalt to permit the use of natural gas as the primary energy source for its boilers to be located in Riverview, Michigan.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C. on February 19, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4194 Filed 2-25-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-027; OFP Case No. 55338-9288-20-24]

Order Granting to Willamette Industries, Inc., Exemption From Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Willamette Industries, Inc., exemption from Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Willamette Industries, Inc. (Willamette or "the petitioner"), of Oxnard, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a planned Port Hueneme facility. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 27, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION:

Frank Duchaine, Coal & Electricity Division, Office of Coal and Electricity Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration project for the Port Hueneme site will supply 100% of the steam required for the paper machine and the other mill systems. It will also supply all of the mill's electrical needs with surplus electrical generation being sold to the utility grid.

The Port Hueneme paper mill is located in Oxnard, California, and is one of four mills in Willamette that produce paper.

The project site will be within the confines of the Port Hueneme mill plant site which is located at the southwest edge of the city along the ocean coast.

The installation proposed will be a simple topping cycle cogeneration facility, incorporating a dual pressure waste heat boiler to gain maximum heat recovery efficiency. The flue gases will be treated in two steps. First, steam is injected to reduce NO_x to 75 PPM. Second, a selective catalytic reductor will reduce NO_x to 15 PPM. The waste heat boiler exhaust gases are then further utilized to heat process water and displace the need for the hot air generated in the present vapor absorption system, thereby eliminating the need for natural gas in these areas.

Power will be produced in a simple topping cycle facility with a gas turbine directly driving the electrical generator. No secondary generation through a combined cycle steam turbine is planned at this time. The permit to operate is based on the gas turbine being operated at its full ISO load rating of 21.8 MW. However, the project will be originally operated at a lessor rate to be in balance with the mill's current steam and electrical constraints.

The gas turbine is designed for a dual fuel capability (natural gas and No. 2 distillate). However, for air quality and economic reasons the special fuel burning nozzles and other equipment required to burn distillate fuel were not purchased and the system will burn only

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natural gas. At full ISO rating the amount of gas consumed will be 220.1 MMBtu/hr. At the initial startup load of 18.0 MW the turbine will consume 190.9 MMBtu/hr.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Willamette's certification to ERA, in accordance with 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on September 20, 1985 (50 FR 38161), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 4, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Willamette has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Willamette to permit the use of natural gas as the primary energy source for its cogeneration facility in Oxnard, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C. on February 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4195 Filed 2-25-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI86-19-003]

Amoco Production Co.; Application for Modification of Order Permitting and Approving Limited-Term Abandonments and Granting Certificates

February 20, 1986.

Take notice that on February 11, 1986, Amoco Production Company (Amoco), pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder (18 CFR Parts 154 and 157), filed an application requesting that in Docket No. CI86-19-000 the Commission modify Paragraph (A) of its Order Permitting And Approving Limited-Term Abandonments and Granting Certificates issued November 1, 1985 by substituting March 31, 1987 for March 31, 1986 therein, all as more fully shown in the application which is on file with the Commission and open to public inspection.

Amoco states that the circumstances that called forth Amoco's application filed on October 16, 1985 and supported issuance of the Commission's November 1, 1985 Order will continue past the March 31, 1986 termination date prescribed in Paragraph (A) of the November 1, 1985 Order to at least until March 31, 1987. If the limited-term abandonment and certificate authorization granted by the November 1, 1985 Order is extended past March 31, 1986, Amoco states that it could continue existing spot market sales and make additional sales.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4176 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-411-000]

The City of St. Marys, West Virginia; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 10, 1986.

On January 17, 1986, the City of St. Marys (Applicant), Town Hall, St. Marys, West Virginia 26170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 40 megawatt hydroelectric facility is located on the Ohio River, in Pleasants County, West Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4179 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-199-000]

Exxon Corp.; Application for Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

February 20, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell gas in interstate commerce as described herein.

The circumstances presented in the application appear to meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-199-000, Feb. 7, 1986	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	UER Marketing Company, High Island Block A-570 Field, Offshore Texas.	[1]	—

[1] Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests that it be issued a Limited-Term Certificate with Pre-Granted Abandonment authorizing it to sell NGPA section 102(c) gas under a Gas Purchase Contract dated September 1, 1985, for a term through November 27, 1987. Applicant was previously granted authorization in Docket No. CI82-001 by order issued November 27, 1985, to abandon sales for a two-year term of production from the subject blocks not purchased by United Gas Pipe Line Company. The abandonment application in Docket No. CI82-4-001 was filed under the expedited procedures established in Order No. 436. Therefore, Applicant requests that this related certificate application be considered on an expedited basis.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-4177 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-6-000]

Home Petroleum Corp.; Petition for Adjustment

Issued Febrary 20, 1986.

Take notice that on November 26, 1985, Home Petroleum Corporation (Home Petroleum) filed a petition with the Commission for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978, requesting an extension of time within which to make Btu refunds required under Commission Order Nos. 399, 399-A and 399-B.

Home Petroleum states that on October 7, 1985, Tennessee Gas Pipeline Corporation requested it to calculate the amounts owed to Tennessee pursuant to the Commission's Btu refund order. Home Petroleum maintains that in all other instances where refunds have been required, the purchaser has made the calculation and that it was unprepared for Tennessee's request. Home Petroleum has requested Tennessee's assistance in making the calculation.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101-1117 [Subpart K] of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4178 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7563-005, et al.]

Hydroelectric Applications; South Fork II, Inc., et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License.

b. Project No: 7563-005

c. Date Filed: January 10, 1986.

d. Applicant: South Fork II, Inc. (Licensee) and South Fork II Associates Limited Partnership (Transferee).

e. Name of Project: Weeks Falls Hydroelectric.

f. Location: On the South Fork Snogualmine River in Sec. 34, T23N, R9E in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Harry P. Hosey, President, Hosey & Associates Engineering Company, Northup West Business Park, 2820 Northup Way, Bellevue, WA 98004, (206) 827-8861.

i. Comment Date: March 31, 1986.

j. Description of Project: On April 25, 1985, a major license was issued to South Fork II, Inc. for the construction, operation and maintenance of the Weeks Falls Project No. 7563. It is proposed to transfer the license to South fork II Associates Limited Partnership. The purpose of this proposed license transfer is to facilitate the financing and construction of the licensed project through a traditional partnership financing structure.

The Licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it was the original licensee.

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k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Preliminary Permit.

b. Project No: 9535–000.

c. Date Filed: October 9, 1985.

d. Applicant: Painted Rocks Hydro Associates.

e. Name of Project: Painted Rocks.

f. Location: At the Montana Department of Natural Resources and Conservation's Painted Rocks dam on the West Fork Bitterroot River, in Ravalli County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Archie R. Ford, P.O. Box 1940, Orofino, ID 83455.

i. Comment Date: March 28, 1986.

j. Competing Application: Project No. 9364, date filed: July 29, 1985. Due date: February 5, 1985.

k. Description of Project: The existing project facilities at the site consist of: (1) a 143-foot-high rockfill embankment dam; (2) a 160-foot-wide spillway; (3) a 30-foot-high intake tower; (4) a 580-foot-long, 10-foot-diameter concrete conduit; and (5) a 655-acre reservoir with a capacity of 45,000 acre-feet at a normal maximum surface elevation of 4467.5 feet. In addition the project would consist of the following proposed facilities: (1) Lining the outlet conduit from the outlet gates to the discharge point with a 84-inch-diameter penstock; (2) a bifurcation 45 feet upstream of the discharge point; (3) a 54-inch-diameter penstock from the bifurcation to the powerhouse at the toe of the dam; (4) a powerhouse containing 2 generating units with a combined capacity of 1.458 MW and an annual average generation of 7.5 GWh; and (5) upgrading an existing transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $62,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

3 a. Type of Application: Surrender of License.

b. Project No: 3012–003.

c. Date Filed: December 13, 1985.

d. Applicant: Saybrooke Manufacturing Company.

e. Name of Project: Saybrooke.

f. Location: On the South Branch of the Pawtuxet River in Kent County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gary P. Halliwell, Halliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914.

i. Comment Date: March 28, 1986.

j. Description of Proposed Surrender: The project would have consisted of: (1) An existing granite block step dam, 110 feet long and 21 feet high; (2) a reservoir of negligible storage capacity at spillway crest elevation 77.2 feet m.s.l.; (3) a headrace 150 feet long; (4) a powerhouse area in a mill building with two turbine-generator units with a total capacity of 235 kW; (5) a tailrace, 300 feet long; (6) electrical facilities; and (7) other appurtenances.

The Licensee states that the State of Rhode Island Water Resources Board is planning an upstream water supply reservoir, to be known as the Big River Reservoir, which would control the flow available for the Saybrooke Project. This flow issue has not been resolved and, consequently, the Licensee is not able to provide the required support information to the financial institutions for project financing.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Surrender of License.

b. Project No. 3010–003.

c. Date Filed: December 13, 1985.

d. Applicant: Valley Industries, Inc.

e. Name of Project: Centerville.

f. Location: On the South Branch of the Pawtuxet River in Kent County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Gary P. Halliwell, Halliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914.

i. Comment Date: March 28, 1986.

j. Description of the Proposed Surrender: The project would have consisted of: (1) An existing granite block arch-step dam, 80 feet long and 16.0 feet high; (2) a reservior of negligible storage capacity at spillway crest elevation 124.9 feet m.s.l.; (3) a headrace 175 feet long: (4) a powerhouse area in a mill building with two turbine-generator units with a total capacity of 155 kW; (5) a tailrace, 200 feet long; (6) trashracks and headgates; (7) electrical facilities; and (8) other appurtenances.

The Licensee states that the State of Rhode Island Water Resources Board is planning an upstream water supply reservoir, to be known as the Big River Reservoir, which would control the flow available for the Centerville Project. This flow issue has not been resolved and, consequently, the Licensee is not able to provide the required support information to the financial institutions for project financing.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. Type of Application: Amendment of Annual License.

b. Project No.: 1250–002.

c. Date Filed: January 31, 1985.

d. Applicant: City of Pasadena Water and Power Department.

e. Name of Project: Azusa Water Power Project.

f. Location: On the San Gabriel River, partly on the lands of Angeles National Forest, in Los Angeles County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Karl A. Johnson, General Manager, City of Pasadena Water and Power Department, 100 North Garfield Avenue, Pasadena, California 91109. (818) 405–4420.

i. Comment Date: April 2, 1986.

j. Expiration Date of Initial License: Applicant's initial license for Project No. 1250 expired on May 31, 1984. The project is currently under annual license.

k. Description of The Proposed Action: The City of Pasadena Water and Power Department (City), Licensee for Project No. 1250, proposes to remove the following project works from within its project boundary: (1) An intake structure, within the Los Angeles County Flood Control District's (District) San Gabriel No. 1 Reservoir; (2) a 30-foot-diameter, approximately 1850-foot-long outlet tunnel reduction valves at the end of the outlet tunnel. The City requests the above changes, in its existing license for Project No. 1250, to accommodate Commission authorization of construction and operation of Project No. 8764 at the District's San Gabriel No. 1 Dam and Reservoir.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9226–000.

c. Date Filed: May 22, 1985.

d. Applicant: The City of Redding, California.

e. Name of Project: Fiddlers Reservoir.

f. Location: On Middle Fork Cottonwood Creek, near Platina, in Shasta and Tehama Counties, California

(in Section 28 of T29N, R7W, M.D.B. & B).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding, 760 Parkview Avenue, Redding, CA 96001, (916) 225–4060.

i. Comment Date: March 25, 1986.

j. Competing Application: Project No. 9218–000, date filed: May 22, 1985.

k. Description of Project: The proposed project would consist of: (1) A 348-foot-high, 3,500-foot-long zoned earthfill dam at elevation 1,102 feet msl; (2) a reservoir with a storage capacity of 545,000 acre-feet and a surface area of 5,500 acres; (3) a 12-foot-diameter, 400-foot-long penstock; (4) a powerhouse containing two or more turbine-generator units with a combined rated capacity of 15,200 kW and operating under a head of 300 feet; (5) a 69–kV, 17-mile-long transmission line interconnecting the project to an existing 230:kV, Western Area Power Administration (WAPA) line. The project's estimated average annual generation of 35.8 GWh would be sold to the City of Redding Electric Department customers.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $300,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9223–000.

c. Date Filed: May 22, 1985.

d. Applicant: The City of Redding, California.

e. Name of Project: Schoenfield Reservoir.

f. Location: On Red Bank Creek, near Red Bluff, partially within lands administered by the Bureau of Land Management, in Tehama County, California (in Section 16 of T26N, R6W, M.D.M. & B).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding, 760 Parkview Avenue, Redding, CA 96001, (916) 225–4060.

i. Comment Date: March 25, 1986.

j. Competing Application: Project No. 9219–000, date filed: May 22, 1985.

k. Description of Project: The proposed project would consist of: (1) A 300-foot-high, 1,000-foot-long zoned earthfill dam at elevation 1006 feet msl; (2) a reservoir with a storage capacity of 177,000 acre-feet and a surface area of 2,600 acres; (3) a 6-foot-diameter, a 4-mile-long conduit connecting the Dippingvat Reservoir to the Schoenfield Reservoir (upper powerhouse); (4) a 5-foot-diameter, 350-foot-long penstock (lower powerhouse); (5) a powerhouse (upper) containing two or more turbine-generator units with a combined rated capacity of 1,800 kW and operating under a head of 190 feet; (6) a powerhouse (lower) containing two or more turbine-generator units with a combined rated capacity of 2,500 kW and operating under a head of 250 feet; and (7) a 34.5–kV, 25-mile-long transmission line interconnecting the project to an existing 230-kV, Western Area Power Administration (WAPA) line, The project's estimated average annual generation of 17.5 GWh would be sold to the City of Redding Electric Department customers.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $300,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9224–000.

c. Date Filed: May 22, 1985.

d. Applicant: The City of Redding, California.

e. Name of Project: Dippingvat Reservoir.

f. Location: On South Fork Cottonwood Creek, near Red Bluff, partially within lands administered by the Bureau of Land Management, in Tehama County, California (In Section 31 of T27N, R6W, M.D.M.&B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding 760 Parkview Avenue, Redding, CA 96001, (916) 225–4060.

i. Comment Date: March 24, 1986.

j, Competing Application: Project No. 9219–000, date filed: May 22, 1985.

k. Description of Project: The proposed project would consist of: (1) A 300-foot-high, 1,200-foot-long zoned earthfill dam at elevation 1,244 feet msl; (2) a reservoir with a storage capacity of 150,000 acre-feet and a surface area of 2,500 acres; (3) a 5-foot-diameter, 350-foot-long penstock; (4) a powerhouse containing two or more turbine-generator units with a combined rated capacity of 2,500 kW and operating under a head of 270 feet; and (5) a 34.5-kV, 22-mile-long transmission line interconnecting the project to an existing 230-kV, Western Area Power Administration (WAPA) line. The project's estimated average annual generation of 11 GWh would be sold to the City of Redding Electric Department customers.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $300,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9768–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Walloomsac.

f. Location: On the Walloomsac River in Rennselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 11-foot-high and 215-foot-long concrete dam with a spillway crest elevation of 444 feet msl; (2) an existing reservoir of negligible size and storage capacity; (3) an existing gate intake structure to be rehabilitated; (4) a proposed 20-foot-wide and 30-foot-long flue; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 420 kW; (6) a proposed trailrace; (7) a new 13.8-kV transmission line approximately 100 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 1.8 million kWh

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operating under a hydraulic head of 22 feet. The existing facilities are owned by the Columbia Corporation.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $43,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9769–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Castleton.

f. Location: On the Moordenerkill River in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Competing Application: Project No. 9418, date filed August 28, 1985. Due Date: February 18, 1986.

j. Comment Date: March 24, 1986.

k. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high and 96-foot-long concrete dam with spillway crest elevation of 146 feet msl; (2) an existing reservoir with a negligible storage capacity at elevation 146 feet msl; (3) an existing 5-foot-wide gated intake structure; (4) a new penstock 3 feet in diameter and 450 feet long; (5) an existing powerhouse to be rehabilitated to contain one turbine/generator for an installed capacity of 150 kW; (6) a proposed tailrace; (7) a new 4.8-kV transmission line approximately 220 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 680,000 kWh under a hydraulic head of 41.5 feet. The dam is owned by the Fort Orange Paper Company.

l. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construciton. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $33,000.

a. Type of Application: Preliminary Permit.

b. Project No.: 9632–000.

c. Date Filed: November 14, 1985.

d. Applicant: Wilfred and Rory Poulin.

e. Name of Project: Wynantskill.

f. Location: On the Wynantskill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Neal F. Dunlevy, Stetson—Dale, Architects & Engineers, 185 Genesee Street, Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 7 acres, a storage capacity of 50-acre-feet, and a normal water surface elevation of 177.0 feet msl; (3) a new concrete intake structure; (4) a new 42-inch-diameter, 2,800-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 225 kW and one generating unit with a capacity of 475 kW for a total installed capacity of 700 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 2,300,000 kWh. The existing dam is owned by the City of Troy, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

12 a. Type of Application: Exemption 5 MW or Less.

b. Project No.: 9180–000.

c. Date Filed: May 8, 1985.

d. Applicant: City of Greenville.

e. Name of Project: Franklin Street Dam.

f. Location: Flat River, Montcalm County, Michigan.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Abe A. Munfah, Ayres, Lewis, Norris & May, Inc., 3983 Research Park Drive, Ann Arbor, MI 48104, (313(371–7800.

i. Comment Date: March 24, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Franklin Street Dam owned by the Applicant, consisting of a 50 foot-long gated concrete spillway section flanked by two 16-foot-high earth embankments, 200 feet long and 350 feet long, respectively; (2) an existing reservoir with a surface area of approximately 300 acres and a gross storage capacity of approximately 1,500 acre-feet at the normal water surface elevation of 811.0 feet (m.s.l.); (3) a proposed powerhouse, located adjacent to the dam spillway section and housing a single generating unit of 130 kW capacity; and (4) appurtenant facilities. The estimated average annual generation of the project is approximately 915,000 KWh. Project power would be sold to Consumers Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

l. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

13 a. Type of Application: Preliminary Permit.

b. Project No: 9657–000.

c. Date Filed: December 2, 1985.

d. Applicant: St. Maries River Hydro, Inc.

e. Name of Project: St. Maries River.

f. Location: On the St. Maries River in Sec. 34, T45N, R2W, near St. Maries, Benwah County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James R. Morris, St. Maries River Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501.

i. Comment Date: March 28, 1986.

j. Competing Application: Project No. 9660, date filed: December 3, 1985. Due Date: March 21, 1986.

k. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 2,800 feet; (2) a 2,315-foot-long, 102-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 3,670 kW; and (4) a 6-mile-long transmission line. Applicant estimates the average annual energy production to be 16,136,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $770,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: The proposed power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2

14 a. Type of Application: Preliminary Permit.

b. Project No: 9633–000.

c. Date Filed: November 20, 1985.

d. Applicant: Stanley Hawkins.

e. Name of Project: Hawkins Willow creek.

f. Location: On Willow Creek, tributary to the Snake River, in Section 21, T1S, R40E, Bonneville County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Vernon Ravenscroft, P.O. Box 893, Boise, ID 83701, (208) 345–2670.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A modified head gate diversion structure along the bank in a natural slack water meadow area having water surface elevation 5880 feet MSL; (2) a 42-inch-diameter, 5,300-foot-long buried steel penstock; (3) a powerhouse containing a generating unit rated at 693-kW at a flow of 60 cfs and at a net head of 165 feet; (4) a tailrace; and (5) a 7.2-kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks an 18-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support a development application. The estimated cost of permit activities is $21,000.

k. Purpose of Project: Applicant would sell the power produced at the site to Utah Power & Light Company. Applicant estimates that the average annual energy production would be 3,748,644 KWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9483–000.

c. Date Filed: September 26, 1985.

d. Applicant: Newburgh Hydro Partners.

e. Name of Project: Newburgh Lock and Dam.

f. Location: On the Ohio River in Henderson County, Kentucky, and Warrick County, Indiana, near Newburgh, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, LeBoeuf, Lamb, Leiby, and McCrae, Suite 110, 1333 New Hampshire Ave., NW., Washington, DC 20036, (202) 457–7500.

i. Comment Date: March 24, 1986.

j. Competing Application: Project No. 9455, date filed September 13, 1985. Comment due date March 6, 1986.

k. Description of Project: The proposed would utilize the existing U.S. Corps of Engineers' Newburgh Lock and Dam and reservoir, and would consist of: (1) A proposed 10 foot diameter steel penstock approximately 50 feet long; (2) a proposed concrete powerhouse approximately 130 feet by 230 feet housing one 40,000-kW generator; (3) a proposed concrete tailrace approximately 130 feet wide, 220 feet long and 15 feet deep; (4) a proposed 125-kV transmission line approximately 9,500 feet long; and appurtenant facilities. The Applicant estimates that the average annual generation would be 180 GWh. All project energy generated would be sold to Kentucky Utilities or Alcoa Corporation.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope under this Permit; A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

16 a. Type of Application: Exemption.

b. Project No: 9247–000.

c. Date Filed: May 30, 1985.

d. Applicant: Willard Ray Moulton, et. al.

e. Name of Project: Pratt Creek.

f. Location: On Pratt Creek in Lemhi County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Anders Grimsrud, 627 N600W #11, Provo, UT 84601.

i. Comment Date: March 24, 1986.

j. Description of Project: The proposed project would consist of (1) An intake structure at the existing dam on Pratt Creek at elevation 5580 feet; (2) a 9,800-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 305kw and an average annual generation of 1.6 GWH; and (4) a 300-foot-long transmission line.

Purpose of Exemption—An exemption, if issued, gives an Exemption priority of control, development, and operation of the project under the terms of the exemption from licensing and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

17 a. Type of Application: Preliminary Permit.

b. Project No: 9715–000.

c. Date Filed: December 24, 1985.

d. Applicant: F & T Services Corporation.

e. Name of Project: Mississippi River Lock and Dam No. 24.

f. Location: On the Mississippi River in Pike County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896, 504–927–9321.

i. Comment Date: April 14, 1986.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing 4 generating units having a total rated capacity of 42 MW; (2) a proposed 150-foot-wide by 200-foot-long inlet channel; (3) a proposed 150-foot-wide by 350-foot-

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long outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Energy produced at the project would be sold to the Missouri Edison Company.

k. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be 30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No: 9667-000.

c. Date Filed: December 3, 1985.

d. Applicant: Midway Associates.

e. Name of Project: Pine Creek Project.

f. Location: On Pine Creek in Wasatch County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would be located on lands of the State of Utah and would consist of: (1) A new diversion dam about 5 feet high; (2) a new intake structure and canal, about 13,000 feet long; (3) a new penstock, 24 inches in diameter and about 5,200 feet long; (4) a new powerhouse with an installed capacity of 3,500 kW operating under a head of 1,700 feet; (5) a tailrace returning flow to Pine Creek; (6) a new 12.5-kV transmission line, about one mile long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 20,000,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $5,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 9626-000.

c. Date Filed: November 18, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Moody Street.

f. Location: On the Charles River, in Middlesex County, in the city of Waltham, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: March 24, 1986.

j. Competing Application: Project No. 9486-001, date filed: October 2, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing stone block masonry dam, 10 feet high and 175 feet long; (2) an existing reservoir with a storage capacity of 1,000 acre-feet and water surface area of 200 acres at normal water surface elevation of 37 feet m.s.l.; (3) a new powerhouse, approximately 30 feet square, housing an installed capacity of 300 kW; (4) a proposed 450-foot-long, 480-V transmission line; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 1.3 GWh. The owner of the dam is the Metropolitan Distict Commission of Massachusetts.

l. Purpose of Project: The Applicant anticipates that project energy will be sold to the Boston Edison Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

20 a. Type of Application: Declaration of Intention.

b. Docket No.: EL86–13–000.

c. Date Filed: November 29, 1985.

d. Applicant: Earle Ausman & Earl Ellis.

e. Name of Project: McRoberts Creek Hydropower.

f. Location: On McRoberts Creek in Matanuska Susitna Borough, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Mr. Earle V. Ausman, 3909 Geneva Place, Anchorage, AK 99508.

i. Comment Date: March 24, 1986.

j. Description of Project: The proposed project would consist of: (1) a 6-foot-high, 35-foot-long timber diversion dam at elevation 1,640 feet; (2) an 8,400-foot-long penstock; (3) a 16-foot by 22-foot powerhouse at elevation 519 feet containing a generating unit rated at 400 kW; and (4) a 7.2–kV, 0.9-mile-long transmission line connecting to the Matanuska Electric Association distribution system.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over a particular hydroelectric project.

k. Purpose of Project: Power would be sold to the Matanuska Electric Association, which is not connected to any interstate utility grid.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9668–000.

c. Date Filed: December 3, 1985.

d. Applicant: Niagara Creek Associates.

e. Name of Project: Niagara Creek Project.

f. Location: On Niagara Creek in Tuolumne County, California:

Item	T/S	Range
Diversion, Penstock and Powerhouse	6N	19E
Power Transmission Lines	6N	19E
Power Transmission Lines	5N	19E

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed project would be located entirely within the Stanislaus National Forest and would consist of: (1) A diversion/intake structure on Niagara Creek at elevation 6,020 feet m.s.l.; (2) a pipeline/penstock, 3,600 feet long; (3) a powerhouse with an installed capacity of 2,900 kW operating under a head of 1,035 feet; (4) a tailrace returning flow to the creek; (5) a 12.0–kV transmission line about nine miles long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 8,205,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $85,000.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 9619–000.

c. Date Filed: November 14, 1985.

d. Applicant: Friant Power Authority.

e. Name of Project: Little Dry Creek Siphon.

f. Location: On Friant Kern Canal, near Clovis, within lands administered by the U.S. Bureau of Reclamation, in Fresno County, California (in Section 28 of T11S, R21E, M.D.B. & M).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John Boudreau, Manager, c/o Terra Bella Irrigation District, 24790 Avenue 95, Terra Bella, CA 93270, (209) 535–4414.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A powerhouse of the Friant Kern Canal utilizing two turbine-generator units with a combined rated capacity of 800 kW, operating under a heard of 11 feet; (2) a 1,000-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) 12–kV transmission line located along Auberry Road. The project's estimated average annual generation of 3.0 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $50,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 9563–000.

c. Date Filed: November 1, 1985.

d. Applicant: Uniontown/Evansville Associates.

e. Name of Project: Uniontown/Evansville Project.

f. Location: On the Ohio River in Posey County, Indiana and Union County, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, 484 East 300 North, Manti, Utah 84642, (801) 835–0202.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Uniontown Lock and Dam, having a dam water elevation approximately 342 feet MSL and would consist of: (1) A new powerhouse 100 feet by 200 feet located on the Kentucky side of the dam and containing thirteen turbine/generators having a total installed capacity of 65,000 kW; (2) a new tailrace extending 200 feet downstream of the powerhouse; (3)(a new 3,960-foot-long 25–kV transmission line; and (4) appurtenant facilities. The Applicant estimates the average annual energy production to be 350,000 MWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to local municipalities or to Southern Indiana Gas & Electric.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

24 a. Type of Application: Preliminary Permit.

b. Project No.: 9816–000.

c. Date Filed: December 31, 1985.

d. Applicant: Taft Hydro.

e. Name of Project: Utica Dam.

f. Location: On the Mohawk River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence R. Taft, Taft Hydro, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 115-foot-long concrete gravity dam; (2) a reservoir with a surface area of 32 acres, a storage capacity of 422 acre-feet, and a normal water surface elevation of 402 feet m.s.l. with: (3) three 9.0-foot-high steel taintor gates: (4) new 2-foot-high wood flashboards; (5) five siphon intake generating units with a capacity of 132 kW each for a total installed generating capacity of 660 kW; (6) a new 40-foot-wide, 100-foot-long earth tailrace; (7) a new transmission line, 1,000 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 3,500,000 kWh. The existing dam is owned by the New York State Department of Transportation, Albany, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $21,000.

25 a. Type of Application: Major License.

b. Project No.: 7362–006.

c. Date Filed: January 23, 1985 as supplemented.

d. Applicant: Renewable Resources Development, a General Partnership, and Upper Lake Creek Hydroelectric.

e. Name of Project: Lake Creek Hydroelectric.

f. Location: On Lake Creek, near Riggins, in Idaho County, Idaho on lands of the United States administered by the Bureau of Land Management, Section 23, Township 24N, Range 3E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

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h. Contact Person: Carl L. Myers, 750 Warm Springs Avenue, Boise, Idaho 83712, (208)–336–1425.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 20-foot-long concrete diversion structure with crest elevation of 2,606 feet; (2) a 38-inch-diameter 11,000-foot-long steel penstock; (3) a concrete powerhouse containing one generating unit with an installed capacity of 4,637kW at a head of 740 feet; and (4) a 1,300-foot-long, 34.5-kV transmission line connnecting through other proposed projects to a sub-station in Riggins. The estimated project cost, in 1984 dollars, is $3,016,200.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

26 a. Type of Application: License.

b. Project No.: 7589–007.

c. Date Filed: April 23, 1985.

d. Applicant: Paul S. Boyer.

e. Name of Project: Shingle Creek.

f. Location: In Nezperce National Forest, on Shingle Creek, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–285(r).

h. Contact Person: Mr. Carl L. Myers, 750 Warm Springs Avenue, Boise, ID 83712.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 2,555 feet; (2) a 3,680-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 621 kW and an average annual generation of 1,899,975 kWh; and (4) a 200-foot-long transmission line with suitable transformers and switching devices to connect to Idaho Power Company's existing New Meadows Feeder No. 041–31 25-kV line. The estimated cost of the project is $877,635.

k. Purpose of Project: Project would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

27 a. Type of Application: Major License.

b. Project No.: 7378–005.

c. Date Filed: February 7, 1985 as supplemented.

d. Applicant: Renewable Resources Development, a General Partnership and Carson Hydroelectric Corporation.

e. Name of Project: Elkhorn Creek Hydroelectric.

f. Location: On Elkhorn Creek, near Riggins, in Idaho County, Idaho, on lands of the United States administered by the Bureau of Land Management and Payette National Forest, Section 33, Township 24N, Range 3E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Carl L. Myers, 750 Warm Springs Avenue, Boise, Idaho 83712, (208)–336–1425.

i. Comment Date: April 11, 1986.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 24-foot-long concrete diversion structure with crest-elevation of 3,647 feet; (2) a 30-inch-diameter, 10,490-foot-long steel penstock; (3) a concrete powerhouse containing one generating unit with an installed capacity of 4,826kW at a head of 1,170 feet; and (4) a 5,600-foot-long, 34.5-kV transmission line connecting through other proposed projects to a substation in Riggins. The estimated project cost, in 1984 dollars, is $2,650,000.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

28 a. Type of Application: Preliminary Permit.

b. Project No: 9712–000.

c. Date Filed: December 23, 1985.

d. Applicant: Beardslee Corporation.

e. Name of Project: Beardslee Dam.

f. Location: East Canada Creek in Herkimer and Montgomery Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. C. William Carter, Beardslee Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986–0440.

i. Comment Date: April 11, 1986.

j. Description of Project: The Applicant proposes to develop the presently unutilized capacity at the Beardslee Dam owned by Niagara Mohawk Power Corporation for the existing unlicensed East Canada Creek Project No. 2648. The proposed project would consist of: (1) An existing dam consisting of: (a) an 18-foot-high, 273-foot-long concrete gravity section, and (b) a 65-foot-high, 647-foot-long rock and earth filled section; (2) a reservoir with a surface area of 255 acres, a storage capacity of 6,500 acre-feet, and a normal water surface elevation of 508.5 feet m.s.l. when structurally increasing the height of the concrete gravity dam by 10 feet to a new dam height of 28 feet; (3) a new 50-foot-wide, 100-foot-long power canal; (4) a new concrete intake structure; (5) a new 12-foot-diameter, 2,600-foot-long steel penstock; (6) a new steel surge tank; (7) a new concrete powerhouse containing two generating units with a capacity of 10,000 kW each for a total installed generating capacity of 20,000 kW; (8) a new 100-foot-long tailrace; (9) a new transmission line, 750 feet long; (10) a new 2,000-foot-long access road; and (11) appurtenant facilities. The Applicant estimates the average annual generation would be 9,000,000 kWh. The existing dam is owned by Niagara Mohawk Power Corporation.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $160,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed

project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application [see 18 CFR 4.36 (1985)]. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9), and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevent to the granting of an exemption. If an agency

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does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 21, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4172 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-292-000 et al.]

Natural Gas Certificate Filings; National Fuel Gas Supply Corp. et al.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP86-292-000]

February 20, 1986.

Take notice that on January 27, 1986, National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York, 14203, filed Docket No. CP86-292-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of a portion of existing pipeline and for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to replace 1.78 miles of its pipeline, designated as Line K, located in the Town of West Seneca, Erie County, New York, with 1.61 miles of 20-inch new coated steel line. Applicant further proposes to abandon and replace an existing regulator station with a new facility. The total estimated cost of the project, as set forth in the application, is $556,000, which Applicant asserts would be financed with internally generated funds and/or interim short-term bank loans.

Applicant's proposals are part of its effort to relocate bare pipeline where it crosses residential areas.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP85-285-000]

February 20, 1986.

In Docket No. CP85-285-000, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self-implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105 of the Commission's Regulations. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

To ensure the consistency of the proposal with the purposes of Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on February 14, 1985, Applicant filed in Docket No. CP85-285-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natrual gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport a contract-demand volume of 6,000 Mcf per day of Natural's gas produced from West Cameron Blocks 509 and 510, offshore Louisiana, as well as any excess volumes Natural may request Applicant to transport, such excess volumes to be transported on a best-efforts, interruptible basis.

Applicant states it would transport the gas from a platform in West Cameron Block 531, offshore Louisiana, and would redeliver equivalent volumes to Natural at an interconnection of Applicant's and Stringray Pipeline Company's facilities in West Cameron Block 510, offshore Louisiana.

Applicant further states that Natural would pay Applicant a contract demand charge of 64.0 cents per Mcf of gas and 2.09 cents per Mcf for excess volumes of gas received for transportation at the point of receipt. Transportation would continue for a period of three years from the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-285-000]

February 20, 1986.

Take notice that on January 23, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-285-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install, operate and maintain one small volume measurement station to accommodate natural gas deliveries to a non-right-of-way grantor through the local distribution company under the certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the residential end-user, LaMonte L. Rauch, is located in Washington County, Minnesota, and would be served through Peoples Natural Gas Company, division of Utilicorp United Inc. (Peoples). It is stated that the proposed volumes to be sold would be within Peoples' existing firm entitlement and that service rendered through the proposed facilities would have no impact on Northern's peak day and annual deliveries. It is further stated that required volumes would be served from the firm entitlement designated by Peoples for delivery to small volume taps.

Northern indicates that installation of the proposed measurement facilities would be pursuant to the letter agreement between Northern and Peoples dated November 1, 1985, and that the total estimated cost to install the facility is $742.

Comment date: April 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-303-000]

February 20, 1986.

Take notice that on February 3, 1986, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-303-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign certain volumes of firm entitlement to accommodate natural gas deliveries to Great Plains Natural Gas Company (Great Plains), its utility customer in Fergus Falls, Minnesota, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to reassign volumes of gas which it sells to Great Plains under Northen's Rate Schedule CD-1 because Great Plains has experienced cancellation of certain agreements between its large volume customers.

Northern avers that the reassignment of volumes would have no impact on Great Plains' authorized level of firm entitlement.

No facilities are required to be constructed or modified to accommodate Great Plains' request, it is stated.

Comment date: April 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP86-305-000]

February 20, 1986.

Take notice that on February 3, 1986, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP86-305-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon certain facilities, all in Kansas and Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to install approximately 0.75 mile of 16-inch tie-over pipeline and appurtenant facilities from the Pampa-Wichita 20-inch pipeline to the Alva compressor station (Alva station) intake and approximately 0.75 mile of 16-inch tie-over pipeline from the Alva station discharge to the Pampa-Wichita 20-inch pipeline to replace the existing 0.75 mile of 8-inch pipe. In addition, Applicant proposes to abandon the seven 1,000 horsepower compressor units at the Corwin compressor station (Corwin station). Applicant states that these units were installed in 1928 and have become obsolete. Applicant indicates that the proposed rearragement of facilities would allow it to use the existing horsepower at Alva station and bypass the Corwin station.

Applicant states that the estimated cost of the proposed facilities is $500,000, which would be paid from treasury cash. Applicant indicates that the estimated total cost for the proposed abandonment is $145,296 with an estimated salvage value of $145,296.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP86-302-000]

February 20, 1986.

Take notice that on January 31, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-302-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Martin Oil Service, Inc. (Martin), certain wellhead compression facilities located in Weld County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests the authority to abandon and sell its Dacona and Haudrick compressors and appurtenant facilities. It is stated that the sale would be undertaken pursuant to an agreement between the Applicant and Martin dated June 28, 1985. It is further stated that the proposed sale price is the net book value of the facilities as of June 30, 1985, which is $20,329.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP86-271-000]

February 20, 1986.

Take notice that on January 15, 1986, United States Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP86-271-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in gas sales volumes to the Town of Greensburg, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to increase Greensburg's maximum daily quantity (MDQ) of natural gas under Rate Schedule G-N from 474 Mcf to 874 Mcf. It is stated that Greensburg requires an increase in its MDQ to meet current demands on its distribution system. It is further stated that one potential customer is a commercial establishment which requires approximately 350 Mcf of natural gas per day. Greensburg's ability to respond to this customer's need is constrained by a total MDQ limitation of 474 Mcf, it is explained. United States that it has sufficient gas supply available to serve the proposed requirements of Greensburg. United further states that no additional facilities would be required to deliver the proposed volumes.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Valero Interstate Transmission Company

[Docket No. CP86-300-000]

February 20, 1986.

Take notice that on January 30, 1986, Valero Interstate Transmissison Company (Vitco), P.O. Box 1569, San Antonio, Texas 78296, filed in Docket No. CP86-300-000 and application pursuant to secton 7 of the National Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of interstate pipelines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Vitco states that it would comply with the conditions specified by paragraph (d) of § 284.221 of the Commission's Regulations.

Comment date: March 13, 1986, in accordance wtih Standard Paragraph F at the end of this notice.

9. Williston Basin Interstate Pipeline Company

[Docket No. CP86-284-000]

February 20, 1986.

Take notice that on January 23, 1986, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86-284-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to operate one sales tap and appurtenant facilities under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin seeks authorization for a sales tap and appurtenant facilities, which was previously installed under emergency conditions pursuant to § 157.48 of the Commission's Regulations, in order to deliver gas owned by Phillips Petroleum Company (Phillips) for use by Phillips in its gathering operations behind its Tioga processing plant, Williams County, North Dakota. Williston Basin advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers.

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Comment date: April 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4161 Filed 2-25-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of January 27 Through February 7, 1986

During the period of January 27 through February 7, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

Meier Oil Service, Inc., Ashkum, Illinois, KEE-0014

Meier Oil Service, Inc., (Meier) filed an Application for Exception from the provisions of the mandatory Form EIA-782B filing requirement. The exception request, if granted, would remove Meier from the list of firms required to respond to the EIA-782B survey. On February 5, 1986, the Department of Energy issued a Proposed Decision and Order granting Meier a three month exception from the reporting requirement.

Wadsworth Oil Company, Inc., Tuskegee, Alabama; KEE-0010

Wadsworth Oil Company, Inc. (Wadsworth) filed an Application for Exception from the Form EIA-782B reporting requirement. The exception request, if granted, would permit Wadsworth to be removed from the sample of surveyed oil companies. On February 5,1986, the Department of Energy issued a Proposed Decision and Order which determined that Wadsworth be granted limited exception relief to simplify the reporting requirement.

[FR Doc. 86-4186 Filed 2-25-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36112; FRL-2974-6]

Pesticide Programs; Chemigation Label Improvement Program; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft Label Improvement Program (LIP) on Chemigation.

SUMMARY: This notice announces the availability of a draft pesticide LIP for pesticides applied through irrigation systems for comment. The Agency is seeking to decrease the likelihood of environmental risks associated with pesticide contamination of ground water and of human exposure to pesticides which may be attributed to pesticide-treated irrigation water. The proposed LIP will provide to users either labeling use directions, including required safety equipment, or label prohibitions of pesticides which may be involved in chemigation practices.

DATE: Written comments on the LIP should be submitted on or before April 14, 1986.

ADDRESSES: Three copies of comments identified with the docket number OPP-36112 should be submitted to: By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 236,

CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of the LIP, contact Frances Mann of the Information Service Section, in Rm. 236 at the address given above (703-557-3262). Requests should be submitted no later than March 13, 1986, to allow sufficient time for receipt before the close of the comment period.

For technical questions contact, by mail: Thomas Ellwanger, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Rm. 241, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1650).

Dated: February 20, 1986.

James W. Akerman,

Acting Director, Registration Division.

[FR Doc. 86-4120 Filed 2-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36109; FRL-2974-3]

Pesticide Programs; Standard Evaluation Procedure's; Availability of Draft Guidance Documents

AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice of Availability; Request for Comments.

SUMMARY: The Environmental Protection Agency announces the availability of the following draft Standard Evaluation Procedures for public comment prior to their publication: Seed Germination/Seedling Emergence—Tier 1; Seed Germination/Seedling Emergence—Tier 2; Vegetative Vigor—Tier 1; Vegetative Vigor—Tier 2; Terrestrial Field Testing—Tier 3; Growth and Reproduction of Aquatic Plants—Tier 1; Growth and Reproduction of Aquatic Plants—Tier 2; Aquatic Field Testing—Tier 3; Target Area Testing; Droplet Size Spectrum; and Drift Field Evaluation. The Standard Evaluation Procedures (SEPs) are a standard set of guidance documents of how the Hazard Evaluation Division (HED) in the Office of Pesticide Programs evaluates studies and scientific data to ensure consistency of scientific reviews of studies submitted by registrants in support of pesticide registrations. This will increase the efficiency of pesticide registration and other regulatory activities. Copies of the draft documents are available at the address given below.

DATE: Comments must be received on or before March 28, 1986.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-36109," by mail to: Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of these draft Standard Evaluation Procedures are also available at this address.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1121, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703-557-7695).

SUPPLEMENTARY INFORMATION: The Standard Evaluation Procedures are a standard set of guidance documents on how HED evaluates studies and scientific data to ensure consistency of scientific reviews. Not only will the SEPs serve as valuable internal reference documents and training aids for new staff, but these documents will also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in HED science reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. The SEPs also serve as training aids for new staff, and inform the public of the internal review process. Throughout the remainder of this and next fiscal year, HED will be writing additional SEPs on the scientific disciplines of toxicology, chemistry, exposure assessment, and ecological effects. Twenty SEPs have been published thus far and will soon be available from the National Technical Information Service, which will be responsible for distribution of all SEPs after they have been finalized. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Program Office, intra-Agency, FIFRA Scientific Advisory Panel, and public comment; this announcement solicits public comment on the draft documents.

Dated: February 3, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86-4003 Filed 2-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51005; FRL-2953-2]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-576, beginning on page 1283, in the issue of Friday, January 10, 1986, make the following correction:

On page 1284, third column, in the third line, "1,00-3,000" should read "1,000-3,000".

BILLING CODE 1505-01-M

[OPP-100036; FRL-2957-4]

Toxic and Hazardous Substances Control, Life Systems, Inc.; Transfer of Data

Correction

In FR Doc. 86-1220, beginning on page 2966, in the issue of Wednesday, January 22, 1986, make the following correction:

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On page 2966, under DATE, in the third line, "February" should read "January".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMISSION

A.G.A., Inc.; Hearing Designation Order

In re Applications of MM Docket No. 86-69:

	File No.
A.G.A., Inc., La Coste, Texas, Req: 810 kHz, 0.25 kW, DA-D.	BP-841102AI
Fundamental Christian Broadcasting, Somerset, Texas, Req: 810 kHz, 0.5 kW, DA-D.	BP-850208AD

For Construction Permit.

Adopted: February 10, 1986.
Released: February 20, 1986.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned applications for new AM broadcast stations and an informal objection to the A.G.A., Inc. (AGA) application filed by Fundamental Christian Broadcasting (FCB).

2. *A.G.A., Inc.* FCB asserts that the AGA application is unacceptable for filing because some of the technical information describing the proposed directional antenna system is inaccurate. FCB further asserts that in contested proceedings, an applicant whose proposal is returned as unacceptable for filing is accorded only one opportunity for acceptance *nunc pro tunc* if a minor curative amendment is tendered within thirty days of dismissal. The AGA application was initially returned on October 4, 1984, as unacceptable for filing, and was retendered November 2, 1984. Therefore, FCB asserts, AGA has had its one opportunity to submit a curative amendment. We agree with FCB in so far as it claims that some of the information in the AGA application is inaccurate. Dismissal is unwarranted, however, as these errors are not of a nature rendering the proposal patently defective under our rules. Rather, we were able to process the amended application without undue delay and determine that the proposal conformed to all relevant acceptance criteria. The application is therefore acceptable for filing. We will deny FCB's objection.

3. The AGA application does however contain errors that must be corrected. The proposed tower heights in degrees do not agree with the heights in feet as listed on the application form (FCC Form 301) and the field ratio for tower number one is mistakenly listed as zero. In addition, the application does not contain antenna site photographs as required by Section V-A, paragraph 8, of the application form. AGA must therefore correct these deficiencies and submit an amendment to the presiding Administrative Law Judge within thirty days of the release of this Order.

4. The environmental narrative statement contained in the AGA application does not contain information concerning the zoning classification of the antenna site and whether construction of the proposed facilities has been a source of controversy in the local community as required by § 1.1311(a) (3) and (4) of the Commission's Rules. AGA must therefore comply with the rules and file the required environmental information with the presiding Administrative Law Judge within thirty days of the release of this Order. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Section 1.1317 of the Rules will be waived by the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

5. The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by A.G.A., Inc. Accordingly an appropriate issue will be specified.

6. *Fundamental Christian Broadcasting.* On November 22, 1985, FCB filed an amendment to its application. The last date on which an amendment could be filed as a matter of right ("B" cut-off date) was July 9, 1985. The amendment contains current mailing address and ownership information and is in part required by § 1.65 of the Commission's Rules. We will therefore accept the amendment for filing with the restriction that it cannot be used to enhance the comparative position of the applicant nor to diminish the comparative position of any other applicant. The amendment is, however, incomplete in that that a one-third ownership interest in the applicant was transferred from one individual to another but none of the information concerning the legal qualifications of that new individual required by section II of the application form was provided. FCB must therefore file the necessary information with the presiding Administrative Law Judge within thirty days of the release of this Order.

7. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearings in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of the antenna towers proposed by A.G.A., Inc.

2. If a final environmental impact statement is issued with respect to the proposal of A.G.A., Inc., which concludes that the proposed facility is likely to have an adverse effect of the quality of the environment, to determine:

a. Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules and,

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

3. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(j) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals, on a comparative basis, would better serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

9. It is further ordered, that the Federal Aviation Administration is made a party to these proceedings.

10. It is further ordered, that the informal objection filed by Fundamental Christian Broadcasting is denied.

11. It is further ordered, that A.G.A., Inc., shall within thirty (30) days of the release of this Order, submit to the presiding Administrative Law Judge, an amendment to its application correcting the deficiencies set out in paragraph three (3) above.

12. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within thirty (30) days of the release of this Order, A.G.A., Inc., shall submit an amendment to its application containing the required environmental narrative information (set out in paragraph four (4) above) required by § 1.1311 of the Commission's Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

13. It is further ordered, that the amendment filed by Fundamental Christian Broadcasting on November 22, 1985, is accepted for filing subject to the restrictions set out in paragraph six (6), above.

14. It is further ordered, that Fundamental Christian Broadcasting file the legal qualification information required by section II of the application form (FCC Form 301) for each new party to its application with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

15. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington DC 20554.

16. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. It is further ordered, that pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-4094 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

Federal Advisory Committee for the 1987 ITU World Administrative Radio Conference for the Mobile Services; Meeting

February 21, 1986.

The sixth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Friday, April 25, 1986, at 9:30 A.M. in the Commission Meeting Room 856, 1919 M Street, NW., Washington, DC.

The meeting agenda is:

1. Approval of meeting agenda.
2. Approval of the summary record of the March 10, 1986, meeting.
3. Report on administrative matters from designated federal employee.
4. Progress reports and consideration of draft proposals from Ad Hoc Group Chairmen:
   (a) Aeronautical,
   (b) Land Mobile,
   (c) Maritime,
   (d) Satellite,
   (e) Steering.
5. Report on technical matters under consideration in the U.S. CCIR organization relevant to the Mobile WARC.
6. Reports on international meetings bearing on the Mobile WARC.
7. Other business.
8. Selection of next meeting date.

Anyone desiring further information should contact Gordon Hempton, FCC/PRB at (202) 632-7175. These meetings are open to the public.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 86-4128 Filed 2-25-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L. Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-010676-011.

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Atlanttrafik Express Service, Ltd.
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Container Lines
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" di Navigazione, S.P.A.
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Nordana Line/Dannebrog Line AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The modification provides for the calling of an emergency Owners' Meeting of the agreement. The parties have requested a shortened review period.

Agreement No. 024-010889.

Title: Port of Galveston Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (Port)
Container Terminal of Galveston, Inc. (CTG)

Synopsis: The proposed agreement would permit the Port to lease the Galveston Wharves' East End Container Terminal to CTG to be operated as a public marine container terminal. The initial term of the agreement is one year with options for ten one-year extensions. The parties have requested a shortened review period.

Dated: February 21, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4137 Filed 2-25-86; 8:45 am]

BILLING CODE 6730-01-M

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FEDERAL RESERVE SYSTEM

Amsterdam-Rotterdam Bank N.V. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Amsterdam-Rotterdam Bank N.V.*, Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, The Private Bank & Trust, N.A., Miami, Florida, in trust company and investment and financial advisory activities, pursuant to § 225.25(b) (3) and (4). These activities would be conducted in the State of Florida.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to engage *de novo* through its subsidiary, Financial Data Dimension, Inc., Thomson, Georgia, in the business of providing data processing and data transmission services and facilities to other financial institutions, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than March 13, 1986.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mid Town Bancorp. Inc.*, Chicago, Illinios; to engage *de novo* through its subsidiary, Mid Town Development Corporation, Chicago, Illinois, in real estate development loans, real estate rehabilitation loans and other commercial and industrial loans. Some consumer finance, credit card and factoring activities may be engaged in by subsidiary, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 14, 1986.

Board of Governors of the Federal Reserve System, February 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4066 Filed 2-25-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicated how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than March 15, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire the remaining 75 percent of the outstanding common stock of EXCEL Business Systems, Inc. ("XCEL"), Mill Valley, California, a California corporation, and thereby engage through EXEL, as a wholly-owned subsidiary, in providing data processing and data transmission services and facilities to other financial institutions, pursuant to § 225.25(b)(7) of Regulation Y. Such activities will involve a packaged system including all applications needed to meet the data processing requirements of financial and banking institutions, including the processing of general ledgers, deposits and extensions of credit. The activities will be conducted from an office of EXCEL, located in Mill Valley, California, serving the United States and the District of Columbia.

Board of Governors of the Federal Reserve System, February 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4069 Filed 2-25-86; 8:45 am]

BILLING CODE 6210-01-M

Shawnee Financial Services Corp. et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation woud not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Shawnee Financial Services Corporation*, Everett, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Everett Bank, Everett, Pennsylvania. Comments on this application must be received not later than March 20, 1986.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Premier Bancorporation, Inc.*, Libertyville, Illinois; to acquire 100 percent of the voting shares of Premier Financial Management, Inc., Libertyville, Illinois, thereby indirectly acquiring Zion State Bank and Trust Company, Zion, Illinois.

2. *Premier Financial Management, Inc.*, Libertyville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Shiloh Bancshares, Inc., Zion, Illinois, thereby indirectly Zion State Bank and Trust Company, Zion, Illinois.

Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J. R. Montgomery Bancorporation*, Lawton, Oklahoma; to acquire 11 percent of City National Bank and Trust Company, Lawton, Oklahoma.

2. *Kanbanc, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 50.01 percent of the voting shares of Citizens State Bank of Pomona, Pomona, Kansas and 50.02 percent of the voting shares of The Hepler State Bank, Hepler, Kansas. Comments on this application must be received not later than March 20, 1986.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Oaklawn Financial Corporation*, Texarkana, Texas; to acquire 100 percent of the voting shares of First Bank and Trust, New Boston, New Boston, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4070 Filed 2-25-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Delegation of Authority; Health Resources and Services Administration

Notice is hereby given that in furtherance of the authorities vested in the Administrator, Health Resources and Services Administration (HRSA), by the Secretary of Health and Human Services' Reorganization Order of September 1, 1982, the Administrator, HRSA, has delegated the following authorities under Title III of the Public Health Service Act, as amended:

Authority	To whom delegated	Area of responsibility
Authority under section 301 (42 U.S.C. 241) relative to research, investigation, and functions;	HRSA Bureau Directors.	Their respective bureaus.
Authority under section 311 (42 U.S.C. 243) concerning Federal-State cooperation;	HRSA Bureau Directors.	Their respective bureaus.
Authority under section 320 (42 U.S.C. 255) concerning receipt, apprehension, detention, treatment, and release of lepers;	Director BHCDA.	BHCDA
Authority under section 321 (42 U.S.C. 248) relative to hospitals;	Directors, BHCDA & IHS.	Their respective bureaus.
Authority under section 322 (42 U.S.C. 249) relative to care and treatment of persons under quarantine and other persons, except the authority to provide mental health care for the Haitian/Cuban Initiative which is the functional responsibility of the Alcohol, Drug Abuse, and Mental Health Administration;	Directors, BHCDA & IHS.	Their respective bureaus.
Authority under section 323 (42 U.S.C. 250) concerning the care and treatment of Federal prisoners;	Director, BHCDA.	BHCDA.
Authority under section 324 (42 U.S.C. 251) concerning the examination and treatment of Federal employees, excluding those authorities delegated to PHS Regional Health Administrators (RHAs);	Director BHCDA.	BHCDA.
Authority under section 324 (42 U.S.C. 251) and the authorities of the Secretary under 5 U.S.C. 7901 pertaining to the FEOH program, including the authority to enter into interagency or intra-agency agreements, but excluding agreements that are national or multiregional in scope. Also included is the authority for the day-to-day operation of FEOH units in accordance with the terms of the interagency agreements;	RHAs	Their respective regions.
Authority under section 324(b) (42 U.S.C. 251b) concerning medical care for Federal employees and their dependents at remote facilities of IHS;	Director, IHS	IHS.
Authority under section 325 (42 U.S.C. 252) concerning the examination of aliens;	Directors, BHCDA & IHS.	Their respective bureaus.
Authority under section 326 (42 U.S.C. 253) concerning services to Coast Guard, Coast and Geodetic Survey, and Public Health Service;	Director, BHCDA.	BHCDA.
Authority under section 327 (42 U.S.C. 254) concerning interdepartmental work;	HRSA Bureau Directors.	Their respective bureaus.
Authority under section 327A (42 U.S.C. 254a) as it pertains to the sharing of medical care facilities and resources under the jurisdiction of the Administrator, Health Resources and Services Administration;	HRSA Bureau Directors.	Their respective bureaus.
Authority under section 328 (42 U.S.C. 254a-1) relative to hospital affiliated primary care centers, excluding those authorities delegated to RHAs;	Director, BHCDA.	BHCDA
Authority under section 328 (42 U.S.C. 254a-1) to award grants to community hospitals to support demonstration projects in the planning, development, and operation of hospital-affiliated primary care centers other than grants that are national or multiregional in scope;	RHAs	Their respective regions.

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Authority	To whom delegated	Area of responsibility
Authority under section 329 (42 U.S.C. 254b) relative to Migrant Health Centers, excluding those authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 329 (42 U.S.C. 254b) to award grants for migrant health centers, excluding grants that are national or multiregional in scope;	RHAs	Their respective regions.
Authority under section 330 (42 U.S.C. 254c) relative to Community Health Centers, excluding those authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 330 (42 U.S.C. 254c) to award grants for community health centers, excluding grants that are national or multiregional in scope;	RHAs	Their respective regions.
Authority under section 331 (42 U.S.C. 254d) relative to the National Health Service Corps;	Director, BHCDA.	BHCDA.
Authority under section 332 (42 U.S.C. 254e) relative to the designation of health manpower shortage areas, excluding section 332(h) (42 U.S.C. 254e(h));	Director, BHPr.	BHPr.
Authority under section 332(h) (42 U.S.C. 254e(h)) relative to information programs pertinent to the designation of health manpower shortage areas;	Director, BHCDA.	BHCDA.
Authority under section 333 (42 U.S.C. 254f) relative to the assignment of Corps personnel to provide health services in or to a health manpower shortage area;	Director, BHCDA.	BHCDA.
Authority under section 334 (42 U.S.C. 254g) relative to cost sharing factors regarding the National Health Service Corps Program, excluding the authority delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 334b (42 U.S.C. 254g(b)) relative to the waiver authority for entities, excluding the waiver of loans approved under section 335(c);	RHAs	There respective regions.
Authority under section 335 (42 U.S.C. 254h) as it pertains to the provision of health services by Corps members, excluding those authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 335(c) (42 U.S.C. 254h(c)) to negotiate and award loans to entities;	RHAs	Their respective regions.
Authority under section 338 (42 U.S.C. 254k(b)) relative to the preparation for practice under the NHSC Scholarship Program;	Director, BHCDA.	BHCDA.
Authority under section 338A (42 U.S.C. 254l) relative to the National Health Service Corps Scholarship Program;	Director, BHCDA.	BHCDA.
Authority under section 338B (42 U.S.C. 254m) concerning obligated service of an individual as a member of the National Health Service Corps;	Director, BHCDA.	BHCDA.
Authority under section 338C (42 U.S.C. 254n) concerning release from Corps service obligation to enter into private practice, excluding the authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 338C(e)(1) (42 U.S.C. 254n) to negotiate and award loans to NHSC scholarship recipients for establishing private practices;	RHAs	Their respective regions.
Authority under section 338D (42 U.S.C. 254o) to take action relative to an individual's breach of Corps scholarship contract, including the waiver authority pertaining to the Indian Health Scholarship Program;	Director, BHCDA.	BHCDA.
Authority under section 338E (42 U.S.C. 254p) concerning special loans for former Corps members to enter private practice, excluding the authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 338E (42 U.S.C. 254p) to negotiate and award loans to assist NHSC scholarship recipients in meeting the costs of establishing their private practices	RHAs	Their respective regions.
Authority under section 338G (42 U.S.C. 254r) concerning the Indian Health Scholarship Program, excluding the waiver authority under section 338D as it pertains to the Indian Health Scholarship Program;	Director, IHS	IHS.
Authority under section 339 (42 U.S.C. 255) relative to the Home Health Services, excluding the authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 339(a) (42 U.S.C. 255) to make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating home health programs, excluding grants that are national or multiregional in scope;	RHAs	Their respective regions.
Authority under section 339(b) (42 U.S.C. 255) to make grants to public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services, other than grants that are national or multiregional in scope;	RHAs	Their respective regions.
Authority under section 340 (42 U.S.C. 256) relative to Primary Care Research and Demonstration Projects subject to the limitations set forth in section 340(c)(1) and section 340(g)(4) of the Public Health Service Act, excluding the authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 340 (42 U.S.C. 256) to administer grants for primary care research and demonstration projects, subject to the limitations set forth in section 340(c)(1) and section 340(g)(4), excluding grants that are national or multiregional in scope;	RHAs	Their respective regions.
Authority under section 340A (42 U.S.C. 256a) concerning Technical Assistance Demonstration Grants and Contracts, excluding the authorities delegated to RHAs;	Director, BHCDA.	BHCDA.
Authority under section 340A (42 U.S.C. 256a) to administer technical assistance demonstration grants to public and private entities to assist such entities in meeting their costs of providing technical assistance to entities engaged in the planning, development, or operation (or any combination of such activities) of migrant health centers under section 329, community health centers under section 330, or any other centers for the delivery of primary health care;	RHAs	Their respective regions.
Authority under Part H (Sections 371–376) (42 U.S.C. 273 et seq.) relative to organ transplants;	Director, Office of Organ Transplantation.	Office of Organ Transplantation.

These authorities may be redelegated.

All previous delegations have been superseded. Provision was made for all previous redelegations to continue in effect pending further redelegation.

This delegation was effective upon date of signature.

Dated: February 14, 1986.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 86-4084 Filed 2-25-86; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following Subcommittees of the Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee for March 1986, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

The publication of this meeting notice is late as the committee has recently been established and the committee members approved.

These meetings will be open to the public to discuss administrative matters for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. The meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

After the meetings, Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892 (Telephone: 301-496-6917), will provide a summary of the meetings and rosters of committee members. Substantive program information may be obtained from the executive secretary of each Subcommittee whose name, room number, and telephone number are listed below.

Name of committee: Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee (ADDK).

Name of subcommittee: ADDK–A.

Executive secretary: Ms. Tommie Sue Tralka, Room 406, Westwood Building, Telephone: 301-496-8830.

Dates of meeting: March 4–5, 1986.

Place of meeting: Linden Hill Hotel, Bethesda, MD.

Open: March 4, 1986, 7:30 p.m.–8:30 p.m.

Closed: March 4, 1986, 8:30 p.m.–11:30 p.m.; March 5, 1986, 8:30 a.m.–adjournment.

Name of subcommittee: ADDK–B.

Executive secretary: Dr. Michael K. May, Room 419, Westwood Building, Telephone: 301-496-7697.

Dates of meeting: March 3–4, 1986.

Place of meeting: Linden Hill Hotel, Bethesda, MD.

Open: March 3, 1986, 8:30 a.m.–9:30 a.m.

Closed: March 3, 1986, 9:30 a.m.–5:00 p.m.; March 4, 1986, 8:30 a.m.–adjournment.

Name of subcommittee: ADDK–C.

Executive secretary: Dr. Michael K. May, Room 419, Westwood Building, Telephone: 301-496-7697.

Dates of meeting: March 11–12, 1986.

Place of meeting: Linden Hill Hotel, Bethesda, MD.

Open: March 11, 1986, 9:00 a.m.–10:00 a.m.

Closed: March 11, 1986, 10:00 a.m.–5:00 p.m.; March 12, 1986, 8:30 a.m.–adjournment.

Name of subcommittee: ADDK–D.

Executive secretary: Ms. Tommie Sue Tralka, Room 406, Westwood Building, Telephone: 301-496-8830.

Dates of meeting: March 11–12, 1986.

Place of meeting: Linden Hill Hotel, Bethesda, MD.

Open: March 11, 1986, 7:30 p.m.–8:30 p.m.

Closed: March 11, 1986, 8:30 p.m.–11:30 p.m.; March 12, 1986, 8:00 a.m.–adjournment.

Dated: February 24, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4326 Filed 2-25-86; 11:12 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review

February 5, 1986.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Application for Training or Employment Assistance, 25 CFR Parts 26 and 27.

Abstract: This form requests information on the age, marital status, employment, education and income of applicants for training or employment assistance. This information is used to determine applicant's eligibility and how much financial assistance is needed.

Bureau Form Number: BIA 8205.

Frequency: On occasion.

Description of Respondents: Individuals or households.

Annual Responses: 6,400.

Annual Burden Hours: 3,200.

Bureau clearance officer: Cathie Martin, 202-343-1676.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86-4072 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-02-M

Information Collection Submitted to the Office of Management and Budget for Review

February 5, 1986.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should

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be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Demonstrated Expansion (Letter), 25 CFR Part 27.

Abstract: To determine if OJT contractor is eligible for extension of contract beyond two years this letter requests information on enterprise's expansion for the past two years, number of additional trainees the enterprise will train, and how many trainees, who have completed training, has the enterprise employed or assisted in finding employment elsewhere.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Small businesses or organizations.

Annual Responses: 10.

Annual Burden Hours: 5.

Bureau clearance officer: Cathie Martin, 202-343-1676.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86-4071 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Receipt of Application for Permit; Endangered and Threatened Species

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-703529

Applicant: Paul E. Moler, Gainsville, FL

The applicant requests a permit to import a blood sample of an Orinoco crocodile (*Crocodylus intermedius*) from Mr. John Thorbjarnarson of Calabozo, Venezuela, for the purpose of scientific research.

PRT-703457

Applicant: Pamela Bompart, Helena, MT

The applicant requests a permit to import eight captive-bred golden parakeets (*Aratinga guarouba*) from Carterton Breeding Avairies, Oxford, England for enhancement of propagation of the species.

PRT-686367

Applicant: Bill Burnhana/Peregrine Fund, Inc., Boise, ID

The applicant requests an amendment to his permit to take, capture, collect, and salvage American peregrine falcons (*Falco peregrinus anatum*) and/or their eggs for scientific research and enhancement of survival to include the States of Oregon and Washington.

PRT-703507

Applicant: Washington Park Zoo, Portland, OR

The applicant requests a permit to import one male and two female Francois' langurs (*Presbytis francoisi*) from Chongging Zoo, Chongging, China, for enhancement of propagation of the species.

PRT-703926

Applicant: Frank Buck Bring 'Em Back Alive, Inc., Sarasota, FL

The applicant requests a permit to purchase 0.4 Asian elephants (*Elephas maximus*) from John Cuneo of Hawthorn Circus Corporation, Grayslake, IL, for the purpose of enhancement of propagation.

PRT-702013

Applicant: Lorne E. Hanna, Corvallis, OR

The applicant requests a permit to engage in interstate and foreign commerce with the following species of endangered or threatened cactus species: *Cereus eriophorous* var. *fragrans, Coryphantha minima, C. sneedii* var. *leii, C. sneedii* var. *sneedii, Echinocereus fendleri* var. *kunzleri*, and *E. triglochidiatus* var. *inermis*.

PRT-697630

Applicant: U.S. Fish & Wildlife Service, Regional Director, Region 3, Minneapolis, MN

The applicant requests an amendment to their current permit to take piping plovers (*Charadrius melodus*) and least terns (*Sterna antillarum*) for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing, or other Service work for those species.

PRT-703246

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI

The applicant requests a permit to import one Asian elephant (*Elephus maximus*) from Rangoon Zoo, Burma, for the purpose of enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 20, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-4153 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-54980]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e) and section 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611 nt, will be issued to Cook Inlet Region, Inc., for approximately 171 acres. The lands involved are in the vicinity of Tps. 6, 7 and 8 N., R. 8 W., Copper River Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the COPPER VALLEY VIEWS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until March 28, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-4130 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-JA-M

California; Proposed Reinstatement of Terminated Oil and Gas Lease

A petition for reinstatement of oil and gas lease CA 14517, embracing lands in the State of California, County of Kern,

was timely filed and accompanied by all the required rentals and royalties accruing from December 1, 1985, the date of termination.

The lessee has agreed to new lease terms for rental at the rate of $10.00 per acre or fraction thereof and royalty at a rate of not less than 16⅔ percent, computed on a sliding scale four percentage points greater than the competitive royalty schedule in the original lease. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

The lessee having met all the requirements for reinstatment of the lease as set forth out in section 31 (d) and (e) of the Minerals Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 18, 1986.

Joan B. Russell,

Chief, Leasable Minerals Section Branch of Lands & Minerals Operations.

[FR Doc. 86-4073 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 918]

California; Filing of Plat of Survey

February 7, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Marin County

T. 1 S., R. 6 W.

2. These plats, in three (3) sheets, representing the administrative survey of a portion of the upland boundaries of Parcel 2 of the former Marin Headlands, State Park, within the Golden Gate National Recreation Area in Township 1 South, Range 6 West, Mount Diablo Meridian, California, under Group No. 918, California, were accepted January 13, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the National Park Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room #2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records and Information Section.

[FR Doc. 86-4076 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 929]

California; Filing of Plat of Survey

February 7, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Trinity County

T. 32 N., R. 10 W.

2. This plat, representing the dependent resurvey of a portion of the subdivision-of-section lines and the metes-and-bounds survey of Lot 28, in section 1, Township 32 North, Range 10 West, Mount Diablo Meridian, California, under Group No. 929, California, was accepted January 22, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records and Information Section.

[FR Doc. 86-4075 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-40-M

[C-2-86]

California; Filing of Plat of Survey

February 7, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 2 N., R. 2 E.

2. This supplemental plat of section 19, Township 2 North, Range 2 East, San Bernardino Meridian, California, was accepted January 13, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Department of Agriculture, Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 86-4074 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Wind Energy Rights-of-Way; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Bid Offer on Rights-of-Way for Wind Energy Development near Tehachapi, California.

SUMMARY: The following described public lands have been examined and identified as suitable for wind energy development through the issuance of rights-of-way under section 501 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2776, 43 U.S.C. and 43 CFR, Part 2800, at no less than the fair market value.

Serial No.	Legal description	Acres	Minimum appraised value
CA 18759	Mount Diablo Meridian, California, T. 32 S., R. 35 E., Sec. 34, W½NE¼, SE¼NE¼, SE¼, San Bernardino Base and Meridian, California.	280	$18,500
CA 18760	T. 11 N., R. 14 W., Sec. 34, SE¼	160	10,600
CA 18761	T. 10 N., R. 14 W., Sec. 8, E½SW¼	480	31,700
CA 18762	T. 10 N., R. 14 W., Sec. 10, W½	320	21,000
CA 18763	T. 10 N., R. 15 W., Sec. 24, Lots 3-6, 11-14	375.40	25,000
CA 18764	T. 10 N., R. 14 W., Sec. 10, E½	320	21,000
CA 18765	T. 10 N., R. 15 W., Sec. 24, Lot 1, 2, 7-10, 15, 16	378.83	25,000

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SUPPLEMENTARY INFORMATION: The objectives of the Bureau of Land Management (BLM) are to:

(1) Ensure timely and orderly development of this important resource in a manner compatible with the use of the public lands for other purposes;

(2) Assure that wind development and production is conducted with maximum protection of the environment; and

(3) Assure the public a fair return for the use of public lands and the use of its renewable resources.

(4) Foster diligent development and production of the wind resources by sound companies using proven technology, rather than focusing on experimental research and development.

The schedule of this right-of-way includes:

(1) Conducting competitive bidding for the development rights on the offered parcels;

(2) Issuance of rights-of-way to the successful bidders;

(3) Submission of detailed plans of development and site specific Environmental Assessments (EAs) prepared to BLM requirements by the right-of-way grantees within twelve months of issuance of the rights-of-way;

(4) Issuance of Notices to Proceed upon (a) BLM review and approval of the plans and EAs, and (b) grantees' submission of reclamation bonds and funds to reimburse BLM expenses to be incurred in monitoring the rights-of-way activity.

The annual rental on a parcel will be the greater amount of (1) the basic annual site rental, which must be at least the appraised value shown above, or (2) 4% of the annual gross revenues received from the sale of electrical energy produced from the wind resources.

Competitive bidding procedures are being used in this offer. Each parcel will be offered for wind energy development rights by sealed bid only. All sealed bids must be submitted to BLM's Ridgecrest Resource Area Office at 112 East Dolphin Street, Ridgecrest, California 93555 no later than April 14, 1986. Sealed bids will be for not less than the appraised values specified in this notice with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, BLM for not less than 10% of the amount of the bid. The sealed bid envelopes must be marked on the front left corner as shown in the following example:

Tehachapi Wind Energy Rights-of-Way
Notice of Realty Action
Serial No. —
Final Bid Date—April 14, 1986

If two or more envelopes containing valid bids of the same amount are received for the wind energy parcels, the determination of which is considered the highest bid shall be by supplemental biddings. Bidders must be authorized to do business in the State of California. The apparent successful bidders will be required to demonstrate technical and financial capability to construct, operate, maintain and terminate the proposal. The remaining 90% of the bid amount shall be submitted prior to issuance of the rights-of-way. The rights-of-way will be subject to valid existing rights. Natural resource and land use constraints may limit development on portions of the parcels. Each right-of-way will contain general and site specific sitpulations.

FOR FURTHER INFORMATION CONTACT: To receive a copy of a sample right-of-way or for additional information, contact the BLM's Ridgecrest Resource Area Office at (619) 375-7125, 112 East Dolphin Street, Ridgecrest, California 93555.

Dated: February 12, 1986.

Hugh Riecken,

Acting District Manager.

[FR Doc. 86-3727 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposal Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5019, Block 530, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 14, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 18, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4077 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Diamond Shamrock Offshore Partners Ltd.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Offshore Partners Limited Partnership has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4912, Block 117, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 13, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 18, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4078 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Unit Operator of the Ship Shoal Block 113 Federal Unit Agreement No. 14-08-001-2931, submitted on February 13, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering appoval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 No. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 18, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4079 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4888, Block 292, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 14, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

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Dated: February 18, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4149 Filed 2-25-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Amdt. No. 1 to Delegation of Authority No. 133]

Authority Delegations; Assistant Administrator for Asia

A. AID Delegation of Authority No. 133, dated December 11, 1981 (46 FR 62337, December 23, 1983), is amended as follows:

1. *Section 4. Authorities Delegated to Assistant Administrators.*

a. Paragraph a. is amended by deleting "the Assistant Administrator for Near East" and by inserting "and Near East" after "the Assistant Administrator for Asia";

b. Subparagraph (1)(a) is deleted in its entirety and subparagraphs (1)(b), (1)(c) and (1)(d) are redesignated (1)(a), (1)(b) and (1)(c) respectively; and

c. Subparagraph (2)(a) is deleted in its entirety and subparagraphs (2)(b) and (2)(c) are redesignated (2)(a) and (2)(b), respectively.

2. *Section 5. Authorities That May be Redelegated to AID/Washington Officers.*

Section 5 is amended in its entirety to read as follows:

Section 5. Authorities That May be Redelegated to AID/Washington Officers.

a. Assistant Administrators may redelegate the authorities delegated under section 4 to Deputy Assistant Administrators.

b. The Senior Assistant Administrator for Science and Technology may redelegate the authorities under section 4 to the Agency Directors, except the authority to authorize a project when the life of project funding exceeds $20 million and the authority to amend a project authorization when the amendment will result in a total life of project funding of more than $30 million may be redelegated ony on a project-by-project basis.

c. Authorities redelegated hereunder may be exercised by persons performing the functions of the designated AID/Washington officer in an "Acting" capacity but may not be redelegated.

3. *Section 6. Authorities That May be Redelegated to Principal Officers of Field Offices.*

a. Paragraph c. is redesignated d.; and

b. A new paragraph c. is added as follows:

c. The authority to authorize a project when the life of project funding exceeds $20 million and the authority to amend a project authorization when the amendment will result in a total life of project funding of more than $30 million may be redelegated only on a project-by-project basis based on policy, programmatic and staffing considerations.

B. Effective Date: This amendment is effective February 10, 1986.

Dated: February 10, 1986.

Jay F. Morris,

Acting Administrator.

[FR Doc. 86-4066 Filed 2-25-86; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[332-223]

The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development; Public Hearing

AGENCY: International Trade Commission.

ACTION: Scheduling of additional public hearing.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Jose Mendez (202-523-8267), Research Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202-523-8267).

Background

The Commission instituted investigation No. 332-223, The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on November 25, 1985, of a request therefor from the Committee on Finance of the United States Senate.

Public Hearings

The Commission will hold a public hearing in connection with this investigation in San Diego, California on April 10, 1986. This hearing is in addition to two public hearings to be held in McAllen, Texas on April 7, 1986 and El Paso, Texas on April 8, 1986. The exact location and times of these hearings shall be announced at a later date. All persons shall have the right to appear, by counsel or in person, to present information to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 24, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs. The deadline for filing prehearing briefs is March 28, 1986.

Written Submissions

In lieu of or in addition to appearances at the public hearings, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commissions' *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than March 24, 1986. All submissions should be addressed to the Secretary, U.S. International Trade Commission, Washington, DC 20436.

Posthearing briefs must be submitted not later than the close of business on April 21, 1986. A signed original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: February 19, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4139 Filed 2-25-86; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332-224, Competitive Conditions in the U.S. Tuna Industry, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: One.

(2) Title of form: Competitive Conditions in the U.S. Tuna Industry—Questionnaire for U.S. Tuna Boat Owners.

(3) Type of request: New.

(4) Frequency of use: Nonrecurring.

(5) Description of respondents: Firms or individuals that own tuna fishing boats.

(6) Estimated number of respondents: 85.

(7) Estimated total number of hours to complete the forms: 1,275.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from Roger L. Corey, Jr., (USITC, tel. no. 202-724-1759). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable and describing the problem in detail. IF YOU ANTICIPATE COMMENTING ON A FORM BUT FIND THAT TIME TO PREPARE COMMENTS WILL PREVENT YOU FROM SUBMITTING THEM PROMPTLY YOU SHOULD ADVISE OMB OF YOUR INTENT WITHIN TWO WEEKS OF THE DATE THIS NOTICE APPEARS IN THE **Federal Register**. Ms. Picoult's telephone number is 202-395-7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: February 21, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4138 Filed 2-25-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads and Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Interstate Commerce Commission has adopted a methodology for indexing gross annual operating revenues for railroads and motor carriers of property to eliminate the effects of inflation from the classification process. The Commission's price deflator formula will provide assurances that carriers are moved to a higher classification because of real business expansion and not from inflationary consequences.

The annual average Railroad Freight Price Index will be used as the railroad deflator. The annual average Producer Price Index for all commodities will be used as the motor carrier deflator. Each index is developed by the Bureau of Labor Statistics. The base years for railroads and motor carriers are 1978 and 1980, respectively. The deflators for 1983, 1984, and 1985 are:

	Railroads—Railroad freight index			Motor carriers of property—Producer prices index	
	Index	Deflator percent		Index	Deflator percent
1978	213.1		1980	252.4	
1983	335.8	59.80	1983	284.6	88.69
1984	372.2	57.25	1984	290.4	86.91
1985	374.8	56.86	1985	291.9	86.47

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Leonardo A. Rodriguez or William G. Norris (202) 275-7510.

James H. Bayne,

Secretary

[FR Doc. 86-4122 Filed 2-25-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30771]

Burlington Northern Railroad Co.; Trackage Rights, Spokane International Railroad Co.

The Spokane International Railroad Company (SI) has agreed to grant overhead trackage rights to the Burlington Northern Railroad Company (BN) between Spokane (milepost 8.24) and Carders (milepost 2.49), WA. The trackage rights will be effective on April 1, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. A filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 18, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4123 Filed 2-25-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30777]

The Great Western Railway Co.; Modified Rail Certificate

On January 21, 1986, a notice was filed by the Great Western Railway Co. (GWR) seeking a modified certificate of public convenience and necessity under 49 CFR Part 1150, Subpart C. GWR is authorized to serve a 54.45-mile line of railroad known as the Lakeview Branch that was formerly owned and operated by Southern Pacific Transportation Company (SPT). The line extends from milepost 458.60 in Alturas, CA to milepost 513.05 in Lakeview, OR, and connects with SPT at Alturas.

By certificate and decision served October 19, 1985, in Docket No. AB-12 (Sub-No. 84), SPT was authorized to abandon the line. The County of Lake, OR then acquired the line from SPT, and by and through the Lake County Railroad Commission negotiated an agreement with GWR under which GWR will operate the line, effective January 17, 1986.

This notice will be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreements, and on the American Short Line Railroad Association.

Dated: February 18, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4124 Filed 2-25-86; 8:45 am]

BILLING CODE 7035-01-M

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JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at 200 Clarendon Street, Floor T27, Boston Massachusetts on March 24 and 25, 1986 beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exceptions of the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 21, 1986.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for Enrollment of Actuaries.

[FR Doc. 86–4119 Filed 2–25–86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Computer Aided Manufacturing-International, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Computer Aided Manufacturing-International, Inc. '(CAM–I") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CAM–I. CAM–I previously filed a written notification disclosing (1) the identities of the parties to CAM–I and (2) the nature and objectives of CAM–I. Notice of this filing was published in the **Federal Register** on January 24, 1985. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the current parties to Computer Aided Manufacturing-International, Inc. and its general areas of planned activities are given below.

Computer Aided Manufacturing-International, Inc. was incorporated as a membership organization in May 1972, for the purpose of sponsoring joint research and development in the use of computer systems and software to improve the productivity of industry. Its members contribute to, and with the assistance of professional staff, plan and contract for, basic research and development projects in such areas as geometric modeling, process planning, advanced numerical control, sculptured surfaces, robotics automation, quality assurance, factory management, and electronics automation. Upon completion, including testing and evaluation, the results of the projects are made available to the public for a fee. The members include corporations, government agencies, and educational institutions located in the United States, Europe, and Japan.

The current industrial member companies in the United States are: Allied Bendix Aerospace; Kansas City Division; Avco Aerostructures Division; Boeing Computer Services; Caterpillar Tractor Company; Coopers & Lybrand; Deere & Company; Digital Equipment Corporation; E.I. Du Pont de Nemours & Co., Inc.; Eastman Kodak Company; Eaton Corporation; Electronic Data Systems; FMC Corporation; Ford Motor Company; General Dynamics/Convair Division; General Dynamics/Fort Worth; General Electric Company; Grumman Aerospace Corporation; GTE Government Systems Corporation; Hughes Aircraft Company; Lawrence Livermore National Laboratory; Litton IST; Lockheed Missiles & Space Co., Inc.; Lockheed-Georgia Company; Los Alamos National Laboratory; Martin Marietta Data Systems; Martin Marietta Energy Systems, Inc.; McDonnell Douglas Corporation; Morton Thiokol, Inc.; Northrop Aircraft Corporation; Optical Gaging Products, Inc.; Sandia National Laboratories; SEI Information Technology; Sheffield Measurement Division; Warner & Swasey Co.; United Technologies Corporation; USAF AFWAL/MLTC; and Westinghouse Electric Corporation.

The current industrial member companies in Europe are: Aerospatiale (France); Asea AB (Sweden); British Aerospace Aircraft Group (United Kingdom); Construcciones Aeronauticas, S.A. (Spain); Daimler-Benz AG (West Germany); Evans & Sutherland (England); Factron Schlumberger (England); Fiat S.p.A (Italy); GEC Electrical Projects, Ltd. (England); Hewlett Packard GmbH (Federal Republic of Germany); Ingersoll Engineers (England); ITT AMT-Center (Belgium); IVF (Sweden); Lucas Group Services Limited (England); M.A.N. AG (Federal Republic of Germany); Matra-Datavision, S.A. (France); Messerschmitt-Bolkow-Blohm GmbH (West Germany); Nuovo Pignone S.p.A. (Italy); Philips International B.V. (The Netherlands); Prime Computer CAD/CAM Ltd. (England); Racal-Redac Ltd. (England); Raggruppamento Selenia Elsag (Italy); Renault Automation (France); Saab-Scania (Sweden); Sandvik AB Coromant (Sweden); Short Brothers Limited (Northern Ireland); Siemens AG (West Germany); Sperry Corporation (England); STC International Computers Ltd. (United Kingdom); Technical Research Centre of Finland (Finland); The Plessey Company PLC (England); TNO Metaalinstituut (The Netherlands); Valmet Corporation (Finland); Volkswagenwerk AG (West Germany); and Waldrich Coburg GmbH (Federal Republic of Germany).

Current industrial member companies in Japan are: Computer Services Corporation; Daikin Industries, Ltd.; Fujitsu Limited; Hitachi, Ltd.; Honda Engineering Co., Ltd.; Japan Information Services, Ltd.; Kawasaki Heavy Industries, Ltd.; Matsushita Electric Industrial Co., Ltd.; Mitsubishi Electric Corporation; Nachi Fujikoshi Corporation; NEC Corporation; Nippon Telegraph & Telephone Public Corp.; Nippon Univac Kaisha, Ltd.; Oki Electric Industry Co., Ltd.; Sanyo Electric Company, Ltd.; Shoko Co., Ltd.; and Toshiba Corporation.

Current educational members in the United States are: Bradley University; Bringham Young University; California Polytechnic State University; Carnegie-Mellon University; Cornell University; Iowa State University; Lehigh University; Massachusetts Institute of Technology; Michigan State University; New Mexico State University; North Carolina State University; Oklahoma State University; Pennsylvania State University; Rensselaer Polytechnic Institute; Texas A & M University; University of New Orleans; University of Oklahoma; University of Rochester; University of Texas at Arlington; and Wichita State University.

Current educational members in Europe are: Aachen Technical University (West Germany); Bordeaux 1 University; GRAI (France); Cranfield Institute of Technology (England); Helsinki University of Technology (Finland); Katholieke Universiteit Leuven (Belgium); Lund Institute of Technology (Sweden); Politecnico di Milano (Italy); Royal Institute of Technology (Sweden): Technical University of Berlin (West Germany); Universitat Stuttgart (West Germany); University of Manchester (England); University of Nottingham (England); and University of Oulu (Finland).

Current educational members in Japan are: Hokkaido University; Kobe University; and Tokyo University.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 86–4112 Filed 2–25–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Motors Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 10, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 10, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Motors Corp., Maine & Lakefront Plants (UAW)	Kenosha, WI	1/27/86	1/17/86	TA-W-17,185	Subcompact automobiles.
AT&T Technologies (Communications Workers of America).	Whitestone, NY	2/10/86	2/4/86	TA-W-17,186	Residence and business telephone sets.
AT&T Technologies (Communications Workers of America).	Omaha, NB	2/10/86	2/4/86	TA-W-17,187	Residence and business telephone sets.
Badger Coal Co., Mine #1 and Prep. Plant (workers)	Buckhannon, WV	2/7/86	1/29/86	TA-W-17,188	Coal mining and cleaning.
Bethlehem Steel Corp. (workers)	Bethlehem, PA	2/10/86	1/31/86	TA-W-17,189	Steel beams, rails, angles, plates, heavy forgings.
Barker Contract Stitching, Inc., (workers)	South Paris, ME	2/6/86	1/31/86	TA-W-17,190	Ladies dress shoes, boots casual shoes.
JEC Tanning Co., Inc. (leather workers)	Peabody, MA	1/31/86	1/29/86	TA-W-17,191	Cowhide.
John Fluke Co., Inc. (workers)	Everett, WA	2/10/86	2/4/86	TA-W-17,192	Electronic instruments.
Minstate Industries (ILGWU)	Lepanto, AR	1/24/86	1/17/86	TA-W-17,193	Womens dresses.
Onan Power Electronics (Co)	Johnson City, TN	2/10/86	1/27/86	TA-W-17,194	Computer power supplies and transformers.
Suntec Industries, Inc. (UAW)	Rockford, IL	2/10/86	2/7/86	TA-W-17,195	Fuel oil pumps.
U.S. Steel Corp., Specialty Steel Products (USWA)	McKees Rock, PA	2/11/86	2/5/86	TA-W-17,196	Track wheels, industrial wheels, railroad wheels, sheave wheels.
Allegheny Ludlum Steel Corp. (USWA)	Brackenridge, PA	2/5/86	2/3/86	TA-W-17,197	Alloy sheet and strip.
Avon Knitting Mills (ACTWU)	Farmingdale, NJ	1/30/86	1/5/86	TA-W-17,198	Knitted fabrics-lace.
Cherin Dress Co., Inc. (ILGWU)	Newark, NJ	2/6/86	1/30/86	TA-W-17,199	Dresses.
Claremont Mfg. Co., (ILGWU)	Jersey City, NJ	1/10/86	1/8/86	TA-W-17,200	Mens and boys robes.
Delval Manufacturing Co. (Company)	Willow Grove, PA	2/10/86	1/28/86	TA-W-17,201	Residential lighting fixtures.
Endicott Johnson Corp., Endicott Johnson Imperial Plant (workers).	Owego, NY	2/11/86	2/3/86	TA-W-17,202	Men dress and leisure shoes, mens and ladies athletic shoes.
International Harvester (Navistar International) (workers)	Memphis, TN	1/31/86	1/21/86	TA-W-17,203	Farm equipment.
L.E. Smith Glass Co., (American Flint Glass Workers)	Mt. Pleasant, PA	2/3/86	1/28/86	TA-W-17,204	Handmade glassware.
Lewis Bolt & Nut Co. (workers)	Minneapolis, MN	2/3/86	1/27/86	TA-W-17,205	Fastness industrial.
Standard Steel Enterprize of Freedom Forge Corp. (USWA).	Burham, PA	2/5/86	2/3/86	TA-W-17,206	Rail road wheel axles, steel forgings.
Sweet Orr & Co., Inc. (workers)	Anniston, AL	2/4/86	1/30/86	TA-W-17,207	School uniforms blouses.
Zwicker Knitting Mills (ACTWU)	Appleton, WI	1/29/86	1/27/86	TA-W-17,208	Hats, scarf, mittins, gloves.
Adelaar Bros., Inc. (workers)	New York, NY	2/7/86	2/5/86	TA-W-17,209	Blouses.
Armstrong Rubber Co., (The) Pacific Coast Div. (URW)	Hanford, CA	2/13/86	2/10/86	TA-W-17,210	Passenger and light trucks radial tires.
Brookfield Clothes Corp. (workers)	Long Island City, NY	12/4/85	12/2/85	TA-W-17,211	Suits sportcoats.
Centronics Data Computer Corp. (workers)	Rochester, MI	2/10/86	2/6/86	TA-W-17,212	Computer printers.
Mackintosh-Hemphill, Inc. (USWA)	Pittsburgh, PA	2/5/86	2/3/86	TA-W-17,213	Iron and steel rolls.
McGraw Edison Service Div. Cooper Industries (workers)	Bluefield, WV	2/10/86	2/6/86	TA-W-17,214	Fixed coils, armature coil flat wire, and all machine works.
Milo Woodcrafters (workers)	Milo, ME	2/3/86	1/30/86	TA-W-17,215	Baskets.
Raintree Sportswear (workers)	Ridgewood, NY	12/13/85	12/11/85	TA-W-17,216	Mens bathing suits.
Ramco/Fitzsimons Steel (USWA)	Buffalo, NY	1/10/86	1/6/86	TA-W-17,217	Cold finished steel bars.
Swimtex, Inc. (workers)	Miami, FL	1/6/86	12/1/85	TA-W-17,218	Swimming suits.
Weyerhaeuser Co., Everett Wood Products Div. (IWA)	Everett, WA	1/22/86	1/22/86	TA-W-17,219	Sawmill.
Wood Way Corp. (workers)	Shelbyville, TN	2/4/86	1/27/86	TA-W-17,220	Bluejeans.
Wood Way Corp. (workers)	Athens, AL	2/4/86	1/27/86	TA-W-17,221	Bluejeans.
Wood Way Corp. (workers)	Hartselle, AL	2/4/86	1/27/86	TA-W-17,222	Bluejeans.

[FR Doc. 86–4164 Filed 2–25–86; 8:45 am]

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Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Suttle Apparatus Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 10, 1986—February 14, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–16, 372; Suttle Apparatus Corp., Lawrenceville, IL
TA–W–16, 339; Penn Aluminum International, Erie, PA
TA–W–16, 428; Diamond-Bathurst, Inc., Indianapolis, IN
TA–W–16, 368; Novelty Textile Mills, Inc., Wauregan, CT
TA–W–16, 359; Georgia-Pacific Corp., Port Hudson, LA
TA–W–16, 402; Interlee, Inc., Lee Filter Div., Edison, NJ
TA–W–16, 388; Hitachi Magna-Lock Corp., Big Rapids, MI
TA–W–16, 329; Caterpillar Tractor Co., York, PA

Affirmative Determinations

TA–W–16, 376; Basque Cedar Co., Clallam Bay, WA

A certification was issued covering all workers of the firm separated on or after August 25, 1984 and before December 31, 1985.

TA–W–16, 380; Hine/Snowbridge, Inc., Boulder, CO

A certification was issued covering all workers of the firm separated on or after August 27, 1984.

TA–W–16, 371; S. Greenberg Co., Boston, MA

A certification was issued covering all workers of the firm separated on or after August 22, 1984 and before September 15, 1985.

TA–W–16, 370; RCA Boringuen, Inc., Juncos, PR

A certification was issued covering all workers of the firm separated on or after August 19, 1984.

TA–W–16, 313; AT&T Information Systems, Shreveport, LA

A certification was issued covering all workers of the firm separated on or after October 1, 1984 and before January 15, 1986.

TA–W–16, 351; Canadian Cedar Industries, Shelton, WA

A certification was issued covering all workers of the firm separated on or after August 16, 1984 and before September 30, 1985.

TA–W–16, 438; Spencer Wright Industries, Cobble Div., Chattanooga, TN

A certification was issued covering all workers of the firm separated on or after September 11, 1984.

TA–W–16, 334; Mallory Times Co., Frankfort, IN

A certification was issued covering all workers of the firm separated on or after December 14, 1984.

TA–W–16, 365; Fisher Corp., Sub-Assembly Dept., Milroy, PA

A certification was issued covering all workers of the firm separated on or after August 20, 1984.

TA–W–16, 373; Technographics Fitchburg Paper, Inc., Fitchburg, MA

A certification was issued covering all workers of the firm separated on or after August 21, 1984.

TA–W–16, 367; Harris Digital Telephone Systems, Novato, CA

A certification was issued covering all workers of the firm separated on or after December 1, 1984.

TA–W–16, 363; Carrier Corp., Syracuse, NY

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before January 1, 1986.

TA–W–16, 366; Forest Hill Sportswear Co., Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after August 22, 1984 and before July 3, 1985.

I hereby certify that the aforementioned determinations were issued during the period February 10, 1986–February 14, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW, Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: February 18, 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–4140 Filed 2–25–86; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

General Public Utilities Nuclear Corp. et al.; (Three Mile Island Nuclear Station, Unit No. 1); Exception

I.

General Public Utilities Nuclear (GPUN) Corporation (the licensee) and three co-owners hold Facility Operating License No. DPR–50, which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI–1) (the facility) at power levels not in excess of 2535 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Dauphin County, Pennslyvsania.

II.

Apppendix J of 10 CFR Part 50, Section III.D.3, requires that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than two years. Section II.H of 10 CFR Part 50, Appendix J, defines "Type C Tests" as tests intended to measure containment isolation valve leakage rates. These valves help maintain containment integrity at design basis accident conditions.

III.

By letter dated October 22, 1985, the licensee requested an exemption from the schedular requirements of 10 CFR Part 50, Appendix J, Section III.D.3. Specifically, 71 valves are due for Type C testing beginning February 23, 1986. The license proposes to postpone leak testing of these valves until the next scheduled steam generator inspection outage; or if the planned outage does not occur as expected, the licensee will shut down TMI–1 on August 23, 1986.

specifically to test these valves. In order to test these 71 valves, the plant must be in a cold shutdown condition.

TMI–1 had been in a cold shutdown condition since March 28, 1979. On May 29, 1985, the Commission's shutdown Order was lifted and a plant heatup was conducted on June 7, 1985. The plant remained in a hot shutdown condition pending judicial review of the Commission's Order. On October 2, 1985, the Supreme Court lifted the judicial stays in effect on the Commission's restart Order, and the plant was taken critical on October 3, 1985. The plant then entered a planned power ascension test program which was completed January 2, 1986. TMI–1 will operate at full power until approximately March 22, 1986. At that time, license condition 2.c.(8)4 requires a plant shutdown to conduct an eddy-current examination of the steam generators. If the licensee had been allowed to start up upon issuance of the original Commission Order, the steam generator inspection outage would have occured before February 23, 1986. The judicial stay on the Commission's Order could have been lifted at any time, so the licensee remained in hot shutdown. The stay was finally lifted on October 2, 1985, and the plant taken critical. However, starting the power ascension program in October 1985 left insufficient time to complete the program, operate at full power for the specified number of days, and still shut down before February 23, 1986.

The duration of the judicial stay was beyond the control of the licensee. Instead of going to cold shutdown conditions during this, at that time, undefined period, the licensee made a deliberate choice to remain in a hot condition for operator training. As a result of this decision, as noted in the staff's startup inspection reports, the operators gained valuable experience which proved to be benefical when the plant was allowed to operate.

The licensee has leak tested all accessible valves. However, there are 71 valves which require the plant to be in a cold shutdown condition before testing can be accomplished. To require the plant to shut down solely to leak test these valves by February 23, 1986, would cause a non-desired perturbation on the steam generator test program and an unnecessary thermal transient on the plant.

Since the shutdown of March 28, 1979, four series of local leak rate tests have been conducted at TMI–1. This frequency of tests is more than what would ordinarily be required over a less than 7-year span. Moreover, leakage paths were identified during the tests and necessary repairs were satisfactorily performed. The latest local leak rate tests conducted in 1984 showed that the actual leakage was less than one third of the allowable limit which indicates that the valves were in good condition. Based on these test results, the valves are predicted to remain within acceptable leakage limits throughout the time interval extension requested.

Containment test requirements per Appendix J of 10 CFR 50 provide for preoperational tests and periodic verification by tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate containment. The purposes of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment and systems and components penetrating primary containment. The regulations specify a maximum of a 2-year interval between Type C tests to define a general periodicity to satisfy the above objectives. Circumstances factored into the 2-year interval include the assumption that a normal plant will be fully operational and hot for most of the time interval.

The licensee will meet the schedular requirement for all but a maximum of 71 valves. However, for these 71 valves, the four series of local leak rate tests conducted during the 6½-year shutdown, with the accompanying valve surveillance and maintenance as documented in the tests, provide sufficient evidence to conclude that with the few months' delay in testing, (a) leakage through the valves will not exceed allowable values before the next test and (b) sufficient maintenance and repairs ahve been made over the service life of the valves to insure their integrity until the next test. Thus, we conclude that the underlying purpose of the rule, i.e., to require local leak rate testing at periodic intervals of certain types of containment isolation valves to determine whether there has been degradation in the leakage characteristics of these valves which might adversely affect containment integrity, will be satisfied even with the delay in testing.

Based on the above discussion, the licensee's proposed extension for the Type C testing of 71 valves listed in their October 22, 1985, submittal until startup from the steam generator inspection outage scheduled to begin in late March 1986 is acceptable. This is a one-time only schedular exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.3.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule—to require local leak rate testing at periodic intervals of certain types of containment isolation valves to determine whether there has been degradation in the leakage characteristics of these valves which might adversely affect containment integrity. Specifically, as noted above, the number of leak tests which have been conducted by the licensee during the shutdown, and the latest local leak rate test results which showed actual leakage less than one-third of the allowable limit, leads the staff to conclude that requiring the plant to shut down solely to test the remaining valves by February 23, 1986 (rather than late March 1986 as requested by licensee) is not necessary to assure the continuing maintenance of containment integrity. Accordingly, the Commission hereby grants an exemption as described in Section III above from Section III.D.3 of Appendix J to the extent that the 2-year interval for performing Type C tests on 71 valves may be extended, on a one-time basis only, for TMI–1 until the startup from the steam generator inspection outage scheduled to begin in late March 1986.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (February 4, 1986, 51 FR 4447).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 20th day of February 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,
Director, Division of PWR Licensing-B.

[FR Doc. 86–4162 Filed 2–25–86; 8:45 am]
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[Docket No. 50-339]

Virginia Electric and Power Co. et al.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-7, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Unit No. 2 (NA-2) located in Louisa County, Virginia, in accordance with the licensee's application for amendment dated September 26, 1985, and amended on January 16, 1986.

The proposed changes would allow the widening of the axial flux difference bands from the current ±5% about a target value of +6% to −15% at 100% power and +20% to −28% at 50% power. The proposed changes would provide additional operating flexibility during return-to-power after trips near the end of the NA-2 cycle No. 4.

The heat flux hot channel factor (FQ) operating limit specified in the NA-2 Technical Specifications (NA-2) is established by loss-of-coolant accident/emergency core cooling system (LOCA/ECCS) analyses performed in accordance with 10 CFR Part 50, Appendix K. These analyses show that if the FQ limit is not exceeded, the predicted LOCA peak clad temperature will not exceed the 2200° limit specified in the Final ECCS Acceptance Criteria. The TS also establish the required method for verification that the actual peaking factor realized during operation will not exceed the axially dependent peaking factor (FQ(Z)) limit. The verification is currently performed by combining the axially dependent radial peaking factor, Fxy(Z), which is determined by periodic surveillance with the core flux monitoring system, with an analytically determined axial peaking factor (PZ(Z)). The determination of PZ(Z) involves evaluating various plant operating maneuvers such as load following. During constant Axial Offset Control (CAOC) operation, the measured core exial flux difference (AFD) is maintained within a fixed band (+ or −5%) of a target value. The target AFD is established by equilibrium operating conditions.

The proposed changes would replace the CAOC AFD limits with a set of limits established by the licensee's Relaxed Power Distribution Control (RPDC) Methodology and Associated FQ Surveillance Technical Specifications dated October 1984. The NRC staff has reviewed the report and finds it to be acceptable.

The important feature of the RPDC strategy is, instead of analytically verifying the peaking factor (FQ) margin for a fixed AFD limit band, the AFD band is varied until the available FQ margin, which increases as power decreases, is utilized. Because a wider range of axial shapes can be realized under RPDC normal operation, additional analyses must be performed to verify that the overtemperature delta-T (OPDT) and overpower delta-T trips continue to provide adequate DNB and local overpower (high kw/ft) protection over the entire range of anticipated Condition II events. In addition, the shapes are evaluated as potential preconditions for the Complete Loss of Flow accident, to ensure that no departure from nuclear boiling (NDB) violations would occur during the bounding, non-OTDT-protected accident. The methodology for performing this verification is discussed in detail in the licensee's RPDC report.

Additionally, the current requirement for monitoring the axially dependent radial peaking factor, Fxy(Z), is being replaced by a requirement to monitor the total peaking factor FQ(Z). This is accomplished by taking a full core flux map under equilibrium and increasing the measured value by appropriate factors to account for manufacturing tolerances and measurement uncertainties. Finally, since the FQ(Z) is measured under equilibrium conditions, a non-equilibrium factor, N(Z) is applied. N(Z) accounts for the maximum potential increase in local peaking which could occur during transient, nonequilibrium operation. In accounting for the transient effects, N(Z) thus has a function which is similar to PZ(Z) in the current approach. The difference is that, where PZ(Z) is a nonequilibrium axial peaking factor, N(Z) envelopes the potential equilibrium-to-nonequilibrium FQ increase and accounts for both axial and radial xenon and power redistribution effects.

The licensee has performed a detailed review of the impact of operation with Relaxed Power Distribution Control/FQ Surveillance on the various accident scenarios discussed in Chapter 15 of the North Anna updated Final Safety Analysis Report (UFSAR). Specifically, the impact of the wider axial flux difference on key safety parameters which could influence accident analysis results has been assessed. Among those parameters considered are: trip reactivity, both total value and reactivity as a function of rod insertion; shutdown margin; reactivity insertion rates due to rod withdrawal from sub-critical and at power; and rod worths and/or peaking factors for ejected, dropped or misaligned control rods.

The NA-2 Cycle 4 reload core design has been evaluated for operation under the proposed RPDC Technical Specifications in accordance with the methodology presented in the licensee's RPDC report. The anlysis included examination of the LOCA and complete Loss of Flow Accident (LOFA) preconditions, the peak linear power (kw/ft), the overtemperature delta-T f(delta-I) function and the fuel rod design criteria. Each analysis was performed at beginning, middle and end of cycle. The analysis yielded two conclusions: (1) None of the normal operation conditions allowed by RPDC were found to violate the key safety criteria, and (1) all of the Condition II events examined in the UFSAR were shown to yield aceptable results when initiated from any of these normal operation conditions. The RPDC bands were thus found to be an acceptable operating space.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Specifically, as discussed above, the proposed changes involve only a relaxation of the limits in axial power distribution skewing and, therefore, neither the probability of occurrence nor the consequences of any accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is increased by these proposed changes. Furthermore, the RPDC analysis procedures and continued application of current reload design and safety analysis methodology will ensure that the UFSAR accident analyses remain bounding.

Also, the proposed changes do not involve any alterations to the physical plant which introduce any new or unique operational modes or accident precursors. Thus the possibility for an accident or malfunction of a different type than any evaluated previously in

the UFSAR is not being created by the proposed changeds. And, finally, while a relaxation of the axial offset operating limits is realized, the margin of safety as defined in the basis for any technical specifications is not reduced by the proposed changes since the margins of safety are preserved by the imposition of a frequent FQ surveillance requirement and by effectively reducing the limit on measured equilibrium FQ by a conservative nonequilibrium factor, N(Z). Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commisson, Washington, DC 20555.

By March 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714 a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who had filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final detemination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Mauphin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 26, 1985 as amended January 16, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office,

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Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 20th day of February, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2 Division of PWR Licensing-A.

[FR Doc. 86-4161 Filed 2-25-86; 8:45 am]

BILLING CODE 7590-01-M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on February 12, 1986 (51 FR 5270) through February 14, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Docket Room, 1717 H Street, NW., Washington, DC.

By March 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be enetered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide

for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50-317 Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: December 17, 1985 as supplemented by letter dated January 16, 1986.

Description of amendment request: The proposed amendment would change the Unit 1 Technical Specification (TS) 3.3.3.2, "Incore Detectors" for the remainder of fuel Cycle 8 operation, as follows: (1) TS 3.3.3.2a would be changed so that the incore detectors would be used to determine azimuthal power tilt at three axial elevations, (2) the number of incore detector segments required for recalibration of the excore neutron flux detection system, in TS 3.3.3.2b, would be decreased from at least 75% to at least 50% of all incore detector segments, and (3) the number of incore detector locations required for monitoring radial peaking factors or linear heat rate would be decreased from at least 75% to at least 50% of all incore detector locations.

Basis for proposed no significant hazards consideration determination: The monitoring of incore neutron flux is accomplished by the incore detectors which provide the detailed power distributions necessary for Technical Specification surveillance of power peaks and core data trends. The 45 in-core self-powered rhodium detector strings are placed in the center control element assembly (CEA) guide tube of selected assemblies. Each detector string has four, 40 cm long rhodium detectors located at 20, 40, 60, and 80 percent core height. Under ideal conditions, the power distribution within the core is symmetrical in that the power produced in one geometric part of the core is the same as other similar geometric core locations. This symmetry exists for both axial (core top to core bottom) and radial (horizontally across the core) locations. Groups of incore detector strings are used to detect asymmetry with regard to power distribution. Since persistent asymmetric power distributions can lead to a degradation of core thermal-hydraulic performance, and result in more adverse post-accident behavior, detection and correction of power asymmetry (power tilt) is important. In addition, incore detectors are used to calibrate the excore detectors which are used for core power level monitoring.

Due to the nature of the incore detector strings, a number of these detectors normally become inoperable during the course of a fuel cycle. With 45 operable incore detector strings, an expected number of failures would still provide an adequate, remaining, detector string complement in both number and location to meet the monitoring requirements of TS 3.3.3.2. An unexpectedly large number of detectors were found failed at startup for Unit 1 Cycle 8 and the number of failed incore detector strings for Unit 1 is approaching the current limits of TS 3.3.3.2. The proposed TS changes provide increased flexibility for Unit 1 Cycle 8 with respect to the acceptable number of failed incore detector strings.

Standard Technical Specifications for Combustion Engineering plants have a Technical Specification (3.3.3.2) requiring an incore detector system with at least 75% of all incore detector locations operable. This operability requirement is applicable when the incore detector system is used for (1) recalibration of the excore neutron flux detector system, or (2) monitoring the azimuthal power tilt, or (3) monitoring the linear heat generation rate. In addition, a surveillance requirement calls for the determination of a core power may once per every 31 effective full power days.

The incore detector system should be maintained as close as possible to 100% operability. This is necessary to be able to identify and evaluate any potential power distribution or reactivity anomaly which occur during the operation of a power plant. An example of a power distribution anomally is a corrosion, "crud", buildup problem that occurred at Calvert Cliffs, Unit 1 during a previous operating cycle. Here, the incore detector system was an important tool in identifying and understanding the problem.

The 75% operability requirement for the incore detector locations, as specified in the Standard Technical Specifications for Combustion Engineering plants, was chosen so that (1) a reasonable number of incore detector failures could be accommodated, (2) overall core power distribution mapping capability could be retained, and (3) there would be incentive for incore detector system maintenance during the next refueling outage. Otherwise a decrease in the operability requirement could lead to a postponement in incore detector maintenance and replacement. Such a degraded incore detector system might not have the capability of identifying and resolving anomalous core conditions.

We have reviewed and approved on a case-by-case basis other requests for Technical Specification changes for the duration of the affected operating cycle when incore detector failures in operating PWRs have approached or exceeded Technical Specification requirements. These interim Technical Specifications have generally been allowed either with increased surveillance (e.g., increased frequency of core mapping), or in most cases because there is substantial margin (usually late in cycle) to Technical Specification power peaking factor limits.

The proposed Technical Specification change is acceptable for Calvert Cliffs, Unit 1 for the remainder of Cycle 8 to allow a decrease from (at least) 75% operable detectors to (at least 50%) operable detectors. This proposed change is acceptable because the licensee has stated that it would

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administratively change the core mapping frequency requirement to 15, from 31, accumulated Mode 1 (above 5% power) days. In addition, there have been no reported core power distribution anomalies and potentially increased margin to Technical Specification power peaking limits may be expected in the latter part of Cycle 8.

In addition, a proposed Technical Specification change would be acceptable for the remainder of Cycle 8 for monitoring the azimuthal power tilt. The number of tilt determinations would remain the same. However, two azimuthal tilt estimates would be made at three of the axial elevations containing incore detectors. This is acceptable because core wide azimuthal tilts are generally observable at monitored as well as adjacent power levels and there have been no reported azimuthal tilts during Cycle 8. Localized power distribution anomalies will, if significant, be observable by, for example, the increased core mapping and surveillance available for the duration of Cycle 8.

We have also reviewed "Analysis of CECOR Power Peaking Uncertainties for Calvert Cliffs Unit 1 Cycle 8," Combustion Engineering Report No. CEN-318(B)-P, November 1985, submitted in support of the proposed Technical Specification changes. The statistical analysis discussed in the report supports the operation of Calvert Cliffs Unit 1 without requiring increases in the uncertainties presently approved for use with CECOR. The analysis was performed using the then current detector failures present in Calvert Cliffs Unit 1 and assuming several extrapolated detector failure configurations. This analysis assumed, however, that expected normal core operation is maintained. No anomalous core conditions were examined.

Based upon the above, we conclude that the proposed changes to TS 3.3.3.2a, 3.3.3.2b, and 3.3.3.2c provide for an adequate complement of incore detectors for monitoring azimuthal power tilt, peaking factors or linear heat rate, and recalibration of the excore neutron flux detection system during the remainder of Unit 1, Cycle 8, in light of the increased use of core mapping surveillance to detect anomalies in the observable parameters. Accordingly, the margin of safety regarding the effects produced by core power anomalies would not be reduced as a result of the proposed TS change. Since calibration of the excore neutron flux detection system will remain satisfactory and azimuthal power tilt, radial peaking factors or linear heat rate can be adequately determined, there will not be a significant increase in the probability or consequences of accidents which have previously been considered based upon these parameters. Finally, since no changes in equipment design or use are involved, no new or different kind of accident will be created. Accordingly, the Commission proposes to determine that the proposed changes to TS 3.3.3.2a, 3.3.3.2b and 3.3.3.2c involve no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: November 19, 1985

Description of amendment request: The proposed amendment would modify the present Technical Specification requirement to scram test 50% of the control rod drives (CRDs) at 16 week intervals, so that every 32 weeks all of the CRDs shall have been tested. This would be changed to the Standard Technical Specifications requirement to scram test at least 10% of the CRDs, on a rotating basis, within each 120 days operation. An evaluation of the test results would also be completed every 120 days of operation to provide reasonable assurance that proper performance is being maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance (48 FR 14870) which includes examples of amendments that are considered not likely to involve significant hazards considerations. One of these is example (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The proposed change would reduce the frequency of testing each CRD, which could result in some increase to the probability of a control rod drop or other previously analyzed accidents. However, no change would be made in an associated Technical Specification requiring that, following each refueling outage, each operable control rod shall be subjected to scram time tests from the fully withdrawn position. The licensee concluded that continued assurance of proper performance would be maintained. This conclusion was based on (1) historical evaluation of the performance of the control rod scram capability at Pilgrim, and (2) other control rod surveillance requirements. The other requirements which provide assurance of the integrity of the control rod system are (1) weekly exercise of all CRDs and (2) the scram time speed measurements made of each CRD prior to full power operation after each refueling.

The reduced frequency of testing the CRDs is consistent with current industry practice and it meets the acceptance criteria of Standard Review Plan Section 6.4

Based upon the licensee's conclusions and the fact that the Standard Review Plan criteria would be met, the staff finds that the proposed change is similar to example (vi). Therefore, the staff proposes to make a determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: John A. Zwolinski.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 11, 1985.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant Unit No. 2. The proposed revision would add operational and surveillance criteria regarding the use and capabilities of the Containment Purge Supply and Exhaust Isolation Valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (ii), relates to a change that constitutes an additional restriction or control not presently

limitations included in the Technical Specifications.

The licensee proposes to add: 1. Subsection 3.6.4 to incorporate the requirement that the Containment Purge Supply and Exhaust Isolation Valves shall be capable of closing within two seconds. Non-compliance with this criterion requires that the valve be declared inoperable and the action statements of TS 3.6.3 are imposed.

2. A statement to the basis of subsection 3.6 to provide guidance concerning justifiable causes for purging during normal plant operation and a statement to identify the limiting condition which established the maximum closing time criteria.

3. A surveillance implemented by Section 4.4.5 to verify compliance with the criterion for closing time stipulated within TS 3.6.4.

These additional limitations are clearly identical to example (ii), therefore, the Commission proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: Shaw, Pittman, Potts, and Trowfridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 19, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications to permit the use of higher enrichment reload fuel assemblies and storage of such assemblies both prior and subsequent to their loading in the reactor. The fuel enrichment would be revised from 3.5 w/o U-235 to 4.3 w/o U-235.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The licensee provided an analysis in their submittal which concluded that the criteria as stated above are met.

Criterion 1

The storage of the higher enrichment fuel could only affect fuel handling accidents. The enrichment increase will not significantly affect the potential consequences of a fuel drop accident since the isotopic content of a discharged assembly is relatively insensitive to the assemblies enrichment. The probability of a fuel handling accident is similarly unaffected by the enrichment increase. There are no structural changes involved that could affect the fuel handling characteristics of IP-2's fuel.

Criterion 2

The enrichment increase does not create possibility of any new or different type of accident. All other acceptance criteria and operating parameters [DNBR, F_Q, ect.] will remain unchanged.

Criterion 3

Although the storage of fuel with increased enrichment will potentially bring the spent fuel pool and the new fuel storage area somewhat closer to criticality than was previously possible, there will not be a significant reduction in margin of safety. The licensee's submittal indicates that the proposed change is based on conservative analyses which show that with an increase in enrichment, the criticality design criteria of Keff less than or equal to 0.95 is met. This is consistent with criteria of the Standard Review of Plan Sections 9.1.1 and 9.1.2. Therefore, the amendment would not involve a significant reduction in margin of safety.

Based on the above, the staff proposes to determine the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Directorate: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 26, 1985.

Description of amendment request: The proposed amendment to the Technical Specifications would revise the F^{N} delta H part power multiplier from 0.2 to 0.3. This revision would allow optimization of core loading patterns by minimizing the part power multiplier at low power.

Basis for proposed no significant hazards consideration determination: The proposed revision would change the F^{N} delta H part power multiplier from 0.2 to 0.3 resulting in the following relations: F^{N} delta H is less than or equal to 1.55 [1.0+0.3 (1−P)]. Where: P=fraction of rated thermal power.

No change is made to the F^{N} delta H limit at full power. The proposed increase in the part power multiplier has a direct impact on Departure from Nucleate Boiling Ratio (DNBR) calcualtions. The core safety limits for Indian Point Unit No. 2 included in Technical Specification 2.1.1, represent restrictions of average enthalpy at vessel exist and minimum DNBR.

the core safety limits currently used in IP-2 safety analyses were generated to bound both the High Parasitic (HIPAR) and Low Parasitic (LOPAR) fuel in the core during the transition cycles from a full HIPAR to a full LOPAR core. At power levels below 100% Rated Power the HIPAR fuel is the limiting fuel type for DNB analyses. In Cycle 8 and all subsequent cycles, the cores are planned to be all LOPAR fuel. Consolidated Edison has indicated that the DNBR conservatism associated with core safety limits based on HIPAR fuel is more than enough to compensate for the DNBR penalty associated with the proposed change to the part power multiplier.

To ensure adequate core protection, Consolidated Edison reevaluated the core safety limits due to the increase in the part power multiplier. This evaluation determined that IP-2's current core safety limits are applicable and bounding for full LOPAR cores, including the effects of an increase in the part power multiplier.

10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Criterion 1

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee's evaluation concludes that the current large and small break LOCA analyses of record remain applicable for an F^{N} delta H increase at partial powers. The LOCA analyses are performed at rated power conditions which bound all

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partial power conditions. The F^N delta H has no increase at rated power and therefore, the proposed partial power F^N delta H increase has no impact on the LOCA analysis. In addition, the core safety limit curves in Technical Specification 2.1.1 remain unchanged and the current overpower delta T and overtemperature delta T Technical Specification setpoint equation constants are applicable and will be maintained. As a result the licensee has indicated that no reanalysis is required for non-LOCA accident events, since non-LOCA accident analyses are not impacted by the F^N delta H part power multiplier change.

Criterion 2

The proposed amendment will not create the possibility of a new or different kind of accident previously evaluated because all accident analyses and nuclear design bases remain unchanged. The change involves no plant equipment or operating procedure changes.

Criterion 3

The proposed amendment will not involve a significant reduction in margin of safety because as discussed above all accident analyses and nuclear design bases remain unchanged. The fuel failure criteria remains unchanged.

Based on the above, the staff proposes to determine that the proposed amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, esq., 4 Irving Place, New York, New York 10003.

NRC Project Directorate: Steven A. Varga.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 10, 1986.

Description of amendment request: Specification 3.4.1.2, "Reactor Coolant System—Hot Standby," presently requires as a limiting condition for operation that at least two of the four reactor coolant loops be operable and at least one of these be in operation. (A reactor coolant "loop" includes its primary piping, steam generator and reactor coolant pump). The proposed amendments would increase by one the number of reactor coolant loops to be operable and in operation for Mode 3 (hot standby). Bases 3/4.4.1, "Reactor Coolant Loops and Coolant Circulation" would be similarly changed to state that "In MODE 3, two reactor coolant loops provide sufficient heat removal capability for removing decay heat; however, single failure considerations require that three loops to OPERABLE." An addition to the ACTION statement for Specification 3.4.1.2 would require that with only one reactor coolant loop in operation, the operator is to restore at least two loops to operation within 72 hours or open the Reactor Trip System breakers.

Basis for proposed no significant hazards consideration determination: Technical Specification 3.4.1.2 currently states that when operating in Mode 3, at least two reactor coolant loops are to be operable, but only one of these two loops is required to actually be operating. This is inconsistent with the FSAR safety analyses which assume that either two or all four of the reactor coolant pumps are operating. The proposed change would eliminate this inconsistency by imposing a more restrictive condition on the allowed number of operable or operating reactor coolant loops. The more restrictive condition is necessary to ensure that sufficient coolant flow is available when operating in Mode 3 so that the DNB design bases are met for all operating conditions and postulated accidents in Mode 3, including the limiting DNB accident, control rod bank withdrawal from subcritical conditions. The change to the specification, including the additional ACTION statement and the changes to the Bases, would result in a McGuire specifications which would be identical to that previously reviewed and accepted by the NRC for a similar plant, the Catawba Nuclear Station.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these examples, (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." As discussed above, the proposed amendments impose a more restrictive requirement for operation and, therefore, match the example. Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina, 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B. J. Youngblood.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: January 16, 1986.

Description of amendment request: The proposed amendment would remove from the Technical Specifications (TSs) the tabular listing of hydraulic snubbers, as suggested by Generic Letter 84–13 dated May 3, 1984.

The licensee had previously requested (July 25, 1984) TS changes to the tabular listing of snubbers to add new snubbers and to revise the classification of several snubbers to "accessible" or "inaccessible" as applicable. That request was previously noticed (50 FR 47862), but has not yet been acted upon. In view of the licensee's request of January 16, 1986, which is the subject of this notice, the licensee has withdrawn that portion of its July 25, 1984 request dealing with snubbers, by letter dated January 24, 1986.

Basis for proposed no significant hazards consideration determination: Generic Letter 84–13, May 3, 1984, "Technical Specifications for Snubbers" concludes that the tabular listing of snubbers included in Technical Specifications may be deleted by any licensee submitting a license amendment.

The removal of the tabular listing of snubbers from the Technical Specifications is of an administrative nature and does not in itself affect plant design or operation, involve modifications to plant equipment, or make changes that would affect plant safety analyses. The Technical Specifications will continue to require the snubbers to be operable. Appropriate actions to be taken if the snubbers are inoperable will also remain in Technical Specifications. Additionally, the NRC staff has determined that inclusion of snubber listings in Technical Specifications is not necessary because any changes in snubber quantities, types, or locations are controlled under the provisions of 10 CFR 50.59 as a change to the facility.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 10, 1982, and April 15, 1985, as

superseded the submittal of November 13, 1985.

Description of amendment request: Request approval of changes to the Appendix A Technical Specifications (TS) pertaining to shock suppressors (snubbers). These changes are to Sections 3.5 and 4.5, Containment, and to Section 6.10.2, Administrative Controls-Record Retention, and the Bases for these Sections in the TS.

The changes to TS Section 3.5.A.8 revise the existing limiting conditions for operation on snubbers to (1) delete Table 3.5.1 which lists the safety-related snubbers by number and location and (2) revise the existing requirements on when snubbers have to be operable and the actions to be taken if snubbers are inoperable. The existing requirements are in terms of the snubbers themselves with the requirements being that, if a snubber is inoperable in all modes of operation except cold shutdown and refueling and cannot be made operable within 72 hours, an orderly shutdown of the plant shall be initiated and the reactor shall be in cold shutdown within 36 hours. The proposed requirements are in terms of the systems containing the safety-related snubbers. The new requirements would be that, if a snubber is inoperable and cannot be made operable within 72 hours, the system is declared inoperable and the appropriate action statement for that system in the TS is followed.

The changes to TS Section 4.5.Q would (1) revise the existing surveillance requirements on safety-related hydraulic snubbers to add surveillance requirements for mechanical snubbers, (2) revise the existing surveillance requirements for hydraulic snubbers and (3) add a requirement for a record to be kept of the service life of each snubber. The record would be maintained as required by proposed TS 6.10.2.1. The revision to the surveillance requirements would delete the distinction in the existing surveillance requirements between hydraulic snubbers whose seal material has been demonstrated by operating experience, lab testing or analysis to be compatible with the operating environment and hydraulic snubbers whose seal material has not been demonstrated to be compatible. In the proposed TS, all hydraulic snubbers meet the same acceptance criteria and are tested on the same schedule. The proposed TS include a specific Visual Inspection Acceptance Criteria, Hydraulic Snubbers Functional Test Acceptance Criteria and Mechanical Snubbers Functional Test Acceptance Criteria. The proposed frequency of visual inspection and functional tests of snubbers is similar to that existing for hydraulic snubbers with seal material demonstrated to be compatible with the operating environment. The proposed acceptance criteria for hydraulic snubbers is similar to the existing acceptance criteria for hydraulic snubbers. The proposed TS delete existing TS 4.5.Q.2 which states that the initial inspection shall be performed within 12 months from the date of issuance of these TS and it shall be assumed that the facility has been on a 12-month inspection schedule. This existing TS is not needed because this initial inspection has already been performed.

On December 10, 1982, in accordance with 10 CFR 50.59 and 50.90, the licensee submitted proposed changes to the TS pertaining to shock suppressors (48 FR 33080). These changes were to TS Section 3.5.A.8 and Bases, Section 4.5.Q and Bases, Section 6.10.2 and Table 3.5.1. The proposed changes were to incorporate revision 1 of the inservice inspection surveillance requirements for snubbers which were transmitted by the Commission to the licensee on March 23, 1981, and to revise Table 3.5.1 to add mechanical snubbers and to reword the table to conform to the then existing NRC Standard TS.

On May 3, 1984, the Commission issued Generic Letter (GL) 84–13, Technical Specifications for Snubbers. The licensee reviewed GL 84–13. It submitted by letter dated April 15, 1985, (1) the proposed changes in its request dated December 10, 1982, with one exception and (2) its proposed changes in response to GL 84–13 (50 FR 20980). (The one exception was that the licensee proposed in its letter dated December 10, 1982, to only revise Table 3.5.1 and in its letter dated April 15, 1985, the proposed action was to delete Table 3.5.1.)

After discussions with NRC Region I in IE Inspection 85–27, the licensee has again revised its proposed TS changes for snubbers. This revision is dated November 13, 1985, which supersedes its submittals of December 10, 1982, and April 15, 1985. This latest revision will bring the TS closer to the requirements in the staff's Boiling Water Reactor Standard Technical Specifications, NUREG–0123 (BWR–STS). The BWR–STS are based on the Standard Review Plans. For snubbers, it is appropriate for the TS to conform to the BWR–STS.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of amendments not likely to involve significant hazards considerations is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS Section 3.5.A.8 and Bases and Table 3.5.1, the licensee has requested approval to delete Table 3.5.1 which lists the safety-related snubbers in the plant and to reword the TS to conform to the BWR–STS. The Commission stated in GL 84–13 that a snubber listing within the TS was not necessary provided the TS are modified to specify which snubbers are required to be operable. The staff's acceptance criteria for snubbers is in Standard Review Plan (SRP) 3.9.3, ASME Code Class 1, 2, and 3 Components, Component Supports and Core Support Structures. The BWR–STS and GL 84–13 provide criteria in the SRP

The proposed amendment will not: 1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the removal of the snubber listing does not impact the existing snubber operability requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. Involve a significant reduction in the margin of safety because it does not involve changes in plant design or operation or affect plant safety analysis. The purpose of the change is to conform to the NRC guidance in Generic Letter 84–13. Any proposed changes to the snubbers would be subject to the provisions of 10 CFR 50.59 and, as a result, should any proposed change significantly reduce the margin of safety, an application for a license amendment would be submitted.

Based on the above, the Commission's staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

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on inspection and testing of snubbers. Therefore, this proposed change is one which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but the results of this change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS 4.5.Q and Bases, the licensee has requested approval to revise the existing surveillance requirements on hydraulic snubbers, add surveillance requirements on mechanical snubbers and delete the reference to Table 3.5.1. The revision to the existing surveillance requirements on snubbers is to reword the TS to conform to the BWR–STS. Therefore, this proposed change is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the result of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

Finally, the revision to TS 6.10.2 would add a requirement that the licensee maintain records of service lives of all safety-related snubbers. Because this is an additional control not currently in the TS, this change is encompassed by the Commission's example (ii) of actions not likely to involve significant hazards consideration.

Because the proposed changes fall within examples (ii) or (vi), provided by the Commission in 48 FR 14870, of amendments that are not likely to involve significant hazards consideration, the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 28, 1986 (TSCR 138).

Description of amendment request: Request approval for an Appendix A. Technical Specifications (TS) change to the surveillance requirements on the Fire Pump Diesel 24-volt battery bank in Section 4.12, Fire Protection. The change would allow the licensee to use a two 12-volt battery cell configuration in addition to the existing twelve 2-volt cell configuration for the 24-volt DC diesel fire pump battery system. The change would revise the surveillance requirements on the cell voltage to be greater than or equal to either 2 volts or 12 volts based on the cell configuration.

Basis for proposed no significant hazards consideration determination: The licensee has proposed Technical Specification Change Request (TSCR) 138 to provide the option of using a two 12-volt battery cell configuration—six 2-volt cells with the intercell connection inaccessible for surveillance—in addition to the existing twelve 2-volt cell configuration with the 2-volt intercell connection accessible for surveillance. Either of these cell configurations would provide the 24 volts needed for the 24-volt DC diesel fire pump battery system (DFPBS).

The DFPBS performance will not be affected by this change. The overall voltage and capacity of the DFPBS will not be changed. The only change is to allow the DFPBS to be either (1) twelve 2-volt cells with the intercell connection accessible for surveillance being the 2-volt cell or (2) two 12-volt cells with the intercell connection accessible for surveillance being the 12-volt cell. The 12-volt cell is composed of six 2-volt cells but the intercell connection are not accessible for surveillance. This TSCR would not change the number of 2-volt cells in the DFPBS but it would change the number of cells required to be accessible for surveillance. It would not change the overall voltage and capacity of the DFPBS and would not affect the function of the DFPBS. This TSCR would not change the method, frequency or the reliability of the surveillance on the DFPBS.

Therefore, based on the above, operation of Oyster Creek with this TSCR.

(1) *Does not involve a significant increase in the probability or consequences of a previously elevated accident because:* The TSCR will not affect the performance or function of the DFPBS and does not change the method, frequency or reliability of the surveillance on the DFPBS.

(2) *Does not create the possibility of a new or different kind of accident from any accident previously analyzed because:* The TSCR will not affect the performance or function of the DFPBS and does not change the method, frequency or reliability of the surveillance on the DFPBS.

(3) *Does not involve a significant reduction in a margin of safety because:* The TSCR will not affect the performance or function of the DFPBS and does not change the method, frequency or reliability of the surveillance on the DFPBS.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 21, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications as follows: In Table 3.3–3 and 3.3–4, instrument numbers have been added for clarity, trip setpoints are now referenced to Table 3.3–6, and a statement added to indicate that the specification applies only during purge. In Table 3.3–6 and 4.3–3, the instrument measurement ranges have been moved to the bases sections, the alarm and trip setpoints have been separated, the noble gas effluent monitors have been included by reference to the appropriate technical specification, the channel functional test and channel calibration have been better defined, and a statement added to indicate that the specifications apply only during purge. In Table 3.3–12 and 3.3–13, instrument numbers have been added for clarity as has the statement that one monitor in required per train for the included by reference to the appropriate technical specification, the channel functional test and channel calibration have been better defined, and a statement added to indicate that the specifications apply only during purge. In Table 3.3–12 and 3.3–13, instrument numbers have been added for clarity as has the statement that one monitor is required per train for the Service Water System effluent line, incorrect footnotes have been removed, and a note has been clarified that other requirements are for non-purging only. In Table 4.3–6, instrument numbers have been added. In Section 6.12–1 and 6.12.2 for Unit 1, the wording is changed to be consistent with Unit 2 and the Standard Technical Specifications.

In Table 4.11–2, the term "charcoal filter" is being correctly identified and replaced with "iodine absorbing media". In Table 3.12–1, the New Buffalo drinking water sample location is deleted. Editorial changes are proposed for Pages 3/4 12–3, 6–21, and for several bases sections.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The first of these examples (i) is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The changes to add instrument numbers, separate alarm and trip setpoints, adding monitors by reference to the appropriate technical specifications, correction of errors in footnotes, clarification of the statement on monitors on the Service Water System effluent line, changes to make Sections 6.12.1 and 6.12.2 consistent between units, and the editorial changes are all directly related to this example. Also related to this example are the changes to indicate that a specification applies only during purge, moving the instrument measurement ranges to the bases section, the changes to the term charcoal filter (now iodine absorbing media) and the revised definition for channel functional test and channel calibration for radiation monitors. The statement that the specification is applicable only during purge relates to the NUREG–0737 item for radiation monitors to be added as a backup to other indicators to close the purge valves if a radiation leak occurs inside containment during purge operation. This reference to a specific mode of operations is a clarification of the technical specifications. The change to move the instrument measurement ranges to the bases is to correct an error in requirements; the instruments are required operable and the instrument ranges are acceptable values to meet the technical specification requirements. Moving these values to the bases will provide the delineation between the requirements and acceptable means for meeting the requirements. The change to the term "charcoal filter" is to clarify or correct technical specification terminology. A charcoal filter is only one of the acceptable methods to absorb iodine, therefore, the correct term to clarify the technical specification is "iodine absorbing media." The revisions to the channel functional test and channel calibration for the radiological effluent monitors is also a clarification to reflect the use of appropriate radioactive calibration sources in the tests and calibrations.

Another example (vi) for making a no significant hazards consideration is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component. The proposed changes to revise the trip setpoints for the radiation monitors used to terminate purge operations and the change to delete the New Buffalo drinking water sample location are related to this example. The setpoints for the radiation monitors will be set to levels to correspond to requirements of 10 CFR Part 20 "Standards for Protection Against Radiation." The deletion of the New Buffalo drinking water sample location will result in one less sample point for normally checking for effluent releases, however, the St. Joseph station is the control point and the Lake Township location is in the same direction as New Buffalo, thus New Buffalo provides only redundant information. The proposed change is clearly within the acceptable criteria for drinking water sample locations.

Based on the above discussions of the proposed changes, the staff, therefore, proposes to determine that the requested actions do not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Powr Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 6, 1985.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications Tables 3.7–2 and 3.7–3 relating to testing requirements and isolation characteristics of containment isolation valves. As a result of long-term modifications to the post-accident sampling system, additional sampling line was installed in the loop B of the jet pumps. The new line is identical to the existing sampling line in loop A. The loop B sampling line contains a new isolation valve similar to the existing isolation valve in the loop A sampling line. The proposed Technical Specification change will add the new loop B sampling line isolation valve in Tables 3.7–2 and 3.7–3 to assure that the loop B valve will be subject to the testing requirements and operating characteristic requirements of the existing containment isolation valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operation license for a facility involves no significant-hazards consideration if operating of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have reviewed the licensee's request for the Technical Specification change, and find that the proposed amendment:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the inclusion of the new containment isolation valve in the testing and operating characteristics requirements does not increase the probability or consequences of any accidents;

2. does not creates a possibility of a new or different accident because the inclusion of the new containment isolation valve in testing and operation characteristics requirements is not expected to create a new accident; and

3. does not involve a significant reduction in a margin of safety because testing and conformance with the required characteristics will increase the safety margins.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

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Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 3, 1986.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications reflecting the Iowa Electric Light and Power Company's (licensee's) proposal to demonstrate feasibility of Hydrogen Water Chemistry System as a mitigator of Intergranular Stress Corrosion Cracking (IGSCC) of stainless steel piping at the DAEC. The licensee estimates that the addition of hydrogen to the reactor water will result in an approximate one to five-fold increase in the nitrogen (N–16) activity in the steam as a result of conversion of soluble N–16 to a volatile form. The increase in normal operating activity in the Main Steam Line for the duration of the proposed test necessitates a temporary increase in the current Main Steam Line radiation scram and containment isolation setpoints. The licensee has, therefore, proposed to change (a) Main Steam Line tunnel high radiation scram setpoint, (b) Main Steam Line tunnel high radiation containment isolation setpoint, and (c) the associated bases explaining the rationale for the changes.

The proposed amendment would permit, during a 17-day test, an increase in the calculated radiation background level used to determine setpoints. The main steam line high radiation level setpoint will remain at three times the background radiation level; however, due to the increased N–16 carryover in the steam, the background radiation level used to determine the high radiation setpoint will be increased prior to the test period. The increase in the background level would be based upon the calculated value of the radiation level expected during the tests (approximately a factor of five increase). During controlled power reduction, restoration to pretest setpoints will be done prior to going below 20% of rated power. If due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20% rated power without the setpoint readjustment, control rod withdrawal will be prohibited until the necessary trip setpoint readjustment is made.

The event which takes credit for that above discussed setpoints is the design bases control rod drop accident. The licensee states that the control rod drop accident is of concern only below 10% of rated power. The hydrogen injection will be stopped below 20% power and, as stated above, the setpoints will be returned to pretest positions. In addition, the capability to monitor for fuel failures will be maintained through: (1) The continued operability of the main steam radiation monitoring scram and isolation system; (2) routine radiation surveys; (3) the performance of daily primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector Off-Gas Monitor. Furthermore, radiation protection practices will be followed by the licensee during the course of the test based upon the licensee's pretest radiation (ALARA) review. During the hydrogen injection test, special radiation level surveys will be performed and protective actions will be taken, as appropriate, to control all onsite personnel exposure. Changes in gaseous effluent release rates for hydrogen injection are expected to be negligible due to the short decay times for N–16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have reviewed the licensee's request which is similar to the request previously reviewed and approved for the Pilgrim, Peach Bottom, and FitzPatrick plants. We find that the proposed amendment:

(1) Does not involve a significant increase in probability and consequences of the control rod drop accident which was previously evaluated to determine the Main Steam Line radiation scram and containment isolation setpoints at the reactor power levels below 20%, because (1) the licensee proposes to suspend the hydrogen addition below 20% of the rated power, (2) reset the setpoints to pretest values at power levels below 20% of the rated power, (3) continue to monitor for fuel failures, and (4) perform special radiation surveys during hydrogen addition test period;

(2) does not create a possibility of a new or different kind of accident because the Main Steam Line high radiation scram and containment isolation setpoint changes are intended to mitigate against previously analyzed accident, i.e., control rod drop accident involving fuel failures; and

(3) does not involve a significant reduction of margin of safety, because pretest setpoints will be restored when power drops below 20% of the rated power, the capability to monitor fuel failures will be maintained, and special radiation level surveys will be performed and protective action taken if needed.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 1, 1985, as amended December 10 and December 27, 1985.

Description of amendment request: The amendment would change License Condition 2.C.(26) by increasing the interval for inspection of the low pressure turbine discs.

Basis for proposed no significant hazards consideration determination: License Condition 2.C.(26) in the Grand Gulf Nuclear Station (GGNS) Unit 1 operating license requires inspection of low pressure turbine discs each refueling outage until an acceptable alternate inspection schedule has been established. This interim conservative approach of requiring an inspection each refueling outage was taken by the staff in its December 1981, Supplement No. 1 to the GGNS Safety Evaluation Report (NUREG–0831), based on its evaluation of Westinghouse turbines, because information to justify longer operation for the GGNS turbines was not available. The amendment would increase the maximum interval for inspection of the discs in the three low pressure turbines at Grand Gulf Nuclear Station, Unit 1, from one fuel cycle (approximately 18 months) to 50,000 hours of operation. The 50,000 hours of coperation would permit reactor operation for four fuel cycles. The turbine generator inspection plan proposed by the licensee is to inspect the high pressure turbine and the generator during the first refueling outage and one of the three low pressure turbines during each of the next three refueling outages. If significant cracks are found during any one of these inspections, all low pressure turbines will be inspected. The inspection cycle would be repeated after the fourth refueling outage. The licensee has requested this change because they believe presently available information on turbine disc integrity for the GGNS turbines, manufactured by Kraftwerk Union (KWU) in West Germany, is adequate to support the proposed alternate inspection schedule. The design of the KWU low pressure turbine disc is intended to minimize stress in the keyway area to make it less susceptible to stress corrosion cracking as compared to older designs. To date, several KWU turbines have undergone complete ultrasonic inspections with no cracking having been found. In addition to the steps taken in the design of the turbines to lessen the susceptibility to stress corrosion cracking, MP&L maintains high reactor feedwater quality by strict compliance with reactor vendor water quality criteria, fuel warranty requirements, and other industry recognized recommendations. A major conservative design feature is that in the event that a cracked disc resulted in a failure, the KWU turbine case has been designed to contain all potential missiles generated at speeds of less than 180% rated speed.

The Commission has made a proposed determination that the amendment would not involve a significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed determination is based on the staff's preliminary review of information provided by the licensee in its amendment request. In the licensee's request by letters dated November 1 and December 27, 1985, the licensee concluded (with appropriate justifying bases) that the proposed amendment does not involve a significant hazards consideration.

The relevant previously evaluated accident under consideration is potential damage by turbine missiles to safety related equipment needed to maintain safe plant shutdown and prevent unacceptable radiological release. The licensee has provided an analysis of the probability of occurrence of a turbine missile accident for the proposed 50,000 hour inspection interval. The probability of the accident is the product of the probability of experiencing a low pressure disc failure due to crack propagation during 50,000 hours of operation and the probability of failure of the overspeed protection system. Failure of the overspeed protection system is necessary to generate a turbine disc missile of sufficient energy to penetrate the low pressure turbine casing and damage safety related equipment. The dominant factor for turbine inspection intervals up to 50,000 hours is the probability of failure of the overspeed protection system, which does not vary with length of inspection interval. Therefore, for inspection intervals up to 50,000 hours, the probability of a turbine missile accident is not significantly increased. Based on its preliminary review of the licensee's submittal, the staff finds that the proposed change in turbine inspection interval does not involve a significant increase in the probability of a previously evaluated accident. The change would not involve a significant increase in the consequences of a previously evaluated accident because it would not change the method or assumptions used in calculating the accident consequences. Because the proposed change does not involve a change to either the turbine or generator equipment, control logic or operating procedures, the change would not create the possibility of a new or different kind of accident from any previously evaluated. Because the lengthening of the LP turbine disc inspection interval has no significant adverse effects on any previous safety analyses presented in the FSAR and does not involve a relaxation of the criteria used to establish safety limits or technical specifications, the proposed change will not result in a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

Project Director: Walter R. Butler.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: October 30, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications to allow control rods to be either electrically or hydraulically disarmed when the control rods are inserted and Refuel Interlocks or Reactor Protection System Trip Functions are inoperable. The existing Technical Specifications require that the control rods be disarmed electrically and hydraulically when inserted under the same conditions.

Basis for proposed no significant hazards consideration determination: The proposed changes to Technical Specifications 3.10, 4.1.D, Table 3.1.1 and Bases 3.1 would allow flexibility in disarming control rods by allowing a variety of disarming methods (any one of which is sufficient to ensure that the control rods remain fully inserted). The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). The proposed change is most closely enveloped by example (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The licensee has determined that the proposed change involves a modest relaxation in the operability requirement of the existing Technical Specifications, but is within acceptable criteria as defined in Standard Technical Specifications, will decrease the probability of an error and improve the availability of equipment or improve the system performance. The staff agrees.

The licensee has reviewed the proposed change pursuant to 10 CFR 50.59 and has determined that it does not constitute an unreviewed safety question. Specifically, the margins of safety as defined in the existing

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Technical Specification Bases are maintained. In addition, the probability of occurrence or the consequences of a previously analyzed accident have not been increased and the possibility for a new type of accident not previously evaluated has not been created.

The licensee has also reviewed the proposed change, in accordance with 10 CFR 50.92, and has concluded that it does not involve a significant hazards consideration. The basis for this conclusion is that the criteria of 10 CFR 50.92(c) are not compromised, a conclusion which is supported by its determinations made pursuant to 10 CFR 50.59. Since the staff has previously reviewed the requirements for disarming G. E. BWR control rods and approved the Standard Technical Specifications that allow either electrical or hydraulic disarming of fully inserted control rods, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant Units 1 and 2, City of Red Wing, Goodhue County, Minnesota

Date of amendment request: January 13, 1986.

Description of amendment request: The proposed amendments would:

1. Add reference to the WRB–1 DNB correlation for Westinghouse fuel and identify that the W–3 DNB correlation will be used for Exxon fuel.

2. Delete reference to the "moderator temperature coefficient" in Specification 3.1.F.1. In place of the existing restriction on isothermal temperature coefficient, require the isothermal temperature coefficient to be below 5 pcm/°F when below 70% power and negative above 70% power.

Change the associated bases.

Replace the existing action statement, specification 3.1.F.3, with the Standard Technical Specification action statements, specification 3.1.1.3, except the requirement to submit a special report in 10 days has been changed to allow 30 days to submit the report.

3. Change the volume requirement for the accumulators from "between 1250 and 1282.9" to "1270 ±20" in specification 3.3.A.1.b.(2).

4. Change the peaking factors limits in Section 3.10 as shown below:

	Old value	New value
F_Q	2.22	2.30
FdH	1.55	1.60
FdH equation	1+0.2(1–P)	1+0.3(1–P)

Note.—The old F_Q for Westinghouse fuel was 2.21.

Revise the peaking factor equations on page TS.2.1–2.

Delete definitions of BU(E_i) and E_i in the specification and references to them in the bases.

Increase the required high neutron flux trip setpoint reduction from 1% to 3.33% for each percent that measured FdH exceeds the limit.

Revise the bases of Section 3.10 as necessary for the peaking factor changes. The bases have also been edited to removed some outdated information, e.g. deletion of the definition of the term $F_Q(Z)$, deletion of a description of the FdH uncertainties and deletion of a discussion of rod bow.

Delete Figure TS.3.10–7, renumber the next sequentially numbered curve and delete references to the curve.

5. On Figure TS.3.10–5, delete the third line segment and extend the second line segment to the 12 foot level. Change the associated bases.

Basis for proposed no significant hazards consideration determination: The proposed changes have been reviewed against the criteria of 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes referencing the WRB–1 DNB correlation are related to methodology changes currently under review by the staff. While these changes may change the consequences of a previously-analyzed accident or may change a safety margin, the results are clearly within all acceptable criteria. The proposed changes relating to the isothermal temperature coefficient have been supported by the licensee's safety evaluation contained in their application.

While the temperature coefficient revision may change the consequences of a previously-analyzed accident or may change a safety margin, the results are clearly within all acceptable criteria and the changes are not considered significant.

The proposed changes related to accumulator level have been reviewed by the licensee including their effect on the Westinghouse LOCA analysis.

While this change may result in some change in the consequences of a previously-analyzed accident, the results would be clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The licensee has reviewed the proposed peaking factor changes and has submitted analyses supporting the proposed changes.

A revised large break LOCA analysis has been performed for the worst case break (CD–0.4) for Exxon fuel. This analysis (submitted November 4, 1985) assumed an F_Q of 2.32, FdH of 1.60, thimble plug removal and the new upper internals.

While this change may result in some change in the consequences of a previously-analyzed accident or may change in some way a safety margin, the results are clearly within all acceptable criteria.

With regard to the proposed change of removing the third line segment of the K(z) curve, this change is supported by recent small break LOCA analyses performed by Westinghouse on Westinghouse and Exxon fuel assemblies. Both analyses show that the small break LOCA peak cladding temperature is approximately 1000°F and support the removal of the third line segment of the K(z) curve.

While this revision may change the consequences of a previously-analyzed accident or may change in some way a safety margin, the results are clearly within all acceptable criteria.

Based on the above, the staff has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the amendments would not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: October 24, 1985 (Reference LAR 85–11).

Description of amendments request: The proposed amendment would revise the Diablo Canyon combined Technical Specifications for Units 1 and 2 in four areas as follows:

1. Loose-part Detection System: This change would add a new Technical Specification 3/4.3.3.11, "Loose-Part Detection System," requiring the system to be operable in Modes 1 and 2 and establishing surveillance requirements for each channel of the system. An associated Bases section would also be added.

2. Reactor Coolant System Relief Valves: This change to Technical Specification 3/4.4.4 would revise the Actions to be taken when PORV(s) or block valve(s) are inoperable by: (1) Making Action a. apply to PORV(s) that are inoperable because of excessive seat leakage; (2) adding a new Action b. that applies to PORV(s) that are inoperable due to causes other than excessive seat leakage; (3) changing existing Action b. to Action c. and replacing that part of the Action dealing with plant shutdown with a new requirement related to PORV(s) isolation and appropriate compliance with new Action b; (4) changing existing Action c. to Action d.; and (5) adding additional information to the Bases section on the safety-related function and operability of the PORVS.

3. Reactor Coolant System (RCS) Pressure/Temperature Limits: This change to Technical Specification 3/4.3.4 would revise Figures 3.4–2 and 3.4–3 on Heatup and Cooldown Limitations to reduce the service life period from 6 effective full power years (EFPY) to 5 EFPY. The associated Bases section would also be revised to reflect the reduction from 6 EFPY to 5 EFPY.

4. Reporting Requirements for Startup Reports: This change would clarify the requirements in Administrative Control 6.9.1.2 for initial startup reports and would add a requirement for subsequent reports to address tests necessary to demonstrate acceptability of changes and/or modifications.

These changes had been requested by the NRC staff as stated in the Diablo Canyon Safety Evaluation Report, Supplement No. 32, July 1985.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revisions do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to add a specification for the loose-part detection system, to provide more restrictive actions in the event of inoperable PORVs, and to reduce the service life period applicable to the RCS heatup and cooldown limitations all constitute additional restrictions not presently included in the Technical Specifications and because the proposed change to clarify and supplement the requirements for startup reports is administrative in nature.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve physical alteration of the plant and either further restrict or have no affect on plant operations.

(3) Involve a significant reduction in the margin of safety because the proposed changes either involve additional restrictions not presently included in the Technical Specifications or are administrative.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration. The NRC staff has reviewed the proposed amendment and the licensee's determination and finds it acceptable.

Therefore, the staff proposes to determine that no significant hazards consideration is involved in the proposed amendment.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 85064.

NRC Project Directorate: Steven A. Varga.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: December 19, 1985.

Description of amendment request: The purpose of the amendment is to request a change to the Unit 2 Technical Specifications, Table 3.3.2–2. The licensee is proposing that the setpoint for MSIV isolation on reactor vessel water level be changed from Level 2 (L2) to Level 1 (L1) in order to reduce the number of challenges to the Safety Relief Valves (SRV). The change is consistent with the NRC recommendations in Item 16 of NUREG–0737 Section II.K.3, "Reduction of Challenges and Failures of Relief Valves—Feasibility Study and System Modification." This exact change was issued on May 28, 1985, for Unit 1.

Basis for Proposed No Significant Hazards Consideration Determination: The licensee in his letter dated December 19, 1985, stated that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. FSAR Chapters 5, 6, and 15 were reviewed to determine the impact of changing the MSIV closure setpoint on the transient and accident analyses. Seven MCPR transients and the loss of coolant accidents result in MSIV closure on L2 water level.

The transient events include generator load rejection with and without bypass, turbine trip with and without bypass, recirculation pump trip (both pumps), recirculation pump seizure, and loss of feedwater flow. The first six events result in a loss of feedwater flow due to the Level 8 (L8) feedwater pump trip followed by a rapid drop in water level due to the void collapse after the L8 turbine trip and scram. The L2 setpoint is reached approximately 30 seconds later since the water level decreases slowly following the initial drop. Changing the MSIV closure setpoint to L1 will result in HPCI and RCIC initiation at 30 seconds with no MSIV closure. Water level will increase following HPCI and RCIC injection, and MSIV closure is not expected to occur for these six transients. Since the reactor is scrammed 30 seconds prior to the L2 trip, the MCPR has increased well above the safety limit. Therefore, changing the MSIV closure setpoint does not affect the thermal margin for the first six transients listed above. The loss

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of feedwater flow event results in a slightly different scenario. Upon loss of feedwater flow, the reactor water level decreases to the Level 3 (L3) setpoint which results in a reactor scram. Because the water level is at the L3 setpoint, the void collapse following the scram causes the water level to drop to the L2 setpoint. Changing the MSIV closure setpoint to L1 will result in HPCI and RCIC initiation with no MSIV closure. Water level will increase following the HPCI and RCIC injection, and the MSIV closure is not expected to occur. Because reactor power decreases prior to the scram due to the reduced core inlet subcooling and because the reactor scrammed a few seconds prior to water level reaching the L2 setpoint, the MCPR has increased well above the safety limit prior to the time L2 is reached. Therefore, changing the MSIV closure setpoint does not affect the thermal margin evaluation for the loss of feedwater flow event.

The loss of coolant accidents also result in a rapid drop in reactor water level. As stated in FSAR Table 6.3–1, a loss of offsite power is assumed coincident with the LOCA. Chapter 15 of the FSAR shows MSIV closure will occur upon a loss of auxiliary power. Therefore, changing the MSIV closure setpoint from L2 to L1 does not affect the LOCA analysis because the MSIVs close due to the loss of offsite power. For a LOCA with offsite power available, changing the MSIV closure setpoint from L2 to L1 will result in a faster pressure decrease which results in earlier low pressure ECCS injection and lower peak clad temperature.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As described above, the change involves revising the setpoint of a previously evaluated trip function. This item can change the results of a previous analysis, but cannot create a different type of accident.

(3) The proposed change do not involve a significant reduction in a margin of safety. This proposed modification reduces the probability of a malfunction of equipment. It will delay or eliminate MSIV closures for many transient events which reduce the number of SRV openings and MSIV closure. Challenges to the HPCI and RCIC systems are reduced by preserving the availability of the feedwater system which allows the operator to suppress those systems' cyclical operation. This likely reduces the probability of a stuck open relief valve and failure of HPCI, RCIC, or MSIVs.

The NRC staff agrees with the licensee's evaluation in this regard and, based on the above, proposes to find the proposed changes to Technical Specification Table 3.3.2–2 do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 17, 1986.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) of Browns Ferry Nuclear Plant Units 1, 2, and 3 to provide various improvements and clarifications to the Administrative Controls section. The changes include:

(1) Revise section 6, Administrative Controls, to incorporate the format of Standard Technical Specifications (STS). This includes the use of the STS page numbering system, revised index/table of contents and relocation of several requirements, revising all the references within TS to sections in section 6, incorporating STS language for actions to be taken in the event of a safety limit violation or reportable event, changing the title of the Special Work Permit (SWP) to the Radiological Work Permit (RWP), and allowing 15 days to submit the monthly report to NRC as is allowed in STS.

(2) Revise the minimum plant staffing requirements to reflect the guidance of STS and requirements of 10 CFR 50.54(m). This includes deletion of the note requiring that the Shift Technical Advisor be onsite at all times, deletion of the note requiring senior operator license (SRO) training for managers, adding a note that requires an SRO to be in the control room of a unit whenever it is in an operational mode other than cold shutdown or refueling, clarifying the requirement for an SRO to directly supervise fuel handling, addition of requirements for the site fire brigade and the STS note regarding the minimum requirements for the fire brigade and health physics technician, and finally to revise the table for minimum shift crew requirements to reflect guidance of STS and requirements of 10 CFR 50.54(m).

(3) Organizational changes within TVA have resulted in revisions to the offsite and facility organization charts.

(4) Deletion of unnecessary and/or obsolete notes and requirements. Two footnotes at the end of the Reporting Requirements section which defined the terms, "forced outage" and "forced reduction in power" are deleted by this amendment since they are not referenced anywhere in these TS or in STS. Two other notes which were unreferenced at the end of this section were moved to the proper locations and referenced similar to STS. The requirement for the Annual Operating Report specifies that operation of the "safety/relief valves" should be included in the report. However, "safety valves" were deleted from the TS by previous amendments, therefore, this reference is being changed to only "relief valves". Similarly the amendment will delete a requirement to maintain records "which are covered under the provisions of paragraph 6.10," since paragraph 6.10 was deleted by previous amendments.

(5) The section that describes the Plant Operations Review Committee (PORC) has been revised to reflect a new emphasis on matters that relate to nuclear safety. The PORC membership and meeting requirements have been more clearly defined and the responsibilities revised to reflect the new emphasis and the proposed change in the technical review of modifications and procedures. The PORC section is also revised to reflect the new TVA organization and guidance of STS.

(6) The technical review and approval of procedures and proposed modifications has been changed to incorporate the use of members of the site supervisory staff designated by the plant manager to perform the required technical and cross-disciplinary review responsibilities. The procedures section has been revised to more clearly delineate those procedures which are required to be established, implemented, and maintained by referencing Appendix A of Regulatory Guide 1.33.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). These examples include: (i) A purely administrative change to technical specifications: for example a change to achieve consistency throughout the

technical specifications, correction of an error, or a change in nomenclature.

The Commission has also provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Changes No. 1 and 4 apply to simple changes in nomenclature and editorial changes. These changes are purely administrative in nature and are encompassed by example (i) of actions not likely to involve significant hazards considerations.

Changes 2, 3, 5 and 6 reflect a licensee management reorganization which has been implemented for the purpose of improving management overview of facility operations, modifications, and maintenance activities. In addition the technical review and approval of procedures and modifications has been changed. Because the changes to the TS do not modify or delete any TS Definitions, Safety Limits, Limiting Safety System Settings, Limiting Conditions for Operation, or Surveillance Requirements they will not increase the possibility or consequences of a previously analyzed accident, introduce the possibility of a new kind of accident, or reduce a safety margin. Because the changes will improve management overview of plant activities, they are likely to have the indirect effect of improving the margin of safety and reducing the possibility of an accident.

Since the application for amendment involves proposed changes that are encompassed by the standards or an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 15, 1985 as supplemented by submittals dated December 13, 1985 and January 28, 1986.

Brief description of amendment: The purpose of the proposed amendment is to revise the Technical Specifications which are necessary to support a transition from a Westinghouse 17 × 17 low-parasitic (LOPAR) fueled core to a Westinghouse 17 × 17 optimized fuel assembly (OFA) fueled core. These revisions are the result of several changes to design and analytical methodology as compared to those employed for the Cycle 1, LOPAR core.

Basis for proposed no significant hazards consideration determination:

Design Changes

Optimized Fuel Assembly (OFA). This amendment incorporates the technical specification changes which are necessary for the replacement of Westinghouse 17 × 17 LOPAR fuel assemblies with Westinghouse 17 × 17 OFAs. This replacement will be performed over a number of cycles. In Cycle 2, the core will include one reload region of OFA. In subsequent cycles, additional regions of OFAs will be used until the core is completely OFA. Detailed descriptions of the OFA fuel and the Westinghouse reload methodology can be found in WCAP–9500–A, "Reference Core Report 17 × 17 Optimized Fuel Assembly", and WCAP–9272–P–A, "Westinghouse Reload Safety Evaluation Methodolgy", respectively. Both of these reports have received generic approval from the staff and have been referenced in connection with the approval of similar license amendments for other facilities.

The use of OFA fuel increases the efficiency of the core by reducing the amount of parasitic material and reduces fuel cycle costs by optimizing the water to uranium ratio.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The OFA is mechanically compatible with the LOPAR fuel assembly, reactor internal interfaces, fuel handling and refueling equipment, and spent fuel storage racks. This facilitates the transition. The assembly envelope and grid centerline elevations for both designs are identical, thereby minimizing mechanical and hydraulic interaction. However, there are several design differences between the OFA and LOPAR assemblies. The OFA has reduced fuel rod, guide thimble, and instrumentation tube diameters, and has six intermediate zircaloy (mixing vane) grids instead of six intermediate inconel (mixing vane) grids in the LOPAR assembly.

The zircaloy grids have thicker and wider straps than the inconel grids which compensate for differences in material strength properties. The overall 17 × 17 OFA pressure drop is essentially the same as that for the 17 × 17 LOPAR assembly.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety. In a mixed core of OFA and LOPAR assemblies, the different grid structures and rod diameters result in a localized flow redistruibution between an adjacent OFA and LOPAR assembly. The effect of this localized flow redistribution is bounded by applying to the OFAs a 2% departure from nucleate boiling ration (DNBR) and 10 degrees-Fahrenheit loss of coolant accident (LOCA) peak clad temperature (PCT) transition penalties which are used in the design and safety analyses. As a result of the smaller OFA fuel rod diameter, for the same power level the OFA rod has a higher volumetric heat generation and surface heat flux than the LOPAR assembly rods. In addition, the reduction in the OFA guide thimble tube diameter results in an increase in the control rod scram time to the dashpot from 2.2 to 2.4 seconds. This increase, as well as the other effects of changes in design, have been incorporated in the non-LOCA transient analyses. The results of these new analyses indicate that the ANS Condition II acceptance criteria for faults of moderate frequency (no fuel or clad failure) are still met. The results of the new LOCA analyses, presented in Attachments D and G, indicate that the acceptance criteria of 10 CFR 50.46 are still met.

In summary, the physics characteristics for the OFA fuel are only slightly different from those of the LOPAR fuel. The differences are within the normal range of variations seen from cycle to cycle and are well within the envelope of conditions analyzed. Therefore, there is no significant reduction in the safety margin.

Wet Annular Burnable Absorbers (WABA). A Wet Annular Burnable Absorber rod will be used in the Callaway reload cores which utilize 17 × 17 OFA fuel. The WABA design has

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annular aluminum oxide—boron carbide absorber pellets contained within two concentric zircaloy tubes with water flowing through the center tube as well as outside the outer tube. The burnable absorber used for Cycle 1 was an annular borosilicate glass burnable absorber with a gass filled central tube and outer stainless steel clad. There are improved fuel cycle benefits associated with the WABA design. These result from lower parasitic neutron absorption of zircaloy as compared with stainless steel tubes, the increase in water fraction in the burnable absorber cell, and a reduction in the boron penalty at the end of each cycle. The design of the WABA is discussed in detail in WCAP–10021–P–A–Rev. 1, "Westinghouse Wet Annular Burnable Absorber Evaluation Report", which has received generic staff approval and has been referenced in connection with the approval of similar license amendments for other facilities. For the WABA rods, there is a larger core bypass flow than that for the glass absorber rod. In order to assure that the total core bypass flow remains within its design basis limit, the number of WABA rods used for Cycle 2 and subsequent reloads will be limited to less than the allowable number of WABA rods approved in WCAP–10021–P–A–Rev. 1.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The referenced WCAP evaluates the material properties and mechanical performance of the WABA design. The WABA design requirements are satisfied and the cladding integrity is maintained throughout the design lifetime.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety. The referenced WCAP evaluates the nuclear and thermal-hydraulic design and concludes that the WABA rods satisfy all performance and design requirements for their design life.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This amendment request is similar to example (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, NUREG–0800. The design changes specified do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; nor create the possibility of a new or different kind of accident or condition over previous evaluations; nor involve a significant reduction in the margin of safety. Based on the above, the design changes do not present a significant hazard.

Analytical Changes

Improved Thermal Design Procedure (ITDP) And WRB–1 DNB Correlation. The design method employed with OFA fuel to satisfy the departure from nucleate boiling (DNB) design basis is the Improved Thermal Design Procedure (ITDP). This methodology is described in WCAP–8567, "Improved Thermal Design Procedure," which has received generic approval from the staff and has been referenced in connection with the approval of similar license amendments for other facilities. This methodology is also discussed in WCAP–9500–A. The ITDP treats plant operating and fuel parameters in a statistical manner to asure that DNBR limits are met. For Cycle 1 with LOPAR fuel, a standard thermal-hydraulic methodology was used which considered plant and fuel best-estimate parameters and their uncertainties in a non-statistical manner to assure that DNBR limits were met.

The new analyses also utilize the WRB–1 DNB Correlation instead of the W–3 R-Grid Correlation which was utilized for Cycle 1. The WRB–1 Correlation provides a more accurate critical heat flux prediction than the W–3 R-Grid Correlation. This methodology is described in WCAP–8762–P–A, "New Westinghouse Correlation WRB–1 for Predicting Critical Heat Flux in Rod Bundles with Mixing Vane Grids", which has received generic staff approval and has been referenced in connection with the approval of similar license amendments for other facilities. This methodology is also discussed in WCAP–9500–A, referenced above in connection with the discussion of OFA.

Use of the ITDP model and WRB–1 Correlation in the non-LOCA analysis makes available additional DNBR margin without encroaching on required safety margins. A portion of the additional margin, assuming a maximum core thermal power of 3565 MWt instead of the licensed rated thermal power of 3411 MWt, is used in the safety analyses required for the change to OFA. These evaluations and analyses of the applicable DNB-limiting transients were carried out at the assumed higher and, therefore, conservative maximum core thermal power level of 3565 MWt.

The W–3 R-Grid DNB Correlation used in the analysis of the Callaway Cycle 1 design was developed from experimental DNB studies conducted with fluid flowing inside heated tubes, modified so as to be applicable to the test results for the LOPAR fuel design. Following development of the W–3 R-Grid DNB Correlation, Westinghouse developed the WRB–1 Correlation. The WRB–1 Correlation, based exclusively on rod bundle tests with fluid flowing outside the heated tubes, a condition which is much more representative of the actual core configuration than the single tube tests on which the W–3 R-Grid Correlation was based, is a better predictor of DNB for actual nuclear reactor geometries. The DNBR acceptance limit for the WRB–1 Correlation is therefore lower than that for the W–3 R-Grid Correlation since the data scatter is smaller. Using the same statistical methods used to calculate the W–3 R-Grid DNBR acceptance limit of 1.30, the WRB–1 Correlation acceptance limit is 1.17. The 1.17, DNBR acceptance limit has been accepted by the staff as satisfying the DNB design basis when utilizing the WRB–1 correlation.

The change in the DNBR acceptance limit associated with the change in the DNB correlations in no way implies a reduction in the safety margin for Callaway. This is true because the DNB design basis that there is a 95% probability with a 95% confidence level that the hottest rod does not experience DNB remains unchanged.

The ITDP methodology is employed to show that the DNB design basis is satisfied. Uncertainties in plant operating parameters, nuclear and thermal parameters, and fuel fabrication parameters are considered statistically such that there is at least a 95% probability with a 95% confidence level that the minimum DNBR will be greater than or equal to 1.17 for the limiting power rod under normal and abnormal operating conditions. Plant parameter uncertainties are used to determine the plant DNBR uncertainty. This DNBR uncertainty, combined with the DNBR acceptance limit, establishes a DNBR value which must be met in plant safety analyses. Since the parameter uncertainties are considered in determining the design DNBR value, the plant safety analyses are performed using nominal values of input parameters without uncertainties.

In addition to the above considerations, a plant specific DNBR margin has been considered in these analyses. In particular, the DNBR values of 1.42 and 1.45, for thimble and typical cells, respectively, were employed in the safety analyses. The DNBR margin between the DNBRs used in the safety analyses (1.42 for thimble cells and 1.45 for typical cells) and the design DNBR values (1.32 for thimble cells and 1.34 for typical cells) is more than sufficient to compensate for the DNBR penalties associated with transition core and rod bow effects and allows for design flexibility

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on the fact that the DNB design basis and correlation do not involve any design change but only analytical changes.

2. This change does create the probability of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety described in the discussions provided above and the WCAPs referenced therein. The change in the DNBR limit associated with the change in the DNB correlations in no way implies a reduction in the safety margin for Callaway. This is true because the DNB design basis (i.e., that there is a 95% probability with a 95% confidence level that the hottest rod does not experience DNB) remains unchanged.

PAD. The revised PAD fuel performance code is used to perform the fuel temperature calculations for the Callaway reload cores. The termal safety model within the new PAD code includes a modified annular gap conductance model, isotropic burnup-dependent fuel densification, a 0.7 multiplier on the creep rate, best-estimate basis modeling techniques, and uncertainties obtained from a statistical combination of model uncertainty and uncertainties due to manufacturing variations which are added to the calculated temperatures.

The revised PAD code, based in part on more test data, is described in WCAP–8720, Addendum 2, "Westinghouse Revised PAD Code Thermal Safety Model", which has received generic approval from the staff and has been referenced in connection with the approval of similar license amendments for other facilities. Use of the revised PAD code thermal safety model provides more realistic initial fuel temperatures for the safety analyses. The use of these more realistic temperatures has also been approved by the staff in their SER for WCAP–8720. The fuel temperatures calculated with the new PAD code are lower than those calculated with the code used for the Cycle 1 analyses.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on the fact that no design change is involved, but only analytical modeling techniques are changed.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety. The revised PAD code thermal safety model is an NRC-approved methodology which results in more realistic temperature predictions, lower than those calculated for the Cycle 1 analyses.

Small Break LOCA Analyses. The change to OFA from LOPAR requires reanalysis of the small break loss of coolant accidents (LOCAs) to demonstrate compliance with the requirements of 10 CFR 50.46 and to develop OFA specific peaking factor limits.

Because Union Electric desired that these analyses be applicable to Callaway over the long term, they were performed at an assumed upper bound design thermal power level of 3565 MWt and with the assumption that 10% of the tubes in the steam generators have been plugged. This also involved the use of fuel data based upon the revised PAD code fuel model (WCAP–8720, Addendum 2) as described above. In Cycle 2, Callaway will operate at a core power level of 3411 MWt. Only a few of the tubes in the steam generators have been plugged and the likelihood that as many as 10% will have to be plugged in considered to be very low. These assumptions lead to higher peak clad temperatures (PCT) than would otherwise be predicted and are therefore very conservative.

The small break LOCA analysis was performed using the Westinghouse NOTRUMP model described in WCAP–10054–P–A, which has been approved generically by the staff and been referenced in connection with the approval of similar amendments for other facilities.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on the fact that no design change is involved, but analytical models have been updated to the most recently approved versions.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety in that the results of this analysis show the PCT is well below the 2200 degree F limit of 10 CFR 50.46.

Large Break LOCA Analysis. The change to OFA from LOPAR requires reanalysis of the large break loss of coolant accident (LOCA) to demonstrate compliance with the requirements of 10 CFR 50.46 and to develop OFA-specific peaking factors.

The large break LOCA analysis performed using the NRC approved, Westinghouse BART model described in WCAP–9562–P–A was submitted by letter dated January 28, 1986. The results of this analysis show the peak clad temperature (PCT) from the BART analysis to be below the 2200 degree-F limit of 10 CFR 50.46.

During the transition from LOPAR to OFA, because the hydraulic resistances of these assemblies differ slightly, the possibility of flow redistribution during the reflood phase of a LOCA exists. This can lead to a PCT for the transition core that is somewhat higher than that for a full core of LOPAR or OFA. Westinghouse studies performed using the BART model show that in a transition core, the effect of the difference in hydraulic resistance between a LOPAR assembly and an OFA assembly is to reduce the steam flow velocity in the OFA at the elevation of the mixing vane grid during the reflood phase of the LOCA transient. This effect is offset somewhat by the improvement in heat transfer attributable to the effects of the mixing vane grids. The net effect is an increase of not more than 10 degrees-Fahrenheit. This penalty is applicable only during the transition core period and is only applied to the results of the large break LOCA analyses, which are performed assuming a full core of either LOPAR or OFA fuel.

The OFA-specific peaking factor limits were developed in a manner consistent with the methodology described in the NRC approved "Reference Core Report 17 x 17 Optimized Fuel Assembly", WCAP–9500–A.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is based on the fact that no design changes are involved with the exception of a bounding assumption that

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up to 10% of the tubes in the steam generators have been plugged. This assumption has been used in the revised LOCA analyses, using the NRC approved BART model, and the PCT remains below the regulatory limit and the radiological consequences are not significantly affected as reported in Attachment F to Reference 1.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

3. This change does not involve a significant reduction in a margin of safety in that the analyses, using the NRC-approved BART model, show the PCT is below the regulatory limit of 2200 deg-F.

Analytical Changes Significant Hazards Summary. The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). This amendment request is similar to example (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the *Standard Review Plan*, NUREG–0800. The analysis changes specified do not involve a significant increase in the probability or consequences of an accident or other adverse conditions over previous evaluations; nor create the possibility of a different kind of accident or condition over previous evaluations; nor involve a significant reduction in the margin of safety. In addition, the analysis changes, have all received generic approval from the staff and have been referenced in connection with the approval of similar license amendments for other facilities. Based on the above, the analysis changes do not present a significant safety hazard.

Based on the foregoing, the requested amendment does not present a significant hazard.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and Olin Library of Washington University, Skinker and Lindell Boulevard, ST. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notices does not extend the notice period of the original notice.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 15, 1986.

Brief description of amendment: The amendment would modify Technical Specification Sections 3.6.2 and 4.6.2 to allow Yarway water level column No. 12 to be out of service during the Spring 1986 refueling outage.

Date of publication of individual notice in Federal Register: February 12, 1986 (51 FR 5285).

Expiration date of individual notice: March 14, 1986.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment August 9, 1985.

Brief description of amendment: Technical Specifications Table 3.1.1 has been revised by changing a formula for the APRM high flux scram setpoint and by restoring a missing reference to note (13).

Date of issuance: February 4, 1986.

Effective date: 30 days after date of issuance.

Amendment No.: 92.

Facility Operating License No. DPR–35. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1985 (50 FR 38910). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment September 6, 1985.

Brief description of amendment: The amendments change the Technical Specifications (TS) to include administrative corrections to both BSEP–2 and BSEP–2 and a minor technical correction to BSEP–1. The administrative corrections include misspellings, inadvertent omissions, mislabeling, incorrect referencing of TS Tables and sections, and deletion of footnotes. The technical correction deals with the time of operation of the fire suppression system pumps to determine operability.

Date of issuance: January 30, 1986.

Effective date: January 30, 1986.

Amendment Nos.: 94 and 119.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1985 (50 FR 41244) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket No. 50–454, Byron Station, Unit No. 1, Ogle County, Illinois

Date of Application for Amendment: September 27, 1985.

Brief Description of Amendment: The Amendment approves changes to the Technical Specifications to correct typographical and grammatical errors on six pages.

Date of Issuance: February 13, 1986.

Effective: February 13, 1986.

Amendment No.: 2.

Facility Operating License No. NPF–37: Amendment revised the Technical Specification.

Date of Initial Notice in Federal Register: October 23, 1985 (50 FR 43022).

No significant hazards consideration comments received: No.

Local Public Document Room Location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of application for amendment: November 13, 1985

Brief Description of amendment: This amendment revises the La Salle Unit 1 Technical Specifications to reflect a reactor scram on low control rod drive pump discharge pressure modification as required for completion by License Condition 2.C.(15).

Date of issuance: February 4, 1986.

Effective date: Upon startup following the first refueling outage.

Amendment No.: 33.

Facility Operating License No. NPF–11. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1985 (50 FR 49784).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: November 13, 1985.

Brief Description of amendment request: This amendment would add an excess flow check valve to the instrument line for the containment flood-up measurement system, to the La Salle, Unit 1 Technical Specifications. This excess flow check valve is a primary containment isolation valve, and therefore, must be added to Table 3.6.3–1 of the Technical Specifications.

Date of Issue: February 10, 1986.

Effective date: Upon startup following the first refueling outage.

Amendment No.: 34.

Facility Operating License No. NPF–11: Amendment revised the Technical Specifications.

Date of inital notice in Federal Register: December 4, 1985 (50 FR 40783).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1986.

No significant hazards consideration comments received: None.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cites Nuclear Power Station, Units 1 and 2, Rock Island County, Illinos

Date of application for amendment: May 2, 1983.

Brief description of amendment: The amendments authorize changes to the Technical Specifications which specify what the reactor pressure should be when conducting scram testing following a refueling outage and revise the requirement of isolating the control rod drive pumps to apply only to single rod scram testing.

Date of issuance: February 7, 1986.

Effective date: February 7, 1986.

Amendment Nos.: 92 and 89.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 21, 1983 (48 FR 56500).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504–17th Street, Moline, Illinois 61265.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 10, 1985.

Brief description of amendment: The amendment changes the Technical Specification to revise the limits for total nuclear peaking factor (F_Q) and accumulator water volume to accommodate plant operation at steam generator plugging levels up to 25%. The change permits a maximum F_Q of 2.32 up to 25% steam generator tube plugging with norminal accumulator values of 822 ft^3.

Date of issuance: January 29, 1986.

Effective date: Immediately to be implemented within 30 days.

Amendment No.: 109.

Facilities Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of intial notice in Federal Register: June 4, 1985 (50 FR 23546).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1986.

No significant hazards consideration comments received; No.

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Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: June 7, 1985 as revised September 3, 1985 and Supplemented December 4, 1985.

Brief description of amendment: The amendment incorporates the requirement to adhere to the "Plan for the Big Rock Point Integrated Assessment" and the terms therein for implementing changes to its contents. Included with the amendment are the plan and a complete listing of all known safety-related modifications to be implemented during the next 3 years.

Date of issuance: February 12, 1986.

Effective date: February 12, 1986.

Amendment No.: 82.

Facility Operating License No. DPR-6. This amendment revised the license.

Date of initial notice in Federal Register: August 14, 1985 (50 FR 32792).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation date February 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 22, 1985.

Brief description of amendment: The amendment revised the method for performing the monthly operability test of the Containment High Radiation Monitors.

Date of issuance: January 30, 1986.

Effective date: January 30, 1986.

Amendment No.: 94.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1985 (50 FR 53230).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 30, 1985.

Brief description of amendment: The amendment clarified the action required by the Technical Specification for primary coolant system leakage when the leakage exceeds the specified limits, and deleted a specification on leakage that was only applicable to cycle 2 operation which ended several years ago.

Date of issuance: January 30, 1986.

Effective date: January 30, 1986.

Amendment No.: 95.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1985 (50 FR 53230).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 17, 1984 with supplements dated May 31, June 21, and October 28, 1985.

Brief description of amendment: The amendment revised the Technical Specifications for the Auxiliary Feedwater System to reflect modifications made to the pump. These changes are consistent with the NRC guidance in Generic Letter 83-37 and Item II.E.1.1 of NUREG-0737, Long Term Auxiliary Feedwater Evaluation. All change requests, as modified by supplemental submittals were approved except for the extension of allowable outage time for an auxiliary feedwater pump from 72 hours to 7 days. That request will be the subjet of separate, future licensing action.

Date of issuance: January 30, 1986.

Effective date: January 30, 1986.

Amendment No.: 96.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1985 (50 FR 53231).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et. al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: April 29, 1985.

Description of amendment request: The amendment changes the Technical Specifications to revise surveillance requirement 4.3.4.2 from a turbine control valve testing frequency of once in seven days to at least once in 31 days.

Date of issuance: February 12, 1986.

Effective date: February 12, 1986.

Amendment No.: 3.

Facility Operating License No. NPF-35. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 20, 1985 (50 FR 47880).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 28, 1985.

Brief description of amendment: This amendment allows for the revision of TS 3.1.2.9 to require cold shutdown instead of hot shutdown if borated water sources cannot be restored to operable status within the specified time.

Date of issuance: January 31, 1986.

Effective date: January 31, 1986.

Amendment No.: 86.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1985, 50 FR 46213.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendment: August 23, 1985.

Brief description of amendment: The amendment revises the TSs to provide operating and surveillance requirements for automatic depressurization system bypass timers that are to be added to Hatch Unit 1 to satisfy the requirements of NUREG-0737, Item II.K.3.18.

Date of issuance: January 28, 1985.

Effective date: January 28, 1985.

Amendment No.: 122.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1985 (50 FR 38915)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: August 2, 1985.

Brief description of amendment: The amendment revises the TSs to correct and clarify the hydrogen recombiner heater testing requirements.

Date of issuance: February 4, 1986.

Effective date: February 4, 1986.

Amendment No.: 61.

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1985 (50 FR 34941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 7, 1985.

Brief description of amendment: This amendment authorizes a change to Section 3.7, Auxiliary Electric Power, of the Appendix A Technical Specifications (TS) to: (1) Decrease the minimum amount of diesel fuel in the standby diesel generator fuel tank required in TS 3.7.C from 14,500 gallons to 14,000 gallons and (2) revise the Bases for this TS.

Date of issuance: February 4, 1986.

Effective date: February 4, 1986.

Amendment No.: 98.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in the Federal Register; December 18, 1985 (50 FR 51624).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: December 9, 1985.

Brief description of amendment: This amendment modifies Section 4.4.1.2.5 of the TMI-1 TSs to state that local leak detection tests shall be performed at a frequency as required by 10 CFR 50, Appendix J. The amendment also states that if an exemption from the test frequency as specified by 10 CFR 50, Appendix J, is granted by the NRC, the frequency as specified by the exemption shall apply.

Date of issuance: Febraury 5, 1986.

Effective date: February 5, 1986.

Amendment No.: 113.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 30, 1985 (50 FR 53232) The Commission's related evaluation of the amendment is contained in a Safety Evaluation Dated February 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: May 28, 1985 as supplemented October 1, 1985.

Brief description of amendment: This amendment changed the Technical Specifications to:

—Add fire detectors which have recently been installed and change certain action statements and surveillance requirements for fire detectors;

—Change the wording of the surveillance requirements for the diesel driven fire pump to reflect the as-built design;

—Add sprinkler systems which have recently been installed;

—Add fire hose stations which have recently been installed and change the operability requirements for fire hose stations in Containment; and

—Revise the technical specifications pertaining to penetrations of fire barriers.

Date of issuance: February 4, 1986.

Effective date: February 4, 1986.

Amendment No.: 110

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1985 (50 FR 27508 at 27507) and supplemented December 30, 1985 (50 FR 52336 at 53233) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1986.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room Location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: March 30, 1977, as supplemented by letters dated May 15, 1980, September 3, 1982, November 5, 1982, January 28, 1983, and November 27, 1985.

Brief description of amendment: The amendment revised the surveillance technical specifications to ensure that

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the reactor building leak rate testing (Types A, B, and C) is performed in accordance with and as specified by 10 CFR Part 50, Appendix J, Primary Coolant Leakage Testing for Water-Cooled Power Reactors. The November 27, 1985 letter from the applicant withdrew a portion of its request related to an increase in leakage rate and revised the other proposed specifications to reflect the currently approved leakage rate. This change does not affect the substance of that portion of the proposed amendment granted by the amendment.

Date of issuance: February 3, 1986.

Effective date: February 3, 1986.

Amendment No.: 95.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52804 at 52818). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th street, Omaha, Nebraska 68102.

Pennsylvania Power and Light Company Dockets Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 26, 1985, supplemented January 15, 1986.

Brief Description of amendments: These amendments revise the operability requirements for three separate effluent radiological monitoring systems: 1) Refueling Floor Wall Exhaust Duct Radiation Monitoring System, 2) Refueling Floor High Exhaust Duct Radiation Monitoring System, and 3) Railroad Access Exhaust Duct Radiation Monitoring System. Based on the licensee's proposal and the staff's review, it was determined that the monitors were not used as a basis to support any safety analysis in operational condition 1, 2, and 3. Therefore, the requirement for operability of the above-mentioned radiation monitoring systems during conditions 1, 2, and 3 has been deleted.

Date of issuance: February 14, 1986.

Effective date: Upon issuance.

Amendment Nos.: 54 and 22.

Facility Operating License Nos. NPF–14 and NPF–22: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1879). The Commission's related evaluation of the amendments is contained in a Safety Evaluation Dated February 15, 1986.

No comments on the proposed determination were received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of Amendment Request: December 18, 1985.

Brief Description of Amendment: The amendment to Operating License NPF–39 revises the Limerick Generating Station Unit 1 Technical Specification to provide a one-time-only extension of 14 weeks on the surveillance testing interval for certain excess flow check valves in instrumentation lines. The purpose of the amendment is to allow a combination of the excess flow checkvalve testing, which must be performed with the reactor in a shutdown condition, with other surveillance testing and maintenance activities to take place in an outage beginning on or before May 26, 1986. The primary basis for the safety of the requested change is that inventory loss due to a rupture of instrumentation lines would be limited to small amounts, the lines can be manually isolated if required and that the probability of detecting a leaking excess flow checkvalve will not be significantly reduced by the one-time extension of the surveillance test interval of less than 20 percent.

Date of Issuance: February 6, 1986.

Effective Date: February 6, 1986.

Amendment No.: 1.

Facility Operating License No. NPF–39: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1985 (50 FR 52874).

Comments Received: No timely comments were received. The Commission's related evaluation of the amendment is contained in Safety Evaluation dated February 6, 1986.

No Significant Hazards considerations comments received: No public comments were received within the time provided by the **Federal Register** notice of consideration of this amendment request.

Local Public Document Room Location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 19, 1985.

Brief description of amendment: The amendment revises the Technical Specifications definition of Operational Mode (Section 1.4) and Operable-Operability (Section 1.6) to reduce ambiguity in the definition of the words "Mode" and "Operable".

The April 19, 1985 application also forwarded a request for an amendment to the structural integrity of ASME Class 1, 2, and 3 components section of the Technical Specifications (Section 3.4.10). By letter dated November 8, 1985, the licensee requested a withdrawal of this request. The staff concludes that, since the current Technical Specifications are more conservative than those proposed, the withdrawal is acceptable. However, the staff has requested the licensee to review Section 3.4.10 of their Technical Specifications and to propose revised Technical Specifications.

Finally, the April 19, 1985 application forwarded a request for an amendment to the surveillance requirements of the Control Room Emergency Ventilation System. The review of this request is being handled separately and will be the subject of a future notice.

Date of issuance: February 10, 1986.

Effective date: February 10, 1986.

Amendment No.: 109.

Facilities Operating License No. NPF–1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37089) The Commission's related evaluation of the amendment is contained in a Safety Evaluation date February 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: May 17, 1985, as supplemented August 9, 1985.

Brief description of amendment: The amendment revises the license condition related to the physical security plan to reference the latest revision to the plan.

Date of issuance: February 7, 1986.

Effective date: February 7, 1986.

Amendment No.: 63.

Facilities Operating License No. DPR–64: Amendment revised the License.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38921) revised November 20, 1985 (50 FR 47869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 6, 1985.

Brief description of amendments: The amendments change the testing requirements regarding battery surveillance during certain plant shutdowns.

Date of issuance: January 29, 1986.

Effective date: January 29, 1986.

Amendment Nos.: 70 and 45.

Facility Operating Licenses Nos. DPR–70 and DPR–75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38921).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1986.

No significant hazards consideration comments received: No. —

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric and Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit 1, Salem County, New Jersey

Date of application for amendment: August 6, 1985.

Brief description of amendment: The amendment permits Unit No. 1 to operate at the 2% higher power level of 3411 Mwt permitted for Unit No. 2.

Date of issuance: February 6, 1986.

Effective date: February 6, 1986.

Amendment No.: 71.

Facility Operating License No. DPR–70: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41256) and December 4, 1985 (50 FR 49791).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 22, 1985, modified December 23, 1985 and supplemented January 8, 1986.

Brief Description of amendment: The amendment changes the Technical Specifications to provide new limiting conditions of operation and surveillance requirements for the 48 inch purge system and the 8 inch mini-purge system.

Date of Issuance: February 15, 1986.

Effective Date: February 15, 1986.

Amendment No.: 13.

Facility Operating License No. DPR–18. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1880). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By

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March 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 10, 1986, as supplemented by letter dated January 14, 1986.

Brief description of amendment: The amendment changed the technical specifications dealing with the inservice inspection program for mechanical shock suppressors (snubbers) such that the maximum drag force acceptance criterion (break away friction) is equal to 2% of the rated load of the mechanical snubber, instead of 1%.

Date of issuance: January 30, 1986.

Effective date: January 30, 1986.

Amendment No.: 93.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards considerations are contained in a Safety Evaluation dated January 30, 1986.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 23, 1986, as supplemented and clarified by letter dated January 24, 1986.

Brief description of amendment: The amendment revises the license to permit operation of the facility on a temporary basis during the remainder of Cycle 8 or until March 31, 1986, whichever occurs first, with certain hot fluid line penetrations not fully in conformance with original FSAR design criteria.

Date of issuance: January 28, 1986.

Effective date: January 28, 1986.

Amendment No.: 78.

Facility Operation License No. DPR–63. Amendment revised the license.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final no significant hazards considerations determination are contained in a Safety Evaluation dated January 28, 1986.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of Application for Admendment: January 15, 1986.

Brief Description of Amendment: Revises Technical Specification Table 3.3–9, Remote Shutdown Instrumentation, by deleting the transfer switches associated with Valves FWA*AOV–61A, 61B, 62A, and 62B (items 7, 8, 9, and 10 in the table). The change would resolve an administrative error made in the compilation of Table 3.3–9 by making the table reflective of the actual plant configuration.

Date of issuance: January 22, 1986.

Effective date: January 22, 1986.

Amendment No. 1.

Facility Operating License No: NPR–44: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazars consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are considered in a Safety Evluation dated January 22, 1986.

Attorney for Licensee: Gerald Garfield, Esq., Day, Berry and Howard, City Place, Hartford, Connecticut 06103–3499.

Local Public Document Room Location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Virginia Electric and Power Company, et al., Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: January 20, 1986.

Brief description of amendment: The amendment allowed suspension of further moderator temperature coefficient measurements once an equilibrium boron concentration of 20 ppm or less is reached for the current fuel cycle No. 4.

Date of issuance: February 12, 1986.

Effective date: January 21, 1986.

Amendment No. 61.

Facility Operating License No. NPR–7: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards considerations are contained in a Safety Evaluation dated February 12, 1986.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscript Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 20th day of February, 1986.

For The Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B.

[FR Doc. 86–4030 Filed 2–25–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Civilian Employee and Contractor Travel Expenses Act of 1985; Study

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy (OFPP) is requesting comments and suggestions about the study on contractor relocation and transportation costs required by section 202, Pub. L. 99–234. Any comments on the study, including issues or options it should address, should be submitted to the Office of Federal Procurement Policy, 726 Jackson Place, NW., Washington, DC 20503.

Public Meeting

A public meeting will be held in Room 2008, New Executive Office Building, 726 Jackson Place, NW., Washington, DC, on March 17, 1986, at 10 a.m. Persons or organizations wishing to present views, ideas, and suggestions about the study are encouraged to attend the meeting. Written statements will be accepted by OFPP, and persons or organizations wishing to make oral statements will be given 5 minutes each to present their views. Persons and organizations with similar views are encouraged to select a common spokesman for the presentation of their views. Persons wishing to attend and/or present statements at the public meeting should contact Teresa Hrabe, telephone number (202) 395–3501, prior to 3 p.m., March 14, 1986, in order to be cleared for admittance to the New Executive Office Building. Entrance to the building is on 17th Street, NW., between Pennsylvania Avenue and H Street.

Background

Section 202, Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Pub. L. 99–234, requires that:

> The Adminstrator for Federal Procurement Policy, in consultation with the Secretary of Defense and the Administrator of General Services, shall undertake a study to determine whether limitations should be placed on payments by executive agencies to Government contractors for costs incurred by contractor employees for transportation and relocation. The Administrator for Federal Procurement Policy shall submit 180 days after the enactment of this Act a report thereon to the appropriate committees of the Congress.

DATE: Comments and suggestions in response to this **Federal Register** notice must be received in OFPP by close of business, April 1, 1986. Two copies of any statements to be presented at the public meeting should be received by March 14, 1986.

ADDRESS: Comments and statements should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9013, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development, (202) 395–6803.

Dated: February 14, 1986.

David F. Baker,

Acting Administrator.

[FR Doc. 86–4080 Filed 2–25–86; 8:45 am]

BILLING CODE 3110-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Withdrawal Information Card through February 1, 1989. The card is completed voluntarily by those nominated for Peace Corps service and who withdraw their applications after that application reaches the Washington Placement Office and prior to invitation to an actual program. The card provides information concerning the reasons for withdrawal as well as suggestions as to how the Volunteer Delivery System could be improved. This information is necessary for Peace Corps to evaluate the effectiveness of the Volunteer Delivery System and to adjust it as necessary. The information provided will not/cannot be used to identify specific individuals who have filled out the card.

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Information About the Form

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526
Title: Withdrawal Information Card
Type of Request: Approval of Use
Frequency of Collection: On occasion
General Description of Respondent: Individuals who were nominated to a Peace Corps program, but who withdrew their application prior to receipt of an invitation.
Estimated Number of Responses: 176 annually
Estimated Hours for Respondents to Furnish Information: Fifteen (15) minutes each
Respondents' Obligations to Reply: Voluntary

Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Phillip Seder, Office of Placement, Peace Corps, 806 Connecticut Avenue, NW., Room 908, Washington, DC 20526. Mr. Seder may be called at 202–632–6594.

This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC on February 20, 1986.

Linda Gregory,

Associate Director for Mangement.

[FR Doc. 86–4127 Filed 2–25–86; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

[Order No. 669; Docket No. N86–1]

Request of the United States Postal Service for an Advisory Opinion on Change in Service, 1986, Collect on Delivery Service and Order Fixing Date for Intervention and Designating Officer of the Commission

Issued February 20, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

On February 12, 1986, the United States Postal Service (Postal Service or Service) filed a Request for an Advisory Opinion that has been docketed as N86–1. The Request, accompanied by supporting testimony and one library reference, stems from a Postal Service determination that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis within the meaning of 39 U.S.C. 3661(b).

The Postal Service intends to implement certain changes in the regulations affecting COD service, which it believes are justified given the increasing use of COD service for fraudulent or deceptive purposes.

Under current regulations, COD packages must be paid for either in cash or by check made payable to the Postal Service. The Service then sends the mailer a postal money order for the COD charges. The changes in the regulations would allow payment by either cash or a check made payable to the mailer. The Service believes the new procedures will give the American consumer additional recourse if he/she is a victim of fraud.

The Service states that these changes regarding COD mail will be made through notice and comment rulemaking "not sooner than 90 days after the filing of the Postal Service's request in this proceeding." USPS–T–2 at 3.

Intervention. Persons desiring to participate as a party should file a notice of intervention with the Secretary of the Commission on or before March 5, 1986, in accordance with section 20 of the rules of practice (39 CFR 3001.20). Notices of intervention shall affirmatively state whether the person filing requests a hearing, or in lieu thereof, a conference; whether such person intends to participate actively in a hearing; and shall set forth the nature of such person's interest in the issues, to the extent such interest is known. Persons seeking limited participation but not party status may, on or before March 5, 1986, file a written notice of intervention as a limited participator, pursuant to § 20a of the rules of practice (39 CFR 3001.20b). In addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to § 20b of the rules of practice (39 CFR 3001.20b).

Possible collateral matter. Preliminary review indicates that if the proposed change is ultimately implemented, the existing language of Domestic Mail Classification Schedule § 6.021 might be read as making the Postal Service an ensurer of payment on checks tendered by addressees. This is not the intent of the filing. Indeed, Postal Service witness Dillman states that under the change, the Postal Service will no longer ensure payment when payment is made by check. *See* USPS–T–2, at 7. Participants should therefore be prepared to address the need for changes to the DMCS.

Officer of the Commission. Pursuant to 39 U.S.C. 3661(c) the officer of the Commission charged with representing the interests of the general public in this docket is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

The Officer of the Commission shall be separately served with three copies of all filings in this case, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

The Commission orders:

(A) Notices of Intervention as full or limited participators in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 on or before March 6, 1986.

(B) Stephen A. Gold is designated officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission who shall separately be served three copies of all documents.

(C) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–4114 Filed 2–25–86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-7902]

Issuer Delisting; Application To Withdraw From Listing and Registration; MacMillan Bloedel Ltd.; Common Stock, No Par Value

February 20, 1986.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Directors of the issuer decided to withdraw its shares from listing on the New York Stock Exchange because in the Board's judgment continuation of the listing is not justified in light of the costs and other potential burdens involved.

Any interested person may, on or before March 13, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–4158 Filed 2–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22914; File No. SR-Amex-86–3]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange Relating to Amendment of Article II, Section 1(e) of the Amex Constitution Regarding Eligibility of Former Public Governors To Serve on the Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Article II, section 1(e) of the Exchange Constitution to allow public governors to be eligible for reelection to the Board after an interval of one year from the end of their term.[1] The text of the proposed rule change is available at the Exchange, care of the office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Article II, Section 1(e) of the Exchange Constitution provides that both industry and public governors must retire from the Board after two consecutive terms and thereafter remain ineligible for reelection for a minimum of two years. Prior to 1972, only industry governors, i.e., members and representatives of member firms, were required to leave the Board for a two-year period before again being eligible for reelection. The reason for this two-year hiatus was to insure that one or more members would not serve indefinitely on the Board and thereby dominate the governing body of the Exchange. Public governors, however, were not limited as to the number of terms they were permitted to serve and, indeed, were appointed by the Exchange President who was also chief executive and a member of the Board. With the reorganization of the Board in 1972, all governors were elected by the membership and the two-year reelection provision was applied to both industry and public governors, without taking into account that the issue of Board domination was unlikely to apply to public governors.

The Exchange is proposing to amend Article II, section 1(e) of the Constitution to allow public governors to be eligible for reelection after a one-year interval. The two-year reelection restriction would be retained as it pertains to industry governors. In considering issues critical to its future growth, it is vital that the Exchange be in a position to use the talents of people who have had significant experience with the Board, and who have built solid working relationships with other governors and Exchange members. Many public governors have immersed themselves in committee work, and their backgrounds in government, industry, finance, and management have conferred enormous benefits on the Exchange. The Exchange needs people like that on its Board, and would like its Nominating Committee to be free to select from this pool of experienced and talented former public governors without having to await the passage of two years from the end of their prior Board service.

In addition, the Exchange is proposing to delete transitional language which permitted the orderly implementation of amendments which reorganized the Board in 1979, increasing its size from 21 to 25 governors.

(2) Basis

The proposed amendment is consistent with Section 6(b) in general and furthers the objectives of Section 6(b)(3) in particular in that it is intended to facilitate the nomination and election of qualified individuals to serve as public governors of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will create no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[1] On February 18, 1986, the American Stock Exchange filed Amendment No. 1 to the proposed rule change indicating that the rule change was approved by the Exchange membership at a special membership meeting held on February 14, 1986.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted March 19, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 18, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4101 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22910; SR-CBOE-48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on December 2, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 12b-4 thereunder to amend Exchange Rule 19.2 to extend the time limit for filing an application for review of an action of the Exchange before the Exchange's Appeals Committee.

Notice of the proposed rule change together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 22765, January 3, 1986) and by publication in the Federal Register (51 FR 1460, January 13, 1986). No comments were received with respect to the proposed rule filing.

The rule change will give any person aggrieved by an action of the Exchange, who desires to have an opportunity to be heard with respect to such action, thirty days from the date of such action to file a written application for a hearing with the Secretary of the Exchange (pursuant to Rule 19.2). This effectively doubles the previous time limit of fifteen days.

The rule change requires strict observance of this extended time limit. Applications not filed within the thirty day period will not be considered by the Appeals Committee unless an applicant files an application within such extension of time as allowed by the Chairman of the Appeals Committee. In order to obtain an extension of time within which to file an appeal, an applicant must file an application for an extension with the Secretary of the Exchange within the thirty day period running from the date of the Exchange action which has aggrieved the applicant. Applications for extensions will be ruled upon by the Chairman of the Appeals Committee, and his ruling will be given in writing. Rulings on applications for extensions are not subject to appeal under Chapter XIX of the Rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4102 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22927; File No. SR-NSCC-86-03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corp. Modifying Its Fee Structure for Automated Communication Access

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposed rule change modifies NSCC's fee structure to provide that participants who communicate with NSCC in an automated fashion via CPU-to-CPU will now be responsible for their communications costs. To encourage the use of such transmission vehicle during the developmental stage, NSCC had previously absorbed these costs. Included within the cost of each service is the cost of producing one hard copy output of each relevant report. Participants opting to receive output in machine readable form will be credited for this copy, while participants who request to be provided with more than one hard copy output will be charged accordingly.

The proposal also would clarify that NSCC's discount policy will not apply to transaction fees for the Fund/Serv System [1] until the initial start-up and development costs are amortized.

In its filing, NSCC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commisson that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

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[1] NSCC's Fund/Serv System was the subject of a previous filing, SR-NSCC-85-08.

450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 19, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4103 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22913; SR-NYSE-86-5]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change on an Accelerated Basis

On January 22, 1986, the New York Stock Exchange, Inc., ("NYSE" or the "Exchange") filed with the Commission a proposed rule change (File No. SR-NYSE-86-5) that revises and expands the interpretations under NYSE Rule 412. The Commission is publishing this Order to request public comment on the proposal and, for reasons described below, is approving the proposal on an accelerated basis.

Background

The Commission on November 26, 1985, approved new NYSE Rule 412 and related explanatory and exemptive interpretations.[1] That Rule and related interpretations generally provide that when a customer gives written notice to his carrying firm to transfer the customer's account to a designated receiving firm, both firms must expedite the transfer. The Rule and interpretations describe in detail how customer account transfers are effected.

NYSE Rule 412 and its interpretations for the first time inject a comprehensive regulatory discipline in the customer account transfer process. To ensure that NYSE members have an efficient means to process customer account transfers, National Securities Clearing Corporation ("NSCC") has designed its Automated Customer Account Transfer System ("ACATS"). ACATS provides NYSE/NSCC member firms a centralized, uniform, automated mechanism to enable efficient customer account transfers.[2] ACATS communicates customer account transfer information among carrying and receiving firms, helps to monitor firms' compliance with NYSE Rule 412 and facilitates actual transfer of customer assets within required time frames by book-entry movement or other appropriate methods.

The NYSE initially implemented Rule 412 on a voluntary, limited pilot basis. Since November 1985, a NYSE committee of member firm representatives has monitored the pilot phase of ACATS to help the Exchange fine-tune Rule 412 and ACATS. The Exchange also conducted a series of programs across the country to educate member firms about the new account transfer requirements and to gather information from member firms about the ACATS process. The information gathered in these efforts is reflected in this proposed rule change.

At this time, the NYSE plans to make fully effective the Rule and related interpretations on February 24, 1986. On that date, NYSE members will be required to comply with NYSE Rule 412 and to use NSCC's ACATS to effect customer account transfers. Implementation of the program, however, will continue to be phased in over the next several months. The Exchange will limit each carrying broker's daily total number of customer account transfer requests to be processed through ACATS and each receiving broker's total daily number of requests received from any single carrying broker.[3] At reasonable time periods thereafter, the Exchange will increase the maximum number of requests to be processed within ACATS. The NYSE indicated that Rule 412 should be fully implemented 120 days after the February 24, 1986 implementation date, *i.e.*, by June 17, 1986. The Exchange believes that such a stepped approach is necessary to accommodate NYSE members' needs to adjust their internal automated systems to the Rule's requirements. The NYSE notes that while 100 member firms have participated in the limited ACATS pilot program, about 150 additional member firms have not had any real operational experience with Rule 412 requirements or ACATS.

Description of the Proposed Rule Change

The proposal includes several new interpretations to Rule 412 and refines a number of existing interpretations.[4] First, the proposal requires NYSE-member firms to develop written procedures for customer account transfers that ensure their implementation of, and compliance with, Rule 412's requirements.

Second, upon receipt of a customer account transfer instruction from a customer, a carrying broker must "freeze" all activities in that account, *e.g.*, cancel all open orders and not take any new orders.

Third, a receiving broker should reject a carrying broker's delivery of a security against a fail to receive that is designated as a "safeguarding position" when the delivered security does not qualify for safeguarding under the interpretations. (Safeguarding positions are securities registered in customer name, even if they are unendorsed or have attached stock/bond powers).

Fourth, "nontransferable" [5] customer assets must be liquidated, retained by the carrying broker for the customer, or shipped, physically and directly, in the customer's name to the customer, in accordance with the customer's instructions. The carrying broker must contact the customer in writing prior to, or at the time of, validation of the transfer instruction to request such further specific instructions regarding the disposition of nontransferable assets. If the customer authorizes liquidation or shipment, the carrying broker will be required either to distribute the resulting money balance to the customer or to initiate the shipment, as appropriate, within five business days after receipt of the customer's instructions concerning asset disposition.

Fifth, a customer must authorize the custodian/trustee for a retirement plan account (a) to deduct outstanding fees due the custodian/trustee from the

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[1] *See* File No. SR-NYSE-85-17, approved in Securities Exchange Act Release No. 22662 (November 26, 1985), 50 FR 49949 (December 2, 1985).

[2] For a complete description of ACATS, see Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 (October 8, 1985) in which the Commission approved File No. SR-NSCC-85-7.

[3] According to the Exchange, the total daily customer transfer activity initially will be limited to fifteen requests a day, with no more than three requests to any one receiving firm.

[4] Several technical, nonsubstantive, and clarifying revisions of the interpretations also are proposed, in particular regarding the type of information that must be included for customer assets in an account to be transferred and the captioning of fail contracts established under NYSE Rule 412.

[5] Interpretation (b)(1)/05 defines a "nontransferable asset" to be "incapable of [transfer] from the carrying organization to the receiving organization because it is [:] 1. an asset that is a proprietary product of the [carrying broker] or 2. an asset that is a product of a third party (e.g. a mutual fund or money market fund) with which the receiving organization does not maintain a relationship or arrangement necessary to receive and carry the asset for the customer account."

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credit balance in the account; or (b) to liquidate assets in the account to the extent necessary to satisfy those fees if the account does not contain a credit balance or if the credit balance is insufficient to satisfy those outstanding fees. If liquidation is not practicable, the fees would need to be transferred to, and accepted by, the receiving broker as a debit item.

Sixth, a receiving broker must deem receipt of a duly-executed mutual fund re-registration form as adequate delivery for purposes of transferring mutual fund shares.

Seventh, NYSE-member firms could agree to close-out fail contracts established under Rule 412 by delivering securities that are substantially comparable to those owed.

Last, fail-to-deliver contracts will not need to be established for nontransferable assets and assets in transfer to the customer, *i.e.*, in possession of a transfer agent at the time of the carrying organization's receipt of a customer account transfer instruction carrying organization for shipment, physically and directly, to the customer.

The NYSE's Rationale

In its filing, the NYSE represented that the proposed rule change is consistent with the requirements of the Act in that it is designed to protect investors and the public interest by requiring expeditious customer account transfers, and is intended to promote cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to transactions in securities, in accordance with section 6(b)(5) of the Act. In addition, the Exchange states that the proposed rule change is consistent with Congress's finding in section 17A(a)(1)(A) of the Act, that "[t]he prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors."

The NYSE's Request for Accelerated Effectiveness

The Exchange believes good cause exists for accelerating effectiveness of the proposed rule change under section 19(b)(2) of the Act. In support of its request, the Exchange states that expedited action is appropriate to meet the industry target date of February 24, 1986. To ensure that, as of that date, NYSE member firms have an adequate procedural framework for expeditious transfers, the Exchange needs some lead time to publish the revisions, and member organizations require sufficient lead time to implement effective programs.

Discussion

For the reasons below, the Commission agrees with the NYSE that its proposed interpretations are consistent with the Act. Therefore, the Commission is approving the proposal.

The proposed interpretations represent a useful fine-tuning, based on experience during the pilot period. These fine-tunings should help ensure successful implementation of a permanent, automated, customer account transfer process. These modifications are the result of close NYSE/user community communications during the program's pilot phase and reflect a careful and responsive approach by the NYSE.[6]

The proposal enhances NYSE Rule 412 operations in several respects. First, the interpretations refine how the Rule will apply to certain investment products. The interpretations describe in detail how carrying firms are to handle "nontransferable assets." [7] They also address how to identify customer-owned municipal securities that have not been assigned CUSIP numbers.[8] The interpretations additionally clarify how member firms must treat customer assets that: (1) Have been placed "in transfer"; [9] (2) are "safekeeping positions"; or (3) are in retirement plan securities accounts for which custodian/trustee fees remain outstanding. In addition, regarding mutual fund shares, the interpretations provide that member firms must accept as good delivery under Rule 412 a duly-executed mutual fund re-registration form regarding mutual fund shares.

Second, the interpretations provide additional guidelines that should facilitate broker compliance and customer protection. For example, the interpretations require a carrying broker to freeze a customer's account by cancelling open orders and declining acceptance of new orders upon receipt of the customer's account transfer request. Moreover, to ensure the integrity of customer "safekeeping positions" maintained as carrying brokers, a new interpretation provides that a receiving broker should reject securities deliveries against a safekeeping position when delivered securities cannot qualify as a "safekeeping position."

Third, the new interpretations offer NYSE member firms needed flexibility. For example, receiving brokers generally have a limited ability to reject account transfers [10] and carrying brokers cannot reject fail contracts in connection with customer account assets that have not been delivered to the receiving broker.[11] New interpretation (c)/02, however, enables them to agree to close-out Rule 412 fail contracts through delivery of securities that are "substantially identical to those owed."

Fourth, the proposal should enhance NYSE's and its member firms' ability to oversee member compliance with Rule 412. New Interpretation (a)/02 requires member firms to develop written procedures for Rule 412 implementation and compliance. This requirement not only should help prepare firms for the February 24, 1986 effective date, it also should help ensure continuing compliance with the Rule. Those written procedures should provide each firm with a blueprint for rule compliance and a means to ensure that firm personnel understand rule requirements and processing mechanics. For NYSE and Commission inspection staffs, those written procedures should facilitate oversight review.

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[6] The Commission is assured that the NYSE will continue its careful and responsive approach while resolving the few remaining processing questions and any new questions uncovered during the phase-in period. For example, the NYSE, NSCC and Options Clearing Corporation must resolve how to transfer options positions in customer accounts. The Exchange has informed the Commission that until that time, customer accounts that contain options positions will be temporarily exempt from Rule 412's requirements. The Commission hopes this situation is resolved quickly.

[7] Under the Rule and existing interpretations, "bankrupt issues" are treated as "delayed delivery asset." Valued fails to deliver and receive need not be established in the customer's account, but "zero value" fail instructions must be generated. A new interpretation further requires those fail instrucitons to be reflected on member books and records, unless the bankrupt issue is "non-deliverable," and it defines "non-deliverable" in this context to mean that the carrying broker does not have enough shares in its in-house and depository accounts to effect delivery and no transfer agent is servicing the issue. *See* note 4 *supra* for a definition of a "non-deliverable asset."

[8] To determine the minimum elements of municipal securities description, NYSE representatives consulted with representatives of the Municipal Securities Rulemaking Board.

[9] An "in transfer" asset is in the possession of a transfer agent at the time the carrying broker receives a customer transfer request.

[10] Under amended interpretation (b)(2)/09, a receiving broker can reject an account transfer only if the account does not comply with the firm's credit policies or meet minimum assets requirements.

[11] *See* Interpretation (b)(3)/01.

Commission Approval on an Accelerated Basis

The Commission finds that good cause exists to approve the proposal prior to the thirtieth day after publication of this release for comment in the Federal Register and therefore is granting NYSE's request to approve the proposal on an accelerated basis. We agree with the NYSE that accelerated approval of the proposal is appropriate. Accelerated effectiveness should ensure that when NYSE Rule 412 becomes fully effective on the industry target date of February 24, 1986, NYSE member firms will be able to look to effective Rule 412 interpretations for guidance. Further, by granting accelerated effectiveness, the Exchange should have sufficient time to notify its members about the most recent changes, and members, in turn, should be able to adjust their internal procedures accordingly before the Rule's full inplementation date. Finally, the proposal is the product of NYSE's active effort to solicit member comments and recommendations. Accordingly, the Commission finds that it is in the public interest to accelerate the proposal's effectiveness and that no purpose would be served were the Commission to delay the effective date of the proposal beyond the industry target date, *i.e.*, until the thirtieth day after publication of this release in the Federal Register.

Request for Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will be available for inspection and copying at the NYSE's principal office. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1986.

Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, section 6 and 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4104 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22906; SR-NYSE-85-46]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

February 14, 1986.

The New York Stock Exchange, Inc. ("NYSE") submitted on November 29, 1985, copies of a proposed rules change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4, to modify rates of reimbursement specified in Supplementary Material to Rules 451 and 465 for the forwarding of proxy and annual report mailings to beneficial shareowners. Specifically the rules changes propose to: (1) Increase, effective July 1, 1986, the approved reasonable rate of the reimbursement for initial mailings of proxy material by $.10 per set (from $.50 to $.60 for those meetings which do not include a proposal which requires beneficial owner instructions and from $.60 to $.70 for those meetings which include a proposal requiring beneficial owner instructions); (2) increase, effective January 1, 1986, the approved reasonable rate of reimbursement for follow-up mailings of proxy material by $.10 per set (from $.50 to $.60 for a selective mailing); (3) increase, effective January 1, 1986, the approved reasonable rate of reimbursement for separately mailed copies of annual reports by $.10 per report (from $.10 to $.20); and (4) establish, effective January 1, 1986, as a reasonable rate of reimbursement, a minimum charge of $3.00 per issuer for mailing annual reports.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 227401, December 23, 1985) and by publication in the Federal Register (50 FR 53413, December 31, 1985). No written comments were received by the Commission on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rules change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4105 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22912; File No. SR-NYSE-86-7]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Options Joint Accounts

February 14, 1986.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] The Commission recently approved another rule change by the NYSE which amended the Supplementary Material to NYSE's Rule 451 (Proxies) and Rule 465 (Company Reports to Stockholders) concerning approved charges by member organizations to issuers in connection with the requirements of Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Act. These changes authorized: (1) the second, and final, surcharge that may be charged issuers in connection with proxy solicitations, which is intended to complete recoupment of start-up costs incurred in complying with the shareholder notification requirements of Rules 14b-1(c) and 17a-3(a)(9)(ii); and (2) a change intended to ensure that NYSE member organizations received a fair and reasonable rate of reimbursement for costs incurred in providing beneficial ownership information to requesting issuers pursuant to Rule 14b-1(c). Securities Exchange Act Release No. 22909 (February 11, 1986) (File No. SR-NYSE-85-43).

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to revise its rules governing joint accounts on the options floor, as follows: (Brackets indicate language deleted; italics indicate language added.)

Joint Accounts

Rule 749.

(a) No member or member organization who is approved by the Exchange to initiate transactions on the Floor shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any option contract or related security unless (1) each participant in such joint account is registered as a broker or a dealer under the Securities Exchange Act of 1934, (2) each participant in such joint account is registered as a Competitive Options Trader pursuant to Rule 758(a) and (3) such joint account applies to the Exchange and is approved for trading. The application shall contain the following information:

(1) name of the joint account;

(2) names of all participants;

(3) the participants's respective interests in the initial capital, profits and losses of the joint account;

(4) name of the member organization carrying and clearing the joint account and the accounts of the participants;

(5) copies of any written agreements or instruments relating to the joint account.

(b) The option trading accounts of all participants in the joint account and the joint account itself must be carried by the same clearing member. The joint account must comply with the provisions of Rule 758 (a)(ii)(A) or (B). The provisions of Rule 758 (a)(ii) regarding revocation of a clearing member's guarantee shall apply to joint accounts.

(c) No joint account may have more than three participants nor may a single participant be associated with more than two joint accounts.

(d) Participants in the joint account must keep current all information regarding the joint account filed with the Exchange. Each joint account must keep its own books and records, separate from the books and records of its participants. Each joint account must provide an account statement to the Exchange's Market Surveillance Division on a monthly basis, in a format acceptable to the Exchange.

(e) No participant in a joint account shall effect a transaction, either for his own account or for the joint account, with another member acting on behalf of the joint account.

(f) Participants in the joint account may not concurrently represent orders for the joint account in the same option series.

(g) Joint accounts are not permitted to enter opening transactions from off the floor for option contracts listed on the Exchange. Positions in the joint account may be closed from off the floor.

(h) Orders for options contracts, futures contracts and securities that are not listed on the Exchange or traded on the New York Futures Exchange Inc. may be entered for the joint account only if the positions created by such orders are a bona fide hedge with positions in option contracts listed on the Exchange that are held in the account. This restriction shall not apply to orders entered for securities underlying Exchange option contracts.

(i) For purposes of determining compliance with Rules 704 (Position Limits) and 705 (Exercise Limits) by the joint account and each participant in the joint account, the Exchange shall compute the positions or exercises attributable to each participant and to the joint account by aggregating all the positions or exercises of the joint account with all the positions or exercises which any participant controls.

(j) Each participant in the joint account and each member organization associated with a participant is jointly and severally responsible for assuring that the account complies with all applicable provisions of the Exchange's Constitution and Rules.

. . . *Supplementary Material:*

.10 Participants in joint accounts should note that the requirements imposed on Competitive Options Traders by the provisions of Rule 758, in particular, paragraphs (b) and (c) and the supplementary material to Rule 758, apply to trading for the joint account. However, the joint account need not meet the assignment and trading volume requirements of Rule 758, Supplementary Material .60 and .65.

.20 Should the Exchange suspend the registration of a Competitive Options Trader pursuant to Rule 758(d), such Competitive Options Trader will not be allowed to enter any orders on behalf of the joint account.

The Exchange will also delete references to Rules 93 and 94 from Rule 750(b).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange is modifying its Rules governing joint accounts as applied to the Options Floor. Currently, Rules 93 and 94, through the incorporation provisions of Rule 750(b), govern joint accounts. The proposed rule change replaces Rules 93 and 94 as applicable to options with a new Rule 749 which is tailored solely for joint accounts operating on the Options Floor. The Exchange believes the proposed rule change will benefit members on the Options Floor by providing a clearer statement of their obligations with respect to joint accounts.

The provisions of Rule 749(a) closely parallel the requirements of Rule 93(a) requiring the joint account to provide certain information to the Exchange and receive approval for the joint account prior to commencing trading. Rule 749(a) requires each participant in the joint account to be registered as a broker or dealer under the Securities Exchange Act of 1934 (the "Act") and a Competitive Options Trader ("COT") under Rule 758(a).

Since the formation of joint accounts is only for proprietary trading on the Options Floor, it serves the interest of a fair and orderly market to have all participants in a joint account meet the affirmative and negative obligations and other requirements imposed on COTs. Supplemenary Material .10 and .20 to Rule 749 also remind members that their obligations as COTs extends to trading in and for the joint account.

Paragraph (b) of rule 749 requires that the joint account be carried by the same clearing member as the accounts of all the participants. Further, each joint account must either have a letter of

gurantee from such clearing member, or if the COT is self-clearing, meet all applicable requirements of The Options Clearing Corporation. The provisions of Rule 759 regarding revocation of the letter of guarantee also apply to joint accounts. These requirements protect the marketplace by providing financial guarantees for the account.

Rule 749(c) limits the number of participants in a joint account to three and prohibits a COT from participating in more than two joint accounts. These restrictions will prevent proliferation of joint accounts. Members desiring to pool capital and other resources remain free to form partnerships or corporations to do so.

Rule 749(d) requires the joint account to maintain books and records separate from those of its participants and to keep all information on file with the Exchange updated. The joint account is also required to submit monthly account statements to the Exchange.

Rule 749(e) prohibits participants in the joint account from trading with the joint account, preventing any pre-arranged or wash trading using the joint account.

Rule 749(f) prevents the participants from using the joint account to gain an unfair priority over other members in the crowd, through the representation of the same order for two accounts in which the participant holds an interest.

Paragraph (g) prohibits joint accounts from establishing opening positions from off the Options Floor; positions already established while on the Floor may be closed through orders entered from off the Floor.

Rule 749(h) restricts orders and positions in the joint account to only (1) those options and futures traded on the Exchange or the New York Futures Exchange, Inc., (2) options and futures traded on other exchanges if the resulting positions is a bona fide hedge with Exchange options or positions, and (3) securities underlying Exchange option contracts. These restrictions will allow the joint account to adequately hedge the risk of its positions while not encouraging trading in instruments not regulated by the Exchange or its subsidiaries.

Rule 749(i) aggregates the option positions and exercises of the joint account and its participants. To illustrate the effect of this provision, assume a limit of 8,000 contracts on the same side of the market for XYZ options and two participants in the joint account, A and B. If A holds 2,000 XYZ option contracts in a regular COT account, and B the same, then the joint account could hold a maximum of 4,000 XYZ options contracts.

Paragraph (j) provides that each participant in the joint account is fully responsible for any activities conducted by and on behalf of the joint account.

The statutory basis of the proposed change is section 6(b)(5) of the Act, in particular, its requirements that the rules of a national securities exchange prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4106 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22909; Amdt. No. 1 to File No. SR-NYSE-83-13]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Fidelity Insurance Requirements

February 14, 1986.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 10, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the amendment is to clarify certain provisions of the proposed amendments to Rule 319. In addition, the amendment responds to questions raised by commentators and the Commission staff on certain aspects of the original filing.

The specific amendments to Rule 319 as filed with SR-NYSE-83-13 and a discussion of these changes follows: [1]

- *Rule 319(d)*—elimination of the word "unassociated".
- *Rule 319(d)(ii)*—Reinstatement of a requirement for introducing members and member organizations to carry securities forgery coverage. This provision was originally planned to be rescinded since an introducing firm would not, under normal circumstances, perform the securities handling functions which would give rise to claims under this provision. However, there may be instances where coverage for securities forgery could be required if

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[1] The proposed rule change was noticed in a Commission release (Securities Exchange Act Release No. 19721, May 2, 1983), and its terms of substance were published in the **Federal Register** (48 FR 20637, May 6, 1983).

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an introducing broker acts even in the capacity of forwarding securities to its clearing organization. Thus, it is believed that such coverage should be retained by introducers.

- *Rule 319(d)(iv)*—Removal of this paragraph relating to the use of the Disclosed Account Rider by introducing members and member organizations. This provision was originally proposed in order to provide an alternative to acquiring coverage directly by introducers through use of a Disclosed Accounts Rider which would make the introducers employees agents of the carrying organization and provide coverage under the carrying organization's bond. However, the insurance industry has indicated that such rider was never intended for or appropriate for such use.
- *Rule 319(e)(ii)*—Removal of the alternate method of calculating required insurance for carrying member organizations. The amendments to Rule 319 as originally filed would permit carrying organizations to calculate the approximate value of securities under their possession and control by use of figures submitted on Part II of the FOCUS report.[8] This calculation would then serve as the basis for figuring the required amount of fidelity insurance as outlined in paragraph (e)(i) of the rule. This calculation was thought to provide a good approximation of securities values at depositories which typically hold the vast majority of a carrying member organization's securities. (The substitute method projected applying a multiplier of six to a FOCUS report item which covered the value of customers' fully and partly secured debit balances.) Subsequent review of this alternative, however, has shown that this relationship can vary by more than what can be considered a normally acceptable margin for reliability.

The Exchange believes that its account carrying member organizations are able to provide a reasonably accurate approximation of the securities and money values under their possession and control through their own in-house computer systems, service bureau records and depository records or some combination thereof. The Exchange notes that it never intended for this figure to be exact, but to serve the purpose of falling into a range of values in order to determine the level of fidelity insurance required. (See Rule 319(e)(i) for these ranges and requirements.) The Exchange will work with its member organizations to establish these values in any instance where a claim of inability to calculate an insurance requirement is made.

- *Rule 319.10*—A provision which will require recalculation of a firm's insurance requirement on an annual or "for cause" basis is proposed to be added to the rule. This provision is meant to address situations where a member organization's business may have changed significantly and an increased or decreased level of insurance is forecast. It will require member organizations to notify the Exchange in such instances. The Exchange will review the circumstances surrounding the projected change in required insurance.
- *Rule 319.13*—Three minor wording changes are proposed in this section of the rule. One will clarify that fidelity insurance coverage will be required only for those commodities broker/dealer affiliates or subsidiaries whose obligations or liabilities are guaranteed by the member organization. Another change will conform a section of the rule dealing with coverage for designated messenger services to language used within the insurance bond forms. The third is a change regarding when coverage for associated broker/dealers will be required from "automatic" to "prompt".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to the filing is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (The "Act") in that Rule 319 will protect investors and the public interest by insuring that members and member organizations comply with certain prescribed minimum fidelity insurance standards. The proposed amendment is also consistent with section 6(c)(3)(A) of the Act which permits a national securities exchange to deny or condition the membership of a broker or dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

All other items required by Form 19b-4 remain as stated in SR-NYSE-83-13.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4107 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22911; File No. SR-PSE-86-01]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 14, 1986, The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[8] Form X-17A-5.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to amend Commentary .01 to Rule VI, Section 55, "Reporting Duties" of the Rules of the Board of Governors, to state specifically that an account origin code is required on all cards or tickets for agency orders. The Exchange also intends to amend .02 of said Commentary to specify the proper account origin codes which are as follows: *"C" for non-broker-dealer customer accounts; "F" for firm proprietary accounts; "M" for member Market Maker accounts; and "B" for firm orders of non-member broker-dealer accounts, stock specialist accounts, or customer account trades of the broker-dealer or non-member broker-dealer.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule change

The proposed rule change will ensure an effective audit trail and compliance procedure in light of the recent Securities and Exchange Commission Release No. 21710 which allows specialists to use listed options. In addition, it will also facilitate Exchange Rule VI, section 43, requiring that orders contain the account designation for which such orders are to be executed.

Furthermore, this proposed rule change is designed to protect the integrity that the Book must maintain in receiving orders from the members as defined in Section 66 of Exchange Rule VI. Under section 66, only public customer orders (origin code "C") may be placed on the Book. This designation will ensure that that limitation will be enforced.

Section 63 of Exchange Rule VI, allows for a facilitation of a customer order by a firm proprietary account (origin code "F".) This proposed rule change will ensure that the customer order and firm proprietary account will be disclosed in a facilitation transaction. In addition, under Section 49 of Exchange Rule VI, customer market orders are entitled to priority over limit orders at the same opening price on the Book. Therefore, to facilitate this Rule, the origin code "F", as proposed will be utilized.

Finally, Options Floor Procedure Advice ("OFPA") B-6, states that the Exchange believes that the special obligation and role of the Market Maker warrant that the crowd be fully aware of the Market Makers' trading activity. Accordingly, OFPA B-6 lists special procedures as to how a ticket should be marked, indicating that it is a Market Maker's order (origin code "M"). This proposed rule change will ensure that this procedure will be utilized, and will aid in contributing to the maintenance of a fair and orderly market.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that it will remove impediments to the creation of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 to facilitate the maintenance of a fair and orderly market in PSE options.

The Commission finds that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will better ensure an effective audit trial and compliance procedure, thereby facilitating the maintenance of a fair and orderly market. In addition, the proposed rule change is similar to a rule change proposed by the Chicago Options Exchange, Inc. which was approved by the Commission (File No. SR-CBOE-85-6), Securities Exchange Act Release No. 34-21944, April 12, 1985.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 18, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4106 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Zenith Laboratories, Inc.

Common Stock, $0.09 Par Value (File No. 7-8834)

This security is listed and registered on one or more other national securities exchange and is reported in the

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consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4159 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Brascan Limited
  Class A Convertible Ordinary Stock (File No. 7-8828)
Korea Fund, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8829)
Gleason Corporation
  Common Stock, $1.00 Par Value (File No. 7-8830)
Metropolitan Financial Corporation
  Common Stock, $.01 Par Value (File No. 7-8831)
O'Sullivan Corporation
  Common Stock, $1.00 Par Value (File No. 7-8832)
Petrie Stores Corporation
  Common Stock, $1.00 Par Value (File No. 7-8833)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extnsions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4160 Filed 2-25-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Copies of the survey, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538
OMB Reviewer: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785

Title: Small Business Development Center Project Officer Checklist
Frequency: Quarterly
Description of Respondents: SBDC's are required to submit on a quarterly basis, a programmatic and financial report and maintain documentation to support and facilitate a financial and/or program audit
Annual Responses: 160
Annual Burden Hours: 320
Type of Request: Reinstatement
Title: Development Company Reporting Requirements
Frequency: Annually
Description of Respondents: Development companies must provide basic information to determine the viability and eligibility of the development companies and to protect SBA's financial interest
Annual Responses: 550
Annual Burden Hours: 825
Type of Request: Reinstatement.

Date: February 19, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-4171 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5470]

Application for a License To Operate as a Small Business Investment Co.; East Coast Venture Capital, Inc.

An amended application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.)*, has been filed by East Coast Venture Capital, Inc. (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1985).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percent of ownership
Zindel Zelmanovitch, 1983 18th Street, Brooklyn, New York 11223.	President, Director	45
Nathan G. Berney, 25 Highview Road, Monsey, New York 10952.	Secretary, Director	[1] 55
Jeanette Berney, 25 Highview Road, Monsey, New York 10952.	Treasurer, Director	

[1] Jointly with spouse.

The Applicant, a New York corporation, with its principal place of business at 250 West 57th Street, New York, New York 10107, will begin operatons with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will initially conduct its activities in the state of New York.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 19, 1986.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-4168 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2229]

Declaration of Disaster Loan Area; Texas

The County of Harris and the adjacent County of Montgomery in the State of Texas constitute a disaster loan area because of damage caused by a tronado, hail and high winds which occured on February 5, 1986. Applications for loans for physical damage may be filed until the close of business on April 21, 1986, and for economic injury until Spetember 2, 1986, at:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222912 for physical damage and for economic injury the number is 637600.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: February 19, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-4166 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2230]

Declaration of Disaster Loan Area; Washington

King County and the adjacent County of Kitsap in the State of Washington constitute a disaster area because of heavy rain, flooding, mud slides and wind which occurred January 16-25, 1986. Applications for loans for physical damage may be filed until the close of business on April 21, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations	10.500

The number assigned to this disaster is 223006 for physical damage and for economic injury the number is 637700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-4167 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

Baltimore Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region III, located in the geographic area of Baltimore, Maryland, will hold a public meeting at 9:30 a.m., on Thursday, March 13, 1986, at the HUD conference room, 2nd floor, The Equitable Building, 10 North Calvert Street, Baltimore, Maryland 21202 to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd floor Baltimore, Maryland 21202. (301) 962-2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 18, 1986.

[FR Doc. 86-4169 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

Oklahoma Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI, located in the geographical area of Oklahoma City, Oklahoma, will hold a public meeting at 10:00 a.m., Wednesday, March 5, 1986, at the Sheraton Hotel, 1000 E. 2nd Street, Edmond, Oklahoma, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert K. Ball, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102 (405) 231-5237.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 18, 1986.

[FR Doc. 86-170 Filed 2-25-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 954]

Certain Foreign Passports Validity

Under the provisions of section 212(a)(26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of his admission into the United States of his

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contemplated initial period of stay authorizing him to return to the country from which he came or proceed to and enter some other country during such period. By reason of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These arrangements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport.

This order adds Hong Kong and Singapore to those countries which have concluded such agreements subsequent to Public Notice 918 of October 1, 1984. The following foreign governments have concluded agreements with the Government of the United States:

Algeria, Antigua and Barbuda, Australia, Austria (Reisepass only), The Bahamas, Bangladesh (travel permits and passports), Belgium, Bolivia, Brazil, Cambodia, Canada, Chile, Colombia, Costa Rica, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany (FRG) (Reisepass and Kinderausweis), Greece, Guatemala, Guinea, Guyana.

Honduras, Hong Kong, Iceland, India, Iran, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Korea, Kuwait, Laos, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua (diplomatic and official passports only), Nigeria, Norway.

Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, St. Vincent and the Granadines, Senegal, Singapore, Soviet Union (U.S.S.R.) (Seamen only), Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Yugoslavia.

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

Public Notice 918 of October 1, 1984 issued at 49 FR 38780 is hereby superseded.

Dated: February 19, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-4136 Filed 2-25-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB January 27, 1986–February 19, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period January 27, 1986—February 19, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from January 27, 1986—February 19, 1986.

DOT No: 2690.
OMB No: 2115-0138.
By: United States Coast Guard.
Title: Records and Reports of Inspections.
Form(s): CG-840-AA, CG-840-BB, CG-2832.
Frequency: On Occasion.
Respondents: Owners and operators of U.S. Merchant Vessels.
Need/Use: This information collection contains a recordkeeping requirement which is needed to enforce the Coast Guard's commercial vessel safety program as described in 46 CFR. The Coast Guard uses these records to document the construction, alteration, repair and maintenance of said vessels to insure the safety of life and property at sea.

DOT No: 2697.
OMB No: 2127-0044.
By: National Highway Traffic Safety Administration.
Title: Names and Addresses of First Purchasers of Motor Vehicles.
Form(s): None.
Frequency: On Occasion.
Respondents: Motor vehicle manufacturers and dealers.
Need/Use: Motor vehicle manufacturers are required to record and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons if the vehicle is recalled.

DOT No: 2698.
OMB No: 2125-0023.
By: Federal Highway Administration.
Title: Defense Bridges and Critical Highway Facilities Reports.
Form(s): None.
Frequency: Annually.
Respondents: State highway agencies.
Need/Use: To meet requirements of the Federal Emergency Management Agency (FEMA), Department of Defense (DOD), and the FHWA in carrying out responsibilities related to National emergencies, disaster relief, and defense activities.

DOT No: 2699.
OMB No: 2138-0016.
By: Research and Special Program Administration.

Title: Report of Extension of Credit to Political Candidates.
Form(s): RSPA-183.
Frequency: On Occasion.
Respondents: Air carriers holding section 401 certificates.
Need/Use: This report fulfills the Department's requirement under the Election Campaign Act to collect data on the extension of unsecured credit to candidates for Federal office by certificated air carriers.

DOT No: 2700.
OMB No: 2115-0520.
By: United States Coast Guard.
Title: Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons (DWT) Carrying Oil in Bulk.
Form(s): None.
Frequency: On Occasion.
Respondents: Existing tank vessels of 20,000-40,000 DWT carrying oil in bulk.
Need/Use: This information collection is needed and used by the Coast Guard to ensure that: (1) U.S. and foreign vessels comply with the minimum standards; (2) documentation is on board to determine compliance with equipment and design standards; and (3) authorized classification societies meet the applicable requirements to conduct third-party certifications and inspections.

DOT No: 2702.
OMB No: 2132-0530.
By: Urban Mass Transportation Administration.
Title: Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance from the Department of Transportation.
Form(s): None.
Frequency: Annually and Triennially.
Respondents: State/Local Governments and public transit authorities.
Need/Use: The information is needed to ensure that UMTA recipients are complying with the statutory provisions concerning transportation services for elderly and handicapped persons. In addition, the information will indicate whether these recipients are providing the services planned. UMTA's recipients are providers of mass transportation service.

DOT No: 2703.
OMB No: 2133-0006.
By: Maritime Administration.
Title: Documentation, Transfer, or Charter of Vessels.
Form(s): MA-29, MA-29A, MA-29B.
Frequency: On Occasion.
Respondents: Charterers/owners of vessels.
Need/Use: Information is needed to provide approval of certain charters to noncitizens and of the sale or other transfer to noncitizens of certain vessels.

DOT No: 2704.
OMB No: None.
By: Urban Mass Transportation Administration.
Title: Charter Bus Operations.
Form(s): None.
Frequency: Annually (with each grant application).
Respondents: State and Local Governments.
Need/Use: UMTA needs to require applicants to submit an agreement and to restrict its recipients to provide charter service only where there is no willing and able private operator to ensure that the UMT Act's protections for UMTA equipment and for private operators are complied with.

DOT No: 2705.
OMB No: 2120-0065.
By: Federal Aviation Administration.
Title: Certification and Operations—FAR 125.
Form(s): None.
Frequency: On Occasion.
Respondents: Air Carriers operating under FAR 125.
Need/Use: Federal Aviation Act of 1958, authorizes issuance of Air Carrier Operating Certificates. 14 CFR 125 will prescribe requirements for leased aircraft, aviation service firms, air travel clubs. Information collected shows compliance and applicants eligibility.

DOT No: 2706.
OMB No: 2125-0508.
By: Federal Highway Administration.
Title: Hazardous Materials Instructions and Documents.
Form(s): None.
Frequency: On Occasion.
Respondents: Motor Carriers.
Need/Use: Requirement that motor carriers transporting Class A or Class B explosives are required to provide drivers with written instructions.

DOT No: 2707.
OMB No: None.
By: National Highway Traffic Safety Administration.
Title: Impact of Public Information and Education Campaign on Driver Perception of Motor Vehicle Accident Injury Risk and Emergency Medical Services Awareness.
Form(s): None.
Frequency: On Occasion.
Respondents: Industries/Households.
Need/Use: PI&E involves a public information and education campaign to increase public knowledge and appropriate use of the EMS System. A telephone survey will be used for the test and comparison sites. It will measure public knowledge and awareness of EMS before and after the campaign.

Issued in Washington, DC, on February 20, 1986.

John E. Turner,

Director of Information Systems and Telecommunications.

[FR Doc. 86-4118 Filed 2-25-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket [illegible]]

Southwest Airlines Co., Enforcement Proceeding; Rescheduling of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to commence on April 14, 1986, has been rescheduled and will commence on April 10, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg., 400 7th Street, SW., Washington, DC before the undersigned Chief Administrative Law Judge.

Dated at Washington, DC, February 19, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-4085 Filed 2-25-86; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

[Docket No. 86-A]

Guidance on Documentation of Private Enterprise Participation of Urban Mass Transportation Programs; Extension of Comment Period

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Extension of Comment Period.

SUMMARY: On January 24, 1986, the Urban Mass Transportation Administration (UMTA) announced in the Federal Register (51 FR 3306) its guidance on documentation of private enterprise participation in urban mass transportation programs. That notice provided a 30-day period for public comments. Since then requests have been received for an extension of the public comment period. The purpose of this notice is to extend the public comment period of an additional 30 days.

DATE: The comment period on UMTA Docket No. 86-A, Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs (51 FR 3306), is extended from February 24, 1986 to March 26, 1986.

ADDRESS: Comments on this policy should be submitted to UMTA Docket Number 86–A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:30 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Birnie, Acting Director, Office of Private Sector Initiatives, Room 9310, telephone (202) 426–6385, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

Dated: February 18, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–4097 Filed 2–25–86; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ.—Public Debt Series—No. 10–86]

Treasury Notes, Series W–1988

Washington, February 20, 1986.

The Secretary announced on February 19, 1986, that the interest rate on the notes designated Series W–1988, described in Department Circular—Public Debt Series—No. 10–86 dated February 13, 1986, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86–4145 Filed 2–25–86; 8:45 am]

BILLING CODE 4810–40–M

[Dept. Circ.—Public Debt Series—No. 11–86]

Treasury Notes of May 15, 1991, Series J–1991

Washington, February 19, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of May 15, 1991, Series J–1991 (CUSIP No. 912827 TJ 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The notes will be dated March 5, 1986, and will accrue interest from that date, payable on a semiannual basis on November 15, 1986, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 26, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 25, 1986, and received no later than Wednesday, March 5, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively

higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, March 5, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, March 3, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, March 5, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes of full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86–4246 Filed 2–24–86; 12:27 pm]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

Advisory Board for Radio Broadcasting to Cuba; Meeting

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on March 4, 1986, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.

Tuesday, March 4, 1986

Part 1—Closed to the Public

9:00 a.m.—1. Discussion of suggested Board By-Laws prepared by Staff.
10:00 a.m.—2. Selection of a Board Vice-Chairman.
10:30 a.m.—3. Technical Responses by the Cuban government to the Radio Marti Program.
11:30 a.m.—4. Evaluation and analysis of the audience.
12:30 p.m.—5. Lunch.
2:30 p.m.—6. Impact of the "Gramm-Rudman" spending legislation on the Radio Marti Program.

Part 2—Open to the Public

3:30 p.m.—7. Discussion of the Annual Report to be sent to President Reagan on the Program's first broadcasting anniversary, May 20, 1986.
4:30 p.m.—8. Testimony of members of the public attending the meeting.
5:30 p.m.—9. Adjournment.

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The first five items of the seven item agenda, which will be discussed from 9:00 a.m. to 3:30 p.m., will be closed to the public. Items 1 and 2 concern (1) the adoption of Board by-laws and (2) the selection of a Vice-Chairman. These two items fall under 5 U.S.C. 552b(c)(2) of the Government in the Sunshine Act which permits meetings to be closed during "discussion of internal personnel rules and practices." Items 3, 4, and 5 cover (3) technical responses by the Cuban government to the Radio Marti Program, (4) the determination of the existing size and nature of the Cuban audience, and (5) the impact of the Gramm-Rudman bill. All will involve discussion of classified information. Closing such deliberations to the public is also justified by the Sunshine Act under 5 U.S.C. 552b(c)(1)). Premature disclosure of some of this information would be likely to significantly frustrate implementation of proposed Agency action.

Members of the public interested in attending the meeting should contact Mr. Stuart Sweet on (202) 485-6312 to make prior arrangements, as access to the building is controlled.

Dated: February 21, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86-4191 Filed 2-25-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Veterans Administration is amending the system of records entitled 27VA047, "Personnel and Accounting Pay System—Va." Specifically, VA field facilities will be granted access to the data stored in this system.

This expanded access is being provided in order to give authorized field and Central Office employees more current information on personnel and payroll data stored at the Austin DPC. Access to the data will be by one of two methods. The first method is an on-line (query) database designed for users with a personal computer or an interactive terminal connected by a dial-in capability with the Austin DPC. The other method is for Department of Medicine and Surgery facilities with a Decentralized Hospital Computer Program (DHCP) to down-load their accessible data to a storage device located at the facility.

Access to data within this system will be limited to authorized employees. Security access procedures will be by the means of unique user identifications and passwords.

Accordingly, the VA is amending the paragraphs pertaining to storage and safeguards.

A "Report of Intention to Publish a Federal Register Notice of a New System of Records" and an advance copy of the new system notice have been provided to the Speaker of the House, President of the Senate, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a(o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

These changes are administrative in nature, therefore, no public comment is required.

Approved: February 18, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

Notice of Amendments to System of Records

In the system identified as 27VA047, "Personnel and Accounting Pay System-VA", in Office of the Federal Register, Privacy Act Insurances, 1984 Compilation, Vol. V., p. 713, as amended at 50 FR 23100 (May 30, 1985), the system notice is revised as follows:

27VA047

SYSTEM NAME:

Personnel and Accounting Pay System—Va

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

* * * * *

STORAGE:

Paper documents, magnetic tape, disks.

* * * * *

SAFEGUARDS:

Physical Security: Access to Payroll Folder Files is restricted to fiscal officers and employees of the Payroll Section. Access to Official Personnel Folder Files is restricted to personnel officers and employees authorized access under Federal Personnel Manual and VA Manual, MP-5, Personnel Policy. Personnel and Fiscal offices are locked after working hours and are protected from outside access by the Federal Protective Service and other security officers. Access to data by means of on-line (query) data base or down-loading with a Decentralizing Hospital Computer Program (DHCP) is restricted to authorized employees by means of unique user identifications and passwords. User identifications and passwords will be seven (7) characters in length. These codes are to be mailed in a sealed envelope to an employee's business address and will be opened only by the addressed employee. No user identification or password will be given to an employee except those authorized access under Federal Personnel Manual and VA Manual, MP-5, Personnel Policy.

* * * * *

[FR Doc. 86-4134 Filed 2-25-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 38
Wednesday, February 26, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
Nuclear Regulatory Commission	1
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1

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 24, March 3, 10, and 17, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW, Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 24

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

2:00 p.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)
2:00 p.m.
Affirmative/Discussion and Vote (Public Meeting
a. Review of ALAB-819 (In the Matter of Philadelphia Electric Company)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)

Week of March 3

Tentative

Wednesday, March 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 10

Tentative

Tuesday, March 11

10:00 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17

Tentative

Monday, March 17

2:00 p.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 21

10:00 a.m.
Advisory Commitee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

ADDITIONAL INFORMATION: Affirmation of "Final Rule Establishing Criteria for Reopening Records to Formal Licensing Proceedings" scheduled for February 20 was *postponed.*

To Verify the Status of Meetings Call (Recording)—(202) 634-1598

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: February 20, 1986.

Julia Corrado,

Office of the Secretary.

[FR Doc. 86-4163 Filed 2-21-86; 4:18 pm]

BILLING CODE 7590-01-M

2

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 4, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611.

The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations.
(2) Canadian Service.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: February 21, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-4115 Filed 2-24-86; 10:52 am]

BILLING CODE 7905-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 24, 1986.

Closed meetings will be held on Tuesday, February 25, 1986, at 2:30 p.m. and on Thursday, February 27, 1986, following the 2:30 p.m. open meeting.

Open meetings will be held on Wednesday, February 26, 1986, at 2:00 p.m. and on Thursday, February 27, 1986, at 10:00 a.m. and 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendered matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C.

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552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 25, 1986, at 2:30 p.m., will be:

Formal orders of investigation.
To amend formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, February 26, 1986, at 2:30 p.m., will be:

The Commission will meet with representatives of self-regulatory organizations and state securities commissions to discuss issues of mutual interest and concern, including, but not limited to, coordination of enforcement and surveillance programs. For further information, please contact Alan L. Dye at (202) 272-2014.

The subject matter of the opening meeting scheduled for Thursday, February 27, 1986, at 10:00 a.m., will be:

1. Consideration of whether to grant an application filed by David Lerner Associates, Inc. for an order exempting it from the provisions of section 9(a) of the Investment Company Act. For further information, contact Gary Sundick at (202) 272-2344.

2. Consideration of whether to adopt rules to require registrants to: (1) Present certain industry segment information for interim periods; and (2) focus on reportable segments within Management's Discussion and Analysis of Financial Condition and Results of Operations. The Commission will also consider whether to adopt certain other amendments to its requirements for interim financial reporting. For further information, please contact John W. Albert at (202) 272-2130.

The subject matter of the open meeting scheduled for Thursday, February 27, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by Owen V. Kane, the vice president of a registered broker-dealer, from an administrative law judge's intial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, February 27, 1986, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Dated: February 20, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4215 Filed 2-24-86; 11:23 am]

BILLING CODE 8010-01-M

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federal register

Wednesday
February 26, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 882

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Central Nervous System Fluid Shunt and Components; Notice of Inquiry

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 83N-0192]

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Central Nervous System Fluid Shunt and Components

AGENCY: Food and Drug Administration.

ACTION: Notice of inquiry.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to invite interested persons, including any Federal agency, to submit any existing standard as a proposed performance standard for the central nervous system fluid shunt and components, or to submit an offer to develop such a proposed standard. If FDA does not receive any response to this notice, or receives a response but does not accept any existing standard or offer to develop a standard, the agency will proceed to develop a performance standard or take other appropriate action to facilitate the development of a performance standard for the device.

DATE: Existing standards or offers shall be submitted on or before April 28, 1986.

ADDRESS: Existing standards or offers shall be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles E. MacNeill, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION:

Background Introduction

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA is required to classify each medical device into one of three regulatory categories: Class I (general controls), class II (performance standards), or class III (premarket approval).

In the **Federal Register** of September 4, 1979 (44 FR 51769), FDA published a final rule (21 CFR 882.5550) classifying the central nervous system fluid shunt and components into class II. In the **Federal Register** of July 8, 1983 (48 FR 31396), FDA initiated a proceeding to establish for the device a performance standard under section 514 of the act (21 U.S.C. 360d). As required by section 514(b) of the act, the proceeding was initiated by publishing in the **Federal Register** a notice of opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. FDA did not receive any request for a change in the classification of the device or any comments on the notice. Therefore, further action is not required under section 514(b) of the act.

As provided by section 514(c) of the act and Part 861 of the regulations governing performance standards development (21 CFR Part 861), FDA is continuing the proceeding to establish a performance standard for the central nervous system fluid shunt and components by inviting interested persons to submit an exisiting standard as a proposed performance standard for the device or to submit an offer to develop such a proposed standard.

Current Action

Section 514(c)(1)(A) of the act and § 861.20(c) of the regulations provide that in the event further action is not required under section 514(b) of the act, FDA shall publish in the **Federal Register** a notice inviting any interested person, including any Federal agency, to submit to FDA, within 60 days after the date of publication of the notice, an existing standard as a proposed performance standard or an offer to develop a proposed performance standard.

Section 514(c)(2)(B) of the act and § 861.22 of the regulations provide that the notice is to include: (1) A description or other designation of the device; (2) a statement of the risk or risks associated with the use of the device and which are intended to be controlled by a performance standard, including pertinent portions of the recommendations of FDA's advisory committees with respect to the device; (3) a summary of the data on which FDA has found a need for initiation of the proceeding to develop a performance standard, including pertinent portions of the recommendations of FDA's advisory committees with respect to the device; (4) identification of any existing performance standard known to FDA which may be relevant to the proceeding; (5) the approximate number of products (i.e., kinds of models) within the generic type of device; and (6) the time period within which the standard is to be developed, which may be extended by the Commissioner of Food and Drugs for good cause shown.

Device Description

The central nervous system fluid shunt is identified in § 882.5550 as a device or a combination of devices used to divert central nervous system fluid from the brain or other part of the central nervous system to an internal delivery site or to an external receptacle for the purpose of relieving elevated intracranial pressure or fluid volume (e.g., due to hydrocephalus). Components of the central nervous system fluid shunt may include catheters, valved catheters, valves, connectors, and other accessory components intended to facilitate use of the shunt or evaluation of a patient with a shunt.

Scope of the Standard; Models of the Device

FDA intends that any proposed performance standard for the central nervous system fluid shunt and its components to be offered or developed at this time would apply to internal totally implanted shunts, external temporary devices that drain cerebrospinal fluid to an external receptacle, and components of both internal and external shunts.

Of the various central nervous system fluid shunt device products, the commonly used shunts fall into the following models which are distinguished by the placement of the proximal or the distal end of the catheter:

(1) *Ventriculo-Atrial Shunt:* A widely used model of the shunt consisting of a variety of catheters, valves, reservoirs, and flushing components. The ventricular segment of the shunt is inserted into a lateral cerebral ventricle, preferably on the right side through a parietal burr hole. The cardiac segment of the shunt is directed subcutaneously to the neck where it is inserted into the internal jugular vein directly or through one of its branches and down the superior vena cava into the right atrium of the heart.

(2) *Ventriculo-Peritoneal Shunt:* A model of the shunt in which the ventricular catheter and components are similar to those of the ventriculo-atrial shunt, but the distal end of the catheter is directed subcutaneously into the peritoneal cavity where absorption of the cerebrospinal fluid takes place.

(3) *Lumbo-Peritoneal Shunt:* A model of the shunt which drains cerebrospinal fluid from the lumbar subarachnoid space to the peritoneal cavity.

(4) *Ventriculo-Ureteral Shunt:* A model of the shunt which drains cerebrospinal fluid from one of the ventricles of the brain to a ureter and into the urinary bladder.

(5) *Ventriculo-Lymphatic Shunt:* A model of the shunt which drains cerebrospinal fluid from one of the ventricles of the brain to one of the lymphatic vessels.

(6) *Ventriculo-Pleural Shunt:* A model of the shunt which drains cerebrospinal fluid from one of the ventricles of the brain to one of the plura cavities.

(7) *External-Receptacle Shunt:* A model of the shunt which drains cerebrospinal fluid from the lateral cerebral ventricle to a receptacle external to the body, generally for diagnostic purposes or for temporary drainage of the fluid.

Risks Associated With the Device and Which Are To Be Controlled by a Performance Standard

In the **Federal Register** of November 28, 1978 (43 FR 55714), FDA published a proposed rule to classify into class II the central nervous system fluid shunt and components. FDA listed in the preamble to the proposal the risks to health which its advisory committee identified as presented by the device.

The Neurological Devices Panel (then the Neurological Device Classification Panel), an FDA advisory Committee, identified the following risks to health:

(a) *Abnormal intracranial pressure:* Mechanical malfunctioning of the shunt or its components (e.g., blockage of the catheter or valve) may result in elevated intracranial pressure and the return of symptoms of hydrocephalus.

(b) *Tissue toxicity:* Adverse tissue reactions may result if the shunt or component materials are not biocompatible.

(c) *Perforation of viscus:* The tip of the catheter may puncture the bladder or other organs if the catheter material is too stiff.

(d) *Infection:* Infection may result if the shunt or its components are not sterile or introduce contaminants into the patient.

A further discussion of the risks identified by the Panel is included in the section of this notice "Summary of the Data Supporting the Need for a Performance Standard."

Based on the Panel's recommendation and on additional reviews of the scientific literature (Ref. 14), FDA has identified the following specific risks associated with the use of the central nervous system fluid shunt and components and that need, as a minimum, to be controlled by a performance standard:

(1) *Elevated intracranial pressure.* Due to mechanical malfunction of a valve or obstruction (clogging) of one of the shunt components, fluid pressure inside the cranium may rise to levels that are life threatening. A performance standard for the device should address requirements such as controls on valve malfunctions, catheter kinking, component clogging, or separation of shunt components to protect against the risk of elevated intracranial pressure.

(2) *Insufficient ventricular volume.* Due to mechanical malfunction of a valve or separation of a shunt component, excessive fluid drainage may cause the ventricle to collapse resulting in subdural bleeding which may be fatal. A performance standard for the device should address requirements such as controls on valve malfunction or separation of shunt components to protect against the risk of insufficient ventricular volume.

(3) *Perforation of a body organ.* Due to the use of catheter material which is too hard or which contains sharp edges, the catheter tip may puncture the bladder or other body organs leading to sepsis or hemorrhage which are life threatening. A performance standard for the device should address this risk by establishing requirements on materials and configuration controls.

(4) *Migration of components.* Due to inadequacies in component attachments, the implanted shunt components may become disconnected and migrate to various parts of the body resulting in life-threatening conditions. This risk may be compounded by the lack of radiopaque markers in the components which prevents location of migrated components in the body. A performance standard for the device should establish requirements and appropriate test methods applicable to component attachments. Provision of any such standard should include radiopaque marking requirements.

(5) *Skin erosion.* A shunt or its components that are implanted subcutaneously may cause erosion of the skin. Erosion can lead to open wounds which are vulnerable to infection and require reconstructive surgery. A standard should address the size, configuration, and material employed in shunts which may contribute to the frequency of erosion.

(6) *Revision trauma.* Periodic revision surgery to replace a shunt or its components, devices which are not easily removed, may result in excessive patient trauma due to component configuration, such as flanged catheters. Avulsion of brain tissue associated with the surgery may lead to hemorrhage or permanent neurological deficit. A standard should address the risk of revision trauma by establishing requirements for component configuration to control tissue damage associated with revision surgery.

(7) *Infection.* Infection resulting from implanation of a shunt or its components may be life threatening and may necessitate revision surgery and antibiotic treatment. A standard should address the risk of infection associated with use of the device by establishing requirements for sterility of the device and for related labeling.

(8) *Tissue toxicity.* Adverse tissue reaction and fever may result from the use of nonbiocompatible materials in a shunt or its components. The adverse effect may be correctable only by revision surgery. A standard should address the risk of tissue toxicity by establishing biocompatibility requirements for shunt and component materials. A standard should include associated test methods to assure reasonable compatibility of materials.

(9) *Thromboembolism.* Ventriculo-atrial shunts, in particular, present the potential for thrombus formation which may block a blood vessel resulting in a life-threatening infarction and the need of revision surgery. A standard should address the risk of thromboembolism by establishing requirements and associated test methods to ensure reasonable freedom from thrombus formation.

Summary of the Data Supporting the Need for a Performance Standard

The need to establish a performance standard for the central nervous system fluid shunt and components is based on information from several sources. These sources include FDA's advisory committee, reports in professional medical journals, a contract study by the University of Missouri on the design and functon of shunt valves (Ref. 13), a comprehensive literature search on neurosurgical implant devices conducted for FDA under another agency contract (Ref. 14), reports received through the agency's Device Experience Network (DEN), and information submitted to FDA under 21 CFR Part 803, the agency's regulations governing medical device reporting. FDA believes that the data presented in this notice support the need for a performance standard to address the risks described under the section of this notice "Risks Associated with the Device and Which are to be Controlled by a Performance Standard."

The Neurological Devices Panel summarized the reasons for recommending that FDA classify the

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central nervous system fluid shunts and components into class II (see 43 FR 55714, 55715). The Panel made its recommendation because the Panel members believed that there is sufficient information available to establish a performance standard that will assure the safety and effectiveness of the device. Shunts have been used for many years to treat hydrocephalus. Hydrocephalus is a condition, usually in children, characterized by an accumulation of cerebrospinal fluid in the head. The cerebrospinal fluid causes the head to enlarge and may produce brain damage by fluid pressure. The Panel members believed that the characteristics of the central nervous system fluid shunt and components are reasonably well established and that the conditions being treated are reasonably well understood. Although the Panel believed that the materials that have been used in the device are generally regarded as safe, it recommended the establishment of standards to ensure consistency in the composition of the materials.

In addition, the Panel members believed that it is important for the physician to know the pressure-flow characteristics of the valves used in shunts, to compare available valves, and to select the correct valve for a particular patient. Accordingly, the Panel recommended that the manufacturers of shunt valves be required to state, in standard form, the pressure-flow characteristics of their valves and to use standard test procedures to obtain measurements of those characteristics.

The Panel members believed that general controls will not provide sufficient control over the characteristics cited above; that a performance standard will provide reasonable assurance of the safety and effectiveness of the generic type of device, which includes internal, totally implanted shunts; external temporary devices that drain cerebrospinal fluid to an external receptacle; and components of both internal and external shunts.

The Panel based its recommendation in part on a review of the literature on fluid shunts. The published literature shows that the use of shunts is associated with relatively high death rates and mental retardation rates. These rates are lower, however, than the death rates and mental retardation rates for patients with untreated hydrocephalus. For example, Milhorat reported that the death rate for patients with untreated hydrocephalus is 40 to 70 percent, compared with a death rate of 5 to 35 percent for patients treated with ventriculo-atrial shunts (Ref. 1). The mental retardation rate among survivors with untreated hydrocephalus is 50 to 85 percent compared with a mental retardation rate of 20 to 50 percent among treated survivors (Ref. 1).

The use of central nervous system shunt products for treating hydrocephalus has been accompanied by a large number of complications. The complications vary depending upon the shunting technique and the anatomical site to which the cerebrospinal fluid is delivered. Complications common to most shunting techniques include obstruction or malfunction of the shunt, infection, and tissue reaction, e.g., formation of a fibrous sheath around the catheter or erosion of tissue over the shunt (Refs. 1, 5, and 7).

Ventriculo-atrial shunts have been associated with unique cardiopulmonary complications attributed to the placement of one end of the catheter in the blood stream. Among these complications are pulmonary emboli caused by clotting at the catheter tip or by breakage or separation and release of the catheter into the blood stream (Refs. 1, 2, and 3), and perforation of the heart wall by the catheter tip (Refs. 1 and 3). Glomerulonephritis (inflammation of the kidneys) has been reported in patients with ventriculo-atrial shunts (Ref. 4). Ventriculo-peritoneal shunts also have been associated with unique complications, such as perforation of the bladder or other organs by the catheter tip (Refs. 8, 9, and 10), development of inguinal (groin) hernias (Ref. 8), intra-abdominal cysts (Refs. 6 and 8), and ascites (cerebrospinal fluid collection in the abdominal cavity) (Ref. 6). Lumbo-peritoneal shunts have been associated with scoliosis (deviation in the straightness of the spine), leg pain or atrophy, and restricted back movement (Refs. 11 and 12). The Panel members believed that there have been few reports of complications associated with the use of ventriculo-ureteral, ventriculo-lymphatic, and ventriculo-pleural shunts because these methods are rarely used.

In 1979, the University of Missouri conducted an FDA-sponsored contract study on the central nervous system fluid shunt and components. The study's specific objectives were: (1) Preparation of a comprehensive critical review of the scientific literature that is directly applicable to the design and function of all shunt valves; (2) determination of the kind of test (or tests) that is necessary and sufficient to demonstrate that a given valve will perform its intended function; (3) identification of valve characteristics or parameters that appear to be of primary inportance to the prescribing physician in his or her selection of the proper device for the patient; (4) the design and documentation of simple, practical, and economical test methods which can be used to measure the characteristics and parameters that are found to be of primary importance; (5) a review of the findings and proposed test methods by independent experts, industry representatives, representatives of voluntary (consensus) standards groups, and others in an open seminar; and (6) the preparation of a final report which draws conclusions based on an analysis of the literature and comments obtained during the seminar (Ref. 13).

The University of Missouri reported that hydrocephalus shunt failures are usually associated with one of the following device complications:

(1) Blockage of shunt components (catheters, valves, connectors).

(2) Disconnection and separation of shunt components.

(3) Hydraulically and mechanically mismatched valves:

(i) Over drainage, which may produce ventricular collapse, hemorrhage, and over-riding of cranial sutures;

(ii) Inadequate drainage, which produces elevated ventricular pressure and the symptoms associated with hydrocephalus.

(4) Infection or inflammatory response of the host.

(5) Corrosion, abnormal calcification, and deterioration of the materials.

The contract study reports that very little quantitative data in the literature relate to blockage of shunt components or disconnection and separation of the components. The report also concludes that, according to the literature, infection or inflammatory response of the host and corrosion, abnormal calcification, or deterioration of the materials used in the shunt valves may be managed by using proper aseptic procedures and by selection of appropriate shunt materials. The complications associated with mismatched valves, however, have been seriously compounded by the lack of uniform standards on the pressure-flow characteristics of shunt valves. According to the study, most valves are described by the closing pressure of the valve and there is considerable overlap between the definitions of common pressure ranges used by various manufacturers. The results of flow tests performed by several investigators showed that the flow characteristics within each class (low, medium, and high flow) varied dramatically between

valve types. Such vastly different flow characteristics between similarly labeled devices indicate a need for standard test methods for pressure-flow characterization of shunts.

The University of Missouri also conducted research on shunt test methods. The contract study indicates that pressure-flow characteristics of shunt valves were determinable by two steady state flow tests: (1) Fixed pressure and flow measurement and (2) fixed flow and pressure measurement. Both methods may be used and, if the measuring equipment is properly selected, should produce the same results. The University of Missouri concluded, however, that such tests do not provide information respecting the performance characteristics of valves in a dynamic environment. The study notes that when designing tests to evaluate the shunt flow characteristics, the following need to be considered:

(1) The shunt assembly transfers fluid between two fluid reservoirs in which the pressures are not steady;

(2) The volume of fluid which is to be transferred by an assembly varies considerably from case to case, but is nearly always in the range of 0 to 2 milliliters per minute;

(3) The pressure within the ventricular cavity is to be maintained within desired limits (usually considered to be 80 to 180 millimeters of water depending on the size and age of the patient); and

(4) The test fluid should have physical properties which can be accurately related to the properties of cerebrospinal fluid.

The University of Missouri purchased five identical shunts from five manufacturers of the device product. The shunts were assembled according to manufacturers' instructions and tested under both steady state and dynamic test conditions. Graphs were plotted for both steady flow and dynamic flow pressure-flow data. A seminar on hydrocephalus shunts was held by the FDA contractor on April 20, 1980, to review these shunts and aspects of steady and dynamic bench test methods. The contract study contains: (1) A description of the equipment and test procedures, (2) data from the bench test of commercially available shunts, (3) a discussion of the test results, (4) conclusions on the value of the proposed bench tests, and (5) recommendations concerning appropriate labeling for cerebrospinal fluid shunt systems. Based on these findings, a standard bench test method was proposed for determining the dynamic pressure-flow characteristics of a shunt assembly.

The contract study concludes that based on an analysis of the literature and on comments obtained during the seminar, dynamic state testing as well as the previously established steady state test methods are necessary to characterize valve performance.

Under another FDA contract, a literature search was performed on neurosurgical implant devices (Ref. 14). The portion of the report of the literature search pertaining to the central nervous system fluid shunt and components identified a number of complications associated with the use of the device. The major complications are summarized below according to the frequency with which the complication was noted in the literature searched (generally in the order from the most to the least often noted).

(1) Obstruction of flow of the cerebrospinal fluid resulting in elevated intracranial pressure was reported most often. The purpose of the surgical procedure is to relieve elevated intracranial pressure; therefore, obstruction of flow returns the patient to the original condition that the surgical procedure was intended to relieve.

(2) Infection is reported often as a major complication and concern of surgeons. An otherwise successful surgical procedure with early indications of patient recovery is complicated with the onset of infection, an event often requiring revision procedures.

(3) Inappropriate dynamic flow characteristics of shunts and their components was cited as a common concern. Many of the components are similar in purpose, if not in design and function; therefore, many of the adverse effects associated with shunts can be related to the pressure-flow characteristics of the device implanted in the patient.

(4) Disconnects, or fracture, of the components comprising the shunt system are a major complication. Loss of integrity of the flow system may result in elevated intracranial pressure, insufficient ventricular volume, or migration through the body of components (or pieces of components in the case of fractures). Pieces of components, or even the components, are difficult to identify in revision surgery in the absence of radiopaque markers.

(5) Perforation of body organs, or body tissue, is caused by hard shunt materials or sharp edges remaining on components. Perforation of the kidney by the ventriculo-peritoneal shunt is often noted. This complication, which requires revision surgery to correct may not be readily diagnosed in the absence of radiopaque markers.

(6) Nonbiocompatible shunt and component materials leading to a toxic reaction or high fever developing in the patient was expressed as a major concern. The use of nonbiocompatible, or marginally biocompatible, materials results in a complication correctable only by revision surgery.

(7) Skin erosion by the shunt subcutaneously implanted at the head/neck region was commonly noted in the literature. Corrective surgery is indicated for this complication which may lead to infection.

(8) Thrombosis is a concern often noted in the literature for ventriculo-atrial shunts because the distal portion of a ventriculo-atrial shunt is inserted into the jugular vein or through one of its branches into the right atrium of the heart. The use of non-thrombo-resistant materials in the distal component of these shunts may lead to thrombosis.

Based on the contract studies (Refs. 13 and 14), FDA concludes that the data support the need for a standard and that sufficient information and data exist to develop a performance standard that will provide reasonable assurance of the safety and effectiveness of the central nervous system fluid shunt and its components.

FDA concludes that the data support the need for characterizing the pressure-flow characteristics of central nervous system fluid shunt products using standard test procedures so that the physician may compare available device products and select the product which best resolves the patient's condition. Also, a shunt product needs to correct the imbalance in the rate of a patient's cerebrospinal fluid formation and drainage to yield a "normal" net accumulation of fluid within the cerebral ventricles to return the patient to a near normal physiological condition. For these reasons, FDA believes that pressure-flow values included in the labeling for the device need to be defined under conditions simulating the dynamic characteristics of the human body and that a standard for the device should so provide.

In addition, based on retrospective studies of patient populations, FDA concludes that common failure/defects of the central nervous system fluid shunt and components relate to disconnection, dislocation, migration, catheter kinking, device rupture, tissue or organ damage, infection, and tissue reaction adjacent to the device. FDA believes that a standard needs to address such risks to provide reasonable assurance of the safe and effective performance of the device when implanted into the human body.

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Under FDA's Device Experience Network (DEN) and the agency's medical device reporting (MDR) regulations (21 CFR Part 803), FDA receives reports on medical devices when a death, serious injury, or malfunction of a device occurs. The DEN system is voluntary, which limits the reliability of the data and does not provide quantitative information. The MDR regulations are mandatory and require a report whenever a manufacturer or importer of a device receives or otherwise becomes aware of oral or written information that a device may have caused or contributed to a death or serious injury, or malfunctioned and if the malfunction were to recur, it would be likely to cause or contribute to a death or serious injury.

FDA has reviewed recently received DEN and MDR reports to identify deaths, serious injuries, and malfunctions associated with the device. Eighteen DEN reports were received and provided specific information on labeling (three reports), infections (three reports), tissue trauma (one report), fractures (one report), connections (three reports), valve malfunctions (five reports), and radiopacity (two reports). Sixteen MDR reports were received and classified under the MDR regulations as malfunctions (11 reports) and serious injuries (5 reports). No deaths were reported to date. The MDR reports are initial reports submitted over a period of 12 months following the effective date of the MDR regulations. The trend of both the DEN and MDR reports confirms the findings on the safety and performance of vascular grafts previously reported under the FDA classification proceedings data discussed above and FDA contract safety and performance study.

Invitation for Offers to Submit Existing Standards

In accordance with section 514(c)(1)(A) of the act and § 861.20(c), FDA invites any interested person, including any Federal agency, to submit by April 28, 1986, an existing standard as a proposed performance standard for the central nervous system fluid shunt and components. Any such person may also submit pertinent portions of an existing standard, including completed portions of any standard that is under development.

FDA has identified two voluntary standards that are applicable to the central nervous system fluid shunt and components: The American Society for Testing Materials (ASTM), ASTM F647-79, "Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application" (Ref. 15); and the International Organization for Standardization (ISO), "Draft Proposal ISO/DP 7197, Implants for Surgery—Neurosurgical Implants—Shunt Assemblies" (Ref. 16).

ASTM F647-79 is intended to establish minimum requirements for the assurance of safety and effectiveness for implantable shunt assemblies. This voluntary standard establishes requirements for the evaluation and specification of implantable shunts relating to flow, direction of flow, materials, radiopacity, mechanical properties, finish, sterility, and labeling. Devices to which the standard is applicable include, but are not limited to, those that are: (1) Temporarily implanted to provide external drainage; or (2) permanently implanted to shunt cerebrospinal fluid from (a) a cerebral ventricle, (b) a cyst, (c) the subarachnoid space, or (d) the subdural space, to the peritoneal cavity, the venous circulation, or some other suitable internal delivery site. Although ASTM F647-79 includes a test method for the evaluation of pressure-flow characteristics of shunts or shunt components, it does not include specific pressure-flow requirements.

Draft proposed ISO/DP7197 is intended to provide definitions of terms pertaining to neurosurgical shunt assembly implants means of size designation, and the evaluation of shunt performance. This draft voluntary foreign standard includes, but is not limited to, devices that are: (1) Temporarily implanted to provide external drainage; or (2) permanently implanted to shunt cerebrospinal fluid from (a) a cerebral ventricle, or (b) the subarachnoid space, to the peritoneal cavity, the venous circulation or right atrium of the heart, an intracranial bypass, or some other suitable internal delivery site. According to this draft voluntary foreign standard, the components which, individually or in combination, comprise shunt assemblies are: inflow catheters, outflow catheters, connectors, reservoirs, antisyphon devices, valves, valved catheters, and other accessory devices. The draft standard includes provisions respecting definitions, type and size designations, materials, finish, freedom from extraneous matter, sterility, performance, packaging, instructions for use, and marking requirements and test methods.

The ASTM national and ISO international standards provide many useful and worthwhile concepts regarding the central nervous system fluid shunt and components, but the agency does not believe that these standards in their current forms would be acceptable as performance standards to assure the safety and effectiveness of the device. The reason for this finding is that the standards do not establish minimum, or reasonable, performance requirements for these devices or cover specific pressure-flow requirements pertaining to these devices. FDA advises, however, that all, or parts, of these existing standards may be submitted as a proposed performance standard because these standards contain relevant concepts that would be considered in the development of a standard for the central nervous system fluid shunt and components.

Section 861.24 sets forth the conditions under which FDA may accept an existing standard or a standard under development as a proposed performance standard. Accordingly, FDA advises that any such submission is to include the following:

1. A description of the procedures used to develop the standard and a list of persons and organizations that participated in, or in the event the standard is under development, to the extent that such information is available or reasonably obtainable;

2. An identification of the specific portions of the existing standard, or standard under development, that the person submitting the standard believes are appropriate for adoption as, or inclusion in, the proposed standard;

3. A summary of the test data and other information, including rationales, necessary to support each specific portion of the standard identified by the person submitting the standard. More detailed information may be requested concerning certain portions of the standard if FDA determines that the summary is inadequate.

In accordance with section 514(d)(2) of the act, if an existing standard or one that is under development is submitted to FDA in response to this notice and FDA does not accept the standard, the agency will publish a notice of that fact together with the reasons therefor. In accordance with § 861.24(b), if an existing standard or one that is under development is submitted to FDA in response to this notice and FDA accepts the standard, or accepts the standard with modification, as a proposed standard, the agency will publish a notice of that fact. FDA advises that in the latter event, it may publish the notice as a notice of proposed rulemaking to establish a performance standard under section 514(g) of the act and § 861.20(e)(1). FDA expects to make such determination and publish the notice of its decision within 180 days after the close of the comment period on this notice.

Invitation for Offers to Develop Proposed Standards

In accordance with section 514(c)(1)(B) of the act and §§ 861.20(c) and 861.22, FDA invites any interested person, including any Federal agency, to offer by April 28, 1986 to develop a performance standard for the central nervous system fluid shunt and components, as described in this notice, to control the risks associated with the device.

Section 514(c)(3) of the act sets out certain criteria applicable to any offeror. Section 514(e)(3) of the act provides that if an offer is accepted, FDA may, upon application which may be made before the acceptance of the offer, agree to contribute to the offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution. Therefore, in accordance with section 514(c)(3) and (e) of the act and § 861.26, FDA advises that any offer to develop a proposed performance standard is to include:

1. Information on the offeror's expertise and experience that qualifies the offeror to develop the standard.

2. Sufficient information on the offeror's financial stability to establish its capability to conduct adequate standards development either with or without contribution by FDA to the offeror's costs. Any request for contribution by FDA to the offeror's cost of developing the standard is to include:

(i) A list of the items of expense for which contribution is sought and the amount requested for each item;

(ii) A justification of each item of expense, including an explanation of how the contribution is likely to ensure development of a more satisfactory standard;

(iii) A statement that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record the costs and expenditures allocable to development of the standard; and

(iv) A statement requesting an advance payment of funds, if necessary to enable the offeror to meet operating expenses during the development period.

3. Information relating to any potential conflicts of interest on the part of the offeror, its directors or officers, or any employees or consultants who may particpate in the development of the standard, including any financial interest in the particular device or in the device industry generally, current industrial or commercial affiliates of the offeror, current sources of financial support for research, and all business entities in which the offeror has a financial interest that may be relevant to the offeror's qualifications to develop a standard for the particular device.

4. Information regarding the offeror's compliance with Federal, State, and local environmental regulations.

5. A detailed description of the procedures the offeror intends to utilize in developing the standard.

6. A description of how the offeror intends to provide interested persons adequate and reasonable notice of their right and opportunity to participate in the development of the standard.

7. A description of the method whereby interested persons who respond to the notice may participate, either in person or through correspondence, in the development of the standard.

8. A statement describing the facilities or equipment the offeror intends to utilize in developing the standard, and how the offeror intends to gain access to them.

9. An estimate of the time required to develop the standard, including a detailed schedule for each phase of the procedure.

10. A description of the method the offeror intends to use or has used to acquire test data or other information needed to support the standard.

11. A description of the method the offeror intends to use to maintain records of the development of the standard and other relevant matters and to make such records available for disclosure during development, and a schedule for meeting the periodic reporting requirements of § 861.30(b).

FDA advises that under section 514(c)(3) of the act and § 861.26(b), information included in an offer to develop a proposed standard is to be made available to the public only if the offer is accepted (except for information exempt from disclosure under 21 CFR 20.61), or if disclosure is required under 21 CFR Part 20.

Time Period to Develop a Standard

FDA estimates the time period to develop a proposed standard and rationale for the central nervous system fluid shunt and its components will be 2 years. The 2-year period may be extended by the Commissioner for good cause shown.

Acceptance by FDA

As required by section 514(e)(1) of the act and § 861.28(a), in determining whether to accept an offer to develop a performance standard, FDA will evaluate the qualifications of the offeror on the basis of the offeror's expertise, experience, financial stability, and potential conflicts of interest. In choosing among competing offerors, the offeror without any financial interest in the particular device for which a proposed standard is sought or in the device industry generally will be preferred, all other things being equal. More than one offer, however, may be accepted.

As required by section 514(e)(2) of the act and § 861.28(c), FDA will publish in the **Federal Register** the name and address of each person whose offer to develop a standard is accepted and a summary of the terms of the accepted offer, including a statement of the extent to which FDA will contribute, if at all, to the cost of developing the proposed standard. As required by section 514(e)(5) of the act and § 861.28(d), if FDA does not accept an offer, the agency will publish in the **Federal Register** a notice of that fact and the reasons for its decision.

Future Actions

Following the expiration of the 60-day time period provided by this notice for interested persons to submit an existing standard or to develop a proposed standard, FDA will:

1. Authorize a Federal agency to develop a proposed performance standard if FDA determines that a performance standard can be developed by a Federal agency, based on the personnel, expertise, and resources of the agency; or

2. Accept an existing standard as a proposed performance standard or as a basis upon which a proposed performance standard may be developed provided FDA determines that such standard is based upon scientific data and information and has been subjected to adequate scientific consideration. An existing standard may be one that is submitted in response to the invitation for standards, or it may be a standard that has been issued or adopted (or is being developed) by any Federal agency or any other qualified entity; or

3. Accept one or more offers to develop a proposed standard; or

4. Proceed to develop a proposed standard; or

5. Take other appropriate action to facilitate development of a performance standard for the device.

The agency has determined under 21 CFR 25.24(e)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that

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does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In any notice of proposed rulemaking that includes a proposed performance standard for the central nervous system fluid shunt and components, FDA will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Until the provisions of any proposed standard are known, FDA cannot determine the economic consequences of the promulgation of such standard.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Milhorat, H. H., "Hydrocephalus and the Cerebrospinal Fluid," Williams and Wilkins Co., Baltimore, pp. 177–223, 1972.

2. Ignelzi, R. J., and W. M. Kirsch, "Follow-up Analysis of Ventriculoperitoneal and Ventriculoatrial Shunts for Hydrocephalus," *Journal of Neurosurgery*, 42:679–682, 1975.

3. Hougen, T. J., et al., "Pulmonary Valvular Dysfunction in Children with Ventriculovenous Shunts for Hydrocephalus: A Previously Unreported Complication," *Pediatrics*, 55:639–641, 1975.

4. McKenzie, S. A., and K. Hayden, "Two Cases of Shunt Nephritis," *Pediatrics*, 54:806–808, 1974.

5. Becker, D. P., and F. E. Nulsen, "Control of Hydrocephalus by Valve-Regulated Venous Shunt: Avoidance of Complications in Prolonged Shunt Maintenance," *Journal of Neurosurgery*, 28:215–226, 1968.

6. Parry, S. W., et al., "Abdominal Pseudocysts and Ascites Formation After Ventriculoperitoneal Shunt Procedures," *Journal of Neurosurgery*, 43:476–478, 1975.

7. Sugar, O., and O. T. Bailey, "Subcutaneous Reaction to Silicone in Ventriculoperitoneal Shunts," *Journal of Neurosurgery*, 41:367–371, 1974.

8. Grosfeld, J. L., et al., "Intraabdominal Complications Following Ventriculoperitoneal Shunt Procedures," *Pediatrics*, 54:791–796, 1974.

9. Robertson, J. S., et al., "Ventriculoperitoneal Shunting for Hydrocephalus," *British Medical Journal*, 2:289–292, 1973.

10. Hoffman, H. S., et al., "New Lumboperitoneal Shunt for Communicating Hydrocephalus," *Journal of Neurosurgery*, 44:258–261, 1976.

11. Eisenberg, H. M., et al., "Lumboperitoneal Shunts: A Review of 34 Cases," *Journal of Neurosurgery*, 35:427–431, 1971.

12. Kushner, J., et al., "Kyphoscoliosis Following Lumbar Subarachnoid Shunts," *Journal of Neurosurgery*, 34:783–791, 1971.

13. Watts, C., et al., "An Investigation of Cerebrospinal Fluid Shunt Valves," USPH FDA 223-79-5004, Phases I, II, and III, August 31, 1982, University of Missouri.

14. Daniels, U. A., N. H. Price, and W. E. Cosgrove, Neurosurgical Implant Literature Search, Final Report, FDA BMDDP–77/2, July 12, 1976.

15. ASTM F647–79, "Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application," ASTM Committee F-4 on Medical and Surgical Materials and Devices, published by the American Society for Testing Materials, 1916 Race St., Philadelphia, 1979.

16. "Draft Proposal ISO/DP 7197, Implants for Surgery—Neurosurgical Implants—Shunt Assemblies," ISO/Technical Committee ISO/Subcommittee 3, published by International Organization for Standardization, 1 Rue de Varembe, CH-1211 Geneve 20, Switzerland.

Interested persons may, on or before April 28, 1986, submit to the Dockets Management Branch (address above) an existing standard or an offer to develop a standard for the central nervous system fluid shunt and components. Two copies of any standards or offers are to be submitted. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received submissions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4053 Filed 2-25-86; 8:45 am]

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federal register

Wednesday
February 26, 1986

Part III

Department of Transportation

Office of Commercial Space Transportation

14 CFR Ch. III

Commercial Space Transportation; Licensing Regulations; Interim Final Rule and Request for Comments

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DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

14 CFR Ch. III

[Docket No. 43810]

Commercial Space Transportation; Licensing Regulations

AGENCY: Office of Commercial Space Transportation, DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule amends Title 14, Code of Federal Regulations, by adding a new Chapter III that sets forth the regulations governing commercial space transportation. The Commercial Space Launch Act of 1984, Pub. L. 98–575 (the Act) authorizes the Secretary of Transportation (the Secretary) to oversee and coordinate commercial launch activities. The Secretary's mandate embraces the authority to license and otherwise regulate such activities, consistent with public health and safety, the safety of property, and the national security and foreign policy interests of the United States, as well as the responsibility to exercise this authority in a manner that encourages, facilitates and promotes a commercial space transportation industry. The Department of Transportation (the Department) is currently implementing its authority in this area through a policy statement published by the Office of Commercial Space Transportation (the Office) on February 25, 1985. Recognizing the need for detailed regulatory guidance upon which prospective applicants can immediately rely, the Office is replacing that policy statement with new regulations. The regulations establish general procedures for the Office, set forth policies and procedures for licensing commercial launch activities, and prescribe general standards and information requirements for launch license applications. Taken together, these provisions constitute the Office's administrative framework for ensuring safe and responsible commercial launch activities and eliminating regulatory obstacles to the development of private launch and launch support services.

DATES: This interim rule becomes effective February 26, 1986. The Office is interested in receiving comments, which should be received by April 28, 1986.

ADDRESS: Comments should be submitted to the Documentary Services Division, Attention: Docket Section/C-55, Room 4107, Docket Number 43810, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

Comments received will be available for examination at the above address, between 9:00 a.m. and 5:00 p.m., E.t., Monday through Friday, except Federal holidays. Receipt of comments will be acknowledged only if a self-addressed, stamped postcard is included with the comment. All written comments received on or before the comment period closes will be considered before these rules are made final.

FOR FURTHER INFORMATION CONTACT: Gerald Musarra, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Room 10424, Washington, DC 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Background

Section 7 of the Commercial Space Launch Act grants the Secretary authority to license commercial launch activities. Section 9 authorizes the Secretary to prescribe the form and manner for license applications and to establish procedures and timetables that will expedite the review of applications and reduce applicants' regulatory burdens. These statutory provisions are presently being implemented by a policy statement published February 25, 1985, by the Office of Commercial Space Transportation. Intended as interim guidance for license applicants, the policy statement outlined the contours of the regulatory framework developed by the Office to accommodate the broadest range of proposals for private launch activities and to safeguard important national interests associated with those activities. These interests are stated explicitly in the Act: public health and safety, the safety of property, national security interests and foreign policy interests of the United States. The licensing process described in the policy statement addressed these concerns through two reviews, Launch Safety Review and Mission Review. Additionally, the policy statement provided for streamlined inter-agency consultation procedures that would assure fast, well-defined reviews by those Federal agencies with expertise or authority relating to a proposed launch activity.

The Office provided the public with an opportunity to comment on the policy statement and, in developing the interim rule, carefully considered the comments received. The interim rule represents a more detailed and refined treatment of the licensing concepts first introduced in the policy statement and reflects the Office's greater practical experience with licensing issues.

Because comments were taken on the policy statement and because prospective applicants need to have more specific guidance in effect, the Office has determined that notice and further comment prior to issuing these regulations is unnecessary and impracticable. However, comments are invited on these regulations and the Office will make necessary and appropriate changes to the regulations in light of comments received.

Comments on the Policy Statement

The Office received 22 comments on the policy statement. Of this total, 14 were submitted by private individuals, three from launch companies, two from trade associations, one from a rocket motor manufacturer, one from a Federal agency and one from a trade newsletter. In addition, by letter dated April 4, 1985, the Chairman of the Advisory Committee on Commercial Space Transportation transmitted to the Secretary the following recommendation adopted during a meeting of the Committee held on March 28, 1985: "Recognizing that each member of the Committee can submit comments on the "Notice of Policy and Request for Comments" on the "Licensing Policy for Commercial Space Activities," the Committee as a whole supports the thrust and direction of the policy and recommends that it be adopted by DOT."

Mission Review

A significant number of commenters (19) expressed concerns about Mission Review. Some suggested that, to the extent the Federal Government's interest in the nature of private launches and payloads arises from U.S. ratification of multilateral space treaties (in particular, the Outer Space Treaty, 18 U.S.T. 2410, 610 U.N.T.S. 205, and the Liability Convention, 24 U.S.T. 2389), such ratification was unwise and those treaties should be "scrapped." Still others argued that the sole purpose of these treaties is to establish responsibility and accountability for space activities and for possible damages resulting from those activities. These comments contended that responsibility/accountability and liability for damages are purely safety concerns. As such, according to these respondents, they provide no basis for any Federal interest in the mission review factors specified in the Notice. Safety concerns, they maintained, could be more than adequately addressed in the context of Launch Safety Review.

Other objections to Mission Review were directed more to the provisions of the Act itself. These comments asserted that the Act fails to define precisely what is meant by the recurring phrase "national security interests and foreign policy interests." One commenter expressed concern that uncertainties created by undefined references to national security and foreign policy interests could have a substantially chilling effect upon the exercise of protected First Amendment rights. That is, news media organizations seeking to place satellites in orbit or to lease transponder capacity might be deterred due to this concern. Specifically, such uncertainties could thwart efforts to secure commitment of the substantial amounts of investment capital needed for the launch activities associated with such undertakings. Thus, this legislative vagueness could indirectly deter the exercise of constitutionally protected activities involving news gathering and distribution. In this context, the commenter asserted, Mission Review could ultimately become a vehicle for effecting prior restraint on free speech.

The Department of Transportation can unilaterally identify in advance only general examples of U.S. foreign policy or national security interests relevant to commercial space launch activities.

The Act expressly commits to the Departments of State and Defense, respectively, responsibility for defining such interests in the context of individual license applications and for informing the Secretary of Transportation of their significance. It is not intended or anticipated that national security or foreign policy interests would be casually invoked by these agencies as a reason for preventing a launch.

Two commenters expressed concern about the process, mandated by the Act, whereby other Federal agencies are consulted on aspects of individual license applications. They expressed some apprehension that these consultations might not occur in good faith and that they may provide a means by which agencies conducting their own commercial space activities could protect their competitive interests.

Given its charter to foster a healthy environment for commercial growth, the Office intends to ensure that Mission Review affords no such opportunity. The Office is directed by the Act to utilize the expertise of other agencies where appropriate. The Act specifically mandates only two specific consultations, the State Department's role in issues affecting foreign policy and the Defense Department's role in matters of national security. Other consultations are left to the discretion of the Office, as it deems appropriate or necessary. These could include assistance requested of the Federal Communications Commission regarding a foreign telecommunications satellite or of the National Aeronautics and Space Administration concerning a proposed mission's effect on existing spacecraft. Mission Review is designed expressly to prevent the interagency review process from becoming an unbridled opportunity for agencies to judge, in areas beyond their particular competence, whether proposed launch activities conflict with national interests.

One commenter suggested that the Office's jurisdiction to weigh national security and foreign policy interests in connection with private space launches does not encompass factors associated with the operations of a payload to be launched. This interpretation is grounded in the language of the Act which gives the Office authority for the launch of a payload but is silent on matters relating to the operation of a payload in orbit. This commenter suggested that the Office's regulatory procedures focus only on the national security and foreign policy implications attending the proposed launch of a payload and not on the payload's operation in orbit.

We question this interpretation, both as a matter of law and in terms of its practical effect. The Act gives the Office authority to determine whether the launch of a payload is inimical to the national interests specified in the Act and does not exclude any relevant factor from the Office's consideration. Thus, the Office will exercise its authority by determining whether any circumstances exist under which the proposed launch of a payload would jeopardize national interests.

Two other commenters who objected to specific aspects of Mission Review expressed concern that it constitutes a requirement for a separate review of each payload in routine launches. Again, this is not the purpose of the review nor do we believe it will have this effect. The Office will make this activity routine to the maximum extent possible. Mission Review focuses chiefly upon aspects of launch proposals not previously considered in the licensing process. Its aim is to provide regulatory certainty for both license applicants and agencies.

Moreover, Mission Review is designed as a means for enabling prospective applicants to ascertain, in the initial stages of commercial planning, whether any problems might exist for a new payload concept. As such, the procedure for obtaining payload determinations or actual approvals for a launch license is designed expressly to avoid situations in which significant capital might be committed to launch proposals which ultimately cannot be implemented. The procedure encourages early consultation with the Office to identify problems with a launch proposal and to thereby avoid any negative investment consequences. One commenter articulated a concern that, if applied to each payload, Mission Review could have an especially devastating effect upon the development of reusable commercial launch vehicles, especially those whose primary payloads may consist of propellants, materials, and components used to support ongoing activities in space (such as space stations). We agree. The growth of commercial airlines, trucking companies or railroads would have been hindered if every item of cargo required Federal approval. Again, Mission Review will not interfere with routine space activities which do not adversely affect the national interests specified in the Act.

Vehicle Reliability

One commenter raised questions regarding vehicle reliability, vehicle and payload hardening, and certification. The concept of vehicle certification and its relationship to public safety was addressed by the Senior Interagency Group/Space Working Group tasked with developing the assignment of a "lead agency" for commercial launch industry promotion and regulation, and subsequently by the Department as part of its development of the licensing process. Both efforts concluded that for the present, public safety with unmanned launch vehicles was best addressed by continuing the current practice of ensuring that adequate safety resources and procedures are in place to protect the public in the event of any unexpected vehicle failure. At the same time, the Office is initiating a major research effort directed toward identifying appropriate safety standards for launch activities where the United States Government may be neither range operator nor mission sponsor. Should this research identify other effective, less burdensome alternatives to protecting public safety, such alternative approaches will be given appropriate consideration.

Consultation

One commenter expressed concern that the discussion in the policy statement of interagency coordination of license applications seemed to indicate that the Secretary of Transportation has the final determination in those cases

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where the Act's consultation requirements fail to produce agreement. This commenter noted that the only section of the Act in which Congress made its intent clear in this regard involves the Secretary's ultimate authority under section 8(a) to establish the regulatory framework for commercial launch licensing. According to this commenter, the accompanying report, however, rather than the Act itself, clarifies Congress' intentions vis-a-vis section 8(a).

The Office believes this issue is more hypothetical than real. The Office works closely with the Defense and State Departments on all matters involving licensing of non-governmental space launch activities. No action by the Secretary of Transportation would derogate in any way from the Secretary of State's authority in matters involving foreign policy or from the Secretary of Defense's in matters involving national security. In the unlikely event of a genuinely irreconcilable disagreement between the Department and either of these agencies, the issue would be resolved in the same manner as any such matter is handled (including interagency disagreements over matters *not* subject to statutory consultation requirements): Through appropriate discussions within the Executive Branch.

International Agreements

Two commenters suggested that the policy statement may have failed to reference all of the international agreements to which the U.S. is party that cover space activities. These commenters suggested that consideration of U.S. international obligations should be a more prominent requirement for a launch license. The statement about U.S. treaty obligations in the policy statement was intended to illustrate the independent bases, beyond the requirements of the Act, for significant Federal interests in space launch activities by private citizens and by others for whom the U.S. has accepted responsibility. This statement was not intended as an exhaustive inventory of all such obligations. The Office recognizes that it and other Federal agencies have additional international responsibilities for space transportation, including compliance with procedures for registration of privately launched U.S. space objects. As legal authorities have repeatedly noted, however, the precise meaning of provisions in several of the treaties is unclear. As a result, a comprehensive list of all provisions of international law and treaty obligations which may apply to specific factual circumstances involving space activities by non-governmental entities cannot be compiled at this time. Thus, the regulations refer to international obligations in general.

Section-by-Section Analysis

Part 400—Basis and Scope

Section 400.1 indicates that the commercial space transportation regulations reflect both the Federal Government's domestic responsibilities for commercial launch activities and the Federal Government's international obligations, particularly its obligation under Article VI of the 1967 Outer Space Treaty to provide authorization and continuing supervision for such activities.

Section 400.2 stipulates that these regulations are intended to guide all United States launch activities except amateur rocket activities and the launch activities of the United States Government.

As stated in the initial policy statement on licensing, the Office's policies and procedures have been developed for the private commercial launch activities that are currently being proposed, but, consistent with the legislative history of the Act, provide adequate supervision for any other non-governmental launch activities as well. Thus, the launch activities falling within the scope of the Office's licensing and regulatory authority may include activities conducted for profit as well as those conducted for experimental or research purposes, or for any other purpose without an apparent profit motive. However, neither the Act nor its legislative history evinces an intention to require licenses for amatuer rocket launches, which number annually in the millions, and it is doubtful that such intention can be inferred. Further, these activities are currently subject to state and local regulation, self-regulation by the organizations sponsoring these activities, and Federal airspace requirements. In the Office's view, existing guidelines and requirements are adequate for protecting public safety, as well as any other national interests that may be associated with these activities. The Office requests comments specifically addressing this subject.

Part 401—Organization and Definitions

Section 401.1 identifies the operating unit within the Department with primary responsibility for implementing the Department's authority under the Act, the Office of Commercial Space Transportation. Section 401.3 identifies the Director of Commercial Space Transportation as the official within the Department to whom the Secretary's authority for commercial space transportation has been delegated.

Section 401.5 contains definitions of the major terms used in the regulations. The definitions of "launch" and "operation of a launch site" are intended to convey the complementary, but nevertheless distinct, nature of these two activities. A launch centers on the placement, or attempted placement, of a specified launch vehicle and/or its payload in a suborbital trajectory or in space. A launch license authorizes a launch to be conducted in order to achieve certain mission obectives. The license holder is legally responsible for the proper conduct of such a launch. Although a launch license would seem to be oriented toward singular events, one license could cover a specified series of launches where the same safety resources will support several identical or similar missions.

In contrast, the operation of a launch site involves continuing operations at a permanent location. A license covering such operations authorizes a person to operate a launch range facility and to offer approved services to launch companies for compensation or hire.

Part 404—Regulations and Licensing Requirements

The Commercial Space Launch Act establishes the regulatory framework for commercial launch activities. Section 9(b) of the Act directs the Office to issue a license once it has determined that an applicant meets the requirements for a license identified in section 8(a)(1) of the Act. These include requirements currently applied by Federal agencies to launch activities. If, however, the Office determines, in consultation with the appropriate agencies, that any such Federal requirement is not needed to protect public safety, the safety of property or the national security and foreign policy interests of the United States, then section 8(a)(2) permits the Office to eliminate that particular requirement as a requirement for a license. Moreover, section 6(b) authorizes the Office to prescribe new requirements specifically for commercial launch activities. Together these provisions confer broad authority upon the Office to craft the simplified regulatory framework intended by the Act.

If the Office wishes to either eliminate an existing Federal requirement or prescribe new ones in order to implement the provisions of the Act, a rulemaking must be conducted that would involve notice to and comment by the public. Part 404 of the regulations

sets out the procedures the Office will follow in conducting rulemaking proceedings and explains how interested parties may participate.

Section 6(c) of the Act gives the Office discretionary authority to waive a licensing requirement for a license applicant if that waiver would be in the public interest and would not jeopardize public health and safety, safety of property, or any national security or foreign policy interest of the United States. Part 404 also establishes procedures for waiver requests by individual applicants.

With regard to existing Federal requirements, the Office has determined that the only provisions with direct applicability to private launches are those of Part 101, Subpart C, of the Federal Aviation Regulations, 14 CFR 101.21–101.25, regulating all unmanned rocket activities. The Office of Commercial Space Transportation and the Federal Aviation Administration have agreed that, henceforth, requirements pertaining to the use of domestic United States airspace for commercial launch purposes will be handled by the Office as an intradepartmental matter on behalf of licensees.

It should be noted that the Office's safety authority extends to protecting workers at commercial launch sites. For the present, however, the Office will not prescribe any standards or requirements for worker safety in the context of licensed launch activities. Instead, the appropriate requirements of the Department of Labor's Occupational Safety and Health Administration will apply to privately conducted launch activities unless the Office determines that direct exercise of its safety authority in this area is appropriate. The Office requests comments specifically addressing the desirability of any future exercise of its safety authority in this area.

Part 405—Investigations and Enforcement

The Office will rely on the provisions of Part 405 to ensure compliance with the terms and conditions of licenses. Section 405.1 requires licensees to cooperate with anyone acting on behalf of the Office to monitor licensed activities or payload-related activities which are covered by section 6(b)(2) of the Act. Monitoring will be conducted in the least intrusive manner possible and only for the purpose of determining whether such activities conform to applicable requirements.

Section 405.3 deals with the modification, suspension or revocation of licenses. The Office may modify a license either on its own initiative or pursuant to a request by the licensee. All modifications must conform to the same standards, identified in the Act, that apply to initial licenses.

Paragraph (b) of § 405.3 indicates that an act of noncompliance with any requirement applicable to a licensed activity is grounds for suspension or revocation of a license. Moreover, § 405.5 provides for emergency orders to halt any launch activity detrimental to national interests, and § 405.7 provides that acts of noncompliance may be punishable by civil penalties.

With regard to the Director's emergency order authority, which is explicitly mandated by section 11 of the Act, the Office is aware of the concern, expressed through the Commercial Space Transportation Advisory Committee, associated with the exercise of this authority. One of the Office's major goals has been to encourage and promote the industry through carefully considered policies and procedures designed to eliminate, wherever possible, regulatory uncertainties. Thus, the Office wishes to emphasize that it views the exercise of this authority as an extraordinary measure to be relied upon in truly emergency circumstances.

Part 406—Administrative Review

Part 406 describes the Office's procedures for implementing the Act's administrative review provisions. Section 12 of the Act requires that an opportunity for a hearing be accorded persons seeking reconsideration of certain decisions concerning activities within the Office's responsibility. Specifically, persons who have applied for a license may challenge a decision not to issue a license or challenge the conditions attached to a license that has been granted. In addition, a person holding a license may dispute a decision to modify, suspend or revoke that license or to issue an emergency order. Similarly, a payload operator or owner may request a review of the facts or issues pertaining to a payload whose launch the Office has decided to prevent, as may a person against whom the Office has assessed a civil penalty. In these circumstances the Office will, if so requested, provide an opportunity for an impartial hearing on the matter at issue. Part 406 sets out the procedures governing the initiation and conduct of such proceedings.

Part 411—Policy

Part 411 establishes the policies of the Office of Commercial Space Transportation for licensing commercial launch activities, including launches, launch site operations, or some combination of the two activities. These policies augment the general application procedures set out in Part 413 of the regulations and the launch license review procedures contained in Part 415 of the regulations.

Section 411.3 identifies the two reviews, Safety Review and Mission Review, through which the Office will evaluate license requests for proposed unmanned launches. Requests for licenses authorizing manned launches may involve issues that require reviews different from or in addition to these two reviews. Although the Office will be responsive to license requests for manned launches, specific implementation of its authority in this area will be addressed in a future rulemaking.

It should be noted that the policy statement under which the Office is currently operating refers to "Launch Safety Review." The Office has decided to use instead the term "Safety Review" in order to avoid confusion with the launch safety approval that must be obtained by the vehicle operator from the appropriate range operator prior to launch.

In order to accord the industry both flexibility and certainty in the course of developing commercial launch proposals, the Office may conduct Safety Review and Mission Review independent of each other and in the order, sequential or concurrent, appropriate to the applicant's needs. For example, an applicant may secure approval for a proposed mission early in the planning stages of a launch activity and apply later for approval of the safety operations proposed to support an actual launch. The record upon which to base licensing decisions thereby can be developed in a manner that responds to the planning needs of applicants.

Section 411.3 also discusses requests for licenses authorizing the operation of commercial launch sites. Although such licenses are mandated by the Act, the interim rule was not specifically developed for implementing the Office's authority in that area. Devising an appropriate regulatory framework for commercial launch site operations involves careful consideration of a range of issues, particularly those relating to requirements or standards for implementing the Office's safety authority. The Office has begun investigating these issues and will initiate a separate rulemaking on this subject early in 1986.

At the same time, the Office has received a number of inquiries and expressions of interest in commercial

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launch site operations and wishes to be responsive to any proposals that might be submitted in the near future. In order to do so, the Office will rely on its review process, discussed below, for evaluating the safety operations of launch license applicants as an appropriate framework for beginning to assess commercial launch site proposals.

Section 411.5 addresses safety approval. Safety Review is technical in nature and focuses only on an applicant's proposed safety operations. At present, there are no published safety standards or requirements applicable to safety operations conducted at sites other than Federal launch ranges. Therefore, pending completion of efforts to develop these standards or requirements, the Office will make case by case determinations regarding proposed safety operations conducted by commercial firms at non-government sites using all available resources including those of other Federal agencies.

Section 411.7 discusses mission approval. In the course of Mission Review the Office will assess the proposed launch from the standpoint of both the national interests and international obligations of the United States. The review will encompass such factors as the nature and purpose of the proposed payload, the impact of the payload on existing uses of space, and the proposed flight plan.

With specific regard to national security and foreign policy interests, the Office is required to consult with the Departments of Defense and State, the Executive Branch agencies with primary responsibility for safeguarding U.S. national security and foreign policy interests, respectively. The Office must ensure that these agencies are apprised of potential commercial launch activities in order that their views may be taken into account. However, the Office wishes to emphasize that, as a general matter, Congress has declared privately conducted commercial launches to be consistent with the national security and foreign policy interests of the United States. The Office also recognizes that the commercial viability of providing such services on a routine basis requires that review of proposed missions not be encumbered by unnecessary process. Therefore, the Office will not seek to determine *de novo* that each launch proposal is consistent with United States interests. Approval will be granted unless there is clear evidence that some aspect of a mission poses a distinct threat to national security or foreign policy interests.

The mission of most proposed orbital launches will be to place payloads in space; thus, the most significant part of Mission Review pertains to the payload to be launched. The Commercial Space Launch Act defines the Office's responsibility for payloads in the context of a licensed commercial launch activity: First, the Office is directed by section 6(b)(1) of the Act to determine whether any license, authorization, or permit required by Federal law has been obtained for the payload to be launched. For such payloads, the Office will not duplicate any review conducted by the agency with primary authority for addressing the Federal interests associated with a given class of payloads. This includes reviews by the Federal Communications Commission for telecommunications satellites, the Department of Commerce for remote-sensing satellites, and other Federal agencies for their own payloads.

Second, section 6(b)(2) of the Act provides the Office an effective mechanism for addressing issues pertaining to new payload classes not covered by existing Federal regulation. The Office is authorized to determine whether the launch of such payloads would jeopardize public safety, the safety of property, or any national security or foreign policy interest. If necessary, the Office may act to prevent the launch of the payload in question. The Office has carefully molded its policies and procedures in this area so that these Federal interests are not served at the unnecessary expense of commercial space enterprise. Thus, the Office will exercise its authority under section 6(b)(2) in a manner that minimizes regulatory uncertainties for those planning or sponsoring new space applications.

Section 411.9 discusses the information the Office will require applicants to submit in order to initiate the review of applications. The Office's approach to this information corresponds to its goal of fostering reliable, low-cost space transportation services. Commercial firms may develop new approaches to the design of launch vehicles, the delivery of launch services, or the location and organization of launch operations. Thus, the information requirements have been intentionally organized into general categories that identify the basic information needed to initiate a license application review. Although all the requested data must be provided for an application to be considered complete, the Office has not prescribed any particular format for submitting it. Submissions may reflect the structure or organization of launch operations as determined by the applicant. The Office is particularly interested in receiving comments that address both the form and content of the information requirements.

Part 413—Applications

Part 413 sets out general license application procedures. These procedures apply to all commercial launch activities, regardless of whether an applicant seeks a license to launch a vehicle, operate a launch site, or for a combination of the two. The application procedures in Part 413 are supplemented by the provisions of Part 415, which contains a detailed description of the review procedures and information requirements for launch license applications. A separate part has been reserved for future regulations addressing applications for licenses authorizing launch site operations.

Since the nature of a proposed launch activity affects the timing and scope of the Office's review, as well as the degree to which other Federal agencies will be involved, section 413.3 encourages prospective applicants to initiate preapplication consultations with the Office of Commercial Space Transportation.

Section 413.9 outlines the process for reviewing all applications. Section 413.9(a) states that applications should contain information that the Director of Commercial Space Transportation has prescribed for the type of application being submitted. For applications pertaining to launch licenses, the required information is set forth in Part 415. The Office views this information as basic to any proposed launch activity; in many cases, it may constitute virtually all the information needed to evaluate the application. To the extent that the Office requests additional information, it will be for novel, unconventional or unfamiliar launch or payload elements.

Section 413.9(b) states that an application is accepted for review by the Director if it is substantially complete, that is, if it contains sufficient information to make such review meaningful. Once an application is accepted for review, § 413.9(d) indicates that the Director will initiate an appropriate interagency review. The Office, not the applicant, will assume the burden of shepherding the application through the review process. Additionally, the reference in § 413.9(d) to an "appropriate" review is intended to make clear that the administrative response to an application may not be standard or uniform in all circumstances; the Office has taken great care to insure that each review is tailored to the application's particular characteristics. In this fashion, the Office intends to avoid any unnecessary regulatory stumbling blocks to proposed launch activities.

Part 413 does not provide for a fee to cover all or part of the costs involved in processing an application. However, the Office has not developed a final position regarding license fees. Comments are requested specifically addressing this subject.

Section 413.9(e) indicates that a determination on a license application will be made within 180 days of receipt. As a matter of policy, however, the Office intends to conduct all application reviews on a expedited basis and anticipates that most determinations will be made well before this statutory deadline.

All licenses issued will contain terms defining the activity authorized by the license and the person responsible for conducting that activity. In addition, conditions will be incorporated into all licenses to ensure compliance with statutory and regulatory requirements. Section 413.15 addresses certain standard conditions, including the need for an on-site mechanisum to verify that the licensed activity conforms to information that was submitted to and reviewed by the Office during the application review process.

The Act preserves the existing authority of Federal agencies with primary responsibility for payload regulation. At present, two Federal agencies, the Federal Communications Commission and the Department of Commerce, are the exclusive licensing authorities for telecommunications satellites and remote sensing satellites, respectively. Section 413.17 indicates that a license for the launch activity is separate from the license for the satellite itself, and thus, in these two instances, has no effect on the exclusive authority of the Federal Communications Commission and the Department of Commerce to issue licenses for such a satellite.

Section 413.19 establishes the applicant's responsibility for the continuing accuracy of information submitted as part of an application review.

Part 415—Launch Licenses

Part 415 establishes procedures for reviewing launch license applications and the general standards for approving such applications. The provisions of this part apply only to prospective launch license applications and should be read together with the general application procedures in Part 413. A future regulatory proposal addressing commercial launch site operations will establish procedures and standards specifically for license applicants seeking authorization for that activity in a separate part.

Section 415.3 identifies the proposed launch activities that will require a launch license. Any person proposing to launch from U.S. territory must obtain a license authorizing the launch. A U.S. citizen proposing to launch from any site, whether inside or outside U.S. territory, must also obtain such a license.

Section 415.5 identifies the two approvals that must be secured in order for a launch license to be issued: safety approval and mission approval. Safety Review and Mission Review are conducted to determine whether these approvals can, in fact, be given. Once secured, no other approval is required from the Office in order for an applicant to be granted a license for an unmanned launch.

The Office will accept applications for Safety Review, Mission Review, or for a determination that the launch of a payload covered by section 6(b)(2) of the Act will not be prevented, independent of one another and before submission of an application for a license. Section 415.7 makes clear that any approval or determination made on such applications will be made part of a licensing record. Thus, when an applicant does apply for a launch license, any approval or determination previously made that relates to the activity for which a license is sought remains valid. The Office will not duplicate a relevant review as long as no significant or substantial changes have been made in matters previously reviewed and approved.

Section 415.9 identifies standard conditions for launch licenses. One of these is purchasing third-party liability insurance coverage. The Office requested comments on third party liability issues in an Advance Notice of Proposed Rulemaking published May 7, 1985.

Subpart B of Part 415 focuses on Safety Review. Section 415.13 identifies the major elements of Safety Review: the proposed launch site, procedures, personnel and equipment. Section 415.15 notifies applicants that Safety Review can be requested either as part of the license request or before a license request is submitted. This provision responds to the need some prospective licensees may have for explicit approval of their safety operations at an early planning stage.

Section 415.17 identifies the information required for a Safety Review. It should be noted that launches from approved sites will be treated differently from those occurring at other sites. Approved sites include both Federal launch ranges and commercial sites operated under the authority of a license issued by the Office. At the present time, however, no licensees are authorized to operate a commercial launch site.

The information requirements for applicants proposing to launch from a site that has not been previously approved by the Office are considerably more detailed. In consultation with other Federal agencies, the Office has attempted to identify the components of safe launch operations for such applicants.

Subpart C of Part 415 focuses on Mission Review. Section 415.23 states that for Mission Review, as for Safety Review, applicants may request approval either as part of a license request or before such a request is made. With regard to required information, the nature of the proposed mission will, once again, affect both the nature and the quantity of information needed by the Office to conduct its review. For proposals which involve licensed payloads, the payload requirements of Mission Review will be satisfied by the issuance of a license by the responsible Federal agency. Proposals involving unlicensed or foreign payloads must be accompanied by more extensive information reflecting the more extensive review such payloads must receive from the Office.

Subpart D of Part 415 identifies circumstances wherein applicants may be required to submit information to the Office as part of Safety Review, Mission Review, or both, in order to satisfy the requirements of the National Environmental Policy Act. This information will be needed when some element of a proposal is not covered or addressed by existing environmental documentation on the effects of launch activities.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The interim regulations were evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979. The regulations are not considered to be "major," as defined by E.O. 12291, because they will not have an annual cost impact exceeding $100 million; they will not cause a major increase in costs or prices for consumers, individual

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industries, government agencies, or regions; and they will not have a significant adverse impact on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulations are considered to be "significant" as defined by the Department's Regulatory Policies and Procedures because of the novelty of space transportation as a private sector activity, the interest of the public and other Federal agencies, and the effect of the regulations on the competitive position of United States launch firms. The Office has prepared a Regulatory Evaluation to accompany these regulations which is available for public review and comment in the rulemaking docket.

The regulations are largely procedural in nature and are intended to eliminate regulatory obstacles to private launch firms, large or small. Small entities are likely to be involved in launch activities and, as a consequence, affected by the regulations. The regulations do not impose significant economic costs on them, however, and the economic benefits associated with the regulations are minimal. Therefore, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities.

The regulations include information requirements that must be reviewed and approved by the Office of Management and Budget. Comments on the information requirements should be directed to the Office of Information and Regulatory Affairs; OMB, Attention: Desk Officer for the Department of Transportation; Office of Commercial Space Transportation.

National Environmental Policy Act

The Office has completed an environmental assessment of the commercial space transportation program. This programmatic assessment has not identified any significant impacts that the conduct of commercial launch activities would have on the human environment. However, certain factors associated with individual launch proposals were not addressed in the assessment and may require further review during the licensing process. These include use of new propellants, new site development, or environmental effects associated with some payloads in the event of a launch accident. The assessment is available for public inspection and the public is invited to comment on it. The assessment and any comments received may be inspected in the Documentary Services Division, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington, DC, from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday except Federal holidays. Copies of the assessment may be requested from: Office of Commercial Space Transportation, S-50, Washington, DC 20590. Comments will be accepted until March 28, 1986, and may be sent to: Documentary Services Division; Attention: Docket Section, Docket No. 43810, Department of Transportation, C-55, Washington, DC 20590.

List of Subjects in 14 CFR Ch. III

Administrative practice and procedure, Space transportation and exploration.

Accordingly, Title 14, Code of Federal Regulations is amended to add a new Chapter III, to read as set forth below.

(Commercial Space Launch Act of 1984; Pub. L. 98-575, October 30, 1984)

Issued in Washington, DC on February 19, 1986.

Madeline Johnson,

Director, Office of Commercial Space Transportation.

CHAPTER III—OFFICE OF COMMERCIAL SPACE TRANSPORTATION, DEPARTMENT OF TRANSPORTATION (PARTS 400-499)

SUBCHAPTER A—GENERAL

Part
400 Basis and Scope.
401 Organization and Definitions.

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404 Regulations and Licensing Requirements.
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411 Policy.
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415 Launch Licenses.

SUBCHAPTER A—GENERAL

PART 400—BASIS AND SCOPE

Sec.
400.1 Basis.
400.2 Scope.

Authority: Secs. 3, 6, 13 and 21, Pub. L. 98-575 (49 U.S.C. App. 2601 note).

§ 400.1 Basis.

The basis for the regulations in this chapter is the Commercial Space Launch Act of 1984, and applicable treaties and international agreements to which the United States is party.

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision of all space launch activities conducted from United States territory or by United States citizens. The regulations in this chapter do not apply to amateur rocket activities, or to United States Government ranges, launches, payloads carried by such launches, or to United States Government payloads.

PART 401—ORGANIZATION AND DEFINITIONS

Sec.
401.1 The Office of Commercial Space Transportation.
401.3 The Director of Commercial Space Transportation.
401.5 Definitions.

Authority: Sec. 4, Pub. L. 98-575 (49 U.S.C. App. 2601 note), § 1.68 Regulations of the Office of the Secretary of Transportation, 49 CFR 1.68.

§ 401.1 The Office of Commercial Space Transportation.

The Office of Commercial Space Transportation, referred to in these regulations as the "Office," is a unit within the Office of the Secretary of Transportation and is located in the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC 20590

§ 401.3 The Director of Commercial Space Transportation.

The Office is headed by a Director appointed by the Secretary of Transportation to exercise the Secretary's authority to license and otherwise regulate commercial space launch activities and to discharge the Secretary's responsibility to encourage, facilitate and promote commercial space launches by the United States private sector.

§ 401.5 Definitions.

As used in this chapter—

Act—means the Commercial Space Launch Act of 1984, Pub. L. 98-575.

Amateur Rocket Activities—means launch activities involving rockets powered by a motor or motors having a total impulse of 200,000 pound—seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Commercial Launch Activities—means the launch activities subject to the authority of the Department of Transportation regardless of whether such activities are conducted by a private or public entity, or for profit.

Director—means the Director of the Office of Commercial Space

Transportation, or any person designated by the Director to exercise the authority or discharge the responsibilities of the Director.

Launch—means to place, or attempt to place, a launch vehicle and/or payload in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space.

Launch Activity—means the launch of a launch vehicle and any payload, the operation of a launch site, or both.

Launch Vehicle—means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space, and any suborbital rocket.

Licensee—means the person authorized by a license to conduct specified commercial launch activities and responsible for conducting such activities in conformance with applicable requirements.

Operation of a Launch Site—means the conduct of approved safety operations at a permanent site for purposes of supporting, for compensation or hire, the launching of launch vehicles and payloads.

Mission—means the objective to be accomplished by a proposed launch and includes the general plan for achieving that objective.

Payload—means an object which a person undertakes to place in outer space by means of a launch vehicle, and includes subcomponents of a launch vehicle specifically designed or adapted for that object.

Person—means any individual and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any State or Nation.

Safety Operations—means the personnel, equipment, facilities, documented plans and procedures, and any other resource needed for safe preparation and launch of a launch vehicle and its payload.

State and United States—when used in a geographical sense, mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, The United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States Citizen—means:

(a) Any individual who is a citizen of the United States;

(b) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(c) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraphs (a) or (b) of this definition. "Controlling interest" means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraphs (a) or (b) of this definition creates a rebuttable presumption that such interest is controlling.

SUBCHAPTER B—PROCEDURE

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

Subpart A—General

Sec.
404.1 Scope.
404.3 Filing of petitions to the Director.
404.5 Action on petitions.

Subpart B—Rulemaking

404.11 General.
404.13 Contents of notices.
404.15 Petitions for extension of time to comment.
404.17 Consideration of comments received.
404.19 Additional rulemaking proceedings.
404.21 Hearings.
404.23 Adoption of final rules.

Authority: Secs. 8 and 13, Pub. L. 98-575 (49 U.S.C. App. 2601 note).

Subpart A—General

§ 404.1 Scope.

Pursuant to sections 8 and 13 of the Act, this part sets forth the procedures for issuing regulations to implement the Act, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space launch activities.

§ 404.3 Filing of petitions to the Director.

(a) Any interested person may petition the Director to issue, amend or repeal a regulation, to eliminate as a requirement for a license any requirement of Federal law applicable to commercial launch activities, or to waive any such requirement in the context of a specific application for a license.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing requirement to be eliminated or waived;

(3) In the case of a petition for a waiver, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause is shown in the petition.

(c) A petition for rulemaking filed under this section must contain a summary, which may be published in the Federal Register, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

§ 404.5 Action on petitions.

(a) *General.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) *Grants.* In the case of a petition for a waiver, the Director may grant the waiver if the Director determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States. In all other cases, if the Director determines that the petition contains adequate justification, the Director initiates a rulemaking action under Subpart B of this part.

(c) *Denials.* If the Director determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) *Notification.* Whenever the Director determines that a petition should be granted or denied, the petitioner is notified of the Director's action and the reasons supporting it.

Subpart B—Rulemaking

§ 404.11 General.

(a) Unless the Director finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings related to each substantive rule proposed.

(b) Unless the Director determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued as final rules without notice or other proceedings.

(c) In the Director's discretion, interested persons may be invited to

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participate in the rulemaking proceedings described in § 404.19 of this subpart.

§ 404.13 Contents of notices.

(a) Each notice of proposed rulemaking is published in the **Federal Register**, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the **Federal Register** or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects or issues involved and, in most cases, a description of the substance or terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 404.15 Petitions for extension of time to comment.

(a) Any person may petition the Director for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition must be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Director grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the **Federal Register**.

§ 404.17 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

§ 404.19 Additional rulemaking proceedings.

The Director may initiate any additional rulemaking proceedings, if necessary or desirable. For example, the Director may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

§ 404.21 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing held under this part is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing.

(b) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a legal officer for the hearing.

§ 404.23 Adoption of final rules.

Final rules are prepared by the appropriate representatives of the Director and the Office of the General Counsel. The rule is then submitted to the Director for consideration. If the Director adopts the rule, it is published in the **Federal Register**, unless all persons subject to it are named and are personally served with a copy of it.

PART 405—INVESTIGATIONS AND ENFORCEMENT

Sec.

405.1 Monitoring of licensed and other activities.
405.3 Authority to modify, suspend or revoke.
405.5 Emergency orders.
405.7 Civil penalties.

Authority: Secs. 14, 17 and 19 Pub. L. 98–575 (49 U.S.C. App. 2601 note).

§ 405.1 Monitoring of licensed and other activities.

Each licensee shall allow and cooperate with Federal officers or employees or other individuals authorized by the Director to observe licensed activities, including launch sites, production facilities or assembly sites used by any contractor of a licensee in the production or assembly of a launch vehicle and in the integration of a payload with its launch vehicle. Such observance is conducted in order to monitor the activities of the licensee or contractor at such time and to such extent as the Director considers reasonable and necessary to determine compliance with the license or to carry out the Director's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

§ 405.3 Authority to modify, suspend or revoke.

(a) Upon application by the licensee or upon the Director's own initiative, the Director may modify a license issued under this chapter if the Director finds that the modification is consistent with the requirements of the Act.

(b) If the Director finds that a licensee has substantially failed to comply with any requirement of the Act, the terms and conditions of the license, any DOT commercial space launch regulation, or other applicable requirement, or that public health and safety, the safety of property or any national security or foreign policy interest of the United States so require, the Director may suspend or revoke any license issued under this chapter.

(c) Unless otherwise specified by the Director, any modification, suspension or revocation made by the Director under this section:

(1) Takes effect immediately; and

(2) Continues in effect during any review of such action under this part.

(d) Whenever the Director takes any action under this section, the Director immediately notifies the licensee in writing of the Director's finding and the action which the Director has taken or proposes to take regarding such finding.

§ 405.5 Emergency orders.

The Director may immediately terminate, prohibit or suspend a licensed launch or launch site operation if the Director determines that—

(a) Such launch or operation is detrimental to public health and safety, safety of property, or any national security or foreign policy interest of the United States; and

(b) The detriment cannot be eliminated effectively through the exercise of other authority of the Director.

§ 405.7 Civil penalties.

(a) Pursuant to section 19 of the Act, any person found by the Director, after notice and opportunity to be heard on the record in accordance with section 554 of title 5, United States Code, to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Director, shall be liable to the United Stated for a civil penalty. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Director by written notice. The Director may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b) if any person fails to pay a civil penalty assessed against such person after the penalty has become final or if such person appeals an order of the

Director, and the appropriate court has entered final judgment in favor of the Director, the Director shall recover the civil penalty assessed in any appropriate district court of the United States.

(c) For purposes of conducting any hearing under this section, the Director may: (1) Issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, and other records; (2) seek enforcement of such subpoenas in the appropriate district court of the United States; and (3) administer oaths and affirmations.

PART 406—ADMINISTRATIVE REVIEW

Sec.

406.1 Hearings.
406.3 Submission; oral presentation.
406.5 Administrative law judge's recommended decision.

Authority: Sec. 12, Pub. L. 98–575 (49 U.S.C. App. 2601, note).

§ 406.1 Hearings.

(a) Pursuant to section 12 of the Commercial Space Launch Act, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with section 554 of title 5, United States Code:

(1) An applicant for a license and a proposed transferee of a license regarding any decision to issue or transfer a license with conditions or to deny the issuance or transfer of such license;

(2) An owner or operator of a payload regarding any decision to prevent the launch of such payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license, or to terminate, prohibit, or suspend any licensed launch activity; and

(4) A person found by the Director to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Director if the Director seeks civil penalties.

(b) An administrative law judge will be designated to preside over any hearing held under this part.

§ 406.3 Submission; oral presentation.

(a) Determinations under this part will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions shall include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions shall be filed as soon as practicable, but in no event more than 30 days after issuance of the Director's decision or finding under § 406.1.

§ 406.5 Administrative law judge's recommended decision.

(a) The recommended decision of the administrative law judge shall be reviewed by the Director, who shall make the final decision on the matter at issue. The Director shall make such final decision within thirty days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Director and may not be delegated.

SUBCHAPTER C—LICENSING

PART 411—POLICY

Sec.

411.1 General.
411.3 Review procedures.
411.5 Safety approval.
411.7 Mission approval.
411.9 Information requirements.

Authority: Secs. 3, 5, and 6, Pub. L. 98–575 (49 U.S.C. App. 2601, note).

§ 411.1 General.

The Office of Commercial Space Transportation may issue and transfer licenses authorizing launches, the operation of launch sites, or both. The policies and procedures in this subchapter apply primarily to launch license applicants.

§ 411.3 Review procedures.

(a) The evaluation of license requests for unmanned launches involves two reviews, Safety Review and Mission Review, designed to address in the most effective and least burdensome manner the two general areas of Federal concern: (1) The efficacy of the proposed safety operations to support safe preparation and launch of a launch vehicle and any payload; and (2) significant issues affecting United States national interests and international obligations that might be associated with the proposed launch. These reviews may be conducted independently of each other and in whichever order, sequential or concurrent, is more appropriate to the needs of the applicant.

(b) Requests for licenses authorizing the operation of a launch site will be reviewed on the basis of the applicant's capability to conduct safety operations on a continuing basis as support for the launching of launch vehicles and payloads.

§ 411.5 Safety approval.

(a) Applicants proposing to launch from sites whose operations are neither licensed by the Office nor supervised by another Federal agency must demonstrate that they possess the capability and resources for safely conducting the preparation and launch of a launch vehicle and any payload to be carried by such vehicle. In these circumstances, a comprehensive review of the applicant's proposed safety operations must be performed in order to determine whether safety approval can be granted.

If an applicant proposes to launch from an established Federal range, as the Act encourages, it is the Office's view that the launch services provided by these ranges clearly provide an appropriate assurance of safety. As a general matter, commercial launch sites operated under the authority of a license issued by the Office should also be capable of providing an appropriate assurance of safety. If an applicant proposes to contract for the services of a Federal range or a private launch site operated under the authority of a license issued by the Office, safety approval will ordinarily be given once the applicant has been accepted by a range or site capable of handling the launch activity proposed. All launch licenses issued under these circumstances will be conditioned by the requirements that the applicant: (1) Comply with all applicable safety requirements and procedures of the range or launch site in question and (2) inform the Office of and obtain approval for any planned or proposed deviations from or alternatives to such requirements or procedures.

§ 411.7 Mission approval.

(a) Mission approval will be granted absent clear evidence that some aspect of the proposed launch poses a threat to distinct U.S. national security or foreign policy interests, constitutes a hazard to public health and safety or safety of property, or is inconsistent with international obligations of the United States.

(b) The Department will not duplicate the substance of a review conducted by a Federal agency with primary authority for addressing the Federal interests associated with a given class of payloads. This includes, for example, reviews conducted by the Federal Communications Commission for telecommunication satellites, the Department of Commerce for remote-sensing satellites, or other Federal agencies for their own payloads. A proposal to launch a foreign telecommunications or remote-sensing payload will be reviewed in consultation with the Departments of Defense and State. A proposal to launch a payload not covered by an existing Federal regulatory regime must be

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reviewed by the Department in consultation with other appropriate Federal agencies in order to determine that the launch of such payload will not jeopardize public health and safety, safety of property, or any national security or foreign policy interest of the United States. In order to provide the certainty needed for new commercial space applications, whether domestic or foreign, the Office, when requested to do so, will provide payload operators or owners with this determination in advance of a launch license request. Subsequent reviews of payloads within the same category will be considered on a routine basis and will focus on new or distinctive elements of the specific payload to be launched.

§ 411.9 Information requirements.

Sections 415.17, 415.25, and 415.27 identify the basic information an applicant must submit in order to initiate an appropriate review. These information requirements are not intended to be all-inclusive and the submission of the required information does not, in itself, demonstrate the qualifications of an applicant. Rather, the information requirements are intended to ensure prompt and efficient review. The nature of individual launch proposals may require the submission of additional information.

PART 413—APPLICATIONS

Sec.
413.1 Scope.
413.3 Pre-Application consultation.
413.5 Application.
413.7 Confidentiality.
413.9 Review of applications.
413.11 Issuance of license.
413.15 Terms and conditions of license.
413.17 Certain rights not conferred by license.
413.19 Substantial and significant changes in information furnished to the Director.

Authority: Secs. 9, 10, 11 and 20, Pub. L. 98–575 (49 U.S.C. App. 2601 note).

§ 413.1 Scope.

The regulations in this part prescribe the application procedures common to licensing all commercial space launch activities. The regulations applying exclusively to launch licenses are contained in Part 415 of this subchapter.

§ 413.3 Pre-application consultation.

(a) Applicants are encouraged to consult with the Office of Commercial Space Transportation at the earliest possible planning stages. Such consultation may reveal potential problems with a proposal and allow changes to be made when they are less likely to result in significant delay or costs to the applicant. Consultations later in the planning process may prove useful in defining informational requirements for appliations and expediting review.

(b) *Consultation.* Upon request, the Director will consult with any prospective applicant to assist the applicant in: (1) Properly preparing the application; and (2) contacting other Government agencies involved in the application review process in order to discuss the prospective application.

§ 413.5 Application.

(a) *Form.* Applications must be in writing and filed in duplicate with the Director, Office of Commercial Space Transportation, S–50, 400 Seventh, SW., Washington, DC 20590.

(b) *Types.* Applications to the Director may request issuance or transfer of a license authorizing a launch or the operation of a launch site. Applications may also be made, separately and in advance of a license application, requesting an approval or determination that must be secured before a license can be issued or transferred.

(c) *Signature.* Applications must be signed as follows:

(1) For a corporation: By an officer authorized to act for the corporation in licensing matters.

(2) For a partnership or a sole proprietorship: By a general partner or proprietor, respectively; or

(3) For an association or other entity: By a principal executive officer.

§ 413.7 Confidentiality.

(a) Applicants who submit with an application or as part of the application review process information that is considered to be a trade secret or commercial or financial information that is privileged or confidential may request in writing that the information be given confidential treatment.

(b) Such a request should be made at the time of submission of the information and state the period of time for which confidential treatment is desired.

(c) A request for confidential treatment will be associated with previously submitted information to the extent that it is practicable in light of prior distribution of such information.

(d) Information requested to be treated confidentially must be clearly marked with an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying legend must be securely attached to the compilation of information for which confidential treatment is requested.

§ 413.9 Review of applications.

(a) Each application shall contain the information prescribed by the Director.

(b) The Director determines whether an application is substantially complete and, if so, accepts the application for review.

(c) Applications found by the Director to be incomplete or so speculative or frivolous as to make review inappropriate will be returned to the applicant with a statement of the reasons therefor.

(d) Once an application is accepted, the Director initiates an appropriate review in light of the specific action requested in the application.

(e) The Director makes a determination on an application as expeditiously as possible but, in the case of a license application, not later than 180 days after receipt of such application. If the Director has not made a determination within 120 days after receipt of such application, the Director informs the applicant of any pending issues and of actions required to resolve such issues.

§ 413.11 Modifications.

Applications may be modified, supplemented, or corrected by the applicant at any time prior to issuance of the Director's decision to grant or deny, whether in whole or in part, the approval, determination, or license requested.

§ 413.13 Issuance of license.

The Director issues or transfers a license authorizing the conduct of commercial space launch activities by the applicant if the Director determines, after review, that the applicant has, and will continue to have, the ability to comply with all requirements for a license, including the ability to conduct safe launch or launch site operations.

§ 413.15 Terms and conditions of license.

(a) Each license issued or transferred under this section shall specify the activities authorized by the license, the name of each person responsible under the license for the conduct of such activities, the period of time for which the license is valid, and such other terms and conditions as may be required to protect public safety, the safety of property, and national security and foreign policy interests of the United States.

(b) All licenses shall specify, as a condition of such license, that the licensee maintain an effective on-site means for verifying that the licensed launch activity conforms to representations made in the license application.

§ 413.17 Certain rights not conferred by license.

No license shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal launch facility, or Federal launch support facility. Issuance of a license does not affect the authority of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*) or the authority of the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4301 *et seq.*).

§ 413.19 Substantial and significant changes in information furnished to the Director.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished to the Director to support a pending application or which formed the basis for any approval, determination of licensing action by the Director. Whenever such information is no longer substantially accurate and complete in all significant respects, or whenever there has been a substantial change as to any matter of decisional significance to the Director, the applicant shall, as promptly as possible, submit a statement furnishing such additional or corrected information as may be appropriate.

(b) Willful false statements made in applications and documents relating to applications or licenses are punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate administrative sanctions, including license revocation and civil penalties.

PART 415—LAUNCH LICENSES

Subpart A—General

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Authority: Secs. 6, 7, 8, and 9, Pub. L. 98–575 (49 U.S.C. App. 2601, note).

Subpart A—General

§ 415.1 Scope.

This part contains the procedures and information requirements which apply exclusively to launch license applications and supplements the general application procedures in Part 413.

§ 415.3 When a launch license is required.

(a) The launch of a launch vehicle and any payload carried by such vehicle by any person from U.S. territory or by a U.S. citizen from outside U.S. territory must be authorized by a license issued under this part.

(b) The launch of a launch vehicle, and any payload carried on such vehicle, by a foreign corporation or other entity controlled by a United States citizen, as defined in § 401.5 of this chapter, at any place which is both outside the United States and outside of the territory of any foreign nation when there is no agreement in force between the United States and a foreign nation which provides that such foreign nation shall exercise jurisdiction over such launch must be authorized by a license issued under this part.

(c) The launch of a launch vehicle and any payload carried on such vehicle by any foreign citizen described in paragraph (b) of this section, from the territory of a foreign nation when there is in force an agreement between the United States and such foreign nation concerning the exercise of jurisdiction by the United States over such launch must be authorized by a license issued under this part.

§ 415.5 Approvals required for a license.

A license authorizing an unmanned launch will be issued or transferred after the Director grants an applicant both mission and safety approval. These approvals may be requested separately and in advance of a license request as provided in §§ 415.15 and 415.23.

§ 415.7 Incorporation of approvals.

(a) Any approval or payload determination made by the Director before a license has been requested, as provided in § 413.5 of this subchapter, will be made part of the record upon which the Director will make a decision to issue a launch license with conditions or to deny a launch license.

(b) An approval or payload determination remains valid, and the Director will not reopen any part of a review which formed the basis for an approval or payload determination, as long as the information submitted as part of the review and other matters of decisional significance to the Director remain accurate and valid.

§ 415.9 Conditions.

All launch licenses will contain those conditions which the Director determines to be necessary and appropriate to protect public health and safety, the safety of property, and national security and foreign policy interests of the United States. Failure to comply with any license condition may be cause for revocation of the license or the initiation of other enforcement actions by the Director. Standard conditions will require the licensee to:

(a) Secure at least the minimum amount of third-party liability insurance specified by the Department;

(b) Adhere strictly to specified range safety regulations and procedures;

(c) Comply with requirements concerning pre-launch record keeping and notifications, including those pertaining to Federal airspace restrictions and military tracking operations; and

(d) Comply with Federal inspection, verification and enforcement requirements.

Subpart B—Safety Review

§ 415.11 Scope.

Safety Review is the procedure for determining whether an applicant can safely conduct the preparation and launch of the proposed launch vehicle and any payload. This review focuses on the elements of an applicant's safety operations, including the proposed launch site, procedures, personnel, and equipment. A safety approval granted by the Director does not confer any approval or authorization an applicant or licensee must obtain from the operator of the range from which the launch vehicle and any payload are approved for launch, or create any presumption or inference that such approval or authorization will be granted.

§ 415.13 General standards for reviewing safety operations.

(a) *Launch Site.* The location, size and design configuration of the proposed site must ensure that off-site persons and property are not exposed to an unreasonable risk of harm.

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(b) *Procedures.* User and range operator procedures must be appropriate for assuring pre-launch check-out and validation of all launch safety systems (ground or flight); control of prelaunch and launch hazards to the public; trajectory flight safety analysis; and safe flight operations from ignition through impact for suborbital launches and through orbital injection or escape velocity for orbital launches.

(c) *Personnel.* Range safety personnel must be qualified and possess appropriate training and experience.

(d) *Equipment.* Range safety equipment and instrumentation and vehicle safety systems must be adequate and appropriate to support safe operations.

§ 415.15 When to request safety approval.

An application for safety approval may be made as a part of a launch license request or, in the alternative, in advance of a launch license request.

§ 415.17 Required information.

(a) *Launches from Approved Launch Sites.* Applicants proposing to launch from Federal launch ranges or commercial sites operated under the authority of a license issued by the Director must provide a statement:

(1) Verifying that the applicant has been accepted by the operator of a launch range or site appropriate for the proposed mission; and

(2) Identifying the party (operator or applicant) responsible for conducting or providing, whether in whole or in part, any element of launch operations discussed in §§ 415.11 and 415.13. In instances where the applicant has assumed primary responsibility for one of these elements, a statement must be provided describing how responsibility and accountability for safety will be assigned between the operator and applicant.

(b) *Other Launches.* All applicants not covered by paragraph (a) of this section must provide the following information in sufficient detail for the Office to begin an assessment of the applicant's competency, experience and capability to conduct a launch safely:

(1) An identification and description of the launch site from which the proposed launch will take place, specifically describing:

(i) The location, size, shape and geographic characteristics of the site;

(ii) The proximity to populated areas;

(iii) Any local activities that may be affected by the launch, such as air traffic, shipping, and offshore fishing; and

(iv) Proposed launch corridors from the site and predicted impact areas.

(2) A description of the role and responsibilities of personnel performing safety or safety related functions for the proposed launch operation. Details should include:

(i) A description of the planned organization, key personnel, and lines of authority and responsibility for accomplishing pre-launch and launch safety functions.

(ii) The methodology proposed for selection, training and testing of the Launch Safety Office and other key personnel critical to assuring Launch Safety System readiness for launch, as well as prior experience, training, etc. of such personnel.

(iii) Description and explanation of how the methodology proposed relates to assuring the successful control of the proposed launch.

(3) A description of tracking and/or data acquisition equipment to be used for safety purposes. This description should include:

(i) An identification of the types of tracking equipment to be used and their performance capabilities;

(ii) The location and placement of equipment; and

(iii) The types, performance capabilities and specifications of other aids to be used including computational equipment, display systems, and recording systems.

(4) A description of proposed flight safety systems including:

(i) The type, design and performance specifications of the flight termination system including transmitters, receivers, ordinance, etc.;

(ii) Schematics and wiring diagrams; and

(iii) Certification and verification procedures for the proposed flight safety system.

(5) Documents outlining the proposed process and procedures to be followed for prelaunch ground safety, flight safety analysis, and flight safety operations, including copies of safety analyses performed to determine potential impacts, establish destruct criteria, unique hazards identified, etc. Examples of documents to be included are set forth below:

(i) Description of ground safety measures taken to protect public safety;

(ii) Flight safety analysis performed, analytical models used, etc. In order to demonstrate efficacy of the proposed process, the applicant is requested to provide examples of safety analyses it has performed to determine potential impacts, establish flight termination criteria, identify/control unique hazards, etc.;

(iii) Flight safety operation to be conducted, criteria proposed for flight termination, practice and testing exercises to be performed, emergency procedures, etc.;

(iv) Quality control and testing procedures for critical safety equipment components including tracking and flight termination; and

(v) Recovery procedures if applicable.

(6) Flight plan data as a function of time for launch vehicle and spacecraft including trajectory, azimuth, flight profile, and orbital elements. Examples of data to be included are set forth below:

(i) Profile plot of the planned flight trajectory, showing altitude versus range and trajectory for each expended stage;

(ii) A plan view of the flight trajectory, showing launch and trajectory azimuth, impact points for each stage, jettisoned component, or other impacting body;

(iii) Launch vehicle ground and IIP ground tracks with respect to all significant land masses shown in true geographical location; and

(iv) Description and definition of orbit.

(7) Description of the launch vehicle and its performance characteristics, as well as a description of any payload with a particular emphasis on hazardous systems. Examples of descriptions to be included are set forth below:

(i) Description of the launch vehicle configuration; major sections and components; weights and dimensions of each; rocket motors and propulsion systems, guidance system for each stage; and destruct system(s);

(ii) Description of payload design sufficient to determine unique flight hazards, hazardous materials involved, etc.; and

(iii) Thrust time history of each stage, maximum turn rates, plot of estimated vehicle weight versus time, analysis of vehicle integrity to meet flight environment.

(8) Other categories of data as determined by the applicant to demonstrate unique capabilities.

§415.19 Incorporation of safety approval.

A safety approval made by the Director under this part may be made part of a licensing record pursuant to § 415.7.

Subpart C—Mission Review

§ 415.21 Scope.

Mission Review is the procedure for identifying significant issues affecting United States national interests and international obligations that may be associated with a proposed launch. A review conducted under this part covers all aspects of a proposed launch, including any payload to be launched, except the safety operations an applicant will use to prepare and launch a launch vehicle and any payload.

§ 415.23 When to request mission approval.

An application for mission approval may be made as part of a launch license request or, in the alternative, in advance of a launch license request.

§415.25 Required information.

(a) The applicant must describe the launch vehicle and the location of the launch site.

(b) The applicant must submit a flight plan and staging data sufficient for evaluating such factors as the potential for land overflight, impacts of spent stages, and debris issues.

(c) The applicant must identify any unique hazards that may be posed by the launch derived from the nature of materials to be launched or potential abort or re-entry hazards.

(d) The applicant must identify the nature and ownership of any payload to be launched.

(e) The applicant must—

(1) Provide proof of application for or issuance of any license, authorization or other permit required by Federal law for the payload which is to be launched; or

(2) If no payload license, authorization or permit is required by any Federal law for the payload which is to be launched, indicate whether a determination, provided for in § 415.27, has been made by the Director concerning such payload.

§ 415.27 Payload determinations.

The Director must determine whether to prevent the launch of a payload for which no license, authorization, or permit is required by Federal law because to launch such payload would jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States. An applicant proposing to launch such a payload must provide:

(a) An assessment of safety issues anticipated by the applicant;

(b) A statement of the number of missions planned for payloads of the same or similar design;

(c) A description of the design and construction plans of the payload;

(d) A description and definition of the proposed orbit, including altitude and inclination; and

(e) Other information, as appropriate.

§ 415.29 Advance determinations on payloads.

Any person may request that the Director make a determination, pursuant to § 415.27, at any time prior to a request for mission approval or a request for a launch license.

§ 415.31 Incorporation of mission approval.

A launch mission approval or payload determination made by the Director under this part may be made part of a licensing record pursuant to § 415.7.

Subpart D—Environmental Impacts of Launch Activities

§ 514.41 General.

In accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1506, and the Department of Transportation's Procedures for Considering Environmental Impacts, DOT Order 5610.1C, the environmental impacts of licensing commercial launch activities must be considered by the Office. The effects of most projected commercial launch activities are already addressed in the Office's programmatic environmental assessment or in environmental impact statements for existing launch sites. The Office will determine whether a proposed launch activity is adequately addressed in these documents. Applicants may be required to provide additional information concerning the environmental effects of a proposed launch activity.

§ 415.43 Environmental information.

Applicants will be required to submit environmental information concerning:

(a) Proposed new launch sites not covered by existing environmental documentation;

(b) A proposed new launch vehicle with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) Proposed launches from established sites involving vehicles with characteristics falling measurably outside the parameters of the existing environmental impact statement covering those sites;

(d) A proposed payload that may have significant environmental impacts in the event of a launch accident; and

(e) Other factors as determined by the Office.

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 868

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor); Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 868

[Docket No. 83N-0193]

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor)

AGENCY: Food and Drug Administration HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to invite interested persons, including any Federal agency, to submit any existing standard as a proposed performance standard for the breathing frequency monitor intended for use on infants (also called the neonatal apnea monitor), or to submit an offer to develop such a proposed standard. If FDA does not receive any response to this notice, or receives a response but does not accept any existing standard or offer to develop a standard, the agency will proceed to develop a performance standard or take other appropriate action to facilitate the development of a performance standard for the device.

DATE: Existing standards or offers shall be submitted on or before April 28, 1986.

ADDRESS: Existing standards or offers shall be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

Background/Introduction

Under section 513 of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360c), FDA is required to classify each medical device into one of three regulatory categories: class I (general controls), class II (performance standards), or class III (premarket approval).

In the **Federal Register** of July 16, 1982 (47 FR 31130), FDA published a final rule (21 CFR 868.2375) classifying the breathing frequency monitor into class II. In the **Federal Register** of October 21, 1980 (45 FR 69684), FDA published a final rule classifying the neonatal ventilatory effort monitor (apnea monitor) into class II and codifying the classification under 21 CFR 880.2440. Subsequently, the agency determined that the neonatal ventilatory effort monitor (apnea monitor) is essentially the same generic type of device as the breathing frequency monitor and in a final rule published in the **Federal Register** of September 10, 1982 (47 FR 39816), removed § 880.2440, consolidating both generic types of devices under § 868.2375.

In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish for the breathing frequency monitor a performance standard under section 514 of the act (21 U.S.C. 360d). As required by section 514(b) of the act, the proceeding was initiated by publishing in the **Federal Register** a notice of opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. FDA did not receive any request for a change in the classification of the device. Therefore, further action is not required under section 514(b) of the act.

As provided by section 514(c) of the act and Part 861 of the regulations governing performance standards development (21 CFR Part 861), FDA is continuing the proceeding to establish a performance standard for the breathing frequency monitor by inviting interested persons to submit an existing standard as a proposed performance standard for the device or to submit an offer to develop such a proposed standard.

As discussed under "Device Description," FDA has decided to limit the action, at this time, to the models of the breathing frequency monitor intended for use only on infants to detect cessation of breathing, and is commonly called the neonatal apnea monitor.

Comments

Although FDA did not receive any requests for a change in the classification of the breathing frequency monitor, the agency received two comments in response to the July 8, 1983 notice. One comment was from a research institute and the other was from a manufacturer of breathing frequency monitors.

1. One comment expressed the view that more than one standard for the breathing frequency monitor is needed to provide reasonable assurance of the safety and effectiveness of the device because of the variety of techniques for monitoring breathing. The comment argued, in addition, that rapidly changing technology will quickly make the provisions of a standard outdated unless the provisions are directly related to safety and the safety aspects of effectiveness. According to the comment, this problem has been experienced by several voluntary standards organizations.

FDA does not agree that more than one standard is necessary for the breathing frequency monitor intended for use on infants. All of the device products include a neonatal respiration sensor, a system for processing the respiration sensor signal, and a system for read-out. The critical issue in considering appropriate concepts for a standard applicable to the device has been the quantitative comparison of the effectiveness of respiration sensors. The feasibility of such comparison has been demonstrated by Mendenhall and Newman (Refs. 1 and 2).

Further, FDA does not agree that a performance standard for breathing frequency monitors should address only safety issues. FDA points out that section 514(a)(2)(A) of the act provides that a performance standard for a device "shall inlcude provisions to provide reasonable assurance of its safe *and effective* performance" (emphasis added). Thus, a performance standard for the breathing frequency monitor is required to address, as necessary, both the safety and the effectiveness of the device.

FDA agrees that a standard for the device will have to be carefully developed to prevent obsolescence of the provisions. To the extent, however, that the comment indirectly was arguing that a performance standard for the breathing frequency monitor should not include "design" features, FDA advises that section 514(a)(2)(B) of the act requires that a performance standard for a device include, to the extent "necessary to provide reasonable assurance of its safe and effective performance," provisions respecting both design and performance characteristics of the device. Thus, a performance standard for the breathing frequency monitor may include either design or performance features, or both, as necessary to provide reasonable assurance of the safety and of the effectiveness of the device. The Center for Devices and Radiological Health has considerable experience with performance standards issued under the Radiation Control for Health and Safety Act of 1968. FDA believes that the distinction, in this case, between performance requirements and design requirements lies primarily in the degree of specificity required to provide adequate protection against a particular health hazard. Close cooperation between all the parties in the standards-setting process is needed to select the appropriate balance between design and performance requirements in any standard that the agency may establish. FDA will work closely with all the parties in the standards-setting process to ensure that the provisions of any performance standard established under section 514 of the act do not become obsolete. In addition, FDA will amend such standards as required by changing technology.

2. One comment expressed the belief that there are insufficient data to allow any organization to develop a meaningful standard for the breathing frequency monitor and, therefore, it is premature to initiate a proceeding to establish a performance standard for the device. The comment argued that additional research is necessary to define better a variety of pertinent characteristics of device function and patient population before undertaking a standards-setting activity for the device.

FDA disagrees. The agency has considered the issues relating to the need for and development of a performance standard for breathing frequency monitors. FDA's advisory committees have concluded that there is sufficient information to establish a performance standard that will provide reasonable assurance of the safety and effectiveness of the device, and FDA agrees. The characteristics of a breathing frequency monitor that FDA believes would provide reasonable assurance of the safety and effectiveness of the device are described elsewhere in this notice under "Risks Associated With the Device and Which Are To Be Controlled by a Performance Standard."

Current Action

Section 514(c)(1)(A) of the act and § 861.20(c) of the regulations provide that in the event that further action is not required under section 514(b) of the act, FDA shall publish in the **Federal Register** a notice inviting any interested person, including any Federal agency, to submit to FDA, within 60 days after the date of publication of the notice, an existing standard as a proposed performance standard, or an offer to develop a proposed performance standard.

Section 514(c)(2)(B) of the act and § 861.22 of the regulations provide that the notice is to include (1) a description or other designation of the device; (2) a statement of the risk or risks associated with the use of the device and which are intended to be controlled by a performance standard, including pertinent portions of the recommendations of FDA's advisory committees with respect to the device; (3) a summary of the data on which FDA has found a need for initiation of the proceeding to develop a performance standard, including pertinent portions of the recommendations of FDA's advisory committees with respect to the device; (4) identification of any existing performance standard known to FDA which may be relevant to the proceeding; (5) the approximate number of products (i.e., kinds of models) within the generic type of device; and (6) the time period within which the standard is to be developed, which may be extended by the Commissioner of Food and Drugs for good cause shown.

Device Description

The breathing frequency monitor is identified in § 868.2375 as a device intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate is outside predetermined limits. The agency notes that the term "alarm" includes any alarm that is appropriate to the manner of use of the breathing frequency monitor, e.g., aural, visual, tactile, or a signal to another machine.

The term breathing frequency monitor as defined for the purpose of § 868.2375 includes devices that utilize signals from a multiplicity of types of respiration sensors. The monitors can process the sensor signal to provide readouts or signals of respiration waveform, respiration events, or respiration rate. Breathing frequency monitors may be used on patients of any age and may be used in the home, as well as in the hospital.

Scope of the Standard; Models of the Device

FDA intends that any proposed performance standard to be offered or developed at this time would apply only to the breathing frequency monitor devices used on infants because different issues are raised by use in neonate and adult populations and a single standard covering both populations could not be easily written. FDA believes neonates are at the greatest risk from use of the device and is therefore proposing at this time to develop a standard applicable to this population. The monitoring device to be covered by this proposed standard is a subset of the generic type of device classified by § 868.2375 and is commonly called the neonatal apnea monitor, a term that will be retained because of common usage. FDA notes that adult and juvenile populations also are at risk. The agency believes, however, that concepts established in a performance standard for neonatal apnea monitors will carry into the design and construction of breathing frequency monitors for other populations. For these reasons, FDA concludes that the neonatal apnea monitor has the highest priority for establishing a standard.

Neonatal apnea monitor devices currently being marketed are primarily pneumographs that employ sensing for thoracic impedance and that include a heart rate monitor. A variety of respiration sensors have been developed (Ref. 3). Any standard that is offered or developed should cover all possible types of sensors. Several of these sensors are discussed briefly to illustrate the range of the various implementation techniques:

Acoustic transducer. A microphone is secured to the infant's neck to sense the sound of air movement in the airway.

Anemometer (thermistor). Direct sensing of the air flow is accomplished by placing a thermistor in a face mask, by the nares or mouth, or in the pharynx. The electrical resistance of the thermistor changes as it is warmed and cooled by the infant's breathing.

Barometer. Respiration is sensed by monitoring the barometric pressure changes which occur when an infant breathes freely within a closed chamber.

Carbon dioxide sensor. The rate of respiration and the degree to which carbon dioxide is removed from the body is measured using the partial pressure of carbon dioxide in the infant's exhalation.

Pneumotachograph. A fine mesh screen is placed across the infant's airway and detects air flow by sensing the pressure drop across the screen.

Reverse plethysmograph. The volume changes occurring in a reservoir into which an infant breathes by way of a face mask and tubing are measured with a strain gauge.

Spirometer. The volume of air that an infant exhales into a reservoir is measured.

Wet-test gas meter and mask. The infant breathes into a face mask with tubing connected to a wet-test gas meter, which measures the volume of air flowing into the face mask.

Air mattress. Body motion caused by breathing can be monitored by placing the infant on a pad or mattress which senses these motions and converts them to electrical signals. One technique uses a segmented air mattress. Tubing connects each air-filled segment to a common manifold which contains a thermistor. The mattress is placed under the infant with the segments perpendicular to the infant's length.

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When the infant breathes, the distribution of his or her body weight shifts, causing air to be displaced from one mattress segment to another by way of the manifold. The moving air cools the thermistor differentially, and this temperature change is detected as a breath.

Air-filled rubber vest. The pressure variations inside an air-filled rubber vest surrounding the chest and abdomen correlate with respiration volume.

Capacitance pneumograph. Changes in the capacitance between conductive plates caused by breathing movements of the infant are detected.

Capacitance mattress. Another technique that senses body motion utilizes a mattress containing two capacitors which vary as the infant moves. The mattress contains several layers of foam with layers of fine wire mesh sandwiched between them to form the plates of two capacitors. The vertical force component of body motion associated with respiration changes the spacing between the mesh layers. These changes in spacing cause changes in capacitance which are interpreted as breathing.

Displacement magnetometer. Inductive means are used to detect chest and abdominal wall movements. Two coils are fixed to the infant's chest, and relative displacements produced by breathing vary the magnetic coupling between the coils. A derived voltage represents these displacements.

Displacement transducer. The elevation of various parts of the chest and abdomen is measured with linear displacement transducers attached by string. In another technique, the variation in separation between two points on the chest occurring with respiration is measured. One end of a guage is fixed to one point on the chest and the other end of the guage is allowed to move with respect to the second point which acts as a marker for the gauge.

Electret. The electret is an electrically polarizable material which acts as a pressure transducer. A pad containing a small, thin sheet of electret, when placed under the infant's mattress, detects the vertical component of force associated with respiratory motion. This force is converted by the transducer to an electrical signal and interpreted as breathing.

Electromyograph. Electrical activity associated with nerve and muscle activation occurring with breathing effort are sensed. Skin surface or needle electrodes are employed.

Impedance pneumograph. Changes in impedance across the thorax caused by the efforts of breathing are sensed. A 10 to 100 kilohertz electric current of about 50 microamperes is passed through electrodes taped to the infant's thorax. The voltage developed and measured is proportional to the transthoracic impedance, which varies during each breath.

Intraesophageal pressure. A catheter is placed in the esophagus to monitor the intraesophageal pressure, which reflects changes in intrathoracic pressure during breathing.

Permanent magnet. Breathing motions can be monitored with a permanent magnet taped to the infant's abdomen or back. A rigid pad containing a concentrically coiled wire is placed under the mattress. Movement of the magnet induces a voltage in the coiled wire which is amplified and interpreted as breathing.

Photoelectric plethysmograph (hemodensitometer). Alterations are detected in the absorption of particular wavelengths of incident light by the blood in the underlying tissue. Hemodensitometer signals from the plantar surface of the infant's foot correlate with his or her respiratory efforts.

Piezo-resistive mattress. A mattress, placed under the infant, changes resistance as the infant's weight redistributes with breathing.

Radar. Low/ amplitude, high-frequency radio transmitter and receiver signals reflected from the infant detect the breathing motion of the chest.

Strain gauge. There are two types of strain gauges. The mercury-in-rubber strain gauge encircles the abdomen or thorax and senses the expansion and contraction of the torso with each inspiration and expiration. The air-filled tubing pneumograph generally consists of two small, hollow, corrugated rubber tubes strapped to the abdomen and connected to an air-tambour to sense air displacement caused by abdominal motion during breathing.

Whole and partial body plethysmograph. The volume of air displaced with each breath is sensed by a pneumotachograph attached to a tube connected to a box in which all or a portion of the infant can be placed.

From data provided in premarket notifications under section 510(k) of the act (21 U.S.C. 360(k)), FDA is aware of about 33 different models of the breathing frequency monitor that potentially would be covered by a performance standard established for the device.

Risks Associated With the Device and Which Are To Be Controlled by a Performance Standard

FDA believes that the characteristics of the neonatal apnea monitor necessitating a performance standard concern the importance of accurate and reliable performance of the device. It is used in medical contexts in which its failure to work properly can have a significant negative effect on the health of the patient, or can, in some situations, be life threatening. In addition, there are general risks associated with the electrical and mechanical features of the device. The primary risk associated with the device is failure to detect reliably the lack of breathing (apnea) which can result in death of the infant patient.

A description of the risks identified by FDA's advisory committees is presented in the section of this notice entitled "Summary of the Data Supporting the Need for a Performance Standard."

Based upon the risks currently known the FDA, to agency is providing to interested persons guidance in the concepts that may be used in a performance standard and that FDA believes will provide reasonable assurance of the safety and effectiveness of the device.

A neonatal apnea monitor should accurately and reliably detect the absence of effective respiration and provide an alarm in such cases. As necessary, a standard for the device should address monitor design, including that of the respiration sensor, and the ability of the monitor to function in physiopathologic situations, such as when there is periodic breathing, disorganized breathing, shallow breathing, too low or too high a breathing rate, or an airway obstruction.

The neonatal apnea monitor may incorporate a secondary monitoring system in case the primary monitoring system fails to perform its intended function.

The labeling for the monitor should provide instructions for each intended use and prominently state the intended uses of the device, describe malfunctions, describe uses not intended for the device, and contain adequate maintenance and service information.

Summary of the Data Supporting the Need for a Performance Standard

The need to establish a performance standard for the neonatal apnea monitor is based on information from several sources. These sources include FDA's advisory committees, a report developed under contract with FDA regarding the

risks and hazards associated with the monitors (Ref. 3), reports received through the agency's Device Experience Network (DEN), information submitted to the agency under Part 803 of the regulations governing medical device reporting (21 CFR Part 803), recent papers presented at a scientific meeting (Refs. 6 through 11), and a report by the American Medical Association (AMA) (Ref. 12). FDA believes the data presented herein support the need for a performance standard to address the risks to health associated with the device. FDA notes that the National Institutes of Health is sponsoring a consensus conference on apnea and home monitoring in September 1986. The objectives of the conference are to determine the facts and recommendations that pertain to infant and neonatal breathing problems and their management insofar as experts in the field and the contributing public can determine. Although FDA will consider any recommendations made by the Panel members as a result of the conference the proceedings of the conference do not bear directly on this action.

The Anesthesiology and Respiratory Therapy Devices Panel, the General and Plastic Surgery Devices Panel, and the General Hospital and Personal Use Devices Panel (then the Anesthesiology Device Classification Panel, the General and Plastic Surgery Classification Panel, and the General Hospital and Personal Use Devices Classification Panel, respectively), FDA advisory committees, recommended that the breathing frequency monitor including the neonatal apnea monitor be classified into class II (see the **Federal Register** of August 24, 1979 and November 2, 1979; 44 FR 49856; 63340). The Panels made their recommendations because the Panel members believed that the device needs accurately and reliably to detect and to alert users to changes in a patient's breathing frequency. The Panels believed that general controls would not provide sufficient control over these characteristics, that a standard would provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a standard to provide such assurance.

The Anesthesiology and Respiratory Therapy Devices Panel identified the following risks to health presented by the breathing frequency monitor: (a) Undetected abnormal respiratory conditions: failure of the device or alarm may cause abnormal conditions to go undiscovered and result in serious patient injury or death; and (b) Inappropriate therapy: the patient may receive incorrect therapy if the device does not monitor the patient's breathing frequency accurately and reliably. The General and Plastic Surgery Devices Panel did not offer reasons for its recommendation that the device be classified in class II.

The General Hospital and Personal Use Devices Panel identified the following risks to health presented by the neonatal ventilatory effort monitor (apnea detector) previously classified in § 880.2440: (a) Infant death: Poor device design, construction, or device malfunction may lead to the failure of the device to detect an abnormal pause in ventilatory efforts (apnea), which could result in infant death; (b) Electrical shock: Improper device design and construction or device malfunction could result in an electrical shock; and (c) Inappropriate therapy: Inappropriate therapy may result if the device is not accurate in determining the breathing rate.

FDA contracted with the Emergency Care Research Institute (ECRI) to study and report on the risks and hazards associated with infant apnea monitors (Ref. 3). In its problem definition study completed in 1978, ECRI concluded generally that several risks and hazards are associated with the devices and that the associated risks and hazards can be controlled by one or more standards.

The risks and hazards listed in the ECRI report are: Failure to alarm for apnea (false-negative); alarm when infant is breathing normally (false-positive); electrode malfunctions; other sensor malfunctions; connector-interchange incompatibility; inappropriate audible alarm level; silencing of audible alarm and failure to reset; excessive alarm delay; inadequate alarm delay; ratemeter inaccuracy; excessively long sampling time on ratemeter; failure of ratemeter to alarm at low or high limits; electromagnetic interference; environmental vibration induced artifact; poor construction techniques, such as sensitivity control knob slippage and incorrect setting leading to detection of spurious signals that are interpreted as breathing (artifact); poor workmanship that is manifest as electrical hazards (microshock, macroshock, and burns); and bacterial contamination.

DEN is an FDA system for reporting and tracking malfunctions in medical devices. The system is voluntary, which limits the reliability of the data. FDA assumes that: (1) Not all device malfunctions are reported; (2) a listing of reported kinds of malfunctions probably does not include all of the kinds of malfunctions that occur; and (3) the frequency of reported kinds of malfunctions does not provide quantitative information and should be regarded only qualitatively.

Specific reported malfunctions of the neonatal apnea monitor in the DEN system to September 11, 1985, are: (1) Erratic operation of the device due to various causes including failure to alarm and false alarms (17 reports); (2) misuse of monitor and incomprehensible terminology in labeling (3 reports); (3) complaints respecting power cords, including poor insulation, mislabeling, or weak construction (3 reports); (4) electromagnetic interference (2 reports); (5) complaints of refusal to provide repair service for nonfunctioning units (2 reports); and (6) electrical shorts inside device (1 report).

In the **Federal Register** of September 14, 1984 (49 FR 36348), FDA issued Part 803 effective December 13, 1984, that requires manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Fifty-one such reports regarding apnea monitor products have been submitted to the agency under Part 803 as of July 16, 1985. Most reports list a failure to alarm for apnea or bradycardia, loose leads, or a fluctuating or low-volume audible alarm. These reports currently are being investigated by FDA and will be considered in the proceeding to establish a performance standard for the neonatal apnea monitor to the extent that they may bear on the provisions of any such standard.

FDA has received reports of one death and two electrical burns sustained when unsupervised children have plugged the connector pins of the sensor electrode lead from an impedance apnea monitor system into either AC power cords or a wall outlet. Because of these incidents, a warning alert has been sent to the medical and manufacturing community.

Several authors at the 1984 annual conference of the Alliance for Engineering in Medicine and Biology presented papers concerning monitoring for apnea (Refs. 6 through 11). In general, the papers presented at the conference affirm that hazards that the

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1978 ECRI study identified still are presented by the device.

On October 17, 1983, AMA issued a diagnostic and therapeutic technology assessment regarding apnea monitoring for newborns at risk of sudden infant death syndrome (Ref. 12). The assessment establishes AMA's position regarding the neonatal apnea monitor. It states: "Of the monitors currently available only those that record both cardiac and respiratory activity should be used: either one may be helpful by itself but the combined monitoring of heart and respiratory rates is preferred. The principal difficulty with the monitoring systems presently available in their susceptibility to false alarms and the possible strain that such a monitoring system in the home may place upon a family. Physicians with experience in the use of home monitors have stated that parents are usually quite cooperative and gain reassurance from the presence of the monitor. In fact, it is quite possible that reassurance of the parent is the greatest benefit to be derived from monitoring these infants, because there is as yet scant proof that identification of apneic spells and stimulation of the infant will, in fact, allow interdiction of the sudden infant death syndrome (SIDS). Furthermore, the ideal monitor that recognizes apnea or bradycardia readily and without artifact has yet to be developed."

Invitation for Offers To Submit Existing Standards

In accordance with section 514(c)(1)(A) of the act and § 861.20(c), FDA invites any interested person, including any Federal agency, to submit by April 28, 1986, an existing standard as a proposed performance standard for the neonatal apnea monitor. Alternatively, any such person may submit pertinent portions of an existing standard, including completed portions of any standard that is under development.

FDA has not been able to identify any voluntary standard that is applicable specifically to either the breathing frequency monitor or the neonatal apnea monitor.

There are voluntary standards, some of which are in final form, that are relevant only in part to a performance standard for the neonatal apnea monitor. These include standards for electrical safety. No one of these standards by itself will provide reasonable assurance of the safety and effectiveness of the neonatal apnea monitor, but these standards contain many concepts that should be considered in the development of a performance standard under section 514 of the act for the device (Refs. 4 and 5).

Section 861.24 sets forth the conditions under which FDA may accept an existing standard or a standard under development as a proposed performance standard. Accordingly, FDA advises that any such submission is to include the following:

1. A description of the procedures used to develop the standard and a list of persons and organizations that participated in, or in the event the standard is under development, that such information is available or are participating in its development, to the extent that reasonably obtainable;

2. An identification of the specific portions of the existing standard, or standard under development, that the person submitting the standard believes are appropriate for adoption as, or inclusion in, the proposed standard; and

3. A summary of the test data and other information, including rationales, necessary to support each specific portion of the standard identified by the person submitting the standard. More detailed information may be requested concerning certain portions of the standard if FDA determines that the summary is inadequate.

In accordance with section 514(d)(2) of the act, if an existing standard or one that is under development is submitted to FDA in response to this notice and FDA does not accept the standard, the agency will publish a notice of that fact together with the reasons therefor. In accordance with § 861.24(b), if an existing standard or one that is under development is submitted to FDA in response to this notice and FDA accepts the standard, or accepts the standard with modification, as a proposed standard, the agency will publish a notice of that fact. FDA advises that in the latter event, it may publish the notice as a notice of proposed rulemaking to establish a performance standard under section 514(g) of the act and § 861.20(e)(1). FDA expects to make such determination and publish the notice of its decision within 180 days after the close of the comment period on this notice.

Invitation for Offers To Develop Proposed Standards

In accordance with section 514(c)(1)(B) of the act and §§ 861.20(c) and 861.22, FDA invites any interested person, including any Federal agency, to offer by April 28, 1986 to develop a performance standard for the neonatal apnea monitor, as described in this notice, to control the risks associated with the device.

Section 514(c)(3) of the act sets out certain criteria applicable to any offerors. Section 514(e)(3) of the act provides that if an offer is accepted, FDA may, upon application which may be made before the acceptance of the offer, agree to contribute to the offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution. Therefore, in accordance with section 514 (c)(3) and (e) of the act and § 861.26, FDA advises that any offer to develop a proposed performance standard is to include:

1. Information on the offeror's expertise and experience that qualifies the offeror to develop the standard.

2. Sufficient information on the offeror's financial stability to establish its capability to conduct adequate standards development either with or without contribution by FDA to the offeror's costs. Any request for contribution by FDA to the offeror's cost of developing the standard shall include:

(i) A list of the items of expense for which contribution is sought and the amount requested for each item;

(ii) A justification of each item of expense, including an explanation of how the contribution is likely to ensure development of a more satisfactory standard;

(iii) A statement that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record the costs and expenditures allocable to development of the standard; and

(iv) A statement requesting an advance payment of funds, if necessary to enable the offeror to meet operating expenses during the development period.

3. Information relating to any potential conflicts of interest on the part of the offeror, its directors or officers, or any employees or consultants who may participate in the development of the standard, including any financial interest in the particular device or in the device industry generally, current industrial or commercial affiliates of the offeror, current sources of financial support for research, and all business entities in which the offeror has a financial interest that may be relevant to the offeror's qualifications to develop a standard for the particular device.

4. Information regarding the offeror's compliance with Federal, State, and local environmental regulations.

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5. A detailed description of the procedures the offeror intends to utilize in developing the standard.

6. A description of how the offeror intends to provide interested persons adequate and reasonable notice of their right and opportunity to participate in the development of the standard.

7. A description of the method whereby interested persons who respond to the notice may participate, either in person or through correspondence, in the development of the standard.

8. A statement describing the facilities or equipment the offeror intended to utilize in developing the standard, and how the offeror intends to gain access to them.

9. An estimate of the time required to develop the standard, including a detailed schedule for each phase of the procedure.

10. A description of the method the offeror intends to use or has used to acquire test data or other information needed to support the standard.

11. A description of the method the offeror intends to use to maintain records of the development of the standard and other relevant matters and to make such records available for disclosure during development, and a schedule for meeting the periodic reporting requirements of § 861.30(b).

FDA advises that under section 514(c)(3) of the act and § 861.26(b), information included in an offer to develop a proposed standard is to be made available to the public only if the offer is accepted (except for information exempt from disclosure under 21 CFR 20.61), or if disclosure is required under 21 CFR Part 20.

Time Period To Develop a Standard

FDA estimates the time period to develop a proposed standard and rationale for the neonatal apnea monitor will be 2 years. This time span will enable the collection of existing information to consider in the development of the standard and will permit public comment on the drafts of the standard. The time period may be extended by the Commissioner for good cause shown.

Acceptance by FDA

As required by section 514(e)(1) of the act and § 861.28(a), in determining whether to accept an offer to develop a performance standard, FDA will evaluate the qualifications of the offeror on the basis of the offeror's expertise, experience, financial stability, and potential conflicts of interest. In choosing among competing offerors, the offeror without any financial interest in the particular device for which a proposed standard is sought or in the device industry generally will be preferred, all other things being equal. More than one offer, however, may be accepted.

As required by section 514(e)(2) of the act and § 861.28(c), FDA will publish in the **Federal Register** the name and address of each person whose offer to develop a standard is accepted and a summary of the terms of the accepted offer, including a statement of the extent to which FDA will contribute, if at all, to the cost of developing the proposed standard. As required by section 514(e)(5) of the act and § 861.28(d), if FDA does not accept an offer, the agency will publish in the **Federal Register** a notice of that fact and the reasons for its decision.

Future Actions

Following expiration of the 60-day time period provided by this notice for interested persons to submit an existing standard or to offer to develop a proposed standard, FDA will:

1. Authorize a Federal agency to develop a proposed performance standard if FDA determines that a performance standard can be developed by a Federal agency, based on the personnel, expertise, and resources of the agency; or

2. Accept an existing standard as a proposed performance standard or as a basis upon which a proposed performance standard may be developed provided FDA determines that such standard based upon scientific data and information and has been subjected to adequate scientific consideration. An existing standard may be one that is submitted in response to the invitation for standards or it may be a standard that has been issued or adopted (or is being developed) by any Federal agency or any other qualified entity; or

3. Accept one or more offers to develop a proposed standard; or

4. Proceed to develop a proposed standard; or

5. Take other appropriate action to facilitate development of a performance standard for the device.

The agency has determined under 21 CFR 25.24(e)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In any notice of proposed rulemaking that includes a proposed performance standard for the neonatal apnea monitor, FDA will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Until the provisions of any proposed standard are known, FDA cannot determine the economic consequences of the promulgation of such standard.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Mendenhall, R.S., and M.R. Newman, "Comparative Analysis of Five Non-Invasive Neonatal Respiration Sensors," Proc. AAMI 20th Annual Meeting, May 1985, p. 61.

2. Mendenhall, R.S., "Comparative Analysis of Five Non-Invasive Neonatal Respiration Sensors," Thesis, January 17, 1985, Department of Biomedical Engineering, Case Western Reserve University, Cleveland, OH.

3. Dyro, J.E., "An Investigation to Determine the Risks and Hazards Associated with Apnea Monitors," Emergency Care Research Institute, Final Report ECRI 410-276, July 1978.

4. "Safe Current Limits (SCL–12/73)," Association for the Advancement of Medical Instrumentation, 1901 North Fort Meyer Dr., Arlington, VA.

5. "Medical Electrical Equipment. Part 1: General Requirements (IEC 601–1–(1977))," American National Standards Institute, 1430 Broadway, New York, NY.

6. Osman, F.S., "General Precautions to Minimize Hazards of Apnea Monitors," Proc. 37th ACEMB, September 1984, p. 33.

7. Dyro, J.E., "The Hazards and Risks of Apnea Monitoring," Proc. 37th ACEMB, September 1984, p. 34.

8. David, Y., "Apnea Monitoring in Non-Hospital Environment," Proc. 37th ACEMB, September 1984, p. 35.

9. Laxminarayan, S., "A Critical Overview of Digital Computer Based Apnea Monitors," Proc. 37th ACEMB, September 1984, p. 37.

10. McIntyre, C.H., "A Comparison of Apnea Monitors Used in the Home," Proc. 37th ACEMB, September 1984, p. 38.

11. Smith, J.M., "Infant Apnea Monitoring: A Clinical Engineering Perspective," Proc. 37th ACEMB, September 1984, p. 39.

12. American Medical Association, "Apnea Monitoring for Newborns at Risk of Sudden Infant Death Syndrome (Reference Paper)," October 17, 1983.

Interested persons may, on or before April 28, 1986, submit to the Dockets

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Management Branch (address above) an existing standard or an offer to develop a standard for the neonatal apnea detector. Two copies of any standards or offers are to be submitted. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received submissions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4082 Filed 2-25-86; 8:45 am]

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federal register

Wednesday
February 26, 1986

Part V

Department of Education

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. To ensure wide and effective use of program funds, the Secretary announces seven priorities to direct funds to the areas of greatest need for fiscal year 1986. A separate competition is established for each priority.

EFFECTIVE DATE: These final annual funding priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final annual priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Special Needs Section, Special Education Programs, Department of Education, 330 C Street SW., (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by section 624 of the Education of the Handicapped Act, supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the Act [20 U.S.C. 1424]. In accordance with this authority, the Secretary intends to fund projects under the following priorities for fiscal year 1986. These priorities identify target areas for project efforts within the scope of model projects and practices. They address the needs of deaf-blind and severely handicapped children which have been identified by professionals, paraprofessionals, and parents as being those most critical at this time. Projects will be funded for up to 36 months, except where otherwise indicated, subject to annual review of progress, the availability of Federal funds, and other factors [see 34 CFR 75.251–75.253].

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the **Federal Register** on October 9, 1985 (50 FR 41318). The public was given thirty days in which to comment. One comment was received in response to the notice of proposed annual funding priorities. The comment and the Department's response are summarized below:

Comment. One commenter expressed concern that Priority No. 6, "Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment," could have a negative impact on the extent to which children with special needs have a continuum of specialized services available to them. Concern was also expressed that placement decisions of educational services be based upon the appropriateness of the program for the individual child.

Response. No change has been made. The priority on "Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment," was included in the fiscal year 1985 competitions. Applications were submitted and awarded that presented a wide spectrum of approaches in varied settings for meeting the educational needs of severely handicapped and deaf-blind children. It is the infent of this priority to increase the availability of placement options in the least restrictive and least segregated environments. In the past, less restrictive options have often not been widely available.

The Education of the Handicapped Act requires that each placement decision be made based upon the appropriateness of the placement for the individual child and in accordance with the least restrictive environment requirements of section 612(5) of the Act. Increasing the range of placement options enhances the ability of grantees to make placements based upon the individual needs of the handicapped child.

Other Changes

Some additional technical and clarifying changes have been made in the priorities, but no substantive revision is intended. A technical change has been made to Priority Six to make clear that all projects funded under this priority must meet at least some needs of deaf-blind children in order to be eligible to be funded. Because these projects are funded with appropriations form the deaf-blind program, projects can only be funded if they are capable of meeting the needs of deaf-blind children.

Priorities

(1) *Non-directed Demonstration Projects for Severely (Other than Deaf-Blind) Handicapped Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs including vocational needs of severely handicapped (other than deaf-blind) children and youth. The content of the demonstration projects is limited only by the overall mission of the program—to demonstrate innovative and effective approaches to the education of severely handicapped children. Applicants proposing to conduct the projects must fully describe and justify the selection of the focus and particular approach to be demonstrated. Approximately $750,000 is expected to be available for issuing seven awards under this competition.

(2) *Supported Employment for Deaf-Blind Youth.* This priority supports projects which design, implement, and disseminate information about innovative practices in the job placement, job site training and follow-up of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects are to focus on on-the-job skills and adaptations, employee-employer relations, job acquisition, retention skills, and, where appropriate, supplemental support for the employment of deaf-blind youth on a long term basis. These projects may also include feasible applications of techniques still in the development stage in research and other experimental programs. These projects are to provide services for severely handicapped deaf-blind youth who typically have not been eligible for vocational rehabilitation services.

The following provisions, which distinguish these projects from traditional vocational education programming for deaf-blind youth, must be incorporated into these projects: (1) Paid employment in regular job settings such as assisted competitive employment, mobile work crews, and work stations in industry; (2) opportunities for integration of these deaf-blind youth with nonhandicapped coworkers in their job setting and with relevant others in typical living environments external to the job; (3) ongoing financial and social services support for these deaf-blind youth throughout the course of the project; and (4) a plan cooperatively developed with

related State and local agencies for the continuation of such services for an appropriate period of time following termination of the project. The overall objective of these projects should be to provide an employment focus directed toward the achievement by these deaf-blind youth of the same goals (security, mobility, quality of life, and appropriate income level) sought for nonhandicapped workers. Approximately $1,000,000 is expected to be available for issuing up to eight awards under this competition.

(3) *Nondirected Demonstration Projects for Deaf-Blind Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs of deaf-blind children and youth. The content of these projects is limited only by the overall mission of the program—to demonstrate innovative and effective approaches to the education of deaf-blind children and youth in the least restrictive environment. Applicants proposing to conduct a project must describe and justify the selection of the focus and particular approach to be demonstrated. Approximately $1,963,000 is expected to be available for issuing 18 awards under this competition.

(4) *State-wide Systems Change.* This priority supports projects which design, implement, evaluate, and disseminate information about a model for the State-wide delivery of comprehensive special education and related services to severely handicapped children and youth (including deaf-blind children and youth), ages birth through 21, within a particular State. Such a design must utilize and enhance existing service delivery systems for these children. Particular attention should be placed on ensuring that deaf-blind children are properly integrated into these systems since services to this group are often provided through a combination of regional, Federal, State and local service providers. Federal programs with which the projects should be coordinated include Early Childhood State Plan projects (34 CFR 309.50–309.53), Services for Deaf-Blind Children programs (34 CFR Part 307), and vocational education. Each project must develop a system which will: (1) Develop a comprehensive description of services for severely handicapped children within a State; (2) complete an extensive analysis of the current service delivery system; (3) design an improved comprehensive State-wide model for the delivery of educational services to maximize the potential of severely handicapped children and youth; (4) implement the model of State-wide services on a pilot basis under systematic and carefully documented conditions; (5) design and implement an evaluation plan for each of the project components; (6) disseminate information about the model's findings and recommendations; (7) establish and utilize an advisory committee; and (8) maintain a performance measurement system to monitor all project activities. In the past few years, contracts and cooperative agreements have been awarded to establish similar State-wide service delivery systems. States receiving those contracts or cooperative agreements are not eligible to compete under this priority.

Projects under this priority will be funded through cooperative agreements with the Secretary. Approximately $815,000 is expected to be available for issuing seven cooperative agreements under this competition.

(5) *Transition Skills Development for Severely Handicapped (Including Deaf-Blind) Youth.* This priority supports projects which design, implement, and disseminate information about innovative practices which facilitate the transition of a small number of severely handicapped (which may include deaf-blind) youth from education to employment and other service options, in preparation for their integration into regular community environments as adults. Emphasis in these projects will be placed on the development of job-related skills, peer interactions, orientation and mobility, personal grooming, independent living skills and the development of a positive self-concept. Projects must include specific activities directed toward development of skills identified as those most needed by project participants in order to facilitate their effective transition. Each project must include procedures for initiating and maintaining on an on-going basis coordination and cooperation with State educational and rehabilitative agencies in the State where the project is located. Projects must have direct access and be providing direct service to the proposed project participants. Approximately $1,965,000 is expected to be available for issuing up to 25 awards at approximately $78,000 per year for up to three years under this competition.

(6) *Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment.* This priority supports projects which, on a district-wide basis (local educational agency) or cross-district basis, design, implement, and evaluate innovative approaches to meet the needs of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environments. Projects under this priority must:

1. Develop new models for delivery of integrated educational services, including changes in the location of instructional areas for provision of these services, for severely handicapped (including deaf-blind) children who currently are being educated in segregated environments;
2. Demonstrate through the provision of project services the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate, regular school settings;
3. Provide inservice training of personnel, including principals, assistant principals and teaching staff, in local educational agencies which are planning to provide educational services to handicapped children of the project in the least restrictive and least segregated environments; and
4. Provide components which promote acceptance of these children and youth by administrators, teachers, parents, and other children and youth in the least restrictive and least segregated environments.

Approximately $809,000 is expected to be available for issuing up to eight awards for up to three years each under this competition.

(7) *Inservice Training—Services for Severely Handicapped (Including Deaf-Blind) Children and Youth.* This priority supports projects which utilize effective inservice training activities that focus on meeting the needs of qualified personnel to provide services to severely handicapped (including deaf-blind) children and youth. Although the projects may include training for a variety of severe handicapping conditions, they must include some training for meeting the unique needs of deaf-blind children and youth. Personnel receiving inservice training under this priority must be either: (a) Currently providing educational service to severely handicapped children and youth; or (b) formally committed to providing educational services to severely handicapped children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must: (a) be appropriate for the attainment of knowledge and competencies that are necessary for the provision of quality educational services for these severely

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handicapped children and youth; and (b) be based on innovative practices for the education of these children and youth in the least restrictive school and community environments. Projects could provide for release time of participants, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills.

Approximately $2,554,000 is expected to be available for issuing up to 16 awards at approximately $106,000 per year for up to three years under this competition.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance Number 84.086; Innovative Programs for Severely Handicapped Children)

Dated: February 21, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-4141 Filed 2-25-86; 8:45 am]

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	ST. LOUIS, MO	**WASHINGTON, DC**	**DENVER, CO**	**DALLAS, TX**
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Federal Register
Vol. 51, No. 39
Thursday, February 27, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448

[Doc. No. 0072A]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on November 22, 1985 (50 FR 48168). The interim rule amended the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean and Canning and Processing Tomato Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, November 22, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 48168, amending the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean and Canning and Processing Tomato Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adpoted as final.

List of Subjects in 7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448

Crop Insurance; Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean, and Canning and processing tomato.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on November 22, 1985, at 50 FR 48168, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 12, 1986.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-4212 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Parts 422, 430, 434, 436, and 443

[Doc. No. 0073A]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 17, 1985 (50 FR 51383). The interim rule amended the Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid Seed Crop Insurance Regulations (7 CFR Parts 422, 430, 434, 436, and 443), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

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of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health and safety. Therefore, neither an Environment Assessment nor an Environmental Impact Statement is needed.

On Tuesday, December 17, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 51383, amending the Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid Seed Crop Insurance Regulations (7 CFR Parts 422, 430, 434, 436, and 443), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 422, 430, 434, 436, and 443

Crop Insurance; Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid seed.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 17, 1985, at 50 FR 51383, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 19, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4213 Filed 2–26–86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 436

[Doc. No. 3196S]

Tobacco (Guaranteed Production Plan) and Tobacco (Dollar Plan) Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule and termination; correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Final Rule and Termination in the **Federal Register** on Wednesday, February 12, 1986, at 51 FR 5154, amending the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), by expanding the provisions therein to incorporate insurance procedures for tobacco types formerly insured under the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434). Section 436.7(d)9.e.(1) inadvertently contained the word "harvested" in the first line thereof which has the effect of changing the meaning of that section. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Doc. 86–3040, appearing at 51 FR 5154 is corrected in the following instance:

§ 436.7 [Corrected]

7 CFR 436.7(d)9.e.(1) introductory text is corrected to read as follows:

* * * * *

(1) Tobacco production which, due to insurable causes, have a value less than the market price for tobacco of the same type, will be adjusted by:

* * * * *

Done in Washington, DC on February 20, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4240 Filed 2–26–86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 440

[Doc. No. 0063A]

Texas Citrus Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply after insurance attaches; (2) Change the method of calculating the insured's share of an indemnity at loss adjustment time; (3) Add a provision that insurance would not attach to acreage on which grafting on existing root stock was performed in the grove within one year prior to the date insurance attaches; (4) Add a provision to provide a coverage level if the insured does not select one; (5) Revise the schedules of coverage; (6) Add a provision to provide that damage to a grove of over 80 percent will be considered as 100 percent damaged; and (7) Add definitions for "Cyclone", and "Freeze". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that the action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 5, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 49854, to revise and reissue the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

One comment was received relative to the Notice of Proposed Rulemaking (50 FR 49854). The commenter recommended three changes in the policy provisions as follows:

1. Section 2.d.(2)—The language in this section provides that FCIC does not insure any acreage on which grafting on existing root stock has been performed within one year prior to the date insurance attaches. Commenter recommended that FCIC specify that the limitation of one year apply to only those trees rebudded in the grove as opposed to those budded in a nursery and set out in the grove. The present language in this section makes no mention as to where the budding takes place and therefore fails to recognize the greater effectiveness of nursery rebudding. It thus fails to recognize the similarity between resetting of nursery rebudded stock and the setting of new nursery grown stock. FCIC considers this comment relevant since it clarifies that insurance should attach on all trees set out for production consistent with other provisions of the policy, while limiting coverage on trees rebudded in the grove. For this reason, FCIC adopts this recommendation.

2. Section 7.a.(2)—Commenter opposed the change to lengthen to the 20th day the date insurance against hurricane and freeze attaches after application is signed and recommended the 20-day waiting period be applied for new applications and not just for new plantings. After publication of the Notice of Proposed Rulemaking, FCIC determined that the reference to "hurricane" was an error and should have read "cyclone". The error does not appear to affect the substance of the comment which addresses the length of the waiting period. Commenter also suggested FCIC eliminate the present 10-day waiting period before coverage attaches when there is a threat of a freeze. Given the imprecision of long range weather forecasts (more than 3 days), FCIC believes that commenter has a valid comment with respect to the waiting period. However, FCIC needs time to inspect the crop to determine if the acreage is acceptable to the Corporation and, therefore will maintain the present 10-day waiting period.

3. Section 4.d.(1), (2), (3) and (4)—Commenter recommends the percent of coverage for different tree ages be changed from the current 25%, 40%, 60%, 70%, and 100% for the first through the fifth year to 35%, 60%, 85%, and 100% for the first through the fourth year. Commenter contends that with denser tree plantings and improved cultural practices, citrus groves have trees in full production considerably sooner than 5 years. In regard to the schedules of coverage, FCIC has determined to adopt, in part, commenters recommendation by revising the schedule of coverage to be 33%, 60%, 80%, 90%, and 100% for the first through the fifth year. An actuarial review indicates that production increases until the fifth or sixth year, then stabilizes.

This review shows that the groves have not achieved full production by the fourth year in all cases. Thus, FCIC believes that the full costs of bringing the trees into production are not fully apparent until at least the fifth year. For these reasons, FCIC adopts the proposed change, in part only, by limitedly increasing the percentage of coverage for the first through the fourth year. This change will be beneficial to producers by increasing the amount of insurance available for different tree ages.

In addition, the notice of proposed rulemaking defined "ASCS". This was included in error and has been removed from the definition section in this final rule. Because this crop is not under the Actual Production History (APH) program requiring the involvement of ASCS, there is no need for this definition. Also, the definition of "county" has been changed. The proposed rule identified "County" to include a definition of land identified by an ASCS farm serial number for the county but physically located in another county. Since this crop is not under APH, this reference has been removed in the final rule. Also, the proposed rule included "frost" as an insurable cause of loss and provided a definition. Because frost does not damage trees insurable under the Texas citrus tree policy, there is no need for that provision, and that provision has been removed in this final rule.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the Texas citrus tree policy are:

1. Section 1—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied in Section 2.

2. Section 2—Add a clause to change the method of calculating the insured's share of an indemnity on crops at loss adjustment time. This limits the insured's indemnity to the insured's interest in the crop at the time of loss.

Add a provision to exclude from insurance any acreage of citrus trees on which grafting on existing root stock has been performed in the grove within one year prior to the date insurance attaches.

3. Section 4—Add a provision for a coverage level if the insured does not select one.

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Revise the percent of coverage for different tree ages from 25%, 40%, 60%, 75%, and 100% to 33%, 60%, 80%, 90%, and 100% for the first through the fifth year. This change more closely reflects the actual cost of growing the trees and the value of the trees per acre.

4. Section 9—Add a provision to provide that any grove with over 80 percent damage will be counted as 100 percent damaged. This change is made because it is not cost effective to care for a grove damaged in excess of 80 percent.

5. Section 17—Add definitions of "Cyclone" and "Freeze".

Since policy changes must be on file by February 28, 1986, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 440

Crop Insurance; Texas Citrus Tree.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Texas Citrus Tree Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years, to read as follows:

PART 440—TEXAS CITRUS TREE INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
440.1 Availability of Texas citrus tree insurance.
440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.
440.3 OMB control numbers.
440.4 Creditors.
440.5 Good faith reliance on misrepresentation.
440.6 The contract.
440.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 440.1 Availability of Texas citrus tree insurance.

Insurance shall be offered under the provisions of this subpart on citrus trees in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed for citrus trees which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level, amount of insurance, and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 440.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 440, Title 7 CFR.

§ 440.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 440.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Texas Citrus Tree insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) Said insured relied thereon in good faith; and (3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 440.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the citrus trees as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 440.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the citrus trees as landlord or owner-operator if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period.

However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a citrus tree contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Texas Citrus Tree Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Texas Citrus Tree—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

(1) Freeze;
(2) Excess moisture;
(3) Hail;
(4) Fire;
(5) Cyclone;
(6) Tornado;
(7) Failure of the irrigation water supply due to unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9g.

b. We will not insure against any cause of loss or damage to the citrus trees due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree prunings have not been removed from the grove;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good grove management practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to follow recognized good citrus tree irrigation practices; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I, Early and midseason orange trees;
Type II, Late orange (including Temples) trees;
Type III, Grapefruit trees except Star Ruby trees;
Type IV, Star Ruby grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit or juice, which are located on insured acreage, and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be trees located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord or owner-operator in the insured citrus trees at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the time of loss.

d. We do not insure any acreage:

(1) For the crop year the application for insurance is filed unless the acreage has been inspected and considered acceptable by us;

(2) On which grafting on existing root stock in a grove has been performed within 1 year prior to the date insurance attaches;

(3) Where the grove management practices carried out are not in accordance with those practices for which premium rates have been established;

(4) Maintained or set out for experimental purposes;

(5) In any established grove which does not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure that acreage; or

(6) Which is not irrigated.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

f. We may:

(1) Exclude from insurance; or
(2) Limit the amount of insurance on;

any acreage which was not insured by us the previous crop year.

3. Report of Acreage, Share, Number, Type, Age of Trees, and Practice

You must report on our form:

a. All the acreage of trees in the county in which you have a share;

b. The practice;

c. Your share at the time insurance attaches; and

d. The type, number of trees, and:

(1) date of original set out; or

(2) date of replacement and/or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years; and

e. Within 72 hours of the completion of setout; the acreage, type, number of trees, and the date setout is completed for any insurable acreage of trees set out after June 1 of the crop year if you elect to insure such acreage during that crop year.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any trees located in the county. This report must be submitted annually on or before June 30. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by June 30, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Coverage Levels and Amounts of Insurance

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

d. The amount of insurance will be reduced for any acreage which has not reached the fourth growing season after being set out or fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance selected from the actuarial table by:

(1) 33 Percent the year of set out or the year following dehorning;

(2) 60 Percent the first growing season after being set out or the second year following dehorning;

(3) 80 Percent the second growing season after being set out or the third year following dehorning; or

(4) 90 Percent the third growing season after being set out or the fourth year following dehorning.

e. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period

a. Insurance attaches on insured acreage on June 1 for each crop year except that for the first crop year and notwithstanding section 2d(1):

(1) If the application is accepted by us after June 1, the insurance against cyclone and freeze will attach the tenth day after the application is signed by you; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion; except insurance against cyclone and freeze will attach the tenth day after you report such acreage.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) Total destruction of the insured trees.

8. Notice of Damage or Loss

a. In case of damage or probable loss, you must give us written notice of:

(1) The dates of damage; and

(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we will have the right to inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

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9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the trees on the unit; or

(2) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Furnish records concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with section 9e, the following applicable amount:

(i) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(ii) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(iii) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information you reported, but all acreage of the insurable acreage planted, whether or not reported as insurable, will count against the amount of insurance.

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The actual percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred. Any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out;

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union. However, no damage will be considered if more than 12 inches of wood above the bud union is alive.

(2) Any percentage of damage by uninsured causes, will not be included in the actual percent of damage.

f. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

g. If you exclude hail and fire as insured causes of loss and the citrus trees are damanged by hail or fire, appraisals will be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire."

h. You must not abandon any acreage to us.

i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

1. If you die, or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the trees on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under by the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will paid to you.

14. Records and Access to Grove

You must keep for two years after time of loss, records of the trees destroyed or damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract and insurance on any type of citrus trees may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date proceeding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both other such other payment and setoff are approved.

d. The cancellation and termination dates are May 31 prior to the date insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continué in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by February 28 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of Texas citrus tree crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus tree insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

d. "Crop year" means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

e. "Cyclone" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been named by the United States Weather Service and which has sustained winds in excess of 58 miles per hour at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

f. "Dehorning" means the cutting back of each scaffold limb to a length that is no longer than ⅛ the height of the tree.

g. "Destroyed" means trees which are damaged to the extent that removal is required.

h. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

i. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

j. "Insured" means the person who is an owner of the trees insured and who submitted the application accepted by us.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

1. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Set out" means transplanting the citrus tree from the nursery to the grove.

n. "Total destruction" means the occurence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

o. "Unit" means all insurable acreage in the county of any one of the tree types referred to in section 2 of this policy, located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share, or

(2) In which you are a joint-owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on January 22, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-4214 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-8]

Alteration of VOR Federal Airways; Georgia; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An editorial error was discovered in the description of Federal Airway V-5 in the Georgia area. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 86-6 was published on January 3, 1986, which amended and established several Federal Airways in south Georgia and north Florida to enhance the flow of air traffic in that area (51 FR 190). An editorial mistake was discovered in the description of airway V-5. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

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Adoption of the Correction

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Federal Register Document 86–8, as published in the Federal Register on January 3, 1986, (51 FR 190) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–5 [Amended]

By removing the words "From Dublin, GA, via Athens, GA" and substituting the words "From Albany, GA, via Vienna, GA; Dublin, GA; Athens, GA".

Issued in Washington, DC, on February 14, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4197 Filed 2–26–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–AWA–5]

Redesignation of VOR Federal Airway, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action redesignates Federal Airway V–69W as V–305 in conjunction with efforts to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways. The action does not alter the configuration of the airway segment involved.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redesignates VOR Federal Airway V–69W as V–305 in conjunction with efforts to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways. The amendment has the effect of renaming an existing airway route segment but does not in any way affect the configuration of that airway. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–69 [Amended]

By removing the words", including a W alternate via INT Shreveport 084° and El Dorado 223° radials"

V–305 [Revised]

From Shreveport, LA, via INT Shreveport 084° and El Dorado, AR, 218° radials; El Dorado; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Conningham, KY; Pocket City, IN; INT Pocket City 046° and Bloomington, IN, 205° radials; Bloomington; INT Bloomington 025° and Indianapolis, IN, 185° radials; to Indianapolis.

Issued in Washington, DC, February 10, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4198 Filed 2–26–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 86–54]

Customs Regulations Amendment Adding Norway to List of Countries Whose Pleasure Vessels are Entitled To Be Issued U.S. Cruising Licenses

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Norway to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been informed that yachts used and employed exclusively as pleasure vessels belonging to any resident of the U.S. are allowed to arrive at and depart from Norwegian ports and cruise in the waters of Norway without being subjected to formal entry and clearance procedures. Therefore, Customs is extending reciprocal privileges to pleasure vessels belonging to any resident of Norway.

EFFECTIVE DATE: These privileges became effective for Norway on December 18, 1985.

FOR FURTHER INFORMATION CONTACT: John Mathis, Carriers, Drawback and Bonds Division (202–566–5706), U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provides that U.S. vessels documented as yachts, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without entering and clearing, as long as they have not visited hovering vessels.

Generally, foreign-flag yachts entering the U.S. are required to comply with the laws applicable for foreign vessels arriving at, departing from, proceeding between ports of the U.S. However, as provided in § 4.94(b), Customs

Regulations (19 CFR 4.94(b)), pleasure vessels from certain countries may be issued cruising licenses which exempt them from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees) at all but the first port of entry in the U.S. Yachts or pleasure vessels not carrying passengers or merchandise in trade are exempt from paying tonnage tax and light money in any case pursuant to § 4.21(b)(5), Customs Regulations (19 CFR 4.21(b)(5)). Cruising licenses are available to pleasure vessels of countries which extend reciprocal privileges to U.S. pleasure vessels. A list of these countries is set forth in § 4.94(b).

By diplomatic note dated November 29, 1985, the Norwegian Royal Ministry of Foreign Affairs informed the American Embassy in Oslo, Norway, that the Government of Norway permits yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States to arrive at and depart from ports of Norway and cruise the waters of Norway without entering and clearing Norwegian Customs, and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses. The embassy conveyed this information to the Department of State, which in turn informed Customs Headquarters by a letter dated December 13, 1985. The Carriers, Drawback and Bonds Division of Customs is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.94(b). Therefore, on January 14, 1986, the Director of the division determined that, effective retroactively to December 18, 1985, Norway should be added to the list of countries set forth in § 4.94(b).

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue these cruising licenses to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165–25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 4.94(b) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Government of Norway and the Department of State, as described above, it has been determined that the United States is in possession of satisfactory evidence regarding the passage of U.S. pleasure vessels through the ports and waters of Norway without their being subjected to formal entry and clearance procedures. Therefore, Norway is added to the list of countries whose pleasure vessels may be issued U.S. cruising licenses.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

The Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs inspection and duties, Imports, Vessels, Yachts.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103. * * *

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 313, 314. * * *

§ 4.94 [Amended]

2. Section 4.94(b), Customs Regulations (19 CFR 4.94(b)), is amended by inserting, in appropriate alphabetical order, the word, "Norway", to the list of countries whose yachts or pleasure vessels may be issued U.S. cruising licenses.

Dated February 20, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86–4262 Filed 2–26–86; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 12 and 178

[T.D. 86–52]

Customs Regulations Amendments Concerning Convention on Cultural Property Implementation Act

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding provisions to implement the Convention on Cultural Property Implementation Act. The Convention addressed the problem of illicit importing and exporting of items of cultural property, that is, items of importance for archaeology, prehistory, history, literature, art, or science. These regulations are designed to prohibit illicit traffic in cultural property while allowing the exchange of natural treasures for legitimate scientific, educational, and cultural purposes. The regulations are effective for all importations of cultural property, and archaeological and ethnological material, subject to the Convention.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Samuel Orandle, Entry Procedures and Penalties Division (202–566–5765); Operational Aspects: Louis Alfano, Duty Assessment Division (202–566–8651); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

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SUPPLEMENTARY INFORMATION:

Background

Beginning in the late 1960's, the U.S. began participating in negotiations, sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO), addressing the problem of illicit international trade in cultural property. Cultural property was defined as property which, on religious or secular grounds, is specifically designated by a country as being important in the archaeology, prehistory, history, literature, art, or science of that country.

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, clandestine excavation of archaeological sites and accompanying illegal importing and exporting.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. Codes of ethics and professional standards were formally developed by these communities. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in negotiations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 96 Stat. 2329 at 2350). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983 the U.S. became the first major art importing country to implement the 1970 Convention.

It was with these goals in mind that Customs issued interim regulations to carry out the policies of the Act. The interim regulations were published in the **Federal Register** as T.D. 85–107 on June 25, 1985 (50 FR 26193), and took effect immediately. However, comments on the interim regulations were invited for consideration before final regulations were issued.

Analysis of Comments

One commenter conveyed strong support for the intent of the regulations while expressing a general concern for what he termed "weaknesses and ambiguities". However, the commenter stated the weakness was the result of the Convention and the implementing Act, and therefore, could not be corrected in the regulations. Customs does not believe the regulations are weak. However, we cannot address specifics since the commenter did not raise any specific points.

The remaining 4 commenters were more detailed in their submissions. Comments they raised and Customs replies are as follows.

Comment: The definition of "museum" in § 12.104(e) should be attributed to its source, the Museum Services Act (Pub. L. 94–462, 20 U.S.C. 968).

Reply: Customs agrees and has added the reference. Also, Customs is adopting a comment that clarifies the point that "recognized museum" under the Act is synonymous with "museum".

Comment: The regulations should clarify how the Secretary of the Treasury will select a museum or other institution to temporarily hold a seized article of archaeological or ethnological material, or article of seized cultural property. Also, the regulations should provide for reimbursement to a museum or institution holding such an article or piece of property if the object requires special care or more security than normal.

Reply: As written, § 12.104f contains reference to the two basic criteria the Secretary will use in determining which museum or institution, if any, will be given an article or material seized under these regulations, for temporary display. These factors are: the safety that will be provided the article or material, and the museum or institution's assurances, backed by a sufficient bond, that the article or material will be returned to the Secretary upon request. This decision is left to the Secretary's discretion and these regulations are not the proper forum for a listing of specifications concerning museums or institutions. The Secretary will consider such requests by museums or institutions on a case-by-case basis.

As to the comment requesting a regulation providing financial assistance to a museum or institution seeking to temporarily house a seized article or material, Customs is aware of no statutory authority requiring that such aid be made available. To the contrary, Customs believes such a provision is contraindicated by the Secretary's requirement of selecting a museum or institution that is financially able to assure the item's safe return.

Comment: Customs failure to prepare a regulatory impact statement is improper. The regulations will have the kind of impact which requires a regulatory impact statement.

Reply: Customs disagrees. These regulations will only have a minor impact on the general public. Persons who trade in archaeological and ethnological material, or in cultural property, will be more effected. Certain documentation or evidence will be required upon importation of articles or materials designated by agreements or emergency actions as coming under the protection of the Act. Customs would characterize this as a minor impact. Customs does not believe that these regulations will result in any significant economic costs, and no comments to the contrary were submitted.

Comment: Customs Background statement in the interim regulations was unwarranted and improper. Although the text of the interim regulations correctly specifies which prohibitions pertain to which types of property, Customs Background statement may lead to unnecessary confusion.

Reply: Customs agrees that the term, "cultural property", may have been used broadly in the Background section of the interim regulations. We regret if any statements made may have appeared too strongly worded.

The intent of the Background section was to convey the urgency of the problem the interim regulations were designed to address. We do not believe the wording was misleading or confusing to a degree requiring that these regulations be reissued with another opportunity to comment. In fact, the commenter raising these points also states the interim regulations themselves correctly set out the prohibitions pertaining to different types of articles or materials.

Comment: Portions of the interim regulations are inconsistent with the Act.

Reply: Customs agrees that there are some instances where the interim regulations diverged slightly from the Act. To correct this, the following changes have been made to the final regulations.

(1) In § 12.104(a)(1), the word, "and" is being added after paragraph (a)(1)(ii), and the phrase, "or in addition to paragraphs (a)(1) (i) and (ii) of this section" is being added after paragraph (a)(1)(iii).

(2) In § 12.104a(a), reference is made to articles of cultural property stolen from "such institution". The corrected phrase in the final regulations is "such museum, monument, or institution".

(3) In § 12.104a(b) in the interim regulations, a phrase was omitted. The proper wording of § 12.104a(b) as it appears in the final regulations is as follows: No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

(4) In § 12.104b, the introductory paragraph is changed to read, "The following is a list of State Parties and the date of entry into force for each State Party:". Also, Zambia is added in proper alphabetical order with a date of entry into force of September 21, 1985.

(5) In § 12.104c(a), the phrase, "is filed with the district director," is moved from the end of the paragraph to immediately after the word "Secretary".

(6) In § 12.104d, reference is made to the, "certificate or evidence". The corrected phrase in the final regulations is "certificate, documentation, or evidence".

(7) In § 12.104g, the word "Convention" is changed to "Convention on Cultural Property Implementation Act" to properly reflect the source of the protections provided items and categories of protected materials.

Comment: One commenter requested clarification of whether the documentation accompanying an importation of designated archaeological or ethnological material might also apply to importations of cultural property. The commenter, representing research libraries, was concerned over the burden a broad interpretation of these regulations would impose on research libraries obtaining rare manuscripts and incunabula from sources outside the U.S.

Reply: The documentation required for importations of designated archaeological and ethnological material does not apply to importations of rare manuscripts, incunabula, or other items of cultural property.

After consideration of all of the comments received in response to publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications previously discussed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects

19 CFR Part 12

Customs duties and inspections, Imports, Exports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 12 and 178, Customs Regulations (19 CFR Parts 12, 178), were amended on an interim basis by the publication of T.D. 85–107, in the **Federal Register** on June 25, 1985 (50 FR 26193). These parts are now amended in final in the following manner:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11, Tariff Schedules of the United States), 1624. * * * § 12.104 et seq. also issued under 19 U.S.C. 2612.

2. Part 12 is further amended by adding a new unit titled, "Cultural Property", designated §§ 12.104–12.104i to read as follows:

Cultural Property

Sec.
12.104 Definitions.
12.104a Importations prohibited.
12.104b State Parties to the Convention.
12.104c Importations permitted.
12.104d Detention of articles; time in which to comply.
12.104e Seizure and forfeiture.
12.104f Temporary disposition of materials and articles.
12.104g Specific items or categories designated by agreements or emergency actions.
12.104h Exempt materials and articles.
12.104i Enforcement.

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Party" to the 1970 UNESCO Convention means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such subject—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or nonindustrial society, and—

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United States Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such article is specifically designated by any State

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Party for the purposes of Article 1. Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statutory art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis (Museum Services Act; Pub. L. 94-462; 20 U.S.C. 968). For the purposes of these regulations, the term "recognized museum" under the Cultural Property Implementation Act shall be synonymous with "museum".

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" or "U.S.", includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties, and the date of entry into force for each State Party:

State party	Date of entry into force
Algeria	Sept. 24, 1974.
Argentina	Apr. 11, 1973.
Bolivia	Jan. 4, 1977.
Brazil	May 16, 1973.
Bulgaria	Apr. 24, 1972.
Cameroon	Aug. 24, 1972.
Canada	June 28, 1978.
Central African Republic	May 1, 1972.
Cuba	Apr. 30, 1980.
Cyprus	Jan. 19, 1980.
Czechoslovakia	May 14, 1977.
Democratic Kampuchea	Dec. 26, 1972.
Democratic People's Republic of Korea	Aug. 13, 1983.
Dominican Republic	June 7, 1973.
Ecuador	Apr. 24, 1972.
Egypt	July 5, 1973.
El Salvador	May 20, 1978.
German Democratic Republic	Apr. 16, 1974.
Greece	Sept. 5, 1981.
Guatemala	Apr. 14, 1985.
Guinea	June 18, 1979.
Honduras	June 19, 1979.
Hungary	Jan. 23, 1978.
India	Apr. 24, 1977.
Iran	Apr. 27, 1975.
Iraq	May 12, 1973.
Italy	Jan. 2, 1979.
Jordan	June 15, 1974.
Kuwait	Sept. 22, 1972.
Mauritania	July 27, 1977.
Mauritius	May 27, 1978.
Mexico	Jan. 4, 1973.
Nepal	Sept. 23, 1976.
Nicaragua	July 19, 1977.
Niger	Jan. 16, 1973.
Nigeria	Apr. 24, 1972.
Oman	Sept. 2, 1978.
Pakistan	July 30, 1981.
Panama	Nov. 13, 1973.
Peru	Jan. 24, 1980.
Poland	Apr. 30, 1974.
Portugal	Mar. 9, 1986.
Qatar	July 20, 1977.
Republic of Korea	May 14, 1983.
Saudi Arabia	Dec. 8, 1976.
Senegal	Mar. 9, 1985.
Socialist People's Libyan Arab Jamahiriya	Apr. 9, 1973.
Spain	Apr. 10, 1986.
Sri Lanka	July 7, 1981.
Syrian Arab Republic	May 21, 1975.
Tunisia	June 10, 1975.
Turkey	July 21, 1981.
United Republic of Tanzania	Nov. 2, 1977.
United States of America	Dec. 2, 1983.
Uruguay	Nov. 9, 1977.
Yugoslavia	Jan. 3, 1973.
Zaire	Dec. 23, 1974.
Zambia	Sept. 21, 1985.

(b) Additions to and deletions from the list of State Parties will be accomplished by Federal Register notice, from time to time, as the necessity arises.

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the district director, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence is presented to such officer. The certificate, documentation, or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence required by § 12.104c, or such certificate, documentation, or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) If not returned to the State Party be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act will from time to time, as the necessity arises, be published in the Federal Register by means of a general notice.

§ 12.104h Exempt materials and articles.

The provisions of these regulations shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

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(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations,

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraph (b)(1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S. for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

Part 178, Customs Regulations (19 CFR Part 178), was also amended by the interim regulations issued as T.D. 85-107. The Office of Management and Budget control number issued to these regulations remains the same is retained in § 178.2.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 et seq.

§ 178.2 [Amended]

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

19 CFR section	description	OMB control No.
12.104c; 12.104e	Certificates and other documentation relating to the importation of items of cultural property.	1515-0147

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved February 3, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-4025 Filed 2-26-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. H. Robins Co., providing for use of a combination of previously approved premixes containing salinomycin and bacitracin methylene disalicylate (bacitracin MD) for making finished feed for broiler chickens. The feed is to be used for prevention of coccidiosis and for improved feed efficiency.

EFFECTIVE DATE: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, filed a supplement to NADA 135-746 providing for combining seperately approved salinomycin and bacitracin MD premixes in making a finished broiler feed. The drug levels in the finished feed will be salinomycin, 40 to 60 grams per ton and bacitracin MD, 4 to 50 grams per ton. The indications for feed use are prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. Maxima, E. brunetti,* and *E. mivati,* and for improved feed efficiency. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.550 by adding new paragraph (c)(1)(vi) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(c) * * *

(1) * * *

(vi)(*a*) *Amount per ton.* Salinomycin 40 to 60 grams and bacitracin methylene disalicylate 4 to 50 grams.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for improved feed efficiency.

(*c*) *Limitations.* Feed continuously as sole ration. Not approved for use with pellet binders. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Bacitracin MD as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: February 20, 1986.

Marvin A. Norcross,
Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-4207 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 41

[Department Regulation 108.847]

Documentation of Nonimmigrants; Treaty Traders and Investors

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the language in 22 CFR §§ 41.40(a)(2) and 41.41(a)(3) to read "at least fifty percent owned". The new language will extend eligibility for E visa classification (treaty traders and investors) to employees of organizations which are owned at least fifty percent by a national or nationals of the same country, or to employees of joint ventures which are equally owned by two parties of differing nationalities. The language will be more consistent with modern realities and the needs of international business, and more in keeping with the intent of treaty provisions because it will enable employees of joint ventures and partnerships of two equal partners to qualify as treaty traders or investors.

EFFECTIVE DATE: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, or Guida Evans-Magher, Consular Affairs Specialist, Legislation and Regulations Division, Visa Services, 2401 E Street NW, Washington, DC 20520. (202) 663-1204, 663-1206.

SUPPLEMENTARY INFORMATION: On December 4, 1985, (50 FR 49705) the Department issued proposed regulations [SD-184] to change the present language in 22 CFR 41.40 and 41.41 which requires that an organization must be "principally owned" by a national or nationals of the same treaty country, to read "at least fifty percent owned" by a national or nationals of the same treaty country. The new language allowed for more visa applicants to qualify for E visa classification under section 101(a)(15)(E) of the Immigration and Nationality Act, (8 U.S.C. 1101(a)(15)(E)) by extending eligibility of such classification to employees of organizations owned at least fifty percent by a national or nationals of the same country, or to employees of joint ventures which are equally owned by two parties of differing nationalities. Interested persons were given until January 10, 1986 to submit comments.

Discussion of Comments

Seven comments were received. Six comments, which included comments from the American Immigration Lawyers Association on behalf of its membership, were enthusiastically in favor of the proposed language which, in addition to lowering the percentage of ownership, extends the eligibility of E visa (treaty traders and investors) classification to employees of joint ventures equally owned by two parties of differing nationalities.

The lone dissenter based his objections on the Supreme Court decision in the case of *Sumitomo Shoji America, Inc.* v. *Avagliano,* 457 U.S. 176, 50 U.S. LAW WEEK 4643 (1932). Although the case speaks to the responsibilities of corporations incorporated in the United States, it does not address the determination of nationality of "organizations" or "corporations" for purposes of the Immigration and Nationality Act. Thus, the provisions of section 101(a)(15)(E) and the proposed regulations are unaffected by the *Sumitomo* decision.

In light of the number of comments received and in view of the favorable responses, the Department is satisfied that the proposed regulations should be published as a final rule, since they bestow a benefit upon the affected parties. This rule is not considered to be a major rule under Executive Order 12291. In addition, the rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Passports and Visas, Aliens, Nonimmigrants, Treaty Traders, Investors.

Adoption of Amendments

PART 41—[AMENDED]

In consideration of the foregoing, 22 CFR Part 41 is amended as follows:

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; 109(b)(1), 91 Stat. 847.

§ 41.40 [Amended]

2. In the last sentence of paragraph (a)(2) of § 41.40 the word "principally", is replaced with the words "at least fifty percent".

§ 41.41 [Amended]

3. In paragraph (a)(3) of § 41.41, the word "principally", is replaced with the words "at least fifty percent".

Dated: February 18, 1986.

Joan M. Clark,
Assistant Secretary for Consular Affairs.

[FR Doc. 86-4135 Filed 2-26-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 42, 43, 58, 290, 571, 850, 880, 881, 882, 883, and 941

[Docket No. R-86-1273; FR-2205]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Technical Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Technical rule.

SUMMARY: Elsewhere in today's Federal Register, the Department is promulgating a final rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Because the Uniform Act rule is being promulgated jointly with 16 other Federal agencies, it was not possible to include in that document technical amendments to conform cross-references elsewhere in the Department's regulations to the new sections in the Uniform Act regulation. The amendments following this preamble contain these necessary amendments.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Melvin Geffner, Deputy Director,

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Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–6336. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Elsewhere in today's Federal Register, the Department of Housing and Urban Development is promulgating jointly with other Federal agencies a rule to implement cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601). The rule applies to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local agencies.

Because the final rule removes Subpart A of 24 CFR Part 43 and completely revises 24 CFR Part 42 where HUD's old Uniform Act requirements were contained, cross-references contained in relocation requirements throughout HUD's regulations must be changed to reflect the new regulations issued today. Accordingly, this rule contains miscellaneous amendments to the Department's regulations to conform certain relocation provisions to those in the new Uniform Act regulations.

This rule also adds the Paperwork Reduction Act approval number for the paperwork collection requirements contained in the revised Uniform Act Rule.

Other Matters

Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect of competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act of 1980

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because it is a rule of procedure, which conforms cross references in certain relocation provisions in the Department's regulations to the new Uniform Act regulations.

National Environmental Policy Act of 1969

A Finding of No Significant Impact with respect to the environment is determined to be unnecessary under the terms of HUD regulations at 24 CFR 50.20(k). HUD regulations implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

HUD Semiannual Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166) under Executive order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 42

Administrative practices and procedure, Claims, Community development, Grant programs: Housing and community development, Loan programs: Housing and community development, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

24 CFR Part 43

Loan programs: Housing and community development, Relocation assistance; Seed-money loans.

24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

24 CFR Part 58

Community development block grants, Grant programs: Housing and community development, Grant programs: Indians, Indians.

24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance; Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 880

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing, new construction.

24 CFR Part 881

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs: Housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

Accordingly, the Department's regulations in Title 24 of the Code of Federal Regulations are amended as follows:

PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

1. The authority citation for Part 42 continues to read as follows:

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 42.20, 42.102, 42.103, 42.104, 42.106, 42.107, 42.203, 42.205, 42.207 [Amended]

2. At the end of each section listed below, add the following phrase:

(Approved under OMB Control Number 2506–0011.)

Sections 42.20, 42.102, 42.103, 42.104, 42.106, 42.107, 42.203, 42.205, and 42.207.

PART 43—PROVISION OF REPLACEMENT HOUSING UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

3. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 206(a)(of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626(a)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 43.28 [Amended]

4. In the introductory paragraph of § 43.28, the phrase "§ 43.4 of this part" is removed and the phrase "§ 42.2 of this chapter" is added in its place.

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

5. The authority citation for Part 290 continues to read as follows:

Authority: Sec. 202, 203, and 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1b, 1701z–11, and 1701z–12); secs. 207 and 211, National Housing Act (12 U.S.C. 1713 and 1715b); section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 290.47 [Amended]

6. In § 290.47(a), the phrase "24 CFR 42.20" is removed and the phrase "§ 42.2(j) of this chapter" is added in its place.

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

7. The authority citation for Part 571 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 571.602 [Amended]

8. In § 571.602(a), the phrase "at 24 CFR 42.85" is removed and the phrase "in § 42.2(p) of this title" is added in its place.

PART 850—HOUSING DEVELOPMENT GRANTS

9. The authority citation for Part 850 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 850.35 [Amended]

10. In § 850.35(d)(3), the phase "24 CFR 42.85" is removed and the phrase "in 42.2(p) of this title" is added in its place.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

11. The authority citation for Part 880 continues to read as follows:

Authority: Secs. 3, 5, and United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 880.209 [Amended]

12. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section	Remove	Add
880.209(a)	At 24 CFR 42.85	In § 42.2(p) of this title.
880.209(b)(3)(i)	At 24 CFR 42.47	§ 42.2(e) of this title.
880.209(b)(4)	At 24 CFR 42.303	In § 42.301 of this title.
880.209(b)(4)	24 CFR 42.353	§ 42.302 of this title.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

13. The authority citation for Part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 881.209 [Amended]

14. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section	Remove	Add
881.209(a)	At 24 CFR 42.85	In § 42.2(p) of this title.
881.209(b)(3)(i)	24 CFR 42.47	§ 42.2(e) of this title.
881.209(b)(4)	At CFR 42.303	In § 42.301 of this title.
881.209(b)(4)	24 CFR 42.353	§ 42.302 of this title.

§ 881.709 [Amended]

15. In § 881.709, in paragraph (a) remove the phrase "at 24 CFR 42.85" and add in its place "in § 42.2(p) of this title", in paragraph (h) remove the phrase "at § 42.453" and add in its place "in § 42.402(b) of this title"; and in paragraph (i) add a period after "Part 42" and remove the phrase "and the policies and procedures contained in HUD Handbook 1376.1, Relocation and Real Property Acquisition, September 1979."

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

16. The authority citation for Part 882 continues to read as follows:

Authority: Sec. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 882.406 [Amended]

17. In § 882.406(a), remove the phrase "at 24 CFR 42.85" and add the phrase "§ 42.2(p) of this title" in its place.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

18. The authority citation for Part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 883.311 [Amended]

19. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section	Remove	Add
883.311(a)	At 24 CFR 42.85	In § 42.2(p) of this title.
883.311(b)(3)(i)	24 CFR 42.47	§ 42.2(e) of this title.
883.311(b)(4)	At 24 CFR 42.303	In § 42.301 of this title.
883.311(b)(4)	24 CFR 42.353	§ 42.302 of this title.

PART 941—PUBLIC HOUSING DEVELOPMENT

20. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9, United States Housing Act of 1937 (42 U.S.C. 1437b, 1437e, and 1437q); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. In § 941.207, the section heading, and paragraphs (a), (b)(1), and (c) are revised as set forth below:

§ 941.207 Relocation and acquisition.

(a) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601–4655) and HUD implementing regulations in Part 42 of this title apply to the acquisition of real property by a PHA for a project assisted under this Part and to any displacement that results from such acquisition.

(b) * * *

(1) PHA acquisition of a site or property that results from a voluntary transaction as described in § 42.101(a)(1) of this title, except the Uniform Act relocation requirements do apply to the displacement of any renter-occupant of such site or property. For purposes of relocation eligibility for such renter-occupants, the "initiation of negotiations" shall be the date of the seller's acceptance of the PHA's written offer to purchase the property.

* * * * *

(c) *Notices.* Persons scheduled to be displaced shall be given written notices and information by the PHA as specified in § 42.203 of this title. Persons not scheduled to be displaced shall be informed of the acquisition and given notice by the PHA of their opportunity to enter into a lease with the PHA, if the PHA has determined their eligibility under Part 960 of this chapter.

* * * * *

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Dated: February 21, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-4218 Filed 2-26-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8067]

Income Tax; Accounting for Long-Term Contracts

Correction

In FR Doc. 85-30814 beginning on page 376 in the issue of Monday, January 6, 1986, make the following corrections:

1. On page 378, third column, in the third line of § 1.451-3(b)(2)(i)(C), "followed" should read "following";
2. On page 386, third column, in the third line of § 1.451-3(d)(6)(iii)(H), "long-time" should read "long-term";
3. On page 380, first column, twenty-third line from the bottom of the column in § 1.451-3(d)(9)(x)(B), "section" was misspelled; and
4. On page 391, third column, in the ninth line of § 1.451-3(e)(2), Example (5), "circumstances" was misspelled.

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Parts 927 and 931

Miscellaneous Changes to Rules of Procedure

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting this final rule to make it clear that the rules of procedure for reporting infractions by a carrier transporting mail by vessel under the Postal Contracting Manual are likewise applicable to a common carrier by water who fails or refuses to transport the mail when required to do so under 39 U.S.C. 5603. In addition, certain obsolete office and department names are updated, and certain other minor changes are made.

EFFECTIVE DATE: March 28, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Vandamm, (202) 268-3021.

List of Subjects in 39 CFR Part 927

Administrative practice and procedure, Government contracts, Maritime carriers, Penalties, Postal Service.

For the reasons set out above, the Postal Service amends title 39 CFR as follows:

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

1. In subchapter N, the undesignated center heading for Parts 927 and 931 is revised to read as follows:

Rules of Procedure Before the Mail Processing Department

2. The authority citation for Part 927 is revised to read as follows:

Authority: 39 U.S.C. 401, 2601, 5401-5403, 5603, 5604; 49 U.S.C. 1375, 1471.

3. In § 927.1, in the last sentence of paragraph (b), strike out "Office of Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; in the first and second sentences of paragraph (c), strike out "Office of Transportation Service(s)" and insert "Office of Transportation and International Services" in lieu thereof; and revise paragraph (a) to read as follows:

§ 927.1 Noncontractual carriage of mail by vessel.

(a) *Report of infraction.* Where evidence is found or reported that a carrier of mail by vessel which has transported or been required to transport mail pursuant to the provisions of section 19-504, Postal Contracting Manual or 39 U.S.C. 5603, has failed or refused to transport the mail when required to do so, has unreasonably or unnecessarily delayed the mails, has committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to the General Manager, Logistics Division, of the region in which the mail was dispatched or received or was required to be dispatched or received.

* * * * *

§ 927.2 [Amended]

4. In § 927.2, in the last sentence of paragraph (c), strike out "Office of Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; in the first and second sentences of paragraph (d), strike out "Office of Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; and in paragraph (f), strike out "Transportation Handbook M-31, Air Service Instructions, Part 320, for interstate air transportation;".

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-4126 Filed 2-26-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276-4176]

Fishery Conservation and Management; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of initial specifications; correction.

SUMMARY: This document makes additional corrections in the specifications table in the notice of initial specifications for all foreign fisheries that was published January 30, 1986, 51 FR 3788.

FOR FURTHER INFORMATION CONTACT: ELizabeth D. Haynes, 202-634-7432.

In FR Doc. 86-2061 beginning on page 3788 in the issue of January 30, 1986, the following corrections are made under the "Northwest Region" heading in the specifications table, page 3790.

1. The species code "849" is added for widow rockfish.
2. The figure "0" is corrected to "2,400" under the "Reserve" column for jack mackerel.
3. The figure "0^{10}" is corrected to "$9{,}600^{10}$" under the "TALFF" column for jack mackerel.

Dated: February 24, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-4276 Filed 2-26-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 39
Thursday, February 27, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-10]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice amends an earlier notice in which the FAA proposed to designate an Airport Radar Service Area (ARSA) at Dulles International Airport, Washington, DC, and reopens the comment period for the proposal. Dulles International Airport is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at Dulles would reduce the risk of midair collision and promote the efficient control of air traffic in the terminal area.

DATES: Comments must be received on or before April 11, 1986.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 85-AWA-10, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Comments received during the earlier comment period will be held in the public docket and combined with comments received during this period.

Availability of NPRM's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this Supplemental NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

On September 30, 1985, the FAA proposed to designate an ARSA at Dulles International Airport, Washington, DC (50 FR 39822), and the comment period for the proposal closed January 2, 1986. One of the goals in the ARSA program is standardization of the designated airspace insofar as possible. Deviation from the standard at Dulles was, and is, necessary due to the rapid rise of the terrain to the west and due to the delegation of airspace. The agency is in the process of making significant changes to the airway and delegated airspace configurations throughout the east coast, commonly referred to as the Expanded East Coast Plan. A modification to the airspace delegated to Dulles Approach Control is anticipated as a part of that plan.

This supplement proposes to amend the earlier notice by raising the 4,000 feet MSL segment within 5 miles of the airport to 4,300 feet MSL. The remainder of the earlier proposal is unchanged. The entire proposal as amended is stated below and an amended graphic is attached.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed in the NPRM, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (RFA). A regulatory evaluation was prepared for the NPRM and is included in the public docket of the initial notice. The conclusions of the evaluation are not altered by this supplemental notice.

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List of Subjects in 14 CFR Part 71

Aviation safety, Airport Radar Service Areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Dulles International Airport, Washington, DC [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'39"N., long 77°27'28"W.) and lying west of a line extending from the 048°T(057°M) bearing from the airport on the 5-mile arc to the 130°T(139°M) bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 149°T(158°M) bearing from the airport clockwise to the 038°T(047°M) bearing from the airport, excluding that airspace beyond 8 miles between the 233°T(242°M) bearing from the airport clockwise to the 272°T(281°M) bearing from the airport, and that airspace extending upward from 1,7000 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 038°T(047°M) bearing from the airport clockwise to the 149°T(158°M) bearing from the airport, excluding that airspace overlying the Washington, DC, Terminal Control Area.

Issued in Washington, DC, on February 14, 1986.

Daniel J. Peterson;

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

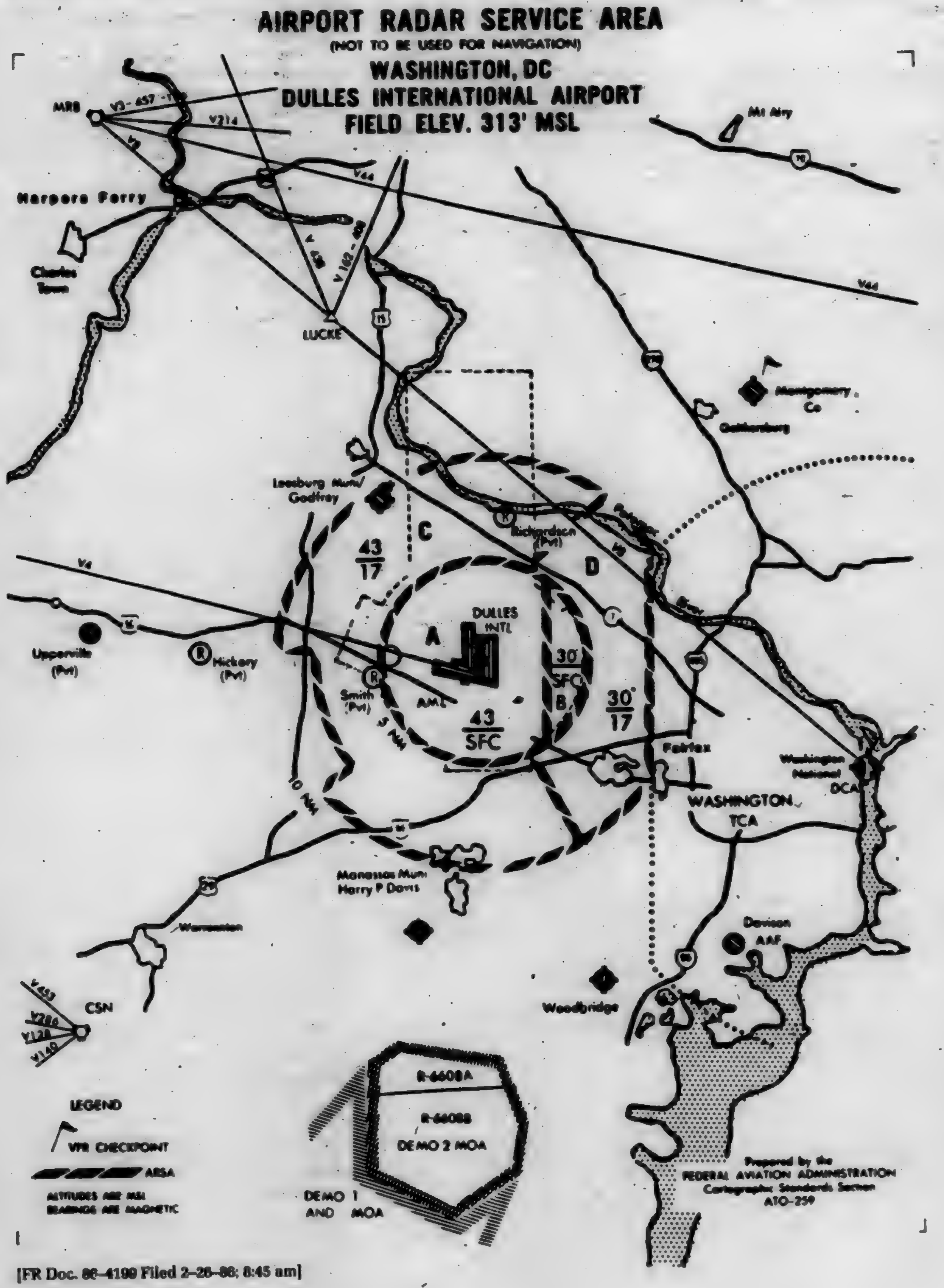

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
WASHINGTON, DC
DULLES INTERNATIONAL AIRPORT
FIELD ELEV. 313' MSL

MRB
V3-457
V214
V4
V44
Harpers Ferry
Charles Town
LUCKE
V 162
15
Mt Airy
70
Montgomery Co
Gaithersburg
Leesburg Muni/ Godfrey
C
43
17
Richardson (Pvt)
D
Potomac River
V4
Upperville (Pvt)
Hickory (Pvt)
R
A
DULLES INTL
Smith (Pvt)
AML
5 NM
10 NM
43
SFC
30
SFC
B
30
17
7
Fairfax
Washington National DCA
WASHINGTON TCA
Manassas Muni Harry P Davis
Warrenton
V453
V286
V128
V140
CSN
Woodbridge
Davison AAF
R-6608A
R-6608B
DEMO 2 MOA
DEMO 1 AND MOA
LEGEND
VFR CHECKPOINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
Prepared by the FEDERAL AVIATION ADMINISTRATION Cartographic Standards Section ATO-259

[FR Doc. 86-4199 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-C

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14 CFR Part 71

[Airspace Docket No. 85-ANM-33]

Proposed Alteration of VOR Federal Airway V-491 and Establishment of V-589-WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Airway V-491 by renumbering the segment between Medicine Bow and Caspe, WY, V-589. V-491 begins at the Medicine Bow very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and goes to Casper, WY, and does not begin again until Rapid City, SD. This has created confusion in referencing this airway because it is segmented. This action would enhance flight planning through this area.

DATE: Comments must be received on or before April 11, 1986.

ADDRESS: Send comments on the proposal in triplicate to:

Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-ANM-33, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-33." The poscard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V-491 by renumbering the segment between Medicine Bow and Casper, WY, V-589. W-491 begins at Medicine Bow VORTAC and goes to Casper, WY, VORTAC, and does not begin again until Rapid City, SD. This has created confusion in referencing this airway because it is segmented. It could be confusing and create problems for a pilot filing a flight plan through this area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-491 [Amended]

By removing the words "From Medicine Bow, WY; INT Medicine Bow 336° and Casper 216° radials; to Casper, WY."

V-589 [New]

From Medicine Bow, WY; INT Medicine Bow 336°T(322°M) and Casper, WY, 216°T(201°M) radials; to Casper.

Issued in Washington, DC, on February 14, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 4201 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release IA-1013; File No. S7-7-86]

Certain Transactions Not Deemed Assignments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a rule under the Investment Advisers Act of 1940 which provides that a transaction which does not result in a change of actual control or management of an investment adviser shall not be deemed an "assignment" requiring client consent for purposes of that act. If adopted, the rule, which is substantively identical to a corresponding rule under the Investment Company Act of 1940, will provide guidance to investment advisers seeking to determine when events that do not cause a change of actual control of the adviser should not be treated as an assignment.

DATE: Comments must be received by March 21, 1986.

ADDRESS: Comments should be sent in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-7-86. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Chief Counsel (202-272-2030), or Stephanie M. Monaco, Attorney (202-272-2031), Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed Rule 202(a)(1)-1 under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Act"), which would deem a transaction which does not result in an actual change of control of an investment adviser not to involve an "assignment" requiring client consent under section 205(2) of the Act [15 U.S.C. 80b-5(2)]. The terms of the proposed rule are substantively identical to those of rule 2a-6 [17 CFR 270.2a-6] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*], which deems certain transactions not to involve the assignment of an investment advisory or principal underwriting contract of a registered investment company. If adopted, the rule will provide guidance to investment advisers seeking to determine when events that do not cause a change of actual control or management of the adviser should not be treated as an assignment and will eliminate the need for advisers to file, and the staff to process, routine no-action and interpretive requests on this topic.

Background and Discussion

Section 205(2) of the Act provides that a registered investment adviser may not enter into or nenew an advisory contract unless the contract provides that it cannot be assigned by the adviser without the consent of the other party to the contract. The term "assignment" is defined in section 202(a)(1) of the Act [15 U.S.C. 80b-2(a)(1)] to include, as relevant here, any transfer of an investment advisory contract by the assignor or any transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.[1] The Act's legislative history mentions concern about fiduciaries assigning personal contracts and demonstrates that this provision is directed against persons who would otherwise "traffic" in investment advisory contracts.[2]

From time to time, however, an adviser may be involved in a transaction—particularly a reorganization or other modification in corporate structure involving a controlling block of the adviser's securities—which technically may be considered to be an assignment for purposes of the Act's definition, but which in fact does not alter the actual control or management of the adviser. If the transaction is viewed as an assignment for purposes of section 205(2), the consent of the adviser's clients would be required. However, because such a transaction does not result in an actual change of control or management of the adviser, interpreting the consent requirement of section 205(2) to apply in this situation appears to serve no useful purpose and, in fact, merely increases the adviser's cost of doing business without providing any benefit to clients.

Accordingly, the Commission is proposing a rule that would deem such a transaction not to involve the assignment of an advisory contract for purpose of section 205(2). The terms of the proposed rule are substantively identical to those of rule 2a-6 under the Investment Company Act of 1940,[3] regarding the "assignment" of an advisory or underwriting contract for a registered investment company. The Commission's staff has stated in no-action letters that the term "assignment" should be interpreted in the same manner for purposes of both of the 1940 Acts.[4] Whether a particular transaction involves an actual change of control is, of course, primarily a factual determination. Because the Commission's staff is not in a position to make the investigation necessary to ascertain, verify, or evaluate the requisite factual information regarding particular transactions, the staff ordinarilly will not express any opinion in responise to inquires as to whether a particular transaction would come within the rule.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the rule proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Paperwork Reduction Act

The proposed rule is not subject to that Act because it does not involve an information collection requirement.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Proposed rule

It is proposed that Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended; 15 U.S.C. 80b-3, 80b-4, 80b-6A, 80b-11 unless otherwise noted.

2. By adding § 275.202(a)(1)-1 as follows:

§ 275.202(a)(1)-1 Certain transactions not deemed assignments.

A transaction which not result in a change of actual control or management of an investment adviser is not an

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[1] Section 2(a)(4) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(4)] contains a substantially similar definition of the term "assignment."

[2] *See, e.g.,* S. Rep. No. 1775 76th Cong., 3d Sess. 22 (1940). The legislative history of the Investment Company Act of 1940 states similar concerns about trafficking in advisory and underwriting contracts of investment companies. *See, e.g.,* Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (1940)

[3] Rule 2a-6 was proposed in Investment Company Act Rel. No. 10809, Aug. 6, 1979, 44 FR 47100 (Aug. 10, 1979) and adopted in Investment Company Act Rel. No. 11005, Jan. 2, 1980, 45 FR 1080 (Jan. 9, 1980).

[4] *E.g.,* Templeton Investment Counsel Limited, *et.al.* (pub. avail. Jan. 23, 1986).

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assignment for purposes of section 205(2) of the Act.

By the Commission.

Dated: February 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 202(a)(1)–1 under the Investment Advisers Act of 1940, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for the certification is that the rule is merely intended to codify existing informal interpretations about certain transactions not deemed to be "assignments" for purposes of that act.

Dated: February 20, 1986.

John Shad,

Chairman.

[FR Doc. 86-4217 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Colorado to its permanent regulatory program (hereinafter referred to as the Colorado program) which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated January 23, 1986, Colorado submitted an amendment to its regulations at 2 CCR 407–2, 5.03.3(2)(b) concerning suspension or revocation of permits.

This notice sets forth the times and locations that the Colorado program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on March 31, 1986 will not necessarily be considered in the decision process. A public hearing on the proposal will be held at 7:00 p.m. on March 19, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the OSMRE Albuquerque Field Office by the close of business on or before March 14, 1986. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, Attn: Colorado Administrative Record, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Copies of the proposed modifications to the program, the Colorado program and the administrative record on the Colorado program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed program amendment by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343–4855

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

The public hearing will be held at the OSMRE Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1492.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On February 29, 1980, Colorado submitted its proposed permanent regulatory program to the Secretary of the Interior. On December 15, 1980, following a review in accordance with 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16.

II. Submission of Program Amendment

By letter dated January 23, 1986, Colorado submitted an amendment to its regulations at 2 CCR 407–2, 5.03.3(2)(b) concerning suspension or revocation of permits, which corresponds to the Federal rule at 30 CFR 843.13(a)(3). The text of the amendment is as follows [upper-case words are additions and the italic words are deletions]:

Rule 5.03.3 Suspension or Revocation of Permits

(2)(b) *The Division shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements of the Act, these Rules, or the permit during three or more inspections of the permit area within any 12-month period.* THE ADMINISTRATOR SHALL PROMPTLY REVIEW THE HISTORY OF VIOLATIONS OF ANY PERMITTEE WHO HAS BEEN CITED FOR VIOLATIONS OF THE ACT, THESE RULES, OR THE PERMIT DURING THREE OR MORE INSPECTIONS OF THE PERMIT AREA WITHIN ANY 12-MONTH PERIOD TO DETERMINE IF A PATTERN OF VIOLATION EXISTS OR HAS EXISTED.

In accordance with the provisions of 30 CFR 732.15 and 732.17, OSMRE is now seeking comments on whether the proposed amendment satisfies the criteria for approval of State program amendments. If the Director determines that the amendment satisfies the criteria and is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved, and 30 CFR Part 906 modified accordingly. If the Director does approve the proposed amendment, it will become part of the approved Colorado program.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 1291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory program. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1986.

Brent Wahlquist,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-4245 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD5 86–03]

Security Zone; James River, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a security zone in the waters of the James River immediately adjacent to the Newport News Shipbuilding and Drydock Co. (NNS) located in Newport News, Va., and establishing a section of anchorage G–1 as a security zone anchorage. This action is necessary to safeguard U.S. Naval vessels from sabotage or other subversive acts, accidents, or other incidents of a similar nature while they are moored at the shipyard. This security zone will provide protection to these vessels by prohibiting access to the waters around the shipyard, except by certain authorized vessels, and by providing a sufficient area in which to detect unauthorized intrusions in time to allow appropriate security measures to be taken.

DATES: Comments must be received on or before April 14, 1986.

ADDRESSES: Comments should be mailed to Commander (mpv), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Room 406, in the offices of the Port and Vessel Safety Branch. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant W. J. Wetzel, (804) 398–6388.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 86–03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant W. J. Wetzel, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and Commander R. J. Reining, Project Attorney, Legal Office, Fifth Coast Guard District.

Discussion of Proposed Regulations

After a review of shipyard physical security, the Supervisor of Shipbuilding, Conversion, and Repair for the U.S. Navy at Newport News, Va., in October 1984, requested that the Coast Guard Captain of the Port, Hampton Roads, establish a security zone. The Coast Guard has concluded that a security zone is warranted and appropriate, because the security zone is intended for the protection of assets which are vital to the national interest. It is undeniable that vessels under construction or repair at this shipyard can easily be approached from the water and are vulnerable to acts of sabotage. Prohibiting access to the water areas around this shipyard provides a means of countering this threat without unnecessarily interfering with the public's use of this waterway.

The requested security zone keeps unauthorized persons sufficiently clear of the vessels in and along the shipyard, allows early detection of unauthorized entry, and does not interfere with navigation using the James River for through passage, although a small section of anchorage G–1 along the shipyard will no longer be open to the general public. If this security zone is established, a separate security zone anchorage will be established by this proposal for the use of vessels that are authorized to be within the security zone. The boundaries of anchorage G–1 will be changed by excluding those portions of the anchorage that are within the security zone. This security zone will be limited to water areas only. Present laws and regulations give NNS sufficient authority to restrict access onto its shipyard property and to deal with unauthorized persons within the shipyard.

This proposal would allow certain vessels and individuals to enter the security zone without obtaining the permission from the Captain of the Port. Because of the administrative difficulties involved, and more importantly because it would impose an unreasonable burden upon NNS and interfere with it's ability to conduct its business, the proposal does not require vessels that have been authorized use of the shipyard's facilities by NNS, vessels being worked on by NNS or at the NNS shipyard, vessels and individuals performing work at the NNS shipyard, and certain public vessels to obtain permission from the Captain of the Port before entering the security zone. (Individuals aboard those vessels also may enter the security zone without the permission of the Captain of the Port.)

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The possible threat to the national security posed by those vessels is assessed by the Navy before they enter the security zone and measures are taken to ensure that the national security is not jeopardized.

The proposal at the same time preserves the Coast Guard's existing authority to control the movement of vessels and individuals on the waters of the United States, including those vessels and individuals that are permitted to enter or remain within the security zone without the specific permission of the Captain of the Port. This authority is restricted by law to actions taken to prevent injury to vessels, waterfront facilities, or the waters of the United States, or to secure the observance of the rights and obligations of the United Status. The reservation of this authority is necessary to ensure that the Coast Guard has the ability to take prompt and adequate enforcement action within the security zone if a threat to the national security or the safety of any vessel arises. The reservation of this authority is not intended to, and should not, obstruct or hinder the ability of NNS to conduct its business at the shipyard. The authority of the Coast Guard that has been reserved by this proposal is no greater than the authority the Coast Guard has over vessels and individuals at other waterfront facilities, including other commercial shipyards.

Other individuals who desire to enter the security zone will be required to request permission from the Captain of the Port via the Security Office of the U.S. Navy Supervisor of Shipbuilding, Conversion, and Repair at Newport News, Virginia.

The Coast Guard understands that there are several commercial fishermen who have traditionally fished these waters. We anticipate that the Captain of the Port will grant permission for these individuals to enter the security zone during those periods when they hold valid licenses to take shellfish or other forms of marine life from the James River at that location, if upon review by the U.S. Navy it is determined that these individuals do not pose a security risk to the United States.

At the present time, there are no intentions to require the use of Port Security Cards, or other special credentials on board vessels within this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The only adverse effect expected to be caused by this proposal are to those interests which will be denied access to the waters contained in this zone. Those interests affected are expected to be primarily recreational, and the loss of the use of this part of the James River should not affect their use of the river for navigation or other purposes except in a very minor way.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.504 is added to read as follows:

§ 165.504 Newport News Shipbuilding and Dry Dock Company Shipyard, James River, Newport News, Va.

(a) *Location* The following is a security zone: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipyard and Dry Dock Co. at latitude 37°00'38.1" N., longitude 76°27'05.7" W., thence southerly to latitude 36°59'58.4" N., longitude 76°27'16.7" W., thence southeasterly to latitude 36°59'23.0" N., longitude 76°26'54.6" W., thence westerly to latitude 36°59'21.5" N., longitude 76°26'58.4" W., thence southeasterly to latitude 36°59'12.9" N., longitude 76°26'52.4" W., thence easterly to latitude 36°59'14.2" N., longitude 76°26'49.1" W., thence southeasterly to latitude 36°58'39.9" N., longitude 76°26'24.1" W., thence easterly to latitude 36°58'37.2" N., longitude 76°26'16.0" W., thence northerly to the intersection of the shoreline with the southernmost property line of the Newport News Shipbuilding and Dry Dock Co. at latitude 36°58'48.0" N., longitude 76°26'11.2" W., thence northwesterly along the shoreline to the point of beginning.

(b) *Security zone anchorage.* The following is a security zone anchorage: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipbuilding and Dry Dock Company shipyard at latitude 37°00'38.1" N., longitude 76°27'05.7" W., thence southerly to latitude 36°59'58.4" N., 76°27'16.7" W., thence easterly to the shoreline at latitude 36°59'58.5" N., longitude 76°27'11.6" W., thence along the shoreline to the point of beginning.

(c) *Special regulations.*

(1) Section 165.33 (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States.

(ii) Public vessels owned or operated by the Commonwealth of Virginia or its subdivisions for law enforcement or firefighting purposes.

(iii) Vessels owned by, operated by, or under charter to Newport News Shipbuilding and Dry Dock Co.

(iv) Vessels that are performing work at Newport News Shipbuilding and Dry Dock Co., including the vessels of subcontractors and other vendors of Newport News Shipbuilding and Dry Dock Co. or other persons that have a contractual relationship with Newport News Shipbuilding and Dry Dock Co.

(v) Vessels that are being built, rebuilt, repaired, or otherwise worked on at or by Newport News Shipbuilding and Dry Dock Co. or another person authorized to perform work at the shipyard.

(vi) Vessels that are authorized by Newport News Shipbuilding and Dry Dock Company to moor at and use its facilities.

(2) Any vessel authorized to enter or remain in the security zone may anchor in the security zone anchorage.

(3) Other vessels desiring access to this zone shall secure permission from the Captain Of The Port through the Security Office of the U.S. Navy Supervisor of Shipbuilding, Conversion, and Repair at Newport News, Virginia. The request shall be forwarded in a timely manner to the Captain Of The Port by the appropriate Navy official. (d) Enforcement. The U.S. Coast Guard may be assisted in the enforcement of this zone by the U.S. Navy.

Dated: February 14, 1986.

James C. Irwin,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 86-4265 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR 166

[CGD 86-006]

Port Access Routes; Approach to Mobile, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study.

SUMMARY: The Coast Guard is undertaking a study of the shipping safety fairways in the approach to Mobile, Alabama. A modification to the existing fairway is being considered for this area. This study is being conducted in accordance with standards contained in the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223 and 1224). As a result of this study, new or modified fairways may be proposed in the Federal Register. Also, the results of this study could affect the manner in which specific offshore areas leased after the date of this notice may be explored and developed.

DATE: Comments are due on or before May 28, 1986.

ADDRESS: Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130-3396.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Frederick V. Newman, Jr., (505) 589—6901.

SUPPLEMENTARY INFORMATION: The area to be examined during the study is bounded by a line connecting the following geographic positions:

Latitude	*Longitude*
(1) 30°10'36" N.,	88° 01'30" W.,
(2) 30°08'04" N.,	88° 00'36" W.,
(3) 30°08'17" N.,	87° 59'15" W.,
(4) 30°05'15" N.,	88° 01'13" W.,
(5) 30°05'15" N.,	88° 08'05" W.,
(6) 30°05'29" N.,	88° 09'19" W.,
(7) 30°07'15" N.,	88° 08'54" W.,
(8) 30°10'36" N.,	88° 03'53" W.

This area encompasses the junction of the Mobile Ship Channel Safety Fairway, the Mobile to Pensacola Safety Fairway, the Mobile Ship Channel to Sea Safety Fairways, and the Horn Island Pass to Mobile Ship Channel Safety Fairway. These fairways are described in the Code of Federal Regulations in Title 33, Part 166, section 200, paragraphs (d) (38) and (39). Safety fairways are areas in which no fixed structures, temporary or permanent, are permitted and therefore may inhibit exploration and exploitation of mineral resources in the area so designated.

Port access routing needs in the Mobile approach area were previously studied in 1980; and the results were published in the Federal Register on October 8, 1981 (46 FR 49969). On the basis of that study no change to the existing shipping safety fairway system in the approaches to Mobile was recommended.

The Coast Guard is initiating a study of the junction of safety fairways in the vicinity of the Mobile Ship Channel entrance in response to a request from Texaco Producing Incorporated to modify the existing Mobile Safety Fairway to open an area presently within the fairway to exploration and production drilling. Specifically, the requested modification would reduce the width of the fairway by moving the western boundary of the existing Mobile Ship Channel Safety Fairway. This boundary would follow a line drawn through the following geographic positions:

Latitude	*Longitude*
(1) 30°07'15" N	8830° 08'54" W.,
(2) 30°08'10" N	8830° 04'40" W.,
(3) 30°10'36" N	8830° 03'53" W.,

Relocation of the western edge of the Mobile Safety Fairway as proposed would affect the following State and Federal lease blocks: State of Alabama lease blocks 113, 131, and 132; and Mobile Area Federal lease blocks 868 and 869. These blocks would then no longer be subject to the fairway restrictions on fixed structures.

Although the above specific alternative will be examined during this study, comments and recommendations or other information need not be limited to this alternative.

Vessel operators are invited to comment on any positive or negative impacts which may result from modifying the fairways within the study area. Likewise potential leaseholders and offshore developers are encouraged to identify and support any foreseeable costs or benefits from possible modification of the fairways in the study area.

Particular issues to be examined during the study, and on which information and public comments are invited, are as follows:

1. The existing and potential vessel traffic (i.e., types of vessels, traffic patterns, number of vessels, variations in the traffic density, etc.).

2. The need for a fairway adjustment (i.e., identification of the conflicting uses of the area which cannot be reasonably accommodated without an adjustment, and whether those needs can be accommodated without an adverse impact on navigation safety).

3. Alternative configurations which can reasonably accommodate the needs of other users.

4. The effect on vessel traffic of the proposed fairway modification, or an alternative fairway configuration, taking into account the location and angle of turns, length of reaches between turns, and maneuverability of vessels expected to transit the area. Also to be considered is any service vessel traffic to be generated by the construction and operation of structures in the area of the modification.

5. Present needs for fairway areas and whether the fairway can accomplish its original purpose if it is modified as proposed.

6. Impacts on adjacent leaseholders or future leaseholders, and the state and federal leasing process, where tracts are located in fairways. One aspect of this issue is how the existence of the fairway restrictions are factored into the value of a lease.

7. Local conditions (e.g., climate, current, hydrography, conditions of limited visibility, and the effect of shoaling on vessel traffic since the fairway was originally established).

8. Adequacy of the aids to navigation system in the vicinity, including public or private aids required on structures to be sited in the area of the modification, and any relocation of existing aids which may be necessary as a result of a fairway modification.

9. Adequacy of advance information available to mariners, including scheduled revisions of affected nautical charts.

10. The need for a safety zone or buffer zone around structures to be sited in the area of the modification.

11. Long term port development plans, including Corps of Engineers dredging and channel-deepening projects.

The Eighth Coast Guard District will be conducting the study and developing recommendations. Following is the name, address and telephone number of the project officer who will be responsible for the study of this area: Lieutenant Commander Frederick V. Newman, Jr., c/o Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130-3396, (504) 589-6901.

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships as affected by other uses of the area. Written comments should be mailed to the above address. In accordance with the PWSA, the Coast Guard will directly consult with the Departments of State, the Interior,

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Commerce, and Army, and the Governors of the affected states during the study. In order to be most useful, any relevant information should be made available to the district office by the end of the comment period.

Procedural Requirements

In conducting this study, the Coast Guard will be governed by certain procedural requirements which are emphasized here to assist those who wish to submit comments. These requirements are based on mandates of the PWSA. The Coast Guard will also apply its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The PWSA directs that "in order to provide safe access routes for the movement of vessel traffic proceeding to or from ports . . . the Secretary shall designate necessary fairways and traffic sephration schemes" in which the "paramount right of navigation over all other users" shall be recognized. Before a designation can be made, the Coast Guard is required to "undertake a study of the potential traffic density and the need for safe access routes." In accordance with 33 U.S.C. 1223, the Coast Guard will "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved."

During the study, the Coast Guard is directed to consult with federal and state agencies and to "consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action."

In accordance with the PWSA, the Secretary has the discretion to modify the location or limits of designated safety fairways, where an adjustment is necessary to accommodate the needs of other uses which cannot be reasonably accommodated otherwise. However, the PWSA also stipulates that such an ajustment should not, in the judgment of the Secretary, "unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues."

The results of this study will be published in the **Federal Register**. If the Coast Guard determines that new or modified routing measure designations are needed, a Notice of Proposed Rulemaking will be published.

It is anticipated that the study will be concluded by July 1986.

Dated: February 20, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86-4267 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1244

[Ex Parte No. 385; Sub-2]

Procedures on Release of Data From the ICC Waybill Sample

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The notice of proposed rulemaking in this proceeding was served on January 8, 1986 and published in the **Federal Register**, at 51 FR 767, January 8, 1986. February 24, 1986, was given as the due date for comments. This is to give notice that the time for filing comments has been extended for an additional 45 days.

DATE: Comments must be received on or before April 10, 1986.

Comments: An original and 15 copies of any comments referring to Ex Parte No. 385 (Sub-No. 2) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

James A. Nash, Tel. (202) 275-6844

or

Elaine K. Kaiser, (202) 275-6894.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission has received a petition from the Association of American Railroads (AAR) requesting a 45-day extension for filing comments in this proceeding. AAR states that the extension will enable the railroad industry to determine whether and to what extent an industry position can be developed. Also, they note that an industry position will expedite the administrative process by eliminating the filing of unnecessary duplicative material and by enabling more precise identification of key issues.

We agree that the 45-day extension is warranted. It will provide the railroads with adequate time to formulate their joint as well as individual positions. Also, this extension will not unduly burden any affected parties because the proposed rules essentially adopt the Commission's Office of Transportation Analysis' current policy for handling waybill requests.

Decided: February 20, 1986.

By the Commission, Heather J. Gradison, Chairman.

James H. Bayne,

Secretary.

[FR Doc. 86-4229 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 51, No. 39
Thursday, February 27, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-010]

Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a Meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

SUMMARY: The purpose of this document is to give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACES, DATES AND TIME OF MEETING: The meeting will be held at Room 734A of the Federal Building, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland, March 25 and 26, 1986, from 8:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harless McDaniel, Chief Staff Officer, Technical Support, VS, APHIS, USDA, ROOM 757, Federal Building, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION:

The purpose of the Committee is to advise the Secretary on means to prevent, suppress, control or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event such disease should enter the United States.

The meeting will be open to the public. Written statements concerning these matters may be filed with the committee before or at the time of the meeting.

The following items will be discussed at the meeting:

1. Status of swine repopulation in Haiti.
2. Consideration of Europe as a single entity in regard to the importation of animal products into the United States.
3. Embryo importation—a review of exotic diseases that can be transmitted by embryos.
4. Exotic animal disease teaching aids for use in veterinary colleges.
5. Movement of animals from offshore islands, such as San Clemente, California, to the mainland.
6. Review of APHIS reorganization.

The meeting will be open to the public. Written statements concerning these and other matters may be filed with the Committee before or at the time of the meeting.

Dated: February 21, 1986.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 86-4273 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 86-021]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Announcement of meeting.

SUMMARY: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held March 4, 1986 (9 a.m.-4 p.m.). Written comments may be filed with the Committee before or at the time of the meeting.

ADDRESSES: The meeting will be held in the Best Western, Maryland Inn Motel, 8601 Baltimore Blvd., College Park, Maryland 20740. Written comments may be mailed to Dr. I.L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5140. Comments received may be inspected at this address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, 301-436-5140.

SUPPLEMENTARY INFORMATION: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan to be held on March 4, 1986. The purpose of the meeting of the General Conference Committee is to review the Model State Program for Poultry Disease Prevention and make recommendations to the Department concerning that program.

This notice is being published on an emergency basis less than 15 days in advance of the meeting. There is an outbreak of avian influenza in the New York live poultry marketing area. It is imperative that the committee review the Model State Program for Poultry Disease Prevention on an expedited basis because of this outbreak.

The meeting will be open to the public. Written statements concerning this matter may be filed with the Committee before or at the time of the meeting.

Dated: February 25, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-4401 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Statements; Availability, etc.; Alabama Coastal Area Management Program (ACAMP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), Commerce.

ACTION: Preparation of an Environmental Assessment.

SUMMARY: Notice is hereby given of the intent to prepare an environmental assessment on a proposed amendment to the ACAMP under the provisions of section 306 of the Federal Coastal Zone Management Act of 1972 (Pub. L. 92-583, as amended). The environmental assessment will be used to determine whether to prepare a supplemental environmental impact statement (SEIS) as required under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA).

The amendment to the ACAMP consists of a change in the definition of the construction control line (CCL) applicable to construction on beaches and dunes in the Alabama coastal area in Baldwin County from Perdido Key to

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Fort Morgan, excluding the incorporated shoreline area of Gulf Shores.

The CCL replaces the construction setback line that was originally established in the ACAMP as the line running parallel to the shoreline at a point 40 linear feet inland of the most inland point of the crestline which is defined as a line interconnecting the peaks of the primary dune system. Because the crestline varies due to the forces of nature, the exact location of the primary dune crestline is often very difficult to detemine, particularly after the damage to the dune system caused by Hurricane Frederick.

The State of Alabama held a public hearing on the proposed CCL on July 11, 1985, in Gulf Shores, Alabama. The Environmental Management Commission adopted the CCL as revised regulations to the ACAMP in October, 1985, and they submitted it to OCRM as an amendment on October 11, 1985.

Federal approval of the amendment would allow the State to maintain their eligibility for program administration grant funds and require that federal actions be consistent with the ACAMP as amended.

In order to determine the scope and significance of issues to be addressed in the environmental assessment, OCRM has reviewed the extensive comments made available by the July 11, 1985 public hearing record and would like to solicit comments from anyone who has knowledge of the impacts which will be associated with implementation of the new CCL. OCRM is currently consulting with the U.S. Fish and Wildlife Service on the endangered Alabama and Perdido Key beach mice under section 7 of the Endangered Species Act. Other aspects being reviewed include the adequacy of the CCL to protect beach dynamics, legal issues including taking, comparison of the old setback line with the CCL, and compliance with the E.O. 11988 on floodplain management.

A scoping meeting will be held on March 18, 1986, in the Navy Conference Room B-100, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC, at 10 a.m. If OCRM decides to prepare a SEIS, this meeting will satisfy the NOAA/NEPA scoping process. All interested parties are invited to attend.

Persons or organizations wishing to submit comments on these or other issues should do so by April 1, 1986.

Requests for the above-described documents and all comments should be made to: Ben Mieremet, Coastal Hazards and Technical Assistance Coordinator, Office of Ocean and Coastal Resource Management, 330 Whitehaven St., NW., Washington, DC 20235 202/254-7494.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.)

Dated: February 24, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-7257 Filed 2-26-86; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Role of the Naval Reserve in the Maritime Strategy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Role of the Naval Reserve in the Maritime Strategy Task Force will meet March 19-20, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine or determine a strategic rationale for the employment of Reserve forces, the value of the Reserve to the total force, and the best way to develop Reserve resources. The entire agenda for the meeting will consist of discussions of key issues regarding changes in the strategic balance, the need for mobilization capability, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928; Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 24, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-4281 Filed 2-26-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before March 31, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Managment and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 24, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Educational Research And Improvement

Type of Review Requested: Revision
Title: Library Services and Construction Act (Pub. L. 98-480) Application and Project Plans for State Administered Programs—Titles I, II and III
Agency Form Number: ED 921 and ED 915
Frequency: Annually
Affected Public: States
Reporting Burden—Responses: 54; Burden Hours: 2,430
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: The application is a required submission from State Library Agencies in order to receive Federal funds under Title I (Library Services), Title II (Public Library Construction), and Title III (Interlibrary Cooperation and Resource Sharing) of the Library Services and Construction Act, as amended by Pub. L. 98-480.

Office of Special Education and Rehabilitative Services

Type of Review: REINSTATEMENT
Title: Education for the Handicapped Incentive Grant FY 1987-89 Application for Federal Assistance
Agency Form Number: 9055-1
Frequency: Triennial
Affected Public: State or local governments
Reporting Burden:
Responses: 19; Burden Hours: 114
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: States are required to submit a state plan in order to receive funds under the Education of the Handicapped Act. The information collected in this application is reviewed by the Office of Special Education, and is used as a resource for monitoring state plans.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: An Evaluation of the Handicapped Migratory Agricultural and Seasonal Farmworkers Vocational Rehabilitation Service Projects
Agency Form Number: B20-14P
Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 378; Burden Hours: 296.6
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: Section 312 of the Rehabilitation Act of 1973 authorized special projects for handicapped migrant and seasonal farmworkers. The projects began in 1976. This is the first evaluation of the projects required under section 14(a) of the Rehabilitation Act of 1973, as amended.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Request for Payment of 1986-87 Pell Grant Award; 1986-87 Alternate Disbursement System (ADS) Student Report; Notice of Termination/Early Graduation
Agency Form Number: Ed 304, 304-1, and 304-2
Frequency: On occasion; Semi-annually; Annually
Affected Public: Individuals or households; Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 122,700; Burden Hours: 79,755
Recordkeeping Burden:
Recordkeepers: 900; Burden Hours: 135.

Abstract: The Request for payment will be used to collect data necessary for the calculation of a Pell Grant award and to process an initial payment. The ADS Student Report requests additional information needed for processing and verifies previously submitted information. The Notice of Termination/Early Graduation is used to notify the Department of students who terminate their enrollment.

[FR Doc. 86-4274 Filed 2-26-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF86-2041-000]

Department of Energy—Bonneville Power Administration; Filing

February 21, 1986.

Take notice that on February 11, 1986, Bonneville Power Administration (BPA) filed a request for waiver by the Commission, pursuant to § 300.13 of the Commission's regulations, of the 60-day advance filing requirement in § 300.10(a)(3)(ii) of the Commission's regulations. BPA states that it is conducting a formal evidentiary hearing pursuant to the Northwest Power Act in order to determine whether to adopt a "variable industrial rate" for its direct service aluminum smelter customers. BPA states that the hearing is scheduled to end on May 1, 1986 and that BPA intends to request the Commission to implement any rate that BPA adopts on July 1, 1986. BPA states that it is concerned that the hearing process may not be completed by May 1, 1986, so that it is requesting in advance a waiver of the 60-day filing requirement. BPA requests that instead it be permitted to submit any proposed rate by May 15, 1986, 45 days in advance of the proposed implementation date of July 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4173 Filed 2-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-52-003, et al.]

Equitable Resources Energy Co.; Petitions To Amend Certificates of Public Convenience and Necessity and To Redesignate Rate Schedules

February 21, 1986.

Take notice that on February 11, 1986, Equitable Resources Energy Company (EREC), of 2900 Grant Building, 330 Grant Street, Pittsburgh, Pennsylvania 15219, pursuant to § 154.92, *et seq.*, and § 157.23, *et seq.*, of the Regulations [18 CFR 154.91, *et seq.* and 157.23, *et seq.* (1984)], filed an application to amend the certificates of public convenience and necessity heretofore issued to Philadelphia Oil Company (Philadelphia Oil) and the related Gas Rate Schedules to reflect a change of name from Philadelphia Oil Company to Equitable Resources Energy Compony as shown on the attached Exhibit II and in the application which is on file with the Commission and open to public inspection.

Effective December 13, 1984, Philadelphia Oil changed its name to Equitable Resources Energy Company by Certificate of Amendment to Articles of Incorporation issued by the State of West Virginia on December 13, 1984.

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Notice is hereby given that all the certificates and rate schedules as listed in the attached Exhibit II are hereby redesignated to reflect the change of name from Philadelphia Oil Company to Equitable Resources Energy Company.

Kenneth F. Plumb,
Secretary.

Certificates and Rate Schedules of Philadelphia Oil Company for Redesignation as Equitable Resources Energy Company

Rate schedule No.	Docket No.	Purchaser
1	CI86-1218	Equitable Gas Company.
11	CI75-52	Kentucky West Virginia Gas Company.

[FR Doc. 86-4174 Filed 2-26-86; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2245-006]

City of Vanceburg, KY; Application for Surrender of License

February 21, 1986.

Take notice that the City of Vanceburg, Kentucky has filed an application for surrender of its license for the Cannelton Project No. 2245.

In 1976 a license was issued to the City of Vanceburg, Kentucky to construct, operate, and maintain the Cannelton Project No. 2245 to be located at the U.S. Army Corps of Engineers (Corps) Cannelton Locks and Dam on the Ohio River. The project would consist of a powerhouse with an installed capacity of 70,560 kW; a bridge connecting the powerhouse to an access road; an earthen dam between the Corps' Cannelton Dam and the powerhouse; and other appurtenant facilities.

By letter of October 12, 1984, the City of Vanceburg was notified that the project site was rendered to a condition satisfactory to the Corps.

Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protect with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the commission's Rules. Any comments, protest, or motion to intervene must be filed with the Secretary of the Commission on or before March 31, 1986. The Commission's address is: 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,
Secretary.

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2975-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Report of Pollution-Caused Fish Kill (EPA ICR #0267). (EPA is proposing a revised form.)

Abstract: Information on pollution-caused fish kills is supplied voluntarily to EPA by State fish and game agencies periodically after they receive reports of fish kills from the public. The information is used by EPA to analyze ambient water quality conditions and to identify potential water quality problem areas.

Respondents: State fish and game agencies.

National Pollutant Discharge Elimination System (NPDES)

Title: Supplementary Report on Oil or Hazardous Substances Spill (EPA ICR #0823). (This is a request for renewed approval of existing requirements; no changes are proposed.)

Abstract: EPA and/or the U.S. Coast Guard usually investigate spills of oil or hazardous substances into navigable waters. When an on-scene investigation cannot be conducted, EPA may request information from those responsible for the spill. The Agency uses the data to determine whether (a) cleanup efforts are satisfactory and (b) any enforcement action is necessary.

Respondents: Businesses, individuals, state and local governments.

Title: Notice of Actual Production Level - Automotive Manufacturing Industries (EPA ICR #1025). (This is a request for renewed approval of existing requirements; no changes are proposed.)

Abstract: Permittees with approved alternate discharge limits must notify the permit authority (EPA or state agency) when changes in production are anticipated. The permit authority then evaluates permit compliance based on the alternate limits.

Respondents: Automotive manufacturing industries.

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Industrial Surface Coating Large Appliances (Subpart SS)—Information Requirements (EPA ICR #659). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: EPA requires new and modified sources to submit notifications of constructions, modifications, startup, shutdowns, and malfunctions and the results of performance tests. Owners/operators record all data and calculations from monthly performance tests used to determine volatile organic compound (VOC) emissions and record all emissions which exceed the standard. Records of daily incinerator temperature, or daily amounts of recovered solvent are maintained. Periods of insufficient incinerator temperature above three continuous hours are recorded.

Respondents: Industrial manufactureres and plant operators who use surface coating processes. SIC codes: 3631, 3632, 3633, and 3639.

Title: New Source Performance Standards (NSPS) for Metal Furniture Surface Coating (Subpart EE) - Information Requirements (ICR #649). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: The EPA requires metal furniture manufacturers of new and modified plants to notify the Agency or delegated enforcement agency of any operational changes that will result in that facility's ability to meet the emission standard for volatile organic compounds. Requirements include installation of temperature measurement devices that calculate the daily volume of VOC-solvent recovered, and records of these calculations. Records of monthly performance tests must be maintained for two years.

Respondents: Industries and plants which apply organic coatings to metal furniture. SIC codes: 2514, 2522, 2531, and 2542.

Title: New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)—Information Requirements (EPA ICR #658). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: EPA requires that owners/operators of industrial operations which coat pressure sensitive tape and label surfaces notify EPA or its delegated agency of any changes or modifications which would affect emission levels. The results of the initial performance test are reported, and air pollution control devices are monitored and their temperatures are recorded. The source submits semi-annual reports of exceedences of VOC emission limits and temperature drops below the allowed limit.

Respondents: Manufacturers of pressure sensitive tape-and label materials. SIC code: 2641.

Title: New Source Performance Standards (NSPS) for Metal Coil Surface Coating (Subpart TT)—Information Requirements (EPA ICR #660). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: EPA requires that new or modified sources notify the Agency or its delegated authority of any changes in operations that will affect emissions levels and the results of performance tests. The VOC content of the coatings, VOC emissions, and incinerator daily temperatures will be recorded.

Respondents: Manufacturers of metal coil. SIC code: 3479.

Agency PRA Clearance Request Completed by OMB

EPA #0583; Records of PCB Storage and Disposal, was approved 12/10/85 (OMB #2070-0061; expires 12/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460.

and

Richard D. Otis (ICRs #0267, 0823, 1025) or Wayne Leiss (ICRs #0649, 0658, 0659, 0660), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: February 21, 1986.

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-4281 Filed 2-26-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-42032B; FRL-2975-7]

Decision Not To Test Formamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing a decision not to require further testing of formamide, CAS No. 75-12-7, for health effects An August 24, 1984, U.S. District Court, Southern District of New York, ruling requires EPA to issue a proposed test rule for this chemical under section 4(a) of the Toxic Substances Control Act (TSCA) by March 1986 or state reasons for not issuing one. EPA has determined that data now available to the Agency, including data received pursuant to a negotiated testing agreement between the Agency and BASF Wyandotte Corporation (BASF), are adequate to characterize formamide for these effects and that no further testing is required at this time. However, EPA may develop proposed rulemaking under section 5(a)(2) or 8(a) of TSCA to monitor any significant change in exposure to this chemical.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Agency is publishing a decision not to require additional testing of formamide for health effects.

I. Introduction

In its Tenth Report, published in the Federal Register of May 25, 1982 (47 FR 22582), the Interagency Testing Committee (ITC) designated formamide for priority testing consideration. The ITC recommended that formamide be tested for genotoxic effects, carcinogenicity, and other chronic health effects. EPA issued a notice, published in the Federal Register of May 23, 1983 (48 FR 23086), which announced the Agency's preliminary decision not to propose a rule under section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601) to require health effects testing of formamide. This decision was based on the Agency's evaluation of the existing data for formamide, the expected exposure profile for formamide, and the tentative acceptance of a testing program submitted by BASF. In the Federal Register of December 29, 1983 (48 FR 57366), EPA issued notice of a negotiated testing agreement (NTA) between EPA and BASF for formamide. Available data did not suggest that formamide is either genotoxic or carcinogenic. Therefore, to answer the concerns expressed by the ITC for other chronic effects, BASF proposed a range-finding study followed by a 90-day subchronic study which was designed to characterize the potential chronic effects of formamide. Because dermal exposure is the most common route of human exposure, the program was designed to clarify the doses at which formamide causes toxic effects after repeated exposure of intact skin over a prolonged period. The specific details of the NTA appear in the December 29, 1983 Federal Register notice. Both the range-finding and 90-day subchronic tests have been completed, and EPA has announced receipt of the test results in two Federal Register notices (49 FR 5190; February 10, 1984 and 50 FR 31919; August 7, 1985). These notices are included in the public docket (OPTS-42032B) for this notice.

On August 24, 1984, the U.S. District Court, Southern District of New York, ruled that negotiated testing agreements were not a legally adequate substitute for rulemaking under section 4 of TSCA in response to priority testing designations of the ITC (*NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)). In its final order, the court required that EPA publish by March 1986 a notice of proposed rulemaking for formamide or its reasons for not initiating rulemaking. This notice is being published in response to the court's mandate and announces the Agency's decision not to require additional health effects testing for this chemical.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

> (A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment;
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such

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activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1) (A) findings are discussed at 45 FR 48528 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

II. Review of Available Data

A. Production, use, and Exposure

Detailed information on production, use, and exposure appears in the Agency's initial response to the ITC (48 FR 23098; May 23, 1983). The Agency is not aware of any new data that suggest that the production, use, and exposure profile for formamide has changed since that time.

There is currently no United States production of this chemical; however, BASF imports between 1 and 11 million pounds per year. About 82 percent of the imported formamide is used by the pharmaceutical industry (Ref. 1). The major TSCA use of formamide (13 percent) is in petroleum production, where it acts as a carrier for the corrosion-inhibiting additives pumped into wells during drilling operations. In this capacity, formamide is expected to be quickly hydrolyzed. Furthermore, because formamide is readily biodegraded and does not bioaccumulate, it is not expected to persist in the environment. Other nonconsumptive TSCA uses include soil stabilization (1.0 percent), polymerization (0.5 percent), laboratory (1.0 percent), and ink solvent (1.5 percent) uses (Ref. 3). Consumer products containing formamide as a result of its use as an ink solvent include a number of fiber, plastic, and felt-tip pens and markers (Ref. 3).

There appears to be little opportunity for exposure to formamide based upon present uses. BASF Wyandotte, using data from a 1982 customer survey, estimated that about 400 workers are exposed to formamide under controlled use conditions (Ref. 4). Potential for exposure to formamide from its use as a solvent in water soluable inks occurs both in the formulation of the ink and in the loading of the ink into the writing instrument. The larger manufacturers of these instruments use automated equipment which approach enclosed systems. In less automated equipment, some inhalation of formamide could occur, although dermal exposure to the inks is expected to be mimimal. Potential workplace exposure may also occur on an intermittent basis from loading, mixing, or drumming operations. In addition, the 1985 National Occupational Exposure Survey projected that about 1,800 chemists are potentially exposed to formamide (Ref. 22). Product labels advise workers and chemists to use protective equipment such as gloves, respirators, and goggles when handling formamide. Futhermore, because of formamide's known teratogenic potential, the label also warns pregnant workers to avoid contact with formamide unless adequate precautions are observed to minimize their exposure.

Worst-case estimates (assuming 100 percent absorption) suggest that if an adult female were to spill formamide on both hands, she could be exposed to 1.45 mg/kg/contact (Ref. 28). A male worker could also be exposed to 1.45 mg/kg/contact (assuming 0.13 m^2 hand surface area and 70 kg body weight). EPA believes that the number of male or female workers so exposed to formamide is not substantial. Although no data on the levels of exposure in any of the industries using formamide were submitted, EPA has no evidence which might suggest that the levels of worker exposure coupled with the known toxicity potential of this chemical are significant or present an unreasonable risk, given the use of proper protective equipment recommended on existing labels and anticipated avoidance by pregnant workers.

Consumer exposure to formamide may result from its use in water-soluble ink formulations. Formamide is used in about 4.0 percent of the pens used in the United States, or 130 million pens (Ref. 5). Based upon conversations with several major U.S. pen manufacturers and their representatives and considering formamide's characteristic quick absorption by paper, resistance to smearing, and added expense, EPA believes that when it is used in consumer pens, it is generally used in finer point pens, not the marker pens often used by children (Ref. 4). Finer point pens usually contain about 5 percent formamide. Formamide is also used in high-performance industrial pens, such as high-speed computer plotter pens. These pens usually contain about 35 percent formamide; however, use of these pens should result in minimal opportunity for consumer exposure.

Several other factors tend to minimize the potential for exposure of persons writing with pens containing formamide. Formamide's low vapor pressure tends to reduce the probability of inhalation. Thus, the only significant potential route of exposure would be from skin contact with wet ink. Because of its low vapor pressure, complete miscibility with water, and lipid solubility, any direct skin contact with formamide would probably result in absorption through the skin. Therefore, worst-case dermal exposure estimates for a child were calculated by EPA using data submitted by BASF (Refs. 3 and 28). Calculations for the ink application exposures were based on a total formulation loading of 1.5 gm for a pen, 6.0 gm for a marker, and an average formamide concentration of 20 percent. If a child painted the central surface of both hands with ink from a broad-tip marker, assuming 100-percent absorption of formamide, the dermal exposure would be about 0.3 mg/kg. On the basis of the results of the 90-day subchronic toxicity testing conducted by BASF there is a

risk quotient of 100 between the no-observed-effect-level (NOEL) and this exposure level. Since this NOEL is for daily dosing over a 90-day period and such misuse by a child is not expected to be repeated daily for 90 days, anticipated risk quotients should be much larger, suggesting lesser concern. Furthermore, considering the physicochemical propreties of formamide and the construction of the porous-tip device, which acts to hold the ink in the pen, EPA believes the use of those products would not result in substantial exposure. On the basis of the above information, EPA has concluded that although a large number of consumers may use writing instruments containing formamide, the levels of individual exposure are likely to be well below those found to cause adverse effects.

Formamide has been used in the past or has been suggested for a multitude of other commercial uses, some of which could result in significant worker and/or consumer exposure. Such potential uses include: as an additive to lube oil and hydraulic fluid, as a component in deicing fluids for airport runways, as a curing agent for epoxy resins, as a plasticizer, as an affinity enhancer for dyes, and as a component of liquid fertilizers. The current import volume and predominantly pharmaceutical use of this imported formamide supports the conclusion that the amount of formamide used for these and other uses is small, if any. Furthermore, concern for formamide's recognized developmental toxicity has and undoubtedly continues to limit manufacture and TSCA-related use of this chemical.

B. Health Effects

A detaile review of the health effects information available to the Agency prior to the NTA was presented in the Agency's initial response to the ITC (48 FR 23098; May 23, 1983). A summary of these data and the new data on genetic toxicity developed by the National Toxicology Program (NTP) and on subchronic toxicity developed by BASF follows:

1. *Acute toxicity.* The acute toxicity of formamide to laboratory animals is in the slight-to-moderate range. Oral LD$_{50}$ values range from 3.2 g/kg in the mouse to 7.5 g/kg in the rat (Refs. 6 and 7). Dermal LD$_{50}$ values are reported to be as high as 17 g/kg in the rabbit; the lowest lethal dermal dose for this species is 6.0 g/kg (Refs. 8 and 9).

2. *Mutagenicity.* At the time of the Agency's initial response to the ITC, formamide had not demonstrated a mutagenic response in *in vitro* assays. No indication of mutagenicity was seen using strains TA–98, TA–100, TA–1535, and TA–1537 (+S9) using the *Salmonella* assay (Ref. 10). It was also reported that formamide was nontoxic and nonmutagenic to *Salmonella* at concentrations up to 200 micrograms per plate but was toxic to the bacteria at 500 micrograms per plate (Ref. 11). In addition, no mutagenic effects were demonstrated in a dominant lethal assay after a single intraperitoneal application (⅓ LD$_{50}$) of formamide to NMRI mice (Refs. 12 and 13). Formamide was also without effect in a cell transformation test using rat embryo cells infected with Rausher leukemia virus (Ref. 14) at concentrations from 0.001 to 100 mg/L.

The NTP recently completed the testing of formamide over five doses in four strains of *Salmonella* (TA 98, TA 100, TA 1535, and TA 1537) with and without activation. Testing was done in triplicate with an independent repeat. No indication of mutagenic activity was seen (Ref. 23). Formamide was also tested and found nonmutagenic in TA–98 with activation (Ref. 24). In addition, the NTP has selected formamide as a neative control in an on-going *Drosophila* sex-linked recessive lethal test (Ref. 25).

The Agency is aware that the data are limited on the potential for formamide to cause chromosomal aberrations. However, based upon the results of the dominant lethal assay (Refs. 12 and 13), the Agency has no grounds to require additional testing for these effects nor reason for concern.

3. *Developmental toxicity.* Three dermal studies were submitted by BASF: the teratogenic effects on rats after repeated percutaneous application (Ref. 15); the teratogenic effect in mice of commercial black ink containing 50-percent formamide following percutaneous application on the 8th day post coitum (Ref. 20); and the teratogenic effect in mice following percutaneous application of this ink on the 13th day post coitum (Ref. 21). In the multiple-dose study, formamide was applied 13 times. Dose-dependent embryotoxic and teratogenic effects were observed. The lowest observed reproductive/teratogenic effect level (LOEL) reported was 0.35 g/kg, the lowest dose tested. In the single-dose studies, significant embryolethal, embryotoxic, and teratogenic (fetal deformities) effects were reported at 2.8 gm/kg. When these effect levels are compared to the worst-case dermal exposure of 1.45 mg/kg for an adult female, a risk quotient of about 240 for repeated exposure for an adult female and her offspring was calculated. Similarly, a risk quotient of over 1,000 was calculated for single dermal exposure to an adult female and her offspring (Ref. 28).

Three oral studies were submitted by BASF which reported dose-dependent embryotoxic and/or teratogenic effects in rats (Ref. 16), mice (Ref. 17), and rabbits (Ref. 18). Because these studies utilized lower dosages than the dermal studies both LOEL's and NOEL's were determined. Based upon the results of these studies:

(a) Rabbits appear to be the most sensitive species tested for embryotoxic effects (LOEL=0.11 g/kg; NOEL=0.037 g/kg) and least sensitive for teratogenic effects (no effect at the highest dose tested, 0.37 g/kg). Similar results were reported by Merkle and Zeller (Ref. 19). In addition, they reported that 0.2 g/kg formamide caused pronounced maternal toxicity and death.

(b) Mice appear to be more sensitive (LOEL=0.20 g/kg with 11 percent malformations; NOEL=0.13 g/kg) than rats (LOEL=32 g/kg with 4 percent malformations; NOEL=0.16 g/kg).

(c) The oral route of administration appears to cause a slightly greater response in Sprague-Dawley rat (LOEL=0.32 g/kg with 4 percent malformations) than the dermal route (LOEL=0.35 g/kg with 2 percent malformations).

(d) The types of dose-related malformations observed in these studies (cleavage of vertebrae, wavy or fused ribs, cleft palate, multilobular liver, and hydrocephalus internus) were the same in both rats and mice and in both dermal and oral tests.

Based upon these results, the Agency believes that the oral NOEL for rabbits (0.037 g/kg) is a conservative estimate of the dermal NOEL for the developmental effects of formamide. When this NOEL is compared to the worst-case dermal exposure of 1.45 mg/kg for an adult female, a risk quotient of 24 for repeated exposure to an adult female and her offspring was calculated. This risk quotient is an order of magnitude (10x) lower than the quotient calculated using the dermal LOEL. The Agency considers the developmental toxicity data submitted by BASF adequate under current limited use and exposure.

4. *Subchronic toxicity.* Prior to the NTA, the Agency received one study showing that repeated doses of formamide administered by gavage to rats 5 days per week for 4 weeks resulted in dose-dependent cumulative effects expressed as gastritis and erosion of the gastric mucosa (Ref. 2). The no-observed-effect level was 34 mg/kg. However, because of the short duration of exposure and the technical difficulties encountered with gavage

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exposure, this study was judged inadequate for risk assessment.

Under the NTA, BASF successfully completed range-finding and 90-day subchronic studies specifically designed to assess the dermal toxicity of formamide, the most common route of human exposure. The studies were designed to clarify the doses at which formamide causes toxic effects after repeated exposure to intact skin over a prolonged period (Ref. 29). They were conducted according to the Organization for Economic Cooperation and Development Subchronic Dermal Toxicity Guideline No. 411 (Ref. 30) and have been reviewed and found acceptable (Refs. 26 and 27). Taking into account the limited current exposure to formamide, EPA believes that the 90-day subchronic test conducted by BASF provides an adequate screen for histopathological effects to the reproductive system and chronic toxicity (with the possible exception of ocular and oncogenic effects for which there is no suggestive evidence) because: extensive biochemical, hematological, and anatomical studies were included; both toxic and non-toxic doses were included; and toxic effects were observed at the high-dose which were not observed at the low-dose (Ref. 33).

The 90-day study conducted in male and female Wistar rats. Formamide was applied to intact, shaved skin, 6 hr/day, 5 days/week at dose levels of 0, 300, 1,000 and 3,000 mg/kg. Although dose levels were based on a 14-day range-finding study, a NOEL was not identified (Ref. 31). The predominant toxic effect observed was polycythemia. A second dermal study using doses of 0, 30, 100, and 3,000 mg/kg provided a NOEL of 30 mg/kg and confirmed the hematological response (Ref. 32). Compound-related effects occurring in a dose-related manner included changes in hematology, clinical chemistry, and weight, i.e., emaciation and decreased body weight (high dose only). Bilateral testicular tubular atrophy was also observed at the 3,000 mg/kg dose. In addition, male rates were clearly more sensitive than female rats to the hematological effects of formamide; significantly increased hemoglobin levels and red cell counts were observed at levels above 300 mg/kg. No abnormalities were detected in the 100 mg/kg or 30 mg/kg dose groups. However, because of the possibility of reduced platelet, lymphocyte, and leucocyte values (not dose-related) at 100 mg/kg, it appears prudent to consider 30 mg/kg the NOEL for the 90-day exposure. When this NOEL is compared to worst-case dermal exposure estimate for a child (0.30 mg/kg) and adult male or female (1.45 mg/kg), risk quotients of about 100 for the child and 20 for the adult exist. Since the NOEL is for repeatedly daily dosing over 90 days and the worst-case exposure estimates are for events that would rarely be expected to occur, anticipated risk quotient should be much larger, suggesting lesser concern for formamide under current use.

5. *Oncogenicity.* EPA is unaware of any bioassay that has not been performed to assess the carcinogenic potential or formamide. However, there are no data which indicate any potential for oncogenic effects.

III. Decision Not to Initiate Rulemaking

EPA has reviewed all available data on formamide including structure-activity relationships, acute toxicity, mutagenicity, and teratogenicity data, and the subchronic toxicity data submitted to the Agency by BASF pursuant to the NTA. The data indicate that the chemical has a low but unique toxicity. Its acute toxicity to laboratory animals is in the slight-to-moderate range. Repeated-dose studies by gavage in rodents resulted in cumulative effects expressed as extensive gastritis and erosion of the gastric mucosa. *In vitro* tests used to predict mutagenic and carcinogenic potential indicate that formamide exhibits slight cellular toxicity, but no mutagenic response. Studies in rats, mice, and rabbits indicate that formamide is embryotoxic and teratogenic at widely varying doses, by several routes of administration. Subchronic dermal studies indicate that repeated exposure to formamide may result in polycythemia. No other significant pathology was observed. Since bilateral testicular tubular atrophy was observed in male rats only at a dose level 100 times the NOEL for hematological effects, the data from the BASF 90-day subchronic study do not suggest a potential unreasonable risk of chronic or abnormal reproductive effects from current exposure to formamide.

The Agendy finds that these data are valid and, when coupled with earlier data, are sufficient to reasonably predict the identified health effects of formamide and do not suggest potential for unreasonable risk at current exposures. Furthermore, current and anticipated future release and exposure for formamide do not appear sufficient to warrant testing for any other effects on a section 4(a)(1)(B) basis.

EPA has therefore decided that testing of formamide under section 4(a)(1) (A) or (B) of TSCA is not warranted at this time. However, the Agency may develop proposed rulemaking pursuant to section 5(a)(2) and/or 8(a) of TSCA to require notification of the Agency prior to any change in manufacturing (importing), processing, handling, use, release, and disposal patterns that would significantly increase exposure to formamide. Other action (e.g., listing of formamide as a hazardous waste, restricting waste disposal practices) may also be taken by the Agency.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS-42032B). The record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this decision consisting of:

(a) a Notice containing the ITC designation of formamide to the Priority List (47 FR 22582; May 25, 1982).

(b) Notice containing the preliminary response to the ITC for formamide (48 FR 23098; May 23, 1983).

(c) Notice containing the decision to adopt the Negotiated Testing Program for formamide (48 FR 57365; December 29, 1983).

(d) Receipt of data notices (49 FR 5190; February 10, 1984 and 50 FR 31918; August 7, 1985).

(2) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(3) Reports—published and unpublished factual materials, including contractor's reports.

B. References

(1) Mathtech. "Level I Economic evaluation: Formamide (March 1982)." Mathtech. Arlington, VA. 22 pp. (1982).

(2) BASF Wyandotte Corp. "Internal Report: Results of the toxicity of formamide in a four-week investigation in the rat." Industrial Hygiene and Toxicology Laboratory, BASF Aktiengesellschaft, Ludwigshafen, West Germany. (1982).

(3) BASF Wyandotte Corp. Letter from R.T. Flaherty, BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 181, Parsippany, NJ 07054, to Steven D. Newburg-Rinn, U.S. Environmental Protection Agency, Test Rules Development Branch, Washington, DC 20460. (September 7, 1982).

(4) BASF Wyandotte Corp. Product literature. Worker exposure survey presented at a meeting with the EPA Assessment Division. (August 19, 1982).

(5) BASF Wyandotte Corp. Letter from R.T. Flaherty, BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 181, Parsippany, NJ 07054, to S.D. Newburg-Rinn, U.S. Environmental Protection Agency, Test Rules Development Branch, Washington, DC 20460. (August 9, 1982).

(6) Zaeva G.N., Vinogradova K.L., Savina M.Y., Osipenko N.I. "Toxicity of formamide." *Toksikol. Novykh. Prom. Khim. Veshchestv* 9:163–174. (1967). (In Russian; as reported in *Chemical Abstracts* 70:16516c).

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(16) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the examination of formamide for teratogenic effects in rats after oral application." XXII/341. Ludwigsnafen/Rhein, West Germany. (1974).

(17) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the examination of formamide for teratogenic effects in mice after oral application." XIX/197. Ludwigshafen/Rhein, West Germany. (1974).

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(19) Merkle J. and Zeller H. "Tests of acetamides and formamides for embryotoxic and teratogenic effect in rabbits." *Arzneim Forschung.* (In German; English trans.) 30:1557–1562. (1980).

(20) BASF. "Internal Report: Report on the examination of a commercially available ink (black) for teratogenic effect in mice by percutaneous application on the 8th day post coitum." XXII/341. Ludwigshafen/Rhein, West Germany. (1973).

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(23) National Toxicology Program. "Results Report. Ames Test with Formamide." National Institute of Environmental Health Sciences. Research Triangle Park, N.C. (August 28, 1985).

(24) Arimoto S., Nakano N., Ohara Y., Tanaka K., Hayatsu H. "A solvent effect on the mutagenicity of tryptophan pyrolysate mutagens in the *Salmonella* mammalian microsome assay." *Mutation Research* 102:105–112. (1982).

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(26) Research and Evaluation Associates, Inc. "Ad Hoc review No. AH–10: Subchronic toxicity of formamide." Research and Evaluation Associates, Inc. Chapel Hill, N.C. 5 pp. (May 1985).

(27) Federal Republic of Germany. "Audit report on the subchronic dermal toxicity (rat) of formamide; Project No. 38H0294/8255 and Follow-up study to détermine a no-observed-effect-level (NOEL); Project No. 38H0400/8431." Dr. Schlottmann, Federal Ministry for Youth, Family Affairs, and Health, Bonn 2 (Bad Godesberg). (1985).

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(29) BASF Wyandotte Corp. Proposed voluntary testing program on formamide. (November 4, 1982).

(30) Organization for Economic Cooperation and Development (1981). Subchronic Dermal Toxicity Guideline No. 411, adopted May 12, 1982.

(31) BASF. "Interim report on the study of subchronic dermal toxicity of formamide in the rat (90-day study)." Project No. 38H0400/8431. Ludwigshafen/Rein, West Germany. (1985).

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(33) Oak Ridge National Laboratory and U.S. Environmental Protection Agency. "Proceedings of the workshop on subchronic toxicity testing." Denver, Colorado. May 20–24, 1979. Publication No. ORNL/EIS–169; EPA–560/11–80–028. (1980).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, along with other information considered by the Agency in development this notice is available for inspection in the OPTS Reading Rm. E–107, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Authority: 15 U.S.C. 2603.

Dated: February 21, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–4255 Filed 2–26–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Capitol Savings and Loan Association, Mount Pleasant, IA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Capitol Savings and Loan Association, Mount Pleasant, Iowa, on February 21, 1986.

Dated: February 24, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–4272 Filed 2–26–86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Reissuance of Ocean Freight Forwarder License; Fuji Express

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 2126; Name and address: Kenichi Haramoto dba, Fuji Express, 340 Swift Avenue, South San Francisco, California 94080; Date reissued: February 13, 1985.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86–4234 Filed 2–26–86; 8:45 am]

BILLING CODE 6730-01-M

Applicants for Ocean Freight Forwarder License; Pac Trek International, Inc.

Notice is hereby given that the following person has filed with the Federal Maritime Commission an

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application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following person should not receive a license are requested to communicate with the Office of Freight Forwarders, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573: Pac Trek International, Inc., 1160 Army Street, San Francisco, CA 94124, Officers: Michael J. Barron, President, Richard Eber, Vice President, Gerald Y. Tom, Secretary/Treasurer.

Dated: February 24, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86-4235 Filed 2-26-86; 8:45 am]

BILLING CODE 6730-01-M

Revocations of Ocean Freight Forwarder Licenses; Unlimited Shipping Agency, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 2798
Name: Unlimited Shipping Agency, Inc.
Address: P.O. Box 66367, AMF O'Hare, Chicago, IL 60666
Date revoked: February 14, 1986
Reason: Requested revocation voluntarily

License No.: 2672
Name: Klaus International, Inc.
Address: 14340 Memorial Drive, #121, Houston, TX 77079
Date revoked: February 18, 1986.
Reason: Requested revocation voluntarily.

Robert G. Drew,
Director, Bureau of Tariffs.

[FR Doc. 86-4236 Filed 2-26-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Acquired Immunodeficiency Syndrome (AIDS) Research Centers

AGENCY: National Institute of Mental Health and National Institute on Drug Abuse, HHS.

ACTION: Issuance of program announcement for establishing Acquired Immunodeficiency Syndrome (AIDS) Research Centers, MH-86-18.

SUMMARY: The National Institute of Mental Health and the National Institute on Drug Abuse announce the availability of a program announcement concerning establishing of Acquired Immunodeficiency Syndrome (AIDS) Research Centers. This announcement is to encourage coordinated, multidisciplinary center programs on the mental health and drug abuse aspects of AIDS which also provide a research environment to encourage the development of new scientists committed to research on AIDS and which establish a structure to facilitate rapid dissemination of the most recent information related to mental health and drug abuse aspects of AIDS. A center is expected to function as a resource to the scientific and clinical community and to State and community agencies. Support may be requested for up to 5 years. It is anticipated that in Fiscal Years 1986 and 1987, there will be up to $500,000 in direct costs per year for two to three research centers.

Receipt and review dates of applications: Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures. Applications must be received by April 15, 1986, for funding considerations in Fiscal Year 1986.

FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTACT:

Ellen Simon Stover, Ph.D., Deputy Director, Division of Basic Sciences, National Institute of Mental Health, Room 11-103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4337, 443-3563

or

Roy W. Pickens, Ph.D., Director, Division of Clinical Research, National Institute on Drug Abuse, Room 10A-38, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6697.

Robert Trachtenberg,
Acting Administrator Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-4241 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-20-M

New Investigator Research Awards

AGENCY: National Institute of Mental Health, HHS.

ACTION: Issuance of program announcement on New Investigator Research Awards, MH-86-17.

SUMMARY: The National Institute of Mental Health announces the availability of a program announcement concerning the New Investigator Research Award (NIRA) in the areas of Prevention and Mental Health Services Research. NIRA is an award to an institution on behalf of a specific individual and is designed to encourage new investigators (or investigators who have established careers in closely related fields) who wish to specialize in the biomedical and biobehavioral disciplines to develop their research capabilities in Prevention or Mental Health Services. Support may be requested for up to 3 years. It is anticipated that in Fiscal Years 1986 and 1987, there will be up to $112,500 in direct costs per year for the 3-year period.

Receipt and review dates of applications: Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures, except that for Fiscal Year 1986, NIRA applications in Mental Health Services (not Prevention) have a receipt date of April 1, 1986, with an earliest award date of September 1986.

FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTACT:

Prevention

Ms. Joyce Lazar, Chief, Prevention Research Branch, National Institute of Mental Health, Room 14C-04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

or

Mental Health Services

Dr. Lawrence Chaitkin, Division of Biometry and Applied Sciences, National Institute of Mental Health, Room 18C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Robert Trachtenberg,
Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-4242 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committee; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

General and Plastic Surgery Devices Panel

Date, time, and place. March 25, 9 a.m., Rms. 703-727A, Health and Human Services Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20901, 301-427-7156.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a collagen hemostatic agent; a PMA supplement for a polydioxanone synthetic absorbable suture; and the reclassification of stainless steel sutures.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial or financial information regarding a premarket approval application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Room 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted inivasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under sections 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

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Dated: February 20, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-4206 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Revisions to HDS Discretionary Grants Administration Manual

AGENCY: Office of Human Development Services, HHS.

ACTION: Final notice.

SUMMARY: The Office of Human Development Services (HDS) is publishing in final, the HDS Discretionary Grants Administration Manual. A notice of proposed revisions was published on October 7, 1982. These revisions apply to all discretionary grant programs administered by the Administration on Children, Youth and Families, the Administration on Aging, the Administration on Developmental Disabilities, the Administration for Native Americans, and the Office of Program Development.

EFFECTIVE DATE: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Beverly Córdova, (202) 472-6709.

SUPPLEMENTARY INFORMATION:

Background

The Office of Human Development Services (HDS) published proposed revisions to its Discretionary Grants Administration Manual (HDS/GAM) in the **Federal Register** on October 7, 1982. The manual is applicable to discretionary grant programs administered by the Administration for Children, Youth and Families (ACYF), the Administration on Aging (AoA), the Administration on Developmental Disabilities (ADD), the Administration for Native Americans (ANA), and the Office of Program Development (OPD). Comments on the proposed revisions were solicited with a deadline of December 6, 1982 for receipt of comments. Comments were received from organizations receiving HDS support as well as from other interested organizations and individuals. A summary of these comments and the action taken, as well as other technical changes, is indicated below.

In the past, the HDS/GAM was divided into parts which differentiated between general policies and procedures applicable to all discretionary grants and cooperative agreements (Part I) and unique requirements specific to a particular program (e.g., Part II—Head Start). Since program specific requirements which supplement, take precedence over, or deviate from, the HDS/GAM are now codified in individual program regulations, we no longer consider such distinctions necessary for this manual. However, where appropriate, any program-specific requirement which has relevance to an HDS/GAM provision is clearly noted. Therefore, Parts II and III to the manual are hereby revoked.

The HDS Discretionary Grants Administration Manual will be provided in its entirety to all current HDS discretionary grantees. Other interested parties may obtain copies of the manual at cost from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Comments and Responses

HDS received twenty-eight comments in response to the October 7 notice. Following are summaries of the specific substantive comments together with our responses.

1. *Comment:* One respondent stated that the HDS Grants Administration Manual (HDS/GAM) is not necessary since the provisions of OMB Circulars establishing uniform requirements for grants and other agreements are incorporated in 45 CFR Part 74, and other policies and procedures applicable to grants are described in the HHS Grants Administration Manual (HHS/GAM).

Response: We agree that recipients of financial assistance should not be confronted with duplicative policies and procedures issued by different awarding offices. In fact, the HDS/GAM was issued in 1977 to provide in one document policies and procedures applicable to all discretionary grants awarded by the program offices which are part of HDS. Prior to the issuance of the HDS/GAM, our program offices had used separate policies and procedures.

The HDS/GAM is not a substitute for 45 CFR Part 74 or the HHS/GAM. The HHS/GAM describes policies and procedures for HHS operating divisions as well as recipients. We implement the HHS/GAM provisions with two manuals, one internal, the HDS Grants Administration Staff Manual, and one external, the HDS/GAM. The HDS/GAM implements the Department's provisions and describes options allowed under the Department's rules and certain deviations to 45 CFR Part 74 which have been approved by the Department. These options and deviations are specifically applicable to HDS grants. Deviations are addressed in 45 CFR Part 74.6 and are authorized by "the head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency and OPAL" (Office of Procurement, Assistance, and Logistics). Certain deviations require approval only from the head of the awarding agency. Part 74 also discusses options for granting agencies. Where we have selected a particular option, we have referenced the appropriate Part 74 citation. Finally, the HDS/GAM is useful to a large number of recipients whose sole or major source of Federal assistance is from HDS, since it highlights issues which are typically and frequently of concern to these recipients.

2. *Comment:* A request was made for a definition of the term "capital expenditure".

Response: The definition of a "capital expenditure" is: "The cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the regular accounting practices of the organization purchasing the equipment". (See definitions of "capital expenditures" in OMB Circular A-21 and "acquisition cost" in 45 CFR 74.132 and OMB Circular A-122). The Definitions section of the manual has been expanded to include this term.

3. *Comment:* The criteria for selection of proposals for funding under a competition for discretionary grants should be outlined in the program announcement.

Response: We agree. The discussion of new applications under section A.2, Application Procedures, of Chapter 1 of the manual has been expanded to require that funding priorities and criteria for review and evaluation must be included in a program announcement.

4. *Comment:* Announcement of the availability of grant funds should be published in the **Federal Register**, even when competition is limited, so that all prospective applicants are properly notified and public information is provided on all grant programs.

Response: We do not agree with this comment. According to Chapter 1-55 of the HHS/GAM, publication of a program announcement in the **Federal Register** is not required by Department policy if the granting office sends a copy of the program announcement directly to every potential applicant. However, we

believe that in most cases wide notification should be encouraged. We have added language in Section A, Application Procedures, of Chapter 1 to provide a program option for publication of notice of availability in the **Federal Register** even when the number of eligible potential applicants is relatively small.

5. *Comment:* The procedures in the manual regarding the Office of Management and Budget Circular A-95 are obsolete since the Circular was revoked.

Response: This is correct. Since the proposed HDS/GAM was published, the Department has issued final regulations implementing Executive Order 12372 in 45 CFR Part 100 (see 48 FR 29188, June 24, 1983). We have changed the provisions in this manual in Section E of Chapter 1 to incorporate these final regulations.

6. *Comment:* Clarification on what grant competition information may or may not be released under the Freedom of Information Act (FOIA) is needed since the Department's policy was recently revised. The revised policy states that requests for all records of "evaluative material" with respect to particular applications being considered will be withheld from the public.

Response: There are a great deal of permutations and possibilities for the kinds and amounts of information that can be released under an FOIA request. It might prove nonproductive to include FOIA information at all in the HDS GAM. In response to the comment, we would prefer to forgo generalizations about grant competition information, and deal on a case by case basis with all requests. Therefore, we are deleting the last two sentences of Chapter 1, Section F, Notice to Unsuccessful Grant Applicants, dealing with our responses to requests from unsuccessful applicants for information regarding the award process.

7. *Comment:* The length of anticipated support for various types of programs should be made clear to potential applicants.

Response: We agree. The general discussion in Section I, Discretionary Grant Funding, of Chapter 1 of the manual has been expanded to state that the anticipated project period will generally be specified in a program announcement and will also usually be included in the description of the program in the *Catalog of Federal Domestic Assistance.*

8. *Comment:* The cost of audit services should be charged to the budget period being audited rather than the period in which the service was actually provided.

Response: We disagree. Generally accepted accounting principles provide for audit obligations to be charged to the fiscal period in which the services are provided. This issue has been clarified in the table showing when obligations should be charged, which appears in Section I of Chapter 1.

9. *Comment:* Forthcoming changes in the Department's Payment Management System (PMS) will make some of the information in the manual regarding liquidation of obligations obsolete.

Response: While some of the formats and information requested and generated by the PMS are different from that of the Department Federal Assistance Finance System (DFAFS), the requirements concerning liquidation of obligations have not been affected. All references to DFAFS in the manual have been changed to PMS to reflect the Department's organizational change to the new Payment Management System.

10. *Comment:* A six month time limit should be established for the liquidation of all obligations incurred under a grant assisted project.

Response: Our current policy is for grantees to submit final Financial Status Reports (SF-269) showing no unliquidated obligations within 90 days of the end of the project period. In unusual circumstances, we would consider extending the deadline date for liquidating obligations for a reasonable time period. The resultant time frame should be more than sufficient for a recipient to close out its grant accounts. We would consider failure to submit a final report within a reasonable length of time an example of poor financial management and take this into account when the fiscal performance of the grantee is evaluated. A resultant poor evaluation could result in a denial or delay in refunding, grounds for tighter fiscal controls on other HDS grants, or other appropriate action. Language has been added to section I.3, Liquidation of Obligations, of Chapter 1, and section A.2, Financial Status Report, of Chapter 6 to strengthen our position on the need for a timely submittal of the Financial Status Report.

11. *Comment:* The section on Transferring Work Through Subgrants or Procurement Contracts Under Grants is lengthy, unclear, and confusing.

Response: After careful consideration we have determined that one addition is necessary in this section. The paragraph in Chapter 1, section K.1 describing prior approval requirements reflects Departmental policy stated in Chapter 1-430 of the HHS/GAM. The paragraph in section K.2 which provides guidance in selecting the proper award instrument has been viewed by most reviewers as being helpful and concise. We have added a sentence to Section K.2 to make a clear distinction regarding the appropriate use of a subaward and a contract.

12. *Comment:* The subsection on Budget Changes distorts the prior approval requirements of the cost principles contained in OMB Circulars A-21, A-87, and A-122 concerning equipment and other capital expenditures. The prior approval requirements in these circulars are not consistent with each other.

Response: We do not believe the HDS/GAM distorts the prior approval requirements set forth in the cited OMB circulars. Although these circulars have different requirements, we are using the authority assigned to us in 45 CFR 74.177(c) to impose the same requirements on all HDS grantees. Thus, in some cases, the requirements on HDS grantees are less rather than more restrictive.

All three circulars that apply to HDS recipients, A-21, A-87, and A-122, have prior approval requirements for the purchase of equipment. The only difference is the threshold which triggers the necessity for prior approval. In interpreting A-87 as it applies to HDS discretionary grants, the provisions dictate prior approval for virtually all items of equipment. A-21 and A-122 are more permissive and require prior approval only for items of equipment having a useful life of two years or more and an acquisition cost of $500 or more per unit. The manual simply waives the stricter requirements of A-87 and imposes the same requirements as A-21 and A-122 so that we have a consistent policy for all HDS grantees.

13. Comment: In Chapter 1, section L.1, Prior Approval Procedures, HDS warns the recipient with regard to acting on written prior approval from HDS when the approved expenditure or activity is unallowable. HDS should not place the burden of responsibility on the recipient, but on HDS, when it approves an unallowable cost or activity.

Response: No change has been made in the manual with regard to this issue. This section was intended to alert grantees as to who the proper officials are when requesting changes. HDS does not assume responsibility for the actions of its employees who act beyond the scope of their authority, orally or in writing. If proper approval has been obtained, and, thereafter, an expenditure or activity is found to be unallowable, the HDS awarding office will carry the weight or responsibility for rectifying the problem. Responsibility still rests with the

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grantee, however, to be cognizant of HHS regulations regarding prior approval procedures as specified in 45 CFR 74.102.

14. Comment: Pub. L. 96–205 states in part that an agency or department shall waive any requirement for local matching funds under $100,000 required by law to be provided by the Northern Mariana Islands and American Samoa. Additionally, Pub. L. 95–348 states that certain grant funds made available to the Northern Mariana Islands shall remain available until expended. Provisions of the manual should reference these two statutes.

Response: As stated in the Introduction, Federal legislation takes precedence where a conflict exists with a provision of the manual. We consider this statement sufficient. It includes by implication Pub. L. 96–205 and Pub. L. 95–348 regarding the Northern Mariana Islands and American Samoa. However, with respect to the issue of funds being available until expended, Pub. L. 95–348 deals with matching formula and/or allotment programs, and would not apply to the discretionary grants covered by the HDS/GAM. No change has been made in the manual.

15. Comment: Chapter 2, section D, Valuation of Third-Party In-Kind Contributions, states that a reasonable amount of uncompensated employee time may be charged as an in-kind contribution to the project provided the services are not within the scope of the employee's paid employment. Since uncompensated time involves no cost to the grantee, this section should be deleted.

Response: Volunteer services are encourage by HDS as an acceptable in-kind contribution. As long as the grantee complies withe provisions of the HDS/GAM, and the services performed are reasonable, necessary, and allowable to the projects, such activity should be allowable as an in-kind contribution. No change has been made to the manual on this issue.

16. Comment: The Cost Transfers discussion in Chapter 3, section A.3, is confusing. The section is concerned with transferring costs into and out of HDS grant accounts due to errors and/or closely related work. The discussion appears to accept cost transfers as a standard grantee practice and thus might mislead grantees into believing that improper allocation of costs is acceptable.

Response: We agree and have deleted this topic from the manual.

17. Comment: Major subawards should not be excluded from the direct cost base when computing the amount of indirect cost dollars to be awarded under a grant.

Response: It is necessary to exclude major subawards from the direct cost base to assure that the recipient organization is equitable and based on relative benefits received. Clarifying language has been added to the third paragraph of section B.1 of Chapter 3, Indirect Costs, to explain the purpose of the base exclusion and to emphasize that the specific elements of cost to be excluded from the direct cost base should be part of the indirect cost negotiation and approval process.

18. *Comment:* The discussion of child care costs as allowable costs should require that such costs be authorized by the recipient's written policy.

Response: We agree. To avoid possible internal organization conflicts and to ensure consistency, child care costs should be addressed in the grantee's written policy. Language has been added to the discussion of this item in section D, Allowable Costs, of Chapter 3, to include this requirement.

19. *Comment:* The HDS/GAM should provide for payment for unused accumulated leave only upon termination of a grant or termination of an employee paid under a grant, and it should state that payment of cash in lieu of leave at year-end is unallowable.

Response: The HDS/GAM is not intended to supersede an organization's consistently applied policies of accounting for compensated absences. If it is an organization's policy (though it is rare) to pay for accumulated leave at the end of a fiscal period, then HDS would not interfere with this policy by placing strictures on those employees working on HDS funded projects.

The discussion of this issue, which appears in section D, Allowable Costs, of Chapter 3, was meant to describe how and when costs associated with earned leave should be recorded under an accrual system or a cash system. The section has been revised to state that, under a cash system, the cost is incurred when the earned leave is taken by the employee and paid by the employer.

20. *Comment:* The interest costs provision in section E, Unallowable Costs, of Chapter 3, is obsolete for educational institutions, since OMB Circular A–21 has been revised.

Response: We agree. We have revised this paragraph on interest costs to conform to the current provisions in OMB Circular A–21 for educational institutions.

21. *Comment:* The manual should reflect the use of the SF–270, Request for Advance or Reimbursement, when advance payments by Treasury check are not made on a predetermined basis.

Response: Language has been added to sections A.2 and A.3 of Chapter 4 and to section A.5 of Chapter 6 requiring the use of this form when payments are not made to a recipient on a predetermined basis (see 45 CFR 74.75(a)(1)).

22. *Comment:* The discussion of program income as it relates to the sale of donated goods or services should be deleted or qualified to reflect the fact that the recipient must report program income only in a share proportionate to the direct costs charged to the program in connection with the generation of the income.

Response: In those instances where program income is generated from the results of non-grant related activities as well as grant activities, the grantee would only report income earned from those activities directly associated with the grant. The commenter's point would appear to be an extrapolation from the definition of program income, but, for the sake of clarity, we have included his distinction in the part of this section dealing with reporting.

In addition, we have deleted the cake sale example relating to the sale of donated goods or services. Since fund-raising costs are not allowable under Federal grant programs, HDS cannot permit grant funds to be used for fund-rasing activities. There may be instances in which a grantee wishes to occasionally conduct fund raising in a building whose cost is charged entirely to an HDS grant. This is permissible provided the incidental use of the building for fund-raising is minor and immaterial and does not interfere with the grant project. As an example, if a grantee held a dance in the Head Start Center to raise money for the program, the net profit of income over expenses would not be program income. Rather, the net profit coud be used as a donation to the program as a cash contribution to help satisfy non-Federal share requirements. The generation of that contribution would be irrelevant.

23. *Comment:* There are basically three different alternatives for the use of progrm income: (1) The deduction alternative, (2) The matching alternative, and (3) The additional costs alternative. These terms should be further clarified, and requirements for reporting program income should be clearly stated to avoid confusion.

Response: We agree. Language has been added to section D.2.d of Chapter 4 to clarify the alternatives and uses of program income. We have also further amended this section to clarify the correct methods of reporting program income on the financial status report.

24. *Comments:* (1) The language in section E, Chapter 4, Reimbursements From Other Federal Agencies, is not consistent with procedures currently established in the Head Start program with regard to USDA reimbursement under the Child Care Food Program; and (2) the section as written might encourage a recipient to request funding for the same costs from several Federal funding sources.

Response: We agree. We have deleted from the section language which may appear misleading or conflicting.

25. *Comment:* In the Definitions section, the term "consultant" should exclude all employees of the recipient organization without regard to the services they perform.

Reponse: In general, we try to follow the provisions of the HHS/GAM (in this case, Chapter 1–45), especially when doing so has been beneficial to the grantee as well as to the HDS mission. In this case, we would lose a considerable pool of expertise if we could not pay consultant fees to university professors and other professionals who would fall under its pressure. We believe it is not in the public interest to unnecessarily limit consultant fees when there is no conflict of interest between those who would be affected and the grant. Therefore, no change has been made.

26. *Comment:* The discussion of lease versus purchase in section D of Chapter 8 of the manual (1) distorts the prior approval requirements of the cost principles; (2) overstates the requirements of Attachment O of OMB Circular A–102 and A–110, and (3) in the case of educational institutions, does not reflect the revised interest provisions in OMB Circular A–21.

Reponse: (1) We have revised Chapter 8, section D, lease vs. purchase, to delete the reference to prior approval; (2) we have corrected the overstatement of the requirement of Attachments O of OMB Circulars A–102 and A–110 by replacing "shall" with "should" in the following passage: "Generally, the decision to lease or purchase equipment *should* be based on the lowest cost to the project considering the length of the project and life expectancy of the equipment", and (3) we have added language which calls to the attention of educational institutions the revision in OMB Circular A–21 which deals with interest.

27. *Comment:* The independent auditor qualifications for public accountants discussed in Chapter 11, Section A, Non-Federal Audits, is an arbitrary and discriminatory requirement. The General Accounting Office (GAO) standard should not be included in the HDS/GAM.

Reponse: The use of Certified Public Accountants (CPAs) for audit work has been a longstanding practice with the Department and is consistent with general Federal practice. Both private and public sectors have found the objectivity and quality of work provided by CPAs extremely valuable in performing monitoring functions as well as safeguarding Federal funds. In addition, in this matter, we are complying with Departmental policy as dictated by GAO. No changes have been made in our requirements.

28. *Comment:* Section B, Audit Resolution, of Chapter 11 should make a clear distinction between the two basic kinds of audit findings, (1) management and systems deficiencies and (2) monetary findings. It should also distinguish between the time frames and actions required for the resolution of each kind of audit finding, and the nature of subsequent HDS actions.

Reponse: This section hs been revised to make clear that the audit resolution process is aimed at agreement between the HDS awarding agency and the grantee. Since there is not always agreement, it also addresses HDS's authority to make unilateral decisions. To clarify the difference between audit resolution and debt collection we have reorganized the section to treat each topic separately.

Dated: February 19, 1986.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Final notice is given to the applicability of the HDS Discretionary Grants Administration Manual as published in the **Federal Register** on October 7, 1982, with the following changes:

a. In the "Definitions" section we will add:

- *Capital Expenditure*

The cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the organization's regular accounting practices. (See definitions of "acquisition cost" in 45 CFR 74.132 and OMB Circular A–122, and "capital expenditures" in OMB Circular A–21.)

b. In Chapter 1, section A.2.a, the final sentence of the first paragraph will be amended to read:

This announcement descibes the program, the amount of funds available, eligibility requirements, where to obtain application forms, the deadlines for submitting an application, criteria for review and evaluation, funding priorities, and other information about the activity.

c. In Chapter 1, section A.2.a, the second sentence in the second paragraph will be amended to read:

In these cases, announcement of the availability of funds may be made through: (1) Publishing a notice in the **Federal Register;** (2) Individual letters to all prospective applicants; (3) Publishing notices in newspapers; or (4) other suitable forms of public notice.

d. In section E, Chapter 1, the provisions concerning the Intergovermental Review of Federal Programs will be completely revised as follows:

E. Intergovernmental Review of Federal Programs

Cross-references:

Executive Order 12372
45 CFR Part 100

1. Background

The Intergovermental Review System established by OMB Circular A–95 was replaced by Executive Order (E.O.) 12372 "Intergovernmental Review of Federal Programs", signed by President Reagan on July 14, 1982. Unders E.O. 12372 and implementing DHHS regulations published at 45 CFR Part 100, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. A list of HDS covered programs is included as Attachment B to this manual. [For clarity, a list of HDS programs which are not covered by the Order is also included.]

The objectives of the new approach under E.O. 12372 are to (1) increase State flexibility to design a process and select programs, (2) increase the ability of State and local elected officials to influence Federal decisions, and (3) compel Federal officials to be more responsive to State concerns, or explain the reasons why they cannot accomodate those concerns. Nearly every State has adopted a State process and designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for coordinating and sending official State process comments and recommendations to Federal agencies.

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All organizations submitting applications subject to E.O. 12372 review should contact the cognizant SPOC (if one has been designated) as early as possible for instructions regarding the State's process.

2. Applicability

The requirements of this section are applicable to all HDS discretionary programs covered by E.O. 12372 except those administered by Federally-recognized Indian Tribes. Changes and additions of covered programs in 45 CFR Part 100 will be announced in the Federal Register.

3. The HDS Process

a. New and Competing Continuation Awards

The responsible HDS granting office will notify the SPOCs as early as possible of the intent to issue new or competing continuation financial assistance awards through the publication of a program announcement in the Federal Register. If every eligible applicant is identifiable by the granting office, the announcement may be mailed to each of them directly instead of being published in the Federal Register.

The program announcement will specify the due date for comments from the SPOCs. That date will normally be the 60th day after the application deadline date. The program announcement and/or the application kit will include a current listing of SPOCs to facilitate early notification. Application kits will include information relating to compliance with the procedures described in this section.

b. Noncompeting Continuation Awards

As early as possible, the cognizant HDS Grants Officer will notify the appropriate SPOC of the intent to make a noncompeting continuation award. For noncompeting continuations which are generally refunded on a continuous basis, e.g., Head Start, the Grants Officer will send out an early notification letter in July of each year. This letter will alert the SPOC of anticipated funding for the subsequent fiscal year beginning October 1 and will indicate the due date for comments from the SPOC. That date will normally be the 30th day afer the application deadline date.

For other noncompeting continuations, HDS will notify the SPOC with a copy of the recipient's refunding guidance letter. This letter is mailed to the recipient six months prior to the continuation date, and will simultaneously be mailed to the cognizant SPOC. Again, an accompanying letter will inform the SPOC that it will have until 30 days after the application deadline date to submit comments. Current grantees receiving continuation application kits or instructions should notify the SPOC that they are applying for a non-competing continuation award with a 30 day rather than a 60 day review period.

c. Applicant Compliance Certification

Applicants shall certify that they have contacted the cognizant SPOC by checking the appropriate box in Item 22 of Standard Form 424, Federal Assistance. If more than one State will be served by the proposed project, the SPOC of each State in which the project will operate should be contacted by the applicant. The applicant's certification in Item 22 serves as assurance that *all* States to be served have been contacted. The Grants Officer will screen each application to ensure that the certification in Item 22 has been included, and immediately notify the SPOC of the receipt of any covered application which should, but does not, indicate that the SPOC has had an opportunity for review.

4. Handling Of State Process Recommendations: The "Accommodate or Explain Rule"

a. The "accommodate or explain" rule applies when all of the following are present:

(1) A written comment that constitutes a State process recommendation is received by the HDS official designated to receive applications.

(2) The comment is sent or transmitted by the SPOC.

(3) HHS has stated in the Federal Register that the program is covered by E.O. 12372.

(4) The applicant is not a Federally-recognized Indian Tribe.

(5) The comment is received not later than the established due date for State process comments.

b. If all of the factors listed in the preceding paragraph are present, the "accommodate or explain" rule is triggered even if the program is not one that was officially selected for review in the State process.

c. A mere endorsement of a grant application does not trigger the "accommodate or explain" rule. However, a comment that prioritizes or ranks applications does trigger the rule (if all of the factors listed in paragraph a above are present).

d. When the "accommodate or explain" rule applies, HDS must make every effort to accommodate the State process recommendation.

e. The HDS granting office will notify the SPOC in writing whether we accommodate or non-accommodate a State process recommendation to which the "accommodate or explain" rule applies.

5. Accommodations

Accommodating a State process recommendation consists of either: (1) Accepting and carrying out the recommendation, or (2) Negotiating a mutually agreeable solution with the SPOC or State process representative.

6. Nonaccommodations

a. Nonaccommodation occurs when:

(1) The State process recommends that an application not be funded, and HDS decides to fund it; or

(2) The State process recommends substantive changes to the application or special conditions in the award and HDS decides to fund the application without these changes or special conditions; or

(3) The State process indicates that a particular application should be chosen for funding over others, and it is not funded while other, lower priority applications are.

b. Explanation requirement:

When a decision is made not to accommodate a State process recommendation, the HDS granting office must promptly send a written explanation of the reason(s) to the SPOC.

c. Delay of implementation: A nonaccommodation decision must not be implemented for at least ten days after the SPOC is first notified of the decision. (See paragraph 7 below concerning exceptions to this rule.) This waiting period requirement is intended to provide adequate time for the State process to formulate an appropriate response if the issue is sufficiently important within the State. Every nonaccommodation explanation given to a SPOC shall notify the SPOC of the specific date after which HDS may implement the nonaccommodation decision. Neither the awards for successful applications nor the disapproval letters for nonsuccessful applicants shall be mailed until after the ten day waiting period has expired.

7. Unusual Circumstances and Waivers

In unusual circumstances, the Department may allow a reduction in: (1) The 60 day waiting period for new and competing continuations; (2) The 30 day waiting period for noncompeting continuations; or (3) The 10 day waiting period for nonaccommodation letters. For example, a statutory deadline, an emergency, or the end of the fiscal year may necessitate a shorter period. This authority is used sparingly to deal with unforeseen situations or problems beyond the Department's control.

e. In Chapter 1, section F, the final two sentences will be deleted.

f. In Chapter 1, section I.1, the following insert will be added after the first sentence:

(Note.—HDS program announcements generally specify the length of the project period covered by the grant award. Further information is provided for some HDS programs in the *Catalog of Federal Domestic Assistance.)*

g. In Chapter 1, section I.2, the table showing when obligations must be charged will be changed as follows:

If the Obligation is for:

- Services by a contractor (except for audit services).
- Audit services.

The Obligation is made:

- When the services are provided.

h. In Chapter 1, section I.3, the second paragraph will be revised to read as follows:

If it is not possible to liquidate totally all obligations within the 90-day period specified for submission of a final report, grantees shall notify the HDS Grants Officer in writing and request approval for an extension of time in which to liquidate obligations. At the same time, grantees shall submit a "provisional" final report, indicating when the final report may be expected. Provisional final reports must be submitted on a quarterly basis until all obligations have been liquidated.

Note.—Failure to submit a final report within a reasonable length of time would be considered an example of poor financial management and taken into account when the fiscal performance of the grantee is evaluated. (See Chapter 6.A.2 for more information on the importance of timely reporting.)

When all obligations have been liquidated, the grantee shall submit a final expenditure report, showing $0 balance on line 10(h) of the SF–269. This $0 balance must also be reflected on the final Cash Transactions Report (SF–272 or PMS–272) which must be submitted with the final SF–269.

i. In Chapter 1, section K.2, the following sentence will be added after the fourth sentence of the first paragraph:

If the grantee intends to *assist* a lower tier party, the award should be made as a subgrant. Where a service is acquired or *purchased,* the award should be a procurement (contract).

j. In Chapter 3, delete section A.3, Cost Transfers.

k. In Chapter 3, section B.1, the first two sentences in the third paragraph will be amended to read:

The indirect cost rate is the ratio, expressed as a percentage, between the indirect costs and a direct cost base, commonly either direct salaries and wages or total direct costs, excluding capital expenditures and other distorting items (such as major subawards and flow-through funds). These base adjustments are necessary to ensure an equitable allocation of indirect costs based on relative benefits received. A definition of the direct cost base, (e.g., the types and/or amounts of distorting items to be excluded from the direct cost base) will be agreed upon as part of the approval process in establishing the organization's indirect cost rate(s) and will be contained in the Rate Agreement.

l. In Chapter 3, section D, the discussion of Child Care Costs in the Allowable Costs Section will be changed as follows:

- *Child Care Costs*

Where authorized by the recipient's written policies, child care costs to allow authorized participants or representatives to attend official board or council meetings, subject to limitations in program guidelines or regulations.

m. In Chapter 3, section D.(1), the discussion of Fringe Benefits will be changed to read as follows:

(1) *Employee sick, vacation, and other leave costs* may be accumulated on an accrual basis or a cash basis provided that an established written policy is consistently applied on an organization-wide basis. Under an accrual accounting system, the costs are recorded when leave is earned. (This meets the requirements of generally accepted accounting principles concerning liability for employee's compensation for future absences.) Under a cash accounting system, the costs are recorded when leave is taken by the employee and paid by the employer.

n. In Chapter 3, section E, the paragraph on interest on borrowed capital or temporary use of endowment funds will be changed to indicate that these costs are unallowable except as follows:

(1) In the case of State, local, and Federally-recognized Indian Tribal governments, interest costs associated with the acquisition of publicly owned buildings which are newly occupied on or after October 1, 1980 are allowable if a "rental rate" system or equivalent system reflecting actual costs is used (see section C.2.a and D.7 of Attachment B of OMB Circular A–87).

(2) In the case of educational institutions subject to the cost principles in OMB Circular A–21 (subsection J.17.e), the cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements and the total cost (including depreciation or use allowance, operation and maintenance costs, interest, etc.) does not exceed the rental cost of comparable assets in the sâme locality:

(a) Buildings acquired or completed on or after July 1, 1982.

(b) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(c) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing $10,000 or more, if agreed to by the Government.

o. For Chapter 4, Section A.2, Method of Payment, the passage entitled Advance by Treasury check will be amended by the addition of the following passage as the last sentence:

For grants paid through the Division of Accounting Operations or the Regional Administrative Support Center, advances are made through either: (1) Receipt of the SF–272; (2) Payment schedules submitted for new awards; or, (3) By the grantee regularly submitting the SF–270, "Request for Advance or Reimbursement."

p. Chapter 4, section A.3.b, first paragraph, will be changed in its entirety to read:

The HDS Grants Officer, at the time of a new award, sends a payment authorization package containing the grantee's forecasted cash needs for the first four months of the award to DAO or RASC. The finance office makes out a schedule of payments based on the forecasted cash needs and sends it to Treasury, where a check is automatically issued to the grantee at or near the beginning of each month. Subsequent payment requests in three month increments are provided by the grantee as part of the quarterly SF–272, Federal Cash Transactions Report, which are in turn forwarded by DAO or RASC to Treasury. If the grantee submits the SF–270 to request payments, a check is released to the grantee after the form is received and processed.

q. In Chapter 4, section D.2.b, the first example of monies received from sale of donated goods or services "cake sales for Head Start program", will be deleted.

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r. In Chapter 4, section D.2.d, the discussion of the options (in bullets) is revised to read as follows:

- Income is deducted from the total project costs and third-party in-kind contributions for the purpose of determining the amount to which the maximum Federal share percentage will be applied. [See *deduction alternative* in 45 CFR 74.42(c).] Under this alternative, the recipient must use the income to reduce the amount of Federal and other funds needed to pay the allowable costs of the project.

Income under this option, when received, must be used for current costs before grant funds. However, the HDS granting office may authorize carryover of income received by the recipient to the recipient's next funding period. If so, the recipient shall use the income carried over before it uses grant funds in that period.

- Income is used for costs that count toward satisfying a matching requirement. [See *cost-sharing or matching alternative* in 45 CFR 74.42(d).] The income, when received, must be used to provide the matching before grant funds are used. The carryover provisions of the deduction alternative also apply to this alternative.
- Income is used by the recipient for costs that further the objectives of the statute under which the grant was made but which are not part of the project budget. They may be allowable or unallowable types of costs. Used in this fashion, income is not deducted from the total project costs when filling out the financial status report and is not required to be used before grant funds; but, it does have to be reported. No authorization from the granting office is necessary if the income is to be used in a later period. [See *additional costs alternative* in 45 CFR 74.42(e).]

The additional costs alternative described in 45 CFR 74.42(e) may not be applied to program income earned by a recipient that is a for-profit organization.

s. The section on Reporting in Chapter 4, Section D.2.d is revised as follows:

The following information pertaining to program income must be reported on the SF–269: (1) Source (or how the income was earned); (2) Amount, and (3) Disposition (identify which alternatives the income was used under and how much for each). Specific instructions for reporting general program income earned on the Financial Status Report (SF–269) are as follows:

(1) Enter on line 10.c all general program income used during this period in accordance with the *deduction alternative.*

(2) Costs paid during the period by general program income under the *matching alternative* (if permitted by the terms of the grant) must be included in line 10.f, and the amount of costs on that line paid by the income must be stated in item 12 (i.e., if any of the costs on line 10.f were paid by general program income, state the amount in item 12).

(3) The amount of costs paid during the period by general program income under the *additional costs alternative* (if permitted by the terms of the grant) must be stated in item 12 along with a description of the purposes for which the income was used.

(4) If any general program income is being held for use in a later period (to the extent such a deferral is authorized), state the amount in item 12.

(5) If any alternative besides the deduction alternative is permitted or if deferral to a later period is authorized, report the amount of general program income earned during the reporting period in item 12.

(6) In item 12 list the sources of the income earned during the reporting period or describe how the income was earned. If the sources or means are the same as those set forth in the application, state "see application" in item 12.

(7) As a minimum, program income must be reported in a share proportionate to the direct costs charged to the progam (or charged to the match) in connection with the generation of the income.

(8) Since interest earned is reported on the SF–272, it is not necessary to report interest on the SF–269.

(9) If SF–270, Request for Advance or Reimbursement, is used to request cash, also report program income in item 11.b of this form.

t. Chapter 4, section E will be substantially shortened to read as follows:

E. Reimbursements From Other Federal Agencies

HDS encourages grantees to seek other Federal funds to supplement financial assistance provided by HDS grant funds. Grantees should anticipate the funding of these project costs by sources other than HDS and should not request funds from HDS to support these same activities.

u. In Chapter 6, section A.2, the following passage will be added as the third paragraph:

In unusual circumstances, the deadline date for submitting a final report may be extended for a reasonable time period (if requested in writing and approved by the Grants Officer). However, the grantee should be advised that failure to submit the final financial status reports within a reasonable period of time would demonstrate poor financial management which could potentially result in a denial or delay in refunding, grounds for tighter fiscal controls on other HDS grants, or other action as may be deemed necessary by the Grants Officer.

v. Chapter 6, section A.5 will be revised to read as follows:

5. Request for Advance or Reimbursement

Cross references:

- 45 *CFR* 74.75, and
- Exhibit X–6–4 of this chapter.

HDS uses Standard Form 270, "Request for Advance or Reimbursement" when: (1) Advance payments by Treasury check are *not* made for a nonconstruction grant on a predetermined basis; (2) A grantee is paid by reimbursement for a nonconstruction grant; or (3) a grantee is paid by advance or reimbursement for a construction grant. The frequency for submitting payment requests is discussed in 45 CFR 74.96 and Chapter 4.A of this manual.

w. Chapter 8, section D, will be changed to read as follows:

D. Lease Versus Purchase

Appendices G (paragraph 8) and H (paragraph 3.C.(1)) of Part 74 require that an analysis shall be made of lease versus purchase alternatives to determine which approach would be the most economical. Generally, the decision to lease or purchase equipment should be based on the lowest cost to the project considering the length of the project and life expectancy of the equipment. In the case of the educational institutions, which can pay interest in certain circumstances, consideration should also be given to the provisions regarding interest in section J.17.e of OMB Circular A–21 (see "Interest Costs" in Chapter 3.E of this Manual).

x. Chapter (11, section A, first paragraph, will be revised to read as follows:

A. Non-Federal Audits

Subpart H of 45 CFR Part 74 (and 45 CFR Part 74, Appendix J) incorporates the audit requirements in OMB Circular A–128 covering governmental recipients and OMB Circular A–110 (Attachment F) for non-governmental recipients. The audit requirements in Circulars A–128 and A–110 are reproduced in Attachment A of this Manual.

In summary, Circular A–128 replaces Attachment P to OMB Circular A–102. The Circular implements the Single Audit Act of 1984. All governmental

recipients receiving $100,000 or more in Federal funds are to be audited annually unless the government has specific authority to perform less frequent audits. Circular A–110 provides that each recipient must have itself audited by non-Federal auditors at least every two years and that the audit is to be performed on an organization-wide basis, with appropriate sampling of grant-related transactions. Unless authorized by program legislation or regulations, the granting office may not impose grant-by-grant (or subgrant-by-subgrant) audit requirements.

y. Chapter 11, section B, will be amended and a new section C will be added as follows:

B. Audit Resolution

Grantees must take timely and appropriate action to resolve audit findings and recommendations, including (1) management and systems deficiencies and (2) monetary findings (i.e., questioned costs). Grantees are usually allowed a 30-day period from the date of request to respond to the responsible audit resolution official (referred to as the "Action Official") concerning audit findings. Thus, grantee organizations have an opportunity to provide any further information they may wish to provide on the audit report. Both monetary and non-monetary findings must be resolved within six months. This means that (1) a final decision on the amount of any monetary recovery must be reached and (2) a satisfactory plan of corrective action, including time schedules, to correct all deficiencies must be established.

Failure to submit timely responses will result in a unilateral determination on the audit findings. If appropriate, the Action Official will also initiate "safeguard" procedures to protect the Government's interests. At the completion of the audit resolution process, the grantee will be notified of the final decision. The grantee may appeal this decision in accordance with the applicable appeal procedures (see Chapter 12).

C. Debt Collection

Funds owed to the Federal Government as a result of audit disallowances signed by the appropriate HDS official must be repaid. The Finance Office is primarily responsible for interest calculation and all other debt collection activities. Interest charges will be assessed from the date of the HDS Official's notification of the disallowance if the disallowance is not paid within 30 days of the date of the disallowance letter. If the grantee appeals the final decision and the disallowed amount is sustained in its entirety or is reduced through a negotiated agreement, interest will be charged for the full period on the sustained amount of the disallowance which was not paid by the date of the disallowance letter.

[FR Doc. 86–4248 Filed 2–26–86 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Refugee Resettlement Program; Proposed Formula for Allocations to States of Fiscal Year 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Notice of proposed formula for allocations to State of fiscal year 1986 funds for refugee and entrant social services.

SUMMARY: This notice proposes the formula for allocation to States of FY 1986 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1986 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

DATE: Comments on the allocation method provided for in this notice will be considered if received by March 31, 1986.

ADDRESS: Address written comments in duplicate, to: David Howell, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C Street SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: David Howell, (202) 245–1923.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $44,802,000 in refugee/entrant social service funds for FY 1986. This is the amount that was originally requested in the President's Budget for FY 1986. Under the Continuing Resolution for 1986 (Pub. L. 99–190), Congress made $71,700,000 available for social services; this was then reduced to $68,617,000 as a result of the 4.3% reduction required to be taken under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177), generally referred to as Gramm-Rudman-Hollings. On February 5, 1986, the President proposed a rescission of those FY 1986 social service funds in excess of the original request of $44,802,000. Congress has not yet acted on this proposed rescission. In the event that funds above the $44,802,000 addressed by this notice were to be finally available, ORR would plan to increase proportionally the State allocations proposed here, based on the same population formula as that contained in this notice.

Of this total of $44,802,000, the Director of ORR proposes to make available to States $35,829,647 during FY 1986 under the social services allocation formula set out in this notice. Separate announcements have been made of remaining funds not included in this notice.

All allocation figures include both refugees and entrants, since both populations may be served with funds made available under this notice.

The Director proposes to allocate funds directly to States in the following manner:

- $33,700,001 (75% of the available social service funds) would be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1985.
- $196,286 of the funds would be made available to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of $45,000 for States for which the formula would otherwise yield less than that amount. In FY 1985, the floor amount was $75,000; the floor amount of $45,000 is proposed for FY 1986 to take into account the overall reduction in funds to be allocated.
- $1,933,360 of the funds would be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a $5,000 floor) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). A written assurance that these funds will be used for MAAs would be required in order for a State to receive these funds. Guidance for States regarding this assurance is provided in Section II of this notice.

Of the $8,972,353 in remaining social service funds, the Director anticipates making about $2,000,000 available to States, if necessary, to provide funding beyond the proposed formula resulting from any adjustment made in population estimates (see Section III, below) specified in Section IV. In addition, $7,000,000 is currently expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

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The discretionary funds will support: Specific program activities (listed below) designed to improve the delivery of services to refugees in areas designated in announcements of the availability of funds; an interagency agreement with the U.S. Public Health Service for the improvement of State mental health services to refugees; contracts to provide technical assistance to refugee service providers; and such activities as the Director determines to be required to address unique refugee service gaps. Announcements of the availability of funding and grant application procedures for some projects have been issued (Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; Availability of FY 1986 Funding for Grants to States to Implement Comprehensive Discretionary Social Services (CDSS) Projects for Refugees, Memorandum to State Refugee Coordinators issued December 19, 1985; Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985).

II. Proposed Formula

Under this proposal, $33,700,001 of the funds available for FY 1986 for social services would be allocated to States in accordance with the formula specified below. A State's allowable allocation would be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—
2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—
3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1985, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. The MAA incentive award supplements will be made subsequently, contingent upon letters of assurance from States.

The proposed formula is identical to that used by ORR for social service allocations in FY 1984 and FY 1985. States have generally supported the concept of this type of formula, which is based on 3-year population estimates, and have supported proposals that minimum amounts be provided to States with small refugee/entrant populations. We believe this position to be programmatically sound, since data on refugee receipt of cash assistance show the highest to occur during a refugee's first 3 years in the United States.

ORR has reviewed available data regarding the need for social services, and has considered relevant information derived from previous experience in the formula allocation of social service funds, comments received in the FY 1983, FY 1984, and FY 1985 allocation proposals, and numerous consultations with States. From this review, ORR has concluded that the proposed formula will result in allocations being made available to States on an equitable basis. Under this proposal, each State would receive funds in proportion to its population of refugees generally having the greatest need for services. Additional special needs of States will be considered under ORR's CDSS announcement.

While the proposed formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only three years. States may provide services without regard to an individual refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Adminstered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice would be subject (as were FY 1985 funds) to a requirement that at least 85 percent of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act section 412(a)(1)(B).) As in FY 1985, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15 percent.

States should also expect to use funds proposed under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985, in addition to providing funds for the refugee program, amended the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.[1]

The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583; June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds proposed for allocation under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. The belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore, additional funds which would be targeted specifically to these organizations have been included in the proposal as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official shall provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency is using funds made available to the State under this special allocation:

(1) That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

(2) That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

(3) That the State agency will observe the following definition of a mutual assistance association:

(a) That the organization must be legally incorporated as a non-profit organization; *and*

(b) That not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

(4) That the State agency shall assist MAA's in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201, with a duplicate copy to the appropriate ORR Regional Director. It will be assumed that States which have not responded by May 30, 1986, do not intend to avail themselves of this special allocation.

III. Basis of Refugee and Entrant Population Estimates

The population estimates for the proposed allocation of funds in FY 1986 are based on the ORR Refugee Data System, adjusted as of October 1, 1985, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1982. Figures for entrants resettled are based on data maintained by the ORR Florida Office.

For fiscal year 1986, ORR's formula allocations to the States for support services for refugees are to be based on the numbers of refugees who arrived, and entrants who arrived or were resettled, during the preceding three fiscal years: 1983, 1984, and 1985. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1982, and September 30, 1985, who are thought to be living in each State as of October 1, 1985. The population estimates for the fiscal year 1986 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

The adjustments made to the base arrival figures for estimated secondary migration were compiled primarily from Forms ORR-11 submitted by the States. At the time these estimates were compiled, all State data submissions were considered to be final. Findings from the February 1985 refugee child count of the U.S. Department of Education were also used selectively to adjust State population estimates.

Estimates have been developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the population totals nationwide 3,600 refugees who were resettled subject to a full Federal match of $1,000 under ORR's voluntary agency program (often referred to as the matching-grant program) with national voluntary refugee resettlement agencies. The social service funds available to serve refugees not covered by the voluntary agency program are limited and, ORR believes, should be directed to the areas where those refugees live.

Table 1, below, shows the estimated three-year populations, as of October 1, 1985, of all refugees (col. 1), excluding those matching-grant refugees discussed above; entrants resettled between October 1, 1982 and September 30, 1985 (col. 2); the total of these figures (col. 3); the formula amounts which the population estimates yield (col. 4); the proposed allocations after allowing for the minimum amounts (col. 5); and the amount available as an incentive to States to use MAA's as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section V of this notice.

IV. Proposed Allocations

The following allocations are proposed for refugee social services in FY 1986:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1986

State	Refugees	Entrants	Total	Formula amount	Proposed allocation	MAA incentive allocation
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	939	0	939	$160,972	$160,972	$9,078
Arizona	2,117	0	2,117	362,915	362,915	20,461
Arkansas	807	0	807	138,343	138,343	7,801
California	64,652	104	64,756	11,101,047	11,101,047	625,975
Colorado	2,008	25	2,033	348,515	348,515	19,649
Connecticut	2,474	11	2,485	426,001	426,001	24,016
Delaware	27	0	27	4,629	45,000	5,000
Dist. Columbia	497	1	498	85,372	85,372	5,000
Florida	4,164	393	4,557	781,201	781,201	44,044
Georgia	3,320	30	3,350	574,287	574,287	32,378
Hawaii	839	0	839	143,829	143,829	8,109
Idaho	865	0	865	148,286	148,286	8,360
Illinois	8,219	31	8,250	1,414,286	1,414,286	79,737
Indiana	643	0	643	110,229	110,229	6,215
Iowa	1,886	0	1,886	323,315	323,315	18,229
Kansas	2,620	0	2,620	449,144	449,144	25,323
Kentucky	671	0	671	115,029	115,029	6,486
Louisiana	2,887	11	2,898	496,801	496,801	28,010
Maine	933	3	936	160,457	160,457	9,047
Maryland	3,175	3	3,178	544,801	544,801	30,716
Massachusetts	8,534	34	8,568	1,468,802	1,468,802	82,811
Michigan	3,444	1	3,445	590,572	590,572	33,296
Minnesota	5,033	17	5,050	865,716	865,716	48,809
Mississippi	401	0	401	68,743	68,743	5,000
Missouri	2,313	6	2,319	397,544	397,544	22,413
Montana	77	0	77	13,200	45,000	5,000
Nebraska	464	0	464	79,543	79,543	5,000
Nevada	800	96	896	153,600	153,600	8,660

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[1] This provision, generally known as the Wilson/Fish Amendment (Pub. L. 98-473), was originally included in the House-passed reauthorization of the Refugee Act, H.R. 3729, as modified and reported by the Senate Judiciary Committee.

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TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1986—Continued

State	Refugees	Entrants	Total	Formula amount	Proposed allocation	[illegible] incentive allocation
	(1)	(2)	(3)	(4)	(5)	(6)
New Hampshire	357	0	357	62,914	62,914	5,000
New Jersey	2,750	102	2,852	499,916	499,916	27,565
New Mexico	459	0	459	77,140	77,140	5,000
New York	14,817	175	14,992	2,518,683	2,518,683	142,000
North Carolina	1,777	1	1,778	304,891	304,891	17,165
North Dakota	420	0	420	72,000	72,000	5,000
Ohio	2,767	13	2,780	476,572	476,572	[illegible]
Oklahoma	1,849	5	1,854	317,858	317,858	17,500
Oregon	2,670	0	2,670	457,716	457,716	25,505
Pennsylvania	6,467	26	6,493	1,113,086	1,113,086	62,755
Rhode Island	1,432	0	1,432	245,485	245,485	13,640
South Carolina	384	6	390	66,857	66,857	5,000
South Dakota	371	0	371	63,600	63,600	5,000
Tennessee	1,856	1	1,857	318,343	318,343	17,946
Texas	14,592	14	14,606	[illegible]	[illegible]	141,169
Utah	1,931	0	1,931	331,069	[illegible]	[illegible]
Vermont	196	0	196	33,600	46,000	5,000
Virginia	6,565	65	6,630	[illegible]	[illegible]	61,403
Washington	7,475	0	7,475	1,281,431	1,281,431	72,247
West Virginia	66	0	66	11,314	46,000	5,000
Wisconsin	1,911	1	1,912	327,772	327,772	18,450
Wyoming	28	0	28	4,800	46,000	5,000
Guam	36	0	36	6,171	46,000	5,000
Total	195,408	1,175	196,583	33,700,001	[illegible]	[illegible]

V. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence through its ORR Regional Director. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering during fiscal years 1983, 1984, and 1985, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of arrival, and case size, if appropriate.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C Street, SW., Washington, DC 20201, Telephone: (202) 245–1967.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: February 20, 1986.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

[FR Doc. 86–4270 Filed 2–26–86; 8:45 am]

BILLING CODE 4190-11-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, March 20–21, 1986, Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on March 20, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 20 from approximately 9:30 a.m. to recess; and on March 21 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 828, National Institute of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Dated: February 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–4208 Filed 2–26–86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, May 15 and 16, 1986, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892. This meeting will be open to the public from 9:00 a.m. to 4:00 p.m. May 15 and from 9:30 a.m. to 12 noon on May 16 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment May 16 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: February 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–4209 Filed 2–26–86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 11–14, 1986, in Conference Room 10, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 1:30 p.m. to 1:50 p.m. on March 11 and from 8:00 a.m. to 8:35 a.m. on March 13 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clincial Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 1:50 p.m. on March 11 until recess on March 12 and from 8:40 a.m. on March 13 until adjournment on March 14. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institute of Health, Bethesda, Maryland 20892, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the committees members.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301) 496–7966, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–4210 Filed 2–26–86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK), April 3, 4, and 5, 1986, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:00 p.m. on April 3, from 9:00 a.m. to 12:00 p.m. and from 2:05 p.m. to 4:00 p.m. on April 4, and from 9:00 a.m. to 10:30 a.m. on April 5. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIADDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 7:30 p.m. to 8:00 p.m. on April 3, from 12:05 p.m. to 2:00 p.m. and 4:25 p.m. to adjournment on April 4, and from 10:30 a.m. to adjournment on April 5, for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIADDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Building 31, Room 9A46, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: February 14, 1986.

[FR Doc. 86–4211 Filed 2–26–86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Colorado; Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that the Canon City District Advisory Council Meeting will be held on Thursday, March 20, 1986, 8:30 a.m. to 5 p.m., in the Community Room of the First National Bank Building, 9th and Royal Gorge Boulevard, Canon City, Colorado. The meeting agenda will include:

1. Current issues including Gramm/Rudman budget reductions, National Wildlife Federation court injunction, Foreset Service-BLM Interchange Proposal, Grazing Boards and Fees.
2. Election of Officers, if quorum is present.
3. Project Pride workshop.
4. Information on the San Luis Resource Management Plan and workshop on issues and criteria.
5. Reports from Area Managers on current programs.
6. Public presentations to the council (open invitation). The meeting is open to the public. Persons interested may make oral presentations to the council at 10 a.m. or they may file written statements for the council's consideration. The District Manager may limit the length of

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oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make a presentation to the council orally or in writing should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3080 East Main, Canon City, Colorado 81212 by March 19, 1986.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Glenn Wallace, (303) 275-0631.

Donnie Sparks,

District Manager.

[FR Doc. 86-4243 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1249, Block 162, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 20, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 21, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4230 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167; Sub-1078X]

Consolidated Rail Corporation; Abandonment in Erie County, NY; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.51-mile line of railroad between milepost 393.67 and milepost 394.18.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective March 29, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 10, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 19, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 11, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4230 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30743]

The Pittston Company; Control Exemption; Buffalo Creek and Gauley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts, under 49 U.S.C. 10505, the control by The Pittston Company of Buffalo Creek and Gauley Railroad Company from the requirements of 49 U.S.C. 11343 subject to protective conditions for all employees: (1) *Nunc pro tunc* from April 27, 1981, until the execution of a new voting trust agreement, which has been approved; and (2) for the future, when the new voting trust agreement terminates.

DATES: This exemption is effective on March 31, 1986. Petitions to stay must be filed by March 10, 1986, and petitions to reopen must be filed by March 19, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30743 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives, Chandler L. van Orman, 888 17th Street NW., Suite 902, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: February 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-4231 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-17]

James M. Sornsin, M.D.; Revocation of Registration; Stay of Revocation With Conditions

On April 17, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order To Show Cause to James M. Sornsin, M.D. (Respondent), at the Henry Ford Hospital, 3799 West Grand Boulevard, Detroit, Michigan, and Cullman Orthopaedic Clinic, 402 Arnold Street NW., Suite 208, Cullman, Alabama. The order to show cause sought to revoke DEA Certificates of Registration AS9115658 and AS1971945 issued to Respondent. The statutory ground under 21 U.S.C. 824(a)(3) for the revocation of AS9115658 was the suspension of Respondent's medical license by the State of Michigan, Department of Licensing and Regulation, Board of Medicine, for a period of one year, thus terminating Respondent's authority to possess, dispense, administer or otherwise handle controlled substances in the State of Michigan. The statutory ground under 21 U.S.C. 824(a)(2) for the revocation of AS1971945 was Respondent's conviction on May 20, 1983, in the United States District Court for the Eastern District of Michigan, for unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the order to show cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young in Nashville, Tennessee on March 21, 1985. The parties having stipulated that Respondent no longer practiced medicine in the State of Michigan, Respondent consented to the revocation of AS9115658 issued to him at an address in Detroit. The findings of the Administrative Law Judge, therefore, relate to whether the Administrator should, in the exercise of his discretion, revoke AS1971945 issued to Respondent at an address in Cullman, Alabama.

On August 6, 1985, the Administrative Law Judge issued his opinion and recommended ruling in this matter. Government counsel filed exceptions to the recommended ruling on August 14, 1985, pursuant to 21 CFR 1316.66. The Administrative Law Judge transmitted the record to the Administrator on September 6, 1985. On October 28, 1985, the Administrator gave counsel for both sides until December 2, 1985 to comment on any issues raised by the transmittal letter of the Administrative Law Judge. Both Government counsel and counsel for Respondent wrote letters commenting on the transmittal letter of the Administrative Law Judge, who also wrote a letter to the Administrator on December 3, 1985, even though the Administrator had not asked him for his thoughts on any comments that might be filed by counsel. The Administrator has considered the entire record in this matter and hereby enters his final order, based on the following findings of fact and conclusions of law.

The Administrative Law Judge found that Respondent pled guilty in Federal court in Detroit to distribution of Talwin, a Schedule IV controlled substance, in violation of 21 U.S.C. 841(a)(1). Respondent was sentenced to three years incarceration, all but six months of which was suspended, and fined $10,000. This plea stemmed from Resondent's involvement with two "clinics" in Detroit, Med-Care Clinic and United Physicians Medical Center. Investigation of these "clinics" by the FBI revealed them to be nothing more than fronts for the diversion of significant quantities of controlled substances. Respondent was hired at Med-Care in January, 1981. During the spring of 1981 Respondent and other physicians employed at the "clinic" wrote very large numbers of prescriptions for controlled substances without any medical justification. For example, on May 15, 1981, Respondent wrote 72 prescriptions for controlled substances filled at one Detroit pharmacy alone. Working part-time on that day, Respondent could not have seen any "patient" for more than four minutes. Similarly, the records of this pharmacy show that Respondent wrote 140 Ambenyl, 82 Desoxyn, 92 Preludin, 162 Talwin and 69 Tussionex prescriptions between January and August, 1981. Most of the patients' addresses on these prescriptions were found to be fictitious.

The Administrator finds that business at the "clinics" grew so brisk that the employees abandoned any pretext of "patient care." Office employees simply took orders from the "patients" for whatever controlled substances they desired. The physicians would proceed to write the prescriptions, filling in fictitious information on patient charts. Whie the record does not reveal whether Respondent worked at the clinic when business was so brisk, the record does show that in March, 1981, Respondent did write an inordinate number of controlled substance prescriptions for "patients" he claimed he saw. On March 4, 1981, he wrote 45 prescriptions; on March 7, a Saturday, 66 prescriptions; on March 10, 69 prescriptions; on March 12, 57 prescriptions; on March 17, 65 prescriptions on March 19, 91 prescriptions; on March 24, 62 prescriptions and March 26, 43 prescriptions. Respondent generated $12,000 worth of business during the month of March, 1981, one-half of which was paid to him.

The Administrative Law Judge found that Respondent cooperated with the FBI in its investigation of the "clinics" and their operators. The Administrative Law Judge further found that after Respondent's release from incarceration in November, 1983, he entered the practice of orthopedics in Cullman, Alabama. A physician who works with Respondent testified that he would be willing to monitor Respondent's prescribing of controlled substances were the Administrator to condition Respondent's continued registration on a monitoring of his prescribing of controlled substances.

After the hearing and the filing of proposed findings of fact and conclusions of law by the parties, the Administrative Law Judge, *sua sponte,* decided to include in his opinion and recommended ruling an agreement between this agency and another physician involved in the same "clinic" investigation. Government counsel took exception to the inclusion of the agreement. While the Administrator has considered the rest of the record in reaching his decision, he did not consider the agreement in the other case, as recommended by the Administrative Law Judge. The Government maintains, and the Administrator concurs, that the facts and circumstances surrounding this independent agreement outside the judicial context should not be treated as judicial precedent. Accordingly, the Administrator did not consider the other agreement in making his determination in this matter.

The Administrative Law Judge recommended that the Administrator not revoke the registration of Respondent at the Alabama address. Rather, he recommended that

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Respondent be registered, subject to four conditions. The Administrative Law Judge based this recommendation on the agreement reached in the other case and the facts brought forward during the hearing in this matter. The four conditions recommended by Judge Young are:

1. Respondent is to maintain a written log for three years of all prescriptions for controlled substances he writes and of all such substances he administers and dispenses, beginning on the effective date of the final order in this Matter;

2. Dr. Vincent F. Bergquist of the Cullman Orthopaedic Clinic will regularly review the log prepared by Respondent. Dr. Bergquist will discuss its contents with Respondent and satisfy himself that each prescription, administration and dispensation there recorded appears to have been done for a legitimate medical purpose;

3. Three months from the effective date of this final order, and every three months thereafter for a period of three years, Respondent will send the log for the preceding three months to a DEA office specified in the final order; and

4. Before Respondent sends in the log to the DEA office, Dr. Bergquist will endorse at the end of it, a statement to the effect that condition two above has been complied with.

The Administrative Law Judge concluded that the record "amply" demonstrates that Respondent has now "launched in a wholly sound and ethical medical practice" and that he enjoys the confidence of his professional colleagues, both as to competence and to character. The Administrative Law Judge correctly pointed out that this is more than can be said of most respondents coming before him. The Administrative Law Judge also noted Respondent's youth and the fact that he has a young family and good professional prospects.

The Administrator adopts the recomendation of the Administrative Law Judge. The factors the Administrator sees in mitigation of Respondent's past activities are his relative youth and the vouching of Dr. Bergquist. Respondent is admonished not to engage in the improper handling of controlled substances again in his professional career. Any such action on his part during the next three years will swiftly and surely lead to sanctions against both him and his DEA registration.

The Administrator is not satisified that the recommendation of the Administrative Law Judge sufficiently protects the public in one important regard. The Administrative Law Judge recommends that the Administrator register Respondent and provide no mechanism for the summary revocation of the registration in the event that Respondent does relapse into his former prescribing practices. Therefore, the Administrator will revoke AS1971945 and deny all pending applications for renewal, but will stay the revocation and denial pending Respondent's successful completion of the conditions recommended by the Administrative Law Judge and adopted by the Administrator. In the event that Dr. Bergquist cannot certify Respondent's compliance, or if any of Respondent's prescriptions are not legitimately issued, the Administrator will summarily suspend AS1971945 pending any hearing on the violation. Respondent is to send the log to the DEA New Orleans Field Division, to the attention of the Diversion Group Supervisor. Upon the successful completion by Respondent of the terms of the probationary registration, the Administrator will grant the Respondent a plenary Certificate of Registration.

In consideration of the facts in this case, the Administrator hereby adopts the recommendation of the Administrative Law Judge to the extent that Respondent is to submit logs to the DEA New Orleans Field Division, subject to the conditions set forth above. Pursuant to 21 U.S.C. 824(a)(2), as delegated to the Administrator of DEA by 21 U.S.C. 871 an 28 CFR 0.100(b), the Administrator hereby revokes DEA Certificate of Registration AS1971945, denies any pending applications for renewal, and stays the revocation and denial pending the successful completion by James M. Sornsin, M.D. of the terms numbered one through four above. The revocation, denial and stay are effective March 31, 1986.

Dated: February 24, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86-4283 Filed 2-26-86; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Establishment of 1986 Aggregate Production Quota for Methamphetamine (for Conversion)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of an established 1986 aggregate production quota.

SUMMARY: This notice establishes the 1986 aggregate production quota for methamphetamine (for conversion).

DATE: This order is effective February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S. Code 826), requires the Attorney General to establish Aggregate Production Quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On December 27, 1985, a notice proposing to establish a 1986 Aggregate Production Quota for methamphetamine (for conversion) was published in the Federal Register (50 FR [illegible]). All interested persons were invited to comment on or object to the proposal on or before January 27, 1986. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1986 aggregate production quota for methamphetamine (for conversion), expressed in grams of anhydrous base, be established as follows:

Basic Class	1986 Aggregate Production Quota (grams)
Schedule II	
Methamphetamine (for conversion)	1,996,000

Dated: February 7, 1986.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 86-4284 Filed 2-26-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Employee Welfare and Pension Benefit Plans Advisory Council; Meeting

Pursuant to sectin 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., March 14, 1986, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-5515—Seminar Room 6, Washington, DC 20210.

The Advisory Council has formed a 12-member task force to study issues relating to pension plan termination in which excess assets revert to the sponsor of employee benefit pension plans covered by ERISA.

The Advisory Council previously held a public hearing on January 13, 1986 at which time testimony was taken from employee representatives, employer representatives, and other interested individuals and groups.

The purpose of the March 14 meeting is to specifically take testimony from participants and beneficiaries of such terminated plans who have not previously testified. The witnesses are requested to relate their experiences to the Advisory Council and to make suggestions relating to the matter as they deem relevant.

Individuals wishing to address the Advisory Council should submit requests on or before March 10, 1986 to Edward F. Lysczek, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210 (202/523-8753). Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Signed at Washington, DC, this 25th day of February, 1986.

T. Timothy Ryan, Jr.,
Chairman, ACEWPBP Task Force on Terminations and Reversions.

[FR Doc. 86-4353 Filed 2-26-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-15]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Open Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Task Force on Automation and Robotics.

DATE: March 11, 1986, 8 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Melvin Montemerlo, Code R, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2743),

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee (SSTAC) was established to provide technology activities in the Office of Aeronautics and Space Technology (OAST). The Informal Task Force on Automation and Robotics, chaired by Dr. Stanley Weiss, is comprised of six members and was formed to provide a review of OAST's automation and robotics program. The meeting will be opened to the public up to the seating capacity of the room (approximately 75 persons including the Task Force members and other participants). The meeting must be held at this time in order that it be in conjunction with the Office of Space Station's Automation and Robotics Panel meeting.

Type of meeting: Open.

Dated: February 21, 1986.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-4204 Filed 2-26-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Records Schedules; Availability

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before April 28, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

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The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of Agriculture, Forest Service, Office of Information (N1–95–86–1). Motion picture production files.

2. Department of the Air Force, Directorate of Administration, Records Management Branch (N1–AFU–86–29). Military Standard Requisitioning and Issue Procedures (MILSTRIP) and Military Standard Billing System (MILSBILLS) computer listings.

3. Department of the Air Force, Directorate of Administration, Records Management Branch (N1–AFU–86–30). Commissary store records.

4. Department of the Air Force, Directorate of Administration, Records Management Branch (N1–AFU–86–31). Commissary records.

5. Department of the Air Force, HQ, USAF, Directorate of Administration, (N1–AFU–86–33). Air Force Special Activities Center Personnel Selection Panel records.

6. Department of the Air Force, HQ, USAF, Directorate of Administration, (N1–AFU–86–34). Annual summaries of real property transactions.

7. Department of the Air Force, Directorate of Administration, Records Management Branch (N1–AFU–86–36). Transportation requests.

8. Department of the Air Force, Directorate of Administration, HQ, USAF, Records Management Branch (NC1–AFU–86–35). Administrative records of base engineer emergency forces.

9. Department of the Army, Records Management Operation Office, Standards Division (N1–AU–86–5). Munitions manufacturing licenses and technical assistance agreements files.

10. Department of the Army, Records Management Operations Office (N1–AU–86–23). Ration control records.

11. Department of the Army, The Adjutant General's Office, Records Management Division (NC1–AU–83–11). Hazardous material management records.

12. Department of the Army, Office of the Adjutant General, Records Management Division (NC1–AU–85–47). Non-appropriated fund activities loan and grant records.

13. Department of the Army, The Adjutant General's Office, Records Management Division (NC1–AU–85–79). Officer aviation position criteria records.

14. Central Intelligence Agency (NC1–263–84–8). The CIA schedule is classfied in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

15. Department of Commerce, Office of Regional Economics (N1–151–86–2). Records relating to tariffs.

16. General Accounting Office, Office of publishing Services (N1–217–86–2). Requests for contract files pertaining to the Miller Act, including correspondence, payment bonds, copies of contracts, final payment vouchers, and related papers.

17. Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank (N1–207–86–1). Subject files, chronological files, and state and territorial files of the SEECB program.

18. Department of labor, Labor Management Services Administration, Office of Labor Management Relations Services (N1–317–86–1). Questionnaires for the study of railroad shop craft employees, 1968.

19, Peace Corps, Office of Public Relations and Office of Administrative Services (NC1–362–85–2). Duplicate copies of speeches, press releases and publications; media contact sheets; and audit workpapers.

20. Department of the Treasury, Bureau of the Public Debt, Division of Investor Accounts (N1–53–86–1). Comprehensive records schedules.

21. Veterans Administration, Office of General Counsel (NC1–15–85–10). District Counsel Offices records.

22. Veterans Administration, Department of Veterans Benefits (NC1–15–85–11). Off-Tape (Manual) Insurance Policy Loan Records.

23. Veterans Administration, Department of Veterans Benefits (NC1–15–85–18). Property Management Folders.

Dated: February 21, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–4250 Filed 2–26–86; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria, and Extreme External Phenomena; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria and Extreme External Phenomena will hold a joint meeting on March 12, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 12, 1986—8:45 A.M. until conclusion of business

The Subcommittee will discuss the status of the EDO's review of the two-year trial use of the 1983 proposed Safety Goal Policy and recommendations for the future use of a safety goal policy and the status of the NRC Staff's development of containment performance criteria. The Subcommittee will also review the NRC Staff's proposed resolution for USI A–17, "Systems Interaction in Nuclear Power Plants." The Subcommittee on Extreme External Phenomena will review the 1986 Ohio earthquake and the implications for the Perry Nuclear Power Plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommitee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 24, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–4271 Filed 2–26–86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22928; File No. SR-BSECC-86-1]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange Clearing Corp. Relating to an Amendment to the Schedule of Trade Recording Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(1), notice is hereby given that on January 31, 1986 the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commisison the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations's Statement on the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Clearing Corporation ("BSECC") has reduced its trade recording fees, effective February 3, 1986. The amendment reduces the trade recording charge per 100 shares from $.44 per hundred to $.29 per hundred for the first 2,500 trades per month. In addition the previous rate of $.00 per hundred for trades in excess of 7,500 per month has been increased to $.05 per hundred. Finally the maximum charge per tradesize has been reduced from $100 to $50.

Self-Regulatory Organizations's Statement of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most signficant aspects of such statements.

(A) Self-Regulatory Organizations's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(1) The BSECC has reduced trade related charges in order to encourage future growth, as well as to pass along to members cost reductions realized through growth and more efficient operations.

(2) The changes herein are changes in fees and therefore, are summarily made effective as of February 3, 1986, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that this proposed change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited from the Fee Committee of the BSECC. This committee is composed of representatives of Dealer-Specialist, Retail and Institutional members of the BSECC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 19, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–4218 Filed 2–26–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22908; File No. SR-DTC-86-01]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

The Depository Trust Company ("DTC") on January 29, 1986 submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). DTC's rule change would allow DTC participants to accept invitations to tender securities and to surrender those securities through DTC. The Commission is publishing this notice to solicit public comment on the proposal.

DTC's proposal would allow DTC participants to use DTC's voluntary offering program services to process acceptances of invitations to tender securities. Currently, participants must communicate directly with the tender agent and, to the extent those securities are in the depository, must withdraw those securities from the depository in physical form and surrender securities to the tender agent. Under the proposed rule change, participants would have the option to accept eligible invitations either through DTC or directly with the tender agent and could surrender securities to the tender agent by book-entry movements from their accounts at DTC to the tender agent's account at DTC.

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The procedures for processing acceptances of invitations to tender securities are substantially similar to DTC's participant operating procedures for exchange offers and cash tender offers. DTC would inform participants whether an invitation qualifies under the program. In accordance with the instructions of participants accepting an eligible invitation, DTC would effect book-entry deliveries of the tendered securities from their accounts to the tender agent's account and would forward their instructions to the tender agent. When DTC receives cash payments from the tender agent for tendered securities, DTC would distribute those payments to its participants through DTC's money settlement system.

DTC's invitation to tender securities program is designed to simplify the process of accepting invitations and tendering securities to tender agents and to permit DTC to continue its regular services rather than making subject securities ineligible for such depository services. Under the program, participants could pledge, by book-entry, their rights to receive the cash payment based on their bids in return for tendered securities or the return of some or all of the tendered securities in accordance with the terms of the invitation. Other depository services, including transfers and withdrawals, would not be available for securities to be issued in exchange for tendered securities until the tender agent releases those securities to DTC.

DTC believes that the proposal is consistent with the Act in general, and with section 17A of the Act in particular, because it facilitates the prompt and accurate clearance and settlement of securities transactions. In addition, DTC believes that the proposal is consistent with the Act because it would allow participants an economical and orderly method for accepting invitations to receive cash payment in return for voluntary tender of securities.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC and at DTC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission invites public comment on the proposal. Comments should refer to File No. SR-DTC-86-01. Please file six copies of comments with the Secretary of the Commission, 450 Fifth Street, NW., Washington.

Dated: February 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4219 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22926; File No. SR-NSCC-85-09]

Self-Regulatory Organizations; Filing and Order Temporarily Approving on an Accelerated Basis Proposed Rule Change of the National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1985, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission File No. SR-NSCC-85-09. The Commission is publishing this notice to describe the proposal and to solicit comments on it. The Commission also is temporarily approving, on an accelerated basis, File No. SR-NSCC-85-09 for the reasons discussed below.

I. Description

NSCC's proposal amends NSCC's rules and procedures to: (1) Establish as a pilot program a Mutual Fund Settlement, Entry and Registration Verification Service (called "Fund/Serv Service"); (2) create a new category of membership ("Fund/Serv Member") and membership qualifications for the Fund/Serv Service; (3) make changes to certain existing rules regarding Fund/Serv Members' rights, privileges and obligations; and (4) establish fees for the Fund/Serv Service.

1. The Fund/Serv Service

New NSCC Rule 52 establishes the Fund/Serv Service that will enable NSCC settling members to submit mutual funds purchase and redemption orders to NSCC. NSCC will transmit all data to Mutual Fund Processors.[1] If NSCC is unable to transmit order data, or the Mutual Fund Processor fails to receive data, the Mutual Fund Processor may obtain summary data to the extent it is available.

On trade date ("T") NSCC settling members submit trade data to NSCC.[2] NSCC will check to ensure that the data is submitted in acceptable format but will not check the accuracy of the data. NSCC will transmit all data submitted in acceptable form to the appropriate Mutual Fund Processor on the evening of T. Mutual Fund Processors will have two business days after T (until T+2) to confirm or reject an order received. Mutual Fund Processors can also correct the dollar or share amounts on confirmed orders (reconfirm a confirmed order) up to T+2. NSCC settling members will have until T+2 to submit corrected orders to the extent they disagree with the terms of an order as confirmed or reconfirmed by a Mutual Fund Processor. A Mutual Fund Processor will have until T+3 to reject any changes submitted by an NSCC settling member.

Mutual Fund Processors that receive orders from members outside of NSCC's system may originate orders ("Fund Originated Orders") for the purpose of confirmation and settlement within the Fund/Serv Service System. Fund Originated Orders must be submitted to NSCC on T+1. NSCC will submit the orders to the appropriate member on the evening of T+1. Members will have until T+2 to accept, reject or correct an order. The Mutual Fund Processor need not take any action if he determines to accept a correction submitted by an NSCC settling member. If the Mutual Fund Processor does not reject the correction by T+3, NSCC will settle the order based upon the correction. If the corrected order is rejected, NSCC will delete the order from the Fund/Serv Service.

Members may also submit "As of" orders up to 6 months after T. A trade not submitted on trade date or a trade previously submitted but rejected from the system may be submitted as an "As of" trade. The Mutual Fund Processor can either accept or reject such an order but cannot make any corrections.

Mutual fund transactions will utilize NSCC's existing settlement system. Orders settled through the Fund/Serv Service, however, are not guaranteed by NSCC. Accordingly, to the extent one side failed to pay for a transaction, the contra side would be required to return to NSCC any funds received from NSCC.

Mutual fund purchases will settle automatically on T+5. For mutual fund liquidations, the settlement date could vary from T+5 to T+15, depending on whether the securities are registered in street name or the customer's name. If the securities are registered in street name settlement would occur on T+5. For securities registered in the customer's name, the system will delay

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[1] A Mutual Fund Processor is a settling member or a Fund/Serv Member that receives mutual fund purchase and redemption orders from NSCC on behalf of eligible mutual funds.

[2] As specified in the new rules, the time frames for action under the new system are set out in NSCC's procedures.

settlement until the Mutual Fund Processor releases the transaction for settlement.[3]

The Mutual Fund Processor will have until T+14 to submit the release. Settlement will occur on the next business day following receipt by NSCC or a release for settlement. Any liquidations remaining in a "delayed" status on T+15 will be deleted from the system.

The Fund/Serv Service also will enable a member to submit registration instructions to a Mutual Fund Processor to the extent that the order was confirmed and settled through the Fund/Serv Service. NSCC will accept registration instructions from T+5 through T+15. All settled orders pending registration instructions on T+15 will be deleted from NSCC's system on T+16.

2. Qualifications for Use of the Fund/Serv System

In order for mutual funds to utilize the Fund/Serv Service, NSCC, in new Rule 51, creates a new category of membership, called a Fund/Serv Member. New Rule 51 defines a Fund/Serv Member as a principal underwriter as defined in section 2(a)(29) of the Investment Company Act of 1940 that is also a registered broker/dealer or an organization that has demonstrated to NSCC's Board of Directors that it could materially benefit from access to the Fund/Serv Service. The rule also requires that the Fund/Serv Member enter into an agreement with NSCC setting forth the rights and obligations of the Fund/Serv Member.

During the pilot program, NSCC proposes to limit participation to no more than four settling members (broker-dealers) and five Fund/Serv members (mutual fund complexes). In its filing, NSCC indicates that it expects the pilot program to last no longer than twelve months.

3. Conforming Amendments to NSCC's Rules

NSCC also is amending many of its existing rules to accommodate the new service and to set forth a Fund/Serv Member's rights and obligations. For example, NSCC Rule 4 is amended to give NSCC the authority to request a clearing fund deposit from Fund/Serv members. NSCC has determined, at least for the pilot program, not to require Fund/Serv Members to make clearing fund deposits.

NSCC's rule change gives it the right to inspect the Fund/Serv Member's books and records. The proposal also establishes minimum standards of financial responsibility and operational capability. These standards require a Fund/Serv applicant to have a previous business history, capable personnel and sufficient financial ability to meet obligations to NSCC. Since NSCC will not, at least initially, require a clearing fund deposit, NSCC proposes a $500 million assets-under-management threshold for applicant funds under the pilot since it believes that a Fund/Serv Member who manages assets of this size would not likely be unable to meet its settlement obligations even if an extraordinary number of redemptions were to occur. The rules also require Fund/Serv applicants to complete a questionnaire, but because of NSCC's relative unfamiliarity with the mutual fund industry, NSCC has determined to defer development of a final questionnaire until a later time.

4. Fund/Serv Systems Fees

NSCC also is amending Rule 24, Charges For Services Rendered, to authorize the establishment of fees for the Fund/Serv Service. NSCC will charge a fee of $0.35 per side per confirmed transaction. In addition, NSCC will charge a participant fee of $50 per month. This fee covers the costs associated with account maintenance. Broker/dealer participants already paying the maximum participant fee of $150 per month will not incur additional monthly account maintenance charges.

II. NSCC's Rationale

NSCC believes that the proposal is consistent with the Act because it facilitates prompt and accurate clearance and settlement of securities transactions in investment company securities. NSCC is limiting participation in the Fund/Serv System, during the pilot program, to obtain experience with the operational aspect of that system. At the conclusion of the pilot, NSCC expects to offer the Fund/Serv Service to all members and qualifying mutual funds.

NSCC requests accelerated approval of the proposal under section 19(b)(2) of the Act. NSCC believes that accelerated approval is justified because the immediate implementation of the Fund/Serv Service would enable NSCC to provide an automated service for processing mutual fund transactions that is not currently available. Because of the significant growth in mutual funds as an investment vehicle and the manual processing of mutual fund transactions, NSCC believes that the speedy implementation of the service would greatly enhance the prompt and accurate processing of mutual fund transactions.

III. Discussion

The Commission agrees with NSCC that the proposed one year pilot is consistent with Section 17A of the Act. Currently, there are no centralized facilities or systems for the processing of mutual fund securities transactions. Rather, broker-dealers individually develop arrangements with mutual funds and fund transfer agents for the clearance and settlement of such transactions. The development of a central processor, coupled with uniform clearance and settlement procedures, could provide substantial efficiencies for both broker-dealers and for mutual funds and their agents. In recognition of this, in 1985, at the request of the Investment Company Institute and the National Association of Securities Dealers, NSCC began developing an automated clearing and settlement system for mutual fund transactions. The Fund/Serv Service is a result of that effort.

The proposal will enable NSCC to provide automated and centralized order entry, confirmation, registration and settlement services for mutual fund transactions. During the pilot, NSCC will monitor the Fund/Serv Service to ensure the safe and efficient processing of mutual fund transactions and will make changes necessary to provide such service to all NSCC members. In addition, the Fund/Serv Service will utilize the same facilities and the same basic settlement system currently used for other securities transactions. Before expiration of the pilot period, NSCC expects to submit a proposed rule change to establish a permanent system. The Commission therefore finds that the proposal is consistent with the Act and, in particular, with section 17A of the Act.

The Commission believes the implementation of the Fund/Serv Service will enable NSCC to provide an automated service for processing mutual fund transactions that is not currently available. In light of the significant growth of mutual funds as an investment vehicle and the manual processing of mutual fund transactions, the Commission agrees with NSCC that the speedy implementation on a pilot basis of the automated service is a significant step in enhancing the prompt and accurate processing of mutual fund transactions and therefore is in the

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[3] Before securities registered in the customer's name can be liquidated, the customer must deliver properly endorsed securities to the broker-dealer. The broker-dealer then forwards them to the mutual fund transfer agent for registration in street name. This process normally can not be completed by T+3 to allow settlement to occur on T+4.

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public interest. By limiting the number of broker-dealers in the pilot, and by restricting the pilot to a limited number of mutual funds with substantial assets under management, NSCC is proceeding in a careful, cautious manner while gaining significant experience with the operation of a permanent mutual fund securities processing system. The Commission therefore finds good cause for approving the proposal on an accelerated basis.

You are invited to submit written data, views and arguments concerning the proposal within 21 days from the date this is published in the Federal Register. Please file six copies of comments, referring to File No. SR-NSCC-85-09, with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, by March 20, 1986.

Copies of all documents related to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC, and at NSCC's principal office.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NSCC-85-09) be, and it hereby is, approved through February 18, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 20, 1986.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-4220 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Vestron Inc.
  Common stock, $0.01 par value (file no. 7-8800)
American Family Corporation
  Common stock, $0.10 par value (file No. 7-8801).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 12, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 4221 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

BMC Industries, Inc.
  Common Stock, $0.10 Par Value (File No. 7-8820)
Centex Corporation
  Common Stock, $0.25 Par Value (File No. 7-8821)
Federal-Mogul Corporation
  Common Stock, $5.00 Par Value (File No. 7-8822)
FoxMeyer Corporation
  Common Stock, $0.10 Par Value (File No. 7-8823)
Green Tree Acceptance, Inc.
  Common Stock, $0.01 Par Value (File No. 7-8824)
McLean Industries, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8825)
The Pep Boys—Manny, Moe & Jack
  Common Stock, $1.00 Par Value (File No. 7-8826)
Zale Corporation
  Common Stock, $1.00 Par Value (File No. 7-8827)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-4222 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 18, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Sea-Land Corporation
  Rights (File No. 7-8807)
Santa Fe Energy Partners L.P.
  Depository Units (File No. 7-8808)
Sun Energy Partners
  Common Stock, No Par Value (File No. 7-8809)
Gruntal Financial Corporation
  Common Stock, $0.10 Par Value (File No. 7-8810)
Kaneb Energy Partners, LTD
  Depository Units Representing Limited Partnership Interests (File No. 7-8811)
Pilgrim Regional Bank Shares, Inc.
  Common Stock, $.001 Par Value (File No. 7-8812)
Badger Meter
  Common Stock, $1.00 Par Value (File No. 7-8813)
Alza Corporation
  Common Stock, $1.00 Par Value (File No. 7-8814)

Consolidated Stores
  Common Stock, $0.01 Par Value (File No. 7-8815)
ML Convertible Securities, Inc.
  Income Shares (File No. 7-8816)
Republic New York Corporation
  Common Stock, $5.00 Par Value (File No. 7-8817)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 11, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-4223 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22935; File No. SR-NASD-85-19]

Self-Regulatory Organizations; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Submitted by the National Association of Securities Dealers, Relating to Proposed Fees for Information Disseminated by Means of the National Quotation Data Service

The National Association of Securities Dealers, Inc. ("NASD") has filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] a proposed rule change [3] that would establish a charge of $79.00 per month for each subscriber terminal receiving full quotation information in NASDAQ securities through vendors other than the NASD or its NASDAQ subsidiary (the NASD has characterized this service as its National Quotation Data Service ("NQDS")).

I. Background

The Commission's firm quotation rule, Rule 11Ac1-1 under the Act, requires the NASD as of April 1, 1982, to make available to vendors full quotation information on those over-the-counter ("OTC") securities designated as National Market System ("NMS") Securities.[4] In light of that requirement, the NASD asked vendors whether they were interested in receiving this quotation information on NMS Securities. Only the Instinet Corporation ("Instient") [5]

The Commission granted the NASD a number of exemptions [6] from having to provide Instinet the data until after technical preparations and negotiations over access terms, with fee as the principal issue, were completed. After nearly two years of negotiations, the parties could not reach an agreement on fees. The NASD thereupon filed with the Commission its proposed fees for the NQDS.[7] Under the proposed fees, Instinet would pay $3,200 a month for the direct computer communication costs of transmitting the quotation information from the NASD to Instinet. Instinet's customers subscribing to the information would be charged by the NASD a monthly per terminal subscriber fee based on the NASD's $150 Level 2/3 fee.[8] The $150 fee would be reduced to reflect that Instinet would receive quotations in only NMS Securities.[9]

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to section 11A(b)(5) of the Act alleging that the fees for NQDS were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information. In its petition, Instinet sought access to quotation information on all NASDAQ securities, not just NMS Securities.[10]

On August 16, 1983, the Commission issued an order pursuant to section 11A(b)(5) of the Act preliminarily finding that at least with respect to those securities designated as NMS Securities, the proposed fees constituted a prohibition or limitation on access to services, and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the Act.[11] In that order, the Commission also solicited comments on certain issues raised in the proceeding, including whether Insitinet should receive access to quotation information on all NASDAQ securities and in a separate release instituted proceedings pursuant to section 19 of the Act to determine whether to approve or disapprove the proposed fees.[12]

After reviewing the record of the proceeding,[13] The Commission, on April 17, 1984, issued orders determining that, among other things,[14] because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] File No. SR-NASD-85-19. Notice of the filing was given by issuance of a Commission release and by publication in the Federal Register. *See* Securities Exchange Act Release No. 22376 (August 30, 1985), 50 FR 36692 ("August Notice").

[4] 17 CFR 240.11Ac1-1. NMS Securities are those OTC securities designated pursuant to Rule 11Aa2-1 under the Act, 17 CFR 240.11Aa2-1. The primary effect of designation is to subject OTC stocks to the Commission's firm quotation, last sale reporting, and confirmation rules (Rules 11Ac1-1, 11Aa3-1, and 10b-10 under the Act).

[5] Instinet is a registered broker-dealer that offers computerized execution facilities and securities information services.

[6] *See*, Securities Exchange Act Release Nos. 18585 (March 23, 1982), 19112 (October 12, 1982), and 19564 (March 3, 1983); 47 FR 13295, 46793, and 48 FR 10175.

[7] *See*, Securities Exchange Act Release No. 19884 (June 17, 1983), 48 FR 29086 ("1983 Fee Proposal Release"). File No. SR-NASD-83-13.

[8] The NASD sells directly to subscribers its NASDAQ Level 2 and 3 services, which identifies all NASDAQ market makers and their quotations. Level 3 service permits market makers to insert quotations into NASDAQ whereas Level 2 service is information only. The NASD also provides Level 1 service, which provides the best bid and offer quotations in each NASDAQ security without identifying market makers, through other vendors and charges vendors' subscribers $8.75 per month per terminal.

[9] *See* 1983 Fee Proposal Release, *supra* note 7, 48 FR at 29087. The NASD's proposed subscriber fee was intended to recover the costs of operating the NASDAQ system.

[10] *See*, Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 15, 1983 ("Instinet Petition"). *See*, Public File No. 4-258.

[11] *See* Securities Exchange Act Release No. 20068 (August 16, 1983), 48 FR 38124.

[12] *See* Securities Exchange Act Release No. 20069 (August 16, 1983), 48 FR 38131.

[13] For a discussion of what composed the proceeding's record, see Securities Exchange Act Release No. 20874 (April 17, 1985), 49 FR 17640 ("April Order").

[14] The Commission instituted proceedings to determine whether Instinet should receive access to full quotation information in all NASDAQ securities, not just NMS Securities. The Commission also granted interim relief to Instinet in the form of immediate access to full NASDAQ quotation information in all NASDAQ securities at an interim subscriber fee equal to the NASDAQ Level 1 fee since Level 1 service was the NASD's only other pass-through service. *See* discussion, *Infra* note 32.

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reasonableness of the NASD's charges to Instinet and its subscribers.[15] Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet.[16] One such function that the Commission determined entailed costs the NASD should not be permitted to recover was the inquiry or "quotation query function."[17] The Commission determined that NQDS should not bear costs associated with the NASDAQ system's query function because NQDS provides Instient only raw quotation data and Instient would have to develop and offer its own inquiry service to subscribers.[18]

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [19] of the finding made in the April Order related to costs of the NASDAQ query function. In urging reconsideration of this finding the NASD asserted that market makers necessarily query full quotation information offered through NASDAQ in deciding whether to maintain or change their quotation. Accordingly, the NASD argued that the query function was an essential part of the update function, and, therefore, Instinet's subscribers should bear a proportionate share of the costs related to the query function. The Commission denied the motion, on the basis that the NASD had not advanced any new data or arguments to warrant Commission reconsideration of issues resolved in the April Order.[20]

On November 19, 1984, the NASD filed a second motion requesting Commission reconsideration of the query cost finding based on new evidence.[21] The evidence was derived in part from an NASD statistical study which indicated that 76.8 percent of queries directed to the NASDAQ system were made by market makers in stocks in which they made markets. The Commission denied the motion because the NASD had not demonstrated that there were reasonable grounds for its failure to produce this evidence prior to the April Order. The NASD also had failed to show that the proffered evidence was material to any of the findings contained in the April Order, as the Commission had previously considered and rejected arguments that the evidence was intended to support.[22]

On July 31, 1985, the NASD filed with the Commission SR–NASD–85–19, the proposed NQDS subscriber fee.[23]

II. Description of SR–NASD–85–19

In its filing with the Commission, the NASD stated that

> [t]he proposed rule change establishes a charge of $79.00 per month per subscriber terminal receiving NQDS information disseminated by a vendor. The proposed rule change is the creation of a fee which accurately reflects the cost of collecting, processing and preparing the NQDS information for distribution of vendors and subscribers and is consistent to the fullest extent possible with the direction contained in the Commission's [April] Order and sound cost accounting principles.

The fee was formulated based on a study performed on behalf of the NASD by the accounting firm of Coopers & Lybrand ("C&L Study"). As further detailed in the August Notice, the NASD explained that

> [t]he fee represents the cost of the information as is collected, processed and prepared for distribution through NQDS, derived on the basis of a functional analysis of the NASDAQ system, the derivation of cost pools attributable to segregable functions performed within the system and the allocation of these costs to the various services offered by NASDAQ which utilize the functions. These costs were in turn applied to the cost bearing units of sale of the information which are the average number of quotations each such service is capable of accessing.

On October 4, 1985, staff of the Commission met with representatives of the NASD and C&L to clarify the methodology and findings of the C&L Study ("October Meeting").[24] The C&L Study, supplemented by the October Meeting, indicated that the following methodology was used in developing the fee. First, four NASDAQ functions were isolated: Broadcast (Level 1), NQDS, queries, and updates. Next, all NASDAQ costs were isolated and seven cost pools, three direct and four indirect, were created. One direct cost pool representing NASDAQ terminal costs was removed because these costs were recovered separately. C&L then allocated the remaining six cost pools [25] to the four NASDAQ functions. The costs contained in the indirect cost pools were allocated to each function in the same porportion that that function made use of the three system resources. After the costs of the four functions were ascertained, products such as NQDS and Level 1, 2 and 3 services derived from these functions could be priced a number of ways. The fees were adjusted to recover 150% of the NASD's 1984 costs. C&L believed that any pricing scenario that excluded query costs in pricing NQDS would not be appropriate in its judgment.

At the October Meeting, the Commission staff asked a number of specific questions about the Study. The Commission staff questioned why the Study concluded that query costs should be shared by NQDS, particularly since the Commission determined in the April Order that this type of cost was not to be included in calculating the NQDS subscriber fee. C&L stated that in its professional view it believed that an allocation of costs based on the system resources a service utilized required

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[15] *See* April Order, *supra* note 13, and Securities Exchange Act Release No. 20873 (April 17, 1984), 49 FR 17652.

[16] *Id.*

[17] The "query function," for example, allows subscribers to NASDAQ Level 2 and 3 services to recall full quotation information on a NASDAQ terminal. The service requires the NASD both to provide an ability to store quotations and to provide information in response to an inquiry.

[18] *See* April Order, *supra* note 13, 49 FR at 17649. In support of this finding the Commission stated that it "rejects the NASD's assertion that it should allocate to NQDS an equal share of each of the NASDAQ system's functions because the market makers who build the data-base depend on all NASDAQ system functions. There is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NQDS fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." April Order, *id.*, 49 FR at 17649 n.91.

[19] *See* motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, date June 11, 1984.

[20] *See* Securities Exchange Act Release No. 21471 (November 8, 1984), 49 FR 45282.

[21] *See* Request for Reconsideration based upon New Evidence submitted by Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated November 19, 1984. The NASD also has filed in the United States Court of Appeals for the District of Columbia Circuit a petition seeking review of the Commission's orders issued in this proceeding. *See* NASD v. SEC, No. 85–1012 (D.C. Cir. filed Jan. 7, 1985).

[22] *See* Securities Exchange Act Release No. 21832 (March 8, 1985), 50 FR 10866.

[23] *See infra* note 3.

[24] *See* File No. 4–258, Memorandum to the Files, from William W. Uchimoto, Division of Market Regulation, SEC, regarding C&L Meeting, dated November 1, 1985. C&L commented on the Commission's Memorandum: see Letter from C&L to Richard G. Ketchum, SEC, dated January 8, 1986.

[25] The three direct cost pools were the costs of each of these NASDAQ component resources: Network Communications, Processor CPU, and Data Storage. The indirect cost pools were: general and administrative costs, systems development and overhead.

NQDS to bear a share of the query costs. In this regard, C&L regarded all subscribers to NASDAQ quotations as benefiting from quotation updates made through Level 3 terminals. C&L concluded that, because updates are based upon market maker queries, all subscribers, including NQDS subscribers, should pay for system costs related to processing market maker queries. In order to isolate those queries that C&L believed were made in connection with a market maker's update, C&L first counted only those queries that were made by market makers in stocks in which they made markets. Of these queries, C&L counted only queries received from Level 3 terminals used to make markets in the particular stocks. C&L determined that 76.8% of Level 3 queries were of this nature.

C&L then responded to questions regarding the Study's view that subscribers to NQDS or Levels 2 or 3 services receive on average nine quotations—eight market makers' quotations and the best bid and offer display ("BBO")—whereas subscribers to Level 1 service receive one quotation, the BBO. Because the Study treated each stored quotation as a single cost unit, subscribers to full quotation information (including NQDS subscribers) thus would bear nine times more query costs than subscribers to Level 1 service. The Commission staff questioned why only one cost unit was attributable to the BBO when the BBO, as a distillation of all market makers' quotations in a specific security, appeared different from individual market maker quotations. C&L believed that the BBO was constructed by massaging "in stream" data reflecting incoming quotation update data. Specifically, C&L assumed the BBO was derived after the data is processed to some degree and validated but before it is entered into the database for storage. Because this data was derived from in stream data, C&L stated that system processing utilized to produce the BBO could not be measured.

III. Comment Letters

In response to its solicitation of comments on SR–NASD–85–19, the Commission received comment letters from the Information Industry Association ("IIA"),[26] Instinet,[27] and the NASD.[28] The IIA did not comment on the specifics of how the NQDS fee should be formulated, but did believe that the NQDS fee should be cost-based for the sake of fairness and efficiency.

Instinet's comment letter was accompanied by a report prepared on behalf of Instinet by the accounting firm of Deloitte Haskins & Sells ("DH&S Report") that reviewed the C&L Study. In its comment letter, Instinet urged the Commission to summarily disapprove the NASD's proposed NQDS subscriber fee because the "NASD and Coopers and Lybrand assume things contrary to the April Order that are integral to the fees proposed." In this regard, Instinet noted that the proposed fee departs from the April Order by assigning a portion of the costs of operating NASDAQ's quotation inquiry function to NQDS subscribers. Furthermore, Instinet cited to the DH&S Report in arguing that the NASD's unit pricing theory that "assign[s] different cost factors to products on the basis of the amount of information provided appears to reflect primarily an assignment of value to the product rather than an allocation of costs," a pricing methodology rejected by the April Order. Instinet reasoned that "the number of quotes available is almost irrelevant where high proportions of costs are fixed costs. In that situation, the availability of one quote costs as much as many, many more." Indeed, Instinet contended that, to the extent dissemination of the BBO involved not only collection of some individual market maker quotations as NQDS but also an additional calculation—*i.e.*, determination and updating of the BBO—if anything a higher fee was appropriate for Level 1 than NQDS. Instinet indicated that a preferable approach would be to apportion common costs among all users on an equal basis utilizing subscriber terminals as the appropriate pricing units. By assuming that the charges for terminals receiving NQDS should be no more than those receiving Level 1 service and using the NASD's methodology except as revised with respect to unit pricing, Instinet calculated that the NQDS monthly subscriber fee should be approximately $11.00 per terminal.

Instinet also argued that it is "unfair and unreasonable" to permit the NASD to set the NQDS subscriber fee to recover 150% of the NASD's 1984 costs. Instinet stated that "even granting the assumption that NASD's historical cost growth is a reasonable predictor of future growth, a front-loaded, 50% increment generates substantial revenues over three years in excess of those generated by 15% per annum rate increase over the same period."

Instinet believed that the multiplier used would generate a capital surplus which the NASD had not justified and would amount to current customers having "to finance capital expenditures that will benefit different, future customers." Finally, Instinet argued that the NASD failed to take into account increased revenues that Instinet expected would largely offset increased costs over time. Instinet recommended that the NASD should establish fees that recover 1986 forecast expenses.

Instinet then requested that the NASD be required to explain or provide further data regarding how conclusions or findings were reached with respect to a number of technical matters discussed in the C&L Study. Instinet cautioned that the proposed NQDS fee should not be approved without review of this additional information and suggested that the Commission hold an informal conference with the parties to explore these matters fully.

The NASD's comment letter addressed some of the major contentions raised by Instinet's comment letter. The NASD's comments were accompanied by an affidavit from a C&L partner, which responded to 49 questions or remarks expressed by Instinet in commenting on the proposed NQDS subscriber fee. The NASD disputed Instinet's view that services such as NQDS must be segregated and separately costed and argued that the NASDAQ system is monolithic and incapable of being functionally analyzed in the manner indicated by Instinet. The NASD also defended its unit pricing methodology stating that it does not result in value-of-service pricing because "it is a cost hearing unit-of-sale approach applied to the quantity of market information received through each service." The NASD then responded to Instinet's concerns regarding the 50% cost recovery multiplier. The NASD believes that the multiplier is based on a reasonable five year projection of costs and avoids costly and repeated fee filings that would require reviewing costs on an annual basis. The NASD indicated that revenue projections are unpredictable and that Level 2 and 3 revenues may actually decline because of new interfaces and a lower NQDS subscriber fee. Indeed, NASD predicts an eventual operating deficit even with the 50%

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[26] *See* Letter from Kenneth B. Allen, Vice President for Government Relations, IIA, to John Wheeler, Secretary, Commission, dated January 3, 1986.

[27] *See* Letter from Daniel T. Brooks and Barry S. Spector, Cadwalader, Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary, Commission, dated November 29, 1985.

[28] *See* Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to John Wheeler, Secretary, Commission, dated January 31, 1986. Accompanying the NASD's comment letter was an affidavit from C&L.

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multiplier. While the NASD was willing to answer other questions and provide further information, the NASD believed that the current record is sufficient for the Commission to analyze the proposed fee.

IV. Discussion

A. Standards Governing Commission Review

The NASD's proposed rule change raises a number of issues under the Act regarding the dissemination of market information. These issues include, first, questions regarding the appropriate prices and terms that an exclusive processor of securities data can impose on vendors that may compete with the exclusive processor in marketing the data in specialized formats and displays.[29]

Second, the proposed rule change must be consistent with Section 15A of the Act. Specifically, the proposal must be consistent with:

- Section 15A(b)(5) of the Act, which requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls."
- Section 15A(b)(6) of the Act, which requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."
- Section 15A(b)(9) of the Act, which requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in futherance of the purposes of [the Act]."

In considering whether the NASD's proposed fee is consistent with these provisions of the Act, the Commission must also consider the proposal in light of the Commission's previous determinations in this matter. Specifically, the Commission, in the April Order, determined that, "at least in the circumstance where an exclusive processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, the exclusive processor's fees should be based strictly on the expenses it incurs in providing information to vendors." [30] In this connection, the Commission stated that

> the NASD may recover only the costs of collecting, validating, [footnote omitted] and preparing the information for shipment to Instinet. Costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing an NQDS subscriber charge. In addition, incremental capacity built into its computer and communications system [footnote omitted] necessary to operate an inquiry service, but not necessary for a quotation collection service, cannot be considered costs relevant to the NQDS service.[31]

The Commission also stated that, "barring demonstrable differences in cost, all subscribers to NASDAQ information through vendors other than NASDAQ should pay the same basic fee to the NASD whether they receive the NASDAQ Level 1 best bid and offer service or the Instinet full quotation service." [32]

B. Institution of Proceedings to Determine Whether to Approve or Disapprove SR–NASD–85–19

After carefully reviewing the terms of the proposed rule change and the C&L Study upon which the rule change was based, the Commission is unable at this time to determine that the rule change is consistent with the Act, particularly sections 11A and 15A thereunder. Accordingly, the Commission is instituting proceedings pursuant to section 19(b)(2)(B) under the Act to determine whether the proposed rule change should be approved or disapproved. The Commission believes that these proceedings will provide the NASD and commentators an opportunity further to assess the NASD filing and C&L Study, as well as to review and address the concerns raised in Instinet's comment letter.

Specifically, the commission notes that the C&L Study's method of computing the NQDS fee does not appear to be cost-based. As previously discussed, the Commission, in the April Order, determined that costs not related to a service provided should not be borne by that service. Under this analysis, the Commission determined that costs associated with operating a quotation query service were not to be included in calculating an NQDS subscriber fee. Notwithstanding the Commission's unequivocal position on query costs, the NASD utilized the C&L Study to base its decision to include certain quotation query costs as common costs apportionable to NQDS subscribers. The NASD's proposed NQDS fee, therefore, is inconsistent with the Act for reasons delineated in the April Order.[33] The Commission preliminarily does not find that the reasoning set forth in the C&L Study justifies a reconsideration of the query function exclusion. C&L based its determination to include market maker query costs on what it labeled as an "assumption"—that because market maker quotations were critical to the operation of the NASDAQ system, all users should share those query costs.[34] This is precisely the same argument made by the NASD and rejected by the Commission in the April Order.[35]

Accordingly, because the NASD included NASDAQ query costs in developing an NQDS subscriber fee, the Commission is unable to conclude at this time that the proposed rule change is consistent with the Act. Moreover, because Instinet would have to provide its own query service while bearing some of the costs of the NASD's competing query service, the commission is unable to make the finding that the rule change does not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." [36]

The Commission in the April Order also determined that the proposed NQDS subscriber fee should be "cost-based and calculated by allocating the percentage of system use of each quotation service offered by the NASD ("functional analysis"), to assure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers." [37] The Commission is concerned about the consistency of the NASD proposal with the Commission determination, particularly in its reliance on the C&L Study's unit pricing theory. The Commission questions why C&L chose the stored quotation as the pricing unit over other potential pricing units such as the number of terminals receiving data. The Commission also questions the appropriateness of requiring recipients of full NASDAQ quotation information to bear nine times more costs than recipients of Level 1 service who receive the BBO.[38]

At the October Meeting, when questioned how the BBO was constructed, C&L responded that it believed that the BBO was formulated from "in stream" data prior to its entry into the NASDAQ database. The Commission requests comment on C&L's analysis that it is unlikely that construction of the BBO may directly result from the processing of all market makers' quotations entered into the quotation database in a particular NASDAQ security. In addition, the Commission requests comments on whether, even if the BBO is constructed in the manner asserted by the NASD, it is possible both from a quotation collection and systems standpoint that dissemination of the BBO may be materially different than dissemination of individual market maker quotations.

The Commission believes that a careful analysis of the actual costs of developing the BBO is necessitated by the Commission's decision in the April Order that "all pass-through subscribers, including the Level 1 fee and the fee to Instinet subscribers, must be calculated on the same basis." [39] In this regard, the Commission provided Instinet and its subscribers interim relief in the form of access to NQDS at a price identical to the NASD's Level 1 charge of $8.75 per terminal per month.[40] The Commission recognized that "there may be costs properly allocable to NQDS that exceed those relating to NASDAQ Level 1 service," but expected the NASD to ascertain those costs by the "more rigorous cost accounting required by [the April Order]." [41] In light of the cost attribution standard imposed by the April Order, the Commission preliminarily believes that the C&L Study does not provide sufficient support for the NASD's conclusion that the BBO pass-through service should recover for each subscriber only one ninth of the system costs recovered by the NQDS pass-through service. Accordingly, absent a careful and searching examination by the NASD of this matter, the Commission is unable to determine, among other things, that the NASD's proposed NQDS fee is based on a formula that provides for the "equitable allocation of reasonable . . . charges among . . . persons using any facility or system which the association operates or controls." [42]

VI. Request for Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the potential grounds for disapproval identified above.[43] Interested persons are invited to submit comments regarding the proposed rule change by April 1, 1986. Persons desiring to submit written data, views, and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–NASD–85–19.

Copies of the submission and all written statements with respect to the proposed rule change between the Commission and any person, other than those which may be withheld from the public,[44] will be available for inspection and copying at the Commission's Public Reference Room.

It is hereby ordered, pursuant to section 19(b)(2) of the Act, that proceedings be instituted to determine whether to approve or disapprove proposed rule change SR–NASD–85–19.

By the Commission.

Dated: February 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–4275 Filed 2–26–86; 8:45 am]

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[Release No. 35–24022; 70–6306]

Consolidated Natural Gas Co.; Proposed Issuance of Common Stock Under Dividend Reinvestment Plan and Employee Stock Ownership Plan Reflecting a Two-for-One Stock Split

February 20, 1986.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed with this Commission a further post-effective amendment to its declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

By prior orders in this proceeding dated June 7, 1979, February 12, 1982, July 9, 1982, November 10, 1983, November 26, 1984, and November 27, 1985 (HCAR Nos. 21088, 22366, 22571, 23114, 23497, and 23925), Consolidated was authorized to issue shares of its common stock, from time to time, to the agent for Consolidated's common stockholders participating in Consolidated's dividend reinvestment plan ("DRP Plan") and to the Trustees of the employee stock ownership plan ("ESOP Plan") of Consolidated and its participating subsidiaries. The time for the issuance of such shares expires on

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[29] In this regard, section 11A(c) of the Act provides that the Commission, may, by rule, assure that "all securities information processors may, for purposes of distribution and publication, obtain [securities data made available by an exclusive processor] on fair and reasonable terms."

Second, the proposed fee must be reviewed to detemine whether such fee is fair and reasonable and is consistent with the Congressional mandate in section 11A(a)(1) of the Act to assure "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."

[30] April Order, *supra* note 13, 49 FR at 17647.

[31] April Order, *id.*, 49 FR at 17659–60.

[32] April Order, *id.*, 49 FR at 17658. The Commission considered NQDS and Level 1 service to be "pass-through" services that only collected information and passed it on to vendors.

[33] At the October Meeting, C&L conceded that it had utilized only statistics that were collectible directly from the NASDAQ system and had not studied reasons why market makers make queries from Level 3 terminals. Accordingly, irrespective of the Commission's decision not to permit any NASDAQ query costs to be passed on to NQDS subscribers, the Commission believes that the C&L Study fails to distinguish and separate Level 3 queries that could be made for purposes other than an activity done that precedes an update of a market maker's quotation. For example, market makers may query a Level 3 terminal to price an incoming order from the firm's retail sales office or to respond to a phone inquiry from a broker with an agency order.

[34] *See* C&L Study at 55–56. The NASD and C&L also restate that the NASDAQ system is monolithic and for that reason assert that accepted cost accounting principles do not require seperate allocation of system costs attributable to the query function. NASD Comment Letter, *supra* note 28 at 3; C&L affidavit, *supra* note 28 at 2. The Commission understands the structure of the NASDAQ system, and in the April Order determined that the Act requires that the NASD still must make a reasonable attempt to identify specific cost components associated with different services generated by the system in order to exclude query costs from the NQDS fee. This determination was based, in part, on its recognition that the NQDS feed requires Instinet to duplicate costs attributable to a query function in its own system. Indeed, the NASD itself has recognized that there is a capability to separate out costs even in a "monolithic" system. Thus, the NASD, in excluding 24% of query costs, has made some cost allocations with respect to NQDS. The Commission believes, however, that these allocations are insufficient. For the reasons stated in the April Order, the Commission believes that the NASD must make an attempt to exclude all costs associated with the NASDAQ query function; of course, the NASD can include the costs of collecting, validating, and preparing the quotation information for shipment to Instinet.

[35] While the Commission recognizes that an expert analysis of NASDAQ can add precision to measuring costs of the various system functions, the

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Commission believes that the C&L study's allocation of a portion of market maker query costs to Instinet and its subscribers reflects a determination falling outside the scope of C&L's special expertise. As a general matter, the determination regarding whether Instinet should subsidize costs attributable to a separate service not provided to Instinet is a policy question which falls in the Commission's area of expertise and discretion.

[36] Section 15A(b)(9) of the Act.

[37] April Order, *supra* note 13, 49 FR at 17642.

[38] As discussed *supra*, the C&L Study treated a "quotation" as a unit of cost. With an average of eight market maker quotations per security plus the BBO, the NASD's proposal is based on a total of nine quotations per security, with the BBO treated identically as an individual market maker quotation.

[39] April Order, *supra* note 13, 49 FR at 17662.

[40] *See* April Order, *supra* note 13, 49 FR at 17661.

[41] *Id.*

[42] Section 15A(b)(5) of the Act.

[43] In light of the comments by Instinet and the IIA, commentators are encouraged to revisit and respond to the questions raised in the August Notice. Specifically, the Commission seeks further comment regarding the NASD's unit pricing methodology, cost pools and allocations, and 150% budget multiplier.

[44] *See* 17 CFR 240.24b–2.

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December 31, 1989, for the DRP and on December 31, 1986, for the ESOP. As of February 12, 1986, 105,174 shares of common stock, $4 par value, allocated to the DRP remain unissued, and 77,134 shares of common stock, $4 par value, allocated to the ESOP remain unissued.

Consolidated has filed a declaration (File No. 70-7217) requesting authorization to amend its Certificate of Incorporation by increasing and classifying its authorized common stock from 50,000,000 shares, $4 par value, to 120,090,000 shares, $2.75 par value, primarily for the purpose of effecting a two-for-one stock split. Each share of issued and unissued $4 par value common stock would be changed into two shares of $2.75 par value common stock. At the close of business on May 20, 1986, the two-for-one stock split would become effective, assuming shareholder approval of the amendment to the Certificate of Incorporation, and all shares of the common stock would be reclassified as $2.75 par value common stock.

Consolidated now proposes in this proceeding to issue through December 31, 1989, to both the agent for the DRP Plan and to the trustees of the ESOP Plan, an aggregate of 364,616 shares of its common stock, $2.75 par value, or twice the number of $4 par value shares remaining unissued immediately prior to the stock split.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commision, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4224 Filed 2-26-86; 8:45 am]

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[Release No. 35-24022; 70-7170]

Consolidated Natural Gas Co.; Proposed Issuance of Common Stock Under Dividend Reinvestment Plan Reflecting a Two-for-One Stock Split

February 20, 1986.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

By order in this proceeding dated November 27, 1985 (HCAR No. 23926), Consolidated was authorized to issue between January 1, 1986, and December 31, 1989, to the agent for Consolidated common stockholders participating in Consolidated's dividend reinvestment plan ("DRP"), up to 750,600 shares of its common stock, $4 par value.

Consolidated has filed a declaration (File No. 70-7217) requesting authorization to amend its Certificate of Incorporation by increasing and classifying its authorized common stock from 50,000,000 shares, $4 par value, to 120,000,000 shares, $2.75 par value, primarily for the purpose of effecting a two-for-one stock split. Each share of issued and unissued $4 par value common stock would be changed into two shares of $2.75 par value common stock. At the close of business on May 20, 1986, the two-for-one stock split would become effective, assuming shareholder approval of the amendment to the Certificate of Incorporation, and all shares of the common stock would be reclassified as $2.75 par value common stock.

Consolidated now proposes in this proceeding to issue through December 31, 1989, to the agent for the DRP plan, 1,500,000 shares of its common stock, $2.75 par value, or twice the number of $4 par value shares authorized prior to the stock split.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4225 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14951; File No. 811-3923]

Lehman International Dollar Funds, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

February 20, 1986.

Notice is hereby given that Lehman International Dollar Funds, Inc. ("Applicant") 55 Water Street, New York, New York 10041, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 29, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is incorporated under the laws of the State of Maryland and that it filed a registration statement pursuant to section 8(b) of the Act on December 9, 1983, which became effective on February 16, 1984. Applicant further states that it has only one investment portfolio, Lehman International Dollar Money Market Fund ("Fund"). According to the application, tax law changes were made in 1984 which would adversely affect the investment objective of the Fund as of July 1, 1985; Applicant notified Fund securityholders of those changes and ceased to sell Fund shares after June 22, 1984. During the month of June 1985, securityholders were advised to redeem their Fund shares at net asset value. The application further states that on July 1, 1985, the only securityholder remaining was Shearson Lehman Brothers, Inc., its sponsor, and total assets were $100,000 in cash. On October 15, 1985, Applicant's directors voted to dissolve

the Corporation. Applicant states that it is not a party to any litigation or administrative proceeding and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4226 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24027; 70-7201]

National Fuel Gas Co.; Proposed $200,000 Loan for a Note and Preferred Stock Option

February 21, 1986.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed a declaration with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

National proposes to lend Metscan, Inc. ("Metscan") the sum of $200,000 in consideration for a note ("Note") made in the same principal amount at an interest rate of 3% per annum above the prime rate of Chemical Bank accruing from the date of execution. Interest on the unpaid principal balance will be paid quarterly beginning on January 1, 1986. Principal will be payable on demand after the fourth anniversary of the date of the Note. Contemporaneously, Metscan will grant National an option to purchase 80,000 of its Class C Preferred Shares at $2.50 per share for a period of four years from the date of the grant, and thereafter for 30 days after the principal and accrued interest is paid in full. At its discretion, National may exercise its option at any time and apply the option price to any outstanding principal indebtedness. In this instance, Metscan would remain liable for the payment of accrued interest.

Metscan has developed an electronic meter reading device that will provide an economical method of reading meters. This system operates to provide low cost and efficient remote automatic meter reading, meter security, theft detection, consumption monitoring, and control capability for metered utility service, including gas meters. The device is presently being field tested within the National distribution territory.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4227 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14607]

Union Pacific Corp.; Application and Opportunity for Hearing

Notice is hereby given that Union Pacific Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under indentures of the Company dated as of April 1, 1969 and September 1, 1980, respectively (the "1969 Indenture" and "1980 Indenture", respectively), which were heretofore qualified under the Act, and the trusteeship by Citibank under an Indenture between Albany County, Wyoming ("Albany County") and Citibank, Trustee, dated December 1, 1985 (the "1985 Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under any of the indentures.

Section 310(b) of the Act provides in part that if a trustee under an Indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, with certain exceptions stated therein, that there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

In support of its application the Company alleges that:

(1) The Company has outstanding on December 20, 1985 approximately $5,099,100 aggregate principal amount of its 4¾% Convertible Denbentures due April 1, 1999 (the "Convertible Debentures") and $250,000,000 aggregate principal amount of its 11⅞% Sinking Fund Debentures due 2010 (the "Sinking Fund Debentures") issued under the 1969 Indenture and 1980 Indenture, respectively, in each case executed by the Company and Citibank, as Trustee. The Convertible Debentures were registered under the Securities Act of 1933, as amended (the "Securities Act") (File No. 2-31741), and the 1969 Indenture was qualified under the Act (File No. not available). The Sinking Fund Debentures were registered under the Securities Act (File No. 2-68787) and the 1980 Indenture was qualified under the Act (File No. 22-10659). Citibank is currently acting as trustee under the 1969 and 1980 Indentures.

(2) Pursuant to the 1985 Indenture, there were issued the Adjustable Rate Pollution Control Revenue Bonds (Union Pacific Railroad Company Project), Series 1985, in the aggregate principal amount of $8,000,000 (the "Bonds"). The proceedings of the sale of the Bonds were loaned to Union Pacific Railroad

Company, a wholly-owned subsidiary of the Company, pursuant to an Pollution Control Financing agreement dated as of December 1, 1985 between Albany County and Union Pacific Railroad Company. The Bonds are payable by Albany County solely from revenues received by Albany County from such Financing Agreement. The rights of Albany County under such Financing Agreement have been assigned to the Trustee to secure the Bonds, and pursuant to a Guaranty dated as of December 1, 1985 (the "Guaranty"), the Company has unconditionally guaranteed the payment by Union Pacific Railroad Company of its obligations under the Financing Agreement in respect of the principal, redemption price, premium, if any, and interest on the Bonds. The Bonds are exempt from registration under the Securities Act by virtue of an exemption contained in section 3(a)(2) thereof, and the 1985 Indenture was not qualified under the Act. Citibank is currently acting as trustee under the 1985 Indenture.

(3) Section 608 of the 1980 Indenture provides in part as follows:

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the trustee shall fail to comply with the provisions of subsection (a) of this section, the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Holders, as their names and addresses appear in the Debenture Register, notice of such failure.

(c) For the purposes of this section, the Trustee shall be deemed to have conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall exclude from the operation of this paragraph (a) the Indenture, dated as of April 1, 1969, between Union Pacific Corporation and Citibank, N.A., Trustee, relating to the Company's 4¾% Convertible Debentures Due 1999, and (b) any indenture or indentures under which securities, or certificates of interest or participation in other securities, of the Company are outstanding, if . . .

(ii) The Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such. . . .

The 1969 Indenture contains indentical provisions to the above, except for section references and the like and the reference to the 1969 Indenture.

(4) Execution of the 1985 Indenture may invoke Citibank in a conflict of interest within the meaning of section 608 of the 1980 Indenture and the corresponding section 8.08 of the 1969 Indenture, since the 1985 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

(5) The Company's obligations with respect to the Convertible Debentures, the Sinking Fund Debentures and the Bonds are wholly unsecured and rank on a parity with each other. The only material differences between the 1969 and 1980 Indentures and the 1985 Indenture, and between the rights of the holders of the Convertible Debentures and the Sinking Fund Debentures and the holders of the Bonds, relate to the fact that the Company is the Guarantor of the obligations of Union Pacific Railroad Company under the Financing Agreement described above, which has been assigned to the Trustee to secure the Bonds, but is the primary obligor under the 1969 and 1980 Indentures, and that the 1969 and 1980 Indentures are wholly unsecured but the 1985 Indenture is secured by the assignment of the rights of Albany County under the Financing Agreement, and also relate to aggregate principal amounts, dates of issue, denominations, events of default, maturity and interest payment dates, interest rates, form of registration, redemption or prepayment procedures, Trustee's reports, restrictions on transferability, conversion, provisions for conflicting interest of the Trustee, and other provisions of a similar nature. Any such differences and any other difference in the provisions of the 1969 and 1980 Indentures and the 1985 Indenture are unlikely to cause any conflict of interest between the respective trusteeships of Citibank under said Indentures.

(6) The Company is not in default under the 1969, 1980 or 1985 Indenture.

(7) Such differences as exist between the 1969 and 1980 Indentures and the 1985 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors of disqualify Citibank from acting as trustee under the 1969 or 1980 Indenture or the 1985 Indenture.

(8) The Company has waived (a) notice of hearing, (b) hearing on the issues raised by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission, File No. 22-14607, at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 17, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, not later than March 17, 1986 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4228 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Government Purchases of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

Under the authority delegated to me by the President in section 1-201 of Executive Order 12260 of December 31, 1980, in order to promote further the economic recovery of the Caribbean

Basin countries, I have determined that the countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et. seq.) provide appropriate reciprocal competitive government procurement opportunities for United States products and suppliers of such products. I hereby direct that products originating in those countries shall be treated as eligible products for purposes of section 1-101 of Executive Order 12260 until September 30, 1985, unless otherwise provided by the U.S. Trade Representative in the Federal Register. Such treatment shall not apply, however, to products, originating in those countries, that are excluded from duty free treatment under 19 U.S.C. 2703(b).

Clayton Yeutter,

United States Trade Representative.

Countries Designed as Beneficiaries under the Caribbean Basin Economic Recovery Act: Antique and Barbuda, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

[FR Doc. 86-4247 Filed 2-26-86; 8:45 am]

BILLING CODE 3190-01-M

Implementation of Modifications in Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice modifies the import relief for specialty steel in order to implement agreements with the European Communities, Japan and the Republic of Korea.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Office of the United States Trade Representative (202) 395-4510.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983, provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless and alloy tool steel imported into the United States. The U.S. Trade Representative was directed by Proclamation 5074 to take such actions and perform such functions for the United States as may be necessary to implement the relief, including the allocation of quota quantities on a country-by-country basis; and, pursuant to section 203 of the Trade Act of 1974, to negotiate orderly marketing agreements and modify the import relief. On September 18, 1984, the President established a national policy for the steel industry and directed the U.S. Trade Representative to coordinate and direct the implementation of that policy, including the negotiation of new arrangements and the reaffirmation of existing measures limiting steel exports into the United States. Supplemental authority to enforce the national policy for the steel industry was provided for in title VII of the Trade and Tariff Act of 1984 (18 U.S.C. 2253 note).

Pursuant to the above authority, the U.S. Trade Representative has concluded agreements with Australia, Austria, Brazil, Czechoslovakia, the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greese, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland), German Democratic Republic, Finland, Hungary, Japan, Mexico, Poland, Portugal, the Republic of Korea, Romania, South Africa, Spain, Venezuela, Yogoslavia. In order to implement such agreements, and unless and until further modified by the U.S. Trade Representative, the Tariff Schedules of the United States (TSUS) is modified as follows:

1. Headnote 10 to subpart A, part 2 of the TSUS is modified by adding new paragraph (g) at the end thereof, as follows:

"(g) *Products Subject to Certain Export Restraint Agreements.*

(i) The duties provided for in items 926.00 and 926.05 shall not apply to products of Australia, Austria, Brazil, Czechoslovakia, the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland), German Democratic Republic, Finland, Hungary, Japan, Mexico, Poland, Portugal, the Republic of Korea, Romania, South Africa, Spain, Venezuela, Yugoslavia exported to the United States on or after March 1, 1986."

(ii) Items 926.00 and 926.05 are modified by inserting in the parenthetical expressions in each item after the opening of parenthesis the words "except as provided in headnote 10(g) to this subpart, and".

(iii) Items 926.12, 926.13, 926.17, 926.18, 926.22, and 926.23 are modified by replacing the country allocations for "Other" countries with "Other, excluding the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland)". These modifications shall be effective as to products of such Member States of the European Communities on or after March 1, 1986. Such products exported to the United States prior to March 1, 1986 shall, on or after March 1, 1986, be permitted entry subject to normal Customs procedures. Such products are subject to a bilateral export restraint agreement with the European Communities which will be implemented on March 1, 1986.

(2) Items 926.12, 926.13, 926.16, 926.22, and 926.23 are further modified by changing the quota quantities for "Other, excluding the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland) to the following:

Item	Quota quantity (in short tons) entered during the restraint period			
	July 20 through Oct. 19	Oct. 20 through Jan. 19	Jan. 20 through Apr. 19	Apr. 20 through July 19
926.12	(1)	(1)	(1)	"1,195"
926.13	"1,136"	"1,136"	"1,136"	"1,137"
926.17	(1)	(1)	(1)	[illegible]
926.18	"876"	"876"	"876"	"877"
926.22	(1)	(1)	(1)	"718"
926.23	"736"	"736"	"737"	"737"

[1] No change.

Dated: February 21, 1986.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 86-4244 Filed 2-26-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86-014]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. Law 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, March 11, 1986, in the U.S. Coast Guard Vessel Traffic Service, 4400 Dauphine Street, New Orleans, LA. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the January 14, 1986 Meeting.

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3. Briefing of VTS Operation.

4. Tour of Vessel Traffic Service Center New Orleans.

5. Question and Answer Period with Vessel Traffic Service Center Operators.

6. Presentation of Information Concerning the "Black Box" Concept of Vessel Traffic Management and the Global Maritime Distress System.

7. Discussion of the Coast Guard's Challenge to the Committee to Increase Participation in Vessel Traffic Service, New Orleans and to Examine the Scope of the Present New Orleans Vessel Traffic System.

8. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: February 19, 1986.

L.C. Kindbom,

Captain, U.S. Coast Guard Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-4266 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 10, notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 6, at 9 a.m., through April 11, 1986, at 4 p.m., at FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Election of new Chairperson.
3. Discussion of agenda items.
4. Discussion of urgent priority items.
5. Report from Executive Director.
6. Old Business.
7. New Business.
8. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than April 4, 1986, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-300, 800 Independence Avenue SW., Washington, DC, 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from July 22 through July 25, 1986, in Oakland, California.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on February 13, 1986.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 86-4202 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 39
Thursday, February 27, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:33 p.m. on Friday, February 21, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank at Douglas, Douglas, Wyoming, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, February 21, 1986; (2) accept the bid for the transaction submitted by First Wyoming Bank-Douglas, Douglas, Wyoming, an insured State nonmember bank; (3) approve the application of First Wyoming Bank-Douglas, Douglas, Wyoming, for consent to purchase certain assets of and assume the liability to pay deposits made in First National Bank at Douglas, Douglas, Wyoming; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 24, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-4256 Filed 2-25-86; 12:40 pm]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 4, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, March 6, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC, (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1986-6
  Jan W. Baran, Fund for America's Future, Inc.
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-4304 Filed 2-25-86; 3:43 pm]

BILLING CODE 6715-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 24, 1986, 49 FR 6469.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 26, 1986, 10:00 a.m..

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

RP-1
  TA85-3-26-002, Natural Gas Pipeline Company of America

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-4361 Filed 2-25-86; 2:51 pm]

BILLING CODE 6717-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 21, 1986.

TIME AND DATE: 9:30 a.m., Thursday, February 20, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The consideration of the following matters, previously noticed to be considered by the Commission at this closed meeting, was postponed until further notice.

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;
2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;
3. Local Union 1609, UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C.

(Issues in these cases involve the interpretation and application of 30 U.S.C. 821, the compensation provisions of the Mine Act.)

No earlier announcement of the decision to postpone consideration of these cases at this meeting was possible. 5 U.S.C. 552(b)(a)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-4349 Filed 2-25-86; 11:39 am]

BILLING CODE 6735-01-M

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INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE:

March 10, 1986—6:00–9:00 p.m.
March 11, 1986—9:00 a.m.–12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open except for the portion to be held as Closed Session to discuss Personnel matters as defined in § 1004.4 (b) of 22 CFR Chapter 10.

MATTERS TO BE CONSIDERED:

March 10, 1986

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of December 9–10, 1985
4. Closed Session to Discuss Personnel Matters as Defined in § 1004.4 (b) of 22 CFR Chapter 10

March 11, 1986

5. Report of the Committees of the Board
6. Other Business

CONTACT PERSONS FOR MORE INFORMATION:

Robert W. Mashek, Secretary to the Board of Directors, (703) 841–3844
Charles M. Berk, General Counsel, (703) 841–3812

Dated: February 21, 1986.

Charles M. Berk,
Sunshine Act Officer.

[FR Doc. 86-4283 Filed 2-25-86; 9:48 am]

BILLING CODE 7025-01-M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, March 4, 1986, at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain sickle guards intended for use in mowing machines (Docket No. 1282).
5. Investigation No. 701–TA–267 and 268, and 731–TA–304 and 305 [Preliminary] (Top-of-the-stove stainless steel cooking ware from Korea and Taiwan)—briefing and vote.
6. Investigation Nos. 701–TA–239 and 731–TA–248 [Final] (Ethyl alcohol from Brazil)—briefing and vote.
7. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Dated: February 24, 1986

Kenneth R. Mason,
Secretary.

[FR Doc. 86-4337 Filed 2-25-86; 11:24 am]

BILLING CODE 7020-02-M

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PAROLE COMMISSION

DATE AND TIME: Wednesday, February 26, 1986—at 10:00 a.m.

PLACE: 5550 Friendship Boulevard, One North Park Building, Room 420–F, Chevy Chase, Maryland 20815, and via a conference telephone circuit.

STATUS: Open: Agency business requires that less than a week's notice be given and this notice is being circulated at the earliest practicable time.

MATTERS TO BE CONSIDERED:

1. Whether or not to adopt a special Curfew, Residential Confinement Program and, if adopted, the procedures to be used.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492–5936.

Dated: February 24, 1986.

Joseph A. Barry,
General Counsel, United States Parole Commission.

[FR Doc. 86-4319 Filed 2-25-86; 10:51 am]

BILLING CODE 4410-01-M

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federal register

Thursday
February 27, 1986

Part II

Postal Service

39 CFR Part 777

Uniform Relocation Assistance and Real Property Acquisition Policies and Procedures; Final Rule

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POSTAL SERVICE

39 CFR Part 777

Final Revised Uniform Relocation Assistance and Real Property Acquisition Policies and Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The final relocation regulations adopted here replace the original Postal Service relocation regulations adopted in 1975, which were written on the assumption that acquisitions normally occur under the exercise or the threat of the exercise of eminent domain. However, because virtually no postal real property acquisitions involve eminent domain takings, the former regulations have not been entirely satisfactory and have at times resulted in confusion and windfall payments to participants in voluntary transactions with the Postal Service. To avoid these problems, the final rule, using the Department of Transportation's final rule as a model, does not apply to voluntary sales made without the exercise or the threat of the exercise of eminent domain.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Pennington, (202) 268–3111.

SUPPLEMENTARY INFORMATION: On May 28, 1985, the Postal Service published in the Federal Register for comment (50 FR 21752) a proposed rule to replace the relocation regulations previously adopted in 1975. A full explanation of the proposed changes, including the variations from the government-wide model rule, was published on May 28 and will not be repeated here, particularly since the Postal Service received no comments on the proposed rule. Accordingly, we are adopting the final rule substantially as proposed, with the exception of a few minor changes which we believe will clarify the final rule.

Implementation of the new regulations will take effect 30 days subsequent to publication in the Federal Register. However, any projects which have been publicly advertised prior to this date will continue to have relocation processed under the former regulations.

A description of the minor changes referred to above follows:

1. In paragraph (e) of § 777.13, the definition of "Displaced Person" has four minor changes:

a. A sentence was added to paragraph (e)(1)(ii)(B) so that it now allows the Postal Service to waive the requirement that a tenant still be in occupancy of the displacement property on the date that title transfers in order to be eligible for assistance.

b. Paragraph (e)(1)(iii) is amended with minor wording changes for clarity. The words "or will be" were inserted before "required to move" in the first sentence. The words "in order for the Postal Service to accomplish the project for which the property was acquired" were inserted before "provided such tenant occupies" in the same sentence. The words "or on the date the Postal Service leases or contracts to lease such property" were deleted from the last sentence which is in parenthesis.

c. Proposed paragraph (e)(2)(iii) was removed. It was ambiguous and could have been misconstrued to eliminate legitimate eligibility. The remaining paragraphs in that section were then renumbered accordingly and a minor wording change was made to the new paragraph (e)(2)(iii) for clarity. The words "for which lawful possession is" were inserted before the word "specified" in the first sentence.

d. Proposed paragraph (e)(2)(viii)(A) was removed to eliminate ambiguity. Paragraph (e)(2)(viii)(B) was changed to (e)(2)(vii), and a sentence was added to exclude as displaced persons, those tenants who are allowed to remain on acquired property and continue renting from the Postal Service, but who are given notice to vacate as a result of failure to comply with the terms of the lease with the Postal Service or failure to renew their leases under prevailing market conditions.

e. An additional definition was added as paragraph (e)(2)(ix) indicating that a person whose property is acquired through "friendly condemnation action" where price is not an issue, is not considered a displaced person.

2. In § 777.13(j), the definition of "Financial Means" was changed slightly for clarification. The words "the greater of" were inserted before "25 percent."

3. Section 777.14 was revised by inserting the words "coercive, or deceptive" in the first line in order to assure that eligibility of displaced persons is protected, and not vulnerable to change because of any action the displaced person may have taken in response to information given or action taken by Postal Service employees.

4. Section 777.22(c)(2) was changed to require that initial contact of displaced persons take place prior to acquisition and prior to the notice of displacement or the notice to vacate, and to suggest that it normally not be made prior to contracting for the acquisition. Language allowing the Postal Service 30 days after the notice of displacement or the notice to vacate before making initial contact was deleted.

5. Section 777.23(b)(6) was modified to provide that the replacement value of property lost, stolen, or damaged in the process of moving would be an allowable moving expense "when determined to be fair and reasonable by the Postal Service." This modification was provided to avoid potential windfalls for damaged articles of little value being replaced with new items having high replacement cost.

6. The last word of § 777.23(d)(4) was changed from "certificate" to "certification" to be consistent with the fee for certification inspections.

7. In § 777.23(h)(1), the annual gross receipts of at least "$2,000" was changed to "$5,000" to be consistent with the approximately 150 percent rise in the CPI since the test was instituted. This change has also been made in the Model Rule published by the Department of Transportation.

8. An addition was made to § 777.23(k)(1) to require that, unless the Postal Service determined otherwise, a claimant would have to make a good faith effort to sell an outdoor advertising sign, which was not to be moved, before the claimant could claim the depreciated replacement cost of the sign, less the proceeds from its sale.

9. The last sentence of § 777.24(a)(1) was changed by changing "(e)" to "(f)." This will exclude displaced persons eligible for 180-day Owner Occupant benefits, who choose instead to receive tenant benefits, from eligibility for downpayment assistance. Such persons are excluded from eligibility for downpayment assistance in both the Model Rule published by the Department of Transportation and the proposed rule published by other Federal agencies on May 28, 1985.

10. A sentence was added to § 777.24(f)(4) to encourage the use of installment of escrow rental assistance payments when last resort housing provisions are used to make payments exceeding $4,000.

11. In § 777.24(h) at the end of the first sentence the words "(not to exceed the costs of such for a comparable replacement dwelling)" were inserted to provide an upper limit on incidental expenses commensurate with costs of comparable housing.

12. In § 777.26(a)(3), the paragraph was clarified by eliminating the words "elect to."

13. In § 777.26(b)(3) the words "but only for such benefits as relate to costs of occupying the new site" were eliminated and the words "with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of $15,000" were substituted, thereby clarifying benefits payable for home and site for an owner.

14. Since a displaced person who owns a mobile home, but rents a site, is considered a tenant for the purposes of these regulations, § 777.26(b)(4) was corrected by deleting the words "the further maximum limitation on home and site benefits combined of $15,000 for a 180-day owner occupant and $4,000 for a 90-day occupant" and substituting the word "a limitation on home and site benefits combined of $4,000."

15. In § 777.27(a), the words "who would otherwise be eligible for a replacement housing payment" were deleted so as to reflect the potential applicability of Last Resort Housing to those desplaced persons not formerly eligible for a replacement housing payment.

16. A paragraph (d) was added to § 777.27 requiring that displaced persons provide proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory, before they can be paid last resort housing exceeding the $4,000 or $15,000 limitations set out in these regulations.

17. Section 777.31, acquisition procedures, has been renumbered and certain minor editorial changes were made.

18. A paragraph (c) was added to § 777.32, protecting the rights of tenants who own improvements on property to be acquired. The language was taken from the Model Rule and the proposed rule published by other Federal agencies on May 28, 1985.

List of Subjects in 39 CFR Part 777

Postal Service, Relocation assistance, Real property acquisition.

For the above reasons, 39 CFR Part 777 is revised to read as follows:

PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Subpart A—General Policy, Purpose and Definitions

Sec.
777.11 General policy.
777.12 Purpose.
777.13 Definitions.
777.14 Certain indirect actions prohibited.

Subpart B—Uniform Relocation Assistance

777.21 General procedures.
777.22 Relocation assistance advisory services.
777.23 Moving expenses.
777.24 Replacement housing payments.
777.25 Additional rules for replacement housing payments.
777.26 Mobile homes.
777.27 Last resort housing.
777.28 Claims and appeals.

Subpart C—Acquisition

777.31 Acquisition procedures.
777.32 Acquisition of tenant-owned improvements.
777.33 Expenses incidental to transfer of title to the Postal Service.

Subpart D—Voluntary Acquisitions

777.41 Acquisition procedures.

Subpart E—Donations

777.51 Acceptance of donations.

Authority: 39 U.S.C. 401.

Subject A—General Policy, Purpose and Definitions

§ 777.11 General policy.

It is the policy of the Postal Service to comply voluntarily with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), hereinafter referred to as the Act.

§ 777.12 Purpose.

The purpose of these regulations is to update policy and procedures for the Postal Service's voluntary compliance with the Act.

§ 777.13 Definitions.

(a) *The Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646. The Act consists of three titles: Title I—General Provisions; Title II—Uniform Relocation Assistance; and Title III—Uniform Real Property Acquisition Policy.

(b) *Business.* Any lawful activity, except a farm operation, that is:

(1) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacturing, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public; or

(3) Solely for the purposes of reimbursing moving and related expenses, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

(4) Conducted by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable Replacement Dwelling.* A dwelling which is:

(1) Decent, safe, and sanitary.

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonably adverse environmental conditions, is not generally less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the displaced person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not include special improvements such as outbuildings, fences, swimming pools, and greenhouses.

(5) Currently available to the displaced person.

(6) Within the financial means of the displaced person.

(d) *Decent, Safe, and Sanitary Dwelling.* A dwelling which meets local housing and occupancy codes and the following standards, unless they are waived for good cause by the Postal Service. The dwelling must:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and areas of living space needed to accommodate the displaced persons. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a bathtub or shower stall, sink, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping unit—as opposed to, for example, a room in a boarding house—there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage draining system, and adequate space and utility service connections for a stove and a refrigerator.

(5) Contain unobstructed egress to safe, open space at ground level.

(6) For displaced persons who are handicapped, be free of any barriers which would preclude their reasonable ingress, egress, or use of the dwelling.

(e) *Displaced Person:* (1) Subject to the additional definitions, limitations and exceptions in paragraph (e)(2) of this section, the term "displaced person" is defined as follows. ("Displaced persons" are entitled to receive benefits

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only as specifically provided for elsewhere in these regulations.)

(i) A person who owns real property, and who is required to move or to move personal property from the real property following Postal Service action to obtain title to, or a leasehold interest in, such real property by the exercise or the threat of the exercise of eminent domain.

(ii) A person who is a tenant and who is required to move or to move his or her personal property from real property:

(A) Following Postal Service action to obtain the tenant's leasehold interest in such real property by the exercise or the threat of the exercise of eminent domain, or,

(B) Where the Postal Service acquires a fee interest in the property (including long-term leases of 50 years or more), as a result of a Postal Service notice of displacement or notice to vacate such real property, provided the tenant was lawfully in possession at the time of the postal contract to acquire such property. (The requirement that the tenant occupy such real property on the date title is such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(C) Where such real property was used to construct a new building for the express purpose of leasing to the Postal Service under circumstances where such tenant would have been a "displaced person" hereunder had the Postal Service itself acquired the land and required the removal of the tenant to undertake construction of the building for Postal Service ownership.

(iii) Where the Postal Service acquires either a fee interest or a leasehold interest in the property, a person who is a residential tenant and is or will be required to move or to move his or her property from the real property, in order for the Postal Service to accomplish the project for which the property was acquired, provided such tenant occupies such real property on the date title in such real property transfers to the Postal Service or the date the Postal Service leases or contracts to lease such property, and further provided such tenant was lawfully in possession at the time of the initiation of negotiations. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(2) The term "displaced person" covers only persons meeting the requirements in paragraph (e)(1) of this section. The term "displaced person" does not cover the following non-exclusive list of examples.

(i) An owner who voluntarily sells his or her real property to the Postal Service, or,

(ii) A tenant who voluntarily transfers his or her leasehold interest to the Postal Service without the exercise or the threat of the exercise of eminent domain, or,

(iii) A tenant who is not lawfully in possession at the times for which lawful possession is specified in paragraphs (e)(1)(ii)(B) and (e)(1)(iii) of this section. A tenant who was legally required by the lease or otherwise to have moved from the property at the times specified in such paragraphs shall not be considered to be lawfully in possession.

(iv) A person who, at the determination of the Postal Service, is not required to relocate permanently, or,

(v) A person who, after receiving a notice of displacement or notice to vacate by the Postal Service, is notified in writing that he or she will not be displaced. Such later notification shall not be issued if the person has already moved. If such latter notification is issued, the Postal Service shall reimburse the person for any reasonable expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement or the notice to vacate or,

(vi) A person who is required to temporarily vacate the premises in order to permit fumigation, repair, painting, or other maintenance or code of enforcement work or,

(vii) A tenant who is required to move from real property as a result of a notice from the Postal Service to vacate such real property where such notice to vacate is issued five years or more after the date of the acquisition of such real property. A tenant who is given a notice to vacate as a result of failure to comply with the terms of his/her lease with the Postal Service or failure to renew his/her lease under prevailing market conditions is not considered to be a displaced person.

(viii) A mobile home occupant who owns the site on which the mobile home is located and who voluntarily sells the site to the Postal Service, regardless of whether such person owns or rents the mobile home.

(ix) A person whose property is acquired through a "friendly condemnation action" where price is not an issue.

(f) *Displacement Dwelling.* The dwelling acquired by the Postal Service from which a displaced person is required to move.

(g) *Dwelling.* The place of permanent or customary and usual residence of a person including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit (i.e. room in a boarding house); a mobile home; or any other residential unit.

(h) *Family.* Two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. If the Postal Service considers that circumstances warrant, others who live together as a family unit may be treated as if they are a family for the purpose of determining assistance under these regulations.

(i) *Farm Operation.* Any activity conducted solely or primarily for the production of one or more types of agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Financial Means.* A comparable replacement dwelling is within the financial means of the displaced family or individual if the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay does not exceed the greater of 25 percent of the monthly gross income of the displaced family or individual or the ratio of the present monthly rental or housing cost to the gross income of the displaced family or individual. (Supplemental payments made by public agencies are to be included in gross income for purposes of these comparisons.)

(k) *Initiation of Negotiations.* In the case where eminent domain is neither exercised nor threatened to be exercised, the initiation of negotiations is the initial written communication stating a price by the owner or the owner's representative to the Postal Service, or by the Postal Service to the owner or the owner's representative, regarding a proposed acquisition (by purchase or lease) or an interest in a specific piece of real property. In the case where eminent domain is either exercised or threatened to be exercised, the initiation of negotiations is the date the Postal Service makes a written offer of just compensation.

(l) *Notice of Displacement.* A notice given in writing by the Postal Service to a person that he or she will be displaced from his or her place of residence, business or farm, as a result of a facility action by the Postal Service. A notice of displacement may be combined with or in a notice to vacate.

(m) *Notice to Vacate.* A notice given in writing by the Postal Service to a person that he or she is to vacate postal owned property on or before a certain date. A notice to vacate may be combined with or in a notice of displacement.

(n) *Owner of Displacement Dwelling.* A person is considered to be an owner, if, at the initiation of negotiations, the person holds any of the following interests in real property acquired for a postal project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest other than leasehold interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraph (n)(1) or (n)(2) of this section; or

(4) Any other interest, including a partial interest, which in the judgment of the Postal Service, warrants consideration as ownership.

(o) *Person.* Any individual, family, partnership, corporation, association, business or farm operation.

(p) *Personal Property.* Any tangible property, not considered part of the real property, for which payment has not been included in the acquisition cost.

(q) *Tenant.* A person who has the legal right to temporary use and occupancy of real property owned by another. In some cases, these regulations also use the term "tenant" to refer to a person who occupies real property owned by another but whose legal right was terminated due to a timely notice to vacate the real property used and occupied.

§ 777.14 Certain indirect actions prohibited.

Postal employees shall take no indirect, coercive, or deceptive actions to cause persons to move from real property in an effort to avoid the circumstances under which such persons would be eligible to receive relocation benefits as displaced persons under these regulations. If a claimant demonstrates that such prohibited action caused him or her to move, he or she will be treated as a displaced person hereunder, if he or she otherwise meets the definition of a displaced person.

Subpart B—Uniform Relocation Assistance

§ 777.21 General procedures.

(a) *Planning Prior to Site Selection.* When acquisition of a site under consideration would likely involve displacement of a person eligible under § 777.13 for relocation assistance, the Postal Service representative shall prepare a relocation needs and availability analysis. The Postal Service representative shall include in the analysis a complete inventory of persons who may be displaced and specifically identify their needs.

(b) *Planning Subsequent to Site Selection.* Subsequent to site selection, the Postal Service must review the relocation needs and availability analysis and establish a specific plan for providing the assistance covered by these regulations to any eligible displaced persons. It will further determine the necessity of establishing an on-site relocation office which would be accessible to displaced persons and would be staffed with relocation personnel qualified to render all relocation services. The Postal Service will assure that cost estimates reflect current market conditions and that funding is available for all relocation assistance and activities.

(c) *Contracting for Relocation Services.* When the Postal Service determines it to be advantageous, it may enter into a relocation assistance service contract with a public agency or private firm having expertise in relocation assistance. The contract must require the contractor to follow Postal Service relocation assistance regulations.

(d) *Notice to Vacate, Ninety Day Requirement.* Postal Service notices to vacate must be issued at least 90 days prior to the date the property must be vacated. Any such notice must be in writing and delivered in person with receipt acknowledged, or by certified mail, return receipt requested. The 90-day requirement does not apply to any such notice issued subsequent to a valid notice to vacate issued by the prior owner of the property. A 90-day notice may be given with, or such notice may be combined with, but such notice must not be given before, the notice of displacement referred to in paragraph (f) of this section.

(e) *Shorter Notice Period, Unusual Circumstances.* An occupant may be required to vacate the property on less than 90 days advance written notice if the Postal Service determines that a 90-day notice is impracticable. An example of such a situation is when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety.

(f) *Notice of Displacement.* Normally, a notice of displacement will be given at the time of acquisition or later. Such notice must not be given earlier than the time of contracting, except in the case of acquisitions by eminent domain or by the threat of eminent domain. Such notice may be given at the time of contracting or between the time of contracting and the time of acquisition if the Postal Service considers it wise to start the displacement process then and if, in the judgment of the Postal Service, it is clear that person will in fact be a displaced person.

(g) *Notice of Availability of Advisory Services.* The notice of displacement will state that relocation assistance advisory services will be available to the displaced person and will designate who will provide such services.

§ 777.22 Relocation assistance advisory services.

(a) *General.* The Postal Service carries out an advisory assistance program for displaced persons.

(b) *Relocation Information.* The Postal Service must contact each displaced person to provide an informational statement outlining the assistance available to the particular person. If it is impracticable to contact the displaced persons personally, the informational statement must be mailed to the persons, certified mail, return receipt requested.

(c) *Time of Initial Contact to Provide Relocation Information.* The initial contact to provide relocation information must take place by the following dates:

(1) Where acquisition of the property is to occur as a result of the exercise or the threat of the exercise of eminent domain, at the time of initiation of negotiation or within 30 days thereafter.

(2) In any other instance such contact must be made prior to acquisition and prior to the notice of displacement or the notice to vacate, but it should normally not be made prior to contracting for the acquisition.

(d) *Service to be Provided.* The advisory program shall include such services as may be necessary or appropriate to:

(1) Provide current information on the availability, purchase prices, financing, and rental costs of replacement dwellings.

(2) For displaced persons eligible for replacement housing payments, explain that the displaced person cannot be required to move unless at least one

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comparable replacement dwelling is made available.

(i) At the request of the displaced person, the Postal Service must inform that person, in writing, of the specific comparable replacement dwelling used as the basis for the replacement housing payment offer, the price or rent used to establish the upper limit of that offer, the basis for the determination, and the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing must be inspected by the Postal Service representative prior to its being made available to assure that it is a comparable replacement dwelling and meets the decent, safe, and sanitary standard. The displaced person must be notified that a replacement housing payment will not be made unless the replacement dwelling is inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority displaced persons must be given reasonable opportunities to relocate to comparable dwellings, not located in a an area of minority concentration, that are within their financial means. This policy, however, does not require the Postal Service to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, must be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to displaced persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply displaced persons with appropriate information concerning Federal, State, and local housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal, State, and local programs offering assistance to displaced persons.

(6) Upon selection of a replacement property by a displaced person, the Postal Service may arrange for a representative to assist the displaced person with necessary arrangements for the move.

§ 777.23 Moving expenses.

(a) *Eligibility.* (1) Residential displaced persons are entitled to benefits under paragraphs (b) and (c) of this section.

(2) Business and farm displaced persons are entitled to benefits under paragraphs (d) through (k) of this section.

(3) Those business or farm displaced persons who reside on the property where the business or farm operation is conducted are eligible for applicable benefits both as residents and as business or farm displaced persons, but no duplicate payments are allowed.

(4) Persons who are required to move or to move personal property from real property, an interest in which is not acquired by the Postal Service, when it is determined by the Postal Service that such move is necessary or reasonable because of the Postal Service's having acquired an interest in other real property owned or leased by such persons and on which such persons conduct a business or farm operation, under circumstances where such persons are displaced persons with regard to such other real property or would have been displaced persons with regard to such other real property had they been required to move or to move personal property from such other real property, are entitled to benefits as residential, business or farm displaced persons-under paragraphs (a)(1) or (a)(2) of this section.

(5) Eligibility for moving expenses does not depend upon the owner's or tenant's actual occupancy of the displacement real property.

(b) *Allowable Expenses, Residential Moves.* Allowable moving expenses include:

(1) Transportation of the displaced person and his or her personal property. Transportation costs are limited to the costs of a move up to a distance of 50 miles unless the Postal Service determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

(4) Storage of the personal property not to exceed 12 months unless the Postal Service determines that a longer period is necessary.

(5) Reasonable costs for insurance for the replacement value of the personal property being moved or stored.

(6) When determined to be fair and reasonable by the Postal Service the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee), but only where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving related expenses that are not listed as non-allowable under paragraph (1)(3) of this section and which the Postal Service determines to be reasonable and necessary.

(c) *Fixed Payment for Moving Expenses, Residential Moves.* Any residential displaced person may choose to receive a fixed payment in lieu of a payment for actual moving and related expenses. This fixed payment will consist of:

(1) A moving expense allowance, not to exceed $300, which must be determined in accordance with the applicable moving allowance schedules approved by the Federal Highway Administration; and

(2) A dislocation allowance of $200.

(d) *Allowable Expenses, Business and Farm Operations.* Allowable expenses include:

(1) The expenses allowed under paragraphs (b) (2), (4), (5) and (6) of this section;

(2) Transportation of personal property. Transportation costs are limited to a distance up to 50 miles unless the Postal Service makes a finding that relocation beyond 50 miles is justified.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property as described in paragraph (d)(8) of this section. This includes connection to utilities available at the replacement site or building and minor modifications to personal property to adapt it to the replacement site or building. Excluded are expenses for providing utilities to or installing utilities at the replacement site or building and expenses for repair, alteration, improvement or modification of the replacement site or building. This exclusion includes, but is not limited to, any repairs, alterations, improvements, or modifications required by local code to bring the building up to standard.

(4) Any license, permit, or certification fee required of the displaced person by a governmental authority at the replacement location. However, this payment is limited to the pro rata value for the remaining useful life of any existing license, permit, or certification.

(5) Reasonable professional services necessary for planning the move of the personal property. Such professional services must be approved in advance

by the Postal Service and shall not exceed the lowest of three acceptable bids.

(6) Relettering signs and replacing stationary, business cards, rubber stamps, etc., on hand at the time of displacement, that are made obsolete as a result of the move. This does not include new signs, and other items replaced will only be reimbursed in the numbers that were on hand when they became obsolete.

(7) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for this payment the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value must be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item no more than 50 miles, but with no allowance for storage.

(8) If an item of personal property which is used as part of a business or farm operation is not moved, is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale. (To be eligible for payments under paragraph (d)(8) of this section, the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary.)

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Postal Service for eligible moving and related expenses, but with no allowance for storage.

(9) A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, which the Postal Service determines to be reasonable and which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from home, time spent searching (based on reasonable salary or earnings) and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(10) Other moving-related expenses, not listed as non-allowable under paragraph (l)(3) of this section, which the Postal Service determines to be reasonable and necessary.

(e) *Fixed Payment in Lieu of Moving Expenses, Business Moves.* Any displaced business, other than an outdoor advertising display business, or a non-profit organization, is eligible for a fixed payment in lieu of actual moving and related expenses. This payment must be in an amount equal to the average annual net earnings of the business at that location, as computed under paragraph (i) of this section, but not less than $2,500 nor more than $10,000. For a displaced person to qualify for this payment, the Postal Service must determine that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment which is not being acquired by the Postal Service, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, if the other establishment did not contribute materially to the income of the displaced person [see paragraph (h) of this section] during the 2 taxable years prior to displacement, it shall not be considered another establishment; for purposes of the preceding sentence); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see paragraph (h) of this section). However, the Postal Service may waive this test for good cause.

(f) *Determining the Number of Businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and finacial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(g) *Fixed Payment in Lieu of Moving Expenses, Farm Operation.* Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (i) of this section, but not less than $2,500 nor more than $10,000. For a displaced person to qualify for this payment, the Postal Service must determine that the farm operation contributed materially to the income of the displaced person during the two taxable years prior to the displacement (see paragraph (h) of this section). In the case of acquisition of land which was part of a farm operation before the acquisition, the fixed payment shall be made only if the Postal Service determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(h) *Contributes materially.* The term "contributes materially," as used in paragraphs (e) and (g) of this section means that, during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Postal Service determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Postal Service may approve the use of other criteria as determined appropriate.

(i) *Average Annual Net Earnings of a Business or Farm Operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may

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be based upon a different period of time when the Postal Service determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Postal Service proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Postal Service determines is satisfactory.

(j) *Nonprofit Organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of $2,500, if the Postal Service determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Postal Service demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Postal Service.

(k) *Relocation of Outdoor Advertising Signs.* The amount of a payment for direct loss of an advertising sign which is personal property is the lesser of:

(1) The depreciated replacement cost of the sign, as determined by the Postal Service, less the proceeds from its sale; (To be eligible for payments under this paragraph (k)(1), the claimant must make a good faith effort to sell the sign, unless the Postal Service determines that such effort is not necessary.) or

(2) The estimated cost of moving the sign, no more than 50 miles, but with no allowance for storage.

(l) *General Provisions*—(1) *Self Moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service. A qualified Postal Service representative may prepare a moving estimate, in lieu of solicitation for bids, but in such case, the moving expense payment cannot exceed $2,500.

(2) *Transfer of Ownership.* Upon request by the Postal Service and in accordance with applicable law, the displaced person may transfer to the Postal Service ownership of any personal property that is not to be moved, sold, or traded-in by executing a disclaimer of all rights or interest in the property.

(3) *Non-Allowable Expenses.* Except as specifically otherwise provided herein, a displaced person is not entitled to payment for:

(i) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership (but see § 777.25(i) and § 777.26).

(ii) Loss of goodwill.

(iii) Loss of profits.

(iv) Loss of trained employees.

(v) Any additional operating expenses of a business or farm operation caused by operating in a new location.

(vi) Personal injury.

(vii) Any legal fee or other cost for perparing a claim for a relocation payment or for representing the displaced person before the Postal Service.

(viii) Expenses for searching for a replacement dwelling.

(ix) Physical changes to the real property at the replacement location of a business or farm operation, except as provided in paragraph (d)(3) of this section.

(x) Costs for storage of personal property on real property owned or leased by the displaced person.

§ 777.24 Replacement housing payments.

(a) Residential displaced persons are eligible for replacement housing payments as follows:

(1) Residential displaced persons who lawfully and continuously owned and occupied a displacement dwelling for not less than 180 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (b) of this section. Such displaced persons may alternately choose the benefits under paragraph (f) of this section.

(2) Residential displaced persons who lawfully and continuously owned and occupied, and residential displaced persons who were tenants and lawfully and continously occupied, a displacement dwelling for not less than 90 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (e) of this section.

(3) Where the replacement housing payment provided hereunder does not provide for housing within the financial means (see § 777.13(j)) of the displaced person, see § 777.27, Last Resort Housing.

(b) *Benefits for 180 Day Owner Occupants.* Displaced persons eligible under paragraph (a)(1) of this section are entitled to benefits as set out below:

(1) An amount which is the sum of:

(i) The amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(A) the reasonable cost of a comparable replacement dwelling as determined by paragraph (c) of this section; or

(B) the purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person; plus

(ii) Interest Cost—(see paragraph (d) of this section); plus

(iii) Incidental Expenses (see paragraph (h) of this section).

(2) The benefits in paragraph (b)(1) above are limited to a maximum payment of $15,000.

(3) The benefits in paragraph (b)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in a court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(c) *Determining the Cost of a Comparable Replacement Dwelling.* The cost of a comparable replacement dwelling for purposes of benefits to be paid to 180 day owner occupants will be determined by applying the following:

(1) If available, at least three representative comparable replacement dwellings must be examined and the payment offer computed on the cost of the fair market value of the dwelling most closely comparable to the displacement dwelling.

(2) To the extent, feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located. If this is not possible, comparable replacement dwellings will be selected from nearby or similar neighborhoods where housing costs are similar.

(d) *Increased Mortgage Interest Costs.* The amount to be paid to a displaced 180 day owner occupant for increased mortgage interest costs is the amount, if any, by which the present value of the interest on the mortgage loan(s) on the replacement dwelling plus any other debt service costs exceeds the present value of the interest on the mortgage loan(s) on the displacement dwelling plus purchaser's points and loan origination fees, subject to the following:

(1) The payment must be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling must be used to compute the payment.

(2) The payment must be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment must be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The new mortgage must be a bona fide mortgage and its interest rate must not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The discount rate used to compute the present value of the increased interest cost must be the prevailing interest rate paid on demand savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination fees, but not seller's points, are reimbursable to the extent they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, and the Postal Service determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, or the new mortgage amount, whichever is less.

(e) *Benefits for 90 Day Owner Occupant and Tenants.* Displaced persons eligible under paragraph (a)(2) of this section are entitled to benefits as set out below:

(1) Rental assistance benefits, as set out in paragraph (f) of this section or downpayment assistane benefits, as set out in paragraph (g) of this section.

(2) The benefits in (e)(1) above are limited to $4,000.

(3) The benefits in (e)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased or rented within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in the court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(f) *Rental Assistance.* The rental assistance benefits, not to exceed $4,000, for 90 day owner occupants and tenants will be computed as follows:

(1) The amount which must be added to 48 times the average monthly rental paid at the displacement dwelling (or, if the displaced person is an owner occupant, the fair market rental value had the displacement dwelling been rented) for the three-month period prior to displacement to provide a total amount equal to the lesser of:

(i) 48 times the reasonable monthly rental of a comparable replacement dwelling; or

(ii) 48 times the actual monthly rental cost of the decent, safe, and sanitary dwelling actually rented and occupied by the displaced person.

(2) If utilities are included in either the replacement dwelling or the displacement dwelling rent, appropriate utilities must be factored into both rentals. If utilities are not included in either monthly rental then the payment will be computed using the base rental rates.

(3) If, in the opinion of the Postal Service, the monthly rental at the displacement dwelling is significantly below the fair market rent of the displacement dwelling, such fair market rent must be used in computing the rental assistance payment.

(4) The payment under this section must be disbursed in a lump-sum amount unless the Postal Service determines on a case-by-case basis, for good cause, that the payment should be made in installments. Where the rental assistance payment exceeds $4,000 under the provisions of Last Resort Housing, (§ 777.27), installment payments or payments through escrow accounts may be considered.

(g) *Downpayment Assistance.* Downpayment assistance, not to exceed $4,000, is available to 90 day owner occupants and 90 day tenants subject to the following: The payment will be the full amount of the first $2,000 of the required downpayment and incidental expenses plus one-half of any amount required for such downpayment and incidental expenses over $2,000.

(h) *Incidental Expenses.* Incidental expenses covered under paragraph (b)(1)(iii) or (g) of this section are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer (not to exceed the costs of such for a comparable replacement dwelling). They include:

(1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender.

(5) Credit report.

(6) Owner's and mortgagee's evidence or assurance of title.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes.

(9) Such other costs as the Postal Service determines to be incidental to the purchase.

§ 777.25 Additional rules for replacement housing payments.

(a) *Multiple Owners.* When a single family dwelling is owned by more than one person and occupied by only some of the 180 day owners (for example, when the dwelling is owned by an estate and only one of the heirs is in occupancy), the occupant(s) is (are) eligible to receive a maximum total price differential which is the lesser of:

(1) The difference between (i) the reasonable cost of a comparable replacement dwelling, as determined under § 777.24(c) and (ii) the acquisition cost of the displacement dwelling; or

(2) The difference between (i) the occupant's share of the acquisition cost of the displacement dwelling and (ii) the purchase price of a decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(b) *Multiple Occupants of One Displacement Dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Postal Service, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Postal Service determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(c) *Mixed Use and Multi-Family Properties Acquired.* If the displacement dwelling was part of a property that contained another dwelling unit or space used for non-residential purposes, or if it is located on a lot larger than that typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling and site can be considered its acquisition cost when computing the price differential.

(d) *Disaster-Related Insurance Proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the displacement dwelling must be included in the acquisition cost of the displacement dwelling when computing the price differential.

(e) *Inspection of Replacement Dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Postal Service must inspect the replacement dwelling and determine that it is a decent, safe, and sanitary dwelling.

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(f) *Purchase of Replacement Dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person has purchased an existing dwelling; purchased and rehabilitated or moved and restored an existing dwelling; or constructed a new dwelling, provided in each instance the dwelling is determined to be decent, safe and sanitary.

(g) *Conversion of Payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment may, within the required 12 month eligibility period, purchase a decent, safe and sanitary replacement dwelling. In such case, he or she is eligible to revise his or her original claim, and claim any additional assistance for which he or she was originally eligible. However, any portion of the rental assistance payment that has been disbursed must be deducted from the resultant replacement housing payment or downpayment assistance payment.

(h) *Payment After Death.* A replacement housing payment is personal to the displaced person. Upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.

(2) The full payment must be disbursed in any case in which a member of a displaced family dies and other family members continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

(i) *180 Day Owner Retention of Displacement Dwelling.* If a 180 day owner occupant retains ownership of his or her dwelling or the right to move his or her dwelling from the displacement site, and he or she moves it and reoccupies it on a replacement site, the cost of the actual replacement dwelling to be computed for purposes of § 777.24(b)(1)(i)(A) (not to exceed the purchase price of a comparable replacement dwelling) will be the sum of:

(1) The expenses of moving and restoring the retained dwelling to a condition comparable to that prior to the move; and

(2) The salvage or other value deducted from the acquisition cost for the retained ownership; and

(3) Additional costs, if necessary, incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

(4) The cost of the replacement site, not to exceed the cost of a comparable available and suitable replacement site.

(j) *90 Day Owner/Retention of Displacement Dwelling.* A 90 day owner occupant who retains ownership of his or her dwelling or the right to remove his or her dwelling may receive the benefits as if he or she were a 180 day owner occupant subject, however, to a limitation of $4,000 on maximum benefits in lieu of the $15,000 limitation set out in paragraph § 777.24(b)(2).

§ 777.26 Mobile homes.

(a) *Moving Expenses.* Displaced persons who are occupants of mobile homes are eligible for moving expenses under § 777.23 subject to the following:

(1) If the person owns the mobile home, moving expenses may, at the owner's option, include any reasonable costs incurred to move the mobile home to a replacement site, plus the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up charges."

(2) If the person rents the mobile home, the Postal Service may allow the person moving expense benefits for moving the mobile home as if the person were an owner of the mobile home under paragraph (a)(1) of this section.

(3) If costs of moving a mobile home are paid as moving expenses under paragraphs (a)(1) or (a)(2) of this section, the person may not receive housing assistance benefits hereunder, other than any benefits to which they are entitled that are limited to the site of the mobile home.

(4) Displaced occupants of mobile homes are eligible for moving expenses for personal property other than the mobile home and its appurtenances, but only to the extent the Postal Service does not pay the costs of moving the mobile home (either as moving expenses or replacement housing payments or, if it does pay such costs, the personal property is of a type that is customarily moved separately from the mobile home.)

(b) *Replacement Housing Payments.* Displaced persons who are 180 day or 90 day occupants of mobile homes qualify for replacement housing payments under § 777.24 subject to the following:

(1) If the displaced person owns the mobile home and owns the site, the person is eligible for benefits under either § 777.24 (b) or (e).

(2) If the displaced person rents the mobile home and rents the site the person is eligible for benefits under § 777.24(e).

(3) If the displaced person rents the mobile home and owns the site the person is eligible for benefits under § 777.24(e), with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of $15,000. (Persons who voluntarily sell mobile home sites are not displaced persons and are not entitled to benefits under Subpart B. See § 777.13(e)(2)(viii)).

(4) If the displaced person owns the mobile home and rents the site the person is eligible for benefits under either § 777.24 (b) or (e) with regard to the mobile home and to benefits as a tenant under § 777.24(e) with regard to the site, subject to a limitation on home and site benefits combined of $4,000.

(c) *Special Rules for Mobile Homes.* (1) In computing replacement housing payments for mobile home owners under paragraph (b) of this section, apply the terms of § 777.25 (i) and (j) as appropriate, to transactions involving moving the mobile home to a new site.

(2) The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. When the Postal Service determines that its acquisition of the real property has had this effect and that for this reason a mobile home occupant located on the remaining part of the property is required to move, such occupant shall be considered a displaced person under these regulations and shall be entitled to such benefits hereunder as the person would otherwise qualify.

§ 777.27 Last resort housing.

(a) *Basic Determination to Provide Last Resort Housing.* A displaced person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to him or her which is within his or her financial means. When such comparable replacement dwelling is not available, additional measures may be taken to provide for "last resort" housing for eligible displaced persons.

(b) *Basic Rights of Persons to be Displaced.* The provisions of this section do not deprive any displaced person of any rights the person may have under these regulations such as the right to accept the maximum replacement housing payment available under these regulations and to move to a decent, safe and sanitary replacement dwelling even if such dwelling is beyond the person's financial means.

(c) *Methods of Providing Replacement Housing.* The Postal Service has broad latitude in implementing this section, but implementation must be on a reasonable cost basis. The Postal Service may provide last resort housing using the following methods:

(1) Rehabilitation of and/or additions to an existing replacement dwelling.

(2) The construction of a new replacement dwelling.

(3) The provision of a direct loan which requires regular amortization or deferred repayment. Terms of such loan will be at the discretion of the Postal Service.

(4) A replacement housing payment in excess of the $4,000 and $15,000 limitations contained in § 777.24. A rental subsidy under this section may be provided in installments.

(5) The relocation and any needed rehabilitation of a replacement dwelling.

(6) The purchase or lease of land and/or a replacement dwelling by the Postal Service and subsequent sale or lease to, or exchange with, a displaced person.

(7) The removal of barriers to the handicapped.

(8) Any other method determined by the Postal Service to be reasonable.

(d) *Proof of Financial Need.* Last Resort Housing benefits exceeding the limitations under § 777.24(b)(2) and § 777.24(e)(2) will not be paid unless required to provide housing within the displaced person's financial means. To establish financial means, the displaced person must furnish the Postal Service proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory.

§ 777.28 Claims and appeals.

(a) *Preparation of Claim.* The relocation representative should assist eligible displaced persons in the preparation of claims for moving assistance and relocation housing assistance. Preliminary review should be conducted in the field by the relocation representative with the displaced person, to preclude technical difficulties in processing the claim at a higher level.

(b) *Documentation.* Any claim for a relocation payment must be supported by such documentation as may be required to support the claim, for example the length of occupancy at the displacement dwelling, the rent paid at the displacement dwelling, expenses incurred in relocating, etc. A displaced person must be provided reasonable assistance to complete and file any required claim.

(c) *Time for Filing.* All claims must be filed with the Postal Service within 18 months after the date of the actual move from the displacement property.

(d) *Review, Approval and Payment.* The Postal Service will review claims within 60 days of submission and approve or disapprove payment. Upon approval or partial approval of the displaced person's claim, the Postal Service will promptly authorize payment of the approved amount. The certification that the claimant has occupied decent, safe, and sanitary housing must be completed prior to final payment of replacement housing payments.

(e) *Relocation Payments Not Considered as Income.* Upon approval of the claim and delivery of the relocation payment, the displaced person must be advised that no relocation payment made under these procedures shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

(f) *Certification.* Certification that a person is displaced will be provided any agency requiring such information to assist that person under any Federal law or program.

(g) *Advance of Funds.* If the displaced person cannot arrange for the acquisition of a replacement property because of financial problems and the problems would be solved by an advance of funds, the Postal Service may determine the estimated amount of the actual claim and authorize an advance of that amount or a portion thereof. The displaced person will be fully informed in writing that his or her final claim will then be subject to adjustment. Advance payments should not be made to persons with a history of financial irresponsibility.

(h) *Money Owed to the Postal Service.* In cases of Postal Service leasing the acquired property to a displaced persons, or in cases of advance moving cost payments, any monies due the Postal Service by the displaced person and not paid before the remainder of the relocation payments are made must be deducted from such payments and the relocation file so documented.

(i) *Notice of Denial of Claim.* If the Postal Service disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of the determination, the basis for the determination, and the procedures for appealing the determination.

(j) *Appeal Procedure.* If a displaced person wishes to file an appeal:

(1) The appeal must be in writing.

(2) The appeal must be directed to the General Manager, Real Estate Division, and must set forth the displaced person's reasons for the appeal. (The General Manager shall not have taken part in the decision which led to the appeal. Appeals misdirected to others must be forwarded immediately to the General Manager with notification of the forwarding to the appellant.)

(3) The appeal must be submitted within 60 days after the displaced person receives written notification of the Postal Service's original determination concerning the displacee's claim. The Postal Service may extend this time limit for good cause.

(k) *Right of Representation.* A displaced person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(l) *Review of Files by Appellant.* The Postal Service must permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are confidential. Such inspection will be permitted as allowed under the Freedom of Information Act, 39 CFR Part 265.

(m) *Scope of Review.* In deciding an appeal, the Postal Service must consider all pertinent justification and other material submitted by the displaced person and all other available information that is needed to ensure a fair and full review of the appeal.

(n) *Determination and Notification After Appeal.* Promptly after receipt of all supporting information submitted by the appellant, the General Manager, Real Estate Division, must make a written determination on the appeal, including the basis on which the decision was made, and furnish the appellant a copy. If the full relief requested is not granted at the regional level, the General Manager, Real Estate Division, must advise the person of his or her right to appeal the decision to the Director, Office of Real Estate. The rules stated here for appeals to the General Manager apply as well as to appeals to the Director, Office of Real Estate.

Subpart C—Acquisition

§ 777.31 Acquisition procedures.

(a) *Policy; Application of Section.* The Postal Service, as a matter of policy,

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acquires interests in real property through voluntary agreements with owners. Only under unusual and compelling circumstances, and on a case-by-case basis, does the Postal Service acquire real property through the exercise or the threat of the exercise of eminent domain. This policy does not, however, prevent the Postal Service from occasionally entering into mutually agreeable condemnation proceedings with an owner, where price is not an issue, and for such purposes as to clear title or to acquire property from certain elected officials. For the purposes of this section, the Postal Service does not consider such voluntary and mutually agreeable uses of condemnation proceedings as the exercise or the threat of the exercise of eminent domain. The following regulations apply only to acquisitions by the exercise or the threat of the exercise of eminent domain:

(1) *Notice to Owner.* As soon as feasible after deciding to acquire a specific property through the exercise of eminent domain, the Postal Service must notify the owner of its intent to acquire the property.

(2) *Expeditious Negotiations.* The Postal Service must make every reasonable effort to acquire real property expeditiously by negotiation.

(3) *Appraisal and Invitation to Owner.* Before the initiation of negotiations, the real property shall be appraised in accordance with Postal Service appraisal standards as outlined in RE-1 and the owner or the owner's designated agent shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(4) *Establishment of Offer of Just Compensation.* Prior to the initiation of negotiations (see § 777.13(k) for definition) the Postal Service must establish an amount which it believes is just compensation for the real property rights be acquired. The amount must not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Appraisers shall not give consideration to, or include in their real property appraisals, any allowances for the benefits provided by Title II of the Act.

(5) *Summary Statement.* Promptly after determining fair market value, the Postal Service shall make a written offer to acquire the property for the full amount believed to be just compensation. Along with the written purchase offer, the owner must be given a written statement of the basis for the offer of just compensation. This statement must include:

(i) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, must be separately stated.

(ii) The location and description of the real property and the interest(s) to be acquired.

(iii) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify and separately held ownership interest in the improvement(s), for example, a tenant-owned improvement.

(6) *Basic Negotiation Procedures.* The Postal Service must make every reasonable effort to contact the owner or the owner's representative and:

(i) Discuss the Postal Service's offer to purchase the property including the basis for the offer of just compensation, and;

(ii) Explain Postal Service acquisition policies and procedures including the provisions for the payment of incidental expenses as described under § 777.33.

(7) *Opportunity to Consider Offer.* The owner must be given a reasonable opportunity to consider the Postal Service's offer, to present material which he or she believes is relevant to determining the value of the property, and to suggest modification in the proposed terms and conditions of the purchase. The Postal Service must consider the owner's presentation.

(8) *Updating Offer of Just Compensation.* If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Postal Service must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Postal Service must promptly reestablish just compensation and offer the revised amount to the owner in writing.

(9) *Contracts and Options.* Contracts to purchase shall cover only those items related to the acquisition of the property, and not incorporate provisions for making payments for relocation costs or related costs under Title II of these regulations.

(10) *Title II Benefits Not To Be Considered.* In the event of condemnation, estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under Title II.

(11) *Coercive Action.* The Postal Service shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(12) *Inverse Condemnation.* If the Postal Service intends to acquire any interest in real property by exercise of the power of eminent domain, it must institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute proceedings to prove the fact of the taking of the real property.

(13) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the Postal Service must either:

(i) Pay the agreed purchase price to the owner; or

(ii) In the case of a condemnation proceeding, deposit with the court for the benefit of the owner an amount not less than the amount of the approved appraised value of the property or the amount of the award of compensation in the condemnation proceeding for the property.

(14) *Right-of-Entry.* With the prior approval of the owner, the Postal Service may obtain a right-of-entry before making payment to the owner.

§ 777.32 Acquisition of Tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Postal Service must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This must include any improvement of a tenant owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Special Conditions.* Payment for tenant-owned improvements will be made to the tenant only if he or she meets the following conditions:

(1) In consideration for the payment the tenant-owner assigns, transfers, and releases to the Postal Service all of the tenant-owner's rights, title, and interests in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(c) *Preservation of Tenant's Rights.* Nothing in this section shall be construed to deprive the tenant-owner of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

§ 777.33 Expenses incidental to transfer of title to the Postal Service.

(a) *Reimbursement.* When property is acquired through the exercise or the threat of the exercise of eminent domain, the owner shall be reimbursed for all reasonable expenses he or she necessarily incurred in conveying the real property to the Postal Service for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar incidental expenses. However, the Postal Service will not pay costs solely required to perfect the owner's title to the real property.

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage, entered into in good faith, encumbering the real property.

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Postal Service obtains title to the property or effective possession of it, whichever is earlier.

(b) *Direct Payment.* Whenever feasible the Postal Service must pay these costs directly and thus avoid the need for an owner to pay such costs and then seek reimbursement from the Postal Service.

(c) *Certain Litigation Expenses.* The owner of the real property acquired must be reimbursed any reasonable expenses, including reasonable attorney, appraisal, and engineering fees which the owner actually incurred because of a condemnation proceeding if:

(1) The final judgment of the court is that the Postal Service cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the Postal Service other than under an agreed-upon settlement; or

(3) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Postal Service effects a settlement of such a proceeding.

Subpart D—Voluntary Acquisitions

§ 777.41 Acquisition procedures.

(a) *Voluntary Acquisitions.* Acquisition rules for voluntary purchases are set out in Handbook RE-1, Realty Acquisition and Management and cover such areas as appraisal and negotiation procedures.

(b) *Tenant-Owned Improvements.* In general the Postal Service deals exclusively with the fee owner on the acquisition of all real property interest at the site. The Postal Service may, however, in exceptional cases deal directly with a tenant on a leasehold improvements matter. Should the Postal Service acquire the fee interest without acquiring rights in a leasehold improvement under circumstances in which the tenant would be entitled to compensation under § 777.32 above if the acquisition were by eminent domain or the under threat thereof, the tenant will be entitled to the benefits that would, under such circumstances, have been paid under § 777.32 above, unless the tenant has formally disclaimed further right in the real property improvement beyond the time of the expiration of his or her tenancy.

Subpart E—Donations

§ 777.51 Acceptance of donations.

Nothing in these regulations shall prevent a person from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Postal Service. The Postal Service may obtain an appraisal of the real property for income tax or other purposes if the owner thereof requests the Postal Service to do so.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 86-4282 Filed 2-26-86; 8:45 am]

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Part III

Department of Education

Law-Related Education Program; Extension of Closing Date and Amendment to Notice for Transmittal of New Applications for Fiscal Year 1986

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Grants, Availability, etc.; Law-Related Education Program

AGENCY: Department of Education.

ACTION: Notice of Extension of Closing Date and Amendment to Notice for Transmittal of New Applications for Fiscal Year 1986 under the Law-Related Education Program.

SUMMARY: This notice extends the closing date of March 7, 1986, to April 7, 1986, for the transmittal of applications for new projects under the law-related education program (84.123). The fiscal year 1986 application notice for this program, published in the **Federal Register** on January 9, 1986 (51 FR 1028), provides detailed information concerning this program. This notice amends the January 9 notice to invite applications for projects on constitutional law.

SUPPLEMENTARY INFORMATION: The law-related education program is intended to enable children, youth, and adults to be more informed and effective citizens by equipping them with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based. An understanding of the Constitution and its importance in our democracy is essential in developing an appreciation for our democration system of government and in preparing youth to be knowledgeable, responsible citizens. The 200th anniversary of the signing of the U.S. Constitution will take place on September 17, 1987.

In view of the upcoming bicentennial of the Constitution, the Secretary of Education believes it is especially appropriate to invite applications under the law-related education program that propose projects on the Constitution, its origins and development, and the fundamental role of the Constitution in our legal system over the past two centuries. For example, proposed projects may educate students about principles that serve as the groundwork for American constitutional democracy, about the original documentary sources relevant to the Constitution, and/or about the concepts implemented by the Constitution, such as the rights and responsibilities of citizenship. This invitational priority is in addition to the invitational priorities stated in the January 9 notice.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning this extension and amendment should be addressed to Jack A. Simms, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2023, FOB-6, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 472-7960.

(20 U.S.C. 3851)

(Catalog of Federal Domestic Assistance No. 84.123, Law-Related Education Program)

Dated: February 26, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-4445 Filed 2-26-86; 10:37 am]

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Part IV

Uniform Relocation Assistance and Real Property Acquisition; Final Rule

Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Department of Housing and Urban Development
Department of Labor
Department of Defense
Department of Education
Pennsylvania Avenue Development Corporation
Veterans Administration
Environmental Protection Agency
General Services Administration
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Department of Justice
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7 CFR PART 21

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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32 CFR PARTS 259, 641 AND 742

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FEDERAL EMERGENCY MANAGEMENT AGENCY

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

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DEPARTMENT OF TRANSPORTATION

49 CFR PART 25

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of Transportation; Environmental Protection Agency; Federal Emergency Management Agency; General Services Administration; National Aeronautics and Space Administration; Pennsylvania Avenue Development Corporation; Veterans' Administration.

ACTION: Final rule.

SUMMARY: This regulation establishes a common rule for the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) which requires that owners of real property to be acquired for Federal or federally-assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition be provided fair, consistent, and equitable treatment. This regulation revises existing Uniform Act regulations and implements the Uniform Act for the 17 agencies listed above. The Department of Transportation, which published a final rule implementing the Uniform Act of March 5, 1985, is publishing this regulation as a "Final rule; request for comments."

DATES: This regulation is effective May 28, 1986, unless otherwise stated in the agency specific preamble. If an agency chooses to make this regulation effective earlier than May 28, 1986, it will publish a notice to that effect in the **Federal Register**. However, the regulation will not be effective earlier than March 31, 1986. It applies to all acquisitions and displacements for which the initiation of negotiations, defined at § ___.2(k), has not occurred as of the effective date.

The paperwork requirements for certain sections are not effective. See discussion under "Paperwork Reduction Act of 1980" in **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION: In May 1982, the Office of Management and Budget (OMB), in response to the concerns of State and local governments, formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each covered agency for the Uniform Act. On February 27, 1985, a Presidential Memorandum was published in the **Federal Register** naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. On March 5, 1985, DOT published in the Register a model Uniform Act rule, which (in accordance with the President's February 27, 1985, memorandum) was followed on May 28, 1985, by a proposed common Uniform Act rule for 16 other covered agencies.

In response to the May 28 **Federal Register** publication, 37 respondents submitted more than 140 comments which were circulated to all covered agencies. The Working Group, under the leadership of OMB and DOT, then reviewed the comments and recommended changes to the proposed rule. These changes then were reviewed by all covered agencies. The regulations of all covered agencies are superceded by this common regulation, although DOT is publishing this regulation as a "Final rule; request for comments."

A description of the substantive changes from the proposed rule follows below. Numerous other changes not affecting content were made for clarity or readability. This regulation is applicable to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local government agencies. Uniform Act requirements, previously carried out under the differing regulations and procedures of separate Federal agencies, now will be included in this common rule. In addition, this common rule will increase the flexibility of State and local government agencies in implementing the Uniform Act.

Subpart A—General

Section ___.2 Definition of real property.

One commenter suggested including a definition of real property in the regulations. This proposal was not adopted because the criteria for distinguishing between real property and personal property vary from State to State. In some more complicated cases, the Agency may require a legal opinion on the appropriate classification of property.

Section ___.2(b) Definition of business.

One commenter recommended that the definition of a business be revised to require a minimum period of operation at the displacement site as a condition of eligibility for payment of moving expenses. The Uniform Act does not contain any basis for such a restriction. Therefore, the suggestion was not adopted.

Section ___.2(c) Definition of comparable replacement dwelling.

There were numerous comments on the components of this definition. These comments are addressed as follows:

Section ___.2(c)(2) Functional similarity.

A number of commenters expressed concern over the proposed requirement at Section ___.2(c)(2) that a comparable replacement dwelling must be functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. Of special concern was the reasonableness of the costs that would be incurred when replacing run-down substandard housing with standard housing, regardless of the size of the housing or the needs of the displaced person. In many cases, the betterment of the person's living standards may be the primary purpose of the project, and excessive cost could render the project infeasible or limit the number of persons whose living conditions could be improved by the project.

In an effort to address the comments, while assuring fair and equitable treatment of all persons displaced from their homes by a project, we have added an explanation of intent in Appendix A. The statement in Appendix A indicates that the term "functionally similar" means that the comparable replacement dwelling must perform the same function, provide the same utility, and be capable of contributing to the same life style as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Section ___.2(c) Comparable replacement dwelling.

Section ___.2(c)(5) of the proposed rule indicated that a comparable replacement dwelling must be "currently available to the displaced person." Several commenters interpreted this to permit displacing agencies to satisfy their Uniform Act obligations by offering persons replacement housing made affordable under federally-assisted housing programs, such as the Department of Housing and Urban Development (HUD) Section 8 Existing Housing Program. This interpretation is not correct.

Under the Uniform Act, a person displaced from private market housing, who is not receiving assistance under any government housing program before displacement, must be provided referrals to private market dwellings which meet all the other criteria of Section ___.2(c) without any subsidy under a government housing program.

To ensure there will be no misunderstanding of the intent of the law and these regulations, Section ___.2(c)(5) has been modified to indicate that a comparable replacement dwelling must be available on the private market, unless the person is receiving government housing assistance to occupy the displacement dwelling. In the latter case, a comparable replacement dwelling may reflect similar government housing assistance. In addition, an explanation of the intent of the rule has been included in Appendix A.

Section ___.2(c)(6) Financial means standard.

Section ___.2(c)(6) of the proposed rule specified that a comparable replacement dwelling must be "within the financial means of the displaced person." It further indicated that a replacement dwelling would meet this standard if the person's basic monthly housing costs after displacement did not exceed those same costs before displacement, after taking into account the replacement housing payment provided under these regulations. A number of commenters supported this "make whole" approach, while others opposed it. Those objecting to the adoption of this standard suggested that a person's monthly housing costs after displacement should not exceed a percentage (25% or 30%) of the person's income and that, where necessary, a replacement housing payment should be sufficient to reduce a person's monthly housing costs to such level.

The final rule retains the "make whole" financial means standard at Section ___.2(c)(6) as consistent with the basic intent of the Uniform Act that a displaced person "shall not suffer disproportionate injuries" as a result of a project and that the person should be able to maintain the same life style after displacement.

Generally, those who preferred a percentage of income test commented from thier experience with HUD-assisted community development and housing programs. It is noted that under the HUD-assisted Community Development Block Grant (CDBG) program, communities have authority to develop relocation payment standards that exceed those required by the Uniform Act, provided that all persons in like circumstances are treated in a like manner. Thus, communities which wish to use a percentage of income test when computing rental assistance payments may do so by adopting a local written policy in accordance with 24 CFR 570.606(b). Such payments may be provided to any displaced persons for whom the community determines payment to be appropriate.

It is also noted that displaced low-income persons receive priority for federally-assisted housing programs designed to provide suitable, decent, safe and sanitary rental housing at a cost for rent and utilities that does not exceed 30% of the persons' adjusted income.

Several commenters requested clarification of the obligation of a displacing agency in those cases where the maximum replacement housing payment under Subpart F is not sufficient to ensure that appropriate replacement housing is within the financial means of the displaced person.

The requirement to provide displaced persons with replacement housing that is within their financial means is set forth in Section 205(c)(3) of the Uniform Act. Section 205(c)(3) requires that such housing must be available to the person before displacement (i.e., before the person moves). Therefore, whenever a $15,000 replacement housing payment under Section ___.402 would be insufficient to meet the financial means standard at Section ___.2(c)(6), the Agency must provide assistance under the last resort housing provisions of Subpart G. In order to make this requirement clear, a statement of this policy has been included in the final rule at Section .2(c)(6)(iii) and Section ___.403(b).

In order to deal with widely varied circumstances, Subpart G provides displacing agencies broad latitude to determine and implement the most cost-effective method of complying with the financial means standard. This may involve cash payments, the provision of housing or other methods. Several examples follow.

Example 1: An eligible person rents a comparable replacement dwelling and the increased cost for rent and utilities is $100 per month, or $4,800 over a 48-month period. Although a rental assistance payment under Section ___.402 is limited to $4,000, the last resort housing provisions of Subpart G would make it possible for the Agency to meet the financial means standard by providing the person $4,800. The payment may be in a lump sum or in installments.

Example 2: A 180-day owner-occupant buys a comparable replacement home and the sum of the price differential described at Section ___.401(c), increased mortgage interest costs, and incidental expenses as described at Section ___.401(e), is $20,000. Although a replacement housing payment for 180-

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day homeowner-occupants under Section ___.401 is limited to $15,000, the last resort housing provisions of Subpart G would make it possible for the Agency to meet the financial means standard by providing the person $20,000.

Example 3: As in Example 2, the cost of obtaining a comparable replacement dwelling is $20,000. However, the Agency can build a new dwelling or rehabilitate an existing one at a cost which would yield a replacement housing payment of $17,500. It may choose this cost-effective method of meeting its obligation to make available a comparable replacement dwelling. Should the displaced person choose another replacement dwelling, his total replacement housing payment would be limited to $17,500.

While a payment under Subpart G may be necessary to meet the financial means test, it should not provide a higher payment than necessary to meet the "make whole" standard. Because the method for computing the increased mortgage interest cost component (Section ___.401(d)) of a replacement housing payment for a 180-day homeowner would do so, the final rule at Section ___.2(c)(6)(i) has been clarified by including a reference to Appendix A, Section ___.602 which explains that a last resort housing payment to a 180-day homeowner who must pay a higher interest rate on the new mortgage, may reflect the "buy down" approach to reimbursement of increased mortgage interest costs. (See Appendix A, Section ___.2(c)(6).)

However, clarification of Section ___.2(c)(6)(i) to permit use of the "buy down" approach when computing last resort housing payments does not change the method of computing a replacement housing payment under Section ___.401.

Section ___.2(f) Definition of displaced person.

Section ___.2(f)(1)(i) of the proposed rule indicated that the Agency shall determine whether a person is displaced as a direct result of a partial acquisition. Two commenters expressed concern that the statement could be construed to mean that the Agency's discretion to determine whether a tenant-occupant is permanently displaced does not extend to an acquisition of the entire real property. To preclude such unintended interpretation, this statement has been moved from Section ___.2(f)(1)(i) to Section ___.2(f)(2)(iv).

Section ___.2(f)(1)(iii) has been amended to indicate that a person displaced, as a result of the Agency's acquisition of or written order to vacate, for the project, other real property on which the person conducts a business or farm operation, is eligible for payment of moving expenses under Section ___.301, Section ___.302, or Section ___.303. Through an inadvertent error, the proposed rule did not make reference to the latter two sections. The change is necessary to conform the rule to the statute. Also, because the term "business" is defined to include any "nonprofit organization," the reference to the latter has been deleted from Section ___.2(f)(1)(iii).

Section ___.2(f)(2) Persons not displaced.

In response to two comments, a statement has been included in Appendix A at Section ___.2(f)(2)(iii) to explain that tenant-occupants who move from acquired real property but who are not permanently displaced within the meaning of the regulations must be treated fairly and equitably.

Section ___.2(f)(2)(viii) of the proposed rule permitted an Agency to determine that a person who is required only to temporarily vacate the premises for a short period to permit fumigation or other code enforcement work is not a "displaced person" under the regulations. Since Section ___.2(f)(2)(iii) authorizes the same determination, the provision at Section ___.2(f)(2)(viii) has been deleted.

Section ___.2(k) Initiation of negotiations.

Several commenters expressed confusion about the meaning of portions of this provision. In response to these comments, we have rewritten the provision to clarify it, but we have not changed its meaning. The provision now clearly indicates that for acquisitions and displacements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96–510, commonly known as Superfund), there is a different definition for the initiation of negotiations. This is due to the differing nature of the Superfund program which is discussed in Appendix A, Section ___.2(k).

Section ___.3 No duplication of payments.

Several commenters expressed the view that Agencies would have to conduct extensive searches to be certain that they were not making duplicate payments. This was not the intention of the proposed rule and we have added a statement in Appendix A, Section ___.3 explaining that an Agency is required to avoid duplicating only those other payments of which it has knowledge at the time it is making the payment under these regulations.

Section ___.8 Compliance with other laws and regulations.

Section ___.8(g) of the proposed rule indicated that implementation of the regulations was subject to certain provisions of Executive Order 12259, "Leadership and Coordination of Fair Housing in Federal Programs." Two commenters called attention to the fact that the entire Executive Order was pertinent to the rule. Accordingly, the rule has been modified to identify the applicability of Executive Order 12259 at Section ___.8(j), and paragraphs (j) through (l) of the proposed rule have been redesignated as paragraphs (k) through (m) of the final rule. In addition, Executive Order 11990, "Protection of Wetlands," which had been inadvertently omitted, has been added at Section ___.8(1).

Section ___.9(c) Reports.

A number of commenters suggested that the content of the statistical report at Appendix B of the rule be expanded and that such report data be collected from displacing agencies more frequently than once each three years. Two commenters suggested deletion of two lines.

No change has been made to the statistical entries in Appendix B in response to these comments. The report data outlined in Appendix B are considered adequate for the general information needs of Federal agencies.

Section ___.10 Appeals.

A number of commenters objected to the proposal to eliminate (under certain federally-assisted programs) a person's right to appeal the decision of a State agency to the Federal agency funding the project. Several were concerned over the objectivity of the State agency when reviewing a request to overrule its earlier decision. Two of the commenters represented State agencies whose objections were based on a concern over whether they could continue to obtain a Federal Agency's review and advice on specific cases.

Programs which will be subject to the final rule vary in nature and many have operated successfully without a regulation authorizing persons to appeal a State Agency's decision to the Federal Agency funding the project. For this reason, we have not changed the final rule to provide for an appeal to the Federal level for all such programs. Federal agencies monitor State agency actions under federally-assisted programs. Also, any person dissatisfied

with a State agency's determination on his or her appeal may seek judicial review of the determination.

With respect to State agencies obtaining review and advice from a Federal Agency, no change in present program administration is intended. State agencies may continue to seek advice as to the general interpretation of a rule or its application in specific cases, whether or not an affected person has filed an appeal.

Section ___.10(b) of the proposed rule provided a person the right to appeal to an Agency its determination as to the person's eligibility for, or the amount of, a relocation payment or certain acquisition expenses. Several commenters recommended that the grounds for appeal be expanded to cover the adequacy of an Agency's referrals to comparable replacement housing before displacement, as provided under the current HUD Uniform Act regulations. Such deficiencies could be addressed by appealing the payment determination, since deficiencies in replacement housing would produce incorrect payments. Therefore, no change in the scope of appeals is considered necessary.

Subpart B—Real Property Acquisition

Section ___.101 Applicability of acquisition requirements.

One commenter raised the issue of the applicability of Subpart B to acquisition of property from a Federal, State, or local gvoernment Agency. The commenter's position was that such acquisitions should not be subject to Subpart B. Past practice of Federal agencies implementing the Uniform Act varies on this point. For example, the Department of Housing and Urban Development regulations excluded such acquisitions from coverage, while the Department of Transportation and Federal Highway Administration (FHWA) regulations did not.

As a consequence of this comment, we changed Section ___.101(a)(2) to indicate that Subpart B applies only if the acquiring governmental Agency has the authority to condemn the property of the owning Agency. This approach will reduce unnecessary paperwork and other administrative burdens on assistance recipients while maintaining Uniform Act protections for those needing them.

Section ___.102 Basic acquisition policies.

Several commenters proposed that the notice to the owner (of the Agency's interest in acquiring the property) required by Section ___.102(b) should be in writing. After careful consideration, we concluded that to require written notification in all cases would be impractical and would result in an unnecessary administrative burden. However, any Agency may elect to provide a written notice. Moreover, all Agencies must comply with the recordkeeping requirements of Section ___.9(a).

One commenter recommended that a relocation specialist accompany the appraiser during the property inspection discussed at Section ___.102(c). While not required by the regulation, this may be done if an Agency so chooses.

Another commenter suggested that an appraisal not be required for properties valued at less than $500 since the appraisal fee could exceed the property's value. We carefully considered this point but concluded that the requirement for an appraisal in all instances should be retained. First, we believe that the Uniform Act does not afford such latitude. Second, in the case of Federal and some State laws, basing the need for an appraisal on a threshold dollar amount in partial acquisitions is not a sound criterion, since a complicated valuation problem can result in a modest or even zero estimate of just compensation.

However, the reader should note Section ___.103(b) (Standards of Appraisals), which contemplates development of an appraisal format for low value, uncomplicated acquisitions and Section ___.108 (Donations).

One commenter suggested that the administrative settlement provision at Section ___.102(i) be revised to permit but not require the Agency to pay "depreciated replacement cost installed" for a real property improvement. This provision is intended to allow an Agency flexibility in settling cases where specific circumstances make it is reasonable to do so. It is impractical to provide a complete list of the numerous reasons for making such settlements in the rule. However, we expect the responsible Agency official to be judicious in the use of this provision, documenting the basis for the settlement. This provision is not to be used as a substitute for ensuring that other acquisition-related work is done properly. For example, if there is an error in the appraisal or appraisal review on a given parcel/property to be acquired, it is expected that the problem will be referred to the appropriate appraiser and/or appraisal reviewer for reconsideration, and, if necessary, correction. Administrative settlements should be used only when it is determined by the Agency that a reasonable difference of opinion exists concerning just compensation and such a settlement is prudent and in the public interest. Accordingly, a given situation might justify a settlement based upon an allowance for "depreciated replacement cost installed."

One commenter suggested that the phrase "for construction purposes" be inserted after "right-of-entry" near the end of the last sentence of Section ___.102(j) dealing with payment before taking possession. This change was recommended so that unnecessary restrictions would not be imposed on the Agency' survey activities. We have made the change to clarify this point. Another commenter recommended that the phrase "in exceptional cases" be deleted from this provision. This suggestion has not been adopted because it is intended that a right-of-entry (i.e., taking possession before payment is made available) be used *only* in the exceptional case. For example, this provision is intended to prohibit the use of rights-of-entry solely to meet a predetermined construction schedule, unless the project, itself, is of an emergency nature. Section 301(4) of the Uniform Act requires that, to the greatest extent practicable, no owner shall be required to surrender possession before payment is made available.

Several comments were received expressing concern that the fair market rent for short-term occupancy under Section ___.102(m) could be interpreted to be an inappropriately high rent in some circumstances. We have added language to Appendix A, Section ___.102(m) to clarify this provision.

Section ___.103 Criteria for appraisals.

One commenter recommended that the provisions of Section ___.103(e) (Qualifications of appraisers) and Section ___.103(f) (permitting the appraiser of a property to negotiate the acquisition of that property if its value is $2,500 or less) should apply only when Federal funds are directly involved in the acquisition of property. This recommendation has not been adopted. If property is acquired for a Federal or federally-assisted project, the requirements of the Uniform Act and this implementing regulation apply whether or not Federal funds are directly involved in acquisition.

One commenter recommended that the regulation address the eligibility of appraisal costs under federally-assisted programs. The eligibility of this type of cost varies by program and, therefore, may be addressed only in specific program regulations.

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Section __.104 Review of appraisals.

Three commenters questioned the need for a review of any appraisal if the interest to be acquired is under $2,000 or is uncomplicated and of a low value. We do not agree. A review appraisal serves as an important check on the appraiser and enhances consistency among offers. In addition, it is a useful management tool providing oversight of Agency appraisal operations. Two of these commenters appeared to believe that the regulation required an overqualified reviewer or a contract reviewer. An appraiser's qualifications should be commensurate with the difficulty of the appraisal problem. (See Section __.103(e).) There is no need to retain a contract reviewer if there is someone on the staff, or otherwise available, who has suitable experience. Even when a contract reviewer is hired, the Agency still retains ultimate responsibility for establishing the amount of the offer to the owner.

Section __.106 Expenses incidental to transfer of title to the Agency.

One commenter suggested that incidental expenses should be reimbursed when the owner is required to pay a certain cost and the Agency later chooses to duplicate the action for its own reasons. We agree since the owner has no choice in such circumstances. An editorial change has been made to Appendix A, Section __.106 to convey this point more clearly.

Section __.108 Donations.

The preamble to the proposed rule noted that Section __.108, in part, allowed an owner of real property to waive his right to an appraisal as long as he is informed of that right. As a corollary, we wish to note that an Agency may use one appraisal as a basis for just compensation for a number of other similar parcels, as long as the owner of such other parcel(s) waives the right to an appraisal. This will reduce the cost of acquiring land while maintaining Uniform Act protections.

Subpart C—General Relocation Requirements

A number of commenters expressed concern about the absence of a requirement for relocation planning, asserting that without such a requirement it is not possible to successfully relocate displaced persons. We do not agree.

The rule does not prohibit relocation planning. Displacing agencies are free to plan in accordance with their needs, in recognition of the fact that they will have to meet the law's requirement to make comparable housing available to displaced persons before such persons may be required to move. We believe that early problem identification and resolution are desirable to avoid delays in project advancement, unnecessary litigation and other management difficulties. Therefore, displacing agencies are encouraged to continue to take appropriate actions to avoid these problems.

Sections __.203 (a) and (b) Relocation notices.

One commenter noted that no specific time had been designated for giving these notices and seemed to recommend doing so. We do not agree. The circumstances of an Agency's knowing that a particular person will be displaced and its ability to provide him or her the information these notices require will vary widely. Designating a particular date or event which would apply to all cases is not practical, in our opinion. However, we wish to make it clear that the requirement in both of these provisions is that the notices must be given promptly. In particular, the general information notice must be provided at the earliest feasible date so that persons to be displaced may be aware of assistance available to them.

Another commenter recommended consolidating the notices under Section __.203 (a) and (b) into one notice to be provided promptly after the initiation of negotiations. We have not accepted this suggestion because we believe it would delay the displaced person's receipt of basic information contained in the general information notice. As noted above, we believe the expeditious provision of this information is essential. However, we agree with the same commenter's suggestion that, if the two notices are separated by a substantial time period, the second notice should reiterate the basic information which was contained in the first. We encourage all displacing agencies to follow such a practice.

Section __.203(c) Ninety-day notice.

In response to a comment, we have changed the language in this provision to make it clear that the ninety-day notice may not be issued before the Agency has notified the person to be displaced of at least one available comparable replacement dwelling. Another commenter requested that the rule explicitly include Court Orders which contain specific vacate dates as meeting the ninety-day notice requirement. While we do not believe such a statement belongs in the rule, we agree that a written Court Order could meet this requirement. However, under ordinary circumstances the ninety-day notice requirement should have been met long before a case goes to condemnation.

Section __.204(a) Availability of comparable replacement dwelling prior to displacement.

Several comments under this section have been dealt with under other, more appropriate sections. This includes the suggestion that HUD Section 8 existing units be considered as comparable housing and the concern about the financial means criterion adopted by the regulations (see Sections __.2(c) (5) and (6)).

One commenter "strongly disagrees with the implication that only one referral needs to be made to a displacee." This is an incorrect reading of the rule. The rule, as proposed, required that, "*Where possible,* three or more comparable replacement dwellings *shall be made available* (emphasis added)." Only in situations where it is not possible to obtain three comparable replacement dwellings is it permitted to obtain fewer than three. However, in no case is it permitted to require a move without one comparable having been made available.

Section __.204(a)(2) Availability of comparable replacement dwelling prior to displacement.

In response to several comments, we have deleted the phrase "(not less than 90 days)" from this section since 90 days may not be an appropriate amount of time in all cases. The displacing Agency will have to judge what is a reasonable amount of time to negotiate and enter into a lease or purchase agreement.

Section __.205(b)(2) Relocation assistance advisory services.

Several commenters took issue with the proposed rule concerning services to be provided to assist minority persons to relocate to dwellings not in areas of minority concentration. The rule makes clear that all activities under the Uniform Act and its implementing regulations must be carried out in a nondiscriminatory manner. This applies to all phases of the process—from the initial contact with owners and displacees to the provision of housing and other relocation assistance and through the final settlement of relocation and acquisition payments. In addition, the rule provides that minority persons who wish to seek replacement housing in nonminority areas, whenever possible, *shall* be provided opportunities to do so. We believe that to go beyond

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these requirements is unnecessary and exceeds the proper scope of this regulation.

Section __.206 Eviction for cause.

Several commenters asked if a displaced person who is evicted from the displacement dwelling and who fails to relocate to decent, safe, and sanitary housing within one year after the eviction is precluded from receiving a replacement housing payment, even if the displacing agency failed to provide a referral to comparable replacement housing. In our view, it would be inconsistent with the intent of the Uniform Act to penalize the displaced person for the Agency's failure to carry out its responsibilities. Therefore, we have modified this provision to make the beginning of the one-year period for obtaining replacement housing the later of either the moving date or the date referral to comparable replacement housing is made.

Section __.207 General requirements—claims for relocation payments.

There were comments on several subsections of Section __.207:

Section __.207(b) Expeditious payments.

One commenter suggested that payment of relocation claims be required within a specific time period, e.g., 30 days. We do not agree. Circumstances vary widely among displacing agencies. For some, making a payment is relatively uncomplicated; for others, it may involve a number of different individuals and even departments. No specific standard would serve both displacees' and agencies' interests. We believe the standard we proposed, i.e., "as soon as feasible," is the correct approach.

Section __.207(d) Time for filing.

In response to a comment, we have restructured this provision to make clear the separate requirements for tenants and owners.

Section __.207(f) Deductions from relocation payments.

Several commenters objected to the idea of allowing displacing agencies to deduct from relocation payments any rent which is owed them. We believe the ability to deduct rent actually and legitimately owed to the displacing Agency is essential to an effective relocation program. Without it, there is little incentive for a recalcitrant occupant either to pay the rent or to move. We see no reason why an occupant should not pay rent to an Agency which has acquired his dwelling and is permitting him to remain on site.

However, we also believe that the Agency has responsibilities toward such occupants. First among these is the prohibition of deductions which would prevent the person to be displaced from obtaining comparable replacement housing. Second, the Agency must meet its responsibilities under these regulations, including referrals to comparable housing, the provision of informational materials and notices, and other assistance. In the case of slum or dangerous conditions, which seem to be the major causes of concern to the commenters, we would expect the Agency to take appropriate action regarding site occupants. In addition, other forums, such as local courts or administrative agencies, are available to such persons.

Subpart D—Payments for Moving and Related Expenses

Section __.302 Fixed payment for moving expenses—residential moves.

One commenter recommended that the moving expense schedule be revised to provide more realistic payments. While this suggestion has merit, the Uniform Act imposes an upper limit of $300 for moving expenses plus a $200 dislocation allowance for this payment.

Section __.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

One commenter recommended that self-moves to a storage site (see Section __.303(a)(4)) be prohibited and that the Agency, at its discretion, pay only the actual cost of the move conducted by a licensed commercial moving company selected by the Agency. We considered this recommendation to be unduly restrictive and, therefore, no change has been made.

One commenter suggested that the eligibility of franchise fees be specified in the regulation at Section __.303(a)(6). In general, eligible moving expense items are too numerous to list individually in the regulation; we have included only broad categories of expenses and those specific items which occur frequently. Each funding agency should provide the necessary guidance to specify which individual items are eligible costs.

Another commenter recommended that we specifically exclude attorneys' fees from the eligible professional services necessary for planning, moving and reinstalling personal property (Section __.303(a)(8)). We did not adopt this suggestion but we note that such fees must be reasonable and *necessary* to be eligible costs.

In response to a comment, we added a provision under purchase of substitute personal property (Section 303(a)(12)) allowing estimated moving cost to be based on a single bid or estimate when the move would be low cost or uncomplicated.

One commenter suggested that allowable searching expenses for a replacement site for an advertising sign should be limited to $300, while another suggested that finders' fees for franchise establishments should be addressed. We concluded that it was impractical to single out certain types of businesses for a different benefit level and that the individual Agency should determine what payment amount is reasonable and necessary.

One commenter suggested that designated agents of the Agency, such as movers and appraisers, be allowed to make inspections of the displacement and replacement sites as discussed in Section __.303(b)(3). This is the intent of the regulation.

Several comments recommended changes in the procedure for self-moves at Section __.303(c). This section has been rewritten for clarity. Since the definition of a business includes nonprofit organizations, we have deleted the redundant reference to them from this section and Sections __.303 (f) and (j). We also deleted the statement concerning additional documentation of moving expenses actually incurred. Determination of the need to gather further information is left to the Agency. Lastly, we added a provision to permit an Agency to make a payment based upon a single bid or estimate for moves which are low cost or uncomplicated in nature.

Section __.304 Fixed payment for moving expenses—nonresidential moves.

Several commenters questioned the provision in Section __.304(a)(1) presuming that a business will suffer a substantial loss of existing patronage, unless the Agency demonstrates otherwise. Given the disruption incident to most moves, we believe the burden of proof belongs with the Agency, not the business. Therefore, no change was made.

Two commenters suggested that the gross receipts portion of the material contribution test at Section __.2(d)(1) provided windfall payments, i.e., that the $2,000 gross receipts threshold is an insufficient basis for making a $2,500 payment. They also suggested raising the $1,000 net earnings threshold in Section __.2(d)(2). We made no changes in Section __.2(d)(2), believing $1,000 in net earnings to be sufficient to meet the material contribution test. However, we did change the threshold level for the gross receipts test from $2,000 to $5,000.

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consistent with the approximately 150 percent rise in the Consumer Price Index since the test was instituted.

Section __2(d)(4) gave an Agency wide discretion to determine, in hardship cases, that the earnings of a business "contribute materially" and thus qualify it for an "in lieu" payment. Two commenters noted that Section __304(a)(3) of the proposed rule addressed the same issue through a waiver. The inconsistency has been corrected by deleting the waiver provision at Section __304(a)(3).

One commenter suggested that the procedure in Section __304(b) for determining the number of businesses should apply to all business relocation payments, not just fixed payments. We believe this issue to be of particular importance for fixed payments; however, if an Agency believes it needs to determine the number of businesses for another business relocation payment, it may use the same criteria.

One commenter suggested that the list of ineligible moving expenses in Section __305 be expanded to include a number of additional items, such as overtime, mistakes, and feasibility studies. We believe it is impractical to list all ineligible costs and that the "ineligibility" of items not specified in Section __305 should be determined by the Agency as part of its responsibility for determining whether costs are reasonable and necessary for the move. The same commenter also suggested that Section __305(j) better distinguish between reinstallation of relocated machinery, equipment and other personal property and physical changes to the real property at the replacement location. We concluded that this determination should be made by the Agency.

In response to two comments, Section __305(k) has been revised to indicate that it prohibits payments for storing personal property on property already owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

Section __401 Replacement housing payments for 180-day homeowner-occupants.

The paragraphs in this section have been rearranged for consistency. Paragraph (c) becomes (f), (d) becomes (c), (e) becomes (d), and (f) becomes (e).

Three commenters suggested changes in the procedure for determining the replacement housing payment when the displaced person retains, relocates, and reoccupies the displacement dwelling. In response, we changed Section __401(c)(4)(iii), formerly Section __401(d)(4)(iii), so that the purchase price of the replacement dwelling will reflect the current fair market value of the replacement site rather than what the displaced person previously paid for it. In addition, we added Section __401(c)(4)(iv) to clarify the requirement in Section __401(d)(4)(iii) of the proposed rule that the retention value of the displacement dwelling is to be included in the purchase price of a replacement dwelling if it is included in the acquisition cost used in computing the replacement housing payment.

We have made a number of language changes in Section __401(d), formerly Section __401(e), solely for clarification.

One commenter suggested that the payment described in Section __401(e), formerly Section __401(f), should be limited to the incidental expenses in connection with purchasing a *comparable* replacement dwelling. In general, we did not accept this suggestion because we believe such a requirement would yield administrative burdens for implementing agencies out of proportion to the resulting savings. However, we did change the treatment of title insurance, formerly in Section __401(f)(1), now Section __401(e)(6), by limiting compensation to the cost for a comparable dwelling. Two other commenters suggested that the cost of termite inspection be listed as an eligible expense. We agree and have revised Section __401(f)(4), now Section __401(e)(4), accordingly. In addition, we deleted the words "by the lender" from this provision so that the cost of a structural certification or termite inspection would be an eligible incidental expense, if required.

Section __402 Replacement housing payments for 90-day occupants.

Two commenters suggested that we permit the Agency to extend for good cause the one-year time period in Section __402(a)(2) for renting/purchasing and occupying a replacement dwelling. We agree and have made the change.

Six commenters objected to the use of the "make whole" approach for determining the rental assistance payment under Section __402(b)(1). They argued that the financial means test should be based on percentage of income. These comments were extensively considered. As discussed under Section __2(c)(6) above, we believe that the intent of the Uniform Act is to provide a means for preventing disproportionate injury to persons displaced by public projects. The "make whole" standard accomplishes this objective.

A number of commenters expressed concern over the provision at Section __402(b)(1) (see also Section __2(c)(6)(ii)) that the market rent of the displacement dwelling is to be used when computing the rental assistance payment for a displaced person who paid little or no rent before displacement. The commenters feared that the provision would unfairly reduce the amount of the rental assistance payment to low-income persons, especially the elderly, who pay a low rent before displacement.

This provision is intended to address the computation of payments for homeowner-occupants (who, of course, did not pay rent before displacement), and those very unusual situations where a tenant is paying an unreasonably low rent, and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where use of the fair market rent would result in a hardship because of the displaced person's income, or other special circumstances. An explanation of this intent has been included in Appendix A, Subpart E.

Three comments concerned the inclusion of utility services when computing a rental assistance payment. One indicated that the inclusion of utility services in the payment computation could result in an inappropriate subsidy and suggested that no utility services be reflected in the payment. The other two commenters expressed concern that the provision required all utility services to be reflected in the payment computation, if a single utility service is included in any of the applicable contract rents.

In response to these comments, the provision has been revised to indicate that the Agency must include in the payment computation the cost of any utility service (i.e., heat, water) which is included in either the displacement dwelling rent or the replacement dwelling rent. If neither rent includes a specific utility service, the Agency may compute the payment with or without such service. In any case, the Agency must ensure that like circumstances are compared.

Section __403 Additional rules governing replacement housing payments.

Four commenters suggested various changes at Section __403(a)(1) concerning the adjustment of the asking price for a comparable replacement dwelling. We considered the suggestions and made clarifying changes.

Several commenters suggested changes in the procedure at Section

__403(a)(2) for computing a replacement housing payment when the displacement property contains a major exterior attribute. Two commenters suggested that the displacing agency be allowed either to adjust the acquisition cost of the displacement dwelling by deducting the value of the attribute (as provided in the rule) *or* to pay for the additional cost of the attribute when it is not included in the comparable replacement property. We do not agree. We believe that the purpose of a replacement housing payment is to provide comparable *housing*, not exterior attributes such as swimming pools, larger-than-typical lots, etc. Moreover, paying for the cost of such attributes would add considerable cost to the relocation process without concomitant housing benefits. In addition, the language in this paragraph regarding partial acquisitions of a typical residential property, where the remainder constitutes a buildable residential lot, has been clarified.

Two commenters suggested that Section __403 (d) and (e), which relate to occupancy requirements, be consolidated. We agree and have combined and clarified the two provisions in Section __403(e).

Subpart F—Mobile Homes

A number of comments were received on this Subpart indicating that we had not made clear the intent of certain proposed provisions. To clarify these items, and to conform Subpart F to the remainder of the regulations, the following changes have been made.

Section __502 Moving and related expenses—mobile homes.

Section __502(a)(3) of the proposed rule has been moved to Section __502(b) of the final rule and revised to make it clear that the reasonable cost of repairs and/or modifications to make a mobile home decent, safe and sanitary are reimbursable, if the Agency determines that it would be practical to relocate the mobile home. A conforming change has been made to Section __503(c)(1).

Section __502(b) of the proposed rule has been moved to Section __502(c) of the final rule and clarified to indicate that payment of a nonreturnable mobile home park entrance fee may be reimbursable, if the person is displaced from a mobile home park or if the Agency determines that payment of the fee is necessary to effect relocation.

Sections __503 and __504 Replacement housing payments for 180-day mobile homeowner occupants and 90-day mobile home occupants

Sections __503(c) __504(c) have been clarified to indicate that a person displaced from a mobile home site may be eligible for a replacement housing payment to assist in purchasing or renting a replacement site, even if the person is not displaced from the mobile home.

Section __505 Additional rules governing relocation payments to mobile home occupants.

Section __505(a) has been modified to make it clear that the computation of a replacement housing payment must take into account the increased cost for both the replacement mobile home and the replacement mobile home site. Also, since this provision, as revised, fully explains the intent of Section __505(b)(1) of the proposed rule, the latter provision has been deleted and the next two paragraphs redesignated accordingly.

Section __505(b)(3) of the proposed rule has been moved to Section __505(b)(2) and revised to make clear its intent to set an upper limit on the replacement housing payment to a 180-day mobile home owner who elects not to relocate the mobile home, even though the Agency determines that, with certain repairs or modifications, relocation of the unit would be practical. To conform it with Section __401(c)(4), this provision also has been revised to require that the upper limit of the payment take into account the cost of moving the mobile home to a replacement site.

Section __505(e), which formerly discussed only mobile home occupants, has been reworded to make it clear that an owner required to move a mobile home as a direct result of a partial acquisition is eligible for payment of moving expenses, regardless of whether he or she occupied the mobile home.

Subpart G—Last Resort Housing

The rule supersedes the current governmentwide rule on last resort housing issued by the Department of Housing and Urban Development (HUD) at 24 CFR Part 43. Subpart G sets forth policies and procedures that maximize the flexibility of agencies seeking to use Section 206 of the Uniform Act (last resort housing provisions). By removing unnecessary existing requirements, it allows agencies to design and implement last resort housing measures according to their own needs.

Section __601(a) has been clarified to indicate that whenever a replacement housing payment under Subpart E would be insufficient to provide a comparable replacement dwelling on a timely basis to a person, the Agency is authorized to take appropriate last resort housing measures under Subpart G to accomplish this objective. This clarification is consistent with those added at Section __2(c)(6)(iii) and Section __403(b).

In response to two comments, Section __601(b) has been clarified by indicating that a 180-day homeowner-occupant, who is eligible for a replacement housing payment under Section __401, is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. However, this provision must be read in conjunction with the definition of "owner of displacement dwelling" at Section __2(1) and is not to be imterpreted as requiring the Agency to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement home than the Agency would be required to provide such persons if they owned fee simple title to such dwelling. A statement to this effect has been included in Appendix A, Section __601(b).

Appendices

The reader's attention is directed to the appendices which accompany the rule. Appendix A provides additional information concerning the intent of certain portions of the rule. Appendix B provides a report form and instructions for those agencies which elect to require a report on Uniform Act activities.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the final rule to result in savings to State and local governments in the implementation of the Uniform Act. However, we do not believe that the regulation will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that the regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives

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to the rule that would minimize the economic impact on small entities.

The head of each of the agenices covered by this notice, or delegatee, has certified that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. The provisions of the Uniform Act which provide the benefits covered by the rule have not changed. The primary impact of the rule is expected to be the elimination of unnecessary administrative requirements and the consequent reduction of burden on affected entities.

Paperwork Reduction Act of 1980

Sections __.102(e), __.103(b), __.104(c), __.203(a), __.203(c), __.205(b), __.207(g), and __.303(b) contain paperwork requirements subject to review by the Office of Management and Budget (OMB) Under Public Law 96–511, the Paperwork Reduction Act of 1980 (the Act). Each covered Federal agency will submit these requirements to OMB for approval in accordance with the Act and associated regulations at 5 CFR 1320. Except for the Department of Transportation (which has already received OMB approval (Order No. 2105–0508), these requirements will not be effective until OMB approval has been obtained. Each Federal agency will publish a notice in the **Federal Register** once OMB approval is obtained.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 21

FOR FURTHER INFORMATION CONTACT: Frank W. Bright, Realty Specialist, Office of Operations, United States Department of Agriculture, Room 1566–South Building, 14th & Independence Avenue, SW., Washington, D.C. 20250, Area Code 202, Telephone No. 447–5113. Office hours Monday through Friday from 8:00 a.m. to 4:30 p.m.

List of Subjects in 7 CFR Part 21

Relocation assistance, Real property acquisition.

Title 7 of the Code of Federal Regulations is amended by revising Part 21 as set forth at the end of this document.

Issued in Washington, D.C., February 21, 1986.

John J. Franke Jr.,
Assistant Secretary for Administration.

PART 21—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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Subpart E—Replacement Housing Payments

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21.503 Replacement housing payment for 180-day mobile homeowner-occupants.
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21.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

21.601 Applicability.
21.602 Methods of providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical information.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

DEPARTMENT OF ENERGY

10 CFR Part 1039

FOR FURTHER INFORMATION CONTACT:

Donald G. Trost, MA–222.1, Chief, Real Property Branch, Real Property and Facilities Management Division, United States Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–1191

John Herrick, Esq, GC–44, United States Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8618.

List of Subjects in 10 CFR Part 1039

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

Chapter X of Title 10 of the Code of Federal Regulations is amended by adding Part 1039 as set forth at the end of this document.

Martha O. Hesse,
Assistant Secretary, Management and Administration.

PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
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1039.4 Assurances, monitoring and corrective action.
1039.5 Manner of notices.
1039.6 Administration of jointly-funded projects.
1039.7 Federal agency waiver of regulations.
1039.8 Compliance with other laws and regulations.

Sec.
1039.9 Recordkeeping and reports.
1039.10 Appeals.

Subpart B—Real Property Acquisition

1039.101 Applicability of acquisition requirements.
1039.102 Basic acquisition policies.
1039.103 Criteria for appraisals.
1039.104 Review of appraisals.
1039.105 Acquisition of tenant-owned improvements.
1039.106 Expenses incidental to transfer of title to the agency.
1039.107 Certain litigation expenses.
1039.108 Donations.

Subpart C—General Relocation Requirements

1039.201 Purpose.
1039.202 Applicability.
1039.203 Relocation notices.
1039.204 Availability of comparable replacement dwelling before displacement.
1039.205 Relocation assistance advisory services.
1039.206 Eviction for cause.
1039.207 General requirements—claims for relocation payments.
1039.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

1039.301 Payments for actual reasonable moving and related expenses—residential moves.
1039.302 Fixed payment for moving expenses—residential moves.
1039.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
1039.304 Fixed payment for moving expenses—nonresidential moves.
1039.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

1039.401 Replacement housing payments for 180-day homeowner occupants.
1039.402 Replacement housing payment for 90-day occupants.
1039.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

1039.501 Applicability.
1039.502 Moving and related expenses—mobile homes.
1039.503 Replacement housing payments for 180-day mobile owner occupants.
1039.504 Replacement housing payments for 90-day mobile occupants.
1039.505 Additional rules governing relocation payment to mobile home occupants.

Subpart G—Last Resort Housing

1039.601 Applicability.
1039.602 Methods providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

DEPARTMENT OF COMMERCE

13 CFR Part 310

15 CFR Parts 11 and 916

[Docket No. 50573–6022]

FOR FURTHER INFORMATION CONTACT: Mary DiGiulian, Director Office of Administrative Services Management, United States Department of Commerce, Room 6319, Washington, D.C. 20230 (202–377–0664).

ADDITIONAL SUPPLEMENTARY INFORMATION: These Regulations supersede existing Department of Commerce regulations governing Uniform Relocation Assistance and Real Property Acquisition located at 13 CFR Part 310 and 15 CFR Part 916.

The collection of information requirements contained in this rule have been approved under OMB No. 0690–0001.

List of Subjects in 15 CFR Part 11

Relocation assistance, Real property acquisition, Reporting and record keeping requirements.

Jerry B. Vance,
Deputy Director, Procurement and Administrative Services.

1. Title 15 of the Code of Federal Regulations is amended by adding Part 11 as set forth at the end of this document.

PART 11—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
11.1 Purpose.
11.2 Definitions.
11.3 No duplication of payments.
11.4 Assurances, monitoring and corrective action.
11.5 Manner of notices.
11.6 Administration of jointly-funded projects.
11.7 Federal agency waiver of regulations.
11.8 Compliance with other laws and regulations.
11.9 Record keeping and reports.
11.10 Appeals.

Subpart B—Real Property Acquisition

11.101 Applicabiltiy of acquisition requirements.
11.102 Basic acquisition policies.
11.103 Criteria for appraisals.
11.104 Review of appraisals.

Sec.
11.105 Acquisition of tenant-owned improvements.
11.106 Expenses incidental to transfer of title to the agency.
11.107 Certain litigation expenses.
11.108 Donations.

Subpart C—General Relocation Requirements

11.201 Purpose.
11.202 Applicability.
11.203 Relocation notices.
11.204 Availability of comparable replacement dwelling before displacement.
11.205 Relocation assistance advisory services.
11.206 Eviction for cause.
11.207 General requirements—claims for relocation payments.
11.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

11.301 Payment for actual reasonable moving and related expenses—residential moves.
11.302 Fixed payment for moving expenses—residential moves.
11.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
11.304 Fixed payment for moving expenses—nonresidential moves.
11.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

11.401 Replacement housing payment for 180-day homeowner-occupants.
11.402 Replacement housing payment for 90-day occupants.
11.403 Additional rules govering replacement housing payments.

Subpart F—Mobile Homes

11.501 Applicability.
11.502 Moving and related expenses—mobile homes.
11.503 Replacement housing payment for 180-day mobile homeowner-occupants.
11.504 Replacement housing payment for 90-day mobile home occupants.
11.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

11.601 Applicablity.
11.602 Methods of providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894. (42 U.S.C. 4601).

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PART 916—[REMOVED AND RESERVED]

2. Title 15 of the CFR is further amended by removing and reserving Part 916.

PART 310—[REMOVED AND RESERVED]

3. Title 13 of the Code of Federal Regulations is amended by removing and reserving Part 310.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1208

FOR FURTHER INFORMATION CONTACT: Ms. Gitta G. Haber, 202–453–1958.

List of Subjects in 14 CFR Part 1208

Uniform relocation assistance, Real property, Relocation, Federally-assisted programs, Housing, Real property acquisition, Relocation requirements, Replacement housing, Mobile homes, Moving and related expenses, Relocation assistance.

Title 14 of the Code of Federal Regulations is amended by adding Part 1208 as set forth at the end of this document.

William R. Graham,

Acting Administrator.

PART 1208—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.
1208.1 Purpose.
1208.2 Definitions.
1208.3 No duplication of payments.
1208.4 Assurances, monitoring and corrective action.
1208.5 Manner of notices.
1208.6 Administration of jointly-funded projects.
1208.7 Federal agency waiver of regulations.
1208.8 Compliance with other laws and regulations.
1208.9 Recordkeeping and reports.
1209.10 Appeals.

Subpart B—Real Property Acquisition

1208.101 Applicability of acquisition requirements.
1208.102 Basic acquisition policies.
1208.103 Criteria for appraisals.
1208.104 Review of appraisals.
1208.105 Acquisition of tenant-owned improvements.
1208.106 Expenses incidental to transfer of title to the agency.
1208.107 Certain litigation expenses.
1208.108 Donation.

Subpart C—General Relocation Requirements

1208.210 Purpose.
1208.202 Applicability.
1208.203 Relocation information and written notices.
1208.204 Availability of comparable replacement dwelling before displacement.
1208.205 Relocation assistance advisory services.
1208.206 Eviction for cause.
1208.207 General requirements—claims for relocation payments.
1208.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

1208.301 Payments for actual reasonable moving and related expenses—residential moves.
1208.302 Fixed payment for moving expenses—residential moves.
1208.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
1208.304 Fixed payment for moving expenses—nonresidential moves.
1208.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

1208.401 Replacement housing payments for 180-day homeowner-occupants.
1208.402 Replacement housing payments for 90-day occupants.
1208.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

1208.501 Applicability.
1208.502 Moving and related expenses—mobile homes.
1208.503 Replacement housing payments for 180-day mobile homeowner occupants.
1208.504 Replacement housing payments for 90-day mobile home occupants.
1208.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

1208.601 Applicability.
1208.602 Methods of providing replacement housing.
Appendix A Additional information.
Appendix B Statistical report form.

Authority: 42 U.S.C. 4601, Sec. 213.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 42 and 43

[Docket No. R-86-1239; FR-2106]

EFFECTIVE DATE: This regulation is effective May 1, 1986 for all acquisitions and displacements for which the initiation of negotiations occurs on or after May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Melvin Geffner, Deputy Director, Roland Brown, Georgian Carter, or Alvin West, Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410. Telephone (202) 755–6336. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: This regulation supersedes existing HUD regulations governing Uniform Relocation Assistance and Real Property Acquisition found at 24 CFR Part 42 and Part 43, Subpart A. The regulation implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The common preamble to this final rule describes the principal changes that will be made in response to the comments submitted to the Federal Agencies on the proposed rule, including those submitted to the Department of Housing and Urban Development.

In addition to this rule the Department is publishing elsewhere in today's issue of the **Federal Register**, a rule containing technical amendments to other HUD regulations which cite relocation requirements in old Part 42 and Part 43, Subpart A. These changes are necessary to accurately reflect current program requirements. This document also contains appropriate amendments to add OMB control numbers to the Paperwork requirements contained in HUD's relocation regulations.

Providing Comparable (Affordable) Replacement Dwellings on a Timely Basis

These regulations accord all persons displaced from a dwelling the right to assistance sufficient to relocate to a comparable replacement dwelling (defined at § 42.2(c)). If a $15,000 replacement housing payment under § 42.401 or a $4,000 replacement housing payment under § 42.402 would not be sufficient to ensure that a comparable (affordable) replacement dwelling is available on a timely basis, the Agency must provide additional or alternative relocation assistance or abandon the displacement-causing activity.

Under § 42.102(m), if a person who is the owner or tenant of the real property at the time of its acquisition by the agency is permitted to occupy it after acquisition on a short-term basis, the rent may not exceed the "fair market rent" for the property. The term "fair market rent" means the rent paid for the unsubsidized use of similar property in similar areas and, thus, may differ from the Fair Market Rent (FMR) established by HUD under its section 8 housing assistance payments programs.

The last resort housing provisions of Subpart G offer Agencies wide latitude to devise appropriate solutions (see § 42.602) for providing such additional or alternative assistance, including the most frequently used option—increasing the replacement housing payment above the limit set forth in § 42.401 or § 42.402. Under the Community Development Block Grant Program grant recipients may, as an alternative to the last resort housing procedures at Subpart G, adopt a written policy in accordance with 24 CFR 570.606(b) under which displaced persons will be provided relocation assistance at levels that will ensure the availability of a comparable replacement dwelling.

To facilitate relocation in a timely and cost-effective manner, Agencies are encouraged to provide referrals to comparable replacement dwellings at the time of the initiation of negotiations (defined at § 42.2(k)) or as soon as feasible thereafter. Timely notification of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment (see § 42.205(b)(2)(i)) is an essential step in the relocation process. Unless such notification is provided in a timely manner, the level of replacement housing assistance would be based on the purchase price or rent of the decent, safe and sanitary dwelling to which the person actually moves, whether or not the resulting compensation exceeds that necessary to relocate to a comparable replacement dwelling.

Section 42.403(a)(1) permits the Agency to adjust the asking price for the comparable replacement dwelling that is used as the basis for computing the upper limit of a replacement housing payment, if the adjustment can be justified by local market data. It should be noted that a comparable replacement dwelling must be actually available to the person to be displaced. It cannot be a dwelling that was recently sold and therefore not available to the person. Nor can the payment be based on a statistical average of recent sales prices. Although very recent sales prices of dwellings similar to the comparable dwelling may serve as a basis for adjusting the asking price, should the comparable replacement dwelling be sold at a price above the adjusted price, the Agency may be required to reestablish the upper limit of the replacement housing payment on the basis of the actual sales price or to select another comparable replacement dwelling for this purpose.

Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect of the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act of 1980

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The primary effect on grantees administering the rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies and the elimination of policy differences among the Federal agencies promulgating this common rule. A small number of displaced businesses would no longer be eligible to choose a fixed payment (up to $10,000) in lieu of a payment for their actual moving expenses. However, there would be minimal effect on the relocation assistance provided to other displaced businesses and all displaced businesses would remain eligible for reimbursement of their actual moving expenses.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, 20410.

HUD Semiannual Agenda

This rule was listed as sequence number 907 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44199) under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2506–0011.

List of Subjects in 24 CFR

24 CFR Part 42

Administrative practice and procedure; Claims; Community development; Grant programs: housing and community development; Loan programs: housing and community development; Manufactured homes; Real property acquisition; Relocation assistance; Reporting and recordkeeping requirements.

24 CFR Part 43

Loan programs: housing and community development; Relocation assistance.

Title 24 of the Code of Federal Regulations is amended as follows:

Dated: February 21, 1986.

Samuel R. Pierce, Jr.,

Secretary.

1. Part 42 is revised as set forth at the end of this document.

PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.
42.1 Purpose.
42.2 Definitions.
42.3 No duplication of payments.
42.4 Assurance, monitoring and corrective action.
42.5 Manner of notices.
42.6 Administration of jointly-funded projects.
42.7 Federal agency waiver of regulations.
42.8 Compliance with other laws and regulations.
42.9 Recordkeeping and reports.
42.10 Appeals.

Subpart B—Real Property Acquisition

42.101 Applicability of acquisition requirements.
42.102 Basic acquisition policies.
42.103 Criteria for appraisals.
42.104 Review of appraisals.
42.105 Acquisition of tenant-owned improvements.
42.106 Expenses incidental to transfer of title to the agency.
42.107 Certain litigation expenses.
42.108 Donations.

Subpart C—General Relocation Requirements

42.201 Purpose.
42.202 Applicability.
42.203 Relocation notices.
42.204 Availability of comparable replacement dwelling before displacement.
42.205 Relocation assistance advisory services.

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42.206 Eviction for cause.
42.207 General requirements—claims for relocation payments.
42.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

42.301 Payment for actual reasonable moving and related expenses—residential moves.
42.302 Fixed payment for moving expenses—residential moves.
42.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
42.304 Fixed payment for moving expenses—nonresidential moves.
42.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

42.401 Replacement housing payment for 180-day homeowner-occupants.
42.402 Replacement housing payment for 90-day occupants.
42.403 Additional rules governing replacement housing payments.

Subpart F—Mobile (Manufactured) Homes

42.501 Applicability.
42.502 Moving and related expenses—mobile (manufactured) homes.
42.503 Replacement housing payment for 180-day mobile (manufactured) homeowner-occupants.
42.504 Replacement housing payment for 90-day mobile (manufactured) home occupants.
42.505 Additional rules governing relocation payments to mobile (manufactured) home occupants.

Subpart G—Last Resort Housing

42.601 Applicability.
42.602 Methods of providing replacement housing.
Appendix A—Additional Information.
Appendix B—Statistical Report Form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

PART 43—PROVISIONS OF REPLACEMENT HOUSING UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

2. The authority citation for Part 43 is revised to read as set forth below and any citation following any section in Part 43 is removed.

Authority: Section 215 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—[Removed and Reserved]

3. Part 43 is amended by removing and reserving Subpart A.

DEPARTMENT OF LABOR

29 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Office of Space and Telecommunications Management, 200 Constitution Avenue, N.W., Washington, DC 20210, Telephone: (202) 523–6405.

List of Subjects in 29 CFR Part 12

Real property acquisition, Relocation assistance.

Title 29 of the Code of Federal Regulations is amended by adding Part 12 as set forth at the end of this document.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

PART 12—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
12.1 Purpose.
12.2 Definitions.
12.3 No duplication of payments.
12.4 Assurances, monitoring and corrective action.
12.5 Manner of notices.
12.6 Administration of jointly-funded projects.
12.7 Federal agency waiver of regulations.
12.8 Compliance with other laws and regulations.
12.9 Recordkeeping and reports.
12.10 Appeals.

Subpart B—Real Property Acquisition

12.101 Applicability of acquisition requirements.
12.102 Basic acquisition policies.
12.103 Criteria for appraisals.
12.104 Review of appraisals.
12.105 Acquisition of tenant-owned improvements.
12.106 Expenses incidental to transfer of title to the agency.
12.107 Certain litigation expenses.
12.108 Donations.

Subpart C—General Relocation Requirements

12.201 Purpose.
12.202 Applicability.
12.203 Relocation information and written notices.
12.204 Availability of comparable replacement dwelling before displacement.
12.205 Relocation assistance advisory services.
12.206 Eviction for cause.
12.207 General requirements—claims for relocation payments.
12.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

12.301 Payment for actual reasonable moving and related expenses—residential moves.
12.302 Fixed payment for moving expenses—residential moves.
12.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
12.304 Fixed payment for moving expenses—nonresidential moves.
12.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

12.401 Replacement housing payment for 180-day homeowner-occupants.
12.402 Replacement housing payment for 90-day occupants.
12.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

12.501 Applicability.
12.502 Moving and related expenses—mobile homes.
12.503 Replacement housing payment for 180-day mobile home owner-occupants.
12.504 Replacement housing payment for 90-day mobile home occupants.
12.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

12.601 Applicability.
12.602 Methods of providing replacement housing.
Appendix A Additional information.
Appendix B Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894 (42 U.S.C. 4601.)

DEPARTMENT OF DEFENSE

32 CFR Parts 259, 641, and 742

FOR FURTHER INFORMATION CONTACT: Jerome Liese, Department of the Army, Office of the Chief Engineers, 20 Massachusetts Ave., N.W., Washington, D.C. 20314–1000 (202–272–0517).

ADDITIONAL SUPPLEMENTARY INFORMATION: This regulation replaces existing Department of the Army and Department of the Navy regulations published in 32 CFR Part 641 and 32 CFR Part 742, respectively, with a single uniform regulation for the three military departments of the Department of Defense. Since the Department of the Army is the land acquisition agent for the Department of the Air Force, no regulations have been issued by that Department. Procedures for the processing of applications for assistance and appeals under the Act remain the same as under the prior regulations.

Lists of Subjects in 32 CFR Part 259

Real property acquisition, Relocation requirements, Moving and related expenses, Replacement housing, Mobile home relocation, Last resort housing, Relocation assistance.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

1. Title 32 of the Code of Federal Regulations is amended by adding Part 259 as set forth at the end of this document.

PART 259—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

Sec.
259.1 Purpose.
259.2 Definitions.
259.3 No duplication of payments.
259.4 Assurances, monitoring and corrective action.
259.5 Manner of notices.
259.6 Administration of jointly-funded projects.
259.7 Federal agency waiver of regulations.
259.8 Compliance with other laws and regulations.
259.9 Recordkeeping and reports.
259.10 Appeals.

Subpart B—Real Property Acquisition

259.101 Applicability of acquisition requirements.
259.102 Basic acquisition policies.
259.103 Criteria for appraisals.
259.104 Review of appraisals.
259.105 Acquisition of tenant-owned improvements.
259.106 Expenses incidental to transfer of title to the agency.
259.107 Certain litigation expenses.
259.108 Donations.

Subpart C—General Relocation Requirements

259.201 Purpose.
259.202 Applicability.
259.203 Relocation notices.
259.204 Availability of comparable replacement dwelling prior to displacement.
259.205 Relocation assistance advisory services.
259.206 Eviction for cause.
259.207 General requirements—claims for relocation payments.
259.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

259.301 Payments for actual reasonable moving and related expenses—residential moves.
259.302 Fixed payment for moving expenses—residential moves.
259.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
259.304 Fixed payment for moving expenses—nonresidential moves.
259.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payment

259.401 Replacement housing payments for 180-day homeowner-occupants.
259.402 Replacement housing payments for 90-day occupants.
259.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

259.501 Applicability.
259.502 Moving and related expenses—mobile homes.
259.503 Replacement housing payments for 180-day mobile home occupants.
259.504 Replacement housing payments for 90-day mobile home occupants.
259.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

259.601 Applicability.
259.602 Methods of providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

PARTS 641 and 742—[REMOVED AND RESERVED]

2. Title 32 is further amended by removing and reserving parts 641 and 742.

DEPARTMENT OF EDUCATION

34 CFR Part 15

FOR FURTHER INFORMATION CONTACT: Gary Rasmussen, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 1175, Washington, D.C. 20202. Telephone: (202) 245–0306.

ADDITIONAL SUPPLEMENTARY INFORMATION: These regulations governing Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs replace previous uniform regulations published by the Department of Health, Education, and Welfare on April 2, 1973 (38 FR 8492), which were adopted and republished with appropriate conforming technical amendments by the Department of Education on May 9, 1980 (45 FR 30825). The text of these regulations is explained elsewhere in this document.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 15

Government property, Relocation assistance, Real property acquisition.

Title 34 of the Code of Federal Regulations is amended by revising Part 15 as set forth at the end of this document.

Dated: February 24, 1986.

William J. Bennett,

Secretary of Education.

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
15.1 Purpose.
15.2 Definitions.
15.3 No duplication of payments.
15.4 Assurances, monitoring and corrective action.
15.5 Manner of notices.
15.6 Administration of jointly-funded projects.
15.7 Federal agency waiver of regulations.
15.8 Compliance with other laws and regulations.
15.9 Recordkeeping and reports.
15.10 Appeals.

Subpart B—Real Property Acquisition

15.101 Applicability of acquisition requirements.
15.102 Basic acquisition policies.
15.103 Criteria for appraisals.
15.104 Review of appraisals.
15.105 Acquisition of tenant-owned improvements.
15.106 Expenses incidental to transfer of title to the agency.
15.107 Certain litigation expenses.
15.108 Donations.

Subpart C—General Relocation Requirements

15.201 Purpose.
15.202 Applicability.
15.203 Relocation notices.
15.204 Availability of comparable replacement dwelling before displacement.

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15.205 Relocation assistance advisory services.
15.206 Eviction for cause.
15.207 General requirements—claims for relocation payments.
15.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

15.301 Payment for actual reasonable moving and related expenses—residential moves.
15.302 Fixed payment for moving expenses—residential moves.
15.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
15.304 Fixed payment for moving expenses—nonresidential moves.
15.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

15.401 Replacement housing payment for 180-day homeowner-occupants.
15.402 Replacement housing payment for 90-day occupants.
15.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

15.501 Applicability.
15.502 Moving and related expenses—mobile homes.
15.503 Replacement housing payment for 180-day mobile homeowner-occupants.
15.504 Replacement housing payment for 90-day mobile home occupants.
15.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

15.601 Applicability.
15.602 Methods of providing replacement housing.

Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 904

FOR FURTHER INFORMATION CONTACT: Mr. Jerry M. Smedley, Director of Development Operations/Acting Deputy Director of Development (202/724-9068), or Mr. Reginald H. Robinson, Program Manager (202/724-9068), Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004-1703.

ADDITIONAL SUPPLEMENTARY INFORMATION: This regulation creates significant changes in the existing regulation of the Pennsylvania Avenue Development Corporation as follows:

Subpart A—General

Section 904.2 Definitions.

(h) Farm operation.

No farm operations currently exist within the Pennsylvania Avenue development area, as that area is defined in 40 U.S.C. Section 871(f), however, this definition and the provision in this regulation related to farm operations are included here for uniformity.

Subpart F—Mobile Homes

No mobile homes currently exist within the Pennsylvania Avenue development area, as that area is defined in 40 U.S.C. Section 871(f), however, this Subpart relating to mobile homes is included here for uniformity.

List of Subjects in 36 CFR Part 904

Relocation assistance, Real property acquisition, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended by revising Part 904 as set forth at the end of this document.

M.J. Brodie,
Executive Director.

PART 904—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
904.1 Purpose.
904.2 Definitions.
904.3 No duplication of payments.
904.4 Assurances, monitoring and corrective action.
904.5 Manner of notices.
904.6 Administration of jointly-funded projects.
904.7 Federal agency waiver of regulations.
904.8 Compliance with other laws and regulations.
904.9 Recordkeeping and reports.
904.10 Appeals.

Subpart B—Real Property Acquisition

904.101 Applicability of acquisition requirements.
904.102 Basic acquisition policies.
904.103 Criteria for appraisals.
904.104 Review of appraisals.
904.105 Acquisition of tenant-owned improvements.
904.106 Expenses incidental to transfer of title to the agency.
904.107 Certain litigation expenses.
904.108 Donations.

Subpart C—General Relocation Requirements

904.201 Purpose.
904.202 Applicability.
904.203 Relocation of information and written notices.
904.204 Availability of comparable replacement dwelling before displacement.
904.205 Relocation assistance advisory services.
904.206 Eviction for cause.
904.207 General requirements—claims for relocation payments.
904.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related

904.301 Payment for actual reasonable moving and related expenses—nonresidential moves.
904.302 Fixed payment for moving expenses—residential moves.
904.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
904.304 Fixed payment for moving expenses—nonresidential moves.
904.305 Ineligible moving and related expense.

Subpart E—Replacement Housing Payments

904.401 Replacement housing payment for 180-day homeowner—occupants.
904.402 Replacement housing payment for 90-day occupants.
904.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

904.501 Applicability.
904.502 Moving and related expenses—mobile homes.
904.503 Replacement housing payment for 180-day mobile home owner occupants.
904.504 Replacement housing payment for 90-day mobile home occupants.
904.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

904.601 Applicability.
904.602 Methods of providing replacement housing.

Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

VETERANS ADMINISTRATION

38 CFR Part 25

FOR FURTHER INFORMATION CONTACT: Pam Swiatek, Chief, Real Estate Division (088C), Office of Construction, Veterans' Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-3105)

ADDITIONAL SUPPLEMENTARY INFORMATION: The Veterans' Administration, in accordance with the Presidential Memorandum of February 27, 1985, and in conjunction with other

covered agencies, published on May 28, 1985, in the Federal Register, a proposed common rule implementing the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 to replace those contained in 38 CFR Part 25. Title 38 CFR is amended by removing the existing regulations in Part 25, and inserting the final common rule in that part.

In response to the May 28 Federal Register publication, the VA received one comment by the State of Washington Department of Transportation objecting to § 25.3, which placed "no duplication of payments" responsibility on the acquiring agency, as burdensome. The suggested change has been considered. The rule never intended to inquire the agencies to make extensive searches to insure that there is no duplication of payments. A section has been added to Appendix A explaining that an agency is required to avoid duplicating only those payments of which it has knowledge at the time it is making the payment under the regulations.

List of Subjects in 38 CFR Part 25

Relocation assistance, Veterans' Administration, Real property acquisition.

Title 38 of the Code of Federal Regulations is amended by revising Part 25 to read as forth at the end of this document.

Approved: February 14, 1986.

Everett Alvarez, Jr.,
Acting Administrator.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
25.1 Purpose.
25.2 Definitions.
25.3 No duplication of payments.
25.4 Assurance, monitoring and corrective action.
25.5 Manner of notices.
25.6 Administration of jointly funded projects.
25.7 Federal agency waiver of regulations.
25.8 Compliance with other laws and regulations.
25.9 Recordkeeping and reports.
25.10 Appeals.

Subpart B—Real Property Acquisition

25.101 Applicability of acquisition requirements.
25.102 Basic Acquisition policies.
25.103 Criteria for appraisals.
25.104 Review of appraisals.

Sec.
25.105 Acquisition of tenant-owned improvements.
25.106 Expenses incidental to transfer of title to the agency.
25.107 Certain litigation expenses.
25.108 Donations.

Subpart C—General Relocation Requirements

25.201 Purpose.
25.202 Applicability.
25.203 Relocation notices.
25.204 Availability of comparable replacement dwelling before displacement.
25.205 Relocation assistance advisory services.
25.206 Eviction for cause.
25.207 General requirements—claims for relocation payments.
25.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

25.301 Payment for actual reasonable moving and related expenses—residential moves.
25.302 Fixed payment for moving expenses—residential moves.
25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
25.304 Fixed payment for moving expenses—nonresidential moves.
25.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

25.401 Replacement housing payment for 180-day homeowner-occupants.
25.402 Replacement housing payment for 90-day occupants.
25.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

25.501 Applicability.
25.502 Moving and related expenses-mobile homes.
25.503 Replacement housing payment for 180-day mobile homeowner-occupant.
25.504 Replacement housing payment for 90-day mobile homeowner-occupants.
25.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

25.601 Applicability.
25.602 Methods of providing replacement housing.

Appendix A—Additional Information.

Appendix B—Statistical Report Form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[FRL 2965-6]

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM-216), Room 3317M, (202) 382-5298. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: Federal agencies are jointly publishing a common final rule to implement cost-effective policies and procedures governing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq). The rule, as a part of the President's regulatory relief program, is designed to reduce the burden of regulation and paper work for EPA's assistance recipients. When effective, this rule will supersede the existing EPA Uniform Act rule at 40 CFR Part 4. In addition to the items discussed above in the common preamble, EPA wishes to bring the following sections to the attention of its readers.

Section 4.101 Real Property Acquisition (General).

Section 4.101(b) provides a benchmark of 50 years beyond which the acquisition requirements of this rule clearly apply to leases. Appendix A at § 4.101(b) notes that an Agency may apply those requirements to a less-than-full-fee acquisition short of 50 years which, in its judgment, should be covered. In the past, under the wastewater treatment grant program, EPA has applied Uniform Act requirements to necessary acquisitions if they were for 20 years or longer. EPA will continue to use this standard under the common rule.

Section 4.103 Criteria for Appraisals.

The rule significantly expands the criteria for appraisals of real property under EPA and EPA-assisted programs. Section 4.103(a) defines an appraisal; § 4.103(b) provides minimum standards for the content of appraisals; § 4.103(e) discusses qualifications for appraisers; and § 4.103(f) discusses conflict of interest in appraisals.

Section 4.104 Review of Appraisals.

The rule adds a requirement that the Agency have an appraisal review process. The purpose of the review is to assure that all appraisals meet Agency appraisal standards.

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Section 4.108 Donations.

The rule permits the full or partial donation of real property to an Agency, as long as the donor is informed of his right to just compensation. Similarly, an owner of real property may waive his right to an appraisal of his property as long as he is informed of that right. This will allow the Agency to avoid the cost of appraisals in situations where the owner believes the benefit he will receive from the project is greater than the value of the interest being acquired, e.g., easements to provide water sewer lines. In addition, it will allow the Agency to use one appraisal as the basis for determining just compensation for a number of other, similar parcels, as long as the owner of such parcel(s) waives the right to an appraisal.

This has been a long-standing problem in EPA's wastewater treatment program under which State agencies may purchase numerous easements, each often of nominal value. In this situation, the cost of obtaining an appraisal for each acquisition may well exceed the value of the interest being acquired. This not only is costly and unproductive, but, in some cases, may affect the viability of the proposed project.

Section 4.207(e) Multiple occupants of one displacement dwelling.

EPA's previous rule (at § 4.333) provided for separate replacement housing payments for multiple occupants of a single dwelling. The common final rule provides for a prorated share of all relocation payments in such multiple occupancy situations, except when the displacing agency determines that more than one household had been maintained. When that occurs, each household has a separate entitlement to relocation payments.

Section 4.304(c) Fixed payment for moving expenses—Nonresidential moves [Farm operation].

The common final rule modifies a portion of EPA' current requirement found at § 4.205–3. That provision, in part, requires that a partial acquisition of a farm operation leave the farm operation with an uneconomic remnant in order for a fixed payment to be payable. The rule only requires that in such cases, the partial acquisition cause a substantial change in the nature of the farm operation.

Section 4.403(a) Determining cost of comparable replacement dwelling.

The current EPA rule at § 4.330 provides three methods of determining the cost of a comparable replacement dwelling, i.e., using dwelling units available on the market, the schedule method, and alternative methods if the market and schedule methods are inappropriate. The common final rule retains only the market method.

Section 4.336 Certification of eligiblity pending purchase of replacement dwelling.

The common final rule deletes the requirement at § 4.336 that the displacing agency, at the request of a displaced person, provide a certificate concerning eligibility for a replacement housing payment. While this no longer is required, EPA encourages displacing agencies to continue to provide this and similar assistance to displaced persons.

Section 4.502 EPA share of costs.

The common final rule deletes the provision at § 4.502(a) of EPA's current regulation requiring that payments and other costs under the Uniform Act be shared in the same manner as other project costs. It also deletes the provision at § 4.502(c) that EPA may advance to a State agency the EPA share of the cost of certain Uniform Act payments if it is determined to be necessary for the expeditious completion of a program or a project. These deletions are for regulatory simplification. Since both provisions are statutory (section 211 of the Uniform Act), the requirements are unchanged.

List of Subjects in 40 CFR Part 4

Real property acquisition, Relocation assistance.

Title 40 of the Code of Federal Regulations is amended by revising Part 4 as set forth at the end of this document.

Lee M. Thomas,
Administrator.
February 21, 1985.

PART 4—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
4.1 Purpose.
4.2 Definitions.
4.3 No duplication of payments.
4.4 Assurances, monitoring and corrective action.
4.5 Manner of notices.
4.6 Administration of jointly-funded projects.
4.7 Federal agency waiver of regulations.
4.8 Compliance with other laws and regulations.
4.9 Recordkeeping and reports.
4.10 Appeals.

Subpart B—Real Property Acquisition

4.101 Applicability of acquisition requirements.
4.102 Basic acquisition policies.
4.103 Criteria for appraisals.
4.104 Review of appraisals.
4.105 Acquisition of tenant-owned improvements.
4.106 Expenses incidental to transfer of title to the agency.
4.107 Certain litigation expenses.
4.108 Donations.

Subpart C—General Relocation Requirements

4.201 Purpose.
4.202 Applicability.
4.203 Relocation notices.
4.204 Availability of comparable replacement dwelling before displacement.
4.205 Relocation assistance advisory services.
4.206 Eviction for cause.
4.207 General requirements—claims for relocation payments.
4.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

4.301 Payment for actual reasonable moving and related expenses—residential moves.
4.302 Fixed payment for moving expenses—residential moves.
4.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
4.304 Fixed payment for moving expenses—nonresidential moves.
4.305 Ineligible moving and related expenses.

Subpart E—Replacement Housing Payments

4.401 Replacement housing payment for 180-day homeowner-occupants.
4.402 Replacement housing payment for 90-day occupants.
4.403 Additional rules governing replacement housing payments.

Subpart F—Mobile Homes

4.501 Applicability.
4.502 Moving and related expenses—mobile homes.
4.503 Replacement housing payment for 180-day mobile home owner-occupants.
4.504 Replacement housing payment for 90-day mobile home occupants.
4.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Last Resort Housing

4.601 Applicability.
4.602 Methods of providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6, 101–18 and 105–51

FOR FURTHER INFORMATION CONTACT: Mr. John H. Quigley, Director, Space Management Division (202–566–1875) or Mr. John P. Spock, Space Management Division (202–523–5549), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. Office hours Monday through Friday from 8:00 to 4:30 P.M., ET.

ADDITIONAL SUPPLEMENTARY INFORMATION: The recordkeeping and information collection requirements included in these regulations have been submitted or are simultaneously being submitted for approval to the Office of Management and Budget.

To promote the uniform and effective administration of Federal relocation assistance and real property acquisition as provided for in the Uniform Act and the Presidential Memorandum of February 27, 1985, GSA revokes its exisitng implementing regulations in 41 CFR 101–18.000 through 101–18.003–19 and 41 CFR 101–18.300 through 101–18.312, and adopts the uniform model regulation published herein and promulgates it at 41 CFR Part 105–51. The model regulation in general provides greater details than exist under GSA's present implementing regulations. The subject coverage is generally the same, however, the model regulation differs as follows:

Section __3 No duplication of payments, and § __4, Assurances, monitoring and corrective action, are new.

Section __101(b) Revises GSA's regulations on leasehold acquisition as published in 41 CFR 101–18.312.

Section __102(g) Is a new requirement for updating offers of just compensation.

Section __103 Expands GSA's criteria for appraisals.

Subparts C, D and E, dealing with general relocation requirements, payment for moving and related expenses, and replacement housing payments, respectively, provide expanded details over those contained in GSA's regulations.

Subpart F on mobile homes is new.

Subpart G expands GSA's present coverage of last resort housing.

Appendix A, Additional information is new.

Effect on other Directives. The provisions of 41 CFR indicated above are superseded by this rule. The Governmentwide regulation, issued by GSA to implement the Uniform Act, at 41 CFR 101–6.1 is cancelled.

List of Subjects in 41 CFR Part 105–51

Real property acquisition; Relocation assistance.

Title 41 of the Code of Federal Regulations is amended as set forth below.

1. Title 41 is amended by adding Part 105–51 to read as follows:

PART 105–51—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart 105–51.0—General

Sec.
105–51.001 Purpose.
105–51.002 Definitions.
105–51.003 No duplications of payments.
105–51.004 Assurances, monitoring and corrective action.
105–51.005 Manner of notices.
105–51.006 Administration of jointly-funded projects.
105–51.007 Federal agency waiver of regulations.
105–51.008 Compliance with other laws and regulations.
105–51.009 Recordkeeping and reports.
105–51.010 Appeals.

Subpart 105–51.1—Real Property Acquisition

105–51.101 Applicability of acquisition requirements.
105–51.102 Basic acquisition policies.
105–51.103 Criteria for appraisals.
105–51.104 Review of appraisals.
105–51.105 Acquisition of tenant-owned improvements.
105–51.106 Expenses incidental to transfer of title to the agency.
105–51.107 Certain litigation expenses.
105–51.108 Donations.

Subpart 105–51.2—General Relocation Requirements

105–51.201 Purpose.
105–51.202 Applicability.
105–51.203 Relocation information and written notices.
105–51.204 Availability of comparable replacement dwelling prior to displacement.
105–51.205 Relocation assistance advisory services.
105–51.206 Eviction for cause.
105–51.207 General requirements-claims for relocation payments.
105–51.208 Relocation payments not considered as income.

Subpart 105–51.3—Payments for Moving and Related Expenses

105–51.301 Payments for actual reasonable moving and related expenses—residential moves.
105–51.302 Fixed payment for moving expenses—residential moves.
105–51.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
105–51.304 Fixed payment for moving expenses—nonresidential moves.
105–51.305 Ineligible moving and related expenses.

Subpart 105–51.4—Replacement Housing Payments

105–51.401 Replacement housing payments for 180-day homeowner-occupants.
105–51.402 Replacement housing payments for 90-day occupants.
105–51.403 Additional rules governing replacement housing payments.

Subpart 105–51.5—Mobile Homes

105–51.501 Applicability.
105–51.502 Moving and related expenses—mobile homes.
105–51.503 Replacement housing payments for 180-day mobile homeowner occupants.
105–51.504 Replacement housing payments for 90-day mobile home occupants.
105–51.505 Additional rules governing relocation payments to mobile home occupants.

Subpart 105–51.6—Last Resort Housing

105–51.601 Applicability.
105–51.602 Methods of providing replacement housing.
Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

2. Part 105–51 is further amended as follows:

a. Change "Subpart D" to read "Subpart 105–51.3" in the following places:

105–51.501
105–51.502(a)(2)

b. Change "Subpart E" to read "Subpart 105–51.4" in the following places:

§ 105–51.501
§ 105–51.505(a)
§ 105–51.601(a)

c. In Appendix A change the subpart designations to read as set forth in the table of contents for Part 105–51 above.

PART 101–6—MISCELLANEOUS REGULATIONS

Subpart 101–6.1—[Removed and Reserved]

3. Subpart 101–6.1 is removed and reserved.

PART 101–18—ACQUISITION OF REAL PROPERTY

4. The authority citation for Part 101–18 continues to read as follows:

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Authority: 63 Stat. 377 (40 U.S.C. 304c, 471, 490, 601–615); 73 Stat. 479; (40 U.S.C. 490 note); (42 U.S.C. 4201–4244); (40 U.S.C. 531–535); E.O. 11512, 35 FR 3979; 84 Stat. 1894, unless otherwise noted.

5. Part 101–18 is amended by removing § 101–18.003 through 101–18.003–19 and by removing and reserving Subpart 101–18.3 as follows:

§§101–18.003 through 101–18.003–19 [Removed].

Subpart 101–18.3—[Removed and Reserved]

Dated: February 20, 1986.

Paul Trause,

Acting Administrator of General Services.

DEPARTMENT OF THE INTERIOR

41 CFR Part 114–50

FOR FURTHER INFORMATION CONTACT: Billy Lee Hart, Chief, Division of Real Property Management, Office of Acquisition and Property Management, Room 5517, Department of the Interior, Washington, D.C. 20240, Phone: 202–343–3336.

ADDITIONAL SUPPLEMENTARY INFORMATION: Federal agencies are promulgating jointly a final common rule to implement cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601). This final common rule is applicable to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local governments.

This regulation supersedes the existing Department of the Interior regulation governing Uniform Relocation Assistance and Real Property Acquisition found at 41 CFR Part 114–50. The principal changes that will be made in the current regulation are discussed below.

Section 114–50.302 (__.2) (a) Definition of Agency.

The term agency has been clarified to mean that an agency within the Department of the Interior means bureau or office including those programs implemented by State or local governmental units with Federal or State financing.

Section 114–50.307 (__.7) Federal Agency Waiver of Regulations.

The term agency in this section has also been clarified to mean that for the purposes of this subpart Federal funding agencies include bureaus and offices.

The Department of the Interior is codifying the rule in Title 41 of the CFR as a subpart rather than as a part. Therefore, the section numbering will be different from the common rulemaking. The differences are displayed in the table of contents of Subpart 114.50.3 below. Conforming amendments are being made to correct the internal references in light of the differences between the Department of the Interior and the common rulemaking numbering.

List of Subjects in 41 CFR Part 114–50

Uniform relocation assistance and real property acquisition policies, Relocation assistance, Real property acquisition.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary—Policy, Budget and Administration.

1. The authority citation for Part 114–50 continues to read as follows:

Authority: 5 U.S.C. 301, and sec. 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).

2. Part 114–50 is amended by revising Subpart 114–50.3 to read as set forth at the end of this document:

PART 114–50—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

* * * * *

Subpart 114–50.3—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

General

Sec.
114–50.301 (__.1) Purpose.
114–50.302 (__.2) Definitions.
114–50.303 (__.3) No duplication of payments.
114–50.304 (__.4) Assurances, monitoring and corrective action.
114–50.305 (__.5) Manner of notices.
114–50.306 (__.6) Administration of jointly-funded projects.
114–50.307 (__.7) Federal agency waiver of regulations.
114–50.308 (__.8) Compliance with other laws and regulations.
114–50.309 (__.9) Recordkeeping and reports.
114–50.310 (__.10) Appeals.

Real Property Acquisition

114–50.311 (__.101) Applicability of acquisition requirements.
114–50.312 (__.102) Basic acquisition policies.
114–50.313 (__.103) Criteria for appraisals.
114–50.314 (__.104) Review of appraisals.
114–50.315 (__.105) Acquisition of tenant-owned improvements.
114–50.316 (__.106) Expenses incidental to transfer of title to the agency.
114–50.317 (__.107) Certain litigation expenses.
114–50.318 (__.108) Donations.

General Relocation Requirements

114–50.321 (__.201) Purpose.
114–50.322 (__.202) Applicability.
114–50.323 (__.203) Relocation information and written notices.
114–50.324 (__.204) Availability of comparable replacement dwelling before displacement.
114–50.325 (__.205) Relocation assistance advisory services.
114–50.326 (__.206) Eviction for cause.
114–50.327 (__.207) General requirements—claims for relocation payments.
114–50.328 (__.208) Relocation payments not considered as income.

Payments for Moving and Related Expenses

114–50.331 (__.301) Payment for actual reasonable moving and related expenses—residential moves.
114–50.332 (__.302) Fixed payment for moving expenses—residential moves.
114–50.333 (__.303) Payment for actual reasonable moving and related expenses—nonresidential moves.
114–50.334 (__.304) Fixed payment for moving expenses—nonresidential moves.
114–50.335 (__.305) Ineligible moving and related expenses.

Replacement Housing Payments

114–50.341 (__.401) Replacement housing payment for 180-day homeowner-occupants.
114–50.342 (__.402) Replacement housing payment for 90-day occupants.
114–50.343 (__.403) Additional rules governing replacement housing payments.

Mobile Homes

114–50.351 (__.501) Applicability.
114–50.352 (__.502) Moving and related expenses—mobile homes.
114–50.353 (__.503) Replacement housing payment for 180-day mobile homeowner-occupants.
114–50.354 (__.504) Replacement housing payment for 90-day mobile home occupants.
114–50.355 (__.505) Additional rules governing relocation payments to mobile home occupants.

Last Resort Housing

114–50.361 (__.601) Applicability.
114–50.362 (__.602) Methods of providing replacement housing.

Appendix A—Additional information.
Appendix B—Statistical report form.

3. Subpart 114–50.3 is further amended as follows:

a. Change "this part" to read "this subpart" in the following places:

§ 114–50.307
§ 114–50.343(e)

b. Change "this Subpart" to read "§§ 114–50.311 through 114–50.318" in the following places:

§ 114–50.311 (a) and (b)
§ 114–50.315 (b) and (e)

c. Change "this Subpart prescribes" to read "Sections 114–50.321 through 114–50.328 prescribe" in § 114–50.321.

d. Change "This Subpart describes" to read "Sections 114–50.351 through 114–50.355 describe" in § 114–50.351.

e. Change "Subpart D" to read "§ 114–50.331 through 114–50.335" in the following places:

§ 114–50.351
§ 114–50.352(a)(2)

f. Change "Subpart E" to read "§§ 114–50–341 through 114–50.343" in the following places:

§ 114–50.351
§ 114–50.355(a)
§ 114–50.361(a)

g. Change "this Subpart" to read "§ 114–50.361 through 114–50.362" in the following places:

§ 114–50.361(a) and (b)
§ 114–50.362 introductory text and (d)

h. In Appendix A, remove the subpart designations from each of the headings.

i. In Appendix A, under the heading "Real Property Acquisition," change "this Subpart" to read "§§ 114–50.31 through 114–50.318" in the three places where it occurs.

Subparts 114–50.1, 114–50.2, and 114–50.4 through 114–50.13 [Removed and Reserved]

4. The Part is further amended by removing and reserving Subparts 114–50.1, 114–50.2, and 114–50.4 through 114–50.13.

DEPARTMENT OF JUSTICE

41 CFR Part 128–18

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Zeidner, Department of Justice, Director, Facilities and Property Management Staff, Room 6315, Main Justice Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20530.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice is codifying the rule in Title 41 of the CFR as a subpart rather than as a part. Therefore, the section numbering will be different from the common rulemaking. The differences are displayed in the Table of Contents of Subpart 128–18.50 below. Conforming amendments are being made to correct the internal references in light of the differences between the Department of Justice numbering and the common rulemaking.

This regulation, replaces the existing Department of Justice regulation published in 41 CFR Part 128–18.

List of Subjects in 41 CFR Part 128–18

Real property acquisition, Personal property, Relocation assistance.

Title 41 of the Code of Federal Regulations is amended by revising Part 128–18 as set forth at the end of this document.

Dated: February 21, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

1. Part 128–18 is revised as set forth at the end of this document.

PART 128–18—ACQUISITION OF REAL PROPERTY

Subpart 128–18.50—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

Sec.
128–18.5001 (Subpart A) General.
128–18.5001–1 (__.1) Purpose.
128–18.5001–2 (__.2) Definitions.
128–18.5001–3 (__.3) No duplication of payments.
128–18.5001–4 (__.4) Assurances, monitoring and corrective action.
128–18.5001–5 (__.5) Manner of notice.
128–18.5001–6 (__.6) Administration of jointly-funded projects.
128–18.5001–7 (__.7) Federal agency waiver of regulations.
128–18.5001–8 (__.8) Compliance with other laws and regulations.
128–18.5001–9 (__.9) Recordkeeping and reports.
128–18.5001–10 (__.10) Appeals.
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128–18.5004 (Subpart D) Payments for Moving and Related Expenses.
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128–18.5005–1 (__.401) Replacement housing payments for 180-day homeowner-occupants.
128–18.5005–2 (__.402) Replacement housing payment for 90-day occupants.
128–18.5005–3 (__.403) Additional rules governing replacement housing payments.
128–18.5006 (Subpart F) Mobile Homes.
128–18.5006–1 (__.501) Applicability.
128–18.5006–2 (__.502) Moving and related expenses—mobile homes.
128–18.5006–3 (__.503) Replacement housing payments for 180-day mobile home owner-occupants.
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128–18.5006–5 (__.505) Additional rules governing relocation payments to mobile home occupants.
128–18.5007 (Subpart G) Last Resort Housing.
128–18.5007–1 (__.601) Applicability.
128–18.5007–2 (__.602) Methods of providing replacement housing.

Appendix A—Section-by-section analysis.
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

2. Part 128–18 is further amended as follows:

a. Change "this part" to read "this subpart" in the following places:

§ 128–18.5001–7
§ 128–18.5003–1
§ 128–18.5005–3(e)

b. Change "this subpart" to read "§ 128–18.5002" in the following places:

§ 128–18.5002–1 (a) and (b)
§ 128–18.5002–5 (b) and (e)

c. Change "This Subpart" to read "§ 128–18.5003" in § 128–18.5003–1.

d. Change "This Subpart" to read "§ 128–18.5006" in § 128–18.5006–1.

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e. Change "Subpart D" to read "§ 128–18.5004" in the following places:

§ 128–18.5006–1

f. Change "Subpart E" to read "§ 128–18.5005" in the following places:

§ 128–18.5005–2(b)
§ 128–18.5006–1
§ 128–18.5006–5(a)
§ 128–18.5007–1(a)

g. Change "this subpart" to read "§ 128–18.5007" in the following places:

§ 128–18.5007–1 (a) and (b)
§ 128–18.5007–2 introductory text and (d)

h. Change "This Subpart G" to read "§ 128–18.5007" in § 128–18.5005–3(b).

i. In Appendix A change the subpart designations to read as set forth in the table of contents for Subpart 128–18.50 above.

j. In Appendix A under § 128–18.5002 entitled "Real Property Acquisition" change "this subpart" to read "this section" in the places where it occurs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 25

FOR FURTHER INFORMATION CONTACT: John Scheibel, Federal Emergency Management Agency, 500 C Street, S.W., Washington, D.C. (202) 646–4100.

List of Subjects in 44 CFR Part 25

Real property acquisition, Relocation assistance.

Title 44 of the Code of Federal Regulations is amended by adding Part 25 as set forth at the end of this document.

February 11, 1986.

Julius W. Becton, Jr.,
Director.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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Appendix A—Additional information.
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 15

FOR FURTHER INFORMATION CONTACT: Gary Houseknecht, Office of Assistance and Cost Policy at Room 513–D, Hubert H. Humphrey Building, 200 Independence Ave. SW Washington, D.C. 20201, or call (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: Federal agencies are jointly publishing a final rule to adopt cost-effective policies and procedures governing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (42 U.S.C. Sec. 4601.) The rule, as part of the President's regulatory relief program, is designed to reduce the burden of regulatory compliance and paperwork for the Department's assistance recipients.

This rule supersedes the existing Department of Health and Human Services regulation at 45 CFR Part 15. That rule was last revised on April 2, 1973 (38 FR 8492).

List of Subjects in 45 CFR Part 15

Real property acquisition, Relocation assistance.

Title 45 of the Code of Federal Regulations is amended by revising Part 15 as set forth at the end of this document.

Otis R. Bowen, M.D.,
Secretary.
February 18, 1986.

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

DEPARTMENT OF TRANSPORTATION

49 CFR Part 25

ACTION: Final rule; request for comments.

DATES: This rule is effective April 28, 1986.

Comments must be received on or before March 31, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 79b, Federal Highway Administration, Room 4205, HHC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Kennedy, Director, Office of Right-of-Way, FHWA, (202–426–0342); Mr. Reid Alsop, Office of Chief Counsel, FHWA, (202–426–0800); or Mr. Joseph F. Canny, Acting Director, Office of Transportation Regulatory Affairs, OST, (202–426–4220); Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Office hours (FHWA) Monday through Friday are from 7:45 a.m. to 4:15 p.m., ET. Office hours (OST) Monday through Friday are from 9:00 a.m. to 5:30 p.m., ET.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) today is publishing an amended version of its regulation establishing policies and procedures for implementing the Uniform Act. This amended version was developed in response to comments received by other Federal agencies to a Notice of Proposed Rulemaking published in the **Federal Register** on May 28, 1985 (50 FR 21712). DOT's final rule which was effective July 3, 1985 (50 FR 8955, March 5, 1985), is amended in order for it to conform with the Government-wide final rule. The amendments contained herein, except for the change in § 25.3 are not expected to have a significant effect on State highway operations or procedures as they are primarily changes needed to clarify the meaning and intent of the regulation. The preamble to the common final rule should be referred to for discussion and explanation of these amendments. While the Department does not anticipate any significant comment on the general provisions of this regulation as these remain unchanged from the July 3 final rule, the revisions to the text are numerous and it therefore wishes to afford an opportunity for comments following publication. Accordingly, interested parties will have 30 days to comment on the revisions as discussed in the preamble to the common rule.

Regarding section 25.3, on March 5, 1985, simultaneously with the publication of DOT's final rule, a Supplemental Notice of Proposed Rulemaking was published. This notice requested comments on a proposed substantive change to § 25.3 which concerns duplication of payments. While virtually all commenters favor a prohibition against duplication of payments, the majority were not in favor of adopting the language in the proposed rule. They expressed fear that an expansion of the current rule which prevents duplication of payments made under State laws of eminent domain to include payments made under any Federal, State or local law, would create administrative burdens of major proportions. Literally interpreted, the proposed language could create such burdens, but such was not the intent. Therefore, in response to the comments received, the intent of this paragraph has been clarified in Appendix A of this final rule at §___.3, that no Agency is required to conduct an exhaustive search for duplicative payments. It is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is made. Based on this clarification of intent, DOT has adopted the proposed language at § 25.3 and has incorporated it into the amended final rule as published today.

Regulatory Evaluation

The Department has determined that this document does not constitute a major rule under the criteria of Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. (44 FR 11034; February 26, 1979).

Paperwork Reduction Act Requirements

This rule contains information collection requirements. The requirements are contained in §§___.9(a), ___.9(c), ___.202, ___.206, and ___.303(b)(2). These are the identical items previously submitted by the Department to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). OMB has approved them for use through December 31, 1986. The OMB approval number is 2105–0508. The Department will apply to OMB for approval of continued use of these reports at the appropriate time.

List of Subjects in 49 CFR Part 25

Transportation, Relocation assistance, Real property acquisition, Reporting and recordkeeping requirements.

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Issued this 20th day of February, 1986, at Washington, D.C.

Elizabeth H. Dole,

Secretary of Transportation.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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Appendix A—Additional information
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub, L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601).

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Subpart A—General

§__.1 Purpose.

The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

§__.2 Definitions.

(a) *Agency*. The term "Agency" means the Federal agency, State or State

agency which acquires the real property or displaces a person (see §__.2(f)).

(b) *Business*. The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of §__.303 of these regulations, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling*. The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in §__.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also §__.403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at §__.401(c), all increased mortgage interest costs as described at §__.401(d) (for last resort housing see Appendix A, §__.602) and all incidental expenses as described at §__.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A, §__.402(b)(1)).

(iii) Whenever a $15,000 replacement housing payment under §__.401 or a $4,000 replacement housing payment under §__.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially*. The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling*. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) *Displaced person*.

(1) *General*. The term "displaced person" means any person (defined at §__.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at §__.2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property on which the person conducts a business or farm operation. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services under §__.205 and moving expenses under §__.301, §__.302, or §__.303.

(2) *Persons not displaced*. The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

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(i) A person who moves before the initiation of negotiations (see also § __.403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § __.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § __.101(a) in Appendix A) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under P.L. 93-477 or P.L. 93-303.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § __.505(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (l) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisidictions.

(p) *State agency.* The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

§ __.3 No duplication of payments.

No person shall receive any payment under these regulations if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under these regulations. (See Appendix A, § __.3.)

§ __.4 Assurances, monitoring and corrective action.

(a) *Assurances.* Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and these regulations. A State agency's assurances under section 305 of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with these regulations, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

§ __.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under these regulations, except the notice described at § __.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ __.6 Administration of jointly funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and these regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

§ __.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ __.8 Compliance with other laws and regulations.

The implementation of these regulations shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (P.L. 93-234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

§ __.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with these regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under these regulations.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under these regulations if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

§ __.10 Appeals

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and these regulations.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § __.106 or § __.107, or a relocation payment required under these regulations. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose resonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

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Subpart B—Real Property Acquisition

§ __.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this Subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A, § __.101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A, § __.101 (b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ __.102, __.103, __.104, and __.105 apply to the extent practicable under State law. (See § __.4 (a).)

§ __.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations. (See also § __.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § __.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § __.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or offer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trail costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) In the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ __.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a

specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, and adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevent physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § __.2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ __.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they met applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obatin an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § __.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ __.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § __.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property

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interests in accordance with other applicable law.

§ ___.106 Expenses incidental to transfer of title to the Agency.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ ___.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ ___.108 Donations.

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ ___.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this Part.

§ ___.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § ___.2(f).

§ ___.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § ___.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.*

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § ___.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ ___.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § ___.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes for filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ ___.205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this Section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and perferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § ___.204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § ___.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § ___.2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocated to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ ___.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ ___.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one diplsacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

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(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § __.204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ __.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ __.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § __.2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § __.305, as the Agency determines to be reasonable and necessary.

§ __.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § __.301, that consists of:

(a) A moving expense allowance not to exceed $300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and

(b) A dislocation allowance of $200.

§ __.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § __.2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § __.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § __.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § __.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved, However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ __.304 Fixed payment for moving expenses—Nonresidential moves.

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. The displaced business is eligible for the payment if the Agency determined that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § __.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § __.2(h) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of $2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other

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reasonable evidence which the Agency determines is satisfactory.

§ __.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under § __.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § __.303(a)(3); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

§ __.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $15,000. (See also § __.403(b).) The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*

(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § __.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § __.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacemet dwelling (defined at § __.2(e)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A, § __.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The amount to be paid under § __.401(b)(2) is the sum of the present value of the following two items: The increase in interest costs that result when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling, and other debt service costs. The following rules apply to the computation:

(1) The payment shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.

(2) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent—

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary.

The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § __.402(c)(1) are those necessary and reasonable costs actually incurred by

the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.*

A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § __.401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $4,000, computed and disbursed in accordance with § __.402(b).

§ __.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*

(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $4,000 for rental assistance. (See also § __.403(b).) Such payment shall be 48 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment.*

(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a payment for downpayment assistance not to exceed $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses (see § __.401(e)) plus one-half of any amount required over $2,000, provided that the displaced person matches equally the amount in excess of $2,000. A displaced person eligible to receive a replacement housing payment for a 180-day homeowner-occupant under § __.401 is not eligible for this payment.

(2) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the Agency determines is necessary for the downpayment.

(3) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ __.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § __.2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § __.205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a $15,000 replacement housing payment under § __.401 or a $4,000 replacement housing payment under § __.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency

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shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § __.2(c)(6)).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § __.2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § __.402(b) is eligible to receive a payment under § __.401 or § __.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § __.401 or § __.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ __.501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of these regulations. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ __.502 Moving and related expenses—Mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § __.301 or, as an alternative, on the basis of a fixed payment under § __.302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § __.503(c), the owner is not eligible for payment for moving the mobile home.) The following rules apply to payments for actual moving expenses under § __.301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ __.503 Replacement housing payment for 180-day mobile homeowner-occupants.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $15,000, under § __.401 if:

(a) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § __.401(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(1) Is not and cannot economically be made decent, safe, and sanitary; or

(2) Cannot be relocated without substantial damage or unreasonable cost; or

(3) Cannot be relocated because there is no available comparable replacement site; or

(4) Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § __.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ __.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $4,000, under § __.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § __.402(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § __.503(c).

§ __.505 Additional rules governing relocation payment to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $15,000 or $4,000) permitted under the section that governs the computation for the dwelling. (See also § __.403(b).)

(b) *Cost of comparable replacement dwelling.*

(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § __.401(c), the cost of a comparable replacement dwelling is the sum of—

(i) The value of the mobile home;

(ii) The cost of any necessary repairs or modifications; and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under these regulations.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under these regulations.

Subpart G—Last Resort Housing

§ __.601 Applicability.

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this Subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this Subpart.

(a) *Basic rights of persons to be displaced.* The provisions of this Subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this Subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § __.401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. (See Appendix A, § __.601(b).)

§ __.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this Subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(d) A replacement housing payment in excess of the limits set forth in § __.401 or § __.402. A rental assistance subsidy under this Subpart may be provided in installments or in a lump sum.

(e) The relocation and, if necessary, rehabilitation of a dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

Appendix A—Additional Information

This appendix provides additional information to explain the intent of certain provisions of the rule.

Subpart A—General

Section __.2(c) Definition of comparable replacement dwelling.

The requirement in § __.2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room.

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Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section __2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in these regulations prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under these regulations. (If a person accepts assistance under a government housing program, the rental assistance payment under § __.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section __2(f)(2) Persons not displaced.

Section __2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under these regulations, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under these regulations may file an appeal in accordance with § __.10.

Section __2(k) Initiation of negotiations.

This section of the rule provides a special definition for acquisitions and displacements under Pub. L. 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section __3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section __9(c) Reports.

This regulation allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this rule, a basic report form (see Appendix B) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section __101(a) General.

The provisions of this Subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this Subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this Subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to these regulations (see § __.2(f)(2)(vi)), the displacement of a

tenant-occupant of the real property is subject to these regulations.

Section __101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section __102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approval appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section __102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section __102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section __102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section __102(m) Fair Rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section __103(b) Standards of appraisal.

In paragraph (b)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section __103(c) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section __103(f) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, the rule provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § __.104. This includes appraisals of real property valued at $2,500, or less.

Section __104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses on that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section __106 Expenses incidental to transfer of title to the agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Section __108 Donations.

This section provides that the Agency must obtain an appraisal and offer the full amount of just compensation due unless the owner, after being fully informed of such policies, releases the Agency from these obligations.

Subpart C—General Relocation Requirements

Section __204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, this regulation requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this rule is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section __205 Relocation assistance advisory services.

Section __205(b)(2)(iii) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration,

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minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section __206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements, there is no basis for changing that determination.

Section __207 General requirements—claims for relocation payments.

Section __207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

Subpart E—Replacement Housing Payments

The provision in § __401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § __402(b)(1) to use the fair market rent for the displacement dwelling is intended to address the computation of payments for homeowner-occupants (who, of course, paid no rent before displacement) and those unusual situations in which a tenant is paying an unreasonably low rent and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where the use of the fair market rent would result in a hardship because of the displaced person's income or other special circumstances.

Subpart F—Mobile Homes

Section __503(c) Replacement housing payment for 180-day mobile homowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § __401 and a replacement housing payment for a site computed under § __402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § __401 to assist in the purchase of a replacement site or, under § __402, to assist in renting a replacement site.

Subpart G—Last Resort Housing

Section __601(a) Basic determination to provide last resort housing.

No additional guidelines for implementation are included in the regulation because additional requirements would tend to limit the flexibility considered necessary or appropriate to provide comparable replacement housing on a timely basis.

Section __601(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § __401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of displacement dwelling" at § __2(l). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section __602 Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.

Whenever last resort housing assistance is provided to a 180-day homeowner-occupant who must pay a higher interest rate for a new mortgage, reimbursement of increased mortgage interest costs may be based on the "buy down" approach, rather than the more costly formula at § __401(d). Under the "buy down" approach, a lump sum payment is made to reduce the amount of the new mortgage to the amount which can be amortized with the same repayment schedule (payment amounts and due dates) as the mortgage on the displacement dwelling. However, the "buy down" approach shall not be used to reduce a payment to less than $15,000 if the payment computed under § __401 would equal $15,000.

Appendix B—Statistical Report Form

This appendix sets forth the statistical information which may be collected from Agencies in accordance with § __9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646 (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30, for the year in which the report is required.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but *NOT LATER THAN NOVEMBER 15* of the year in which the report is due.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in parentheses in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons Displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Columns (a) or (b). Report in Column (a) the number of claims approved during the report year. Report in Column (b) the total amount represented by the claims reported in Column (a).

Line 10b, Column (b). Report in Column (b) the amount of increased mortgage interest costs that was

included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

Line 13. Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (b) the total financial assistance under Section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $5,000 to rent a replacement dwelling, the sum of $4,000 shall be included on Line 11, Column (b), and $1,000 shall be included on Line 13, Column (b).)

Line 14. Report on Line 14 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Part C. Real Property Acquisition Subject to Uniform Act

Line 16, Columns (a) and (b). Report in Column (a) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column b), blank.

Part D. Relocation Appeals Filed During Report Year

Line 18. Report on Line 18 the total number of relocation appeals filed during the report year by a person alleging the Agency failed to properly determine the person's eligibility for, or the amount of, a relocation payment required under these regulations.

BILLING CODES 3410-98; 6450-01; 3510-FB; 7510-01; 4210-32; 4510-23; 3810-01; 4000-01; 7630-01; 8320-01; 6560-50; 6820-23; 4310-10; 4410-01; 6718-01; 4150-04; 4810-62-M

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Model Uniform Act Report

Attachment
Appendix B

Part A. Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	*Total (a)*	*No. of Owners (b)*	*No. of Tenants (c)*
1	Households *(Families and individuals)*			
2	Businesses and Nonprofit Organizations			
3	Farms			

Part B. Relocation Payments and Expenses Under Uniform Act During Report Year

	Item		*No. of Claims (a)*	*Amount (b)*
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))		
5		Fixed Payment Including Dislocation Allowance (Section 202(b))		
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))		
7		Payment in Lieu of Actual Expenses (Section 202(c))		
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))		
9		Payment in Lieu of Actual Expenses (Section 202(c))		
10a	Replacement Housing Payments for Homeowners *(Section 203(a))*			
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs		▨	
11	Rental Assistance Payment *(Tenants and Certain Others) (Section 204(1))*			
12	Downpayment Assistance *(Tenants and Certain Others) (Section 204(2))*			
13	Housing Assistance as Last Resort *(Section 206(a))*			
14	Relocation Advisory Assistance and Services Cost *(Section 205)*		▨	
15	Total *(Sum of Lines 4 through 14 Excluding Line 10b)*		▨	

Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	*No. of Parcels (a)*	*Compensation (b)*
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation Included on Line 16 *(where price disagreement was involved)*		▨

Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project / Program	

[FR Doc. 86-4305 Filed 2-26-86; 8:45 am]

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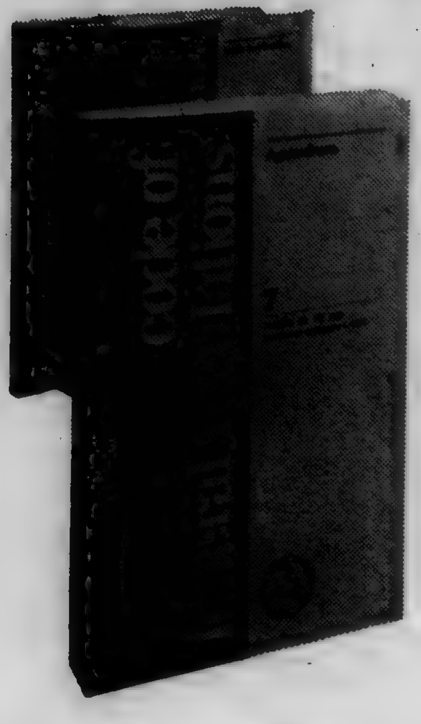

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Title 3—

The President

Executive Order 12552 of February 25, 1986

Productivity Improvement Program for the Federal Government

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Budget and Accounting Act of 1921, as amended, and in order to establish a comprehensive program for the improvement of productivity throughout all Executive departments and agencies, it is hereby ordered as follows:

Section 1. There is hereby established a government-wide program to improve the quality, timeliness, and efficiency of services provided by the Federal government. The goal of the program shall be to improve the quality and timeliness of service to the public, and to achieve a 20 percent productivity increase in appropriate functions by 1992. Each Executive department and agency will be responsible for contributing to the achievement of this goal.

Sec. 2. As used in this Order, the term:

(a) "Productivity" means the efficiency with which resources are used to produce a government service or product at specified levels of quality and timeliness;

(b) "Services" means those functions and activities performed by the Federal government to achieve program objectives;

(c) "Common agency functions" means those functions which are found in more than one agency, such as awarding grants or loans to individuals or institutions, providing direct benefit payments, processing claims, or furnishing health care;

(d) "Common government functions" means those functions that are common to every agency, such as administrative services;

(e) "Measurement system" means both the specific measures used to determine whether standards of quality, timeliness, and efficiency of services are being met, and the procedures for the collection and reporting of data resulting from application of productivity measures;

(f) "Organizational performance standard" means a statement which quantifies and describes the desired level of quality, timeliness, and efficiency of services to be provided by an organization;

(g) "Management review" means the review by the Director of the Office of Management and Budget, as part of the budget process, of agency accomplishments and plans for management and productivity improvements.

Sec. 3. The head of each Executive department and agency shall:

(a) Use the agency's planning process to review current functions, develop agency goals and objectives for improvement in services, and to identify those functions which offer the most significant opportunity for major gains in quality, timeliness, and efficiency.

(b) Develop and submit annually to the Office of Management and Budget a productivity plan. Each plan shall conform to the policy guidance issued by the Director of the Office of Management and Budget, pursuant to Section 5 of this Order, and shall:

(1) set forth the agency's productivity goals and objectives;

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(2) target priorities for the year, and expand coverage each subsequent year to additional appropriate functions and programs, with the objective of broadest possible coverage on all appropriate functions by 1992;

(3) describe the proposed actions designed to make the agency's operations and delivery of services more efficient and responsive;

(4) describe the methods, including efficiency reviews and cost comparisons with the private sector, that the agency will use either to improve its own service, or to make use of commercial services available in the private sector when it is economical to do so; and,

(5) describe the measurement systems to be used by the agency to gauge quality, timeliness, and efficiency.

(c) Implement the productivity program after the management review by the Director of the Office of Management and Budget as provided in Section 6.

(d) Assess annually the agency's progress toward achieving objectives and priorities, including documented gains and cost savings. This assessment will form the basis of the agency's report to the Domestic Policy Council as required by Section 4.

(e) Designate a senior official responsible for guiding the agency's productivity improvement program;

(f) Inform agency managers and employees that they are expected to be responsible for improvements in the quality, timeliness, and efficiency of services;

(g) Encourage employee participation in the productivity program through employee training, incentives, recognition, rewards and by taking actions to minimize negative impacts on employees which may occur as a result of the productivity program.

Sec. 4. The head of each Executive department and agency shall report annually to the President through the Domestic Policy Council on accomplishments achieved under the plan.

Sec. 5. The Director of the Office of Management and Budget is authorized to:

(a) Develop and promulgate goals, policies, principles, standards, and guidelines for the effective administration of this Order by Executive departments and agencies;

(b) Identify and propose the elimination of statutory barriers that inhibit opportunities to make improvements in productivity; and

(c) In consultation with the agencies, select and develop organizational performance standards for those common government and common agency functions that are appropriate targets for improvement in quality, timeliness, and efficiency.

Sec. 6. The Director shall review, through the management review process, each agency's productivity plan based upon the requirements and guidance issued pursuant to Section 5 of this Order. Nothing in this subsection shall be construed as displacing agency responsibilities delegated by law.

Sec. 7. The Director of the Office of Management and Budget shall submit to Congress, in conjunction with the President's budget, a report on productivity plans and accomplishments of the agencies and the government as a whole.

Sec. 8. The Director of the Office of Personnel Management shall:

(a) review incentive practices and programs and other personnel policies and practices which relate to the productivity of the Federal work force and make or recommend such changes as will support productivity improvement;

(b) develop programs to minimize negative impacts on employees; such programs should include, among others, continued development of retraining and job placement alternatives; and

(c) develop and implement training programs for Federal employees to assist them in their performance of productivity improvement tasks.

The Director of the Office of Personnel Management will report to the Office of Management and Budget on actions taken pursuant to this Section.

Ronald Reagan

THE WHITE HOUSE,
February 25, 1986.

[FR Doc. 86-4454
Filed 2-26-86; 11:18 am]
Billing code 3195-01-M

Editorial note: For the text of a White House announcement, released February 25, on Executive Order 12552, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 9).

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Rules and Regulations

Federal Register
Vol. 51, No. 40
Friday, February 28, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

[Docket No. 3166S]

Prevented Planting Endorsement to Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, respectively), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for a prevented planting optional endorsement allowing prevented planting insurance coverage in all areas where feed grains, wheat, cotton or rice are produced.

The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective date: February 28, 1986.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than April 29, 1986, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for the regulations affected by this action remain unchanged and are made part of each regulation affected by this rule.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which precludes notice and other public procedure. The Food Security Act of 1985 provides that if the Secretary of Agriculture determines that producers were prevented from planting any portion of the acreage intended for feed grains, wheat, cotton, or rice to such crop or other non-conserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make prevented planting disaster payments to the producers. Such producers will not be eligible for such payments if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act.

The current FCIC prevented planting crop insurance policy is presently offered on an experimental basis in a limited number of counties. The existing program does not cover loss from causes other than excess moisture as required by the Food Security Act of 1985 relative to prevented planting disaster payments. The experience gained to date indicates that the existing pilot program should not be expanded to a nationwide offer as such a program would be unlikely to attract participation except from those producers who perceive themselves to be in a very high risk situation.

The Corporation intends to provide a prevented planting program consistent with the requirements of the Farm Security Act of 1985 in all areas. The Corporation will also maintain the current experimental prevented planting program in those counties where such program is now being offered as a viable alternative for at least this crop year.

FCIC has determined that, because of the late passage of the Food Security Act of 1985, and the need to provide a prevented planting program consistent with the requirements found in the Food Security Act of 1985 relative to prevented planting disaster payments, it would be prudent and cost effective to offer the new prevented planting endorsement to all producers of certain ASCS program crops, and allow those prevented planting program policyholders who are currently insured the option to retain the present program for this crop year only, or to cancel the present policy and apply for the newly available coverage.

FCIC is providing a prevented planting insurance endorsement to crop insurance contracts on the acreage of Agricultural Stabilization and Conservation Service (ASCS) program crops (wheat, barley, corn, grain sorghum, oats, upland cotton, ELS cotton, and rice) when the producers are participating in the ASCS Acreage Reduction or set-aside programs.

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The Prevented Planting Crop Insurance endorsement contained herein provides for protection against prevention of planting due to drought, flood, or other natural disaster caused by adverse weather conditions beyond the control of the producer occurring within the insurance period.

To be eligible for protection, the producer must participate in the acreage reduction or set-aside program offered by ASCS and hold a valid crop insurance contract on the qualifying crop. For 1986 only, special provisions apply to permit eligibility for prevented planting coverage even though the sales may be closed for the required qualifying crop insurance contract.

All existing prevented planting crop insurance policies now in effect will be honored through the current crop year. Insurance will be made available under the new 1986 prevented planting crop insurance endorsement contained herein to persons who had such insurance if the policyholders agree to cancel their present policies. A new application for insurance must be signed before the applicable sales closing date to effect a change.

Written comments on this interim rule are solicited by FCIC for 60 days after publication in the **Federal Register** and any written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday. This rule will be scheduled for review so that any amendment made necessary by comments received may be published as quickly as possible.

List of Subjects in 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

Crop Insurance, Wheat, Barley, Grain sorghum, Cotton, Rice, Oat, Corn, ELS Cotton.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby amends that Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, respectively), effective for the 1986 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 418, 420, 421, 424, 427, 432, and 448 are amended by adding new §§ 418.8, 420.8, 421.8, 424.8, 427.8, 432.8 and 448.8, and 7 CFR Part 419 is amended by adding a new § 419.9, to read as follows:

§ ___ Prevented planting endorsement.

(a) A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds having a qualifying crop insurance contract under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or set-aside program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement on or prior to the prevented planting sales closing date established by the actuarial table or the endorsement.

(b) for the 1986 fall crop only (planted in fall of 1985) procedures are established for the purchase of the prevented planting endorsement without the underlying policy of insurance and a special sales closing date has been assigned.

(c) The provisions of the Prevented Planting Crop Insurance Endorsement for the 1986 and succeeding crop years are as follows:

Federal Crop Insurance Corporation

Prevented Planting Crop Insurance Endorsement

(This is an annual election to be made by the insured before the date specified in Section 3.)

Agreement to Insure: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

Throughout this endorsement, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

All provisions of the qualifying crop policy not in conflict with this endorsement are applicable.

1986 Special Provisions

(Applicable to the 1986 crop year only)

A. The sales closing and intended acreage report dates will be April 15, 1986.

B. If the sales closing date for the qualifying crop insurance program is March 31, 1986, or earlier, and the applicant for the prevented planting endorsement is not insured for the qualifying crop, the terms and conditions of the applicable qualifying crop insurance contract shall become a part of the prevented planting endorsement even though no liability or premium will attach for the qualifying crop insurance contract. In this event, the following elections will apply:

(1) The 65% level of coverage; and

(2) The highest available price election.

Further, the intended acreage may not exceed the base acreage for the qualifying crop established by the county ASCS office, less the intended reduction of acreage necessary to comply with ASCS program requirements.

General Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable prevention of planting insured acreage to the qualifying crop or other non-conserving crop during the insurance period due to drought, flood, or other natural disaster beyond the control of the producer occurring within the insurance period, unless those causes are excepted, excluded, or limited by the actuarial table.

b. We will not cover any prevention of planting (i) because of the failure to plant insured acreage due to a cause other than those listed in Subsection 1a. or (ii) when most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or other non-conserving crops.

2. Acreage and share insured

a. The acreage insured for each crop year will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator, or tenant in the insured acreage at the time insurance attaches.

c. Unless otherwise authorized by the actuarial table, we will not insure any acreage intended for planting by you unless you have a valid crop insurance contract for the current crop year on the qualifying crop.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop for the crop year on at least one farm which is part of the insured unit.

3. Report of acreage and share.

You must report on our form:

a. All the cultivated acreage of the qualifying crop intended for planting in the county in which you have a share; and

b. Your share at the time of reporting.

You must designate separately any acreage that is not insurable. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report.

If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amount of insurance per acre is computed by multiplying the yield guarantee for the qualifying crop times the price election chosen for the qualifying crop times .35.

b. The coverage level is the same as that chosen for the qualifying crop.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accure at the same rate and terms on any unpaid premium balance as applicable to the qualifying crop insurance contract.

6. Insurance period.

Insurance attaches or is considered to have attached 45 days prior to the sales closing date of the qualifying crop insurance contract for the crop year and ends at the earliest of:

a. Planting of the insured acreage to the qualifying crop or other no-conserving crop; or

b. The prevented planting date.

7. Notice of damage or loss.

a. If you fail to plant the guaranteed acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than 5 days after the prevented planting date.

b. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 8.

8. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form at the time a claim is or should be filed for the qualifying crop.

b. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on the unit was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed;

(2) Establish that a production loss was sustained on the qualifying crop when the yield guarantee per acre of that crop is multiplied by the intended acres for planting; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on the unit by:

(1) Multiplying the insured acreage times the amount of insurance;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, plus any acreage intended for planting from which a forage crop is harvested, plus any acreage which could have been planted, times the amount of insurance;

(3) Multiplying this result by your share; and

(4) Subtracting therefrom your share of any production of the qualifying crop which is in excess of the total guaranteed production on all units of the qualifying crop, insured or eligible for insurance, in the county, multiplied by the selected price election.

9. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. This contract is for one year or until the termination date, whichever occurs first. It may be renewed for each succeeding crop year if you apply and report your intended acreage for planting at least 45 days prior to the sales closing date of the qualifying crop.

c. This contract will not be renewed by us if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due.

d. The termination date is 30 days after the prevented planting date.

10. Contract changes.

We may change any terms and provisions of the contract from year to year. All contract changes will be available at your service office 30 days prior to the sales closing date for this insurance.

11. Meaning of terms

For the purposes of prevented planting crop insurance:

a. "Cultivated acreage intended for planting" means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other non-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or state programs or for any other reason.

b. "Insurable acreage" means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

c. "Non-conserving crop" means any annual crop planted for harvest as food, feed, or fiber.

d. "Planted acreage" means the insured acreage:

(1) Planted to any qualifying crop or non-conserving crop during the insurance period; or

(2) Which could have been planted during the insurance period to a qualifying crop or non-conserving crop normally included in your farming operation.

e. "Prevented planting date" means the latest date established by the crop actuarial tables that we will insure any spring-planted crop in the county, except tobacco. This date coincides with any extended date or final date offered under any late planting agreement option.

f. "Qualifying crop" means the ASCS program crop (wheat, corn, grain sorghum, barley, oats, cotton, or rice) which is also insured.

g. "Unit" means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this policy for the crop year. The unit will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss.

h. "Yield guarantee" means the result of multiplying your average yield for the qualifying crop, as determined by us, by the percentage representing the coverage level chosen by you.

Done in Washington, DC, on February 3, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4422 Filed 2–27–86; 8:45 am]

BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Parts 801 and 802

Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) is finalizing with slight modification as a final rule, a proposed rule in which certain changes were proposed to be made to the regulations under the United States Grain Standards Act (Act), as amended, concerning the Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems. This action amends the regulations by incorporating by reference the applicable requirements of National Bureau of Standards (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1985 edition (Handbook 44) and NBS Handbook 105–1, "Specifications and Tolerances for Field Standard Weights" (Handbook 105–1); clarifying the scope and format of the requirements of the current Parts 801 and 802; and revising the tolerances for scales, near-infrared reflectance (NIR) analyzers, and Kjeldahl analyses, so as to update the regulations to reflect current commercial standards. The changes will condense and reduce the text of the regulations and will simplify the overall language of the regulations to facilitate their use.

EFFECTIVE DATE: March 31, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

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SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.C.S. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Final Action

Part 801 of the regulations, *Official Performance Requirements for Grain Inspection Equipment*, prescribes specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing official services.

Part 802 of the regulations, *Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems*, sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X or Class Y weighing services.

The review of the regulations concerning Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems (7 CFR 801.1–801.12 and 7 CFR 802.0–802.13) included a determination of continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations were serving their intended purpose, the language was clear, and the regulations were consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. The regulations, particularly Part 802, contained requirements that are also covered in NBS Handbooks 44 and 105–1 and in the FGIS Weighing Handbook. In order to condense and reduce the text of the regulations, thereby eliminating unnecessary duplication, FGIS is incorporating by reference the text of NBS Handbooks 44 and 105–1, with some exceptions. Additionally, certain information deleted from the regulations will continue to appear as provisions set forth in the FGIS Weighing Handbook. This will reduce the text of the regulations as appropriate, and simplify and facilitate the use of the regulations. In the July 22, 1985, Federal Register (50 FR 29869), FGIS proposed that certain sections of the regulations be revised. Except for some additional Handbook 44 requirements being incorporated by reference and other miscellaneous changes made for clarity and accuracy, the changes which appear in this final rule are the same as those proposed. This final rule revises these sections as follows:

1. Section 801.2, *Meaning of terms*, by removing the definition for balances because the tolerances for balances were removed from 7 CFR Part 801 so as to consolidate all the tolerances for balances in one Part of the regulations; renumbering the remaining definitions, as appropriate; revising the definition title *Master inspection equipment* to *National standard equipment* and the definition title *Grain divider* to *Divider* to more clearly describe the equipment; adding a definition for *Transfer standard* for clarity; and revising certain definitions by simplifying, clarifying, and removing unnecessary language to promote a better understanding of the requirements.

2. Section 801.3, *Tolerance for balances*, by removing the entire section because these tolerances are incorporated by reference in 7 CFR Part 802.

3. Sections 801.4, *Tolerances for barley pearlers*, 801.5, *Tolerances for dockage testers*, 801.6, *Tolerances for diverter-type mechanical samplers*, 801.7, *Tolerances for moisture meters*, 801.9, *Tolerances for sieve devices*, 801.10, *Tolerances for test weight apparatuses*, and 801.11, *Tolerances for dividers*, by consolidating the footnote references into the body of the text; clarifying the scope of the tolerances by stating, where appropriate, the type of grain and standard used to test the equipment; and redesignating §§ 801.4–801.7 and 801.9–801.11 as §§ 801.3–801.6 and 801.8–801.10, respectively. These revisions will facilitate the use of the regulations.

4. Section 801.7, *Tolerances for moisture meters*, by revising the tolerance title "FGIS/Master standard meters" to "Headquarters standard meters" to indicate more clearly that the National standard meter is the reference standard against which the Headquarters standard meters are tested. The tolerance title was proposed as "FGIS standard meters." In this final rule, the title has been changed to "Headquarters standard meters" to eliminate any confusion and for clarity.

5. Section 801.8, *Tolerances for near-infrared reflectance (NIR) analyzers and Kjeldahl analyses*, by revising for accuracy the tolerances for near-infrared reflectance (NIR) analyzers and Kjeldahl analyses and redesignating as § 801.7. The revised tolerances have been used on a trial basis since May 1982 to improve accuracy. All officially approved NIR analyzers and Kjeldahl laboratories have been tested using the revised tolerances and found to be capable of meeting these established tolerances. This action updates the regulations to reflect current commercial standards.

6. Section 801.10, *Tolerances for test weight apparatuses*, by revising the tolerance titles for the test weight apparatuses to clarify the manner in which these tolerances are to be applied to electronic test weight computer/scales.

7. Section 801.11, *Tolerances for dividers*, by combining the tolerances for dividers and restating the tolerance as a percentage instead of the present weight basis in order to simplify its use and clarify its application. The previous tolerances were only applicable to two-way dividers. In the last two years the Service approved several models of three- and four-way dividers using tolerances based upon a mathematical extrapolation of the previous two-way divider tolerances. The revised tolerances reflect these mathematical extrapolations.

8. Section 801.12, *Related design requirements*, by revising the related design requirements to simplify and clarify the language in order to facilitate their use and redesignating as § 801.11.

9. Sections 802.1, *Meaning of terms*, 802.2, *General requirements*, 802.3, *Design of indicating and recording elements and of recorded representations*, 802.4, *Design of balance, tare, dampening, and arresting mechanisms*, 802.5, *Design of weighing elements*, 802.6, *Design of weighbeams and poises*, 802.7, *Marking requirements*, 802.8, *Installation requirements*, 802.9, *User requirements*, 802.10, *Tolerances and sensitivity requirements*, 802.11, *Weight-indicating and weight-recording devices and representations*, 802.12, *Railroad track scales; additional requirements*, and 802.13, *Test standards and counterpoise weights*, by removing and incorporating by reference the requirements of the 1985 edition of NBS Handbooks 44 and 105–1, with the exception of those

Handbook 44 requirements which do not pertain to or are not practical for FGIS grain scales. As discussed below, comments were received which recommended that additional Handbook 44 provisions be incorporated by reference. This final rule will provide for incorporation by reference of additional portions of Handbook 44, as appropriate. Therefore, all of proposed §§ 802.1 and 802.2 will be removed. Those provisions of Handbook 44 that are not incorporated by reference are specified in § 802.0(b). Proposed § 802.3 is redesignated as § 802.1 by the final rule.

Since the FGIS regulations were approved in 1980, many of the Handbook 44 requirements have been revised and expanded to encompass the requirements necessary for official grain weight certification. FGIS has discussed adopting the applicable requirements of NBS handbook 44 with the FGIS Advisory Committee and grain industry organizations and determined that the requirements in the 1985 edition of Handbook 44 and 105–1, pertaining to the scales under the jurisdiction of FGIS, are substantially the same as the present FGIS regulations. Therefore, FGIS has determined that these regulations should be incorporated by reference into the Code of Federal Regulations in paragraph (a) of revised § 802.0.10. Sections 802.0, *Applicability*, and 802.13(g), *Qualified laboratories*, by simplifying, clarifying, condensing, and removing unnecessary language to facilitate the use of the regulations and redesignating § 802.13(g) as § 802.1. In addition, certain track scale requirements pertaining to obsolete equipment and the requirements for monitoring test weights during movement to and from storage were removed because they are no longer necessary or applicable.

Comments were to be submitted by September 20, 1985. Eighteen organizations, including State and private weights and measures organizations and grain trade groups, commented on the proposed changes to the regulations. Two of the organizations were in favor of the proposed regulations in their entirety. The other commenters were also in favor of the proposed regulations but recommended that additional Handbook 44 requirements and codes be incorporated by reference.

Fifteen commenters recommended that the requirements in Handbook 44 that pertain to grain scales be adopted in their entirety. As proposed, certain requirements of Handbook 44 would not be incorporated by reference. These proposed exceptions related to Handbook 44 requirements that did not pertain to grain scales or were different from FGIS requirements under the Act which generally are more stringent for FGIS program purposes than NBS Handbook 44; e.g., grain hopper scale tolerances, vehicle and trade scale class requirements, and minimum test weight requirements for vehicle and trade scales. Under the proposal, these tolerances and minimum weight requirements would continue to appear in Part 802, as revised.

The comments received on the proposed rule indicated that a number of grain industry trade groups and weights and measures organizations strongly supported adoption of the additional Handbook 44 requirements. In view of the above, FGIS has determined that incorporation by reference of the additional provisions of Handbook 44, specified below, will maintain program integrity even though certain tolerances will become less stringent. This revision will further simplify and facilitate use of the regulations. Nonetheless, those provisions of Handbook 44 that do not pertain to or are not practical for FGIS grain scales are not incorporated by reference. Accordingly, Part 802 has been revised to reflect the incorporation by reference of the Handbook 44 requirements in the notice of proposed rulemaking and these additional Handbook 44 requirements: Scale Code (2.20) sections N.2, N.2.1, T.2.10, T.3.7, T.3.7.1, T.3.8.1–2, and UR.1.1.7; and New Scale Code (2.20) sections N.3, N.3.1, and T.1.3. Incorporation of these additional requirements will revise FGIS requirements in the following manner:

1. The minimum test weight requirement for all scales with a capacity greater than 40,000 pounds, except railway track scales and automatic bulk weighing systems, shall be 12.5 percent of capacity or 10,000 pounds whichever is greater; a change from 10.0 percent of capacity.

2. The minimum test weight requirement for railway track scales shall be 30,000 pounds; a change from 50,000 pounds.

3. The minimum tolerance for railway track scales shall be 30 pounds; a change from 25 pounds.

4. The basic tolerance for vehicle scales shall be that tolerance established for Class IIIL scales; a change from a maintenance tolerance of 0.1 percent and an acceptance tolerance of 0.05 percent.

5. The basic maintenance tolerance for nonautomatic hopper scales, installed prior to January 1, 1986, and all automatic bulk weighing systems, shall be 0.1 percent of applied test load; a change from 0.05 percent.

6. The basic tolerance for railway track scales shall be that tolerance established for Class IIIL scales; a change from a maintenance tolerance of 0.1 percent and an acceptance tolerance of 0.05 percent.

7. For railway track scales, the value of the scale division shall be not greater than 20 pounds for nonautomatic indicating scales and not greater than 100 pounds for automatic indicating scales; a change from 50 pounds for both types.

As a result of the aforementioned changes, the Service is incorporating by reference the General Code, the Scale Codes, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1985 edition of Handbook 44 in their entirety with the exception of those requirements concerning coupled-in-motion weighing and influence factors. The coupled-in-motion requirements (Scale Code (2.20) sections N.2.1.1, T.3.8.3, and T.3.8.4, and New Scale Code (2.20) sections N.3.1.1, T.1.9, T.N.3.6, and T.N.3.6.1–4) were not adopted because the relative inaccuracy of this type of weighing at this time. The influence factor requirements (New Scale Code (2.20) section T.N.8) were not adopted because NBS has determined that it is not feasible to implement these requirements prior to January 1, 1988.

Two commenters also recommended that the Service adopt the Handbook 44 requirements for moisture meters. The Handbook 44 requirements for moisture meters are not feasible for testing the number and type of moisture meters used for official inspection purposes. In addition, adoption of Handbook 44 requirements for moisture meters would significantly raise program costs for this type activity.

Miscellaneous nonsubstantive changes are made to provisions of Parts 801 and 802 in this final rule for clarity and accuracy. For example, a subparagraph (b) has been added to section 802.1, *Qualified laboratories*, to specifically reference type evaluation laboratories. Section 802.0(a) is rewritten to clarify that portion of Handbook 44 and all of Handbook 105–1 are incorporated by reference. While the FGIS Weighing Handbook is applicable to all scales used for official grain weight and certification, it is not incorporated by reference. In addition, this final rule changes for accuracy, section 801.6(a), as proposed, by deleting tolerances for sample exchanges and section 801.8, as proposed, by changing the reference for

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a sieve description from ⁵⁄₆₄ x ¾ inch slotted to 5.⁵⁄₆₄ x ¾ inch slotted.

List of Subjects in 7 CFR Parts 801 and 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

Accordingly, 7 CFR Parts 801 and 802 are revised as follows:

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Sec.
801.1 Applicability.
801.2 Meaning of terms.
801.3 Tolerances for barley pearlers.
801.4 Tolerances for dockage testers.
801.5 Tolerances for diverter-type mechanical samplers.
801.6 Tolerances for moisture meters.
801.7 Tolerances for near-infrared reflectance (NIR) analyzers and Kjeldahl analyses.
801.8 Tolerances for sieves.
901.9 Tolerances for test weight apparatuses.
801.10 Tolerances for dividers.
801.11 Related design requirements.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

§ 801.1 Applicability.

The requirements set forth in this Part 801 describe certain specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing inspection services under the Act.

§ 801.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this part shall be considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms listed in the Part 800 shall have the same meaning when the terms are used in this Part 801. For the purposes of this part, the following terms shall have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on a pound of 16 ounces.

(2) *Barley pearler.* An approved laboratory device used to mechanically dehull kernels of barley or other grain.

(3) *Deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the individual test result from the equipment that is being tested and (ii) the reference standard or the individual test result from the standard (or National standard) equipment, as applicable.

(4) *Direct comparison method.* An equipment testing procedure wherein transfer standards are tested at the same time and place to compare the performance of two or more units of the same inpsection equipment. One unit of the equipment used in the test shall be standard inspection equipment. (See also sample exchange method).

(5) *Diverter-type mechanical sampler (primary).* An approved device used to obtain representative portions from a flowing stream of grain.

(6) *Diverter-type mechanical sampler (secondary).* An approved device used to subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(7) *Divider.* An approved laboratory device used to mechanically divide a sample of grain into two or more representative portions.

(8) *Dockage tester.* An approved laboratory device used to mechanically separate dockage and/or foreign material from grain.

(9) *Maintenance tolerance.* An allowance established for use in determining whether inspection equipment should be approved for use in performing official inspection services.

(10) *Mean deviation from standard.* In testing inspection equipment for accuracy, the variation between (i) the average fo the test results from the equipment that is being tested and (ii) the reference standard or the average of the test results from the standard (or National standard) equipment, as applicable.

(11) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(12) *Moisture meter.* An approved laboratory device used to indicate directly or through conversion and/or correction tables the moisture content of grain including cereal grains and oil seeds.

(13) *National standard inspection equipment.* A designated approved unit of inspection equipment used as the reference in determining the accuracy of standard inspection equipment.

(14) *Official inspection equipment.* Equipment approved by the Service and used in performing official inspection services.

(15) *Sample exchange method.* An equipment testing procedure wherein transfer standards are tested to compare the performance of two or more units of the same inspection equipment installed at different locations. One unit of the equipment used in the test shall be standard inspection equipment. (See also direct comparison method.)

(16) *Sieves.* Approved laboratory devices with perforations for use in separating particles of various sizes.

(17) *Standard inspection equipment.* An approved unit of inspection equipment that is designated by the Service for use in determining the accuracy of official inspection equipment.

(18) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(19) *Test weight apparatus.* An approved laboratory device used to measure the test weight (density) of a sample of grain.

(20) *Transfer standard.* The medium (device or material) by which traceability is transferred from one inspection equipment standard unit to another unit.

(21) *Winchester bushel.* A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

§ 801.3 Tolerances for barley pearlers.

The maintenance tolerances for barley pearlers used in performing official inspection services shall be:

Item	Tolerance
Timer switch:	
0 to 60 seconds	±5 seconds, deviation from standard clock.
61 to 90 seconds	±7 seconds, deviation from standard clock.
Over 90 seconds	±10 seconds, deviation from standard clock.
Pearled portion	±1.0 gram, mean deviation from standard barley pearler using barley.

§ 801.4 Tolerances for dockage testers.

The maintenance tolerances for dockage testers used in performing official inspection services shall be:

Item	Tolerance
Air separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat.
Riddle separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat.
Sieve separation	±0.10 percent, mean deviation from standard dockage tester using Hard Red Winter wheat.
Total dockage separation.	±0.15 percent, mean deviation from standard dockage tester using Hard Red Winter wheat.

§ 801.5 Tolerance for diverter-type mechanical samplers.

The maintenance tolerance for diverter-type mechanical samplers (primary, or primary and secondary in combination) used in performing official inspection services shall be ±10 percent, mean deviation from standard sampling device using corn or the same type of grain that the system will be used to sample.

§ 801.6 Tolerances for moisture meters.

The maintenance tolerances for moisture meters used in performing official inspection services shall be:

(a) Headquarters standard meters.

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat.	
Mid	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat.	
High	±0.05 percent moisture, mean deviation from National standard moisture meter using Hard Red Winter wheat.	

(b) All other than Headquarters standard meters.

Moisture range	Tolerance	
	Direct comparison	Sample exchange
Low	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.	±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.
Mid	±0.10 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.
High	±0.15 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.	±0.20 percent moisture, mean deviation from standard moisture meter using Hard Red Winter wheat.

§ 801.7 Tolerances for near-infrared reflectance (NIR) analyzers and Kjeldahl analyses.

(a) *NIR.* The maintenance tolerance for NIR analyzers used in performing official inspection services shall be ±0.15 percent, mean deviation from standard Kjeldahl using wheat.

(b) *Kjeldahl.* The maintenance tolerance for Kjeldahl analyses used in performing official inspection services shall be ±0.15 percent, standard deviation.

§ 801.8 Tolerances for sieves.

The maintenance tolerances for sieves used in performing official inspection services shall be:

(a) Thickness of metal: ±0.0015 inch.

(b) Accuracy of perforation: ±0.001 inch from design specification.

(c) Sieving accuracy:

Sieve description	Tolerance	
	Direct comparison	Sample exchange
.064 x ⅜ inch oblong	±0.2 percent, mean deviation from standard sieve using wheat.	±0.3 percent, mean deviation from standard sieve using wheat.
⁵⁄₆₄ x ¾ inch slotted	±0.3 percent, mean deviation from standard sieve using barley.	±0.5 percent, mean deviation from standard sieve using barley.
5.⁵⁄₆₄ x ¾ inch slotted	±0.5 percent, mean deviation from standard sieve using barley.	±0.7 percent, mean deviation from standard sieve using barley.
⁶⁄₆₄ x ¾ inch slotted	±0.7 percent, mean deviation from standard sieve using barley.	±1.0 percent, mean deviation from standard sieve using barley.

§ 801.9 Tolerances for test weight apparatuses.

The maintenance tolerances for test weight per bushel apparatuses used in performing official inspection services shall be:

Item	Tolerance
Beam/scale accuracy	±0.10 pound per bushel deviation at any reading, using test weights.
Overall accuracy	±0.15 pound per bushel, mean deviation from standard test weight apparatus using wheat.

§ 801.10 Tolerance for dividers.

The maintenance tolerance for dividers used in performing official inspection services shall be ±1.0 percent, mean deviation from target value using wheat.

§ 801.11 Related design requirements.

(a) *Suitability.* The design, construction, and location of official sampling and inspection equipment and related sample handling systems shall be suitable for the official sampling and inspection activities for which the equipment is to be used.

(b) *Durability.* The design, construction, and material used in official sampling and inspection equipment and related sample handling systems shall assure that, under normal operating conditions, operating parts will remain fully operable, adjustments will remain reasonably constant, and accuracy will be maintained between equipment test periods.

(c) *Marking and identification.* Official sampling and inspection equipment for which tolerances have been established shall be permanently marked to show the manufacturer's name, initials, or trademark; the serial number of the equipment; and the model, the type, and the design or pattern of the equipment. Operational controls for mechanical samplers and related sample handling systems, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbutton or switch.

(d) *Repeatability.* Official inspection equipment when tested in accordance with §§ 800.217 and 800.219 shall, within the tolerances prescribed in §§ 801.3 through 801.10, be capable of repeating its results when the equipment is operated in its normal manner.

(e) *Security.* Mechanical samplers and related sample handling systems shall provide a ready means of sealing to deter unauthorized adjustments, removal, or changing of component parts or timing sequence without removing or breaking the seals; and otherwise be designed, constructed, and installed in a manner to prevent deception by any person.

(f) *Installation requirements.* Official sampling and inspection equipment and related sample handling systems shall be installed (1) at a site approved by the Service, (2) according to the manufacturer's instructions, and (3) in such a manner that neither the operation nor the performance of the equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

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PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Sec.
802.0 Applicability.
802.1 Qualified laboratories.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

§ 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X or Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook; the General Code, the Scale Codes, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1985 edition of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NBS Handbook 105–1, "Specifications and Tolerances for Field Standard Weights" (Handbook 105–1). Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials in Handbooks 44 and 105–1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. The NBS Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20403. These are also available for inspection at the Office of the Federal Register, Room 8401, 1100 "L" Street, N.W., Washington, D.C.

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales Code (2.20)
  N.2.1.1—For coupled-in-motion tests.
  T.3.8.3—Weighing coupled-in-motion used for individual car weights.
  T.3.8.4—Weighing coupled-in-motion used for unit train weights.
New Scales Code (2.20)
  N.3.1.1—Test train.
  T.1.9—Railway track scales weighing in motion.
  T.N.3.6—In motion weighing.
  T.N.3.6.1–4—In motion weighing.
  T.N.8—Influence factors.

§ 802.1 Qualified laboratories.

(a) *Metrology laboratories.* (1) Any State metrology laboratory currently approved by the NBS ongoing certification program having auditing capability is automatically approved by the Service.

(2) Any county or city weights and measures jurisdiction approved by NBS or by their respective NBS-Certified State laboratory as being equipped with appropriate traceable standards and trained staff to provide valid calibration is approved by the Service. The State approval may be documented by a certificate or letter. The jurisdiction must be equipped to provide suitable certification documentation.

(3) Any commercial industrial laboratory primarily involved in the business of sealing and calibrating test weights (standards) will be approved by the Service provided:

(i) It requests written authority to perform tolerance testing of weights used within the Service's program(s) through their approved State jurisdiction. Copies of its request and written reference regarding the State decision shall be provided to the Service. A positive decision by the State will be required as a prerequisite to the Service's granting approval to any commercial laboratory to tolerance test the weights used in testing scales under the jurisdiction of the Service;

(ii) It has NBS traceable standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) It is equipped to provide suitable certification documentation;

(iv) It permits the Service to make onsite visits to laboratory testing space.

(4) Approval of the commercial industrial laboratory will be at the Service's discretion. Once it has obtained approval, the commercial industrial laboratory maintains its site in a manner prescribed by the State and the Service.

(b) *Type evaluation laboratories.* Any State measurement laboratory currently certified by NBS in accordance with its program for the Certification of Capability of State Measurement Laboratories to conduct evaluations under the National Type Evaluation Program is approved by the Service.

Dated: February 12, 1986.

Kenneth A. Gilles,
Administrator.

[FR Doc. 86–4233 Filed 2–27–86; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Parts 905 and 913

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Grapefruit Grown in the Interior District in Florida; Redistricting and Reapportionment of Grower Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule redefines grower districts and reapportions grower members on the Citrus Administrative Committee (CAC) and the Interior Grapefruit Marketing Committee (IGMC) under Marketing Order Nos. 905 and 913, respectively. The rule is based on changes in the average percentage of acreage, production, and shipments of regulated fruits during the preceding five-year period (1980–1985). The changes were recommended at meetings of the CAC and IGMC held on February 4, 1986.

EFFECTIVE DATE: February 28, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250. Telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum No. 1512–1 and Executive Order 12291, and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that these actions will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 95 handlers of citrus under the Marketing Order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and approximately 57 handlers of grapefruit under the Marketing Order for Grapefruit Grown in the Interior District in Florida will be subject to regulations during the course of the current season and that the great majority of these groups may be classified as small entities. While regulations issued under these orders impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities, if present at all, is not significant.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Pursuant to §§ 905.14 and 913.14 of the subject Marketing Orders, any redistricting and reapportionment must be announced on or before March 1 of the then current fiscal period. This deadline cannot be met with an effective date 30 days after publication.

Notice of these actions was published in the **Federal Register** on February 13, 1986 (51 FR 5361). Interested persons were invited to submit written comments by February 24, 1986. No comments were received.

Section 905.13 of the order covering Florida oranges, grapefruit, tangerines and tangelos defines five citrus districts comprising the production area for purposes of grower representation on the CAC. The apportionment of grower members for each citrus district is described in § 905.23. Currently, each district is represented by two grower members and alternates except Citrus District Two, which has one grower member and alternate, for a total of nine grower members on the CAC.

Section 905.14 of the order authorizes the CAC, with the approval of the Secretary, to redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of the districts, or both. The membership of the CAC must consist of at least eight but not more than nine grower members. The number of members from each district and the grouping of the districts are based, insofar as practicable, upon the respective averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and (3) the total number of acres of citrus in each district.

During the five year period (1980–85), the combined average percentages for Marketing Order 905 are as follows: Citrus District One, 16.54 percent; Citrus District Two, 8.36 percent; Citrus District Three, 30.59 percent, Citrus District Four, 23.39 percent; and Citrus District Five, 21.12 percent. The average percent of Citrus District Two shows a decrease in acreage, production, and shipments for the five-year period. This final rule will: (1) Combine Citrus Districts One and Two to become Citrus District One with two grower members and alternates; (2) change Citrus District Five to Citrus District Two with two grower members and alternates; (3) change Citrus District Four to Citrus District Three with two grower members and alternates; and (4) change Citrus District Three to Citrus District Four with three grower members and alternates. The action will result in more proportionate averages as follows: Citrus District One, 24.90 percent; Citrus District Two, 21.12 percent, Citrus District Three, 23.39 percent; and Citrus District Four, 30.59 percent.

For Florida Interior District grapefruit, § 913.13 of the order defines four grower districts for purposes of grower representation on the IGMC. The apportionment of grower members for each grower district is described in § 913.16 of the order. Currently, Grower Districts Two and Three are each represented by one grower member and alternate; Grower District One has two grower members and alternates; and Grower District Four has three grower members and alternates for a total of seven grower members on the IGMC.

Section 913.14 authorizes the IGMC, with the approval of the Secretary, to redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of the districts, or both. The membership of the IGMC must consist of at least six but not more than seven grower members. The redistricting of grower districts and the reapportionment of grower members are based on the same criteria as contained in § 905.14 for Florida citrus.

The combined average percentages for M.O. 913 during the 1980–85 five-year period are: Grower District One, 21.09 percent; Grower District Two, 7.74 percent; Grower District Three, 26.48 percent; and Grower District Four, 44.69 percent. This final rule will: (1) Combine Grower Districts One and Two to become Grower District One with two grower members and alternates; (2) change Grower District Four to Grower District Two with three grower members and alternates; and (3) change the representation from one grower member and alternate to two grower members and alternates in Grower District Three. This action will result in the following average percentages: Grower District One, 28.83 percent; Grower District Two, 44.69 percent; and Grower District Three, 26.48 percent.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC and IGMC, and other available information, it is further found that the redistricting of districts and reapportionment of grower members under §§ 905.14 and 913.14, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 905 and 913

Marketing Agreements and Orders, Oranges, Grapefruit, Interior District, Tangerines, Tangelos, and Florida.

1. The authority citation for 7 CFR Parts 905 and 913 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 905—[AMENDED]

2. A new § 905.114 is added to Subpart—Rules and Regulations (7 CFR §§ 905.120—905.152) to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) "Citrus District One" shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the Counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) "Citrus District Two" shall include the County of Polk. This district shall have two grower members and alternates.

(c) "Citrus District Three" shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the Counties of Palm Beach and Martin not included in Regulation Area II. This district shall have two grower members and alternates.

(d) "Citrus District Four" shall include the County of St. Lucie and that part of the Counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have three grower members and alternates.

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PART 913—[AMENDED]

3. A new § 913.114 is added to Subpart—Rules and Regulations (7 CFR §§ 913.120–913.166) to read as follows:

§ 913.114 Redistricting of grower districts and reapportionment of grower members.

Pursuant to § 913.14, the grower districts and membership allotted each district shall be as follows:

(a) "Grower District One" shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwanee, and County Commissioner's Districts 1, 2, and 3 of Volusia County, and that part of the Counties of Indian River and Brevard which is included in the Interior District. This district shall have two grower members and alternates.

(b) "Grower District Two" shall include the County of Polk. This district shall have three grower members and alternates.

(c) "Grower District Three" shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and the parts of the Counties of Palm Beach and Martin which are included in the Interior District. This district shall have two grower members and alternates.

Dated: February 26, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86-4545 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 979 and 987

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 979 and 987 for the 1985–86 fiscal period. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: October 1, 1985—September 30, 1986 (§§ 979.208, and 987.330).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5552.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum No. 1512-1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that these actions will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus both statutes have small entity orientation and compatibility.

The rule authorizes expenditures and establishes assessment rates under Marketing Orders 979 and 987 for the 1985–86 fiscal period.

The assessment rates prescribed herein represent only a small fraction of the crop values of the specified commodities. It is estimated that approximately 35 handlers of Texas melons and 26 handlers of California dates are currently subject to regulation under marketing orders each season, and the great majority of this group may be classified as small entities. While regulations issued under these orders impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable fruits and vegetables handled from the beginning of such period. To enable the committee to meet current fiscal obligations, approval of the expenses is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified and handlers have been apprised of such provisions, and the effective time.

List of Subjects in 7 CFR 979 and 987

Marketing agreements and orders; Melons, Dates, Texas, and California.

1. The authority citation for 7 CFR Parts 979 and 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Therefore, §§ 979.207 and 987.329 are removed and new §§ 979.208 and 987.330 are added to read as follows: (The followng sections prescribed expenses and assessment rates and will not be published in the Code of Federal Regulations.)

PART 979—MELONS GROWN IN SOUTH TEXAS

§ 979.208 Expenses and assessment rate.

Expenses of $195,519 by the South Texas Melon Committee are authorized, and an assessment rate of $0.015 per carton of melons is established for the fiscal period ending September 30, 1986. In accordance with the provisions of § 979.42, late payment charges of one and one-half percent per month shall be charged on the unpaid balance for each past due account. An account is past due 30 days after the billing date. Unexpended funds may be carried over as a reserve.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.330 Expenses and assessment rate.

Expenses of $26,050 by the California Date Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 987.72 of 8 cents per hundredweight of assessable dates is established for the crop year ending September 30, 1986. Any unexpended funds from that crop may be used temporarily during the first four months of the ensuing crop year, and thereafter shall be credited or refunded to the handler from whom collected.

Dated: February 21, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 86-4342 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-013]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations by adding Wisconsin to the lists of approved States authorized to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). This action is taken because the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, has determined that Wisconsin has laws or regulations in effect to require the additional inspection, treatment, and testing of such horses to further ensure their freedom from CEM as required by the regulations. The amendments are necessary in order to avoid the imposition of unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

EFFECTIVE DATE: February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

Section 92.2(i) of the regulations in 9 CFR Part 92, among other things, authorizes the importation of certain horses (mares and stallions over 731 days of age) into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into approved States for further inspection, treatment, and testing.

A document published in the **Federal Register** on November 29, 1985 (50 FR 49028–49029), set forth an interim rule amending § 92.4 of the regulations by adding Wisconsin to the lists of approved States authorized to receive these mares and stallions. The addition of Wisconsin to the lists was based on the findings that it meets certain minimum standards concerning treatment, testing, and handling procedures for these mares and stallions.

The interim rule was made effective upon publication. Comments were solicited for 60 days after publication of the amendments. No comments were received. The factual situation which was set forth in the document of November 29, 1985, still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that fewer than 20 mares and stallions from countries affected with CEM will be imported into the State of Wisconsin annually. This compares with approximately 3,340 such animals imported into the entire United States during Fiscal Year 1984 and with approximately 36,000 horses of all classes imported into the United States during the same period.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 50 FR 49028–49029 on November 29, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 25th day of February 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-4403 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0566]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 265, its Rules Regarding Delegation of Authority, to delegate authority to permit foreign subsidiaries of U.S. banking organizations to hold shares of U.S. affiliates as part of internal reorganizations. The delegation is intended to expedite processing of applications that raise no substantial issues.

EFFECTIVE DATE: February 21, 1986.

FOR FURTHER INFORMATION CONTACT: James Keller, Manager, International Banking Applications, Division of Banking Supervision and Regulation (202/452-2523); or Kathleen M. O'Day, Senior Counsel, Legal Division (202/452-3786); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) permits a U.S. banking organization to invest in a

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foreign company that does not do business in the United States except as an incident to its foreign business. As a general matter, this does not permit a foreign subsidiary of a U.S. banking organization to hold shares of U.S. companies. The Board, however, has permitted a foreign subsidiary to hold shares of a U.S. affiliate where the investment in the shares is part of an internal reorganization or transfer of funds from outside the United States to the U.S. affiliate and may be viewed as a provision of services to the parent by the foreign subsidiary. The Board is amending its delegation rules to authorize the Director of the Division of Banking Supervision and Regulation in consultation with the General Counsel, to permit such a foreign subsidiary of a U.S. banking organization to hold shares in a U.S. affiliate in such circumstances, *i.e.*, as part of an internal reorganization or transfer of funds.

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with the adoption of this amendment because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirement of that section.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et. seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment adopted will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 265

Authority delegations [Government agencies], Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

12 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

2. 12 CFR Part 265 is amended by adding a new paragraph § 265.2(c)(34) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(c) * * *

(34) Under the provisions of Subpart A of part 211 of this chapter (Regulation K) and after consultation with the General Counsel, to permit a foreign subsidiary of a bank holding company to invest in shares of a U.S. affiliate of the banking holding company where the investment is made as part of an internal corporate reorganization or an internal transfer of funds, subject to such conditions and terms as the Director and the General Counsel deem appropriate and consistent with the purposes of Regulation K.

By order of the Board of Governors, February 21, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4308 Filed 2-27-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-64-AD; Amdt. 39-5243]

Airworthiness Directives, Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires repetitive inspections, and repair, if necessary, of the center wing rear spar end fittings on certain Fokker Model F28 series airplanes. Several cases of cracked fittings due to stress corrosion were found during inspection by the manufacturer. Uncorrected cracked fittings could result in structural failure of the wing.

EFFECTIVE DATE: April 7, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires repetitive inspections, and repair, if necessary, of the center wing rear spar end fittings on certain Fokker Model F28 airplanes was published in the **Federal Register** on July 22, 1985 (50 FR 29804). Several cases of cracked fittings due to stress corrosion were found during inspection by the manufacturer. The inspections, and repairs, if necessary, are required within six years after initial delivery and at intervals not to exceed one year thereafter. This action is considered necessary to maintain the structural integrity of the wing.

The comment period for the proposal, which ended September 10, 1985, afforded interested persons an opportunity to participate in making the rule. Due consideration has been given to the comment received, which was from an organization representing an airline operator. The commenter offered no objections to the proposed AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule without change.

It is estimated that there are 30 airplanes on the U.S. Register which are affected by this AD, that it will take approximately 3 manhours per airplane per year to conduct the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost to U.S. operators will be $3,600 per year.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($120.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART—39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes, certificated in any category:

Serial Numbers:
11003 to 11189 inclusive
11190 to 11192 inclusive (RH side only)
11991 and 11992

To prevent failures of the wing center section, accomplish the following, unless already accomplished, within the next 60 days after the effective date of this AD, or before the airplane reaches six years of age (from date of delivery), whichever occurs later:

A. Inspect the center wing rear spar end fittings, and repair if cracks are found, in accordance with Fokker Service Bulletin F28/57-73, dated June 18, 1984.

B. Repeat the inspection and repairs required by paragraph A., above, at intervals not to exceed one year.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 7, 1986.

Issued in Seattle, Washington, on January 21, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4303 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-118-AD; Amdt. 39-5242]

Airworthiness Directives; Gates Learjet Models 25, 25A, 25B, and 25C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises an existing airworthiness directive (AD) applicable to certain Gates Learjet Model 25 series airplanes, to extend the inspection interval for Stall Warning Accelerometers from 165 hours to 220 hours time-in-service. This will permit operators to perform this inspection in conjunction with other airplane maintenance schedules.

DATE: Effective April 7, 1986.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert B. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 82-01-04R1 to increase the repetitive inspection interval of the Stall Warning Accelerometer Unit from 165 hours to 220 hours time-in-service, was published in the Federal Register on November 13, 1985 (50 FR 46777). In addition, the proposed amendment would revise paragraph G. of the AD to reflect the correct address of the Wichita Aircraft Certification Office.

The comment period closed January 3, 1986, and interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received. The commenter strongly supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 180 airplanes of U.S. registry will be affected by this AD. It has been determined that the requirements of this AD may actually reduce operators' costs since the required inspection may be accomplished in conjunction with other regularly scheduled airplane maintenance and inspections.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising paragraphs D. and G. of Airworthiness Directive (AD) 82-01-04 R1, Amendment 39-4751, as follows:

"D. To ensure proper operation of the Stall Warning Accelerometer Unit, unless previously inspected in the last 100 hours time-in-service before the effective date of this AD, within the next 50 hours time-in-service, and at intervals not to exceed 220 hours time-in-service thereafter, perform the inspection of the Stall Warning Accelerometer in accordance with Gates Learjet Service Bulletin SB 23/24/25-301B, as appropriate."

"G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209."

All persons affected by this proposal who have not already received the applicable service information from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective April 7, 1986.

Issued in Seattle, Washington, on February 21, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4302 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–ANM–10]

Correction to Description of Great Falls, MT, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The description of the Great Falls, Montana, transition area contains an incorrect reference to Airway V–257. The airway should be V–247. This action corrects the description.

DATES: Effective date—0901 UTC, March 31, 1986.

Comments must be received on or before May 2, 1986.

ADDRESSES: Send comments on the rule to: Manager, Airspace & System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 86–ANM–10, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM–535, Federal Aviation Administration, Docket No. 86–ANM–10, 17900 Pacific Highway South, C–68966, Seattle, WA 98168, Telephone: (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves correcting a reference to Airway V–257 in the description of the Great Falls, Montana, transition area and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations corrects a reference to Airway 257 in the description of the Great Falls, Montana, transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Transition areas/Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Great Falls, Montana (Revised)

That airspace extending upward from 700 feet above the surface within a 17-mile radius of Malmstrom AFB (lat. 47°30′05″N/long. 111°11′20″W) within 3 miles each side of the Great Falls VORTAC 157 radial, extending from the 17-mile radius area to 21.5 miles southeast of the VORTAC, and within 9 miles northwest of and 13 miles southeast of the Great Falls VORTAC 225 radial, extending from the 17-mile radius area to 15 miles southwest of the VORTAC. That airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Great Falls VORTAC; and that airspace beginning 60 miles southeast of the Great Falls VORTAC from the south edge of V–113, east to the west edge of V–187, southeast to the intersect of the east edge of V–247, northwest to the intersect of the 60-mile radius of great Falls VORTAC; excluding that portion overlying the Billings, Montana, and Helena, Montana, 1,200-foot transition areas.

Issued in Seattle, Washington, on February 20, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86–4301 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–31]

Amendment to Transition Area; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the transition area at Wenatchee, Washington, to accommodate a new VOR/DME–C instrument approach to the Pangborn Field Airport at Wenatchee, Washington.

EFFECTIVE DATE: 0901 UTC, April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, Docket No. 85–ANM–31, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

SUPPLEMENTARY INFORMATION:

History

On Friday, December 20, 1985, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area for Wenatchee, Washington (51 FR 3944).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Wenatchee, Washington, transition area. This action is necessary to provide controlled airspace to accommodate a new VOR/DME–C instrument approach to the Pangborn Field Airport. This action will ensure segregation of aircraft using approach procedures in instrument

weather conditions and other aircraft operating in visual weather conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71, continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Wenatchee, Washington, Transition Area (Amended)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the Wenatchee VOR 124° radial, extending from the VOR to 12.5 miles southeast of the VOR and that airspace between the 5-mile radius circle of the Pangborn Field Airport (lat 47°23′56″N, long. 120°12′20″W) and the 11 DME arc of the Wenatchee VOR/DME bounded by the north edge of V–120 clockwise to the Wenatchee VOR/DME 327°T (305°M) radial, including that airspace within a 1-mile radius of Francher Field, Washington (lat. 47°28′55″N, long. 120°16′40″W); that airspace extending upward from 1,200 feet above the surface within 5 miles south and 8 miles north of the Wenatchee VOR 092° and 272° radials, extending 7 miles west to 14 miles east of the VOR and within 5 miles southwest and 9.5 miles northeast of the 124° radial, extending from the VOR/DME to 23 miles southeast of the VOR and that airspace between the 11 DME and the 19 DME arcs of the Wenatchee VOR/DME bounded by the north edge of V–120 clockwise to the Wenatchee VOR/DME 327°T (305°M) radial.

Issued in Seattle, Washington, on February 20, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86–4363 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–5]

Amendment to Transition Area; Douglas, WY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects Federal Register Document 86–1869. The final rule airspace description which was published for the Douglas, Wyoming, transition area to be effective March 13, 1986, contained reference to an erroneous state boundary and an incomplete description of the 1,200 foot transition area. This action corrects these errors.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, Docket No. 85–ANM–5, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 86–1869 was published on January 31, 1986 (51 FR 3944) that amended the 700 foot transition area at Douglas, Wyoming. This action was necessary due to the relocation of the Converse County Airport, Douglas, Wyoming. It was discovered that the airspace description published in the final rule contained reference to an erroneous state boundary and an incomplete description of the 1,200 foot transition area. This action corrects these discrepancies.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Correction

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86–1869, as published in the **Federal Register** on January 31, 1986 (51 FR 3944) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983) (14 CFR 11.69).

§ 71.181 [Corrected]

2. By correcting § 71.181 as follows:

Douglas, Wyoming, Transition Area [Amended]

That airspace extending upward from 700 feet above the surface within a 10.5 mile radius of the Converse County Airport, Douglas, Wyoming, (lat. 42°47′46″ N, long. 105°23′08″ W); and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at a point at lat. 43°14′00″ N, long. 105°28′01″ W; east along the south edge of V–26 to lat. 43°28′30″ N, long. 104°30′00″ W; to lat. 43°00′00″ N, long. 104°30′00″ W; east to the Wyoming-South Dakota-Nebraska State boundary, south to the north edge of V–100, west to the west edge of V–19, northwest to lat. 42°27′30″ N, long. 105°52′05″ W; thence to point of beginning, excluding the Casper and Cheyenne, Wyoming, transition areas.

Issued in Seattle, Washington, on February 20, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86–4360 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ASO–18]

Alteration to Christiansted St. Croix, VI, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action enlarges the Christiansted St. Croix, VI, Transition Area to accommodate operations conducted under instrument flight rules

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(IFR) from Christiansted Harbor Seaplane Base.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 22, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide sufficient controlled airspace within which operations conducted under IFR from Christiansted Harbor Seaplane Base would be afforded the protection of increased VFR minimums associated with controlled airspace (50 FR 48220). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations enlarges the Christiansted, St. Croix, VI, Transition Area to accommodate IFR departure operations from the Christiansted Harbor Seaplane Base.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Christiansted, St. Croix, VI [Amended]

By removing the words "and that airspace" and substituting the words "within a 6.5-mile radius of Christiansted Harbor Seaplane Base (lat. 17°45'11" N., long. 64°42'24" N.); and that airspace" and by removing "VOR" wherever it appears and substituting "VOR/DME." Also, by removing "068°" wherever it appears and substituting "069°."

Issued in Washington, DC, on February 21, 1986.

Shelomo Wugalter,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-4365 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWA-1]

Alteration of Restricted Areas R-3202A, B and C—Saylor Creek, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Areas R-3202A, B and C, located near Saylor Creek, ID, indicating more accurately when the areas are being utilized. This action will reduce the time the restricted areas are in effect.

EFFECTIVE DATE: 0901 U.T.C., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) changes the times of use for Restricted Areas R-3202A, B and C, located near Saylor Creek, ID, from "daily, 0600-0200, local time; other times by NOTAM" to "Monday-Friday, 0800-0000 local time; other times by NOTAM." Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 73.32 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.32 is amended as follows:

R-3202A Saylor Creek, ID [Amended]

By removing the words "Daily, 0600 to 0200, local time." and by substituting the words "Monday-Friday, 0800-0000 local time."

R-3202B Saylor Creek, ID [Amended]

By removing the words "Daily, 0600 to

0200, local time." and by substituting the words "Monday-Friday, 0800-0000 local time."

R-3202C Saylor Creek, ID [Amended]

By removing the words "Daily, 0600 to 0200, local time." and by substituting the words "Monday-Friday, 0800-0000 local time."

Issued in Washington, D.C. on February 21, 1986.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-4364 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 85-AGL-29]

Change in Time of Designation of Restricted Areas R-4201A and R-4201B, Camp Grayling, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the time of designation for R-4201A and R-4201B, Camp Grayling, MI. A "continuous" time of designation of these restricted areas is no longer required by the using agency. The time changes will more accurately reflect actual use, will release time periods during which the areas are available for public access, and will provide for the more efficient utilization of airspace.

DATE: Effective 0901 U.T.C., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3128.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR Part 73) reduces the times of use for Restricted Areas R-4201A and R-4201B, Camp Grayling, MI, from "continuous" to "0800-1600 local time, Tuesday-Saturday; other times by NOTAM" for R-4201A and to "0001 Saturday-2359 Sunday local time; other times by NOTAM" for R-4201B. The Department of the Army has indicated that continuous use of R-4201A and R-4201B is no longer required. Because this would amend the time of designation to reflect actual times of use and reduce the time that the restricted areas are in effect, this action is a minor amendment in which the public would not be particularly interested. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.42 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.42 is amended as follows:

R-4201A Camp Grayling, MI [Amended]

By removing the word "Continuous" and substituting the words "0800-1600 local time, Tuesday-Saturday; other times by NOTAM."

R-4201B Camp Grayling, MI [Amended]

By removing the word "Continuous" and substituting the words "0001 Saturday-2359 Sunday local time; other times by NOTAM."

Issued in Washington, D.C., on February 21, 1986.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-4367 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85-AWA-52]

Alteration and Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J-79 and establishes new Jet Route J-193 which are located in the vicinity of Richmond, VA. The realignment alleviates congestion and compression of traffic in the airspace between New England and Florida. This amendment is a portion of the Expanded East Coast Plan (EECP) that is designed to make optimum use of limited airspace along the east coast corridor. The jet routes in this docket, J-79 and J-193, were removed from ASD 85-AWA-41, due to technical problems that could not be resolved in time to make the effective date of March 13, 1986. The EECP will be implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of J-174, J-40, J-191, J-79 and establish J-193 in ADS 85-AWA-41 (50 FR 41905). Due to technical problems with NAVAIDs, J-79 and J-193 were removed from ASD 85-AWA-41 and are processed under this rule with a May 8, 1986, effective date. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns J-79 and establishes new J-193. These jet routes are segments of the EECP that is designed to alleviate compression and

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congestion in several terminal areas. This action completes an additional segment of the EECP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–79 [Amended]

By removing the words "Charleston; Wilmington, NC; Norfolk, VA; INT of Norfolk 023° and Coyle, NJ, 208° radials; Coyle; Kennedy, NY;" and substituting the words "Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; Sea Isle, NJ; Kennedy, NY;"

J–198 [New]

From Wilmington, NC, via INT of Wilmington 056° and Franklin, VA 190° radials; to Franklin.

Issued in Washington, DC, on February 21, 1986.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4308 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24918; Amdt. No. 1315]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number. This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for

Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on February 21, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C.106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective 8 May 1986*

Camden, AR—Harrell Field, VOR/DME Rwy 36, Amdt. 5
Camden, AR—Harrell Field, NDB Rwy 18, Amdt. 8
Fargo, ND—Hector Field, NDB Rwy 17, Amdt. 13
Fargo, ND—Hector Field, ILS Rwy 17, Amdt. 2
Wahpeton, ND—Harry Stern, NDB Rwy 33, Amdt. 2
Williston, ND—Sloulin Fld Intl, VOR Rwy 11, Amdt. 11
Williston, ND—Sloulin Fld Intl, VOR/DME Rwy 29, Amdt. 2
Williston, ND—Sloulin Fld Intl, ILS Rwy 29, Amdt. 1
Williston, ND—Skoulin Fld Intl, ILS Rwy 29, Amdt. 1

* * * *Effective 10 April 1986*

Harrison, AR—Boone County, LOC Rwy 36, Amdt. 5
Harrison, AR—Boone County, NDB Rwy 18, Amdt. 4
Harrison, AR—Boone County, NDB Rwy 36, Amdt. 4
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS Rwy 8R, Amdt. 58
Cartersville, GA—Cartersville, VOR/DME–A, Amdt. 2, Cancelled
Moline, IL—Quad-City, ILS Rwy 9, Amdt. 27
Bellaire, MI—Antrim County, VOR Rwy 2, Orig.
West Branch, MI—West Branch Community, VOR Rwy 27, Orig.
West Branch, MI—West Branch Community, NDB Rwy 27, Amdt. 6
Cape Girardeau, MO—Cape Girardeau Muni, VOR Rwy 2, Amdt. 8
Cape Girardeau, MO—Cape Girardeau Muni, VOR Rwy 10, Amdt. 1
Cape Girardeau, MO—Cape Girardeau Muni, VOR Rwy 20, Amdt. 1
Buffalo, NY—Greater Buffalo Intl, VOR–A, Amdt. 17
Buffalo, NY—Greater Buffalo Intl, NDB Rwy 5, Amdt. 10
Buffalo, NY—Greater Buffalo Intl, NDB Rwy 23, Amdt. 14
Buffalo, NY—Greater Buffalo Intl, ILS Rwy 5, Amdt. 13
Buffalo, NY—Greater Buffalo Intl, ILS Rwy 23, Amdt. 27
Buffalo, NY—Greater Buffalo Intl, RADAR–1, Amdt. 13
Syracuse, NY—Syracuse Hancock Intl, RADAR–1, Amdt. 5, Cancelled
Mandan, ND—Mandan Muni, RADAR–1 Amdt. 1
Merrill, WI—Merrill Muni, NDB Rwy 7, Amdt. 1
Merrill, WI—Merrill Muni, NDB Rwy 16, Amdt. 5

* * * *Effective 13 March 1986*

Fort Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, VOR–A, Amdt. 1, Cancelled
Fort Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, NDB Rwy 26, Orig.

The FAA published an Amendment in Docket No. *24902*, Amdt. No. *1313* to Part 97 of the Federal Aviation Regulations (VOL *51* FR No. *22* Page *4159;* dated *3 FEB 1986*) under Section *97.25* effective *13 MAR 86*, which is hereby amended as follows:

Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt. 16, Rescinded.

[FR Doc. 86–4280 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

Supplemental Security Income; Disability and Blindness Determinations

Correction

In FR Doc. 85–28887, beginning on page 50118, in the issue of Friday, December 6, 1985, make the following corrections:

1. On page 50127, second column, fifth line from bottom in § 404.1579(b)(5), "lastest" should read "latest".

2. On the same page, third column, fifth line, in § 404.1579(c)(4), "medica" should read "medical".

3. On page 50131, third column, in § 404.1594(b)(3) Example 2, second paragraph, first line, "had" should read "has".

4. On page 50132, first column, twenty-fourth line in § 404.1594(b)(4), "had" should read "has". In the thirty-second line, after the word "these" insert "basic".

5. On the same page, second column, fourth line in § 404.1594(b)(4)(ii), "in" should read "is". In the eleventh line, the second "to sustained" should be removed.

6. On page 50133, first column, second line in § 404.1594(c)(3), "consideration" should read "considerations."

7. On the same page, third column, twenty-eighth line in § 404.1594(c)(3)(v), "effects" should read "efforts".

8. On page 50137, first column, first line of § 416.986(a), "you" should read "your". In the second line, "yor" should read "you". In paragraph (a)(2) of same section and column, second line, "no" should read "not".

9. On page 50139, in § 416.994(b)(1)(iv)(C), second column, first line, "evaluation" should read "evaluations".

10. On page 50140, first column, fifth line in § 416.994(b)(2)(iv)(C), "our" should read "your".

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11. On the same page, third column, twentieth line in § 416.994(b)(3), before "medical" insert "any".

12. On page 50141, second column, third line in § 416.994(b)(3)(iii)(B)*(1)*, "Subchapter" should read "Subpart". In the same section, paragraph (b)(3)(iii))(B)*(2)*, first line, "or" should read "of".

13. On the same page, third column, sixth line in § 416.994(b)(3)(iv)(A), Example 1, "electroencephalogram" was misspelled.

14. On page 50142, first column, eighth line in § 416.994(b)(3)(iv)(B), Example, "original" was misspelled.

15. On page 50143, third column, third line in § 416.994(c)(1)(i) Example 1, "has" should read "had".

16. On page 50145, in § 416.994(c)(3)(i), second column, twenty-second line, "The" should read "This".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

Correction

In FR Doc. 86-3005 beginning on page 5162 in the issue of Wednesday, February 12, 1986, make the following corrections:

1. On page 5162, third column, in Part 558, in the first line of the Authority, insert "82" before "Stat.".

2. On page 5163, in the table at the top of the page, under "Limitations", first line, insert "cattle" after "pasture".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission is making procedural clarifications and revisions to its rules at 28 CFR 2.19 (Information Considered) and § 2.27 (Appeal of Original Jurisdiction Cases). The amendment to 28 CFR 2.19 provides that the procedures for submission of materials to be considered by the Commission also are applicable to preliminary interviews and the amendment to 28 CFR 2.27 revises the date at which material supporting the appeal of an original jurisdiction case must be submitted to the Commission.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission is making procedural changes to two of its rules related to the Submission by offenders of materials and information for consideration by the Commission.

First, in making a parole or reparole determination, the Commission considers a number of reports and other documents concerning the prisoner. It will also take into consideration additional information concerning the prisioner, including information submitted by the prisoner or by other interested persons. The rules governing the information so considered are at 28 CFR 2.19.

Occasionally, at the hearing, a prisoner or his representative will submit for the first time voluminous material concerning the prisoner to be considered by the panel. In such instances, it is generally impossible for the examiners to read all the material submitted without seriously disturbing the hearing schedule. To remedy this situation and to ensure that the information contained in the submitted materials receives appropriate attention and review, the Commission adopted procedures which limit the amount of material to be first submitted at a hearing, which establish the timing of that submission, which allow for summarization of the submitted material, and which provides for Commission consideration of all the material submitted as part of the review of the panel's recommendation. A final rule in this regard was published in the **Federal Register** (50 FR 36422, September 6, 1985).

The submission of voluminous materials concerning prisoners are equally problematic to the individuals who conduct preliminary interviews as part of the parole revocation process. To remedy this similar situation and again to ensure that the submitted material receives appropriate attention, the Commission is amending 28 CFR 2.19 to extend the coverage of those procedures to preliminary interviews.

Second, as part of the procedures regarding the Commission's consideration of an appeal of original jurisdiction cases, the Commission receives and reviews written information concerning prisoners as submitted by attorneys, relatives and other interested parties. Presently, these supporting materials are to be submitted at least two weeks in advance of the Commission meeting at which the appeal will be heard. 28 CFR 2.27(b). The Commission has determined that this two-week deadline does not provide ample time for the material to be reviewed, a summary prepared, typed, rechecked for accuracy, photocopied for the National and Regional Commissioners' packets and mailed out. These necessary steps take considerable time and delay review by the Commissioners beyond the two-week period.

To remedy this situation and to ensure adequate time for review, the Commission is amending 28 CFR 2.27(b) to require that the supporting materials be submitted thirty days in advance of the meeting at which the appeal will be considered.

These such changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and (4204(a)(6).

2. 28 CFR 2.19, *Information Considered,* is amended by revising paragraph (b)(3) to read as follows:

§ 2.19 Information Considered.

* * * * *

(b) * * *

(3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing (or preliminary interview) and the hearing panel (or person conducting the hearing or preliminary interview) concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing (or preliminary interview). All of the material submitted will become part of the record to be considered by the Commission in its review of the proceedings.

* * * * *

3. 28 CFR § 2.27, *Appeal of Original Jurisdiction Cases,* is amended by revising paragraph (b) to read as follows:

§ 2.27 Appeal of Original Jurisdiction Cases.

* * * * *

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Appeals and all supporting material are to be submitted thirty days in advance of the meeting at which the appeals will be considered.

* * * * *

Dated: February 12, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86-4237 Filed 2-27-86; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission is making several interpretative clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to remove ambiguities, to conform to other parts of the guidelines, and to make the guidelines more comprehensive.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION:

A. The Interim Rule and its Purposes

On October 3, 1985, the U.S. Parole Commission published in the **Federal Register** (50 FR 40368) an interim rule, with request for public comment, that made a number of amendments to the Commission's paroling policy guidelines. Among those amendments were the following:

1. A revision was made to 28 CFR 2.20(j)(1) to conform to amendments made to 28 CFR 2.21 concerning the recalculation of the salient factor score for parole violators. And a revision was made to 28 CFR 2.36(a)(1) to make it more consistent with amendments made to 28 CFR 2.21 concerning the grading of administrative violations as Category One.

2. Several changes were made to the offense examples in the Offense Severity Index of 28 CFR 2.20. These amendments were, for the most part, editorial and served to clarify the offense examples. Other revisions added new offense examples, making the offense severity index more comprehensive by including behaviors previously not specifically covered. Offense Example 211(a) was revised for clarity as were Offense Examples 212(a), 221(e), 615, and 621(b). (For consistency, an amendment was made to Definition 17 in Subchapter B of Chapter Thirteen to conform to the revision in Offense Examples 211(e) and 212(a)). The titles of Offense Examples 232 and 801 were revised for clarity and consistency and the statutory reference in the title of Offense Example 361 was removed. New subparagraph (c) was added to Offense Example 322 to clarify the relationship of extortion to non-governmental corruption. Operating video gambling machines were added to the list of gambling law violations in Offense Example 1111 and, for consitsency, Offense Example 1112 was revised for grading by reference to Offense Example 1111. Offense Example 803 was removed; the underlying statute had been repealed and involuntary manslaughter is covered elsewhere in the guidelines. New Offense Example 363 was added to make the index more comprehensive by providing coverage for "insider trading" offenses. The grading of the severity of those offenses paralleled that of the antitrust offenses in Offense Example 361. New Offense Examples 1171 and 1172, rating environmental offenses, were added. The Commission proposed the creation of a subchapter on these offenses in the proposed rule published on June 10, 1985 (50 FR 24236). No comment was received, and the Commission had developed these two offense examples pursuant to that proposal. Also, new General Note (7) was added to Subchapter A of Chapter Thirteen to clarify the grading of state offenses committed at or about the same time as the current federal offense.

3. To make the rules more comprehensive, the Commission revised several offense examples and other paragraphs by incorporating, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual. These changes were also to help clarify the rules and examples. In this regard, amendments were made to Offense Examples 232(c), 331(f)(3), 331(g)(2), 362(d), and 618 (a) and (b). Similarly, Note (3) was added to the Notes to Chapter Nine; subparagraphs (a) through (e) were added to General Note (2) of Subchapter A of Chapter Thirteen; and the salient factor scoring instructions were incorporated into the rules.

B. Public Comment

With the exception of the addition of new Offense Example 363 regarding insider trading (discussed below), no public comment was received on any of the revisions, additions or clarifications contained in the interim rule.

As regards the addition of new Offense Example 363 to Chapter 3, Subchapter G of the Offense Behavior Severity Index of § 2.20, significant response was received questioning the severity ratings developed for insider trading. An amendment was attached to the Continuing Resolution (House Joint Resolution 465, Further Continuing Appropriations for Fiscal Year 1986; Pub. L. 99-190) prohibiting the Parole Commission from enforcing this offense example for a six month period, except with respect to pending offenses. Letters were forwarded by various Senators and Congressmen expressing their views on the subject. Additionally, a letter was received from the Secretary of the U.S. Securities and Exchange Commission noting that Commission's position on the matter and another received from the Deputy Attorney General passing on the comments of the Economic Crime Council.

The thrust of all the comments received was basically the same: insider trading is a very serious offense that has consequences beyond the illegal profits generated by the inside trader; as a comparative, the severity level of insider trading should be graded as similar to fraud type offenses rather than to antitrust offenses as provided for in the interim rule; the severity ratings contained in the interim rule do not adequately reflect the seriousness of the offense and the resultant harm caused and, further, do not reflect recent legislative and prosecutorial initiatives aimed at both deterring and more appropriately sanctioning this behavior.

The U.S. Parole Commission has reviewed the letters and comments received and has determined to amend the portion of the interim rule that deals with insider trading. Rather than paralleling the severity categories for insider trading offenses with violations of the antitrust laws, such offenses will be treated as similar to traditional frauds and will be rated accordingly.

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C. Changes From the Interim Rule

This final rule contains several changes from the interim rule. First, a change is being made to Offense Examples 301(a) and 303(a) of Chapter Three, Subchapter A of the Offense Behavior Severity Index of § 2.20 to conform the language therein to the changes made in Offense Examples 211(a) and 212(a) of Chapter Two, Subchapter B of the Offense Behavior Severity Index of § 2.20. Second, an error was made in the interim rule whereby Offense Example 331 was identified incorrectly (in two instances) as being within Chapter 3, Subchapter F of the Offense Behavior Severity Index of § 2.20. Offense Example 331 is in Chapter 3, Subchapter D of the Offense Behavior Severity Index of § 2.20. Next, as discussed above, a revision has been made to Offense Example 363 of Chapter 3, Subchapter G of the Offense Behavior Severity Index of § 2.20. Finally, for clarification, language is being added to the instructions for the computation of the salient factor score contained in § 2.20 at A.2(b)6 and at *Special Instructions—Federal Parole Violations*, Item C and Item D.

These rule changes will not have a significant econonic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.20, *Paroling Policy Guidelines; Statement of General Policy*, is amended by revising paragraph (j)(1) to read as follows:

§ 2.20 Paroling Policy Guidelines; Statement of General Policy.

* * * * *

(j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given toward the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

* * * * *

3. Offense Example 211(a) in Chapter 2, Subchapter B, in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

211 *Assault During Commission of Another Offense*

(a) If serious bodily injury* results or if 'serious bodily injury is the result intended'*, grade as Category Seven;

* * * * *

4. Offense Example 212(a) of Chapter 2, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

212 *Assault*

(a) If serious bodily injury* results or if 'serious bodily injury is the result intended'*, grade as Category Seven;

* * * * *

5. Offense Example 221(e) of Chapter 2, Subchapter C of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

221 *Kidnapping*

* * * * *

(e) *Exception:* If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

6. The title of Offense Example 232 of Chapter 2, Subchapter D in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

232 *Unlawful Sexual Conduct with Minors (e.g., carnal knowledge*)*

7. Offense Example 232 of Chapter 2, Subchapter D in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (c) to read as follows:

232 *Unlawful Sexual Conduct with Minors (e.g., carnal knowledge*)*

* * * * *

(c) *Note:* Where the victim is less than 12 years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist.

8. Offense Example 301(a) of Chapter 3, Subchapter A in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

301 *Property Destruction by Arson or Explosives*

(a) If the conduct results in serious bodily injury* or if 'serious bodily injury is the result intended'*, grade as Category Seven;

* * * * *

9. Offense Example 303(a) of Chapter 3, Subchapter A in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

303 *Property Destruction Other Than Listed Above*

(a) If the conduct result in serious bodily injury* or 'serious bodily injury is the result intended'*, grade as if 'assault during commission of another offense';

* * * * *

10. Offense Example 322 of Chapter 3, Subchapter C in the Offense Behavior Severity Index of § 2.20 is revising paragraph (c) to read as follows:

322 *Extortion*

* * * * *

(c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, Subchapter F;

11. Offense Example 331 of Chapter 3, Subchapter D in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (f)(3) to read as follows:

331 *Theft, Forgery* * * *

* * * * *

(f) * * *

(3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category two.

* * * * *

12. Offense Example 331 of Chapter 3, Subchapter D in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (g)(2) to read as follows:

331 *Theft, Forgery* * * *

* * * * *

(g) * * *

(2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as 'fraud'.

13. The title of Offense Example 361 of Chapter 3, Subchapter G in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

361 *Violation of Securities or Investment Regulations*

14. Offense Example 362 of Chapter 3, Subchapter G in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (d) to read as follows:

362 *Antitrust Offenses*

* * * * *

(d) *Note:* The term 'economic impact' refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

15. Offense Example 363 of Chapter 3, Subchapter G is revised in the Offense Behavior Severity Index of § 2.20 to read as follows:

363 *Insider Trading*

(a) If the estimated economic impact is more than $500,000, grade as Category Six;

(b) If the estimated economic impact is more than $100,000 but not more than $500,000, grade as Category Five;

(c) If the estimated economic impact is at least $20,000 but not more than $100,000, grade as Category Four;

(d) If the estimated economic impact is at least $2,000 but less than $20,000, grade as Category Three;

(e) If the estimated economic impact is less than $2,000, grade as Category Two.

(f) Note: The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

16. Offense Example 615 of Chapter 6, Subchapter B in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

615 *Harboring a Fugitive*

Grade as if 'accessory after the fact' to the offense for which the fugitive is wanted, but not higher than Category Three.

17. Offense Example 618 of Chapter 6, Subchapter B in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

618 *Contempt of Court*

(a) Criminal Contempt (re: 18 U.S.C. 402). Where imposed in connecton with a prisoner serving a sentence for another offense, add <=6 months to the guidelines otherwise appropriate.

(b) *Exception:* If a criminal sentence of more than one year is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if 'accessory after the fact'.

(c) Civil Contempt. See 28 CFR 2.10.

18. Offense Example 621 of Chapter 6, Subchapter C in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (b) to read as follows:

621 *Bribery* * * *

* * * * *

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.

* * * * *

19. The title of Offense Example 801 of Chapter 8, Subchapter A in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

801 *Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony*

20. Offense Example 803 of Chapter 8, Subchapter A in the Offense Behavior Severity Index of § 2.20 is removed.

21. Note 3 to the Notes to Chapter Nine of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

—Notes to Chapter Nine

* * * * *

(3) Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).

22. Offense Example 1111 of Chapter Eleven, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1111 *Gambling Law Violations—Operating or Employment in an Unlawful Business* (re: 18 U.S.C. 1955)

(a) If large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000); Dice or card games (estimated daily 'house cut' more than $1,000); video gambling (eight or more machines)]; grade as Category Four;

(b) If medium scale operation [e.g., Sports books (estimated daily gross $5,000—$15,000); Horse books (estimated daily gross $1,500—$4,000); Numbers bankers (estimated daily gross $750—$2,000); Dice or card games (estimated daily 'house cut' $400—$1,000); video gambling (four-seven machines)]; grade as Category Three;

(c) If small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750); Dice or card games (estimated daily 'house cut' less than $400); video gambling (three or fewer machines)]; grade as Category Two;

(d) *Exception:* Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

23. Offense Example 1112 of Chapter Eleven, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1112 *Interstate Transportation of Wagering Paraphernalia* (re: 18 U.S.C. 1953) Grade as if 'operating a gambling business'.

24. Offense Examples 1171 and 1172 of Chapter Eleven, Subchapter H to the Offense Behavior Severity Index of § 2.20 are revised to read as follows:

SUBCHAPTER H—ENVIRONMENTAL OFFENSES

1171 *Knowing Endangerment Resulting From Unlawful Treatment, Transportation, Storage, or Disposal of Hazardous Waste* [Re: 42 U.S.C. 6928(e)]

(a) If death results, grade as Category Seven;

(b) If serious bodily injury results, grade as Category Six;

(c) Otherwise, grade as Category Five.

(d) *Note:* Knowing Endangerment requires a finding that the offender knowingly transported, treated, stored, or disposed of any hazardous waste and knew that he thereby placed another person in imminent danger of death or serious bodily injury.

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility* [Re: 42 U.S.C. 6928(d)(1–2)]

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $100,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $20,000–$100,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

25. General Note 2 to Chapter Thirteen, Subchapter A in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

SUBCHAPTER A—GENERAL NOTES

* * * * *

2. * * *

(a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating. In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	Points	Severity	Points
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3		

Examples: 3 Category Five Offense [3x(9)=27]=Category Six, 5 Category Five Offenses [5x(9)=45]=Category Seven, 2 Category Six Offenses [2x(27)=54]=Category Seven

(b) The term 'multiple separate offenses' generally refers to offenses committed at different times. However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (1) unrelated offenses, and (2) offenses involving the unlawful possession of weapons during commission of another offense.

(c) For offenses graded according to monetary value (e.g., theft) and drug offenses, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

(d) Intervening Arrests. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

(3) Income Tax Violations Related to Other Criminal Activity. Where the circumstances indicate that the offender's income tax violations are related to failure to report

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income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.

26. Chapter Thirteen, Subchapter A is amended by revising General Note 7 to the Offense Behavior Severity Index of § 2.20 to read as follows:

SUBCHAPTER A—GENERAL NOTES

* * * * *

7. Where state offense(s) are sufficiently related to the federal offense in time or nature to be considered as part of the same episode, course, or spree of criminal conduct (e.g., during a three month period an offender robs two federal banks, one state bank, and one grocery store), such conduct shall be considered as an aggravating factor by being graded on the severity scale as if part of the current federal offense behavior. Any time spent in custody on the state offense(s) shall be credited for guideline purposes.

27. Definition 17 of Chapter Thirteen, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

SUBCHAPTER B—DEFINITIONS

* * * * *

17. 'Serious bodily injury is the result intended' refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an 'attempt to murder'.

* * * * *

28. 28 CFR 2.20, *Paroling Policy Guidelines; Statement of General Policy*, is amended by revising instructions for the computation of the salient factor score to read as follows:

SALIENT FACTOR SCORING MANUAL. The following instructions serve as a guide in computing the salient factor score.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more. . . . = 0]]

A.1 In General. Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together). Do not count the current federal offense or state/local convictions resulting from the current federal offense (i.e., offenses that are considered in assessing the severity of the current offense). *Exception:* Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (e.g., after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

A.2 Convictions—

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the salient factor score, use the offense of conviction.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. contempt of court;
2. disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering loud and abusive language;
3. driving without a license/with a revoked or suspended license/with a false license;
4. false information to a police officer;
5. fish and game violations;
6. gambling (e.g., betting on dice, sports, cards) [Note: Operation or promotion of or employment in an unlawful gambling business is not included herein];
7. loitering;
8. non-support;
9. prostitution;
10. resisting arrest/evade and elude;
11. trespassing;
12. reckless driving;
13. hindering/failure to obey a police officer;
14. leaving the scene of an accident (except as listed under (a)).

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. hitchhiking;
2. local regulatory violations;
3. public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. traffic violations (except as specifically listed);
5. vagrancy/vagabond and rogue;
6. civil contempt.

A.3 Juvenile Conduct. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 Military Conduct. Count military convictions by general or special court-martial (not summary court-maritial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. *Note:* This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 Diversion. Conduct resulting in diversion from the judicial process without a finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

A.6 Setting Aside of Convictions/Restoration of Civil Rights Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7 Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. *Note:* Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, if the offender has applied to have a conviction vacated and provides evidence (e.g., a letter from the court clerk) that the required records are unavailable, do not count the conviction. *Note:* If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 Ancient Prior Record. If both of the following conditions are met: (1) the offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes of Item A, B, or C. *Note:* This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 Foreign Convictions. Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 Tribal Court Convictions. Tribal court convictions are counted under the same terms and conditions as any other conviction.

A11. Forfeiture of Collateral. If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.12 Conditional/Unconditional Discharge (New York State). In N.Y. State, the term "conditional discharge" refers to a conviction with a suspended sentence and unsupervised probation; the term "unconditional discharge" refers to a conviction with a suspended sentence. Thus, such N.Y. State dispositions for countable offenses are counted as convictions.

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None=-2; One or two=1; Three or more=0]]

B.1 Count all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 Count only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed as the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 Definitions—

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to "time served". If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less. Count a sentence to intermittent confinement (e.g., weekends) totalling more than 30 days.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It does not include foster home placement. Count confinement in a community treatment center when part of a committed sentence. Do not count confinement in a CTC when imposed as a condition of probation or parole. Do not count self-commitment for drug or alcohol treatment.

(c) If a committed sentence of more then thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. *Note:* Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. *Example:* An offender is sentenced to a term of three years confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (e.g., escape or failure to report for service or sentence).

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE)

C.1 Score 2 if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 Score 1 if the subject was 20–25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 Score 0 if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

C.4 Definitions—

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS)

D.1 Score 1 if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 Score 0 if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 Definitions—

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

E.1 Score 1 if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 Score 0 if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 Definitions

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. *Note:* Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

ITEM F. HISTORY OF HEROIN/OPIATE DEPENDENCE

F.1 Score 1 if the subject has no history of heroin or opiate dependence.

F.2 Score 0 if the subject has any record of heroin or opiate dependence.

F.3 Ancient Heroin/Opiate Record. If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 Definition. For calculation of the salient factor score, the term 'heroin/opiate dependence' is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

Special Instructions—Federal Probation Violators

Item A Count the original federal offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.

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Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. *Note*: the prisoner is still credited with the time served toward the current commitment.

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. *Exception*: A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

Special Instructions—Federal Parole Violators

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior/parole violation behavior.

Item D Count backwards three years from the commencement of the new criminal behavior/parole violation behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

29. 28 CFR 2.36(a)(1), *Rescission Guidelines*, is revised to conform to 28 CFR 2.21 concerning the grading of administrative violations as Category One. The revised paragraph reads as follows:

§ 2.36 Rescission Guidelines.

(a) * * *

(1) Administrative Rule Infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct, or by 0–120 days in the case of use or simple possession of illicit drugs. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

* * * * *

Dated: February 12, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86–4236 Filed 2–27–86; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administrative Instruction No. 81]

Privacy Act of 1974, as Amended; Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises the Office of the Secretary of Defense Privacy Program which implements the Privacy Act of 1974, as amended (5 U.S.C. 552a) within the Department. This revision supersedes a final rule (40 FR 55526) published on November 28, 1975, 32 CFR Part 286b—"Personal Privacy and Rights of Individuals Regarding Their Personal Records." This revision incorporates changes occasioned by DoD Directive 5400.11, June 9, 1982, and DoD Regulation 5400.11–R, August 31, 1983, both entitled: "Department of Defense Privacy Program."

EFFECTIVE DATE: January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Ms Norma Cook, OSD Privacy Act Officer, Office of the Deputy Assisant Secretary of Defense (Administration), The Pentagon, Washington, D.C. 20301–1100. Telephone 202–697–2501 or AUTOVON 227–2501.

SUPPLEMENTARY INFORMATION: Subsection 3(f) of Privacy Act of 1974, as amended (Title 5 U.S.C. § 552a) requires that Federal agencies promulgate rules for implementing the Privacy Act. On November 28, 1975, the Office of the Secretary of Defense published a final rule (40 FR 55526), 32 CFR Part 286b, which implemented DoD Directive 5400.11 dated August 4, 1975 entitled: "Personal Privacy and Rights of Individuals Regarding Their Personal Records." DoD Directive 5400.11 entitled: "Department of Defense Privacy Program" was revised on June 9, 1982. This revision implements the above mentioned documents.

The Department of Defense has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90–354) and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 286b

Privacy.

Accordingly, Part 286b of 32 CFR is revised to read as follows:

PART 286b—PRIVACY PROGRAM

Sec.
286b.1 Reissuance and purpose.
286b.2 Applicability and scope.
286b.3 Definitions.
286b.4 Policy.
286b.5 Responsibilities.
286b.6 Procedures.
286b.7 Procedures for exemptions.
286b.8 Information requirements.

Authority: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a)

§ 286b.1 Reissuance and purpose.

This part reissues Administrative Instruction No. 81 to update and implement basic policies and procedures outlined in Privacy Act of 1974, DoD 5400.11–R, OMB Circular No. A–108 (TM No. 4) and to provide guidance and procedures for use in establishing the Privacy Program in the Office of the Secretary of Defense (OSD) and those organizations assigned to OSD for administrative support.

§ 286b.2 Applicability and scope.

(a) This part applies to the OSD, Organization of the Joint Chiefs of Staff (OJCS), Inspector General of the Department of Defense (IG, DOD), Defense Advanced Research Projects Agency (DARPA), Uniformed Services University of the Health Sciences (USUHS) and other activities assigned to OSD for administrative support (hereafter referred to collectively as "OSD Components").

(b) This part covers record systems maintained by OSD Components and governs the maintenance, access, change, and release of information contained in OSD Component record systems, from which information pertaining to an individual is retrieved by a personal identifier.

§ 286b.3 Definitions.

Access. Any individual's review of a record or a copy of a record or parts of a system of records.

Disclosure. The transfer of any personal information from a system of records by any means of oral, written, electronic, mechanical, or other communication, to any person, private entity, or Government agency, other than the subject of the record, the

subject's designated agent, or the subject's legal guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

Individual Access. Access to information pertaining to the individual or his or her designated agent or legal guardian.

Maintain. Includes maintenance, collection, use or dissemination.

Personal Information. Information about an individual that is intimate or private, as distinguished from information related solely to the individual's official functions or public life.

§ 286b.4 Policy.

(a) It is DoD policy to protect the privacy of individuals involved in any phase of the personnel management process and to permit any individual to know what existing records pertain to him or her in any OSD Component covered by this part.

(b) Each office maintaining records and information about individuals shall ensure that their privacy is protected from unauthorized disclosure. These offices shall permit individuals to have access to, and to have a copy made of, all or any portion of records pertaining to them (except those referred to in Chapters 3 and 5, DoD 5400.11–R and to have an opportunity to request that such records be amended as provided by the Privacy Act of 1974. Individuals requesting access to their records shall receive concurrent consideration under the Privacy Act of 1974 and the Freedom of Information Act as amended, if appropriate.

(c) The heads of OSD Components shall maintain any record of an identifiable personal nature in a manner that is necessary and lawful. Any information collected must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information.

§ 286b.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense (Administration) (DASD(A)), Office of the Assistant Secretary of Defense (Comptroller) OASD(c)), shall:

(1) Direct and administer the DoD Privacy Program for OSD Components.

(2) Establish standards and procedures to ensure implementation of and compliance with the Privacy Act of 1974, OMB Circular No. A–108 (TM No. 4), and DoD 5400.11–R.

(3) Serve as the appellate authority within OSD when a requester appeals a denial for amendment of a record or initiates legal action to correct a record.

(4) Evaluate and decide, in coordination with the General Counsel (GC), DoD, appeals resulting from denials of correction and/or amendments to records by OSD Components.

(5) Designate the Records Management Division, Correspondence and Directives Directorate, Washington Headquarters Services (WHS), as the office responsible for all aspects of the Privacy Act, except that portion pertaining to receiving and acting on public requests for personal records. As such, the Records Management Division, shall:

(i) Exercise oversight and administrative control of the Privacy Act Program in OSD and those organizations assigned to OSD for administrative support.

(ii) Provide guidance and training to organizational entities as required by the Privacy Act of 1974 and OMB Circular A–108 (TM No. 4).

(iii) Collect and consolidate data from OSD Components, and submit an annual report to the Defense Privacy Office, as required by the Privacy Act of 1974, OMB Circular A–108 (TM No. 4) and DoD 5400.11–R.

(iv) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the Office of Management and Budget (OMB), the Congress, and the **Federal Register**, as required by the Privacy Act of 1974, OMB Circular No. A–108 (TM No. 4) and DoD 5400.11–R.

(v) Collect information from OSD Components, and prepare consolidated reports required by the Privacy Act of 1974 and DoD 5400.11–R.

(b) The Assistant Secretary of Defense (Public Affairs) (ASDC(A) shall:

(1) Designate the Director for Freedom of Information and Security Review, OASDP(A), as the point of contact for individuals requesting information or access to records and copies concerning themselves.

(2) Serve as the authority within OSD when requesters seek reconsideration of previously denied requests for access to records, and in coordination with the GC, DoD, and the DASD(A), evaluate and decide on such requests.

(c) The Director for Freedom of Information and Security Review shall:

(1) Forward requests for information or access to records to the appropriate OSD Component having primary responsibility for any pertinent system of records under the Privacy Act of 1974 or to OSD Components, under the Freedom of Information Act as amended.

(2) Maintain deadlines to ensure that responses are made within the time limits prescribed in DoD 5400.7–R, DoD Directive 5400.10 and this part.

(3) Collect fees charged and assessed for reproducing requested materials.

(4) Refer all matters concerning amendments of records and general and specific exemptions under the Privacy Act of 1974 to the proper OSD components.

(5) Authorize a specific field activity of an OSD Component to act as the point of contact for individuals requesting information or access to records or copies, under the Privacy Act of 1974 for which the field activity has primary responsibility. All authorizations by the ASD(PA) shall be coordinated with the heads of the OSD Component concerned.

(d) The General Counsel, DoD, shall:

(1) Coordinate with the Department of Justice (DoJ) on all OSD final denials of appeals for amending records, and review actions to confirm denial of access to records.

(2) Provide advice and assistance to the DASD(A) in the discharge of appellate and review responsibilities, and to the ASD(PA) on all access matters.

(3) Provide advice and assistance to OSD Components on legal matters pertaining to the Privacy Act of 1974.

(e) The Head of OSD Components shall:

(1) Designate an individual as the point of contact for Privacy Act matters; designate an official to deny initial requests for access to an individual's records or changes to records; and advise both DASD(A) and ASD(PA) of names of officials so designated.

(2) Report any new record system, or changes to an existing system, to the Records Administrator, ODASD(A), at least 90 days before the intended use of the system.

(3) Review all contracts that provide for maintaining records systems, by or on behalf of his or her office, to ensure within his or her authority, that language is included that provides that such systems shall be maintained in a manner consistent with the Privacy Act of 1974.

(4) Revise procurement guidance to ensure that any contract providing for the maintenance of a records system, by or on behalf of his or her office, includes language that ensures that such system will be maintained in accordance with the Privacy Act of 1974.

(5) Revise computer and telecommunications procurement policies to ensure that agencies review all proposed contracts for equipment and services to comply with the Privacy Act of 1974.

(6) Coordinate with Automatic Data Processing (ADP) and word processing managers providing services to ensure that an adequate risk analysis is conducted to comply with DoD 5400.11–R.

(7) Review all Directives that require forms or other methods used to collect information about individuals to ensure that the Privacy Act of 1974 is complied with.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11–R.

(9) Coordinate with the Office of the General Counsel (OGC) on all proposed denials of access to records.

(10) Provide justification to the ASD(PA) when access to a record is denied in whole or in part.

(11) Provide the record to the ASD(PA) when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, of who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11–R.

(14) Forward all requests for access to records received directly from an individual to the ASD(PA) for appropriate suspense control and recording.

(15) Provide ASD(PA) with a copy of the requested record when the request is granted.

(f) The Director for Space Management and Services (SM&S), WHS, shall:

Upon request of the OSD Records Administrator, provide the necessary automated services through the OSD support system for publishing of data in the **Federal Register** as required by the Privacy Act of 1974.

(g) The Requester is responbible for:

(1) Submitting a request for access to a record or information, in person or in writing, to the Directorate for Freedom of Information and Security Review, (DFOI/SR), OASD(PA), Room 2C757, Pentagon, Washington, D.C. 20301–1155. The Requester must also:

(i) Establish his or her identity as outlined in DoD 5400.11–R.

(ii) Describe the record sought, and provide sufficient information to enable the material to be located (e.g., identification of system or records, approximate date it was initiated, originating organization, and type of document).

(iii) Comply with procedures provided in DoD 5400.11–R for inspecting and/or obtaining copies of requested records.

(2) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

§ 286b.6 Procedures.

(a) *Publication of Notice in the* **Federal Register**. (1) A notice shall be published in the **Federal Register** of any record system meeting the definition of a system of records defined in DoD 5400.11–R.

(2) Regarding new or revised records systems, each OSD Component shall provide the DASD(A) with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the Office of Management and Budget (OBM) and to Congress at least 60 days before use and to the **Federal Register** at least 30 days before being put into use, in order to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD Regulation 5400.11–R.

(b) *Access to Information on Records Systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11–R.

(2) There is no requirement under the Privacy Act of 1974 that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(4) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(5) Individuals shall not be denied access to a record in a system of records pertaining to themselves because those records are exempted from disclosure under DoD 5400.7–R. This regulation states that "an exempted record shall be made available upon request of any individual when, in the judgment of the releasing Component or higher authority, no significant, legitimate, governmental purpose would be served by withholding it under an applicable exemption."

(6) Individuals shall not be denied access to their records for refusing to disclose their Social Security Numbers (SSNs), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(7) Any individual may request access to a record pertaining to him or her, in person or by mail, in accordance with the procedures outlined in paragraph (b)(8) of this section.

(8) Information necessary to identify a record is: the individual's name, date of birth, place of birth, identification of the records system as listed in the **Federal Register**, or sufficient information to identify the type of records being sought, and the approximate date the records might have been created. Any individual making a request for access to records in person shall come to the Directorate for Freedom of Information and Security Review, DFOI/SR, OASD(PA) Room 2C757, Pentagon, Washington, D.C. 20301–1155; and shall provide personal identification acceptable to the Director, DFOI/SR, to verify the individual's identity (e.g., driver's license, other licenses, permits, or passes used for routine identification purposes).

(9) If an individual wishes to be accompanied by a third party when seeking access to records or wishes to have the record released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(10) Any individual submitting a request by mail for access to information shall address such request to the Directorate for Freedom of Information and Security Review, OASD(PA), Pentagon, Room 2C757, Washington, D.C. 20301–1155. The request shall include a signed notarized statement to verify his or her identity or an alternate verification for individuals, such as military members overseas who do not have access to notary services.

(11) The following procedures shall apply to requests for access to investigatory records:

(i) Individuals requesting access to investigatory records pertaining to themselves and for law enforcement purposes are processed under DoD 5400.11–R or DoD 5400.7–R depending on which regulation gives them the greater degree of access.

(ii) Individual requests for access to investigatory records pertaining to themselves compiled for law enforcement purposes (and in the custody of law enforcement activities) that have been incorporated into the records system, exempted from the access provisions of DoD 5400.11–R, will be processed in accordance with Section B, Chapter 5, DoD 5400.11–R. Individuals shall not be denied access to records solely because they are in the exempt system, but they will have the same access that they would receive under DoD 5400.7–R. (Also see subsection A.10., Chapter 3, DoD 5400.11–R).

(iii) Requests by individuals for access to investigatory records pertaining to themselves that are in records systems exempted from access provisions will be processed under subsection C.1. of Chapter 5, DoD 5400.11–R or DoD 5400.7–R, depending upon which regulation gives the greater degree of access. (See also subsection A.10., Chapter 3, DoD 5400.11–R).

(iv) Individual requests for access to investigatory records exempted from access under Section B, Chapter 5, DoD 5400.11–R that are temporarily in the hands of a noninvestigatory element for adjudicative or personnel actions, will be referred to the originating investigating agency. The requester will be informed in writing of these referrals.

(12) The following procedures shall apply to requests for illegible, incomplete, or partially exempt records:

(i) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(ii) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(iii) When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that it will be understood by the requester.

(iv) The requester shall be informed of all deletions or changes to records.

(13) Medical records shall be disclosed to the individual they pertain to, unless a determination is made in consultation with a medical doctor, that the disclosure could have adverse effects on the individual's physical or mental health. Such information may be transmitted to a medical doctor named by the individual concerned.

(14) The individual may be charged reproduction fees for copies or records as outlined in DoD 5400.11–R.

(c) *Request To Amend Personal Information in Records Systems and Disputes.* (1) The Head of an OSD Component, or the designated official, shall allow individuals to request amendment to their records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests should be as brief and as simple as possible and should contain, as a minimum, identifying information to locate the record, a description of the items to be amended, and the reason for the change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(8) of this section to ensure that they are seeking to amend records pertaining to themselves, and not, inadvertently or intentionally, the records of others.

(2) The appropriate system manager shall mail a written acknowledgment to an individual's request to amend a record within 10 days after receipt, excluding Saturdays, Sundays, and legal public holidays. Such acknowledgment shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed, processed, and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend the records:

(i) If the OSD Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures, and inform the requester of the action taken. The OSD Component official shall also notify all previous holders of the record that the amendment has been made, and shall explain the substance of the correction.

(ii) If he or she disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure established by OSD for an appeal as outlined in paragraph (c)(6) of this section.

(iii) If the request for an amendment pertains to a record controlled and maintained by another Federal agency, the request shall be referred to the appropriate agency, and the requester advised of this.

(4) The following procedures shall be used when reviewing records under dispute:

(i) In response to a request for an amendment to records, officials shall determine the accuracy, relevance, timeliness, or completeness of the requested record. The Head of an OSD Component, or designated official, shall develop tolerances for accuracy, relevance, and timeliness by giving consideration as to whether such tolerances could result in consequences adverse to the individual.

(ii) The Head of an OSD Component, or designated official, shall limit the review of a record to those items of information that clearly bear on any determination to amend the records and shall ensure that all those elements are present before determination is made.

(5) If the Head of an OSD Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of a record, he or she shall:

(i) Advise the individual of the denial and the reason for it.

(ii) Inform the individual that he or she may request a further review.

(iii) Describe the procedures for requesting such review including the name and address of the official to whom the request should be directed. The procedures should be as brief and simple as possible and should indicate where the individual can seek advice or assistance in obtaining such review.

(iv) Furnish a copy of the justification of any denial to amend a record to DASD(A).

(6) If an individual disagrees with the initial OSD determination, he or she may file a request for further review of the record. The request should be sent to the Deputy Assistant Secretary of Defense (Administration), Department of Defense, The Pentagon, Washington, DC 20301–1155, if the record is created and maintained by an OSD Component.

(7) If, after review, the DASD(A) further refuses to amend the record as requested, the DASD(A) shall advise the individual:

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(i) Of the refusal and the reason for it.

(ii) Of his or her right to file a statement of the reason for disagreeing with the DASD(A)'s decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement, at the discretion of the OSD Component, summarizing its reasons for refusing to amend the records.

(v) That prior recipients of copies of disputed records shall be provided a copy of any statement of dispute to the extent that an accounting of disclosure is maintained.

(vi) Of his or her right to seek judicial review of the DASD(A)'s refusal to amend a record.

(8) If, after the review, the DASD(A) determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(9) The final OSD determination on an individual's request for a review of the DASD(A)'s refusal to amend the record must be concluded within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. If the DASD(A) determines that a fair and equitable review cannot be made within that time, the individual will be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(d) *Disclosure of Disputed Information.* (1) After the DASD(A) has refused to amend a record and the individual has filed a statement under paragraph (c)(7) of this section, the OSD Component shall clearly annotate the record so that the proceeding is clear to any authorized person to whom the record is disclosed. The notation itself shall be integral to the record. Where an accounting of a disclosure has been made, the OSD Component shall advise previous recipients that the record has been disputed, and shall provide a copy of the individual's statement where requested.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is to be disclosed.

(ii) When information that is the subject of a statement of dispute is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3) of this section.

(e) *Penalties*—(1) *Civil Action.* (i) An individual may file a civil suit against the United States for:

(A) Refusal to amend a record.

(B) Improper denial of the access to a record.

(C) Failure to maintain a record accurately.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and lawyer's fees.

(iv) When the individual can show that personal damage was done because an OSD officer or employee failed to comply with the provisions of the Privacy Act of 1974, the United States may be assessed damages by the court at a minimum of $1,000.

(2) *Criminal action.* (i) Criminal penalties may be imposed against an OSD officer or employee for willful unauthorized disclosure of information in the records, for failure to publish a notice of the existence of a record system in the **Federal Register**, or for gaining access to the individual's record under false pretenses (i.e., against any person who knowingly and willfully requests or obtains any record concerning another individual without legal authorization).

(ii) An OSD officer or employee may be fined up to $5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation Status Sheet.* Whenever a complaint citing the Privacy Act of 1974 is filed in a U.S. District Court against the Department of Defense, a DoD Component, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.11–R provides a standard format for this notification. (The initial litigation status sheet shall, as a miniumum, provide the information required by items 1 through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

§ 286b.7 Procedures for exemptions.

(a) *General information.* The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 286b.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions.* [Reserved]

(c) *Specific exemptions.* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, "National Security Information," dated June 28, 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, "National Security Information," dated June 28, 1979, as amended, and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD system of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(i) *SYSID–DWHS P26, SYSNAME.* Protective Services File. Exemption.

This system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled for law enforcement purposes; or a record maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of the material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k) (2) and (3).

Reasons. These exemptions are necessary to maintain the confidentiality of the records compiled for the purpose of law enforcement, or protecting the President of the United States or others pursuant to 18 U.S.C. 3056.

(2) *SYSID–DWHS P28, SYSNAME.* The Office of the Secretary of Defense Clearance File:

Exemption. This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This exemption is required to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) *SYSID–DGC 04, SYSNAME.* Industrial Personnel Security Clearance Case Files.

Exemption. All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This system of records is exempt from subsections (c)(3) and (d) of Section 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) *SYSID–DWHS P32, SYSNAME.* Standards of Conduct Inquiry File. Exemption. This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k) (2) and (5).

Reasons. These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability, eligibility or qualifications for Federal civilian employment, military service, or Federal contracts of those alleged to have violated or caused others to violate the Standards of Conduct regulations of the Department of Defense.

(5) *SYSID–DUSDP 02, SYSNAME.* Special Personnel Security Cases.

Exemption. All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

Authority: 5 U.S.C. 552a(k)(5).

Reasons. This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

SYSID–DMRA&L 02.0, SYSNAME. Educator Application Files.

Exemption—All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

Authority—5 U.S.C. 552a(k)(5).

Reasons—It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the

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Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information necessary to make determinations involving applicants suitability for DoDDS teaching positions.

§ 286b.8 Information requirements.

The Defense Privacy Office shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 5000.19.

February 25, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4393 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

Proposed Rules

Federal Register
Vol. 51, No. 40
Friday, February 28, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 84-019P]

Deletion of Certain Labeling Requirements for "Pork With Barbecue Sauce" or "Beef With Barbecue Sauce"

Correction

In FR Doc. 86-3900 beginning on page 6415 in the issue of Monday, February 24, 1986, make the following correction:

On page 6415, first column, in the "**DATE**" paragraph, "1966" should have read "1986".

BILLING CODE 1505-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law; Insurance and Real Estate Underwriting, etc.

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Extention of deadline for consideration, adoption, and publishing of final rule.

SUMMARY: This notice serves to extend the period of time which the FDIC may take under its internal policy statement for the consideration, adoption, and publishing of the FDIC's final rule on participation by insured banks in real estate development and insurance underwriting activities.

DATE: The deadline for final agency action on the proposed rule is extended to September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202/898-3743) Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC's Statement of Policy on Development and Review of Rules and Regulations (44 FR 31007, 1979) states that it is the intention of the FDIC to formally withdraw any proposed regulation on which final action by the Board of Directors has not been taken within nine months from the date the regulation was last published for comment. The FDIC published on June 7, 1985 a proposed amendment to Part 332 of FDIC's regulations governing "Powers Inconsistent with the Purposes of Federal Deposit Insurance". (50 FR 23964, June 7, 1985). The proposed amendment would have, among other things, prohibited insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and established certain restrictions on the indirect conduct of such activities.

Pursuant to the FDIC's policy, final action on this proposed regulation should be taken by March 7, 1986 in order to avoid withdrawal of the proposed rule. Inasmuch as FDIC staff are still actively reviewing the June 7, 1985 proposal and two members of the FDIC's three member Board of Directors have changed since the regulation was published for comment, the FDIC's Board of Directors has determined that additional time is necessary for the staff to complete its review and for the Board of Directors to familiarize itself with the subject matter dealt with by the proposal. As withdrawing the proposal and initiating the rulemaking process anew will cause unnecessary delay, the Board of Directors has determined to extend the deadline for final agency action on the proposed regulation to September 8, 1986 by publication of this notice.

By order of the Board of Directors, 24th day of February, 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR. Doc. 86-4397 Filed 2-27-86; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Shipbuilding and Ship Repair Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: On June 27, 1985, SBA published in the Federal Register a Notice of Inquiry soliciting the public's views concerning the appropriateness of retaining the ship repair component of the Shipbuilding and ship repair size standard at 1,000 employees. This notice referred to a special preliminary study by the SBA which indicated that the size standard in both shipbuilding and ship repair activities should be retained at 1,000 employees. Public response to this notice has now strongly supported this point of view and SBA is now formally notifying the public that it will retain the 1,000-employee size standard for both shipbuilding and ship repair activities.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: In the notice of June 27, 1985 (50 FR 26582), the Size Standards Staff treated the shipbuilding and ship repair industry (SIC-3731) as if it were two separate industries—the shipbuilding industry and the ship repair industry. It asked the question whether either activity, when analyzed as a distinct industry, should merit a different size standard than 1,000 employees. It took two broad elements into consideration—the industrial structure of these two "industries" and the procurement needs of the Government.

In considering the industrial structure of the two activities, the seven factors described in our regulation were considered using indexes which included the concentration ratio (percent of total sales received by the four most dominant firms in the industry), the average firm size in receipts, coverage (the proportion of firms falling under the size standard), the size distribution of Government contracts, and the proportion of Federal contract dollars awarded small firms either through the set-aside or the unrestricted process.

These factors in general supported the view that a 1,000-employee size standard is appropriate for both shipbuilding and ship repair activities. Both activities have been dominated by a few very large firms and this pattern suggests relatively high size standards. Only one factor—size of contract—seemed to imply that a lower size

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standard than 1,000 employees might be appropriate for ship repair activities. However, this factor was clearly outweighed by the other factors, each suggesting that a high or very high size standard would be appropriate.

Other considerations tied to the procurement needs of the Government also argued strongly against a lower standard for either shipbuilding or ship repair activities. Updated data from the Department of Defense continued to indicate that set-aside contracts are distributed among a number of firms rather than concentrated among only a few firms. Moreover, the overall sophistication and reporting requirements of the Department of Defense would seem to imply a size standard in the 1,000-employee range to satisfy the procurement needs of the Federal Government.

The public response to the notice of June 27, 1985, also strongly supported a 1,000-employee size standard in both activities. Out of 32 commentors, 25 opposed the lower size standards, most perceiving the drive for a lower size standard as an attempt by very large firms to undercut the set-aside program by making it less attractive for the Department of Defense to set aside contracts. (A lower size standard would probably result in fewer set-aside contracts since there would be fewer eligible firms to compete for set-aside contracts).

From the seven commentors supporting the lower size standard of 500 employees in ship repair activities, only two issues were considered significant by SBA. These will each be reviewed.

Criticism: Contract data related to nuclear work awards should be separated from non-nuclear contract work for reason of analysis. Data for firms specializing in nuclear work should be separated from data for firms without nuclear capability since the two groups of firms only rarely compete for the same contracts. A separation of the data, from this perspective would show the non-nuclear component of the industry to be composed of smaller sized firms with smaller sized contracts and this in turn would suggest a lower size standard for ship repair activities.

Response: SBA believes that there is no logical basis to excluding data relating to certain firms based on their capital equipment or capabilities. Such a policy would require an additional standard for separating out acceptable data from other data simply because different equipment was involved. Moreover, the argument could be never ending with firms at every level arguing that they are not able to compete with larger sized firms because of capital equipment limitations.

Criticism: SBA should consider regional size standards for ship repair activities because the West and East Coast differ in the incidence of set-asides.

Response: The SBA has never considered varying size standards on a regional basis within particular industries as a viable alternative to a nationwide size standard. At present we have over 800 nationwide size standards and further subdivision based on regional variations could lead to thousands of different size standards with great administrative difficulties and considerable confusion. Moreover, inequities would arise since arbitrary geographical lines would define size standards and firms in one area of the nation would be treated differently from firms in another area in the same industry. There is a question whether such an unequal treatment would be legal. From an economic standpoint, firms might be motivated to change their area of operations simply because of size standard differences and this would be unfortunate from SBA's point of view. For these various reasons, SBA would be very reluctant to consider regional size standards even if it could be shown that significant regional differences exist.

The combination of SBA's internal analysis, the public's response and the strongly supportive view of the Navy has led SBA to the decision to retain the 1,000-employee size standard in both shipbuilding and ship repair activities. This size standard would appear to best meet the procurement needs of the Government as well as the needs of the small firm component of the industry at this point in time. Reinforcing the view that the ship repair size standard should be retained at 1,000 employees rather than lowered to 500 employees is the fact that only 12 percent of all Federal dollars for ship overhaul and repair work over the 1983–84 period was set aside for small firms. Accordingly the industry is now formally notified that SBA has decided to retain the size standard for both shipbuilding and ship repair activities at 1,000 employees, based on the structure of the industry and the procurement needs of the Government.

Dated: February 11, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–4411 Filed 2–27–86; 8:45 am]

BILLING CODE [illegible]-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–07–AD]

Airworthiness Directives; Lockheed-Georgia Company Model 1329 Series Airplanes (Jetstar), Equipped With Auxiliary Power Unit (APU) in Accordance With STC 1043WE or STC SA3297WE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require the replacement of the auxiliary power unit fuel supply shutoff valve with a modified valve on Lockheed 1329 airplanes equipped with Auxiliary Power Unit (APU) in accordance with Supplemental Type Certificate (STC) 1043WE or (STC) SA3292WE. This action is prompted by several incidents of fuel fumes entering the passenger compartment through the APU air inlet and air conditioning system from APU fuel control leaks in the APU compartment. This action is necessary to minimize the potential for fuel fumes entering the passenger compartment.

DATE: Comments must be received on or before April 22, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–07–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airesearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles, California 90045, or Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063, Attention: J. A. Smith. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Romy Santiago, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–07–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been at least seven reports of fuel fumes entering the passenger compartment through the APU air inlet and air conditioning system from APU fuel control leaks in the APU compartment on Lockheed-Georgia Model 1329 series airplanes. The FAA is aware of five incidents due to failure of components on the APU fuel control unit.

To correct this situation, Airesearch Aviation Company, the holder of the Supplemental Type Certificates (STC) on the APU installation, issued Service Bulletin No. 11.37, dated December 19, 1984, recommending replacement of the APU fuel supply shutoff value, Valcor V4700–13, with a modified value, Valcor V4700–130, having pressure relief capability, and visual inspection of the APU fuel control governor cover sealing joint for seal ring protrusion, cover distortion, or fuel leaks. Accomplishment of the inspection and modification described in Service Bulletin No. 11.37 is intended to minimize these fuel leaks and reduce the potential of fuel fumes from entering the passenger compartment.

Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being proposed which would require the replacement of the APU fuel supply shutoff valve with a modified valve and a visual inspection and replacement, if necessary, of the APU fuel control in accordance with the service bulletin previously mentioned.

It is estimated that 77 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $726 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $68,222.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($886.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Jetstar Model 1329 and Jetstar II series airplanes, equipped with Airesearch Aviation Company Model 30–92 Auxiliary Power Unit (APU) in accordance with STC SA1043WE or STC SA3297WE. Compliance required as indicated, unless previously accomplished.

To minimize the potential for fuel fumes entering the passenger compartment, accomplish the following:

A. Within the next 600 hours time-in-service or 12 months after the effective date of this AD, whichever occurs earlier:

1. Install an improved APU fuel supply shutoff valve, Valcor P/N V4700–130, in accordance with Airesearch Aviation Company Service Bulletin No. 11.37, dated December 19, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region; and

2. Visually inspect and replace, if necessary before further flight, the sealing joint of the fuel control governor cover for fuel leaks, seal (O-ring) extrusion, and cover distortion, in accordance with the Airesearch Aviation Company service bulletin mentioned above.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063, Attention: J. A. Smith; or Airesearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles, California 90045. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on February 21, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4306 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85–NM–158–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require replacement or modification of tank 1, 2, and 3 transfer pump check valves and associated pressure switches, and installation of additional surge relief valves. This action is prompted by numerous incidents in which failures occurred in fuel transfer lines. This action is necessary to

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minimize the potential of unusable fuel being trapped in any of the wing tanks and possible fuel imbalance, resulting in a reduction of airplane control or loss of range, or both.

DATES: Comments must be received on or before April 22, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–158–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglass Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Romy L. Santiago, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–158–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Operators have reported 22 instances of incontrolled fuel transfer to the center wing auxiliary fuel tank from wing tanks 1, 2, and 3 after refueling, caused by a fuel line break or fuel couplings separation. In one case, the fuel line break was large enough to prevent fuel transfer from the auxiliary tank. Investigation has revealed that a fuel coupling separation or a fuel line break in the center wing crossfeed manifold can allow fuel to gravity-feed from the wing tanks to the center wing tank through the wing tank transfer pumps. These pumps have a check valve at the pump outlet which opens at a relatively low pressure.

McDonnell Douglas issued DC–10 Service Bulletin 28–140 in May 1984, which describes the installation of replacement transfer pump check valves which have a higher opening pressure, and the replacement of associated doubler assemblies and pressure switches. Revision 1 of Service Bulletin 28–140, dated October 16, 1985, incorporates notes which coordinate with Service Bulletin 28–163.

In related problems, operators have reported over 80 instances of damaged fuel system check valves, broken welds, deformed flanges, and separated couplings. Investigation has revealed that these conditions were caused by excessive surge pressure being generated from the aircraft fill shutoff valves. If not corrected, these conditions could result in component and pipe failures, with a consequential inability to transfer fuel, dump fuel, or crossfeed fuel, and possible excessive unusable fuel or lateral imbalance.

Accordingly, McDonnell issued DC–10 Service Bulletin (S/B) 28–163, dated October 16, 1985, which recommends modification of the fill shutoff valve tube/tee assemblies and existing surge relief valves in tanks 1 and 3, and installation of new surge relief valves in tank 2.

The FAA intends to specify a common compliance time for the accomplishment of both DC–10 S/B 28–140 and DC–10 S/B 28–163. Since the former service bulletin was issued in May 1984 and laboratory tests by McDonnell Douglas have proved the seriousness and magnitude of the fill valve pressure surge problem, the final compliance time specified by the FAA would be 3,000 flight hours or one year, whichever occurs first. It is appropriate to assume that operators will accomplish both service bulletins at the same maintenance check.

Since this condition is likely to exist or develop on other DC–10 airplanes of the same type design, and airworthiness dircetive (AD) is being proposed which would require modification of the transfer pump check valves and associated pressure switches, and installation of additional surge relief valves in accordance with McDonnell Douglas DC–10. Service Bulletin 28–140, Revision 1, date October 16, 1985 and Service Bulletin 28–163, dated October 16, 1985, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

It is estimated that 189 airplanes of U.S. registry would be affected by this AD. I would require approximately 21 manhours per airplane to accomplish the required repair, and the average labor charge would be $40 per manhour. The cost of parts exclusive of surge relief valves is estimated at $5,284 per airplane. Based on these figures, the total cost impact of this Ad on U.S. operators would be $1,157,436.

For this reasons, the FAA has determined that this document: (1) Involves a proposed regulations which is not major under Exectuve Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–10 and KC–10A (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action in contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas; Applies to Model DC–10–10, –15, –30, and –40 and KC–10A (Military) series airplanes, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To preclude potential fuel feed line failures and resulting unusable fuel or fuel imbalance, complete the following:

A. Within the next twelve (12) months, or 3,000 flight hours, whichever occurs first, after the effective date of this Ad, complete the modifications and installations in accordance with the accomplishment instructions of McDonnell Douglas DC–10 Service Bulletin 28–140, Revision 1, dated October 16, 1985, and Service Bulletin 28–163, dated October 16, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on February 21, 1986

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4304 Filed 2–27–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–22]

Alteration of Billings, MT, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the size of the Billing, Montana, Control zone. During an annual review of control zones, it was determined that the billings, control zone could be reduced in size and still contain the instrument approached to the Logan Field Airport.

DATES: Comments must be received on or before May 2, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 85-ANM 22-17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM–535, Federal Aviation Administration, Docket No. 85–ANM–22, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemeking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ANM–22". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the size of the Billings, Montana, control zone to contain all Instrument Flight Rule arrivals and departures.

The PAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criterea of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/Aviation safety.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

Billings, Montana (Revised)

That airspace extending upward from the surface within a 5-mile radius of the Logan International Airport (45°48'29" N lat./108°32'25" W long.) and within 2 miles each side of the 113° bearing from the airport extending from the 5-mile radius area to 7 miles east of the airport; and that airspace between the 220° bearing clockwise to the 170° bearing from the airport extending from the 5-mile radius area to a 6-mile radius.

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Issued in Seattle, Washington, on February 20, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-4299 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-27]

Proposed Alteration of Helena Control Zone, Helena, MT.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document withdraws a NPRM which proposed to change the status of the Helena Control Zone from full-time to part-time. The National Weather Service modified its hours of operation and weather observations were not available from 0000 to 0400. Since the issuance of the NPRM, the National Weather Service has resumed their 24-hour operation; and therefore, the change in the status of the Helena Control Zone is not necessary. Accordingly, the NPRM is withdrawn.

DATE: This withdrawal is effective February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, Airspace Technical Specialist, Federal Aviation Administration, Docket No. 85-ANM-27, 17900 Pacific Highway South, C-68966, Seattle, WA 98168, Telephone: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On August 29, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Helena Control Zone from full-time to part-time (50 FR 35100). The National Weather Service had modified its hours of operation and weather observations were not available from 0000 to 0400. Comments were requested from the public.

Since issuing the NPRM, the National Weather Service has informed FAA that they have resumed their 24-hour operation at Helena, Montana, and weather observations are available. Therefore, the change in the control zone status is not required and the NPRM is withdrawn.

Since this action only withdraws a NPRM, it may be made effective in less than 30 days. It is neither a proposal nor final rule; and therefore, is not covered under Executive Order 12291 or the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the FAA withdraws a proposal to amend § 71.171 or Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By withdrawing the NPRM published in the **Federal Register** on August 29, 1985 (50 FR 35100), FR Doc. 85-20606.

Issued in Seattle, Washington, on February 20, 1986.

David E. Jones,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-4300 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-8]

Proposed Designation of Transition Area; Madisonville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Madisonville, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Madisonville Municipal Airport. This action is necessary since there is a proposed VOR/DME SIAP to the Madisonville Municipal Airport utilizing the Leona VORTAC (LOA). This proposed action will benefit aircraft conducting instrument flight rules (IFR) activity at Madisonville Municipal Airport. Coincident with this proposed action, the airport status will be changed from visual flight rules (VFR) to IFR.

DATES: Comments must be received within 45 days after publication of this notice in the **Federal Register**.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86-ASW-8, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2622.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASW-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating a 700-foot transition area at the Madisonville Municipal Airport, Madisonville, TX. To enhance airport usage, a new instrument approach procedure is being developed for the Madisonville Muncipal Airport, utilizing the Leona VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Madisonville, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This proposed action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400-6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revise Pub. L. 97-449, January 12, 1983); 14 CFR 11.65.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Madisonville, TX New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Madisonville Municipal Airport (latitude 30°54'40" N., longitude 95°57'05" W.).

Issued in Fort Worth, TX, on February 13, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-4366 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85-AWA-51]

Proposed Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice corrects mistakes noted in the descriptions of J-208 in which "Hopeville, VA," should read "Hopewell, VA;" in J-210, where "Vance, SC" was inadvertently omitted; and J-209 to include "Norfolk, VA" as published in the **Federal Register** on January 21, 1986 (51 FR 2721). This proposal is a segment of the Expanded East Coast Plan (EECP) designed to make optimum use of the limited airspace along the east coast corridor.

DATES: Comments must be received on or before March 6, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-51, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-51." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

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The Proposal

In this supplemental notice the FAA is changing the proposed amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to correct mistakes noted in the original proposal published on January 21, 1986 (51 FR 2721). Also, the FAA proposes to extend J–209 from Tar River, NC, direct to Norfolk, VA. These route segments are a part of an overall plan designed to alleviate congestion and compression of traffic in the airspace between new England and Florida. This proposal is a portion of the EECP designed to make optimum use of limited airspace along the east coast corridor. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

J–206 [New]

From Athens, GA, via Liberty, NC; to Hopewell, VA.

J–209 [New]

From Greenwood, SC, via Tar River, NC; to Norfolk, VA.

J–216 [New]

From INT Savannah, GA, 266° T(267° M) and Vance, SC, 221° T(223° M) radials; Vance; to Wilmington, NC.

Issued in Washington, DC on February 21, 1986.

Shelomo Wuglater,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4362 Filed 2–27–86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 85–349]

Cable Television Systems; Carriage of Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Extension of time for reply comments.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the Notice of Inquiry and Notice of Proposed Rule Making in MM Docket No. 85–349. This Notice requested comments and specific rule proposals regarding matters concerning carriage of television broadcast stations by cable television systems. The extension of time was requested by Adelphia Communications Corporation *et al.*

DATES: Reply comments are due March 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

The Proposed Rule in this proceeding was published on November 22, 1985 (50 FR 48232).

Order Extending Time for Filing Reply Comments

In the matter of amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems (MM Docket No. 85–349)

Adopted: February 20, 1986.
Released: February 21, 1986.
By the Acting Chief, Mass Media Bureau.

1. On February 18, 1986, Adelphia Communications Corporation *et al.* filed a motion requesting that the reply comment date in this proceeding be extended until March 4, 1986. The extension is said to be needed in order to review the large number of initial comments and to formulate adequate replies to the complex issues raised therein.

2. Good cause having been shown, the requested time extension will be granted.

3. Accordingly, it is ordered that the time for filing reply comments in the above-captioned proceeding is extended to and including March 4, 1986.

4. This action is taken pursuant to authority found in section 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

5. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau (202) 632–6302.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 86–4388 Filed 2–27–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adverse Effect Wage Rate for Montana; Reopening of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the comment period on a proposed rule to amend the regulations for the certification of temporary employment of nonimmigrant aliens in agriculture in the United States to add Montana to the list of States for which adverse effect wage rates (AEWRs) are computed and published annually. This action is taken to permit additional time for comments from interested parties.

DATE: The public is invited to submit written comments on the proposed rule on or before March 31, 1986.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration Room 8100—Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213, Attention: Mr. Richard C. Gilliland, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening. Telephone: 202–376–6228.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1985, at 50 FR 50311, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published a notice of proposed rulemaking to amend its regulations at 20 CFR Part 655 for the certification of temporary employment of nonimmigrant aliens in agriculture in the United States to add Montana to the list of States in 20 CFR § 655.207(b)(2) for which adverse effect wage rates (AEWRs) are computed and published annually. The AEWR for Montana will be established and set to prevent the employment of these aliens from having an adverse effect on the wages of similarly employed United States workers.

The public was invited to submit written comments on the proposed rule to ETA on or before January 9, 1986. Many commenters submitting comments on the proposed rule requested an extension of the comment period, in part because the comment period included public holidays. They requested an extension of time to allow the public to submit additional information which they believe DOL should consider before a final decision is reached on the rulemaking.

DOL has determined, therefore, to grant the above-referenced requests, and, in this one instance in this rulemaking, to reopen the comment period for an additional 30 days after the publication of this notice in the **Federal Register**.

Accordingly, the comment period on the proposed rule published in FR Doc. 85–29279 at 50 FR 50311 on December 10, 1985, is hereby reopened for a period concluding on the date set forth above in the "DATE" section.

Signed at Washington, D.C., this 18th day of February, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–4354 Filed 2–27–86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 86–5, Notice No. 2]

Truck Size and Weight; Specialized Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplementary information to advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The following information supplements Docket 86–5 published at 50 FR 52940 on December 27, 1985. The maxi-cube design that is discussed herein, is in addition to, not in place of, the combination of vehicles described in the December 27, 1985, notice. The petitioner has requested that this particular combination of vehicles also be designated as specialized equipment under the provisions of Section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA).

DATE: The comment period on this docket has been extended to March 17, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86–5, Notice No. 2, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. J.B. Smith, Office of Motor Carrier Transportation (202) 426–5370 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: LHT Industries has filed an amended petition seeking a determination that an additional or alternative design also be classified as "specialized equipment" within the meaning of 411(d) of the STAA, 49 U.S.C. 2311(d). The alternative maxi-cube design is primarily different in that a two-axle truck (truck tractor) will be utilized rather than a three-axle power unit; the front cargo box (semitrailer) will be equipped with a single axle rather than no axles; the forward hold-down clamps securing the cargo box (semitrailer) to the truck (truck tractor) frame are eliminated; and the rear coupling pins are increased from 2 inches to 3 inches in diameter.

The front single-axle semitrailer on the newly proposed design is coupled to the tractor by conventional methods—kingpin and fifth wheel assembly plate. The front single-axle semitrailer is also secured at the rear of the tractor frame by 3-inch coupling pins that interface with the front semitrailer and provide semitrailer lateral and vertical stability. The kingpin and fifth wheel assembly act as a coupling and not a point of articulation. The second trailing semitrailer is connected by a drawbar coupling assembly to the rear of the front semitrailer and provides a single point of articulation. The total length of the combination of vehicles will not exceed 65 feet. (See Figures 1 and 2)

The FHWA is requesting public comments relative to this request by LHT Industries. The FHWA is primarily seeking comments and information on the following issues relating to the maxi-cube: maneuvering characteristics, safety, control, offtracking, crosswind effects and the need for overall length limits on such a configuration. The FHWA would also appreciate comments on the petitioner's stated advantages to this vehicle. Finally, FHWA would appreciate comments regarding the need to preempt current State regulation of this vehicle. Any other comments and information are invited.

The FHWA has determined, at this time, that this document contains neither a major rule under Executive Order 12291, nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared, if necessary, based upon the data received in response to this notice.

Based upon the information available to FHWA at this time, the action taken in this rulemaking will not have significant impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultations and Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 U.S.C. 2311(d); 49 CFR 1.48.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highway and roads, Motor carriers—size and weight.

Issued on: February 21, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

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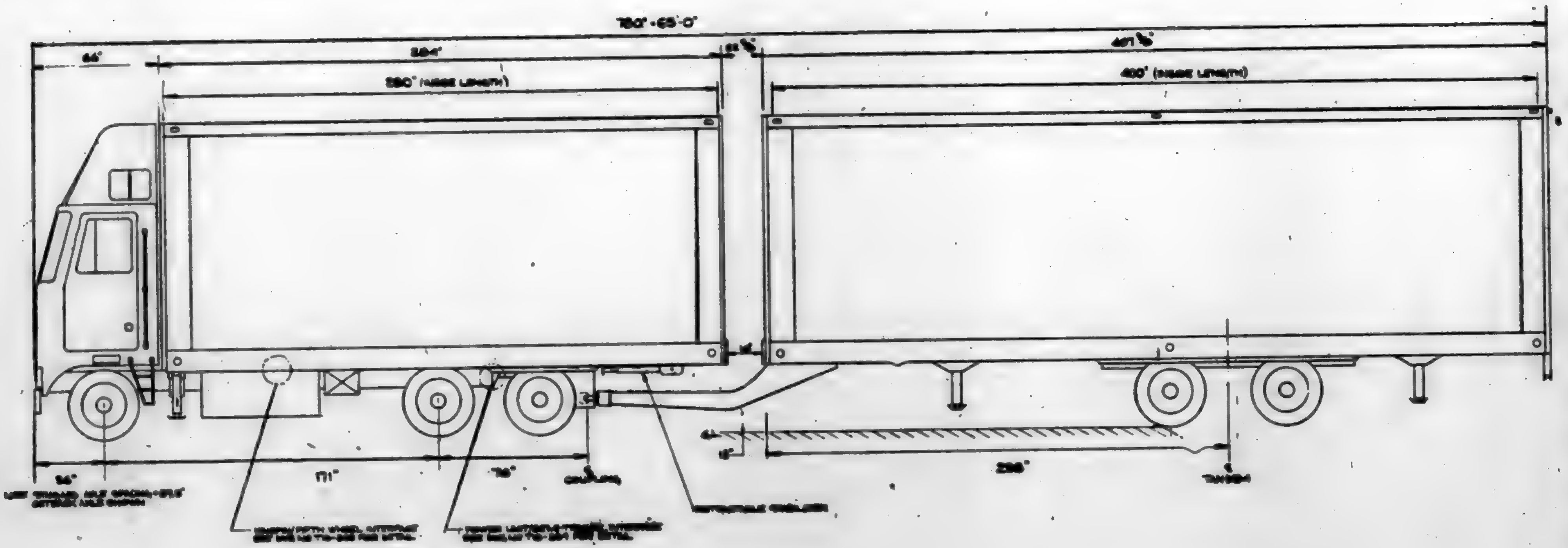
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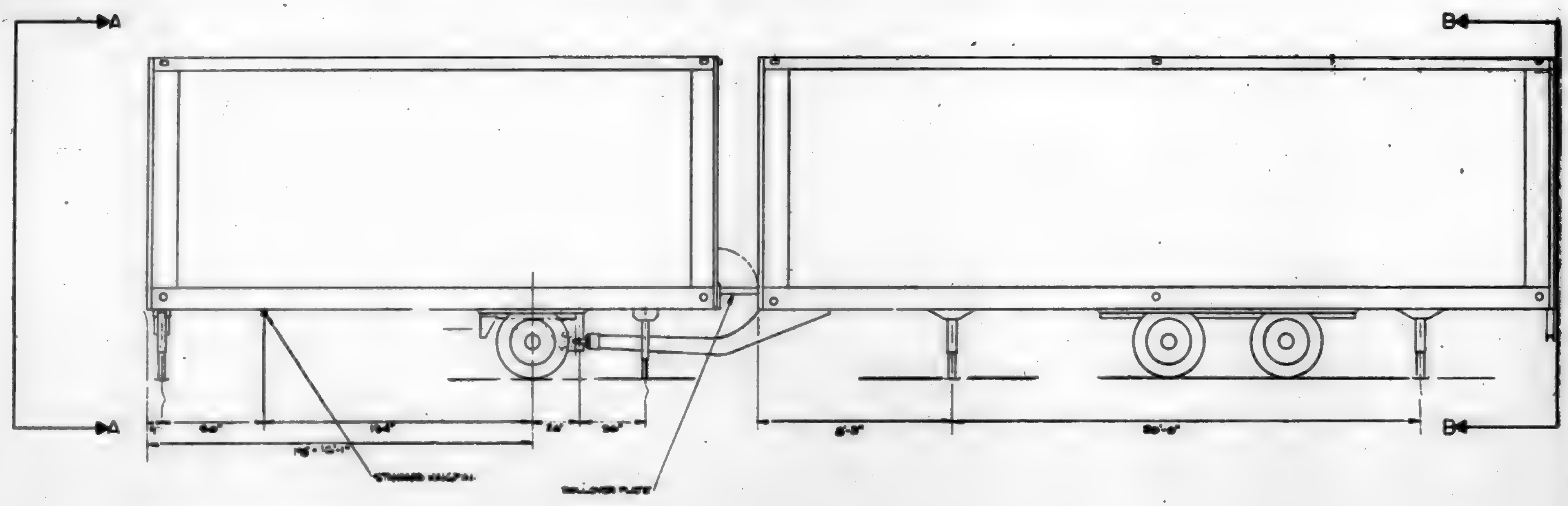

[FR Doc. 86-4356 Filed 2-27-86; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 37]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Adjunctive Dental Benefit

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Amendment of Rule.

SUMMARY: This amendment to the DoD Regulation 6010.8–R (32 CFR 199) would revise the adjunctive dental benefit to allow for payment of dental care when performed in preparation for medical treatment of a disease or disorder or required as the result of iatrogenic dental trauma or complications caused by medically necessary treatment of an injury or a disease.

EFFECTIVE DATE: Written public comments must be received on or before March 31, 1986.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, OCHAMPUS, Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone 303–361–8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–4, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this Title. This regulation was issued under the authority of and in accordance with Chapter 55, Title 10, United States Code.

Our previous interpretation of the regulatory implementation of section 1079(1) of this Title limited payment to that dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition. This specifically excluded restoration of teeth and their supporting structures when injured or affected during the medical or surgical management of the medical condition.

In a final appeal decision the Assistant Secretary of Defense Health Affairs determined that this interpretation had unduly narrowed the intent of the adjunctive dental care benefit and that CHAMPUS should include cost sharing of medically necessary adjunctive dental care when performed in preparation for medical treatment of a disease or disorder or required as a result of dental trauma or complications caused by medically necessary treatment of an injury or disease (iatrogenic). Dental care undertaken solely for the purpose of mitigating the consequences of the damage which may be caused by necessary medical treatment of an injury or a disease should be considered an integral part of the treatment of the medical condition rather than simply a preventative measure. Preventative care is defined as that care usually consisting of relatively benign measures which have a neutral or beneficial effect on the general health of the patient.

Since general implementing provisions limiting the adjunctive dental benefit to that care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition have been difficult to understand by providers and beneficiaries, a list of covered conditions has been incorporated into this proposed rule. These include those conditions which were previously covered under the program and those that will be covered under the new benefit interpretation. The treatment of these and similar conditions identified by the Director of OCHAMPUS may be paid under the adjunctive dental benefit. This will allow program flexibility in considering rare conditions or unusual situations not found on the list. The OCHAMPUS Policy Manual will contain detailed procedural guidelines for processing and adjudication of adjunctive dental claims.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense, and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.8 is amended by adding definitions for "adjunctive dental care" and "dental care" in the proper alphabetical order as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

Adjunctive Dental Care. Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition; or, is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic).

* * * * *

Dental Care. Services relating to the teeth and their supporting structures.

* * * * *

§ 199.10 [Amended]

3. Section 119.10 is amended by revising paragraphs (e)(10)(i), (e)(10)(ii) and the Note following paragraph (e)(10)(iv)(*h*) to read as follows:

* * * * *

(e) * * *

(10) * * *

(i) *Adjunctive Dental Care: Limited.* Adjunctive dental care is limited to those services and supplies provided under the following conditions:

(*a*) Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition. The following is a list of conditions for which CHAMPUS benefits are payable under this provision:

(*1*) Intraoral abscesses which extend beyond the dental alveolus.

(*2*) Extraoral abscesses.

(*3*) Cellulitis and osteitis which is clearly exacerbating and directly affecting a medical condition currently under treatment.

(*4*) Removal of teeth and tooth fragments in order to treat and repair facial trauma resulting from an accidental injury.

(*5*) Myofacial Pain Dysfunction Syndrome.

(*6*) Ankyloglossia.

(*7*) Adjunctive dental and orthodontic support for cleft palate.

(*8*) The prosthetic replacement of either the maxilla or the mandible due to the reduction of body tissues associated with traumatic injury (e.g., impact, gun shot wound), in addition to services related to treating neoplasms or iatrogenic dental trauma.

Note.—The test of whether dental trauma is covered is whether the trauma is solely

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dental trauma. Dental trauma, in order to be covered, must be related to, and an integral part of medical trauma; or a result of medically necessary treatment of an injury or disease.

(*b*) Dental care required in preparation for medical treatment of a disease or disorder or required as the result of dental trauma caused by the medically necessary treatment of an injury or disease (iatrogenic).

(*1*) Necessary dental care including prophylaxis and extractions when performed in preparation for or as a result of in-line radiation therapy for oral or facial cancer.

(*2*) Treatment of gingival hyperplasia, with or without periodontal disease, as a direct result of prolonged therapy with Dilantin (diphenylhydantoin) or related compounds.

(*c*) Dental care is limited to the above and similar conditions specifically prescribed by the Director, OCHAMPUS, as meeting the requirements for coverage under the provisions of this section.

(ii) *General Exclusions.*

(*a*) Dental care which is routine, preventative, restorative, prosthodontic, periodontic or emergency does not qualify as adjunctive dental care for the purposes of CHAMPUS except when performed in preparation for or as a result of dental trauma caused by medically necessary treatment of an injury or disease.

(*b*) The adding or modifying of bridgework and dentures.

(*c*) Orthodontia, except when directly related to and an integral part of the medical or surgical correction of a cleft palate or when required in preparation for, or as a result of, trauma to the teeth and supporting structures caused by medically necessary treatment of an injury or disease.

* * * * *

(e) * * *

(10) * * *

(iv) * * *

(*h*) * * *

Note.—Extraction of unerupted or partially erupted, malposed or impacted teeth, with or without the attached follicular or development tissues, is not a covered oral surgery procedure except when the care is indicated in preparation for medical treatment of a disease or disorder or required as a result of dental trauma caused by the necessary medical treatment of an injury or illness. Surgical preparation of the mouth for dentures is not covered by CHAMPUS.

* * * * *

Dated: February 24, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4329 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR Part 701

Availability of Department of Navy Records and Publications of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Amendment to proposed rule.

SUMMARY: The Department of the Navy proposes to establish a specific exemption from certain provisions of the Privacy Act for a system of records.

DATES: Comments must be received on or before March 31, 1986.

ADDRESS: Send any comments to Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Mrs. Aitken at the above address or telephone: 202/697-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes to exempt certain provisions of system of records N05300-3, "Faculty Professional Files" under the provisions of 5 U.S.C. 552a (k)(5).

List of Subjects in 32 CFR Part 701

Privacy, Exemption, Investigative information, Records.

Accordingly, it is proposed to amend Subpart G of 32 CFR Part 701 as follows:

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93-502, 32 CFR Part 286 (40 FR 6190). Subpart E also issued under 32 CFR Part 296 (40 FR 4911), unless otherwise noted.

2. Add paragraph (n) to § 701.117.

PART 701—[AMENDED]

Subpart G—Privacy Act Exemptions

* * * * *

§ 701.117 Exemptions for specific Navy record systems.

* * * * *

(n) Naval Postgraduate School—(1) ID-N05300-3.

System name: Faculty Professional Files

Exemption: Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a: (c)(3), (d), e(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a (k)(5).

Reason: Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 21, 1986.

[FR Doc. 86-4186 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-2903-8]

Requirements for Implementation Plans: Surface Coal Mines and Fugitive Emissions; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: On October 26, 1984, EPA proposed rulemaking which would cause the fugitive emissions from surface coal mines to be considered in determinations of whether construction involving those entities would be required to obtain major source new source review (NSR) permits (49 FR 43211). In that notice, EPA announced that it was preparing a Regulatory Impact Analysis (RIA) of the subject proposal and would make that document available for public comment. By this notice, EPA announces that the RIA is available for review and that the public comment period is reopened.

The previous notice also prompted special concerns on the part of the mining industry with respect to certain generic issues arising from the review of fugitive emissions. The comment period is hereby reopened to receive further comment on those specific issues.

DATES: The comment period will remain open until April 29, 1986. The public hearing will be held on April 9, 1986, at 10:00 a.m.

ADDRESSES: Comments should be submitted (triplicate, if possible) to: Central Docket Section (LE-131A), EPA, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-84-33.

Public hearing: Room 239, Federal Building, Corner of 20th Stout St., Denver, Colorado.

Docket: The EPA established a docket for this rulemaking, Docket No. A-84-33, in accordance with Section 307(d) of the Clean Air Act (Act), 42 U.S.C. 7607(d), and its contents will serve as the record in case of judicial review under that section. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kirt Cox, New Source Review Section, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 (telephone 919-541-5591, FTS-629-5591).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 302(j) of the Act, fugitive emissions are included in determining whether a source is "major," for NSR purposes, "as determined by rule by the Administrator." On October 26, 1984, EPA proposed that surface coal mines be added to the list of 30 source categories for which fugitive emissions are included in determining whether a source is "major" (49 FR 43211).

The EPA based its proposal on the interpretation that Congress intended that the Agency make only two determinations before requiring that fugitive emissions be included in applicability determinations pursuant to Section 302(j) of the Act. The first of these is that the sources have the potential to degrade air quality significantly; the second is that no unreasonable socioeconomic impacts relative to benefits would result from subjecting the sources to NSR. The first finding is adequate to support a proposal to list. The EPA will promulgate a proposed listing unless public comment affirmatively demonstrates that unreasonable socioeconomic impacts would result. It was pursuant to this model that EPA made the subject proposal with respect to mines. The EPA has been collecting the rulemaking record relevant to the second finding.

In the proposal, EPA reported that it was preparing an RIA, as described in Executive Order 12291, in order to aid in the evaluation of special issues related to the proposed action. The EPA indicated that it would make the results of the analysis available to the public for comment before taking final action on the proposal (49 FR at 43212). This procedure was further described in EPA's notice of December 17, 1984 (49 FR 48948). In that notice EPA reported that, upon completion of the analysis, it would announce the RIA's availability by a **Federal Register** notice and reopen the public comment period.

II. Reopening of the Public Comment Period

By this notice, EPA announces the availability of the RIA and the reopening of the public comment period for comment on it. Copies of the study may be obtained, subject to available supplies, from EPA's Office of Air Quality Planning and Standards by contacting Mr. Cox at the address noted above. The analysis has also been placed in the official rulemaking docket (Docket No. A-84-33) and is available for inspection and copying at the time and place indicated above. Although the focus of this reopening of the comment period is on the RIA, further comment on the proposal with respect to surface coal mines and the generic fugitive emissions issues discussed below in Part IV, will be accepted. The public comment period with respect to the existing list of 30 source categories and to the relevance of section 302(j) to review of modifications has closed and is not being reopened.

III. The Regulatory Impact Analysis

A. Summary

The analysis evaluates the projected consequences of alternative approaches to regulating new and modified surface coal mines as major construction projects under new source review. It considers benefits, costs, and general environmental and economic impacts.

Four regulatory alternatives are examined:

1. Do not list surface coal mines (the status quo).
2. List all new surface coal mines, grandfather increment consumption.
3. List all new surface coal mines, do not grandfather increment consumption.
4. IV. List only surface coal mines impacting Class I and Mandatory Class II areas.

Five important coal basins are investigated for Alternative II: Powder River, San Juan, Fort Union, Illinois, and Appalachian. Powder River serves as a case study for Alternative III; Bryce Canyon National Park and Chaco Culture National Historic Park are reviewed relative to Alternative IV. These areas are evaluated for the year 1995.[1] The costs evaluated arise from application of best available control technology and, more importantly, from size limitations in surface coal mines because of ambient constraints. Benefit categories include mortality, morbidity, and soiling for Alternatives II and III, and visibility for Alternative IV. The study also examines national impacts involving coal price and production, and the cost of electricity

The costs determined under Alternative II and III, considerably exceed the benefits. The reason for this is that the modeling techniques employed indicate varying, but often significant, constraints on mine size as a result of prevention of significant deterioration (PSD) increment limitations. By contrast, relatively few people live in most mining basins; thus the benefits of cleaner air in those places are extremely limited. The results regarding Alternative IV are significantly different. Since less than 1 percent of the nation's coal reserves lie near Class I and Mandatory Class II areas, societal costs of regulation are expected to be relatively small. Benefits from protecting these areas of special scenic and ecologic importance can, however, be appreciable, although difficult to quantify.

It should be noted that the analysis of costs and benefits for Alternative IV is conducted with an assumption that no other regulatory program would protest Class I and Mandatory Class II areas from surface coal mines. It is possible, however, that other programs, notably the one operated by the Department of the Interior (DOI) pursuant to the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* could address similar problems. EPA therefore seeks comment on the effectiveness of such programs in protecting Class I and Mandatory Class II areas. EPA has requested an analysis of this issue from DOI. Responses will be placed in the rulemaking docket.

B. Role of the Study

This RIA has been prepared for two reasons. First, it satisfies the Executive Order 12291 requirement that major rulemakings consider economic consequences. Second, it was prepared for use in assisting the Administrator in making his decision on the final action on the October 26, 1984, proposal to list surface coal mines.

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[1] For Alternative IV. Chaco Culture National Historic Park is evaluated for 1989 and Bryce Canyon is evaluated for 1996.

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Legally, EPA has broad discretion in its use of the study. The Act allows economics to be taken into account in making this decision but does not mandate any specific test or standard.

The EPA sees this study as an important source of information for this decision-making process. Nonetheless, the Administrator will rely on the entire rulemaking record in making his final decision on this matter; no single document has a determinative role. The inherent imprecision in any such economic analysis makes it unwise to give conclusive weight to any finding that a particular alternative is simply economically more desirable than another. Also, a study cannot quantify in monetary terms all factors germane to the final decision. These more subjective concerns are explained briefly below.

Several factors limit the precision of the RIA. First, mines are unconventional sources that are not as readily evaluated as traditional industrial sources. They can appropriately be described as having a series of temporary, relocating emissions activities at one large, fixed location. Controversy also surrounds the application of many technical aspects of the review process. Modeling procedures are highly contested, as are certain emissions factor issues such as pit retention. Because the Act does not directly address the particular problems which mines may have but which are not experienced by most other sources of fugitive emissions, EPA had to make difficult policy assumptions which significantly affect the review of certain fugitive emissions points. Similarly, certain simplifying assumptions, such as basing the analysis on review of prototypical mines, are used in the analysis. All of the above factors have made preparation of the RIA more difficult, limit the precision of the analysis, and militate against relying solely on it.

A decision on a rulemaking involving important national issues should also consider issues beyond the scope of an economic study. For example, one or more of the regulatory options might have a pronounced effect upon national coal price or supply. Such an impact on the nation's energy supply could have ramifications to national security, trade balances, or international relations. Such factors are beyond the scope of regulatory analysis, and could be addressed with only limited precision in any case. Additionally, certain other factors, even though more traditionally economic in nature, are not evaluated by the study. For example, the study does not quantify costs of additional rail lines and other transportation systems required because the proposed regulations would potentially create more, smaller, surface mines. Nonetheless, such factors would add to the cost estimates and should be considered in the final decision.

Selection of the most reasonable option is thus not a simple process. The net benefit figures projected for various regulatory strategies by the RIA do not conclusively determine the relative values of these strategies. Instead, the final decision of whether to list will take into account many more factors than the numerical results of the study, most notably the record established by the commenters.

IV. Other Fugitive Emissions Issues

The October 26, 1984, proposal also reopened the public comment period on the existing list of 30 source categories for which fugitive emissions are included in determination of major source status. Further, the notice solicited comment on an interpretive ruling involving section 302(j) of the Act in relation to the review of modifications involving fugitive emissions at sources that are already "major."

Public comment on these matters was generally limited. However, representatives of the mining industry have expressed special additional concerns involving, generally, the definition of "source" which EPA uses in NSR applicability determinations. The essence of their argument is that some mines could be made subject to major preconstruction review even if EPA does not promulgate the proposed listing of surface coal mines. The EPA hereby solicits further comment on these matters.

At first look, the issue appears straightforward: if EPA list mines, fugitive emissions will be counted in future applicability determinations; if mines are not listed, fugitive emissions would not be counted. Since mines emit predominantly fugitive particulate matter, mines would not be subject to NSR because, without being listed pursuant to section 302(j) rulemaking, their potential to emit does not reach "major" status. That is, indeed, the case for isolated operations that engage solely in mining. However, mining associated with more conventional industrial activity may trigger NSR even if mines are not listed. This can arise from the definition of "source," as it pertains to standard industrial classification (SIC) groupings, to the concept of "support facility," or to EPA's requirements for modifications at sources already "major." These matters, described below, are vigorously addressed by some industry commenters, notably the American Mining Congress and National Coal Association.

The NSR regulations use the SIC code as the fundamental definitional tool for identifying the types of activities that are grouped together as a "source." This approach generally works well but poses a potential problem to the mining industry. For example, SIC 12, "bituminous coal and lignite mining," includes not only the mine proper but also coal preparation plants. Coal preparation plants are sometimes subject to NSR, especially since they are already listed with respect to the inclusion of fugitive emissions. "Coal cleaning plants (with thermal dryers)," a subset of coal preparation plants, is on the list of 30 for which fugitive emissions are counted in applicability determinations. In addition, there is a new source performance standard for coal preparation plants (40 CFR Part 60, Subpart Y). This standard was created prior to August 7, 1980, thereby rendering these sources as listed (*see e.g.*, 40 CFR 52.21(8)(4)(vii)(aa)).

These facts have two ramifications. First, stack and fugitive emissions at the coal cleaning plant would, of course, be summed in determining whether it would be a major stationary source. If the coal cleaning plant were "major," then the mine would also be brought into NSR, regardless of whether mines are listed. The reason for this is that these operations are typically aggregated as one source, since they belong to the same SIC, are adjacent and contiguous, and are under common control. Parties such as the National Coal Association indicate that coal cleaning plants are often not 100 tons-per-year sources, and, therefore, would not bring affiliated mines into review unless the fugitive emissions of the affected mines are taken into account. An additional issue arises, however, from the fact that strict construction of the regulations with respect to the SIC could result in the entire operation being a "listed" source. If this were the case, the *fugitive* emissions from the *mine* would be included in applicability determinations. This would result in PSD review in many such situations. The same issues can apply in cases involving other listed activities that may be operated with mines.

Second, a "support facility" for a source is considered as part of the primary source, even if it belongs to a different two-digit SIC code. "Support facilities" are defined by the 1980 preamble as "typically those which convey, store or otherwise assist in the production of the principal product" (45 FR 52695). Physical proximity is generally a key part of such a determination. It is possible to conclude that operations such as mine mouth power plants are a single source, thus bringing the mine into PSD review.

Mining industry commenters also expressed concern about the operation of the interpretation set forth for comment in the October 26, 1984, **Federal Register**. This interpretation is that section 302(j) of the Act, the definition of "major stationary source," focuses its rulemaking requirement with respect to fugitive emissions on whether a *source* is "major," not on the review of modifications involving fugitive emissions at sources already "major." Generally this would have no effect on mines. Since mines are not listed and since they do not have sufficient stack emissions to qualify as "major," this interpretive ruling would not affect them. (If mines were listed, this interpretive ruling would have no bearing on their review.) Once again, however, the aggregation of mines with industrial facilities could produce results which the mining industry contends are unreasonable unless EPA has first completed a listing under section 302(j). Modifications at a mine associated with a coal preparation plant, for example, could trigger NSR of the modification, even if its emissions increase consisted totally of fugitive emissions. Of course, if one of the approaches to source definition enunciated above is adopted, fugitives from mines at such aggregated sources would be reviewed directly. The interpretive ruling would not come into play. Thus, the definition of "source" is expected to remain the primary issue.

These issues present essentially the same concern as the more prominent issue of listing: how to provide any appropriate relief from review to the mining industry while not jeopardizing the more important general review of fugitive emissions from all other sources. This is an especially challenging task in view of the fact that the Act does not expressly provide for special treatment of this somewhat unconventional source category. Because this rulemaking addresses mining issues broadly, and also includes responses to the reopening of the public comment period on the list of 30 source categories,[8] EPA is addressing these new concerns in this rulemaking.

The American Mining Congress and other mining groups, after presenting comment on these specific matters, conclude by arguing that surface coal mines "simply are not the kinds" of sources and emissions which Congress intended to be subject to NSR. Their recommended solution is to change the definition of "building, structure, facility, or installation" in all NSR regulations—e.g., 40 CFR 52.21(b)(6)—so as to create an exemption from the standard aggregation of pollutant-emitting activities based on proximity, ownership, and SIC code. This exemption would be created "where the agency has designated a separate source category or grouping."

The EPA concludes that the current approach to "source" definition appears reasonable for virtually all sources. It is possible, however, that it may produce an untoward effect in the case of mines, for reasons argued by industry, if mines are found to be inappropriate for listing. The EPA, therefore, seeks comment on whether such an exemption, or any crafting of the section 302(j) rulemaking having similar effect, is justified for surface coal mines. The EPA anticipates that any such exemption would be granted only after a detailed examination of the nature of a particular source category and a finding that unusual circumstances justify this special treatment. It is also important that any such procedure for exemptions be crafted in a way so as not be jeopardize review of fugitive emissions from the great majority of sources for which an exemption would not be appropriate. The EPA, therefore, also solicits comment on what administrative procedures and safeguards might be appropriate for creating such an exemption.

V. Miscellaneous

A. Public Hearing

The EPA will hold a public hearing on April 9, 1986 at 10:00 a.m. in Room 239, Federal Building, Corner of 20th and Stout St., Denver, Colorado. The hearing will be informal. A panel of EPA staff will hear the oral presentations. There will be no cross-examination and no requirement that any person be under oath. Each member of the panel may seek clarification or amplification of any presentation. The presiding officer of the panel may set a time limit for each presentation and may restrict any presentation that would be irrelevant or repetitious. A transcript of the hearing will be made and placed in the rulemaking docket.

Any person who wishes to speak at the hearing should as soon as possible send written notice of this to EPA, give name, address, telephone number, and the length of the presentation. Anyone stating that this his or her presentation would be longer than 20 minutes should also state why it need be longer. Each notice should be sent to Mr. Kirt Cox at the address given at the beginning of this notice. The EPA will develop a schedule for presentations based on the notices it receives. Each speaker should bring extra copies of his or her presentation for the convenience of the hearing panel, the hearing reporter, the press, and other participants. The hearings will be open to the public.

B. Economic Impact Assessment

Section 307 of the Clean Air Act, 42 U.S.C. 7607, requires EPA to prepare an economic impact assessment in connection with proposal of any substantial revisions to existing regulations. This notice announces the availability of the economic analysis that EPA prepared in order to comply with Executive Order 12291 and which also satisfies the requirement for preparation of an economic impact assessment on the proposal to list strip mines. The EPA did not prepare an economic analysis of the new interpretation of section 302(j) as it relates to modifications because this is not a substantial revision. As discussed above, this interpretation will not bring many additional modifications under review.

Dated: February 18, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-4357 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Office of Acquisition Policy

41 CFR Part 101-20

Management of Buildings and Grounds

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking and availability of draft.

SUMMARY: This notice announces the availability of a draft proposed revision of Federal Property Management Regulation (FPMR) 101-20, Management of Buildings and Grounds.

DATE: Any comments on the proposed revision should be submitted in writing to the address shown below within 60 days from the publication date of this notice in the **Federal Register**. No

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[8] Industry commenters have requested that coal cleaning plants be delisted.

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extensions on the comment date cited in this notice will be made.

ADDRESS: Comments should be submitted to the General Services Administration, VR, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Emily C. Karam, Director of Regulatory Review (VR), Office of Acquisition Policy, telephone (202) 566–1177 or FTS 566–1177. A single copy of the proposed revision is available upon request.

SUPPLEMENTARY INFORMATION: The proposed revision incorporates recommendations to update, clarify, and streamline the regulation which were submitted to the Administrator of GSA by the Interagency Advisory Committee on Regulatory Review.

List of Subjects in 41 CFR Part 101–20

Building operations, maintenance, protection, and alterations, Vending facilities; Conduct on Federal property, Occasional use of public buildings, Sidewalk installation, repair and replacement.

Dated: February 18, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–4287 Filed 2–27–86; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register

Vol. 51, No. 40

Friday, February 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86–003]

Scrapie Research on U.S. Army Dugway Proving Ground, UT; Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment for scrapie research using goats and sheep on the U.S. Army Dugway Proving Ground, Utah (DPG). On the basis of the assessment, the APHIS has determined no significant adverse effect on the environment will result from implementation of the selected alternative. Therefore, an environmental impact statement (EIS) on this program will not be prepared.

ADDRESS: A copy of the environmental assessment may be obtained from Dr. Chester A. Gipson, Special Diseases Staff, Veterinary Services, APHIS, USDA, Room 824, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

The environmental assessment is available for public inspection at this same address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Chester A. Gipson, Special Diseases Staff, Veterinary Services, APHIS, USDA, Room 824, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8231.

SUPPLEMENTARY INFORMATION:

Scrapie has been recognized as a serious threat to the sheep and goat industries in both the United States and Canada. The USDA has prepared an environmental assessment for conducting research using goats and sheep on U.S. Army Proving Ground in Utah.

The purpose of this action is to determine whether or not a procedure called embryonic transfer could be used in greatly reducing or eliminating the risk of introducing scrapie into domestic flocks. In this procedure, an embryo would be taken from a scrapie infected sheep or goat and transferred to the uterus of a recipient sheep or goat. Upon parturition, the newborn lamb or kid would represent a new genetic line.

The results of this action will yield information on if and how scrapie is transmitted vertically (from parent to progeny in utero). Scrapie-free sheep and goats might then be obtained from scrapie-exposed or affected flocks. The procedure might also provide a way to control or eradicate the disease in the United States and facilitate the import and export of genetic lines to strengthen the U.S. sheep and goat industry.

A number of alternatives were considered in selecting the recommended course of action: (1) No action; (2) Using a contained facility on DPG; (3) Performing scrapie research elsewhere; (4) Using the proposed corral facilities on the DPG.

Alternative one was disregarded because it would require that no scrapie research be performed. The need for this type of scrapie research is necessary to control or possibly eradicate this disease.

Alternative two was disregarded because the only such building available on the DPG which is qualified to operate at biosafety levels one, two, or three is Building 2028, Baker Laboratory. However, this building is not large enough to support both its ongoing military testing and the proposed scrapie research. Construction of a new building would be prohibitively expensive.

Alternative three is not feasible since performing scrapie research elsewhere would entail accomplishing a number of functions prior to its commencement. The time lost and additional money spent as well as the low probability of finding a site which matches DPG's complement of isolation, security, and available facilities makes this course of action inferior.

APHIS has selected four. The location of DPG is ideal for performing studies of this nature. It is relatively isolated from any large areas of population. This would ensure no possibility of spreading diseases. Also, a physical buffer zone will isolate the animals being tested from the natural fauna. Precautions have been made to assure that the water which has come in contact with the research area will evaporate before it could reach any major sources of water. These precautions will guarantee no contact would be made with the natural fauna, eliminating the possibility of the spread of disease. Most importantly, the use of this research facility is consistent with its past and intended uses.

APHIS, after considering the cumulative effects of implementing the selected alternative, has concluded there will be no primary, secondary, or cumulative adverse effects on the quality of the environment.

The environment assessment evaluated the uniqueness or rareness of resources affected and has concluded the selected alternative will neither have an effect on the continued existence of any endangered or threatened species nor will it result in destruction or adverse modifications of the habitats of such species.

This action has been reviewed under the requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321, et seq.), the Council on Environmental Qualities (CEQ), NEPA Regulations (40 CFR, Parts 1500–1508), and the APHIS guidelines concerning implementation of NEPA procedures.

Done at Washington, DC, this 24th day of February.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–4402 Filed 2–27–86; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on April 23 through April 25, 1986 in San Bernardino, CA. The meeting will begin at 7:00 pm. on April 23, at the Hilton

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Hotel, located at 285 E. Hospitality Lane in San Bernardino.

The purpose of the meeting is for the Council to provide recommendations for the Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Pacific Crest Trail. The meeting will include a review of trail completion status, rights-of-way acquisition, and other related matters about the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Assistant Regional Forester for Recreation, Wilderness and Cultural Rsources, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111, phone (415) 556-6966.

Dated: February 19, 1986.

Zane G. Smith, Jr.,

Chairman.

[FR Doc. 86-4286 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-11-M

Committee of State Foresters; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Albuquerque, New Mexico, on March 6, 1986. The meeting will be held in the Santa Fe Room of the Continental Inn, 6000 Pan American Freeway, NE, beginning at 8 a.m.

The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee of State Foresters to consult with the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313). Peter Myers, Assistant Secretary for Natural Resources and Environment, will chair this meeting. The meeting will be open to the public. Written statements may be filed with the Committee before or after the meeting.

FOR FURTHER INFORMATION CONTACT: Allan J. West, Executive Secretary, State and Private Forestry, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-6657.

Dated: February 21, 1986.

F. Dale Robertson,

Associate Chief.

[FR Doc. 86-4343 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Federal Coal Export Commission Meeting

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Federal Coal Export Commission (Commission) established on November 5, 1985 (50 FR 227 (1985)), will hold its initial meeting on Monday, March 17, 1986 at 10:00 a.m.-4:00 p.m. in Room 4830, U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. The initial meeting of a committee established by the Commission to review the state of the industry will be held on the same date, at the same address and room as the Commission meeting, between 2:00 p.m. and 4:00 p.m.

The Commission, consisting of 30 members invited to participate from among organized labor, coal exporters, transporters, financial institutions and government, will address problems affecting the U.S. coal export industry.

The agenda for this initial meeting emphasizes Commission/committee organization, membership and preliminary work plan. For further information contact Robert H. Brumley, Executive Director of the Commission, at (202) 377-4772.

The public is welcome to attend this initial meeting and will be admitted to the extent that seating is available. Public comments are welcome and persons wishing to make formal statements must notify the Executive Director of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of the public comments. Written statements may be submitted before or after each session.

Dated: February 25, 1986.

Robert H. Brumley,

Executive Director, Federal Coal Export Commission.

[FR Doc. 86-4466 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-16-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Subcommittee will convene a public meeting, March 10, 1986 from approximately 10 a.m. to approximately 4 p.m., at the Council's Office, Banco de Ponce Building, Suite 1108 Hato Rey, PR, to discuss issues related to the Council's budget as well as to discuss other administrative issues. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; telephone: (809) 753-4926.

Dated: February 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86-4320 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, March 7, 1986, at the Howard Johnson's Motor Lodge, Danvers, MA, from 10 a.m. to approximately 5 p.m., to discuss resubmission of the Northeast Multispecies Fishery Management Plan to the Secretary of Commerce, as well as to discuss other fishery management and administrative matters. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: February 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86-4321 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, March 18-20, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service 7600 Sand Point Way, Building 4, Room 2079, Seattle, WA, to consider first trimester landings under current groundfish trip limits and trip frequencies; to review Council suggestions on the first draft of

a proposed groundfish fishery management plan amendment, and to draft reports to be presented to the Pacific Fishery Management Council during its April 8-11, 1986 meeting in Eureka, CA. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, Or 97201; telphone (503) 221-6352.

Dated: February 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86-4322 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce..

The Pacific Fishery Management Council and its advisory bodies will convene public meetings, March 10-13, 1986, at the Holiday Inn Portland-Airport, 8439 NE. Columbia Boulevard, Portland, OR, as follows:

On March 10, the Council meeting will convene at 1 p.m. with a closed session (not open to the public), to discuss litigation and personnel matters. The open session will begin at 2 p.m. with administrative matters, including appointment of a new member to the Groundfish Management Team and the status of the FY 86 budget. The Council will review the 1985 salmon fisheries and the status of the stocks, as well as hear recommendations from the Scientific and Statistical Committee (SSC), the Salmon Advisory Subpanel (SAS), the public, the states, and the National Marine Fisheries Service on the 1985 fisheries and the 1986 stock abundance.

On March 11, the Council will tentatively adopt 1986 salmon management options for analysis by the Salmon Plan Development Team (SPDT), and receive a summary of 1987 salmon plan amendment issues. The Council will also review groundfish management issues and take action on experimental fishing permit applications, drafts of the groundfish plan amendment package, and foreign fishing applications. There will be a public comment period at 4:30 p.m.

On March 12, the Council will continue consideration of administrative matters including the FY 87 data collection needs for Council-related activities and the Council/National Oceanic and Atmospheric Administration Task Group evaluation of the Magnuson Fishery Conservation and Management Act implementation. The Council will also hear a report of its Habitat Committee and public comments on a habitat policy prior to final adoption.

On March 13, the Council will hear the analysis and comments of the SPDT, SSC, SAS, public, and states on the provisonal 1986 salmon management options before final adoption of management options for public hearings.

Meetings of the Council's SSC, SAS, SPDT, habitat, foreign fishing, and budget committees will be held in the same location commencing the afternoon of March 9 through the evening of March 13. Detailed agendas of all meetings will be available for the public on February 21. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: February 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4323 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-22-M

Intent To Prepare a Draft Environmental Impact Statement and Management Plan for a Possible National Marine Sanctuary of Norfolk Canyon; Announcement of Norfolk Canyon as an Active Candidate and Suspension of Ten Fathom Ledge/Big Rock From Consideration as a National Marine Sanctuary

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is announcing Norfolk Canyon (60 miles off the coast of Virginia) as an Active Candidate for designation as a National Marine Sanctuary, and its intent to prepare an environmental impact statement on the proposal to designate. A notice scheduling a scoping meeting will be published at a later date.

On September 17, 1985, NOAA initiated preliminary consultation on two sites as potential national marine sanctuaries. (Preliminary Consultation is the first step toward designation of a national marine sanctuary.) The sites were Norfolk Canyon and Ten Fathom Ledge/Big Rock. On November 18, 1985 the period for public comment ended. NOA has reviewed and considered public comments on both sites and is continuing the process for designating Norfolk Canyon. A draft management plan and draft environmental impact statement will be prepared. NOAA is also announcing that due to a backlog of Active Candidates it will not proceed with further evaluation of Ten Fathom Ledge/Big Rock at this time. The site will remain on the Site Evaluation List for future consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Lindelof, Senior Policy Analyst, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, DC 20235 (202) 634-4236.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 *et seq.* (the Act), authorizes the Secretary of Commerce to designate ocean waters, as far seaward as the outer edge of the continental shelf and over which the United States exercises jurisdiction, consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for those conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuary Program Division (SPD).

The 1984 amendments to the Act (Title I of Pub. L. 98-498, codified to 16 U.S.C. 1431-1439), made several changes in the process for designating National Marine Sanctuaries. NOAA is currently modifying its program operating regulations at 15 CFR Part 922 to reflect these changes. In the interim, where there is a conflict between the current regulations and the 1984 amendments, NOAA will rely on the statutory amendments. Since the 1984 amendments do not require the Preliminary Consultation or Active Candidate stages in the marine sanctuary designation process, NOAA will no longer conduct a formal Preliminary Consultation or Active Candidate review. Instead, NOAA will issue a notice informing the public of its

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intent to prepare an EIS on a proposed designation of an Active Candidate selected from the Site Evaluation List (SEL).

NOAA began its consideration of Norfolk Canyon and Ten Fathom Ledge/Big Rock under its current operating regulations at 15 CFR 922.30(1). On September 17, 1985, NOAA published a notice (50 FR 37760) announcing preliminary consultation and seeking public comment for these two sites. The public comment period closed on November 18, 1985.

II. Selection of Norfolk Canyon as an Active Candidate

Norfolk Canyon is located approximately 60 miles off the coast of Virginia. The center of the Canyon head is approximately latitude 37°03.3′ W, longitude 74°38.4′ W. The Canyon head is about 16 to 19 km long and 6 km wide near the shelf break.

Natural Resources

Norfolk Canyon is the southern-most submarine canyon is a series of the prominent deep water features along the eastern continental margin of the United States. It is an excellent biogeographic representation of this habitat and has two distinguishing features which other East Coast canyon sites lack: (1) The physiographic location is in a non-glaciated area that is influenced by a major drainage system (Chesapeake Bay), and (2) the site is the habitat of several alcyonarid and scleractinid corals, including *Primnoe reseda.*

The geology of the Canyon is characterized by deep V-shaped valleys and steep, rocky and often unstable walls and swift current. Despite these physical features, Norfolk Canyon supports an abundance of marine life, of which its huge Alcyanarian tree corals and "pueblo villages" (i.e., areas along the canyon wall where large invertebrates and some finfish dig extensive depressions, caves and burrows for their lodging) are especially prominent. For a more detailed discussion of the site's natural resources, please see 50 FR 37760 announcing Prelimary Consultation.

Human Uses

Major human activities pursued on the eastern continental margin include commercial and recreational fisheries, mineral resources development, ocean dumping and military operations. Norfolk Canyon is not heavily fished for commercial purposes but the area is used by recreational fishermen who fish for white marlin (*Teptrapturus albidus*).

No mineral resources are currently mined in the vicinity of Norfolk Canyon. Those resources with the greatest near-term potential for development are oil and gas. Upcoming lease sale number 111 in the Mid-Atlantic area is tentatively scheduled for November 1986.

Although no ocean disposal of wastes is occuring at present in Norfolk Canyon, the area has been used previously for the dumping of radioactive wastes. There are two former dumpsites, one located at about the 1000-meter isobath, the other, more extensive, lying at depths between about 2000 and 2500 meters. Both occur on or near the axis of the Canyon.

Summary of Comments

A total of eight comments were received on the September 12, 1985 notice. Reviewers included Federal and state agencies, representatives of the oil and gas industry, representatives of the fishing industry, environmental and public interest groups, and members of the public. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, 2001 Wisconsin Avenue NW., Washington, DC 20235. The comments are available for review at that office.

All reviewers supported listing the Norfolk Canyon as an Active Candidate and proceeding with our evaluation. Amoco Corporation and the Offshore Operators Committee noted that until a boudary has been determined it was difficult to determine the significance of the proposal and that this information should be provided prior to selection as an active candidate. The Department of the Interior questioned how Norfolk Canyon was selected when it is not on NOAA's Site Evaluation List.

NOAA's Response.

In response to the boundary comment, at this early stage in reviewing a site as a potential national marine sanctuary, NOAA does not have sufficient information to formulate specific boundary alternatives. As part of developing a draft environmental impact statement and management plan, NOAA will identify several boundary alternatives, including its preferred alternative, for public review and comment.

In response to the Department of the Interior comment, as explained in the original notice for comment, Norfolk Canyon is eligible for consideration because it had already been under consideration for designation by NOAA at the time of development of the SEL and therefore was grandfathered into the SEL process. At the time of development of the SEL the following sites were under consideration for designation by NOAA: Cordell Bank (California); Norfolk Canyon (South Atlantic); La Parguera (Puerto Rico); Monterey Bay (California); Hawaiian waters; and Fagatele Bay (American Samoa). The scientific teams responsible for making SEL Recommendations were instructed not to consider these sites for SEL listing since they had already been selected by NOAA for further evaluation. At that time a contract had been awarded to synthesize information on the physical and biological features of Norfolk Canyon. This site is therefore the last of the pre-SEL Candidates to be actively considered.

Subsequent Actions

NOAA intends to prepare a draft environmental impact statement (DEIS) including a resource assessment report and draft management plan on the designation of the area as a National Marine Sanctuary. A scoping meeting will be held prior to preparation of the draft management plan and DEIS and a notice of its date, time and location will be published in the **Federal Register**. A public hearing on the DEIS Will be conducted. A final environmental impact statement and management plan will be prepared. In undertaking the analysis for the DEIS, NOAA will consider the factors required in determining if a site meets the Designation Standards outlined in section 303(a) of the 1984 amendments to the Act and will consult with Congress, other affected agencies and the appropriate Regional Fishery Management Council(s).

After the final environmental impact statement, subsequent steps include a determination by the Secretary of Commerce that the site meets the Designation Standards, and designation by the Secretary. Congress then has the opportunity to disapprove the designation. Opportunities for public comment exist throughout this process and will be advertised in the local media, and other appropriate channels.

III. Suspension of Ten Fathom Ledge/Big Rock From Further Consideration as a Potential National Marine Sanctuary.

The September 17, 1985 notice of Preliminary Consultation included the Ten Fathom Ledge/Big Rock site. NOAA received ten letters and petitions. Reviewers included Federal and state agencies, representatives of the fishing industry, environmental and public interest groups, dive groups and members of the public. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and

Coastal Resource Management, 2001 Wisconsin Avenue NW., Washington, DC 20235. The comments are available for review at that office. Only representatives of the commercial fishing industry who use the area objected to proceeding to evaluate the site for designation. The commercial fishing interests expressed concern that there might be restrictions on fishing activities. The Department of the Interior suggested that the site may be needed for mining strategic nonenergy minerals and that more information should be provided to evaluate the site.

NOAA has decided not to proceed with designation of Ten Fathom Ledge/Big Rock at this time. The Sanctuary Programs Division currently has two active candidates, Flower Garden Banks in the Gulf of Mexico and Cordell Bank off the coast of California. The level of staff time and costs involved in marine sanctuary designation preclude the processing of more than two or three Active Candidates simultaneously. Given these constraints, it is not reasonable or likely that NOAA can process both Ten Fathom Ledge/Big Rock and Norfolk Canyon in the 3 year time span required by 15 CFR 922.31(a). Accordingly, NOAA has decided to continue the process it began several years ago for designating Norfolk Canyon and to leave Ten Fathom Ledge/Big Rock on the SEL for future consideration.

Federal Domestic Assistance Catalog No. 11.429.

Dated: February 24, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-4372 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-426,440 (4,539,048) Date Filed: 09/28/82
  Detection of Agricultural Contraband in Baggage
SN 6-527,730 (4,534,856) Date Filed: 06/30/83
  Electrodynamic Method for Separating Components
SN 6-579,919 (4,540,033) Date Filed: 02/14/84
  Continuous Tree Harvester
SN 6-591,367 Date Filed: 09/20/85
  Method for Controlling Yellow Nutsedge Using Puccinia Canaliculata
SN 6-593,658 (4,548,804) Date Filed: 03/26/84
  Visual-Olfactory Habitat Mimic for Assessment of Fruit Fly Response to Behavior-Modifying Chemicals
SN 6-620,815 (4,545,236) Date Filed: 06/15/84
  Device for Simulating Stress on Packages During Coupling of Railcars
SN 6-625,272 (4,550,985) Date Filed: 06/27/84
  Hide Transfer Apparatus
SN 6-638,827 (4,539,006) Date Filed: 08/08/84
  Agents to Produce Durable Press Low Formaldehyde Release Cellulosic Textiles: Etherified N,N-BIS(Hydroxymethyl)-Carbamates
SN 6-694,554 (4,554,412) Date Filed: 01/24/85
  Aliquot Part Locator
SN 6-785,639 Date Filed: 10/08/85
  Sex Pheromone Composition for Southwestern Corn Borer
SN 6-789,212 Date Filed: 10/18/85
  Process for Dyeing Smooth-Dry Cellulosic Fabric
SN 6-789,298 Date Filed: 10/18/85
  Method for Insitu Coloring Crosslinked Cellulosic Materials

Department of Commerce

SN 6-636,769 (4,558,218) Date Filed: 08/01/84
  Heat Pipe Oven Molecular Beam Source

Department of Health and Human Services

SN 6-509,619 (4,544,231) Date Filed: 06/29/83
  Method of Joining Plastic Optical Fibers and Connections Obtained
SN 6-548,849 (4,546,097) Date Filed: 11/04/83
  Saponin-Based Polyether Polyols, Pharmaceutical Compositions and a Method of Using Same
SN 6-563,369 (4,547,367) Date Filed: 12/20/83
  Hepatitis B. Core Antigen Vaccine
SN 6-620,601 (4,547,568) Date Filed: 06/14/84
  Intercalculating Agents Specifying Nucleotides
SN 6-637,660 (4,547,360) Date Filed: 08/06/84
  Hepatitis B. Core Antigen Vaccine Made by Recombinant DNA
SN 6-727,919 Date Filed: 04/26/85
  Method of Forming a Metal Chelate Protein Conjugate
SN 6-787,134 Date Filed: 10/15/85
  Reducing or Counteracting the Development of Measures of Brain Aging
SN 6-801,965 Date Filed: 11/26/85
  Method and Device for Quantitative Endpoint Determination in Immunofluorescence Using Microfluorophotometry

Department of the Air Force

SN 6-366,743 (4,547,884) Date Filed: 04/08/82
  Sonic Flow Plate
SN 6-375,640 (4,548,981) Date Filed: 05/06/82
  Method for Assembling a Multiconductor Flat Cable
SN 6-393,267 (4,539,664) Date Filed: 08/29/82
  Adjustable Balance Weight for Rotating Shaft
SN 6-447,736 (4,540,976) Date Filed: 12/07/82
  Bistatic Pulse-Overlap Doppler Radar Intrusion Detection Apparatus
SN 6-491,108 (4,540,904) Date Filed: 05/03/83
  Tri-State Type Driver Circuit
SN 6-497,447 (4,546,328) Date Filed: 05/23/83
  PLL Swept Frequency Generator With Programmable Sweep Rate
SN 6-511,060 (4,550,255) Date Filed: 07/05/83
  Void Detection and Composition Measurements in Composite Wires
SN 6-512,062 (4,538,792) Date Filed: 07/08/83
  Loading Dolly
SN 6-512,064 (4,547,727) Date Filed: 07/08/83
  Simultaneous Signal Detection for IFM Receivers by Transient Detection
SN 6-533,331 (4,549,427) Date Filed: 09/19/83
  Electronic Nerve Agent Detector
SN 6-539,352 (4,538,635) Date Filed: 10/06/83
  Laser Beam Duct Pressure Controller System

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SN 6–539,889 (4,550,275) Date Filed: 10/07/83
High Efficiency Pulse Ultraviolet Light Source
SN 6–562,369 (4,546,032) Date Filed: 12/16/83
Fiber Reinforced Carbon/Carbon Composite Structure With Tailored Directional Shear Strength Properties
SN 6–566,445 (4,539,809) Date Filed: 12/28/83
Fuel Pump Vent Drain System
SN 6–574,434 (4,550,293) Date Filed: 01/27/84
Narrow Deviation Voltage Controlled Crystal Oscillator
SN 6–577,412 (4,546,353) Date Filed: 02/06/84
Asymmetric Thrust Warning System for Dual Engine Aircraft
SN 6–580,979 (4,546,320) Date Filed: 02/16/84
Total Temperature Probe Buffer Amplifier
SN 6–592,033 (4,540,833) Date Filed: 03/21/84
Protected Ethynlated Phenols
SN 6–595,153 (4,548,903) Date Filed: 03/30/84
Method to Reveal Microstructures in Single Phase Alloys
SN 6–607,094 (4,546,283) Date Filed: 05/04/84
Conductor Structure for Thick Film Electrical Device
SN 6–610,911 (4,547,958) Date Filed: 05/16/84
VMJ Solar Cell Fabrication Process Using Mask Aligner
SN 6–612,912 (4,544,713) Date Filed: 05/16/84
Method for Making Heterocyclic Block Copolymer
SN 6–616,380 (4,540,339) Date Filed: 06/01/84
One-Piece HPTR Blade Squealer Tip
SN 6–627,691 (4,546,343) Date Filed: 07/03/84
Data Acquisition Channel Apparatus
SN 6–634,346 (4,547,592) Date Filed: 07/25/84
Thermosetting Arylether Compounds and Their Synthesis
SN 6–635,393 (4,547,230) Date Filed: 07/30/84
LPE Semiconductor Material Transfer Method
SN 6–657,100 (4,546,897) Date Filed: 10/02/84
Inert Atmosphere Transfer Vessel
SN 6–661,646 (4,540,450) Date Filed: 10/17/84
INP:TE Protective Layer Process for Reducing Substrate Dissociation
SN 6–686,954 (4,546,429) Date Filed: 12/27/84
Interactive Communiation Channel
SN 6–688,943 Date Filed: 01/04/85
Apparatus for Transmitting Data from High Speed Rotors
SN 6–708,910 Date Filed: 03/06/85
Linear Geometry Thyratron
SN-6–741,643 Date Filed: 06/10/85
TiW/Si Self-Aligned Gate for GaAs Mesfets
SN 6–743,338 Date Filed: 10/06/85
Synthetic Aperture Multi-Telescope Tracker Apparatus
SN 6–743,550 Date Filed: 06/11/85
Discrete Phase Conjugate Technique for Precompensation of Laser Beams Transmitted Through Turbulence
SN 6–743,845 Date Filed: 06/12/85
Translational Mount for Large Optical Elements
SN 6–762,888 Date Filed: 08/06/85
Missile Longitudinal Support Assembly
SN 6–763,576 Date Filed: 08/08/85
Universal Wavefront Sensor Aparatus
SN 6–764,820 Date Filed: 08/12/85
Robotic Refueling System for Tactical and Strategic Aircraft
SN 6–765,483 Date Filed: 08/14/85
Novel Methods for Tuning Free Electron Lasers to Multiple Wavelengths
SN 6–768,664 Date Filed: 08/23/85
Computer Controlled Lead Forming
SN 6–769,114 Date Filed: 08/26/85
Infrared Sensor Target
SN 6–772,581 Date Filed: 09/04/85
Radar Clutter Simulator
SN 6–772,813 Date Filed: 05/09/85
Situation Awareness Mode
SN 6–772,814 Date Filed: 05/09/85
Automatic Attenuator for Sonobuoys
SN 6–772,815 Date Filed: 05/09/85
A New NDE Method for Coated Carbon-Carbon Composites
SN 6–777,141 Date Filed: 09/18/85
Computer Controller Optical Surfacing (CCOS) LAP Pressure Control System
SN 6–779,402 Date Filed: 09/24/85
Claw Grip Contract Probe for Flat Packs
SN 6–779,403 Date Filed: 09/24/85
Active Secondary Mirror Mount
SN 6–782,332 Date Filed: 10/01/85
Dual Material Exhaust Nozzle Flap
SN 6–782,335 Date Filed: 10/01/85
Hybrid Single Crystal Optic Fibers by Growth Solution
SN 6–782,630 Date Filed: 10/01/85
Hydraulic Pressure Intersifier
SN 6–784,966 Date Filed: 10/07/85
Igniter Electrode Life Control
SN 6–785,186 Date Filed: 10/07/85
Repetitively Pulsed Q-Switched Chemical Oxygen-Iodine Laser
SN 6–785,690 Date Filed: 10/09/85
Electrical Cone Connector
SN 6–788,189 Date Filed: 10/16/85
Aircraft Window Clamping Device
SN 6–789,862 Date Filed: 10/21/85
Hidden Fault Bit Apparatus for a Self-Organizing Digital Processor System
SN 6–789,863 Date Filed: 10/21/85
Direct Moat Self-Aligned Field Oxide Technique
SN 6–790,292 Date Filed: 10/22/85
A Real-Time Programmable Optical Correlator

Department of the Army

SN 6–478,816 (4,554,279) Date Filed: 03/31/83
5–(Straight Chain 3–12 Carbon Alkoxy)-8-Quinolinamines and their use for Treatment of Malaria
SN 6–521,490 (4,542,870) Date Filed: 08/08/83
SSICM Guidance and Control Concep
SN6–550,698 (4,542,954) Date Filed: 11/10/83
Wide Angle Lens for the Infrared Dedicatory Clause
SN 6–749,038 Date Filed: 06/25/85
Wideband SAW Channelizer Using Slanted Array Input Transducer
SN 6–775,076 Date Filed: 09/12/85
Oxynitride Glass Fibers
SN 6–778,941 Date Filed: 09/23/85
Single Plane Transient Voltage Suppression Device Assembly
SN 6–780,750 Date Filed: 09/27/85
Malaria Vaccine
SN 6–780,751 Date Filed: 09/27/85
Error Processing Technique for Modified Read Code
SN 6–781,166 Date Filed: 09/30/85
Method of Chemically Polishing Quartz Crystal Blanks
SN 6–785,709 Date Filed: 10/09/85
An Improved Process for Making Smoke Producing Composition
SN 6–791,672 Date Filed: 10/28/85
Optically Triggered Bulk Device Gunn Oscillator
SN 6–791,970 Date Filed: 10/28/85
Relative Sizing of Layout Data to Compensate for Exposure Errors on Optical Lithography Systems
SN 6–793,931 Date Filed: 11/01/85
SAW Transition Detector for PSK Signals
SN 6–796,332 Date Filed: 11/12/85
Electrolyte for Lithium-Inorganic Non-Aqueous Rechargeable Cell System and Rechargeable Cell System Including Said Electrolyte.

[FR Doc. 86–4294 Filed 2–27–86; 8:45 am]

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Government-Owned Inventions; Availability for Licensing

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Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,
Office of Federal Patent Licensing National Technical Information Service U.S. Department of Commerce.

Department of Agriculture

SN 6–385,161 (4,556,460 Date Filed: 06/04/82
Dehydration of Ethanol
SN 6–724,013 Date Filed: 04/17/85
Ova Harvesting System
SN 6–794,028 Date Filed: 11/01/85
Self-Releasing Coupling
SN 6–797–538 Date Filed: 11/13/85
Postharvest Biological Control of Stone Fruit Brown Rot by *Bacillus Subtilis*

Department of Commerce

SN 6–581,831 (4,559,717) Date Filed: 2/21/84
Flexure Hinge
SN 6–802,091 Date Filed: 11/25/85
Method and Apparatus Relating to Specimen Cells for Scanning Electron Microscopes
SN 6–802,875 Date Filed: 11/29/85
Heat Pipe Oven Molecular Beam Source

Department of Health and Human Services

SN 6–459,796 (4,552,962) Date Filed: 01/21/83
Antitussive 6-Keto Morphinans of the (+)-Series
SN 6–476,830 (4,556,712) Date Filed: 03/18/83
Preparation and Racemization of Chiral 1-Benzyl-1,2,3,4-Tetrahydroisoquinolines
SN 6–796,930 Date Filed: 11/18/85
A High Speed Texture Discrimination of Ultrasonic Imaging

Department of the Air Force

SN 6–473,384 (4,554,416) Date Filed: 03/08/83
Low Voltage Two Wire to Four Wire Telephone Circuit Converter Apparatus
SN 6–473,392 (4,554,543) Date Filed: 03/08/83
Glide Slope Indicator System
SN 6–498,334 (4,555,706) Date Filed: 05/26/83
Simultaneous Nulling in the Sum and Difference Patterns of a Monopulse Radar Antenna
SN 6–505,166 (4,553,457) Date Filed: 06/17/83
Machining a Cooled Cylindrical Optic to Compensate for Pressure Distortion
SN 6–515,240 (4,553,435) Date Filed: 07/19/83
Elevated Transient Temperature Leak Test for Unstable Microelectronic Packages
SN 6–536,142 (4,554,544) Date Filed: 09/26/83
Diffuse Incandescent Runway Marker Light Apparatus for Overt/Covert Operation
SN 6–541,820 (4,555,770) Date Filed: 10/13/83
Charge-Coupled Device Gaussian Convolution Method
SN 6–559,561 (4,546,268) Date Filed: 12/08/83
Narrow Pulsewidth Pulse Generator Circuit Utilizing NPN Microwave Transistors
SN 6–566,753 (4,555,079) Date Filed: 12/28/83
Multiple Jet Blowing Around the Blunt Trailing Edge of a Circulation Controlled Airfoil
SN 6–569,642 (4,555,708) Date Filed: 01/10/84
Dipole Ring Array Antenna for Circularly Polarized Pattern
SN 6–579,625 (4,554,024) Date Filed: 02/13/84
Method for Preparing an Improved Pitch Impregnant for a Carbon-Carbon Composite
SN 6–586,956 (4,551,153) Date Filed: 03/07/84
Fuel Vapor Generator
SN 6–758,927 Date Filed: 07/25/85
Precision Guided Antiaircraft Munition
SN 6–763,575 Date Filed: 08/08/85
Fiber Optic Pyrometry with Large Dynamic Range
SN 6–763,578 Date Filed: 08/08/85
Transient Detector Apparatus
SN 6–767,446 Date Filed: 08/20/85
Low Pass II Section Digital Phase Shifter Apparatus
SN 6–767,454 Date Filed: 08/20/85
T-Section Digital Phase Shifter Apparatus
SN 6–767,455 Date Filed: 08/20/85
II-Section Digital Phase Shifter Apparatus
SN 6–767,578 Date Filed: 08/20/85
A Low Pass T-Section Digital Phase Shifter Apparatus
SN 6–767,923 Date Filed: 08/21/85
An Improved Process for Preparing Pentafluorotellurium Hypofluorite
SN 6–788,188 Date Filed: 10/16/85
Modulated Optical Energy Source
SN 6–788,199 Date Filed: 10/17/85
Timed Primate Roto-Positioner
SN 6–792,373 Date Filed: 10/29/85
Fire Control Apparatus for a Lasser Weapon
SN 6–793,811 Date Filed: 11/01/85
Microprocessor Controlled RF Modulator Apparatus
SN 6–793,812 Date Filed: 11/01/85
Sinusoidal Determination of Limiting Optical Resolution
SN 6–795,400 Date Filed: 11/06/85
Apparatus for Scanning and Measuring the Near-Field Radiation of an Antenna
SN 6–795,571 Date Filed: 11/12/85
Autonomous Synchronization of a Bistatic Synthetic Aperture Radar (SAR) System
SN 6–795,572 Date Filed: 11/06/85
Hybrid Single Crystal Optic Fibers
SN 6–796,125 Date Filed: 11/08/85
NF_3 Combustor for Cylindrical Laser
SN 6–798,042 Date Filed: 11/14/86
Improved Bolt Frame Construction

Department of the Army

SN 6–771,981 Date Filed: 09/03/85
Silver Sulfonamide-Complexes of Diamines as Antimicrobial Agents
SN 6–777,068 Date Filed: 09/17/85
Process for the Preparation of Detoxified Polysaccharide-Outer Membrane Protein Complexes, and Their Use as Antibacterial Vaccines
SN 6–797,345 Date Filed: 11/12/85
Dual Plane Transient Voltage Suppression Device Assembly
SN 6–801,023 Date Filed: 11/22/85
Afterburning Reduction
SN 6–801,024 Date Filed: 11/22/85
Filtering Transient Voltage Suppression Device Assembly

Department of the Interior

SN 6–502,034 (4,554,822) Date Filed 06/07/83
Plugging Factor Monitor Unit
SN 6–644,303 (4,552,730) Date Filed 08/27/84
Recovery of Titanium from Perovskite Using Sulfuric Acid Leaching

Department of Health & Human Sevices

SN 6–186,735 (4,359,457)
Anti Thy 1.2 Monoclonal Antibody-Ricin Hybrid Utilized as a Tumor Suppressant
SN 6–199,781 (4,356,117)
Chemical Modifications of Proteins Which Induce New Receptor Specificities and Therefore Elicit New Effects in Cells
SN 6–341,572 (4,397,843)
Mannose-b-Phosphate-Low Density Protein Reagent Effective Against Hypercholesterolemia
SN 6–350,222 (4,520,011)

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Inactivating Protein Synthesis by Incubating Anti-Thy 1.1-Ricin A Chain Monoclonal Antibody Hybrids with Target Protein Cells
SN 6-350,223 (4,440,747)
Monoclonal Antibody-Ricin Hybrids as a Treatment of Murine Graft-Versus-Host Disease
SN 6-399,257 (4,500,687)
Prevention of Graft Versus Host Disease Following Bone Marrow Transplantation
SN 6-456,401
Improved Protocol for the Treatment of Graft Versus Host Disease.

[FR Doc. 86-4295 Filed 2-27-86; 8:45 am]

BILLING CODE 3610-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

February 25, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 3, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Republic of Korea have agreed, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, to establish a specific limit for braided and non-braided luggage of man-made fibers in Category 670pt. (only T.S.U.S.A. numbers 706.3420, 706.4144 and 706.4152) with sublimits for braided (T.S.U.S.A. number 706.3420) and non-braided luggage (T.S.U.S.A. numbers 706.4152 and 705.4144), produced or manufactured in Korea and exported during the period which began on January 1, 1986 and extends through December 31, 1986. Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 670 in excess of the designated restraint limits. Growth amounting to 2.5 percent per year will be applied for the duration of the agreement. Swing will not be available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), Novmeber 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 25, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 18, 1985, which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on March 3, 1986, the directive of December 18, 1985 is hereby amended to include the following import restraint limits for man-made fiber textile products in Category 670:

Category	12-Mo restraint limit [1]
670 pt [2]	26,000,000 pounds of which not more than 24,750,000 pounds shall be in T.S.U.S.A. numbers 706.4152 and 706.4144 and not more than 1,250,000 pounds shall be in T.S.U.S.A. number 706.3420.

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] For Category 670, only TSUSA numbers 706.3420, 706.4144, and 706.4152.

Man-made fiber textile products in TSUSA 706.3420 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated May 24, 1985 (See 50 FR 21923) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including women's girls' and infants' cotton shirts and blouses in Category 341, men's and boys' other coats of man-made fibers in Category 634, and women's, girls' and infants' man-made fiber coats in Category 635, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 an extends through May 31, 1986. In the CITA directive published below the limit for Category 341 is being increased to 526,939 dozen to account for carryover and swing according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. The limits for Categories 634 and 635 are being reduced to 110,867 dozen and 173,072 dozen, respectively, to account for the swing applied to Category 341.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397, June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5,

Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 24, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lank.

Effective on February 24, 1986, you are directed to adjust the restraint limits established for the following categories in the directive of May 24, 1985 to the limits indicated, according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka:[1]

Category	Adjusted 12-mo limit (dozen) [1]
341	526,939
634	110,867
635	173,072

[1] The limits have not been aduated to account for any imports exported after May 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-4374 Filed 2-27-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Summer Study on Theater Air Defense; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study on Theater Air Defense will meet closed session on 20-21 March, 15-16 April, 13 May 1986 and 11-12 June in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Summer Study will examine current U.S. air defense capabilities in Europe, joint plans and organizations, and relevant new technology and equipment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matter listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 24, 1986.

[FR Doc. 86-4335 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Electronic Combat will meet in closed session on 27 March, 23 April and 7 May 1986 in the Pentagon, Arlington, Virginia

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine current electronic warfare technical issues, vulnerabilities of U.S. systems, and the means of countering the effects of these technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matter listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 24, 1986.

[FR Doc. 86-4333 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on FOFA (Defensive Systems, Subgroup); Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on FOFA (Defensive Systems Subgroup) will meet in closed session on 26 March 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 26 March 1986 the Subgroup will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 24, 1986.

[FR Doc. 86-4334 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Airborne Reconnaissance; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Airborne Reconnaissance will meet in closed session on 19-20 March, 7-8 May, 24-25 June, 20-21 August and 16-17 September 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine

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[1] The agreement provides, in part, that (1) specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish airborne reconnaissance.

In accordance with section 10(d) of the Federal Advisory committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
February 24, 1986
[FR Doc. 86-4332 Filed 2-27-86; 8:45 am]
BILLING CODE 3810-01-M

Renewal of Advisory Committees

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Department of Defense Advisory Committees listed below have been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. These committees are being renewed for two years effective February 28, 1986.

Office of the Secretary of Defense

Advisory Group of Electron Devices; Board of Visitors, Defense Systems Management College; Board of Visitors, Equal Opportunity Management Institute; Defense Advisory Committee on Military Personnel Testing; Defense Advisory Committee on Women in the Services; Defense Science Board; DoD Wage Committee.

Organization of the Joint Chiefs of Staff

Board of Visitors, National Defense University; Scientific Advisory Group of the Joint Strategic Target Planning Staff.

Army

Armed Forces Epidemiological Board; Army Advisory Panel on ROTC Affairs; Army Science Board; Command and General Staff College Advisory Committee; Department of the Army Historical Advisory Committee; Environmental Advisory Board, Chief of Engineers; Scientific Advisory Board, Armed Forces Institute of Pathology; US Army Medical Research and Development Advisory Committee.

Navy

Academic Advisory Board to the Superintendent, US Naval Academy; Board of Advisors to the President, Naval War College; Board of Advisors to the Superintendent, Naval Postgraduate School; Chief of Naval Operations Executive Panel Advisory Committee; Naval Research Advisory Committee; Navy Resale System Advisory Committee; Secretary of the Navy's Advisory Board on Education and Training; Secretary of the Navy's Advisory Committee on Naval History.

Air Force

Advisory Committee on the Air Force Historical Program; Air University Board of Visitors; Community College of the Air Force Advisory Committee; USAF Scientific Advisory Board.

Defense Nuclear Agency

Scientific Advisory Group of Effects.

Defense Intelligence Agency

Defense Intelligence Agency Advisory Committee.

Defense Communications Agency

Defense Communications Agency Scientific Advisory Group.

National Security Agency

National Security Agency Advisory Board; Public Cryptography Advisory Committee (PCAC).

Patricia Means,
OSD Federal Register Liaison Officer, Department of Defense.
February 21, 1986
[FR Doc. 86-4331 Filed 2-27-86; 8:45 am]
BILLING CODE 3810-01-M

Agency Information Collection Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

REVISION OF A CURRENTLY APPROVED COLLECTION

Youth Attitude Tracking Study II (YATS II)

Determines/evaluates knowledge of and attitudes toward military service of Americans, 16-24 years of age. Provides annual cross-sectional data on propensity to serve and on other key issues for trend analyses. Used by DoD Components to develop recruiting strategies, incentive programs, advertising strategies, Congressional testimony, resource allocation and special studies. Responses, 10,000; Burden hours, 5,050.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD (FM&P), Room 3C200, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This collection is not for contract.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
February 25, 1986.
[FR Doc. 86-4392 Filed 2-27-86; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 20, 1986.

The site for the meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Unmanned Air Reconnaissance Vehicles, previously scheduled for Wright-Patterson AFB, OH, March 11-13, 1986, has been changed to the ANSER Corporation, Crystal Gateway 3, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia.

As previously announced, this meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 86-4235 Filed 2-27-86; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Establishment of an Army Senior Reserve Officers' Training Corps Unit, College level institutions desiring to host an Army ROTC unit must complete the DA Form 918 to make application and commit themselves to an agreement with the US Army. Responses: 16. Burden hours: 160.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM-ADI-M, Room 1C638, The Pentagon, Washington, DC 20310-0700, telephone (202) 695-1571.

February 25, 1986.
Patricia H. Means,
OSD Federal Register Liaison Officer.
[FR Doc. 86-4327 Filed 2-27-86; 8:45 am]
BILLING CODE 3710-08-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Request for Army Reserve Retirement Pay, DA Form 4240.

The information provided on DA Form 4240, enables the Army to process requests for retirement pay from Army reservists not on active duty at age 60. Retired Army reservists. Responses: 5,000. Burden hours: 1,598.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM-ADI-M, Room 1C638, The Pentagon, Washington, DC 20310-0700, telephone (202) 695-1571.

February 25, 1986.
Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 86-4328 Filed 2-27-86; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: Monday & Tuesday, 17-18 March 1986
Times of Meeting: 0830-1630 hours (Mon), 0830-1200 hours (Tue)
Places: Ballistic Research Laboratory, APG, Maryland
Agenda: The Army Science Board AHSG on Ballistic Research Laboratory Effectiveness Review will visit the cite for the purpose of gathering data for conducting the effectiveness review of that facility. Briefings will be presented by each directorate covering their work program. The panel will meet in executive session to discuss the methodology for conducting the review and to discuss observations as a result of the briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 86-4516 Filed 2-27-86; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) As estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

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Extension

Final Accounting Report by Trustee of Incompetent Navy Personnel, NAVJAG 5800/13, NAVJAG 5800/13A.

The information provided by the report is used by the Fiduciary Affairs Branch, Civil Affairs Division to monitor the proper expenditure of trustee funds. Lack of such information would prevent proper monitoring of the expenditure of trustee funds. Individuals Responses 600, Burden hours 1,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Mr. Daniel J. Vitiello, DOD Clearance, Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Valeria Childress, Department of the Navy, Judge Advocate General, 200 Stovall Street, Alexandria, Virginia 22332, (202) 325-9752.

February 24, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4330 Filed 2-27-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics (ACES); Meeting

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 17-18, 1986.

ADDRESS: 1200 19th Street, NW., Room 823, Washington, D.C., 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 1200 19th Street, NW. (Brown Building), Room 600-D, Washington, D.C. 20208. Telephone: (202) 254-5284.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the Center for Statistics (CS) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes the following:

- A symposium on standards.
- A discussion of elementary and secondary school data redesign.
- A discussion of *The Condition of Education,* 1986 Edition.
- Such old and new business as the Chairman or membership may put before the Council.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street, NW. (Brown Building), Room 600-D, Washington, D.C. 20208.

Dated: February 21, 1986.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86-4313 Filed 2-27-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E-85-035; OFP Case No. 65003-8294-01,02-12]

Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978; Occidental Chemical Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Occidental Chemical Corporation an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On September 30, 1985, Occidental Chemical Corporation (Occidental) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent exemption for a major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*, (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. The procedure for petitioning and criteria for an exemption from the prohibitions of FUA are contained in 10 CFR Parts 500, 501 and 503 published on June 6, 1980, at 45 FR 38276 and 38302.

Occidental requested a permanent fuels mixture exemption in order to burn petroleum and natural gas in a mixture with a methane-rich by-product stream. The stream will be an unavoidable by-product of the cracking process used to produce ethylene and propylene from the feedstocks ethane and propane. The mixture will be utilized in two (2) new package boilers to be erected at Occidental's Lake Charles, Louisiana, plant which is part of a petrochemical complex acquired from Cities Service Company and inactive since the beginning of 1982.

Pursuant to section 212(d) of the Act, and 10 CFR 503.38, and subject to specified terms and conditions stated herein, ERA hereby issues this order granting a permanent fuels mixture exemption to Occidental to permit the use of petroleum and natural gas in a mixture with a methane-rich by-product stream in their two (2) new boilers designated as Boiler #1 and Boiler #2. As specified in the terms and conditions, the amount of petroleum and natural gas used in the exempted units shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in each unit.

In accordance with section 702(a) of FUA, this order shall take effect on April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

George C. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone: (202) 252-1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 252-6947

The public file containing a copy of this Order as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

SUPPLEMENTARY INFORMATION: Under the authority of section 212(d) of the Act, 10 CFR 503.38 sets forth eligibility criteria and evidentiary requirements governing a permanent exemption for the use of petroleum or natural gas in a mixture with alternate fuels. Under 10 CFR 503.38(d), a certification alternative is available for MFBI's which will not burn more than 25 percent petroleum or natural gas in a mixture with an alternate fuel. Occidental utilized the certification alternative in its permanent fuels mixture exemption petition.

In accordance with the procedural requirements of FUA and 10 CFR 503.3(d), ERA published notice of its acceptance of Occidental's petition in the Federal Register on November 15, 1985, at 50 FR 47252. The notice of acceptance provided a 45-day comment period during which interested persons could submit written comments on the petition for exemption or could request that a public hearing be convened. The period expired on December 30, 1985.

No comments were received on ERA's acceptance of Occidental's petition nor was a public hearing requested.

As required by section 701 (f) and (g) of the Act, ERA provided copies of Occidental's petition to the Environmental Protection Agency and the Federal Trade Commission for their comments. No comments were received from those agencies.

Decision and Order

Based upon review of the entire record of this proceeding, ERA has determined that Occidental has satisfied the certification requirements of 10 CFR 503.38(d). Therefore, pursuant to section 212(d) of the Act, and subject to the terms and conditions stated below, ERA hereby grants Occidental a permanent fuels mixture exemption to permit the use of petroleum and natural gas in a mixture with methane-rich by-product stream. The total amount of petroleum and natural gas used in the exempted units shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in each unit.

Terms and Conditions

Section 214(a) of FUA and 10 CFR 503.12(a) provide ERA the authority to attach terms and conditions to any order granting an exemption. Accordingly, this order is granted subject to the following terms and conditions.

(1) The amount of petroleum and/or natural gas to be used in a mixture with an alternate fuel in Boiler #1 and Boiler #2 will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of those units.

(2) Prior to operating the boilders under this exemption, Occidental will secure applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Clean Water Act, Rivers and Harbors Act, Coastal Zone Management Act and the Resource Conservation and Recovery Act.

Effectiveness of Order

This order shall take effect on April 29, 1986.

Judicial Review

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review in the United States Court of Appeals for the circuit wherein such person resides, or has his principal place of business, at any time before the 60th day after the date of publication of this order in the Federal Register.

Issued in Washington, D.C. on February 14, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4335 Filed 2-27-86; 8:45 am]

BILLING CODE 6450-01-M

Eton Trading Corp. and Eton Enterprises, Inc.; Amended Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of an Amended Proposed Remedial order which was issued to Eton Trading Corporation and Eton Enterprises, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $9,182,412.70 plus interest in connection with the purchase and resale of crude oil during the period June 1980 through December 1980.

A copy of the Amended Proposed Remedial Order, with confidential information deleted, may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building, Room 1E-190; 1000 Independence Avenue SW.; Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building, Room 6F-078; 1000 Independence Avenue SW.; Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 14th day of January, 1986.

Ben Lemos,

Director, Office of Field Operations, Dallas Economic Regulatory Administration.

[FR Doc. 86-4433 Filed 2-27-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-029; OFP Case No. 55080-9299-20-24]

Powerplant and Industrial Fuel Use; Crown Zellerbach Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Crown Zellerbach Corporation, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Crown Zellerbach Corporation (Crown) ("the petitioner"). The permanent cogeneration exemption permits the use of natural gas or No. 2 fuel oil as the primary energy source for a 45 MW combined cycle cogeneration facility designed to produce electricity and process steam at the Crown papermill facility located in St. Francisville, Louisiana. The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on April 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202)252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202)252-6947

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SUPPLEMENTARY INFORMATION: On August 6, 1985, Crown petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas and petroleum in a 45 MW combined cycle cogeneration facility consisting of gas turbine and generator, a heat recovery steam generator and ancillary equipment.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Crown's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 30, 1985 (50 FR 39754), commencing a 45–day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 14, 1985; no comments were received and no hearing was requested.

NEPA compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Crown has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Crown to permit the use of natural gas or No. 2 fuel oil as the primary energy source for its papermill cogeneration facility in St. Francisville, Louisiana.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C., on February 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–4426 Filed 2–27–86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E–86–30; OFP Case No. 51209–9300–20, 21–24]

Powerplant and Industrial Fuel Use; Gulf States Utilities Co

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Gulf States Utilities Company, for its Louisiana station, Baton Rouge, Louisiana, and a proposed rescission of an order granting a permanent peakload exemption for a prior use portion of that facility.

SUMMARY: On January 14, 1986, Gulf States Utilities Company (GSU), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Louisiana Station, Baton Rouge, Louisiana, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. § 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant, for which the petition was filed and GSU is planning to construct, is a cogeneration facility at the existing Louisiana Station powerplant in Baton Rouge, Louisiana. The facility will consist of two gas turbine electric generating units, each with an associated heat recovery steam generator (HRSG). The fuels for the gas turbine/HSRG units will be natural gas and process gas from the adjacent Exxon refinery/chemical plant complex. The units will provide electric energy and steam to the Exxon Complex. The cogeneration facility is referred to as the "Gas Turbine/HRSG Project".

One of the gas turbine units for the project will be an existing Westinghouse Model 501D5 gas turbine unit, which will be moved from its current location at GSU's Roy S. Nelson Station in Westlake, Calcasieu Parish, Louisiana. This turbine was installed in 1982 as a new peakload powerplant and was granted a Permanent Peakload Exemption under the Fuel Use Act (Docket No. ERA–FC–80–043; ERA Case No. 51209–1393–27–22). At this time, the second turbine unit has not been selected but is expected to be similar in size and configuration. The Gas Turbine/HRSG Project will generate up to 258 megawatts (MW) of electric power (two units, each generating 129 MW) and up to 1,200,000 lb/hr of steam for use at the Exxon Baton Rouge complex. Preliminary engineering for the project has begun, and on site construction is scheduled to begin in October 1986. Disassembly and movement of the existing Westinghouse turbine from Nelson Station to Louisiana Station is expected to begin in mid-1986. Start of operation is scheduled for March 1987.

The petition for exemption was filed with a request that ERA, pursuant to 10 CFR 501.100 *et seq.*, rescind a permanent peakload exemption granted by ERA to GSU on May 18, 1981, applicable to their Roy S. Nelson Station in Westlake, Louisiana. GSU's Request for Rescission is contingent upon the granting by ERA of the permanent exemption for its Louisiana Station pursuant to 10 CFR 501.32. Thus, if ERA determines to deny GSU's petition pursuant to 10 CFR 502.32, ERA will treat the Request for Rescission as withdrawn. However, if ERA grants the petition pursuant to 10 CFR 503.32, the Rescission Order will be effective contemporaneously.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination of the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before April 14, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA–C&E–86–30 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, D.C. 20585, Phone (202) 252–1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252–6947

SUPPLEMENTAL INFORMATION: GSU proposes to install a cogeneration system at their Louisiana Station, Baton Rouge, Louisiana, which will generate electrical power and produce steam for sale to Exxon's nearby refinery complex. The proposed cogeneration system will be operated by GSU.

The cogeneration facility is classified as an electric powerplant unde FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.37(a)(1), GSU has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), GSU has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact anaylsis, as required under 10 CFR 503.13.

Rescission Request: ERA hereby accepts GSU's Request for Rescission of Permanent Peakload Exemption granted May 18, 1981. GSU's request for rescission is based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the Peakload exemption to GSU. Accordingly, pursuant to 10 CFR 501.101(f), GSU has submitted documentation supporting its Request for Rescission.

NEPA Compliance: In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) and Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that GSU is entitiled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on February 14, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–4425 Filed 2–27–86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–C&E–86–13; OFP Case No. 64012–9295–22–24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises, Inc.; Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting to Klondike Equity Enterprises, Inc. Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Adminstration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Klondike Equity Enterprises, Inc. (KEE or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27.6 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Klondike III facility located in Orange County, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, DC 20585, Telephone (202) 252–9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW.,

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Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On October 21, 1985, KEE petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27.6 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas & Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including KEE's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 25, 1985 (50 FR 48459), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 9, 1986; no comments were received and no hearing was requested.

Nepa Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that KEE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to KEE to permit the use of natural gas as the primary energy source for its cogeneration facility at Klondike III in Orange County, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on February 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4427 Filed 2-27-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-18; OFP Case No. 64012-9295-23-24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises, Inc.; Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting to Klondike Equity Enterprises, Inc., exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Klondike Equity Enterprises, Inc. (KEE or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for 27.6 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Klondike V facility located in Santa Ana, California. The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on April 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On October 28, 1985, KEE petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27.6 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to Southern California Edison Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including KEE's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil and natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 9, 1985 (50 FR 50197), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 23, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that KEE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to KEE to permit the use of natural gas as the primary energy source for its cogeneration facility at Klondike V in Santa Ana, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on February 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4428 Filed 2-27-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9063-001]

Fluid Energy Systems, Inc.; Surrender of Preliminary Permit

February 21, 1986.

Take notice that Fluid Energy Systems, Inc., Permittee for the proposed West Walker River Power Project No. 9063, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 22, 1985, and would have expired on July 31, 1988. The project would have been located on West Walker River in Mono County, California.

The Permittee filed the request on January 22, 1986, and the preliminary permit for Project No. 9063 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4383 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7182-000 and 5865-000]

Jerald & Lois Simms, David Cereghino, Availability of Environmental Assessment And Finding of No Significant Impact

February 21, 1986

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission, (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
7182-000	Davis Creek	WA	Davis Creek	Packwood	Jerald & Lois Simms.
5865-000	John Day Creek	ID	John Day Creek	Riggins	David Cereghino.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4384 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

Long Lake Energy Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

[Docket No. QF86-515-000 et al.]

February 21, 1986.

On February 4, 1986, Long Lake Energy Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170 submitted for filing five (5) applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Each of the hydroelectric small power production facilities location, water resources, FERC project number and electric power production capacity are listed below.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to

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become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

Docket No.	Location	Resources	FERC Project No.	Capacity
QF86-515-000	Lewis County, NY	Moose River	4949	11.9 MW
QF86-516-000	Jefferson County, NY	Black River	5763	6.0 MW
QF86-517-000	Oswego and Onondaga Counties, NY	Oswego River	4113	4.9 MW
QF86-518-000	Jefferson County, NY	Black River	4715	17.9 MW

[FR Doc. 86-4385 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-145-000, et al.]

Electric Rate and Corporate Regulation Filings; Bangor Hydro-Electric Co. et al.

February 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company

[Docket No. ER86-145-000]

Take notice that on February 13, 1986, Bangor Hydro-Electric Company (BH) tendered for filing notice of a revised rate schedule. The revision affects the rate schedule filed by BH on November 1, 1985 between BH and Central Vermont Public Service Corporation (CVPS) providing for the sale of non-firm energy by BH to CVPS.

Comment date: March 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER86-290-000]

Take notice that on *February 14, 1986*, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Cambridge Electric Light Company (CEL), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by CEL under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, December 1, 1985.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER86-308-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on Feb. 18, 1986 tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 27, 1986 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $6,981.25 to $6,903.08 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $5,868.55 to $5,675.81 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $3,237.42 to $3,402.53 in accordance with Article IV.2. of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1986.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East, Binghamton, NY 13902.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER86-163-001]

Take notice that on January 30, 1986, Commonwealth Edison Company (Edison) tendered for filing six copies of the previously filed Rate 78B, Wholesale Service and Rider 8A, Allowance for Customer-owned Transformers and Rider 19, Industrial Development, as currently available to qualifying industrial customers in its retail service area. This filing was made pursuant to Commission order dated January 3, 1986 in Docket No. ER86-163-000.

Comment date: March 5, 1986, in accordance with Standard Paragraph H at the end of this notice.

5. Montaup Electric Company

[Docket No. ER86-288-000]

Take notice that on Feb. 14, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing amendments to its fuel adjustment clause applicable to all-requirements service to its affiliates Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and contract demand service to three non-affiliated customers: The Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island. The amendments provide for treatment of test power from the Millstone No. 3 and Seabrook No. 1 generating units in accordance with *Pennsylvania Power & Light Company*, Docket Nos. ER82-493-000 and ER82-494-000, Opinion No. 170, 23 F.E.R.C. ¶ 61,395 (June 22, 1983). The effect of this treatment and associated accounting is to defer the flow-through of fuel cost savings from each unit until the unit goes into commercial service and, thereafter, to pass the savings through to ratepayers over the service life of the unit. The customers, however, receive a current pass through of savings to the extent construction work in progress ("CWIP") in each unit is included in rate base.

The savings will begin to occur at Millstone No. 3 and Seabrook No. 1 whenever net positive amounts of test energy are generated. This is expected to occur for a period of a month or more preceding the commercial operation

date of each unit. Millstone No. 3 is currently scheduled to enter commercial service on May 1, 1986 but the schedule may be advanced. Seabrook No. 1 is presently scheduled to enter commercial service on November 1, 1986.

The Company requests that the present filing be made effective whenever net positive test generation occurs at Millstone No. 3. The Company will notify the Commission promptly when that event occurs.

The Company's filing has been served on the affected customers, the Massachusetts Department of Public Utilities and the Rhode Island Department of Public Utilities and Carriers.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER86-298-000]

Take notice that Niagara Mohawk Power Corporation (Niagara), February 14, 1986, on tendered for filing as a rate schedule, an agreement between Niagara and the Power Authority of the State of New York (PASNY) dated December 12, 1985.

Niagara presently has on file an agreement with PASNY dated January 25, 1956. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 38. This new agreement is being transmitted as a supplement to the existing agreement.

The original January 25, 1956, agreement states that Niagara will provide transmission for the Power Authority of the State of New York to effect the delivery of electric power and energy to the State of Vermont, the city of Plattsburg, and the U.S. Air Force base at Plattsburgh.

This supplement revises the rate for transmission as provided for in terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of January 1, 1986.

Copies of the filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this document.

Niagara Mohawk Power Corporation

[Docket No. ER86-308-000]

Take notice that Niagara Mohawk Power Corporation (Niagara), on February 18, 1986 tendered for filing as a rate schedule, an agreement between Niagara and Long Island Lighting Co. (LILCO) dated May 15, 1985.

Niagara presently has on file an agreement with LILCO dated February 14, 1975 last amended October 1, 1984. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 91 with Supplement 6. The new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick powes and energy from the Power Authority of the State of New York to Long Island as provided for in the terms of the original agreement. Niagara requests the Commission to allow said agreement to become effective as of September 1, 1985.

Copies of this filing were served upon the following:

Long Island Lighting Company, 250 Old Country Road, Mineola, NY 11501

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER86-306-000]

Take notice that on February 18, 1986, Southwestern Electric Power Company ("SWEPCO"), with the concurrence of the City of Siloam Springs, Arkansas ("Siloam Springs"), tendered for filing proposed rate increases applicable to Siloam Springs. The proposed changes would increase revenues from jurisdictional sales by $53,000 based on a test year ended March 31, 1986. The rate increase is intended to compensate SWEPCO for its investment and expenses with respect to placing SWEPCO's new generating plant, Dolet Hills Unit No. 1 in rate base in the spring of 1986. SWEPCO requests an effective date of March 1, 1986, and accordingly, seeks waiver of the notice requirements of the Federal Power Act.

Copies of the filing have been served on Siloam Springs and on the Arkansas Public Service Commission.

Comment date: March 6, 1986, in accodance with Standard Paragraph E at the end of this document.

9. Southern California Edison Company

[Docket No. ER86-307-000]

Take notice that, on February 18, 1986, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following agreement, which has been executed by Edison and Deseret Generation and Transmission Co-operative ("Deseret").

EDISON–DESERET
ECONOMY ENERGY AGREEMENT
("AGREEMENT")

Under the terms of the Agreement, Economy Energy may be sold by one Party and purchased by the other Party to make more efficient use of the Parties' electrical systems.

Edison requests, to the extent necessary, Waiver of Notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this document.

10. Public Service Company of Colorado

[Docket No. ER86-296-000]

Take notice that Public Service Company of Colorado (Public Service), on February 6, 1986 tendered for filing a proposed change in its Power Purchase and Interchange Agreement (Agreement) with Colorado-Ute Electric Association, Inc. (Colorado-Ute). Public Service states that the proposed change is a Supplement to Public Service's Agreement with Colorado-Ute, dated April 30, 1982, on file with the Commission under Public Service's FERC Rate Schedule No. 37.

Public Service states that the Supplement to the Agreement with Colorado-Ute provides for the elimination of the Stockade delivery point and for various increases and reductions in load at the other delivery points.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Power and Light Company

[Docket No. ER86-303-000]

Take notice that Puget Sound Power & Light Company of Bellevue, Washington (Puget Power), on February 14, 1986, tendered for filing a change in rates applicable to electric service rendered to nine wholesale customers under its

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existing Wholesale for Resale Power Contracts. Puget Power's filing would change both of its wholesale rate schedules, one for large customers and the other for small customers. Puget Power states that the proposed changes would increase revenues from the nine wholesale customers by $215,313 based on the twelve-month period ending December 31, 1984.

Puget Power states that proposed rate increase is necessary in order to recover a portion of the $464,934 overall revenue deficiency which exists.

Copies of the filing were served upon Puget's wholesale customers.

Comment date: March 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4387 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-286-000, et al.]

Natural Gas Certification Filings; Northwest Central Pipeline Corp. et al.

February 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Northwest Central Pipeline Corporation

[Docket No. CP86-286-000]

Take notice that on January 23, 1986, Northwest Central Pipeline Corpration (Application), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-286-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of up to 25,000 Mcf of gas per day with Pacific Gas and Electric Company (PG&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to exchange up to 25,000 Mcf of gas per day which it proposes to gather for PG&E in the Northeast Wamsutter area in Sweetwater and Carbon Counties, Wyoming, by causing thermally equivalent volumes of gas to be delivered to Northwest Pipeline Corporation in the Moxa area in Lincoln County, Wyoming, for redelivery to PG&E.

It is explained that Applicant and PG&E have entered a twenty-year gas gathering and exchange agreement dated December 31, 1979, as amended, and that the exchange of gas would be made on a thermally equivalent basis, free of transportation charges to either party. It is stated that under the agreement PG&E would pay applicant its cost of service for gathering such gas.

It is further explained that Applicant would have Northwest gather gas for it in the Moxa area and that, after being gathered, such gas would be transported by Northwest for PG&E and delivered to its market area. It is stated that PG&E has entered into such a transportation agreement with Northwest.

Applicant further requests authorization to file annually tariff revisions by January 31 of each year reflecting any changes, additions or deletions, of delivery points.

Comment date: March 14, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP86-296-000]

Take notice that on January 30, 1986, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77251-1642, filed in Docket No. CP86-296-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to a small local general service customer, the City of Sunray Utilities (Sunray), in Texas and the construction and operation of certain related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sunray currently is purchasing gas from Panhandle pursuant to an emergency sale initiated December 12, 1985, for sixty days, it is explained. Panhandle further states that such sale is concurrently being extended from February 11, 1986, to April 10, 1986. Panhandle contends that Sunray is experiencing a rapid decline in production from its well supply and has requested to purchase up to 1,500 Mcf maximum daily quantity of gas on a long-term basis, as an alternative source of gas supply to avoid any interruption of service to its customers upon expiration of the emergency sale. Sunray would purchase the gas from Panhandle under its Rate Schedule SG-3, for a primary term ending October 31, 1993, it is asserted.

Panhandle also requests authorization to construct and operate measuring and regulating facilities at an estimated cost of $15,000, to effectuate the proposed deliveries. Panhandle also indicates that the volumes requested would not have substantial impact on its other customers.

Comment date: March 14, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-251-001]

Take notice that on February 3, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-251-001 an amendment to its pending application filed in Docket No. CP86-251-000 pursuant to section 7(c) of the Natural Gas Act so as to request authorization to (1) increase sales of natural gas on an interim daily basis to two of Applicant's existing resale customers, Consolidated Edison Company of New York, Inc. (Con Ed), and Boston Gas Company (Boston Gas), and/or transport of identical volumes at the resale customers' option and (2) construct and operate facilities necessary to deliver these volumes, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that the increased natural gas service obligation for these resale customers would total 15.460 million cubic feet of natural gas per day (Mcfd). It is explained that the resale customers proposed associated sales/transportation volumes are 5,000 Mcfd for Con Ed and 10,460 Mcfd for Boston

Gas. Applicant states these resale customers are currently stockholders/members of Boundary Gas, Inc. (Boundary), and that all deliveries would be made at its existing delivery points.

Applicant states that the proposed service would be provided under the same terms and conditions as proposed in Docket No. CP86-251-000. Specifically, Applicant proposes that interim sales and/or transportation service would continue only until firm deliveries commence of Canadian gas to these customers from Boundary through facilities for which authorization is sought in Docket No. CP81-107-000, *et al.* Applicant states that the sales would be made at its existing Rate Schedule CD-5 or CD-6 rates and asserts that these rates would not materially change as a result of this application. It is further stated that rates for interim transportation service charged in lieu of sales service rates would be Applicant's generally applicable transportation rates for comparable service, but not less than the sum of the demand and non-gas commodity components of Applicant's Rate Schedule CD-5 or CD-6 rates (plus fuel). After the proposed interim service ends, Applicant proposes that the facilities constructed for the interim sales and/or transportation service would be used to transport Boundary gas volumes. Applicant explains that transportation rates for the firm transportation of Boundary gas volumes would be calculated to return the incremental cost of the facilities constructed to perform it, including the undepreciated cost of facilities constructed for the interim natural gas service proposed herein.

To accomplish the proposed increased deliveries, Applicant proposes to construct and operate 13.7 miles of 30-inch mainline loop in New York, Pennsylvania and Massachusetts and to replace 5.1 miles of lateral or delivery pipeline in Massachusetts. Applicant says that no additional compression is required to perform the service. Applicant estimates the total costs of these facilities to be $17,456,000.

Comment date: March 14, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Wisconsin Gas Company

[Docket No. CP86-297-000]

Take notice that on January 30, 1986, Wisconsin Gas Company (Applicant), 626 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, filed in Docket No. CP86-297-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an arrangement to sell to and exchange natural gas with Northern States Power Company—Wisconsin (NSP-Wisconsin) in return for half the equivalent volume of liquefied natural gas (LNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant reports that it entered into a sale and exchange agreement with NSP-Wisconsin on July 16, 1973, whereunder Applicant would take LNG from NSP-Wisconsin and would deliver twice the equivalent volumes of vaporous natural gas back to NSP-Wisconsin in exchange, using the facilities of Midwestern Gas Transmission Company (Midwestern) and ANR Pipeline Company (ANR) to ship the gas. It is explained that to perform its own portion of this exchange arrangement, ANR executed a separate contract with Midwestern and ANR on August 30, 1973, as amended on June 1, 1978, and on March 31, 1983.

Applicant reports that on September 18, 1985, it entered into a new agreement with NSP-Wisconsin, which provided that Applicant would now purchase LNG from NSP-Wisconsin for cash in lieu of vaporous natural gas. This new arrangement would replace the previously-certificated sale and exchange arrangement, which expired of its own terms on March 31, 1984, says Applicant.

Applicant states that in conformity with the above transactions, it also executed an agreement with Midwestern and ANR on December 2, 1985, terminating their own extant exchanges as of that date.

Applicant notes that NSP-Wisconsin filed an application on October 23, 1985, in Docket No. CP76-84-002, requesting authorization to sell LNG to Applicant for cash in accordance with their new contract. It is further indicated that on January 14, 1986, Midwestern filed a petition in Docket No. CP86-287-000 for permission and approval to abandon its gas exchange arrangement with Wisconsin Gas and ANR.

Applicant also requests that its operations continue to be declared exempt from the provisions of the Natural Gas Act, pursuant to section 1(c) thereof.

Comment date: March 14, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4388 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-47-000]

Northwest Alaskan Pipeline; Tariff Changes

February 21, 1986.

Take notice that on February 11, 1986, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0999, tendered for filing in Docket No. RP86-47 the following tariff sheets to its FERC Gas Tariff Original Volume No. 2:

Second Revised Sheet No. 100
Second Revised Sheet No. 108
Second Revised Sheet No. 110
First Revised Sheet No. 114B
First Revised Sheet No. 114C
First Revised Sheet No. 114D
First Revised Sheet No. 114E
First Revised Sheet No. 114F
First Revised Sheet No. 114G

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Original Sheet No. 114H
Original Sheet No. 114I
Second Revised Sheet No. 115
Second Revised Sheet No. 123
Second Revised Sheet No. 150
Second Revised Sheet No. 160
Second Revised Sheet No. 173
Original Sheet No. 173A
Original Sheet No. 173B
Second Revised Sheet No. 176
Second Revised Sheet No. 176A
Original Sheet No. 176B
First Revised Sheet No. 186A

Northwest Alaskan states that it is submitting these sheets to reflect changes in the commodity charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X–1.

Northwest Alaskan states that it is submitting the above tariff sheets pursuant to the provisions of the amended purchase agreement dated February 1, 1986, between Northwest Alaskan and Northern.

These changes are beneficial to Northern in that the commodity charges for gas purchased in excess of the minimum daily volume will be substantially reduced.

Northwest Alaskan requests that the above sheets become effective on the date on which all necessary Canadian regulatory approvals have been obtained.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4375 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA86–5–20–002 and TA86–6–20–003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 12, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Eighth Revised Sheet No. 211
Second Substitute Nineteenth Revised Sheet No. 213
Second Substitute Twentieth Revised Sheet No. 213

Algonquin Gas states that such tariff sheets are being filed to reflect a decrease in its Rate Schedule STB and S–IS Space Charges as reflected in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Schedule SS–II and ISS–III.

Algonquin Gas requests that the Commission accept Substitute Eighth Revised Sheet No. 211 and Second Substitute Nineteenth Revised Sheet No. 213 to be effective January 1, 1986; and that the Commission accept Second Substitute Twentieth Revised Sheet No. 213 to be effective February 1, 1986.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to adjust the next month's billing subsequent to Commission approval to effectuate the results of the proposed rate changes as of January 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4376 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5080–002]

Donnie McFadden dba Buckeye Land Co.; Surrender of Exemption

February 21, 1986.

Take notice that Donnie McFadden dba Buckeye Land Company, Exemptee for the Billingsley Creek Project No. 5080, has requested that his exemption be terminated. The exemption for Project No. 5080 was issued December 15, 1981. The project would have been located on Billingsley Creek in Gooding County, Idaho.

The Exemptee filed the request on January 31, 1986, and the exemption for Project No. 5080 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4382 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–4–37–000, 001]

Northwest Pipeline Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

Take notice that on February 14, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of: (1) Reflecting the changes in Northwest's estimated cost of purchased gas; (2) reflecting the change in unrecovered purchased gas costs since Northwest's PGA filing dated February 14, 1985; and (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order No. 49.

The current PGA adjustment, for which notice is given herein, aggregates to a decrease of 2.689¢ per therm (including the special surcharge of 0.319¢ (not applicable to Rate Schedule PL–1)) in the commodity rate for all rate schedules, unless noted above, affected by and subject to the PGA. There is no change in the demand rate. The annual jurisdictional change in the Northwest's

rates is a decrease of approximately $63,292,772. Northwest proposes to refund through its twelve-month surcharge the adjusted balance of $28,751,562 in its current deferral subaccount of FERC Account No. 191 as of December 31, 1985. The proposed rate changes have been reflected on Twenty-Sixth Revised Sheet No. 10 and Eighth Amended Substitute Nineteeth Revised Sheet No. 10 applicable to consenting and nonconsenting parties respectively.

Northwest also tendered for filing and acceptance Twelfth Revised Sheet No. 10–B reflecting revised projected incremental surcharges and Fifth Revised Sheet No. 127–A reflecting revised tariff language to allow for the elimination of the effects of concurrent exchange imbalance. Northwest requests an effective date of April 1, 1986 for all tendered tariff sheets.

A copy of this filing has been mailed to all parties of record in Docket No. RP72–154–000 to all jurisdcational customers, and to affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4377 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–86–38–000]

Southern Natural Gas Co.; Refund Report

February 21, 1986.

Take notice that on January 13, 1986, Southern Natural Gas Company (Southern) tendered for filing a refund report in accordance with section 17.4 of its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern reports that it has refunded $7,795,273.05 in lump sum payment to its jurisdictional customers representing their proportionate share of certain refunds received by Southern from Chevron U.S.A., Inc., Exxon Company, U.S.A. and Terra Resources, Inc., for overcollections by those suppliers attributable to periods prior to January 1, 1980.

Southern indicates that copies of this filing have been sent to each customer receiving a refund and to each interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4378 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–1–42–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 21, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on February 10, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute 9th Revised Sheet No. 74
Substitute 4th Revised Sheet No. 75

On January 30, 1986, Transwestern filed with the Federal Energy Regulatory Commission (Commission) revised tariff sheets incorporating the new methodology for treating monthly concurrent exchange imbalances as adopted by the Commission in orders issued January 15, 1986 in Docket Nos. TA85–2–11–002, *et al.*, and TA85–2–15–000, –002 and –003. Subsequent to the filing of January 20, 1986, Transwestern became aware of certain typographical errors contined on such tariff sheets. The instant filing is being made for the sole purpose of correcting such typographical errors.

The proposed effective date of the above tariff sheets is March 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4379 Filed 2–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–2–11–003, TA86–1–11–002, and TA86–2–11–002]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

February 21, 1986.

Take notice that on February 6, 1986, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Seventy-Second Revised Sheet No. 4
Fifth Revised Sheet No. 74–B
Sixth Revised Sheet No. 74–F
First Revised Sheet No. 74–F1

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 13, 1986.

United states that the tariff sheets are being filed pursuant to the requirements of the Commission's January 22, 1986, order on rehearing in the captioned dockets.

United reports that it mailed copies of the proposed tariff sheets to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)) All such motions or protests should be filed on or before February 28, 1986. Protests will be

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considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-4380 Filed 2-27-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59754 FRL-2975-6]

Polyester of Benzenedicarboxylic Acids and Alkanepolyols; Certain Chemical Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) permanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period: for Y 86-82: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, exlcuding legal holidays.

Y 86-82

Manufacturer. Confidential.

Chemical. (G)] Polyester of benzenedicarboxylic acids and alkanepolyols.

Use/Production. (G) Resin for industrial enamels. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 10 hrs/da, up to 50 day/yr.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

Dated: February 21, 1986.

Denise Devoe,
Acting Director, Information Management Division.

[FR Doc. 86-4252 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-5162 FRL-2975-5]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-541, 86-542, 86-543 and 86-544, May 18, 1986

P 86-545, 86-546, 86-547, 86-548, 86-549, 86-550, 86-551, 86-552, 86-553, 86-554, 86-555, 86-556, 86-557, 86-558, and 86-559, May 19, 1986

P 86-560 and 86-561, May 20, 1986.

Written comments by:

P 86-541, 86-542, 86-543, and 86-544, April 18, 1986

P 86-545, 86-546, 86-547, 86-548, 86-549, 86-550, 86-551, 86-552, 86-553, 86-554, 86-555, 86-556, 86-557, 86-558, and 86-559, April 19, 1986

P 86-560 and 86-561, April 20, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51612]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-541

Manufacturer. Confidential.

Chemical. (G) Alkyl heterocyclic carbamoly halide.

Use/Production. (S) Site-limited captive intermediate for the manufacture of a pesticide. Prod. range: 3,000 kg/yr.

Toxicity Data. Acute oral: 500 mg/kg; Irritation: Skin—Slight to moderate, Eye—Moderate to severe; Inhalation: Negative; Ames test: Non-mutagenic.

Exposure. Manufacture: dermal, a total of 10 workers, up to 3 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Negligible release to air.

P 86-542

Manufacturer. Mallinckrodt, Inc.

Chemical. (S) N-nitrosophenylhydroxylamine, ethanol amine salt.

Use/Production. (S) Industrial monomer stabilizer. Prod. range: Confidential.

Toxicity Data. Acute oral: 419 mg/kg; Acute dermal: 2.91 gm/kg; Irritation: Skin—Irritant, Eye—Severe; Inhalation: 7.4 mg/1.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release.

P 86-543

Importer. Orient Chemical Corporation.

Chemical. (G) Quaternary ammonium salt.

Use/Import. (S) Commercial component of electrographic toner. Import range: 1,000-5,000 kg/yr.

Toxicity data. No data submitted.

Exposure. Processing: Inhalation, a total of 10 workers, up to 1 hr/da, up to 50 da/yr.

Environmental Release/Disposal. No release.

P 86-544

Importer. American Hoechst Corporation.

Chemical. (S) Butanedioic acid, sulfo-1, 4-bis(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl) ester, sodium salt.

Use/Import. (S) Industrial synthetic fiber lubricant additive, consumer surface tension depressant for window and glass cleaners, and commercial floor polish. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-545

Manufacturer. Essex Speciality Products, Inc.

Chemical. (G) Alkoxysilane-isocyanate terminated polyether based urethane prepolymer.

Use/Production. (S) Polymer used in sealant manufacture. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture.

Environmental Release/Disposal. No release.

P 86-546

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Alkoxysilane terminated polyisocyanate.

Use/Production. (G) Site-limited intermediate used in polymer manufacture. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture.

Environmental Release/Disposal. No release.

P 86-547

Manufacturer. Confidential.

Chemical. (G) Oxime terminated polyurethane.

Use/Production. (G) Industrial paint ingredient. Prod. range: 100,000-1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 52 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 2 to 169 kg/batch released to land. Disposal by incineration and landfill.

P 86-548

Manufacturer. Confidential.

Chemical. (G) Alicyclic aliphatic polyester.

Use/Production. (G) Polymeric resin used in manufacturing non-consumer use coating products. Prod. range: 30,000-350,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 30 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. 4 to 130 kg/batch released to land. Disposal by incineration and landfill.

P 86-549

Manufacturer. Confidential.

Chemical. (G) Acrylate modified alicyclic urethane.

Use/Production. (G) Site-limited and industrial isolated intermediate. Prod. range: 15,000-30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 18 workers, up to 4 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. Trace to 53 kg/batch released to land. Disposal by incineration and landfill.

P 86-550

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic polymer.

Use/Production. (S) Industrial, commercial and consumer paint resin. Prod. range: 150,000-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 44 workers, up to 8 hrs/da, up to 45 da/yr.

Environmental Release/Disposal. 5 to 97 kg/batch released to land. Disposal by incineration and landfill.

P 86-551

Manufacturer. Confidential.

Chemical. (G) Polyurethane of isophorone diisocyanate.

Use/Production. (G) Industrial coating resin. Prod. range: 50,000-250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 30 workers, up to 8 hrs/da, up to 220 da/yr.

Environmental Release/Disposal. 3 to 150 kg/batch released to land. Disposal by incineration and landfill.

P 86-552

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Hydrocarbon modified maleated rosin ester.

Use/Production. (S) Industrial resin component in production of ink vehicle varnishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 750 da/yr.

Environmental Release/Disposal. 24 kg/batch released to air with 500 gm/day to land. Disposal by sanitary landfill and mechanical filter system.

P 86-553

Manufacturer. Givaudan Corporation.

Chemical. (S) Benzoic acid, 4-[[(methylphenylamino)methylene]]-ethyl ester.

Use/Production. (S) Industrial, commercial and consumer ultra violet absorber. Prod. range: Confidential.

Toxicity Data. Acute oral: 200-300 >g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Skin sensitization: Negative; Phototoxicity test: Not phototoxic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 86-554

Manufacturer. Alcolac Inc.

Chemical. (S) Poly(oxy-1,2-ethanediyl), alpha-(1-oxo-2-propenyl)-omega-(dodecyloxy)-.

Use/Production. (S) Aqueous thickeners. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture.

Environmental Release/Disposal. 2 to 4 kg/batch released to aqueous. Disposal by POTW.

P 86-555

Manufacturer. Confidential.

Chemical. (G) Acrylourethane.

Use/Production. (G) Coatings/adhesives for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-556

Importer. Confidential.

Chemical. (G) Butylaminosilane.

Use/Import. (S) Industrial and commercial silicone rubber chain extender. Importer range; Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 5 workers, up to 1.0 hr/da.

Environmental Release/Disposal. 0.4 kg/samples released to air. Disposal by approved landfill, Resource Conservation and Recovery Act (RCRA) and commercial solvent disposer.

P 86-557

Manufacturer. Confidential.

Chemical. (G) 2,4-diamino-5-[[(p-acetylaminophenylazo) sulfocarbopolycyclic azo]-

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hydroxysulfocarbopolycyclic azo]-benzenesulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Confidential.

P 86-558

Manufacturer. Confidential.

Chemical. (G) 2,4-diamino-5-[[[p-acetylaminophenylazo) sulfocarbopolycyclic azo]-hydroxysulfocarbopolycyclic azo]-benzenesulfonic acid, substituted alkylamine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 3 workers.

Environmental Release/Disposal. Disposal by navigable waterway.

P 86-559

Manufacturer. Foote Mineral Company.

Chemical. (G) Lithium hyperoxoperborate.

Use/Production. (G) Self contained rebreather device. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-560

Manufacturer. Confidential.

Chemical. (G) Urethane oligomer.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 86-561

Manufacturer. Confidential.

Chemical. (G) Modified styrenated acrylic water resin.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

Dated: February 21, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-4253 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-62034A FRL-2977-6]

Comprehensive Assessment Information Rule; Extension of Participation Deadline for CAIR Form Pretest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of CAIR form pretest participation deadline.

SUMMARY: EPA is extending the period in which persons may volunteer to participate in the Comprehensive Assessment Information Rule (CAIR) form pretest. This is being done to ensure that all persons interested have adequate time to contact EPA's contractor, Science Applications International Corporation (SAIC), for information on the conduct of the pretest.

DATE: Persons wishing to participate in this pretest should notify SAIC no later than March 14, 1986.

ADDRESS: Send written requests to participate, or call SAIC at the following location: Ms. Carolyn Bosserman, Science Applications International Corporation, 8400 Westpark Drive, McLean, VA 22102 (703-821-4812).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Notice of the CAIR form pretest was published in the Federal Register of January 24, 1986 (51 FR 3251). EPA is conducting this pretest to determine potential problems with the form and provide EPA with an opportunity to improve the form before the CAIR is promulgated. In order to develop a pretest which will be representative of the industry as a whole, EPA is interested in having the widest variety of companies participate. To ensure this, EPA has decided to extend the deadline for requesting participation in the pretest. EPA's contractor, SAIC, who is approved to receive confidential business information, will be conducting the pretest, and any data received during the pretest will not be revealed either to EPA or the public. EPA encourages all companies interested in participating to contact SAIC. However, the selection of companies will be made at random by SAIC, so EPA cannot guarantee that all volunteers will be able to participate in the pretest due to limitations on the number of total participants. SAIC will be accepting responses to this notice until March 14, 1986.

Dated: February 25, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 86-4476 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2975-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 10, 1986 through February 14, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 *FR* 4804).

Draft EISs

ERP No. DS-COE-C34032-TX, Rating EC2, Galveston Multipurpose Deepwater Port and Crude Oil Distribution System Construction, Additional Information on Worst Case Oil Spill Analysis and Environmental Impacts of Bulk Commodities Activities, Permit Applications, TX. Summary: EPA has environmental concerns regarding the proposed actions compliance with the Prevention of Significant Deterioration (PSD) regulations exemption and conditions established on September 21, 1981. EPA requests that clarifying information be included in the final supplemental EIS to more fully assess the PSD compliance issue under applicable Federal and State air quality pollution control regulations.

ERP No. D-FHW-B40063-00, Rating LO=Alter. 1, 2, and Truck Diversion Alter.; EO=Alter. 3, 4, 5, A, B, F; DEIS=2; US 6 Improvement, I-52/I-395 in Killingly, CT to I-295 in Johnston, RI, 404 Permit, CT and RI. Summary: EPA recommends that the proposed alternative consist of diversion of hazardous trucks from the Scituate Reservoir watershed in conjunction with construction of drainage and safety improvements on Route 6. From the standpoint of public health, EPA strongly objects to alternatives that involve a major widening and upgrading of Route 6 or new alignments. EPA objects to the lack of consideration of alternatives outside the watershed; and in addition has asked for more information on secondary impacts, mitigation, and air quality.

ERP No. D-FHW-K40115-CA, Rating EC2, CA-4 Freeway Construction, Wilson Way to CA-99, CA. Summary: EPA is concerned that the air quality analysis was limited to carbon monoxide emissions and did not provide other baseline air quality data or a mitigation plan.

ERP No. D-SFW-L64032-AK, Rating EO2, Yukon Flats Nat'l Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Designation, AK. Summary: EPA is concerned that Alternatives B and C could result in serious adverse impacts, including significant restrictions to subsistence uses; significant long-term water quality degradation; and significant adverse effects on wetlands and associated fish and wildlife species. Implementation of either Alternative D or Alternative E would substantially reduce these concerns.

ERP No. DS-UNS-C11004-00, Rating EC2, Stapleton—Ft. Wadsworth Complex Surface Action Group Homeporting Facility, Development Plans Modification and Family Housing Alternatives at Staten Island, NY, RI, and MA. Summary: EPA is concerned that the proposed project modifications may cause adverse impacts to air quality and environmentally sensitive resources. EPA requests that additional information be presented in the final supplemental EIS to address these issues.

Final EISs

ERP No. F-AFS-E65063-FL, Florida Nat'l Forests, Land and Resource Mgmt. Plan, FL. Summary: EPA has no serious overall objections to the preferred plan. Specific concerns were expressed, however, relative to the potential impacts of timber management in wetlands areas, restoration of titi acreage to pine plantation, and reconstruction of road 13.

ERP No. F-BLM-L92007-00, Northwest Area Noxious Weed Control Program, ID, WA, MT, OR, and WY. Summary: Revisions to the final EIS document adequately respond to EPA concerns.

ERP No. F-COE-E36137-MS, Pearl River Basin Flood Control Plan, MS. Summary: EPA has reviewed the final EIS and has no objections to the project.

ERP No. F-COE-K36085-HI, Kahawainui Stream Flood Damage Reduction Plan, HI. Summary: EPA believes that the selected alternative does not comply with Clean Water Act 404(b)(1) guidelines, and requests that alternative plans #1 and #3 be considered. EPA also requests that design phase planning address impacts to water quality, and incorporate mitigation to address water quality impacts.

Dated: February 25, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-4575 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2975-5]

Environmental Impact Statements; Availability of Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 18, 1986 Through February 21, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860059, DSuppl, FHW, CA, CA-15 Reconstruction, I-805 to I-8, New Preferred Alternative, San Diego County, Due: April 25, 1986, Contact: Michael Cook (916) 551-1307.

EIS No. 860060, DSuppl, SFW, AK, Tetlin National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Review, Oil and Gas Exploration and Leasing, Due: April 14, 1986, Contact: Bill Knauer (907) 786-3399.

EIS No. 860061, Final, FHW, AK, Raspberry Road Reconstruction, Jewel Road to Minnesota Drive, Due: March 31, 1986, Contact: Tom Neunaber (907) 586-7428.

EIS No. 860062, Draft, BOP, OR, Sheridan Federal Correctional Institution Complex, Construction and Operation, Yamhill County, Due: April 14, 1986, Contact: Loy Hayes (202) 272-6535.

EIS No. 860063, Draft, COE, CA, Santa Barbara County Streams, Flood Control Plan, Mission Creek, Santa Barbara County, Due: April 14, 1986, Contact: John Kennedy (213) 798-2314.

EIS No. 860064, Draft, COE NY, Sauquoit Creek Flood Control Plan, Oneida County, Due: April 14, 1986, Contact: Robert Dieterich (212) 264-4662.

EIS No. 860065, Draft, SCS, TX, Choctaw Creek Watershed Protection, Flood Prevention and Recreation Plan, Grayson County, Due: April 14, 1986, Contact: Dale Fischgrabe (817) 774-1216.

EIS No. 860066, Final, DOE, AZ, NV, Mead-Phoenix 500kV Direct Current Transmission Line, Construction, Operation and Maintenance, Due: March 31, 1986, Contact: Gary Frey (303) 231-1527.

Amended Notice

EIS No. 860046, Draft, FHW, AZ, Arizona Forest Highway/AZ-67 Reconstruction, Jacob Lake to Grand Canyon National Park, published FR 02-21-86—Incorrect Title.

Dated: February 25, 1986.

David G. Davis,

Acting Director Office of Federal Activities.

[FR Doc. 86-4572 Filed 2-27-86; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Organization; Farm Credit System Capital Corporation

AGENCY: Farm Credit Administration.

ACTION: Notice; Charter and Articles of Incorporation of the Farm Credit System Capital Corporation.

SUMMARY: On February 24, 1986, the Farm Credit Administration ("FCA") chartered the FARM CREDIT SYSTEM CAPITAL CORPORATION ("CORPORATION") pursuant to Title IV, Part D1, section 4.28A of the Farm Credit Act of 1971, as amended ("Act"), to supersede and succeed the assets and liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation") a service corporation chartered by the Farm Credit Administration on June 6, 1985, pursuant to Title IV, Part D, sections 4.25 to 4.27 of the Act. Congress established the CORPORATION under the Farm Credit Amendments Act of 1985, Pub. L. 99-205 (1985), to carry out a program of financial and technical assistance to Farm Credit System institutions experiencing financial difficulties. The Chairman also dissolved and revoked the charter of the Predecessor Corporation. The texts of the Charter and Articles of Incorporation of the CORPORATION and Certificate of Dissolution of the Predecessor Corporation are set forth below:

FARM CREDIT ADMINISTRATION

McLean, Virginia

Charter

Farm Credit System Capital Corporation

The Chairman of the Farm Credit Administration Board hereby charters a corporation pursuant to section 4.28A, Title IV, Part D1 of the Farm Credit Act of 1971, as amended ("the Act"), to be known as the FARM CREDIT SYSTEM CAPITAL CORPORATION ("CORPORATION"). The CORPORATION hereby supersedes, succeeds to the assets of, and shall be

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liable for and assume all debts, obligations, contracts, and other liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation") chartered by the Governor of the Farm Credit Administration under Title IV, Part D of the Act on June 6, 1985, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the Predecessor Corporation. All officers, employees, and agents of the Predecessor Corporation shall be employees and agents of the said CORPORATION and continue to perform the same duties in managing the business and assets of the Predecessor Corporation as set forth in the Articles of Incorporation until directed otherwise by the board of directors of the CORPORATION or the new chief executive officer.

The Chairman of the Farm Credit Administration Board grants this Federal charter to the FARM CREDIT SYSTEM CAPITAL CORPORATION, incorporating an attached original of the Articles of Incorporation of same, and said CORPORATION is hereby authorized to exercise all powers duly conferred under the Act, and the regulations of the Farm Credit Administration promulgated thereunder, and the Articles of Incorporation of the CORPORATION, as same shall be in effect. All capital stock and other equities of the Predecessor Corporation shall be converted into Class D stock of the CORPORATION in a like value and amount as provided in the Articles of Incorporation and bylaws of the CORPORATION.

IN WITNESS WHEREOF, the Chairman has executed this charter and caused the seal of the Farm Credit Administration to be affixed hereto this 24th day of February 1986.

Farm Credit Administration Board.

By: Donald E. Wilkinson,

Acting Chairman.

Attest: Marvin Duncan.

ARTICLES OF INCORPORATION OF FARM CREDIT SYSTEM CAPITAL CORPORATION

Article I—Name

The name of the Corporation shall be "Farm Credit System Capital Corporation" (hereinafter "Corporation").

Article II—Statutory Authority

The Corporation is established pursuant to Title IV, Part D1 of the Farm Credit Act of 1971, as amended ("Act"), as an institution of the Farm Credit System ("System") and an instrumentality of the United States to the same extent as the Federal land banks, the Federal intermediate credit banks, and the banks for cooperatives (collectively "System banks") and subject to the same examination and regulation by the FCA. All powers and authorities stated in these Articles of Incorporation and the bylaws adopted by the board of directors of the Corporation can only be exercised in accordance with any limitations or restrictions herein stated or in FCA regulations or the Act then in effect.

Article III—Duration and Office

Section 1. Duration. The corporate existence of the Corporation shall commence on the issuance of charter by the Chairman of the Farm Credit Administration Board ("FCA Board") of the Farm Credit Administration ("FCA") and shall continue until liquidated in accordance with ARTICLE IX of these Articles of Incorporation.

Section 2. Principal Office. The principal office of the Corporation and such other offices shall be located in such place(s) as designated by the board of directors ("Board").

Article IV—Successor Corporation

Section 1. Succession. As provided in section 4.28H of the Act, the Corporation succeeds to assets and liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation"), chartered by the FCA on June 6, 1985 pursuant to Title IV, Part D, sections 4.25 to 4.27 of the Act, which charter was revoked on the date of the chartering of the Corporation. The Corporation shall continue all existing contractual obligations, security instruments, and title instruments as obligations and instruments of the Corporation. All stocks in the Predecessor Corporation shall be converted in like value and amount of a special class of Corporation stock provided therefor in the Corporation bylaws and FCA regulations. The Corporation shall account separately for the instruments and obligations assumed from the Predecessor Corporation. Any surplus funds available after the obligations and instruments have been fully performed shall be distributed pro rata to the stockholders of the Predecessor Corporation based on their relative contribution to the Predecessor Corporation. Any losses occurring from these instruments and obligations shall be borne by the stockholders of the Predecessor Corporation up to the amount of investment in such stock and any remaining losses borne by the Corporation.

Section 2. Initial Management. The chief executive officer of the Predecessor Corporation shall become a manager of the Corporation and shall report to, and be subject to the supervision and direction of, the FCA until such time as the Board meets and directs the operations of the Corporation. At that time, the Board shall appoint an acting or a chief executive officer, as soon as practicable, at which point the position and functions of the manager shall terminate.

Article V—Purposes and Powers

1. Purposes. The Corporation is formed for the sole purpose of implementing a program of financial and technical assistance to System institutions and their borrowers which are experiencing financial difficulties as provided in section 4.28B of the Act and the FCA regulations.

2. Powers. The Corporation shall have the following powers, including those provided in the Act and FCA regulations, to effectuate the purposes of the Corporation.

(a) To operate under the direction of its Board; and

(b) To adopt, alter, and use a corporate seal, which shall be judicially noted; and

(c) To provide for a president, one or more vice presidents, a secretary, a treasurer, and such other officers, employers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons; and adopt a salary scale for officers and employees of the Corporation in accordance with the directives of the Board; and

(d) To prescribe by the Board its bylaws, not inconsistent with law, which shall provide for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its loans, commitments, and other financial assistance are made; its general business is conducted; and the privileges granted by law are exercised and enjoyed; and

(e) To enter into contracts and make advance, progress, or other payments with respect to such contracts; and

(f) To contract with System institutions for local administration, servicing, and restructuring of loan and loan-related assets and management of acquired properties of the Corporation; and

(g) To sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal; and

(h) To acquire, hold, lease, mortgage, exchange, improve, manage, operate, maintain, or dispose of, at public or private sale, real and personal property, and guarantee, sell, or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership or property necessary and convenient to its business; and

(i) To authorize, through the Board, the issuance and sale of obligations, including notes, bonds, debentures, capital notes, and voting or nonvoting securities, to the Secretary of the Treasury or the Farm Credit Administration, under such terms and conditions as shall be determined; and

(j) To obtain insurance against loss; and

(k) To modify or consent to modification with respect to the rate of interest, time or payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or in which it has an interest under the Act; and

(l) To borrow from any commercial bank on its own individual responsibility on such terms and conditions as it may determine with the approval of the FCA; and

(m) To join with System banks in the issuance of Systemwide obligations, assume liability of Systemwide obligations, be jointly and severally liable with System banks on Systemwide obligations, and satisfy the collateral requirements with respect thereto, in accordance with the Act and FCA regulations; and

(n) To require other institutions of the System through purchase of stock, in, or obligations of, the Corporation, to make funds available to the Corporation to enable it to make financial assistance available to System institutions as provided in paragraph (o) below. The Corporation may also assess at such times and under such circumstances as it deems appropriate, System institutions for the purpose of covering its operating expenses not to include interest costs. The guidelines to be used by the Corporation in obtaining funds from System institutions for the purpose of aggregating resources to assist other System institutions, to the extent practicable, shall give priority to obtaining funds through the use of transactions that require the Corporation, on reasonable terms, to repay the contributed funds from surpluses accumulated by the Corporation, and otherwise shall be in conformity with FCA regulations; and

(o) To administer financial assistance under regulations of the FCA; and

(p) To purchase at fair market value from any other System institution, on the request of such institution, loans (or interests in loans) that have been placed in nonaccrual status and assets (or interests in assets) in the account for acquired property; and

(q) To require System institutions to sell to the Corporation loans, assets, and interests described in paragraph (p) as a condition to receiving financial assistance from the Corporation; and

(r) To exercise all the rights and privileges of any System institution with respect to any loan which it has acquired or in which it has participated, including the adjustment of interest rates, compromise of indebtedness, waiver of default, and other such rights and privileges; and

(s) To assume debt or other liabilities from System institutions in connection with the acquisition of loans or interests therein or other assets from such institutions; and

(t) To refinance, reamortise, guarantee, or compromise indebtedness, and otherwise provide debt adjustment assistance, with respect to any loan to a borrower or a System institution purchased under paragraph (p) or participated in by the Corporation, and, after a determination by the Corporation that the borrower could not reasonably be anticipated to meet loan servicing charges under a refinanced, reamortized, or otherwise restructured loan under reasonable terms and conditions acceptable to the Corporation, liquidate any such loan; and

(u) To purchase from associations undergoing liquidation all assets which are performing loans not voluntarily purchased by other associations; and

(v) To deposit its securities and its current funds with any member of the Federal Reserve System or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed; and

(w) To render or provide financial or technical or other related assistance to System institutions experiencing financial difficulties; and

(x) To exercise such incidental powers as may be necessary to carry out its powers, duties, and functions in accordance with the Act and FCA regulations.

Article VI—Stockholders and Stock

Section 1. Qualifications and Liability of Stockholders. All System banks shall be holders of Class A voting stock as provided in the Bylaws and the FCA regulations. The Corporation shall also be authorized to issue nonvoting stock to the FCA and the Secretary of the Treasury of the United States in accordance with the Act and FCA regulations. All other classes of stock shall be nonvoting and may be held by eligible System institutions as shall subscribe to, or are assessed for, such stock in accordance with the Bylaws, the FCA regulations, and the Act. The liability of each of the stockholders of the Corporation for the debts and obligations of the Corporation shall be limited to the subscription price for the shares of stock purchased by such stockholder and no stockholder by reason of its status as such shall be responsible for the claims of creditors of the Corporation.

Section 2. Capital Stock. The Corporation is authorized to issue classes of stock, as provided in the Bylaws, in such numbers and at such times as the Board may determines. The Board is also authorized to fix and establish the following in relations to any issuance of stock under the Bylaws in accordance with the FCA regulations:

(a) The maximum number of shares of that class or series, the distinctive designation of that class or series, and the par or stated value thereof;

(b) Whether shares of that class or series shall be entitled to receive dividends (which shall be noncumulative), the rate or rates of such dividends, the conditions and the times of such dividends and the preference to, or relation to, the dividends payable on any other class or classes, or any other series of the same or any other class or classes, of capital stock of the Corporation.

(c) The rights of the shares of that class or series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or upon any distribution of assets;

(d) Whether the shares of that class or series shall have conversion privileges and, if so, the terms and conditions of such conversion privileges;

(e) Whether the shares of that class or series shall be redeemable, and, if so, the price at and the terms and conditions upon which such shares be redeemable;

(f) Such other preferences and relative, paticipating, optional or other special rights and qualifications, limitations or restrictions thereof.

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Notwithstanding the fixing of the maximum number of shares constituting a particular class or series upon the issuance thereof, the Board may at any time thereafter authorize the issuance of additional shares of the same class or series or may reduce the maximum number of shares constituting such class or series.

Section 3. Earnings. The Board, in its discretion, may determine that all activities of the Corporation shall be conducted on a cooperative basis for the mutual benefit of its stockholders as patrons or on a non-cooperative basis, or that certain activities of the Corporation shall be conducted on a cooperative basis and other activities shall be conducted on a non-cooperative basis. The Board may declare dividends from earnings available therefor payable to the holders of any one or more classes or series of capital stock of the Corporation in such amounts, at such times, upon such conditions, with such qualifications and on such other terms as may be determined by the Board subject to the FCA regulations relating thereto, but any dividends declared on any class or series shall be payable ratably on each share of such class or series outstanding.

Section 4. Book entry form. Any or all classes and series of capital stock shall be in book entry form, and ownership shall be confirmed by the Corporation upon the request of the holder.

Section 5. Repurchases. Subject to the FCA regulations, the Corporation may repurchase from surplus available therefor any or all shares of capital stock of the Corporation at such times, for such consideration and on such other terms as the Board may determine and, if the terms of the stock do not permit otherwise, the holders of such shares may agree.

Article VII—Board of Directors

Section 1. Authority. Subject to the limitations expressed in these Articles of Incorporation, the FCA regulations, the Act, and other applicable law, the business and affairs of the Corporation shall be directed by the Board.

Section 2. Membership. As provided in the Act and the FCA regulations, the initial Board shall be comprised of two (2) members appointed by the Chairman of the FCA Board and three (3) members elected by all of the System banks from each of the following categories:

(a) one member from an institution and a Farm Credit district that, at the time of the election, is or is projected by the FCA Board to be a net contributor to the Corporation;

(b) one number from an institution and a Farm Credit district that, at the time of the election, is or is projected by the FCA Board to be a net recipient to the Corporation;

(c) one member without regard to the restriction of paragraphs (a) or (b).

Section 3. Expanded Membership. In the event the Secretary of the Treasury purchases any obligation of the Corporation under section 4.28J of the Act, and for so long as such obligation remains outstanding, the Board shall be expanded by two members. One member shall be appointed by the Secretary of Agriculture, and one member shall be selected by the other members of the Board, including the appointee of the Secretary of Agriculture. The latter selection shall not be a borrower from, shareholder in, or employee or agent of any System institution, or a government employee.

Section 4. Term. The initial term of the first appointed director and the director elected to the position in section 2(c) above shall be one year. The terms for every other elected or appointed director shall be two years. Thereafter, each elected or appointed director shall serve two years. All directors shall serve until his or her successor becomes appointed or elected and qualified, unless the office becomes vacant or the director is removed, dies, resigns, or is otherwise unable to serve in accordance with the Bylaws or the FCA regulations. Any appointed or elected director may serve any number of terms, unless removed.

Section 5. Bylaw provision. Bylaws from time to time in affect may contain provisions, not inconsistent with these Articles of incorporation, the FCA regulations, and the Act, regarding the election or appointment, classification, resignation or removal, qualifications, indemnification, procedures and conduct, management and control of the business of, or the rights, powers, and duties of the Board. The authority of the Board to act through committees and the notice, quorum, and vote required for action by the Board may also be as provided in the Bylaws.

Article VIII—Nominating Committee

Section 1. There shall be a Nominating Committee composed of the Chairman, or the Vice Chairman, of each System bank board of directors. The Committee shall meet as soon as practicable following the chartering of the Corporation to nominate candidates for the three Corporation directors to be elected by the voting stockholders. The Committee shall first elect a Chairman and a Vice Chairman to conduct the business of the Committee. After the initial meeting, the Committee shall meet prior to any annual or special meeting of the stockholders at which directors are to be elected.

The Committee may participate in a meeting of the Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

Section 2. Quorum. A majority of the Committee shall constitute a quorum for transacting business of the Committee.

Section 3. Minutes. The Committee shall keep minutes of its proceedings which shall be maintained with the corporate records of the Corporation.

Article IX—Termination of Certain Powers; Liquidation

After December 31, 1990, all powers of the Corporation to increase the amount of direct financial assistance or the purchase of nonaccrual and related assets, directly or indirectly, to any System institution or its borrowers shall terminate. However, the Corporation shall continue to exercise those powers necessary for the management and orderly liquidation of commitments made and obligations incurred in providing such assistance. Thereafter, the Corporation shall be placed in an inactive status or liquidated upon a plan adopted by the Board of the Corporation and approved by the FCA.

Article X—Amendments

These Articles of Incorporation may be amended from time to time by the FCA Board in accordance with the Act.

FARM CREDIT ADMINISTRATION

McLean, Virginia

Certificate of Dissolution of Farm Credit System Capital Corporation

The Chairman of the Farm Credit Administration Board hereby dissolves and revokes the charter of the FARM CREDIT SYSTEM CAPITAL CORPORATION ("Predecessor Corporation") chartered by the Farm Credit Administration ("FCA") on June 6, 1985, pursuant to Title IV, Part D, sections 4.25 to 4.27 of the Farm Credit Act of 1971, as amended ("Act"). The Predecessor Corporation is superseded by the FARM CREDIT SYSTEM CAPITAL CORPORATION ("Corporation") chartered by the Chairman on this day with such powers as are provided in the Articles of Incorporation of the Corporation and the Act, and on such terms and conditions as shall be provided in the regulations of the Farm Credit Administration.

IN WITNESS HEREOF, the Chairman has executed this certificate of dissolution and caused the seal of the Farm Credit Administration to be affixed hereto this 24th day of February 1986.

Farm Credit Administration Board.
By: Donald E. Wilkinson,
Acting Chairman.
Attest: Marvin Duncan
Marvin Duncan
Acting Chairman.

[FR Doc. 86-4446 Filed 2-26-86; 11:36 am]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; Bank Shares Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-3266), published at page 5606 of the issue for Friday, February 14, 1986.

Comments on this application must be received not later than March 6, 1986.

Board of Governors of the Federal Reserve System, February 21, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4310 Filed 2-27-86; 8:45 am]

BILLING CODE 6210-01-M

Dominion Bankshares Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 22, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to acquire 100 percent of the voting shares of State National Bank of Maryland, Rockville, Maryland.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Charter 17 Bancorp, Inc.*, Richmond, Indiana; to acquire 11.9 percent of the voting shares of PTC Financial Corporation, Peru, Indiana, thereby indirectly acquiring The Peru Trust Company, Peru, Illinois.

2. *Citizens Community Bankshares, Inc.*, Wittenberg, Wisconsin; to acquire 99.06 percent of the voting shares of Iron Exchange Bank, Hurley, Wisconsin. Comments on this application must be received not later than March 21, 1986.

3. *Independent Community Bancshares, Inc.*, Kiel, Wisconsin; to acquire 100 percent of the voting shares of Newton State Bank, Newton, Wisconsin. Comments on this application must be received not later than March 21, 1986.

4. *M&I Stevens Point Corp.*, Stevens Point, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of First Affiliated Bancorporation, Inc., Stevens Point, Wisconsin, thereby indirectly acquiring Bank of Park Ridge, Park Ridge, Wisconsin and The First National Bank of Stevens Point, Stevens Point, Wisconsin.

5. *Marshall & Illsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of M&I Stevens Point Corp., Stevens Point, Wisconsin, thereby indirectly acquiring Bank of Park Ridge, Park Ridge, Wisconsin and The First National Bank of Stevens Point, Stevens Point, Wisconsin.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lafayette Bancshares, Inc.*, Lafayette, Minnesota; to become a bank holding company by acquiring 86.33 percent of the voting shares of Citizens State Bank of Lafayette, Lafayette, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fredonia Bancshares, Inc.*, Nacogdoches, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Fredonia State Bank, Nacogdoches, Texas.

Board of Governors of the Federal Reserve System, March 21, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4311 Filed 2-27-86; 8:45am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Independence Bancorp, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-3375), published at page 5803 of the issue for Tuesday, February 18, 1986.

The notice of the application by Independence Bancorp, Inc., Perkasie, Pennsylvania to engage in certain insurance activities is withdrawn. The Board has not determined that the proposed activity is closely related to banking pursuant to the Board's Regulation Y, 12 CFR 225.23.

Board of Governors of the Federal Reserve System, February 21, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4312 Filed 2-27-86; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council Meeting

The Consumer Advisory Council will meet on Thursday, March 20, and Friday, March 21. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 20 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The March 21 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Board's Proposal to Revise Advertising Rules of Regulation Q.*—Report by the Council's Ad Hoc Committee on Service Charges on the Board's proposed revisions to Regulation Q's advertising rules and on other matters relating to disclosures in connection with deposit accounts.

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2. *Tie-Ins in the Granting of Consumer Credit.*—Discussion of (1) the sale of credit-related insurance in consumer credit transactions, (2) the rates charged for credit-related insurance and a recent state regulation requiring certain creditors to engage in competitive bidding for credit-related insurance and (3) the results of a Board-sponsored survey to determine consumer attitudes about credit-related insurance.

3. *Delayed Availability of Funds.*—Discussion of (1) the practice by financial institutions of delaying a consumer's access to funds deposited by check and (2) two approaches being considered by the Congress to alleviate consumer concerns about this practice, one involving disclosure of hold policies to consumers and the other setting a series of availability schedules.

4. *Credit Card Interest Rates.*—Discussion of congressional proposals to establish nationwide ceilings on credit card interest rates.

5. *Reduced-Rate Financing.*—Discussion of whether recent programs offering consumers reduced-rate financing for automobile purchases lessen the value of the annual percentage rate as a tool for consumers' use in credit shopping.

6. *Disclosures for Adjustable Rate Mortgages (Tentative).*—Discussion of the usefulness of uniform disclosure requirements for adjustable rate mortgage programs.

7. *Legislative Briefing.*—Presentation to inform Council members about the legislative outlook for 1986.

8. *Regulatory Update.*—Status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, March 17, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452-3305.

Board of Governors of the Federal Reserve System, February 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-[illegible] Filed 2-27-86; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of December 16-17, 1985

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on December 16-17, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that economic activity is expanding at a relatively modest pace in the current quarter. Total nonfarm payroll employment increased further in November, though less than in October, and the civilian unemployment rate edged down to 7.0 percent. Retail sales and industrial production picked up in November after declining in October. After strengthening in October, housing starts fell appreciably in November. Incoming information generally suggests relatively sluggish business capital spending. Revised merchandise trade data for the third quarter confirm that the deficit widened further, as non-oil imports continued to increase and exports fell somewhat. Broad measures of prices and wages appear to be rising at rates close to those recorded earlier in the year.

After declining in October, M1 grew substantially in November while growth in M2 and M3 continued quite moderate. Expansion in total domestic nonfinancial debt has remained rapid. Through November, M1 expanded at a rate well above the long-run range set by the Committee, M2 grew at a rate a bit below the upper end of its range for the year, and M3 expanded at a rate near the midpoint of its range for 1985. Treasury bill rates have fallen somewhat while other short-term market interest rates have changed little on balance since the November meeting of the Committee; long-term rates have moved appreciably lower over the period. The trade-weighted value of the dollar against major foreign currencies has declined on balance since the Committee's meeting in early November, though the dollar has tended to stabilize more recently.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a substantial basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee at the July meeting reaffirmed ranges for the year of 6 to 9 percent for M2 and 6 to 9½ percent for M3. The associated range for total domestic nonfinancial debt was reaffirmed at 9 to 12 percent. With respect to M1, the base was moved forward to the second quarter of 1985 and a range was established at an annual growth rate of 3 to 8 percent. The range takes account of expectations of a return of velocity growth toward more usual patterns, following the sharp decline in velocity during the first half of the year, while also recognizing a higher degree of uncertainty regarding that behavior. The appropriateness of the new range will continue to be reexamined in the light of evidence with respect to economic and financial developments including developments in foreign exchange markets. More generally, the Committee agreed that growth in the aggregates may be in the upper parts of their ranges, depending on continuing developments with respect to velocity and provided that inflationary pressures remain subdued.

For 1986 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9 percent for M3. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1986. With respect to M1 particularly, the Committee recognized that uncertainties surrounding recent behavior of velocity would require careful reappraisal of the target range at the beginning of 1986. Moreover, in establishing ranges for next year, the Committee also recognized that account would need to be taken of experience with institutional and depository behavior in response to the completion of deposit rate deregulation early in the year.

In the implementation of policy for the immediate future, the Committee seeks to decrease somewhat the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M2 and M3 over the period from November to March at annual rates of about 6 to 8 percent; while the behavior of M1 continues to be subject to unusual uncertainty, growth at an annual rate of 7 to 9 percent over the period is anticipated. Somewhat greater reserve restraint might, and somewhat lesser reserve restraint would, be acceptable depending on behavior of the aggregates, the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, February 20, 1986.

Stephen H. Axilrod,

Secretary.

[FR Doc. 86-4307 Filed 2-27-86; 8:45 am]

BILLING CODE 6210-01-M

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[1] The Record of policy actions of the Committee for the meeting of December 16-17, 1985, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 21, 1986.

Social Security Administration

Subject: The Study of Nonresponses to Court Case Notices—New
Respondents: Individuals or households

Subject: Request for Parental Locator Services—Revision—(0960-0165)
Respondents: State or local governments

Subject: Pre-1957 Military Service-Federal Benefit Questionnaire—Extension—(0960-0120)
Respondents: Individuals or households

Subject: Overpayment Recovery Questionnaire—Extension—(0960-0037)
Respondents: Individuals or households

Subject: Time Report of Personnel Services for Disability Determination Services—Revision—(0960-0406)
Respondents: State or local governments

Subject: Missing and Discrepant Wage Reports Letter—New
Respondents: Businesses or other for-profit institutions; Small businesses or organizations

Subject: Final Rule—State Income and Eligibility Verification System—New
Respondents: State or local governments
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

Subject: Information Collection Requirements contained in BERC 321-F, Income and Eligibility Verification System, R-74 and IEVS State Plan Preprint, SP-1—New
Respondents: State or local Governments
OMB Desk Officer: Fay S. Iudicello

PUBLIC HEALTH SERVICES

Food and Drug Administration

Subject: Importers Entry Notice—Reinstatement—(0910-0046)
Respondents: Businesses or other for-profit

National Center for Health Statistics

Subject: 1986 National Mortality Followback Survey—NW
Respondents: Individuals or Households; Businesses or other for-profit institutions; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Bruce Artim.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Date: February 24, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-4269 Filed 2-27-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85N-0474]

Federation of American Societies for Experimental Biology; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announced in the **Federal Register** of November 13, 1985 (50 FR 46832), that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), under its contract with FDA, was undertaking a study on dietary characteristics and cancer. The notice announced that an open meeting of the Scientific Steering Group, established by FASEB under the contract, would be scheduled in March 1986 and that the date and location of the meeting would be announced in the **Federal Register**. This notice announces that the meeting will be held on March 26, 1986.

DATE: The open meeting will be held on Wednesday, March 26, 1986, at 9 a.m. The executive session will be held after the open meeting.

ADDRESS: The open and executive session meetings will be held in the Milton O. Lee Bldg. at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1985 (50 FR 46832), FDA announced that FASEB, under its contract with FDA (No. 223-83-2020), was undertaking a study on dietary characteristics and cancer. FASEB's Scientific Steering Group, established under the contract, recommended that the Life Sciences Research Office study the available information and data being generated by a major study on dietary characteristics and cancer. For complete information about this study, see 50 FR 46833. FASEB also invited submission of scientific data and information on certain specific questions related to this subject (50 FR 46833) for consideration by the Scientific Steering Group.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Scientific Steering Group will hold an open meeting on March 26, 1986, during which an opportunity will be provided for the public to present written and oral views, information, and data on dietary characteristics and cancer. If time permits, after the conclusion of the open meeting the Scientific Steering Group will meet in executive session to review task orders under the contract initiated since June 1, 1984.

The conference room in which the open meeting is being held has limited seating. Therefore, advance registration is strongly encouraged (contact Kenneth Fisher—address above). Additionally, because parking space is limited, use of public transportation is encouraged.

Dated: February 24, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4314 Filed 2-27-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0031]

W.L. Gore & Associates, Inc.; Premarket Approval of GORE-TEX™ Suture ePTFE Nonabsorbable Monofilament

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by W. L.

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Gore Associates, Inc., Flagstaff, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the GORE-TEX™ Suture ePTFE NONABSORBABLE MONOFILAMENT. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 31, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7238.

SUPPLEMENTARY INFORMATION: On April 11, 1983, W.L. Gore and Associates, Inc., Flagstaff, AZ 86002, submitted to CDRH an application for premarket approval of the GORE-TEX™ Suture ePTFE NONABSORBABLE MONOFILAMENT. The device is an expanded polytetrafluoroethylene nonabsorbable monofilament surgical suture that is not dyed. The GORE-TEX™ Suture ePTFE NONABSORBABLE MONOFILAMENT is indicated for use in all types of soft tissue approximation, including use in cardiovascular surgery, but not in ophthalmic surgery, microsurgery, and neural tissue. It is recommended for use where reduced suture-line bleeding during cardiovascular anastomotic procedures is desired. The device is available in sizes designated by the applicant as CV-2 through CV-7, with and without permanently attached needles.

On June 25, 1984, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application.

On December 30, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 31, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 21, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-4315 Filed 2-27-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Activities

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing: (1) The availability of approximately $360 million for community health (CH) activities and approximately $45 million for migrant health (MH) activities funded under sections 330 and 329 of the Public Health Service Act (42 U.S.C. 254c and 254b) respectively; (2) within the aforementioned funding, the availability of up to $12 million, targeted to high need areas, for new starts and new expansion activities; (3) within the $400 million, the availability of up to $3 million for grants to provide technical and other non-financial assistance under section 330(f)(1) of the Act; and (4) the criteria that will be used in evaluating applications in FY 1986.

DATE: With the exception of 330(f)(1) applications, continuation funding applications are due 120 days to the expiration of the current grant award; applications for new starts, expansions and new and continuation 330(f)(1) awards must be delivered or postmarked by June 1, 1986, and received in time to process.

FOR FURTHER INFORMATION CONTACT: Application kits and additional information may be obtained from, and completed applications should be sent to, the appropriate Regional Administrator (see Appendix).

SUPPLEMENTARY INFORMATION:

Critieria for Evaluating CH/MH Continuation Applications

As is the practice every year, compliance with standard criteria stipulated in the regulations (42 CFR Part 51c for CH and Part 56 for MH activities) and the performance of grant recipients in using previously awarded section 330 and 329 funds will be carefully reviewed in determining whether continued Federal support will be made available. This year's reviews of Community and Migrant Health Centers (CHC/MHC) will emphasize governance, clinical and financial/administrative expectations as set out below:

- *Governance* (42 CFR 31c.304 ad 56.304)—Each governing borad must represent the population of the catchment area, with center users comprising a majority of membership of

the board. Governing boards are expected to be responsive to the communities that they serve, fulfilling all of the functions and responsibilities specified in the legislation and implementing regulations.

- *Clinical* (42 CFR 51c.102(c)(1)(i), 51c.303 (a) and (p), 56.303 (a) and (p), 56.603 (a) and (n), and 56.102(g)(1)(i)).—CHCs and MH centers and programs must provide health services so that such services are available and accessible promptly, as appropriate, and in a manner which will assure continuity of service to the residents of the center's catchment area. Primary health services must be provided for all residents of the catchment area; such services include, but are not limited to, the diagnostic, treatment, and other services rendered by physicians and physician's extenders, perinatal services, and other preventive health services. In addition, a center must provide sufficient staff, qualified by training and experience, to carry out the activities of the center. In considering which projects to fund, the Secretary will consider whether a center has an appropriate number of full-time providers on staff who provide after hours coverage, have admitting privileges and hospitalize their patients.
- *Financial/Administrative* (42 CFR 51c.303(g), 56.303 (r) ad (s), and 56.305 (a)(3))—CHCs and MH centers and programs must seek to develop and utilize to the greatest extent possible other Federal, State, and local, and private resources, and must seek to maximize non-grant revenues. In considering which projects to fund, the Secretary will consider applicants' plans to secure maximum self-sufficiency and minimize dependence upon and need for subsequent CHC and MH grants.

To determine the level of funding to be awarded, each grantee's entire section 330 and/or 329 financed program will be reviewed using a zero-based assessment process. These zero-based assessments will be used to ascertain the need for the services and to assure that costs of providing the services and the revenues generated are acceptable. The reviews will incorporate all of the considerations listed in 42 CFR 51c.305 for CH grantees and 42 CFR 56.305 or 56.604, as appropriate, for MH grantees. In order to be funded, grantees will be expected to demonstrate: (1) The need and demand for services to be funded, with special attention given to the low birth weight and infant mortality rates in the catchment area; (2) financial and administrative efficiency in the provision of services; and, (3) a clinical system consistent with the priorities mentioned above.

Criteria for Evaluating New and Expansion CH/MH Applications

Applications for funding of "new starts" for CHCs and MH centers and programs will be evaluated in accordance with the criteria set forth in 42 CFR 51c.305 for CH and 56.305 and 56.604 for MH activities. Emphasis during grant evaluation will be placed on the extent to which the need for health services will be addressed, particularly for areas in need of improved perinatal systems. It should be noted that migrant health "centers" and "programs" have different requirements under the authorizing legislation and the regulations: migrant health centers must offer a full range of specified primary and supplemental services and serve a high impact area (section 329(d)(1)(A) of the PHS Act and 42 CFR Part 56, Subpart C); migrant health "programs" may be funded in areas where there is no migrant health center and in which not more than 4,000 migratory agricultural workers and their families reside for more than two months, with a more limited range of services required than offered by migrant health centers (section 329(d)(1)(B) of the PHS Act and 42 CFR Part 56, Subpart F).

The expansion of activities for existing grantees includes, but is not limited to, the establishment of satellite clinics, the expansion of service capacity, and related activities directed toward the expansion and the improvement of the delivery of services, such as improved financial management, planning, marketing, outreach activities, and perinatal systems. The extent to which applicants for expansion funds have or plan to develop cooperative linkages and arrangements with other health care organizations, such as through rural consortia and urban networks, will be considered as applications are reviewed. See 42 CFR 51c.305 (i) and (j), 56.305(a) (6) and (7) and 56.604(a)(2) (iii) and (iv).

Criteria for Evaluating Applications To Provide Technical and Other Non-financial Assistance Under Section 330(f)(1)

A full explanation of the basis on which application will be reviewed is included in the Federal Register Notice, Volume 50, Number 130, Monday, July 8, 1985, page 27851. In addition, the performance of grant recipients in using previously awarded section 330(f)(1) funds will be considered in determining whether Federal support will be made available to continuation applicants.

Other Award Information

Under the terms of the Primary Care Block Grant legislation (section 1923 of the PHS Act, 42 U.S.C. 300y-2), the Department is required to solicit comments from the Governor of the State and the appropriate local officials prior to awarding CHC grants. Since these comments are an essential part of a grant application's review, CHC applicants are advised to request that such comments be sent to the appropriate regional office prior to the due date of their application.

Furthermore, all grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (standard DHHS Form No. 424) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. At the latest, States should receive applications from grantees at the same time that they are due in the Regional Office.

In the OMB *Catalog of Federal Domestic Assistance*, the Community Health Center program is listed as Number 13.224; the Migrant Health Center program is Number 13.246, and; the Technical and Other Non-financial Assistance to Community Health Centers is Number 13.129.

Dated: February 24, 1986

John H. Kelso,

Acting Administrator.

Appendix—Regional Health Administrators

Mr. Edward J. Montminy, Regional Health Administrator, DHHS Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 223-6827

Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-2560

William Lassek, M.D., Regional Health Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101 (215) 596-6637

John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 655-3879

Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

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Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163
E. Frank Ellis, M.D., Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite 1202, Atlanta, Georgia 30323, (404) 221-2316
Stephen H. King, M.D., Acting Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353-1385
Sheridan L. Weinstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810
Ms. Dorthy H. Mann, Regional Health Administrator, DHHS Region X, 2901 Third Avenue, Mail Stop 405, Seattle, Washington 98121 (206) 442-0430.

[FR Doc. 86-4317 Filed 2-27-86; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wild Horse and Burro Advisory Board; Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretaries of the Interior and of Agriculture are establishing a wild horse and burro advisory board to provide advice concerning policy issues related to the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior through the Bureau of Land Management and by the Department of Agriculture through the Forest Service.

Further information concerning the advisory board may be obtained from the Director, Bureau of Land Management (250), U.S. Department of the Interior, Premier Building, Room 901, Washington, D.C. 20240.

The certification of establishment is published below.

Certification

We hereby certify that the establishment of the Wild Horse and Burro Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Departments of the Interior and Agriculture by the Wild Free-Roaming Horse and Burro Act (Public Law 92-195, as amended).

Donald Paul Hodel,
Secretary of the Interior.

Date Signed: February 12, 1986.

John R. Block,
Secretary of Agriculture.

[FR Doc. 86-4258 Filed 2-27-86; 8:45 am]

BILLING CODE 3410-01-M, 4310-10-M

Bureau of Land Management

Wild Horse and Burro Advisory Board; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for the Wild Horse and Burro Advisory Board.

SUMMARY: The purpose of this notice is to solicit public nominations for the appointment of members to the Wild Horse and Burro Advisory Board.

The Board will comprise 9 members. Terms of appointment will be for 2 years, or until the Board has been terminated.

Members of the Board shall not be employees of the Federal or State Governments. To ensure Board membership that is balanced in terms of categories of interest represented and functions performed, nominees must be persons who, as a result of training, experience, and attainment, have scientific knowledge or special expertise which qualifies them to represent and provide advise on at least one of the following categories of interest: protection of wild horses and burros, wild horse and burro populations dynamics, management of wildlife, animal husbandry (as it relates to rangeland management).

At least one member will be a representative of a recognized wild horse and burro protection advocacy organization and will be appointed from among those individuals recommended by such organizations.

One member will be chosen from each of the nine categories listed below:

Wild horse and burro research
Wild horse and burro management
Wildlife management
Rangeland management
Livestock management
Animal husbandry: veterinary medicine
Animal husbandry: humane organizations
Conservation
Public at large.

The purpose of the Board will be to provide informed advice to the Secretary of the Interior, the Director, Bureau of Land Management, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands.

Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Board will normally meet three times annually. Additional meetings may be called by the Director, Bureau of Land Management, or his designee in connnection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Wild Horse and Burro Advisory Board should forward the names, addresses, professions, and other biographic data on qualified nominees to the address below.

ADDRESS: The mailing address is as follows: Chief, Division of Wild Horses and Burros (250), Bureau of Land Management, Premier Building, Room 901, Washington, DC 20240.

DATE: All nominations must be received by March 28, 1986.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Wild Horses and Burros.

Robert F. Burford,
Director.

[FR Doc. 86-4259 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-10-M

Environmental Impact Statement; Oregon Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Supplement to the Draft Oregon Wilderness Environmental Impact Statement (DEIS).

DATE: Comments on issues and alternatives to be addressed in the Supplemental DEIS must be received at the address listed below by April 14, 1986. Protests regarding the wilderness inventory decisions included in this notice must be received no later than March 31, 1986.

ADDRESS: Comments should be sent to: Wilderness Studies (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208. Protests should be sent to: State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Jerry Magee (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208. Telephone: (503) 231-6256.

SUPPLEMENTARY INFORMATION: The Draft Oregon Wilderness Environmental Impact Statement (DEIS) was released for public review on April 30, 1985, as announced through a Federal Register notice of availability (50 FR 18321). The document addressed wilderness suitability and nonsuitability recommendations for 77 Wilderness Study Areas (WSAs) totaling 2,304,142 acres. The DEIS analyzed the impacts of seven alternatives ranging from All Wilderness to No Wilderness/No Action. The comment period ended August 31, 1985.

The Bureau of Land Management intends to prepare a supplement to the Oregon Wilderness DEIS to consider additional lands that are being restored or added to WSA status.

On April 18, 1985, the U.S. District Court for the Eastern District of California issued a decision in *Sierra Club* v. *Watt* concerning certain lands that were deleted from wilderness review in 1982 and 1983. The decision restored split-estate lands (where the Federal Government owns the surface and another entity owns the mineral estate) to wilderness study area (WSA) status under section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). The court also held that the Secretary of the Interior has discretionary authority to study (under section 202 of FLPMA) or remove from study those areas less than 5,000 acres that were deleted from WSA status through Federal Register notices between December 30, 1982 and August 9, 1983. Subsequently, the Secretary of the Interior has directed that these areas be retained as section 202 WSAs unless changes in status of the adjacent lands (upon which most of the BLM areas under 5,000 acres depended for identification as WSAs) no longer justify such WSA status.

In addition, the Department of the Interior has agreed to re-inventory lands over 5,000 acres that are contiguous to lands under wilderness review by other agencies, but which were deleted from WSA status as a result of a determination that they did not possess wilderness characteristics on their own.

As a result of an Interior Board of Land Appeals decision, Oregon and Idaho Inventory Unit OR-3-194A/ID-16-48A, Lookout Butte, was reinventoried and subsequently designated as a WSA on August 28, 1985, through publication of a Federal Register notice (50 FR 34917).

The final category of lands to be incorporated into the Supplemental DEIS includes split-estate and full fee-estate lands, acquired since completion of the wilderness inventory phase, that are either within or adjacent to the outer boundaries of an existing WSA and within the same roadless area. The decision to add any such lands to the wilderness review effort is within BLM's discretionary authority under sections 202 and 302 of FLPMA. In some places, these acquired lands form a bridge ot other BLM-administered public lands within these same roadless area. Only those acquired lands, and any adjoining public lands, which have been found through inventory, to possess wilderness characteristics in association with the adjacent WSAs will be considered in the Supplemental DEIS.

Overall, the supplement to the DEIS will address eight WSAs containing 113,065 acres not addressed in the original DEIS, plus modifications adding a total of 213,007 acres to 58 WSAs which appeared in the DEIS. The additions bring the combined total of WSAs and acres studied in the DEIS and Supplement to 85 WSAs and 2,640,214 acres.

As a supplement to the DEIS, it is expected that the document will address the same mix of site-specific alternatives defined and analyzed in the DEIS: All Wilderness (Entire WSA recommended suitable for wilderness designation), Enhanced Wilderness (Opportunities to enhance wilderness manageability considered), Partial (Opportunities to resolve or minimize resource conflicts considered), No Wilderness/No Action (Current levels of use and management continued), and the Preferred Alternative (usually one of the four preceding alternatives, but in some cases different from all of them). For some WSAs the document may address only the All Wilderness and No Wilderness/No Action alternatives. The other alternatives will be addressed for those WSAs where such options are considered relevant for analysis. The statewide alternatives will again incorporated all of the site-specific alternatives developed for the individual WSAs.

The Supplement will address the general issue topics discussed in the DEIS (wilderness values, ecosystems and vegetation, economic value and local personal income, livestock grazing, energy and mineral development, utility corridor routing, timber production, recreation use, wildlife and management of adjacent lands). The site-specific analyses will address those relevant site-specific issues identified by BLM staff and those raised by the public either previously or during the comment period established in this notice.

The Supplement is not intended to substantially modify the DEIS to respond to public comments on the DEIS, although some revisions may be made in respond to public comments to improve clarity. Any revisions not related to either clarity or the additional study lands identified above will be defered until the final EIS, including any adjustments to the preferred alternative for individual WSAs.

Table 1 lists the study areas to be addressed in the Supplemental DEIS. It identifies by study area the acres addressed in the original DEIS, those added under section 603 of FLPMA (split-estate lands previously deleted from WSA status and the new Lookout Butte WSA), and those added under Section 202 of FLPMA (areas under 5,000 acres previously deleted from WSA status; areas over 5,000 acres that do not possess wilderness characteristics when considered apart from adjacent lands under study by another agency; and certain split-estate and full fee-estate lands acquired after the passage of FLPMA, along with adjoining public lands, found through inventory to possess wilderness characteristics warranting further study). The final column lists acreages of acquired and associated public lands, within the same roadless areas as existing WSAs, that were inventoried and found to not meet wilderness criteria for WSA status.

This announcement constitutes a final inventory decision for the acquired and associated public lands listed in Table 1. This inventory decision is subject to protest. Unless a protest is received during the 30-day protest period, which ends on March 31, 1986, this inventory decision will become final on that date.

Dated: February 21, 1986.

William G. Leavell,
State Director.

BILLING CODE 4310-33-M

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Table 1. Study Areas Included in the Supplement to the Oregon Wilderness DEIS

SDEIS Study Area Number (OR-)	SDEIS Study Area Name	Acres in WSA in 4/85 DEIS	Acreage Added Under Sec. 603	Acreage Added Under Sec. 202 1/	Total SDEIS Study Area Acres	Acq. & Assoc. Public Lands Not Meeting WSA Criteria (ac.)
1-2	Devils Garden Lava Bed	28,720	920	0	29,640	0
1-3	Squaw Ridge Lava Bed	27,700	620	0	28,320	0
1-22	Four Craters Lava Bed	11,960	640	0	12,600	0
1-24	Sand Dunes	16,000	400	0	16,400	0
1-58	Diablo Mountain	107,920	5,200	0	113,120	0
1-101	Abert Rim	23,280	480	0	23,760	0
1-117	Fish Creek Rim	16,070	0	620	16,690	0
1-146A	Hawk Mountain	68,360	0	1,280	69,640	0
1-146B	Sage Hen Hills	0	2/	2/	8,520	0
2-23L	Stonehouse	21,000	0	325	21,325	2
2-72C	Sheepshead Mountains	51,120	0	3,270	54,390	0
2-72D	Wildcat Canyon	32,720	0	2,110	34,830	0
2-72F	Heath Lake	20,100	0	420	20,520	0
2-72I	Table Mountain	38,600	0	1,992	40,592	0
2-72J	West Peak	7,900	0	635	8,535	0
2-73A	East Alvord	21,600	0	640	22,240	0
2-73H	Winter Range	14,800	0	640	15,440	0
2-74	Alvord Desert	111,690	107,900	31,470	251,060	230
2-77	Mahogany Ridge	27,210	160	570	27,940	0
2-78	Red Mountain	14,730	0	1,485	16,215	0
2-81	Pueblo Mountains	69,310	0	3,380	72,690	440
2-82	Rincon	97,545	0	6,420	103,965	200
2-83	Alvord Peak	14,655	0	2,170	16,825	14,790
2-84	Basque Hills	137,220	0	4,190	141,410	0
2-85F	High Steens	65,420	680	3,640	69,740	2,380
2-85G	S.Fk.Donner & Blitzen R.	35,850	0	1,705	37,555	65
2-85H	Home Creek	25,120	0	1,470	26,590	30
2-86E	Blitzen River	51,890	170	2,220	54,280	0
2-86F	Little Blitzen Gorge	9,240	140	20	9,400	0
2-87	Bridge Creek	14,060	0	485	14,545	0
2-98A	Pine Creek	0	0	200	200	0
2-98C	Sheep Gulch	0	0	720	720	0
2-98D	Indian Creek	0	0	208	208	0
3-18	Castle Rock	5,560	0	640	6,200	0
3-27	Beaver Dam Creek	19,140	80	360	19,580	0
3-31	Camp Creek	18,360	840	0	19,200	0
3-32	Cottonwood Creek	8,500	200	0	8,700	0
3-33	Gold Creek	12,920	680	0	13,600	0
3-35	Sperry Creek	5,360	0	240	5,600	0
3-47	Cedar Mountain	31,440	2,160	0	33,600	0
3-53	Dry Creek	22,540	1,000	0	23,540	0
3-56	Dry Creek Buttes	49,880	1,920	0	51,800	0
3-74	Upper Leslie Gulch	0	0	3,000	3,000	0
3-110	Lower Owyhee Canyon	71,940	1,460	1,985	75,385	0
3-111	Saddle Butte	81,300	0	5,000	86,300	0
3-114	Palomino Hills	50,560	0	3,840	54,400	0
3-118	Bowden Hills	56,140	0	3,760	59,900	0
3-120	Clarks Butte	31,450	40	0	31,490	0
3-128	Jordan Craters	27,560	240 3/	0	27,800	0
3-152	Willow Creek	28,810	0	1,755	30,565	0
3-153	Disaster Peak	30,490	90	1,460	32,040	0
3-156	Fifteenmile Creek	48,460	0	2,830	51,290	0
3-157	Oregon Canyon	40,400	20	2,480	42,900	0
3-162	Twelvemile Creek	26,960	0	1,640	28,600	0
3-173	Upper W. Little Owyhee	58,660	0	3,840	62,500	0
3-194	Lookout Butte	0	99,600 4/	0	99,600 4/	0
5-6	Lower John Day	19,532	0	240	19,772	0
5-8	North Pole Ridge	6,249	0	120	6,369	0
5-31	North Fork	10,745	0	240	10,985	0
5-33	South Fork	19,391	240	0	19,631	0
5-34	Sand Hollow	8,091	700	0	8,791	0
5-35	Gerry Mountain	19,980	720	0	20,700	0
5-43	Cougar Well	17,315	0	1,120	18,435	0
6-1	McGraw Creek	0	0	497	497	0
6-2	Homestead	6,321	600	0	6,921	0
11-1	Mountain Lakes	0	0	320	320	0
	TOTALS	2,015,844	227,900 2/	107,652 2/	2,359,916	18,137

1/ The study areas and acreages added under Section 202 of FLPMA fall into the following categories:

Under 5,000 acres: Pine Creek (OR-2-98A) - 200 acres, Sheep Gulch (OR-2-98C) - 720 acres, Indian Creek (OR-2-98D) - 208 acres, Upper Leslie Gulch (OR-3-74) - 3,000 acres, McGraw Creek (OR-6-1) - 497 acres and Mountain Lakes (OR-11-1) - 320 acres.

Over 5,000 acres: Possibly Sage Hen Hills (OR-1-146B) - 8,520 acres, if further inventory determines that the area does not possess wilderness characteristics when considered apart from adjacent U.S. Fish and Wildlife Service lands under wilderness consideration.

Acquired and Adjacent Lands: The remaining study areas listed in the table.

2/ Further inventory and a separate public review period are necessary to determine whether the Sage Hen Hills WSA will be studied under Section 603 or Section 202 of FLPMA. When determined, the 8,520 acres would be added to the appropriate column.

3/ Includes 215 acres erroneously omitted from the DEIS due to records which incorrectly depicted the lands as split-estate rather than public lands.

4/ Includes 34,400 acres in Idaho.

[FR Doc. 86-4249 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-33-C

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Denver, Colorado, on April 1, 1986. The public is invited to attend. The Board will (1) discuss the Secretary's coal program decisions, (2) the timing and proposed means of implmentation of the decisions, and (3) review the Board charter with respect to its renewal.

DATE: The Board will meet at 9:00 a.m. on April 1, 1986.

ADDRESS: The Board meeting will be held at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado 80207, telephone 1-800-252-7466.

FOR FURTHER INFORMATION CONTACT: Walt Rewinski or Tom Walker, Division of Solid Mineral Leasing, Bureau of Land Management (650), 18th and C Streets NW., Washington, DC 20240, telephone (202/FTS) 343-4636.

SUPPLEMENTARY INFORMATION: The Board will meet to hear a presentation on the Secretary's coal leasing decisions and the specific changes developed to improve the leasing process and increase public confidence in the program. These changes culminate a comprehensive program review which included the 1983-1984 examination of fair market value policy for Federal coal leasing by an independent commission established by the Secretary; the Office of Technology Assessment's investigation of environmental protection in the Federal coal leasing program; and the Secretary's commitment to re-examine the basis for a Federal coal leasing program.

Board members will also be briefed on the Department's proposal to restart the regional activity planning process and the implementation of the program changes. Additionally, the Board will review its charter, which expires in October 1986, and discuss possible changes in anticipation of charter renewal, which is required every two years.

The public will have an opportunity to address the Board on agenda topics during the public comment period, as noted on the agenda, below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on speakers' comments to ensure that all those wishing to address the Board are heard.

Agenda—Federal-State Coal Advisory Board Meeting

April 1, 1986

Denver, Colorado

Welcome and Introductions
- —BLM Director
- —Deputy Director for Energy and Mineral Resources
- —Board Members

Review and Approval of Meeting Agenda
Approval of 1985 Meeting Minutes
Director's Remark
Coal Program Developments
- —Summary of Secretary's coal program
- —Extent to which program changes apply
  - Existing activity planning
  - New activity planning
- —Program restart
  - BLM conferences on program changes
  - RCT meetings
  - Long-range schedule and market analysis
- —FSCAB recommendation on data adequacy
- —RCT reports

Break
Coal Program Developments (cont'd)
Lunch
Advisory Board Charter
Public Comment Period
Break
Discussion/Recommendations
Adjourn

Robert F. Burford,

Director.

February 24, 1986.

[FR Doc. 86-4281 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-14881 et al.]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture proposes that 332.74 acres of withdrawals for the Warm Springs Administrative Site, Snake River Administrative Site and the Swan Valley Administrative Site continue for an additional 30 years, which is the anticipated time the sites will continue to be used as administrative sites. These lands will remain closed to surface entry, and mining, but not mineral leasing.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to; Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208-334-1735.

The Forest Service proposes that the existing land withdrawals made by the Secretarial Order of October 19, 1906, Executive Order 2221, of July 19, 1915, Executive Order 4951, of August 17, 1928, Public Land Order No. 107, of March 31, 1943, and Public Land Order 2970, of March 18, 1963, be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

I-14878

Secretarial Order of October 19, 1906

Boise Meridian

T. 2 N., R. 43 E.
Sec. 32, lots 6, 7, E½SE¼.

I-14884

Executive Order 2221, dated July 19, 1915

Boise Meridian

T. 11 N., R. 32 E.
Sec. 25, SE¼SW¼, W½SE¼;
Sec. 36, NE¼NW¼.

I-14882

Executive Order 4951, dated August 17, 1928

Boise Meridian

T. 2 N., R. 43 E.
Sec. 33, lots 4, 5, SW¼SW¼.

I-14881

Public Land Order No. 107, dated March 31, 1943

Boise Meridian

T. 1 N., R. 43 E.
Sec. 1, lots 5, 6, 11, 77, 78, 91, 92.

I-012083

Public Land Order No. 2970, dated March 18, 1963

Boise Meridian

T. 1 N., R. 43 E.
Sec. 1, lots 80, 81, 82, 83.

The area involved totals 332.74 acres in Clark County.

The withdrawals are essential for protection of substantial capital improvements on the Administrative Sites. The withdrawals closed the described lands to surface entry, and mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the

BEST COPY AVAILABLE

Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: February 20, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-4297 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-[illegible]

North Dakota; Resource Management Plan Alternatives

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Supplement to Notice of Intent for the Initiation of Planning Activity in Dickinson District, North Dakota.

SUMMARY: This notice supplements the "Notice of Intent for the Initiation of a Planning Activity for the North Dakota Resource Management Plan (RMP)," published in the Federal Register, Volume 49, Number 245, Pages 49382 and 49383, on Wednesday, December 19, 1984. This supplement identifies four alternatives to be considered in detail during the preparation of the RMP and accompanying Environmental Impact Statement (EIS). The four alternatives will be based on the general themes of no action, commodity resource production, balanced multiple use, and protection of natural resource amenities.

SUPPLEMENTARY INFORMATION: Alternatives to be considered in detail were not identified in the original "Notice of Intent" for the North Dakota RMP. Four alternatives have been designed to present a range of feasible management actions which address the resource management issues of coal leasing, land pattern adjustment, oil and gas leasing, and offroad vehicle use.

The "No Action Alternative" is included in accordance with 43 CFR 1502.14(d). The theme of commodity resource production will be represented by maximizing commodity production subject to legal requirements. The balanced multiple use theme will be represented by maximizing commodity production within legal requirements and resource constraints identified through consultation with state and federal resource management agencies, interest groups, and the general public. The fourth alternative emphasizes maintaining or improving amenity values. This alternative would allow development of commodity resources, but only to a level which would not adversely impact other resource values.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager, P.O. Box 1229, Dickinson, North Dakota 58602, Telephone: (701) 225-9148.

Dean Stepanek,

State Director.

February 21, 1986.

[FR. Doc. 86-4290 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-DN-M

[NM 59439-OK and NM 59433-OK]

Public Lands Sale in Woods and Woodward Counties, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Sale Notice.

SUMMARY: The Tulsa District proposes to dispose of 197.27 acres of public land in Woods and Woodward Counties, Oklahoma. The proposed sale is consistent with the Bureau's planning system and the Federal Land Policy and Management Act (FLPMA) of 1976. Public interest will be served by disposition of these isolated tracts that are difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency.

DATE: For a period of 45 days after the date of publication of this Notice in the Federal Register, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area Headquarters, 405-231-5491.

The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the FLPMA of 1976 (90 Stat. 2743, 43 U.S.C. 1701) at no less than the appraised fair market value:

Tract	Legal description	Acres	Value
	Woods County (WD)		
WD-2	T. 24 N., R. 16 W., I.M., sec. 21: NE¼SW¼ and NE¼NE¼.	80.00	$16,000
WD-3	T. 24 N., R. 16 W., I.M., sec. 22: NW¼NW¼.	40.00	8,000
WD-5	T. 25 N., R. 14 W., I.M., sec. 18: Lot 3.	37.27	11,200
	Woodward County (WW)		
WW-1	T. 21 N., R. 17 W., I.M., sec. 30: NE¼SW¼.	40.00	8,000

(Containing 197.27 acres)

Patents, when issued, will contain the following reservations: 1. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this Bureau of Land Management office.

2. The sale of the lands will be subject to all valid existing rights and reservations of record.

Tracts WD-2, WD-3, and WW-1 do not have legal access and the Bureau of Land Management will not guarantee access.

The identified tracts will be sold by sealed bid under competitive bidding procedures. Sealed written bids will be considered only if received by the Bureau of Land Management, Oklahoma Resource Area Headquarters, 200 N.W. Fifth Street, Room 548, Oklahoma City, Oklahoma, 73102, prior to 10:00 a.m., Monday, May 5, 1986. The tract numbers should be printed on the lower left hand corner (example: Land Sale—Tract WD-5). Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management, for at least twenty percent of the amount bid. The written, sealed bids will be opened and publicly declared at the beginning of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be the highest bid shall be by supplemental sealed bids.

Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days of the sale. Failure to pay the full bid price shall result in cancellation of the sale for the tract, and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

If the identified tracts are not sold, they will be available for sale by sealed bid on the first Monday of each month for six months as follows: (1) June 2, 1986; (2) July 7, 1986; (3) August 4, 1986;

(4) September 8, 1986; (5) October 6, 1986; and, (6) November 3, 1986.

Jim Sims,

District Manager.

[FR Doc. 86-4285 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-FB-M

[W-86514]

Realty Action; Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—FLPMA Sale; Public Lands, Lincoln and Sweetwater Counties, Wyoming.

SUMMARY: The following public lands have been examined and found suitable for Direct Sale under section 203 of the Federal Land Policy and Management Act of 1976, at not less than the appraised fair market value of $640,000.00. The lands will not be offered for sale until sixty (60) days after the date of this notice:

6th Principal Meridian

T. 22 N., R. 111 W.,
  Sec. 18: Lot 8, SE¼SW¼, S½SE¼.
T. 22 N., R. 112 W.,
  Sec. 14: S½N½, S½.

The lands are proposed to be offered for sale to Exxon Corporation to be used for the operation of a natural gas processing plant and related facilities.

The sale is consistent with the Bureau's planning system. At this time, the lands are not suitable for management by the Bureau or another federal agency. It has been determined through the Riley Ridge Natural Gas Project EIS process that the public interest would be best served by offering the lands for sale.

This land sale will not be completed, and patent will not be issued until Exxon has finished and the Bureau of Land Management has approved the cultural resources mitigation reports for this sale.

The patent, when issued, will contain certain reservations to the United States and will be subject to all valid existing rights and reservations of record. Detailed information concerning these reservations, as well as conditions of the sale, are available for review at the Kemmerer Resource Area Office, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effort will end upon issuance of the patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Donald H. Sweep,

District Manager.

[FR Doc. 86-4284 Filed 2-27-86; 8:45 am]

BILLING CODE 4310-22-M

Resource Management Plans; Medicine Bow and Divide Resource Areas, WY

AGENCY: Bureau of Land Management, Rawlins District Office, Rawlins, Wyoming, Interior.

ACTION: Initiation of a Resource Management Plan (RMP), request and invitation for public participation, request for coal and other resource information, and request for identification of areas of interest in federal coal leasing and development for the Medicine Bow and Divide Resource Areas, Rawlins District, Wyoming.

SUMMARY: The Rawlins District is initiating a land use planning effort to guide future management actions on approximatley 3.9 million acres of public lands and 5.1 million acres of Federal mineral estate administered by the Bureau of Land Management (BLM) within the Medicine Bow and Divide Resource Areas. The two adjacent resource areas are located in south-central and southeastern Wyoming and include Carbon, Albany and Laramie counties and eastern Sweetwater county. The single planning effort will result in two comprehensive land-use plans that will identify allowable land and resource uses and general management practices for each resource area.

An interdisciplinary team has been formed to develop the RMP. Disciplines to be represented include geology, petroleum and mining engineering, range conservation, wildlife biology, forestry, economics, recreation, lands, hydrology, soils, air quality, sociology, and archaeology.

Public participation will be solicited and provided throughout the planning process by: Federal Register announcements, discussions with interested and affected parties, press releases and notices, individual mailings to all parties who have expressed an interest, and public meetings and hearings. Anyone interested in having his or her name placed on the mailing list should contact the Team Leader at the address listed below.

The BLM initiated the scoping process for this planning effort in September 1985 by conducting an assessment of the current management in the two Resource Areas. This assessment has substantiated that an RMP must be developed for each of the resource areas and has identified several problems, concerns and conflicts among the following resource and resource use categories:

1. Mineral exploration and development,
2. Livestock grazing management and wild horse management,
3. Scenic and recreation values and recreational uses,
4. Special management area designation for areas with unique resource values, inlcuding wilderness study areas,
5. Wildlife habitat,
6. Forestry management activities,
7. Fire management activities.

The various problem areas identified relate to three general preliminary issues that each plan should address:

1. Management of vegetative resources for both consumptive (e.g., grazing including wild horses, timber harvesting, mineral development activities, etc.) and nonconsumptive uses (e.g., watershed protection, maintenance of cover for wildlife, etc.);
2. Special management determinations to protect environmentally sensitive areas of unique resource values, including Wilderness Study Areas; and
3. Management determinations to protect or improve water and air resource values.

To complete the scoping, the BLM is requesting the public to help (1) identify additional problems, concerns, conflicts, and management opportunities that should also be addressed in the planning process; and (2) to participate throughout the planning process.

This notice includes a request for any available resource information and data pertaining to the two resource areas and the above mentioned disciplines. The purposes of this request are:

1. To assure that the Environmental Impact Statement (EIS) and subsequent RMP's cover the fullest possible range of consideration for resource and land uses and management alternatives.
2. To fulfill the "call for coal resource information" requirement in 43 CFR

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3420.1–2. This call is issued to (a) obtain any available data on the location quality and quantity of Federal coal with development potential, and (b) identify areas where there is substantiated interest in future leasing and development of Federal coal, and the interested parties. Parties interested in future leasing and development of Federal coal in the two resource areas will be expected to provide coal resource data (and other resource data, regarding item 3 below) for their areas of interest. This particularly concerns areas where there is little or inadequate existing data, which would require inventory and data collection during the early planning stages. The lack of participation by interested parties may result in the omission of their areas of interest from further consideration for coal leasing.

3. To obtain any available information and resource data pertinent to conducting the coal screening requirements in 43 CFR 3420.1–4(e). Specifically, this concerns information needed for adequate application of the 20 coal unsuitability criteria (43 CFR 3461.1) and for adequate evaluation of any other multiple use resource values that would be in conflict with coal development (43 CFR 3420.1–4(e)(3)).

4. To identify any apparent "qualified surface owners" as defined in section 714 of the Surface Mining Control and Reclamation Act and in 43 CFR 3400.0–5(gg). This will help to initiate any necessary consultation with surface owners as required by 43 CFR 3420.1–4(e)(4).

DATES: Identification of problems, conflicts, concerns, and management opportunities and development of planning criteria for this planning effort began in September 1985. Commencing immediately, the BLM is requesting any information and resource data that can be provided relative to all items discussed above. The BLM is also requesting all parties interested in or who wish to participate in the planning effort, particularly in the ongoing scoping of the plans, to contact the planning Team Leader at the address and phone number below. This should be done as soon as possible to help assure timely notification of the upcoming scoping meetings to be held at various locations in and around the planning areas. Public meetings will be announced through the Federal Register, local news media and public mailings.

ADDRESS: Medicine Bow and Divide RMP Team Leader, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324–7171.

FOR FURTHER INFORMATION CONTACT: Steve Howell, Team Leader, at the above address.

SUPPLEMENTARY INFORMATION: Copies of the preliminary problems, concerns, conflicts, management opportunities, issues and planning criteria are available at the BLM District Office, P.O. Box 670, 1300 N. 3rd Street, Rawlins, Wyoming 82301.

Hillary A. Oden,

State Director.

[FR Doc. 86–4430 Filed 2–27–86; 8:45 am]

BILLING CODE 4310-22-M

[CA–15531]

Realty Action; Noncompetitive Sale of Public Land in Los Angeles County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Noncompetitive sale of public land in Los Angeles County, California to the city of Los Angeles.

SUMMARY: The following described public land has been examined and found suitable for disposal by noncompetitive sale under section 203 (a)(1) and section 209 (a) and (b) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750 and 2757; 43 U.S.C. 1713 and 1719):

San Bernardino Meridian, California

T. 2S., R. 15W., SBM

Sec. 4, Lots 3 & 4.

Containing 4.00 acres more or less.

The subject land is located in the City of Los Angeles, California. The land is being offered by direct sale to the City of Los Angeles for not less than the appraised fair market value of $343,000.

Purpose

The sale of this land will provide clear title to numerous innocent purchasers of private property by removing a cloud from their titles. This sale is consistent with Federal and local government planning.

The subject land is to be sold directly to the City of Los Angeles for the appraised market value of $343,000 by direct sale pursuant to 43 CFR 2711.3–3(a)(5).

A certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, Bureau of Land Management for the entire amount of $343,000 shall be received at the place of sale, California Desert District Office, 1695 Spruce Street, Riverside, California 92507, by 1:00 p.m. on May 30, 1986. The payment shall be enclosed in a sealed envelope clearly marked "Public Land Sale, CA–15531, Los Angeles County, California".

Failure to submit the full purchase price as specified above shall result in cancellation of the sale of the above described land.

The subject land is prospectively valuable for oil and gas. It has been determined that this land contains no other known mineral values. Therefore, as a condition of sale, a $50.00 nonrefundable fee for conveyance of the remaining mineral estate is required.

The patent, when issued, will contain the following reservations:

1. A right-of-way shall be reserved to the United States for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. (a) The United States reserves all oil and gas in the land so patented subject to disposition under the general leasing laws.

(b) The United States reserves to itself, its permittees, licensees, and lessees the right to prospect for, mine and remove the oil and gas owned by the United States udner applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necesary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling and storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

(c) Unless otherwise provided by separate agreement with the surface owner, permittees, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

(d) All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittees, licensees, and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittees, licensees and lessees.

Publication of this Notice of Realty Action in the Federal Register shall segregate the subject public land from appropriation under the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands upon publication in the Federal Register of a termination of the segregation or 270

days from the date of publication, whichever occurs first.

Further information concerning this sale, including the land report, environmental assessment and appraisal, is available for review at the Indio Resource Area Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: February 21, 1986.

Richard M. Barber,

Acting District Manager.

[FR Doc. 86–4473 Filed 2–27–86; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4993, Block 30, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 14, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: February 20, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–4293 Filed 2–27–86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: 30 CFR 602 Helium Distribution Contracts

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations to (a) determine legitimacy of applicants for distribution contracts, (b) estalished accountability of helium transfer between distributers, and (c) report annual sales, transfers, and purchases of Bureau helium as certification of compliance with 30 CFR Part 602. The Bureau will use information supplied on the three forms as described to implement and manage an effective helium distribution system in accordance with 30 CFR Part 602.

Bureau Form Number: 6–1575–A, 6–1580–A, and 6–1581–A.

Frequency: Annually.

Description of Respondents: Industrial gas suppliers who elect to distribute Bureau of Mines helium.

Annual Responses: 48.

Annual Burden Hours: 24.

Bureau clearance officer: James T. Hereford 202–634–1125.

Dated: February 14, 1986.

Robert C. Horton,

Director, Bureau of Mines.

[FR Doc. 86–4292 Filed 2–28–86; 8:45 am]

BILLING CODE 4310-53-M

Office of Surface Mining; Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions for the paperwork Reduction Act 44. U.S.C. Chapter 35. Copies of the proposed collection of information and related forms and explanatory material many be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: 30 CFR Part 772 Requirement of Coal Exploration.

Abstract: Sections 507(b), 508(a), and 516(b) of Pub. L. 95–87 require applicants for underground mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operations. This information is used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of respondents: Coal Mine Operators.

Annual Responses: 2,250.

Annual Burden Hours: 77,500.

Bureau Clearance Officer: Darlene Grose Boyd 202–343–5547.

Dated: February 14, 1986.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR. Doc. 86–4291 Filed 2–27–86; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Import Investigations; Certain Dried Salted Codfish From Canada; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–199 (Final), Certain Dried Salted Codfish from Canada.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731–TA–199 (Final) regarding certain dried salted codfish from Canada, provided for in item 111.22 of the Tariff Schedules of the United States. The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of certain dried salted codfish from Canada if the antidumping duty order is modified or revoked with respect to such merchandise, provided for in item 111.22 of the Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: David Coombs, Office of Investigations, U.S. International Trade Commission (202–523–1376). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On June 27, 1985, the Commission determined pursuant to section 735(b) of the Tariff Act of 1930, that the establishment of an industry in the United States is threatened with material injury by reason of imports of certain dried salted codfish from Canada which have been found by the Department of Commerce to be sold at less than fair value.

On February 6, 1986, the Commission received a request to review its affirmative determination in investigation No. 731–TA–199 (Final). The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Freeman, Wasserman, & Schneider on behalf of BMT Commodity Corp. and Delca Distributors, Inc., an importer and seller, respectively, of certain dried salted codfish from Canada.

Written comments requested: Pursuant § 207.45(b)(2) of the Commission's rules of practice and procedure (19 CFR 207.45(b)(2)), the Commission requests public comments concerning whether the following changed circumstances alleged in the request for review are sufficient to warrant institution of a review investigation: (1) Codfish Corp., the only known potential producer, ceased production in November 1984, has not recommenced production, and filed for bankruptcy on November 18, 1985, (2) the continuing unavailability of a domestic source of supply has resulted in American consumers paying higher prices for imported codfish as a result of the dumping duties and in a decline in demand for codfish in Puerto Rico as the competitive gap widens between dried salted codfish and other less expensive sources of protein such as chicken and pork, and (3) even if Codfish Corp. were producing, it could not attain the level of production necessary to be a viable producer.

Additional information: Under § 201.8 of the Commission's rules of practice and procedure (19 CFR 201.8), the signed original and 14 true copies of all written submission must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other public documents in this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436; telephone 202–523–0161.

Issued: February 25, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–4336 Filed 2–27–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMRCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; AMEDCO Inc., et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 59 U.S.C. 10524(b).

1. Parent corporation and address of principal office: AMEDCO Inc., P.O. Box 14351A, St. Louis, MO 63178.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of incorporation:

Name	State or jurisdiction of incorporation
Acme Metal Co.	Tennessee.
AMEDCO Casket Stamping Co.	Missouri.
AMEDCO Contract Inc.	Do.
AMEDCO Controls Inc.	Do.
AMEDCO Funeral Supply Inc.	Delaware.
AMEDCO Health Care Inc.	Missouri.
AMEDCO Steel Inc.	Oklahoma.
American Funeral Computer Services Inc.	Illinois.
Avalon Casket Co.	Tennessee.
Belmont Casket Co.	Missouri.
Central States Rebar, Inc.	Texas.
Edwards Equipment Co.	Missouri.
Gold Shield Casket Co.	Do.
Hallmark Casket Co.	Do.
Health Facilities Design Associates, Inc.	Nebraska
L.H. Kellogg Chemical Co.	Minnesota
Lewis Industries, Inc.	Delaware
Lockwoven Company Inc.	Missouri.
Mac-O-Mo Inc.	Do.
Marshfield Casket Company Inc.	Do.
Midwest Products Inc.	Do.
Oxycon Inc.	Ohio.
Ozark Casket Supply Inc.	Missouri.
Preference Casket Mfg. Co.	Do.
Professional Securities Corp.	Do.
Royal Bond Inc.	Do.
S&D Medical Products Inc.	Do.
Smith & Davis Manufacturing Co.	Do.
Spartan Casket Shell, Inc.	Delaware.
Steel Processing & Supply Co.	Texas.
Universal Flowers Inc.	Missouri.
Wallace Metal Products Inc.	Texas.
York Casket Co.	Delaware.

1. Parent corporation and address of principal office: Masco Corporation, 21001 Van Born Road, Taylor, Michigan 48180.

2. Wholly-owned subsidiaries [1] which will participate in the operations, and their States of incorporation:

American Metal Products Company, Delaware
Aqua Glass Corporation, Tennessee
  Tombigbee Transport Corporation, Tennessee
Baldwin Hardware Corporation, Pennsylvania
Brass-Craft Manufacturing Company, Michigan
Brass-Craft Holding Company, Michigan
Brass-Craft Western Company, Texas
Thomas Mfg. Company, Inc. of Thomasville, North Carolina
Evans Rule Company, Inc., New Jersey
  Taylor Investments, Inc., New Jersey
  E-R Rule Co. of Puerto Rico, Inc., New Jersey
Fulton Manufacturing Corporation, Delaware
Marvel Metal Products Co., Delaware
Masco Building Products Corp., Delaware
Masco Corporation of Indiana, Indiana
  Delta Faucet Company, Michigan
Merillat Industries, Inc., Michigan
Peerless Sales Corporation, California
Reese Service Center of California, Inc., California
Trayco, Inc., Michigan

3. Divisions of parent corporation and location of principal office:

American Metal Products, California
Auto Flo Company, Michigan
Compac Corporation, New Jersey
Davis Manufacturing Company, Michigan
Gamco Products Company, Kentucky

4. Divisions of Masco Building Products Corp. and location of principal office:

Artistic Brass Division, California
Bowers Division, California
Plumbing Fixtures Division, California
Sponge Cushing Division, Illinois
Thermador/Waste King Division, California
Wieser Lock Division, California

5. Divisions of Masco Corporation of Indiana and location of principal office:

Delta Faucet Company, Indiana
EPIC, Incorporated, Indiana
Peerless Aire Company, Indiana
Peerless Faucet Company, Indiana
Reese Products Company, Indiana

1. The name of the parent corporation is NL Industries, Inc., 3000 North Belt East, P.O. Box 60087, Houston, TX 77205.

2. The names of the wholly-owned subsidiaries or divisions which will participate in the proposed operations are as follows:

Name	Address	State of incorporation
NL Acme Tool, Inc.	P.O. Box 60087, Houston, TX 77205.	*NL Acme Tool, Inc & NL Sperry-Sun, Inc. at Delaware corporations, and are Subsidiaries, of NL Industries, Inc.*
NL Sperry-Sun, Inc.	P.O. Box 60087, Houston, TX 77205.	
NL Atlas Bradford.	P.O. Box 60087, Houston, TX 77205.	*All of the following listed companies are Divisions of NL Industries, Inc., a New Jersey corporation.*
NL Erco		
NL Chemicals	P.O. Box 60087, Houston, TX 77205.	
NL Shaffer	P.O. Box 60087, Houston, TX 77205.	
NL Treating Chemicals.	P.O. Box 60087, Houston, TX 77205.	
NL McCullough.	P.O. Box 60087, Houston, TX 77205.	
NL Logging Systems.	P.O. Box 60087, Houston, TX 77205.	
NL MWD	P.O. Box 60087, Houston, TX 77205.	
NL Hycalog	P.O. Box 60087, Houston, TX 77205.	
NL Rucker Products.	P.O. Box 60087, Houston, TX 77205.	
NL Baroid	P.O. Box 60087, Houston, TX 77205.	

1. Parent corporation and address of principal office: Pepsico, Inc., 700 Anderson Hill Road Purchase, N.Y. 10577.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation of each subsidiary:

(1) Ainwick Corp. (OR)
(2) Alexandra Equities, Inc. (DE)
(3) Allegheny Pepsi Cola Bottling Co. (MD)
(4) Arizona Speciality Breads, Inc. (CA)
(5) Beverages, Foods & Services Industries, Inc. (DE)
(6) Big Sur Restaurant Inc (KS)
(7) Blankinship-Pehle, Inc. (TX)
(8) Buckeye PH, Inc. (OH)
(9) Chesapeake Bay Pizza Hut, Inc. (MO)
(10) Collin Leasing Corp. (DE)
(11) Crunch Barrel Foods Corp. (DE)
(12) D&E Foodservice, Inc. (SC)
(13) Davlyn Realty Corp. (DE)
(14) Equity Beverages, Inc. (DE)
(15) Export Development Corp. (DE)
(16) Fiesta Cantina of Ohio, Inc. (OH)
(17) Franchise Services, Inc. (DS)
(18) Franchise Services of Kansas, Inc. (CA)
(19) Fresno H&B, Inc. (CA)
(20) Frito-Lay, Inc. (DE)
(21) Frito-Lay of Puerto Rico, Inc. (DE)
(22) Golden Bear Family Restaurants, Inc. (IL)
(23) Golden Bear Properties, Inc. (DE)
(24) HIS Pizza Corp. (TX)
(25) J&G Producted, Inc. (KS)
(26) KAKAP, Inc. (CA)
(27) La Petite Boulangerie, Inc. (DE)
(28) La Petite Boulangerie, Inc. (CA)
(29) California Exceptional Breads, Inc. (CA)
(30) Lake Michigan Management Co., Inc. (WI)
(31) Mexhut, Inc. (DE)
(32) Mexichip, Inc. (DE)
(33) MexSport, Inc. (DE)
(34) Mimoca, Inc. (CA)
(35) Mountaineer Pizza Hut Inc. (WV)
(36) National Beverages, Inc. (FL)
(37) Oriole Pizza Hut, Inc. (MD)
(38) PBG Beverage Distributors, Inc. (DE)
(39) PepsiCo Food Systems, Inc. (DE)
(40) PesiCo Captial Res., Inc. (DE)
(41) PepsiCo Overseas Corp. (DE)
(42) PepsiCo Services Corp. (DE)
(43) PepsiCo World Trading Co., Inc. (DE)
(44) Pepsi-Cola Co. (DE)
(45) Pepsi-Cola Bottling International, Inc. (NV)
(46) Pepsi-Cola Bottling Co. of Los Angeles (CA)
(47) Pepsi-Cola Bottling Co. of Logan (WV)
(48) Pepsi-Cola Bottling Co. Inc. of Indianapolis (IN)
(49) The Pepsi-Cola Bottling Co., Moundsville W. Va., Inc. (WV)
(50) Pepsi-Cola Equipment Corp. (NY)
(51) Pepsi-Cola International Limited (U.S.A.) (DE)
(52) Pepsi-Cola Metropolitan Bottling Co., Inc. (NY)
(53) Pepsi-Cola Americana S.A. (DE)
(54) Pepsi-Cola Manufacturing Co., Inc. (DE)
(55) Pepsi-Cola Sweeteners, Inc. (DE)
(56) PAGAM Corp. (DE)
(57) Petal, Inc. (DE)
(58) Pizza Hut, Inc. (DE)
(59) Pizza Hut of America Inc. (DE)
(60) Pizza Hut of Charles Co., Inc. (MD)
(61) Pizza Hut of Dallas Inc. (TX)
(62) Pizza Hut of Dorchester Co., Inc. (MD)
(63) Pizza Hut of Duncan Inc. (OK)
(64) Pizza Hut of East Wicomico Co., Inc. (MD)
(65) Pizza Hut of Garrett Co., Inc. (MD)
(66) Pizza Hut of Las Vegas (NV)
(67) Pizza Hut of Oregon, Inc. (OR)
(68 Pizza Hut of Port Lavaca, Inc. (TX)
(69) Pizza Hut of Pueblo, Inc. (CO)
(70) Pizza Hut of St. Mary's County, Inc. (MD)
(71) Pizza Hut of Talbot County, Inc. (MD)
(72) Pizza Hut of the Hills, Inc. (TX)
(73) Pizza Hut of Utah, Inc. (UT)
(74) Pizza Hut of Wicomico Co., Inc. (MD)

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[1] Directly owned subsidiaries appear at the left hand margin, first tier and second tier subsidiaries are indicated by single and double indentation, respectively, and are listed under the names of their respective parent companies.

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(75) Pizza Hut of Zion, Inc. (IL)
(76) Pizza-S-U (NM)
(77) Potomac Pizza Hut, Inc. (MD)
(78) Pub Beverages, Inc. (DE)
(79) Pub Realty, Inc. (CA)
(80) Purchase Leasing Corp. (DE)
(81) Redux Realty, Inc. (DE)
(82) Sabritas S.A. de C.V. (DE)
(83) Somers Leasing Corp. (DE)
(84) Southern Pizza Huts, Inc. (LA)
(85) Taco Bell Corp. (CA)
(86) Taco Bell Royalty Co. (CA)
(87) Temanti S.A. de C.V. (MX)
(88) Pepsi-Cola Bottling Co. of Puerto Rico (DE)
(89) Pepsi-Cola Interamerica, S.A. (DE)
(90) Pizza Hut of San Diego Inc. (CA)
(91) PepsiCo Services International (DE)

1. Parent corporation and address of principal office: Pressure Vessel Service, Inc., d/b/a/ PVS Chemicals Chemicals, Inc., 11001 Harper Avenue, Detroit, Michigan.

2. Wholly—owned subsidiaries which will participate in the operations, and states of incorporations:

(i) Bay Chemical Company—Michigan;
(ii) Waste Acid Services, Inc.—Michigan;
(iii) Chemical Transport Services, Inc.—Michigan;
(iv) PVS Chemicals, Inc. (Illinois)—Michigan;
(v) PVS Chemicals, Inc. (New York)—Michigan;
(vi) PVS Chemicals, Inc. (Ohio)—Michigan;
(vii) Fanchem, Ltd.—Ontario, Canada;
(viii) PVS Chemicals, Inc. (Michigan)—Michigan.

1. Red Cross Stores, Inc. is the parent company and has its principal office at 5901 Shallowford Road, Chattanooga, TN 37422.

2. The Wholly-owned subsidiaries which will participate in the operations are Chattanooga Fixtures & Distribution Company and Red Food Stores (Georgia), Incorporated.

1. Parent corporation and address of principal office: Thrifty Corporation, 3424 Wilshire Boulevard, Los Angeles, California 90010.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: Thrifty Jr. Inc., California.

James H. Bayne,
Secretary.

[FR Doc. 86-4338 Filed 2-27-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-28 (Sub-10x)]

Central of Georgia Railroad Co. Abandonment Exemption in Barbour County, Al; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its 6.1-mile line of railroad between milepost L-349.0 near White Oak and milepost L-355.1 near Clayton in Barbour County, Al.

Applicant, has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail serice on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective March 30, 1986, (unless stayed pending reconsideration). Petitions to stay must be filed by March 20, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 20, 1986, with: Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, 1050 Connecticut Avenue, NW, Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned on environmental or public use conditions.

Decided: February 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 86-4341 Filed 2-27-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30300]

CSX Corp.; Control; American Commercial Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Oversight proceeding.

SUMMARY: The Commission is instituting the oversight proceeding ordered in Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.,* —— I.C.C.2d —— (September 7, 1984). Comments are invited regarding any adverse or beneficial effects of the acquisition.

DATE: Comments must be filed with the Commission and served on CSX Corporation no later than April 30, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

ADDRESSES: Send and original and 10 copies of all pleadings, referring to Finance Docket No. 30300, to: Office of the Secretary Case Control Branch, Interstate Commerce Commission Washington, DC 20423.

Send 1 copy to applicant's representative: R. Eden Martin, 1722 Eye Street, NW., Washington, DC 20006.

A copy of applicant's report to the Commission on this transaction is available from applicant's representative.

SUPPLEMENTARY INFORMATION: In *CSX Corporation—Control—American Commercial Lines, Inc., supra, (CSX/ACL),* we authorized the acquisition of control by CSX Corporation (CSX), a non-carrier holding company that controls serveral class I railroads, of American Commercial Lines, Inc. (ACL) and its water carrier subsidiary, American Commercial Barge Lines Company (ACBL). The acquisition was consummated on October 12, 1984.

We imposed reporting and oversight conditions on our authorization to monitor the impact of the acquisition on competition. This notice impact of the acquisition on competition. This notice institutes the first proceeding under the oversight condition.

As noted in Appendix E to *CSX/ACL,* after receipt of public comments, the proceeding will be assigned to an Administrative Law Judge (ALJ).

The ALJ shall prepare a report to the Commission on the oversight proceeding. The Commission will issue a decision by August 31, 1986, on whether to reopen the proceeding or take any other action based on the ALJ's report.

Decided: February 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

[FR Doc. 86-4340 Filed 2-27-86; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for

review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Avenue NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance:—Extension
Bureau/Office:—Bureau of Accounts
Title of Form:—Classification Index Survey Form for Railroad companies that do not file an Annual Report with the ICC
OMB Form No.:—3120-0077
Agency Form No.:—RCS
Frequency:—Annually
Respondents:—Railroad Industry
No. of Respondents:—400
Total Burden Hrs.:—100

Type of Clearance:—Reinstatement
Bureau/Office:—Bureau of Accounts
Title of Form:—Quarterly Report of Results of Operation
OMB Form No.:—3120-0002
Agency Form No.:—QFR
Frequency:—Quarterly
Respondents:—Transportation Industry
No. of Respondents:—1,166
Total Burden Hrs.:—19,822

James H. Bayne,
Secretary.

[FR Doc. 86-4339 Filed 2-27-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act and Clean Water Act; Lowell, IN et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 11, 1986, a proposed consent decree in *United States* v. *Town of Lowell, et al.,* Civ. No. H83-0425, was lodged with the United States District Court for the Northern District of Indiana. This agreement resolves a judicial enforcement action brought by the United States against the Towns of Lowell and Cedar Lake for violations of the Clean Air Act and Clean Water Act at the Town of Lowell's wastewater treatment plant in Lowell, Indiana.

The proposed Consent Decree provides that the Towns of Lowell and Cedar Lake will implement several immediate modifications to the operation of the Lowell wastewater treatment plant to assure that as much wastewater as possible receives at least primary treatment. By May 31, 1986, the defendants will complete a sewer system evaluation study as well as a study of the feasibility of installing temporary storage facilities for excess wastewater. By September 1, 1986, the defendants will submit a program for eliminating bypasses around the wastewater treatment plant and for achieving compliance with the plant's NPDES permit. Final compliance with the terms and conditions of the NPDES permit is required by June 30, 1988. Finally, the agreement provides that the Towns of Lowell and Cedar Lake will each pay a $20,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Town of Lowell, et al.,* D.J. Ref. 90-5-1-1-1957.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Northern District of Indiana, Federal Building, Fourth Floor, 507 State Street, Hammond, Indiana 46320

EPA: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.20 (.10 per page reproduction fee) payable to the Treasurer of the United States.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-4289 Filed 2-27-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirements.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Department of Labor, Jim Rhodes and/or Jim Lemke on AC 202-523-6308. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB

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reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration

Maritime—Material Handling Hooks and Unfired Pressure Vessels 1218–0052; OSHA 237
Recordkeeping
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
900 respondents; 1,350 hours; 0 forms

To ensure that hooks that are used for materials handling and unfired pressure vessels that have not been rated by the manufacturers or a standards organization and are used by shipyard personnel are examined and tested before use.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Manlifts
1218–0055; OSHA 200
On occasion
Businesses or other for profit; small businesses or organizations
3,000 respondents; 52,500 hours; 0 forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a manlift and for taking the necessary preventive action to assure employee safety.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Installation and Operation of Resistance Welding Equipment
29 CFR 1916.252(c)(6)
29 CFR 1910.252(c)(6)
1218–0056; OSHA 219
Recordkeeping
Businesses or others for profit; non-profit institutions; small businesses or organizations
150,000 respondents; 50,000 hours; 0 forms

The information is needed to assure the effectiveness of the regulation. The recordkeeping provides the Agency with adequate information to indicate the equipment is maintained properly and may prevent severe physical harm or death.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Portable Fire Extinguishers; Hydrostatic Test Record
1218–0114; OSHA 205
On occasion
State or local governments; businesses or other for profit; federal agencies or employees; small businesses or organizations
7,058,824 respondentes; 2,964,706 hours; 0 forms

Requires that portable fire extinguishers be hydrostatically tested every 5 to 12 years depending upon the type of shell construction. A record of the test containing the date of test, the test pressure, and the name of the individual or agency doing the test.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Records of Inspection of Critical Components on Cranes
1218–0116; OSHA 206
Recordkeeping
Businesses or other for profit; small businesses or organizations
660,000 responses; 330,000 hours; 0 forms

OSHA requires a record of periodic thorough inspection of overhead and gantry cranes and mobile cranes. The inspections are to determine the condition of hooks, hoist chains and brakes to prevent injury to employees due to component failure during use.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Record of Inspection and Maintenance of Presses
1218–0117; OSHA 215
Recordkeeping
State or local governments; businesses or other for profit; small businesses or organizations
1,517,240 hours, 0 forms

In order to ensure workplace safety it is the responsibility of the employer to establish and follow a program of regular inspections of power presses and forging machines. The parts, equipment and safeguards must be in a safe operating condition. The employer shall maintain records of these inspections and the maintenance work performed.

This information collection was approved by OMB for a period ot two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Records of Inspection of Running Ropes on Cranes and Derricks
1218–0120; OSHA 209
Recordkeeping
Businesses or other for profit; small businesses or organizations
780,000 responses; 390,000 hours; 0 forms

OSHA requires a record of periodic thorough inspection of running ropes on cranes, mobile cranes, and derricks. The inspections are to determine the condition of the wire ropes to prevent injury due to rope failure during use.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submissain is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August 1985 and approved by OMB in September 1985.

Occupational Safety and Health Administration

Records of Inspection of Idle Ropes on Cranes and Derricks
1218–0118; OSHA 208
Recordkeeping
Businesses or other for profit; small businesses or organizations
6,800 responses; 3,400 hours; 0 forms

OSHA requires a record of periodic thorough inspection of idle ropes on overhead and gantry cranes, mobile cranes, and derricks. The inspections are to determine the condition of the wire ropes to prevent injury to employees due to rope failure during use.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August 1985 and approved by OMB in September 1985.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package orignally submitted in August 1985 and approved by OMB in September 1985.

Occupational Safety and Health Administration

Electrical Component Inspection (explosives haulage trucks used underground)
1218–0122; OSHA 236
Recordkeeping
Businesses or other for profit; small businesses or organizations
1 respondent; 8 hours; 0 forms

A record of electrical system checks on explosives haulage trucks is required to ensure elimination of ignition sources that would cause fires or explosions when employees are underground.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in Auguest 1985 and approved by OMB in September 1985.

Occupational Safety and Health Administration

Inspection Report (Critical Components for Cranes)
1218–0123; OSHA 231
Recordkeeping

Occupational Safety and Health Administration

Service Station Inventory Records for Flammable Liquids Tanks
1218–0119; OSHA 203
Recordkeeping
State or local governments; businesses or other for profit; federal agencies or employees; small businesses or organizations
11,133 respondents; 2,371,329 hours; 0 forms

Requires the maintenance and reconciliation of inventory records for Class I liquid storage tanks to detect underground leaks to avoid fires and explosions.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August 1985 and approved by OMB in September 1985.

Occupational Safety and Health Administration

Powered Platforms for Exterior Maintenance
1218–0121; OSHA 201
On occasion
Businesses or other for profit; small businesses or organizations
19,500 respondents; 243,750 hours, 0 forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of powered platform and for taking the necessary preventive action to assure employee safety.

Businesses or other for profit; small businesses or organizations
110,000 responses; 660,000 hours; 0 forms

The employer is required to record the condition of items critical to the continued safe use of mobile cranes observed during monthly inspections. Use of the records to determine service and maintenance schedules ensures a safer workplace.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Occupational Safety and Health Administration

Hoist Inspection Record
1218–0124; OSHA 232
Recordkeeping
Businesses or other for profit; small businesses or organizations
1,200 respondents; 9,600 hours; 0 forms

Records of inspections and test of hoist facility are required to ensure corrective procedures in a timely manner to minimize hazards to employees while in, on, or around the hoist and its proximity.

This information collection was approved by OMB for a period of two months which was extended for an additional three months at OSHA's request. This submission is a request for extension of the clearance with no change in either the collection of information or in the clearance package originally submitted in August, 1985 and approved by OMB in September, 1985.

Signed at Washington, DC, this 25th day of February 1986.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 86–4404 Filed 2–27–86; 8:45 am]

BILLING CODE 4510-26-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29

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CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I.	
Florida:	
FL86-38 (Jan. 3, 1986)	p. 193.
Massachusetts:	
MA86-2 (Jan. 3, 1986)	pp. 364–365.
MA86-3 (Jan. 3, 1986)	pp. 370–377.
Pennsylvania:	
PA86-1 (Jan. 3, 1986)	pp. 793–795.
PA86-10 (Jan. 3, 1986)	p. 880.
Volume II.	
Michigan:	
MI86-1 (Jan. 3, 1986)	p. 385.
Minnesota:	
MN86-6 (Jan. 3, 1986)	p. 505.
MN86-8 (Jan. 3, 1986)	pp. 531–537.
Ohio:	
OH86-1 (Jan. 3, 1986)	pp. 662–666, pp. 666–669.
OH86-3 (Jan. 3, 1986)	pp. 697–702.
Wisconsin:	
WI86-15 (Jan. 3, 1986)	pp. 1011–1012.
Listing by Location (Index)	pp. xxii–xxiv, pp. xlvii–xlviii.
Listing by Decision (Index)	pp. xlix–lvi.
Volume III.	
California:	
CA86-2 (Jan. 3, 1986)	p. 54.
Oregon:	
OR86-2 (Jan. 3, 1986)	p. 272.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of February 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-4183 Filed 2-27-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-3684]

Employee Benefit Plans; Prohibited Transactions/Exemptions; Pooled Pension Fund Management Corp. (PPFMC) in Baton Rouge, LA

In the **Federal Register** dated March 16, 1984 (49 FR 9978), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of PPFMC, the sponsor of a number of pooled mortgage funds.

Notice is hereby given that the Department does not, at this time, contemplate granting the requested exemption.

Accordingly, the notice of pendency is hereby withdrawn.

If the Department proposes, at a future date, to grant the exemption, notice of the pendency thereof will be published in the **Federal Register** giving interested persons an opportunity to comment on the proposal and, if appropriate, to request a hearing thereon.

Signed at Washington, DC, this 24th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-4398 Filed 2-27-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5914 et al.]

Proposed Exemptions; Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below.

Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc., Profit Sharing Plan (the Profit Sharing Plan) and Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc., Pension Plan (the Pension Plan; Together, the Plans) Located in Kansas City, Missouri

[Application No. D-5914]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plans of certain improved real property (the Property) to Westport Management Services, Inc. (the Buyer), a party in interest with respect to the Plans, provided that the sale price is at least fair market value on the date of sale; and (2) the concurrent extension of credit from the Plans to the Buyer, provided that the terms are no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated third party.

Summary of Facts and Representations

1. The Buyer is a wholly-owned subsidiary of Tuohy, Wells, Kimble, Goolsbee, Hardy, Hervey & Associates, Inc., doing business as Westport Anesthesia Services, Inc. (the Employer). The primary business of the Employer is providing medical services in the field of anesthesiology. The primary business of the Buyer is providing management, billing and accounting services to the Employer. As of July 31, 1985, the Employer had net assets of approximately $257,000, and the Buyer had net assets of approximately $270,000.

2. As of July 31, 1985, the Profit Sharing Plan had approximately 39 participants and total assets of approximately $4,451,340. As of March 12, 1985, the Pension Plan had approximately 34 participants and total assets of approximately $1,093,836. Investment decisions on behalf of both Plans are made by the Plans' four trustees (the Trustees), two of whom are shareholders of the Employer. The Trustees are Timothy F. Cussen, William H. Hervey, II, M.D., James A. Wells, M.D., and Earl L. Williams. Both Plans provide for participant directed accounts at the participant's option. In each Plan, accounts not so directed are placed in a pooled fund invested by the Trustees (the Pooled Funds). As of July 31, 1985, 1985, the Pooled Fund of the Profit Sharing Plan had assets of $779,127, and the Pooled Fund of the Pension Plan had assets of $496,100.

3. Among the assets of the Pooled Funds is the Property, of which the Profit Sharing Plan owns 75 percent and the Pension Plan owns 25 percent. The Property is a condominium located in Vail, Colorado. The Plans purchased the Property on behalf of the Pooled Funds for $235,000 on April 15, 1983 from Vail Investment Fund and Development Limited, an unrelated party.

4. The applicants represent that the income from rents has exceeded the expenses incurred by the Plans in maintaining and holding the Property, and that the value of the Property has declined since it was purchased by the Plans. An independent appraisal of the Property performed on July 23, 1984 by R.H. Reeves of Vail, Colorado established a fair market value of $215,000. Mr. Reeves represents that the value of most vacation home properties in Vail, Colorado have declined since 1980, because there has been a greater supply of such homes than there is demand for them.

5. The Buyer and the Trustees request an exemption for the sale by the Plans

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of the Property to the Buyer. The purchase price will be $258,500 or fair market value at the time of sale, whichever is greater, but in no event will it be less than the Plans' total net cost of acquiring and holding the Property. Of this amount, $115,167 will be paid in cash. The remainder of the purchase price will be paid pursuant to a promissory note (the Note). The Note will be secured by a first mortgage on the Property, and the Plans will have full recourse to the Employer. The Note will be payable in monthly installments of principal and interest over a period of twenty-five years, and will initially bear interest at a rate equal to the published prime rate of Chase Manhattan Bank at the time the sale is consummated. Thereafter, the interest rate will be adjusted annually in accordance with Chase Manhattan Bank's prime rate, with a floor of no more than 3% variance from the initial interest rate.

6. The Employer has retained Olathe State Bank of Olathe, Kansas to act as the independent fiduciary (the Independent Fiduciary) for the Plans. The Independent Fiduciary represents that it is unrelated to and has no business relationship with the Employer or the Buyer. The Independent Fiduciary has agreed to supervise and effectuate the sale of the Property, to collect all funds due under the Note, to ensure that the value of the Collateral is always equal to at least 150% of the outstanding balance of the Note, and to take any steps necessary or advisable in connection with enforcing and carrying out the terms of the Note and the mortgage on behalf of the Plans.[1]

7. The Independent Fiduciary represents that it would have been willing to enter into the Note with the Buyer on the same terms. It further repesents that it has examined the financial statement of the Employer and the loan to value ratio of the Note, and it has determined that the Note is well secured. Further, it represents that the floating interest rate protects the Plans from a below-market return. Finally, the Independent Fiduciary represents that the sale would improve the liquidity of the Plans, and that the pruchase price of $43,500 over appraised value should offset any potential future appreciation lost to the Plans by virtue of the sale.

8. In summary, the applicants represented that the proposed transaction meets the statutory criteria for section 408(a) of the Act because:

(a) The sale will relieve the Plans of an unprofitable and illiquid investment;

(b) The sale price of the Property will be at or above its appraised fair market value;

(c) The Note will be secured by a first mostgage on the Property, which has an appraised fair market value of at least 150% of the amount of the Note; and

(d) The Independent Fiduciary has determined that the proposed transaction is in the best interests and protective of the Plans and their participants and will take all appropriate actions to enforce the rights of the Plans.

For Further Information Contact: Ms Linda Shore of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Gay Plumbing & Heating Company Profit Sharing Plan (the Plan) Located in Albany, Georgia

[Application No. D-6098]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of its entire interest in Ledo Properties Company (Ledo), a partnership under Georgia Law, to John L. Gay and Annette H. Gay (Mr. and Mrs. Gay), parties in interest with respect to the Plan, for the greater of $313,424 or the fair market value of the Plan's interest in Ledo as of the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution (profit sharing) individual account plan sponored by Gay Plumbing and Heating Co. (the Plan Sponsor), a plumbing contractor doing business in Albany, Georgia. As of May 14, 1985, the Plan had 91 participants, and as of December 31, 1984 it has assets of $334,284. The trustees of the Plan are Mrs. and Mrs. Gay.

2. On August 30, 1972 the Plan made an initial capital contribution of $100,000 to Ledo, constituting a 24.75% capital interest in the partnership. As the result of Ledo's subsequent buying out the interests of three partners, the Plan currently owns a 28.27% capital interest in Ledo (Ledo is, in practice, a general partnership, and each partner is a general partner with respect to the partnership.) Ledo owns several tracts of real property, both improved and unimproved, including a farm located in Lee and Dougherty Counties, Georgia, consisting of 577.54 acres and a separate tract consisting of 110.16 acres in Dougherty County, Georgia (the Property).

3. The Property was appraised on August 31, 1982 by Paul A. Jones, Jr., SRA (the Independent Appraiser), as having a fair market value of $1,455,000. Subsequently, the Independent Appraiser opined that the fair market value of the Property as of October 31, 1984 was $1,114,000. The Independent Appraiser states that he has no present or contemplated interest in the Property, and that neither his employment to make the appraisal nor his compensation is contingent upon the appraised value of the Property. The Independent Appraiser states that in investigating farm sales in Lee County in 1984 he found the market almost non-existent; of the four farm sales he located, two were foreclosures. The applicant represents that the lower 1984 appraised value of the Property is testimony to the condition of the farm economy in south Georgia generally. Extreme drought has been common, and the foreign investment which was a significant factor in maintaining property values for agricultural property in 1982 is today reduced considerably because of the strength of the United States dollar abroad. The applicant represents that the principal Ledo property, the farm located in Lee and Dougherty Counties, has experienced significant depreciation in recent years and does not offer the prospect for appreciation in the near future. The applicant further states that the proposed purchase price is in excess of that currently being received for comparable farmland.

4. The applicant represents that Ledo's farm property is leased to Oakland Farm, an unrelated third party, for $10,000 per annum, and that a 60 acre pecan grove is leased to Pippin Pecan Company, another unrelated third party, for $11,111 per annum. The applicant represents that the lease payments approximate the real estate taxes due annually or Ledo's farm property.

5. The applicant seeks an administrative exemption to permit the

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[1] The applicants represent that the Independent Fiduciary has undertaken an investigation to determine whether the Property has been used by any parties in interest with respect to the Plans and will ensure that the Plans received or will receive at least fair market rental value for such use, plus interest at an appropriate rate. The applicants further represent that that they will file the required forms with the Internal Revenue Service and pay the applicable excise tax within 60 days of the date this exemption is granted.

Plan to sell its entire interest in Ledo to Mr. and Mrs. Gay for a total purchase price of $313,424, provided that such price is not less than the fair market value of the Plan's interest in Ledo as of the date of the sale. This purchase price was determined by adding $12,997 in current assets (cash) and $12,777 in deferred construction interest to the appraised value of $1,114,000 and subtracting the total current liabilities of $35,000. The resulting figure, $1,104,774, was then multiplied by the Plan's interest in Ledo, 28.37%, resulting in $313,424 as the fair market value of the Plan's interest as of December 31, 1984. No discount has been taken because of the lack of a potential sale of the farm property which constitutes the greater part of Ledo's holdings, nor, for the same reason, has a premium been attached to the value of the Plan's interest in Ledo, even though upon consummation of the proposed sale Mr. and Mrs. Gay will own approximately one-third of Ledo.

6. Upon the sale of the Plan's interest in Ledo, the Plan will be terminated and all the Plan assets will be distributed to the Plan participants. The applicant represents that the Plan Sponsor has significantly reduced its business activities in recent years, and that although there are 91 Plan participants, the Plan Sponsor has only 5 current employees, and finds the Plan quite costly to maintain. The Plan Sponsor represents that it will be liquidated upon termination of the Plan.

7. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Plan's interest in Ledo will be sold for no less than its fair market value at the time of the sale as determined by an independent appraiser; (b) the proposed sale represents a one-time transaction for cash which can be easily verified; (c) the proposed sale will not require the payment of any commissions by the Plan; (d) the proposed sale will enable the Plan to dispose of a non-marketable asset which produces no income, thus, facilitating the distribution of assets upon Plan termination; and (e) Mr. and Mrs. Gay, the Plan's trustees, have determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Marprowear Corporation Profit Sharing Plan and Trust (the Plan) Located in West Orange, New Jersey

[Application No. D-6330]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain improved commercial real property to Martin Riback, Charles Riback and Joseph Weinberg, the trustees of the Plan (the Trustees), provided that such sale is on terms not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing pension plan with seven participants and total assets of $6,984,231.23 as of December 31, 1984. Each of the Trustees is an officer and owner of more than ten percent of the stock of the Marprowear Corporation (the Employer), the sponsor of the Plan. The Employer is a closely-held New Jersey corporation engaged in the wholesale of casual clothing. All investment decisions on behalf of the Plan are made by the Trustees.

2. Among the assets of the Plan is the Ledgemont Circle Shopping Center (the Property). The Property consists of 8.58 acres of commercially-zoned land improved with a retail shopping center of approximately 60,000 square feet, located on Route 46 in Ledgewood, New Jersey. The Plan acquired the Property on May 30, 1973 for $450,000 and leased approximately 20,000 square feet (the Leased Space) of the Property to the Employer until June 30, 1984, at which time the Employer vacated such premises. The Employer represents that its lease of the Leased Space from the Plan until June 30, 1984 was exempt from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.[2] The Trustees represent that despite their best good-faith efforts a new tenant for the Leased Space has not been located and the Leased Space has remained vacant since the Employer vacated the premises on June 30, 1984. Thus, since June 30, 1984, the Plan has not earned any income from the Leased Space, which constitutes approximately one-third of the leaseable space in the Property. Since the Property constitutes approximately 26 percent of the assets of the Plan, the lack of income from the Leased Space represents a substantial loss of potential income to the Plan's participants and beneficiaries. This substantial deficiency of performance of a major Plan asset will continue as long as the Leased Space remains vacant, which the Trustees represent is the likely future under current and foreseeable market conditions, or until the Plan disposes of the Property by selling it and investing the proceeds in alternative investments. The Trustees represent that they are not likely to locate an unrelated purchaser of the Property who would be willing to pay the Plan the full appraised fair market value of the Property because (1) outstanding leases of the remaining space in the Property would prevent a potential purchaser's control of two-thirds of the Property's space, and (2) a potential purchaser would face the same loss of income of the Leased Space until a suitable tenant could be found.

3. In order to alleviate this deficiency of the Property's performance as a major Plan asset, and to avoid the costs and problems in locating an unrelated purchaser willing to pay the full appraised fair market value of the Property, the Trustees propose to purchase the Property from the Plan in their individual capacities and are requesting an exemption to permit this transaction. The Trustees propose to pay the Plan cash in the amount of the Property's full appraised fair market value. The Property has been appraised by Irwin J. Steinberg, MAI (Steinberg), an independent professional real estate appraiser with the firm of Appraisal Group International in East Orange, New Jersey. In an update of his full narrative appraisal of September 6, 1984, Steinberg states that as of June 11, 1985 the Property had a fair market value of $1,800,000. All costs and expenses related to the sale will be borne by the Trustees. The Trustees represent that their proposed purchase of the Property from the Plan will be in the best interests and protective of the participants and beneficiaries of the Plan in that it will not only alleviate the Plan of an unproductive asset but will

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[2] In this proposed exemption, the Department expresses no opinion as to whether the Employer's lease of the Leased Space was exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.

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also allow the Plan's assets to achieve better diversification, since the Property represents about one-fourth of the Plan's assets.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408 of the Act for the following reasons: (1) The purchase price paid by the Trustees to the Plan will be the Property's fair market value according to Steinberg; (2) the proposed sale is a one-time transaction for cash; (3) all costs and expenses related to the proposed transaction will be borne by the Trustees; and (4) the proposed transaction will enable the Plan to dispose of a poorly-performing asset and to achieve better diversification of its assets.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wynne Building Corporation Employees Pension Trust (the Plan) Located in Miami, Florida

[Application No. D–6425]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan of $750,000 (the Loan), secured by a first mortgage on certain real property (the Property), by the Plan to Wynne Building Corporation, a Florida corporation, (the Employer), provided that the terms of the Loan are and remain at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Employer is a Florida corporation, organized on April 1, 1983, by the merger of its two predecessor corporations. The Employer had total assets of $22,670,534, as of March 31, 1985. It is a closely held corporation with 45 percent of its outstanding shares owned by Mr. Joel F. Wynne, President; 22.5 percent of its shares owned by Mr. Chester C. Wynne, Executive Vice President; 22.5 percent of its shares owned by Mrs. Dorothy Wynne, Director; and the remaining 10 percent of its shares owned by Mr. Harvey A. Newman, Vice President of the Employer. Mr. Chester C. Wynne and Mrs. Dorothy Wynne are married and parents of Mr. Joel F. Wynne. Since July 9, 1964, the Employer, and its predecessors, have acquired, developed, and managed income producing real estate. In this 21-year period, they developed 75 rental properties in Dade County, Florida, which include apartments, warehouses, and duplexes, and 4 manufactured home communities in St. Lucie County, Florida. Most of these properties are owned by the Employer and all are managed by the approximately 120 employees of the Employer. Financing for development of these properties has been obtained from either banks and savings and loan associations or from working capital and profits of the Employer.

2. The Plan is a defined benefit plan with approximately 70 participants and total assets of $3,027,827, as of June 30, 1985. Most of the Plan assets consist of 318 corporate bonds, maturing at various dates, with a total face value of $3,514,750. The trustee for the Plan, Mr. Joel F. Wynne, is also the president, a principal shareholder of the Employer. However, for the duration of the proposed loan transaction, Mr. Leo Levy, 10400 S.W. 98th Street Miami, Florida, has been retained, at the expense of the Employer, to be the independent fiduciary with respect to the funding and servicing of the proposed loan transaction. Mr. Levy, as the independent fiduciary, has been given full authority to monitor the loan transaction throughout its duration and to take any action necessary to safeguard the interests of the Plan and its participants and beneficiaries. The Loan will not be disbursed until Mr. Levy has determined that all the terms and conditions of the transaction have been fulfilled and that the transaction is in the best interests of the Plan and its participants and beneficiaries. Mr. Levy's qualifications include more than 25 years experience with an insurance company and several banks, involving investments, consulting and administering employee benefit plans.

3. The Employer and the Plan request an exemption from the prohibited transaction provisions of the Act which would permit the Plan to loan the sum of $750,000 to the Employer for its use as working capital in the acquisition and development of additional real properties. The Loan represents less than 25% of the assets of the Plan. The Loan will be evidenced by a promissory note for the principal sum of $750,000, excuted by the Employer and payable monthly to the Plan together with interest at the rate of 13.875 percent per annum until maturity in 10 years. The monthly payments of principal and interest on the Loan will be in the sum of $11,588.68 with no penalty for acceleration of payments in part or full. The Loan will be secured by a first mortgage on the Property which has the following legal description:

> East half of lot 13, all of lots 14 and 15, Block 1, CORTLAND INDUSTRIAL PARK, according to the plat thereof as recorded in Plat Book 113 at Page 52 of the Public Records of Dade County, Florida.

The street address of the Property is 12800–12811 SW. 122nd Avenue and 12210–12228 SW. 128th Street, Miami, Florida. The Property consists of 3.33 acres, which includes a 20 bay warehouse building with a gross buildable area of 51,098 square feet and a net rentable area of 49,994 square feet. The Property is fully rented, generating annual revenues of approximately $190,000. These improvements were completed in 1981 and are considered to be in good condition as attested to by a qualified independent appraiser, Mr. Phillip G. Spool, A.S.A., Real Estate Appraiser, P.O. Box 013655, Miami, Florida 33103. As of August 23, 1985, Mr. Spool determined that the Property had a market value of $1,300,000. Furthermore, the mortgage provides that the Property will have a value at all times which equals or exceeds the amount of the Loan by 150 percent. If the value of the Property should fall below 150 percent of the outstanding principal balance of the Loan, the mortgagor will have 30 days within which to repay enough of the outstanding principal balance so that the current value of the Property will again equal or exceed 150 percent of the outstanding principal balance of the Loan.

4. Mr. Levy, the independent fiduciary, represents that he is not related in any way to the Employer or its principals and that he has a thorough familiarity with requirements of the Act, having functioned under its provisions since 1974.

Further, he represents that he fully understands and acknowledges his duties, responsibilities, and liabilities in performing as a fiduciary with respect to the Plan. He represents that his qualifications to act as a fiduciary in the proposed transaction are evidenced by his experience of over 25 years in all phases of employee benefit plans, including administration, investment and consulting. Mr. Levy, after examining the Plan's investment portfolio and recognizing that it stresses safety of its principal coupled with a reasonable rate of return, finds the

proposed transaction satisfies this criterion. He also agrees to monitor the proposed transaction on behalf of the Plan and take any necessary action to foreclose in case of default. Mr. Levy states that, because of the high interest rate and the ample security involved, the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicants represent that the proposed Loan satisfies the statutory criteria of section 408(a) of the Act because (a) the independent fiduciary with respect to the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries; (b) the terms of the Loan will produce a better than average rate of return; (c) the Loan will be secured at all times by collateral with a value of at least 150 percent of the outstanding principal balance of the Loan; (d) the independent fiduciary with respect to the Plan will pursue the rights of the Plan and its participants and beneficiaries in the event of default, including foreclosure on the security of the Loan; and (e) the collateral will be appraised at any time the independent fiduciary with respect to the Plan deems necessary.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Medford Radiological Group E. Doyle Profit Sharing Plan Trust (the Plan) Located in Medford Oregon

[Application No. D–6443]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of certain works of art (the Artworks) by the Plan to Edward J. Doyle, M.D. (Dr. Doyle), a disqualified person with respect to the Plan, provided that the cash received by the Plan from the proposed sale is the higher of either $5,350 or the fair market value of the Artworks of the date of the sale.[3]

Summary of Facts and Representations

1. The Plan is a Keogh profit sharing plan in which Dr. Doyle is the sole participant, sponsor, and trustee. After Dr. Doyle incorporated his medical practice and established another employee benefit plan for his new professional corporation, the Plan ceased to be funded and was "frozen". As of December 12, 1985, the Plan had total assets of $48,000.

2. The Artworks consist of five pieces of graphic art in the form of etchings by three different artists. These include (a) two by Boulanger entitled *Single Girl on Bicycle,* valued at $850 and *La Bergere,* valued at $1,300; (b) two by Tamayo entitled *Cabeza en Rojo* valued at $1,000 and *Hombre con Baston,* valued at $1,000; and (c) one by Dali entitled *Diane de Poitiers* valued at $1,200. The Artworks were purchased from unrelated parties in June 1980 as an investment for the Plan and have remained in the possession of The Art Show, an art gallery in Bend, Oregon. These five pieces since their purchase have been on display by The Art Show in its gallery as well as at various art shows for the purpose of selling the Artworks.

3. Since there has been no success in selling the Artworks for the past five and one-half years at their appraised value, Dr. Doyle is seeking an exemption from the prohibited transactions of the Act which would permit him to purchase the Art works for cash from the Plan for their appraised value in order to permit the Plan to invest the proceeds of the sale in income producing assets. The Artworks have been appraised by Caro Hakala of the Art Show, as of November 15, 1985, to have a total current market value of $5,350.

4. In summary, the applicant represents that the proposed transaction satisifies the criteria for exemption under section 4975(c)(2) of the Code because (a) the sale will be a one-time transaction for cash with no expense incurred by the Plan; (b) the Plan will sell the Artworks at their fair market value as detemined by an independent appraiser; (c) The Art Show has been unsuccessful in its attempts to sell the Artworks on behalf of the Plan; and (d) the Plan will be able to invest the proceeds of the sale in income producing assets.

Notice to Interested Persons: Because Dr. Doyle is the applicant as well as the Plan sponsor, trustee, and sole participant, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Birr, Wilson, & Co., Inc. Employee's Profit Sharing Plan (the Profit Sharing Plan) and The Birr, Wilson & Co., Inc. Financial Security Plan for Account Executives (the Security Plan collectively, the Plans) Located in San Francisco, CA

[Application Nos. D–6477 and D–6478]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed exercise of stock options (the Options) by the Plans to purchase from Birr, Wilson & Co., Inc. (the Employer) stock in unrelated companies; and (2) the potential repurchase of the Options from the Plans by the Employer, for a period of five years from the date this proposed exemption becomes final, provided that the terms and conditions of the transactions are at least as favorable to the Plans as those obtainable in similar transactions with an unrelated party.

Temporary Nature of Exemption: This exemption, if granted, shall be effective for a period of five years commencing with the date on which the exemption becomes final.

Summary of Facts and Representations

1. The Employer is a closely held regional stock brokerage firm with its principal place of business in San Francisco, California. It also has offices in other cities in California and in New York, Idaho, Oregon, Nevada and Washington. It has seats on the New York and Pacific Stock Exchanges and is a member of the National Association of Securities Dealers, Inc. The Employer is also subject to the Securities Act of 1933, the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, and is a registered investment adviser under the

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[3] Pursuant to 29 CFR 2510.3–3(b), there is no jurisdiction under Title I of the Act for the proposed sale because Dr. Doyle is the sole participant of the Plan. However, there is jurisidiction under Title II of the Act: therefore the Department may grant an administrative exemption under section 4975(c)(2) of the Code.

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Investment Advisers Act of 1940. The Employer has no obligation to pay dividents and the last cash dividend paid was $.08 per share paid in March, 1977.

2. The Profit Sharing Plan is a profit sharing plan covering employees of the Employer who are not account executives or account executive trainees. As of November 30, 1984, it has 221 participants and assets of $1,804,711.74.

3. The Security Plan is a profit sharing plan covering account executives of the Employer who are compensated primarily on a commission basis. As of November 30, 1984, it had 135 participants and assets of $4,522,837.29.

4. The trustee of both Plans is Security Pacific National Bank (the Trustee). Most investment decisions are made by the Employee Plan Committee (the Committee), which is currently comprised of officers and/or directors of the Employer.

5. As an underwriter, the Employer frequently purchases and will continue to purchase warrants (the Warrants) to acquire shares of stock in issuers for whom it is performing underwriting services. The Employer acquires these Warrants for a cash purchase price equal to what it believes to be the fair market value of the Warrants.

6. The Employer has recently declared and will continue to declare dividends in the form of options (the Options) to purchase shares of stock in the companies from which the Employer has acquired the Warrants. The Plans, as shareholders of the Employer, have been, and will be granted the Options.

7. The Options become exercisable on the dates on which the Option holder receives notification from the Employer that the Options are exerciseable. The Options will remain exercisable for a period of thirty days following the dates of the original exercise notices. The Options may be exercised only by purchasing all of the stock which the Option holder has a right to purchase. The Employer may, in its absolute discretion, give the Option holder the exercise notice any time during the exercise notice period, but in any event must give such exercise notice not later than the final date of the exercise notice period.

8. The applicant represents that the decision of when to give the exercise notice to Option holders will be based on the Employer's evaluation of factors which will include, but not be limited to, the current market price of the shares which could be acquired pursuant to the Options, the time remaining on the Options and the expectation of market performance in relation to the time remaining on the Options.

9. The applicant represents that the Employer may exercise its Warrants at a price generally equal to 100% to 120% of the initial offering price for the shares of stock involved. The Options may be exercised by the Trustee at a price equal to the price at which the Employer may acquire its shares pursuant to its Warrants.

10. No commissions will be paid by the Plans in connection with their acquisition of shares pursuant to the Options.

11. The purchase price under each Option is subject to adjustment if the issuing company pays a dividend in shares of its common stock, subdivides (split) its outstanding shares of common stock, combines (reverse split) its outstanding shares of common stock, or issues by reclassification of its shares of common stock any shares or other securities, or distributes to holders of its common stock any securities of itself or of any other entity. If any of the foregoing events were to occur, the number of shares of common stock or other securities which the Trustee is entitled to purchase pursuant to the Option immediately prior to the occurrence of any of the foregoing events shall be adjusted so that the Trustee will be entitled to receive upon exercise the number of shares of common stock or other securities which it would have owned or would have been entitled to receive after the occurrence of any of the events described above had the Option been exercised immediately prior to the happening of such event, and the exercise price per share shall be correspondingly adjusted. No adjustment in the number of shares and/or the exercise price shall take place unless such adjustment would require an increase or decrease of at least 1% in the exercise price or the number of shares which could otherwise be acquired pursuant to the Option. Notwithstanding the foregoing, any adjustment which is not required pursuant to the terms of the Option agreements shall be carried forward and taken into account in the event of any subsequent adjustment.

An adjustment made pursuant to the Option agreements shall become effective immediately after the record date in the case of a stock dividend, or other distribution, subdivision, combination or reclassification of the shares. If the issuing company is consolidated or merged with or into another corporation or if all or substantially all of its assets are conveyed to another corporation, each Option holder will be permitted to purchase the kind and number of shares of stock or other securities receivable upon such consolidation, merger or conveyance based on the number of shares of common stock which could have been purchased under the Option immediately prior to such consolidation, merger or conveyance.

12. The Employer, at any time prior to the exercise of the Options, may repurchase the Options from the Trustee in the event the Employer sells or otherwise disposes of its Warrants or the Employer exercises the Warrants and sells or otherwise disposes of all of the shares acquired pursuant to the Warrants. In the event the Employer exercises its repurchase rights as described above, it will pay each Option holder cash in an amount determined in accordance with a formula contained in the Option agreements, which assures that the Plans receive their proportionate share of the proceeds of the sale or other disposition of either the Warrants or the shares. The Plan will bear no expenses with respect to such a repurchase.

13. The decision of whether or not the Plans will exercise the Options will be made by the investment advisor(s) appointed by the Committee. The Employer currently anticipates that the investment advisor will be Roger E. Engemann & Associates, Inc. (Engemann) of Pasadena, California. Engemann is a registered investment advisor under the Investment Advisors Act of 1940 and is not related to the Company in any respect other than in its capacity as investment advisor to the Plan. The applicant represents however, that Engemann may, in certain cases, choose to have the Employer execute brokerage transactions on behalf of his clients. In determining whether the Options should be exercised, Engemann will give appropriate consideration to those facts and circumstances which Engemann knows or should know are relevant to the exercise of the Options in question. This consideration will include, but will not necessarily be limited to, a determination that the exercise of the Options is reasonably designed, as part of the portfolio of the Plans, to further the purposes of the Plans, taking into consideration the risk of loss and the opportunity for gain or other return associated with the exercise of the Options and the effect that the exercise of the Options will have on the portfolio with regard to diversification; the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the Plans; and the projected return of the portfolio relative to the funding objectives of the Plans.

14. The applicant represents that the value of the Options currently held is less than .1% of the value of the aggregate assets of the Plans as of November 30, 1984, and if the Options are exercised and the exercise price equals the fair market value of the stock purchased, that the value of such stock would equal no more than 1% of the value of the Plans' assets.

15. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the subject transactions because: (a) The terms of the Options granted to the Plans are and will be the same as those granted to all shareholders of the Employer; (b) the Plans will be able to exercise the Options at the same price at which the Employer exercises its Warrants; (c) an independent fiduciary, Engemann, will decide whether it is in the Plans' interests to exercise the Options; (d) in the event the Employer repurchases any Option, the Plans will receive their full share of the proceeds and bear no expense with respect to such resale; and (e) failure to grant the exemption will prevent the Plans from benefitting from these and future dividends issued to stock holders of the Employer or from the repurchase of the Options by the Employer.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an adminstrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-4399 Filed 2-27-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-23; Exemption Application No. D-5413 et al.]

Grant of Individual Exemptions; UPS Company Defined Benefit Pension Plan and Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

UPS Company Defined Benefit Pension Plan and Trust (the Plan) Located in Torrance, CA

[Prohibited Transaction Exemption 86-23; Exemption Application No. D-5413]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the periodic purchases by the Plan of undivided interests in a parcel of property (the Property) located in Malibu, California from Mr. Hiram C. Sloan (Mr. Sloan), provided the Plan pays no more for such interests in the Property than their fair market value on the date of the purchase; and (2) the leasing of the Plan's interest in the Property by the Plan to Mr. Sloan, UPS Company or Malibu Paradigm, under the terms set forth in the notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

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For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 30, 1985 at 50 FR 53216.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

H&E Electric Supply Company Employees Retirement Plan and Trust (the Plan) Located in Carlsbad, NM

[Prohibited Transaction Exemption 86–24; Exemption Application No. D–5462]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing of certain real property by the Plan to H&E Electric Supply Company, the sponsor, provided that the terms and conditions of the leasing are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: This exemption is effective April 2, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 30, 1985, at 50 FR 53218.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8194 (This is not a toll free number.)

Thomas E. Moore, Jr., M.D. Corporate Pension Plan (the Plan) Located in San Francisco, CA

[Prohibited Transaction, Exemption 86–25; Exemption Application No. D–5835]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past sale of 5.5 ounces of gold bullion and 204 ounces of gold coin (the Gold) by the Plan to Dr. Thomas E. Moore, Jr. (Dr. Moore); and (2) the proposed sale of the Gold by the Plan to Dr. Moore provided that the terms of the past transactions were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party and provided the terms of the proposed transaction is also as favorable to the Plan as those obtainable in an arm's-length transaction.

Effective Date: The effective date for transaction (1) of this exemption will be April 2, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 19, 1985 at 50 FR 47641.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number).

Standard Precast, Inc. Profit Sharing Plan (the Plan) Located in Jacksonville, FL

[Prohibited Transaction Exemption 86–26; Exemption Application No. D–5947]

Exemption

The restrictions of section 406 (a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Standard Precast, Inc. provided the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective: This exemption is effective December 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46197.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

James P. Gills, M.D., P.A. Pension Plan and Trust (the Plan) Located in Clearwater, FL

[Prohibited Transaction Exemption 86–27; Exemption Application No. D–5981]

Exemption

The restrictions of section 406 (a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to St. Luke's Clinic Properties, a party in interest with respect to the Plan, provided that the terms of the proposed sale are as favorable to the Plan as an arm's-length transaction with an unrelated party at the time of consummation.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 15, 1985 at 50 FR 47300.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Operating Engineers Pension Trust (the Plan) Located in Pasadena, CA

[Prohibited Transaction Exemption 86–28; Exemption Application No. D–6171]

Exemption

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the Plan, for the total cash consideration of $862,457, of certain real property (the Subject Property) from the International Union of Operating Engineers, Local Union No. 12 (the Union), provided the price paid for the Subject Property is not more than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 16, 1985 at 50 FR 37597.

Written Comments. The Department received one written comment to the notice of proposed exemption and no requests for a public hearing. The written comment contained numerous objections to the granting of the proposed exemption. Folowing are the objections articulated by the commentator (the Commentator) and the responses given by the Plan trustees (hereinafter, the Applicants or the Trustees) to the issues raised.

1. *Control of the Trustees.* The Commentator says he is opposed to most transactions entered into between the dominant Trustee of the Plan, whom the Commentator describes as a Union Trustee, and the Plan's administrative corporate president. The Commentator states that he believes this Trustee is in full control of the Plan's six other Trustees since he can terminate and replace these officials without the approval and vote of the Plan's participants. The Applicants have, however, countered this objection by asserting that control of the Plan by an official of a labor organization is prohibited since the Plan is administered in accordance with the statutory requirements of the Labor Management Relations Act of 1947, as amended.

2. *Move of Union Offices.* The Commentator questions the motivations of the individuals responsible for the Union's move from its present location to another. The Commentator essentially objects to the necessity for the move and he believes there will be an expenditure of Plan funds to finance the move. The Commentator further believes that if the officials advocating the move were compelled to refraim from using Plan money to fund real estate transactions, the Plan asset total as well as the benefits paid to participants would be increased.

The Applicants have responded to the Commentator's questions by explaning that the Union leases space from the Plan under a pre-Act written lease providing for the payment of rent by the Union to the Plan. The Applicants represent that if the Union were to vacate this space, any moving expenses the Union incurred would be paid by the Union and not by the Plan.

Additionally, the Applicants note that the considerations involved in relocating the administrative offices of the Plan have been described in documents submitteed in support of the exemption application. According to the Applicants, the Plan has been successful in achieving gains of its real estate investments and the results have been beneficial to the Plan. Since the Subject Property is adjacent to property where the Union intends to locate its headquarters, the Applicants explain that the proximity between Plan and Union offices will probably override any future office relocations.

3. *Investment Performance of the Plan.* The Commentator is doubtful about the investment performance of the Plan since he believes the Plan has been mismanaged by the Applicants. He also expresses the general view that pension plans have no need for tax shelters and that they should be self-perpetuating and augmented only by interest earnings.

The Applicants have responded to the Commentator's concerns by asserting that the Plan has had an outstanding record of performance under their administration and by presenting documentary evidence. The Applicants explain that independently audited financial statements for the Plan show net assets in excess of $706 million and a 12.44 percent net return on investment as of June 30, 1985. The Applicants also document and describe certain commercial loans and participation interests in commecial loans in which the Plan has invested favorably. Additionally, the Applicants document and describe the Plan's performance in securities investments. Using an independent investment performance analysis obtained on behalf of the Plan from Merrill Lynch Capital Markets, the Applicants state that the Plan's investment performance in corporate equities and bonds for the period December 1979 to June 1985 ranked first and thirty-first, respectively, among the one hundred portfolios compared.

4. *Terms of Sale.* The Commentator raises several objections to the terms of the proposed transaction. He initially questions the representation in the notice of proposed exemption that the Plan will pay no real estate fees or commissions in connection with the transaction. He states that he cannot believe this representation since he feels someone is ultimately benefitting from the use of Plan funds. The Applicants, however, counter this objection by reaffirming that the Plan will pay no real estate fees or commissions to any party.

The Commentator also queries why the Plan did not purchase the Subject Property in December 1984 directly from M.J. Brock (Brock), a real estate developer and contributing employer. According to the Applicants, the Plan did not purchase the Subject Property from Brock because Brock is a party in interest. The Applicants also explain that Brock would not have waited to sell the Subject Property while an exemption application was being processed by the Department. The Applicants further state that unless the Plan purchased the entire property owned by Brock and obtained a second exemption permitting the sale of a portion to the Union, Brock would have been required to await the recording of a new boundary line for the Subject Property. The Applicants explain that such delays would not have been acceptable to Brock and the transaction could not have been consummated. The Applicants conclude by stating that the Commentator has no reason for complaining that the Plan did not purchase the Subject Property directly from Brock because the Plan will be paying the same price Brock has been paid for the property.

The Commentator also questions the accuracy of the dimensions of the property retained by the Union and that of the Subject Property but the Applicants assert that the square footages are precise. In addition, the Commentator wishes to know the identities of the unrelated parties from whom the Plan purchased a parcel of land containing 18,000 square feet (the Trust Property) and he also insists upon a disclosure of the purchase price paid. The Applicants have responded to these inquiries by explaining that the Plan acquired the Trust Property at a purchase price of $30 per square foot on December 27, 1984 from James M. Jones and Lillias V. Jones, who are husband and wife and unrelated parties. The Commentator further questions where the Union obtained the funds to purchase the Subject Property from Brock but the Applicants consider this matter irrelevant to the merits of the exemption application.

The Department has considered the entire record, including the comment letter received from the Commentator and the Applicants' response to the comment letter. Based on its review, the Department has determined to grant the exemption as it has been proposed.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

John H. Ten Pas, M.D. Retirement Trust (the Plan) Located in Grand Haven, MI

[Prohibited Transaction Exemption 86–29; Exemption Application No. D–6418]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of 10.04 acres of vacant land located in Robinson Township, Michigan, from the individual segregated account of John H. Ten Pas (Ten Pas) in the Plan to Ten Pas, provided the Plan receives no less than fair market value at the time of sale. Section 408(d)(3) of the Act provides that the Department does not have the authority to grant an exemption under section 408(a) of the Act for the sale of any property of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject sale. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975(c)(2) of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 1985 at 50 FR 53221.

For Further Information Contact: Mr. Paul Kelty of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogatioon of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an adminstrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-4400 Filed 2-27-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel, Performing Arts-Theater Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts-Theater Section) to the National Council on the Arts will be held on March 19-20, 1986 from 9:00 a.m.-5:30 p.m., and March 21, 1986 from 9:00 a.m. to 5:00 p.m., Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 19, 1986 from 9:00 a.m. to 10:30 a.m. and March 21, 1986 from 2:00 p.m. to 5:00 p.m. Topics for discussion will be Program review and updates and guidelines and policy issues.

The remaining sessions of this meeting on March 19, 1986 from 10:30 a.m. to 5:30 p.m., March 20, 1986 from 9:00 a.m. to 5:30 p.m. and March 21, 1986 from 9:00 a.m. to 2:00 p.m. are for the purpose of Application review, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-4350 Filed 2-27-86; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel, Art in Public Places Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on March 18-20, 1986 from 9:00 am-6:00 pm, Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-4351 Filed 2-27-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Responses to Safety Recommendations; Availability

Recommendation No.	Respondent	Date	Subject
A-84-120	Federal Aviation Administration (FAA).	1/8/86	Underwing emergency exits on F-27 airplanes; interference from adjacent passenger seats.
A-85-88 through -90	FAA	1/13/86	Continuous flow oxygen masks.
A-76-21, -23, -27, and A-77-58	FAA	1/13/86	Continuous flow oxygen masks.
A-84-46, -93 and -94	FAA	1/13/86	Alcohol use by pilots.
A-85-73 through -76	FAA	1/13/86	Fuel contamination problems on Pilatus Britten-Norman BN-2, BN-2A, BN-2B, BN-2T, and BN-2A Mk III model airplanes engaged in commuter/air taxi operations.
A-85-31	FAA	1/13/86	Attachment of wing extension assembly intercostals on Piper Model PA-60-601B, -601P, and -602P Aerostar airplanes.
A-85-81 through -86	FAA	1/13/86	Tire explosions in wheel wells of B-727 airplanes; brake lining cups; hydraulic system lines, electrical wiring and control system cables located in wheel wells.
A-85-87	FAA	1/13/86	Hobbs, Datcon, and similar hourmeter oil pressure switches mounted directly to the engine
A-83-6	FAA	1/10/86	Fuel system modification for Cessna single-engine airplanes with rubberized bladder-type fuel cells for detection and/or elimination of water from the fuel.
A-85-91 and -92	FAA	1/10/86	Installation of electrical wires wires and cables adjacent to the titanium bleed air ducts on Lockheed L-1011 airplanes.
A-84-9	FAA	1/13/86	Deficiencies detected during surveillance activities.
A-77-70	FAA	1/13/86	Installation of approved shoulder harnesses at all seat locations in general aviation aircraft.
A-84-72	FAA	1/14/86	Expanded radar coverage for Miami ARTCC.
A-85-77	FAA	1/14/86	Individual fuel line drain valves in Piper Apache Model PA-23-150, PA-23-160, and PA-23-235 airplanes; optional auxiliary fuel cells; operating information regarding the use of fuel additives in piston-powered airplanes for cold weather operation.
A-82-116	FAA	1/17/86	Minimum airspeeds and appropriate flight precautions during flight in icing conditions.
A-85-10	FAA	1/17/86	Inspection of fuel tank filler cap and adapter assemblies in Mooney Model M20B, M20C, M20D, M20E, M20F, M20G, M20J, (201) and M20K (231) airplanes.
A-85-106 through -111	FAA	1/17/86	Engine exhaust leakage; silicon oil separator drain hoses, fuel metering unit tee fittings on Cessna Model T303 airplanes.
A-84-111 through -115	FAA	1/17/86	Hazardous Inflight Weather Advisory Service Program.
A-85-50 and -52	FAA	1/21/86	Ignition switch on Fairchild Swearingen model SA-226 airplanes.
A-85-126	FAA	1/27/86	Seat/restraint systems.
A-84-130 through -133	FAA	1/27/86	Inclusion of bracing position in passenger safety information cards.
A-85-117	FAA	2/4/86	Requirement that required flight crewmembers of U.S.-registered civil aircraft keep the shoulder harness fastened while at their stations.
A-85-2	FAA	2/4/86	Modification of horizontal stabilizer attachment structure of EMB-110P1 and -110P2 model airplanes.
A-85-33	FAA	2/4/86	Face-to-face and/or interphone coordination between local and ground controllers.
A-84-108	U.S. Department of Commerce Nat'l Oceanic and Atmospheric Administration.	2/5/86	Severe clear air turbulence.
A-81-15	FAA	2/10/86	Cessna aircraft seat locking in all seat positions.
A-85-5 and -6	FAA	2/10/86	Engine fire detection and extinguishing systems on Boeing 747 series airplanes equipped with Pratt & Whitney JT9D engines.
A-85-69 through -71	FAA	2/11/86	Crash design guidelines for seats, restraint systems, fuel systems and structures.
HIGHWAY			
H-82-35	State of New Mexico	10/2/85	Citizen reporting of drunk drivers.
H-85-22	State of North Carolina	12/3/85	Child passenger safety.
H-85-49 and -50	State of New Mexico	12/19/85	Improved reporting of alcohol involvement in highway crashes.
H-85-22	Commonwealth of Massachusetts	12/19/85	Child passenger safety.
H-71-37, H-72-18, H-72-22 and H-74-25.	National Highway Traffic Safety Administration.	12/27/85	Standards for overhead surfaces on passenger buses; occupant survivability standards; information-gathering programs.
H-83-46	Department of California	12/31/85	Schoolbus passenger briefing.
H-78-25 and -26	National Highway Traffic Safety Administration.	1/2/86	Comparison skid testing; commercial vehicle tires and ASTM E-274 skid-test tire.
H-85-49 and -50	State of Florida	1/3/86	Improved reporting of alcohol involvement in highway crashes.
H-85-49 and -50	State of Nevada	1/5/86	Improved reporting of alcohol involvement in highway crashes.
H-83-25	Federal Highway Admin.	1/6/86	Corrosion-induced cargo tank structural failures.
H-85-49 and -50	State of Hawaii	1/7/86	Improved reporting of alcohol involvement in highway crashes.
H-85-22	Ohio Department of Highway Safety	1/8/86	Children passenger safety.
H-85-49 and -50	State of Mississippi	1/9/86	Improved reporting of alcohol involvement in highway crashes.
H-85-49 and -50	Commonwealth of Kentucky	1/10/86	Do.
H-85-49 and -50	State of Maryland	1/10/86	Do.
H-82-35	Commonwealth of Pennsylvania	1/10/86	Citizen reporting of drunk drivers.
H-85-22	State of West Virginia	1/14/86	Child passenger safety.
H-85-49 and -50	District of Columbia	1/14/86	Improved reporting of alcohol involvement in highway crashes.
H-85-22	State of Georgia	1/14/86	Child passenger safety.
H-85-49 and -50	State of Louisiana	1/5/86	Improved reporting of alcohol involvement in highway crashes.
H-85-22	State of Rhode Island	1/15/86	Child passenger safety.
H-85-22 and H-85-49 and -50	Missouri Dept. of Public Safety	1/16/86	Child passenger safety and improved reporting of alcohol involvement in highway crashes.
H-85-49 and -50	State of Rhode Island and Providence Plantations.	1/16/86	Improved reporting of alcohol involvement in highway crashes.
H-85-22	State of Connecticut	1/16/86	Child passenger safety.
H-85-49 and -50	State of West Virginia	1/29/86	Improved reporting of alcohol involvement in highway crashes.
H-85-8 through -15	do	2/3/86	Schoolbus inspections.
H-81-11	Federal Highway Admin	2/3/86	Brake check areas for steep highway grades.
H-85-27 thru -29	do	2/5/86	Bridge inspections.
H-85-49 and -50	Ohio Dept. of Highway Safety	2/10/86	Improved reporting of alcohol involvement in highway crashes.
H-84-70	State of Georgia	2/11/86	Vehicle licensing procedures.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC, 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Federal Register Liaison Officer.

February 21, 1986.

[FR Doc. 86-4352 Filed 2-27-86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 70-698]

Finding of No Significant Impact Amendment of Special Nuclear Material License No. SNM-770; Westinghouse Electric, Pittsburgh, PA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM-770 to authorize the commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material at the Waltz Mill Site in Pittsburgh, Pennsylvania

Summary of Environmental Assessment

Identification of the Proposed Action: The proposed action would allow Westinghouse Electric Corporation to install a laundry facility at the Waltz Mill Site. The facility will be used to perform the cleaning of protective clothing and other personal protective equipment used at other facilities.

The Need for the Proposed Action: Space at licensed burial facilities is a valuable and limited resource. As a result, the NRC has adopted a policy on low-level waste volume reduction to encourage licensees to establish programs to reduce the volume of waste required for disposal. The proposed laundry facility at the Waltz Mill Site is commensurate with such a policy of good volume reduction practices. By offering the laundry service to other facilities, benefits are realized in terms of (1) decontamination of protective clothing and equipment for reuse and (2) reduction in volume of contaminated material for burial.

Environmental Impacts of the Proposed Action

Construction Impacts: No new construction is planned except for general grading of the area, the installation of electrical power, some concrete pads to support the house trailers and laundry modules, and a ventilation system. Thus, the construction impact is expected to be minimal.

Gaseous Emissions: Opening of the containers and sorting of items are performed within the confines of a ventilated canopy-type hood, and the air is also exhausted through the facilities ventilation system. All of the air effluents from the laundry facility will be exhausted through HEPA filters and will be continuously monitored for beta-gamma radioactivity.

Operating experience obtained using such laundry modules at other locations has indicated that the radioactivity in the air effluents after HEPA filtration is typically less than detectable levels. The total volume of air exhausted will be increased by approximately 8 percent and there will be some small increase in total activity releases. It is expected that an increase can be easily accommodated, since even the highest dose calculated in the recent EIA due to airborne effluents was less than 1 percent of the limits specified in the Clean Air Act (40 CFR Part 61). These limits are 25 millirem/year to the whole body and 75 millirem/year to the critical organs. The recent expansion of the decontamination, disposal, and recycle service at the Waltz Mill Site does not alter the belief that doses will remain well below the EPA standards.

Non-radiological air effluents may contain small quantities of the freon cleaning solvent. These vapors will be exhausted through the HEPA filters prior to release.

Liquid Effluents: The proposed activities in the laundry facility are based on continuous recirculation and purification of the liquid utilized in the equipment. The facility is not equipped with any drain so there is no discharge of liquids directly to any waste processing system. The small quantity of liquid waste which will be generated shall be collected in small containers and either added to the liquid processing system or characterized for nuclide concentration, solidified, and shipped to an offsite burial facility. If the liquid waste is treated in the liquid waste processing facility, it will not significantly increase the volume of waste treated.

Solid Waste: Westinghouse estimates that about 250 cu. ft. of solid waste per year will be generated with the laundry facility operating at full capacity. This solid waste consists of materials such as solidified distillate bottoms, spent ion exchange resins, spent aqueous filter media, plastic, paper, and non-reusable clothing associated with the laundry operations. These materials will be collected, characterized, and shipped to an offsite burial facility.

Transportation: As a result of the addition of the laundry facility, the number of incoming and outgoing trucks from the Waltz Mill Site will increase by approximately 60 percent. Therefore, the probability of an accident involving a shipment of radioactive material will also increase.

The environmental effects of transportation accidents involving properly packaged materials has been thoroughly analyzed and documented.[1] These analyses show that the radiological risk from transportation accidents involving radioactive materials does not contribute appreciably to the accident consequences. The increase in shipments would add very little to public injuries or fatalities in case of accident.

Conclusion: The staff believes this operation can be performed at the Waltz Mill Site in an environmentally safe manner. The airborne, liquid, and solid releases from the laundry facility are expected to have an insignificant environmental impact. Therefore, the staff concludes there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action: An alternative to conducting the laundry operation at the Waltz Mill Site would be denial of the application and authorizing these operations to be performed at another location. Allowing the laundry operation to be performed at another location does not offer any environmental benefit. Although denial of Westinghouse's license amendment is an alternative available to the NRC, it would be considered only if issues of public health and safety cannot be resolved to the satisfaction of the regulatory authorities involved.

Agencies and Persons Consulted: The Commission's staff reviewed the applicant's request of October 11, 1985 and its supplement dated December 18, 1985.

Finding of No Significant Impact: The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment of Special Nuclear Materials License No. SNM-770. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment and the above documents are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

Dated at Silver Spring, Maryland this 24th day of February 1986.

For the Nuclear Regulatory Commission

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 86-4409 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

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[1] U.S. Nuclear Regulatory Commission, Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, NUREG-0170, Volumes 1 and 2, Washington, DC. December 1977.

[Docket No. 50-289]

GPU Nuclear Corp. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Considertion Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pennsylvania.

In accordance with the licensee's application dated February 4, 1986, the proposed amendment would modify the Once Through Steam Generator (OTSG) tube repair criteria for TMI-1. The present TMI-1 Technical Specifications (TSs) require that defects extending greater than 40% of the tube wall thickness shall be repaired. Defects penetrating less than 40% of the tube wall thickness are acceptable regardless of their length. The licensee proposes to change the repair criteria to allow not repairing the tube, under certain circumstances, if it has a defect up to 50% tube wall penetration.

The proposed amendment has certain limitations on the 50% tube wall criteria. First, the 50% tube wall repair criteria do not apply to defects on the outer diameter (secondary side) of the tube or areas on the inner diameter (primary side) of reduced eddy current sensitivity (upper and lower tube sheet, secondary faces and support plate entry and exit locations). In these areas, the present 40% criteria will still apply. Second, in areas where the 50% tube wall criteria apply, there is a limitation on the maximum allowable length of a defect of 0.55 inches if it is between 40% and 50% penetration of the tube wall. Third, the proposed amendment is only in effect until the next scheduled refueling outage (scheduled for approximately December 1986). Based on the results of steam generator inspections, both the licensee and NRC staff will evaluate what repair criteria should apply on restart from the refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commision's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The general 40% throughwall repair limit for the OTSG has an allowance of 10% throughwall to allow for further corrosion and 10% allowance to account for eddy current accuracies in detecting defects. The NRC staff has concluded, as stated before the Atomic Safety and Licensing Board in the TMI-1 steam generator repair hearings held in July 1984, that it is reasonably certain that corrosion is not an ongoing phenomenon on the primary side of the OTSG at TMI-1. By letter dated July 29, 1985, the licensee submitted the final report of its long term corrosion program which again concludes that the corrosion process on the primary side of the OTSG has been arrested. Although the results of this study are still under review by the NRC staff, there is reasonable assurance that in the short term the corrosion mechanism on the primary side has been arrested. In the previous TMI-1 steam generator repair hearings held in 1984, and with this application, the licensee has submitted data which indicates the inaccuracy of eddy current inspections at TMI-1 is 10% or less.

Permitting the corrosion allowance to go to zero would imply that a defect of up to 50% throughwall penetration and unlimited length would satisfy the Standard Review Plan criteria. However, before permitting a permanent change, it would be prudent to verify the corrosion rate predictions and eddy current inspection accuracy. The temporary change proposed by the licensee satisfies these concerns.

The three criteria for making a no significant hazards determination are provided in 10 CFR 50.92. Each criterion is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated.

The event of concern for this amendment is a steam generator tube rupture. The proposed criteria provide assurance of OTSG tube wall integrity under normal operating and faulted conditions. In particular, the proposed amendment would satisy the recommendations of Regulatory Guide 1.121 in that it contains a margin of safety against ductile failure equal to 3.0 times normal loads. Thus, use of the proposed criteria does not involve a significant increase in the probability of occurrence of a steam generator tube rupture event.

in accordance with the recommendations of Regulatory Guide 1.121, the proposed amendment also contains a margin of safety against faulted conditions, specifically under loads associated with the main steam line break accident. Thus, use of the proposed criteria does not involve a significant increase in the consequences of an accident previously evaluated.

(2) Use of the proposed criteria should not create the possibilty of a new or different kind of accident from any accident previously evaluated.

Use of the proposed criteria has no bearing on any accident other than the steam generator tube rupture or main steam line break, discussed above. Thus, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the proposed criteria should not involve a significant reduction in a margin of safety.

The margin of safety for the proposed revised criteria is in accordance with the licensing basis for the existing repair limit. The limiting margin of safety previously approved by NRC is not affected or reduced. The margin separating the proposed revised criteria from the analytical results from normal operating and faulted conditions is in accordance with the guidelines of Regulatory Guide 1.121 and is not significantly reduced by this amendment.

The Commission has provided examples of amendments not likely to involve significant hazards consideration (48 FR 14870). Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are

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clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed amendment fits this example in that some safety margin may be reduced but the results are clearly within all acceptable criteria specified in the Standard Review Plan. The Commission, therefore, proposes to determine that this amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By March 31, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the followig message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For futher details with respect to this action, see the application for amendment dated February 4, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 21st day of February 1986.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6 Division of PWR Licensing-B.

[FR Doc. 86-4405 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on March 18, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

To the extent practical the meeting may be open to public attendance, however, a portions of the meeting will be closed to discuss material relating to plant safeguards and security.

The agenda for the subject meeting shall be as follows:

Tuesday, March 18, 1986—8:30 A.M. until the conclusion of business.

The Subcommittee will continue its review of NRR resolution position for USI A-45, "Shutdown Decay Heat Removal Requirements."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Futher information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 24, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-4395 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275-OLA and 50-323-OLA; ASLBP No. 86-523-030-LA]

Pacific Gas and Electric Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Pacific Gas and Electric Company

Diablo Canyon Nuclear Power Plant, Units 1 and 2

Facility Operating License Nos. DPR-80 and DPR-82

This Board is being established pursuant to a notice published by the Commission on January 13, 1986 in the **Federal Register** (51 FR 1451-56) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses DPR-80 and DPR-82 for Diablo Canyon Nuclear Power Plant, Units 1 and 2, Respectively, and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The amendments would authorize the licensee to increase the Unit 1 and Unit 2 spent fuel pool storage capacity from 270 to 1324 storage locations for each unit. The proposed expansion is to be achieved by reracking the spent fuel pools with a combination of poisoned racks and nonpoisoned racks in a two-region arrangement.

The Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Mr. Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 21st day of February, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-4396 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-414]

Duke Power Co; Catawba Nuclear Station, Unit 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Reglatory Commission (the Commission) has issued Facility Operating License No. NPF-48 to Duke Power Company, North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency (the licensees) which authorizes operation of the Catawba Nuclear Station, Unit 2, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan with a condition limiting operation to five percent of full power (170 megawatts thermal).

The Catawba Nuclear Station, Unit 2, is a pressurized water reactor located in York County, South Carolina, approximately 6 miles north of Rock Hill, South Carolina.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on June 25, 1981 (46 FR 32974). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

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Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and the issuance of exemptions included in this license will have no significant impact on the environment (51 FR 6219).

For further details with respect to this action, see (1) Facility Operating License No. NPF-48; (2) the Commission's Safety Evaluation report, dated February 1983 (NUREG-0954), and Supplements 1 through 5; (4) the final Safety Analysis Report and Amendments thereto; (5) the Environmental report and supplements thereto; (6) the Final Environmental Statement, dated January 1983 (NUREG-0921); (7) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated June 22, 1984; (8) the Supplemental Partial Initial Decision on Emergency Planning dated September 18, 1984; and (9) the Partial Initial Decision Resolving Foreman Override Concerns and Authorizing Issuance of Operating Licenses dated November 27, 1984.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the York Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of the Facility Operating License NPF-48 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A. Copies of the Safety Evaluation Report and its supplements (NUREG-0954) and the Final Environmental Statement (NUREG-0921) may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 24th day of February 1986.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A, NRR.

[FR Doc. 86-4405 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Power Authority of the State of New York (the licensee) to withdraw its January 6, 1981 application for proposed amendment to the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York. The proposed amendment would have modified the provisions in the Technical Specifications pertaining to four miscellaneous matters: the first change proposed to delete, from the Bases, the pressure setpoint for permissible entry into the Run mode, and to correct that setpoint in the Definitions to be consistent with the same setpoint in the corresponding Limiting Conditions for Operation; the second change proposed to correct an apparent error in the list of valve isolation groups which isolate on a high drywell pressure signal; the third change proposed to correct an error in the list of inputs to the Rod Worth Minimizer, and the fourth change proposed to correct specifications pertaining to the low Pressure Coolant Injection (LPCI) system that should have been modified as a result of a previously approved amendment involving the LPCI system. The Commission issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on July 29, 1983 (45 FR 83086). By letter dated December 24, 1985, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated January 6, 1981 and (2) the licensee's letter dated December 24, 1985, withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 21st day of February.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-4407 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-323]

Pacific Gas and Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of § 50.46(a)(1) to 10 CFR Part 50 to the Pacific Gas and Electric Company (the licensee) for the Diablo Canyon Nuclear Power Plant, Unit 2 (Diablo Canyon 2 or the facility) located on the licensee's site in San Luis Obispo County, California.

Environmental Assessment

Identification of proposed action: The exemption would allow for a temporary relief from the provisions of § 50.46(a)(1) with respect to the requirement that the ECCS cooling performance be calculated on a plant specific basis using an approved ECCS evaluation model. The current calculated ECCS performance for the facility, as referenced in the Final Safety Analysis Report (FSAR), is not based on the actual operating conditions for the facility. The temporary relief would allow continued operation of the facility until a revised calculated ECCS cooling performance has been completed using an approved ECCS model and actual facility operating conditions. During the duration of the temporary relief granted by the exemption the heat flux hot channel factor, Fq, will be limited to a value of 2.30 as compared to a value of 2.32 used in the Technical Specification 3.2.2.

The Need for the proposed action: The proposed exemption is required to permit the licensee to continue operation of the facility.

Environment impacts of the proposed action: With respect to the exemption the temporary relief from the above requirement of 10 CFR 50.46(a)(1) would involve no significant change in the probability or consequences of any accident previously analyzed, and no significant increase in the amounts and no significant change in the types of effluents that may be released offsite. Further, there is no significant increase in individual or cumulative radiation exposure. Therefore, there are no unreviewed environmental questions involved.

Alternative to the proposed action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative use of resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2," dated May 1978.

Agencies and persons consulted: The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated February 21, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 25th day of February 1986.

For the Nuclear Regulatory Commission.

Jan A. Norris,

Acting Director, PWR Project Directorate No. 3, Division of PWR Licensing-A.

[FR Doc. 86-4406 Filed 2-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina.

In accordance with the licensee's application dated November 19, 1985, as revised January 14 and February 14, 1986, the proposed amendments would revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 1 at full rated power during the upcoming Cycle 10. The proposed amendment request changes the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protective System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS 3.5.2).

To support the license amendment request for operation of Oconee Unit 1, Cycle 10, the licensee submitted, as an attachment to the application, a Duke Power Company (DPC) Report, DPC-RD-2006, "Oconee Unit 1, Cycle 10 Reload Report." A summary of the Cycle 10 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 117 fuel assemblies will be reinserted, similar to those previously used, and 60 fuel assemblies will be discharged and replaced by new but substantially similar assemblies of the Mark BZ type. As in the previous cycle, Cycle 10 will utilize gray (less absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly absorbing) APSRs.

As part of these proposed amendments, the licensee is proposing to clarify some of the TSs. Some of the Figures and a Table in section 2, such as the rod position limits and operational power imbalance which have been individually given for each Unit, are being combined into one TS. The Reactor Protective System setpoints have been assigned the same values and thus section 2 would be written such that it is generic to all Oconee units. Also, the Bases for section 2 have been revised to simplify and clarify this section. A discrepancy was found between TS 3.5.1 and its bases. It appears that the bases for this TS were not reworded when the licensee previously requested a revision to Table 3.5.1-1. The footnote allowing a one-out-of-two logic for up to four hours in the power range instrumentation is being clarified.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Example (iii) of the types of amendments not likely to involve significant hazards considerations is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

This particular reload involves the reinsertion of 117 fuel assemblies of a type previously approved and used and the insertion of 60 fuel assemblies of the Mark BZ type. The Mark BZ fuel assemblies are the same as previously approved and used assemblies in terms of fuel rods, end grid, end fittings, and guide tubes and differ only slightly from previously approved assemblies in the use of Zircaloy spacer grids rather than Inconel Intermediate Spacer grids. Thus, this core reload involves the use of fuel assemblies that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The request for amendment changes the TSs to reflect new operating limits based on the fuel and control rods to be inserted into the core. These parameters are based on the new physics of the core and fall within the acceptance criteria.

In the analyses supporting this reload, there have been no significant changes in the acceptance criteria for the Technical Specifications, the analytical methods used to demonstrate conformance with the Technical Specifications and the regulations were not significantly changed, and those analytical methods have previously been found acceptable. Thus, this reload and the proposed license amendments reflecting it appear to be encompassed by example (iii) of amendments not likely to involve a significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards considerations.

Example (i) of 48 FR 14870 is also applicable to several of the proposed TS revisions. This example involves amendment requests that are considered to be purely administrative in nature. The revisions to section 2 will allow for the consolidation of certain Figures and a Table for simplicity and clarity and should be considered administrative.

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With the information found in this seciton now generic for all three units, the elimination of repetitive information is needed.

The revisions to the bases of Section 3.5.1 are also administrative and are being made to achieve consistency throughout the TSs. The bases were not rewritten when an administrative revision to Table 3.5.1–1 occurred. In addition, Table 3.5.1–1, Footnote A, is being revised to clarify its intent.

Thus, the proposed administrative changes appear to be encompassed by example (i), of amendments not likely to involve significant hazards considerations. On this basis, the Commission proposes to determine that these requested amendments do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

By March 31, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri) (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition, and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 19, 1985, as revised January 14 and February 14, 1986, which is available for public

inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 24th day of February 1986.

For the Nuclear Regulatory Commission

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 86–4578 Filed 2–27–86; 8:54 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on February 14, 1986 (50 FR 5622). Individual authorities established or revoked under schedules A, B, or C between January 1, 1986 and January 31, 1986 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked in January.

Schedule B

The following exceptions are established:

Department of Defense

Positions of Criminal Investigator, GS–1811–5/15, in the Office of the Inspector General. Effective January 10, 1986.

Federal Trade Commission

Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of any individual Fellow may not exceed 4 years. Effective January 10, 1986.

National Endowment for the Humanities

Two Humanist Administrators, Museums and Historical Organizations Program, Division of General Programs. Effective January 30, 1986.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective January 10, 1986.

One Private Secretary to the Under Secretary for International Affairs and Commodity Programs. Effective January 13, 1986.

One Confidential Assistant to the Administrator, Rural Electrification Administration. Effective January 19, 1986.

One Staff Assistant to the Manager, Federal Crop Insurance Corporation. Effective January 19, 1986.

Department of Commerce

One Congressional Liaison Specialist to the Director, Congressional Affairs, International Trade Administration. Effective January 9, 1986.

One Confidential Assistant to the General Counsel. Effective January 10, 1986.

One Special Assistant to the Secretary. Effective January 14, 1986.

One Confidential Assistant to the Director, Office of Business Liaison. Effective January 27, 1986.

One Special Assistant to the Administrator, National Oceanic and Atmospheric Administration Effective January 30, 1986.

One Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective January 30, 1986.

Department of Defense

One Private Secretary to the Assistant Secretary of Defense (Research and Technology) Director, Defense Advanced Research Projects Agency. Effective January 9, 1986.

One Private Secretary to the Deputy Under Secretary of Defense (Tactical Warfare Programs). Effective January 13, 1986.

One Private Secretary to the Assistant Secretary of Defense (Force Management and Personnell). Effective January 27, 1986.

Department of Education

One Confidential Assistant to the General Counsel. Effective January 3, 1986.

One Special Assistant to the Secretary. Effective January 13, 1986.

One Confidential Assistant to the Assistant Secretary for the Office of Educational Research and Improvement. Effective January 14, 1986.

One Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement. Effective January 21, 1986.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitave Services. Effective January 22, 1986.

One Special Assistant to the Under Secretary. Effective January 27, 1986.

One Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement. Effective January 27, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective January 29, 1986.

One Special Assistant to the Director, Historically Black Colleges and Universities Staff, Office of the Assistant Secretary for Postsecondary Education. Effective January 31, 1986.

One Special Assistant to the Secretary's Regional Representative, with duty location in San Francisco, California. Effective January 31, 1986.

Department of Energy

One Private Secretary to a Member Federal Energy Regulatory Commission. Effective January 14, 1986.

One Legal Advisor to a Member, Federal Energy Regulatory Commission. Effective January 14, 1986.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Housing/Federal Housing Commissioner. Effective January 2, 1986.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective January 3, 1986.

One Special Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation, Office of the Assistant Secretary for Community Planning and Development. Effective January 27, 1986.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective January 27, 1986.

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Department of Interior

One Special Assistant to the Director, National Park Service. Effective January 3, 1986.

One Deputy Congressional Affairs Officer to the Congressional Affairs Officer, Bureau of Land Management. Effective January 13, 1986.

One Special Assistant to the Director, U.S. Fish and Wildlife Service, with duty location in Anchorage, Alaska. Effective January 13, 1986.

One Confidential Assistant to the Inspector General. Effective January 13, 1986.

One Confidential Assistant to the Director, Office of Surface Mining, Reclamation and Enforcement. Effective January 14, 1986.

Department of Justice

One Confidential Assistant to the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs. Effective January 2, 1986.

Department of Labor

One Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective January 8, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective January 10, 1986.

One Staff Assistant to the Deputy Under Secretary for Congressional Affairs. Effective January 13, 1986.

One Special Assistant to the Chief of Staff. Effective January 22, 1986.

One Confidential Staff Assistant to the Assistant Secretary for Employment and Training. Effective January 27, 1986.

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective January 30, 1986.

Two Senior Liaison Officers to the Deputy Under Secretary for Congressional Affairs. Effective January 30, 1986.

Department of State

One Special Assistant to the Assistant Secretary for the Bureau of Human Rights and Humanitarian Affairs. Effective January 2, 1986.

One Policy and Program Officer to the Assistant Secretary for the Bureau of Human Rights and Humanitarian Affairs. Effective January 2, 1986.

Department of Transportation

One Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective January 8, 1986.

One Secretary to the Associate Deputy Secretary. Effective January 15, 1986.

Department of Treasury

One Staff Assistant to the Deputy Assistant Secretary for Administration. Effective January 18, 1986.

One Special Assistant to the Deputy Assistant Secretary for Developing Nations, Office of the Assistant Secretary for International Affairs. Effective January 22, 1986.

Consumer Product Safety Commission

One Special Assistant (Legal) to a Commissioner. Effective January 13, 1986.

Consumer Product Safety Commission

One Special Assistant (Legal) to a Commissioner. Effective January 13, 1986.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response. Effective January 31, 1986.

Equal Employment Opportunity Commission

One Attorney Advisor to the Chairman. Effective January 17, 1986.

Federal Labor Relations Authority

One Staff Assistant to the Chairman. Effective January 27, 1986.

Federal Maritime Commission

One Secretary (Stenography) to a Commissioner. Effective January 13, 1986.

General Services Administration

One Special Assistant to the Associate Administrator for Public Affairs. Effective January 30, 1986.

One Special Assistant to the Associate Administrator for Public Affairs. Effective January 31, 1986.

Government Printing Office

One Staff Assistant to the Public Printer. Effective January 30, 1986.

International Trade Commission

One Staff Assistant to the Chairwoman. Effective January 27, 1986.

Interstate Commerce Commission

One Confidential Assistant to the Chairman. Effective January 14, 1986.

National Archives and Records Administration

One Public Affairs Specialist to the Archivist of the United States. Effective January 3, 1986.

National Endowment for the Humanities

One Confidential Assistant to the Director, Institute of Museum Services. Effective January 29, 1986.

National Transportation Safety Board

One Confidential Assistant to a Board Member. Effective January 13, 1986.

Office of U.S. Trade Representative

One Executive Assistant to the Deputy U.S. Trade Representative. Effective January 21, 1986.

Small Business Administration

One Special Assistant to the Associate Administrator for Procurement Assistance. Effective January 3, 1986.

One Director of Veterans' Affairs to the Associate Deputy Administrator for Special Programs. Effective January 21, 1986.

U.S. Information Agency

One Staff Assistant to the Deputy Director. Effective January 21, 1986.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Management. Effective January 29, 1986.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-4278 Filed 2-27-86; 8:45 am]

BILLING CODE 6325-01-M

Proposed Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed form BRI 46-360, application for restoration of survivor annuity.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a proposed information collection from the public. Form BRI 46-360, Application for Restoration of Survivor Annuity, was developed by the Office of Personnel Management (OPM) for the use of widows and widowers whose survivor annuities were terminated because of remarriage prior to July 18, 1966, and who write to OPM requesting restoration. For copies of this proposal call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of the application to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E St., NW., Room 6410, Washington, D.C. 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-4318 Filed 2-27-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14952; File No. 812-6107]

Application and Opportunity for Hearing; Metropolitan Series Fund, Inc.

February 21, 1986.

Notice is hereby given that Metropolitan Series Fund, Inc. ("Applicant"), One Madison Avenue, New York, New York 10010, filed an application on April 30, 1985, and an amendment thereto on January 30, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 promulgated thereunder, to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing debt obligations with a remaining maturity of one year or less (referred to as "short-term" debt obligations) held in its Money Market Portfolio and in its Discretionary Portfolio (together "Portfolios"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of those provisions that are relevant to the application.

The application states that Applicant is a corporation organized under the laws of Maryland and is registered under the Act as an open-end, diversified management investment company. Metropolitan Life Insurance Company ("Metropolitan Life") is Applicant's investment manager, although State Street Research Management, a wholly-owned subsidiary of Metropolitan Life, serves as sub-investment manager with respect to certain of Applicant's portfolios. Applicant states that it has four portfolios, one of which, the Discretionary Portfolio, has not yet issued shares. The other portfolios are the Growth, Income and Money Market Portfolios. According to the application, the Money Market Portfolio seeks to attain its investment objective by investing in short-term money market instruments, and the Discretionary Portfolio seeks to attain its investment objective through investing in combinations of equity securities, fixed income debt securities and short-term money market instruments.

Applicant represents that it intends to offer its capital stock exclusively to the general accounts and separate accounts of Metropolitan Life and Metropolitan Life affiliates. The separate accounts are or will be established in connection with variable annuity contracts, scheduled premium and flexible premium variable life insurance contracts and other variable insurance products as may in the future be legally permitted. Such separate accounts are or will be registered under the Act as unit investment trusts.

Applicant states that it uses the amortized cost valuation method for debt obligations with remaining maturities of 60 days or less. Applicant proposes to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in its Money Market Portfolio and in its Discretionary Portfolio. Applicant states that amortized cost pricing will not be used for any securities having a remaining maturity of more than one year. Under the amortized cost method of valuation, securities are originally valued at the cost at which they were purchased, and their value is adjusted daily to account for amortization of any premium or for accretion of any discount.

Applicant notes that the provisions of the Act from which it seeks exemption require that investment companies calculate their net asset value for the purpose of pricing their shares for sale, repurchase and redemption by valuing at market value those securities for which market quotations are readily available. Applicant states that it cannot rely on Rule 2a-7 under the Act because, among other things, neither the Money Market nor the Discretionary Portfolio can meet the conditions of the rule with respect to maintaining a constant net asset value and because the Discretionary Portfolio may purchase securities having a remaining maturity in excess of one year. Applicant states that the Discretionary Portfolio does not maintain a constant net asset value per share because it will invest in equity and fixed income debt securities. Applicant states that the Money Market Portfolio does not maintain a constant net asset value per share primarily because it declares dividends annually, to avoid the additional administrative expenses of having to declare and reinvest dividends daily. Applicant submits that there is no necessary relationship between the appropriateness of the use of the amortized cost method of valuation and the maintenance of a constant net asset value. Applicant asserts that the use of the amortized cost method of valuation for short-term debt securities held in its Money Market and Discretionary Portfolios would avoid the high administrative costs associated with valuing such instruments at market value on a daily basis.

Applicant submits that in its view, the significant objective that the Commission sought to achieve by imposing conditions under Rule 2a-7 is that any dilution that may occur be trivial. Applicant submits that the conditions in the application will provide contractowners the same protections against dilution or other unfair effects that the conditions of Rule 2a-7 provide shareholders in conventional "money market funds." Applicant asserts that the use of the amortized cost method of valuation for its two portfolios is also unlikely to result in any dilution or other unfair effects on contractowners because the portfolios are investment media for variable insurance products rather than money market funds, and the owners who participate in any of the portfolios of the Fund will tend to have a longer-range investment perspective than is typical of shareholders in money market funds. Thus, Applicant asserts, it is less likely that short-term securities would have to be liquidated prior to maturity.

Applicant states it is willing to consent to the entry of an order by the Commission conditioning the grant of its exemptive request upon the following conditions:

(1) In supervising the operations of Applicant and delegating special responsibilites involving portfolio management to its investment manager or subinvestment manager, the Board of Directors of Applicant undertakes (as a particular responsibility within the overall duty of care owed to shareholders of Applicant) to establish procedures reasonably designed, taking into account current market conditions and the Portfolios' investment objectives, to minimize the deviation between each Portfolio's net asset value per share as computed through use of the amortized cost valuation method and its net asset value per share as

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determined through use of available market quotations.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, between the value of each Portfolio's short-term debt obligations, as determined by using available market quotations, from their value as computed through use of the amortized cost method of valuation; and the maintenance of records of such review. To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions as authorized by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation exceeds ½ of 1 percent, a requirement that the Board of Directors promptly consider what action, if any, should be initiated.

(c) If the Board of Directors believes the extent of any deviation from the amortized cost value for the short-term debt obligations of either Portfolio may result in material dilution or other unfair results to contractholders, it will take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten such Portfolio's average portfolio maturity; withholding the crediting of additional shares in lieu of dividends; or using a net asset value per share as determined by using available market quotations for the entire short-term investment portfolio.

(3)(a)(i) The Discretionary Portfolio will use the amortized cost method of valuation only for its short-term money market instruments—i.e., securities whose remaining maturity is one year or less (except that repurchase agreements having a term of one year or less from the date of delivery of the repurchase agreement may be valued through use of the amortized cost method of valuation regardless of the maturity of the underlying securities held pursuant to the repurchase agreement). (ii) The Portfolios shall each maintain a dollar-weighted average portfolio maturity for their short-term securities appropriate to their objective of minimizing the deviation from their net asset value per share, as determined through use of the amortized cost method of valuation, from their net asset value per share, as determined through use of available market quotations; provided, however, that neither Portfolio shall maintain a dollar-weighted average portfolio maturity for its short-term portfolio which exceeds 120 days. If the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity for the short-term portfolio of either Portfolio which exceeds 120 days, the Portfolio's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(b) The maturity of short-term portfolio securities held by these Portfolios shall be calculated as set forth in Rule 2a–7 under the Act.

(4) Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in subparagraph (1) above, and the Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(5) The investments held in the Money Market Portfolio and the short-term investments held in the Discretionary Portfolio, including repurchase agreements, will be limited to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality. For this purpose, "high quality" instruments shall mean those instruments that are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) If any action pursuant to paragraph 2(c) above was taken, the Series Fund will report such action on Form N–SAR covering the period in which the action was taken and will attach a statement to the form describing with specificity the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4414 Filed 2–27–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 12, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Mesa Limited Partnership
  Depository Units (File No. 7–8804)
Newhall Land & Farming Company
  Limited Partnership Units (File No. 7–8805)
American Royalty Trust
  Units of Beneficial Interest (File No. 7–8806)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 5, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4413 Filed 2–27–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14955; 812–6281]

Shearson Lehman Special Equity Portfolios; Application for Order Permitting a Contingent Deferred Sales Load and an Offer of Exchange

February 24, 1986.

Notice is hereby given that Shearson Lehman Special Equity Portfolios ("Applicant"), Two World Trade Center, New York, NY 10048, filed an application on January 13, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"): (1) Exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 under the Act to the extent necessary to permit Applicant to assess a contingent deferred sales charge ("CDSC") on redemptions of its initial and future series of shares, and to permit Applicant under certain circumstances to waive or apply credits against the CDSC; and (2) exempting Applicant from the provisions of Section 11(a) of the Act to permit Applicant to offer to exchange shares of each of Applicant's series for shares of any other of Applicant's series or for shares of any series of Shearson Lehman Special Portfolios on the basis of relative net asset values per share of the series at the time of the exchange, subject to a $5.00 service charge on each exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for relevant statutory provisions.

According to the application, Applicant is an open-end, diversified, management investment company registered under the Act. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts on January 8, 1986. Applicant states that it is a series company that is currently composed of three series—the Equity Growth Portfolio, the Equity Plus Portfolio and the International Equity Portfolio (collectively, the "Portfolios".) Applicant states further that shares of all of the Portfolios are distributed by Shearson Lehman Brothers Inc. ("Shearson Lehman"), and affiliates of Shearson Lehman serve as the investment advisers to the various Portfolios. Lehman Management Co., Inc., a wholly-owned subsidiary of Shearson Lehman, serves as investment adviser of the Equity Growth Portfolio; The Boston Company Advisors, Inc., an indirect wholly-owned subsidiary of Shearson Lehman, serves as the investment adviser of the Equity Plus Portfolio, as the subinvestment adviser of the Equity Growth Portfolio and the International Growth Portfolio and as the administrator for each of the Portfolios; American Express Asset Management N.V., an indirect wholly-owned subsidiary of American Express Company ("American Express"), the ultimate parent company of Shearson Lehman, serves as the investment adviser of the International Equity Portfolio.

Applicant proposes to: (1) Offer shares of each Portfolio subject to a CDSC; (2) institute a plan of distribution in accordance with Rule 12b-1 under the Act; and (3) provide Applicant's shareholders with the right to exchange shares of one Portfolio for shares of another Portfolio and for shares of any portfolio of Shearson Lehman Special Portfolios ("SLSP"), an open-end management investment company, of the series form, registered under the Act and distributed by Shearson Lehman.

Applicant states that shares of each of the Portfolios will be offered and sold without the deduction of a sales load at the time of the purchase. Applicant represents that certain redemptions of shares of the Portfolios, however, would be subject to a CDSC. Applicant states that the proceeds of the CDSC will be paid to Shearson Lehman and will be used by Shearson Lehman in whole or in part to defray costs incurred in connection with the sale of Applicant's shares, including payments of sales commissions to Shearson Lehman Financial Consultants on the sale of those shares.

According to the application, the CDSC will be imposed on a redemption of shares of any Portfolio that causes the current value of the shares of the Portfolio held by a shareholder to fall below the total dollar amount of payments for the purchase of shares of the Portfolio made by the shareholder during the preceding five years. The application states that no CDSC will be imposed to the extent that the net asset value of the shares redeemed by a shareholder does not exceed (1) the current net asset value of shares of the Portfolio purchased more than five years prior to the redemption ("Old Shares Value"), plus (2) the current net asset value of shares of the Portfolio purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Shares Value"), plus (3) increases in the net asset value of the shares of the Portfolio above purchase payments made during the preceding five years ("Application Value").

The application states that, in effecting a particular redemption request of shares of a Portfolio made by a shareholder, Applicant will first redeem an amount that represents Application Value. If the amount of the requested redemption exceeded Appreciation Value, Applicant will next redeem an amount that represents Reinvestment Shares Value. If the amount of the redemption exceeded Appreciation Value and Reinvestment Shares Value, Applicant will then redeem an amount that represents Old Shares Value. The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value and Old Shares Value will be subject to the CDSC.

Applicant represents that the amount of the CDSC will depend on the number of years that have elapsed since the shareholder made the purchase payment from which an amount is being redeemed. The CDSC will be 5% in the first year and decrease by 1% per year thereafter, so that a redemption in the sixth year following purchase would not be subject to the CDSC. Applicant also states that the amount of the CDSC (if any) will be calculated by first determining the date on which the purchase payment that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the CDSC. All purchase payments for shares of a Portfolio made by a shareholder during a particular Shearson Lehman statement month will be aggregated and deemed to have been made on the last day of the preceding Shearson Lehman statement month for purposes of determining the number of years that have elapsed since the purchase payments were made.

Applicant states that, in determining whether a CDSC is payable and, if so, the percentage applicable, Applicant

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will assume that the purchase payment for shares of a Portfolio from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected. In addition, Applicant will assess no CDSC on exchanges of shares. Applicant states that for purposes of assessing the CDSC, when shares of one Portfolio are exchanged for shares of another Portfolio or for shares of a portfolio of SLSP, Applicant will assume that the purchase date for the shares of the Portfolio acquired in the exchange will be the date on which the shares traded in the exchange were purchased.

Under Applicant's proposal, the CDSC will be waived on the following redemptions: (1) Any partial or total redemption of shares of a shareholder who dies or becomes disabled, so long as the redemption is requested within one year of death or initial determination of disability; (2) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (3) redemptions effected pursuant to Applicant's automatic cash withdrawal plan (under which a shareholder who owns shares of a Portfolio with a value in excess of $10,000 may elect to receive periodic cash payments of at least $50 monthly) of amounts up to 2% of the value of a shareholder's shares in a Portfolio at the time the withdrawal plan commences; (4) redemptions effected pursuant to Applicant's right to liquidate a shareholder's account if the aggregate net asset value of the shares held in the account is less than $250; (5) redemptions effected by (i) employees of American Express and its subsidiaries, (ii) IRAs, Keogh plans and employee benefit plans for those employees, and (iii) spouses and minor children of those employees, so long as orders for Applicant's shares on behalf of the spouses and children are placed by the employees; (6) redemptions effected by accounts managed by investment advisory subsidiaries of American Express registered under the Investment Advisers Act of 1940; (7) redemptions effected by directors of any investment company for which Shearson Lehman serves as a distributor; and (8) redemptions effected by an investment company registered under the Act in connection with the combination of the investment company with Applicant by merger, acquisition of assets, or by any other transaction. Applicant also proposes a one-time only reinvestment privilege under which a shareholder who redeems shares subject to the CDSC and reinvests the proceeds of the redemption within 30 days after the redemption will receive a credit against the amount of the CDSC paid. Applicant represents that the percentage of the CDSC credited to the shareholder will be the same as the percentage of the redemption proceeds that are reinvested.

Applicant will finance its distribution expenses pursuant to a plan (the "Plan") adopted pursuant to Rule 12b–1 under the Act. Applicant states that, under the Plan, Applicant will monthly pay a fee at the annual rate of 1% of the average daily net assets of the Portfolio to Shearson Lehman for expenses incurred by Shearson Lehman in connection with the offering of Applicant's shares.

Applicant will also offer to exchange shares of each Portfolio for shares of any other Portfolio or shares of any portfolio of SLSP at their relative net asset values. According to the application, a $5.00 service fee ("Fee"), paid to Shearson Lehman, will be deducted on each exchange. Applicant states that the Fee is merely an administrative cost that will be paid by a shareholder so as to defray the expense of and to facilitate the exchange. Imposition of the Fee, Applicant contends, does not affect the basis on which exchanges will be made. Each exchange, Applicant represents, will be made on the basis of the relative net asset values of the Portfolios involved and, for that reason should be deemed consistent with the requirements of section 11(a) of the Act.

Applicant submits that its proposal is consistent with the policies underlying the Act. To avoid any possibility that questions may be raised under the definitional and regulating sections of the Act, Applicant requests exemption, pursuant to section 6(c) of the Act, to the extent necessary or appropriate, from sections 2(a)(32), 2(a)(35), 11(a) and 22(c) of the Act and Rules 22c–1 and 22d–1 thereunder for the Portfolios and (a) any additional series or classes of shares Applicant may offer in the future on substantially the same basis as Applicant offers shares of the Portfolios, and (b) any other registered investment company organized in the future that employs an affiliated person of American Express as investment adviser or principal underwriter.

Applicant believes that the CDSC and the exchange privilege are fair and in the best interests of Applicant's shareholders. Applicant submits that the operation of the CDSC will enable Applicant's shareholders to have the advantages of a greater investment amount from the time of purchase than would be the case if Applicant's shares were sold subject to a traditional front-end sales load. Applicant asserts further that the CDSC is fair to shareholders because it applies only to redemptions of amounts representing purchase payments for shares of the Portfolios and does not apply to either increases in the value of a shareholder's account through capital appreciation or to increases representing reinvestment of distributions.

Applicant also contends that certain of the waivers from the CDSC are fair to shareholders. Applicant submits, for example, that waiving the CDSC in the extraordinary circumstances of death or total disability of a shareholder, or on an involuntary redemption effected pursuant to Applicant's right to liquidate shareholder accounts of an aggregate net asset value less than $250, are fair because to impose a charge for an involuntary redemption would be equivalent to the imposition of a penalty upon a shareholder. Applicant submits that the waiver on redemptions effected pursuant to Applicant's automatic cash withdrawal plan is fair because it will enable Applicant's shareholders to receive the full benefit of that plan.

Applicant believes that its proposed waiver of the CDSC on redemptions in connection with certain distributions from IRAs or other qualified retirement plans is appropriate for public policy reasons. Waiving the CDSC on certain distributions from qualified retirement plans, Applicant submits, is fully consistent with the provisions of the Internal Revenue Code of 1954, as amended, granting favored tax treatment to accumulations under those plans and imposing additional taxes on early distributions from IRAs and other plans.

A number of the proposed waivers from the CDSC, Applicant believes, are appropriate because they involve the redemption of shares sold at little or no selling expense to Shearson Lehman. Included in this group of waivers, Applicant states, and those waivers on: (1) Redemptions effected by accounts managed by registered investment advisory subsidiaries of American Express, (2) redemptions by employees of American Express and its subsidiaries and individuals and plans related to those employees, (3) redemptions effected by directors or trustees of any investment company for which Shearson Lehman serves as distributor; and (4) redemptions effected by a registered investment company in connection with the combination of the investment company with Applicant.

Applicant submits that, like its proposed waivers of the CDSC, its proposed one-time-only credit of all or a portion of the CDSC applicable to a shareholder who redeems shares subject to the CDSC and reinvests the proceeds of the redemption within 30 days after the redemption is in the interests of shareholders. Applicant notes that the crediting procedure will afford a shareholder of Applicant the opportunity to determine without fear of being subjected to the CDSC whether the redemption was the best means of satisfying his current financial needs.

Applicant notes that the proposed exchange privilege will provide shareholders the opportunity to change their investment objective from time to time. Applicant submits that the imposition of the Fee on exchanges is fair and will not harm shareholders or discriminate among shareholders of any Portfolio or of any portfolio of SLSP. Applicant states that the Fee is designed merely to compensate Shearson Lehman for the costs incurred in facilitating exchanges.

Notice is Further Given that any interested person wishing to request a hearing on the application may, not later than March 17, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-4415 Filed 2-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22940; File No. SR-MSTC-85-8]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of Midwest Securities Trust Company

On November 21, 1985, Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Notice of the proposal was published in Securities Exchange Act Release No. 22706 (December 12, 1985), 50 FR 51764 (December 19, 1985). No comments were received. As discussed below, the Commission is approving the proposed rule change.

The rule change amends MSTC's Rules[1] to clarify the rights and liabilities of MSTC and its participants with respect to MST System communications services.[2] Specifically, the proposal provides that MSTC shall not be liable for any loss or damage to information sent or received through the communications system, provided that MSTC shall use its best efforts to reconstitute information lost or damaged by MSTC's gross negligence, fraud, or criminal acts. The proposal also provides that an MSTC participant shall indemnify and hold harmless MSTC against any loss sustained arising from a claim of a third party, who, with approval of the MSTC participant, received information or other services from communications services furnished by MSTC to an MSTC participant.

The proposal incorporates in MSTC Rules the provisions of an MSTC Communications Service Agreement ("Agreement") that MSTC has executed with its participants and that sets forth the rights and liabilities of MSTC and MSTC participants for MST System communication services. MSTC believes the proposal will be more expedient than executing an Agreement with each MSTC participant. MSTC also believes that the proposal is consistent with section 17A of the Act because it recognizes new data processing and communications techniques that facilitate securities clearance and settlement.

As discussed below, the Commission is approving the proposed rule change. The proposal adds a new indemnification provision to MSTC Rules for loss of or damage to information sent through the MSTC communication system. In conversations with Division of Market Regulation staff, MSTC has indicated that the proposal is intended to apply only to information loss or damage within the communications system and is not intended to displace MSTC's responsibilities under its general or specific indemnification provisions. MSTC's current indemnification rules provide a general standard requiring MSTC participants to indemnify MSTC for losses sustained, provided that MSTC participants shall not be liable for losses resulting from grossly negligent, fraudulent or criminal acts of MSTC, its officers, employees or agents. MSTC's indemnification rules provide separate standards for MSTC custody and delivery of participants' securities and for dissenter's rights, appraisal rights or similar rights which participants instruct MSTC to act upon as registered owner of securities held for participants. In those cases, participants must indemnify MSTC, or its nominee, for losses not involving fault on the part of MSTC or its nominee.

The Act does not specify the standard of care that must be exercised by registered clearing agencies and the Commission has determined that imposition of a unique federal standard of care for registered clearing agencies is not appropriate at this time.[3] For those reasons the Commission believes that the clearing agency standard of care and the allocation of rights and liabilities between a clearing agency and its participants applicable to clearing agency services generally may be set by the clearing agency and its participants. The Commission believes it should review clearing agency proposed rule changes in this area on a case-by-case basis and balance the need for a high degree of clearing agency care with the effect resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds.

The Commission believes the instant proposal does not affect MSTC's standard of care for the safeguarding of securities and funds. The proposal relates only to information loss or damage in the communications system; MSTC is responsible for a higher standard of care for transaction processing and safekeeping functions. In most instances, information communicated through the system is confirmed in some manner to participants, which enables participants to monitor information flow. Thus, MSTC and its participants share responsibility for the communications system. Because participant computer terminals are supplied by independent vendors, MSTC may not always be able to guard against loss or damage to information flowing through these terminals. Although codification of the Agreement into MSTC Rules allocates to participants much of the risk of loss or damage to communications information,

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[1] *See* MSTC Rules, Article I, Rule 3, Section 2.

[2] MSTC participants access the MST System through computer terminals they obtain from independent suppliers.

[3] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 2, 1983).

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the Commission cannot say this allocation is inappropriate or inconsistent with MSTC obligations under the Act. Moreover, the Commission believes that MSTC has demonstrated the exercise of a high degree of care in its operations and expects that it will continue to do so in the future. For the reasons above, the Commission finds that the proposal is consistent with the Act and should be approved.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4410 Filed 2-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-[illegible]; File No. SR-NASD-[illegible]]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change on an Accelerated Basis

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 1, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change and on February 12, 1986 an amendment thereto described in Items I, II, and III below. The Commission is publishing this ORDER to solicit comments on the proposed rule change and the amendment. For reasons described below, the Commission is approving the proposal on an accelerated basis.

I. Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new section to the NASD's Uniform Practice Code that establishes time frames to be adhered to in transferring customer securities accounts from one member firm to another and that details specific requirements governing the transfer process for various types of securities.

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 1, 1985 the NASD filed a proposed rule change to put in place procedures to provide for the timely and efficient transfer of customers' securities accounts between member firms. In general terms, that rule change provides that customer account assets must be transferred within ten business days of the customer's request and that NASD member firms must use automated clearing agency facilities for the transfer. The proposed rule was filed to accompany a proposed strengthening of New York Stock Exchange ("NYSE") Rule 412. The NASD Board of Governors concluded that the NASD procedures should be consistent to the degree possible with the NYSE procedures.

On November 26, 1985 the Commission approved the NYSE proposal with a proposed effective date of February 24, 1986.[1] On January 21, 1986 the NYSE proposed certain amendments to its revised rule which reflect the Exchange's experience with the Pilot of the National Securities Corporations' automated account transfer system. The NASD has again determined that, to the degree possible, it is appropriate to provide supplemental procedures which parallel those of the NYSE. The following is a summary of the more substantive requirements of the proposal.

1. Assets in a customer's account that are nontransferable will be required to be either liquidated, retained by the carrying member for the customer, or shipped, physically and directly, in the customers' name to the customer, in accordance with the customer's instructions. A carrying member will be required to request specific instructions concerning disposition of nontransferable assets, and those instructions shall be accomplished within five business days.

2. With respect to retirement plan accounts, the customer will be required to authorize the custodian/trustee for the account to deduct outstanding fees due the custodian/trustee from the credit balance in the account. If the account does not contain a credit balance or if the credit balance is insufficient to satisfy such outstanding fees, the custodian/trustee must be authorized to liquidate assets in the account to the extent necessary to satisfy those fees. If liquidation of assets in the account is not practicable, such fees would have to be transferred to and accepted by the receiving member as a debit item with the account.

3. Upon receipt of a transfer instruction, a carrying member will be required to "freeze" all activities in the account to be transferred, *e.g.*, cancel all open orders.

4. Fail to deliver contracts would not have to be established on nontransferable assets and assets in transfer to the customer, *i.e.*, in possession of the transfer agent at the time of receipt of the transfer instruction by the carrying member for shipment, physically and directly, to the customer.

5. Members would be able to agree to close out fail contracts established pursuant to the rule through the delivery of securities that are substantially comparable to those due the customer.

6. A receiving organization would be required to deem receipt of a duly executed mutual fund re-registration form as adequate delivery for purposes of transferring mutual fund shares pursuant to the rule.

In its filing the NASD has asserted its belief that the rule change, including the proposed amendments, protects investors and is consistent with the purposes of the Act in providing a mechanism for expediting the transfer of a customer's securities account from one member to another. The NASD further asserted its belief that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The NASD requested the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**, and, in any event, before February 24, 1986, the scheduled industry target date for effectiveness of the proposed rule changes governing the transfer of customers' securities accounts. The NASD asserted its belief that the proposed rule change will protect investors and is consistent with the purposes of the Act because it provides a mechanism for expediting the transfer of a customer's securities account from one member to another.

IV. Commission Approval of the Proposed Rule Change

For the following reasons, the Commission finds the proposed rule change to be consistent with the requirements of the Act. The NASD proposal, like that of the NYSE, is designed to address weaknesses in the customer account transfer process. Existing transfer procedures permit firms to delay customer account transfers for extended periods while disputing with the customer the amount of securities or the money balances in the customer's account. In today's high-volume environment, however, in which certificate immobilization and use of book-entry facilities are expanding, it is important that customers be able to move street-name positions from firm to firm promptly and accurately. For that reason, an industry committee of representatives from broker-dealer's transfer of account departments (the "412 Committee"), formed nearly ten years ago, was reactivated recently to help the NYSE, NASD and the National Securities Clearing Corporation ("NSCC") develop a modern automated customer account transfer system. This NASD proposed rule change is part of that Committee effort and is designed to complement both the recent changes to NYSE Rule 412 and the recently adopted NSCC rules establishing NSCC's Customer Account Transfer System.[2]

In the Commission's view, the NASD's proposed rule change represents an important step toward assuring industry-wide, that customer accounts will be transferred in a timely manner. The proposed rule establishes uniform procedures and specific time frames; provides increased certainty to customers that, as of settlement date, most positions in most accounts will be deemed transferred; and ensures that assets and funds will be available for customer use at the receiving firm on a timely basis. Indeed, by requiring firms to establish fail positions on their books within the prescribed time frames, the rule transfers the risks associated with transfer delays from customers to broker-dealers. The rule thus creates significant incentives to transfer accounts on time, while extending traditional close-out remedies to the customer account transfer process. In that way, the rule seems well-designed to ensure both timely and financially responsible transfers.

In addition, the proposed rule change reflects useful fine-tuning based on industry experience during the NYSE/NSCC pilot period. This fine-tuning should help ensure successful implementation of a permanent, automated, customer account transfer process. These modifications are the result of close communications amount self-regulatory organizations during the program's pilot phase. Among other things, the interpretations describe in detail how carrying firms are to handle "nontransferable assets." They also clarify how member firms must treat customer assets, and incidential fees pertaining to assets, that: (1) Have been placed "in transfer";[3] (2) are "safekeeping positions"; or (3) are in retirement plan securities accounts for which custodian/trustee fees remain outstanding. With respect to mutual fund shares, the interpretations provide that member firms must accept as good delivery a duly-executed mutual fund re-registration form regarding mutual fund shares.

In addition, the interpretations provide guidelines that should facilitate broker compliance and customer protection. For example, the interpretations require a carrying broker to freeze a customer's acount by cancelling open orders and declining acceptance of new orders upon receipt of the customer's account transfer request. Also, to ensure the integrity of customer "safekeeping positions" maintained at carrying brokers, an interpretation provides that a receiving broker should reject securities deliveries against a safekeeping position when delivered securities cannot qualify as a "safekeeping position." Moreover, "nontransferable" customer assets must be liquidated, retained by the carrying broker for the customer, or shipped, physically and directly, in the customer's name to the customer, in accordance with the costomer's instructions. The carrying broker must contact the customer in writing prior to, or at the time of, validation of the transfer instruction to request such further specific instructions regarding the disposition of nontransferable assets. If the customer authorized liquidation or shipment, the carrying broker will be required either to distribute the resulting money balance to the customer or to initiate the shipment, as appropriate, within five business days after receipt of the customer's instructions concerning asset disposition.[4]

Finally, requiring the use in most instances of automated clearing agency account transfer facilities extends the proven benefits of National Clearance and Settlement System services to the customer account transfer process. Injecting centralized clearing facilities into the transfer process promotes timely delivery and receipt of communications between the receiving and carrying firms and enables effective compliance monitoring. Also, use of an automated system should enhance efficiency and reduce expenses in accounting transfer processing by eliminating, for all depository-eligible securities, the manually intensive handling of certificates and related paper between the two broker-dealer firms. Thus, by assuring that customer accounts in most instances will be transferred among member firms promptly and accurately, the NASD proposal should reduce risk, expense and potential exposure for customers.[5]

V. Commission Approval on an Accelerated Basis

The Commission finds that good cause exists to order the approval of the proposal prior to the thirtieth day after publication of this Order for comment in the **Federal Register** and therefore is granting the NASD's request to approve the proposal on an accelerated basis. With the minor exception noted above,[6] the NASD rule, as amended, is substantially similar to the NYSE's amended account transfer rule. Except for certain requirements made based on experience with the NYSE/NSCC pilot the NYSE proposed rule change was published for comment for more than thirty days; commentors expressed strong support for the rule change as amended. Accordingly, the Commission finds that notice of the NASD proposal prior to approval is unnecessary. Accelerated effectiveness should ensure that when section 65 of the NASD's Uniform Practice Code becomes fully effective on the industry target date of February 24, 1986, NASD member firms will be able to look to the rule for guidance. Finally, because the proposal is the product of an industry-wide effort,

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[1] Securities Exchange Act Release No. [illegible], November 26, 1985; 50 FR [illegible].

[2] Securities Exchange Act Release No. 22481, September 30, 1985; 50 FR 41274.

[3] An "in transfer" asset is an asset in the possession of a transfer agent at the time the carrying broker receives a customer transfer request.

[4] A "nontransferable asset" is defined to be

a. an asset that is a proprietary product of the carrying member.

b. as asset that is a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account.

c. an asset that may not be received due to regulatory limitations on the scope of the receiving member's business.

d. the asset is a bankrupt issue for which the carrying member does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the shares.

Thus, under the NASD's rule, in contrast with the NYSE Rule, 412, municipal securities in a customer account, for example, will be deemed nontransferable whenever the receiving organization is not qualified to do a municipal securities business and therefore cannot receive the securities. In that instance, the customer will be required to designate an alternative disposition of those securities.

[5] The NASD Rule and the NYSE Rule do not subject customer account transfers to the rigors of their rules if transfers involve delivery from an NASD-only firm to an NYSE firm, or vice versa. Because customers in those transfer situations may be exposed to account transfer delays, the Commission expects all SROs to work together expeditiously to resolve that problem by extending their rules to transfers involving firms that are members of different SROs.

[6] *See* note 4, *supra*.

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no purpose would be served were the Commission to delay the effectiveness of the proposal beyond the industry target date, *i.e.*, until the thirtieth day after publication of this Order in the Federal Register.

VI. Request for Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1986.

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, sections 15A(b)(6), and 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4417 Filed 2-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22934; File No. SR-OCC-85-20]

Self-Regulatory Organizations: Options Clearing Corp. Order Approving Proposed Rule Changes Implementing Dial-up Access for On-Line System ("C/MACS")

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission, a proposed rule change that would authorize a dial-up telecommunications option for OCC Clearing Members. Notice of the proposal was published in Securities Exchange Act Release No. 22762 (January 2, 1986), 51 FR 1868 (January 8, 1986). No comment letters were received by the Commission.

II. Description

The proposal would amend OCC's procedures to enable OCC Clearing Members to access by "dial-up" OCC's on-line communication system ("C/MACS").[1] Previously, Clearing Members could access C/MACS only by dedicated telephone line. Under the proposal, OCC Clearing Members could "dial-up" C/MACS via ordinary telephone line to use the same terminal functions available to Clearing Members via dedicated telephone line. Specifically, Clearing Members could: (1) Retrieve daily activity and position reports, (2) inquire about current positions and activity, and (3) enter instructions for same-day security and cash movements.

OCC proposed elaborate safeguards to help prevent unauthorized access via dial-up connection.[2] The proposal requires use of a password system to identify each user and terminal function. If a user enters all passwords correctly and within specified time limits, C/MACS automatically terminates the telephone connection and then calls the user at the user's authorized location. If the system call-back does not verify authorized access, the connection is terminated. The system also automatically monitors and records password errors and response time-limit violations violations, enabling OCC to detect possible security problems and to contact Clearing Member users.[3]

III. OCC's Rationale for the Proposals

OCC believes that the proposal is consistent with section 17A of the Act because the proposal would further the efficient handling of securities transactions by making new data processing and communications techniques available on a cost-effective basis to a greater number of Clearing Members.

IV. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act and therefore should be approved. The Commission agrees with OCC that dial-up access should provide an economical alternative to use of dedicated telephone lines and therefore should increase the number of OCC Clearing Members using automated communication equipment. In particular, the Commission recognizes that the proposal should enable OCC's smaller-volume Clearing Members to enjoy efficiencies provided by automated communication methods. Indeed, dial-up C/MACS use could help to increase small Clearing Member market participation to the market's benefit.

On the other hand, the Commission remains concerned that dial-up access to clearing agency processing systems without proper safeguarding measures could pose to clearing agencies and their members special financial and operational risks. The Commission believes, however, that OCC's proposal contains elaborate safeguards that should protect adequately funds, securities and data.[4] Finally, the Commission urges OCC to monitor closely the continuing adequacy of dial-up safeguards and to implement necessary system changes expeditiously.

V. Conclusion

On the basis of the foregoing, the Commission finds the proposal consistent with section 17A of the Act because it facilitates the prompt, accurate and safe clearance and settlement of securities transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4418 Filed 2-27-86; 8:45 am]

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[1] C/MACS is a computerized communication system linking OCC's Clearing Members to OCC.

[2] In a previous Commission Order relating to clearing agency automated communications systems, the Commission expressed concerns about unauthorized access to securities, funds, and data through use of dial-up computer connections. *See* Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 995 (January 6, 1984), approving File Nos. SR-DTC-79-8; SR-MSTC-77-8; SR-MCC-77-4; SR-Philadep-80-4.

[3] The Commission previously approved a similar system at Midwest Clearing Corporation and Midwest Securities Trust Company. *See* Securities Exchange Act Release No. 21227 (August 9, 1984), 49 FR 32966 (August 15, 1984), approving File Nos. SR-MCC-84-6; SR-MSTC-84-6.

[4] As noted above, the Commission previously approved a Midwest proposal for dial-up access with essentially the same safeguards and security features. That system has been operating smoothly since the end of 1984.

[Release No. 34-22937; File No. SR-OCC-86-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 10, 1986, Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change reducing the fee for foreign currency option exercises settled through OCC's DVP settlement system.[1]

Since the DVP system was implemented, OCC has passed through its costs to those Clearing Members who use this optional service. OCC's correspondent bank has now agreed to reduce the DVP fee from $87.50 to $50.00 per million dollars (pro-rated for fractions of millions) of the U.S. Dollar aggregate exercise price of the options settled via DVP.

OCC believes that the proposed rule change is consistent with section 17A because it allocates reasonable fees in an equitable manner among OCC's Clearing Members by allocating costs associated with DVP settlement to those who use the system.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by March 21, 1986.

Dated: February 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4419 Filed 2-27-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 21359 (September 27, 1984), 49 FR 39138 (October 3, 1984). The DVP system (OCC Rule 1606A) established an alternative to the "regular-way" settlement procedures of OCC Rule 1606. Under Rule 1606A a Clearing Member submits a DVP authorization to OCC for the amount to be settled in the DVP system. The DVP authorization, among other things, instructs the Clearing Member's agent bank to guarantee, via international bank wire, delivery of the Member's U.S. dollar settlement obligation to OCC's correspondent bank on the exercise settlement date. This eases the financing burden on Clearing Members who previously had to advance payment two business days before settlement date under Rule 1606.

The DVP system eliminates the two-day gap between payment and delivery. The DVP system also substitutes the credit of the Member's agent bank for that of the Member and places the risk of default by the agent bank on OCC's correspondent bank. The DVP fee represents a pass-through by OCC to Clearing Members of the fee OCC's correspondent bank charges on the credit extended to Clearing Members' agent banks.

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective March 1, 1986, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *8.795%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling that the Regulation imposes. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Pub. L., 99-226, December 28, 1985, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: February 19, 1986.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-4412 Filed 2-27-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on March 21, 1986, in the Main Briefing Room, MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks (2) Approval of Minutes of the Meeting Held on January 17, 1986; (3) Executive Director's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for January and February 1986; (5) Report of the RTCA Fiscal and Management Subcommittee; (6) Report of the Awards Committee; (7) Consideration of Proposals to Establish New Special Committee; (8) Consideration of Change 3 to RTCA Document DO-185, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment"; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500 Washington, DC 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

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Issued in Washington, DC, February 21, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86-4270 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

Airport Access and Capacity, Proposed Policy; Public Hearing

SUMMARY: The Federal Aviation Administration (FAA) is holding three public hearings to receive comments, suggestions, and information on a proposed airport access and capacity policy published in the **Federal Register** on January 22, 1986 (51 FR 2985). The public is encouraged to attend and present their views at these hearings. The first hearing was held in Washington, DC, on February 20 and 21. Additional hearings are scheduled for Denver, Colorado, and Los Angeles, California.

The Denver, Colorado, hearing will be held in the lecture hall of building 25 at the Denver Federal Center, 6th Avenue and Kipling Street, Denver, Colorado, on March 5 (and on March 6, if necessary). The other hearing will be held at the Hacienda Hotel, 525 North Sepulveda Blvd., El Segundo, California, on April 2 and 3.

The upcoming hearings will be open to the public from 9 a.m. to approximately 5 p.m. on the scheduled days. The second day of each meeting will be ended after all present have been given an opportunity to speak.

Background

The FAA intends to clarify the Federal position on provision and management of capacity in the National Airport and Airway System. In developing the Federal position, the FAA has published a proposed policy that describes a possible Federal position on airport access and capacity issues and requests public comments on the proposed policy and on issues relevant to developing an airport access and capacity policy to serve the public interest.

The public hearings scheduled above afford interested parties an opportunity to present their views on the issues and the policy proposed by the FAA. Persons wishing to make a presentation at either upcoming hearing should advise Carol Strong, Office of Aviation Policy and Plans, Federal Aviation Administration, Washington, DC 20591, Telephone: (202) 426-3331.

ADDRESS: Written comments on the proposed airport access and capacity policy (51 FR 2985) will be accepted until April 18, 1986. Comments in duplicate should be sent to: Gary L. Olin, Economic Analysis Branch (APO-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Comments submitted to the FAA may be examined in Room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. For further information, contact Gary L. Olin at (202) 426-3420. Issued in Washington, DC, on February 24, 1986.

Marvin L. Olson,

Acting Director of Aviation Policy and Plans.

[FR Doc. 86-4361 Filed 2-27-86; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 40
Friday, February 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 24, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

> Application of Countrywide Thrift and Loan, an operating noninsured industrial bank located at 155 N. Lake Avenue, Pasadena, California, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 25, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-4497 Filed 2-26-86; 12:56 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 24, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's assistance agreements with insured banks.

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

> Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 25, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 86-4498 Filed 2-26-86; 12:57 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:52 p.m. on Monday, February 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to adopt a resolution making funds available to pay deposits made in Elk City State Bank, Elk City, Oklahoma, which had been closed by the Bank Commissioner for the State of Oklahoma on Friday, February 21, 1986.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(B)).

The meeting was held in the Chairman's Office, Room 6023, in the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 26, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-4499 Filed 2-26-86; 12:58 pm]

BILLING CODE 6714-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 5, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 85-7—Independent Action—Notice and Meeting Provisions in Conference Agreements—Consideration of Proposed Rule and Comments.

Portion closed to the public:

1. Docket No. 84-33—Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Status of Proceeding.

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CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,
Secretary.
[FR Doc. 86-4420 Filed 2-25-86; 4:35 pm]
BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 6349, February 21, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 26, 1986.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement to be presented to the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations regarding the Export Trading Company Act of 1982.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 26, 1986.

William W. Wiles,
Secretary of the Board.
[FR Doc. 86-4541 Filed 2-26-86; 8:45 am]
BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Wednesday, March 5, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of an application by the State of Wisconsin for an exemption from Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices).

Discussion Agenda

2. Proposed revisions to Regulations D (Reserve Requirements of Depository Institutions) and Q (Interest on Deposits) to reflect the expiration of the Depository Institutions Deregulation Act. (Proposed earlier for public comment; Docket No. R-0565)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 26, 1986.

William W. Wiles,
Secretary of the Board.
[FR Doc. 86-4452 Filed 2-26-86; 11:22 am]
BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: Approximately 10:30 a.m., Wednesday, March 5, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 26, 1986.

William W. Wiles,
Secretary of the Board.
[FR Doc 86-4453 Filed 2-26-86; 11:23 am]
BILLING CODE 6210-01-M

8

FEDERAL TRADE COMMISSION

TIME AND PLACE: 10:00 a.m., Wednesday, March 5, 1986.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of Amendment of Pre-Sale Availability Rule—16 CFR 702 (1985).

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523-1892, Recorded Message: (202) 5423-3806.

Emily H. Rock,
Secretary.
[FR Doc. 86-4451 Filed 2-26-86; 11:17 am]
BILLING CODE 6750-01-M

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federal register

Friday
February 28, 1986

Part II

Department of Labor

Employment and Training Administration

Department of Agriculture

Food and Nutrition Service

Department of Health and Human Services

Social Security Administration
Health Care Financing Administration

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs; Final Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 275

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 435

Social Security Administration

45 CFR Parts 205, 206 and 232

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs

AGENCIES: Food and Nutrition Service, Department of Agriculture; Health Care Financing Administration and Social Security Administration, Department of Health and Human Services; Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: These final regulations implement changes made in the following programs:

1. The Food Stamp program under the Food Stamp Act of 1977, as amended;
2. The Aid to Families with Dependent Children (AFDC) program under Title IV–A of the Social Security Act; the Adult Assistance programs under Titles I, X, XIV, and XVI (AABD) of the Social Security Act;
3. The Medicaid program under Title XIX of the Social Security Act; and,
4. The Unemployment Compensation program under Title III of the Social Security Act.

This action is being taken to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369) regarding income and eligibility verification procedures. This section requires State agencies that administer the Food Stamp Program (FSP), the Aid to Families with Dependent Children Program (AFDC), the Adult Assistance programs (in the Territories), the Medicaid program and the Unemployment Compensation (UC) program to develop an Income and Eligibility Verification System (IEVS) which meets certain statutory requirements. The major statutory changes reflected in these regulations provide State agencies with additional sources of useful information in verifying applicant and recipient reported circumstances and also ensure that appropriate privacy and procedural safeguards are applied in the use of the information.

EFFECTIVE DATE: These regulations are effective May 29, 1986.

FOR FURTHER INFORMATION CONTACT:

For Food Stamps: Bonny O'Neil, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3414

For AFDC and Adult Assistance Programs: Barbara M. Levering, Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street SW., Washington, D.C. 20201, (202) 245–2637

For Medicaid: Joyce G. Somsak, Director, Office of Quality Control Programs, BQC, Health Care Financing Administration, DHHS, Room 239 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 597–1354

For Unemployment Compensation: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Room 6112, Washington, D.C. 20213, (202) 376–6636

SUPPLEMENTARY INFORMATION:

BACKGROUND AND OBJECTIVES

On March 14, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (50 FR 10450). This notice proposed to amend Parts 271, 272, 273 and 275 of Title 7, amend Parts 205, 206 and 232 of Chapter II of Title 45, amend Parts 431 and 435 of Chapter IV, Title 42 and add new Part 603 to Chapter V of Title 20 of the Code of Federal Regulations.

Section 2651 of DEFRA amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose of enabling and requiring Federally funded public assistance and unemployment agencies to make more accurate eligibility determinations and benefit payments by exchanging information with each other and by obtaining unearned income data from the Internal Revenue Service (IRS) and other income and wage data from the Social Security Administration (SSA) and from State wage and Unemployment Insurance Benefit (UIB) data files.

DISCUSSION OF MAJOR PROVISIONS AND RESPONSES TO COMMENTS

Provided in the discussion below are the major provisions of the NPRM, significant comments received on each provision, the responses to such comments, and changes incorporated into the final regulations.

Although the final comment period closed on April 29, 1985, the three Departments accepted and considered all comments on the NPRM received by June 11, 1985. Comments on the NPRM were received from 53 parties: 38 States, 6 client advocate groups, 4 local or county welfare agencies, 4 Federal agencies and 1 private citizen. A number of commenters responded in a positive way to the NPRM approach of a joint publication of Federal regulations by the three Departments. We have maintained that approach in these final rules with a single preamble authored by the Office of Family Assistance (OFA), the Food and Nutrition Service (FNS), and the Health Care Financing Administration (HCFA), responding to public assistance program issues followed by the individual regulations. A separate discussion authored by the Employment and Training Administration (ETA) addressing issues specific to State UC agencies follows the discussion of issues directly relating to the public assistance programs.

A. Public Assistance Programs

The provisions of the NPRM that specified the required timeframes for State welfare agency use of the IEVS data received the most comments. The Federal agencies have considered the comments and have: (a) Revised the requirements that information on applicants be requested and used during the application period; and (b) modified the timeframe for requesting and acting on information on recipients.

A significant number of comments were also received on State agency reporting requirements involving the use of IEVS data. The Federal agencies have considered the comments of the public and have adjusted the final regulations to reduce the reporting burden placed on the State public assistance agencies.

During the course of the following discussion, the pronoun "we" is used to include the three Federal agencies (OFA, HCFA and FNS) administering public assistance programs unless otherwise specified. "Applicant" and "recipient" are terms used generally for all public assistance programs.

We have made minor and technical changes as a result of our own review of the NPRM and we have clarified regulatory language as necessary to aid in the implementation of the provisions. We have also changed the term "Statewide Income and Eligibility Verification System (SIEVS)" to "Income and Eligibility Verification System (IEVS)." No change in substance is intended by this redesignation.

1. General

a. Costs and Savings

The common preamble and the Medicaid NPRM included a voluntary regulatory impact statement which discussed potential costs and savings in implementing this regulation. Several comments were received regarding these potential savings. One commenter anticipates that initial savings will be far more significant than ongoing savings and will not be high in States with current wage and UC match systems. Another commenter, in questioning potential savings, suggested that the Federal government totally fund the program for one year after which we could assess savings and compare them against costs.

Response: Savings achieved during initial reviews of existing recipients may be high as it is possible that a significant number of recipients will be found to be ineligible or receiving excess benefits and will have their benefits terminated or reduced. However, there will be long term savings resulting from terminated or reduced benefits. IEVS should enable States to identify unreported changes in circumstances which may result in determination of ineligibility or excess benefits and in addition discourage new applicants from attempting to receive benefits to which they are not entitled. Also, the use of the information for valid related program purposes such as determining available third party resources for health care benefits can result in additional program savings. The commenter may be correct that significant new savings may not accrue from wage and UIB matching in States that currently and effectively perform such activities for their AFDC and food stamp recipients. However, even these States should achieve new savings from receipt of relevant SSA and IRS data. Costs for implementing these provisions are reimbursable only to the extent provided under statutory and regulatory authorities. The Federal government has no authority to fund the program totally.

b. Applicability of IEVS Requirements

(1) *Emergency Assistance Program; Refugee Cash Assistance Program.* Some commenters inquired as to whether the IEVS requirements apply to recipients of the Emergency Assistance (EA) Program or Refugee Cash Assistance (RCA) Program.

Response: Pursuant to the statute, the EA program is not subject to the IEVS requirements. In those cases where emergency assistance is provided to individuals applying for or receiving benefits under one of the programs covered by these regulations, however, the State agency must comply with the appropriate IEVS requirements. The RCA Program provides financial assistance under Title IV of the Immigration and Naturalization Act to recently arrived refugees who are ineligible for AFDC and the Adult Assistance Programs. Since these funds are not paid under any title of the Social Security Act, the State is not required to include these applicants and recipients in the IEVS.

States also provide assistance to refugees, who are eligible, under the AFDC or Adult Assistance Programs. Since these individuals receive assistance under the Social Security Act, they must be included in the IEVS.

(2) *Medicaid Program.* One commenter recommended that HCFA include a provision exempting a State Medicaid agency from the responsibility of matching IEVS data.

Response: The requirements of the Medicaid regulation apply only in those situations in which the Medicaid agency makes the eligibility determination. For Medicaid recipients eligible by virtue of receipt of AFDC assistance, the AFDC IEVS requirements would already apply. For aged, blind, or disabled Medicaid recipients receiving SSI payments the Medicaid IEVS requirements do not apply if such recipients' Medicaid eligibility is determined by SSA pursuant to section 1634 of the Social Security Act. In any case the Medicaid State agency may access IEVS data on recipients whether or not it is responsible for the eligibility decision. It should be noted that IEVS information may be accessed and used for purposes of determining third party liability. HCFA is currently considering proposing that all Medicaid agencies be required to use IEVS information for that purpose. Commenters also asked if children in foster care or receiving adoption assistance are included under IEVS requirements for Medicaid; this is discussed in section 5 of the preamble in connection with SSNs.

c. Use of IEVS Data

We have included a discussion of how IEVS data is to be used with respect to verifying household circumstances in section 4 of this preamble concerning independent verification. Both the FSP and the AFDC proposed rules incorporated current rules providing for the use of wage match data for criminal and civil prosecutions. HCFA's current rules (42 CFR 431.300ff) also provide for the use or disclosure of applicant or recipient information for purposes directly related to State plan administration including criminal and civil prosecution. The final rules retain this provision.

One commenter on the FSP proposed rule argued that the use of IEVS information for prosecution is improper.

Response: Prior FSP rulemaking on wage matching has responded to this concern (See FSP proposed rules of July 10, 1981 (46 FR 35650) and final rules of May 7, 1982 (47 19940)). As discussed in this final rule a major purpose of wage matching is deterrence. The possibility of fraud prosecution should reduce deliberate incorrect reporting. A further clarification has been made in the FSP rule to indicate that the data which is obtained from IEVS could be used to obtain information for prosecutions. Thus, it could be used as the basis for investigations in the same way as it is used as a basis of inquiry about household circumstances.

One commenter stated that the regulations can be interpreted to exclude use of IEVS information beyond the programs explicitly authorized to use it and requested that we clarify whether, for example, information regarding a Medicaid participant could be used in a general assistance fraud situation.

Response: Current AFDC and Medicaid regulations permit disclosure of information concerning applicants and recipients to all Federal or Federally-funded programs which provide assistance in cash or in kind or services to individuals on the basis of need. This excludes general assistance programs. Current FSP regulations permit disclosure to the same programs as AFDC and Medicaid and add to the list general assistance programs which are subject to joint processing requirements. Thus, State data from IEVS can be disclosed to certain general assistance programs only by the FSP. DEFRA permits States to disclose SSA wage data and IRS unearned income data only to programs listed in statute: AFDC, Adult Assistance, Medicaid, SSI, UC, FSP, Child Support Enforcement, and Old Age, Survivors and Disability Insurance (OASDI). Thus, tax return data cannot be redisclosed to general assistance programs or to other Federal

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or Federally-assisted programs such as Title XX.

d. Oversight and Coordination of IEVS

Several commenters thought that the final rules should designate or specify a process for States to designate a State entity to oversee implementation of IEVS and that the Federal government should designate a Federal entity to coordinate Federal activities and or/ resolve interagency or interstate disputes.

Response: Final rules do not place any specified type of oversight requirement on States. There is no statutory requirement to require States to organize implementation of the IEVS requirements in any special way; in fact such a requirement might interfere with current State activities under requirements prior to DEFRA. We do not believe it serves any useful purpose to intervene in State organizational arrangements. We do not plan to add to existing Federal oversight mechanisms. The agencies are committed to close coordination of guidelines and requirements to avoid confusion and delay as demonstrated by their joint publication of implementing regulations.

One commenter thought the Federal agencies should establish and document uniform guidelines and programming specifications for the required matches and a general systems design should be prepared and issued to State agencies before implementation.

Response: It is not feasible to establish such guidelines within the time frames posed by these regulations except for the standardized formats under development. It is possible that each Federal agency (OFA, FNS, and HCFA) will publish additional guidelines for the States as implementation and operational experience demonstrate a need for such guidance.

2. Access and Use of Information

This section discusses separately the requirements for access and use of information on applicants and recipients.

a. Applicants

(1) *Timeframes and action.* The proposed rules for AFDC, FSP and Medicaid required that State agencies obtain and use information from IEVS as part of the eligibility determination for applicants. Applicants include all individuals applying for assistance and for whom application is made. There was some variation among the three program rules in the proposed timeframes because of current program regulatory differences in this area. Medicaid's proposed timeframe was the application period, a maximum of 45 days (60 days for disabled applicants); the AFDC timeframe was 45 days from the date of application; the FSP timeframe was specified as 30 days, to conform to the Food Stamp statute for delivery of benefits. The NPRM did not specify the frequency with which the agency must request information on applicants, requiring instead that the information be obtained and used within the program-specified periods. None of the programs permitted the eligibility decision to be delayed pending receipt of IEVS information. If IEVS information was received after an applicant had been determined eligible, the data was required to be used within 20 days of receipt.

The primary concern of commenters was that the sources of required data matches, in particular IRS, would not return match results in time to act on applications within a 30 or 45-day application period. One commenter suggested that the regulations require that the request for data be made within the application period.

Response: We agree the proposed timeframes for applicants need some adjustment. We also believe that data should be requested as soon as practicable and used to the extent possible in the eligibility/benefit determination. Consequently the final rules distinguish between requesting and using information.

Specifically the final rules require that data from all of the required sources must be requested on applicants for Medicaid, AFDC, Adult Assistance and FSP at the first available opportunity, which would be the next scheduled match for each source. The agency must use the information from such requests in making the eligibility determination if the information is received by the agency so it can be used before the agency mails its notice of decision to the applicant. If the information is received after the application has been approved, the data must be used within the timeframe for action on information received on recipients, as discussed later in this section.

The regulatory requirement for the establishment of agreements has been amended to specify the State Wage Information Collection Agency (SWICA) must accept and process requests for wage information no less frequently than twice monthly. This change will enable States to request, obtain and use wage information on applicants as early as possible in the application period. The number of applicant requests made on this frequency will, in most cases, be relatively few and should not represent a problem to either the State agency or the SWICA in scheduling of data processing.

The frequency for obtaining UIB information for applicants has been similarly changed. The State agency must request UIB information from the State UC agency on each applicant at the first available opportunity and the agreement between the two agencies must specify that the UC agency will accept and process these requests for applicants no less frequently than twice monthly.

We emphasize that this twice-monthly frequency is a minimum requirement. Many States already provide more frequent access to State wage data and UIB data files. We encourage States to develop on-line systems and other methods for rapid turnaround of State agency requests so that wage and UIB data can be used to determine eligibility and benefits of applicants.

With regard to IRS data, the final rules require that requests for IRS data for applicants must be made at the first available "monthly" IRS match date. IRS has published a schedule of its monthly cycles for processing these requests and the dates by which requests must be received. It should be noted that IRS Revenue Procedure 85–21 (April 8, 1985), which we have provided all State agencies, announced that eleven monthly match deadlines are being made available to States in the twelve-month period beginning July 1985. For the purpose of this rule, the monthly deadline for tape submittal to IRS will constitute the next available opportunity for requesting IRS information on applicants.

With regard to requesting data from SSA at the first available opportunity, the State agency would meet the requirement by accreting the applicant in the next processing cycle of the Beneficiary and Earnings Data Exchange (BENDEX) system. This does not preclude the use of the Third Party Query (TPQY) system as discussed in Section (3)(e) of this preamble. BENDEX provides the agency with pension, earnings and self-employment information and creates a record which would generate automatic notices to the State when updated information becomes available.

(2) *Non-delay of eligibility.* The proposed AFDC, Adult Assistance and FSP rules provided that a State agency could not delay the eligibility determination solely to await IEVS information it had requested unless it had reason to believe information reported by the applicant was not accurate. Current regulations prohibit an agency from delaying approval of an application beyond the stated application timeframes without documenting cause.

Nonetheless, seven commenters were concerned that the requirements in the NPRM for obtaining and using IEVS information within a specified period after the date of application would in some cases delay eligibility determination beyond the standard for promptness. Three commenters suggested a State could avoid delaying eligibility determination only if on-line access (or other methods that would ensure rapid turnaround of requests) were provided. One commenter asked us to make clear in the final rules that the period of time between the State agency's request and receipt of information does not constitute a "waiting period" in which action on an application can be delayed. Several commenters believed that our counsel against delaying approval of applications beyond the proposed time limits in order to receive and use the match information was not strong enough. One commenter stated it was essential to ensure there was no delay in eligibility for the truly needy.

Response: We stress again that eligibility determinations must continue to be processed according to the Federal timeframe standards specified in each program's regulations. State agencies are expected to make the eligibility determinations as promptly as possible and may not hold a pending application solely to await IEVS information which it has requested, if other evidence establishes the individual's eligibility for assistance. Consequently, there is no waiting period. We encourage the use of on-line systems for front end verification, but our rules do not require States to have this capability.

(3) *Applicants becoming recipients.* Like the proposed rules, the final rules provide that information requested on applicants but received after an eligibility determination has been made must be acted on according to the timeframe specified for recipients. If an applicant becomes a recipient before the match can be initiated, the State agency must still match the individual at the first available opportunity. Match results on such individuals must be used in accordance with the schedule for action on recipients.

(4) *Social Security Numbers (SSNs).* Commenters asked what matching requirements apply for an applicant who does not have an SSN at application.

Response: The final rules have been amended to provide that each individual must be matched at the next cycle of applicant matching after the State agency obtains the SSN, whether the individual is then a recipient or still an applicant. As discussed in section 5 of this preamble, DEFRA requires the furnishing of an SSN to effectively associate records. The requirement for timely matching when the SSN is furnished will help ensure that long periods of ineligibility are prevented.

One commenter suggested that in the case of applicants with a SSN(s), data not be requested until after the SSN is verified.

Response: The final rules do not adopt this suggestion because it would delay many requests on applicants until SSA can verify the SSN, which may take over a month. We would point out that obtaining information on applicants will in some instances constitute verification of the SSN, as discussed in sections of this preamble dealing with SSNs.

(5) *Denied applicants.* Several commenters requested that State agencies not be required to request IEVS data for applicants who are denied eligibility based on information obtained during the routine application process.

Response: State agencies are not required to request or use IEVS data on applicants after they are determined to be ineligible. However, if the application is pending at the first available opportunity for matching with the respective sources, the data must be requested.

(6) *Other individuals whose income or resources are considered.* Two commenters noted that the NPRM did not propose requirements for exchanges of data on members of the household (other than applicants or recipients) or require them to furnish SSNs.

Response: With respect to the requirement for furnishing SSNs, DEFRA mandates that only *applicants* and *recipients* furnish their SSNs as a condition of eligibility. Under section 7(a) of the Privacy Act (Pub. L. 93–579), unless the disclosure of a SSN is required by Federal law, or was required before January 1, 1975, a State may not require such disclosure. There is no Federal law which requires the disclosure of SSNs other than those of applicants or recipients. Thus the regulations only require that applicants and recipients (including individuals included in the definition of household for FSP) furnish their SSNs.

With respect to requirements for data exchanges on other individuals whose income or resources are considered, the final rules for the public assistance programs differ. For the Medicaid program, the final rule limits the matching requirements to applicants and recipients. However, Medicaid agencies are required to verify the income and resources of financially responsible relatives and can conduct matches on those individuals if a SSN is voluntarily furnished, even though these rules would not require such matches. The final rule for the AFDC and Adult Assistance programs require that the State agency must request data from the required sources, not only for those applying for or receiving assistance, but also for those individuals whose income or resources are considered in the determination of eligibility and the computation of the benefit, such as stepparents, sanctioned individuals, and parents of a minor parent, if the agency maintains the SSNs for any such individuals. FSP policy in regard to these types of individuals is consistent with AFDC policy. The final FSP rules clarify that IEVS data must be requested for all household members, including those excluded because of such reasons as having been disqualified for intentional program violations if such persons' SSNs are available to the State agency. That is, these persons' resources and income are treated as available to the household in their entirety or on a pro rata basis.

b. Recipients

(1) *Timeframes and action.* The proposed rules for AFDC, Adult Assistance, Medicaid and the FSP required State agencies to request information on recipients at specified frequencies from various sources. The discussion about those sources and frequencies is in section 3 of this preamble. The proposed rules also required that information received from these sources be used to determine eligibility and benefits of recipients within 20 calendar days of receipt.

A significant number of the commenters specifically addressed the issue of the 20-day timeframe for action on recipient matches. They stated such concerns as: it was not a feasible timeframe because too much action was required; verification with households and especially third parties sometimes extends beyond 20 days; ADP prioritizing was of little help; and the age of the data required a relatively long time for analysis and resolution. One commenter thought the timeframe was feasible only for eligible households and cases which were still eligible when the information was received. Commenters recommended a variety of modifications of the proposed timeframes. Many commenters suggested that the timeframe, if required, be greater than 20 days. Several commenters recommended alternative approaches such as allowing State agency

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discretion, letting the Quality Control (QC) process force prompt action, and beginning the timeframe with the receipt of data by caseworkers. Several commenters asked for clarification as to what action was required within the timeframe.

Response: We do not agree with most of the suggested methodologies for setting timeframes. Allowing each State agency to designate a timeframe would be equivalent to current Food Stamp and AFDC wage matching requirements, which allow State agencies to develop their own guidelines. Federal audits indicate State agencies are not taking prompt action on all match results. While State agencies should, and in some cases do, recognize that match results can be of significant use in reducing QC errors, these audit results show there has not been prompt action on match results even with the QC incentive. Consequently we do not believe State agency concern about lower QC error rates by itself will result in prompt action on IEVS data. Finally, we do not believe that setting a time standard only on caseworker action is sufficient since this would not establish a standard for State agency program processing up to receipt of the data by the caseworkers. Processing should be accomplished promptly to avoid unwarranted delay in action.

We did, however, consider the comments on expanding the 20 day timeframe. We have modified the final rules to provide additional time and flexibility for State agency action on match results pertaining to recipients. The final rule requires State agencies to promptly initiate appropriate action on all match data upon receipt from a particular data source. The State is required to compare the match data against case record information, identify new, discrepant or unverified facts, investigate and verify information where warranted and either send a notice of intended case action or document the decision not to send one. The notice would provide the individual with an opportunity to respond and also explain his/her rights to a fair hearing. The final AFDC and Adult Assistance program regulations have been amended to emphasize that adverse action can be taken only in accordance with the notice and hearing requirements at 45 CFR 205.10.

The State shall complete appropriate action on all information items received from the data sources within 30 days, except when collateral verification sources have not yet responded to verification requests. However, action on no more than 20% of the information items may be delayed beyond the 30-day timeframe because of third party verification which is received after that period or is not received. Upon receipt of delayed collateral verification, the State shall promptly take appropriate case action in accordance with current regulations. In no case can appropriate action be delayed beyond the time of the next case action or recertification/ redetermination, whichever is earlier.

The timeframe does not apply to individuals and households whose cases have been closed by the time the data match results are received. We do believe this information on terminated cases warrants followup action, however, and we expect State agencies to identify such situations and pursue claims and other actions as required by current rules relating to information about terminated cases.

To ensure that the 30-day timeframe or allowable delay exceptions are met, States are also required to develop and maintain a tracking system to monitor adherence to these requirements. The agency shall use appropriate procedures to monitor these timeliness requirements. In addition, the timeframe requirements for recipients do not relieve the State agencies of their quality control (QC) responsibilities for the determination of erroneous payments or their liability for such erroneous payments. (Comments about QC issues in general are discussed in Section 9 of this preamble.)

We set the 30-day timeframe, as opposed to a longer one or the 20-day timeframe proposed in the NPRMs, based on a number of considerations. State agencies are currently required to act promply on reported information about changes in recipient eligibility and benefit amounts. We believe they should also act promptly on IEVS information. We were convinced to lenghten the timeframe to 30 days because IEVS information from IRS and SSA must be requested by a single State coordinating agency and therefore match information must be disseminated to the program agency and the organizational level that will act on the information. We believe 30 days is a reasonable time for States to transmit data to the appropriate organizational level and for that level to identify and take appropriate action. The 30-day timeframe requirement applies only to IEVS information.

In setting the 30-day timeframe, we also considered the workload impact of these rules and determined the 30-day timeframe is achieveable and reasonable. First, most agencies are already using quarterly State wage information and SSA benefit information and these are not new sources of information to be processed. Second, the actual number of matches is small in relation to caseloads. For example, California matched its casefiles against unearned income reported to its tax agency and received matches on about six percent of the inquiries. We expect similar results with IRS requests. The number of matches for wage data should relate to the caseload reporting earned income. FSP has the largest percentage of caseload reporting earned income, about 17 percent. Therefore, we expect wage data matches to be less than 20 percent of requests. Third, we estimate the number of matches requiring verification with the recipient and/or a third party will be relatively small. Both unemployment compensation and SSA benefit information will be received from the primary verification source, usually without the need for additional verification. We also expect that a large number of matches from the sources will duplicate information which is already known to the agency and verification is in the case record. In these situations, no further case action is required. Similarly, we would expect a low number of wage and benefit reports from SSA.

Another consideration in setting the 30-day timeframe is the eligibility status of cases. Since the cases will be eligible when the State agency is verifying match results, the agency can use the recipient as the primary contact for resolving discrepancies. The recipient is obligated under current regulations to cooperate, subject to termination of eligibility, in providing information about circumstances. Therefore the recipient has an incentive to provide verification of match data or to assist in obtaining verification from third party sources of information.

We also recognize that the lack of complete control over third party sources of verification may prevent final action on every case within 30 days. Therefore the rules permit agencies to delay final action on up to 20% of total matches, but only if third party verification has been timely requested and not received. We expect agencies to complete the case record comparison and to request necessary verification from collateral sources early enough in the 30-day timeframe to provide these third parties with adequate time to respond. When third party verification is received after the 30-day period, we expect agencies to act promptly on the information. An agency may not indefinitely delay using IEVS information because third party

verification is not received. The agency should follow-up on earlier requests and may need to use the recipient to verify the information or to assist in obtaining verification from the third party. In no circumstances may the agency delay action beyond the next case action or scheduled redetermination/ recertification, whichever is earlier.

(2) *Other individuals whose income or resources are considered.* Two commenters requested clarification of whether the requirements of obtaining and using IEVS information apply to members of the household, other than applicants or recipients.

Response: As mentioned in the discussion on applicants, the final rules for the AFDC and FSP programs require that individuals whose need, income or resources are included in the eligibility determination must be included in matching if the State agency maintains the SSNs of any such individuals.

C. Priority Action on Recipient Matches

The proposed rule required State agencies to give priority to action on IEVS data which was most likely to be useful for verifying eligibility and benefits. This priority structure would have been documented to the respective Federal agencies, including a description of how the priorities would be used, and periodically reviewed and modified as a result of experience with operation of the IEVS.

Several commenters requested modifications of these proposed provisions. One commenter recommended that the priority structure be deleted since action was being required on all matches. Another commenter recommended deletion of this requirement because in his experience all data needs to be reviewed. Other commenters requested that there be national criteria for setting priorities, possibly defined in dollars; that there be Federal oversight of priorities; and that the priorities be based on the currency of data. One commenter thought that if State agencies are allowed to act only on priority data the rule should specify that associated errors should not be used to determine the QC error rate.

Response: We have considered these comments and the final rules delete the requirement that State agencies give priority action to IEVS data which is most likely to be useful in verifying eligibility and benefits. While not required, States may develop priorities for action on IEVS data. However, both the proposed and final rules require that State agencies take appropriate action on all matches within the revised recipient timeframe.

As previously indicated, the State is required to compare the match data against case record information, determine whether further verification is necessary, investigate where warranted and either send a notice of intended case action or document that the information does not require case action. If the match data duplicates known and verified information in the case record, no further action is required. The purpose of the statutory requirements is to ensure that appropriate benefits are provided only to eligible recipients. Therefore, all new, previously unreported or updated IEVS information which may affect eligibility or benefits should be verified or investigated and required notices sent within the required timeframe.

3. Information Sources Accessed

a. General

The proposed rules required State agencies to request information from each of the various sources at specified frequencies for recipients. There was no provision for exempting any types of individuals or cases.

A number of respondents made the general comment that the specificity of the requirements for accessing information did not offer States sufficient flexibility in conducting data matching. Two commenters maintained that Congress intended that States should be allowed to determine the information that was useful. One commenter observed that the requirements would be costly and administratively burdensome on States and information available through data matching was often already in the case record. One of the commenters suggested that the Federal agencies publish guidelines for accessing these sources rather than rules requiring access.

Response: We believe that requiring all State agencies to access the several data sources is necessary to assure that all available leads about unreported and underreported financial circumstances are obtained and acted on. The authority to determine what information in useful is provided to the Secretaries of the respective departments by the statute (section 1137(a)(2)). The final rules, as did the NPRM, provide for some flexibility with respect to data bases accessed through the possible use of alternate sources, discussed in this preamble in section 3(g). We recognize that there will be costs associated with requesting information, as already discussed in Section 1(a) of the preamble. According to State experience with matching, the primary cost is associated with follow-up on data rather than the cost of accessing data bases. Action on information from match activity which is already in the case file should result in only minimal costs to State agencies. We believe that there will be sufficient leads on unreported or underreported data to warrant the cost of managing duplicate information already available to the State. Regulations are the vehicle for establishing requirements for compliance with Federal statute and as such are the guidelines for minimal State agency action.

These rules contain the mimimum requirements for accessing information for use in verification of income and eligibility. State agencies may continue current data match activities with other sources or request the information at more frequent intervals. Many States are obtaining useful information, such as motor vehicle registration, or obtaining wage or UIB data on a more frequent basis than these rules require. These rules should not be construed to mean that current data match activities should be discontinued or that more frequent matching is not allowable. With regard to the cost effectiveness of the required matches, all of the required information sources have been demonstrated to be useful in preventing incorrect eligibility and benefit amounts, either by directly offsetting costs or by helping deter nonreporting by applicants and recipients.

Guidelines and instructional material about the procedures for accessing Federal data bases have been provided, and we plan to provide more during the first several months after publication of this rule.

Another commenter proposed that the Federal agencies pilot test the use of these sources of information before publishing regulations.

Response: The statute requires IEVS implementation nationwide, not on a pilot basis. AFDC and FSP have had wage match requirements for several years. Experience with these requirements and in accessing UC and SSA benefit information has demonstrated the value of the matching required in IEVS. We believe the new source of information, IRS unearned income information, will be a useful source. The State of California found this type of information useful when it matched public assistance records against a State tax agency file of unearned income information.

One commenter believes that States should be permitted to discontinue matching against any source if State

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experience demonstrates that it is not cost-effective.

Response: Experience with the IEVS will be reviewed to determine if any modifications are justified to prevent the unwarranted expenditure of administrative resources.

Another commenter suggested that a State be exempted from the requirements for accessing data if its quality control error rate remained at an acceptable level.

Response: The statute does not exempt States from matching requirements based upon a low quality control error rate, nor do we believe such States should be exempted. While QC error rate standards are the error rate levels at which State agencies avoid fiscal disallowances State agencies should strive for a zero error rate in order to assure that benefits are provided only to eligible persons and at the correct level in order to prevent misspent Federal and State funds.

Commenters also requested that they be allowed to reduce the frequency of requests and exempt certain individuals from requests.

Response: The frequencies of requests to particular data sources are discussed in the following sections of this preamble. The issue of exempting individuals from requests to certain data sources is also discussed in connection with particular sources. In general, the rules require that all applicants and recipients be referred to all data sources. We believe that the incremental costs of including all individuals is minimal. It would be more costly to identify specific individuals to exclude from requests than to include them and let the match process eliminate them by simply not returning data.

One commenter requested clarification on whether a single agency in a State must perform all matches as IRS requires that one agency submit requests for all agencies in a particular State.

Response: A single agency does not have to perform the matches other than the IRS and SSA matches. However, this may prove to be the most efficient method in many situations, since a merged file may have already been prepared for IRS and SSA purposes.

One commenter stated future enhancements to the IEVS should include a centralized pool of the Federal agencies' data to allow faster and more economical matching. Another commenter suggested that BENDEX be used as a clearinghouse for all Federal matches.

Response: We do not believe that a central pool of Federal data would provide for faster and more economical matching than the current structure. The need to consolidate the data before it could be accessed by States would delay the information. It could save some State costs in that only one request for both IRS and SSA data would be necessary. As just noted, a merged request file may be generated anyway and State costs might not be affected at all. We do not plan to add to BENDEX the function of Federal clearinghouse. We believe that BENDEX and the IRS access procedures are as consolidated as is practical, economical and prudent from the perspective of protecting an individual's privacy.

One commenter believed that in order for the IEVS to be truly effective, the involved Federal agencies must be willing to establish an on-line automated system with State agencies to verify and obtain information.

Response: SSA and IRS have not found it cost effective to make the wage and self-employment (SSA) and unearned income (IRS) information accessible on-line for their own agency purposes. Therefore, it would not be feasible to allow States on-line access to these files. SSA has the capability of providing on-line access to benefit data. A pilot project is being conducted with Tennessee to provide wire-to-wire exchange of benefit data (see section 5). We believe that the IRS and SSA scheduled response times will allow States to make effective use of the data.

One commenter thought Medicaid's timeframes for requesting Federal data should be flexible, as are FNS' and OFA's.

Response: HCFA has modified the language on requesting data from SSA at 435.948(a)(2) and 435.948(a)(3) to parallel the language for FSP, AFDC and Adult Assistance. The Medicaid agency does not have to request SSA information yearly as proposed but must accrete applicants to BENDEX so as to receive automatic responses whenever SSA's records are updated.

b. SWICAs.

The proposed rules required that recipients (except institutionalized Medicaid recipients) be matched quarterly to State wage data from State Wage Information Collection Agencies (SWICAs). By statute, employers in each State are required to report wages quarterly by September 30, 1988, unless the State agency has an alternative system which is equally timely and effective. The proposed rule also specified certain criteria for the data available from a SWICA which is not maintained by the State UC agency.

Several commenters argued against the requirement for quarterly matching of recipients against wage data. One commenter questioned the value of wage matching beyond the first few months of initial certification of a recipient. One commenter proposed instead to require yearly matches with very loose screening criteria and a more thorough investigation as part of the redetermination process. Another questioned the value of quarterly matches for the homebound elderly or children under age 16.

Response: The final rules retain the requirement for quarterly wage matching because we believe that there is sufficient change in employment situations to warrant matching as frequently as wages are reported. Certainly a yearly match would be too infrequent and allow excess benefits to continue too long. The general section above discussed some reasons for requiring that all individuals be matched. The value of including children and the homebound elderly is to identify wages earned by household members but reported under the others' SSN's.

One commenter questioned whether the SWICA criteria listed in the NPRM applied to UC agencies which already collect quarterly wage data. The commenter was particularly concerned with the criteria which would require the State to include the full name of the wage earner on the record and the additional costs that would be necessary if this were required of existing systems.

Response: The proposed and final criteria apply only to SWICAs which are not UC agencies already collecting quarterly wage information.

Two changes have been made in the final rules. First, the criteria are extended to another type of SWICA. We have been informed that some States may elect to meet the statutory requirement by developing a wage collection system in the UC agency but not using the system for the computation of unemployment insurance benefits. The NPRM did not cover this situation which may be limited to only one or two States. In the final rules, the criteria apply to such SWICA types since they will not come under Department of Labor (DOL) regulations in this regard. Second, the final rules require that non-UC SWICA data be made available to SSA for the purpose of administering the Title II and Title XVI programs. The DOL rules published simultaneously with these rules require this same access for SWICAs which are under UC agencies and are used for UIB computation purposes. (For consistency with other current references in AFDC regulations, the AFDC and Adult

Assistance IEVS regulations refer to UIB information as unemployment compensation information.)

Two commenters maintained that State wage data should be more current and suggested that the Federal government require more frequent wage reporting by employers.

Response: Quarterly reporting of wage data is a statutory requirement. We are interested in State agencies obtaining the data as promptly as possible and urge that, in working with UC and non-UC agencies, State agencies arrange to match as soon after the data is collected as possible. State agencies can also help assure that the data is current by arranging to use it promptly after the match is completed.

c. Unemployment Insurance Benefits (UIB)

In addition to requiring a match of applicants to UIB, data, the proposed rules required that requests be made: (1) For all recipients about whom requests at application indicate non-receipt of UIB for the first three months of eligibility; (2) for all recipients who report loss of employment, in each of the three months after the recipient reports; and (3) for any recipient receiving UIB, in each month until these benefits are exhausted. For the FSP, the legislation and the proposed rule also required FSP State agencies to request and utilize any information in addition to wage and UIB information available from UC agencies to the extent permitted under section 303(*d*) of the Social Security Act.

Several commenters indicated that requiring the agency to do data matches for UIB information at application and for three months following application or loss of employment is unnecessary and burdensome. One commenter suggested that quarterly matching was sufficient. Several commenters questioned the value of verifying the amount of UIB monthly while a recipient reported receiving such benefits because UIB payments do not fluctuate and monthly reporting can adequately track changes.

Response: In order to determine whether an individual has applied for UIB, an agency must request the data at application or following the loss of employment. Because an individual does not have to apply for UIB immediately, it is necessary to check for three months, by which time an eligible individual generally will be receiving UI benefits.

State agencies need to continue to request UC data once the UC agency shows payment of benefits when a worker loses his or her job in order to receive leads on changes in income. UIB amounts can and do frequently fluctuate as a result of reported changes in earnings or number of dependents. The State agency may also verify the data independently through monthly reporting or by viewing the benefit check.

One commenter believed that the regulations should specify that the State Medicaid agency may request, and the UC agency must allow, matches on applicant and recipient caseloads. One commenter recommended HCFA exempt a State Medicaid agency from the responsibility of matching UIB data.

Response: The regulations require Medicaid agencies to request and use UIB data from the UC agency when the Medicaid agency makes the Medicaid eligibility determination. (See applicability of IEVS requirements, section 1(b)(2) of this preamble.) If a Medicaid agency determines that it is useful to obtain UIB data when the eligibility determination was make by SSA, then the Medicaid agency should made the appropriate arrangements with the UC agency, including the necessary agreement. The State plan would describe the match activities the Medicaid agency will conduct in addition to the matches required by these rules.

One commenter asked whether SSA intended to match SSI files against State UIB information.

Response: The income and eligibility verification provisions of the DEFRA do not require SSA to match SSI files with State UIB benefit information. SSA is, however, reviewing the result of pilot studies in several States which matched SSI records and State wage and UIB files and may expand the use of this information in the future.

d. IRS

In addition to the match on applicants, the proposed rules required an annual match of recipients against IRS data on unearned income. A number of commenters addressed several different aspects of the requirements for accessing IRS information.

Several commenters questioned the usefulness of IRS unearned income information because it covers the calendar year and does not reflect current recipient circumstances.

Response: While IRS unearned income information covers a particular calendar year and that information is not available until about nine months following that year, it may show unreported household resources. We believe that these leads will be useful. This is especially so since there has been no other source of such data up to now.

Two commenters thought the State agencies should have to request data from IRS on an annual basis only for recipients and not on applicants, since yearly information is sufficient for the SSI program.

Response: We require agencies to request data on applicants and recipients to determine any past and current unreported resources and to prevent long periods of incorrect eligibility. We believe that there is sufficient evidence of the need to check as early as possible on applicant resources. The SSI program has not established its permanent policy on the frequency of its access to IRS data.

One commenter, noting the amount of information on the IRS unearned income file, asked whether State agencies should request information on all recipients at one time each year or request information for a percentage of the caseload each month during the year.

Response: The final rules clarify the NPRM by specifying that the annual match will be conducted when IRS has prepared the annual tax data for matching and that State agencies would match all recipients at that time. The purpose is to make sure that the most recent IRS data is compared to information reported by the ongoing participants. State agencies would request information on all recipients at this one time. We recognize that this annual match will result in a larger number of IRS matches for one particular month than for the others. Experience does not indicate that the number of matches on unearned income is likely to overburden State resources. For example, as mentioned elsewhere in this preamble, California found a match rate of about six percent.

Medicaid agencies should include on the file for the annual match individuals whose eligibility was terminated since the last yearly match was conducted when the information would be useful in determining the correct period of eligibility or medical payment amount. The initial match of recipients to IRS data and to SSA data is duscussed in section 10 of this preamble which deals with implementation.

Another commenter thought IRS information should not be used for certification or recertification purposes but only for fraud investigations.

Response: DEFRA specifically requires that the information from IRS and other specified sources be used to verify eligibility and benefits.

One commenter wanted to know whether IRS would process State tapes only once a month and whether the agencies would be provided with a schedule.

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Response: As discussed in section 2(a) above, IRS has scheduled eleven monthly runs of State tapes against its national file of unearned income information. IRS will only process one tape per month per State.

One commenter asked if the State agency could obtain the IRS unearned income information from the State revenue department in the same State if the revenue department received data from IRS.

Response: No, the State agency must request the information directly from IRS. Although the State revenue department may also receive unearned income information from IRS, the Internal Revenue Code prohibits redisclosure of that informaion by the State revenue department to any other agency.

One commenter thought the requesting and verification of IRS data creates a duplication of match activities for Medicaid recipients between the States and SSI. When SSI must match against IRS, SSI should provide the States with the IRS information.

Response: Medicaid agencies are required to obtain IRS data only for those cases in which the Medicaid agency makes the eligibility determination. SSI will only obtain IRS data for those cases where the Medicaid eligibility is determined by SSA pursuant to section 1634 of the Social Security Act. Therefore, no duplication of match activities will occur.

One commenter wanted the data obtainable from IRS expanded to include all income sources such as tax return amounts and earnings. The large cost for developing the capability to match with IRS should result in obtaining as much information as possible. Another commenter wanted IRS data on wages, rather than requesting it from SSA, because IRS data is more recent.

Response: The Deficit Reduction Act is specific in stating only unearned income information is to be furnished by IRS. IRS has developed a process for State agencies to obtain income information at a low cost and without developing complex procedures. Unearned income has been found to be very useful by California and in the SSI program for identifying unreported resources.

e. SSA

The proposed rules required State agencies to access all available SSA data on applicants. We received a number of comments about accessing SSA data. The majority were procedural and are discussed below. The final rules contain the requirements for accreting applicants and unaccreted recipients to SSA systems.

The preamble to the NPRM indicated the State agency would meet this requirement by using the Third Party Query (TPQY) system recently made available to State agencies or by accreting the applicant's name to the Beneficiary and Earnings Data Exchange (BENDEX) system. If the State chooses to use the TPQY system, it is also required to accrete the name to BENDEX if and when the individual becomes a recipient. BENDEX provides the State agency with pension, earnings, and self-employment information (only SSA benefit data are available through TPQY) and creates a record which generates an automatic response to the State agency whenever updated information becomes available (which TPQY does not do).

One commenter thought the statement in the general preamble that the TPQY system should only be used in critical situations conflicts with SSA's standard TPQY agreements. The commenter suggested TPQY requests were the most effective way to obtain benefit information on new applicants.

Response: Article V of the model agreement for TPQY states that TPQY should be used only if the data is unavailable through BENDEX. State agencies may, but are not required, to use TPQY at application, if the BENDEX system will not provide a response timely enough to use in the initial eligibility determination process. The State agency must also maintain the necessary controls to ensure that a request is made to SSA either through BENDEX or TPQY on each applicant, and that all reports from SSA are investigated.

One commenter wanted to know whether SSA agencies will still be able to obtain information from the Master Beneficiary Record (MBR).

Response: State agencies will still be able to access the MBR. Under IEVS, they are required to request and use SSA Title II benefit data, and BENDEX is the data exchange system between States and the MBR. The BENDEX system provides current data on the status of social security benefits and also provides automatic reporting of benefit changes.

One commenter wanted to know how SSA will make "pension and related data" available, since it is not available on State Data Exchange (SDX) or BENDEX.

Response: In September 1985, SSA began providing pension data with wage data. The data includes both the amount of pension paid for a calendar year and the name and address of the payer of the pension. Since the pension data will be supplied with wage data, State agencies do not need to use any special procedures to obtain this new data.

Two commenters were concerned that SSA files contain inaccurate and discrepant information. One of these commenters suggested that SSA files (as well as other data sources cited in these rules) be cleared of all internal discrepancies before they are forwarded to another agency.

Response: Data bases, especially ones as large as those maintained by SSA, usually contain some inaccuracies and discrepancies. The Federal agencies are aware that States have found some problems with SSA data. Although we do not believe the scope of these problems warrants any effort so great as the commenters suggest, we would stress two factors. First, except for UC and SSA benefit data, the information obtained through IEVS will be generally treated as a lead for further verification activity. SSA earnings data will almost always need to be verified. Second, if a State receives what they believe is incorrect information, no adverse action should be initiated until the discrepancy is resolved. We would expect, however, if a pattern is noted, that SSA be contacted so that corrective action can be taken.

One commenter believed that net earnings from self-employment will not be useful since the assistance programs have different allowable deductions in calculating net self-employment income.

Response: The information obtained would be used as a lead for unreported self-employment income.

One commenter questioned whether the SSA wage information match is redundant, since the SWICA information is much more current.

Response: SSA wage data, while less current, can give leads to employment not reported to a given State's SWICA, such as employment in other States and self-employment.

One commenter wanted HCFA to clarify that section 1634 State Medicaid agencies are not required to match against the SDX.

Response: As discussed in section 1(b) of this preamble, Applicability of IEVS Requirements, Medicaid IEVS regulations pertain only to determinations made by the State Medicaid agency. A Medicaid agency with an agreement under section 1634 of the Act for SSA to make Medicaid determinations and redeterminations for SSI applicants and recipients does not currently have to request SDX information on SSI applicants and recipients for eligibility purposes.

Medicaid agencies may access such information for third party liability (TPL) purposes. We are currently considering mandating such matches for TPL and any such requirement would be proposed through the rule making process.

One commenter wanted data from the SSA benefit applications to be made available.

Response: The statute specifically identifies the information SSA can provide. General application data is not included.

f. Interprogram and Interstate Exchange.

The proposed rule required that all programs in the IEVS exchange income and eligibility information with each other in accordance with interstate and intrastate agreements in effect and as appropriate to the requesting program's verification and eligibility determination needs.

One commenter believed we ought to clarify regulations to show that an agency has access to another agency's data without necessarily providing data to that other agency.

Response: We agree with the comment and have modified the final rules where necessary to clarify this issue. An agency may request information from another agency in the IEVS on the basis of its self-determined need and subject to an agreement with the other agency, reached on that basis. We expect the requesting agency to define the data to be provided, subject to the provider's disclosure limits. State agencies are encouraged to request data from adjacent jurisdictions and other States where experience indicates the data would be useful. Each Medicaid State agency must submit a plan as part of its State plan indicating the information it intends to request from other State agencies (42 CFR 435.948(a)(6)).

Three commenters thought access to the State Employment Security Internet system for the IEVS matches would be very helpful. Some commenters expressed concern that there were plans for such requirements, perhaps on a national scale.

Response: The Internet system is still under development and its potential uses are still being evaluated by the Department of Labor. The rules do not require State agencies to use the Internet system. We would note, however, that nothing in these rules would preclude access to this system. In a recent pilot project the Office of Child Support Enforcement found Internet to be an effective means of information exchange.

One commenter noted that current regulations authorize the IV–D Child Support Enforcement agencies to access out-of-State data bases for AFDC and Medicaid, but not for FSP. The commenter feels there is no reason to treat the FSP differently.

Response: FNS has added the Child Support Enforcement agencies to the list of programs with access to FSP case information on an interstate basis. The proposed rules should have authorized such access, as provided by statute.

One commenter thought that developing data sharing capacity with out-of-state agencies, as well as reimbursement for the data, will present difficult compliance problems.

Response: To keep problems with data sharing between agencies in other States to a minimum, all the final rules have the identical requirements for written agreements and safeguarding of information. This should help agencies enter into data sharing agreements. As discussed in section 7 of this preamble, formats and model agreements are being developed for the exchange of information between State agencies. These materials should make the development of new matches easier and minimize developmental costs and the associated reimbursement.

g. Alternate Sources

The final rules retain the NPRM provision that a State agency may obtain data from sources other than those specified in regulations if it can demonstrate to the respective Secretaries that the alternate source furnishes data as timely, complete and useful as data from the source specified in regulations. The Departments of Health and Human Services, Agriculture and Labor will consult before approving an alternate source. In the preamble to the NPRM we specifically requested comments on possible alternate sources and criteria for evaluating these sources.

Two commenters suggested the Federal agencies should be flexible in permitting States to substitute useful sources of data such as bank matching for the required IRS match. Another commenter asked the Federal agencies to make available the criteria which would be used to evaluate a State's request. Another commenter asked that the criteria should allow for an alternative wage data source which would have more current information than is available from UC agencies. Finally, one commenter did not believe that alternate sources would provide timely data or provide data on a sufficiently frequent basis.

Response: To evaluate a State agency's proposal to use an alternative source we would apply the standards contained in the final rule. The source (or combination of sources) would have to be as timely, complete and useful as the required source.

4. Independent Verification

The NPRMs for all three agencies incorporated the legislative requirements for independent verification of IRS unearned income information. All of the programs were guided by the House Conference Report language calling for the independent verification of the IRS unearned income information relating to the amount of resource or income involved, whether the applicant or recipient actually had access to the resource or income and the period of actual access to the resource or income. The final rules retain this requirement. With respect to other information obtained through the IEVS, the NPRM for the FSP stated explicitly what types of IEVS information would and would not be subject to independent verification. While not as explicit, the NPRM preamble stated that the AFDC, Adult Assistance and Medicaid programs expect independent verification of IEVS information where necessary. In response to comments, the Medicaid, AFDC, and Adult Assistance final rules have been modified to explicitly require verification, if determined appropriate based on agency experience. These requirements are discussed further in response to comments below.

a. General Requirements

Several commenters requested further information on what is involved in the independent verification process.

Response: Independent verification is an inquiry about a possible discrepancy between information reported from various sources and that reported to the State agency by the applicant or recipient. Data from IEVS is the starting point for the inquiry. Independent verification, thus, is the means of gathering information which will enable the caseworker to determine actual circumstances and decide whether or not to send a notice of adverse action. Because IEVS data often pertains to past periods relative to the time period the caseworker receives it, the process of independent verification would include an inquiry about the relevance of the data to current circumstances. Independent verification can be accomplished either through the applicant or recipient or through a third party source such as the employer or bank which reported the information.

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One commenter believed that there should be no independent verification requirements, another believed that all IEVS information should be independently verified, and another believed the rules should be consistent.

Response: Since DEFRA requires independent verification of IRS data, the rules must implement that requirement, and the final rules retain the NPRM provision in this regard. On the other hand, to require independent verification of all IEVS information would in some instances be unnecessary. For example, we expect that if an inquiry to BENDEX shows receipt of social security benefits which were not reported by a recipient, a State would issue a notice of adverse action without independently verifying the information since the best source of information, SSA files, had already been used. As noted above, the Medicaid, AFDC and Adult Assistance final rules have been modified to require verification, if determined appropriate based on agency experience. We believe that the final rules of all three programs are now consistent with respect to independent verification.

In relation to the FSP proposed rule, two commenters requested a clearer definition of the proposed distinction between IEVS data considered verified upon receipt and data considered unverified upon receipt. One commenter requested that State agencies be allowed to independently verify IEVS data considered verified upon receipt. The reason cited for this request was that sometimes SSA benefits and UIB data need further verification before a case action can be initiated.

Response: The final FSP rules revise the language in the NPRM so that the term "considered" is used with respect to both "verified" and "unverified." The final rule also provides that if the State agency has information that indicates that the IEVS-obtained information which would be generally considered verified upon receipt is questionable, then the State agency must independently verify it. State agencies are always free to independently verify any data obtained through IEVS. Receipt of generally considered unverified IEVS information, in conjunction with other case information, may also provide a sufficient basis for a notice of adverse action. The final FSP rules provide that in such situations State agencies may proceed without independent verification, except where the information is from IRS. We believe that this approach enables State agencies to make sure that notices of adverse action are based on appropriate information and do not violate any due process considerations. Finally, we would note that a typographical error is corrected in the FSP rule in the second sentence of § 273.2(f)(9)(iii): "for" is changed to "from".

One commenter suggested that the rules should require that the applicants and recipients be contacted as part of the verification of IRS unearned income information.

Response: In permitting the State agency to verify information with either the third party source or the individual/household, the final rules parallel the Conference Committee Report on the legislation. Verification will often be accomplished through contact with applicants and recipients, but we believe that the option of contacting a third party is necessary in cases where the recipient fails or refuses to cooperate, the State agency believes it to be in the interest of the investigation of potential fraud or when other factors indicate that a third party contact is preferable.

Another commenter asked how the requirements for verifying IEVS data related to current procedures on verification of information from parties identified by the recipient, such as bank and employers.

Response: Verification of IEVS data does not replace the verification procedures used in the several programs as part of the eligibility determination. Verification of the IEVS data supplements that verification since it pursues information provided by parties other than the household.

b. Collateral Contacts

The FSP proposed rules eliminated the current requirement that households provide the names of third parties (collateral contacts) or give the State agency prior permission to contact third parties to obtain independent verification.

Several commenters objected to the FSP proposal on collateral contacts, arguing that: direct contact with employers or landlords jeopardizes household employment and housing arrangements; the policy violates the due process provisions of the Fourteenth Amendment; and it conflicts with household privacy rights of section 11(e)(8) of the Food Stamp Act. Two public agencies argued that the proposed policy would allow State agencies to contact everyone and anyone about facts relating to a food stamp recipient's participation, and that contact with the household is necessary in order to resolve discrepancies. One commenter argued that FNS should provide guidance for a method of resolving discrepancies when the household cannot provide verification of wages and the employer holds an anti-welfare attitude. The commenter argued that there should be a third alternative to forgoing benefits or allowing disclosure and thereby jeopardizing employment. Three commenters supported the proposed policy on the grounds it provides State agencies with the flexibility they need to prevent fraud.

Response: The final FSP rule remains unchanged, thereby eliminating the requirement that the State agency obtain prior approval for particular collateral contacts. As discussed elsewhere in the preamble in connection with action on recipient households (Section 2, Access and use of information), State agencies have the opportunity to contact households and because of their eligibility status may often find this the most advantageous approach. The U.S. Department of Agriculture (USDA) does not see that this policy will affect due process since the households would be given a notice of adverse action if information from a third party indicates a basis for a case action, and fair hearings would be available before benefits would be affected. Without this policy, households which have intentionally failed to report wages or resources could refuse to provide the information themselves and therefore be terminated from the program. Having been terminated and then not allowing contact with an employer or bank, they could prevent the development of information which could be used for fraud investigations and prosecutions relating to past benefits. With respect to Section 11(e)(8) of the Food Stamp Act, as stated in the preamble to the NPRM, USDA believes that the notice at application and periodically thereafter, which DEFRA requires, fully satisfies the purposes of the privacy interest established by the Food Stamp Act. The notice at application comes in advance of any actual contact with employers, banking institutions and the like, and provides the applicant the opportunity to forgo program benefits rather than permit disclosure of the fact that the application has been made to persons not involved in the administration or enforcement of various benefit programs. Furthermore, USDA does not believe that the policy opens up the verification process to everyone. Current rules continue to state several examples of acceptable collateral contacts qualified by the clause "who can be expected to provide accurate third party verification."

USDA and the other Federal agencies are concerned about the potential problem of repercussions on working applicants and recipients when employers discover they are receiving public assistance. We would point out there is nothing to prevent households from informing caseworkers of their concern about this matter at certification or when they change jobs. If they correctly report income, the IEVS data should not indicate a discrepancy for follow-up.

5. Social Security Numbers (SSNs): Furnishing, Using and Verifying

DEFRA requires each applicant for and each recipient of AFDC, Adult Assistance in the territories, food stamps, UC, and Medicaid to furnish his or her SSN(s) as a condition of eligibility.

Current rules for FSP and AFDC already require the furnishing of SSNs. These regulations implement the new statutory requirement to furnish SSNs to the Adult Assistance programs and to the Medicaid program. HCFA proposed, for recipients who became eligible before April 1, 1985, that the State Medicaid agency was required to obtain SSNs when the agency made a redetermination or by April 1, 1986, whichever came first. As discussed in section 2 of this preamble, the regulations for all programs require the use of the SSN to associate information on applicants and recipients for the required matches. The proposed rules required all Medicaid, AFDC, FSP and Adult Assistance Program State agencies to verify applicant and recipient SSNs.

a. Implementation

One commenter recommended that the statutorily required implementation date of April 1, 1985 for obtaining SSNs on applicants should be adjusted to give the State Medicaid agencies an adequate timeframe in which to meet the requirement. Another commenter wanted to know if an agency had to have an agreement with SSA regarding obtaining SSNs.

Response: HCFA does not have authority to delay the Medicaid requirement that State agencies start obtaining SSNs for applicants as of April 1, 1985 because the statutory provision is self implementing. It is a fairly simple requirement to implement, requiring only that an agency tell an applicant or recipient that he or she must furnish an SSN in order to be eligible for benefits. HCFA's proposed language in 42 CFR 435.910 may have misled the commenter into believing the State agency has to obtain the SSN for the applicant or recipient, rather than from the applicant or recipient. By law, it is the applicant (or recipient) who must furnish the SSN. HCFA is revising the regulation to conform more closely to the law and the FSP and AFDC regulations and to clarify that the Medicaid agency must require the individual to furnish the SSN. Currently, some agencies assist individuals with obtaining SSNs; the revised language is not to be construed as a requirement to discontinue this practice. A State agency must have an agreement with SSA if the agency assists an individual in obtaining an SSN by submitting an SSN application form (SS–5) on his behalf.

HCFA indicated in the proposed rule that the State did not have to obtain an SSN for a recipient until the time of redetermination or April 1, 1986, whichever was earlier. It was subsequently determined this section of the legislation was self-implementing without regulation. As a result, HCFA informed all Medicaid agencies in Program Memorandum 85–3—State Plan Preprint to require all current recipients to furnish SSNs beginning April 1, 1985.

Four commenters to HCFA believed children in foster care or receiving adoption assistance should be exempt from having to furnish SSNs, as there are several problems associated with this requirement. It raises concerns about confidentiality; the number may not have been obtained before the case is terminated; adoptive parents may apply for a second number; in many cases, the child has been abandoned or removed from his or her natural parents and information necessary to acquire an SSN cannot be obtained; or the child may need emergency medical care.

Response: DEFRA does not exempt any applicants or recipients of the subject programs except some newborns (see comment and response immediately following) from having to furnish an SSN. Although the furnishing of the SSNs is a new requirement for Medicaid, the other programs have had the requirements and their experience should be helpful to the Medicaid agencies. Medical assistance cannot be denied if an individual needs emergency care and has not previously applied for an SSN.

Four commenters questioned whether SSNs have to be furnished for newborns; and one asked whether a newborn had to be enumerated retroactively if the birth is not reported for three months or more.

Response: The only exception to the requirement to furnish an SSN for Medicaid eligibility relates to newborns. DEFRA amended section 1902 of the Social Security Act by adding a paragraph that mandates a newborn child be deemed to have filed an application and have been found eligible for Medicaid if he or she is born on or after October 1, 1984 to a woman who is eligible for Medicaid on the day of the newborn's birth. This deemed eligibility lasts for a year as long as the mother remains eligible and the child remains a member of the mother's household. Because the child is deemed to have filed an application and eligibility is linked to the mother's eligibility, the IEVS requirements do not apply to the newborn. Persons who are deemed applicants do not fall within the scope of the IEVS provisions for furnishing SSNs. However, if the child is to remain eligible after one year of age, an SSN must be furnished on his or her behalf. As long as the newborn is deemed eligible, the newborn does not have to be enumerated retroactively.

b. Multiple SSNs

One commenter wanted to know whether it would be necessary to keep on file more than one SSN per person. One commenter wanted to know if a State agency has to verify multiple SSNs.

Response: Yes. If a person has two SSNs, for example, he or she may be using both and it will be necessary to obtain data filed under both SSNs. The proposed rules for FSP and AFDC were clear that multiple SSNs were to be verified and used but the proposed Medicaid rule was not. HCFA has clarified its regulations, at Section 435.948(a), to indicate this and to indicate that all SSNs of a given individual must be used. HCFA has also revised Sections 435.910(g) and 435.920(b) to clarify that all SSNs must be verified.

c. Verification of SSNs

A number of comments related to the requirement that the furnished SSN must be verified. One commenter believed the requirement that an agency must verify SSNs goes beyond the authority of the statute. Several commenters wanted clarification about whether an "official document" may still be used (as permitted by current regulations) to verify SSNs. One commenter believed deleting the requirement that an applicant or recipient must show proof of his or her SSN is a mistake. One commenter urged that only verified SSNs be utilized in the data matching; in that agency's experience, use of unverified numbers and the first three letters of thelast name resulted in mismatch rates of 30 percent. Several commenters believed (1) the SWICA, (2)

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the UC agency, or (3) SSA should be required to verify the SSN, not the State public assistance agency.

Response: DEFRA requires that the applicant furnish his or her SSN(s) for the purpose of permitting the authorized program to associate records on that individual with the SSN. Requiring verification of the SSN ensures that the SSN used for this purpose is for that individual. Although not specifically mentioned in the statute, verification is necessary to ensure the proper and efficient administration of the matching requirements and to help prevent disclosure of information on individuals who are not applicants or recipients of benefits under these programs.

A State agency may continue to accept a social security card or other official document to meet the requirement that an applicant or recipient *furnish* an SSN or SSNs. Since these regulations do not allow eligibility determinations to be delayed awaiting SSN verification, furnished SSNs will need to be used for the initial applicant matching. Because an individual may furnish a duplicated, false, or nonexistent SSN or have multiple SSNs, these rules require all furnished SSNs to be verified so the agency will maintain and exchange information on correct SSNs.

We are aware there could be mismatches based on unverified numbers furnished by applicants, but matches should be conducted on all numbers furnished by applicants as the numbers may have been used even if erroneous and unverifiable. State agencies are not required to verify SSNs of applicants determined ineligible.

As discussed further in subsection (d) below, SSA generally verifies the SSN of individuals receiving Title II or Title XVI benefits. An SSN received on such individuals through BENDEX or SDX can be considered verified. It is not cost effective to have all SSNs in a SWICA, UC, or SSA data base verified at entry, as only a very small percentage of these individuals actually apply for public assistance benefits.

d. SSA Verification Systems

One commenter stated that the BENDEX system does not cross refer the claim number under which a person is drawing benefits to that person's own SSN. One commenter believed SSA's Supplemental Security Record (SSR) and MBR records should have a new field to indicate whether a "cross reference SSN" has been verified.

One commenter questioned whether all SSNs received from SSA via the BENDEX are verified, except for individuals receiving benefits on their own numbers and said that not all SSNs on SSI recipients have been verified as some applicants are placed in pay status through default without the SSN being verified. One commenter believed SSNs of applicants should not have to be verified because BENDEX verifies only the SSNs of current claimants, and the verification on non claimants will rarely be received within the application period. One commenter asked whether the three means of verifying SSNs mentioned in the general preamble must be followed in the order presented (i.e., BENDEX, SDX, TPQY).

Response: The BENDEX system does cross refer the claim account number on which the person receives benefits to the person's SSN if the SSN is in SSA's records (See BENDEX Handbook, POMS, SM 10801.245.B). In a small percentage of cases a beneficiary's SSN is not on SSA's records and SSA is planning to correct these situations.

It is true that not all SSNs on the BENDEX are verified. If an individual is receiving benefits on another's account number, the individual's SSN will have to be separately verified according to SSA instructions.

As discussed in section (c) above, we do not require SSNs to be verified before the agency requests and uses IEVS data and do not allow eligibility determinations to be delayed for SSN verification. However, if the BENDEX, SDX or TPQY processes are used to verify the SSN, prompt verification can result.

If an applicant's SSN is not verified through these processes, the SSN verification system must be used. a redesign of the SSN verification system is underway and when that is in place, verification of SSNs should not exceed three weeks.

There is no required order for using the BENDEX, SDX, TPQY, and SSN verification system for verifying SSNs. As stated in Article V of the model agreement on TPQY, TPQY should be used only if the data are unavailable through the BENDEX or SDX. However, the SDX and BENDEX systems can be used only to verify the SSNs of SSA beneficiaries. The SSN verification system has to be used to verify all other SSNs.

With respect to verification to SSNs, the proposed FSP rule contained a statement that an SSN would be considered verified if an inquiry to SSA for certain types of information resulted in a response associated with the SSN. To avoid possible conflict with SSA instructions and to ensure consistency with Medicaid, AFDC and Adult Assistance rules, that statement has been eliminated from the final FSP rule.

e. Quality Control (QC) Errors

One commenter to HCFA believed that until the States have the IEVS in place, QC should continue to consider missing SSNs as technical errors and once the systems are in place, the absence of an SSN should be treated as a QC error only when a match with the number would have affected the recipient's eligibility or benefits. Another commenter thought a lack of an SSN or an incorrect SSN should never be a QC error.

Response: HCFA does not agree with these comments. The law requires as a condition of eligibility that every applicant and recipient furnish his or her SSN or SSNs. Therefore, anyone who has not been determined otherwise eligible but who has not furnished an SSN (except in the case of an applicant who applies for an SSN at the same time he or she applies for Medicaid and whose SSN has not yet been received by the time the period for determining eligibility has run out) has not met the full conditions of eligibility and so is not eligible. However, missing SSNs will remain QC technical errors until HCFA deletes SSNs as technical errors through regulations.

f. Other Issues

One commenter urged a totally automatic (on-line) SSN enumeration and verification system, claiming it would significantly improve all SSN-related processes.

Response: SSA is working with Tennessee on a pilot project to provide wire-to-wire exchange of benefit data which will also verify the SSNs of clients who receive social security or SSI payments. Once the pilot is running successfully, SSA expects to offer the same service to other States. On-line access to the SSN verification system is not feasible at this time.

One commenter maintained that States should be allowed to send completed forms to the local district office to be keyed in rather than requiring the forms be mailed to Wilkes Barre, Pennsylvania, because of time problems.

Response: SSA is not pursuing such a system at this time. It is currently more cost effective to process such SS–5s in a central location.

One commenter wanted to know the difference a Social Security Account Number and an SSN. Most of the local agencies use the former term only when benefits are being paid on a social security claim.

Response: The two terms (Social Security Account Number and Social

Security Number) are synonymous in Federal usage. When referring to the number under which benefits are paid, SSA uses the term "social security claim number".

A commenter noted the FNS preamble language on SSA direct notification to State agencies of newly issued SSNs was different from the other preambles.

Response: FNS believes these direct notification procedures will simplify the verification process for State agencies that do not have enumeration agreements with SSA and will limit the burden involved in acquiring an SSN for the household. OFA believes that regulatory language is not necessary for the AFDC program because all State AFDC agencies without enumeration agreements currently receive direct notification of newly issued SSNs for applicants and recipients through a validation tape provided by SSA.

Several commenters to FNS supported elimination of the "month and 30 day" limit on participation after application for an SSN. One commenter objected to the proposed indefinite participation allowed pending receipt of the SSN.

Response: FNS has decided to retain the proposed language allowing indefinite participation in order to prevent adverse actions as a result of factors outside of the control of the household.

FNS received five comments on the proposal to allow participation pending application for an SSN with good cause. Several of the commenters supported this general approach. One State agency recommended such participation be limited to 90 days. A commenter recommended such participation be limited to the first certification period. Two commenters suggested the section needed editing to make it clearer.

Response: FNS has decided to retain the proposal. Setting limits on participation pending application for an SSN with good cause could have adverse effects on a household as a result of factors outside the control of the household. OFA received comments on this topic in response to a Notice of Intent to Develop Regulations, jointly issued with FNS on February 19, 1985 (50 FR 6976). These comments are under consideration and will be addressed in separate rulemaking. HCFA also plans to address this issue in future rulemaking. Minor editorial changes in the FSP rule have been made for clarification.

6. Additional Procedural Requirements

a. Routine Notification

DEFRA requires that all applicants and recipients be notified that information available through the IEVS system will be requested and utilized. The notification is to be given at application and periodically thereafter.

FNS proposed that the notification be a written statement on the FSP application or on a separate sheet. OFA and HCFA proposed only that the initial notice be provided in writing at application. For AFDC, Adult Assistance and FSP the periodic notification for recipients would be at recertification or redetermination. HCFA proposed to require the periodic notification to be at least yearly and that for current recipients (i.e., those eligible at time the proposed rule was published) the initial written notification could not be later than April 1, 1986.

One commenter was concerned about the varying definitions of the word "periodically", as used to indicate how often an agency must notify recipients of the IEVS and the uses of the information and recommended the Federal government state the minimum frequency.

Response: The definition of "periodically" is based on existing program case processing cycles. AFDC and Adult Assistance require a redetermination every six months. FSP recertifies at the initiation of new certification periods which vary according to household circumstances. Medicaid agencies must redetermine the eligibility of Medicaid recipients with respect to circumstances that may change at least every 12 months. We believe it is administratively easy to provide notice to recipients at these intervals and provide recipients sufficiently frequent notice about the use of IEVS. State agencies should also be aware that there is no prohibition against developing a generic notice which could be used for recipients in the three programs.

One commenter asked that all agencies specify the notice be in writing. One commenter wanted to know whether the notice to applicants and recipients had to be specific as to exactly with whom the agency would be doing matches.

Response: The notice to applicants and recipients must be written and must notify the applicant or recipient that income and eligibility information may be obtained using his or her SSN(s) and will be used in the eligibility and payment amount determination. The notice must, at a minimum, indicate the types of agencies included (e.g., unemployment compensation agencies). This will allow the State agencies the flexibility to match with covered agencies in the State and in other States while affording the necessary protection of the individual's right to know how information about him is being used.

The FSP application form is being revised to identify other programs with which information will be exchanged and to notify households that other persons and oganizations may be contacted to verify income and eligibility.

One commenter requested that FSP households be notified of how their casefiles are protected from unauthorized disclosure and that State agency manuals contain the detailed disclosure rules of the agencies providing information.

Response: Information about disclosure limits for the FSP is contained in program rules, copies of which are located in local offices as required by current rules. FNS believes this should be sufficient notice about disclosure rules. With respect to providing access to the source agencies' disclosure rules, FNS believes no useful purpose would be served by having those agencies' rules in State manuals since the knowledge of them would not enable households to determine if abuse had occurred. All three Federal agencies do believe that State agencies should obtain assurances from provider agencies that their ADP processing methods prevent providers from recording what recipient names and/or SSNs are processed and that individuals having access to such information are bound by the disclosure rules of the various programs. The final rules for Medicaid and FSP are modified accordingly. The existing AFDC and Adult Assistance program rules at 45 CFR 205.50(a)(2)(i) provide adequate protection in this regard by requiring that information only be released to agencies which are subject to the same standards of confidentiality as the State agency.

One commenter wanted to know whether we had considered allowing State agencies to give recipients a five-day, rather than 10-day notice of proposed adverse action; it would allow agencies to act more quickly to close cases if warranted (for example, in cases of fraud).

Response: We do not believe individuals would have adequate notice if the time frame were shortened, and any savings would not justify threatening an individual's right to appeal a proposed adverse action.

b. Notice of Expiration or Adverse Action

Under the proposed rules, the applicant or recipient had to be notified of any planned adverse action and had

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to be given the opportunity for a fair hearing. FSP proposed rules also included a provision under which households which failed to respond timely to State agency requests for information would be sent a notice of expiration of their certification period. OFA and HCFA required only that a notice be sent prior to any intended action.

Twelve commenters addressed this issue, several arguing the FSP notice should be a notice of adverse action to forestall continued overissuance, and several others arguing it should be such a notice because the proposed notice violated due process.

Response: FNS agrees that in some instances a notice of adverse action could forestall continued overissuance at least as promptly as a notice of expiration of the certification period. FNS has no way to determine how frequently the use of notices of adverse action could forestall overissuance more effectively than notices of expiration, but certainly in some cases the former notice would be more effective. While the preferred type of notice may not be clear, if a notice of adverse action is used and the fair hearing upholds the State agency, then the overissuance is recoverable. For this reason, a notice of adverse action may result in program savings. More importantly, the concern of commenters was that the guarantee of continued benefits pending a fair hearing under a notice of adverse action was not provided if a notice of expiration was used. While the Department continues to believe that most requests for information will be responded to by the household without the need for a fair hearing, we concede that in the event of an irreconcilable dispute, only the notice of adverse action would permit the prior allotment level to continue. Therefore, the final rule replaces the proposed use of the notice of expiration with a notice of adverse action when a household does not respond timely to a State agency inquiry about IEVS information. Moreover, use of an adverse action notice in these circumstances is consistent with the approach used in AFDC, Adult Assistance and Medicaid.

c. Safeguards

The final rules are identical to the NPRM in requiring each program to protect the confidentiality of the information due to the sensitive nature of information about individuals. DEFRA requires each State agency to institute adequate safeguards to assure (1) that information is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information and that unearned income data from IRS is exchanged only with those agencies authorized to receive it; and (2) the information is adequately protected against unauthorized disclosure for other purposes. The NPRM proposed to standardize requirements and procedures for safeguarding information through agreements between providing and receiving agencies.

One commenter noted that the IRS publication entitled "Tax Information Security Guidelines for Federal, State and Local Agencies", which was mentioned in the preamble to the NPRM, prohibits States from furnishing confidential Federal tax information to a political subdivision. The commenter believes it will be very difficult for State-supervised programs to comply with this provision. Another commenter noted that regulations on confidentiality appear to require that each income maintenance worker must sign a separate confidentiality statement which would create a burdensome paperwork requirement and recommended that States should be given the option of devising an alternate method for assuring the protection of confidentiality.

Response: DEFRA explicitly requires IRS to disclose unearned income data to Federal, State, or local agencies administering the specified programs. The IRS Revenue Procedure 85–21, issued April 8, 1985, notifies these Federal, State and local agencies of the manner, time and place for obtaining the unearned income data. The "Tax Information Security Guidelines" were revised in May, 1985, to reflect the DEFRA changes in law. Neither program regulations nor IRS guidelines require each income maintenance worker to sign a confidentiality statement.

State agencies will be required to affirm that all individuals having access to IRS information have been informed of the safeguarding requirements and the penalties for unauthorized disclosure.

One commenter stated it was doubtful that State agencies have the existing security arrangements required to protect IRS tax information.

Response: We believe that extensive modification to existing State security procedures should not be necessary. State public assistance agencies are, and have been for many years, required by Federal law and regulations to safeguard personal data against unauthorized use or disclosure. Information to be safeguarded includes individuals' names, addresses, amount of assistance, social or economic conditions, wages, agency evaluations, and medical data. Further, States have Privacy Acts which require safeguards. All of these requirements (which are comparable to the IRS requirements) must be adhered to by the public assistance programs. States have considerable experience in implementing the IRS guidelines for securing tax data because State taxing agencies currently have acess to IRS tax data and must follow these guidelines. The Federal agencies will work with State agencies to help ensure compliance with the IRS guidelines.

One commenter thought the Federal agencies should have compatible wording in their regulations on safeguarding information and urged a single publication regarding the requirement.

Response: All the Federal agencies have similar safeguarding requirements, but since they have different program needs and procedures it is not feasible to publish a single standard. Such a standard would be too general and would not be sufficiently informative concerning what data may be released or how such information should be protected. However, we are concerned about the potential for unauthorized disclosure and do intend to publish common guidelines that will enable States to develop and maintain adequate safeguarding procedures. The final rules have been amended to require State agency adherence to these guidelines when they are issued.

Several commenters thought FNS had deleted paragraph 272.1(c)(2) which provides households access to their casefiles.

Response: The NPRM inadvertently did not redesignate the paragraph as 272.1(c)(3). This is done in the final rule.

d. Agreements

The NPRM extended to the Medicaid, Adult Assistance, and UC programs the current requirement for AFDC and FSP that agencies must enter into written agreements concerning the procedures for requesting and providing wage information and added for AFDC, Medicaid, Adult Assistance, and FSP the requirement that State agencies execute such agreements with IRS.

The final rules are virtually identical to the proposed rule except for a new requirement that each agreement with a SWICA and UC agency (which in most States are one and the same) must accept and process requests for wage and UIB information no less frequently than twice per month. This is necessary in order to conform with the new requirements for access and use of

information for applicants which require the State agency to request information at the first available opportunity. For the State wage and unemployment benefit information, this first available opportunity must occur at least twice per month. We believe this provision will ensure that information on applicants will be obtained without delay and used, whenever possible, in the initial determination of eligibility.

One commenter asked whether the designation of agency officials with authority to request data was to be by title or by names and suggested the use of titles because of personnel changes.

Response: We agree that titles or positions should be specified rather than names and we have modified the final regulations where necessary.

One commenter thought the requirement for interagency agreements was burdensome and unnecessary because the agreements would not be legally binding contracts. Commenters had difficulty with the requirements concerning interstate agreements between State agencies because of the potentially high number of agreements. Two commenters suggested the use of a standard agreement for everyone to sign. Another commenter stated that if States were to use BENDEX and update it regularly, it would be adequate to address the relatively rare instances of interstate fraud and would obviate the need for most interagency agreements. A commenter stated that delays would occur while agreements were executed. One commenter wanted to know whether an agreement would be necessary when an agency in another State requests information. One commenter wanted to know how long agencies would have for obtaining agreements, since there were no data formats to follow.

Response: Regardless of whether the agreement between two agencies is a contract, it is necessary to document the arrangements State agencies have made to provide and obtain data. The items specified are those which we believe are the minimum about which parties to data exchanges need to agree in order to effect exchanges efficiently, assure both the parties and the Federal agencies that data is properly safeguarded, and assure that any reimbursement of costs is appropriate. Model agreements are being developed and will be made available to States with the instructions for using standardized formats as described in Section 7 below; their use should help State agencies expedite arrangements for data exchange. Since many such agreements are already in place, there should be many situations where the negotiations involve a limited number of issues. With respect to interstate matching and BENDEX, the rule does not set standards for interstate matching because we believe that State agencies should examine where such matching is needed, one factor being the use of BENDEX. With respect to potential delays pending the execution of agreements, we expect that data exchanges will be conducted using existing procedures until new agreements are signed. There must be an agreement between any two agencies (or the State or States on their agencies' behalf) before data may be released.

One commenter asked whether the requesting agency could specify in the agreement with the provider agency a minimum response time.

Response: The final rules for AFDC, Adult Assistance and Medicaid, as did the NPRMs, provide that the agreements specify the timing of the response. Through an oversight FSP rules did not mention the timing of responses to requests, and the final rules include such a provision. This and the other provisions of the agreements are minimum requirements. State agencies can add others. We would note, however, that the schedules for requesting and providing information are subject to negotiation and agreement among the parties involved. The Federal agencies do not plan to set standards in this area other than ones which derive from the required frequencies of access to the various data sources.

One commenter asked if agreements were necessary among programs which are administered by an umbrella agency. Another commenter wanted to know if each agency must request information from the source agency.

Response: Yes. An agreement is necessary for each data exchange agreement between agencies even if the programs are administered by an umbrella agency. However, States may use standard language for all agreements. Except for the IRS and BENDEX matches, States are free to allow each State agency to request matching information or to designate a single coordinating agency to request all information. As explained in IRS Revenue Procedure 85–21, the IRS data must be requested only by a single State coordinating agency and each State agency designated to receive information from the coordinating agency must have a written agreement with the IRS concerning safeguarding and use of information. Similar instructions on access to BENDEX are contained in the POMS manual.

e. Reimbursement for Costs of Providing Data

The NPRM required that all agreements for the exchange of income and eligibility information must include a provision for determining appropriate reimbursement from the requesting agency for the reasonable cost incurred in providing the data.

Two commenters felt the proposal to charge for any mandated matching would impose a considerable burden on State resources. One State felt the reimbursement requirements should be deleted entirely and funds provided by the Federal agencies involved. Another commenter questioned the legality of regulations which require the use of Federal data and require States to pay for it.

Response: We do not believe the cost of obtaining information will present a major obstacle to the success of the matching program. States may enter into agreements to obtain and provide information free of charge or at nominal cost. Furthermore, we believe DEFRA entitles Federal agencies as well as State agencies to request appropriate reimbursement.

One commenter asked whether the reimbursement requirement includes data exchanges with other State agencies. The commenter notes the State already has a productive data exchange program in place and might be placed in the position of paying for information that is available presently at no cost.

Response: The law requires only that accounting systems must be utilized which assure that programs providing data receive appropriate reimbursement from programs utilizing the data. The regulations provide only that the agency must reimburse the provider of information, if requested, for the reasonable costs of matching and do not mandate that a State must begin charging for data that is previously provided without charge. We anticipate many States will want to continue satisfactory relationships and enter into new agreements with other States which will provide for an exchange of information without charge.

Even where the State must pay for such information, we expect that these charges will be modest. In addition, the Federal government will share in these administrative costs.

One commenter suggested to HCFA that if the regulations were implemented in such a way as to permit States to delegate their responsibility to Medicaid providers, the providers should be reimbursed for their added expenses.

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Response: HCFA does not intend that State agencies would delegate IEVS responsibilities to Medicaid providers. We recognize many medical providers assist Medicaid applicants in completing applications and providing income and eligibility information. However, the providers are reimbursed for these administrative expenses through the Medicaid costs reimbursement programs.

7. Standardized Formats

The NPRM and the final rules require State agencies to use standardized formats and procedures for the exchange of data internally within States and for interstate exchanges with programs. These standardized formats will be established by the Secretary of the Department of Health and Human Services (HHS), in consultation with the Secretary of Agriculture, (based on the results of the HHS Inspector General study) for State wage, UC and public assistance data. State agencies must also use (a) the formats and procedures prescribed by the Internal Revenue Service (see Revenue Procedure 85–21) for obtaining unearned income information, and (b) the formats and procedures prescribed by the Social Security Administration in various published documents for obtaining benefit, pension and earnings data and for verifying SSNs.

Two commenters suggested there should be a single format for accessing all Federal sources of information at IRS and SSA.

Response: We recognize that multiple input and output record formats for the various Federal information sources represent a burden on States. Both IRS and SSA, however, are working with the HHS Inspector General task force on standardized formats to develop formats which are compatible with one another as well as with the standardized formats to be used for obtaining State data.

Two commenters expressed concern that the formats were not yet finalized. One commenter recommended that the matching requirements of these rules should be suspended until the formats are released, and another commenter maintained that State agencies should have an opportunity to comment on the formats before they are released.

Response: We expect the standardized formats to be issued by the Secretary of HHS soon after publication of these rules. If the issuance is delayed, we will provide further guidance to States on interim procedures to be used; we do not, however, anticipate any suspension of the matching requirements. The standardized formats have been developed with the participation of 17 States in pilot testing. We believe there has been adequate opportunity for State comments to be made and addressed in this process.

Two commenters stressed that formats should be required for interstate exchanges. One of these commenters suggested the requirements should be limited to interstate exchanges.

Response: When the standardized formats are published, the Federal agencies will provide further instructions to State agencies regarding the formats. These comments will be considered in the development of these instructions.

One commenter wanted the definition of standardized formats clarified. The commenter believed it should be a minimum set of data requirements which would not entail a costly reformatting of case records.

Response: The intent of standardizing formats is to allow for the creation of files specifically for matching purposes. These formats require the minimum set of data elements necessary for a successful match and can be maintained independently from the case record.

8. Automation

In the common preamble to the NPRM we stated our view that the statutory requirement for IEVS mandated a logical process and not necessarily a physical or automated system to assure the timely and efficient exchange of information among the various programs. The needs-based programs currently have systems in place for exchanging and maintaining such data, but these systems vary in degree of automation. Although an increasing number of States are operating automated on-line systems to exchange, maintain and make data available to workers, we did not propose to require this level of automation. We also suggested that State agencies explore ways to integrate the IEVS processes into their current systems. The only specific proposal for automation was that non-UC SWICAS must have machine readable data bases.

We propose that costs for systems development and operations to support receiver agency requirements be allocated by programs under an approved cost allocation plan and be reimbursed at appropriate matching rates. We reminded State agencies to request prior approval accordiing to existing regulations and guidelines.

FNS did not propose to require an overall, computerized system, but encouraged the use of automated technology in developing efficient methods of matching. FNS proposed that State agencies with automated data bases would be required to enter all SSNs into the automated data base.

OFA did not propose new, separate systems to carry out the provisions of DEFRA but expected agencies to modify existing eligibility and information systems to accommodate the new requirements. The final rule has been modified at 45 CFR 205.51(d) to require the submittal of a request for prior approval, where appropriate, for any new developmental ADP costs associated with IEVS implementation. This is consistent with the language in the NPRM preamble, and is incorporated into regulatory text to emphasize the applicability of this requirement to these provisions. This requirement applies to costs incurred by another agency which will seek reimbursement from the State agency, e.g., for the development of a wage collection system, as well as costs incurred directly by the State agency.

HCFA did not propose new or separate systems but proposed to require the maintenance of the SSN, name and other data elements in a specified format in order to be able to conduct the required data exchanges. The State Medicaid agency was required to access SWICA, IRS and SSA data in an automated fashion, however.

a. General

Ten commenters stated automation would be required to meet IEVS requirements fully.

Response: We agree that automating the required IEVS functions would enhance a State agency's ability to respond timely to the substantial amount of information made available to the State agencies as a consequence of the data exchange requirements. We do not believe such automation should be required in these rules. In some States, compiling the requested records into the prescribed formats and printing the returned data for transmittal to the workers may be the only functions requiring automated processing, with all the other functions and processes performed manually. Each State agency must determine the relative costs and benefits of various levels of automation necessary to meet IEVS requirements.

Two commenters recommended that the Federal agencies authorize an increased percentage of Federal financial participation (FFP) to ensure that the States have the ability to implement the system, and also suggested the development of guidelines for requesting approval.

Response: Each Federal agency has the authority to respond to requests for enhanced matching rates contained in the State agency's Advance Planning

Document (APD) or APD amendments in accordance with existing agency policy and regulations. The decision to approve or disapprove such requests will be dependent upon whether the costs for the system are allocable or attributable to the automated system qualifying for the higher match. We believe that existing rules and procedures for requesting prior approval for enhanced funding for automating processes are sufficient for the purpose and must be followed by State agencies.

One commenter recommended a demonstration project for the development of system components.

Response: The systems requirements contained in the rules have been adequately demonstrated in current practice. Many States already have systems for handling wage and UC data for AFDC and FSP. The SSI Program has successfully matched with IRS data using the procedures that States will use. We also recommend that State agencies review the catalog of Automated Front-end Eligibility Techniques which may be obtained from the Department of Health and Human Services' Office of the Inspector General. We believe that this material and other material available from States with operating experience should provide a good base for other systems development.

One commenter stated that his State agency does not have an automated front-end eligibility system and the creation of one would cost a great deal and entail major modifications of the existing client information system.

Response: The agency is not required to create an automated front-end eligibility system. If the applicant and recipient population is so small that a front-end system has not been cost-effective so far, it is unlikely that the IEVS data received will make automation necessary.

One commenter believed that identical State systems would be necessary to implement the provisions.

Response: It is not administratively feasible nor desirable to require all State and Federal agencies to have identical systems. Each agency has its own systems requirements and each has developed systems that serve its own needs.

Each system has different degrees of automation and different processing techniques to carry out the agency's functions. The requirement for use of standardized formats will ensure that information can be exchanged between different systems. Our policy is to provide the States with maximum flexibility to develop systems to meet their specific needs.

A number of commenters did not agree that implementation of the IEVS can be done at a relatively low cost by making minor modifications to existing systems, partly because of staff costs involved in follow-up actions.

Response: We agree that the staff costs involved in follow-up actions could be greater than the systems development and maintenance costs and that these costs are difficult to estimate. However, studies conducted on wage matching and other computer matching for income and eligibility verification show that activities required by these rules can be carried out on a cost effective basis. These studies include:

- U.S. Department of Health and Human Services, Office of Inspector General, *Computer Matching in State Administered Benefit Programs*, Washington, D.C. Government Printing Office, June 1984.
- U.S. General Accounting Office, *Better Wage Matching Systems and Procedures Would Enhance Food Stamp Program Integrity*, GAO/RCED–84–112, September 11, 1984.
- U.S. General Accounting Office, *Legislative and Administrative Changes to Improve Verification of Welfare Recipients' Income and Assets Could Save Hundreds of Millions*, GAO/HRD–82–9, January 14, 1982.
- Greenberg, David H., and Pfiester, Jennifer. "Wage Matching Techniques Used in Administering the Food Stamp and AFDC programs: An Interim Analysis," Research report sponsored under grant number 59–3198–142 by the U.S. Department of Agriculture, Food and Nutrition Service, February, 1983.
- Greenberg, David, and Wolf, Douglas. "An Evaluation of Food Stamp and AFDC Wage Matching Techniques", Research sponsored under grant number 59–3198–142 by the U.S. Department of Agriculture, Food and Nutrition Service, May 1984.

One commenter thought the regulations provided insufficient information for designing the system.

Response: We are publishing this information in manuals and other instructions. To this end, the following materials have been made available to the State agencies for designing the system.

- *Tax Information Security Guidelines* (for Federal, State and Local agencies). Department of the Treasury, Internal Revenue Service, Publication 1075 (Rev. 7/83)
- *Beneficiary and Earnings Data Exchange (BENDEX) Handbook.* U.S. Department of Health and Human Services, SSA Pub. No. 68–0610601.
- "Enumeration Verification System (EVS) User's Package for State Welfare Systems." SSA Office of Systems Requirements (301–594–3593)
- "Revenue Procedure 85–21: Return Information. Federal, State and Local agencies." *Internal Revenue Bulletin*, No. 1985–14, April 8, 1985.
- *State Data Exchange (SDX) Handbook.* U.S. Department of Health and Human Services, SSA Pub. No. 68–0502601.

b. IEVS Systems Support

A number of commenters expressed some concern regarding automated systems and their ability to support State agency information needs relating to the implementation of the IEVS requirements. A few commenters suggested possible revisions to Federal systems that could increase the efficiency and effectiveness of these systems.

Two commenters suggested information from the Veteran's Administration (VA) and the Railroad Retirement Board (RRB) would be useful to State agencies. One commenter added that the Bureau of Indian Affairs (BIA) has information that may be useful to certain States.

Response: In response to this and previous requests, we are exploring with the VA whether and how access to VA compensation and benefits information might be available. Access to VA and BIA information is not authorized by the statute. However, BENDEX currently reports RRB status (active or terminated). We have referred the suggestions on expanded access to the President's Council on Management Improvement, which is responsible for interagency coordination in this area.

One commenter asked about obtaining military pay data.

Response: Even though it is not required by current rules or by DEFRA, many agencies have agreements with military bases in their States to supply information on military personnel who apply for or receive benefits. The Department of Defense (DOD) has also established the Defense Enrollment/Eligibility Reporting System (DEERS), an automated file containing pay, health insurance and entitlement information on all active duty and retired military personnel and their dependents. A DOD/HCFA pilot project using this information to identify third party health insurance payors has recently been conducted with positive results. As soon as the report is available, it will be distributed to the States. We expect that DEERS will provide useful earnings information to public assistance agencies as well.

There were suggestions from States that SSA provide additional information on the SDX system; e.g., personal property information and direct deposit information.

Response: Codes which reflect the existence of various types of personal property and use of direct deposit are

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available on SDX. The specific source, address, amount, or direct deposit bank are not available. This is explained in the SDX Handbook (SSA Pub. No. 68-0502601).

9. Monitoring

a. Quality Control

The three agencies proposed to require that IEVS information be used in QC reviews. OFA and HCFA specifically proposed to require that the IEVS information be made available to HHS to be used in the Federal QC review process. Rules for the FSP would have the same effect. The preamble to the NPRM stressed that each State agency would continue to be responsible for the accuracy of its eligibility and payment amount determinations as determined by the QC system, whether it complied with the requirements of these rules or not.

One commenter thought the QC review should be based on the State plan for reviewing and determining the priority of information and ordering of information for followup, because to use criteria to determine whether an agency is responsible for erroneous payments other than as described in the agency's State plan places the State agency in an unfair position. Another commenter thought that if State agencies are permitted to take action only on priority match information which would have an effect on the agency's error rate, the rule should specify that these errors would not be used to determine the error rate. One commenter recommended that State agencies be given a grace period for implementation of these rules during which QC errors resulting from IEVS matches would not be counted.

Response: We do not agree with these comments. The new State plan requirement that the State utilize additional sources of information for determining eligibility and the amount of assistance payments does not supersede the requirement to use other sources. Thus, the requirement to establish and use IEVS does not relieve State agencies of the responsibility to explore all areas of potential wage, income, resource, and income information in determining eligibility and payment amounts and use that information in the eligibility determination process. We do not believe QC programs should be revised because the State agencies have additional information available to determine eligibility. The QC process (Eligibility QC for Medicaid) will continue to focus on whether the eligibility status is correct for a case, and not on the process used to arrive at that decision. The final rules for all programs have been amended to emphasize that the requirements for matching and followup do not relieve the State agency of its responsibility for the determination of erroneous payments and/or its liability for such payments. To fail to hold agencies responsible for erroneous payments would be inconsistent with other statutory requirements.

The final rules do not provide for a grace period for QC errors which might be discovered through IEVS matches. Based on State experience implementing new data exchanges, we do not believe that QC errors will increase due to this rule.

As discussed earlier in this preamble, the requirement that State agencies give priority action to IEVS data which is most likely to be useful in verifying eligibility and benefits has been deleted.

A commenter thought the Federal QC review should not cite a difference with State QC findings if the original State QC review correctly used the information sources specified and subsequently more recent information became available for Federal review.

Response: It has been a longstanding QC policy to conduct a Federal review based on case circumstances and any information available at the time of the rereview. During the rereview, if a case is found to be in error, errors will be cited regardless of whether or not there is a time lag in obtaining information. However, since the Federal review should occur shortly after the State reports its findings, this should rarely happen.

One commenter stated that State agencies should not be held accountable for incorrect information provided by the Federal government, such as the data on the BENDEX.

Response: The State agencies remain responsible for ensuring that any information they use in determining eligiblity and payment amounts is correct. (See discussion on verifying information in section 4 of this preamble.)

b. Maintenance of Records and Reports

The NPRM for AFDC, Adult Assistance and Medicaid contained proposed information reporting requirements that required State agencies to maintain records for (a) tracking the status of match results sent to caseworkers for follow-up and (b) for reporting data on the actions taken and the savings realized based on the matches. FSP rules addressed only the latter reporting requirement.

Five commenters specifically objected to the requirement for tracking the status of match results sent to caseworkers for follow-up, citing the difficulty of tracking each match (especially on applicants). One commenter believed the regulations should state that there is no follow-up or disposition required when there is no "hit"; one believed there should be no further tracking when the data does not affect a case.

Response: The FSP rule has been modified to be consistent with AFDC, Adult Assistance and Medicaid in requiring State agencies to use appropriate procedures to monitor the timeliness requirements. The Federal agencies believe a method to monitor the status of match results is necessary to assure that a State is in compliance with the requirement for acting on information within a specified timeframe. The requirement pertains only to information obtained through the IEVS; and if there is no match, then no follow-up is required. The system may be either automated or manual. The system must maintain the status of the match result until such time as case action is taken or the State agency has determined that the information does not affect the case. State agencies are expected to track these actions in the same way that they track such activities as the timeliness of application processing and the completion of fair hearings. It is only by means of such tracking that State agencies can comply with the requirements for monitoring program administration and operations.

Thirty letters responded to our request for comments on the requirement for a reporting system to capture data on actions taken and savings realized; more than fifteen commenters believed such a system would be too costly and burdensome to develop and maintain. Three commenters also indicated the reporting system would not produce reliable data on savings and cost avoidance. Some of the commenters suggested alternative ways to provide data on the outcome of matching, such as case sampling and targeted national studies. One commenter stated that current reporting was not specifically mandated by DEFRA and another commenter believed the QC review and reporting process should provide sufficient data to evaluate the agency's use of the data. Three commenters thought there should be a pilot test of the reporting requirements, and one commenter suggested the rules permit the State to submit for approval a plan for reporting. Several commenters recommended that any reporting requirements imposed by the Federal agencies should be uniform, and one

commenter believed reporting should be no more frequent than annually.

Response: While reporting was not mandated by DEFRA, we believe that it is necessary to help ensure the proper and efficient administration of the programs. In response to these comments, we are developing uniform, annual reporting requirements intended to minimize the record keeping and reporting costs and burden on States, while enabling the Federal government to monitor compliance with the requirements for accessing and using information. Specific instructions on reporting will be sent to each State agency. We intend to require State agencies to maintain and report annually on: (a) the number of agency records submitted to each IEVS source agency, (b) the number of positive match results received from each source agency, and possibly, additional minimal information, but only that which should be readily available to the State. We need consistent reporting of these elements and cannot permit States to develop individual reporting plans. A State agency may, of course, maintain whatever additional information is necessary for reporting of data on dollar savings and cost avoidance to State officials, for management information purposes. In addition, we intend to conduct targeted program reviews in selected states after these matching requirements are fully implemented. We will review case files and related documentation on cases where action has been taken as a result of IEVS data. States are expected to maintain records of case action based on IEVS-obtained information as they do for other case actions. The Federal agencies have made final rule changes which require State agencies to maintain necessary records on the use of IEVS information.

10. Implementation

The final rules require State agencies to implement the requirements within 90 days of publication of these rules. We are providing 90 days to help ensure that State agencies can implement the requirements of the rule, including approval of plan submissions. Costs incurred in implementing this rule are eligible for Federal financial participation. Exceptions to the 90 day implementation period are:

(a) Medicaid agencies were required to obtain the SSNs of Medicaid applicants and recipients effective April 1, 1985 (pursuant to Medicaid Program Memorandum 85-3-State Plan Preprint);

(b) Food Stamp and AFDC agencies must maintain during the implementation period the level of effort required under prior regulations regarding wage matching;

(c) all State agencies must comply with the requirement regarding independent verifiacation of IRS unearned income information effective upon receipt of the IRS information;

(d) all State agencies must have a source of employment-related data through the State Wage Information Collection Agency (SWICA) by September 30, 1988, in accordance with the requirements of Section 1137(a)(3) of DEFRA; and,

(e) a State agency may request and may receive a waiver through September 30, 1986 in order to delay implementation of any other provision of the regulations other than c. above (i.e., independent verification of IRS unearned income information).

Except where permitted by waiver as described in paragraph (e) above, State agencies must also as of the effective date of these rules:

(a) request IRS unearned income information on all current recipients; and,

(b) accrete to the BENDEX system all current recipients not previously accreted. Where the State has accreted individuals but not estabished earnings exchange, the State also reaccrete these individuals for this purpose.

Several State commenters believed implementation would take longer than permitted by statute and the waiver provision should permit longer delays. Several commenters were concerned about implementing the new system because of State budget considerations. Some of these States legislatures will not meet soon enough to appropriate the funds necessary for implementation.

Response: We have no authority to permit delays beyond September 30, 1986. Furthermore, we believe that the matching requirements were sufficiently specific in the statute for States to have taken whatever legislative action as may have been necessary to ensure full implementation before September 30, 1986. All State agencies have income and eligibility verification processes in place and most are currently using some of the sources required by these rules.

Several comments were received regarding increased costs of implementing and operating the verification system. One commenter stated that personnel and computer time must be redirected to implement the new rules while more effective error-rate reduction efforts must be delayed; the commenter further stated the rule would result in an agency's receiving information that would be useful for error reduction, but would result in a short-term increase in current errors.

Response: Although initial implementation of the system may affect workload management, this should be temporary and minimal. Additionally, if severe problems are anticipated, a delay in implementation of specific provisions may be granted until September 30, 1986. This should be enough time to implement the system and avoid major workload disruptions or increases in current error rates.

One commenter suggested the regulations should require that each State, rather than each agency, submit a request for a delay in implementation.

Response: We do not permit a State to submit one request for the whole State for a delay in implementation because the delay may effect only one program. The State may, however, submit the same request to both Secretaries. The three agencies will consult with each other before approving or disapproving a delay in implementation.

One commenter stated waiver requirements must be specific and must allow State agencies sufficient time to respond.

Response: A State agency must include in its request for delay in implementation at a minimum the following:

(1) The provision;

(2) The date the State agency will implement the provision;

(3) Justification for not being able to implement within 90 days of publication of the final rule; and

(4) Implementation plan (what steps the State agency plans to take to implement the provision by the date given in item 2 above). The implementation plan should describe any system or program improvements necessary to comply with the rules and the steps to be taken to make these improvements (such as the submission of an advance planning document (APD) or legislative action).

Executive Order 12291

Executive Order 12291 requires a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one which has an annual impact on the economy of $100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment investment, productivity or innovation.

This rule has been reviewed under Executive Order 12291 and has been classified "not major". The FNS portion of this rule will not have an annual effect on the economy of $100 million or more, nor are the rules likely to result in

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a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The SSA portion of this rule will have an annual effect of more than $100 million and therefore does constitute a major rule. However, these program costs and savings are a direct result of DEFRA. Since the Secretary of HHS has no discretion in implementing the statutory requirements, the Office of Management and Budget (OMB) has granted a waiver from the requirement to conduct a regulatory impact analysis.

HCFA Voluntary Regulatory Impact Analysis

HCFA has determined that a regulatory impact analysis is not required for this final rule. Nevertheless, HCFA recognizes concerns with potential impacts, and that annual savings in the Medicaid program may eventually exceed $100 million. Therefore, HCFA has provided a voluntary impact analysis. Comments relating to this analysis are discussed above in the specific topical areas.

Implementation of this rule will result in Federal savings in the Medicaid program to the extent additional applicants and recipients are discovered to be ineligible for Medicaid benefits as compared to those found eligible under existing income and eligibility verification systems. HCFA actuaries estimate that implementation eventually could save as much as $100 million per year in Federal Medicaid program expenditures once the system is fully operational.

The Federal Medicaid program savings are likely to result from the following:

- $50 million would occur without action by HCFA or State Medicaid agencies as a direct result of termination of ineligible individuals from the SSI and AFDC programs as a result of new or expanded data matches on unearned income.
- $20 million in Federal savings would result from matching by States of Medicaid program eligibility and income data against other data on unearned income and taking action to terminate ineligible individuals from medical assistance-only programs.
- An additional $30 million in Federal Medicaid program savings might result from implementation of a data system for wages; i.e., the potential availability of health insurance through employment, or the potential to purchase insurance through employment-related programs.
- We expect it would take three years to achieve the $70 million of annual Federal savings related to matching on unearned income. However, the quarterly reporting data match system for wages for wages is not required to be in place until September 1, 1988. Consequently, the full savings would probably not be achieved until FY 1989 or FY 1990.

As the range of comments received demonstrates, the costs of implementation and operation of the revised system will vary from State to State. We recognize in some States the costs may be high. However, it is these States which we believe will benefit the most from the system. The States that already have operational income and eligibility verification systems will not benefit as much. But, on the other hand, implementation costs for them will be relatively small. The following includes a discussion of a number of factors that will affect the magnitude of the ultimate costs.

First, we expect States will modify existing State eligibility and information systems, rather than develop new systems. However Wyoming and Puerto Rico now have no automated Medicaid data processing at all, and may have to develop new systems to access information in an automated fashion.

Where there are existing systems, those systems will have to be modified to use SSNs as required by these rules, and will have to be modified to use the standardized formats developed. This will result in implementation costs and increased operating costs beyond what States currently expend. For each State, the actual increase in administrative costs will be dependent on the current level of automated systems and wage and income matching in the State. Currently, 17 States have integrated their Medicaid eligibility determination systems with eligibility determinations for other means-based programs that would be covered under these IEVS requirements.

Further, each of the following activities and procedures will require design, developmental, and implementation costs:

- Data matching;
- Data management;
- Data security;
- Investigation and independent verification of meaningful matches; and
- Applicant and recipient notification and follow-up.

Once implemented, each of these activities and procedures will require ongoing operating costs, which will also be incurred for tape exchanges and legal services.

Depending on how States implement these regulations operationally, the resulting costs could be large or relatively small. We believe the necessary changes can be made at relatively low costs, primarily by making minor modifications to existing systems. Nonetheless, the costs of such systems raise the possibility that the savings resulting from implementation of these proposals could be exceeded in some States by the costs for at least the first years, during which implementation costs will be at their highest, while savings will occur later. Because of the possible risk of adverse outcomes in some States, we expect that the costs and benefits of this program will be closely monitored by the State agencies, and we will be reviewing the degree of success of the program on an ongoing basis.

Many recipients participate in more than one program, and eligibility for one program is often related to eligibility for other programs. For example, AFDC and most SSI recipients are usually eligible for Medicaid. However, eligibility requirements are not identical between any two programs. Therefore, even if an individual or family loses eligibility under one program, they may retain eligibility or be eligible on another basis for other programs.

It is estimated that the matching of unearned income would eliminate about 30,000 individuals from the SSI rolls. Many of these individuals would also lose their categorically-needy Medicaid eligibility, but some could be expected to be eligible for Medicaid under the medically-needy option that 32 States currently follow. Similarly, some of the individuals eliminated from the AFDC rolls would come back onto the Medicaid rolls under the medically-needy option.

This regulation is likely to result in a significant reduction of Federal Medicaid program expenditures and an increase in administrative costs. The savings potentially may exceed $100 million annually. However, these savings would be primarily a result of the statutory requirements of section 2651 of Pub. L. 98–369, not this rule. The amount of increase in costs will depend largely on the systems currently in place for income and eligibility verification

and on decisions made by the State agencies regarding how the new requirements will be implemented. However, we do not expect these costs to exceed $100 million annually or to exceed any other threshold criteria for major rules. Therefore, we have determined that a regulatory impact analysis is not required.

Executive Order 12372 (Applicable only to the Food Stamp Program)

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notices to 7 CFR 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) and the Secretaries of DHHS and USDA have certified that it will not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, nonprofit organizations that are not dominant in their field, and governmental jurisdictions of less than 50,000 population. States and individuals are not treated as small entities under the RFA. This rule would change Federal regulations to comply with Pub. L. 98–369 by requiring State agencies to implement a system for verifying income and eligiblity and would set standards for certain State agency actions. State agencies would be affected in varying degrees by the need to develop new administrative procedures. Applicants and recipients would be affected to the extent information obtained from the verification system and from follow-up action would increase State agency effectiveness in identifying and taking appropriate action on applicants and recipients with respect to eligibility status and level of benefits.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pl. 96–511), the collection of information requirements that are included in these final rules have been submitted to the Office of Management and Budget (OMB) for review and approval. A notice will be published in the **Federal Register** when approval is obtained.

Organizations and individuals desiring to submit comments on these collection of information requirements should direct them to the agency officials designated as information contacts earlier in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, D.C. 20503, Attn: Fay Iudicello (for the AFDC and Medicaid programs) or Marina Gatti (for the Food Stamp Program).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

ADDITIONAL SUPPLEMENTARY INFORMATION:

Federal-State Unemployment Compensation Program

The Employment and Training Administration (ETA) is issuing final regulations to provide for the participation of the State employment security agencies (SESA) in an income and eligibility verification system. DEFRA amended the Social Security Act to require income and eligibility verification exchange among State and local agencies administering various federally-assisted programs including the Federal-State unemployment compensation program. Under prescribed conditions, wage, income and benefit information on individuals will be exchanged among the agencies administering the identified programs. The disclosure and exchange of information is limited to program purposes and must be safeguarded against unauthorized disclosure. Section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended title XI of the Social Security Act by adding section 1137 which established an income and eligibility verification system for the exchange of information among State agencies administering specified programs. The programs are: Aid to Families with Dependent Children (AFDC), Medicaid, Food Stamps, Unemployment Compensation (UC), and any State program under a plan approved under Title I, X, XIV of XVI or the Social Security Act. Programs participating in the income and eligibility verification system are required to share information to assist in the child enforcement support program and to assist the Secretary of Health and Human Services in verifying eligibility amounts under titles II and XVI of the Social Security Act.

Section 2651 of the DEFRA also amended section 303 of Title III of the Social Security Act to require the State agency charged with administering the UC law to participate in the income and eligibility verification system. Section 303 has previously required only that State UC agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support agencies. Section 3304(a)(16) of the Internal Revenue Code of 1954 has required that State UC agencies disclose wage information to AFDC agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State UC agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture).

The wage date will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to information on income and earnings of individuals from the Social Security Administration and unearned income from the Internal Revenue Service.

ETA's regulations do not contain specific requirements as to the extent to which information must be utilized in verifying eligibility and benefit amounts. Eligibility and benefit amounts are determined under State rather than Federal, UC laws. The State UC laws have considerable latitude under Federal law in determining the usefulness and effectiveness of various sources of information. In addition, ETA continues to work with State UC agencies on improved methods for ensuring correct and timely payments of benefits.

The Supplementary Information section of the published proposal (50 FR 10450–10456) is hereby incorporated in this preamble by reference.

The final regulations incorporate the substantive changes and improvements to the published proposal. The proposal was published in the **Federal Register** on March 14, 1985. Comments on the proposal published on March 14, 1985, were solicited through April 29, 1985.

The Department received timely written responses to the proposal from 11 State employment security agencies, 11 State Health and Human Resources agencies, 1 County Social Service agency and 1 association for housing authorities. Comments were received from Alaska Department of Health and Social Services (AL–DHSS), Alaska Department of Labor (AL–DOL), Arizona Department of Economic Security (AZ–DES), California Employment Development Department

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(CA–EDD), Florida Department of Health and Rehabilitative Services (FL–DHRS), Kentucky Cabinet for Human Resources (KY–CHR), Maine Department of Human Services (ME–DHS), Maryland Department of Human Resources (MD–DHR), Massachusetts Department of Public Welfare (MA–DPW), Minnesota Department of Human Services (MN–DHS), Minnesota Department of Economic Security (MN–DES), Nebraska Department of Social Services (NE–DSS), Nevada Employment Security Department (NV–ESD), Ohio Burea of Employment Services (OH–BES), County of Lucas, Ohio Department of Human Services (CoL–DHS), Association of Oregon Housing Authorities (AOHA), Oregon Employment Division (OR–ED), Pennsylvania Office of Employment Security (PA–OES), Texas Department of Human Resources (TX–DHR), Vermont Department of Social Welfare (VT–DSW), Washington Employment Security Department (WA–ESD), Wisconsin Department of Health and Social Services and Department of Industry, Labor and Human Relations (WI–HHS&DOL) and Wyoming Employment Security Commission (WY–ESC). Many of the comments received addressed the regulations proposed by the Department of Agriculture and Health and Human Services to which the Department of Labor cannot respond. The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations.

Following is a summary of the comments directed specifically to the rules proposed by the Department of Labor and the Department's response in order of Section.

Section 603.2 Definitions

Comments on this section dealt mainly with the meaning of "wage information" and "claim information". Oregon (OR–ED) is concerned that a literal interpretation of the term "employer address", included in "wage information", would preclude the current State practice of using the "address of record" which could be an employer's representative or post office box. This interpretation would require considerable procedural change and expense. The Department did not intend in the proposed rules to require SESAs to change any existing data elements maintained on automated files. However, any changes to data elements and systems required by a requesting agency fall under the requirements in Section 603.6(b)(5) covering reimbursement for costs incurred in providing data.

Ohio (OH–BES) questions the statutory authority for using such a broad definition of "wage information." It questions the need to include the employer's name and address in the definition when the purpose of collecting wage information is to verify eligibility and compute benefits. It is also concerned that if a State changed from a wage request system to a wage record system before September 30, 1988, that the definition of "wage information" would be imposed before the change.

The Department believes that the statutory language requires disclosure of any information maintained by SESAs that is needed by requesting agencies for verifying eligibility and benefit amounts. Therefore, if wage information is available prior to the September 30, 1988 effective date, we believe DEFRA requires it be provided to requesting agencies. Additionally, we believe the collection of information regarding the name and address of the individual's employer is reasonably related to ensuring eligibility and the accuracy of wage information.

Comments were received from California (CA–EDD), Minnesota (MN–DHS), Oregon (OR–ED), Ohio (OH–BES) and Washington (WA–ESD) on subsection (5) of "Claim Information." California, Minnesota and Ohio object to disclosable claim information being defined in terms of what requesting agency needs rather than what is available on an existing data base. These SESAs are concerned that implementation of subsection (5) could lead to disclosing information contrary to existing State laws and agreements and the intended purpose of Pub. L. 98–369 itself. They also point out that most of the substance under the "wage information" and the "claim information" definitions is identical. Ohio also feels that this section is completely without statutory foundation. California feels this provision needs more specificity as to what information can be released. Minnesota feels that the information to be released should be limited. Washington (WA–ESD) indicates that data relating to job refusal is maintained on their system only if the refusal results in a disqualification. This State maintains it is not practical to have the level of detail specified in Section 603.2(c)(4) on their system. We believe that the definitions of wage and claim information are reasonably related to the statutory language which requires agencies to disclose any information that is needed to verify eligibility and benefit amounts. To the extent such disclosures are required for compliance with DEFRA, modification to State law may be necessary.

The Department feels that the word "useful" may be too broad. The language of subsection (c)(5) has been changed from "which the requesting agency determines is useful" to "which is needed by the requesting agency to verify eligibility and benefit amounts." We expect the agreements will detail specific information to be disclosed and that the requesting agency must demonstrate why information is needed as a condition for disclosure. No other changes have been made to this section of the proposed rules.

Section 603.3 Eligibility Conditions for Claimants

Section 603.3 requires claimants to furnish their Social Security Numbers (SSN) as a condition of eligibility for UC. Wisconsin was concerned about the inconsistent use of the term SSN and Social Security *Account* Number (SSAN) among the various Federal agencies. Most of the Wisconsin agencies use SSAN only where benefits are being paid on a social security claim. Although the two terms are synonymous in Federal usage, in order to avoid confusion the Department has used only the term SSN throughout the rules.

If a claimant fails to refuses to provide a SSN the claimant will be ineligible for UC. Subsection (c) provides that an ineligible claimant may become eligible if a SSN is provided and the claim may be backdated to the initial filing date. Two comments dealt with this subsection.

Arizona (AZ–DES) indicates that no backdating of claims is allowed under State regulations and sees no reason to "reward" a claimant who refuses to provide required information. Oregon (OR–ED) does not oppose backdating, but suggests that a time limit be imposed. DEFRA contains no specific requirements regarding backdating. Backdating of claims is an issue now decided under State law. The Department of Labor feels, therefore, that the regulation should permit backdating only to the extent permitted under State law. The language of subsection (c) has been changed from "retroactive to the date of filing an initial claim" to "retroactive to the extent permitted under State law."

Section 603.4 Notification to Claimants

Two comments addressed the DEFRA requirement that the agencies notify applicants, at the time of application and periodically thereafter, that information about them will be exchanged and used to verify income and eligibility. Wisconsin (WI–HHS&DOL) notes that the term "periodically" will be defined by individual programs and suggested that the Federal Government issue a single statement on the minimum frequency of required notices. It prefers that all of the rules use the food stamp notification in 7 CFR 273.2(b). Oregon (OR–ED) feels it is an undue burden to require notification at the initial claim stage as well as periodically and suggests only one notification.

The language of DEFRA under section 1137(a)(6) requires that applicants be notified "at the time of application, and periodically thereafter, that information available through the system will be requested and utilized." Periodically was defined in a proposed Unemployment Insurance Program Letter (UIPL) published in the **Federal Register** on June 14, 1985. Since no comments were received on this definition, it is being incorporated into these final rules in response to the comments on the proposed rules. The periodic notice requirement will be satisfied with provision of a printed notice on or attached to any subsequent additional claims.

Section 603.5 Disclosure of Information

This rule requires State UC agencies to disclose information to authorized requesting agencies and requires adherence to standardized formats. Oregon (OR–ED) and California (CA–EDD) feel it is unreasonable to require "standardized formats" which had not yet been established, reviewed or commented on. Under section 1137(a)(4) the State agencies must "adhere to standardized formats and procedure established by the Secretary of Health and Human Services (HHS) (in consultation with the Secretary of Agriculture.)" HHS has sponsored pilot tests of standardized formats. These formats will be issued initially as guidelines in order to provide the flexibility to make any needed changes.

Ohio (OH–BES) is concerned that the proposed rules permit disclosure of information beyond the authority granted by Federal and State law. It is particularly concerned about the disclosure of "claim information" as defined in Section 603.2(c)(5). This comment has been addressed in Section 603.2.

California (CA–EDD) is also concerned about having to disclose information simply "deemed by the requesting agency to be useful" and suggests that the rules ensure that no rearrangement of priorities detrimental to the programs providing the data be required. The establishment of priorities is an issue of operation not regulations. This issue has been addressed in section 603.2 and should be worked out as part of the agreements.

Section 603.6 Agreement Between State Unemployment Compensation Agency and Requesting Agency

Maine (ME–DHS) commented that agreements are unnecessary since the statute requires State agencies to exchange information. As indicated in the summary to the general preamble, we disagree. Agreements are needed to protect data and establish appropriate reimbursement and procedures for access and use.

Minnesota (MN–DES) commented that the rule is vague regarding the procedures to follow if the requesting agency is a UI agency or a SWICA. California (CA–EDD) is concerned about the lack of a procedure for resolving disputes arising out of the agreements. It indicates that constant telephone requests for immediate information could not be accommodated. Pennsylvania (PA–DOL) feels that a model agreement would be helpful. These comments are concerned with operational issues and can be addressed in the agreements and with UIPLs. Model agreements are being developed and use of them should help State agencies expedite arrangements for the exchange of data.

Section 603.7 Protection of Confidentiality

This section lists the measures required by the requesting agencies to protect the confidentiality of information received from the State UC agencies against unauthorized disclosure. California (CA–EDD) is concerned about subsection (a). This subsection states that the UC agency shall require the requesting agency to comply with UC's provisions against disclosure. California feels that confidentiality should be the responsibility of the *receiving* agency, and that the furnishing agency's responsibility should terminate upon verification that the requestor is properly authorized to receive the information. The Department disagrees with this suggestion. The information disclosed by the furnishing agency is UC information. Since any violations of disclosure are covered under the State UC law, the ultimate responsibility must lie with the UC agency to protect its own information. One method of protecting this information will be the onsite inspections by the State agency.

Comments by Wisconsin and Oregon are on subsection (a)(6)(ii). Wisconsin feels it unnecessary ot have each employee sign a written acknowledgment in light of existing Federal and State penalties for disclosure of UI information. Each State should devise its own methods. Oregon suggests this provision be struck as it is "massive overkill" to require *all* employees who *might* access information to sign a written acknowledgment. This State recommends that the agency Administrator be required to sign an acknowledgment on behalf of the entire agency attesting to agency's policies and procedures regarding confidentiality. The Department agrees with these suggestions. The final regulations are modified to incorporate Oregon's suggestions that the Administrator be required to sign an acknowledgment on behalf to the entire agency.

Ohio feels that subsection (b) is contrary to its State law and oversteps the rulemaking authority allowed by the Federal statute. It also points out that no disclosure restrictions are placed upon individuals, requesting agencies, attorneys, prosecuting authorities or authorized agents who receive information from a requesting agency. Under section 603.7(b)(5) redisclosures by a requesting agency are permitted only if "provision for such redisclosure is contained in the agreement between the requesting agency and the State UC agency." Restrictions on redisclosure by third parties can and should be incorporated into these agreements. Therefore, no changes are made in the final regulations.

Texas (TX–DHS) feels that additional language should be added to subsection(c) specifying that "onsite inspections should be required and approved in advance." In regard to Federal inspection, since this is State data, it is most appropriate for State officials to be responsible for any inspections. Accordingly, the final rule has been revised to provide for onsite inspection by State officials only.

Section 603.8 Obtaining Information from Other Agencies and Crossmatching with Wage Information

Three States commented on this section. California is concerned that the language in subsection (a) conflicts with the exemption language in the preamble. This subsection could be interpreted as requiring verification of SSN status of *all* UI claimants through the Social Security Administration, which would be unnecessarily costly and burdensome. It is recommended that the language reflect that of the preamble or at the least that the term "shall" be changed to "may". Massachusetts feels

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that an additional match with the Social Security Administration for wage information is redundant.

Oregon addressed subsections (b) and (c). It urges that subsection (b) be clarified to indicate that States, and not the DOL, determine what information is likely to be productive in identifying ineligibility for benefits and preventing incorrect payments. Oregon interprets the rule this way, but feels it should be clarified. Although it agrees with subsection (c) that any amplifications must be published in the Federal Register, it feels the language was too broad and vague.

The Department feels this section follows the statutory language and does not go beyond it. Therefore, no change is proposed in the final regulations.

Section 603.9 Effective Date

Six States commented on the effective date. Oregon and Florida indicated that the April 1, 1985 effective date is unrealistic in view of each State's need to develop automated systems. Arizona suggests that waiver requests should be considered on an individual basis and extended beyond the September 30, 1986 deadline. This extension should be without sanction and under a mutually agreed upon plan of action. Texas points out that at least five publications relating to the operations of SIEVS are currently unavailable to State agencies. Oregon points out that since the rules were published in the Federal Register on March 14, 1985, there is inadequate time to respond, let alone implement the program. Florida suggests that the September 30, 1986 implementation date is overly optimistic since some agencies, particularly the IRS, have not yet developed the technical requirements for obtaining information from their files.

Comments concerning the short time frame for implementation and the delay in issuing proposed rules are valid. The effective date for implementation, however, is statutory and out of the control of the various Departments involved. The Department recognizes that States may not be able to fully implement the requirements within the 90-day period following publication of these final rules. The Department expects the State UC agencies to request a waiver of those requirements which cannot be met by submitting a plan describing their effort to comply with the requirements of Section 1137 (a) and (b) which includes a time table and appropriate supporting justification.

Section 603.21 Alternative System

This section allows the Secretary of Labor to waive the requirement of quarterly wage reporting by employers if a State has in effect an alternative system which is as effective and timely for providing income and eligibility data. Wisconsin has requested the criteria that will be used by the Secretary of Labor to judge the effectiveness and timeliness of an alternative system as a guide for the states in developing alternative systems. The Department needs to consult with the other federal agencies as to what types of alternative systems are viable. If any alternative system is considered viable, the criteria for it will be published in the Federal Register within 90 days of the date of these final regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, DC 20213; telephone (202) 376-6636 (this is not a toll free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the paperwork requirements that are included in this regulation have been approved by the Office of Management and Budet (OMB) and have been assigned OMB control number 1205-0238.

Trade Sensitive Activity

The Department believes that the final rule in this document does *not* involve trade sensitive activities. This determination is predicated upon the fact that this rule only implements amendments to an individual entitlement program and will only affect individuals applying for benefits under unemployment compensation programs. Consequently, this proposed rule does not fall within the scope of the Office of Management and Budget's definition of a trade sensitive activity.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an income and eligibility verification system and has no economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

I, William E. Brock, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b) that the final regulations published hereinafter (20 CFR Part 603, Income and Eligibility Verification System Final Rule) will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Dated: February 18, 1986.

William E. Brock.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 275

[Amdt. No. 264]

Food Stamp Program; Deficit Reduction Act

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, and 275 are amended as follows:

1. a. The authority citation for Parts 271, 273 and 275 continues to read as follows:

Authority: 91 Stat. 958 (U.S.C. 2011-2027).

b. The authority citation of Part 272 continues to read as follows:

Authority: 91 Stat. 958 (U.S.C. 2011-2029).

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "State Income and Eligibility Verification System" (IEVS) and "State Wage Information Collection Agency" (SWICA) are added in alphabetical order to read as follows:

§ 271.2 Definitions.

* * * * *

State Income and Eligibility Verification System (IEVS)—means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, generally referred to as the IEVS.

State Wage Information Collection Agency (SWICA)—means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, paragraph (c)(1) is revised, paragraph (c)(2) is redesignated as paragraph (c)(3), a new paragraph (c)(2) is added, and paragraph (g) is amended to add a new paragraph (70) in numerical order. The revision and additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in § 272.8(a)(2), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the administration of the Child Support Program under Part D, Title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act;

(iv) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provison of law; and

(v) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received through the IEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards established by the Secretary of the Treasury in section 6103(l) of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines.*

* * * * *

(g) *Implementation.* * * *

(70) *Amendment 264.* These rules are affective on May 29, 1986. No later than that date State agencies are required to submit the attachment to their State Plan of Operation specified in § 272.2 and in § 272.8(i), documenting either full implementation of these rules or good faith efforts to implement them. The documentation of full implementation or of good faith efforts shall show either that the State agency is routinely requesting and using, or shall show the dates when it will begin routinely to request the use, information from the various data sources specified in § 272.8(a) according to the frequancies for requests, timeframes and other requirements of § 272.8(e), (f) and (g). Full implementation shall include requests for available information from the Social Security Administration for all recipients for which such information has not been previously requested. The 30-day timeframe specified in § 272.8(g) is effective for applicant households which become recipients as discussed in § 272.8(e)(1) as soon as a State agency begin receiving information from particular data sources.

(i) A Plan describing good faith efforts shall at a minimum document that the State agency is currently in compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Requests for delays of implementation beyond (insert date 90 days after publication) shall identify the applicable regulation part, the date for implementation, justification for the delay, and the implementation plan.

(ii) The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in § 273.2(f)(9) beyond the initial implementation date of any of these new provisions.

(iii) Implementation schedules beyond September 30, 1986 are not approvable, with the following exception: If on April 1, 1985 no SWICA exists in a particular State, the provisions of the rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in no event later than September 30, 1986. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1986.

4. In § 272.2, the seventh sentence of paragraph (a)(2) is revised, and a new

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paragraph (d)(1)(iv) is added. The revision and addition read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) * * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the optional Nutrition Education Plan, and the plan for the State Income and Eligibility Verification System. * * *

* * * * *

(d) *Planning documents.*

(1) * * *

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

* * * * *

5. A new section, § 272.8, is added to read as follows:

§ 272.8 State Income and Eligibility Verification System.

(a) *General.* (1) State agencies shall maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies shall request wage and benefit information from the agencies identified in this paragraph and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information shall be requested and used with respect to all household members, including any considered excluded household members as specified in § 273.11(c) whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies shall obtain written agreements from these information provider agencies that they shall not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of § 272.1(c). The wage and benefit information and agencies are:

(i) Wage information maintained by the State Wage Information Collection Agency (SWICA);

(ii) Information about net earnings from self-employment, wages, and payments of retirement income maintained by the Social Security Administration (SSA) and available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and Federal retirement, and survivors, disability, SSI and related benefit information available from SSA;

(iii) Unearned income information from the IRS available pursuant to Section 6103(1)(7)(B) of the IRS Code; and

(iv) Claim information from the agency administering Unemployment Insurance Benefits (UIB) and any information in additon to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies shall exchange with State agencies administering certain other programs in the IEVS information about stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that the same objectives are likely to be met. These programs are:

(i) The Aid to Families with Dependent Children (AFDC);

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

(3) State agencies shall provide information to people administering the Child Support Program (Title IV–D of the Social Security Act) and Titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) *Agreements.* (i) Prior to requesting or exchanging information with other agencies, State agencies shall execute data exchange agreements with those agencies. The agreements shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be part of the State agency's Plan of Operation, as required by paragraph (i) of this section. These agreements shall cover at least the following areas:

(A) Identification of positions of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for any types of information, including the formats to be used;

(C) The safeguards limiting release or redisclosure as required by Federal or State law or regulation as discussed in § 272.1(c) and as may be required by other guidelines published by the Secretary; and

(D) Reimbursement agreements, as appropriate, including new developmental costs associated with the furnishing of data.

(ii) Agreements with SWICA's and agencies providing UIB data shall specify State agency access no less frequently than twice a month for applicants.

(5) *Uses of data.* The State agency shall use information obtained by means of the IEVS for the purposes of:

(i) Verifying a household's eligibility;

(ii) Verifying the proper amount of benefits;

(iii) Investigating to determine whether participating households received benefits to which they were not entitled; and

(iv) Obtaining information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(b) *State Wage Information.* The wage information maintained by a SWICA which is not a UC agency or which is a UC agency but does not use wage data for determining UIB shall:

(1) Contain the Social Security Number (SSN), the last name, wages earned for the period of the report for each employee, and an identifier of the employer such as name and address;

(2) Include all employers covered by the State's UC law;

(3) Be accumulated by employers for no longer periods than calendar quarters and be reported by employers to the SWICA within 30 days of the end of each quarter;

(4) Be machine readable; and

(5) Be accessible to agencies in other States which have executed agreements as required in paragraph (a)(4) of this section and to the Social Security Administration as specified in paragraph (a)(3) of this section for verifying eligibility and benefits under Titles II and XVI of the Social Security Act.

(c) *Alternate data sources.* The Secretary may, upon a State agency's application which is included in the attachment to the Plan of Operation specified in paragraph (i) of this section, permit a State agency to request and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The application shall document that the alternate source or sources provides accurate and timely information that is as useful for verifying eligibility and benefit amounts. State agencies shall comply with the requirements specified in paragraph (a) of this section unless this application for an alternate source has been approved. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the

Secretary of the Department of Labor prior to approval of any alternate data source.

(d) *Form of data requests and exchanges.* Requests for wage and benefit information and exchanges of eligibility and benefit information with the programs specified in paragraph (a) of this section shall be in the standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary) and required by the Secretary for SWICA, UC and other States, and in the formats prescribed by the Commissioners of SSA and IRS for SSA and IRS requests.

(e) *Requesting and using information for applicants.* State agencies shall request and use information about members of all applicant households as specified below.

(1) Information shall be requested at the next available opportunity after the date of application even if the applicant household has been determined eligible by that time. Information about members of applicant households who cannot provide SSNs at application shall be requested at the next available opportunity after the State agency is notified of their SSN's. Information received within the 30-day application period shall be used to determine household eligibility and benefits, if the information is received timely enough that it can be used for that determination. However, State agencies shall make eligibility and benefit determinations without waiting for receipt of IEVS data so as to comply with the promptness standard of § 273.2(g). Information received from a source after an eligibility determination has been made shall be used as specified in paragraphs (f) and (g) of this section.

(2) Information from the SWICA, from SSA and IRS, and claim information from the agency administering UIB shall be requested and used as specified in paragraph (e)(1) of this section. Requests to SWICAs shall access the most recent SWICA data available. Requests to SSA and IRS shall be submitted according to procedures specified by the respective Commissioners of those organizations.

(3) Any information other than wage and UIB which UC agencies may have and which State agencies determine would be useful in verifying eligibility or benefits of applicant households shall be requested by methods and at intervals to which State agencies and UC agencies agree and shall be used as specified in paragraph (e)(1) of this section; and

(4) Exchanges of information about applicant households with other programs specified in paragraph (a) of this section shall be made as the State agency and other programs may agree.

(f) *Requesting and using information for recipients.* With respect to all members of recipient households, State agencies shall:

(1) Request information from the SWICA quarterly, such requests including all households which participated in any month of the quarter;

(2) Request information about household members from SSA data bases no later than the second month of the certification period, when requests at application did not establish automatic reporting to the State agency of changes in SSA data. Requests shall be submitted according to procedures specified by the Commissioner of SSA;

(3) Request information from IRS annually for all current recipients. Requests shall be submitted to IRS according to procedures specified by the Commissioner of IRS;

(4) Exchange information with other programs specified in paragraph (a) of this section as the State agency and these other programs may agree;

(5) Request information about Unemployment Insurance Benefits (UIB) from the agency administering that program as follows:

(i) For all household members about whom requests at application indicate no receipt of UIB, information shall be requested for the three months subsequent to the month of application or until the receipt of UIB is reported, whichever is earlier;

(ii) For all household members who report a loss of employment, information shall be requested for the three months subsequent to the month the loss is reported or until the receipt of UIB is reported, whichever is earlier; and

(iii) For all household members receiving UIB, information shall be requested monthly until UIB are exhausted; and

(6) Request from UC agencies any information other than UIB information which State agencies determine would be useful in verifying eligibility or benefits of recipient households. Requests shall be made by methods and at intervals to which the State agencies and the UC agencies agree.

(g) *Actions on recipient households.* (1) Except as specified in paragraph (g)(2) of this section, State agencies shall initiate and pursue action on information about recipient households which is received from the sources specified in paragraph (f) of this section so that case action is complete within 30 days of receipt of that information. Case action shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2(f)(9) (iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or termination eligibility, notices of adverse action. Such adverse action would be effective according to § 273.12(c)(2) or the retrospective budgeting provisions at § 273.21.

(2) State agencies may complete the actions specified in paragraph (g)(1) of this section after the 30-day period specified therein on no more than 20 percent of the information items received from the data sources specified in paragraph (f) of this section if:

(i) The only reason that the actions cannot be completed is the nonreceipt of requested verification from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraphs (g) (1) or (2) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(4) State agencies shall use appropriate procedures to monitor the timeliness requirements in paragraphs (g) (1) and (2) of this section.

(h) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in section 275 of this Part (which pertains to quality control) and in guidelines on quality control established under that section.

(i) *Plan of operations.* The requirements for the IEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include a description of procedures used, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households and third parties as specified in § 272.1. This document shall also include any of the material concerning alternate data sources as specified in paragraph (c) of this section.

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(j) *Reports and documentation.* (1) The agency shall report as the Secretary prescribes for determining compliance with these regulations and evaluating the effectiveness of the income and eligibility verification system.

(2) The State agency shall document as required by § 273.2(f)(6) its use of information obtained through the IEVS both when an adverse action is and is not initiated.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

6. In § 273.2, paragraph (b) is amended by the addition of a sentence at the end; paragraph (f)(1)(v) is revised; paragraph (f)(4)(ii) is amended by removing everything after the fourth sentence; paragraph (f)(4)(iv) is revised; paragraph (f)(9) is revised; and the sixth sentence of paragraph (f)(4)(i)(B) is revised. The amendments and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.* * * * All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification system (IEVS) will be requested, used, and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social Security Numbers.* The State agency shall verify the Social Security Number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in § 272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6.

* * * * *

(4) *Sources of verification.* * * *

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

* * * * *

(9) Use of IEVS.

(i) The State agency shall use information obtained through the IEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by Part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtain through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred. Except with respect to unearned income information from IRS, if a State agency has information which indicates that independent verification is not needed, such verification is not required.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in § 273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

* * * * *

(i) *Expedited Service.* * * *

(4) *Special procedures for expediting service.* * * *

(i) * * *

(B) * * * Those household members unable to provide the required SSN's or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in § 273.6(d). * * *

* * * * *

7. Section 273.6 is revised in its entirety to read as follows:

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to

certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(c) *Failure to comply.* If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income and resources to the extent specified in § 273.11(c) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household member has applied for an SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSN, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSNs.* The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under Title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all SSNs obtained in accordance with § 273.6(a) into these files.

PART 275—PERFORMANCE REPORTING SYSTEM

8. In § 275.12, paragraph (c) introductory text is amended by the addition of a sentence following the first sentence. The new sentence reads as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * * A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (IEVS) as specified in § 272.8. * * *

* * * * *

Dated: January 30, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

List of Subjects in 29 CFR Part 603

Unemployment-compensation, Labor.

For the reasons set forth in the preamble, a new Part 603 is added to Chapter V of Title 20 of the Code of Federal Regulations as set out below.

Signed at Washington, D.C., on February 18, 1986.

William E. Brock,

Secretary of Labor.

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Sec.

603.1 Purpose.

Subpart A—Income and Eligibility Verification System

603.2 Definitions.
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603.4 Notification to claimants.
603.5 Disclosure of information.
603.6 Agreement between State unemployment compensation agency and requesting agency.
603.7 Protection of confidentiality.
603.8 Obtaining information from other agencies and crossmatching with wage information.
603.9 Effective date of rule.

Subpart B—Quarterly Wage Reporting

603.20 Effective date of rule.
603.21 Alternative system.

Authority: Sec. 1102, Social Security Act, ch. 531; 49 Stat. 647, as amended (42 U.S.C 1302); Reorganization Plan No. 2 of 1949, 63 Stat. 1065, 14 FR 5225.

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§ 603.1 Purpose.

(a) Section 2651 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amended title XI of the Social Security Act to include a requirement that States have an income and eligibility verification system in effect which would be used in verifying eligibility for, and the amount of, benefits available under several Federally assisted programs including the Federal-State unemployment compensation program. The Act requires that employers in each State make quarterly wage reports to a State agency, which may be the State unemployment compensation agency, and that wage information and benefit information obtained from other agencies be used in verifying eligibility for benefits. The requirement of quarterly wage reporting may be waived if the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) determines the State has in effect an alternative system which is as effective and timely as quarterly wage reporting for the purposes of providing employment related income and eligibility data.

(b) Section 2651(d) of Pub. L. 98–396 added a new section 303(f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of Section 1137 of the Social Security Act, as added by Pub. L. 98–369. The regulations in this Part are issued to implement this requirement.

Subpart A—Income and Eligibility Verification System

§ 603.2 Definitions.

For the purposes of this Part:

(a) "State unemployment compensation agency" means the agency charged with the administration of the unemployment compensation law approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(b) "Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Number (or numbers, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law, except that in a State in which wages are not required to be reported under the unemployment compensation law, "wage information" means:

(1) That wage information which is reported under provisions of State law which fulfill the requirements of section 1137 of the Social Security Act; or

(2) That information which is obtained through an alternative system which fulfills the requirements of section 1137 of the Social Security Act.

(c) "Claim information" means information regarding:

(1) Whether an individual is receiving, has received or has applied for unemployment compensation;

(2) The amount of compensation the individual is receiving or is entitled to receive;

(3) The individual's current (or most recent) home address; and

(4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

(5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligiblity for, and the amount of, benefits.

(d) "Requesting agency" means:

(1) Any State or local agency charged with the responsibility of enforcing the provisions of the Aid to Families with Dependent Children program under a State plan approved under part A of title IV of the Social Security Act;

(2) Any State or local agency charged with the responsibility of enforcing the provisions of the Medicaid program under a State plan approved under title XIX of the Social Security Act;

(3) Any State or local agency charged with the responsibility of enforcing the provisions of the Food Stamp program under the Food Stamp Act of 1977;

(4) Any State or local agency charged with the responsibility of enforcing a program under a plan approved under title I, X, XIV, or XVI of the Social Security Act;

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of title IV of the Social Security Act; and

(6) The Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under titles II and XVI of the Social Security Act (Sec. 1137(a)).

§ 603.3 Eligibility condition for claimants.

(a) The State unemployment compensation agency shall require, as a condition of eligibility for unemployment benefits, that each claimant for benefits furnish to the agency his/her social security number (or numbers if he/she has more than one such number), and the agency shall utilize such numbers in the administration of the unemployment compensation program so as to associate the agency's records pertaining to each claimant with the claimant's social security number(s).

(b) If the State agency determines that a claimant has refused or failed to provide a Social Security Number, then that individual shall be ineligible to participate in the unemployment compensation program.

(c) Any claimant held ineligible for not supplying a social security number may become eligible upon providing the State agency with such number retroactive to the extent permitted under State law. (Sec. 1137(a)(1)).

§ 603.4 Notification to claimants.

Claimants shall be notified at the time of filing an initial claim for benefits through a written statement on or provided with the initial claim form and periodically thereafter that information available through the income and eligibility verification system will be requested and utilized by requesting agencies as defined in section 603.2(d) (Sec. 1137(a)(6)) Provisions of a printed notice on or attached to any subsequent additional claims will satisfy the requirement for periodic notice thereafter.

§ 603.5 Disclosure of information.

The State unemployment compensation agency will disclose to authorized requesting agencies, as defined in section 603.2(d), which have entered into an agreement in accordance with this Part, wage and claim information as defined herein contained in the records of such State agency as is deemed by the requesting agency to be needed in verifying eligibility for, and the amount of, benefits. Standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) will be adhered to by the State unemployment compensation agency. (Sec. 1137(a)(4)).

§ 603.6 Agreement between State unemployment compensation agency and requesting agency.

(a) The State unemployment compensation agency will enter into specific written agreements with any requesting agency as defined in this Part.

(b) The agreements will include, but need not be limited, to the following:

(1) The purposes for which requests will be made and the specific information needed;

(2) Identification of all agency officials, by position, with authority to request information;

(3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;

(4) Basis for establishing the reporting periods for which information will be provided;

(5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incurred in providing data, including any new developmental costs associated with furnishing data to the requesting agency and calculated in accordance with the provisions of OMB Circular A–87;

(6) Safeguards to ensure that information obtained from the State unemployment compensation agency will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of section 603.7.

(c) The requirements in paragraph (a) and (b) of this section shall also apply to requesting agencies receiving information from a State unemployment compensation agency in another State and shall be administered by the State unemployment compensation agency disclosing the information (sec. 1137(a)(4) and (a)(7)).

§ 603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this Part to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure:

(1) The information shall be used only to the extent necessary to assist in the valid administrative needs of the program receiving such information and shall be disclosed only for these purposes as defined in this agreement;

(2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of section 603.6;

(3) The information shall be stored in a place physically secure from access by unauthorized persons;

(4) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal or other means;

(5) Precautions shall be taken to ensure that only authorized personnel are given access to on-line files;

(6)(i) The requesting agency shall instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of this Part, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this Part, and any other relevant State statutes, and

(ii) The head of each State agency shall sign an acknowledgment on behalf of the entire agency attesting to the agency's policies and procedures regarding confidentiality.

(b) Any requesting agency is authorized to redisclose the information only as follows:

(1) Any wage or claim information may be given to the individual who is the subject of the information;

(2) Information about an individual may be given to an attorney or other duly authorized agent representing the individual if the individual has given written consent and the information is needed in connection with a claim for benefits against the requesting agency; and

(3) Any wage or claim information may be given to another requesting agency as defined in this Part or to any criminal or civil prosecuting authorities acting for or on behalf of the requesting agency if provision for such redisclosure is contained in the agreement between the requesting agency and the State unemployment compensation agency.

(c) The requesting agency shall permit the State unemployment compensation agency to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (sec. 1137(a)(5)(B).

§ 603.8 Obtaining information from other agencies and Crossmatching with wage information.

(a) The State unemployment compensation agency shall obtain such information from the Social Security administration and any requesting agency as may be needed in verifying eligibility for, and the amount of, benefits.

(b) To the extent that such information shall be determined likely to be productive in identifying ineligibility for benefits and preventing incorrect payments, the State unemployment compensation agency shall crossmatch quarterly wage information with unemployment benefit payment information (sec. 1137(a)(2)).

(c) To the extent necessary, the United States Department of Labor may amplify on the requirements for state compliance with this section in instructions issued and published for comment in the Federal Register under the provisions of section 1137(a)(2) of the Social Security Act.

§ 603.9 Effective date of rule.

The effective date of this Subpart A rule is May 29, 1986, after consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, may by waiver grant a delay in this effective date if the State submits within 90 days of publication of this rule in final form a plan describing a good faith effort to comply with the requirements of section 1137 (a) and (b) of the Social Security Act through but not beyond September 30, 1986.

Subpart B—Quarterly Wage Reporting

§ 603.20 Effective date of rule.

The requirement that employers in a State report quarterly wage information to a State agency (which may be the State unemployment compensation agency), is effective September 30, 1988 (sec. 1137(a)(3)).

§ 603.21 Alternative system.

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if the Secretary determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the date for submitting requests for such waiver will be issued, if necessary, by the United States Department of Labor and published for comment in the Federal Register.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 435

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

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42 CFR Chapter IV is amended as set forth below:

A. Part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. Subpart A is amended as set forth below:

Subpart A—Single State Agency

a. The authority citation for Subpart A continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

b. In § 431.17, paragraphs (b) and (b)(1) are reprinted for the reader's comprehension, paragraph (b)(1)(iv) is revised, and paragraph (b)(1)(vi) is added to read as follows:

§ 431.17 Maintenance of records.

* * * * *

(b) *Content of records.* A State plan must provide that the Medicaid agency will maintain or supervise the maintenance of the records necessary for the proper and efficient operation of the plan. The records must include—

(1) Individual records on each applicant and recipient that contain information on—

* * * * *

(iv) Provision of medical assistance;

* * * * *

(vi) The disposition of income and eligibility verfication information received under §§ 435.940 through 435.960 of this subchapter; and

* * * * *

2. Subpart F is amended as set forth below:

Subpart F—Safeguarding Information on Applicants and Recipients

a. The authority citation for Subpart F continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

b. Section 431.300 is revised to read as follows:

§ 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff.), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and

(2) The information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

c. The introductory language of § 431.305(b) is repeated for the reader's convenience and a new paragraph (b)(6) is added as follows:

§ 431.305 Types of information to be safeguarded.

* * * * *

(b) This information must include at least—

* * * * *

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940ff.). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

d. Section 431.306 is amended by revising paragraph (d) and adding a new paragraph (g) as follows:

§ 431.306 Release of information.

* * * * *

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this Act and §§ 435.940–435.965 of this chapter.

If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

* * * * *

(g) Before requesting information from, or releasing information to, other agencies to verify income, eligibility and the amount of assistance under §§ 435.940–435.965 of this chapter, the agency must execute data exchange agreements with those agencies, as specified in § 435.945(f).

3. Subpart P is amended as set forth below:

Subpart P—Quality Control

a. The authority citation for Subpart P continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

b. Section 431.800 is amended by revising paragraph (h) as follows:

§ 431.800 Medical quality control (MQC) system.

* * * * *

(h) *Access to records.* The agency, upon request, must provide HHS staff with access to all records pertaining to its MQC reviews to which the State has access, including information available under Part 435, Subpart J, of this chapter.

c. Section 431.804 is amended by revising paragraph (c)(6) as follows:

§ 431.804 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984).

* * * * *

(c) Setting of State's payment error rate.

* * * * *

(6) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, which includes obtaining and using information available under Part 435, Subpart J, of this chapter, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit;

(ii) The Federal subsample; or

(iii) Other arrangements as the Administrator may prescribe.

* * * * *

B. Part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 435, Subpart J, is amended by revising the titles of §§ 435.912 and 435.919, by adding a new undesignated centered heading immediately following the title of § 435.930, and by adding titles for new §§ 435.940, 435.945, 435.948, 435.952, 435.955, 435.960, and 435.965 as follows:

Subpart J—Eligibility in the States and District of Columbia

* * * * *

Sec.
435.912 Notice of agency's decision concerning eligibility.

* * * * *

435.919 Timely and adequate notice concerning adverse actions.

* * * * *

Income and Eligibility Verification

435.940 Basis and scope.
435.945 General requirements.
435.948 Requesting information.
435.952 Use of information.
435.955 Additional requirements regarding the use of information released by the Department of the Treasury.
435.960 Standardized formats for maintaining information for verifying income and eligibility.
435.965 Delay of effective date.

3. In § 435.4, the definition of "SWICA" is added, alphabetically after "SSI," as follows:

§ 435.4 [Amended]

* * * * *

"SWICA" means the State wage information collection agency under section 1137(a) of the Act. It is the State agency administering the State unemployment compensation law; a separate agency administering a quarterly wage reporting system; or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data.

4. In § 435.910, the introductory language to paragraph (b) is repeated for the convenience of the reader, paragraphs (a) and (b)(3), the introductory language of paragraphs (e) and (e)(3) are revised to read as follows, paragraphs (b)(1), (c) and (d) are removed and reserved, and a new paragraph (g) is added as follows:

§ 435.910 Use of social security number.

(a) The agency must require, as a condition of eligibility, that each individual (including children) requesting Medicaid services furnish each of his or her social security numbers (SSNs).

(b) The agency must advise the applicant of—

(1) [Reserved]

* * * * *

(3) The uses the agency will make of each SSN, including its use for verifying income, eligibility, and amount of medical assistance payments under §§ 435.940 through 435.960.

(c) [Reserved]

(d) [Reserved]

(e) If an applicant cannot recall his SSN or SSNs or has not been issued a SSN the agency must—

* * * * *

(3) Either send the application to SSA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.

* * * * *

(g) The agency must verify each SSN of each applicant and recipient with SSA, as prescribed by the Commissioner, to insure that each SSN furnished was issued to that individual, and to determine whether any others were issued.

5. The title of § 435.912 is revised as follows:

§ 435.912 Notice of agency's decision concerning eligibility.

6. The title of § 435.919 is revised to read as follows:

§ 435.919 Timely and adequate notice concerning adverse actions.

7. Section 435.920 is amended by revising paragraph (b) as follows:

§ 435.920 Verification of SSNs.

* * * * *

(b) If the case record does not contain the required SSNs, the agency must require the recipient to furnish them and meet other requirements of § 435.910.

* * * * *

8. A new undesignated centered heading and new §§ 435.940–435.965 are added as follows:

Income and Eligibility Verification Requirements

§ 435.940 Basis and Scope.

(a) Section 1137 of the Act requires certain Federally-funded, State-administered public assistance programs to establish procedures for obtaining, using and verifying information relevant to determinations as to eligibility and the amount of assistance. Section 1902(a)(4) of the Act allows the Secretary to prescribe methods of administration found necessary for the proper and efficient operation of a State's Medicaid plan.

(b) The agency must maintain information, as enumerated in § 435.960, to exchange for the purpose of enabling any agency or program referenced in § 435.945(b) to verify income, eligibility of, and the amount of assistance for its applicants and recipients.

§ 435.945 General requirements.

(a) The agency must request and use information timely in accordance with §§ 435.948 and 435.952 of this subpart for verifying Medicaid eligibility and the amount of medical assistance payments.

(b) The agency must furnish to other agencies in the State and in other States and to Federal programs income, eligibility and medical assistance payment information for verifying eligibility or benefit amounts for the programs listed in § 435.948(a)(6) of this subpart. In addition, the agency must furnish income and eligibility information to—

(1) The child support program under part D of title IV of the Act; and

(2) SSA for old age, survivors and disability benefits under title II and for SSI benefits under title XVI of the Act.

(c) The agency must, upon request, reimburse another agency listed in § 435.948(a)(6) of this subpart or paragraph (b) of this section for reasonable costs incurred in furnishing information, including new developmental costs associated with furnishing the information to another agency.

(d) The agency must inform all applicants in writing at the time of application that the agency will obtain and use information available to it under section 1137 of the Act to verify income, eligibility and the correct amount of medical assistance payments. The agency must give each recipient the same notice when it redetermines eligibility. The requirements in this paragraph do not apply in the case of applicants or recipients whose eligibility is determined by AFDC or by SSA under section 1634 of the Act.

(e) The agency must report as the Secretary prescribes for the purposes of determining compliance with §§ 431.305, 431.800, 435.910, 435.919 and 435.940 through 435.965 of this chapter and of evaluating the effectiveness of the income and eligibility verification system.

(f) The agency must execute written agreements with other agencies before releasing data to or requesting data from, those agencies. The agreements, at a minimum, must specify:

(1) The information to be exchanged;

(2) The titles of all agency officials with the authority to request income and eligibility information;

(3) The methods, including the formats to be used, and the timing for requesting and providing the information (see also paragraph (f)(6) of this section);

(4) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations;

(5) The method, if any, the agency will use to reimburse reasonable costs of furnishing the information; and

(6) In the case of an agreement between a SWICA or a UC agency and

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the Medicaid agency, that the Medicaid agency will obtain information on applicants at least twice monthly.

(g) SWICA that does not use the quarterly wages reported by employers as required by Section 1137 of the Act of unemployment insurance benefit calculations must maintain wage information that:

(1) Contains the SSN, full name, wages earned for the period of the report, and an identifier of the employer;

(2) Includes all employers covered by the States' UC law;

(3) Accumulates earnings reported by employers for no longer periods than calendar quarters;

(4) Is reported to the SWICA within 30 days after the end of the quarter;

(5) Is machine readable; and

(6) Is accessible to agencies in other States that have executed agreements as required in § 435.945(f) of this chapter and to SSA for use in making eligibility or benefit determinations under Title II or XVI of the Act.

§ 435.948 Requesting information

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the agency must request information from the sources specified in this paragraph for verifying Medicaid eligibility and the correct amount of medical assistance payments for each applicant (unless obviously ineligible on the face of his or her application) and recipient. The agency must request—

(1) State wage information maintained by the SWICA during the application period and at least on a quarterly basis;

(2) Information about net earnings from self-employment, wage and payment of retirement income, maintained by SSA and available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, for applicants during the application period and for recipients for whom the information has not previously been requested;

(3) Information about benefit and other eligibility related information available from SSA under titles II and XVI of the Social Security Act for applicants during the application period and for recipients for whom the information has not previously been requested;

(4) Unearned income information from the Internal Revenue Service available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954, during the application period and at least yearly;

(5) Unemployment compensation information maintained by the agency administering State unemployment compensation laws (under the provisions of section 3304 of the Internal Revenue Code and section 303 of the Act) as follows:

(i) For an applicant, during the application period and at least for each of the three subsequent months;

(ii) For a recipient that reports a loss of employment, at the time the recipient reports that loss and for at least each of the three subsequent months.

(iii) For an applicant or a recipient who is found to be receiving unemployment compensation benefits, at least for each month until the benefits are reported to be exhausted.

(6) Any additional income, resource, or eligibility information relevant to determinations concerning eligibility or correct amount of medical assistance payments available from agencies in the State or other States administering the following programs as provided in the agency's State plan:

(i) AFDC;

(ii) Medicaid;

(iii) State-administered supplementary payment programs under Section 1616(a) of the Act;

(iv) SWICA;

(v) Unemployment compensation;

(vi) Food stamps; and

(vii) Any State program administered under a plan approved under Title I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled), or XVI (aid to the aged, blind, and disabled in Puerto Rico, Guam, and the Virgin Islands) of the Act.

(b) The agency must request information on applicants from the sources listed in paragraph (a)(1) through (a)(5) of this section at the first opportunity provided by these sources following the receipt of the application. If an applicant cannot provide an SSN at application, the agency must request the information at the next available opportunity after receiving the SSN.

(c) The agency must request the information required in paragraph (a) of this section by SSN, using each SSN furnished by the individual or received through verification.

(d) *Exception*: In cases where the individual is institutionalized, the agency needs to obtain and use information from SWICA only during the application period and on a yearly basis, and from unemployment compensation agencies only during the application period. An individual is institutionalized for purposes of this section when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733, and 435.832.

(e) *Exception: Alternate sources*. (1) The Secretary may, upon application from a State agency, permit an agency to request and use income information from a source or sources alternative to those listed in paragraph (a) of this section. The agency must demonstrate to the Secretary that the alternative source(s) is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor before determining whether an agency may use an alternate source.

(2) The agency must continue to meet the requirements of this section unless the Secretary has approved the request.

(f) *Exception:* If the agency administering the the AFDC program, or SSA under section 1634 of the Act, determines the eligibility of an applicant or recipient, the requirements of this section do not apply to that applicant or recipient.

§ 435.952 Use of information.

(a) The agency must review and compare against the casefile any information received under §§ 435.940 through 435.960 to determine whether it affects the applicant's or recipient's eligibility or amount of medical assistance payment. The agency must also verify the information if determined appropriate by agency experience or if required by § 435.955.

(b) For applicants; if the information is received during the application period, it must be used, to the extent possible, making eligibility determinations. If it is received after the eligibility determination, it must be used as specified for recipients in paragraphs (c) and (d) of this section.

(c) Except as specified in paragraph (d) of this section, for recipients, the agency must, within 30 days of receipt of an item of information, request verification (if appropriate), determine whether the information affects eligibility or the amount of medical assistance payment, and make an entry in the case file that no action is necessary or notify the recipient of any adverse action the agency intends to take.

(d) Subject to paragraph (e) of this section, if the agency does not receive requested third party verification within the 30 day period after receipt of information, the agency may determine whether the information affects eligibility or correct amount of medical assistance payment after the 30 day period. However, the agency must make any delayed determinations permitted under this paragraph—

(1) Promptly, as required by § 435.916, if the verification is received before the next redetermination; or

(2) In conjunction with the next redetermination if no verification is received before that redetermination.

(e) The number of determinations delayed beyond 30 days from receipt of an item of information (as permitted by paragraph (d) of this section) must not exceed twenty percent of the number of items of information received on all recipients.

(f) The agency must use appropriate procedures to monitor the timeliness requirements of this section.

(g) The requirements of this section do not relieve the agency of its responsibility for determinations of erroneous payments or the agency's liability for those erroneous payments, as defined in Subpart P of this chapter.

§ 435.955 Additional requirements regarding the use of information released by the Department of the Treasury.

(a) Based on information concerning an applicant's or recipient's unearned income the agency receives from the Department of Treasury (Internal Revenue Service) (under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954), the agency may not terminate, deny, suspend, or reduce benefits to that individual until it has taken appropriate steps to verify the information, independently, relating to—

(1) The amount of the income and resource that generated the income involved:

(2) Whether the applicant or recipient actually has (or had) access to the resource of income (or both) for his or her own use; and

(3) The period or periods when the individual actually had the resource or income or both.

(b) The agency must verify the information by either—

(1) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income and resource that generated the income; or

(2) Sending the applicant or recipient a letter informing that individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has and its possible relevance to the individual's past or future eligibility, and be as neutral in tone as possible.

(c)(1) If the source of the unearned income or the applicant or recipient verifies the information, and the agency intends to reduce, suspend, terminate or deny medical assistance payments based on the information, the agency must send the applicant or recipient a notice of the action to be taken and include information on the right to appeal and opportunity for a hearing under §§ 431.200 through 431.250 of this chapter (see also § 435.912 and 435.919).

(2) If the applicant or recipient fails to respond after reasonable attempts to contact him or her, the agency must proceed to deny, terminate, reduce or suspend benefits based on the applicant or recipient's failure to cooperate.

(3) If the applicant or recipient disputes the information, the agency must obtain evidence (from the source of the unearned income, applicant or recipient, or otherwise) to substantiate any negative case action that it may take.

§ 435.460 Standardized formats for obtaining and using information for verifying income and eligibility.

(e) The agency must maintain for all applicants and recipients within an agency file the SSN, surname and other data elements in a format that at a minimum allows the agency to obtain and use eligibility and income information from the agencies or programs referenced in § 435.945(b). The agency must request information from—

(1) SWICA, unemployment compensation agencies, and agencies of other States, as prescribed by the Secretary;

(2) SSA, as prescribed by the Commissioner of SSA; and

(3) The Internal Revenue Service, as prescribed by the Commissioner of the Internal Revenue Service.

(b) Release of income and eligibility information to, or receipt of information from, other agencies in the State and in other States must be made in the manner prescribed by the Secretary and must be completed in a timely manner.

§ 435.965 Delay of effective date.

(a) If the agency submits, by May 29, 1986, a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act and of §§ 435.910 and 435.940 through 435.960 of this subpart, the Secretary may, after consultation with the Secretary of Agriculture and the Secretary of Labor, grant a delay in the effective date of § 435.910 and §§ 435.940 through 435.960, but not beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of Section 1137(c) of the Act, which is implemented by § 435.955 (a) and (c). (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

(Calalog of Federal Domestic Assistance Program No. 13.774, Medical Assistance)

Dated: January 31, 1986.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: February 11, 1986.

Otis R. Bowen, M.D.,

Secretary.

Social Security Administration

45 CFR Parts 205, 206 and 232

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these final rules.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended, 42 U.S.C. 1302.

Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

Dated: January 30, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 11, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Therefore, 45 CFR Parts 205, 206 and 232 are amended as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

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2. Section 205.40 is amended by revising paragraphs (b)(1)(v) and (c)(3)(ii) to read as follows:

§ 205.40 Quality Control System.

* * * * *

(b) *State plan requirements.* * * *

(1) * * *

(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties, including information available under § 205.55.

* * * * *

(c) * * *

(3) * * *

(ii) The fact that the agency has complied with the requirements for redetermination of eligibility (see Section 206.10(a)(9) of this chapter) or for timely action on information from the State's Income and Eligibility Verification System (IEVS) (see section 205.56(a)(1)) has no bearing on, and does not relieve the State agency of its responsibility for, the determination of erroneous payments or its liability for such payments; and

* * * * *

3. Section 205.44 is amended by revising paragraph (d)(2) to read as follows:

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

* * * * *

(d) *How we will measure a State's performance.* * * *

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, which includes obtaining and using information available under § 205.55, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods, error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

* * * * *

4. Section 205.50 is amended by adding paragraph (a)(1)(i)(F) and by revising paragraphs (a)(2)(i)(B) and (a)(3) (ii) and (iii) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *

(1) * * *

(i) * * *

(F) The administration of a State unemployment compensation program.

* * * * *

(2) * * *

(i) * * *

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

* * * * *

(iii) Except in the case of information requested pursuant to §§ 235.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

* * * * *

(3) * * *

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

* * * * *

5. Section 205.51 is revised to read as follows:

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be an Income and Eligibility Verification System in the State. Income and Eligibility Verification System (IEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency (UC) information from the State Wage Information Collection Agency, described in paragraph (b) of this section; from the agency administering the State's unemployment compensation program (UC) under section 3304 of the Internal Revenue Code; from agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary; from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Wage information maintained by a SWICA which receives quarterly wage reports from employers but does not use these reports for computation of employment compensation shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State, to agencies in other States, and to Social Security Administration for establishing or verifying eligibility and benefit amounts under titles II and XVI of the Social Security Act, pursuant to agreements as required in § 205.58.

(d) A State shall obtain prior written approval from the Department, where appropriate, in accordance with 45 CFR 95.611, for any new developmental costs for automatic data processing equipment and services incurred in meeting IEVS requirements.

6. A new § 205.55 is added to read as follows:

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Except as provided in paragraph (b), the State agency will request through the IEVS:

(1) Wage information from the SWICA for all applicants at the first opportunity following receipt of the application and for all recipients on a quarterly basis.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) For applicants at the first opportunity following receipt of the application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants at the first opportunity following receipt of the application in the manner set forth by the Commissioner of Social Security. The State agency will also request such information for all recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103 (l)(7)(B) of the Internal Revenue Code of 1954, for all applicants at the first opportunity following receipt of the application for all recipients on a yearly basis. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC program (in another State) under title IV–A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under plan approved under Title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(b)(1) With respect to individuals who cannot furnish an SSN at application, information specified in paragraph (a) will be requested at the first opportunity provided by each source after the State agency is provided with the SSN.

(2) For the purposes of this section, applicants and recipients shall also include any other individuals whose income or resources are considered in determining the amount of assistance, if the State agency has obtained the SSN of such individuals.

(c) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title IV–D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(d) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

7. Section 205.56 is revised to read as follows:

§ 205.56 Requirements governing the use of income and eligibility information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance, as follows:

(i) The State agency shall review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance.

(ii) The State agency shall verify that the information is accurate and applicable to case circumstances either through the applicant or recipient or through a third party, if such verification is determined appropriate based on agency experience or is required under paragraph (b) of this section.

(iii) For applicants, if the information is received during the application period, the State agency shall use such information, to the extent possible, in making the eligibility determination.

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall, within thirty (30) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: completion of action may be delayed beyond 30 days on no more than twenty (20) percent of the information items received, if:

(A) The reason that the action cannot be completed within 30 days is the

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nonreceipt of requested third party verification; and

(B) Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the State agency shall make its decision based on information provided by the recipient and any other information in its possession.

(v) The State agency shall use appropriate procedures to monitor the timeliness requirements specified in this subparagraph;

(1) Investigations to determine whether recipients received assistance under the State plan to which they were not entitled; and

(3) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b) With respect to the information received under § 205.55 from the Internal Revenue Service concerning unearned income of an applicant or recipient:

(1) The agency shall not terminate, deny, suspend, or reduce benefits to the individual based on the information until it has taken the appropriate steps to independently verify the information, relating to:

(i) The amount of the resource or income involved;

(ii) Whether the applicant or recipient actually has (or had) access to the resource or income for his or her own use; and

(iii) The period or periods when the individual actually had the resource or income.

(2) The agency must verify the information by either:

(i) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income or the resource; or

(ii) Sending the applicant or recipient a letter informing the individual of the information received and asking him or her to respond within a specific period. The letter must clearly explain the information the agency has, its relevance to the individual's eligibility or benefit, and what action the agency will take in the event the individual fails to respond to the letter.

(c) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to this section, the agency must provide notice and the opportunity for a fair hearing in accordance with § 205.10(a).

8. Section 205.57 is revised to read as follows:

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange date with other agencies pursuant to § 205.55.

9. Section 205.58 is revised to read as follows:

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A state plan under title I, IV, AV—A, X, XIV, or XVI, (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) with those agencies providing income and eligibility information. The agreements will contain the procedures to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by position with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period. Agreements with the SWICA and the agency administering the Unemployment Compensation program in the State must provide that the State agency shall obtain information no less frequently than twice monthly;

(4) The type of information and reporting periods for which information will be provided;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and as may be required by guidelines issued by the Secretary; and

(6) Reimbursement, if any, for the costs of furnishing the information requested by the State agency, including new developmental costs associated with furnishing such information.

10. Section 205.60 is revised to read as follows:

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial assistance, and the use of any information obtained under section 205.55, with respect to individual applications denied, recipients whose benefits have been terminated, recipients whose benefits have been modified, and the dollar value of these denials, terminations and modifications. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The agency shall report as the Secretary prescribes for the purpose of determining compliance with the requirements of sections 205.55 and 205.56 and for evaluating the effectiveness of the Income and Eligibility Verification System.

11. A new section 205.62 is added as follows:

§ 205.62 Delay of effective date.

(a) If the agency submits, by May 29, 1986, a plan describing a good faith effort to come into compliance with the requirements of section 1137 of the Act and these implementing regulations, the Secretary may grant a delay in the effective date of any provision of §§ 205.55 through 205.60 and § 206.10 implementing section 1137(a) and (g) of the Act. This plan must include the following information for each provision: the provision, the proposed implementation date, a justification for the delay, and a plan for implementing the provision. The Secretary shall consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of any plan describing a good faith effort and may not grant a delay of the effective date of any provision beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of section

1137(c) of the Act, which is implemented by § 205.56. (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

12. The authority citation for Part 206 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

13. Section 206.10 is amended by removing paragraphs (a)(9)(iii)(A) and (B), by adding a new paragraph (a)(2)(iii), and by revising paragraph (a)(5)(ii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(2) * * *

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

* * * * *

(5) * * *

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other evidence establishes the individual's eligibility for assistance.

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

14. The authority citation for Part 232 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

15. Section 232.10 is redesignated as new § 205.52. Newly designated § 205.52 is revised to read as follows:

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV–A, X, XIV, or CVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verfication of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may acept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

[FR Doc. 86-4260 Filed 2-27-86; 8:45 am]

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Part III

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2000

Organization and Functions; Final Rule

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COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2000

Organization and Functions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: These regulations are for the purpose of informing the public as to the creation and organization of the Commission on the Bicentennial of the United States Constitution, its purposes, duties and functions. The intended effect is to provide basic information on the authority and structure of the Commission so that individuals and public and private organizations, including governmental agencies, may deal with the Commission in an informed manner.

EFFECTIVE DATE: February 28, 1986.

ADDRESS: 734 Jackson Place, NW., Washington, DC 20503. Tel. (202) USA-1787.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Tel. (202) USA-1787.

SUPPLEMENTARY INFORMATION:

Background

This regulation is designed to inform the public as to the creation, authority, organization, purposes and functions of the Commission. Although its enacting statute was approved in September 1983, the Commission was not appointed until June 1985. Its first five months were spent in selecting a Staff Director and an initial staff, in developing basic policies on project and program recognition and in obtaining funds to operate. It is now important for the general public to know the basic facts about the Commission and its operations, which this regulation provides.

Classification

This is not a major rule under E.O. 12291 since it has no effect on the economy, on costs or on prices, nor does it affect economic competition and U.S. enterprise. It has no effect on the environment and no environmental impact statement is necessary

Public Comment

This regulation is being issued as a final rule without opportunity for public comment since it consists solely of a recital of facts and an explanation of the organization and functions of the Commission.

Statutory Authority

This regulation is issued under the general powers granted to the Commission by Pub. L. 98-101, 97 Stat. 719, and the authority of 5 U.S.C. 552.

List of Subjects in 45 CFR Part 2000

U.S. Constitution Bicentennial, Commemorative activities, Donations, Organization and functions (government agencies).

Issued in Washington, DC, on January 10, 1986.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authority of Pub. L. 98-101, 97 Stat. 719, a new Chapter XX is established and a new Part 2000 is added to Title 45, *Code of Federal Regulations*, to read as follows:

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2000—ORGANIZATION AND FUNCTIONS

Subpart A—Commission Organization

Sec.
2000.10 Authorization.
2000.11 The Commission.
2000.12 The Chairman.
2000.13 Purpose, duties and responsibilities.
2000.14 Delegation to State Commissions.

Subpart B—Powers and Functions

2000.20 Personnel.
2000.21 Facilities and services.
2000.22 Donations to Commission.

Subpart C—Commemorative Activities

2000.30 Planning considerations.

Subpart D—Commission Operations

2000.40 Offices of the Commission.

Authority: Pub. L. 98-101; 97 Stat. 719; 5 U.S.C. 552.

Subpart A—Commission Organization

§ 2000.10 Authorization.

The Commission on the Bicentennial of the United States Constitution was authorized by Pub. L. 98-101, 97 Stat. 719, signed by the President on September 29, 1983. Appointment of the Commission and designation of the Chairman were announced by the President on June 25, 1985. Commission members were sworn into office on July 30, 1985. The first meeting of the Commission was held on July 29 and 30, 1985.

§ 2000.11 The Commission.

(a) *Composition.* The Commission is composed of 23 members chosen and appointed in accordance with section 4 of Pub. L. 98-101, 97 Stat. 719, as follows:

(1) Twenty members appointed by the President;

(2) The Chief Justice of the United States or his designee;

(3) The President pro tempore of the United States or his designee;

(4) The Speaker of the United States House of Representatives or his designee.

(b) *Recommendations for appointment.* Of the 20 members appointed by the President, 12 are appointed from recommendations made as follows:

(1) Four were appointed from among recommendations made by the Chief Justice of the United States;

(2) Four were appointed from among recommendations made by the President pro tempore of the United States Senate;

(3) Four were appointed from among recommendations made by the Speaker of the United States House of Representatives.

(c) *Balanced membership.* In making recommendations to the President regarding appointments to the Commission, the statutory mandate was to achieve a balanced membership representing, to the maximum extent practicable, the Nation as a whole.

(d) *Term of Commissioners.* Members of the Commission are appointed for the life of the Commission, which terminates December 31, 1989.

(e) *Service without compensation.* Members of the Commission serve without being compensated as a member of the Commission, except that each member is reimbursed for travel, subsistence and other necessary expenses incurred in performance of Commission duties.

(f) *Vacancies.* A vacancy in the Commission must be filled in the same manner in which the original appointment was made. A vacancy does not affect the powers of the Commission.

(g) *Quorum.* Twelve members of the Commission constitute a quorum, but a lesser number may conduct meetings.

(h) *Qualifications.* Commission members are required to be chosen from among individuals who have demonstrated scholarship, a strong sense of public service, expertise in the learned professions, and abilities likely to contribute to the fulfillment of the duties of the Commission.

§ 2000.12 The Chairman.

(a) The Chairman of the Commission is the Chief Justice of the United States, who is also a member of the Commission.

(b) The Chairman is designated by the President of the United States and serves at the pleasure of the President.

(c) The Chairman is authorized by the Commission to appoint an Executive Committee and such committees of the Commission as the Chairman believes will advance and expedite the work of the Commission.

§ 2000.13 Purpose, duties and responsibilities.

(a) The primary purpose of the Commission is to promote and coordinate activities to commemorate the bicentennial of the United States Constitution.

(b) The duties of the Commission include the following:

(1) To plan and develop activities to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government;

(2) To encourage private organizations, and State and local governments, to organize and participate in bicentennial activities commemorating or examining the drafting, ratification, and history of the Constitution and the specific features of the document;

(3) To coordinate, generally, commemorative bicentennial activities throughout all of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam and the Virgin Islands; and

(4) To serve as a clearinghouse for the collection and dissemination of information about the bicentennial events and plans.

(c) The Commission is required to submit an annual report to the President, to each House of the Congress, and to the Judicial Conference of the United States.

(d) The Commission is directed to seek the cooperation, advice and assistance of both public and private organizations, including governmental agencies.

§ 2000.14 Delegation to State Commissions.

In carrying out its purposes, the Commission may delegate authority to State bicentennial advisory commissions to assist in implementing Pub. L. 98-101, 97 Stat. 719.

Subpart B—Powers and Functions

§ 2000.20 Personnel.

(a) In carrying out its functions and responsibilities, the Commission is empowered:

(1) To appoint a Staff Director;

(2) To appoint and fix the compensation of such additional publicly paid personnel as the Chairman finds necessary to carry out the purposes of the Commission;

(3) To appoint and fix the pay of additional personnel to be paid out of private donations, not to exceed forty staff members;

(4) To request the head of any Federal agency to detail to the Commission, without reimbursement to the agency, such personnel as the Commission may require for carrying out its duties and functions.

(b) The Staff Director has responsibility for administering the work of the Commission's staff under the oversight of the Chairman and the Commission.

§ 2000.21 Facilities and services.

(a) To accomplish its purposes, the Commission is authorized to procure supplies, services and property, within the limits of appropriated or donated funds, and to enter into agreements with the General Services Administration.

(b) The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies.

§ 2000.22 Donations to Commission.

(a) *Authorization.* The Commission is authorized to accept, use, solicit and dispose of donations of money, property, or personal services.

(b) *Limits.* Donations may not exceed:

(1) $25,000 in value annually, in the case of individual donors, or

(2) $100,000 in value annually in the case of donations from a corporation, partnership, or other business organization.

(c) *Nonprofit donors.* There is no limit on donations from a nonprofit organization which is tax exempt and qualified under section 501(c)(3) of the Internal Revenue Code.

Subpart C—Commemorative Activities

§ 2000.30 Planning considerations.

(a) In planning and implementing appropriate activities to commemorate the bicentennial, the Commission shall give due consideration to the following:

(1) The historical setting in which the Constitution was developed and ratified;

(2) The contribution of diverse ethnic and racial groups;

(3) The relationship and historical development of the three branches of the Government;

(4) The importance of activities concerning the Constitution and citizenship education throughout all of the States regardless of when each State achieved statehood;

(5) The unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;

(6) The diverse legal and philosophical views regarding the Constitution;

(7) The need for reflection upon academic and scholarly views of the Constitution as well as the principle that the general public also must understand the document, its contents and meaning.

(8) The substantive provisions of the Constitution itself;

(9) The impact of the Constitution on American life and government;

(10) The need to encourage appropriate educational curriculums designed to educate students at all levels on the drafting, ratification, and history of the Constitution and its specific provisions; and

(11) The significance of the principles and institutions of the Constitution to other nations and their citizens.

Subpart D—Commission Operations

§ 2000.40 Offices of the Commission.

The offices of the Commission are located at 734 Jackson Place, NW., Washington, DC 20503. There are no field offices.

[FR Doc. 86-3856 Filed 2-27-86; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 33

Airworthiness Standards: Aircraft Engines Fuel and Induction System; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 24922; Notice No. 86-2]

Airworthiness Standards: Aircraft Engines Fuel and Induction System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM), Invitation for Interested Persons to Submit Comments.

SUMMARY: This advance notice proposes to establish requirements to assure that an engine fuel mixture control lever will move automatically to the full-rich position in the event it becomes disconnected from the mixture control linkage. This proposal would add a new paragraph to § 33.35 of Part 33 of the Federal Aviation Regulations (FAR). Consideration of this new requirement results from an analysis of a series of accidents attributed to mixture controls moving to the idle cut-off position in flight.

DATES: Comments must be received on or before April 29, 1986.

ADDRESS: Comments on this advance proposal may be delivered or mailed in duplicate to: Federal Aviation Administration, Office of the General Counsel, Room 916, Attention: Rules Docket No. 24922, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Engine and Propeller Standards, ANE-110, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7077.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of or determining the need for the proposed rule by submitting such written data, views, or arguments as they may desire. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24922." The postcard will be date/time stamped and returned to the commenter. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the ANPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

The National Transportation Safety Board (NTSB) analyzed 54 aircraft accidents, which occurred between 1971 and 1981, attributed to problems with carburetor mixture linkage. Based on that analysis the NTSB concluded that in the majority of cases, there was a discontinuity in the mixture control linkage caused by a slippage or breakage of the control mechanism at the carburetor. This situation apparently resulted in the mixture control either moving or vibrating to the idle cut-off position.

One recommendation resulting from the NTSB evaluation is to amend Part 33 of the FAR to require that the carburetor mixture control lever move automatically to the full-rich position in the event that it becomes disconnected from the mixture control linkage. In the NTSB's view, having the mixture move to the "full-rich" position would be the best alternative in most cases, since the majority of small single-engine airplanes which are subject to such failures operate routinely at relatively low altitudes. The NTSB believes that the installation of a simple safety return spring, or other type of restraint on the carburetor mixture control lever, would be effective in preventing accidents.

The FAA has informally elicited the views of engine and carburetor manufacturers on this recommendation. Based on the information received, it is not clear whether or not the recommended regulatory change would result in improved airworthiness over current carburetor designs. A number of the cases used in the NTSB analysis suggest a question of inadequate maintenance instead of carburetor design deficiencies. Thus, it appears that some of the accidents analyzed would probably not have been prevented by the recommendation. On the other hand, the outcome of some of the 54 accidents reviewed, including one fatal accident and a number of serious injury accidents, may have had a more favorable outcome if the recommended change had been in effect at the time the subject engine designs were certificated.

The FAA is not convinced that information received to date is adequate to make a final decision on the proposed regulatory change. Consequently, the FAA considers it prudent to elicit comments from the general public on this proposal. As it is currently being considered, the proposed rule would apply to any type of fuel metering system, not just carburetor systems which formed the basis of the NTSB evaluation. While the proposed wording of the new requirement is presently derived from the NTSB recommendation, alternative language and alternative means of achieving the same result, as may be suggested in response to this ANRPM, will also be considered. The FAA is especially interested in any recommendation or comment, with supporting rationale, as to whether "full-rich" is the preferred position in the event of linkage failure.

Economic Impact and Benefits

Public comments concerning the economic impact and benefits are specifically sought in addition to comments on the technical aspect of the proposed airworthiness standard.

Agencies of the Federal government are required by Executive Order 12291 to examine any proposed regulation to ascertain its economic impact and to adopt only those regulatory programs in which potential benefits to society clearly outweigh the potential costs to society. Any regulatory proposal by the FAA must be accompanied by an evaluation quantifying and/or qualifying, to the extend possible, the benefits and cost of such proposals. Although the FAA does not have sufficient information to generate definitive costs at this time, we anticipate costs will be minimal.

However, if comments to this ANPRM indicate this assumption is erroneous, a complete cost evaluation will be prepared. Therefore, it is essential that comments for or against the proposal discussed here include the economic impact as perceived by the commenter. With this in mind, FAA poses the following questions:

1. What would be the cost (in terms of engineering hours) of designing a fuel mixture control system that would satisfy the requirements of this proposal?
2. What would be the incremental cost of manufacturing a carburetor (or any other type of fuel metering system in use) that would satisfy the requirements of this proposal?
3. How effective would the proposed remedy be in preventing accidents caused by a break in the mixture control linkage?
4. Are there any alternative measures that could achieve the same objective in a more effective or less costly manner?

List of Subjects in 14 CFR Part 33

Aircraft engines, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration is considering an amendment to Part 33 of the FAR as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority for Part 33 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, P.L. 97-449, January 12, 1983).

2. By adding new § 33.35(f) to read as follows:

§ 33.35 Fuel and induction system

* * * * *

(f) The fuel system of the engine must be designed and constructed such that if the mixture control linkage becomes disconnected, the mixture lever must move automatically to the full-rich position.

Issued in Burlington, Massachusetts on February 24, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-4298 Filed 2-27-86; 8:45 am]

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Part V

National Archives and Records Administration

36 CFR Part 1275

Preservation and Protection of and Access to Historical Materials of the Nixon Administration; Repromulgation of Public Access Regulations; Final Rule

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

Preservation and Protection of and Access to Historical Materials of the Nixon Administration; Repromulgation of Public Access Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This final rule sets forth procedures to be followed by the National Archives and Records Administration (NARA) for preserving and protecting the Presidential materials of the Nixon Administration and for providing public access to these materials. This rule implements the Presidential Recordings and Materials Preservation Act (44 U.S.C. 2111 note).

EFFECTIVE DATE: June 28, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Brooks, Legal Services Staff, 202/523-3618.

SUPPLEMENTARY INFORMATION: On March 29, 1985, the proposed regulations were published for public comment at 50 FR 12575. These regulations were required because the previous regulations were ruled invalid by the United States District Court for the District of Columbia (*Allen et al.* v. *Carmen et. al*, 578 F. Supp. 951) on the grounds that they were subjected to unconstitutional legislative vetoes. These regulations were proposed after lengthy deliberations by the National Archives and various other agencies and offices in the Executive Branch.

Since the notice of proposed rulemaking was published, NARA has been established as an independent executive branch agency, pursuant to the National Archives and Records Administration Act of 1984 [Pub. L. 98-497]. Consequently, the regulations, which were to have been published in Title 41 of the Code of Federal Regulations, are being published in Part 1275 of Title 36 of the Code of the Federal Regulations with other NARA regulations. Therefore, a new numbering format is used for these final regulations that does not affect the substance of the regulations.

During the sixty-day comment period, NARA received comments in response to these proposed regulations from only three parties: (1) R. Stan Mortenson on behalf of Richard Nixon and certain unnamed former Nixon administration staff members; (2) David Ginsburg, on behalf of Henry Kissinger; and (3) Howard Minderer, on behalf of the National Broadcasting Company, Inc. All comments consisted of objections and exceptions to certain provisions of the proposed regulations.

Both Mr. Mortenson and Mr. Ginsburg claim that the regulations provide inadequate notice to interested parties before scheduled release. Both also claim that the restriction in the regulations intended to protect personal privacy interests is inadequate.

In addition, Mr. Ginsburg asserts that the regulations unconstitutionally deny former staff members due process and equal protection of laws because of dissimilar treatment afforded to Presidential materials of other administrations. Finally, Mr. Ginsburg proposes a formal adjudicatory process to resolve disputes over release of materials.

Mr. Mortenson objects to certain definitions included in the regulations as vague and overbroad which could result in the Government's retaining personal materials which should be returned. Notice to everyone mentioned within the materials prior to release is urged by Mr. Mortenson. Finally, Mr. Mortenson claims that the regulations unfairly shift to the protestor the burden of protecting his rights or privileges.

Mr. Minderer objects to the regulations not providing any means for researchers to obtain copies of the White House tapes after they are released to the public.

In the eleven years since passage of the Presidential Records and Materials Preservation Act (PRMPA) [44 U.S.C. 2111 note], the National Archives has addressed many of these comments and objections in other forums. Without repeating all previous statements and positions on these subjects, we shall attempt to address, in abbreviated form, the comments and objections outlined above.

Section 1275.42(b) [formerly 41 CFR 105-63.401(b)] provides that the National Archives will publish in the **Federal Register** and provide to certain individuals a prior notice of at least 30 calendar days before opening materials to the public. Both Mr. Ginsburg and Mr. Mortenson claim that a 30-day notice period is inadequate to review the files scheduled for opening.

In response, we need only point out the regulations provide a minimum notice of 30 days, no maximum is provided. Both commentors are also aware that under the prior regulations the National Archives extended the original 30-day notice upon request for good cause. We intend to continue this practice under the proposed regulations.

We also recognize that Mr. Nixon believes he has a greater review burden than others because of the volume of materials involved. Under the prior regulations, the National Archives and Mr. Nixon agreed that Mr. Nixon or his agents would be allowed to review parts of integral file segments after archival processing rather than be required to wait until an entire integral file segment was completed. This arrangement allows Mr. Nixon to review smaller completed segments on a periodic basis, and therefore, not require substantial time to review the files after publication of notice. We intend to continue this practice in order to facilitate the review by Mr. Nixon, if desired.

Proposed § 1275.52 [formerly 41 CFR 105-63.402-2] lists various categories of materials whose access will be restricted from public release. One of the restriction categories pertains to documents that, if released, would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person. Both Mr. Ginsburg and Mr. Mortenson criticized this provision as insufficiently restrictive. Mr. Ginsburg suggests an alternative standard of "tend to embarrass, damage or harass living persons."

In response to these comments, we note that the language used in this section mirrors the language used in the Freedom of Information Act [5 U.S.C. 552(b)(6)]. Moreover, similar language is used in the Presidential Records Act [44 U.S.C. 2204(a)(6)]. Therefore, the National Archives will restrict public access to the same types of information in the Nixon Presidential materials as is currently being restricted in agency records and will be restricted in Presidential records.

Mr. Ginsburg's suggested alternative was used as a restriction in certain past deeds of gift for Presidential materials. However, the most recent Presidential deed of gift, the Carter letter of gift, dated January 31, 1981, includes language similar to the proposed regulation. We have found that the application of the "unwarranted invasion" restriction and the older "tend to embarrass" restriction has resulted in comparable protection of individuals' privacy interests. In processing documents under the previous set of regulations, thousands of the 1,500,000 pages comprising the Special files were identified as restrictable for personal privacy reasons and withdrawn from the files scheduled to be made available to the public. We believe that the proposed regulation affords proper and equitable protection of privacy interests without being unduly restrictive.

In his comments, Mr. Ginsburg also objects to the proposed regulations on constitutional grounds alleging denial of due process and equal protection of laws. Mr. Ginsburg argues that, prior to 1974, Dr. Kissinger and other White House Staff members reasonably expected Nixon Presidential materials to be treated the same as material of previous administrations and returned to staff members or donated to a Presidential Library under more protective restrictions.

In drafting the proposed regulations, we attempted to follow past practices in Presidential libraries as closely as possible, except where the PRMPA required a specific course of action deviating from these past practices. The single greatest departure from past practices involves establishing unique rights under the proposed regulations for former Nixon White House staff members.

Traditionally, at the end of his administration, a President gathered all White House materials, including the office files of aides and staff members, as his personal property. These materials were donated, often before leaving office or shortly thereafter, to the National Archives for the establishment of a Presidential library. Certain provisions were included in the deed of gift restricting access to specified types of material. These restrictions differed somewhat from President to President, but were generally similar to the restrictions included in our proposed regulations. It was then the responsibility of the National Archives to process and make available materials in accordance with the terms of the deed of gift. Only rarely, and then usually at the request of the National Archives, would the President become involved in public release of materials. Former aides and staff members who may have generated or received the materials were never consulted about releases.

In the proposed regulations, former Nixon aides and staff members are notified before release of materials generated or received by them and are given the opportunity to review the materials and submit comments or objections before release. We believe that these regulations not only comply with the constitutional and other legal requirements for due process and equal protection, but also far exceed the traditional protections afforded former aides or staff members of any other recent administration. Therefore, no White House aide or staff member in 1974 should have reasonably expected greater protection than we have included in these regulations.

Finally, Mr. Ginsburg objects to the regulations because they do not include formal administrative procedures. He proposes a formal adjudicatory process, including hearing, discovery and presiding officer, to resolve disputes over release of materials.

In response, we note that formal adjudication is required by neither the Administrative Procedures Act [5 U.S.C. 551 *et seq.*] nor the PRMPA. The National Archives, therefore, has the discretion to adopt its own administrative procedures, so long as they meet requirements of due process. We believe that the proposed regulations do meet those requirements, and that the informal procedures adopted therein will better serve all parties involved in the release of materials.

In addition to his comments discussed above, Mr. Mortenson raises other objections to the proposed regulations, on behalf of Mr. Nixon and others. We should note at the outset that the provisions objected to by Mr. Mortenson are identical to the prior set of regulations approved by Mr. Nixon in settling *Nixon* v. *Solomon* in 1979. Without regard to the legal propriety of permitting Mr. Nixon to raise again matters which were formerly agreed upon, we shall try to address the substance of these issues.

Mr. Mortenson objects to certain definitions included in the proposed regulations. First, Mr. Mortenson argues that the term "Presidential historical materials", located in § 1275.16 [formerly 41 CFR 105-63.104(a)], is too vague and overly broad. Also, Mr. Mortenson contends that the term "private or personal materials", located in § 1275.16(b) [formerly 41 CFR 105-63.104(b)], is too broad and authorizes the Government to retain too much material.

These two comments are treated together because they are actually two sides of the same coin. In processing materials, a document or item must be designated Presidential historical or private or personal. Presidential historical materials are retained by the Government. Personal or private materials are returned unless they reflect "Watergate Abuses." In effect, Mr. Mortenson is arguing that the definitions permit the Government to retain materials that should be returned.

In this area, the experience of the National Archives in other Presidential libraries is most important. The definitions proposed in the regulations reflect the extent of materials found in other Presidential libraries. The Nixon Presidential historical materials, as defined by these regulations, do not differ in kind from the Presidential historical materials of other administrations that are in the custody of the National Archives. In these regulations, we attempt to retain and treat the Nixon historical materials in a manner consistent with the practices of the Presidential libraries.

In defining these terms, as proposed, we attempt to assure that the Government retains materials that properly reflect a complete and accurate record of the Nixon administration. The National Archives plays a similar role in the determination of records status in both the Federal records and Presidential records areas [*See* 44 U.S.C. Chs. 21, 29, 31 & 33; 44 U.S.C. Ch. 22]. We believe that the definitions discussed above are not too far-reaching and meet the PRMPA mandate to take into account "the need to provide public access to those materials which have general historical significance * * * ." [44 U.S.C. 2111 at section 104(a)6].

Mr. Mortenson also comments that § 1275.26(b) [formerly 41 CFR 105-63.204(b)] provides that only certain personnel and "Mr. Nixon" will have access to records storage areas. No specific provision is made to include Mr. Nixon's designed attorney or agent.

Based upon past practices and references in other provisions, we believe it was understood that access would be allowed to Mr. Nixon's designated attorney or agent pursuant to § 1275.26(b). However, in order to clarify this understanding, we have amended § 1275.26(b) to include this specific provision.

Next, Mr. Mortenson objects to the adequacy of notification prior to public release of materials provided in § 1275.42 [formerly 41 CFR 105-63.401]. Mr. Mortenson argues notification must be given to every person whose name is mentioned in the materials proposed to be released.

This idea of universal notification has been proposed and rejected by the National Archives in prior versions of the regulations. Universal notification is a practical impossibility, considering that the Nixon materials include approximately 40 million pages. We have estimated that it would require a staff the size of the NARA staff presently processing the Nixon documents more than 300 years to compile a list of all persons mentioned, find addresses, and prepare notification. Moreover, we do not believe such an elaborate notification system is required. In releasing materials of past Presidents, no such notification was attempted and no claim of injury was ever filed. We believe the creation of a registry, as provided in § 1275.42(c) [formerly 41 CFR 105-63.401(c)], should

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be sufficient if someone is concerned about the release of his name.

Mr. Mortenson also objects to the list of restrictions in §§ 1275.50 and 1275.52 [formerly 41 CFR 105–63.402–1 and 105–63.402–2] because they do not provide for a restriction based upon Presidential privilege. Mr. Mortenson argues that, without this restriction, the burden is upon Mr. Nixon and others to make this claim.

During the notice period prior to release, the regulations provide all parties, includiing the incumbent President, the opportunity to raise any objection or claim of privilege. This would include the right to raise any executive or Presidential privilege claim. This is the type of privilege which is reserved to the President or former Presidents. The incumbent President has not objected to our proposed regulations including the placement of responsibility for claims of privilege. Mr. Mortenson's objection implies that we should assert a claim of privilege on behalf of Mr. Nixon. This we cannot do.

Executive privilege is not included as a separate category of restriction in other Presidential libraries. Also, the Presidental Records Act places a time limit of 12 years on executive privilege type claims [44 U.S.C. 2204]. We are quickly approaching the twelfth anniversary of the resignation of Mr. Nixon. We believe that our regulations provide the most realistic way to handle a potential claim of executive privilege over these Nixon Presidential historical materials.

Finally, Mr. Minderer comments upon § 1275.64 [formerly 41 CFR 105–63.404] which provides for public access to tape recordings of Presidential conversations. Mr. Minderer objects to the regulations not providing any means for researchers to obtain copies of the tapes after they are released to the public.

The issue of providing copies of tapes is very troublesome. The genesis for our position is the settlement agreement in *Nixon* v. *Solomon*. As part of a general settlement of most issues in that case, the National Archives agreed to the prohibition of copies of tapes. Congress originally did not address the issue of providing copies of tapes in the PRMPA and did nothing to overrule the prohibition when the National Archives submitted previous sets of regulations for review.

In our review of this provision for the proposed regulations, we reconsidered whether continuing this prohibition was appropriate. We had some concern about possible improper use of taped Presidential conversation if such copies were released to the public. In fact, we continue to prohibit the copying of the Nixon tapes previously released in court and now being played for the public in the National Archives.

Taped conversations have recently been publicly released in the Kennedy Presidential Library. We are providing copies of certain Kennedy Presidential conversations upon request. However, we have had very little experience with the results of this distribution. Therefore, until Congress speaks on this matter, and while we obtain practical experiences in other Presidential libraries, we have decided to maintain the prior agreed upon position of prohibiting copying of the Nixon Presidential tapes for the public. This position may be reviewed periodically.

The effective date for these regulations has been established as June 26, 1986. Section 104(b) of the PRMPA provides that the proposed regulations shall not take effect until after the first period of 60 calendar days of continuous session of Congress after submission of the regulations to each House of the Congress. We intend to submit these regulations to Congress at the time of this publication in the Federal Register. For purposes of calculating this period, continuity of session is broken only by an adjournment *sine die*, but days on which either Houses has adjourned for more than three days are excluded. Based upon the schedules of both Houses of Congress, we estimate that the statutorily required time period will be met by June 18, 1986. In order to accommodate any unexpected changes in Congress' schedule, we have made the effective date extend a few days beyond the required time period. If, for any reason, this report and wait period has not been met by June 26, 1986, we shall amend these regulations by notice in the Federal Register and provide a new effective date.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1275

Archives and records; Nixon historical materials.

For the reasons stated in the summary, Chapter XII of Title 36 of the Code of Federal Regulations is amended by adding Part 1275 to Subchapter F to read as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

Sec.
1275.1 Scope of part.

Subpart A—General Provisions

1275.10 Purpose.
1275.12 Application.
1275.14 Legal custody.
1275.16 Definitions.
1275.18 Requests or demands for access.

Subpart B—Preservation and Protection

1275.20 Responsibility.
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1275.24 Archival processing.
1275.26 Access procedures.
1275.28 Extraordinary authority during emergencies.

Subpart C—Access to Materials by Former President Nixon, Federal Agencies, and for Use in Any Judicial Proceeding

1275.30 Access by former President Nixon.
1275.32 Access by Federal agencies.
1275.34 Access for use in judicial proceedings.

Subpart D—Access by the Public

1275.40 Scope of subpart.
1275.42 Processing period; notice of proposed opening.
1275.44 Rights and privileges; right to a fair trial.
1275.46 Segregation and review; Senior Archival Panel; Presidential Materials Review Board.
1275.48 Transfer of materials.
1275.50 Restriction of materials related to abuses of governmental power.
1275.52 Restriction of materials of general historical significance unrelated to abuses of governmental power.
1275.54 Periodic review of restrictions.
1275.56 Appeal of restrictions.
1275.58 Deletion of restricted portions.
1275.60 Requests for declassification.
1275.62 Reference room locations, hours, and rules.
1275.64 Reproduction of tape recordings of Presidential conversations.
1275.66 Reproduction and authentication of other materials.
1275.68 Amendment of regulations.
1275.70 Freedom of Information requests.

Authority: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98–497; 44 U.S.C. 2104; and secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act 88 Stat. 1695; 44 U.S.C. 2111 note.

§ 1275.1 Scope of part.

This part sets forth policies and procedures concerning the preservation and protection of and access to the tape recordings, papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Subpart A—General Provisions

§ 1275.10 Purpose.

This Part 1275 implements the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695). It prescribes policies and procedures by which the National Archives and Records Administration will preserve, protect, and provide access to the Presidential historical materials of the Nixon Administration.

§ 1275.12 Application.

This Part 1275 applies to all of the Presidential historical materials of the Nixon Administration in the custody of the Archivist of the United States pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695).

§ 1275.14 Legal custody.

The Archivist of the United States has or will obtain exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695).

§ 1275.16 Definitions.

For the purposes of this Part 1275, the following terms have the meaning ascribed to them in this § 1275.16.

(a) *Presidential historical materials.* The term "Presidential historical materials" (also referred to as "historical materials" and "materials") shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory powers or duties as President and retained or appropriate for retention as evidence of or information about these powers or duties. Included in this definition are materials relating to the political activities of former President Nixon or members of his staff, but only when those activities directly relate to or have a direct effect upon the carrying out of constitutional or statutory powers or duties. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience or reference when they are clearly so identified.

(b) *Private or personal materials.* The term "private or personal materials" shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff.

(c) *Abuses of governmental power popularly identifed under the generic term "Watergate."* The term "abuses of governmental power popularly identified under the generic term "Watergate" (also referred to as "abuses of governmental power"), shall mean those alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional or statutory functions as President, or as political activities directly relating to or having a direct effect upon those functions, and which (1) were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or (2) are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93–1305.

(d) *General historical significance.* The term "general historical significance" shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory powers or duties of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term "archivist" shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term "agency" shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President. For purposes of § 1275.32 only, the term "agency" shall also include the White House Office.

(g) *Initial archival processing.* The term "initial archival processing" shall mean the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; reboxing the documents and affixing labels; producing finding aids such as folder title lists, cross-indexes, and subject lists; reproducing and transcribing tape recordings; reviewing the materials to idenfity items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; and identifying materials requiring further processing.

(h) *Staff.* The term "staff" shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White House Office or Domestic Council from any other Federal activity; or those pesons who otherwise were designated as assistants to the President, in connection with their service in that capacity; or any persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(i) *National security classified information.* The term "national security classified information" shall mean any matter which is security classified under existing law, and has been or should be designated as such.

§ 1275.18 Requests or demands for access.

Each agency which receives a request or legal demand for access to Presidential historical materials of the Nixon Administration shall immediately forward the request or demand to the Archivist of the United States, National Archives and Records Administration (NARA), Washington, D.C. 20408.

Subpart B—Preservation and Protection

§ 1275.20 Responsibility.

The Archivist of the United States or his designated agent (hereinafter the Archivist) is responsible for the preservation and protection of the Presidential historical materials. He may arrange with other Federal agencies, acting pursuant to appropriate Federal

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authority, for assistance in their preservation and protection.

§ 1275.22 Security.

The Archivist is responsible for providing adequate security for the Presidential historical materials.

§ 1275.24 Archival processing.

When authorized by the Archivist and until the commencement of archival processing in accordance with Subpart D of this Part, archivists may process the Presidential historical materials to the extent necessary for protecting and preserving the materials, and for providing authorized access to the materials persuant to Subpart C of this Part.

§ 1275.26 Access procedures.

(a) The Archivist will receive and/or prepare appropriate documentation of each access authorized under this Part 1275.

(b) Entry to the records storage areas will be provided by the Archivist only to archival, maintenance, security, or other necessary personnel or to Mr. Nixon or his agent. Two persons, at least one of whom represents the Archivist, will be present at all times that records storage areas are occupied.

(c) The Archivist will determine that each individual having access to the Presidental historical materials has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the material examined.

(d) The Archivist will provide former President Nixon or his designated attorney or agent (hereinafter Mr. Nixon), prior notice of, and allow him to be present during, each search necessary to comply with an authorized access under §§ 1275.32 or 1275.34.

(e) Only NARA archivists shall conduct searches necessary to comply with authorized accesses under §§ 1275.32 and 1275.34.

(f) Prior to releasing Presidential historical materials in accordance with an access authorized under §§ 1275.32 or 1275.34, the Archivist will give Mr. Nixon notice of the nature and identity of, and at his request allow him access to, those Presidential historical materials which the archivists have determined are covered by the subpoena, or other lawful process, or request. The notice will also inform Mr. Nixon that he may file a claim with the Archivist objecting to the release of all or portions of the described materials within 5 workdays of his receiving the notice described herein. The claim should detail the alleged rights and privileges of Mr. Nixon which would be violated by the release of the materials. The Archivist will refrain from releasing any of the materials to the requester during this period, and while any claim of right or privilege is pending before him, will refrain from releasing the materials subject to the claim.

(g) The Archivist will notify Mr. Nixon in writing of the administrative determination on any claims filed in accordance with paragraph (f) of this section. In the event the determination is wholly or partially adverse to the claim, the Archivist will refrain from releasing the materials to the requester for an additional 5 workdays from Mr. Nixon's receipt of the determination.

(h) Whenever possible, a copy, which shall be certified upon request, instead of the original documentary Presidential historical materials shall be provided to comply with a subpoena or other lawful process or request. Whenever the original documentary material is removed, a certified copy of the material shall be inserted in the proper file until the return of the original.

§ 1275.28 Extraordinary authority during emergencies.

In the event of an emergency that threatens the physical preservation of the Presidential historical materials or their environs, the Archivist will take such steps as may be necessary, including removal of the materials to temporary locations outside the metropolitan area of the District of Columbia, to preserve and protect the materials.

Subpart C—Access to Materials by Former President Nixon, Federal Agencies, and For Use in Any Judicial Proceeding

§ 1275.30 Access by former President Nixon.

In accordance with the provisions of Subpart B of this Part, former President Richard M. Nixon or his designated agent shall at all times have access to Presidential historical materials in the custody and control of the Archivist.

§ 1275.32 Access by Federal agencies.

In accordance with the provisions of Subpart B of this Part, any Federal agency or department in the executive branch shall have access for lawful Government use to the Presidential historical materials in the custody and control of the Archivist to the extent necessary for ongoing Government business. The Archivist will only consider written requests from heads of agencies or departments, deputy heads of agencies or departments, or heads of major organizational components or functions within agencies or departments.

§ 1275.34 Access for use in judicial proceedings.

In accordance with the provisions of Subpart B of this part, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Archivist will be made available for use in any judicial proceeding and are subject to subpoena or other lawful process.

Subpart D—Access by the Public

§ 1275.40 Scope of subpart.

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§ 1275.42 Processing period; notice of proposed opening.

(a) The Archivist will commence the initial archival processing of the materials. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owner in accordance with § 1275.48. As soon thereafter as possible, the Archivist will open for public access all of the materials in the Archivist's custody and control which are neither restricted pursuant to § 1275.50 or § 1275.52 nor subject to outstanding claims or petitions seeking such restrictions. The Archivist will open for public access each integral file segment of the materials upon completion of initial archival processing on that segment. Insofar as practicable, the Archivist will give priority in such initial archival processing to materials relating to abuses of governmental power as defined in § 1275.16(c).

(b) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Archivist will publish notice in the Federal Register of the proposed opening. The notice will reasonably identify the material to be opened and will include a reference to the right of any interested person to file a claim or petition in accordance with § 1275.44. Copies of the notice will be sent to the incumbent President of the United States or his designated agent and by first-class mail to the last known address of: Mr. Nixon, or his designated agent or heirs; any former staff member reasonably identifiable as the individual responsible for creating or maintaining the file segment proposed to be opened; any individual named in the material which the Archivist may not restrict in accordance with § 1275.50(b) because the material is essential to an understanding of any abuse of governmental power; and any persons named in the materials who are registered with the National Archives and Records Administration in accordance with paragraph (c) of this section.

(c) The Archivist will maintain a registry which shall contain the names and mailing addresses of persons who wish to receive personal notice of the proposed opening of integral file segments of the materials when those segments contain references about them. To be included in the registry, a person must submit his/her name and mailing address to the National Archives and Records Administration (NLN), Washington, D.C. 20408. Both the envelope and letter should be prominently marked, "Nixon Materials Registry." By submitting his/her name for inclusion in the registry, a person agrees to reimburse the United States for the cost of first-class postage for each instance of personal notice received.

§ 1275.44 Rights and privileges; right to a fair trial.

(a) Within 30 days following publication of the notice prescribed in § 1275.42(b), any person claiming a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Archivist in writing of the claimed right or privilege and the specific materials to which it relates. Unless the claim states that particular materials are private or personal (see paragraph (d) of this section), the Archivist will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 30 days following publication of the notice prescribed in § 127.42(b), officers of any Federal, State, or local court and other persons who believe that public access to any of the materials may jeopardize an individual's right to a fair and impartial trial should petition the Archivist setting forth the relevant circumstances that warrant withholding specified materials. The Archivist will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the petitioner, the Archivist will refrain from providing public access to the pertinent materials. If that decision is adverse to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

(c) In reaching decisions required by paragraphs (a) and (b) of this section, the Archivist may consult with other appropriate Federal agencies. If these consultations require the transfer of copies of the materials to Federal officials in agencies other than the National Archives and Records Administration, the Archivist will transfer these copies in accordance with the procedures prescribed in §§ 1275.26 and 1275.32.

(d) Within 30 days following publication of notice prescribed in § 1275.42(b), any person claiming that materials proposed for public access are in fact private or personal, as defined in § 1275.16(b), and that he or she is the proprietary or commemorative owner of those materials shall notify the Archivist in writing. The claim shall describe the specific materials to which it refers, and the claimant's basis for concluding that these materials are private or personal. Upon receipt of such a claim, the Archivist will transmit it to the Presidential Materials Review Board for its consideration and determination in accordance with § 1275.46(i). The Archivist will refrain from providing public access to the pertinent materials or from returning them to the claimant for at least 30 calendar days from receipt by the claimant or any intervening parties of the Board's determination.

§ 1275.46 Segregation and review; Senior Archival Panel; Presidential Materials Review Board.

(a) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate private or personal materials, as defined in § 1275.16(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials. At all times when the archivists or other authorized officials have access to the materials in accordance with these regulations, they shall take all reasonable steps to minimize the degree of intrusion into private or personal materials. Except as provided in these regulations, the archivists or other authorized officials shall not disclose to any person private or personal or otherwise restricted information learned as a result of their activities under these regulations.

(b) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in § 1275.16(c), nor otherwise having general historical significance, as defined in § 1275.16(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in § 1275.42(a), the Archivist will assign archivists to segregate materials subject to restriction, as prescribed in §§ 1275.50 and 1275.52. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material and the basis for the restriction as prescribed in §§ 1275.50 and 1275.52.

(d) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this section, or if the archivists conclude that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist of the United States. The Panel shall than have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this section.

(e) If the Senior Archival Panel is unable to make a determination required in paragraph (d) of this section, or if the panel concludes that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the Panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(f) The Presidential Materials Review Board ("Board") shall consist of the Archivist of the United States, who shall serve as Chairman, and the following additional members:

(1) The Assistant Archivist for the Office of the National Archives;

(2) The Assistant Archivist for the Office of the Presidential Libraries;

(3) The Director of the Legal Counsel Staff of the National Archives and Records Administration; and

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(4) The Historian of a Federal agency who shall be selected by the Archivist of the United States in his capacity as Chairman.

The Board shall meet at the call of the Chairman. Three members of the Board shall constitute a quorum for the conduct of the Board's business, although each member of the Board may participate in all of the Board's decisions. Members of the Board may be represented by their delegates on those occasions when they are unable to attend the meetings of the Board. The Board may consult with officials of interested Federal agencies in formulating its decisions. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32.

(g) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this section, the Board shall prepare a final written decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination.

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraph (c) of this section, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

(i) When the Board considers a matter referred to it by the Archivist as provided in § 1275.44(d), it shall follow these procedures:

(1) The Board shall notify the claimant of its consideration of the claim, and invite the claimant to supplement at his discretion the basis for the claim.

(2) The Board will publish notice in the **Federal Register**, advising the public of its consideration of the claim, and describing the materials in question as fully as reasonbly possible without disclosing arguably private or personal information. The notice will further advise that any member of the public may petition the Board within 15 calendar days of the publication of notice, setting forth the intervenor's views concerning the public or private nature of the materials.

(3) The Board shall take into account the positions maintained by the claimant and any intervenors in reaching its decision. The Board shall issue its decision, including dissenting and concurring opinions, no sooner than 20 days nor later than 60 days from the publication of notice in the **Federal Register** provided in paragraph (h)(2), of this section. The Board's decision shall be the final administrative determination. The Archivist will notify the claimant and any intervenors of the Board's decision by certified mail, return receipt requested, and shall refrain from acting upon that decision for 30 calendar days as provided in § 1275.44(d).

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon or his heirs or, when appropriate and after notifying Mr. Nixon or his designated agent, to the former staff member having primary proprietary or commemorative interest in the materials.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 1275.16(a).

§ 1275.50 Restriction of materials related to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 1275.16(c), when:

(1) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a claim by any person of a legal or constitutional right or privilege; or

(2) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Archivist may waive this restriction when:

(1) (A) The requester is engaged in a historical research project; or

(B) The requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided*, That if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Archivist will make available such personal information, or portions thereof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

§ 1275.52 Restriction of materials of general historical significance unrelated to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 1275.50(a).

(b) The Archivist will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

§ 1275.54 Periodic review fo restrictions.

The Archivist periodically will assign archivists to review materials placed under restriction by § 1275.50 or § 1275.52 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 1275.44(d), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraph (e) and (h) of § 1275.46, in making its determination. Before opening previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

§ 1275.56 Appeal of restrictions.

Upon petition of any researcher who claims in writing to the Archivist that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in § 1275.46(f). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32. As necessary and practicable, the Board shall also seek the views of any person, including former President Nixon, whose rights or privileges might be adversely affected by a decision to open the materials. The Board shall prepare a final written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Archivist will notify the petitioner and other interested persons of the final adminsitrative determination within 60 calendar days following receipt of such petition. If the Board's decision is to open previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

§ 1275.58 Deletion of restricted portions.

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this § 1275.50 or § 1275.52.

§ 1275.60 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of 36 CFR Part 1254 of this Chapter, as that may be amended from time to time.

§ 1275.62 Reference room locations, hours, and rules.

The Archivist shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, D.C. 20408.

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

(a) To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which:

(1) Involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and

(2) Were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Md.; Key Biscayne, Fla.; or San Clemente, Calif.; and

(3) Were recorded during the period beginning January 20, 1969, and ending August 9, 1974, the Archivist will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) Since the original tape recordings may contain information which is subject to restriction in accordance with § 1275.50 or § 1275.52, the Archivists shall review the tapes and delete restricted portions from copies for public and official reference use.

(c) Researchers may listen to reference copies of the tape recordings described in paragraph (a) of this section in a National Archivers building in the Washington, D.C. area and at other reference locations established by the Archivist in accordance with § 1275.62.

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying for researchers of materials other than tape recordings described in § 1275.64 normally will be done by personnel of the National Archives and Records Administration using Government equipment. With the permission of the Archivist or his designated agent, a researcher may use his own copying equipment. Permission shall be based on the determination that such use will not harm the materials or disrupt reference activities. Equipment shall be used under the supervision of NARA personnel.

(b) The Archivist may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in Part 1258 of this Chapter or pertinent successor regulation, as that schedule is amended from time to time.

§ 1275.68 Amendment of regulations.

The Archivist may from time to time amend the regulations of this Subpart D in accordance with the applicable law concerning such amendments.

§§ 1275.70 Freedom of information requests.

(a) The Archivist will process Freedom of Information Act requests for access to only those materials within the Presidential historical materials which are identifiable by an Archivist as records of an agency as defined in § 1275.16(f). The Archivist will process these requests in accordance with the Freedom of Information regulations set forth in § 1254.30 of this Chapter or pertinent successor regulations.

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(b) In order to allow NARA Archivists to devote as much time and effort as possible to the processing of materials for general public access, the Archivist will not process those Freedom of Information requests where the requester can reasonably obtain the same materials through a request directed to an agency (as defined in § 1275.16(f)), unless the requester demonstrates that he or she has unsuccessfully sought access from that agency or its successor in law or function.

Dated: July 9, 1985.

Frank G. Burke,

Acting Archivist of the United States.

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Briefings on How To Use the Federal Register— For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

	ST. LOUIS, MO	WASHINGTON, DC	DENVER, CO	DALLAS, TX
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Monday, March 3, 1986

Presidential Documents

Title 3—

The President

Executive Order 12553 of February 25, 1986

Revocation of Various Executive Orders

By the authority vested in me as President by the Constitution and laws of the United States of America, and to eliminate Executive Orders that are no longer necessary, it is hereby ordered that the following Executive Orders, and any amendments thereto, are revoked:

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723	Providing for examination for appointment to the U.S. Military and Naval Academies
3577	Establishing the manner of dating proclamations, commissions and similar executive documents
5401	Providing for appointments to and inclusion of the District of Columbia municipal service in the Civil Service
5918	Providing for examination for appointment to the U.S. Military and Naval Academies
6359	Relating to gold recovered from natural deposits
6558	Relating to receipt of gold on consignment by mints and assay offices
8427	Prescribing regulations for interbuilding mail and messenger service
9095	Establishing the Office of Alien Property Custodian
9193	Relating to the Office of Alien Property Custodian
9553	Creating an emergency board to investigate a railroad labor dispute
9555	Creating an emergency board to investigate a railroad labor dispute
9567	Amending functions and duties of the Alien Property Custodian with respect to property of Germany and Japan and their nationals
9573	Creating an emergency board to investigate a railroad labor dispute
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9663	Creating an emergency board to investigate railroad labor disputes
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9717	Creating an emergency board to investigate railroad labor disputes
9719	Creating an emergency board to investigate airline labor disputes
9721	Providing for transfer of personnel to certain public international organizations
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9889	Creating an emergency board to investigate a railroad labor dispute
9900	Creating an emergency board to investigate a railroad labor dispute
9910	Creating an emergency board to investigate a railroad labor dispute
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9971	Creating an emergency board to investigate labor disputes between certain workers and transportation systems operated by the Secretary of the Army
9988	Prescribing Selective Service regulations
9991	Creating an emergency board to investigate a railroad labor dispute
9992	Amending Selective Service regulations
9998	Creating an emergency board to investigate a railroad labor dispute
10001	Prescribing and amending Selective Service regulations
10008	Amending Selective Service regulations
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Ronald Reagan

THE WHITE HOUSE,
February 25, 1986.

[FR Doc. 86-4455
Filed 2-28-86; 11:19 am]
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Editorial note: For the text of a White House announcement, released February 25, on Executive Order 12553, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 9).

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Rules and Regulations

Federal Register
Vol. 51, No. 41
Monday, March 3, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 628]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 628 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 28 through March 6, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 628 (§ 907.928) is effective for the period February 28 through March 6, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 25, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is improving. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.928 Navel Orange Regulation 628 is hereby added to read:

§ 907.928 Navel Orange Regulation 628.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 28, 1986 through March 6, 1986, are established as follows:

(a) District 1: 1,550,00 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 28, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-4577 Filed 2-28-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This action continues a prior suspension of the requirement that plants operated by a cooperative association need to be located either in the marketing area or in a county adjacent to the marketing area to be eligible for regulation under the Southwest Plains milk order. The continuing action was requested by a cooperative association at a public hearing held in Tulsa, Oklahoma, on November 6, 1985. The cooperative operates supply plants which have supplied supplemental milk to distributing plants that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. The location requirement for a cooperative's pool plants has been suspended since April 1985. Several proposals, including one that would expand the marketing area and alleviate the cooperative's pooling problem associated with the location of its plants, were considered at the November 6 hearing. On the basis of all available information, a further suspension of the location requirement for plants operated by a cooperative is warranted. The provisions would be suspended until the hearing proceeding has been completed. Such interim action is needed to provide a continuation of the orderly disposition of the reserve milk supplies now associated with the market while the proceeding advances toward completion.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-2089.

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SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued September 20, 1985; published September 26, 1985 (50 FR 39017).

The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

It is hereby found and determined that the current suspension, which expires at the end of February, should be extended beginning for the month of March 1986, and continuing until the hearing proceeding on proposed amendments to the order has been completed and that the following provisions of the current order to not tend to effectuate the declared policy of the Act:

In § 1106.7(c) the words "located in the marketing area or in a county adjacent to the marketing area".

Statement of Consideration

This action is based on the record of a public hearing held on November 6, 1985, at Tulsa, Oklahoma, to consider several proposed amendments to the Southwest Plains order.

The order now provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the cooperative's producer milk is delivered to and physically received at distributing plants during the month. This action continues a prior suspension of the location requirement as a basis of pooling eligibility for plants operated by a cooperative association. The requirement has been suspended since April 1985 and this action extends the suspension until the hearing proceeding regarding this matter is concluded.

A continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), at the November 6 hearing. Mid-Am operates supply plants and represents producers who supply the fluid milk needs of distributing plants that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. Supplemental milk historically has been furnished to these distributing plants for Mid-Am's supply plants, which are located in southwest Missouri. However, since the supply plants are not located in the marketing area or in a county adjacent to the maketing area, they may not be qualified under the pooling provisions for plants operated by a cooperative association.

At the hearing, Mid-Am supported a proposal to include certain territory in southwest Missouri where its supply plants are located in the Southwest Plains marketing area. A witness for proponent cooperative testified that such a change is needed to reflect current marketing conditions. He also testified that the present suspension action should be extended again if the November 6 hearing proceeding has not been completed by the end of February 1986 when the current suspension expires. This action would permit Mid-Am to avoid uneconomic movements of milk solely to qualify it for pool participation while the proposals to resolve the cooperative's pooling problems are evaluated on the basis of the hearing evidence.

At the November 6 hearing there was only limited opposition to Mid-Am's proposal to add 30 counties in southwest Missouri and northwest Arkansas to the Southwest Plains marketing area. Although one handler presented opposition testimony, his objection was confined to the inclusion of a portion of one county in southwest Missouri.

Testimony and statistics presented at the hearing indicate that the scope of regulation under the Southwest Plains order was extended considerably by the April 1 termination of the St. Louis-Ozarks order. For example, several distributing plants and supply plants regulated under the former order and located in southwest Missouri and northwest Arkansas became regulated under the Southwest Plains order. The regulation of these plants under the Southwest Plains order had a dramatic impact on the Market's supply-demand relationship. For example, from March to April 1985, Class I use of producer milk increased by 58 percent while producer supplies more than doubled. As a result, the Class I utilization of producer milk declined from 57 percent in March to 44 percent in April. Record data also show that during the months of April through September 1985, the Class I use of producer milk ranged from 6.9 to 10.8 percentage points below the market's Class I utilization for the same month of 1984. For the entire period of April through September 1985, the Class I utilization was 8.6 percentage points below such use during the same six-month period in 1984.

An extension of the current suspension is warranted on the basis of the foregoing information. With an extension, Mid-Am will be able to continue pooling its supply plants in southwest Missouri on the basis of the cooperative's overall performance in supplying the market's distributing plants. This will enable the cooperative to handle efficiently its reserve milk supplies now associated with this market and assure that the milk it markets for dairy farmers who supply the fluid needs of the market will continue to be pooled with the outcome of the hearing proceeding advances toward completion.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon and thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest is that:

(a) This suspension is necessary to reflect current marketing conditions and to assure a continuation of the orderly marketing of milk in the marketing area in that without an extension of the suspension, costly and inefficient movements of milk would need to be made solely to qualify the milk for pool participation;

(b) This continuing action does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this action were fully explored at a public hearing held on November 6, 1985, where all interested parties had an opportunity to testify concerning the proposals.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following language in § 1106.7(c) of the Southwest Plains order is hereby further suspended beginning for the month of March 1986 and continuing until the rulemaking proceeding relating to this matter has been completed:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.7 [Amended].

2. In 7 CFR Part 1106 in § 1106.7(c) introductory text, the words "located in the marketing area or in a county adjacent to the marketing area" are suspended beginning for the month of March 1986 and beyond.

Effective date: March 3, 1986.

Signed at Washington, DC on: February 24, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-4465 Filed 2-28-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 1046

Amendment to Physical Fitness Training Program for Protective Force Personnel

AGENCY: Defense Programs, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending 10 CFR Part 1046 to require each contractor security inspector to participate in a physical fitness program on a continuing basis. DOE has determined that continuing training is necessary for security inspectors to carry out their security duties in a safe and effective manner.

EFFECTIVE DATE: April 2, 1986.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dowd, Department of Energy, Defense Programs, DP-343, Germantown, Washington, DC 20545, (301) 353–3203

Jo Ann Williams, Department of Energy, GC–31, Room 6B–256, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 252–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Procedural Requirements

I. Background

On November 23, 1984, the Department of Energy promulgated regulations (49 FR 46097–46105) designed to ensure that DOE contractor security inspectors have the requisite medical and physical fitness to protect nuclear weapons, special nuclear material, and sensitive facilities effectively. As promulgated, the regulations require each incumbent security inspector to participate in a physical fitness training program only until he or she meets the applicable physical fitness standards for initial qualification.

On November 12, 1985, DOE published proposed regulations (50 FR 46672–46673) that would require participation in a physical fitness program on a continuing basis. DOE has determined that continuing participation is necessary for security inspectors to maintain the desired level of physical fitness. Each DOE contractor employing security inspectors shall be responsible for development and implementation of such a program subject to the approval of the cognizant DOE Field Organization.

II. Discussion of Comments

DOE held public hearings in Albuquerque, New Mexico and Washington, DC and solicited written comments on these rules. DOE received no written comments. Two representatives of one labor union local testified at the Albuquerque hearing. They expressed general support for participation by security inspectors in a maintenance physical fitness program so long as the program does not require frequent long-distance (3 miles) running. In their view, the DOE physical fitness standard could be met by individuals who engaged either in running moderate distances or other aerobic exercises, such as swimming or bicycling.

DOE appreciates the concerns expressed by these union representatives regarding the nature of the maintenance program. However, these regulations do not set forth specifics regarding the content of the maintenance program. Each DOE contractor employing security inspectors shall be responsible for development and implementation of such a program subject to the approval of the cognizant DOE Field Organization.

While running need not be the sole exercise in a maintenance program, it must be a significant component of any physical fitness program whose objective is to maintain fitness sufficient to pass an annual running test. However, DOE will allow as much flexibility as it can in each contractor's approach to maintaining the general aerobic fitness of its security inspectors. DOE will ensure that employing contractors are made aware of the concerns expressed at the hearing and consider those concerns when considering specific maintenance plans for approval.

III. Procedural Requirements

A. Review Under Executive Order 12291

This Final Rule was reviewed under Executive Order 12291 (46 FR 13193, Feb. 19, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to Section 3(c)(3) of Executive Order 12291, this Final Rule was submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*) requires, in part, that an agency prepare a regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. This Final Rule deals with a training program for DOE protective personnel. The economic impact on small businesses is negligible. Accordingly, pursuant to section 606(b) of the Regulatory Flexibility Act, DOE certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

C. Environmental Review

DOE has determined that this Final Rule is not a major Federal action with significant environmental impact, and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

D. Paperwork Reduction Act

There regulations do not impose a collection of information requirement; therefore, it is not necessary to submit them to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 1046

Security measures, Medical and physical fitness/qualifications standards, Government contracts.

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For reasons set out in the preamble, Subpart B of 10 CFR Part 1046 of the Code of Federal Regulations is amended as set forth below.

Issued at Washington, D.C. this 21 day of February, 1986.

Sylvester R. Foley,

Assistant Secretary for Defense Programs.

1. The authority citation for Part 1046 continues to read as follows:

Authority: Atomic Energy Act, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)

2. In § 1046.12, a new paragraph (d) is added as follows:

§ 1046.12 Physical Fitness Training Program.

* * * * *

(d) After his or her initial qualification, each incumbent security inspector shall participate in a DOE-approved physical fitness training program on a continuing basis. This training is for the purpose of ensuring that security inspectors maintain the requisite physical fitness for effective job performance and to enable the individual security inspector to pass the applicable annual physical fitness requalification test without suffering any undue physical injury.

Appendix A—[Amended]

3. Section F.(7) and (8) of Appendix A to Subpart B are replaced by the following:

(7) *Training Program.* Beginning January 23, 1985, incumbent security inspectors shall participate in a physical fitness training program.

4. Section F.(9) of Appendix A to Subpart B would be redesignated Section F.(8).

[FR Doc. 4424 Filed 2–28–86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563d

[86–161]

Securities Filing of Insured Institutions

Dated: February 19, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical amendment.

SUMMARY: Section 563d.1 of the Federal Home Loan Bank Board's (the "Bank Board" or "Board") regulations currently requires that all filings being submitted to the Board under the Securities Exchange Act of 1934 be forwarded, with the appropriate number of copies, to the Corporate and Securities Division (the "Division") of the Office of General Counsel. Once these filings are received in the Division, distribution of the copies is made by the staff, including forwarding one copy for transmission to the Federal Home Loan Bank the ("District Bank") in whose district the institution is located. By its action today, the Board is hereby adding a new § 563d.2 to its regulations which would require reporting institutions to file one of the copies already required by the rules directly with the appropriate Federal Home Loan Bank. This will increase the efficiency of the review process by avoiding unnecessary delays in the distribution of the copies.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Diane F. Petruso, Paralegal Specialist, Corporate and Securities Division, Office of General Counsel, (202) 377–7059, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 563d.1 of the Board's regulations directs institutions filing reports with the Bank Board under the Securities Exchange Act of 1934, to mail the reports, with the appropriate number of copies, to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW. Washington, D.C. 20552. When the Division receives these filings, distribution is made to staff members and various offices within the Board.

In order to eliminate any possible delay in the distribution, review, and processing of these documents, and to improve the coordination of securities disclosure review with information available through the Board's supervisory and examination process, the Board is adopting a technical amendment and adding a new § 563d.2 to its regulations. The new § 563d.2 requires that each reporting institution mail one of the required number of copies of each filing directly to the District Bank for their area. The only exceptions to this requirement will be in the case of preliminary versions of any filing, and Forms 3 and 4, in which case all copies shall continue to be forwarded to the Corporate and Securities Division. All remaining required copies of each filing will be sent, as the rules currently provide, to the Corporate and Securities Division, of the Office of General Counsel. This change does not require the reporting institutions to file any more copies than they do now; the only change is that, in most cases, one copy will be sent directly to the Federal Home Loan Bank in their District. It should also be noted that this change applies only to the reporting institution itself. Individuals and other entities who may file, for example, a Form 13D, Statement of Beneficial Ownership, directly with the Board; will continue to file all required copies with the Division.

Pursuant to 12 CFR 508.11 and 508.14, and the Board finds that, because of the minor, technical nature of this amendment, notice and public comment are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563d, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563d—SECURITIES OF INSURED INSTITUTIONS

Subpart A—Regulations

1. The authority citation for Part 563d continues to read as follows:

Authority: Secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended (15 U.S.C. 78c(b), 78 *l*, m, n and w; 78d–1); and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. p. 1071.

§ 563d.1 [Amended]

2. Amend § 563d.1 by inserting the phrase ", except as noted in § 563d.2, below.", after the zip code "20552."

* * * * *

3. Add a new 563d.2, to read as follows:

§ 563d.2 Mailing requirements for securities filings.

Those institutions required to file reports with the Corporate and Securities Division of the Office of General Counsel, as set forth in § 563d.1, above, shall file one of the required number of copies with the Federal Home Loan Bank for the District in which the institution has its main office. Such copies shall be marked to the attention of the Supervisory Agent. In the case of preliminary versions of any filing, and in the case of Forms 3 and 4, however, all copies shall be sent to the Corporate and Securities Division, as set forth in § 563d.1. The originally-signed copy and all remaining copies of each filing shall be sent to the Corporate and Securities Division, at the address noted in § 563d.1. Additionally, copies to the District Banks shall be mailed on the same day as the original and remaining copies are forwarded to the Corporate and Securities Division.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–4430 Filed 2–28–86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–117–AD; Amdt. 39–5245]

Airworthiness Directives; Gates Learjet Models 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises an existing airworthiness directive (AD) applicable to certain Gates Learjet airplanes, which currently requires repetitive inspections of Stall Warning Accelerometers. This amendment extends the inspection interval from 165 hours to 220 hours time-in-service. This permits operators to perform this inspection in conjunction with other airplane maintenance schedules. In addition, this amendment limits the applicability of the AD to those airplanes in which certain equipment has not been incorporated.

EFFECTIVE DATE: April 10, 1986.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by amending AD 82–01–05R1 to increase the repetitive inspection interval for Stall Warning Accelerometers from 165 hours to 220 hours time-in-service, was published in the **Federal Register** on November 18, 1985 (50 FR 47409). In addition, the proposed amendment would revise paragraph C. of AD 82–01–05R1 to reflect the correct address of the Wichita Aircraft Certification Office.

The comment period ended January 6, 1986, and interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

Two commenters concurred with the proposal.

The third commenter, the manufacturer, stated that paragraph A. should indicate that Model 36 series airplanes incorporating Gates Learjet Airplane Accessory Kit 83–2 would also be exempt from the requirements of the AD. After consideration of additional data, the FAA concurs and has changed paragraph A. accordingly. The FAA has determined that this change is in the public interest and will not compromise safety of flight; it will have no adverse economic impact on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously mentioned.

It is estimated that 1,017 airplanes of U.S. registry will be affected by this AD. The FAA has determined that the requirements of this AD may actually reduce operators' costs since the required inspections may now be accomplished in conjunction with other regularly scheduled airplane maintenance and inspections.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By revising Airworthiness Directive (AD) 82–01–05R1, Amendment 39–4746, as follows:

A. Change the applicability statement to reflect the following models and serial numbers:

Model	Serial No.
23	23–003 through 23–099.
24, 24A	24A–011, 24A–012, 24–015, 24–019, 24–031, 24–043, 24–050, 24–051, 24–055, 24–060, 24–065, 24–067, 24–090, and 24–100 through 24–180.
24B, 24B–A	24–181 through 24–217, 24–219 through 24–229.
24C, 24D, 24D–A	24–218, 24–230 through 24–328.
24E, 24F, 24F–A	24–329 through 24–357.
25D, 25F	25–206 through 25–336, 25–338 and on.
28	28–001 and on.
29	29–001 and on.
35, 35A	35–001 through 35–605.
36, 36A	36–001 through 36–053.

B. Change paragraph A to read as follows:

A. To assure proper operation of the Stall Warning Accelerometer Unit, unless previously inspected in the last 200 hours time-in-service before the effective date of this AD, within the next 50 hours time-in-service, and at intervals not to exceed 220 hours time-in-service thereafter, perform the inspection of the Stall Warning Accelerometer in accordance with Gates Learjet Service Bulletins (SB) 23/24/25–301B, SB 28/29–27–3B, or SB 35/36–27–12B, as appropriate. Models 35 and 36 series airplanes incorporating Gates Learjet Airplane Accessory Kit 83–2 are exempt from the requirements of this AD.

C. Change paragraph C to read as follows:

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277.

These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

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This amendment becomes effective April 10, 1986.

Issued in Seattle, Washington, on February 24, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4438 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-120-AD; Amdt. 39-5244]

Airworthiness Directives: Boeing Model 757-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires replacement of the existing elevator control forward override assembly cam on certain Boeing Model 757 airplanes. This action is prompted by a report of an incident during functional testing which resulted in jamming of both elevator control columns against the stops. This condition, if not corrected, could result in loss of elevator control.

EFFECTIVE DATE: April 10, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that would require replacement of the existing elevator control forward override assembly came on certain Boeing Model 757 airplanes was published in the **Federal Register** on November 13, 1985 (50 FR 46776). The comment period for the proposal closed on January 3, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received; the commenter had no objections to the contents of the proposed rule.

After a careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 31 airplanes will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required modification, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,960.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria or the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757-200 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 757-200 series airplanes listed in Boeing Service Bulletin 757-27-0057, Revision 1, dated October 17, 1985, certificated in any category.

To eliminate the possibility of the elevator forward override mechanism becoming jammed, accomplish the following, unless already accomplished:

A. Within the next 60 days after the effective date of this AD, remove and replace the elevator control forward override assembly cam with a revised cam in accordance with Boeing Service Bulletin 757-27-0057, Revision 1, dated October 17, 1985, or later FAA-approved revision.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 10, 1986.

Issued in Seattle, Washington, on February 24, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4439 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-20]

Alteration of VOR Federal Airway V-45, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Federal Airway V-45 between the Youngstown, OH, Very High Frequency Omni-Directional Radio Range and Tactical Air Navigational Aid (VORTAC) and the Varys, OH, intersection. This action is taken to simplify a commonly used routing to avoid pilot confusion and excessive clearance readbacks that congest radio communication frequencies.

EFFECTIVE DATE: 0901 U.t.c., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION

History

On December 4, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter V-45 between Youngstown, OH, VORTAC and Varys, OH, intersection (50 FR 49704).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as

that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A Dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters V-45 between Youngstown, OH, VORTAC and Varys, OH, intersection. This segment is frequently used in the tower en route system between Youngstown and Waterville, OH, VORTACs. The routing presently issued is Youngstown V-6, V-297 and V-45. This often causes pilot confusion and excessive readbacks and increases controller verbage. This action eliminates those problems. It also reduces excessive routing entered in the tower control strips which are already limited on displayable route segments.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-45 [Amended]

By removing the words "From INT Waterville, OH, 085° and Cleveland, OH, 335° radials;" and substituting the words "From Youngstown, OH, INT Youngstown 272° and Akron, OH, 296° radials; INT Akron 296° and Waterville, OH, 085° radials;"

Issued in Washington, D.C., on February 24, 1986.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-4441 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 375

[OST Docket No: 42547; Amdt No. 375-1]

Navigation of Foreign Civil Aircraft Within the United States

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This regulation revises DOT's rule concerning the navigation in the United States of foreign civil aircraft that are not engaged in foreign air transportation. Outdated provisions are deleted and the rule is conformed to FAA regulations. The rule also expands the definition of a foreign civil aircraft to include U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States. Application procedures for foreign aircraft permits have been revised to expedite processing.

EFFECTIVE DATE: April 2, 1986.

FOR FURTHER INFORMATION CONTACT: Peter B. Schwarzkopf, Office of Assistant General Counsel for International Law, C-20, (202) 472-5621; or Terri Smith, Licensing Division, Office of Aviation Operations, P-45, (202 755-3800; U.S. Department of Transportation, 400 Seventh Street SW., Room 6412, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking adopted October 4, 1984, (SPDR 91, Docket 42547 (49 FR 42948, 10/25/84)), the Civil Aeronautics Board proposed revision of Part 375 of its Regulations (14 CFR Part 375) governing the navigation of foreign civil aircraft within the United States. The proposed amendments, which are finalized here, primarily update and make technical corrections to the rule. However, the definition of "foreign civil aircraft" is also expanded to ensure the application of the standard of reciprocity under section 1108(b) of the Act. Because of the numerous revisions, and the restructuring of the order of various of its provisions, the Part is reissued in its revised form.

With the statutory termination of the Civil Aeronautics Board on January 1, 1985, under the Airline Deregulation Act of 1978, and the Civil Aeronautics Board Sunset Act of 1984, the Department of Transportation is now responsible for the disposition of these rules.

A summary of the changes to them preexisting Part 375 (other than minor editorial revisions), and their purpose, follows:

Section 375.1—Definitions. The definition of foreign civil aircraft is revised to encompass U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States. With the amendment of section 501(b)(1)(A)(ii) of the Federal Aviation Act (Act) (Pub. L. 95-163, 91 Stat. 1283) to permit U.S. registration of aircraft by U.S. corporations owned and controlled by foreign nationals, the amendment is necessary to achieve the Congressional purpose reflected in section 1108(b) of the Act that foreign aircraft, operated for commercial purposes within the United States, be permitted to do so only if reciprocity exists with the country of which the owners or operators are nationals.

Section 375.3—Existing permits. The reference to permits issued under the expired provisions of Part 190 of the Civil Air Regulations is no longer pertinent and has been deleted.

Section 375.10—Certain foreign civil aircraft registered in ICAO member states. The section is amended to delete the requirement that notices of airworthiness standards be filed through diplomatic channels. Direct filing with the Department of Transportation, rather than through the Department of State, will simplify procedures, and conforms these procedures to those now in effect for foreign air carrier permits.

Section 375.11—Other foreign civil aircraft. Revisions to this section clarify that an operator of a foreign civil aircraft that is not registered in an ICAO member state must comply with applicable FAA rules, in addition to the requirements of Part 375.

Section 375.19—Nature of privilege conferred. The section has been moved from § 375.42(b) to Subpart C (Rules Generally Applicable) to clarify that all operations under Part 375 are operated pursuant to section 1108(b) of the Act and under the terms of the Chicago Convention.

Section 375.20—Airworthiness and registration certificates. These airworthiness provisions are revised to conform to changes made by the FAA to § 91.28 of its rules (14 CFR 91.28); specifically, the grant of a "special flight authorization (in lieu of the prior air safety flight authorization) for certain limited navigation of foreign aircraft not possessing a valid certificate of

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airworthiness from its country of registry, and the deletion of specification of circumstances in which such authorizations might be granted. Special flight authorizations may be carried in place of an airworthiness certificate, but all other requirements of Part 375 must be complied with. DOT foreign aircraft permits and special authorizations, when required, will be issued only after issuance of the FAA special flight authorization.

Section 375.31—Demonstration flights of foreign aircraft. Clarification is made that demonstration flights at public air shows are authorized without specific prior approval, so long as the operations comply with the other provisions of Part 375.

Section 375.35—Free Transportation. The categories of persons to whom free transportation may be provided by foreign air carriers over non-traffic segments is expanded to include travel agents, security personnel guarding foreign government officials, and guests of a foreign air carrier on aircraft delivery flights. In light of the routine approval of these categories in the past, case-by-case approval of these operations does not appear to be required.

Section 375.36—Lease of foreign civil aircraft without crew. This section specifically provides for the dry lease (lease without crew) of a foreign aircraft to a U.S. direct air carrier or U.S. citizen commercial operator under applicable FAA rules §§ 121.153 and 135.25), without a specific pre-flight authorization, but subject to FAA requirements. The former ambiguity as to such authorization is, therefore, removed, and the section is expanded to cover commercial operations under the revised definition of foreign civil aircraft.

Sections

375.40—Permits for commercial air operations.
375.41—Agricultural and industrial operations within the United States.
375.42—Transport Operations—occasional planeload charters.
375.43—Application for foreign aircraft permit.
375.44—Issuance of permit.

The rule reorganizes and revises the application procedures for a foreign aircraft permit and the standards for issuance of a permit (prior §§ 375.40–375.42) to be similar to the procedures under Part 212 (statements of authorization to operate charter flights). It includes procedures for filing answers to applications and provides for service of applications if warranted. Such procedures will be utilized for example for Canadian operator applications for aerial agricultural, industrial or survey operations, in which the Canadian first refusal ("primary rights") policy has largely extinguished reciprocity, and has frequently warranted denial of Canadian operators' applications. The new procedures facilitate the processing of these contested applications, and implement the Act's reciprocity requirement in section 1108(b). Provision for grant of foreign aircraft permits for continuing cargo operations has been deleted, since there have been no recent requests of this nature, and the authority, if requested, is more appropriately granted by foreign air carrier permit, under section 402 of the Act, or by exemption under section 416(b) from the provisions of section 402.

Section 375.50—Transit flights; scheduled international air service operations. The advance period for filing of notices of proposed operation of scheduled service pursuant to the International Air Service Transit Agreement in transit across the United States has been increased to 30 days (from 15) in order to permit the Department to administer more effectively the requirements of this section. The increase should not inconvenience, or otherwise burden, any filing carrier.

Fifteen comments were filed in response to the CAB rulemaking notice. The only controversial portion of the rule was the revision of the definition of "foreign civil aircraft" to encompass U.S. registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States. Nine comments were filed in support of this revision.[1] Four persons filed comments in opposition.[2]

The principal opposition was reflected in the comments and reply comments of Interra Technologies, Inc., a Texas incorporated corporation owned 50% by Canadian nationals, which is engaged in aerial survey operations within and adjacent to U.S. airspace by radar equipped small aircraft. It has registered its aircraft in the United States pursuant to the 1977 amendments to section 501(b)(1)(A)(ii) of the Act which permits U.S. incorporated corporations to register aircraft based and primarily used in the United States, and not registered under the laws of any foreign country, despite the fact that their foreign ownership precludes the corporation from qualifying as a "citizen of the United States" under section 101(16) of the Act.

Interra (and attorneys Lester and Stewart with respect to some arguments) allege that DOT has no jurisdiction to revise the Part 375 definition of foreign civil aircraft, since the plain meaning of the language of section 1108(b) of the Act, and its legislative history, demonstrate that Congress intended to permit CAB issuance of permits under that section only with respect to aircraft registered in a foreign country.

We cannot agree. Section 1108(b) is applicable to "foreign aircraft, which are not part of the armed forces of a foreign nation". It is not in terms limited to "foreign-registered aircraft". On the contrary, the two criteria under which DOT is permitted to grant foreign aircraft permits to navigate in the United States— "if such foreign nation grants a similar privilege with respect to aircraft of the United States" and if "it shall find such action to be in the interest of the public"—necessarily require application to aircraft owned or operated by foreign nationals, as well as foreign-registered aircraft, if the Congressional purpose is to be achieved.

We recognize that the current definition in Part 375 of the regulations (but not in section 1108(b) of the Act) has for many years been limited to aircraft of foreign registry. Moreover, it is reasonable to assume that the primary focus of section 1108(b) was on aircraft for foreign registry. But this is because, prior to the 1977 amendments, foreign owned aircraft were ineligible for registration in the United States. While foreign nationals could have operated U.S.-registered leased aircraft, we are unaware of any previous instance in which the seciton 1108(b) reciprocity provisions had been abused on the basis of foreign operation of U.S.-registered leased aircraft.

In 1977, section 501 of the Act was amended to permit U.S.-incorporated corporations, which do not qualify as citizens of the United States because of their foreign ownership, to obtain U.S. registration for aircraft based and primarily used in the United States. (Section 501(b)(1)(A)(ii), Pub. L. 95–163, 91 Stat. 1283.) It is clear from the legislative history of the amendments that the focus was on private corporate aircraft, and not commercial operations performed by foreign nationals within the United States. Thus the purposes of the amendment were to remove unnecessary restrictions on sales of aircraft to resident aliens (expanded to include foreign owned U.S.-incorporated corporations), and to avoid a serious impediment to safety resulting from the necessity of these foreign nationals having to register their U.S. based aircraft abroad, with the difficulties of complying with foreign safety inspection procedures. (See, 123 Cong. Rec. 36636–37, 43 (H.R. 6010); 123 Cong. Rec. 14255 (H.R. 735); Senate Report No. 95–96, 95th Cong., 1st Sess, to accompany H.R. 735, April 20, 1977.) Nothing in the legislative history of the amendment indicates any intention by Congress to restrict the applicability of the reciprocity requirement in section 1108(b) of the Act.

The failure to apply Part 375 to foreign owned, controlled, or operated U.S.-registered aircraft would, particularly since the 1977 amendments, create a loophole under which the reciprocity provisions of section 1108(b) could easily be evaded. The existence of such a loophole has now become a demonstrable problem. One company not a U.S. citizen, Interra, has acknowledged that it is now freely conducting U.S. commercial operations despite the first refusal or "primary rights" policy which precludes such operations by U.S. carriers in Canada. Moreover, the comments of Carson Helicopters, E.G. & G. Geometrics, Petroleum Helicopters, American Society of Photogrammetry, and Keystone Aerial Surveys, demonstrate further that the Interra situation is not an isolated incident. Accordingly, DOT finds that amendment of the definition of "foreign civil aircraft", as proposed, is consistent with the Act, and is clearly required in the public interest.

The amendment will give DOT the opportunity to ensure that the section 1108(b) reciprocity standard is applied in accordance with the Congressional intent. Of course, if special circumstances exist under which reciprocity concerns should be moderated in light of other public interest considerations, these circumstances will be evaluated on a case-by-case basis.

The comments of John Stewart refer to possible confusion of the public by classification of certain U.S.-registered aircraft as "foreign civil aircraft". Interra similarly makes reference to this alleged anomaly. We are not persuaded they any undue confusion or anomaly would exist. The definition would have its sole impact on Part 375 commercial operations in the United States by foreign owned, controlled or operated aircraft, and would not be applicable for any other purpose

The Federal Aviation Act has always made reference to the nationality of ownership and control in the context of the grant of rights for commercial operations to, from, or within the United States. Thus, the definition of "citizen" in section 101(16) of the Act requires that a U.S. corporation be 75% owned and controlled by U.S. citizens in order to operate as a U.S. air carrier. Only U.S. air carriers are entitled to engage in domestic (cabotage) common carriage operations. Foreign nationals are precluded from engaging in such domestic operations whether or not they use U.S.-registered aircraft.

As a technical matter, the definition would also result in the application of Part 375 to foreign-owned, U.S.-registered aircraft not engaged in commercial operations. However, § 375.30 grants a blanket regulatory authorization for navigation of foreign civil aircraft in the United States which are not engaged in commercial operations. Therefore, the technical application of the regulation to non-commercial operations would have no practical effect. Accordingly, there is little probability of any undue confusion as a result of such application.

British Aerospace, Inc. has requested an interpretation of the definition of "commercial air operations" in § 375.1 so as to exclude from "operations for remuneration or hire", demonstration flights where reimbursement of expenses does not exceed the categories of reimbursable expenses permitted under FAA Part 91 (14 CFR 91.181 (b)(3) and (d)(1)). These FAA regulations appear to provide a reasonable delineation between a simple reimbursement for expenses, and operations for remuneration or hire, in the context of demonstration flights in connection with the sale of aircraft. Therefore, without prejudice to any other interpretation of "remuneration or hire" with respect to the definition of commercial air operations under § 375.1, the Department will not consider a demonstration flight (for the purpose of sale) involving reimbursement of expenses not exceeding those specified in current 14 CFR 91.181(d) of the FAA regulations, as a "commercial air operation" within the meaning of Part 375 of the DOT regulations.

Donald W. Smith of the law firm of Kirkpatrick and Lockhart, supported by comments of British Aerospace, Inc. and Robert C. Lester, points out that the exclusion from the requirement of issuance of a foreign aircraft permit of foreign civil aircraft leased to a U.S. air carrier for authorized air transportation operations should equally apply to a lease to a U.S. citizen or permanent resident for commercial operations. The point is well taken. This would not, of course, include leases to U.S.-incorporated corporations which do not qualify as U.S. citizens under section 101(16) of the Act. Accordingly, section 375.36 reflects this change.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. We find that the economic impact of this regulation is so minimal a full regulatory evaluation is not required.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. The rule will only apply to operators of foreign civil aircraft. The revisions will primarily affect 10 to 15 Canadian industrial operators. Only one such operator has filed an objection in this proceeding.

The collection of information requirements in this rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements were submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review. The OMB approval number for the application procedure and related form contained in the rule is 2106–0002.

List of Subjects in 14 CFR Part 375

Aircraft, Airmen, Foreign relations, Reporting and recordkeeping requirements.

Final Rule

Accordingly, pursuant to the authority delegated under 49 CFR 1.56, 14 CFR Part 375, Navigation of Foreign Civil Aircraft Within the United States, is revised to read as follows:

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[1] Aero Service Division, Western Geophysical Company of America (including reply comments); Petroleum Helicopters, Inc.; Carson Helicopters, Inc.; and Carson Geoscience Company; E.G. & G. Geometrics; American Society of Photogrammetry; Keystone Aerial Surveys, Inc.; Donald W. Smith of the law firm of Kirkpatrick & Lockhart; Senator Johnson and Congressman Tauzin; and Congressman Regula.

[2] Interra Technologies, Inc. (including reply comments); Evironmental Research Institute of Michigan; Robert C. Lester, P.C., Attorney; and John Stewart of the law firm of Zuckert, Scoutt, Rasenberger and Johnson. British Aerospace and Westland, Inc. filed comments dealing with other issues. The comments of Donald W. Smith of the law firm of Kirkpatrick & Lockhart also dealt with other issues.

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PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

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Subpart G—Penalties

375.60 Penalties.

Subpart H—Special Authorization

375.70 Special authorization.
Appendix A—Form 4500

Authority: 49 U.S.C. 1324, 1372, 1502, 1508.

Subpart A—General

§ 375.1 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended;

"Air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in interstate, overseas, or foreign commerce (see section 101 (10) and (23) of the Federal Aviation Act, 49 U.S.C. 1301);

"Category" shall indicate a classification of aircraft such as airplane, helicopter, glider, etc.;

"Commercial air operations" shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under section 402 of the Act, exemptions, and all other operations in air transportation.

"Exemption" means an exemption granted, under section 416(b) of the Act, authorizing air transportation by a foreign air carrier;

"Foreign air carrier permit" means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

"Foreign aircraft permit" means a permit authorizing navigation of foreign civil aircraft in the United States pursuant to section 1108(b) of the Act and this part;

"Foreign civil aircraft" means (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States;

"Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail, and does not include landings for embarking or disembarking stopover passengers or transshipped cargo or mail, or for other than strictly operational purposes.

"Type" means all aircraft of the same basic design including all modifications thereto except those modifications that result in a change in handling or flight characteristics.

§ 375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated under authority contained in a foreign air carrier permit or exemption. This part also contains provisions that specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department.

§ 375.3 [Reserved]

Subpart B—Authorization

§ 375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State that at the time of manufacture was a member of the International Civil Aviation Organization (ICAO), and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State that at the time of manufacture was not a member of ICAO, and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States (1) if the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness are equal to or above the minimum standards established pursuant to the Chicago Convention, or (2) if such notification has not been made to ICAO at the time of flight, there is on file with the Department a statement by the State of registry that, with regard to aircraft of the type that is proposed to be operated hereunder, the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention.

§ 375.11 Other foreign civil aircraft.

A foreign civil aircraft other than those referred to in § 375.10 may be navigated in the United States only when (a) the operation is authorized by the Department under the provisions of this part, and (b) the aircraft complies with any applicable airworthiness standards of the Federal Aviation Administration for its operation.

Subpart C—Rules Generally Applicable

§ 375.19 Nature of privilege conferred.

The provisions of this part, and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5. That article gives foreign aircraft the privilege of "taking on or discharging passengers, cargo or mail" subject to the right of the State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. The U.S. Congress by the 1953 amendment to section 6 of the Air Commerce Act of 1926, now designated as section 1108(b) of the Act, authorizes the Department to permit such operations only where conditions of reciprocity and the interest of the public in the United States are met. Thus, the operator of any foreign registered aircraft is not entitled as a matter of right to the issuance, renewal or freedom from modification or change in a permit issuable pursuant to this authority. Accordingly, any authority conferred by this part may be withheld, revoked, amended, modified, restricted, suspended, withdrawn, or canceled by the Department in the interest of the public of the United States, without notice or hearing.

§ 375.20 Airworthiness and registration certificates.

Foreign civil aircraft shall carry currently effective certificates of registration and airworthiness issued or rendered valid by the country of registry and shall display the nationality and registration markings of that country. However, a foreign civil aircraft may carry, in lieu of such certificate of airworthiness, an effective special flight authorization issued by the Federal Aviation Administration for the operations being performed.

§ 375.21 Airmen.

Members of the flight crew of a foreign civil aircraft shall have in their personal possession valid airman certificates or licenses authorizing them to perform their assigned functions in the aircraft and for the operation involved issued or rendered valid by the country of registry of the aircraft or by the United States. No such flight crew members shall perform any flight duty within the United States that they are not currently authorized to perform in the country issuing or validating the certificate.

§ 375.22 Flight operations.

Flights of foreign civil aircraft in the United States shall be conducted in accordance with the currently applicable rules of the Federal Aviation Administration.

§ 375.23 Maximum allowable weights.

Foreign civil aircraft that are permitted to navigate in the United States on the basis of foreign airworthiness certificates must conform to the limitations on maximum certificated weights prescribed or authorized for the particular variation of the aircraft type, and for the particular category of use, by the country of manufacture of the aircraft type involved.

§ 375.24 Entry and clearance.

All U.S. entry and clearance requirements for aircraft, passengers, crews, baggage and cargo shall be followed.

§ 375.25 Unauthorized operations.

No foreign civil aircraft shall be navigated in the United States unless authorized by this part. Commercial air operations (other than those authorized by § 375.36) shall not be undertaken without a permit issued by the Department.

§ 375.26 Waiver of sovereign immunity.

Owners and operators of aircraft operated under this part that are engaged in proprietary of commercial activities waive any defense of sovereign immunity from suit in any action or proceeding instituted against any of them in any court or other tribunal in the United States for any claim relating to that operation.

Subpart D—Authorized Operations

§ 375.30 Operations other than commercial air operations.

Foreign civil aircraft that are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may carry non-revenue traffic to, from or between points in the United States.

§ 375.31 Demonstration flights of foreign aircraft.

Flights of foreign civil aircraft within the United States may be made for the purpose of demonstration of the aircraft or any component thereof (including demonstrations at airshows), provided no persons, cargo or mail are carried for remuneration or hire.

§ 375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft that are engaged in agricultural or industrial operations to be performed wholly outside the United States may be navigated into, out of, and within the United States in connection with those operations provided that the aircraft is not at the time engaged in the carriage of passengers, cargo, or mail for remuneration or hire.

§ 375.33 Transit flights, irregular operations.

Foreign civil aircraft carrying passengers, property or mail for remuneration or hire, but not engaged in scheduled international air services, are authorized to navigate nonstop across the territory of the United States and to make stops for non-traffic purposes. The navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft. Flights involving stops under such circumstances may, however, be performed in the case of emergency relating to the safey of the aircraft, passengers, cargo or crew.

§ 375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or a buyer's employees or designees. This section does not, however, authorize foreign civil aircraft to be used within the United States for the purpose of flight instruction for remuneration or hire.

§ 375.35 Free Transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

(1) Between two or more points in the United States;

(2) Between a point in the United States named in the carrier's section 402 permit or exemption, and a point outside the United States not so named, when authorized in accordance with the provisions of Part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and

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(3) Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

(1) Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;

(2) Directors, officers and employees, and their parents and immediate families, of an air carrier or another foreign air carrier traveling pursuant to a pass interchange arrangement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services, if the agents are under no obligation to sell the transporting carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;

(5) Persons injured in aircraft accidents and physicians and nurses attending such persons;

(6) Any persons or property with the object of providing relief in cases of general epidemic, natural disaster or other catastrophe;

(7) Any person who has the duty of guarding foreign government officials travelling on official business; and

(8) Guests of a foreign air carrier (including members of the press) on delivery flights of newly-acquired or newly-renovated aircraft.

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

§ 375.36 Lease of foreign civil aircraft without crew.

Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.

Subpart E—Operation Requiring Specific Pre-Flight Authorization of Filing

§ 375.40 Permits for commercial air operations.

(a) *Permit required.* Except for aircraft being operated under a foreign air carrier permit, an exemption, or as otherwise provided in Subpart D or H of this part, foreign civil aircraft may engage in commercial air operations only if there is carried on board the aircraft a permit issued by the Department in accordance with this subpart authorizing the operations involved.

(b) Aircraft are not authorized to engage in air transportation under this section. Where an operation involves the carriage of persons, property or mail for compensation or hire, the Department will determine whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, based on all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, an applicant that holds itself out to the public, or to a particular class or segment, as willing to furnish transportation for hire is a common carrier.

§ 375.41 Agricultural and industrial operations within the United States.

Foreign civil aircraft shall not be used for such commercial air operations as crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States, including its territorial waters and overlying airspace, unless a permit has been issued by the Department and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

§ 375.42 Transport operations—occasional planeload charters.

Occasional planeload charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a calendar year. This part does not authorize operations that involve solicitation of the general public such as is usually involved in the transportation of individually-ticketed passengers or individually-waybilled cargo, or in which the charterer is a travel agent, a charter operator, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

§ 375.43 Application for foreign aircraft permit.

(a) Applications for foreign aircraft permits shall be submitted on OST Form 4509, (Appendix A), in duplicate, addressed to the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Upon a showing of good cause, applications may be made by telegram or by telephone.

(b) Applications shall contain a proper identification (including citizenship) of the applicant (the operator of the aircraft concerned) and of the owner thereof (if different from the applicant), a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In the case of cargo flights, the names of all contractors, agents, if any, and the beneficial owner of the cargo, and a description of the cargo and of the proposed operations shall be provided. In the case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. Applications shall also contain a statement as to whether the applicant's homeland allows operators of U.S.-registered aircraft to conduct similar operations.

(c) Applications shall be filed at least 15 days in advance of the proposed commencement date of the operations. The Department may direct the applicant to serve copies of its application on additional persons. Late applications may be considered by the Department upon a showing of good cause.

(d) (1) Any party in interest may file a memorandum supporting or opposing an application. Two copies of each memorandum shall be filed within 7 business days after the application is filed but no later than the proposed commencement date of the operations. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Department is asked to consider.

(3) A copy of each memorandum shall be served on the applicant.

(e) (1) Unless otherwise ordered by the Department, each application and memorandum filed in response shall be available for public inspection at the Licensing Division of the Office of Aviation Operations immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information should be withheld under applicable provisions of law, and the public interest does not require disclosure, it will order that the injurious information be withheld.

(Information collection requirements contained in this section approved by the Office of Management and Budget under control number 2106-0002).

§ 375.44 Issuance of permit.

(a) The Department will issue a foreign aircraft permit if it finds that the proposed operations meet the requirements of this part and are in the public interest. Foreign aircraft permits may be conditioned or limited by the Department. Permits must be carried aboard the applicant's aircraft during flight over U.S. territory, and are not transferable.

(3) In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality deals with U.S. civil aircraft operators on the basis of substantial reciprocity, and whether the operation is otherwise in the public interest.

§ 375.45 Records and reports of occasional planeload charters.

(a) *Cargo documents.* The holder of a permit for cargo operations shall issue a manifest or shipping document to its shipper with respect to each shipment.

(b) [Reserved]

(c) *Contents of documents for passenger flights.* The holder of a permit for passenger charters originating or terminating in the United States shall require each charterer to file with it prior to flight a list of names and addresses of all passengers to be transported on each flight.

(d) *Reports of unused authority.* All foreign operators of occasional planeload charters for which authority is granted must notify the Department, in writing, not later than 15 days after the expiration of their permits, or their failure to use this authority. The unused authority shall otherwise be deemed to have been exercised.

Subpart F—Transit Flights

§ 375.50 Transit flights; scheduled international air service operations.

(a) *Requirement of notice.* Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 30 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Filing of the notice.* An original and two copies of the Notice shall be filed with the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Copies of the Notice shall be served upon the Department of State and the Administrator of the Federal Aviation Administration. The filing date shall be the date of actual receipt by the Department.

(c) *Content of notice.* A "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement" shall be clearly labeled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

(1) The name, country or organization, and citizenship of the operator, and, if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or offeror of services is held by nationals of a country other than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed. If any officer or director of the operator or carrier offering the services is a national of a country other than the country of organization or citizenship, the position of duties of such officer or director, and the officer and director's relevant position in relation to other officers and directors must similarly be fully disclosed. If the information required in this subsection has been previously supplied to the Department, the applicant may incorporate it by reference.

(2) The State of registration of the aircraft proposed to be operated.

(3) A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

(4) A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the operations in the United States, copies of all such advertisements or publications shall be included.

(5) Any change with respect to these matters (minor changes in schedules or routing excepted) shall also be filed with the Department.

(d) *Authorized operations.* If the operator and the carrier offering services to the public (if different from the operator) have filed a "Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement," at least 30 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b), and (c) of this section, the described operations may be commenced and performed without further authorization from the Department, unless and until the Department issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Department is of the view that a question may exist as to whether (1) the proposed services are authorized pursuant to the terms of the International Air Services Transit Agreement; (2) substantial ownership and effective control are vested in nationals of a State party to the International Air Services Transit Agreement; (3) the proposed operations will be in compliance with the laws of the United States, the Department's rules, or the provisions of this section; or (4) the operator or its government have performed their obligations under the International Air Services Transit Agreement.

(e) *Prohibited operations.* If the Department issues an order of notification as described in paragraph (d) of this section, neither the operator, nor the carrier offering the services to the public, shall commence the proposed operations, or, except as may be

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otherwise specified in the order, operate any flights subsequent to receipt of the order, unless and until the Department issues a foreign aircraft permit pursuant to the provisions of section 1108(b) of the Act and this part specifically authorizing such operations.

(f) *Foreign aircraft permit—application and procedures.* If the Department issues an Order of Notification as described in paragraph (d) of this section, the carrier's Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement shall be treated as an application for the required foreign aircraft permit, and further procedures on such application shall be as directed by the Department.

(g) *Short notice filing.* Nothing in this section shall be construed as precluding the filing of an application for a foreign aircraft permit to perform transit operations pursuant to the International Air Services Transit Agreement less than 30 days in advance of the proposed operation. No such flights shall be operated, however, unless or until a specific foreign aircraft permit has been issued by the Department.

(h) *Nature of privilege conferred.* Air transportation is not authorized under this section, and the burden rests upon each operator and carrier to show that the proposed operations will not constitute air transportation within the meaning of the Federal Aviation Act. In addition, each operator and carrier has the burden of demonstrating that the proposed operations are authorized by the International Air Services Transit Agreement, and that the appropriate authorization should not be withheld pursuant to Section 5 of Article I thereof. Stopovers for the convenience or pleasure of the passengers are not authorized under this section and stops other than for strictly operational reasons shall not be made. The consolidation on the same aircraft of an operation under this section with a service authorized under section 402 or 416(b) of the Act is not authorized by this section. Any authorization or permit granted under this section is nontransferable, and may be withheld, revoked, suspended, withdrawn, or cancelled by the Department, without notice or hearing, if required by the public interest. Operators of aircraft registered in countries not parties to the International Air Services Transit Agreement shall make special application to the Department under § 375.70.

Subpart G—Penalties

§ 375.60 Penalties.

The operation of a foreign aircraft within the United States or over adjacent territorial waters in violation of the provisions of this part constitutes a violation of the Federal Aviation Act and of this chapter, and may, in addition, constitute a violation of the rules of the Federal Aviation Administration. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any United States certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or an exemption, or in violation of the terms of such authority constitutes not only a violation of this Part but of Title IV of the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart H—Special Authorization

§ 375.70 Special authorization.

Any person desiring to navigate a foreign civil aircraft within the United States other than as specifically provided in this part may petition the Department for a special authorization to conduct the particular flight or series of flights. Such authorization may be issued only if the Department finds that the proposed operation is fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to operators of U.S.-registered aircraft, and that the proposed operation is in the interest of the public of the United States.

BILLING CODE 4910-62-M

Appendix A—Form 4509

Approved by OMB
No. 2106-0002
Expires 11/30/87

U.S. Department of Transportation

APPLICATION FOR FOREIGN AIRCRAFT PERMIT OR SPECIAL AUTHORIZATION UNDER PART 375

(See Instructions On Reverse Side)

TO: Department of Transportation
Licensing Division, P-45
Office of Aviation Operations
Washington, D.C. 20590

DO NOT WRITE—FOR OFFICIAL USE ONLY

Disposition of Applications:

☐ Approved

☐ Approved, subject to condition(s) on reverse.

☐ Disapproved/Dismissed for reason(s) cited on reverse.

Under assigned authority ____________

Effective from ________ to ________.

Director, Office of Aviation Operations

Operations pursuant to this authorization shall conform to Part 375 of the Department's Regulations and Part 91 of the Federal Aviation Regulations. THIS PERMIT MUST BE CARRIED ABOARD AIRCRAFT DURING FLIGHT OVER UNITED STATES TERRITORY.

1. Name and address of applicant: (operator)

Nationality:

2. Send authorization to:
a. Name and address:

b. Telephone:

3. Aircraft make, model, and registration or identification marks:

4. Country in which aircraft is registered:

5. Name and address of registered owner of aircraft:

6. Name and address of contractor/charterer:

7. Dates of flights:

8. Planned routing of flights (indicate non-traffic stops by asterisks):

9. Description of operations (see instructions) (Check one):
Passenger ☐ Cargo ☐ Agricultural or Industrial operation ☐

10. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein?________; if so, has the fact of such reciprocity been established with the Department?________. If the fact has not been established with the Department, provide documentation to establish such reciprocity.

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11. If application is being filed late, state reasons for lateness:

12. Other information requested by the Department:

CERTIFICATION

I hereby certify that the flights for which authority is sought herein conform to the requirements of the applicable regulations and orders of the Department of Transportation.

(Date) (Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 375.43 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.
2. Under Item 9:
   (a) For passenger flights, provide full identification or description of group contracting for charter, and name and address of travel agent, if any.
   (b) For cargo flights, provide the names of all contractors, description of cargo, beneficial owner of cargo, and provide a full description of the proposed operation including nature of any service to be performed by any exporter, importer, or transportation agent.
   (c) For agricultural or industrial operations, describe area involved and purpose of operations.
3. Send the application to: Department of Transportation, Licensing Division, P-45, Office of Aviation Operations, Washington, D.C. 20590.
4. See Part 91 of Federal Aviation Regulations and 375 of the Department's Regulations (14 CFR 91 and 14 CFR 375) for a full statement of the rules respecting navigation of foreign civil aircraft within the United States.

DO NOT WRITE—FOR OFFICIAL USE ONLY

Exercise of the authorization is subject to the following condition(s):
OR Application is disapproved/dismissed for the following reason(s):

Issued in Washington, D.C. on February 20, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-4117 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-62-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS); Use and Reimbursement Policy for Non-U.S. Government Users

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The existing rule states that rates for TDRSS services will be set by the Associate Administrator for Space Tracking and Data Systems at NASA Headquarters. 14 CFR Part 1215 is being amended by revising Appendix A to reflect the rate changes for CY 1987. Since this revision involves NASA management procedures and decisions, no public comment is required.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Office of Space Tracking and Data Systems, Code T, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jack W. Wild, 202-453-2030.

List of Subjects in 14 CFR Part 1215.

Satellites, Tracking and data relay satellite, Communications equipment, Government contract.

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for Part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

PART 1215—[AMENDED]

For reasons set out in the Preamble, Appendix A to 14 CFR Part 1215 is revised to read as follows:

Appendix A—Estimated Service Rates in 1987 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY-87 based on current projections in 1987 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $130.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $29.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $9.00 per minute for non-U.S. Government users.

Robert O. Aller,

Associate Administrator for Space Tracking and Data Systems.

February 6, 1986.

[FR Doc. 86-4437 Filed 2-28-86; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM85-19-001, RM85-19-002, RM85-19-003, RM85-19-004, RM85-19-005]

Generic Determination of Rate of Return on Common Equity for Public Utilities

February 24, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; granting of rehearing for purposes of further reconsideration.

SUMMARY: On December 26, 1985 (51 FR 343, January 6, 1986), the Commission issued a final rule concerning generic determination of rate of return on common equity for public utilities. By this order, the Commission grants rehearing for the limited purpose of further consideration in order to allow sufficient time for due consideration of the matters raised in requests for rehearing. This does not constitute action on the merits of the requests.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8015.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued February 24, 1986.

On January 24, 1986, and January 27, 1986, the Southern Company and other parties [1] filed requests for rehearing of the Commission's order issued in this proceeding on December 26, 1985. 33 FERC ¶ 61,426.

In the absence of Commission action within 30 days, the requests for rehearing would be deemed to have been denied 18 CFR 385.713. In order to allow sufficient time for due consideration of the matters raised, the Commission is granting rehearing for the limited purpose of further consideration. This order does not, however, constitute action, in whole or in part, on the merits of the requests for rehearing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4556 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct the regulation for use of virginiamycin in complete broiler and fryer chicken feeds for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 27, 1981 (46 FR 18966), FDA published a document reflecting approval of supplemental NADA's 91-467 and 91-513 filed by SmithKline Animal Health Products, Division of SmithKline Beckman Corp.,

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[1] The Edison Electric Institute, New England Power Company, the Wholesale Customer Group, Boston Edison Company, El Paso Electric Company, Florida Power Corporation, Montaup Electric Company, and Wisconsin Electric Power Company.

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1600 Paoli Pike, West Chester, PA 19380. The NADA's provided for the manufacture of complete feeds containing 5 or 5 to 15 grams of virginiamycin per ton for increased rate of weight gain at 5 to 15 grams per ton and for improved feed efficiency at 5 grams per ton. Because the 5 to 15 grams per ton claim includes increased rate of weight gain at 5 grams per ton, the regulations are corrected to properly reflect that the lower level claim includes both indications.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.635 is amended by revising paragraph (f)(2)(ii) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(f) * * *

(2) * * *

(ii) 5 grams per ton for increased rate of weight gain and improved feed efficiency in broiler chickens, not for use in layers.

* * * * *

Dated: February 25, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-4444 Filed 2-28-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8073]

Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984

Correction

In FR Doc. 86-2172, beginning on page 4312, in the issue of Tuesday, February 4, 1986, make the following corrections:

1. On page 4313, second column, in the table, under "Subjects" sixth line, "ESPO" should read "ESOP".

2. On page 4315, first column, in § 1.72(e)–1T A–3(b), fourth line, after the word "made", insert "to".

3. On page 4316, first column, in § 1.79–4T A–3, seventh line, "individual" should read "individuals".

4. On page 4321, § 1.404(b)–1T A–2(b)(1), third column, eighth line from bottom of paragraph, remove "or plan,".

5. On page 4327, first column, in § 1.419–1T A–10(a), first line, "an" should read "and". In the third line, "and" should read "an".

6. On page 4332, § 1.512(a)–5T A–1, second column, first line, "512(c)(3)" should read "512(a)(3)".

7. On page 4333, first column, in § 1.512(a)–5T A–4(a), fourteenth line, "Q8A–3" should read "Q & A–3".

BILLING CODE 1505-1-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on August 13, 1985. The amendments pertain to: definitions, small operator assistance, permitting, inspection and enforcement, topsoil, surface and ground water monitoring, disposal of excess spoil, stabilization of surface areas and auger mining. The amendments pertaining to surface and ground water monitoring supersede emergency regulations submitted to OSMRE on May 20, 1985.

After providing for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving these amendments. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register**. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Program Amendments

On August 13, 1985, Kentucky submitted amendments to its regulations pertaining to definitions, small operator assistance, permitting requirements, inspection and enforcement, topsoil, surface and ground water monitoring, disposal of excess spoil, stabilization of surface areas and auger mining. These regulation changes were submitted, in part, in response to a letter from the Director, OSMRE, which identified areas of the Kentucky program needing revision. The amendments pertaining to surface and ground water monitoring at 405 KAR 7:020, 405 KAR 8:030, 405 KAR 8:040, 405 KAR 16:110 and 405 KAR 18:110 supersede emergency regulations that were submitted previously to

OSMRE and announced for public comment on July 11, 1985 (50 FR 28222).

On October 30, 1985, OSMRE published a notice in the **Federal Register** (50 FR 45116) announcing receipt of the amendments and inviting public comment on their adequacy. The public comment period ended November 29, 1985. The public hearing scheduled for November 25, 1985, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on August 13, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. Findings on each section of the rules are discussed below. Only those provisions of particular interest are discussed in the specific findings which follow, and lack of discussion of a specific provision does not indicate or imply any deficiency in the provision. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules.

405 KAR 7:020

Amendments to 405 KAR 7:020 supersede emergency regulations 405 KAR 7:020E submitted to OSMRE on May 20, 1985 and announced for public comment in the July 11, 1985 **Federal Register** (50 FR 28222).

1. Kentucky rule 405 KAR 7:020 is amended to modify the definition of "aquifer" to mean a zone, stratum or group of strata that can store and transmit water in sufficient quantities for domestic, agriculture, industrial or other beneficial use. The Federal definition differs in that it refers to sufficient quantities for a "specific use", as did the previous Kentucky rule. The Director finds the amendment to be no less effective than the Federal rule since it serves to clarify application of the definition.

2. A definition of "coal mine waste" is added to 405 KAR 7:020 which is the same as the Federal definition at 30 CFR 701.5.

3. The definition of "coal processing waste" is amended to include materials which are separated from the coal during cleaning, concentrating or other processing or preparation of coal, similar to and no less effective than the Federal definition in 30 CFR 701.5.

4. A definition of "excess spoil" is added to 405 KAR 7:020 to mean spoil material disposed of in a location other than the extraction area, except that spoil used to achieve approximate original contour is not considered excess spoil. This is similar to the Federal definition in 30 CFR 701.5 and no less effective.

5. A definition of "refuse pile" is added to mean a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry or other liquid or semi-liquid material. This is similar to the Federal definition at 30 CFR 701.5 except that the Federal definition does not contain the language concerning retention by an impounding structure. The Kentucky rule clarifies what the Federal rule implies and is no less effective than the Federal rule.

6. Kentucky has added a definition of "E horizon" to its "soil horizons" definition that is identical to the Federal definition at 30 CFR 701.5.

7. The Kentucky definition of "spoil" is amended to mean overburden and other materials, excluding topsoil, coal mine waste and mined coal, that are excavated during surface coal mining and reclamation operations. The Federal definition in 30 CFR 701.5 differs in that it includes only overburden removed during surface coal mining operations. The Director finds the Kentucky definition to be more explicit but not less effective than the Federal rule.

8. The Kentucky definition of "undergound development waste" is amended to more closely resemble the Federal definition except that Kentucky uses "extracted" to replace the Federal term "excavated, moved, and disposed of." The Director finds that this change does not change the effect of the definition and that it is no less effective than the Federal definition in 30 CFR 701.5.

9. Kentucky has added a definition of "water transmitting zone" to mean "a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of ground water." Although the Federal rules do not contain this definition, it does not conflict with Federal requirements and the Director therefore finds it acceptable.

10. Kentucky has added the abbreviation KPDES for Kentucky Pollutant Discharge Elimination System.

11. Some non-substantive changes of an editorial nature were made in 405 KAR 7:020 which the Director finds acceptable.

The Director, therefore, finds Kentucky's amendments to 405 KAR 7:020 no less effective than the Federal rules.

405 KAR 7:080

12. Kentucky has amended its small operator assistance program (SOAP) rules at 405 KAR 7:080 to clarify that operators are eligible for assistance if actual and attributed production does not exceed 100,000 tons during any consecutive 12 month period. The Director finds that this is no less effective then the Federal requirements at 30 CFR 795.6(a).

13. Kentucky has added a restriction in section 3 of 405 KAR 7:080 that Federal funds specifically authorized for SOAP program services listed in 405 KAR 7:080 section 4 shall not be used for administrative costs. The Director finds that this is in keeping with OSMRE policy on SOAP funding.

14. Kentucky had deleted the requirement in 405 KAR 7:080 section 4(3) that authorized representatives of the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) conduct periodic on-site evaluations of SOAP activities. The Director finds this deletion acceptable since there is no Federal counterpart in 30 CFR Part 795.

15. Kentucky has amended its requirements for eligibility for assistance at 405 KAR 7:080 section 5. The amended requirements are substantially the same as the Federal requirements at 30 CFR 795.6(a). Therefore, the Director finds them no less effective than the Federal requirements.

16. Kentucky has amended section 6 of 405 KAR 7:080, regarding how to file for assistance, so that it closely resembles the Federal requirements of 30 CFR 795.7. However, Kentucky has amended paragraph (7)(c) so that, instead of showing the location and extent of known workings for any underground mine in the affected area, the topographic map need only show the location and extent of known workings for the proposed underground mine. The Director finds that, for the purposes of denoting the location and extent of mining for SOAP assistance, it is sufficient to show the workings for the proposed underground mine. The Kentucky rule is, therefore, no less effective than the Federal rule.

17. Kentucky has amended 405 KAR 7:080 section 7 to add that the NREPC shall notify an applicant in writing when a SOAP application is approved and to reword the requirement to notify an applicant who is found ineligible. The Director finds the rule no less effective than the Federal requirements for application approval and notice in 30 CFR 795.8.

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18. Section 8 of 405 KAR 7:080 is amended to provide that information "may" rather that "shall" be applied under the small operator assistance program, and to add several types of required information to the list of information that may be included in the SOAP-funded data collection. The Director has determined that the rule satisfies the provisions in 30 CFR 795.9(b) for data requirements.

19. Kentucky has amended, in section 9, the formula for allocation of funds when funds are less than those required to provide all SOAP services. The Director finds that this section adequately satisfies the requirement in 30 CFR 795.11(b) that the regulatory authority establish a formula.

20. Kentucky has amended section 10 of 405 KAR 7:080 to more closely resemble the wording in the Federal rule at 30 CFR 795.10. The Director finds the changes no less effective than the Federal rules.

405 KAR 8:030

The amended rules at 405 KAR 8:030 supersede emergency regulations 405 KAR 8:030E submitted to OSMRE on May 20, 1985 and announced for public comment in the July 11, 1985 **Federal Register** (50 FR 28222). The amendments pertain to permit requirements for surface mines for geologic and hydrologic information in sections 12 through 16, land use information in section 22, mining and reclamation plan requirements in section 24, the blasting plan in section 26, and protection of the hydrologic balance in section 32.

21. The amendments to section 12 add requirements similar to the Federal requirements in 30 CFR 780.21 (a), (c), (d), (f), and (g), except that paragraph (4) of the Kentucky rule requires water quality analyses to be conducted according to the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," and 30 CFR 780.21(a) references the fifteenth edition. The Director finds the amended rules no less effective than the Federal rules, but recommends that Kentucky use an updated version of the referenced manual.

22. Section 13 is amended by deleting previous language and adding new language which contains requirements similar to the Federal requirements in 30 CFR 780.22, geologic information. The Kentucky rules contain requirements for additional sampling or information when necessary, in 405 KAR 8:030 sections 13(1)(a)(4) and (13)(3), which are not found in the Federal rules but for which regulatory authority discretion is provided in 30 CFR 780.22(c). Therefore, the Director finds the Kentucky rules no less effective than 30 CFR 780.22.

23. Section 14 is amended concerning requirements for baseline ground water information and supplemental information. The amended rules contain requirements similar to those found in 30 CFR 780.21 (b)(1) and (b)(3), with one exception. The Kentucky rules in paragraph (3)(b) require ground water information to include data on dissolved iron and dissolved manganese while the Federal rule at 30 CFR 780.21(b)(1) specifies total iron and total manganese. However, the Director finds the Kentucky rule no less effective for the following reason. Ground water in a natural state is naturally filtered through rocks, etc., and therefore does not contain particulate matter. When taking a ground water sample from a monitoring well, particulate matter from the well may be disturbed and included in the sample water. So, a reading of the total iron and total manganese may give a distorted reading of the condition of the ground water. A reading of the dissolved iron and dissolved manganese would be taken by filtering the sample which should given a reading which would be closer to the true condition of the ground water. The Director, therefore, finds section 14 of 405 KAR 8:030 no less effective than 30 CFR 780 (b)(1) and (b)(3).

24. Section 15 is amended by deleting previous requirements and adding requirements for baseline surface water information. This section of the Kentucky rules covers all the requirements found in 30 CFR 780.21(b)(2) and, therefore, the Director finds the Kentucky rule no less effective than the Federal rule.

25. Section 16 of 405 KAR 8:030 is amended to clarify requirements for alterntive water supply information. The Kentucky rule contains the requirements of 30 CFR 780.21(e) and the Director finds it to be no less effective than the Federal counterpart.

26. Kentucky has added paragraph (4) to section 22 of 405 KAR 8:030, land use information, to require that the permit application contain a description identifying cities, towns, municipalities, or parts thereof that are located within the proposed permit area. Although the Federal counterpart rule at 30 CFR 779.22 does not contain this specific requirement, the Kentucky rule is consistent with Federal requirements to show the uses of the land existing at the time the application is filed. The Director finds the amended language no less effective than the Federal rule.

27. Kentucky has amended 405 KAR 8:030 section 24(4)(d) to require the plan for removal, storage and redistribution of soil materials to include a demonstration of suitability of any proposed topsoil substitutes or supplements. Although the Federal counterpart at 30 CFR 780.18(b)(4) specifies which characteristics of the topsoil substitutes are to be analyzed, the Kentucky rule is no less effective since the Kentucky rule at 405 KAR 16:050 section 1(3) contains similar requirements.

28. Kentucky has amended 405 KAR 8:030 section 26 to delete some previous requirements and to add new requirements for the blasting plan. The amended Kentucky rule contains the requirements found in the Federal permitting requirements for a blasting plan at 30 CFR 780.13 and, therefore, the Director finds the Kentucky rule no less effective than the Federal rule.

29. Kentucky has deleted existing language and added new language to section 32 of 405 KAR 8:030 which establishes permitting requirements for protection of the hydrologic balance. The Director finds that the Kentucky rule contains requirements similar to and no less effective than those contained in 30 CFR 780.21 (f), (g), (h) and (i)(1). (The Kentucky counterpart to 30 CFR 780.21(i)(2) is contained in 405 KAR 16:110 section 2.)

405 KAR 8:040

Amendments to 405 KAR 8:040 supersede emergency regulations 405 KAR 8:040E submitted to OSMRE on May 20, 1985 and announced for public comment in the July 11, 1985 **Federal Register** (50 FR 28222). The amendments pertain to permit requirements for underground mines for geologic and hydrologic information, land use information, mining and reclamation plan requirements, protection of the hydrologic balance and blasting similar to the changes in 405 KAR 8:030 for surface mines. The amendments also modify section 28, requirements for underground development waste and excess spoil.

30. Section 12, General requirements for baseline geologic and hydrologic information, contains requirements similar to the Federal rules at 30 CFR 784.14 (a), (c), (d), (e) and (f), except that paragraph (4) of the Kentucky rule references the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," and should reference the fifteenth edition. The Director finds the amended rules no less effective than The Federal rules, but recommends that Kentucky use an updated version of the referenced manual.

32. Section 14, baseline ground water information, contains requirements that are similar to the Federal requirements in 30 CFR 784.14 (b)(1) and (b)(3) which the Director finds no less effective than the Federal rules.

33. Section 15 of 405 8:040, baseline surface water information, covers the requirements found in 30 CFR 784.14 (b)(2) and is no less effective than this Federal rule.

34. Section 16 contains discretionary provisions for alternative water supply information. Although the Federal rules do not contain a counterpart to this provision, the Director finds the section consistent with the Federal rules.

35. Kentucky has added paragraph (4) to section 22 of 405 KAR 8:040, land-use information, to require that the permit application contain a description identifying the extent to which cities, towns and municipalities, or parts thereof, are located within the proposed permit area. Although Federal land use information rules at 30 CFR 783.22 do not contain this specific requirement, The Kentucky rule is consistent with the Federal requirements.

36. Kentucky has amended 405 KAR 8:040 section 24(4)(d) to require the plan for removal, storage and redistribution of soil materials to include a demonstration of suitability of any proposed topsoil substitutes or supplements. Although the Federal counterpart at 30 CFR 780.18(b)(4) specifies which characteristics are to be analyzed, the Kentucky rule is no less effective since it references 405 KAR 18:050 which contains similar requirements.

37. Section 28 of 405 KAR 8:040 is amended to cross-reference applicable provisions of 405 KAR 18:140 (on coal processing waste disposal) and 18:160 (coal processing waste dams and impoundments). The Director finds the rule no less effective than the Federal requirements for underground development waste in 30 CFR 784.19.

38. Section 32 of 405 KAR 18:040 contains underground mine permitting requirements for protection of the hydrologic balance. The Director finds that the Kentucky rule contains requirements similar to and no less effective than those contained in 30 CFR 784.14 (e), (f), (g) and (h).

38. Kentucky has added section 39 to 405 KAR 8:040 to establish underground mine permit requirements for blasting. Although the Federal requirements for underground mine permits do not contain such provisions, the Kentucky rule is consistent with Federal provisions for surface blasting activities incident to underground mining in 30 CFR 817.61–817.68. The Director finds the Kentucky rule no less effective than the Federal provisions.

405 KAR 12:010

Kentucky has amended various provisions in its inspection and enforcement rules. Some of the changes are non-substantive or of an editorial nature and these are found to be acceptable. Substantive changes are discussed below along with the Director's findings.

40. Section 3 of 405 KAR 12:010 is amended concerning inspectors' right of entry and access to mining and exploration sites and records. The Director finds the rules no less effective that the Federal rules for right of entry at 30 CFR 840.12. This section is also amended in subsection (5) to allow for the use of aerial inspections to complete the requirements for partial inspections and to further clarify frequency requirements. Subsection (6) is added to establish requirements for aerial inspections. The Kentucky rules concerning aerial inspections are similar to and no less effective than the Federal rules on aerial inspections in CFR 840.11 (d) (1) and (2).

41. Section 4 of 405 KAR 12:010 is amended to add requirements concerning retention of records of inspections for five years after final bond release or final action by the NREPC on a permit. The Director finds the Kentucky rules consistent with and no less effective than the Federal rules for availability of records at 30 CFR 840.14.

42. Section 5 of 405 KAR 12:010 is amended to apply the penalties and sanctions provisions of that section to coal exploration and reclamation operations. The Director finds this rule consistent with and no less effective than 30 CFR 840.13 which requires State programs to contain civil and criminal penalty provisions no less stringent than section 518 of SMCRA and consistent with 30 CFR Part 845.

405 KAR 12:020

Kentucky has amended various provisions in its enforcement rules at 405 KAR 12:020, including some non-substantive and editorial changes. Substantive changes are discussed below.

43. Changes are made in sections 1 and 2, which clarify the Kentucky rules and include coal exploration operations under the requirements of the rules. The Director finds these changes consistent with the Federal enforcement provisions.

44. Section 3 of 405 KAR 12:020 is amended to clarify the rule and to add paragraph (1)(c) to require an authorized representative of NREPC to immediately issue an order of cessation and immediate compliance if operations are being conducted without a permit or coal exploration is being conducted without proper notice or approval. The Director finds this provision no less effective than 30 CFR 843.11(a)(2) which provides that operating without a permit constitutes a condition which causes or can cause significant, imminent environmental harm, except in certain instances.

45. The requirements for notice of inspection of noncompliance in Section 4 are amended to provide for NREPC actions concerning notices of inspection of noncompliance. The Director finds the rule to be consistent with and no less effective than provisions for inspection and enforcement in 30 CFR Parts 842 and 843.

46. Section 5 of 405 12:020 is amended to clarify requirements for service of notices and orders, and to add instructions for serving notices and orders to coal exploration and reclamation operations. The amended language is similar to and no less effective than the Federal requirements for service of notices and orders at 30 CFR 843.14.

47. Changes are made in section 6 concerning expiration of notices and orders, which clarify the rule and make it applicable to exploration sites as well as mine sites. The Kentucky rule is no less effective than the Federal rules for extension or termination of cessation orders in 30 CFR 843.11 (e) and (f).

48. Section 7 of 405 KAR 12:020 is amended to give the NREPC the authority to initiate formal hearings for suspension or revocation of permits, to initiate formal hearings for bond forfeitures, and to initiate formal herings or judicial proceedings for other relief measures. This is consistent with the Federal rules which require the regulatory authority to initiate actions which require these powers.

405 KAR 16:050

49. Kentucky has amended its surface mining requirements for topsoil at 405 KAR 16:050. Minor clarifying changes are made in section 1. Section 2 of 405 KAR 16:050 is amended to add provisions for handling of topsoil and substitute soil materials and for selecting substitute materials. Provision is made for NREPC to choose not to require topsoil removal for certain specified minor disturbances. Section 3 is amended to clarify requirements for storage of topsoil, to allow use of vegetative material as mulch is such measures are demonstrated to have no

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adverse effect on topsoil and if approved by the regulatory authority, and to allow for temporary distribution of soil materials for long-term storage. Section 4 is amended to clarify requirements for redistribution of soil and to establish additional criteria for when soil materials shall be redistributed and for possible exemptions of topsoil redistribution on embankments of permanent impoundments and of roads. Section 5 contains minor changes for nutrients and soil amendments requirements. Kentucky's amended rules at 405 KAR 16:050 contain all requirements found in the Federal requirements for removal, storage and redistribution of topsoil and subsoil, for topsoil substitutes and supplements, and for subsoil segregation at 30 CFR 816.22. The Director has determined therefore that the Kentucky rules are no less effective than the Federal rules.

405 KAR 16:110

Amendments to 405 KAR 16:110 supersede emergency regulations 405 KAR 16:110E submitted to OSMRE on May 29, 1985 and announced for public comment in the July 11, 1985 **Federal Register** (50 FR 28222).

50. Section 1 of 405 KAR 16:110 contains requirements which are similar to the requirements in 30 CFR 816.41(a) concerning general requirements for hydrologic balance protection and 816.41(c) concerning ground water monitoring, and which the Director finds no less effective than the Federal rules. (the Kentucky counterpart to 30 CFR 816.41(b) is contained in 405 KAR 16:060 which is not being amended by this action.)

51. Section 2, ground water monitoring, reiterates some material contained in the Kentucky permitting requirements (which the Director is approving in this notice) and adds a provision allowing the NREPC to waive monitoring of certain water transmitting zones when certain demonstration is made by the applicant. The waiver language is similar to Federal rule 30 CFR 780.21(i)(2). The Director finds these rules to be no less effective than the Federal rules.

52. Section 3, surface water monitoring, establishes requirements which are similar to those at 30 CFR 816.41(e) for surface water monitoring, and reiterates requirements in the Kentucky permitting rules that are similar to some of the requirements in 30 CFR 780.21(b)(2) for surface water information permitting requirements. The Director finds the Kentucky rules no less effective than the Federal counterparts. (The Kentucky counterpart to 30 CFR 816.41(d) is contained in 405 KAR 16:060 which is not being amended by this action).

405 KAR 16:130

Kentucky has amended its rules for disposal of excess spoil, for surface mining activities, at 405 KAR 16:130.

53. Section 1 of 405 KAR 16:130 contains general requirements for disposal of excess spoil. The Kentucky rule contains all the requirements found in the Federal provisions for disposal of excess spoil at 30 CFR 816.71, including: General provisions; design certification requirements; location and foundation requirements; placement of excess spoil provisions; requirements for drainage control and surface area stabilization; inspection requirements; and provisions for disposal of excess spoil in underground workings. The Kentucky rules contain extra clarifying requirements not found in the Federal rules but which are consistent with and not in conflict with Federal requirements. The Kentucky rule does not contain a direct counterpart to 30 CFR 816.71(i) which allows disposal of coal mine waste in excess spoil fills. Instead Kentucky allows, at section 1(10)(a) disposal of excess spoil in coal mine waste refuse piles in accordance with the Kentucky requirements for disposal of coal processing waste, which the Director finds acceptable. Therefore, the Director finds the Kentucky rules no less effective than the Federal rules.

54. Section 2 of 405 KAR 16:130 contains the requirements found in the Federal rules for drainage control for disposal of excess spoil in valley fills and head-of-hollow fills, found in 30 CFR 816.72(a), except that the Federal rule specifies that diversion channels used will be designed to safely pass the runoff from a 100-year, 6-hour precipitation event and the Kentucky rule specifies a 100-year, 24-hour event.

Although the Federal rules specify the 100-year, 6-hour event, Kentucky has found that for watershed characteristics in Kentucky, diversion ditches designed for a 24-hour event are sufficient to safely pass run-off from the 6-hour event also. Since this provides protection no less effective than the Federal rules provide, Kentucky has chosen to retain the 100-year, 24-hour event in its rules in order to avoid any problems or confusion that may result from a change in design requirements at this time. In the preamble to its July 19, 1983 rule changes, OSM recognized that, depending on the watershed, either the 6-hour or 24-hour event could result in higher runoff volume (48 FR 32920). Kentucky has found the 24-hour event to result in the higher runoff volume in Kentucky. The Director, therefore, finds the Kentucky rule no less effective than the Federal rules.

55. Section 3 of 405 KAR 16:130, rock-core chimney drains, contains the requirements for rock-core chimney drains found in the Federal rules at 30 CFR 816.72(b). Therefore, the Director finds the Kentucky rule no less effective than the Federal rule.

56. Section 4 of 405 KAR 16:030, end-dumped fills, covers the requirements for durable rock fills found in 30 CFR 816.73. The Kentucky rule also contains additional material to define "durable rock" and to clarify sampling measures that are or may be required. The Director finds that additional material does not conflict with the Federal rule and serves to clarify Kentucky's requirements. The Director finds the Kentucky provisions no less effective than the Federal rules.

57. Kentucky has amended section 5, disposal on existing benches, to include requirements found in the Federal counterpart rules at 30 CFR 816.74. The Director finds the rule no less effective than its Federal counterpart.

58. Kentucky has added section 6 to 405 KAR 16:130 to establish applicability of the amended rules to existing and new permits which the Director finds to provide a reasonable transition period.

59. Rule 405 KAR 16:130 contains appendices A and B which clarify requirements of the rule and which the Director finds consistent with the Federal requirements.

405 KAR 16:170

60. Kentucky has amended 405 KAR 16:170, section 1, stabilization of surface areas, to require that all exposed surface areas shall be protected and stabilized to effectively control and limit erosion and air pollution attendant to erosion, consistent with 30 CFR 816.95(a). Kentucky has amended section 2, control measures, to make minor changes, and has deleted sections 3 and 4, which established additional measures and monitoring requirements and which are no longer found in the Federal requirements. The Director finds the rule no less effective than the Federal requirements in 30 CFR 816.95(a). (The Kentucky counterpart to 30 CFR 816.95(b) is found in the existing Kentucky rules at 405 KAR 16:190 section 6.)

405 KAR 18:050

61. Kentucky has amended its underground mining requirements for topsoil at 405 KAR 18:050. The amended rules are the same as those for surface mining topsoil requirements discussed in this notice under 405 KAR 16:050. The comparable Federal rules for underground mining are at 30 CFR 817.22 and are the same as those for surface mining in 30 CFR 816.22. Therefore, the Director finds the Kentucky rules no less effective than the Federal rules for the reasons discussed in Finding 49 of this notice.

405 KAR 18:110

Amendments to 405 KAR 18:110 supersede emergency regulations 405 KAR 18:110E submitted to OSM on May 29, 1985 and announced for public comment in the July 11, 1985 **Federal Register** (50 FR 28222).

62. The amended rules for surface and ground water monitoring for underground mining operations at 405 KAR 18:110 are essentially the same as those for surface and ground water monitoring for surface mining operations discussed in this notice under 405 KAR 16:110, with one exception: Paragraph (1)(d) of section 1 of 405 KAR 16:110 does not appear in section 1 of 405 KAR 18:110. This paragraph requires monitoring to demonstrate that the mining operation has not proximately resulted in the contamination, diminution, or interruption of a ground or surface water supply that is used for certain purposes. Since the Federal counterpart to the Kentucky section 1 at 30 CFR 817.41(a) does not contain this specific requirement, and since the Federal rule 30 CFR 816.41(b)(2) which required restoration of premining recharge capacity has been suspended (February 21, 1985, 50 FR 7274), the Director finds that the Kentucky rule is no less effective than the Federal rule. Kentucky's rules at 405 KAR 18:060 provide protection against contamination of ground water and surface water. Therefore, for this reason and for the reasons stated above in the findings for 405 KAR 16:110, the Director finds the Kentucky rules at 405 KAR 18:110 no less effective than the Federal rules in 30 CFR 817.41 (a) and (c), and (e), and 30 CFR 784.14 (b)(2) and (h)(2) which are the underground mining equivalents to 780.21 (b)(2) and (i)(2).

405 KAR 18:130

63. The amended rules for disposal of excess spoil, for underground mining operations, at 405 KAR 18:130 are essentially the same as those for excess spoil for surface mining operations discussed in this notice under 405 KAR 16:130, with the exceptions that are discussed in the following paragraphs. The findings under 405 KAR 16:130 apply to this rule also, but the Federal cites are found in 30 CFR Part 817 rather than 816.

One difference from the surface mining requirements in 405 KAR 16:130 is that 405 KAR 18:130 section 1(11) contains provisions for spoil resulting from face-up operations not found in the Kentucky or Federal requirements for surface mining operations. However, the Federal requirements for underground mining operations do contain a counterpart to this Kentucky rule at 30 CFR 817.71(k). The Kentucky rule requirements are similar to the Federal requirements and the Director finds them no less effective.

Another difference is found in 405 KAR 18:130 section 4(2)(a)(2) which does not contain information found in the Kentucky counterpart at 405 KAR 16:130 section 4(2)(a)(2) that tells where one can obtain copies of a certain Kentucky manual. Lack of this information does not bear on the effectiveness of the rule.

The third difference is an added section at 405 KAR 18:130 section 6, requiring underground development waste to be disposed of in accordance with the coal mine waste requirements of 405 KAR 18:140 and 18:160 as applicable. Since the Federal definition of "coal mine waste" at 30 CFR 701.5 includes underground development waste, this requirement is consistent with the Federal requirements for coal mine waste.

The final difference is that, since 405 KAR 18:130 contains an additional section (section 6 discussed above), the comments under 405 KAR 16:130 which refer to section 6 should be applied to section 7 of 405 KAR 18:130.

For the reasons listed above and for the reasons listed in the disposal of excess spoil requirements for surface mining operations listed above under 405 KAR 16:130, the Director finds the Kentucky rules at 405 KAR 18:130 no less effective than the Federal requirements at 30 CFR 817.71, 817.72, 817.73 and 817.74.

405 KAR 18:170

64. Kentucky has amended 405 KAR 18:170, section 1, stabilization of surface areas, to require that all exposed surface areas shall be protected and stabilized to effectively control and limit erosion and air pollution attendant to erosion, consistent with 30 CFR 817.95(a). Kentucky has amended section 2, control measures, to make minor changes, and has deleted sections 3 and 4. The Director finds the rule no less effective than 30 CFR 817.95(a). (The counterpart to 30 CFR 817.95(b) is found in 405 KAR 18:190 section 4, which is not being amended at this time.)

405 KAR 20:030

Kentucky has amended its requirements for auger mining at 405 KAR 20:030.

65. Section 1, paragraph (1) is amended to provide that auger mining operations shall be conducted so as to maximize the utilization and conservation of coal in accordance with 405 KAR 16:010 as well as being planned and conducted to maximize recoverability of mineral reserves after the mining activities are completed. This is consistent with and no less effective than 30 CFR 819.13 (a) and (b) which contain similar requirements.

Paragraph (3)(a) of section 1 is amended so that, rather than requiring that auger holes discharging water containing toxic- or acid-forming material be sealed *or treated* within 72 hours, the rule now requires that auger holes discharging toxic or acid-forming material be sealed within 72 hours, and discharges shall be treated as necessary until the hole is properly sealed. This is similar to and no less effective than 30 CFR 819.15(b)(1). Paragraph (3)(b) now requires that auger holes not discharging water containing acid- or toxic-forming material be sealed within 30 days. This is similar to the Federal requirements in 30 CFR 819.15(b)(2) except that Kentucky uses a 30-day limit while the Federal rules use the general requirement of "contemporaneous as practicable." The Director has determined that the 30 day limit is reasonable and that the Kentucky rule is no less effective than the Federal rule.

Paragraph (4)(c) is added to add another test that must be met for the NREPC to allow an auger hole to be left unsealed. The added test is that drainage from the auger hole will not result in instability of the landfill. Although this provision is not included in the Federal rule, the Director finds that it is consistent with the Federal rules for auger mining and no less effective.

Paragraph (5)(d) is replaced by paragraph (6) which requires auger mining to comply with the subsidence performance standards in 405 KAR 18:210. This is consistent with 30 CFR 819.17 which requires auger mining to be conducted in accordance with 30 CFR 817.121 (a) and (c). Other minor changes are made to 405 KAR 20:030 to clarify the rules.

The Director finds the amended Kentucky rules at 405 KAR 20:030 to be no less effective than the Federal counterparts for auger mining.

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IV. Public Comments

OSMRE solicited comments from the Environmental Protection Agency (EPA) and received its concurrence on the amendments. EPA stated that the Kentucky amendments demonstrate "the legal authority, administrative capability and technical conformity to OSMRE regulations necessary to maintain air and water quality standards . . .".

No comments were received in response to OSMRE's request for comments from the public.

V. Director's Decision

The Director, based on the above findings, is approving the Kentucky program amendments as submitted on August 13, 1985.

The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 25, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.15 is amended by adding a new paragraph (o) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(o) The following amendments submitted to OSMRE on August 13, 1985, are approved effective March 3, 1986: Revisions to the Kentucky Administrative Regulations in 405 KAR 7:020, 405 KAR 7:080, 405 KAR 8:030, 405 KAR 8:040, 405 KAR 12:010, 405 KAR 12:020, 405 KAR 16:050, 405 KAR 16:110, 405 KAR 16:130, 405 KAR 16:170, 405 KAR 18:050, 405 KAR 18:110, 405 KAR 18:130, 405 KAR 18:170 and 405 KAR 20:030.

[FR Doc. 86-4555 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 513

[Army Regulation 600-15]

Indebtedness of Military Personnel; Claim Processing Policies

AGENCY: Army Department, DOD.

ACTION: Final rule.

SUMMARY: On September 28, 1979, a revised rule was published in the **Federal Register** (44 FR 190) with the title Assistance of Creditor by Department of the Army. This rule is revised and gives the Army's policy and procedures governing private indebtedness of Army members. Also, it provides guidance for processing claims. It forbids debt collectors from contacting commanders without prior consent of the debtor or without a court order.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Commander, U.S. Army Community and Family Support Center (DACF–IS–PA), Room 468, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0522.

FOR FURTHER INFORMATION CONTACT: LTC Milton J. Brokaw, (202) 325-8951.

SUPPLEMENTARY INFORMATION: 32 CFR 513 is revised to give the Department of the Army's policy and guidance in handling debt claims against Army members. Army Regulation 600–15 complies with the Department of Defense Directive 1344.9 contained in Part 43a, Chapter 1 of this title. Army Regulation 600–15 applies to the Regular Army, the U.S. Army Reserve (USAR) on active duty, active duty for training or official active duty for training (30 days or more duration), the Army National Guard of the United States (ARNGUS) on active duty, active duty for training under Title 10, U.S.C. (30 days or more duration), and creditors (see glossary) who seek help in processing debt complaints against Army members. It does not apply to members of the USAR performing inactive duty training or to members of the ARNGUS performing duty in a state status under Title 32, U.S.C. This regulation does not apply to claims for support of family members under Army Regulation 608–99, or to claims by the Federal, State, or Municipal governments.

The U.S. Army Community and Family Support Center has certified that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the revision will not increase the economic burden of the existing regulation for any party since it only clarifies the present rules and does not substantively alter them.

List of Subjects in 32 CFR Part 513

Credit, Debts, Wages, Military personnel.

Accordingly, Part 513 is revised to Title 32 CFR to read as follows:

PART 513—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.
513.1 General.
513.2 Administrative Procedures for Processing Complaints.
513.3 Administrative and Punitive Actions.
513.4 Conditions Creditors Must Meet Before Getting Help in Debt Processing.
513.5 Procedures Governing Nonactive Duty or Discharged Personnel.

Appendix A.—References
Appendix B.—Standards of Fairness
Appendix C.—Glossary

Authority: 10 U.S.C. 3012.

§ 513.1 General.

(a) *Purpose.* This regulation prescribes Department of the Army (DA) policy, responsibilities, and procedures in handling debt claims against soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy on processing debt claims against soldiers.

(2) The Commanding General, U.S. Army Community and Family Support Center (CG, USACFSC) will—

(i) Set procedures for processing debt claims against soldiers.

(ii) Process debt claims received at USACFSC regarding soldiers.

(iii) Carry out the objectives of the regulation to protect the rights of the soldier, his or her family members, and the interests of the Army.

(iv) Advise and assist the directors of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to indebtedness of soldiers.

(3) Officers having general court-martial jurisdiction will—(i) Ensure special emphasis on the indebtedness issue is given in command information programs. This includes soldiers being informed of their responsibility to manage their personal affairs satisfactorily and pay their debts promptly. Also, inform soldiers of the possible consequences of failure to pay their debts.

(ii) Take action on requests to file unfavorable information in a soldier's official personnel file. (See § 513.3.)

(4) First level field grade commanders will monitor instances of soldiers' repeated failure to pay debts that are brought to their attention. These commanders will take action, when proper.

(5) Immediate commanders will—(i) Ensure that soldiers are informed of the following:

(A) DA policy on indebtedness.

(B) The possible consequences of failure to pay their debts.

(ii) Manage the processing of debt claims per the terms of this regulation.

(iii) Answer all correspondence received from CG, USACFSC and other DA officials.

(iv) Answer all correspondence received directly from claimants and third parties (for example, Members of Congress). The commander will not include unreleasable information without the soldier's written consent. This complies with the Privacy Act of 1974. (See AR 340–21.) Commanders should ask the Staff Judge Advocate (SJA) for guidance in unusual or difficult situations.

(v) Inform the first level field grade commander of instances of soldiers' repeated failure to pay their debts. Also, point out actions taken or contemplated to correct the situation.

(vi) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(6) The unit, installation, or command public affairs officer will—(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.*

(1) Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly. Failure to do so damages their credit reputation and affects the Army's public image. The Army, however, has no legal authority to force soldiers to pay their debts. Also, the Army cannot divert any part of a soldier's pay even though payment of the debt was decreed by a civil court. Only civil authorities can enforce payment of private debts.

(2) Debt claims against corporations and organizations to which a soldier belongs, or of which a soldier is an officer, will not be processed under this regulation. In this situation, the matter should be pursued in civil court. If a judgment is received specifically against the soldier, then this regulation will apply.

(3) Creditors who follow § 513.4 will have their debt complaints processed.

(4) Requests for help that do not follow § 513.4 will be returned without action with an explanation as discussed in § 513.4(d).

(5) The Army will revoke debt processing privileges for creditors who—(i) Refuse to abide by this regulation.

(ii) Try to use the Army as a debt collection agency. (See § 513.4(e).)

(6) The Army does not try to judge or settle disputed debts, or admit or deny whether claims are valid. The Army will not tell claimants whether any adverse action has been taken against a soldier as a result of the claim.

(7) If a soldier is not trying to resolve unpaid debts promptly or complaints of repeated failure to pay debts are received, commanders will consider the actions shown below. (See §§ 513.2(a)(3)(xv) and 513.3.)

(i) Making the failure a matter of permanent record.

(ii) Denial of reenlistment (enlisted personnel).

(iii) Administrative separation from the Service.

(iv) Punishment under the Uniform Code of Military Justice (UCMJ). When proper, such misconduct may be charged under articles 92, 123, 133, or 134 of the UCMJ.

(8) Checks that are dishonored for any reason remain proof of indebtedness until—(i) Made good.

(ii) Proven to be the error of the financial institution on which drawn, or the error of any other person or institution; such action then absolves the soldier of fault. (See § 513.2(c).)

(9) When necessary, commanders and soldiers are urged to seek help from the SJA.

(f) Banks and credit unions.

(1) Banks and credit unions located on military bases must apply Department of Defense (DOD) Standards of Fairness (app B) before making loans or credit agreements. Banks and credit unions that do not meet this requirement will be denied help in processing debt complaints.

(2) If soldiers are referred to off-base branches of an on-post bank or credit union, the branches also must comply with the Standards of Fairness before making loans or credit agreements.

(3) Interest rates and service charges for loans made by oversea military banking facilities are set by DOD.

(g) Fair Debt Collection Practices Act (section 1692, title 15, United States Code (15 USC 1692)).

(1) A debt collector may not contact any person other than the soldier, his or her lawyer or legal counsel, or the creditor about any debt collection. The debt collector, however, may contact the employer if he or she has a written and signed consent from the soldier, or a court order permitting contact. The written consent must include the debt collector's name. It is illegal for debt collectors to use another name when collecting debts.

(2) Debt collectors who have obtained the needed written consent or court order and who have followed § 513.4 will have their debt complaints processed.

(3) Creditors who collect only on their own behalf are exempt from the Act.

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(h) Individual repayment plan of the Bankruptcy Act. Chapter XIII of the Bankruptcy Act (11 U.S.C. 1301, et seq.) provides for the protection and relief of individuals with a regular income. It also sets rules for paying debts under the supervision of U.S. Federal District Courts. Care must be taken not to confuse "bankruptcy" and "individual repayment plans" in order not to infringe on the rights of the soldier.

(i) *Locator service.* (1) Installations will honor requests for central locator service by a banking office (AR 210–135) or credit union (AR 210–24) located on a military installation. This service will be free when banking offices and credit unions cite AR 37–60. This service will be used to locate persons for settling accounts, checks that did not clear, and delinquent loans. The U.S. Army Finance and Accounting Center (USAFAC), Indianapolis, IN 46249–1016, will assist these banking offices and credit unions to locate soldiers who cannot be located locally.

(2) Current military addresses for all soldiers may be obtained by writing the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301. All requests must include the soldier's full name, rank, and social security number (SSN). They should include the date and place of birth if the SSN is not known. A check or money order for $3.50 payable to the Treasurer of the United States must be enclosed with each request. (See AR 37–60.)

(3) A debt collector should not write to the U.S. Army Enlisted Records and Evaluation Center (USAEREC) if he or she knows the soldier is represented by a civilian lawyer or military legal counsel. However, the debt collector may write to USAEREC if he or she—

(i) Does not know or cannot easily find out the name and address of the lawyer or legal counsel.

(ii) Does not receive a response from the lawyer or legal counsel.

(4) If a debt collector writes to USAEREC, a postcard cannot be used. Also, the request cannot state that the locator service is being sought in order to collect a debt. These actions would violate the Fair Debt Collection Practices Act (§ 513.1(g)).

(j) *Allotments of pay for debts.* (1) The Department of Defense Military Pay and Allowances Entitlements Manual sets forth the provisions governing allotments of pay. Voluntary allotments of military pay and allowances of soldiers in active military service are limited. Payment to a financial organization for credit to the account of the soldier (allotter) is permitted. Money thus credited may be used for any purpose desired and directed by the soldier.

(2) Creditors must not—

(i) Request that a soldier set up a bank account for the soldier to use in paying a debt.

(ii) Request a soldier to pay by allotment.

(iii) Send sample copies of an allotment form to the solider or guide the soldier on how to make out such an allotment.

(3) It is a soldier's option on how he or she pays the debt. A soldier who has an allotment going to his or her financial organization's account may request to have a bank transfer order in effect. However, there may be a charge for this service.

§ 513.2 Administrative procedure for processing complaints.

(a) *Commander's actions.* Upon receipt of a debt complaint, the commander will—

(1) Review the case to ensure that the terms of this regulation have been met.

(2) Consult the SJA if needed.

(3) Take the following actions:

(i) If any of the terms of § 513.4(c) have not been met by the creditor, return the complaint. Tell the writer that no action will be taken until those terms are met.

(ii) Upon receipt of subsequent inquiries from USACFSC, Members of Congress, or any other source, inform the writer that—

(A) The creditor has been told that his or her request lacked data or documentation.

(B) The commander regrets that he or she cannot process the complaint until the creditor supplies the necessary data.

(C) A reply previously has been made to the creditor. Enclose a copy of the reply.

(iii) If the creditor refuses or repeatedly fails to comply with any of the requirements, refer the complete case through channels to the Commander, USACFC, ATTN: DACF–IS–PA, ALEX VA 22231–0522. If it is believed the creditor's debt processing privileges should be revoked, include a recommendation stating the reasons.

(iv) If the soldier was not given full disclosure information when the debt was incurred, refer him or her to the SJA office. The SJA office will advise if the soldier has a right to file suit against the creditor. The soldier may be entitled to twice the amount of the finance charge, for a minimum of $100 up to a maximum of $1,000, plus court costs and lawyer fees. This does not apply to debts incurred before 30 June 1969.

(v) If in doubt as to the legality of the contract, consult the SJA. This action is to ensure that the contract terms do not violate Federal and State laws.

(vi) Accept as valid proof, claims based on court judgments, orders, or decrees.

(vii) If the debt or the amount of the debt is disputed or denied by the soldier, reply directly to the creditor. Tell him or her that Army policy requires that disputed debts be settled by civil courts. Do not, in the reply, try to judge or settle any disputed debts, or admit or deny the validity of the claim.

(viii) If the creditor has met all the requirements discussed in § 513.4, interview the soldier.

(A) Ensure that the soldier is properly advised of his or her rights under the Privacy Act of 1974. DA Form 4817–R (Consent/Nonconsent To Disclose Personal Information) will be completed.

(B) Notify the soldier of the debt complaint.

(C) Explain that the Army requires that soldiers pay their debts promptly. Failure to do so damages credit reputations and affects the Army's public image. Also, explain that the willful failure to resolve unpaid debts may result in administrative or punitive. actions as described in § 513.3.

(D) Tell the soldier of his or her legal rights and duties. If appropriate, advise the soldier of his or her rights under article 31, UCMJ. Also, inform the soldier that counseling service is available under the Legal Assistance Program (AR 27–3).

(E) Review all available facts including the soldier's defenses, rights, and counterclaims.

(F) Urge the soldier to seek budget counseling and consumer protection advice, if proper. These services may be obtained from on-post credit unions, Army Community Service Program Counselors (AR 608–1), or through financial management seminars or workshops.

(G) Help the soldier in settling or in liquidating the debt. Give the soldier a copy of DA Pam 360–520 if proper. Answer any questions that he or she might have.

(H) Have the soldier sign a statement allowing or forbidding release of information to the claimant (DA Form 4817–R). AR 340–17 and AR 340–21, paragraph 3–3 govern this.

(I) Ask the soldier about his or her intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the complaint or declining to do either.

(ix) Advise the claimant promptly that the soldier has been told of the complaint.

(x) Summarize the soldier's intentions if the soldier allows release of the information.

(xi) If proper, advise the claimant that indebtedness disputes must be resolved in a civil court of competent jurisdiction.

(xii) Ask the claimant to write, if necessary, directly to the soldier or his or her commander.

(xiii) Retain the statement allowing or forbidding release of information to the claimant with the case file for future reference. (See § 513.3.)

(xiv) Monitor actions closely to ensure promises made to claimants are being met.

(xv) Consider administrative or punitive action, if proper (See §§ 513.1(e)(7) and 513.3.)

(xvi) Inform the first level field grade commander of instances of soldiers' repeated failure to pay their debts. Also, point out actions taken or contemplated to correct the situation.

(b) Procedures for routing debt complaints.

(1) Send debt complaints through proper channels to the soldier's commander for action.

(2) If the soldier is a patient attached to a medical holding detachment (MHD), the complaint will be sent there for action. The commander of the MHD will take action per this regulation.

(3) The command receiving the complaint will acknowledge the letter and tell the writer of the referral. DA Form 209 (Delay, Referral, or Follow-Up Notice) may be used for this purpose.

(4) All correspondence to the President, received from outside of DOD, will be processed per AR 1–9.

(5) Send complaints to the soldier's new duty station if the soldier has been reassigned. Advise the claimant of the soldier's reporting date and the unit address to which correspondence should be sent.

(6) See § 513.5 for procedures governing processing of claims for nonactive duty or discharged personnel.

(c) Processing debt complaints based on dishonored checks.

(1) Writing checks against an account with no or not enough funds is a serious matter. It may be a misdemeanor or a felony. This depends on the amount of the check and the laws or statutes of the jurisdiction where the check is presented for payment. The soldier is responsible for making sure that money is in his or her bank account to cover checks written on that account. Writing bad checks may result in disciplinary or administrative action. Whether or not such action is taken, a dishonored check for not enough funds remains proof of an indebtedness except as provided in § 513.1(e)(8).

(2) Commanders must answer all check complaints, other than those discussed in § 513.2(c)(3), even if such complaints concerns checks errors caused by oversight or negligence. (AR 210–60 outlines ways for handling dishonored checks written on Army installations and in Army facilities.)

(3) Checks made good within 5 days of notice do not require any action if the complaint is based on—

(i) Bank or Government error.

(ii) Failure to date the check.

(iii) Inconsistent or not legible amounts shown on the check.

(iv) Lack of legible signature.

(4) Bad checks written by family members are not processed under this regulation except in the following instance. The SJA finds that these checks stand for debts for which the soldier may be held personally liable under Federal or State laws (for example, checks written for necessities such as rent, utilities, or food).

(d) Inquiries from USACFSC or DA officials. The commander must—

(1) Give USACFSC or DA officials complete data on all inquiries.

(2) Seek the advice of the SJA before replying to a court order if necessary.

(3) State "not applicable" to items that do not apply.

(4) If applicable, advise USACFSC or DA officials—

(i) Whether the soldier acknowledges the debt.

(ii) Of the corrective action taken (to include the amounts and dates payments will be made).

(iii) Of the method of payment (for example, personal check).

(iv) Whether the soldier allowed or forbade release of the information given. (See DA Form 4817–R.)

(v) Whether the soldier is following the terms of a court order.

(vi) Whether the soldier's actions follow Army policy as stated in this regulation.

(vii) In the reply, include your name, unit address, and your automatic voice network (AUTOVON) number. If no AUTOVON Number is available, include a commercial or other number where the unit can be reached.

(5) Return to USACFSC or DA officials inquiries received after the soldier has been transferred. Include a copy of his or her permanent change of station orders.

§ 513.3 Administrative and punitive actions.

(a) *Considerations.* Commanders will not tolerate irresponsibility, neglect, dishonesty, or evasiveness. Failure to pay debts promptly and honorably may require disciplinary or administrative action. If a soldier is not trying to resolve unpaid debts promptly or complaints of repeated failure to pay debts are received, commanders will consider—

(1) Making it a matter of permanent record (§ 513.3(b)).

(2) Denial of reenlistment (enlisted members) (AR 601–280).

(3) Administrative separation from the Service (AR 635–100 or AR 635–200).

(4) Punishment under the UCMJ. (See § 513.1(e)(7).)

(b) Official personnel files.

(1) The Army requires that all-inclusive information of the qualifications of its soliders be on file. This prevents selection of soldiers for positions of leadership, trust, and responsibility whose qualifications are questionable.

(2) Documents/records created or received in connection with debt complaints will be filed per AR 600–37 and the Army Functional Files System (AR 340–2 and AR 340–18).

(3) The soldier may show his or her negligence, disregard, or unwillingness to resolve the matter by repeatedly failing to pay his or her debts. In these cases, the commander will decide whether to place a letter of reprimand, admonition, or censure in the soldier's official personnel files. AR 600–37, chapter 2, governs action taken to file unfavorable information.

(4) If information does not merit filing in the soldier's official personnel files, the commander will—

(i) Continue to monitor the situation.

(ii) Furnish further guidance and help.

(iii) Consider later action (§ 513.3(b)(3)) if warranted by further evidence.

§ 513.4 Conditions creditors must meet before getting help in debt processing.

(a) Statutory and other regulatory requirements.

(1) The Truth-in-Lending Act, Public Law 90–321 (15 USC 1601), lists the general disclosure rules that must be met by creditors. It does not cover private parties who extend credit only rarely to help a person. (See § 513.4(f)(1).)

(2) Federal Reserve Board Regulation Z (12 CFR 226) lists specific disclosure rules for all credit transactions under the Truth-in-Lending Act.

(3) Certain States have rules that may apply to credit transactions in lieu of Federal Reserve Board Regulation Z. However, the Federal Reserve Board must first decide if the State sets largely the same rules and enforcement measures. States currently exempted from Regulation Z are Connecticut,

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Maine, Massachusetts, Oklahoma, and Wyoming.

(4) DOD Standards of Fairness (app B) define fair and just dealings with soldiers. DA Pam 360–520, chapter 4, contains simplified explanations of these standards. Note that certain debt complaints are exempt (§ 513.4(f)).

(5) Certificate of Compliance certifies the creditor has complied with the full disclosure requirements of Federal or State laws and regulations, State laws regarding contact with the employer of the debtor, and the application of the Standards of Fairness to the consumer credit transaction.

(6) Full disclosure information shows what the soldier should know about contract terms.

(7) The Fair Debt Collection Practices Act contains other conditions a creditor must meet. (See § 513.1(g).)

(b) *State laws.* Florida, Louisiana, Maryland, Massachusetts, New York, North Carolina, and Wisconsin have passed laws that forbid creditors from contacting employers. This includes commanders, unless certain conditions are met. These conditions are the reduction of a debt to court judgment or the written permission of a debtor. The judgment must conform to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 USC App, Sec 501 et seq., (1970)) if applicable. (See DA Pam 27–166.) Other States may enact similar laws; if they do, the same conditions will apply. Creditors wanting to make use of the debt processing privilege must first certify their compliance with the relevant State's law about contact with an employer. These laws, however, do not apply if the debtor is located in a State that has not passed such a law.

(c) Debt processing.

(1) Creditors, other than private parties described in 513.4(f)(1), must send—

(i) A signed copy of the Certificate of Compliance with DOD Standards of Fairness (app B) showing compliance with one of the following:

(A) The Truth-in-Lending Act.

(B) Federal Reserve Board Regulation Z.

(C) State regulations.

(ii) A true copy of the signed contract.

(iii) The general and specific disclosure information given the soldier before signing the contract.

(iv) A copy of a judgment or written permission from the soldier allowing the creditor to contact his or her employer about the debt, if applicable. (See § 513.4(b).)

(v) Photocopies of actual correspondence or documentary proof showing that every effort has been made to get payment by direct contact with the soldier. The creditor must give the soldier a chance to answer each inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.)

(2) Foreign-owned companies having debt complaints must send—

(i) A true copy of the terms of the debt.

(ii) A certification that they have met the DOD Standards of Fairness.

(iii) An English translation of the above (if not already in English).

(iv) Documentation as in §§ 513.4(c)(1) (iv) and (v).

(3) Creditors not subject to Regulation Z, such as public utility companies, will send a certification with their request. It must state that no interest, finance charge, or other fee exceeds that permitted by the laws of the State in which the service was requested.

(4) Creditors not subject to the Truth-in-Lending Act must send—

(i) Legible copies of actual correspondence. (See § 513.4(c)(1)(v).)

(ii) Documentary proof showing that every effort has been made to get the payment by direct contact with the soldier.

(5) Creditors who have followed these terms may contact the soldier's commander for help. If the commander is contacted, the creditor must give the commander a chance to answer the inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.) If unsuccessful, after reasonable efforts to collect the debt, creditors may request help from USACFSC. In such cases, the information must be the same as that sent the commander. (See § 513.4(c)(6).) The request should be sent to the Commander, USACFSC, ATTN: DACF–IS–PA, ALEX VA 22331–0522.

(6) All requests for help must include—

(i) The soldier's full name, rank, and SSN.

(ii) Date and place of birth, if SSN is not known.

(iii) The amount and date of the original debt.

(iv) The terms of payment.

(v) The balance due.

(vi) Documents described in §§ 513.4(c) (1) through (4) which apply.

(7) Separate letters should be written on each account for prompt and efficient processing.

(8) Letters lacking data will be returned for added documents.

(d) Debt complaints returned to creditors without action. Requests for help in processing debt complaints will be returned without action with an explanation if—

(1) Creditors did not enclose the following:

(i) Documents showing compliance with the Truth-in-Lending Act, Federal Reserve Board Regulation Z, or State regulation.

(ii) Signed copies of the Certificate of Compliance with DOD Standards of Fairness.

(iii) A completed copy of form with the Full Disclosure Information. (See § 513.4(a)(6).)

(iv) Signed copies of the contract.

(v) Legible copies of actual correspondence or documentary proof showing that every effort has been made to get the payment by direct contact with the soldier. (See § 513.4(c)(1)(v).)

(2) The soldier is located in a State whose laws forbid creditors from contacting employers.

(3) The claim is obviously false or misleading.

(4) The finance charge does not conform to the State law where the contract is signed.

(5) A U.S. company operating overseas exceeds the lowest interest rate of the State or States where chartered or doing business in the United States.

(6) The contract or loan agreement provides that the debtor must pay the creditor's attorney fees, unless the following limitations in § 513.4(d)(6) (i) through (iii) are included. No attorney's fee may be charged for services done by a salaried employee of the creditor.

(i) The fees will have to be paid only in the event of a default by the soldier.

(ii) The fees will have to be paid only if a lawsuit is filed.

(iii) The fees will not exceed 20 percent of the amount found due.

(7) A penalty for prepayment has been charged.

(8) A charge has been made for an insurance premium without satisfactory proof of—

(i) A policy or insurance certificate having been issued.

(ii) Delivery of a policy or certificate to the soldier within 30 days of issuance.

(9) The late charge is in excess of 5 percent of the late payment, or $5, whichever is the lesser amount. Only one late charge may be made for any late installment. Late charges will not be made where an allotment has been timely filed, but payment has been delayed.

(10) The creditor has not given the soldier a chance to answer a previous inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.)

(11) The claimant is a debt collector without a court order or a signed letter

of consent by the soldier. (See § 513.1(g).)

(12) The debt is covered by an order of a bankruptcy court. (e) Cancellation of debt processing privilege.

(1) Creditors who refuse or fail repeatedly to follow these terms will be referred through channels to the Commander, USACFSC, Attn: DACF–IS–PA, Alex, Va 22331–0522, by the commander.

(2) The CG, USACFSC will—

(i) Cancel debt processing privileges if the queries clearly show that the creditor is—

(A) Not conforming with this regulation.

(B) Trying to make unreasonable use of the debt processing privilege.

(C) Trying to use the Army as a collection agency.

(ii) Inform commanders worldwide by electrical message that the debt processing privilege of a specific creditor has been revoked.

(iii) Inform the creditor that his or her debt processing privilege has been revoked and state the reasons for this action. (f) Exemptions from Full Disclosure and Standards of Fairness. The debt complaints discussed below are exempt from the Full Disclosure and Standards of Fairness. This does not prevent the debtor from questioning service charges and negotiating a fair and reasonable settlement.

(1) Claims from private parties selling personal items (for example, car, furniture, appliances) on a one-time basis.

(2) Claims from companies or individuals giving services in which credit is given only to help the soldier (for example, utilities, milk, laundry, medical, and related services).

(3) Claims by endorsers, comakers, or lenders who intend only to help the soldier in getting credit. These claims, however, may not benefit the above through receipt of interest or otherwise.

(4) Contract for the purchase, sale, or rental of real estate.

(5) Claims in which the total unpaid amount does not exceed $50.

(6) Claims based on a revolving or open-end credit account. The account must show—

(i) The periodic interest rate and the equivalent annual rate.

(ii) The balance to which the interest is applied to compute the charge.

(7) Claims as security liens on real property (for example, a house). This does not include improvements or repairs.

(8) Attorneys representing parties under §§ 513.4(f) (1) through (7).

§ 513.5 Procedures Governing Nonactive Duty or Discharged Personnel.

(a) *Procedures governing nonactive duty personnel.* (1) Debt complaints against former soldiers or others not on active duty will be sent to the Commander, U.S. Army Reserve Personnel Center (ARPERCEN), ATTN: DARP–PSE–VS, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(2) After ARPERCEN verifies the status, the following officials will act as prescribed below.

(i) Chief, National Guard Bureau, Wash DC 20310–2500, for soldiers of the Army National Guard.

(ii) The area commander concerned for Ready Reservists assigned to troop program units under their control. (See AR 140–1, para 1–6.)

(iii) ARPERCEN for nonunit soldiers assigned to Control Groups of the Ready Reserve, Standby Reserve, and Retired Reserve.

(3) The officials cited in § 513.5(a)(2) will ensure that debt complaints are delivered to the person concerned, using military channels. When the complaint cannot be delivered through military channels, it will be sent to the last known mailing address of the person by certified mail, using PS Form 3811 (Return Receipt, Registered, Insured, and Certified Mail). It should be marked Return Receipt Requested—Deliver to Addressee Only. This form is available at U.S. post offices.

(4) After delivery of correspondence, the responsible official will advise the claimant—

(i) Of the date and method of delivery.

(ii) That the military department does not control the personal affairs of nonactive duty personnel. These personnel usually are in a civilian status and are not subject to military discipline. Therefore, the matter has been left to the person's discretion.

(iii) Of the person's mailing address only if the conditions in § 513.5(c) are met.

(b) Procedures governing discharged personnel.

(1) Debt complaints against persons who have been discharged from the service (that is, those now holding no military status) will be sent to ARPERCEN.

(2) ARPERCEN will return the correspondence, and all accompanying documentation, and advise the claimaint—

(i) That the person is no longer a member of the Army or the Reserve Components.

(ii) Of the date of discharge.

(iii) That the Army no longer has control or authority over the discharged personnel. Therefore, the Army can take no further action in this matter.

(iv) Of the person's mailing address only if the conditions in § 513.5(c) are met.

(c) Conditions for disclosing mailing address. Nonactive duty and discharged personnel's mailing addresses will not be discussed unless—

(1) The person consents in writing to the release of his or her address.

(2) The claimant sends a court order directing the release of the address.

(3) Any other reason that does not constitute a violation of the Privacy Act of 1974.

(d) Retired personnel.

(1) The claimant may be advised that correspondence may be sent to the retired person as follows:

(i) Place correspondence in a stamped envelope with the retired person's name typed or printed on the envelope.

(ii) Place a stamped envelope in a second envelope and mail to Commander, ARPERCEN, Attn: DARP–PSE–VS, 9700 Page Boulevard, St. Louis, MO 63131–5200.

(2) ARPERCEN will forward the correspondence to the retired person, but cannot release the address per provisions of the Privacy Act of 1974.

Appendix A—References

Section I

Required Publications.

AR 340–2

Maintenance and Dispostion of Records in TOE Units of the Active Army, the Army Reserve and the National Guard. (Cited in § 513.3(b)(2).)

AR 340–17

Release of Information and Records from Army Files. (Cited in § 513.2(a)(3)(viii)(H).)

AR 340–18

The Army Functional Files System. (Cited in § 513.3(b)(2).)

AR 340–21

The Army Privacy Program. (Cited in §§ 513.1(d)(5)(iv) and 513.2(a)(3)(viii)(H).)

AR 600–37

Unfavorable Information. (Cited in § 513.3(b) (2) and (3).)

DA Pam 27–166

Soldiers' and Sailors' Civil Relief Act. (Cited in §513.4(b).)

DA Pam 360–520

Credit: Master or Servant. (Cited in §§ 513.2(a)(3)(viii)(G) and 513.4(a)(4).)

Uniform Code of Military Justice. (Cited in §§ 513.1(e)(7)(iv), 513.2(a)(3)(viii)(D) and 513.3(a)(4).)

Section II

Related Publications.

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A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1–9

White House Liaison, Communications, and Inspections.

AR 11–2

Internal Control Systems.

AR 27–3

Legal Assistance.

AR 37–60

Pricing for Materiel and Services.

AR 140–1

USAR—Mission, Organization, and Training.

AR 210–24

Credit Unions.

AR 210–60

Control and Prevention of Abuse of Check Cashing Privileges.

AR 210–135

Banking Service on Army Installations.

AR 601–280

Army Reenlistment Program.

AR 608–1

Army Community Service Program.

AR 608–99

Family Support, Child Custody, and Paternity.

AR 635–100

Officer Personnel (Separations).

AR 635–200

Enlisted Personnel (Separations).

DODD 1344.9

Indebtedness of Military Personnel.

Federal Reserve Board Regulation Z Truth in Lending.

Section III

Prescribed Forms.

DA Form 4817–R

Consent/Nonconsent to Disclose Personal Information. (Cited in §§ 513.2(a)(3)(viii) (A) and (H), and 513.2(d)(4)(iv).)

Section IV

Referenced Forms.

DA Form 200

Delay, Referral, or Follow-Up Notice.

PS Form 3811

Return Receipt, Registered, Insured, and Certified Mail.

Appendix B—Standards of Fairness

B–1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed in the United States by the military member.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. However, interest rates and service charges applicable to overseas military banking facilities will be established by the Department of Defense.

B–2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

B–3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised the holder of this fact.

B–4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

B–5. No late charge shall be made in excess of 5 percent of the late payment, or $5 whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed, but payment of the allotment has been delayed. Late charges by overseas banking facilities are a matter of contract with the Department of Defense. Late charges by Federal credit unions are set at 20 percent of the interest due with a minimum of not less than 5 cents.

B–6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment that portion of the finance charges which has inured to the benefit of the seller of the creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied.

B–7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

B–8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

B–9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will be governed by the laws of the State in which the security is requested.

B–10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in preproduction costs, or require preparation for delivery, such additional costs will be listed in the order form or contract.

a. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by Public Law 90–321, "Truth-in-Lending Act," Section 125 (15 USC 1601 (1976)) and the Federal Reserve Board Regulation Z (12 CFR 226, 226.3, 226.9 (1978)).

Appendix C—Glossary

Section I—Abbreviations

ARNGUS: Army National Guard of the United States
ARPERCEN: U.S. Army Reserve Personnel Center
AUTOVON: automatic voice network
DA: Department of the Army
DOD: Department of Defense
HQDA: Headquarters, Department of the Army
MHD: medical holding detachment
SJA: staff judge advocate
SSN: social security number
UCMJ: Uniform Code of Military Justice
USACFSC: U.S. Army Community and Family Support Center
USAEREC: U.S. Army Enlisted Records and Evaluation Center
USAFAC: U.S. Army Finance and Accounting Center
USAR: U.S. Army Reserve

U.S.C. U.S. Code.

Section II—Terms

Check: A written order, usually on a standard printed form, directing a bank or credit union to pay money.
Creditor: Any person or business that offers or extends credit, or to whom or to which a debt is owed. This term includes lending institutions (such as centralized charge systems) which, although not parties to the original transactions, seek help in collecting debts.
Debt: Any legal debt acknowledged by the soldier, or in where there is no reasonable dispute as to the facts or law, or which has been reduced to judgment.
Debt collector: Any person or business that solely collects debts owed to another person or business. (A debt collector is not a creditor.)
Disputed debt: Any debt, not reduced to a judgment, in which there is a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation the soldier to pay.
Family member: As used in this regulation, an individual who qualifies for dependency benefits under certain conditions as set by Army regulations. (For example, spouse or unmarried child, to include stepchildren, and adopted or illegitimate children.)
Judgment: Any decision given by a court of justice or other competent tribunal as a result of proceedings instituted therein. As defined, a judgment includes any administrative enforcement order (Vollstreckungsanordnung) issued by the German federal post office (Deutsche Bundespost) regarding unpaid telephone bills. Such orders come within the coverage of this regulation regardless of where the soldier is stationed.
Soldier: Commissioned and warrant officers and enlisted personnel.

John O. Roach, II,
Army Liaison Officer, with the Federal Register.

[FR Doc. 86–4290 Filed 2–28–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3140

[Circular No. 2576]

Combined Hydrocarbon Leasing; Paying Quantities and Diligent Development of Combined Hydrocarbons

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides definitions of and procedures for meeting the production in paying quantities and diligent development requirements for tar sand in all combined hydrocarbon leases. The definitions and procedures in the final rulemaking will be used by the Secretary of the Interior in carrying out his responsibilities under the Combined Hydrocarbon Leasing Act of 1981.

EFFECTIVE DATE: April 2, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Edward E. Coggs, (202) 343–2892
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on combined Hydrocarbon Leasing; Amendment Covering Paying Quantities and Diligent Development of Combined Hydrocarbon Leases was published in the **Federal Register** on January 10, 1985 (50 FR 1300), with a 60-day comment period. The comment period was extended to April 3, 1985, by a publication in the **Federal Register** on March 19, 1985, (50 FR 10998).

During the comment period, five written comments were received on the proposed rulemaking. These comments were given careful consideration. The comments were generally favorable, with suggestions for specific changes to the proposed rulemaking. Comments on specific sections of the proposed rulemaking will be addressed in the preamble under the section being discussed. Only those sections that were the subject of comments will be addressed.

Section 3142.1 Diligent development

Several comments were received on this section of the proposed rulemaking. The comments questioned whether the diligent development portion of the proposed rulemaking would be equally applicable to competitively obtained leases and to conversion leases. The diligent development requirements, which have been adopted with only minor changes by the final rulemaking, will be equally applicable to both competitive and conversion leases. The Department of the Interior has defined diligent development in its regulations in a manner that recognizes the financial commitment of a lessee to the development of the tar sand resource. However, under section 17(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 226(e)) a combined hydrocarbon lease, whether issued as a conversion or competitive lease, has a primary term of ten years and for so long thereafter as oil or gas is produced in paying quantities. The only relief from this requirement to produce in paying quantities other than relief by a limited term extension, is provided by section 17(f) of the Act (30 U.S.C. 226(f)) for those leases with wells capable of production in paying quantities and for those leases which are suspended. However, the producible well provision would not be applicable to tar sand surface mines. Therefore, in the event a lessee fails to meet the requirement for production in paying quantities on a tar sand lease, the final rulemaking provides that the lessee will, if he/she has met the diligent development requirements for a tar sand lease, receive a suspension of production. This suspension will allow lessees to refine their technology after the end of the primary term without lease expiration. The Department believes this benefit should be available to all combined hydrocarbon leases, no matter how issued, and therefore, will apply this diligent development requirement to both converted and competitive combined hydrocarbon leases.

The penalty for failure to meet the diligent development obligation is lease expiration—either at the end of the primary term for failure to produce in paying quantities or during the extended term for failure to produce or to receive a lease suspension. The Department of the Interior may take certain actions to enforce this remedy, such as refusal to approve a supplement to an approved plan of operations which would authorize drilling or mining activity on the lease if the diligent development requirements have not been met. In the event a combined hydrocarbon lease is producing, or has a well capable of producing, oil or gas in paying quantities by conventional methods, the Department's remedy would be lease cancellation under 30 U.S.C. 188(a). Before pursuing such a drastic remedy, the Department would give considerable weight to the existence of production from the lease prior to conversion and to the lessee's justification of why the diligent development requirements were not met.

A final comment on this section expressed the view that the proposed rulemaking was confusing as to the interrelationship between the requirement for production in paying quantities and the requirement for diligent development of a lease. After careful review of the comment and the provisions of the proposed rulemaking, the final rulemaking has adopted an amendment as paragraph (c) that clarifies that a lessee will have met the requirement for diligent development if that lessee has achieved production in

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paying quantities by the end of the primary term of the lease. This new provision will be applicable only on leases where tar sand is developed by unconventional methods.

Section 3142.2-1 Minimum Production Schedule

One comment suggested that this section of the proposed rulemaking would provide an incentive to a lessee to purposely understate the recoverable tar sand reserves estimate. Thus, if a lessee understated the recoverable tar sand reserve estimates, he/she could avoid or reduce the payment of advance royalties by making it easier to meet a (artificially low) minimum production requirement. The authorized officer should base the estimated recoverable tar sand reserves on all available data. It was the intent of the Department of the Interior in issuing the proposed rulemaking to allow the authorized officer to use other data to judge the adequacy of the estimates provided by the lessee. This is evidenced by the provision in the proposed rulemaking, which has been rewritten for clarification in the final rulemaking, providing a two-year period between the submission of data by the lessee and the initiation of the minimum production schedule. The final rulemaking has also been changed to clarify that the minimum production amount is established under the lease, rather than specifically set out in the lease, (see section 4 of the current lease form) and that the minimum production schedule will be part of the plan of operations.

Section 3142.2-2 Advance Royalties in Lieu of Production

As the result of a comment on this section of the proposed rulemaking, the section was carefully reviewed. That review resulted in the addition of new paragraphs (b) and (c) to the final rulemaking. These paragraphs clarify the conditions under which a lessee: (1) May request a suspension of production and pay advance royalty in lieu of production because of a failure to produce from the lease during a lease year; and (2) will pay advance royalty because of a failure to produce in an amount sufficient to meet the minimum production schedule for that year for the lease. Due to comments on the legality of allowing payment of advance royalty in lieu of production after the primary term of the lease expires, the final rulemaking provides for a suspension of production under section 17(f) of the Mineral Leasing Act (30 U.S.C. 226(f)) upon payment of advance royalty. The Mineral Leasing Act also provides that no lease shall expire while production is suspended. After studying this issue, the Office of the Solicitor, Department of the Interior, concluded that the Bureau of Land Management may establish appropriate criteria for granting a suspension because the statute specified none (Solicitor's Opinion M-36953, 92 I.D. 293, 301 (1985)). A suspension of production does not prevent the lessee from operating on the lease, including the removal of minimal quantities of the tar sand resource needed for testing oil recovery technology.

Section 3142.3 Expiration

One comment recommended that this section be amended to provide for termination of the lease during the primary term, as provided in the general regulations covering leases in § 2920.9-3(a)(1). Section 2920.9-3(a)(1) is, by its own terms, applicable to leases issued under Part 2920, but is not applicable to leases issued under subchapter C. The final rulemaking has not adopted the recommended amendment.

The principal author of this final rulemaking is Edward E. Coggs, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule Under Executive Order 12291 and will not have a significant economic effect of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The leasing procedures provided in this final rulemaking are available to all entities who wish to avail themselves of the opportunity to lease and develop combined hydrocarbon resources, regardless of the size of the entity. The final rulemaking follows the guidance set out in the Combined Hydrocarbon Leasing Act and is designed to provide an equitable process for leasing and development of combined hydrocarbon resources.

While this final rulemaking is applicable to any combined hydrocarbon lease, it presently is specifically applicable only to the eight combined hydrocarbon leases that are in existence as a result of approval by the Secretary of the Interior under the terms of the Combined Hydrocarbon Leasing Act of 1981. Therefore, since there are fewer then ten respondents submitting information in response to the requirements in this final rulemaking in any one year, approval by the Office of Management and Budget under 44 U.S.C. 3507, as set forth in 5 CFR §§ 1320.4 and 1320.7 (c) and (d), is not required.

List of Subjects for 43 CFR Part 3140

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—mineral reserves.

Under the authority of the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3140, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

January 22, 1986.

1. The authority citation for Part 3140 is added to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 95 Stat. 1070; 43 U.S.C. 1701 et seq.

2. Part 3140 is amended by adding a new subpart 3142 to read:

PART 3140—[AMENDED]

Subpart 3142—Paying Quantities/Diligent Development

Sec.
3142.0-1 Purpose.
3142.0-3 Authority.
3142.0-5 Definitions.
3142.1 Diligent Development.
3142.2 Minimum production levels.
3142.2-1 Minimum production schedule.
3142.2-2 Advance royalties in lieu of production.
3142.3 Expiration.

Subpart 3142—Paying Quantities/Diligent Development

§3142.0.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases.

§3142.0-3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§3142.0-5 Definitions.

As used in Part 3140 of this title, the term "production in paying quantities" means: (a) Production, in compliance with an approved plain of operations and by nonconventional methods, of oil and gas which can be marketed; or (b) production of oil or gas by conventional methods as the term is currently used in Part 3160 of this title.

§3142.1 Diligent Development.

A lessee shall have met his/her diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which shall include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.0-5(a) of this title, by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which shall be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

§ 3142.2 Minimum production levels.

§ 3142.2-1 Minimum production schedule.

Upon receipt of the supplement to the plan of operations described in § 3142.1(b) of this title, the authorized officer shall examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee shall furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: or grade, strip ratio, vertical and horizal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer shall then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which shall start in the eleventh year of the lease. This minimum production level shall escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the lease and remain at 1 percent each year thereafter.

§3142.2-2 Advance royalties in lieu of production.

(a) Failure to meet the minimum annual tar sand production schedule level in any year shall result in the assessment of an advance royalty in lieu of production which shall be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there shall be no production during the remainder of the lease year, the lessee shall submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer shall approve a suspension of production for that lease year and the lease shall not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit, the lessee shall pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer shall direct a suspension of production for those periods during which no production occurred.

§3142.3 Expiration.

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, shall result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee shall remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

[FR Doc. 86-4530 File 2-28-86; 8:45 am]

BILLING CODE 4310-84-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 845

Transportation Accident/Incident Hearings and Reports; Practice Rules

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment to 49 CFR 845.13 requires parties to the Board's transportation accident hearings to select as their representatives qualified technical employees or members who do not occupy legal positions. This amendment would be similar to the condition that parties to aviation accident investigations be represented by suitable qualified technical personnel.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: The Safety Board has established rules of practice in transportation accident hearings (Subparts A and B of 49 CFR Part 845). These rules permit the designation of parties to an accident hearing which is conditioned on among other things an entity's special knowledge which will contribute to the development of pertinent evidence. 49 CFR 845.13(a). This rule, however, does not specify that the party's representative at the hearing possess any specialized knowledge or expertise.

The Board's rules of procedure for aviation accident investigations require an entity as a prerequisite to being invited to participate in the investigation to provide "suitable qualified technical personnel" who will actively assist in the investigation. 49 CFR 831.9(a). Participants in nonaviation investigations are also represented by qualified technical personnel. Since the parties to a field investigation of an accident are virtually always also designated as parties to any hearing held in connection with the accident and since the hearing is an extension of the field investigation, the Board believes that ideally a person who represented a party during an earlier phase of the

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investigation should serve as spokesperson for the party at the hearing. The direct ongoing participation of technical personnel will provide continuity through the accident inquiry. This amendment would require spokespersons to be employees or members of the party they represent because such personnel are most likely to possess an intimate knowledge and understanding of the functions, activities, operations or products of the party they represent and therefore would be in the best position to render assistance to the Board. The Board reserves the right to allow the Chairman of the Board of Inquiry to permit a nonemployee spokesperson in the exceptional case where due to the small size of its workforce a party is unable to provide an employee as a spokesperson. Since the Board expects that parties will rarely if ever be unable to proffer an employee as a representative, the Board will not at this time create a formal exception to the requirement that parties be represented at the hearing by an employee. An organization that the Board invites to participate in the investigation for the first time at the hearing likewise will be required to be represented by an employee possessing technical qualificlations.

Parties to the Board's field investigations are not represented by persons who occupy legal positions, but a few parties have had legal counsel serve as spokesperson at the hearing. This rule change will prevent the shifting from a technical representative during the field investigation to a legal representative at the hearing. Transportation accidents involve complex subject matter and technical issues. The Board's investigations of these accidents are conducted by the Board's staff of experts with assistance from the technical personnel of the parties. The purpose of the inquiry remains the same irrespective of the phase of the investigation, i.e., develop the facts, conditions, and circumstances of the mishap to enable the Board to determine the probable cause of the accident and to ascertain measures which will tend to prevent accidents and injuries. It is not the function of the Board's inquiries to determine the rights or liabilities of any person. The Board derives the greatest benefit from the insight and specialized knowledge of qualified technical personnel who represent parties, and the Board believes that parties invited to participate at a hearing should be represented by a person who theretofore participated in the investigation or at the very least an official who supervises such persons or an employee who possesses comparable technical qualifications and current work experience. Although the legal representatives of some parties to hearings have had transportation-related technical experience and have contributed to the hearing, the Board believes that persons who occupy technical rather than legal positions will be able to offer more to the Board and be more in keeping with the spirit and purposes of the inquiry.

Since this amendment is a rule of agency procedure and practice, the Board finds that notice and public procedure are not necessary, and the amendment can become effective less than 30 days from the date of publication in the **Federal Register**. This amendment will apply to accidents which occur after its publication.

Regulatory Flexibility

This rule is not subject to the Regulatory Flexibility Act because the notice and public comment procedure requirement of 5 U.S.C. § 553 do not apply.

List of Subjects in 49 CFR Part 845

Administrative practice and procedure, Hearing, Investigation, Safety, Transportation. Adoption of the Amendment.

Accordingly, 49 CFR Part 845 is amended as follows:

PART 845—[AMENDED]

1. The authority citation for Part 845 is revised to read as follows:

Authority: Title VII, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1441 *et seq.*; and the Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166, 49 U.S.C 1901 *et seq.*

2. By adding the following new sentence to the end of § 845.13(a):

§ 845.13 Designation of Parties.

(a)* * * Parties shall be represented by suitable qualified technical employees or members who do not occupy legal positions.

Signed at Washington, D.C. on February 26, 1986.

Jim Burnett,

Chairman.

[FR Doc. 86-4474 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-58-M

Proposed Rules

Federal Register
Vol. 51, No. 41
Monday, March 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Proposed Amendment No. 5 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt gift boxes of melons from the container requirements of the handling regulation. The containers currently required are too large for gift pack use. This action will permit melon shippers to serve a small but growing segment of the melon market that would not otherwise be available to them.

DATES: Comments due April 2, 1986.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U. S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250 (202) 475–3919.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajer" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 156 and Order No. 979, regulate the handling of melons grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in December 1961 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on December 3, 1985, the committee recommended that the regulation continue but that gift boxes of melons be exempt from the container requirements of the handling regulation. The current handling regulation includes a requirement that all melons be packed in containers of specified dimensions. The usual cartons for cantaloups contain 40 pounds and those for honeydew melons 30 pounds, too large for gift-type packaging. Moreover, for the gift-pack market a range of sizes and configurations for containers is necessary. The packs may contain other items such as fruit, preserves or nuts; and a range of different sizes is more appropriate in order to offer consumers a wider selection. All other provisions of the handling regulation, including minimum grade requirements, will be applicable to such packages. Since gift packages must contain only the highest quality melons in order to command their price, there is little chance that this will be used as a "dumping ground" for melons of questionable grade. The committee believes this action will enable melon shippers to serve a small but developing market for gift packages.

Although the regulation proposed to be amended is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including and analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before March 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of South Texas melons would tend to effectuate the declared policy of the act.

It is hereby found and determined that providing more than 30 days notice with respect to this proposal is impractical, unnecessary and contrary to the public interest because the melon shipping season begins on May 1, and any regulatory amendment should become effective by that date.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.304 (47 FR 13118, March 29, 1982; 47 FR 24109, June 3, 1982; 48 FR 21881, May 16, 1983; 49 FR 15541, April 19, 1984; and 50 FR 10206, March 14, 1985) is hereby proposed to be further amended by adding a new paragraph (e)(4) as follows:

§ 979.304 Handling regulation

* * * * *

(e) *Special purpose shipments.* * * *

(4) The handling to any person of gift packages of melons not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (b) of this section, but shall meet all assessment requirements of § 979.42 and the grade and inspection requirements of paragraphs (a) and (c) respectively of this section.

* * * * *

Dated: February 21, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-4463 Filed 2-28-86; 8:45 am]

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7 CFR Parts 1068, 1065, and 1079

[Docket Nos. AO-178-A40, AO-86-A44, and AO-295-A37]

Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing will be held to consider proposals to amend the location adjustment provisions in each of the three orders. Such adjustments to Class I milk prices generally reflect the costs of moving milk from production areas to consuming centers. Interested persons in all Federal milk orders were invited to submit location adjustment proposals in response to the new Class I price differentials provided by the Food Security Act of 1985. Proposals for consideration at this hearing were submitted by dairy farmer cooperative associations and by milk processors.

DATE: The hearing will convene at 9:30 a.m. on April 8, 1986.

ADDRESS: The hearing will be held at The Thunderbird Motel, 2201 East 78th Street (Interstate Highway 494 and 24th Avenue South), Minneapolis (Bloomington), Minnesota 55420-1695, (612) 854-3411.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at The Thunderbird Motel, 2201 East 78th Street (Interstate Highway 494 and 24th Avenue South), Minneapolis (Bloomington), Minnesota, beginning at 9:30 a.m. on April 8, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to proposals Nos. 1 through 15.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1068, 1065, and 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1068, 1065, and 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposals To Amend the Upper Midwest Order (Part 1068)

Proposed by Associated Milk Producers, Inc.

Proposal No. 1

Amend § 1068.52(a)(1) to read:

(1) Zone I shall include that territory, both inside and outside the marketing area, not included in Zones 2, 3, 4, and 5.

Proposal No. 2

Amend § 1068.52(a)(2) to read:

(2) Zone 2 shall include:

(i) The Minnesota counties of Aitkin, Becker, Benton, Big Stone, Carlton, Cass, Chippewa, Chisago, Crow Wing, Dodge, Douglas, Fillmore, Goodhue, Grant, Houston, Hubbard, Isanti, Kanabec, Kandiyohi, LeSueur, McLeod, Meeker, Mille Lacs, Morrison, Nicollet, Otter Tail, Pine, Pope, Renville, Rice, Sibley, Sherburne, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Wilkin, Winona, and Wright;

(ii) The Wisconsin counties of Burnett, Calumet, Columbia, Crawford, Douglas (except the city of Superior), Green Lake, Manitowoc, Pierce, Polk, Richland, St. Croix, Sauk, Vernon, and Winnebago;

(iii) The Michigan counties of Dickinson, Gogebic, Iron, and Menominee; and

(iv) The Iowa county of Allamakee.

Proposal No. 3

In § 1068.52, and a new paragraph (a)(5) as follows:

(5) Zone 5 shall include:

(i) The Minnesota counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lyon, Martin, Mower, Murry, Olmsted, Redwood, and Watonwan; and

(ii) The Iowa counties of Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Proposal No. 4

Amend the tabular portion of § 1068.52(b) to read:

Zone	Adjustment per hundredweight
1	No adjustment.
2	Minus 5.
3	Minus 10.
4	Minus 15.
5	Plus 3.

Proposal by Mid-America Dairymen, Inc.

Proposal No. 5

Amend § 1068.52(a)(2) to read:

(2) Zone 2 shall include:

(i) The Iowa counties and Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth;

(ii) The Minnesota counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lyon, Martin, Mower, Murray, Olmsted, Redwood, and Watonwan.

Proposal No. 6

Amend § 1068.52(b) to read:

(b) For milk received at a plant from producers or a handler described in § 1068.9(c) and which is classified as Class I milk, the price specified in § 1068.50(a) shall be adjusted by the following amounts:

Zone	Adjustment per hundredweight
1	No adjustment.
2	Plus 7 cents.
3	Minus 10 cents.
4	Minus 15 cents.

Proposed by National Farmers' Organization, Inc.

Proposal No. 7

Revise § 1068.52(a)(2)(i) by adding "Lac qui Parle" County, and add a new paragraph (v) as follows:

(v) The South Dakota counties of Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Proposals To Amend the Nebraska-Western Iowa Order (Part 1065)

Proposed by Gillette Dairy, Inc.

Proposal No. 8

In § 1065.52(a)(1), remove Boone, Madison, and Stanton counties from Zone 1.

Proposal No. 9

In § 1065.52(b)(3), eliminate Norfolk, Nebraska, as a basing point for computing location adjustments.

Proposed by Mid-America Dairymen, Inc.

Proposal No. 10

Amend § 1065.52 (a) and (b) as follows:

a. In paragraph (a)(1), delete Madison and Stanton Counties and add Washington County in Nebraska.

b. Add a new paragraph (a)(3) to establish a new Zone 3 consisting of Antelope, Burt, Cuming, Holt, Madison, Pierce, Stanton, Thurston, and Wayne Counties in Nebraska.

c. Add a new paragraphs (a)(4) to establish a new Zone 4 consisting of Dakota and Dixon counties in Nebraska and Plymouth and Woodbury counties in Iowa.

d. Revise paragraph (b) to read as follows:

(b) For producer milk received at a pool plant (or diverted to a nonpool plant) and which is classified as Class I milk without movement in bulk form to a pool plant at which a higher Class I price applies, the Class I price specified in § 1065.50(a) shall be adjusted for the location of the plant receiving the milk as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, plus 15 cents;

(3) In Zone 3, minus 10 cents;

(4) In Zone 4, minus 20 cents; and

(5) At a plant located outside of Zones 1, 2, 3, and 4 and in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota (east of State Highway 73 only), or Wisconsin, the price shall be reduced by 2.0 cents per 10 miles or fraction thereof (by shortest hard-surfaced highway as measured by the market administrator) that such plant is located from the city hall in Omaha, Nebraska; and

(6) At any other location, no adjustment.

Proposed by Neu Cheese Company and Orchard Dairy, Inc.

Proposal No. 11

Amend § 1065.52(a)(1) and (b) as follows:

In paragraph (a)(1), add Antelope, Pierce, Cedar, Dixon, Dakota, Thurston, Cuming, Burt, Washington, and Wayne counties in Nebraska and Plymouth and Woodbury counties in Iowa, to Zone 1; and

In paragraph (b), delete Norfolk, Nebraska, as a basing point for computing location adjustments.

Proposed by Wells Dairy, Inc.

Proposal No. 12

Amend § 1065.52(b)(3) by changing "1.5" to "2.8."

Proposals To Amend the Iowa Order (Part 1079)

Proposed by Mid-America Dairymen, Inc.

Proposal No. 13

Amend § 1079.52(b)(3) by changing "1.5" to "2.0."

Proposed by National Farmers' Organization, Inc.

Proposal No. 14

In § 1079.52, revise paragraphs (a) and (b) to read as follows:

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include that terrirtory, both inside and outside the marketing area, not included in Zones 2 through 5.

(2) Zone 2 shall include:

(i) The Iowa counties of Benton, Cedar, Clinton, Iowa, Johnson, Jones, Keokuk, Linn, Louisa, Marshall, Muscatine, Poweshiek, Scott, Tama, and Washington; and

(ii) The Illinois counties of Henry, Mercer, and Rock Island.

(3) Zone 3 shall include:

The Iowa counties of Black Hawk, Brenner, Buchanan, Butler, Cerro Gordo, Chickasaw, Delaware, Dubuque, Fayette, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Jackson, Webster, and Wright.

(4) Zone 4 shall include:

The Iowa counties of Alamakee, Clay, Clayton, Dickinson, Emmet, Howard, Kossuth, O'Brien, Osceola, Palo Alto, Pocahontas, Winnebago, and Winneshiek.

(5) Zone 5 shall include:

The States of Minnesota and Wisconsin and that portion of the State of Illinois that is north of Interstate 80.

(b) For milk received at a plant from producers or from a handler described in § 1079.9(c) and which is classified as Class I milk without movement in bulk to a pool plant at which a higher Class I price applies, the price specified in § 1079.50(a) shall be adjusted as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, minus 10 cents;

(3) In Zone 3, minus 20 cents;

(4) In Zone 4, minus 30 cents; and

(5) In Zone 5, the price shall be reduced by the greater of 30 cents or an amount equal to 2.0 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the Post Office in Des Moines, Iowa.

Proposed by the Dairy Division, Agricultural Marketing Serrvice

Proposal No. 15

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

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Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the aforesaid specified Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: February 25, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-4462 Filed 2-28-86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Community Facilities loan and grant servicing regulations to implement Pub. L. 99–88. This proposed action is being taken to comply with Title 1 of Pub. L. 99–88 which gives certain FmHA Water and Waste Disposal (WWD) and Community facility (CF) borrowers a choice of the interest rates on their loans. The law applies to WWD and CF loans closed or approved after November 12, 1983. The intended effect of this proposed action is to establish the procedures for FmHA to service those loans closed after November 12, 1983, in which the borrower requests a change of loan interest rate.

DATES: Comments must be submitted on or before April 2, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Building, 14th and Independence Avenue SW., Washington, DC 20250. All comments received in a timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:15 a.m. and 4:45 p.m. The collection of information requirements contained in this rule have been submitted to Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bonnie Justice, Loan Specialist, Community Facilities Division, (202) 382–1490, or William F. Hagy, Loan Specialist, Water and Waste Disposal Division, (202) 382–9636, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "non-major" since the annual effect of the economy is less than $100 million and there will be no significant increase in cost or price for consumers, individual industries; Federal, State, or Local Government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.418 and 10.423 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. (49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This action implements FmHA's servicing of loans and grants closed since November 12, 1983, when the borrower requests a change of interest rate. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

Pub. L. 99–88 requires that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by FmHA to WWD and CF borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Until Pub. L. 99–88, WWD and CF borrowers did not have a choice of the interest rate on their loans. The interest rate was established on the date of loan approval and the loan was closed at that rate.

FmHA proposes to add a provision to Subpart E of Part 1951 to service loans closed after November 12, 1983, to allow borrowers to request that their interest rate be changed and to administratively accomplish the resulting change in interest rate for WWD and CF loans. This action will bring existing FmHA Community Facility servicing regulations into compliance with Pub. L. 99–88.

FmHA amends Subpart E of Part 1951 by adding § 1951.221 to authorize that, upon request of the borrower, FmHA will change the interest rate on a closed WWD or CF loan.

List of Subjects in 7 CFR Part 1951

Account servicing; Grant programs—Housing and community development; Loan programs—Housing and community development; Reporting requirements; Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1951.221 is added and reads as follows:

§ 1951.221 Special provision for interest rate change.

(a) *General.* Pub. L. 99–88 provides that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facilities borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval.

Loans closed November 12, 1983, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after November 12, 1983, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. Loans closed after October 25, 1985, where the borrower was given a choice of interest rate in accordance with Part 1942, Subpart A of this Chapter, will not be serviced under this Subpart. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date and mailed by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers should notify FmHA within 90 calendar days of the date of FmHA notification indicating the borrower's election to retain the interest rate in effect at loan approval or to change the interest rate to the rate in effect at the time of loan closing. If FmHA receives no reply from the borrower within the 90 day period, FmHA will not consider a borrower's future request for a lower interest rate under the provisions of this subpart.

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already made to the loan account(s) will be reversed and reapplied, by FmHA, utilizing the changed interest rate. The balance of loan payments after the completion of the reversal and reapplication procedures will be applied to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.221(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the paid-in-full borrower as a refund unless the borrower is delinquent on another FmHA loan of the same type, in which case the refund will be applied to the delinquent account.

(3) The FmHA Finance Office will administratively change the interest rate on a borrower's account in accordance with the notification from the FmHA servicing official. The installment schedule as set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount.

(4) A borrower with an amortized account, who has requested a change of interest in accordance with this subpart and FmHA has accomplished this change by an administrative adjustment to the loan account, yet a reduction in installment amounts is needed to provide for a sound operation, may request FmHA to consider a reamortization of the account in accordance with § 1951.207(f) of this subpart.

Dated: January 10, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-4544 Filed 3-28-86; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 317, 318, and 381

[Docket No. 84–020R]

Total Plant Quality Control for Labeling; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed Rule; reopening of comment period.

SUMMARY: On September 25, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule to expand the concept of generically approved labeling of meat and poultry products for those establishments operating a USDA-approved Total Quality Control system which can develop an acceptable plan for controlling the labeling of their products. FSIS received several requests to extend the comment period to allow more time for reviewing and evaluating the proposal, and therefore, on November 21, 1985, FSIS extended the comment period for an additional 60 days. The comment period closed on January 24, 1986.

FSIS has received a request from the Western States Meat Association to reopen the comment period to allow additional time to study the proposal and submit comments. The Agency has determined that it will reopen the comment period for 45 additional days.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Written comments to: Policy Office, Attn: FSIS Hearing Clerk Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: On September 25, 1985, FSIS published a proposed rule in the **Federal Register** (50 FR 38824) to amend the Federal meat and poultry products inspection regulations to expand the concept of generically approved labeling of meat and poultry products for those establishments operating a USDA-approved Total Quality Control system which can develop an acceptable plan for controlling the labeling of their products. On November 21, 1985, (50 FR 48096), FSIS extended the comment period for 60 days.

FSIS has received a request from the Western States Meat Association to reopen the comment period to allow additional time to study the proposal and submit comments. FSIS is interested in receiving additional data on this proposal and has, therefore, determined that there is sufficient justification for reopening the comment period for 45 days.

Done at Washington, DC, on February 25, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-4464 Filed 2-28-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–3]

Proposed Alteration of VOR Federal Airway V–5 and Establishment of V–1, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V–5 and establish V–1 located in the vicinity of Kona, HI. This action would support FAA's agreement with the International Civil Aviation Organization (ICAO) to revoke all alternate airways from the National Airspace System (NAS). This action would also simplify flight planning between Kahului and Keahole Airports.

DATES: Comments must be received on or before April 18, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWP–3, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWP–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter Federal Airway V–5 located in the vicinity of Kona, HI, by revoking alternate airway V–5W and renaming that segment V–1. This action would support our agreement with ICAO to eliminate all alternate airways in our NAS. Section 71.127 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.127 is amended as follows:

V–5 [Revised]

From Kona, HI, to INT Kona 338°T(327°M) and Maui, HI, 179°T(166°M) radials; to Maui.

V–1 [New]

From Kona, HI, via INT Kona 323°T(312°M) and Maui, HI, 179°T(168°M) radials; INT Maui 179°T(168°M) and Upolu Point, HI, 305°T(294°M) radials; INT Maui 197°T(186°M) and Upolu Point 306°T(294°M) radials; to Maui.

Issued in Washington, DC, on February 24, 1986.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4442 Filed 2–28–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 85–ASO–16]

Proposed Revocation, Realignment and Establishment of Restricted Area, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to revoke, realign, establish and increase the size of three Restricted Areas in eastern North Carolina. This second extension is at the request of the state of North Carolina.

DATES: Comments must be received on or before March 18, 1986.

ADDRESS: Direct comments to: Director, FAA Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85–ASO–16, Federal Aviation Agency, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 85–ASO–16, published on December 16, 1985, (50 FR 51260) proposed to redesignate and realign R–5301, Albemarle Sound, NC, and R–5302, Harvey Point, NC. Additionally, an increase in the size of R–5313 is proposed. The Continental Control Area would be adjusted according to these actions and the Stumpy Point Military Operations Area would no longer be required and would be cancelled. A previous extension of comment period was published in the **Federal Register** on January 31, 1986 (51 FR 3992). In response to a second request from the state of North Carolina, this action extends the comment period closing date to allow for a 90-day comment period instead of the existing 75-day comment period on Airspace Docket No. 85–ASO–16.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted area.

Extension of Comment Period

The comment period for Airspace Docket No. 85–ASO–16 is extended to close on March 18, 1986.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on February 24, 1986.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4440 Filed 2–28–86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of the comment period.

SUMMARY: On August 5, 1985, the Commodity Futures Trading Commission ("Commission") published proposed amendments to the minimum financial and related requirements for futures commission merchants ("FCMs") and introducing brokers ("IBs") (50 FR 31612), and allowed sixty days for public comment thereon, until October 4, 1985. By letters dated August 28 and 29, 1985, two exchanges requested a sixty-day extension of the comment period. The Commission subsequently extended the comment period for thirty days, to November 4, 1985. 50 FR 39133 (September 27, 1985). By letters dated September 26 and October 10, 1985, an exchange requested a further extension of the comment period, noting that in conjunction with other exchanges, it was in the process of analyzing data essential to responding to the issues raised in the Commission's proposals. The Commission subsequently extended the comment period for an additional four months, until March 5, 1986, with respect only to the proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital. 50 FR 45831 (November 4, 1985).

The Commission has reviewed approximately ninety comments already received on its financial rule proposals. Based upon that review, and before proceeding further, the Commission subsequently determined to reopen the comment period on the other August 5 financial rule proposals until March 5, 1986 in order to permit commenters to address among other things certain other commenters' suggested alternatives. 50 FR 49859 (December 5, 1985). The Commission noted, however, that its reopening of the comment period did not foreclose the Commission either from electing to treat each of the various financial rule proposals separately, as it had previously indicated, or from determining based upon all comments submitted that two or more of the items may be considered together.

By letter dated February 24, 1986, an industry trade association requested an additional thirty-day extension of the comment period, until April 4, 1986. The trade association stated that it is diligently exploring an alternative approach to the Commission's concentration charge proposal but does not anticipate that with work will be completed by March 5, 1986. Since the Commission remains interested in exploring reasonble alternatives to its proposals and recognizes the complexity of this undertaking, the Commission has determined that an additional extension of the comment period is warranted.

DATES: Notice is hereby given that all comments on the proposed amendments to the minimum financial and related requirements for FCMs and IBs published on August 5, 1985 must be submitted by April 4, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

Issued in Washington, DC on February 25, 1986 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–4432 Filed 2–28–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country-of-Origin Marking Requirement on Orange Juice Containers; Request for Comment and Notice of Hearing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Solicitation of public comments and notice of public hearing.

SUMMARY: Customs is soliciting the view of the public regarding an implementation date for a requirement that labels on frozen concentrated and reconstituted orange juice products which contain imported concentrate be marked to show the foreign country-of-origin of the products. The requirement for marking the products was recently upheld by the Court of International Trade, but Customs was directed by the

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Court to seek comments from all interested parties before reaching a decision on an effective date for the requirement.

DATE: Comments (preferably in triplicate) must be received on or before April 2, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–0237).

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Customs is requesting the views of the public in regard to the earliest practicable implementation date for a requirement that containers of orange juice in frozen concentrated or reconstituted forms, which contain imported concentrate, must be labeled to comply with the country-of-origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304).

In response to a formal request, Customs published a ruling dated September 4, 1985, in the Customs Bulletin of September 25, 1985 (C.S.D. 85–47, 19 Cust. Bull. No. 39 at 21), stating that retail packages of orange juice containing imported concentrate must be marked. The rationale for that decision is discussed in detail in the cited decision. That ruling was to be implemented for affected products entered for consumption or withdrawn from warehouse on or after January 1, 1986.

That implementation date was extended to March 1, 1986, by a notice published in the December 11, 1985, Customs Bulletin (19 Cust. Bull. No. 50). The extension decision took into account the ruling's perceived economic impact on the manufacturing public, as well as the right of ultimate purchasers of affected juice products to be fully informed about the origin of those products. The March 1, 1986, date was nearly 6 months after the initial ruling had been issued, and was considered reasonable.

In a recent case brought by the National Juice Products Association, *et al.* challenging C.S.D. 85–47, *National Juice Products Association* v. *United States,* ____CIT____, Slip Op. 86–13 (January 30, 1986), the Court of International Trade held that C.S.D. 85–47 was substantively valid. The Court, however, remanded the case to Customs for reconsideration of the effective date. The Court directed Customs to adhere to the notice and comment provisions of § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)), and to carefully consider all possible issues relating to a reasonable time to implement the new ruling.

Accordingly, Customs is soliciting comments related to the implementation date. Of particular interest is any information concerning the time it generally takes suppliers to provide new or changed labels and cans to the packagers of orange juice products, as well as the quantity of labels and printed retail containers usually kept in inventory. We also seek information as to whether the industry has already taken steps to procure new labels which satisfy the requirements of C.S.D. 85–47.

Public Hearing

A public hearing will be held on this matter on March 28, 1986, commencing at 9:30 a.m. in Room 3428, Customs Service Headquarters.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved:

William von Raab,
Commissioner of Customs.

David D. Queen,
Assistant Secretary of the Treasury.

February 21, 1986.

[FR Doc. 86–4592 Filed 2–28–86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–86–01]

Special Local Regulations for Norfolk Harborfest

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule making.

SUMMARY: The Coast Guard is considering proposal that would establish special local regulations for the City of Norfolk Harborfest, an annual weekend event held between the third weekend in May and the third weekend in June. Annual notice of the precise dates and times of these regulations will be published in the Local Notice to Mariners. These special local regulations are considered necessary to control vessel traffic due to the confined nature of the waterway and the expected congestion at the time of the events. The intended effect will be to restrict general navigation in the Port Norfolk and Town Point Reach sections of the Elizabeth River for the safety of spectators and participants in the events.

DATES: Comments must be received on or before April 17, 1986.

ADDRESSES: Comments should be hand delivered, or mailed to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will also be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portmouth, Virginia 23704–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: Interested persons are invited to particpate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–86–01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be

considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulation

These regulations are necessary due to the confined nature of the waterway and the expected congestion at the time of the various events. The area subject to the special local regulations is identifical to that area which has been subject to the regulations for previous Norfolk Harborfests. The special regulations are also substantially the same as those established in the past. Norfolk Harborfest is an annual, weekend event designed to promote and enhance the city of Norfolk's nautical heritage. The events held are a combination of land and water events centered about the downtown portion of Norfolk and typically include speedboat races, air-sea rescue demonstrations by the Coast Guard, demonstrations of military vessels and riverine warfare craft, and fireworks displays. The celebrations have also included a parade of sailing ships into the Harborfest area and subsequent open house periods for public viewing of the ships. The events have drawn large numbers of boats to the Town Point Reach area creating congestion.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Its economic impact is expected to be minimal since, as in the past, closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time. Comments received concerning past Harborfests indicate that commercial interests normally using the waterways can adapt to the minor restrictions they may encounter. Therefore, a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100. 35).

2. A new Section 100.501 is added to part 100 to read as follows:

§ 100.501. Norfolk Harborfest, Elizabeth River, Norfolk, Virginia.

(a) *Effective Dates of Regulations:* These regulations will be effective for one weekend, Friday through Sunday, during a period between the third weekend in May and the third weekend in June. Annual notice of the precise dates and times will be published in the Local Notice to Mariners.

(b) *Regulated Area:* Except those waters designated as spectator vessel areas in paragraph (c), the waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn over the Midtown Tunnel, located in the Port Norfolk Reach section of the Elizabeth River between Pinners Point at latitude 36°51'28.0" N., longitude 76°18'59.0" W. and the northeast shore of the Elizabeth River at latitude 36°51'39.5" N., longitude 76°18'36.5" W., to the south by a line drawn over the Downtown Tunnel, located in the Lower Reach section of the Elizabeth River, between the western shore of the Southern Branch of the Elizabeth River in Portsmouth, Virginia at latitude 36°49'57.0" N., longitude 76°17'46.0" W., and the eastern shore at latitude 36°49'56.5" N., longitude 76°17'34.5" W., and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50'21.5" N. longitude 76°,17'14.5" W. and Norfolk at latitute 36°50'35.0" N., longitude 76°17'10.0" W.

(c) *Specator Vessel Areas:*

(1) The waters adjacent to the Town Point Reach section of the Elizabeth River, bounded by the shore and line drawn between Hospital Point located at latitude 36'50'50.5" N., longitude 76'18'09" W., and the tip of the channelside pier at the Holiday Inn Marina, located at latitude 36'50'29" N., longitude 76'17' 52.5" W.

(2) The waters adjacent to the Port Norfolk Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point located at latitude 36'50'55" N., longitude 76'18' 14.5" W. and the tip of the southern most railroad pier at Port Norfolk located at latitude 36'51'14.5" N., longitude 76'18'44" W.

(d) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard, who has been designated by Commander, Fifth Coast Guard District. The Coast Guard Patrol Commander will be stationed at the Town Point reviewing platform.

(e) *Special Local Regulations:*

(1) Except for participants in the Norfolk Harborfest and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The Coast Guard Patrol Commander may stop a Norfolk Harborfest event to allow vessels to transmit the regulated area via the main channel.

(3) The operator of any vessel in the regulated areas shall:

(i) stop his vessel immediately when directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign; or

(ii) proceed as directed by any Coast Guard officer or petty officer.

(4) Spectator vessels may anchor in the two designated anchorage areas.

Dated: February 20, 1986.

James C. Irwin,
Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 86–4552 Filed 2–28–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD3 85–56]

Anchorage Grounds, New London Harbor, CT

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish two additional anchorage grounds at the mouth of the Thames River, New London, CT. The two anchorages are to the east of major shipping tracklines, approximately one mile southeast of New London Ledge Light. Anchorage E is being proposed for general use, while

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Anchorage F will be exclusively for naval vessels. These anchorages are deemed necessary because of the need for a deeper anchorage for large vessels using the Thames River. A separate naval anchorage will safeguard both naval vessels and commercial vessels from unnecessary risk of collision.

DATES: Comments must be received on or before April 17, 1986.

ADDRESSES: Comments should be mailed to Captain of the Port, New London, Fort Trumbull, New London, CT 06320. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Station New London, CT. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign Jon Hammond, (203) 442–4471.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CDG3 85–56) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard to envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign Jon Hammond, Port Operations Officer, Captain of the Port New London CT, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The New London Pilots Association, New England Pilots Association and other interests requested that an additional anchorage by established at the mouth of the Thames River. The consensus of these groups was that the existing anchorages were suitable for smaller vessels and should be kept for their use. However, it was felt that these anchorages do not provide the depths required for large freighters and tankers which use the Thames River. An additional concern was that Anchorage D, located between Bartlett Reef and Rapid Rock, was a hazardous area in which to maneuver and anchor a large vessel, particularly in a southerly and onshore wind. Proposed Anchorage E is in deeper water and to the east of shipping and ferry track-lines.

The U.S. Navy, COMSUBGRU TWO, is also concerned with the safety of anchoring a large vessel in the existing anchorages and feels that an anchorage should be establishd for general use as well as one for sole naval use. The majority of vessels using this anchorage would be submarines, which have different tending characteristics at anchor than surface ships and are difficult to see due to dark color and a minimal amount of surface area. It is for the safety of both civilian and naval vessels alike that Anchorage F would be established south of Anchorage E with a buffer beteen them.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will provide defined anchorage areas for vessels awaiting berthing on the Thames River and for naval vessels. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in Section 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.147 paragraphs (a) (5) and (6) are added to read as follows and paragraph (b)(2) is redesignated as (b)(3) and new (b)(2) is added to read as follows:

§ 110.147 New London Harbor, Conn.

(a) * * *

(5) *Anchorage E.* The waters at the mouth of New London Harbor one mile southeast of New London Ledge Light beginning at latitude 41°17′26″ N., longitude 72°04′21″ W.; thence northeasterly to latitude 41°17′38″ N., longitude 72°03′54″ W.; thence southeasterly to latitude 41°16′50″ N., longitude 72°03′16″ W.; thence southwesterly to latitude 41°16′38″ N., longitude 72°03′43″ W.; and thence northwesterly to the point of beginning.

(6) *Anchorage F.* The waters off the mouth of New London Harbor two miles southeast of New London Ledge Light beginning at latitude 41°16′00″ N., longitude 72°03′13″ W.; thence westerly to latitude 41°16′00″ N., longitude 72°03′38″ W.; thence northerly to latitude 41°16′35″ N., longitude 72°03′38″ W.; thence easterly to latitude 41°16′35″ N., longitude 72°03′13″ W.; and thence southerly to the point of beginning.

(b) * * *

(2) Anchorage F is reserved for the use of naval vessels and, except in cases of emergency, no other vessel may anchor in Anchorage F without permission from the Captain of the Port, New London CT.

* * * * *

Dated: February 18, 1986.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86–4553 Filed 2–28–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD3 85–67]

Special Anchorage Area; Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an additional special anchorage area on the Thames River, New London CT, 125 yards north of the Gold Star Highway bridge, adjacent to the western shore. Because of the crowded conditions in the other special anchorages on the Thames River, consideration is being given to creating an additional area to ease the burden of securing a safe anchorage.

DATES: Comments will be received on or before April 17, 1986.

ADDRESSES: Comments should be mailed to Captain of the Port, New London, Fort Trumbull, New London, CT

06320. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Station, New London, CT. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign Jon Hammond, (203) 442–4471.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 85–67) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign Jon Hammond, Port Operations Officer, Captain of the Port, New London, CT, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The City of New London, CT, has asket that an additional special anchorage be created to relieve crowded conditions in the other special anchorages in the area. These areas become especially hazardous during the numerous waterborne events that are sponsored by the City each summer. Abutting property owners, shell fishing interests, the Harbor Master and the U.S. Navy COMSUBGRU TWO, have been consulted and have no objections to this proposal. The Superintendent of the U.S. Coast Guard Academy was concerned that the anchorage would interfere with Academy sailing activities in the northeast section of the proposed anchorage. The northeast section is the furthest part of the area from public launch ramps, and the utilization of that area for anchorages is expected to be light, with the impact on Academy sailing to be minimal. It is expected that the majority of vessels using the special anchorage will be recreational boats. Both state and municipal launch ramps are convenient to the site.

This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will provide a defined special anchorage area for local mariners as well as for mariners traveling upriver. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.52 paragraph (d) is added to read as follows:

§ 110.52 Thames River, New London, CT

* * * * *

(d) *Area No. 4.* An area in the western part of the Thames River, north of the highway bridge, bounded as follows: Beginning at a point 125 yards north of the highway bridge at latitude 41°21′56″, longitude 72°05′32″; thence easterly to latitude 41°21′56″, longitude 72°05′27″; thence northerly to latitude 41°22′12″, longitude 72°05′27″; thence westerly to latitude 41°22′12″, longitude 72°05′47″; thence southeasterly to latitude 41°22′02″, longitude 72°05′40″; thence downriver along the charted foul grounds to the point of beginning.

Dated: February 18, 1986.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86–4554 Filed 2–28–86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–2960–7]

Standards of Performance for New Stationary Sources; Addition of Alternative Procedure (Critical Orifices as Calibration Standards) to Method 5, Appendix A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add an alternative procedure to Method 5. The alternative is a calibration procedure using critical orifices as calibration standards instead of a wet test meter. The intended effect of these revisions is to reduce the cost of calibration without sacrificing accuracy. This alternative would apply to all sources where regulations specify the use of Method 5 equipment for determining particulate matter or other pollutants.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule

DATES: *Comments.* Comments must be received on or before May 16, 1986.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 21, 1986, a public hearing will be held on April 23, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Candace Sorrell at (919) 541–2237 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 21, 1986.

ADDRESSES: *Comments.* Comments should be submitted (n duplicate if possible) to: Central Docket Section (LE–131), Attention Docket Number A–

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85–25, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the Emission Measurement Lab, Research Triangle Park. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Candace Sorrell, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

Docket. Docket No. A–85–25, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Sorrell or Mr. Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

Miscellaneous

This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking revises the test method to which the affected facilities are already subject.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on small entities because this rule does not impose any additional requirements.

Dated: February 24, 1986.

Lee M. Thomas,
Administrator.

PART 60—[AMENDED]

It is proposed that Method 5 of Appendix A of 40 CFR Part 60 be amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, 301; Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A—[Amended]

2. By adding a new section 7.2 to Method 5 as follows:

7. Alternative Procedures.

* * * * *

7.2 Critical Orifices As Calibration Standards. The critical orifices may be used as calibration standards in place of the wet test meter specified in Section 5.3, provided that they are selected, calibrated, and used as follows:

7.2.1 Selection of Critical Orifices.

7.2.1.1 Hypodermic needle or stainless steel needles tubings are suitable for use as critical orifices. Select five critical orifices that are appropriately sized to cover the range of flow rates between 10 and 34 liters/min or the expected operating range. Two of the critical orifices should bracket the range. A minimum of three critical orifices will be needed to calibrate a Method 5 dry gas meter (DGM); the other two critical orifices can serve as spares and provide better selection for bracketing the range of operating flow rates. The needle sizes and tubing lengths shown below give the following approximate flow rates:

Gauge/cm	Flow rate (liters/min)	Gauge/cm	Flow rate (liters/min.)
12/7.6	32.56	14/2.5	19.54
12/10.2	30.02	14/5.1	17.27
13/2.5	25.77	14/7.6	16.14
13/5.1	23.50	15/3.2	14.16
13/7.6	22.37	15/7.6	11.61
13/10.2	20.67	15/10.2	10.48

7.2.1.2 These needles can be adapted to a Method 5 type sampling train as follows: Insert a serum bottle stopper, 13–by 20–mm sleeve type, into a ½-inch Swagelock quick connect. Insert the needle into the stopper as shown in Figure 5–9.

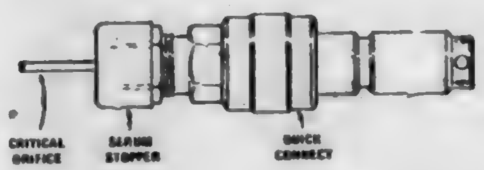

FIGURE 5-9. Critical orifice adaptation to Method 5 metering system.

7.2.2 Critical Orifice Calibration.

7.2.2.1 Calibration of meter box. The critical orifices must be calibrated in the same configuration as they will be used, i. e., there should be no connections to the inlet of the orifice.

7.2.2.1.1 Before calibrating the meter box, leak check the system as follows: fully open the coarse adjust valve, and completely close the by-pass valve. Plug the inlet. Then turn on the pump, and determine whether there is any leakage. The leakage rate shall be zero, i.e., no detectable movement of the DGM dial shall be seen for 1 minute.

7.2.2.1.2 Check also for leakages in that portion of the sampling train between the pump and the orifice meter. See Section 5.6 for the procedure; make any corrections, if necessary. If leakage is detected, check for cracked gaskets, loose fittings, worn O-rings, etc., and make the necessary repairs.

7.2.2.1.3 After determining that the meter box is leakless, calibrate, the meter box according to the procedure given in Section 5.3. Make sure that the wet test meter meets the requirements stated in Section 7.1.1.1. Check the water level in the wet test meter. Record the DGM calibration factor Y.

7.2.2.2 Calibration of critical orifices. Set up the apparatus as shown in Figure 5–10.

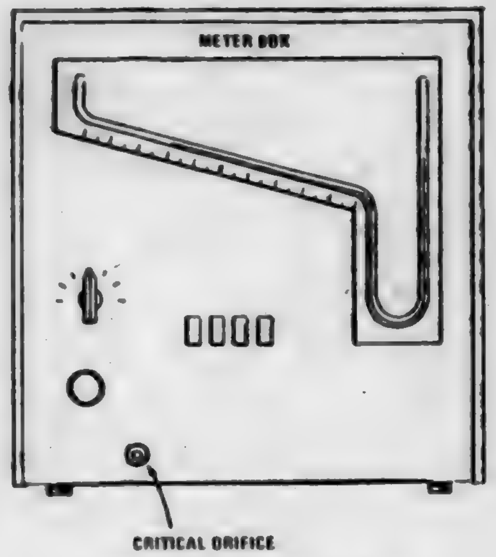

FIGURE 5-10. Apparatus setup.

7.2.2.2.1 Allow a warm-up time of 15 minutes. This step is important to equilibrate the temperature conditions through the DGM.

7.2.2.2.2 Leak check the system as in section 7.2.2.1.1. The leakage rate shall be zero.

7.2.2.2.3 Before calibrating the critical orifice, determine its suitability and the appropriate operating vacuum as follows: Turn on the pump, fully open the coarse adjust valve, and adjust the by-pass valve to give a vacuum reading corresponding to about half of atmospheric pressure. Observe the meter box orifice manometer reading, ΔH. Slowly increase the vacuum reading until a stable reading is obtained on the meter box orifice manometer. Record the critical vacuum for each orifice.

Orifices that do not reach a critical value shall not be used.

7.2.2.2.4 Obtain the barometric pressure using a barometer as described in Section

2.1.9. Record the barometric pressure P_{bar}, in MM Hg. (in Hg).

7.2.2.2.5 Conduct duplicate runs at a vacuum of 25 to 50 mm Hg (1 to 2 in. Hg) above the critical vacuum. The runs shall be at least 5 minutes each. The DGM volume readings shall be in increments of 0.00283 m³ (0.1 ft³) or in increments of complete revolutions of the DGM. As a guideline, the times should not differ by more than 3.0 seconds (this includes allowance for changes in the DGM temperatures) to achieve ±0.5 percent in K'. Record the information listed in Figure 5–11.

7.2.2.2.6 Calculate K' using Equation 5–9.

$$K' = \frac{17.64\, V_m\, Y\, (P_{bar} + \Delta H/13.6)\,\sqrt{T_{amb}}}{P_{bar}\, T_m\, \Theta} \qquad \text{Eq. 5-9}$$

where:

K' = Critical orifice coefficient, $\frac{(m^3)(°K)^{1/2}}{(mm.\ Hg)(min)}$ $\left[\frac{(ft^3)(°R)^{1/2}}{(in.\ Hg)(min)}\right]$.

T_{amb} = Absolute ambient temperature, °K (°R).

Average the K' values. The individual K' values should not differ by more than 0.5 percent from the average.

7.2.3 Using the critical Orifices as Calibration standards.

7.2.3.1 Record the barometric pressure.

7.2.3.2 Calibrate the metering system according to the procedure outlined in Sections 7.2.2.2.1 to 7.2.2.2.5. Record the information listed in Figure 5–12.

Date ______
Train ID ______
DGM cal. factor ______
Critical orifice ID ______

	Run No.	1	2
Dry gas meter:			
Final reading	m³ (ft³)		
Initial reading	m³ (ft³)		
Difference, V_m	m³ (ft³)		
Inlet/Outlet temperatures:			
Initial	°C (°F)	/	/
Final	°C (°F)	/	/
Avg. temperature, T_m	°C (°F)		
Time, Θ	min/sec	/	/
	min		

	Run No.	1	2
Orifice man. rdg., ΔH.	mm (in.) H_2O		
Bar. pressure, P_{bar}	mm (in.) Hg		
Ambient temperature, T_{amb}	°C (°F)		
Pump vacuum	(in.) Hg		
K' factor			
Average			

Figure 5–11. Data sheet for determining K' factor.

Date ______
Train ID ______
Critical orifice ID ______
Critical orifice K' factor ______

	Run No.	1	2
Dry gas meter:			
Final reading	m³ (ft³)		
Initial reading	m³(ft³)		
Difference, V_m	m³ (ft³)		
Inlet/Outlet temperatures:			
Initial	°C (°F)	/	/
Final	°C (°F)	/	/
Avg. temperature, T_m	°C (°F)		
Time, Θ	min/sec	/	/
	min		
Orifice man. rdg.,ΔH	mm (in.) H_2O		
Bar. pressure, Pbar	mm (in.)Hg		
Ambient temperature, T_{amb}	°C (°F)		
Pump vacuum	(in.) Hg		
$V_{m(std)}$	m³ (ft³)		
$V_{cr(std)}$	m³ (ft³)		
DGM cal. factor, Y			

Figure 5–12. Data sheet for determining DGM Y factor.

7.2.3.3 Calculate the standard volumes of air passed through the DGM and the critical orifices, and calculate the DGM calibration factor, Y, using the equations below:

$$V_{m(std)} = 17.64\, V_m\, \frac{P_{bar} + (\Delta H/13.6)}{T_m} \qquad \text{Eq. 5-10}$$

$$V_{cr(std)} = K'\, \frac{P_{bar}\, \Theta}{\sqrt{T_{amb}}} \qquad \text{Eq. 5-11}$$

$$Y = \frac{V_{cr(std)}}{V_{m(std)}} \qquad \text{Eq. 5-12}$$

where:

$V_{cr(std)}$ = Volume of gas sample passed through the critical orifice, corrected to standard conditions, dsm³ (dscf).

7.2.3.4 Average the DGM calibration values for each of the flow rates. The calibration factor at each of the flow rates should not differ by more than ±2 percent from the average.

7.2.3.5 Compare the dry gas meter Y factors obtained from two adjacent orifices, for example, when checking 13/2.5, use orifices 12/10.2 and 13/5.1. If any critical orifice yields a Y factor differing by more

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than 2 percent from the others, recalibrate the critical orifice according to Section 7.2.2.2.

By adding a new Citation 12 to section 8, Bibliography, as follows:

8. *Bibliography.*

* * * * *

12. Lodge, J.P., Jr., J.B. Pate, B.E. Ammons, and G.A. Swanson. The Use of Hypodermic Needles as Critical Orifices in Air Sampling. J. Air Pollution Control Association. *16*:197–200. 1966.

[FR Doc. 86-4478 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AMS-FRL-2976-5]

Gasoline Volatility and Hydrocarbon Emissions From Motor Vehicles; Public Workshop and Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On February 4 and 5, 1985, EPA held public hearings on a technical study on gasoline volatility and hydrocarbon emissions from motor vehicles (November 21, 1985, 50 FR 48100). Another notice specifying the time and place of the public hearing and the close of the comment period was published on December 18, 1985 (50 FR 51559). By this notice, EPA is announcing a public workshop on this issue and an extension of the comment period until after the workshop.

DATES: A public workshop on this issue will be held on March 12, 1986, convening at 1:00 p.m. The workshop will continue through March 13, 1986. The comment period for the study is extended until March 27, 1986.

ADDRESSES: The workshop will be held in the conference room of the Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Phil Carlson, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4278.

Dated: February 25, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-4486 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BERC-301-P]

Medicare Program; Hospice "Core" Services; Nursing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would permit certain hospices located in areas that are not urbanized to receive from HCFA a waiver of the requirement to provide nursing services directly. The regulations would implement section 2343 of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

DATE: To assure consideration, comments must be received by May 2, 1986.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, ATTN: BERC-301-P, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BERC-301-P.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 594-9446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction of Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption in normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other care-givers with the goal of making the individual as physically and emotionally comfortable as possible.

The hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home in order to enable the terminally ill individual to remain at home in the company of family and friends as long as possible. Inpatient hospice settings have been used when the individual's pain and symptoms must be closely monitored in order to be controlled, when medical intervention is required to control pain or palliate symptoms, or when the family needs a rest from the tedium and stress involved in caring for the individual (respite care).

B. Legislative History

Section 122 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97-248, enacted on September 3, 1982) enacted section 1861(dd) of the Social Security Act (Act) to expand the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries with a life expectancy of six months or less. Section 1861(dd)(2)(A)(ii)(I) of the Act specifies that a hospice must routinely provide directly substantially all of the following "core services": Nursing care, medical social services, physician's services and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others, in which case the hospice must maintain professional management responsibility for all such services furnished to an individual, regardless of the location of or type of facility in which such services are furnished. Congress enacted this benefit with a "sunset" provision so that the hospice benefit is currently available only from November 1, 1983 through September 30, 1986.

On July 18, 1984, section 2343 of the Deficit Reduction Act of 1984 (DRA), Pub. L. 98-369, amended section 1861(dd) of the Act by adding a new paragraph (5), to permit the Secretary to waive, to a greater or lesser extent, for certain hospices, the requirement to routinely provide directly substantially all nursing services. Section 1861(dd)(5)(A) of the Act specifies that to obtain a waiver a hospice must be located in an area which is not an urbanized area (as defined by the Bureau of the Census), must have been in operation on or before January 1, 1983, and must demonstrate a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide nursing care directly. Section 1861(dd)(5)(B) of the Act specifies that if a waiver is requested by an organization that meets the statutory requirements, and if it is submitted in the form and contains the information required by the Secretary, the waiver will be deemed granted unless the request is denied by the Secretary within 60 days after the request is received by the Secretary. Further, that paragraph states that the granting of a waiver will not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

Section 2343 of DRA specifies that the Secretary must study the necessity and appropriateness of the "core services" requirement and submit the findings to Congress prior to January 1, 1986. (This date corresponds to the date that the Secretary must submit a report concerning the hospice program's reimbursement method and benefit structure.) The study must include not only an analysis of Medicare-approved hospices but also a review of non-Medicare hospices.

C. Current Regulations

We published a final rule on December 16, 1983 (48 FR 56008) to implement the hospice program under Medicare (42 CFR Part 418). The final rule defines a hospice as a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals, meets the conditions specified in the regulations and has a valid provider agreement.

The final rule requires that a hospice provide nursing care and services by or under the supervision of a registered nurse (42 CFR 418.82) and that these services be routinely provided directly by hospice employees (42 CFR 418.80). Under these regulations, a hospice may use contracted staff to meet the "core service" needs of its patients, but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

II. Provisions of the Proposed Regulations

As evidenced by the amendment to the statute, Congress was concerned that the original law and current regulations may have placed an unreasonable burden on hospices located in rural areas by requiring them to provide nursing care services directly. Rural hospices have reported problems

in hiring enough nurses to provide hospice care, and they have also questioned the cost-effectiveness of directly employing nurses in rural areas where hospice utilization is relatively low.

The proposed regulations would implement the statutory provision that permits the Secretary to waive the requirement that an agency or organization must routinely provide directly substantially all of the nursing "core services" for certain agencies or organizations with respect to all or part of the nursing care. Hospices which are located in non-urbanized areas (as identified by the Bureau of the Census for the 1980 Census) and were operational on or before January 1, 1983, may be given a waiver of the requirement that nursing services be provided directly if they can demonstrate that they made a good faith effort to hire nurses. This waiver may involve nursing services throughout the hospice's service area or, for a hospice which functions in a large non-urban area where availability of nurses differs from one location to another, may be granted only for a part of the hospice's service area. Waivers granted under this authority would remain effective for one year.

The statute permits the Secretary to set forth the form and information required in order to determine whether to grant the waiver. The statute and our criteria require that the hospice demonstrate an effort at recruitment which failed.

As required by the statute, HCFA would make determinations as to urbanized and non-urbanized areas based on the 1980 Census Bureau designations. For a hospice which operates in several areas, the location of the hospice would be considered the location of its central office. HCFA would determine whether a hospice was operational on or before January 1, 1983 based on:

1. Proof that the organization was established to provide hospice services on or before January 1, 1983 (e.g., newspaper advertisements, dated correspondence on hospice letterhead, dated invoices, articles of incorporation, governing body minutes, etc.)
2. Evidence that hospice-type services were actually furnished to patients on or before January 1, 1983 (e.g., dated copies of medical records, nursing notes, pharmaceutical orders, etc.); and
3. Evidence that the hospice care was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983 (i.e., evidence of a distinct program in an existing provider or articles of incorporation that show it to be a discrete and separate organization).

We have adopted these criteria because we recognize that most of these hospices will not have been able to meet the full range of requirements set forth in section 1861(dd)(2), the statutory definition of "hospice program", since the definition did not exist until the enactment of the provision. Nonetheless, it is clear that the basic statutory concept of a hospice is of a discrete activity providing hospice care and that, therefore, these waivers should be restricted to such hospices.

HCFA would make determinations of good faith efforts to hire nurses based on the following:

1. Proof of recruitment efforts through advertisements in professional journals or local newspapers;
2. Copies of job descriptions for nurse employees;
3. Evidence that salary and benefits are competitive for the area (e.g., evidence of salary and benefit offers in connection with recruitment advertisements); and
4. Any other contributing activities (e.g., recruiting efforts at health fairs, etc.)

We are expecially interested in comments concerning the appropriateness of the above criteria and any suggestions for other items we could consider. We will consider and discuss comments we received in the publication of the final rule.

A hospice would submit a request for waiver of the nursing core services requirement directly to HCFA, Office of Coverage Policy, BERC, 409 East High Rise, 6325 Security Boulevard, Baltimore Maryland 21207. We propose to respond to all requests within 60 days; however, any waiver request will, under the law, be deemed to be granted unless it is denied within 60 days after it is received. The granting of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

We will be publishing interim instructions for the Hospice Manual (HCFA Pub. 21), the State Operations Manual, the Part A Intermediary Manual, and the Regional Office Manual. These instructions will provide details relating to submission of waiver requests.

III. Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major

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increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order. In addition, the Regulatory Flexibility Act, Pub. L. 96-354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit providers.) Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective.

As noted elsewhere in this preamble, section 2343 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), seeks to correct an unreasonable burden that may have been created by the original law and the current regulations. Specifically, Congress concluded that rural hospices were encountering problems in hiring enough nurses to provide hospice care directly. These hospices had questioned the cost-effectiveness of directly employing nurses in rural areas where hospice utilization is relatively low. We believe that this burden may have resulted in some delay in obtaining a Medicare provider agreement as well as unnecessary expenditures (e.g., advertising costs for continued recruitment efforts) and could have made it difficult for the hospice to assure that nursing services would always be available as required by 42 CFR 418.82 (condition of participation—nursing services).

This proposed rule would continue to require that hospices provide nursing services, but as specified in the amendment, for certain rural hospices we are proposing that they may request a waiver that would provide administrative flexibility in securing nursing services. Instead of directly employing nurses, and incurring the ongoing expense of salary and benefits, rural hospices could choose, for example, to make contractual arrangements with organizations like Visiting Nurse Associations to provide nursing services to hospice patients.

Since the main test for obtaining a waiver is the demonstrated inability to recruit nurse employees, we expect that virtually no existing hospices (which have already been approved for Medicare participation) would be applying successfully for a waiver. Rather, the main group of candidates should be organizations that, because of an inability to recruit nurses, have been unable to participate. To the extent that these organizations have been unseccessfully trying to recruit nurses, this provision would enable them to discontinue unsuccessful efforts and thus save advertising costs. For hospices which have not yet begun to recruit nursing staff, this provision will enable recruitment efforts to be ended when it can be determined that they will not be effective. We believe that the incremental difference between the incurred costs of current hiring practices and hiring practices of hospices receiving a waiver under this provision would not be significant. Therefore, we have determined, and the Secretary certifies, that this proposed rule would not result in an annual economic impact that meets the threshold criteria of the Executive Order 12291 and the Regulatory Flexibility Act of 1980.

IV. Information Collection Requirements

Section 418.83 of the proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, EOMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HCFA.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

List of Subjects in 42 CFR Part 418.

Coinsurance, Hospice, Medicare, Respite care; Volunteers.

42 CFR Part 418, Subpart C would be amended as set forth below:

PART 418—HOSPICE CARE

Subpart C—Conditions of Participation

The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1861–1866 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395x–1395cc and 1395hh).

1. Section 418.80 is revised to read as follows:

§ 418.80 Condition of participation—Core services.

Except as permitted in § 418.83, a hospice must ensure that substantially all the core services described in §§ 418.82 through 418.88 are routinely provided directly by hospice employees. A hospice may use contracted staff if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet the requirements specified in §§ 418.82 through 418.88.

2. A new § 418.83 is added to read as follows:

§ 418.83 Nursing services—Waiver of requirement for substantially all nursing services to be routinely provided directly by a hospice.

(a) HCFA may approve a waiver of the requirement in § 418.80 for nursing services provided by a hospice which is located in a non-urbanized area. The location of a hospice which operates in several areas is considered to be the location of its central office. The hospice must also demonstrate that it was operational on or before January 1, 1983, and that it made a good faith effort to hire a sufficient number of nurses to provide services directly. In making the decision to approve a waiver, HCFA will use the following criteria in making a determination:

(1) The 1980 Bureau of the Census designations for determining non-urbanized areas.

(2) Evidence regarding whether a hospice was operational on or before January 1, 1983 based on—

(i) Proof that the organization was established to provide hospice services on or before January 1, 1983;

(ii) Evidence that hospice-type services were actually furnished to patients on or before January 1, 1983; and

(iii) Evidence that the hospice was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983.

(3) Evidence regarding whether or not a hospice demonstrated a good faith effort to hire nurses based on the

following that must be submitted by the hospice—

(i) Copies of advertisements in professional journals or local newspapers that demonstrate recruitment efforts;

(ii) Job descriptions for nurse employees;

(iii) Evidence that salary and benefits are competitive for the area; and

(iv) Evidence of any other contributing activities (e.g., recruiting efforts at health fairs).

(b) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.

(c) Waivers will remain effective for one year at a time.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance)

Dated: November 11, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: November 25, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 86-4301 Filed 2-28-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

Oil and Gas Leasing Onshore Operations Site Security; Noncompliance Provisions, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period and listing of public hearings on the proposed rulemaking.

SUMMARY: A proposed rulemaking that would revise the existing regulations implementing the Federal Oil and Gas Royalty Management Act of 1982 was published in the Federal Register on January 30, 1986 (51 FR 3882). That proposed rulemaking provided a 60-day comment period. The publication also listed a schedule of public hearings which gave the locations, dates and times for the hearings. After careful review of the regulations and the hearing schedule, the Bureau of Land Management has decided to provide an additional 15 days for public comment and to hold additional public hearings. The public comment period is hereby extended for an additional 15 days. In addition, the locations, dates and times of the public hearings are set out in the SUPPLEMENTARY INFORMATION portion of this notice.

DATE: Comments should be submitted by April 15, 1986. Comments received or postmarked after this date may not be considered in the decisionmaking process on issuance of a final rulemaking. For dates of the public hearings see the SUPPLEMENTARY INFORMATION portion of this document. In addition, the Bureau of Land Management will hold public hearings on the proposed rulemaking that would revise the existing regulations implementing the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) at the locations, dates and times set out in the address portion of this notice. Transcripts will be made of the public hearings and will be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: For the locations of the public hearings see the SUPPLEMENTARY INFORMATION portion of this document.

FOR FURTHER INFORMATION CONTACT:

Frank Salwerowicz, (303) 294-7136

or

Stephen Spector, (202) 653-2147

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION:

Addresses and Dates of Public Hearings

The locations, dates and times of the public hearings are as follows:

Washington, DC, Department of the Interior Auditorium, 1800 C Street NW., Washington, DC 20240, March 12, 1986, 9:30 a.m.

Denver, Colorado, Executive Towers, 1405 Curtis, Denver, Colorado 80202, (303) 571-0300, March 18, 1986, 9:00 a.m.

Albuquerque, New Mexico, Albuquerque Hilton Inn, 1901 University Blvd. NW., Albuquerque, New Mexico 87102, (505) 884-2500, March 19, 1986, 9:30 a.m.

Bakersfield, California, Hilton Inn, Sycamore Room, Sutter Street Bar & Grill, 3535 Rosedale Highway, Bakersfield, California 93308, (805) 327-0681, March 20, 1986, 9:00 a.m.

Casper, Wyoming, Holiday Inn, 300 West F Street, Casper, Wyoming 82601, (307) 235-2531, March 19, 1986, 9:00 a.m.

Billings Montana, Northern Hotel, Broadway & First Avenue North, Billings, Montana 59101, (406) 245-5121, March 20, 1986, 1:00 p.m.

Salt Lake City, Utah, BLM State Office, 4th Floor Conference Room, 342 South State Street, Salt Lake City, Utah 84111, (801) 524-3000, March 18, 1986, 10:00 a.m.

Liberal, Kansas, Holiday Inn, 603 East Pancake Blvd., Liberal, Kansas 67901, (918) 581-6480, April 1, 1986, 10:00 a.m.

Tulsa, Oklahoma, BLM District Office, 9522-H East 47th Place, Tulsa, Oklahoma 74145 (918) 581-6480 April 3, 1986, 10:00 a.m.

Oklahoma City, Oklahoma, Alfred P. Murray Building, Room 911, Federal Building, 200 N.W. Fifth Street, Oklahoma City, Oklahoma 73102, (918) 581-6480, April 4, 1986, 10:00 a.m.

Dallas, Texas, Holiday Inn, 1955 Market Center Blvd., Dallas, Texas 75207, (918) 581-6480, April 8, 1986, 10:00 a.m.

Dated: February 26, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 86-4531 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 86-6]

Service Contracts

Correction

In FR Doc. 86-3410 beginning on page 5734 in the issue of Tuesday, February 18, 1986, make the following correction on page 5745:

In the second column, in § 581.8(d), in the second line, "3-day" should read "30-day".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

48 CFR 207, 215, 234, 244 and 252

Department of Defense, Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Notice of intent to develop a proposed rule to promote competition at the subcontract level.

SUMMARY: Because of continued emphasis within the Department of Defense on fostering competition in acquisition, the Defense Acquisition Regulatory (DAR) Council is considering the possibility of revising certain parts of the DoD FAR Supplement.

DATE: Comments should be submitted in writing to the DAR Council at the address shown below no later than April 17, 1986, to be considered in the formulation of a proposed rule. Please cite DAR Case 86-55 in all correspondence related to this issue.

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ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202)697–7268.

SUPPLEMENTARY INFORMATION: Consistent with continued emphasis within the Department of Defense on fostering competition in the acquisition of weapon systems, supplies and services, the Defense Acquisition Regulatory (DAR) Council is presently considering whether and to what extent current procedures and contract clauses specified within the Department of Defense FAR Supplement (DFARS) should be revised so as to promote completition at the subcontract level. Prior to drafting a proposed rule on this subject, the DAR Council seeks the insight and recommendations of the public and industry regarding procedures which would enhance subcontract competition in a cost effective manner, without imposing undue paperwork burdens or adversely affecting small entities. Although comments are solicited concerning the topic of subcontract competition generally, comments are especially invited regarding the following proposals which have been submitted for the DAR Council's consideration:

1. Add DFARS 207.105(b)(2) to require contracting officers to address in acquisition plans how subcontract competition will be sought, promoted and sustained throughout an acquisition.
2. Add DFARS 215.605(b) to require that contracting officers evaluate the extent of subcontract competition in the source selection process.
3. Add DFARS 234.005–1(a) to require that program managers prepare plans which address subcontract competition barriers and specific action/milestones for improving competition.
4. Add DFARS 244.303(b), 244.7001 and 252.244–7000 to require prime contractors subject to Contractor Purchasing System Review (CPSR) requirements, which are not small businesses and which accept a negotiated contract above $500,000, to submit a quarterly statistical report on all first-tier competitive and noncompetitive subcontract awards, on a plant-wide basis. (Variations of this proposal have been suggested which would require reporting on an individual contract basis, apply the requirement only to contracts awarded without full and open competition, and extend application to small businesses.)
5. In lieu of the reporting system in 4 above, revise the DFARS to require large business prime contractors, in contracts awarded without full and open competition of over $3 million, to report quarterly concerning the dollar value of noncompetitive subcontracts and to identify within proposals those items above $25,000 which will be obtained through noncompetitive subcontracts.

In assessing the reporting requirements above, comments are requested concerning potential implementation costs, both start-up and recurring, and whether systems currently exist which could be readily adapted to collect subcontract competition data. Suggestions are requested concerning alternative dollar thresholds for applicability and data reporting format.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 86–4472 Filed 2–28–86; 8:45 am]
BILLING CODE 3810-01-M

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48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement - Cost and Price Management

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering the promulgation of a new rule in the DoD FAR Supplement, § 215.873, Cost and Price Management. The purpose of the proposed rule is to implement section 917 of the DoD Authorization Act of 1986 (Pub. L. 99–145).

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than April 29, 1986, to be considered in the final rule. Please cite DAR Case 85–215 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquistion Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7268.

SUPPLEMENTARY INFORMATION:

A. Background

Section 917 of the DoD Authorization Act of 1986 (Pub. L. 99–145) requires (1) the documentation of (a) the contractor's proposal, (b) the negotiated settlement, and (c) the incurred costs by cost element, including the breakout of recurring and nonrecurring costs; and (2) the creation and maintenance of a bill of labor and a bill of material. The Department of Defense is required to report to the Congress by March 31, 1986, on the status of its implementation of section 917, "Cost and Management", of Pub. L. 99–145. This proposed rule is DoD's interpretation and proposed regulation based upon the law.

It was the intent of Congress that this provision of law be at no cost to the contractor. Therefore, it is requested that public comments specifically address, in detail, any difficulties that are envisioned and any costs (either direct or indirect, including estimates thereof,) that would be incurred to implement the law.

Finally, in order to ensure that the maximum number of public comments can be addressed in the report to the Congress, it is requested that public comments be submitted by March 14, 1986. If after an initial submission, further or more detailed comments are necessary, such comments will be considered in drafting a final rule, as long as they are submitted by April 29, 1986.

B. Regulatory Flexibility Act

This rule does not appear to have a significant impact on an substantial number of small entities because this rule applies to the award of contracts requiring the submission of cost or pricing data and most awards to small entities are made on a price competitive basis not requiring such data.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements that exceed the information collection requirements resulting from the statute. Therefore, OMB approval under 44 U.S.C. 3501, et seq. is not required.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 215 and 252 be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Sections 215.873, 215.873–1, 215.873–2, 215.873–3, and 215.873–4 are added to read as follows:

§ 215.873 Cost and price management.

§ 215.873–1 Policy.

(a) Effective cost and price management is critically important to assure that fair and reasonable prices are paid for the goods and services acquired by DoD. Contractor submission and maintenance, as well as Government review, of the cost and price management information, required by 10 U.S.C. 2406, will assist the contracting officer in determining fair and reasonable prices because historical data will be more readily available as an aid in projecting future costs of performance. However, neither the statute nor the clauses at 252.215–7002 and 252.215–7003 require any new systems on the part of contractors.

(b) Cost and price management data for a contract being negotiated and from all previous contracts for the same or similar items meet the definition of cost or pricing data.

§ 215.873–2 Definitions.

(a) "Covered contract" means any contract awarded, using the procedures of 10 U.S.C. Chapter 137, by the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, where certified cost or pricing data are required.

(b) "Major manufactured end item" is an item of supply which is of significant value, is ready for its intended use and performs an autonomous function as a major weapons system subject to selected acquisition reporting or a major segregable portion of such a system. Examples of such major segregable portions are radars, fire control systems, countermeasures devices and engines.

(c) "Touch labor" is production labor which can be reasonably and consistently related directly to a unit of work being manufactured, processed, or tested. It involves work affecting the composition, condition, or production of a product; it may also be referred to as "hands-on labor" or "factory labor". Touch labor includes such functions as machining, welding, fabricating, setup, cleaning, painting, assembling, functional testing of production articles and that labor required to complete the manually-controlled process portion of the work cycle.

§ 215.873–3 Maintenance and review.

(a) *Contractor responsibilities.* The data for cost and price management required by the clauses at 252.215–7002 and 252.215–7003 are maintained by the contractor throughout the life of the contract. The clauses require the contractor to maintain this data in the same manner in which they were proposed.

(b) *Government uses.* The contracting officer may use the information provided by the clauses at 252.215–7002 and 252.215–7003 to assist in performing functions such as:

(1) Analyzing proposals for follow-on contracts, modifications, or change orders;

(2) Evaluating make-or-buy decision changes;

(3) Evaluating proposals for IMIP programs or other plant rearrangement activities;

(4) Evaluating progress under a contract; or

(5) Evaluating contractor management systems.

§ 215.873–4 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 252.215–7001, Certificate for Cost and Price Management Data, in solicitations which are subject to the requirements of this paragraph.

(b) The contracting officer shall insert the clause at 252.215–7002, Cost and Price Management, in solicitations and contracts when it is contemplated that a covered contract, as defined above, will be awarded.

(c) In addition to the clause at 252.215–7002, the contracting officer shall insert the clause at 252.215–7003, Cost and Price Management (Bill of Labor and Bill of Material), in solicitations and contracts when it is contemplated that a covered contract will be awarded for the supply of a major manufactured end item as defined in section 215.873–2 above.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

4. Sections 252.215–7001, 252.215–7002 and 252.215–7003 are added to read as follows:

§ 252.215–7001 Certificate for Cost and Price Management Data.

As prescribed in 215.873–4(a), insert the following provision:

Certificate for Cost and Price Management Data (Feb. 1986)

The Offeror hereby certifies that on 8 November 1985 the Offeror—

(1) ——— did ——— did not maintain the information required by the clause at 252.215–7002 of the DoD FAR Supplement;

(2) ——— did ——— did not maintain the information required by the clause at 252.215.7003 of the DoD FAR Supplement.

(End of provision)

§ 252.215–7002 Cost and Price Management

As prescribed in 215.873–4(b), insert the following clause:

Cost and Price Management (Feb. 1986)

(a) Nothing in this clause shall require the submission of the information to be submitted under this clause, if the Contractor has certified that it did not maintain such information on 8 November 1985.

(b) As a part of the cost or pricing data submitted on the Standard Form 1411 (SF 1411), the Contractor shall submit a breakout by element of proposed cost with recurring and nonrecurring cost and profit or fee separately identified. Nonrecurring cost includes such costs as preproduction engineering, special plant rearrangement, initial rework, spoilage, pilot runs, etc.

(c) The Contractor shall record, at a minimum, the proposed, negotiated and incurred costs and profit or fee under the contract in the same manner as proposed in paragraph (b) above. All such recorded amounts shall be available for review by the Contracting Officer of representatives of the Contracting Officer until three (3) years after final payment under this contract.

(End of clause)

§ 252.215–7003 Cost and Price Management (Bill of Labor and Bill of Material).

As prescribed in 215.873–4(c), insert the following clause:

Cost and Price Management (Bill of Labor and Bill of Material) (Feb. 1986)

(a) Nothing in this clause shall require the submission of the information to be submitted under this clause, if the Contractor has certified that it did not maintain such information on 8 November 1985.

(b) *Bill of labor.*

(1) *Proposal.*

As part of the cost or pricing data submitted on the Standard Form 1411 (SF 1411), the Contractor shall include a separate bill of labor which shows (i) each labor category required by the Contractor for the manufacturing and routine testing of major manufactured end items to be supplied to the government and (ii) the number of hours of each labor category. This bill of labor shall reflect only the touch labor to produce and test the end item and shall not include labor

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to support, manage or assist in the performance of this work. The bill of labor shall show the standard hours of work calculated for each labor category, where standards have been developed, using a labor time standard system which yields time standards comparable to standards derived using a commercially available predetermined time standard system widely used in the United States. the proposal shall show the factors which convert these standard hours to the proposed labor hours.

(2) *Recording.*

The Contractor shall record the proposed and negotiated bills of labor for labor used by the Contractor in manufacturing the item and for labor used by the Contractor in performing routine testing relating to the item.

(3) *Maintenance.*

The Contractor shall maintain bill of labor records which show the standard labor hour content of the touch labor necessary for manufacturing and routine testing of the major manufactured end items to be provided to the Government under this contract. As work progresses, these records shall show any changes in the type or quantity of standard labor hour content.

(c) *Bill of Material.*

(1) *Proposal.*

In addition, the Contractor shall include a separate bill of material, as defined in Table 15-2 of FAR 15.805-6, which shows the items, quantities and unit prices of the material required by the Contractor for the manufacturing and routine testing of major manufactured end items to be supplied to the Government.

(2) Recording.

The Contractor shall record the proposed and negotiated bills of material used by the Contractor under the contract in manufacturing the item and of material used by the Contractor in performing routine testing relating to the item.

(3) *Maintenance.*

The Contractor shall maintain bill of material records which show the material necessary for manufacturing and routine testing of the major manufactured end items to be provided to the Government under this contract. As work progresses, these records shall show any changes in the items, quantities and unit prices on the bill of material. The costs set out in the bill of material shall be expressed in current dollars (this is, in amounts which have been paid or which are expected to be paid).

(d) The above records shall be available for review by the Contracting Officer or representatives of the Contracting Officer until three (3) years after final payment under this contract.

(End of clause)

[FR Doc. 86-4471 Filed 2-28-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Rear Identification Lamps on Trailers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies the petition for rulemaking submitted by Truck Trailer Manufacturers Association to amend the Federal motor vehicle safety standard on lighting to eliminate rear identification lamps on trailers, and to allow clearance lamps to be mounted at the trailer frame height. The petition is denied because the petitioner provided no substantive support for the requested changes.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202-426-2153).

SUPPLEMENTARY INFORMATION: On August 2, 1985, Truck Trailer Manufacturers Association of Alexandria, Va. (TTMA) petitioned the agency for rulemaking to amend 49 CFR 571.108, Motor Vehicle Safety Standard No. 108; *Lamps, Reflective Devices, and Associated Equipment.* Standard No. 108 currently requires trailers whose overall width is 80 or more inches to be equipped with identification lamps on the rear, and with clearance lamps to indicate the overall width of the vehicle and to be mounted as close to the top as practicable. TTMA wishes to eliminate the rear identification lamps and to allow the clearance lamps to be mounted at the trailer frame height. It further proposed that reflective devices such as reflex reflectors be located on the rear and near the top of van and tank trailers to aid motorists in seeing a trailer in hilly terrain and in estimating distance to the trailer and closing speed.

In support, TTMA cited a Vector Enterprises report furnished to the agency on "Improved Commercial Vehicle Conspicuity and Signalling Systems" which concluded that identification lamps serve no purpose and should be replaced by reflective devices. In addition, TTMA submitted that flashing lamps may now be used to indicate slow moving trucks (a previous purpose of identification lamps), and that the limited data that exist show no significant difference between rear end accidents involving platform trailers as compared with van trailers.

NHTSA has carefully reviewed this petition. While it is true that the initial version of the Vector report reached the conclusion ascribed to it, NHTSA is awaiting the final version of the Vector report and has not yet concluded that reflective devices are a superior or equivalent replacement. As for flashing lamps, their use only to indicate slow-moving vehicles is irrelevant to the need for an indicator of the presence of a wide vehicle in the roadway ahead. Their use is in most instances optional, and an inactive hazard warning system at night would fail to serve the purpose of identification lamps. In essence, TTMA has provided no substantive support for the changes it recommended, and its petition is denied.

The program official and attorney principally responsible for this notice are Kevin Cavey and Taylor Vinson, respectively.

(Sections 103, 119, and 124, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 25, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-4500 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 1-18; Notice 28]

Federal Motor Vehicle Safety Standards Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for reconsideration.

SUMMARY: This notice responds to a petition for reconsideration concerning two aspects of the final rule on Standard No. 101, *Controls and Displays,* published on June 4, 1985 (50 FR 23426). The first part of the petition concerns the use of the symbol for the horn control, which Mercedes seeks to omit for horn controls located in the center of the steering column. The second part concerns the use of the International Standards Organization's (ISO) brake warning symbol, which Mercedes seeks as an alternative to the word "brake" presently required by the standard. The agency is denying both parts of the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 426-2153.

SUPPLEMENTARY INFORMATION: On June 4, 1985, NHTSA published in the **Federal Register** a final rule responding to a number of petitions for reconsideration and for rulemaking on Standard No. 101, *Controls and Displays.* The notice denied Mercedes-Benz's prior petition for reconsideration regarding the identification of passenger car horn controls located on the steering column, and its petition regarding the use of the ISO brake symbol as a substitute for the word "brake." Mercedes has petitioned for reconsideration of these issues. For the reasons set forth below, the agency again denies these petitions.

Horn Controls on the Steering Column

In support of its claim that passenger car horn controls mounted on the steering column hub need not be identified by the horn symbol (a picture of a horn or bugle), Mercedes stated that the use of this symbol will not produce a shorter reaction time for drivers in emergency situations. In Mercedes' view, the most intuitive action for a driver facing an emergency is to press the steering hub, an action taken because of the hub's prominent location, not because of any symbol on it. Mercedes further stressed the need for any driver to use the owner's manual, if necessary, to verify the location and functions of controls and displays.

As the agency stated in response to Mercedes-Benz's prior petition, the need to identify the horn control has increased as the manufacturers have elected to locate the horn control elsewhere than on the steering hub. Drivers have come to expect the horn control in various locations, such as control stalks or steering wheel spokes, and not just in the traditional steering hub location. The absence of the symbol from the hub could lead the driver to believe that the horn was located elsewhere, thereby impeding the driver from taking the correct action in an emergency. As long as the horn control may be located in other places, the agency believes that affirmative marking of the control is necessary. The owner's manual would not be an adequate alternative to marking the control, in that most drivers other than the original owner may not refer to the manual routinely before operating the vehicle.

The ISO Brake Symbol

The agency addressed Mercedes-Benz's earlier petition for the use of the ISO brake failure symbol (an exclamation point enclosed by parentheses representing brake shoes) in the notice of June 4, 1985. As stated in the notice, the agency relied on a study sponsored by the Society of Automotive Engineers which found that the ISO symbol was recognized by a very low percentage of motorists (28 per cent) compared with the percentage who recognized the term "brake" (87 per cent). In the agency's view, this low percentage argued strongly against the adoption of the ISO symbol.

In resubmitting its petition, Mercedes argued that the study must have reflected the fact that the ISO symbol has not been permitted in the United States and would therefore not have been familiar to American motorists. In fact, the study ("Investigation into the Identification and Interpretation of Automotive Indicators and Controls," SAE Technical Paper No. 780340) was conducted not in the United States but in Germany. The participants were drawn at random from visitors to the BMW Museum in Munich, and represented a cross-section of European and American motorists. In view of the exposure of many in the group to the ISO symbol in European vehicles, the conclusion seems well founded that the term "Brake" is more recognized by motorists and should be retained as the exclusive indication of brake failure. The agency accordingly affirms its prior denial of the Mercedes-Benz petition for use of the ISO symbol.

For the foregoing reasons, the Mercedes-Benz petition is denied in its entirety.

(Secs. 103, 119, and 124, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410a); delegation of authority at 49 CFR 1.50)

Issued on February 24, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-4421 Filed 2-28-86; 8:45 am]

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Notices

Federal Register
Vol. 51, No. 41
Monday, March 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Dairy Export Incentive Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Commodity Credit Corporation's export incentive program for dairy products. Section 153(a) of the Food Security Act of 1985 (Act) provides that during the period beginning 60 days after the date of enactment of the Act (December 23, 1985) and ending on September 30, 1989, the Commodity Credit Corporation (CCC) shall establish and operate such an export incentive program.

ADDRESS: Comments and proposed alternative systems should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250. Arrangements to receive copies of the announcement and invitations to submit bids issued under the program may be made by writing to the CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington D.C. 20250 (Phone (202) 382–9240) or by writing the Kansas City Commodity Office, P.O. Box 205, Kansas City, Missouri 64141 (Phone (913) 236–3057).

FOR FURTHER INFORMATION CONTACT: William R. Randolph, Direct Sales Staff, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, (Phone (202) 382–9254) for information on submission of bids and requirements for participation and Indulis Kancitis, Director, Dairy Division, Agricultural Stabilization and Conservation Service, USDA, Washington, DC 20250 (Phone (202) 447–3385) for information on the kinds of dairy products available as a CCC bonus and the method of delivery of the diery products to exporters.

Dairy Export Incentive Program: CCC will issue an announcement containing the terms and conditions of the program and an invitation inviting U.S. exporters to submit competitive bids for an CCC bonus needed to make a competitive sale of U.S. commercial dairy products to an eligible country. The invitation will specify (a) the eligible dairy products that may be sold to a foreign buyer, (b) the eligible dairy destinations, (c) the kinds of CCC-owned dairy products that will be made available to exporters as a bonus and (d) the method used to determine the value of the CCC bonus dairy products.

The CCC bonus would apply only to that quantity of dairy products sold by a U.S. exporter in any year which is in addition to, and not in place of, any export sales the exporter would otherwise make in the absence of the program.

The dairy products delivered to the exporter as the CCC bonus must be sold for export. The sale of the CCC bonus dairy products by the exporter must be in addition to, and not in place of, export sales of dairy products that the exporter would otherwise make under the program or in the absence of the program. To the extent practicable, the sale of the CCC bonus dairy products is not to displace commercial export sales of U.S. dairy products by other exporters.

In general, the program will work as follows:

(1) To participate under the program, interested parties must qualify prior to submitting a competitive bid to CCC.

(2) Exporters would be required to provide CCC with various financial securities in connection with participation in the program.

(3) A U.S. exporter makes an export sale of an eligible dairy product to a buyer in an eligible country. The exporter would then submit a competitive bid to CCC for the CCC bonus needed to make the sale of the eligible dairy product competitive in the eligible country. The bid would include certain terms of the sale to the foreign buyer and the per unit value of the CCC bonus requested by the exporter.

(4) CCC would examine the bid for (a) the competitiveness of the sale to the foreign buyer with bids and sales from other U.S. exporters and from competitor countries, (b) the competitiveness of the CCC bonus requested for that sale and (c) compliance with any criteria established for export sales under the program. CCC will reserve the right to reject any or all bids.

(5) If the bid is accepted, the exporter would make export against the sale and would furnish evidence of export to CCC.

(6) Within 30 days after the date of export of eligible dairy products from commercial sources, the exporter must request delivery of the CCC bonus in the form of dairy products from the inventory of CCC. The CCC bonus due the exporter would be the net quantity of eligible dairy products exported times the approved bonus value established by the acceptance of the exporter's bid. The bonus commodity will be delivered to the exporter instore at the storing warehouse.

(7) Within 60 days after the delivery of the CCC bonus, the exporter must furnish evidence of export of the CCC bonus to an eligible destination.

(8) Failure to export the required quantity of commercial dairy products against an accepted bid, or the failure to export the CCC bonus, could result in liquidated damages being charged the exporter.

CCC invites the public to comment on this system and to propose alternative systems at any time during the course of the program.

Signed at Washington, DC on February 26, 1986.

Daniel G. Amstutz,
President, CCC.

[FR Doc. 86–4601 Filed 2–27–86; 10:16 am]

BILLING CODE 3410-10-M

Federal Grain Inspection Service

Designation Renewal of Quincy Grain Inspection & Weighing Service (IL)

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Quincy Grain Inspection & Weighing Service (Quincy), as an official agency responsible for providing official services under the Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: April 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Quincy's designation terminates on March 31, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the September 20, 1985, **Federal Register** (50 FR 38146). Applications were to be postmarked by October 21, 1985. We received two applications for the Quincy area. Quincy applied for designation renewal in the area currently assigned to that agency. Southern Illinois Grain Inspection Service, Inc., Fairview Heights, Illinois, applied for designation in a portion of the geographic area presently assigned to Quincy.

FGIS announced the applicant names and requested comments on the same in the December 2, 1985, **Federal Register** (50 FR 49434). Comments were to be postmarked by January 16, 1986. No comments were received regarding designation in the Quincy, Illinois, geographic area.

FGIS evaluated all available information regarding the designation criteria in section 7(f)1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Quincy is better able than any other applicant to provide official services in the geographic area for which FGIS is renewing its designation. Effective April 1, 1986, and terminating March 31, 1989, Quincy will provide official inspection services in its specified geographic area, which is the entire area previously described in the September 20 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address: Quincy Grain Inspection & Weighing Service, 401 South 9th Street, P.O. Box 755, Quincy, IL 62301.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 12, 1986.

J.T. Abshier,
Director, Compliance Division.

[FR Doc. 86–4345 Filed 2–28–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to D.L. Boltenhouse Grain Inspection Service (OH)

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to D.L. Boltenhouse Grain Inspection Service (Boltenhouse).

DATE: Comments to be postmarked on or before April 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Labakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Labakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been received and determined not to be a rule or regulation as defined in executive Order 12291 and Departmental Regulations 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the December 27, 1985, **Federal Register** (50 FR 52975), and as corrected, January 6, 1986 (51 FR 421). Applications were to be postmarked by January 27, 1986. Boltenhouse was the only applicant for its designation and applied for designation renewal in the area currently assigned to that agency. Boltenhouse is changing its name to Erie Grain Inspection Service and applied for designation renewal under that name.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: February 12, 1986.

J.T. Abshier,
Director, Compliance Division.

[FR Doc. 86–4347 Filed 2–28–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to Fremont Grain Inspection Department, Inc., (NE) and Titus Grain Inspection, Inc. (IN)

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specificed agency. The Official agencies are Fremont Grain Inspection Department, Inc., and Titus Grain Inspection, Inc.

DATE: Applications to be postmarked on or before April 2, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400

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Independence avenue, SW., Room 1647, South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifices that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Fremont Grain Inspection Department, Inc. (Fremont), 603 East Dodge Street, Fremont, NE 68025, and Titus Grain Inspection, Inc. (Titus), 1111 East 800 North, West Lafayette, IN 47906, were each designated under the Act as an official agency to provide inspection functions on September 1, 1983.

Each official agency's designation terminates on August 31, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Fremont, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Iowa, Carroll (west of U.S. Route 71); Crawford; Harrison (east of State Route 183); and Shelby Counties. Also in Iowa, Clay (west of U.S. Route 71); Dickinson (west of U.S. Route 71); O'Brien (north of B24 and east of U.S. Route 59); and Osceola (east of U.S. Route 59) Counties.

In Nebraska, the area is:

Bounded on the North by U.S. Route 20 east to the Pierce County line; the eastern Pierce County line; the northern Wayne, Cuming, and Burt County lines east to the Missouri River;

Bounded on the East by the Missouri River south-southeast to State Route 91; State Route 91 west to the Dodge County line; the eastern and southern Dodge County lines west to U.S. Route 77; U.S. Route 77 south to the Saunders County line;

Bounded on the South by the southern Saunders, Butler, and Polk County lines; and

Bounded on the west by the western Polk County line north to the Platte River; the Platte River northeast to the western Platte County line; the western and northern Platte County lines east to U.S. Route 81; U.S. Route 81 north to U.S. Route 20.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Fremont and are part of this geographic area assignment:

1. Farmers Cooperative and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska;
2. Juergens Produce and Seed and Farmers Grain and Lumber Company, both in Carroll, Carroll County, Iowa.

The following locations outside of the foregoing contiguous geographic area, are presently assigned to Titus and are part of this geographic area assignment:

1. Boswell Grain Company, Boswell, Benton County;
2. Dunn Grain, Dunn, Benton County;
3. York Richland Grain Elevator, Inc., Earl Park, Benton County;
4. Raub Grain Company, Raub, Benton County;
5. The Andersons, Delphi, Carroll County;
6. Buckeye Feed and Supply Company, Leiters Ford, Fulton County;
7. Cargill, Inc., Linden, Montgomery County.

Exceptions to the described geographic area are the following locations situated inside Titus' area which have been and will continue to be serviced by Schneider Inspection Service, Inc.: Central Soya and Farmers Grain, both in Winamac, Pulaski County.

Interested parties, including Fremont and Titus, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning September 1, 1986, and ending August 31, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Exceptions to the described geographic area are the following locations situated inside Fremont's area which have been and will continue to be serviced by the following official agencies:

1. Hastings Grain Inspection, Inc., to service Farmers Cooperative Grain Company and Wagner Mills, Inc., both in Columbus, Platte County, Nebraska;
2. Omaha Grain Inspection Service, Inc., to service Farmers Coop Business Assn., Rising City, Butler County, Nebraska, and Farmers Coop Business Assn., Shelby, Polk County, Nebraska;
3. Sioux City Inspection & Weighing Agency, Inc., to service Charter Oak Grain & Seed and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa.

The geographic area presently assigned to Titus, in the State of Indiana, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Pulaski County line;

Bounded on the East by the eastern and southern Pulaski County lines; the eastern White County line; the eastern Carroll County line south to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded on the Soute by the southern Tippecanoe County line; the eastern and southern Fountain County lines west to U.S. Route 41; and

Bounded on the West by U.S. Route 41 north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the White County line; the western White and Pulaski County lines.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: February 12, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–4346 Filed 2–28–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Enid, OK, Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the Enid, Oklahoma, geographic area.

DATE: Comments to be postmarked on or before April 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule of regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the cancellation of designation of Enid Grain Inspection Co., Inc., and requested applications for official agency designation to provide official services within a specified geographic area in the December 27, 1985, **Federal Register** (50 FR 52975), and as corrected, January 6, 1986 (51 FR 421). Applications were to be postmarked by January 27, 1986. Barry Hibbets, Enid, Oklahoma, who proposes to continue the business as Enid Grain Inspection Co., Inc. (Hibbets), was the only applicant for designation and applied for the entire area available for assignment. Hibbets began providing official inspection services in the specified geographic area on an interim basis, starting January 1, 1986, until June 30, 1986.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: February 12, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–4348 Filed 2–28–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the State of Florida

AGENCY: Federal Grain Inspection Service (FGIS) USDA.

ACTION: Notice.

SUMMARY: This notice announces that there were no applicants for designation for the State of Florida geographic area, pursuant to the October 25 **Federal Register** notice requesting such applicants. FGIS is again requesting applications from parties interested in being designated as the official agency to provide official services in the State of Florida geographic area. FGIS has been providing and will continue to provide official services in the entire State of Florida until a decision can be made in this matter.

DATE: Applications to be postmarked on or before March 18, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (Act), specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the October 25, 1985, **Federal Register** (50 FR 43429). Applications were to be postmarked by November 25, 1985; we received no applications for the Florida designation. As a result, FGIS again is requesting applications for designation in the State of Florida geographic area. A 15-day application period is deemed adequate in view of the prior request for applicants. FGIS has been providing and will continue to provide official services in the entire State of Florida until a decision can be made in this matter.

Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, the designation in the specified geographic area will not exceed a 3-year period.

The geographic area available for assignment is the entire State of Florida except those export port locations within the State.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–4344 Filed 2–28–86; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Cleveland Peninsula Area Analysis; Tongass National Forest, Ketchikan Area; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the Cleveland Peninsula Analysis Area. The Analysis will set standards and guidelines for management activities, provide a detailed schedule of activities, and determine the level of development to take place through the year 2000. Alternative locations of timber harvest units, roads, and timber harvest facilities will be identified and evaluated.

Overall guidance for the analysis will be provided by the Alaska Regional Guide, The Tongass Land Management Plan and The LPK Timber Sale Plan for the 1984–89 Operating Period.

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A range of alternatives will be examined to determine which combination of activities best balances resource needs in meeting public needs. One alternative will be the no action alternative.

Scoping for the project was done in January and February 1984. The issues identified at that time which are associated with the project include:

1. Level of Development That Will Take Place
2. Effect the Construction And Occupation of a Logging Camp May Have on King Salmon Stocks of West Behm Canal
3. Road Management
4. Economics
5. Impact on the Community of Meyers Chuck
6. Protection and Enhancement of Recreation Opportunities
7. Effects on Fish and Wildlife Values.

This notice is being prepared to provide time for additional comments.

The Fish and Wildlife Service of the Department of the Interior and the National Marine Fisheries Service of the Department of Commerce will be asked to participate as cooperating agencies to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist within the project.

The Army Corp of Engineers will be asked to participate as a cooperating agency to evaluate potential impacts of terminal transfer facilities on marine habitat and to evaluate potential impacts on wetlands and floodplains.

Win Green, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901 is the Responsible Official.

The analysis is expected to take about one year to complete. The Draft Environmental Impact Statement should be available for public review by August 1986. The Final Environmental Impact Statement is scheduled to be completed in December, 1986.

Written comments and suggestions concerning the analysis should be sent to Win Green, Forest Supervisor, Tongass National Forest, Ketchikan, Alaska 99901 by April 15, 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to Dale J. Thompson, Team Leader, Federal Building, Tongass National Forest, Ketchikan, Alaska 99901, Phone (907) 225–3101.

Win Green,
Forest Supervisor.

Dated: February 14, 1986.

[FR Doc. 86-3972 Filed 2-28-86; 8:45 am]

BILLING CODE 3410-11-M

Food Safety and Inspection Service

[Docket No. 86-006N]

Elimination of Import Inspection Activities at Other Than Approved Locations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy Statement.

SUMMARY: This notice announces the Food Safety and Inspection Service's policy concerning the inspection of imported products at other than approved locations. Effective March 1, 1986, all import inspection activities, including staging of lots of product and sample selection, will be permitted only at establishments officially approved for import inspection activities.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–3473.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service conducts a reinspection of imported meat and poultry products to assure that they are wholesome, not adulterated, and properly labeled and packaged as required under the Federal Meat Inspection Act and the Poultry Products Inspection Act. The Federal meat inspection regulations permit this reinspection only at establishments specifically approved to handle import inspection activities for specific types of products (9 CFR 327.6).

In the past, inspection of imported products has been provided at piers, warehouses and other nonofficial facilities. This has occurred because imported products may be stripped (removed from large cargo shipping containers) at these locations, and it is convenient for importers to present imported products there for inspection. In practice, to accommodate inspection at such sites, FSIS personnel must drive to the location, visually check paperwork and product labeling, take samples if required, and return with samples to an official establishment for further inspection. The inspectors then must return to the location to release the product or to refuse it entry.

These are unofficial locations and FSIS does not enforce requirements relating to facility sanitation, insect and rodent control, control over chemical compounds and potential contaminants, acceptable methods of product handling, and other facility standards, as required for official establishments. In addition, FSIS incurs additional, nonreimbursed personnel and mileage costs as a result of performing import inspection at these locations.

Therefore, effective March 1, 1986, FSIS will permit import inspection activities, including staging of lots of product and sample selection, only at establishments officially approved for import inspection activities. This policy will ensure acceptable standards for inspecting imported meat and poultry products; will eliminate unreimbursable personnel costs and mileage costs; and will conform to existing FSIS regulations.

Done at Washington, DC on February 26, 1986.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 86-4573 Filed 2-28-86; 8:45 am]

BILLING CODE 3410-DM-M

CIVIL RIGHTS COMMISSION

Vermont Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on March 12, 1986, at the Holiday Inn, VIP Room, Blush Hill Road, Waterbury, Vermont. The purpose of the meeting is to discuss a briefing memorandum summarizing the November community forum on "Civil Rights Concerns and Issues in Vermont" and the Committee's planned study of Vermont's human rights laws and methods of enforcement.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kenneth Holland or Jacob Schlitt, Director of the New England Regional Office at (617)223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1986.

Donald A. Deppe,
Program Specialist for Regional Programs.

[FR Doc. 86-4450 Filed 2-28-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Report on Condition of Survey Mark
Form Number: Agency—NOAA—76–91; OMB 0648–0006
Type of Request: On occasion
Burden: 2,500 respondents; 500 reporting hours
Needs and Uses: The National Horizontal and Vertical Control Network consists of approximately 800,000 survey points distributed throughout the United States. Surveyors provide information on geodetic control marks they use. The information is used to maintain the national geodetic control network.
Affected Public: State or local governments, businesses or other for-profit institutions, federal agencies or employees, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Sebsequent Purchaser Reports
Form Number: Agency—N/A; OMB—0648–0079
Type of Request: Extension of the expiration date
Burden: 150 respondents; 150 reporting hours
Needs and Uses: The information provided allows members of the public to engage in certain trade involving fish and wildlife that would otherwise be prohibited under the Endangered Species Act.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Permit/Letter of Agreement Reports
Form Number: Agency—N/A; OMB—0648–085
Type of Request: Extension of the expiration date
Burden: 300 respondents; 900 reporting hours
Needs and Uses: The Marine Mammal Protection Act, the Endangered Species Act and the Fur Seal Act provide for the granting of permits by the National Oceanic and Atmospheric Administration for actions which would otherwise be prohibited under these Acts. The Permit/Letter of Agreement Reports are used to track actions under specific permits and the overall effects of the permits granted.
Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Federal Fisheries Permit—Amendment J
Form Number: Agency—88–156; OMB—0648–0097
Type of Request: Revision of a currently approved collection
Burden: 444 respondents; 222 new reporting hours
Needs and Uses: Amendment J establishes a procedure for issuing permits to user groups fishing for king mackerel. Permits enable monitoring of catch levels and help identify closure dates
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1986.

Edward Michals,
Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-4512 Filed 2-28-86 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: June 1986 Immigration and Fertility Supplement
Form Number: Agency—CPS—1; OMB—0607–0460
Type of Request: Reinstatement of a previously approved collection
Burden: 58,000 respondents; 2,378 reporting hours
Needs and Uses: This survey will provide data to be used by the Immigration and Naturalization Service to evaluate policies concerning immigration and naturalization. The survey will also provide information on the lifetime fertility of women, native and foreign-born, by various demographic characteristics.
Affected Public: Individuals or households
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 25, 1986.

Edward Michals,
Departmental Clearance Officer.

[FR Doc. 86-4513 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Defense RDT&E Price Index Study Data Requirement
Form Number: Agency—131500; OMB—0608—0033
Type of Request: Extension of a currently approved collection
Burden: 25 respondents; 700 reporting hours
Needs and Uses: Collected data are needed to develop deflators for

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defense purchases of contractual research, development, test, and evaluating (RDT&E). Results are used in the National Income and Product accounts and in analysis of RDT&E costs relative to costs of other defense purchases.

Affected Public: Businesses or other for-profit institutions and non-profit institutions

Frequency: Quarterly

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 277–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Buiding, Washington, DC 20503.

Dated: February 25, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–4514 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 6–86]

Foreign-Trade Zone 46; Cincinnati, OH; Application for Subzone Honda Auto and Motorcycle Engine Plant, Shelby County, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 46, requesting foreign-trade subzone status for the motorcycle and automobile engine manufacturing plant of Honda of America Manufacturing, Inc., located in Shelby County, Ohio, some 45 miles north of the Dayton Customs port of entry. The application was submitted pursuant ot the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 6, 1986.

On January 12, 1979, the Board authorized subzone status for the Honda of American motorcycle manufacturing plant in Union County, Ohio (Board Order 141, 44 FR 4003). The subzone was expanded in May 1982 to include an auto manufacturing facility (Board Order 191; 47 FR 24760).

The proposed subzone is located at Meranda and Wenger Roads, Franklin Township in Shelby County, some 45 miles north of Dayton. The 505-acre facility is used to produce motorcycle engines, employing 83 persons. By late summer, auto engines will be added to the plant's product line, increasing employment to 160.

For the motorcycle engine line, plant operations involve manufacturing crankshafts and final assembly. For auto engines, operations include manufacturing cylinder blocks and final assembly. Most of the parts used in both operations are sourced aboard. The finished engines are to be shipped to Honda's motorcycle and auto plants in Union County (Subzone 46B), replacing engines now imported.

Zone procedures will exempt Honda from duty payments on the foreign parts used in engines that are exported. On domestic shipments, the company will be able to take advantage of the same duty rate on engine parts that is already applicable to the foreign engines used in the subzone. The savings will encourage Honda to make maximum use of U.S. production facilities to produce parts that otherwise would be imported.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 31, 1986.

A copy of the application in available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Dayton Int'l Airport, Vandalia, OH 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: February 24, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–4504 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-DS-M

Bureau of the Census

Motor Freight Transportation and Warehousing Survey; Determination

In accordance with Title 13, United States Code, section 182, 224, and 225, and due Notice of Consideration having been published January 21, 1986, (51 FR 2746), I have determined that data covering 1984 and 1985 revenues and expenses for the trucking and warehousing industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. This survey will yield 1984 and 1985 data on annual operating revenues and expenses for the trucking and warehousing industries.

The Census Bureau will require a selected sample of trucking and warehousing firms in the United States (with payroll size determining the probability of selection) to report on the 1985 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenues and expenses for these industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: February 26, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–4492 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A–412–501]

Anhydrous Sodium Metasilicate From the United Kingdom; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that anhydrous sodium metasilicate (ASM) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also preliminarily determined that critical circumstances do not exist in this case. If this investigation proceeds normally, we will make a final determination by May 10, 1986.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur J. Simonetti or John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4929, or (202) 377–5404.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that ASM from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We made fair value comparisons on one company representing virtually all of the sale of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the United States price and the home market price. We have preliminarily found that the margin for the company investigated is 3.93 percent, *ad valorem*.

Case History

On September 16, 1985, we received a petition filed in proper form from the P.Q. Corporation on behalf of the U.S. industry producing ASM. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on October 10, 1985 (50 FR 41920), and notified the ITC of our action.

On October 30, 1985, a questionnaire was presented to counsel for the respondent.

On October 31, 1985, the ITC found that there is a reasonable indication that imports of ASM from the United Kingdom are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1773, October 1985).

On December 2, 1985, the respondent filed a response to our questionnaire. We investigated Joseph Crosfield & Sons, Ltd., the manufacturer who accounts for virtually all British exports of the merchandise to the United States. We examined 100 percent of the sales made by this company.

Scope of Investigation

The product covered by this investigation is anhydrous sodium metasilicate, currently classified under item number 421.34 of the *Tariff Schedules of the United States.* Anhydrous sodium metasilicate is a definite crystalline chemical compound having the chemical formula Na_2SiO_3

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the C.I.F. delivered, packed price. We made deductions for U.K. handling, U.S. handling, foreign inland freight, ocean freight, marine insurance, and U.S. freight.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered home market prices. From the home market price, deductions were made for inland freight and insurance, various discounts and rebates. In accordance with § 353.15 (19 CFR 353.15) of the U.S. Department of Commerce Regulations, adjustments were made for technical services, where appropriate, and warranty expenses. Also, a small lot surcharge was added to the home market selling price, where appropriate. Where U.S. sales involved commissions, indirect selling expenses were granted as an offset for the costs of the U.S. commission expenses. Home market packing expenses were allowed up to the amount of the packing expense of U.S. sales.

Pursuant to § 353.56 of the Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Preliminary Negative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of ASM from the United Kingdom present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and, (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of the product under investigation, we ascertain whether there have been any prior investigations of this product in any other country. We found no evidence of any other country having found sales at less than fair value of this product from the United Kingdom. Neither the Department nor Treasury has investigated this product before. Therefore, we find that there is no history of dumping.

The second criterion is whether the importers knew, or should have known that the exporter was dumping the merchandise. We normally consider margins of 25 percent or more to constitute constructive knowledge or dumping. Since the margins in this case do not meet or exceed this level, we find that knowledge of dumping cannot be imputed to the importers.

Because we do not have either a history of dumping or knowledge on the part of the importers that the merchandise was being dumped, we, therefore, do not have to consider whether there are massive imports over a relatively short period.

For the reasons described above, we have preliminarily determined that critical circumstances do not exist with respect to imports of ASM from the United Kingdom.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of ASM from the United Kingdom that are entered, or

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withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Joseph Crosfield & Sons, Ltd	3.93
All others	3.93

ITC Notification

In accordance with section 773(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 A.M., on April 18, 1986, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 15, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 24, 1986.

[FR Doc. 86-4506 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-601, A-583-601, A-351-601]

Termination of Antidumping Duty Investigations; Certain Finished Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan and Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In a letter dated February 10, 1986, the U.S. Butt-Weld Pipe Fittings Committee withdrew its antidumping duty petitions filed on January 13, 1986, with respect to certain finished carbon steel butt-weld pipe fittings from Brazil, Japan and Taiwan. Based on the withdrawal, we are terminating our investigations.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick O'Mara or Mary S. Clapp of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3798, or 377-1769.

Case History

On January 13, 1986, we received antidumping duty petitions filed with respect to certain finished carbon steel butt-weld pipe fittings from Brazil, Japan and Taiwan. In compliance with the filing requirements of § 353.36 of our antidumping duty regulations (19 CFR § 353.36), the antidumping duty petitions alleged that imports of certain finished carbon steel butt-weld pipe fittings from Brazil, Japan and Taiwan are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petitions, we determined that they contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the U.S. International Trade Administration Commission (ITC) of our actions and initiated the investigations on February 3, 1986 (50 FR 4948 and 50 FR 4949).

Scope of Investigations

The products covered by these investigations are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States* (TSUS).

Withdrawal of Petitions

On February 10, 1986, we received a letter from the U.S. Butt-Weld Pipe Fittings Committee, withdrawing its antidumping duty petitions. Under Section 734(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have consulted with the ITC. We have determined that termination is in the public interest.

We have notified all parties to the investigations and the ITC of petitioner's withdrawal of the antidumping duty petitions and our intention to terminate. For these reasons, we are terminating our antidumping duty investigations of certain finished carbon steel butt-weld pipe fittings from Brazil, Japan and Taiwan.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 24, 1986.

[FR Doc. 86-4507 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-505 and C-583-504]

Postponement of Antidumping Duty Determination and Extension of the Deadline for Final Countervailing Duty Determination; Oil Country Tubular Goods from Taiwan

ACTION: Notice.

SUMMARY: The final antidumping duty determination involving oil country tubular goods from Taiwan is being postponed until not later than May 21, 1986, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended.

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), the deadline for the final countervailing duty determination is also extended until May 21, 1986, to coincide with the revised date of the final antidumping duty determination.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, regarding the antidumping investigation at (202) 377-5404 or (202) 377-5288; or, Laurel LaCivita or Mary Martin regarding the countervailing duty investigation at (202) 377-0189 or (202) 377-2830. Written inquiries should be addressed to Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, Attn: Room B-099.

SUPPLEMENTARY INFORMATION: On July 22, 1985, we received antidumping duty and countervailing duty petitions filed in proper form by the Lone Star Steel Company and CF&I Steel Corporation, producers of oil country tubular goods. The Department found that the petitions contained sufficient grounds on which to initiate investigations, and on August 12, 1985, the Department initiated countervailing duty and antidumping duty investigations (50 FR 33384 and 50 FR 33388).

On September 26, 1985, the Department granted a timely request for an extension of the deadline date for the preliminary determination in the countervailing duty investigation. On November 29, 1985, we issued a preliminary negative countervailing duty determination (50 FR 49977). The notice stated that we expected to issue our final determination by February 13, 1986.

On December 30, 1985, the Department preliminarily determined that oil country tubular goods from Taiwan are being, or are likely to be sold in the United States at less than fair value (51 FR 663). The notice stated that we would issue our final determination by March 17, 1986. On January 16, 1986, counsel for respondent requested that the Department extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). The respondent is qualified to make this request because he is the exporter who accounts for all of the exports to the U.S. of the merchandise under investigation. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination no later than May 21, 1986.

On January 27, 1986, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), the Department extended the deadline for the final countervailing duty determination to coincide with the final determination in the antidumping investigation (51 FR 3377) at petitioners' request. Therefore, the final countervailing duty determination is due by May 21, 1986.

Scope of Investigation

The products under investigation are "oil country tubular goods," which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API standards as currently provided for in the *Tariff Schedules of the United States, Annotated* items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4868, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

The United States International Trade Commission is being advised of the postponements in accordance with section 735(d) and section 705(d) of the Act.

In accordance with 19 U.S.C. 1671d(a)(1), the final countervailing duty determination will also be made by May 21, 1986.

Comments

In order to have any comments considered for our final antidumping duty determination, parties must submit them by March 30, 1986. All written views should be filed at the U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230, in at least 10 copies.

This notice is published pursuant to section 735(d) and 705(d) of the Act.

Dated: February 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc 86-4505 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Spiny Lobster Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the northwestern Hawaiian Islands spiny lobster fishery.

SUMMARY: This notice announces that anyone entering the commercial spiny lobster fishery in the northwestern Hawaiian Islands (NWHI) after August 8, 1985 (control date) will not be assured of future access to the spiny lobster resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the NWHI spiny lobster resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the spiny lobster resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Peter Milone (Fisheries Development Specialists, NMFS), 808-955-8831.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Spiny Lobster Fisheries of the Western Pacific Region (FMP) was developed by the Western Pacific Fishery management Council (Council) and implemented under the Magnuson Fishery Conservation and Management Act by regulations appearing at 50 CFR Part 661. The Council in August 1985 adopted an emergency amendment (50 FR 40558, October 4, 1985) to the FMP to place a moratorium on new entry to the spiny lobster fishery in the NWHI. The Council acted in response to the increasing numbers of boats in the fishery while catch rates in the NWHI suggested decline of the stocks. The Council concluded that vessels active in the fishery at the time of the decision (August 8, 1985) had sufficient capacity to harvest the available yield of spiny lobster in the NWHI and that alternative ways to establish an access limitation program for the fishery should be considered. The emergency moratorium was intended to provide time in which to evaluate such alternatives. Knowing that it can take substantial time to develop and implement such a program,

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however, the Council specified August 8, 1985, as the initial cutoff date for the purpose of establishing "historic participation" in the fishery in the event that this criterion is ultimately selected to limit access. Persons who entered the fishery after August 8, 1985, or who enter the fishery after publication of this notice are not assured of future participation should the Council develop and the Secretary of Commerce implement an access management regime that limits the number of participants in the fishery.

NMFS and the Council intend, in making this announcement, to discourage speculative entry into the NWHI spiny lobster fishery while potential management regimes to control access to the fishery are discussed by the Council and possibly developed. If the Council decides to develop such a regime, some fishermen who do not currently fish for spiny lobster in the NWHI and never have done so may enter the fishery for the sole purpose of establishing a record of making commercial landings of spiny lobster. Such a record often is considered indicative of economic dependence on the fishery. On this basis, a fisherman may successfully claim access to a fishery that is otherwise limited to traditional participants. Future entrants may have to buy their fishing rights or a permit from a participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain upon selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over developed when management authorities being to consider use of a limited access regime. The original problems become exacerbated by those who seek possible windfall gain from the solutions being discussed. To help distinguish *bona fide*, established fishermen from the speculative entrants to a fishery, the management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria may be applied for entry.

This announcment establishes August 8, 1985, as such a control date for potential use in determining historical or traditional participation in the NWHI spiny lobster fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the spiny lobster fishery. Fishermen are not guaranteed future participation in the spiny lobster fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

(16 U.S.C. 1801 *et seq.*)

Dated: February 26, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 86-4502 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-22-M

Foreign Fishing Permits; Summary of Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422
John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674–2331
Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366
Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926
Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815
Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352
Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563
Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Dated: February 28, 1986.

Richard B. Roe,

Director, Office of Resource Management.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Regional fishery management councils

Code and fishery:	
ABS Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA Snails (Bering Sea)	North Pacific.
WOC Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Fishing operations

Activity code:	
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels (Joint Venture).

Nation, vessel name and type	Application No.	Fishery	Activity
Government of the People's Republic of China			
Hai Feng 2021, cargo/transport vessel.	CH–86–0005	BSA, GOA	3
Government of Denmark			
Icebert, cargo/transport vessel.	DA–86–0001	ABS	3
Iceblink, cargo/transport vessel.	DA–86–0002	NWA, ABS	3
Ice Flower, cargo/transport vessel.	DA–86–0003	ABS	3
Iceport, cargo/transport vessel.	DA–86–0004	ABS	3
Nordlandia, cargo/transport vessel.	DA–86–0006	NWA, ABS	3
Snowdrop, cargo/transport vessel.	DA–86–0007	ABS	3
Vestlandia, cargo/transport vessel.	DA–86–0008	ABS	3
Government of Italy			
Cosetta, medium stern trawler.	IT–86–0005	NWA	1*
Gabriella C., medium stern trawler.	IT–86–0010	NWA	1*
Government of Japan			
Anyo Maru No. 15, medium stern trawler.	JA–86–0104	BSA	1
Akishio Maru M/V, cargo/transport vessel.	JA–86–0096	NWA, GOA, BSA	3
Chosei Maru No. 78, pot fishing vessel.	JA–86–0839	SNA	1
Eiwa Maru No. 38, pot fishing vessel.	JA–86–1568	SNA	1
Eikyo Maru No. 12, longline vessel.	JA–86–0124	BSA, GOA	1
Eikyu Maru No. 35, medium stern trawler.	JA–86–0511	BSA	1
Ebisu Maru No. 88, longline/gillnet vessel.	JA–86–0118	BSA, GOA	1
Hamayoshi Maru No. 63, medium stern trawler.	JA–86–1187	BSA	1
Hatsue Maru No. 68, longline vessel.	JA–86–0562	BSA, GOA	1
Hoyo Maru No. 63, pot fishing vessel.	JA–86–0862	SNA	1
Keiyo Maru No. 8, pot fishing vessel.	JA–86–1137	SNA	1
Kyowa Maru No. 8, pot fishing vessel.	JA–86–0901	SNA	1
Mito Maru No. 32, small stern trawler.	JA–86–1197	BSA	1
Ryoan Maru No. 21, medium stern trawler.	JA–86–1172	BSA	1
Ryoan Maru No. 2, pot fishing vessel.	JA–86–0877	SNA	1
Sankichi Maru No. 23, pot fishing vessel.	JA–86–0848	SNA	1
Shinko Maru No. 11, longline vessel.	JA–86–0119	BSA, GOA	1
Ryuho Maru No. 38, longline vessel.	JA–86–0557	BSA, GOA	1
Tsune Maru No. 31, longline vessel.	JA–86–0601	BSA, GOA	1
Kiyo Maru No. 55, longline vessel.	JA–86–0602	BSA, GOA	1
Fukuyoshi Maru No. 85, longline vessel.	JA–86–0603	BSA, GOA	1
Hatsue Maru No. 38, longline vessel.	JA–86–0605	BSA, GOA	1
Sumiyoshi Maru No. 53, longline vessel.	JA–86–0608	BSA, GOA	1
Matsuei Maru No. 88, longline vessel.	JA–86–0609	BSA, GOA	1
Mito Maru No. 82, longline vessel.	JA–86–0611	BSA, GOA	1
Tomi Maru No. 88, longline vessel.	JA–86–0612	BSA, GOA	1
Shintoku Maru No. 25, longline vessel.	JA–86–0613	BSA, GOA	1
Choyo Maru No. 81, longline vessel.	JA–86–0615	BSA, GOA	1
Tenyo Maru No. 37, longline vessel.	JA–86–0616	BSA, GOA	1
Tenyo Maru No. 25, longline vessel.	JA–86–0618	BSA, GOA	1
Ryusho Maru No. 18, longline vessel.	JA–86–0620	BSA, GOA	1
Anyo Maru No. 21, longline vessel.	JA–86–0621	BSA, GOA	1
Anyo Maru No. 22, longline vessel.	JA–86–0622	BSA, GOA	1
Shinei Maru No. 63, small stern trawler.	JA–86–1196	BSA, GOA	1
Akashi Maru No. 11, pair trawler.	JA–86–1530	BSA	1
Akashi Maru No. 12, pair trawler.	JA–86–1531	BSA	1
Daitoku Maru No. 31, reefer/cargo vessel.	JA–86–1092	BSA, GOA	3
Fukuyoshi Maru No. 58, small stern trawler.	JA–86–1536	BSA	1
Fukucho Maru No. 11, small stern trawler.	JA–86–1537	BSA	1
Otowa Maru, cargo/transport vessel.	JA–86–1538	BSA, GOA, SNA, NWA	3
Fukushio Maru, cargo/transport vessel.	JA–86–1539	BSA, GOA, NWA	3
Shinwa Maru, reefer/cargo vessel.	JA–86–0004	BSA, GOA, NWA, SNA	3
The Government of the Kingdom of the Netherlands			
Alida, large stern trawler.	NL–86–0006	NWA	1*
Prins Bernhard, large stern trawler.	NL–86–0007	NWA	1*
Ariadne, medium stern trawler.	NL–86–0009	NWA	1*
Johanna Maria, medium stern trawler.	NL–86–0011	NWA	1*
Cornelis Vrolijk Fzn, medium stern trawler.	NL–86–0014	NWA	1*
Zeeland, large stern trawler.	NL–86–0022	NWA	1*
Holland, large stern trawler.	NL–86–0023	NWA	1*
Pear Sluis, medium stern trawler.	NL–86–0024	NWA	1*
Hendrika Johanna, medium stern trawler.	NL–86–0025	NWA	1*
Dirk Dirk, medium stern trawler.	NL–86–0026	NWA	1*
Annie Hillina, medium stern trawler.	NL–86–0027	NWA	1*
Astrid, large stern trawler.	NL–86–0028	NWA	1*
Government of the Polish People's Republic			
Buran, cargo/transport vessel.	PL–86–0033	BSA, GOA, WOC	3
Lewanter, cargo/transport vessel.	PL–86–0030	BSA, GOA, WOC	3
Pieniny 2, tanker fuel/water.	PL–86–0110	BSA, GOA, WOC	3
Tatry, tanker fuel/water.	PL–86–0108	BSA, GOA, WOC, NWA	3
Zonda, cargo/transport vessel.	PL–86–0102	BSA, GOA, WOC, NWA	3
The Government of Spain			
Kanbiope, medium stern trawler.	SP–86–0056	NWA	1
Mirador Del Fito, medium stern trawler.	SP–86–0171	NWA	1
Taiwan			
Hai Hsiung No. 12, Longline Fishing Vessel.	TW–86–3086	PBS	1
Koa Ya No. 1, longline fishing vessel.	TW–86–0057	PBS	1
Kao Ya No. 2, longline fishing vessel.	TW–86–0058	PBS	1
Kao Ya No. 3, longline fishing vessel.	TW–86–00659	PBS	1
Kao Ya No. 6, longline fishing vessel.	TW–86–0025	PBS	1
Kao Ya No. 36, longline fishing vessel.	TW–86–0063	PBS	1
Kao Ya No. 101, longline fishing vessel.	TW–86–0064	PBS	1
Lih Sheng No. 1, longline fishing vessel.	TW–86–0065	PBS	1
Ming Kuo No. 32, longline fishing vessel.	TW–86–0021	PBS	1
Shuh Jinn No. 1, longline fishing vessel.	TW–86–0067	PBS	1
Shiuh Long No. 1, longline fishing vessel.	TW–86–0068	PBS	1
Tai Shang No. 1, longline fishing vessel.	TW–86–0066	PBS	1
Kuo Li No. 1, longline fishing vessel.	TW–86–3069	PBS	1
Government of the Union of the Socialist Republics			
Dalniy Vostok, factory ship.	UR–86–0783	BSA, GOA	2*
Skalat, cargo/transport vessel.	UR–86–0784	BSA, GOA	3
Valdaysk, cargo/transport vessel.	UR–86–0785	BSA, GOA	3
Vladivostok, factory ship.	UR–86–0786	BSA, GOA	2*
Nadezhdinsk, large stern trawler.	UR–86–0002	BSA, GOA, WOC	1*
Svetlaja, large stern trawler.	UR–86–0080	BSA, GOA, WOC	1*
Tretjakovo, large stern trawler.	UR–86–0111	BSA, GOA, WOC	1*
Lotos, large stern trawler.	UR–86–0200	BSA, GOA, WOC	1*
Ternei, large stern trawler.	UR–86–0202	BSA, GOA, WOC	1*
Fyodor Krainov, large stern trawler.	UR–86–0206	BSA, GOA, WOC	1*

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Nation, vessel name and type	Application No.	Fishery	Activity
[illegible], large stern trawler.	UR-86-[illegible]	BSA, GOA, WOC	1*
[illegible], large stern trawler.	UR-86-0226	BSA, GOA[illegible]	1*
[illegible], large stern trawler.	UR-86-[illegible]	BSA, GOA, WOC	1*
[illegible], large stern trawler.	UR-86-[illegible]	BSA, GOA, WOC	1*
[illegible], large stern trawler.	UR-86-0716	BSA, GOA, WOC	1*
[illegible], medium stern trawler.	UR-86-0757	BSA, GOA, WOC	1*
Marshal [illegible], factory ship.	UR-86-0788	BSA, GOA, WOC	1*
[illegible], medium stern trawler.	UR-86-0789	BSA, GOA, WOC	1*
Jablonovskiy, medium stern trawler.	UR-86-0790	BSA, GOA, WOC	1*

Joint Venture

Japan

The Government of Japan has submitted permit applications for the KASHIMA MARU and the TAKACHIHO MARU to engage in joint venture activities with the American partner Northern Deep Sea Fisheries, Inc., Seattle WA. The species requested is yellowfin sole, Pacific cod and other species in the Bering Sea and Aleutian Islands fisheries. Notice of Receipt of the Permit Applications for these vessels was published November 21, 1985, 50 FR 48111.

Two Japanese vessels published in this Notice will participate in joint venture operations that were published on November 21, 1985, 50 FR 48112: the KOYO MARU NO. 3 with Northern Deep Sea Fisheries, Inc. and the TENYO MARU NO. 2 with Westward Trawlers, Inc. Both American partners are located in Seattle, WA.

The vessels TOMI MARU NO. 83 and TOMI MARU NO. 85 were to have participated in a joint venture with Westward Trawlers Inc. and notice was published on November 21, 1985. The application is now amended and identifies Alaska Contact, Ltd. as the new American partner. The tonnage amounts requested for these vessels were published November 21, 1985, 50 FR 48111 and are not changed.

Italy

The Italian vessel COSETTA, will participate in a joint venture with the IST Corporation, Cape May, N.J. Notice of receipt of the permit application for the joint venture was published December 6, 1985, 50 FR 50150.

Netherlands

The Government of the Kingdom of the Netherlands has submitted permit applications for joint venture activities in the Northwest Atlantic Ocean fishery. The species requested is Atlantic Mackerel in the amount of 1,000 mt. The designated American partner is Scan Ocean, Inc., Gloucester, MA.

[FR Doc. 86-4529 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

The invention listed below was developed at the National Cancer Institute of the National Institutes of Health and is owned by the U.S. Government. It is available for licensing in the U.S. in accordance with 35 U.S.C. 207. Corresponding foreign patent applications, also available for licensing, have been filed to provide extended protection for licensees.

SN 6-843,729

Method of Continuous Production of Retroviruses (HTLV–III) from Patients with AIDS and Pre-AIDS Using Permissive Cells

Technical and licensing information may be obtained by writing to: Robert P. Auber, Director, Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 86-4469 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Thursday, March 13, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC February 21, 1986.

Charles H. Atherton,

Secretary.

[FR Doc. 86-4470 Filed 2-28-86; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

February 26, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 3, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On February 19 and 24, 1986, the Governments of the United States and the People's Republic of Bangladesh exchanged letters on a new Bilateral Cotton and Man-Made Fiber Textile Agreement beginning on February 1, 1986 and extending through January 31, 1988. The agreement establishes specific limits for cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, and 347/348, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1986 and extends through January 31, 1987. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreement directs the Commissioner of Customs to control imports in these categories at the designated limits.

The Chairman of CITA also directs the Commissioner of Customs to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 340 which were exported during the restraint period which began March 1, 1985 and extended through January 31, 1986 in amounts of 80,000 dozens on March 3, 1986 and 80,000 dozens on March 28, 1986. Both quantitlies will be charged to the limit being established for Category 340/640.

The letter and the actions taken pursuant to it are not designed to

implement all of the provisions of the new bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924); December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 26, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of January 23, 1986 concerning cotton textile products in Category 334, produced or manufactured in Bangladesh.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textile done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986 between the Governments of the United States and the People's Republic of Bangladesh; and accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 3, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, and 347/348, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1986 and extends through January 31, 1987, in excess of the following limits:

Category	Twelve-month restraint limit [1]
331	505,000 dozen pairs.
334	60,000 dozen.
335	110,000 dozen.
340/640	1,300,000 dozen of which not more than 300,000 dozen shall be in yarn-dyed shirts in Cat 340/640 pt.[2]
41	1,100,000 dozen.
47/348	980,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1986.

[2] In Categories 340 and 640, only T.S.U.S.A. numbers 381.5500, 381.5610, 381.5625, 381.5660, 381.9535, 381.9550, 381.0520, 381.3130, 381.3140, 381.3150, 381.5635 and 381.9546

In carrying out this directive entries of textile products in Category 340, produced or manufactured in Bangladesh, which have been exported to the United States during the twelve-month period which began on March 1, 1985 and extended through January 31, 1986, shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in amounts of 80,000 dozen on March 3, 1986 and 80,000 dozen on March 28, 1986. These amounts will be charged to the restraint limits established in this directive for Category 340/640. Cotton and man-made fiber textile products in Categories 331, 334, 335, 341, 347/348 and 640 which have been exported to the United States prior to February 1, 1986 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The foregoing limits are subject to adjustment in the future according to the terms of the bilateral agreement of February 19 and 24, 1986 which provide, in part, that: specific limits may be adjusted by designated percentages; carryforward is applicable to specific limit categories during the first agreement year and carryover during subsequent agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in teh **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984), (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrrying out the above directions, the Commissioner to Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within he foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1)

Sincerely

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR. Doc. 86-4508 Filed 2-28-86; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

February 26, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 3, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce. (202) 377–4212.

Background

On December 30, 1985, a notice was published in the **Federal Register** (50 FR 53182) announcing the import restraint limits for certain cotton, wool, and man-made fiber textile products, produced or manufactured in China and exported to the United States during the agreement year which began on January 1, 1986 and extended through December 31, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, the Governments of the United States and the People's Republic of China have agreed to establish specific limits for the following products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986: Men's and boys' other wool coats in Category 434, man-made fiber thread in Category 605 pt. (only TSUSA number 310.9500), man-made fiber pajamas and blanket sleepers in Category 651, and man-made fiber underwear in Category 652.

The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of textile products in the foregoing categories in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983, (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

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Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 26, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 3, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 434, 605 pt. [1], 651 and 652, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following limits:

Category	Twelve-month restraint limits [2]
434	11,817 dozen.
605 pt.[1]	450,000 pounds.
651	520,000 dozen of which not more than 93,000 dozen shall be in TSUSA numbers 384.2222 and 384.8632.
652	1,800,000 dozen.

[1] In Category 605, only TSUSA number 310.9500.

[2] The limits have not been adjusted to account for any imports exported after December 31, 1985. Imports amounting to 50,164 dozen should be charged to the limit for Category 651.

In carrying out this directive textile products in the foregoing categories except Category 605pt.[1], which have been exported to the United States during the agreement period which began on January 1, 1985 and extended through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Category 605pt.[1], which have been exported on and after August 15, 1985 and extending through December 31, 1985, shall be permitted entry for consumption in the United States in amounts not to exceed 90,000 pounds per month beginning in March 1986 and extending through July 1986. These amounts plus goods exported on and after January 1, 1986, shall not together be permitted to exceed the newly established 1986 limit.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, as amended, which provide in part, that: (1) specific limits may be exceeded by not more than 5 percent of their square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) except for certain exceptions specified in the agreement, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year, subject to consultations, according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–4509 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China; Correction

February 26, 1986.

On January 27, 1986 a notice was published in the **Federal Register** (51 FR 3392) which announced newly agreed specific limits for certain specified categories of cotton and wool textile products, including cotton luggage in part of Category 369, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The TSUSA numbers identifying the cotton luggage covered by the newly agreed limit for Category 369pt. should be corrected to read as follows in both the notice document and in footnote 2 of the letter to the Commissioner of Customs which followed that notice: 706.3210, 706.3650, and 706.4111.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86–4510 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Category 342

February 28, 1986.

On January 31, 1986, the Government of the United States requested consultations with the Government of Sri Lanka with respect to Category 342 (cotton skirts). This request was made on the basis of the agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products. The agreement provides for consultations when imports cause market disruption, or the threat thereof.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period which began January 31, 1986 and extends through May 31, 1986 at a level of 50,349 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 342 exported during the 90-day consultation period which began on January 31, 1986 and extends through April 30, 1986 at the prescribed limit of 44,298 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the limits established during the subsequent agrement year.

The United States remains committee to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be published in the **Federal Register**.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was publishd in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Category 342 under the agreement with the Government of Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 342—Cotton Skirts

January 1986.

Summary and Conclusions

U.S. imports of cotton skirts from Sri Lanka were 133,072 dozens during the year ending November 1985, a 58 percent increase over the 84,218 dozens imported through year ending November 1984. Full year 1984 imports from Sri Lanka were 90,102, compared with 13,373 in 1983.

The sharp and substantial increase of low-valued imports of Category 342 from Sri Lanka is disrupting the U.S. market for cotton skirts.

Production and Market

Domestic production of cotton skirts has been relatively stable sicne 1982. In 1984, production was 2,027,000 dozens, 3.0 percent below the 1982 level of 2,090,000 dozens.

The market for domestically produced and imported cotton skirts grew by approximately 25 percent between 1982 and 1984, however U.S. producers did not share in the growth. Their share of the market fell from 63 percent in 1982 to 49 percent in 1984.

Imports and Import Penetration

Imports from all sources increased 75 percent, from 1,228,000 dozens in 1982 to 2,146,000 dozens in 1984. The import production ratio correspondingly rose from 58.7 percent in 1982 to 105.9 percent in 1984.

Import Values vs. Domestic Prices

Approximately 90 percent of the Category 342 imports from Sri Lanka entered under TSUSA No. 384.5251 (previously 383.5051)—womens' other cotton skirts, kint, not ornamented. These garments enter the U.S. at landed duty-paid values below U.S. producers's prices for comparable items.

February 26, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 4, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 342 produced or manufactured in Sri Lanka and exported during the ninety-day period which began on January 31, 1986 and extends through April 30, 1986, in excess of the following level:

Category	Ninety-day level [1]
342	44,298 dozen.

[1] The limit has not been adjusted to account for any imports exported after January 30, 1986.

Textile products in Category 342 which have been exported to the United States prior to January 31, 1986 shall not be subject to this directive.

Textile products in Category 342 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–4511 Filed 2–28–86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

1986 Procurement List; Addition

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by workshops for other severely handicapped.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

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SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement List of the commodity listed below was published in the **Federal Register** on April 12, 1985 (50 FR 14411). As the result of the public notice, the current contractor for the poncho liner and its counsel submitted comments both in writing and orally before the Committee. These comments questioned the workshop's capability to produce the poncho liner, the fair market price, the impact on the current contractor, and the workshop's qualification.

The workshop's capability to produce the poncho liner as verified by a Government on-site inspection. The times required for the workshop's manufacturing operations involved in the production of the poncho liner have been confirmed by technical personnel who have extensive background and experience in manufacturing sewing items employing blind labor. The workshop has the financial capability to produce the poncho liner.

The price for the poncho liner is a fair market price based on the bids submitted on the most recent solicitation for which an award has been made for this item.

In the Government's fiscal year 1985, the value of the current contractor's award for the portion of the poncho liner being added to the Procurement List represented not more han 6% of the total value of all contracts awarded to that contractor by the Government. The most recent contract for the poncho liner which was awarded to the current contractor in October 1985, less the quantity being added to the Procurement List, exceeds the total quantity of the poncho liner awarded to that firm in fiscal year 1985 and also exceeds the total value of that firm's fiscal year 1985 contract for this item. The potential loss to that firm of the portion of the poncho liner being added to the Procurement List represents 8.1% of the value of all Government contracts awarded to that firm in only the first four months of fiscal year 1986.

The workshop proposing to produce the poncho liner meets the definition of a qualified nonprofit agency for the blind contained in Pub. L. 92–28, as amended.

Based on all of the information provided, the workshop is capable of producing the requirements for the Memphis depot for the poncho liner at the fair market price and the addition of that portion of the poncho liner to the Procurement List would not have a serious adverse impact on the current contract for this item.

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986: Liner, Poncho, Wet Weather, 8405–00–889–3683 (Requirements for Memphis, Tennessee Depot only).

C.W. Fletcher,
Executive Director.

[FR Doc. 86-4503 Filed 2-28-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Counselor and Test Specialist Training for ASVAB–14.

The effectiveness of ASVAB–14 Counselor Training Workshops and self-instructional materials for increasing counselors' knowledge, understanding, and utilization of the ASVAB will be investigated through administering a survey to samples of workshop participants, counselors receiving self-instructional materials, and a control group.

Responses, 1,900
Burden hours, 400

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746 0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD (FM&P), Room 3C800, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643. This collection is not for contract.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

February 26, 1986.

[FR Doc. 86-4450 Filed 2-28-86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Long-Term Effects of Military Experience on Low-Aptitude Youth

The effects of military service on low-aptitude youth will be investigated through administering a survey to samples drawn from two low-aptitude veteran populations accessed at different time periods. Survey data will be contrasted with information on

caparable civilian youth available through the Department of Labor's National Longitudinal Surveys.

Responses, 1,450
Burden hours, 725.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD (FM&P), Room 3C800, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643. This collection is not for contract.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

February 26, 1986.

[FR Doc. 86-4451 Filed 2-28-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; New Record Systems

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notices of three new record systems subject to the Privacy Act.

SUMMARY: The Air Force is adding three new record systems to its existing inventory of record systems subject to the Privacy Act of 1974, as amended.

DATE: This action will be effective without further notice April 2, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Mr. Jon Updike, HQ USAF/DAQD, The Pentagon, Washington, D.C. 20330–5024. Telephone: 202/694–3431, Autovon: 224–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a) have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15062 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 46477) November 8, 1985
FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 (51 FR 4531) February 5, 1986

A new systems report as required by 5 U.S.C. 552a(o) of the Privacy Act and under guidelines established by paragraph 4b of Appendix I to OMB Circular No. A–130—Federal Agency Responsibilities for Maintaining Records About Individuals, dated December 12, 1985, was submitted on February 3, 1986.

February 26, 1986.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

F050 AF A

SYSTEM NAME:

050 AF A Professional Military Education (PME) Student Records.

SYSTEM LOCATION:

Professional Military Education Centers, NCO Academies and schools at Air Force Major Commands and bases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel assigned to the centers or schools as students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student records including academic standing, evaluations, training and testing results, counseling, locators information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by as implemented by Air Force Regulations (AFR) 5.–39, Noncommissioned Officer Professional Military Education and Civilian Initial Supervisory Training.

PURPOSE(S)

Used as a record of attendance and training, class standing, completion or elimination, as locator, and as a source of statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, and on computer and computer output products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are stored in security file containers/cabinets or rooms. Records are accessed by custodian of the system or persons responsible for maintenance of the records in course of their official duties.

RETENTION AND DISPOSAL:

Retained for 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent for PME at each Major Command, commandant at each academy or leadship school or director of personnel at each base where a school is located. Addresses are in the address directory which follows the sytems notices.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from students and staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None.

F050 AFOSI A

SYSTEM NAME:

050 AFOSI A Air Force Office of Special Investigations Academy Individual Academic Records.

SYSTEM LOCATION.

HQ Air Force Office of Special Investigations (AFOSI), Bolling Air Force Base, DC 20332–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USAF, US Coast Guard enlisted, Defense Investigative Service and foreign national students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of individual training and education of each student indicating final grade or rating of proficiency obtained in each subject and/or the reason for noncompletion of the course of study.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by, and Air Force Regulation 23-18, Air Force Office of Special Investigations.

PURPOSE(S):

Verification of attendance and completion of noncompletion of training; develop historical data for analysis by personnel responsible for maintaining effectiveness of and developing training; and maintain a data base for long term studies involving graduate performance, career patterns, and possible selection for faculty duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form, and on computer and computer output products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets and in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Automated records are maintained until no longer needed. Individual student file folders are held for 25 years after course is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, information Release Division, Directorate of Administration, HQ Air Force Office of Special Investigations, Bolling Air Force Base, DC 20332-6001.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation (AFR) 12-35.

RECORD SOURCE CATEGORIES:

Data is obtained from student exercises, testing and performance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F050 AFSC A

SYSTEM NAME:

050 AFSC A Systems Acquisition School Student Records.

SYSTEM LOCATION:

Air Force Systems Command (AFSC), Systems Acquisition School, 6575th School Squadron, Brooks AFB, TX 78235-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, DOD civilian employees, contractor personnel, Air National Guard and Air Force and Army Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student record includes personnel locator information, individual academic standings, subjects studied, hours, final grades, graduation data and related training data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Regulation (AFR) 50-5, USAF Formal Schools (Policy, Responsibilities, General Procedures, and Course Announcements).

PURPOSE(S):

Record individual attendance, grades and locator information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force,

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form, on computer and computer output products, and microfilm.

RETRIEVABILITY:

Filed by name and Social Security Number.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties. Records are stored in locked cabinets and rooms.

RETENTION AND DISPOSAL:

All records are retained for five years, then retired to the Washington National Records Center for an additional 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 6575th School Squadron, Brooks AFB, TX 78235-5000.

NOTIFICATION PROCEDURE:

Contact the system manager, Name, SSN or course number are required to identify files.

RECORD ACCESS PROCEDURE:

Individuals can obtain assistance in gaining access from the system manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual, existing personnel records, testing and performance at the school.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-4546 Filed 2-28-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, March 24, 1986.

Times of Meeting: 1300-1500 hours.

Place: The Pentagon, Room 2D731, Washington, DC.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for Army 21 will meet for an In-Process Review. This meeting will be open to the public. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-4517 Filed 2-28-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday & Thursday, March 26-27, 1986.

Times of Meeting: 0800-1700, Wednesday; 0800-1200, Thursday.

Place: Combined Arms Center, Ft. Leavenworth, Kansas.

Agenda: The Army Science Board 1986 Summer Study Panel on C^3I Requirements for AirLand Battle will meet to receive briefings on the background, doctrinal implications and operational considerations of C^3I. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-4518 Filed 2-28-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday, April 10, 1986.

Times of Meeting: 0800-1700 hours.

Place: The Pentagon, Room 3E385, Washington, DC.

Agenda: The Army Science Board 1986 Summer Study on Technology Forecast for the Key Operational Capabilities will meet for information briefings and planning for the conduct of the Summer Study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-4519 Filed 2-28-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Agency Information Collection Activities Under OMB Review

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 2, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW, Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burdens; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 26, 1986.

George P. Sotos,

Director, Information Resources Management Service

Office of Postsecondary Education

Type of Review: New
Title: Pel Grant Electronic Data Transmission Pilot Project Institution Survey
Agency Form Number: E40-17P
Frequency: Annually
Affected Public: Businesses or other for-profit, and non-profit institutions
Reporting Burden:
  Responses: 800
  Burden Hours: 336
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: The information to be obtained from this survey will be used to estimate the participation rates of institutions; determine the factors which influence institution participation; and estimate total costs and cost-effectiveness of the electronic transmission of Pell Grant information.

Office of Undersecretary

Type of Review: New
Title: Survey of Volunteer Literacy Activities
Agency Form Number: NA
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
  Responses: 80
  Burden Hours: 20
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: The Survey of Adult Literacy Activities of religious organizations is necessary as part of President Reagan's Adult Literacy Initiative announced on September 7, 1983 to address the problem of functional illiteracy in the United States. The research will help in the understanding and the documentation of religious organizations' scope of involvement in adult literacy activities.

[FR Doc. 86-4576 Filed 2-28-86; 8:45 am]

BILLING CODE 4000-01-M

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National Advisory Council on Adult Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: March 18, 1986, 1:00 p.m. to 5:00 p.m., Executive Committee Meeting (Closed): March 19–21, 1986, 9:00 a.m. to 5:00 p.m., Full Council Meeting (Open).

ADDRESS: 2000 L Street, NW., Room 555, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW., Washington, DC 20036, 202/634–6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 312 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The Executive Committee meeting on March 18, 1986, will be closed to the public to discuss staff performance and other related personnel matters. This review and subsequent discussions will touch upon matters that would disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemtion (2) and (6) of section 552b(c) of Title 5 U.S.C., and under the authority of section 10(d) of the Federal Advisory Committee Act.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The meeting of the full Council on March 19–21, 1986, is open to the public. The proposed agenda includes:

Oath of Office Ceremonies
Meeting with Secretary of Education
Department of Education Report
Adult Literacy Initiative
ABC/PBS Project Literacy U.S. (PLUS)
Annual Report
Standing Committee Meetings and Reports

Records are kept of all Council proceeding, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, DC on February 25, 1986.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 86-4459 Filed 2-28-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86-300-000, et al.]

Electric Rate and Corporate Regulation Filings; Utah Power & Light Co., et al.

Take notice that the following filings have been made with the Commission:

1. Utah Power & Light Company

[Docket No. ER86-300-000]

February 24, 1986

Take notice that on February 14, 1986, Utah Power & Light Company (UP&L) submitted for filing with the Commission three contracts covering transactions with other electric systems, principally relating to the transfer of power and energy through UP&L's Mona Substation in Central Utah. The three contracts are as follows:

1. Bonanza Project Interconnection Agreement between Deseret Generation & Transmission Cooperative (Deseret) and UP&L, dated November 19, 1985.

2. Transmission Service Agreement between UP&L, Intermountain Consumer Power Association and Deseret, dated December 28, 1980.

3. Preliminary Mona Substation Interconnection Agreement among Intermountain Power Agency (IPA), Deseret, and UP&L, dated December 22, 1982.

The Bonanza Project Interconnection Agreement provides that Deseret will transmit power and energy from the Bonanza generating plant in Northeastern Utah over Deseret's 345 kV line to UP&L's Mona Substation in Central Utah. From that point, UP&L will wheel power and energy to the respective systems of the entities comprising Deseret (the agreement was entered into by Deseret for itself and as agent for 27 power purchasers—21 municipal and 6 cooperative systems). In addition, UP&L and Deseret are interconnected at UP&L's UMPALCO Substation in Northeastern Utah at 138 kV.

An additional agreement between UP&L and IPA is expected to be signed and filed with the Commission in the near future. That contract will relate primarily to power and energy to be generated at the IPP generating plant in West-Central Utah which is expected to go into commercial operation in mid-1986.

UP&L requests that the notice requirements of 18 CFR § 35.3 be waived and that the agreements be made effective upon acceptance for filing as provided in the contracts. Copies have been served upon Deseret, IPA, the Utah Public Service Commission, and all others required to be served.

Comment date: March 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Northern California Power Agency

[Docket No. EL86-23-000]

February 25, 1986.

Take notice that on January 24, 1986 Northern California Power Agency (NCPA) tendered for filing a Motion for leave to intervene and a request for clarification in Docket No. ER86–232–000. The Commission, by letter dated February 13, 1986, assigned NCPA's filing to Docket No. EL86–23–000, insofar as it deemed the filing to be essentially a petition for declaratory order.

NCPA asks that the Commisson clarify to what extent changes to interconnection agreements are required to be filed under part 35 of the Commission's Regulations. NCPA requests this clarification because it said Pacific Gas & Electric's (PG&E) position, that implementation of their agreement requires such filings, hampers NCPA's efforts to obtain the full benefit of the agreement. NCPA further states that, while the instant filing has not caused any problems to NCPA, it is appropriate for the Commission to address this question so that future disputes may be avoided.

Comment date: March 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. EC86–15–000]

February 24, 1986.

Take notice that on February 18, 1986, Kansas City Power & Light Company (Applicant) filed an Application for authority to sell a substation and associated facilities and for approval of an interim lease of those facilities to the City of Salisbury, Chariton County, Missouri. The Application is filed pursuant to section 203 of the Federal Power Act and involves property in excess of $50,000.00.

Applicant is incorporated under the laws of the State of Missouri with its principal place of business in Kansas City, Missouri.

The sale will facilitate the eligibility of the City of Salisbury to receive service under a Municipal Participation Agreement, approved December 23, 1985, by the Federal Energy Regulatory Commission in Docket No. ER–86–172–000. The property involved in the proposed sale and interim lease will be needed solely by the City of Salisbury and will not be used or necessary in serving other wholesale or retail customers of Kansas City Power & Light Company.

Comment date: March 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER86–309–000]

February 24, 1986.

Take notice that ARIZONA PUBLIC SERVICE COMPANY (APS) on February 19, 1986, tendered for filing Amendment Number 1 to the Wholesale Power Supply Agreement between ARIZONA PUBLIC SERVICE COMPANY and the BUREAU OF INDIAN AFFAIRS on Behalf of the Colorado River Indian Irrigation Project (CRIIP), FPC Rate Schedule No. 65.

The current rate of service to CRIIP contains provisions for the application of a sales tax charge. This charge is to cover the "Arizona Transaction Privilege (Sales Tax)". The Sales Tax law has been amended which now exempts the collection of this tax from CRIIP which is anticipated to be $35,000.00 for calendar 1986 billings.

Arizona Public Service Company requests this Amendment to become effective on the date it is accepted for filing by FERC.

Copies of this filing have been served upon the Arizona Corporation Commission and CRIIP.

Comment date: March 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER86–310–000]

February 24, 1986.

TAKE NOTICE that ARIZONA PUBLIC SERVICE COMPANY (APS), on February 19, 1986, tendered for filing Amendment Number 1 to the Wholesale Power Supply Agreement between ARIZONA PUBLIC SERVICE COMPANY and the BUREAU OF INDIAN AFFAIRS on Behalf of the San Carlos Indian Irrigation Project (SCIIP), FPC Rate Schedule No. 66.

The current rate for service to SCIIP contains provisions for the application of a sales tax. This charge is to cover the "Arizona Transaction Privilege (Sales Tax)". The Sales Tax law has been amended which now exempts the collection of this tax from SCIIP which is anticipated to be $340,000.00 for calendar 1986 billings.

Arizona Public Service Company requests this Amendment to become effective on the date it is accepted for filing by FERC.

Copies of this filing have been served upon the Arizona Corporation Commission and SCIIP.

Comment date: March 10, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4557 Filed 2–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9587–000, et al.]

Hydroelectric Applications (Patterson Creek Associates, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9587–000.

c. Date Filed: November 1, 1985.

d. Applicant: Patterson Creek Associates.

e. Name of Project: Patterson Creek.

f. Location: In Challis National Forest, on Patterson Creek in Lemhi County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–285(r).

h. Contact Person: Mike Graham, 484 East 300 North Manti, UT 84642.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion dam on Patterson Creek at elevation 6,800 feet; (2) a 5,280-foot-long, 34-inch diameter penstock to the bifucation; (3) an 8-foot-high diversion dam on the East Fork of Patterson Creek at elevation 6,800 feet; (4) a 3,300-foot-long, 24-inch-diameter penstock to the bifurcation; (5) an 8,715-foot-long, 42-inch-diameter penstock from the bifurcation to; (6) the powerhouse containing two generating units with a combined capacity of 3,000 kW and an average annual generation of 15 GWh; and (7) a 660-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9642–000.

c. Date Filed: November 25, 1985.

d. Applicant: Hydrodynamics, Inc.

e. Name of Project: East Bench.

f. Location: On Rock Creek Clear Creek Ditch in Carbon County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–285(r).

h. Contact Person: Susan Young, POB 413, Red Lodge, MT 59068.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 5,820 feet; (2) a 3,500-foot-long, 32-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 350 kW and an average annual generation of 1.4 GWh; and (4) a 4,000-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC

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license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9644-000.

c. Date Filed: November 25, 1985.

d. Applicant: Hydrodynamic, Inc.

e. Name of Project: Scotch Coulee.

f. Location: On Rock Creek Clear Creek Ditch in Carbon County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–285(r).

h. Contact Person: Susan Young, POB 413, Red Lodge, MT 59068.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at elevation 5,860 feet; (2) a 6,600-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 500 kW and an average annual generation of 2.0 GWh; and (4) a 6,400-foot-long transmission line.

A preliminary does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $15,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9645-000.

c. Date Filed: November 25, 1985.

d. Applicant: Hydrodynamics, Inc.

e. Name of Project: Lower South Fork.

f. Location: On the South Fork Dry Creek in Carbon County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–285(r).

h. Contact Person: Susan Young, POB 413, Red Lodge, MT 59068.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at elevation 4,615 feet; (2) a 8,400-foot-long, 28-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 500 kW and an average annual generation of 2.4 GWh; and (4) a 300-foot-long transmission line.

A preliminary does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $9,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9643-000.

c. Date Filed: November 25, 1985.

d. Applicant: Richard L. Hamm.

e. Name of Project: Tony Creek.

f. Location: On Tony Creek in Sanders County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–285(r).

h. Contact Person: Susan Young, POB 413, Red Lodge, MT 59068.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at elevation 2,880 feet; (2) a 2,700-foot-long, 6-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 100 kW and an average annual generation of 0.5 GWh; and (4) a 100-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

6. a. Type of Application: Preliminary Permit.

b. Project No.: 9680-000.

c. Date Filed: December 13, 1985.

d. Applicant: The Burlington Energy Development Associates.

e. Name of Project: Wynantskill.

f. Location: On Wynantskill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson and Mr. Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: April 4, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 110-foot-long concrete gravity dam; (2) a reservoir with a surface area of 10 acres, a storage capacity of 44 acre-feet, and a normal water surface elevation of 251 feet m.s.l.; (3) a new concrete intake structure; (4) a new 42-inch-diameter, 1,225-foot-long steel penstock; (5) an existing 13-foot-wide, 10-foot-hight concrete surge tank; (6) a new concrete powerhouse containing six generating units with a capacity of 94.5 kW each for a total installed capacity of 567 kW; (7) a new transmission line, 500 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,170,000 kWh. The existing dam is owned by Campbell's 9 Acres, Inc., Wynantskill, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $35,000.

7. a. Type of Application: Preliminary Permit.

b. Project No.: 9486-001.

c. Date Filed: October 2, 1985.

d. Applicant: Waltham Hydro Conservationists.

e. Name of Project: Moody Street.

f. Location: On the Charles River, In Middlesex County, in the city of Waltham, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Waltham Hydro Conservationists, Mr. Louis Rosenman 1350 New York Avenue, NW #600, Washington, DC 20005.

i. Comment Date: April 4, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing stone block masonry dam, 10 feet high and 150 feet long with 3-foot flashboards; (2) an existing reservoir with a storage capacity of 750 acre-feet and water surface area of 260 acres at normal water surface elevation of 34.8 feet m.s.l.; (3) an existing fish passage

facility; (4) a new intake structure; (5) a new 6-foot-diameter penstock, 425 feet long; (6) a new powerhouse, approximately 30 feet square, housing a turbine/generator with an installed capacity of 364 kW; (7) a new 20-foot-long tailrace; (8) a proposed 64.5-kV transmission line, approximately 150 feet long; and (9) appurtenant facilities. Applicant estimates that the average annual generation would be 1.8 GWh. The owner of the dam is the Metropolitan District Commission of Massachusetts.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Boston Edison Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, the Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $145,000.

8. a. Type of Application: Preliminary Permit.

b. Project No.: 9501-000.

c. Date Filed: October 1, 1985.

d. Applicant: Sheridan Hydro Associates.

e. Name of Project: North Piney Creek.

f. Location: On North Piney Creek in Sheridan County, Wyoming within the Bighorn National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Attorney at Law, 1350 New York Avenue, NW #600 Washington, D.C. 20005 (202) 783–2100.

i. Comment Date: April 4, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 80-foot-long, concrete diversion structure at elevation 6,200 feet; (2) a 36-inch-diameter, 6,000-foot-long steel penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 6,000 kW, 8producing an estimated average annual energy output of 10.5 GWh; (4) a 20-foot-long, 10-foot-wide concrete tailrace; and (5) a 3,500-foot-long, 12.5 kV transmission line tying into an existing Montana-Dakota line.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $145,000.

k. Purpose of Project: Project power would be sold to Montana-Dakota Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project: No.: 9542–000

c. Dated Filed: October 11, 1985.

d. Applicant: City of Gilbert, Arizona.

e. Name of Project: Roosevelt Turnout.

f. Location: On the Granite Reef Turnout to Roosevelt Canal, near Mesa, partially within lands administered by the Bureau of Land Management, in Maricopa County, Arizona (Sections 1, 2, 3, & 4 of TIN, R6E and Section 6 of TIN, R7E, S.R.M.&B.)

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kent Cooper, City Manager, City of Gilbert, Gilbert, AZ 85234, (602) 892–0800.

i. Comment Date: April 4, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A diversion structure at elevation 1,570 feet msl; (2) a 54-inch-diameter, 18,840-foot-long concrete and steel penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,600 kW and operating under a head of 168 feet; and (4) a 69-kV, 300-foot-long transmission line interconnecting the project to an existing Salt River Power District line. The project's estimated average annual generation of 10.368 GWh would be sold to a utility yet to be determined.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $53,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B., C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project: No.: 9713–000.

c. Dated Filed: December 23, 1985.

d. Applicant: Alpine Hydroelectric Company.

e. Name of Project: Alpine Water.

f. Location: On the Cascade Alpine Brook in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Harold Turner, P.O. Box 7191, Concord, NH 03301.

i. Comment Date: April 4, 1986.

j. Decription of Project: The proposed project would consist of: (1) An existing 21-foot-high and 125-foot-long concrete dam with a spillway crest elevation of 1,220 feet msl; (2) an existing 1-acre reservoir with a storage capacity of 5 acre-feet at 1,220 feet msl; (3) a proposed 12-inch-diameter steel penstock 1,200 feet long; (4) a proposed powerhouse to contain one turbine/generator for an installed capacity of 100 kW; (5) a proposed tailrace 5 feet wide and 15 feet long; (6) a new transmission line 50 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 475,000 kWh under a hydraulic head of 305 feet. The dam is owned by the James River Corporation.

k. Purpose of Project: Project power will be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B,. C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Application estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

11 a. Type of Application: Preliminary Permit.

b. Project: No.: 9492–000.

c. Dated Filed: October 1, 1985.

d. Applicant: Easton Associates.

e. Name of Project: Silver Creek.

f. Location: On Silver Creek, tributary to the Yakima River, near the town of Easton, in Sections 35 and 36 T21N., R13E, in Kittitas County, Washington, and affecting U.S. lands within the Wenatchee National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high, 35-foot-long, concrete-

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gravity, overflow-type diversion dam at elevation 3,680.0 feet msl; (2) a small reservoir; (3) a 28-inch-diameter, 5,500-foot-long buried penstock; (4) a powerhouse containing a generating unit rated at 2,817-kWh at a flow of 36 cfs and at a net head of 1,221 feet; (5) a 2,400-v/69-kV switchyard; and (6) a 53,859-foot-long, 69-kV transmission line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $15,000.

k. Purpose of Project: Applicant intends to sell the power produced at the site to local municipalities or to the local power company. Applicant estimates that the average annual energy production would be 9,870,460-kWh

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B,. C, and D2.

12 a. Type of Application: Preliminary Permit.

b.Project: No.: 9500–000.

c. Dated Filed: October 1, 1985.

d. Applicant: Tongue River Hydro Partners I.

e. Name of Project: South Tongue River.

f. Location: On South Tongue River in Sheridan County, Wyoming within the Bighorn National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Attorney at Law, 1350 New York Avenue, #600, Washington, D.C. 20005, (202) 783–2100.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 100-foot-long concrete diversion structure at elevation 6,8000 feet; (2) a 60-inch-diameter, 8,000-foot-long steel penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 4,300 kW, producing an estimated average annual energy output of 10.5 GWh; (4) a 10-long-wide, 20-foot-long concrete tailrace; and (5) a 5-mile-long, 64–kV transmission line tying into a Montana-Dakota Utility line.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $145,000.

k. Purpose of Project: Project power would be sold to Montana-Dakota Utility Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project: No.: 9730–000.

c. Date Filed: December 26, 1985.

d. Applicant: Summit Hydropower.

e. Name of Project: Whitman River Water Power.

f. Location: On the Whitman River in Worcester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Duncan Broatch, P.O. Box 122, Putnam, CT 06260.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high and 60-foot-long granite dam with a spillway crest elevation of 661 feet msl; (2) an existing 8-acre reservoir with a storage capacity of 20-acre-feet at 661 feet msl; (3) an existing penstock 400 feet long to be rehabilitated; (4) an existing powerhouse to be rehabilitated to contain one new turbine-generator for an installed capacity of 282 kW; (5) an existing tailrace; (6) an existing 13.4-kV three phase transmission line approximately 125 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 1,000,000 kWh under a hydraulic head of 70 feet. The dam is owned by the James River Massachusetts, Inc.

k. Purpose of Project: Project power will be sold to the Fitchburg Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

14 a. Type of Application: Preliminary Permit.

b. Project: No.: 9656–000.

c. Dated Filed: December 2, 1985.

d. Applicant: Marble Creek Hydro, Inc.

e. Name of Project: Marble Creek.

f. Location: In St. Joe National Forest, on Marble Creek in Shoshone County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: James R. Morris, P.O. Box 1016, Lewiston, ID 83501.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion weir at elevation 1,560 feet; (2) a 4,150-foot-long, 84-inch-diameter steel conduit; (3) a powerhouse containing two generators with a combined capacity of 3.95 MW and an average generation of 17,301 MWh; and (4) a 1.8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $385,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9491–000.

c. Date Filed: October 1, 1985.

d. Applicant: Fall Creek Associates.

e. Name of Project: Fall Creek.

f. Location: At the U.S. Army Crops of Engineers' Fall Creek Dam on Fall Creek, a tributary to the Willamette River, near Springfield, in Lane County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Conact Person: Mr. J. Kirk Rector, 5041 S. Boabab Drive, Salt Lake City, UT 84117.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would utilize the existig Corps of Engineers' Fall Creek Dam and would consist of: (1) A 550–foot-long, 10 -foot-diameter steel penstock; (2) a bifurcation; (3) a powerhouse containing a generating unit rated at 1.4-kW at an operating head of 85 feet; (4) a short 13.8-kW transmission line; and (5) a tailrace.

A preliminary permit if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and

environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $105,000.

k. Purpose of Project: Project energy would be sold to Lane Electric Cooperative. Applicant estimates that the average annual energy production would be 6.3–GWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9543–000.

c. Date Filed: October 11, 1985.

d. Applicant: Rim View Trout Company.

e. Name of Project: Rim View.

f. Location: On Niagra Springs a tributary to the Snake River in Gooding County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Conact Person: Vernon Ravenscroft, Consulting Associates, Inc., P.O. Box 893, Boise, ID 83701.

i. Comment Date: April 4, 1986.

j. Description of Project: The proposed project would consist of: (1) A 50-foot-long, 80-inch-diameter penstock from the hatchery's existing intake facilities; (2) a powerhouse containing a single generating unit; (3) an 80-inch-diameter penstock from the hatchery's outflow facilities; (4) a second powerhouse also containing a single generative unit. The combined capacity would be 548 kw with an average annual generation of 4,567,113 kwh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $23,100. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

17 a. Type of Application: License (5MW or Less).

b. Project No.: 9028–000.

c. Date Filed: March 15, 1985.

d. Applicant: Halifax County, Virginia, Synergics, Inc., and Banister Hydro Associates.

e. Name of Project: Halifax Hydropower Project.

f. Location. On the Banister River in Halifax County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, MD 21403, 301–268–8820.

i. Comment Date: April 7, 1986.

j. Description of Project: The existing dam is owned by the City of Halifax, Virginia. The proposed project would consists of: (1) A dam which consist of a 246-foot-long section of steel coffercells filled with earth and rock, a 56-foot-long concrete, non-overflow section, a 293-foot-long gated spillway section, and a 74-foot-long existing powerhouse constructed integrally with the dam. The powerhouse would contain three proposed generators, two rated at 455 kW and one rated at 875 kW. The dam is 37 feet high; (2) an existing reservoir with a surface area of 400 acres and a storage capacity of 3,510 acre-feet at powerpool elevation of 351.3 feet m.s.l.; (3) a proposed 300-foot-long, 13.2 kV transmission line; and (4) appurtenant facilities. The estimated average annual generation is 6.1 GWh.

k. Purpose of Project: Power produced at the project would be sold to the Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

18 a. Type of Application: Major License.

b. Project No.: 4715–003.

c. Date Filed: May 31, 1985.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Felts Mills.

f. Location: On the Black River in Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Donald E. Hamer, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170 (212) 983–2006.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would consist of the following:

(A) the Upper Dam development would consist of: (1) A 20-foot-high, 361-foot-long concrete gravity dam; (2) an existing reservoir with a water surface area of 50 acres, a gross storage capacity of 690 acre-feet, and a water surface elevation of 608.90 feet USGS; (3) a new 500-foot-long earth power canal; (4) a new powerhouse containing two generating units with an installed generating capacity of 3,560 kW each for a total installed generating capacity of 7,120 kW; (5) a new 85-foot-wide, 100-foot-long earth tailrace; (6) a new transmission line, 400 feet long; and (7) appurtenant facilities.

(B) The Middle Dam, located 1.4 miles downstream from the Upper Dam development, would consist of: (1) A 20-foot-high, 879-foot-long concrete gravity dam to be partially demolished; and (2) a reservoir with a water surface area of 46 acres, a gross storage capacity of 350 acre-feet, and a water surface elevation of 590.50 feet USGS.

(C) The Lower Dam development, located 1.1 miles downstream from the Middle Dam, would consist of: (1) A 20-foot-high, 2,460-foot-long concrete gravity and earth embankment dam; (2) a reservoir with a water surface area of 17 acres, a gross storage capacity of 300 acre-feet, and a water surface elevation of 576.20 feet USGS; (3) a new concrete intake gate; (4) a new powerhouse containing two generating units with an installed generating capacity of 4,720 kW each for a total installed generating capacity of 9,440 kW; (5) a new 75-foot-wide, 600-foot-long earth tailrace; (6) a new transmission line, 2,400 feet long; and (7) appurtenant facilities.

The project would have a total installed generating capacity of 16,560 kW. The Applicant estimates that the average annual generation would be 76,551,000 kWh. The existing dams are owned by the Niagara Mohawk Power Corporation. This license application was filed pursuant to a preliminary permit held by the Applicant.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs; A3, A9, B, and C.

19 a. Type of Application: Preliminary Permit.

b. Project No: 9841–000.

c. Date Filed: December 31, 1985.

d. Applicant: Dennis K. and Patricia A. Rathbun.

e. Name of Project: Ladies Canyon Creek Project.

f. Location: On Ladies Canyon Creek in Sierra County, California; Section 26, T.20N., R.11E., MDB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dennis Rathbun, 4608 North Chealea Lane, Betheada, MD 20814 (301) 951–8773.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 9344, Date Filed: 07–12–85.

k. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 45-foot-long diversion dam located at elevation 4,520 feet msl; (2) a 14-inch-diameter, 1,500-foot-long low pressure conduit; (3) a 12-inch-diameter, 1,500-foot long penstock; (4) a powerhouse with a total installed

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capacity of 350 kW; and (5) a 1,000-foot-long, 12.5-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The estimated 2.4 GWh generated annually by the proposed project would be sold to PG&E. The project would be partially located on the Tahoe National Forest lands.

l. Purpose of Project: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $20,000.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specifiy which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents.*—Any filings must bear in all capital letters the title "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly indentified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's reapresentatives.

Dated: February 26, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4558 Filed 2–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86–299–000 et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co. et al.

February 26, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP86–299–000]

Take notice that on January 30, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86–299–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a one-year limited-term transportation of natural gas for Mountain Industrial Gas Company (MIG) on behalf of Exxon Company USA (Exxon), the sale of fuel reimbursement gas and the construction and operation of an interconnection with Stauffer Wyoming Pipeline Company (Stauffer), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Exxon would purchase up to 30,000 Mcf on natural gas per day (Mcfd) from MIG for use in the start-up of Exxon's Shute Creek processing plant in Lincoln County, Wyoming. It is further stated that MIG has requested that CIG transport to 30,000 Mcfd, on an interruptible basis, for it on behalf of Exxon. It is explained that the natural gas would be delivered to CIG for MIG's account at five receipt points in Colorado and Wyoming. CIG would then redeliver thermally equivalent volumes, less an allowance for fuel requirements, to Stauffer at redelivery points in Sweetwater County, Wyoming. It is stated that Stauffer would then transport and deliver the natural gas to Exxon for use as fuel in the start-up of its Shute Creek Plant.

CIG indicates that it proposes to construct an interconnection with Stauffer in Sweetwater County, Wyoming, at an estimated cost of $19,700. CIG further indicates that the new intereonnection with Stauffer would be required to effectuate redelivery of the proposed transportation volumes because there is insufficient capacity at the existing CIG/Stauffer interconnection to redeliver the maximum volumes contemplated under the proposal.

CIG states that it proposes to charge MIG 32.62 cents per Mcf for redelivery volumes plus a Gas Research Institute surcharge of 1.35 cents per Mcf. CIG further states that the transportation rate would be equivalent to CIG's Rate Schedule EUS–2 rate which is subject to final Commission action in Docket No. RP86–122–000. CIG indicates that it proposes to either redeliver thermally equivalent volumes, less an allowance for fuel reimbursement, or redeliver thermally equivalent volumes and sell MIG the fuel requirement volumes. It is stated that the sale of any fuel requirement volumes would be at a rate equal to CIG's then current weighted average cost of gas.

Comment date: March 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP86–296–000]

Take notice that on January 19, 1986, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1624, Houston, Texas 77001, filed in Docket No. CP86–296–000 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of three compressors at the Hemphill compressor station, Dewey County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authority to install three 779 horsepower (site rated) compressor units at the Hemphill compressor station. Panhandle requests that the design capacity at the Hemphill compressor station be increased from 47 million cubic feet per day (Mcfd) to 67.9 Mcfd. Panhandle states that additional horsepower is required at the Hemphill compressor station to compress the projected winter 1986–87 average day flow of 60,000 Mcf of gas per day of currently attached gas supply and that the existing compressor can only compress up to 47,000 Mcf of natural gas per day to pipeline specifications. The estimated cost of these compression facilities is $2,000,000, which would be financed with company cash on hand and short-term bank borrowing as necessary.

Comment date: March 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

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3. Southern Natural Gas Company

[Docket No. CP86-308-000]

Take notice that on February 6, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86-308-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Alabama Gas Corporation (Alagasco), acting as agent for certain of its industrial end-use customers (End-Users), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 50 billion Btu of natural gas per day on behalf of Alagasco, acting as agent for the End-Users, for a term of one year from the date of the Commission's order. It is stated that Alagasco, as agent for the End-Users, would purchase such gas from SNG Trading, Inc. It is explained that Applicant would receive the gas at existing points of interconnection on Southern's system as specified in Exhibit A to the transportation agreement and deliver it to Alagasco for further transportation to the respective plants of the End-Users (See appendix for list of End-Users and volumes to be transported).

Applicant states that Alagasco has agreed to pay the following transportation charge:

(a) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Alagasco under any and all transportation agreements with Applicant, excluding that certain long-term transportation agreement among Applicant, Alagasco, and Alabama Intrastate Supply, dated October 1, 1984, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to Alagasco do not exceed the daily contract demand of Alagasco, the transportation rate would be 39.9 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Applicant on any day to Alagasco under any and all transportation agreements with Applicant, excluding that certain long-term transportation agreement among Applicant, Alagasco, and Alabama Intrastate Supply, dated October 1, 1984, when added to the volumes of gas delivered under Applicant's OCD Rate Schedule on such day to Alagasco exceed the daily contract demand of Alagasco, the transportation rate for the excess volumes would be 64.9 cents per million Btu.

Applicant proposes to charge Alagasco the currently effective GRI surcharge. Applicant also proposes to retain 3.25 percent of the volume transported for fuel use.

Applicant also requests flexible authority to provide transportation from additional delivery points in the event Alagasco obtains alternative sources of supply of natural gas.

Applicant states that the transportation service would enable the End-users to diversify their natural gas supply sources and to obtain gas at competitive prices. In addition, Applicant states that it would obtain take-or-pay relief on the gas that Alagasco may obtain from Applicant's suppliers.

APPENDIX

End-users	Agency agreement date	Estimated transportation quantity[1]
ANNISTON AREA		
Lee Brass, Anniston, AL	Feb. 3, 1986	550
Monsanto Co. Anniston, AL	do	1,846
C.M. Offray, Anniston, AL	do	352
McWane, Inc., Anniston, AL	do	800
BIRMINGHAM AREA		
Allied Chemical, Fairfield, AL	do	500
A.P. Green, Birmingham, AL	do	310
Berman Iron & Metal Co., Birmingham, AL	do	300
Bickerstaff Clay Products Co., Bessemer, AL	do	1,150
Dickey Co., Birmingham, AL	do	860
Golden Flake, Inc., Birmingham, AL	do	407
SMI Steel, Inc., Birmingham, AL	do	1,000
Stockham Valves & Fittings, Birmingham, AL	do	447
U.S. Pipe & Foundry, Bessemer, AL	do	1,546
U.S. Pipe & Foundry, Birmingham, AL	do	1,214
GADSDEN AREA		
Culp Smelting & Refining Co., Inc., Gadsden, AL	do	359
Goodyear Tire & Rubber Co., Gadsden, AL	do	6,000
LEEDS AREA		
ILCO, Inc., Leeds, AL	do	400
MONTGOMERY AREA		
Brockway Glass Co., Inc., Montgomery, AL	do	4,382
Excelsior Brick Co., Montgomery, AL	do	400
Gurney Industries, Montgomery, AL	do	386
Jenkins Brick Co., Montgomery, AL	do	910
Rheem Manufacturing Co., Montgomery, AL	do	503
Union Camp Corp., Montgomery, AL	do	9,000
OPELIKA AREA		
Uniroyal, Inc., Opelika, AL	do	1,440
West Point Pepperell, Opelika, AL	do	1,760
Ampex Corp., Opelika, AL	do	844
FAIRFAX-SHAWMUT AREA		
West Point Pepperell, Langdale, AL	do	470
SELMA AREA		
Henry Brick, Selma, AL	do	385
TUSCALOOSA AREA		
B.F. Goodrich Co., Tuscaloosa, AL	do	2,600
Phifer Wire Products, Inc., Tuscaloosa, AL	do	346
Tamko Asphalt, Inc., Tuscaloosa, AL	do	350
GREENE-HALE		
Southern Reels, Moundville, AL	do	500

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[1] The Transportation Quantity is an estimated average daily volume in million Btu for each End-user, and, therefore, the total of these quantities does not exactly equal the transportation quantity in the agreement.

Comment date: March 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordnce with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4559 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL86-22-000]

Airco, Inc., et al; Complaint

February 26, 1986.

Take notice that on February 6, 1986, Airco, Inc. and S.K.W. Alloys tendered for filing a complaint pursuant to section 206 of the Commission's rules of practice and procedure (18 CFR 385.206). Airco and S.K.W. file this complaint seeking an order to compel Niagara Mohawk Corporation (Niagara Mohawk) to refund to the power authority of the State of New York (Power Authority) for ultimate refund to Airco, S.K.W. and all similarly situated industries, all amounts collected in excess of the rates on file with the Commission for Fitzpatrick Nuclear Power (Fitzpatrick Power) transmission service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commissions' rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection. Complainants state that the filing has been served on Niagara Mohawk. Niagara Mohawk's answer is due on or before March 28, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4560 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI68-690-001; CI75-361-000]

Applications for Partial Limited-Term Abandonment Authorizations; ARCO Oil and Gas Co., et al.

February 26, 1986.

Take notice that on February 19, 1986, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Applicant), P.O. Box 2819, Dallas, Texas 75221 filed applications for expedited partial limited-term abandonment of sales of gas to Natural Gas Pipeline Company of America (NGPL). The sales were made pursuant to contracts dated September 1, 1967, certificated in Docket Nos. CI68-690 and CI75-361, which are on file as Applicant's FERC Gas Rate Schedule No. 609 and 688, respectively.

Applicant proposes to abandon for a limited-term sales of gas from its interest in the Tubb Estate #1-25 Well, which was recompleted in February 1984 as an NGPA section 104 recompletion well with an expected optimal flow rate of 18–24 MMcf/d. Applicant states that the well produces sour gas and that NGPL has applied for an EPA permit to install a 1.5 MMcf/d sweetening facility. However, a local landowner has protested the proposed facility and it is unknown when, if ever, Natural will be granted a permit for such facility. Applicant states that these filings are made with NGPL's knowledge, and that Applicant is exercising its right pursuant to Article Four, (a) of the referenced contract that reads in part:

"Seller (ARCO) shall have the right to take gas from the gas reserves for the sale of gas to others on an interim basis, provided that any arrangement entered into by Seller pursuant thereto shall be intrastate in nature, and shall, by its terms, be expressly terminable by Seller and shall be terminated by Seller on or before the date Pipeline (NGPL) completes the construction of facilities adequate to enable the receipt of the applicable quantity hereunder".

Applicant states that NGPL is also aware of Applicant's intent to deliver such gas to Lyondell Petrochemical Company, Division of Atlantic Richfield Company (Lyondell) until such time as NGPL is ready to take the gas. Applicant further states that NGPL has stated that it will not oppose this filing. Applicant also states that abandonment authorization will allow it to produce and deliver the gas from the Tubb Estate #1-25 well to Lyondell on the basis of in interdivision transfer or to sell to intrastate purchasers. Therefore, Applicant contends that abandonment in this instance will benefit the overall market by making otherwise shut-in gas available in competition with other gas, the ultimate effect of which will be to lower prices, or at least keep prices low, for consumers. It is asserted that at the same time there will be no adverse effect on NGPL or its customers, because NGPL cannot accept deliveries of production of gas from the well, and may never be able to accept such delivery. Applicant states that the effect of granting the requested limited-term, partial abandonment in this case will cause, to quote Felmont Oil Corporation and Essex Offshore, Inc. (33 FERC ¶ 61,333): "a shift in the identification of the public interest, from the interest of only specific customers to the interests of the market as a whole." Applicant avers that clearly, it is in the interest of the market as a whole to permit abandonment of the production from the Tubb Estate #1-25; and, whether the specific customers of NGPL would ever benefit from its production is speculative. Therefore, Applicant states the public interest compels a "shift" in this case.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1986, file wtih the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4561 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-287-000]

Filing of Executed Letter Agreement; Cambridge Electric Light Co.

February 24, 1986.

Take notice that on February 6, 1986, Cambridge Electric Light Company (Cambridge) tendered for filing an executed letter agreement between Cambridge and Town of Belmont, Massachusetts (Belmont) requesting the Commission to allow such agreement to become effective as proposed on July 1, 1985, the date upon which New York Power Authority (NYPA) power was first delivered by Cambridge to Belmont.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

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North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4562 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-48-000]

Columbia Gas Transmission Corp. et al.; Complaint

February 26, 1986.

Take notice that on February 11, 1986, Columbia Gas Transmission Corp. (Columbia) tendered for filing a Complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) rules of practice and procedure.[1] In its Complaint, Columbia requests that the Commission find the minimum commodity bill provision contained in Transcontinental Gas Pipe Line Corporation's (Transco) Rate Schedule CD unjust, unreasonable, and unduly discriminatory under the Natural Gas Act. Columbia asserts that Transco's minimum bill is contrary to the objections of Order Nos. 436 [2] and 436-A [3] which encourage competition within the natural gas industry. Specifically, Columbia alleges that Transco's minimum bill thwarts Columbia's ability to compete for joint customers of Columbia and Transco; the minimum bill sends improper market signals as to the true market value of natural gas; and that Columbia is burdened with unwarranted expenditures unrelated to Transco's cost of providing service to Columbia. In addition, Columbia contends that Transco's minimum bill should be eliminated on the basis of recent Commission precedent.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure.[4] All such motions or protests should be filed on or before March 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4563 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-311-000, et al.]

Application and Filing of Settlement; Consolidated Gas Transmission

February 24, 1986.

Take notice that on February 10, 1986, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-311-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436. Applicant states that it accepts and would comply with the conditions in paragraph (c) of 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

It is indicated that the application for a blanket transportation certificate is filed pursuant to a proposed settlement in *Consolidated Gas Transmission Corporation*, Docket No. RP85-169-000, RP81-80-000, and RP82-115-000 (settlement) which was filed concurrently with the application herein and revised on February 19, 1986. Applicant states that pursuant to that settlement, upon receipt of (a) a Commission order approving the settlement in accordance with the terms thereof, and (b) a Commission order approving the blanket certificate application in accordance with the terms thereof, Applicant would accept such blanket certificate. Applicant indicates that immediately thereafter, it and its customers would execute new service agreements in the same form and substance as those currently in effect, except that such new service agreements would contain the language in the form prescribed in Appendix E to the settlement. Applicant states that the parties agree to execute new service agreements, in accordance with the provisions of Article VI of the settlement prior to the exercise of any rights under §§ 284.10(c) 284.10(d) of the Commission's Regulations, such that the new service agreements are not "eligible firm sales service agreements" as defined in § 284.10(b) of the Commission's Regulations. Applicant states that, accordingly, pursuant to § 284.10(b), the provisions of § 284.10(c) of the Commission's Regulations regarding contract demand conversions and reductions did not apply to Applicant's transportation service. It is also indicated that although not required under Order No. 436, the new service agreements provide that Applicant's sales customers would have the right to contract demand reductions or conversions commencing January 1, 1989. Additionally, the settlement provides that the sole supplier clauses contained in Applicant's full requirements contracts shall be waived to the extent that Applicant provides transportation service as provided in the settlement.

The settlement contains transportation rates and conditions which Applicant states reflect the requirements of Order No. 436. Applicant also states that it intends to provide firm and interruptible transportation service under proposed Rate Schedules TF and TI, respectively, to be included in its FERC Gas Tariff, Volume No. 1. The rate schedules are attached as Appendix C to the proposed settlement.

In addition, Applicant indicates that it is the understanding of Applicant and the parties to the settlement that Applicant's storage facilities are excluded from the non-discriminatory access provisions of the rules promulgated by Order No. 436, except to allow access to these facilities in order to assure firm transportation service. Applicant requests that the certificate issued should affirm that understanding.

The settlement also proposes to resolve the outstanding rate-of-return issue in Docket No. RP81-80-000 and terminate all remaining issues or proceedings in Docket No. RP82-115-000.

Any person desiring to be heard or to make protest with reference to said application should on or before March 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Comments on the proposed settlement are due not later than March 3, 1986. Reply comments, if any, are due not later than March 13, 1986.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4564 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-49-000]

East Ohio Gas v. Panhandle Eastern Pipe Line Co.; Complaint and Request for Summary Disposition

February 26, 1986.

Take notice that on February 10, 1986, the East Ohio Gas Company ("East Ohio"), pursuant to Rule 206 of the Commission's rules of practice and procedure and section 4 of the Natural Gas Act (15 U.S.C. 717c), submitted for filing a Complaint And Request For Summary Disposition against Panhandle Eastern Pipe Line Company ("Panhandle").

In its complaint East Ohio requests that the Commission, by summary disposition, order Panhandle to continue its practice of providing minimum bill credits for on-system transportation service, a practice which Panhandle has attempted to terminate unilaterally as of September 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4565 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-52-004]

Equitable Resources Energy; Application

February 24, 1986.

Take notice that on February 11, 1986, Equitable Resources Energy Company ("EREC") filed an application under the Natural Gas Act and the Federal Energy Regulatory Commission's ("Commission") Regulations, requesting that the Commission permit and approve the abandonment of certain sales of natural gas committed and dedicated to Kentucky West Virginia Gas Company ("Kentucky West"), and issue a certificate of public convenience and necessity to EREC authorizing the sale of natural gas from certain wells and leases in southwest Virginia to East Tennessee Natural Gas Company ("East Tennessee"), all as more fully set out in EREC's application.

EREC states that the gas sales to Kentucky West to be abandoned involves gas produced and sold from Dickenson County, Virginia. EREC states that the abandonment requested is in the public interest since Kentucky West has excess gas supplies and the abandonment will reduce Kentucky West's potential take-or-pay liability and lower Kentucky West's average gas costs. EREC further requests a certificate authorizing it to sell to East Tennessee the gas that will be abandoned. EREC states that the sale proposed herein will provide a stable gas supply and permit East Tennessee to diversify its supply sources.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 10, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4566 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5367-003]

Platte River Power Authority; Surrender of Exemption

February 26, 1986.

Take notice that Platte River Power Authority, Exemptee for the proposed Button Rock Project No. 5367, has requested that its exemption be terminated. The exemption was issued on April 13, 1984. The project would have been located on the North Fork St. Vrain Creek, in Boulder County, Colorado.

The Exemptee filed the request on January 21, 1986, and the exemption for Project No. 5367 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

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[1] 18 CFR 385.206.

[2] 50 FR 42408 (October 18, 1985). FERC Stats. & Regs. ¶ 30,665, 33 FERC ¶ 61,007 (1985).

[3] 50 FR 52217 (December 18, 1985). FERC Stats. and Regs., ¶ 30,675, 33 FERC ¶ 61,372 (1985).

[4] 18 CFR 385.214, 385.211.

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for under 18 CFR Part 4, may be filed on the business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4567 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2217-000]

Steven A. Rice; Notice of Application

February 25, 1986.

Take notice that on February 19, 1986, Steven A. Rice submitted for filing an application for authority to hold the following interlocking positions:

Director, Monongahela Power Company, Public Utility
Director, The Potomac Edison Company, Public Utility
Director, West Penn Power Company, Public Utility

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4568 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-256-000]

Tucson Electric Power Co.; Notice of Filing

February 24, 1986.

Take notice that on February 18, 1986, Tucson Electric Power Company tendered for filing a notice of cancellation of Rate Schedule FPC No. 9 and Supplement thereto. As a result of certain agreements reached by Tucson Electric Power Company and Arizona Electric Power Cooperative, Inc., the said Rate Schedule and Supplement No. 1 are no longer of any use or benefit. The wheeling arrangement was discontinued as of December 26, 1985.

The aforementioned Rate Schedule and Supplement thereto are identified as the "Tucson-AEPCO Electric Power Wheeling Agreement" and "Amendment No. 1 to the Tucson-AEPCO Electric Power Wheeling Agreement," respectively. The wheeling agreement was dated January 4, 1980. The termination date agreed to by the parties with respect to both the Agreement and Amendment No. 1 was December 26, 1985.

The only parties to the Rate Schedule and Supplement No. 1 thereto are Tucson Electric Power Company and Arizona Electric Power Cooperative, Inc. There are no other entities affected by this termination.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4569 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-784-000, et al.]

Valley Gas Transmission, Inc., et al.; Self-Implementing Transactions

February 25, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant of a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before March 14, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cent/MMBtu)
ST86-0784	Valley Gas Transmission, Inc	Interstate Gathering Corp	01-02-86	B		
ST86-0785	Equitable Gas Co	Columbia Gas of Pennsylvania, Inc	01-02-86	B		
ST86-0786	Texas Eastern Transmission Corp	Tuscan Dairy Farms, Inc	01-02-86	F(157)		
ST86-0787	Texas Eastern Transmission Corp	Archer Daniels Midland Co	01-02-86	F(157)		
ST86-0788	Texas Eastern Transmission Corp	Reichhold Chemical, Inc	01-02-86	F(157)		
ST86-0789	Texas Eastern Transmission Corp	Witco Chemical Corp	01-02-86	F(157)		
ST86-0790	Texas Eastern Transmission Corp	Celanese Corp	01-02-86	F(157)		
ST86-0791	Texas Eastern Transmission Corp	U.S. Gypsum Co	01-02-86	F(157)		
ST86-0792	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	01-02-86	B		
ST86-0793	Texas Eastern Transmission Corp	Battle Creek Gas Co	01-02-86	B		
ST86-0794	Texas Eastern Transmission Corp	Consumers Power Co	01-02-86	B		
ST86-0795	Texas Eastern Transmission Corp	FMC Corp	01-02-86	F(157)		
ST86-0796	Texas Eastern Transmission Corp	M&M/Mars	01-02-86	F(157)		
ST86-0797	Texas Eastern Transmission Corp	Milton Industries	01-02-86	F(157)		
ST86-0798	Trunkline Gas Co	Battle Creek Gas Co	01-06-86	B		
ST86-0799	Trunkline Gas Co	Consumers Power Co	01-06-86	B		
ST86-0800	Northwest Pipeline Corp	Washington Water Power Co	01-06-86	B		
ST86-0801	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	01-06-86	B		
ST86-0803	Texas Eastern Transmission Corp	Columbia Gas of Kentucky, Inc	01-06-86	B		
ST86-0804	Michigan Gas Storage Co	Consumers Power Co	01-06-86	B		
ST86-0805	Tennessee Gas Pipeline Co	Valley Gas Co	01-06-86	B		
ST86-0806	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	01-07-86	B		
ST86-0807	ANR Pipeline Co	Columbia Gas of Ohio, Inc	01-07-86	B		
ST86-0808	ANR Pipeline Co	Kimberly-Clark Corp	01-07-86	F(157)		
ST86-0809	Michigan Gas Storage Co	Battle Creek Gas Co	01-07-86	B		
ST86-0810	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-07-86	B		
ST86-0811	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-07-86	B		
ST86-0812	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-07-86	B		
ST86-0813	Valero Transmission Co	Pacific Gas and Electric Co	01-09-86	C		
ST86-0814	Texas Gas Transmission Corp	Michigan Gas Utilities Co., et al	01-09-86	B		
ST86-0815	Texas Gas Transmission Corp	Columbia Gas of Kentucky, Inc., et al	01-09-86	B		
ST86-0816	Texas Gas Transmission Corp	Consolidated Gas Transmission Corp	01-09-86	G		
ST86-0817	Texas Eastern Transmission Corp	American Distribution Co	01-09-86	B		
ST86-0818	Texas Eastern Transmission Corp	Battle Creek Gas Co	01-09-86	B		
ST86-0819	Texas Eastern Transmission Corp	Central Illinois Public Service Co	01-09-86	B		
ST86-0820	Texas Eastern Transmission Corp	National Gas and Oil Corp	01-09-86	B		
ST86-0821	Texas Eastern Transmission Corp	Texas Products Corp., Inc. (TPC)	01-09-86	B		
ST86-0822	Texas Eastern Transmission Corp	Philadelphia Gas Works	01-10-86	B		
ST86-0823	Trunkline Gas Co	Michigan Gas Utilities	01-10-86	B		
ST86-0824	ANR Pipeline Co	Northern Intrastate Pipeline Co	01-10-86	B		
ST86-0825	Michigan Gas Storage Co	Consumers Power Co	01-13-86	B		
ST86-0826	Delphi Gas Pipeline Corp	Philadelphia Electric Co	01-13-86	C		
ST86-0827	Texas Eastern Transmission Corp	Consolidated Edison Co., of NY, Inc	01-13-86	B		
ST86-0828	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	01-13-86	B		
ST86-0829	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	01-13-86	B		
ST86-0830	Texas Eastern Transmission Corp	Elizabethtown Gas Co	01-13-86	B		
ST86-0831	Texas Gas Transmission Corp	Mississippi Valley Gas Co	01-13-86	B		
ST86-0832	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-13-86	B		
ST86-0833	Texas Gas Transmission Corp	City of Elizabethtown	01-13-86	B		
ST86-0834	Texas Gas Transmission Corp	Carrollton Utilities	01-13-86	B		
ST86-0835	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-13-86	B		
ST86-0836	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	01-13-86	B		
ST86-0837	Texas Eastern Transmission Corp	Philadelphia Electric Co	01-13-86	B		
ST86-0838	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System	01-13-86	B		
ST86-0839	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	01-13-86	B		
ST86-0840	Colorado Interstate Gas Co	Public Service Co. of Colorado	01-13-86	B		
ST86-0841	Northwest Pipeline Corp	Cascade Natural Gas Corp	01-13-86	B		
ST86-0842	Panhandle Gas Co	Philadelphia Electric Co	01-14-86	D		
ST86-0843	Panhandle Gas Co	Philadelphia Gas Works	01-14-86	D		
ST86-0844	Panhandle Gas Co	Long Island Lighting Co	01-14-86	D		
ST86-0845	Panhandle Gas Co	Philadelphia Electric Co	01-14-86	D		
ST86-0846	Panhandle Gas Co	Philadelphia Electric Co	01-14-86	D		
ST86-0847	Panhandle Gas Co	Philadelphia Gas Works	01-14-86	D		
ST86-0848	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-14-86	B		
ST86-0849	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-14-86	B		
ST86-0850	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-14-86	B		
ST86-0851	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-14-86	B		
ST86-0852	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-14-86	B		
ST86-0853	Arkla Energy Resources	Memphis Light, Gas and Water Division	01-14-86	B		
ST86-0854	The Nueces Co	Colorado Interstate Gas Co	12-02-85	C	05-01-86	30.81
ST86-0856	Texas Eastern Transmission Corp	Creole Gas Pipeline Corp	01-15-86	B		
ST86-0857	Columbia Gulf Transmission Co	Lynchburg Gas Co	01-15-86	B		
ST86-0858	Equitable Gas Co	Equitable Gas Co	01-15-86	B		
ST86-0859	Equitable Gas Co	Equitable Gas Co	01-15-86	B		
ST86-0860	Equitable Gas Co	Equitable Gas Co	01-15-86	B		
ST86-0861	Equitable Gas Co	Equitable Gas Co	01-15-86	B		
ST86-0862	Trunkline Gas Co	Pontchartrain Natural Gas System	01-16-86	B		
ST86-0863	Trunkline Gas Co	Michigan Gas Utilities	01-16-86	B		
ST86-0864	Delhi Gas Pipeline Corp	Louisiana Industrial Gas Supply System	01-17-86	C		
ST86-0865	Transcontinental Gas Pipe Line Corp	National Fuel Gas Supply Corp	01-17-86	G		
ST86-0866	Northwest Pipeline Corp	Intermountain Gas Co	01-17-86	B		
ST86-0867	Northwest Pipeline Corp	Northern Natural Gas Co	01-17-86	G		
ST86-0868	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-17-86	B		

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[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372 (Oct. 18, 1985).

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cent/MMBtu)
ST86-0869	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-17-86	B		
ST86-0870	Texas Gas Transmission Corp	Louisville Gas & Electric Co	01-17-86	B		
ST86-0871	Texas Gas Transmission Corp	United Cities Gas Co	01-17-86	B		
ST86-0872	Texas Gas Transmission Corp	Transcontinental Gas Pipe Line Corp	01-21-86	G		
ST86-0873	Michigan Gas Storage Co	Consumers Power Co	01-21-86	B		
ST86-0874	Louisiana Intrastate Segment, Div. AER	Associated Natural Gas Co	01-21-86	D	06-20-86	101.42
ST86-0876	Gas Transport, Inc	Columbia Gas of Pennsylvania, Inc	01-22-86	B		
ST86-0877	Gas Transport, Inc	Columbia Gas of Pennsylvania, Inc	01-22-86	B		
ST86-0878	Valero Transmission Co	Baltimore Gas and Electric Co., et al	01-22-86	C		
ST86-0879	Valero Transmission Co	Consumers Power Co	01-22-86	C		
ST86-0880	Valero Transmission Co	VLDC Co	01-22-86	C		
ST86-0881	Panhandle Eastern Pipe Line Co	Midwest Solvents Co	01-23-86	F(157)		
ST86-0882	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-23-86	B		
ST86-0883	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-23-86	B		
ST86-0884	Texas Gas Transmission Corp	Southern Indiana Gas & Electric Co	01-23-86	B		
ST86-0885	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-23-86	B		
ST86-0886	Houston Pipe Line Co	Texas Eastern Transmission Corp	01-27-86	C		
ST86-0887	ONG Transmission Co	Northern Indiana Public Service Co	01-30-86	C	06-29-86	10.00
ST86-0888	Channel Industries Gas Co	El Paso Natural Gas Co	01-30-86	C		
ST86-0889	Transtexas Pipeline	Richardson Fuels, Inc., et al	01-30-86	C		
ST86-0890	Tenngasco Gas Supply Co	El Paso Natural Gas Co	01-30-86	C		
ST86-0891	Kentucky West Virginia Gas Co	UGI Corp	01-30-86	B		
ST86-0892	Intrastate Gathering Corp	Tennessee Gas Pipeline Co	01-30-86	C		
ST86-0893	Louisiana Intrastate Gas Corp	Freeport Interstate Pipeline Co	01-30-86	D	06-29-86	22.40
ST86-0894	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-31-86	B		
ST86-0895	Arkla Energy Resources	Arkansas Louisiana Gas Co	01-31-86	B		
ST86-0896	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-31-86	B		
ST86-0897	Texas Gas Transmission Corp	Mississippi Valley Gas Co	01-31-86	B		
ST86-0898	Texas Gas Transmission Corp	Western Kentucky Gas Co	01-31-86	B		
ST86-0899	Texas Gas Transmission Corp	Memphis Light, Gas and Water Div	01-31-86	B		
ST86-0900	Texas Gas Transmission Corp	Jackson Utility Div., city of Jackson	01-31-86	B		
ST86-0901	Texas Transmission Corp	Citizens Gas & Coke Utility	01-31-86	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 86-4570 Filed 2-28-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2977-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Survey of Community Water Systems (EPA ICR #0371). (This is a new survey.)

Abstract: EPA is surveying community drinking water systems in order to estimate the costs associated with proposed regulatory actions. Data items include size of population served, sources of water, operating characteristics, and financial data.

Respondents: Community water systems: local governments, businesses.

Office of Pesticides and Toxic Substances

Title: Monitoring Potential Arsenic Exposure Levels in Wood Treatment Plants (EPA ICR #1289). (This is a request for a new collection.)

Abstract: This information collection is required as a condition imposed on applicators of arsenic as a preservative on wood products in order to assure that the levels of arsenic in wood treatment plants do not exceed acceptable potential exposure levels.

Respondents: Arsenical wood treatment plant employers.

Title: Ethylene Oxide Monitoring and Recordkeeping Program (EPA ICR #1290). (This is a request for a new collection.)

Abstract: This action imposed the requirements of the Office of Safety and Health Administration (OSHA) ethylene oxide standard in facilities not regulated by OSHA which use ethylene oxide as a pesticide. This action will ensure that all workers exposed to ethylene oxide are afforded the protection of the OSHA ethylene oxide standard. Facilities affected are public State and local hospitals.

Respondents: Public State and local hospitals.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washigton, DC 20460

and

Richard D. Otis (ICRs #0371) or Carlos Tellez (ICRs #1289 and #1290), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: February 25, 1986.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-4480 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2976-2; EPA Project Number SJ 85-09]

Approval of Prevention of Significant Air Quality Determination (PSD) Permit to Shell California Production, Inc.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 6, 1986 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct an additional 20 megawatt gas turbine cogeneration project to the existing facility in the South Belridge Oil Field, Kern County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: No_x at 35 lbs/hr and CO at 22 lbs/hr.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address requests to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9,215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of a water injection system to control NO_x and an emissions limit of 41 ppm @ 15% O_2 (dry) for CO.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by May 2, 1986.

Dated: February 20, 1986.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 86-4481 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-10-FRL-2977-5]

Proposal To Recommend Designation of the North Florence Dunal Aquifer, Lane County, OR, as a Sole Source Aquifer and Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and public hearing.

SUMMARY: The Region 10 office of the Environmental Protection Agency (EPA) is proposing to recommend that the North Florence Dunal Aquifer in Lane County, Oregon, be designated as the sole or principal source of drinking water for the area. A Support Document providing the bases for this recommendation is available for review and public comments are requested. A hearing will be held if sufficient public interest is expressed.

DATES: Requests to hold a public hearing should be filed on or before May 23, 1986.

A public hearing is tentatively scheduled for June 22, 1986, in Florence, Oregon at 7:00 p.m. The hearing will be cancelled if sufficient public interest is not expressed by May 23, 1986. The public is also encouraged to submit written comments regarding the support document, the proposed boundaries and the appropriateness of this designation. These must be submitted by August 1, 1986.

ADDRESSES: Persons requesting a hearing should notify Wendy Marshall, M/S 409, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

The Support Document, which includes a map of the area proposed for designation, is available for public inspection and copying during normal business hours at the Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, the Environmental Protection Agency, Oregon Operations Office, 522 Southwest Fifth Avenue, Yeon Building, 2nd Floor, Portland, Oregon, and the Siuslaw Public Library, 250 Highway 101 North, Florence, Oregon. The Support Document may also be obtained by contacting Wendy Marshall at the address above.

The public hearing will be held at the Florence City Hall Council Chambers, 250 Highway 101, Florence, on June 23, 1986, from 7:00 p.m. to 9:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall at (206) 422-1890 or FTS 399-1890.

SUPPLEMENTARY INFORMATION: Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) authorizes the Administrator to determine, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health. After such a determination is made, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such an aquifer through a recharge zone so as to create a significant hazard to public health.

On June 2, 1985, a private citizen residing in Lane County, Oregon submitted a petition requesting that the Administrator of the EPA designate the aquifer underlying the North Florence Dunal Area as the sole drinking water source for the area. Additional information was provided to EPA on July 30, 1985. Notice of this petition was published in the **Federal Register** on November 13, 1985.

The EPA Region 10 office is proposing to recommend to the Administrator that sole source aquifer designation be made. The boundaries of the area being proposed for designation by the Regional Office are the Siuslaw River to the south, the Pacific Ocean to the west, Sutton Creek to the north, and an extensive bedrock ridge east of Collard, Clear, and Munsel Lakes to the east.

A Support Document providing the bases for the recommendation is available for public review. This document includes such information as a description of the location of the aquifer, boundary of the area, pertinent geologic and hydrologic information, climate, population, existence or absence of alternate drinking water sources, and potential sources of contamination.

A hearing will be held to discuss the proposal and the Support Document if sufficient public interest is expressed. Requests for a public hearing should include the following information: (1) Name, address, and telephone number of the individual, organization, or other entity requesting a hearing and (2) a brief statement of the requesting person's interest in the proposed recommendation.

If the hearing is cancelled, those persons having expressed interest in attending the hearing will be notified by phone and by letter of the cancellation. Other persons should contact the Environmental Protection Agency at (206) 442-1890 to confirm the hearing date and time. EPA will also send notice of the hearing or of its cancellation to the local media.

Dated: January 24, 1986.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 86-4477 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-2974-7]

Clean Air Act Grant to Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA today announces it is granting Kentucky's request that specific

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reductions in non-federal matching funds be judged nonselective with regard to the provisions of section 105(b) of the Clean Air Act (CAA). This action was proposed in the **Federal Register** of November 5, 1985 (50 FR 45931), and an opportunity for public hearing was offered. There was no response to the proposal notice.

EFFECTIVE DATE: This action is effective immediately.

ADDRESSES: Copies of the information submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Grants Administration Unit, 345 Courtland Street, N.E., Atlanta, Georgia 30365
Kentucky Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: William H. McBride of EPA Region IV's Grants Administration Unit at the Atlanta address above, or call 404/881-4415 (FTS 257-4415).

SUPPLEMENTARY INFORMATION: EPA assists Kentucky in the operation of the State's air pollution control program through an annual cooperative agreement made pursuant to section 105 of the CAA (42 U.S.C. 7405). Section 105(b) of the CAA specifies the following criteria for such financial assistance:

> * * * No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government * * *

On June 26, 1984, the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC), in the context of section 105(b) of the CAA and applicable EPA federal regulations, requested that EPA consider certain reductions in non-federal funding as nonselective. That request is part of the technical support document (TSD) for this notice. EPA responded in a letter dated August 23, 1984, also part of the TSD for this notice, asking Kentucky to submit additional documentation to clarify specific details of the request. If EPA disapproved the request regarding non-selective funding reductions and determined that Kentucky was not eligible for assistance under section 105 of the CAA, Kentucky would be obliged to return assistance funds for which they were not eligible.

On November 1, 1984, Kentucky supported their request by providing a chronological list and discussion of twenty-six relevant actions that took place between April 13, 1979, and August 1, 1984. These served to document an extended period of austerity in State government prompted by revenue shortfalls. The November 1, 1984, submittal is also part of the TSD for this notice. The twenty-six items were described in the proposal notice of November 5, 1985 (50 FR 45931).

EPA met with State agency representatives on January 8, 1985, and again on January 23, 1985, to clarify the State's submittal to specify only those requests that they believed to be absolutely necessary. As a result of the meetings, all parties agreed that Kentucky's request to EPA Region IV could be summarized and broken down as follows:

1. The Financial Status Report (FSR) submitted by Kentucky for the FY 83 section 105 cooperative agreement reported $2,218,308 as the State share. Neither the cooperative agreement or any other documentation prior to June 26, 1984, requested that any portion of this amount be determined nonrecurrent.

2. Kentucky requested that $80,700 budgeted for expenditure in FY 84 but lost through a statewide funding reduction be determined by EPA to be a State government-wide nonselective expenditure reduction as allowed under section 105(b) of the Clean Air Act.

3. Kentucky requested that $186,900 lost from a receipt fund account through a Governor's Office action be determined by EPA to be a State government-wide nonselective expenditure reduction as allowed under section 105(b) of the Clean Air Act. The lost receipt funds were programmed for expenditure in FY 84.

EPA Region IV determined to respond to Kentucky's requests as follows:

1. This was a point of information for which no response was necessary.

2. EPA determined that the $80,700 was part of a nonselective statewide reduction (see discussion below).

3. While the Governor's Office policy decision to impound all receipt funds appears nonselective, the impact of this policy was uneven. EPA requested that Kentucky withdraw this portion of their request.

The basis for EPA's second determination is now presented. A nonselective statewide reduction is allowed under section 105(b) of the CAA, and does not affect the State's eligibility for receiving EPA assistance. Kentucky has requested that an FY 83 reduction in air program support in the amount of $80,700 be considered a nonselective reduction. The reduction occurred as a result of the Governor's imposing a blanket funding reduction by the Kentucky General Fund. The reduction is verified in documentation included as part of Kentucky's June 26, 1984 submittal, namely:

A. A December 17, 1982, letter from the Secretary of KNREPC to the State Budget Director indicated that the Department for Environmental Protection, as directed, was reducing its budget by $87,400. In discussions with Kentucky it was revealed that the share of the Division of Air Pollution Control (DAPC) in this reduction was $29,100.

B. A September 8, 1983, memorandum from KNREPC's Administrative Services Department to various divisions in the agency indicated a three percent General Fund reduction, and that the DAPC's share in the reduction was $51,600.

These two sums—$29,100 and $51,600—account for the $80,700 total reduction in State funding for FY 83.

Final action. Since the reduction in air program funds was in line with reductions imposed on other executive branches of the State government, EPA finds that the reduction was nonselective and does not affect Kentucky's eligibility for receiving Federal assistance under Section 105 of the CAA.

This action is consistent with the provisions of Section 105(b) in that an opportunity was offered in the notice of November 5, 1985 (50 FR 45931) for the public to comment and request a public hearing on the matter.

Dated: February 10, 1986.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 86-4121 Filed 3-28-86; 8:45 am]

BILLING CODE 6560-50-M

[OA-FRL-2977-4]

Intergovernmental Review of Agency Programs and Activities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: After the Office of Management and Budget (OMB) reviewed the first year's implementation Executive Order 12372, it rescinded previously approved criteria for program exclusions that were not included in the

Order or the White House Fact Sheet. Subsequently, the Environmental Protection Agency (EPA) re-examined its excluded programs. The purposes of this Notice is to inform all interested parties that EPA proposes to continue to exclude all except on training program, most research, development, and demonstration projects, and all EPA issued interstate plans and permits from the scope of Executive Order 12372. In addition, EPA proposes to exclude certain applications submitted under the new Senior Environmental Employment (SEE) Program. The following explains the basis for these proposed exclusions.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Interested persons should submit comments (2 copies if possible) to: Central Docket Section (LE-131), Attention: Docket No. G-86-01, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

The public may inspect the comments received on this Notice between 8 a.m. and 4 p.m. on business days at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Corinne. S. Allison, Grants Policy and Procedures Branch (PM-216), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone (202) 382-5294.)

SUPPLEMENTARY INFORMATION: *Training:* EPA's training programs have the primary objective of supporting students through traineeships for occupational and professional training, and to develop career-oriented personnel qualified to work in occupations involving environmental protection and pollution abatement and control. The training programs include: Air Pollution Control Manpower Training, Air Pollution Control Technical Training, Water Pollution Control Professional Training, Water Pollution Control—State and Local Manpower Program Development, Safe Drinking Water Professional Training, Safe Drinking Water Occupational Training, and Hazardous Waste Training. (Note: With the exception of Air Pollution Control Manpower Training (66.003), these programs are not separately listed in the *Catalog of Federal Domestic Assistance.)* In general, these programs all operate with limited funds that Congress adds to the Agency's annual appropriations in order to maintain environmental training programs. Awards are made primarily to academic institutions which in turn select trainees (priority for the traineeships is assigned to employees of State and local environmental control agencies). EPA pays tution and fees directly to the recipient organizations which in turn pay stipends directly to the trainees.

Except for training for wastewater treatment operators (formerly cataloged as 66.420, "Water Pollution Control—State and Local Manpower Program Development) we believe that the Agency's training programs only indirectly affect State and local governments and that the nature of the programs and the small amount of Federal funds associated with them does not have a major impact on State and local planning. Accordingly, we propose to exclude these programs from the scope of the Order. Since the wastewater treatment operator training program provides direct, job-related skills training to enhance the effectiveness of wastewater treatment operators, a number of States believe that this program does directly affect them. We agree and propose to include the program under the Order.

Research, Development, Demonstration: A second category of proposed exclusions concerns most of the applications submitted under EPA's various research, development, and demonstration programs: those which (1) do not require an Environmental Impact Statement (EIS); or (2) do not require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (3) do not have a unique geographic focus or directly relate to the governmental responsibilities of a State or local government with the project's geographic area. Those projects generally are national in scope and do not directly affect State and local governments. However, applications that do require an EIS or unusual measures to protect the public, or have an unique geographic focus or directly relate to the governmental responsibilities of a State or local government within the project's geographic area will continue to be eligible for intergovernmental review.

EPA-Issued Interstate Plans and Permits: The third category proposed for exclusion concerns *EPA-issued Interstate plans and permits* for the following direct development activities:

(1) State Implementation Plans (SIPs) under Section 110(c) of the Clean Air Act;

(2) Prevention of Significant Deterioration (PSD) permits under the Clean Air Act;

(3) National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act;

(4) Underground Injection Control (UIC) permit under the Safe Drinking Water Act, and

(5) Treatment, storage, and disposal permits under the Resource, Conservation and Recovery Act (RCRA).

Note.—EPA-issued intrastate plans and permits will continue to be covered.

Current procedures and regulations that implement statutory requirements allow affected States, elected officials, and the general public to be consulted and to comment on EPA plans and permits before EPA makes a final decision. To expand our procedures to include a detailed interstate process under the Order would require EPA to set up a redundant review process and greatly impede our issuance of permits or substitute SIPs.

Senior Environmental Employment (SEE) Program: The fourth proposed exclusion is for certain applications under the SEE Program. (This new program will be described in the next *Catalog of Federal Domestic Assistance* and has been assigned the number 66.508.) The SEE program uses the talents of older Americans to provide technical assistance to Federal, State, and local environmental agencies for pollution abatement, prevention and control projects. EPA is proposing to include this program except for applications proposing technical assistance for Federal environmental agencies. In the latter case, we believe applications should be excluded because they will not directly affect State and local governments. However, SEE applications providing technical assistance to a State or local environmental agency will directly affect State and local government and therefore will be eligible for States to review under an official E.O. process.

Dated: February 12, 1986.

Seymour D. Greenstone,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 86-4479 Filed 2-28-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51607; FRL-2980-2]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-1680, beginning on page 4033, in the issue of Friday, January 31, 1986, make the following correction:

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On page 4835, second column, under P86-388, in the eighth line, "1 hrs" should read "3 hrs".

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

Senior Executive Service Performance Review Board; Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Performance Review Board.

DATE: February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Robert H. Volland, Director of Personnel, 500 C Street SW., Washington, DC 20472, (202) 646-3962.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:

Members: William F.W. Jones; Edward W. Kernan; John R. Lilley, II; Audrey J. Reeg; Frank C. Sidella; Frank H. Thomas; and Robert S. Wilkerson.

Dated: February 18, 1986.

Spence W. Perry,

Acting General Counsel.

[FR Doc. 86-4456 Filed 2-28-86; 8:45 am]

BILLING CODE [illegible]

[FEMA-757-DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-757-DR), dated February 15, 1986, and related determinations.

DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of February 15, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub.L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from severe storms, landslides, and flooding, beginning on or about January 18, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster and are designated eligible as follows:

Clallam, King, and Jefferson Counties for Public assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-4457 Filed 2-28-86; 8:45 am]

BILLING CODE [illegible]

FEDERAL HOME LOAN BANK BOARD

[No. AC-469]

Star Savings and Loan Association, Sayre, PA; Notice of Final Action, Approval of Conversion Application

Dated: February 24, 1986.

Notice is hereby given that on February 7, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Star Savings and Loan Association, Sayre, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-4431 Filed 2-28-86; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-004066-003.

Title: Port of Oakland (Port) and Marine Terminals Corporation (MTC) Management Agreement.

Parties:

Port of Oakland
Marine Terminals Corporation

Synopsis: The proposed amendment would add to the terminal area covered by the agreement an additional area of approximately one acre. A restatement of the entire agreement was also included.

Agreement No. 213-010657-002.

Title: Nippon Yusen Kaisha and Showa Line, Ltd. Space Charter and Sailing Agreement in the Far East-U.S. Pacific Trades.

Parties:

Nippon Yusen Kaisha
Showa Line, Ltd.

Synopsis: The proposed amendment would (1) enlarge the scope of the agreement to include the Japan-U.S. Pacific Northwest (Oregon and Washington) trade; (2) permit the parties to operate a maximum of fifteen (15) vessels which have standard operating capacities ranging up to 3590 TEU'S; (3) revise the duration provision of the agreement to incorporate an indefinite term with the right of termination upon ninety (90) days' written notice by either party; and (4) make certain nonsubstantive changes to the agreement. The parties have requested a shortened review period.

Agreement No. 207-010668-001.

Title: Overseas Containers Limited Joint Service.

Parties:

The Peninsular & Oriental Steam Navigation Company
Ocean Transport & Trading, PLC
British & Commonwealth Shipping Co., PLC
Overseas Containers Limited

Synopsis: The proposed amendment provides that Overseas Containers Limited or any of its subsidiaries may enter into joint service or any other agreement with other common carriers, and may operate additional ships under such agreement. The parties have requested a shortened review period.

Dated: February 26, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4547 filed 2-28-86; 8:45 am]

BILLING CODE 6730-01-M

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

National Toxicology Program; Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on March 24 and 25, 1986.

The meeting will be open to the public from 8:30 a.m. until adjournment on March 24. The preliminary agenda with *approximate* times are as follows:

Review of NTP Reproductive and Development Toxicology Programs:

8:30 a.m.-12:10 p.m.—Overview and platform and poster presentations on intramural and extramural projects in reproductive toxicology and evaluation of short-term assays for teratologic and reproductive toxicologic effects.

1:00 p.m.-4:30 p.m.—Platform and poster presentations on intramural and extramural projects in developmental toxicology. Concluding remarks and discussions.

The meeting on March 25 will be open to the public from 8:30 a.m. to 10:45 a.m. and from 1:00 p.m. until adjournment. The preliminary agenda with *approximate* times are as follows:

8:30 a.m.-8:45 a.m.—Report of the Director, NTP.

8:45 a.m.-10:45 a.m.—Review of Chemicals Nominated for NTP Testing. (Thirteen chemicals will be reviewed. Of these, five were reviewed by the NTP Chemical Evaluation Committee (CEC) on October 23, 1985, and listed in the **Federal Register,** Volume 51, No. 6, pp. 3262-3263, January 24, 1986: (1) n-Butyl acrylate; (2) 12-0-Hexadecanoyl-16-hydroxyphorbol-13-acetate; (3) Methyl ethyl ketoxime; (4) alpha-Methylstyrene; and (5) Tung oil. The remaining eight chemicals were reviewed by the CEC on January 8, 1986: (1) n-Butane; (2) Catechol; (3) 2-Chloronitrobenzene; (4) 4-Chloronitrobenzene; (5) Furan; (6) Furfuryl alcohol; (7) Isopentane; and (8) Pentamidine isethionate.)

1:00 p.m.-Adjournment—Discussion of Levels of Evidence of Carcinogenicity.

In accordance with the provisions set forth in section 552b(c)(6) Title 5 U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 25 from approximately 11:00 a.m. to 1:00 p.m. for further evaluation of NTP programs in reproductive and developmental toxicology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will have available a roster of Board members and expert consultants and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: February 13, 1986.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 86-4467 Filed 2-28-86; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of March 26, 1986, of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

The meeting begins at 8:30 a.m. and will be open to the public. The primary agenda topic is to peer review draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* Panel of Experts. The meeting will commence with a discussion of modifications to the levels of evidence of carcinogenicity used since June 1983 in formulating interpretive conclusions for the NTP long-term toxicology and carcinogenesis studies.

Draft technical reports of studies on the following chemicals (listed in alphabetical order with Chemical Abstracts, Service registry numbers routes of administration and species, and NTP chemical managers) are tentatively scheduled to be peer reviewed on March 26. The actual order of presentation will be decided at a later date.

Chemical (CAS Registry No.)	Route/species	Chemcial manager (Phone No.)
Boric Acid (10043-35-3).	Feed/Mice	Dr. M.P. Dieter (919-541-3368).
1,4-Dichlorobenzene (106-46-7).	Feed/Mice, Rats	Dr. J.A. Goldstein (919-541-4495).
Pentachloronitrobenzene (82-68-8).	Feed/Mice	Dr. J.K. Dunnick (919-541-4811).
Phenylephrine Hydrochloride (61-76-7).	Feed/Mice, Rats	Dr. J.A. Bucher (919-541-4532).
Tetrakis (Hydroxymethyl) Phosphonium Chloride (124-64-1).	Gavage/Mice, Rats.	Dr. C.W. Jameson (919-541-4096).
Tetrakis (Hydroxymethyl) Phosphonium Sulfate (55566-30-8).	Gavage/Mice, Rats.	Dr. C.W. Jameson (919-541-4096).
Xylenes (mixed) (1330-20-7).	Gavage, Mice, Rats.	Dr. W.C. Eastin (919-541-7941).

The draft technical report on Trichloroethylene (without Epichlorohydrin) (79-01-6) (NTP TR No. 273) reviewed at the last meeting on December 9, 1985, and deferred for revision will *not* be presented until the next meeting (summer 1986).

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agenda, rosters of Subcommittee and Panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

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Dated: February 25, 1986.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 86-[illegible] Filed 2-28-86; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Managment, Interior.

ACTION: Notice of Realty Action CA 18789.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Managment Act of Octbober 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3S., R. 5E.,
Sec. 30: Lots 1, 14, 18, 21, 22, 25, SE¼, unnumbered lot in the NW¼ (42.93 acres), unnumbered lot in the SW¼ SW¼ (42.98 acres).

Containing 352.34 acres of public land.

In exchange for these lands, the United States will acquire the following lands from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 6E.,
Sec. 2: Lot 3 and 4, SW¼ NW¼, W½ SE¼ NW¼, W½ SE¼, SW¼ NE¼ SE¼ SE¼.

San Bernardino Meridian, California

T. 4S., R. 7E.,
Section 6: Lot 1 of NW¼, Lot 1 of SW¼, N½ of Lot 2 of SW¼, W½ NW¼ SE¼.

Except any portion within the 80.00 foot wide right-of-way, for an aqueduct road; the 50.00 foot wide right-of-way, for a transmission line, and the 80.00 foot wide right-of-way, for an aqueduct road, granted to the Metropolitan Water District of Southern California, by an act of Congress, approved June 18, 1932 (Ch. C 47 Stat. 324), as shown on the maps of definite location thereof, approved by the Secretary of the Interior, May 2, 1938 and December 2, 1938;

Containing 656.51 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. Other State or Federal agencies will acquire the remaining portion of the preserve. The public interest will be well served by completing the exchange.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or 2 years from the date of publication, whichever occurs first.

The values of the lands to be exchanged are approximately equal. Full equalization of value will be achieved by acreage adjustments or by a payment to the United States by the Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).
2. All the oil, gas, and geothermal steam and associated geothermal resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.
3. Those rights for railroad purposes granted to the Southern Pacific Railroad Company, its successors or assigns, under the authority of the Act of July 27, 1866 (14 Stat. 292).
4. An existing pipeline right-of-way granted by the United States to Southern California Gas Company, its successors or assigns, by right-of-way grant LA 0107395 under the authority of the Act of February 25, 1920 (30 U.S.C. 181).
5. A right-of-way for a Federal Aid Highway, serial No. LA 097054, under the Act of November 9, 1921 (42 Stat. 212, 23 U.S.C. 18).
6. An existing pipeline right-of-way granted by the United States to Southern California Gas Company, its successors or assigns, by right-of-way grant LA 0110795 under the authority of the Act of February 25, 1920 (41 Stat. 440).
7. Those rights for telephone line purposes granted to Pacific Telephone and Telegraph Company, its successors or assigns, serial No. LA 0170375, under the Act of March 4, 1911 (43 U.S.C. 961).
8. A right-of-way for a Federal Aid Highway, serial No. R 243. Act of August 27, 1958, as amended (23 U.S.C. 317).
9. Those rights for transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial No. R 458, under the Act of March 4, 1911 (43 U.S.C. 961).
10. Those rights for drainage purposes granted to the Coachella Valley Water District, its successors or assigns, serial No. R 829, under the Act of March 3, 1891 (43 U.S.C. 946–949).
11. Those rights for electric transmission line purposes granted to Southern California Edison Company, its successors or assigns, serial No. R 964, under the Act of March 4, 1911 (43 U.S.C. 961).
12. Those rights for pipeline purposes granted to Southern California Gas Company, its successors or assigns, serial No. R 1091, under Sec. 28 of the Mineral Leasing Act (30 U.S.C. 185).
13. Those rights for road purposes granted to Palm Center Associates, its successors or assigns, serial No. CA 10226, under the Act of October 21, 1976 (43 U.S.C. 1761).
14. The reservation to the United States, its permittees and licensees, to enter upon, occupy and use any part or all of the said land lying within 50 feet of the centerline of an electric transmission line authorized under Power Project 1397 and Powersite Reserve 530, and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

FOR FURTHER INFORMATION CONTACT: Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92505.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: February 20, 1986.

Hugh W. Riecken,

Acting District Manager.

[FR Doc. 86-4434 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-40-M

Utah; Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 160 acres of public land for the East Canyon Dam, Weber Basin Project near Bountiful, Utah. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

ADDRESS: Inquiries concerning the land should be sent to: Utah State Director, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM Utah State Office, 801-524-3674.

On February 19, 1986, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Salt Lake Meridian

T. 2 N., R. 3 E.,
Sec. 10, SE¼.

The area described contains 160 acres in Morgan County.

The purpose of the proposed withdrawal is to reserve the land as an addition for the East Canyon Dam of the Weber Basin Project.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Bureau of Reclamation.

Dated: February 24, 1986.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-4481 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202-395-7340.

Title: Demonstration and Special Events Permit

Abstract: The National Park Service uses the Public Gathering Permit to authorize demonstrations and special events in National Capital Region parks and to grant waivers of numerical limitations on demonstrations on the White House Sidewalk and in Lafayette Park

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Individuals or households Annual Responses: 1000

Annual Burden Hours: 500

Bureau Clearance Officer: Russell K. Olsen, 202-523-5133

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 4536 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on April 1, 1986, at the Jefferson Parish West Bank Council Chamber, New Courthouse, Second Street, Gretna, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95-625, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Status of Funding
—Construction Program
—Land Acquisition
—State Legislative Proposal

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafittee National Historical Park, U.S. Customs ouse, 423 Canal Street, Room 206, New Orleans, Louisiana 70130, telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: February 19, 1986.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 86-4534 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: March 21, 1986, 7:30 p.m. inclement weather reschedule date: April 11, 1986.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. § 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda

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for the meeting will include discussion of the 1986 draft plan. The meeting will be open to the public. Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: February 20, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86-4535 Filed 2-28-86; 8:45 am]

BILLING CODE 4310-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-301 through 303 (Preliminary)]

Termination of Import Investigation; Certain Butt-Weld Pipe Fittings From Brazil, Japan, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On February 25, 1986, the Commission received notice from the U.S. Department of Commerce stating that, having received a letter from Counsel for petitioners in the subject investigations withdrawing the petition, Commerce was terminating its antidumping investigations on butt-weld pipe fittings from Brazil, Japan, and Taiwan. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the subject investigations are terminated.

EFFECTIVE DATED: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Brians Walters (202-523-0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: February 26, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4447 Filed 2-28-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-306 and 307 (Preliminary)]

Glyoxal From the Federal Republic of Germany and France; Withdrawl of Petition in Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On February 21, 1986, the Department of Commerce and the U.S. International Commission received a letter from counsel for the American Cyanamid Company, the petitioner in these investigations, stating that our client has instructed us to withdraw the antidumping petition concerning glyoxal from the Federal Republic of Germany and France filed on February 12, 1986." Having received this letter, Commerce did not initiate investigations as provided for in section 732(c) of the Tariff Act of 1930. Accordingly, the Commission hereby gives notice that the antidumping investigations involving glyoxal from the Federal Republic of Germany and France, provided for in item 427.53 of the Tariff Schedules of the United States (invs. Nos. 731-TA-306 and 307 (Preliminary)) will not be continued further

EFFECTIVE DATE: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

This notice is published pursuant to § 207.40 of the Commission's Rules of Practice and Procedure (19 CFR 207.40).

By order of the Commission.

Issued: February 25, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4448 Filed 2-28-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-253 (Final) and 731-TA-252 (Final)]

Import Investigation Determination; Certain Welded Carbon Steel Pipes and Tubes From Turkey and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Turkey of welded carbon steel standard pipes and tubes,[3] which have been found by the Department of Commerce to be subsidized by the Government of Turkey. Chairwoman Paula Stern and Commissioner Alfred E. Eckes determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Seeley G. Lodwick and Commissioner David B. Rohr determine that a domestic industry is threatened with material injury by reason of the subject imports. Commissioner Lodwick and Commissioner Rohr further determine, pursuant to section 705(b)(4)(B) of the Act (19 U.S.C. 1671d(b)(4)(B)), that they would not have found material injury but for any suspension of liquidation of entries of the subject merchandise.

The Commission also determines,[4] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is threatened with material injury by reason of imports from Turkey of welded carbon steel line pipes and tubes,[5] which have been found by the Department of Commerce to be subsidized by the Government of Turkey. Commissioners Eckes, Lodwick, and Rohr further determine, pursuant to section 705(b)(4)(B) of the Act (19 U.S.C. 1671d(b)(4)(B)), that they would not have found material injury but for any suspension of liquidation of entries of the subject merchandise.

Finally, the Commission determines,[6] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Thailand of welded carbon steel standard pipes and tubes,[7] which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). Chairwoman Paula Stern and Commissioner Alfred E. Eckes determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Seeley G. Lodwick and Commissioner David B. Rohr determined that a domestic industry is threatened with material injury by reason of the subject imports. Commissioner Lodwick and Commissioner Rohr further determine, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), that they would not have found material injury but for any suspension of liquidation of entries of the subject merchandise.

Background

The Commission instituted the investigation on Thailand effective October 1, 1985, following a preliminary determination by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from Thailand were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Effective October 25, 1985, the Commission instituted the investigation on Turkey following a preliminary determination by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from Turkey were being subsidized within the meaning of section 701 of th Act (19 U.S.C. 1671). Notices of the institution of the Commission's investigations and of a public hearing to be held in connection therewith were given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register on October 28, 1985 (50 FR 43614) and November 14, 1985 (50 FR 47125). The hearing was held in Washington, DC, on January 7, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 21, 1986. The views of the Commission are contained in USITC Publication 1810 (February 1986), entitled "Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand: Determinations of the Commission in Investigations Nos. 701-TA-253 (Final) and 731-TA-252 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: February 21, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4449 Filed 2-28-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-43 (Sub-No. 19)]

Lease and Interchange of Vehicles—Segregated Escrow Funds; Termination of Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Termination of proceeding.

SUMMARY: The Commission has discontinued, for insufficient evidence, a proceeding initiated to determine whether the escrow fund rule at 49 CFR 1057.12(k) should be clarified to require that escrow funds deposited by a lessor with either a lessee or a third party be placed in a separate escrow account, in trust for the lessor, that cannot be commingled with the lessee's or third party's other funds. Notice of the proceeding has not been previously published in the Federal Register.

DATES: This decision is effective on March 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912
or
Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision that is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 11107 and 10321 and 5 U.S.C. 553.

Decided: February 12, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

James H. Bayne,

Secretary.

[FR Doc. 86-4460 Filed 2-28-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30786]

Missouri Pacific Railroad Co.; Granting of Trackage Rights Exemption by Missouri-Kansas-Texas Railroad Co.

On February 11, 1986, Missouri Pacific Railroad Company (MP) filed a notice of exemption under 49 CFR 1180.2(d)(5).

MP and Missouri-Kansas-Texas Railroad Company (MKT) operate tracks between Ogden and San Antonio, TX. In order to create a shorter, more direct route for some of MP's traffic, MKT will grant MP overhead trackage rights over 23.86 miles of MKT's track between Ogden (milepost 1012.56) and San Antonio (bridge No. 1036.2). The trackage rights will be effective February 19, 1986. MP will continue to use its main line for other traffic.[1]

MP mischaracterizes the transaction as a joint project involving the relocation of a line of railroad that does not disrupt service to shippers, i.e. an exempt transaction under 49 CFR 1180.2(d)(5). The transaction does not fall within that exemption because MP

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Brunsdale make negative determinations.

[3] For purposes of this investigation, the term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[4] Chairwoman Stern, Vice Chairman Liebeler, and Commissioner Brunsdale make negative determinations.

[5] For purposes of this investigation, the term "welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch 0.375 inch or more but not over 16 inches in outside diameter, conforming to American Petroleum Institute (API) specifications for line pipe, provided for in TSUSA items 610.3208 and 610.3209.

[6] Vice Chairman Liebeler and Commissioner Burnadale make negative determinations.

[7] For purposes of this investigation, the term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[1] In order to gain physical access to MKT's track, MP will construct (1) a 3,292-foot connecting track between its main line and MKT's line at milepost 1012.56, and (2) a 915-foot connecting track between MKT's track at bridge No. 1036.2 and a rail line of the Southern Pacific Transportation Company over which MP now operates under trackage rights.

Construction of these connecting tracks does not fall under an existing class exemption. That part of the transaction requires approval under 49 U.S.C. 10901 or exemption under 49 U.S.C. 10505. A separate decision will follow concerning the construction phase of the transaction.

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is not relocating its line of railroad. Rather, MP will continue service over its main line while using the trackage rights over MKT's line as an alternative route.

The transaction involves the acquisition by MP of trackage rights over a line owned by another rail carrier (MKT) that is based on a written agreement and is not sought in a responsive application to a rail consolidation proceeding. MP's acquisition of these trackage rights, therefore, falls squarely within the trackage rights class exemption of 49 CFR 1180.2(d)(7).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of the exemption, MP has proposed that any employees affected by the transaction be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Decided: February 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4461 Filed 2-28-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Alaska Ventures & Alaska Ventures

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on *February 18, 1986* a proposed consent decree in *United States v. David Sweet dba Alaska Ventures and Alaska Ventures*, Civil Action No. F84-0028, was lodged with the United States District Court for the District of Alaska. The proposed consent decree concerns the discharge of pollutants into the waters of the United States in violation of the Clean Water Act. The proposed consent decree requires the defendants to abate further discharges without the authorization of a NPDES permit and to pay a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. David Sweet dba Alaska Ventures and Alaska Ventures*, DJ Ref. 90-5-1-1-2183.

The proposed consent decree may be examined at the office of the United States Attorney, District of Alaska, United States Courthouse, Room 310, 101 12th Avenue, Fairbanks, Alaska and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530.

A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-4435 Filed 2-28-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-12]

Anthony D. Christiano, D.O., Jackson NJ; Hearing

Notice is hereby given that on January 23, 1986, the Drug Enforcement Administration, Department of Justice, issued to Anthony D. Christiano, D.O., and Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on October 28, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elasped since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 10:00 a.m. on Thursday, March 13, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: February 25, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-4515 Filed 2-28-86; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Forms Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming (202) 357-9520.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

Title: Sample Survey of Industrial Innovation in the United States.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,500; total of 2,208 burden hours.

Abstract: Since Research and Development is only one component of the innovation process in firms, additional quantitative information is needed on industrial innovative activities to improve the capabilities of the Federal Government to better understand the relationships among Research and Development, competition, innovation and productivity of the U.S. industrial sector.

Dated: February 26, 1986.

Herman G. Fleming,

NSF Reports Officer.

[FR Doc. 86-4543 Filed 2-28-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption to 10 CFR Part 50, Appendix J, Paragraph III.D.3 for Facility Operating License No. NPF-39, issued to the Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station, Unit 1, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: This Exemption would suspend the requirement to conduct Type C leakage testing at intervals no greater than 24 months, as stated in 10 CFR Part 50, Appendix J, Paragraph III.D.3, for 27 containment isolation valves from March 3, 1986 until May 26, 1986.

The Need for the Proposed Action: The proposed Exemption from the regulation is required in order to allow continued operation of the plant until May 26, 1986 when the plant will be shutdown for extensive maintenance and surveillance testing activities. Without this Exemption, a forced shutdown, beginning on March 3, 1986 and lasting about two weeks, would be required in order to perform the necessary surveillance tests.

Environmental Impacts of the Proposed Action: There are no environmental impacts of the proposed action. During the period of the extension the plant will continue with normal operations. On May 26, 1986 the plant will be shutdown and the containment isolation valve Type C leakage test will be performed during that outage. The surveillance test will be performed at that time, in every other respect, the same as if it had been performed during an outage prior to March 3, 1986. The staff has reviewed the information provided by the licensee and finds that postponing these leakrate tests until May 26, 1986 would have little or no effect on containment integrity. No changes are being made in the allowable amounts and no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed Exemption.

Alternative to the Proposed Actions: Since we have concluded that there is no measurable environmental impact associated with the granting of the proposed Exemption, any alternative to this Exemption will have the same or greater environmental impact.

The principal alternative would be to deny the Exemption which would require a two week shutdown beginning no later than March 3, 1986.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connnection with the "Final Environmental Statement" related to the operation of the Limerick Generating Station, Unit 1, dated April 1, 1984.

Agencies and Persons Consulted: The NRC staff performed the entire review of the licensee's position and did not consult other agencies or persons.

Findings of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see Amendment No. 2 to NPF-39, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. A copy may be obtained on request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Walter R. Bulter, (301) 492-7456.

Dated at Bethesda, Maryland this 26th day of February 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-4580 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 501-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Administrative Practices for Nuclear Criticality Safety at Fuels and Materials Facilities" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to describe practices acceptable to the NRC staff for administration of a nuclear criticality safety program for operations with fissionable materials at fuels and materials facilities in which there exists a potential for criticality accidents. The guide endorses ANSI/ANS-8.19-1984, "Administrative Practices for Nuclear Criticality Safety."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Adminstration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by May 1, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 24th day of February 1986.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology Office of Nuclear Regulatory Research.

[FR Doc. 86-4579 Filed 2-28-86; 8:45 am]

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[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 115 and 98 to Facility Operating License Nos. DPR-53 and DPR-69, issued to Baltimore Gas and Electric Company (the licensee), which revised the Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (the facility), located in Calvert County, Maryland. The amendments were effective as of the date of their issuance.

The amendments revise provisions in the Technical Specifications (TS) to allow use of the 4-inch post-accident hydrogen purge line for containment purge during normal operation. The TS are changed as follows: (1) TS 3.6.1.8, "Containment Vent System," which requires the containment vent valves (MOV 6900 and 6901) to be closed during reactor operation will be deleted upon intial operability of the Containment Radiation Signal isolation input to motor operated valves (MOVs) 6900 and 6901; (2) the isolation times for MOVs 6900 and 6901 are decreased from less than or equal to 20 seconds to less than or equal to 15 seconds as required by TS 3.6.4.1, "Containment Isolation Valves"; (3) the notation at the end of TS Table 3.6-1, "Containment Isolation Valves," has been changed to reflect deletion of TS 3.6.1.8; and (4) a requirement has been added to TS Table 3.6-1 to limit the use of the containment vent valves to containment pressure control, containment radioactivity control, and surveillance purposes.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on March 11, 1985 (50 FR 9733) and December 13, 1985 (50 FR 50973). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action significantly beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1973.

For further details with respect to the action see (1) the applications for amendments dated December 22, 1983 and March 28, 1984, (2) Amendment Nos. 115 and 98 to facility Operating License Nos. DPR-53 and DPR-69, (3) the Commission's related Safety Evaluation dated February 20, 1986, and (4) the Environmental Assessment dated December 31, 1985. All of these items are avilable for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 20th day of February, 1986.

For the Nuclear Regulatory Commission.

Donald E. Sells,

Acting Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86-4581 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-10856 License No. 13-16347-01 and EA 85-83]

Calumet Testing Services, Inc.; Order Imposing Civil Monetary Penalities

I

Calumet Testing Services, Incorporated, 1945 N. Griffith Boulevard, Griffith, IN 46319 (the licensee) is the holder of License No. 13-16347-01 issued by the Nuclear Regulatory Commission (the Commission/NRC) which authorizes the licensee to use byproduct material to conduct industrial radiography.

II

An NRC safety inspection of the licensee's activities under the license was conducted June 21 through July 18, 1985. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated September 9, 1985. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the cumulative amount of the proposed civil penalties. The base civil penalty was increased by 100 percent because of the licensee's prior poor performance and failure to implement affective corrective actions for similar problems. A response dated October 18, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the violations occurred as stated and the penalties proposed in the Notice of Violation and Proposed Imposition of Civil Penalties should be mitigated by Four Thousand Dollars ($4,000) based on the licensee's prompt identification and reporting of an overexposure.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of Twelve Thousand Dollars ($12,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request also shall be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 24th day of February 1986.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In a letter dated October 18, 1985 the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties dated September 9, 1985. In its response, the licensee admits certain violations occurred as described in the Notice, denies other violations, requests mitigation of the civil penalties and provides reasons why it believes that mitigation of the penalties is appropriate. Provided below are (1) a restatement of each violation, (2) the licensee's assertion regarding each violation, (3) NRC's response to each licensee assertion, (4) a summary of the licensee's arguments in support of mitigation of the proposed penalties, and (5) NRC's evaluation and conclusion.

I. Restatement of Violations, Licensee Assertions, and NRC's Response

A. Restatement of Violation A

10 CFR 20.101(a) provides that no licensee shall possess, use, or transfer licensed material in such a manner as to cause any individual in a restricted area to receive in any period of one calendar quarter from radioactive material and other sources of radiation a total occupation dose in excess of 18.75 rems to the hand and forearms.

Contrary to the above, on June 14, 1985, during the second calendar quarter of 1985, a radiographer's assistant received a calculated hand dose of greater than 75 rems.

Licensee's Assertion. The licensee does not agreee that the radiographer's assistant received a hand dose in excess of regulatory limits. However, based on time and distance measurements made during reenactments, the licensee does agree that 1.2 percent of the individual's hand (approximately 2 cm^2 in surface area) may have received over 75 rems and less than 9 percent of the hand may have received over 18.75 rems. From these data the licensee concludes that because only parts of the hand received doses in excess of regulatory limits, it did not constitute a violation. The licensee further asserts that even if the radiographer's assistant did receive a hand dose in excess of the regulatory limits, because only a small portion (i.e., 2 cm^2) of his hand received greater than 75 rems, the severity level is more appropriately set a Severity Level III.

NRC Response. The licensee's analysis assumes that 10 CFR 20.101(a) provides for averaging of extremity dose over the entire surface area of the exposed individual's hand. However, this assumption is erroneous because this section of 10 CFR Part 20 provides no basis to permit averaging the dose.

The licensee admits that an area of approximately 2 cm^2 of the exposed individual's hand may have received at least 75 rems. The licensee further admits that an additional area of approximately 14 cm^2 received greater than 18.75 rems. Therefore, the licensee violated the provisions of 10 CFR 20.101(a).

Determination of the severity level for the violation is based on the amount of dose received. As such, the determination of radiation dose is predicated on the radiation dose standards found in 10 CFR Part 20. That a licensee employee received 75 rems to only a small portion of his hand does not prevent the violation from being appropriately categorized as a Severity Level II. Accodingly, no basis exists in the licensee's response for reducing the severity level of the violation.

B. Restatement of Violation B

10 CFR 34.43(b) requires that a survey with a radiation survey instrument shall made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall include the guide tube.

Contrary to the above, on June 14, 1985, a radiographer's assistant failed to perform a radiation survey after a radiographic exposure to determine that the sealed source had been returned to its shielded position.

Licensee's Assertion. The licensee admits a survey was not made after each radiographic exposure and states the violation occurred because the radiographer's assistant made a personal decision not to make a survey, contrary to NRC requirements and the procedures of Calumet Testing Services, Incorporated (CTS).

NRC Response. The licensee's assertion that the radiographer's assistant is responsible for the violation because he made a personal decision to violate NRC rules and CTS procedures is without merit. NRC holds the licensee responsible for violations committed by an employee even in the absence of a finding that management contributed to the violation. *Atlantic Research Corporation,* CLI-80-7, 11 NRC 413 (1980). However, management participation may be a consideration in determining the severity level of a violation in that the severity level may be increased where management is found to be involved. This factor was not used here in determining the severity level.

C. Restatement of Violation C

10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) The radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on June 14, 1985, two radiographer's assistants performed three radiographic operations without the personal presence of a radiographer. As a result, a radiographer would not have been able to give immediate assistance if required and did not watch the assistants performing the operations.

Licensee' Assertion. The licensee denies that radiographer's assistants were performing radiographic exposures without the personal presence of a radiographer and asserts that a radiographer was in a position to be of immediate assistance since a radiographer was on site and was working on the same boiler as the assistants. The licensee admits that the radiographer did not actually watch the assistants while they were making radiographic exposures.

NRC Response. The regulation requires *visual* observation. Although a radiographer was present at the building site, he was making radiographic exposures in another area and could not observe two radiographer's assistants while they were making radiographic exposures. As a result, the radiographer was not aware of any problem until after he was notified that one of the

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radiographer's assistants received an extremely overexposure. It should be noted that when the radiographer's assistant discovered that the radiography source was exposed he did not immediately contact the radiographer. Instead, accompanied by a second radiographer's assistant, he reentered the restricted area, unlocked the exposure device and retracted the source to a proper shielded position. If the radiographer had complied with the requirements of 10 CFR 34.44, he would have ensured that the radiographer's assistant did not approach the exposure device after an exposure without making a complete radiation survey, especially after it was discovered that the radioactive source was in an unshielded position. Accordingly, no basis has been provided in the licensee's response for withdrawal of this violation.

II. Licensee's Request for Mitigation

The licensee offers eight reasons why it believes the proposed civil penalty should be mitigated.

1. The event was promptly reported as it may have been an overexposure.
2. The licensee cooperated with NRC requests.
3. The NRC inspected two job sites and found no problem with the quality of training.
4. The overexposure was not the result of improper training. Several examples are cited to support the claim that the radiographer's assistant knew that surveys were required; but the individual made a personal decision not to make a survey.
5. The event that occurred in June 1983 and resulted in a $4,000 civil penalty that the licensee paid on September 1, 1983 occurred as a result of not surveying and was not the result of insufficient supervision of the assistant.
6. The radiographer's assistant did not experience any high degree of serious radiation injury as evidenced by examinations, blood tests, and chromosome studies.
7. The licensee quotes the Enforcement Policy, page 8585 of the Federal Register, dated March 8, 1984 which states, "a civil penalty can be fully mitigated for a first offense in an area of concern or for an offense in an area in which no previous offense had occurred for a period of at least two years." The licensee also notes, "the two incidents were just eight hours shy of being two years apart."
8. The licensee had to write off a significant amount in bad debts and expects this amount to be even higher in 1985. The licensee stated, "[a] large penalty would cause considerable hardship as we are still in a difficult economic environment."

NRC Evaluation. The following evaluation will separately address each of the eight reasons set forth by the licensee in support of mitigation.

1. The NRC agrees that the licensee promptly reported the overexposure (the day after the overexposure occurred). However, in considering whether to reduce a civil penalty based on a licensee's prompt identification and reporting, the NRC Enforcement Policy, 10 CFR Part 2, Appendix C (1985), Section V.B.1 states that "[n]o consideration will be given to this factor if the licensee does not take immediate action to correct the problem upon discovery." The NRC's concern regarding this proviso was initially based on statements made by the President, Calumet Testing Services, Incorporated at the July 8, 1985 enforcement conference. The president stated that immediate corrective action was limited to meeting with the radiographers and radiographer's assistants involved during which he emphasized the importance of following safety procedures and NRC regulations. The NRC considers such immediate corrective action to be adequate and we have consequently reduced the proposed civil penalty as described below in section III, NRC Conclusion.

2. The NRC acknowledges that the licensee cooperated with NRC requests. However, corrective action is always required when there is a violation, and the licensee's compliance with NRC's request that additional corrective action be initiated was an expected response.

Regarding the licensee's corrective actions, our evaluation indicates that on the whole the corrective actions are only what NRC would expect. In addition, training of personnel, modification of locks on radiographic exposure devices, and the program of disciplinary action against employees who violate NRC regulations and CTS procedures are corrective actions which were implemented only after the NRC emphasized the importance of such actions at the enforcement conference (more than three weeks after the overexposure occurred).

Under the enforcement policy a civil penalty may be reduced where a licensee's corrective actions are found to be unusually prompt and extensive. However, in this case the licensee's corrective actions were neither prompt nor extensive. Accordingly, no adequate basis exists in the licensee's response for reducing the civil penalty amount.

3. The NRC did not issue a citation for an inadequate training program in this case. However, two similar incidents in the last two years involving radiation overexposure to a radiographer's assistant would seem to indicate a weakness in the licensee's training program. Further, that inspections of two of the licensee's job sites did not result in cited violations involving training does not necessarily demonstrate that training at other job sites or the licensee's training program as a whole are adequate.

4. The licensee was not cited for failure to have an adequate training program. The NRC agrees that the incident itself is not conclusive as to the adequacy of the licensee's training program. However, as stated above, two such similar incidents within a fairly short time period suggest inadequate training was a possible contributing factor.

5. The NRC agrees that the principal cause of the 1983 overexposure was the failure to perform an adequate survey of the exposure device. However, it should be noted that at the time the radiographer's assistant was making the inadequate survey, the radiographer was inside the boiler and was not observing the assistant. Consequently, as in the present case, failure to adequately supervise the radiographer's assistant contributed to the violation. Therefore, the radiographer's assistants' failures to perform surveys and the radiographers' failure to adequately supervise were contributing factors in both cases—thus the similarity.

6. The NRC believes that any radiation dose in excess of regulatory limits is a matter of serious concern and does not rely on physical damage as a criterion for evaluating overexposures.

7. The NRC Enforcement Policy provides that a civil penalty can be fully mitigated for an offense in an area in which no previous offense has occurred for a period of at least two years. Conversely, the Policy provides for up to 100% escalation for poor performance in the area of concern. The NRC staff acknowledges that almost two years had elapsed since issuance of the last civil penalty to the licensee. However, because the two year criterion is a guideline and because the 1983 violation was so similar to the present violation, the NRC considers the present violation to fit a situation of prior poor performance in the area of concern.

8. It is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business. The NRC staff has reviewed the licensee's financial statements submitted with its October 18, 1985 response and is unable to conclude, from the information presented by the licensee, that payment of the civil penalty as reduced would create an undue hardship for the licensee.

III. NRC Conclusion

The NRC staff has determined that all violations did occur as originally stated in the September 9, 1985 Notice of Violation and Proposed Imposition of Civil Penalties. The licensee's October 18, 1985 response did not provide a sufficient basis for withdrawal of the violations. However, the NRC staff has concluded that a $4,000 reduction in the proposed base civil penalty is appropriate because the licensee promptly identified and reported the overexposure violation. Therefore, the NRC staff has concluded that a $12,000 civil penalty should be imposed. This amount reflects 50% of the base civil penalty of $8,000 for prompt identification and reporting which was balanced against 100% escalation for prior poor performance.

[FR Doc. 86-4582 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-01993, 070-01398 Licenses No. 21-00338-02, SNM-1393, and EA85-90]

Hurley Medical Center; Order Imposing Civil Monetary Penalties

I

Hurley Medical Center, One Hurley Plaza, Flint, MI 48502 (the licensee) is the holder of License Nos. 21-00338-02 and SNM-1393 issued by the Nuclear Regulatory Commission (the Commission). The licenses authorize the licensee to operate Hurley Medical Center in accordance with the conditions specified therein.

II

A routine NRC safety inspection of the licensee's activities was conducted on May 2, 3, and 24, 1985. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with Commission requirements and the conditions of its licenses. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated August 22, 1985. The Notice states the nature of the violations, the requirements of the Commission's regulations or license conditions that were violated, and the amount of civil penalties proposed for the violations. The licensee responsed to the Notice of Violation and Proposed Imposition of Civil Penalties with two letters dated October 4, 1985.

III

After consideration of the licensee's responses and the statements of fact, explanation, and arguments regarding remission or mitigation contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Two Thousand Five Hundred Dollars ($2,500) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555. A copy of the hearing request also shall be sent to the Executive Legal Director, USNRC, Washington, DC 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(A) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above and

(b) Whether on the basis of such violation this Order should be sustained.

Dated at Bethesda, Maryland, this 24th day of February 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

The licensee's October 4, 1985 responses to the August 22, 1985 Notice of Violation and Proposed Imposition of Civil Penalties for Hurley Medical Center admit the facts as stated in 13 of the 14 violations in the Notice. The licensee can neither confirm nor deny the violation concerning the licensee's participation in the explant, recovery, or return of a nuclear pacemaker. The licensee's responses provide its reasons why the penalties are not appropriate. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's responses, and (3) the NRC's evaluation of the licensee's responses.

A. Restatement of the Violation

Licensee Condition No. 24 of License 21-00338-02 requires that all licensed material be possessed and used in accordance with statements and procedures in the application dated September 23, 1983. The application dated September 23, 1983 states that the Medical Isotope Committee shall meet no less than once in each calendar quarter.

Contrary to the above, the Medical Isotope Committee did not meet quarterly. Specifically, the Medical Isotope Committee failed to meet during the first, third, and fourth quarters of 1981 and 1982; the second and third quarters of 1983; the first and second quarters of 1984; and the first quarter of 1985.

Licensee's Response. During the specified period, Hurley Medical Center's Medical Isotope Committee did not meet quarterly because of a lack of understanding on NRC requirements. After the Medical Isotope Committee was reestablished as the hospital's Radiation Safety Committee in November of 1982, it was the understanding of the Committee representatives that the requirement was to meet semiannually. Following the NRC inspection of May 2, 3, and 24, 1985, an administrative directive was distributed which created standing quarterly meetings. Meetings have been held regularly since that time, and special monthly meetings have been held to monitor progress and compliance with other NRC requirements.

"In addition, committee membership has been strengthened to include additional representatives from the Department of Pharmacy, administrative

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and medical representatives from Cardiovascular Services, technical representation from the Divisions of Nuclear Medicine and Radiation Therapy, and additional medical staff representation from the Department of Radiology."

"Full compliance was achieved immediately following the most recent NRC inspection."

NRC Evaluation. The licensee admits the violation. The NRC staff acknowledges the licensee's position that noncompliance resulted from a misunderstanding of NRC requirements. However, the NRC review shows that the requirement to meet once in each calendar quarter is clear and should not have been subject to any misunderstanding.

B. Restatement of the Violation

License Condition No. 24 of License 21–00338–02 requires that licensed materials be used in accordance with the application received February 8, 1978, the application dated September 23, 1978 and the application dated September 23, 1983. These applications describe Room 22, equipped with a ventilation system, as the area where xenon-133 would be used.

Contrary to the above, on several occasions since November 1984, xenon-133 was used in a room other than Room 22. Specifically, xenon-133 was used in Room 20, an area not authorized by the license. Although Room 20 was equipped with an exhaust fan, the air flow rates and xenon-133 concentrations had not been evaluated or approved by NRC.

Licensee's Response. "Hurley Medical Center did not amend its license to reflect that the room used for xenon-133 procedures had been changed. Although failure to amend the license was an oversight, the Radiation Safety Officer was aware that the air flow was sufficient in the room in question. The health and safety of patients and staff occupying these areas was not compromised."

"The xenon procedures imaging room license amendment and accompanying floor plan were forwarded to the NRC on June 6, 1985."

NRC Evaluation. The licensee admits the violation in that the license was not amended to reflect a change in the room used for xenon-133 procedures. The licensee does state that the RSO was aware that the air flow was sufficient in the room where xenon-133 was used. Notwithstanding the licensee's evaluation, areas where radioactive materials is used or stored are not in accordance with NRC regulatory requirements unless and until the area is specifically authorized in an NRC license.

C. Restatement of the Violation

License Condition No. 24 of License 21–00338–02 requires licensed material be possessed and used in accordance with the application received February 8, 1978. The application received February 8, 1978 contains precautions and procedures to be followed when caring for patients treated with therapeutic quantities of radionuclides. Item 8 states nursing personnel entering the patient's rooms are to wear film badges.

Contrary to the above, nursing personnel entering therapy patients' rooms did not always wear film badges. Nursing personnel did not wear film badges in cases where brachytheraphy (cesium-137) implants were performed on October 8 and 29, November 13 and 19, December 3, 1984, and January 22 and March 19 and 26, 1985.

Licensee's Response. Hurley Medical Center did not provide film badges to nurses entering therapy rooms. The Radiation Safety Officer stated:

> The number of Cs–137 Sealed source therapies performed has decreased to 30 in 1983 and 14 in 1984. Each treatment lasts about three days. Nursing involvement with these patients is minimal, about 14 minutes per day or 45 minutes to one hour total. The measured exposure rate at bedside of these patients is about 10Mr/hr@ 1 Meter, so that the probable exposure to nurses is 10mR. If the same nurse attended three patients per month, she would receive 10mR per month or 90mR per quarter. This is less than one quarter of the maximum allowed dose of 1200mR per quarter. According to 10 CFR 20.202a(1), film badges are not necessary under these conditions. Our results of monitoring nurses' radiation exposure confims these calculations. In accordance with license conditions, badges are assigned to nursing personnel attending radioactive implants and radioiodine therapies.

"Since the most recent NRC inspection, a new standard practice has been developed to ensure assignment and monitoring of nursing personnel assigned to the care of radioactive implant patients. This policy states that badges will be ordered and assigned by the Radiation Safety Officer. The supervisor of the Radiation Therapy Department will provide the badges and be responsible for the evaluation of personnel for the duration of the patient's impact."

Full compliance with this license condition was achieved June 7, 1985."

NRC Evaluation. The licensee admits that film badges were not issued to nursing personnel but explains that film badges were not necessary according to 10 CFR 20.202(a)(1). While the NRC staff acknowledges that 10 CFR 20.202(a)(1) would not require the issuance of film badges, the violation is against the licensee's license condition which required film badges to be issued for nursing personnel. The more restrictive statement in the license is controlling. Part of License Condition 24 states that the NRC's regulations shall govern the licensee's statements in application or letters, unless the statements in the application or letters are more restrictive than the regulations.

D. Restatement of the Violation

License Condition No. 24 of License 21–00338 requries that licensed material be possessed and used in accordance with statements and procedures in the application received February 8, 1978. The application received February 8, 1978 contains precautions and procedures to be followed when caring for patients treated with therapeutic quantities of radionuclides. Item 4 states that surveys of exposure rates in the patient's room and adjacent areas will be performed.

Contrary to the above, surveys were not always perfomed of the patients' rooms and adjacent areas. Specifically, 14 cesium-137 sealed source implants were performed between February 6, 1984 and March 26, 1985 and only two surveys were conducted. No patient room surveys were conducted during 14 cesium-137 sealed source implants between April 5 and September 28, 1982.

Licensee's Response. Hurley Medical Center acknowledges that it did not perform surveys of patients' rooms and adjacent areas following treatment with radionuclides. The Radiation Safety Officer stated:

> State of Michigan Radiation Rule 465(2) states "Calculations based on previous surveys will comply with this subrule," i.e., a survey performed for each patient. A series of surveys of patients' rooms and adjacent areas were taken to determine the radiation levels present during treatment. No excessive radiation levels were recorded. Calculations were made of exposure rate per mCi of activity used in treatment: 0.30 mR/hr @ 1 Meter. The exposure rates in subsequent therapies were calculated from this value. This complies with State of Michigan Radiation Rules. No excessive radiation levels or exposures were measured or calculated.

"Since the last NRC inspection, a new standard practice has been developed and implemented to assure compliance with this condition. It is the responsibility of the Radiation Physicist to perform these surveys, and the responsibility of the Radiation Therapy Supervisor to monitor compliance with this practice. These actions will be reported at the quarterly Radiation Safety Committee meeting."

"Compliance was achieved by June 7, 1985."

"*NRC Evaluation.* The licensee admits the violation, although it contends that it was complying with the State of Michigan's radiation rules. If the licensee was implementing the less restrictive survey requirement imposed by the State of Michigan, the licensee was not complying with the requirement in its NRC license.

E. Restatement of the Violation

License Condition No. 16 of License SNM–1393 requires that licensed material be possessed and used in accordance with statements, representations, and procedures in a letter dated April 24, 1973. The letter dated April 24, 1973 states the physician responsible for nuclear pacemaker studies was William J. Weber, M.D.

Contrary to the above, licensee personnel other than the physician listed in the April 24, 1973 letter as the responsible individual are currently responsible for the nuclear pacemake program.

Licensee's Response. "Hurley Medical Center did not amend its license properly to reflect physicians in charge of the nuclear pacemaker program. While Hurley Medical Center did recognize the need to renew its nuclear pacemaker license, amending the physician's name responsible for the new pacemaker program was overlooked. Hurley Medical Center has not implanted a nuclear pacemaker in a number of years. As a result, it was understood that no physician needed to be authorized for the implant of these pacemakers. On June 7, 1985, Hurley Medical Center provided a new amendment to this license which was incorrect. Hurley Medical Center is providing a corrected amendment to its license naming a responsible physician so that the three remaining nuclear pacemaker patients may be monitored appropriately."

"It is the responsibility of the Director of Cardiovascular Services to assure that any change in physician control or responsibility for this program be communicated to the Radiation Safety Officer and to Administration for appropriate amendment of the license."

"Hurley Medical Center will be in compliance with this condition when the NRC acknowledges this license amendment request."

NRC Evaluation. The licensee admits the violation. Although Hurley Medical Center personnel did not implant a nuclear pacemaker over the last few years, there was still a nuclear pacemaker program in effect. The license failed to inform the NRC of the name(s) of the individual(s) responsible for nuclear pacemaker studies.

F. Restatement of the Violation

Item 9A of License SNM–1393 autherizes the possession of nuclear pacemakers for purposes of explantation, recovery and disposal. License Condition No. 16 (License SNM–1393) requires that licensed material be possessed and used in accordance with statements and procedures contained in a letter dated April 24, 1973. The letter states that William J. Weber, M.D. is the individual responsible for nuclear pacemaker studies.

Contrary to the above, the licensee failed to explant, recover, and return for disposal a nuclear pacemaker from a patient who died in February 1985. Specifically, licensee personnel other than the responsible individual listed in the April 24, 1973 letter requested that a funeral director remove a nuclear pacemaker from the body of a patient after realizing that the patient had been the recipient of a nuclear pacemaker. The funeral director, who was not authorized by this license, was also requested to return the nuclear pacemaker to the manufacturer for disposal. The licensee did not participate in or supervise the explant, recovery, or return of the nuclear pacemaker.

Licensee's Response. "Hurley Medical Center can neither confirm nor deny violation of this license condition. Conversations held with the funeral director in question indicate that he cannot recall whether the pacemaker was removed prior to contacting Hurley Medical Center personnel or whether Hurley Medical Center personnel instructed him to remove the pacemaker. Hurley Medical Center personnel state that the pacemaker was removed prior to being contacted by the funeral home director and that at no time were instructions given to explant the pacemaker."

"A standard practice has been developed which outlines the proper procedure to be followed upon the death of a pacemaker patient * * * All Cardiovascular Study Unit staff have been informed of proper procedure, and it is the responsibility of the supervisor of this unit to monitor compliance. This activity will be monitored on a quarterly basis by the Radiation Safety Committee."

"Hurley Medical Center cannot determine whether or not a violation of this nature occurred."

NRC Evaluation. The licensee does not confirm or deny a violation of this license condition. In response to the licensee's comments, the funeral director was again contacted by the NRC staff on October 29, 1985 by telephone. The funeral director, who removed the pacemaker, stated that the patient had died at the hospital. He further stated the hospital staff called the funeral director and instructed him to remove the pacemaker and that the hospital then sent the funeral director the package in which to return the pacemaker. Although the statements presented by the licensee and the NRC do not agree as to how the violation transpired, the NRC staff continues to believe that a violation occurred. Neither the statements presented by the NRC or by the licensee contradict the fact that the licensee failed, for some reason, to participate in or supervise the explant, recovery, or return to the manufacturer of the nuclear pacemaker. The NRC staff has concluded that a violation of the license condition occurred even though disagreement remains concerning who initiated the removal of the nuclear pacemaker.

G. Restatement of the Violation

License Condition No. 13 of License SNM–1393 states that the licensee shall report to the NRC, within 24 hours of occurrence, the death of any nuclear pacemaker patient.

Contrary to the above, the licensee failed to report to the NRC that nuclear pacemaker patients died in November 1984 and January 1985.

Licensee's Response. "Hurley Medical Center did not notify the NRC within 24 hours of discovering the death of two pacemaker patients. At the time of the deaths of these patients, it was thought that it was the responsibility of the physician following the patient to notify the NRC. However, since this time, Hurley Medical Center has officially notified the NRC of these deaths in a memorandum dated May 30, 1985."

Hurley Medical Center has since developed a standard practice to ensure regular followup for its pacemaker patients at 6-month intervals and to include provisions to contact the NRC within 24 hours of the death of a patient. The supervisor of the Cardiovascular Study Unit has the responsibility to notify the NRC of these deaths. This standard practice will be monitored by the Director of Cardiovascular Services and reviewed by the Radiation Safety Committee at its quarterly meetings.

Hurley Medical Center was in full compliance with the condition on June 7, 1985.

NRC Evaluation. The licensee admits the violation.

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H. Restatement of the Violation

License Condition No. 14 of License SNM–1393 states that the licensee shall contact the NRC within 10 days after loss of contact with a nuclear pacemaker patient.

Contrary to the above, the licensee failed to report the loss of contact with nuclear pacemaker patients in March, April, and November 1982, and in March 1984.

Licensee's Response. "Hurley Medical Center did not report the loss of contact with a nuclear pacemaker patient as required. This occurred as a result of failing to comply with the condition of contacting pacemaker patients at predetermined intervals. Since that time, Hurley Medical Center has contacted all current nuclear pacemaker patients and determined their whereabouts."

"A standard practice has been developed that includes the provision that loss of contact will be reported within [10] days. It is the responsibility of the supervisor for the Cardiovascular Study Unit to initiate this contact. It will be the responsibility of the Director of Cardiovascular Services to monitor this activity with quarterly reports to be made to the Radiation Safety Committee."

"Hurley Medical Center was in compliance with this condition on June 7, 1985."

NRC Evaluation. The licensee admits the violation.

Restatement of the Violation

I. License Condition No. 16 of License SNM–1393 requires that all licensed material be possessed and used in accordance with statements, representations, and procedures contained in a letter dated April 24, 1973. The letter dated April 24, 1973 states that nuclear pacemaker patients shall be contacted each month.

Contrary to the above, nuclear pacemaker patients were not contacted each month. Specifically, the licensee failed to contact pacemaker patients approximately 5 times in 1982, 11 times in 1983 and 11 times in 1984.

Licensee's Response. "Hurley Medical Center did not contact all nuclear pacemaker patients monthly, as required. This occurred because Cardiovascular Study Unit staff were not properly trained in that they were unaware of the necessity for this contact. An amendment request has been filed to allow contact to be made semiannually."

"In addition, a standard practice has been developed which ensures that this activity will take place at regularly scheduled intervals. It is the responsibility of the supervisor of the Cardiovascular Study Unit to make this contact. The Director of Cardiovascular Services will monitor this activity and will report to the Radiation Safety Committee on a quarterly basis."

"Full compliance with this license condition was achieved June 7, 1985."

NRC Evaluation. The licensee admits the violation.

Restatement of the Violation

J. 10 CFR 35.14(b)(5)(v) states that the licensee shall conduct a quarterly physical inventory to account for all Group VI sources and devices received and possessed.

Contrary to the above, the licensee failed to conduct a quarterly physical inventory to account for all Group VI sources and devices received and possessed. Specifically, Group VI sources such as the 3M cesium-137 needles, the Nuclear Associates cesium-137 microrad after loading sources, and the cobalt-60 needles were not inventoried quarterly. The last inventory was September 1983.

Licensee's Response. The licensee did not conduct quarterly physical inventories to account for all Group VI sources and devices. The Radiation Safety Officer stated:

> The Co-60 and Cs-137 needles have not been used in four years and are in storage. [10 CFR 35.14(e)(1)(i)(B)] states: 'no wipe tests are needed on sources which are being stored and not used.' This was confirmed by verbal communication the NRC Region III Office in Chicago and the Inspector pointed out that the regulation cited concerns calibration sources only.
>
> Also, the Co-60 needles had not been wipe tested during previous NRC inspection of June 23, 1981. We were not cited at that time nor were we informed of the required wipe testing even if source is in storage.

"Full compliance with this license condition was achieved June 7, 1985."

NRC Evaluation. The licensee admitted this violation. The additional information provided by the licensee does not have any bearing on this citation. The licensee was cited for not conducting a quarterly inventory. The regulation cited by the licensee (10 CFR 35.14(e)(1)(i)(B)) has no relevance to this citation since it involves leak testing of sealed sources used as calibration or references sources. The NRC staff concludes that the violation occurred as stated. The licensee's additional comments, while not relevant here, have been addressed under violation L.

K. Restatement of the Violation

10 CFR 35.14(f)(2) states that quarterly physical inventories shall be performed to account for all calibration sources received and possessed.

Contrary to the above, quarterly inventories of calibration sources were not performed. Specifically, a barium-133 source and a cobalt-60 source had not been inventoried since the last inspection on June 23, 1981.

Licensee's Response. "Quarterly inventory of calibration sources was not performed. However, this was due to an oversight by the Radiation Safety Officer who believed that annual inventories (that were conducted in December 1981, December 1982, December 1983 and December 1984) and wipe test[s] that were also conducted semiannually since June 23, 1981 (and are in effect an inventory), satisfied the intention of this requirement."

"A standard practice has been developed in order to ensure that quarterly inventories are now performed * * *."

"Hurley Medical Center has been in full compliance with this requirement since June 7, 1985."

NRC Evaluation. The licensee admits the violation. The NRC staff agrees that a wipe test can satisfy the inventory requirement depending on the type of documentation retained. However, using the semiannual wipe test dates in conjunction with the annual inventory date would still leave a 6-month gap between inventory dates. The NRC staff has concluded that this violation did occur.

L. Restatement of the Violation

10 CFR 35.14(5)(i) states that Group VI sealed sources shall be tested for contamination and/or leakage at intervals not to exceed 6 months.

Contrary to the above, Group VI sources had not been leak tested since the last inspection on June 23, 1981.

Licensee's Response. Hurley Medical Center did not conduct 6-month leak tests at specified intervals.

"Since the last NRC inspection, the Co-60 and Cs-137 sources have been scheduled to be wipe tested at 6-month intervals. All other Group VI sources except the 3M Cs-137 tubes have been wipe tested at the required 6-month intervals. The 3M Cs-137 tubes have a 3-year interval. A standard practice which outlines these procedures has been developed * * * and specifies that the Radiation Safety Officer will perform these tests. This policy also states that the supervisor of Radiation Therapy will monitor compliance and will report the results of these tests at the quarterly scheduled Radiation Safety Committee meetings."

"Hurley Medical Center has been in compliance with this requirement since June 7 1985."

NRC Evaluation. The licensee admits the violation. The NRC's evaluation of the licensee's responses to violation J are addressed here because they pertain to leak testing. The licensee is correct in stating that under the provisions of 10 CFR 35.14(e)(1)(i)(B) certain sources do not need to be wipe tested if they are in storage. However, the sources at issue here, Co-60 and Cs-137 needles, are not calibration or reference sources and therefore are not exempt from leak testing while in storage. Indeed, this was pointed out to the licensee by the inspector during the phone call mentioned by the licensee.

Concerning the licensee's comment that the licensee was not previously cited for lack of Co-60 wipe tests, NRC inspections consist of selective sampling techniques and may not have covered this area during the June 23, 1981 inspection. The licensee is held responsible for understanding and implementing all applicable regulations for which the license was granted.

M. Restatement of the Violation

10 CFR 71.5 states that no licensee shall transport licensed material out of his facility unless the licensee complies with 49 CFR Parts 170–189.

49 CFR 173.475(i) states that before each shipment of any radioactive materials package, the shipper shall ensure by examination or appropriate tests that external radiation and contamination levels are within the allowable limits specified in this chapter.

Contrary to the above, the licensee failed to ensure that the external radiation and contamination levels were within allowable limits for packages containing molybdenum/technetium returned to the manufacturer for disposal. Since the date of license issuance, the licensee had not performed direct radiation surveys and wipe tests for removable contamination on packages returned to the manufacturer.

Licensee's Response. "Hurley Medical Center did not document that it performed required tests of external radiation and contamination levels of packages that were returned to manufacturers for disposal. These tests, however, were performed during the past review period. It should be noted that all generators undergo a 6-week decontamination period equivalent to 15 half lives. For this reason, it is not felt that 'hot' radioactive material is being transported."

"A standard practice has been developed which outlines the required testing which must be performed and the fact that this activity must be documented. It is the responsibility of the Nuclear Medicine technologist to perform these tests, and the responsibility of the Nuclear Medicine supervisor to assure that these activities are performed. The results will be reviewed at the quarterly Radiation Safety Committee meetings."

"Full compliance with this license condition was achieved June 7, 1985."

NRC Evaluation. The licensee admits the violation. The licensee states that during the past review period the tests were performed but not documented. However, in interviews during the inspection licensee personnel indicated that direct radiation surveys and wipe tests were not always performed on generator shipments returned to the manufacturer. The licensee's practice of storing generators during a 6-week decontamination period is a good method of operation; however, unless absolute inventory control is achieved, the only way of ensuring contamination levels is by direct radiation surveys.

N. Restatement of the Violation

10 CFR 20.401(b) requires that the licensee maintain records showing the results of surveys made to assure compliance with 10 CFR 20.201(b).

Contrary to the above, the licensee failed to maintain records of surveys of technetium-99m contaminated waste to document that no measurable radiation above background was present before disposal. Records of surveys have not been maintained since the date of license issuance.

Licensee's Response. "Hurley Medical Center did perform the appropriate waste disposal activities, but did not maintain records of these surveys. It should be noted that waste is stored a minimum of 28 half lives (i.e., one week) prior to disposal. At this time, waste is surveyed to ensure that non-technetium radioisotopes have not been inadvertently mixed with technetium waste."

"Our license renewal application of 1978 includes the procedures or radioactive waste disposal. These procedures explicitly describe the waste disposal methods we will follow and did not mention recording results. These procedures were approved by the NRC and we were not cited for these methods during the previous inspection of June 1981."

"Since the most recent inspection, a standard practice has been developed which outlines that survey results will be recorded * * * It is the responsibility of the Nuclear Medicine technologist to perform these activities. The supervisor of the division of Nuclear Medicine will monitor these activities and report quarterly to the Radiation Safety Committee meeting."

"Hurley Medical Center has been in full compliance with this condition since June 7, 1985."

NRC Evaluation. The licensee admits the violation. The licensee did not maintain records of waste disposal surveys and states that the procedure submitted by the hospital to the NRC concerning waste disposal activities did not discuss maintenance of survey results. The NRC staff agrees with the licensee that maintenance of survey results was not addressed. However, 10 CFR 20.401(b) requires records be kept and, unless explicitly exempted, a licensee must comply with all NRC regulations applicable to its licensed activities.

NRC inspections are a selective sampling of records, operating procedures, independent measurements, and interviews with personnel. It is possible that violations identified during the May 1985 inspection were not found during the June 1981 inspection. It is also possible that the next inspection may identify violations not found during the May 1985 inspection. It is the licensee's responsibility to ensure that the program is in compliance with NRC requirements and regulations.

NRC Conclusion. For the above reasons, the NRC staff believes that the violations occurred as stated. The NRC has reviewed Hurley Medical Center's response to the proposed imposition of civil penalties and agrees with the licensee that management initiatives were undertaken in the area of Radiation Safety. The staff acknowledges that an Administrative Director was hired in July of 1984 and that the position of Nuclear Medicine Supervisor was also created. In addition to these newly created positions, a contract between Medical Physics Consultants, Incorporated and Hurley Medical Center for services starting October 1, 1984 was signed to monitor and evaluate the Diagnostic Radiology and Nuclear Medicine Departments.

The NRC staff believes that all of the above steps are indications of the sincerity and willingness of top level management representatives at the Medical Center to improve the radiation safety program. However, the Nuclear Medicine Supervisor and the Administrative Director had been in their respective positions for some time before the NRC inspection, the latter for 10 months before the discovery of the 14 violations. The consulting firm, according to the contract, should have

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visited the facility seven times before the NRC inspection. Many of the violations identified by the inspector are clear violations of the license conditions and NRC regulations for which misunderstandings and oversight by personnel should not have occurred.

The NRC staff has concluded that the 14-violations collectively represent a significant breakdown in day-to-day management oversight and control of the radiation safety program. The additional personnel retained by the licensee are indications of management's willingness and desire to improve the radiation safety program. Notwithstanding the sincerity of the licensee's efforts, the NRC staff believes that such actions (taken 7 to 9 months before the NRC inspection) should have identified many of the violations. The effectiveness of these actions is not apparent to the NRC staff. In fact, the licensee should determine how these actions can be strengthened or better administered. Upon consideration of the licensee's arguments concerning mitigation of the civil penalty, the NRC staff has concluded that the licensee's actions were not effective in preventing noncompliance with the license conditions or NRC regulations. For this reason, the licensee's argument concerning management action does not warrant mitigation of the civil penalties.

[FR Doc. 86-4583 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027-MLA-2; ASLBP No. 86-524-01-MLA-2]

Appointment of Presiding Officer To Conduct Informal Proceeding; Sequoyah Fuels Corp.

Pursuant to the Commission's Order dated Febraury 20, 1986, a presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the request for authorization for onsite disposal or storage of certain waste materials filed on May 24, 1985 by:

Sequoyah Fuels Corporation, Sequoyah Facility, Source Material License No. Sub-1010

The name and address of the Presiding Officer is:

John H Frye III, Administrative Judge,
Atomic Safety and Licensing Board,
U S. Nuclear Regulatory Commission,
Washington, D.C. 20555

Issued at Bethesda, Maryland, this 25th day of February, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-4548 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346-ML; ASLBP No. 86-525-01-ML]

Appointment of Presiding Officer To Conduct Informal Proceeding; Toledo Edison Co., et al.

Pursuant to the Commission's Order dated February 20, 1986, a presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the request for authorization for onsite disposal of by-product material filed on July 14, 1983 by:

Toledo Edison Company, *et al.* (Davis-Besse Nuclear Power Station, Unit No. 1)

The name and address of the Presiding Officer is:

Helen F. Hoyt, Administrative Judge,
Atomic Safety and Licensing Board,
U.S. Nuclear Regulatory Commission,
Washington, D.C. 20555

Issued at Bethesda, Maryland, this 25th day of February, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-4549 Filed 2-28-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Streamlining Project Procedures; Combined Road Plan Demonstration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of demonstration program.

SUMMARY The Federal Highway Administration will conduct a demonstration program using modified Federal-aid procedures to simulate as closely as possible a block grant program for certain highway projects.

EFFECTIVE DATE: March 3, 1986.

Termination of demonstration program: Minimum of two years after plan approval with possible extension to a maximum of four years with FHWA approval.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Director, Office of Planning, (202) 426-2961 or Mr. Ronald E. Heinz, Director, Office of Engineering, (202) 426-4853 or Ms. Ruth R. Johnson, Office of the Chief Counsel (202) 426-0780, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except legal holidays.

Background

The Federal Highway Administration's efforts to cut red tape have been ongoing from the Secondary Road Plan (started in 1954). The minimization of paperwork section, 23 U.S.C. 101(e), added by section 108 of the 1973 Highway Act (Pub. L. 93-87, 87 Stat. 250, 255) added a broad effort to reduce paperwork on Federal highway projects. Section 129 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 96 Stat. 2097, 2118) allowed alternative methods for processing projects and led to the Facilitate Acceleration through Special Techniques (FAST) program for accelerated project procedures (48 FR 25181, June 6, 1983).

Experience with these efforts plus changing economic and governmental conditions caused the Federal Highway Administration to rethink basic Federal Highway responsibilities for highways and resulted in a legislative proposal for a block grant approach to projects for selected program categories. Such a departure from the traditional highway program has raised questions about program management, administration, and the changes to the existing relationship among the Federal, State, and local agencies involved in the Federal-aid program.

The purpose of this demonstration is to use existing authority to modify normal Federal-aid procedures so as much responsibility as possible rests with the State and local governments and then to apply the revised procedures in carefully selected situations to test whether the procedures are workable and the governmental arrangements are satisfactory.

Funding for the projects under this demonstration will come from regular apportionments to the States for the Federal-Aid Secondary (FAS) system, the Federal-Aid Urban (FAU) system and the Highway Bridge Replacement and Rehabilitation (HBRR) program. There are no special demonstration funds involved. Normal Federal-aid payment procedures will be used.

Description of Demonstration

Combined Road Plan

The following concepts outline a Combined Road Plan (CRP) which puts together the same projects intended to be included under the block grant being proposed by FHWA and UMTA. It uses existing regulations, such as those relating to the Secondary Road Program (23 CFR 642) and Certification Acceptance (23 CFR 640), but also reflects a modified responsibility for these projects. The demonstration will be conducted in selected States, not to exceed 10, chosen by FHWA based on the needs of the demonstration and the States' expressed interest. Interested States may contact their FHWA Division office.

A. Projects Covered

1. All highway projects funded with FAS and FAU funds;
2. HBRR projects on the FAS and FAU systems and HBRR projects on off-system routes; and
3. Other special projects as negotiated during plan approval.

B. Authority

1. 23 U.S C. 307, Research and Planning;
2. 23 U.S C. 117, Certification Acceptance;
3. 23 U.S C. 101 (e), Minimization of Paperwork; and
4. Surface Transportation Assistance Act of 1982, section 129, Acceleration of Projects. FHWA's policy statement on the Acceleration of Projects published at 48 FR 25181 on June 6, 1983.

C. Format and Contents of CRP

The format and contents of the CRP are essentially the same as those in existing secondary road plans. The procedures and standards included will have to be broadened to cover the additional types of projects eligible under the FAU and HBRR programs. The selected States will work with the FHWA Division Office to develop a CRP tailored to their situation.

D. Action Agencies

1. The FHWA at all levels;
2. The State highway agency; and
3. Local agencies, if included in the CRP.

E. State or Local Actions

1. Surveys;
2. Design;
3. Plans, specifications, and estimates (PS&E) preparation and approval;
4. Contract award;
5. Construction supervision and inspection; and
6. Other actions as negotiated during plan approval.

F. FHWA Actions

1. Program approval, authorization, project agreement, fiscal review (including claim settlement), process reviews, final acceptance;
2. Review and approval of preliminary plans for major structures (FHPM 6-1-2-1);
3. As applicable: Non-Title 23 requirements such as environment, right-of-way relocation or acquisition, civil rights, etc.; and
4. CRP approval: By FHWA Regional Office after Washington review.

The following paragraphs describe how the CRP can or cannot modify the regular Federal-aid procedures for FHWA actions.

G. Federal-Aid Systems

The CRP may provide that some or all of the routes functionally classified in the categories specified in 23 U.S.C. 103(c) and (d), Federal-Aid systems, are automatically included on the corresponding Federal-aid system with no further Federal approval required. The State is responsible for approving the functional classification and obtaining agreement from appropriate local officials when required by law.

H. Project Selection

FAS projects will continue to be selected by the State highway agency and appropriate local officials. FAU projects will continue to be selected by appropriate local officials with State highway agency concurrence. The State highway agency may waive its separate concurrence for FAU projects in urbanized areas when the projects are developed through a transportation planning process with State participation. Off-system bridge projects will continue to be selected by the State highway agency based on the selection lists furnished by FHWA (23 CFR Part 650).

I. Program Submittal

The CRP may provide that the State submittal under 23 U S C. 105, Programs, be whatever document the State and the Division Office agree meets their needs. Existing project grouping authority is available and new ways to group projects may be negotiated during plan approval.

J. Authorization

FHWA will continue to authorize projects to commit Federal funds. The CRP may allow concurrent program approval and authorization as is done now under secondary road plans.

K. Matching Ratio

Regular matching ratios will apply but the CRP may provide that the State will approve less than normal Federal share for CRP projects where this is allowed by current Federal regulations. (23 CFR Part 630, Subpart A and subsequent instructions).

L. Design Standards

Regular Federal-aid design standards will be used but the CRP may provide that the State will approve exceptions to the design standards included in the CRP. If this is done, the CRP must include provisions for full satisfaction of the safety aspects of highways and bridges when exceptions are approved.

M. Environment

As joint lead agencies with FHWA, States already have a major role in managing the processes required under various environmental laws and regulations. However, Federal involvement is still under most of these regulations and statutes. Should additional flexibility become available in these requirements, it will be incorporated into the CRP.

N. Right-of-Way Acquisition and Relocation

The current regulations (49 CFR Part 25) provide for a process where the State, in response to Federal requirements, develops procedures for acquisition and relocation. FHWA then approves those procedures and the State manages the program subject to FHWA evaluation (process reviews). Since this meets the goal of minimal FHWA involvement while serving the objectives of the law, the CRP will simply incorporate the existing process.

O. Nondiscrimination, Davis Bacon, Buy America

Informal analysis indicates these items are being handled efficiently. The CRP will incorporate existing practices or negotiate specific ones during development.

P. Final Inspection

The CRP may provide that the on-site inspection of completed projects will be performed by State project personnel and a report submitted to FHWA. FHWA will review the State reports and spot check as part of the process reviews.

Q. Records Access, Audit

Current regulations (23 CFR Part 17 and 23 CFR Part 12) place responsibility on the State to see that access to records is maintained and that audits

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are performed. The cognizant Federal agency then coordinates settlement of audit findings. The CRP should incorporate this process by reference.

R. Time Schedule

Since the demonstrations will last for a minimum of two years and could be extended to a maximum of four years after individual plan approval, there will be a staggered implementation and termination schedule. This is necessary to give each demonstration time to be developed and a period of project activity long enough to show results. Projects started under the demonstration will normally be completed using demonstration procedures.

S. Evaluation

The State shall submit annual reports and a final summary report within six months after completion of the demonstration period giving an evaluation of its effectiveness. These reports shall be submitted to the FHWA Division Office.

T. Oversight

FHWA will conduct process reviews at periodic intervals and report the results. If discrepancies are noted, corrective action will be taken up to and including termination of the demonstration.

Issued on: February 25, 1986.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-4550 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-22-M

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended February 21, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Feb. 18, 1986	43806	B.C.A. Limited, d/b/a British Caribbean Airways, c/o William A. Nelson, Shaw & Gould, 1825 K Street NW., Washington, DC 20006. Application of B.C.A. Limited, d/b/a British Caribbean Airways pursuant to Section 402 of the Act and Subpart Q of the Regulations requests issuance of a foreign air carrier permit to operate scheduled foreign air transportation of passengers, cargo and mail between British Virgin Islands, various Caribbean points and Miami. Answers may be filed by March 18, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-4501 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket No. S-765]

Lykes Bros. Steamship Co., Inc.; Application To Perform Subsidized Service on TRs 15-A and 20

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated January 13, 1986, has requested an amendment to the Appendix A of Operating-Differential Subsidy Agreement, Contract No. MA/MSB-451, to provide service on TRs 15-A and 20 (U.S. Atlantic/South and East Africa) and (U.S. Gulf/East Coast South America), respectively.

United States Lines (S.A.) Inc. (USL(S.A.)) currently holds operating rights on TRs 15-A and 20. It has recently temporarily suspended direct service from the U.S. Atlantic to South and East Africa (TR 15-A). Instead, it has substituted a U.S.-flag relay service to Rotterdam with oncarriage by foreign-flag vessel to South and East Africa. USL(S.A.) has also substituted minibridge service over U.S. Atlantic ports for direct water service on TR 20 between U.S. Gulf ports and the east coast of South America.

As a result of recent actions of USL(S.A.), by letter dated January 13, 1986, Lykes has requested permission to assume the performance of subsidized services between ports in the U.S. Gulf and east coast of South America (TR 20) and between ports in the U.S. Atlantic and South and East Africa (TR 15-A). Lykes proposes to provide these services on a privilege call basis up to the maximum number of sailings established in USL(S.A.)'s Operating-Differential Subsidy Agreement. These calls are to be made by Lykes with existing vessels and within the existing maximum established in its current Operating-Differential Subsidy Agreement, Contract No. MA/MSB-451 covering TR 15-B (U.S. Gulf/South and East Africa).

Lykes points out that it is seeking to continue the subsidized liner services, heretofore performed by Delta Lines and presently authorized to be conducted by USL(S.A.), in the event and only to the extent that USL(S.A.) has terminated or suspended its service as a subsidized operator. Moreover, Lykes indicates that if such were to occur, U.S.-flag service on TRs 15-A and 20 would no longer exist.

Lykes further points out that it is proposing simply to increase the geographic areas served by vessels within its contract authority on a privilege basis, no additional subsidy obligations will be incurred by the United States.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on March 18, 1986. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Dated: February 26, 1986.

Georgia P. Stamas,

Secretary.

[FR Doc. 86-4542 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-81-M

Urban Mass Transportation Administration

Dispute Resolution Involving Advanced Design Bus Specification

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to clarify the position of the Urban Mass Transportation Administration (UMTA) pertaining to UMTA's role in contract disputes arising from procurements of buses by UMTA grantees.

FOR FURTHER INFORMATION CONTACT: Theodore A. Munter, Assistant Chief Counsel for Programs, UMTA, Room 9223, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-1936.

SUPPLEMENTARY INFORMATION: On October 7, 1982, UMTA published a Notice in the Federal Register announcing that, effective October 1, 1982, UMTA's Baseline Advanced Design Transit Coach Specifications (White Book), with the exception of certain safety-related features, would no longer be mandatory for UMTA grantees, 47 FR 44457 (1982). Thereafter, grantees were permitted to use the non-safety related provisions of the White Book on a voluntary basis.

On November 5, 1985, the United States Court of Appeals for the District of Columbia Circuit decided that inclusion of a White Book Disputes Clause in a contract between an UMTA grantee and a vendor, where UMTA is not a party to the contract, does not obligate UMTA to provide a forum for resolution of all disputes that may arise in the course of that contract, nor does it obligate UMTA to provide de novo review of disputes. *Grumman Ohio Corp.* v. *Dole,* 776 F.2d 338 (D.C. Cir. 1985).

The purpose of this Notice is to make it clear that continued use of the White Book on a voluntary basis by UMTA grantees does not commit UMTA to review contract disputes. Issues raised concerning bid specifications and contract awards (including safety and other matters), will continue to be resolved in accordance with the review standards set forth in the Office of Management and Budget (OMB) Circular A-102, and UMTA Circular 4220.1A, Third Party Contracting Guidelines. Post-award disputes involving contract performance or administration (whether they concern safety or other matters) will not be reviewed by UMTA and should be addressed to and resolved by the appropriate local entity.

Furthermore, it should be emphasized that UMTA, as a grantor agency, is not a party to contracts entered into between its grantees and third parties. The White Disputes Clause was never intended to apply to issues relating to performance or damages arising out of post-delivery problems. Disputes concerning such issues should be resolved by local entities in conformance with applicable State law.

Although UMTA will not entertain any appeals under the White Book Disputes Clause where use of the non-safety related provisions was voluntary, UMTA encourages all grantees using the White Book to consider including in the specification a dispute resolution provision designating a local arbiter or forum.

Issued on: February 24, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 86-4384 Filed 2-28-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-14]

Revision of Criteria for Establishing Ports of Entry and Stations

Correction

In FR Doc. 86-2400 appearing on page 4550 in the issue of Wednesday, February 5, 1986, make the following correction:

In the first column the last line should read, "Customs value), informal (under $250 in Customs value));"

BILLING CODE 1820-01-M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Women Veterans will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, on March 24 through March 26, 1986. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The session will convene at 9:00 a.m. all three days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Bandau, Program Assistant, Office of the Administrator, Veterans Administration Central Office (phone 202/389-5518) prior to March 19, 1986.

Dated: February 20, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-4494 Filed 2-28-86; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

DATED: February 25, 1986.

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By direction of the Administrator.

Rancall H. Bryant,

Executive Assistant to the Associate Deputy Administrator for Management.

New

1 Department of Veterans Benefits.
2 Mortgage Loan Information.
3 VA Form 26-8982.
4 On occasion; One time report.
5. Individuals or households.
6. 95,000 responses.
7. 7,917 hours.
8. Not applicable.

[FR Doc. 86-4495 Filed 2-28-86; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Veterans Administration Medical Center, 150 South Huntington Avenue, Boston, MA 02140, on April 15 and 16, 1986. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adquacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on April 15 and 16, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-389-2861), prior to April 10, 1986.

The meeting will be closed from 8:00 a.m. to 5:30 p.m. on April 15, and from 8:00 a.m. to 4:00 p.m. on April 16, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: February 24, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-4589 Filed 2-28-86; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Hematology	Mar. 28, 1986	8 a.m. to 5 p.m.	Room 119, VA Central Office.[1]
Respiration	Apr. 6, 1986	7 p.m. to 10 p.m.	Washington Plaza Hotel.[2]
Do.	Apr. 7, 1986	8 a.m. to 5 p.m.	Do.
Basic Sciences	Apr. 7, 1986	do	Room 119, VA Central Office.
Do.	Apr., 8, 1986	do	Do.
Surgery	Apr. 11, 1986	do	Washington Plaza Hotel.
Do.	Apr. 12, 1986	do	Do.
Gastroenterology	Apr. 18, 1986	do	Room 119, VA Central Office.
Mental Health and Behavioral Sciences	Apr. 28, 1986	do	Room 119, VA Central Office.
	Apr. 29, 1986	do	Do.
Cardiovascular Studies	May 1, 1986	do	Washington Plaza Hotel.
Do.	May 2, 1986	do	Do.
Oncology	May 2, 1986	do	Washington Plaza Hotel.
Infectious Diseases	May 5, 1986	7 p.m. to 10 p.m.	Presidential Room, Holiday Inn[3]
Do.	May 6, 1986	8 a.m. to 5 p.m.	Do.
Do.	May 7, 1986	8 a.m. to 1 p.m.	Do.
Alcoholism and Drug Dependence	May 5, 1986	8 a.m. to 5 p.m.	Jackson Room, Holiday Inn.
Endocrinology	May 6, 1986	do	Caucus Room, Holiday Inn.
Do.	May 7, 1986	do	Do.
Neurobiology	May 8, 1986	do	Washington Plaza Hotel.
Do.	May 9, 1986	do	Do.
Immunology	May 9, 1986	do	Caucus Room, Holiday Inn.
Do.	May 10, 1986	do	Do.
Nephrology	May 12, 1986	do	Washington Plaza Hotel.
Do.	May 13, 1986	do	Do.

[1] Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420.
[2] Washington Plaza Hotel, Massachusetts and Vermont Avenue NW., Washington, DC 20005.
[3] Holiday Inn, 1501 Rhode Island Avenue NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: Discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by

subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389-5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 24, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-4540 Filed 2-28-86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC on April 4, 1986, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202-389-2864) prior to March 25, 1986.

Dated: February 20, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-4493 Filed 2-28-86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 41
Monday, March 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 4, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for Designation in European Currency Unit Options
—Application of the Chicago Mercantile Exchange for Designation in Japanese Yen Options
—Affiliation of MidAmerica Commodity Exchange with the Chicago Board of Trade

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4620 Filed 2–27–86; 11:33 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 7, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4621 Filed 2–27–86; 11:34 am]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4622 Filed 2–27–86; 11:35 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4623 Filed 2–27–86; 11:36 am]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 28, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4624 Filed 2–27–86; 11:37 am]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 11, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Judicial Session

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4639 Filed 2–27–86; 2:20 p.m.]

BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Rule Enforcement Reviews

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4640 Filed 2–27–86; 2:21 p.m.]

BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 9:00 a.m., March 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Rule enforcement review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4641 Filed 2–27–86; 2:22 p.m.]

BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., March 21, 1986.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for Designation in Long Term Municipal Bond Options
—Application of the Chicago Mercantile Exchange for Designation in Three-Month Treasury Bill Options
—Application of the Commodity Exchange, Inc. for Designation in Copper Options
—Settlement Price Rules/Commodity Exchange, Inc.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4642 Filed 2–27–86; 2:23 pm]

BILLING CODE 6351-01-M

10

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., March 25, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed Foreign Options and Futures Regulations
—National Futures Association's proposed Compliance Rule 2–30 (Customer Information and Risk Disclosure) and Guideline for Disclosure of Costs Associated with Futures Transactions
—Expansion of the Agricultural Option Pilot Program
—Registration Application of First Asset Corporation

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86–4643 Filed 2–27–86; 2:24 pm]

BILLING CODE 6351-01-M

11

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol 51, No. 36, Page 6489.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Feb. 27, 1986, 9:30 a.m.

CHANGES: Agenda revised to delete previous item—Monitoring Voluntary Standards, and substitute item on Methylene Chloride.

Listed below is the item which was deleted:

Commission Meeting, Thursday, February 27, 1986, 9:30 a.m.
Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

Open to the Public

Monitoring Voluntary Standards

The staff will brief the Commission on recent comments received on efforts by staff to monitor industry enforcement of voluntary standards. The staff will also present options for carrying out this effort in the future.

The new item added is:

Open to the Public

Methylene Chloride

The Commission will consider various options available to them on methylene chloride in paint strippers and spray paints.

The Commission decided that Agency business required scheduling this meeting without normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
February 26, 1986.

[FR Doc. 86–4634 Filed 2–27–86; 12:18 pm]

BILLING CODE 6355-01-M

12

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 51, No. 36, Page 6489.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Feb. 25, 1986, 9:30 a.m.

CHANGES: Meeting Canceled.

Listed below is the canceled meeting:

Commission Meeting, Tuesday, February 25, 1986, 9:30 a.m.
Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

Open to the Public

1. Pressed Wood Project/Petition CP 82–6

The Commission will consider the Consumer Federation of America's petition CP 82–6 requesting a mandatory standard on formaldehyde emissions from pressed wood products.

2. ATVs: Preliminary Hazard Analysis

The staff will brief the Commission on the preliminary injury survey of all-terrain vehicles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
February 26, 1986.

[FR Doc. 86–4635 Filed 2–27–86; 12:18 pm]

BILLING CODE 6355-01-M

13

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, March 10, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations
Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: February 28, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

[FR Doc. 86–4599–06 Filed 2–27–86; 10:03 am]

BILLING CODE 6750-06-M

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FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 24, 1986, 51 FR 6489.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 26, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

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TA85-3-25-002, Mississippi River Transmission Corporation

Lois D. Cashell,
Acting Secretary.

[FR Doc. 86-4607 Filed 2-27-86; 10:43 am]

BILLING CODE 6717-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 3, 1986.

A closed meeting will be held on Wednesday, March 5, 1986, at 2:30 p.m. An open meeting will be held on Thursday, March 6, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, March 5, 1986, at 2:30 p.m., will be:

Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, March 6, 1986, at 10:00 a.m., will be:

1. Consideration of whether to adopt amendments to Rule 10a-1 ("short sale rule") under the Securities Exchange Act of 1934 that exclude from its application transactions in National Market System securities that are traded on an exchange on a listed or unlisted trading privileges basis. For further information, please contact Andrew E. Feldman at (202) 272-2414.

2. Consideration of whether to adopt Rule 3a12-9 under the Securities Exchange Act of 1934. Rule 3a12-9 provides an exemption from the arranging for credit provisions of Sections 7(c) and 11(d)(1) of the Exchange Act, for public offerings of direct participation programs with mandatory deferred payment features. In general, the Rule will allow broker-dealers to participate in public offerings of direct participation program securities with mandatory deferred payments, provided that the securities are sold pursuant to a business development plan, minimum down payments are made by investors, and certain other conditions are satisfied. For further information, please contact Edward L. Pittman at (202) 272-2848.

3. Consideration of whether to terminate pursuant to Rule 6 under the Public Utility Holding Company Act of 1935 ("Act") the exemption that K N Energy, Inc. has claimed under Rule 2 under the Act. For further information, please contact Lewis B. Reich at (202) 272-3800.

4. Consideration of whether to adopt a revision of Rule 70 and an amendment to Rule 50 under the Public Utility Holding Company Act of 1935. The revision of Rule 70 would simplify and expand the exemptions now available under the existing rule which permit persons affiliated with investment bankers and commercial banking institutions to serve as officers or directors of registered holding companies and their subsidiaries. The amendment to Rule 50 would address potential conflicts of interest. For further information, please contact Denis R. Molleur at (202) 272-2673 or Elizabeth Norsworthy at (202) 272-2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Mahaffey at (202) 272-2091.

Dated: February 24, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-4625 Filed 2-27-86; 11:38 am]

BILLING CODE 8010-01-M

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federal register

Monday
March 3, 1986

Part II

Pacific Northwest Electric Power and Conservation Planning Council

Northwest Conservation and Electric Power Plan; Notice of Final Model Conservation Standard Amendments

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Final Model Conservation Standard Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments regarding model conservation standards.

SUMMARY: On July 10, 1985, the Pacific Northwest Electric Power and Conservation Planning Council (Council) voted to enter rulemaking to amend portions of its 1983 Northwest Conservation and Electric Power Plan (Plan) relating to model conservation standards (MCS). After holding public hearings and consultations and accepting public comments regarding the proposed MCS amendments, the Council adopted final MCS amendments at its December 4, 1985 meeting in Portland, Oregon. This notice provides the text of the final amendment. Although the public comment period on the proposed MCS amendments overlapped in part with the comment period held by the Council to consider the 1985 draft revision of the Plan, the two rulemakings were separate processes. Because the Council intends to publish these MCS amendments along with its revised Plan, some technical, nonsubstantial amendments may be necessary to conform these amendments to the format of the Plan.

ADDRESS: Copies of this notice and the Council's response to public comments will be mailed to all those who commented on the proposed amendments. Others may obtain copies upon request by writing Division of Public Information and Involvement, Suite 1100, 850 S.W. Broadway, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, at Suite 1100, 850 S.W. Broadway, Portland, Oregon, 97205, or (503) 222–5161, (toll-free) 1–800–222–3355 (in Montana, Idaho or Washington) or 1–800–452–2324 in Oregon.

SUPPLEMENTARY INFORMATION:

Background

As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, "the Act"), the Council in 1983 adopted its Plan including MCS for new structures and for existing structures which are converted to electric space heating/conditioning. (48 FR 24493, June 1, 1983). The Act also authorized the Council to recommend that the Administrator of the Bonneville Power Administration (Bonneville) impose a 10–50 percent rate surcharge upon Bonneville customers for those portions of their loads within jurisdictions which do not, or upon Bonneville customers which do not, implement the MCS or achieve comparable savings of electricity. In the 1983 Plan, the Council set a January 1, 1986 deadline for adoption of the MCS through building codes or alternative programs for achieving comparable energy savings and recommended that Bonneville impose a surcharge after that date. This deadline applied to the MCS for new residential and commercial structures and for existing structures converted to electric heating or space conditioning.

The Plan also called on Bonneville to implement various educational, technical and financial assistance programs to further adoption of the MCS. One of these programs, the Residential Standards Demonstration Program (RSDP) was designed to provide designers, builders, subcontractors, materials suppliers and building code officials with experience in the construction of residences meeting the MCS. The RSDP involves more than 400 residences across the region built to the energy efficiency requirements of the MCS, as well as a "control group" of homes built to current practice. All RSDP buildings are metered to allow comparison of the amount of electricity each consumes for space heating, water heating and other uses.

As a result of incentive efforts called for in the Plan and implemented by Bonneville, several jurisdictions in the region (including the City of Tacoma, Washington) have already adopted and have begun to enforce the MCS.

Bonneville has initiated a marketing program, Super Good Cents, aimed at achieving a target of 5,000 houses built to the MCS during fiscal year 1986. Also, through development of a surcharge policy, Bonneville is establishing a procedure to test the compliance of utility-designed programs in gaining savings of electricity equivalent to those expected under the MCS. Finally, Bonneville has a continuing program to help train and educate the building industry to construct more energy-efficient buildings.

Based upon its review of preliminary data and builder experience resulting from the RSDP and the early-adopting jurisdictions, the Council determined that some amendment of the Plan was necessary to permit additional time for the regional transition from current building practice to the levels of energy efficiency called for in the MCS.

At a Council meeting held in Missoula, Montana on July 10, 1985, the Council decided to enter rulemaking to amend portions of the Plan relating to the MCS. The Council released a proposed rule for public comment shortly after that meeting (50 FR 30654, July 26, 1985).

A principal feature of the proposed amendments was an extension of the deadline for adopting the MCS for new electrically-heated residences from January 1, 1986 to January 1, 1989, with an interim level of electrical savings required by January 1987. The July 26, 1985 proposed amendments also called for Bonneville to provide incentive payments to new homebuyers or builders to offset some of the difference in construction costs between that level which is optimal for the consumer and that increased level which represents a cost-effective resource for the region. The proposed amendments also called for delaying the MCS for new commercial buildings from January 1, 1986 to January 1, 1987 and for delaying from January 1, 1986 to January 1, 1989 the MCS for buildings that convert to electric heating/conditioning.

In the July 26, 1985 proposed rule, the Council encouraged submission of comments addressing the following issues in particular:

- The MCS as "lost opportunity resources" (i.e., the value to the region of acting promptly to acquire cost-effective electric power savings that may not be available as inexpensively later, if at all);
- Indoor air quality;
- Achievable market share rates for the MCS for new residences, both before and after the January 1, 1989 deadline contained in the July 26, 1985 proposed amendments; and
- Appropriate levels of incentive payments for construction of new residences to the requirements of the MCS.

The Council initially set 5 p.m., August 28, 1985 as the deadline for submission of public comments on the proposed MCS amendments. In response to requests from interested members of the public, however, the Council at its August 7, 1985 meeting in Portland, Oregon voted to extend that deadline to 5 p.m., September 13, 1985 (50 FR 33435, Aug. 19, 1985). Between August 6, 1985 and September 13, 1985, the Council held public hearings in Portland, Oregon; Seattle and Spokane, Washington, Missoula, Montana; and Burley, Idaho. The Council also held an informal consultation in Portland on August 6, 1985, during which members of the public were provided an opportunity to question the Council and staff regarding the proposed amendments. The Council also distributed to 1,354 individuals and groups copies of two documents providing updated technical background information from the RSDP relevant to the proposed MCS amendments (see 50 FR 37680, Sept. 11, 1985).

In response to public comments received and ongoing study and analysis conducted by Council staff, the Council voted at its September 18, 1985 meeting in Portland to reopen the public comment period to take additional comment from September 19 through October 21, 1985 on the Council's latest formulation of its proposed MCS amendments (50 FR 40091, Oct. 1, 1985). Noting that the proposed amendments had evolved through the rulemaking process, the Council invited comment on several particular aspects of the proposed amendments:

- The appropriate deadline for implementation of the standards;
- The appropriate interim progress to be required to insure compliance with the standards;
- Financial assistance to home buyers or builders required to achieve the standards, and allocation of such payments between utilities and Bonneville;
- Surcharges for failure to achieve compliance with the standards or failure to adopt programs designed to achieve the standards; and
- The need for the standards to insure indoor air quality comparable to that achieved under current building practices.

This formulation of the proposed amendments, released on September 23, 1985, eliminated the interim prescriptive path contained in the July 26, 1985 formulation of the proposed amendments. Instead, in order to achieve progress toward the MCS, it required a shared Bonneville and local utility payment program to be in place by January 1, 1987 and be designed to purchase energy savings from new home construction (or fund an alternative that achieves equivalent progress). It also required state or local government or utilities to achieve MCS levels of construction in 85 percent of the new, electrically heated homes constructed in the region by January 1, 1989. This formulation of the proposed amendments provided for a 1987 surcharge for failure to adopt the MCS interim progress program, implement an alternative plan, participate in a Bonneville program, or allow Bonneville to operate a payment program, and a 1989 surcharge for failure to adopt the MCS as codes, offer financial assistance or obtain equivalent savings by other means. This formulation of the proposed amendments also contained provisions designed to prevent fuel switching and set 1988 as the deadline for achievement of the MCS for all sectors. Comments on this later formulation of the proposed MCS amendments were taken at hearings in Salem, Oregon; Seattle, Washington; Missoula, Montana; and Boise, Idaho.[1] Also, two additional consultations were held in Portland regarding the proposed amendments (50 FR 40855–40856, Oct. 4, 1985). Written comments were accepted through 5 p.m. October 23, 1985.[2]

After considering all public comments received, the Council adopted final MCS amendments at its December 4, 1985 meeting in Portland, Oregon. The text of the final amendments is provided below. Note that:

- Footnote 4 in Table 1 of the final amendments in this notice (regarding exterior walls in multifamily structures) was not included in the pre-publication version of the amendments distributed previously; and
- The final amendments in this notice properly include a heading entitled "The Minimum Performance Standard for Commercial Programs", which was improperly listed in the pre-publication version of the amendments as "The Maximum Performance Standard for Commercial Programs."

The Council has used the word "should" in the final MCS amendments, when referring to actions to be carried out by Bonneville, to express the Council's expectation that Bonneville will implement these final amendments and will consult with the Council on a regular basis regarding such implementation. The use of the word should does not imply any limitation on or interpretation of the Council's statutory relationship with Bonneville. The Act provides that all conservation and resource acquisitions by Bonneville shall be consistent with the Plan, except as otherwise specifically provided in the Act. (16 U.S.C. 839b(d)(2)). The Council has determined that these actions are cost effective and prudent and must be taken now for Bonneville to acquire the lowest-cost resources over the next 20 years. These key activities should be part of any work plan designed to meet the goals and objectives of the Council's Plan. If significant changes in circumstances occur, the Plan can be amended at any time by Council action.

Final Amendments

For the reasons set out in this notice and under authority given the Council under the Act (16 U.S.C. 839b(d)(1)), the Northwest Conservation and Electric Power Plan (48 FR 24493, June 1, 1983) as amended, is amended further by deleting the existing text of Volume I, Chapter 10, Section 2, "Residential Sector-New Building Standard"; Section 3, "Residential Sector-Conversion Standard"; Section 6, "Commercial Sector-New Building Standard"; Section 7, "Commercial Sector-Conversion Standard"; Section 8, "Commercial Sector-Demonstration Program"; Action Item 12.1, dealing with Bonneville reimbursement to state and local governments for the cost of adopting and enforcing the MCS; Action Item 25, "Method for Calculating Surcharges" and Appendices D, J and L, and replacing them with the following:

1.0 Model Conservation Standards for New Residential Buildings, New Commercial Buildings, Conversions, and Utility Residential and Commercial Conservation Programs and Surcharge Methodology

As directed by the Northwest Power Act, the Council designed the model conservation standards (MCS) to produce electricity savings that are both cost-effective for the region and economically feasible for consumers. Since most residential and commercial buildings constructed today are likely to last considerably longer than the current surplus of electricity, all cost-effective conservation should be captured at the time the buildings are constructed. Where such cost-effective measures are not installed at the time of construction, it can be prohibitively expensive if not impossible to return to the structure and add the measures later. The result is

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[1] These hearings had already been scheduled to take comment on the Council's draft revised Plan (50 FR 37980, September 12, 1985). Although comments on both the draft Plan and the MCS amendments were taken at these hearings, the rulemakings followed different schedules. The Council did, however, recognize that certain issues in the two proceedings were interrelated. The Council specifically noted in its notice of reopening the MCS comment period that the role of the MCS in relation to the resource portfolio of the 1985 Plan is an issue on which comments would be appropriately received in the revised Plan rulemaking (50 FR 40091, Oct. 1, 1985).

[2] Although the Council's notice of the reopening of the MCS comment period set October 21, 1985 as the deadline for receipt of public comment, the Council on October 21 voted to extend that deadline until October 23, 1985. (50 FR 43822, Oct. 29, 1985). Because an unexpectedly large number of commentors asked to present comments at a public hearing in Seattle on October 21, the Council extended the comment period to allow some of those persons to present comments on October 23 at a second day of hearings.

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that a cost-effective resource is lost to the region forever.

Sector Objective

To improve the efficiency with which new residential and commercial buildings use electricity and to assure that buildings converting from other fuels also use electricity efficiently.

Status and Review: Model Conservation Standards

Since the Council's first regional power plan was adopted on April 27, 1983, the Council and Bonneville have made substantial progress in their efforts to improve the energy efficiency of new buildings. Several local jurisdictions in Washington State have adopted the MCS as codes. In addition, statewide code improvements have been achieved in Oregon and Washington, although not to the full levels of the MCS. Over 400 houses have been built to the MCS through the Residential Standards Demonstration Program (RSDP), a training program for builders and code officials, and other interested parties in the shelter industry. Even though the data from the RSDP have statistical limitations, the Council is encouraged by the fact that costs reported by the majority of RSDP builders were in accord with the Council's 1983 cost estimates. This result is remarkable in that most RSDP builders were constructing an MCS home for the first time.

Bonneville has initiated a marketing program, Super Good Cents, aimed at achieving 5,000 houses built to the MCS in fiscal year 1986. Houses built and marketed through the Super Good Cents program will be certified energy efficient by electrical utilities. The goal of certification is to get lenders, sellers and buyers to recognize the added value of an MCS home because it is less expensive to own and heat. Bonneville also has a continuing program to help train and educate the shelter industry, including lenders, about the advantages of building more efficient buildings.

The Council adopted the MCS in its 1983 power plan for the region (48 FR 24493, June 1, 1983). On July 26, 1985, the Council published proposed amendments to those standards (50 FR 30654, July 26, 1985). Hearings were held in the four Northwest states to receive oral public comment on the proposed amendments. Consultations were held with interested persons and groups. Extensive written public comments were also received. After review of the comments received, the Council published a reformulated version of the proposed rule and reopened the comment period (50 FR 40091, Oct. 1, 1985). Additional consultations and hearings in each of the Northwest states were held. The MCS are the result of that process.

The MCS savings levels for both new residential and commercial buildings are equivalent to the MCS set forth and as amended by the Council in its 1983 plan. The savings resulting from the MCS will help the region avoid the construction of more expensive resources.

The MCS protect indoor air quality by including requirements to maintain air quality at levels common in 1983 in new non-MCS residential buildings. The Council also has included action items in this plan for the development by Bonneville of design, installation, and inspection standards for mechanical ventilation.

The MCS are also designed to meet the Northwest Power Act's requirements that they produce all electrical energy savings that are cost effective for the region and economically feasible for consumers, taking into account financial assistance made available pursuant to the Act. The Council will continue to monitor the cost and performance of all the Model Conservation Standards and will revise the MCS as appropriate.

The Council's 1983 approach to the MCS emphasized the use of building codes as the least expensive way for the regional power system to acquire cost-effective conservation. State and local jurisdictions are still strongly encouraged to adopt the MCS for new residential and commercial buildings and conversions as building codes. This reformulation of the MCS, however, also focuses on utility residential and commercial conservation programs. The new MCS for utility programs are designed to encourage through marketing and financial assistance improved building practice and ultimate adoption of building codes at MCS levels by reducing the cost of the MCS.

Compliance with the MCS for utility programs is determined by an annual evaluation of the performance of all utilities. The poorest performing utilities will be subject to a surcharge as detailed below.

To help jurisdictions and utilities prevent inefficient buildings from being converted to electricity for space heating and/or conditioning, the Council has included an MCS for conversions that calls upon state and local jurisdictions and utilities to require all regionally cost-effective conservation measures to be installed at the time of conversion.

The Model Conservation Standards

The Council has adopted five model conservation standards. The MCS include the MCS for new residential buildings, the MCS for utility residential conservation programs, the MCS for new commercial buildings, the MCS for utility commercial conservation programs, and the MCS for conversions.

The MCS for New Residential Buildings

The Council's model conservation standard for new single and multifamily electrically heated residential buildings is as follows: new buildings are to be built to energy efficiency levels equal to those which would be achieved by using the illustrative component performance paths displayed in Table 1 for each of the Northwest climate zones.[1]

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[1] Single family residences are defined to include duplexes. Multifamily residences include triplexes and larger structures up to and including 4-story low-rise residential structures. The standard applies to site-built residences and not to residences which are regulated under the National Manufactured Housing Construction and Safety Standards Act of 1974. 42 U.S.C. 5401 *et seq.* (1983).

TABLE 1.—ILLUSTRATIVE PATHS FOR RESIDENCES BUILT TO THE MCS LEVEL

Component	Climate zone [2]		
	Zone 1	Zone 2	Zone 3
Ceilings:			
Attic	R-38(U-0.032) [3]	R-38(U-0.032)	R-38(U-0.032).
Vaults	R-38(U-0.028)	R-38(U-0.028)	R-38(U-0.028).
Walls:			
Above grade	R-19(U-0.057)	R-25(U-0.046)	R-31(U-0.036). [4]
Below grade	R-19 [5]	R-19	R-25.
Floors:			
Crawl Spaces & Unheated Bsmts	R-19(U-0.040)	R-30(U-0.030)	R-30(U-0.030).

TABLE 1.—ILLUSTRATIVE PATHS FOR RESIDENCES BUILT TO THE MCS LEVEL—Continued

Component	Climate zone [2]		
	Zone 1	Zone 2	Zone 3
Slab-on-grade Perimeter	R-10	R-12	R-15.
Glazing [6]	R-2.5(U-0.40)	R-2.5(U-0.40)	R-2.5(U-0.40).
Maximum Glazed Area (% floor area)	15	15	15
Exterior Doors	R-7(U-0.16)	R-7(U-0.16)	R-7(U-0.16).
Infiltration Control	0.1 ach [7]	0.1 ach	0.1 ach.
Mechanical Ventilation w/Heat Recovery	0.5 ach	0.5 ach	0.5 ach.

[2] The Council has established climate zones for the region based on the number of heating degree days as follows: Zone 1—4-6,000 heating degree days; Zone 2—6-8,000 heating degree days; and Zone 3—over 8,000 heating degree days.

[3] R-values listed in this table are for the insulation only. U-values listed in this table are for the full assembly of the respective component.

[4] Multifamily exterior walls above grade in Zone 3 should be insulated to a nominal R-25 (U-0.045).

[5] Only the R-value is listed for below grade insulation. The corresponding U-value is not known with precision.

[6] U-values for glazing shall be the tested values for thermal transmittance due to conduction resulting from either the American Architectural Manufacturers Association (AAMA) 1503.1-1980 test procedure or the American Society for Testing and Materials (ASTM) C236 or C976 test procedures. Testing shall be conducted under established winter horizontal heat flow test conditions using a 15 mph wind speed and product sample sizes specified under AAMA 1503.1-1980. Testing shall be conducted by a certified testing laboratory. *EXCEPTION:* Site-built fixed glazing shall be exempt from the thermal testing requirements; provided the insulating glass is tested and certified under a Society of Insulated Glass Manufacturers of America (SIGMA) approved certification program as class "A" in accordance with ASTM E-744-81 and the insulating glass is installed either in an aluminum frame having a minimum 0.25 inch low conductance thermal break or in wood framing in accordance with SIGMA glazing specifications; and provided further, that site-built double glazed units with fixed panes shall have a dead air space between panes of not less than ½ inch and site-built triple glazed units with fixed panes shall have a dead air space between panes of not less than ½ inch.

[7] Air changes per hour.

The electric power savings represented by the measures in Table 1 are estimated to result in savings equivalent to those which would be produced by the performance standards as set forth and as amended in the Council's 1983 Power Plan. Trade-offs among components may be made so long as the overall efficiency and indoor air quality of the building are at least equivalent to a building containing the measures listed in Table 1. Other illustrative approaches to building to this standard are described in those portions of the Council's *Model Conservation Standards Equivalent Code,* dated February 1985, as it will be conformed to this rule and as it may be amended from time to time, which apply to low-rise residential buildings.

The MCS for Utility Residential Conservation Programs

The MCS for utility residential conservation programs is that utilities must implement, in accordance with the requirements detailed below, the Bonneville/utility residential MCS program, an equivalent alternative program, or rely on improved building codes to the MCS level. The Bonneville/utility residential MCS program consists of an agressive marketing [8] and financial assistance program made available by Bonneville and the local utility to homebuilders during 1987 and 1988, and thereafter as set forth below.

Financial Assistance in 1987 and 1988

The amount of financial assistance for the Bonneville/utility residential MCS program during the 1987 and 1988 calendar years should be as stated in Table 2. The local share of financial assistance shown in Table 2 is the minimum required of a utility in order for it to receive the Bonneville share. Utilities may elect to offer more if needed to achieve compliance with the minimum performance or equivalence standard.

TABLE 2.—FINANCIAL ASSISTANCE FOR AN AVERAGE SINGLE FAMILY HOUSE (APPROXIMATELY 1850 Square Feet)

For Full Requirements Customers [*] of Bonneville

[Calendar Years 1987 and 1988]

State	Climate zone 1		Climate zone 2		Climate zone 3	
	Local	Bonneville	Local	Bonneville	Local	Bonneville
Washington	$130	$2,500	$260	$2,500	N/A	N/A
Oregon	445	2,500	830	2,500	N/A	N/A
Idaho	1,970	2,500	1,970	2,500	$440	$2,500
Montana	N/A	N/A	N/A	N/A	440	2,500

[*] Financial assistance to generating public utilities, investor-owned utilities not currently placing a load on Bonneville, and other utilities in the region should be set as provided below under "Activities to Achieve Council's Objectives."

Financial Assistance in 1989 and Thereafter

Beginning on January 1, 1989, the level of total financial assistance for the Bonneville/utility residential MCS program should be established by Bonneville within the range of values calculated by the Council. The minimum value for the range will be the difference in net present value of life cycle cost to the consumer between a house built to the minimum life cycle cost level and a house built to the full residential MCS level. The maximum value for the range will be the median builders' costs in the previous year or years for conservation measures more efficient than the level of the 1983 building practice. The Council's current calculation of the minimum and maximum values is shown in Table 3. The financial assistance beyond January 1, 1989, should be provided by Bonneville and local utilities [9] based on shares established in Table 4. The Council may, from time to time, revise these tables based on new information, including, but not limited to, that made available by early adopter jurisdictions and by utilities participating in the Bonneville/utility residential MCS program.

TABLE 3.—MINIMUM AND MAXIMUM FINANCIAL ASSISTANCE LEVELS

Climate zone	Minimum	Maximum
1	$1,400	$5,600
2	1,300	6,000
3	1,080	5,100

TABLE 4.—PERCENTAGE OF FINANCIAL ASSISTANCE TO BE MADE BY LOCAL UTILITIES

[For full requirements customers [*] of Bonneville]

State	Climate zone 1	Climate zone 2	Climate zone 3
Idaho	30	30	15
Montana	N/A	N/A	15
Oregon	15	25	N/A
Washington	5	10	N/A

[*] Financial assistance to generating public utilities, investor-owned utilities not currently placing a load on Bonneville, and other utilities in the region should be set as provided below under "Activities to Achieve Council's Objectives."

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[8] "Super Good Cents" is the current name given to the Bonneville marketing program to encourage residential construction at the MCS level of efficiency. The Council believes the design and features of the Super Good Cents program will, if implemented regionwide, provide a successful mechanism for advancing building practices to the full residential MCS level of savings throughout the region.

[9] If local utilities determine that higher levels of financial assistance are required to achieve compliance, they should adjust their assistance level as appropriate.

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The Minimum Performance Standard for Residential Programs

All utilities must meet the annual minimum performance standard for each performance year or be subject to a surcharge except, in the limited circumstances described below, utilities whose total load is less than 25 average annual megawatts.

The Council has set the annual minimum performance standard for residential programs for calendar year 1987 (the first performance year) to equal 30 percent of the electricity savings that could be saved if all new electrically heated residential buildings in a utility service territory were built to the residential MCS levels. The Council will set the minimum performance standard for calendar year 1988 (the second performance year) by January 1, 1987.

By July, 1988, Bonneville should establish the minimum performance standard for 1989 (the third performance year). By each July thereafter, Bonneville should set the minimum performance standard for the following performance year based on the relative performance of utilities during the past performance year. The minimum performance standard should be set by Bonneville in the following way:

- All utilities including those participating in the Bonneville/utility residential MCS program, those which have had codes adopted in their service territory, and those which have adopted other alternatives (where reliable data is available) will be ranked each year based on their performance in achieving in the previous performance year the electricity savings potential of the MCS. Savings should be measured from existing practice in 1983.[10] Performance will be measured by the percentage of electricity savings achieved out of all the electricity that could have been saved if all new electrically heated residential buildings in a utility service territory had been built to the residential MCS level. Thus, for example, if ten identical single family residences were built in a utility service territory, five of which were built to the residential MCS level and five to 1983 practice, that utility's performance level would be 50 percent. If five were built to the residential MCS level and the remaining five were built to a revised code or building practice that achieved 50 percent of the MCS savings, the utility's performance would be 75 percent.
- Utilities with the highest performance and which represent 80 percent of the new electrically heated residences will be grouped. The performance level of the poorest performing utility in that group is the minimum performance standard for the next performance year. If there is little difference in performance among utilities, the Council may reconsider this minimum performance standard. The Administrator should use caution when evaluating utilities with very few new electrically heated dwellings in their service area and should consider evaluating these utilities over more than one calendar year.

The Equivalence Standard for Residential Programs

The equivalence standard applies only to utilities selecting an alternative program to the Bonneville/utility residential MCS program. The equivalence standard is the average savings achieved by any means by utilities participating in the Bonneville/utility residential MCS program during the previous performance year. Savings are measured as a percentage of all the electricity savings achieved out of all the electricity that could have been saved if all new electrically heated residences were built to MCS levels. Beginning in 1988, Bonneville should announce the equivalence standard for the next performance year by July 1 of each year. Utilities with alternative programs not performing at the level of the equivalence standard when it is announced must, by January 1 of the next performance year: (1) Secure Bonneville's approval of another alternative plan for meeting the equivalence standard; or (2) adopt the Bonneville/utility residential MCS program. If a utility fails to take one of these two corrective actions, and fails to meet the equivalence standard during that next performance year, the utility will be subject to a surcharge.

Submission of Utility Plans for Compliance With the MCS for Residential Programs

Utilities must, by September 1, 1986, submit to Bonneville an initial plan declaring how they intend to meet the MCS for utility residential conservation programs. The ultimate goal for such programs is to obtain, as soon as possible, at least 85 percent of the savings which would have been obtained if all electrically heated residential buildings had been constructed to the residential MCS level.[11] In subsequent years, a utility may change its declaration, subject to the same Bonneville approvals required for the 1986 initial plan submissions.

There are several ways utilities can comply with the MCS for utility residential conservation programs. These are:

1. Submit by September 1 of any year beginning in 1986, and have approved by Bonneville prior to January 1 of the next year, a declaration that the MCS for residential buildings have been or will be met no later than January 1 of that next year, and for each subsequent year through codes at MCS levels adopted and enforced by a state and/or local government, and thereafter in each performance year, achieve and maintain the level of savings required by the annual minimum performance standard;

2. Agree by September 1 of any year beginning in 1986, to adopt and implement the Bonneville/utility residential MCS program by January 1 of the next year, and thereafter in each performance year achieve and maintain the level of savings required by the annual minimum performance standard;

3. For utilities with less than 25 average annual megawatts of load, agree by September 1 of any year beginning in 1986, to adopt and implement the Bonneville/utility residential MCS program by January 1 of the next year, and offer to pay financial assistance throughout each performance year equal to or greater than the maximum value of financial assistance shown in Table 3; or

4. Submit by September 1 of any year beginning in 1986, an alternative program that will be implemented and enforced and is initially approved by Bonneville, prior to the next performance year, as being capable of providing savings equivalent to the Bonneville/utility residential MCS program and which does not duplicate the acquisition of other resources that are already in the Council's plan. In addition, in order to continue to be considered equivalent, an alternative program must comply with the equivalence standard. Further, utilities with an alternative program must achieve and maintain in each performance year, the level of savings annually required by the annual minimum performance standard. Alternative programs may include, but are not limited to, state or local government or utility marketing programs, financial assistance, codes that achieve part of the MCS level of savings, or other measures to encourage energy efficient construction of new residential buildings or other lost opportunity conservation resources. Each alternative plan should specify at least the following:

—Thermal efficiency specifications per building
—Measures to maintain adequate indoor air quality, by providing no less than 0.5 air changes per hour
—Target market share
—Level of utility payments or other activities to promote residential MCS level construction
—Marketing plan
—Contingency plans for achieving targets with alternative marketing strategies
—Compliance certification strategy (e.g., utility inspection)
—Data gathering to meet Bonneville information needs.

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[10] The Council will work with Bonneville in defining 1983 practice for use as a benchmark and will supply this information to utilities.

[11] 85 percent is the level of compliance that the Council believes is achievable by utility programs.

Surcharge Recommendation

The evaluation of utility performance and the annual establishment of the minimum performance standard and equivalence standard should become part of Bonneville's surcharge policy. Bonneville should monitor performance and equivalence during each year beginning with the first performance year (1987).

The Council recommends that a 10 percent surcharge be imposed as of January 1, 1987, on utilities which have not complied with the September 1, 1986, deadline to submit: (1) An initial plan for implementation of the Bonneville/utility residential MCS program; (2) a plan for implementation of an alternative program which is approved by Bonneville as being equivalent as set forth above; or (3) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge continues in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

The Council recommends that on each January 1, beginning in 1989, a 10 percent surcharge be imposed for one year on all utilities which did not comply with the annual minimum performance standard for the performance year beginning two years earlier. For example, utilities failing to meet the 1987 minimum performance standard should be surcharged commencing January 1, 1989 for one year. Utilities failing to meet the 1988 minimum performance standard should be surcharged commencing January 1, 1990 for one year. However, utilities with a total load of less than 25 average megawatts which participate in the Bonneville/utility residential MCS program and offer throughout each year to which a minimum performance standard is applicable, financial assistance equal to or greater than the maximum value of financial assistance shown in Table 3 should not be surcharged regardless of their performance.

The Council recommends that on each July 1, beginning in 1990, a 10 percent surcharge be imposed for one year on utilities with alternative residential programs that have not taken the corrective actions for alternative programs as set forth above, and which have not met the equivalence standard for the previous performance year beginning in 1989. For example, on July 1, 1988, Bonneville will announce the equivalence standard for 1989 based on performance in 1987. A utility with an existing alternative program not performing to that level when it is announced, which does not by January 1, 1989, either adopt and implement the Bonneville/utility residential MCS program or secure Bonneville's approval of an alternative plan and which fails to meet the equivalence standard during 1989, should be surcharged on July 1, 1990.

The Council's surcharge methodology is set forth below. The total surcharge on a utility for failing to meet the MCS for residential and commercial utility programs should not exceed 10 percent of its rate at any time.

In no event should a utility be surcharged if it achieves and maintains, in any of the ways enumerated above, a level of electrical energy savings equivalent to 85 percent of those which would be achieved if all new electrically heated residences in its service territories were constructed to the level of the residential MCS.[12] A utility operating the Bonneville/utility residential MCS program or a program approved by Bonneville as equivalent should not be surcharged if Bonneville does not offer it financial assistance to be provided to home builders for each residence meeting the standards at least equal to the minimum value of financial assistance shown in Table 3.

Exemptions

The Council finds there is no need for exemptions at this time. If Bonneville finds that hardship exists, Bonneville should, if necessary, fully finance the MCS in those jurisdictions.

The MCS for New Commercial Buildings

The Council's model conservation standard for new commercial buildings is as follows: new commercial buildings are to be constructed to achieve savings equivalent to those achievable through constructing buildings to the Council of American Building Officials (CABO) 1983 Model Energy Code, which is based on the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) ASHRAE 90–80, with the following modifications. The ventilation requirements are those set forth in ASHRAE Standard 62–81, and the interior lighting standard for all office buildings and for those retail areas containing over 20,000 square feet is 1.5 watts per square foot. The lighting efficiency requirements for all commercial buildings are as shown in Table 5.

The Council recognizes that in some situations the lighting budgets shown in Table 5 may not provide acceptable lighting. Consequently, the Council's lighting standard for new commercial buildings may be met by documenting through the use of ASHRAE/IES (Illuminating Engineering Society) 90R–1986 and/or IES LEM–1–1986 that the lighting power budgets set forth in Table 5 are insufficient to achieve the recommended illuminance values for lighting design specified in the IES 1981 *Lighting Handbook, Applications Volume.* Such documentation must demonstrate that the recommended illuminance values cannot be achieved within the lighting budget when the most efficient equipment and lighting controls suitable for the specific task are used.

Illustrative ways for a commercial building to meet this standard are described in those portions of the Council's *Model Conservation Standards Equivalent Code* dated February 1985, as it will be conformed to this rule and may be subsequently amended from time to time, which apply to all buildings except low-rise residential buildings.

TABLE 5.—INTERIOR LIGHTING POWER BUDGET [1]

Group	Occupancy description	Lighting power budget [2] (W/square feet)
A	Assembly w/stage	1.1
	Stage lighting	(4)
	Assembly w/o stage: other than B and E	1.1
B	Gasoline service station	2.0
	Storage garages	0.3
	Office buildings, wholesale stores, police and fire stations	1.5
	Retail stores	
	—less than 1,050 square feet	4.5

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[12] A utility relying on codes may, in its declaration, use that portion of savings from any commercial building codes which exceed the commercial MCS level as an offset against the full residential MCS level.

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TABLE 5.—INTERIOR LIGHTING POWER BUDGET [1]—Continued

Group	Occupancy description	Lighting power budget [2] (W/square foot)
	—1,000 to 8,000 square feet	3.6
	—8,000 to 20,000 square feet	2.5
	—Over 20,000 square feet	1.5
	Drinking and dining establishments	1.65
	Food preparation-task lighting	(3)
	Aircraft hangars	0.7
	Process plants	1.0
	Factories and workshops	2.0
	Storage structures	0.7
E	Schools and daycare centers	2.0
	Audio-visual presentation lighting	(3)
H	Storage structures	0.7
	Handling areas	2.0
	Paint shops	2.5
	Paint spray booths	5.0
	Auto-repair booths	2.0
	Aircraft repair hangars	2.0
I	Institutions	2.0
	Administrative support areas	2.0
	Nursing areas	0.9
	Diagnostic, treatment, food service task lighting	(3)
R	Dwelling units	(3)
	Other areas	1.1
	Food preparation task lighting	(3)

[1] Watts/sq. ft. of room may be increased by 2 percent per foot of height above 20 feet.

[2] Emergency exit lighting is exempt from interior lighting budget.

[3] Exempt.

The Council's MCS for new commercial buildings were developed using the ASHRAE 90-80 standard originally issued in 1980. ASHRAE intends to adopt and issue an updated version of Standard 90 (ASHRAE 90.1) by mid-1986. The ASHRAE standard serves as the basis for the Council of American Building Officials Model Energy Code. Therefore, the Council intends to review the updated standard for potential adoption as its MCS. This review process will commence as soon as the ASHRAE standard has been adopted in its final form.,

The MCS for Utility Commercial Conservation Programs

The model conservation standard for utility commercial conservation programs is that utilities must: (1) Implement a joint marketing program with Bonneville, which may contain financial assistance payments to developers, (the Bonneville/utility commercial MCS program); or (2) implement an equivalent alternative program; or (3) rely on improved building codes to the MCS levels and achieve compliance with the annual minimum performance standard calculated as set forth below.

The Minimum Performance Standard for Commercial Programs

All utilities must meet the annual minimum performance standard. All utilities including those participating in the Bonneville/utility MCS program for commercial buildings, those which have had codes adopted in their service territory to the MCS level, and those which have adopted other alternatives (where reliable data is available) will be ranked each year based on their performance in achieving in the previous year the electricity savings potential of the commerical MCS. Savings should be measured from existing practice in 1982.[13] Performance will be measured by electricity savings achieved as a percentage of the electricty savings that could have been saved if all new commercial buildings in a utility service territory had been constructed to MCS levels. Thus, for example, if ten identical commercial buildings were built in a utility service territory, five of which were constructed to MCS levels (through codes or any other means), that utility's performance level would be calculated at 50 percent.

Utilities with the highest performance and which represent 80 percent of the new commercial floorspace will be grouped. The performance level of the poorest performing utility in that group is the annual minimum performance standard. If there is little difference in performance among utilities, the Council may reconsider this minimum performance standard. The Administrator should use caution when evaluating utilities with very few new commercial buildings and should consider evaluating these utilities over more than one calendar year.

The Equivalence Standard for Commercial Programs

The equivalence standard applies only to utilities selecting an alternative program to the Bonneville/utility commercial MCS program.

The equivalence standard is the average savings achieved by any means by utilities participating in the Bonneville/utility commercial MCS program during the previous performance year. Savings are measured as a percentage of all the electricity savings achieved out of all the electricity that could have been saved if all new commercial buildings were built to MCS levels. Beginning in 1988, Bonneville should announce the equivalence standard for the next performance year by July 1 of each year. Utilities with alternative programs not performing at the level of the equivalence standard when it is announced must, by January 1 of the next performance year: (1) Secure Bonneville's approval of another alternative plan for meeting the equivalence standard; or (2) adopt the Bonneville/utility commercial MCS program. If a utility fails to take one of these two corrective actions, and fails to meet the equivalence standard during that next performance year, the utility will be subject to a surcharge.

Submission of Utility Plans for Compliance With the MCS for Commercial Programs

Utilities must, by September 1, 1986, submit to Bonneville an initial plan declaring how they intend to meet the MCS for utility commercial conservation programs. The ultimate goal for such programs is to obtain, as soon as possible, at least 85 percent of the savings which would have been obtained if all commercial buildings had been constructed to the commercial MCS level.[14] In subsequent years, a utility may change its declaration, subject to the same Bonneville approvals required for the 1986 initial plan submission.

There are several ways utilities can comply with the MCS for utility commercial conservation programs. These are:

1. Submit by September 1, of any year beginning in 1986, and have approved by Bonneville prior to January 1 of the next year, a declaration that the MCS for commercial buildings have been or will be met no later than January 1 of the next year and for each subsequent year, through codes at the MCS levels adopted and enforced by a state and/or local government, and thereafter in each performance year achieve and maintain the level of savings required by the annual minimum performance standard;

2. Agree by September 1 of any year beginning in 1986, to adopt and implement the Bonneville/utility commercial MCS program by January 1 of the next year, which may contain financial assistance payments, and thereafter achieve and maintain the level of savings required by the annual minimum performance standard; or

3. Submit by September 1 of any year beginning in 1986, an alternative program that will be implemented and enforced by January 1 of the next year, and is initially approved by Bonneville, prior to the next performance year as being capable of providing savings equivalent to the Bonneville/utility commercial MCS program, and which does not duplicate acquisition of other resources that are already in the Council's plan. In addition, in order to continue to be considered equivalent, an alternative program must comply with the equivalence standard. Further, utilities with an alternative program must achieve and maintain in each performance year the level of savings annually required by the annual minimum performance standard. Alternative programs may include, but are not limited to, state or local government or utility marketing programs, financial assistance, codes that achieve part of the MCS level of savings, or other measures to encourage energy efficient construction of new commercial buildings or other lost opportunity conservation resources. Each alternative plan should specify at least the following:

—Electric efficiency specifications per building.

—Target market share.

—Level of utility payments or other activities to promote commercial MCS level construction.

—Marketing plan.

—Contingency plans for achieving targets with alternative marketing strategies.

—Compliance certification strategy (e.g., utility inspection).

—Data gathering to meet Bonneville information needs.

Surcharge Recommendation

The evaluation of utility performance and establishment of a minimum performance standard and equivalence standard should become part of Bonneville's surcharge policy. Bonneville should monitor performance and equivalence during each performance year beginning with the first performance year (1987).

The Council recommends that a 10 percent surcharge be imposed as of January 1, 1987, on utilities which have not complied with the September 1, 1986, deadline to submit an initial plan for implementation of the Bonneville/utility commercial MCS program, a plan for implementation of an alternative program which is approved by Bonneville as equivalent, as set forth above, or a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. This surcharge continues in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

The Council recommends that on each January 1 beginning in 1989, a 10 percent surcharge be imposed for one year on utilities which have not complied with the annual minimum performance standard for the performance year beginning two years earlier.

The Council recommends that on each July 1, beginning in 1990, a 10 percent surcharge be imposed for one year on utilities with alternative commercial programs that have not taken the corrective actions for alternative programs as set forth above, and which have not met the equivalence standard for that performance year beginning in 1989. For example, on July 1, 1988, Bonneville will announce the equivalence standard for 1989 based on performance in 1987. A utility with an existing alternative program not performing to that level when it is announced, which does not by January 1, 1989, either adopt and implement the Bonneville/utility commercial MCS program or secure Bonneville's approval of another alternative plan and which fails to meet the equivalence standard during 1989, should be surcharged on July 1, 1990.

The Council's surcharge methodology is set forth in Appendix A. The total surcharge on a utility for failing to meet the MCS for residential and commercial utility programs should not exceed 10 percent of its rate at any time.

In no event should a utility be surcharged if it achieves and maintains, in any of the three ways enumerated above, a level of electrical energy savings equivalent to 85 percent of those which would be achieved if all new commercial buildings in their service territories were constructed to the level of the commercial MCS.[15]

Exemptions

The Council finds there is no need for exemptions at this time. If Bonneville finds that hardship exists, Bonneville should, if necessary, fully finance the achievement of the MCS in those jurisdictions.

The MCS for Buildings Converting to Electric Space Conditioning

The Council's model conservation standard for residential and commercial buildings converting to electric space conditioning is that state or local governments or utilities should take actions through codes, alternative programs or a combination thereof to achieve electric power savings from buildings which convert to electrical space conditioning. These savings should be comparable to those savings that would be achieved if each building converting to electric space conditioning were upgraded to include all regionally cost-effective electricity conservation measures. Although the conversion standard is highly recommended, the Council is not recommending that a surcharge be imposed for failure to act accordingly.

Activities To Achieve Council's Objectives

Achieving the improved levels of building efficiency represented by the MCS is the goal of the Council. This goal can be achieved in a variety of ways. Bonneville has a key leadership role in achieving the goal of constructing more efficient buildings in the region.

Even though the benefits of building to the MCS are clear, homebuyers, builders, lenders, state and local governments and utilities need technical and financial assistance to make the transition to energy-efficient buildings constructed at the level of the standards. Bonneville should continue activities to assist homebuyers, state and local governments, homebuilders, utilities, realtors, lenders, and appraisers to accurately evaluate building techniques that will achieve improved levels of electrical energy efficiency. This training and technical information is needed so that all of the decisionmakers involved in constructing and purchasing new buildings can make an informed decision that recognizes the importance of energy efficient measures in the total costs of owning and heating or cooling the building. Bonneville activities listed below are those that the Council has determined are important in achieving its goal.

Bonneville activities are discussed in four sections below: (1) New site-built electrically heated residences; (2) new commercial buildings; (3) conversions of buildings to electric space conditioning; and (4) general activities that relate to more than one of the building sectors.

1. New Electrically Heated Residential Buildings

Bonneville should develop and implement a workplan which includes the following actions:

- Assist states, local governments and/or utilities in their efforts to comply with the Council's residential MCS described above.
- Refine the point system used in the Residential Standards Demonstration Program, using the generalized paths shown in Table 1 as the basis. At a minimum, component trade-offs should be included to account for variations in building thermal mass, heating system efficiency, solar orientation, envelope thermal efficiency, and mechanical ventilation without heat recovery. The

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[13] The Council will work with Bonneville in defining 1982 practice for use as a benchmark and will supply this information to utilities.

[14] 85 percent is the level of compliance that the Council believes is achievable by utility programs.

[15] A utility relying on codes may, in its declaration, use that portion of savings from any residential building codes which exceed the residential MCS level as an offset against the full commercial MCS level.

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point system is required to give builders the flexibility they need to meet the wide range of characteristics desired by homebuyers.

- Maintain an aggressive energy efficient new home marketing program (e.g. Super Good Cents). This program should include, as a condition of participation in the program, monitoring of indoor air quality and employment of specific pollutant source control measures in residential buildings constructed under the program. When the commercial marketing program development (described below) is complete, make the marketing program a comprehensive one to market electrically efficient residential and commercial buildings.
- Establish by July 1, 1986, a program to share financial assistance with local utilities for both single family and multi-family dwellings. Bonneville should establish the financial assistance for calendar years 1987 and 1988 at the levels stated in Table 2 for average size single family houses (about 1850 ft²), and establish a procedure to adjust the financial assistance as appropriate beyond January 1, 1989. Finanial assistance to multi-family residences and other than average size single family houses should be based on the square footage of the residences. The financial assistance and/or marketing effort should be adjusted if compliance with the MCS is not being achieved. In any case, beginning January 1, 1989, the financial assistance should be established by Bonneville within the range set forth in Table 3 above. The minimum value is the difference in net present value life cycle costs to the consumer between a house built to the minimum life cycle cost level and a house built to the full residential MCS level. The maximum value is the median builders' costs in the previous year or years for conservation measures more efficient than the level of the 1983 building practice. The Council's current calculation of the minimum and maximum values is shown in Table 3. The financial assistance beyond January 1, 1989, should be provided by Bonneville and local utilities [18] based on shares established in Table 4. The cost sharing ratios will be determined by the level of current building practices in each state by climate zone compared to the residential MCS. As local building practice improves through codes or by other means, the local utility's share of the total financial assistance payment would be decreased until such time as the code reached or exceeded the minimum life cycle cost level for homebuyers. At that time, the local utility's share of the financial assistance could drop to zero, and Bonneville would make the entire payment, up to the maximum level described above. The Council may revise these tables based on new information, including, but not limited to, that made available by early adopter jurisdictions and by utilities participating in the Bonneville/utility residential MCS program.

Bonneville financial assistance should be offered regionwide—including to utilities not currently exchanging with Bonneville or purchasing power from Bonneville. There are several reasons for this. First, Bonneville could find itself obligated to meet future investor-owned utility loads under its current power sales contracts. Avoiding unnecessary increases in investor-owned utility load requirements would reduce future rate increases as well as other risks associated with expensive thermal plant construction. Second, when an investor-owned utility acquires new resources, its acquisition costs are not paid solely by that utility's customers. In significant part, the costs are paid by Bonneville and its customers. This occurs when these costs are included in an investor-owned utility's average system cost and are spread to all Bonneville customers through the exchange. This exchange was authorized by the Northwest Power Act and is designed to provide lower rates for the residential and small farm customers of investor-owned utilities. Energy efficient construction will help hold down the size and cost of the exchange. Third, it is important for the ultimate adoption of MCS building codes and reduction of MCS costs to pursue MCS construction and market development regionwide. Improving building practice is key to achieving MCS construction. This may not occur if the focus is solely on that portion of the region (approximately 40 percent) currently purchasing power from Bonneville.

Bonneville financial assistance to partial requirements customers and potential customers not currently purchasing from Bonneville should vary to reflect the benefits Bonneville is expected to receive in reduced load requirements, reduced exchange requirements, and improved building practice. The payments should take into consideration Bonneville's "Final Conservation Cost-Sharing Principles" (Office of Conservation, Bonneville Power Administration, January 21, 1985), which allow cost sharing with all Bonneville customers, including those with no load requirements on Bonneville.

The Council expects that costs of conservation measures beyond the current minimum life cycle cost level for homebuyers will decline as the market for heat recovery ventilators matures, builders gain experience in using high R-value exterior walls, and lower cost infiltration techniques come into practice. As this occurs, Bonneville's share of the financial assistance would decrease. It could become zero when the full residential standard results in the minimum life cycle cost level for homebuyers. The Council will review annually the allocation shares as codes improve, relative costs and performance of conservation measures change, or as building practice changes, and will adjust them as appropriate.

Based on costs reported by builders participating in the Residential Standards Demonstration Program (RSDP), the Council has established the minimum share of the total financial assistance to be provided by the local utility. This share is based on a Council judgment after considering: (1) The RSDP costs of measures that would be required to go from current (October 1985) building practice (or 1986 state building codes) to a house which has the minimum life cycle costs for homebuyers and; (2) the RSDP costs of measures that would be required to go from current building practice to the full residential MCS. The local share of the financial assistance is based on the ratio of these two costs. The financial assistance per single family dwelling for an average sized home should be as shown in Table 2 and should remain in effect for calendar years 1987 and 1988.

- *Develop and implement* in consultation with the region's electric utilities, other fuel providers (such as the natural gas industry), state and local governments, utility regulatory commissions, and others, a method to monitor the effects of financial assistance on heating system choice of new homebuyers. The Council does not believe that consumer choice between competing fuel sources will be significantly affected by financial assistance offered by Bonneville and/or utilities. If the Council determines that significant fuel switching does occur, then the Council may determine that appropriate adjustments should be made to the financial assistance levels and/or marketing program. The Council will also analyze how the life cycle cost of gas-heated homes compares to electrically-heated homes and will make that information available to interested parties.
- Request utilities to submit to Bonneville by September 1, 1986, a plan declaring how they intend to comply with the MCS for utility residential conservation programs beginning on January 1, 1987.
- Continue research on technology that improves indoor air quality beyond the level attained in homes built to current practice, which is estimated to be approximately 0.5 air changes per hour.
- Expand Bonneville's existing Indoor Air Quality Research Program to:

—Assess the relative effectiveness of alternative source reduction and mechanical ventilation systems and strategies for minimizing potential pollutant build-up, including but not limited to spot ventilation, whole house exhaust-only ventilation, ductless heat recovery ventilation, and whole house heat recovery ventilation.

—Monitor indoor air quality in a sample of all new electrically heated homes and evaluate the effectiveness of natural ventilation (i.e., infiltration) compared to mechanical ventilation in maintaining clean air, given the same source strength and whole house ventilation rate.

—Identify the major indoor pollutants that may be significantly reduced or eliminated through source reduction actions that might be effected through building codes and product standards.

—Provide findings from indoor air quality research to local and state building code and public health agencies for their consideration.

- Heat recovery ventilation systems and/or ventilation systems without heat recovery installed in all programs used to achieve the MCS should be designed and certified to result in 0.5 air changes per hour to the conditioned space under typical installation and design weather conditions. Interim standards for the design, installation and performance of heat recovery ventilation systems should be promulgated by April 1, 1986. Final standards for the design, installation, and performance of heat recovery ventilation systems should be established by January 1, 1987. The Council intends to review and approve the standards at that time.
- Inspect heat recovery ventilators installed before the standards have been established and repair those units that are not meeting the certification standard. Heat recovery ventilation systems installed prior to January 1, 1987 which satisfy the interim standards, but fail to meet the final standard should be replaced or upgraded at no cost to the homeowner or homebuilder, as appropriate.
- Require that all houses built to the residential MCS under the Bonneville/utility residential MCS program or an alternative program being used to comply with the residential standard have a mechanical ventilator capable of providing 0.5 air changes per hour installed if natural ventilation has been reduced below that level. Existing early adopter programs which do no require mechanical ventilators are exempted from this restriction.
- Continue to provide technical and financial assistance to builders, insulation contractors, architects, designers, real estate appraisers, lenders, salespersons and code officials for the implementation of a uniform, regionwide energy efficiency certification system for new residential buildings.
- Provide information to homebuyers on energy efficient housing including publications on how to operate an energy efficient house and equipment such as heat recovery ventilators.

2. New Commercial Buildings

Bonneville should develop and implement a workplan which includes the following activities.

- Assist states, local governments and/or utilities in their efforts to take actions through codes, a Bonneville/utility commercial MCS program, alternative programs, or a combination thereof which will result in compliance with the commercial buildings MCS.
- Request utilities or local jurisdictions to submit to Bonneville by September 1, 1986, their plans for complying with the MCS for utility conservation programs for commercial buildings.
- Develop and implement an aggressive energy-efficient new commercial buildings marketing program similar to the Super Good Cents program for residential buildings. This should be made part of a comprehensive package to market efficient buildings, both residential and commercial. Evaluate the need for financial assistance to promote commercial buildings built to the MCS.
- Collect and evaluate data on new energy efficient commercial buildings built under the "early adopter" program or elsewhere. These data should be maintained and updated as necessary so they can be used in future planning and be used in information brochures on efficient building techniques.
- Continue the New Commercial Buildings Field Test Demonstration Program conducted pursuant to the Council's 1983 plan. This program is designed to achieve approximately 30 new commercial buildings constructed to be approximately 30 percent more efficient than the Council's standard.
- Develop for commercial buildings an energy efficiency certification program focusing on lighting. This program should be available by January 1, 1987, and be designed to influence the financing terms available to developers of energy efficient commercial buildings.

3. Residential and Commercial Buildings Converting to Electric Space Conditioning

Bonneville should develop and implement a workplan which includes the following activities:

- Encourage and assist states, local governments or utilities to take actions through codes, alternative programs or a combination thereof to achieve electric power savings from buildings which convert to electrical space conditioning comparable to those savings that would be achieved by incorporating all efficiency improvements that could be installed up to the regionally cost-effective level. The Council will work with Bonneville in consultation with the interested regional parties to define the measures that are regionally cost-effective.

4. General Activities for both Residential and Commercial Buildings

Bonneville should develop and implement a workplan which includes the following activities:

- Refine the Code Adoption Demonstration Program which encourages utilities, states and local governments to achieve the MCS through adoption of equivalent codes prior to January 1, 1989. If codes adopted in a utility's jurisdiction vary in specifics from those stated above, but result in equivalent electricity savings, the utility should be eligible for inclusion in the Code Adoption Demonstration Program. This "early adopter" program should be available throughout the region to jurisdictions which comply in aggregate with the MCS for new residential and commercial buildings through improvements in their building codes and should include the following elements:

—Financial assistance sufficient to cover the incremental cost of electrically heated residential building construction between 1983 practice and the MCS. This financial assistance should be available through January 1, 1989, to any jurisdiction that adopts the MCS through codes before January 1, 1989. Beyond January 1, 1989, financial

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[18] If local utilities determine that higher levels of financial assistance are required to achieve compliance, they should adjust their assistance level as appropriate.

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assistance to early adopters should be set at or above financial assistance given to utilities participating in the Bonneville/utility MCS program.

- —Inclusion of financial assistance to commercial building developers in "early adopter" jurisdictions.
- —Reimbursement to utilities and states or local governments for the costs of MCS-level code adoption and enforcement.
- —Systematic evaluation of construction cost, fuel share impacts, thermal performance, occupant satisfaction, indoor air quality, overall compliance with code targets, and enforcement costs for both residential and commercial buildings.
- —Education and training programs for builders, consumers, architects, designers, energy code enforcement officials, mechanical ventilation system designers, installers and servicing contractors, realtors, lenders and appraisers, and other appropriate participants in the design, purchase, and construction of new buildings.
- —Shelter industry training which focuses on the most cost efficient means of achieving the MCS.

- Implement the Model Conservation Standards Implementation Program (MCSIP) to reimburse state and local governments throughout the region for the incremental costs of adopting and enforcing model conservation standards as codes. Reimbursement should be made available throughout the region and should continue as long as enforcement of the standards remains regionally cost effective.
- Establish and maintain a program to reimburse states or local governments for the incremental costs of adopting and enforcing codes that are designed to achieve part of the savings represented by the MCS if the inspection and enforcement activities are undertaken as part of an overall program designed to meet the MCS. Code enforcement reimbursement should be provided for the cost of at least one inspection per building in such jurisdictions. This reimbursement should be provided throughout the region so long as regionally cost effective.
- By December 1, 1986, design and implement a method or process for estimating costs of building to the MCS throughout the region. This activity should be aimed at producing annual reports beginning in 1987 on the estimated costs experienced by builders in early adopter jurisdictions, and by builders in the Bonneville/utility MCS programs throughout the region. These cost estimates will be used by Bonneville and the Council to evaluate all aspects of the MCS, including a determination of the amount of and responsibility for the financial assistance offered in the next building season.
- As soon as possible in 1986, design a process to collect utility specific data on the achievement of electricity savings as a precentage of the total savings that would be expected if all buildings were constructed to MCS levels. The data should be the basis for a report published every year to notify utilities of their progress towards achieving the MCS in the previous year and the annual minimum performance standard and equivalence standard, where applicable, which will have to be met in the following year to avoid a surcharge.
- Continue development of and implement a procedure to measure compliance with the MCS and to review alternative plans for achieving compliance with the MCS for utility conservation programs. This procedure should be incorporated into Bonneville's surcharge policy scheduled for completion early in 1986. The surcharge policy should be modified to incorporate changes to the MCS made by the Council in this plan.
- Continue to collect and analyze data regarding energy use, structural specifications and operation of residences and commercial buildings through the existing End-use Load and Conservation Assessment Project (ELCAP).
- Establish, maintain and disseminate the results of an ongoing research and demonstration effort which focuses on the refinement of new residential and commercial building conservation technologies, construction techniques and products. This program should initially concentrate in the residential sector, identifying and/or developing better information on:

  - —Reducing uncontrolled air leakage
  - —Providing more reliable ventilation both with and without heat recovery
  - —Constructing highly insulated exterior walls.

Recommended Activities for the Region's Public Utility Commissions and Investor-Owned Utilities

The Council recommends that the region's public utility commissions consider providing appropriate rate treatment for investor-owned utility expenditures (e.g., marketing program costs and/or payments) made to encourage the construction of more energy, efficient structures which use electricity for space conditioning and which achieve savings comparable to those specified for the MCS for new residences and commercial buildings.

Surcharge Methodology

Section 4(f)(2) of the Northwest Power Act provides for Council recommendation of a 10 percent to 50 percent surcharge on Bonneville customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to those which would be obtained under the model conservation standards. The purpose of the surcharge is twofold: (1) To recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve equivalent electricity savings, and (2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and enforce the standards or comparable alternatives.

The Administrator is responsible for implementing the surcharge in accordance with the Council methodology for the surcharge calculation. The Council recommends that the Bonneville Administrator impose surcharges as specified above. The method is set out below.

A. Identification of Customers Subject to Surcharge

In accordance with the schedule set forth above, the Administrator should identify those customers, states, or political subdivisions which have:

1. Failed to comply with the model conservation standards for utility residential and commercial conservation programs, including meeting all filing deadlines, and
2. Failed to achieve equivalent savings of electricity through an acceptable alternative program, as determined by the Administrator.

B. Calculation of Surcharge

The annual surcharge for non-complying customers or customers in non-complying jurisdictions is then calculated by the Bonneville Administrator as follows:

1. If the customer is purchasing firm power from Bonneville under a power sales contract and is not exchanging under a residential purchase and sales agreement, the surcharge is 10 percent of the cost to the customer of all firm power purchased from Bonneville under the power sales contract for that portion of the customer's load in jurisdictions not implementing the MCS or comparable programs.
2. If the customer is not purchasing firm power from Bonneville under a power sales contract but is exchanging

(or is deemed to be exchanging) under a residential purchase and sales agreement, the surcharge is 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange (or deemed to be purchased) for that portion of the customer's load in jurisdictions not implementing the MCS or comparable programs.
3. If the customer is purchasing firm power from Bonneville under a power sales contract and also is exchanging (or is deemed to be exchanging) under a residential purchase and sales agreement, the surcharge is: (a) 10 percent of the cost to the customer of firm power purchased under the power sales contract, *plus* (b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange (or deemed to be purchased) multiplied by the fraction of the utility's exchange load originally served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource purchased from Bonneville and already surcharge under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

C. Evaluation of Alternatives and Electricity Savings

To assist Bonneville in estimating comparable electricity savings from alternative plans, a utility or jurisdiction should present its best estimate of new residential and commercial building construction in non-complying areas within its service territory or boundaries. Bonneville will determine, in consultation with the Council, whether the alternative conservation plan of a utility or jurisdiction will achieve savings of electricity comparable to those that would have been achieved under the utility programs identified in the MCS. When determining electricity savings that would have occurred had the utility program standards been implemented, jurisdiction-specific weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Council's Plan. For single-family residential buildings, Bonneville should assume the following regarding houses built to the model conservation standards: 1) Houses in climate zone 1 would save, on average, 6,725 kWh per year; 2) houses in climate zone 2 would save, on average, 8,853 kWh per year; and 3) houses in climate zone 3 would save, on average, 6,535 kWh per year. For multifamily dwellings, Bonneville should assume the following: 1) Dwelling units in climate zone 1 would save, on average, 3,120 kWh per year, 2) dwelling units in climate zone 2 would save, on average, 4,489 kWh per year, and 3) dwelling units in climate zone 3 would save, on average, 5,235 kWh per year. For commercial buildings, and where good estimates are not available for the number of new residential buildings, the estimated electricity savings should be determined by multiplying total regional average megawatt savings by sector expected from the standards, as shown in the Plan, by the utility's non-complying share of total regional load in the applicable sectors.

If the Bonneville Administrator determines that a proposed alternative plan is not acceptable, he should notify the entity that its alternative plan has been judged to be not acceptable and that Bonneville will add a surcharge to the affected utility's bill as of the dates set forth above. The surcharge is calculated as described in section B above. If subsequent modifications to the entity's alternative plan are determined by the Administrator to be acceptable, then the surcharge should be removed.

A general method of determining the estimated electrical energy savings of an alternative conservation plan should be developed in consultation with the Council and included in Bonneville's policy to implement the surcharge.

Response to Comments

Incorporated in this notice by reference are the Council's summaries of and responses to all significant public comments received on the proposed model conservation standards amendments during the public comment period. This referenced 86-page document will be mailed to all those who commented on the proposed amendments, and is also available to others upon request to the Council's Public Information and Involvement Division at the address and telephone numbers listed in this notice.

Legal Effect of This Notice

The Act provides that suits seeking judicial review of these final amendments must be filed on or before May 2, 1986 (16 U.S.C. 839f(e)(5)).

Edward Sheets,
Executive Director.

[FR Doc. 86–4196 Filed 2–28–86; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulations; Reasonableness of Contract Costs; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Reasonableness of Contract Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acqusition Regulation (FAR) 31.201-3, Determining reasonableness.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 2, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86-11 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The change to FAR 31.201-3 under consideration is designed to shift the burden of proof on the issue of reasonableness of contract costs from the Government to the contractor, abolish the presumption of reasonableness which attaches to incurred costs, and simplify the list of considerations that impact reasonableness determinations. This proposed rule is considered necessary to ensure that only reasonable costs are paid under Government contracts. Moreover, the proposed coverage is based, in part, upon section 933 of the Defense Procurement Improvement Act of 1985 (Pub. L. 99-145).

B. Regulatory Flexibility Act

The proposed change to FAR 31.201-3 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because the proposed coverage is designed primarily to clarify the term "reasonable cost" and to shift the burden of proof for establishing reasonableness of costs to the contractor when a cost is challenged by the contracting officer. A prudent business should already be maintaining adequate documentation to satisfy this burden of proof.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed change to FAR 31.201-3 does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 24, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.201-3 is revised to read as follows:

31.201-3 Determining reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor, and upon challenge of a specific cost by the contracting officer, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including—

(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;

(3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and

(4) Any significant deviations from the contractor's established practices.

[FR Doc. 86-4429 Filed 2-28-86; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 207, 210, 225, 226, 510, 514, and 558

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 210, 225, 226, 510, 514, and 558

[Docket No. 77N-0076]

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule revising the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. This final rule is based on the tentative final rule published in the **Federal Register** of July 29, 1983 (48 FR 34574) and amended in the **Federal Register** of November 1, 1983 (48 FR 50358).

EFFECTIVE DATES: These regulations shall become effective May 2, 1986, except that the provisions of 21 CFR 558.4(d), Category II, requiring the submission and approval of medicated feed applications for products formerly exempt from such requirement shall become effective March 3, 1987.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements the conclusions of the Medicated Feed Task Force of 1978 that were announced in the **Federal Register** of December 15, 1978 (48 FR 58634). The Task Force concluded that the existing program is the result of piecemeal policies affecting animal drugs resulting from application of the Federal Food, Drug, and Cosmetic Act (the act) enacted in 1938, as it evolved before and after the passage of the Animal Drug Amendments of 1968 (the amendments) (Pub. L. 90-399). Even after passage of the amendments, the medicated feed program continued to grow in a haphazard way. Exemptions from section 512(m) of the act (21 U.S.C. 360b(m)) resulted in feeds containing some carcinogenic drugs being exempt from the requirement for an approved medicated feed application, whereas feeds containing some drugs with wide margins of safety were subject to only partial or no exemptions. This anomalous situation was compounded by inconsistencies in the exemptions among drugs and among uses of individual drugs. For example, a new animal drug in feed may be exempted for one species but not others, making the regulatory program confusing and difficult to enforce because drugs marketed under the exempted use may be diverted to a nonexempted use.

The Task Force concluded that the current medicated feed program lacks uniformity. It recommended, among other things, that regulatory control of feeds containing new animal drugs that pose a potential risk to human beings from residues be strengthened, and that control of feeds containing drugs that pose little risk to human beings be reduced, thereby better utilizing the limited resources of the agency. Requirements for approved medicated feed applications should be based upon the degree of risk from use of the drug, either in terms of the toxicity of the drug itself or the concentration of the drug.

In the **Federal Register** of January 8, 1981 (46 FR 2456), FDA addressed the comments received on the Task Force report and proposed regulations based on the Task Force's recommendations. Approximately 570 comments were received on the proposal. The comments were from the animal drug industry, commercial feed manufacturers, on-farm mixers (mixer-feeders), veterinary practitioners, and Federal and State agencies. Following an evaluation of these comments, the agency concluded that additional changes should be made in the regulations to further simplify them without compromising the central focus of the Task Force. The agency concluded that the drugs used in animal feeds should be placed into categories based on their likelihood of producing unsafe residues in the edible products of treated animals. The agency's responses to the comments were discussed in detail in the tentative final rule published in the **Federal Register** of July 29, 1983 (48 FR 34574).

In the tentative final rule, the agency made two significant changes from the 1981 proposal. First, the agency reduced the number of drug categories from three to two. Second, the agency decided to exempt from the requirement of an approved medicated feed application the manufacture of Type B and Type C medicated feeds from Type A medicated articles listed in Category I. Those medicated feed manufacturers using solely Type A medicated articles in Category I would not need to register under section 510(b) of the act (21 U.S.C. 360(b)). The agency also made a number of minor editorial and technical revisions.

II. Provisions of This Final Rule

A. Drug Categories

The two drug categories defined in the July 29, 1983 tentative final rule are retained.

Category I consists of those drugs for which no withdrawal period is required at the lowest use level for each species for which they are approved. Drugs in this category include: aklomide, ammonium chloride, amprolium with ethopabate, bacitracin (from bacitracin methylene disalicylate or zinc bacitracin), bambermycins, buquinolate, chlortetracyline, coumaphos, decoquinate, dichlorvos, erythromycin (thiocyanate salt), fenbendazole, iodinated casein, monensin, nequinate, niclosamide, nystatin, oleandomycin, oxytetracycline, penicillin, penicillin with streptomycin, poloxalene, salinomycin, tylosin, virginiamycin, and zoalene.

Category II consists of those drugs: (1) For which a withdrawal period is required at the lowest use level for at least one species for which they are approved; or (2) that are regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern, regardless of whether a withdrawal period is required.

Drugs in this category include: Amprolium, arsanilate sodium, arsanilic acid, butynorate, carbadox, carbarsone, clopidol, dimetridazole, famphur, furazolidone, halofuginone hydrobromide, hygromycin B, ipronidazole, lasalocid, levamisole, lincomycin, melengestrol acetate, morantel tartrate, neomycin, nicarbazin, nitarsone, nitrofurazone, nitromide-sulfanitran, novobiocin, phenothiazine, piperazine, pyrantel tartrate, robenidine, ronnel, roxarsone, sulfadimethoxine-ormetoprim, sulfaethoxypyridazine, sulfamerazine, sulfamethazine, sulfanitran with aklomide, sulfaquinoxaline, sulfathiazole, and thiabendazole.

B. Definitions

As stated in the 1983 tentative final rule, the definitions clearly distinguish between those medicated feed articles that constitute new animal drugs subject to approval under section 512(c) of the act, and animal feeds containing new animal drugs subject to approval under section 512(m)(2) of the act. The definitions also distinguish between the kinds of medicated feeds subject to approval under section 512(m) of the act. Type A medicated articles will be regulated as new animal drugs. Type B and Type C medicated feeds will be

regulated as animal feeds containing new animal drugs.

Type A medicated article. The definition in the 1983 tentative final rule is retained without change. A Type A medicated article is a standardized product intended for use in the manufacture of a medicated animal feed. It is limited to use solely in accordance with its published regulation and contains one or more new animal drugs for use in the manufacture of a medicated animal feed. It is produced from a drug component or another Type A medicated article, and is subject to the requirements for approval under section 512(b) of the act. It usually includes a diluent (carrier substance), and must be further mixed to produce either another Type A medicated article, or a Type B or Type C medicated feed.

Type B medicated feed. The definition in the 1983 tentative final rule is retained without change. A Type B medicated feed is an animal feed containing a new animal drug and that is intended solely for manufacture into another Type B or a Type C medicated feed. It is produced from a drug component, a Type A medicated article, or another Type B medicated feed. If it is produced from a drug component, it must be the subject of an application approved under section 512(c) of the act. If it is produced from a Category II, Type A article, it must be the subject of an approval under section 512(m) of the act. A Type B medicated feed conforms to the definition of animal feed in section 201(x) of the act (21 U.S.C. 321(x)). Before being fed to animals, however, it has to be substantially diluted with one or more nutrients to produce a Type C medicated feed.

For the purpose of defining the dividing line between a Type A medicated article and a Type B medicated feed, the criteria of the tentative final rule are retained. Thus, the maximum permitted concentration of drug in a Type B medicated feed is 200 times the highest continuous use level for Category I drugs, and 100 times the highest continuous use level for Category II drugs. At approved levels above those concentrations, the product is a Type A medicated article. The "highest continuous use level" means the highest dosage at which a drug is approved for continuous use (14 days or more) or, if a drug is not approved for continuous use, the highest level used for disease prevention or control. If a drug is approved for multiple species at different use levels, the highest level would govern under this definition.

Type C medicated feed. In response to comments, FDA has revised the definition of the tentative final rule to conform to the preamble of the tentative final rule. A Type C medicated feed is a medicated animal feed containing a new animal drug that may be offered as a complete feed, or when permitted under Subchapter E of Title 21 of the Code of Federal Regulations, it may be fed top dressed or offered free-choice in conjunction with other animal feed to supplement the animals' total daily ration. It is produced by substantially diluting a drug component, Type A medicated article, or Type B or Type C medicated feed with feed ingredients to a level of use that is covered by an approved new animal drug application (NADA). If produced from a drug component, it must be the subject of an application approval under section 512(c) of the act. If produced from a Category II, Type A medicated article, it must be the subject of an approval under section 512(m) of the act.

Type A medicated articles and Type B and Type C medicated feeds have different requirements for approval, manufacture, and registration. These requirements are described in the following sections.

C. New Animal Drug Applications

All Type A medicated articles are new animal drugs. Their manufacture requires an approved NADA under section 512(c) of the act and § 514.105(a) of the regulations (21 CFR 514.105(a)). Also, the manufacture of Type B or Type C medicated feeds from a drug component requires an approved NADA under section 512(c) of the act. This final rule does not change those existing requirements.

D. Medicated Feed Applications

No changes in the 1983 tentative final rule were made. Therefore, the submission of a medicated feed application for the manufacture of a Type B or Type C medicated feed from a Type A medicated article will not be required for Category I drugs. A medicated feed application also will not be required for the manufacture of a Type B or Type C medicated feed from a Type B, Category I medicated feed.

For Category II drugs, the final rule waives the requirements of section 512(m) of the act for submission of a medicated feed application for the manufacture of a Type B or Type C medicated feed using a Type B medicated feed. The use of a Category II, Type A medicated article in manufacturing a Type B or Type C medicated feed must be the subject of an approved medicated feed application.

E. Current Good Manufacturing Practice (CGMP)

The manufacture of a Type A medicated article is subject to the existing CGMP regulations in Part 226 (21 CFR Part 226) covering the manufacture of medicated premixes. The manufacture of a Category II, Type B or Type C medicated feed from a Type A medicated article will be subject to existing §§ 225.1 through 225.115 (21 CFR 225.1 through 225.115). These sections provide CGMP requirements for the production of medicated feeds from Type A medicated articles when an approved medicated feed application is required. New §§ 225.120 through 225.202 provide CGMP regulations for the manufacture of medicated feeds for which the requirements of section 512(m) of the act have been waived.

F. Registration

Under the authority of section 510(g)(4) of the act, the agency will exempt from registration under section 510(b) of the act those firms manufacturing medicated feeds for which the requirements for submission and approval of medicated feed applications have been waived. Thus, registration will be required only for all firms manufacturing medicated feeds from Category II, Type A articles.

G. Summary of Requirements

The following table summarizes the major provisions of this final rule and related requirements:

CATEGORY I DRUGS

Starting drug product	Medicated product manufactured	FDA form	FDA registration	Good manufacturing practice regulations (Title 21)	Biennal GMP inspections
Drug component	Type A, B, or C	356 (new animal drug application).	Yes	Part 226	Yes.
Type A	Type A	356 (new animal drug application.	Yes	Part 226	Yes.
Type A	Type B or C	None	No	§§ 225.120-225.202	No.
Type B	Type B or C	None	No	§§ 225.120-225.202	No.

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CATEGORY II DRUGS

Starting drug product	Medicated product manufactured	FDA form	FDA registration	Good manufacturing practice regulations (Title 21)	Biennal GMP inspections
Drug component	Type A, B, or C	356 (new animal drug application).	Yes	Part 226	Yes.
Type A	Type A	356 (new animal drug application).	Yes	Part 226	Yes.
Type A	Type B or C	1900 (medicated feed application).	Yes	§§ 225.10–225.115	Yes.
Type B	Type B or C	None	No	§§ 225.120–225.202	No.

III. Comments on the July 29, 1983 Tentative Final Rule

Approximately 93 comments on the tentative final rule were received. A number of the comments addressed the same issues as those submitted in response to the 1981 proposal; FDA responded to those comments in depth in the preamble of the tentative final rule. Those responses, which continue to reflect the position of the agency and which will not be repeated here, relate to the following:

1. Authority to revoke waivers from section 512(m) of the act through rulemaking (48 FR 34577).
2. Regulation of medicated feeds based upon intended use, or species for which the medicated feed is labeled, rather than on drug concentration (48 FR 34577).
3. Basing an exemption on no withdrawal period at the lowest continuous use level (48 FR 34578).
4. Including reference to the Association of American Feed Control Officials' (AAFCO) "Official Publication" as an official source for defining nutrient ingredients (48 FR 34578).
5. Including a drug component ("bulk drug") in the definition of a "Type A medicated article" (48 FR 34578).
6. Permitting the use of any approved source of a Type A medicated article in a medicated feed application (48 FR 34579).
7. Elimination of medicated feed applications as obsolete and duplicative, on the basis that registration and conformity with current good manufacturing practices should be adequate for regulatory purposes (48 FR 34577).
8. "New drug" status of products in § 558.20 (21 CFR 558.20) (48 FR 34580).

A. Criteria for Exemption From Section 512(m) of the Act

1. Numerous comments requested that the agency not exempt Category I, Type A medicated articles. The comments stated that requiring medicated feed applications for the use of all Type A articles, both Category I and Category II, would provide a realistic scheme of control.

The basis for reducing the regulatory requirements was discussed in the preamble to the tentative final rule. The agency stated that it believes that it is highly unlikely that the use of these drugs in feed would result in unsafe drug residues in the edible products of food-producing animals. Because the agency wants to concentrate its efforts in the area of potential unsafe residues in food derived from treated animals, it is essential that the regulatory burden be reduced in areas where such potential is minimal.

2. A number of comments stated that it would be inequitable to require an NADA for the manufacture of a Type A medicated article from a Type A medicated article for Category I drugs in view of the fact that manufacture of a Type B or Type C medicated feed requires no approved application for use of a Type A medicated article.

A Type A medicated article is itself a new animal drug as defined in section 201(w) of the act and as such is required to be the subject of an approved application submitted under section 512(b) of the act. Because such articles contain high concentrations of new animal drugs, their manufacture should be subject to premarketing clearance.

Alternatively, the comments requested that the maximum drug level of Category I, Type B medicated feed be increased from 200 to 400 times the highest continuous use level and that the use of Category I, Type A medicated articles require an approved medicated feed application.

The agency has considered the request that the maximum level of a Type B medicated feed be raised to 400 times and found that to do so would in a number of instances cause the maximum level of the drug in Type B medicated feed to exceed the levels provided for in the approved NADA for a Type A medicated article. Under these circumstances, it would be illogical to increase the maximum level permitted in a Type B medicated feed.

3. A number of comments requested that the current waivers from the requirement of a medicated feed application be retained and that the current waiver criteria be incorporated into the category definitions.

The agency does not agree. The inconsistencies in the current program have resulted in part from the use of outdated waiver provisions. The agency has considered the existing waiver criteria in developing this final rule.

4. Seven comments requested that exemption granted under § 558.15 be retained under the new program.

The tentative final rule published July 29, 1983, inadvertently failed to include the exemption proviso in § 558.15(g). A correction document published on November 1, 1983 (48 FR 50358) reinserted the proviso. As corrected, § 558.15 is essentially unchanged and the exemption continues as before.

5. Four comments suggested that the proposed amendment to § 207.10(f) (21 CFR 207.10(f)) be reworded to conform with the exemption criteria.

The agency agrees and has made the requested change.

6. Two comments stated that there should be no exemption from the requirement of an approved medicated feed application for use of Category II, Type B medicated feeds.

The agency continues to believe that the Category II, Type B medicated feeds should be exempted from the requirement of an approved medicated feed application. As discussed in the preamble to the tentative final rule (48 FR 34577), the agency believes that "[t]he more concentrated the source of the drug, the greater would be the impact of error in manufacturing." The agency previously concluded that the likelihood of producing unsafe residues from mixing errors when a Category II, Type B medicated feed is used is low enough to justify the exemption. The comments presented no new information to cause the agency to reverse its previous decision.

7. Two comments questioned the rationale for placing penicillin and tetracycline in Category I considering the agency's announced concern about their use in feed at subtherapeutic levels.

Penicillin and the tetracyclines are placed in Category I because of the unlikelihood of their use in animal feeds causing unsafe drug residues in edible products of animal origin. As discussed above, the agency believes that drugs with a greater potential for causing unsafe drug residues in human food (Category II) should be subject to more stringent regulatory and manufacturing controls than drugs with less potential

for causing unsafe residues in human food (Category I).

In comparison, the agency's concern with the use of penicillin and the subtherapeutic use of the tetracyclines in animal feeds is unrelated to the potential of a drug to result in unsafe drug residues in human food from its use in medicated feeds. In 1977, FDA proposed to prohibit the use of penicillin in animal feeds and to restrict the subtherapeutic animal feed use of the tetracyclines. FDA proposed to take that action because it believed that, among other things, the continued feeding of penicillin and the tetracyclines to animal results in an increase of bacterial strains that are resistant to one or more antimicrobial drugs, and that these antibiotic-resistant organisms may be transferred to humans or the antibiotic-resistance will be transferred to another organism that causes disease. The end result is a situation where the antibiotic resistance interferes with the treatment of infectious diseases. Accordingly, the possible development of drug-resistant bacteria is a totally separate issue that is procedurally unrelated to this final rule.

Subsequently, congressional committee reports stated that FDA should hold the matter in abeyance pending the final results from ongoing studies. These studies, to assess further whether these uses of penicillin and the tetracyclines have a potentially significant impact on human health, have now been completed and the agency is currently reviewing the findings. A recently published study by the Centers for Disease Control in *The New England Journal of Medicine*, September 6, 1984, Vol. 311, pp. 617–622, reported that antimicrobial-resistant organisms of animal origin can cause serious human illness. FDA is considering the results of that study, along with other information, in deciding what action to take with respect to these uses of penicillin and the tetracyclines in animal feeds.

Should the agency decide to withdraw approval for these uses of penicillin and the tetracyclines in animal feeds, promulgation of this final rule will have no effect on that action. The placement of a drug in either Category I or II does not affect that drug's potential for development of drug-resistant bacterial. In addition, this final rule will not make withdrawal of approval more difficult by increasing the quantity of those drugs sold for use in feed. Penicillin and the tetracyclines currently do not require an approved medicated feed application and none will be required by this final rule.

8. Six comments were concerned about the safety of imported meat. They stated that, because foreign feed manufacturers and producers are not subject to FDA regulations, domestic feed manufacturers and producers are the subject of unfair discrimination.

The agency does not agree that it is practicing unfair discrimination. Under the act, FDA does not have the authority to inspect foreign medicated feed manufacturers that produce feed for consumption by animals whose edible products are imported into this country. In contrast, Congress mandated that domestic feed manufacturers comply with CGMP regulations, and that they be routinely inspected to determine compliance.

B. Definitions

9. Two comments requested that the term "carrier" be deleted from the definition of a Type A medicated article and the term "nutrient" substituted to permit greater latitude in optional ingredients. The comments also requested deletion of the word "other" from § 558.3(b)(1).

The agency does not agree with the first suggestion. The primary purpose of a Type A medicated articles is to provide a source of the drug for use in feed. Deleting the word "carrier" and replacing it with the word "nutrient" would provide an unwarranted emphasis on its nutrient content. The drug carriers used by the manufacturer can include items known to be sources of nutrition. The agency agrees that the word "other" should be deleted, and, accordingly, has revised § 558.3(b)(1).

10. One comment requested that the manufacture of a Type B medicated feed directly from a drug component be permitted rather than first having to produce a Type A medicated article.

The use of a drug component for the manufacture of Type B or Type C medicated feeds is permitted so long as an NADA providing for such manufacture has been approved under section 512(c) of the act. FDA has revised § 558.3(b) to provide for this manufacturing procedure.

11. Two comments stated that § 558.4 should define the concentrations of all drugs that may be used in combination as Type B medicated feeds.

Section 558.4 lists only those drugs and drug combinations that are approved for marketing as Type A medicated articles. Approved Type B combinations are identified in the appropriate regulations for the drugs. Only those specifically listed in the regulations as permitted combinations in Type B medicated feed are permitted.

C. Current Good Manufacturing Practice

12. Five comments stated that the requirement in § 225.58 *Laboratory controls*, for retention of results of assays of State feed control officials to fulfill periodic assay requirements, would be prejudicial because only "out of tolerance" results are reported to the firm.

The AAFCO Uniform State Feed Bill, which has been adopted by about half the States, requires that: "The results of all analyses of official samples shall be forwarded by the *DIRECTOR* to the person named on the label and to the purchaser" of the sampled product. In addition, almost all States that have not adopted the AAFCO Uniform State Feed Bill have similar provisions in their laws. Accordingly, State feed control agency officials report all assay results for tested constituents to the person named on the label and the purchaser of the sampled product. The official in some cases does not report the actual laboratory results but indicates that the product meets label guarantees by stating "Pass," "OK," etc. Actual laboratory results are reported on products that do not meet label guarantees. Even though the actual results may not be returned, notification that a product meets guarantees is sufficient to meet the assay requirement of § 225.58. Under these circumstances, the agency does not view this requirement as prejudicial.

13. Several comments stated that the 5 percent assay requirements of § 225.58(b)(2) as proposed in 1981 should be retained.

As discussed in the preamble to the tentative final rule, following an evaluation of the nearly 50 comments addressing this issue, the agency decided that the existing assay requirements would be retained for all products requiring an approved medicated feed application. This consists of at least three representative samples of medicated feed for each drug or drug combination to be assayed annually.

14. Several comments suggested that proposed § 225.135 *Work areas* be changed by adding the words "and storage" to the section.

The agency agrees and has made the revision.

15. Seven comments requested that § 225.142 *Components* be revised because of confusion arising from the use of undefined and imprecise terminology, and an apparent reduction in inventory requirements.

The agency has revised § 225.142 to provide for proper control of incoming

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Type A and Type B medicated products. Revised § 225.142 requires an accountability system to assure proper inventory control of the product. The type of system to be used is the choice of the user. The inventory system should be one that provides a record of receipt and eventual use or disposal of the products.

16. Eight comments opposed the language in § 225.180 *Labeling* that would provide cross-references to various parts of the Code of Federal Regulations in which labeling requirements are specified.

The agency has revised § 225.180 to delete reference to specific labeling requirements. Section 225.180 as revised focuses on maintaining the integrity of labeling control and assurance that medicated feeds are appropriately labeled.

D. Applications

17. Several comments requested that § 514.1(b) be revised to provide an appropriate cross-reference to § 501.110 (21 CFR 501.110), incorporating the use of collective names. The comments said that the tentative final rule appeared to revoke the use of collective names for nonmedicated feeds.

The agency agrees and has made the suggested change.

18. Several comments requested that § 514.1(b)(5)(vii)(*a*) be clarified to indicate that the method of analysis required applied only to the requested dosage form and not all other possibilities.

The agency agrees and has made the change. In addition, the agency on its own initiatives is revising the analytical method requirement section of the new animal drug application to be consistent with the final rule. The revision provides for references to pharmaceutical dosage products, Type A, Type B, or Type C products. Also, the agency on its own initiative is revising the stability requirement section of the new animal drug application to reflect requirements of the final rule. Section 211.137 (21 CFR 211.137) under CGMP requirements for pharmaceutical dosage forms requires expiration dates on these products. The agency has revised the stability section of the new animal drug application to provide for an expiration date for finished pharmaceutical dosage forms and Type A medicated articles. Section 211.166 requires stability testing for pharmaceutical dosage forms. Section 226.58 requires expiration dates and stability testing for Type A medicated articles. Stability testing of proposed Type B and Type C medicated feeds will be required as part of the new animal drug application for an animal drug.

19. Several comments suggested that all approved medicated feed applications (Form FD 1800) be rescinded and replaced with a new Form FDA 1900.

An approved medicated feed application is a valid license to manufacture a specific medicated feed. FDA may take action to withdraw approval only by following the procedure specified in section 512(m)(4)(B) of the act, and only for the reasons specified in that section. Over the years thousands of applications have been approved for the manufacture of medicated feeds. Any benefit that might be gained by replacing otherwise valid Forms FD 1800 with new Forms FDA 1900 would be far outweighed by the burden imposed on both the public and the agency.

20. Some comments requested that new Form FDA 1900 be made available for comment. Other comments requested that § 514.2 be revised to conform to new Form FDA 1900. One comment submitted a suggested form.

Revised § 514.2 includes all the information submission requirements of Form FDA 1900 and was available for comment. The form suggested by the comment is incomplete because it fails to include all of the elements provided in § 514.2.

21. One comment requested that the words "drug(s) or" in § 514.2(b)(4) be deleted because Form FDA 1900 is only intended for use of a Type A medicated article.

The agency agrees and has made the change.

D. Miscellaneous Comments

22. Ten comments noted certain discrepancies in the permitted analytical variations of Type B medicated feeds and stated that in some instances the percentage of variation appeared to be too broad for the concentration of the Type B medicated feed.

After careful consideration, the agency has decided to include the tables used in the 1981 proposal. These tables, which were not part of the 1983 tentative final rule, have been revised to take into account subsequent revisions. The new tables in § 558.4(d) provide for Type A assay limits, Type B maximum use levels (100X or 200X), and Type B and Type C assay limits.

The agency included the Type A assay limits because it believes that this information will be of value to users of medicated articles. The values were not listed in the 1983 tentative final rule, and were incorrectly identified in the 1981 proposed rule as Type B limits. These Type A limits are listed in current Part 558 regulations under the various approved new animal drugs.

The assay limit values listed under Type B and Type C in the final rule reflect the values approved for Type C medicated feeds. Many intermediate premix products (classified as Type B products) also have the same approved limits.

The preamble to the 1981 proposal invited interested persons to submit alternate levels if supported by appropriate analytical data. Many comments were received, but no alternate levels were suggested.

The agency has carefully reviewed the tables and has decided that until sufficient data are received from applicants or other sources, e.g., AAFCO or State government laboratories, the assay limits stated will be used for enforcing potency requirements.

23. A comment from a State agency pointed out that if a Type A medicated article which assays at the lowest value limit is used to manufacture a Type B or Type C medicated feed, the resulting product could be in violation. This occurs due to the wide spread of assay limits between Type A medicated articles and Type B and Type C medicated feeds.

To overcome this possibility, the agency studied the differences between all Type A and Type B and Type C limits. Wherever there was a difference between lower Type A and lower Type C limits of greater than 15 percent, the agency has added a set of intermediate limits for the Type B medicated feed. As an example, bambermycins has premix limits of 90 to 110 percent and finished feed limits of 70 to 130 percent (current § 558.95(c)). Should a Type B medicated feed, which is a finished feed, assaying at the lower limit be used to produce a Type C medicated feed, the latter could be violative. Because of this situation, the agency has established in revised § 558.4(d) intermediate assay limits for a bambermycins Type B feed of 80 to 120 percent. These Type B limits are well within the ranges established for the various Type A medicated articles and Type C medicated feeds and thus can be analyzed by the current methods. FDA will use these limits until applicants can provide data to substantiate other limits. The agency has added a note at the bottom of the tables in § 558.4(d) to describe the need for these additional limits.

24. One comment stated that nonmedicated feeds should be subject to assay requirements to check for cross-contamination.

The agency does not consider this to be a reasonable requirement because of the number of assays that would be required to analyze each batch of nonmedicated feed for all possible sources for cross-contamination. Should circumstances so require, the agency will analyze feeds, medicated or nonmedicated, for cross-contamination.

25. Two comments requested that § 514.112 be revised to include reference to § 510.515 as a basis for approval.

The agency agrees and has made the change.

26. One comment stated that FDA provided no rationale for the elimination of Category III (the category containing those drugs regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern) and urged that FDA retain the 1981 proposal's designation of Category III.

To simplify the program, FDA chose to combine into a single category those drugs previously assigned to Category II and Category III. The definition of Category II now includes all drugs with a withdrawal period as well as those drugs regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern. This action will not in any way diminish protection of the public health, but will make the program less complex and its administration more cost-effective.

FDA based this decision on the fact that all of the drugs previously assigned to Category III have withdrawal periods. Because errors associated with the preparation of medicated feed containing a former Category II drug or a former Category III drug would be equally likely to result in animals with above-tolerance residues, the agency concluded that there is no need for a separate Category III.

FDA expanded the 1981 proposal's definition of Category II to ensure that a drug regulated as a carcinogen on a "no-residue" basis in the future would not be assigned to Category I. This action ensures that any carcinogenic new animal drug used in medicated feed will be subject to appropriate controls to protect the public health.

27. One comment stated that the program lacks a scientific rationale and that the agency has failed to make the scientific basis for the proposal available for public comment.

The final rule is based on the agency's conclusion that the entire medicated feeds program should be revised to emphasize regulatory control over those feeds containing new animal drugs that pose the greatest likelihood of producing unsafe residues in the edible products of treated animals. As discussed in the preamble to the tentative final rule, the agency has concluded that the existence or nonexistence of a withdrawal period is a valid basis for making that determination. Although FDA acknowledges that other approaches are possible, FDA has concluded as the expert agency charged with enforcement of the act, that the regulatory scheme in this final rule is the appropriate way to enforce the act's medicated feed provisions.

28. One comment provided data intended to show that the concentration of drug in a product that is intended for further dilution has no significant impact on the accuracy of the concentration of the drug in the final feed.

While the data submitted appear to be valid, the agency does not believe that the data are directly applicable to actual feed manufacturing situations. These data were generated at a research facility using very controlled procedures and equipment that are not typically found on farms or at commercial mills. Therefore, as discussed in paragraph 6 above, the agency continues to believe that the dilution factor is a valid basis on which to determine the safety of a drug used in feed.

29. One comment presented information intended to show that mixer-feeders are inherently safer than commercial feed mills and thus should be exempt from the registration and medicated feed application requirements of the act. The comment contended that inadequate cleaning of equipment was a significant cause of violative residues, and that mixer-feeders are inherently safer than commercial feed mills because each mixer-feeder mixes feed for only one species of animal, thereby eliminating the possibility of cross-contamination with drugs that are not approved for use in that species.

The agency agrees that inadequate cleaning of equipment is a prominent cause of violative residues, as shown by FDA investigations of U.S. Department of Agriculture-reported residue violations in 1977 and 1978. These investigations did not establish, however, that on-the-farm feed-mixing operations are safer than commercial mills. Rather, failure to clean mixing equipment adequately was considered to be a major cause of the residue in a majority of cases involving both mixer-feeders and commercial feed mills. Likewise, the sulfonamide tissue residue problem mentioned by the comment is created by both mixer-feeders and commercial mills, as both types of operations have been found to be contributing in a material way to the problem. Therefore, the agency concludes that exempting mixer-feeders to concentrate its limited resources on commercial mills would not be in the interest of public health.

30. One comment contended that the proposal is contrary to FDA's interpretation of the act concerning unavoidable contamination, and cited sections 306, 406, and 512 of the act (21 U.S.C. 336, 346, and 360b), and 21 CFR 109.7 and 509.7 of the regulations. The comment stated that a substance cannot be unavoidable under the act unless the CGMP regulations are "technology-forcing" so as to provide an incentive for technological improvement.

FDA does not agree that CGMP regulations should be "technology-forcing." CGMP regulations must be flexible because they are applicable to firms that differ widely in size, facilities and equipment used, and products produced. CGMP regulations are designed to be minimum requirements that can reasonably be met by all members of the industry. Although FDA encourages the development and use of improved technology, the agency does not consider the CGMP regulations to be an appropriate mechanism for attaining that goal.

31. One comment stated that FDA had not discussed the legal status of medicated feeds that are contaminated during the mixing process with unintended drugs, and cited section 406 of the act.

FDA regulates the manufacture of medicated feeds, including any contamination by unintended drugs, by means of the CGMP regulations. Because section 406 of the act pertains, in relevant part, to poisonous or deleterious substances added to food that cannot be avoided by good manufacturing practice, it is not applicable to this rulemaking.

32. Three comments stated that the agency had failed to consider adequately the economic consequences of implementation of the program.

An assessment of the economic impact of the program was discussed in the preamble to the 1983 tentative final rule. Copies of the assessment are on file with the Dockets Management Branch for public examination. None of the comments submitted disputed the data used by the agency.

33. Several comments requested changes in the maximum Type B levels for chlortetracycline, dichlorvos, and morantel tartrate. Also, one comment noted that amprolium has a withdrawal time at its lowest approved use in calves and therefore should be a Category II drug.

The agency agrees with the comments and has made the necessary changes. Several other individual drug changes

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were made in §§ 558.4 and 558.20. Ethylenediamine dihydriodide was deleted because it is not the subject of an approved NADA or an interim regulation. Fenbendazole was recently approved for use in feed. The maximum Type B level for monensin was increased based upon a new approved use level, and the drug is moved to Category I based upon deletion of its withdrawal period as published in the Federal Register of August 12, 1985 (50 FR 32396). The maximum Type B levels for sulfamethazine and sulfathiazole were changed to eliminate errors in the tentative final rule.

34. Several comments raised concerns about the tentative final rule's 200 grams per ton maximum Type B level for melengestrol acetate. The drug's NADA sponsor pointed out that the 200 grams per ton figure will conflict with the drug's conditions of approval.

The agency agrees. Therefore, the maximum Type B level is 2 grams per ton (0.00022 percent), which is the level currently exempted.

IV. Implementation Procedures

A program alteration of the magnitude presented in this final rule cannot be immediately placed into effect. For example, it may be necessary for existing stocks to be depleted, decisions of management to be made, medicated feed applications to be submitted, and inspections to be completed. Therefore, these regulations shall become effective May 2, 1986, except that the provisions of 21 CFR 558.4(d), Category II, requiring the submission and approval of medicated feed applications for products formerly exempt from such requirement shall become effective March 3, 1987.

As an example of the effect of this program, two drug examples are presented. The first example is a drug (salinomycin) which was not previously exempt but which is exempt under the new program. The second example covers a previously exempt drug (roxarsone) which becomes nonexempt under the new program.

1. *Salinomycin.* Salinomycin, a recently approved poultry drug, now requires an approved medicated feed application to cover its use in the manufacture of medicated feed. Because this drug has no withdrawal period, after May 2, 1986, the use of salinomycin Type A medicated articles in the manufacture of Type B or Type C medicated feeds will no longer require an approved application (Form FDA 1900). Previously approved applications for this drug will be retired. FDA will return to the applicant those applications currently under review for salinomycin with a letter explaining its action.

2. *Roxarsone.* The agency has not required approved medicated feed applications for roxarsone (§ 558.530(c)). However, with its placement in Category II, because the drug requires a withdrawal period, the use of Type A medicated articles containing roxarsone in the manufacture of Type B or Type C medicated feeds will require approved medicated feed applications. Should a medicated feed manufacturer decide to use the roxarsone Type A medicated article, then the following will need to be accomplished before March 3, 1987: (1) Register with the agency as a drug manufacturer (if not registered previously) using Form FDA 2656, which can be obtained from the Food and Drug Administration, Center for Drugs and Biologics, Drug Listing Staff (HFN-315), 5600 Fishers Lane, Rockville, MD 20857; and (2) obtain approved medicated feed applications. Because FDA has 90 days to review these applications, the agency recommends that applications for roxarsone and other formerly exempt drugs be submitted by December 3, 1986. In fact, the agency requests that firms submit their applications for these drugs as soon as possible following the effective date of these regulations to facilitate an orderly transition to the new program.

In the preamble to the 1981 proposal, the agency announced a modified directed inspection program. The program was intended to permit more efficient use of agency resources in determining whether firms manufacturing medicated feed are in compliance with key CGMP regulations. The proposal also indicated that directed inspections would continue until a final rule was published. Following publication of this final rule, the agency will revise its medicated feed compliance program to direct the inspectors (FDA or State) to determine compliance with the full range of CGMP regulations. The depth of an inspection will depend on such factors as previous inspectional history and current inspectional findings.

Firms may apply to FDA for approval under section 512(m) of the act using the new Form FDA 1900. (Copies of this form may be obtained from the Public Health Service Forms and Publication Distribution Center, 12100 Parklawn Dr., Rockville, MD 20857.) Firms not in compliance with the CGMP regulations will have their applications denied. FDA intends to schedule and conduct preapproval inspection before final agency action on applications from firms with no inspectional history.

The agency also indicated in the preamble to the 1981 proposal its intention to consider whether further administrative and regulatory action should be initiated against firms that failed the directed inspections. After careful consideration, the agency has decided to propose withdrawal of their medicated feed applications (Form FDA 1800) for Category II drugs through formal procedures under section 512(m)(4) of the act following publication of this final rule. Firms that desire to continue using the nonexempt drug products may request reinspection after they have corrected the deficiencies in their operations.

Because the existing approved medicated feed applications (Form FDA 1800) constitute licenses, they cannot be "canceled" as recommended by the Medicated Feed Task Force. As indicated above, the agency will initiate action to withdraw applications for Category II drugs, where the firm has been found not to be in compliance with CGMP regulations. Because the use of Category I, Type A medicated articles in the manufacture of Type B or Type C medicated feeds no longer requires an approved application, these applications are moot. Therefore, the agency will retire them administratively.

V. Economic Impact

The recategorization of many drugs used in animal feeds will have small but differing cost impacts on the various sectors of the industry. For each of the industry sectors analyzed, the costs imposed by this revision of the proposed medicated feed program are well below the thresholds that signify a major rule according to the criteria specified in Executive Order 12291. Thus, the agency has determined that these final regulations are not a major rule.

Most small livestock and poultry farms do not manufacture the medicated feeds that they use and therefore would not be affected. Thus, the changes will affect larger farms, and even there the impacts will be small. A large cattle feedlot or integrated chicken farm is estimated to save an average of about $585 annually (a total of $600,000) because the drugs most commonly used would be subject to less regulation. An average large hog producer is estimated to have added costs of about $24 (a total of $427,000), if the most commonly used drugs continue their popularity. FDA was unable to estimate the direction of the impact on turkey producers, but expects the total impact to be smaller than either of the amounts cited above.

The agency expects that there may be some shifting among drugs used by

livestock producers (particularly the hog producers) if it becomes economically advantageous to substitute alternative drugs for those currently used. While such shifts were not projected, they would serve to mitigate any added costs.

In the nonfarm sector, an average commercial feed mill should experience savings of about $49 (a total of $470,000) under the revised program. Further, as many as 1,150 commercial feed mills may choose to use only those drugs for which medicated feed applications would not be required and would thereby voluntarily avoid further regulation (a savings of $630,000). No significant net impact is expected for animal drug manufacturers, although some shifts in market shares are possible.

For each of the industry sectors analyzed, any costs imposed by this revision of the medicated feed program would be well below the thresholds that signify a major rule according to the criteria specified in Executive Order 12291. Thus, the agency has determined that the final rule does not constitute a major rule under that Order.

FDA has considered the effect that this final rule will have on small entities, including small businesses, and certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will result.

A threshold assessment supporting these conclusions is available for review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 225.202, 514.1(b)(3)(v)(*a*) and (*b*) and (5)(vii)(*a*), and 514.2(a) and (b) were submitted to the Office of Management and Budget (OMB) with the tentative final rule as required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). As a result of its review, OMB approved these requirements during the proposed rulemaking stage and assigned control number 0910-0163. FDA has incorporated these requirements into the appropriate Code of Federal Regulations sections bearing OMB control numbers as shown in the table below:

Section	OMB Control No.
225.202	0910-0152
514.1(b)(3)(v) (a) and (b) and (5)(vii)(a)	0910-0032
514.2(a) and (b)	0910-0011

List of Subjects

21 CFR Part 207

Drug listing, Drug registration.

21 CFR Part 210

Drugs, Packaging and containers.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers.

21 CFR Part 226

Animal feed premixes, Labeling, Packaging and containers.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Parts 207, 210, 225, 226, 510, 514, and 558 are amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. The authority citation for 21 CFR Part 207 is revised to read as follows:

Authority: Secs. 201, 502, 505, 506, 507, 510, 512, 701(a), 704, Pub. L. 717, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055, 1057 as amended (21 U.S.C. 321, 352, 355, 356, 357, 360, 360b, 371(a), 374); sec. 351, Pub. L. 410, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

2. Part 207 is amended in § 207.10 by revising paragraph (f), to read as follows:

§ 207.10 Exemptions for domestic establishments.

* * * * *

(f) Persons who manufacture Type B or Type C medicated feed using Category I, Type A medicated articles; Category I, Type B medicated feeds; and/or Category II, Type B medicated feeds, as defined in § 558.3 of this chapter, as drug sources.

* * * * *

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

3. The authority citation for 21 CFR Part 210 is revised to read as follows:

Authority: Secs. 501, 701, 52 Stat. 1049-1050 as amended, 1055-1056 as amended (21 U.S.C. 351, 371); 21 CFR 5.10, 5.11.

4. Part 210 is amended by revising the part heading as set out above.

5. In § 210.3 by revising paragraph (b)(13) and (14), to read as follows:

§ 210.3 Definitions.

* * * * *

(b) * * *

(13) The term "medicated feed" means any Type B or Type C medicated feed as defined in § 558.3 of this chapter. The feed contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated feeds is subject to the requirements of Part 225 of this chapter.

(14) The term "medicated premix" means a Type A medicated article as defined in § 558.3 of this chapter. The article contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated premixes is subject to the requirements of Part 226 of this chapter.

* * * * *

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

6. The authority citation for 21 CFR Part 225 is revised to read as follows:

Authority: Secs. 501, 512, 701(a), 52 Stat. 1049-1050 as amended, 1055, 82 Stat. 343-351 (21 U.S.C. 351, 360(b), 371(a)); 21 CFR 5.10, 5.11.

7. Part 225 is amended in § 225.1 by revising paragraph (b), to read as follows:

§ 225.1 Current good manufacturing practice.

* * * * *

(b)(1) The provisions of this part set forth the criteria for determining whether the manufacture of a medicated feed is in compliance with current good manufacturing practice. These regulations shall apply to all types of facilities and equipment used in the production of medicated feeds, and they shall also govern those instances in

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which failure to adhere to the regulations has caused nonmedicated feeds that are manufactured, processed, packed, or held to be adulterated. In such cases, the medicated feed shall be deemed to be adulterated within the meaning of section 501(a)(2)(B) of the act, and the nonmedicated feed shall be deemed to be adulterated within the meaning of section 402(a)(2)(D) of the act.

(2) The regulations in §§ 225.10 through 225.115 apply to facilities manufacturing one or more medicated feeds for which an approved medicated feed application is required. The regulations in §§ 225.120 through 225.202 apply to facilities manufacturing solely medicated feeds for which approved medicated feed applications are not required.

8. In § 225.58 by revising "FD-1800" to read "FDA 1900" in paragraph (b)(1), by removing and reserving paragraph (b)(2), and by revising paragraph (c), to read as follows:

§ 225.58 Laboratory controls.

* * * * *

(b) * * *

(2) [Reserved]

(c) The originals or copies of all results of assays, including those from State feed control officials and any other governmental agency, shall be maintained on the premises for a period of not less than 1 year after distribution of the medicated feed. The results of assays performed by State feed control officials may be considered toward fulfillment of the periodic assay requirements of this section.

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§ 225.115 [Amended]

9. In § 225.115 *Complaint files* in paragraph (b)(2) by revising the two references to "FD-1800" to read "FDA 1900".

10. By adding new Subparts F, G, H, and I, to read as follows:

Subpart F—Facilities and Equipment

Sec.
225.120 Building and grounds.
225.130 Equipment.
225.135 Work and storage areas.

Subpart G—Product Quality Assurance

225.142 Components.
225.158 Laboratory assays.
225.165 Equipment cleanout procedures.

Subpart H—Labeling

225.180 Labeling.

Subpart I—Records

225.202 Formula, production, and distribution records.

Subpart F—Facilities and Equipment

§ 225.120 Buildings and grounds.

Buildings used for production of medicated feed shall provide adequate space for equipment, processing, and orderly receipt and storage of medicated feed. Areas shall include access for routine maintenance and cleaning of equipment. Buildings and grounds shall be constructed and maintained in a manner to minimize vermin and pest infestation.

§ 225.130 Equipment.

Equipment shall be capable of producing a medicated feed of intended potency and purity, and shall be maintained in a reasonably clean and orderly manner. Scales and liquid metering devices shall be accurate and of suitable size, design, construction, precision, and accuracy for their intended purposes. All equipment shall be designed, constructed, installed, and maintained so as to facilitate inspection and use of cleanout procedure(s).

§ 225.135 Work and storage areas.

Work areas and equipment used for the production or storage of medicated feeds or components thereof shall not be used for, and shall be physically separated from, work areas and equipment used for the manufacture and storage of fertilizers, herbicides, insecticides, fungicides, rodenticides, and other pesticides unless such articles are approved for use in the manufacture of animal feed.

Subpart G—Product Quality Assurance

§ 225.142 Components.

Adequate procedures shall be established and maintained for the identification, storage, and inventory control (receipt and use) of all Type A medicated articles and Type B medicated feeds intended for use in the manufacture of medicated feeds to aid in assuring the identity, strength, quality, and purity of these drug sources. Packaged Type A medicated articles and Type B medicated feeds shall be stored in designated areas in their original closed containers. Bulk Type A medicated articles and bulk Type B medicated feeds shall be identified and stored in a manner such that their identity, strength, quality, and purity will be maintained. All Type A medicated articles and Type B medicated feeds shall be used in accordance with their labeled mixing directions.

§ 225.158 Laboratory assays.

Where the results of laboratory assays of drug components, including assays by State feed control officials, indicate that the medicated feed is not in accord with the permissible limits specified in this chapter, investigation and corrective action shall be implemented immediately by the firm and such records shall be maintained on the premises for a period of 1 year.

§ 225.165 Equipment cleanout procedures.

Adequate procedures shall be established and used for all equipment used in the production and distribution of medicated feeds to avoid unsafe contamination of medicated and nonmedicated feeds.

Subpart H—Labeling

§ 225.180 Labeling.

Labels shall be received, handled, and stored in a manner that prevents label mixups and assures that the correct labels are used for the medicated feed. All deliveries of medicated feeds, whether bagged or in bulk, shall be adequately labeled to assure that the feed can be properly used.

Subpart I—Records

§ 225.202 Formula, production, and distribution records.

Records shall be maintained identifying the formulation, date of mixing, and if not for own use, date of shipment. The records shall be adequate to facilitate the recall of specific batches of medicated feed that have been distributed. Such records shall be retained on the premises for 1 year following the date of last distribution.

(Information collection requirements approved by the Office of Management and Budget under number 0910-0152.)

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

11. The authority citation for 21 CFR Part 226 is revised to read as follows:

Authority: Secs. 501, 701, 52 Stat. 1049–1050 as amended, 1055–1056 as amended (21 U.S.C. 351, 371); 21 CFR 5.10, 5.11.

12. Part 226 is amended by revising the part heading as set out above.

13. By revising the term "medicated premixes" to read "Type A medicated article(s)" wherever it appears in Part 226.

PART 510—NEW ANIMAL DRUGS

14. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.6 [Amended]

15. Part 510 is amended in § 510.6 *New animal drugs; transitional provisions re section 512 of the Act* in paragraphs (d)(3), (e), and (f) by revising "FD-1800" to read "FDA 1900".

§ 510.305 [Amended]

16. § 510.305 *Maintenance of copies of approved applications for animal feed bearing or containing new animal drugs* in the introductory text and in paragraph (a) by revising "FD-1800" to read "FD 1900".

PART 514—NEW ANIMAL DRUG APPLICATIONS

17. The authority citation for 21 CFR Part 514 is revised to read as follows:

Authority: Secs. 512(i), (n), 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b(i), (n), 371(a)); 21 CFR 5.10, 5.11.

18. Part 514 is amended in § 514.1 by removing paragraph (e), by adding a parenthetical statement at the end of the section, and by revising paragraph (b)(3)(v)(*a*) and (*b*) and (5)(vii)(*a*) and (5)(x), to read as follows:

§ 514.1. Applications.

* * * * *

(b) * * *

(3) * * *

(v) * * *

(*a*) Specimens of labeling to be used for such new animal drug with adequate directions for the manufacture and use of finished feeds for all conditions for which the new animal drug is intended, recommended, or suggested in any of the labeling, including advertising, sponsored by the applicant. Ingredient labeling may utilize collective names as provided in § 501.110 of this chapter.

(*b*) Representative labeling proposed to be used for Type B and Type C medicated feeds containing the new animal drug.

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(5) * * *

(vii) * * *

(*a*) A description of practicable methods of analysis of adequate sensitivity to determine the amount of the new animal drug in the final dosage form should be included. The dosage form may be a finished pharmaceutical product, a Type A medicated article, a Type B or a Type C medicated feed, or a product for use in animal drinking water. Where two or more active ingredients are included, methods should be quantitative and specific for each active ingredient.

* * * * *

(x) A complete description of, and data derived from, studies of the stability of the new animal drug in the final dosage form, including information showing the suitability of the analytical methods used. A description of any additional stability studies underway or planned. Stability data for the finished dosage form of the new animal drug in the container in which it is to be marketed, including any proposed multiple dose container, and, if it is to be put into solution at the time of dispensing, for the solution prepared as directed. If the new animal drug is intended for use in the manufacture of Type C medicated feed as defined in § 558.3 of this chapter, stability data derived from studies in which representative formulations of the medicated feed articles are used. Similar data may be required for Type B medicated feeds as determined by the Food and Drug Administration on a case-by-case basis. Expiration dates shall be proposed for finished pharmaceutical dosage forms and Type A medicated articles. If the data indicate that an expiration date is needed for Type B or Type C medicated feeds, the applicant shall propose such expiration date. If no expiration date is proposed for Type B or Type C medicated feeds, the applicant shall justify its absence with data.

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(Information collection requirements approved by the Office of Management and Budget under number 0910-0032.)

19. By revising § 514.2, to read as follows:

§ 514.2 Applications for animal feeds bearing or containing new animal drugs.

(a) Applications (Form FDA 1900) to be filed under section 512(m) of the act shall be completed, signed, and submitted in triplicate in the form described in paragraphs (b) and (c) of this section.

(b) Each application for a Type B or Type C medicated feed, as defined in § 558.3 of this chapter, shall include the following information:

(1) The name and address of the applicant.

(2) The registration number assigned pursuant to section 510 of the act and last date of registration of each mill.

(3) Whether the submission is an original or supplemental application.

(4) Identification of the Type A medicated article, as defined in § 558.3 of this chapter, used by generic name, potency, and manufacturer.

(5) The species of animal(s) for which the feed is intended.

(6) The form of feed to be produced, i.e., mash, meal crumbles, pellets, liquid, or other specified form.

(7) Whether the feed is a Type B or Type C medicated feed.

(8) Whether the feed is for sale or for own use (not for sale).

(9) Level of the drug(s) in the finished feed, and the amount of Type A medicated article per ton contained therein.

(10) Identification of the regulation(s) in Subchapter E of this chapter on which approval relies.

(11) Labeling representative of each intended use as stated in the claim. Each generic label shall include the claim, drug level, mixing directions, feeding directions, caution and/or warning statements, and any other special directions required by the published regulation. This shall consist of bag labels, invoice copy, bulk labels, and placards when applicable.

(12) A commitment to establish and maintain a program of sampling and analysis consisting of an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the date of manufacture of the medicated feed.

(13) A statement of the minimum and maximum assay value permitted from the labeled amount of the drug.

(14) Identification of the agent authorized to act on behalf of the applicant.

(15) The applicant's name, responsible individual's title and original signature, and date.

(c) Upon approval, one copy of the application will be signed by an authorized employee of the Food and Drug Administration designated by the Commissioner, and it will be returned to the applicant.

(Information collection requirements approved by the Office of Management and Budget under number 0910-0011.)

§ 514.9 [Amended]

20. In § 514.9 *Supplemental applications for animal feeds bearing or containing new animal drugs* in paragraph (c) by revising "FD-1800" to read "FDA 1900".

§ 514.55 [Amended]

21. In § 514.55 *Forms for certification or exemption of antibiotic drugs for animal use subject to section 512(n) of the Act* by revising "1800" to read "1900" and by revising "FD-1800—Revised" to read "FDA 1900".

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§ 514.105 [Amended]

22. In § 514.105 *Approval of applications* in paragraph (b) by revising "FD-1800" to read "Form FDA 1900".

23. By adding new § 514.112, to read as follows:

§ 514.112 Return of applications for animal feeds bearing or containing new animal drugs.

Applications submitted pursuant to § 514.2 will be returned to the applicant if such applications are incomplete or inaccurate or do not contain an identification of the applicable regulation(s). These regulations include those published pursuant to section 512(i) of the act, and are found in Part 558 of this chapter. In addition, § 510.515 of this chapter may also provide a basis on which approval of the application relies, as required by § 514.2(b)(10). All reasons for the return of the application will be made known to the applicant.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

24. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

25. Part 558 is amended by revising § 558.3, to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

(a) Regulations in this part provide for approved uses of drugs and combinations of drugs in animal feeds. Approved combinations of such drugs are specifically identified or incorporated by cross-reference. Unless specifically provided for by the regulations, a combination of two or more drugs is not approved.

(b) The following definitions apply to terms used in this part:

(1) New animal drugs for use in animal feed are placed in two categories as follows:

(i) Category I—These drugs require no withdrawal period at the lowest use level in each species for which they are approved.

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved or are regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern regardless whether a withdrawal period is required.

(2) A "Type A medicated article" is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. It consists of a new animal drug(s), with or without carrier (e.g., calcium carbonate, rice hull, corn, gluten) with or without inactive ingredients. The manufacture of a Type A medicated article requires an application approved under § 514.105(a) of this chapter.

(3) A "Type B medicated feed" is intended solely for the manufacture of other medicated feeds (Type B or Type C). It contains a substantial quantity of nutrients including vitamins and/or minerals and/or other nutritional ingredients in an amount not less than 25 percent of the weight of the Type A medicated article. It is manufactured by diluting a Type A medicated article or another Type B medicated feed. The maximum concentration of animal drug(s) in a Type B medicated feed is 200 times the highest continuous use level for Category I drugs and 100 times the highest continuous use level for Category II drugs. The term "highest continuous use level" means the highest dosage at which the drug is approved for continuous use (14 days or more), or, if the drug is not approved for continuous use, it means the highest level used for disease prevention or control. If the drug is approved for multiple species at different use levels, the highest approved level of use would govern under this definition. The manufacture of a Type B medicated feed from a Category II, Type A medicated article requires an application approved under § 514.105(b) of this chapter.

(4) A "Type C medicated feed" is intended as the complete feed for the animal or may be fed "top dressed" (added on top of usual ration) on or offered "free-choice" (e.g., supplement) in conjunction with other animal feed. It contains a substantial quantity of nutrients including vitamins, minerals, and/or other nutritional ingredients. It is manufactured by diluting a Type A medicated article or a Type B medicated feed. A Type C medicated feed may be further diluted to produce another type C medicated feed. The manufacture of a Type C medicated feed from a Category II, Type A medicated article requires an application approved under § 514.105(b) of this chapter.

(5) A Type B or Type C medicated feed manufactured from a drug component (bulk or "drum-run" (dried crude fermentation product)) requires an application approved under § 514.105(a) of this chapter.

26. By revising § 558.4, to read as follows:

§ 558.4 Medicated feed applications.

(a) The manufacture of a Type B or Type C medicated feed from a Category I, Type A medicated article is exempt from the requirement of an approved medicated feed application.

(b) The manufacture of a Type B or Type C medicated feed from a Category II, Type A medicated article requires an approved medicated feed application.

(c) The use of Type B and Type C medicated feeds shall conform to the conditions of use provided for in Subpart B of this part and in §§ 510.515, 558.15, and 558.20.

(d) This paragraph identifies each drug by category, the maximum level of drug in Type B medicated feeds, and the assay limits for the drug in Type A medicated articles and Type B and Type C medicated feeds, as follows:

CATEGORY I

Drug	Assay limits type A percent [1]	Type B maximum (200x)	Assay limits (percent of labeled amount) type B/C [2]
Aklomide	90-110	22.75 g/lb (5.0 %)	85-120.
Ammonium chloride	90-110	4.0 oz/lb (25 %)	85-120.
Amprolium with Ethopabate	94-114	22.75 g/lb (5.0 %)	80-120.
Bacitracin methylene disalicylate	85-115	20.0 g/lb (4.4 %)	70-130.
Bacitracin zinc	84-115	5.0 g/lb (1.1 %)	74-130.
Bambermycins	90-110	800 g/ton (0.09 %)	80-120/170-130.
Buquinolate	90-110	9.8 g/lb (2.2 %)	80-120.
Chlortetracycline	85-125	40.0 g/lb (8.8 %)	80-115/170-130.
Coumaphos	85-115	6.0 g/lb (1.3 %)	80-120.
Decoquinate	90-105	2.72 g/lb (0.6 %)	80-120.
Dichlorvos	100-115	33.0 g/lb (7.3 %)	80-120/80-130.
Erythromycin (thiocyanate salt)	85-115	9.25 g/lb (2.04 %)	<20g/ton 70-115/80-150; >20g/ton 75-125.
Fenbendazole	95-113	4.54 g/lb (1.0 %)	75-125.
Iodinated casein	85-115	20.0 g/lb (4.4 %)	75-125.

CATEGORY I—Continued

Drug	Assay limits type A percent [1]	Type B maximum (200x)	Assay limits (percent of labeled amount) type B/C [2]
Monensin	90-110	40.0 g/lb (8.8 %)	Chickens: 75-125; Cattle: 5-10 g/ton 80-120; Cattle: 10-30 g/ton 85-115; Liq. feed: 80-120.
Nequinate	95-112	1.83 g/lb (0.4 %)	80-120.
Niclosamide	85-20	225 g/lb (49.5 %)	80-120.
Nystatin	85-115	5.0 g/lb (1.1 %)	75-125.
Oleandomycin	85-120	1.125 g/lb (0.25 %)	<11.25 g/ton 70-130; >11.25 g/ton 75-125.
Oxytetracycline	90-120	20.0 g/lb (4.4 %)	75-125/65-135.
Penicillin	80-120	10.0 g/lb (2.2 %)	65-135.
Penicillin Streptomycin	80-120	1.5 g/lb (0.33 %)	65-135.
	85-115	7.5 g/lb (1.65 %)	70-130.
Poloxalene	90-110	54.48 g/lb (12.0 %)	Liq. feed: 85-115.
Salinomycin	100-120	6.0 g/lb (1.3 %)	80-120
Tylosin	80-120	10.0 g/lb (2.2 %)	75-125.
Virginiamycin	85-115	10.0 g/lb (2.2 %)	70-130.
Zoalene	98-104	11.35 g/lb (2.4 %)	85-115.

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

CATEGORY II

Drug	Assay limits type A percent [1]	Type B Maximum (100x)	Assay limits (percent of labeled amount) type B/C [2]
Amprolium	94-114	11.35 g/lb (2.5%)	80-120.
Arsanilate sodium	98-108	4.5 g/lb (1.0%)	85-115/75-125.
Arsanilic acid	98-108	4.5 g/lb (1.0%)	85-115/75-125.
Butynorate	90-110	17.0 g/lb (3.74%)	85-115.
Butynorate	90-110	63.45 g/lb (14.0%)	85-115.
Piperazine	90-110	49.95 g/lb (11.0%)	85-115
Phenothiazine	90-110	263.32 g/lb (58.0%)	85-115.
Carbadox	90-110	2.5 g/lb (0.55%)	75-125
Carbarsone	93-102	17.0 g/lb (3.74%)	85-115.
Clopidol	94-106	11.4 g/lb (2.5%)	90-115/80-120.
Dimetridazole	98-103	9.1 g/lb (2.0%)	85-120.
Famphur	100-110	5.5 g/lb (1.21%)	90-115/80-120.
Furazolidone	95-105	10.0 g/lb (2.2%)	85-115.
Halofuginone hydrobromide	80-120	272.0 g/ton (.03%)	70-125.
Hygromycin B	90-110	1,200 g/ton (0.13%)	75-125.
Ipronidazole	98-115	2.84 g/lb (0.63%)	0.00625%, 85-120/75-125; 0.025%, 85-120/80-120.
Lasalocid	100-120	5.65 g/lb (1.24%)	Chickens: 85-120/75-125; Supplements: 85-120/80-120.
Levamisole	85-120	113.5 g/lb (25%)	85-125.
Lincomycin	90-115	10.0 g/lb (2.2%)	80-130.
Melengestrol acetate	90-110	2.0 g/ton (0.00022%)	80-115/70-120.
Morantel tartrate	90-110	66.0 g/lb (14.52%)	85-115.
Neomycin	80-120	7.0 g/lb (1.54%)	70-125.
Neomycin	80-120	7.0 g/lb (1.54%)	70-125.
Oxytetracycline	80-120	10.0 g/lb (2.2%)	65-135.
Nicarbazin	98-106	5.675 g/lb (1.25%)	85-115/80-120.
Nitarsone	90-110	8.5 g/lb (1.87%)	85-120.
Nitrofurazone	90-110	10.0 g/lb (2.2%)	80-125.
Nitromide	90-110	11.35 g/lb (2.5%)	80-120.
Sulfanitran	85-115	13.6 g/lb (3.0%)	75-125.
Nitromide	90-110	11.35 g/lb (2.5%)	85-115.
Sulfanitran	85-115	5.65 g/lb (1.24%)	75-125.
Roxarsone	95-103	2.275 g/lb (0.5%)	85-120.
Novobiocin	85-115	17.5 g/lb (3.85%)	80-120.
Phenothiazine	90-110	66.5 g/lb (14.6%)	85-115.
Piperazine	90-110	165 g/lb (40.25%)	85-115.
Pyrantel tartrate	90-110	4.8 g/lb (1.1%)	85-115.
Robenidine	95-115	1.5 g/lb (0.33%)	80-120.
Ronnel	85-115	27.2 g/lb (6.0%)	80-120.
Roxarsone	95-103	2.275 g/lb (0.5%)	85-120.
Roxarsone	95-103	2.275 g/lb (0.5%)	85-120.
Aklomide	90-110	11.35 g/lb (2.5%)	85-120.
Roxarsone	95-108	2.275 g/lb (0.5%)	85-120.
Clopidol	94-106	11.35 g/lb (2.5%)	80-120.
Bacitracin methylene disalicylate	85-115	5.0 g/lb (1.1%)	70-130.
Roxarsone	95-103	2.275 g/lb (0.5%)	85-120.
Monensin	90-110	5.5 g/lb (1.2%)	75-125.
Sulfadimethoxine	95-115	5.675 g/lb (1.25%)	0.01% (combined) 85-115/75-125.
Ormetoprim	95-115	3.405 g/lb (0.75%)	0.02% (combined) 85-115.
Sulfaethoxy-pyridazine	95-105	50.0 g/lb (11.0%)	85-115.
Sulfamerazine	95-115	18.6 g/lb (4.0%)	85-115.
Sulfamethazine	95-115	10.0 g/lb (2.2%)	80-120.
Chlortetracycline	95-125	10.0 g/lb (2.2%)	85-125/70-130.
Penicillin	80-120	5.0 g/lb (1.1%)	85-125/70-130.
Sulfamethazine	95-115	10.0 g/lb (2.2%)	80-120.
Chlortetracycline	95-125	10.0 g/lb (2.2%)	85-125/70-130.
Sulfamethazine	95-115	10.0 g/lb (2.2%)	80-120.
Tylosin	80-120	10.0 g/lb (2.2%)	75-125.

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CATEGORY II—Continued

Drug	Assay limits type A percent [1]	Type B Maximum (100x)	Assay limits (percent of labeled amount) type B/C [2]
Sulfanitran	85–115	13.6 g/lb (3.0%)	75–125.
Aklomide	90–110	11.2 g/lb (2.5%)	85–120.
Sulfanitran	85–115	13.6 g/lb (3.0%)	75–125.
Aklomide	90–110	11.2 g/lb (2.5%)	85–120.
Roxarsone	95–100	2.715 g/lb (0.60%)	85–120.
Sulfanitran	85–115	13.6 g/lb (3.0%)	75–125.
Aklomide	90–110	11.2 g/lb (2.5%)	85–120.
Roxarsone	95–100	2.27 g/lb (0.5%)	85–120.
Sulfaquinoxaline	98–106	11.2 g/lb (2.5%)	85–115.
Sulfathiazole	85–115	10.0 g/lb (2.2%)	80–120.
Chlortetracycline	85–125	10.0 g/lb (2.2%)	70–130.
Penicillin	90–100	5.0 g/lb (1.1%)	70–130.
Thiabendazole	94–106	45.4 g/lb (10.0%)	<7% 85–115; <7% 90–110.

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

(e) When drugs from both categories are in combination, the Category II requirements will apply to the combination drug product.

27. In § 558.15 by revising the introductory text of paragraph (g) and the introductory text of paragraph (g)(2), to read as follows:

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

* * * * *

(g) The submission of applications and data required by paragraphs (a) and (b) of this section is not required for the continued manufacture of any Type A medicated article that is produced solely from another Type A medicated article that is in compliance with the requirements of this section. Provided, that the diluted Type A medicated article contains no drug ingredient whose use in or on animal feed requires an approved application pursuant to section 512(m) of the act and/or where the Type A medicated article is approved by regulation in this part.

* * * * *

(2) The following is a list of drug combinations permitted when prepared from Type A medicated articles listed in paragraph (g)(1) of this section. Drug combination and sponsors listed in Subpart B of this part are incorporated herein by reference because the drug combinations are safe and effective by contemporary standards, or their sponsors have been notified of any additional safety or efficacy data required on an individual basis:

* * * * *

28. By adding new § 558.20 to Subpart A, to read as follows:

§ 558.20 Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing.

Applications for animal feeds bearing or containing new animal drugs shall contain a reference to a section in the new animal drug regulations where the drug and the intended use are listed. For the purposes of such applications the following list identifies drugs that are required to be the subject of approved medicated feed applications for the indicated uses which are not listed in other new animal drug regulations. The drugs are not listed elsewhere for these uses in other new animal drug regulations because they were so used prior to the Food Additives Amendment of 1958 which required the listing of such drugs in appropriate regulations.

Drug ingredient	Species	Use levels	Indications for use	Limitations
Arsanilate sodium	Swine	0.005 to 0.01%	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Do	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Do	do	0.025 to 0.04%	Treatment of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5–6 days as sole source of organic arsenic.
Arsanilic acid	do	0.005 to 0.01%	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Do	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Do	do	0.025 to 0.04%	Treatment of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5–6 days as sole source of organic arsenic.
Butynorate (dibutyltin dilaurate).	Turkeys	0.0375%	As an aid in the prevention of coccidiosis (caused by *E. meleagridis, E. meleagrimitis, E. gallopavonis*) and hexamitiasis.	Withdraw 7 days before slaughter.
Neomycin sulfate	Chickens, turkeys, and ducks.	70 to 140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis (nonspecific enteritis, salmonellosis, bluecomb, mud fever).	Withdrawal before slaughter: 30 days, cattle; 20 days, sheep and swine; 14 days, turkeys, ducks, and laying hens; 5 days, broiler chickens.
Do	Mink	140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis and diarrhea.	Do.
Do	Swine, calves, cattle, horses, sheep, goats.	70 to 140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis (scours, diarrhea, bloody dysentery, vibrionic dysentery, winter dysentery, white scours, coli-bacillosis, salmonellosis, diarrhea caused by *E. coli*, vibrio and salmonella organisms); enterotoxemia in lambs.	Do.
Nitarsone (4-nitrophenylarsonic acid).	Chickens and turkeys.	0.01875%	As an aid in the prevention of blackhead.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Phenothiazine	Chickens	0.5 g per bird	Removal of cecal worms (*Heterakis gallinarum*).	For 1 day only.
Do	Turkeys	1 g per bird	do	Do.
Do	Swine	5 g up to 25 lb; 8 g, 26 to 50 lb; 10 g, 51 to 100 lb; 20 g, 101 to 200 lb; 30 g, 201 lb and up.	Removes nodular worms (*Oesophagostomum*).	Do.
Do	Sheep and goats	20 to 60 lb body weight, 12.5 g; over 60 lb body weight, 25 g.	Removal of stomach worms (*Haemonchus, Ostertagia*, and *Trichostrongylus* spp.); large-mouth bowel worms (*Chabertia* spp.), and hookworms (*Bunostomum* spp.).	Milk from dairy animals which have been treated with phenothiazine should not be used for food for 4 days following treatment.
Do	do	1g/head/day	Control of stomach worms (*Haemonchus, Ostertagia*, and *Trichostrongylus* spp.); large-mouth bowel worms and hookworms (*Chabertia* spp.), (*Bunostomum* spp.).	Do not feed to lactating dairy animals. Feed continuously.
Do	Cattle	10 g/100 lb body weight, up to a maximum of 70 g.	Removes common stomach worms *Haemonchus*), lesser stomach worms (*Ostertagia*), hair worms, bankrupt worms (*Trichostrongylus* spp.), nodular worm (*Oesophagostomum* spp.), and largemouth bowel worms (*Chabertia* spp.).	Milk from dairy animals which have been treated with phenothiazine should not be used for food for 4 days following treatment.
Do	do	20 g/100 lb body weight up to a maximum of 80 g. Micronized (2–3 micron size particles)—10 g/100 lb body weight, up to a maximum of 60 g.	Hookworms (*Bunostomum* spp.)	For 1 day only. Milk from dairy animals which have been treated with phenothiazine should not be used for food for 4 days following treatement.
Do	do	0.25 g/100 lb body weight/day. For adult average dose is 2 g.	Controls common stomach worms (*Haemonchus*), lesser stomach worms (*Ostertagia*), hair worms, bankrupt worms (*Trichostrongylus* spp.), nodular worm (*Oesophagostomum* spp.), and largemouth bowel worms (*Chabertia* spp.).	Do not feed to lactating dairy animals.
Do	Horses and mules	2.5 g/100 lb body weight up to a maximum of 30 g.	Removal of strongyles (*Strongylus* spp.)	For 1 day only.
Do	do	2 g per head per day	do	For continuous use; feed 2 g per head per day for 21 consecutive days then none for 9 days. Repeat the feeding schedule as long as worm control is desired.
Piperazine	Chickens (under 6 weeks of age).	0.2 to 0.4%	Control of infestation of large roundworms (*Ascaris*)	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Do	Chickens (over 6 weeks of age).	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Do	Turkeys (under 12 weeks of age).	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Do	Turkeys (over 12 weeks of age).	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100–400 mg of piperazine per bird according to size.

29. In § 558.35, by removing paragraphs (a), (b), (d), and (e), by redesignating paragraph (c) as paragraph (a) and revising the introductory text of the redesignating paragraph, and by redesignated existing paragraphs (f) and (g) as paragraphs (b) and (c), respectively, to read as follows:

§ 558.35 Aklomide.

(a) *Approvals.* Type A medicated articles: to 017210 in § 510.600(c) of this chapter, as follows:

* * * * *

30. In § 558.45, by removing paragraphs (b), (c), (d), and (e), by redesignating existing paragraph (f) as paragraph (b), and by revising paragraph (a), to read as follows:

§ 558.45 Ammonium chloride, feed grade.

(a) *Approvals.* Type A medicated articles: 99 percent to 011462 in § 510.600(c) of this chapter.

* * * * *

31. In § 558.55, by revising paragraph (a), by removing paragraph (b), by redesignating existing paragraph (c) as paragraph (b) and revising it, by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively, to read as follows:

§ 558.55 Amprolium.

(a) *Approvals.* Type A medicated articles: 25 percent to 000006 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(b) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

32. In § 558.58, by removing paragraph (b), by revising paragraph (a), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising redesignated paragraph (b) and the introductory text of redesignated paragraph (d), to read as follows:

§ 558.58 Amprolium and ethopabate.

(a) *Approvals.* Type A medicated articles: (1) 25 percent amprolium and 0.8 percent ethopabate; 25 percent amprolium and 8 percent ethopabate; 5 percent amprolium and 0.16 percent ethopabate; 5 percent amprolium and 1.6 percent ethopabate; to 000006.

(2) 0.15 percent amprolium and 0.004 percent ethopabate and 0.5 gram per pound bacitracin (as bacitracin methylene disalicylate) to 047019 in § 510.600(c) of this chapter.

(b) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

(d) *Conditions of use.* It is used for chickens as follows:

* * * * *

33. In § 558.60, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, by revising paragraph (a) and the introductory text of redesignated paragraph (c)(1), to read as follows:

§ 558.60 Arsanilate sodium.

(a) *Appprovals.* Type A medicated articles: 20, 50, or 100 percent to 043731 in § 510.600(c) of this chapter.

* * * * *

(c) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

* * * * *

34. In § 558.62, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a) and the introductory text of redesignated paragraph (c)(1), to read as follows:

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§ 558.62 Arsanilic acid.

(a) *Approvals.* Type A medicated articles: 20, 50, or 100 percent to 042731 in § 510.600(c) of this chapter.

* * * * *

(c) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

* * * * *

35. In § 558.76, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b) and the introductory text of redesignated paragraph (d)(1), to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

(a) *Approvals.* Type A medicated articles: 25, 40, or 50 percent to 046573 in § 510.600(c) of this chapter.

(b) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

* * * * *

(d) *Conditions of use.* It is used as follows:

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36. In § 558.78, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b) and the introductory text of redesignated paragraph (d)(1), to read as follows:

§ 558.78 Bacitracin zinc.

(a) *Approvals.* Type A medicated articles: (1) 50 grams per pound to 046573 in § 510.600(c) of this chapter for use as in paragraph (d)(1)(i) and (ii) of this section.

(2) 10, 25, 40, and 50 grams per pound to 012769 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(3) 5 and 50 grams per pound to 000010 in § 510.600(c) of this chapter for use in chickens as in paragraph (d)(1)(i) of this section.

(b) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

* * * * *

(d) *Conditions of use.* (1) It is used as follows:

* * * * *

37. In § 558.95, by removing paragraphs (b), (c), and (d), by redesignating existing paragraph (e) as paragraph (b), and by revising paragraph (a) and the introductory text of redesignated paragraph (b)(1) and (2), to read as follows:

§ 558.95 Bambermycins.

(a) *Approvals.* Type A medicated articles: (1) 2 and 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter for use as in paragraph (b)(1), (2)(i) and (ii), and (3) of this section.

(2) 0.4 gram of activity per pound to 012799 and 020275 for use as in paragraph (b)(2) of this section.

(3) 0.4 and 2 grams of activity per pound to 011490 in § 510.600(c) of this chapter for use as in paragraph (b)(2) of this section.

(4) 0.4 and 2 grams of activity per pound for use as in paragraph (b)(2) of this section and 2 grams of activity per pound for use as in paragraph (b)(3) of this section to 016968, 017274, and 017790 in § 510.600(c) of this chapter.

(5) 0.08 gram of activity per pound for use as in paragraph (b)(2) of this section to 034139 in § 510.600(c) of this chapter.

(b) *Conditions of use*—(1) *Broiler chicken.* It is used as follows:

* * * * *

(2) *Growing-finished swine.* It is used as follows:

* * * * *

38. In § 558.105, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b) and the introductory text of redesignated paragraph (d), to read as follows:

§ 558.105 Buquinolate.

(a) *Approvals.* Type A medicated articles: 10.5 and 22 percent to 000149 in § 510.600(c) of this chapter.

(b) *Special considerations.* Do not use in Type B or Tpye C medicated feeds containing bentonite.

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(d) *Conditions of use.* It is used as follows:

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39. In § 558.115, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (c) and the introductory text of redesignated paragraph (d), to read as follows:

§ 558.115 Carbadox.

(a) *Approvals.* Type A medicated articles: 2.2 percent (10 grams per pound) to 000069 in § 510.600(c) of this chapter.

* * * * *

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(d) *Conditions of use.* It is used for swine as follows:

* * * * *

40. In § 558.120, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a) and the introductory text of redesignated paragraph (c)(1), to read as follows:

§ 558.120 Carbarsone (not U.S.P.).

(a) *Approvals.* Type A medicated articles: (1) 37.5 percent to 011794 in § 510.600(c) of this chapter.

(2) 25 percent carbarsone and 5 grams per pound bacitracin (as bacitracin methylene disalicylate) to 011794 in § 510.600(c) of this chapter.

* * * * *

(c) *Conditions of use.* It is used for turkeys as follows:

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41. In § 558.128, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

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§ 558.128 Chlortetracycline.

(a) *Approvals.* Type A medicated articles: 10 and 50 grams per pound chlortetracycline to 010042 in § 510.600(c) of this chapter; 35 grams chlortetracycline with 7.7 percent (35 grams) sulfamethazine to 010042 in § 510.600(c) of this chapter.

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42. In § 558.145, by removing paragraphs (c) and (d), by redesignating existing paragraphs (e) and (f) as paragraphs (c) and (d), respectively, and by revising paragraphs (a) and (b), to read as follows:

§ 558.145 Chlortetracycline, procaine penicillin, and sulfamethazine.

(a) *Approvals.* Type A medicated articles: (1) 20 grams of chlortetracycline per pound, 4.4 percent (20 grams) of sulfamethazine, and procaine penicillin equivalent in activity to 10 grams of penicillin per pound to 000069 and 010042 in § 510.600(c) of this chapter.

(2) 40 grams of chlortetracycline per pound, 8.8 percent of sulfamethazine, and penicillin procaine equivalent in activity to 20 grams of penicillin per pound to 010042 in § 510.600(c) of this chapter.

(b) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

(3) Type C medicated feed contains in each ton, 100 grams of chlortetracycline, 50 grams of penicillin as procaine penicillin, and 100 grams of sulfamethazine.

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43. In § 558.155, by removing paragraphs (c) and (d), by redesignating existing paragraphs (e) and (f) as paragraphs (c) and (d), respectively, and by revising paragraphs (a) and (b) and the introductory text of redesignated paragraph (d), to read as follows:

§ 558.155 Chlortetracycline, procaine penicillin, and sulfathiazole.

(a) Approvals. Type A medicated articles: (1) 20 grams of chlortetracycline hydrochloride, 4.4 percent (20 grams) sulfathiazole, and procaine penicillin equivalent to 10 grams of penicillin per pound to 052313 in § 510.600(c) of this chapter.

(2) 40 grams of chlortetracycline hydrochloride, 8.8 percent (40 grams) sulfathiazole and procaine penicillin equivalent in activity to 20 grams of penicillin per pound to 052313 in § 510.600(c) of this chapter.

(b) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

* * * * *

(d) *Conditions of use.* It is used for swine as follows:

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44. In § 558.175, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), as paragraphs (b) and (c) respectively, and by revising paragraph (a), to read as follows:

§ 558.175 Clopidol.

(a) Approvals. Type A medicated articles: (1) 25 percent to 025700 in § 510.600(c) of this chapter.

(2) 25 percent of clopidol, 10 percent of roxarsone, and 4, 10. 15, or 25 grams of bacitracin methylene disalicylate per pound to 025700 in § 510.600(c) of this chapter.

* * * * *

45. In § 558.185, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b), to read as follows:

§ 558.185 Coumaphos.

(a) *Approvals.* Type A medicated articles: (1) 1.12, 2.0, 11.2, and 50 percent to 000859 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(2) 1.12 and 11.2 percent to 017800 in § 510.600(c) of this chapter for use as in paragraph (d)(1)(ii) of this section.

(b) *Special considerations.* Adequate directions and warnings for use must be given and shall include a statement that coumaphos is a cholinesterase inhibitor and that animals being treated with coumaphos should not be exposed during or within a few days before or after treatment to any other cholinesterase-inhibiting drugs, insecticides, pesticides, or chemicals.

* * * * *

46. In § 558.195, by removing paragraphs (b), (c), and (d), by redesignating existing paragraphs (e), (f), and (g) as paragraphs (b), (c), and (d), respectively, and by revisions paragraph (a), to read as follows:

§ 558.195 Decoquinate

(a) *Approvals.* Type A medicated articles: 6 percent to 011801 in § 510.600(c) of this chapter.

* * * * *

47. In § 558.205, by removing paragraphs (b) and (c), by redesignating exisitng paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a), to read as follows:

§ 558.205 Dichlorvos.

(a) *Approvals.* Type A medicated articles: 3.1 and 9.6 percent to 052313 in § 510.600(c) of this chapter.

* * * * *

48. In § 558.240, by removing paragraphs (b) and (c), by redesignating exisitng paragraphs (d) and (e) as paragraphs (b) and (c) respectively, and by adding paragraph (a), to read as follows:

§ 558.240 Dimetridazole.

(a) *Approvals.* Type A medicated articles: 30 percent to 017210 in § 510.600(c) of this chapter.

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49. In § 558.248, by removing paragraph (b) by redesignating exisitng paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), and by revising paragraph (a), and redesignated paragraph (b) and the introductory text of redesignated paragraph (d)(1), to read as follows:

§ 558.248 Erythromycin thiocyanate.

(a) *Approvals.* Type A medicated articles: (1) 2.2 percent to 050604 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(2) 5 and 10 percent to 050604 in § 510.600(c) of this chapter for use as in paragraph (d)(1) (i) and (iii) of this section.

(b) *Special considerations.* The levels of antibiotic are expressed in terms of erythromycin master standard. One gram of erythromycin thiocyanate is equivalent to 0.925 gram of erythromcin master standard.

* * * * *

(d) *Condition of use.* (1) It is used as follows:

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50. In § 558.254, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by adding paragraph (a), to read as follows:

§ 558.254 Famphur.

(a) *Approvals.* Type A medicated articles: 13.2 and 33.3 percent to 010042 in § 510.600(c) of this chapter.

* * * * *

51. In § 558.258, by removing paragraph (b), by redesignating exisitng paragraphs (c) and (d) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.258 Fenbendazole.

(a) *Approvals.* Type A medicated articles: 4 percent (18.1 grams per pound) fenbendazole and 20 percent (90.7 grams per pound) fenbendazole to 012799 in § 510.600(c) of this chapter.

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52. In § 558.262, by removing paragraphs (b) and (c), by redesignating exisitng paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by adding paragraph (a), to read as follows:

§ 558.262 Furazolidone.

(a) *Approvals.* Type A medicated articles: 10, 50, and 100 grams per pound to 000007 in 011801 in § 510.600(c) of this chapter.

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53. In § 558.265, by removing paragraphs (b) and (c), by redesignating exisitng paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.265 Halofuginone hydrobromide.

(a) *Approvals.* Type A medicated articles: 6 grams per kilogram (2.72 grams per pound) to 012799 in § 510.600(c) of this chapter.

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54. In § 558.274, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.274 Hygromycin B.

(a) *Approvals.* (1) Type A medicated articles: 2.4 and 8 grams per pound to 000986 in § 510.600(c) of this chapter for use as in paragraph (c) of this section.

(2) 2.4 grams per pound to 011490, 016968, 018083, and 043733 in § 510.600(c) of this chapter for use in swine feed as in paragraph (c)(1)(ii) of this section.

(3) 1.2 grams per pound to 016968 in § 510.600(c) of this chapter for use in swine as in paragraph (c)(1)(ii) of this section.

(4) 0.6 gram per pound to 016968, 017434, 017473, 017519, 017790, 018083, 020275, 022422, 026948, 043733, 050568, and 050639 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) of this section and in swine as in paragraph (c)(1)(ii) of this section.

(5) 0.48 and 2.4 grams per pound to 026186 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) of this section and in swine as in paragraph (c)(1)(ii) of this section.

(6) 0.8 and 1.6 grams per pound to 043734 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) of this section.

(7) 2.4 grams per pound to 011790 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) of this section and in swine as in paragraph (c)(1)(ii) of this section.

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55. In § 558.305, by removing paragraphs (b), (c), and (e), by redesignating existing paragraphs (d) and (f) as paragraphs (b) and (c), respectively, and by revising paragraph (a) and the introductory text of redesignated paragraph (c), to read as follows:

§ 558.305 Ipronidazole.

(a) *Approvals.* Type A medicated articles: 12.5 percent to 000004 in § 510.600(c) of this chapter.

* * * * *

(c) *Conditions of use.* It is used for turkeys as follows:

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56. In § 558.311, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a), to read as follows:

§ 558.311 Lasalocid.

(a) *Approvals.* Type A medicated articles: (1) 3.0, 3.3, 3.8, 4.0, 4.3, 4.4, 5.0, 5.1, 5.5, 5.7, 6.0, 6.3, 6.7, 7.2, 7.5, 8.0, 8.3, 10.0, 12.5, 15, 20, and 50 percent activity granted to 000004 in § 510.600(c) of this chapter for use as in paragraph (d) (1), (2), (3), and (4) of this section.

(2) 15 percent activity to 000007 as provded by 000004 in § 510.600(c) of this chapter for use as in paragraph (d)(5) of this section.

(3) 15, 20, 33.1, and 50 percent activity to 000004 in § 510.600(c) of this chapter for use in feed for cattle as provided in paragraph (d) (6) and (7) of this section. Type A medicated articles containing lasalocid dried fermentation residue are for use in cattle feed only.

* * * * *

57. In § 558.315, by removing paragraphs (b), (c), (d), and (f), by redesignating existing paragraphs (e) and (g) as paragraphs (b) and (c), respectively, and by revising paragraph (a) and the introductory text of redesignated paragraph (c), to read as follows:

§ 558.315 Levamisole hydrochloride (equivalent).

(a) *Approvals.* Type A medicated articles: 227 grams per pound to 043781 in § 510.600(c) of this chapter.

* * * * *

(c) *Conditions of use.* It is used in Type C medicated feed as follows:

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58. In § 558.325, by removing paragraphs (b), (c), and (e), by redesignating existing paragraphs (d) and (f) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.325 Lincomycin.

(a) *Approvals.* Type A medicated articles: (1) 4 grams per pound to:

(i) 000009 in § 510.600(c) of this chapter for use as in paragraph (c)(1) and (3) of this section.

(ii) 034139 in § 510.600(c) of this chapter for use as in paragraph (c)(2) of this section.

(2) 20 grams per pound to 000009 in § 510.600(c) of this chapter for use as in paragraph (c)(1), (2), and (3) of this section.

(3) 50 grams per pound to 000009 in § 510.600(c) of this chapter for use as in paragraph (c)(1) and (2) of this section.

(4) 8, 10, and 20 grams per pound to 011490 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(5) 8 and 20 grams per pound to 043733, 050639, and 051359 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(6) 4, 8, 10, and 20 grams per pound to 018083 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(7) [Reserved]

(8) 4, 5, 8, 10, and 20 grams per pound to 016968 for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(9) 4 and 20 grams per pound to 047427 in § 510.600(c) of this chapter for use as in paragraph (c)(2) of this section.

(10) 4, 8, and 20 grams per pound to 017274 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(11) 5 and 10 grams per pound to 012286 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(12) 20 grams per pound to 020275 in § 510.600 of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(13) 2.5 and 8 grams per pound to 017800 in § 510.600(c) of this chapter for use as in paragraph (c)(2) of this section.

(14) 4 and 20 grams per pound to 024174 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i), (ii), and (iii) of this section.

(15) 8 and 20 grams per pound to 017790 in § 510.600(c) of this chapter for use as in paragraph (c)(2) of this section.

* * * * *

59. In § 558.342, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.342 Melengestrol acetate.

(a) *Approvals.* Dry Type A medicated articles: 100 or 200 milligrams per pound or liquid premix containing 500 milligrams per pound to 000009 in § 510.600(c) of this chapter.

* * * * *

60. In § 558.355, by removing and reserving paragraphs (a) and (d)(3) and (4), by revising the introductory text of paragraph (b), and by revising paragraph (c), to read as follows:

§ 558.355 Monensin.

(a) [Reserved]

(b) *Approvals.* Approvals for Type A medicated articles containing the specified levels of monensin activity granted to firms identified by sponsor numbers in § 510.600(c) of this chapter for the conditions of use indicated in paragraph (f) of this section are as follows:

* * * * *

(c) *Assay limits.* Liquid feed supplements contain 80 to 120 percent of the labeled amount of monensin activity.

* * * * *

61. In § 558.360, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (c)(1), to read as follows:

§ 558.360 Morantel tartrate.

(a) *Approvals.* Type A medicated articles: 88 grams per pound to 000069 in § 510.600(c) of this chapter.

* * * * *

(c) *Special considerations.* (1) Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

62. In § 558.365, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (c), to read as follows:

§ 558.365 Nequinate.

(a) *Approvals.* Type A medicated articles: 4 percent to 017800 in § 510.600(c) of this chapter.

* * * * *

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

63. In § 558.366, by removing paragraphs (b) and (d), by redesignating existing paragraphs (c) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.366 Nicarbazin.

(a) *Approvals.* Type A medicated articles: 25 percent to 000006 and 000986 in § 510.600(c) of this chapter.

* * * * *

64. In § 558.367, by removing paragraph (b), by redesignating existing paragraph (c) as paragraph (b), and by revising paragraph (a), to read as follows:

§ 558.367 Niclosamide.

(a) *Approvals.* Type A medicated articles: 66 percent to 000859 in § 510.600(c) of this chapter.

* * * * *

65. In § 558.369, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a), to read as follows:

§ 558.369 Nitarsone.

(a) *Approvals.* Type A medicated articles: 50 percent to 017210 in § 510.600(c) of this chapter.

* * * * *

66. In § 558.370, by removing paragraphs (b) and (c), by redesignating existing paragraph (d) as paragraph (b), and by revising paragraph (a), to read as follows:

§ 558.370 Nitrofurazone.

(a) *Approvals.* Type A medicated articles: 50 grams per pound to 000007 and 011801 in § 510.600(c) of this chapter.

* * * * *

67. In § 558.376, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by adding paragraph (a), to read as follows:

§ 558.376 Nitromide and sulfanitran.

(a) *Approvals.* Type A medicated articles: 25 percent nitromide, 30 percent sulfanitran, with or without 5 percent roxarsone to 017210 in § 510.600(c) of this chapter.

* * * * *

68. In § 558.415, by removing paragraphs (b), (c), and (d), by redesignating existing paragraphs (e) and (f) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.415 Novobiocin.

(a) *Approvals.* Type A medicated articles: 25 grams of activity per pound to 000009 in § 510.600(c) of this chapter.

* * * * *

69. In § 558.430, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by adding paragraph (a), to read as follows:

§ 558.430 Nystatin.

(a) *Approvals.* Type A medicated articles: 20 grams of activity per pound to 000003 in § 510.600(c) of this chapter.

* * * * *

70. In § 558.435, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (c), to read as follows:

§ 558.435 Oleandomycin.

(a) *Approvals.* Type A medicated articles: 5 grams of activity per pound to 000069 in § 510.600(c) of this chapter.

* * * * *

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing oleandomycin.

* * * * *

71. In § 558.450, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b), to read as follows:

§ 558.450 Oxytetracycline.

(a) *Approvals.* Type A medicated articles: (1) 10 and 50 grams per pound to 000069 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(2) 100 grams per pound to 000069 in § 510.600(c) of this chapter for use as in paragraph (d)(1), table 1, item (v) of this section.

(b) *Special considerations.* The amount of oxytetracycline is expressed in terms of an equivalent amount of oxytetracycline hydrochloride.

* * * * *

72. In § 558.460, by removing paragraphs (b), (c), and (d), by redesignating existing paragraphs (e) and (f) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.460 Penicillin.

(a) *Specifications.* As penicillin procaine G or feed grade penicillin procaine.

* * * * *

73. In § 558.464, by removing paragraph (b), by redesignating existing paragraph (c) as paragraph (b), and by revising paragraph (a), to read as follows:

§ 558.464 Poloxalene.

(a) *Approvals.* (1) Dry Type A medicated articles: 53 percent to 000007 in § 510.600(c) of this chapter.

(2) Liquid Type A medicated articles: 99.5 percent to 000007 in § 510.600(c) of this chapter.

* * * * *

74. In § 558.465, by removing paragraphs (b) and (c), by redesignating existing paragraph (d) as paragraph (b), and by revising the section heading and paragraph (a), to read as follows:

§ 558.465 Poloxalene liquid Type C medicated feed article.

(a) *Approvals.* Type A medicated articles: 99.5 percent to 000007 in § 510.600(c) of this chapter.

* * * * *

75. In § 558.485, by removing and reserving paragraph (b), by revising the introductory text of paragraph (a), and

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by revising paragraph (d), to read as follows:

§ 558.485 Pyrantel tartrate.

(a) *Approvals.* Type A medicated articles containing pyrantel tartrate to firms identified by drug labeler codes in § 510.600(c) of this chapter for the specific usage indicated in paragraph (e) of this section:

* * * * *

(b) [Reserved]

* * * * *

(d) *Special considerations.* (1) Consult veterinarian before using in severely debilitated animals.

(2) Do not mix in Type B or Type C medicated feeds containing bentonite.

* * * * *

76. In § 558.515, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and the second sentence in redesignated paragraph (b), to read as follows:

§ 558.515 Robenidine hydrochloride.

(a) *Approvals.* Type A medicated articles: 30 grams per pound to 010042 in § 510.600(c) of this chapter.

(b) * * * Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

77. In § 558.525, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a), to read as follows:

§ 558.525 Ronnel.

(a) *Approvals.* Type A medicated articles: (1) 18 and 40 percent to 025700 in § 510.600(c) of this chapter.

(2) 5.5 percent in mineral mix to 021930 in § 510.600(c) of this chapter.

* * * * *

78. In § 558.530, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d), (e), and (f) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a), to read as follows:

§ 558.530 Roxarsone.

(a) *Approvals.* Type A medicated articles: (1) 10, 20, and 50 percent to 011801 in § 510.600(c) of this chapter for use in making chicken and turkey feeds.

(2) 10, 20, 50, and 80 percent to 017210 in § 510.600(c) of this chapter for use in making chicken, turkey, and swine feeds.

* * * * *

79. In § 558.550, by removing paragraph (b), by redesignating existing paragraph (c) as paragraph (b), and by revising paragraph (a), to read as follows:

§ 558.550 Salinomycin.

(a) *Approvals.* Type A medicated articles: 30 grams of activity from salinomycin sodium biomass to 000031 in § 510.600(c) of this chapter.

* * * * *

80. In § 558.575, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

(a) *Approvals.* Type A medicated articles: 25 percent of sulfadimethoxine and 15 percent of ormetoprim and 25 percent of sulfadimethoxine and 5 percent of ormetoprim to 000004 in § 510.600(c) of this chapter.

* * * * *

81. In § 558.579, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c) respectively, and by revising paragraph (a), to read as follows:

§ 558.579 Sulfaethoxypyridazine.

(a) *Approvals.* Type A medicated articles: 5.5 percent for swine, and 5.5 and 11 percent for cattle to 010042 in § 510.600(c) of this chapter.

* * * * *

82. In § 558.582, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.582 Sulfamerazine.

(a) *Approvals.* Type A medicated articles: 99 percent to 010042 in § 510.600(c) of this chapter.

* * * * *

83. In § 558.586, by removing and reserving paragraphs (b) and (c) and by revising the section heading and adding paragraph (a), to read as follows:

§ 558.586 Sulfaquinoxaline.

(a) *Approvals.* Type A medicated articles: 40 percent to 000006 in § 510.600(c) of this chapter.

(b)–(c) [Reserved]

* * * * *

84. In § 558.615, by removing paragraph (b), by redesignating existing paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) and redesignated paragraph (b), to read as follows:

§ 558.615 Thiabendazole.

(a) *Approvals.* Dry Type A medicated articles: 22, 44.1, 66.1, and 88.2 percent to 000006 in § 510.600(c) of this chapter. The 66.1 percent Type A is solely for the manufacture of cane molasses liquid Type C medicated feed article which is mixed in dry feeds. The 88.2 percent Type A is used solely for the manufacture of an aqueous slurry for adding to a Type C dry cattle feed.

(b) *Special considerations.* Do not use in Type B or Type C medicated foods containing bentonite.

* * * * *

85. In § 558.625, by removing and reserving paragraphs (c) and (d) and by revising the introductory text of paragraph (b), to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) *Approvals.* Type A medicated article levels of tylosin granted to firms as sponsor(s) and identified by drug listing numbers in § 510.600(c) of this chapter for the specific usage indicated in paragraph (f) of this section.

* * * * *

(c)–(d)–[Reserved]

* * * * *

86. In § 558.630, by removing and reserving paragraphs (a), (c), and (d), and by revising the introductory text of paragraph (b), to read as follows:

§ 558.630 Tylosin and sulfamethazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated article levels, a combination of equal amounts of tylosin and sulfamethazine, granted to firms as sponsor(s) and identified by drug listing numbers in § 510.600(c) of this chapter for the conditions of use indicated in paragraph (f) of this section.

* * * * *

(c)–(d) [Reserved]

* * * * *

87. In § 558.635, by removing and reserving paragraphs (a), (c), and (e) (3) and (4), and by revising paragraph (b), to read as follows:

§ 558.635 Virginiamycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles. (1) 1.1 percent activity (5 grams per pound), 2.2 percent activity (10 grams per pound), 4.4 percent activity (20 grams per pound), 11 percent activity (50 grams per pound), and 50 percent activity (227 grams per pound) to 000007 in § 510.600(c) of this chapter.

(2) 2.2 percent activity (10 grams per pound) to 011490, 016968, 017274, 017790, and 047427 in § 510.600(c) of this chapter for use as in paragraph (f)(1) (iv) and (v) of this section.

(c) [Reserved]

* * * * *

(e) * * *

(3)–(4) [Reserved]

* * * * *

In § 558.680, by removing paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising paragraph (a), to read as follows:

§ 558.680 Zoalene.

(a) *Approvals.* Type A medicated articles: 25 percent to 017210 in § 510.600(c) of this chapter.

* * * * *

Dated: January 28, 1986.

Frank E. Young,
Commissioner of Food and Drugs

Otis R. Bowen,
Secretary of Health and Human Services.

[FR Doc. 86–4316 Filed 2–28–86; 8:45 am]

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21 CFR Part 884

Obstetrical-Gynecological Devices; Transabdominal Amnioscope (Fetoscope) and Accessories; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 85N-0494]

Obstetrical-Gynecological Devices; Premarket Approval of the Transabdominal Amnioscope (Fetoscope) and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the transabdominal amnioscope (fetoscope) and accessories, a medical device. The agency is also summarizing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by May 2, 1986; requests for a change in classification by March 18, 1986.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for the development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If the proceeding is terminated, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or a notice of completion of a PDP for the device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigation necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Transabdominal Amnioscope (Fetoscope) and Accessories

In the **Federal Register** of February 26, 1980 (45 FR 12688), FDA issued a final rule (21 CFR 884.1600) classifying the transabdominal amnioscope (also known as the fetoscope) and accessories into class III. The preamble to the proposal to classify the device (44 FR

19907; April 3, 1979) included the recommendation of the Obstetrics-Gynecology Devices Panel (formerly) the Obstetrical and Gynecological Device Classification Panel) (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be asigned to the transabdominal amnioscope and accessories. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or a notice of completion of a PDP) could be required was September 30, 1982, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the transabdominal amnioscope and accessories identified in § 884.1600(a) has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the transabdominal amnioscope and accessories have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is now proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the transabdominal amnioscope and accessories within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the transabdominal amnioscope and accessories during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will stipulate that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any transabdominal amnioscope and accessories: (1) That is not legally on the market on or before that date or (2) that is legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the transabdominal amnioscope and accessories is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

A transabdominal amnioscope is a device designed to permit direct visual examination of the fetus by a telescopic system via abdominal entry. The device is used to ascertain fetal abnormalities, to obtain fetal blood samples, or to obtain fetal tissue. The generic type of device may include the following accessories: Trocar and cannula, instruments used through an operating channel or through a separate cannula associated with the amnioscope, light source and cables, and component parts.

The proposed rule to require premarket approval of the tansabdominal amnioscope and accessories applies to transabdominal amnioscope (fetoscope) products and accessories for use with the products that were being commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date which have been found to be substantially equivalent to such transabdominal amnioscopes and accessories.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the Act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the transabdominal amnioscope and accessories to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

In 1979, the Panel considered the appropriate classification of the transabdominal amnioscope and accessories. After reviewing all available literature on the transabdominal amnioscope, the Panel recommended that the device and its accessories be classified into class III (44 FR 19907; April 3, 1979). The Panel based its recommendation, in part, on its conclusion that satisfactory performance of the device has never been demonstrated, that available information is insufficient to establish a standard to provide assurance of the device's safety and effectiveness, and that clinical experience with the device is too limited to establish that general controls would assure its safe and effective use.

The Panel identified several risks to health associated with the use of the device: Tissue burns, infection, electrical shock, trauma, adverse tissue reaction, spontaneous abortion, and premature delivery. In addition, FDA reviewed data and information describing the application of the transabdominal amnioscope to examine the fetus visually and to collect tissue samplings. Based on FDA's review of these data and information, some of which were not available at the time of the Panel meeting, the agency concluded that the device presents a potential unreasonable risk of illness or injury due to risks associated with its use, including the reported frequency of diagnostic error, failure of sample acquisition, and fetal loss. For these reasons, FDA found that the value of diagnostic information on fetal status obtained with the use of the device may

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not outweigh the fetal risk presented by the device. Accordingly, FDA determined that the transabdominal amnioscope and accessories should be subject to premarket approval.

Since the time of classification of the device, FDA has evaluated the risks then determined to be associated with the use of the transabdominal amnioscope and accessories. Based on that evaluation, FDA believes that with the development of fiber optics and remote light source, current models of the device no longer present the risks of tissue burns and electrical shock. FDA believes that the following are significant risks which continue to be associated with the use of transabdominal amnioscope (fetoscope) products and the accessories used with these products:

Spontaneous abortion. Spontaneous abortion is one of the most serious risks of fetoscopy. The incidence of spontaneous abortion following fetoscopy was recently reported to be 6.8 percent for fetal blood sampling, 7.9 percent for fetal visualization, and 16 percent for fetal skin biopsy (Ref. 19). Moreover, the incidence of spontaneous abortion has been found to be higher in patients for whom a followup second fetoscopy procedure was necessary whether the followup procedure was conducted on the same day as the first procedure or later (Refs. 2 and 23).

Premature delivery. The incidence of premature delivery of the fetus following fetoscopy for sampling of fetal blood range between 5.3 percent and 14.8 percent (Refs. 2 and 23). According to Antsaklis (Ref. 2) and Ward and Modell (Ref. 23), many factors contribute to premature delivery of the fetus, but the average incidence of 10 percent premature delivery following fetoscopy was much higher than the estimated 1.5 percent expected in a normal group of patients. Therefore, these authors conclude that fetoscopy has to be considered an additional hazard contributing to premature delivery. These authors also report that the incidence of premature delivery following fetal visualization with transabdominal amnioscope devices is much higher than that following fetal blood sampling with the devices, probably because of the additional manipulation of the fetoscope required for visually identifying developmental abnormalities.

Fetal and maternal injuries. Direct damage to the fetus and to the mother has been reported following fetoscopy (Refs. 2, 3, 6, 12, 14, and 17). Hobbins and Mahoney (Ref. 8) reported fetal bleeding both into amniotic fluid and maternal circulation. Rodeck and Nicolaides (Ref. 16) reported a rise in maternal serum alpha-fetoprotein concentration indicating feto-maternal hemorrhage as a result of punctured chorionic plate vessels during fetoscopy. Feto-maternal hemorrhage in Rh-negative mothers is a potential complication due to isoimmunization (Ref. 16). In addition, it has been suggested that the bright light source might damage the fetal retina during fetoscopy (Ref. 16).

Amnionitis and leakage of amniotic fluid as a result of trauma are the two significant maternal complications following fetoscopy (Refs. 3 and 13). The incidence of amnionitis has been reported to be about 1 percent and leakage of amniotic fluid to be 5 percent (Refs. 3 and 13). According to Antsaklis (Ref. 2) and Ward and Modell (Ref. 23), trauma either to the fetus or to the uterus of the mother is the main cause of spontaneous abortion following fetoscopy. Early studies indicate, however, that the use of small diameter fetoscopes (1.7 to 3.1 millimeters) may reduce these risks (Ref. 3).

Infection. Rocker and Laurence report that infection is a significant hazard both to the fetus and to the mother (Refs. 2 and 14). The incidence of fetal infection following fetoscopy is about 1 percent. These authors considered the observed fetal infection, in some cases, to be the direct cause of fetal death. During fetoscopy procedures, antibiotics are routinely administered to the patients (Ref. 2) to minimize maternal infection. Fetal infection can be so serious, however, that it causes septic abortion (infected miscarriage) followed in some cases by blood poisoning (septicemia) which can lead to death.

Adverse tissue reaction. Materials or substances used to manufacture transabdominal amnioscope (fetoscope) devices and the accessories used with these devices could cause systemic or local tissue reaction, when the devices contact the maternal or fetal tissues. Because the devices used for fetoscopy come in direct contract with very sensitive fetal and maternal tissues, biocompatibility of the device materials is essential to provide reasonable assurance of the safety of the device.

Benefits of the Device

Fetoscopy is performed to visualize the fetus or to sample fetal tissues for the diagnosis of fetal conditions that are difficult or impossible to diagnose with ultrasonography or amniocentesis (Refs. 5, 13, 14, 16, 18, 20, and 21). Visual examination of the fetus has successfully diagnosed craniofacial defects, limb defects, and neural tube defects (Ref. 15). Several skin diseases have been diagnosed by fetal skin biopsy using the transabdominal amnioscope and accessories (Ref. 4). Other prenatal diagnoses of specific conditions that have been accomplished with fetoscopy include hemoglobinopathies (Refs. 1 and 22), hemophilias (Refs. 7 and 9), white blood cell and platelet disorders (Ref. 10), red cell typing (Ref. 11), and several enzyme deficiencies (Ref. 3). Diagnosis of a normal healthy fetus by fetoscopy provides the benefit of reassurance to parents who are at high risk of a pregnancy with genetic or developmental abnormalities such as the defects and conditions discussed above.

In summary, fetoscopy offers a valuable tool in the prenatal diagnosis of conditions that cannot be diagnosed by ultrasonography or amniocentesis, though the procedure is not without certain attendant risks as well as the possibility of failure to provide diagnostic information. FDA believes, however, that fetoscopy using the transabdominal amnioscope and accessories can be beneficial in prenatal diagnosis for genetic diseases and developmental abnormalities in high-risk patients.

Discussion of Risks and Benefits

FDA classified the transabdominal amnioscope and accessories into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable risks and benefits to the public from use of the transabdominal amnioscope and accessories and believes that the studies discussed above present evidence of significant risks associated with the use of the device. These risks must be addressed by manufacturers of the device.

Fetal infection is a serious complication associated with the fetoscopy procedure. The incidence of fetal infection associated with use of the transabdominal amnioscope and accessories leading to spontaneous abortion has been reported (Ref. 14). FDA believes, therefore, that the rate, type, severity, and outcome of these infections should be clearly documented for any transabdominal amnioscope and accessories for which premarket approval is sought.

Fetal trauma leading to fetal deformities and fetal loss has been reported following fetoscopy (Refs. 2, 3,

6, 8, 12, 14, and 17). FDA believes that the difference in rate, type, severity, and outcome of fetal trauma following fetal blood or tissue sampling and following fetal visualization should be clearly documented for each device.

Leakage of amniotic fluid and amnionitis are severe maternal complications frequently caused by the fetoscopy procedure (Refs. 3 and 13). Feto-maternal hemorrhage as a result of punctured chorionic plate vessels has also been reported (Ref. 16). FDA believes that the rate, type, severity, and outcome of all the maternal complications associated with the use of each transabdominal amnioscope and accessories should be clearly documented.

Spontaneous abortion and premature delivery have been reported following fetoscopy (Refs. 2, 14, and 23). FDA believes that the incidence of spontaneous abortion and premature delivery for each indication (fetal blood or tissue sampling and fetal visualizaton) should be clearly established for each device.

Although the transabdominal amnioscope and accessories may provide prenatal diagnostic data that are unavailable with other methods, fetal blood sampling and fetal visualization by fetoscopy have often failed to provide the necessary diagnostic data. Fetal blood obtained by the procedure may be contaminated with amniotic fluid. Fetal visualization has been reported as failing in 13 percent of the attempted cases (Ref. 3). For these reasons, FDA believes that the diagnostic effectiveness of fetoscopy must be documented in terms of effective fetal blood or tissue sampling and fetal examination.

Because the transabdominal amnioscope and accessories come in contact with very sensitive fetal and maternal tissues, FDA believes that the safety of all the materials used in the device that come in contact with tissues must be established by adequate biocompatibility studies.

FDA tentatively concludes, therefore, that the transabdominal amnioscope and accessories should undergo premarket approval to determine whether the probable benefits to health from use of the device for its intended uses and conditions of use outweigh any probable risks to the fetus and the mother.

Any PMA for the device is to contain the information required by section 515(e)(1)(A) of the act. Such a PMA should also contain a detailed discussion with supporting preclinical and clinical studies respecting the risks identified above and the effectiveness of the device for which premarket approval is sought.

In addition, the PMA should contain all data and information on: (1) The risks known to the applicant that have not been identified in this document, (2) the effectiveness of the specific transabdominal amnioscope and its accessories that is the subject of the application, and (3) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought.

Applicants should submit any PMA in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." (The guideline is available upon request from Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.)

Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in the preambles to FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the transabdominal amnioscope and accessories is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by March 18, 1986.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the transabdominal amnioscope and accessories is submitted, the agency will, by May 2, 1986, after consultation with the appropriate FDA advisory committee and by an order published in the Federal Register, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and §860.130 of the regulations.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Alter, B. P., "Prenatal Diagnosis of Hemoglobinopathies and Other Hematologic Diseases," *Journal of Pediatrics*, 95:501–513, 1979.

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7. Firshein, S. I., et al., "Prenatal Diagnosis of Classic Hemophilia," *New England Journal of Medicine*, 300:937–941, 1979.

8. Hobbins, J.C., and M. J. Mahoney, "In Utero Diagnosis of Hemoglobinopathies. Technic for Obtaining Fetal Blood." *New England Journal of Medicine*, 290:1065–1067, 1974.

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10. Newburger, P. E., et al., "Prenatal Diagnosis of Chronic Granulomatous Disease," *New England Journal of Medicine*, 300:178–181, 1979.

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14. Rocker, I., and K. M. Laurence, "An Assessment of Fetoscopy," *in* "Fetoscopy," Edited by Rocker, I., and K. M. Laurence, New York, Elsevier/North-Holland, pp. 301–309, 1981.

15. Rodeck, C. H., and S. Campbell, "Early Prenatal Diagnosis of Neural-Tube Defects by Ultrasound-Guided Fetoscopy," *Lancet*, i, 1128–1129, 1978.

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16. Rodeck, C. H., and K. H. Nicolaides, "Fetoscopy and Fetal Tissue Sampling." *British Medical Bulletin,* 39:332–337, 1983.

17. Rodeck, C. H., "Fetoscopy at King's College Hospital London," *in* "Fetoscopy," Edited by Rocker, I., and K. M. Laurence, New York, Elsevier/North-Holland, pp. 233–259, 1981.

18. Rodeck, C. H., "Prenatal Diagnosis by Fetoscopy and Chorion Biopsy," *Australian and New Zealand Journal of Obstetrics and Gynaecology,* 24:86–90, 1984.

19. Special Report: "The Status of Fetoscopy and Fetal Tissue Sampling," Fourth Annual Meeting of the International Fetoscopy Group, San Francisco, 1982, *Prenatal Diagnosis,* 4:79–81, 1984.

20. Toftager-Larsen, K., and R. J. Benzie, "Fetoscopy in Prenatal Diagnosis of the Majewski and the Saldino-Noonan Types of the Short Rib-Polydactyly Syndromes," *Clinical Genetics,* 26:56–60, 1984.

21. Tolarova, M., and A. Zwinger, "The Use of Fetoscopy by Inborn Morphological Anomalies," *Acta Chir. Plasticae,* 23: 139–151, 1981.

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23. Ward, R. H. T., and B. Modell, "The Mid-Trimester of Pregnancy in Relation to Fetoscopy and to Fetal Blood Sampling," *in* "Fetoscopy," Edited by Rocker, I., and K. M. Laurence, New York, Elsevier/North-Holland, pp. 3–31, 1981.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only four or five small firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Comments

Interested persons may, on or before May 2, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before March 18, 1986, submit to the Dockets Management Branch a written request to change the classification of the transabdominal amnioscope and accessories. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR Part 884 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; §§ 884.1600(c), 884.5360(d), and 884.5380(c) also are issued under secs. 501, 515, and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In Part 884, § 884.1600 is amended by adding new paragraph (c), to read as follows:

§ 884.1600 Transabdominal amnioscope (fetoscope) and accessories.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any transabdominal amnioscope (fetoscope) and accessories that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to a transabdominal amnioscope (fetoscope) and accessories that was in commercial distribution before May 28, 1976. Any other transabdominal amnioscope (fetoscope) and accessories shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: February 6, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–4443 Filed 2–28–86; 8:45 am]

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federal register

Monday
March 3, 1986

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 4700

Revision of Existing Regulations on Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2577]

Revision of Existing Regulations on Protection, Management, and Control of Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the provisions on wild free-roaming horses and burros in Part 4700 to reduce the regulatory burden on the public, to clarify the management procedures of the Bureau of Land Management as they affect the public, to remove unnecessary provisions, and to improve the organization of the regulations.

EFFECTIVE DATE: April 2, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (250), Bureau of Land Management, Room 901, Premier Building, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John S. Boyles (202) 653-9215.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to revise the existing regulations on the protection, managment, and control of wild free-roaming horses and burros on public lands was published in the Federal Register on December 18, 1984 (49 FR 49252). Comments were invited for a period of 60 days ending February 19, 1985, during which period a total of 19 comments were received, with 10 from associations, 6 from Federal agency offices, 2 from State governments, and 1 from a Member of Congress. All of the comments have been given careful consideration during the decisionmaking process on this final rulemaking.

The comments contained discussions of specific sections of the proposed rulemaking and in many instances recommended changes, some of which have been adopted in this final rulemaking. This preamble will discuss only those sections that were the subject of specific comments or were changed.

Section 4700.0–2 Objectives.

One comment suggested that the objectives should be amended to conform more closely to the statutory objectives stated in the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340) (the Act). Based on this comment, the section has been amended to incorporate the statutory requirement that wild horses and burros be managed "as an integral part of the natural system of the public lands" under the principle of multiple use.

Section 4700.0–5 Definitions.

Several comments addressed the proposed definitions of the terms "appropriate management level" and "excess animals." Most of the comments criticized the proposed definitions of the terms as being inconsistent with the statutory definitions and intent, and urged that the statutory language be used. In response to these comments, the definitions of both terms have been removed from the final rulemaking. The language of the statute will govern management.

One comment questioned whether the definition of "authorized officer" allows for appeals by the public to higher authority. The definition merely defines who is to carry out the provisions of this rulemaking, and has no bearing on appeals under the Administrative Procedure Act or 43 CFR Part 4 of any decision made under these regulations. The definition is not changed in the final rulemaking.

Two comments addressed the definitions for "band" and "herd", urging that the former be removed and that the latter be conformed to the language in the Act. In response to these comments, the definitions of both terms have been removed from the rulemaking. "Herd" is defined in the Act. "Band" is not used in the text of the final rulemaking, and thus does not require definition.

Several comments addressed the definition of "commercial exploitation," urging that it be expanded to include slaughtering and processing the remains of horses and burros, and not be limited to using the wild characteristics of the animals for financial gain. Slaughtering a wild horse or burro is prohibited by § 4770.1(c) of this relemaking, and selling a wild horse or burro or its remains is prohibited by § 4770.1(d). Processing of the remains of a wild horse or burro is addressed in § 4730.2, which prohibits receiving compensation for remains, but allows disposal of remains through rendering. The definition is retained unchanged.

Several comments objected to the proposed definition of "humane treatment," which required that handling be consistent with "standard animal husbandry practices." Because no specific group of husbandry practices can be presented as a "standard," the word has been replaced in the final rulemaking with the phrase "accepted by the veterinary community." Accepted animal husbandry practices are those outlined in textbooks on the subject. The BLM has relied primarily on the following:

1. Bradley, Melvin. *Horses: A Practical and Scientific Approach*. New York: McGraw-Hill, Inc., 1981.
2. Ensminger, M.E. *Horses and Horsemanship*, 5th ed. Danville, Illinois: The Interstate Printers and Publishers, Inc., 1977.

In addition, the adjectives "kind" and "merciful" have been removed because they are redundant, given the requirement that handling not cause unnecessary stress or suffering.

Another comment stated that "stress," referred to in the definition, is undefined. In this and all other cases where common words or expressions are used, the ordinary dictionary definition is intended to be applied.

Several comments addressed the definition of "inhumane treatment." Some stated a preference for the definition in the existing regulations; others stated that requiring the treatment to be intentional is too restrictive, and that it should be defined to include inflicting pain and suffering. The word "death" has been replaced in the definition in the final rulemaking with "undue suffering", in response to one of the comments, and to allow the authorized officer to destroy animals in appropriate circumstances. The definition has also been expanded to include negligent as well as intentional behavior, and the word "standard" is replaced for the reasons stated above. However, the definition in the existing regulations is not retained because it may be too restrictive, in that it includes a specific list of proscribed acts or omissions without stating clearly that other acts or omissions may constitute inhumane treatment.

One comment suggested that the definition of "old wild horse or burro" should be amended to make it clear that, to be subject to destruction as an act of mercy because of physical deterioration, the animal's deterioration must have rendered it unable to fend for itself. This suggestion has been adopted in the final rulemaking.

One comment stated that the definition of "wild horses and burros" should be amended to include their progeny. This change has not been adopted in the final rulemaking because it would include animals born after their mothers have been placed under a Private Maintenance and Care Agreement. Such animals have never been "unbranded or unclaimed horses and burros on public lands of the United States," the statutory definition of wild horses and burros. The final rulemaking

does address progeny born while the mothers are on public land or at adoption centers. In response to a comment, the definition has been amended to assure that the term includes the characteristic "free-roaming".

One comment suggested including in the rulemaking a definition for "herd area." This suggestion has been adopted in the final rulemaking. Two comments urged that a definition of "malicious harassment" be included. This request has not been adopted in the final rulemaking. Instead, the prohibition in § 4770.1(a) has been amended to prohibit negligent as well as malicious injury or harassment. The terms negligence and malice are both well-defined in the law.

Section 4700.0–6 Policy.

Several comments addressed paragraph (a) of this section, urging that the policy should emphasize that wild horses and burros should be managed as one of the multiple uses of the public lands, not as a dominant use limited only by the capacity of the habitat. Other comments urged that more than just museum-exhibit populations should be maintained on the public lands. Paragraph (a) of § 4700.0–6 has been amended in the final rulemaking to accommodate both suggestions, that is, to require that populations be self-sustaining and that populations of horses and burros be kept in balance with other uses as well as the productive capacity of the habitat.

Several comments addressed paragraph (b) of this section, urging that the language on forage allocation in the existing regulations (43 CFR 4700.0–6(c)) be retained. Other comments stated that the word "comparably" is vague and should be replaced by "equivalent" in describing how wild horses and burros will be considered in relation to other resources in formulating land use plans. Specific provision for forage allocation is not necessary because the policy is clearly stated that wild horse and burro management will maintain self-sustaining populations. This cannot be done without adequate forage. The word "comparably" is used in the existing regulations to require all resource values to be considered in proportion to their presence on the land, competition with other resources, and the interest of the public in them. Assigning equal or equivalent weight to all resources, as some comments suggested, would not allow varying circumstances to be treated appropriately. The paragraph is not changed in the final rulemaking.

Two comments addressed paragraph (c) of this section, urging that it be policy to manage wild horses and burros at the minimum feasible level, and expressing concern that maintaining free-roaming behavior of the animals may be inconsistent with multiple use of the public lands. Failure to maintain the free-roaming nature of the animals would be contrary to the policy established by the Act. The requirement that management shall be at the minimum level to attain planning objectives is contained in § 4710.4. It is not necessary to amend this provision.

One comment urged that paragraph (d) of this section be amended to preclude cooperative arrangements for the management of wild horses and burros. The Act specifically authorizes the Secretary of the Interior to enter into cooperative agreements with State and local governments and with individual landowners to attain management objectives. The paragraph is retained in the final rulemaking. It should be understood that § 4710.7 retains the statutory provisions for individuals to maintain wild horses and burros on their private land.

Although there were no comments on paragaph (e), it has been amended by removing the word "nationwide" in reference to adoption centers, to avoid misleading the public into expecting to find adoptable animals in every community around the country.

In response to several comments, and to make it consistent with § 4750.4–2(b), paragraph (f) has been amended to state that adoption fees will "normally" be required.

One comment asked for a policy declaration on removal of animals from private land. Such a declaration is unnecessary because the procedure is clearly stated in § 4720.2–1. Another comment asked that management guidelines be included in the policy statement. Such guidelines are more appropriately stated in manuals for the use of field personnel of the Bureau. Neither suggestion has been adopted in the final rulemaking.

Section 4710.1 Land use planning.

Several comments addressed this section. One expressed general support, another asked for language requiring that management activities comply with law and Congressional intent, and a third urged that management activities be included in approved land use plans. In response to the second comment, management activities shall be in accordance with the law regardless of any criteria in regulations. In response to the third, the paragraph has been amended by substituting the words "in accordance" for "compatible" in describing the relationship of management actions to land use plans. Management activities, including the development of herd management area plans, must not only be compatible with the land use plan but must also reflect specific guidance derivable from the land use plan on the subjects of resource allocation, relationships between wild horses and burros and other recognized uses, and critical resource use levels that would require modification of the plan's multiple-use prescriptions.

Section 4710.2 Inventory and monitoring.

Several comments urged that the authorized officer be required to address the numbers of horses and burros that existed in herd areas in 1971 as a basis for further management. This suggestion is not adopted in the final rulemaking. There is no indication in the Act or its legislative history that herds should be managed at their 1971 size or any other specific level. Furthermore, although estimates of 1971 population levels have been made, they are at best conjectural and highly unreliable. It is more appropriate to allow the authorized officer the flexibility to determine appropriate management levels based on analysis of competing land uses, forage availability, and public concern.

Another comment urged that the authorized officer be required to monitor herd and habitat characteristics regardless of whether herd management areas are established. This suggestion has not been adopted in the final rulemaking, because this type of information is useful only when herds are to be managed in the long term. This provision has been amended to delete the list of items to be inventoried and monitored on herd management areas, because these will vary depending on the objectives in the herd management area plan.

Section 4710.3–1 Herd management areas.

Several comments addressed this section, expressing concern that it could be interpreted to direct every District Manager of the Bureau of Land Management to establish herd management areas. This provision has been amended to alleviate this concern and to clarify that herd management areas shall be established only where herds existed in 1971. One comment suggested that the effect on nearby private land of management for wild horses and burros should be taken into account in delineating herd management areas. This suggestion has been adopted in the final rulemaking.

Section 4710.3–2 Wild horse and burro ranges.

Several comments objected to this section as implying that numerous wild horse and burro ranges will be

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established on public lands. Such ranges are specifically provided for by law (16 U.S.C. 1333(a)), and will be established only upon completion of the appropriate planning process, including public participation. The section has been retained, with editorial changes, in the final rulemaking.

Section 4710.4 Constraints on management.

Several comments addressed this section, pointing out that limiting wild horses and burros to their 1971 "yearlong" habitat could effectively eliminate most of their actual habitat from management as herd areas, due to their seasonal use of some areas. The section has been amended to remove the reference to yearlong habitat. In this connection, a definition has been added for "herd area" in § 4700.0–5. Another change has been incorporated to make it clear that management will not be restricted to herd areas, but will rather be undertaken with the objective of limiting animal distribution to herd areas by controlling herd size to prevent habitat from being overpopulated.

Section 4710.5 Closure to livestock grazing.

Numerous comments addressed paragraph (a) of this section, either opposing it as inconsistent with multiple use management, or urging that it be amended to provide additional protection for wild horses and burros. Actions under this section are discretionary with the authorized officer and subject to public consultation. The provision is necessary to allow the authorized officer to meet the needs of all users of the public lands, including wild horses and burros, and is retained unamended in the final rulemaking.

Several comments asked that paragraph (b) of this section be amended to allow camp horses or riding stock to graze on public lands inhabited by wild horses and burros. The paragraph has been amended to make it clear that herd areas are closed only to grazing under permit or lease by domestic horses and burros, and not to pack or camp horses. In addition, for the latter it is the normal practice that outfitters carry fodder for their animals with them, or limit their grazing by tying or hobbling them, so interference by these animals with or consumption of forage needed by wild horses and burros is minimal.

As a result of concerns expressed in numerous comments, paragraph (c) of this section has been rewritten in the final rulemaking to clarify the limits on the authority of the authorized officer. Sufficient authorities for this provision are found in the Taylor Grazing Act and the Federal Land Policy and Management Act, as well as the Wild Free-Roaming Horse and Burro Act. Any notice of closure will be subject to the normal administrative appeal process.

Section 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

In response to public comment, this section has been amended to make it clear that any conditions established for the removal of unauthorized livestock would apply only to removal from public lands.

Section 4710.7 Maintenance of wild horses and burros on privately controlled lands.

This section has been amended to remove the requirement that private maintenance occur only on unfenced land, because that requirement is not supported by law. Landowners may voluntarily provide for and maintain wild horses and burros that freely move onto their land, whether it is fenced or not.

Section 4720.1 Removal.

One comment discussed the term "current information" in this section, and suggested that detailed language in the statute at 16 U.S.C. 1333(b)(2) be included in the regulation. The authorized officer is equally bound by the statute and the regulations, and there is no need to repeat the requirements of the law in the regulations. The comment is not adopted in the final rulemaking.

An editorial change has been made in § 4720.1(b), adding the word "humanely" to meet the requirements of law.

Three comments addressed paragraph (c) of this section, 2 of them urging that it be removed from the rulemaking, and 1 asking that a time limit be set for holding captured animals. Section 1333(b)(2)(C) of the Act requires the humane destruction of excess wild horses and burros. Even if the section were removed from the rulemaking, the responsibility to carry out the law would remain. Retaining the paragraph in the rulemaking makes it clear that the Secretary may impose standards for humane destruction of excess animals. Setting a time limit on holding captured animals would deprive the authorized officer of flexibility needed to meet various circumstances, such as temporary lulls in adoption demand.

Section 4720.2–1 Removal of strayed animals from private lands.

Several comments addressed this section, stating that the information requested from private landowners seeking removal of strayed animals from their land was too burdensome and should be supplied only in the discretion of the landowner. However, it would be impossible for the authorized officer to be responsive to a request for removal of strayed animals without specific information about the number of animals involved, their location and that of the private lands, and the dates the animals were observed. Requiring this information would enable the authorized officer to determine the appropriate agency action and to assign to each individual request its appropriate priority. Therefore, the final rulemaking makes the content of such requests mandatory by replacing the word "should" with "shall." Other comments urged that the regulation require immediate or priority removal of strayed animals. The comments are not adopted in the final rulemaking, because circumstances may make such action impossible. Requiring that removal be accomplished as soon as practicable commits the Bureau to expeditious removal of strayed animals.

Section 4720.2–2 Removal of excess animals from private lands.

One comment stated that the authorized officer should not be required to obtain written permission from the owners of unimproved private lands intermingled with public lands in herd areas when removing excess animals. This comment has been adopted in the final rulemaking by removing the phrase "or using". A sentence has been added to make it clear that flying aircraft over a parcel of land does not constitute entry.

Section 4730.1 Destruction.

Several comments addressed this section, observing both the Congressional intent that destruction be a tool for managing wild horses and burros, and the legislatively drawn distinction between destruction of excess animals and destruction of old, sick, and lame animals as an act of mercy. The section has been rewritten in the final rulemaking to conform to the statute in these respects.

Section 4730.2 Disposal of remains.

Several comments addressed this section, some urging that it prohibit processing of remains, and others that some provision be made for compensating individuals for disposal of remains. Neither suggestion has been adopted in the final rulemaking. To provide consistency with the Act, and to remove the ambiguity between the words "carcasses" and "remains", the former has been replaced with the latter wherever it appeared. Processing remains is the most appropriate way of disposing of them and complies with the law so long as neither the Bureau nor any individual receives compensation for conveying the remains. Although no compensation can be received for

transfer of the remains, once the remains have been sanitarily rendered in accordance with normal local or State standards, the renderer may sell the end products, which are no longer considered remains as used in the Act.

In response to one comment, the section has been amended to make it clear that the Bureau is not required to dispose of remains of animals that die on the open public range.

Section 4740.1 Use of motor vehicles or aircraft.

This section has been amended to reflect numerous comments stating generally that management activities should be conducted in a humane manner, and to clarify that a public hearing shall be held before using helicopters or motor vehicles in the management of wild horses and burros.

Section 4740.2 Standards for vehicles used for transport of wild horses and burros.

Two comments urged that this section be amended to provide specific standards for head room in horse trailers and to require that food given to animals in transit be compatible with what they are accustomed to. Such specificity is unnecessary in these regulations. Bureau personnel are trained to judge whether trailers are suitable for transporting individual animals, and allowing feed rations to change while remaining adequate may help adopted animals adjust to their new environments.

Section 4750.2–1 Health and identification requirements.

One comment suggested that verification of an animal's soundness and health, required in paragraph (a) of this section, should be obtained from a licensed veterinarian. This recommendation would eliminate the possibility of obtaining a verification from other qualified individuals. Another comment recommended that the provision for tests, immunizations, and worming be removed from the rulemaking because they are not required by Federal law. These tests may not be required by Federal law, but are required by the laws of many of the public land States. Neither recommendation has been adopted in the final rulemaking.

One comment sought the removal of the provision in paragraph (c) for freeze-marking unweaned foals, because of possible stress on the young animals and because of doubt as to their status as free-roaming if born after their dams have been rounded up. This comment has not been adopted in the final rulemaking. Foals born in captivity but before their dams are adopted into private maintenance are considerd free-roaming for purposes of these regulations. Also, while freeze-marking may involve some stress, it is the most humane and cost-efficient way of providing the necessary identification of these animals.

Section 4750.3–1 Application for private maintenance of wild horses and burros.

Several comments urged that the provision for a nonrefundable filing fee to accompany the application be removed from the regulations, on the grounds that imposing a fee would tend to discourage adoptions. The recommendation is adopted in the final rulemaking.

Section 4750.3–2 Qualification standards for private maintenance.

One comment address paragraph (a)(1) of this section, asking that legal age be determined by where an applicant is a citizen or permanent resident. To avoid the confusion inherent in making this kind of determination, the provision has been amended in the final rulemaking to require only that the applicant be at least 18 years old.

One comment requested that the rulemaking state the minimum acceptable standards for facilities for animals in private maintenance. Paragraph (a)(3) has been rewritten to state those standards.

Section 4750.3–3 Supporting information and certification for private maintenance of more than 4 wild horses and burros.

The opening paragraph of § 4750.3–3(a) has been rewritten for purposes of clarification and stricter compliance with the judicial settlement in *American Horse Protection Association, Inc., et al v. Watt, et al* (the AHPA settlement). The amendment makes it clear that the facilities must be physically inspected by a person determined by the authorized officer to be qualified.

Paragraph (a)(1) of this section has been amended to cross-refer to the standards contained in the previous section, in order to make clear the responsibilities of those seeking to adopt more than 4 horses or burros. Paragraph (b) has been rewritten to be more consistent with the AHPA settlement. In the final rulemaking this paragraph makes it clear that the required information is to be provided by holders of powers of attorney to adopt animals on behalf of members of a group.

Section 4750.4–1 Private Maintenance and Care Agreement.

Paragraphs (b), (c), and (d) of this section have been removed in the final rulemaking, and the remaining paragraphs redesignated, to eliminate duplication between the provisions stated in the agreement required by this section and the acts prohibited in § 4770.1.

One comment suggested that paragraph (e) of the proposed rulemaking be amended to prohibit long-term or indefinite as well as permanent transfers of adopted animals without prior approval by the authorized officer. This comment has been adopted in the final rulemaking in paragraph (b) by imposing a 30-day limit on transfers without such prior approval.

One comment suggested that adopters be given a definite time within which an animal must be made available for inspection after written request by the authorized office under paragraph (f). This recommendation has been adopted in the final rulemaking by imposing a 7-day deadline.

Two comments suggested that paragraph (g) of the proposed rulemaking ((d) in this final rulemaking) be amended to require a veterinarian's certificate in all cases of the death of an adopted animal. This suggestion has not been adopted in the final rulemaking, but it remains within the discretion of the authorized officer to require such a certificate.

One comment requested more specificity in paragraph (h) of this section in the proposed rulemaking. In response, the paragraph has been amended to make it clear that it is the adopter's financial responsibility to care for animals covered by the Private Maintenance and Care Agreement. New paragraphs have been added to clarify that the adopter is responsible for managing adopted animals, for damages cause by them, for rounding up strays, and for disposal of dead animals. In response to a comment, a requirement has been added that the adopter notify the authorized office of any change of address.

Section 4750.4–2 Adoption fee.

Paragraph (a) of this section has been amended in the final rulemaking to conform to the amendment of § 4750.3–1, which removed the application fee. An editorial change has also been made to make it clear that only unweaned foals are not subject to the adoption fee.

Section 4750.4–3 Request to terminate Private Maintenance and Care Agreement.

In response to a comment, this section has been amended to clarify that adopted animals may be transferred directly to a new adopter, with the approval of the authorized officer, and that the officer need not take physical possession of animals involved in such transfers.

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Section 4750.4–4 Replacement animals.

One comment from a Bureau field office suggested shortening from 60 to 10 days the period within which an adopter can obtain an animal to replace one that has died or had to be destroyed due to a condition that existed at the time of adoption. This suggestion was not adopted. Instead, because some conditions that may cause death after a 60-day period may have existed at the time of adoption, this section has been amended to extend the time to 6 months.

Section 4750.5 Application for title to wild horses and burros.

Several comments objected to the provision in paragraph (a) of this section allowing adopters to acquire title to more than 4 animals in one year as not being supported by section 1333(c) of the Act. The provision has been removed in the final rulemaking.

One comment requested that paragraph (b) of this section be amended to state in some detail the required contents of the veterinarian's statement to be supplied by the applicant for title. In response to this comment, the word "humane" has been inserted in front of "treatment," so that the required certification will incorporate the elements listed in the definition (§ 4700.0–5(g)) of "human treatment," i.e., handling compatible with standard animal husbandry practices.

Another change has been made in the final rulemaking affecting title application. Application for title has been incorporated in the adoption process so that an adopter applies for title to an animal automatically at the time the Private Maintenance and Care Agreement is signed. The final sentence of the paragraph has been removed as redundant.

Section 4760 Compliance with the Private Maintenance and Care Agreement.

A new paragraph (b) has been added to this section to conform it to the terms of the settlement in *American Horse Protection Association v. Watt.* Paragraph (b) requires the authorized officer to verify compliance with the Private Maintenance and Care Agreement when one adopter has acquired 25 or more animals, or 25 or more are maintained in one place.

One comment pointed out that paragraph (b) of this section in the proposed rulemaking (relettered (c) in the final rulemaking), when read in conjunction with § 4750.4–1(f), requires the authorized officer investigating a complaint about the care, treatment, or use of an adopted animal to notify the adopter in writing before inspecting the animal or the facilities where it is maintained. This is a correct statement of the requirement, which is not changed in the final rulemaking. However, the authorized officer may enlist the assistance of Federal or local law enforcement authorities, who may with proper cause obtain a search warrant and investigate without such warning.

Section 4770.1 Prohibited acts.

One comment stated that paragraph (a) of this section demonstrates the need for a definition of "malicious harassment," and another stated that the prohibition in this paragraph would be very hard to enforce because of the difficulty of proving malicious intent. The paragraph has been amended to prohibit negligent as well as malicious injury of a wild horse or burro.

The separate prohibition against using a wild horse or burro for bucking stock has been removed from the final rulemaking. Any use considered to be inhumane is already prohibited in § 4770.1(e), and use that takes advantage of an animal's characteristic of wildness is prohibited in § 4770.1(e).

A paragraph has been added to this section prohibiting the violation of orders, terms, or conditions established by the authorized officer. Other changes of an editorial nature have been made.

Section 4770.2 Civil penalties

In response to several comments that this section singled out holders of grazing permits for discriminatory treatment, paragraph (a) of this section has been amended to apply to all permittees or lessees on the pubic lands.

The principal author of this final rulemaking is John S. Boyles, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A limited number of veterinarians, cooperative extension agents, and humane officials may be insignificantly affected by the rulemaking. The certification required for adopters to receive title is needed on a nonrecurring basis. The changes allow adopters discretion to choose the official from whom they obtain a certification, resulting in some cost savings. Adopters are required to pay a fee to obtain the animals and to provide information to show their ability to provide humane transport, facilities, and care for the animals. An insignificant number of individuals may be deterred from participating because of the fee or qualification standards for humane care.

Information collection requirements for administering these regulations have been approved by the Office of Management and Budget and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the provisions of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Act of June 28, 1934, as amended (43 U.S.C. 315), Part 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is revised to read as set forth below.

Dated: February 7, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

GROUP 4700—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Note.—The information collection requirements contained in Group 4700 have been approved by the Office of Management and Budget and assigned clearance number 1004–0042. The information is being collected to permit the authorized officer to remove wild horses and burros from private land and to determine whether an application for adoption of and title to wild horses or burros should be granted. Responses are required to obtain benefits.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

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Subpart 4760—Compliance

4760.1 Compliance with the Private Maintenance and Care Agreement.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

4770.1 Prohibited acts.
4770.2 Civil penalties.
4770.3 Administrative remedies.
4770.4 Arrest.
4770.5 Criminal penalties.

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340). Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.). Act of Sept. 8, 1959 (18 U.S.C. 47). Act of June 28, 1934 (43 U.S.C. 315).

Subpart 4700—General

§ 4700.0–1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0–2 Objectives.

The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use; protection of wild horses and burros from unauthorized capture, branding, harassment or death; and humane care and treatment of wild horses and burros.

§ 4700.0–3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, and 4341–4347).

§ 4700.0–5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(c) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(d) "Herd area" means the geographic area identified as having been used by a herd as its habitat in 1971.

(e) "Humane treatment" means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro.

(f) "Inhumane treatment" means any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community.

(g) "Lame wild horse or burro" means a wild horse or burro with one or more malfunctioning limbs that permanently impair its freedom of movement.

(h) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration and inability to fend for itself, suffering, or closeness to death.

(i) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(j) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(k) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(l) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act. Where it appears in this part the term "wild horses and burros" is deemed to include the term "free-roaming".

§ 4700.0–6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers for private maintenance and care.

(f) Fees shall normally be required from qualified individuals adopting

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excess wild horses and burros to defray part of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When herd management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics.

§ 4710.3 Management areas.

§ 4710.3–1 Herd management areas.

Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in § 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.

§ 4710.3–2 Wild horse and burro ranges.

Herd management areas may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

§ 4710.4 Constraints on management.

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.

(c) Closure may be termporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§ 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.

§ 4710.7 Maintenance of wild horses and burros on privately controlled lands

Individuals controlling lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands. Individuals who maintain wild free-roaming horses and burros on their land shall notify the authorized officer and shall supply a reasonable estimate of the number of such animals so maintained. Individuals shall not remove or entice will horses or burros from the public lands.

Subpart 4720—Removal

§ 4720.1 Removal of excess animals from public lands.

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order.

(a) Old, sick, or lame animals shall be destroyed in accordance with Subpart 4730 of this title;

(b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with Subpart 4750 of this title; and

(c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this title.

§ 4720.2 Removal of strayed or excess animals from private lands.

§ 4720.2–1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request shall indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

§ 4720.2–2 Removal of excess animals from private lands.

If the authorized officer determines that proper management requires the removal of wild horses and burros from areas that include private lands, the authorized officer shall obtain the written consent of the private owner before entering such lands. Flying aircraft over lands does not constitute entry.

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Remains

§ 4730.1 Destruction.

Except as an act of mercy, no wild horse or burro shall be destroyed without the authorization of the authorized officer. Old, sick, or lame animals shall be destroyed in the most humane manner possible. Excess animals for which adoption demand does not exist shall be destroyed in the most humane and cost efficient manner possible.

§ 4730.2 Disposal of remains.

Remains of wild horses or burros that die after capture shall be disposed of in accordance with State or local sanitation laws. No compensation of any kind shall be received by any agency or individual disposing of remains. The products of rendering are not considered remains.

Subpart 4740—Motor Vehicles and Aircraft

§ 4740.1 Use of motor vehicles or aircraft.

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or

destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

§ 4740.2 Standards for vehicles used for transport of wild horses and burros.

(a) Use of motor vehicles for transport of wild horses or burros shall be in accordance with appropriate local, State and Federal laws and regulations applicable to the humane transportation of horses and burros, and shall include, but not be limited to, the following standards:

(1) The interior of enclosures shall be free from protrusion that could injure animals;

(2) Equipment shall be in safe conditions and of sufficient strength to withstand the rigors of transportation;

(3) Enclosures shall have ample head room to allow animals to stand normally;

(4) Enclosures for transporting two or more animals shall have partitions to separate them by age and sex as deemed necessary by the authorized officer;

(5) Floors of enclosures shall be covered with nonskid material;

(6) Enclosures shall be adequately ventilated and offer sufficient protection to animals from inclement weather and temperature extremes; and

(7) Unless otherwise approved by the authorized officer, transportation shall be limited in sequence to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

(b) The authorized officer shall not load wild horses or burros if he/she determines that the vehicle to be used for transporting the wild horses or burros is not satisfactory for that purpose.

Subpart 4750—Private Maintenance

§ 4750.1 Private maintenance.

The authorized officer shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.

§ 4750.2 Health, identification, and inspection requirements.

§ 4750.2–1 Health and identification requirements.

(a) An individual determined to be qualified by the authorized officer shall verify each excess animal's soundness and good health, determine its age and sex, and administer immunizations, worming compounds, and tests for communicable diseases.

(b) Documentation conforming compliance with State health inspection and immunization requirements for each wild horse or burro shall be provided to each adopter by the authorized officer.

(c) Each animal offered for private maintenance, including orphan and unweaned foals, shall be individually identified by the authorized officer with a permanent freeze mark of alpha numeric symbols on the left side of its neck. The freeze mark identifies the animal as Federal property subject to the provisions of the Act and these regulations by a patented symbol, the animal's year of birth, and its individual identification number. The authorized officer shall record the freeze mark on the documentation of health and immunizations. For purposes of this subpart, a freeze mark applied by the authorized officer is not considered a brand.

§ 4750.2–2 Brand inspection.

The authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, of each animal to be transported across the State where the adoption center is located. The adopter shall be responsible for obtaining inspections for brands required by other States to or through which the animal may be transported.

§ 4750.3 Application requirements for private maintenance.

§ 4750.3–1 Application for private maintenance of wild horses and burros.

An individual applying for a wild horse or burro shall file an application with the Bureau of Land Management on a form approved by the Director.

§ 4750.3–2 Qualification standards for private maintenance.

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

(1) Be 18 years of age or older;

(2) Have no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations;

(3) Have adequate feed, water, and facilities to provide humane care to the number of animals requested. Facilities shall be in safe condition and of sufficient strength and design to contain the animals. The following standards apply:

(i) A minimum space of 144 square feet shall be provided for each animal maintained, if exercised daily; otherwise, a minimum of 400 square feet shall be provided for each animal;

(ii) Until fence broken, adult horses shall be maintained in an enclosure at least 6 feet high; burros in an enclosure at least 4½ feet high; and horses less than 18 months old in an enclosure at least 5 feet high. Materials shall be protrusion-free and shall not include large-mesh woven or barbed wire;

(iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes. The authorized officer may require that the shelter be a structure, which shall be well-drained and adequately ventilated;

(iv) Feed and water shall be adequate to meet the nutritional requirements of the animals, based on their age, physiological condition and level of activity; and

(4) Have obtained no-more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing by the authorized officer.

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3–1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

§ 4750.3–3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

(a) An individual applying for more than 4 wild horses or burros within a 12-month period, or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location shall provide a written report prepared by the authorized officer, or by a local humane official, veterinarian, cooperative extension agent, or similarly qualified person approved by the authorized officer, verifying that the applicant's facilities have been inspected appear adequate to care for the number of animals requested, and satisfy the requirements contained in § 4750.3–2(a).

(1) The report shall include a description of the facilities, including corral sizes, pasture size, and shelter, barn, or stall dimensions, and shall note any discrepancies between the facilities inspected and representations made in the application form.

(2) When an applicant requests 25 or more animals or when 25 or more animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer prior to approving the application.

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(b) Any individual or group represented by a power of attorney and applying for more than 4 animals shall provide the following:

(1) A summary of the age, sex, and number of wild free-roaming horses or burros requested by species;

(2) Requested adoption date and center location;

(3) If applicable, names, addresses and telephone numbers of all applicants represented by a power of attorney submitted with the request;

(4) A transportation plan that describes the transport vehicle and any rest-stops;

(5) A distribution plan for delivering the animals to their assigned adopters;

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution; and

(7) When the adopted animals will be maintained at a single location or where the applicants have been solicited by the holder of their power of attorney, a concise statement outlining the arrangements, including duties and responsibilities of the parties, for maintaining the animals.

§ 4750.3–4 Approval or disapproval of applications.

If an application is approved, the authorized officer shall offer the individual an opportunity to select the appropriate number, sex, age and species of animals from those available. If the authorized officer disapproves an application for private maintenance because the applicant lacks adequate facilities or transport, the individual may correct the shortcoming and file a new application.

§ 4750.4 Private maintenance of wild horses and burros.

§ 4750.4–1 Private Maintenance and Care Agreement.

To obtain a wild horse or burro, a qualified applicant shall execute a Private Maintenance and Care Agreement and agree to abide by its terms and conditions, including but not limited to the following:

(a) Title to wild horses and burros covered by the agreement shall remain in the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Certificate of Title is issued by the authorized officer.

(b) Wild horses and burros covered by the agreement shall not be transferred for more than 30 days to another location or to the care of another individual without the prior approval of the authorized officer;

(c) Wild horses and burros covered by the agreement shall be made available for physical inspection within 7 days of receipt of a written request by the authorized officer;

(d) The authorized officer shall be notified within 7 days of discovery of the death, theft or escape of wild horses and burros covered by the agreement;

(e) Adopters are financially responsible for the proper care and treatment of all wild horses and burros covered by the agreement.

(f) Adopters are responsible, as provided by State law, for any personal injury, property damage, or death caused by animals in their care; for pursing animals that escape or stray; and for costs of recapture.

(g) Adopters shall notify the authorized officer within 30 days of any change in the adopter's address; and

(h) Adopters shall dispose of remains in accordance with applicable sanitation laws.

§ 4750.4–2 Adoption fee.

(a) An individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of $125 per horse and $75 per burro, except that no fee shall be paid for unweaned foals.

(b) The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadoptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

§ 4750.4–3 Request to terminate Private Maintenance and Care Agreement.

An adopter may request to terminate his/her responsibility for an adopted animal by submitting a written relinquishment of the Private Maintenance and Care Agreement for that animal. The authorized officer shall arrange to transfer the animal to another qualified applicant or take possession of the animal at a location specified by the authorized officer within 30 days of receipt of the written request for relinquishment.

§ 4750.4–4 Replacement animals.

The authorized officer shall replace an animal, upon request by the adopter, if (a) within 6 months of the execution of the Private Maintenance and Care Agreement the animal dies or is required to be destroyed due to a condition that existed at the time of placement with the adopter; and (b) the adopter provides, within a reasonable time, a statement by a veterinarian certifying that reasonable care and treatment would not have corrected the condition. Transportation of the replacement animal shall be the responsibility of the adopter.

4750.5 Application for title to wild horses and burros.

(a) The adopter shall apply for title, using a form designated by the Director, upon signing the Private Maintenance and Care Agreement.

(b) The authorized officer shall issue a Certificate of Title after 12 months, if the adopter has complied with the terms and conditions of the agreement and the authorized officer determines, based either on a field inspection or a statement provided by the adopter from a veterinarian, extension agent, local humane official, or other individual acceptable to the authorized officer, that the animal or animals covered by the Agreement have received proper care and humane treatment.

(c) An adopter may not obtain title to more than 4 animals per 12-month period of private maintenance. Effective the date of issuance of the Certificate of Title, Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act or regulations under this title.

Subpart 4760—Compliance

§ 4760.1 Compliance with the Private Maintenance and Care Agreement.

(a) An adopter shall comply with the terms and conditions of the Private Maintenance and Care Agreement and these regulations. The authorized officer may verify compliance by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained. The authorized officer may authorize a cooperative extension agent, local humane official or similarly qualified individual to verify compliance.

(b) The authorized officer shall verify compliance with the terms of the Private Maintenance and Care Agreement when an adopter has received 25 or more animals or when 25 or more animals are maintained at a single location.

(c) The authorized officer shall conduct an investigation when a complaint concerning the care, treatment, or use of a wild horse or

burro is received by the Bureau of Land Management.

(d) The authorized officer may require, as a condition for continuation of a Private Maintenance and Care Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care or is being maintained in unsatisfactory conditions. The adopter shall be given reasonable time to complete the required corrective actions.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

§ 4770.1 Prohibited acts.

The following acts are prohibited:

(a) Maliciously or negligently in juring or harassing a wild horse or burro;

(b) Removing or attempting to remove a wild horse or burro from the public lands without authorization from the authorized officer;

(c) Destroying a wild horse or burro without authorization from the authorized officer except as an act of mercy;

(d) Selling or attempting to sell, directly or indirectly, a wild horse or burro or its remains;

(e) Commercially exploiting a wild horse or burro;

(f) Treating a wild horse or burro inhumanely;

(g) Violating a term or condition of the Private Maintenance and Care Agreement;

(h) Branding a wild horse or burro;

(i) Removing or altering a freeze mark on a wild horse or burro;

(j) Violating an order, term, or condition established by the authorized officer under this part.

§ 4770.2 Civil penalties.

(a) A permittee or lessee who has been convicted of any of the prohibited acts found in § 4770.1 of this title may be subject to suspension or cancellation of the permit or lease.

(b) An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care Agreement may result in the cancellation of the agreement, repossession of wild horses and burros included in the agreement and disapproval of requests by the adopted for additional excess wild horses and burros.

§ 4770.3 Administrative remedies.

Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal in accordance with 43 CFR 4.4 within 30 days of receipt of the written decision.

§ 4770.4 Arrest.

The Director of the Bureau of Land Management may authorize an employee who witnesses a violation of the Act or these regulations to arrest without warrant any person committing the violation, and to take the person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so authorized shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4770.5 Criminal penalties.

Any person who commits any act prohibited in § 4770.1 of these regulations shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both, for each violation. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in 18 U.S.C. 3401.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 21, 1986

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved)	$5.50	Jan. 1, 1986
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
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*1200-End, 6 (6 Reserved)	6.50	Jan. 1, 1986
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

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A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
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March 11	March 26	April 10	April 25	May 12	June 9
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March 14	March 31	April 14	April 28	May 13	June 12
March 17	April 1	April 16	May 1	May 16	June 16
March 18	April 2	April 17	May 2	May 19	June 16
March 19	April 3	April 18	May 5	May 19	June 17
March 20	April 4	April 21	May 5	May 19	June 18
March 21	April 7	April 21	May 5	May 20	June 19
March 24	April 8	April 23	May 8	May 23	June 23
March 25	April 9	April 24	May 9	May 27	June 23
March 26	April 10	April 25	May 12	May 27	June 24
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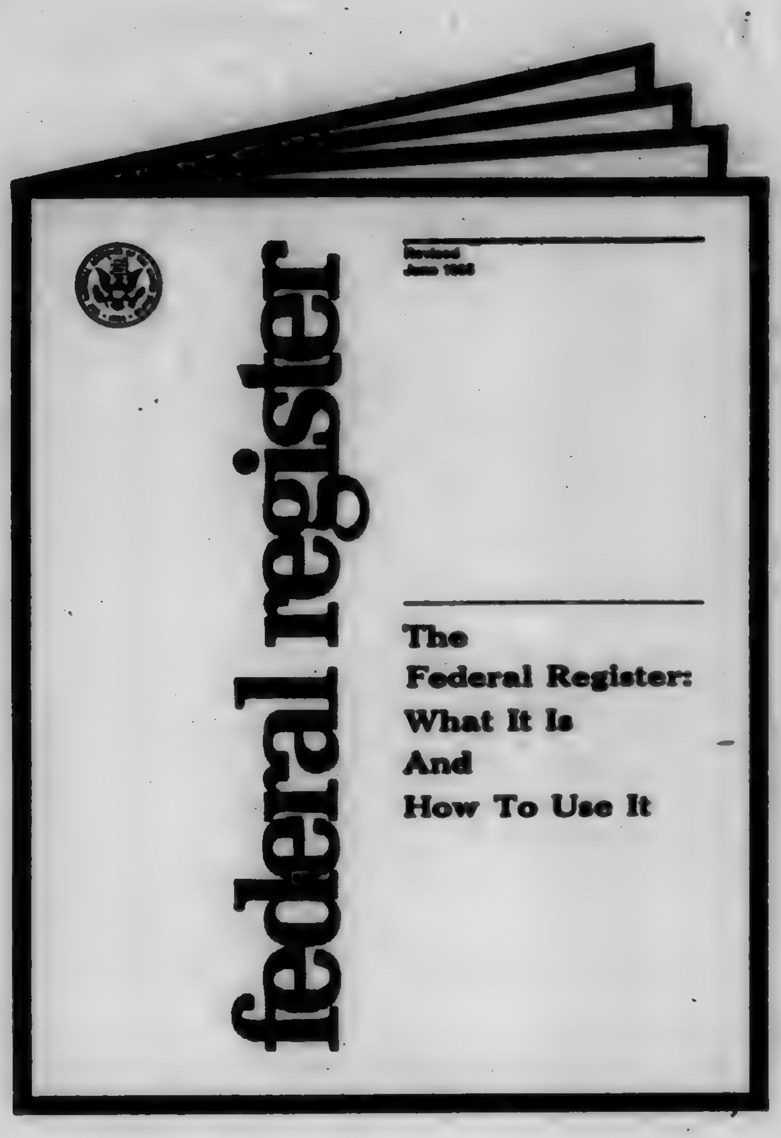

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Briefings on How To Use the Federal Register—
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Selected Subjects

Administrative Practice and Procedure
  Federal Communications Commission
  Internal Revenue Service

Authority Delegations (Government Agencies)
  Justice Department

Aviation Safety
  Federal Aviation Administration

Food Additives
  Food and Drug Administration

Government Employees
  Personnel Management Office

Government Procurement
  Energy Department

Hazardous Waste
  Environmental Protection Agency

Health Insurance
  Personnel Management Office

Fisheries
  National Oceanic and Atmospheric Administration

Immigration
  Immigration and Naturalization Service

Medicaid
  Health Care Financing Administration

Old-Age, Survivors, and Disability Insurance
  Social Security Administration

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Radio Broadcasting
Federal Communications Commission

Television Broadcasting
Federal Communications Commission

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Presidential Documents

Title 3—

The President

Proclamation 5445 of February 28, 1986

Red Cross Month, 1986

By the President of the United States of America

A Proclamation

In cities, towns, and rural communities across our Nation, Americans have turned time and again to the American Red Cross for help. And they have not been disappointed. Acting as a conduit for the generous outpouring of time, money, and voluntarily donated blood, the Red Cross has been there whenever needed throughout the past year.

During 1985, an unprecedented series of violent storms, including hurricanes and tornadoes, smashed across our Nation. The Red Cross responded by providing immediate emergency assistance to more than four million Americans displaced by these storms. In small towns and large cities, the Red Cross responded on more than 60,000 occasions to Americans in need, and to families whose homes were damaged or destroyed by fire, flood, or storm. Due to the unprecedented demand for assistance to disaster victims here in our Nation, the funds available to the Red Cross for such vital work have been totally depleted, and yet that magnificent organization continues to provide emergency assistance to individuals and families in need all across America.

The American Red Cross also played an active role as part of an international effort in the harrowing drama of the American travelers hijacked in Beirut, relaying messages from the prisoners to families back home and insuring their safe conduct out of Lebanon. Our Red Cross quickly and efficiently mobilized support for the victims of the terrible Mexico City earthquake and the Colombian volcano eruption, in conjunction with the International Red Cross, while continuing the vital work of feeding and providing medical care for millions of victims of drought and famine in Africa.

As the collector, processor, and distributor of more than half of the Nation's voluntarily donated blood, the American Red Cross took the lead in implementing HTLV–III antibody testing, adding significantly to the effectiveness of recruitment and screening practices already in effect that protect more than one-and-a-half million recipients of blood and blood products from exposure to the deadly AIDS virus.

All of this was accomplished without the Red Cross cutting back on any of its continuing heavy responsibilities. Millions of our fellow citizens were taught lifesaving techniques in CPR (cardio-pulmonary resuscitation), first aid, water safety, and small craft operation. More than half-a-million emergency messages were relayed worldwide between members of our Armed Forces and their loved ones back home. Nearly six million individuals were served at Red Cross blood pressure screenings and aid stations.

Providing the most efficient and effective help in times of emergency and disaster is an enormous task. But since its founding by Clara Barton in 1881 the American Red Cross has met the challenge. It has been able to do so only because millions of Americans have volunteered their money, time, and their hearts so that those services will always be available.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, and Honorary Chairman of the American National Red Cross, do hereby designate March 1986 as Red Cross Month, and I urge all Americans to give generous support to the work of the American Red Cross and to their local Red Cross chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-4792
Filed 2-28-86; 4:00 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12554 of February 28, 1986

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 162a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409, 12463, and 12506, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1987.

Ronald Reagan

THE WHITE HOUSE,
February 28, 1986.

[FR Doc. 86-4791
Filed 2-28-86; 3:59 pm]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations providing modified, clarified criteria for determining a Federal employee's exemption status under the Fair Labor Standards Act (FLSA). These regulations were first published as final rules at 48 FR 49494 on October 25, 1983, and were involved in judicial and Congressional action, which delayed implementation until July 3, 1985. The exemption regulations were republished at 50 FR 35529 on August 30, 1985, for readers' convenience, to reiterate that a 120-day implementation period started on July 3, 1985, and to allow for additional comments which may not have been previously considered. The modifications are intended to facilitate FLSA administration in the Federal sector and to alleviate the discrepancy between OPM's exemption criteria and the exemption criteria that are applicable to employees in the private sector. They also provide criteria for applying the FLSA to employees on temporary duty and to employees who travel to and from foreign areas.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Clogston, (202) 632–5691.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462, *et seq.*, concerning reduction-in-force (RIF), performance management, and the application of the Fair Labor Standards Act (FLSA) to the Federal work force became effective on July 3, 1985. They were republished as a proposed regulation at 50 FR 35529 on August 30, 1985, to allow interested parties the opportunity to consider substantive changes to parts of the regulations and to comment on the proposed implementation schedule. Comments have been received and considered, and are addressed later.

As stated in the August 30, 1985, republication, the regulations have been in effect since July 3, 1985. We again provided a 120-day period starting July 3, 1985, to permit agencies time to integrate the changes into their current operational structure. This meant that with the 120-day delay, the full and final effective date was the first pay period on or after November 1, 1985.

We also provided the first 90 days of this period, until October 1, 1985, for agency headquarters to submit requests for an OPM advisory opinion on exceptions to the presumption of exemption. On August 2, 1985, a memorandum was provided to Directors of Personnel notifying them that these regulations are now effective, providing the 120-day delay from July 3, 1985, and outlining procedures for requesting exceptions to the presumption of exemption.

Under these new regulations, it is assumed that if a position is properly classified at the GS–11 or above level (or equivalent level in other white collar salary systems), the position would properly be exempt under the provisions of the FLSA. However, we do recognize that there could exist rare occasions when there might be an exception to this presumption. For those unusual situations when an agency feels that an exception might exist, we proposed a regulatory procedure for requesting a waiver (see § 551.207). We proposed that these requests be made as soon as possible within the first 90 days of the 120-day implementation period so that we can provide our advisory opinion to the agency headquarters before the expiration of the 120-day implementation period. We have acted on all agency headquarters requests received by October 1, 1985.

Discussion of Comments

Most of the comments received in response to the proposed regulations republished at 50 FR 35529 on August 30, 1985, are similar to those received when these regulations were previously published. We have already addressed these issues in previous **Federal Register** notices; and we feel that our explanation is still valid. However, in order to be totally responsive to all concerns, we will again summarize those comments along with our explanation.

Two unions commented that OPM does not have the authority to change FLSA regulations, or that OPM's changes are not consistent with FLSA regulations or Federal case law. OPM was given the authority to administer the FLSA so that it could reconcile differences between the FLSA and existing Federal pay and classification statutes. This responsibility necessarily carries with it the authority to regulate. Indeed, it is the purpose of OPM's FLSA regulations to provide a framework for FLSA administration within the Federal sector. A direct application of Department of Labor (DOL) regulations to Federal employees is not feasible because DOL regulations do not take into account existing, sometimes conflicting, pay and classification statutes.

Several labor organizations objected to the use of the classification system for determining presumed exemption. One of those organizations recommended a cut-off salary of $21,798 for determining presumed exemption. OPM believes that defining the FLSA minimum grade levels for exemption, and the cutoff points for applying the "short test" in terms of the classification system makes more sense than using only absolute dollar figures. Otherwise, such routine actions as within-grade increases and yearly comparability increases could affect an employee's examption status. Furthermore, as we repeatedly have emphasized, the position classification system is a *job evaluation* process which is a more logical system for defining exemption for Federal employees than gross weekly salary.

An agency and one union objected to setting the presumed exemption grade level at GS–11. The agency recommended that the grade level at

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which exemption is presumed should be lowered. Since the cutoff in the General Schedule for time and a half is GS–10, we do not believe that exemptions should be presumed at levels in the General Schedule where exemption begins to become problematic. It must be noted that title 5 of the U.S. Code divides the General Schedule into two distinct categories. Those employees paid at less than the rate of GS–10, step 1, are entitled to time-and-a-half of their basic rate for overtime work. Those employees paid at the GS–10, step 1, rate or above are paid at the overtime rate of GS–10, step 1, regardless of grade level. In effect, title 5 provides a statutory division point above which employees are entitled to overtime compensation, but not to time-and-a-half. To determine that employees paid above the statutory break point are nonexempt creates pay distortions which frustrate the distinctions made by the General Schedule. Consequently, OPM believes that a presumption that employees above GS–10 are exempt is an appropriate reconciliation of title 5 and the FLSA and gives the fullest effect to both statutes while preserving the protective features of the FLSA for the segment of the workforce it was designed to protect.

The union further argues that using GS–11 for exemption determination purposes misallocates the burden of proof to salary levels rather than job duties. We must emphasize the fact that this presumption would be made only after the agency fulfills the burden of proper classification of a position at a high grade level pursuant to a formal evaluation procedure. OPM in its dual role as administrator of the FLSA and the position classification system believes that proper classification at these grade levels justifies the presumption of exemption. OPM still recognizes that certain positions may not be exempt at these higher grade levels and has provided a regulatory procedure for exceptions. Also, employees still retain the right to appeal their individual determination to the appropriate OPM office.

In addition to the above, we received the following comments that have not been previously addressed:

One agency recommends that 5 CFR 551.209 dealing with the application of the executive, administrative, and professional exemption criteria for temporary duty be rewritten for clarification purposes. We will address this point in future changes as appropriate.

One union argues that supervisory determinations outlined in 5 CFR 551.204(a) of the proposed regulations concerning executive exemptions are not proper in that the "Supervisory Grade Evaluation Guide for General Schedule employees and Job Grading Standard for Supervisors for Wage Grade employees are contained in the Federal Personnel manual and are not published subject to the provision of the Administrative Procedures Act (APA)." Since the Supervisory Grade Evaluation Guide (SGEG) was already in effect prior to the application of the APA's requirements regarding agency practices and procedures adopted by OPM (see 5 U.S.C. 1103(b), 1105), there is no need for it to be republished in accordance with the APA (see section 902(a), Pub. L. 95–454).

One agency stated that it would like to see clearer criteria for administrative and professional exemptions and coverage of trainee positions (§§ 551.205 and 551.206 respectively). In addition, the agency believes it would be helpful to have guidelines relating to occupational series. The regulations are expanded by FPM material. Therefore, there is no need for additional clarification in these regulations. Exemption criteria are applied to all positions including trainee positions. If the exemption criteria apply, the position is exempted. Exemption determinations cannot be made on the basis of occupational series, but must be made on the basis of actual duties performed.

One union stated that the proposed regulations do not protect the narrow construction of exemptions intended under FLSA. To the contrary, the proposed regulations clearly affirm the intended FLSA policy.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it provides procedures for applying the exemption criteria of the Fair Labor Standards Act to Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is adopting its proposed rules as published on August 30, 1985 (50 FR 35529), as final rules without change to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority for Part 551 is revised to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 USC 204f.

2. Paragraph (h) section 551.102 continues to read as follows:

§ 551.102 Definitions.

* * * * *

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Wake Island;

(9) Eniwetok Atoll;

(10) Kwajalein Atoll; and

(11) Johnston Island.

2. Subpart B of Part 551 continues to read with the exception of Section 551.207, which is revised, as follows:

Subpart B—Exemptions

Sec.
551.201 Agency authority.
551.202 General principles governing exemptions.
551.203 Exemption of General Schedule employees.
551.204 Executive exemption criteria.
551.205 Administrative exemption criteria.
551.206 Professional exemption criteria.
551.207 Exceptions by OPM.
551.208 Foreign exemption.
551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

Subpart B—Exemptions

§ 551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that—

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees.

(a) Any employee properly classified at GS–4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS–5 through GS–10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart;

(c) Except as provided in § 551.207 of this subpart, any employee properly classified at GS–11 or above (or the equivalent level in other white collar pay systems) shall be presumed to be exempt under this subpart. An agency that properly classifies an employee at GS–11 or above shall be deemed to have satisfied the burden of proof for asserting exemption.

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who supervises at least three subordinate employees and who meets all the following criteria:

(a) The employee's primary duty consist of management or supervision. This primary duty requirement is met if—

(1) The employee is a General Schedule employee whose position is determined to be "Supervisory" or "Managerial" under the Supervisory Grade-Evaluation Guide;

(2) The employee is a Federal Wage System employee whose position fully meets or exceeds the "Foreman range of responsibility" as defined in the Job Grading Standard for Supervisors; or

(3) The employee is subject to a pay system other than the General Schedule or the Federal Wage System and the employee's position meets or exceeds the definition of Supervisor in the Supervisory Grade-Evaluation Guide or the employee's position fully meets or exceeds thc "Foreman range or responsibility" as defined in the Job Grading Standard for Supervisors.

(b) In addition to the primary duty criterion that applies to all employees, Foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems) and employees classified at GS–5 or GS–6 (or the equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

§ 551.205 Administrative exemption criteria.

An administrative employee is an advisor, assistance, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that—

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a mangement official.

(b) The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS–5 or GS–6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule exployees classified at GS–5 or GS–6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Exceptions by OPM.

The Office of Personnel Management will provide advisory opinions on agency-proposed exceptions to the presumption of exemption for specific occupations at GS–11 or above (or the equivalent level in other white collar pay systems) which is specified in § 551.203(c) of this subpart. Exceptions may not be made before OPM consideration. Requests for advisory opinions from agencies shoud be sent to the Office of Personnel Management, Agency Compliance and Evaluation, 1900 E Street, NW., Washington, DC 20415.

§ 551.208 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be

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determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a territory under the jurisdiction of the United States.

§ 551.209 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.207 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the termporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other age systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.209(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.209(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.209(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS-5 or GS-6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80 percent of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20 percent nonexempt work.

[FR Doc. 86-4677 Filed 3-3-86; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations on the Federal Employees Health Benefits (FEHB) Program to clarify and define appropriate uses of program reserves.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT: Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, (202) 632-3772.

SUPPLEMENTARY INFORMATION: On August 9, 1985, OPM published proposed regulations at 50 FR 32287. The regulations were issued to (1) provide clear notice to health benefits carriers of the availability of the refund alternative in addition to the uses already specified for contingency reserves; (2) reduce the level of reserves health benefits carriers may hold and still qualify for a transfer of funds from the contingency reserves held by OPM to the special reserves of the carriers; and (3) add a mechanism for transferring excess reserves held by carriers to the contingency reserves held by OPM.

OPM received comments from nine plans (or their representatives), two underwriters, and two associations of health plans. The following discussion summarizes the changes to the proposed regulations based on the comments received. An evaluation of comments OPM did not adopt and the rationale for OPM's action is included under the appropriate subject heading.

Consistency With Law and Regulations

One commenter believed that the regulations were inconsistent with OPM's statutory authority because the law (5 U.S.C. 8909(a)) specifies that the portion of the contribution set aside for the contingency reserve is not to exceed 3 percent of the contributions toward the plan. However, 5 U.S.C. 8909(a) refers to amounts automatically set aside as premiums are collected, not to any subsequent amounts. Further, 5 U.S.C. 8909(b) specifically includes "other refunds made by a plan" as income to the contingency reserve. Therefore, we find no conflict between the regulations and the law.

Another commenter believed that the regulations conflict with OPM's procurement regulations (41 CFR 1-4.152-1(b)), which provide that a surplus of subscription charges collected by the carrier for an experience-rated plan over the cost of providing benefits is to be kept in a "special reserve account." Surpluses are to be carried over to a new contract year as a positive balance in the special reserve account, while deficits are to be carried over as a negative balance. These regulations specify the accounting process to be used when a surplus or deficit exists.

They do not prevent the transfer of a portion of the surplus to OPM's contingency reserves for the plan, nor do they prevent OPM from transferring funds from the contingency reserve to the special reserve when a deficit exists. Carriers will continue to carry part of their surpluses in their special reserve accounts; and the surpluses so carried will continue to be subject to OPM's procurement regulations.

Use of Contingency Reserves

Four commenters expressed concern about whether the reserves transferred to the contingency reserve would continue to be available to the carriers to increase benefits or reduce rates and whether plans would be involved in the decision as to how they would be used. The FEHB law gives OPM the discretion to use contingency reserves to increase benefits or reduce rates. In the past, OPM always consulted with the carriers on how excess reserves were to be used. Carriers will continue to be involved in determining how excess reserves will be used. The only effect the revised regulations have on the use of contingency reserves is to clarify that the refund alternative is also available as a means of reducing excess reserves.

Transfer of Carrier-Held Reserves to the Contingency Reserves

Several commenters objected, for various reasons, to the transfer of carrier-held reserves to the contingency reserves held by OPM. The revised regulations reflect the principle that FEHB Program funds should, to the extent consistent with sound administration, be held within the Government. Therefore, these regulations limit the carrier-held reserves to the amount needed to pay claims and to avoid cash-flow problems in the event of unanticipated fluctuations in claims experience.

Level of Carrier-Held Reserves That Triggers Transfer of Funds

Several commenters suggested that the level of carrier-held reserves that triggers a transfer of funds be tied to incurred claims rather than subscription income. They pointed out that the 1986 rates for some plans were set at an amount lower than necessary to cover benefit costs in order to draw down the reserves. Other commenters objected to including both special reserves and incurred claims reserves in the formula for triggering a transfer of reserve funds. One commenter objected to changing the trigger amount from 2 months to 1 month of special reserves for plans with more than 50 percent of their subscribers overseas.

OPM agrees that subscription income may not reflect the actual amount of reserves needed by carriers to pay claims. Therefore, the final regulations tie the maximum allowable level of carrier-held reserves for experience-rated plans to the monthly average of claims paid in the last 6 months of the contract year, plus administrative expenses and retentions. This is to say, the prefered minimum balance for the contingency reserves has been changed to reflect an average month's paid claims plus administrative expenses and retentions rather than subscription income. The maximum level for special reserves is expressed as 4 times the perferred minimum balance for the contingency reserves rather than 4 months of subscription income.

OPM believes that in Program-wide regulations incurred claims reserves and special reserves must be considered together. The amount of incurred, but not yet paid, claims varies from carrier to carrier. Since the amount of incurred claims is estimated, it is also subject to different assumptions on the part of the carriers. Only by using a total figure for incurred and special reserves can we establish a standard that can be applicable to plans across the board.

The trigger formula for reserve fund transfers for plans with more than 50 percent of their subscribers overseas applies to special reserves only. These plans can set their incurred claims reserves at a level that takes into consideration the higher degree of uncontrollable elements to which they are subject. We do not agree that more tha 1 month's special reserves is needed by these plans. However, the final regulations tie the limitation to a month's average of claims paid plus administrative expenses and retentions rather than to subscription income. This change better reflects the monthly amount needed by the plans to pay claims.

In addition, OPM has added language to the final regulations to clarify how carriers are to effect the transfer of their excess reserves to the contingency reserves that OPM maintains for their plan.

Transfers of Funds Based on Good Cause

A number of commenters indicated that they did not understand the provision (5 CFR 890.503(c)(5)) for allowing transfers of funds under conditions other than those specifically provided for in the regulations. This provision is intended to allow carriers to request funds from their contingency reserve when good cause exists. If the carrier provides adequate justification for the request, OPM can respond in a matter of days. This provision also allows carriers to transfer funds from their special reserves to the contingency reserves when good cause exists. The final regulations include language to clarify that carriers may make application to OPM for funds from their contingency reserve any time they have good cause. The funds transferred under this provision are not limited to the excess in contingency reserves over the preferred minimum balance.

Other Comments

A number of comments OPM received had to do with the contract rate-setting process. These regulations do not affect the rate-setting process nor do they establish a policy concerning the drawing down of reserve levels. The regulations have to do only with the conditions under which OPM will make payments to the carriers from the contingency reserves and the carriers will make payments to OPM from their special reserves.

One underwriter suggested that OPM's regulations should state that an underwriter could use its own funds to pay claims if the carrier's reserves were depleted and that the resulting loss in investment income would be reflected as an offset to other investment income derived in that year. These regulations do not require a carrier to operate with insufficient reserves. Insufficient reserves to pay claims that have been presented for payment would be adequate justification for OPM to transfer funds from the contingency reserves to the plan's special reserves. OPM did not adopt this suggestion because it is unnecessary.

Some of the comments OPM received indicate uncertainty as to when these regulations will affect the levels of carrier-held reserves. The regulations will apply to the 1986 contract year. That is, these regulations will apply to reserves held by the carriers on December 31, 1986. They will not apply to reserves held by the carriers on December 31, 1985.

E.O. 12291, Federal Regulations

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to OPM's management of the Employees Health Benefits Funds

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List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913.

2. Section 890.503 is amended by revising paragraphs (c)(1)–(3) and (5) to read as follows:

§ 890.503 Reserves.

* * * * *

(c)(1) The contingency reserve of each plan is credited with (i) the three one-hunderd-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan; (ii) amounts transferred in accordance with law from other contingency reserves and the administrative reserve; (iii) income from investment of the reserve; (iv) its proportionate share of the income from investment of the administrative reserve; and (v) any return of reserves of the plan. The preferred minimum balance for the contingency reserve for community-rated plans is 1 month's subscription charges at the average monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period. The preferred minimum balance for the contingency reserve for experience-rated plans is 1 month's average of claims paid plus 1 month's average administrative expenses and retentions. For the purposes of this section, a month's average paid claims is one-sixth of the total claims paid during the last 6 months of the most recent contract period, and a month's average administrative expenses and retentions is one-twelfth of the administrative expenses and retentions for the most recent contract period. Amounts in excess of the preferred minimum balance for a contingency reserve account may be used with respect to the plan from which the reserve derives: To defray increases in future rates; to increase plan benefits; or to reduce contributions of eligible subscribers and the Government under the program through devices such as a temporary suspension of, or reduction in, required contributions or a refund of contributions to eligible subscribers and the Government.

(2) Except as provided by paragraphs (c)(3) and (c)(4) of this section, when, as of the end of a contract period, the total of all the reserves held by an experience-rated carrier for a plan amounts to *less* than 4 times the preferred minimum balance for the contingency reserve, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between 4 times the preferred minimum balance for the contingency reserve and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan. Except as provided by paragraphs (c)(3) and (c)(4) of this section, when, as of the end of a contract period, the total of all reserves held by an experience-rated carrier for the plan amounts to *more* than 4 times the preferred minimum balance for the contingency reserve, the carrier shall return to OPM any excess over 4 times the preferred minimum balance for the contingency reserve to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time the plan submits its annual accounting statement. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement, OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

(3) If more than 50 percent of the enrollees in a plan are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, the carrier's "special" reserve, as opposed to the total reserves held, shall be used to determine payments to and from the contingency reserve. The "special" reserve is equal to the excess of funds held over those needed to pay incurred claims yet to be presented for payment, administrative expenses, and retentions. When the special reserve held by the carrier for the plan at the end of a contract period amounts to less than the preferred minimum balance for the contingency reserve, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between the preferred minimum balance for the contingency reserve and the total of the special reserve held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carriers shall credit the amount so paid to the special reserve for the plan. When the special reserve held by the carrier for the plan at the end of the contract period amounts to more than the preferred minimum balance for the contingency reserve, the carrier shall return to OPM any excess over the amount of the preferred minimum balance of the contingency reserve, to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time the plan submits its annual accounting statement. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement, OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

* * * * *

(5) In addition to those amounts, if any, paid under paragraphs (c)(1) through (c)(4) of this section, OPM may authorize such other payments from the contingency reserve as in the judgment of OPM may be in the best interest of employees and annuitants enrolled in the program. A carrier for a plan may apply to OPM at any time for a payment from the contingency reserve when the carrier has good cause, such as unexpected claims experience and variations from expected community rates. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. Amounts paid from the contingency reserve under this subparagraph and under the above subparagraphs of this paragraph shall be reported as subscription income in the year in which paid. By agreement with the carrier and where good cause exists, OPM may accept payment from carrier reserves for credit to the contingency reserve in an amount and under conditions other than those specified in paragraph (c) of this section.

[FR Doc. 86-4676 Filed 3-3-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence; Advance Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies the intention of the Immigration and Naturalization Service concerning the granting of advance parole to applicants for adjustment of status.

Aliens granted advance parole whose adjustment applications are denied will be subject to the exclusion provisions of section 236 of the Act. Such aliens shall not be entitled to a deportation hearing. This amendment also eliminates the language concerning unintended or innocent and casual departure. Any departure without prior permission (advance parole) will terminate the adjustment application.

EFFECTIVE DATE: April 3, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

For Specific Information: Robert Amerine, Program Analyst, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5464.

SUPPLEMENTARY INFORMATION: Section 245(a) of the Immigration and Nationality Act, 8 U.S.C. 1255(a) authorizes the adjustment of status of an alien "who was inspected and admitted or paroled in the United States". Under the regulations prescribed by the Attorney General, an applicant for adjustment of status who wishes to leave the country and return may apply for advance permission to be paroled into the United States upon return to prosecute his or her application. This procedural device has been referred to as "advance parole". Recently there have been questions as to whether applicants for adjustment who have been paroled into the United States pursuant to a grant of advance parole, will be subject to exclusion or deportation proceedings if the application is subsequently denied. The United States Court of Appeals for the Fourth and Ninth Circuits, in large part relying on the prior language of 8 CFR 245.2(a)(3), determined that such paroled aliens whose adjustment applications have been denied are entitled to have the question of whether they can remain in the United States adjudicated in deportation rather that exclusion proceedings. *Joshi* v. *District Director, INS* 720 F.2d. 799 (4th Cir. 1983); *Patel* v. *Landon* 739 F.2d. 1455 (9th Cir. 1984).

Advance parole is not specifically mentioned in the Immigration and Nationality Act. The INS has developed this practice in conformity with 8 U.S.C. 1182(d)(5)(A) to be used in public interest or emergent situations. In *Landon* v. *Plasencia,* 459 U.S. 21, the Supreme Court held that "the language and history of Act * * * clearly reflect a congressional intent that whether or not the alien is a permanent resident, admissibility shall be determined in an exclusion hearing." An alien who is paroled into the United States does not effect an "entry" and thus remains subject to exclusion proceedings. *Leng May Ma* v. *Barber,* 357 U.S. 185.

The notice of proposed rulemaking was published on June 7, 1985 at 50 FR 23959 with a 60 day comment period. A total of ten comments were received by the Service during the allotted period. With one exception, the responses were generally in opposition to the proposed change in the regulation. All comments were carefully reviewed and full consideration was afforded to each. However, the Service has decided to publish the final rule as proposed.

The arguments advanced were not persuasive in light of the clear congressional intent to determine admissibility in exclusion rather than deportation hearings. It is equally clear that aliens who are paroled into the United States have not effected an "entry" and consequently are not afforded the same procedural benefits that the Act extends to aliens who have entered the United States.

Several comments relied heavily upon the *Joshi* and *Patel* decisions to buttress their contentions. Both of those decisions drew heavily on the language previously found at 8 CFR 245.2(a)(3) as justification for reversing lower court judgments upholding exclusion orders. The paroled alien appellants in each case argued that they were entitled to have their status determined in deportation proceedings. In our view, reliance on those decisions is misplaced, since amendment of the regulation will remove the underpinning of those decisions.

Several commenters argued to the effect that the proposed amendment would serve as a trap for the unwary. We believe that fear to be unfounded. The present I-485 application form which is used by aliens seeking adjustment of status contains the following admonition at the very top of the instruction page:

WARNING: If you consider departing from the United States to any country, including Canada and Mexico, before a decision is made on your application, consult with the office of the Immigration and Naturalization Service processing your case before departure, since a departure from the United States may result in a termination of your application.

We believe this information serves to inform aliens of the consequences of departure from the United States, and the necessity to obtain further information from the Immigration and Naturalization Service. While we view this warning to be more than adequate, the INS will consider the addition of further cautionary language when the I-485 and I-512 are modified or revised.

The adjustment of status regulations already provide at § 245.2(a) that a denied adjustment application by an alien paroled under section 212(d)(5) of the Act may be renewed *in exclusion proceedings* only under two conditions. First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application. The regulation at § 245.2(a)(3) as it is being revised will bring it in better conformity with the foregoing section.

The benefit afforded to the alien by the regulations promulgated under section 245 of the Act is essentially that of the convenience of avoiding a trip outside the United States to apply for an immigrant visa. In our view it is clearly not burdensome, unreasonable or harsh as some comments suggest, to require an alien who was granted the discretionary benefit of parole, but was deemed ineligible or denied adjustment of status to be placed in exclusion proceedings for adjudication of his status. The grant of advance parole to return to the United States is usually predicated in large part on the presumed strength of the pending adjustment application.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This order is not a major rule

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within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for Part 245 continues to read as follows, and the authority citation which follows § 245.2 is removed.

Authority: Secs. 101, 103, 201, 203, 204, 212, 245, 247; 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, and 1257, unless otherwise noted.

2. Section 245.2 is amended by revising paragraph (a)(3) to read as follows:

§ 245.2 Application.

(a) * * *

(3) *Departure.* The departure of an applicant for permanent resident status under section 245 of the Act or this part shall be deemed an abandonment of the application, constituting grounds for termination thereof, unless the applicant had previously been granted advance parole by the Service for such absence and was thereafter inspected upon return. If the application of such an individual granted advance parole is subsequently denied, the applicant will be subject to the exclusion provisions of section 236 of the Act. No alien granted advance parole and inspected upon return shall be entitled to a deportation hearing. In determining the date of "last arrival" within the meaning of section 1 of the Act of November 2, 1966, in the case of an applicant who was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall not be included. In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975, or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section 102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979, as an Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

* * * * *

Dated: February 11, 1986.

Lawrence J. Weinig,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-4371 Filed 3-3-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-113-AD; Amdt. 39-5249]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires the addition of tether straps to limit the opening motion of the escape slide cover on the aft doors of Boeing Model 737 airplanes. During recent testing, it was determined that, with rapid door opening, the escape slide cover can swing open far enough to allow the girt bar stowage bracket to hook in the doorway, temporarily arresting the door opening motion. This condition could cause delay in an emergency evacuation.

EFFECTIVE DATE: April 11, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. It may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to add an airworthiness directive which requires the installation of tether straps on Model 737 aft doors escape slide containers was published in the **Federal Register** on October 30, 1985 (50 FR 45115).

This modification will limit the opening motion of the aft escape slide containers and ensure that the girt bar stowage bracket cannot jam in the doorway during emergency door operation.

The comment period closed on December 23, 1985. Interested persons have been afforded an opportunity to comment on the proposed AD. Due consideration has been given to all comments received.

One comment was received in response to the Notice of Proposed Rulemaking. The commenter did not object to the modification, but requested that the compliance time be extended to one year instead of the six-month compliance time as proposed in the Notice. The commenter stated that service experience does not warrant a six-month compliance time. The FAA does not agree. The door jamming condition was demonstrated to be repeatable during testing. Since the modifications required are relatively simple, the FAA considers six months sufficient time for compliance.

This amendment reference Boeing Service Bulletin 737-25A1182, Revision 2, to reflect the latest revision of that document. The Notice referred to Revision 1; however, Revision 2 differs only editorially and in format from Revision 1, and there is no change in the effect of the AD.

After careful review of all available data, including all comments received, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

In addition, the cost estimate has been reduced to reflect the latest manpower estimates.

It is estimated that approximately 440 airplanes of U.S. registry will be affected by this AD. Approximately 2 manhours wil be required to modify each airplane and the average labor charge will be $40 per manhour. Based on these figures the total cost impact of this AD on U.S. operators is estimated to be $35,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -300 airplanes, as specified in Boeing Service Bulletin 737-25A1182, Revision 2, dated November 12, 1985, certificated in any category. To correct aft door emergency opening characteristics, accomplish the following within 6 months after the effective date of this amendment, unless previously accomplished:

A. Install escape slide cover restraining straps in accordance with Boeing Service Bulletin 737-25A1182, Revision 2, Part II, dated November 12, 1985, or later FAA-approved revisions.

Note.—Installation of escape slide cover restraining straps in accordance with Boeing Service Bulletin 737-25A1182, Revision 1, dated September 24, 1985, is equivalent to such installation in accordance with Revision 2 of that service bulletin, and constitutes compliance with this paragraph.

B. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this amendment who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This service bulletin may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 11, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4587 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-62-AD; Amdt. 39-5105]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule; withdrawal and reissuance.

SUMMARY: This action withdraws and reissues a correction to Airworthiness Directive (AD) T85-11-52, Amendment 39-5105 (50 FR 29648; July 22, 1985), an AD applicable to the Boeing Model 737-300 series airplanes, which limited the airplanes to Jet A type fuels. The correction, as published, limited the applicability to Boeing Model 737-300 series aircraft equipped with Plessey Type 8240 Mark 1, 2, or 3 fuel boost pumps; however, the applicability statement should also have included TRW 10-60533-1 fuel boost pumps. This reissued correction to AD T85-11-52 includes the TRW pumps in the applicability statement.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued telegraphic AD T85-11-52 applicable to Boeing Model 737 series airplanes on June 7, 1985, after receiving reports of loss-of-power during climb when using JP-4 fuel. The AD was published as Amendment 39-5105 in the **Federal Register** on July 22, 1985 (50 FR 29648). The AD was inadvertently made effective to *all* Boeing Model 737-300 series airplanes by omission of the affected fuel boost pump identification from the applicability statement of the AD. A correction to AD T85-11-52, published in the **Federal Register** on February 4, 1986 (51 FR 4296), limited the AD applicability to airplanes equipped with Plessey Type 8240 Mark 1, 2, or 3 pumps. The AD should apply to Boeing Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, Mark 2, or Mark 3 fuel boost pumps and TRW 10-60533-1 fuel boost pumps. Therefore, action is taken herein to make this correction.

Since this action only corrects an error in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days as good cause exists.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, the airworthiness directive correction published in the **Federal Register** on February 4, 1986 (51 FR 4296), is hereby withdrawn.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

2. By correcting the applicability statement of AD T85-11-52, Amendment 39-5105 (50 FR 29648; July 22, 1985), FR Doc. 85-17313, to identify properly the affected airplanes, as follows:

Boeing: Applies to Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, 2, or 3 fuel boost pumps or TRW 10-60533-1 fuel boost pumps, certificated in any category.

This correction becomes effective March 13, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4589 Filed 3-3-86; 8:45 am]

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14 CFR Part 39

[Docket No. 86-NM-19-AD; Amdt. 39-5246]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the forward engine mount nuts for adequate self-locking capability, on Boeing Model 747 series airplanes equipped with Rolls-Royce engines. This action is prompted by a recent report of inadequate self-locking capability of some nuts. This action is necessary since inadequate self-locking capability of these nuts, if not corrected, could result in separation of the engine from the airplane.

EFFECTIVE DATE: March 24, 1986.

ADDRESSES: The service information on the inspection procedure may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been a recent report of self-locking nuts, part number BACN10HR[illegible], on Boeing Model 747 airplanes, not having the required self-locking capability. This was found to have been the result of improper processing of the nuts. Should the clamp-up torque be lost, the nut may back off and allow the bolt to come out. Loss of a bolt could result in separation of an engine from the airplane.

Boeing Commercial Airplane Company has issued Alert Service Bulletin 747-71A2216, dated December 20, 1985, which describes the specific procedures to be used to inspect for adequate self-locking torque on forward engine mount nuts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being issued which requires inspection of forward engine mount nuts for adequate self-locking torque, and replacement of defective nuts, in accordance with Boeing Alert Service Bulletin 747-71A2216.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes equipped with Rolls-Royce engines, certificated in any category, listed in Boeing Alert Service Bulletin 747-71A2216, dated December 20, 1985.

To detect faulty self-locking nuts that could lead to separation of an engine, accomplish the following, unless already accomplished:

A. Within 30 days after the effective date of this AD, perform a one-time inspection of the forward engine mount nuts for adequate self-locking torque, in accordance with Boeing Alert Service Bulletin 747-71A2216, dated December 20, 1985, or later FAA-approved revisions.

B. Defective nuts must be replaced prior to further flight.

C. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection time in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received information on inspection procedures from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 24, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,
Acting Director, Northwest Mountain Region.

[FR Doc. 86-4586 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-08-AD; Amdt. 39-5247]

Airworthiness Directives; deHavilland Aircraft of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD) which imposes a reduced altitude operating limit on certain deHavilland Model DHC-8-101 airplanes, to prevent elevator vibration until the elevator control surface and spring tab mass balance weights are modified. This AD deletes the operating limitation and requires the modification referenced in the telegraphic AD for those airplanes, and requires modification of the elevator mass balance weights on certain other Model DHC-8-101 airplanes, unless already accomplished. This action is considered necessary to preclude elevator vibration. Elevator vibration, or the consequent flutter, could result in structural failure of the airplane.

EFFECTIVE DATE: March 24, 1986.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to deHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2978; or Mr. Vito Pulera, Airframe Branch, ANE-172, FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on deHavilland (DHC) Model DHC-8 airplanes.

On January 3, 1986, the FAA issued telegraphic AD T85-26-52, which imposes a reduced altitude operating limit on Model DHC-8-101 airplanes, serial numbers 15 through 24, until the elevator and spring tab mass balance weights are modified in accordance with DHC Modification 8/0468. That AD followed the issuance, on the same day, of DHC Service Bulletin A8-55-3 and Canadian Air Transport Administration (CATA) telegraphic AD CF-86-01, which required the same action. These actions were prompted by a report of elevator vibration on an airplane, serial number 21, while it was being operated at the altitude limit.

On January 14, 1986, the FAA learned that two previous incidents of elevator vibration had occurred on another airplane, serial number 18. It was reported that the airplane had been exposed to water by washing and to precipitation in freezing weather. The vibration could not be duplicated after the elevator balance was increased from the minimum tolerance to a nominal tolerance level. DHC and CATA concluded from these incidents that the elevator flutter margins may be inadequate. DHC issued Service Bulletin A8-55-4 on January 15, 1986, describing DHC Modification 8/0478 to increase the elevator mass balance weights on airplanes, serial numbers 1 through 14. The CATA issued revised AD CF-86-01 R1 on January 13, 1986, to make the modifications mandatory.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, this AD supersedes T85-26-52, and requires modification of the elevator and spring tab mass balance weights for Model DHC-8 airplanes, serial numbers 15 through 24; additionally, it requires modification of the elevator mass balance weights for airplanes, serial numbers 1 through 14.

Further, since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to Model DHC-8-101 airplanes, serial numbers 1 through 24, certificated in any category. To assure structural integrity of the elevator and spring tab, accomplish the following within the next 200 flight hours or 30 days after the effective date of this AD, whichever comes first, unless already accomplished:

A. For airplanes, serial numbers 1 through 14, accomplish Modification No. 8/0478 to the elevator mass balance weights as described in deHavilland Aircraft of Canada, Ltd., Service Bulletin No. A8-55-4, dated January 15, 1986.

B. For airplanes, serial numbers 15 through 24, the limitation imposed by telegraphic AD T85-26-52, issued January 3, 1986, may be removed from the Airplane Flight Manual when Modification No. 8/0468 to the spring tab and elevator mass balance weights, as described in deHavilland Aircraft of Canada, Ltd., Service Bulletin No. A8-55-3, dated January 3, 1986, has been incorporated.

C. Alternate means of compliance which provide an acceptable level of s may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to deHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes telegraphic AD T85-26-52, dated January 3, 1986.

This amendment becomes effective March 24, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,
Acting Director, Northwest Mountain Region.

[FR Doc. 86-4585 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-130-AD; Amdt. 39-5248]

Airworthiness Directives; Gates Learjet Models 24D, 24D-A, 24E, 24F, 24F-A, 25, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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SUMMARY: This action supersedes an existing airworthiness directive (AD) which requires repetitive inspections of the battery and battery vent system on certain Gates Learjet airplanes. This amendment requires relocation of the battery vent inlet which is necessary to eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery inlet vent.

EFFECTIVE DATE: April 11, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) [illegible].

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by adopting a new airworthiness directive to require relocation of the battery inlet vent from the bottom of certain Gates Learjet series airplanes to the side of the airplane, in accordance with certain Gates Learjet Corporation service bulletins was published in the Federal Register on December 6, 1985 (50 FR 49945). Further, this proposal would supersede AD 85-22-04, Amendment 39-5161 (50 FR 43565; October 28, 1985), by requiring a modification in lieu of repetitive inspections.

The comment period for proposal closed January 28, 1986, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Approximately 577 airplanes of U.S. registry will be affected by this AD. The modification will require approximately 13.5 hours to accomplish, at an average labor charge of $40 per manhour. Existing hardware and components are utilized for vent relocation; therefore, no parts cost is anticipated. Based on these figures, the total cost impact of this AD on U.S. operators will be $311,580.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($540). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding Airworthiness Directive (AD) 85-22-04, Amendment 39-5161 (50 FR 43565; October 28, 1985), with the following new AD:

Gates Learjet Corporation: Applies to the following Gates Learjet models and serial numbers:

Models	Serial No.
24D, 24D-A, 24E, 24F, 24F-A	[illegible]
25, 25B, 25C, 25D, 25F	059; 061; 063 thru 370.
28	001 thru 005.
29	001 thru 006.
35, 35A	001 thru 570; 580 thru 600.
36, 36A	[illegible]

Compliance as indicated in the body of the AD.

To eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery vent, accomplish the following within the next 200 flight hours, unless already accomplished:

A. Relocate the battery inlet vent in accordance with instructions contained in Gates Learjet Corporation Service Bulletin (SB) 24/25-334A (for Models 24 and 25 series airplanes), SB 28/29-24-5A (for Models 28 and 29 series airplanes), or SB 35/36-24-10 (for Models 35 and 36 series airplanes), July 18, 1985, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the modification requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This Amendment supersedes Amendment 39-5161 (50 FR 43565; October 28, 1985), AD 85-22-04.

This Amendment becomes effective April 11, 1986.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4586 Filed 3-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; the Automobile; Property Essential to Self-Support; the Home; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction of final rule.

SUMMARY: In the Final Rule which appeared in the Federal Register on October 22, 1985 (50 FR 42683), § 416.1212 of Regulations No. 16 was revised. That section should have included paragraph (d), which explains how we treat the proceeds from the sale of an excluded home and was not changed by the revision. Section 416.1212 is being corrected to reinstate paragraph (d), which was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: A revision of § 416.1212 of Regulations No. 16 was published as a Final Rule on October 22, 1985 (50 FR 42683). That final rule inadvertently omitted paragraph (d) of § 416.1212, which was not changed by the revision. That paragraph provided for excluding from resources the proceeds from the sale of an excluded home which are used within 3 months of the date of receipt to purchase another home. In order to correct § 416.1212, paragraph (d) is added to read as follows:

§ 416.1212 Exclusion of the home.

* * * * *

(d) *Proceeds from the sale of an excluded home.* The proceeds from the sale of a home which is excluded from the individual's resources will also be excluded from resources to the extent they are intended to be used and are, in fact, used to purchase another home, which is similarly excluded, within 3 months of the date of receipt of the proceeds.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: February 26, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-4654 Filed 3-3-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 84F-0222]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers, Dodecyldiphenyloxidedisulfonic acid, etc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dodecyldiphenyloxidedisulfonic acid, sulfonated tall oil fatty acid, and neo-decanoic acid as components in a sanitizing solution for use on food-processing equipment and utensils that contact food and on glass bottles and other glass containers intended for holding milk. This action responds to a petition filed by Pennwalt Corp. The firm has since turned over the rights of the petition to Henkel Corp.

DATES: Effective March 4, 1986; objections by April 3, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nuturition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 12, 1984 (49 FR 28456), FDA announced that a petition (FAP 4H3606) had been filed by Pennwalt Corp., Three Parkway, Philadelphia, PA 19102. Since that time, the firm has turned over the rights of the petition to Henkel Corp., 300 Brookside Ave., Ambler, PA 19002. The petition proposed that the food additive regulations be amended to provide for the safe use of dodecyldiphenyloxidedisulfonic acid, sulfonated tall oil fatty acid, and neo-decanoic acid as components in a sanitizing solution for use on food-processing equipment and utensils that contact food and on glass bottles and other glass containers intended for holding milk.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before April 3, 1986 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraphs (b)(29) and (c)(24) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(29) An aqueous solution containing dodecyldiphenyloxidedisulfonic acid (CAS Reg. No. 30260-73-2), sulfonated tall oil fatty acid (CAS Reg. No. 68309-27-3), and neo-decanoic acid (CAS Reg. No. 26896-20-8). In addition to use on food-processing equipment and utensils, this solution may be used on glass

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bottles and other glass containers intended for holding milk.

(c) * * *

(24) Solutions identified in paragraph (b)(29) of this section will provide at least 237 parts per million and not more than 474 parts per million dodecyldiphenyloxidedisulfonic acid, at least 33 parts per million and not more than 66 parts per million sulfonated tall oil fatty acid, and at least 87 parts per million and not more than 174 parts per million neo-decanoic acid.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4604 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 84F-0089]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Hydrogen Peroxide, Etc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an aqueous solution containing hydrogen peroxide, peracetic acid, acetic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as a sanitizing solution on food-contact surfaces. This action responds to a petition filed by Bonewitz Chemical Services, Inc. Bonewitz Chemical Services, Inc., was subsequently merged into Henkel Corp.

DATES: Effective March 4, 1986; objections by April 3, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1984 (49 FR 18043), FDA announced that a petition (FAP 4H3781) had been filed by Bonewitz Chemical Services, Inc., Burlington, IA 52601, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of an aqueous solution containing hydrogen peroxide, peracetic acid, acetic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as a sanitizing solution on food-contact surfaces. Bonewitz Chemical Services, Inc., was subsequently merged into Henkel Corp., 300 Brookside Ave., Ambler, PA 19002.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 25.31a(b)(6).

Any person who will be adversely affected by this regulation may at any time on or before April 3, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraphs (b)(30) and (c)(25) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(30) An aqueous solution containing hydrogen peroxide (CAS Reg. No. 7722-84-1), peracetic acid (CAS Reg. No. 79-21-0), acetic acid (CAS Reg. No. 64-19-7), and 1-hydroxyethylidene-1,1-diphosphonic acid (CAS Reg. No. 2809-21-4).

(c) * * *

(25) Solutions identified in paragraph (b)(30) of this section shall provide, when ready to use, not less than 550 parts per million and not more than 1,100 parts per million hydrogen peroxide, not less than 100 parts per million and not more than 200 parts per million peracetic acid, not less than 150 parts per million and not more than 300 parts per million acetic acid, and not less than 15 parts per million and not more than 30 parts per million 1-hydroxyethylidene-1,1-diphosphonic acid.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4603 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPING

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Office of the Assistant Secretary, for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 200, 203, 207, 213, 220, 221, 231, 232, 241, 242, 511, 571, and 970

[Docket No. N-86-1593]

Announcement of Effective Dates for Recently, Published Final and Interim Rules

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Office of the Assistant Secretary for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Effective Dates for Final and Interim rules.

SUMMARY: The Department of Housing and Urban Development Act requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published final or interim rule effective. Since Congress adjourned *sine die* before the thirty days elapsed for certain rules published in November and December, 1985, and since the statutory period is about to be met for certain rules published in January, 1986, the Department is now announcing the effective dates for the following final and interim rules.

EFFECTIVE DATES: See the individual amendments below.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), requires HUD to delay effectiveness of a published final or interim rule until thirty days of continuous session of Congress have elapsed. Effective dates for the following listed rules published between November, 1985 and January, 1986 had to be delayed until the second session of the 99th Congress reconvened for this calendar year, and until thirty session days had elapsed.

Accordingly, the Department amends 24 CFR as follows:

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER

PART 200—[AMENDED]

1. In FR Doc. 86-708, 24 CFR Part 200, Use of Materials Bulletin No. 38i—HUD Building Product Standards and Certification Program for the Grademaking of Lumber [Docket No. R85-1247; FR-2109], beginning on page 1369, in the issue of Monday, January 13, 1986, the effective date is March 1, 1986.

PART 203—[AMENDED]

2. In FR Doc. 85-30084, 24 CFR Part 203, Use of Loan Correspondents in Connection with FHA Mortgage Insurance [Docket No. R-85-1226; FR-1954], beginning on page 51673, in the issue of Thursday, December 19, 1985, the effective date is March 1, 1986.

PARTS 207, 213, 220, 221, 231, 232, 241, AND 242—[AMENDED]

3. In FR Doc. 85-828, 24 CFR Parts 207, 213, 220, 221, 231, 232, 241, and 242, Prepayment Limitation for Bond-Financed Projects [Docket No. R-86-1229; FR-1819], beginning on page 2358, in the issue of Thursday, January 16, 1986, the effective date is March 1, 1986.

PARTS 232 AND 242—[AMENDED]

4. In FR Doc. 85-27673, 24 CFR Parts 232 and 242, Refinancing of HUD-Insured Hospital Mortgages [Docket No. R-85-1234; FR-1806], beginning on page 47726, in the issue of Wednesday, November 20, 1985, the effective date is March 1, 1986.

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

PART 511—[AMENDED]

5. In FR Doc. 85-27606, 24 CFR Part 511, Rental Rehabilitation Program; Performance Adjustments to Formula Allocations [Docket No. R-85-1260; FR-2055], beginning on page 50594, in the issue of Tuesday, December 10, 1985, the effective date section is DATES: Effective date: March 1, 1986. Comment due date: February 10, 1986.

PART 571—[AMENDED]

6. In FR Doc. 85-30082, 24 CFR Part 571, Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Conflict of Interest [Docket No. R-85-1228; FR-2018], beginning on page 51675, in the issue of Thursday, December 19, 1985, the effective date is March 1, 1986.

CHAPTER IX—OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING

PART 970—[AMENDED]

7. In FR Doc. 85-29563, 24 CFR Part 970, Public Housing Program: Demolition or Disposition of Public Housing Projects [Docket No. R-85-1179; FR-1892], beginning on page 50891, in the issue of Friday, December 13, 1985, the effective date is March 1, 1986.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 27, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-4617 Filed 3-3-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8078]

Procedure and Administration; Tax Shelter Registration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to tax shelter registration. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the Federal Register. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect

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organizers, sellers, investors and certain other persons associated with investments that are considered tax shelters.

DATES: The regulations apply to tax shelters in which any interest is first sold after August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Paulette Chernyshev of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T). Telephone 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the temporary Procedure and Administration Regulations (26 CFR Part 301) published in the **Federal Register** on August 15, 1984 (49 FR 32712). The temporary regulations amended by this document relate to tax shelter registration under section 6111 of the Internal Revenue Code of 1954, as added by section 141 of the Tax Reform Act of 1984 (Pub. L. 98-369 98 Stat. 678). This document also amends the Table of OMB Control Numbers (26 CFR Part 602).

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised herein or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

Explanation of Provisions

Question and answer 45 of the temporary regulations relating to tax shelter organizer is not required to file an amended application for registration if the facts relating to the tax shelter change after the tax shelter has been registered. A number of commentators have requested that tax shelter organizers be allowed to file amended applications for registration. Accordingly, the temporary regulations have been revised to permit, but not require, the filing of amended applications in certain circumstances. However, permission to file an amended application does not alter the requirement to file a complete and accurate initial application by the required date. If the initial application was timely filed and contained complete and accurate information, the filing of an amended application to reflect later developments will not affect the determination as to whether the initial application would be subject to penalty.

Question and answer 52 of the temporary regulations required a person who sells (or otherwise transfers) an interest in a tax shelter to furnish the registration number of the tax shelter to the purchaser (or transferee) at the time of the sale (or transfer) of the interest (or, if later, within 7 days after the seller or transferor receives the registration number). Commentators have requested that sellers be allowed more time to furnish the registration number. Accordingly, the temporary regulations have been amended to provide that the seller (or transferor) must furnish the registation number to the purchaser (or transferee) at the time of sale (or transfer) of the interest (or, if later, within 20 days after the seller or transferor receives the registration number). The regulations continue to provide that a written statement explaining that a registration number has been applied for and providing certain other information must be furnished to the purchaser (or transferee) at the time of the sale if the registration number is not furnished at that time.

Executive Order 12291, Regulatory Flexibility Act, amd Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of poposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is Paulette Chernyshev of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulaions on matters of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 and 26 CFR Part 602 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6111-1T also issued under 26 U.S.C. 6111.

Par. 2. Section 301.6111-1T is amended by revising answers 45 and 52, adding new question and answer 45A, and amending the table of contents to reflect the additional question and answer. The revised and added provisions read as follows:

§ 301.6111-1T Questions and answers relating to tax shelter registration (Temporary).

* * * * *

Table of Contents

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Information reported on an amended application 45A

* * * * *

Q-45. If the facts relating to a tax shelter change after the tax shelter has been registered, must the tax shelter be registered again or must an amended application for registration be filed by the tax shelter organizer?

A-45. No. The tax shelter organizer, however, is permitted to file an amended application if a material change in facts occurs after the initial registration. A material change in facts is—

(1) A change in the identifying information relating to the tax shelter or tax shelter organizer,

(2) The acquisition or construction of a principal asset not reported on the initial application for registration,

(3) A change in the method of financing a minimum investment unit, or

(4) A change in the principal business activity.

In addition, a change in any tax shelter ratio reported on the initial application for registration that increases or decreases the reciprocal of the tax shelter ratio (*i.e.,* the fraction in which the amount of the applicable investment base is the numerator and the amount of the applicable deductions and credits is the denominator) by 50 percent or more is a material change in facts. For example, if the tax shelter ratio increases from 2 to 1 to 4 to 1, the reciprocal of the tax shelter ratio decreases from ½ to ¼, a 50-percent decrease. Similarly, if the tax shelter ratio decreases from 6 to 1 to 4 to 1, the reciprocal of the tax shelter ratio increases from ⅙ to ¼, a 50-percent increase. In either case, there is a material change in facts and an amended application could be filed.

Q-45A. What information should be included on an amended application for registration?

A-45A. The tax shelter organizer must include the identifying information requested on Form 8264, Application for Registration of a Tax Shelter, and the tax shelter registration number that has been assigned to the tax shelter. In addition, the tax shelter organizer should include any other information requested on Form 8364(1) that has changed since the tax shelter was registered, or (2) that the tax shelter organizer did not know at the time the tax shelter was registered but has learned of since the registration.

For example, assume that A organizes partnership L, a blind pool that will invest in real estate. Before the real estate is identified or acquired, interests in L will be offered to the public in an offering that must be registered with the Securities and Exchange Commission. Although A does not know what real estate L will acquire and therefore is unable to calculate the tax shelter ratio with certainty, A concludes (based on representations made or to be made) that the tax shelter ratio will exceed 2 to 1 as to some of the investors. Accordingly, A registers L as a tax shelter. A attaches a statement to the application for registration, explaining that L is a blind pool organized to invest in real estate, but that L has not yet acquired any real estate. In addition, A attaches a statement explaining that although the tax shelter ratio is expected to exceed 2 to 1, A cannot compute the tax shelter ratio with certainty because L has not yet acquired any real estate. Several months after L is registered, L acquires a shopping center. A may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, A should report the shopping center as the principal asset and the recomputed tax shelter ratio.

As another example, assume that C organizes a limited partnership that is a tax shelter. On the application for registration, C reports that the tax shelter ratio is 2.2 to 1. After the partnership has been registered, C finds that the partnership is unable to attract sufficient investors. To make investing in the partnership more attractive, C decides to offer financing for the purchase or interests in the partnership. As a result of the change in financing, the tax shelter ratio will be 5 to 1. Because there is a change in financing and a change in the tax shelter ratio that decreases the reciprocal of the tax shelter ratio by 50 percent or more, C may file an amended application for registration. In addition to reporting the identifying information and the tax shelter registration number on the amended application, C should report the recomputed tax shelter ratio and information relating to the change in financing.

* * * * *

Q-52. When must the registration number be furnished to purchasers of interests in the tax shelter?

A-52. The person who sells (or otherwise transfers) an interest in a tax shelter must furnish the registration number to the purchaser (or transferee) at the time of sale (or transfer) of the interest (or, if later, within 20 days after the seller or transferor receives the registration number). If the registration number is not furnished at the time of the sale (or other transfer), the seller (or transferor) must furnish the statement described in A-54 to the purchaser (or transferee) at the time of the sale (or other transfer). If interests in a tax shelter were sold before September 1, 1984, all investors who acquired their interests in the tax shelter before September 1, 1984, must be furnished with the registration number of the tax shelter by December 31, 1984. The registration number will be considered furnished to the investor if it is mailed to the investor at the last address of the investor known to the person required to furnish the number.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 301.6111-1T . . . 1545-0865".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: February 11, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86-4683 Filed 3-3-86; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 601

Search and Duplication Service Fees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of Statement of Procedural Rules.

SUMMARY: This document contains amendments to the Statement of Procedural Rules (SPR) to reflect changes in the fees charged for search and duplication services. The provisions are amended to conform to Department of Treasury Regulations related to the disclosure of records under the Freedom of Information Act and to incorporate a recent change in charges for copies of returns and return information.

EFFECTIVE DATE: April 25, 1983, except § 601.702(f)(5) (regarding charges for copies of returns, etc.) is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW. Washington, DC 20224: Attention: CC:LR:T (202) 566-3458, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the SPR (26 CFR Part 601).

Section 601.702(f) of the SPR, relating to fees for services, is amended to conform with Treasury Department Regulations at 31 CFR 1.6 as amended April 25, 1983, (48 FR 12350). The section is also amended to reflect Rev. Proc. 85-56, 1985-46 I.R.B. 45 (modifying Rev. Proc. 66-3, 1966-1 C.B. 601) regarding charges for copies of returns and transcripts.

The Treasury Department amended its regulations implementing the Freedom of Information Act (FOIA). The amendment increased the fees charged for duplication, search, and unpriced printed material to reflect increased

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costs to the Department. The fee for copying records is $.15 per copy of each page made by photocopy or similar process. The rate of $.15 per copy of each page also applies to preprinted materials, which will no longer be available at reduced rates. The search fee has been increased to $10.00 for each hour or fraction thereof and applies to all searches, including those which take less than one hour. Charges for computer searches will reflect the actual direct cost to the Department, as will fees for computer printouts. Section 601.702(f) of the SPR is amended to reflect these changes.

Rev. Proc. 85–56, 1985–48 I.R.B. 45, modified Rev. Proc. 66–3, 1966–1 C.B. 601 to reflect the implementation of a pre-paid fixed fee system for furnishing taxpayers with photocopies of their tax returns or transcripts of return information. The charge for a photocopy of a tax return is $4.25 and the charge for a transcript of tax information is $2.25. The Revenue Procedure includes instructions for making requests for copies and advance payments. The purpose of the new system is to eliminate the administrative costs involved in billing taxpayers who request copies of returns and return information. Requiring payment in advance will ensure that the total cost of securing and furnishing photocopies will be paid by those individuals who request such information. Section 601.702(f) is amended to add a new paragraph (f)(5) to set forth these rules.

Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that Regulatory Impact Analysis is therefore not required.

Paperwork Reduction Act

The collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. This collection has been approved by OMB (Control No. 1545–0429).

Drafting Information

The principal author of these amendments to the Statement of Procedural Rules is Sandra E. Wallach of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments both on matters of substance and style.

List of Subjects in 26 CFR 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Adoption of Amendments to the Statement of Procedure Rules

Accordingly, 26 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 continues to read in part:

Authority: 5 U.S.C. 301 and 502.

Par. 2. Section 601.702 is amended as follows:

1. Paragraphs (f)(3) and (f)(4) are revised to read as set forth below.

2. Paragraphs (f) (5), (6), (7), (8), and (9) are redesignated as paragraphs (f) (6), (7), (8), (9), and (10) respectively, and a new paragraph (f)(5) is added, to read as set forth below.

3. Paragraph (f)(6) as redesignated is amended by removing the first two sentences.

§ 601.702 Publication and public inspection.

* * * * *

(f) *Fees for services.* * * *

(3) *Search services.* Fees charged for search services are as follows:

(i) Searches other than for computerized records—$10.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(ii) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(iii) Searches requiring travel or transportation—Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(iv) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual cost to the Internal Revenue Service.

(4) *Duplication other than for returns, transcripts of return information, and related documents.* Fees charged for duplication other than for returns, transcripts of return information, and related documents are as follows:

(i) $.15 per copy of each page, up to 8½" x 14", made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of reproduction.

(iii) Records may be released to a private contractor for copying and the requester will be charged the actual cost of duplication charged by the private contractor.

(iv) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(5) *Charges for copies of returns, transcripts of return information, and related documents.* Charges for furnishing copies of returns, transcripts of return information, and related documents are as follows:

(i) A charge of $4.25 will be made for each request for a copy of a return or other related document (other than Employee Plans and Exempt Organization Returns). Payments are to be submitted in advance using IRS Form 4506, Request For Copy of Tax Form or Individual Income Tax Account Information.

(ii) A charge of $2.25 will be made for each request for a transcript of individual income tax account information. Payments shall be submitted according to procedures prescribed in paragraph (g)(5)(i) of this section.

(iii) A charge of $1.00 for the first page and $.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will be submitted subsequent to receipt of Form 2866, Document Transmittal and Bill.

* * * * *

§ 601.9000 [Amended]

Par. 3. Section 601.9000(c) is amended by inserting in the appropriate place in the table "§ 601.702(f)(2) . . . 1545–0429".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–4684 Filed 3–3–86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1126-86]

Delegation of Authority Under the Department of Justice Asset Forfeiture Fund

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Sections 524(c)(1)(F) and (3) of Title 28 of the United States Code provide for the Attorney General or his delegate to purchase evidence of any violation of the Controlled Substances Act or the Controlled Substances Import and Export Act. Such delegation is limited to the Director of the Federal Bureau of Investigation (FBI) and the Administrator of the Drug Enforcement Administration (DEA), when the evidence to be purchased is valued at $100,000 or more. Subsection (2) of section 524(c) provides for the Attorney General or his delegate to pay awards for information or assistance leading to civil or criminal forfeitures under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 *et seq.*) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. 1961 *et seq.*). Where such awards are $10,000 or more, such delegation of payments may not be made to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the FBI or the Administrator of the DEA.

This order delegates to the Director of the FBI and the Administrator of the DEA the ability to purchase evidence and make awards from the Department of Justice Assets Forfeiture Fund. Where there is the need to purchase evidence of $100,000 or more, the Director of the FBI and the Administrator of the DEA are hereby given such delegated authority. All of the delegations granted above are provided for in subsections (c)(1), (2) and (3) of section 524 of Title 28, and are deemed to be effective as of the date of the appropriation for payment from the Department of Justice Assets Forfeiture Fund, August 15, 1985.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272–6420.

SUPPLEMENTARY INFORMATION: This rule delegates specific duties of the Attorney General to the Director of the FBI and the Administrator of the DEA, and is, therefore, a necessary act of internal management of the Department of Justice. The order is not a rule within the meaning of Executive Order 12291, section (1)(a). The order does not affect a substantial number of small business entities and is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies); Organization and Functions (Government agencies).

PART 0—[AMENDED]

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510 and 524, Part 0 of Chapter I of Title 28, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5. U.S.C. 301, 2303; 8 U.S.C. 1103; 15 U.S.C. 664(K); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. A new paragraph (k) is added in § 0.85 to read as follows:

§ 0.85 General functions.

* * * * *

(k) Payment of awards (including those over $10,000) under 28 U.S.C. 524(c)(2), and purchase of evidence (including the authority to pay more than $100,000) under 28 U.S.C. 524(c)(1)(F).

3. A new paragraph (d) is added in § 0.101 to read as follows:

§ 0.101 Specific functions.

* * * * *

(d) Payment of awards (including those over $10,000) under 28 U.S.C. 524(c)(2) and purchase of evidence (including the authority to pay more than $100,000) under 28 U.S.C. 524(c)(1)(F).

Dated: February 13, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86–4433 Filed 3–3–86; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[FCC 86–86]

Amendments of the Commission's Rules; Rulemaking Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to clarify §§ 0.411(b)(2), 0.445 (b) and (c), and 1.412(a)(1) of the Commission's rules by adding language which specifies that summaries of Notices of Proposed Rulemaking and other rulemaking decisions adopted by the Commission constitute rulemaking documents for purposes of **Federal Register** publication. In addition, §§ 0.416, 0.445(b), 0.445(c), and 0.445(d) of the rules are being amended to enable the Commission to reduce the amount it publishes in the *FCC Reports*. These actions are necessary in order to accommodate current and future budgetary restrictions.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Tricarico, Secretary, Federal Communications Commission, Washington, DC 20554 (202) 632–6410.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Federal Communications Commission.

47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

Order

In the Matter of amendment to clarify §§ 0.411(b)(2), 0.416, 0.445(b), 0.445(c), 0.445(d) 1.412(a)(1), and 0.430 of the Commission's Rules.

Adopted: February 21, 1986.
Released: February 24, 1986.

By the Commission.

1. By this Order the Commission decides that, commencing immediately, it will begin publishing in the **Federal Register** summaries of most policy statements of general applicability, and Notices of Proposed Rulemaking and Reports and Orders adopted in rulemaking proceedings. The Commission's general practice has been to publish in the **Federal Register** the full

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text of all NPRMs, rulemaking decisions, and policy statements. However, due to budgetary constraints and the rising cost of Federal Register publication, the Commission has concluded that Federal Register publication of detailed summaries in lieu of the full text of Commission decisions will be a reasonable and cost-efficient method of apprising the public of these actions.[1]

2. The published summaries will be sufficiently detailed to inform members of the public of issues raised in a policy statement, or proposed or final rulemaking decision, that might be of particular concern and will advise how copies of the complete decision may be obtained.[2] In proceedings addressing issues of exceptional complexity or magnitude, the Commission may determine that Federal Register publication of the full text of particular policy statements or rulemaking decisions will be in the public interest.

3. Current Commission rules call for Federal Register publication of Notices of Proposed Rulemaking and other rulemaking "documents." The Commission is clarifying its rules to make explicit that summaries of NPRMs and other rulemaking decisions adopted by the Commission, constitute rulemaking documents for purposes of Federal Register publication. *See, e.g.*, 47 CFR 0.411(b)(2), 0.445(c), and 412(a)(1). The Commission will also amend its rules to allow it to publish in the Federal Register summaries of policy statements of general applicability. *See* 47 CFR 0.445(d).

4. Section 4(m) of the Communications Act of 1934 provides:

> The Commission shall provide for the *publication of its reports and decisions in such form and manner as may be best adapted for public information and use* and such authorized publication shall be competent evidence of the reports and decisions of the Commission contained in all courts of the United States and of the several States without further proof or authentication thereof.

47 U.S.C. 154(m) (emphasis added). Section 0.445(b) of the Commission's rules implements this mandate by requiring the publication of all final decisions and other documents having precedential or historical significance in the *FCC Reports*. Section 0.445(d) requires the Commission to publish in the Federal Register and *FCC Reports* policy statements and interpretations intended to have legal effect and general applicability. Section 0.445(e) provides that documents published in the Federal Register, *FCC Reports*, or *Pike and Fischer* may be relied upon by the Commission or any private party in any matter. Documents not published in one of these sources may not be relied upon except as against a party with actual notice.

5. The Commission is also amending §§ 0.416, 0.445(b), 0.445(c), and 0.445(d) of the rules to permit it to reduce the material it publishes in the *FCC Reports*. Consistent with the amended rules, the Commission will publish in the *FCC Reports* only those rulemaking decisions and policy statements summarized in the Federal Register and *not* published in *Pike and Fischer*. The Commission believes that these amendments are within the discretion permitted the Commission under section 4(m) to designate the means by which its decisions shall best be made available to the public.[3]

6. Prior notice and public procedures are not required because this action is interpretive and procedural in nature. *See* 5 U.S.C. 553(b)(3)(B), 47 CFR 1.412(b)(3) and (5).

7. Accordingly, it is ordered, pursuant to authority provided by sections 4(i), 4(j), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j) and 303(r), that the Commission's Rules are amended by clarification as indicated in the attached Appendix.

8. It is further ordered that this Order is effective upon publication in the Federal Register. *See* 5 U.S.C. 553(d)(2), 47 CFR 1.427(b).

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 0—[AMENDED]

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended by clarification as follows:

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 0.411, paragraph (b)(2) is revised to read as follows:

Printed Publications

§ 0.411 General reference materials.

* * * * *

(b)(2) *The Federal Register.* As rules are adopted, amended, or repealed, the changes are published in the Federal Register, which is published daily except on legal holidays. Notices of proposed rule making, other rule making documents, statements of general policy, interpretations of general applicability, and other Commission documents having general applicability and legal effect are also published in the Federal Register. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of Federal Register publication. The Federal Register is fully indexed and contains numerous findings aids.

3. Section 0.416 is revised to read as follows:

§ 0.416 The Federal Communications Commission Reports.

All documents adopted by the Commission having precedential or historical significance that are not published in a nationally distributed, comprehensive reporter of FCC decisions are published in the FCC Reports. The FCC Reports are published monthly in pamphlet form. The pamphlets are available on a subscription basis. Earlier volumes contain Commission decisions and reports but are less comprehensive than those currently being published. Supplements (to those earlier volumes) containing additional documents having precedential or historical significance will be issued from time to time. Current bound volumes contain indexes, tables of cases and other finding aids.

4. In § 0.445, paragraphs (b), (c) and (d) are revised to read as follows:

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

* * * * *

(b) All final decisions and other documents currently adopted by the Commission having precedential or historical significance are published in the FCC Reports or Pike and Fischer Radio Regulations.

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[1] The Commission will continue Federal Register publication of the actual text of final rule appendices.

[2] The full text of Commission decisions are available on the date of release from the Office of Congressional and Public Affairs. Thereafter, the full texts will be available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC, or as otherwise specified in the summary published in the Federal Register. The complete texts of rulemaking decisions and policy statements may also be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

[3] *Pike and Fischer* is a private publishing concern currently recognized in § 0.445(e) of the rules as an official reporter of Commission decisions. The Commission will amend its rules to include other sources that enable the Commission to meet its section 4(m) obligations as those reporters are brought to its attention. To enable the Commission to satisfy the requirements of section 4(m), those publications would have to be nationally available and comprehensive reporters of FCC decisions.

(c) All rulemaking documents are published in the Federal Register. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of Federal Register publication. See § 1.412(a)(1). The complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, or as otherwise specified in the rulemaking document published in the Federal Register. The complete texts of rulemaking decisions may also be purchased from the Commission's duplicating contractor.

(d) Formal policy statements and interpretations designed to have general applicability and legal effect are published in the Federal Register, Pike and Fischer, or the FCC Reports. See §§ 411(b)(2) and 0.416. Commission decisions and other Commission documents not entitled formal policy statements or interpretations may contain substantive interpretations and statements regarding policy, and these are published as part of the document in the FCC Reports or Pike and Fischer. General statements regarding policy and interpretations furnished to individuals, in correspondence or otherwise, are not ordinarily published. A series of individual interpretations may be collected and published in the Federal Register, Pike and Fischer, or the FCC Reports.

PART 1—[AMENDED]

5. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

6. In § 1.412, paragraph (a)(1) is revised to read as follows:

§ 1.412 Notice of proposed rulemaking.

* * * * *

(a)(1) Notice is ordinarily given by publication of a "Notice of Proposed Rule Making" in the Federal Register. A summary of the full decision adopted by the Commission constitutes a "Notice of Proposed Rulemaking" for purposes of Federal Register publication.

7. § 1.430 is revised to read as follows:

§ 1.430 Proceedings on a notice of inquiry.

The provisions of this subpart also govern proceedings commenced by issuing a "Notice of Inquiry," except that such proceedings do not result in the adoption of rules, and Notices of Inquiry are not required to be published in the Federal Register.

[FR Doc. [illegible] Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286]

MTS and WATS Market Structure; Access Charges and Tariff Provisions

AGENCY: Federal Communications Commission.

ACTION: Delay of effective date.

SUMMARY: This action delays the effective date of the revised separations procedures (Decision and Order FCC 86-6; 51 FR 2706, January 21, 1986) adopted by the Commission concerning the allocation of equal access costs to May 1, 1986. The Commission is taking this action in order to allow the carriers more time to revise their separations procedures and file tariffs to reflect the changes in Part 67 of the Commission's rules. This will result in a more orderly schedule for implementation of these changes.

DATES: This document is effective March 4, 1986. The effective date of Decision and Order FCC 86-6 is delayed until May 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau, (202) 632-9342.

Order

In the matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket Nos. 78-72 and 80-286.

Adopted: February 20, 1986.
Released: February 21, 1986.
By the Chief, Common Carrier Bureau.

1. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West), the Bell Atlantic telephone companies (Bell Atlantic), and Southwestern Bell Telephone Company (Southwestern) have filed petitions seeking an extension of the effective date of the revised separations procedures for equal access costs recently adopted in this Commission's January 7, 1986, *Decision and Order* in this proceeding.[1]

2. In the *Order*, this Commission adopted the Joint Board's recommendations concerning the separations treatment of equal access and network reconfiguration (EANR) costs. In its *Recommended Decision*[2] the Joint Board found that the existing separations procedures for equal access costs resulted in an excessive allocation of costs to the state jurisdiction and recommended that equal access costs, as defined by the Joint Board, be allocated between the state and interstate jurisdictions based on access minutes of use.[3] At the same time, the Joint Board concluded that the existing separations procedures properly allocate network reconfiguration costs, and, therefore, did not need to be changed. In adopting the Joint Board's recommendations, this Commission provided that the changes in the separations procedures for allocation of equal access costs would become effective 30 days after publication of the *Order* in the Federal Register i.e., on February 20, 1986.[4]

3. US West states that since their separations data is normally processed on a monthly basis, it would be very expensive for them to make the changes in their accounting system necessary to implement the revised separations procedures in the middle of the month. In addition, US West notes that the new separations changes allocate a greater portion of equal access costs to the interstate jurisdiction than the pre-existing procedures, necessitating the filing of revised access tariffs to recover these increased costs. In light of the fact that the minimum period of public notice for such tariffs filings is 45 days,[5] US West requests that the effective date of the changes in the separations procedures for equal access costs be deferred to April 1, 1986. Bell Atlantic requests an effective date of May 1, 1986, citing the same considerations as US West. Southwestern requests that the Commission defer the effective date of the new separations procedures until March 1, 1986, to avoid the administrative burdens which would be involved in implementing separations changes in the middle of the month. In explaining the very limited nature of the deferral which it requests, Southwestern Bell states that it does not believe that separations changes and implementing

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[1] CC Docket Nos. 78-72 and 80-286, 51 FR 2706 (January 21, 1986).

[2] *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 47705 (November 20, 1985).

[3] This measure of relative usage would include all toll usage except BOC intraLATA toll usage.

[4] *Erratum*, CC Docket Nos. 78-72 and 80-286, FCC Mimeo No. 2020, January 16, 1986.

[5] *See* 47 CFR 61.38(c)(2).

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tariff revisions must become effective concurrently in all circumstances. However, Southwestern states that it does not object to an extension of the effective date to April 1, 1986, as requested by US West.

4. The Bureau is waiving the implementation of the revised separations procedures for allocation of equal access costs until May 1, 1986, in order to avoid the administrative burdens associated with implementing these separations changes in the middle of the month and to allow the carriers adequate time to file implementing tariff revisions on 45 days' public notice.

5. It is hereby ordered that the implementation of the revised separations procedures for equal access costs adopted by the Commission, is waived until May 1, 1986.

6. It is further ordered, that the Bell Atlantic Petition for Reconsideration, the US West Petition for Waiver and the Southwestern Petition to Defer Effective Date are granted to the extent indicated herein.[6]

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-4389 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

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[6] This action is taken pursuant to the authority contained in sections 4 (i) and (j) and 221(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 221(c) (1984).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51100-5180]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of amounts of the pollock apportioned to domestic annual processing (DPA) and reserve in the Western/Central Regulatory Area to joint venture processing (JVP) under provisions of the Fishery Management Plan For Groundfish of the Gulf of Alaska (FMP). This action is necessary to provide sufficient pollock as a target species. This reapportionment is intended as a management measure that promotes full utilization of Gulf of Alaska groundfish.

DATES: This notice is effective February 27, 1986. Comments on this action are invited until March 31, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at § 672.20(c)(ii) authorize the apportionment of surplus amounts of the reserve to domestic annual harvest (DAH) if the Director, Alaska Region, NMFS (Regional Director), after consultation with the North Pacific Fishery Management Council (Council), has determined that these amounts of the reserve will be harvested by domestic fishermen during the remainder of the year. Section 672.20(c)(ii)(3) further authorizes the Regional Director to allocate any increases or decreases in DAH between the DAP and JVP components of DAH. Interim initial specifications for Gulf of Alaska groundfish (51 FR 956, January 9, 1986), were modified later in (51 FR 5198, February 12, 1986).

The Regional Director has determined that an additional 18,000 metric tons (mt) of pollock in the Western/Central Regulatory Area of the Gulf of Alaska will be harvested by JVP fishermen during the remainder of the year and that it is necessary immediately to apportion 15,960 mt from the reserve and 2,040 mt from the DAP component of DAH to JVP in order to avoid disruption of domestic JVP fisheries. He also has determined that the 2,040 mt to be transferred from DAP will not be taken by U.S. DAP fishermen. Consequently, 15,960 mt of pollock in the Gulf of Alaska is transferred from reserve to DAH and allocated to JVP and 2,040 mt of pollock is transferred from DAP to JVP, as shown in the table below. The entire 18,000 mt may be harvested in the area known as Shelikof Strait. The Regional Director takes this action after consultation with the Council. He makes no change in the total allowable level of foreign fishing (TALFF).

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT OF DHA TO RESERVE

(Figures are in metric tons)

	Current	This action	Revised
Pollock: Western/Central Regulatory Area (Optimum yield = 305,000):			
Reserve	15,960	−15,960	0
TALFF	40	0	40
DAH	289,000	+15,960	304,960
DAP	204,000	−2,040	201,960
JVP	85,000	+18,000	103,000

Classification

This action is taken under 50 CFR Part 672 and complies with Executive Order 12291.

In view of the need to avoid disruption of domestic fisheries, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: February 27, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-4679 Filed 2-27-86; 5:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Merger of Credit Unions; Proposed Revision

AGENCY: National Credit Union Administration (NCUA).

ACTION: Correction to preamble of proposed rule.

SUMMARY: On Thursday, January 30, 1986, a proposed rule entitled "Merger of Credit Unions; Proposed Revision" was published in the Federal Register (51 FR 3793). The statement regarding Office of Management and Budget (OMB) clearance of information collection requirements in the regulation was incorrectly published in the proposed rule. This correction is necessary so that an accurate statement may be substituted for the incorrect statement published with the proposed rule on January 30, 1986.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of the General Counsel, at the above address; telephone: (202) 375-1030 or Wilmer A. Theard, Director, Administrative Procedures, at the above address; telephone: (202) 357-1055.

The paragraph entitled Paperwork Reduction Act in the third column on page 3793 of the Federal Register dated January 30, 1986, should be deleted and the following paragraph substituted for it.

Paperwork Reduction Act

The proposed rule will be submitted to the Office of Management and Budget for clearance of any information collection requirements that appear therein. Any information collection requirements in the final rule will not take effect until they have been cleared by the Office of Management and Budget. Comments regarding information collection requirements contained in the proposed rule should be forwarded directly to the OMB Desk Officer indicated below: OMB, Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Robert Neal.

Dated: February 22, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. [illegible] Filed 3-3-86; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-145-AD]

Airworthiness Directives; British Aerospace Viscount Model 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the aircraft hydraulic system cut out valve on British Aerospace (BAe), Aircraft Group, Viscount Model 800 series airplanes. This action is taken as a result of a report of an inadvertent withdrawal of the mechanical nose landing gear downlock on a Viscount Model 700 series airplane, which caused the nose landing gear to collapse. Since the Viscount Model 800 series airplanes use this same part, the potential exists for these airplanes also to be subject to this failure.

DATE: Comments must be received on or before April 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-145-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-145-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A recent investigation of a nose gear collapse on a Vickers Viscount 745 D airplane revealed that the collapse was the result of a failure of the cut out valve, in conjunction with a high flow rate in the gear return line. This caused the downlock to withdraw. This same design is also used on the Viscount Model 800 series airplanes.

The FAA issued AD 86-02-05, Amendment 39-5204 (50 FR 53129; December 30, 1985), which requires

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modification of the aircraft hydraulic cut out valve on Viscount Model 700 Series airplanes, in accordance with Standard Products Modification Standard SA 3490, dated December 16, 1959. Since the Model 800 series airplanes use the same part as the Model 700 series, the FAA has determined that, in order to preclude the potential for the same type of failure of the cut out valve, a similar modification is necessary for the Model 800.

Since these conditions are likely to exist or develop on other airplanes of this model, an AD is proposed that would require modification of the hydraulic system cut out valve installed on Viscount Model 800 series airplanes, in accordance with Automotive Products Modification Standard SA 3490, dated December 16, 1959.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Vickers Viscount Model 800 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished. To prevent nose landing gear collapse as a result of a faulty hydraulic cut out valve, accomplish the following:

A. Within the next 1,000 hours time-in-service or nine months after the effective of this AD, whichever occurs first, modify the cut out valve, Part Number AIR 41910, in accordance with Automotive Products Modification Standard SA 3490, dated December 16, 1959 (reference BAe Technical News Sheet No. 232, Issue 1, dated August 5, 1985).

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 25, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4590 Filed 3–3–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AWP–38]

Proposed Alteration of San Diego, CA, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the San Diego, CA, Terminal Control Area (TCA). It is intended to widen the non-TCA airspace along the California shoreline between La Jolla and Del Mar where general aviation traffic tends to congregate and simplify definition of TCA boundaries for pilots by reference to navigational aid radials where possible. This proposal would also lower the ceiling of the San Diego TCA from 12,500 feet MSL to 10,000 feet MSL; reduce the overall lateral size of the existing TCA; and encompass airspace east and northeast of Miramar Naval Air Station (NAS) to contain high performance aircraft arriving and departing Miramar NAS.

DATES: Comments must be received on or before May 5, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWP–38, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWP–38." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket

both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting in order to receive additional input with respect to the proposal. The meeting place and time is listed below. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The meeting will begin at 7:00 p.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space available basis. The FAA representative may accelerate the meeting agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at the meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Public Meeting Schedule

The schedule for the meeting is as follows:

Date: April 29, 1986, 7:00 p.m. to 10:00 p.m.
Place: Convair Recreation Association Pavilion, 9115 Clairmont Mesa Boulevard, San Diego, CA 92123
Agenda:
7:00 p.m.–7:15 p.m.—Presentation of Meeting Procedures
7:15 p.m.–7:30 p.m.—FAA Presentation of Proposal
7:30 p.m.–10:00 p.m.—Public Presentations and Discussion

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the San Diego TCA as follows:

1. Widen the visual flight rules (VFR) corridor along the California shoreline. The lower and upper altitude limits of the corridor would remain the same (above 3,300 feet MSL, below 4,700 feet MSL). The widening is proposed to help alleviate a potential hazardous condition resulting from the north/south general aviation VFR traffic that tends to congregate in this area.

2. Simplify definition of TCA boundaries by reference to navigational aid radials where possible. This action is intended to aid VFR pilots in discerning boundaries of the TCA for flight operations and flight planning purposes. Except for some dividing lines between areas within the TCA, a few references to runway extensions and control zones, and some references to some arcs referenced to distance measuring equipment (DME), TCA boundaries are defined by radials of very high frequency omni-directional radio range tactical air navigational aid (VORTAC) facilities.

3. Lower the ceiling of the San Diego TCA from 12,500 feet MSL to 10,000 feet MSL. The San Diego area has little comparative overflight activity. Enroute aircraft operations account for less than 5 percent of the traffic in the area. A lowering of the top of the TCA from 12,500 feet MSL to 10,000 feet MSL is not expected to have any operational or safety impacts.

4. Reduce the overall lateral size of the existing TCA. Under the proposal, the lateral size would be reduced without deviating from basic TCA configuration criteria designed to contain all published instrument procedures once an aircraft's flight track enters the TCA. The existing TCA contains 19 subareas (Areas A through S). The proposed TCA contains 17 (Areas A through Q). The southern and western boundaries are unchanged from the existing boundaries.

5. Encompass airspace east and northeast of Miramar NAS to contain high performance aircraft arriving and departing that airport. Miramar NAS is one of the two primary airports in the San Diego TCA. The additional area encompassed into the TCA adds airspace in areas of known hazard to aircraft operating into and out of the primary airports. Over 90 percent of the near midair collision reports received in the San Diego area over the past two years occurred in airspace that will be encompassed in the proposed TCA.

Concurrent with the above modification of the TCA, the FAA plans to cancel the San Diego Terminal Radar Service Area (TRSA). In consideration of the newly configured TCA, as coordinated with local users, a more efficient use of available airspace is effected which makes the TRSA unnecessary.

The proposal to modify the San Diego TCA was originally submitted by Mr. Robert F. Bourque, a San Diego area pilot. Following discussions between FAA representatives and Mr. Bourque, revised proposals were drafted and subsequently circulated to all local FAA air traffic control (ATC) facilities, the U.S. Navy at Miramar NAS and North Island NAS, and the FAA's Terminal Radar Approach Control Facility (TRACON) Advisory Board for comments. All requests for changes were received, including Mr. Bourque's, and a revised plan was presented at the Los Angeles Air Traffic Users Forum and accepted without comment. In addition, local aviation interests were briefed in September of 1985. This proposal was designed based on all of the user input received as a result of the referenced original and altered proposals, meetings, and briefings.

This proposed amendment to the San Diego TCA entails no increase in height of TCA airspace, no impact on air traffic or air navigational facilities, no need for additional equipment or personnel, no change in any IFR arrival or departure routes, no foreseen adverse economic or environmental impact, and no change to flight patterns.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the

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Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

List of Subjects in 14 CFR Part 71

Aviation Safety, Terminal Control Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.401(b) is amended as follows:

San Diego, CA (Revised)

Primary Airports

San Diego, CA. (Linbergh Field), (lat. 32°43'58"N., long. 117°11'34"W.). Miramar NAS, Miramar, CA. (lat. 32°52'30"N., long. 117°08'15"W.).

Boundaries

Based on the Julian (JLI) VORTAC (lat. 33°08'26"N., long. 116°35'09"W.) and Oceanside (OCN) VORTAC (lat. 33°14'26"N., long. 117°25'01"W.):

Southern TCA Boundary

A straight line beginning at the intersection of Julian 185°T(170°M) radial and a point 3 miles north of the Mexico Border to lat. 32°33'07"N., long. 117°30'45"W.

Western Boundary

Eastern edge of Warning Area 291 (W–291).

Area A. That airspace extending upward from 4,800 feet to and including 10,000 feet. MSL beginning at the intersection of the Oceanside VORTAC 225°T(210°M) radial and the eastern edge of W–291; then clockwise via the Oceanside 225°T(210°M) radial to intercept the Julian VORTAC 265°T(250°M) radial; then via the Julian 265°T(250°M) radial to intercept the Oceanside 115°T(100°M) radial; then via the Oceanside 115°T(100°M) radial to the Julian 217°T(202°M) radial; then via the Julian 217°T(202°M) radial to the Oceanside 121°T(106°M) radial; then northwesterly via the Oceanside 121°T(106°M) radial to the Julian 247°T(232°M) radial; then southwesterly via the Julian 247°T(232°M) radial to the Oceanside 135°T(120°M) radial; then northwesterly via the Oceanside 135°T(120°M) radial to the Mission Bay VORTAC 008°T(353°M) radial; then southerly via the Mission Bay 008°T(353°M) to a point that intercepts a visual reference to Miramar NAS Runway 28 centerline extended; then via the Runway 28 centerline to intercept the Julian 259°T(244°M) radial; then via the Julian 259°T(244°M) radial to the Oceanside 200°T(185°M) radial; then southerly via the Oceanside 200°T(185°M) radial to the Mission Bay 279°T(264°M) radial; then westerly via the Mission Bay 279°T(264°M) radial to the eastern edge of W–291; then northerly along the eastern edge of W–291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the eastern edge of W–291 and the Mission Bay 279°T(264°M) radial; then easterly via the Mission Bay 279°T(264°M) radial to the Oceanside 200°T(185°M) radial; then northerly via the Oceanside 200°T(185°M) radial to the Julian 259°T(244°M) radial; then via the Julian 259°T(244°M) radial to the Oceanside 182°T(167°M) radial; then southerly via the Oceanside 182°T(167°M) radial to the Poggi VORTAC 290°T(276°M) radial; then via the Poggi 290°T(276°M) radial to intercept the extension of the control zone division line that separates Lindbergh Field and North Island NAS; then via this line on an easterly heading to intercept the Oceanside 171°T(156°M) radial; then southerly via the Oceanside 171°T(156°M) radial to the Poggi 279°T(265°M) radial; then westerly via the Poggi 279°T(265°M) radial to the eastern edge of W–291; then northerly along the eastern edge of W–291 to the point of beginning.

Area C. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 182°T(167°M) radial and a visual extension of Miramar NAS Runway 28 centerline; then easterly via the Runway 28 centerline extension to intercept the Oceanside 165°T(150°M) radial; then southerly via the Oceanside 165°T(150°M) radial and the Mission Bay 310°T(295°M) radial to Mission Bay; then westerly via the Mission Bay 279°T(264°M) radial to intercept the Oceanside 171°T(156°M) radial; then via the Oceanside 171°T(156°M) radial southerly to intersect the extension of the control zone division line between Lindbergh Field and North Island NAS; then westerly on the extension line to intercept the Poggi 290°T(276°M) radial; then westerly via the Poggi 290°T(276°M) radial to intercept the Oceanside 182°T(167°M) radial; then northerly via the Oceanside 182°T(167°M) radial to the point of beginning.

Area D. That airspace extending upward from 1,500 feet MSL to and including 2,500 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 165°T(150°M) radial and a visual extension of Miramar NAS Runway 28 centerline; then southeasterly via the Runway 28 centerline to intercept the Mission Bay 008°T(353°M) radial; then southerly via the Mission Bay 008°T(353°M) radial to intersect a visual extension of Montgomery Field Runway 28R centerline; then via the Runway 28R centerline to intercept the Oceanside 165°T(150°M) radial; then northerly via the Oceanside 165°T(150°M) radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 008°T(353°M) radial and the Oceanside 135°T(120°M) radial; then southeasterly via the Oceanside 135°T(120°M) radial to the Julian 247°T(232°M) radial; then southwesterly via the Julian 237°T(232°M) radial to the Mission Bay 008°T(353°M) radial; then northerly via Mission Bay 008°T(353°M) radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 008°T(353°M) radial and the visual extension of Miramar NAS Runway 28 centerline; then southeasterly via the Runway 28 centerline to intercept the extension of the control zone separation of Montgomery Field and Miramar NAS; then westerly via this separation line to intercept a visual extension of the Montgomery Field Runway 28 centerline; then via the Runway 28R centerline to intercept the Mission Bay 008°T(353°M) radial; then northerly via the Mission Bay 008°T(353°M) radial to the point of beginning.

Area G. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the Oceanside 135°T(120°M) radial and the Julian 247°T(232°M) radial; then southeasterly via the Oceanside 135°T(120°M) radial to intercept the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to intersect the visual extension of Miramar NAS Runway 10/28 centerline; then via the Runway 10/28 centerline to intercept the Mission Bay 008°T(353°M) radial; then northerly via the Mission Bay 008°T(353°M) radial to the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 135°T(120°M) radial and the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to intercept the Oceanside 130°T(115°M) radial; then southeasterly via the Oceanside 130°T(115°M) radial to the Poggi 006°T(352°M) radial; then southerly via the Poggi 006°T(352°M) to the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to the Oceanside 135°T(120°M) radial then northwesterly via the Oceanside 135°T(120°M) radial to the point of beginning.

Area I. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 130°T(115°M) radial and the Julian 247°T(232°M) radial; then northeasterly via the Julian 247°T(232°M) radial to the Oceanside 121°T(106°M) radial; then southeasterly via the Oceanside 121°T(106°M) radial to the Mission Bay 070°T(055°M) radial; then southwesterly via the Mission Bay 070°T(055°M) radial to the Poggi 006°T(352°M) radial; then northerly via the Poggi 006°T(352°M) radial to the Oceanside 130°(115°M) radial then via the Oceanside 130°T(115°M) radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay VORTAC; then northwesterly via the Mission Bay 310°T(295°M) radial to the Oceanside 165°T(150°M) radial; then northerly via the Oceanside 165°T(150°M) radial to the westerly extension of the Montgomery Field Runway 285 centerline; then easterly via the Runway 28R centerline to the separation line between Montgomery Field and Miramar NAS, Control Zones; then via the control zone separation line to the Mission Bay 070°T(055°M) radial; then northeasterly via the Mission Bay 070°T(055°M) radial to the Oceanside 130°T(115°M) radial; then southeasterly via the Oceanside 130°T(115°M) radial to the Julian 204°T(189°M) radial; then southerly via the Julian 204°T(189°M) radial to the Mission Bay 099°T(084°M) radial; then westerly via the Mission Bay 099°T(084°M) radial to the point of beginning.

Area K. That airspace extending upward from 5,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Mission Bay 070°T(055°M) radial and the Oceanside 121°T(106°M) radial; then southeasterly via the Oceanside 121°T(106°M) radial to the Julian 185°T(170°M) radial; then southerly via the Julian 185°T(170°M) radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Julian 204°T(189°M) radial; then northerly via the Julian 204°T(189°M) radial to the Oceanside 130°T(115°M) radial; then northwesterly via the Oceanside 130°T(115°M) radial to intercept the Mission Bay 070°T(055°M) radial; then northeasterly via th Mission Bay 070°T(055°M) radial to the point of beginning.

Area L. That airspace extending upward from the surface to 10,000 feet MSL beginning at the intersection of the Oceanside 171°T(156°M) radial and the Mission Bay 279°T(264°M) radial; then easterly via the Mission Bay 279°T(264°M) radial and the Mission Bay 099°T(084°M) radial to the Mission Bay 10 DME, then clockwise via the Mission Bay 10 DME arc to the Poggi 300°T(286°M) radial; then northwesterly via the Poggi 300°T(286°M) radial to intersect the division line that separates the Lindbergh Field and North, Island NAS, Control Zones; then westerly along this line extended to intercept the Oceanside 171°T(156°M) radial; then northerly via the Oceanside 171°T(156°M) radial to the point of beginning; excluding (VFR Corridor) that airspace from 3,300 feet to 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; then southeasterly on a line direct to the Hotel del Coronado (south end of Coronado Island); then via the Silver Strand Boulevard to the Mission Bay 10 DME; then counterclockwise via the Mission Bay 10 DME to intersect Interstate 5 (I–5); then northerly via I–5 to the intersection of Highway 94; then on a northerly heading direct to the intersection of the interchange of I–5 and I–805 to intersect the Mission Bay 099°T(084°M) radial; then westerly via Mission Bay 099°T(084°M) radial to Mission Bay to the point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/10 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Mission Bay 13 DME; then clockwise via the 13 DME arc to the Poggi 300°T(286°M) radial; then via the Poggi 300°T(286°M) radial to the Mission Bay 10 DME; then northerly via the 10 DME arc to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/13 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Mission Bay 15 DME; then clockwise via the Mission Bay 15 DME arc to the Poggi 300°T(286°M) radial; then via the Poggi 300°T(286°M) radial to the Mission Bay 13 DME; then northerly via the 13 DME to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL beginning at the Mission Bay 099°T(084°M) radial/15 DME; then easterly via the Mission Bay 099°T(084°M) radial to the Julian 204°T(189°M) radial; then southerly via the Julian 204°T(189°M) radial to intersect a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the Poggi 120°T(106°M) radial; then northwesterly via the Poggi 120°T(106°M)/300°T(286°M) radial to the Mission Bay 15 DME; then northerly via the Mission Bay 15 DME to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Poggi 279°T(265°M) radial and the eastern edge of W–291; then easterly via the Poggi 279°T(265°M) radial to intercept the Mission Bay 10 DME; then northeasterly via the Mission Bay 10 DME to the Poggi 300°T(286°M) radial; then southeasterly via the Poggi 300°T(286°M)/120°T(106°M) radial to intercept a line that is 3 NM north and parallel to the U.S./Mexican Border; then westerly via this line to the eastern edge of W–291; then northerly via the eastern edge of W–291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Oceanside 171°T(156°M) radial and an extension of the division line separating the Lindbergh Field and North Island NAS, Control Zones; then easterly along that division line to intercept the Poggi 300°T(286°M) radial; then southeasterly via the Poggi 300°T(286°M) radial to intercept the Mission Bay 10 DME; then clockwise via the Mission Bay 10 DME arc to intercept the Poggi 279°T(265°M) radial; then westerly via the Poggi 279°T(265°M) radial to the Oceanside 171°T(156°M) radial; then northerly via the Oceanside 171°T(156°M) radial to the point of beginning, excluding airspace of the VFR Corridor (See Area "L").

Issued in Washington DC on February 26, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–4591 Filed 3–3–86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Social Security Benefits; U.S. Residence Requirements for Non-Resident Aliens and Deductions for Work Outside the U.S.

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration (SSA) proposes to amend two regulations on paying benefits to persons living or working outside the United States (U.S.). The first amendment would provide that more than 45 hours of remunerative activity performed in a month outside the U.S. by an old-age beneficiary will cause deductions to be made from the benefits of dependents either entitled on or deemed entitled on that old-age beneficiary's earnings record. This amendment reflects section 2661(g)(1) of Pub. L. 98–369, which was effective for foreign work performed by the old-age beneficiary beginning in September 1984. The second amendment would provide that an alien beneficiary who is outside the U.S. for more than 6 consecutive months and who would otherwise be paid dependent's or survivor's benefits under certain existing provisions must also satisfy a length-of-U.S.-residence requirement in order to be paid these benefits. The amendment reflects section 340 of Pub. L. 98–21, which was effective for aliens first eligible for dependent's or survivor's benefits after December 1984.

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to the Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during those same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–3408.

SUPPLEMENTARY INFORMATION: These proposed amendments would revise two SSA regulations for paying benefits to persons living outside the U.S. and to persons entitled (or deemed entitled) to benefits on the earnings records of persons engaged in non-covered work outside the U.S. Both proposed amendments reflect amendments to the Social Security Act (the Act). The provisions of these proposed amendments are as follows:

I. Foreign Work Test

We propose to amend the foreign work test described in section 404.417. The term "foreign work test" means the amount of noncovered work a Social Security beneficiary can perform while outside the U.S. before we make deductions from his or her benefits and from the benefits of dependent beneficiaries entitled or deemed entitled on his or her earnings record. The foreign work test deductions apply to the beneficiary who is entitled to benefits under title II of the Act and who performs non-covered outside the U.S. unless he or she is—

(a) Age 70 or older; or

(b) Receiving—

(1) Disability insurance benefits; or

(2) Child's, widow's or widower's benefits based on disability.

The foreign work test deductions also apply to dependent's benefits when the person (who is under age 70) on whose earning's record the dependent is entitled (or deemed entitled) engages in non-covered work outside the U.S. However, the dependent's deductions based on that worker's activity do not apply to wife's or husband's benefits that are payable beginning with January 1985 to a spouse divorced for at least 2 years from a worker who is either eligible for, or is receiving old-age benefits. (See 50 FR 5264 published in the Federal Register on February 7, 1985.)

We propose to amend paragraph (b) of § 404.417 by providing that SSA will make deductions from a dependent beneficiary's benefits for a month if the old-age beneficiary on whose earnings record the dependent is entitled or deemed entitled works "in excess of 45 hours" in that month. This amendment implements section 2661(g)(1) of Pub. L. 98–369—"The Deficit Reduction Act of 1984"—which changed, beginning with September 1984, the monthly foreign work test applied to dependent beneficiaries in the case of work by the old-age beneficiary from a 7-day test to an "in excess of 45 hours" test. This change affects the following categories of dependent beneficiaries: (1) A beneficiary entitled to wife's, husband's (unless a divorced spouse as previously described), or child's benefits on the earnings record of an old-age beneficiary when the old-age beneficiary performed the work; and (2) A beneficiary, who is married to an old-age insurance beneficiary who performed the foreign work but who is entitled on someone else's earnings record to mother's or father's benefits or child's benefits based on disability.

This amendment would correct an anomalous situation created when section 203(c) of the Act was amended by enactment of section 309(g) of Pub. L. 98–21—"The Social Security Amendments of 1983" on April 20, 1983. Section 309(g) substitutes the "in excess of 45 hours" work test for a 7-day work test in section 203(c) of the Act. It applies to benefits payable for months beginning with *May 1983*. However, because section 203(d) of the Act was not amended along with section 203(c), this new foreign work test applied in imposing deductions from the working beneficiary's benefits, but did not apply in imposing deductions from the benefits of that beneficiary's dependents on account of that beneficiary's work. Thus, an "in excess of 45 hours" test applied when making deductions from the old-age beneficiary's benefits while a 7-day foreign work test applied when making deductions from the dependent's benefits. This situation was corrected by enactment of section 2661(g)(1) of Pub. L. 98–369 on July 18, 1984 which amended section 203(d) of the Act to also provide an "in excess of 45 hours" foreign work test for deductions from dependents' benefits effective for months beginning with *September 1984*. While the "in excess of 45 hours" foreign work test now applies in determining whether to impose deductions on the benefits of both the old-age beneficiary and that person's dependents (based on the old-age beneficiary's work), this proposed regulation reflects different effective dates for the two categories of beneficiaries because of the different effective dates of the two legislative amendments.

II. U.S. Residence Requirements—Alien Outside the U.S.

(a) Aliens to Whom These Residence Requirements Apply

This amendment would set forth an added requirement for paying Social Security dependent's or survivor's benefits to a person who is not a U.S. citizen or U.S. national (hereinafter referred to as an alien) and who is outside of the United States for more than 6 consecutive months. It reflects

section 340 of Pub. L. 98–21—"The Social Security Amendments of 1983"—which added paragraph (11) to section 202(t) of the Act, providing a length-of-U.S.-residence-requirement for paying dependent's or survivor's benefits to certain aliens who are first eligible after December 1984. The statute and the proposed regulation amendment impose the residence requirement on an alien who would otherwise be paid benefits under section 202(t)(2) or of the Act because he or she—

1. Is a citizen of a country which has a pension or social insurance system of general application that pays periodic benefits because of old-age, retirement, or death to qualified U.S. citizens even though they are not citizens of and do not reside in such country; or

2. Is entitled to benefits on the earnings record of a worker who—

a. Resided in the U.S. for a period, or periods, of 10 or more years;

b. Earned 40 or more quarters of coverage; or

c. Worked in employment covered by the Railroad Retirement Act while in the U.S. and the work is treated as employment covered by the Social Security Act; or

3. Is outside the U.S. because he or she is in the active military or naval service of the U.S.

(b) U.S. Residence Requirements Apply Only to Dependent's and Survivor's Benefits

Under this proposed rule, the U.S. residence requirement is a requirement that must be met by aliens entitled to dependent's or survivor's benefits but not those entitled to old-age or disability insurance benefits. Paragraph (c) of section 340 of Pub. L. 98–21 (the effective date provisions) states that the "length of U.S. residence" provision applies to benefits payable under *sections 202 and 223 of the Act*, which, read literally, would include old-age and disability insurance benefits. However, the section 202(t)(11) provisions of the Act added by sec. 340(a)(2) of Pub. L. 98–21 exclusively apply the new U.S. residence requirement to dependent and survivor beneficiaries, i.e., those entitled to benefits under section 202(b), (c), (d), (e), (f), (g) and (h) of the Act. Thus, it is clear that Congress intended to exclude old-age and disability insurance beneficiaries from these provisions.

(c) The U.S. Residence Requirements for Payment of Dependent's and Survivor's Benefits

The U.S. residence requirements apply to those aliens outside the U.S. who are first eligible for dependent's or survivor's benefits after December 31, 1984. For each dependent's or survivor's benefit, the U.S. residence requirement is as follows:

(1) To be paid a child's benefit—

(i)(A) The alien must have resided for 5 or more years in the U.S. as the child of the worker on whose earnings record benefit entitlement exists; or

(B) The worker on whose earnings record the benefit entitlement exists and the other parent, if any, must each have either resided in the U.S. for 5 or more years or died while residing in the U.S.; and

(ii) If the alien is entitled as an adopted child, the alien must have been adopted within the U.S. by the worker on whose earnings record benefit entitlement exists and have lived in the U.S. with, and received one-half support from, that worker for a period (beginning prior to the age of 18) of at least one year's duration, immediately preceding the month in which the worker became disabled, eligible for benefits, or died (whichever occurred first).

Note.—We define "other parent" in this proposed regulation as that term relates to the requirement that both parents of the child (i.e., worker and other parent) must have either resided for 5 years in or died in the U.S. for the child to be paid benefits if that child does not meet the 5-year U.S. residence requirement. "Other parent" will mean the parent who is of the opposite sex of the worker and who is either: (1) An adoptive parent by whom the child was adopted before the child attained age 18 and who is or was the spouse of the person on whose earnings record the child is entitled, (2) the natural mother or father of the child, or (3) the step-parent of the child by marriage to the worker prior to the child's attainment of age 16. If the child has more than one "other parent", the requirement is met if any one of them satisfies the U.S. residence requirement.

(2) To be paid a wife's, husband's, widow's, widower's, divorced wife's, divorced husband's, surviving divorced wife's, surviving divorced husband's, surviving divorced mother's, or surviving divorced father's benefit, the alien must have had a spousal relationship with the worker for 5 or more years while residing in the U.S.

(3) To be paid a parent's benefit, the alien must have resided in the U.S. as the parent of the worker for 5 or more years.

(d) Aliens Exempted From These Residence Requirements

The alien is exempt from the U.S. residence requirement if he or she is—

1. A citizen or resident of a country with which the U.S. has concluded a Social Security totalization agreement which is in force (see section 233 of the Social Security Act), in which case the totalization agreement provisions govern whether this U.S. residence requirement applies;

2. A national of a country with which the U.S. had a treaty in effect on August 1, 1956 and the U.S. residence requirements would be contrary to the terms of such treaty; or

3. Entitled to benefits on the earnings record of a worker who died while in the U.S. Armed Forces or as the result of a service connected disease or injury.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet the criteria for a major rule because they will not have an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

These proposed regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they will affect only individuals. Therefore, a regulatory flexibility analysis as provided by Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.803 Social Security Retirement Insurance; No. 13.805 Social Security Survivor's Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability Benefits, Old-Age, Survivors, and Disability Insurance.

Dated: October 7, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: January 9, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III, title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 202, 203, 205, and 1102, 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorg. Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 403, 405, and 1302.

2. In § 404.417, paragraph (b) is revised to read as follows:

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§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 45-hour and 7-day work test.

* * * * *

(b) *Deductions from benefits because of the earnings or work of an insured individual*—(1) *Prior to September 1984.* Where the insured individual entitled to old-age benefits works for 7 or more days in a month prior to September 1984 while under age 72 (age 70 after December 1982), a deduction is made for that month from any:

(i) Wife's, husband's, or child's insurance benefit payable on the insured individual's earnings record; and

(ii) Mother's, father's, or child's insurance benefit based on child's disability, which under § 404.420 is deemed payable on the insured individual's earnings record because of the beneficiary's marriage to the insured individual.

(2) *From September 1984 on.* Effective September 1984, a benefit deduction is made for a month from the benefits described in paragraph (b)(1) of this section only if the insured individual, while under age 70, has worked in excess of 45 hours in that month.

(3) *Amount of deduction.* The amount of the deduction required by paragraph (b) of this section is equal to the wife's, husband's or child's benefit.

(4) *From January 1985 on.* Effective January 1985, no deduction will be made from the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

3. In § 404.460, paragraph (d) is added which reads as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * *

(d) *Nonpayment of monthly benefits to certain aliens entitled to dependent's or survivor's benefits.* An individual who, after December 31, 1984, becomes eligible for dependent's or survivor's benefits for the first time on the earnings record of the worker, is an alien, has been outside the United States for more than 6 consecutive months, and is qualified to receive a monthly benefit by reason of the provisions of paragraphs (b)(2), (b)(3), (b)(5), or (b)(7) of this section, must also meet a U.S. residence requirement described in this section to receive benefits:

(1) An alien entitled to benefits as a dependent or surviving child—

(i) Must have resided in the U.S. for 5 or more years as the child of the parent on whose earnings record entitlement is based; or

(ii) The parent on whose earnings record the child is entitled and the other parent, if any, must each either resided in the United States for 5 or more years or died while residing in the U.S.

(2) an alien entitled to benefits as a dependent or surviving child based on an adoptive relationship must meet the requirements of paragraph (d)(1) of this section and—

(i) Have been adopted within the United States by the worker on whose earnings record the child's entitlement is based; and

(ii) Have lived in the United States with, and received one-half support from, the worker for a period, beginning prior to the child's attainment of age 18, of (A) at least one year immediately before the month in which the worker became eligible for old-age benefits or disability benefits or died (whichever comes first), or (B) if the worker had a period of disability which continued until the worker's entitlement to old-age or disability benefits or death, at least one year immediately before the month in which that period of disability began.

(3) An alien entitled to benefits as a spouse, surviving spouse, divorced spouse, surviving divorced spouse, or surviving divorced mother or father must have resided in the United States for 5 or more years while in a spousal relationship with the person on whose earnings record the entitlement is based. The dependent's or survivor's spousal relationship over the required period can be that of wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, or a combination of two or more of these categories.

(4) An alien who is entitled to parent's benefits must have resided in the United States for 5 or more years as a parent of the person on whose earnings record the entitlement is based.

(5) Individuals eligible for benefits before January 1, 1985 (including those eligible for one category of benefits on a particular worker's earnings record after December 31, 1984, but also eligible for a different category of benefits on the same worker's earnings record before January 1, 1985), will not have to meet the residency requirement.

(6) Definitions applicable to paragraph (d) of this section are as follows:

"Eligible for benefits" means that an individual satisfies the criteria described in Subpart D of this Part for dependent's or survivor's insurance benefits at a particular time except that the person need not have applied for those benefits at that time.

"Other parent" for purposes of paragraph (d)(1)(ii) of this section means any other living parent who is of the opposite sex of the worker and who is either: The adoptive parent by whom the child was adopted before the child attained age 16 and who is or was the spouse of the person on whose earnings record the child is entitled; the natural mother or natural father of the child; or the step-parent of the child by a marriage, contracted before the child attained age 16, to the natural or adopting parent on whose earnings record the child in entitled.

Note.—Based on this definition, a child may have more than one living "other parent." However, the child's benefit will be payable for a month if in that month he or she has one "other parent" who had resided in the U.S. for at least 5 years.

"Resided in the United States" for satisfying the residency requirement means presence in the United States with the intention of establishing at least a temporary home. A period of residence begins upon arrival in the United States with that intention and continues so long as an attachment to an abode in the United States is maintained, accompanied by actual physical presence in the United States for a significant part of the period, and ending the day of departure from the United States with the intention to reside elsewhere. The period need not have been continuous and the requirement is satisfied if the periods of U.S. residence added together give a total of 5 full years.

(7) The provisions described in paragraph (d) of this section shall not apply if the beneficiary is a citizen or resident of a country with which the United States has a totalization agreement in force, except to the extent provided by that agreement.

[FR Doc. 86–4571 Filed 3–3–86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[LR–66–85]

Tax Shelter Registration

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to tax shelter registration. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by May 5, 1986. The amendments are proposed to be effective generally with respect to tax shelters in which any interest is first sold after August 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–66–85), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Paulette Chernyshev, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: CC:LR:T) telephone 202–566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations portion of this issue of the Federal Register amend Parts 301 and 602 of Title 26 of the Code of Federal Regulations. These amendments change the rules relating to tax shelter registration under section 6111 of the Internal Revenue Code of 1954, as added by section 141 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 678). For the text of the temporary regulations, see FR Doc. 86–4683 (T.D. 8078) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 301 and 602 of Title 26 of the Code of Federal Regulations.

Executive Order 12291; Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these regulations is Paulette Chernyshev of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise tases, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 86–4682 Filed 3–3–86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2976-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous five wastes generated during the production of tetaethyl and tetramethyl lead, and from the formulation of mixed alkyl lead compounds. The effect of this proposed rule, if promulgated, is that all of these wastes woud be subject to regulation as hazardous under 40 CFR Parts 262–266, and Parts 270, 271, and 124.

DATES: EPA will accept public comments on this proposed rule until April 18, 1986. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by March 19, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Comments should identify the regulatory docket "Listing Alkyl Lead." Requests for a hearing shoud be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

The public docket for this amendment is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Richard L. Dailey, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7738.

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SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA today is proposing to amend this list by adding five wastes that are generated during the production of tetraethyl and tetramethyl lead compounds, and from the formulation of mixed alkyl leads. These hazardous wastes, generated by the processes described below, are wastewaters, process and combined plant wastewater sludges, slags, and flue dusts.

As derived from industry-supplied data and from EPA-sponsored sampling and analysis of the specific wastes, these wastes typically contain significant concentrations of one or more hazardous constituents of concern which include carcinogenic and otherwise chronically and acutely toxic organic and inorganic compounds (USEPA, 1983a, 1983b, 1984a). Table I (below) lists the constituents of concern, their ranges of concentrations in the wastes, their exposure pathways of concern, their mobilities in soil, their persistence in the media of concern, and such factors as water solubility, long octanol/water partition coefficients (k_{ow}), and soil absorption co-efficients (k_{oc}) that enable the Agency to estimate a chemical's mobility and persistence in the environment. Table I also lists the various salts of lead that may form upon disposal. Using the data supplied in Table I, and having evaluated these wastes against the criteria for listing hazardous wastes as provided in 40 CFR 261.11(a)(3), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or othewise managed.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous the following wastes that are generated in conjunction with the manufacture of tetramethyl and tetramethyl lead, and from the formulation of mixed alkyl leads:

K127—Recovery furnace slag and flue dust from the sodium-lead alloy alkyl lead process.

K128—Combined process wastewaters from the sodium-lead alloy alkyl lead process.

K129—Wastewater treatment sludges from the sodium-lead alloy alkyl lead process.

K130—Wastewater treatment sludges resulting from the combined treatment of facility wastewaters, which include, but are not limited to, wastewaters from the sodium-lead alloy alkyl lead process.

K135—Washwater from the formulation of mixed alkyl leads.

In 1983, three domestic companies produced alkyl lead compounds at three locations, with a total annual production capacity of 203,000 kkg.[1] In addition, two domestic companies engaged in the formulation of mixed alkyl lead compounds at two locations in 1983. Their total production capacity is confidential business information (CBI). Based on this information, however, we are able to estimate the total volume of residual waste generated during the production of alkyl lead compounds and from the formulation of mixed alkyl leads by the processes described here at greater than 2 million kkg per year.[1] (The volume of waste generated for each waste stream is claimed to be CBI.) These wastes are formed as residuals at several points in the production of alkyl lead compounds and the formulation of mixed alkyl leads.

Alkyl lead production may either be conducted in a continuous or on a batch basis. The two processes by which alkyl leads are produced are as follows.

1. Reaction of a sodium-lead alloy with either methyl or ethyl chloride to form either tetramethyl or tetraethyl lead.
2. Electrolysis of an organomagnesium (Grignard) reagent containing either methyl or ethyl moieties in the presence of elemental lead to form either tetramethyl or tetraethyl lead.

Currently, the Grignard electrolysis process generates one residual, waste oil from electrical equipment and storm-water skimmings; that could be listed as hazardous. The Agency has chosen, however, to list this waste stream under a separate rule; this rulemaking was proposed on November 29, 1985 (see 50 FR 49212).

The method used for formulations of mixed alkyl leads is:

Reaction of a mixture of tetraethyl and tetramethyl lead in the presence of a Lewis acid catalyst to form a mixture of tetramethyl, trimethylethyl, diethyldimethyl, triethylmethyl, and tetraethyl lead compounds.

The wastes proposed for listing today are formed at a number of points in the production of alkyl lead compounds by the sodium-lead alloy process and in the formulation of mixed alkyl leads. The recovery furnace slag and flue dust (K127) are generated during the recovery of lead that is not consumed by the sodium-lead alloy reaction. The combined process wastewaters (K128) arise from washing the product of the sodium-lead alloy reaction, from scrubbing the wastewaters, from lead recovery dewatering, from lead recovery furnace caustic wastewaters, and from surface runoff associated with the sodium-lead alloy process. The process wastewater sludges (K129) arise from the settling of suspended solids from the process wastewaters. The combined plant wastewater treatment sludges (K130) result from the combined treatment of various discrete plant process wastewaters which include, but are not limited to, wastewaters from lead alkyl production. The washwater from the formulation of mixed alkyl leads (K135) is generated from washing the mixed alkyl lead product to remove water-soluble impurities.

The listing background document (available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries) and the sources cited there describe these processes in detail. Sections of the background document, however, are confidential business information (CBI); these CBI sections are not available to the public.

Most of the wastes proposed to be listed are disposed. However, one of the wastes that is proposed to be listed—namely, K129—is primarily recycled by being reclaimed.[2] The Agency believes that this recycling activity could raise the question of whether or not this residue should be defined as a solid waste when reclaimed. In particular, on January 4, 1985, the Agency issued a final rule which specifies which materials are solid and hazardous wastes when they are recycled. See 50 FR 614. (This rulemaking also specified general and specific management standards for most types of hazardous waste recycling activities.) Among other things, the rule indicates that all spent materials[3] (whether they are listed or exhibit one or more of the hazardous waste characteristics) are defined as solid wastes when they are reclaimed. Sludges and by-products, on the other hand, are defined as solid wastes when they are reclaimed only if they are specifically listed.[4] [5] We limited the definition to listed sludges and by-products to avoid including sludges and by-products that are routinely processed to recover usable products as part of on-going production operations. Nevertheless, sludges and by-products that are routinely reclaimed can be listed (and thus be defined as a solid waste) if they are more like a waste than like a product. This determination is made by EPA on a material-by-material basis. The relevant factors that EPA will consider are:

- How frequently the material is recycled on an industry-wide basis;
- Whether the material is replacing a raw material and the degree to which it is similar in composition to the raw material;
- The relation of the recovery practice to the principal activity of the facility; and
- Whether the secondary material is managed in a way to minimize loss. See 50 FR 641.

Based on EPA's survey of the industry, all of waste K129 is recycled by being reclaimed. This material is recycled, however, only after it has been stored for long periods of time, usually for at least one year. In addition, and more importantly, these sludges are not stored in a way commensurate with designation as products; rather, they are stored in an insecure fashion without significant attempt to minimize loss. These sludges are stored in surface impoundments. As the Agency stated during the solid waste definition rulemaking, the Agency simply does not believe that hazardous sludges that are stored underwater in enormous holes in the ground are being handled like products or like valued new materials. Indeed, surface impoundments containing hazardous secondary materials (as well as hazardous wastes) pose a particular threat of contaminating ground water, and have always been one o the chief concerns of the hazardous waste management program. Not only is containment without a liner system probably impossible, but materials are constantly in the presence of liquids, creating the situation most conducive to forming leachate. Since most impoundments are unlined, and many are underlain by permeable soils, the potential for downward seepage of contamianted fluids into ground water is high.[6]

Furthermore, it should be noted that in granting variances from classification as a solid waste, one of the factors the Agency will consider is the extent to which handling the material (before being reclaimed) is designed to minimize loss. See 40 CFR 260.31(a)(4); 260.31(b)(3); and 260.31(c)(5). Where the materials are stored in open unlined piles, *unlined impoundments*, or leaking tanks and drums, it is less likely a variance will be granted (*i.e.*, the more carefully a material is handled, the more it is commodity-like). See 50 FR 654, 655. Additionally, these sludges undergo a significant amount of reprocessing before the resulting end product (lead) can be used as a raw starting material in the production of alkyl leads. The reprocessing steps or this waste consist of physically dewatering and drying the sludge, which is then sent to an on-site pyrometallurgical furnace for initial lead recovery. This refined waste is subsequently sent to an off-site commercial secondary lead smelter for final lead recovery. This amount of reprocessing indicates that the proposed waste is not recycled in a closed-loop process, as defined in 40 CFR 261.2(e)(iii). See 50 FR 664, 1985. We, therefore, believe that although most if not all of this material is reclaimed, it should be listed as a solid waste.

1. Concentrations of Hazardous Constituents in Wastes

As derived from industry-supplied data and from EPA-sponsored sampling and analysis, these wastes typically contain significant concentrations of one or more of the following hazardous constituents: lead or lead salts, tetraethyl lead, ethylene dibromide, or ethylene dichloride. In particular, lead is found in concentrations ranging approximately from 150 to 500,000 ppm, tetraethyl lead from around 1000 to 20,060 ppm, and ethylene dibromide and ethylene dichloride are both present at maximum concentrations of between 2500 and 5000 ppm. Table I lists the constituents of concern in each waste stream along with their effects of concern, the concentrations expected in the wastes, exposure pathways of concern, their mobilities in soil, their persistence in the medium of concern, and such factors as water solubility, log octanol/water partition coefficient (K_{ow}), and soil absorption partition coefficient (K_{oc}); these data will enable the Agency to estimate a compound's mobility and persistence in the environment. Table I also provides data for some salts of lead that may be expected to form in the environment.

2. Effects of Concern

These hazardous constituents have carcinogenic or other chronic systemic effects in laboratory animals and/or humans. For example, lead, which has been known to be toxic since antiquity, is present in all of the wastes in levels ranging from 150–500,000 ppm, and is chronically toxic, causing neurological and hematopoietic effects (Casarett and Doull, 1980). Chronic exposure to inorganic lead also causes renal damage (Clarkson and Kench, 1956; Chisolm, 1968; Cramer *et al.*, 1974; Weeden *et al.*, 1975), cerebrovascular disease (Dingwall-Fordyce and Lane, 1963), heart failure (Kline, 1960), electrocardiographic abnormalties (Kosminder and Pentelenz, 1962), possible impaired liver function (Dodic *et al.*, 1971), impaired thyroid function (Sanstead *et al.*, 1969), intestinal colic (Beritic, 1971), and miscarriage and stillbirths (Lane, 1949; Nogaki, 1958). All of these effects occurred in humans as a result of exposure to lead.

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[1] The Agency recently learned that one of the manufacturers of alkyl leads has stopped production as a result of the declining market for leaded gasoline caused by EPA's lead phase-down rule. Because the manufacturer is reported to be dismantling its production facility, the Agency expects that production capacity to be permanently lost.

[2] Another waste—namely, recovery furnace slag and flue dust (K127)—is generated at a rate of approximately 15 million pounds per year. Of this total, approximately one million pounds (or 7.5 percent) is recycled by being reclaimed. The Agency believes that since such a small amount of this waste is being reclaimed, this stream is more like a waste than like a product. Additionally, this waste undergoes substantial reprocessing at an off-site facility, and thus is not reclaimed by a closed-loop type of system.

[3] A spent material is any material that has been used and, as a result of contamination, can no

Continued

longer serve the purpose for which it was produced without processing. See 40 CFR 261.1(c)(1); see also preamble discussion in 50 FR 624, January 4, 1985.

[4] Under the recycling rules, the recycled process wastewater sludges would be defined as a sludge.

[5] Non-listed sludges and by-products that are recycled would be defined as solid wastes if they are accumulated speculatively. A material is accumulated speculatively if it is accumulating before being recycled, unless a person can demonstrate that the material has recycling potential and feasibilitty, and durign a one-year calendar period, the amount of material recycled, or transferred to a different site for recycling, is at least 75 percent of the amount accumulated at the beginning of the year.

[6] See U.S. EPA, Report to Congress, *Surface Impoundments and Their Effect on Ground Water Quality in the United States—A Preliminary Survey*, EPA section 7019–78–004 (1978); see also U.S. EPA, *The Prevalence of Subsurface Migration of Hazardous Chemical Substances at Selected Industrial Waste Disposal Sites*, EPA/5301 SE 6341 (October, 1977).

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TABLE I—CHARACTERIZATION OF WASTE STREAMS

Waste and const. of concern	Effects of concern	Range of conc. (ppm)	Exposure pathway of concern	Water sol. (mg/L)	Soil mobility [1]	Log Kow [2]	Log Koc [2]	Persistence in groundwater [1]
K127 Rec. Furn. Dust and Slag:								
Lead	Chron. Tox.	150,000 to 300,000	gw	1	Mod	(3)	(3)	Indefinite.
Lead Acetate [4]	Chron. Tox.	150,000 to 300,000	gw	365,000	High	(3)	(3)	Indefinite.
Lead Nitrate [4]	Chron Tox.	150,000 to 300,000	gw	333,000	High	(3)	(3)	Indefinite.
Lead Chloride [4]	Chron. Tox.	150,00 to 300,000	gw	10,600	High	(3)	(3)	Indefinite.
K128 Comb. Proc. WW:								
Lead	Chron. Tox.	150 to 400	gw	1	Mod	(3)	(3)	Indefinite.
K129 Proc. WW Sludge:								
Lead	Chron. Tox.	250,000 to 500,000	gw	1	Mod	(3)	(3)	Indefinite.
Lead Acetate [4]	Chron. Tox.	250,000 to 500,000	gw	365,000	High	(3)	(3)	Indefinite.
Lead Nitrate [4]	Chron Tox.	250,000 to 500,000	gw	333,000	High	(3)	(3)	Indefinite.
Lead Chloride [4]	Chron. Tox.	250,000 to 500,000	gw	10,600	High	(3)	(3)	Indefinite.
TEL	Chron. Tox.	10,000 to 20,000	gw	0.3	Low	4.97	1,660	High.
K130 Combined Plant WW Sludge:								
Lead	Chron. Tox.	300 to 700	gw	1	Mod	(3)	(3)	Indefinite.
Lead Acetate [4]	Chron. Tox.	300 to 700	gw	365,000	High	(3)	(3)	Indefinite.
Lead Nitrate [4]	Chron Tox.	300 to 700	gw	333,000	High	(3)	(3)	Indefinite.
Lead Chloride [4]	Chron. Tox.	300 to 700	gw	10,600	High	(3)	(3)	Indefinite.
K135 Mixed Alkyl Lead Wash Water:								
Lead	Chron. Tox.	50,000 to 150,000	gw	1	Mod	(3)	(3)	Indefinite.
EDB	Carc.	2,000 to 5,000	gw	4,000	Mod	1.66	30.8	High.
EDC	Carc.	2,000 to 5,000	gw	8,690	Mod	1.29	24.5	High.
TEL	Chron. Tox.	1,000 to 2,000	gw	0.3	Low	4.97	1,600	High.

[1] See Appendix A to the listing background document for a discussion of descriptors for solubility, rate of evaporation from water, volatility, mobility in soil, and persistence in ground water, surface water, and air.

[2] Verschueren, 1983.

[3] K_{ow} and K_{oc} are not applicable to metals.

[4] These substances are expected to form when lead bearing wastes come into contact with the appropriate acidic moiety.

The Agency is concerned about possible exposure to both lead and lead salts that may form in disposal situations. While the effects listed above are attributed only to lead, it is important to note that, from a toxicological point of view, there is little differentiation among lead and its salts. In fact, most major reference works group lead, its salts and its oxides under the inclusive term "inorganic lead." A standard reference in the field, (Casarett and Doull, 1980) states that, biologically, there are two forms of lead. These are the organic (alkyl) leads, and inorganic lead, which includes the salts and oxides of lead that are considered to act identically once absorbed into the systemic circulation. Similarily, the "Handbook of Toxic and Hazardous Chemicals" in its section of lead, defines lead as including lead oxides, metallic lead, and lead salts (Sittig, 1981). Furthermore, Clayton and Clayton (1981) state that lead, in all its forms, is a cumulative poison. Finally, a fourth standard reference work, Sax's *Dangerous Properties of Industrial Materials* (1979), attributes any differences in the relative toxicities of inorganic lead compounds to three factors, the first and most important of which is the solubility of the compound in body fluids. All of the lead salts given in Table I are highly soluble in water, and, thus, will be soluble in body fluids. Accordingly, exposure to the salts of lead, such as those listed in Table I, will cause deleterious effects similar to those listed above for lead.

Ethylene dibromide, present in one waste (K135) at up to 5,000 ppm, has been shown to be carcinogenic in both rats and mice, and is considered by the Agency's Carcinogen Assessment Group (CAG) to have shown "substantial" evidence of carcinogenicity (USEPA, 1980). Administered dermally, by inhalation, or by gavage, ethylene dibromide induced both local and remote tumors, including cancers of the skin, nasal cavity, stomach, lung, spleen, liver, adrenals and reproductive organs (NTP, 1982; NCI, 1978). Ethylene dichloride is also present in K135 at up to 5,000 ppm and is listed by CAG as having "sufficient" evidence of carcinogenicity (USEPA, 1980). Tetraethyl lead, a constituent of K129 and K135, is much more acutely toxic than lead or the inorganic leads, with an oral LD_{50} in rats of 12.3 mg/kg (Windholtz, 1984).

These compounds, therefore, exhibit toxicological properties of regulatory concern. (For additional information on the toxicity of the hazardous constituents, see the Health and Environmental Effects Profiles (HEEPs), available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries.)

The Agency has determined that these constituents are present in the wastes at significant concentrations that are capable of posing a substantial present or potential threat to human health and the environment. For example, both an Ambient Water Quality Criterion (AWQC), and a Drinking Water Standard (DWS) have been established (see 45 FR 79318, November 28, 1980, and 40 FR 59566, December, 1975, respectively) for one of the constituents fo concern that occurs in all of the wastes that we are proposing to list, namely lead. The AWQC/DWS developed for this substance to protect against health risks to humans resulting from the consumption of contaminated water is 50 ug/L. As can be seen above, this constituent is present in the wastes at concentrations of six thousand times to ten million times as high as the AWQC/DWS.

Of the two known carcinogens in the wastes, namely ethylene dibromide (EDB) and ethylene dichloride (EDC), only the latter has been assigned an AWQC. For ethylene dichloride, the AWQC to protect against an incremental increase of cancer risk over lifetime at the 10^{-6} level is 0.94 μg/1. As can be seen in Table I, EDC is present in K135 at a level that is 5 million times that of the AWQC. Additionally, ethylene dichloride's solubility in water is on the order of nine million times the AWQC, indicating its potential for migration and ground water contamination.

Examination of existing AWQC's for both pesticide and nonpesticide organic chemicals (see 45 FR 79318, cited above) reveals that, in the case of carcinogens, the AWQC value to protect against a 10^{-6} excess cancer risk from the consumption of water and aquatic organisms is nowhere greater than 5 micrograms per liter, and that, for many such compounds, the AWQC's are less than 5 nanograms per liter. Ethylene dibromide, the other carcinogen found in K135, is present at 5000 ppm, or one million times the higherst AWQC established for oncogenic compounds. Also, the Agency has estimated that lifetime exposure to 100 ppb of EDB in drinking water engenders an excess cancer risk as high as one in five

(USEPA, 1983c). Finally, EDB's solubility in water is approximately 800,000 times higher than the AWQC, indicating a significant potential for subsurface migration.

Although tetraethyl lead is only slightly soluble in water, the acute toxicity of this compound is so great that even a few parts per million in solution presents the potential for a human health hazard. This concern over very small concentrations is apparent in the recommendation of the Agency Work Group on Acceptable Daily Intakes (ADI), which recommended an oral ADI of 4.6×10^{-6} mg/L for tetraethyl lead (USEPA, 1985).

3. Mobility of Constituents of Concern

These constituents have solubilities that range from slightly soluble to highly soluble as indicated in Table I. The exposure pathway of principal concern is leading to ground water. The water solubility of a given hazardous constituent is indicative of its mobility potential (*i.e.*, the likelihood that it will be released from a management site and be dissolved in a water resource of concern). Leaching is of concern because these compounds are soluble in water and, therefore, could leach out of the wastes, potentially contamianting ground water.

The water solubility of elemental lead is moderate (see Appendix A to the listing background document, available in the public docket). The Agency, however, believes that various salts of lead listed in Table I may be formed if the wastes come into contact with the appropriate acid moieties either through inadvertent co-disposal, or interaction with other environmental components. These specific salts (lead acetate, lead nitrate, and lead chloride) were selected because their corresponding acids (acetic acid, nitric acid, and hydrochloric acid), are produced in large quantities, and have widespread commercial and industrial uses (Chemical Marketing Reporter, 1982), both of which engender the possibility of inadvertent co-disposal with several of the proposed lead-bearing wastes. As can be seen in Table I, the salts that may be formed are thousands of times more soluble than lead. This dramatic increase in solubility indicates that the salts have a high potential for soil mobility and, thus, may move through a landfill to contaminate an underlying aquifer. Thus, even though the elemental lead in these wastes is not highly mobile, the Agency believes that this constituent will become available for release into the environment as a result of the typical disposal practices for these wastes, and, therefore, pose a threat to human health and the environment. (Section V.B.1. of the background document provides a detailed discussion of the enhanced mobility of lead through the formation of lead salts.)

In laboratory tests, ethylene dichloride has been shown to percolate through a soil column of 140 cm depth (USEPA, 1984a). The fact that 10% of the sampled ground water in New Jersey contained EDC indicates that the compound may migrate down through some soil types under ambient conditions as well (Cohen, 1984). This transport is not unexpected, as the log octanol/water partition coefficient is 1.48, (Leo *et al.*, 1971), indicating that the substance is not immobilized through sorption to soils or sediments.

Similarly, ethylene dibromide has a moderate log octanol/water partition coefficient of 2.35 (Leo *et al.*, 1971), which indicates a tendency that is somewhat less than that of EDC to migrate down through soils. This is borne out by the fact that samples of aquifers and of well water in areas where ethylene dibromide was used as a soil fumigant contained ethylene dibromide at concentrations of from 0.05 to 10.0 ppb (average range), with peak levels at 500 ppb (USEPA, 1984b).

Tetraethyl lead is a liquid that boils at between 200 and 227°C (Windholtz, 1984), and solidifies at approximately −136.8°C (Clayton and Clayton, 1981). Tetraethyl lead thus remains a potentially mobile liquid over the entire range of temperatures likely to be encountered in the environment. While only slightly soluble in water (0.3 mg/L), Jarvie *et al.* (1981) point out that tetraethyl lead can form suspensions in water at approximately 39 to 40 mg/L. This indicates that tetraethyl lead can combine with water, and move with it through the soil to contaminate an underlying aquifer. Due to TEL's extreme toxicity, only a small percentage need leach from the waste to reach an environmental receptor at levels of regulatory concern.

4. Persistence of Constituents of Concern

The Agency considers a material to be persistent if it is present in the environment long enough to be detected, since it may also result in exposure to humans in that same period of time. Lead, whether it is in pure, metallic form, or in the form of a salt, or an oxide, is an element and, as such, will persist indefinitely.

The fate of ethylene dibromide released to water is relatively uncertain. While it is known that EDB hydrolyzes in water to ethylene glycol and bromoethanol, the reported rate of hydrolysis varies widely. Brown *et al.* (1975) report a half-life of 2.7×105 days, while Johns *et al.* (1976) have estimated a half-life of 5 to 10 days. In a recently completed study that simulated conditions similar to those in ground water, the EPA estimated that the half-life of EDB is aroung eight years (Cohen, 1984). As a halogenated alkane, ethylene dibromide does not biodegrade to any appreciable extent. The same is true for ethylene dichloride, which, given its structural similarity to ethylene dibromide and the fact that bromine atoms are more labile to hydrolysis, can be expected to have a similar half-life (approximately eight years). Some experimental data, however, suggest the possibility of a maximum half-life of 50,000 years at pH 7 and 25°C (Radding *et al.*, 1977). Suspensions of tetraethyl lead in distilled water that were kept in the dark (analogous to ground water conditions) were found to have only a two percent decomposition to triethyl lead cations over a 77 day period, indicating a resistance to hydrolysis. Under the assumption of first order kinetics, this finding indicates a half-life of 7.2 years. If second-order kinetics are applied, a half-life of 10 years is estimated. It should be noted that Fe^{3+} and Cu^{2+} ions, which occur in natural waters, catalyze the decomposition of TEL to triethyl lead, and that the decomposition is much more rapid than that of the same reaction in pure distilled water. Additionally, triethyl lead is highly toxic acid and, as a cationic salt, is virtually immune to hydrolysis (Jarvie *et al.*, 1981). Thus, tetraethyl lead that is released to ground water should persist for years, slowly decomposing to substances (triethyl lead, inorganic lead) which also are very toxic.

In substantiation of the persistence of the constituents of concern in water and soil it is noted that:

- Lead is an element and as such will persist in soil and water indefinitely.
- At the Naval Air Station, Lakehurst New Jersey, approximately 20,000 gallons of leaded fuel were dumped prior to 1966. In the late 1970's, tetraethyl lead still contaminated soil at a concentration of up to 200 ppm (JRB, 1984).
- Ethylene dichloride has been frequently detected in surface water, and less often in ground water (USEPA, 1984a). As previously noted, ten percent of the ground water sampled in New Jersey was found to contain ethylene dichloride.
- Ethylene dibromide was detected as a contaminant in over 1000 wells in

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California, Georgia, Florida, Hawaii, South Carolina, Connecticut, Massachusetts, and Washington (Cohen, 1984b).

Due to the significant amounts of the hazardous constituents in these wastes, the toxic effects of these constituents, their potential for mobility by leaching from soil and their persistence in ground water, the Agency believes that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

III. Test Methods for Compounds Added to Appendix VII

In 49 FR 38786–38809, Monday, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. (The comment period for the proposed test methods closed on December 31, 1984).

In the October 1, 1984, proposal, Method Numbers 8010 and 8240 were designated for testing ethylene dibromide (dibromoethane), and Method Numbers 7420 and 7421 were designated for tetraethyl lead. Although we are mentioning the test methods proposed for use in analyzing for ethylene dibromide and tetraethyl lead in the wastes proposed for listing today, we are not reopening the comment period at this time. Lead and ethylene dichloride are already included in 40 CFR Part 261, Appendix III. The methods to use for detecting the presence and concentration of lead are 7420 and 7421, and the methods to use for determining the presence and concentration of ethylene dichloride (dichloroethane) are 8010 and 8240.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, DC 20420, (202) 783–3238, Document Number: 055–002–81001–2.

IV. CERCLA Impacts

All hazardous wastes proposed for today's proposed rule will, upon the effective date of promulgation, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or at (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

Pursuant to section 102, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation. If, however, a newly listed hazardous waste contains hazardous substances for which final RQs have already been assigned in Table 302.4, 40 CFR Part 302, the lowest RQ assigned to any of the constituents present in the waste represents the RQ for the waste stream. See 50 FR 13463 (April 4, 1985). Thus, if the waste contains only one constituent of concern, the waste will have the same RQ as that of the constituent.

In the case of wastes K127, K129, and K130, lead is the only hazardous constituent. Because lead presently has an RQ of one pound (see 50 FR 13489), the Agency ordinarily would propose that the RQ for wastes K127, K129, and K130 also would be one pound. However, the Agency has proposed in a Notice of Proposed Rulemaking (NPRM), that the RQ for lead be adjusted to 5000 pounds (see 50 FR 13519). Therefore, the Agency Proposes in this NPRM that the RQ for wastes K127, K129, and K130 be 5000 pounds.

In the case of waste K128, both lead and tetraethyl lead have been identified as hazardous constituents. Because the Agency has proposed in the above-referenced NPRM that the RQ for tetraethyl lead be 10 pounds (see 50 FR 13502), the Agency proposes in this NPRM that the RQ for waste K128 be 10 pounds.

In the case of waste K135, four hazardous constituents—lead, tetraethyl lead, ethylene dibromide and ethylene dichloride—have been identified as constituents of concern. Because ethylene dibromide and ethylene dichloride have higher RQs (1000 pound and 5000 pounds, respectively, see 50 FR 13467), than the proposed 10 pound RQ for tetraethyl lead, the Agency proposes in this NPRM that the RQ for waste K135 be 10 pounds. However, because ethylene dibromide and ethylene dichloride are currently undergoing carcinogenicity assessment for CERCLA RQ adjustment (ranking) purposes, the RQ for waste K135 is subject to change when the assessment is complete, as will be noted in its listing in Table 302.4.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

It contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes regulations that would not be effective in authorized States since the regulations would not be imposed pursuant to be Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or

final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 261.21(e)(2) requires that States that have final authorization modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations as RCRA hazardous wastes until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include equivalent regulations within the time period discussed above. The process and schedule fo revision of State programs is described in 40 CFR 271.21.

VI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The additional incurred annual cost for disposal of these wastes as hazardous is less than $6,000, well under the $100 million constituting a major regulation. This cost is insignificant and results from minimal additional compliance requirements, such as reporting, waste analyses, and permit modification for these wastes. (The detailed economic analysis is presented in a separate report; however, since much of the data used to calculate the economic impact is confidential, the economic analysis report is also confidential.)

In addition, we do not expect that there will be any adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is being conducted.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes proposed for listings here are not generated by small entities (as defined by the Regulatory Flexibility Act). Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: February 24, 1986.

Lee M. Thomas,
Administrator.

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.32 [Amended]

2. In § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * *	*
K127	Recovery furnace slag and flue dust from the sodium-lead alloy alkyl lead process.	(T)
K128	Combined process wastewaters from the sodium-lead alloy alkyl lead process.	(T)
K129	Wastewater treatment sludges from the sodium-lead alloy alkyl lead process.	(T)
K130	Wastewater treatment sludges resulting from the combined treatment of facility wastewaters, which include, but are not limited to, wastewaters from the sodium-lead alloy alkyl lead process.	(T)
K135	Washwater from the formulation of mixed alkyl leads.	(T)
*	* * *	*

Appendix VII—[Amended]

3. Add the following entries in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * * *
K127	Lead.
K128	Lead.
K129	Lead, tetraethyl lead.
K130	Lead.
K135	Lead, ethylene dibromide, ethylene dichloride, tetraethyl lead.
*	* * * *

[FR Doc. 86-4462 Filed 3-3-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286]

MTS and WATS Market Structure Establishment of a Joint Board; Rochester Plan

AGENCY: Federal Communications Commission.

ACTION: Order Inviting Comments.

SUMMARY: This order invites comments on the merits of an experimental access service tariff proposal filed by the Rochester Telephone Corporation (Rochester). The Commission is taking this action in order to enable the Joint Board to evaluate and analyze the Rochester plan and to prepare a recommendation for Commission consideration. This will facilitate the Commission's decision making process.

DATES: Comments on the Rochester plan are to be filed no later than March 21, 1986, and reply comments no later than April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau (202) 632-6363.

Order Inviting Comments

In the matter of MTS and WATS Market Structure amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket Nos. 78-72 and 80-286.

Adopted: February 19, 1986.

Released: February 21, 1986.

By Chief, Common Carrier Bureau.

I. Introduction

1. On January 16, 1986, the Rochester Telephone Corporation (Rochester) filed a petition for waiver of §§ 69.105, 69.202, 69.205, and 69.206 of the Commission's Rules to permit Rochester to file an experimental access service tariff for its greater Rochester, New York service territory.[1] Rochester states that its proposed experimental tariff structure would emulate the original access charge plan adopted by the Commission in the *MTS and WATS Market Structure* proceeding.[2] In its *Recommended Decision and Order* [3] adopted on November 15, 1984, the Federal-State Joint Board urged the Commission to explore experimental tariff mechanisms for recovering the interstate allocation of non-traffic sensitive (NTS) costs by providing for review of such proposals through the Joint Board process. The Commission subsequently adopted the Joint Board recommendation.[4] Accordingly, we are requesting comments concerning Rochester's proposal and asking the Joint Board to prepare recommendations concerning this matter.

II. The Rochester Plan

3. Rochester states that its plan is designed to test the effects of the Commission's original access charge plan in a specific market. Effective June 1, 1986, Rochester would implement an interstate subscriber line charge applicable to residential and single line business customers in its service territory equal to its fully allocated interstate NTS loop costs which currently are $3.54 per line. Rochester would also file a separate per minute carrier common line charge for interstate calls originating and terminating in its service territory to be effective June 1, 1986. This charge would reflect the reduced NTS carrier common line revenue requirement resulting from Rochester's increased subscriber line charge and would maintain the 55 percent discount for non-premium access. Rochester would continue to pool its common line revenues, remitting to the pool revenues computed based on

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[1] Rochester also seeks waivers for Seneca-Gorham Telephone Company and Ogden Telephone Company. Rochester states that these companies concur in its interstate switched access service tariff and have advised Rochester that they would like to participate in its experiment.

[2] CC Docket No. 78-72, *Third Report and Order,* 93 FCC 2d 241 (1983), *modified on reconsideration,* 97 FCC 2d 682 (1983), *modified on further reconsideration,* 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part, Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC,* 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied,* 105 S. Ct. 1224 (1985), *modified on further reconsideration,* 49 FR 46383 (November 26, 1984), 50 FR 18249 (April 30, 1985), *aff'd on further reconsideration,* 50 FR 43707 (October 29, 1985 *appeal docketed, U.S. Telephone Inc. v. FCC,* No. 84-1115 (D.C. Cir. March 23, 1984).

[3] *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules,* CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984).

[4] *Decision and Order,* CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

the NECA rate multiplied by Rochester's actual minutes of use as well as the subscriber line charge revenues generated by the present Part 69 Rules. However, it would not remit to the National Exchange Carrier Association (NECA) pool its additional residential and single line business subscriber line charge revenues. Rochester also proposes that the American Telephone and Telegraph Company (AT&T) be required (or voluntarily agree) to reduce its interstate toll rates for calls originating in the Rochester, New York service territory by an amount equivalent to the reduction in AT&T's access service charges for both its originating and terminating traffic in Rochester's service area.[5] Rochester states that the other common carriers could be expected to pass through to the consumers all or most of their cost savings in the form of reduced switched access service rates for calls from Rochester in order to maintain their competitive posture vis-a-vis AT&T.[6]

4. Rochester proposes to apply its experimental tariff for a period of two years and provide information to the Joint Board and the Commission periodically concerning the following matters: (1) Elasticity of demand for toll service at the rate levels envisioned by the Commission's original access charge plan; (2) changes in customer choices of local service options in response to the increased interstate subscriber line charge; (3) requests for lifeline exemptions in response to the increased subscriber line charge; and (4) effects on bypass activities. According to Rochester, the data gathered under its experiment will allow a more informed policy decision when the Joint Board and Commission undertake review of the current access charge plan beginning in late 1986.

III. Discussion

5. The Commission is committed to working closely with the Joint Board in exploring experimental tariff mechanisms for recovering the interstate allocation of NTS costs. We are therefore initiating this proceeding to enable us to evalute the Rochester plan through the Joint Board mechanism. We believe that expeditious consideration of this plan is important. Interested parties are hereby invited to comment on the merits of allowing Rochester to implement this plan.[7] We are asking the Federal-State Joint Board established in CC Docket No. 80-286 to analyze the Rochester petition and prepare a recommendation for Commission consideration.

IV. Ordering Clauses

6. Accordingly, it is ordered, that comments on the Rochester petition are to be filed with the Secretary, Federal Communications Commission, no later than March 21, 1986. Reply comments are to be filed no later than April 4, 1986. All comments and reply comments are to be served on the Joint Board members and staff listed in Attachment A.

7. It is further ordered, that the Federal-State Joint Board is to analyze the Rochester plan and prepare a recommendation for Commission review.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

Attachment A

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, 1919 M Street, NW., Room 814, Washington DC 20554

Commissioner Henry M. Rivera, Federal Communications Commission, 1919 M Street, NW., Room 832, Washington DC 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, 1919 M Street, NW., Room 826, Washington DC 20554

Chairman Marvin R. Weatherly, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Chairman Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Commissioner Edward P. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 29510, Raleigh, North Carolina 27626-0510

Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910

Lorraine Plaga, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Elton Calder, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, Georgia 30334

Guy E. Twombly, Maine Public Utilities Commission, 242 State Street, Augusta, Maine 04333

[FR Doc. 86-4390 Filed 3-3-86; 8:45 am]

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47 CFR Part 73

[MM Docket No. 86-73]

TV Broadcast Station in Grand Island, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to change the offset designation from "minus" to "zero" for Channel 17 at Grand Island, Nebraska, on the Commission's own motion. The change in offset could avoid objectionable interference between Station KTTW, Channel 17– at Sioux Falls, South Dakota, and a proposed operation on the co-channel at Grand Island, Nebraska.

DATES: Comments must be filed on or before April 21, 1986 and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations

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[5] Rochester states that the reduced toll rates would approximate those which Rochester customers would pay if the nationwide carrier common line charge were reduced as proposed by Rochester.

[6] Rochester does not propose reduced access charge rates for interexchange carriers that subscribe only to terminating access service and do not provide originating interexchange service in Rochester because their cost savings would not be passed through to toll users participating in the Rochester experiment.

[7] Among other things, interested parties should address the extent to which the Rochester plan satisfies the four basic goals enunciated by the Commission in the *MTS and WATS Market Structure* proceeding. *See Decision and Order,* CC Docket Nos. 78-72 and 80-286, 50 FR 47746 (November 20, 1985) at paragraph 7.

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(Grand Island, Nebraska); MM Docket No. 86-73.

Adopted: January 31, 1986.
Released: February 26, 1986.

By the Chief, Policy and Rules Division.

1. The Commission, on its own motion, proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, the change the offset on Channel 17 at Grand Island, Nebraska, from its current "minus" designation to a "zero" designation.

2. Family Broadcasting Co., Inc. filed an application (BPCT-840601KF) for a new television station on Channel 17– at Grand Island. During the processing of the application, the staff discovered that this assignment has the same offset as the closest co-channel assignment (Channel 17–, Sioux Falls, South Dakota) for which a construction permit has been granted to Family Broadcasting Co., Inc. to operate Station KTTW. Section 73.610 of the Commission's rules specify a 175 mile separation between co-channel UHF assignments in Zone II of the United States. This distance, however, is predicated upon the use of proper offset designations.[1] Here, while the distance between the two operations is 197 miles, it is not great enough to avoid objectionable interference absent the imposition of the proper offset. Therefore, we wish to correct the designation for Channel 17 at Grand Island to specify a "zero" offset.

PART 73—[AMENDED]

3. We believe the public interest would be served by proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, since it could permit improved service to the public by both the Grand Island, Nebraska, and Sioux Falls, South Dakota, stations. Accordingly, we propose to amend the Table of Assignments, for the community listed below, to read as follows:

City	Channel	
	Present	Proposed
Grand Island, NE	11–, 17–	11–, 17

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A Showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 21, 1986, and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral prepentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may led the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–4612 Filed 3–3–86; 8:45 am]
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[1] A non-offset station 200 miles away will cause the same amount of interference as an otherwise identical, but offset, station 175 miles away. There are currently no Channel 17 assignments, with a zero offset, within 200 miles of the Grand Island proposed site.

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47 CFR Part 73

[MM Docket No. 86–70; RM–5131]

FM Broadcast Station in Las Vegas and North Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 278 for Channel 277 at Las Vegas, Nevada, and Channel 282 for Chanel 281 at North Las Vegas, at the request of Holiday Broadcasting Co., Inc. The substitution of channels would permit Station KCRR (FM) to continue operating from its new transmitter site in compliance with the minimum distance separation requirements.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: LESLIE K. SHAPIRO, MASS MEDIA BUREAU, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specified sections are cited to text.

Proposed Rulemaking

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Las Vegas and North Las Vegas, Nevada): MM Docket No. 86–70, RM–5131.

Adopted: January 31, 1986.
Released: February 26, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by Holiday Broadcasting Company, licensee of FM Station KCRR, Channel 274, at Bullhead City, Arizona ("petitioner"), requesting the substitution of FM Channel 278 for Channel 277 at Las Vegas, Nevada, and Channel 282 for Channel 281 at North Las Vegas, Nevada.

2. Petitioner states that it has recently been forced to relocate its studio and transmitter from its licensed site in the business section of Bulhead City. Because of the urgency of the move, the Commission granted it Special Temporary Authority ("STA") to operate with 220 watts effective radiated power, rather than its authorized 100 kilowatts, from an existing communications site atop Spirit Mountain. Although the petitioner believes its new site to be an optimum one, Station KCRR, operating with its licensed facilities, would be short-spaced to Channel 277 at Las Vagas. Its proposed substitution (Channel 278) would be short-spaced to Channel 281 at North Las Vegas. Petitioner has determined that the channel substitutions can be accomplished without affecting any other existing or proposed allotments. Thus, rather than seek a waiver of the Commission's mileage separation requirements, it seeks the substitution of channels.

3. As noted by the petitioner, applications are on file for both the Las Vegas and North Las Vegas channels. No construction permit has been issued for either channel, however, a Review Board decision, which is now on appeal, has granted the application of Debra D. Carrigan for Channel 281 at North Las Vegas (MM Docket 83p–858 *et al.* F.C.C. 85R–26, adopted March 13, 1985). Our engineering study shows that Channels 278 and 282 can be allocated to Las Vegas and North Las Vegas, respectively, in compliance with the Commission's minimum distance separation requirements and can also be utilized at the applicant's sites. Further, the substitution of channels would permit the petitioner to permanently relocate its transmitter atop Spirit Mountain and transmit with its authorized power level.

PART 73—[AMENDED]

4. Based on the above, we believe the public interest would be served by proposing to substitute the channels, as requested. Should the channels ultimately be made, the applicants for both Channel 277 and Channel 281 would be permitted to amend their applications to specifiy the new channel without loss of cut-off status. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Las Vegas, NV	222, 226, 242, 246, 253, 270, 277, and 293.	222, 226, 242, 246, 253, 270, 278, 293, and 300 [1]
North Las Vegas, NV.	281	282

[1] Channel 300 is proposed for allocation to Las Vegas, Nevada, by Notice of Proposed Rule Making, MM Docket 84–655, 49 FR 29425, published July 20, 1984.

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and the filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest it required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 21, 1986, and reply coments on or before May 6, 1986, and are advised to read Appendix for the proper procedures. Additionally, a copy of such coments should be served on the petitioners, or their counsel or consultant, as follows: Holiday Broadcasting Co., Inc., P.O. Box 1604, Bullhead City, Arizona 86430, (Petitioner).

7. It is ordered, that the Secretary shall send a copy of this *Notice of Proposed Rule Making*, By certified mail, return receipt requested, to the applicants for Channel 277, Las Vegas, Nevada, and Channel 281, North Las Vegas, Nevada, as follows:

Gary E. Wilson, 28 Windfall Road, Belvedere, California 94920
(BPH–8211021AI, Channel 277, Paradise, Nevada)

East Las Vegas Broadcasting, Inc., 1410 Glenare Drive, Casper, Wyoming 82601
(BPH 820528AK, Channel 277, East Las Vegas, Nevada)

Women's Coalition for Better Broadcasting, Box 52, Greenville, South Carolina 29602
(BPH 820611AJ, Channel 277, Las Vegas, Nevada)

Terrell Broadcasting Co., 6 Sugarwood Drive, Pittsford, New York 14534
(BPH 820902AO, Channel 277, Las Vegas, Nevada)

Martin Intermart Inc., 522 Park Street, Box 2696, Jacksonville, Florida 32203
(BPH 8210020AP, Channel 277, Las Vegas, Nevada)

Great Scott Music Enterprises, 2700 Royal Road, North Las Vegas, Nevada 89030
(BPH 821020AO, Channel 277, East Las Vegas, Nevada)

Summit Broadcasting, Inc., 1029 Pacific Street, San Luis Obispo, California 93401
(BPH 821021AS, Channel 277, Las Vegas, Nevada)

Fremont Broadcasting Corp., 1935 Boulder Highway, Henderson, Nevada 89015
(BPH 821021AP, Channel 277, Las Vegas, Nevada)

Debra D. Carrigan, 3550 Katmai Drive, Las Vegas, Nevada 89122
(BPH 810909AH, Channel 281, North Las Vegas, Nevada)

Constance J. Wodlinger, 800 Galleon Drive, Naples, Florida 33940
(BPH 820322AW, Channel 281, North Las Vegas, Nevada)

Silver State Communications, Inc., P.O. Box 4001, Las Vegas, Nevada 89127
(BPH 820414AF, Channel 281, North Las Vegas, Nevada)

MCB Broadcasting of Nevada, Inc., 318 West Boardman, Youngstown, Ohio 44503
(BPH 820415AD, Channel 281, North Las Vegas, Nevada)

New Radio, Inc., 624 South 9th Street, Las Vegas, Nevada 89101
(BPH 820415AZ, Channel 281, North Las Vegas, Nevada)

Las Vegas Electronics, Inc., 2001 East Flamingo Road, Las Vegas, Nevada 89109

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(BPH 820615AM, Channel 2[illegible], North Las Vegas, Nevada)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been seved on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provision of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filing made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4615 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-72; RM-5073]

FM Broadcast Station in Columbia, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 248C1 for existing Channel 250 at Columbia, South Carolina, and the modification of the license of Station WCOS–FM to specify operation on the new channel, at the request of WCOS, Inc. The substitution of channels would eliminate short-spacings to several North Carolina and South Carolina stations. We also propose to amend the Table on our own motion by reallocating Channel 261A from Columbia to West Columbia, South Carolina, to reflect its actual usage by Station WSQC (FM) there.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read.

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to *text.*

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Columbia, South Carolina); MM Docket No. 86-72, RM-5072.

Adopted: January 31, 1986.

Released: February 28, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by WCOS, Inc. ("Petitioner"), licensee of Station WCOS–FM, South Carolina. Petitioner seeks the substitution of Channel 248C1 for its Channel 250, and the modification of its license to specify operation on the new frequency.

2. WCOS operates as an existing short-spaced allocation to co-channel Station WPEG, Concord, North Carolina, and to adjacent channel Stations WQSM, Fayetteville, North Carolina, and WBFM, Seneca, South Carolina. The Commission has granted WCOS–FM a construction permit to move its transmitter site and increase its facilities to those of a full Class C (BPH-831123AJ) and it is now ready to seek program test authority. This move of transmitter and increase in facilities leaves in place the 83 mile short-spacing to Station WPEG, the 13 mile short-spacing to Station WQSM and the 33 mile short-spacing to Station WBFM, and thus the need to operate with a directional antenna. However, petitioner has found that if it shifts its operation to Channel 248 and operates as a Class C1, with a decrease in its antenna height, all short-spacings will be eliminated and it will be able to operate nondirectionally.

3. As to the modification of its license, petitioner states that § 1.420(g) of the Rules should not apply in that its request is not an upgrade but a downgrade of its facilities. Hence, no second equivalent channel need be available for use by other interested parties or if that is not possible, Channel 248C1 should not be opened for competing applications, according to WCOS.

4. Channel 248C1 can be allocated to Columbia and used at WCOS–FM's new transmitter site in compliance with the Commission's minimum distance separation and other technical requirements. In addition, it eliminates the existing short-spacings to Stations WPEG, WQSM, and WBFM. As such, we believe petitioner's proposal warrants further consideration. We believe, also, that § 1.420(g), governing modification of existing station licenses, does not apply in this case. Station WCOS–FM does not seek an upgrade in its facilities, in that it is already operating on a Class C channel and has been issued a construction permit specifying full class C facilities. By this petition for rule making, it seeks a voluntary downgrade to specify Class C1 facilities. Thus, the procedures outlined in § 1.420(g) of the Rules and *Modification of FM and TV Station Licenses,* 98 FCC 2d 916 (1984), do not apply in this case. See, *Key West and Hialeah, Florida,* 50 FR 26229, published June 25, 1985.

PART 73—[AMENDED]

5. As an additional matter, we propose to amend the FM Table of Allotments by reallocating Channel 261A from Columbia to West Columbia, South Carolina, to reflect its present usage there by Station WSCQ. Comments are invited on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Columbia, SC.	228A, 250, 261A, 276A, and 284.	228A, 248C1, 276A, and 284.
West Columbia, SC.		261A.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

7. Interested parties may file comments on or before April 21, 1986, and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Matthew H. McCormick, Esq., Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036, (Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420

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of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (*a*), (*b*) and (*c*) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4613 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-71; RM-5074]

FM Broadcast Station in Post, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Boles Broadcasting Company, proposes the substitution of Channel 297C2 for 297A at Post, Texas, in order to provide that community with its first wide coverage FM service.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Post, Texas); MM Docket No. 86-71, RM-5074.

Adopted: January 31, 1986.
Released: February 26, 1986.

1. The Commission has before it for consideration a petition for rule making filed by Boles Broadcasting Company ("petitioner"), licensee of AM Station KPOS in Post, Texas, seeking the substitution of Class C2 Channel 297 for 297A at Post, Texas. Petitioner notes that Channel 297A was alloted to Post in MM Docket No. 84-231 *First Report and Order*, 49 F.R. 3514, published January 25, 1985. This Channel is #29 in the sequential order of the random selection in which the new FM allotments will be made available for applications. The Class C2 channel could provide that community with its first wide coverage FM service. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel.

2. We believe the petitioner's proposal warrants consideration. The substitution can be made in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

3. In view of the fact that the proposed substitution could provide Post, Texas, with its first wide coverage FM service, the Commission proposed to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the following community:

City	Channel	
	Present	Proposed
Post, TX	297A	297C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 21, 1986 and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James Boles, Boles Broadcasting Company, 115 West Main, P.O. Box 98, Post, Texas 79356

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-4614 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Management and Operating Contracts

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the DOE Acquisition Regulation (DEAR) to implement the requirements of the Department of Defense (DOD) Authorization Act, 1986 (Pub. L. 99-145, November 8, 1985) (hereafter referred to as the "Act"), which at section 1534 of Title XV, Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986, requires the Secretary of Energy to establish regulations specifying that certain costs are not allowable in connection with contract awards in excess of $100,000 which obligate funds appropriated for national security programs of DOE.

The amendments being proposed today pertain to DOE's management and operating (M&O) contracts. To ensure uniform implementation of the Act, the proposed amendments are predicated, to the maximum extent practicable, on the same criteria as are being established by DOD under the requirements of section 911 of the Act which, for DOD contracts, contains the identical cost prohibitions specified under section 1534 for DOE contracts. The intent of the proposed amendments is to establish uniform contractual coverage and related cost principle guidance for application to all of the Department's M&O contractors consistent with the DOD criteria. Where necessary, however, the DOD criteria, proposed as amendments to the Federal Acquisition Regulation (FAR) for Federal-wide application, have been modified or expanded to clarify unique DOE policies and procedures, e.g., lobbying, public relations and advertising, travel and entertainment costs. The proposed amendments, when promulgated as a final rule, will prohibit M&O contractors from claiming as allowable reimbursable contract costs the types of costs which have been cited to be not allowable in section 1534 of the Act.

In the interest of Federal-wide uniformity DOE does not, at this time, intend to establish unique regulatory amendments for its non-M&O acquisition contracts, i.e., contracts subject to FAR, Part 31, Contract Cost Principles and Procedures. Such non-M&O contracts will be subject to the cost principle amendments being established separately in the FAR, or that may be established in applicable Office of Management and Budget (OMB) circulars or otherwise to implement the Act as discussed below.

DATE: Written comments should be submitted no later than April 3, 1986.

ADDRESS: Comments should be addressed to: U.S. Department of Energy, Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8173

Paul J. Sherry, Office of the Assistant General Counsel for Procurement and Financial Incentives (GC-43), Washington, DC 20585, (202) 252-1526

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
  A. Review Under Executive Order 12291
  B. Review Under the Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. National Environmental Policy Act
  E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is to revise the DEAR as necessary to implement the requirements of section 1534 of the Act which specifies, in part, that the following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly

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associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

Section 1534 of the Act provides that implementing DOE regulations may establish appropriate definitions, exclusions, limitations and qualifications, and defines the term "covered contract" as a DOE contract in excess of $100,000 which obligates funds appropriated for national security programs of the Department of Energy. For Federal-wide uniformity and practicality of implementation, the Department proposes to extend the requirements of section 1534 to all M&O contracts regardless of the type of program or funding source involved. The resulting final requirements will be incorporated in existing M&O contracts within 30 days after the effective date of the final rule and will be required to be incorporated in new M&O contracts as of the effective date of the final rule.

Cost prohibitions identical to those listed in section 1534 were also established in section 911 of the Act for contracts awarded by DOD. Implementing regulations applicable to both DOD and DOE contracts placed with commercial organizations, but not to DOE M&O contracts, were proposed separately under the FAR amendment process as amendments to FAR Subpart 31.2, Contracts with Commercial Organizations (See **Federal Register** (FR) Notices of Proposed Rulemaking at 50 FR 7199, February 21, 1985 (Public Relations and Advertising); 50 FR 8752, March 5, 1985 (Travel); 50 FR 51777, December 19, 1985 (Entertainment); 50 FR 51779, December 19, 1985 (Alcoholic Beverages); and at 50 FR 53086, December 27, 1985 (Contributions and Donations, Fines and Penalties, and Defense of Fraud Proceedings)). To date, there has been no substantive change proposed under the FAR with regard to the existing lobbying cost principle provisions found at FAR 31.205–22, Lobbying costs.

Consistent with the intent of the Act, the amendments being proposed today essentially contain the language included in the counterpart amendments proposed to FAR Subpart 31.2, Contracts with Commercial Organizations, and the existing lobbying cost principle provisions found at FAR 31.205–22. Where not adopted verbatim, the FAR language was modified to reflect the unique circumstances applicable to DOE's M&O contractors.

A brief description of the proposed changes to DEAR Subpart 970.31, Contract Cost Principles and Procedures, follows: Subsection 970.3101–6, Advance Understandings on Particular Cost Items, is expanded to include lobbying, public relations and advertising, and travel and relocation as items of cost where advance agreements would be particularly important. Existing subsection 970.3102–7, Lobbying Costs, is replaced in its entirety for consistency, to the maximum extent practicable, with the requirements of section 1534 of the Act, the lobbying cost principle promulgated by the OMB for non-profit organizations ("Lobbying" revision to OMB Circular A–122), and the FAR Subpart 31.2 lobbying cost principle. As revised, subsection 970.3102–17, Travel Costs, further provides that the cost of air travel by other than commercial carrier (e.g., by corporate aircraft) in excess of the cost of travel by commercial carrier is unallowable. Subsections 970.3102–19, Public Relations and Advertising, and 970.3102–20, Defense of Fraud, are proposed as new cost principle guidance for determining the allowability of such costs.

DEAR Subpart 970.52, Contract Clauses for Management and Operating Contracts, is proposed to be amended at subsections 970.5204–13 and 970.5204–14, both titled "Allowable costs and fixed fee," for purposes of making the ten cost items specified as not allowable in section 1534 of the Act unallowable for reimbursement under the standard terms and conditions to be incorporated in M&O contracts.

DOE believes that section 1534 of the Act should also be applied to all other entities doing business with the Department under non-M&O acquisition contracts, i.e., educational institutions, non-profit organizations and State and local governments. However, allowable/unallowable costs for these organizations are governed by cost principles issued by OMB, i.e., OMB Circulars A–21, A–122 and A–87, respectively. DOE also believes that the cost prohibitions of section 1534, if applied to DOE contracts only, will result in an inequitable and administratively burdensome situation being created for any such entity dealing with multiple Federal agencies. Therefore, DOE is not proposing today to amend, for DOE only, the cost principles applicable to such organizations in order to fully implement section 1534. DOE is pursuing with OMB and DOD the need for changes to the applicable OMB circulars for the unallowable costs of section 1534 not otherwise currently unallowable under the circulars. In the event that OMB determines that changes to the circulars are unnecessary, DOE may, prior to April 7, 1986, announce its intention to extend the cost prohibitions of section 1534 to these organizations under applicable DOE contracts. Comments are invited on this issue.

II. Procedural Requirements

A. Review Under Executive Order 1229

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the Bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed by this proposed rule have been cleared by OMB for DOE use

under OMB clearance number 1910–0500.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on February 25, 1986.

Berton J. Roth,
Director, Procurement and Assistance Management Directorate.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); and sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Subsection 970.3101–6 is amended by revising paragraphs (a)(3) and (a)(8), and adding new paragraphs (a)(10), (a)(11) and (a)(12) to read as follows:

970.3106–6 Advance understandings on particular cost items.

(a) * * *

(3) Professional or technical consulting services;

* * * * *

(8) Unemployment insurance experience ratings;

* * * * *

(10) Lobbying costs;

(11) Public relations and advertising; and

(12) Travel and relocation costs as related to special or mass personnel movements and, as related to travel via contractor-owned-leased, or -chartered aircraft.

* * * * *

3. Subsection 970.3102–7 is revised to read as follows:

970.3102–7 Lobbying costs.

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcome of any Federal, state, or local election, referendum, initiative, or similar procedure, through inkind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence—

(i) The introduction of Federal or state legislation; or

(ii) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence—

(i) The introduction of Federal or state legislation; or

(ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to enage in unallowable activities.

(b) The following activities are excepted from the coverage of paragraph (a) above:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) make by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this subsection for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing or providing Congressional members with technical and scientific advice of contractor-employed experts pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the appropriate Committee or Subcommittee.

(2) Any lobbying made unallowable under paragraph (a)(3) above to influence state legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) Annually when submitting a cumulative claim for net costs incurred under the contract (i.e., Voucher Accounting For Net Expenditures Accrued pursuant to 970.5204–16(e), or annual cost statement for nonintegrated contractors) M&O contractors shall be required to separately identify total unallowable lobbying costs incurred, if any, for the applicable period and such costs shall thereafter be treated as unallowable activity costs.

(d) M&O contractors shall be required to submit, as part of their annual claim or cost statement, a certification that the requirements and standards of this subsection have been complied with.

(e) M&O contractors shall be required to maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable pursuant to this subsection complies with the requirements of this subsection.

(f) Time logs, calendars, or similar records shall not be required to be

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created for purposes of complying with this subsection when:

(1) The employee engages in lobbying (as defined in paragraphs (a) and (b) above) less than 25 percent of the employee's compensated hours of employment during that calendar month; and

(2) The organization has not materially misstated any allowable or unallowable costs within the preceding five-year period.

When conditions in paragraphs (f) (1) and (2) immediately above are met, contractors are not required to establish records in addition to those already required and maintained to support the allowability of claimed costs for lobbying activities, and the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during any calendar month.

(g) Existing procedures should be utilized to resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning the interpretation or application of this subsection.

4. Subsection 970.3102–17 is amended by revising paragraph (a) to read as follows:

970.3102–17 Travel costs.

(a)(1) *Commercial air travel.* It is the policy of the DOE to require the use of the lessor of the lowest available commercial discount air fare accommodations or other less than first-class commercial air accommodations for all necessary travel under the contract, except when such accommodations are not reasonably available. For example, discount or less than first-class accommodations are considered not reasonably available where such accommodations would: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air fare costs in excess of the lowest available commercial discount fare or other less then first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(2) *Air travel by other than commercial carrier.* "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance and other related costs. Costs of travel via contractor-owned, -leased, and -chartered aircraft shall not exceed the cost of commercial air travel accommodations, unless the contractor can demonstrate that costs in excess of such amounts are necessary for contract performance and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantage gained.

* * * * *

5. Subsection 970.3102–19 is added to read as follows:

970.3102–19 Public relations and advertising.

(a) "Public relations" means all functions and activities dedicated to:

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) below regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) above.

(d) The only advertising costs that are allowable are those specifically required by contract, approved in advance by the contracting officer, or that arise from requirements of the contract and that are exclusively for:

(1) Recruiting personnel required for contract performance;

(2) Acquiring scarce items for contract performance;

(3) Disposing of scrap or surplus materials acquired for contract performance; or

(4) The transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

Costs of this nature are allowable to the extent that they are determined by the contracting officer to be reasonable, necessary, and incident to contract performance.

(e) Allowable public relations costs includes the following:

(1) Costs specifically required by contract, or approved in advance by the contracting officer.

(2) Costs of—

(i) Responding to inquiries on company policies and activities.

(ii) Communicating with the public, press, stockholders, creditors, and customers, and

(iii) Conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, environmental impact of plant operations, etc.

(3) Administrative costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.), exclusive of contractor contributions and donations which are unallowable (see 970.5204–13(e)(8) and 970.5204–14(e)(6)).

(4) Costs of plant tours and open house (but see paragraph (f)(5) below).

(f) Unallowable public relations and advertising costs include the following:

(1) All advertising costs other than those specified in paragraph (d) above.

(2) Costs of air shows and other special events, such as conventions and trade shows including:

(i) Cost of displays, demonstrations and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is not of benefit to the DOE mission.

(4) Costs of ceremonies such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to benefit the contractor's organization by calling favorable public attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

(8) All public relations costs, other than those specified in paragraph (e) above, whose primary purpose is to benefit the contrator's organization by promoting the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this paragraph (f)(8) modifies the express unallowability of costs listed in paragraphs (f)(2) through (f)(7). The purpose of this paragraph (f)(8) is to provide criteria for determining whether costs not specifically identified should be unallowable.

(6) Subsection 970.3102–20 is added to read as follows:

970.3102–20 Defense of fraud proceedings.

(a) *Definitions.*

"Costs," as used in this subsection, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it: the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred before commencing the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

"Fraud," as used in this subsection, means—

(1) Acts of fraud or corruption or attempts to defraud the Government or to corrup its agents;

(2) Acts which constitute a cause for debarment or suspension (see Federal Acquisition Regulation 9.406–2(a) and 9.407–2(a)): and

(3) Acts which violate the False Claims Act, 31 U.S.C. 3739–3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

(b) Costs incurred in connection with defense of any—

(1) Criminal or civil investigation, grand jury proceeding, or prosecution;

(2) Civil litigation:

(3) Suspension or debarment proceedings; or

(4) Similar proceedings (including those associated with the filing of any false certification), or any combination of the foregoing, brought by the Government against a contractor, its agent or employee, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agent or employee, as defined in paragraph (a) above, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agent or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(c) In circumstances where the charges of fraud are resolved by consent or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(d) Costs which may be unallowable under this subsection, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) above, the contracting officer should generally withhold payment of such costs. However, the contracting officer may in appropriate circumstances provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

970.3102 Contract clause [Redesignated as 970.3103]

7. Section 970.3102, entitled "Contract clauses," is amended by correcting the section number from "970.3102" to "970.3103."

8. In subsection 970.5204–13, the clause is amended by revising subparagraphs (e)(1), (e)(8), (e)(11), (e)(12), (e)(27), and (e)(31), and by adding new subparagraph (e)(33) and (e)(34) to read as follows:

970.5204–13 Allowable costs and fixed fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, except those advertising and public relations costs: (i) Specifically required by the contract, (ii) approved in advance by the contracting officer as clearly in furtherance of work performed under the contract, or (iii) advertising costs that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, or the transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

* * * * *

(8) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(11) Entertainment, including costs of amusement, diversion, social activities; any directly associated costs such as tickets to shows or sports events, meals lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization; except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in the contract.

* * * * *

(12) Fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

* * * * *

(27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract and the cost of which exceeds the lowest available commercial discount air fare or other less than first-class (standard, coach, or equivalent) commercial air fare. The cost of air travel in excess of the lowest available commercial discount fare or other less than first-class commercial air accommodations is unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air travel costs in excess of the lowest available commercial discount fare or other less than first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(31) Lobbying costs, except the cost of lobbying activities, if any, which were specified in the contract or approved in advance by the contracting officer. Annually when submitting a cumulative claim for net costs incurred under this contract (i.e., Voucher Accounting For Net Expenditures Accrued or annual cost statement for non-integrated contractors), total unallowable lobbying costs shall be separately identified and excluded from such claims. The contractor shall separately certify, as part of its annual allowable cost representations that

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it has not claimed for reimbursement under this contract the cost of any unallowable lobbying activity.

* * * * *

(33) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(34) Costs of alcoholic beverages.

9. In subsection 970.5204–14, the clause is amended by revising subparagraphs (e)(1), (e)(6), (e)(9), (e)(10), (e)(24) and (e)(29), and by adding new subparagraphs (e)(31) and (e)(32) to read as follows:

970.5204–14 Allowable costs and fixed fee (Support Contracts).

* * * * *

(e) * * *

(1) Advertising and public relations costs designed to promote the contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, except those advertising and public relations costs: (i) Specifically required by the contract, (ii) approved in advance by the contracting officer as clearly in furtherance of work performed under the contract, or (iii) advertising costs that arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance disposing of scrap or surplus materials, or the transfer, by DOE laboratories, of federally owned or originated technology to State and local governments and to the private sector.

* * * * *

(6) Contributions and donations, including cash, contractor-owned property and services, regardless of the recipient.

* * * * *

(9) Entertainment, including costs of amusement, diversion, and social activities, and any directly associated costs such as tickets to shows or sports events, meals lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization; except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in the contract.

* * * * *

(10) Fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State and local or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

* * * * *

(24) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract and the cost of which exceeds the lowest available commercial discount air fare or other less than first-class (standard, coach, or equivalent) commercial air fare. The cost of air travel in excess of the lowest available commercial discount fare or other less than first-class commercial air accommodations is unallowable, except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. However, in order for air travel costs in excess of the lowest available commercial discount fare or other less than first-class commercial air fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

* * * * *

(29) Lobbying costs, except the cost of lobbying activities, if any, which were specified in the contract or approved in advance by the contracting officer. Annually when submitting a cumulative claim for net costs incurred under this contract (i.e., Voucher Accounting For Net Expenditures Accrued or annual cost statement for non-integrated contractors), total unallowable lobbying costs shall be separately identified and excluded from such claims. The contractor shall separately certify, as part of its annual allowable cost representations that it has not claimed for reimbursement under this contract the cost of any unallowable lobbying activity.

* * * * *

(31) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Government where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(32) Costs of alcoholic beverages.

[FR Doc. 86–4498 Filed 3–3–86; 8:45 am]

BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of 1986 Sugar Import Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice changes the 1986 sugar import quota year from the period December 1, 1985 through September 30, 1986 to the period December 1, 1985 through December 31, 1986.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982, amended Headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) in part to authorize the Secretary of Agriculture to amend the quota period for sugar imported into the United States after consulting with the U.S. Trade Representative and the Department of State if the Secretary determines such action is appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

For the 1986 quota year the quota level was set at 1,722,000 short tons, raw value, and the quota period was established as December 1, 1985–September 30, 1986 (50 FR 37887).

This notice sets forth the change to the 1986 quota period made by the Secretary to the period December 1, 1985 through December 31, 1986.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, after consultations with the U.S. Trade Representative and the Department of State, I have changed the 1986 sugar import quota year from the period December 1, 1985 through September 30, 1986 to the period December 1, 1985 through December 31, 1986.

I have determined that this change in the sugar import quota year gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a)(i) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse, for consumption between December 1, 1985 and December 31, 1986, inclusive, shall not exceed in the aggregate 1,722,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 1,720,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

Signed at Washington, DC on February 27, 1986.

Daniel G. Amstutz,

Acting Secretary of Agriculture.

[FR Doc. 86–4675 Filed 3–3–86; 8:45 am]

BILLING CODE 3410-10-M

Food and Nutrition Service

Availability of Surplus Commodities; Fiscal Year 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that for the period October 1, 1985 through September 30, 1986, the Department of Agriculture will continue to make available surplus cheese, butter, nonfat dry milk, honey, rice, flour and corn meal to requesting State agencies for distribution to eligible recipients. The foods are being made available by this announcement under the Temporary Emergency Food Assistance Program (TEFAP) authorized under section 202 of the Temporary Emergency Food Assistance Act of 1983 (Title II of Pub. L. 98–8, as amended).

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302, Telephone (703) 756–3660.

EFFECTIVE DATE: October 1, 1985.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512. It has been classified as "nonmajor", because it meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

This is not a rule as defined in the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq), and thus is exempt from the provisions of that Act. The purpose of the action is to notify States of the types and quantities of foods to be made available for household distribution during Fiscal Year 1986.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

The Secretary anticipates that the following commodities and amounts will be made available during Fiscal Year 1986 to agencies of State governments which request them for distribution to eligible recipients: cheese, 420 million pounds; flour, 132 million pounds; rice, 132 million pounds; nonfat dry milk, 96 million pounds; honey, 76 million pounds; butter, 72 million pounds; corn meal, 36 million pounds.

The actual types and quantities of commodities made available by the Department may differ from these estimates. The foods made available under this notice will be targeted to needy persons, including low-income and unemployed persons. These foods are being offered under the provisions of Title II of Pub. L. 98–8, as amended by

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Pub. L. 99-198, the Food Security Act of 1985, approved December 23, 1985.

(Catalog of Federal Domestic Assistance No. 10.550)

Authority: Sec. 210(c), Pub. L. 98-8, as amended.

Dated: February 27, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86-4656 Filed 3-3-86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

[Docket Nos. 2636-01 and 2636-02]

Actions Affective Export Privileges; Alan C.T. Simmons, Digital Resources, Ltd.; Decision and Order

Appearance for Respondents: Alan C.T. Simmons, Keasen Farm, St. Ive Liskard, Cornwall, England, and Digital Resources, Ltd, 34th Pezikow Syntagmatos 17, Pireas, Greece.

Appearance for Government: Margo E. Jackson, Esq., Office of the Assistant General, Counsel for Export Administration, U.S. Department of Commerce, Washington, DC 20230.

Preliminary Statement

A proceeding was initiated on April 14, 1983, against Alan C.T. Simmons, Keasen Farm, St. Ive Liskard, Cornwall, England, individually and doing business as both Amber Computer Services, Mesogian 174, Holargos, Athens, Greece, and Digital Resources, Ltd., 34 Pezikow Syntagmatos 17, Pireas, Greece, by the issuance of a charging letter by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency). The Agency received confirmation that the charging letters was delivered to Respondents by a return receipt of certified mail. The Respondents were charged with violating the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).

In the charging letter, OEE alleged that Respondents exported, or caused to be reexported from Greece to Sweden, and subsequently from Sweden to the Union of Soviet Socialist Republic (U.S.S.R.), 16 shipments of U.S.-origin computers and computer equipment without obtaining the reexport authorization which Respondent knew was required by 15 CFR 374.1 in 15 CFR 387.2, 387.4, and 387.6. Respondent was also charged with concealing material facts from Agency's Office of Export Administration in connection with the 16 transactions, in violation of 15 CFR 387.5, and causing, aiding, abetting, counseling, commanding, inducing, procuring, or permitting the doing of the above-described acts, in violation of 15 CFR 387.2.

Respondents failed to answer the charging letter as required by 15 CFR 388.7(a). Under the Regulations, failure to answer the charging letter constitutes an admission of those charges by Respondents. 15 CFR 388.8.

In accordance with 15 CFR 388.8, the Agency submitted evidence to support the allegations contained in the charging letter. The undersigned Administrative Law Judge considered the evidence and my findings are detailed below.

From August 8, 1980, and February 23, 1982, Respondent reexported or caused to be reexported 16 shipments of U.S.-origin computers and computer equipment from Greece to Sweden, and then from Sweden to the U.S.S.R., knowing that the reexport authorisation was required by the Regulations had not been obtained. In connection with these 16 transactions, Respondent unlawfully concealed material facts from the Agency's Office of Export Administration and caused, aided, abetted, counseled, commanded, induced, procured, or permitted the doing of the illegal acts described above.

Based on the foregoing, I find that Respondent engaged in export activities in violation of the Act and the Regulations, as alleged in the charging letters. I find that an Order denying export privileges to Alan C.T. Simmons, Amber Computer Services and Digital Resources, Ltd., for a period ending 30 years from the date this Order becomes final is reasonably necessary to protect the public interest and achieve effective enforcement of the Act and the Regulations.

Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, *it is ordered:*

I. All outstanding validated export licenses in which any Respondent appears or participates in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. For a period of 30 years from the date this Order becomes final, Respondents, their successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States or to be exported; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extent not only to Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comments, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of the Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, in any manner or capacity, on behalf of or in any association with any Respondent or related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any

Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: February 25, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-4658 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 1613-01, 1613-02, and 1613-03]

Actions Affecting Export Privileges; Spawr Optical Research, Inc.; Walter J. Spawr, Frances A. Spawr; Decision and Order

Appearance for Respondent: Steven R. Perles, Esq., Suite 400, 1320 19th Street, NW., Washington, DC 20036

Appearance for Government: Thomas C. Barbour, Esq., Office of General Counsel, Room H3845, U.S. Department of Commerce, Washington, DC 20230.

Preliminary Statement

On May 1, 1981, a charging letter was issued by the Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency) against Walter J. Spawr, Frances A. Spawr, and Spawr Optical Research, Inc., (hereinafter jointly referred to as Respondents) 1527 Pomona Road, Corona, California 91720. The Respondents were therein charged with violating the Export Administration Act of 1969, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1982) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).

The initial aspect of this proceeding, the issuance of a still effective Temporary Denial Order on February 24, 1981, has lingered, unresolved for almost 5 years, filling 6 volumes of files and producing a cumbersome, convoluted record.[1] In the 1981 charging letter, OEE alleged that Respondents violated the Act and the Regulations by knowingly conspiring to export and in fact did export and reexport U.S.-origin copper water-cooled laser mirrors used in high-power CO_2 lasers from the United States, the Federal Republic of Germany, and Switzerland to the Union of Soviet Socialist Republics (U.S.S.R.) without obtaining validated export licenses as required by § 372.1(b) of the Regulations or reexport authorization as required by § 374.1 of the Regulations, and by falsifying and concealing material facts on export control documents.

The charging letter and temporary denial order against Respondents initiated administrative proceedings for the same violations upon which they had been indicted in a prior criminal proceeding. At the criminal trial, Spawr Optical Research was found guilty on all 14 charges in the indictment: For misrepresenting shipment values in Shipper's Export Declarations submitted to the U.S. Customs Service in 1976 (counts 1 and 2) and 1977 (counts 3–6); conspiracy to export without a license (count 10); and exporting laser mirrors to Germany and Switzerland with the knowledge that the mirrors would be shipped to the U.S.S.R. without obtaining the required validated export license in 1976 (counts 7–9) and 1977 (counts 11–14). Frances Spawr was found guilty on counts 1–6 and 10–14 and Walter Spawr was found guilty on counts 10–14. *United States* v. *Spawr Optical Research, Inc.*, CR 80-789 (WMB) (C.D. Calif. 1980). Although Respondents pursued the appeal of their criminal conviction through the judicial process, the convictions were upheld by the Ninth Circuit, and Respondents' petition to the Supreme Court to review their criminal convictions was denied. *United States* v. *Spawr Optical Research, Inc.*, 685 F.2d 1076 (9th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983).

The Agency filed a Motion for Summary Judgment in this administrative proceeding on October 10, 1984, asserting Respondents' liability for the violations alleged in the charging letter, to the extent Respondents were found guilty on the same criminal charges, and seeks the imposition of a period of denial of export privileges. In the Motion for Summary Judgment the Agency chose not to pursue those charges in the charging letter that did not correspond to the convictions in the criminal proceeding. In effect, this has resulted in the withdrawal of counts 7–9 against Frances Spawr and the withdrawal of counts 1–9 against Walter Spawr. The Motion for Summary Judgment was granted on October 10, 1985, but a period was allowed for comments, modifications, or alterations on the proposed Order submitted therewith.

Discussion

Respondents contend that under due process they are entitled to an evidentiary hearing and should not be collaterally estopped. They claim that the Agency improperly rejected their application for a license to export their commodity and that any Denial Order must be linked to the national security, foreign policy, or short supply objectives of section 3(10) of the Act, 50 U.S.C. app. 2401–2402 (1982), as amended in 1985, Pub. L. 99-64, 99 Stat. 120 (1985). Although Respondents agree that a criminal conviction constitutes estoppel in favor of the United States in a subsequent civil proceeding regarding those matters determined by the judgment in the criminal case, they argue that the "necessary" statutory elements referred to above were not established at the criminal trial and, therefore, the matter is still open for determination. *See* Respondents' Reply to the Department's Proposed Order, November 2, 1985. In effect, Respondents claim a prejudicial error occurred at the criminal trial and seek to have this tribunal review the criminal proceeding and engage in an analysis and determination of the level of technology pertinent to Respondents' laser mirrors.

Although Respondents' due process claim has superficial appeal, I find it devoid of merit before this tribunal. The Agency expressly denied Respondents' application for export licenses. The appropriate mechanism to challenge the validity of that denial is through a license denial appeal. That process is outlined in Part 389, Title 15 of the Code of Federal Regulations. This tribunal is not the proper forum before which to address the validity of the regulations or the denial of export licenses.[2] Respondents not only failed to appeal their license denial through the necessary channels but failed to prevail at the criminal proceeding as well.

The agency proceeding involved here is one of limited scope. The purpose of

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[1] The events charged here occurred in 1976 and 1977, almost a decade ago. The deplorable delay in processing this and too many other cases is both unexplainable and unexplicable.

[2] Moreover, the inclusion of Respondents' equipment on the commodity control list and the license denial more than support an inference that the statutory and regulatory requirements regarding evaluation of a commodity and application for export were met with respect to the particular transactions involved here. In any event, the appraisal and review of the very technical determinations respecting what should or should not be placed on the control lists and what should be licensed for export, to particular destinations, is better left to the license appeal process.

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this type of administrative proceeding is to adjudicate facts. Entitlement to a hearing is predicated upon the determination of such issues as whether the acts charged have been committed, and, if so, whether the acts constitute a violation. Due process cases presuppose that oral hearings and other trial procedures are useful primarily for resolving questions of fact. Due process does not require an agency to hold a hearing if a question of law is the only dispute. *See Mackey* v. *Montrym*, 443 U.S. 1, 13–7 (1979). Respondents had abundant opportunity to present their case before a United States District Court in a criminal proceeding with the full panoply of protected rights attendant to such a proceeding. A jury heard the facts (the same facts upon which the Agency's civil charges are based), deliberated the case, and concluded Respondents committed the charged acts which constitute violations of the Act and the Regulations. This forum rightfully relies on the criminal process and does not exist to question the factual determination made under the high, beyond a reasonable doubt, standard of proof applicable to those criminal proceedings. Since the factual issues underlying this administrative proceeding have already been resolved at the prior criminal trial, no appropriate issues exist within the jurisdictional ambit of this tribunal which warrant an evidentiary hearing. This forum does not exist to "try" the regulations or licensing determinations. The criminal conviction of Respondents estops them from contesting in this proceeding any element necessarily established at the criminal trial. *See Considine* v. *United States*, 683 F.2d 1285, 1286 (9th Cir. 1982); *United States* v. *Podell*, 572 F.2d 31, 35 (2nd Cir. 1978); *Berdick* v. *United States*, 612 F.2d 533, 537 (Ct. Claims 1979).

Respondents contend that Denial Orders may not be used as a punitive measure and that before a Denial Order can issue, the Agency must show that the export of Respondents' commodity, deemed a national security threat under section 3(10) in the mid-1970's, continues to constitute such a threat in the mid-1980's.

Whether the effect of denial of export privileges may be or is punitive is not for consideration here. The evaluation that the export of a commodity constitutes a national security threat is part of the process in which criteria are generated to identify exportable from non-exportable products to particular countries. Further, the law that is to be applied is the law at the time the violation occurred. A criminal court found that in 1976 and 1977, Respondents committed the acts charged. Respondents' criminal convictions warrant denial of their export privileges in order to prevent further exports of advanced technology. Although this may have a punitive effect, it is part of the whole package of the statutes and regulations enacted and promulgated to protect this nation from those who would arrogate to themselves national security and foreign policy decisions. Respondents have demonstrated that they cannot be trusted and are, in my assessment, scoundrels of judicially established reputation. In a United States criminal court they were found to have displayed a contemptuous disregard for the statutes and regulations designed to protect national interests. It is appropriate that Respondents be denied export privileges and be barred from further export transactions.

Respondents request that a definition of permitted "domestic sales" be incorporated into the Order. The language proposed by agency counsel in response to Respondents' request is a near-verbatim extract of a portion of correspondence dating from 1966 which was recently provided to the parties by this Office in this proceeding.[3]

It is not appropriate to attempt to furnish a simple definition for a complex problem in individual cases. These Respondents are not to be singled out and furnished with language that is generally applicable to the export community at large. The language in the usual Order accurately and clearly reflects that Respondents' export-related transactions only are affected, not legitimate domestic sales. The general guidelines on domestic sales quoted above will be applied to these and other Respondents as well. When clarification of a particular transaction is warranted, separate rulings will issue upon request. I would further recommend that the Agency, following solicitation of public comments, promulgate a rule on this item of significant interest to the export community.

Findings

As my findings of fact, I incorporate the findings made by the United States Court of Appeals for the Ninth Circuit in *United States v. Spawr Optical Research, Inc., supra.* note 1,1083. Based upon the record before me including those findings of fact and the criminal conviction of Respondents,[4] I hereby draw the following conclusions of law:[5]

On or about July 9, 1976 (Count 1), July 16, 1976 (Count 2), February 9, 1977 (Count 3), February 10, 1977 (Count 4), February 11, 1977 (Count 5, and February 14, 1977 (Count 6), Frances A. Spawr and Spawr Optical Research, Inc., falsified and concealed material facts on export control documents accompanying exports of laser mirrors

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[3] The Agency in its Response to Respondents' Reply, December 5, 1985, proposed that the following paragraph be substituted for Paragraph IV of the proposed Order:

IV. This order does not preclude Respondents from engaging in legitimate domestic sales. Respondents may sell goods in the United States to other American firms even though the Respondents may know that the other firms intend to export the goods from the United States, provided that the Respondents sell at the same price as they would sell to any other domestic firm, make no special profit from the fact that the transaction is for export, do not share in the fruits of the export transaction directly or indirectly as a joint venturer or otherwise, do not manufacture goods specifically for export or in accordance with an order from a foreign buyer, and the foreign order which the other American firm is filling is not one received directly, or indirectly, through the recommendation or other communication of the Respondents. In addition, in legitimate domestic sales transactions, the Respondents must sell and deliver on a basis that will not involve them in the export financing, transporting, forwarding, or other servicing of the goods for shipment from the United States. In other words, the Respondents's sale must be on a wholly-domestic basis.

The complete language provided to the parties by this Office, which is an excerpt from a letter: Schaeffer to Covington and Burling, in the Grome Metal case, January 9, 1961, reads as follows:

Generally speaking, a respondent may sell goods in the United States to another American firm even though the respondent may know that the other firm intends to export the goods from the United States, provided that the respondent sells at the same price as he would sell to any other domestic firm, makes no special profit from the fact that the transaction is for export, does not share in the fruits or the export transaction directly or indirectly as a joint venturer or otherwise, and the foreign order which the other American firm is filling is not one received through the recommendation of the respondent. In addition, in such a case, the respondent must sell and deliver on a basis that will not involve him in the export financing, transporting, forwarding, or other servicing of the goods for shipment from the United States. In other words, the respondent's sale must be on a wholly domestic basis.

Where a respondent knows, or has reason to suspect, that goods which he is selling to another American firm are intended for export to one of the respondent's regular customers, he would under the terms of the Export Denial Order e prohibited from acting as the supplier. In transactions of this nature, the BFC has always considered that the respondent is, in essence, doing indirectly through another American firm what he is forbidden by the order to do directly.

[4] I have been informed by counsel that the District Court for the Central District of California has recently granted Respondents' petition to re-open their criminal case. Because this Decision is based in significant part on the prior criminal convictions, if the District Court overturns any of these convictions, Respondents may petition this tribunal to re-open this administrative proceeding for an independent adjudication of the factual issues.

[5] Cross-references to the counts of indictment upon which Respondents were found guilty have been provided for each conclusion of law. *See United States v. Spawr Optical Research, Inc., supra.*

from the United States, in violation of § 387.5 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations).[6]

2. On or about June 1, 1976 (Count 7), July, 1976 (Count 8), and July 16, 1976 (Count 9), Spawr Optical Research, Inc., exported and caused to be exported copper water-cooled laser mirrors from the United States to the Federal Republic of Germany without obtaining the required validated export license from the Department, with the knowledge and intent that the mirrors would be reexported to the Union of Soviet Socialist Republics (U.S.S.R.) without authorization from the Department, in violation of § 387.6 of the Regulations.

3. During the period from October 1976 to late February 1977, Walter J. Spawr, Frances A. Spawr and Spawr Optical Research, Inc., after the Department had rejected an export license application filed by Spawr Optical Research, Inc., to export copper water-cooled laser mirrors to the U.S.S.R., conspired to violate the Regulations. The conspiracy involved the export of copper water-cooled laser mirrors to Fracht A.G., a freight forwarder in Switzerland, with the knowledge and intent that the laser mirrors would be diverted to the U.S.S.R. without the required validated export license or reexport authorization required by the Regulations, in violation of §§ 387.3 and 387.4 of the Regulations (Count 10).

4. On or about February 9, 1977 (Count 11), February 10, 1977 (Count 12), February 11, 1977 (Count 13), and February 14, 1977 (Count 14), Walter J. Spawr, Frances A. Spawr, and Spawr Optical Research, Inc., exported and caused to be exported copper water-cooled laser mirrors from the United States to Fracht A.G. in Switzerland with the knowledge and intent that the mirrors would be reexported to the U.S.S.R. without the required export licenses or reexport authorization required by the Regulations, in violation of § 387.6 of the Regulations.

Conclusion

Based on the foregoing, I concur in the proposal of Agency counsel that an Order denying all export privileges to Respondents for a period of 6 years from the date of this order is appropriate in this proceeding. I am not without some reservation about this time period. In the decade since I was previously active in these adjudications, the use of fixed numbers of years has become common. My view is that the conduct of individuals or companies that export products such as those described here, after an export license has been specifically denied, demonstrates such a defiance of the laws of the United States as to be incompatible with automatic restoration of export privileges. That will be my approach hereafter.

Order

Therefore, pursuant to the authority delegated to me by § 388.16 of the Regulations, it is ordered that:

I. All outstanding validated export licenses in which the Respondents appear or participate, in any manner or capacity, be revoked and returned to the Office of Export Administration for cancellation.

II. For a period of 6 years from the date that this Order becomes final, the Respondents, their successor or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2402 (1982)), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (1985), and the Regulations.

III. Such denial of export privileges shall extend not only to the Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall with respect to U.S.-orgin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the Respondents or any related party, or whereby the Respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the Respondents or any related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act. At that time the Temporary Denial Order issued against the Respondents shall, by its terms, be terminated.

Dated: January 27, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86–4069 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-DT-M

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[6] During the periods alleged in the Charging Letter prior to September 30, 1976, the Regulations were issued pursuant to the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976)). From October 1, 1976 to June 7, 1977, the Regulations were continued in effect under Executive Order 11940, 3 CFR Part 166 (1976 Comp.).

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Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on March 20, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

TIME AND PLACE: Thursday, March 20, 1986, 9:30 to 11:00 a.m., at the Red Cross Building, Hall of Governors, 18th and E Streets, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 26, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–4673 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-BW-M

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary.

SUMMARY: The Communications Committee of the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on March 13, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

TIME AND PLACE: Thursday, March 13, 1986, 3:00 p.m., at the National Association of Broadcasters, VTW Room, 1771 N Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 26, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–4674 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-BW-M

International Trade Administration

[A-337-001]

Sodium Nitrate From Chile; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the Olin Corporation, the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers the one known exporter of this merchandise to the United States and the period March 16, 1983 through February 29, 1984. The review indicates the existence of *de minimis* dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Linda Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 38527) an early determination of antidumping duty for the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). In accordance with § 353.53a(a) of the Commerce Regulations, the Olin Corporation, the petitioner, requested an administrative review. The Department published in the **Federal Register** (50 FR 48825, November 27, 1985) a notice of initiation of antidumping duty administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the Tariff Schedules of the United States Annotated. The review covers the one known exporter of this merchandise to the United States, Socieded Quimica Y Minera de Chile S.A. ("SQM"), and the period March 16, 1983 through February 29, 1984.

United States Price

In calculating United States price the Department used exporter's sales price, as defined in section 772 of the Tariff Act. Exporter's sales price was based on the delivered or f.o.b. packed or unpacked price to an unrelated purchaser in the United States. Where applicable, we made deductions for discounts, foreign inland freight, marine insurance, ocean freight, handling charges, U.S. brokerage charges, credit, advertising and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the delivered or the f.o.b. packed price with adjustments, where applicable, for inland freight, credit, differences in packing, and for indirect

selling expenses to offset U.S. selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 0.07 percent exists for SQM for the period March 16, 1982 through February 29, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearings.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for SQM is less than 0.5 percent and therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as provided for by § 353.48(b) of the Commerce Regulations, on shipments of Chilean industrial sodium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: February 24, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–4646 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Numbers 2636–01 and 2636–02]

Actions Affecting Export Privileges; Alan C. T. Simmons, Digital Resources, Ltd.; Order

On February 25, 1986, the Administrative Law Judge entered a Default Order in the above matter, which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120) (July 12, 1985) and 15 CFR 388.8(a) for final action.

Having examined the record and based on facts adduced in this case, I affirm the Order of the Administrative Law Judge, which constitutes the final agency action in the case.

Dated: February 26, 1986.

Paul H. Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–4660 Filed 3–3–86; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Numbers 1613–01, 1613–02, and 1613–03]

Actions Affecting Export Privileges; Walter J. Spawr, Frances A. Spawr, Spawr Optical Research, Inc.; Order

On January 27, 1986, the Administrative Law Judge entered an Order denying Respondent's request for an evidentiary hearing on the issue of whether a violation of the "National Security" requirement of the Act and regulations existed or could be established by the agency, and further directed the Respondents be denied export licenses for 6 years. The Order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 as amended, for final action.

Having examined the record including the submissions of counsel; based on facts adduced and applicable law, I concur in the determination of the Administrative Law Judge that the placement of products on the Commodity Control List, as well as the determination of the countries and parties to whom exports may be made, is a matter for determination in the licensing, rather than in the adjudication process. I affirm the Order of the Administrative Law Judge.

This constitutes the final agency action in the case.

Dated: February 26, 1986.

Paul H. Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–4661 filed 3–3–86; 8:45 am]

BILLING CODE 3510-DT-M

Decision on Application for Duty-Free Entry of Scientific Instrument; North Dakota State Soil Conservation Committee

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–208R. Applicant: North Dakota State Soil Conservation Committee, Bismarck, ND 58505. Instrument: Electromagnetic Ground Conductivity Meter, Model EM–38 and Accessories. Manufacturer: Geonics Ltd., Canada. Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides for in situ measurement of ground conductivity in milliohms per meter. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Malles,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86–4647 Filed 3–3–86; 8:45am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Rensselaer Polytechnic Institute

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–297. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180–3590. Instrument: Surface Forces Apparatus System. Manufacturer: Anutech Pty., Ltd.,

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Australia. Intended use: See notice at 50 FR 41381.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can measure force-distance relationships between solid surfaces with a force sensitivity of 10.0 nanonewtons and a distance resolution of ±0.2 nanometers. The National Bureau of Standards advises in its memorandum dated January 24, 1986 that (1) this capability is pertinent to the applicant's intended purpose and

(2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4648 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Rhode Island

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-301. Applicant: University of Rhode Island, Narragansett, RI 02882. Instrument: Mass Spectrometer, Model MAT 251 with Accessories. Manufacturer: Finnigan, West Germany. Intended use: See notice at 50 FR 45138.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument guarantees (1) a reproductibility and zero enrichment of $\pm 0.025\,{}^{\circ}/_{\circ\circ}$ for $\delta^{18}O$ and $\delta(O_2N_2)$ and $\pm 0.010\,{}^{\circ}/_{\circ\circ}$ for $\delta^{15}N$ and (2) an internal precision for $\delta^{13}C$ analysis of CO_2 of $\pm 0.15\,{}^{\circ}/_{\circ\circ}$ for samples containing 0.05 μmol CO_2. The National Bureau of Standards advises in its memorandum dated February 4, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value of the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4649 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcement; New Mexico

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$165,000* for the budget period *July 1, 1986* to *June 30, 1987*. The IBDC will operate in the *State of New Mexico*.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for-profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic review culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for applications is *April 3, 1986*. Applications must be postmarked *On or Before April 3, 1986*.

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 24, 1986.

Melda Cabrera,

Acting Regional Director, Dallas Regional Office.

Project Specifications for Minority Business Development Centers

Fiscal Year 1986.

Program Number and Title: 11.800 (Minority Business Development Centers).

Project Name (Geographic Area or Metropolitan Statistical Area (MSA)): State of New Mexico (Indian Business Development Center).

Project Identification Number: 06-10-86010-01.

Operated By: (Firm/Organization).

Project Start and End Dates: July 1, 1986 thru June 30, 1987.

Project Duration (months): 12.

Federal Funding: (100%) $165,000.

Closing date for Submission of this Application: April 3, 1986.

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the geographic area of: the State of New Mexico.

Eligibility criteria: Competition is open to American Indian Non-Profit Organizations and For-Profit Firms (those entities which are owned or controlled by one or more American Indian persons).

Project Period: The competitive award period will be approximately three (3) years

consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance, and Agency priorities.

MBDA's minimum level of effort: Financial Packages: $982,000; M&TA Hours: 1,274; Procurements: $1,439,000; Number of clients: 56.

[FR Doc. 86-4520 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Maryland (Chesapeake Bay) and Florida (Rookery Bay) National Estuarine Sanctuary Programs. Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to coastal management activities, their adherence to the terms and conditions of financial assistance awards funded under the CZMA, and carrying out the objectives of CZMA section 315 regarding the implementation of the Estuarine Sanctuary Program. The states evaluated were found to be adhering to their approved estuarine sanctuary programs. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 24, 1986.

[FR Doc. 86-4597 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs and Estuarine Sanctuaries; Intent To Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Louisiana Coastal Management Program (CMP); Michigan CMP; and Maine CMP and Hawaii's Waimanu National Estuarine Sanctuary; Georgia's Sapelo National Estuarine Sanctuary; and Oregon's South Slough National Estuarine Sanctuary through June 30, 1986. These reviews will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under CZMA section 306, and the Estuarine Sanctuary Program is authorized by CZMA section 315. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, DC 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 24, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-4596 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-08-M

Dall's Porpoise Proposed Action Plan; Availability

Pursuant to section 14(b)(2) of the North Pacific Fisheries Act of 1954 as amended (16 U.S.C. 1021 et seq.), the National Marine Fisheries Service has released to the general public its Proposed Action Plan for Dall's Porpoise for 1986. The Plan describes research studies conducted on Dall's porpoise, research plans for 1986, and management measures taken to reduce the incidental take of this species in the Japanese high seas salmon fishery.

Copies of this report are available from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, DC 20235.

Dated: February 24, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-4626 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

National Advisory Committee on Oceans and Atmosphere; Meeting

February 25, 1986.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Monday and Tuesday, March 17-18, 1986. The meeting will be held at 2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. on Monday and commence at 8:30 a.m. and end at 3:00 p.m. on Tuesday.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and

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submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, March 17, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B-100, Washington, DC.
8:00 a.m.–12:00 Noon—Plenary
9:00 a.m.–9:15 a.m.
- Announcements

9:15 a.m.–9:30 a.m.
- Swearing-in Ceremony

9:30 a.m.–10:30 Noon
- Guest Speaker: Dr. Rober M. White, President, National Academy of Engineering

Topic: Emerging Issues in Oceanic and Atmospheric Affairs
10:30 a.m.–12:00 Noon
- Committee Discussion

Exclusive Economic Zone (EEZ) Report
Acid Rain Statement
12:00 Noon–1:30 p.m.—Lunch
1:30 p.m.–5:00 p.m.—Panel Meetings
- Panel 1: Roles and Missions of the National Ocean Service/National Marine Fisheries Service

Room B-100
Speakers:
Jim Drewry, Professional Staff Member, Senate Committee on Commerce, Science, and Transportation
Topic:
Ocean Services and Fisheries
Thomas Kitsos, Legislative Analyst, House Committee on Merchant Marine and Fisheries
Topic: Ocean Services
- Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/Office of Oceanic and Atmospheric Research

Room 416
Speakers:
RADM J.B. Mooney, Chief of Naval Operations
Topic: Ocean Research
Dr. D. James Baker, President, Joint Oceanographic Institutions, Inc.
Topic: Satellites and Ocean Research
5:00 p.m.—Recess

Tuesday, March 18, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC
8:30 a.m.–11:30 a.m.—Panel meeting
- Panel 2: Roles and Missions of the National Weather Service/National

Room 416
9:30 a.m.–10:30 a.m.
Speaker:
William S. Barney, Federal Coordinator for Meteorological Services and Supporting Research
Topic:
Federal Meteorological Services
11:30 a.m.–1:00 p.m.—Lunch
1:00 p.m.–3:00 p.m.—Plenary
- Committee Discussion of NOAA Study
- Old Business
- Panel Reports
- New Topics
- New Business

3:00 p.m.—Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: February 25, 1986.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 86-4458 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-12-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene a public meeting, March 4, 1986, from 9 a.m. to 5 p.m., and on March 5, from 9 a.m. to 1 p.m., at the Ala Moana Americana Hotel, 410 Atkinson Drive, Hibiscus Ballroom #2, Honolulu, HI. The Council will discuss progress on a limited entry concept for the bottomfish fisheries of the Northwestern Hawaiian Islands (NWHI); review the partial disapproval decision by the Agency of the Council's Spiny Lobster Amendment #3; review recommendations of the Lobster Planning Team and the Scientific and Statistical Committee on management of the NWHI fisheries, i.e. measuring for slipper lobsters, economic conditions, restructuring the fishery management plan into a framework document, closed seasons; review the 1985 lobster annual report, as well as discuss any other committee business. A detailed agenda is available from the Council's office, address below.

Also on March 4, the Council will convene a closed session (not open to the public), from 8 a.m. to 9 a.m., to discuss personnel matters. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: February 28, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Services.

[FR Doc. 86-4626 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

[P16H]

Marine Mammals; Application for Permit; Dr. Gerald L. Kooyman, Scripps Institute of Oceanography

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Gerald L. Kooyman.

b. Address: Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093

2. Type of Permit: Scientific Research

3. Name of Number of Marine Mammals: Weddell seal *(Leptonychotes weddelli)* 15

4. Type of Take: To study the dive behavior and population ecology of Weddell seals.

5. Location of Activity: Terra Nova Bay, Antarctica.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 97031.

Dated: February 28, 1986.

Richard B. Roe,

Director, Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4627 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; North Wind Undersea Institute

On December 27, 1985, notice was published in the **Federal Register** (50 FR 52983) that an application had been filed by the North Wind Undersea Institute, 610 City Island Avenue, City Island, New York 10464 for a permit to acquire three (3) rehabilitated beached/stranded harbor seals *(Phoca vitulina)* from the New England Aquarium for public display.

Notice is hereby given that on February 19, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799.

Dated: February 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4628 Filed 3-3-86; 8:45 am]

BILLING CODE 3510-22-M

[P77 17]

Marine Mammals; Issuance of Permit Southwest Fisheries Center, National Marine Fisheries Center

On January 3, 1986, notice was published in the **Federal Register** (50 FR 239) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, to take up to 475 Hawaiian monk seals *(Monachus schauinslandi)* for scientific research by flipper tagging and bleach marking.

Notice is hereby given that on February 13, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4629 Filed 3-3-86; 8:45am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Legislative Environmental Impact Statement; Small Intercontinental Ballistic Missile; Development

The United States Air Force will prepare a Legislative Environmental Impact Statement (LEIS) concerning the full-scale development of the Small Intercontinental Ballistic Missile (Small ICBM) and the selection of deployment locations for basing the missile system. Consistent with 203 of the 1986 Defense Authorization act and § 1506.8 of the Council on Environmental Quality regulations, the LEIS will be transmitted to Congress.

The Department of the Air Force will serve as the lead agency and will supervise the preparation of the LEIS. Cooperating agencies, if any, will be specified in subsequent notices to be issued by the Air Force.

The LEIS covered by this notice will be a programmatic document. It will compare, on a regional basis, the environmental impacts expected to result from the deployment of the Small ICBM in one or more of the alternative basing modes at alternative deployment locations that have been determined to be suitable.

This LEIS will be the first in a two-tiered environmental impact analysis process. The second tier, as directed by Congress, will be one or more Administrative Environmental Impact Statements to cover specifically selected sites for the deployment and peacetime operations of the Small ICBM.

The basing modes and their locations to be analyzed in the LEIS are:

a. Hard Mobile Launchers in Random Movement on Department of Defense or Department of Energy installations.

Alternative support base	Alternative deployment area
Arizona Complex	
Gila Bend Air Force Auxiliary Field or Yuma Proving Ground.	Luke Air Force Range (AFR), and Yuma Proving Ground.
Florida Complex	
Eglin Air Force Base	Eglin AFB.
Nevada Complex	
Indian Springs Air Force Auxiliary Field or Nellis Air Force Base.	Nellis AFR, and Nevada Test Site.
New Mexico Complex	
Fort Bliss, Holloman Air Force Base, or White Sands Missile Range Headquarters.	Fort Bliss, Holloman AFB, and White Sands Missile Range.
South Central California Complex	
Edwards Air Force Base, or Fort Irwin National Training Center (NTC).	China Lake Naval Weapons Center, Edwards AFB Fort Irwin NTC, and Twenty-Nine Palms Marine Corps Air Ground Combat Center.
Washington Complex	
Yakima Firing Center (FC)	DOE Hanford Site, and Yakima FC.

b. Hard Mobile Launchers on Minuteman facilities.

Ellsworth Air Force Base, South Dakota
F E Warren Air Force Base, Wyoming
Grand Forks Air Force Base, North Dakota
Malmstrom Air Force Base, Montana
Minot Air Force Base, North Dakota
Whiteman Air Force Base, Missouri.

c. Hard Silos in a Patterned Array on or near Department of Defense installations.

Davis-Monthan Air Force Base, Arizona
Edwards Air Force Base, California
Fort Bliss, Texas
F E Warren Air Force Base, Wyoming
Gila Bend Air Force Auxiliary Field, Arizona
Yuma Proving Ground, Arizona.

For further information concerning the Legislative Environmental Impact Statement for the Small ICBM weapon system, contact: Lt Col Peter Walsh, AFRCE-BMS/DEV, Norton AFB CA 92409-6448, Telephone: (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4663 Filed 3-3-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Air Force Science and Technology Programs for Reliability, Maintainability and Logistics will conduct a closed meeting at the Pentagon, Washington, DC, on March 19–20, 1986, from 8:30 am to 5:00 pm.

The purpose of the meeting will be to review Air Force Reliability, Maintainability and Logistics technology programs and evaluate their completeners and innovativeness to achieve Air Force goals.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-4650 Filed 3-3-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Nuclear Waste Policy Act of 1982; Public Hearings on Crystalline Repository Project Draft Area Recommendation Report

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of public hearings on the Draft Area Recommendation Report.

SUMMARY: DOE has scheduled public hearings to receive oral and written comments from the public on the draft Area Recommendation Report (ARR), which identifies potential sites for consideration in the siting of a nuclear waste repository. This draft ARR was issued for public review and comment on January 16, 1986.

The draft ARR identifies 12 candidate areas, located in the States of Georgia, Maine, Minnesota, New Hampshire, North Carolina, Virginia, and Wisconsin, which DOE is proposing as potentially acceptable sites for area phase field studies. In addition, DOE has identified 8 candidate areas which may be designated as potentially acceptable sites during ARR finalization or the area phase, if necessary. These areas are located in Georgia, Minnesota, and Wisconsin.

The proposed potentially acceptable sites and candidate areas were selected from the 235 crystalline rock bodies which previously were identified by DOE in a series of Regional Characterization Reports which followed a national survey of crystalline rock. The 235 crystalline rock bodies are located in the following 17 States in the North Central, Northeastern, and Southeastern regions of the United States: North Central—Michigan, Minnesota, Wisconsin; Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont; Southeast—Georgia, Maryland, North Carolina, South Carolina, and Virginia.

FOR FURTHER INFORMATION CONTACT:

Dr. Sally A. Mann, Project Manager, Crystalline Repository Project Office, Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, Phone: (312) 972-2675

Ellison S. Burton, Director, Siting Division (RW-25), Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 252-1116

Robert Mussler, Esq., Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, Washington, DC 20585, Phone: (202) 252-6947.

SUPPLEMENTARY INFORMATION:

I. Public Hearing Locations, Dates, and Times

Public hearings on the draft ARR are scheduled as follows:

AREA RECOMMENDATION REPORT HEARINGS

City and State	Address	Date	Time(s) (p.m.)
Ashland, WI	Ashland High School, 1900 Beaser Avenue, Ashland, WI 54801	3/17/86	5–10
White Lake, WI	White Lake High School, County Trunk M, White Lake, WI 54491	3/19/86	5–10
Morris, MN	Morris High School, 201 Columbia Avenue, Morris, MN 56267	3/24/86	5–10
Bedford, VA	Bedford Educational Ctr. Auditorium, 600 Edmund, Bedford, VA 24523	2/24/86	5–10
Loganville, GA	Loganville High School, Georgia Highway 81, Loganville, GA 30249	3/25/86	5–10
Sauk Centre, MN	Sauk Centre Jr. High, 9th and State, Sauk Centre, MN 56378	3/25/86	5–10
Portland, ME	City Hall Auditorium, 389 Congress Street, Portland, ME 04101	3/25/86	5–10
South Boston, VA	Halifax County Senior, High School, Highway 129, South Boston, VA 24592	3/26/86	5–10
Thomaston, GA	Thomaston Civic Center, Holston Drive, Thomaston, GA 30287	3/28/86	5–10
Winthrop, MN	City Hall, 2nd Floor, 305 N. Main Street, Winthrop, MN 55396	4/08/86	5–10
Lincoln, ME	Mattanawcook Academy, 15 Reed Drive, Lincoln, ME 04457	[1] 4/04/86	5–10
Waupaca, WI	Waupaca High School, 1149 Shoemaker Road, Waupaca, WI 54981	4/08/86	5–10
Keshena, WI	Menominee Indian, Senior High School, Highway 47, P.O. Box 50, Keshena, WI 54135	3/29/86	1–6
Albany, NY	Empire State Plaza, Convention Center, Albany, NY 12242	3/31/86	5–10
Mahnomen, MN	Mahnomen High School, Madison Avenue, Mahnomen, MN 56557	3/31/86	5–10
Indian Island, ME	Community Building, Penobscot Nation, 6 River Road Indian Island, ME 04468	4/1/86	5–10
Warren, MN	American Legion, 424 N. First Street, Warren, MN 56762	4/1/86	5–10
Henniker, NH	New England College Field House, Circle Street, Henniker, NH 03242	4/1/86	5–10
Raleigh, NC	Raleigh Civic Center, 500 Fayetteville Street, Raleigh, NC 27601	4/02/86	5–10
Eastport, ME	Shead High School, High Street, Eastport, ME 04631	4/03/86	5–10
Ada, MN	Ada High School, 106 Fourth St., E, Ada, MN 56510	4/03/86	5–10
Concord, NH	Concord City Auditorium, #1 Prince Street, Concord, NH 03301	4/3/86	5–10
Asheville, NC	Asheville Civic Center, Thomas Wolfe Auditorium, 87 Haywood Street, Asheville, NC 28801.	4/4/86	5–10
Foley, MN	Foley Elementary School, Foley, MN 56329	4/7/86	5–10
Montpelier, VA	South Anna Elem. School, St. Route 673, Box 199, Montpelier, VA 23192	4/7/86	5–10
Bridgton, ME	Lake Region High School, Route 302, Bridgton, ME 04009	4/8/86	6–10
Boston, MA	Gardener Auditorium, Beacon and Bowdin, State House, Boston, MA 02133	4/8/86	6–11
Providence, RI	State House, Room 313, Providence, RI 02903	4/10/86	5–10
Ironwood, MI	Ironwood Theater, 109 E. Aurora, Ironwood, MI 49938	4/10/86	6–10
Trenton, NJ	State Museum Auditorium, 205 W. State Street, Trenton, NJ 08625-0530	4/10/86	5–10
Montpelier, VT	Pavilion Auditorium, 109 State Street, Montpelier, VT 05602	4/10/86	6–10
Hartford, CT	Parkview Hilton, 1 Hilton Plaza, Hartford, CT 06103	4/14/86	5–10
Annapolis, MD	Holiday Inn, 210 Holiday Ct., Annapolis, MD 21401	4/15/86	5–10

[1] Subject to change.

II. Presentation Procedure

Any person or representative of a group may submit a written request for an opportunity to make an oral presentation at a public hearing. Such requests must be received no later than ten days before the scheduled hearing. Requests should be sent to the Crystalline Repository Project Office at the address given above, identified as "ARR Hearing Request" on the outside of the envelope. Anyone making a request should provide a phone number at which he or she may be contacted throughout the day of the hearing. All written requests for opportunities to present comments shall be acknowledged by DOE.

In addition, persons may request an opportunity to make a presentation at a public hearing by calling the Crystalline Repository Project Office at the above telephone number. All telephone requests will be confirmed prior to the public hearing. Persons making a written request to speak at a public hearing will be provided an opportunity to make their presentation first or at the time agreed upon with DOE. Persons making requests by telephone will be scheduled to speak after those persons who made written requests.

At the hearing, those who have registered in advance will be heard first or at times reserved for them. Anyone present at the heaing who would like to speak but did not pre-register, may request an opportunity to speak. The moderator at the hearing will determine if such request can be accommodated within the time period scheduled.

Each person scheduled to appear at a specific hearing is requested to bring a written copy of his or her statement for submission to the hearing record.

III. Conduct of Hearings

DOE reserves the right to arrange the schedule of presentations to be heard and to establish additional procedures governing the conduct of the hearing. To ensure that as many interested persons as possible are given the opportunity to present oral comments, the length of each presentation will be limited to no more than 10 minutes, and may be further limited for a particular hearing depending upon the number of persons requesting to be head.

Questions may be asked only by those conducting each hearing, and there will be no cross-examination of persons presenting statements. Any further procedural rules needed for the proper conduct of the hearing will be announced by the moderator at the start of the hearing.

IV. Written Comments

DOE will consider both oral and written comments received on the draft ARR. The opportunity to provide written comments on the draft ARR is afforded by a public comment period which is scheduled to end on April 16, 1986. Written comments should be sent to: U.S. Department of Energy, ATTN: Comments-Draft ARR, Crystalline Repository Project Office, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439.

As noted above, written comments on the draft ARR may also be submitted at the public hearing.

V. Transcripts

A transcript will be made of each public hearing. Transcript copies will be made available for public inspection at the following locations, at the indicated times, Monday through Friday, except Federal holidays and where noted below:

1. DOE Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6020, 9:00 a.m. to 4:00 p.m.
2. Albuquerque Operations Office, Kirtland Air Force Base, National Atomic Museum Library, Public Reading Room, Albuquerque, New Mexico 87115, (505) 844-8443, 9:00 a.m. to 5:00 p.m.
3. Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2010, 8:00 a.m. to 5:00 p.m.
4. Idaho Operaions Office, 550 2nd Street, Headquarters 199, Idaho Falls, Idaho 83401, (208) 526-0271, 8:00 a.m. to 5:00 p.m.
5. Nevada Operations Office, Public Docket Room, 2753 S. Highland, Las Vegas, Nevada 89114, (702) 734-3521, 8:00 a.m. to 4:30 p.m.
6. Oak Ridge Operations Office, 200 Administration Road, Room G208, Federal Building, Oak Ridge, Tennessee 37830, (615) 576-1216, 8:00 a.m. to 4:30 p.m.
7. Richland Operations Office, Hanford Science Center-Rockwell Hanford Operations, 825 Jadwin Avenue, Federal Building, Richland, Washington 99352, (509) 376-8273, Sunday 1:00 p.m. to 5:00 p.m., Monday through Saturday 9:00 to 5:00 P.M.
8. San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Reading Room, Room 240, Oakland, California 94612, (415) 273-4358, 8:30 a.m. to 4:00 p.m.
9. Savannah River Operations Office, 211 York Street, N.E., Federal Building, Aiken, South Carolina 29801, (803) 725-3267, 8:30 a.m. to 4:00 p.m.
10. Boston Support Office, Analex Building, Room 1002, 150 Causeway Street, Boston, Massachusetts 02114, (617) 223-2525, 8:30 a.m. to 5:30 p.m.
11. New York Support Office, 26 Federal Plaza, Room 3200, New York New York 10278, (212) 264-1021, 8:00 a.m. to 5:30 p.m.

Any person may purchase a copy of the transcript of the hearing from the reporter, so identified by the moderator.

Issued in Washington DC, February 26, 1986.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Managment.

[FR Doc. 86-4638 Filed 3-3-86; 8:45 am]

BILLING CODE 6450-01-M

Receipt and Financial Settlement Provisions for Nuclear Research Reactor Fuels

Correction

In FR Doc. 86-3452 beginning on page 5754 in the issue of Tuesday, February 18, 1986, make the following correction:

On page 5755, in the middle column, in paragraph 6, subparagraph b was omitted. Paragraph 6 is corrected to read as follows:

6. DOE's commitment to provide fuel receipt and financial settlement services will terminate on the following dates:

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a. For research reactor fuels described in 4.a. and 4.c.—December 31, 1987; and

b. For research reactor fuels described in 4.b.—December 31, 1992.

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Project No. 9195-000 et al.]

Hydroelectric Applications (City of Colorado Springs, CO, et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (Over 5 NW).

b. Project No.: 9195–000.

c. Date Filed: May 17, 1985.

d. Applicant: City of Colorado Springs, Colorado.

e. Name of Project: Stanley Canyon Hydroelectric.

f. Location: Municipal Water System, City of Colorado Springs, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Don M. Schoen, Dept. of Utilities, P.O. Box 1103, Colorado Springs, CO 80947, (303) 636–5582.

Mr. David M. Lefebvre, Black & Veatch, P.O. Box 8405, Kansas City, MO 64114, (913) 967–2164.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 230-foot-high, 3,400-foot-long earthfilled Rampart Dam; impounding, (2) the 510-acre Rampart Reservoir with a gross storage capacity of 40,000 acre-feet at a normal maximum water surface elevation of 9,000 feet msl; (3) a 6-foot-diameter, 3-mile-long water supply conduit consisting of a 17,200-foot-long concrete lined tunnel, a high-pressure pipeline, and a closed flume; (4) a 35 feet by 60 feet by 130 feet concrete powerhouse located 2,000 feet north of the existing Pine Valley Purification Plant containing, initially, a single impulse turbine-generator unit with an installed capacity of 6.9 MW and producing an estimated average annual generation of 31.3 GWh and, ultimately, by 1996, 3 turbine-generator units with a total installed capacity of 19.3 MW and producing an estimated average annual generation of 60.5 GWh; (5) an underground concrete regulating reservoir with an initial storage capacity of 10 million gallons and with a 20-million gallon capacity by 1996; (6) an 8.4-mile-long, 34.5-kV buried transmission line interconnecting the project to the City of Colorado Springs, Cottonwood Substation; and (7) a 20-foot-wide access road to the powerhouse and another to a new pressure reducing station.

The proposed project would be constructed concurrently with the Applicant's expansion of its water distribution system which consists of a new water supply conduit, purification plant, and underground reservoirs and pipelines. The project would be located on City of Colorado Springs, Pike National Forest, and U.S. Air Force Academy lands in sections 28, 29, and 30, Township 12S, Range 67W and sections 25 and 26, Township 12S, Range 68W, Sixth Principal Meridian.

k. This notice also consists of the following standard paragraphs: A3, B, and C.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9744–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Madrid Hydropower Project.

f. Location: On the Grass River near Madrid, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, P.E., 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547.

Mr. Neal F. Dunlevy, P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete and stone masonry dam approximately 400 feet long and 12 feet high; (2) an existing 100-acre reservoir with 880 acre-feet of storage at an elevation of 275 MSL (the use of 2-foot breakaway flashboards will be investigated); (3) a proposed power flume approximately 50 feet in length and width containing either one 750 kW bulb turbine-generator or two 375 kW bulb turbine-generators; (4) a proposed tailrace 50 feet wide, 10 feet deep, 100 feet long; (5) a proposed 4.16 kV transmission line approximately 200 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.8 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by Town of Madrid, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $21,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9772–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Lower Stockport.

f. Location: On the Claverack Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalger Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high and 225-foot-long dam to be reconstructed; (2) a proposed 10-acre reservoir with a storage capacity of 95 acre-feet at elevation 26 feet msl; (3) a new intake structure; (4) a proposed powerhouse to contain one turbine/generator for an installed capacity of 365 kW; (5) a proposed tailrace; (6) a new 13.8–kV transmission line approximately 600 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 1.55 million kWh under a hydraulic head of 18 feet. The existing facilities are owned by Vincent Muessman and Pulcher and Sacco, Inc.

k. Purpose of Project: Project power will be be sold to the Niagara Mohawk Power Corporation.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $54,000.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9736–000.

c. Date Filed: December 27, 1985.

d. Applicant: James David Young, *et al.*

e. Name of Project: Young.

f. Location: On Little Thompson River, near Longmont, in Boulder County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. James D. Young, 3025 Colgate Drive, Longmont, CO 80501, (303) 772–2159

Christopher R. Herman, Esq., Calkins, Kramer, Grimshaw & Harring, 1700 Lincoln, Suite 3800, Denver, CO 80203, (303) 839–3716.

i. Comment Date: April 16, 1986.

j. Deseciption of Project: The proposed project would consist of: (1) The existing W.R. Blower No. 1 diversion structure and ditch; (2) a 15-inch-diameter, 3,980-foot-long PVC pipeline/penstock; (3) a concrete powerhouse containing a single 20 kW centrifugal; pump turbine-generator unit producing an estimated average annual generation of 175,000 kWh; (4) a 15-inch-diameter, 130-foot-long PVC pipe tailrace; and (5) a 100-foot-long tap line interconnecting the project to an existing 12.47 kV Poudre Valley REA line. The project would be located entirely on private lands in section 6, T3N, R69W, 6th P.M. Applicant intends to sell project power to either Poudre Valley REA, Public Service Company of Colorado, or the City of Longmont, Colorado.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $12,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9788–000.

c. Date Filed: December 30, 1985.

d. Applicant: Grand River Power Company.

e. Name of Project: Grand River.

f. Location: On the Colorado River, near Rifle, in Garfield County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Soctt Balcomb, Esq., Delaney & Balcomb, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602, (303) 945–6546.

i. Comment Date: April 13, 1986.

j. Description of Project: The proposed project would consist of: (1) A 42-foot-high, 300-foot-long concrete gravity dam across the Colorado River; impounding, (2) a 470 acre reservoir with a storage area of 7,800 acre-feet at normal maximum water surface elevation of 5,215 feet msl; (3) a 125 feet by 32 feet concrete powerhouse, integrated with the dam structure, containing a single 8.1 MW Kaplan turbine-generator unit and producing an estimated average annual generation of 53 GWh; and (4) a 8,500-foot-long transmission line interconnecting the project to an existing 230 kV Public Service Company of Colorado (PSCC) line. Applicant intends to sell project power to PSCC or the Glenwood Springs Electric System. The project would be located in SW ¼, NE ¼ of Section 27, NW ¼ , NE ¼ of Section 27, and in Sections 33 and 34, T65, R94W, 6th P.M.

K. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9614–000.

c. Date Filed: November 6, 1985.

d. Applicant: Andrew F. Rose.

e. Name of Project: Laramie-Poudre.

f. Location: On the Laramie River and Cache La Poudre River, near Fort Collins, in Larimer County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Andrew F. Rose, P.O. Box 325, Greeley, CO 80632, (303) 330–8024

Mr. James M. Rose, 726 Laporte Avenue, Fort Collins, CO 80501.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-diameter, 1,250-foot-long steel penstock anchored to bedrock near the mouth of the existing Laramie-Poudre Tunnel; (2) a powerhouse located adjacent to State Highway 14, containing two Francis turbine-generator units with a total installed capacity of 1,600 kW, operating under a head of 500 feet, and producing an estimated average annual generation of 6.5 GWh; (3) a tailrace returning water to an existing drainage channel thence to Cache La Poudre River; (4) a 12-mile-long, 7.2-kV transmission line interconnecting the project at the Rustic Substation to an existing Poudre Valley Rural Electric Association, Inc. line. The project would be entirely located on Roosevelt National Forest lands and easements. Portions of the Cache La Poudre River have been designated for study for inclusion in the National Wild and Scenic Rivers System. Project power would be sold to a public utility or irrigation district.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9810–000.

c. Date Filed: December 30, 1985.

d. Applicant: Clifton Corporation.

e. Name of Project: New Savannah Bluff Hydro Project.

f. Location: On the Savannah River in Richmond County, Georgia and Aiken County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Route 2, Box 302A, One Clifton—Glendale Road, Spartanburg, SC 29302, 803–579–4405.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed run-of-river project would be located at the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam, and woud consist of: (1) A proposed headrace canal beginning approximately 500 feet upstream of the lock and dam; (2) a new powerhouse containing one 7.2-MW generator; (3) a new tailrace approximately 750 feet long; (4) two proposed transmission lines, one located on the South Carolina side of the river consisting of a 4-mile-long 46-kV line, and one located on the Georgia side of the river consisting of a 4-mile-long 13.8-kV line; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 46,290 MWh. Project energy would be sold to Georgia Power Company and South Carolina Electric and Light Company.

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k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $75,000.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9790-000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Wildwood Power Project.

f. Location: On Deer Creek near the town of Grass Valley in Nevada County, California (Section 20, T16N, R7E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (916) 432-2560.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) The Wildwood Associates' existing 60-foot-high Anthony Dam; (2) The Wildwood Associates' existing 2,400 acre-foot-capacity Lake Wildwood; (3) a 48-inch-diameter, 1,140-foot-long penstock to be connected to the existing outlet of the dam; (4) a powerhouse to contain a single generating unit with a rated capacity of 650 kW operating under a head of 54 feet; and (5) a 300-foot-long, 21-kV transmission line to connect the project with an existing Pacific Gas and Electric Company (PG&E) line north of the powerhouse.

k. Purpose of Project: The project's estimated annual generation of 1.0 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Amendment to License.

b. Project No.: 2075-002.

c. Date Filed: January 27, 1986.

d. Applicant: The Washington Water Power Company.

e. Name of Project: Noxon Rapids.

f. Location: On the Clark Fork River in Sanders County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Edward J. Leary, The Washington Water Power Co., E. 1411 Mission Avenue, Spokane, WA 99220, (509) 489-0500.

i. Comment Date: April 7, 1986.

j. Description of Project: Applicant proposes to delete from the license two 230-kV transmission lines. One line extend approximately 19 miles from the Noxon Rapids plant to Applicant's Cabinet Gorge Plant and the other extends approximately 43 miles from the Noxon Rapids plant to Applicant's Pine Creek Substation. In addition, the terminal facilities at the Pine Creek Substation and all those electrical facilities in the switchyard except for the 230-kV switching equipment associated with the generating plant would also be deleted from the license. The two transmission lines are no longer considered to be primary lines for transmission of power from the Noxon Rapids powerhouse to the point of junction with the distribution system or with the interconnected primary transmission system. Applicant states that it will acquire easements from the Forest Service for the occupancy of Forest Service lands crossed by the transmission lines.

k. This notice also consists of the following standard paragraphs: B & C.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9707-000.

c. Date Filed: December 23, 1985.

d. Applicant: Mr. Franklin Springer.

e. Name of Project: Springer Hydro Development No. 1.

f. Location: On McFadden, Morrison, and Pine Creeks, tributaries of the Arkansas River, near Buena Vista and Riverside, in Chaffee County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Franklin Springer, Route 1, Box 380, Buena Vista, CO 81211, (303) 395-2364

Mr. Karl F. Kumli III, Attorney at Law, P.O. Box 2279, Boulder, CO 80306, (303) 440-0075.

i. Comment Date: April 17, 1986.

j. Description of Project: The existing run-of-the-river project consist of: (1) A 7-foot-high, 40-foot-long dyke structure across Morrison Creek at elevation 8,665 feet msl; (2) a 6-foot-high, 200-foot-long earthfilled dam structure across a draw located adjacent to McFadden Creek at elevation 8,678 feet msl and impounding the 2.2 acre Waupaca Reservoir No. 2; (3) the 10-inch-diameter, 412-foot-long McFadden Pipeline; (4) the 10-inch-diameter, 1,100-foot-long Morrison Pipeline; (5) a 10-inch-diameter, 1,100-foot-long steel penstock; (6) a 8-foot-high, 20-foot-long, 10-foot-wide concrete powerhouse containing a single Pelton turbine-generator unit with an installed capacity of 45 kW, operating under a head of 196 feet and a hydraulic capacity of 6 cfs, and producing an estimated average annual generation of 103,680 kWh; (7) a 24-inch-diameter, 130-foot-long tailrace discharging water to Morrison Creek; and (8) a 250-foot-long, 480-volt transmission line interconnecting the project to an existing 250-kV Sangre de Cristo Electric Association, Inc. line. Project power is sold to the Colorado-Ute Electric Association, Inc. The project is located entirely on Applicant lands in Section 34, T125, R79W, 6th PM, Harvard Lakes Quadrangle.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $5,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9791-000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Lower Deer Creek Power Project.

f. Location: On Deer Creek near the town of Grass Valley in Nevada County, California (Sections 22, 23 and 26, T16N, R6E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (915) 432-2560.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 600 feet; (2) a 60-inch-diameter, 175-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 800 kW operating under a head of 53 feet; and (4) a 12-kV, 2,000-foot-long transmission line to connect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse.

k. Purpose of Project: The project's estimated annual generation of 1.3 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraph: A5, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9834-000.

c. Date Filed: December 31, 1985.

d. Applicant: Gray Creek Hydro Company.

e. Name of Project: Gray Creek Project.

f. Location: On Gray Creek, near the town of Floriston, in Nevada County, California (Sections 6; and 36, T17N, R18E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Jess Bailey, P.O. Box 48, Floriston, CA 96111, (916) 587-7389

Mr. Timothy Berg, 2710 Harding Way, Reno, NV 80503.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at approximate elevation of 5600 feet; (2) 4,000-foot-long channel; (3) a 36-inch-diameter, 350-foot-long penstock; (4) a powerhouse to contain generating units with combined rated capacity of 780 kW operating under a head of 310 feet; and (5) a 0.1-mile-long, 60-k/v transmission line to connect the powerhouse with an existing Sierra Pacific Power Company (SPP) line north of the project.

k. Purpose of Profect: The project's estimated annual generation of 3.075 million kWh will be sold to SPP.

l. This notice also consists of the following standard paragraph: A5, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9792-000.

c. Date Filed: December 30, 1985.

d. Applicant: Edward Navikis.

e. Name of Project: Wolf Creek Power Project.

f. Location: On Nevada Irrigation District's D-S Canal near the town of Grass Valley in Nevada County, California (Sections 24, 25, 29 and 30, R8E, T16N, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Edward Navikis, P.O. Box 1578, Grass Valley, CA 95945, (916) 432-2560.

i. Comment Date: April 16, 1986.

j. Description of Project: The proposed project would consist of: (1) An intake structure within the south bank of the D-S Canal; (2) a 36-inch-diameter, 2,000-foot-long penstock; (3) a power house to contain a single generating unit with a rated capacity of 825 KW operating under a head of 220 feet and discharging into Wolf Creek; and (4) a 2,000 to 4,000-foot-long, 12-kV transmission line will connect the powerhouse with an existing Pacific Gas and Electric Company (PG&E) line southwest of the project.

k. Purpose of Project: The project's estimated annual generation of 2.9 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9618-000.

c. Date Filed: November 12, 1985.

d. Applicant: Mr. Bill Harris.

e. Name of Project: Robinson Springs.

f. Location: On Robinson Springs and Mau Spring Creek, near Eureka, within lands administered by the Bureau of Land Management, in White Pine County, Nevada (In Sections 4, 5, and 8 of T20N, R55E and Sections 31, 32, 33, and 34 of T21N, R55E, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bill Harris, HCR 30 Box 29, Chiloquin, OR 97624, (503) 783-2134.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) A 1,000-foot-long collection ditch (Robinson Springs) at elevation 6,880 feet msl; (2) a 4-foot-high, 10-foot-long diversion structure (Robinson Springs) at elevation 6,880 feet msl; (3) a 4-foot-high, 10-foot-long diversion structure (Mau Creek) at elevation 6,960 feet msl; (4) an 8-inch-diameter, 4,290-foot-long steel pipe (Robinson Springs); (5) a 6-inch-diameter, 7,950-foot-long steel pipe (Mau Creek); (6) a 10-inch-diameter, 4,950-foot-long steel penstock; (7) a powerhouse containing a single turbime-generator unit with a rated capacity of 300 kW and operating under a head of 917 feet; (8) a 12-inch-diameter, 1,600-foot-long plastic water return line; and (9) a 34-kV, 50-foot-long transmission line interconnecting the project to an existing Mt. Wheeler Power Company line. The project's estimated average annual generation of 1.5 GWh would be sold to Mt. Wheeler Power Company.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $7,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9746-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Masena Grass Hydropower Project.

f. Location: On the Grass River near Masssena, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft P.E., 10315 Caughdenoy Rd., Central Square, NY 13036

Mr. Neal F. Dunlevy P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13502.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed would consist of: (1) An existing concrete and stone masonry dam approximately 380 feet long and 10 feet high; (2) an existing 200-acre reservoir with 1,000 acre-feet of storage at an elevation of 172 MSL (the use of breakaway wooden flashboards will be investigated); (3) a proposed concrete intake structure with trash racks and gate approximately 30 feet wide; (4) a proposed canal 35 feet wide, 10 feet deep, and 300 feet long; (5) a proposed power flume 50 feet wide and long, and 15 feet high containing two 450-kW submerged bulb turbine-generators; (6) a proposed tailrace channel 35 feet wide, 10 feet deep, and 300 feet long; (7) a proposed 4.8 kV transmission line 500 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.5 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by Philip and Bonnie Milliga, Massena, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on result of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the

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work to be performed under the preliminary permit would be $21,000.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9741–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: East Sidney Hydro Project.

f. Location: On Ouleout Creek near East Sidney, Delaware County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft P.E., 10315 Caughdenoy Rd, Central Square, NY 13036, (315) 437–2547

Mr. Neal F. Dunlevy P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed would utilize the Corps of Engineers' East Sidney Flood Control Dam and reservoir, and would consist of: (1) A proposed 6 foot diameter penstock approximately 400 feet long; (2) a proposed powerhouse approximately 20 feet by 20 feet housing a 750-kW generator; (3) a proposed tailrace 8 feet wide, 7 feet deep, and 50 feet long; (4) a proposed 13.2 kV transmission line approximately 1,000 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 3.4 GWh. The project energy would be sold to New York State Electric and Gas Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize constuction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminay permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

17 a. Type of Application: Major License under 5MW.

b. Project No.: 7045–001.

c. Date Filed: April 30, 1984.

d. Applicant: Mainstream Hydro Corporation.

e. Name of Project: Sullivan Dam Project.

f. Location: On the Sugar River in the Town of Claremont, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Roger W. Lamson, P.O. Box 414, North Hartland, VT 05052, (802) 295–3316.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 110-foot-long, 8-foot-high concrete gravity Broad Street Dam; (2) an impoundment having a surface area of 2 acres, a storage capacity of 8 acre-feet, and a normal water surface elevation of 525.5 feet msl; (3) a proposed intake structure; (4) a proposed 800-foot-diameter steel penstock; (5) a proposed powerhouse containing 3 generating units having a total installed capacity of 1890 kW; (6) a proposed 60-foot-long tailrace; (6) a proposed 100-foot-long 2.40-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 7,360,000 MWh. The existing dam is owned by the City of Clarement, New Hampshire.

k. Purpose of Project: All project energy generated would be sold to the Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: New License (over 5 MW).

b. Project No.: 6032–000 (previously licensed as Project No. 2500).

c. Date Filed: January 23, 1982.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Mechanicville Project.

f. Location: On the Hudson River, in the Town of Mechanicville, Rensselaer and Saratoga Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–5582.

i. Comment Date: April 17, 1986.

j. Description of Project: The existing project consists of the following:

(1) The western dam portion 795 feet in length consisting of an earth fill with concrete core section 700 feet long and 15 feet high and a gravity concrete section 95 feet long and 20 feet high; (2) a 290-acre reservoir at elevation 47 feet; (3) an open flume and concrete intake structure consisting of six separate passages 23 feet wide, 10 feet high, and 37 feet long equipped with steel racks and slots for use of stop logs; (4) a concrete, brick, and steel powerhouse equipped with six horizontal generating units having a total capacity of 4,500 kW; and (5) appurtenant electrical and mechanical facilities.

The redeveloped project would consist of:

(1) An existing dam in sections: a 200-foot-long, 15-foot-high earth fill with a concrete core western section consisting of a non-overflow wall and sluiceway, a 1,000-foot-long, 22-foot-high concrete gravity eastern section; (2) installation of 1-foot-high flashboards; (3) a reservoir having a surface area of 275 acres, a storage capacity of 1,150 acre-feet, and a normal water surface elevation of 48 feet USGS; (4) a proposed 140-foot-long, 20-foot-wide intake structure; (5) a proposed powerhouse replacing the existing powerhouse containing 5 generating units with an installed capacity 12,000 kW; (6) a proposed tailrace; (7) a proposed 150-foot-long, 34.5-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average generation would be 58,000,000 kWh.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $2,350,000, and the estimated severance damages would amount to $28,750,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.

l. This notice also consists of the following standard paragraphs: B and C.

19 a. Type of Application: Preliminary Permit.

b. Project No.521–000.

c. Date Filed: October 3, 1985.

d. Applicant: Lloyd Ladd.

e. Name of Project: Ladd Dam.

f. Location: China Lake Outlet Stream, Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–824(r).

h. Contact Person: Mr. Lloyd, Snow Pond Road, Oakland, ME 04963, (207) 465–7815.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 10 feet high and 70 feet long; (2) an existing impoundment with normal maximum surface elevation of 150 feet mean sea level, volume of 200 acre-feet, and surface area of 38 acres; (3) a proposed submersible turbine/generator of 100 kW capacity to be installed at the existing deep gate location; (4) a proposed 25-foot-long excavated tailrace channel; (5) a proposed 200-foot-long, 480 volt transmission line, and (6) appurtenant facilities.

The estimated annual energy production of the project is 400,000 kWh. The estimated net hydraulic head is 12 feet. Project power would be sold to Central Maine Power Company. The owner of the dam is Lloyd Ladd.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $19,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No. 9559–000.

c. Date Filed: October 25, 1985.

d. Applicant: River Street Associates.

e. Name of Project: Gurnsey Dam.

f. Location: On the Nubanusit River in Hillsboro County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kenneth L. King, River Street, Peterborough, NH 03458, (603) 924–9980.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing masonry and concrete gravity dam 16 feet high and 104 feet long with a crest elevation of 746 feet mean sea level; (2) an existing impoundment 7,000 square feet in area and with no storage capacity at a normal maximum surface elevation of 746 feet mean sea level; (3) a proposed concrete intake and proposed 54-inch-diameter, 20-foot-long steel penstock; (4) a proposed 20-foot-long, 12-foot-wide concrete powerhouse enclosing a proposed 75 kW capacity turbine/generator; (5) a proposed 480 volt, 375-foot-long transmission line; and (6) appurtenant facilities. The estimated annual energy production is 300,000 kWh. The hydraulic head is approximately 16.5 feet. Project power would be sold to the Public Service Company of New Hampshire The dam is owned by Brickmill Associates.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $8,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9602–000.

c. Date Filed: November 1, 1985.

d. Applicant: Como Lake, Inc.

e. Name of Project: Como Lake.

f. Location: On Rock Creek, a tributary to the Bitterroot River, in the Bitterroot National Forest in Section 29, 28 and 32, T.4N., R.21W. near the town of Hamilton in Ravalli County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Rita Weaver, P.O. Box 604, Gooding, ID 83330, (208) 934–8401.

i. Comment Date: April 17, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam at elevation 4,194 feet; (2) a 4,200-foot-long, 10-foot-diameter penstock; (3) a powerhouse containing three generating units with a total rated capacity of 3,634 kW; and (4) an 11,000-foot-long transmission line. Applicant estimates the average annual energy production to be 13,606,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $150,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 9550–000.

c. Dated Filed: October 22, 1985.

d. Applicant: Lower Patterson, Inc.

e. Name of Project: Lower Patterson Creek.

f. Location: On land managed by the Bureau of Land Management, on Patterson Creek, in Lembi, County, Idaho. Township 14N, Range 23E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rita Weaver, P.O. Box 64, Gooding, ID 83330, (208) 934–8401.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 9587, Dated Filed: 11/01/85. Due Date: 04/07/85.

k. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion dam at elevation 6,240 feet; (2) a 5,400-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing three generating units with a combined capacity of 1,350 kW and an average generation of 5, 913 MWh; and (4) a 600-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $20,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23 a. Type of Application: Amendment of License.

b. Project No.: 2305–006.

c. Dated Filed: May 9, 1985 and supplemented on October 9, 1985.

d. Applicant: Sabine River Authority of Texas and Sabine River Authority, State of Louisiana.

e. Name of Project: Toledo Bend Dam Project.

f. Location: On the Sabine River in Newton County, Texas and Sabine Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Sam Collins, General Manager, Sabine River Authority to Texas, P.O. Box 579, Orange, TX 77631, 409–883–9334.

i. Comment Date: April 7, 1986.

j. Description of Project: The Toledo Bend Dam Project No. 2305 as licensed would consist of: (1) A rolled earth-filled dam with maximum height of 112 feet and length of 11,250 feet; (2) a reservoir covering an area of 181,600 acres with a controlled storage capacity of 4,477,000 acre-feet; (3) a spillway comprised of a concrete, gravity-type, gated weir with a concrete chute and stilling basin, and a discharge channel in the left abutment; (4) a sluiceway; (5) a powerhouse located in the right abutment containing

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two 46-MW generators for a total rated capacity of 92 MW; (6) a tailrace channel; (7) step-up transformers; (8) a switchyard; and (9) appurtenant electrical and mechanical facilities. The annual average generation of the project is 207,000 MWh.

The Applicants propose to amend its license by: (1) increasing the total installed capacity by 810 kW with the installation of a portable generator to be located inside the sluiceway of the Toledo Bend Dam spillway; and (2) increasing the estimated annual generation by 6,026 MWh. The Applicants state that the new facilities would be in the same general project area, and no adverse impacts would be expected other than those addressed in the original licensing process. The project would be operated as already licensed with no other changes.

k. Purpose of Project: Project energy would be sold ot either Gulf State Utilities or Central Louisiana Electric Company.

l. This notice also consists of the following standard paragraphs: B, C and D1.

24 a. Type of Application: Conduit Exemption.

b. Project No.: 9699-000

c. Dated Filed: December 20, 1985.

d. Applicant: Albany Hydro Associates.

e. Name of Project: Albany Hydro Development Project.

f. Location: At the Water Tranmission Main at the Albany Water Filtration Plant, Town of Bethlehem, Albany County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Timothy D. Butler, Albany Hydro Associates, 7 Hemlock Street, Latham, New York 12110, (518) 785-5540.

i. Comment Date: April 7, 1986.

j. Description of Project: The proposed project would utilize the existing Albany Water Transmission Main and would consist of the following: (1) A proposed underground powerhouse which will contain a 130-kW generating unit; and (2) appurtenant facilities. The Applicant estimates a 900 MWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

25 a. Type of Application: Conduit Exemption.

b. Project No.: 8344-001.

c. Date Filed: June 7, 1984.

d. Applicant: Pacific Malibu Development Corporation.

e. Name of Project: Las Vegas Wash Hydro Project.

f. Location: Las Vegas Wash in Clark County, Nevada. NE¼ of SW¼ of SW¼ of Section 14, Township 21 South, Range 63 East, Mount Diablo Baseline and Meridian. Also the S½ of SE¼ of NW¼ of SW¼ of said Section 14.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. Barry Silverton, Chief Executive Officer, Pacific Malibu Development Cooporation, 12021 Wilshire Boulevard, Suite 1900, Los Angeles, CA 90025.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 9634-000, Date Filed: November 20, 1985.

k. Description of Project: The proposed project would be located on lands owned by the Applicant, would utilize flows from 3 local wastewater treatment plants through a pipeline 84 inches in diameter and 10,700 feet long, and would consist of: (1) A powerhouse with an installed capacity of 2,760 kW; (2) a tailrace returning flow to the Wash; and (3) apputenant facilities. The Applicant estimates that the average annual energy output would be 11,800,000 kWh.

l. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

26 a. Type of Application: 5 MW Exemption.

b. Project No.: 9548-000.

c. Date Filed: October 18, 1985.

d. Applicant: Rhyne Mills, Inc.

e. Name of Project: Rhyne Mills No. 1.

f. Location: South Fork Catawba River, Lincoln County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Paul C. Rhyne Jr., President, Rhyne Mills, Inc., P.O. Box 70, Lincolnton, NC 28092, (704) 735-7456.

i. Comment Date: April 7, 1986.

j. Competing Application: Project No. 8469, Date July 30, 1984.

k. Description of Project: The project would consist of: (1) An existing concrete and rock dam structure, approximately 153 feet long and 13 feet high, (2) an existing reservoir with a surface area of 11 acres and a gross storage capacity of 75 acre-feet at the normal maximum water surface elevation of 727 feet (m.s.l.); (3) an existing powerhouse located at the left dam abutment, in which two new generating units with a total capacity of 710 kW would be installed, (4) an existing tailrace, aproximately 150 feet long and 36 feet wide; (5) a proposed short transmission line section to interconnect with an existing substation adjacent to the project and (6) appurtenant facilities. The estimated average annual generation of 3.4 GWh would be used in the Applicant's textile mill operation, with excess power sold to Duke Power Company.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3a.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 day after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATIONS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes, No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file wihin 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no

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comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 27, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4616 Filed 3-3-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50649; FRL-2968-8]

Issuance of Experimental Use Permits; Abbott Laboratories et al.

Correction

In FR Doc. 86-3048 beginning on page 5249 in the issue of Wednesday, February 12, 1986, make the following correction: On page 5249, in the second column, in the eighth line of the second complete paragraph, "amion" should read "amino".

BILLING CODE 1505-01-M

[OPP-66219; FRL-2969-7]

Pesticide Registration Standards; Notice of Registration Standards Issued in FY85 and Registration Standards Scheduled for FY86

Correction

In FR Doc. 86-3046 beginning on page 5245 in the issue of Wednesday, February 12, 1986, make the following corrections: On page 5246, in the second column, in the first complete paragraph, in the second line, "Registrating" should read "Registration"; in the table, in entry 7, in the second column, "56-48-2" should read "56-38-2".

BILLING CODE 1505-01-M

[OPP-180687; FRL-2969-1]

Pesticides; Emergency Exemptions for Sethoxydim, etc.

Correction

In FR Doc. 86-3040 beginning on page 5247 in the issue of Wednesday, February 12, 1986, make the following corrections:

1. On page 5248, in the third column, in paragraph 22, "acetate" should be inserted after the word "Ethyl".

2. On the same page, in the same column, in the first line of paragraph 23, "Trifluralin" was misspelled.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1570]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 28, 1986.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules. (CC Docket No. 81-216, RM's 2845, 2930, 3195, 3208, 3227, 3283, 3316, 3329, 3348, 3501, 3526, 3530, & 4054).

Petition to Amend Part 68 of the Commission's Rules to Permit Registration of Terminal Equipment for Connection to Voiceband Private Line Channels that Utilize Loop Start, Ringdown or Inband Signaling and Voiceband Metallic Private Line Channels. (CC Docket No. 84-490, RM-4458).

Filed By: Marilyn J. Gottlieb Wasser, Attorney for American Telephone and Telegraph Company on 2-10-86.

Subject: Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. (CC Docket No. 84-800, Phase II).

Filed By: Richard C. Schramm, Daniel J. Whelan & David K. Hall, Attorneys for The Bell Atlantic Telephone Companies of 2-10-86.

Saul Fisher, Campbell L. Syling & Bruce P. Beausejour, Attorneys for New York Telephone Company and New England Telephone and Telegraph Company on 2-10-86.

Thomas J. Reiman, Alfred Winchell Whittaker, Joyce L. Bernstein S. Harry J. Kelly, Attorneys for Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company & Wisconsin Bell, Inc., on 2-14-86.

Jack E. Herington & Sherry F. Bellamy, Attorneys for United States Telephone Association on 2-14-86.

Filed By: Stephen A. Wuttke, Attorney for Central Telephone Company on 2-14-86.

Daniel L. Bart & Richard McKenna, Attorneys for GTE Service Corporation and its affiliated domestic telephone operating companies on 2-14-86.

Ronald T. LeMay, Vice President-General Counsel & Carolyn C. Hill, Attorney for United Telephone System, Inc., on 2-14-86.

Terry O. Oulundsen, Vice President-Regulatory Matters for The Southern New England Telephone Company on 2-14-86.

Josephine S. Trubek, Attorney for Rochester Telephone Corporation on 2-14-86.

Dana A. Rasmussen & Robert B. McKenna, Attorneys for The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company & Pacific Northwest Bell Telephone Company on 2-18-86.

Robert L. Barada, Susan E. Barisone & Stanley J. Moore, Attorneys for Pacific Bell & Nevada Bell on 2-18-86.

Steven A. Millstein, Division Manager-Southwestern Bell Corporation Earnings Requirements & William C. Sullivan, Linda S. Legg, Paul G. Lane & Hope E. Thurrott, Attorneys for Southwestern Bell Telephone Company on 2-18-86.

Vincent L. Sgrosso, M. Robert Sutherland & G. Thomas Abernathy, Jr., Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company on 2-18-86.

Francine J. Berry, W. Preston Granbert, Richard J. Rawson & Jules M. Perlberg, Attorneys for American Telephone and Telegraph Company on 2-18-86.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-4600 Filed 3-3-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-470]

First Federal Savings of Arkansas, F.A. Little Rock, AR; Final Action Approval of Conversion Application

Dated: February 26, 1986

Notice is hereby given that on February 12, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings of Arkansas, F.A., Little Rock, Arkansas for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-4606 Filed 3-3-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

I.B. Russell Co. Laboratories; Sodium Arsanilate (Arsanilic Acid) Tablets; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by I.D. Russell Co. Laboratories providing for the use of sodium arsanilate (arsanilic acid) tablets in poultry drinking water for increased rate of weight gain, improved feed efficiency, improved pigmentation, and prevention of coccidiosis. The firm requested the withdrawal of approval.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: I.D. Russell Co. Laboratories, Box 1, Kansas City, MO 64141, informed FDA, by letter dated November 14, 1985, that the firm voluntarily requests withdrawal of approval of NADA 6-860 and waives an opportunity for hearing. The NADA provides for use of Zuco sodium arsanilate (arsanilic acid) tablets in poultry drinking water for increased rate of weight gain, improved feed efficiency, imporved pigmentation, and prevention of coccidiosis.

Therefore, under the Federal Food, Drug, and Cosmetic Acit (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 6-860 and all supplements thereto for sodium arsanilate (arsanilic acid) tablets is hereby withdrawn, effective March 14, 1986.

Dated: February 20, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-4605 Filed 3-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0582]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tambocor

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tambocor and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Tambocor, whose sole active ingredient is flecainide acetate. Tambocor is an antiarrhythmic drug for treatment of life-threatening ventricular arrythmias, such as sustained ventricular tachycardia. Based on this approval, Alcon Laboratories, Inc., now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Tambocor is 3,449 days. Of this time, 2,403 days occurred during the testing phase of the regulatory review period, while 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act become effective:* May 24, 1976. FDA has verified that, as claimed by the applicant, the investigational new drug application became effective on May 24, 1976 (30 days after its receipt by the agency; see 21 CFR 312.1(b)(4)).

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 21, 1982. FDA has verified that the new drug application (NDA 18-830) was initially submitted on the date claimed by the applicant, December 21, 1982.

3. *The date the application was approved:* October 31, 1985, FDA has verified that NDA 18-830 was approved on October 31, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and

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Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 5, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 2, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp., 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 26, 1986.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 86–4602 Filed 3–3–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–86–1594; FR–2202]

Application Submission Dates for HUD-Administered Small Cities Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises prospective applicants of the dates for submission of applications to the HUD offices for the HUD-administered Small Cities Program in Maryland and New York under the Community Development Block Grant Program for Fiscal Year 1986.

FOR FURTHER INFORMATION CONTACT: Patricia G. Myers, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established dates for submission of applications for Small Cities grants in the States of Maryland and New York for Fiscal Year 1986. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-administered Small Cities Program will be accepted only during the designated time period. Applications received in the HUD Offices after the deadline must be postmarked no later than the applicable deadline submission date. Any applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive grants under 24 CFR 570.426, are required to be submitted to the applicable HUD Office in accordance with the following schedule:

State	No earlier than—	No later than—
Maryland	Apr. 14, 1986	Apr. 28, 1986.
New York	Feb. 24, 1986	Mar. 10, 1986.

Applicants in Maryland should submit their applications to the Baltimore Field Office. Applicants in New York in the Counties of Sullivan, Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau and Suffolk Counties should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approved number 2506–0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: February 26, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86–4672 Filed 3–3–86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kanuti National Wildlife Refuge, AK; Draft Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review

February 25, 1986.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kanuti National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008 and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes three alternative strategies for long-term management of the 1,291,100 acre refuge. The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATES: Comments on the draft CCP/EIS must be submitted on or before June 9, 1986, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199, telephone (907) 786–3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public review process. Copies of the draft CCP)/EIS have been sent to all agencies that particpated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the draft may obtain one by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Kanuti National Wildlife Refuge Office, Federal Office Building, 101 12th Avenue, Room 8–B, Fairbanks, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW., Department of the Interior, Washington, DC 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Kanuti National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) and Section 1008 of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include hunting, fishing and habitats, trapping, transportation and access, and public use. The draft CCP/EIS addresses three alternatives for long-range management of the refuge including one that would continue current management. A second alternative proposes the entire refuge for wilderness designation and the third alternative emphasizes management and restoration of fish and wildlife populations to historic levels and allows increased opportunity for hunting, fishing and trapping above current levels. A preferred alternative is identified.

The plan also addresses the general wilderness suitability of 1,291,000 acres of now-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for perservation as wilderness and report his recommendations to the President by 1985.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the March 8, 1984, Federal Register. Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86–4619 Filed 3–3–86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Availability of Draft Carlsbad Resource Area Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management announces the availability of the Draft Carlsbad Resource Area Resource Management Plan (RMP)/Environmental Impact Statement (EIS) for public review and comment. This document identifies and analyzes the future land use planning options for approximately 2,171,000 acres of Federal surface and 2,725,405 acres of Federal minerals, including all of Eddy and Lea Counties and southwest Chaves County. The Bureau of Land Management also proposes six Areas of Critical Environmental Concern (ACEC).

Public Participation:

Comments on the Draft RMP/EIS will be accepted until close of business June 9, 1986. There will be public hearings at the following location: Carlsbad, May 7, 1986, 2:00 p.m. and 7:00 p.m., Carlsbad Municipal Library, Halagueno Park and Fox Street.

Oral testimony will be limited to 10 minutes. Written comments are encouraged even if an oral presentation is made.

A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies and groups who have expressed an interest in the Carlsbad Resource Area planning process. In addition, review copies may be examined at the following locations.

Bureau of Land Management Offices

New Mexico State Office, Public Affairs Staff, Room 2016, U.S. Post Office and Federal Bldg., P.O. Box 1449, Santa Fe, New Mexico 87501, (505) 988–6316
Carlsbad Resource Area, 101 E. Mermod, P.O. Box 1778, Carlsbad, New Mexico 88220, (505) 887–6544
Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, New Mexico 88201 (505) 622–9042

Supplemental Information

Four alternatives have been developed that describe the different management options available to Bureau of Land Management for the Carlsbad Resource Area and are analyzed in the Draft RMP/EIS.

Alternative A describes the cumulative effects of continuing current management, both in the short-term (up to 10 years) and the long-term (up to 20 years).

Alternative B emphasizes production and/or consumption of resources with high priority given to programs that might improve economic conditions in the Resource Area. Alternative B provides the minimum acceptable level of resource protection while still having only minimal impacts on industry.

Alternative C is the preferred alternative and would change current management to meet statutory requirements and policy commitments and would resolve issues by balancing resource utilization with conservation.

Alternative D emphasizes resolution of issues in favor of resource protection and preservation of sensitive, natural, cultural and aesthetic values. Alternative D1 constitutes a no grazing alternative and was developed to analyze the effects of eliminating all domestic livestock from allotments west of the Pecos River.

Areas of Critical Environmental Concern

Six ACEC's are recommended for designation. These areas are discussed briefly below:

1. The Chosa Draw Caves Complex (2,200 acres) includes all or portions of Sections 20, 21, 22, 27, 28, 29 and 33 of T. 25 S., R. 25 E. This area contains an extensive gypsum cave complex. The Parks Ranch Cave of the complex is the second longest gypsum cave recorded on the North American continent and the only known cave on public lands in New Mexico with a perennial water supply supporting aquatic cave fauna.

2. Dark Canyon (3,950 acres) includes all or portions of Sections 24, 25, 34 and 35 of T. 24 S., R. 23 E., and Sections 15, 17, 19, 20, 21, 22, 23 and 30 of T. 24 S., R. 24 E. The area contains a highly scenic canyon section of one of the major drainages of the Guadalupe Mountains and harbors two State Listed Endangered plant species and four limestone caves containing fragile cave resources.

3. Lonesome Ridge (2,990 acres) includes all or portions of Sections 19, 20, 21, 22, 28, 30 and 31 of T. 26 S., R. 22 E. This area contains a great diversity of high scenic, wildlife, plant, geologic and

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other natural history values. It is part of the Guadalupe escarpment, the world's foremost example of a Permian age fossil reef. The area includes a Federally Listed Threatened plant species, two State Listed Endangered plant species and important cave resources.

4. Blue Spring (160 acres) includes a portion of Section 33, T. 24 S., R. 26 E. Blue Spring contains endemic fish populations including the Federally Listed Threatened Pecos Gambusia. It is a significant source of water in a desert environment with riparian habitat important for a variety of wildlife species.

5. Yeso Hills (5,460 acres) includes all or portions of Sections 13, 14, 15, 22, 23, 24, 25, 27, 34 and 35 of T. 26 S., R. 24 E. The area contains the only outcrop of the Castile Formation in the Resource Area and a population of a State Listed Endangered plant species as well as suitable habitat for a State Listed Endangered animal species and a Federally Listed Threatened plant species.

6. Pecos River/Canyons Complex (5,190 acres) includes all or portions of Sections 23, 24, 25, 26, 27, 28, 32, 33, 34 and 35 of T. 24 S., R. 29 E.; Sections 4 and 5 of T. 25 S., R. 29 E.; and Sections 30 and 31 of T. 24 S., R. 30 E. This area is composed to two large distinctive canyons converging with the Pecos River and includes unique riparian habitat, many diverse soil types, unspoiled scenic values, large and culturally complex archaeological sites and prime wildlife habitat for several State Endangered animal species as well as suitable habitat for several Federally Listed Threatened, Federal candidate and State Listed Endangered animal and plant species.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Draft RMP/EIS, contact Charles Dahlen, Area Manager, Carlsbad Resource Area, P.O. Box 1778, Carlsbad, New Mexico 88220, (505) 887-6544.

Dated: February 25, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-4645 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-JB-M

Butte District Advisory Council Meeting

The meeting of the Butte District Advisory Council scheduled for March 5 and 6 (51 FR 4656) has been postponed until further notice.

Dated: February 24, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86-4593 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-DN-M

[Alaska AA-48594-AL]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48594-AL has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 3 W.,
  Sec. 25, SW¼SE¼.
  (40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48594-AL as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1985, subject to the terms and conditions cited above.

Dated: February 20, 1986.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86-4594 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-JA-M

[U-54790]

Realty Action; Noncompetitive Sale of Public Lands in Uintah County, UT

The following described land has been examined and identified as suitable for disposal by sale under section 203 (90 Stat. 2750, 43 U.S.C. 1713) and section 209(b) (90 Stat. 2750, 43 U.S.C. 1719) of the Federal Land Policy and Management Act of 1976, at no less than the appraised fair market value ($6,050):

Salt Lake Meridian

T. 4 S., R. 21 E.,
  Sec. 3: S½SE¼NW¼SW¼
  The land described aggregates five acres.

This land is being offered at direct sale to Ms. Carol Rogers.

The land offered in this sale is for both the surface and subsurface estates. The United States will reserve the right to construct ditches and canals and will reserve an access right-of-way. Selling this land is consistent with Bureau planning and county zoning. The public interest will be well served by selling this land.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination.

Dean L. Evans,

Acting District Manager.

[FR Doc. 86-4595 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 22, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 19, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Leighton vicinity, *Johnson, John, House,* Near jct. of Fosters Mill and River Rds.

Lauderdale County

Florence vicinity, *Armistead, Peter F. Sr., House,* Waterloo Rd.
Smithsonia vinicity, *Koger, William, House,* Smithsonia-Rhodesville Rd.

Lawrence County

Courtland vicinity, Albemarle, Off US 72
Wheeler vicinity, *Bride's Hill,* Lock Rd.

Morgan County

Somerville vicinity, *Rice, Green Pryor, House* Off Rt 684
Trinity vinicity, *Murphey Dr. William E., House,* Off US 1

CALIFORNIA

Orange County

Orange, *Culver, C.Z., House,* 205 E. Palmyra

Santa Clara County

Palo Alto, *Ramona St. Architectural District,* 518-581 Ramona and 256-282 Hamilton

Santa Cruz County

Santa Cruz, *Carmelita Court,* 315-321 Main St.

FLORIDA

Duval County

Mission of San Juan del Puerto Archeological Site

IDAHO

Ada County

Boise, *Goreczky, Anton, House,* 1601 N. Seventh St.

ILLINOIS

Lake County

Waukegan *Great Lakes Naval Training Station,* Bounded by Cluverius Ave., Lake Michigan, G St. and Sheridan Ave.

KENTUCKY

Boyle County

Danville, *Birney, James, House (Danville MRA),* Perryville Rd.
Danville, *Carnegie Library (Danville MRA),* Center College Campus.
Danville, *Danville Cemetery (Danville MRA),* N End of First St.
Danville, *Danville Commercial District (Danville MRA),* W. Main between N. Fifth and N. First, and area bounded by S. Third, W. Walnut, and S. Fourth.
Danville, *East Main Street Historic District (Danville MRA),* Nos. 419-619 E. Main St.
Danville, *First Presbyterian Church (Danville MRA),* W. Main between N. Fifth and N. Sixth Sts.
Danville, *Gore House (Danville MRA),* 350 Proctor
Danville, *Haskins, W. H., House (Danville MRA),* 430 Lexington Ave.
Danville, *Lexington Avenue—Broadway Historic District (Danville MRA),* W. and E. Lexington between N. Fifth and Old Wilderness Rd., and area bounded by N. Larrimore, W. Broadway, and N. Fifth
Danville, Maple Street District (Danville MRA), Both sides of Maple Ave. between W. Main and High
Danville, *Warehouse District (Danville MRA),* Intersection of Harding St. and W. Walnut
Danville, *Willis—Russel House (Danville MRA),* 200-208 Walnut St.

Butler County

Carlston Annis Shell Mound (15Bt5) (Green River Shell Middens of Kentucky TR)
DeWeese Shell Mound (15Bt6) (Green River Shell Middens of Kentucky TR)
Rayburn Johnson Shell Mound (15Bt41) (Green River Shell Middens of Kentucky TR)
Read Shell Mound (15Bt10) (Green River Shell Middens of Kentucky TR)
Russell Shell Mound (15Bt11) (Green River Shell Middens of Kentucky TR)
Woodbury Shell Midden (15Bt67) (Green River Shell Middens of Kentucky TR)

Campbell County

Fort Thomas, *Fort Thomas Military Reservation District,* Roughly bounded by Pearson, Alexander, and Cochran Aves., River Rd., and S. Fort Thomas Ave.

Fayette County

Lexington, *Ashland Park Historic District,* Roughly bounded by S. Hanover Ave., Richmond Rd. to Fairway E, Woodspoint, Fontain and Tates Creek Rds.

Harlan County

Harlan, *Harlan Commercial District,* Roughly bounded by Mound, Second, Clover, and Main Sts.

Henderson County

Archeological Site KHC-3 (15He635) (Green River Shell Middens of Kentucky TR)
Archeological Site KHC-4 (15He636) (Green River Shell Middens of Kentucky TR)
Bluff City Shell Mound (15 He160) (Green River Shell Middens of Kentucky TR)
James Gilles Shell Midden (15He580) (Green River Shell Middens of Kentucky TR)

Jefferson County

Louisville, *Humphrey—McMeekin House,* 2240 Douglas Blvd.

McLean County

Archeological Site 15 McL16 (Green River Shell Middens of Kentucky TR)
Archeological Site 15 McL17 (Green River Shell Middens of Kentucky TR)
Archeological Site 15 McL26 (Green River Shell Middens of Kentucky TR)
Austin Site (15 McL15) (Green River Shell Middens of Kentucky TR)
Butterfield Site (15 McL7) (Green River Shell Middens of Kentucky TR)
Crowe Shell Midden (15 McL109) (Green River Shell Middens of Kentucky TR)
R.D. Ford Shell Midden (15McL2) (Green River Shell Middens of Kentucky TR)

Muhlenberg County

Archeological Site 15 Mu 41 (Green River Shell Middens of Kentucky TR)
Baker Site (15 Mu 12) (Green River Shell Middens of Kentucky TR)

Ohio County

Archeological Site KHC-6 (15 Oh97) (Green River Shell Middens of Kentucky TR)
Bowles Site (15 Oh13) (Green River Shell Middens of Kentucky TR)
Chiggerville Site (15 Oh1) (Green River Shell Middens of Kentucky TR)
J.T. Barnard Shell Midden (KHC-1) (Green River Shell Middens of Kentucky TR)
Jackson Bluff Site (15 Oh12) (Green River Shell Middens of Kentucky TR)
Jimtown Site (15 Oh19) (Green River Shell Middens of Kentucky TR)
Smallhous Shell Mound (15 Oh10) (Green River Shell Middens of Kentucky TR)

Shelby County

Shelbyville vicinity, *Ha[illegible]wood Hall,* KY 55 at Moody Pike

MAINE

Androscoggin County

Auburn, *Briggs, William, Homestead,* 1470 Turner St.

Aroostook County

Fort Fairfield, *Reed, Philo, House,* 38 Main St.
Presque Isle, *Presque Isle National Bank,* 422 Main St.

Penobscot County

Burlington, *Old Tavern,* ME 188 and Old Dam Rd.

Piscataquis County

Guilford, *Guilford Memorial Library,* Library and Water Sts.

Sagadahoc County

Richmond, *Peacock Tavern,* Route 201

Waldo County

Searsport, *Union Hall,* 3 Reservoir St.

MASSACHUSETTS

Berkshire County

Williamstown, *Williamstown Main Post Office,* 63 Spring St.

Hampshire County

Easthampton, *Easthampton Main Post Office,* 19 Union St.

MINNESOTA

Freeborn County

Albert Lea, *Paine, H.A., House,* 609 W. Fountain St.
Clarks Grove, *Clarks Grove Cooperative Creamery,* Main St. E and Independence Ave.
Hayward Township, *Lodge Zare Zapadu,* County Hwy. 30
Mansfield Township, *Niebuhr, John, Farmhouse,* Off County Hwy. 2

Mower County

Adams, *First National Bank of Adams,* 322 Main St.
Austin, *Wright, Arthur W., House,* 300 Fourth Ave. NW
LeRoy, *First State Bank of LeRoy,* Main St. and Broadway
LeRoy, *LeRoy Public Library,* Luella St. and Broadway

MISSISSIPPI

Warren County

Vicksburg, *South Vicksburg Public School No. 200,* 900 Speed St.

NEBRASKA

Cass County

Weeping Water, *Gibson House,* 107 Clinton

Douglas County

Omaha, *Ford Hospital,* 121-129 S. Twenty-fifth St.
Omaha, *North Presbyterian Church,* 3105 N.Twenty-fourth St.

Lincoln County

Wallace, *Johnson Memorial Building,* Off NE 25

Saunders County

Morse Bluff, *Rad Plzen cis. 9 Z.C.B.J. (SD10-6), Off NE 79*

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NEW HAMPSHIRE

Coos County

Lancaster, *Lancaster Main Post Office*, 120 Main St.

Hillsborough County

Peterborough, *Peterborough Post Office*, 23 Grove St.

Strafford County

Somersworth, *Somersworth Post Office*, 2 Elm St.

NEW YORK

Broome County

Binghamton, *Railroad Terminal Historic District*, Intersection of Chenango St. and Erie-Lackawanna Railroad Tracks

Chenango County

Columbus, *Columbus Community Church*, NY 80

Green County

West Coxsackie, *Houghtaling, Peter, Farm and Lime Kiln*, Lime Kiln Rd.

Kings County

Brooklyn, *Feuchtwanger Stable*, 159 Carlton Ave.

Monroe County

Rochester, *Building at 551–555 North Goodman Street*, 551–555 N. Goodman St.

New York County

New York, *Christodora House*, 147 Ave. B
New York, *Westchester House*, 541–551 Broome St.

Saratoga County

Waterford, *Ormsby-Laughlin Textile Companies Mill*, 31 Mohawk Ave.

Schoharie County

Central Bridge, *Westinghouse, George Jr., Birthplace and Boyhood Home*, Westinghouse Rd.

St. Lawrence County

Hannawa Falls, *Cox, Gardner, House*, Main St.

Suffolk County

Centerport, *LITTLE JENNIE (Chesapeake Bay bugeye)*, Centerport Harbor

Wayne County

Macedon, *Bullis, Charles, House*, 1727 Canandaigua Rd.

PENNSYLVANIA

Greene County

Sugar Grove Petroglyph Site (36GR5)

Lancaster County

Lancaster Township, *Northeast Lancaster Township Historic District*, Roughly bounded by Marietta, Race, and Wheatland Aves., and Wilson Dr.

Westmoreland County

Household No. 1 Site (36WM31)

PUERTO RICO

Aguadilla County

Aguadilla, *Casa de Piedra*, 14 Progresso St.
Aguadilla, *Fuerte de la Concepcion*, Stahl St.

Coamo County

Coamo, *Hermitage Church of Nuestra Senora de Valvanera of Coamo*, Quinton and Carrion Maduro Sts.

Mayaguez County

Mayaguez, *United States Post Office and Courthouse*, McKinley and Pier DeFillo Sts.

SOUTH CAROLINA

Charleston County

Long Point Plantation

Lancaster County

Lancaster, *Springs, Leroy, House*, Catawba and Gay Sts.

[FR Doc. 86-4537 Filed 3-3-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30782]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Missouri-Kansas-Texas Railroad Co.; Exemption

The Missouri-Kansas-Texas Railroad Company (MKT) has agreed to grant overhead trackage rights to the Burlington Northern Railroad Company (BN) between milepost 655.87 and milepost 657.30, a distance of approximately 1.43 miles, near Denison, TX. The trackage rights will be effective on March 1, 1986.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: January 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4630 Filed 3-3-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-157)B]

Seaboard System Railroad, Inc.; Abandonment in Polk County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 2.35-mile line of railroad between Lake Wales (milepost SV–867.65) and Sandland (milepost SV–870) in Polk County, FL.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-4631 Filed 3-3-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant To Clean Water Act; Tosco Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 3, 1985, a proposed consent decree in *United States* v. *Tosco Corporation* (N.D. Cal.) Civil Action No. C-84-6383 WWS, was lodged with the United States District Court for the Northern District of California. The complaint filed by the United States alleged that Tosco Corporation had violated the Clean Water Act by discharging pollutants into Suisun Bay in excess of the effluent limitations contained in its National Pollutant Discharge Elimination System Permit. The complaint sought civil penalties and injunctive relief to enjoin defendants from further violations. The consent decree provides that defendants will pay a civil penalty for past violations, and will be enjoined from further violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tosco Corporation*, D.J. Ref. 90-5-1-1-2199.

The proposed consent decree may be examined at the office of the United States Attorney, Room 16201 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-4596 Filed 3-3-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; M.D. Pharmaceutical, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 20, 1985, M.D. pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 3, 1986.

Dated: February 26, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-4644 Filed 3-3-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Assistant Secretary for Policy
Work Search Among UI Claimants
Other, one-time survey
Individuals or households
3,000 responses; 1,000 hours; 1 form

This project will examine the effects of state Unemployment Insurance work-search requirements on claimant's benefit receipt, payment error rates, search behavior, and job-finding success. Information gathered will help program administrators refine state laws and practices to better meet program objectives. Respondents include former UI-benefit recipients.

Revision

Employment and Training Administration
National Longitudinal Surveys—Survey of Work Experience of Mature Women
1205-0044; LGT 3131, LGT 3133
Annually; Biennially
Individuals or households
3700 respondents; 1554 burden hours; 2 forms

The Department of Labor will use this information to determine the employment and training needs and develop labor market policies designed to ease the employment and unemployment problems faced by women aged 49–63. These women were

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30–44 years of age when this longitudinal survey began in 1967.

Signed at Washington, DC, this 27th day of February 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–4666 Filed 3–3–86; 8:45 am]

BILLING CODE 4510-23-M

Office of the Assistant Secretary for Veterans' Employment and Training

Special Solicitation for Grant Application Job Training Partnership Act; Program Year 1986

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veterans' employment and training programs in the States of Alaska, Louisiana, and Maryland and in the District of Columbia in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 Code of Federal Regulations (CFR) Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA will be available for issuance as of the date of this notice. The closing date for receipt of grant applications in response to the SGA is April 21, 1986.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the State Director for Veterans' Employment and Training Service (SDVETS) located in the State in which the proposed program would operate. The applicable addresses are as follows:

Alaska

SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3–7000, Juneau, Alaska 99802, (907) 465–2723

Louisiana

SDVETS Leonard Walters, Veterans' Employment and Training Service, U.S. Department of Labor, Employment Security Bldg., 1001 N. 23rd Street, Room 242, Baton Rouge, Louisiana 70804, (504) 342–4691

Maryland

SDVETS Gary Lobdell, Veterans' Employment and Training Service, U.S. Department of Labor, 1100 North Eutaw Street, Rm. 205, Baltimore, Maryland 21201, (301) 383–5193

District of Columbia

SDVETS George H. Joiner, Veterans' Employment and Training Service, U.S. Department of Labor, 500 C Street, NW., Rm. 327, Washington, DC 20001, (202) 639–1076

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor (USDOL), 200 Constitution Ave., NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523–8611, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION:

On January 2, 1986, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued an SGA for the Job Training Partnership Act Title IV, Part C, Program Year 1986 funds. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on December 13, 1985. A deadline of February 14, 1986 was established for receipt of applications.

The January 2, 1986 SGA limited eligible applicants to (1) the designated JTPA administrative entity for the State/Governor as recognized by the Employment and Training Administration, USDOL, and (2) service delivery area administrative entities as described in sections 101 and 103 of the JTPA, including single statewide service delivery areas. The SGA also stated that if in any State no eligible applicant applied for funds within the specified timeframe, the definition of eligible applicant would be broadened in those States and a special solicitation would be issued to provide services to targeted veterans in those States.

No eligible applicant applied for funds within the established timeframe in the States of Alaska, Louisiana, and Maryland and in the District of Columbia. Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs in each of these States in the following amounts:

State	Amount available
Alaska	$70,000
Louisiana	123,909
Maryland	143,000
District of Columbia	55,000

Applications for funds based on the SGA will be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions; and private for profit and nonprofit organizations.

Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State in which the proposed program would be implemented. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for funds must be received by the appropriate State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address noted above on April 21, 1986.

It is anticipated that grant awards will be made by November 1986.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training Service.

Signed at Washington, DC, this 27th day of February 1986.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 86–4685 Filed 3–3–86; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

Assistance Adjustance; Investigations Regarding Certifications of Eligibility To Apply for Worker; Amax Chemical Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 14, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amax Chemical Corp. (USWA)	Carlsbad, NM	2/18/86	2/14/86	TA-W-17,223	Potash.
Carteenie, Inc. (workers)	Minersville, PA	1/14/86	1/3/86	TA-W-17,224	Ladies' sportswear and dresses.
Dresser Industries, Inc., Ideco Div. (CAWIU)	Beaumont, TX	2/19/86	2/14/86	TA-W-17,225	Oilfield drilling equipment.
Gould & Scammon (workers)	Auburn, ME	2/18/86	2/7/86	TA-W-17,226	Shoe counters.
Hibbing Taconite Co. (USWA)	Hibbing, MN	2/18/86	2/14/86	TA-W-17,227	Taconite pellets.
International Hat Co. (workers)	Piedmont, MO	2/19/86	2/14/86	TA-W-17,228	Baseball caps.
Lake Side Mills, Inc. (ACTWU)	Buffalo, NY	2/10/86	2/5/86	TA-W-17,229	Fake fur, knits, stuffed animals.
Liebert Corporation (workers)	Sacramento, CA	2/14/86	2/4/86	TA-W-17,230	Power line distortion monitors.
Lundburg Industries (USWA)	Carlsbad, NM	2/18/86	2/14/86	TA-W-17,231	Potash.
Offshore Navigation Inc. (company)	Harahan, LA	2/19/86	2/6/86	TA-W-17,232	Radiopositioning service to geophisical companies.
Ultra Light Systems, Inc. (company)	Perris, CA	2/17/86	2/5/86	TA-W-17,233	Light aircraft wing and tail surfaces.
Van Huffel Tube Corp. (USWA)	Warren, OH	2/19/86	2/18/86	TA-W-17,234	Round, square, rectangular, mandrel tubing, plus oil country and flareweld pipe.
Alcoa, Inc., Vancouver Operation (Aluminum, Brick & Glass)	Vancouver, WA	2/18/86	2/12/86	TA-W-17,235	Aluminum ingot, wire, etc.
Bel Aire Products Co. (workers)	Akron, OH	2/13/86	2/7/86	TA-W-17,236	Sporting goods accessories.
General Electric Co., Drive System Operation (company)	Salem, VA	2/18/86	2/6/86	TA-W-17,237	Customized electronic control systems for automation of industrial processes.
Inspiration Copper Co., Open Pit Mining Div. (workers)	Claypool, AZ	2/6/86	2/3/86	TA-W-17,238	Copper mining, milling.
Lynchburg Foundry—Lower Basin (wkrs)	Lynchburg, VA	2/18/86	2/13/86	TA-W-17,239	Castings, auto, farm equipment, heavy duty trucks, farm tractors.
R&M Manufacturing Corp. (company)	Leominster, MA	2/18/86	2/2/86	TA-W-17,240	Women's loungewear.

[FR Doc. 86–4489 Filed 3–3–86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,325]

Negative Determination, Regarding Application for Reconsideration; AT&T Network Systems, Columbus, OH

By an application dated February 5, 1986, the International Brotherhood of Electrical Workers (IBEW) requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at AT&T Network Systems, Columbus, Ohio. The determination was published in the **Federal Register** on January 21, 1986 (52 FR 2773).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports and technology changes adversely affected employment at the Columbus plant of AT&T Network Systems.

Workers at the Columbus plant produce central office telephone switching equipment and associated apparatus like equal access switching equipment. The layoffs at the Columbus plant were the result of production realignments as newer switching products replaced older vintage models. Worker separations resulting from technological changes would not form a basis for certification. Further, the Bell operating companies decreased their demand after having filled their needs for "equal access" equipment. Company officials indicated that production resulting from the court-mandated decision on "equal access" equipment was a one-shot program. Sales of equal access equipment to the Bell operating companies provide other carriers such as MCI and Sprint equal access to the long distance market. Worker separations resulting from the completing of this program would not form a basis for certification.

Findings in the Department's investigation show that company imports of all products were negligible relative to total production at the Columbus plant. Company officials reported that company imports were not used as a replacement for domestic production at the plant. According to company officials, company imports resulted from demand for their products that exceeded their manufacturing capacity.

The Department's survey of all Bell Telephone regional operating companies showed that most of the Bell operating companies did not purchase imported central office switching equipment and associated apparatus in 1983, 1984 and in the January–September 1985 period. The few operating companies which imported switching equipment represented a small proportion of the survey group's total purchase reduction from AT&T Network Systems in 1984 and in the January–September 1985 period. Imports for these operating companies accounted for a small proportion of their overall product requirements during the above mentioned time periods.

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Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of February 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-4687 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,184 et al]

Adjustments Assistance; Amended Certification Regarding Eligibility To Apply for Worker; Control Data Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1985, applicable to all workers at Control Data Corporation, Magnetic Peripherals. The Notice of Certification was published in the **Federal Register** on January 7, 1986 (51 FR 695).

Based on additional information furnished by the company identifying an administrative support group that was fully dedicated to the support of the head arm assemblies produced at Eden Prairie, the Department is amending the certification.

The intent of the certification is to cover all workers of the Head Manufacturing Administration at Edina, Minnesota who were engaged in employment related to the production of head arm assemblies and who were adversely affected by increased imports of head arm assemblies.

The certification is amended by including the Head Manufacturing Administration of Magnetic Peripherals, Incorporated at Edina, Minnesota.

The certification applicable to TA-W-16,184 and TA-W-16,410 is hereby amended and issued as follows: "All workers of Head Manufacturing Administration, Edina, Minnesota and the Eden Prairie, Minnesota facility of Magnetic Peripherals, Inc., subsidiary of Control Data Corporation, who became totally or partially separated from employment on or after July 8, 1984" and, "all workers of the Bemidji, Minnesota facility of Magnetic Peripherals, Inc., subsidiary of Control Data Corporation who became totally or partially separated from employment on or after September 5, 1984 and before June 1, 1985, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of February 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-4688 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Diamond Chain Co., Indianapolis, IN

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 17, 1986 to February 21, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,462; Diamond Chain Co., Indianapolis, IN

TA-W-16,282; Eaton Corp/Yale Materials Handling Corp., Salem VA

TA-W-16,445; Luray Textiles, Luray, VA

TA-W-16,435; Vera Maxwell, Inc., New York, NY

TA-W-16,422; Northwest Automatic Products, Inc., Minneapolis, MN

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-16,436; Weyerhaeuser Co., Plywood Div., Longview, WA

Aggregate U.S. imports of softwood veneer are negligible.

TA-W-16,434; Smith GM Power, Inc., Salt Lake City, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,421; Nationwide Studios, Inc., Miami, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-16,348; Data Products Corp., Juncos, PR

Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA-W-16,497; Tobin Hamilton Co., Inc., Mansfield, MO

A certification was issued covering all workers of the firm separated on or after September 19, 1984.

TA-W-16,208; Opelika Manufacturing Corp., Opelika Sewing Plant, Opelika, AL

A certification was issued covering all workers of the firm separated on or after July 15, 1984.

TA-W-16,433; Samuel Brutin & Co., Paterson, NJ

TA-W-16,419; Florsheim Shoe Co., Poplar Bluff, MO

A certification was issued covering all workers of the firm separated on or after September 5, 1984.

TA-W-16,404; Star Sportswear Manufacturing Corp., Lynn, MA

A certification was issued covering all workers of the firm separated on or after September 10, 1984 and before July 31, 1985.

TA-W-16,495; The Timken Co., Ashland, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-16,496; The Timken Co., Bucyrus, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-16,360; Hedstrom Corp., Dothan, AL

A certification was issued covering all workers of the firm producing bicycles and wood products separated on or after August 19, 1984 and before October 15, 1985.

I hereby certify that the aforementioned determinations were issued during the period February 17, 1986 to February 21, 1986. Copies of the these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons to write to the above address.

Dated: February 25, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-4690 Filed 3-3-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activites Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent a request for an expedited review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(g) to the Office of Management and Budget (OMB) for the following proposal for the collection of information.

ADDRESSES: Send comments to Ms. Edythe Manza, National Endowment for the Humanities, Administrative Services Office, Room 429, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0361) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Manza, National Endowment for the Humanities, Administrative Services Office, Room 429, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0361) from whom copies of forms are available..

SUPPLEMENTARY INFORMATION: The 1986 appropriations for NEH included instructions to NEH to establish and administer the National Capital Arts and Cultural Affairs Program ("NCACAP"). NCACAP provides operating assistance in the form of NEH grants to qualify institutions in the Nation's Capital. The law instructs the NEH to establish an application process by March 1, 1986. NEH has requested the Director of OMB to approve and assign a control number by February 28, 1986, to the information collection form to be used in the application process. This entry is a new form. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Form.

Title: National Capital Arts and Cultural Affairs Program: Guidelines and Application materials

Form Number: Not yet designated

Frequency of Collection: Annual

Respondents: Qualifying institutions within the District of Columbia

Use: Application for funding

Estimated Number of Respondents: 15

Estimated Hours for Respondents to Provide Information: 10

Dated: February 28, 1986.

Susan Metts,

Acting Director of Administration.

[FR Doc. 86-4632 Filed 3-3-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

National Science Foundation's Senior Executive Service Performance Review Board; Membership

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street, NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Frank L. Huband, Director, Division of Electrical, Communications and Systems Engineering, Directorate for Engineering

Ian D. MacGregor, Deputy Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences

William L. Stewart, Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

Alan I. Leshner, Executive Officer, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director

Dated: February 26, 1986.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 86-4651 Filed 3-3-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293, License No. DPR-35 and EA 85-106]

Boston Edison Co. (Pilgrim Nuclear Power Station); Order Imposing a Civil Monetary Penalty

I

Boston Edison Company, Boston, Massachusetts 02193 (the licensee) is the holder of License No. DPR-35 issued by the Nuclear Regulatory Commission (the Commission/NRC). The license authorizes the licensee to operate the Pilgrim Nuclear Power Station, Plymouth, Massachusetts, in accordance with the conditions specified therein.

II

On August 6-8, 1985 an NRC inspection was conducted to review the circumstances associated with the discovery by the licensees of two openings in a vital area barrier. During the inspection, two additional openings in the barrier were identified by an NRC inspector and it appeared that the

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licensee had not conducted its activities in full compliance of NRC requirements. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 21, 1985. The Notice stated the nature of the violation, the provision of the Nuclear Regulatory Commission requirements that the licensee had violated, and the amount of civil penalty proposed for the violation. The licensee answered the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 27, 1985.

III

After consideration of the response and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the violation occurred as stated, was properly classified at a Severity Level III, and that the proposed penalty of $50,000 for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may request a hearing within thirty days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request also shall be sent to the Executive Legal Director, U.S., Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been maade by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland this 25th day of February 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,
Director, Office of Inspection and Enforcement.

[FR Doc. 86-4657 Filed 3-3-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on March 20 and 21, 1986 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on March 20, recess and reconvene at 8:00 a.m. on March 21. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The March 20 session and a portion of the March 21 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456-7740, prior to 3:00 p.m. on March 19. Ms. Boyd is also available to 3:00 p.m. on March 19. Ms. Boyd is also available to provide specific information regarding time, place and agenda for the open session.

Jerry D. Jennings,
Executive Director, Office of Science and Technology Policy.
February 25, 1986.

[FR Doc. 86-4746 Filed 3-3-86; 8:45 am]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Generalized System of Preferences; Notice of Public Hearings on Sodium Bromide

The purpose of this notice is to announce public hearings on the proposed modification of the list of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) to remove imports of sodium bromide (TSUS 420.82) from Israel.

1. Notice of Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee will hold public hearings on Friday, March 14, 1986, at 10:00 a.m. in Room 403 of the Winder Building, 600 17th St., NW., Washington, DC as part of its review of the proposed modification of the list of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) to remove imports of sodium bromide (TSUS 420.82) from Israel. This review was initiated at the request of the U.S. Bromine Alliance. Interested parties are invited to submit testimony or written comments.

2. Deadline for Receipt of Requests to Participate in Public Hearings.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or

statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Tuesday, March 11, 1986. Oral testimony should summarize supplement information contained in briefs or statements submitted for the record. Parties requesting to testify will be notified by March 12 of the estimated time of their appearance before the GSP Subcommittee. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Friday, April 4, 1986. Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, provided that such submissions are received by Friday, March 14, 1986. Rebuttal briefs will be accepted if submitted in twenty copies, in English, by close of business Friday, April 4, 1986.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and on each page within the document, where appropriate, that confidential material is included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

3. Communications

All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Office of the United States Trade Representative, 600 17th St., NW., Room 517, Washington, DC. 20506. Questions may be directed to any member of the GSP Information Center at (202) 395-6951.

4. Further Information

For further information about this review, see the notice published on February 18, 1986 (51 CFR 5817).

Donald M. Phillips,
Chairman, Trade Policy Staff Committee.

[FR Doc. 86-4711 Filed 3-3-86; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24029; 70-7168]

Columbia Gas System, Inc.; Proposal to Issue Common Stock Under Long-Term Incentive Plan; Order Authorizing Solicitation of Proxies

February 25, 1986.

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(5) and 62 thereunder.

Columbia proposes, subject to stockholder approval, to issue and grant and/or sell up to 1.5 million shares of its common stock, pursuant to a new ten year Long-Term Incentive Plan ("Plan") which, in pertinent part, consists of, (a) Incentive Stock Options, (b) Non-qualified Stock Options, (c) Stock Appreciation Rights, and (d) Contingent Stock Awards. The maximum number of shares that may be awarded to any one individual during the like of the Plan is 10% of the total 1.5 million shares or 150,000 shares. The Plan will be administered by the Compensation Committee of Columbia's Board of Directors.

Columbia proposes to solicit proxies in this regard for voting at the 1986 Annual Meeting. Columbia has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this mater. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that Columbia's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-4671 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24030; 70-7223]

Columbia Gas System, Inc.; Proposed Issuance and Sale of Common Stock Pursuant To Dividend Reinvestment Plan; Exception From Competitive Bidding

February 25, 1986.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

By Orders dated May 3, 1982 and April 24, 1985 (HCAR Nos. 22486 and 23695, respectively), Columbia was authorized to issue and sell 3,000,000 shares of Common Stock pursuant to the Dividend Reinvestment Plan ("Plan"). Of those 3,000,000 shares, 2,652,641 had been issued as of December 31, 1985. Columbia now proposes to issue and sell up to an additional 3,000,000 shares of its authorized but unissued common stock, $10 par value, through the Plan after full issuance of the remaining 347,359 shares authorized. The maximum optional cash payments through the Plan will increase from $5,000 to $10,000 per dividend payment, which is presently made quarterly. These shares will be issued from time to time through March 31, 1990. As of this date approximately 27,960 of Columbia's 112,973 shareholders are participating in the Plan.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549,

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and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4670 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14957; 812-6282]

Shearson Lehman Special Portfolios; Application for an Amended Order Relating To Waiver of Contingent Deferred Sales Charges And Offer of Exchange

February 25, 1986.

Notice is hereby given that Shearson Lehman Special Portfolios ("Applicant"), Two World Trade Center, New York, New York 10048 filed an application on January 14, 1986, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order amending an outstanding exemptive order of the Commission dated September 5, 1985 (Investment Company Act Release No. 14706) ("Order"). The Order exempted the Applicant from 1) the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d thereunder to the extent necessary to permit the assessment of a contingent deferred sales charge ("CDSC") on redemption of Applicant's shares, and to apply credits against the CDSC; and 2) the provisions of section 11(a) of the Act and permitting Applicant to offer to exchange shares of each of Applicant's series for shares of other Applicant's series at relative net asset value, subject to a $5.00 fee on each exchange. Applicant seeks to amend the Order to (1) modify the circumstances under which withdrawals made from Applicant's automatic cash withdrawal plan are not subject to a CDSC; (2) to modify a representation contained in the earlier application whereby Applicant agreed to limit the annual fee under its plan of distribution adopted under Rule 12b-1 to .75%. Applicant now proposes limiting such annual fee to permit series of Applicant's shares to pay an annual fee under Applicant's plan of distribution in accordance with Rule 12b-1, provided such fee does not exceed 1.25% of the average daily net assets of the relevant series; and (3) permit Applicant to offer to exchange each of its series for shares of any series of Shearson Lehman Special Equity Portfolios and any series of any other registered investment company designated by Applicant's Board of Trustees. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant statutory provisions.

According to the application, Applicant is an open-end diversified management investment company registered under the Act and currently offers four series of shares: The Option Income Portfolio, the Long Term Government Securities Portfolio, the Intermediate Term Government Securities Portfolio and the Tax-Exempt Income Portfolio (collectively, the "Portfolios"). Applicant states that pursuant to the Order, Applicant's CDSC is waived on certain redemptions including its automatic cash withdrawal plan ("Withdrawal Plan"), which permits a shareholder owning Portfolio shares with a value in excess of $10,000 to elect to receive periodic cash payments of at least $50 monthly, but not more than 2% of the value of the shareholder's account at the time he elects to participate in the Withdrawal Plan. Applicant proposes to change the Withdrawal Plan and permit regular withdrawals in excess of 2%, and to modify the CDSC so that it is waived only on redemptions under the Withdrawal Plan not exceeding 2% of the value of shares held in a Portfolio at the time with Withdrawal Plan commences.

Applicant's Rule 12b-1 distribution plan ("Plan") provides for payment of an annual fee to Shearson Lehman Brothers, Inc. ("Shearson Lehman") for expenses incurred by it in connection with the offering of Applicant's shares. Applicant states that under the Plan, the distribution fee is paid monthly by Applicant with respect to each Portfolio at the annual rate of .75% of the daily net assets of the Portfolio. Applicant proposes that the Order be amended to permit it to change the fee a Portfolio pays, or any additional series or classes of shares offered by Applicant on substantially the same basis as Applicant offers the shares of the Portfolios ("Future Portfolios") with a fee that may be higher or lower, but in no event will the distribution fee payable by a Portfolio or a Future Portfolio exceed 1.25% of the daily net assets of the relevant Portfolio.

Applicant also proposes to extend Applicant's current offer to exchange shares of one Portfolio for shares of any other Portfolio to include shares of each Portfolio for shares of any portfolio of Shearson Lehman Special Equity Portfolios or any shares of any registered investment company which may be designated in the future by Applicant's Board of Trustees. Applicant states a CDSC will not be assessed on such exchanges; however, the $5.00 service charge, payable to Shearson Lehman, will be deducted on each exchange.

Applicant submits that the relief requested is consistent with the policies underlying the Act and is fair and in the interest of Applicant's shareholders. Applicant asserts that the bases on which the Order was issued will not be affected, and that modifying the wavier of the CDSC for Withdrawal Plan redemptions will bring the wavier into closer conformity with the operation of the CDSC generally. Applicant states that withdrawals may be made according to a schedule that results in the redemption of a shareholder's assets over approximately five years without imposition of the CDSC, however, automatic cash withdrawals made on a more accelerated basis are subject to the CDSC. Applicant states the proposed waiver will benefit investors by proving flexibility to make automatic withdrawals in excess of 2% of the value of their accounts, while simultaneously making programmed redemptions over a period shorter than five years subject to the CDSC on a basis similar to that of other shareholders making redemptions outside the Withdrawal Plan.

Applicant further submits that within the mutual fund industry a wide range of distribution fees are payable under distribution plans adopted under Rule 12b-1 under the Act. The range of fees is related to the nature and extent of the distribution effort required to market the varying types of shares. Applicant may seek to change the amount of the distribution fee currently payable by the Portfolios or to offer Future Portfolios in situations where a different distribution fee would be appropriate. These fees would be payable in accordance with a plan adopted according to Rule 12b-1 under the Act and shareholders of the relevant Portfolios will have the protections provided by Rule 12b-1 under the Act.

Applicant states that the Order was issued prior to the organization of Shearson Lehman Special Equity Portfolios and that exchanges of

Applicant's shares for shares of that Fund and of other designated investment companies which operate similar to Applicant will be made in the same manner and on the same terms as exchanges among the Portfolios.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4665 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22942; File No. SR-BSE-86-1]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Amendment to the Schedule of Value Charges.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1986 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Effective February 3, 1986, the scheduled value charges for trades executed on the BSE has been amended. The value charge shall be $.16 per $1000 of contract value for the first $10 million in monthly trade value. Thereafter the value charge per $1000 of contract value shall decline to $.13, $.10, $.08, $.05, and $.03 for that portion of monthly trade values in excess of $10 million, $50 million, $100 million, $200 million and $500 million respectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(1) The BSE has lowered value charges imposed on trades executed on the Boston Stock Exchange. The proposed amendment establishes a declining schedule of charges dependent upon the gross monthly value of trades executed. The purpose of the schedule is to encourage members to direct additional orderflow to the BSE, and to pass on to members the benefits of lower costs achieved through more efficient operations.

(2) The basis for the proposed charge is section 6(b)(4) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the Fee Committee of the Board of Governors of the BSE comprised of representatives of dealer-specialist, retail and institutional firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549, Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4667 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22952; File No. SR-CBOE-85-63]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On December 23, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 under the Act,[2] a proposed rule change to allow CBOE to list series of options on the Standard and Poor's 500 Stock Index ("S&P 500 Index") that expire in up to five different

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

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months: series expiring one and two months from the date of listing; series expiring in the two months from the March quarterly expiration cycle that follow the two near-term expiration months; and, at the discretion of the Exchange, series expiring in the month from the March cycle that follows these two far-term expiration months. Series in the discretionary fifth expiration month could have as much as eleven months to expiration at the time of listing. As an example of the effect of this rule change, after the February expiration, the months available for trading would be March, April, June and September, and perhaps December. The S&P 500 Index option currently trades on a quarterly, March expiration cycle, with series available in a maximum of three different months and the farthest term series being nine months to expiration upon listing.

The proposed rule change was noticed in Securities Exchange Act Release No. 22769 (January 6, 1986), 51 FR 1461 (January 13, 1986). No comments were received on the proposed rule change.

The Commission previously has approved as many as six expiration months for options on broad-based indexes like the S&P 500 Index.[3] The principal difference between these previously approved proposals and CBOE's current proposal is that the farthest-term series allowed under the previous rule changes have nine months to expiration at the time of listing while CBOE's proposal allows series with as much as eleven months to expiration upon listing.[4]

As the Commission previously has indicated, as a general regulatory matter expiration cycles may be left to the business judgment of the exchange.[5] As the Commission also has indicated, however, proposals to introduce new expiration months may raise regulatory concerns, principally ones concerning the liquidity in both the new series being introduced and in the series already allowed.[6] The Commission has stated that a balance must be sought between ensuring that market participants are provided an array of expirations adequate to their investment demands and ensuring that this array does not cause an excessive dilution of liquidity in open options series.[7]

In this case, the additional series CBOE proposes (three expiration months to five) is less than that previously approved by the Commission for other broad-based index options.[8]

The only new issue raised by the CBOE proposal is whether series of S&P 500 index options that have 11 months to expiration upon listing are likely to be significantly less liquid than the series with nine months to expiration currently allowed for other index options contracts that have series in five different expiration months.[9] The Commission has no reason to question the CBOE's judgment that the far-term eleven-months series allowed under CBOE's proposal will exhibit significantly less liquidity than the far-term nine months series available in the existing index options contracts that have five (or six) different expiration months.[10]

For these reasons, the Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4669 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

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[3] *See, e.g.*, Securities Exchange Act Release Nos. 20330 and 20414 (October 28, and November 25, 1983), 48 FR 50651 and 54308 (New York ("NYSE") and American ("Amex") Stock Exchange proposals, respectively).

[4] Another difference is that the S&P 500 index option is a European-style option while the other index options are American-style options. A European-style option can be exercised only on the day previous to its expiration. The Commission does not believe that the fact that the S&P 500 index option is a European-style option raises special regulatory concerns regarding the number and arrangement of expiration months in this context.

[5] Amex Release note 3, *supra*. *See also* Securities Exchange Act Release No. 21512 (November 2, 1984), 49 FR 46856 (approving twelve-month options series for foreign currency options traded on the Philadelphia Stock Exchange, Inc. ("Phlx")) ("Phlx Release").

[6] *Id.*

[7] *Id.*

[8] Note 3, *supra*.

[9] *See also* the Phlx Release, note 5, *supra* (approving twelve months series for foreign currency options).

[10] Although the existing far-term nine-month series for index options contracts exhibit little volume relative to the near-term months where almost all volume is concentrated, the Commission assumes that volume for an eleven month series (as proposed by CBOE) would be similar—and not significantly less—as for the existing nine month series.

[Release No. 22878A; File No. ODD-86-1]

Self-Regulatory Organizations; the Options Clearing Corp.; Order Granting Approval to Supplement to Options Disclosure Document; Correction

On February 7, 1986, the Securities and Exchange Commission ("SEC") issued a release[1] approving the "ECU Disclosure Rider," a supplement to the options disclosure document filed pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act")[2] disclosing potential risks to holders and writers of options on the European Currency Unit ("ECU") in the event that a court were to set aside the SEC's February 3, 1986, orders approving the rules ofthe Philadelphia Stock Exchange, Inc. ("Phlx") and the Options Clearing Corporation ("OCC") pertaining to ECU options.[3] The order approving the "ECU Disclosure Rider" stated that this supplement would be required to be delivered for the 60-day period following publication in the **Federal Register** of the SEC's orders approving the Phlx and OCC ECU options rules. The SEC hereby revises that portion of the order to state that the "ECU Disclosure Rider" is required to be delivered for the 60-day period following the date of entry of the SEC's orders approving the OCC and Phlx proposals.[4] The date of entry of these orders was February 3, 1986,[5] thus the "ECU Disclosure Rider" will be required to be delivered until April 4, 1985.

For the Commisson, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4696 Filed 3-3-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] Securities Exchange Act Release No. 22878 (February 7, 1986), 51 FR 5630 (February 14, 1986).

[2] 17 CFR 240.9b–1 (1985).

[3] Securities Exchange Act Release Nos. 22853 and 22854 (February 3, 1986); 51 FR 5129 and 5128 (February 11, 1986).

[4] *See* section 25(a)(1) of the Act, 15 U.S.C. 78y (1982).

[5] 17 CFR 201.22(k) (1985).

[Release No. 34-22950; File No. SR-Phlx-86-1]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Narrowing Maximum Allowable Bid-Ask Differential Applicable to Specialists and Registered Options Traders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986 Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to amend Exchange Rule 1014(c)(i) to narrow the bid-ask differential applicable to single equity options and index options (the latter by operation of Exchange Rule 1000) traded on the Exchange. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted:

Obligations and Restrictions Applicable to Specialists and Registered Option Traders

Rule 1014 (a) through (c)—No change.

(i) Options on Stocks. (A) Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the [last preceding transaction price was $.50] *prevailing bid is $1* or less, no more than [½] ⅜ of $1 where the [last preceding transaction price was] *prevailing bid is* more than $1 [.50] but [did] *does* not exceed $3 [10], *no more than ½ of $1 where the prevailing bid is more than $3 but does not exceed $10*, no more than ¾ of $1 where [the last preceding transaction price was] *the prevailing bid* is more than $10 but less than $20, and no more than $1 where the [last preceding transaction price was] *the prevailing bid is* $20 or more, provided that the Exchange may establish differences other than the above for one or more series or classes of options. [The bid-ask differentials as stated above shall apply to series of less than nine months. For all other series, the bid-ask differential shall be twice that stated above.]

(B) through (e) (iii)—unchanged

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to improve price continuity in single equity options contracts and index options contracts (the latter by operation of Exchange Rule 1000) for which the prevailing bid does not exceed $3 by narrowing the maximum allowable bid-ask differential and changing the reference point for such differential from the last preceding transaction to the prevailing bid.

For example, under the provisions of existing Rule 1014, a Specialist or Registered Options Trader must bid or offer so as to create a difference of no more than ¼ of $1 between the bid and offer for each option contract for which the last preceding transaction price was $.05 or less. The proposed amendments to Rule 1014 would, among other things, require a Specialist or Registered Options Trader to bid or offer so as to create a difference of no more than ¼ of $1 between the bid and offer for each option contract for which the prevailing bid is $1 or less. Similarly the bid-ask differential is narrowed in the case of a single equity option and index options for which the prevailing bid is more than $1 but does not exceed $3.

Additionally, the maximum bid-ask differentials set forth in existing Rule 1014 apply to series of less than nine months. Under the proposed amendments to the rule, such provision is deleted so as to make the maximum allowable bid-ask differentials applicable to all series of single equity options and index options.

Statutory Basis

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") in that it can be effected to promote the maintenance of fair and orderly markets and, in particular, section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organizations's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period; (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifith Street, NW., Washington, DC 20549. Copies of such filing will also be

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available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–4668 Filed 3–3 86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 25, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Triangle Industries, Inc.
 Cumulative Preferred Stock, $1.00 Par Value (File No. 7–8845)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 19, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make wirtten comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheller,

Secretary.

[FR Doc. 4004 Filed 3–3–86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

NYSTRS/NV Capital, Limited Partnership; Issuance of License To Operate as a Small Business Investment Company [License No. 02/02–0493]

On December 27, 1985, a notice was published in the **Federal Register** (50 FR 53053) stating that an application had been filed by NYSTRS/NV Capital, Limited Partnership, 1215 Western Avenue, Albany, New York 12203, with the Small Business Administration (SBA), for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1985)).

Interested parties were given until the close of business January 25, 1986, to submit their comments on the application to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other information, SBA issued License No. 02/02–0493 to NYSTRS/NV Capital, Limited Partnership on February 7, 1986, to operate as a section 301(c) SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Businesss Investment Companies.)

Dated: February 24, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–4652 Filed 3–3–86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2231]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 21, 1986, I find that the Counties of Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma and Yuba constitute a disaster loan area because of damage from severe storms, landslides, mudslides and flooding beginning on or about February 12, 1986. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on April 24, 1986, and for economic injury until September 2, 1986, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223106 for physical damage and for economic injury the number is 637900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 24, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86–4653 Filed 3–3–86; 8:45 am]

BILLING CODE 8025-01-M

86–4538 Loan Guarantees; Pilot Project in the State of Illinois

AGENCY: Small Business Administration.

ACTION: Notice.

SUBJECT: Pilot Project in the State of Illinois.

SUMMARY: The Small Business Administration authorized a pilot program that is designed to increase the access of Illinois small businesses to fixed rate loans. This program is fully described at 48 FR 36533 (August 11, 1983) and amended at 49 FR 16916 (April 20, 1984). SBA published an extension of the program to March 31, 1986, at 50 FR 12680.

At the request of local and Regional SBA officials and representatives of the Illinois Department of Commerce and Community Affairs, SBA will extend the pilot program in the State of Illinois through September 30, 1986.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Economist, Small Business Administration, Room 800, 1441 L St. NW., Washington, DC 20416 (202–653–5954).

(Catalog of Federal Domestic Assistance Programs, 59.012, Small Business Loans)

Dated: February 24, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86–4538 Filed 3–3–86; 8:45 am]

BILLING CODE 8025-01-M

Wichita Advisory Council Meeting

The U.S. Small Business Administration, Region VII, located in the geographical area of Wichita, Kansas, will hold a public meeting from 11:00 a.m.-2:00 p.m., on Tuesday, March 11, 1986, at the Fourth Financial Center, Dining Room Lounge, 9th Floor, Wichita, Kansas, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Clayton Hunter, District Director, U.S. Small Business Administration, 110 E. Waterman, Wichita, Kansas (316) 269–6566.

Dated: February 26, 1986.

Joan M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86–4490 Filed 3–3–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/946]

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Closed Meeting

The Department of State's Advisory Committee on Oceans and International Environmental and Scientific affairs will meet at 8:30 A.M. on Wednesday morning, March 26, 1986 in Conference Room 1107 of the Department of State, 22nd and C Streets, NW., Washington, DC in a session which will not be open to the public. As this session will include discussion of classified material and issues which are the subjects of ongoing meetings and negotiations will respect to fusion research, famine, and global warming, it has been closed pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1) and 5 U.S.C. 552b (C)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in current and future negotiations. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meeting should be directed to Robert H. Goeckermann of OES/STS, Room 4329, Department of State. He may be reached by telephone on (202) 647–2764.

Dated: February 24, 1986.

John D. Negroponte,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 86–4606 Filed 3–3–86; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 42
Tuesday, March 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 5, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Management Review: Matrix Management

The Commission will reconsider a decision related to matrix management as a part of the ongoing management review.

2. ATVs: Preliminary Hazard Analysis

The staff will brief the Commission on the preliminary injury survey of all-terrain vehicles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

Dated: February 21, 1986.

[FR Doc. 86-4772 Filed 2-28-86; 2:59 pm]

BILLING CODE 6355-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Friday, March 7, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and to establish six branches:

New Bedford Five Cents Savings Bank, New Bedford, Massachusetts, an insured mutual savings bank, for consent to merge, under its charter and title, with Fall River Savings Bank, Fall River, Massachusetts, a non-FDIC-insured mutual savings bank, and for consent to establish the six offices of Fall River Savings Bank as branches of the resultant bank.

Application for consent to purchase assets and assume liabilities and establish four branches:

Capitol Bank and Trust Company, Boston, Massachusetts, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Community Co-operative Bank, Medford, Massachusetts, a non-federally-insured institution, and for consent to establish the four offices of Community Co-operative Bank as branches of Capitol Bank and Trust Company.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1985

Discussion Agenda:

Memorandum and Resolution re: Final amendment to Parts 303 and 309 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Disclosure of Information," "respectively, which (1) requires persons who have filed notices with the Corporation under the Change in Bank Control Act of 1978 ("CBCA") (12 U.S.C. 1817(j)), to publish an announcement of the notice's acceptance in a newspaper, except that in the case of a public tender offer the announcement may be delayed until a tender offer commences; and (2) make certain information regarding CBCA notices accepted by the Corporation available to the public upon request, except in certain public tender offer situations.

Memorandum and Resolution re: Final amendment to the Corporation's rules and regulations in the form of a new Part 352, entitled "Nondiscrimination on the Basis of Handicap," which amendment, in implementing the spirit of Section 504 of the Rehabilitation Act of 1973, as amended, defines the scope of the Corporation's obligation to ensure that, to the extent practicable, handicapped persons are provided with equal access to Corporation programs and activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 86-4777 Filed 2-28-86; 3:28 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Friday, March 7, 1986 the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6),) (c)(8), and (c)(9)(A)(ii) of title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names or persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to purchase assets and assume liabilities:

Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilty to pay deposits made in Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution

Memorandum regard liquidation activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 86-4778 Filed 2-28-86; 3:27 pm]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM; BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on February 26, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, March 5, 1986.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: February 28, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4700 Filed 2-28-86; 10:35 am]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM; BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding fees for directors of the Federal Reserve Bank and members of advisory panels of the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 28, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86-4788 Filed 2-28-86; 3:53 pm]

BILLING CODE 6210-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-8]

TIME AND DATE: Monday, March 10, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
   a. Certain dynamic random access memories, components thereof, and products containing same (Docket No. 1283).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,
Secretary.

February 27, 1986.

[FR Doc. 86-4775 Filed 2-28-86; 3:17 pm]

BILLING CODE 7020-02-M

7

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-6]

TIME AND DATE: Friday, March 14, 1986 at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints.
   a. Certain luggage products (Docket No. 1284).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,
Secretary.

February 27, 1986.

[FR Doc. 86-4776 Filed 2-28-86; 3:18 pm]

BILLING CODE 7020-02-M

8

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: Meeting will commence at 12:00 p.m., Thursday, March 13, 1986, and continue until 4:30 p.m. or until all official business is completed.

PLACE: Mississippi Band of Choctaw Indians, Tribal Office Building, Route 7, Philadelphia, Mississippi 39350.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes January 30, 1986
3. FY 1986 Consolidated Operating Budget

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Policy Development, (202) 863–1842.

Dated Issued: February 27, 1986.

Timothy H. Baker,
Secretary.

[FR Doc. 86-4680 Filed 2-27-86; 4:55 pm]

BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

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TIME AND DATE: The meeting will commence at 6:30 p.m., Wednesday, March 12, 1986, and continue until all official business is completed.

PLACE: Holiday Inn North, Spanish Oaks Room I and II, I-55 North Frontage Road, Jackson, Mississippi 39206.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Denial of Refunding—45 CFR 1625
   —Report from the Office of General Counsel
   —Public comment
   —Recommendations to Board
3. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Counsel, Division of Policy Development, (202) 863-1842.

Date Issued: February 27, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-4661 Filed 2-27-86; 4:55 pm]

BILLING CODE 6820-35-M

10

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3

Wednesday, March 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 10—Tentative

Tuesday, March 11

10:00 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17—Tentative

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)
2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)
2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Review of ALAB-819 (In the Matter of Philadelphia Electric Company)" scheduled for February 27, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

February 27, 1986.

[FR Doc. 86-4793 Filed 2-28-86; 3:50 pm]

BILLING CODE 7590-01-M

11

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1364]

TIME AND DATE: 10:30 a.m. (e.s.t.), Thursday, March, 6, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, TN.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 14, 1986.

Action Items

Old Business Items

1. Recommendation regarding program for compliance with Environmental Protection Agency's stack height regulation at Colbert, Johnsonville, Shawnee, and Widows Creek fossil plants.

New Business Items

B—Purchase Awards

B1. Invitation NQ-835085—Steam generator blowdown demineralizers for Watts Bar Nuclear Plant.

B2. Negotiation GF-453861—Dry fly ash facility for John Sevier Fossil Plant.

F—Unclassified

F1. Supplement to Agreement No. TV-61214A with Oak Ridge Operations, U.S. Department of Energy (DOE) providing for TVA to continue performing mapping services for DOE.

F2. Supplement to Contract No. TV-60035A with Environmental Protection Agency covering arrangements for TVA to continue the long-term water quality monitoring program of selected reservoirs in the Tennessee Valley region in order to evaluate their acid sensitivity.

F3. Contract No. TV-69143A among State of Alabama Community Colleges in Gadsden, the University of Alabama, the City of Gadsden, Alabama, and TVA to establish a joint research and training center to serve as a focal point for economic development as well as industrial development and training in advanced technologies.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: February 27, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86-4731 Filed 2-28-86; 12:24 pm]

BILLING CODE 8120-01-M

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federal register

Tuesday
March 4, 1986

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 435 and 442

Medicaid Program; Standards for Intermediate Care Facilities for the Mentally Retarded; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 442

[BERC-266-P]

Medicaid Program; Standards for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing a general revision of the standards for intermediate care facilities for the mentally retarded and persons with related conditions, (ICFs/MR). The standards are those requirements that ICFs/MR must meet in order to participate in the Medicaid program. This proposed rule is designed to increase the focus on the provision of active treatment services for clients, clarify Federal requirements, and maintain essential client protections. The major outcome of these proposed regulations would be to align Federal standards with contemporary care practices for residential care services for persons with mental retardation or other developmental disabilities. We are also proposing to make several technical changes and cross-references to achieve consistency with other existing regulations.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 5, 1986.

ADDRESS: Mail Comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-266-P, P.O. Box 26676, Baltimore, Maryland 21207

In addition, please address a copy of your comments on the information collection requirements to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Fay Iudicello.

If your prefer, you may deliver your comments to one of the following addresses:

Room 309-G Hubert H. Humphrey Building 200 Independence Ave., SW., Washington, DC or

Room 132, East High Rise Building, 6325, Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BERC-266-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Samuel Kidder (301) 597-5909.

SUPPLEMENTARY INFORMATION:

I. Background

General

Section 1905(c) of the Social Security Act authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). These are facilities that provide health-related care to individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services above the level of room and board that can only be made available to them through institutional facilities. Section 1905(d) indicates that the term "intermediate care facility services" may include services in a public institution for the mentally retarded or persons with related conditions (ICF/MR). (Private facilities may also participate as ICFs/MR.)

Fifty States and jurisdictions currently cover ICF care; 49 of these include ICF/MR care and serve over 140,000 individuals in over 2,911 ICFs/MR, ranging in size from 4 beds to almost 1,500 beds.

ICF/MR Standards—Current Regulations

Current standards for ICFs/MR are found at 42 CFR Part 442, Subpart G. These standards were published in 1974 and are based primarily on the 1971 voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded (AC/FMR), now renamed the Accreditation Council for Services to Mentally Retarded and Other Developmentally Disabled Persons (AC MRDD). The standards are the requirements that ICFs/MR must meet in order to participate in the Medicaid program. They were developed on the assumption that they would be used for the most part in large, public institutions which served as the principal source of out of the home placement of persons with mental retardation at the time the standards were published. Since the early 1970s, litigation, legislation, research and technological advances have influenced the way in which clients are identified, assessed, and provided services. The size of large institutions has steadily decreased and the provision of a broad spectrum of services to clients in community settings has expanded greatly in the last 10 years.

Despite these changes, the standards have not been significantly revised since they were originally published in 1974. We are proposing a general revision of the standards designed to increase the focus on the provision of active treatment services to clients, clarify Federal requirements, maintain essential client protections, and to provide State survey agencies with a more accurate mechanism for assessing quality of care.

II. Provisions of the Regulations

A. General Approach

In revising these standards, we have based our proposals primarily on the accreditation standards published in 1983 by the Accreditation Council for Services to Mentally Retarded and Other Developmentally Disabled Persons (AC MRDD), particularly in the Active Treatment Services section of our proposed standards. We have based our revisions on the following general principles:

- The standards should enable both the facility and monitoring agencies (State survey agencies and Federal reviewers) to form judgments about whether individuals' needs are being properly assessed and appropriate interventions planned and delivered.
- The standards should be applicable to all of the various sizes of facilities that provide services to the mentally retarded and should provide these facilities with greater flexibility in the administration of their programs.
- The standards should focus more on client and staff performance rather than on compliance with processes and paper requirements.
- The standards should provide for individual client protections, given the vulnerability and frequent isolation of many clients in ICFs/MR.

The major organizational and structural revisions to the standards are as follows:

- We are proposing to reorganize the standards into four major sections in order to eliminate duplicative language and provide the facilities and surveyors with a logical, accountable method of determining compliance.

- We are proposing to revise most of the detailed language of the current standards to give facilities greater ability to administer their programs, while recognizing their widely varying sizes, locations and organizational structure. We would retain appropriate detail in the areas of needed client protections.
- We would reword much of the language contained in the current regulations to reflect contemporary terminology in the field of developmental disabilities. For example, we have substituted the term "client" for "resident" throughout the standards.
- We would retain necessary emphasis on health services, but we would revise the regulations to reflect the wide diversity in health care delivery systems utilized by ICFs/MR.
- The proposed standards emphasize the development of the individual client in defining the active treatment process. We have used the AC MRDD standards for active treatment as a guide and would tie professional qualifications and duties to the active treatment process.
- We would clarify numerous existing standards that have created problems for providers and reviewers (e.g., qualifications for the qualified mental retardation professional, thermostatically controlled water faucets, self-administration of medications, and the application of State nursing home health and sanitation standards).

We believe that the proposed modifications to the current regulations would result in an improved set of standards for ICFs/MR. Although not proposed in this notice, we are also considering using a "condition of participation" format for these regulations, and invite public comment on this approach.This change would make the regulations for ICFs/MR consistent with the organization of the Medicare and Medicaid regulations for skilled nursing facilities (SNFs). Under this format, requirements are characteristically grouped as conditions of participation, each of which contains standards that are used to assess compliance with the condition.

Although we have not used the conditions format at this time, we believe the standards could easily be organized into conditions of participation in the final regulations. For example, the standards could be organized into conditions of participation in the following way:

1. A condition of participation entitled "Administration and Management" could be structured to cover the proposed standards that involve overall policy direction and administrative requirements for the ICF/MR.

2. A condition of participation on client protections could encompass the proposed standards that require facilities to afford clients their legal and civil rights, including financial arrangements and staff treatment of clients.

3. We could establish a condition of participation on facility staffing to include all personnel qualifications, staff licensure and training requirements, and the direct care staff ratios. This would also include professional program services, because we believe that the qualifications and sufficiency of professional program staff directly impact on the facility's ability to provide the required active treatment services for their clients.

4. We could establish a condition of participation on behavior modification programs to cover all the standards that deal with this issue, including drug usage.

5. There could be a separate condition of participation on active treatment services to incorporate all the proposed standards that comprise an individual's active treatment program. This could include client assessment requirements for admissions, transfers, release, and the establishment and modification of a client's individual program plan.

6. There could be one condition of participation on health care services to cover the proposed standards on physician, nursing, dental, pharmacy, and laboratory services.

7. We could have a condition entitled "Physical Environment" that would regulate client living areas, space and equipment in other areas of the facility, and would include the standards on fire safety, building accessibility and use, and sanitation.

8. We could have one condition on all facets of dietary services.

Under such an approach, State agencies would survey for compliance with the conditions of participation and if a facility is found to meet *all* the proposed requirements at the condition level, it would be eligible for Medicaid certification. Facilities with deficiencies at the standard level could have up to 12 months to effectuate a corrective plan of action. We are particularly requesting public comments on the use of conditions and is potential impact on facility participation in the Medicaid ICF/MR program.

Although we are considering the use of the condition of participation format, we believe that the proposed regulations using standards also would ensure that clients are provided with quality care while at the same time recognizing the needs of facilities of widely differing characteristics. These changes are discussed in detail below.

B. Proposed Revisions to the Standards for ICFs/MR

Protection of Clients' Rights

Current regulations at 42 CFR 442.403 and 442.404 identify the rights of clients in ICFs/MR, including a residents' bill of rights. These standards were taken directly from the standards for general ICFs and contain detailed descriptions of clients' rights that are also stated in other sections of the standards. For example, § 442.404(f) of the existing regulations describes in detail a client's rights regarding the use of restraints. However, §§ 442.437 and 442.438 duplicate and overlap with the provisions of § 442.404(f). To eliminate this duplication, we are proposing to create a new section (see proposed § 442.401) entitled "Protection of Clients' Rights". This section would specify clients' rights and what the facility must do to assure that clients' rights are protected. The specific details relating to these rights have been retained in appropriate sections of these proposed regulations.

Throughout the standards, we use the terms "client, parents (if the clients are minors) or guardians" in recognition of the three persons who can act in a client's behalf unless otherwise determined by the State. By doing so, we do not intend to limit the State's authority to decide who can represent the client; rather, by using a consistent term denoting who must be informed, give permission, etc., we hope to minimize confusion. We are also proposing to eliminate the provision that allowed a qualified mental retardation professional to determine whether or not a client could understand his or her rights, which may have had the unintended effect of appearing to change the client's legal status without proper State adjudication.

Administrative Services

1. Client Finances: Current regulations at 42 CFR 442.408 contain the duties of the facility with regard to the protection of the finances of each client. We would retain this standard, but would simplify the language and include language from section 1861(j)(14) of the Act, referred to in section 1905(c) of the Act, which would require that the facility maintain a system that assures a complete accounting of clients' personal funds. (See proposed § 442.410.)

2. Governing Body: Current regulations (42 CFR 442.409 and 442.410) specify the duties of the governing body and set the qualifications for the chief executive officer. We would simplify and combine these standards. Proposed

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regulations at § 442.412 would specify that the facility must have a governing body that exercises general direction over the facility, and sets the qualifications for and appoints the administrator of the facility. We would also require that the administrator possess knowledge of developmental disabilities.

3. Commnication With Clients, Parents, and Guardians: Current regulations at 42 CFR 442.414 specify the facility's responsibility to have an active program of communication with clients, parents, and guardians. We are proposing to retain this standard, with some minor modifications in language. We would add new requirements explicitly allowing family, clients and friends to participate in the active treatment process and clearly permitting leave for visits, trips and vacations in recognition of the importance of their continued involvement. (See proposed § 442.414.)

4. Compliance with Federal, State and Local Laws: Current regulations at 42 CFR 442.415 require that facilities meet all applicable Federal, State and local laws, regulations and codes pertaining to health and safety. We would retain this standard but would add a reference to civil rights laws (that is, section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135) and all regulations issued under the authority of these Acts). This means that the State's ICF/MR program must be in compliance with these laws and regulations, and each facility must be in compliance with those provisions of the laws and regulations which apply on a facility-specific basis. We would also eliminate other references throughout the standards which specify requirements already contained in State laws. Thus, facilities would continue to be required to meet all applicable laws, but surveyors would not have to duplicate the monitoring activities of other agencies. (See proposed § 442.416.)

5. Provision of Needed Services: We would clarify in the proposed regulations at 42 CFR 442.418(a) that, at a minimum, facilities are required to furnish directly the following:

- The services of a qualified mental retardation professional.
- The services of direct care staff.
- The development and monitoring of active treatment programs.
- Nursing services for clients with medical care plans.
- Living quarters.

Other services, such as physician, dental, pharmacy and food services, can be arranged for through outside resources (e.g., outside agencies or individuals who provide programs and services to the facility).

However, in all cases, the facility must assume responsibility for the provision of services. Current regulations at 42 CFR 442.417, 442.455 and 442.476 discuss the arrangements facilities may have with outside resources in order to furnish required services to their clients. We propose to consolidate these three sections into one standard (see proposed § 442.418(b)) that would specify that if the facility cannot furnish a needed service, it must have a written agreement with an outside resource to furnish the service. Under the proposed rules, the agreement would be required to contain the responsibilities of both parties and ensure that all standards contained in this subpart are met. The facility would be responsible for assuring that the outside services meet the needs of each client.

6. Personnel Policies: Current regulations at 42 CFR 442.427 discuss written personnel policies. We would retain the essential elements of this standard, however, we would not require the policies to be written. Additionally, we would add a provision to prohibit a facility from employing individuals with a history of child or client abuse, neglect or exploitation. (See proposed § 442.420.) As revised, this section would require that the facility:

- Develop and implement personnel policies that are available to all staff;
- Make job descriptions available for all positions;
- Prohibit employees with signs of symptoms of a communicable disease from working;
- Prohibit the employment of individuals with a history of child or client abuse, neglect or exploitation.

7. Licensure and Professional Standards: We propose to retain the standard on licensure and professional standards currently found at 42 CFR 442.428. We would, however, eliminate the requirement that the facility take into account the standards of professional conduct developed by professional societies because the licensure or certification itself carries with it applicable standards of conduct. (See proposed § 442.422.)

8. Staff Treatment of Clients: Treatment of clients by facility staff is currently discussed at 42 CFR 442.430. We are proposing to retain this standard as § 442.424, with some minor wording changes. The regulations would specify that the facility must develop policies and procedures to prohibit mistreatment, neglect, or abuse of clients, assure that alleged violations are reported immediately, and have evidence that all violations are reported and investigated promptly within 5 working days, and an appropriate penalty imposed.

9. Facility Staffing: Current regulations found at 42 CFR 442.431, 442.433, 442.445 and 442.473 address appropriate staffing of facilities, including the size and duties of the staff. We are proposing (see § 442.426) to combine these standards and also add new requirements for support staff. We would modify the current standards as follows:

a. We have retained the requirement that prohibits the facility from depending upon clients or volunteers to meet requirements for client care or support services. This provision is necessary to assure that volunteers supplement services but are not the sole providers of services.

b. We would prohibit direct care staff from being required to provide housekeeping or other support services to the extent that these duties interfere with the exercise of their primary direct care duties.

c. We would retain the requirement currently found in § 442.445 that in any unit housing more than 16 persons, there must be staff on duty *and awake*, when clients are present. This on duty and awake standard is especially important at night when clients are usually present and usually asleep. We would also retain the requirement that in units housing 16 or fewer clients, a responsible direct care staff person be immediately accessible to clients 24 hours a day. Among other concerns, these requirements would ensure the safe evacuation of clients in case of a fire or adverse weather conditions.

d. We would require that all facilities employ a qualified dietitian on either a full-time, part-time, or consultant basis, regardless of the size of the facility. We have not specified the frequency of this consultation and invite public comments on this issue. Additionally, under the proposed rule, a facility that does not employ a full-time dietitian would be required to designate a person to serve as the director of food services. Current regulations at § 442.473 contain different standards depending on the size of the facility, but do not require facilities serving fewer than 20 persons to employ a registered dietitian. These revisions would assure that all clients, not just those in large facilities, receive adequate dietary monitoring and menu planning.

10. Direct Care (Residential Living Unit) Staff: Current regulations at 42

CFR 442.445 contain the requirements regarding the ratio of direct care staff to clients. We would retain requirements for staff to client ratios with modifications (see proposed § 442.428). We would change the ratios to reflect present and on-duty staff rather than overall staff as specified in existing regulations. (The term "overall staff" attempts to account for present and on-duty staff, as well as for staff on leave and for vacant positions.) The proposed ratios reflect the existing ratios calculated without including staff on leave or vacant positions. In addition, in the proposed § 442.428(a) we have raised the age for children from six to twelve years because there are few young children in facilities today and because we believe children under age 12 require close staff involvement and supervision.

The proposed staff to client ratios for a 24-hour period follow below. These ratios would be considered the minimum requirements that a facility must meet and could be exceeded. Additionally, we have noted per shift ratios that have been applied through ICF/MR guidelines throughout the history of the program.

a. For each living unit serving children under 12 years or serving severely impaired clients, the present and on-duty staff to client ratio would be 1 to 3.2. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to eight for the day shift.
- One to eight for the evening shift.
- One to sixteen for the night shift.

b. For each living unit serving moderately retarded clients, the present and on-duty staff to client ratio would be one to four. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to eight for the day shift.
- One to sixteen for the evening shift.
- One to sixteen for the night shift.

We note that the day and evening shift ratios could be reversed at the discretion of the facility and based on client need.

c. For living units serving mildly retarded clients, the present and on-duty staff to client ratio would be 1 to 6.4. On a shift basis, we would expect this ratio to equate to the following present and on-duty staff to client ratios:

- One to sixteen for the day shift.
- One to sixteen for the evening shift.
- One to thirty-two for the night shift.

11. Staff Training Program: Current regulations at 42 CFR 442.432 require the facility to have a program for the continuing training of staff. We would revise this standard to emphasize the need for training of staff who work directly with clients to focus on skills directed toward clients' developmental and behavioral needs. In addition, we would require that staff members be able to demonstrate practical skills and techniques necessary to implement the individual program plans for each client under their care. This represents a major new focus on staff performance rather than only on process. (See proposed § 442.430.)

12. Client records: Current regulations at 42 CFR 442.499 to 442.504 contain the requirements a facility must follow with regard to client records. These sections contain many details regarding recordkeeping requirements that are duplicated in other areas of the current standards. We are proposing to consolidate general requirements regarding client records in § 442.432 which requires that the facility develop and maintain a comprehensive recordkeeping system that assures the confidentiality of records. While we would continue to identify specific records that must be kept regarding particular facets of care where appropriate, most notably in the active treatment section, in general we believe that the facility is able to determine the type of recordkeeping structure that best fits its needs.

13. Emergencies or Death of a Client: Current regulations at 42 CFR 442.426 require facilities to notify a client's parents or guardian of any significant incidents including illness, accident or death. We would delete certain requirements concerning autopsies since State laws address this issue. (See proposed § 442.434.)

14. Infection Control: In recognition of our continued concern for the safeguarding of client and staff health, we are proposing to add a new section (see proposed § 442.436) to require the facility to engage in an active program for the prevention, control and investigation of infection or communicable diseases.

Active Treatment Services

1. Active Treatment: We are proposing to create a new section in the standards on active treatment services. Section 1905(d) of the Social Security Act provides that payment may be made for services in an ICF/MR if the individual in the facility is receiving active treatment. Although the regulations are based on this statutory requirement, the specific requirements in the regulations related to it are scattered throughout the current ICF/MR standards. However, there is a definition of active treatment found in 42 CFR 435.1009 that we are also proposing to revise. In proposed § 442.440, we would require the facility to provide an active treatment program for each client that is directed toward either: (1) The acquisition of the skills necessary for the client's maximum possible independence, or (2) the prevention of regression or loss of current functional status in dependent clients where no further positive growth is demonstrable. We would also emphasize that active treatment must not include the maintenance of generally independent clients who function with little supervision or who require few if any significant active treatment services. The revised regulations will, for the first time, enable the surveyor to make a judgment about whether or not the facility is providing active treatment services for each client by specifically describing the process involved in the delivery of the active treatment program.

2. Admissions, Transfers, and Discharge: Current regulations at 42 CFR 442.418, 442.421, 442.424, and 442.425 discuss the process for admission, release, and transfer of clients. We would retain these provisions (see proposed § 442.442) with the following changes:

a. We would modify the language to require that facilities admit only those clients who are in need of active treatment services.

b. We would eliminate the provision that permits a facility to admit a client when the facility has determined that admission is not the best plan for the client. Under the statute, the facility can only receive Medicaid payment for those persons in need of and receiving active treatment.

c. We would permit admission evaluations to be based either on evaluations made by the facility or by outside sources. We would also require that a preadmission evaluation be completed or updated no more than 90 days before admission.

d. We would require that admission decisions be made by an interdisciplinary team based on a comprehensive evaluation of the client.

e. We would require a physician to participate in establishing the newly admitted client's individual program plan. This would ensure that these regulations are consistent with current Medicaid utilization control requirements at 42 CFR 456.380 that specify plan of care requirements for intermediate care facilities.

f. We would require that if a client is to be transferred or discharged, the facility must provide documentation that the client was transferred for good cause (e.g., medical reasons or the

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facility or staff are unable to provide necessary services). The facility must also provide a final summary of the client's status at the time of transfer or discharge.

g. We would retain requirements dealing with planning for a client's discharge and adjustments to a new environment.

3. Individual Program Plan (IPP): In the proposed § 442.444, we would require that an interdisciplinary team representing the professions, disciplines or service areas relevant to each client's needs, develop an IPP for each client that states specific intervention objectives. Current regulations at § 442.421 require the facility to review the pre-admission evaluation within one month after admission. We would retain this requirement but make the focus client-oriented rather than facility-oriented, by requiring the participation of the client and the client's family, if obtainable and appropriate, in the development of an IPP for each client. We would require that the IPP outline specific objectives that are related to the client's developmental and behavioral management needs and: (1) Stated separately in terms of single behavioral outcomes, (2) assigned projected completion dates, (3) expressed in behavioral terms that provide measureable indices of progress, (4) organized to reflect a developmental progression appropriate to the individual, (5) assigned priorities and (6) specific to the programs and strategies to be used. We would also require that the IPP emphasize personal care skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing and grooming), until these skills are either accomplished or demonstrated to be developmentally unavailable to the client. We would also eliminate the word "prognosis" from this requirement, as this is essentially a medical term that lends itself to numerous interpretations inappropriate in this setting.

4. Program Implementation: Current regulations at 42 CFR 442.435 require the facility to develop an activity schedule for each resident that details how his or her time is to be spent, including the provision that there can be no more than 3 continuous hours of unscheduled activity. We would revise this section to require facilities to implement a continuous active treatment program for each client, consisting of the interventions and services needed to carry out the objectives identified in the IPP (see proposed § 442.446). We would retain the requirement that multi-handicapped, non-ambulatory clients spend a major portion of each waking day out of bed and outside of the bedroom area although this requirement would be included in the proposed standard relating to the IPP. (See proposed § 442.444(f).)

5. Program Documentation: There are numerous sections in the current standards that discuss program documentation and recordkeeping. We would consolidate these into one section (proposed § 442.448) that requires the facility to document, in measurable terms, the client's performance in relationship to the objectives contained in the IPP and to account for other major incidents related to the client's developmental, social, and behavioral status. Other programmatic recordkeeping to be performed will be left to the discretion of the facility.

6. Program Monitoring and Change: Current regulations at 42 CFR 442.422 require that the status of each resident be reviewed at least annually by the interdisciplinary team. We would retain this requirement, but would require that the review repeat the same initial process outlined in § 442.442. We would require that each client's program be coordinated and monitored by a qualified mental retardation professional who is employed by the facility. We would define a qualified mental retardation professional as a physician, a registered nurse, or an individual who holds at least a bachelor's degree in one of the professions defined in § 442.460 of these proposed standards and has at least one year of experience working directly with persons with mental retardation or other developmental disability. This would increase the number of persons qualified to serve as a qualified mental retardation professional. We considered numerous suggestions and proposals for changes in the requirements for the qualified mental retardation professional and we have received support of our approach from groups and individuals in the field. However, in recognition of the wide diversity of views about qualified mental retardation professional qualifications, we especially invite comments on this important client monitoring function.

We would also require that the facility establish a specially constituted committee to review, monitor, and approve individual behavior management and other programs. The committee would also review, monitor, and provide consultation to the administrator concerning facility-wide programs in behavior management, drug usage, etc. The committee would not have the authority to approve facility practices, but would serve to aid in client protection and act as a consultant for the administrator. (See proposed § 442.450.)

7. Behavior Management: Current regulations at 42 CFR 442.437–442.441 contain the requirements for behavior management. We are proposing to retain these requirements and update them by incorporating the current language of the voluntary standards of the Accreditation Council for Facilities for the Mentally Retarded and Developmentally Disabled (1983 edition). We would revise the current standards as follows:

a. We would require the facility to have written policies and procedures for the behavioral management of clients, to allow clients to participate in the development of these procedures, and to prohibit the use of coercion or abuse. We would prohibit the placement of a client alone in a room from which egress is not prossible, except when done as part of an organized behavior modification program. However, we are concerned that by permitting clients to be locked in a room, a new fire safety issue is raised. The fire safety standards that we have proposed (see 50 FR 45921, November 5, 1985, for details) include a new chapter 21 of the National Fire Protection Association's Life Safety Code entitiled "Residential Board and Care Occupancies" and its equivalency system, the Fire Safety Evaluation System for Board and Care Homes. These fire safety standards place a great emphasis on the client's own ability to remove him or herself from fire hazards and less emphasis on physical plant features. Thus, we specifically invite comments on the advisability of permitting clients to be in locked rooms and, if this practice is advisable, how can clients be protected from fire hazards. (See proposed § 442.452.)

b. We would require the facility to develop detailed behavior modification programs that are included in the client's IPPs, approved in writing by the facility's review committee and conducted only with the written consent of the client, parents, or legal guardian. (See proposed § 442.454.)

c. We would require that the facility have written procedures that contain specific details on who may use restraints, how they may be used, and a system for monitoring their use. The facility would be permitted to use physical restraints only if necessary to protect the client from injury to himself or herself or to others, or as part of an approved behavior modification program. (See proposed § 442.456.)

d. We would require that drugs used for behavior management be utilized only as a integral part of the client's IPP and be directed toward the reduction of, and eventually the elimination of, the behavior for which the drugs are used. We would eliminate the use of the term "chemical restraint" as this term has been used to refer to the application of any medication that was designed to alter or control behavior. A drug that facilitates needed (or appropriate) responses from the client is not a chemical restraint and any drug that is applied inappropriately can be a restraint. (See proposed § 442.458.)

8. Professional Program Services: The current standards for ICFs/MR specify the qualifications for the professional staff by cross-reference to the skilled nursing facility (SNF) definitions contained in 42 CFR 405.1101. Since few facility administrators have access to SNF regulations, we are proposing to consolidate these requirements into one standard (see proposed § 442.460) and to list the qualifications of each profession following the approach contained in the AC MRDD standards, section 4.7 of the 1983 edition.

We have discussed personnel qualifications with the relevant professional groups in order to bring the proposed requirements in line with contemporary practice. We are not proposing any changes in qualifications except where professional requirements have been modified by the relevant professional certifying or accrediting organization.

We propose adding qualifications for a new professional category. This is a general qualification standard for persons with at least a bachelor's degree in a human services field, in recognition of the fact that there are other disciplines not specified in this section that provide services to clients in ICFs/MR (for example, rehabilitation counselors). We propose to eliminate all sub-professional qualifications, but would not restrict a facility from hiring these individuals.

It is our desire that these proposed standards protect client safety and ensure appropriate treatment without imposing undue costs or restrictions on facility operations. We, therefore, encourage comments on the question of the need for identifying specific professional program staff and their qualifications (as well as the level of qualifications specified) and whether and to what extent facilities should have discretion in determining the need for and qualifications of such personnel. We also encourage comments as to alternative methods for ensuring appropriate treatment and protecting client safety, such as approaches which would focus on successful implementation of the client's IPP, rather than on the use of professional staff meeting particular qualifications.

9. Physician Services: Current regulations at 42 CFR 442.474 to 442.477 set forth the requirements for physician services. These standards were directed primarily toward organized health service departments in large institutions. We would revise the current requirements that are based on the size of the institution and focus instead on the needs of the clients. The regulations, as revised, would reflect the growing awareness that there are various ways facilities acquire health services for their clients and that not all clients require a medical care plan (i.e., a formalized plan for the provision of physician and related medical care services). We propose the following:

a. The facility would be required to provide physician services on a 24-hour a day basis. The facility would be allowed to use physician assistants and nurse practitioners to provide physician services to the extent permitted by State law. The facility would be responsible for providing or arranging for the provision or services to meet the client's full range of health needs, even if the client does not require a medical care plan but requires more than simple quarterly health review. (See proposed § 442.462.)

b. The physician would participate in the development and update of the client's IPP, and the development of a medical care plan of treatment if one is required. (See proposed § 442.464.)

c. The facility would be required to have a formal arrangement for providing each client with medical care that includes preventive health services as well as the provision of emergency treatment. (See proposed § 442.466). We would eliminate the requirement that the facility designate a physician to be responsible for maintaining the health conditions and practices of the facility, as this is the proper role for administrators and other responsible staff.

10. Nursing Services: Nursing services are discussed in current regulations at 42 CFR 442.478 to 442.481. We would revise these requirements as follows:

a. We would require the facility to provide nursing services in accordance with client needs. These services would include—

- Developing the IPP;
- If ordered by a physician, developing a medical care plan of treatment for a client;
- Surveillance of a client's health status at least quarterly, that is, an in-person, direct, physician observation of the client to detect signs and symptoms of health problems and poor hygiene practices; and
- Implementing preventive health measures (See proposed § 442.468).

b. To assure that each client's nursing needs are met, we would require that the facility have enough nursing staff to carry out the various nursing duties, including a licensed nurse on duty on one full shift seven days a week to supervise the nursing services provided to clients under a medical care plan. We would require that the facility utilize registered nurses as appropriate and as required by State law to perform the services described in this section, but other licensed nursing personnel may also be utilized. We would eliminate the specific qualifications for practical and vocational nurses because we believe that State and local laws adequately regulate the profession. We would require those facilities that employ only licensed practical or vocational nurses to have a formal arrangement with a registered nurse to serve on a consultant basis. (See proposed § 442.470.) We have not specified the frequency of this consultation and invite public comment on the issue.

1. Dental Services: The requirements for the provision of dental services to clients of ICFs/MR are currently found at 42 CFR 442.457 to 442.462. In order to assure that all clients receive necessary dental services we would revise the regulations as follows:

a. We would require that the facility provide or make arrangements for comprehensive dental diagnostic and treatment services for each client, and that dental professionals participate, as appropriate, in the development of the IPP as part of the interdisciplinary process. (See proposed § 442.472.)

b. We would retain the current requirement that comprehensive diagnostic services include a complete initial examination, periodic followup examinations, and entry of the results in clients' dental records. (See proposed § 442.474.)

c. We would require that comprehensive dental treatment include provisions for emergency treatment 24-hours a day and routine dental care as needed. (See proposed § 442.476.)

d. We would require that if the facility maintains an in-house dental service, a permanent record be kept for each client. If the facility does not maintain a service, it would be required to obtain a summary of the results of dental visits and maintain this in the client's record. (See proposed § 442.478.)

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12. Pharmacy Services: Current regulations at 42 CFR 442.482 to 442.485 set forth the requirements for the provision of pharmacy services. We would revise many of the present requirements of these sections, while continuing to ensure proper storage, labeling, packaging, and review of drugs. We would also revise the regulations to take into account the fact that many facilities do not have in-house pharmacy services. We would revise the regulations as follows:

a. We would require the facility to provide drugs and biologicals, either from an in-house pharmacy or through outside sources. (See proposed § 442.480.)

b. We would revise the regulations to stress the importance of the pharmacist's involvement in the drug regimen reviews, even when the RN is doing the actual review. (See proposed § 442.482.)

c. We would require the facility to have an organized system for drug administration that assures that drugs are properly administered, without error, including those that are self administered. We would require that, where unlicensed personnel are allowed by State law to administer drugs, a licensed nurse participate in the training of these personnel in facility-specific drug administration procedures apart from and in addition to any State program. We would also require that drugs that are to be administered to clients while they are not under the direct care of the facility be packaged and labeled by a pharmacist. (See proposed § 442.484.)

d. We would require that the facility store drugs under lock and key except when they are being prepared for administration. We would also require that drugs be stored under proper conditions of sanitation, temperature, light, humidity, and security. The facility would be required to maintain records of the receipt and disposition of all controlled drugs and, on a sample basis, periodically reconscile the receipt and disposition of all controlled substances. (See proposed § 442.486.)

e. We would require that drugs be labeled in accordance with accepted professional principles and practices and that the facility not maintain outdated drugs or drug containers with worn, illegible, or missing labels. (See proposed § 442.488.)

13. Laboratory Services: Current Medicaid regulations at 42 CFR 440.30 require that independent laboratory services be provided by a laboratory that meets the requirements for participation in Medicare. 42 CFR 405.1310 through 405.1317 contain the conditions for coverage of services of independent laboratories. However, many large public ICFs/MR operate their own laboratories. In order to assure the health and safety of clients served by these laboratories, we are proposing to add a new section 442.489 which would contain the standards that the ICF/MR must meet if it elects to provide direct laboratory services on a routine basis. We propose the following:

a. We would include a general definition of laboratory services, specifying some of the services that could be supplied by such a laboratory.

b. We would require that the laboratory must either be licensed or approved as a laboratory according to State law (if it is located in a State that provides for licensing or approval of laboratories), or must meet the requirement specified in paragraph (c) through (f) of this section.

c. We would require that the laboratory meet the management requirements specified in 42 CFR 405.1316. Section 405.1316 requires, generally, that the laboratory maintain records and meet professionally acceptable standards.

d. We would require that the laboratory director be either (1) a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or (2) a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services. We specifically invite comments on these educational requirements for the laboratory director.

e. Under this proposal, we would require that the laboratory director provide adequate technical supervision of the laboratory services and ensure that staff have appropriate education and experience, are sufficient in numbers, and receive appropriate in-service training.

f. We would also require that laboratory technologists be technically competent to perform test procedures and report test results.

g. We would require that the laboratory meet the proficiency testing requirements specified in § 405.1314(a) and the quality control requirements specified in § 405.1317.

Physical Environment

We are proposing to consolidate all of the disparate sections of the regulations dealing with the physical plant of the facility, while retaining the essential client protection and living environment features of the existing standards. We would revise many of the requirements, recognizing the many types of facilities operating in the ICF/MR program. We propose to revise the regulations regarding the physical environment as follows:

1. Living Environment: We would continue to require that clients be housed appropriately, according to age, development and social needs. We also would continue to prohibit the segregation of residents based on physical handicap. (See proposed § 442.500.)

2. Bedrooms: We would revise the standard on client bedrooms to require floor to ceiling walls in newly certified facilities. The exception for existing facilities is necessary because many facilities have partial walls. To complete these walls would be expensive, especially when one considers possible modifications to ventilating systems. We would also revise the standard to allow bedrooms to be below ground level under certain circumstances. We would continue the prohibition against more than four clients to a bedroom unless a variance is granted. We would clarify the conditions for granting such a variance to indicate that a variance may be granted only when clients are so health-impaired as to require constant supervision. The variance was never intended to justify the continued use of open wards. We would continue to require that the facility provide each client with a separate bed and appropriate bedding and furniture. (See proposed § 442.502)

3. Storage Space: We would require that clients have adequate space for equipment and suitable storage space for personal possessions, including clothing. (See proposed § 442.504.)

4. Bathrooms: We would require that bathrooms provide adequate toilet and bathing facilities and provide for individual privacy. We would also require that if clients have not been trained to regulate water temperature, the temperature of the water not exceed 110° Fahrenheit. (See proposed § 442.506.)

5. Heating and Ventilation: We would retain the provision requiring each bedroom to have at least one window and direct outside ventilation. We would also require the facility to maintain the temperature and humidity within a normal range and ensure that the heating apparatus is not a burn or smoke hazard to clients. (See proposed § 442.508.)

6. Floors: We would retain the provision that the floors have either a resilient nonabrasive, nonslip surface or nonabrasive carpeting in units where clients crawl. (See proposed § 442.510.)

7. Space and Equipment: We are proposing to consolidate several existing standards and create a new standard to require that the facility provide sufficient space and equipment in dining, health services, and program areas to enable staff to provide clients with needed services. We would also require the facility to furnish, maintain, and encourage the use of dentures, eyeglasses, hearing aids, and other devices required by the client. (See proposed § 442.512.)

Safety and Sanitation

Current regulations at 42 CFR 442.505 to 442.512 set forth requirements for various aspects of safety and sanitation. We propose to revise these standards as follows:

1. Emergency Plans: We would require that the facility have detailed written plans and procedures to meet all potential emergencies and that the plan be available to all staff. We have eliminated the requirement that these procedures be posted, since we do not believe that posting is as useful as ensuring that staff are adequately trained. (See proposed § 442.550.)

2. Evacuation Drills: We have revised the standard on evacuation drills to stress the participation of those individuals capable both physically and mentally of cooperating in their own evacuation from a building. Thus, we would emphasize the importance of training those clients able to do so, to respond in their own behalf to an emergency. We would revise the rules to require facilities to hold drills at least quarterly for each shift of personnel (assuming three shifts, this amounts to 12 drills per year) and to actually evacuate those clients who can cooperate during each of these drills. For those clients who cannot cooperate, we would require actual evacuation during at least one drill a year on each shift (assuming three shifts, this amounts to three drills per year). (See proposed § 442.552.)

3. Fire Protection: Because we have proposed revisions to the current regulations on fire protection in a separate regulations document, "Fire Safety Standards for ICFs/MR" (see 50 FR 45921, November 5, 1985, for details on the proposal), we have not addressed them here. We would, however, reserve § 442.554 for the placement of the fire protection standards after the proposal is finalized.

4. Paint: We would retain the requirement that the facility use lead-free paint and remove or cover old paint or plaster containing lead. (See proposed § 442.556.)

5. Building Accessibility: ICF/MR programs must be accessible to the handicapped. By requiring compliance with civil rights laws (see § 442.416 of the proposed regulations), we propose that the facility meet Department-wide regulations establishing accessibility standards for all recipients of federal financial assistance. It should be noted that under these standards each facility need not necessarily make structural changes but they must make their programs and activities, when viewed as a whole, readily accessible to handicapped persons.

Food and Nutrition Service

Food and nutrition requirements are addressed in current regulations at 42 CFR 442.465 to 442.471. These standards are directed toward large facilities that operate their own institutional food services. We would revise the regulations to change many of the requirements that are not applicable for the smaller group homes that operate their own kitchens. We would revise the regulations as follows:

1. Diet: We would require that the facility provide each client with a diet prepared in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (See proposed § 442.558.)

2. Meal Service: We would retain the standard on meal services that requires the facility to serve at least three meals a day at regular times, at the appropriate temperature, form (e.g., pureed, ground, chopped) and with the proper utensils. (See proposed § 442.560.)

3. Menus: We would continue to require that menus be prepared in advance, be different for the same days of each week, be adjusted for seasonal changes, be kept on file for 30 days and include the average portion sizes for menu items. We would eliminate the requirement that the facility keep a record of food that is purchased because this burdensome requirement does not assure that clients achieve adequate diets or that they receive adequate nutrition. (See proposed § 442.562.)

4. Dining Areas: We would continue to require that facilities serve meals in dining areas, provide table service for all clients who can and will eat at a table, and equip areas with appropriate tables, chairs, utensils and dishes. (See proposed § 442.564.)

C. Other Proposed Revisions

1. Active Treatment

Current regulations at 42 CFR 435.1009 contain the definition of "active treatment". We propose to revise this definition to bring it into conformance with the revisions we are proposing to the active treatment section in the standards. The revised definition would clarify that the active treatment program is directed toward either the acquisition of the skills necessary for the client's maximum possible development, or the prevention of regression or loss of the client's current functional status.

2. Exemption From Certain Nursing Home Standards

Current regulations at 42 CFR 442.252 specify that an ICF must meet State requirements for nursing home safety and sanitation. Many ICFs/MR have found the standard at § 442.502 to be in conflict with the nature of an ICF/MR, particularly in small facilities. Examples of these nursing home requirements are a nurse call system and a licensed nursing home administrator. We are proposing to revise this section of the regulations by exempting ICFs/MR from this requirement. We would continue to require that the ICF/MR be in compliance with all applicable Federal, State and local laws, regulations and codes, such as health, safety, sanitation, research, and civil rights laws and accessibility laws for the handicapped. (See proposed § 442.416.)

III. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual economic impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the Order.

As noted elsewhere in the preamble, we are proposing to revise the ICF/MR standards with the twofold purpose of: (1) Ensuring that clients are provided quality care; and (2) relieving facilities of the duplicative requirements contained in the current regulations and thus reducing their operating costs. As the focus shifts from the institution to the client, we believe that because of these proposed changes, State surveyors will be in a better position to determine whether active treatment is actually occurring for each client. This determination is important to ensure that those who work with clients deliver accountable, habilitative services that result in the client's growth and

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development and that result in more effective expenditure of Medicaid dollars in the ICF/MR setting.

While we believe that the regulation would accomplish these results, for several reasons we are not able to determine the economic impact. First, current cost reporting requirements do not provide data broken down by cost centers that would allow us to determine the extent of our present or future expenditures. Second, ascribing cost of care is difficult because of the variations among facilities in terms of facility size and type, and diversity in per diem rates within a State. Third, the variety of client characteristics makes it difficult to ascribe costs of care based on these characteristics.

In conclusion, even though we can not develop a precise estimate, our best available data indicate that the economic impact of this regulation would not exceed $100 million, nor would it meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis. We also believe that these proposed regulations would maximize net benefits by reducing facility operating costs, ensuring more administrative flexibility, and reducing paperwork burden. Clients should benefit from the stronger focus on definable outcomes related to the care provided to them.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act, we prepare and publish a regulatory flexibility analysis for any regulation that is likely to have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction with a population of less than 50,000. The purpose of the analysis would be to anticipate the potential impact and to seek alternatives that would have a less significant effect.

As of September 9, 1985, there are about 2,911 certified ICFs/MR ranging in size from 4 to more than 1500 beds. The composition of these ICFs/MR is as follows:

Number of beds	Number of ICFs/MR	Percent of total
4-16	2,078	71
17-50	322	11
51-100	220	7
101-300	166	5
301-500	48	1
501-750	47	1
751-	30	1

Public ICFs/MR comprise about 31 percent of certified ICFs/MR and private facilities represent the remaining 69 percent.

We believe that all of these facilities would benefit by the new standards because of the reduced paperwork burdens and costs, and the increased administrative flexibility provided to facilities in the proposal. We also expect that some individual facilities may be significantly affected by these proposals. For example, we understand that the public ICFs/MR currently commit as much as 20 percent of their fiscal and staff resources to the preparation of paperwork under the present standards (as estimated by the National Association of Superintendents of Public Residential Facilities for the Mentally Retarded). While some of this paperwork is legally and programmatically necessary and important, much of it is performed only to meet specific and discrete requirements specified in current regulations. The proposed regulations' emphasis on staff and client performance rather than paper compliance, could reduce the production of paper by a third in these facilities. However, State licensing requirements and internal facility policies and practices would also affect the extent of real savings which could occur under these standards by retaining some of the same requirements.

We believe that facilities with fewer than 16 beds would be affected less significantly by our new standards because these facilities are now subject to interpretive guidelines especially designed for surveying small facilities. While these facilities would benefit from reduced paperwork and increased focus on client outcomes, because of their size, they typically experience fewer of the administrative and programmatic problems in delivering and accounting for services to clients which result from the prescriptive, generally inflexible standards contained in the current regulations.

Other provisions which may significantly impact individual facilities include:

1. *Physician services*—We are proposing to allow physician assistants (PAs) and nurse practitioners (NPs) to perform physician functions to the extent allowed by State law. We anticipate that this provision could result in significant savings for those facilities that can use PAs and NPs for routine health care.

2. *Nursing services*—For those facilities that serve 15 or fewer persons who do not now require professional nursing services, the proposed standards would result in the necessity to arrange for nursing personnel to conduct an in-person health review of each client *at least* quarterly. This could represent an increased cost over present requirements for affected facilities, although we cannot determine whether these costs would be significant to these affected facilities because we cannot calculate the expected offset in savings that would occur under these standards. However, this requirement would be balanced by a decrease in costs because facilities that serve 16 or more clients, none of whom have a medical care plan ordered by a physician, would not need a licensed nurse on duty.

3. *Staff to client ratios*—We are proposing to revise the method used in determining staff to client ratios. Instead of counting total employees, we would count numbers of employees on duty during a 24-hour period. We believe that this would provide a more accurate measure of manpower actually spent caring for clients. It should not have a significant impact on facility staffing levels because the proposed ratios were derived from current ratios factoring out the estimated numbers of employees not actually on duty at a given time. It also reflects surveyor guideline practices that have been used since the beginning of the program.

4. *Dental services*—Our proposed standards would require that each client's dental needs be addressed, including dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health. Current standards require comprehensive dental treatment including emergency care and annual check-ups. We believe that our proposed language makes explicit that which was always intended in the current standards, namely that the client's dental care needs be met. Whether this proposal represents an increase in cost to affected facilities depends on the extent to which they are meeting existing standards as we intended them to be applied.

5. *Client bedrooms (floor to ceiling walls)*—We are proposing to require, for newly certified facilities, that walls must extend from the floor to the ceiling between living quarters. Clients would benefit by increased privacy and a slight degree of increased safety by the containment of possible spreading fires. The economic impact of this requirement would be negligible because there are very few new facilities coming into the program that do not already meet this requirement.

6. *Client bedrooms (variance to the four-to-a-bedroom rule)*—Our proposal limits the conditions under which a facility can claim a variance to our long-standing rule that no more than four persons may be allowed per bedroom. We would limit this arrangement to clients with severe health problems that require continuous monitoring during sleeping hours. For those facilities that have relied on this variance in existing standards, this new provision may represent significant increased capital expenditures, or the buildings affected could face the loss of certification in the ICF/MR program. We believe that the existing provision allowing for more than four persons per bedroom was never intended to serve as a vehicle for the perpetuation of open ward housing arrangements for clients who could successfully live in more private space. Thus, this proposal actually supports those States and facilities that have committed the necessary resources to comply with the intent of the original standards. This provision would not affect most ICFs/MR with fewer than 16 beds because they typically use housing with normal size bedrooms and usually house fewer than four persons per bedroom.

7. *Evacuation drills*—We are proposing to revise the requirement for evacuation drills to focus more attention on the mobility and responsiveness of various clients to a possible life-threatening situation. We believe that the proposed change will have no economic impact.

8. *Laboratory services*—We are also proposing certain health and safety standards for those ICFs/MR that choose to provide in-house laboratory services (ICFs/MR that have arrangements with independent laboratories may contract only with laboratories that meet the requirements for participation in Medicare (42 CFR 440.30)). We have identified 110 public (but no private) ICFs/MR that currently use in-house labs. Of this total, only 38 are currently State licensed. We are proposing that the remaining unlicensed facilities meet the requirements of proposed § 442.489, unless they become State licensed.

The requirements detailed in proposed § 442.489(c), (d), (e) and (f) are basically standard norms for laboratories and should not impose any additional requirements beyond these accepted standards. Further, as most of these laboratories are now operating near the level of those provisions, they should, again, not incur great costs in complying with our requirements.

We believe that any costs incurred by affected ICFs/MR would be offset by the health and safety benefits inherent in these provisions. As a result of a recent survey, we have determined that although laboratory services are incorporated in facilities' per diem rates, in most instances there was no quality control over these services. Including these laboratory requirements would allow State surveyors and Federal authorities to monitor the quality of this vital service in those ICFs/MR that choose to provide laboratory services. Quality control is especially important in larger, public ICFs/MR, which now house the most severely handicapped clients. These facilities use laboratory services extensively and routinely for drug levels, fluid analyses, tissue and waste analyses, and for infection control. Thus, we believe that all ICF/MR clients will benefit from the incremental improvements in the services received from their laboratories.

The actual impact on an individual ICF/MR would represent the extent of the incremental difference between a facility's current level of compliance with our regulations and the effort and cost, if any, required to meet these proposed revisions. Overall, we believe that most facilities will be able to improve performance at lower cost. As explained above, smaller facilities already have substantial flexibility so that the net gain is not expected to be substantial for most of these facilities. Nonetheless, we expect that many smaller facilities will be affected both significantly and beneficially.

In our view, the Regulatory Flexibility Act does not require an analysis unless the impact is adverse. However, because of this significant beneficial impact, we have voluntarily prepared the analysis above, which, when taken together with the remainder of the preamble, constitutes a regulatory flexibility analysis

Paperwork Reduction Act of 1980

Sections 442.410 (a) and (b), 442.418(b)(1), 442.432 (a), (e) and (f), 442.436(c), 442.442 (b)(2)(i), (c)(1) and (c)(3), 442.444 (a), (c), (d) and (e), 442.446 (c) and (d), 442.448 (a) and (b), 442.450(d), 442.452(a), 442.454 (a) and (b), 442.456(b), 442.468(b), 442.478 (a), (b) and (c), 442.482 (b), (c) and (d), 442.484(i), 442.486 (c) and (d), 442.489(d)(2), 442.502(c)(2), 442.550(a), 442.552(b)(4) and 442.562 contain information collection requirements which require approval from the Office of Management and Budget under the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, DC 20503, Attn: Fay Iudicello.

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

List of Subjects

42 GFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting and recordkeeping requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 442

Certification of intermediate care facilities (ICFs), Certification of skilled nursing facilities (SNFs), Contracts (Agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (Disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

42 CFR Chapter IV would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

A. Section 435.1009 is amended by revising the definition of "active treatment in intermediate care facilities for the mentally retarded" to read as follows:

§ 435.1009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

"Active treatment in intermediate care facilities for the mentally retarded" requires the following:

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(a) The provision of an active treatment program for each client that is directed toward—

(1) The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or

(2) For dependent clients where no further positive growth is reasonably considered possible, the prevention of regression or loss of current optimal functional status.

(b) Active treatment does not include the maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in 42 CFR Part 442.

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PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

B. Part 442 is amended as set forth below:

1. The table of contents for Subpart G and the authority citation for Part 442 are revised to read as follows:

Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded

Sec.
442.400 Basis and purpose.
442.401 Protection of client's rights

Administrative Services

442.410 Client finances.
442.412 Governing body.
442.414 Communications with clients, parents and guardians.
442.416 Compliance with Federal, State and local laws.
442.418 Provision of needed services.
442.420 Personnel policies.
442.422 Licensure and professional standards.
442.424 Staff treatment of clients.
442.426 Facility staffing.
442.428 Direct care (residential living unit) staff.
442.430 Staff training program.
442.432 Client records.
442.434 Emergencies or death of a client.
442.436 Infection control.

Active Treatment Services

442.440 Active treatment.
442.442 Admissions, transfers, and discharge.
442.444 Individual program plan.
442.446 Program implementation.
442.448 Program documentation.
442.450 Program monitoring and change.
442.452 Behavior management—policies and procedures.
442.454 Behavior modification programs.
442.456 Physical restraints.
442.458 Drug usage.

Sec.
442.460 Professional program services.
442.462 Physician services.
442.464 Physician participation.
442.466 Comprehensive health services.
442.468 Nursing services.
442.470 Nursing staff.
442.472 Dental services.
442.474 Comprehensive dental diagnostic services.
442.476 Comprehensive dental treatment.
442.478 Documentation.
442.480 Pharmacy services.
442.482 Drug regimen review.
442.484 Drug administration.
442.486 Storage and recordkeeping.
442.488 Labeling.
442.489 Laboratory services.

Physical Environment

442.500 Client living environment.
442.502 Client bedrooms.
442.504 Storage space in living units.
442.506 Client bathrooms.
442.508 Heating and ventilation in living units.
442.510 Floors in living units.
442.512 Space and equipment in dining, health services, and program areas.

Safety and Sanitation

442.550 Emergency plan and procedures.
442.552 Evacuation drills.
442.554 [Reserved].
442.556 Paint.
442.558 Food and nutrition services.
442.560 Meal services.
442.562 Menus.
442.564 Dining areas and service.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart E—Intermediate Care Facility Requirements; All Facilities

2. Subpart E is amended by revising § 442.252 to read as follows:

§ 442.252 State safety and sanitation standards.

An ICF other than an ICF/MR must meet State safety and sanitation standards for nursing homes.

3. Subpart G is revised to read as follows:

Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded

§ 442.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe standards for intermediate care facility services in facilities for the mentally retarded or persons with related conditions.

§ 442.401 Protection of clients' rights.

The facility must ensure the rights of all clients. Therefore, the facility must—

(a) Inform each client, parent (if the client is a minor), or guardian (if applicable), of the client's rights and the rules of the facility;

(b) Inform each client, parent or guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) Allow and encourage each client to exercise his or her rights as a client of the facility, and as a citizen of the United States, including the right to file complaints;

(d) Allow each client to manage his or her financial affairs and teach him or her to do so to the extent of the client's capabilities;

(e) Ensure that clients are not subjected to physical or psychological abuse;

(f) Ensure that clients are free from unnecessary drugs and physical restraints and are provided habilitation to reduce dependency on drugs and physical restraints;

(g) Provide each client with the opportunity for personal privacy;

(h) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts;

(i) Permit clients to communicate, associate and meet privately with individuals of their choice, and to send and receive mail;

(j) Permit clients to participate in social, religious, and community group activities; and

(k) Permit clients to retain and use personal possessions and appropriate clothing, and ensure that each client is dressed in his or her own clothing each day unless confined to bed by a physician.

Administrative Services

§ 442.410 Client finances.

The facility must establish and maintain a system that assures a full and complete accounting of the clients' personal funds.

(a) The system must include the use of a separate account for funds to preclude any commingling of client funds with facility funds or with the funds of any person other than another client.

(b) The facility must maintain a current, written financial record for each client that includes the management of all funds handled by the facility on behalf of the client.

(c) The financial record must be available on request to the client and his or her parents or guardian.

§ 442.412 Governing body.

The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(a) Exercise general policy, budget, and operating direction over the facility;

(b) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility, which must include knowledge in the field of developmental disabilities; and

(c) Appoint the administrator of the facility.

§ 442.414 Communications with clients, parents, and guardians.

The facility must have an active program of communication with the client, parents, and guardian. The facility must—

(a) Permit participation of parents and guardians in the client's active treatment process specified in § 442.440 unless their participation is unobtainable or inappropriate;

(b) Answer communications from clients' families and friends promptly and appropriately;

(c) Permit individuals with a relationship to the client (such as family, close friends, and advocates) to visit at any reasonable hour, without prior notice, unless and interdisciplinary team determines that this would not be appropriate;

(d) Permit parents or guardians to visit any area of the facility that provides direct client care services to the client; and

(e) Permit frequent and informal leaves from the facility for visits, trips, or vacations.

§ 442.416 Compliance with Federal, State, and local laws.

The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, research and civil rights.

§ 442.418 Provision of needed services.

(a) *Services provided directly.* At a minimum, the following must be provided directly by the facility:

(1) The services of a qualified mental retardation professional.

(2) The services of direct care staff.

(3) The development and monitoring of active treatment programs.

(4) Nursing services for clients with medical care plans.

(5) Living quarters as specified in §§ 442.500 through 442.512, which set forth the standards for the physical environment of an ICF/MR.

(b) *Services provided through outside arrangements.* (1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Assure that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that the quality of outside services meets the needs of each client.

§ 442.420 Personnel policies.

The facility must—

(a) Develop and implement personnel policies that are available to all employees;

(b) Make job descriptions available for all positions; and

(c) Prohibit employees with symptoms or signs of a communicable disease from working; and

(d) Prohibit the employment of individuals with a history of child or client abuse, neglect or exploitation.

§ 442.422 Licensure and professional standards.

The facility must require compliance with the same licensure or certification standards for positions in the facility as are required for comparable positions in community practice.

§ 442.424 Staff treatment of clients.

(a) The facility must develop and implement policies and procedures that prohibit mistreatment, neglect or abuse of the client by an employee of the facility.

(b) The facility must ensure that all alleged violations of policies are reported immediately through established procedures.

(c) The facility must have evidence that—

(1) It investigates thoroughly all alleged violations;

(2) The results of the investigation are reported to the administrator or his designated representative within 5 working days of the incident; and

(3) If the alleged violation is verified, the administrator takes appropriate corrective action.

§ 442.426 Facility staffing.

(a) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(b) Direct care staff must not be required to provide housekeeping, laundry or other support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(c) In each defined residential living unit housing clients for whom a physician has ordered a medical care plan, or clients who are aggressive, assaultive or security risks, or one that houses more than 16 persons, there must be responsible direct care staff on duty and awake when clients are present to take prompt, appropriate action in case of injury, illness, fire or other emergency.

(d) In each defined residential living unit housing clients for whom a physician has not ordered a medical care plan and that houses 16 or fewer clients, there must be a responsible direct care staff person immediately accessible to clients on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies.

(e) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(f) The facility must employ a qualified dietitian who is registered or eligible for registration by the American Dietetics Association either full-time, part-time, or on a consultant basis.

(g) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

§ 442.428 Direct care (residential living unit) staff.

Direct care staff are defined as the present on-duty staff-per-clients calculated over all shifts in a 24 hour period for each defined residential living unit. Direct care staff must be provided by the facility in the following minimal ratios:

(a) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, severely physically handicapped clients, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(b) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(c) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

§ 442.430 Staff training program.

(a) The facility must provide each employee with initial and continuing

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training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(b) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(c) Staff must be able to demonstrate skills and techniques necessary to implement the individual program plans for each client under their care.

§ 442.432 Client records.

(a) The facility must develop and maintain a recordkeeping system that includes a separate record for each client, and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(b) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(c) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or his or her parents or legal guardian.

(d) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(e) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(f) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

§ 442.434 Emergencies or death of a client.

The facility must notify promptly the client's parents or guardian of any significant incidents, including serious illness, accident or death, and autopsy findings if requested.

§ 442.436 Infection control.

(a) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(b) The facility must implement successful corrective action in affected problem areas.

(c) The facility must maintain a log of incidents and corrective actions related to infections.

Active Treatment Services

§ 442.440 Active treatment.

(a) The facility must provide an active treatment program for each client that is directed toward—

(1) The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or

(2) For dependent clients where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status.

(b) Active treatment does not include the maintenance of generally independent clients who are able to function with little supervision or who require few if any of the significant active treatment services described in these standards.

§ 442.442 Admissions, transfers, and discharge.

(a) The facility must admit only those individuals who are in need of active treatment services as described in this subpart and for whom the facility can provide needed services.

(b) Admission decisions must be made by an interdisciplinary team, based on a comprehensive evaluation of the client that is conducted or updated by the facility or made by outside sources.

(1) A comprehensive evaluation must contain background information and a comprehensive functional assessment of current developmental, behavioral, social and health status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(2) A preadmission evaluation must be completed or updated no more than 90 days before the date of admission.

(3) At the time of admission, a physician must participate in the establishment of the client's individual program plan as required by § 456.380 of this chapter that specifies plan of care requirements for ICFs.

(c) If a client is to be either transferred or discharged, the facility must—

(1) Have documentation in the client's record that the client was transferred or discharged for good cause;

(2) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies);

(3) Provide a final summary of the client's developmental, behavioral, social, and health status at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the client, parents or guardian; and

(4) Provide a post-discharge plan of care that will assist the client to adjust to his or her new living environment.

§ 442.444 Individual program plan.

(a) The facility must develop an individual program plan (IPP) for each client. An interdisciplinary team representing the professions, disciplines, or service areas that are relevant to each client's needs, as identified by comprehensive functional assessments described in § 442.442(b), must be used to develop the plan.

(b) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies involved in serving the client is encouraged. Participation by the client or the client's parents or guardian is required unless their participation is unobtainable or inappropriate.

(c) Within 30 days after admission, the interdisciplinary team must perform assessments or re-assessments as needed to supplement pre-admission data. The assessment must—

(1) Identify the presenting problems and disabilities and, where possible, their causes;

(2) Identify the client's specific developmental strengths;

(3) Identify the client's developmental and behavioral management needs;

(4) Identify the client's need for services without regard to the actual availability of the services needed; and

(5) Include, as applicable, physical development and health, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, vocational skills and adaptive behaviors or independent-living skills necessary for the client to be able to function in the community.

(d) Within 30 days after admission, the interdisciplinary team must prepare, for each client, an IPP that states specific objectives for individual needs. These objectives must—

(1) Be stated separately, in terms of a single behavioral outcome;

(2) Be assigned projected completion dates;

(3) Be expressed in behavioral terms that provide measurable indices of performance;

(4) Be organized to reflect a developmental progression appropriate to the individual;

(5) Be assigned priorities; and

(6) Include the programs and strategies to be used.

(e) The IPP must emphasize personal care skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, and grooming), until the client has acquired these skills or it has been demonstrated that he or she is developmentally incapable of acquiring them.

(f) The IPP must provide that multi-handicapped and non-ambulatory

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clients spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(g) A copy of each client's IPP must be made available to all relevant staff, including staffs of other agencies who work with the client, and to the client's parents or guardian.

§ 442.446 Program implementation.

(a) As soon as the interdisciplinary team has formulated a client's IPP, the facility must implement a continuous active treatment program for each client.

(b) The program must consist of needed interventions and services in sufficient number and frequency to carry out the objectives identified in the IPP.

(c) The facility must develop an active treatment schedule that outlines the active treatment program and is attached to and distributed with the IPP.

(d) Each client's IPP must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

§ 442.448 Program documentation.

(a) The facility must document, in measurable terms, the client's performance in relationship to the objectives contained in the IPP.

(b) The facility must document that significant developmental, behavioral and social objectives identified in the client's IPP have taken place.

§ 442.450 Program monitoring and change.

(a) Each client's active treatment program must be integrated, coordinated and monitored by an qualified mental retardation professional who—

(1) Is employed by the facility;

(2) Has at least one year of experience working directly with persons with mental retardation or other developmental disability; and

(3) Is one of the following:

(i) A physician.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category included in § 442.460.

(b) A client's active treatment program must be reviewed and revised as necessary, if—

(1) The client has successfully completed an objective or objectives identified in the IPP;

(2) The client is regressing or losing skills already gained; or

(3) The client is failing to progress toward identified objectives after reasonable efforts have been made.

(c) The facility must develop procedures for revising plans between regularly scheduled reviews that include at least—

(1) Participation of and approval by the interdisciplinary team for any changes in the individual objectives of a client's IPP; and

(2) Approval of changes in implementation strategies for objectives by the qualified mental retardation professional and a professional member of the interdisciplinary team associated with the area of planned change.

(d) At least annually, the facility must reassess and revise the IPP, repeating the process set forth in § 442.444.

(e) The facility must establish and use a specially constituted committee or committees consisting of members from facility staff, parents, clients (if possible), and persons with no ownership or control interest in the facility, to—

(1) Review, approve, and monitor those individual behavior management and other programs that, in the opinion of the committee, involve risks to client protections; and

(2) Review, monitor and make suggestions about facility practices and programs as they relate to drug usage, physical restraints, behavior modification programs, protection of client rights and funds, and any other areas that the committee feels need to be addressed.

(f) The provisions of paragraph (e) of this section may be modified only if, in the judgment of the survey agency, State law or regulations provide for equivalent client protection and consultation.

§ 442.452 Behavior management—policies and procedures.

(a) The facility must have written policies and procedures for the behavioral management of clients. Those policies and procedures must be available to and implemented by all staff, and be available to parents, guardians, and if possible, clients.

(b) To the extent possible, clients must participate in the formulation of behavior management policies and procedures.

(c) Staff of the facility must not use corporal punishment, or verbal, physical, or sexual abuse.

(d) Staff must not place a client unobserved in a room or other area from which egress is prevented except as part of a systematic time-out program that meets all applicable standards.

(e) Clients must not discipline other clients, except as part of an organized self-government that is conducted in accordance with the behavior management policies and procedures specified in paragraph (a) of this section.

(f) Staff must not punish a client by withholding food that contributes to a nutritionally adequate diet.

§ 442.454 Behavior modification programs.

(a) The facility must formulate and implement written policies and procedures that govern the use of behavior modification programs, specify the staff members who may authorize their use, and describe a mechanism for monitoring and controlling their use.

(b) Each written behavior modification program (including aversive techniques), physical restraint program, and program for the use of drugs for behavior modification purposes must be a part of each client's IPP and specify—

(1) The behavioral objectives of the program;

(2) The methods to be used;

(3) The schedule for the use of the method;

(4) The persons responsible for the program; and

(5) The data to be collected to assess progress toward the desired objectives.

(c) For purposes of this subpart, a "time out" device is a procedure designed to improve behavior by placing the client where there is no opportunity for positive reinforcement of his or her undesirable behavior.

(d) Removal from a situation for time-out purposes must not be for longer than one hour, except in extraordinary instances that are approved by a professional member of the client's interdisciplinary team.

(e) Each behavior modification program that involves the use of aversive conditioning or time-out devices must be—

(1) Approved in writing by the facility's review committee, as required by § 442.450(e); and

(2) Conducted only with the written consent of the client or his or her parents or legal guardian, if available.

(f) Except in response to emergency situations, less restrictive methods of behavior management must be attempted and documented to have failed before more restrictive methods are employed.

§ 442.456 Physical restraints.

(a) The facility may employ physical restraint only—

(1) As a time out device that is an integral part of an IPP and that is intended to lead to less restrictive means of managing and eliminating the bahavior for which the restraint is applied; or

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(2) As an emergency measure, but only if absolutely necessary to protect the client or others from injury.

(b) The facility must have written policies and procedures that define the use of restraints, the staff members who may authorize their use, and a mechanism for monitoring and controlling their use.

(c) Written authorization for restraints not used as part of an integrated behavior modification program must not be in effect longer than 12 consecutive hours.

(d) The facility must not issue orders for restraints on a standing or as needed basis.

(e) An individual placed in restraint must be checked at least every thirty minutes by staff trained in the use of restraints and a record of these checks must be kept.

(f) Restraints must be designed and used so as not to cause physical injury to the individual and so as to cause the least possible discomfort.

(g) The facility must not employ physical restraints as punishment, for the convenience of staff, or as a substitute for an active treatment program.

(h) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hours in which restraint is employed, and a record of such activity must be kept.

(i) Totally enclosed cribs are considered restraints and their use must be governed by the standards in this section.

(j) Barred enclosures other than cribs must not be more than three feet in height and must not have tops.

(k) A physical restraint used as a time-out device must be used only during behavior modification exercises and only in the presence of staff trained to implement the program.

§ 442.458 Drug usage.

(a) The facility must not use drugs as a punishment, for the convenience of staff, as a substitute for an active treatment program, or in doses that interfere with an individual's IPP.

(b) Drugs used for behavior management must be used only as an integral part of the client's IPP that is directed toward the reduction of, and eventual elimination of, the behaviors for which the drugs are employed.

§ 442.460 Professional program services.

(a) The facility must provide professional program services to implement the active treatment program defined by each client's IPP. Professional program staff must work directly with the clients and with other professionals and the paraprofessional and nonprofessional staffs who work with clients.

(b) The facility must have available enough qualified professional staff and support personnel to carry out the various professional services in accordance with the stated goals and objectives of every IPP.

(c) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(d) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(e) Professional program staff must meet the following qualifications:

(1) An occupational therapist must be—

(i) Eligible for certification as an occupational therapist by the American Occupational Therapy Association; or

(ii) A graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy Association and the committee on Allied Health Education and Accreditation of the American Medical Association.

(2) An occupational therapy assistant must be—

(i) Eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association; or

(ii) A graduate of an occupational therapy assistant program accredited by the American Occupational Therapy Association.

(3) A physical therapist must be licensed as a physical therapist by the State in which he or she practices.

(4) A physical therapy assistant must be a graduate of a two year college-level program approved by the American Physical Therapy Association.

(5) A psychologist must have at least a master's degree in psychology from an accredited program.

(6) A social worker must—

(i) Be licensed, if applicable, by the State in which he or she is practicing;

(ii) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education; or

(iii) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education.

(7) A speech and language pathologist or audiologist must be licensed, if applicable, by the State in which he or she is practicing and—

(i) Be eligible for a certificate of clinical competence in speech and language pathology or audiology granted by the American Speech, Language, and Hearing Association under its requirements in effect on the publication of this provision; or

(ii) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(8) A professional recreation staff member must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education, or recreation therapy.

(9) A human services professional must have at least a bachelor's degree in a human services field other than those mentioned in paragraphs (e)(1) through (e)(8) of this section (such as sociology, special education, rehabilitation counseling).

§ 442.462 Physician services.

(a) The facility must provide or arrange for the provision of physician services 24 hours a day, including treatment, medications, diet, and any other medical service prescribed or planned for the client.

(b) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

§ 442.464 Physician participation.

(a) A physician must participate in—

(1) The establishment of the newly admitted client's IPP as required by § 456.380 of this chapter that specifies plan of care requirements for ICFs; and

(2) The development of a medical care plan of treatment (i.e., a formalized plan for the provision of physician and related medical care services) for a client if the physician determines that an individual client requires such a plan for the medical management of specific serious health problems. This plan must be integrated in the overall IPP, as appropriate.

(b) If appropriate, physicians must participate in the review and update of an IPP as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

§ 442.466 Comprehensive health services.

The facility must—

(a) Have a formal arrangement for providing each client with medical care that includes care for medical emergencies on a 24 hours a day basis as well as general preventive health services; and

(b) Provide annual physical examinations that include the following:

(1) Examination of vision and hearing.

(2) Routine immunizations and tuberculosis control.

(3) Screening laboratory examinations as determined necessary by the physician, and special studies, if needed.

§ 442.468 Nursing services.

The facility must provide clients with nursing services in accordance with their needs. These services must include—

(a) The development, review, and update of an IPP as part of the interdisciplinary team process;

(b) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(c) A determination of clients' health status by an onsite, direct physical review at least quarterly of those residents certified by a physician as not in need of a medical care plan of treatment. Based on the nurse's recorded findings, the nurse must take necessary action (including referral to a physician if necessary) to address the health problems of clients;

(d) Other nursing care as prescribed by the physician or as identified by client needs; and

(e) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(1) Training clients and staff as needed in appropriate health and hygiene methods;

(2) Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(3) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

§ 442.470 Nursing staff

(a) Nurses providing services in the facility must have a current license to practice in the State.

(b) The facility must have available enough nursing staff and other support personnel to carry out the various nursing services.

(c) The facility must employ a licensed nurse on one full shift 7 days a week to supervise the health services for clients for whom the physician has ordered a medical care plan.

(d) In facilities with clients who have been determined by the physician not to require a medical care plan, the facility must arrange for licensed nursing personnel to conduct health surveillance of each client on a quarterly basis.

(e) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(f) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to consult with the licensed practical or vocational nurses.

(g) Non-licensed personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

§ 442.472 Dental services.

(a) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(b) Dental professionals must participate, as appropriate, in the development, review and update of an IPP as part of the interdisciplinary process.

§ 442.474 Comprehensive dental diagnostic services.

Comprehensive dental diagnostic services included—

(a) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within 6 months before admission);

(b) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(c) A review of the results of examination and entry of the results in the client's dental record.

§ 442.476 Comprehensive dental treatment.

Comprehensive dental treatment services include—

(a) Provision of emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(b) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

§ 442.478 Documentation.

(a) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(b) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintained in the client's living unit.

(c) The facility must provide a copy of the dental record (if available) or the most recent dental summary to the client, his parents, or guardian upon discharge from the facility.

§ 442.480 Pharmacy services.

The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

§ 442.482 Drug regimen review.

(a) A pharmacist or registered nurse must review the drug regimen of each client at least quarterly.

(b) The pharmacist or nurse must report any irregularities in clients' drug regimens to the prescribing physician.

(c) The pharmacist or nurse must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(d) An individual medication administration record must be maintained for each client.

(e) The pharmacist must participate, as appropriate, in the development, implementation, and review of each client's IPP.

§ 442.484 Drug administration.

The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(a) All drugs are administered in compliance with the physician's orders;

(b) All drugs are administered without error, including those that are self-administered;

(c) If unlicensed personnel are allowed by State law to administer drugs, a licensed nurse participates in the training of these personnel in facility-specific drug administration procedures apart from and in addition to any State program;

(d) Clients are taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(e) The client's physician is informed of the interdisciplinary team's decision

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that self-administration of medications is an objective for the client;

(f) No client self-administers medications until he or she demonstrates the competency to do so;

(g) Drugs used by clients while not under the direct care of the facility are packaged and labeled by a pharmacist;

(h) There is an automatic stop order for those drugs not limited by the prescription in time or quantity; and

(i) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician or registered nurse.

§ 442.486 Storage and recordkeeping.

(a) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(b) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized personnel may have access to the keys to the drug storage area.

(c) The facility must maintain records of the receipt and disposition of all controlled drugs.

(d) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (as identified in 21 U.S.C. 812).

(e) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*, as implemented by 21 CFR Part 308).

§ 442.488 Labeling.

(a) Labeling of drugs and biologicals must—

(1) Be based on currently accepted professional principles and practices; and

(2) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(b) The facility must not retain—

(1) Outdated drugs; and

(2) Drug containers with worn, illegible, or missing labels.

(c) Drugs and biologicals packaged in containers designated for a particular client and that have been discontinued by the physician must not be available for administration.

§ 442.490 Laboratory services.

(a) For purposes for this section, "laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(b) If an ICF/MR that meets the requirements of this subpart operates its own laboratory, the laboratory must either—

(1) Be licensed or approved according to State law if it is located in a State that provides for the licensing or approval of laboratories; or

(2) Meet the requirements of paragraphs (c) through (f) of this section.

(c) The laboratory must meet the management requirements specified in § 405.1316 of this chapter.

(d) The facility must provide personnel to direct and conduct the laboratory services.

(1) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must be either—

(i) A pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(ii) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(2) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(3) The laboratory director must ensure that the staff—

(i) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(ii) Is sufficient in number for the scope and complexity of the services provided; and

(iii) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(4) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

(e) The laboratory must meet the proficiency testing requirements specified in § 405.1314(a) of this chapter.

(f) The laboratory must meet the quality control requirements specified in § 405.1317 of this chapter.

Physical Environment

§ 442.500 Client living environment.

(a) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(b) The facility must not segregate clients on the basis of their physical handicaps. It must integrate clients with ambulation deficits or who are deaf, blind, epileptic, etc., with others of comparable social and intellectual development.

§ 442.502 Client bedrooms.

(a) Bedrooms must—(1) Be rooms that have at least one outside wall;

(2) Be equipped with or located near toilet and bathing facilities;

(3) Accommodate no more than four clients unless granted a variance under paragraph (c) of this section;

(4) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(5) In all newly certified facilities, have walls that extend from floor to ceiling.

(b) If a bedroom is below grade level, it must have a window that is no more than 44 inches from the floor and must be usable as a second means of escape. If the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, the window must be no more than 36 inches above the ground.

(c) The survey agency may grant a variance from the limit of four clients per room only if a physician or psychologist who is a member of the interdisciplinary team and who is a qualified mental retardation professional—

(1) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(2) Documents the reasons why housing in a room of only four or fewer persons would not be feasible.

(d) The facility must provide each client with—

(1) A separate bed of proper size and height for the convenience of the client;

(2) A clean, comfortable, fire safe mattress;

(3) Bedding appropriate to the weather and climate; and

(4) Appropriate furniture, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the client.

§ 442.504 Storage space in living units.

The facility must provide—(a) Space for equipment for daily out-of-bed activity for all clients who are not yet

mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety;

(b) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing; and

(c) Adequate clean linen and dirty linen storage areas for each living unit.

§ 442.506 Client bathrooms.

The facility must—(a) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(b) Provide for individual privacy in toilets, bathtubs, and showers unless specifically contraindicated by the client's physical, behavioral, or developmental needs; and

(c) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110° Fahrenheit.

§ 442.508 Heating and ventilation in living units.

(a) Each client bedroom in the facility must have—(1) At least one window to the outside; and

(2) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(b) The facility must—(1) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(2) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

§ 442.510 Floors in living units.

The facility must have—(a) Floors that have a resilient, nonabrasive, and slip-resistant surface; and

(b) Nonabrasive carpeting, if the living unit is carpeted and serves clients who crawl.

§ 442.512 Space and equipment in dining, health services, and program areas.

(a) The facility must provide sufficient space and equipment in dining, health services, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by these standards and as identified in each client's IPP.

(b) The facility must furnish, maintain in good repair, and encourage the use of, dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by appropriate specialists or the interdisciplinary team as needed by the client.

Safety and Sanitation

§ 442.550 Emergency plan and procedures.

(a) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(b) The facility must communicate, periodically review, make the plan available, and provide training to the staff.

§ 442.552 Evacuation drills.

(a) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(1) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(2) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(3) Evaluate the effectiveness of emergency and disaster plans and procedures.

(b) The facility must—

(1) Actually evacuate clients who cannot cooperate in an evacuation, during at least one drill a year on each shift;

(2) Actually evacuate clients who can cooperate in an evacuation, during at least one drill each quarter on each shift;

(3) Make special provisions for the evacuation of the physically handicapped;

(4) File a report and evaluation on each evacuation drill; and

(5) Investigate all problems with evacuation drills, including accidents, and take corrective action.

(c) Facilities must meet the requirements of paragraphs (a) and (b) of this section for any live-in and relief staff they utilize.

§ 442.554 [Reserved]

§ 442.556 Paint.

The facility must— (a) Use lead-free paint inside the facility; and

(b) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

§ 442.558 Food and nutrition services.

(a) The facility must provide each client with a nourishing, well-balanced diet including modified and specially-prescribed diets.

(b) A qualified dietitian and a physician must participate in decisions about modified and special diets, including modifications and changes to special and modified diets.

(c) Unless otherwise specified by medical needs the diet must be prepared in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

§ 442.560 Meal services.

(a) The facility must serve at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(1) Not more than 14 hours between a substantial evening meal and breakfast of the following day; and

(2) Not less than 10 hours between breakfast and the evening meal of the same day.

(b) Food must be served—(1) In appropriate quanitity;

(2) At appropriate temperature;

(3) In a form consistent with the developmental level of the client; and

(4) With appropriate utensils.

(c) Food served and uneaten must be discarded.

§ 442.562 Menus.

Menus must—(a) Be prepared in advance;

(b) Provide a variety of foods at each meal;

(c) Be different for the same days of each week and adjusted for seasonal changes;

(d) Be kept on file for 30 days; and

(e) Include the average portion sizes for menu items.

§442.564 Dining areas and service.

The facility must—(a) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(b) Provide table service for all clients who can and will eat at a table, includng clients in wheelchairs;

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(c) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client; and

(d) Supervise and staff dining rooms adequately to direct self-help dining procedures and to assure that each client receives enough food.

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: February 10, 1986.

Henry R. Desmarais,
Acting Administrator, Health Care Financing Administration.

Approved: February 26, 1986.

Otis R. Bowen,
Secretary

[FR Doc. 86-4633 Filed 3-3-86; 8:45 am]

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federal register

Tuesday
March 4, 1986

Part III

Environmental Protection Agency

40 CFR Part 271

State Hazardous Waste Programs;

Procedures for Approving Revisions; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-FRL-2943-7]

State Hazardous Waste Programs; Procedures for Approving Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating amendments to the procedures in 40 CFR 271.21 for processing revisions to State hazardous waste programs. The final rule is designed to streamline and improve the revision process for the States by eliminating the distinction between substantial and non-substantial revisions and making other changes to the approval procedures. The new process offers increased public participation by providing an opportunity to comment on all, rather than only substantial, program revisions.

DATES: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on March 18, 1986. These regulations shall become effective on March 18, 1986.

FOR FURTHER INFORMATION CONTACT: The RCRA hotline, toll-free at (800) 424–9346 or in Washington, DC at (202) 382–3000, or Frank McAlister, State Programs Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382–2210.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 270–271. 40 CFR 271.21(b) requires States to submit their proposed program revisions to EPA for approval. The rule, prior to today's amendment, also specified two types of EPA approval procedures for program revisions.

For substantial program revisions, EPA was required to issue a public notice in the **Federal Register**, in the major newspapers in the State, and via mail to interested persons. The notice had to summarize the proposed revisions, provide for a comment period of at least 30 days, and provide for an opportunity for public hearing if there was significant public interest. After the comment period and a determination by the Agency that the proposed revisions were in compliance with the requirements of the Act, a notice of approval was published in the **Federal Register**. The same procedures did not apply to non-substantial program revisions. Rather, notice of approval of non-substantial program revisions could have been given simply by a letter from the Administrator to the State Governor or his designee.

EPA was concerned that the procedures for processing substantial program revisions might have been too time-consuming and resource-intensive for both the States and EPA. The time element is particularly critical; until a State receives authorization to implement a permitting requirement imposed by HSWA, the State cannot issue a RCRA permit to a facility within its borders. Instead, it must issue a joint permit with EPA whereby EPA adds the HSWA requirements that the State is not authorized to implement. We also were concerned that the public did not have an opportunity to comment on non-substantial program revisions.

To simplify and expedite the State revision process, EPA proposed on June 10, 1985 (50 FR 24362–24364) to streamline the procedures for approval of State hazardous waste program revisions. The proposal also sought to expand the opportunity for public involvement to include all State program revisions. EPA strongly encourages full public participation in all its State authorization decisions.

To accomplish these objectives, we proposed to eliminate the distinction between substantial and non-substantial program revisions and to substitute two alternative procedures for approving revisions: (1) Standard rulemaking, or (2) immediate final rulemaking. Under the first alternative, a proposed approval or disapproval would have been published in the **Federal Register** with at least a 30-day public comment period. EPA would have reviewed the public comments and responded to them in a final rule approving or disapproving the proposed revision. Under the second alternative, EPA would have published an immediate final rule in the **Federal Register** indicating that the State revision was approved or disapproved. EPA's decision would have taken effect 45 days after the date of publication unless EPA received a negative comment within the 30-day comment period. Under this proposed option, if EPA received a negative comment, EPA would have notified the State of the comment and published a new **Federal Register** action withdrawing the immediate final rule. The **Federal Register** publication would have identified the objection and proposed the approval or disapproval of the revision with a new comment period. The standard rulemaking alternative discussed above would have then been followed until a final decision was reached.

It should be noted that on January 6, 1986, EPA proposed additional changes to 40 CFR 271.21 (see 51 FR 496–504). The purpose of the January 6 proposal is to facilitate authorization of hazardous waste programs by defining *when* State program modifications must be completed. In contrast, today's final rule identifies *how* the State revisions will be processed. Regardless of the outcome of the January 6 proposal, today's rule will have a beneficial effect in streamlining State program approval procedures.

II. Provisions of the final rule

A. General

Although few comments were received on the proposal, all commenters supported the concept of streamlining the approval process for State program revisions. Indeed, most commenters suggested providing less opportunity for public comment than EPA proposed. As will be discussed in EPA's response to comments, those suggestions were rejected.

In analyzing the proposed rule, EPA realized there was no reason why receipt of adverse comments should automatically result in withdrawal of its decision. Normally EPA responds to public comments and does not provide a new comment period on comments that are received. We concluded that automatic withdrawal of the immediate final rule and reproposal of EPA's decision would serve no practical purpose and only delay resolution of the issues raised by the comments. EPA was persuaded that a more efficient process could be devised. Thus, the final rule adopts the following approach.

The rule provides that if no adverse comments are received on EPA's decision to approve a State program revision, the decision will take effect 60 days after the date of publication. A second **Federal Register** notice would not be published. This aspect of the rule is the same as proposed, except that the proposal provided for an effective date 45 days after the date of publication. The Agency found it necessary to extend the effective date from 45 to 60 days since the proposal would have allowed an insufficient amount of time (a maximum of only 15 days after the close of the comment period) for the Agency to address adverse comments in accordance with the alternatives provided in the final rule, as discussed below. In addition, EPA wishes to clarify that the immediate final rule will be published in the final rule section of the **Federal Register** but will be cross-referenced in the proposed rule section of the **Federal Register** as well.

If adverse comments are received, a second **Federal Register** notice will be published before the time the immediate final rule takes effect. Unlike the proposal, however, the second notice may or may not withdraw the immediate final rule. If the Administrator disagrees with the public comments, he may publish a second **Federal Register** notice prior to the effective date of his decision which identifies the issues raised, responds to these comments and affirms that the immediate final rule will take effect as scheduled.

If the Administrator agrees with the public comments and decides to reverse his decision, he may do one of two things. He may publish a final rule before the effective date of his decision reflecting his changed position and explaining his reasoning. Alternatively, if he believes the change in position warrants a new round of public comment, he may withdraw the immediate final rule prior to its effective date and simultaneously propose his new decision.

Finally, if the comments raise issues that the Administrator cannot resolve before the effective date of the immediate final rule, he will withdraw the rule prior to its effective date. At a later date, he may publish a final rule which responds to comments and contains his decision or he may provide a new round of comment. This option assures that EPA will have whatever amount of time is necessary to consider all comments fully.

In short, the final rule provides the Administrator with several procedural options for making decisions on program revisions, including following standard rulemaking procedures. The common denominator of all the approaches is that no decision to approve or disapprove a State program will be made without an opportunity for public comment or before EPA has the opportunity to consider and respond to public comments. At the same time EPA retains the flexibility to choose the quickest and most effective approach for each situation, thereby reducing the administrative burdens and time delays for the States and EPA.

B. Use of Standard Rulemaking and Immediate Final Rulemaking

While either standard rulemaking or immediate final rulemaking procedures may be used to approve State program revisions, the Agency is more likely to use the standard rulemaking procedure in some circumstances. For example, if a State submitted a program revision for a large number of changes at the same time and the Agency expected the revision to generate public interest (e.g., there is a history of public comments on authorization decisions affecting the State), we would follow the standard rulemaking procedures. Further, EPA would normally use standard rulemaking procedures if the Agency were planning to disapprove a State program revision since more public comment would be likely.

On the other hand, the immediate final approach most likely would be used if the State has a history of little or no public interest in previous authorization decisions. For example, if no comments had been received on the State's initial application for final authorization or on recent program revisions, then subsequent revisions would ordinarily be processed using the immediate final rulemaking.

C. Elimination of Public Hearing Requirement

As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing.

III. Response to Comments

Several commentors suggested that comments on EPA's decision to approve or disapprove a State program revision which are inconsequential, insignificant or trivial may unnecessarily hinder the streamlining process and, therefore, EPA should only respond to significant comments. EPA does not believe that it is practical or desirable to rate the significance of public comments. Unless a comment is not germane to the program revision or is unsupported, EPA will respond to it in a second **Federal Register** notice. By "germane" EPA means that it would not publish a response where, for example, the comment concerned the State's permit program whereas the program revision concerned manifest requirements. Similarly, EPA would not publish a response where a person objected to EPA's decision but gave no reason.

One commentor suggested that EPA retain flexibility in how the Agency responds to adverse comments by allowing the option of either responding to the comments in the **Federal Register** or extending the public comment period. We agree that adverse comments should not result in automatic withdrawal of EPA's decision and have changed the rule as discussed above.

One commentor suggested that, where EPA withdraws an immediate final rule, the Agency should provide a specific response in the **Federal Register** which details what must be changed by the State, how the change must be made, and to what extent the change must be made. EPA agrees that, if time allows, such discussion would be appropriate; however, an overriding concern is the timely withdrawal of the rule (see section II A above). If not explained in the **Federal Register**, EPA will provide a detailed letter to the State which will be publicly available.

Several commentors, suggested that EPA retain the non-substantial revision process. We have rejected this comment because, as stated in the proposal, we believe that the public should be able to comment on all program revisions. Further, what EPA views as a non-substantial revision may be considered substantial by the public. Indeed, the concept of distinguishing between substantial and non-substantial program revisions is problematic. We also disagree with the comment that non-substantial revisions are essentially clerical revisions.

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Two commentors opposed the use of standard rulemaking procedures for State authorization decisions. We believe it is important to retain the option of standard rulemaking procedures. We can think of no legal or practical reason for limiting EPA's discretion to use standard rulemaking procedures.

One commentor requested guidance on when EPA would use standard rulemaking procedures versus immediate final rules. Section II.*B* of the preamble provides discussion on this subject.

Two commentors opposed increasing the opportunity for public involvement in State program revisions. The Agency disagrees. We believe it is sound public policy to provide all parties the opportunity to review and comment on all EPA State authorization decisions, irrespective of whether or not one particular party may view a proposed revision as non-substantial or trivial, as discussed above. Further, EPA does not have to establish a basis for allowing public comment. Also, while we recognize the public has the opportunity to comment at State proceedings (e.g., at State hearings on the adoption of their regulations), the public does not have the opportunity to advise EPA at that time on whether each State program revision meets the Federal requirements for authorization.

IV. Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely streamlines procedures for approving State RCRA program revisions. The Office of Management and Budget has exempted this rulemaking from Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments adopted here merely streamline the procedures for approving State hazardous waste program revisions and do not affect the compliance burdens of the regulated community.

Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2000-0041.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 21, 1986.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, 40 CFR Part 271 is revised as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006, Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

2. In § 271.21, paragraphs (b)(2)-(4) are revised to read as follows:

* * * * *

(b) * * *

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b)(3) or (4) of this section.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his approval or disapproval of a State program revision:

(A) In the **Federal Register;**

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of 30 days.

(iii) Approval or disapproval of a State program revision shall become effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received by the end of the comment period. If an adverse comment is received the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the **Federal Register** either:

(A) A withdrawal of the immediate final decision; or

(B) A notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the **Federal Register;**

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the **Federal Register.**

* * * * *

[FR Doc. 86-4610 Filed 3-3-86; 8:45 am]
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Comprehensive Smokeless Tobacco Health Education Act of 1986. (Feb. 27, 1986; 100 Stat. 30; 6 pages) Price: $1.00

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR PART 807

MARINE MAMMAL COMMISSION

50 CFR PART 550

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

Correction

In FR Doc. 86–2134 beginning on page 4566 in the issue of Wednesday, February 5, 1986, make the following corrections:

1. On page 4580, in the first column, § ____.103, under the definition for "Handicapped person", in paragraph (l)(ii), in the third line, "bring" should read "brain".

2. On page 4581, in § ____.150(c), in the third column, in the third and fourth lines, "April 7, 1986" should read "June 6, 1986".

BILLING CODE [illegible]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 86-401]

Revision of Delegation of Authority; Assistant Secretary for Marketing and Inspection Services et al.

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service (APHIS), the authority to administer the Animal Damage Control Act of March 2, 1931, (7 U.S.C. 426, 426b). The Secretary of Agriculture believes that this program can be conducted most effectively under the jurisdiction of APHIS.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sidney R. Moore, Public Affairs Specialist, Legislative and Public Affairs Staff, Animal and Plant Health Inspection Service, Room 1153 South Agriculture Building, 12th and Independence Avenue, SW., Washington, DC 20250, (202) 447–3981.

SUPPLEMENTARY INFORMATION: The Animal Damage Control program (ADC) was established by the Act of March 2, 1931. The statute authorizes programs for research and operational control of depredating animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur bearing animals and birds and for the protection of stock and other domestic animals through the suppression of animal diseases in predatory and other wild animals. From 1931 until 1939, the ADC was administered by the Department of Agriculture through the then Bureau of Biological Survey. From 1939 to December 19, 1985, the program was administered by the Fish and Wildlife Service, of the Department of the Interior, on the basis that the authority to administer the Act of March 2, 1931, along with the Bureau of Biological Survey, had been transferred to the Department of the Interior by

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Reorganization Plan No. II of 1939. Congress transferred the responsibility for administration of ADC to the Department of Agriculture, in the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986, as enacted on December 19, 1985, by Section 101 of the Continuing Appropriations for fiscal year 1986, Pub. L. No. 99-190. The Secretary of Agriculture believes that this program can be conducted most effectively under the jurisdiction of APHIS. This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, APHIS, the responsibility and the authority for administering the Animal Damage Control Act of 1931 (7 U.S.C. 426, 426b). This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 11291. Finally, this subject is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read.

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953 unless as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b)(38) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(38) The Act of March 2, 1931, (7 U.S.C. 426, 426b).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding a new paragraph (a)(41) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(41) The Act of March 2, 1931 (7 U.S.C. 426, 426b).

Dated: February 28, 1986.

For Subpart C:

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

Dated: February 20, 1986.

For Subpart F:

Raymond D. Lett,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86-4655 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 86-303]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations in 7 CFR Part 354 which prescribe commuted traveltime allowances. The regulations are amended by adding or changing commuted traveltime periods for traveling from certain duty stations in Arizona, Florida, Ohio, and Texas to specified locations in these States where services are to be performed. This document also amends the regulations by deleting commuted traveltime periods for traveling from certain duty stations in Illinois, Ohio, and Texas to specified locations in these States.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Eggert, Director, National Administrative Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 354, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), set forth provisions for obtaining, on a reimbursable basis, inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal products, or other commodities, during Sundays, holidays, or at other times outside the regular tour of duty of Plant Protection and Quarantine (PPQ) employees who perform such services. These services are provided upon request to any person, firm, or corporation having ownership, custody, or control of the animals or commodities requiring such services.

The regulations provide that under certain circumstances the charges for reimbursable services of a PPQ employee shall include charges for a commuted traveltime period. Section 354.2 of the regulations contains administrative instructions prescribing commuted traveltime periods. Traveltime periods reflect, as nearly as is practicable, the time required for a PPQ employee to travel from the employee's duty station to the locality where the service is provided and to return to the employee's duty station.

This document amends § 354.2 of the regulations by adding or changing commuted traveltime periods for traveling from certain duty stations in Arizona, Florida, Ohio, and Texas to other locations in these States where services are to be performed (the amendments are set forth in the rule portion of this document). This action is necessary to inform the public that PPQ employees are available to travel from such duty stations to perform services at specified locations and to inform the public of the commuted traveltime periods for such travel.

This document also amends § 354.2 of the regulations by deleting commuted traveltime periods for traveling from certain duty stations in Illinois, Ohio, and Texas to specified locations in these States (the amendments are set forth in the rule portion of this document). This action is necessary because PPQ employees are no longer available to travel from the specified duty stations to perform such services.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The amount of articles and commodities requiring inspection and other services of a PPQ employee on a Sunday, holiday, or overtime basis at the affected locations represent an insignificant portion of the total amount of articles and commodities that require such services at locations in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this rule are impracticable and contrary to the public interest; and good cause is found for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 7 CFR Part 354 is amended as follows:

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in alphabetical order or removing the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Delete:			
* * * * *			
Florida:			
Ft. Lauderdale		1	
Port Everglades.		1	
* * * * *			
Illinois:			
Peoria	Princeton		3
* * * * *			
Ohio:			
Columbus	Marysville		2
Columbus	Sidney		5
Columbus	Washington Court House.		3
Dayton	Marysville		3
Dayton	Sidney		2
Dayton	Washington Court House.		3
* * * * *			
Texas:			
Barbour's Cut	Houston		3
Bayport	Houston		3
Baytown	Houston		2
Dallas/Ft. Worth Regional Airport.	Denton		2
Dallas/Ft. Worth Regional Airport.	Waxahachie		3
Houston (except Houston Intercontinental Airport).		2	
Houston Intercontinental Airport.			3
Kelly AFB	Boerne		3
Love Field	Waxahachie		2
Love Field	Denton		2
Orange	Lake Charles		2
Port Arthur	Lake Charles and Baton Rouge.		3

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
* * * * *			
Add:			
Arizona:			
Fort Huachuca Army Base, Sierra Vista.	Douglas or Nogales.		3
Fort Huachuca Army Base, Sierra Vista.	Tucson		4
* * * * *			
Florida:			
Ft. Lauderdale		2	
Port Everglades.		2	
* * * * *			
Ohio:			
Cincinnati	Columbus		6
Cincinnati	Dayton		3
Columbus		2	
Columbus	Dayton		4
Dayton		2	
Dayton	Columbus		4
* * * * *			
Texas:			
Barbour's Cut	Houston	2	
Bayport	Houston	2	
Baytown	Houston	2	
Houston (Including Houston Intercontinental Airport).		2	
* * * * *			

Done at Washington, DC, this 28th day of February, 1986.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 4728 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448

[Doc. No. 0074A]

Various Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 26, 1985 (50 FR 52757). The interim rule amended the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop

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Insurance Regulations (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447 and 448), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 26, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 52757, amending the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448

Crop Insurance, Forage seeding, Pea, Wheat, Barley, Grain sorghum, Cotton, Flax, Rice, Peanut, Combined crop, Oat, Sunflower, Soybean, Corn, Dry bean, Tobacco (quota plan), Canning and freezing sweet corn, Canning and processing tomato, Popcorn, and ELS cotton.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 26, 1985, at 50 FR 52757, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 25, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4720 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 416

[Amdt. No. 1; Doc. No. 0069A]

Pea Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, the interim rule published in the **Federal Register** on December 6, 1985 (50 FR 49920). The interim rule amended the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years, by deleting the payment of indemnity for any peas which are lost because they were not harvested even though they were available for harvest. The intended effect of this action is to confirm the interim rule published on Friday, December 6, 1985, at 50 FR 49920, to clarify that FCIC will not insure against loss of production when green peas are not timely harvested by the processor because of unusual weather conditions resulting in a substantial amount of peas being ready for harvest at the same time. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, December 6, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 49920, amending the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years, to delete the payment of indemnity for any peas which are lost because they were not harvested even though they were available for harvest.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be publish in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 416

Crop insurance, Peas.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Friday, December 6, 1985, at 50 FR 49920, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516.)

Done in Washington, DC, on February 11, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4721 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 627, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 627 increases the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 21–27, 1986. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 627, Amendment 1 (§ 907.927) is effective for the period February 21–27, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that his action will tend to effectuate the declared policy of the act.

The amendment is consistent with the marketing policy for 1985–86. The committee met publicly on February 25, 1986, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared policy of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for Part 7 CFR 907 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 907.927 (51 FR 6217) is revised to read as follows:

§ 907.927 Navel Orange Regulation 627.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 21, 1986, through February 27, 1986, are established as follows:

(a) District 1: 1,550,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 27, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–4824 Filed 3–4–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 959

Onions Grown in South Texas; Amdt. No. 4 to Handling Regulation

AGENCY: Agricultural Market Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the continuing handling regulation § 959.322 by allowing unlimited experimental shipments of onions in 50, 40, 25, and 20 pound cartons, rather than the current level of shipments, which is 10 percent. In addition, it relieves gift package handling requirements by making a change which clarifies the assessment provision and by not requiring repeat inspections of gift packages. The amendment promotes orderly marketing of such onions by removing unnecessary requirements and providing improved marketing information.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Acting Chief Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, (202) 475–3919.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

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Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 40 handlers of onions will be subject to regulation under the South Texas Onion Marketing Order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden imposed on small entities by this amendment, if present at all, is not significant.

This final rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended, regulating the handling of onions grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

On November 7, 1985, the committee recommended deleting the 10 percent limitation on experimental shipments and allowing unlimited experimental shipments of onions in 50, 40, 25, and 20 pound cartons under paragraph (f)(4), Experimental shipments. The committee believes that there are presently too many unknowns regarding carton size(s) and construction type(s), and therefore considers it premature to recommend specific cartons to be included in § 959.322(c). Permitting unlimited experimental shipments of onions in 50, 40, 25, and 20 pound containers will allow the committee to collect sufficient data from which it can determine the most beneficial carton sizes that would also be practicable to the trade.

To ensure that the handling of onions in such experimental containers remains under proper supervision, the South Texas Onion Committee must be notified of carton size and furnished a container manifest; and shippers must furnish the committee with outturn reports of such shipments.

In addition, on February 20, 1986, the committee unanimously recommended that gift packs be released from inspection and assessment requirements when such gift packs have been previously handled by a first handler. There is some confusion whether the language of § 959.322(f)(3) requires a second assessment on gift packages. The order specifies in § 959.42(a) that the handler who first handles regulated onions shall pay assessments. This final rule will eliminate the confusion by amending § 959.322(f)(3) in such manner as to make it clear to all concerned that an onion gift pack is not subject to assessment when such onions have been previously handled and subject to assessment. Assessments are collected when onions are inspected and when inspection certificates are granted. Therefore, this rule also eliminates the need for a second inspection if the onions have already been handled and inspected. The committee believes duplicate inspection and assessment to be contrary to its market development goals.

Notice of the proposed amendment of the handling regulation regarding experimental shipments was published in the **Federal Register** (51 FR 760) on January 8, 1986. It provided that interested persons could file comments on the proposal through February 7, 1986. No comments were received. With respect to the amendment concerning the gift pack requirements, such amendment is a clarification and a relaxation of certain requirements. After considering the recommendations submitted earlier by the committee and other available information, the Department has decided that the proposed amendment should be made effective and that the final rule should be issued.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the requirements specified in this rule at an open meeting at which the committee recommended issuance of such requirements to become effective as soon as possible. South Texas onion handlers have been apprised of the final rule's provisions. The shipment of these onions is expected to begin immediately, and therefore it is important that these changes become effective as soon as possible. The provisions in the final rule are the same as those in a proposed rule which was published in the **Federal Register**, and which provided a 30 day comment period, except for a relaxation of requirements applicable to certain gift packs. It is found that this final rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.322 (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48 FR 25169, June 6, 1983; and 49 FR 4931, February 9, 1984) is hereby further amended by revising (f)(3) and (f)(4)(i) as follows:

§ 959.322 Handling regulation.

* * * * *

(f) *Special purpose shipment.* * * *

(3) *Gift packages.* The handling to any person of gift packages of onions, not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(4) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37⅛ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in

thickness. Also, onions may be shipped in 50, 40, 25, and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

* * * * *

Dated: February 28, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-4727 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-018]

Specifically Approved States Authorized To Receive Mares Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations by adding Maryland and Ohio to the list of approved States authorized to receive certain mares imported into the United States from countries affected with contagious equine metritis (CEM). This action is taken because the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, has determined that Maryland and Ohio have laws or regulations in effect to require the additional inspection, treatment, and testing of such horses to further ensure their freedom from CEM as required by the regulations. The amendment is necessary in order to avoid the imposition of unnecessary restrictions on importers of mares from countries affected with CEM.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

Section 92.2(i) of the regulations in 9 CFR Part 92, among other things, authorizes the importation of certain mares and stallions over 731 days of age into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into approved States for further inspection, treatment, and testing.

A document published in the **Federal Register** on December 2, 1985 (50 FR 49344–49345), set forth an interim rule amending § 92.4 of the regulations by adding Maryland and Ohio to the list of approved States authorized to receive such mares. The addition of Maryland and Ohio to the list was based on the finding that they meet certain minimum standards concerning treatment, testing, and handling procedures for these mares.

The interim rule was made effective upon publication. Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of December 2, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that fewer than 26 mares from countries affected with CEM will be imported into the States of Maryland and Ohio annually. This compares with approximately 3,340 stallions and mares (most of these were mares) imported into the United States from countries affected with CEM during Fiscal Year 1984 and with approximately 36,000 horses of all classes imported into the United States during that same period.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Liverstock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 50 FR 49344–49345 on December 2, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 27th day of February 1986.

G. J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-4819 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Appliance Standards

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Final rules; Removal.

SUMMARY: Today's notice removes the U.S. Department of Energy rules regarding energy efficiency standards for kitchen ranges and ovens, clothes

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dryers, furnaces, central air conditioners, refrigerators and refrigerator-freezers, freezers, water heaters and room air conditioners and removes rules granting petitions from five States requesting, in each case, that the State energy efficiency standard for clothes dryers and/or kitchen ranges and ovens be exempted from preemption by the Federal standards rules for these two products.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CE-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163, 87 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3266), which requires DOE to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard is to be established if there is no test procedure for the product or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded. Section 327(b)(3).

On December 15, 1982, DOE issued a final rule with respect to two covered products, clothes dryers, and kitchen ranges and ovens. 47 FR 57198 (December 22, 1982). (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State of local energy efficiency standards. On August 25, 1983, DOE issued a final rule with respect to six further covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376 (August 30, 1983). (Hereafter referred to as the August 1983 rule.) For each of the six products covered by the August 1983 rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

On March 15, 1984, DOE issued final rules granting petitions from the States of California, New York, Wisconsin, Minnesota and Oregon, requesting, in each case, that the State energy efficiency standard for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption. 49 FR 11764 (March 27, 1984).

The December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department of Energy. The Court of Appeals granted NRDC's petition and set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985). That decision having now become final, the Department is removing these rules from the Code of Federal Regulations. Similarly, the Department is removing final rules granting five States exemption from two of the rules which have been set aside.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC February 12, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291–6309).

2. Section 430.32 is removed and reserved.

§ 430.32 Final energy efficiency standards. [Reserved]

3. Section 430.33 is removed and reserved.

§ 430.33 Preemption of State regulations. [Reserved]

[FR Doc. 86–4806 Filed 3–4–86; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

[Rev. 2, Amdt. 6]

Standards of Conduct; Conflict of Interest

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The internal organization of the Agency, Office of General Counsel has been altered by a reorganization. As part of this reorganization, the responsibilities of the Agency Standards of Conduct Counselor and the Agency Ethics Officer were transferred from the Associate General Counsel for Financial Law to the Deputy General Counsel. The purpose of this amendment is to reflect this transfer of duties in the Agency's regulations.

EFFECTIVE DATE: March 9, 1986.

FOR FURTHER INFORMATION CONTACT: Michael F. Kinkead, Attorney, Small Business Administration, Room 722, 1441 L Street NW., Washington, DC 20416, (202) 653-6381.

SUPPLEMENTARY INFORMATION: SBA is publishing this rule change in final form since it relates only to Agency management and is, therefore, exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Orders 12291..

List of Subjects in 13 CFR Part 105

Conflict of interests.

PART 105—[AMENDED]

Accordingly, SBA amends Part 105 of 13 CFR to read as follows:

1. The authority citation for Part 105 continues to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 634(b)(6)).

2. Sections 105.802(a) and 105.803(a) are revised as follows:

§ 105.802 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor shall be the Deputy General Counsel. He shall be assisted by a Regional Standards of Conduct Counselor for each SBA Region. The Regional Counsel shall be the Regional Standards of Conduct Counselor for each Region.

* * * * *

§ 105.803 Designated Agency Ethics Official.

(a) The Designated Agency Ethics Officials, appointed by the Administrator pursuant to the Ethics in Government Act of 1978, shall be the Deputy General Counsel. He may, in turn, appoint an Alternate Designated Agency Ethics Official, who will be an attorney in the Office of Finance and Legislation. The Alternate Official will assist the designated Agency Ethics Official and shall act for him in his absence, in the performance of his official functions.

Dated: February 12, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86–4410 Filed 3–4–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F–0534]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of zinc sulfide for use in contact with food. This action responds to a petition filed by Springborn Laboratories, Inc., on behalf of Ore and Chemical Corp.

DATES: Effective March 5, 1986; objections by April 7, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 9, 1985 (50 FR 50234), FDA announced that a petition (FAP 4B3811) had been filed by Ore and Chemical Corp., 520 Madison Ave., New York, NY 10022,.proposing that the food additive regulations be amended to provide for the safe use of zinc sulfide as a colorant for polymers and as a component of a lubricant with incidental food contact for food-processing machinery.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided is 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential enviromental effects of this action has concluded that the actions will not have significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action to approve the use of zinc sulfide as a colorant in polymers would require an environmental assessment under 21 CFR 25.31a(a) and an action to approve the use of zinc sulfide in lubricants with incidental food contact would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3297 is amended in paragraph (e) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3297. Colorants for polymers.

* * * * *

(e) * * *

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Substances	Limitations
* * * * *	
Zinc sulfide	For use at levels not to exceed 10 percent by weight.

3. Section 178.3570 is amended in paragraph (a)(3) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *
(3) * * *

Substances	Limitations
* * * * *	
Zinc sulfide	For use at levels not to exceed 10 percent by weight of the lubricant.

* * * * *

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4607 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 43 and 276

[DoD Directive 1344.7]

Personal Commercial Solicitation on DoD Installations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part provides in a single document Department of Defense policies governing the conduct of personal commercial solicitation and insurance sales on DoD installations and updates procedures for dealers and their agents seeking to transact personal commercial business on DoD installations. In addition to minor editorial changes made in this final document, we have defined the term "DoD installation".

EFFECTIVE DATE: February 13, 1986.

ADDRESS: Assistant Secretary of Defense (Force Management and Personnel), ODASD(MM&PP), PA&S, Room 3C975, Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Schoenberger, (202) 697-9525.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 43

Consumer protection, Military personnel, Federal buildings and facilities.

PART 276—[REMOVED]

Title 32 CFR Part 276 (Solicitation and Sale of Insurance on Department of Defense Installations) is removed in its entirety.

Title 32 CFR Part 43 is revised to read as follows:

PART 43—PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS

Sec.
43.1 Reissuance and purpose.
43.2 Applicability and scope.
43.3 Definitions.
43.4 Policy.
43.5 Responsibilities.
43.6 Procedures.
Appendix A—Life Insurance Products and Securities.
Appendix B—The Overseas Life Insurance Accreditation Program.

Authority: 5 U.S.C. 301.

§ 43.1 Reissuance and purpose.

This part:

(a) Consolidates into a single document 32 CFR Part 43 and 32 CFR Part 276 and update DoD policies and procedures governing personal commercial solicitation and insurance sales on DoD installations.

(b) Continues the established annual DoD accreditation requirements for life insurance companies operating in overseas areas where neither Federal nor state consumer protection regulations apply.

§ 43.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD),the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), and the Unified Commends (herafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) The provisions of this part do not apply to services furnished by commercial companies, such as deliveries of milk, laundry, and related residence services when such services are authorized by the DoD installation commander.

(c) Nothing in this part should be construed to preclude private, non-profit, tax-exempt organizations composed of active and retired members of the Military Services from holding membership meetings which do not involve commercial solicitation on DoD installations. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander or his or her designee.

§ 43.3 Definitions.

Agent. An individual who receives remuneration as a salesperson or whose remuneration is dependent on volume of sales of a product or products.

Association. Any organization, whether or not the word "Association" appears in its title, composed of and serving exclusively members of the Military Services on active duty, in a Reserve status, in a retired status, and their dependents, which officers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

DoD Installation. Any Federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DoD personnel are assigned for duty, including barracks, transient housing, and family quarters.

DoD Personnel. All active duty officers (commissioned and warrant) and enlisted members of the Military Services and all civilian employees, including nonappropriated fund employees and special Government employees of all offices, agencies, and departments carrying on functions on a Defense installation.

General Agent. A person who has a legal contract to represent a company solely and exclusively.

Insurance Carrier. An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

Insurance Product. A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

Insurer. Any company or association engaged in the business of selling insurance policies to DoD personnel.

Normal Home Enterprises. Sales or services which are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

Securities. Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by state insurance authorities.

Solicitation. The conduct of any private business, including the offering and sale of insurance on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility vested in the DoD installation commander.

§ 43.4 Policy.

It is the policy of the Department of Defense to safeguard and promote the welfare of DoD personnel as consumers by setting forth a uniform approach to the conduct of all personal commercial solicitation and sales to them by dealers and their agents.

§ 43.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall be responsible for developing policies and procedures governing personal commercial solicitation activities conducted on DoD installations.

(b) The *Heads of DoD Components*, or their designees, shall assure implementation of this Directive and compliance with its provisions.

§ 43.6 Procedures.

(a) *General.*

(1) No person has authority to enter upon a DoD installation and transact personal commercial solicitation as a matter of rights. Personal commercial solicitation will be permitted only if the following requirements are met:

(i) The solicitor is duly licensed under applicable Federal, state, or municipal laws and has complied with installation regulations in accordance with paragraph (c) of this section.

(ii) Personal commercial solicitation is permitted by the local installation commander.

(iii) A specific appointment has been made with the individual concerned and conducted in family quarters or in other areas designated by the installation commander.

(2) Those seeking to transact personal commercial solicitation on overseas installations shall be required to observe, in addition to the above, the applicable laws of the host country and, upon demand, present documentary evidence to the installation commander, or designee, that the company they represent, and its agents, meet the licensing requirements of the host country.

(3) Organizations involved in sales are permitted to display literature on DoD installations in locations selected by the commander.

(b) *Life Insurance Products and Securities.* (1) Life insurance products and securities offered and sold to DoD personnel must meet the prerequisites described in Appendix A.

(2) Insurers and their agents are authorized to solicit on DoD installations provided they are licensed under the insurance laws of the state in which the installation is located. In overseas areas, DoD Components shall limit this authorization to those insurers accredited under the provisions of Appendix B.

(3) The conduct of all insurance business on DoD installations shall be by specific appointment. When establishing the appointment, insurance agents must identify themselves to the prospective purchaser as an agent for a specific company.

(4) Installation commanders shall designate areas where interviews by appointment may be conducted. Invitations to conduct interviews shall be extended to all agents on an equitable basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy consistent with this concept.

(5) Installation commanders shall make disinterested third-party counseling available to DoD personnel desiring counseling.

(6) In addition to the solicitation prohibitions contained in paragraph (d) of this section, DoD Components shall prohibit:

(i) DoD personnel from representing any insurer, or dealing directly or indirectly with any insurer or any recognized representative of any insurer on the installation, as an agent or in any official or business capacity with or without compensation.

(ii) The use of an agent as a participant in any Military Services-sponsored insurance education or orientation program.

(iii) The designation of any agent or the use by any agent of titles such as "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," etc.

(iv) The assignment of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing his or her name or company affiliation.

(v) The use of the "Daily Bulletin" or any other notice, official or unofficial, announcing the presence of an agent and his or her availability.

(c) *Supervision of On-Base Commercial Activities.* (1) All pertinent installation regulations shall be posted in a place easily accessible to those conducting personal commercial solicitation activities on the installation.

(2) When practicable, as determined by the installation commander, a copy of the applicable installation regulations shall be given to those conducting on-base commercial activities with the warning that any infractions of the regulations will result in the withdrawal of solicitation privileges.

(d) *Prohibited Practices.* The following commercial solicitation practices shall be prohibited on all DoD installations:

(1) Solicitation of recruits, trainees, and transient personnel in a "mass" or "captive" audience.

(2) Making appointments with or soliciting military personnel who are in an "on-duty" status.

(3) Soliciting without appointment in areas utilized for the housing or processing of transient personnel, in barracks areas used as quarters, in unit areas, in family quarters areas, and in areas provided by installation commanders for interviews by appointment.

(4) Use of official identification cards by retired or reserve members of the Military Services to gain access to DoD installations for the purpose of soliciting.

(5) Procuring, or attempting to procure, or supplying roster listings of DoD personnel for purposes of commercial solicitation, except for releases granted in accordance with DoD Directive 5400.7.

(6) Offering unfair, improper, and deceptive inducements to purchase or trade.

(7) Using rebates to facilitate transactions or to eliminate competition.

(8) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.

(9) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(10) Full-time DoD personnel making personal commercial solicitations or sales to DoD personnel who are junior in rank or grade as provided in DoD Directive 5500.7[1].

(11) Entering into any unauthorized or restricted area.

(12) Using any portion of installation facilities, including quarters, as a

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[1] Copies may be obtained, if needed, from the US Naval Publications and Forms Center 5801 Tabor Avenue, ATTN: Code 301, Philadelphia PA 19120.

showroom or store for the sale of goods or services, except as specifically authorized by DoD Directives 1330.9[2] and 1330.17[3] and DoD Instructions 1330.18[4] and 1000.15[5]. This is not intended to preclude normal home enterprises, providing applicable state and local laws are complied with.

(13) Soliciting door to door.

(14) Advertising addresses or telephone numbers of commercial sales activities conducted on the installation.

(e) *Denial and Revocation of On-Base Solicitation.* (1) The installation commander shall deny or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the command. The grounds for taking this action shall include, but not be limited to, the following:

(i) Failure to meet the licensing and other regulatory requirements prescribed in paragraphs (a) and (b) of this section.

(ii) Commission of any of the practices prohibited in paragraphs (b)(6) and (d) of this section.

(iii) Substantiated complaints or adverse reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(iv) Knowing and willful violations of Pub. L. 90–321.

(v) Personal misconduct by a company's agent or representative while on the installation.

(vi) The possession of or any attempt to obtain supplies of allotment forms used by the Military Departments, or possession or use of facsimiles thereof.

(vii) Failure to incorporate and abide by the Standards of Fairness policies contained in DoD Directive 1344.9.[6]

(2) In withdrawing solicitation privileges, the commander shall determine whether to limit it to the agent alone or extend it to the company the agent represents. This decision shall be communicated to the agent and to the company the agent represents and shall be based on the circumstances of the particular case, including, among others, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability.

(i) Upon withdrawing solicitation privileges, the commander shall promptly inform the agent and the company the agent represents orally or in writing.

(ii) If the grounds for the action involve the eligibility of the agent or company to hold a state license or to meet other regulatory requirements, the appropriate authorities will be notified.

(iii) The commander shall afford the individual or company an opportunity to show cause why the action should not be taken. To "show cause" means an opportunity must be given for the grieved party to present facts on his or her behalf on an informal basis for the consideration of the installation commander.

(iv) If warranted, the commander shall recommend to the Military Department concerned that the action taken be extended to other DoD installations. If so approved, and when appropriate, the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), following consultation with the Military Department concerned, shall order the action extended to other Military Departments.

(v) All denials or withdrawals of privileges will be for a set period of time, at the end of which the individual may reapply for permission to solicit through the Military Department originally imposing the restriction. Denial or withdrawal of soliciting privileges may or may not be continued, as warranted.

(vi) When such denials or withdrawals are lifted, the Office of the ASD(FM&P) shall be notified for parallel action if the same denial or withdrawal has been extended to other Military Departments.

(vii) The commanding officer may, if circumstances dictate, make immediate suspensions of solicitation privileges for a period of 30 days while an investigation is conducted. Exceptions to this amount of time must be approved by the Military Department concerned.

(3) Upon receipt of the information outlined above, the Secretaries of the Military Departments may direct the Armed Forces Disciplinary Control Boards in all geographical areas in which the grounds for action have occurred to consider the charges and take appropriate action.

(f) *Advertising Policies.* (1) The Department of Defense expects voluntary observance of the highest business ethics both by commercial enterprises soliciting DoD personnel through advertisements in unofficial military publications, and by the publishers of those publications in describing goods, services, and commodities, and the terms of the sale (including guarantees, warranties, and the like).

(2) The advertising of credit terms shall conform to the provisions of Pub. L. 90–321 as implemented by Regulation Z.

(g) *Educational Programs.* (1) The Military Departments shall develop and disseminate information and education programs for members of the Military Services on how to conduct their personal commercial affairs, including such subjects as the Truth-in-Lending Act, insurance, Government benefits, savings, and budgeting. The services of representatives of credit unions, banks, and those nonprofit military associations (provided such associations are not underwritten by a commercial insurance company) approved by the Military Departments may be used for this purpose. Under no circumstances shall commercial agents, including representatives of loan, finance, insurance or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations expert in this field may, with appropriate disclaimers and permission, be adapted or used if approved by the Military Department concerned. Presentations by approved organizations shall only be conducted at the express request of the installation commander.

(2) The Military Departments shall also make qualified personnel and facilities available for individual counseling on loans and consumer credit transactions in order to encourage thrift and financial responsibility and promote a better understanding of the wise use of credit, as prescribed in DoD Directive 1344.9.[7]

(3) Military members shall be encouraged to seek advice from a legal assistance officer or their own lawyer before making a substantial loan or credit commitment.

(4) Each Military Department shall provide advice and guidance to military personnel who have a complaint under Pub. L. 90–321 or who allege a criminal violation of its provisions, including referral to the appropriate regulatory agency for processing of the complaint.

Appendix A—Life Insurance Products and Securities

A. Life Insurance Product Content Prerequisites

1. Insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on DoD installations, must:

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[2] See footnote 1 to § 43.6(d)(10).

[3] See footnote 1 to § 43.6(d)(10).

[4] See footnote 1 to § 43.6(d)(10).

[5] See footnote 1 to § 43.6(d)(10).

[6] See footnote 1 to § 43.6(d)(10).

[7] See footnote 1 to § 43.6(d)(10).

a. Comply with the insurance laws of the state or country in which the installation is located and the procedural requirements of this Directive.

b. Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

c. Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

d. Contain no variation in the amount of death benefit or premium based upon the length of time the contract has been in force, unless all such variations are clearly described therein.

2. To comply with paragraphs A.1.b., c., and d., above, an appropriate reference stamped on the face of the contract shall draw the attention of the policyholder to any extra premium charges and any variations in the amount of death benefit or premium based upon the length of time the contract has been in force.

3. Variable life insurance products may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

4. Premiums shall reflect only the actual premiums payable for the life insurance product.

B. Sale of Securities

1. All securities must be registered with the Securities and Exchange Commission.

2. All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.

3. All securities representatives must apply directly to the commander of the installation on which they desire to solicit the sale of securities.

4. Where the accredited insurer's policy permits, an overseas accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities Dealers or as an associate of a broker or dealer registered with the Securities and Exchange Commission—may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

C. Use of the Allotment of Pay System

1. Allotments of military pay for life insurance products shall be made in accordance with DoD Directive 7330.1.[8]

2. For personnel in pay grades E–1, E–2, and E–3, at least seven days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station.

D. Association—General

The recent growth and general acceptability of quasimilitary associations offering various insurance plans to military personnel are acknowledged. Some associations are not organized within the supervision of insurance laws of either a state or the Federal Government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained herein and the spirit of this part.

Appendix B—The Overseas Life Insurance Accreditation Program

A. Accreditation Criteria

1. *Initial Accreditation.*

a. Insurers must demonstrate continuous successful operation in the life insurance business for a period of not less than five years on December 31 of the year preceding the date of filing the application.

b. Insurers must be listed in Best's Life-Health Insurance Reports and be assigned a rating of B+ (Very Good) or better for the business year preceding the Government's fiscal year for which accreditation is sought.

2. *Reaccreditation.*

a. Insurers must demonstrate continuous successful operation in the life insurance business, as described in subsection A.1.a., above.

b. Insurers must retain a Best's rating of B+ or better, as described in paragraph A.1.b., above.

c. Insurers must establish an agency sales force in one of the overseas commands within two years of initial accreditation.

3. *Waiver Provisions.*

Waivers of the initial accreditation and reaccreditation provisions will be considered for those insurers demonstrating substantial compliance with the aforementioned criteria.

B. Application Instructions

1. *Applications Filed Annually.* During the months of May and June of each year insurers may apply for solicitation privileges for personnel assigned to U.S. military installations in foreign areas for the fiscal year beginning the following October 1.

2. *Application Prerequisites.* A letter of application, signed by the president, vice president, or designated official of the insurance company shall be forwarded to the Assistant Secretary of Defense (Force Management and Personnel), Attention: Personnel Administration and Services Directorate, ODASD(MM&PP), The Pentagon, Washington, DC 20301–4000. The letter shall contain the information set forth below, submitted in the order listed. Where not applicable, so state.

a. The overseas commands (e.g., European, Pacific, Atlantic, Southern) where the company is presently soliciting, or planning to solicit on U.S. military installations.

b. A statement that the company has complied with, or will comply with, the applicable laws of the country or countries wherein it proposes to solicit. "Laws of the country" means all natural, provincial, city, or county laws or ordinances of any country, as applicable.

c. A statement that the products to be offered for sale conform to the standards prescribed in Appendix A and contain only the standard provisions such as those prescribed by the laws of the state where the company's headquarters are located.

d. A statement that the company shall assume full responsibility for the acts of its agents with respect to solicitation. Sales personnel will be limited in numbers to one general agent and no more than 50 sales personnel for each overseas area. If warranted, the number of agents may be further limited by the overseas command concerned.

e. A statement that the company will not utilize agents who have not been accredited by the appropriate overseas command to sell to DoD personnel on or off its DoD installations.

f. Any explanatory or supplemental comments that will assist in evaluating the application.

g. If the Department of Defense requires facts or statistics beyond those normally involved in accreditation, the company shall make separate arrangements to provide them.

h. A statement that the company's general agent and other accredited agents are appointed in accordance with the prerequisites established in section C., below.

3. If a company is a life insurance company subsidiary, it must be accredited separately on its own merits.

C. Agent Requirements

Unified commanders shall apply the following principles:

1. An agent must possess a current state license. The overseas commander may waive this requirement for an accredited agent continuously residing and successfully selling life insurance in foreign areas, who, through no fault of his or her own, due to state law (or regulation) governing domicile requirements, or requiring that the agent's company be licensed to do business in that state, forfeits eligibility for a state license. The request for a waiver shall contain the name of the state or jurisdiction which would not renew the agent's license.

2. General agents and agents shall represent only one accredited commercial insurance company. This requirement may be waived by the overseas commander if multiple representation can be proven to be in the best interest of DoD personnel.

3. An agent must have at least one year of successful life insurance underwriting in the United States or its territories, generally within the five years preceding the date of application, in order to be designated as accredited and employed for overseas solicitation.

4. Appropriate overseas commanders shall exercise further agent control procedures as deemed necessary.

5. An agent, once accredited in an overseas area, may not change affiliation from the staff of one general agent to another and retain accreditation, unless the previous employer certifies in writing that the release is without justifiable prejudice. Unified commanders will have final authority to determine justifiable prejudice. Indebtedness of an agent to a previous employer is an example of justifiable prejudice.

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[8] See footnote 1 to § 43.6(d)(10).

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D. Announcement of Findings

1. Accreditation by the Department of defense upon annual applications of insurers shall be announced as soon as practicable by a notice to each applicant and by a listing released annually in September to the appropriate overseas commander. This approval does not constitute DoD endorsement of the insurer. Any advertising by insurers which suggests such endorsement is prohibited.

2. In the event accreditation is denied, specific reasons for such findings shall be submitted to the applicant.

a. Upon receipt of notification of an unfavorable finding, the insurer shall have 30 days from the receipt of such notification (forwarded certified mail, return recipt requested) in which to request reconsideration of the original decision. This request must be accompanied by substantiating data or information in rebuttal of the specific reasons upon which the adverse findings are based.

b. Action by the Assistant Secretary of Defense (Force Management and Personnel) on appeal is final.

c. If the applicant is presently accredited as an insurer, up to 90 days from final action on an unfavorable finding shall be granted in which to close out operations.

3. Upon receiving the annual letter of accreditation, each company shall send to the applicable unified commander a verified list of agents currently accredited for overseas solicitation. Where applicable, the company shall also include the names of new agents for whom original accreditation and permission to solicit on base is requested. Insurers initially accredited will be furnished instructions by the Department of Defense for agent accreditation procedures in overseas areas.

4. Material changes affecting the corporate status and financial conditions of the company which may occur during the fiscal year of accreditation must be reported as they occur.

a. The Department of Defense reserves the right to terminate accreditation if such material changes appear to substantially affect the financial and operational criteria described in section A., above, on which accreditation was based.

b. Failure to report such material changes can result in termination of accreditation regardless of how it affects the criteria.

5. If an analysis of information furnished by the company indicates that unfavorable trends are developing which may possibly adversely affect its future operations, the Department of Defense may, at its option, bring such matters to the attention of the company and request a statement as to what action, if any, is contemplated to deal with such unfavorable trends.

Dated: February 28, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4806 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations; Lafayette Park Structure Prohibitions and Sign Limitations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the National Capital Parks regulations in § 50.19 of 36 Code of Federal Regulations to prohibit stationary structures, with certain exceptions, and to place reasonable limitations on the size and number of stationary signs in Lafayette Park. The National Park Service has received numerous complaints from the general public concerning the presence in Lafayette Park of semi-permanent, billboard-type signs and various structures that substantially distract from the aesthetic quality of, and occupy a disproportionate amount of space within, the Park. Furthermore, concerns have been raised about damage to the Park and public safety. The rule addresses the use of Lafayette Park through a balancing of First Amendment freedoms of speech and expression against the rights of the park visitor to utilize this historic Park for traditional recreational and aesthetic purposes. A proposed rule was published on August 20, 1985. 50 FR 33571. Comments were accepted until October 21, 1985.

EFFECTIVE DATE: April 4, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, telephone (202) 426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, DC 20240, telephone (202) 343-4338.

SUPPLEMENTARY INFORMATION:

I. Background

As pointed out by the American Society of Landscape Architects Lafayette Park is a publicly-owned historic landscape and is part of the Lafayette Square Historic District. Once part of the White House grounds, Lafayette Park was separated from the White House in the early 1800's by President Thomas Jefferson for the use of residents and visitors to Washington.

The visual quality of Lafayette Partk is of extreme importance as the Park functions as a formal garden park of meticulous landscaping, with flowers, trees, fountains, walks and statues. In addition, Lafayette Park is a critical part of the aesthetic setting of the White House, literally functioning as the "front door" of that setting.

The National Capitol Planning Commission ("NCPC"), the central planning agency for the Federal Government in the National Capital Region, pointed out that Lafayette Park has been designated as a "Monumental and Decorative Park". As such, the NCPC indicated that it applies the following policies to Lafayette Park:

> Monumental and Decorative Parks, as shown on Diagrams 1, 2, and 3, [Lafayette Park appears on Diagrams 1, 2, and 3] should serve as settings to enhance public buildings, monuments and memorials; as such, their fundamental integrity should be protected. Additionally, they should serve as outdoor areas for displays and cultural activities, as well as areas for passive and controlled active recreational activities, including lunch time picnics and gatherings. . .

Lafayette Park has functioned historically as a site for residents and visitors to engage in recreational activities such as strolling through the grounds, eating lunch, reading or viewing the White House. Because of the character of the Park, more intensive recreational activities, such as softball and special events, are not allowed there. In addition, Lafayette Park has functioned historically as a site for traditional First Amendment activities, such as leafletting, making speeches, and carrying signs.

For most of the history of Lafayette Park, these many different interests—historic aesthetic, recreational, and First Amendment—have all been accommodated within this seven-acre park. However, over the past few years, Lafayette Park has been increasingly dominated by large, semi-permanent signs and structures of every sort which are often unattended by their owners.

It has not been uncommon to have signs as large as twenty-five feet by twelve feet in the Park for months at a time. In addition, it has not been uncommon to have structures ten feet high, eight feet long and four feet wide in the Park for long periods of time. Further, while the number of signs and structures increases and decreases as demonstrators come and go in the Park, there has generally been a large number of such materials in the Park at the same time. In August of 1984, for example, there were one hundred and forty signs in Lafayette Park on a continuing basis. Rather than a testament to differing opinions, the majority of these signs expressed the views of a handful of demonstrators. Eighty of the signs

present in the Park in August of 1984 belonged to one demonstrator. Over the past two years, two to six demonstrators have accounted for a vast majority of the signs that continuously occupy a large portion of Lafayette Park.

In July of 1985, there were seventy-seven signs in Lafayette Park, ranging in size from two feet by three feet to a sign eight feet by twenty-four feet. There were three signs that measured twelve feet by fifteen feet and thirteen signs that were at least eight feet wide. One of these signs indicated that thirty-three of the total number of signs belonged to two persons who had been in the Park since June of 1981. In addition to signs, there were various structures in the Park, including pyramids, chairs, a grocery cart, and desks.

These signs and structures have substantially tipped the delicate balance between casual use and the exercise of First Amendment rights that has existed in Lafayette Park for decades. Commenters on the proposed regulations indicate repeatedly that they have been preempted from utilizing the Park by a few demonstrators who physically occupy a great deal of space in the Park with signs and structures. Further, commenters indicate that it is difficult to get a clear view of the White House from behind the signs and structures in Lafayette Park. One demonstrator has had up to eight billboard-type signs, along with various smaller signs, lined up on the south sidewalk of the Park for long periods of time. This individual, along with one other demonstrator, has occupied almost half of the length of the south sidewalk of the Park, substantially interfering with the view of the White House from Lafayette Park.

In addition to the problem of a few individuals continuously preempting the use of a large portion of the Park, visitors complain frequently that the numerous large signs and structures amount to a visual blight in the Park and generally create an offensive and unsightly appearance in an otherwise formal and historic park area. Prior to the publication of the proposed rule, the National Park Service received at least twenty-five complaints, most requesting some action, concerning Lafayette Park. Each month since then (August, 1985), the Park Service has received additional complaints about the unsightly condition of Lafayette Park. Despite the fact that a few person commenting on the proposed regulations indicated that they did not recognize an aesthetic problem in the Park, almost two hundred other people complained about the present condition of the Park, some even saying that they will not visit, walk through or even drive past the Park. Many of these commenters acknowledged the importance of exercising First Amendment rights in the Park, but then plead for some balance between the rights of demonstrators and those of visitors to enjoy the beautiful and historic park.

Further, conversations with United States Park Police officer assigned to Lafayette Park during tourist seasons reveal that they receive frequent complaints about the visual blight in Lafayette Park. Complaints noted by the officers include the fact that large signs interfere with the view of the White House, prevent picture taking and, together with the ever-present structures, generally ruin the aesthetic quality of Lafayette Park.

In addition to aesthetic concerns, Park Service workers and members of the public have expressed concern about the safety of large billboard-type signs. Large signs in the Park are generally constructed of plywood and are very oftern crudely supported. Many times, the signs are not attended by their owners. On several occasions, large signs have been blown down by heavy winds and, in one case, a sign struck a pedestrian resulting in a head wound requiring several stitches. In addition, structures, often crudely constructed and sometimes utilizing glass pieces and protruding nails, present other safety hazards.

The Park Service has attempted to work with individuals having large signs and structures in order to ensure that these items are safe and properly secured. However, it has been the experience of the Park Service that it is almost impossible to keep up with the varied signs and structures that sometimes appear overnight in the Park. Further, some demonstrators are uncooperative in making changes in their property. Even when demonstrators will cooperate in attempting to make their signs and structures safer, the methods for accomplishing that end sometimes result in damage to the Park. For example, it has been found that large signs are often most safely secured by placing numerous stakes in the ground, causing damage to the turf and the Park's inground sprinkler system.

In addition to the damage caused by methods necessary to secure large signs and structures, the signs and structures themselves have caused injury to park resources. Whether the result of being permanently anchored to the ground or because of sheer size, many of the signs and structures in the Park can be moved only with considerable difficulty and only if the owner can be located. As long as large signs and structures are in the Park, it is impossible for the Park Service to perform routine maintenance such as watering, trimming and grass cutting. The placement of heavy signs and structures on the ground causes considerable damage to the turf, creating large patches of dried and dead grass. In addition, bricks making up the sidewalks through the Park have been crushed and damaged by large structures.

The presence of structures has been of particular concern in Lafayette Park. Without limitations on the size and use of structures, individuals have accumulated an assortment of buildings and rubbish in the Park, often unattended. Several two and three story structures have been built in Lafayette Park. Desks, chairs, bookcases, carts, doors and a porcelain toilet have all appeared in the Park. One individual filled a broken grocery cart with trash, stating that it was a symbolic structure. All in all, the presence of these items has produced a dump-like atmosphere in this historical and finely landscaped national park.

The National Park Service has attempted to deal with these problems under existing regulations. Starting in September of 1984, the Park Service began doing regular inspections of Lafayette Park in order to remove articles and conditions that violated federal regulations. Primarily utilizing its authority to remove stored and abandoned property, the Park Service removed many truckloads of property and trash from the Park. However, this authority was insufficient to deal with the many large signs and most of the structures that have appeared in Lafayette Park, as evidenced by the description of the condition of the Park in July of 1985. While there were fewer signs in the Park in July of 1985 than in August of 1984, this is due less to Park Service efforts to enforce existing regulations than to the fluctuation in the number of signs as demonstrations begin and end.

The National Park service currently has no effective regulations governing the use of signs and structures in Lafayette Park. Under present regulations, individuals and groups numbering twenty-five participants or less need not apply for a permit for, or even notify the National Park Service of, a demonstration in the Park. While groups numbering over twenty-five participants must apply for a permit to demonstrate, there are no provisions in

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existing regulations that would allow the Park Service to deny a permit for any kind or size sign. Under present regulations, a demonstrator may have as many signs, in whatever size, as Lafayette Park can accommodate.

Likewise, there are limited regulations governing structures. While a permit is necessary to erect a structure in any park area, the Park Service has no regulation prohibiting individual structures unless they cannot be accommodated in the Park. Therefore, existing regulations would not allow the Park Service to deny a permit for a symbolic display comprised solely of a porcelain toilet, for example.

In addition, it is often difficult to enforce existing regulations concerning trash and abandoned property. For example, the Park Service cannot always tell what property is trash and what is not. One individual had a cone covered with a pair or men's underwear in Lafayette Park. The individual claimed that the object was a symbolic structure.

Further, the Park Service has had a difficult time enforcing abandoned property regulations as it is not always possible to tell what is abandoned and what is not. One individual will often claim most of the signs and structures in the Park only to disappear the next day when some other individual claims all the objects. In addition, demonstrators are frequently in and out of the Park, making it impossible to prove clearly that they have abandoned their property. Finally, there are so many signs, structures and other property in Lafayette Park at any one time that it is difficult for Park employees who work in the Park on a daily basis to tell what property belongs to which demonstrator.

Because of the lack of regulations to deal effectively with aesthetic, public safety and resource protection problems in Lafayette Park, the National Park Service proposed amendments to the present demonstration regulations on August 20, 1985.

II. Analysis of Comments

1. Comments in Support

The National Park Service received one hundred and twelve letters and post cards and one petition containing one hundred signatures from individuals and groups supporting the proposed regulations. Most of these commenters expressly stated that large signs and structures in Lafayette Park substantially disrupted their enjoyment and view of the Park. Many found the Park to be "embarrassing" and "disgusting" due to the on-going demonstrations. Illustrative of many of these comments is the following:

> Congratulations and thank you for the newly announced regulations designed to clean up Lafayette Park while protecting demonstrators' First Amendment rights.
>
> The protection of these free-speech rights is highly important to me because I myself have marched and carried signs in support of a number of important causes. The proposed limit on size of signs and the "attendance" requirement is very reasonable and logical. Otherwise, the "demonstration" becomes "dumping" in a public place.
>
> The current state of the park is deplorable. In my walks to and from work, what I see is trash strewn through-out the park. The protesters are "few and far between." Numerous tourists are seen being frustrated in their attempts to view and photograph the White House and other fine architecture surrounding the park. The general appearance of the demonstrators and their shantytown is such that dialogue or any type of contact is avoided. Tourists returning to small towns recite with disgust how "the Government" has allowed protesters to litter, loiter, and camp permanently in this place which should belong to all the people.

A travel professional who works a few blocks from the White House wrote:

> I can speak from personal experience of the negative impression the scene in Lafayette Park presents to visitors, especially foreign visitors. Travel, especially to our beautiful monuments, constitutes the largest business in our area, larger even than government. We cannot tolerate this blight any longer.

Other commenters also spoke of the physical damage done to the Park and the potential safety hazards posed by the large, unattended signs and structures, as well as aesthetic concerns. An example of this is the following excerpt from one letter:

> I write to *support* the proposed amendments to NCP regulations concerning structures and signs in Lafayette Park, published on August 20th in the Federal Register. The amendments are a balanced approach to a serious problem, and protect the rights of those who wish to enjoy the park for its intended and primary purpose, while permitting exercise of 1st Amendment rights in this public space. Current regulations, or lack thereof, have led to a deterioration in both the physical/environmental integrity of the park, and in its aesthetic qualities. I live and work near the Park and have personally overved the destruction that some of these structures and signs have had on the grassy areas. The number of signs—many with the same or similar messages—detracts from both the acutal physical space that is available for enjoyment of this area for its intended use—as a park, and from the beauty of the area. The proposed amendments are a reasonable time, place and manner restriction which protects the park itself, as well as the rights of those who use the park as a park, yet permits those who use it only as a public forum to do so. I urge adoption of the proposals without substantive change. (Emphasis in the original).

The American Society of Landscape Architects summed up many of the comments received when it recommended the adoption of the proposed regulations and succinctly stated the reasons as follows:

> Lafayette Park has long been a major component in the historic setting of the White House, and is of critical importance in its context with the City of Washington.
>
> The park is a key experience to visitors to Washington from around the world, as well as a daily experience for many local residents.
>
> The present situation is both visually unattractive and potentially dangerous to visitors and users of what has historically been a meticulously maintained passive environment.

Many of the commenters expressed their commitment to the exercise of First Amendment rights but then stated their view that that exercise should not preclude others from enjoying the Park. The common thread running through the letters supporting the proposed regulations was a plea for balance, as evidenced in the following excerpt from one letter:

> I strongly support freedom of expression and am eternally vigilant to trends that impinge on that freedom. However, there must be balance. In recent years, there has been no such balance. Signs in Lafayette Park are unsightly, too large, and precariously erected. The safety of visitors to the park as well as the desire of visitors to the city to appreciate its sights must be weighed against the freedom of expression to achieve the required balance.

Most of the commenters expressed their belief that the proposed regulations represent the proper balance between the exercise of First Amendment rights and the rights of Park visitors. A judge on the United States Claims Court wrote as follows: "The proposed amendment represents a good-faith effort to balance the exercise of first amendment rights with the very real spoliation of Lafayette Park." The American Society of Landscape Architects commented as follows:

> The ASLA is aware of the sensitivity of this issue in regard to First Amendment freedoms, and feels that the proposed regulations are fair and appropriate in balancing those freedoms against the rights of the park visitor. The American Society of Landscape Architects recommends the adoption of these regulations.

2. Comments in Opposition—Too Lenient

The National Park Service received seventy-six letters and post cards from individuals and groups who felt that the

proposed regulations were too lenient. One letter contained eight signatures. In addition, the Park Service received one petition with nine signatures requesting that the regulations be changed to allow only hand-carried signs in Lafayette Park.

The majority of these commenters suggested that the National Park Service place a total ban on stationary signs in Lafayette Park. For example, J. Carter Brown, writing for the Commission of Fine Arts, indicated that the Commission "can testify only too well the degree to which this most historic of Washington's parks has been increasingly spoiled over the last few years by a proliferation of signs and other structures erected in the name of some cause." Finding that the major cause of the problems in Lafayette Park is the permanent nature of signs and structures, the Commission recommended a requirement that signs and demonstrators keep moving throughout a demonstration.

Senator Mark O. Hatfield pointed out that "Oregonians who visit Washington frequently mention their unhappiness over the lack of respect shown for the public interest in maintaining a scenic public park in front of the White House." The Senator also pointed out the substantive damage done to the Park by large signs over the years. The Senator stated that he would not object to even more restrictive size requirements and the elimination of all stationary signs. Representative John F. Seiberling questioned why any sign should be set up as a permanent fixture in the Park and suggested that the Park Service allow only one sign per person. The Architect of the Capitol and the Washington Legal Foundation, as well as many individuals, also suggested that the Park Service allow only hand-carried signs in Lafayette Park.

The National Park Service agrees that a requirement that all signs be hand-carried, rather then stationary, would better serve aesthetic, public safety and resource concerns in Lafayette Park. However, the Park Service believes that it has an obligation to attempt a less restrictive alternative, such as the regulations adopted here, to determine whether this alternative would be sufficient to meet the substantial government interests detailed. If the final regulations, once made effective, do not meet these interests, the Park Service may then consider further regulatory changes.

A number of other commenters suggested that signs and/or demonstrations be banned from Lafayette Park altogether. The National Park Service recognizes that a part of Lafayette Park's history is the Park's role as situs for free expression. The Park Service believes that it would not be appropriate to ban demonstrations from this area.

Other commenters suggested additional time and place restrictions on demonstrations in Lafayette Park. For example, the Washington Legal Foundation ("WLF") found the proposed regulations to be a "half-hearted" and "timid" attempt to deal with the problems in the Park and suggested several alternatives. Primarily, the WLF suggested a requirement that: (1) All signs be hand-carried and those signs be no larger than four feet by four feet; (2) all signs be confined to either the Northeast or Northwest quadrant of Lafayette Park; and (3) no demonstrations be allowed between 11:30 a.m. and 1:30 p.m. each day. Again, we believe that the Park Service should try the less restrictive alternative and, only if it fails, should move to more restrictive measures.

Many other commenters agreed with the WLF's proposal to close the Park to demonstrations periodically. Some suggested closing the Park at night; some suggested closing the Park on weekends. One commenter suggested that no group should be allowed to demonstrate longer than 24 hours in any one seven-day period. Finally, one individual suggested an alternative regulatory scheme that would allow larger signs, but with restrictions on length of stay.

The National Park Service did consider closing the Park to demonstrators at night. However, this limitation, as any limitation on duration of demonstrations, would preclude continuous vigils in Lafayette Park. Although the Park Service does not believe that it has a constitutional obligation to allow continuous vigils, it does not wish to preclude them unless other measures are insufficient to meet aesthetic, public safety and resource concerns.

Other commenters suggested that sign size limitations be more restrictive. The National Capital Planning Commission supported the proposed regulations but suggested that further limitations be placed on stationary signs. One individual recommended a regulation that would limit the maximum allowable sign size to three feet by three feet. This contrasts sharply with the views of commenters who felt that the sign sizes proposed in the regulations were too restrictive, as discussed below. While any decision as to allowable sign size is a difficult line-drawing exercise, the National Park Service believes that it has chosen a sign size limitation which represents a reasonable accommodation between aesthetics, resource protection and public safety, and the ability of demonstrators to convey a message.

Several commenters further suggested that the limitations on demonstrations in the proposed regulations be extended to all parks in downtown Washington. The National Park Service maintains the different parks at different aesthetic levels. For example, the Mall and the Ellipse are not maintained as formal garden parks like Lafayette Park. Further, parks like the Mall and the Ellipse can sustain greater impact. They are maintained in great part for recreational purposes. Therefore, the Park Service believes that each park must be considered separately.

Several commenters also mentioned areas in which the proposed regulations were vague, and thus needed further clarification. One commenter questioned whether limitations on signs "placed or set down" would include signs set on wheels. To clarify the intent of the regulations that all signs not hand-carried are subject to the size limitations specified, we have deleted the "placed or set down" language in the final regulations and inserted language specifically subjecting all "signs not being hand-carried" to the size limitations.

The WLF also pointed out that the provision in the proposed regulation allowing speaker's platforms is unclear as to when these structures may be used and whether they must be attended. We have revised the proposed regulations to allow the use of a speaker's platform as reasonably required to serve demonstration participants only when a demonstration actually attracts one hundred or more participants and only when the platform is being erected, dismantled or used. Likewise, for a demonstration attracting fewer than one hundred persons, the final regulations would allow a "soapbox" speaker's platform only when it is being erected, dismantled or used.

Finally, commenters pointed out that problems other than aesthetics are caused by the use of large signs and structures in Lafayette Park. The WLF expressed their concern for the safety of the White House and the President in light of the numerous means of concealment offered by large, permanent signs and structures. Another commenter indicated that large signs and structures often block passageways, benches and trash cans throughout the Park. Almost every commenter objected to the usurpation of substantial parts of the Park by a few demonstrators. The National Park Service believes that the

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final regulations, coupled with existing regulatory authority, will eliminate most of these problems.

3. Comments in Opposition—Too Restrictive

The National Park Service received thirty-nine letters from individuals and groups opposing the proposed regulations. It also received a petition, with several thousand signatures, in opposition. However, after carefully reviewing the petition, it appears that many of the signatures were gathered in April and May of 1985, prior to the drafting of these proposed regulations, and in response to a preamble that speaks generally to the closing of Pennsylvania Avenue and "further restrictions on demonstrating around the White House." These pages do contain the sentence "I believe that the ethnic identity of the United States is more aptly expressed by freedom to assemble and protest in Lafayette Park than by pristine pictures of the White House". Even though most of the petition did not address the specific regulations proposed here, the entire petition was given careful consideration. We especially noted several pages that did refer specifically to provisions in the proposed regulations.

Many of the commenters opposing the proposed regulations made the point that Lafayette Park is a unique site for First Amendment activities because of the Park's close proximity to the White House and its occupants. Further, groups such as the American Civil Liberties Union ("ACLU"), the Sierra Club and the White House Vigil for the ERA, as well as individuals, indicated that Lafayette Park has long been utilized by demonstrators such as the early suffragettes to bring their message to the public. The commenters stated their belief that, because of the unique opportunities Lafayette Park offers to bring a message directly to the public and the Executive Branch, demonstrations must be allowed to continue in that Park.

The National Park Service agrees that Lafayette Park is an appropriate site for demonstrations and emphasizes the fact that the final regulations do not prohibit demonstrations in the Park. The Park Service is merely placing reasonable limitations on the demonstrations that do occur in the Park. Further, while Lafayette Park has historically been the site of many demonstrations for many different causes, the Park has become a site for permanent billboard-type signs and structures only in the last few years. The Park Service is not attempting to change the traditional use of Lafayette Park for demonstrations. Rather, it is merely attempting to solve a problem that has recently arisen in the Park.

It was pointed out repeatedly by those opposing and those favoring the proposed regulations that it has only been a handful of individuals who have had the large signs and structures in the Park. Many of those opposing the regulations seemed to believe that the proposed regulations would somehow prevent, or were intended to prevent, those individuals from demonstrating in Lafayette Park. The National Park Service does not intend to prohibit any individual from demonstrating in Lafayette Park. The individuals now demonstrating in the Park may remain there under the final regulations. They simply cannot continue to have large, unattended signs and structures. Each demonstrator may have two four-foot by four-foot signs as long as they are attended. Further, demonstrating groups may have a speaker's platform and hand-carried structures.

The ACLU specifically questioned the motives of the National Park Service in promulgating these regulations, suggesting that the sole purpose for the amendments is to harass certain individuals now demonstrating in Lafayette Park. To support this proposition, the ACLU attached to its comments several affidavits by Concepcion Picciotto, a long-time demonstrator, that allegedly prove that the Park Service is allowing private citizens to destroy demonstrators' signs.

The final regulations are intended to address real and substantial problems now existing in Lafayette Park. If the regulations, when effective, have a greater impact on one group of demonstrators, it is only because those demonstrators are the ones causing the substantial problems in the Park with large signs and structures.

Further, we have examined Ms. Picciotto's complaints that the Park Police failed to stop private individuals from damaging her signs. Police reports indicate that Park Police arrived only after the alleged damage was done in each of these incidents. Having no authority to make arrests for misdemeanors not committed in their presence, the police appropriately referred Ms. Picciotto to the Citizens Complaint Bureau. See 16 U.S.C. 1a–6.

In another incident not mentioned by the ACLU, the Park Police went to Lafayette Park in response to a complaint by Ms. Picciotto that she had been assaulted and one of her signs had been damaged. The alleged assailant, a member of the military, admitted to destruction of the sign. He was then taken into custody and, pursuant to Park Police General Orders, turned over to military authorities. The Park Police officer handling the complaint advised Ms. Picciotto to go to the Citizens Complaint Bureau to file a complaint and gave her a brochure on the Bureau. The officer later went to the United States Attorney's Office to seek a warrant against the assailant. That office declined to approve the application for a warrant.

Some commenters also suggested that restrictions on demonstrations on the White House sidewalk make Lafayette Park an even more important site for demonstrations directed toward the White House. It is true that restrictions were placed on the size, placement and construction of signs used on the White House sidewalk in July of 1983. These restrictions were intended to meet security as well as aesthetic interests on the sidewalk and were promulgated largely because of a proliferation of large, unattended signs and structures. The imposition of those regulations appears, in large part, to be the reason for the movement of large signs and structures to Lafayette Park. Once in Lafayette Park, the signs and structures grew in size and number until the Park Service was forced to consider additional regulatory limitations there also.

The Park Service believes, however, that the final regulations, coupled with the White House sidewalk regulations, leave open ample avenues for communication. Neither regulation prohibits leafletting, making a speech, having marches, exhibiting signs or engaging in any other traditional method of exercising First Amendment rights. In fact, an individual may have a sign as long as twenty feet and as wide as three feet on the White House sidewalk not three hundred feet from the White House.

One commenter argued that "by precedent" the proposed regulation would limit demonstrations in other parks. The final regulations are specifically applicable to Lafayette Park alone and would not place any limitations upon demonstrations in any other park, such as the Ellipse or the Mall.

Many of the commenters opposing the proposed regulations, such as the ACLU, take the position either that there is no problem in Lafayette Park or that the problem can be handled under existing regulations. The ACLU, for example, stated that the Park Service has misrepresented the current situation and that visitors to the Park find the ongoing demonstrations to be "a thrilling example of their democracy in action."

The ACLU further stated that visitors are not precluded from using Lafayette Park as they are free to walk through the demonstration sites. Other commenters questioned whether the view of the White House from Lafayette Park is really blocked by signs.

In response, the National Park Service points out that almost two hundred persons or groups wrote to the Park Service to support the proposed limitations on demonstrations in Lafayette Park or to request more stringent restrictions. Some of those letters have been quoted in part above. Commenters also pointed out the difficulty in getting a clear view of the White House from Lafayette Park.

It is obvious that some people find the aesthethic quality of Lafayette Park to be damaged by large signs and structures. It is equally obvious that there are divergent views on the question of aesthetic quality in Lafayette Park. For this reason, the Park Service has attempted to take a "middle" position in the final regulations that accommodates the exercise of free speech in the Park while still maintaining the aesthetic quality of the Park and meeting resource protection and safety concerns. We have carefully reviewed the regulations and found them to represent such "middle ground".

The ACLU and others did bring to our attention an additional aesthetic problem in the area of Lafayette Park. In its comments, the group indicated that tour buses and trucks parked along Pennsylvania Avenue obstruct the view of the White House from Lafayette Park more than signs along Pennsylvania Avenue. Although the primary focus of the proposed regulations is the maintenance of the aesthetics in Lafayette Park itself, the Park Service is concerned with maintaining as unobstructed a view as possible of the White House. For this reason, and in response to the ACLU's comments, we have initiated discussions with the District of Columbia, which has primary law enforcement jurisdiction on Pennsylvania Avenue, in an effort to eliminate parking, especially by buses and trucks, on the Avenue.

None of the commenters opposing the regulations seem to dispute the safety problems and resource damage done by large, unattended signs and structures. However, some commenters felt that vigorous enforcement of existing regulations would eliminate these problems as well as aesthetic concerns. The ACLU suggested that the National Park Service simply spend money to repair damaged areas and commented that other events do equal damage to the parks.

The National Park Service has attempted to alleviate current problems in the Lafayette Park by utilizing existing regulations, as noted above. Starting in September of 1984, and after consultation with the ACLU, the Park Service began a program of weekly park inspections for the purpose of spotting items in violation of the regulations and removing them. However, this effort did not succeed in eliminating large, unattended signs and structures in Lafayette Park. This failure was due primarily to the fact that there are no regulations at present that prohibit structures or place limitations on signs in the Park. As discussed earlier, regulations prohibiting abandoned property are practically impossible to enforce because of present conditions in the Park. Therefore, additional regulations are necessary.

As to the ACLU's suggestion that the Park Service should allow the damage caused by large signs and structures and simply spend the money to repair it, the National Park Service does not believe that the Government, and ultimately the taxpayers, have a constitutionally-imposed duty to pay for unlimited destruction of park resources by a few individuals. The Supreme Court affirmed this when it found in *Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540, 549, that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe that right.

The Park Service realizes that signs properly supported will cause damage to the Park. These final regulations limit that damage by requiring signs to be smaller, and by prohibiting most structures. The Park Service believes that the regulations achieve a reasonable balance between the right to demonstrate and the right of other citizens to have the parks maintained in an intact condition.

As to the ACLU's comments that the Park Service has allowed activities on the Washington Monument Grounds on July 4th of each year that result in substantial damage to that area, the Park Service must point out that the Monument Grounds are not maintained at the same level of aesthetic quality as Lafayette Park. For example, softball, other games, and special events are allowed on the Monument Grounds but are not allowed in Lafayette Park. Further, the Park Service is taking well-publicized steps to change the July 4th program to minimize resource damage.

The ACLU also indicated that Lafayette Park suffers some damage every four years as a result of Inaugural activities. As pointed out by the ACLU, the Park Service has no veto power over these activities, the activities being congressionally and constitutionally mandated. Moreover, the groups causing that damage have been required to pay for all necessary repairs.

Even when aesthetic and resource damage and threats to public safety were acknowledged, some commenters took the position that the Park Service is legally barred from addressing those concerns. The ACLU in particular argued that the exercise of First Amendment rights must predominate over other government interests. Many of those opposed to the proposed regulations took the position that destruction of aesthetic quality must be tolerated to accommodate First Amendment rights. Among these were numerous activist groups who signed a statement issued by a group called "Friends of First Amendment Rights in Lafayette and other Federal parks."

The National Park Service believes that the exercise of First Amendment rights is of great importance. However, it also believes, in accord with a multitude of court decisions, that reasonable limitations may be placed upon that exercise when necessary to meet legitimate government interests. It is beyond question that resource protection and public safety constitute substantial government interests. We also believe that the Supreme Court has indicated quite clearly that aesthetics also rises to the level of a legitimate government interest. Recently, the Court stated, in *City Council* v. *Taxpayers for Vincent*, 104 S. Ct. 2118, 2129 (1984), that "the state may legitimately exercise its police powers to advance aesthetic values." More specifically, both the Supreme Court and this Circuit have recognized the substantial government interest in "maintaining the parks in the heart of the capital in an attractive and intact condition." *White House Vigil for the ERA Committee* v. *Clark*, 746 F.2d 1518, 1529 (1984), quoting *Clark* v. *Community for Creative Non-Violence*, 104 S.Ct. 3065, 3070 (1984). The Court of Appeals went further in saying "Finally, the government has a substantial interest in the preservation and enhancement of the human environment; aesthetics are a proper focus of governmental regulation." 746 F.2d at 1528.

The National Park Service believes that these decisions sanction reasonable limitations upon activity that diminishes the aesthetic quality of, and that does damage to, Lafayette Park. However, many of the commenters who opposed the proposed regulations stated that they believed that these regulations

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did not represent such reasonable limitations.

Several commenters opposed the size restrictions placed upon signs in the proposed regulations. Those commenters argued that large signs are necessary in order to have their messages read from a long distance, especially from the White House, and are necessary for complex messages.

The National Park Service has documented that a four-foot by four-foot sign can be read from a considerable distance. It may be true that, depending on the size of the printing, a sign that size could not be read from the White House sidewalk. However, signs as large as three feet high and twenty feet long are allowed on the White House sidewalk itself. Further, the Park Service does not believe that it has a constitutional obligation to ensure that a demonstration sign can be read from any arbitrary distance chosen by a demonstrator or that the sign be large enough to accommodate any lengthy and complex message an individual can imagine.

Further, the ACLU and the Sierra Club stated that they saw no reason for a limitation on the thickness of allowable signs. The National Park Service believes that a limitation on the thickness of signs is necessary to prevent individuals from erecting signs that are, in reality, structures, for example, a "sign" four feet long, four feet wide and four feet deep. In fact, demonstrators have argued in court that structures that are four-sided and that have been used as living accommodations are "signs". Further, the quarter-inch requirement assures a relatively light sign that can be moved by demonstrators when they leave or when park maintenance is necessary. However, the Park Service is revising the proposed regulations to exclude from the thickness provision braces reasonably required to support lawful signs so long as the braces are not used to form an enclosure of two or more sides. This allows demonstrators to properly brace their sign without fear of running afoul of these regulations.

The ACLU also suggested that the Park Service allow signs to be up to six feet in height if it is going to allow them to be elevated to a height of six feet. We must reject this suggestion. The Park Service is proposing a regulation that would allow signs to be elevated to six feet to accommodate supports that might raise a sign above the four-foot level. The purpose of this is to accommodate demonstrators and public safety concerns, not to create a loophole through which billboard-type signs again can creep into the Park.

While agreeing that signs should be attended, most commenters opposing the proposed regulations disagreed with the requirement that a person stay within three feet of his/her sign. The ACLU suggested that there be exceptions for demonstrators who, for example, wish to cross the street to chat with passersby, retrieve a hat blown off by the wind or go to the restroom. Another commenter suggested that sign owners merely be required to stay within the Park or on the surrounding sidewalks.

The Park Service has carefully considered these comments but can think of no regulatory alternative that would assure that signs are, in fact, attended. It would be impossible to enforce a regulation that contained the kinds of exceptions suggested by the ACLU or the suggestion that sign owners be somewhere in the Park or on surrounding sidewalks. Further, a regulation requiring persons to be in physical contact with their signs at all times on the White House sidewalk, a regulation upheld by this Circuit, has been in effect for several years and has not discouraged the thousands of demonstrators who use that site each year. The most effective enforcement scheme is to require physical contact with signs. There is no doubt in that situation as to the ownership of signs. However, the National Park Service did not wish to prevent individuals from moving a short distance away from their signs to conduct other demonstration activities.

Several commenters argued that the Park Service has regulations capable of dealing with any attendance problems now occurring in Lafayette Park. While there is a regulation prohibiting the abandonment of property in the parks, the regulation has been ineffective in preventing persons from leaving signs and structures unattended for long periods in Lafayette Park, as discussed above.

Another commenter suggested an exception to the attendance requirement that would allow demonstrators to stack and store signs for later use. However, the Park Service believes that any attendance requirement must be applied across the board to standing or stored signs.

Several commenters opposed the limitation on the number of signs any one demonstrator may have in the Park at any one time. The ACLU complains about the limitation on "the quantum of a person's speech". The National Park Service does not believe that an individual has a constitutional right to an unlimited "quantity" of free speech regardless of the impact of that speech on other interests. Without a limitation on the number of signs, a few demonstrators would be free to occupy the whole of Lafayette Park to the exclusion of everyone else and to the detriment of park resources.

Several commenters also opposed the proposed prohibition on structures in Lafayette Park. The ACLU indicated that such a prohibition is not necessary and that it is overbroad. While admitting that large, heavy structures such as desks, bookcases, and porcelain toilets "may" be inappropriate in Lafayette Park, the ACLU argued that present regulations are sufficient to keep these items out of the Park. The National Park Service disagrees.

There are no regulations that prohibit structures in Lafayette Park. The Park Service has been able to deny permits for such massive construction projects as public libraries and spaceship landing facilities under regulations which allow the Park Service to deny permits for activities that cannot be reasonably accommodated in the Park. However, it is unclear whether this regulation could be applied to a desk or porcelain toilet. At any rate, the Park Service believes that a more specific regulation gives more specific notice to the public concerning items that are prohibited.

Another commenter suggested that the term "structure" be defined. While we believe that the term has a generally understood meaning, we have revised the regulations to give the public notice of the usage of the term by providing examples of prohibited structures, and by listing those items that are not considered to be "structures".

The ACLU and the Sierra Club also argued that the proposed prohibition is overbroad as it would also prohibit "well-recognized items" such as tables for literature and folding chairs. The Park Service does not believe that use of tables and chairs is protected under the First Amendment, and even if it were, there is ample government interest in aesthetics, park protection and public safety to support a neutral, across-the-board ban on such use. However, in an effort to respond to the concern about a prohibition of traditional symbolic materials, we have revised the regulations so as to allow any structure in Lafayette Park that is being hand-carried. This exception, then, would allow symbolic structures, such as coffins and cages, to be carried in the Park.

In its comments, the ACLU also argued that the Park Service, not the demonstrators, is responsible for the dump-like appearance of the Park. We

do not believe this argument to have merit. For example, the ACLU faults the Parks Service for not seizing chairs, the exact items that the ACLU later characterizes as "well-recognized" demonstration materials. The group also criticized the Park Service for not removing other items, many of which the record shows have been seized by the Park Service and then repeatedly returned to the Park by their owners. Finally, the ACLU criticized the Park Service for not allowing demonstrators to construct and repair their signs in Lafayette Park. We do not believe that the National Park Service must allow Lafayette Park to become a construction area.

Ten persons wrote to the National Park Service opposing the proposed regulations because the Department of the Interior allegedly did not enforce building height laws to prohibit the construction of Metropolitan Square on 15th and F Streets. None of the comments contained substantive criticisms of the specific provisions containd in the proposed regulations. Since the building of Metropolitan Square is unrelated to anything in the proposed rulemaking, we simply note these commenters' opposition in this rulemaking.

Several commenters, including the ACLU, suggested a public meeting or private negotiations concerning this rulemaking effort. It would be inappropriate in this instance to have private negotiations with any one individual or group. This rulemaking has been thoroughly and intelligently discussed in the media, through editorials, articles and letters to the editor, and thoughtful comments have been received from all sides of the question. The National Park Service does not believe that a public meeting would contribute any comments or insights not already expressed and addressed here.

III. Regulatory Changes

As is evident from the foregoing discussion of comments on the proposed regulations, there is a divergence of views on the proper regulatory scheme for Lafayette Park. The National Park Service, in its role as manager of the nation's parks, must ultimately decide how best to administer and manage Lafayette Park. The task is made all the more difficult by the dual functions of that management—to conserve the resource while at the same time allowing public use.

The National Park Service has carefully reviewed the proposed regulations in light of all the comments. The Park Service has found that, with a few changes, as discussed below, the proposed regulations represent the best balance possible between the exercise of First Amendment rights and the maintenance of visual quality, resources and public safety. For this reason, the National Park Service adopts the proposed regulations, with noted changes, as the final rule amending 36 CFR Part 50. The specific changes are discussed below.

1. Signs

The National Park Service is amending its regulations to limit the size of stationary signs permitted in Lafayette Park; limit the number of stationary signs one individual may have in the Park at any one time, and require that stationary signs be attended.

By amending its regulations, the National Park Service is not prohibiting demonstrations in Lafayette Park. Nor is it placing any limitation on signs that are hand-carried. The Park Service is merely placing reasonable, content-neutral limitations on stationary signs used in Lafayette Park so that visitors might be able to enjoy the history and beauty of the Park while demonstrators continue to have ample avenues of communication. In addition, the final regulations would apply only to Lafayette Park and not to the many other park areas in close proximity, for example, the Ellipse on the south side of the White House.

Specifically, the final regulations limit the size of stationary signs permitted in Lafayette Park to the dimensions of four feet in length, four feet in width and one-quarter inch in thickness. Such a size limitation would prohibit the immense billboard-type signs that now dominate Lafayette Park and which substantially impact the aesthetic values of the Park, while creating safety concerns and seriously damaging park resources.

The proposed regulations have been changed slightly to make it clear that the size and sign limitations apply to all signs that are not hand-carried. Therefore, the limitations specified would be applicable to a sign placed on wheels when that sign is not being hand-carried.

As noted in the notice of proposed rulemaking, the National Park consulted its *Service Sign System Specification Manual* ("Manual") in order to arrive at a permitted sign size that fully accommodates the needs of demonstrators. The Manual is utilized by National Park Service personnel to determine the sign size and lettering necessary to be adequately seen by pedestrian traffic. Signs utilized by the Park Service contain directions, instructions, prohibitions and warnings.

Utilizing standards set forth in the Manual, it was calculated that a sign four feet by four feet could contain at least ten lines of writing in a letter size that could be seen easily up to one hundred feet away from the sign. We are aware that signs with that lengthy a message may not be readable from the White House or the White House sidewalk. However, the National Park Service does not believe that it has an obligation to allow signs that are large enough to be read from any distance a demonstrator chooses. Further, signs up to three feet wide and twenty feet long can be used on the White House sidewalk itself.

In addition, in July of 1985, forty-four percent of the seventy-eight signs in Lafayette Park had a message consisting of ten words or less; of these, fifty percent had messages of five words or less. These messages could easily be placed on a four by four sign in very large lettering that probably could be seen even from the White House sidewalk.

On the basis of these considerations, it was determined that a four-foot by four-foot sign offered an effective means of communication for demonstrators. Further, the dimensions stated conform to a standard size of plywood commercially available. While there are no magic dimensions above which damage will certainly occur and below which government interests will certainly be satisfied, the Park Service has attempted to accommodate the needs of both visitors and demonstrators with this selection of permissible sign size.

In addition, the National Park Service is limiting the thickness of stationary signs allowed in Lafayette Park to one-quarter inch. This requirement prevents individuals from claiming all manner of structures as signs. Without a thickness restriction, an individual could utilize a "sign" that was four feet long, four feet wide and four feet thick. A quarter-inch was chosen as the maximum thickness dimension because that is a standard size of plywood, the material most often used for signs in Lafayette Park, and is relatively light and easier to move than other plywood of greater thickness. Park Service employees indicate that quarter-inch plywood weighs half of what half-inch plywood weighs. For example, a four-foot by eight-foot sheet of external plywood one-quarter inch thick weighs twenty-four pounds; the same sheet one-half inch thick weighs forty-eight pounds.

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Language has been added to the final regulations to make it clear that the sign thickness limitation is not applicable to braces that are reasonably required to meet support and safety requirements. However, this exclusion is not intended to allow huge "A-Frame" type supports or other supports that are not reasonably required to support a four by four sign. In addition, braces may not be used to form an enclosure of two or more sides. This requirement is added to assure that individuals do not use the exception to the thickness limitation to convert their signs into structures, shelters or places for storage of property.

To accommodate individuals and groups who wish to have larger signs, the National Park Service has exempted all hand-carried signs from these size limitations. This allows demonstrators to have large signs, which includes banners, but assures that the signs will not cause damage to park resources because they will not be placed on the ground, will not create safety concerns because they will be held by demonstrators, and finally, will not create aesthetic problems because they can be easily moved and will not be permanent in nature.

To avoid circumvention of the size limitations on stationary signs, the final regulations also prohibit a conforming-size sign from being elevated to exceed a height of six feet above the ground. It would do little good to place limitations on the height of stationary signs only to have them again become billboard size by utilizing posts or other means of elevation. In addition, such elevation over six feet could result in additional safety problems. The National Park Service is allowing signs to be elevated in order to accommodate the use of supports and to allow demonstrators to make signs more visible.

Also to avoid circumvention of the size limitations, the final regulations prohibit the arrangement or combination of stationary signs so as to exceed the permitted size limitations. Again, it would be useless to institute sign size limitations if those limitations could be easily circumvented by combining two or more signs so as to create a billboard effect.

The proposed regulations have been revised slightly to prohibit the arrangement of signs so as to form an enclosure of two or more sides. This requirement, like the parallel requirement for sign bracing, prevents the use of signs for noncommunicative purposes such as for structures, shelters, and storage spaces.

To avoid the problem of one individual utilizing a great deal of space with unlimited numbers of signs and to avoid the massive accumulation of signs that is now occurring in the Park, the National Park Service is limiting the number of stationary signs that a single individual can have in Lafayette Park at one time. Present regulations do not prohibit a single individual from monopolizing any amount of this national park that attracts thousands of people each year by just adding sign after sign to his or her collection. The final regulations eliminate this unfair usurpation of park land by limiting each person to two stationary four-foot by four-foot signs at any one time in Lafayette Park. This provision would also diminish the aesthetic impact that a few individuals could have if allowed to accumulate unlimited numbers of signs. The Park Service believes that this is a reasonable accommodation of both visitors and demonstrators.

In addition to limiting the number of signs that an individual may have in Lafayette Park, the final regulations require that stationary signs in the Park be attended. The term "attended" is defined in the regulations as being within three feet of a sign. This requirement assures that demonstrators take responsibility for their signs. Specifically, the attendance requirement assures that signs can be readily identified with specific individuals so that safety problems can be quickly rectified, so that signs can be moved temporarily for routine park maintenance such as grass cutting, trimming and watering, and so that Park Service personnel can tell which signs are abandoned. Further, we do not believe that individuals have a right to permanently usurp public park areas by erecting signs and then leaving them to attend to other business.

The definition of the term "attended", *i.e.*, within three feet, was not an easy line to draw. The three-foot distance requirement was first suggested by the Court of Appeals for the District of Columbia Circuit. In the course of reviewing a preliminary injunction against enforcement of the White House Sidewalk regulations, the Court modified the Park Service's definition of the term "attended" to require individuals to be within three feet of their signs. *White House Vigil for the ERA Committee* v. *Watt*, No. 83–1775 (D.C. Cir., Order issued Aug. 8, 1983). While the Court finally approved the original definition, *i.e.*, in physical contact, for the White House Sidewalk, we adopted a three-foot requirement for Lafayette Park to enable demonstrators to move a short distance from their signs to carry on other activities such as engaging in discussions with others or passing out leaflets or other publications.

We do not believe that a less restrictive regulation would meet legitimate needs in Lafayette Park or would be enforceable. Requiring only that an individual be somewhere in the seven-acre Park, as suggested by one commenter, would not meet the need for the Park Service to identify specific individuals with specific signs. Neither could such a requirement be effectively enforced. Likewise, a regulation allowing individuals to leave the Park to eat or use the bathroom or chat with persons on the White House Sidewalk, as suggested by other commenters, would also defeat any efforts toward accountability and would be impossible to enforce.

The National Park Service believes that the sign limitations described will together solve many of the problems that have arisen in the Park. While each restriction separately benefits the Park and the public, no restriction alone meets all of the Government's interests. For example, a prohibition of unattended signs alone would not necessarily prevent an individual from utilizing a disproportionate amount of space in the Park. Without corresponding size and number limitations, that individual could surround him/herself with a number of large signs and still be within three feet of some part of each sign. Sign size and number restrictions, without a requirement that the signs be attended, would result in the numerous problems associated with absentee owners, as described above.

2. Structures

In addition to restrictions on the use of signs in Lafayette Park, the National Park Service is prohibiting the use of stationary structures in the Park, with the exception of certain speaker's platforms.

Structures have substantially intruded upon visitors' enjoyment of Lafayette Park. The lack of specific restrictions in existing regulations has led to massive structures being placed in the Park. These structures substantially detract from the view of the Park and monopolize large portions of the Park. Further, it has been the experience of the Park Service that some demonstrators have accumulated a large number of items in the Park, items including piles of rubbish, doors and desks, claiming that these are permitted structures. Rather than communicating a message, these items have generally evoked complaints from citizens. Finally, the presence of structures of any

sort in the fragile environment of Lafayette Park causes resource damage.

For these reasons, the Park Service initially considered a total ban on all structures in the Park. Consideration of less restrictive alternatives yielded no regulatory scheme that would allow structures to be placed in the Park while avoiding turf damage and the visual blight created by some demonstrators.

However, to avoid working a hardship on large demonstration groups that require a platform so that speakers can be heard and seen effectively by demonstration participants, the Park Service is making an exception for temporary speaker's platforms that are reasonably necessary when a demonstrating group numbers one hundred or more persons. For a group numbering less than one hundred persons, a small, temporary "soapbox" platform is allowed. Although the Park Service realizes that some damage to park resources may be done by these structures, it believes that it has an obligation to balance the needs of demonstrators with the needs and rights of the general public. Further, any harm that may be caused by the large speaker's platforms will be minimized by their short duration in the Park as large demonstrations generally do not remain in the Park longer than one day.

Several changes were made in these provisions to clarify their intent and narrow their scope. First, the final regulations require that one hundred or more persons actually *attend* a demonstration before a large speaker's platform can be used. This avoids the stituation in which a group claims to have one hundred persons "involved" in a demonstration but only five show up. Second, the final regulations allow speaker's platforms only when those platforms are being erected, dismantled or used. These restrictions were added because unattended speaker's platforms would cause the same damage to aesthetics, resource protection and public safety as unattended signs. Further, without such a limitation, unattended speaker's platforms could occupy a substantial amount of space in Lafayette Park. Third, responding to suggestions by Park Police representatives that individuals be allowed larger soapbox speaker's platforms, we have revised the regulations to allow soapbox platforms as large as three feet long, three feet wide, and three feet high. Finally, we have extended the provision requiring that structures in the Park be authorized by permit to soapbox structures.

Consideration of the many comments received on the proposed regulations resulted in two other changes in the final "structures" regulations. First, so as not to prohibit altogether symbolic structures sometimes used by demonstrators, the National Park Service has revised the proposed regulations to allow any structures in Lafayette Park that, in fact, are being hand-carried. The final regulations would allow demonstrators to carry various props and symbolic structures such as effigies, coffins and crosses. The Park Service makes this change in response to commenters, such as the ACLU, who pointed out that the proposed regulations prohibited some structures the use of which would have minimal impact on park resources, public safety, and aesthetic interests. After carefully considering these comments, the Park Service has come to the conclusion that hand-carried structures, not being placed down in the Park, will not cause the resource damage and safety concerns that result from stationary structures. In addition, hand-carried structures will have minimal impact on aesthetic interests as, presumably, the structures will be in the Park only on a temporary basis.

In addition, the National Park Service has revised the proposed regulations so as to define the term "structure" by example in the final regulations. We believe that this gives the public adequate notice of the items that are prohibited in Lafayette Park. This revision responds to a suggestion by a commenter, as mentioned above, and to a recent District Court ruling in a criminal case finding that the term "structures" in the current regulations as applied to the White House sidewalk is unconstitutionally vague. *United States v. Snyder*, Cr. Nos. 85–0222 and 85–0306 (D.D.C. Opinion filed Dec. 6, 1985).

The final regulations define the term "structure" by giving examples of categories of items included within the term, *i.e.*, props and displays, furniture and furnishings, shelters, and wagons and carts, and then giving further examples of items included within the categories. The list of categories was compiled from Park Service reports and staff observations of structures that have been used in Lafayette Park and that create the problems discussed extensively above. For example, desks and chairs have been used extensively in the Park, creating several outdoor office spaces. Various shelters have been created, offtimes out of large signs, in which persons have been found sleeping. Props and displays have included such items as a toilet, chests, doors, and primitive buildings of unsafe construction. Carts have been filled with trash and left in the Park as symbolic structures. These types of items, especially when stationary in the Park, have caused physical damage to the Park as well as substantially diminishing its aesthetic quality, while communicating little. Because it is not possible to list every structure that might cause damage in Lafayette Park, a "catch-all" phrase is added to the examples to include "all other similar types of property which might tend to harm park resources including aesthetic interests."

The final regulations make it clear that certain items are not included within the definition of the term "structure". So as to avoid any possible misunderstanding, the final regulations exempt signs from the definition. Likewise, the National Park Service wants to make it clear that wheelchairs and other devices for the handicapped in use by handicapped persons will not be considered to be structures. Finally, the Park Service notes that bicycles and baby carriages and strollers temporarily placed in or being moved across the Park are not included within the definition of the term "structure" as long as these items are attended (defined as an individual being within three feet of the bicycle, baby carriage, or stroller). It has been the experience of park personnel that these items are generally in the Park for only brief periods of time and do not cause the harm to aesthetics, resources and public safety that are caused by the structures mentioned above.

The National Park Service does not believe that the addition of this definition by example changes the substance of the proposed regulations. The additional provision merely clarifies the prohibition contained in the proposed rule, and adds certain practical exceptions, so that the public is given clear notice of what is and what is not allowed.

3. Conclusion.

The National Park Service believes that the final regulatory restrictions, taken as a whole, accomplish the purpose of restoring Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the Park Service would be remiss in its responsibilities to all citizens if it did nothing to curb

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increasing resource damage or if it ignored safety concerns. Moreover, the National Park Service believes that there is clear legal authority for promulgation of these regulations as they are content-neutral, leave open ample alternative avenues of communication, and are narrowly tailored to meet legitimate government interests. The substantial government interest in safety, resource protection and aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within the past two years.

It is not easy to draw the lines established in the final rule. For this reason, the National Park Service wishes to express its appreciation to the many individuals and groups who took the time to contribute their comments and suggestions on the proper management of the national parks.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, U.S. Department of the Interior.

Paperwork Reduction Act

The information requirements contained in § 50.19 of Part 50 have been cleared by the Office of Management and Budget for approval under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1024–0021.

Compliance with Other Laws

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The rule merely places reasonable limitations on the use of structures and signs in Lafayette Park. The rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 12 U.S.C. 4332, *et seq.*

List of Subjects in 36 CFR Part 50

District of Columbia, National parks, National Capital parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, 36 CFR Part 50 is amended as follows:

1. The authority citation for Part 50 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); (D.C. Code 8-137 (1981) and D.C. Code § 40-721 (1981).

2. Section 50.19 is amended by redesignating paragraphs (e) (11) through (14) as (e) (12) through (15) and adding a new paragraph (e)(11) to read as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(e) * * *

(11) The following are prohibited in Lafayette Park:

(i) The erection, placement or use of structures of any kind except for the following:

(A) Structures that are being hand-carried are allowed.

(B) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(C) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary "soapbox" speaker's platform is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(D) For the purpose of this section, the term "structure" includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term "structure" does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term "attended" is defined as an individual being within three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(ii) The use of signs except for the following:

(A) Hand-carried signs are allowed regardless of size.

(B) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (¼) inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term "attended" is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-foot by four-foot signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

Dated: February 27, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4093 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3243/R812; FRL 2976-7]

Pesticide Tolerance Exemption for Whole Egg Solids

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of whole egg solids when used as an animal repellent in or on the raw agricultural commodity almonds. This regulation, to eliminate the need to establish a maximum permissible level for residues of whole egg solids in or on almonds, was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on March 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3243/R812], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of January 8, 1986 (51 FR 765), that announced that IR-4, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3243 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of California proposing the establishment of an exemption from the requirement of a tolerance for whole egg solids when used as an animal repellent in or on the raw agricultural commodity almonds.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance would protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1071 is added to read as follows:

§ 180.1071 Egg solids (whole); exemption from the requirement of a tolerance.

Whole egg solids (of at least feed grade quality) are exempted from the requirement of a tolerance for residues when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

[FR Doc. 86-4486 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4F3066/R762; FRL-2976-6]

Pesticide Tolerance for Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide fenarimol in or on the raw agricultural commodity pecans. This regulation to establish a maximum permissible level of residues of fenarimol in pecans was requested, pursuant to a petition, by Elanco Products Co.

EFFECTIVE DATE: Effective on March 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3066/R762], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of June 6, 1984 (49 FR 23444), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285 filed pesticide petition 4F3066 proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on pecans at 0.1 part per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include:

1. A 90-day dog feeding study with no-observed-effect level (NOEL) of 20 milligrams per kilogram (mg/kg) bodyweight per day (bw/day).

2. A 2-year chronic feeding/oncogenic study in rats with a NOEL of 1.25 mg/kg bw/day for the systemic effect atrophy of the thymus. The compound demonstrated an oncogenic effect of significant increase of hepatic adenomas and hyperplastic nodules at 17.5 mg/kg bw/day.

3. A 2-year oncogenicity study in mice that was negative at all doses tested (0, 7, 24.2, and 65.7 mg/kg bw/day).

4. A rabbit teratology study that was negative for teratogenic effects at all doses tested (0, 5, 13, and 35 mg/kg).

5. A rat teratology study that demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 13, and 35 mg/kg).

6. A multigeneration reproduction study in rats that demonstrated irreversible infertility at 0.625 mg/kg bw/day.

7. A multigeneration reproduction study in guinea pigs that was negative for reproduction effects at 35 mg/kg bw/day.

8. An aromatase inhibition study that showed the compound to be a moderately weak inhibitor of aromatase

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activity in the stimulated rat ovarian microsomal system.

9. A mouse lymphoma forward mutation assay; a DNA repair synthesis study in rat liver culture systems; Ames test in *salmonella typhimurim* and in *E. coli*; and *in vivo* chromosome aberration in the Chinese hamster. Fenarimol did not demonstrate mutagenic activity in any of these studies.

The adverse reproductive effects (irreversible infertility) in rats are considered species-specific caused by testosterone aromatase inhibition. A NOEL of 35 mg/kg bw/day for reproductive effects was established in the multigeneration reproduction study in the guinea pig.

Data currently lacking is a 1-year feeding study in dogs. This study has been submitted to the Agency and is presently being reviewed and evaluated.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 1.25 mg/kg bw/day) and using a 100-fold safety factor is calculated as 0.0125 mg/kg bw/day. The maximum permitted intake (MPI) for a 60-kg person is calculated to be 0.75 mg/day. The theoretical maximum residue contribution (TMRC) from the tolerance is 0.00005 mg/day and utilizes 0.12 percent of the ADI. No previous tolerances have been established for fenarimol. The chemical has demonstrated oncogenic effect in rats, producing a significant increase in hepatic adenomas and hyperplastic nodules at the highest dose tested (17.5 mg/kg bw/day). Based on these results, a theoretical oncogenic risk for dietary exposure from eating pecan meat containing 0.1 ppm of fenarimol residues was calculated to be 7.3×10^{-9}.

The chemical also demonstrated the teratogenic effect of hydronephrosis at 35 mg/kg bw/day in rats. The NOEL, as previously stated, for this effect was 13 mg/kg bw/day. Based on these data, a margin of safety was calculated for a single dietary portion of pecan meat containing 0.1 ppm of fenarimol residues. The margin of safety for teratogenic effects is >56,000

The nature of the terminal residues in pecans is adequately understood. No data is available concerning the metabolism in poultry and livestock. However, pecan hulls are not considered feed items for either poultry or livestock. Therefore, 40 CFR 180.6(a)(3) applies to this tolerance. An adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of fenarimol.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 18, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.421 is added to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

Tolerances are established for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities:

Commodities	Parts per million
Pecans	0.1

[FR Doc. 4487 Filed 3–4–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 468

[OW-FRL-2942-1]

Copper Forming Point Source Category Effluent Limitations Guidelines, Pretreatment, Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is amending 40 CFR Part 468, a regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that form copper and copper alloys ("copper forming regulation"). EPA agreed to propose and take final action on these amendments in a settlement agreement to resolve a lawsuit challenging the final copper forming regulation promulgated by EPA on August 15, 1983 (48 FR 36942). The amendments modify the copper forming regulation as it applies to the forming of beryllium copper.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for the purpose of judicial review at 1:00 p.m. Eastern time on March 19, 1986. This regulation shall become effective April 18, 1986. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Address questions on the final rule to Ms. Janet K. Goodwin, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The record for the final rule will be available for public review not later than April 4, 1986 in the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, DC. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382–7126.

SUPPLEMENTARY INFORMATION:

Organization of this notice

I. Legal Authority
II. Background
III. Amendments to the Copper Forming Regulation
IV. Environmental Impact of the Amendments to the Copper Forming Regulation
V. Economic Impact of the Amendments
VI. Executive Order 12291
VII. Regulatory Flexibility Analysis
VIII. OMB Review
IX. List of Subjects in 40 CFR Part 468

I. Legal Authority

The regulation described in this notice is promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 92–217).

II. Background

On November 12, 1982, EPA proposed a regulation to establish effluent limitations guidelines for existing direct dischargers based on the best practicable control technology currently achievable ("BPT") and the best available technology economically achievable ("BAT"); new source performance standards ("NSPS") for new direct dischargers; and pretreatment standards for existing and new indirect dischargers ("PSES" and "PSNS", respectively) for the copper forming point source category (47 FR 51279.) EPA published final effluent limitations guidelines and standards for the copper forming category on August 15, 1983 (40 CFR Part 468; 48 FR 36942) and technical corrections to the final rule on November 3, 1983 (48 FR 50717). This regulation established one subcategory that applies to all wastewater discharges resulting from the forming of copper and copper alloys. See 40 CFR 468.01. The preamble to the final copper forming effluent limitations guidelines and standards ("copper forming regulation") contains a complete discussion of the development of the regulation.

Following promulgation of the copper forming regulation, Brush Wellman, Inc. ("Brush") and Cerro Copper Products Company together with the Village of Sauget ("Cerro") filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Seventh Circuit (*Cerro Copper Products Company et al.* v. *EPA*, Nos. 83–3053 and 84–1087.) At the request of all parties, the two cases were subsequently deconsolidated since each raised distinctly different issues.

On September 28, 1984, EPA and Brush executed a Settlement Agreement to resolve all issues raised by Brush with respect to the copper forming effluent limitations guidelines and standards. The Agreement applies only to the challenges made by Brush; it does not resolve challenges made by Cerro nor is Cerro a party to the Agreement. All the provisions in the copper forming regulation challenged by Cerro were upheld in *Cerro Copper Products Company* v. *Ruckelshaus* (7th Cir., July 1, 1985).

Brush challenged the copper forming regulation on the grounds that this regulation and single subcategory were not appropriate as applied to its facilities for two related reasons. First, Brush forms beryllium copper alloys that differ from other copper alloys because the beryllium oxide coating formed on the surface of the metal during heat treating is both tenacious and abrasive and must be removed by special treatment before the alloys can be further processed. Second, one facility owned by Brush produces exclusively very high gauge beryllium copper strip and wire products. Brush claims this causes the volume of wastewater and mass of pollutants discharged to vary significantly from other copper forming plants.

Subsequent data and information submitted by Brush which were not available to EPA before promulgation support its contention that beryllium copper forming involves technical considerations not adequately addressed by the single subcategory of the copper forming regulation. In addition, substantial quantities of beryllium will be present in wastewaters from the removal of the beryllium oxide coating which were not taken into account during the copper forming rulemaking.

Because of these differences, EPA concluded that discharges from beryllium copper forming are best handled as a separate subcategory. Accordingly, EPA agreed to propose certain amendments to the copper forming regulation and to take final action on that proposal. Specifically, EPA agreed to propose to exclude the forming of beryllium copper alloys from the existing copper forming regulation and to create a new subcategory in the regulation reserved for effluent limitations guidelines and standards for the forming of beryllium copper alloys. EPA also agreed to propose that the term "beryllium copper" shall mean copper that is alloyed to contain 0.1 percent or more beryllium. Brush in turn agreed that if the provisions of the copper forming amendments were consistent with the Settlement Agreement, it would voluntarily dismiss its petition for review and withdraw its request for a "fundamentally different factors" variance which it also submitted pursuant to 40 CFR Part 125, Subpart D. Brush also agreed not to seek judicial review of any final amendments that are consistent with the Settlement Agreement.

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Seventh Circuit to stay the effectiveness of 40 CFR Part 468 as it applies to discharges from beryllium copper forming pending final action by EPA on the amendments. On November 8, 1984, the court denied the joint motion. EPA and Brush subsequently filed a joint motion to reconsider the denial. The court granted the motion and entered the stay described above on March 5, 1985. Therefore, 40 CFR Part 468, Subpart A, currently does not apply to discharges from beryllium copper forming. Copies of the Settlement Agreement and the court's stay have been sent to EPA Regional Offices and State NPDES Permit issuing authorities.

III. Amendments to the Copper Forming Regulation

In accordance with the Settlement Agreement, on June 24, 1985, EPA proposed to exclude the forming of beryllium copper alloys from the existing copper forming regulation and to create a new subcategory in the regulation reserved for effluent limitations guidelines and standards for the forming of beryllium copper alloys. EPA also proposed to define "beryllium copper alloy" as specified in the Settlement Agreement.

EPA received only one comment on the proposal, from Brush Wellman. Brush Wellman supported the proposal to exclude beryllium copper alloys from the copper forming regulation as well as the proposed definition of "beryllium copper alloy." Accordingly, EPA is promulgating the proposed provisions as final amendments to the copper forming regulation.

Below is a detailed explanation of those sections of the copper forming regulation subject to these final amendments. All limitations and standards contained in the final copper forming regulation published on August 15, 1983 which are not specifically listed below are not affected by the amendments.

A. *Section 468.01 Applicability.* EPA is correcting a typographical error

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changing the CFR unit from subpart to part.

B. *Section 468.02 Specialized Definitions.* EPA is adding a definition for the term beryllium copper alloy to mean an alloy of copper which is annoyed to contain 0.10 percent beryllium or greater. In the proposal, we explained that this definition would cover all beryllium copper alloys that are manufactured or will be manufactured within the forseeable future. Also, any alloy with beryllium present in this amount is expected to have the unique properties characteristic of all beryllium copper alloys. We used the term "alloyed to contain" to specify that the beryllium must be intentionally added.

C. *Section 468.10 Applicability; description of the copper forming subcategory.* Section 468.10 of the final copper forming rule contains only one subcategory to cover discharges from the forming of all copper and copper alloys. This was based on information available to the Agency at the time of promulgation which indicated that wastewater generated by forming any copper alloy contained similar pollutant constituents in amounts effectively controlled by the same model wastewater pollution control technology. Accordingly, EPA established a single subcategory in the copper forming effluent limitations guidelines and standards.

After promulgation, Brush submitted information indicating that copper alloys containing beryllium have unique properties requiring different forming techinques than the forming of other copper alloys. These differences are discussed in the preceding section of this preamble. Because of these differences, the Agency is excluding beryllium copper forming from the existing regulation and creating a new subcategory reserved for effluent limitations guidelines and standards for all beryllium copper alloys. The Agency made this change by adding "except beryllium copper alloys" at the end of § 468.10, Applicability of Subpart A.

The final copper forming regulation includes beryllium copper alloys in the copper forming subcategory. EPA is establishing a new Subpart B reserved for a separate subcategory for beryllium copper forming to account for significant process differences from the forming of other copper alloys. The Agency has already begun gathering data relative to beryllium copper forming and expects to proposed limitations and standards for this subcategory in the near future.

The unique physical properties of beryllium copper alloys, which cause unique forming problems, also apply to other metal alloys containing significant quantities of beryllium and pure beryllium metal. Therefore, the Agency may decide to combine the forming of all alloys that are alloyed to contain beryllium at 0.1 percent or greater under one subcategory. Brush Wellman, in its comments on both the notice of new data for the nonferrous metals forming category and the proposal to amend the copper forming regulation (50 FR 26128, June 24, 1985), objected to this suggestion. EPA is reserving judgment on the appropriate categorization of beryllium and beryllium alloys, including beryllium copper, until it gathers additional data and proposes effluent limitations guidelines and standards for beryllium copper.

IV. Environmental Impact of the Amendments to the Copper Forming Regulation

These amendments will not increase the discharge of pollutants generated by copper forming plants which continue to be covered by the copper forming requirements of Subpart A. EPA estimates that five to nine plants are affected by today's final amendments. Until beryllium copper forming effluent limitations guidelines and standards are established, these plants will be regulated on a case-by-case basis. The Agency does not expect a significant increase of pollutants discharged.

V. Economic Impact of the Amendments

The amendments will not alter the recommended technologies for complying with the copper forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 48 FR 36948). These amendments will not alter the determinations with respect to the economic impact to copper forming plants other than beryllium copper forming and since these amendments do not establish any effluent requirements, they should have no impact on beryllium copper forming plants.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This regulation, like the copper regulation promulgated August 15, 1983, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 15, 1983 final copper forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (48 FR 36950). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, since the amendments would not alter the economic impact of the regulation. The agency did not, therefore, prepare a formal analysis for this regulation.

VIII. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

List of Subjects in 40 CFR Part 468

Copper forming, Water pollution control, Waste treatment and disposal.

Dated: February 24, 1986.

Lee M. Thomas,

Administrator.

For the reasons state above, EPA is amending 40 CFR Part 468 as follows:

PART 468—COPPER FORMING POINT SOURCE CATEGORY

1. The authority citation for Part 468 continues to read as follows:

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 468.01 is amended by revising paragraph (a) to read as follows:

§ 468.01 Applicability.

(a) The provisions of this part are applicable to discharges resulting from the manufacture of formed copper and copper alloy products. The forming operations covered are hot rolling, cold rolling, drawing, extrusion, and forging. The casting of copper and copper alloys is not controlled by this part. (See 40 CFR Part 451.)

* * * * *

3. Section 468.02 is amended by adding a new paragraph (y) to read as follows:

§ 468.02 Specialized Definitions.

* * * * *

(y) The term "beryllium copper alloy" shall mean any copper alloy that is alloyed to contain 0.10 percent or greater beryllium.

4. Section 468.10 is revised to read as follows:

§ 468.10 Applicability; description of the copper forming subcatgory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of copper and copper alloys except beryllium copper alloys.

5. Part 468 is amended by adding a new subpart (B) as follows:

Subpart B—Beryllium Copper Forming Subcategory

§ 468.20 Applicability; description of the beryllium coppr forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of beryllium copper alloys.

[FR Doc. 4752 Filed 3–4–86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

[FPMR Amdt. E–259]

Procurement Sources and Programs; Dollar Thresholds, for Billing Adjustments

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation deletes the $25 threshold for billing adjustments prescribed in the FPMR and replaces it with a reference to the current thresholds in the GSA Handbook, Discrepancies or Deficiencies in GSA or DoD Shipments, Material, or Billings (FPMR 101–26.8). This will update and simplify the FPMR coverage on dollar thresholds for billing adjustments.

FOR FURTHER INFORMATION CONTACT: Gary L. Hood, Deputy Director, Inventory and Requisition Management Division (703–557–8570).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–26

Government property management.

1. The authority citation for Part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 101–26.803–2 is revised to read as follows:

§ 101–26.803–2 Adjustments.

GSA and DoD will adjust billings whenever the difference involved, resulting from over or under charges or discrepancies or deficiencies in shipments or material, meets the dollar value requirement prescribed in the GSA Handbook, Discrepancies or Deficiencies in GSA or DoD Shipments, Material, or Billings (FPMR 101–26.8).

Dated: February 19, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–4745 Filed 3–4–86; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25, 28 and 29

Easements, Clarification of Jurisdiction; National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises portions of 50 CFR Subchapter C to clarify the applicability of U.S. Fish and Wildlife Service (Service) regulations in easement areas. These revisions clarify misinterpretations that have arisen concerning the application of certain Service regulations to areas of the National Wildlife Refuge System that were acquired in less than fee title through easement and are administered by the Service. The rule adds and defines the terms "easement" and "coordination area," and redefines "national wildlife refuge" and "wildlife management area." It also states the requirement for special use permits for certain types of activities in easement areas, and the regional directors' authority to issue those permits.

EFFECTIVE DATE: April 4, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, Room 2343 Interior, U.S. Fish and Wildlife Service, Washington, DC 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: Subchapter C, 50 CFR Parts 25 through 29 contain the administrative, public use and land use management provisions for the National Wildlife Refuge System (NWRS). The purposes of those regulations are to, among other things, regulate general administration of various units of the NWRS and provide for issuing permits for activities otherwise prohibited on such units. The National Wildlife Refuge System Administration Act (NRSAA), 16 U.S.C. 668dd et seq., defines these units as including land, water and interests therein which are administered as national wildlife refuges, endangered or threatened species habitat, wildlife ranges, game ranges, wildlife management areas and waterfowl production areas. Consistent with this defintion in the NWRSAA, regulations in Subchapter C define the NWRS as including any Service interest in land and water, including less than fee simple interests such as wetland easements. Application of this definition has been misconstrued by some to mean that all of the general regulations for the NWRS in subchapter C are applicable to areas acquired by the Service through easement agreement. This makes the regulations subject to an overly expansive interpretation. It was not the original intent of the rules, nor does it accurately reflect how the rules have been either interpreted or administered by the Service. Rather, the Service has always considered only some of the regulations as applicable to NWRS easement areas, given the limited property interest the Service acquires in those areas. In order to clarify which regulations do or do not apply to less than fee areas, the Service decided to issue a revised set of regulations on this subject.

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Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On April 25, 1984, the proposed rule to clarify applicability of Service regulations in easement areas was published in the Federal Register (49 FR 17778), with a 30-day comment period. Written comments were received and are considered in the following section.

Responses to Comments

Seven written comments were received in response to the proposed rulemaking. Substantive comments are outlined and responded to below:

Issue 1: One commenter suggested that the reference to game commissions in § 25.12(a)(5) be changed to "state fish and wildlife agency."

Response: That suggested change has been made.

Issue 2: One commenter suggested that the definition of coordination area [§ 25.12(a)(6)] be clarified to include the fact that those areas are a part of the NWRS.

Reponse: The recommendation has been accepted and the definition has been clarified.

Issue 3: One commenter recommended that mitigation measures be required if mitigation is necessary to make the proposed use compatible with the purposes for which the easement was acquired.

Response: That suggested change has been made.

Issue 4: One commenter suggested that § 25.12(a)(3) of the proposed rule "be modified to specifically state that the regulations only apply to the wetland area identified in the easement summary."

Response: This comment applies only to waterfowl production areas (WPA). Easement summaries are working papers used by the Service in negotiating with landowners for purchase of prairie pothole easements. These summaries are not part of the contract. The easement contract between the Service and the seller covers all wetland areas described in that contract, and delineated on a map attached to the contract. The contract applies to currently existing wetlands as well to as those subject to recurrence through natural or man-made causes, and to any enlargements of the wetland areas resulting from normal or abnormal increased water.

Further, the regulations are intended to apply to easements other than prairie pothole easements. The Service administers many such areas and a reference to wetland acres in easement summaries would be meaningless for those types of easements. The definition of easement in the regulations applies equally to wetland (prairie pothole) easements and all other types of easements. The actual scope of any easement is, of course, governed by the document creating it (see Issue 18 Response).

Issue 5: One commenter suggested that the second sentence of proposed § 25.44(a) be modified to delete the word "indirectly" and thus state, "Provisions of Subchapter C shall apply to activities within easement areas only to the extent that the provisions of Subchapter C are directly related to the easement interests acquired by the United States and are consistent with provisions of this subsection."

Response: Whether the regulations in Subchapter C can apply either directly or indirectly to the easement interest acquired by the Service is dependent upon the provisions of an individual easement agreement. For example, in the usual agreement executed to convey easements for waterfowl management rights, the provisions related to drainage state that the easements will be maintained as a waterfowl production area "by not draining, causing or permitting the draining by construction of ditches, or by any means, *direct or indirect,*" (emphasis added). This is an example of how the Service's authority may extend beyond the regulation of direct effects. The commenter's suggested change, therefore, is unduly narrow and has not been adopted.

Issue 6: One commenter noted that requiring an owner's agreement for third party activities could effectively preclude the use of condemnation by a governmental entity at the state of local level.

Response: Proposed § 25.44(b) does not expressly prohibit a governmental entity from condemning a servient estate subject to a Service easement; rather, it requires that once the property is condemned, the governmental entity must then obtain a permit from the Service for uses which may directly or indirectly affect the Service s easement interests. We agree, however, that in instances where only a partial interest in the servient estate is condemned, the proposed requirement of the servient estate owner's consent could conceivably preclude the local or state government's *use* of the condemned interest. For example, the servient estate owner could conceivably refuse to agree to the local government's proposed activity even though the use was consistent with the partial property interest obtained through condemnation. To prevent potential problems, a new section is added as § 25.44(c) of the final rule to allow issuance of special use permits without the owner's agreement in cases of condemnation of partial interest in the servient estate, if it is determined that such use is compatible with the purposes for which the Service's easement interest was acquired and is consistent with the partial property interest obtained through condemnation.

Issue 7: One commenter expressed the need for clarity as to how these regulations apply to areas held in less than fee, such as, but not limited to easements.

Response: The regulations apply only to the extent that the property interest held by the United States may be affected. Those provisions of the NWRS general regulations relating to the control of "social conduct" like drinking or gambling were but examples of regulations that do not apply to easement areas since they are unrelated to the protection of the Service s limited property interest.

Issue 8: One commenter recommended that the limited interest agreement between the Service and the landowner be clearly set forth in the proposed change.

Response: The Service feels that the last sentence of § 25.11(a) clearly expresses the fact that the Service recognizes it acquires a limited interest, and that application of regulations on areas held in less than fee extends only to the extent specific property interests are acquired.

Issue 9: One commenter objected to retaining the procedure in § 29.21 for permits for rights-of-way across easement areas. It was felt that it could be difficult for applicants to determine which procedure to follow as the difference between rights-of-way and activities affecting easement areas may sometimes be unclear.

Response: The Service does not see this potential difficulty as a real problem. In the majority of instances, it will be clear whether or not a proposed use is of the type traditionally considered a right-of-way. It is obvious that uses such as railways, roads and pipelines fall within the right-of-way category, thereby requiring a permit under § 29.21. In the few instances, however, where it might be unclear whether a proposed use requires a permit under §§ 29.21 or 25.44, the applicant may simply submit a written application to the regional director who can then determine which procedure to follow. Both sections require that written applications be submitted to the regional director. Upon receipt of an application, if the regional director determines that the wrong procedures are being followed, he or she will inform the applicant of the appropriate procedure.

Issue 10: One commenter objected that the current procedure in 50 CFR 25.44 does not contain all of the same regulatory provisions and requirements currently found in § 29.21 (rights-of-way). They gave the example that § 25.44 does not require a map and a "detailed environmental analysis" of the impact of the proposed use.

Response: The Service disagrees that these requirements must be specifically provided for in § 25.44. Rights-of-way permits, unlike most potential permitted uses under § 25.44, generally entail long-term encumbrances on the land with potentially significant impacts. Thus, granting a right-of-way for a pipeline is likely to produce considerably more impacts than those created by a more limited and temporary form of special use. A more detailed analysis and procedure are justified for rights-of-way. Furthermore, the procedure in § 25.44 does not peclude the regional director from requesting additional information when deemed necessary for proposed special uses with the potential for greater impacts.

Issue 11: One commenter requested that the procedure in § 25.44 include a provision for public participation in the permitting process.

Response: The Service does not believe such a provision for easement areas is required, and it would be extremely burdensome to implement. For instance, public participation normally is not utilized when issuing permits to allow the use of refuge lands owned in fee. Moreover, the expense and delays in agency decisionmaking associated with such a proposal would be considerable. The Service, therefore, declines to adopt this suggestion.

Issue 12: Two commenters requested that both "wildlife management areas" and "coordination areas" be defined to avoid confusion of these terms.

Response: The Service agrees with this recommendation and both definitions are in the final rule.

Issue 13: One commenter contended that activities not affecting the proprietary interests of the Service should automatically be permitted.

Response: As a matter of law, the Service evaluates activities on a case-by-case basis to determine the potential of various uses for affecting the interest acquired by the Service. The NWRSAA authorizes the Secretary to permit the use of any area within the NWRS whenever he determines that such uses are compatible with the major purposes for which such areas were established (16 U.S.C. 668dd(d)(1)). Section 25.44(b) has been revised to indicate that the regional director will issue a letter of non-objection if the requested use will not affect the Service interest. However, the right to make such a determination is retained by the Service.

Issue 14: One commenter suggested that the proposed procedure in § 25.44(b) for granting special use permits be changed to allow permitting to "be accomplished by rule rather than a hard and fast permitting procedure."

Response: The Service had difficulty interpreting the intent of the comment, and the commenter provided no explanation or justification for the suggestion.

The Service interprets the suggestion to be that it should issue special rules listing certain categories of activities that could be conducted without individual permits. As stated above in issue 13, as a matter of law under the NWRSAA, the Service must evaluate activities which may affect easement interests on an individual basis. A wide range of activities may require evaluation under § 25.44(b), and it is difficult to anticipate in advance what those activities and their effects might be on the Service's various easement interests. Therefore, it is more effective for the Service to make compatibility determinations on a case-by-case basis rather than generically through formal rulemaking.

Issue 15: One commenter suggested that mitigation be shown to be cost-effective.

Response: Section 25.44(c) allows the Service to require mitigation when necessary to make a permitted use compatible with the purposes for which the easement was acquired. The Service notes that Congress has limited the activities that may be carried out in areas of the NWRS. The NWRSAA requires that permitted uses of areas of the NWRS be compatible with the purposes for which the areas were established. Mitigation is allowed under § 25.44(c) solely for the purpose of conforming proposed activities to this compatibility requirement. The mitigation measures necessary to make a permitted use compatible may or may not be cost-effective; the NWRSAA does not authorize the Service to consider costs as a factor in making determinations of what mitigation measures are needed to satisfy the compatibility requirement.

Issue 16: One commenter requested that definitions for each of the five types of management areas listed in the NWRSAA be given in this rule.

Response: Definitions contained in § 25.12 are those essential to interpretation of the regulations. Clarification of the definition of "coordination area" and definition of the general term "wildlife management area" have been provided in the final rule. For the purpose of this rule, additional definitions are unnecessary.

Issue 17: One commenter recommended deleting the phrase "other special authorities" in the proposed definition of coordination area [§ 25.12(a)(6)].

Response: The Service concurs and has deleted the phrase.

Issue 18: One commenter requested that the easement definition and discussion concerning easements be restricted to waterfowl production areas (WPA) only.

Response: By definition an easement means a less than fee interest in land or water. Those easements acquired by the Service are generally administered for the purpose of maintaining fish and wildlife habitat. These easements may be acquired under a variety of statutory authorities in order to protect a variety of wildlife needs such as waterfowl migration and wintering habitat, endangered species habitat and other important fish and wildlife habitat, as well as the better known waterfowl production areas. Since all of these various easements become part of the NWRS, and are therefore subject to the provisions of the general Refuge System regulations, the term easement cannot be restricted to WPA easements alone.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(a)(1)) authorizes the Secretary of the Interior to administer various categories of areas for the conservation of fish and wildlife through the Fish and Wildlife Service. The areas are defined by the Act to include, "all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas," and designates these areas as part of the NWRS. Activities affecting the Federal Government's interests in these areas are subject to the provisions of the act related to prohibited and permitted activities (668dd(c)) and use of these areas (668dd(d)), as well as to such regulations as may be prescribed.

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires each

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information collection requirement to display an Office of Management and Budget (OMB) clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is voluntary, mandatory, or required to obtain a benefit. The information collection requirements of refuge regulations are presently approved under OMB approval number 1018-0014. These regulations impose no new reporting or recordkeeping requirements. The special use permits and related information collection requirements in present rules will continue to apply to limited activities on easement area. The information collection is necessary for the regional director to issue permits and a response is required to obtain permitted benefits.

Environmental Effects

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76–59) was filed on November 12, 1976. In accordance with Appendix 1 section 516 of the Departmental Manual, dated September 28, 1982 (published at 47 FR 28841), these regulations do not involve a change in the level or types of use previously permitted by the Service, but merely clarify what the Service's historic policy has been through the amendment of certain ambiguous provisions of the general refuge regulations. These regulations are therefore, categorically excluded from further compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. This rule is primarily a clarification of existing regulations. There will be a minor positive economic effect because it should eliminate costs associated with the occasional litigation resulting from confusion over Service jurisdiction and authority in easement areas. The costs to the Service in developing and implementing this amendment, as well as the administrative costs associated with issuance of permits, are not expected to exceed $25,000. There will be no additional enforcement cost placed on the Federal government or the states. Because this rulemaking would not change on-the-ground enforcement or any significant amount of permit activity, there will be little, if any, effect on employment and investment. This regulation will have no effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Revision of 50 CFR Subchapter C will clarify the Service's authority on easements and it is anticipated to have no economic effect on small entities. For the most part, the rule addresses administrative matters associated with the management of refuge programs and will have no new economic effect on landowners with easements.

The primary author of this rulemaking is Noreen Clough, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, National Wildlife Refuge System, Safety, Wildlife refuges.

50 CFR Part 28

Law enforcement, National Wildlife Refuge System, Penalties, Seizures and forfeitures, Wildlife refuges.

50 CFR Part 29

National Wildlife Refuge System, Public lands-mineral resuorces, Public lands-rights-of-way, Wildlife refuges.

For the reasons set out in the preamble, Parts 25, 28 and 29, Subchapter C, Chapter 1 of Title 50, Code of Federal Regulations, are amended as set forth below.

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, 45 Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402 as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); Sec. 476 Stat. 654 (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd).

2. 50 CFR 25.11(a) is revised to read as follows:

Subpart A—Introduction

§ 25.11 Purpose of regulations.

(a) The regulations in this subchapter govern general administration of national wildlife refuges, public notice of changes in U.S. Fish and Wildlife Service policy regarding refuges, issuance of permits required on refuges, and other administrative aspects involving the management of various units of the National Wildlife Refuge System. These regulations apply to areas of land and water held by the United States in fee title and to property interests in such land and water in less than fee, inlcuding but not limited to easements. For areas held in less than fee, these regulations apply only to the extent that the property interest held by the United States may be affected.

* * * * *

§ 25.12 [Amended]

3. In 50 CFR 25.12 (a) is amended by alphabetizing the definitions; adding the definition for "Coordination area" and "Easement"; and revising the definition for "National wildlife refuge" and "Wildlife management area" as follows:

(a) * * *

* * * * *

"Coordination area" means a wildlife manegement area that has been withdrawn from the public domain or acquired by the Federal Government and subsequently made available to a State by cooperative agreement between the U.S. Fish and Wildlife Service and the State fish and wildlife agency pursuant to the Act of March 10, 1934 (16 U.S.C. 661–666c: 48 Stat. 401), as amended; or by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended. Coordination areas are managed by the States but are a part of the National Wildlife Refuge System.

"Easement" means a less than fee interest in land or water acquired and administered by the U.S. Fish and Wildlife Service for the purpose of maintaining fish and wildlife habitat.

* * * * *

"National wildlife refuge" means any area of the National Wildlife Refuge System, except coordination areas.

* * * * *

"Wildlife management area" means a general term used in describing a variety of areas that are managed for wildlife purposes which may be included in the National Wildlife Refuge System.

(b) * * *

4. 50 CFR 25.44 is redesignated as "§ 25.45 Appeals Procedure" and a new § 25.44 is added as follows:

§ 25.44 Easement area permits.

(a) The provisions of this subsection shall govern the regulation of activities that affect easement interests acquired by the United States. All other provisions of Subchapter C shall apply to activities within such easement areas, but only to the extent that those provisions are directly or indirectly related to the protection of those easement interests expressly acquired by the United States which are specified in the easement agreement itself, and are not inconsistent with the provisions of this subsection.

(b) Permits for use of easement areas administered by the Service are required where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the regional director or a designee. Special use permits may be granted to owners of servient estates, or to third parties with the owner's agreement, by the regional director or a designee, upon written determination that such permitted use is compatible with the purposes for which the easement was acquired. If it is ultimately determined that the requested use will not affect the United States' interest, the regional director will issue a letter of non-objection.

(c) In instances where the third applicant is a governmental entity which has acquired a partial interest in the servient estate by subsequent condemnation, a special use permit may be granted to the governmental entity without the servient estate owner's agreement if the regional director or his or her designee determines:

(1) The permitted use is compatible with the purpose for which the Service's easement was acquired; and

(2) The permitted use is consistent with the partial property interests obtained through condemnation.

(d) The regional director or designee may require mitigation measures, as determined appropriate, within the easement area, in order to make the proposed use compatible with the purposes for which the easement was acquired. Such mitigation measures are solely for the purpose of complying with the requirement of the National Wildlife Refuge Administration Act that the use be compatible with the purpose for which the area was established. If the proposed use cannot be made compatible through permit stipulations and/or mitigation, the permit will be denied.

(e) Regulations pertaining to rights-of-way in easement areas are contained in 50 CFR Part 29.21.

PART 28—[AMENDED]

5. The authority citation for Part 28 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); sec. 5, 43 Stat. 651 (16 U.S.C. 725); sec. 5, 45 Stat. 449 (16 U.S.C. 690d); sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); sec. 4, 76 Stat. 654 (16 U.S.C. 460k); sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 301).

6. 50 CFR Part 28 is amended by revising the phrase "to protect Service property and facilities" in § 28.21 to read, "to protect Service lands, property, facilities, or interests therein,"

PART 29—[AMENDED]

7. The authority citation for Part 29 is revised and the authority citations following all the sections in Part 29 are removed.

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. 50 CFR Part 29 is amended by removing paragraph 29.21(f), and redesignating existing paragraphs 29.21(g), 29.21(h) and 29.21(i) as paragraphs 29.21(f), 29.21(g) and 29.21(h), respectively.

Dated: October 15, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-[illegible] Filed 3-4-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 43
Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 30813]

General Administrative Regulations; Crop Insurance; Debt Management; Delinquent Debts; Credit Reporting Procedures; Collection Procedures

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new subpart, Subpart K, Debt Management. This proposed rule sets forth the procedures under which FCIC will refer information with respect to delinquent debts owed to FCIC to credit reporting agencies and to contract collection agencies. These actions, which are usual and customary in commerce, are being taken as an incentive for delinquent debtors to repay debts owed to FCIC. This action is being taken under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments must be received not later than April 4, 1986 to be assured of consideration.

ADDRESS: Written comments should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert Brammer, Comptroller, Federal Crop Insurance Corporation, Room 4652, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–5183.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Enviornmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offers crop insurance to eligible producers in the return for the payment of a premium. The premium is due and payable when insurance attaches at the time of seeding or planting. Premium billing is generally made at the time of harvest and the insured is allowed 30 days in which to pay the premium before interest attaches. While FCIC collects a high percentage of premium, some accounts remain unpaid. Those insureds who do not pay their premium become indebted to FCIC. As an aid in effective debt management FCIC will submit information with respect to these and any other delinquent debts owed to FCIC to credit reporting agencies and collection agencies. This policy is consistent with customary business practices in the private sector, the Federal Claims Collection Standards (FCCS), 4 CFR 102.5, and Office of Management and Budget (OMB) Circular A–129.

The Debt Collection Act of 1982 (Pub. L. 97–365)(Act), amended section 3 of the Federal Claims Collection Act (FCCA)(now codified at 31 U.S.C. 3711(f)) to authorize the head of an agency, in attempts to collect delinquent debts owed by an individual, to disclose information relating to such debt to a consumer reporting agency. The Act also amended the Privacy Act of 1974 (5 U.S.C. 552a(b)) to permit such disclosure of information under certain conditions.

Under the proposed rule, information with respect to delinquent debts will be referred to credit reporting agencies.

In disclosing information with respect to delinquent individual debts, FCIC will follow the due process requirements set forth in the FCCS. In disclosing information with respect to other delinquent debts to credit reporting agencies, FCIC will afford such debtors notice and due process similar to that provided to individuals. Only that information directly related to the indentity of the debtor and the history of the claims will be released. Debtor information will consist of the following: The debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status and history of the claim, and the crop insurance program under which the claim arose.

Debts owed to FCIC which FCIC is unable to collect by the termination date contained in the crop insurance contract or by the date payment was to have been made or as determined by FCIC, will be referred to a collection agency under contract with the General Services Administration (GSA) in accordance with accepted collection contract procedures.

The public is invited to submit written comments with respect to this proposed rule to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written submissions received pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday. A comment period of 30 days following the publication of this rule is provided in order to give interested parties time to comment and to make available the early implementation of this policy as an aid to effective debt management.

List of Subjects in 7 CFR Part 400

General administrative regulations, Crop insurance, Debt management, Delinquent debts, Credit reporting procedures, Collection procedures.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (5 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new subpart, Subject K, Debt Management, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart K—Debt Management

Sec.
400.115 Purpose.
400.116 Definitions.
400.117 Determination of delinquency.
400.118 Demand for payment.
400.119 Notice to debtor, credit reporting agency.
400.120 Subsequent disclosure and verification.
400.121 Information disclosure limitations.
400.122 Attempts to locate debtor.
400.123 Requests for review of indebtedness.
400.124 Disclosure to credit reporting agencies.
400.125 Notice to debtor, collection agency.
400.126 Referral of delinquent debts to contract collection agencies.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart K—Debt Management

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Crop Insurance Corporation (FCIC) to credit reporting agencies of information with respect to delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *"Credit reporting agency"* means (1) a consumer reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with FCIC to provide credit reporting services.

(b) *"Collection agency"* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *"Comptroller"* means the employee of FCIC filling that position or the person designated by the Comptroller to perform that function.

(d) *"Debt and claim"* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money, the total amount of which is in excess of $100, which has been determined by an appropriate agency officials to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions. The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good faith reliance provisions, or other causes.

(e) *"Delinquent debt"* means (1) any debt owned to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *"System of records"* means a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *"Request for review"* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§ 400.117 Determination of delinquency.

Prior to disclosing information to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall be responsible for reviewing the claim and determining that the claim is valid and overdue.

§ 400.118 Demand for payment.

The Comptroller responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.

§ 400.119 Notice to debtor, credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller responsible for disclosure of information with respect to delinquent debts to a credit reporting agency shall send written notice to the debtor informing such debtor:

(1) Of the basis for the indebtedness;

(2) That the payment is overdue;

(3) That FCIC intends to disclose to a credit reporting agency that the debtor is reponsible for the debt and with respect to an individual, that such disclosure shall be made not less than 60 days after notification to such debtor;

(4) Of the specific information intended to be disclosed to the credit reporting agency;

(5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the system of records of FCIC concerning the claim;

(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(7) Of the date after which the information will be reported to the credit reporting agency.

(b) The content and standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§ 400.120 Subsequent disclosure and verification.

(a) FCIC shall promptly notify each credit reporting agency to which the original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payment received, additional amounts due, or offsets made with respect to the debt.

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(b) FCIC shall promptly verify or correct, as appropriate, information about the claim on request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

(c) FCIC shall obtain satisfactory assurances from each consumer reporting agency to which information will be privided that the agency is in compliance with the provisions of all laws and regulations of the United States relating to providing consumer credit information.

§ 400.121 Information disclosure limitations.

FCIC shall limit delinquent debt information disclosed to credit reporting agencies to:

(a) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(b) The amount, status, and history of the claim; and

(c) The FCIC program under which the claim arose.

§ 400.122 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, FCIC shall take reasonable action to locate a debtor for whom FCIC does not have a current address in order to send the notification in accordance with § 400.119 of this subpart.

§ 400.123 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, FCIC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable administrative appeal procedures.

(b) Upon receipt of a timely request for review, FCIC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on there quest.

(c) Upon completion of the review, the reviewing office shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from the provided in the initial notification.

§ 400.124 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller or designated manager of the systems of records shall disclose to credit reporting agencies the information specified in § 400.122.

(b) Disclosure of information to credit reporting agencies shall be made on or after the date specified in §§ 400.119(a)(3) and 400.124 and shall be comprised of the information set forth in the initial determination or any modification thereof.

(c) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to repay the debt and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or designee has not issued a decision on the review.

§ 400.125 Notice to debtor, collection agency.

FCIC shall provide 30 days written notice to the debtor, mailed to the debtor's last known address, of FCIC's intent to forward the debt to a collection agency for further collection action.

§ 400.126 Referral of delinquent debts to contract collection agencies.

(a) FCIC shall use the services of a contract collection agency which has entered into a contract with the General Services Administration to recover debts owed to FCIC.

(b) If FCIC's collection efforts have been unsuccessful on a delinquent debt, and the delinquent debt remains unpaid, FCIC may refer the debt to a contract collection agency for collection.

(c) FCIC shall retain the authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation.

Done in Washington, DC, on February 10, 1985.

Edward Hew,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–4719 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a rederendum be conducted among growers and handlers of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland to determine whether they favor continuance of the marketing order under which they operate.

DATES: The referendum period is March 10 through March 20, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475–3919.

SUPPLEMENTARY INFORMATION: This action is taken under Marketing Order 930 (7 CFR Part 930) regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the act.

The Department is required under § 930.73(d) of the cherry marketing order to conduct a referendum within the month of March every fifth year to ascertain whether continuation is favored by growers and handlers. The last such referendum was held during March 1981. If it develops from the referendum that (1) More than 50 percent of the producers by number of volume of production represented in the referendum, or (2) more than 50 percent of the handlers who during the representative period handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum, favor termination, the Secretary shall give consideration to terminating the marketing order.

The act provides that the Secretary shall terminate an order, whenever he finds that such termination is favored by a majority of producers who, during a representative period, have produced for market more than 50 percent of the volume of the commodity produced for market within the production area, or have produced more than 50 percent of the volume sold in the marketing area (7 U.S.C. 608c (16)(B)). Accordingly, if, in this referendum, termination is favored by the requisite majority, the Secretary shall terminate the marketing order pursuant to section 8c(16)(B) of the act.

It is hereby directed that a referendum be conducted during the period March 10 through March 20, 1986, among growers and handlers who, during the period May 1, 1985, through December 31, 1985 (which period is hereby determined to be a representative period for purposes of this referendum), were engaged, in the States specified above, in the production or processing of cherries for market, to ascertain whether such growers and handlers favor the continuance of the marketing order.

Martha B. Ranspm and Raymond C. Martin, III, of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct said referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended." (7 CFR Part 900.400 *et seq.*)

Authority: Agricultural Marketing Agreement Act of 1937, as Amended Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: February 27, 1986.

Karen K. Darling,

Deputy Assistant Secretary Marketing & Inspection Services.

[FR Doc. 86–4728 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1006

Milk in the Upper Florida Marketing Area; Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written comments on a proposal to terminate (or suspend for 12 months) certain classification provisions of the Upper Florida order. The proposed action would remove the provision "(including milkshake mix)" from the fluid milk product definition. Such action would classify skim milk and butterfat used in milkshake mix as Class II milk. Currently, a Class I classification applies to skim milk and butterfat in such use. Upper Florida Milk Producers Association, the proponent of the proposed action, indicates that the termination order is needed in order for a processing plant regulated under the Upper Florida order to be competitive with certain other Federal order plants in the processing and distribution of a milkshake mix product (Shake Ups). Proponent indicates that the milkshake product contains in excess of 20 percent total solids and would be classified as a Class II product under the Georgia order and a large number of other Federal order markets.

DATE: Comments are due on or before March 20, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968-South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers by reducing the payments that are required to be made for milk used in the processing of milkshake mix.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination or, alternatively, a 12-month suspension of the following provision of the order regulating the handling of milk in the Upper Florida marketing area is being considered:

1. In § 1006.15, the provision "(including milkshake mix)".

All persons who want to send written data, views, or arguments about the proposed termination (or suspension) should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968-South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 15 days after the publication of this notice in the **Federal Register**.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination (or suspension) would classify as Class II milk all skim milk and butterfat used in the processing of milkshake mix. The order now classifies as Class I milk the skim milk and butterfat in such use.

The proposed termination (or a 12-month suspension) of the provision "(including mildshake mix)" from the fluid milk product definition of the Upper Florida milk marketing order was requested by Upper Florida Milk Producers Association. The cooperative supplies a large portion of the market's fluid milk needs. It also supplies milk to the Flav-O-Rich plant at Jacksonville, Florida, that is processing a milkshake mix product (Shake Ups) containing in excess of 20 percent total solids. The cooperative indicates that a Class II classification is needed for such product in order for the plant to compete with handlers regulated under the Georgia milk order and most other Federal milk orders. Proponent states that skim milk and butterfat in milkshake mix containing in excess of 20 percent total solids are classified as Class II milk in most Federal milk orders while the current provisions of the Upper Florida milk order classify the skim milk and butterfat in such product as Class I milk. Therefore, comments are sought to determine whether the aforementioned provision should be terminated or suspended.

List of Subjects in 7 CFR Part 1006

Dairy products, Milk, Milk marketing order.

The authority citation for CFR Part 1006 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–4823 Filed 3–4–86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1131 and 1136

Milk in the Central Arizona and Great Basin Marketing Areas; Termination of Proceeding on Proposed Termination of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a proceeding on a proposal to terminate the requirement that handlers regulated under the Central Arizona and Great Basin marketing areas pay more than the previous month's Class III price in making partial payments for milk received during the first 15 days of the month. Termination of the amount of the partial payment rate in excess of the previous month's Class III price was requested by Safeway Stores, Inc., a proprietary handler under both orders. Although the proposed termination was supported in comments received from other handlers regulated under the Great Basin order, strong opposition to such action was expressed on behalf of the producer groups representing a substantial majority of the producers

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whose milk is pooled under the two Federal orders.

Because of the conflicting viewpoints expressed by interested parties and the large number of producers opposed to the proposed termination, it is concluded that the requested termination should not be implemented on the basis of this proceeding.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Termination of Certain Provisions of the Orders: Issued January 14, 1986; published January 17, 1986 (51 FR 2506).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

Notice of proposed rulemaking was published in the **Federal Register** (51 FR 2506) concerning a proposed termination of certain provisions of the Central Arizona and Great Basin milk orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon by February 3, 1986.

Statement of Consideration

The proposed termination would have eliminated the portion of the partial payment rate handlers must pay for milk received from producers during the first 15 days of the month that exceeds the previous month's Class III price.

The Central Arizona order provides that handlers must pay producers or their cooperative 1.3 times the Class III price for the preceding month for milk received the first 15 days of the month. A partial payment under this order is not required for milk of producers who have discontinued shipping milk before the 25th day of the month. With respect to milk received from a cooperative association in its capacity as a bulk tank handler or as the operator of a pool plant, the order requires a partial payment at the above rate for all milk received the first 15 days of the month.

Similarly, the Great Basin order requires that handlers pay more than the previous month's Class III price for all milk received during the first 15 days of the month from any producer. The partial payment rate under the Great Basin order is 1.2 times the Class III price for the preceding month. The Great Basin order also requires partial payments to a cooperative association in its capacity as a bulk tank handler and as the operator of a pool plant.

Safeway Stores, Inc., proposed that the 1.3 and 1.2 factors be terminated. Such an action would have resulted in producers and cooperatives being paid the Class III price of the previous month for milk delivered during the first 15 days of the month. The partial payment so computed would have been due to producers and to cooperative associations on or before the end of the month in which the milk was delivered, as is provided by the provisions currently in the orders.

Safeway indicated that at the present time, the price relationship between the Class I price and the preceding month's Class III price is such that partial payments at either the 1.3 or 1.2 rate times the preceding month's Class III price result in handlers having to pay producers more than the Class I price. Safeway indicated, for example, that for the month of October 1985 under the Central Arizona order, the minimum Federal order partial payment rate was $14.46 (Class III price for September $11.12 × 1.3), or $.86 more than the $13.60 Class I price. Under the Great Basin order, for the same month, the minimum partial payment rate was $13.34 (Class II price for September $11.12 × 1.2) or $.36 more than the Class I price of $12.98. Under both orders, the differences between the partial payment rate and the uniform price would be even larger than the differences between the partial payment rate and the Class I price.

At the time the current partial payment rates were promulgated (Central Arizona—final decision issued January 19, 1961; Great Basin—final decision issued March 29, 1961) it was determined that in both markets the rate for partial payments would not result in any "overpayments". This was determined because at that time the proportion of the Class I price and, consequently, of the uniform price to producers represented by the Class III price was substantially smaller than in recent months. Under current market conditions, the orders require a partial payment at a price that exceeds the final minimum order pay price, including the Class I price for milk received from a cooperative association and for which payment is required at not less than class prices.

Aside from Safeway's initial proposal to terminate the 1.3 factor used to establish the partial payment rate under the Central Arizona order, there was no support for the proposed termination from other persons affected by the Central Arizona order. There was, however, strong opposition to the proposal from a nonmember producer and on behalf of United Dairymen of Arizona (UDA), a cooperative association representing nearly all of the producers pooled under the Central Arizona order. The comments on behalf of UDA stressed repeatedly that such an action should be taken only after a public hearing at which all parties would have an opportunity to introduce evidence and voice opinions.

The proposed termination was supported by two handlers, in addition to Safeway, regulated under the Great Basin order, and by the operator of three nonpool plants receiving milk from producers whose milk is eligible for fluid use at Great Basin pool plants. The handlers supported termination action on the basis that the partial payment rate currently exceeds the Class I price, and thus constitutes an overpayment to producers for milk delivered during the first 15 days of the month.

Comments opposing the proposed termination were filed on behalf of Intermountain Milk Producers Association (IMPA), a federation of cooperatives whose members represent a large majority of the producers whose milk is pooled under the Great Basin Federal milk order. Like the comments filed on behalf of Central Arizona producers, those submitted by IMPA argued that dairy farmers already wait for most of the remainder of the month to be paid for the milk they market during the first 15 days of the month. Further, the commenters stated, by the time producers are paid for the milk they deliver during the first half of the month, handlers have already received another 15 or 16 days' production (10 days' production, under the Central Arizona order). According to the comments received from producers, reduction of the partial payment rate would represent an unwarranted additional extension of credit to handlers at the expense of producers.

A hearing is scheduled to begin on March 18, 1986, in Salt Lake City to receive testimony and evidence relating to a proposal to merge the Great Basin and Lake Mead orders. One of the proposals contained in the hearing notice would establish the rate of partial payment under the proposed merged order, or would amend the partial payment rate under the current Great Basin order, at the level of the Class III price for the previous month. No proposals to amend the partial payment provisions of the Central Arizona order have been received.

In view of the conflicting viewpoints expressed by interested persons and the large number of producers opposed to

the proposed termination, it is concluded that the requested termination should be based on the record of a public hearing rather than implemented on the basis of this proceeding. Accordingly, the proceeding begun in this matter on January 14, 1986, is hereby terminated.

List of Subjects in 7 CFR Parts 1131 and 1138

Dairy products, Milk, Milk marketing orders.

The authority citation for CFR Parts 1131 and 1138 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-4822 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through July 1986 a suspension of portions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension of the provision was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before March 12, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: The Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of March through July 1986.

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would continue to relax for the months of March through July 1986 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distribution plant each month.

The order now provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distribution plants in the months of March, April, May, June, July and December, and 20 percent in other months. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that during 1985, producer receipts pooled under the Eastern Colorado order increased 12.7 percent over the previous year. At the same time, the cooperative states, producer milk in Class I rose only 1.8 percent. According to the cooperative, there are ample supplies of local milk to meet the fluid requirements of Eastern Colorado distribution plants as a result of increased milk production. However, Mid-Am estimates that approximately 15 loads of producer milk per month would have to be shipped from farms in Kansas and Nebraska to Eastern Colorado pool distributing plants in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: February 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-4821 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-02-M

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Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85-036E]

Facility and Equipment Requirements for the Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 29, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. FSIS has received a request from the National Broiler Council to allow more time for reviewing and gathering information. FSIS concurs in this request and is hereby extending the comment period for 45 days.

DATE: Comments must be received on or before April 14, 1986.

ADDRESS: Written comments to: Policy Office, Attn: FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, Washington, DC 20250; Telephone (202) 447-3217.

SUPPLEMENTARY INFORMATION: On January 29, 1986, FSIS published in the **Federal Register** (51 FR 3621) a proposed rule to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The proposed regulation would specify certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency deems to be appropriate and essential to assume optimum inspection performance under the new system. It would require the installation of an appropriately designed, adjustable platform at each inspector's station. In addition, the proposed regulation would provide for carcass selection devices known as selector or "kickouts" to be installed at inspection stations. The proposal would also require equipment appropriate to permit adequate lighting and proper handwashing and handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

Interested persons were given until February 28, 1986, to comment on this proposed rule. FSIS has received a request from the National Broiler Council to extend the comment period to allow more time to review and gather information on the proposal. FSIS is interested in receiving additional data, and therefore is extending the comment period for an additional 45 days, to April 14, 1986.

Done at Washington, DC on: March 3, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-4929 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Appliance Standards

AGENCY: Conservation and Renewable Energy, DOE

ACTION: Proposed Rules; Withdrawal and Termination.

SUMMARY: Today's notice withdraws and terminates the U.S. Department of Energy rulemakings to prescribe energy efficiency standards for dishwashers, television sets, clothes washers and humidifiers and dehumidifiers, and to grant State petitions for exemptions from Federal preemption of State or local energy efficiency standards.

DATE: This withdrawal and termination is effective March 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CE-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION:

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163, 87 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3266), which requires DOE to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard is to be established if there is no procedure for the product; or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy would be a rule that supersedes any State standard. Section 325(b). A State whose energy efficiency standard would be superseded, however, may petition the Department for a rule that it not be superseded. Section 327(b)(3).

On December 15, 1982, DOE issued a final rule with respect to two covered products, clothes dryers, and kitchen ranges and ovens. 47 FR 57198 (December 22, 1982). (Hereafter referred to as the December 1982 rule.) With respect to both products, DOE determined that a standard would not result in significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State or local energy efficiency standards. On August 25, 1983, DOE issued a final rule with respect to six further covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376 (August 30, 1983). (Hereafter referred to as the August 1983 rule.) For each of the six products covered by the August 1983 rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in

significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

On March 15, 1985, the Department issued a proposed rulemaking regarding energy efficiency standards for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 50 FR 12966 (April 1, 1985). On August 8, 1984, DOE proposed to grant petitions from 26 States requesting, in each case, that State efficiency standards pertaining to one or more of eight covered products in the December 1982 and August 1983 rules be exempted from Federal preemption. 49 FR 32944 (August 17, 1984). On May 3, 1985, DOE proposed to grant petitions from two States, Michigan and Hawaii, requesting in each case, that State regulations pertaining to the energy use or energy efficiency of certain appliances be exempted from Federal preemption. 50 FR 21450 (May 24, 1985).

The December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department of Energy. The Court of Appeals granted NRDC's petition and set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985). That decision having now become final, the Department is giving notice of the termination and withdrawal of affected rulemakings in progress. These are the proposed rules regarding energy efficiency standards for dishwashers, television sets, clothes washers and humidifiers and dehumidifiers, 50 FR 12966, and the rules proposing to grant the 26 State petitions, 49 FR 32944, and the Michigan and Hawaii petitions, 50 21450, for exemption from Federal preemption of State or local energy efficiency standards.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, February 12, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-4809 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-3-000]

Ceiling Prices; Old Gas Pricing Structure

February 28, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice providing for reply comments and establishing a public conference.

SUMMARY: As discussed more fully below in this notice, the Commission is providing for reply comments on the proposal by the Secretary of the Department of Energy relating to old gas pricing structure. Also, the Commission is scheduling a public conference to discuss specific issues.

DATES: Reply comments are due on March 27, 1986. The public conference will convene at 9 a.m. on April 10 and 11, 1986. Requests to participate in the public conference must be directed to the Secretary on or before March 21, 1986.

ADDRESSES: The hearing will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Reply comments and requests to participate and questions regarding participation in the public conference should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth Plumb, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Federal Energy Regulatory Commission (Commission) issued a notice of procedural schedule, 50 FR 52935 (Dec. 27, 1985), establishing a schedule for public comment on a notice of proposed rulemaking issued by the Department of Energy under section 403 of the Department of Energy Organization Act, 42 U.S.C. 4273 (1982), for action by the Commission, 50 FR 48540 (Nov. 25, 1985).

Under the Secretary's proposed rule, the Commission would exercise its authority: (1) Under sections 104 and 106 of the National Gas Policy Act of 1978 (NGPA), to establish just and reasonable prices for "flowing" old gas, and (2) under section 107 of the NGPA, to establish incentive prices for certain categories of old gas. Under the proposal, the Commission would act to eliminate vintaging and replace the current myriad of old gas ceiling prices with a single ceiling price (the ceiling price for post-1974 gas). In addition, the Commission would establish incentive prices for certain categories of old gas, in order to increase significantly the production of old gas and to encourage long-term investment in natural gas exploration, development, and production. In this order, the Commission is providing for a period for reply comments and establishing a public conference.[1] An original and 14 copies of the reply comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, by 4:30 p.m. e.s.t. on March 27, 1986. Also, any interested person may request, in writing, to participate in the public conference that will convene at 9 a.m. on April 10 and 11, 1986.

The public conference will not be of judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels. The Commission will issue another notice setting specific issues to be discussed in the conference. There will be no cross examination of persons presenting statements. However, the Commission panel may question these persons. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM86-3-000, in the Commission's Division of Public Information, Room 1000, and may be ordered from that office.

Requests to participate in the hearing should be submitted, in writing, on or before March 21, 1986, to the Office of the Secretary. A list of the participants in the conference will be available in the Commission's Division of Public Information and at the hearing room on the morning the conference is convened.

By the direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-4692 Filed 3-4-86; 8:45 am]

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[1] The Commission notes that it has received motions from Associated Gas Distributors (AGD), United Distribution Companies (UDC) and others in this docket. For example, AGD requests that the Commission establish further procedures including reply comments, discovery, and an extension of the initial comment period.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225A]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rules; changes in hearing schedule and dates for submission of documents.

SUMMARY: This notice announces changes in the starting date of public hearings and changes in the dates for submission of comments, noitices of intention to appear, and other documentary evidence on the proposed revision of the standard for occuptional exposure to formaldehyde (50 FR 50412, December 10, 1985). It has been brought to the Agency's attention that the hearing, which was originally scheduled to begin on April 22, 1986, would conflict with the observance of the Passover holiday. The hearing has been rescheduled to begin on May 5, 1986 to avoid this conflict. The rescheduling of the starting date of the hearing allows the Agency to extend the dates by which the public must submit comments and other documents related to participation at the rulemaking hearings on occupational exposure to formaldehyde.

DATES: Wrtten comments on the proposed standard must be postmarked on or before March 24, 1986. Notices of intention to appear at the informal rulemaking hearings on the proposed standard must be received by March 24, 1986. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than April 14, 1986. All comments and documents related to public participation in the informal rulemaking hearings must be submitted in quadruplicate (see 50 FR 50412, 50487, December 10, 1985).

The informal rulemaking hearing is scheduled to begin on May 5, 1986, at 10:00 A.M.

ADDRESSES: Written comments on the formaldehyde proposal are to be submitted to the Docket Officer, Docket No. H-225A, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210, telephone (202) 523-7894.

The informal rulemaking hearing will be held in the Auditorium, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, telephone (202) 523-7894.

Notices of intention to testify at the hearing, testimony, and documentary evidence are to be sent to Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-225A, Room N-3662, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8024.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Forster, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

Signed at Washington, DC, this 25th day of February 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 4662 Filed 3-4-86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Outer Continental Shelf, Oil and Gas and Sulphur Operations; Platforms and Other Facilities

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (DOI) is considering amending its regulations concerning the disposition of platforms and other facilities used in oil and gas production in the Outer Continental Shelf (OCS) following termination of production. The amendments being considered would revise Minerals Management Service (MMS) rules which require the removal of all structures and facilities upon the cessation of operations. These changes would make it possible for structures to remain in the OCS leasehold under permits which may be granted by the Corps of Engineers (Corps) or other authority with jurisdiction in the OCS. The MMS is seeking comments on the changes to its regulations that are being considered.

DATE: Comments must be hand-delivered or postmarked no later than April 4, 1986.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION:

Background

For the past several years, DOI and MMS have been considering the desirability of modifying the regulatory requirement for complete removal of all platforms and other facilities from OCS leases when production is terminated. Although regulations continue to require complete clearance of the seabed, several actions to promote platform dispositions which could entail leaving structures wholly or partially in the OCS have been undertaken by Congress, DOI, and MMS.

In January 1983, DOI formed the Recreational and Environmental Enhancement for Fishing in the Seas (REEFS) Task Force with Federal, State, and private sector representatives. At that time, DOI announced its support for a policy to permit platforms, or other facilities or parts thereof, to remain on OCS leaseholds for the protection of fish and other aquatic life and for the conservation of natural resources.

During 1983–84, a Memorandum of Understanding among five Federal Departments and Agencies was developed to address the divergent interests and responsibilities of these groups in various matters in the OCS. The document outlined procedures to ensure consultations among those Agencies, but it has not been finalized.

In November 1984, the enactment of the National Fishing Enhancement Act of 1984 (Act), Pub. L. 98-623, established a national policy and program to promote the development of artificial reefs for fish habitats and the ultimate increase in fishery production. In compliance with this legislation, the Department of Commerce has developed a long-term national plan for artificial reefs outlining criteria for the design, materials, and siting of reefs. Under the Act, the Corps is responsible for issuing reef permits specifying design, location, and construction material. A variety of materials is used to contruct artificial reefs, but offshore oil and gas structures are particularly well suited for this use. The Corps is also responsible for ensuring that titles to reefs and financial capability for maintenance and liability are established. In July 1985, the Corps issued proposed regulations to enable it to fulfill these responsibilities (50 FR 30479).

In November 1984, MMS published an Advance Notice of Proposed Rulemaking (ANPR) to solicit information on the legal, economic, safety, and other aspects of various alternatives for the disposition of postproduction platforms. This information was requested to support a study which DOI had commissioned from the National Research Council's Marine Board to analyze and advise MMS on the issue of platform removal. The Marine Board study was issued in mid-1985. It provides extentive information concerning the number, type, and location of offshore platforms and comparative cost estimates for several disposal options. It also discusses alternative policies for platform disposal and concludes that a more flexible U.S. policy on the disposition of offshore platforms is warranted.

These developments have significant implications for the offshore oil and gas industry. The general practice for disposition of obsolete platforms has been the complete removal of all structural elements and their return to a shore facility for salvage or scrap. As the number of obsolete platforms increases with the maturing of the offshore industry and platforms are located in deeper waters and farther from shore, the cumulative costs for removal to distant disposal locations onshore will become significant. Response to MMS's earlier inquiry on this question in the November 1984 ANPR estimated removal costs of several million dollars in moderate water depths (200 to 400 feet) with sharply increasing costs in waters 500 feet and greater. Therefore, the development of alternatives for platform disposal offers the possibility for major cost reductions with concomitant financial benefits for the offshore producers. This, in turn, can be expected to have a positive effect on future oil and gas prices.

MMS Position

There are a number of factors, including those outlined above, which indicate that modification of the MMS position on platform removal is appropriate to reflect recent developments.

The findings of the Marine Board study, the 1984 legislation promoting a national artificial reefs program, and the more flexible positions on platform removal emerging in some international arenas support the allowance of alternatives for platform disposal under certain circumstances. In addition, it is the policy of MMS not to impose unnecessary costs on offshore oil and gas operations. Therefore, MMS favors the most economical disposition of obsolete platforms consistent with navigational and human safety, national defense requirements, and environmental safeguards. The MMS desires to facilitate platform disposal alternatives which meet these criteria and the specific conditions required to obtain the necessary permits from the Corps or possibly the Environmental Protection Agency (EPA). Any future MMS approval of alternative platform disposal plans which entail structures remaining on leases in the OCS, in whole or in part, would be conditioned on the proper permits having been obtained from those Government Agencies which are authorized to issue permits for such disposal. In contemplation of this possibility, we believe it is appropriate to eliminate any MMS regulatory provisions which might be an impediment to the issuance of such permits and the implementation of this policy. Consequently, we are evaluating changes to MMS rules.

Rule Changes Contemplated

Current MMS platform removal regulations and the stipulations for site clearance in MMS leases and OCS Orders are inconsistent with the policy outlined above to allow platforms to remain on the lease site if the necessary permits have been obtained. To alleviate this conflict and to provide for consistency with the Corps regulations, MMS intends to amend its rules concerning site clearance. These amendments will be designed to accomplish the following:

- Modify the absolute requirements to clear sites.
- Require lessees to indicate whether they have considered obtaining an artificial reef or other permit.
- Provide a procedure for lessees to apply to MMS for approval to leave platforms onsite.
- Require that platform disposition not be inconsistent with navigational and human safety, national defense requirements, and environmental safeguards.
- Specify that MMS approval for leaving platforms or parts of structures on lease sites will be conditioned on lessees obtaining necessary permits from the Corps or EPA.

The MMS is seeking comments and suggestions from interested parties on the suitability of these objectives and on the best way to design regulatory provisions to implement them.

In developing these amendments, MMS will also take into account the provisions fo the Act which absolve persons transferring title to reef materials (donors of reefs) from liability for damages if the materials meet requirements and not "defective" when transferred.

We are, therefore, soliciting responses to the following questions:

- What would make a platform defective as a materials for artificial reef purposes? Is any equipment on a platform or oil and gas structure unsuitable for a reef?
- How can material in platforms be shown not to be defective?
- What should the role of MMS be relative to the Corps in determining whether or not platform materials are defective?

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public land/mineral resources, Reporting and recordkeeping requirements.

Dated: February 18, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-4762 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2951-3]

Air Pollution; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The purpose of this proposed rule is to revise and add additional concentration calculation equations and miscellaneous clarifications to a method already published in 40 CFR Part 60. The intended effect is to enhance the reliability of data produced by this test method.

DATES: *Comments.* Comments must be received on or before May 19, 1986.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

If anyone contacts EPA requesting to speak at a public hearing by March 28, 1986, a public hearing will be held on April 9, 1986, beginning at 10:00 a.m.

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Persons interested in attending the hearing should call William Grimley at (919) 541–2237 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 28, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–85–23, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 28, 1986, the public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify William Grimley, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

Docket. Docket No. A–85–23, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 18 was promulgated in the **Federal Register** on October 18, 1983 (48 FR 48344).

These proposed amendments are intended to improve the reliability of data produced by the method, and in that respect, comments are solicited on the entire method. Any comments submitted to the Administrator on the method should contain specific information and data pertinent to their evaluation.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed method revisions in accordance with section 307(d)(5) of the Clean Air Act. Persons wishinig to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) To serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Can surface coating, Cement industry, Coal, Copper, Electric power plants, Fiberglass insulation, Fossil-fuel-fired steam generators, Glass and glass products, Grains, Incorporations by reference, Industrial organic chemicals, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Organic solvent cleaners, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Synthetic fibers, Tires, Waste treatment and disposal, Zinc.

Dated: February 14, 1986.

Lee M. Thomas,

Administrator.

It is proposed to Amend 40 CFR Part 60, Appendix A, Method 18, as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By revising the first paragraph of section 1.2 as follows:

The major organic components of a gas mixture are separated by gas chromatography (GC) and individually quantified by flame ionization, flame photometric, electron capture, or other appropriate detection principles.

3. By revising the last sentence of section 4 as follows:

To adjust gaseous organic concentrations when water vapor is present in the sample, water vapor concentrations are determined for those samples, and a correction factor is applied.

4. By revising the first paragraph of section 5 as follows:

Perform a presurvey for each source to be tested. Refer to Figure 18–1. Some of the information can be collected from literature surveys and source personnel. Collect gas samples that can be analyzed to confirm the identities and approximate concentrations of the organic emissions.

5. By adding a sentence after the heading of section 5.1 as follows:

5.1 Apparatus. This apparatus list also applies to sections 6 and 7.

6. By revising section 5.1.4 as follows:

5.1.4 Flowmeters. To measure flow rates.

7. By revising section 5.1.7 as follows:

5.1.7 Syringe. 0.5-ml, 1.0- and 10-microliter sizes, calibrated, maximum accuracy (gas tight) for preparing calibration standards.

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8. By adding sections 5.1.19 and 5.1.20 as follows:

5.1.19 Sample Probes. Pyrex or stainless steel, of sufficient length to reach centroid of stack.

5.1.20 Barometer. To measure barometric pressure.

9. By revising section 5.2.4 as follows:

5.2.4 Organic Compound Solutions. Pure or nearly pure liquid samples of all the organic compounds needed to prepare calibration standards.

10. By removing the first sentence of section 6.

11. By revising the last paragraph of section 6.1.1 as follows:

Plants with analytical laboratories may also be able to provide information on appropriate analytical procedures.

12. By revising sections 6.2; 6.3, 6.4, and 6.5 as follows:

6.2 Calibration Standards. Prepare or obtain enough calibration standards so that there are three different concentrations of each organic compound expected to be in the source sample. For each organic compound, select those concentrations that bracket the concentrations expected in the source samples. A calibration standard may contain more than one organic compound. If available, commercial cylinder gases may be used if their concentrations have been certified by direct analysis.

If samples are collected in adsorbent tubes (charcoal, XAD–2, Tenax, etc.), prepare or obtain standards in the same solvent used for the sample extraction procedure. Refer to section 7.4.3.

Verify the stability of all standards for the time periods they are used. If gas standards are prepared in the laboratory, use one or more of the following procedures.

6.2.1 Preparation of Standards from High Concentration Cylinder Standards. Obtain enough high concentration cylinder standards to represent all the organic compounds expected in the source samples.

Use these high concentration standards to prepare lower concentration standards by dilution, as shown by Figures 18–5 and 18–6.

To prepare the diluted calibration samples, calibrated rotameters are normally used to meter both the high concentration calibration gas and the diluent gas. Other types of flowmeters may be used.

Calibrate each flowmeter before use by placing it between the diluent gas supply and a suitably sized bubble meter, spirometer, or wet test meter. Record all data shown on Figure 18–4. While it is desirable to calibrate the cylinder gas flowmeter with cylinder gas, the available quantity and cost may preclude it. The error introduced by using the diluent gas for calibration is insignificant for gas mixtures of up to 1,000 to 2,000 ppm of each organic component.

Once the flowmeters are calibrated, connect the flowmeters to the calibration and diluent gas supplies using 6-mm Teflon tubing. Connect the outlet side of the flowmeters through a connector to a leak-free Tedlar bag as shown in Figure 18–5. (See section 7.1 for bag leak-check procedures.) Adjust the gas flow to provide the desired dilution, and fill the bag with sufficient gas for GC calibration. Be careful not to overfill and cause the bag to apply additional pressure on the dilution system. Record the flow rates of both flowmeters and the laboratory temperature, and atmospheric pressure. Calculate the concentration C_s in ppm of each organic in the diluted gas as follows:

$$C_s = \frac{10^6(\bar{X}\ q_c)}{q_c + q_d} \qquad \text{Eq. 18-1}$$

where:

10^6 = Conversion to ppm.

$\bar{X}$ = Mole fraction of the organic in the calibration gas to be diluted.

q_c = Flow rate of the calibration gas to be diluted.

q_d = Diluent gas flow rate.

Single-stage dilution should be used to prepare calibration mixtures up to about 1:20 dilution factor.

For greater dilutions, a double dilution system is recommended, as shown in Figure 18–6. Fill the Tedlar bag with the dilute gas from the second stage. Record the laboratory temperature, barometric pressure, and static pressure readings. Correct the flow readings for temperature and pressure. Calculate the concentration C_s in ppm of the organic in the final gas mixture as follows:

$$C_s = 10^6\ \bar{X}\left(\frac{q_{c1}}{q_{c1} + q_{d1}}\right)\left(\frac{q_{c2}}{q_{c2} + q_{d2}}\right) \qquad \text{Eq. 18-2}$$

where:

10^6 = Conversion to ppm.

$\bar{X}$ = Mole fraction to the organic in the calibration gas to be diluted.

q_{c1} = Flow rate of the calibration gas to be diluted in stage 1.

q_{c2} = Flow rate of the gas from stage 1 that is to be diluted in stage 2.

q_{d1} = Flow rate of diluent gas in stage 1.

q_{d2} = Flow rate of diluent gas in stage 2.

Further details of the calibration methods for flowmeters and the dilution system can be found in Citation 21 in the Bibliography.

6.2.2 Preparation of Standards from Volatile Materials. Record all data shown on Figure 18–3.

6.2.2.1 Gas Injection Technique. This procedure is applicable to organic compounds that exist entirely as a gas at ambient conditions. Evaculate a 10-liter Tedlar bag that has passed a leak-check (see section 7.1), and meter in 5.0 liters of air or nitrogen through a dry gas meter that has been calibrated in a manner consistent with the procedure described in section 5.1.1 of Method 5. While the bag is filling, use a 0.5-ml syringe to inject a known quantity of "pure" gas of the orangic compound through the wall of the bag, or through a septum-capped tee at the bag inlet. Withdraw the syringe needle, and immediately cover the resulting hole with a piece of masking tape. In a like manner, prepare dilutions having other concentrations. Prepare a minimum of three concentrations. Place each bag on a smooth surface, and alternately depress opposite sides of the bag 50 times to mix the gases. Record the average meter temperature and pressure, the gas volume and the barometric pressure. Record the syringe temperature and pressure before injection.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{G_v \times 10^6\ \dfrac{293}{T_s}\ \dfrac{P_s}{760}}{V_m\ Y\ \dfrac{293}{T_m}\ \dfrac{P_m}{760}\ \dfrac{1000\ \text{ml}}{\text{liter}}} \qquad \text{Eq. 18-3}$$

where:

G_v = Gas volume of organic compound injected, ml.

10^6 = Conversion to ppm.

P_s = Absolute pressure of syringe before injection, mm Hg.

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T_s = Absolute temperature of syringe before injection, °K.
V_m = Gas volume indicated by dry gas meter, liters.
Y = Dry gas meter calibration factor, dimensionless.
P_m = Absolute pressure of dry gas meter, mm Hg.
T_m = Absolute temperature of dry gas meter, °K.

6.2.2.2 Liquid Injection Technique. Use the equipment shown in Figure 18–8. Calibrate the dry gas meter as described in section 6.2.2.1 with a wet test meter or a spirometer. Use a water manometer for the pressure gauge and glass, Teflon, brass, or stainless steel for all connections. Connect a valve to the inlet of the 50-liter Tedlar bag.

To prepare the standards, assemble the equipment as shown in Figure 18–8, and leak-check the system. Completely evacuate the bag. Fill the bag with hydrocarbon-free air, and evacuate the bag again. Close the inlet valve.

Turn on the hot plate, and allow the water to reach boiling. Connect the bag to the impinger outlet. Record the initial meter reading, open the bag inlet valve, and open the cylinder. Adjust the rate so that the bag will be completely filled in approximately 15 minutes. Record meter pressure, temperature, and local barometric pressure.

Allow the liquid organic to equilibrate to room temperature. Fill the 1.0- or 10-microliter syringe to the desired liquid volume with the organic. Place the syringe needle into the impinger inlet using the septum provided, and inject the liquid into the flowing air stream. Use a needle of sufficient length to permit injection of the liquid below the air inlet branch of the tee. Remove the syringe.

When the bag is filled, stop the pump, and close the bag inlet valve. Record the final meter reading, temperature, and pressure.

Disconnect the bag from the impinger outlet, and set it aside for at least 1 hour to equilibrate.

Measure the solvent liquid density at room temperature by accurately weighing a known volume of the material on an analytical balance to the nearest 1.0 milligram. Take care during the weighing to minimize evaporation of the material. A ground-glass stoppered 25-ml volumetric flask or a glass-stoppered specific gravity bottle is suitable for weighing. Calculate the result in terms of g/ml. As an alternative, literature values of the density of the liquid at 20°C may be used.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{\frac{L_v\ \rho}{M}\ (24.055 \times 10^6)}{V_m\ Y\ \frac{293}{T_m}\ \frac{P_m}{760}\ \frac{1000\ \mu l}{ml}} = 6.24 \times 10^4\ \frac{L_v\ \rho\ T_m}{M\ V_m\ Y\ P_m} \qquad \text{Eq. 18-4}$$

where:
L_v = Liquid volume of organic injected, μl.
ρ = Liquid organic density as determined, g/ml.
M = Molecular weight of organic, g/g-mole.
24.055 = Ideal gas molar volume at 293°K and 760 mm Hg, liters/g-mole.
10^6 = Conversion to ppm.

6.3 Preparation of Calibration Curves. Establish proper GC conditioning, then flush the sampling loop for 30 seconds at a rate of 100 ml/min. Allow the sample loop pressure to equilibrate to atmospheric pressure, and activate the injection valve. Record the standard concentration, attenuator factor, injection time, chart speed, retention time, peak area, sample loop temperature, column temperature, and carrier gas flow rate. Repeat the standard injection until two consecutive injections give area counts within 5 percent of their average. The average multiplied by the attenuator factor is then the calibration area value for that concentration.

Repeat this procedure for each standard. Prepare a graphical plot of concentration (C_s) versus the calibration area values. Perform a regression analysis, and draw the least squares line.

6.4 Relative Response Factors. The calibration curve generated from the standards for a single organic can usually be related to each of the individual GC response curves that are developed in the laboratory for all the compounds in the source. In the field, standards for that single organic can then be used to "calibrate" the GC for all the organics present.

This procedure should first be confirmed in the laboratory by preparing and analyzing calibration standard containing multiple organic compounds.

6.5 Quality Assurance for Laboratory Procedures. Immediately after the preparation of the calibration curves and prior to the presurvey sample analysis, the analysis audit described in Part 61, Appendix C, Procedure 2: "Procedure for Field Auditing GC Analysis", should be performed. The information required to document the analysis of the audit samples has been included on the example data sheets shown in Figures 18–3 and 18–7. The audit analyses should agree with the audit concentrations within 10 percent. When available, the tester may obtain audit cylinders by contacting: U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711. Audit cylinders obtained from a commercial gas manufacturer may be used provided that (a) the gas manufacturer certifies the audit cylinder in a manner similar to the procedure described in Part 61, Appendix B, Method 106, section 5.2.3.1, and (b) the gas manufacturer obtains an independent analysis of the audit cylinders to verify this analysis. Independent analysis is defined as an analysis performed by an individual other than the individual who performs the gas manufacturer's analysis, while using calibration standards and analysis equipment different from those used for the gas manufacturer's analysis. Verification is complete and acceptable when the independent analysis concentration is within 5 percent of the gas manufacturer's concentration.

13. By revising section 7.1.1 as follows:

7.1.1 Evacuated Container Sampling Procedure. In this procedure, the bags are filled by evacuating the rigid air-tight container holding the bags. Use a field sample data sheet as shown in Figure 18–10. Collect triplicate samples from each sample location.

14. By changing the first word after the heading of section 7.1.2 from "Flow" to "Follow."

15. By revising section 7.1.5 and 7.1.6 and adding 7.1.7 and 7.1.8 to read as follows:

7.1.5 Analysis of Bag Samples.

7.1.5.1 Apparatus. Same as section 5. A minimum of three gas standards are required.

7.1.5.2 Procedure. Establish proper GC operating conditions as described in section 6.3, and record all data listed in Figure 18–7. Prepare the GC so that gas can be drawn through the sample valve. Flush the sample loop with gas from one of the three calibration mixtures, and activate the valve. Obtain at least two chromatograms for the mixture. The results are acceptable when the peak areas from two consecutive injections agree to within 5 percent of their average. If they do not, run additional analyses or correct the analytical techniques until this requirement is met. Then analyze the other two calibration mixtures in the same manner. Prepare a calibration curve as described in Section 6.3.

Analyze the source gas samples by connecting each bag to the sampling valve with a piece of Teflon tubing identified for that bag. Follow the specifications on replicate analyses specified for the calibration gases. Record the data listed in Figure 18–11. If certain items do not apply, use the notation "N.A." After all samples have been analyzed, repeat the analyses of the calibration gas mixtures, and generate a second calibration curve. Use an average of

the two curves to determine the sample gas concentrations. If the two calibration curves differ by more than 5 percent from their mean value, then report the final results by comparison to both calibration curves.

7.1.6 Determination of Bag Water Vapor Content. Measure and record the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content as a decimal figure. (Assume the relative humidity to be 100 percent unless a lesser value is known.) If the bag has been maintained at an elevated temperature as described in section 7.1.4, determine the stack gas water content by Method 4.

7.1.7 Quality Assurance. Immediately prior to the analysis of the stack gas samples, perform audit analyses as described in Section 6.5. The audit analyses must agree with the audit concentrations within 10 percent. If the results are acceptable, proceed with the analyses of the source samples. If they do not, then determine the reason for the discrepancy, and take corrective action before proceeding.

7.1.8 Emission Calculations. From the average calibration curve described in section 7.1.5, select the value of C_s that corresponds to the peak area. Calculate the concentration C_c in ppm, dry basis, of the organic in the samples as follows:

$$C_c = \frac{C_s P_r T_i F_r}{P_i T_r (1 - B_{ws})} \qquad \text{Eq. 18-5}$$

where:
C_s = Concentration of the organic from the calibration curve, ppm.
P_r = Reference pressure, the barometric pressure or absolute sample loop pressure recorded during calibration, mm Hg.
T_i = Sample loop temperature at the time of sample analysis, °K.
F_r = Relative response factor (if applicable, see Section 6.4).
P_i = Barometric or absolute sample loop pressure at time of sample analysis, mm Hg.
T_r = Reference temperature, the temperature of the sample loop recorded during calibration, °K.
B_{ws} = Water vapor content of the bag sample or stack gas, proportion by volume.

16. By removing the last paragraph of Section 7.2.2.

17. By adding sections 7.2.3, 7.2.4, and 7.2.5 as follows:

7.2.3 Determination of Stack Gas Moisture Content. Use Method 4 to measure the stack gas moisture content.

7.2.4 Quality Assurance. Same as Section 7.1.7. The audit gases must be introduced in the sample line immediately following the probe.

7.2.5 Emission Calculations. Same as Section 7.1.8.

18. By adding sections 7.3.3, 7.3.4, and 7.3.5 as follows:

7.3.3 Determination of Stack Gas Moisture Content. Same as section 7.2.3.

7.3.4 Quality Assurance. Same as section 7.2.4.

7.3.5 Emission Calculations. Same as section 7.2.5, with the dilution factor applied.

19. By revising Figure 18–3 to appear as follows:

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Preparation of Standards in Tedlar Bags and Calibration Curve

	Standards Mixture #1	 Mixture #2	 Mixture #3
Standards Preparation Data:			
Organic: ______			
Bag number or identification			
Dry gas meter calibration factor			
Final meter reading (liters)			
Initial meter reading (liters)			
Metered volume (liters)			
Average meter temperature (°K)			
Average meter pressure, gauge (mm Hg)			
Average atmospheric pressure (mm Hg)			
Average meter pressure, absolute (mm Hg)			
Syringe temperature (°K) (Section 6.2.2.1)			
Syringe pressure, absolute (mm Hg) (Section 6.2.2.1)			
Volume of gas in syringe (ml) (Section 6.2.2.1)			
Density of liquid organic (g/ml) (Section 6.2.2.2)			
Volume of liquid in syringe (μl) (Section 6.2.2.2)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature			
Initial (°C)			
Rate change (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Organic retention time (min)			
Attenuation factor			
Peak height (mm)			
Peak area (mm^2)			
Peak area x attenuation factor (mm^2)			
Calculated concentration (ppm) (Equation 18-3 or 18-4)			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-3. Data sheet - standards prepared in Tedlar bags and calibration curve.

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20. By revising Figure 18-4 to appear as follows:

Flowmeter Calibration

Flowmeter number or identification ______________________
Flowmeter type ______________________
Calibration device (x): Bubble meter ___ Spirometer ___ Wet test meter ___
Readings at laboratory conditions:
Laboratory temperature (T_{lab}) ________ °K
Laboratory barometric pressure (P_{lab}) ________ mm Hg
Flow data:

Flowmeter reading (as marked)	 temp. (°K)	 pressure (absolute)

Calibration device Time (min)	 gas volume[a]	 flow rate[b]

[a] = Volume of gas measured by calibration device, corrected to standard conditions (liters).

[b] = Calibration device gas volume/time.

Plot flowmeter reading against flow rate (standard conditions), and draw a smooth curve. If the flowmeter being calibrated is a rotameter or other flow device that is viscosity dependent, it may be necessary to generate a "family" of calibration curves that cover the operating pressure and temperature ranges of the flowmeter.

While the following technique should be verified before application, it may be possible to calculate flow rate readings for rotameters at standard conditions Q_{std} as follows:

$$Q_{std} = Q_{lab}\left(\frac{760 \times T_{lab}}{P_{lab} \times 293}\right)^{1/2}$$

Flow rate (laboratory conditions)	Flow rate (standard conditions)

Figure 18-4. Data sheet - flowmeter calibration.

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21. By revising Figure 18-7 to appear as follows:

Preparation of Standards by Dilution of Cylinder Standard

Cylinder standard: Organic ________ Certified Concentration _______ ppm

Standards Preparation Data: Date ____________

Stage 1	Mixture 1	Mixture 2	Mixture 3
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Laboratory temperature (°K)			
Barometric pressure (mm Hg)			
Flowmeter gage pressure (mm Hg)			
Flow rate cylinder gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
Stage 2 (if used)			
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Flow rate stage 1 gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature:			
Initial (°C)			
Program rate (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Retention time (min)			
Attenuation factor			
Peak area (mm^2)			
Peak area x attenuation factor			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-7. Data sheet - standards prepared by dilution of cylinder standard.

[FR Doc. 86-4254 Filed 3-4-86; 8:45 am]

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40 CFR Part 268

[SWH-FRL-2977-9]

Hazardous Waste Management System; Land Disposal Restrictions; Petitioner's Guidance Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Petitioner's Guidance Manual and request for comments.

SUMMARY: The Environmental Protection Agency is today announcing the availability of a draft guidance manual for public comment. The document is entitled "Land Disposal Ban Variance Petitioner's Guidance Manual". The manual provides a basic description of the requirements for petitioning the Agency for removal of restrictions placed on land disposal of any hazardous waste under section 3004 (d), (e), or (g) of the Solid Waste Disposal Act (SDWA) as amended.

The Agency is requesting comments concerning the general concepts outlined in the guidance manual and on the specific details of the petition process. The Agency is offering this manual for public comment partly in hopes of facilitating public comment on the petition related aspects of the proposed Land Disposal Restriction Rule.

DATE: Comments on this draft guidance manual should be submitted by May 5, 1986.

ADDRESS: Comments on this draft guidance manual should be sent to Docket Clerk, Attn: LDR-2, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public docket is located in Rm. S-212 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All communications should identify the title of the manual.

Single copies of the draft guidance manual entitled, Land Disposal Restriction Variance Petitioners Guidance Manual: First Draft are available by calling the RCRA Hotline, at (800) 424-9346 or (202)-382-3000. The manual is available for reading at all EPA libraries and in the EPA docket Room S-212, U.S. Environmental Protectin Agency, 401 M Street SW., Washington, DC 20460, from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this guidance contact: James Bachmaier, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC (202) 382-4679.

SUPPLEMENTARY INFORMATION: The manual provides a more detailed description of the petitioning process than is indicatd in the preamble to the proposed Land Disposal Restrictions Decision Rule published in the **Federal Register** on January 14, 1986 (51 FR 1602). The proposed Land Disposal Restrictions Rule is in response to amendments to the Solid Waste Disposal Act (SDWA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA) on November 8, 1984.

Since the draft guidance manual is based on a proposed rule, the approach and content of the final version of the guidance, when issued, will be dependent on the approach promulgated in the final Land Disposal Restrictions Rule. Promulgation of the first phase of final land disposal restrictions is scheduled for November 1986.

Dated: February 25, 1986.

Marcia Williams,

Director, Office of Solid Waste.

[FR Doc. 86-4836 Filed 3-4-86; 8:45 am]

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40 CFR Parts 796, 797, and 799

[OPTS-42006C; FRL-2978-5]

Unsubstituted Phenylenediamines; Proposed Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on unsubstituted phenylenediamines (pda). Extension of the comment period is necessary to permit adequate time for the public to comment on the chemical fate and environmental toxicity testing scheme presented in the pda proposed test rule.

DATES: Written comments on the proposed rule should be submitted on or before April 10, 1986.

ADDRESS: Address written comments in triplicate identified by the document control number OPTS-42006C to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Room E-107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: Proposed rulemaking for pda's was published in the **Federal Register** of January 6, 1986 (51 FR 472). The proposed test rule included a triggered testing program for chemical fate and environmental toxicity testing. The program requires that the results of environmental fate testing be used to provide a predicted environmental concentration (PEC) for the three unsubstituted pdas. The PEC would then be compared with acute aquatic toxicity test data to determine whether additional acute toxicity testing in other aquatic species or chronic testing in the most sensitive aquatic species should be conducted. The proposed test rule also requires triggering of oncogenicity testing from the results of a sex-linked recessive lethal test. Industry has requested a 60-day extension period in which to provide written comments on the proposed rule. Since the environmental effects section of the proposed rule presents a new EPA approach to generating test data, the Agency is granting a 30-day extension on the comment period to permit adequate public comment on the proposed chemical fate and environmental toxicity testing scheme. Public comments will be due on or before April 10, 1986.

Authority: 15 U.S.C. 2603.

Dated: February 25, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-4753 Filed 3-4-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Kenai National Wildlife Refuge, Resource Protection Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

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SUMMARY: The Fish and Wildlife Service proposes to issue specific regulations for public use and access on the Kenai National Wildlife Refuge (NWR). These regulations would further define existing general regulations and describe the conditions under which public use and recreation, including but not limited to, hunting, fishing, trapping, and camping, will be permitted on the refuge. To protect refuge resources, to promote the safety of refuge users, and to more equitably allocate opportunities to enjoy refuge facilities, these refuge-specific regulations are proposed pursuant to 50 CFR 36.42 (e) and (g).

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be addressed to Regional Director (ATTN: William Knauer, Wildlife Resources), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

FOR FURTHER INFORMATION CONTACT: Mr. William Knauer (address above) or the Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; telephone (907) 262–7021.

SUPPLEMENTARY INFORMATION: Regulations proposed in this rule would supplement and amend the Management Regulations for Alaska National Wildlife Refuge (50 CFR Part 36), published at 46 FR 31827 on June 17, 1981. The rule is proposed in accordance with the public participation and closure procedure described in 50 CFR 36.42. When finalized the regulations contained herein would supersede the special regulations for Kenai NWR contained in 50 CFR 26.34. Those special regulations were promulgated to protect Alaska refuge resources and ensure public safety while still allowing traditional activities and recreational use.

Kenai NWR was used by nearly one-half million visitors in 1985, and the number of visitors is increasing. The proposed regulations for access and public use are designed to protect the refuge's fish, wildlife, and habitat resources from the effects of intensive unregulated public use. The regulations will also assist in protecting the health and safety of the many people who use the Kenai NWR.

These regulations are consistent with the preferred management alternative in the Kenai NWR Comprehensive Conservation Plan (CCP), for which a Record of Decision was signed on June 27, 1985. A detailed examination of their need is available for review at the refuge headquarters and the regional office (address above).

The policy of the Department of the Interior is, whenever, practicable, to afford the public an opportunity to participate in the rulemaking process. Therefore, it is the purpose of this proposed rulemaking to seek public input regarding the proposed public use and access regulations for Kenai NWR. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Regional Director (address above) by the end of the comment period. Public hearings to receive comments will be held in Anchorage, Homer, and Soldotna, Alaska. Prior notice will be provided in the major affected areas. All relevant comments will be considered prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

Executive Order 8979 of December 16, 1941, orginally established the Kenai National Moose Range. The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3101) redesignated the Moose Range as the Kenai National Wildlife Refuge. The purposes of the refuge, outlined as follows, are specified in Sections 302 and 303 of ANILCA: a) conservation of fish and wildlife populations and habitats; b) fulfillment of international treaty obligations; c) protection of water quality and quantity, consistent with (a) above; d) provision of opportunities for scientific research, interpretation, enviromental education and land management training, consistent with (a) and (b) above; and e) provision of opportunities for fish and wildlife-oriented recreation in a manner compatible with refuge purposes. ANILCA also designated 1.35 million acres or about 69% of the refuge as wilderness, which is managed in accordance with the provisions of the Wilderness Act, the National Wildlife Refuge System Administration Act, and ANILCA.

Section 304 of ANILCA requires the Secretary to prescribe such regulations as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska are compatible with the purposes of the refuge.

Section 1110(a) of ANILCA opens all Alaska refuges, including designated wilderness areas, to public access by airplanes, motorboats, snowmobiles and traditional nonmotorized means, subject to reasonable regulation. Restrictions on these modes of access can be imposed only if refuge resources are being detrimentally impacted and if a public hearing is first held in the area in which the restriction would be imposed. The Service believes that unlimited, unrestricted public use would harm the resource values of the refuge, as described in the document entitled "Resource Needs for Regulations on Kenai National Wildlife Refuge", which is available from the refuge or regional office (addresses above). This document also describes in detail the resource impact bases for the access restrictions that would be implemented by the proposed regulations, and thus demonstrates the consistency of the proposed regulations with the requirements of section 1110(a).

The proposed regulations also have been evaluated as to their impact on subsistence uses as required by section 810 of ANILCA. The proposed public use and access would not be significantly different from that currently allowed. The proposed regulations are consistent with the purposes and intent of section 810 and would result in no significant restrictions on subsistence activities.

Properly regulated public use and access, as proposed by these rules, are consistent with and will not interfere with the refuge purposes delineated above, and are thus compatible with the purposes for which this refuge was established.

Environmental Considerations

The Final Environmental Statement for Operation of the National Wildlife Refuge System [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). An environmental assessment and finding of no significant impact for proposed interim regulations for Alaska national wildlife refuges was approved on May 13, 1981. The regulations proposed herein do not involve a significant change in the level of use previously permitted. An environmental impact statement on the management of Kenai NWR was completed in April 1985 and a Record of Decision was signed on June 27, 1985. These proposed regulations are in conformance with that Record of Decision.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires each information collection requirement to display an Office of Management and Budget (OMB) clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is

voluntary, mandatory, or required to obtain a benefit. The Service has received approval from OMB for the information collection requirements of these regulations under the approval numbers cited below:

Type of information collection	OMB approval No.
Special use permits on Alaska Refuges (including trapping)	1018-0061.

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities requiring that public uses be compatible with the primary purposes for which the areas were established.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule is expected to cost the National Wildlife Refuge System less than $15,000 annually for permit processing and is expected to cost the users of refuge resources who need permits less than $8,000 annually ($15 estimated cost for time and information to develop each permit application).

Unregulated public use would ultimately result in the termination of many recreational activities on the refuge because of damage to refuge resources. Regulating public use as proposed in this document will allow recreational activities to continue, having a minor positive secondary effect on sporting goods stores, restaurants, hotels, motels, and inns. The proposed regulations will impose no costs on small entities. The exact number of businesses and the amount of trade that will result from implementing these regulations is unknown. The aggregate effect is a positive economic effect on a number of small entities. The number of small entities affected is unknown; however, the positive effects will be seasonal in nature and will, in most cases, merely continue existing uses of refuge areas. The impacts will not be significant.

William Knauer, Wildlife Resources, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land-mineral resources, Public lands-rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

For the reasons set out in the preamble, it is proposed to amend Part 36, Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for Part 36 continues to read as follows:

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96–487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd et seq.; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) et seq.; Refuge Recreation Act, 16 U.S.C. 460k et seq.; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96–511.

2. Subpart E—Permits and Public Participation, consisting of §§ 36.41 and 36.42 would be redesignated as Subpart F, as follows:

* * * * *

Subpart F—Permits and Public Participation

* * * * *

3. A new Subpart E consisting of § 36.39 would be added, to read as follows:

* * * * *

Subpart E—Refuge-Specific Regulations

§ 36.39 Public use.

(a) *General.* Public use of Alaska national wildlife refuges is permitted subject to all other parts of 50 CFR Part 36, those sections of 50 CFR Subchapter C not supplemented by Part 36, and the following refuge-specific requirements. In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Unless otherwise indicated, maps delineating designated-use areas are available from the respective refuge manager.

(b)–(h) [Reserved]

(i) *Kenai National Wildlife Refuge.*—(1) *Aircraft.* (i) The operation of aircraft on the Kenai National Wildlife Refuge, except in an emergency, is permitted only as authorized in designated areas as described below. These areas are also depicted on a map available from the refuge manager.

(A) Within the Canoe Lakes, Andy Simons, and Mystery Creek units of the Kenai Wilderness, only the following lakes are designated for airplane operations:

Canoe Lakes Unit

Scenic Lake
Snowshoe Lake
King Lake
Shoepac Lake
Mull Lake
Taiga Lake
Bird Lake
Sandpiper Lake
Grouse Lake
Nekutak Lake
Wilderness Lake
Bedlam Lake
Norak Lake
Tangerra Lake
Vogel Lake
Cook Lake

Andy Simons Unit

Upper Russian Lake
Pothole Lake
Iceberg Lake
Kolomin Lake
Green Lake
High Lake
Lower Russian Lake
Twin Lake
Harvey Lake
Emerald Lake
Martin Lake
Windy Lake
Dinglestadt Glacier terminus lake
Wusnesenski Glacier terminus lake
Tustumena Lake and all wilderness lakes within one mile of the shoreline of Tustumena Lake.

All unnamed lakes in Section 1 and 2, T.1 S., R.8 W., and Sections 4, 5, 8, & 9, T.1 S., R.9 W., S.M., AK.

Mystery Creek Unit

An unnamed lake in Section 11, T.6N., R.5W., S.M., AK.

(B) Airplanes may operate on all lakes outside the Kenai Wilderness except those lakes with recreational developments, including but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. The non-wilderness lakes closed to aircraft operations are as follows:

North of Sterling Highway

Cashka Lake
Anertz Lake
Dabbler Lake
West Lake
Silver Lake
Forest Lake
Watson Lake
Imeri Lake
Rainbow Lake
Dolly Varden Lake
Weed Lake
Lili Lake
Mosquito Lake
Breeze Lake
Afonasi Lake
Upper Jean Lake

Skilak Loop Area (South of Sterling Highway and North of Skilak Lake)

All lakes are closed to aircraft except that airplanes may land on Bottenintnin Lake, which is open year-around and on Hidden Lake, which is open only for sport ice fishing.

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South of Sterling Highway

Headquarters Lake is restricted to administrative use only.

(ii) Notwithstanding any other provision of these regulations, operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present.

(iii) The operation of airplanes, at the pilot's own risk, is authorized on the unmaintained Indian Creek Airstrip.

(iv) Unlicensed aircraft are permitted to operate on the refuge only as authorized by a special use permit from the Refuge Manager.

(v) Airplanes may operate only within designated areas on the Chickaloon Flats, as depicted on a map available from the Refuge Manager.

(2) *Motorboats.* Motorboats are authorized on all waters of the refuge except under the following conditions and within the following areas:

(i) Motorboats are not authorized within the Canoe Lakes Unit of the Kenai Wilderness except on those lakes designated for airplane operations as described on a map available from the Refuge Manager. Motors are not authorized on those portions of the Moose ad Swanson Rivers within the Canoe Lakes Unit of the Kenai Wilderness.

(ii) That section of the Kenai River from the outlet of Skilak Lake downstream for three miles, is closed to motorboat use between March 15 and May 1, inclusive. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iii) That section of the Kenai River from the powerline crossing located approximately one mile below the confluence of the Russian and Kenai Rivers, downstream to Skilak Lake is closed to motorboats. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iv) Motors in excess of 10 horsepower are not authorized on the Moose, Swanson, Funny, Chickaloon, Killey, and Fox Rivers.

(v) A "no-wake" restriction applies to Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow Lakes.

(vi) Notwithstanding any other provision of these regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present.

(3) *Off-road vehicles.* (i) The use of air cushion, airboat, or other non-traditional motorized watercraft is not allowed on the Kenai National Wildlife Refuge, except as authorized by a special use permit from the refuge manager.

(ii) Off-road vehicle use, including operation on lake and river ice, is not permitted. Licensed highway vehicles are permitted on Hidden, Engineer, Kelly, Petersen, and Watson Lakes for ice fishing purposes only, and must enter and exit lakes via existing boat ramps.

(4) *Snowmobiles.* Operation of snowmobiles is authorized on the Kenai National Wildlife Refuge subject to the following conditions and exceptions:

(i) Snowmobiles are permitted between December 1 and April 30 only when the refuge manager determines that there is adequate snowcover to protect underlying vegetation and soils. During this time, the manager will authorize through public notice the use of snowmobiles less than 46 inches in width and less than 1,000 pounds (450 kg) in weight. Designated snowmobile areas are described on a map available from the refuge manager.

(ii) All areas above timberline are closed to snowmobile use except in the Caribou Hills.

(iii) The area within Sections 5, 6, 7, and 8, T.4 N., R. 10 W., S.M., AK., east of the Sterling Highway right-of-way including the Refuge Headquarters Complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes; and that area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road, is closed to snowmobile use.

(iv) An area, including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake, is closed to snowmobile use.

(v) An area, including the Swan Lake Canoe Route, and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on th east from a point at the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary is closed to snowmoble use.

(vi) Within the Skilak Loop Special Management Area, snowmobiles are prohibited except on Hidden, Kelly, Petersen and Engineer lakes for ice fishing access only. Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(vii) Snowmobiles may not be used as an aid in big game hunting or for transporting big game animals. Snowmobiles may be used to transport fur animals, including wolves, and small game.

(viii) Snowmobiles may not be used on maintained roads within the wildlife refuge. Snowmobiles may cross a maintained road after stopping and when traffic on the roadway allows safe snowmobile crossing.

(ix) Snowmobiles may not be used for activities such as racing or for the herding, hazing, harassment or driving of wildlife.

(5) *Hunting and trapping.* (i) Firearms may not be discharged within ¼ mile of designated campgrounds, trailheads, waysides, buildings or the Sterling Highway.

(ii) A special use permit, available from the Refuge Manager, is required prior to baiting black bears.

(iii) Hunting with the aid or use of a dog for taking of big game is permitted only for black bear, and then only under the terms of a special use permit from the Refuge Manager.

(iv) Hunting and trapping within Sections 5, 6, 7, and 8, T.4 N., R. 10 W., S.M., AK., encompassing the Kenai National Wildlife Refuge Headquarters/Visitor Center and associated environmental education trails are prohibited. The boundary of these administrative and environmental education areas is depicted on a map available from the Refuge Manager.

(v) A person who has been airborne may not take, or assist in taking, free roaming fur animals on Kenai NWR until after 3:00 A.M. following the day in which the flying occurred. This does not apply to a trapper using a firearm or other means to dispatch an animal legally caught by trap or snare. This also does not apply to transportation of persons by regularly scheduled flights, to and between cities, town or villages than normally provide scheduled services to this area.

(6) *Fishing.* Fishing is prohibited June 1 to August 15 on the south bank of the Kenai River from the Kenai-Russian River Ferry dock to a point 100 feet downstream.

(7) *Other public uses.* (i) Camping is permitted on the Kenai NWR subject to the following restrictions:

(A) Camping may not exceed 14 days in any 30 day period anywhere on the refuge.

(B) Campers may not spend more than 2 consecutive days at the Kenai-Russian River access area, more than 7 consecutive dates at Hidden Lake Campground, or more than 7 consecutive days in refuge shelters.

(C) Within developed campgrounds, camping is permitted only in designated areas and open fires are permitted only in Service-provided fire grates or portable, self-contained, metal fire grills.

(D) No camping is permitted within ¼ mile of the Sterling Highway, Ski Hill or Skilak Loop roads except in designated campgrounds.

(E) Campers may cut only dead and down timber for campfire use.

(F) Pets in developed campgrounds are permitted only on a leash no longer than nine feet.

(ii) Removal of timber, including the cutting of firewood for home use, is permitted only as authorized by a special use permit from the refuge manager.

(iii) Leaving personal property unattended longer than 72 hours is authorized only in designated areas or as authorized by a special use permit from the refuge manager.

(iv) Rock outcrop islands in Skilak Lake used by nesting cormorants and gulls and the adjacent waters within 100 yards are closed to public entry and use from March 15 to September 30. Maps showing these areas are available from the refuge manager.

(v) All radio transmitters, neck and leg bands, ear tags, or other research marking devices recovered from wildlife shall be turned into the refuge manager within 5 days after recovery.

(vi) Use of non-motorized wheeled vehicles is permitted only on refuge roads designated for public vehicular access.

(vii) The use of motorized equipment, including but not limited to, chainsaws, generators, and auxiliary power units, is not permitted within the Kenai Wilderness, except for the use of snowmobiles, airplanes, and motorboats in designated areas.

(viii) All canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points. Maximum group size is 15 persons.

Dated: January 30, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4789 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 80

Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Acts; Interest Earned From License Fees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopen comment period.

SUMMARY: The Service reopens the period for submission of comments from the public on the proposal (see 50 FR 50185, December 9, 1985) to revise the rules contained in 50 CFR Part 80 related to requirements for participation in the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act.

DATE: The Service will consider information and comments received by March 28, 1986, in considering the making of a final rule.

ADDRESS: Please send correspondence concerning this notice to the Associate Director—Federal Assistance, Room 3024, Interior Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Taylor, Acting Chief, Division of Federal Aid, Room 634, Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Telephone (703) 235-1526.

SUPPLEMENTARY INFORMATION: On December 9, 1985, the Service published in the **Federal Register** (50 FR 50185) proposed revisions to § 80.4 of 50 CFR Part 80, Diversion of License Fees. These revisions, if finalized, would amend the requirements related to the prohibition against diversion of fees paid by fishermen and hunters.

The proposed revisions will have an impact on State fish and wildlife agencies as participants in the Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts.

On January 8, 1986, a Notice was published in the **Federal Register** (51 FR 769) to correct a typographical error in the text of the Proposed Rule. Because of this correction and the need expressed by some State fish and wildlife agencies for additional time to coordinate their response with other State agencies, the comment period has been reopened.

Therefore, the Service hereby extends the closing date of the comment period to March 28, 1986.

Dated: February 14, 1986.

Susan E. Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-4709 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register

Vol. 51, No. 43

Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

AGENCY: Committee on Administration.

Date: Monday, March 17, 1986.

Time: 2:30 P.M.

Location: Department of Commerce, Room 5858, 14th Street and Constitution Avenue, NW., Washington, DC.

Agenda: (1) Professor Burnele Powell's examination of declaratory orders as a means of agency advice-giving, and (2) Philip Harter's study of federal agencies' use of alternative dispute resolution techniques.

Contact: Charles Pou, Jr., 202-254-7065.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92-463).

Richard K. Berg,

General Counsel.

[FR Doc. 86-4625 Filed 3-4-86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 28, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

M.O. 931—Fresh Bartlett Pears Grown in Oregon and Washington
Not agency report forms but committee forms
Recordkeeping; Weekly; Semi-monthly
Businesses or other for-profit; 1,698 responses; 983 hours; not applicable under 3504(h)
George J. Kelhart, (202) 475-3919

- Statistical Reporting Service

Annual Mink Survey
Annually
Farms; 1,069 responses; 178 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447-6820

New

- Agricultural Marketing Service

Honey Research, Promotion and Consumer Information Order
On occasion

- Individuals or households; Farms; Businesses or other for-Profit; Small businesses or organizations; 15,900 responses; 1,500 hours; not applicable under 3504(h)

Jerry Brooks, (202) 447-5057

- Farmers Home Administration

Borrower Election Statement
One time
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 4,680 responses; 374 hours; not applicable under 3504(h)
Save Villano, (202) 382-1452

- Federal Crop Insurance Corporation

Standard Reinsurance Agreement
Annually
Businesses or other for-profit; 64 responses; 128 hours; not applicable under 3504(h)
William Flora, (202) 382-0798

Reinstatement

- Farmers Home Administration

7 CFR 1951-E, Servicing of Community Program Loans and Grants FmHA 451-33
On occasion
State or local governments; Non-profit institutions; 320 responses; 165 hours; not applicable under 3504(h)
Bill Hagy, (202) 382-9636

Revision

- Agricultural Marketing Service

Pork Promotion, Research, and Consumer Information Program LS-35 and -36
On occasion
Individuals or households; Farms; 40,500 responses; 570 hours; not applicable under 3504(h)
Robert Leverette, (202) 447-2650

- Economic Research Service
- Feasibility Test of Panels of Farmland Value Reporters

Quarterly

Farm; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 3,060 responses; 451 hours; not applicable under 3504(h)
William H. Heneberry, (202) 786-1430.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-4620 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Florida National Scenic Trail; Availability of Draft Comprehensive Plan

AGENCY: Forest Service, USDA.

ACTION: Availability of Draft Comprehensive Plan for the Florida National Scenic Trail.

SUMMARY: Pub. L. 98-11 amended the National Trails System Act (16 U.S.C. 1244) adding the Florida Trail to the National Scenic Trail System. Section 5(e) of the National Trails System Act requires that a comprehensive plan for the acquisition, management, development, and use of the trail be developed and submitted to Congress. The Florida National Scenic Trail Draft Comprehensive Plan will be available for public review and comment on March 3, 1986.

ADDRESS: Requests for copies of the Florida National Scenic Trail Draft Comprehensive Plan should be sent to: Forest Supervisor, USDA-Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: F. Norman Heintz at (904) 681-7265, Tallahassee, Florida, or Charles Huppuch at (404) 347-7252, Atlanta, Georgia.

Dated: February 25, 1986.

Don Percival,

Forest Supervisor.

[FR Doc. 86-4796 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-11-M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trail Advisory Council will be held at 9:00 a.m. on Saturday, April 5, 1986, at the Withlacoochee Training Center, seven miles north of Brooksville, Florida.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include discussion of the comments received from public review of the Draft Comprehensive Plan.

The meeting will be open to the public; however, facilities and space for accommodating the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact F. Norman Heintz, Recreation Staff Officer, USDA-Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681-7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida on February 24, 1986.

Don Percival,

Forest Supervisor.

[FR Doc. 86-4797 Filed 3-4-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Reinsurance Transactions with Insurance Companies Resident Aboard
Form Number: Agency—BE-48; OMB—0608-0016
Type of Request: Revision of a currently approved collection
Burden: 200 respondents; 300 reporting hours
Needs and Uses: The data collected are an integral part of the U.S. National Income and Product Accounts. These accounts are used extensively by Government, international organizations, industry, and other private groups
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of Economic Analysis
Title: Foreign Contract Operations of U.S. Construction, Engineering, Architectural, and Related Consulting and Technical Services Firms
Form Number: Agency—BE-47; OMB—0608-0015
Type of Request: Revision of a currently approved collection
Burden: 130 respondents; 455 reporting hours
Needs and Uses: The data collected are an integral part of the U.S. National Income and Product Accounts. These data are used extensively by Government, international organizations, industry, and other private groups
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-4723 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 Test Census of Los Angeles County—Census Community Awareness Program—Survey of Community Group Leaders
Form Number: Agency—DC-140-U; OMB—NA
Type of Request: New collection
Burden: 150 respondents; 75 reporting hours
Needs and Uses: This survey will be used to evaluate key Census Community Awareness Program activities which are mainly targeted

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towards difficult-to-enumerate areas and population groups

Affected Public: Individuals or households

Frequency: One time only

Respondents's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-4724 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-122-503]

Antidumping Duty Order; Certain Iron Construction Castings From Canada

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate Investigations concerning certain iron construction castings from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that these products are being sold at less than fair value and that sales of these products from Canada are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain iron construction castings from Canada made on or after October 28, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick O'Mara or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3798 or 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

The merchandise covered by this order consists of certain iron construction castings limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and value, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classified under item number 657.09 of the *Tariff Schedules of the United States (TSUS).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on October 28, 1985, the Department published its preliminary determination that there was reason to believe or suspect that certain iron construction castings from Canada were being sold at less than fair value (50 FR 43592). On January 16, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 2412).

On February 19, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importation materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain iron construction castings from Canada. These antidumping duties will be assessed on all unliquidated entries of the product entered, or withdrawn from warehouse, for consumption on or after October 28, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 43592).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-averaged antidumping duty margin as noted below.

Manufacturers/producers/exporters	Weighted-average margin (percent)
Mueller Canada, Inc.	9.8
Bibby Ste. Croix Foundries, Inc	[1] 8.6
LaPerle Foundry, Ltd	[1] 3.9
All other manufacturers/producers/exporters	[1] 7.0

[1] The margins of 8.6 for Bibby Ste. Croix Foundries, Inc., and 3.9 for LaPerle Foundry, Ltd., are changes from the original January 6, 1986 final determination figures of 10.9 and 7.4, respectively. These changes were made based upon clerical errors discovered in the respective calculations. Accordingly, the previous "all other" margin of 10.2 is changed to 7.0.

This determination constitutes an antidumping duty order with respect to certain iron construction castings from Canada, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

February 26, 1986.

[FR Doc. 86-4722 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-057]

Antidumping; Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Correction to Final Results of Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 10, 1984 the Department of Commerce published in the **Federal Register** (49 FR 1263) the final results of its administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 44811, September 7, 1977) for the periods December 1, 1978 through August 31, 1979 and September 1, 1979 through August 31, 1981. The assessment rates for Babcock Allatt Ltd. (now Fortress Allatt Ltd.), for the time periods were zero percent and 4.20 percent, respectively. The 4.20 percent estimated antidumping duties cash deposit rate was based on the margins which we calculated for Fortress Allatt's purchase price and exporter's sales price transactions.

After providing interested parties with an opportunity to comment, we are establishing separate estimated antidumping duties cash deposit rates for purchase price transactions (zero percent) and for exporter's sales price transactions (14.43 percent) for Fortress Allatt Ltd.

These rates shall apply to all shipments of this merchandise from Fortress Allatt Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These rates will remain in effect until the publication of the final results of the next administrative review

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2209/5255.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4749 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Antidumping; Steel Wire Rope From Japan; Initiation and Preliminary Results of Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on steel wire rope from Japan. The review covers 21 of the 121 known manufacturers and/or exporters of this merchandise to the United States and generally the period January 1, 1977 through March 31, 1978. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the period.

When company-supplied information was incomplete or no information was received in response to our questionnaire, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery or Phyllis Derrick, Office of Compliance, Internationl Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 12294) the final results of its last administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). In accordance with § 353.53 of the Commerce Regulations, the petitioner requested an administrative review of this finding on October 3, 1985. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated. The review covers 21 of the 121 known manufacturers and/or exporters of Japanese steel wire rope to the United States and generally the period January 1, 1977 through March 31, 1978.

One firm failed to respond to our questionnaire and other firms provided incomplete responses to certain portions of our questionnaire. For the non-responsive firm, we used the best information available for assessment purposes. The best information available was the rate from the immediately preceding period for that firm. For firms providing incomplete responses, we used the best information available for the incomplete portions of their responses.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as defined, respectively, in sections 203 and 204 of the 1921 Act, as appropriate.

Purchase price was based on the f.o.b. packed price to unrelated trading companies for export to the United States. Exporter's sales price was based on the c.i.f. packed price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight, insurance, f.o.b. charges, ocean freight, marine insurance, wharfage and handling, U.S. inland freight, U.S. customs duties, bank charges, and the U.S. subsidiary's selling expenses. No other deductions were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price or constructed value, as defined, respectively, in sections 205 and 206 of the 1921 Act. Home market price was based on the packed delivered price with adjustments, where applicable, for inland freight, insurance, and differences in the cost of packing and credit.

Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and packing. The amount added for general expenses was ten percent of the sum of materials and fabrication costs, or actual general expenses, whichever was greater. The amount added for profit was eight percent of the sum of material and fabrication costs and general expenses, or actual profit, whichever was greater. We made adjustments, where applicable, for differences in the cost of credit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
KoKoKu Steel Wire/[illegible]	1/1/77-3/31/78	17.43
KoKoKu Steel Wire/Kanematsu-Gosho	1/1/77-3/31/78	0.35
KoKoKu Steel Wire/[illegible] Machinery	1/1/77-3/31/78	3.59
KoKoKu Steel Wire/Mitsui & Co	1/1/77-3/31/78	11.81
KoKoKu Steel Wire/Nichimen Co	1/1/77-3/31/78	2.32

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Manufacturer/exporter	Period	Margin (percent)
KoKoku Steel Wire/Nissho-Iwai, Ltd.	1/1/77-3/31/78	0.19
KoKoku Steel Wire/Shinsho Corp.	1/1/77-3/31/78	8.94
KoKoku Steel Wire/UNA	1/1/77-3/31/78	31.76
Nippon Steel/Mitsui & Co.	1/1/77-3/31/78	32.90
Shinko Wire Corp./Ataka & Co	1/1/75-7/31/76	0.10
	8/1/76-3/31/78	0
Shinko Wire Corp./Kanematsu-Gosho	1/1/75-3/31/78	0
Shinko Wire Corp./Nissho-Iwai, Ltd.	1/1/71-7/31/76	[1] 0
	8/1/76-3/31/78	0
Shinko Wire Corp./Shinsho Corp.	1/1/75-10/31/76	0.10
	11/1/76-9/30/77	38.91
	10/1/77-3/31/78	12.04
Shinko Wire Corp./T. Chatani	8/1/76-3/31/78	0
Shinko Wire Corp./Yuasa Trading	8/1/76-3/31/78	0
Teikoku-Sangyo/C. Itoh	1/1/77-3/31/78	5.01
Teikoku-Sangyo/Mitsui & Co.	1/1/77-3/31/78	0.73
Teikoku-Sangyo/Nissho-Iwai, Ltd.	1/1/77-3/31/78	8.94
Teikoku-Sangyo/Shinsho Corp.	1/1/77-3/31/78	26.00
Teikoku-Sangyo/Showa Boeki	1/1/77-3/31/78	0
Teikoku-Sangyo/Sumitomo Corp.	1/1/77-3/31/78	8.56
Teikoku-Sangyo/Tosho Co.	1/1/77-3/31/78	61.05
Tokyo Rope/Ataka & Co.	1/1/77-3/31/78	0.23
Tokyo Rope/C. Itoh	1/1/77-3/31/78	1.25
Tokyo Rope/Mitsubishi & Co.	1/1/77-3/31/78	0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first working day thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

The above margins shall not change the current rates for cash deposits of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: February 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4751 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than March 31, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March, for the following periods:

Antidumping Duty Proceeding

Brass Fire Protection Equipment from Italy, 07/10/84-02/28/86
Monochrome and Color Television Receiving Sets from Japan, 03/01/85-02/28/86
Ferrite Cores from Japan, 03/01/85-02/28/86
Rayon Staple Fiber from Finland, 03/01/85-02/28/86
Rayon Staple Fiber from France, 03/01/85-02/28/86
Chloropicrin from the Peoples Republic of China, 03/01/85-02/28/86
Canned Bartlett Pears from Australia, 03/01/85-02/28/86
Sodium Nitrate from Chile, 03/01/85-02/28/86

Countervailing Duty Proceeding

Leather Wearing Apparel from Argentina, 01/01/85-12/31/85
Textile Mill Products and Apparel from Argentina, 12/21/84-12/31/85
Certain Castor Oil Products from Brazil, 01/01/85-12/31/85
Cotton Yarn from Brazil, 01/01/85-12/31/85
Frozen Concentrated Orange Juice from Brazil, 01/01/85-12/31/85
Certain Tool Steel Products from Brazil, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Columbia, 03/12/85-12/31/85
Certain Iron-Metal Construction Castings from Mexico, 01/01/85-12/31/85
Certain Textile Mill Products from Mexico, 01/03/85-12/31/85
Cotton Shop Towels from Pakistan, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Peru, 12/21/84-12/31/85
Ferrochrome from South Africa, 01/01/85-12/31/85
Certain Textile Mill Products and Apparel from Sri Lanka, 12/21/84-12/31/85
Certain Apparel from Thailand, 12/21/84-12/31/85
Certain Textile Mill Products from Thailand, 03/12/85-12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 21, 1986.

If the Department does not receive by March 31, 1986, a request for review of entries covered by an order or finding listed in this notice and for the period indentified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-4750 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Cold Rolled Steel Sheet and Strip; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the United States-Japan Arrangement Concerning Trade in Certain Steel Products with respect to high carbon, cold rolled sheet and strip for manufacturing measuring tapes.

EFFECTIVE DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377-3793.

SUPPLEMENTARY INFORMATION: The United States concluded a steel export restraint agreement with Japan on May 14, 1985, and on December 11, 1985 concluded an exchange of letters extending the 1982 U.S.-EC steel restraint agreement. Both Arrangements provide that, in cases where abnormal supply or demand factors demonstrate that the U.S. industry is unable to meet domestic demand for a particular product, an additional tonnage will be allowed for such product by a special license.

We have received a request for short supply for the following product imported from the EC and/or Japan:

EC

Cold rolled steel strip used to manufacture measuring tapes, conforming to general specification AISI C1095, in thicknesses ranging from .0045 to .0062 inch (+/−.0003 inch per size) and in a width of 6.3 inches.

Japan

Cold rolled steel sheet and strip used to manufacture measuring tapes, conforming to general specification AISI C1095, in thicknesses ranging from .0045 to .0062 inch (+/−.0003 inch per size) and in widths ranging from 6.3 inches to 12.4 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of this submission and also include with it a submission without proprietary information, which can be placed in the public file. The public file will be maintained in the Central Records Unit, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 27, 1986.

[FR Doc. 86-4769 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Soliciting Competitive Financial Assistance Applications

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of 7/1/86 to 6/30/87. The MBDC will operate in the Jacksonville, FL Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-86000-01 for the Jacksonville, FL SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is desinged to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities

DATE: The closing date for applications is 4/4/86. Applications must be postmarked on or before 4/4/86.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia 30309, 404-347-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 27, 1986.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

A pre-application conference to assist all interested applicants will be helf at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, on Friday, March 21, 1986, at 9 am.

[FR Doc. 86-4732 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-21-M

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National Bureau of Standards

[Docket No. 51075-5175]

Proposed Federal Information Processing Standard Publication 29-2; Interpretation Procedures for Federal Information Processing Standard Programming Languages

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal information processing standard publication (FIPS PUB) 29-2.

SUMMARY: The purpose of this notice is to announce a proposed Federal Information Processing Standard Publication (FIPS PUB) 29-2, entitled "Interpretation Procedures for Federal Information Processing Standard Programming Languages". Proposed FIPS PUB 29-2 is a revision to FIPS PUB 29-1 which was published in 1981.

The proposed revision broadens the methods that NBS may use in developing interpretations to FIPS Programming Languages to include assistance by Federal Interpretation Committees, by committees of recognized standards bodies, and by recognized language experts.

Prior to the submission of this proposed revision to the Secretary of Commerce (Secretary) for review and approval, it is essential to assure that consideration is given to the needs and views of vendors of processors, the public, and State and local governments. The propose of this notice is to solicit such views.

DATE: Comments and proposals must be submitted on or before June 3, 1986.

ADDRESS: Written comments on this proposed revision or any alternative proposals should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attn: Proposed FIPS PUB 29-2.

Written comments and proposals received in response to this notice will be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. James Hall, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: February 27, 1986.

Ernest Ambler,

Director.

Proposed Federal Information Processing Standards Publication 29-2

(date)

Interpretation Procedure for Federal Information Processing Standard Programming Languages

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Purpose.* The purpose of this Federal Information Processing Standards Publication (FIPS PUB) is to establish the procedures for requesting an interpretation of any of the Federal Information Processing Standards (FIPS) Programming Languages and for providing a solution to the request.

2. *Background.* The FIPS Programming Languages define the elements of the programming languages and the rules for their use. As the standards are used to implement processors, validate processors, or write source programs, questions may arise as to the meaning of certain language specifications. It is desirable to provide solutions to these questions that can be used uniformly throughout the Federal Government. In order to achieve this objective, the National Bureau of Standards will provide responses to questions of interpretation for the respective FIPS. To assist NBS in providing these responses, a variety of mechanisms may be used, including:

a. organization of a Federal Interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular language.

b. obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

c. consultation with other recognized language experts.

3. *Approving Authority of Interpretations.* Director, National Bureau of Standards.

4. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

5. *Cross Index.*[1]

a. FIPS PUB 21, COBOL.

b. FIPS PUB 68, Minimal BASIC.

c. FIPS PUB 69, FORTRAN.

d. FIPS PUB 109, PASCAL.

e. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

6. *Implementing Schedule.* These procedures become effective on (date).

7. *Applicability.*

a. The provisions of this document apply to Federal departments and agencies and to vendors of processors that wish to have questions concerning specifications for FIPS Programming Languages resolved by the National Bureau of Standards.

b. Interpretations that are developed and approved as a result of employing these procedures apply to all processors for FIPS Programming Languages that are brought into the Federal inventory after the effective date that is specified with each interpretation.

8. *Procedures.* (In the following procedure, each reference to "Federal Interpretation Committee" (FIC) should be construed to mean the specific interpretation committee responsible for the language to which the request applies).

a. *Requesting an Interpretation.*

(1) Requests may be submitted by a vendor of a processor intended to conform to a FIPS Programming Language or by any department or agency of the Federal Government.

(2) Requests for an interpretation and the date by which the interpretation is desired should be submitted in writing to the National Bureau of Standards. See paragraph 9 for address.

b. *Processing a Request for Interpretation.*

(1) Upon receipt, the National Bureau of Standards will determine which of the following mechanisms will be used in developing a response to the request for interpretation:

(a) Organization of a Federal Interpretation Committee (FIC) which will be responsible for providing a recommended interpretation for a particular language.

(b) Obtaining a recommended interpretation from a committee of the recognized standards body responsible for the development of the standard that has been adopted as a FIPS.

(c) Consultation with other recognized language experts.

(d) Any combination of the mechanisms in (a) through (c) above.

(2) If the FIC is utilized:

(a) The request is distributed to the FIC.

(b) Position papers on proposed solutions to a cited problem may be submitted by any FIC member for consideration by the FIC membership.

(c) The requestor of an interpretation may be invited to attend the meeting at which the request will be considered, and to participate in the discussion of the problem identified by the request.

(3) If either the appropriate standards body or other recognized language experts is utilized, the request is sent to that body indicating the date by which an interpretation is desired.

(4) Upon completion of the proposed interpretation, the National Bureau of Standards will:

(a) Arrange for publication of the proposed interpretation in the Federal Register and forward it to Federal agencies for the purpose of soliciting comments from Federal agencies, vendors, and private industry.

(b) Notify requestor of the proposed interpretation.

(5) Comments received as a result of publication and review of the proposed interpretation will then be reviewed by the National Bureau of Standards and, if appropriate, the body specified in paragraph 8.b.(1), and a final interpretation developed.

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[1] Refers to most recent revision of FIPS PUBS.

c. *Dissemination of an Approved Interpretation.*

(1) The National Bureau of Standards will be responsible for the dissemination of interpretations for the FIPS Programming Language.

(2) The approved interpretation will consist of the following information:

(a) Definition of the problem being resolved.

(b) Discussion of the issues relevant to the problem.

(c) Discussion of the solution to the problem (interpretation).

(d) Any necessary clarification to the FIPS Programming Language to effect the resolution.

(e) Effective date of the interpretation.

(3) The approved interpretation will be disseminated and will include, at a minimum, the following: publication in the Federal Register; letter to the Federal agencies; and letter to the requestor.

(4) The National Bureau of Standards will maintain a central register of approved interpretations for reference.

9. *Point of Contact.* The following address will be used for correspondence pertaining to FIPS Programming Language interpretations: Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

10. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 29-2 (FIPSPUB29-2), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, or deposit account.

[FR Doc. 86-4708 Filed 3-4-86- 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting to review spiny lobster, shrimp, and stone crab fishery management plan amendments; discuss preliminary consideration of the total allowable catch for king and Spanish mackerel for the forthcoming fishing year; discuss management under the recently implemented coral regulations, as well as discuss personnel and other matters pertaining to Council operations.

The public meeting will convene March 12 at 8 a.m., and recess at 5:30 p.m.; reconvene March 13 at 8 a.m., adjourn at noon, and will take place at the Harbour Island Hotel, 725 Harbour Island Boulevard, Tampa, Florida. Committee meetings of the Council will be held on March 10-11. Personnel matters will be closed to the public during both Committee and Council sessions. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: February 27, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4757 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Cascadia Research Collective

On December 19, 1985, notice was published in the Federal Register (50 FR 51738) that an application had been filed by the Cascadia Research Collective, Waterstreet Building, 218½ West Fourth Street, Olympia, Washington 98501, to take marine mammals for scientific research.

Notice is hereby given to that on February 15, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4762 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 524]

Marine Mammals; Permit Modification; Connyland

Notice is hereby given that pursuant to the provisions of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and section C.4 of Public Display Permit No. 524 issued to Connyland, CH-8557 Lipperswil, Switzerland on September 28, 1985 (50 FR 40887), that Permit is modified as follows:

Section A is modified by adding: "2. The Permit Holder is authorized to take a fifth Atlantic bottlenose dolphin (*Tursiops truncatus*) by the means described in the application."

This modification became effective on February 25, 1986.

The permit, as modified and documentation pertaining to the modification are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4763 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Dr. James H. W. Hain (P135B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name Dr. James H. W. Hain, Associated Scientists at Wood Hole, Inc.

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b. Address Box 721, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals, and Location of Activity: An unspecified number of cetaceans and pinnipeds (except walrus) will be taken from all parts of the world, principally the Continental Shelf Waters of the northeastern United States.

4. Type of Take: The proposed research consists of aerial, surface vessels, and underwater acoustic surveys and sampling, which may involve harassment to individual animals of the population stocks. The Applicant also requests authority to collect and import marine parts from dead animals found stranded or floating.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator of Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;
Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 25, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4704 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Gerald L. Kooyman (P19G)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dr. Gerald L. Kooyman, Physiological Research Laboratory A-004.

b. Address: Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Harbor seal (*Phoca vitulina*) 10; California sea lion (*Zalophus californianus*) 15.

4. Type of Take: From beached/stranded rehabilitated or captive born stocks to study respiratory functions.

5. Location of Activity: Scripps Institution of Oceanography and Pacific Ocean a short distance offshore from Scripps.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 25, 1986.

Richard R. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-4705 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 21, 1986 at 9:00 a.m., at the New York Hilton Hotel, 1335 Avenue of the Americas, New York, New York 10019. Meeting Room information will be posted on the hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Business
  A. Statistic on Tourism as Services Data
IV. New Business
  A. Bicentennial of the Constitution
  B. Statue of Liberty—Ellis Island Restoration Project
  C. Tourism and the Caribbean Basin Initiative
  D. Terrorism and Tourism
V. Miscellaneous
  A. Establish next meeting date
VI. Adjournment.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86-4701 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescinding the Call on Certain Man-Made Fiber Apparel Products in Category 638 Produced or Manufactured in China

February 28, 1986.

On July 16, 1985 a notice was published in the **Federal Register** (50FR 28833) announcing that the Government of the United States had requested the Government of the People's Republic of China to enter into consultations concerning exports to the United States of knit shirts of man-made fibers in Category 638 produced or manufactured in China.

The purpose of this notice is to announce that, pursuant to consultations with the Government of the People's Republic of China, the United States Government has agreed to withdraw the limit on this category at this time. Should it become necessary to discuss this category with the Government of the People's Republic of China at a later date, further notice will be published in the **Federal Register**. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the import control limit previously established for this category.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

February 28, 1986

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of July 11, 1985 concerning imports of man-made fiber textile products in Category 638, produced or manufactured in China and exported during the twelve-month period which began on April 23, 1985 and extends through April 22, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86-4770 Filed 3-4-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Amendments Relating to the Soybean Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to amend Regulations 1180.01 and 1185.01 of the soybean oil futures contract. The proposal would amend the contract's minimum rates for loading into trucks and rail tank cars when load-out is requested by the holder of a warehouse receipt. The Director of the Division of Economic Anaylysis of the Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 4, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT Regulations 1180.01 and 1185.01.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

In accordance with section 5a(12) of the Commodity Exchange Act 7 U.S.C. 71(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the Chicago Board of Trade relating to its soybean oil futures contract is of major economic significance. Accordingly, the primary proposed amendments are printed below with brackets indicated deletions and underlining indicating additions.

1180.01 Duties of Warehouse Operators—It shall be the duty of the operators of all regular warehouses:

* * * * *

(f) To ship oil ordered out by warehouses in Buyer's tank cars, [or otherwise as] *if so* arranged, [as promptly as possible but not later than three days after tank car is ready for loading (strikes excepted).] *and to begin loading out soybean oil on or before the third business day following the date the car is ready for loading or the receipt is cancelled, whichever occurs later, at a minimum daily rate per business day equal to the greater of either 2% of the total oil represented by warehouse receipts against which oil has not yet been loaded out against or the equivalent of four jumbo rail tank cars.*

All rail loading orders received prior to 2:00 p.m. on a given business day shall be considered dated that day and shall be entitled to equal treatment. Rail loading orders received after 2:00 p.m. on a business day shall be considered dated the following business day. When loading rail loading orders and shipping instructions received by a shipper prior to 2:00 p.m. on a given business day, as determined hereunder, cannot be completed on the third following business day, the shipper shall allocate daily loading against such loading orders as equitably as possible on a pro-rata-basis on subsequent business days. Loading against all truck orders scheduled for a given business day shall be completed before loading of any orders scheduled for a subsequent business day.

* * * * *

(i) *To ship oil ordered out of the warehouse in Buyer's tank truck, is so arranged,* [owner of warehouse receipt may order oil out by truck. Each warehouseman must designate daily truck loading with the registrar's office of the Chicago Board of Trade. The operator of a shipping plant issuing soybean oil warehouse receipts shall not be required to load each day] *and to load the oil in such manner at a daily rate per business day equal to the greater of eight trucks or 1% of the total oil represented by warehouse receipts against which oil has not yet been loaded* [more than a maximum of 50% of his daily truck loading capacity as

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shown on warehouseman's application for regularity and approved by the Exchange].

* * * * *

(j) *Notwithstanding any other provisions of this Regulation, on days when both rail and truck are loaded, the warehouseman shall be required to load at a minimum daily rate equal to the greater of eight trucks and four jumbo rail cars or 2% of the total oil represented by warehouse receipts against which oil has not yet been loaded. If the effective minimum is 2% of the total oil represented by receipts against which oil has not been loaded out against, loading will be allocated between modes on a pro-rata basis except that: (i) a minimum of eight trucks and four jumbo rail cars must be loaded; (ii) no more than 1% of the total oil must be loaded by truck; and (iii) a minimum of 2% of the total oil less the amount loaded by truck must be loaded by rail.*

* * * * *

Also, Regulation 1185.01—Application for Declaration of Regularity—has been amended by deleting the requirement that regular facilities register a daily rate of truck loading.

The CBT has stated that the proposed amendments will be effective for all newly listed trading months following Commission approval.

Other materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033, K Street NW., Washington, DC 20581 by April 4, 1986

Issued in Washington, DC on February 28, 1986

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-4767 Filed 3-4-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows.

DATE: 25 March 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 28, 1986.

[FR Doc. 4805 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Summer Study on Mine Warfare; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study on Mine Warfare will meet in closed session on 25–26 March, 22–23 April, 13 May, and 26–27 June 1986 in the Pentagon, Arlington, Virginia. At these meetings the Summer Study will evaluate the Department of Defense land and over the beach mine warfare programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the Army's requirements for the LHX Helicopter.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: February 28, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-4807 Filed 3-4-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 25, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Review of Air Force Current and Long-Term Responses to Hazardous Materials/Waste Issues will meet April 8–9, 1986 at the Pentagon, Room 5D982 from 9:00 a.m. to 5:00 p.m. each day. The purpose of the meeting will be to review Air Force use of hazardous materials as pertains to system development and acquisition

The meeting will be open to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 86-4738 Filed 3-4-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: Department of Education

ACTION: Notice of public meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: March 24, 1986, 9:00 a.m. to 5:00 p.m. and March 25, 8:30 a.m. to 3:00 p.m local time. Requests for oral presentations before the Committee must be received on or before March 14 1986. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: North 1, 2, 3, Sheraton National Hotel, 900 South Orme Street (Corner of Columbia Pike and Washington Boulevard), Arlington, Virginia 22204 (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: Alfreda M. Liebermann, Acting Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3030, ROB–3), Washington, DC 20202 (202/245–9703).

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by section 1205 of the Higher Education Act as amended by Pub. L. 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs. The meeting on March 24–25 will be open to the public. The Advisory Committee will review petitions and interim reports by the following accrediting agencies relative to continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. The agencies having petitions and interim reports pending before the Committee are:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Renewal of Recognition

Association of Independent Colleges and Schools, Accrediting Commission
Middle States Association of Colleges and Schools, Commission on Higher Education
New York State Board of Regents
Southern Association of Colleges and Schools, Commission on Colleges

B. Interim Reports

American Assembly of Collegiate Schools of Business, Accreditation Council
Council on Education for Public Health
Foundation for Interior Design Education Research Committee on Accreditation

C. Show Cause Why the Agency Should Not Be Removed From the Secretary's List of Nationally Recognized Accrediting Agencies

Foundation for Interior Design Education Research, Committee on Accreditation (graduate programs only)

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. Petitions for Renewal of Recognition

Minnesota State Board for Vocational-Technical Education
New York State Board of Regents

B. Interim Reports

Office of the Superintendent of Public Instruction, State of Washington
Oklahoma State Board of Vocational and Technical Education
Oklahoma State Regents for Higher Education
Puerto Rico State Agency for the Approval of Public Postsecondary Vocational/Technical Education

Petitions for Recognition as State Agencies for the Approval of Nurse Education

A. Petitions for Renewal of Recognition

Missouri State Board of Nursing
New Hampshire Board of Nursing Education and Nurse Registration
New York State Board of Regents (Nursing Education Unit)

B. Request for Voluntary Withdrawal of Recognition

West Virginia Board of Examiners for Registered Nurses Requests for oral presentations before the Committee should be submitted in writing to Alfreda M. Liebermann (address above). Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Requests should be received on or before March 14, 1986. Time constraints may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3030, ROB–3), Washington, DC. from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed at Washington, DC, on February 28, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86-4699 Filed 3-4-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada, concerning Civil Uses of Atomic Energy, as amended:

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–CA–384, to the Universite du Quebec a Montreal, Montreal, Canada, 0.0996 grams of uranium, enriched to 99.8 percent in uranium-235 for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice. For the Department of Energy.

Dated: February 28, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc 86-4611 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Subsequent Arrangement Between United States, Canada, and Republic of Korea

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the

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Republic of Korea concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement carried out under the above-mentioned agreements involves the retransfer of a UO_2 ceramic fuel bundle from the Korea Advanced Energy Research Institute to Atomic Energy of Canada, Ltd., for use in research in ceramic fuel fabrication technology. The fuel element contains 8,220 grams of uranium, enriched to 3.17 percent in U-235. This retransfer is designated as RTD/CA(KO)-1.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement is not inimical to the common defense and security.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Security for International Affairs and Energy Emergencies.

[FR Doc. 86-4813 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-137, for the transfer of 114.05 tonnes of uranium, enriched to an average of 3.56 percent in the isotope uranium-235, for use as fuel in the Forsmark and Ringhals power reactors in Sweden. The material is to be transferred from the URENCO uranium enrichment facilities in the European Community.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4812 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-JA-360, for the supply of 296.8 grams of natural uranium to the Japan Nuclear Fuel Conversion Co., Ltd., Tokyo, Japan, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4814 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and Mexico

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale:

Contract S-IA-140, to the Instituto de Geologia, Ciudad Universitaria, Delegacion Coyoacan, Mexico, 47.188 grams of natural uranium, and one gram of uranium depleted in the isotope U-235, for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4815 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement Between United States and International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-IA-142, to the Institute for Nuclear Power Research, Bucharest, Romania, 148.8 grams of natural uranium, for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effort no sooner than fifteen days after the date of publication of this notice.

Dated: February 28, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-4816 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Procedures Governing Bonneville Power Administration; Rate Hearings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for Comments. *BPA File No:* APR-86-1.

SUMMARY: Consistent with section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i), and with recent decisions of the United States Court of Appeals for the Ninth Circuit, Bonneville Power Administration (BPA) is revising its procedures for rate hearings by amending existing rules, incorporating an interim rule on ex parte communications and including a new provision for expedited rate proceedings. The rule replaces the procedures found at 47 FR 6240 (February 10, 1982), and 49 FR 10960 (March 23, 1984). This is a rule of agency procedure within the meaning of section 553(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A). Accordingly, the rule becomes effective on March 7, 1986, for all rate hearings initiated on or after that date. BPA is accepting comments on these rules through April 4, 1986, and reply comments through April 21, 1986. BPA will revise the rule, if the comments domonstrate a need to do so.

Responsible Official: John Cameron, Assistant General Counsel, is the official responsible for this revision of procedures.

DATES: This rule is effective on March 7, 1986. Comments will be received through April 4, 1986. Reply comments will be received through April 21, 1986.

ADDRESSES: Written comments should be submitted to the Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. BPA File No. APR86-1 should be referenced in all comments.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503-230-p3478. Oregon callers outside Portland may use 800-542-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-457-6046. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION

I. Background

Section 7(i) of the Northwest Power Act requires BPA to conduct a public hearing on the merits of BPA proposals to change a rate for power or transmission services. BPA's existing procedural rule for rate hearings is found at 47 FR 6240 (February 10, 1982). Experience gained under the rule has prompted BPA to clarify certain ambiguities and to incorporate certain procedures now left for ad hoc resolution by the hearing officer. Additionally, rulings by the United States Court of Appeals for the Ninth Circuit have clarified the requirements of section 7(i).

In *Central Lincoln PUD* v. *Johnson*, 735 F. 2d 1101 (9th Cir. 1984), the court held that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the APA, 5 U.S.C. 557(d). In response to the Court's ruling, BPA published an interim rule adopting an ex parte communication rule at 49 FR 10960 (March 23, 1984). It is BPA's understanding that the interim rule has worked to the satisfaction of its customers. Therefore, the new rule simply makes the interim procedures final.

In *Portland General Electric Company* v. *BPA*, 754 F.2d 1475 (9th Cir. 1985), and *California Energy Commission* v. *BPA*, 754 F.2d 1470 (9th Cir. 1985), the court held that rate hearings could be conducted on an expedited basis where delays might frustrate BPA's fulfillment of its statutory obligations. The PGE and CEC cases revealed that BPA's existing ratemaking procedures could be cumbersome and unduly protracted. Thus the new rule includes a procedure for expedited rate hearings, to be concluded within 90 days after they are initiated by a notice published in the **Federal Register.**

Under section 553(b)(3)(A) of the APA, "rules of agency organization, procedure, or practice" are exempt from notice and comment rulemaking procedures. 5 U.S.C. 553(b)(3)(A). In *Southern California Edison* v. *FERC*, 770 F.2d 779 (9th Cir. 1985), the court held that the Federal Energy Regulatory Commission rules establishing procedures for interim approval of BPA rates were agency procedural rules within the scope of the section 553(b)(3)(A) exemption. BPA finds that the instant rule is also a procedural rule exempt from notice and comment rulemaking procedures. Accordingly, the rule is effective as of March 7, 1986, for all hearings initiated on or after that date. However, because of BPA's commitment to informing and consulting with the public, BPA will accept comments and reply comments on this rule. Comments will be accepted until April 4, 1986. Reply comments will be accepted until April 21, 1986. Copies of any comments filed with BPA on this rule will be available upon request of BPA's Public Involvement Office. If comments and reply comments so warrant, BPA will revise this rule at a later date. In the meantime, waiver provisions in the new rule may be used by the Administrator to remedy any prejudice to hearing parties.

II. Summay of the Rule

A. Section 1010.1—Applicability

Section 1010.1 makes the rule applicable to rate hearings under Northwest Power Act section 7(i). However, section 1010.1(b) grandfathers the rule to exclude hearings initiated before March 7, 1986.

Section 1010.1(c) creates three exceptions. The first pertains to implementation of rates or rate formulae previously established in a hearing under section 7(i). Hearings are not required when the Administrator begins

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to use an existing rate or replaces formula rate variables with constants to determine a price. However, BPA may conduct some informal proceeding on such actions. The second exception relates to instances where BPA may be required by statute or contract to decide whether a new rate or a rate change should be proposed. If, for example, BPA decides that implementation of a Northwest Power Act provision does not result in any rate change, no hearing need be conducted. The third exception relates to contract negotiation. The exception is explained in section 1010.2(j): "A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of this rule." BPA will not conduct rate hearings on all matters before the agency, just because they might bear some relationship to rates.

Paragraph (d) allows the Administrator flexibility consistent with the law to adopt alternative procedures, or waive application of a procedure, as necessary for a fair and expeditious hearing.

B. Section 1010.2—Definitions

Section 1010.2 defines terms used in the rule. Definitions should be familiar to persons who have participated in BPA hearings. The definition of "legal issue" clarifies the fact that rate hearings provide a forum for allegations that a proposed rate would be inconsistent with any contractual right or obligation.

C. Section 1010.3—Initiation of Hearing

This section provides for **Federal Register** notice of proposed rates as required by section 7(i)(1) of the Northwest Power Act. Notice pursuant to this section requires the Administrator to specify information that was previously required under BPA's procedural rules, plus (1) designation of either provisions for general rate proceedings or expedited rate proceedings, (2) designation of a prehearing conference date, and (3) specification of the date on which the Administrator's final record of decision will be issued.

These additional notice requirements are intended to apprise parties and participants of the nature of a hearing and to ensure a more timely and orderly hearings process.

D. Section 1010.4—Intervention

This section clarifies rules for intervening as a party and for opposing any petition for intervention in BPA rate proceedings. Previous intervention rules provided less guidance to the hearing officer in ruling on petitions for interventions, oppositions to petitions, and late interventions. This section is intended to afford opportunity for BPA's customers and customer groups, and others who have a demonstrable interest in the hearings, to participate in a meaningful fashion. At the same time, this section is intended to give the hearing officer more discretion in acting on interventions, in protecting the interests of all parties, and in maintaining an expedited hearing schedule.

Paragraph (b) of this section requires all petitioners to state their interests in the proceeding. Petitioners whose rates are subject to revision should so specify in their petition for intervention. Petitioners whose rates are not subject to revision are required to state with specificity their interest in the hearing process, in order to enable the hearing officer to make a determination. This requirement will also give BPA more notice of particular issues to be raised in the hearing.

Paragraph (c) of this section specifies the time within which petitions to intervene must be filed. This paragraph is intended to discourage untimely interventions. Accordingly, this paragraph provides the hearing officer criteria with which to determine whether to grant an untimely intervention. Untimely interventions will not be granted by the hearing officer except when in his determination the untimely petition meets the criteria specified in paragraph (c). Paragraph (d) specifies that any petitioner for intervention and any party may oppose any petition for intervention.

Paragraph (e) of this section clarifies that participants will not have the rights and duties accorded parties. For example, participants will not have the right to cross-examine or seek discovery. Neither will participants be subject to discovery of the parties.

E. Section 1010.5—Participation

Section 1010.5 provides that persons wishing to comment on any proposed rate matter may do so by submitting written comments or by commenting orally in field hearings when convened by the Administrator. Participants may submit comments without being subject to the duties of and having the privileges of parties who have intervened under section 1010.4 of this rule. However, participants may be questioned by BPA staff at field hearings, when questioning is necessary to clarify positions taken in comments.

F. Section 1010.6—Prehearing Conference

This section expressly requires the hearing officer to establish hearing schedules consistent with this rule and with any additional requirements noticed by the Administrator in the FEDERAL REGISTER notice. However, the section allows the hearing officer sufficient discretion to implement a hearing schedule that ensures development of a full and complete record, consistent with fairness to the parties.

Paragraph (d) of this section requires the hearing officer to consolidate parties with similar interests into groups, when in his determination such consolidation will contribute to an expeditious proceeding. This paragraph is intended to facilitate a process without unnecessary duplication of testimony, cross-examination and briefing.

G. Section 1010.7—Ex Parte Communications

Section 1010.7 is adopted for the reasons stated in 49 FR 10980 (March 23, 1984). This section contains a general rule prohibiting ex parte communication regarding any matter pending before BPA in a hearing conducted pursuant to this rule. It is intended to ensure that the Administrator's decision is based upon a publicly developed record to which all parties and participants have had an opportunity to participate, rebut or challenge. Essentially, the provision is a verbatim recital of the interim rule, which has worked effectively for the last two years.

The section contains express exceptions to the general rule. These exceptions clarify the scope of an ex parte communication.

Paragraph (c) specifies that the rule against ex parte communications will apply either when **Federal Register** notice is published or when a person has knowledge that a **Federal Register** notice will be published.

Paragraphs (d), (e), and (f) of this section prescribe procedural safeguards that BPA will take to ensure that ex parte communications do not occur, and to the extent they do occur, are documented and excluded from the formal record. Paragraph (g) provides an opportunity for any person to rebut any contention contained in an ex parte communication.

H. Section 1010.8—Discovery

Section 1010.8 governs the scope of discovery in a rate hearing. Paragraph (b) specifies that discovery may be made through written data requests served on counsel for a witness or party.

Paragraph (c) provides that when the hearing officer schedules transcribed clarification sessions for prefiled testimony, parties must serve data request relating to that testimony one business day prior to the scheduled clarification sessions. This paragraph allows witnesses the option of responding to such requests orally at the transcribed session, or responding in writing. Paragraph (h) provides that parties wishing copies of written data responses request such information from the party answering the request. These paragraphs are intended to streamline clarification and data requests to reduce paper flow wherever possible.

Paragraphs (d)–(e) govern discovery disputes that may arise. The hearing officer is granted discretion to rule on or mediate any dispute to the extent consistent with this rule and other applicable law. Paragraph (f) grants the hearing officer discretion to make in camera inspection or grant protective orders to the extent necessary to protect information that has been shown to be privileged or proprietary. In addition, paragraph (g) provides remedies available to the hearing officer should any party refuse to comply with an order compelling production or discovery. These paragraphs are intended to promote full and fair discovery, but protect parties and BPA from unduly burdensome discovery or public dissemination of matters of a proprietary or privileged nature. The withholding party must demonstrate the legitimacy of any claim that information is proprietary or privileged.

I. Section 1010.9—General Rate Proceedings

Section 1010.9 provides that a general rate proceeding is one in which the Administrator proposes to revise all or substantially all rates, and where expedited rate proceedings are not selected by the Administrator.

J. Section 1010.10—Expedited Rate Proceedings

This section governs rate proceedings where the Administrator has elected in § 1010.3 notice to conduct an expedited rate hearing. This rule provides that an expedited proceeding will be completed within 90 days of § 1010.3 **Federal Register** notice. This section is intended to provide the Administrator with a mechanism for expedited rate hearings, where the Administrator has determined, among other things, that delays could significantly harm BPA's ability to satisfy its statutory obligations, and that expeditious implementation of new or revised rates is consistent with any contractual limitations. Discretion is left to the hearing officer to implement, consistent with the requirement of this rule, procedures necessary to enable the parties and BPA to develop a record. Only the hearing officer is authorized to request extensions of the 90-day period. Such requests may be made only when the parties demonstrate to the hearing officer's satisfaction that an extension is warranted. Any decision to extend is left to the sole discretion of the Administrator.

K. Section 1010.11—Testimony and Exhibits

Section 1010.11 governs the submission into the record of direct and rebuttal testimony of the parties. This section is intended to streamline submission of testimony and exhibits, and limit admission of unreasonably long or repetitious testimony and exhibits.

Paragraph (a) of this section is the general rule that testimony will be written, but oral testimony may be taken by leave of the hearing officer. Paragraph (a)(4) requires the hearing officer to reject exhibits or other documentation of excessive length, but allows parties to submit for the record excerpts and summaries of documentation and exhibits that have been rejected by the hearing officer under the terms of this paragraph. Paragraph (g) provides the hearing officer with the ability to reject all or part of testimony or exhibits not submitted in accordance with section 1010.11. Previous rules offered neither guidelines nor sanctions for the hearing officer to use in developing a full record unencumbered by repetitious material.

Paragraph (b) allows the hearing officer to designate documents from other BPA rate proceedings as items by reference. Items by reference will not physically become part of the record of the ongoing rate hearing unless the hearing officer so orders. Paragraph (c) allows the Administrator or the hearing officer to take official notice of any matter that would properly be the subject of official notice in federal courts, and also of any matter about which BPA is expert. This paragraph is intended to expedite the hearing process by taking official notice of undisputed facts.

Paragraph (e) provides parties and BPA the opportunity to move to strike testimony and exhibits when not in compliance with these rules or other applicable laws. This paragraph also clarifies that a party who has moved to strike may not answer the response of the party against whom the motion was made. This should encourage moving parties to state with particularity the reasons for the motion, and is intended to decrease the amount of paperwork involved with motions to strike.

L. Section 1010.12—Hearing

This section clarifies rules for testifying in panels and for cross-examination. Paragraph (a) provides that witnesses may testify in a panel. This does not change existing practice. However, paragraph (a) also specifically permits any panel witness to respond to a cross-examination question, provided the witness has submitted qualifications and is under oath.

Paragraph (b) empowers the hearing officer to limit excessive and irrelevant cross-examination. Previous rules provided little guidance to the hearing officer to oversee cross-examination. This paragraph provides the hearing officer discretion to (1) require cross-examination be completed within a reasonable time, (2) appoint lead counsel to conduct cross-examination of witnesses when the parties have substantially similar interests, and (3) limit friendly cross.

Paragraph (c) governs use and admission of cross-examination exhibits. Subparagraph (c)(1) merely recites the current practice that copies of cross exhibits be provided to the hearing officer and to witnesses' counsel. Subparagraph (c)(2), however, specifies that cross-examination exhibits containing material not offered as evidence must clearly designate which material is offered as evidence and which material is excluded. This is intended to clarify the record and streamline cross-examination.

Paragraph (d) grants the hearing officer the discretion to receive stipulations on any issue of fact. Stipulations are intended to further simplify proceedings wherever possible. Paragraph (e) merely specifies that all matters not otherwise governed by this rule are left to the discretion of the hearing officer.

M. Section 1010.13—Briefs

Section 1010.13 governs submission of briefs. Paragraph (c) provides that initial briefs should identify legal, factual, and policy issues to be resolved by the Administrator, and specify the parties' position on each issue. Paragraph (d) provides for the submission of briefs on exceptions, for the purpose of responding to errors in the Administrator's draft record of decision or providing additional support for a position. Paragraph (d) changes the characterization of the second brief from

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a "Reply Brief" to a "Brief on Exceptions," to more accurately reflect the purpose the second brief.

Paragraph (a) states general rules applicable to all briefs. This paragraph specifically prohibits the practice of attaching to briefs or incorporating by reference into briefs materials not admitted into evidence by the hearing officer. This paragraph is intended to end a past practice which has had the effects of unnecessarily creating additional motions practice for the hearing officer long after the formal record has closed and further unnecessarily cluttering the record. This rule should also encourage parties to submit for the record all evidentiary and other matters during the regular course of the hearing. Paragraph (c) requires the hearing officer to reject any brief not in accordance with these rules.

Paragraph (b) requires parties to fully raise and develop their position on any issue, or else be deemed to take no position on that issue. Arguments not raised are deemed waived. This paragraph is intended to encourage the fullest development of the record possible at the appropriate time and to prevent after-the-fact raising of questions to which the Administrator could have responded had the issues been timely raised.

N. Section 1010.14—Oral Argument

Self explanatory.

O. Section 1010.15—Service of Documents

This section is intended to clarify rules of service applicable during rate hearings. This section requires that copies of all documents, including motions, briefs, pleadings, testimony, and decisional documents be served on all parties to the service list compiled by the hearing officer pursuant to section 1010.6. This paragraph also limits the number of persons upon whom service is to be made, except that the Administrator may designate additional persons upon whom service will be made.

P. Section 1010.16—Record of Decision

This section merely restates the requirements of section 7(i)(5) of the Northwest Power Act that the Administrator make a final decision, including a full and complete justification for the final proposed rates. This section additionally requires the Administrator to serve all parties with and make available to participants a copy of the draft record of decision and the final record of decision.

III. Authority: Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(i); Administrative Procedure Act, 5 U.S.C. 551–557.

In consideration of the foregoing, BPA amends its procedural rules for hearings under Northwest Power Act section 7(i) as set forth below.

Issued in Portland, Oregon.

Peter T. Johnson,
Administrator, Bonneville Power Administration.
February 20, 1986.

Bonneville Power Administration, United States Department of Energy, Rules of Procedure Governing Rate Hearings

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§ 1010.16 *Record Of Decision*

Section 1010.1 Applicability

(a) *General Rule.* This rule applies to all proceedings conducted under the procedural requirements for ratemaking contained in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i). On determining that new or revised rates may be needed to satisfy fiscal or other statutory obligations of Bonneville Power Administration (BPA), the Administrator may initiate a hearing in accordance with this rule to develop a full and complete record on proposed rates.

(b) *Transitional application.* This rule applies only to rate hearings initiated on or after March 7, 1986. All hearings initiated prior to that date shall be conducted pursuant to the "Procedures Governing Bonneville Power Administration Rate Adjustments," 47 FR 6240 (February 10, 1982). Rate hearings are initiated as provided in § 1010.3 of this rule.

(c) *Exceptions.* This rule does not appy to:

(1) Proceedings regarding implementation of rates or formulae previously adopted by the Administrator and approved, on either an interim or final basis, by the Federal Energy Regulatory Commission,

(2) Proceedings required by statute or by contract, in which the Administrator does not propose any new rate, formula rate, discount, credit, surcharge or other rate change, or (3) negotiation of, or the receipt of public comment on, any contract, except for provisions which satisfy the definition in § 1010.2(j).

(d) *Waiver.* To the extent permitted by law, the Administrator may waive any section of this rule of procedure or prescribe any alternative procedures he determines to be appropriate.

Section 1010.2 Definitions

(a) "Administrator" means the BPA administrator or the acting administrator or, for the purpose of § 1010.7, the hearing officer.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Draft Record of Decision" means the document, issued by BPA after the submission of initial briefs, which identifies each issue BPA will resolve in the pending rate hearing; summarizes the factual, legal and policy arguments presented by BPA and the parties on each issue; and sets forth the Administrator's tentative decision on each issue.

(d) "Ex Parte Communication" means an oral or written communication

regarding the merits of any issue pending in a hearing conducted pursuant to Northwest Power Act section 7(i) which is not on the record and with respect to which reasonable prior notice to parties has not been given, but it shall not include request for status reports on any hearings.

(e) "Hearing Office" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act section 7(i)(2).

(f) "Legal Issue" includes any issue grounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing of the propriety of a rate proposed by BPA or any party.

(g) "Participant" means any person submitting for the record oral or written comments pursuant to § 1010.5 on a rate proposed by the Administrator.

(b) "Party" means any person whose intervention is effective under § 1010.4.

(i) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(j) "Rate" means the monetary charge, discount, credit, surcharge, pricing formula, or pricing algorithm for any electric power or transmission service provided by BPA, including charges for capacity and energy. However, the term does not include transmission line losses, leasing fees, facility-use charge other than for BPA transmission services, or charges for operation and maintenance of customer-owned facilities. A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of these rules.

(k) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, draft record of decision and record of decision certified by the hearing oficer.

Section 1010.3 Initiation of Hearing

A hearing on the Administrator's proposal to establish or revise the rate for any power or transmission service shall be initiated on the day a notice of BPA's initial rate proposal is published in the **Federal Register**. The notice shall:

(a) Specify the proposed rates and summarize any studies, analyses, or other available information that BPA intends to use in the hearing to justify the proposed rates,

(b) Establish a deadline for filing petitions to intervene,

(c) State whether the hearing will be conducted under the rule for general rate proceedings § 1010.9, or the rule for expedited rate proceedings § 1010.10, together with a statement of reasons for the Administrator's choice between the two rules,

(d) Establish a date on which the hearing officer will conduct the prehearing conference,

(e) Specify the date on which the Administrator will issue the record of decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing, and

(f) Provide other information which the Administrator determines to be pertinent to the hearing.

Section 1010.4 Intervention.

(a) *Filing.* A person seeking to become a party in a rate hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APR.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the § 1010.3(b) notice for the hearing in question.

(2) Late interventions are strongly disfavored. Granting an untimely petititon to intervene must not be a basis for delaying or deferring any procedural schedule. A later intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time,

(ii) Any disruption of the proceeding might result from allowing a later intervention,

(iii) The petitioner's interest is adequately represented by existing parties, and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within two days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in §§ 1010.6, 1010.8–1010.15 are available only to parties, and are not available to participants.

Section 1010.5 Participation

Any person, who is not a party, may become a participant by submitting written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Written comments must be submitted to the BPA Public Involvement Office. The hearing officer may allow reasonable questioning of participants by BPA counsel.

Section 1010.6 Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's **Federal Register** notice. During the conference, the hearing officer shall:

(a) Act on all intervention petitions.

(b) Establish any special rules of procedure the hearing officer considers appropriate, provided that such special rules conform to BPA's rules of procedure governing rate hearings,

(c) Establish a service list,

(d) Establish a procedural schedule for the entire hearing, and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

Section 1010.7 Ex Parte Communications

(a) *General Rule.* Except as permitted in paragraph (b) of this section, no party or participant in any hearing shall submit ex parte communications to the Administrator or any BPA employee regarding any matter pending before BPA in the hearing. Neither shall the Administrator nor any BPA employee request or entertain such ex parte communications.

(b) *Exceptions.* The prohibitions contained in paragraph (a) of this section do not apply to a communication:

(1) Relating to matters of procedure only;

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(2) From a person when otherwise authorized by law or other portions of these procedures;

(3) From or to the Federal Energy Regulatory Commission after coordination with BPA counsel;

(4) Which all parties agree may be made on an ex parte basis;

(5) Relating to exchanges of data in the ordinary course of business, data required to be exchanged pursuant to contracts, or data which would be available pursuant to Freedom of Information Act requests;

(6) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with BPA during a hearing and which is made in the presence of or after coordination with BPA counsel; or

(7) Which relates to a topic that is only secondarily the object of a hearing, for which BPA is statutorily responsible under provisions other than Northwest Power Act section 7, or which is eventually decided other than through a section 7(i) hearing.

(c) *Application.* The prohibitions contained in this section shall apply from the day on which BPA publishes the Federal Register notice specified § 1010.3, or the person responsible for such communication has knowledge that a notice will be published.

(d) *Notice of meetings.* BPA will give reasonable public notice of any meeting which BPA intends to hold with any customer group or member of the public when it reasonably appears that matters of substance relative to the merits of a section 7(i) hearing will be discussed. For any such meeting held individually with customers, customer groups, and others, BPA will prepare a memorandum reciting the date of the meeting, persons in attendance, and a summary of issues discussed and positions taken. This memorandum will be placed in an ex parte file separate from the material upon which the Administrator relies in reaching a decision. This file will be available for review through BPA's Public Involvement Office.

(e) *Written materials.* Any written material received by the Administrator or BPA staff which would otherwise be subject to the prohibition of paragraph (a) of this section automatically will be placed in the ex parte file identified in paragraph (d) of this section.

(f) *Oral communications.* The Administrator or any BPA employee who receives an oral offer of any communication prohibited by paragraph (a) of this section shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall prepare a statement setting forth the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to BPA's Office of General Counsel. BPA's Office of General Counsel must deliver these statements to the hearing officer who will serve copies on parties to the proceedings. The hearing officer will also serve a copy of the statements to the communicator and allow him or her a reasonable opportunity to file a response.

(g) *Rebuttal.* Requests for an opportunity to rebut, on the record, any facts or contentions contained in either ex parte communication or in a memorandum prepared pursuant to paragraph (d) of this section should be filed with the hearing officer. The hearing officer will grant such requests only where the dictates of fairness so require.

Section 1010.8 Discovery

BPA and the parties to any rate hearing may engage in discovery, and be subject to discovery requests, according to the following rules:

(a) *Informal requests.* Prior to initiation of a rate hearing, information concerning BPA rates may be requested by making a written request through BPA's Office of General Counsel/APR.

(b) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. BPA or any party may request data in hard copy or computer tape, studies, or admissions; however, no party shall be required to perform any new study or to run any analysis or computer program. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served only on counsel for the requesting party.

(c) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a witnesses' testimony serve all data requests pertaining to that testimony at least one business day prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (b) of this section.

(d) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(e) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(f) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(g) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates, or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond, or

(3) Recommending to the Administrator that an appropriate adverse infrerence be drawn against the party refusing to answer or respond.

(h) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

Section 1010.9 General Rate Proceedings

(a) *General rule.* a general rate proceeding is a hearing on the Administrator's proposal to revise all, or substantially all, of BPA's power and transmission rates in instances where the Administrator does not utilize the procedures in § 1010.10 for an expedited rate proceeding. The hearing officer may establish the procedures and conduct hearings, consistent with this rule, as necessary to develop a full and complete record and to receive public comment and argument related to the proposed rates.

Section 1010.10 Expedited Rate Proceedings

(a) *General Rule.* The record of decision in rate hearings conducted under this section shall be issued within 90 days after notice is issued under § 1010.3, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the 90-day hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days thereafter.

(c) *Special procedure.* Oral argument will not be heard in expedited rate proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.

Section 1010.11 Testimony And Exhibits

(a) *General Rule.* (1) Parties shall be provided an adequate opportunity to offer refutation or rebuttal on any material submitted by any other party or by BPA. Except as provided in § 1010.5, witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which exclude irrelevant or redundant material.

(b) *Items by reference.* Testimony, exhibits, or studies from other BPA rate hearings may be designated as items by references in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official notice.* The administrator or the hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to § 1010.5 shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

Section 1010.12. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be limited to issues relevant to the proposed rates or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz,* friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witnesses' counsel.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

Section 1010.13. Briefs

(a) *General rule.* Briefs shall be filed at times specified by the hearing officer in the procedural schedule. All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Waiver of issues or arguments.* Parties whose briefs do not raise and fully develop their positions on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived.

(c) *Initial brief.* At the conclusion of the evidentiary portion of a hearing, the hearing officer shall allow each party to submit any initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(d) *Brief on exceptions.* After issuance of BPA's draft record of decision, each party may file a brief on exceptions. The purposes of the brief on exceptions are to: (i) Raise any alleged legal, policy, or evidentiary errors in the draft record of decision, or (ii) provide additional support for tentative decisions contained in the draft record of decision. Alleged errors not raised in briefs on exceptions shall be deemed waived.

(e) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

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Section 1010.14. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator, except as limited by § 1010.10(c).

Section 1010.15. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under § 1010.6, service on parties may be made by service on BPA General Counsel/APR. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by § 1010.8 (b) and (h).

Section 1010.16. Record of Decision

Based on the entire hearing record, the Administrator shall make a decision adopting final proposed rates for submission to the Federal Energy Regulatory Commission for confirmation and approval. The record of decision shall include a full and complete justification for the final proposed rate or rates. The Administrator shall promptly serve copies of the record of decision on all parties to the proceeding. Copies of the record of decision will be made available to participants through BPA's Public Involvement manager.

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BILLING CODE 6450-01-M

Fall River-Lower Valley Transmission System Reinforcement; Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy, Bonneville Power Administration, proposed to build 161–kV transmission facilities from Goshen Substation to Drummond Substation in southeastern Idaho. The proposal was based on a need to maintain reliable service to electrical loads in the Targhee, Drummond, Palisades, West Yellowstone, and Teton areas.

Several alternatives were studied to meet the need. The alternatives, including the proposed Goshen-Drummond plan, were analyzed in the October 1985 Final Environmental Impact Statement (EIS) titled "Fall River-Lower Valley Transmission System Reinforcement." The EIS was prepared by BPA. The Bureau of Land Management (BLM) and the Forest Service (FS) participated as cooperating agencies. The Bureau of Reclamation (BOR) also participated in project development.

This Record of Decision (ROD) describes BPA's decision to build a 73-mile 161–kV transmission line from Goshen Substation southwest of Idaho Falls to Drummond Substation near Ashton, Idaho.

Decision

The Bonneville Power Administration has decided to construct the Fall River-Lower Valley 161–kV transmission line following the proposed alternative (Goshen-Drummond) identified in the draft and final EIS's.

SUPPLEMENTARY INFORMATION:

Selected Alternative

A new 73-mile 161–kV line will be built from Goshen Substation (15 miles southwest of Idaho Falls) to Drummond Substation (east of Ashton, Idaho) (see map). Two 115–kV power circuit breakers will be added at Drummond Substation. The 161–kV line will operated initially at 115–kV. Later (1992) a 161/115–kV transformer will be added at Drummond Substation. An additional 115–kV circuit breaker will be required at Goshen Substation until the line is converted to 161–kV. Upon energization, BPA may transfer to Utah Power and Light Company (UP&L) ownership of approximately one-half of the transmission line (from Goshen Substation to the Snake River). This transfer would be in exchange for favorable system wheeling rates and would be part of a power sales contract currently being negotiated between BPA and UP&L.

The line will cross approximately 1/2 mile of BLM land at the Snake River and approximately 1/4 mile of BOR land at the Teton River Crossing. Procedures for obtaining land use grants from these agencies will be undertaken when location and design details have been finalized.

Goshen-Drummond was selected from among four construction alternatives. Because all four alternatives could create impacts that would be similar in nature, intensity, or significance, no one plan was considered to be environementally preferable. However, within the Goshen-Drummond alternative, the following route and design options were selected because they have the least impact of all Goshen-Drummond options. As noted below, they are part of the mitigation adopted for the selected plan.

SELECTED PLAN (GOSHEN—DRUMMOND)

FALL RIVER/LOWER VALLEY REINFORCEMENT PROJECT

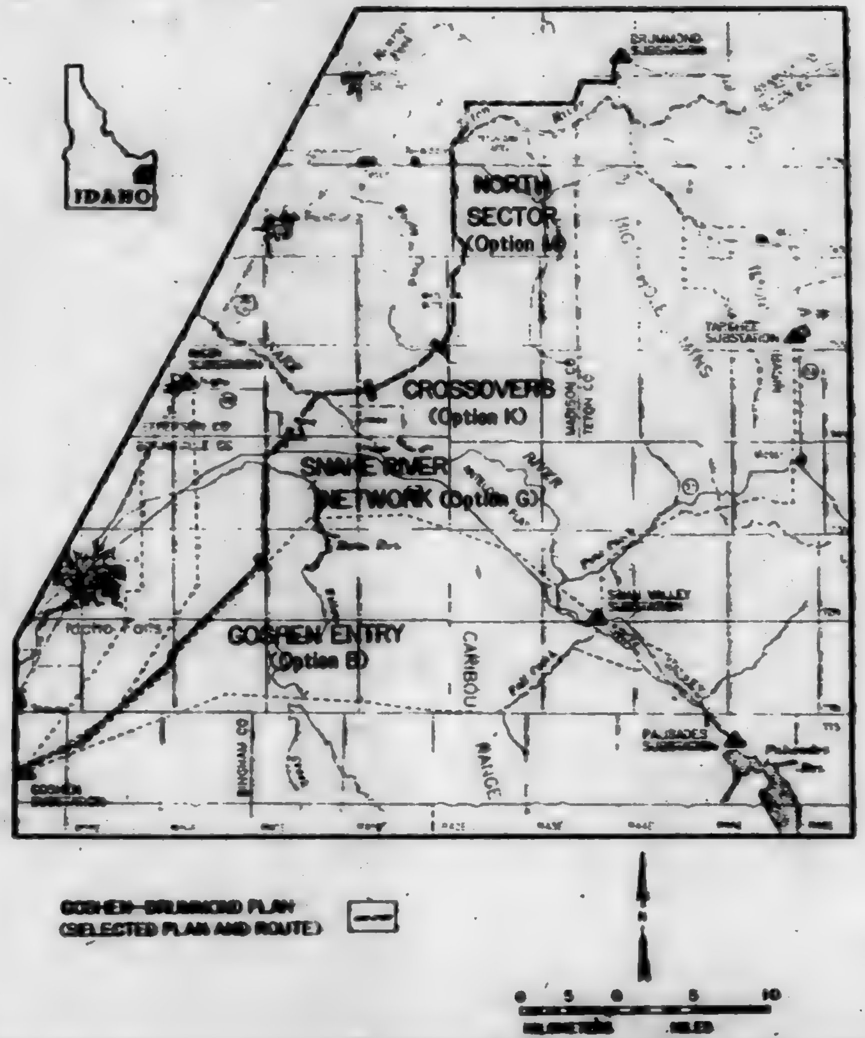

The Goshen-Drummond plan was divided into four geographic sectors, for ease of discussion. From south to north, they are: The *Goshen Entry*, the *Snake River Network*, the *Crossovers*, and the *North Sector* (see map). The selected route, design, and mitigation options for each sector are:

Goshen Entry—Option B

Twenty miles of existing 161–kV line out of Goshen Substation will be torn down and replaced with double-circuit construction as mitigation. Because it uses the existing right-of-way, double-circuit costruction will have less impact on residences and irrigated farmland than the alternative of building a parallel line.

Snake River Network—Option G

The line will leave the existing line's path west of Ririe Reservior and head north, primarily along country roads. It will cross the southeast corner of the town of Ririe and will cross the Snake River near the Union Pacific Railroad trestle. The selected option G avoids the serious conflicts with agriculture and residences that some other alternatives would have. It also has less effect on esthetics, recreation, wildlife, and soils than some other options. On balance, it would have the least environmental effect of the seven options considered for this sector.

Construction will be entirely on single wood-pole structures on option G to minimize conflict with cultivated land and other developed land uses, as these structures take less space than H-frames.

The route relocation on the eastern side of the town of Ririe was selected as mitigation to reduce effects on agricultural operations and residences.

A cultural resources survey for the Heise-Thornton Road, followed by mapping and photographing of any remaining unaltered portions, will reduce overall impact; any portions determined eligible for National Register listing would be avoided.

Crossovers—Option K

Past the river, the line will head northeast, largely through wooded terrain. The standard H-frame structures will be used in most areas. Option K was chosen because it proved possible to locate the line on the farm/forest margins, avoiding impacts on wildlife. It also avoids the greater impacts on agriculture characteristic of the other crossover.

North Sector—Option M

The line will cross Moody Creek, then continue north, primarily along existing roads in order to minimize effects on cultivated land. Just north of the Teton Dam Site, it will turn east for about 11 miles to Drummond Substation. Single-pole structures are proposed for most cultivated areas. H-frames will be used elsewhere. Option M avoids the impacts of the other option in this sector on big game, on fisheries, on soils and vegetation, and on irrigated land. Option M effects on these resources are less severe or more mitigable. Although Option M crosses more miles of irrigated agriculture than the alternative option, a good system of roads parallels the route, reducing access road needs and allowing pole placement near road edges, thereby reducing disturbance and interference with both wildlife and agriculture.

A route adjustment north of the Teton River has been selected to avoid interfering with existing and planned circle irrigation systems for about 2 miles.

A route adjustment into Drummon has been selected to avoid building parallel to existing lines, except for the last ½ mile.

Alternatives

In arriving at a decision, BPA evaluated a number of alternatives to the Goshen-Drummon plan. These included three electrical plans of service, Conservation in-lieu-of construction, and No Action. In these evaluations, BPA considered the following factors: ability to meet the

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need, engineering performance, environmental effects, cost considerations, and public concerns. Following is a brief description of each alternative and the reasons it was not selected.

A. Goshen-Targhee Plan

The area's system could be reinforced by building a mostly parallel 161-kV line along the present Swan Valley-Goshen line to Swan Valley Substation, then into Targhee Substation, for a distance of 75 miles.

This alternative was rejected because it cost the most and did not perform as well as Goshen-Drummond from an electrical or maintenance standpoint.

B. Goshen-Swan Valley-Targhee Plan

The area's system could also be reinforced by rebuilding the Palisades-Goshen 115–kV line. One option would be to rebuild it to double-circuit 161–kV (or to build a new parallel line) for 38 miles to Swan Valley. Another option would be to upgrade the existing line to 161–kV. Either option would be followed later by construction of a parallel 161–kV line from Swan Valley to Targhee.

This alternative was rejected because it cost more and would not perform as well as Goshen-Drummond from an electrical or maintenance standpoint.

C. Other-Utility-Build

Utah Power and Light Company (UP&L) could construct a 43-mile 161–kV transmission line from their Rigby Substantion to Drummond. Within a few years, they would also reinforce their facilities at Rigby Substation form their Bonneville Substation or Jefferson Substantion to the west, and still later they would reinforce the system from Goshen to Rigby to avoid overloads. Although these actions would be undertaken without a Rigby-Drummond line, building this line would accelerate their timing.

This alternative was rejected because: (1) It costs substantially more over the long term; and (2) it offers fewer benefits towards operation, maintenance and reliability of service on facilities serving the area customers.

D. Conservation In-lieu-of Construction

This alternative would involve developing programs to conserve enregy or manage loads, in addition to current weatherization and irrigation conservation programs in the area.

Conservation as an alternative was rejected because it does not meet the need for the project.

E. No Action.

Under the No Action alternative, no new facilities would be constructed and no existing transmission lines would be altered. No special or additional actions would be taken to satisfy the need for the proposal.

No action was rejected because it does not meet the need for the project.

Factors Used in Making the Decision

In making a decision, BPA considered the following factors: Ability to meet the need, engineering performance, environmental effects, cost considerations, and public concerns.

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Ability to meet the need

BPA is contractually obligated to maintain reliable service to Fall River Rural Electric Cooperative and to Lower Valley Power and Light Co. Action is needed by the winter of 1988–89 to avoid future outage or overload problems on the existing system; those problems would cause blackouts of the Fall River-Lower Valley service areas. All four construction alternatives meet this need and timing. The No Action alternative and the Conservation alternative do not.

Engineering Performance

Factors considered under this heading are: Increasing reliability, reducing the amount of radial service, reducing line losses, and operation/maintenance considerations.

Goshen-Drummond and UP&L plans would provide the greatest increase in reliability for the area transmission system. They would provide and additional source of power farther into an area currently served by a single line than would the other two BPA construction alternatives, thus, reinforcing the area transmission system closer to one of the growth areas and increasing the system's reliability. Goshen-Drummond would have greater loss savings than would the other two BPA plans. Loss savings for Goshen-Drummond and for the UP&L plan would be similar.

Because the project is being proposed primarily to impove reliability to BPA's Fall River and Lower Valley customers, having only one entity operate and maintain all sources of power to the customers is an advantage in terms of coordination and reliability of service. The UP&L alternative would not provide this advantage. This advantage would hold if BPA should transfer owership of part of the line to UP&L, because BPA would continue to operate and maintain the line. Under the Goshen-Drummond plan, UP&L would be able to tap the Goshen-Drummond line where needed in lieu of reinforcing their existing system.

Cost Considerations

The chosen alternative would have the lowest long-term cost of any construction proposal. Although No Action and Conservation would cost less, they do not meet the need. The other two BPA plans would have higher costs due to access, clearing, materials, and/or construction. Facility costs, charges for wheeling, and charges for the use of facilities required to reinforce UP&L's Rigby Substation and attributable to this project make the UP&L Build plan substantially more costly than the chosen plan.

Environmental Effects.

Only construction alternatives were considered here. The alternatives of No Action and Conservation would have little or no environmental impact, but do not meet the stated need for the project.

Although individual effects vary, levels of environmental disturbance would be similar for all four electrical plans of service. The UP&L plan crosses a more heavily settled and intensively farmed part of the Snake River Valley, and would therefore cause the most concerns for irrigated agriculture and developed land use. Recreation, wildlife, and esthetic concerns are most significant for the Goshen-Swan Valley-Targhee and Goshen-Targhee plans. The selected plan (Goshen-Drummond) falls midway between these other plans. It would have more impacts for natural resources and dryland farming than the UP&L plan, but less than the other two BPA plans. It would have fewer effects on irrigation and developed land use than the UP&L plan, but more than the other BPA plans. The selected plan offers substantial opportunities for mitigate or avoid impacts by routing along roads, using single-pole construction, or rebuilding existing facilities in places. The UP&L plan offers similar opportunities, but the other two BPA plans do not.

Transfer of ownership of part of the line to UP&L would change the economic effects of the project. Because economic impacts are minor for the overall project and are not a major factor in the environmental comparison, such changes are not important to the selection of the Goshen-Drummond plan. Under Federal ownership, the

facilities would not be subject to State or local taxes. Any portion of the line under private ownership would be taxable. A small net positive local economic benefit would result from selling part of the line.

Because resource tradeoffs for the four construction plans would balance out, environmental impacts were not a factor in selecting a construction plan. They were, however, critical in determining the route of least impact, the designs, and mitigation for the chosen plan. The selected route and design options are the environmetally preferred ones.

Public Concerns

Public input on alternative plans and on route and design options was considered in making plan, route, and design selections.

A few commenters expressed concern over whether one of the other three construction plans might better meet the need, cost less, or have lower impact. However, most commenters did not question that Goshen-Drummond would best satisfy these conditions. The comparisons above show that the alternative plans do not meet these criteria better than the plan chosen.

Public concerns over resource tradeoffs were a major factor in developing locations, designs, and mitigation for the Goshen-Drummond Plan. The decisions to build double-circuit out of Goshen Substation and to reroute the line in the town of Ririe and elsewhere were direct responses to public requests and were environmentally preferable. The decisions to locate along existing linear features as much as possible and to use single-pole construction in developed or irrigated areas were responses to public concerns to avoid impacts on agricultural land and residences. The crossing of the Snake River an the location north to Moody Creek were developed to meet agency and environmental group concerns to avoid wildlife, scenic, and recreational effects without compromising important land uses such as irrigated agriculture and residences.

Overall, the Goshen-Drummond Plan was selected because it would best satisfy engineering performance and cost criteria, while being at least as acceptable as the other construction alternatives in meeting environmental and public concerns. Specifically:

- It would provide the greatest increase in system reliability (equal to the UP&L plan);
- It would provide the greatest loss savings;
- It would retain the benefits for operation and maintenance of a single entity (BPA) managing the facilities serving the area customers;
- It would cost the least over the long term.

All of the wetlands and all but one of the floodplains crossed by the proposed route can be spanned at the South Fork Snake River crossing, however, four to five structures must be placed in the 100-year floodplain. The structures will be built on footings designed to withstand flooding and neither the construction activities nor the physical presence of the line will alter floodplain characteristics or create the potential for greater loss of property or life during flooding. Because the floodplain is too wide to be spanned, there is no practicable alternative to locating the structures in the flood plain. Also, all practicable measures to minimize potential harm to the floodplain have been included.

Mitigation

Means of mitigating environmental impacts of the project adopted as part of the proposal are listed under *Decision*. Additional measures not part of the proposal have also been adopted to reduce or avoid effects of the project which could still occur. Adopting these measures (listed below) insures that all practicable means have been used to protect the environment from harm; it also insures that BPA will follow its mandates for land management as set forth in law, regulation, and policy.

The following measures considered in the final EIS were adopted. They will be incorporated in the project construction specifications and the joint interagency mitigation plan. Where applicable, specific locations will be worked out by the interagency committee.

- Where the line parallels existing roads, access during construction will be from these roads. New access along the right-of-way (convenience roads) will be built only where absolutely necessary due to terrain limitations.
- Where there are some existing roads near key wildlife areas, spur roads to structure sites will be used to the extent practical, rather than continuous or loop roads. Road locations will be planned with assistance from the State of Idaho. Use of access roads will be controlled where appropriate.
- Noxious week surveys will be done by BPA before and after construction. A weed control plan will be developed, including mitigation measures to prevent spread of noxious weeds. The postconstruction survey will scheduled no sooner than one year after construction. BPA will work with each county on the project weed control effort.
- Disturbed areas will be seeded with quick-growing grass species easily adaptable to the site, and will be fertilized if necessary. Standard erosion control measures such as water bars, drainage structures, and low-gradient road cuts will also be used in problem soils areas. To reduce rutting and compaction, BPA will try to avoid construction on problem soils when they are wet.
- Sediment traps (e.g., bales of hay placed downstream to filter sediment during road construction) will be installed in streams with fishery values or in tributaries of these streams where road construction activities have a potential for effecting the fishery values.
- In riparian areas, clearing of vegetation for transmission line right-of-way will be limited. Access roads will be designed to avoid riparian areas as much as possible. Where canyons (such as Moody Creek and the Teton River) can be spanned with adequate line clearance, they will not be cleared. Limited clearing may be required near the top of the canyon sides to obtain adequate clearance from the conductors.
- Osprey nesting platforms will be placed in a number of structures near the Snake River Crossing to serve as nesting sites. Number and locations of platforms will be worked out by the interagency mitigation committee.
- No transmission towers or access roads will be constructed in wetland areas.
- Vegetation management plans, including uses of herbicide applications, will be developed for public lands in cooperation with the appropriate Federal land management agency (BOR, BLM).
- A vegetation control program will be used selectively to minimize injury to groundcover and low-growing shrubs which are compatible with the line and which stabilize the soil.
- To reduce effects on air quality, debris piles will be kept as clean and dry as possible and burned in such a manner as to reduce smoke. No garbage or petroleum-based products will be burned. Water or other dust control agents will be used on roads as necessary.
- Coordination with local government agencies will minimize service- and community-related impacts from the construction workforce. Close consultation with landowners on structure and access road siting, advance notice of necessary construction and maintenance work,

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continued development of fair negotiation and compensation practices for easement acquisition, and prompt response to landowner problems are measures that will reduce socioeconomic impacts. Good gate management and location of structures off irrigated land wherever possible will also limit social concerns related to trespass and interference with agricultural operations.

- If residents experience television or radio reception problems due to the line, BPA will investigate such reports and provide appropriate mitigation to restore reception to preconstruction level if a BPA facility should be found to be the cause.
- Potential problems with telecommunication or railroad entities due to BPA's line will be investigated and mitigated in the design stage (before construction), according to BPA policy and in cooperation with the affected entity.
- BPA will undertake additional consultation with the Fort Hall Shoshone-Bannock Tribe should sites of religious significance be discovered during the preconstruction archeological survey. BPA would consider excavation to recover below-ground cultural remains; this could partially avoid loss of cultural deposits at most identified historic and prehistoric sites. Impacts on any remaining structures would be avoided should they be determined eligible for nomination to the "National Register of Historic Places."

Monitoring and Enforcement

BPA construction inspectors will monitor all phases of construction to ensure that all BPA standards are met. Incorporating all project mitigation measures in the project construction specifications will ensure that their implementation is monitored and enforced.

The postconstruction weed survey will serve to monitor the effectiveness of measures specified in the weed control plan.

In addition, BPA will participate with other affected agencies in an interagency mitigation committee. BPA will adopt additional mitigation measures identified and agreed upon by this committee. Specific monitoring and enforcement procedures and schedules, if necessary, will be determined by the committee, beginning in the spring of 1986.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208, telephone (503) 230-5136.

Issued in Portland, Oregon, on February 20, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–4712 Filed 3–4–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. WH–004]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Bock Water Heaters, Inc.

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Bock Water Heaters, Inc., (Bock) of Madison, Wisconsin, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. Bock manufactures a Model 32PG gas-fired water heaters which has a high mass heat exchanger. The petition requests DOE to grant Bock relief from the DOE test procedure for water heaters for its Model 32PG gas-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than [April 4, 1986.]

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–004, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–0127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9513.

Background

The Energy Conservation Progam for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure, and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of water heaters to disclose on an EnergyGuide label on each unit to asist consumers in making a purchasing decision.

By letter dated January 13, 1986, Bock filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model 32PG gas-fired water heater. Bock states that the mass of the combustion chamber and heat exchanger of this water heater model is the highest of any water heater known to Bock. Bock further states that the Model 32PG gas-fired water heater is identical in "statistics and performance" with the Model 32E oil-fired water heater. DOE granted Bock a test procedure waiver for its Model 32E oil-fired water heater by notice published in the Federal Register on November 15, 1985. 50 FR 47106. (Hereafter referred to as the November waiver.)

Bock claims that the efficiency of the Model 32PG gas-fired water heater is approximately 78 to 80 percent, or approximately 11 to 13 percentage points higher than the current DOE test procedure yields. While Bock does not propose an alternative test procedure, DOE assumes that Bock proposes that DOE consider the same test method for its Model 32PG gas-fired water heater as that specified in the waiver granted to Bock for its Model 32E oil-fired water heater. The November waiver specified a "simulated use" test method. The simulated use test method involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws. The recovery efficiency is then calculated based upon the total energy consumed over the three consecutive water draws.

In addition to comments for or against DOE granting Bock's request for a waiver, DOE invites comments on the efficacy of the simulated use test method or any other test methods which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., February 27, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86–4610 Filed 3–4–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI86–211–000]

Lynx Exploration Co.; Application for Abandonment Authorization

February 27, 1986.

Take notice that on February 20, 1986, Lynx Exploration Company (Applicant), 1580 Lincoln Street, Suite 800, Denver, Colorado 80203 filed an application for an expedited abandonment of a sale of gas previously made by Amoco Production Company (Amoco) to Panhandle Eastern Pipe Line Company (Panhandle) certificated in Docket No. CI72–440 pursuant to a July 5, 1979, contract, on file as Amoco's FERC Gas Rate Schedule No. 587. Applicant proposes to abandon service from its interest in the SE¼ Section 5–T2S–R63W, 6 p.m., Chieftain Field, Adams County, Colorado.

Applicant states that gas from the J-Sand is presently dedicated to interstate commerce under the subject contract. By Farmout Assignment executed June 10, 1985, effective May 1, 1985, Applicant earned the subject interest from Amoco by drilling and completing as a producing well, the #1 Amoco-Wailes well, located in the NE¼ Section 5–T2S–R63W, 6 P.M. Applicant further states that the well is presently producing from the D-Sand only and Applicant desires to recomplete in the J-Sand. However, Applicant states that Panhandle, due to its oversupply situation, is not desirous of purchasing the J-Sand gas. Therefore, in order for Applicant to be able to market the gas from the J-Sand, Applicant states it is necessary for Applicant to obtain abandonment authorization so that Panhandle can then release Amoco from the July 5, 1979, contract, Amoco can then release its call on the gas and Applicant can then obtain another market for the gas. By letter dated February 11, 1986, Panhandle concurred with and supports Applicant's request for abandonment authorization. Panhandle advised Applicant that the subject gas, being situated on old leases, is dedicated to interstate commerce until the well receives a final NGPA section 103 determination which may take approximately twelve months; or until abandonment authorization is obtained. Panhandle further advised Applicant that upon being granted abandonment authorization, Panhandle will tender a Release Agreement. Applicant proposes to market the gas to Vessel Gas Processing Company for resale to Colorado Interstate Gas Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4787 Filed 3–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85–1–155 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Carbonaire Co., Inc.); Order Granting Rehearing for Further Consideration

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Carbonaire Co., Inc. has filed a timely request for rehearing in the above-captioned docket. Rehearing of the Order Denying Request for Clarification issued on January 7, 1986 is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the request for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4785 Filed 3–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85–1–154 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwestern Gas Transmission Co.); Order Granting Rehearing for Further Consideration

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 5, 1986, the Panhandle Producers and Royalty Owners Association and the Independent Petroleum Association of Mountain States filed a request for rehearing of the Commission's decision issued January 7, 1986, concerning Midwestern Gas Transmission Company.[1] In order to provide sufficient time to consider the issues raised in these pleadings, the Commission grants rehearing for the limited purpose of further consideration. As provided in § 385.713 of the Commission's Rules of Practice and

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[1] Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol (Midwestern Gas Transmission Company), 34 FERC ¶ 61,007 (1986).

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Procedure, no answers to the requests for rehearing will be considered.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4786 Filed 3–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86–337–000, et al.]

Natural Gas Certificate Filings; Algonquin Gas Transmission Company, et al.

February 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP86–337–000]

Take notice that on February 20, 1986, Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston Massachusetts 02135, filed in Docket No. CP86–337–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin Gas to render a limited-term interruptible transportation service on behalf of The Southern Connecticut Gas Company (Southern Connecticut), to construct facilities to expand the use of its Wallingford, Connecticut, interconnection, and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin Gas states that Southern Connecticut has requested Algonquin Gas to provide an interruptible transportation service which would enable Southern Connecticut in turn to deliver supplies of gas to The United Illuminating Company (UI) for use in UI's electric generating plant in New Haven, Connecticut. Algonquin Gas requests authority to implement this service for Southern Connecticut under proposed Rate Schedule PP–T for a limited term commencing upon Commission authorization acceptable to Algonquin Gas and ending December 31, 1990. Algonquin Gas requests that the limited-term authorization for service requested herein be issued in such a form as to indicate explicitly that Algonquin Gas has not, by this application or by the transportation service proposed herein, become a "transporter" pursuant to the Commission's final rules in Docket No. RM8–1–000.

More specifically, UI proposes to purchase gas from Tenngasco Corporation, a Tenneco company (Tenngasco). Algonquin Gas states that Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), would transport the gas purchased by UI to existing points of interconnection between Tennessee and Algonquin Gas. It is stated that Tenngasco, acting as agent for UI, has entered into an agreement with Tennessee to provide transportation on behalf of Tenngasco and that on November 1, 1985, Tennessee filed an application in Docket No. CP86–179–000 requesting authority to render a transportation service for Tenngasco. Algonquin Gas indicates that deliveries of such gas would be made at the Wallingford, Connecticut, interconnection or, alternatively, at the existing Mahwah, New Jersey, or Mendon, Massachusetts, interconnections as agreed by Algonquin Gas. Algonquin Gas indicates that it would receive such gas at the Wallingford, Connecticut, or other point of interconnection with Tennessee, would transport such gas to Southern Connecticut's existing delivery point located at North Haven, Connecticut, and would deliver equivalent quantities (reduced for fuel if applicable) to Southern Connecticut.

To render the service, Algonquin Gas proposes to install minor auxiliary facilities at the Wallingford, Connecticut, interconnection. It is stated that this would not affect the capacity of Algonquin Gas' pipeline system. It is indicated that such minor auxiliary facilities, estimated to cost $200,000, would include but not be limited to data acquisition equipment. Algonquin Gas states that such facilities, which would allow for routine service rather than emergency exchange service, would be installed at Southern Connecticut's expense.

It is stated that the proposed limited-term transportation service to be rendered for Southern Connecticut would contemplate the delivery of a maximum daily quantity of up to 44 billion Btu of gas per day on an interruptible basis. However, Algonquin Gas proposes to render service in accordance with section 6 of proposed Rate Schedule PP–T, which provides that the "* * * Maximum Daily Quantity shall not foreclose Shipper and Transporter from scheduling on any day a transportation quantity which may be larger than the Maximum Daily Quantity." It is stated that such language is standard for interruptible services and would provide the parties with operating flexibility in the daily dispatching of gas.

It is stated that the rate to be charged for service would be 14.74 cents per million Btu of gas delivered, which is Algonquin Gas' long-established rate for interruptible transportation. It is further stated that such rate would be incorporated in a new rate schedule, Rate Schedule PP–T, which would also provide, *inter alia*, for the reimbursement of fuel and GRI charges, as applicable.

Algonquin Gas requests expedited treatment of this application in order to provide the proposed services in a timely manner. It is stated that such expedited treatment would enable UI to maximize cost savings to its customers by commencing its supply purchase as soon as its generation plant can consume natural gas which is estimated to be May 15, 1986. In addition, given the limited-term nature of this proposed service, Algonquin Gas requests corresponding pre-granted authority to abandon such service as of December 31, 1990.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86–339–000]

Take notice that on February 20, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–339–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file and open to public inspection.

Northern proposes to transport on a firm basis up to a maximum daily quantity (MDQ) of 12,500 Mcf of natural gas for Texas Gas under the terms of a January 22, 1986, gas transportation agreement. Northern also proposes to transport volumes in excess of the MDQ on a best-efforts basis. The proposed term of the transportation service, it is indicated, is 15 years from the date of initial delivery an bi-yearly thereafter.

It is stated that the gas is produced from Eugene Island Block 372, offshore Louisiana (EI 372). It is explained that Texas Gas has contracted to purchase 35 percent of the reserves attributable to EI 372 from Union Exploration Partners, Ltd. (UXP). Northern would receive the gas, including overrun volumes, at the interconnection of UXP-owned facilities and a 16-inch pipeline jointly owned by Northern, Columbia Gulf Transmission Company, and Texas Eastern Transmission Corporation (Texas

Eastern) in EI 342. It is further stated that Northern would transport and redeliver thermally equivalent volumes to Texas Gas at the interconnection of the 16-inch pipeline and a 30-inch offshore lateral jointly owned by Texas Gas, Texas Eastern, and Tennessee Gas Transmission Corporation in EI 342.

Northern proposes to charge Texas Gas a monthy demand charge of $33,098 for transportation of the MDQ and a rate of 8.71 cents per Mcf for volumes transported in excess of the MDQ.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP86–315–000]

Take notice that on February 11, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–315–000 a petition for a declaratory order granting an exemption from the requirements of section 7(c) of the Natural Gas Act or in the alternative a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the limited-term delivery of gas for direct sale service to Exxon Company USA (Exxon) for use as start-up gas in Exxon's Shute Creek processing plant in Lincoln County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. By supplemental letter dated February 21, 1986, Northwest withdrew its request for declaratory order.

It is stated that on December 4, 1985, Exxon and Northwest entered into a start-up gas sales agreement whereby Northwest would provide up to 25,000 Mcf of natural gas per day of pipeline quality gas for use as fuel gas for start-up operations at Exxon's soon to be completed Shute Creek plant. It is explained that the start-up gas would be used to purge the various processing facilities within the plant site, which would include boilers, sulfur furnaces, thermal oxidizers, sulfur and carbon dioxide rejection facilities and dehydration and flare assistance facilities. Exxon estimates that the total usage of start-up gas would be approximately 750,000 Mcf.

Northwest states that it would charge Exxon in accordance to its Rate Schedule DS–1 flat commodity rate which is currently 34.134 cents per therm as set forth in Northwest's FERC Gas Tariff, First Revised Volume No. 1, for all volumes sold to Exxon under the December 4, 1985, agreement.

It is also explained that Northwest was authorized August 30, 1985, in Docket No. CP85–349–000 to construct and operate 17.53 miles of pipeline and appurtenant facilities extending from Northwest's existing Opal processing plant to the outlet of Exxon's partially completed Shute Creek processing plant, referred to as a residue line. Northwest was also authorized, it is stated, to use the residue line for the transportation of natural gas purchased by ANR Pipeline Company (ANR) from Exxon at the outlet of the Shute Creek processing plant. It is explained that ownership of the residue line would be split between Northwest and ANR upon commencement of Northwest's transportation service for ANR and that prior to that time, during the plant start-up period, Northwest would retain 100 percent ownership in the residue line. It is further explained that the December 4, 1985, sales agreement provides that Exxon would pay Northwest's full cost of service for the residue line, based upon 100 percent ownership of the residue line, commencing January 1, 1986, and ending at such time as Exxon first delivers processed gas to Northwest for transportation for the account of ANR through the residue line. It is stated that the monthly residue line cost-of-service charge to Exxon for the period commencing January 1, 1986, is estimated to be $114,568.

It is stated that the term of the sales agreement is from the date of initial deliveries to Exxon and would continue for a period of six months or until the date of initial delivery of processed gas to Northwest for transportation for the account of ANR through the residue line, whichever date is earlier. It is indicated that the agreement may be terminated by either party upon five days written notice.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP86–301–000]

Take notice on January 31, 1986, that Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP86–301–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for National Distillers and Chemical Corporation (NDCC) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport up to 11,000 Mcf per day (21,120 million Btu per day) of a gasified 80–20 percent ethane-propane mix for NDCC on an interruptible basis during the months of April through November, which gas would be received from Mid-America Pipeline Company at an existing point of interconnection with Panhandle in Pratt County, Kansas, and delivered to NDCC through an existing point of delivery in Douglas County, Illinois.

The volumes to be transported for NDCC are supplemental to volumes of extractable hydrocarbons available to NDCC under its agreement with Panhandle for the purchase of ethane and heavier hydrocarbons out of Panhandle's gas stream. It is explained that these supplemental volumes are needed during periods when Panhandle's gas stream is diminished or the quantity of extractable ethane and heavier hydrocarbons is diminished. NDCC claims it would experience extraordinary and severe operational problems at its Tuscola, Illinois, plant from diminished quantities of extractable hydrocarbons being available.

Panhandle proposes to charge 84.0 cents per million Btu to perform such service and would retain 5.03 percent (about 1062 million Btu) for fuel and unaccounted-for line loss volumes. Panhandle would also collect the Gas Research Institute funding unit applicable to this service. No new facilities would be constructed to perform such service.

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86–322–000]

Take notice that on February 12, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP86–322–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially service to Allied Paper Corporation (Allied), Boise Southern Company (Boise), Georgia-Pacific Corporation (Georgia-Pacific), Manville Forest Products Corporation (Manville), Masonite Corporation (Masonite), Mississippi Power Company-Sweatt (MPCO-Sweatt), Mississippi Power Company-Watson (MPCO-Watson), Stone Container Corporation (Stone), and Vertac Chemical Corporation (Vertac), pursuant to the agreements between each of the parties and United, all as more fully set forth in the

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application which is on file with the Commission and open to public inspection.

United and the aforesaid industrial customers have agreed to modify their maximum daily quantity (MDQ) of natural gas. Accordingly, United States, that it and the parties, respectively, entered into separate agreements providing for a reduction in each customer's MDQ as shown below:

Certificated docket No.	Industrial sales customer (existing MDQ Mcf per day)	New MDQ	Date of new agreement
CP64-301	Allied (14,000)	6,000	10/29/84
CP71-66	Boise (26,000)	20,000	12/20/84
CP66-280	Georgia-Pacific (32,000).	27,000	11/27/84
G-232	Manville (35,000)	19,000	7/15/84
G-232	Masonite (40,000)	17,000	12/21/84
G-1447	MPCO-Sweet (23,000).	15,800	10/29/84
G-11, 200	MPCO-Watson (74,000).	35,000	10/29/84
G-232	Stone (22,000)	16,000	5/24/85
G-1447 and CP61-13.	Vertac (8,700)	7,000	10/29/84

Comment date: March 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-4784 Filed 3-4-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Notice is hereby given of the following meeting:

Name: Solid Earth Sciences Panel of the Energy Research Advisory Board.

Date and time:

March 18, 1986—9:00 a.m.–5:00 p.m.

March 19, 1986—9:00 a.m.–12:00 Noon.

Place: March 18: Department of Energy, 1000 Independence Avenue, SW., Room 8E-089, Washington, DC 20585.

March 19: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-5767.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel

The purpose of the Panel is to review the research and development programs of the Department of Energy involving the solid earth sciences, including such topics as basic research in continental structure, modeling enhanced oil recovery and underground migration of chemicals. The Panel will also review the arrangements for coordination between industry, universities, and Federal agencies.

Tentative Agenda

March 18, 1986

- Current earth sciences programs in DOE and National Laboratories
- Missions of other Federal agencies involved in solid earth sciences
- Industry, academic, and Government needs for earth scientists in the short and long range
- Public Comment—10 minute rule

March 19, 1986

- Scope of Panel's study
- Future meeting plans
- Public Comment—10 minute rule

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes of the Meeting

The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 21, 1986.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 86-4716 Filed 3-4-86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Environmental Impact Statement Availability; Mead-Phoenix ±500-kV Transmission Line Project, Arizona and Nevada

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of availability for final environmental impact statement.

SUMMARY: Notice is hereby given that the U.S. Department of Energy (DOE), Western Area Power Administration (Western), has issued a final environmental impact statement (EIS) for the Mead-Phoenix ±500-kV Transmission Line Project in Arizona and southern Nevada, DOE-EIS-0107-F. The final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council of Environmental Quality requlations, 40 CFR Parts 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended.

DATES: Written comments must be sent and postmarked no later than March 31, 1986, to be considered in the decisionmaking process.

For further information or copies of the final EIS, contact:

Mr. Charles Saylor, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293-8844
Mr. Gary Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527
Ms. Lida Whitaker, Office of Environmental Guidance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6374

Background Information

Western, in cooperation with the Bureau of Land Management (BLM) and National Park Service (NPS), has developed an EIS to assess the environmental effects of constructing, operating, and maintaining a 240-mile 500-kilovolt (kV) direct-current transmission line from the proposed Eastwing Terminal near Phoenix, Arizona, to the Mead Substation near Boulder City, Nevada. Alternating-current/direct-current converter terminals would be constructed at the proposed Eastwing Site and the Mead Substation with about 20 miles of distribution line between a ground electrode and each terminal. Communication facilities would also be constructed.

The line is proposed by Western, the Southern California Public Power Authority (SCPPA), M-S-R (Modesto-Santa Clara-Redding) Public Power Agency, and the Salt River Project (SRP) of Phoenix, Arizona. The proposed project would: (1) Help reduce dependence on oil and natural gas for electricity consumed in the SCPPA and M-S-R member service areas; (2) furnish access for all project sponsors to the economy energy market; (3) provide a path for sale of SRP's offpeak surplus capacity to California markets; (4) provide a path for Western to deliver Arizona's increased entitlement of power and energy from Hoover Generating Station; (5) help provide a link for movement of power and energy between the Pacific Northwest and the Pacific Southwest; (6) enhance system reliability; (7) help meet the forecast need for power of SCPPA and M-S-R members by providing firm, long-term transmission capacity; and (8) provide out-of-basin support during Los Angeles' air quality Stage III episodes. The Mead-Phoenix Project will initially be designed to transfer 1,600 megawatts (MW) between the Phoenix area and southern Nevada, with ultimate capacity of up to 2,200 MW.

Alternatives considered include no action, energy conservation, alternative generation sources, alternative transmission technologies, and the proposed action with various routing alternatives. The preferred routing alternative would be located in the counties of Clark, Nevada, and Mohave, Yavapai, and Maricopa, Arizona. Potential significant impacts on cultural, biological, and visual resources have been identified.

The Environmental Protection Agency's Notice of Availability for the draft EIS on the Mead-Phoenix ±500-kV Transmission Line Project was published in the **Federal Register** on March 2, 1984. Public hearings were held in Peoria and Kingman, Arizona, and Boulder City, Nevada, on March 27, 28, and 29, 1984, respectively. The final EIS responds to public comments received on the draft EIS and describes a minor change in the preferred route as a result of these comments. The final EIS should be used in conjunction with the draft EIS.

Copies of the final EIS have been distributed to the recipients of the draft EIS. The final EIS and a copy of the draft EIS have been distributed to and are available for public inspection at: (1) Phoenix Public Library, Arizona State University Library, Clark County Library, and University of Nevada at Las Vegas Library; (2) Clark, Mohave, Yavapai, and Maricopa County planning offices; (3) BLM District Offices in Las Vegas, Nevada (4765 Vegas Drive), and Phoenix, Arizona (2015 West Deer Valley Road), and BLM Resource Area Offices in Kingman, (2475 Beverly Avenue) and Lake Havasu City (3189 Sweetwater Avenue), Arizona; (4) NPS office in Boulder City, Nevada (601 Nevada Highway); (5) Western offices in Boulder City (3 miles south on Buchanan), Phoenix (615 South 43rd Avenue), and Golden, Colorado (1627 Cole Blvd.); and (6) The DOE reading room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the draft and/or final EIS will be distributed by Western upon request.

Written comments should be sent to:

Mr. Gary Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401

Issued at Washington, DC February 24, 1986.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 86-4714 Filed 2-28-86; 11:29 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50652; FRL-2976-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-48. Issuance. Abbott Laboratories, 14th and Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 35.23 pounds of the plant growth regulator gibberellins A_4A_7 on apples to evaluate its use as a growth regulator for the suppression of russetting on apples. A total of 644 acres are involved; the program is authorized only in the States of California, Maine, Massachusetts, Michigan, North Carolina, New York, Oregon, Pennsylvania, and Washington. The experimental use permit is effective from February 15, 1986 to February 15, 1987. A permanent tolerance for residues of the active ingredient in or on applies has been established (40 CFR 180.224). (Robert Taylor, PM 25, Rm. 245, CM #2, (703-557-1800))

6340-EUP-9. Extension. American Hoechst Corporation, Agricultural Division, Route 202-206 North,

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Somerville, NJ 08876. This experimental use permit allows the use of 1,470 pounds of the herbicide (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy propanoate on turfgrasses to evaluate selective control of grassy weeds. A total of 4,200 acres are involved; the program is authorized in the States of California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, Washington, and Wisconsin. The experimental use permit is effective from March 1, 1986 to March 1, 1987. This permit is issued with the limitation that pastures and rangelands are not treated. (Richard Mountfort, PM 23, Rm. 237, CM # 2, (703-557-1830))

10182-EUP-39. Issuance. ICI Americas, Inc., Agricultural Chemicals Division, New Murphy Road and Concord Pike, Wilmington, DE 19897. This experimental use permit allows the use of 2,250 pounds of the plant growth regulator (±)-(R*,R*)-beta-[(4-chlorophenyl)methyl]-alpha-(1,1-dimethyl-ethyl)-1H-1,2,4-triazole-1-ethanol on ornamental and shade trees to evaluate the effectiveness of retardation of shoot growth. A total of 112 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from January 17, 1986 to January 17, 1988. This permit is issued with the limitation that sugar maple trees or any other trees that could be tapped for sugar not be treated. Also, treated fruit or nut trees are not to be harvested within 1 year after application. (Robert Taylor, PM 25, Rm. 245, CM # 2, (703-557-1800))

748-EUP-23. Issuance. PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 93 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on conifer seedbeds to evaluate the control of various weeds. A total of 62 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 1, 1986 to April 1, 1987. (Richard Mountfort, PM 23, Rm. 237, CM # 2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 19, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-4485 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-435 FRL-2976-9]

Pesticide Tolerance Petitions; Ciba-Geigy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-435] and the petition number, attention Product Manager (PM-21): at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:
Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 229, CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposing to amend 40 CFR 180.408 by establishing tolerances for the combined residues of metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the commodities as follows:

Petition identity	Commodities	Parts per million
PP 6F3330	Asparagus	7.0
PP 6F3337	Strawberries	5.0

The proposed analytical method for determining residues is gas chromatography using a nitrogen/phosphorus detector operating in the nitrogen-specific mode. PM-21

Authority: 21 U.S.C. 346a.

Dated: February 18, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-4484 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-32500; FRL-2977-2]

Pesticide Programs; Conditional Registration of New Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA policy regarding approval or denial of applications for conditional registration of pesticide products containing new active ingredients under section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act. The notice sets out policies on the criteria for approval, publication of notice of such approval in the Federal Register, the conditions of registration (and the consequences of failure to meet the conditions), and conversion from conditional to unconditional registration.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Washington, DC 20460

Office location and phone number: Room 1114, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0944).

SUPPLEMENTARY INFORMATION:

I. Conditional Registration

FIFRA section 3(c)(7)(C) authorizes the Administrator of EPA to issue a conditional registration for a pesticide product containing an active ingredient not contained in any previously registered product (a new chemical) in the absence of certain required data, if the Administrator determines that:

1. Since the data requirement was imposed, there has been insufficient time for the data to have been generated;
2. During the period of the conditional registration, use of the pesticide will not cause unreasonable adverse effects; and
3. Use of the pesticide is in the public interest.

All three determinations must be made before issuance of the conditional registration. If approved, the registration is contingent upon the registrant's submitting the required data within a certain time, and, when received, upon the data showing that the pesticide does not meet or exceed special review criteria. If either of these two conditions are not met, the conditional registration may be cancelled under FIFRA section 6(e) [but see also Unit X].

II. Data Requirements

First, the Agency must determine that there has been insufficient time since a data requirement was imposed for the applicant to have generated the required data. To make this determination, the Agency must specify both a date when data requirements were imposed and an acceptable timeframe for conducting each study.

A. When Are Data Requirements Imposed?

The Agency considers that most data requirements were imposed, and prospective applicants given notice of such data requirements, on the date of publication in the Federal Register of proposed 40 CFR Part 158, Data Requirements for Pesticide Registration (November 24, 1982; 47 FR 53192). On that date the Agency formally proposed a specific set of data requirements that applicants for registration could use as the basis for submitting an application for registration. The Agency had originally proposed most of the data requirements of Part 158 in 1978, and, as a practical matter, had applied them on a case-by-case basis since that time. The Agency believes that applicants for registration of new chemical were also informally using the 1979 proposed requirements as the basis for their applications and were familiar with them. Thus EPA believes that using the 1982 formal proposal date as the date of imposition of data requirements is reasonable.

If a data requirement was not included in proposed Part 158 on that date, but was contained in the final rule, the Agency considers the data requirement to have been imposed as of the April 25, 1985, effective date of Part 158.

If a data requirement was included in the proposal, but modified in the final rule, the Agency will presume that the earlier date applies. An applicant who believes that the requirement was significantly modified between proposal and promulgation such that the latter date should apply must justify his request in terms of the effect such modification had on his testing or data development planning. EPA believes that few such situations have occurred, because the final Part 158 rule did not result in major changes from the proposal.

All data requirements in part 158 are considered to have been imposed as of the dates given above, including "tiered" requirements (the requirement for the study is dependent on the results of an earlier study).

B. Completeness of Applications

The Agency expects that an applicant for conditional registration of a new chemical will submit a complete set of required studies. An applicant is expected to apply the criteria of Part 158 himself (in conjunction with additional information in the Pesticide Assessment Guidelines), and, if he is unable to ascertain that a particular study is required from Part 158, to consult with the Agency. Studies for which the Agency believes consultation is a necessary step are indicated in the tables in Unit II.C with the symbol "‡". However, applicants should extend their enquiries to other studies if they believe it necessary. An applicant should consult with the Agency at the earliest possible time after completion of a lower tier study if his results suggest the need for additional testing. Moverover, a prospective applicant may request that the Agency screen his lower tier studies independent of the application process to determine them need for additional studies.

The Agency intends to issue additional guidance on its data requirements in Part 158 to reduce the need for Agency consultation. A notice is in preparation for publication in the Federal Register setting out definitive criteria for initiating higher tier aquatic and non-target insect testing. The criteria stated in that notice are clear and unambiguous, and allow an applicant to determine with certainty whether higher tier testing is required. The Agency intends in the future to incorporate these criteria into its regulations.

The Agency is also prepared to offer considerable assistance in advance of application to minimize the possibility that the application will be incomplete. Incomplete applications will be returned and applicants may suffer delays in the review of resubmitted applications. Hence it is prudent to seek Agency assistance whenever any uncertainty arises with respect to data requirements.

The Agency will rarely grant conditional registration solely because an applicant claims to have been unable to ascertain in advance of application that a study was required.

The Agency will consider the applicant's good faith effort to determine and comply with data requirements, EPA's need for the data that have not been generated, and whether there are concerns that the missing data might address. If a data requirement is clearly not foreseeable by the applicant before applicant (e.g., it is not contained in Part 158, or the Agency is unable to provide early guidance based on a screening level review), the Agency will be more likely to grant conditional registration for the purpose of generating the data.

C. What Is a Period Reasonably Sufficient for Generation of Data?

On August 22, 1985, the Agency issued PR Notice 85-5, Policy Regarding Time Extensions for Submitting Additional Data to Support Existing Registrations, which lists the timeframes EPA believes are reasonably sufficient to generate required studies. The timeframes in PR Notice 85-5 are reprinted in the following tables:

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PRODUCT CHEMISTRY DATA REQUIREMENTS (§ 158.120)

	Guideline reference	Time generally allowed for conducting study (months)[1]
Product Identity:		
Product identity and disclosure of ingredients	61—1	6
Description of begining materials and manufacturing process	61—2	6
Discussion of formation of impurities	61—3	6
Analysis and certification of ingredients:		
Preliminary analysis	62—1	12
Certification of limits	62—2	12
Analytical method for enforcement of limits	62—3	12
Physical and Chemical Properties:		
Color	63—2	6
Physical state	63—3	6
Odor	63—4	6
Melting point	63—5	6
Boiling point	63—6	6
Density, bulk density, or specific gravity	63—7	6
Solubility	63—8	6
Vapor pressure	63—9	6
Dissociation constant	63—10	6
Octanol/water partition coefficient	63—11	6
pH	63—12	6
Stability	63—13	6
Oxidizing or reducing action	63—14	6
Flammability	63—15	6
Explodability	63—16	6
Storage stability	63—17	15
Viscosity	63—18	6
Miscibility	63—19	6
Corrosion characteristics	63—20	15
Dielectric breakdown voltage	63—21	6
Other Requirements:		
Submittal of samples	64—1	6

[1] This is the time that a registrant is generally allowed to respond to a request for data. It includes: lead time, test period, analysis and reporting. Allowances to these dates will be made for seasonal adjustments.

RESIDUE CHEMISTRY DATA REQUIREMENTS (§ 158.125)

	Guideline reference	Time generally allowed for conducting study (months)
Chemical Identity	171-2	6
Directions for Use	171-3	6
Nature of Residue:		
Plants	171-4	[1]18
Livestock	171-4	18
Residue Analytical Method	171-4	15
Magnitude of the Residue:		
Crop Field Trials	171-4	[1]18
Processed Food/Feed	171-4	[1]24
Meat/Milk/Poultry/Eggs	171-4	18
Potable Water	171-4	15
Fish	171-4	15
Irrigated Crops	171-4	[1]18
Food Handling	171-4	12
Reduction of Residue	171-5	9
Reasonable Grounds in Support of Petition	171-7	6

[1] Depending on seasonal needs, time may be extended.

ENVIRONMENTAL FATE DATA REQUIREMENTS (§ 158.130)

	Guideline reference	Time generally allowed for conducting study (months)
Degradation Studies (Lab):		
Hydrolysis	161-1	9
Photodegradation:		
In water	161-2	9
On soil	161-3	9
In air	161-4	9
Metabolism Studies (Lab):		
Aerobic soil	162-1	27
Anaerobic soil	162-2	27
Anaerobic aquatic	162-3	27
Aerobic aquatic	162-4	27
Mobility Studies:		
Leaching (adsorption/desorption)	163-1	12
Volatility:[1]		
Lab	163-2	12
Field	163-3	15
Dissipation Studies (Field):		
Soil	164-1	27
Aquatic (sediment)	164-2	27
Forestry	164-3	27
Combination and tank mixes[1]	164-4	N/A
Soil (long term)[1]	164-5	50
Accumulation Studies:		
Rotational crops:[1]		
Confined	165-1	39
Field	165-2	50
Irrigated crops[1]	165-3	39
In fish	165-4	12
In aquatic non-target organisms[1]	165-5	12

[1] Consult with Agency to determine if study is required.

TOXICOLOGY DATA REQUIREMENTS (§ 158.135)

	Guideline reference	Time generally allowed for conducting study (months)
Acute Testing:		
Oral LD50—Rat	81-1	9
Dermal LD50—Rabbit (preferred species)	81-2	9
Inhalation LC50—Rat	81-3	9
Primary eye irritation—Rabbit	81-4	9
Primary dermal irritation—Rabbit	81-5	9
Dermal sensitization—Guinea Pig	81-6	9
Acute delayed neurotoxicity—Hen	81-7	12
Subchronic Testing:		
90-Day Feeding:		
Rodent	82-1	15
Non-Rodent (Dog)	82-1	18
21-Day dermal—Rabbit	82-2	12
90-Day dermal	82-3	15
90-Day inhalation	82-4	15
90-Day neurotoxicity—Hen, mammal	82-5	15
Chronic Testing:		
Chronic Feeding:		
2 spp. Rodent & Non-Rodent (Dog)	83-1	50
Oncogenicity Study:		
2 spp. Rat & Mouse (Preferred)	83-2	50
Teratogenicity (2 species)—Rat, mouse, hamster, rabbit	83-3	15
Reproduction (2-generation)—Rat or other species	83-4	30
Mutagenicity Testing:		
Gene Mutation (Ames Test)	84-2	9
Chromosomal Aberration	84-2	12
Other Mechanisms of Mutagenicity	84-4	12
Special Testing:		
General Metabolism—Rat	85-1	24
Dermal Penetration	85-2	12
Special Requirement:		
Domestic Animal Safety	86-1	([1])

[1] Variable depending on species and type of study required.

	Guideline reference	Time generally allowed for conducting study (months)
REENTRY PROTECTION DATA REQUIREMENTS (§ 158.140)		
Foliar Dissipation[1]	132-1	27
Soil Dissipation[1]	132-1	27
Dermal exposure[1]	133-3	27
Inhalation exposure[1]	133-4	27
WILDLIFE AND AQUATIC ORGANISM DATA REQUIREMENTS (§ 158.145)		
Avian and Mammalian Testing:		
Avian Oral LD50	71-1	9
Avian Dietary LC50	71-2	9
Wild mammal toxicity[1]	71-3	24
Avian reproduction	71-4	24
Simulated and actual field testing—mammals and birds[1]	71-5	([2])
Aquatic Organism Testing:		
Freshwater fish LC50	72-1	9
Acute LC50 freshwater invertebrates	72-2	9
Acute LC50 estuarine and marine organisms[1]	72-3	12
Fish early life stage and aquatic invertebrate lifecycle[1]	72-4	15
Fish—Lifecycle[1]	72-5	27
Aquatic organism accumulation[1]	72-6	12
Simulated or actual field testing—Aquatic organisms[1]	72 7	([2])

[1] Consult with Agency to determine whether study is required.

[2] Two to four years depending on number of examinations.

	Guideline reference	Time generally allowed for conducting study (months)
PLANT PROTECTION DATA REQUIREMENTS (§ 158.150)		
Target Area Phytotoxicity	121-1	9
Nontarget Area Phytotoxicity:		
Tier I:		
Seed Germination/Seedling Emergence	122-1	9
Vegetative Vigor	122-1	9
Aquatic Plant Growth	122-2	9
Tier II:		
Seed Germination/Seedling Emergence	123-1	9
Vegetative Vigor	123-2	9
Aquatic Plant Growth	123-3	9
Tier III:		
Terrestrial Field	124-1	24-48
Aquatic Field	124-2	24-48
NONTARGET INSECT DATA REQUIREMENTS (§ 158.155)		
Nontarget Insect Testing—Pollinators:		
Honey bee acute contact LD50	141-1	9
Honey bee—Toxicity of residue on foliage	141-2	15
Honey Bee subacute feeding study[1]	141-4	[2]
Nontarget Insect Testing—Aquatic Insects:		
Acute Toxicity to aquatic insects[1]	142-1	15
Aquatic insect lifecycle study[1]	142-1	[2]
Simulated or actual field testing for aquatic insects	142-3	[2]
Nontarget Insect Testing—Predators and Parasites[1]	143-1 to 143-3	[2]

[1] Consult with Agency to determine whether study is required.

[2] Defer—No Guidelines or protocols have been developed for these studies.

BIOCHEMICAL PESTICIDE DATA REQUIREMENTS (§ 158.165)

	Guideline reference	Time generally allowed for conducting study (months)
Pesticide Product Analysis:		
Product identity	151-10	6
Manufacturing process	151-11	6
Discussion of formation of unintentional ingredients	151-12	6
Analysis of samples	151-13	12
Certification of limits	151-15	12
Analytical methods	151-16	12
Physical and chemical properties	151-17	6
Submittal of samples	151-18	6
Pesticide Residue:		
Chemical identity	153-3	6
Directions for use	153-3	6
Nature of the residue:		
Plants	153-3	[1]18
Livestock	153-3	18
Residue analytical method	153-3	12
Magnitude of the Residue:		
Crop field trails	153-3	[1]18
Processed food/feed	153-3	[1]24
Meat/milk/poultry/eggs	153-3	18
Potable water	153-3	15
Fish	153-3	15
Irrigated crops	153-3	[1]18
Food handling	153-3	12
Reduction of residue	153-3	9
Reasonable Grounds in support of petition	153-3	6

[1] Depending on seasonal needs, time may be extended.

BIOCHEMICAL PESTICIDE DATA REQUIREMENTS (§ 158.165)

	Guideline reference	Time generally allowed for conducting study (months)
Biochemical Pesticide Toxicology Data Requirements:		
Tier I:		
Acute oral toxicity	152-10	9
Acute dermal toxicity	152-11	9
Acute inhalation	152-12	9
Primary eye irritation	152-13	9
Primary dermal irritation	152-14	9
Hypersensitivity study	152-15	9
Hypersensitivity incidents	152-16	9
Studies to detect genotoxicity	152-17	9
Immune response	152-18	9
90-day feeding (1 spp.)	152-20	15
90-day dermal (1 spp.)	152-21	15
90-day inhalation (1 spp.)	152-22	15
Teratogenicity (1 spp.)	152-23	15
Tier II:		
Mammalian mutagenicity tests	152-19	9
Immune response	152-24	9
Tier III:		
Chronic exposure	152-25	50
Oncogenicity	152-29	50
Nontarget Organism, Fate, and Expression Data Requirements:		
Tier I:		
Avian acute oral LD50	154-6	9
Avian dietary LC50	154-7	9
Freshwater fish LC50	154-8	9
Freshwater invertebrate LC50	154-9	9
Nontarget plant studies	154-10	9
Nontarget insect testing	154-11	9
Tier II:		
Volatility	155-4	9
Dispenser-water leaching	155-5	9
Adsorption-desorption[1]	155-6	9
Octanol/Water Partition[1]	155-7	9
UV absorption	155-8	9
Hydrolysis	155-9	9
Aerobic soil metabolism[1]	155-10	27

BIOCHEMICAL PESTICIDE DATA REQUIREMENTS (§ 158.165)—Continued

	Guideline reference	Time generally allowed for conducting study (months)
Aerobic aquatic metabolism[1]	155-11	27
Soil photolysis[1]	155-12	9
Aquatic photolysis[1]	155-13	9
Tier III:		
Terrestrial wildlife testing[1]	154-12	24-48
Aquatic animal testing[1]	154-13	24-48
Nontarget plant studies	154-14	24-48
Nontarget insect testing[1]	154-15	15

[1] Consult with Agency to determine if study is required.

MICROBIAL PESTICIDES REQUIREMENTS (§ 158.170)

	Guideline reference	Time generally allowed for conducting study (months)
Product Analysis:		
Product identity and Manufacturing process	151-20	6
Discussion of formation of unintentional ingredients	151-22	6
Analysis of samples	151-23	12
Certification of limits	151-25	12
Analytical methods	151-	12
Physical and chemical properties	151-26	6
Submittal of samples	151-27	6
Microbial Pesticide Toxicology Data Requirements:		
Tier I:		
Acute oral	152-30	9
Acute dermal	152-31	9
Acute inhalation	152-32	9
I.V., I.C., I.P. injection	152-33	9
Primary dermal	152-34	9
Primary eye	152-35	9
Hypersensitivity study	152-36	9
Hypersensitivity incidents	152-37	9
Immune response	152-38	9
Tissue culture	152-39	9
Tier II:		
Acute oral	152-40	9
Acute inhalation	152-41	9
Subchronic oral	152-42	12
Acute I.P., I.C.	152-43	12
Primary dermal	152-44	9
Primary eye	152-45	9
Immune response	152-46	9
Teratogenicity	152-47	12
Virulence enhancement	152-48	9
Mammalian mutagenicity	152-49	9
Tier III:		
Chronic feeding	152-50	50
Oncogenicity	152-51	50
Mutagenicity	152-52	9
Teratogenicity	152-53	12
Microbial Pesticide Non-target Organism and Environmental Expression Data Requirements:		
Tier I:		
Avian oral	154-16	9
Avian injection test	154-17	9
Wild mammal testing	154-18	24
Freshwater fish testing	154-19	9
Freshwater aquatic invertebrate testing	154-20	9
Estuarine and marine animal testing	154-21	15
Nontarget plant studies	154-22	9
Nontarget insect testing	154-23	9
Honey bee testing	154-24	9

PRODUCT PERFORMANCE DATA REQUIREMENTS (§ 158.160)

	Guideline reference	Time generally allowed for conducting study (months)
Efficacy of Antimicrobial Agents		
Products For Use on Hard Surfaces	91-2	
Sterilizers:		
AOAC Sporicidal Test		9
Disinfectants (limited efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (general or broad-spectrum efficacy)		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (hospital or medical environmental efficacy):		
AOAC Use Dilution Test		6
AOAC Germicidal Spray Products Test		6
Fungicides (pathogenic fungi):		
AOAC Fungicidal Test		6
AOAC Use Dilution Method (Fungi only)		6
AOAC Germicidal Spray Products Test (Fungi only)		6
Virucides:		
Virucidal Test (Per virus)		6
Tuberculocides:		
AOAC Tuberculocidal Activity Method		9
Phenol Coefficient(s):		
AOAC Phenol Coefficient Method		6
Additional Microorganisms:		
AOAC Use-Dilution Method		6
AOAC Germicidal Spray Products Test		6
AOAC Fungicidal Test		6
Sanitizers (for non-food contact surfaces):		
Sanitizer Test Non-Food		6
Sanitizing Rinses (food contact surfaces):		
AOAC Available Chlorine Germicidal Equiv. Conc.		6
AOAC Germicidal and Detergent Sanitizers Method		6
Products Requiring Confirmatory Data	91-3	
Sterilizers:		
AOAC Sporicidal Test (Done by independent lab)		9
Disinfectants (limited efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (general or broad-spectrum efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Disinfectants (hospital/medical-environmental efficacy):		
AOAC Use Dilution Method		6
AOAC Germicidal Spray Products Test		6
Sanitizers:		
AOAC Germicidal and Detergent Sanitizers Test		6
AOAC Germicidal Equivalent Conc. Test		6
Products For Use on Fabrics and Textiles	91-4	
Laundry Additives—Disinfecting Presoak:		
AOAC Use Dilution Method		6
Actual Washing Machine Test		6
Disinfecting Laundry Additives (non-residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6
Actual Washing Machine Test		6
Sanitizing Laundry Additives (non-residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6

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PRODUCT PERFORMANCE DATA REQUIREMENTS (§ 158.160)—Continued

	Guideline reference	Time generally allowed for conducting study (months)
Actual Washing Machine Test		6
Self-Sanitizing Laundry Additives (residual):		
AOAC (Bacteriostatic) Activity of Laundry Additives		6
AATCC Committee RA31, Test Method 100–1974		6
Actual Washing Machine Test		6
Carpet Sanitizers:		
Sanitizer Carpet RD, EPA		6
Air Sanitizers—No Std. Test (for products w/o glycols)	'91-5	6
Products for Control of Microbial Pests Associated With Human and Animal Wastes; Treatments for Toilet Bowl and Urinal Surfaces	91-7	
Disinfectants:		
AOAC Use-Dilution Method		6
AOAC Germicidal Spray Products Test		6
Sanitizers:		
Sanitizers—Non Food contact surfaces		6
Sanitizers for Toilet and Urinal Bowl Water:		
Test in toilet/urinal		6
Products for Treating Water Systems	91-8	
Potable Water Treatment Units:		
No standard test		6
Swimming Pool Water:		
AOAC Method for Water Disinfectants for Swimming Pools		6
Actual Swimming Pool Test		9
Efficacy of Fungicides and Nematicides		
Products for Control of Organisms Producing Mycotoxins	93-16	27
Efficacy of Vertebrate Control Agents		
Avian toxicants	96-5	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Avian Repellents	96-6	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Avian frightening agents	96-7	
TOX tests		9
LAB acceptance tests		9
LAB efficacy tests		9
Field tests		9
Bat toxicants and repellents	96-8	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Commensal rodenticides	96-10	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodenticides on Farm and Rangelands	96-12	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodent fumigants	96-13	
TOX tests		9
LAB efficacy tests		9
Field tests		9
Rodent reproductive inhibitors	96-16	
TOX tests		9
LAB efficacy tests		9
LAB breeding tests		12
Field tests		27
Mammalian predacides	96-17	
TOX tests		9
BAIT acceptance tests		9
LAB efficacy tests		9
Field tests		12

The timeframes in the tables will serve as the basis for determining whether sufficient time has elapsed for a study to have been generated. Based on the date of imposition of data requirements given in Unit II.A, and the timeframes needed for generation of data given in Unit II.C, an applicant seeking conditional registration of a new chemical must satisfy the Agency that he has had insufficient time to generate a particular study that he is unable to submit at the time of application. Prospective applicants should note that, based on the 1982 date of imposition which the Agency presumes to apply in the majority of situations, sufficient time to conduct a large number of the listed studies has already passed. If the timeframes for all required studies have elapsed, the Agency cannot grant conditional registration if any of those studies are missing at the time of application.

If conditional registration is approved, the timeframes in Unit II.C will be used to determine the duration of the conditional registration. Conditional registration will be granted to coincide with the timeframe for generation of the longest study conditionally required. If the results of the conditionally required study trigger a requirement for another (tiered) study, the conditional registration may be extended.

III. Risk Assessment for New Chemicals

The second criterion that must be met for approval of conditional registration is a risk criterion. The Agency must determine that use of the pesticide for the limited period while the required studies are conducted will not cause unreasonable adverse effects on human health or the environment.

Risk assessment for a new chemical will focus on the potential risks from use of the pesticide for the limited time period while required studies are being generated. Since the data base for a new chemical must be virtually complete at the time of application (lacking only those studies recently imposed, or those that the applicant could not reasonably ascertain were required), the Agency should be able to adequately characterize the risks likely in the short term. Approval will be based on the Agency's determination that the data base as a whole provides reasonable assurance of acceptable human and environmental risk during the limited time while studies are being generated.

IV. Public Interest Finding

Finally, the Agency must determine that use of the new chemical during the period of the conditional registration will be in the public interest. In deciding whether this public interest criterion has been satisfied, EPA will consider a number of factors, enumerated in this unit. However, neither the applicant's desire to market the pesticide nor a user's desire to have the product available is sufficient grounds for a public interest finding.

A. Presumption of Public Interest

In certain circumstances, EPA will presume that the use of a pesticide is in the public interest. In these instances, the applicant need not substantiate the public interest finding. Registration of a new pesticide is presumed to be in the public interest for the following uses:

1. A minor crop use. The Agency intends to issue in the **Federal Register** a notice of its minor crop policies.

2. A replacement for another pesticide that is of continuing concern to the Agency. These pesticides are those which have been determined, through the special review process, to present relatively high-risk, but whose registration has been continued because the benefits are also relatively high (often because of a lack of alternatives).

3. A use for which an exemption under FIFRA sec. 18 has been granted, if the basis for the exemption was the lack of a registered alternative product.

4. A use against a pest of public health significance.

B. Factors Affecting a Public Interest Finding

For all other new chemicals, EPA will consider a variety of factors pertaining to the need for the chemical, its comparative benefits, risks, and costs. The Agency must determine that (1) there is a need for the new chemical that is not being met by other currently registered pesticides or on-pesticidal alternatives; (2) the new pesticide is comparatively less risky to health or the environment than currently registered pesticides; or (3) the benefits (including economic benefits) from use of the new chemical exceed those of alternative registered pesticides and other available non-chemical techniques.

The Agency may consider any or all of the factors listed below to determine whether the public interest finding can be made. The list is intended to provide guidance to applicants on the considerations that may influence the Agency's decision. In many cases, the data required by Part 158 as part of the application will suffice to support the public interest finding and no information need be submitted by the applicant; however, the burden rests with the applicant to provide additional

data, if requested by the Agency, to substantiate the public interest finding.

1. *Need factors.* Information supporting a judgment that the pesticide will fulfill a unique or essential user need, taking into account:

a. The historical levels of pest infestation that have occurred, and their frequency and distribution (for example, a recurring pest problem).

b. The historical and current control practices that have been recommended or used to alleviate or mitigate the pest problem, both pesticidal and non-pesticidal, and why such control methods are inadequate to meet user needs (for example, pest resistance to existing pesticides, advancing application technologies, or changing agricultural trends). Lack of existing registered pesticides may support a determination of need, but is not sufficient in itself to justify a public interest finding. In the absence of existing registered pesticides, the applicant must address the need for a pesticide method of control compared to non-pesticide methods of control.

c. Marketplace availability of existing registered pesticides (for example, limited production capacity or shortages of essential ingredients that might affect availability).

d. Current or impending regulatory actions on existing pesticides that might affect their availability, usefulness, cost, or acceptance by users.

2. *Composition factors.* Information demonstrating that, compared with alternatives, the product formulation is significantly less hazardous to store, transport, mix, or use, taking into account:

a. Formulation type (for example, invert emulsion, coarse granules, encapsulated products).

b. Inert ingredients.

c. Formulation characteristics (such as flammability or corrosivity).

3. *Usage factors.* Quantitative estimates of the following, demonstrating the potential usage of the product:

a. Total acres/units projected to be treated by commodity or site.

b. Pounds/gallons active ingredient projected to be applied annually to each site.

c. Geographic areas of use by site.

4. *Performance factors.* Performance data comparing the pesticide both to registered alternative pesticides and to non-chemical methods of treatment, taking into account:

a. The spectrum of pests controlled, specificity of action of the pesticide to the target pest(s), pest distribution, infestation levels at which control is necessary.

b. Comparative efficacy, such as maximum and minimum dosage rates, application timing or frequency, percent control, and yield/quality effects.

c. Adverse crop effects (for example, phytotoxicity, delayed maturity, or reduced crop quality).

d. Unique properties of the pesticide or of the formulation that increase performance.

e. Suitability for use in an integrated pest management (IPM) program.

5. *Risk factors.* Data demonstrating the comparative risks to man, other organisms, or the environment of the new pesticide and registered alternative pesticides, taking into account:

a. Acute, subacute and chronic toxicity to man and non-target organisms.

b. Potential for reduced exposure to applicators, mixers, and loaders (for example, water-soluble or closed-system packaging, or improved application techniques).

c. Potential for reduced exposure to farmworkers and pickers (for example, low volatility, pre-plant vs. post-emergence application).

d. Advantageous environmental fate characteristics and properties (for example, rapid degradation in soil or water, low mobility in soil).

6. *Economic factors.* Comparative estimated costs and savings if the new pesticide is used instead of equivalent registered pesticides or alternative non-pesticide methods, taking into account:

a. Projected price of pesticide at user level.

b. Indirect savings to users from application techniques (such as compatibility with other pesticides for tank mixes), pre- and post-application tasks, frequency, timing, dosage rates, ease of harvest, or other application factors.

c. Indirect savings to processors and consumers.

7. *Data base completeness.* If the data base for the new chemical is substantially complete but registered alternative pesticides have significant data gaps, the Agency may take this into account. However, since a new pesticide is expected to be supported by a relatively complete data base, and since the data must demonstrate that the pesticide does not exceed risk criteria, the completeness of the data base alone will not be sufficient to make a public interest finding.

V. Application of the Conditional Registration Policy

This unit gives some examples of how the Agency will apply this policy. The hypothetical examples focus on the first criterion for approval of a conditional registration, i.e., when data requirements were imposed and whether the applicant could determine that a study is required. In each case, before granting the conditional registration, the Agency must also make the risk determination and public interest finding required by FIFRA section 3(c)(7)(C).

1. An application for registration of a food use pesticide which lacks an oncogenicity study is submitted in April 1986. The applicant states that the study has been in progress since the data requirements were issued in 1982, and provides his interim results. In this case, the requirement for the study was clear, and the applicant should and did recognize the requirement, but there has been insufficient time to complete the study. The Agency will consider granting a conditional registration, since the applicant would not have had time to complete the study since the data requirement was imposed. The duration of the conditional registration, if approved, will be the length of time remaining for completion of the study and reporting of results.

2. A person submits an application lacking a study which was contained in the 1982 Part 158 proposal, and which the applicant can clearly discern is required for his product and its uses (for example, an environmental effects study for an outdoor use). The study is one that requires only 12 months to complete. The data requirement was clearly imposed in 1982, and the applicant should therefore have completed the study before submitting his application. The Agency will not consider granting conditional registration for the purpose of generating the study.

3. 2. A person applies for registration of a pesticide for outdoor use, and includes a full set of first tier ecological effects testing. No results from second tier studies are included. Part 158 contains sufficient information to suggest that certain results of the first tier studies require a second tier study. The applicant should have consulted with the Agency as soon as the first tier studies were complete to determine which, if any, of the second tier studies should be conducted. The Agency is likely to reject a conditional registration because the applicant should also have recognized the need to conduct the study or consult with EPA on the need for the study.

3. An applicant submits an application for a non-food use, which does not include chronic health studies. The conditions of Part 158 are such that the applicant cannot unilaterally determine

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that these are required for the use patterns proposed. When consulted by the applicant, the Agency was unable to determine, from a preliminary review of the use patterns proposed, the extent and duration of exposure. Upon its complete review of the application, EPA determines that one or more chronic studies is required. The requirement for the studies is considered to have been imposed when EPA makes this decision, rather than in 1982. The Agency will consider a conditional registration for the purpose of conducting the studies. The duration of the conditional registration, if granted, will be the timeframe for the longest study.

5. An applicant submits an application with a full set of data based upon Part 158. In reviewing the data, however, the Agency finds that it needs exposure data to complete its review. Because exposure data are not generically required by Part 158, (being specific to the use patterns proposed), the data requirement is clearly not foreseeable by the applicant. The Agency will consider granting conditional registration while the data are being generated. The Agency will determine a timeframe for the conditional registration, sufficient for conduct and reporting of the study, including development and approval of acceptable protocols.

6. A company has a reproduction study in progress, based on existing Agency protocols. The 30-month study is into its 15th month when the Agency announces that certain critical elements of the protocol have been changed. The producer should consult immediately with the Agency to determine whether his ongoing testing will be sufficient when completed, or whether the revisions to the Agency protocol call for modifications to the testing regimen (or the need to reconduct the study entirely). If the Agency determines that the study must be reconducted, the Agency will consider a conditional registration, which would be granted for 39 months from the date of the protocol change (or whatever term is appropriate for the new protocol). If the company chooses to continue testing without consulting the Agency, and the study thereafter proves to be unacceptable, EPA will not grant a conditional registration until the data requirement has been satisfied.

VI. Tolerances Associated With Conditional Registration

If the Agency determines that a conditional registration may be issued under FIFRA section 3(c)(7)(C), any required tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) will be issued to run concurrent with the conditional registration. Such tolerances will expire a year after the scheduled expiration of the conditional registration to allow sufficient time for legally treated crops to move through channels of trade.

VII. Publication in the Federal Register

As provided in proposed § 152.102, the Agency will issue for publication in the **Federal Register** a notice of receipt of each application for registration of a new chemical, and will provide opportunity for comment by interested parties. Comments will be considered in making the public interest finding.

The Agency will also issue for publication in the **Federal Register** a notice announcing the issuance of a conditional registration for a new chemical. The notice will describe the new chemical, list missing data and the dates for submission, summarize the Agency's conclusions about potential risk, and explain the basis for the public interest finding.

VIII. Conditions of Registration

The Agency will establish the conditions of registration when it approves the conditional registration of a new chemical. The applicant must consent to the conditions of registration before the Agency will approve the application, so that there will be no question later of his knowledge of the conditions being imposed. Assent to the conditions is normally done at the time the applicant responds to the Agency's preliminary approval of the application. The following conditions will routinely be imposed on all such registrations:

1. The registrant must submit specified studies according to a schedule established by the Agency. The Agency may also require the submission of interim reports to gauge satisfactory progress toward completion of the studies.

2. The registrant must submit annual reports of production of the pesticide product, by November 15 each year. This report is required for the Agency to submit its mandatory report to Congress under FIFRA section 29, and is to be submitted to the Registration Division. This report is a separate requirement from reporting required under FIFRA section 7, which is submitted to the Office of Compliance Monitoring.

3. The conditional registration will expire upon a date specified by the Agency, based upon the length of the longest study required. If the data are received by the data of expiration, the registration will be extended day by day until the Agency has reviewed the data and determined whether they fulfill the conditions of the registration.

The Agency will notify the registrant of the date of expiration, and may permit disposition of existing stocks after the expiration date, consistent with its assessment of the pesticide's risks.

Dated: February 24, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-4489 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64002; FRL-2977-1]

Pesticide Programs; Policy Statement on the Inability To Contact Certain Requirements of Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has been unable to contact certain registrants of pesticide products. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136, et seq., failure to maintain a correct and current address with the EPA and on pesticide product labels means that the registration is not in compliance with the statute and is grounds for cancellation. Therefore, the Agency has decided that it may initiate, from time to time, cancellation proceedings for registrations held by registrants whom EPA, after good faith efforts, has been unable to contact.

EFFECTIVE DATE: Effective on March 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Jack E. Housenger, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7889).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs its ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation where some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

The legal authority under which cancellation of the pesticide registrations of registrants the Agency is unable to contact is section 6(b) of FIFRA which allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act . . . ." Section 3(c)(1)(A) of FIFRA and 40 CFR § 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product.

Additionally, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to delivery to any person a misbranded pesticide. Under section 2(q)(2)(C)(i) of FIFRA, failure to have the registrant's correct address on the lable of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit to EPA a correct and current address and include such address as part of the label of its pesticide products is grounds for cancellation of that registrant's registrations and is in violation of the Act's provisions.

The Agency has therefore decided that it may initiate cancellation proceedings for registrations held by those registrants whom EPA has been unable to contact. Notices of the Agency's intent to cancel such a registrant's registrations will be published periodically in the **Federal Register**. The Agency will issue these notices only after good faith efforts to contact the registrant have failed.

Dated: February 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-4483 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee Meeting

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Monday, March 24, 1986 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of Eximbank's Financial Report, a review of the Advisory Committee's duties and goals, a discussion of Eximbank's Charter renewal legislation, the status of I-Match II, the status of Mixed Credit legislation and negotiations, a briefing on the status of the Competitiveness Report for 1985, and a review of Foreign Content issues.

Public participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Hart Fessenden,

General Counsel.

[FR Doc. 86-4698 Filed 3-4-86; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are fund in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010739-001.

Title: Nedlloyd/Barber Blue Sea North America-Middle East Reciprocal Space Charter & Coordinated Sailing Agreement.

Parties:

Barber Blue Sea (N.A.), Inc.
Nedlloyd Lijnen BV

Synopsis: The proposed amendment would (1) authorize the parties to pool revenues in the trade and to discuss and agree on rates and terms of transportation in portions of the trade in which the parties are not members of conferences; (2) add provisions pertaining to membership, neutral body policing, prohibited acts, independent action, consultations; and shippers' requests and complaints; and (3) make various other non/substantive changes. In addition, this amendment changes the agreement's classification for a sailing agreement (213) to a cooperative working agreement (302).

Dated: February 28, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-4706 Filed 3-4-86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010854-001.

Title: Portland Terminal Agreement.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
The Port of Portland (Port)

Synopsis: This agreement establishes rates and provisions for the levels of container throughput the Port would charge Evergreen on inbound empty containers discharged by the Port at Terminal 6. The agreement also provides for the automatic increase or reduction of the rates based on the percentage of increase of the Port's throughput rates.

Agreement No.: 213-010880.

Title: Costa/Nedlloyd Space Charter and Sailing Agreement

Parties:

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Costa Container Lines, S.p.A.
Nedlloyd Lijnen BV

Synopsis: The proposed agreement would permit the parties to coordinate sailings, cross-charter Ro/Ro space and agree on certain ocean carrier services in the trade from ports in Italy, France, and Spain (including the Canary Islands) to ports on the U.S. Atlantic and Gulf coasts.

Agreement No.: 217–010891.

Title: Hong Kong Islands Line America S.A./Gearbulk Container Service Space Charter and Sailing Agreement.

Parties:

Hong Kong Islands Line America S.A. (HKIL)
Gearbulk Container Service (GBCS).

Synopsis: The proposed agreement would permit HKIL to charter space on GBCS vessels and to agree on certain ocean carrier services in the trade from the Far East to the U.S. Pacific Northwest.

Dated: February 28, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.

[FR Doc. 86–4707 Filed 3–4–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; Proposed Amendment of Systems of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed Amendment of Privacy Act Systems of Records.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is proposing to amend its Privacy Act Systems of Records to permit disclosures to consumer reporting agencies.

DATE: The proposed amendment will take effect without further notice on April 11, 1986, unless comments received on or before that date cause a contrary determination to be made.

ADDRESS: Send written comments to Ted Chaskelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted Chaskelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427 (202) 653–5305.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749, 31 U.S.C. 3711(f)) establishes an exception to the Privacy Act of 1974, in that it authorizes disclosure of information, to a consumer reporting agency, that an individual is responsible for a debt to the United States. The Debt Collection Act requires, however, that a notice be published in the Federal Register, pursuant to 5 U.S.C. 552a(e)(4), stating that information contained in agency systems of records may be disclosed to a consumer reporting agency.

FMCS therefore proposes to amend two of its systems of records: FMCS–I, Agency Internal Personnel Records, and FMCS–II, Agency Pay Records. These systems were last published in the Privacy Act Issuances, 1984 Compilation, at p. 377.

For both systems of records, it is proposed that a new heading will be added immediately after the heading for "routine uses." The new heading, and the notice following it will state:

* * * * *

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may made from this system of records, to consumer reporting agencies, that an individual is responsible for a debt to the United States. Such Disclosures will be made pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3711(f)) to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

Dated: February 28, 1986.

Duane M. Buckmaster,
Deputy Director.

[FR Doc. 86–4773 Filed 3–4–86; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86–3508), published at page 6036 of the issue for Wednesday, February 19, 1986.

Comments on this application must be received not later than March 10, 1986.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86–4702 Filed 3–4–86; 8:45 am]

BILLING CODE 6210-01-M

European American Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *European American Bancorp*, New York, New York; to engage *de novo* through its subsidiary, EAB Mortgage Company, Inc., Uniondale, New York, and thereby engage in servicing the Applicant's existing residential and commercial mortgage portfolio; the origination, closing and servicing of new residential first and second mortgages; the servicing of new commercial mortgages; the purchase of existing residential first and second mortgages, with or without servicing, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 20, 1986.

2. *Westpac Banking Corporation*, Sydney, Australia; to engage *de novo* through its subsidiary, American and Australian Portfolio Managers, Inc., New York, New York, in providing investment advisory services, pursuant to § 225.25(b)(4) of Regulation Y. Comments on this application must be received not later than March 20, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *McLaughlin Holding Company*, Moline, Illinois; to engage *de novo* through its subsidiary, MBC Financial Corp., Moline, Illinois, in making and servicing loans as a commercial finance company, and leasing personal property as the functional equivalent of an extension of credit to the commercial lessee of the property, pursuant to § 225.25 (b)(1)(iv) and (b)(5), respectively.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Firstbank Holding Company of Colorado*, and its direct subsidiary, *Firstbank Holding Company*, both of Lakewood, Colorado; to expand the geographic scope of their previously approved activities of underwriting, as reinsurers, credit life and credit disability insurance directly related to extension of credit by their subsidiaries to including underwriting such coverages in the State of California, pursuant to § 225.25(b)(9) of Regulation Y. Comments on this application must be received not later than March 18, 1986.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pacific Inland Bancorp*, Anaheim, California; to engage *de novo* through its subsidiary, Pacific Inland Venture Corp., Anaheim, California, in providing portfolio investment advice, pursuant to § 225.25(b)(4) of Regulation Y.

2. *Ventura County National Bancorp*, Oxnard, California; to engage *de novo* through its subsidiary, Ventura Commercial Finance Company, Oxnard, California, in extensions of credit on a fully secured basis to commercial customers in diverse industries and servicing of all loans made, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 19, 1986.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc. 86–4703 Filed 3–4–86; 8:45 am]

BILLING CODE 6210-01-M

Saver's Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in secton 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Saver's Bancorp, Inc.*, Littleton, New Hampshire; to acquire 100 percent of the voting shares of Dartmouth Savings Bank, Hanover, New Hampshire.

2. *Saver's Bancorp, Inc.*, Littleton, New Hampshire; to acquire 100 percent of the voting shares of United Savings Bank, Manchester, New Hampshire. Comments on this application must be received not later than March 22, 1986.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *State Bancorp, Inc.*, New Hyde Park, New York; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Long Island, New Hyde Park, New York. Comments on this application must be received not later than March 22, 1986.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of Constitution Bank, Philadelphia, Pennsylvania (in organization). Comments on this application must be received not later than March 22, 1986.

D. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *S&T Bancorp, Inc.*, Indiana, Pennsylvania; to merge with Union Bancorp of DuBois, Pennsylvania, Inc., DuBois, Pennsylvania, thereby indirectly acquiring The Union Banking & Trust Company of DuBois, DuBois, Pennsylvania.

2. *Union National Corporation*, Lebanon, Pennsylvania; to acquire 100 percent of the voting shares of Valley National Bank, Freeport, Pennsylvania.

E. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of First Bankers Corporation of Florida, Pompano Beach, Florida.

Applicant will thereby merge First Bankers Corporation of Florida, Pompano Beach, Florida with Atlantic Bancorporation, Jacksonville, Florida, an existing subsidiary of Applicant, thereby indirectly acquiring the following banks: The First Bankers, N.A., Pompano Beach; The First Bankers of Indian River County, Vero Beach; The First Bankers of Volusia County, N.A., New Smyrna Beach; The First Bankers of Orange County, N.A., Winter Garden; The First Bankers of Florida, N.A., Cape Canaveral; The First Bankers of Palm Beach, N.A., Boca Raton; The First Bankers of Polk County, Haines City; The First Bankers of Tampa Bay, N.A., St. Petersburg; and The Island Bank, Holmes Beach, all located in the State of Florida.

2. *United Bankshares, Inc.*, Parkersburg, West Virginia; to merge with Intermountain Bankshares Inc., Charleston, West Virginia, thereby indirectly acquiring Kanawha Banking & Trust Company, N.A., Charleston, West Virginia and Half Dollar Trust and Savings Bank, Wheeling, West Virginia. Comments on this application must be received not later than March 22, 1986.

F. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104

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Marietta Street, NW., Atlanta, Georgia 30303:

1. *Peoples Exchange Bancshares, Inc.*, Beatrice, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Peoples Exchange Bank of Monroe County, Beatrice, Alabama. Comments on this application must be received not later than March 22, 1986.

G. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation*, Urbana, Illinois; to acquire 100 percent of the voting shares of Champaign County Bank and Trust Company, Urbana, Illinois.

2. *Marshall and Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of The Home State Bank of South Milwaukee, South Milwaukee, Wisconsin.

H. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Grenada Bank, Grenada, Mississippi. Comments on this application must be received not later than March 22, 1986.

I. *Federal Reserve Bank of Minneapolis* (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Roscoe Financial Services, Inc.*, Roscoe, South Dakota; to become a bank holding company by acquiring 90.3 percent of the voting shares of First State Bank of Roscoe, Roscoe, South Dakota.

J. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capital Reserves Group, Inc.*, College Station, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of UnitedBank-College Station, N.A., College Station, Texas. Comments on this application must be received not later than March 22, 1986.

2. *Security Dallas Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, Dallas, Texas. Comments on this application must be received not later than March 22, 1986.

K. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Montecito Bancorp*, Santa Barbara, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Montecito, Santa Barbara, California.

2. *Puget Sound Bancorp*, Tacoma, Washington; to acquire 100 percent of the voting shares of Savings Bank of Puget Sound, FSB, Seattle, Washington.

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4704 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc.; Application To Engage de Novo in Nonbanking activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1986.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to expand the activities of its discount brokerage subsidiary, Tabrokerage Inc., Fort Werth, Texas, to include acting as broker in the purchase and sale of gold and silver bullion and coins solely on the order of or for the account of customers. The Board has determined that this activity is permissible for bank holding companies, *First Interstate Bancorp*, 71 Federal Reserve Bulletin 467 (1985).

Board of Governors of the Federal Reserve System, February 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4705 Filed 3-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86F-0049]

Velsicol Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3894) has been filed by Velsicol Chemical Corp., 341 East Ohio Street, Chicago, IL 60611, proposing that §176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of diethylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985, (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Dated: February 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-4696 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0047]

International Drug Scheduling; Convention on Psychotropic Substances; Nonbarbiturate Sedatives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, illicit trafficking, and medical utility of 25 drug substances of the nonbarbiturate sedative class. This information will be considered in preparing the United States' response to a World Health Organization (WHO) request for assistance in obtaining data on these drugs. WHO will consider the United States' response in deciding whether to recommend that the United Nations' Commission on Narcotic Drugs (CDD) place certain international restrictions, on these drugs. This notice requesting information is required by law.

DATE: Comments by April 4, 1986..

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Shehan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention on Psychotropic Substances of 1971 (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that a party to the treaty or WHO shall, if it has information on a drug substance that would justify the imposition of international control or a change in the degree of such control, provide the Secretary-General of the United Nations with such information. The Secretary-General in turn notifies the parties to the Psychotropic Convention of this information. The Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) provides that, when the United States has received an Article 2 notice from the Secretary-General, the Secretary of State shall transmit the notice to the Secretary of Health and Human Services. The Secretary of Health and Human Services then publishes the notice in the **Federal Register** and provides the interested persons an opportunity to submit comments that will assist the Department of Health and Human Services (HHS) in preparing a response to the WHO request.

The agency has received the WHO notice and is including it in this notice. A copy of the WHO is on display in FDA's Docket Management Branch (address above). The notice reads as follows:

UNITED NATIONS—NATIONS UNIES

Vienna International Centre

NAR/CL.22/1985

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following twenty-five substances:

1. Acecarbromal
2. Bromisoval
3. Buspirone
4. Captodiame
5. Carbromal
6. Chloralose
7. Chlorhexadol
8. Chlormethiazole edisylate
9. Dichloralphenazone
10. Diethylallylacetamide
11. Etodroxizine
12. Etomidate
13. Fenpentadiol
14. Hexapropymate
15. Hydroxyhenamate
16. Methylpentynol
17. Phenprobamate
18. Propanidid
19. Propiomazine
20. Prothipendyl
21. Pyrithyldione
22. Sodium oxybate
23. Triclofos
24. Trimetozine
25. Valnoctamide

The WHO 24th Expert Committee on Drug Dependence, to be convened from 6 to 10 April 1987, will examine the twenty-five substances listed above to determine if any proposals should be made concerning their possible control under provisions of the Convention on Psychotropic Substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that a report must be prepared on this subject for a WHO review group which will meet well in advance of the 24th ECDD, it would be appreciated if the information could be transmitted to the Secretary-General by 20 May 1986. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna, International Centre, P.O. Box 500, A-1400 Vienna, Austria.

5 December 1985

UNITED NATIONS DIVISION OF NARCOTIC DRUGS

Vienna International Centre
A-100 Vienna, Austria

Questionnaire for Data Collection for the Use by the World Health Organization and the Committee on Narcotic Drugs of the Economic and Social Council

Substance Reported on ____________

1. Availability of substance (registered, marketed, dispensed, etc.).

2. National control measures applied to the substance as compared to measures applied to narcotic drugs or psychotropic substances (e.g., prescription requirements, licensing of manufacture and distribution, control of import and export, etc.).

3. Extent of actual abuse of the substance at the national level.

4. Degree of seriousness of the public health and social problems * associated with the abuse of the substance reported on under 3 above.

5. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.

6. Identification of the substance as of local or foreign manufacture and identification of any commercial markings on packages seized in the illicit traffic.

7. Existence of clandestine laboratories manufacturing the substance.

Therefore, as required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA, on behalf of HHS, invites interested persons to submit comments on the 25 drugs listed above.

Of the 25 drugs listed in the WHO notice, available information indicates that 11 have a marketing history in the United States. Six of these drugs, acecarbromal, buspirone,

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* Example of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behavior problems, criminality, etc. For a thorough examination of the question, please refer to the WHO publication entitled "Assessment of Public health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances."

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dichloralphenazone, etomidate, propiomazine, and triclofos are currently available in the United States. Drugs previously marketed in the United States include bromisoval, captodiame, carbromal, methylpentynol, and valnoctamide. Chlorhexadol is controlled domestically under Schedule III of the CSA, while dichloralphenazone is controlled under Schedule IV.

FDA will use data and information received in response to this notice to compile an information package. FDA may also include information it independently gathers. The information package will be forwarded by HHS through the Department of State to WHO. WHO will consider the information deciding whether to recommend international control of any of these drugs. International control could result in, among other restrictions, imposition of prescription status, recordkeeping requirements for manufacturers, and limits upon quantities imported and exported. The information package sent by HHS to WHO will not include any recommendations as to whether international control should be imposed. HHS will defer making any such recommendations until after WHO has made its own recommendations to CND. The WHO recommendations will be made in 1987, sometime after the meeting of the WHO Expert Committee on Drug Dependence which is scheduled to meet in April 1987. Any HHS recommendations on international control will be preceded by another **Federal Register** notice soliciting public comment, as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before April 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be submitted in the format given in the WHO questionnaire for Data Collection. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The rquirements were approved and assigned OMB control number 0910-0226.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4832 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80P-0024 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Donovan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of the performance standard for laser products (21 CFR 1040.11(c)).

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date, termination date
80P-0024 (extension)	Mr. Brian B. O'Brien, 15 Country Drive, Weston, MA 02193.	Brian B. O'Brien Laser projectors, Model No. 100 Series, and for shows assembled and produced by Brian B. O'Brien incorpating these projectors.	Dec. 31, 1985–Dec. 31, 1987
82P-0118 (extension and amendment).	J. Douglas Falk Engineering, 186 Paul Court, Hillsdale, N.J. 07642.	Groundstar Series laser projectors, laser light sculpture projectors, and laser light shows manufactured, assembled, and produced by J. Douglas Falk Engineering.	Jan. 10, 1986–Apr. 30, 1988.
83V-0170 (extension)	John Young Planetarium, Orlando Science Center, 810 East Rollins Street, Orlando, FL 32803.	Orlando Science Center, John Young Planetarium, laser light shows incorporating the Class IV argon OSC Projection System Number One.	Dec. 13, 1985–June 17, 1987
83V-0182 (extension)	South Florida Museum and Bishop Planetarium, 201 10th Street West, Bradenton, FL 33505.	Laser light shows assembled and produced by Bishop Planetarium incorporating a Laser Systems Development Corporation certified Model C-3 Series, laser projector.	Nov. 21, 1985–June 15, 1987
84V-0378 (extension)	Shawnee Brittan Productions, 1500 United Founders Tower, Oklahoma City, OK 73112.	Shawnee Brittan Productions Laser Space Theater laser light shows incorporating the Laser Presentations Model LP-4 laser light show projector.	Jan. 10, 1986–Dec. 10, 1987
85V-0041	Laser Theatrics, E 402 Wedgewood No. 60, Spokane, WA 99208.	Laser Theatrics laser light show incorporating a Class IV Laser Fantasy Productions, Inc. (aka Coherent Innovations, Inc.) Rainbow 3AK laser projector with Ar, Kr, Ar/Kr, or HeNe laser systems.	Dec. 23, 1985–Dec. 23, 1987
85V-0189 (amendment)	Computer Graphics, c/o Stage Sound, Inc., 4708 E. Van Buren Street, Phoenix, AZ 85008.	Laser light show and projection systems assembled and produced by Computer Graphics incorporating Laser Media's Stingray or LM projectors or Laser Systems Development Corporation's X-Y scanners and Class IV Ar, Kr, or Ar/Kr ion laser systems.	Dec. 30, 1985–June 24, 1987
85V-0239 (amendment)	Laser Dreams, 1461 Church Street, San Francisco, CA 94131	Laser Dreams laser light shows incorporating laser projection systems manufactured by Laser Dreams.	Jan. 15, 1986–May 30, 1987
85V-0298	Laser Light Systems, 731 Layne Court, Palo Alto, CA 94306.	Laser Light Systems' laser light shows and the incorporated laser projection system consisting of Laser Systems Development Corporation Model R3, C3 or C6 optics modules and Class IV argon or krypton lasers such as Spectra-Physics' Models 164 or 171 or Laser Light Systems' Model LL1.	Jan. 9, 1986–Jan. 9, 1988.
85V-0305	Sea World, 1720 South Shores Road, San Diego, CA 92109.	Sea World Laser Light Shows, such as "Summer Nights," incorporating Laser Media LMS Series Class IV ion laser projection systems.	Dec. 31, 1985–Dec. 31, 1987
85V-0341	Video Interactive Sports, Limited, dba Photon Amusements, 6025 Chimney Rock, Houston, TX 77081.	Photon Amusements laser light show assembled and produced by Video Interactive Sports, Ltd. incorporating the Laser Media, Inc. Model LMS and Fiberay laser projector devices with a Class IV argon ion laser.	Jan. 10, 1986–Jan. 10, 1988.
85V-0364	P.O.K. Limited Partnership, dba Photon Amusements, 202 Grant Avenue, Seaside Heights, NJ 08751.	Photon Amusements laser light show assembled and produced by P.O.K. Limited Partnership incorporating the Laser Media, Inc. Model LMS and Fiberay laser projector devices with a Class IV argon ion laser.	Dec. 2, 1985–Dec. 2, 1987

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: February 25, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health

[FR Doc. 86-4695 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0029]

Mansfield Scientific, Inc.; Premarket Approval of the Mansfield Scientific Heart Trak™ Coronary Balloon Dilatation Catheter System

Correction

In the issue of Monday, February 10, 1986, in the document beginning on page 4993 in the third column, make the following corrections:

1. On page 4993, third column, in the "SUMMARY," fourth line, "Mansfiled" should read "Mansfield". In the DATE paragraph, first line, remove the "1" before "Petitions".

2. On page 4994, second column, in the file line at the end of the document, "FR Doc. 86-2781" should read "FR Doc. 86-2784".

BILLING CODE 1505-01-D

[Docket No. 86M-0054]

Toray Industries (America), Inc.; Premarket Approval of Toray (Astifilcon A) Soft Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Toray Industries (America), Inc., New York, NY, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Toray (astifilcon A) Soft Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 14, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On September 24, 1984, Toray Industries (America), Inc., New York, NY 10017, submitted to CDRH an application for premarket approval of the Toray (astifilcon A) Soft Contact Lens. The spherical Toray (astifilcon A) Soft Contact Lens is indicated for daily wear or extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic. The lens may be worn by persons who may exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from plano to −20.00 D and +10.00 D to +20.00 D and is to be disinfected using a heat lens care system only.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 24, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Toray (astifilcon A) Soft Contact Lens states that the lens is to be disinfected using only the recommended heat disinfection system. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the

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Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 4, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5 53).

Dated: February 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-4694 Filed 3-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Filing of Plats of Survey; Nevada

February 24, 1986.

The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 38 N., R. 62 E., 1/7/86, Dependent Resurvey
T. 8 N., R. 30 E., 1/7/86, Supplemental Plat
T. 8 N., R. 56 E., 2/21/86, Dependent Resurvey
T. 9 N., R. 56 E., 2/21/86, Dependent Resurvey and Section Subdivision.

These surveys were executed to meet certain administrative needs of this Bureau.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning these surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-4795 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-HC-M

Record of Decision for Federal Coal Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision.

SUMMARY: This notice is to inform the public of the availability of the Secretary of the Interior's Record of Decision (ROD) on whether to continue the 1979 Federal coal leasing program, as modified, or to adopt an alternative. The alternatives considered by the Secretary were fully described in the Final Environmental Impact Statement Supplement to the (1979) Federal Coal Management Program published in October 1985.

ADDRESS: Copies of the ROD may be obtained by contacting the Bureau of Land Management, Office of Public Affairs (130), Room 5600, 18th and C Streets, NW., Washington, DC 20240, telephone (202) 343-5717.

FOR FURTHER INFORMATION CONTACT: Walt Rewinski or Tom Walker, Division of Solid Mineral Leasing, Bureau of Land Management (650), 18th and C Streets NW., Washington, DC 20240, telephone (202) 343-4636.

SUPPLEMENTARY INFORMATION: On February 26, 1986, the Secretary of the Interior announced his decision to continue a Federal coal program which employs regional coal activity planning and lease-by-application procedures for competitive leasing of Federal coal. The Secretary's decision culminates a comprehensive program review which included the 1983–1984 examination of fair market value policy for Federal coal leasing by the Linowes Commission; the Office of Technology Assessment's (OTA) investigation of environmental protection in the Federal coal leasing program; and the Secretary's commitment to re-examine the basis for a Federal coal leasing program.

As part of the Secretary's coal program review, the Department prepared a supplement to the 1979 Final Environmental Impact Statement for the Federal Coal Management Program. This supplement was prepared in recognition that economic and other conditions had changed significantly since 1979, and that numerous changes to the program had been made or proposed since 1979. The supplement compared the environmental impacts of the following four alternatives: (1) The proposed action, which is the existing program as modified by Linowes, OTA, and Departmental changes; (2) leasing-by-application; (3) preference right and emergency leasing; and (4) no new Federal leasing. The Secretary has adopted alternative 1, the proposed action. Therefore, pursuant to the Council on Environmental Quality's regulations at 40 CFR 1506.6b, the Secretary's ROD for the Federal coal leasing program is being made available to the public, and may be obtained as noted under ADDRESS, above.

February 28, 1986.

Robert F. Burford,

Director.

[FR Doc. 86-4766 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-84-M

Supplement to the Western Oregon Program, Management of Competing Vegetation; Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the supplement to the western Oregon program—Management of Competing Vegetation Draft EIS (supplemental DEIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Supplement to the Draft Environmental Impact Statement for Management of Competing Vegetation on lands in western Oregon. The proposal involves implementing a vegetation management program on public lands administered by the Bureau of Land Management. The Supplement presents a Risk Assessment and Worst-Case Analysis of effects on human health from using herbicides.

A limited number of copies of the Supplement and the original Draft EIS are available upon request at the following BLM offices:

Office of Public Affairs, 18th and C Streets, Washington, DC 20240, Phone (202) 343-5717
Oregon State Office, 825 N.E. Multnomah, P.O. Box 2965, Portland, Oregon 97208, Phone (503) 231-6277
Coos Bay District Office, 333 54th Street, Coos Bay, Oregon 97420, Phone (503) 269-5880
Eugene District Office, 1255 Pearl Street, Eugene, Oregon 97401, Phone (503) 687-6651
Medford District Office, 3040 Biddle Road, Medford, Oregon 97501, Phone (503) 776-4174
Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, Phone (503) 672-4491.
Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97302, Phone (503) 399-5646

Reading copies will be placed in the following libraries: Portland State University, Portland; Oregon State University, Corvallis; University of Oregon, Eugene; Chemeketa Community College, Salem; Lane Community College, Eugene; Umpqua Community College, Roseburg; Linn-Benton Community College, Albany; and public libraries in: Applegate, Bandon, Brookings, Canyonville, Coos Bay, Coquille, Corvallis, Cottage Grove, Drain, Eugene, Gold Beach, Grants Pass, Illinois Valley, Klamath Falls, Medford, Myrtle Creek, North Bend, Oakland, Port Orford, Reedsport, Riddle, Roseburg, Salem, Springfield, Sutherlin, Williams, Winston and Wolf Creek.

Written comments on the Supplemental DEIS should be sent to: Oregon State Director, Bureau of Land Management, Attention: R. Gregg Simmons, P.O. Box 2965, Portland, Oregon 97208.

Comments should be postmarked on or before April 30, 1986 to be considered in preparation of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Gregg Simmons, Oregon State Office, Phone (503) 231-6272.

Dated: February 19, 1986.

William G. Leavell,

State Director.

[FR Doc. 86-4774 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-33-M

[A-20637]

Public Land Exchange in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange, Public Land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridan

T. 25 N., R. 19 W.,
  Sec. 6, lot 7, SE¼SW¼, and SE¼;
  Sec. 8, all;
  Sec. 18, lot 1–4, inclusive and E½W½.
  Containing 1,197.17 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Dale D. Smith of Arivaca, Arizona:

Gila and Salt River Meridan

T. 28 N., R. 16 W.,
  Sec. 5, lots 1–4, inclusive, S½N½, and S½;
  Sec. 7, lots 1–4, inclusive, E½, and E½W½.
T. 29 N., R. 16 W.,
  Sec. 31, lots 1 and 2, NE¼, and E½NW¼;
  Sec. 33, all.
  Containing 2,238.32 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States—(a) right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and (b) all the oil and gas and with it the right to prospect for, mine, and remove same.

2. Subject to—(a) any restrictions that may be imposed by Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 82-1 of May 17, 1982; (b) such rights for road right-of-way purposes as the Mohave County Board of Supervisors may have under R.S. 2477 (43 U.S.C. 932); (c) road rights-of-way A-19014, A-19015, A-19016, and A-19017; and (d) water pipeline right-of-way A-6178.

Private lands to be acquired by the United States will be subject to the following reservation:

1. All minerals are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 89 of Deeds, page 106 and 110 and in Book 86 of Deeds, page 49.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing law. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 25, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-4743 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-32-M

[Ser. No. CA 17664]

Realty Action; Exchange of Public and Private Lands in Fresno, Madera, and Nevada Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on the proposed exchange of public and private lands.

SUMMARY: This notice is to advise the public that the comment period for the proposed exchange between the Bureau of Land Management and the Santa Fe Pacific Realty Corporation, Inc. is being extended until March 14, 1986.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the **Federal Register** on January 2, 1986, Vol. 51, No. 1, pages 128–129, established a 45-day comment period. The purpose of the Notice was to offer an opportunity for interested parties to submit comments on a proposed exchange of public and private lands

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between the Bureau of Land Management and the Santa Fe Pacific Realty Corporation. In response to the interest expressed the comment period is being extended.

DATE: Written comments on the proposed exchange must be received by March 14, 1986.

ADDRESS: Written comments should be sent to: Bakersfield District Manager, Bureau of Land Management, 800 Truxtun Avenue, Rm. 1311, Bakersfield, California 93301. Written comments will be forwarded to the State Director who may modify or vacate this realty action.

FOR FURTHER INFORMATION CONTACT: David Howell, Area Manager, Bureau of Land Management, Hollister Resource Area, P.O. Box 365, Hollister, CA 95023.

Dated: February 25, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86-4744 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-40-M

[W-96731]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-96731 for lands in Johnson County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termiantion.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-96731 effective November 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-4746 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-22-M

[W-83585]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-83585 for lands in Johnson County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-83585 effective April 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-4747 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Aniakchak National Monument Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Introduction of guests.
(3) Review and discuss input on draft hunting plan.
(4) Finalize recommendations.
(5) Old business.
(6) New business.
(7) Adjourn.

DATE: The meeting will begin at 9:00 a.m. on March 12, 1986, and conclude the afternoon of March 13, 1986.

ADDRESS: The meeting will be held at the Fish and Wildlife Service, Conference Room, King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT: David Morris, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246-3305.

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Robert L. Peterson,

Acting Regional Director.

[FR Doc. 86-4733 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-70-M

Wrangell-St. Elias National Park Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Wrangell-St. Elias National Park Subsistency Resource Commission. The following agenda items will be discussed:

1. Status of State subsistence hunt regulations on preserved lands and 1985 Tier 11 caribou hunt.

2. Review and finalize commission recommendations.

a. Predator control.
b. Northway as resident zone.
c. Aircraft access.
d. General management plan.

3. Part Resource Management Plan—Brad Cella.

DATES: The meeting of the Wrangell-St. Elias Subsistence Resource Commission will be held at the Park Headquarters in Glennallen, Alaska, Mile 105 Richardson Highway, starting at 2:00 p.m. on April 7 and continuing at 8:30 a.m. on April 8.

FOR FURTHER INFORMATION CONTACT: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588.

SUPPLEMENTARY INFORMATION: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: February 25, 1986.

Robert L. Peterson,

Regional Director, Alaska Region.

[FR Doc. 86-4734 Filed 3-4-86; 8:45 am]

BILLING CODE 4310-70-M

Overseas Private Investment Corporation

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. if you anticipate commenting on the form, but find the time allotted to prepare comments will prevent you from submitting them promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation (OPIC), 1615 M Street, NW., Washington, DC 20527. Telephone: (202) 457-7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395-7231.

Summary of Form Under Review

Type of Request: Extension of expiration date without substantive change.

Title: OPIC Opportunity Bank Company Profile.

Form Number: OPIC-82.

Frequency of Use: Once per U.S. company registration.

Type of Respondent: Business or other for profit.

Standard Industrial Classification: All.

Description of Affected Public: U.S. Companies.

Number of Responses: 500.

Reporting Hours: 15 minutes per response.

Federal Cost: $2,922.50.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Information will be submitted by U.S. businesses seeking opportunities abroad. Opportunity Bank program provides chance for U.S. business to attract business proposals from potential joint venture partners and to consider expanding their operations with foreign business contacts.

Dated: February 20, 1986.

Robert O'Sullivan,

Office of the General Counsel.

[FR Doc. 86-4735 Filed 3-4-86; 8:45 am]

BILLING CODE 3210-01-M

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the Agency has mnade such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form, but find the time allotted to prepare comments will prevent you from submitting them promptly, you should advse the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation (OPIC), 1615 M Street, MW, Washington, DC 20527. Telephone: (202) 457-7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395-7231.

Summary of Form Under Review

Type of Request: Extension of expiration date without substantive change.

Title: OPIC Opportunity Bank Project Profile.

Form Number: OPIC-83.

Frequency of Use: Once per project proposal.

Type of Respondent: Businesses or other for-profit.

Standard Industrial Classification: All.

Description of Affected Public: Foreign Businesses.

Number of Responses: 300.

Reporting Hours: 15 minutes per response.

Federal Cost: $1,796.50.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Information will be used to provide foreign project leads to U.S. business seeking joint ventures abroad. Information will be submitted by foreign business executives who wish to attract U.S. investment.

Dated: February 20, 1986.

Robert O'Sullivan,

Office of the General Counsel.

[FR Doc. 86-4736 Filed 3-4-86; 8:45 am]

BILLING CODE 3210-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for Review.

Purpose of Information Collection

The proposed information collection is to enable the Commission to determine eligibility of the applicant Small Businesses for Trade Remedy Assistance under section 221 of the Trade and Tariff Act of 1984, (19 U.S.C. 1339).

Summary of Proposals

(1) Number of Forms Submitted: One.

(2) Title of Form: Application for Technical Assistance from the Trade Remedy Assistance Center of the U.S.

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International Trade Commission: Certification of Applicant.

(3) Type of Request: New.

(4) Frequency of Use: Nonrecurring.

(5) Description of Respondents: Small businesses requesting eligibility for Trade Remedy Assistance from the Commission.

(6) Estimated Number of Respondents: One per application for assistance.

(7) Estimated Total Number of Hours to Complete Form: One.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from the Trade Remedy Assistance Center (telephone number (202) 523-0488). Comments about the form should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on the form but find that the time required to prepare comments will prevent you from submitting comments promptly, you should so advise the Office of Management and Budget as soon as possible. A copy of the comments submitted should be provided to Jeffrey L. Gertler, United States International Trade Commission, 701 E. Street, NW., Washington, DC 20436.

Issued: February 28, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4779 Filed 3-4-86 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-184

Import Investigation; Certain Foam Earplugs; Commission Decision To Modify That Portion of Initial Determination Limiting Duration of Confidential Treatment to Five Years

AGENCY: International Trade Commission.

ACTION: Modification of that portion of the initial determination (ID) on violation of section 337 issued by the presiding administrative law judge (ALJ) on November 30, 1984, that limits confidential treatment to five years.

SUMMARY: The Commission has determined to modify that portion of the ALJ's ID of November 30, 1984, which limits the duration of the protective order to five (5) years. The modification will permit continued confidential treatment for certain specified information beyond the five year period. The ID became the Commission's determination on January 17, 1985 (50 FR 4277).

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: On March 15, 1985, complainant filed a motion (Motion No. 184-14C) to modify the ID to provide continuing protection for certain information now covered by the protective order issued in this investigation. The ID limits the duration of the protective order to five years from the date the Commission terminated the investigation (March 4, 1985), i.e., until March 4, 1990. The Commission has determined to modify the 5-year limitation to allow continuing *in camera* treatment of certain specified confidential information beyond the 5-year period.

Copies of the Commission's Action and Order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 27, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-4782 Filed 3-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-263 (Final)]

Import Investigation; Iron Construction Castings From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured [2] [3] by reason of imports from Canada of "heavy" iron construction castings and that an industry in the United States is threatened with material injury [4] by reason of imports from Canada of "light" iron construction castings, provided for in item 657.09 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5] The Commission further finds that it would not have found material injury but for the liquidation of entries of "light" iron construction castings.

Background

The Commission instituted this investigation effective October 29, 1985, following a preliminary determination by the Department of Commerce that imports of iron construction castings from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 15, 1985 (50 FR 47287). The hearing was held in Washington, DC, on January 16, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 19, 1986. The views of the Commission are contained in USITC Publication 1811 (February 1986), entitled "Iron Construction Castings from Canada: Determination of the Commission in Investigation No. 731-TA-263 (Final) Under the Tariff Act of 1930, Together

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR § 207.2(i)).

[2] Vice Chairman Liebeler dissenting with respect to "heavy" iron construction castings.

[3] Commissioner Brunsdale finds threat of material injury with respect to both "heavy" and "light" iron construction castings. She further determines that she would not have found material injury but for the suspension of liquidation of entries of "heavy" and "light" iron construction castings.

[4] Commissioner Lodwick found that a domestic industry was materially injured by reason of imports of "light" construction castings.

[5] In the notice of its final LTFV determination with respect to imports from Canada, Commerce stated that it believes that light and heavy construction castings should be considered within the same "class or kind" of merchandise. Therefore, it did not differentiate between heavy and light castings in making its LTFV determinations, stating that "We have therefore determined that light and heavy construction castings are of the same class or kind, and that any differences between the two types of castings are not significant enough to warrant the application of separate margins" (51 FR 2412).

With the Information Obtained in the Investigation."

Issued: February 19, 1986.

By Order of The Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 86-4781 Filed 3-4-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-10 (Sub-37X)]

Norfolk and Western Railway Co.; Discontinuance of Service; Exemption in Suffolk, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of service by Norfolk and Western Railway Company over approximately 4.9 miles of rail line in Suffolk, VA, subject to employee protective conditions.

DATES: This exemption will be effective on April 4, 1986. Petitions to stay must be filed by March 20, 1986, petitions for reconsideration must be filed by March 31, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-10 (Sub-No. 37X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Angelica D. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042-0069

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: February 28, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-4682 Filed 3-4-86; 8:45 am]

BILLING CODE 7035-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (Program) including certain measures contained in section 404 of the Program to improve downstream passage of juvenile fish at U.S. Army Corps of Engineers dams on the lower Columbia and Snake River. On October 10, 1984, the Council amended section 404 of the Program. In response to concerns expressed by agency and tribal fishery managers on the Columbia River in early 1985, the Council invited the fishery managers on August 2, 1985 to submit a written proposal for an alternative to the Program's existing downstream passage measures. On August 8, 1985 the Council chartered the Mainstem Passage Advisory Committee (MPAC), comprised of representatives of the fishery managers, the Corps, Bonneville, and the Pacific Northwest Utilities Conference Committee (PNUCC). The MPAC meet on eight times between August, 1985 and January, 1986. Its members developed or directed much of the analysis upon which the Council's action is based. All committee meetings were open to the public. In a public meeting on December 12, 1985, the Council voted to initiate rulemaking to amend sections 304, 404 and 1504 of the Program, pursuant to section 4(d)(1) of the Northwest Power Act and section 1404(a)(1) of the Program. A notice of proposed amendment, public hearings, and opportunity to comment was published in the **Federal Register** (50 FR 52575) on December 24, 1985. A copy of the notice, together with an issue paper discussing the proposed amendment, its background, and alternatives to it, were mailed to the Council's fish and wildlife consultation list, comprised of representatives of Indian tribes, federal and state fish agencies, federal power agencies, and sustimers of the Bonneville Power Administration. The notice established a 43-day public comment period, extending from December 12, 1985 to January 24, 1986. On January 9, 1986, the Council published in the **Federal Register** (51 FR 1053) and mailed to its fish and wildlife consultation list, a notice announcing hearings and correcting certain cost figures. Hearings on the proposed amendments were held and public comment was received on January 13, 1986 in Helena, Montana, on January 17, 1986 in Boise, Idaho, on January 21, 1986 in Spokane, Washington and on January 22, 1986 in Portland, Oregon. Consultations with leaders of the fishery agencies, tribes, utilities, the Bonneville Power Administration and the U.S. Army Corps of Engineers were held in January 1986. During the comment period, the Council staff also continued to share information and undertake further technical analysis in cooperation with interested parties. Written comment was received from 35 individuals and organizations, and oral comments were heard from at least 10 individuals and organizations. The public comment period closed at 5:00 p.m. on January 24, 1986.

Final Amendments

The Council has considered fully the issues and the public comment in this rulemaking, and has evaluated the proposed alternatives under the standards for Program measures stated in section 4(h) of the Northwest Power Act. The Council hereby amends the Columbia River Basin Fish and Wildlife Program as follows:

1. In section 304, paragraphs (b)(2) and (d)(1) are revised to read as follows:

* * * * *

(b) * * *

(1) * * *

(2) The Water Budget managers will be the primary points of contact between the power system and the fish and wildlife agencies and tribes on matters concerning the Water Budget and spill at hydroelectric projects operated by the Corps of Engineers on the mainstem of the Columbia and Snake Rivers. They will be responsible for informing the Corps of Engineers when and to what extent they wish to draw on the Water Budget. They also will be responsible for all in-season communicatons regarding spill. The Corps will inform the other project operators and regulators of Water Budget requests and spill communications to the extent necessary. the Corps shall manage and implement annual fish passage plans, and make in-season spill decisions and adjustments

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in consultation with the Water Budget managers.

* * * * *

(d) * * *

(1) Bonneville shall fund a study to gather additional evidence on the relationship among flows, spills, travel time, and smolt survival. This study will include an analysis of the relationship between flows and survival of the late-summer migrating chinook stocks, which migrate during earlier life stages than the smolts that migrate in the spring. Based on the results of the study, the Council will determine whether the Water Budget is successful in achieving smolt survival and to what degree. Annually, it will review the operation of the Water Budget. Pursuant to section 1400, the Council will consider proposed alternatives to the Water Budget designed to be more effective in improving downstream migration or in reducing power system effects. Bonneville shall also fund expeditiously investigations of spill effectiveness, hourly fish passage patterns, and reservoir mortality, at mainstem federal projects in consultation with all interested parties.

* * * * *

2. In section 403, the final paragraph is revised to read as follows:

* * * * *

In 1986 the Council considered a number of alternatives to the 90 percent survival standard. To provide greater protection for upriver natural and wild runs, the Council extended the spill season to cover all but the first and last 10 percent of the fish migrating during the spring and summer migration periods. The Council determined that spill should be provided regardless of any impacts on firm hydropower, but in no event after August 15th of the year. The Council expects to reexamine these standards before the beginning of the 1987 migration.

3. In section 404, paragraphs (b)(3), (b)(4)(A), (b)(8)(A) and (b)(9)(A) are revised to read as follows:

* * * * *

(b)* * *

(1)* * *

(2)* * *

(3) In consultation with the fish and wildlife agencies and tribes, the Corps of Engineers shall develop and implement a plan for spills which will achieve a level of smolt survival comparable to or better than that achievable by the best available bypass and screening systems, and at last 90 percent smolt survival. This shall be done by April 1 of each year. Spill operations shall begin when the first 10 percent of the spring migrants have passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the projects consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, and make in-season spill decisions or adjustments in consultation with the Water Budget managers.

(4) The Corps of Engineers, having studied bypass efficiency of the sluiceway at The Dalles Dam and reported to the Council on study results, shall implement:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

(B)* * *

(C)* * *

* * * * *

(8) The Corps of Engineers shall implement at Lower Monumental Dam:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plant that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

(B) * * *

(9) The Corps of Engineers, having evaluated effectiveness of the sluiceway as a fish bypass system at Ice Harbor Dam, shall implement:

(A) A coordinated interim juvenile passage plan which will result in at least 90 percent smolt survival of spring and summer migrants. Spill operations shall begin when the first 10 percent of the spring migration has passed the dam and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers

of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plant that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish pasage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.

* * * * *

4. Action 32.1 of section 1504 is revised to read as follows:

Bonneville Actions

32.1 Test and evaluate an alternative conduit system for juvenile fish by November 15, 1986. Report results to the Council by January 1987. [section 404(c)(3).] Fund expeditiously studies to investigate spill effectiveness, hourly fish passage patterns, and reservoir mortality, at mainstem federal projects in consultation with all interested parties. [section 304(d)(1).]

* * * * *

5. Action 32.2 of section 1504 is revised to read as follows:

Corps Actions

32.2 All projects.

- Develop and implement a coordinated systemwide annual juvenile passage plan to achieve at least 90 percent smolt survival of spring and summer migrants at each project as described in section 404(b). Include estimates of fish bypass efficiencies and smolt survival for each project and for the system. Spill operations shall begin when the first 10 percent of the spring migration has passed and shall protect 80 percent of the spring migration. Spill shall continue or begin again when the first 10 percent of the summer migrants have passed the dam, and shall protect 80 percent of the summer migration. Spill shall occur regardless of any impact on firm energy. No spill, however, shall be required after August 15 of each year. Before the juvenile passage season, the fish and wildlife agencies and tribes will identify "spill criteria:" the spring and summer periods that include 80 percent of the typical spring and summer migrations, the daily hours of spill, and the numbers of fish that will trigger spill operations. These spill criteria will guide spill operations at the project consistent with the 90 percent survival objective. The Corps shall develop, in consultation with the fish agencies and tribes, an annual juvenile fish passage plan that is consistent with program standards and incorporates the spill criteria. The Corps shall be responsible for managing and implementing the annual juvenile fish passage plan, making in-season spill decisions or adjustments in consultation with the Water Budget managers.
- Continue to implement adult fish criteria and evaluate measures to protect adult passage at each project. [Section 604(a)(1), 604(a)(2), 604(a)(3), 604(b)(1), 604(b)(2).]
- Submit a draft comprehensive transportation evaluation report and proposal for further action to the Council by March 1985. Submit a final report, incorporating a review of comments, to the Council by May 1985. [Section 404(b)(17).]
- Present an annual report to the Council each January on each project's fish passage facilities, research results, and operations. Include proposals for future actions to improve fish passage facilities. [Section 404(b)(1)–(9), 604(a)(1)–(3).]

Response to Comments

1. Procedural Adequacy of Rulemaking

Comments: A number of commenters objected to what they perceived as the "fast track" nature of this rulemaking. Seattle City Light (Seattle) said, for example, that it could not get a clear picture of what the rulemaking was proposing. The Public Power Council (PPC) and Intercompany Pool (ICP) agreed, asserting that the initial proposal had been given numerous interpretations during the course of the rulemaking. The Pacific Nowthwest Utilities Conference Committee (PNUCC) said that the Council had failed to make its proposal clear in time to allow for the study and analysis that it required.

Puget Power, Bonneville, PNUCC, Pacific Power & Light and others asserted that there was no justification for altering the current spill criteria. The existing Program has measures to improve survival, PNUCC said, the Corps' 1985 spill practice surpassed the Council's standard and no targeted species are declining in population. Bonneville asserted that despite low water conditions in 1985, all runs of upriver fish except mid-Columbia summer chinook showed substantial increases over returns in the 1970s. In other words, there was no evidence produced to suggest that fish survival in 1985 was inadequate. Seattle agreed that no emergency had been demonstrated that would warrant a "fast track" proceeding. In the absence of any threat of extinction, any showing of irreparable damage, or even any substantial loss, ICP said, this subject ought to have been taken up in the Council's regular 1986 amendment process. ICP said that neither of the Council's two stated premises for amending the Program justified what ICP characterized as "emergency action." Neither the lack of agreement between the fish agencies and tribes and the Corps nor the fact that the existing standard was generally being met by the Corps was reason for amending, in ICP's opinion.

PNUCC, ICP, PPC and others stated that they had not had time to evaluate adequately the complex issues entailed in establishing spill levels. Moreover, throughout the public comment period, the data and assumptions being evaluated were characterized by substantial uncertainty, ICP said. As late as four days before the close of public comments, Puget said, the Council staff was still running computer studies to determine the possible cost impacts of the proposed amendment. Pacific asserted that the existing regime for increasing runs of anadromous fish was achieved through the mutual effort of all those who own and operate dams on the Columbia and is based on supporting evidence. Amending this regime in a "fast track" proceeding could be harmful to the region, Pacific said.

Puget said that the "fast track" amendment process fails to meet the statutory standards mandated by the Northwest Power Act and the Program. Puget argued that this amendment is not based on "research results, changing technology, legal developments, efforts to coordinate the Council's program with programs aimed at non-hydroelectric effects on fish and wildlife, and other significant developments," citing only a portion of section 1401. Because data was being subjected to ongoing analysis throughout the public comment period, Puget asserted that the amendment was not based on "conclusive evidence," as the Program allegedly required. PNUCC said that although it worked with the Council's staff in developing a shared data base that would support accurate comparisons of costs and benefits, such comparisons were not produced before the close of public comment. "In fact, analysis continued after public testimony at the January 22 hearing and after a consultation of the parties that same day," PNUCC said.

Bonneville criticized what it viewed as a "piece-meal" approach to improving passage and urged a "programmatic passage strategy" based on sound biological objectives such as river system fish stock survival rates

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and annual passage plans. Bonneville argued that focusing on the survival level at each project is both inconsistent with the systemwide planning mandate of the Northwest Power Act and does not constitute a sound biological objective. BPA said that any strategy ought to account for transportation and reservoir mortalities. Bonneville agreed with those who said this subject ought to be taken up in the 1986 amendment process, but should the Council decide to amend the spill criteria in this proceeding, Bonneville offered a recommended strategy addressing the concerns it raised.

The National Wildlife Federation (NWF) described the agencies' and tribes' proposal as a "recommendation," which must be approved if the statutory criteria are met.

Response: The rulemakings undertaken by the Northwest Power Planning Council are governed by the Northwest Power Act and section 553 of the federal Administrative Procedure Act (APA). Under neither of these statutes can this Mainstem Passage amendment process be considered "fast track." The process leading to the Council's action was an intense one, providing numerous opportunities for public comment and focusing more effort by more people than any other single proposal for action in the history of the Program. The Council held hearings in each of the region's four states, as the Northwest Power Act requires. Interested persons were given the opportunity to submit oral testimony, both at the hearings and at several consultations sponsored by the Council, and were all allowed to submit written comments throughout the 43-day comment period. Neither statute prescribes a particular amount of time that must be permitted for public comment in "notice and comment" rulemaking. The Council has concluded that it allowed a reasonable amount of time for public review and comment. In this case, the Council voted to enter rulemaking on December 12, 1985, and notice of the proposed rule was published in the **Federal Register** on December 24, 1985, and mailed to the Council's fish and wildlife consultation list. The public comment period closed on January 24, 1986. The Council set the length of the comment period with the proximity of the 1986 downstream migration of juvenile salmon and steelhead in mind, realizing that if any improvements in the survival objectives were to benefit this year's run, the rulemaking would have to be concluded with enough time for the Corps and Bonneville to implement any amendments. The Council was also aware that considerable discussion, study, analysis and sharing of views regarding the need for amending existing spill objectives had been going on among interested persons for at least nine months preceding the notice of proposed rulemaking. Nor was mainstem passage a new subject for the region. Interested members of the region had addressed the question of spill objectives several times before this rulemaking. The Council's 1982 Program called upon the Corps of Engineers to develop a spill program in consultation with the fish agencies and tribes and extensive discussions ensued. The Council took up this question again in 1984, when it set the 90 percent survival level under review in the current rulemaking. The fishery agencies and tribes were actively discussing this question with the Corps in early 1985, and at the Council's March 1985 meeting, the fishery agencies and tribes asked the Council to reconsider the 90 percent objective. The Council called for alternative proposals and on August 8, 1985, the Council chartered the Mainstem Passage Advisory Committee (MPAC). MPAC held at least eight meetings to discuss mainstem passage and spill objectives prior to the close of this rulemaking. All MPAC meetings were open to the public. The Council has concluded that this subject has received sufficient analysis, over an extended period of time, to justify its decision. In light of the extended period of intense discussion, the Council disagrees with those who characterize its consideration of spill objectives as "fast track."

The Council provided adequate notice of the proposed amendment to interested persons. The December 24, 1985 **Federal Register** notice (50 FR 52575) set forth clearly the questions the Council intended to address in the rulemaking: (1) What survival objectives would provide adequate interim protection for juvenile fish? (2) Is a survival objective appropriate for transported fish? (3) Who should have the responsibility of coordinating spill requests? In proposing its answers to these questions, the Council made clear the direction of its own thinking. For example, the proposal set an interim survival level of 94 percent in average and higher water conditions and a 92 percent objective in lower-than-average water conditions. The notice also invited public comment on a number of specific questions aimed at focusing the direction and scope of the issues involved. To narrow the issues, the notice also limited preliminarily: (1) The merits of transportation, (2) the problem of reservoir mortalities, and (3) the management and institutional issues raised by the fishery agencies and tribes.

In addition to the original **Federal Register** notice and a supplemental **Federal Register** notice that corrected some data, the Council also distributed to interested persons an issue paper, "Alternative Interim Fish Passage Objectives," which gave an even more detailed account of the issues and the proposed rule. Members of the Mainstem Passage Advisory Committee, including a representative of PNUCC, participated directly with the staff during the five months of the ongoing development of the issues surrounding spill objectives; MPAC members were intimately familiar with both what was at issue in this rulemaking and with the continuous analysis of the data that had been gathered.

The Council is also aware that those entitles that stand to be most directly affected by this rulemaking have been represented in the process from its inception, and, in most cases, for the past several years. The Northwest Power Act does not require the Council to act on the basis of perfect knowledge, nor is the standard "conclusive evidence," as Puget asserted. Instead, the Council's action is to be based on and supported by "the best available scientific knowledge." Northwest Power Act, section 4(h)(6)(B). The Council has concluded that through the contributions of its staff and of various other interested persons, it employed the best scientific knowledge that is currently available. All of the alternatives examined during this rulemaking were based on the same body of data with the same analytical models and the same assumptions. That data was developed by the Council staff with the assistance of the MPAC, which worked in public meetings. MPAC's membership includes many of the scientific and technical experts on mainsteam passage issues. The Council judged that each of the alternatives was based on the best available scientific knowledge, since each was modeled using the Corps' FISHPASS survival model. This model incorporates the best available mainstem passage coefficients and assumptions developed in the MPAC. By holding the model coefficients constant and varying only spill or survival levels, it was possible to make a relative comparison of each of the alternatives. In this manner a common set of studies was developed for use by all interested parties.

The Council notes, in response to PNUCC's concern that analysis was still being done late in the comment period, that no new data was added once the comment period closed. Of course further analysis of the data was being done, as is appropriate under the APA and necessary in this sort of rulemaking.

In response to the comment of ICP that the Council failed to judge that either the existing standard or the Corps 1985 spill program was less than adequate, the Council notes that the amendment specifies that spill is to be provided to protect 80 percent of the spring and summer migrants in both the Snake and Columbia rivers. Current Program measures do not specify the duration of spill protection, and the Corps has provided spill only to the extent that nonfirm energy is available. The amendment makes the fishery agencies and tribes responsible for establishing the biological criteria for determining the average of typical migration times and fish numbers that will trigger spill to protect the middle 80 percent of the spring chinook and steelhead in the spring period and the middle 80 percent of the subyearling chinook in the summer at the noncollector dams, regardless of the unavailability of nonfirm energy. The amendment also emphasizes the need for further evaluation of spill effectiveness and other mainstem survival questions.

The Council does not regard the fishery agencies' and tribes' proposal as a recommendation that triggers all the procedural requirements of the Northwest Power Act. See, for example, section 4(h)(7). As noted in the original **Federal Register** notice, this rulemaking was undertaken pursuant to section 4(d)(1) of the Northwest Power Act and section 1404(a)(1) of the Program. Section 1404(a)(1) provides that the Council may consider a program amendment at any time on its own motion and that it may adopt a recommended amendment, adopt it with modifications, or reject it "for failure to conform to the statutory standards for program elements." These statutory standards for program elements are found in sections 4(h)(5) and (6) of the Northwest Power Act. Measures must "protect, mitigate, and enhance fish and wildlife affected by the [hydroelectric facilities on the Columbia River and its tributaries] while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation." Northwest Power Act, section 4(h)(5). Such measures must also "complement the existing and future activities of the Federal and region's state fish and wildlife agencies and appropriate Indian tribes; be based on, and supported by, the best available scientific knowledge; utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost; be consistent with the legal rights of appropriate Indian tribes in the region; and in the case of anadromous fish, provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives." Northwest Power Act, section 4(h)(6). These are the criteria that the Council applied in evaluating the fishery agencies' and tribes' proposal.

In response to Bonneville's comment that this rulemaking constitutes a "piece-meal" approach to improving passage, the Council notes that no single measure can be expected to produce dramatic systemwide results in improving the production, migration and survival of fish in the Columbia Basin. While the Council agrees with Bonneville that the thrust of the Council's energies and the Program as a whole must be to achieve a systemwide plan, that does not mean that the Council is contrained to take up the entire Program every time it acts. Sections 4(d)(1) and 4(h) of the Northwest Power Act anticipate that the Program may be amended from time to time apart from the Program-wide amendment process. As summarized in the preceding paragraph, the Act also establishes the criteria the Council is to apply in evaluating particular amendment proposals, and those are the criteria the Council employed in this instance.

2. Biological Benefits

Comments: The United States Fish and Wildlife Service (F&W) stated that the Snake River runs of salmon and steelhead, especially the wild or naturally produced runs, "need all the assistance possible to facilitate their outmigration." F&W asserted that even small increases in per dam survival will produce significant benefits to overall outmigration survival.

The National Wildlife Federation (NWF) contended that the current standard does not satisfy the statute's requirement of improved survival. NWF particularly emphasized the importance of summer spill to protect the Snake River runs, which are among the most threatened on the system. Upriver salmon and steelhead might even qualify as endangered species, NWF said. NWF asserted that no standard less than 94 percent could be justified under the Act, and "surely no lower standard will restore the threatened Snake River fish run." NWF, Oregon Department of Fish and Wildlife (ODFW), and CRITFC argued that there is no biological justification for differentiating between high and low water years.

Regarding the scale of biological benefits, which the National Marine Fisheries Service (NMFS) concedes is much smaller than expected, NMFS urged the Council not to use high reservoir mortalities as a reason for not improving dam survival. NMFS asserted that there is insufficient knowledge of reservoir and dam mortalities to be confident about the reservoir mortality assumption. In the short-term, NMFS said there are no viable alternatives for improving survival, since transportation is already at its maximum and bypass system improvements will take several years to complete.

CRITFC also urged protection of summer migrants and objected to the Corps' method of estimating system mortality as one that was not endorsed by the Mainstem Passage Advisory Committee. The Corps' method, CRITFC and ODFW said, ignores the fact that 25 percent of the fish modeled were input in the Bonneville pool. Thus the Corps' aggregated numbers ignore disproportionate mortalities upstream. ODFW and CRITFC also objected to the Corps' accounting for transportation, allowing equal credit to transported and inriver fish. CRITFC emphasized tribal fishing rights, noting that in the last decade mainstem treaty fisheries have been severely restricted.

The Corps, on the other hand, criticized the dam survival standard as inadequate because it ignores reservoir passage, transportation and the condition of individual stocks. The Corps also said that dam survival criteria are complicated by the survival coefficients and diel (hourly fish passage patterns) and seasonal fish distributions used to compute them. The Corps asserted that in addition to the 90 percent protection offered by the Program, at least an additional 5 percent is provided by the bypass systems. The Corps said it regards the 90 percent standard as a minimum; in practice the Corps has done better. The Corps criticized the staff's December 1985 92/94 proposal because it was "not

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accompanied by supporting data showing the incremental benefit in overall survival improvement versus cost." The Corps contended that its evaluation of various passage plans for 1986 demonstrated that current spill levels represent a reasonable upper limit. The Corps also asserted that improved inriver survival may not result in improved adult runs due to problems with fish health, hatchery practices and ocean harvest management. Until these problems are corrected, dam improvements will do little, the Corps stated.

The Corps also argued that it is improper to use only eight-dam survival as a primary measure of total system survival when more than 83 percent of the migration passes six dams of fewer and 24 percent enters Bonneville pool alone. No fish enter the Ice Harbor pool and the Lyons Ferry hatchery releases in the Lower Monumental pool have transportation facilities available. Therefore, it is incorrect to argue that inriver fish entering below Little Goose suffer an inordinate mortality level.

The Corps also urged the Council to adopt a study plan to develop system survival criteria during the regular amendment process.

Bonneville suggested that the Council use a "System Stock Survival Method" that measures survival of individual stocks throughout the system. ODFW and CRITFC agreed that such a method could be useful, but only if applied to in-river migrants with no downstream fish inputs, and not to transported fish.

Puget said that it continues to support the bypass solution at both federal and non-federal projects, but until such facilities are in place, Puget believes that the 90 percent survival objective is both reasonable and adequate. Unless research and testing clearly support the cost-effectiveness of increasing that level, it should not be changed, Puget asserted. Puget agreed with PNUCC that summer spill studies demonstrate poor results: only summer chinook would benefit from summer spill and more spill will not measurably increase the number of returning adults. Nor will more spill allow for the inriver harvest of summer chinook, Puget said. PPC echoed these views.

PNUCC contended that none of the proposed amendments offered significant biological improvements over the existing program. PNUCC said that no stocks or runs that are in danger of extinction stand to benefit from the proposed amendment. In its analysis, PNUCC focused on the zero-aged summer chinook as the stock with the greatest potential impact on the power system and the stock in which the fish agencies are most interested. PNUCC also submitted the comments of Dr. Don Chapman analyzing spill benefits to summer chinook, which concluded that transportation is the best means for improving protection.

Finally, PNUCC said, the summer migrants run well beyond the period suggested by the Council staff proposal and beyond that covered by the FISHPASS analysis, with the results that the proposal offers summer and fall chinook little protection and the enormous costs of spilling later in the summer are not reflected in the cost analyses.

Response: The Council agrees that upriver runs, particularly wild and natural runs and those originating in the Snake River system, merit additional protection, and for that reason has decided to insure that the spill program protects summer migrants. On the other hand, the Council disagrees with the suggestion that no survival standard less than 94 percent can provide adequate protection for upriver runs. Information developed through the MPAC does not demonstrate a significant biological benefit from increasing the survivial standard from 90 percent.

The Council concludes that the existing 90 percent standard, including spill to protect summer migrants, provides sufficient interim protection to be consistent with the Northwest Power Act's requirement that measures be developed to improve survival at mainstem dams. The Council also concludes that there is no significant biological difference between the Council's amendment and the fishery agencies' and tribes' proposal, because both would extend spill into the summer migration season. The Council's amendment was adopted because it is the less costly of the alternatives providing summer spill.

The Council concurs with NMFS that the reason for the relatively small incremental biological benefit due to improvements in dam survival or spill is because the high reservoir motality included in the FISH PASS model dampens the benefits gained by increasing smolt survival at the dams. The Council also agrees with Bonneville that the System Stock Survival Method is a promising analytical tool, and has analyzed both "system survival" and "stock survival" methods in this rulemaking. The Council also agrees with CRITFC an ODFW that this method should be applied to in-river migrants only, given the sharp dispute among the experts regarding the ultimate benefits of transportation. (See "Transportation" section, below.)

Regarding the Corps' criticism that the dam survival standard is inadequate because it ignores reservoir passage, transportation and the condition of individual stocks, the Council's analysis of all the alternatives included full consideration or reservoir mortality and maximum smolt transportation. The Council's calculations of downstream (system) fish survival are based on the best biological information available on fish mortality in the reservoirs, over the spillways, through the turbines and bypasses and during collection and transportation. The model also includes the best available diel and seasonal fish distribution data developed in the MPAC process. All of these data coefficients and assumptions were held constant in each of the FISH PASS studies to allow for a comparison of alternatives.

In addition, the Council has not evaluated the alternatives on the basis of dam survival alone. Rather, the Council has evaluated the alternatives on the basis of three biological factors: (1) Whether the proposals increase the number of fish that survive through the system as a whole ("system survival"); (2) whether the proposals improve survival rates at specific dams ("dam survival"), in accord with the Program action plan's call for improvements in survival at mainstem dams (Program section 1503, Goal 1, p. 109); and (3) whether the proposals protect wild and natural runs, which are located primarily in upriver areas ("stock survival"), and which have a special status under the Fish and Wildlife Progam (Progam section 700, p. 43).

The Council recognizes that many fish pass only six dams, and that 24 percent enter the system in the Bonneville pool. The Council has taken these facts into account, while also considering that most of the fish entering at the Bonneville pool are hatchery fish, that the wild and natural stocks enter the system upriver from Bonneville Dam, and that the weakest stocks in the system enter in the uppermost reaches of the system, particularly in Idaho.

Regarding the Corps' comment that in addition to the 90 percent survival level, at least an additional five percent protection is provided to fish through bypass systems, the Council notes that the amendment will provide interim protection of juvenile fish at four mainstem projects: Lower Monumental, Ice Harbor, The Dalles, and John Day. Of these projects, only John Day Dam has a bypass system (partially completed) to provide some protection for juvenile fish. Both The Dalles and Ice Harbor have sluiceways to provide

some protection. Lower Monumental Dam, however, has neither a screening and bypass system nor a sluiceway to protect fish. The Council's amendment calls for the most spill at Lower Monumental Dam, with lesser amounts at John Day, the Dalles and Ice Harbor dams, reflecting their varying levels of smolt protection. Problems with fish health and hatchery practices are being addressed by ongoing research programs and ocean harvest management issues are largely being addressed by the U.S./Canada Pacific Salmon Treaty. Contrary to the Corps' contention that there are few inriver fish remaining in the river below Little Goose Dam, FISHPASS model studies, including maximum transportation of all smolts, indicate that nearly 1.8 million fish either enter or remain inriver to pass Lower Monumental and Ice Harbor dams. These inriver fish, which represent over 30 percent of the cumulative total of fish transported in the Snake River, will require interim protection in the form of spills.

The Council agrees with the Corps that there is a need to broaden the context of review of the role of spill and mainstem passage. The Council intends to do so during the balance of this year, and will consider carefully the merits of the system stock survival method.

Regarding PNUCC's concern over the length of the summer spill period, the Council's analysis used the seasonal fish migration data developed in the MPAC process, which specified median dates of June 8 through the end of July to protect 80 percent of the summer migration at McNary Dam. The Council has determined that spill should not be required after August 15 of each year.

3. Cost-Benefit Analysis

Comments: The Direct Service Industries, Inc. (DSIs) asserted that a cost-benefit analysis is the proper standard to use in evaluating alternative approaches for enhancing fish survival. The DSIs said that the Council's proposal would offer no increased benefit over the existing Corps practice but would have a significantly increased cost. NWF, CRITFC and ODFW rejected a cost-benefit analysis and the Corps of Engineers asserted that system survival benefits and foregone power revenues should be the criteria for judging proposals.

Response: The Council agrees that traditional cost-benefit analysis is inappropriate under the Northwest Power Act. The Council has not evaluated any of the alternatives according to a cost-benefit criterion. Rather, the Council has determined whether (1) the alternatives "protect, mitigate and enhance fish" affected by the development and operation of Corps projects, "while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply." Northwest Power Act, section 4(h)(5); and (2) "where equally effective alternative means of achieving the same sound biological objective exist," the Council has chosen "the alternative with the minimum economic cost." Id., section 4(h)(6)(C).

4. Impact on Power System

Comments: NWF asserted that the fish agency and tribes' proposal does not undermine the power system, and that impacts on nonfirm power represent lost dollars, not an unreasonable power impact. The DSIs said that the Council's proposed amendment would probably degrade the quality of service to their loads, increase power costs, and have no proportionate benefits to fish survival. The DSIs asserted that the proposal might adversely affect their top quartile service in a number of ways, chiefly in below average water years. The DSIs also observed that power restrictions would probably have long term adverse effects on the region in terms of loss of BPA revenues, DSI plant production, jobs, state and local tax revenues and associated economic impacts. The DSIs asserted that the Council's analytical models do not capture these effects, with the result that estimates of the effects of top quartile restrictions likely understate the impacts on Bonneville's revenues and other costs to the region.

Response: There is no evidence on the Council's analysis that any of the spill proposals would reduce the reliability of the power system. The Council has concluded that the spill program encompassed by this amendment does not represent a threat to a reliable, economic power system. Moreover, in none of the Council's analyses was the top quartile load affected in any way. Service to the top quartile was unchanged between base case and all spill cases in all periods of the year. The only possible effect to the top quartile would occur if the system did not refill by the end of July because of the spill proposal. In that case service to the top quartile might be affected in the next year although there is sufficient water available to refill reservoirs if the system operators wish. Based on the Council's analysis, however, the effect on refill was negligible. DSI firm loads were not affected in the Council's analysis. Provisional draft was returned with no curtailment to the DSI firm quartile.

5. Transportation

Comments: The Corps argued that the transportation question should be addressed, consistent with section 4(h)(6)(C) of the Northwest Power Act, and that the data for evaluating transport is more complete than for evaluating survival goals. The Corps also contends that transportation of all species is desirable.

CRITFC argued that transported fish return in relatively poor numbers,and that system survival calculations are extremely sensitive to changes in post-transport survival.

PNUCC submitted a statement proposing transportation of as many summer migrants as possible to avoid an extended period of spill running into the fall and early winter and called for increased study of transportation alternatives of certain fall chinook stocks and supplemention of certain summer chinook stocks.

Bonneville also urged maximum transport of all stocks, with careful monitoring to insure that rebuilding is taking place.

Response: The Program amendment specifies the level of protection to be afforded fish that are not transported, and does not say whether more or fewer fish should be transported. The Council agrees that the post-transport factor may be a sensitive variable, but does not believe that sufficient knowledge exists to choose any particular factor. As the comments illustrate, experts differ sharply about what is the "best available scientific knowledge" on the merits of transportation, and the Council has not attempted to resolve that continuing debate in this interim rulemaking.

Regarding research, the Program already calls for studies of tansportation effectiveness (sections 404(b)(17); and 404(a)(4)).

6. Costs.

Comments: CRITFC and ODFW emphasized the uncertainty of the cost numbers analyzed in the rulemaking, but CRITFC accepted generally the Council's and Bonneville's cost estimates. CRITFC and ODFW suggested that the total cost of the fishery agency and tribal proposal may be lower than models show, because maximum transportation may be used in 1986; in better water years, spill costs would decrease dramatically. ODFW and CRITFC also noted that the cost of their proposal would be a small part of Bonneville's revenues in all events, and suggested that the cost of their proposal

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would be lower if they were allowed to manage the spill program.

The Corps noted that increased spill would be very costly, and especially if the Council allow impacts on FELCC, or calls for summer spill. The Corps accepted BPA's cost data, recognizing that they "also have limitations."

ICP expressed confusion about the cost of the Council's proposal contained in the Federal Register notice, referred to a $100 million cost estimate, and suggested that the cost would be much higher than the Council expected. Puget challenged the cost estimates included in the Council's Federal Register notice.

Seattle City Light (Seattle) said it was unsure of the cost or impacts of the proposal outlined in the Federal Register notice, but did conclude that the cost would be very high and the benefits very small. Seattle asserted that the cost and power impacts might violate the Northwest Power Act, section 4(h)((1)(B), if the proposal required more interchange energy to be delivered to other Pacific Northwest Coordination Agreement Parties from the Skagit plants. Seattle said its costs could be as great as $10 million annually.

ICP also noted that the impact of the spill outlined in the Federal Register notice would fall largely outside the water budget period, when its power impacts are likely to be the greatest, yet most difficult to translate into monthly average spill. If BPA has to spill at Grand Coulee in order to meet a higher spill requirement, ICP said, the downstream non-federal project might find themselves with unshapable surpluses. ICP also stated that the benefit of spill would cost approximately $1,000 per returning adult fish.

PNUCC said that it hadn't had time to analyze thoroughly the cost impacts of the various proposals, but was skeptical of the results generated by the System Analysis Model (SAM). PNUCC also challenged: (1) The Council's limiting consideration of costs to expected values; (2) the Council's failure to use a base case in the analysis that reflects no forced spill; and (3) the Council's failure to account for a true "worst case" low-water scenario.

The DSIs did not see that the Council's proposal offered any biological improvement over the Corps' in terms of fish mortality, despite high costs. The DSIs asserted that a cost-benefit analysis ought to be applied to evaluate alternative approaches to enhancing fish survival, just as it would be for any project. The DSIs also alleged that Council's proposal would fail to ensure an economic and reliable power supply for the region and would not constitute a reasonable balance between fish and power.

Response: The Council agrees that the cost data generated by the model is inexact, and precludes any precise prediction of the costs of any of the alternative proposals. The Council has used the model results only to make comparisons among alternatives.

The Council has not evaluated any of the alternatives according to a cost-benefit criterion. See "Cost-benefit analysis" section, above.

Regarding the cost of the agency and tribal proposal, the Council agrees that eliminating spill at Lower Granite and Little Goose could reduce the total cost of the proposal. The Council's latest analysis assumes maximum transportation for the proposal, with no spill at Lower Granite and Little Goose.

Regarding refill impacts, the Council's analysis, which looked at the expected value forecast for this year's runoff as the worst case of three, showed no refill impacts.

The Council agrees that summer spills would increase the cost of the spill program.

Regarding the cost of the spill program in 1985, the Council was unable to verify Bonneville cost calculations because neither Bonneville nor any other commenter submitted detailed information regarding those calculations. The Council has approached comparisons with the 1985 spill program cautiously, since 1985 was a peculiar year. The runoff forecast was consistently higher than the actual runoff. This scenario should represent the worst case (highest cost) for spill planning. Throughout 1985, operators planned on having more water than was actually available; they were thus not as cautious and as a result the hydro system did not refill. This scenario is unlikely to reoccur, although it probably does represent one kind of worst case for the current volume forecast, which is very similar to the 1942 water condition used in the analysis.

Regarding Seattle's concerns, the Council's analysis showed that hydro system refill would not be affected. Seattle has not provided the Council with sufficient information regarding the possible impact to Seattle due to interchange requirements to determine whether such impacts realistically can be expected. The Council concludes that this amendment would not violate section 4(h)(1)(B) of the Northwest Power Act. Utilities that share in the benefits of the Federal Columbia River Power System under the Coordination Agreement have agreed to share in the costs of generating power on the river. These costs include the cost of protecting, mitigating and enhancing fish and wildlife affected by the hydroelectric system.

Regarding ICP's confusion over cost estimates, the Council is not aware of the source of any $100 million estimate. The fact that BPA's actual cost of spill in 1985 was approximately twice its original estimate is probably a function of the unusual forecast-to-runoff relationship last year. It is thus more likely to be evidence of the unlikely worst case than of the most likely outcome.

The Council agrees that spill after June 15th would have the greatest cost impact because less non-firm hydro power is available then, and prices could be higher if supplies are short. It is not clear why Grand Coulee would have to spill. It was not a project designated to spill in any of the proposals.

Regarding PNUCC's concerns: (1) In the Council's latest analysis, it did not use expected values over all water conditions, but rather values for specific water conditions; (2) the Council used a base case that contained no fish bypass spill; all of the spill scenarios were modeled with the current spill operation at Bonneville; (3) the $27 million total actual cost estimate for last year's spill program, which has not been supported with analysis or explained to the Council, probably represents one reasonable worst case for this year's volume runoff forecast.

Based on the Council's anlysis, there is no evidence that any of the spill proposals would reduce the reliability of the power system. The Council believes that the spill program encompassed by this amendment does not represent a threat to a reliable, economical power system.

Regarding the concerns of the DSIs, in none of the Council's analyses was the top quartile load affected in any way. Service to the top quartile was unchanged between base case and all spill cases in all periods of the year. The only possible effect on the top quartile would occur if the system did not refill at the end of July because of the spill. In that case the service to the top quartile might be affected in the next year although there is sufficient energy available to refill reservoirs if the system operators wish. Based on the Council's analysis, however, the effect on refill was negligible and DSI firm loads were not affected. Provisional draft was returned with no curtailment to the DSI firm quartile.

7. Criticism of Models

Comments: NMFS cautioned the Council not to rely too heavily on Corps models and cost estimates due to the wide range of uncertainties involved; their use of single flow conditions; their treatment of transportation credit in a manner objected to by NMFS in the Mainstem Passage Advisory Committee; and the Corps' use of 1942 water conditions, which show higher costs than any other year the advisory committee studied, due to anomalies in runoff shape.

The U.S. Fish and Wildlife Service disputed the reliability of the modeling analyses. They argued that the model does not successfully account for all relevant factors, such as additional mortality occurring in reservoirs as a result of turbine injuries, stress and disorientation.

PNUCC said that the uncertainties contained in the FISHPASS model have not been adequately evaluated. The dam mortality calculated by FISHPASS, for example, is particularly sensitive to the turbine mortality and spill effectiveness coefficients employed, which have a significant range of uncertainty. PNUCC also stated that the FISHPASS iterative process of estimating spill introduces another significant range of error. FISHPASS results demonstrate that increased spill adds no significant protection to downstream migrants, according to PNUCC, and there is no significant difference in benefits among the various proposals. When spill is increased at collector dams, moreover, the result is that fewer fish are transported, more remain in the river to die in the reservoirs, and fewer fish survive to below Bonneville Dam. PNUCC also asserted that the small decreases in mortality shown in the various proposals are within the range of uncertainty in the FISHPASS model, so that none of the proposals can be said to represent a change from the status quo.

Response: The Council agrees with commenters who emphasize the wide range of uncertainties involved in model analyses of cost and biological impacts of the alternatives. For this reason, the Council has used model analyses only to compare alternatives, not to predict exact costs or precise biological improvements.

The Council's Mainstem Passage Advisory Committee (MPAC) selected the 1942 water year for analytical purposes. No commenter has suggested that the comparison of alternatives would differ if other water years had been used.

The MPAC also discussed whether turbine mortality assumptions should include backroll mortality and indirect losses, and determined what assumptions to use regarding turbine and reservoir mortalities. While the Council recognizes that turbine and reservoir mortalities can be debated and should be studied further, the Council concludes that the MPAC's assumptions represent the best available scientific knowledge. The amendment calls for further study of reservoir mortality, to advance the state of knowledge in this area.

Regarding the significance of biological differences indicated by the models, the Council concludes that the studies do not show significant biological benefits for increases in survival percentages greater than 90 percent. The Council has found that extending spill into the summer migration period will provide significant biological benefit.

8. Institutional and Management Issues

Comments: NMFS suggested that a failure to address institutional issues will seriously undermine the effectiveness of any interim program, and that the tribes and agencies should be given authority to manage spill. NMFS, NWF and CRITFC drew an analogy between BPA's relationship with the Corps and that being proposed by the agencies and tribes. CRITFC and NWF believe that agency and tribal management of spill will be most efficient. CRITFC opposes rigid reliance on trigger numbers of fish because it precludes flexible spill management for unpredictable patterns of fish migration. NWF supports using Fish Passage Center to manage spill.

CRITFC would not frame passage objectives solely in terms of survival, and urged the Council to define its assumptions so that implementing agencies may interpret the Program's survival objective uniformly. If the Council adopts a bare survival objective, CRITFC suggested, it should state the percentage or volume of spill to be used at each project to reach that objective.

The Corps asserted that it "has no [legal] authority to submit to binding arbitration or mediation" in providing spill, and "cannot delegate responsibility for its operation and management decisions to" the fishery agencies and tribes. The Corps, Bonneville and others contended that agreement with the fishery agencies and tribes is an unrealistic goal, and that the Council should not attempt to mandate agreement between entities whose responsibilities are fundamentally different. The Corps asserted that past failures to agree are the result of the agencies' and tribes' refusal to recognize the Corps' responsibilities or the Program's survival goal. The Corps also maintained that its management of spill is the most efficient method available.

Response: Commenters have raised substantial issues regarding the proper allocation of management authority, and the advisability of a spill volume. However, the Council believes that some of these issues, and particularly their legal ramifications, have not been adequately examined and explained by the parties in this interim rulemaking. Accordingly, the Council is not attempting to resolve all the management and institutional issues raised by the commenters in this rulemaking. The amendments adopted by the Council are intended to respond to many of these concerns, however, by giving sufficient definition to the spill program to eliminate unnecessary disputes, and by calling on the tribes and fishery agencies to develop precise criteria for regulating spill, which criteria will be applied by the Corps in consultation with the Water Budget managers. The amendment will result in a percentage of spill, as suggested by CRITFC.

9. Implementation Problems

Comments: The Corps asserted that spill criteria should differ when firm energy would be affected, primarily because spills then must be quantified and included under the Coordination Agreement procedures. The Corps also maintained that Coordination Agreement planning has already begun for the 1986–87 seasons, and that additional spill cannot be guaranteed in a critical period, in derogation of what the Corps describes as BPA's "legal right to market their full FELCC based on a regime that does not contain provisions for the spill requirement (except for the last half of April and May spill at Lower Monumental)." The Corps also asserted that a predetermined spill volume could not be set for 1986 because BPA's firm energy levels are established by the annual operating plan a year in advance.

Response: Available evidence indicates that it is unlikely that 1986 will be a critical water year. Moreover, BPA raised no issue regarding infringment of its "legal rights" under Coordination Agreement procedures, and the Council puts little weight on the Corps' characterization of such a right. The Coordination Agreement does not require any party to operate a project inconsistent with its requirements for nonpower uses or functions (section 15), and Bonneville is required by the Northwest Power Act to use its fund and authorities consistent with the Council's Program (section 4(h)(10)(A)).

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Finally, the Council will continue to study mainstem passage issues and problems, including consideration of biologically sound alternatives to spill.

Edward Sheets,

Executive Director.

[FR Doc. 86-4730 Filed 3-4-86; 8:45 am]

BILLING CODE [illegible]

POSTAL RATE COMMISSION

[Order No. 671; Docket No. A86-11]

Greene, Rhode Island 02827 (Barbara Rush, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 26, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-11.

Name of Affected Post Office: Greene, Rhode Island 02827.

Name(s) of Petitioner(s): Barbara Rush, and others.

Type of Determination: Closing.

Date of Filing of Initial Appeal Papers: February 18, 1986.

Categories of Issues Apparently Raised:

1. Observance of procedural requirements [39 U.S.C. 404(b)(1)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].
3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 5, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 18, 1986—Filing of Petition.

February 26, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].

March 25, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 14, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

April 29, 1986—(1) Petitioner's Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 6, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 18, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-4739 Filed 3-4-86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 672; Docket No. A86-12]

Oakland, Rhode Island 02858 (Richard J. Lapierre, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 26, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-12.

Name of Affected Post Office: Oakland, Rhode Island 02858.

Name(s) of Petitioner(s): Richard J. Lapierre.

Type of Determination: Closing.

Date of Filing of Initial Appeal Papers: February 20, 1986.

Categories of Issues Apparently Raised:

1. Whether the Determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law [39 U.S.C. 404(b)(5)(A)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 7, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 20, 1986—Filing of Petition.

February 26, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

March 27, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 16, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

May 1, 1986—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 8, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 20, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-4740 Filed 3-4-86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 670; Docket No. A86-13]

Wellfleet, Massachusetts 02667 (Gerald Houk et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued February 25, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-13.

Name of Affected Post Office: Wellfleet, Massachusetts 02667.

Name(s) of Petitioner(s): Gerald Houk and others.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 18, 1986.

Categories of Issues Apparently Raised:

1. Whether Postal Service's action is subject to the requirements of 39 U.S.C. 404(b).
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 5, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 18, 1986—Filing of Petition.

February 25, 1986—Notice and Order of Filing of Appeal.

March 17, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111 (b)].

March 25, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

April 14, 1986—Postal Service Answering Brief [*see* 39 CFR 3001–115(c)].

April 29, 1986—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 6, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 18, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-4741 Filed 3-4-86; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Earnings and Disability Monitoring.

(2) Form(s) submitted: G–19, G–254.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion, annually.

(5) Respondents: Individual households, Businesses or other for-profit.

(6) Annual responses: 4,663.

(7) Annual reporting hours: 785.

(8) Collection description: The reports obtain information about an annuitant's employment and earnings. Under the RRA, an annuity can be reduced or not paid depending on the amount of earnings and type of work performed. Certain work may indicate a recovery from disability.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 4737 Filed 3-4-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22953/February 27, 1986; File No. SR-MCC-86-2]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Midwest Clearing Corporation Relating to Municipal Bond Comparison System (MBCS)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1986, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A are the revised procedures for implementation of the Municipal Bond Comparison System (MBCS).[1]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The procedures filed by Midwest Clearing Corporation relating to changes to the MBCS, operated by MCC to compare municipal securities transactions. These procedures reflect the implementation of Phase V of the national system for comparison of municipal trades. The procedures finalize the when-issued trading procedures previously filed in SR–MCC–85–5.[2] Additionally, these procedures will allow more efficient processing of syndicate takedown transactions.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it provides for the prompt and accurate clearance and settlement of securities transactions. The proposed change will facilitate municipal bond trade comparision, thus assisting the establishment of a national system for securities clearance and settlement.

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[1] The National Securities Clearing Corporation ("NSCC") acts as the hub for municipal securities comparison processing. MCC's procedures essentially mirror NSCC procedures approved in Securities Exchange Act Release Nos. 22[illegible] (June 5, 1985), 50 FR 24730 (June 12, 1985) (File Nos. SR–NSCC–85–[illegible]) and 22906 (February 18, 1986), 51 FR 6337 (February 21, 1986) (File No. SR–NSCC–86–02).

[2] Securities Exchange Act Release No. 34–22392 (September 9, 1985), 50 FR 37754 (September 17, 1985).

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(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4800 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22954; File No. SR-MSRB-86-4]

Self-Regulatory Organization; Order Approving Rule Change by Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") on January 6, 1986 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB Rule G-12 on uniform practice to provide confirmation of the concession as a percentage of the bond's price in dealer transactions in zero coupon, compound interest, and multiplier municipal securities. In its filing the MSRB indicates that the requirements imposed by the rule change are consistent with industry practices.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 22807 (51 FR 3290; January 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 26, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4802 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 26, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Mesa Limited Partnership Depositary Units (File No. 7-8846)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 20, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4801 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14963; 812-6258]

David Lerner Associates, Inc.; Filing of Application

February 27, 1986.

Notice is hereby given that David Lerner Associates, Inc. ("Lerner Associates" or "Applicant"), 477 Jericho Turnpike, Syosset, New York 11791, has filed an application requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940 (the "Act") exempting it from section 9(a) of the Act and for an order of temporary exemption from section 9(a) pending the determination of the Commission on its application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provision thereof.

According to the application, Lerner Associates is a registered broker-dealer specializing in municipal and United States Government securities with four offices in New York, Connecticut and New Jersey. Lerner Associates seeks to become the principal underwriter of a recently established investment company, Sprit of America Government Fund, Inc. ("Fund"). According to the Application, Fund will invest in U.S.

Treasury securities and securities issued by agencies of the U.S. Government or instrumentalities established or sponsored by the U.S. Government.

This application concerns the conduct of one of Applicant's approximately 160 employees, Benjamin Rabin, at a time prior to his affiliation with Applicant. On April 18, 1984, a consent judgment was entered in the United States District Court for the Southern District of New York against Rabin and a corporation of which he was a principal, prohibiting them from engaging in certain conduct in violation of section 5 of the Securities Act of 1933. This judgment arose from a complaint filed on December 17, 1980 against Rabin, the corporation and 37 other defendants in *Securities and Exchange Commission* v. *Cable/Tel Corp., et al.*, S.D.N.Y., 80 Civ. 7170 (MEL). The employee agreed to the issuance of this judgment without admitting or denying the allegations of the Commission's complaint upon which the proceeding was based. The employee become affiliated with Lerner Associates at the firm's Teaneck, New Jersey office in April, 1985 subsequent to the issuance of the consent judgment. His activities at Lerner Associates are limited to the sale of certain securities, and he is subject to strict supervisory controls.

Section 9(a) of the Investment Company Act, as is relevant here, disqualifies any person or company from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered open-end company or registered unit investment trust, if such person has been permanently or temporarily enjoined from engaging or continuing any conduct or practice in connection with its activities as an underwriter, broker, dealer or investment adviser, or in connection with the purchase or sale of any security or if an affiliated person of such person or company has been so enjoined. Accordingly, absent an exemption from section 9(a) the consent judgment against the employee would prevent Lerner Associates from serving as the principal underwriter of the Fund.

Section 9(c) of the Investment Company Act provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a) of the Act, "either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to [Applicant], are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application."

Applicant submits that the prohibitions of section 9(a) of the Investment Company Act would be unduly and disproportionately severe as applied to it and that its conduct has been such as not to make it against the public interest or protection of investors to grant the requested exemption. In support of this contention, Applicant represents that:

(1) The conduct giving rise to the disability herein was in no way traceable to Lerner Associates;

(2) The employee whose conduct gives rise to the disability herein does not occupy a management or supervisory position at Lerner Associates;

(3) The employee in question is authorized to engage in only limited sales activities and is subject to strict supervision by the Branch Manager of the Teaneck, New Jersey office;

(4) Denial of the requested order would unfairly penalize the firm and its other approximately 160 employees for something for which they had no responsibility; and

(5) Applicant has adopted a broad array of measures designed to prevent a recurrence of the conduct which gave rise to the disability herein.

Based upon the foregoing, Lerner Associates submits that its application should be granted.

The Commission has considered the matter and finds that the prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Lerner and that the conduct of Lerner has been such as not to make it against the public interest or protection of investors to grant the application of Lerner for a temporary exemption from section 9(a) pending determination of the application.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Lerner is hereby temporarily exempted from the provisions of section 9(a) of the Act, pending final determination by the Commission of Lerner's application for an order permanently exempting Lerner from the provisions of section 9(a).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-4803 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24033; 70-7216]

Pennsylvania Electric Co. et al., Proposed Repayment Agreements Providing for Letters of Credit

February 27, 1986.

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey and Metropolitan Edison ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania, all subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

Penelec, JCP&L and Met-Ed (collectively, the "Companies") intend to obtain unsecured bank letters of credit ("Letters of Credit") issued in favor of the Pennsylvania Department of Environmental Resources ("PaDER") and/or the New Jersey Department of Environmental Protection ("NJDEP") to secure the Companies' obligations under certain regulatory requirements pertaining to waste disposal facilities. The Companies propose to enter into separate Repayment Agreements ("Agreements") with banks. Under the Agreements, the Companies would be severally obligated to repay on demand any amounts (but only to the extent of each company's allocable share thereof in the case of the jointly owned stations) which the banks may pay to the PaDER or the NJDEP, under the Letter of Credit, together with interest and fees as more fully disussed in the declaration. It is proposed that the Letters of Credit for Penelec's facilities will be in an

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aggregate principal amount of up to $2,880,000. The obligations for JCP&L's and Met-Ed's facilities will be in an aggregate amount of up to $250,000 and $450,000, respectively.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4804 Filed 3-4-86; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Government Purchases of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

Correction

In FR Doc. 86-4247 beginning on page 6964 in the issue of Thursday, February 27, 1986, make the following correction: On page 6965, first column, thirteenth line, "1985" should have read "1995".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirments of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a publci hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before April 25, 1986, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Indiana Transportation Museum

(Waiver Petition Docket Number RSGM-85-24)

The Indiana Transportation Museum (ITM) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 16 passenger cars. The ITM indicates that these cars operate on a limited schedule through areas not subject to extensive vandalism and have carried over 60,000 passengers without injury. The petitioner is requesting this temporary waiver to allow for the orderly installation of certified glazing.

Maryland State Railroad Administration

(Waiver Petition Docket Number RSGM-85-27)

The Maryland State Railroad Administration seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one passenger car. The petitioner plans to operate this car as a backup unit in commuter service between Baltimore, Maryland, Washington, DC, and Martinsburg, West Virginia. A temporary waiver is requested to allow time to complete the installation of certified glazing.

The Chicago, West Pullman and Southern Railroad Company

(Waiver Petition Docket Number RSGM-85-28)

The Chicago, West Pullman and Southern Railroad Company, Wisconsin and Calumet Division (WICT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and two cabooses. The WICT operates on 90 miles of track in a rural area of south central Wisconsin near Janesville. The petitioner states there have been no reported acts of vandalism and feels that compliance with FRA saftey glazing requirements is unnecessary.

Merchant Grain and Transportation, Inc.

(Waiver Petition Docket Number RSGM-85-29

The Merchant Grain and Transportation, Inc. (MGT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive, #1210. The MGT plans to operate a short line railroad at Jeffersonville, Indiana. The petitioner states that they have not encountered any acts of vandalism and feels that compliance with FRA safety glazing requirements is unnecessary.

Chicago, Central and Pacific Railroad Company

(Waiver Petition Docket Number RSGM-86-1)

The Chicago, Central and Pacific Railroad Company (CCP) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 15 cabooses. The CCP plans to operate on approximately 674 miles of track purchased from the Illinois Central Gulf Railroad (ICG). The track is located between Omaha, Nebraska, and just east of Chicago, Illinois, with branch lines from Fort Dodge to Sioux City, Iowa, and from Manchester to Cedar Rapids, Iowa. The CCP states that the majority of the track runs through rural areas and small towns with the exception of Omaha, Nebraska, and Waterloo and Cedar Rapids, Iowa. The petitioner indicates that the ICG has not experienced any window glazing safety problems with these cabooses during the past two years. The temporary waiver is requested to allow time for the CCP to retrofit these 15 cabooses with certified glazing.

Old Augusta Railroad Company

(Waiver Petition Docket Number RSGM-86-2)

The Old Augusta Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive, #100. The locomotive operates on 2½ miles of track near New Augusta, Mississippi, and sees limited use as an emergency backup unit. The petitioner states they have had no problems with vandals and feels that compliance with FRA safety glazing requirements is unnecessary.

Lackawanna Valley Railroad

(Waiver Petition Docket Number RSGM-86-3)

The Lackawanna Valley Railroad (LVAL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for side glazing on one locomotive, #901. The LVAL operates on 25 miles of track located in Lackawanna County, Pennsylvania, and leased from the Lackawanna County Railroad Authority. The petitioner indicates there have been no incidents of vandalism to their locomotive, and no injuries have occurred as a result of side window breakage. The LVAL states that the locomotive has FRA approved glazing in the front and rear windows and feels the installation of certified side glazing is unnecessary.

Bay Colony Railroad Corporation

(Waiver Petition Docket Number RSGM-86-4, SA-86-1 and LI-86-1)

The Bay Colony Railroad Corporation (BCLR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223), the Safety Appliance Standards (49 CFR Part 231), and the Locomotive Safety Standards (49 CFR Part 229) for one locomotive, #BCLR 151. The locomotive glazing presently installed is DUOLITE Safety Glass and does not comply with 49 CFR Part 223. The locomotive handholds and switching steps do not comply with 49 CFR Part 231. The locomotive is not equipped with a speed indicator (49 CFR 229.117), headlight dimmer switch (49 CFR 229.125) and a slip-slide alarm (49 CFR 229.115). BCLR 151 is a 25 ton industrial type locomotive built by General Electric in 1942. The BCLR indicates the locomotive will be used largely on trackage within yard limits.

Port Authority Trans-Hudson Corporation

(Waiver Petition Docket Number LI-86-6)

The Port Authority Trans-Hudson Corporation (PATH) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). PATH has ordered 95 electrically self propelled passenger cars, which are considered "MU locomotives" under FRA regulations, and specified that these units be built to comply with subsection (b) of § 229.141. Subsection (b) sets body structure design standards for new locomotives operated in trains having a total weight of less than 600,000 pounds. Subsection (a) sets higher design standards for locomotives used in trains weighing over 600,000 pounds. The new cars will weigh approximately 68,400 pounds per unit, and when operated as planned in 10 unit trains, the gross empty weight will exceed the 600,000 pounds limit set forth in Subsection (b). The railroad is, therefore, seeking a waiver of compliance from the regulation in order to be allowed to build the MU locomotives to the less stringent requirements of § 229.141 (b) rather than those of § 229.141 (a).

Issued in Washington, DC, on February 28, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-4771 Filed 3-4-86; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. IRA-32]

Cascade Fireworks, Inc., Application for Inconsistency Ruling; Notice of Termination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Termination of application for inconsistency ruling.

SUMMARY: This document terminates Docker No. IRA-32 by which RSPA solicited comments on the merits of an application for an inconsistency ruling filed by Cascade Fireworks, Inc., an Oregon Corporation (Cascade) (49 FR 44048, November 1, 1084).

In its application, Cascade requested the RSPA determine whether Oregon Revised Statute (ORS) 480.120(1)(a), dated October, 1983, governing the shipment and transportation of fireworks within the State of Oregon, was inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA. On June 13, 1985, the Oregon legislature enacted Oregon House Bill 2939 A-Engrossed, amending ORS 480.120(1)(a) and other provisions related to fireworks. The amendments became effective January 1, 1986. The enactment amends ORS 480.120(1)(a) by deleting the language formerly restricting shipments of fireworks to common carriers only. As a result of this amendment, the question of inconsistency as posed in Cascade's application is moot. Therefore, Docket No. IRA-32 is hereby terminated.

Signed in Washington, DC on February 28, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-4827 Filed 3-4-86; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. IRA-34]

Application for Inconsistency Ruling; State of Illinois, Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Extension of time for public comment.

SUMMARY: This notice extends the public comment period for IRA-34 (50 FR 45186, October 30, 1985).

DATE: Comments should be received within forty-five (45) days of the date of publication of this notice. (Late filed comments will be considered to the extent practicable.)

ADDRESSES: The application and all related correspondence and comments may be reviewed in the Dockets Branch, Office of Hazardous Materials Transportation, Room 8426, 400 Seventh Street, SW., Washington, DC 20590. Comments on the application may be submitted to the Dockets Branch at the above address. To ensure proper handling, indicate Docket No. IRA-34 on your submission. Three copies of each submission are requested.

A copy of each comment must also be sent to the following, individuals:

Mr. Jack McKay, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036

Mr. Henry L. Henderson, Assistant Attorney General, Environmental Control Division, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601.

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Certification of the fact that copies have been sent to these individuals is to be indicated on any comments submitted to the Dockets Branch. [The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. McKay and Henderson at the addresses noted in the **Federal Register**."]

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. (Tel: 202/755-4972).

SUPPLEMENTARY INFORMATION: On October 30, 1985, RSPA published a notice for comment concerning Wisconsin Electric Power Company's application for an administrative ruling on the question of whether an Illinois statute, which imposes a fee of $1000 per cask upon owners of spent nuclear fuel being transported through Illinois, is inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

The public comment period was scheduled to end on December 20, 1985. Because a number of prospective commenters requested additional time, RSPA extended the comment period to January 21, 1986. RSPA subsequently received requests from the State of Illinois and the Electric Utility Companies' Nuclear Transportation Group to reopen the comment period for this proceeding. Both requestors cited the need for an opportunity to respond to arguments first raised in comments submitted in response to the public notice. In the interest of compiling a comprehensive administrative record from which to develop a ruling, RSPA is hereby reopening the comment period on IRA-34 for a 45-day period commencing with the publication of this notice in the **Federal Register**

Issued in Washington, DC, on February 28, 1986.

Alan I. Roberts,

Office of Hazardous Materials Transportation.

[FR Doc. 86-4826 Filed 3-4-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0018
Form Number: IRS Forms 706-B(1) and 706-B(2)
Type of Review: Extension
Title: Information Return by Trustee for Taxable Distribution or Termination from a Generation-Skipping Trust (706-b(1)); and Beneficiary's Share of a Taxable Distribution From a Generation-Skipping Trust (706-B(2))

OMB Number: 1545-0495
Form Number: IRS Form 4506-A
Type of Review: Extension
Title: Request for Public-Inspection Copy of Exempt Organization Tax Form

OMB Number: 1545-0110
Form Number: IRS Form 1099-DIV
Type of Review: Extension
Title: Statement for Recipients of Dividends and Distributions

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0092
Form Number: ATF F 5100.31 (1648/1649/1650)
Type of Review: Extension
Title: Application for Certification/Extension of Label/Bottle Approval under the Federal Alcohol Administration Act

Clearance Officer: Roy J. Betsill, (202) 566-7641, Bureau of Alcohol, Tobacco, and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1986.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 4716 Filed 3-4-86; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Delegation Order 25; Docket No. 86-6]

Organization and Functions; Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, and by Treasury Order No. 129 (Rev. No. 2), dated April 22, 1955, it is ordered as follows:

A. During a vacancy in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Senior Deputy Comptroller for Bank Supervision,

(2) Senior Deputy Comptroller for Policy and Planning,

(3) Deputy Comptroller for Multinational Banking,

(4) Chief National Bank Examiner,

(5) Deputy Comptroller for the Midwestern District.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptroller for the districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 24 is hereby repealed.

Dated: February 26, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-4729 Filed 3-4-86; 8:45 am]

BILLING CODE 4810-33-M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; National American Insurance Company of New York

Notice is hereby given that the Certificate of Authority issued by the Treasury to National American Insurance Company of New York, under

the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27123, July 1, 1985.

With respect to any bonds currently in force with National American Insurance Company of New York, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2319.

Dated: February 25, 1986.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-4710 Filed 3-4-86; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 43
Wednesday, March 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 52b), notice is hereby given that at 3:53 p.m. on Thursday, February 27, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Gorman, Gorman, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, February 27, 1986; (2) accept the bid for the transaction submitted by Citizens State Bank, Gorman, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Citizen State Bank, Gorman, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Gorman, Gorman, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) consider recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,350-L (2nd Amendment)
  The First National Bank of Midland, Midland, Texas
Memorandum and Resolution re:
  The First National Bank in Humboldt, Humboldt, Iowa

(C) consider recommendations regarding the Corporation's assistance agreements with inspired banks pursuant to section 13 of the Federal Deposit Insurance Act; and

(D) consider a request for financial assistance pursuant to section 13(c)(1) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael Patriarca, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6], (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: February 28, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-4860 Filed 3-3-86; 8:45 am]

BILLING CODE 6717-01-M

2

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC-170 (Sub-No. 1)—
  Short Notice Effectiveness For Independently Filed Single-Factor Motor-Water Rates.
Ex Parte No. MC-176—
  Short Notice Effectiveness For Independently Filed Motor Passenger Carrier Rates.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary

[FR Doc. 86-4725 Filed 2-28-86; 11:36 am]

BILLING CODE 7035-01-M

3

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, March 14, 1986, and continue until all official business is completed.

PLACE: Holiday Inn—North, Spanish Oaks 1 & 2, I-55 North Frontage Road, Jackson, Mississippi 39206.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Discussion and Action on the Recommendations of the Operations and Regulations Committee
   —Denial of Refunding—45 CFR Part 1625
   —Definition of "Private Attorney" 45 CFR Part 1614
   —Questioned Costs—45 CFR Part 1630
3. Discussion and Action on the Recommendations of the Audit and Appropriations Committee
   —FY 1986 Consolidated Operating Budget
4. Public Comment

CONTACT PERSON FOR FURTHER INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date Issued: March 3, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-4925 Filed 3-3-86; 3:56 pm]

BILLING CODE 6820-35-M

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federal register

Wednesday
March 5, 1986

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 7, 25, 245, and 252
Beer; Final Rule

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts, 7, 25, 245, and 252

[T.D. ATF-224; Reference Notice No. 449]

Beer

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is revising and recodifying regulations regarding the qualification of breweries, the production and removal of beer and cereal beverages, and the tax payment of beer. The regulations in 27 CFR Part 245 are reissued as Part 25. These regulations incorporate a large number of IRS revenue rulings and AFT rulings. Many substantive changes are adopted which will relieve the regulatory burden on brewers, and result in some cost savings.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum or Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7626.

SUPPLEMENTARY INFORMATION:

General

This final rule is part of ATF's plan to review, update, and reissue all of its regulations. Restrictive regulations have been deleted where possible. Twenty eight IRS and ATF rulings have been incorporated into the regulations or declared obsolete. The number of regulatory sections has been reduced to 146, eliminating 27 sections. Ten letterhead notices or applications have also been eliminated leaving only 18 notices or applications, most of which are one-time notices. Four Government forms have been replaced by commercial records while one additional form has been eliminated altogether. Finally, all of the sections in this part have been rewritten to improve their clarity and understanding.

Notice Number 449

ATF published Notice No. 449 in the **Federal Register** on February 3, 1983 (48 FR 4803). That notice proposed revision of the beer regulations and reissuance of 27 CFR Part 245 as 27 CFR Part 25. A 90-day comment period was provided for the submission of written comments.

In response to Notice No. 449, ATF received 5 written comments. Respondents were the United States Brewers Association (U.S.B.A.), the G. Heileman Brewing Company, the Miller Brewing Company, Anheuser-Busch Companies, and the Surety Association of America, an association representing over 500 companies which write surety bonds.

All respondents generally favored the proposed regulations. Their specific comments are set forth below according to subject matter. ATF received no requests to hold a public hearing and consequently did not hold a hearing regarding these regulations.

Storage of Taxpaid Beer

G. Heileman requested that § 25.23, 25.24, and 25.213 be amended to provide for the storage of taxpaid beer on brewery premises. Heileman stated that required recordkeeping is adequate to protect the revenue. Their comment envisions automatic extension or curtailment of brewery premises to accommodate taxpaid beer, and a simpler method of obtaining ATF approval for such storage.

In the past, ATF has approved numerous variances allowing brewers to store taxpaid beer of other brewers' production on brewery premises. In view of the many past approvals, ATF is authorizing storage of taxpaid beer in § 25.24 under the following conditions:

(1) Taxpaid beer may not be of the brewer's own production;

(2) Taxpaid beer will be segregated in such a manner as to preclude mixing with untaxpaid beer;

(3) The brewer will have a wholesaler's or importer's permit, when required, and keep appropriate records of the taxpaid beer;

(4) Taxpaid beer will be in packages or kegs, i.e., no bulk beer; taxpaid beer may not be relabeled;

(5) Taxpaid beer transactions will not be shown on required brewery records;

(6) The brewer will purchase a special tax stamp as a wholesaler, if required; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer or marking to show the status of taxpaid beer, if necessary to protect the revenue.

Beer of the brewer's own production being returned to the brewery is eligible for an offset under § 25.159 if returned to the brewery from which removed, or for an adjustment to the tax return if removed from another brewery under § 25.213. This beer may not be stored taxpaid at the brewery premises under § 25.24.

Marking of Rooms and Tanks

Anheuser-Busch and Miller requested deleting the requirement in § 25.32 to mark each room or division of the brewery with a sign designating its use. Miller also suggested eliminating the requirement in § 25.35 to mark the serial number on each tank in the brewery. Both brewers stated these are unnecessary burdens on the industry and of little value.

ATF agrees that there is little benefit to require marking each room or division of a brewery with a sign designating its use. Consequently, this requirement was dropped by deleting proposed § 25.32.

With respect to marking serial numbers (and capacities marked on tanks under § 25.35(a)), ATF believes these markings have value in taking inventories at breweries, both for brewers and for ATF officers. Therefore, this requirement is not changed. As proposed, this section does not require the "use" to be marked on each stationary tank.

Measuring Systems

Subpart E, Measurement of Beer, requires brewers to measure the quantity of beer transferred from brewery cellars to packaging operations. The actual system of measurement is left to the brewer who may now use the system best suited to brewery operations. A brewer may continue to employ a beer meter or may use other systems such as a gauge glass or tank readings. Under § 25.42, the brewer is required to test and adjust meters, gauge glasses, or other devices used, to insure their accuracy and is required to keep records of those tests.

No comments were addressed to this subpart and Subpart E is adopted without change from the notice.

Brewery Qualifications

Subpart G, Qualifications of a Brewery, contains regulations relating to the filing of notices and qualifying documents (except bonds). This subpart replaces Part 245: Subpart G, Notices; Subpart J, Approval of Documents; Subpart L, Changes in Name, Proprietorship, Control, Location, Premises, and Equipment; and Subpart M, Notice of Discontinuance of Business.

Brewer's notice. The brewer's notice, Form 27–C, is redesignated Form 5130.10.

Under Subpart G, the brewer's notice remains in effect on a continuing basis; it does not require renewal every 4 years. However, under § 25.71, the regional director (compliance) may at any time require a brewer to give a

superseding notice in conjunction with the filing of a new brewer's bond.

Section 25.71 also allows brewers to file amended notices within 30 days of a change rather than within 10 days of the change. Changes in proprietorship or in partnership generally require the filing of a new notice before commencing business. Section 25.74 allows brewers to file a list of changes in the stockholders in the corporation annually on July 1, rather than within 30 days of the changes.

Under § 25.66, brewers no longer need to submit articles of incoporation with the brewer's notice. However, this section requires that the articles of incorporation, corporate bylaws, and certificate authorizing the brewer to do business in the State be kept available at the brewery for inspection by ATF officers. Miller requested clarification of this section to allow these corporate documents be made available for inspection at the brewer's home brewery, when in the case of a multiplant company, this information is referenced in the various brewers notices to the brewer's notice covering the home brewery. Miller's request was anticipated by the proposed regulations. However, to clarify their intent, § 25.66(d) states that these documents need only be available for inspection at the brewer's home brewery. Each brewer's notice filed by a multiplant brewer will also be required to state the location where these corporate documents may be examined.

Miller also requested amendment of § 25.75 to delete the requirement that new brewer's notices be filed due to changes in officers or directors of the corporation. As an alternative, they suggested that only a new notice for the brewer's home brewery be filed to reflect such changes. ATF finds the intent of §§ 25.62(b) and 25.75 is to allow for filing of a brewer's notice only at the brewer's home brewery when this information is incorporated by reference under § 25.62(b) at other plants. However, § 25.75 has been modified to make it clear that only the brewer's notice at the home brewery need be amended due to changes in officers and directors.

The requirement to include a list of major brewery equipment on the brewer's notice has been deleted. Also deleted is the requirement to include copies of certificates issued by offices where brewer's trade names are registered. Several elements have been added to the brewer's notice. These include a statement of the brewer's business day, evidence of control to allow transfers of beer without payment of tax between breweries, and the statement of process by which a brewer will render beer unfit for beverage use.

Section 25.62, Data for notice, simplifies existing instructions relating to the filing of corporate documents and the description of the brewery.

Although ATF will not require brewers to file new brewer's notices with the effective date of these regulations, because of the changes in the form, a new and complete notice will be required the next time a brewer intends to file a new or amended brewer's notice.

Statement of process. Fermented beverages produced and marketed under the designations of "lager" or "malt liquor" have been added to those for which no statement of process is required ("beer," "ale," "porter," and "stout"). Products such as flavored beer, flavored malt liquor, cereal beverages, "malt beverages," and the like still require the filing of a statement of process under §§ 25.62(a)(10) and 25.67.

A new section, § 25.67, covers the statement of process. It requires that the base product conform to the definition of "beer." It is ATF's position that all fermented products (except sake, a wine which is included under "Beer," and cereal beverages which are nontaxable) produced by a brewer should have the characteristics of beer in order to insure their proper tax classification, and to insure that they may be produced at a brewery.

G. Heileman commented that proposed § 25.67 required products for which a statement of process was filed to have the characteristics of "beer" as defined in § 25.11. Heileman noted that cereal beverages are not "beer" and not subject to tax, but are covered by a statement of process. They further requested that all regulatory requirements concerning cereal beverages be relaxed, including the requirement to file a statement of process.

Section 25.67 has been modified by stating that cereal beverages need not have the characteristics of "beer." However, ATF believes that it is important to file statements of process for cereal beverages to insure that their manufacture will result in a product which is non-taxable. Similarly, ATF believes that a statutory change in the Internal Revenue Code would be necessary to eliminate other requirements relating to cereal beverages.

Section 25.67 requires brewers who change a statement of process to receive ATF approval prior to using the changed process. Prior approval of a brewer's statement of process will insure proper tax classification of products produced at breweries, and will insure that only beverages which may be produced at breweries are so produced. This change is consistent with the approval of formulas for wine or distilled spirits products prior to their production.

Incorporation of qualifying documents by reference. Section 25.62(b) permits a brewer to incorporate certain organizational documents by reference into the brewer's notice. These organizational documents may be filed for any type of premises such as a distilled spirits plant or another brewery, and may be filed in any ATF region.

Plats. The requirement for brewers to prepare and submit plats of the brewery premises, now contained in Subpart I of Part 245, is deleted.

Alternation of operations. In response to several inquiries from brewers wishing to produce or bottle wine, a new section has been added to Subpart G. Under § 25.81, a brewer may alternate a portion of the brewery between a brewery and a bonded winery or a taxpaid wine bottling house. After receiving approval of the qualifying documents as a bonded or taxpaid wine premises, and obtaining a new brewer's bond or consent of surety, a brewer may alternate to a wine premises by filing a notice with the ATF area supervisor prior to the change in premises. All beer must be removed prior to qualifying the premises as a bonded or taxpaid wine premises, and all wine must be removed prior to alternating the premises back to a brewery. Records of wine and other requirements relating to wine are found in Parts 231 and 240 of this chapter.

Bonds and Consents of Surety

Only one comment, from the Surety Association of America, was addressed to surety bonds. All proposed regulations dealing with bonds have been adopted without change. Anheuser-Busch commented on allowing surety bonds to be continuing rather than requiring resubmission every 4 years. ATF, however, cannot adopt this comment since 26 U.S.C. 5401 specifically requires a new bond every 4 years. The Brewer's Bond, Form 1566, is renumbered Form 5130.22, and the Brewer's Bond Continuation Certificate, Form 1566–A, is renumbered Form 5130.23.

Under § 25.93, the penal sum of the bond would be equal to 10 percent of the amount of tax a brewer would be liable for during a calendar year during the period of the bond. For example, if a small brewer removed 300,000 barrels of beer a year subject to tax and made no

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other removals, the penal sum of the bond would be determined as follows:

60,000 barrels @ $7=$420,000
240,000 barrels @ $9=$2,160,000
Annual liability=$2,580,000.

The penal sum would be 10 percent of this or $258,000. A brewer would, however, be free to obtain a bond with a greater penal sum. Maximum and minimum penal sum remain at $500,000 and $1,000, respectively.

With the change in calculating the penal sum, § 25.175 requires brewers to prepay the tax on removals when their outstanding tax liability exceeds the limits of coverage on the bond (when less than the maximum penal sum), until the outstanding tax liability is reduced below the bond coverage. Rules for prepayments are contained in § 25.175.

These changes are intended to aid small brewers in obtaining brewer's bonds and to allow them to purchase smaller bonds.

Special Tax Stamps

Section 25.112 recognizes that many brewers are wholesale dealers in beer. Brewers who purchase for resale beer produced by other brewers are required to purchase special tax stamps as wholesalers. ATF notes that brewers purchasing beer from other brewers or importing beer and storing it taxpaid on brewery premises under § 25.24 are liable for special tax as wholesalers; the exemption in 26 U.S.C. 5113(a) does not apply to sales of other brewers' taxpaid beer.

Marks, Brands and Labels

Subpart J, Marks, Brands and Labels, contains requirements for the marks on bottles, cans, kegs, barrels, and other containers used to remove beer from the brewery.

Marks on barrels and kegs, bottles, and cans. Under § 25.141, a brewer may utilize a coding system to show the actual place of production when the brewer operates two or more breweries. A brewer need only notify the regional director (compliance) of the coding system to be used, rather than apply to use a particular coding system. Similarly, a brewer may use a coding system for labels used on bottles and cans upon notification to the regional director (compliance) under § 25.142.

Although not incorporated into § 25.141, ATF notes that barrels or kegs need not be owned by the brewer and may be leased if they bear the required markings of the brewer filling them.

Tolerance in filling bottles and cans. Section 25.142, Bottles, incorporates Revenue Ruling 71–227 which defines "good commercial practice" in the filling of bottles and cans, and establishes a tolerance from the stated label fill. Under the revenue ruling, the tolerance was not more than plus or minus 0.5 percent, determined by comparing the brewer's fill test records with stated label contents, calculated on not less then 3 consecutive months.

The ruling is further modified by establishing the tolerance on each 3 month period. This removes any ambiguity in application of the section while providing a long enough time period to allow for normal flustuations in filling bottles and cans. A statement of tax liability has also been inserted into the section. Although no tax will be collected on removals when the fills are within the prescribed tolerance (±0.5%) in a three month period, and when filling is conducted in compliance with good commercial practice, the brewer is liable for tax on the *entire amount* of overfill when the fill tolerance has been exceeded for a three month period, or when the brewer does not fill in compliance with good commercial practice. This statement reflects long-standing ATF policy on overfills which is incorporated in regulations in § 25.156 for keg beer (formerly § 245.113).

Case markings. Under § 25.143, a brewer may use unmarked cases when cartons containing beer or the visible portions of bottles or cans within the case show the required markings. If the required markings are on the case, they may be placed anywhere on the case including the bottom.

Other markings. Under §25.145, the designation "beer" is included with the mandatory markings on bulk containers of beer removed from a brewery without payment of tax, for export or for transfer to another brewery of the same brewer.

Tax on Beer

Subpart K contains regulations concerning the determination and payment of tax on beer. Sections 25.156 and 25.157 are modified by requiring taxable removals to be summarized daily by rounding to the second decimal place rather than being reduced to the third decimal place by dropping the 4th and 5th decimal places. Miller Brewing Company questioned the need to compute quantities to the 5th decimal place such as the table of cases in § 25.158. AFT, however, is retaining the requirement to compute barrelage quantities to five decimal places since a very accurate factor per case is necessary to insure accurate barrelage quantities when hundreds of thousands of cases are removed subject to tax every day at large breweries. The resulting barrelage quantity may, however, be rounded to two decimal places rather than three with no loss of accuracy.

Size of containers. The tax computation on bottled beer in § 25.158 reflects a barrel equivalent for cases containing 48–7 oz. bottles. This size was added at the request of both Miller and Anheuser-Busch. Corrections were made in the barrel equivalents for cases of 40–7 oz. bottles, 48–10 oz. bottles, and 60–12 oz. bottles.

In their comment, Heileman requested that the limitations on the size of containers in which beer may be removed from the brewery be eliminated or expanded.

ATF notes that under § 25.158, beer may be removed in bottles and cans of any size, including beer in unlisted case sizes. Brewers may not remove beer taxpaid in containers larger than a hogshead (62 gallons) by virtue of the language of 26 U.S.C. 5412, although regulations provide for removal of beer in bulk containers for purposes other than for consumption or sale (export, transfer between breweries, use in manufacturing). ATF is not at this time adopting new sizes for barrels or kegs outside of those fractional parts authorized by § 25.156 since no need for additional keg sizes has been shown. We are, however, receptive to additional keg sizes if a need for them is demonstrated.

Offsets. Section 25.159 contains the provisions of ATF Ruling 79–6, somewhat modified. This section prohibits a brewer from receiving an offset or deduction for beer returned to the brewery if the brewer does not issue credit to the customer who returned the beer within 30 days after the return of the beer to the brewery. A brewer who takes an offset or deduction for returned beer, but who does not timely credit the customer for an amount at least equal to the tax, is required to make an increasing adjustment on the next tax return.

Prepayment of tax. Section 25.174 allows a brewer to prepay tax on removals of beer when the penal sum of a brewer's bond (in less than the maximum penal sum) is not sufficient to cover outstanding tax liability.

Removal of Beer Without Payment of Tax

All provisions of Part 245 relating to the removal of beer from a brewery without payment of tax appear in Subpart L, Removals Without Payment of Tax.

Transfer of beer between breweries. Regulations governing the transfer of beer between breweries of the same ownership are included in §§ 25.181.25.186.

Form 2035, Notice of Transfer of Untaxpaid Beer, has been eliminated. In place of this form, § 25.186 requires the shipping brewer to prepare a commercial record for invoice for the beer to be transferred. This invoice is serially numbered and information shown is similar to that appearing on Form 2035.

The shipping brewer will prepare the invoice, in duplicate, and upon shipment furnish the original to the receiving brewer and file the other copy. The receiving brewer will note any discrepancy in the beer received on a copy of the invoice and maintain this invoice with the brewery records. These invoices will be used by both brewers to prepare their daily records and their monthly reports.

Under § 25.181, the shipping brewer may reconsign beer while in transit or may return beer to the shipping brewery for any reason, and beer may be reconsigned to any brewery of the same ownership. When beer is reconsigned during transit, § 25.186 requires the shipping brewer to void all copies of the first invoice and prepare a new invoice showing the new recipient, or to mark all copies of the original invoice with "Reconsigned to," followed by the name and address of the new receiving brewery. The new invoice will be distributed and filed in the same manner as the original invoice.

Section 25.184 requires a brewer to file a claim for remission of tax liability on beer lost during transit when the loss exceeds 2 percent of the quantity transferred. As proposed, this section would have also required immediate reporting of loss of any beer in cases or in kegs or barrels to the regional director (compliance). Miller objected to this proposal on the basis that it would increase paperwork and have little beneficial effect. ATF agrees with Miller's comment and has deleted proposed § 25.184(d)(2). Brewers must continue to make immediate report of losses due to theft or other unusual reason.

Removal of beer unfit for beverage use. Under § 25.191, a brewer may deliberately render beer unfit for use and remove it without payment of tax for use in manufacturing, as well as remove beer which had unintentionally become unfit for beverage use. An application is no longer required; however, if brewers intend to render beer unfit for beverage use, they must file a statement of process as part of the brewer's notice, Form 5130.10. Section 25.192 has been clarified to allow removal of sour or damaged beer in bulk containers.

Export of beer. Section 25.203 allows brewers to export beer without payment of tax in bulk containers (tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of vessels), as well as bottles and cans or kegs and barrels. Additionally, § 25.14, tanks, vehicles and vessels, requires the same markings on bulk containers of beer removed without payment of tax from a brewry for export that are required for bulk containers removed for transfer to another brewery. A conforming change to allow export of beer in bulk containers has been made to § 252.143, Containers [a new section].

Miller requested that changes be made in the export regulations, Part 252, relating to beer being exported. First, they requested that IRS Revenue Ruling 71–208 allowing use of an ocean bill of lading as proof of exportation be incorporated into the part. They also requested that "Export" marks required on cases of beer exported be deleted when export shipments are made directly by the brewer and are supported by appropriate shipping documents.

ATF agrees that IRS Revenue Ruling 71–208 concerning ocean bills of lading should be incorporated into Part 252. Consequently, a new section, § 252.43, has been added which allows use of the ocean bill of lading in lieu of Customs certification of ATF Form 1689. In addition, this section permits other proof of exportation to be used including other bills of lading and landing certificates executed by officials of foreign nations or U.S. possessions. Approval from the regional director (compliance) is no longer required for the alternate forms of export certification specified § 252.43. Alternate forms of certification not listed may be used on approval of the regional director (compliance).

ATF has also deleted the requirement to mark each case of beer with "Export" marks when beer is directly exported by the brewer and supported by appropriate shipping records, when beer is removed to a foreign-trade zone, and when beer is removed to the military. Section 252.144 (formerly §§ 252.143 and 252.150e) is amended.

Beer for research, development or testing. Sections 25.195–25.198 govern removals of beer without payment of tax for analysis, research, development or testing purposes. Brewers are no longer required to apply to the regional director (compliance) for permission to remove beer for research, development or testing.

In their comment, Miller objected to the requirement to mark each package of beer removed from the brewery for research, development or testing (but not for routine laboratory analysis) with the marking "Not for consumption or sale." Miller requested that beer shipped for these purposes in interplant transfers not be subject to this marking requirement.

ATF agrees that the marking requirement "Not for consumption or sale" is burdensome when placed on containers of beer removed for research, development or testing. Therefore, § 25.198 has been amended to delete this requirement. The section does, however, provide that the marks be applied when, in the opinion of the regional director (compliance), they are necessary to protect the revenue.

Beer Returned to Brewery

Section 25.211 requires a brewer to determine the actual quantity of beer in kegs or cases returned to the brewery. Section 25.211 incorporates Revenue Ruling 60–82 as modified by Revenue Ruling 60–298. Accordingly, a brewer need not use weight to determine the actual quantity of beer returned, but may use other accurate methods such as gauging by stick or by a gauging glass in the case of an accumulation tank. Brewers no longer need to notify the regional director (compliance) of these other methods to be used. In the case of kegs equipped with tamper-proof fittings, brewers are relieved of making balling and alcohol content determinations, thus incorporating ATF Ruling 75–28.

Miller requested that § 25.211 be amended to allow for the determination of quantity of returned beer by weighing cased beer contained in dumpsters, or weighing pallets containing returned kegs of beer, and subtracting the tare weight to determine the barrelage. Miller stated this procedure would represent a substantial savings over determining quantity of returned beer in individual containers.

ATF views Miller's comment as a significant savings in time for determining quantities of beer returned to the brewery. Consequently, § 25.211(a) has been amended to permit weighing accumulated cases or kegs of returned beer and determining the quantity of returned beer by subtracting tare weight of dumpsters, pallets, and packaging materials. ATF notes that since accumulated beer could be returned by different customers, brewers must be able to establish the quantity of beer returned by each customer in order to satisfy the recordkeeping provision of paragraph (c)

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and to issue credit memoranda, if appropriate.

Miller also commented that the required records in § 25.211(c) seem redundant when supporting documents are kept as required by § 25.211(d). ATF disagrees. Section 25.211(c) requires certain transactions to be kept as part of required daily records—date beer returned, quantity, the name and address of person returning beer and the brewery from which removed. The quantity of beer will be used to prepare the brewer's monthly report. Section 25.211(d) requires that these records be substantiated by credit memoranda, invoices, etc. These documents are necessary to verify that the brewer is entitled to a tax offset or adjustment for the returned beer. When a brewer is required to file notice of intention to return beer to a brewery other than the one from which removed, § 25.213 requires the notice to be filed with the ATF area supervisor of the area in which the brewery is located where the beer is to be returned.

Voluntary Destruction of Beer

Subpart N contains requirements relating to the voluntary destruction of beer. The notice of destruction is now to be filed with the area supervisor of the area in which the beer is to be destroyed. Although the proposed regulations would have made this notice optional at the discretion of the regional director (compliance), ATF is continuing to require this notice of destruction as a revenue protection measure.

Beer Purchased From Another Brewer

Under Subpart O, Beer Purchased From Another Brewer, a brewer may purchase beer in kegs from another brewer which bear the marks and brands of the purchasing brewer. In accordance with 26 U.S.C. 5413, the producing brewer will taxpay the beer. The requirement that the purchasing brewer give notice to the regional director (compliance) of intent to purchase the beer has been deleted. Similarly, the requirement that the purchasing and producing brewers make separate notations in their brewer's monthly reports of the sale or purchase of such beer has been deleted. Both purchasing and producing brewers are required to keep details of the sale or purchase of such beer in accordance with § 25.302, Daily records of operations.

Section 25.231 incorporates Revenue Ruling 62–146, which prohibits a brewer from purchasing taxpaid or tax determined beer in bottles or cans bearing the marks of the purchasing brewer.

G. Heileman commented that it is unnecessary to incorporate Revenue Ruling 62–146 into § 25.231, and that adequate recordkeeping would protect the revenue. ATF, however, disagrees. Taxpaid beer bearing markings of a brewer which did not produce the beer would not identify the brewer who taxpaid the beer. Moreover, such markings would not inform the consumer as to who actually produced the beer. This ruling implements 26 U.S.C. 5413 which allows the purchase of taxpaid beer in kegs bearing the purchasing brewer's marks, but which does not authorize the purchase of taxpaid beer in bottles with the purchasing brewer's markings. Therefore, the revenue ruling has been incorporated in § 25.231.

Section 25.232 incorporates Revenue Ruling 57–25. A brewer engaging in the business of purchasing beer from another brewer must obtain a basic permit under the Federal Alcohol Administration Act as a wholesale dealer of malt beverages.

Cereal Beverages

Section 25.11 defines "cereal beverage" as a beverage produced from malt (or a substitute) either fermented or unfermented, which contains, when ready for consumption, less than ½ of 1 percent of alcohol by volume. This definition recognizes that some cereal beverages are produced without alcoholic fermentation.

Requirements governing labeling of cereal beverages appear in § 25.242. This section incorporates Revenue Ruling 57–322, which allows the designation "Near Beer" to be used on containers of cereal beverages.

Beer Concentrate

Subpart R contains regulations relating to the process of concentration of beer and the reconstitution of beer from concentrate. The definition for concentrate has been moved into § 25.11. This definition makes it clear that concentration is an authorized process in the production of beer.

Other requirements relating to concentrate are greatly simplified. Brewers producing concentrate or reconstituting beer are no longer required to register their process of concentration or reconstitution; Form 3019 is therefore eliminated. Brewers may conduct all operations relating to beer concentrate without notifying the regional director (compliance). Criteria for the production of concentrate and for the reconstitution of beer remain in § 25.262. Labeling requirements for beer produced from concentrate are retained in § 25.263.

The requirement for brewers to obtain a consent of surety in order to concentrate beer or reconstitute beer has been deleted. These processes are now covered under the brewer's bond. Requirements for the penal sum of bonds of brewers producing concentrate or reconstituting beer have been moved into § 25.93. The basis for tax liability is changed to 10 percent of the liability on beer entered into the concentration process during a calendar year.

Regulations relating to records and reports of brewers producing concentrate or reconstituting beer have been moved into Subpart U.

Form 3020, Transfer of Concentrate Produced from Beer, has been eliminated. Under § 25.264, brewers transferring concentrate may use invoices or commercial records as a record of transfer. The shipping brewer will prepare an invoice which contains the information now found on Form 3020. Upon shipment, the original invoice will be sent to the consignee brewer and a copy retained for the shipping brewer's records.

ATF regulations relating to concentrate have been adopted as proposed. In response to the notice, ATF received 2 comments relating to concentrate; in general the respondents stated the proposed regulations were adequate to cover any concentrate operations.

In Part 252, Subpart Ga, Export of concentrate made from beer, has been combined with Subpart G, Export of beer. This has been done because export procedures for both are similar. Form 3021, Export of beer concentrate, has been eliminated. Brewers exporting beer concentrate will use Form 1689, appropriately modified to record that transaction.

Pilot Brewing Plants

Subpart S contains regulations applicable to pilot brewing plants. This subpart is adopted without change from the notice.

Operation of pilot brewing plants is on a continuing basis, and an approved application will remain current as long as the operator maintains a brewer's bond.

Operators of pilot brewing plants will use the same commercial records or invoices as required under Subpart L to cover transfers of beer from a pilot brewing plant to a brewery of the same ownership. Also, operators, no longer need apply to the regional director (compliance) for authorization to transfer beer without payment of tax from a pilot brewing plant to a brewery of the same ownership. This operation is

authorized by § 25.271 which requires only that commercial records or invoices be used to document the transfer. A consent of surety is not required when transferring beer from a pilot brewing plant to a brewery since this operation is now a condition of the Brewer's Bond.

Refund or Adjustment of Tax

Regulations concerning the filing of claims for refund or credit of tax on beer lost, destroyed, rendered unmerchantable, or on which the tax was overpaid, are found in Subpart T. No comments were addressed to this subpart and it is adopted without change.

This subpart allows adjustment to the beer tax return for beer returned to a brewery, lost, destroyed, or rendered unmerchantable. Under § 25.284, brewers may simply make an adjustment, without interest, for the tax paid on beer returned to a brewery of the brewer, lost destroyed, or rendered unmerchantable. Brewers are no longer required to file claims for credit of tax and may thus receive their tax monies more quickly through use of tax adjustments. Brewers may, however, continue to file claims for refund of taxes paid and for relief from tax liability in appropriate circumstances. ATF points out that under § 25.284(e)(3), brewers may not make adjustments on their tax return for beer lost, destroyed or rendered unmerchantable if they are indemnified through insurance or otherwise in respect to the tax on the beer. Brewers must make available for inspection credit memoranda or other records documenting these transactions.

Records and Reports

Records. Section 25.291 lists all records which are required as part of the recordkeeping system at the brewery. These include transaction forms, daily records and summaries, source records used to prepare daily and summary records and monthly reports, returns, claims, and copies of applications.

Form 2051 has been eliminated as a required record. This form, Record of Brewery Operations, served as a daily summary of transactions occurring at the brewery, and was prepared using source transaction records. Anheuser-Busch commented that proposed § 25.291 was unclear as to whether daily summary records are required in addition to transaction records. The United States Brewers Association also commented that the maintenance of daily summary records is burdensome on small brewers, especially when required in addition to daily transaction records.

In response to these comments, § 25.291 has been clarified to require the keeping of daily records which may consist of source documents, invoices, or other commercial records. A separate government daily record is not required although the regional director (compliance) may require a specific format or arrangement when the information in records is not clearly or accurately shown. Daily summary records are required to be kept for some transactions; these are spelled out in § 25.292(b) and include beer and cereal beverage bottled and racked, taxable removals, and beer returned to the brewery. A daily summary is also required of brewing materials and beer and cereal beverage in process and on hand. ATF notes this requirement does not include a daily physical inventory of beer and cereal beverage, but rather a "book" inventory. Section 25.294 requires physical inventories on a monthly basis.

Section 25.292(a) lists items to be included in the brewer's daily records. This section requires a separate record of beer transferred for bottling and of beer transferred for racking. It also requires brewers to show separately the quantities of beer removed in bulk without payment of tax, as well as quantities removed in bottles and in kegs.

Anheuser-Busch objected to proposed § 25.292(j), which would have required daily records of beer used for laboratory samples at the brewery. They stated that numerous small samples are taken daily from various stages in the brewing process, and that it would be difficult to account for and determine the barrel equivalent of all samples tested on a given day.

ATF agrees that maintaining a record of every sample taken at the brewery is burdensome and does little to protect revenues. However, we believe that records should be kept of packaged beer used as samples at the brewery since this beer is recorded as bottled and poses more jeopardy to the revenue than bulk beer. Therefore, § 25.292(a)(10) has been revised to provide for recordkeeping of samples of packaged beer only.

A record of balling and the alcohol content of wort produced, beer and cereal beverage transferred for bottling or racking, transferred between breweries and to pilot brewing plants is required by § 25.293.

Monthly inventories are required by § 25.294. This section allows brewers to take inventories within 7 days of the end of the month for which taken.

Monthly report of brewer's operations. Form 103 has been redesignated Form 5130.9. Submission of this report will be by the 15th day of the month, rather than by the 10th as previously required.

In keeping with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and as an economy move to reduce the cost of government, ATF solicited information from brewers on alternatives to the brewer's monthly report. Suggested alternatives to monthly reporting included (1) monthly reporting but abbreviated format, (2) monthly reporting, quarterly statistics, (3) quarterly reporting, quarterly statistics, and (4) monthly or quarterly reporting for tax purposes only with statistical data compiled by and published by the private sector.

All brewer respondents—the United States Brewers Association, Anheuser-Busch, Heilemen, and Miller commented strongly in favor of retaining current monthly reporting and monthly reporting of statistics. The major reason given was that the information contained in the ATF monthly statistical releases is not available from other sources and is used extensively by the brewing industry, analysts, and suppliers to monitor industry performance. Quarterly statistics would not provide the data on a timely basis.

ATF finds that the data on Form 5130.9 is a necessary and vital part of its revenue protection mission with respect to breweries since it shows taxable and nontaxable removals, overages, shortages and losses at breweries. Monitoring of this form monthly enables ATF to pinpoint difficulties at individual breweries on a timely basis and to take appropriate steps to protect tax revenues.

Less frequent reporting by brewers would mask unusual transactions at a brewery which could have revenue impact or result in revenue loss to the Government. Transactions which could easily be detected when reported monthly, could easily be diluted when reported on a quarterly basis. Quarterly reporting would also greatly increase the quantity of source records ATF inspectors and auditors would need to examine during revenue audits at breweries. Therefore, ATF is retaining Form 5130.9 as a monthly report form.

Retention of records. The retention period for required records has been reduced to three years in § 25.300. However, the regional director (compliance) may require records to be kept for up to three additional years if the records are necessary for the

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conduct of a current examination or investigation.

Reproduction of records. Under § 25.301, brewers are no longer required to obtain approval from the regional director (compliance) for the copying of records. Brewers may copy records by any process which accurately reproduces the original record and leaves a durable record capable of being preserved.

Other Issues

G. Heileman requested that the regulations be amended to allow the transfer of beer from customs custody to a brewery.

While ATF has no objection to such a proposal, we do not find this transaction authorized by 26 U.S.C. 5054(a); therefore, we cannot incorporate this suggestion into regulations.

Section 25.52 has been amended to permit regional directors (compliance) to grant emergency variances to brewers when good cause is shown, and when an emergency exists. Although Part 245 did not include this emergency provision, it exists for many other types of ATF permittees. Approval authority lies with the regional director (compliance) rather than the Director.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB). In response to Notice No. 449, ATF received comments from the United States Brewers Association, Miller Brewing Company, Anheuser-Busch Companies and G. Heileman Brewing Company concerning information collection requirements. In accordance with 5 CFR Part 1320, these comments regarding records, reports or other information collection requirements are discussed in this preamble under the headings titled Brewer's notice; Tax on Beer; Transfer of beer between breweries; Export of beer; Beer for research, development or testing; Beer Returned to Brewery; Records; and Monthly report of brewer's operations.

Transitional Rules

These rules become final on May 1, 1986. Brewers may continue to operate after that date in accordance with 27 CFR Part 25 without filing new notices or bonds. Existing variances from regulations will remain in effect unless their need is eliminated by Part 25. The following changes will occur on the effective date.

Storage of taxpaid beer. Brewers may store taxpaid beer on brewery premises as of the effective date if all conditions of § 25.24 are satisfied. Existing variances regarding such storage will become obsolete.

Measuring systems for beer. As of the effective date, brewers may employ measuring systems other than meters for measuring beer. Existing variances regarding beer meters or alternate methods for measuring beer will become obsolete.

Brewers notice. Brewers may continue to operate under existing brewers notices. Variances which are not affected by the new regulations (such as use of brewery for other purposes) will remain in effect. A brewer will be required to file a new and complete brewer's notice on Form 5130.10 the first time it is necessary to file a new or amended brewer's notice.

Brewers bonds. Existing bonds or continuation certificates remain valid until their expiration. New bonds or continuation certificates will be filed on Forms 5130.22 or 5130.23. Brewers may elect to file new bonds prior to their expiration to take advantage of reduced penal sums or for other reasons.

When determining penal sums for bonds which are in less than the maximum penal sum, brewers should use future estimated removals as the basis for deteminining the penal sum. Regional directors (compliance) may, however, disapprove bonds which in their opinion, contain inadequate penal sums.

Beer for research, development or testing. Beer may be removed for research, development or testing under § 25.196 with no marking requirement, unless the regional director (compliance) notifies the brewer prior to the effective date that marking will be required.

Beer returned to the brewery. Unless the regional director (compliance) notifies the brewer prior to the effective date, beer may be returned to any brewery of the brewer under Subpart M without prior notice. The regional director (compliance) may, however, at any time require the brewer to give notice.

Adjustments to the beer tax return. Brewers shall take adjustments to the beer tax return for beer lost, destroyed, returned, etc. beginning with the first full return period following the effective date of the regulations. Brewers may, at their option, file for refund of tax.

Pilot brewing plants. Current registrations and bonds of pilot brewing plants remain in effect under Subpart S. At their option, operators of pilot brewing plants may file new bonds, continuation certificates, or registrations.

Records and reports. Form 2051 is obsolete as of the effective date of the regulations. As of that date, brewers are required to keep daily records and summary records specified in § 25.292.

Treatment of Revenue Rulings

Twenty eight IRS Revenue Rulings and ATF Rulings are either incorporated into the final regulations, or their provisions are obsolete. They include: I.R.S. Revenue Rulings 55–343, 1955–1, C.B. 568; 55–549, 1955–2 C.B. 699; 56–236, 1956–1 C.B. 705; 56–238, 1956–1 C.B. 711; 57–25, 1957–1 C.B. 610; 57–83, 1957–1 C.B. 563; 57–176, 1957–1 C.B. 609; 57–272, 1957–1 C.B. 563; 57–322, 1957–2 C.B. 930; 57–414, 1957–2 C.B. 976; 60–82, 1960–1 C.B. 711; 60–201, 1960–1 C.B. 712; 60–209, 1960–1 C.B. 733; 60–267, 1960–2 C.B. 618; 60–296, 1960–2 C.B. 516; 61–30, 1961–1 C.B. 795; 61–34, 1961–1 C.B. 822; 62–146, 1962–2 C.B. 380; 65–176, 1965–2, C.B. 514; 65–247, 1965–2 C.B. 515; 71–227, 1971–1 C.B. 470; ATF Rulings 72–3, 1973–ATF C.B. 64; 74–30, 1974–ATF C.B. 44; 75–26, 1975–ATF C.B. 53; 78–13, 1978–ATF C.B. 69; 79–6, ATF Quarterly Bulletin 1979–1, 24; 80–7, ATF Quarterly Bulletin 1980–2, 18.

Regulatory Reform

These final regulations significantly decrease paperwork on brewers, especially in the area of forms and applications. Under these regulations five of ten required brewery forms are eliminated. Four of these forms are replaced by commercial records and one is eliminated altogether. One additional form is eliminated pertaining to the export of beer concentrate under Part 252.

Under Part 245, brewers are required to file up to 28 letterhead applications or notices to conduct certain operations. Ten of these applications or notices become obsolete with these new regulations, and of the remaining notices or applications only 5 are recurring; the rest are one-time notices only. Many variances have been incorporated into the regulations by allowing brewers to conduct certain operations without special permission or without notifying the regional director (compliance).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this rule because this rule will not have a significant economic impact on a substantial number of small entities. This rule is not expected to: Have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting,

recordkeeping, or other compliance burdens on a substantial number of small entities. This rule is expected to reduce significantly the paperwork and recordkeeping burdens imposed on brewers.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document is Charles N. Bacon, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

Executive Order 12291

It has been determined that this rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of 100 million dollars or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting requirements, Surety bonds, Vessels, Warehouses, Wine.

Issuance of Regulations

Paragraph 1. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Part 7 is amended by (1) deleting the CROSS REFERENCES and the Part numbers which follow the table of sections and precede Subpart A, and (2) by adding a new section, § 7.4, containing related regulations which reads as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

* * * * *

§ 7.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.

27 CFR Part 4—Labeling and Advertising of Wine.

27 CFR Part 5—Labeling and Advertising of Distilled Spirits.

27 CFR Part 25—Beer.

27 CFR Part 200—Rules of Practice in Permit Proceedings.

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.

PART 245—[REMOVED]

Par. 3. Part 245 is removed.

Par. 4. A new Part 25 is added which reads as follows:

PART 25—BEER

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Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Subpart A—Scope of Regulations

§ 25.1 Production and removal of beer.

The regulations in this part relate to beer and cereal beverages and cover the location, construction, equipment, operations and qualifications of breweries and pilot brewing plants.

§ 25.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 25.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Agnus Court, Springfield, Virginia 22153.

§ 25.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 7—Labeling and Advertising of Malt Beverages.

27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.

27 CFR Part 252—Exportation of Liquors.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and

Budget contained in 27 CFR Part 25 under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display, OMB control number 1512–0045.* OMB control number 1512–0045 is assigned to the following sections in 27 CFR Part 25: §§ 25.23, 25.52, 25.61, 25.62, 25.64, 25.66, 25.67, 25.68, 25.71, 25.72, 25.73, 25.74, 25.75, 25.76, 25.77, 25.78, 25.81, 25.85, 25.103, 25.114, 25.141, 25.142, 25.144, 25.158, 25.167, 25,184, 25.213, 25.222, 25.272, 25.273, 25.277, 25.282, 25.299.

(c) *Display, OMB control number 1512–0052.* OMB control number 1512–0052 is assigned to the following sections in 27 CFR Part 25: §§ 25.296(b), 25.297.

(d) *Display, OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following section in 27 CFR Part 25: § 25.65.

(e) *Display, OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in 27 CFR Part 25: §§ 25.281, 25.282, 25.286.

(f) *Display, OMB control number 1512–0333.* OMB control number 1512–0323 is assigned to the following sections in 27 CFR Part 25: §§ 25.42, 25.142, 25.186, 25.192, 25.195, 25.196, 25.211, 25.252, 25.264, 25.276, 25.284, 25.291, 25.292, 25.293, 25.294, 25.295, 25.296(a), 25.300, 25.301.

(g) *Display, OMB control number 1512–0457.* OMB control number 1512–0457 is assigned to the following section in 27 CFR Part 25: § 25.165.

(h) *Display, OMB control number 1512–0467.* OMB control number 1512–0467 is assigned to the following sections in 27 CFR Part 25: §§ 25.122, 25.160, 25.163, 25.164, 25.165, 25.166, 25.167, 25.168, 25.175, 25.224, 25.284, 25.285, 25.296.

(i) *Display, OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in 27 CFR Part 25: §§ 25.111, 25.112, 25.113, 25.114, 25.117, 25.118, 25.119, 25.121, 25.126, 25.127, 25.131, 25.132, 25.133, 25.134.

(j) *Display, OMB control number 1512–0478.* OMB control number 1512–0478 is assigned to the following sections in 27 CFR Part 25: §§ 25.24, 25.35, 25.141, 25.142, 25.143, 25.145, 25.192, 25.196, 25.231, 25.242, 25.251, 25.263.

Subpart B—Definitions

§ 25.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meanings given in this section.

Area supervisor. The supervisory officer of a Bureau of Alcohol, Tobacco and Firearms area office.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Balling. The percent by weight of dissolved solids at 60 °F. present in wort and beer, usually determined by a balling saccharometer.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing ⅛, ⅙, ¼, ⅓, or ½ barrel, a whole barrel, or other size authorized by the regional director (compliance).

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

Bottle. A bottle, can or similar container.

Bottling. The filling of bottles, cans, and similar containers.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Brewery. The land and buildings described in the Brewer's Notice, Form 5130.10, where beer is to be produced and packaged.

Brewing. The production of beer for sale.

Business day. The 24-hour cycle of operations in effect at the brewery and described on the Brewer's Notice, Form 5130.10.

Cereal beverage. A beverage, produced either wholly or in part from malt (or a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Concentrate. Concentrate produced from beer by the removal of water under the provisions of Subpart R of this part. The processes of concentration of beer and reconstitution of beer are considered authorized processes in the production of beer.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A Director of an Internal Revenue Sevice Center.

District *Director.* A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds made by a brewer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed *under penalties of perjury.* Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, when no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this———(insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by men and, to the best of my knowledge and belief, is true, correct and complete."

Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon. The liquid measure containing 231 cubic inches.

Losses. Known quantities of beer lost due to breakage, casualty, or other unusual cause.

Package. A bottle, can, keg, barrel, or other original consumer container.

Packaging. The filling of any package.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Racking. The filling of kegs or barrels.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal ATF regional official

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responsible for administering regulations in this part.

Removed for consumption or sale. Except when used with respect to beer removed without payment of tax as authorized by law, (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery.

Secretary. The Secretary of the Treasury or his or her delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Shortage. An unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Treasury account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

Wort. The product of brewing before fermentation which results in beer.

Subpart C—Location and Use of Brewery

§ 25.21 Restrictions on location.

A brewery may not be established or operated in any dwelling house or on board any vessel or boat, or in any building or on any premises where the revenue will be jeopardized or the effective administration of this part will be hindered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.22 Continuity of brewery.

Brewery premises will be unbroken except that they may be separated by public passageways, streets, highways, waterways, carrier rights-of-way, or partitions. If the brewery premises are separated, the parts will abut on the dividing medium and be adjacent to each other. If the brewer has facilities for loading, or for case packing or storage which are located within reasonable proximity to the brewery, the regional director (compliance) may approve these facilities as part of the brewery if the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.23 Restrictions on use.

(a) *Use of brewery in production of beer or cereal beverage.* A brewery may be used only for the following purposes involving the production of beer or cereal beverages:

(1) For producing, packaging and storing beer, cereal beverages, vitamins, ice, malt, malt syrup, and other by-products of the brewing process, or soft drinks and other nonalcoholic beverages;

(2) For processing spent grain, carbon dioxide, and yeast; and

(3) For storing packages and supplies necessary or connected to brewery operations.

(b) *Other authorized uses.* A brewer may use a brewery for other purposes, not involving the production of beer or cereal beverage, upon approval from the Director, if the purposes:

(1) Require the use of by-products or waste from the production of beer;

(2) Utilize buildings, rooms, areas, or equipment not fully employed in the production or packaging of beer;

(3) Are reasonably necessary to realize the maximum benefit from the premises and equipment and reduce the overhead of the brewery;

(4) Are in the public interest because of emergency conditions; or

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery.

(c) *Application.* A brewer desiring to use a brewery for other purposes shall submit to the Director through the appropriate regional director (compliance), an application listing the purposes. The Director will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.24 Storage of beer.

(a) *Taxpaid beer.* Beer of a brewer's own production on which the tax has been paid or determined may not be stored in the brewery, except as provided in § 25.213. Beer produced by other brewers may be stored at the brewery under the following conditions:

(1) Taxpaid beer will be segregated in such a manner as to preclude mixing with nontaxpaid beer;

(2) If required by Part 1 of this chapter, the brewer shall have a wholesalers or importers basic permit under the Federal Alcohol Administration Act, and keep records of the taxpaid beer as a wholesaler or importer under Part 194 of this chapter.

(3) Taxpaid beer may be stored in packages;

(4) Taxpaid beer may not be relabeled;

(5) Taxpaid beer may not be shown on required brewery records;

(6) The brewer shall purchase a special tax stamp as a wholesaler, if required by Part 194 of this chapter; and

(7) The regional director (compliance) may require physical segregation of taxpaid beer, or marking to show the status of taxpaid beer, if necessary to protect the revenue.

(b) *Untaxpaid beer.* Packaged beer on which tax has not been paid or determined may be stored in any suitable location in the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart D—Construction and Equipment

Construction

§ 25.31 Brewery buildings.

Brewery buildings shall be arranged and constructed to afford adequate protection to the revenue and to facilitate inspection by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

Equipment

§ 25.35 Tanks.

Each stationary tank, vat, cask or other container used, or intended for use, as a receptacle for wort, beer or concentrate produced from beer shall:

(a) Be durably marked with a serial number and capacity; and

(b) Be equipped with a suitable measuring device. The brewer may provide meters or other suitable portable devices for measuring contents of tanks or containers in lieu of providing each tank or container with a measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 25.36 Empty container storage.

Empty barrels, kegs, bottles, other containers, or other supplies stored in the brewery will be segregated from filled containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart E—Measurement of Beer

§ 25.41 Measuring system required.

The brewer shall accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking. The brewer may use a measuring device, such as a meter or gauge glass, or any other suitable method.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

25.42 Testing of measuring devices.

(a) *General requirements.* If a measuring device such as a meter or gauge glass is used to measure beer, the

brewer shall periodically test the measuring device and adjust or repair it, if necessary. The brewer shall keep records of tests available for inspection by ATF officers. Records of tests will include:

(1) Date of test;

(2) Identity of meter or measuring device;

(3) Result of test; and

(4) Corrective action taken, if necessary.

(b) *Requirements for beer meters.* The allowable variation for beer meters as established by testing may not exceed ±0.5 percent. If a meter test discloses an error in excess of the allowable variation, the brewer shall immediately adjust or repair the meter. Adjustments will reduce the error to as near zero as practicable.

(c) *Authority to require tests.* If the regional director (compliance) has reason to believe that the accuracy or reliability of a measuring device is not being properly maintained, he or she may require the brewer to test the measuring device and, if necessary, adjust or repair the measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Subpart F—Miscellaneous Provisions

§ 25.51 ATF officer's right of entry and examination.

An ATF officer may enter, during normal business hours, a brewery or other place where beer is stored and may, when the premises are open at other times, enter those premises in the performance of official duties. ATF officers shall make inspections as the regional director (compliance) deems necessary to determine that operations are conducted in compliance with the law and this part. The owner of any building or place where beer is produced, made, or kept, or person having charge over such premises, who refuses to admit an ATF officer acting under 26 U.S.C. 7606, or who refuses to permit an ATF officer to examine beer shall, for each refusal, forfeit $500.

(Act of August 16, 1954, 68A Stat. 872, 903, as amended (26 U.S.C. 7342, 7606))

§ 25.52 Variations from requirements.

(a) *Exceptions to construction, equipment and methods of operations.* (1) *General.* The Director may approve details of construction, equipment or methods of operations, in lieu of those specified in this part. The brewer shall show that it is impracticable to conform to the prescribed specification, and that the proposed variance: (i) will afford the protection to the revenue intended by the specifications in this part; (ii) will not hinder the effective administration of this part, and (iii) is not contrary to any provision of law.

(2) *Application.* A brewer who proposes to employ methods of operations or construction or equipment other than as provided in this part shall submit an application to the regional director (compliance). The application will describe the proposed variation and state the need for it. The brewer shall submit drawings or photographs if necessary to describe the proposed variation.

(3) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The brewer shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(4) *Exceptions.* The Director may not authorize an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(5) *Conditions of approval.* A brewer may not employ an alternate method or procedure until the Director has approved its use. The brewer shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements.*

(1) *Application.* When an emergency exists, a brewer may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The brewer shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval.* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A brewer may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(c) *Automatic termination of approval.* If the brewer fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the brewer is required to comply with prescribed requirements of regulations.

(d) *Withdrawal of approval.* The Director may withdraw approval of an alternate method or procedure, approved under paragraph (a) of this section, if the Director finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval. The regional director (compliance) may withdraw approval of an emergency variation from requirements, approved under paragraph (b) of this section, if the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended, 1396, as amended (26 U.S.C. 5552, 5556))

Subpart G—Qualification of a Brewery

Original Qualification

§ 25.61 General requirements for notice.

(a) *Establishment.* Operations as a brewer may be conducted only by a person who has given notice as a brewer under this subpart. A person may not commence the business of a brewer until the regional director (compliance) approves the brewery and the brewer's notice, including all documents made part of that notice.

(b) *Brewer's Notice, Form 5130.10.* Each person shall, before commencing business as a brewer, give notice on Form 5130.10 to the regional director (compliance) of the region in which the brewery is located. Each person continuing business as a brewer as provided in § 25.71 shall give notice on Form 5130.10 to the regional director (compliance). Each notice will be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the notice will be made part of the notice.

(c) *Additional information.* The regional director (compliance) may at any time require the brewer to furnish, as part of the notice, additional information which is necessary to protect and insure collection of the revenue.

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(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.62 Data for Notice.

(a) *Required information.* The brewer shall prepare the notice on Form 5130.10 and shall include the following information: (1) Serial number.

(2) Purpose for which filed.

(3) Name and principal business address of the brewer and the location of the brewery if different from the business address.

(4) Statement of the type of business organization and of the persons interested in the business, supported by the information listed in § 25.66.

(5) Description of brewery, as specified in § 25.68.

(b) A list of trade names which the brewer intends to use in doing business or in packaging beer.

(7) A statement of process for fermented beverages if required by § 25.67.

(8) The name and address of the owner of the land or buildings comprising the brewery, and of any mortgagee or other encumbrancer of the land or buildings comprising the brewery.

(9) The 24-hour cycle of operations at the brewery which is to be the brewer's business day.

(10) The process by which the brewer intends to render beer unfit for beverage use when beer is to be removed for use in manufacturing under §§ 25.191–25.192.

(11) Statement showing ownership or controlling interests in other breweries which will establish eligibility for the transfer of beer without payment of tax between breweries of the same ownership, as authorized in § 25.181.

(12) The date of the notice and the name and signature of the brewer or person authorized to sign on behalf of the brewer.

(b) *Incorporation by reference.* If any of the information required by paragraph (a)(4) of this section is on file with the regional director (compliance) of any ATF region in connection with the qualification of any other premises operated by the brewer, that information, if accurate and complete, may be incorporated into the brewer's notice by reference.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.63 Notice of registration.

The Brewer's Notice, Form 5130.10, when approved by the regional director (compliance), will constitute the notice of registration of the brewery. The regional director (compliance) will not approve the notice until the notice and all incorporated documents are complete, accurate, and in compliance with the requirements of this part. A person may not operate a brewery until the notice required by this subpart has been approved by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.64 Maintenance of notice file.

The brewer shall maintain the approved Brewer's Notice, Form 5130.10, and all incorporated documents at the brewery premises, in complete and current condition, readily available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.65 Power of attorney.

The brewer shall execute and file with the regional director (compliance) a Form 1534 (5000.8) for each person authorized to sign or act on behalf on the brewer. The Form 1534 (5000.8) is not required for persons whose authority is furnished in the Brewer's Notice, Form 5130.10.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.66 Organizational documents.

The supporting information required by paragraph (a)(4) of § 25.62 includes, as applicable, the following:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation;

(2) List of directors and officers, showing their names and addresses;

(3) Extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation; and

(4) Statement showing the number of shares of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* Copy of the articles of partnership or association, if any, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of all persons having 10 percent or more stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another person. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance); or

(2) In the case of an individual owner or partnership, the name and address of each person holding an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section, and additional documents such as the articles of incorporation, bylaws, and State certificates authorizing the brewer to operate in the State where located (if other than the State in which the brewery is incorporated) shall be made available to any ATF officer upon request. In the case of multiplant brewers, these documents may be made available at the brewer's home brewery. Each brewer's notice filed by multiplant brewers will state the location where these corporate documents may be inspected.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.67 Statement of process.

(a) The Brewer's Notice, Form 5130.10 will contain a statement of process for any fermented beverage which the brewer intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor."

(b) The statement of process will give the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

(c) A statement of process for any fermented beverage (other than sake or cereal beverage) will not be approved unless the base product has the characteristics of beer as defined in § 25.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1338, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

§ 25.68 Description of brewery.

(a) The Brewer's Notice, Form 5130.10, will include a description of (1) each tract of land comprising the brewery, and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used.

(b) The description of the land will be in sufficient detail to enable ATF officers to determine the boundaries of the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Changes After Original Qualification

§ 25.71 Amended or superseding notices.

(a) *Requirement for amended notice.* (1) When there is a change with respect to the information shown in the Brewer's Notice, Form 5130.10, the brewer shall within 30 days of the change (except as otherwise provided in this subpart) submit to the regional director (compliance) an amended notice setting forth the new information. Changed notices will be submitted in skeleton form, with unchanged items marked "No change since Form 5130.10, Serial No. ———."

(2) The regional director (compliance) may require immediate filing of an amended Form 5130.10 if the accuracy of existing documents has been affected by any change.

(b) *Requirement for superseding notice.* (1) The regional director (compliance) may require a brewer to file a new and complete notice, superseding those previously filed, in conjunction with the filing of a new bond. This superseding notice will become effective on the date of the brewer's bond or on the date of the brewer's bond continuation certificate.

(2) If the information required by § 25.62(a) (4), (5), (6), (7), (9), and (10) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.72 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the outgoing brewer shall comply with the requirements of § 25.85. The successor brewer shall, before beginning operations, qualify in the same manner as the proprietor of a new brewery. The successor brewer shall file a new notice and bond in his or her own name. Beer on hand may be transferred without payment of tax to the successor brewer and will be accounted for by that brewer.

(b) *Fiduciary.* (1) If the successor to the brewer is an administrator, executor, receiver, trustee, assignee or other fiduciary, the fiduciary may in lieu of filing a new notice and bond, file an amended notice and furnish a consent of surety extending the terms of the predecessor's bond or continuation certificate.

(2) The fiduciary shall furnish the regional director (compliance) a certified copy of the court order or other document showing qualification as fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the same as the date of the order, or the date therein specified for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date of the appointment will be the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.73 Change in partnership.

(a) *New notice required.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, constitutes a change in proprietorship. Unless exempted by paragraph (b) of this section, the death, bankruptcy or adjudicated insolvency of one or more partners results in a dissolution of the partnership and a change in proprietorship. The successor shall qualify the brewery in the same manner as the propietor of a new brewery.

(b) *Continuing partnership.* A surviving partner or partners may continue to operate the brewery for purposes of liquidation and settlement under the following conditions:

(1) Under the laws of the State where the partnership was formed, the partnership is not terminated on death or insolvency of a partner(s); and

(2) Under the laws of the State where the partnership was formed, the surviving partner(s) has the exclusive right to control and possession of the partnership assets for the purpose of liquidation and settlement; and

(3) A consent of surety if filed in which the surety and the surviving partner(s) agree to remain liable on the bond.

(c) *Settlement of partnership.* If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) shall qualify in his or her own name from the date of acquisition and give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.74 Change in stockholders.

Changes in the list of stockholders furnished under the provisions of § 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the regional director (compliance). When the sale or transfer of capital stock results in a change in the control or management of the business, notification of the change will be made within 30 days in accordance with § 25.71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 25.66(a)(4), the brewer shall submit, within 30 days of the change, an amended notice on Form 5130.10. If the brewer has shown to the satisfaction of the regional director (compliance) that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the regional director (compliance) may waive the requirements for submitting applications for amended notice to cover changes of those corporate officers. In the case of multiplant brewers, new brewers notices need not be filed for those breweries in which the lists of officers and directors are incorporated by reference in their brewer's notices under § 25.62(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.62(a)(7) for any fermented beverage produced and marketed under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor," the brewer shall submit an amended notice and obtain approval of the notice prior to using the changed statement of process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.77 Change in location.

When there is a change in the location of the brewery, the brewer shall file an amended Form 5130.10, and a new bond, Form 5130.22, or a consent of surety, Form 1533 (5000.18), in accordance with § 25.91, extending the terms of the bond or continuation certificate to cover operations at the new location. The brewer may not begin operations at the new location until the regional director (compliance) approves the required documents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.78 Change in premises.

Except as authorized in § 25.81, when the brewery is to be extended or curtailed, the brewer shall file with the regional director (compliance) an amended Form 5130.10. The additional facilities covered by the extension may not be used for the proposed purposes, and the portion to be curtailed may not be used for other than the previously

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approved purposes, prior to approval of Form 5130.10

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Alternation of Operations

§ 25.81 Alternation of brewery and bonded or taxpaid wine premises.

(a) *General.* A brewer operating a contiguous bonded winery or taxpaid wine bottling house may, as provided in this section, alternate the use of each premises by extension or curtailment.

(b) *Qualifying documents.* The brewer shall file with the regional director (compliance) and receive approval of the following qualifying documents:

(1) Form 698 (5120.25) or 2975 (5140.2) and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

(2) Special diagrams, in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist both during extension and curtailment. The diagrams will clearly depict wall areas, buildings, floors, rooms, equipment and pipelines which are to be subject to alternation in their relative operating sequence.

(3) Evidence of existing bond, consent of surety, continuation certificate, or a new bond to cover the proposed alternation of premises.

(c) *Brewer's responsibility.* After approval of qualifying documents, the brewer may alternate the designated premises pursuant to a letterhead notice submitted to the regional director (compliance) through the ATF area supervisor. The notice will contain the information required by paragraph (d) of this section. Prior to the effective date and hour of the alternation, the brewer shall (1) remove all beer on brewery premises to be alternated to bonded or taxpaid wine premises, or (2) remove all wine from bonded to taxpaid wine premises to be alternated to brewery premises.

(d) *Information for notice.* The notice required by paragraph (c) of this section will contain the following information:

(1) Plant name and address;
(2) Serial number;
(3) Effective date and hour of proposed change;
(4) Whether premises are to be curtailed or extended;
(5) Purpose of curtailment or extension;
(6) Identification of the special diagram depicting the premises as they exist when curtailed or extended; and
(7) Date of execution and signature of brewer.

(e) *Separation of premises.* The regional director (compliance) may require that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the regional director (compliance), from the remaining portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

Discontinuance of Business

§ 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business premanently, he or she shall file with the regional director (compliance) a notice on Form 5130.10. The brewer shall state the purpose of the notice as "Discontinuance of business" and give the date of the discontinuance. When all beer has been lawfully disposed of, the regional director (compliance) will approve the Form 5130.10 and return a copy to the brewer. The brewer shall file a report on Form 5130.9 showing no beer or cereal beverage on hand and marked "Final Report."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

Subpart H—Bonds and Consents of Surety

§ 25.91 Requirement for bond.

(a) *General.* Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97, with the regional director (compliance).

(b) *Conditions of the bond.* The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

(c) *Additional information.* The regional director (compliance) shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business.* A person may not begin business or continue business as a brewer until first receiving notice that the regional director (compliance) has approved the bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91–673, 84 Stat. 2057 (26 U.S.C. 5417))

§ 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.93 Penal sum of bond.

(a) *Calculation.* The penal sum of the brewer's bond will be equal to 10 percent of the maximum amount of tax, calculated at the rates prescribed by law, which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(1) Removed for transfer to the brewery from other breweries owned by the same brewer;

(2) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(3) Removed without payment of tax for use in research, development, or testing; and

(4) Removed for consumption or sale.

(b) *Concentrate.* A brewer who concentrates beer under Subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums.* The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed $150,000 when the tax on beer is to be prepaid, or $500,000 when the tax is to be deferred as provided in § 25.164.

The minimum penal sum of a bond is $1,000.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.94 Strengthening bonds.

(a) *Requirement.* When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in Subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions.* A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution.* Strengthening bonds will show the current date of execution and their effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.95 New bond.

The regional director (compliance) may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the regional director (compliance), the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the regional director (compliance) after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.98 Surety or security.

(a) *Bond coverage.* Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety.* Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570.* Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register.** Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(d) *More than one corporate surety.* A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities in lieu of corporate surety.* Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308); sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308))

Disapproval or Termination Bonds or Consents of Surety

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval.* The regional director (compliance) may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval.* If the regional director (compliance) disapproves a bond or consent of surety, the person giving the bond may appeal the disapproval to the Director, who will grant a hearing in the matter if requested by the applicant or brewer. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after: (a) the effective date of a superseding bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

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§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the regional director (compliance) that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liability under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the regional director (compliance). The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the regional director (compliance) will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the regional director (compliance) determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior to the release of the security, the regional director (compliance) may, for proper cause, extend the date of release of the security for an additional length of time as may be appropriate.

(31 U.S.C. 9301, 9303)

Subpart I—Special Taxes

Liability for Special Tax

§ 25.111 Brewer's special tax.

Brewers are required to pay, on or before the first day of July in each year, or before commencing operations, a special tax at the rate imposed by 26 U.S.C. 5091. Special taxes are imposed as of the first day of July in each year, or on commencing the business of a brewer. In the former case, special tax is computed for the entire year; in the latter case, special tax is computed from the first day of the month which liability is incurred until the 30th day of June following.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1339, 1346, as amended (26 U.S.C. 5091, 5142))

§ 25.112 Wholesaler's special tax.

Brewers who purchase beer from other brewers for resale, including brewers purchasing beer in their own kegs or barrels, may be liable for special tax as wholesale dealers in beer under 26 U.S.C. 5111. Special taxes are imposed as of the first day of July in each year or on commencing the business of a wholesaler.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1346, as amended (26 U.S.C. 5111, 5142))

§ 25.113 Each place of business taxable.

(a) *General.* A brewer incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax for each brewery. The brewer may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

Execution of Special Tax Returns

§ 25.117 Special tax returns.

(a) *General.* Each person required to pay special tax shall prepare a return on IRS Form 11. The return will be filed, with payment of tax, with the director of the service center serving the internal revenue district in which the taxpayer's business is located, or by hand carrying in accordance with paragraph (c) of this section.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at two or more locations shall: (1) File on special tax return, IRS Form 11 (prepared in the manner prescribed in §25.118), with payment of tax to cover all locations. The return with tax will be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address, employer identification number, class of tax, and period covered by the return. The list will show, by States, the name address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list will be attached to the IRS Form 11, as a part of the return, and the copy will be retained by the taxpayer for a period of not less than two years.

(c) *Hand carried returns.* If the return is filed by hand carrying, the taxpayer shall file it with the district director for the district in which the taxpayer's business is located or in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located.

(Act of August 16, 1954, 68A Stat. 752, as amended (26 U.S.C. 6091); sec. 201. Pub. L. 85–859, 72 Stat. 1346, as amended (26 U.S.C. 5142))

§ 25.118 Data required on IRS Form 11.

Each return on IRS Form 11 will be prepared in accordance with the instructions on the form or issued in respect to the form. Each return will include the following:

(a) If the taxpayer is an individual or a corporation, the true name of the individual or corporation;

(b) If the taxpayer is a partnership, the true name of every person comprising the partnership;

(c) The employer identification number (see §§ 25.121–25.123);

(d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description, in addition to the post office address. In the case of one return for two or more locations as provided in § 25.117, the location to be shown on IRS Form 11 will be the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer);

(e) The classes of tax; and

(f) All other information required by the form.

(Act of August 16, 1954, 68A Stat. 732, as amended, 845, as amended (26 U.S.C. 6011, 7011); sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.119 Execution of IRS Form 11.

(a) *Ordinary returns.* The return of an individual proprietor will be signed by the individual. The return of a partnership will be signed by any of the partners. The return of a corporation will be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(b) *Fiduciories.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature will be preceded by the name of the principal, followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed with the internal revenue office with which IRS Form 11 is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* IRS Form 11 will contain or be verified by a written declaration that it has been executed under penalties of perjury.

(Act of August 16, 1954, 68A Stat. 748, as amended, 749, as amended, 757, as amended, 845, as amended (26 U.S.C. 6061, 6065, 6151, 7011))

Employer Identification Numbers

§ 25.121 Employer identification number.

The employer identification number defined in 26 CFR 301.7701–12 of the taxpayer who has been assigned the number will be shown on each IRS Form 11, including amended IRS Form 11, filed under this subpart. Failure of the taxpayer to include the employer identification number on IRS Form 11 may result in the imposition of the penalty specified in 26 CFR 301.6676–1.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 25.122 Application for employer identification number.

Each taxpayer who files a return or IRS Form 11 or ATF Form 5000.24 shall file IRS Form SS–4 to apply for an employer identification number. The taxpayer shall apply for and be assigned one employer identification number regardless of the number of places of business for which the taxpayer is required to file a return. If a taxpayer has filed the first return, IRS Form 11 or ATF Form 5000.24, before applying for or being assigned an employer identification number, he or she shall apply within 7 days of the filing of the return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 25.123 Execution of IRS Form SS–4.

(a) *Preparation.* The taxpayer shall prepare IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form. The taxpayer shall file IRS Form SS–4 with the district director of any internal revenue district in which the taxpayer operates a business subject to special tax, unless the instructions on IRS Form SS–4 require it to be filed with the director of the service center serving the internal revenue district.

(b) *Signature.* The application will be signed by:

(1) The individual, if the taxpayer is an individual;

(2) The president, vice president, or other principal officer, if the taxpayer is a corporation;

(3) A responsible and authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or

(4) The fiduciary, if the taxpayer is a trust or estate.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

Issuance of Special Tax Stamps

§ 25.125 Issuance of stamps.

Upon filing a properly executed return of IRS Form 11, together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to IRS Form 11 required by § 25.117(b); but showing as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 25.126 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to IRS Form 11. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 25.127 Examination of special tax stamps.

All stamps denoting payment of special tax will be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(Act of August 16, 1954 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85–859, 72 Stat. 1348, as amended (26 U.S.C. 5146))

Changes in Special Tax Stamps

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, the brewer shall, within 30 days after the change, file with the director of the service center who issued the stamp an additional return on IRS Form 11 covering the new corporate or firm name, or trade names. The brewer shall forward the special tax stamp or stamps to the director of the service center who issued the stamp for appropriate notation with respect to the change in name.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011))

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall obtain the required special tax stamps.

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(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on the business for the remainder of the period for which the special tax was paid, if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on IRS Form 11 with the director of the service center who issued the stamp, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.133 Persons having right of succession.

Under the conditions indicated in § 25.132, the right of succession will pass to certain persons in the following cases:

(a) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(b) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(c) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(d) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (25 U.S.C. 5143))

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall within 30 days after the change file with the director of the service center who issued the stamp an amended return on IRS Form 11 covering the new location. The brewer shall forward the special tax stamp or stamps to the director of the service center for endorsement of the change in location. If the brewer does not file the amended return within 30 days, the brewer is required to obtain a new special tax stamp.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

Subpart J—Marks, Brands, and Labels

§ 25.141 Barrels and kegs.

(a) *General requirements.* The brewer's name or trade name and the place of production (city and, if necessary for identification, State) shall be permanently marked on each barrel or keg. If the place of production is clearly shown on the bung or on the tap cover, or on a label securely affixed to each barrel or keg, the place of production need not be permanently marked on each barrel or keg. No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned and operated by the same person, firm or corporation (as defined in § 25.181), the place of production may be shown as provided in paragraph (a) of this section. If two or more brewery locations are shown, the place of production (including street address if two or more breweries are located in the same city) will be shown on the bung or on the tap cover or on a label securely affixed to each barrel or keg.

(2) The brewer may use a coding system on the bung or tap cover or label which will identify the place of actual production and will permit ATF officers to determine the place of production of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Label approval required.* Labels or tap covers used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.142 Bottles.

(a) *Label requirements.* Each bottle of beer shall show by label or otherwise the name or trade name of the brewer, the net contents of the bottle, the nature of the product such as beer, ale, porter, stout, etc., and the place of production (city and, when necessary for identification, State). No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production may be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations. If the location of two or more breweries is shown on the label, the place of production may be indicated either by printing, coding or other markings on the label, bottle, crown or lid.

(2) The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

(c) *Distinctive names.* If the brewer's name, trade name or brand name includes the name of a city which is not the place where the beer was produced, the Director may require the brewer to state the actual place of production on the label.

(d) *Tolerances.* The statement of net contents shall indicate exactly the volume of beer within the bottle except for variations in measuring as may occur in filling conducted in compliance with good commercial practice. The barrel equivalent of bottles filled during a consecutive three month period, calculated on the basis of the brewer's fill test records, may not vary more than 0.5 percent from the barrel equivalent of bottles filled during the same period, calculated on the basis of the stated net contents of the bottles. The brewer is liable for the tax on the entire amount of beer removed, without benefit of tolerance, when the fill of bottles and cans exceeds the tolerance for the three month period, or when filling is not conducted in compliance with good commercial practice.

(e) *Label approval required.* Labels used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(f) *Short-fill bottles.* A brewer may dispose of taxpaid short-fill bottles of beer to employees for their use but not for resale. These bottles need not be labeled, but if labeled they need not show an accurate statement of net contents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.143 Cases.

(a) *Brewer's name.* The brewer's name or trade name will be shown on each case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.144 Rebranding barrels and kegs.

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in § 25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall permanently remove or durably cover the original marks and brands after notifying the regional director (compliance) of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer: (1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or (2) succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with § 25.141, which indicate ownership.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership (as defined in § 25.181), or who exports beer without payment of tax, as provided in § 25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph (b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation "Beer";

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 252 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

Subpart K—Tax on Beer

Liability for Tax

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in §25.156.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General.* Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a "controlled group" of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563–3, may be acquired through:

(A) An option to purchase stock;

(B) Attribution from partnerships;

(C) Attribution from estate or trusts;

(D) Attribution from corporations; or

(E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer's daily records and reported in the monthly report, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers shall include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with Subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption of sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

Determination of Tax

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the Director determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the Director determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156 will be treated as such for purposes of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended, 1390, as amended (26 U.S.C. 5412, 5416))

§ 25.156 Determination of tax on keg beer.

In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are halves, thirds, quarters, sixths, and eighths, and beer may be removed only in kegs rated at those capacities. If any barrel or authorized fractional part of a barrel contains a quantity of beer more than two percent in excess of its rated capacity, tax will

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be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg. The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.157 Determination of tax on bottled beer.

The quantities of bottled beer removed subject to tax shall be computed to 5 decimal places in accordance with the table and instructions in § 25.158. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5061))

§ 25.158 Tax computations for bottled beer.

Barrel equivalents for various case sizes are as follows:

Number of bottles per case	Fluid contents (ounces) of each bottle	Barrel equivalent
1	128	0.03226
1	288	.07258
4	64	.06452
6	64	.09677
6	[1] 2	.10226
12	7	.02117
12	8	.02419
12	11	.03327
12	12	.03629
12	14	.04234
12	24	.07258
12	30	.09073
12	32	.09677
12	[1] 1	.10226
12	40	.12097
24	7	.04234
24	8	.04839
24	10	.06048
24	11	.06653
24	11½	.06956
24	12	.07258
24	14	.08468
24	16	.09677
24	[1] ½	.10226
32	7	.05646
35	7	.06174
36	7	.06351
36	8	.07258
40	7	.07056
48	7	.08468
48	10	.12097
48	12	.14516
50	12	.15121

[1] Liter.

If beer is to be removed in cases or bottles of sizes other than those listed in the above table, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5412))

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part.

(b) *Offsets.* During any business day, the quantity of beer returned to the same brewery from which removed is to be taken as an offset against or deducted from the total quantity of beer removed for consumption or sale from that brewery on the day that the beer is returned.

(c) *Offsets not allowed.* An offset or deduction for returned beer will not be allowed if:

(1) The brewer was indemnified by insurance or otherwise in respect of the tax; or

(2) The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the tax is not timely credited after the offset or deduction is taken, the brewer shall make an increasing adjustment on the next tax return.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5054, 5056, 5061))

§ 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

Preparation and Remittance of Tax Returns

§ 25.163 Method of taxpayment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.173 and 25.175. The brewer shall pay the tax by remittance to the district director or the director of the service center at the time the tax return is rendered, and the remittance will be in cash, or by check or money order, payable to the "Internal Revenue Service" and delivered to the district director or the director of the service center; or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

(Act of August 16, 1954, 68A Stat. 775, as amended, 777, as amended, 778, as amended (26 U.S.C. 6302, 6311, 6313); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.164 Semimonthly return.

(a) *Requirement for filing.* Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 5000.24. The brewer shall file Form 5000.24 as a semimonthly return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods.* Return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and remittance as required by this section, not later than the last full calendar day of the return period next succeeding that period. When the due date for filing a

return falls on a Saturday, Sunday or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday or legal holiday.

(e) *Timely filing.* (1) When the brewer sends the semimonthly return by U.S. mail, with remittance as required by this section to the office of the district director or to the director of the service center, or without remittance as required by § 25.165 to the district director, director of the service center, or regional director (compliance) in accordance with the instructions on the form, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commerical bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, is not authorized for a taxpayer who is required by this section to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 25.158, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4. These criteria are not the same criteria applied to a controlled group of brewers under § 25.152 for the purpose of determining eligibility for a reduced rate of tax.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, Form 5000.24, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §§ 25.164 or 25.175. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 25.164. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to make an electronic fund transfer immediately in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and will be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled "Payment of Tax by Electronic Fund Transfer." This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.166 Payment of reduced rate of tax.

(a) *By return, Form 5000.24.* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 25.167, pay the reduced rate of tax on beer by semimonthly return as provided in § 25.164 or by prepayment return as provided in § 25.175. Payment of reduced rate of tax on beer by return, Form 5000.24, may commence with any tax return filed during a calendar year and will continue until the brewer has taxpaid 60,000 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 25.167(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year,

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but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 843, for refund of tax excessively paid on beer during that year. Claims for refund of tax will be filed as provided in § 25.285.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.167 Notice of brewer to pay reduced rate of tax.

(a) *Requirement to file notice.* Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 5000.24, shall prepare a notice containing the information required by paragraph (b) of this section. The brewer shall file this notice with the regional director (compliance) for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall file the notice each year in which payment of the reduced rate of tax on beer is made by return.

(b) *Information to be furnished.* Each notice described in paragraph (a) of this section will contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) *Perjury statement.* Each notice described in this section will be executed by the brewer under penalties of perjury as defined in § 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in 26 CFR 301.6676–1. A brewer shall apply for an employer identification number on IRS Form SS–4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

Prepayment of Tax

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentment of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the regional director (compliance) finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will be in cash or in the form of a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the law of any State, Territory, or possession of the United States, or in the form of a money order as provided in 26 CFR 301.6311–1 (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

§ 25.175 Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.* (1) Prepayment will be made by forwarding or delivering to the district director, or the director of the service center a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by delivering or forwarding it to the district director, director of the service center or regional director (compliance), in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term "forwarding" means depositing in the U.S. mail, properly addressed to the district director or the director of the service center in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

Failure to Pay Tax

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85–859, 72 Stat. 1406, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

Transfer to Another Brewery of Same Ownership

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be reconsigned to another brewery of the same ownership or be returned to the shipping brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same

brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the regional director (compliance). The brewer shall mark, brand or label containers as provided by Subpart J of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination of the quantities of beer to be shipped and received in bulk conveyances.

(Sec 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.184 Losses in transit.

(a) *Liability for losses.* The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer reconsigns beer while in transit or returns beer to the shipping brewery, the brewer is liable under the bond of the brewery to which the beer is reconsigned or returned for the tax on beer lost in transit.

(b) *Losses allowable without claim.* If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.

(c) *Losses requiring claim.* If loss of beer during transit exceeds two percent of the quantity shipped, the brewer shall submit a claim under penalties of perjury for remission of the tax on the entire loss. The brewer shall submit the claim to the regional director (compliance) of the region in which the brewery to which the beer was shipped, reconsigned or returned, is located. The brewer shall prepare and submit the claim as provided in § 25.286.

(d) *Losses requiring immediate report.* The brewer shall report to the regional diretor (compliance) a loss by fire, theft, casualty or any other unusual loss as soon as it becomes known.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended 1389 (26 U.S.C. 5056, 5414))

§ 25.185 Mingling.

Beer transferred without payment of tax from one brewery to another brewery belonging to the same brewer may be mingled with beer of the receiving brewery. The brewer may handle the beer transferred in accordance with the requirements of this part relating to beer produced in the receiving brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.186 Record of beer transferred.

(a) *Preparation of invoice.* When beer is transferred between breweries without payment of tax, the shipping brewer shall prepare a serially numbered invoice or commercial record, in duplicate, covering the transfer. The invoice will be marked "transfer without payment of tax" and will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) For cases, the number and size of cases and the total barrels;

(5) For kegs, the number and size of kegs and the total barrels;

(6) For shipments in bulk containers, the type of container, identity of the container and the total barrels.

(b) *Reconsignment of beer.* When beer is reconsigned in transit to another brewery of the same ownership, the shipping brewer shall (1) prepare a new invoice showing reconsignment to another brewery and shall void all copies of the original invoice, or (2) shall mark all copies of the original invoice with the words "Reconsigned to ———," followed by the name and address of the brewery to which the beer is reconsigned.

(c) *Disposition of invoice.* On shipment of the beer, the shipping brewer shall send the original copy of the invoice to the receiving brewer, and shall retain the other copy for the brewery records. On receipt of the beer, the receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall note on the invoice any discrepancies in the beer received, and retain the invoice in the brewery records.

(d) *Preparation of records and report.* The shipping brewer shall use the invoice showing beer removed to another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.9. The receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall use the invoice showing beer received from another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

Removal of Beer Unfit for Beverage Use

§ 25.191 General.

A brewer may remove sour or damaged beer, or beer which the brewer has deliberately rendered unfit for beverage use, from the brewery without payment of tax for use in manufacturing. Unfit beer may be removed under this section for use as distilling material at alcohol fuel plants qualified under Subpart Y of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.192 Removal of sour or damaged beer.

(a) *Containers.* The brewer shall remove sour or damaged beer (1) in casks or other packages, containing not less than one barrel each and unlike those ordinarily used for packaging beer, or (2) in tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of a vessel. The brewer shall mark the nature of the contents on each container.

(b) *Beer meter.* The brewer shall remove sour or damaged beer without passing it through the meter (if any) or racking machine.

(c) *Records and reports.* The brewer shall record the removal of sour or damaged beer in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Removals for Analysis, Research, Development or Testing

§ 25.195 Removals for analysis.

A brewer may remove beer, without payment of tax, to a laboratory for analysis to determine the character or quality of the product. Beer may be removed for analysis in packages or in bulk containers. The brewer shall record beer removed for analysis in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.196 Removals for research, development or testing.

(a) A brewer may remove beer, without payment of tax, for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems,

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materials, or equipment relating to beer or brewery operations. Beer may be removed for research, development or testing in packages or in bulk containers.

(b) The brewer shall mark each barrel, keg, case, or shipping container with the name and address of the brewer and of the consignee, the identity of the product, and the quantity of the product. If necessary to protect the revenue, the regional director (compliance) may require a brewer to mark each container with the words "Not for Consumption or Sale." If beer is removed in a bulk conveyance, the brewer shall place the marks on the route board of the conveyance.

(c) The brewer shall record beer removed for research, development, or testing in daily records under § 25.292 and on the monthly report, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Removal of Beer to a Contiguous Distilled Spirits Plant

§ 25.201 Removal by pipeline.

A brewer may remove beer from the brewery, without payment of tax, by pipeline to the bonded premises of a distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1380, as amended (26 U.S.C. 5222, 5412))

Exportation

§ 25.203 Exportation without payment of tax.

A brewer may remove beer without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with Part 252 of this chapter. Beer may be removed from a brewery in bottles, kegs, or in bulk containers.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Beer For Personal or Family Use

§ 25.205 Production.

(a) Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult is any individual who is 18 years of age or older. If the locality in which the household is located requires a greater minimum age for the sale of beer to individuals, the adult shall be that age before commencing the production of beer. This exemption does not authorize the production of beer for use contrary to State or local law.

(b) The production of beer per household, without payment of tax, for personal or family use may not exceed:

(1) 200 gallons per calendar year if there are two or more adults residing in the household, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) Partnerships except as provided in § 25.207, corporations or associations may not produce beer, without payment of tax, for personal or family use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.206 Removal of beer.

Beer made under § 25.205 may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Beer removed under this section may not be sold or offered for sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.207 Removal from brewery for personal or family use.

Any adult, as defined in § 25.205, who operates a brewery under this part as an individual owner or in partnership with others, may remove beer from the brewery without payment of tax for personal or family use. The amount of beer removed for each household, without payment of tax, per calendar year may not exceed 100 gallons if there is one adult residing in the household or 200 gallons if there are two or more adults residing in the household. Beer removed in excess of the above limitations will be reported as a taxable removal.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Subpart M—Beer Returned to Brewery

§ 25.211 Beer returned to brewery.

(a) *General.* Beer, produced in the United States, on which the brewer has paid or determined the tax may be returned to any brewery of the brewer. Upon return of the beer to the brewery, the brewer shall determine the actual quantity of beer received, expressed in barrels. For cases or bottles, the label may be used to determine the quantity. When kegs or cases containing less than the original contents are received, the brewer shall determine the actual quantity of beer by weight or by other accurate means. The brewer shall determine the balling and alcohol content of returned keg beer unless the keg is equipped with tamper-proof fittings. The quantity of beer returned may be established by weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight of dumpsters, pallets, packages and the like.

(b) *Disposition of returned beer.* The brewer may dispose of beer returned under this subpart in any manner prescribed for beer which has never left the brewery. If returned beer is again removed for consumption or sale, tax will be determined and paid without respect to the tax which was determined or paid at the time of prior removal of the beer.

(c) *Records.* For beer returned to the brewery under this subpart, the brewer's daily records under § 25.292 will show:

(1) Date;

(2) Quantity of beer returned;

(3) If the title to the beer has passed, the name and address of the person returning the beer; and

(4) Name and address of the brewery from which the beer was removed, if different from the brewery to which returned.

(d) *Supporting records.* The records of returned beer will be supported by invoices, credit memoranda or other commercial papers, and will differentiate beween beer returned to the brewery from which removed and beer returned to a brewery different from the one from which removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended, 1390, as amended (26 U.S.C. 5054, 5056, 5415))

§ 25.212 Beer returned to brewery from which removed.

If beer on which the tax has been determined or paid is returned to the brewery from which removed, the brewer shall take the quantity of beer as an offset or deduction against the quantity of beer removed for consumption or sale from the brewery on that business day, as provided in § 25.159

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended (26 U.S.C. 5056, 5415))

§ 25.213 Beer returned to brewery other than that from which removed.

(a) *Refund or adjustment of tax.* If beer on which the tax has been determined or paid is returned to a brewery of the brewer other than the one from which removed, the brewer may make a claim for refund or relief of tax or may make an adjustment to the beer tax return, for the tax on the beer

returned to the brewery. The brewer may not take an offset for beer returned to the brewery other than the one from which removed. Procedures for filing claims for refund or relief of tax or for making adjustments to the beer tax return are contained in Supart T of this part.

(b) *Notice.* A brewer need not file notice of intention to return beer to a brewery other than the one from which removed unless required by the regional director (compliance). When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in § 25.11. The brewer shall file it with the regional director (compliance) through the area supervisor of the area in which the brewery is located where the beer is to be returned. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases and the actual quantity of beer, in barrels;

(2) The name and address of the brewery from which the beer was removed;

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined; and

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(c) *Return of beer.* If the brewer is required to file a notice of intention to return beer to the brewery, the brewer may bring the beer onto the brewery premises prior to filing the notice. The brewer shall segregate the returned beer from all other beer at the brewery and clearly identify it as returned beer. The returned beer will be retained intact for inspection by an ATF officer until the notice has been filed and disposition authorized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart N—Voluntary Destruction

§ 25.221 Voluntary destruction of beer.

(a) *On brewery premises.* A brewer may destroy, at the brewery, beer on which the tax has not been determined or paid.

(b) *Destruction without return to brewery.* A brewer may destroy beer on which the tax has been paid or determined at a location other than any of the breweries operated by the brewer, upon compliance with his subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.222 Notice of brewer.

(a) *Beer to be destroyed.* When a brewer possesses beer which has been taxpaid or tax determined and which the brewer wishes to destroy at a location other than at any of the brewer's breweries, the brewer shall give written notice of intention to destroy the beer. The brewer shall submit this notice to the regional director (compliance) through the area supervisor of the area in which the beer is to be destroyed.

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 25.11. The brewer shall specify the date on which the beer is to be destroyed; this date may not be less than 12 days from the date the notice is mailed or delivered to the area supervisor.

(c) *Information to be furnished.* The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels. When kegs containing less than the actual contents are to be destroyed, the brewer shall determine the actual content of beer by weight or by other accurate means.

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title of the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.223 Destruction of beer off brewery premises.

(a) *Destruction without supervision.* A brewer may destroy beer without supervision if the regional director (compliance) does not advise the brewer before the date specified in the notice that destruction of the beer is to be supervised.

(b) *Destruction with supervision.* The regional director (compliance) may require that an ATF officer verify the information in the notice of destruction or witness the destruction of the beer. The regional director (compliance) may also require a delay in the destruction of the beer or, if the place of destruction is not readily accessible to an ATF officer, may require that the beer be moved to a more convenient location. In this case, the brewer may not destroy the beer except under the conditions imposed by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.224 Refund or adjustment of tax.

(a) *Claim for refund or relief of tax.* The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims for refund or relief of tax will be filed as provided in Subpart T of this part.

(b) *Adjustments to the excise tax return.* A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in Subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Subpart O—Beer Purchased From Another Brewer

§ 25.231 Finished beer.

(a) A brewer may obtain beer in barrels and kegs, finished and ready for sale from another brewer. The purchasing brewer may furnish the producing brewer barrels and kegs marked with the purchasing brewer's name and location. The producing brewer shall pay the tax as provided in Subpart K of this part.

(b) A brewer may not purchase taxpaid or tax determined beer from another brewer in bottles or cans which bear the name and address of the purchasing brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5413))

§ 25.232 Basic permit.

A brewer who engages in the business of purchasing beer for resale is required to possess a wholesaler's or importer's basis permit under the provisions of section 3(c) of the Federal Alcohol Administration Act and Part 1 of this chapter.

Subpart P—Cereal Beverage

§ 25.241 Production.

Brewers may produce cereal beverage and remove it without payment of tax from the brewery. The method of

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production shall insure that the alcohol content of the cereal beverage will not increase while in the original container after removal from the brewery. The brewer shall keep cereal beverage separate from beer, and shall measure the quantity of cereal beverage transferred for packaging in accordance with § 25.41.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.242 Markings.

(a) *Designation.* When bottled or packaged, cereal beverage may be designated "Cereal Beverage," "Malt Beverage," "Near Beer," or other distinctive name. If designated "Near Beer," those words will be printed identically in the same size or style of type, in the same color of ink, and on the same background.

(b) *Barrels and kegs.* A brewer may remove cereal beverage in barrels and kegs if the sides are durably painted at each end with a white stripe not less than 4 inches in width and the heads are painted in a solid color, with conspicuous lettering in a contrasting color reading "Nontaxable under section 5051 I.R.C." The brewer shall also legibly mark the brewer's name or trade name and the address on the container.

(c) *Bottles.* Bottle labels shall show the name or trade name and address of the brewer, the distinctive name of the beverage, if any, and the legend "Nontaxable under section 5051 I.R.C." Other information which is not inconsistent with the requirements of this section may be shown on bottle lablels.

(d) *Cases.* The brewer shall mark cases or shipping containers to show the nature of the product and the name or trade name and address of the brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart Q—Removal of Brewer's Yeast and Other Articles

§ 25.251 Authorized removals.

(a) *Brewer's yeast.* A brewer may remove brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), from the brewery in barrels, tank trucks, in other suitable containers, or by pipeline.

(b) *Containers.* Containers will bear a label giving the name and location of the brewery and including the words "Brewer's Yeast."

(c) *Pipeline.* If brewer's yeast is removed by pipeline, the pipeline will be described in the Brewer's Notice, Form 5130.10. The premises where the brewer's yeast is received is subject to inspection by an ATF officer during ordinary business hours.

(d) *Other articles.* A brewer may remove malt, malt syrup, wort, and other articles from the brewery.

(e) *Methods of Analysis of the American Society of Brewing Chemists, Seventh Edition (1976).* In reference to paragraph (a) of this section, this incorporation by reference was approved by the Director of the Federal Register on March 23, 1981, and is available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC. This publication is available from the American Society of Brewing Chemists, 40 Pilot Knob Road, St. Paul, Minnesota 55121.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.252 Records.

(a) *Production.* The brewer shall keep records of the production of malt syrup, wort, and other articles which are removed from the brewery. The record shall include the quantities and kinds of materials used, and in the case of wort and concentrated wort, the balling.

(b) *Removals.* The brewer shall keep records of removals of brewer's yeast, malt and other articles from the brewery. The record shall include the quantity and date of removal of each lot, and the name and address of the consignee. These records may consist of invoices or shipping documents.

(c) *Inspection.* All records under this section shall be available for inspection at the brewery by an ATF officer during normal business hours.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

Subpart R—Beer Concentrate

§ 25.261 General.

(a) *Authorized processes.* A brewer may, in accordance with this subpart—

(1) Produce concentrate from beer,

(2) Reconstitute beer from concentrate,

(3) Transfer concentrate from one brewery to another brewery of the same ownership, and

(4) Remove concentrate without payment of tax for exportation, or for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation in accordance with Part 252 of this chapter.

(b) *Brewery treatment of concentrate.* Beer reconstituted from concentrate in accordance with this subpart shall (except with respect to the additional labeling of reconstituted beer under § 25.263) be treated the same as beer which has not been concentrated and reconstituted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.262 Restrictions and conditions on processes of concentration and reconstitution.

(a) *Conditions on concentration.* A brewer may not employ any process of concentration which separates alcohol spirits from any fermented substance.

(b) *Conditions on reconstitution.*

(1) The process of reconstitution of beer will consist of the addition to the concentrate of carbon dioxide and water only.

(2) A brewer may not employ any process of concentration or reconstitution unless the beer upon reconstitution will, without the addition of any substance other than carbon dioxide and water, possess the taste, aroma, color, and other characteristics of beer which has not been concentrated.

(3) The process of reconstitution shall provide for the addition of sufficient water to restore the concentrate to a volume not less than, and an alcohol content not greater than, that of the beer used to produce the concentrate.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1315, as amended, 1388, as amended (26 U.S.C. 5002, 5401))

§ 25.263 Production of concentrate and reconstitution of beer.

(a) *Operations at brewery.* A brewer may concentrate beer or reconstitute beer only at a brewery.

(b) *Marking of containers.* Containers of concentrate transferred to other breweries of the same ownership, and containers of concentrate removed for export shall be marked, branded and labeled in the same manner as prescribed for containers of beer in Subpart J of this part. All containers shall be identified as containers of beer concentrate.

(c) *Mingling with beer.* A brewer may not mingle concentrate with unconcentrated beer. A brewer may mingle reconstituted beer with other beer at the brewery.

(d) *Additional labeling.* Barrels, kegs, and bottles containing beer produced from concentrate will show by label or otherwise the statement "PRODUCED FROM . . . CONCENTRATE," the blank to be filled in with the appropriate class designation of the beer (beer, lager, ale, stout, etc.) from which the concentrate was made. The statement will be conspicuous and readily legible and, in the case of bottled beer, will appear in direct conjunction with, and as a part of,

the class designation. All parts of the class designation will appear in lettering of substantially the same size and kind.

(3) *Records and reports.* Brewers producing concentrate and brewers reconstituting beer from concentrate shall keep the records and reports required by Subpart U of this part.

§ 25.264 Transfer between breweries.

(a) *Authorized transfers.* A brewer may remove from the brewery, without payment of tax, concentrate produced from beer for transfer to any other brewery of the same ownership (within the limits of ownership described in § 25.181).

(b) *Record of concentrate transferred.* When transferring concentrate between breweries, the shipping brewer shall prepare for each conveyance a serially numbered invoice or commercial record covering the transfer. The invoice will be clearly marked to indicate that concentrate produced from beer is being transferred. The invoice will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) The number of containers transferred, the balling, percentage of alcohol by volume, and the total barrels of concentrate; and

(5) A description of the beer from which the concentrate was produced including the number of barrels, balling, and percentage of alcohol by volume.

(c) *Disposition of invoice.* On shipment of the concentrate, the shipping brewer shall send the original copy of the invoice to the receiving brewer and shall retain a copy for the brewery records. On receipt of the concentrate, the receiving brewer shall note on the invoice any discrepancies in the concentrate received and retain the invoice in the brewery records.

Subpart S—Pilot Brewing Plants

§ 25.271 General.

(a) *Establishment.* A person may establish and operate a pilot brewing plant off the brewery premises for research, analytical, experimental, or developmental purposes relating to beer or brewery operations. Pilot brewing plants will be established as provided in this subpart.

(b) *Authorized removals.* Beer may be removed from a pilot brewing plant only for analysis or organoleptic examination.

(c) *Transfers between brewery and pilot brewing plant.* Subject to Subpart I. of this part, beer may be transferred to a pilot brewing plant from a brewery of the same ownership, and beer may be transferred without payment of tax from a pilot brewing plant to a brewery of the same ownership.

(d) *Other regulations applicable.* The provisions of Subparts A, B, F, I, K, and of §§ 25.63, 25.64, and 25.21 are applicable to pilot brewing plants established under this subpart. Also, the provisions of §§ 25.72–25.75, 25.77, 25.92 and 25.94–25.105 relating to bonds, and consents of surety, and of §§ 25.131–25.134 are applicable to bonds and consents of surety given, and to changes in the proprietorship, location, and premises of pilot brewing plants established under this subpart.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.272 Application.

(a) *Form of application.* Any person desiring to establish a pilot brewing plant under the subpart shall file an application with the regional director (compliance). The application will be in writing and will include the following:

(1) Name and address of the applicant;

(2) Description of the premises and equipment to be used in the operations;

(3) Nature, purpose, and extent of the operations; and

(4) A statement that the applicant agrees to comply with all provisions of this part applicable to the operations to be conducted.

(b) *Additional information.* The regional director (compliance) may at any time before or after approval of an application, require the submission of additional information necessary for administration of this part or for protection of the revenue.

(c) *Authorization of operations.* The regional director (compliance) may authorize the operation of a pilot brewing plant if it is determined that the plant will be operated solely for one or more of the purposes specified in § 25.271, and that operations will not jeopardize the revenue.

(d) *Withdrawal of authorization.* The regional director (compliance) may withdraw authorization to operate a pilot brewing plant if in his or her judgment, the revenue would be jeopardized by the operations of the plant.

(e) *Commencement of operations.* A person may not begin operation of a pilot brewing plant until the regional director (compliance) has approved the application required by this section.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.273 Action on application.

If the regional director (compliance) approves the application for a pilot brewing plant, he or she will note approval on the application and forward a copy to the applicant. The applicant shall file the copy of the approved application at the premises, available for inspection by an ATF officer.

§ 25.274 Bond.

(a) *Requirement.* Any person requesting authorization to establish a pilot brewing plant under this subpart shall execute and file a brewer's bond, Form 5130.22. A person may not begin operation of a pilot brewing plant until receiving notice from the regional director (compliance) of the approval of the bond. Operations may continue only as long as an approved bond is in effect.

(b) *Penal sum.* The penal sum of a bond covering the premises of a pilot brewing plant will be an amount equal to the potential tax liability of the maximum quantity of beer on hand, in transit to the plant, and unaccounted for at any one time, computed by multiplying the quantity of beer in barrels by the rate of tax in 26 U.S.C. 5051. The penal sum of the bond (or total penal sum if original and strengthening bonds are filed) may not exceed $50,000 or be less than $500.

(c) *Conditions of bonds.* The bond will be conditioned that the operator of the pilot brewing plant shall pay, or cause to be paid, to the United States according to the laws of the United States and the provisions of this part, the taxes, including penalties and interest for which the operator shall become liable, on all beer brewed, produced, or received on the premises.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.275 Special tax.

The special tax imposed on a brewer by 26 U.S.C. 5091 shall be paid in accordance with Subpart I of this part.

§ 25.276 Operations and records.

(a) *Commencement of operations.* A person may commence operation of a pilot brewing plant upon receipt of the approved application and bond.

(b) *Reports.* The operator of a pilot brewing plant is not required to file monthly reports with the regional director (compliance).

(c) *Records.* The operator of a pilot brewing plant shall maintain records which, in the opinion of the regional director (compliance), are appropriate to the type of operation being conducted. These records will include information sufficient to account for the receipt,

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production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials. These records will be available for inspection by an ATF officer.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.277 Discontinuance of operations.

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the regional director (compliance) stating the purpose of the notice and giving the date of discontinuance. When operations have been completed and all beer at the premises has been disposed of and accounted for, the regional director (compliance) will note approval on the notice and return a copy to the operator.

Subpart T—Refund or Adjustment of Tax or Relief From Liability

§ 25.281 General.

(a) *Reasons for refund or adjustment of tax or relief from liability.* The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in Subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in Subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in § 25.282.

(b) *Refund of beer tax excessively paid.* A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in § 25.285.

(c) *Rate of tax.* Brewers who have filed the notice required by § 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the regional director (compliance) that the tax was paid or determined at the higher rate of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.282 Beer lost by fire, theft, casualty, or act of God.

(a) *General.* The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in § 25.286.

(b) *Unmerchantable beer.* When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the regional director (compliance) that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) *Beer lost or destroyed.* When beer is lost or destroyed, whether by theft or otherwise, the regional director (compliance) may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) *Beer lost by theft.* When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Notification of regional director (compliance).* (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, shall, on learning of the loss of beer, immediately notify in writing the regional director (compliance) of the region in which the loss occurred of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents shall be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability shall notify in writing the regional director (compliance) of the region in which the beer is, of the circumstances by which the beer became unmerchantable, and shall state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) *Additional information.* The regional director (compliance) may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed.* Claims for refund of tax on beer returned to a brewery under the provisions of § 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;

(9) A statement that the tax has been fully paid or determined; and

(10) A reference to the notice (if required) filed under §§ 25.213 or 25.222.

(b) *Beer lost, destroyed, or rendered unmerchantable.* Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a) (1), (2), (3), (5), and (6) of this section;

(2) A statement of the circumstances surrounding the loss;

(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;

(4) Date of the loss, and if lost in transit, the name of the carrier;

(5) A reference incorporating the notice required by § 25.282; and

(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under § 25.282.

(c) *Additional evidence.* The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this section.

(d) *Filing of claim.* Claim for refund of tax shall be filed on IRS Form 843 with the regional director (compliance) of the region in which the beer was lost, returned, destroyed, or rendered unmerchantable. Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.284 Adjustment of tax.

(a) *Adjustment of tax in lieu of refund.* In lieu of filing a claim for refund of tax as provided in § 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) *Beer returned to brewery other than from which removed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer returned to the brewery under § 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under § 25.213, the adjustment may not be made until the regional director (compliance) authorizes disposition of the beer.

(c) *Beer voluntarily destroyed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under Subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) *Beer lost, destroyed or rendered unmerchantable.* An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under § 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification of the regional director (compliance) required under § 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing to the satisfaction of the regional director (compliance) that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Condition of adjustments.* (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) *Records.* When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records;

(1) For beer returned to the brewery or voluntarily destroyed, the records required by §§ 25.283(a) (1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by § 25.283 (a) (1), (2), (5), (b) (2), (3), (4), (5), and (6).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.285 Refund of beer tax excessively paid.

(a) *Eligibility.* A brewer who, under the provisions of § 25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on IRS Form 843 with the regional director (compliance) in the region in which the brewer's principal place of business is located, within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see 26 CFR 301.6511(a)–1 and 301.6511(b)–1.

(b) *Calculation of refund.* The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in § 25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished.* Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in § 25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 by the brewer or the brewer's authorized agent and submitted with Form 5130.9 of the receiving brewery for the month on which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the month in which the loss is discovered. When, for valid reasons, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to the monthly report stating the reason whey the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

(b) *Information to be shown.* The claim will show the following information:

(1) The date of the shipment;

(2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;

(3) The percent of loss;

(4) The specific cause of the loss;

(5) The nature of the loss (leakage, breakage, casualty, etc.);

(6) Information as to whether the claimant has been indemnified by

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insurance or otherwise in respect to the tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the carrier or other persons having personal knowledge of the loss, if available.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1389, as amended (26 U.S.C. 5056, 5414))

Subpart U—Records and Reports

§ 25.291 Records.

(a) *General.* (1) The records to be maintained by brewers include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of this part, if those documents contain all the details required by this part, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Entries.* (1) Each entry required by this part to be made in daily records will be made not later than the close of the business day next succeeding the day on which the transaction occurs.

(2) When the brewer prepares transaction or business records concurrenty with the individual operation or transaction and these records contain all the required information with respect to the operation or transaction, entries in daily records may be made not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(c) *Content.* (1) All entries in the daily records required by this subpart will show the date of the operation or transaction.

(2) Daily records will accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) Brewers to prepare summaries, reports, and returns required by this part, and

(ii) ATF officers to verify removals of beer and cereal beverages, to verify claims, and to ascertain if there has been compliance with law and regulations.

(d) *Format.* (1) The brewer's copies of prescribed forms which bear all required details will be utilized as daily records.

(2) When a form is not prescribed, the records required by this subpart will be those commercial records used by the brewer in the accounting system and will bear all required details.

(3) The brewer shall maintain daily records required by this part so they clearly and accurately reflect all mandatory information. When the format or arrangement of the daily records is such that the information is not clearly or accurately shown, the regional director (compliance) may require a format or arrangement which will clearly and accurately show the information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.292 Daily records of operations.

(a) *Daily records.* A brewer shall maintain daily records of operations which show by quantity the following:

(1) Each kind of material received and used in the production of beer and cereal beverage (including the balling and the quantity of each type of material used in the production of wort or concentrated wort).

(2) Beer and cereal beverage produced (including water added after production is determined).

(3) Beer and cereal beverage transferred for and returned from bottling.

(4) Beer and cereal beverage transferred for and returned from racking.

(5) Beer and cereal beverage bottled.

(6) Beer and cereal beverage racked.

(7) Cereal beverage removed from the brewery.

(8) Beer removed for consumption or sale. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered (not required for sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottels.

(9) Beer removed without payment of tax. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges or deep tanks of vessels.

(10) Packaged beer used for laboratory samples at the brewery.

(11) Beer consumed at the brewery.

(12) Beer returned to the brewery from which removed.

(13) Beer returned to the brewery after removal from another brewery owned by the brewer.

(14) Beer reconditioned, used as material, or destroyed.

(15) Beer received from other breweries or received from pilot brewing plants.

(16) Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause.

(17) Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom shipped or delivered) and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal.

(18) Record of tests of measuring devices.

(19) Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

(b) *Daily summary records.* A brewer shall maintain daily summaries of the following transactions:

(1) Beer and cereal beverage bottled;

(2) Beer and cereal beverage racked;

(3) Beer removed for consumption or sale;

(4) Beer returned to the brewery from which removed;

(5) Beer returned to the brewery after removed from another brewery owned by the brewer; and

(6) Brewing materials, beer and cereal beverage in process, and finished beer and cereal beverage on hand.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.293 Record of ballings and alcohol content.

The brewer shall maintain a record of the ballings of the wort produced, and of the ballings and the alcohol content of beer and cereal beverage transferred for bottling and racking, between breweries in bulk conveyances, and to pilot brewing plants. Records showing ballings and alcohol content need not be consolidated and averaged daily unless the brewer so desires.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.294 Inventories.

(a) The brewer shall take a physical inventory of beer and cereal beverage at least once each calender month. The brewer may take this inventory within 7 days of the close of the calendar month for which made.

(b) The brewer shall make a record of inventories of beer or cereal beverage which will show the following:

(1) Date taken;

(2) Quantity of beer and cereal beverage on hand;

(3) Losses, gains, and shortages; and

(4) Signature, under penalties of perjury of the brewer or person taking this inventory.

(c) The brewer shall retain inventory records and make them available for inspection by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.295 Record of unsalable beer.

A brewer having unsalable beer in packages or tanks in the brewery may destroy, recondition, or use the beer as material. The brewer shall report the quantity of the beer destroyed, reconditioned, or used as materials, in daily records and on Form 5130.9. If the unsalable beer consists of rejects from the packaging operations, the beer may be destroyed without being included in the packaging production records, and, when so destroyed, will be so reported in the brewer's daily records and on Form 5130.9. When reject bottled beer is to be consumed at the brewery or sold to brewery employees, or is cased or otherwise accumulated pending other disposition, the quantity will be included in the packaging production and be so reported in the brewer's daily records and on Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389 as amended, 1390, as amended, 1395 as amended (26 U.S.C. 5411, 5415, 5555))

§ 25.296 Record of beer concentrate.

(a) *Daily records.* A brewer who produces concentrate or reconstitutes beer shall maintain daily records which accurately reflect the balling, quantity, and alcohol content of—

(1) Beer entered into the concentration process;

(2) Concentrate produced;

(3) Concentrate transferred to other breweries;

(4) Concentrate exported;

(5) Concentrate received;

(6) Concentrate used in reconstituting beer; and

(7) Beer reconstituted.

(b) *Monthly summary reports.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer will prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the month. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the month;

(2) Concentrate on hand end of the month;

(3) Concentrate produced;

(4) Concentrate received; and

(5) Specific disposition of concentrate such as "used in reconstitution," "removed for export," "removed to foreign-trade zone," or "transferred to other breweries."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.297 Brewer's monthly report, Form 5130.9

The brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared. The brewer shall retain a copy of the Form 5130.9 for the brewery records.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395 as amended (26 U.S.C. 5415, 5555))

§ 25.298 Excise tax return, Form 5000.24.

All entries on the excise tax return, Form 5000.24, will be fully supported by accurate and complete records. The brewer shall file a copy of Form 5000.24 as a part of the records at the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5061, 5415, 5555))

§ 25.299 Execution under penalties of perjury.

When a return, form, or other document is required by this part or in the instruction on or with the return, form, or other document to be executed under the penalties of perjury, as defined in § 25.11, it will be so executed and will be signed by the brewer or other duly authorized person.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065))

§ 25.300 Retention and preservation of records.

(a) *Place of maintenance.* Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any ATF officer during business hours.

(b) *Reproduction of original records.* Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under § 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) *Retention of records.* Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The regional director (compliance) may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) *Data Processing.* (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the brewery if the original transaction (source) records required by §§ 25.292–25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.301 Photographic copies of records.

(a) *General.* Brewers may record, copy, or reproduce records required by this part. Brewers may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as through it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

Par. 5. The authority citation for 27 CFR Part 252 is revised to read as follows:

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Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5176, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

Par. 6. The table of sections to Part 252 is amended as follows:

PART 252—EXPORTATION OF LIQUORS

* * * * *

Subpart C—Miscellaneous Provisions

* * * * *

Evidence of Exportation and Use

Sec.
252.40 Evidence of Exportation: distilled spirits and wine.
252.41 Evidence of lading for use on vessles or aircraft: distilled spirits and wine.

* * * * *

252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

* * * * *

Subpart D—Bonds and Consents of Surety

* * * * *

252.60 Brewer's bond, Form 5130.22.

* * * * *

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

252.141 General.
252.142 Notice, Form 1689.
252.143 Containers.
252.144 Export marks.
252.145 Consignment, shipment and delivery.
252.146 Disposition of forms.
252.147 Return of beer or beer concentrate.
252.148 Brewer's report.
252.149 Losses.
252.150 Charges and credits on bond.

Subpart Ga [Removed]

* * * * *

Subpart N—Proceedings at Ports of Export

* * * * *

Alternate Procedures

252.295 Exception for export of beer.

Subpart O—Losses

* * * * *

Beer and Beer Concentrate

252.320 Loss of beer and beer concentrate in transit.

* * * * *

Par. 7. Section 252.3 is revised by updating the part number for Part 245. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Regulations relating to this part are listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 25—Beer
27 CFR Part 30—Gauging Manual
27 CFR Part 194—Liquor Dealers
27 CFR Part 231—Taxpaid Wine Bottling Houses
27 CFR Part 240—Wine
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety of Sureties on Penal Bonds

Par. 8. Section 252.11 is amended by changing the citation for Part 245 to Part 25 in the definition of "brewery." As revised, the definition reads as follows:

§ 252.11 Meaning of terms.

* * * * *

Brewery. Premises established under Part 25 of this chapter for the production of beer.

* * * * *

Par. 9. Section 252.40 is amended by changing the section title and by making a similar change in the first sentence. As revised, the section heading and the introductory text of § 252.40 read as follows:

§ 252.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

* * * * *

Par. 10. Section 252.41 is revised by adding distilled spirits and wine to the section title, and by deleting beer from the text of the section. As revised, § 252.41 reads as follows:

§ 252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.266.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859; 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

Par. 11. A new § 252.43 is added giving evidence of exportation and use on vessels and aircraft for beer only. As added, § 252.43 reads as follows:

§ 252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

(1) Customs certification of lading and clearance on Form 1582–B or Form 1689 under Subpart M of this part; or

(2) For shipment to the armed forces, certification by a military officer on Form 1582–B or Form 1689 under § 252.275; or

(3) A bill of lading (§ 252.250), a railway express receipt (§ 252.251), or an air express or air freight bill of lading (§ 252.252), when such bills of lading or receipt show exportation to a foreign country or possession; or

(4) A certificate issued by an export carrier under § 252.253 attesting to exportation to a foreign country or possession; or

(5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or

(6) Any other evidence of exportation approved by the regional director (compliance).

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

(1) For fishing vessels only, customs certification of lading and use on Form 1582–B or Form 1689 under § 252.23; or

(2) Customs certification of lading on Form 1582–B or Form 1689 under §§ 252.264 or 252.282; or

(3) Any other evidence of exportation approved by the regional director (compliance).

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

§ 252.51 [Amended]

Par. 12. Section 252.51 is amended by changing the reference to Part 245 to read Part 25 in the last sentence of the section

Par. 13. Section 252.60 is revised by changing the brewer's bond number, the part number, and by deleting the proviso. As revised, § 252.60 reads as follows:

§ 252.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 252.141, the brewer's bond, Form 5130.22, furnished under the provisions of Part 25 of this chapter will cover the removals.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

Par. 14. Subpart G is revised by incorporating into it the provisions of Subpart Ga relating to the exportation of beer concentrate. As revised, Subpart G reads as follows:

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

§ 252.141 General.

(a) *Beer.* Beer may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country;

(2) Use as supplies on the vessels and aircraft described in § 252.21; or

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate.* Concentrate, produced from beer under the provisions of Subpart R of Part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country; or

(2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond.* All removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in § 252.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.142 Notice, Form 1689.

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 for each withdrawal. The brewer shall execute Form 1689 in quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked "Consignee's Copy."

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.143 Containers.

(a) *Beer.* Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate.* Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.144 Export marks.

(a) *General Requirement.* In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of Part 25 of this chapter, the brewer shall mark the word "Export" on each container or case of beer, or the words "Beer concentrate for export" on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions.* A brewer need not apply the mark "Export" on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of Subpart M of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the regional director (compliance), retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy," provided for in § 252.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to be brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 252.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 returned by the district director of customs, "Canceled—Returned to Brewery," and forward one copy to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

§ 252.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any calendar month will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512–0052.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of Subpart O of this part, with respect to losses are applicable.

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(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 252.168 Charges and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Par. 15. Subpart Ga is removed.

§ 252.223 [Amended]

Par. 16. Section 252.223 is amended by changing the reference to Part 245 to read Part 25.

Par. 17. A new center headnote following § 252.290, and a new § 252.295 are added to Subpart N, which relieves brewers or exporters from obtaining customs certification on Forms 1582–B or 1689 when other proof of exportation is submitted. As added, the undesignated center headnote and § 252.295 read as follows:

Alternate Procedures

§ 252.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 252.46. Brewers and exporters shall prepare Forms 1582–B or 1689, as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

Par. 18. The undesignated center headnote between § 252.318 and § 252.320 is changed from "BEER" to read "BEER AND BEER CONCENTRATE".

Par. 17. Section 252.320 is revised by expanding coverage of the section to include beer concentrate and by making editorial changes. As revised, § 252.320 reads as follows:

§ 252.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the regional director (compliance) of Form 1689 from the officer required to certify it under the provisions of Subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the regional director (compliance) will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the regional director (compliance) will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the regional director (compliance) will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

Par. 18. Section 252.321 is revised by expanding coverage of the section to include beer concentrate. As revised, § 252.321 reads as follows:

§ 252.321 Tax assessed on loss not accounted for.

The regional director (compliance) shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on: (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Signed: April 25, 1985.

Stephen E. Higgins,

Director.

Approved: September 20, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86–4369 Filed 3–4–86; 8:45 am]

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Part III

Department of Energy

Western Area Power Administration

Sacramento Area Office; Central Valley Project; Final Withdrawal Procedures; Notice

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DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Area Office; Central Valley Project Withdrawal Procedure

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final Withdrawal Procedures.

SUMMARY: The Sacramento Area Office of the Western Area Power Administration (Western) is issuing this notice of final procedures for withdrawal of Central Valley Project (CVP) power allocations from its customers under varying circumstances. This notice also contains final criteria governing the allocation and service of power to preference customers in Trinity, Tuolumne, and Calaveras Counties with statutory first preference rights to CVP power.

This proceeding is being conducted by Western for the purpose of developing and clarifying methods of withdrawal of CVP power from customers under circumstances prescribed by law or by contract. For further information regarding the specific circumstances prescribed by law or contract, and the procedures and their alternatives, see the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985), and the **Federal Register** notice dated August 16, 1985 (50 FR 33314, August 16, 1985).

As discussed in the Responses to Customer Comments section of this notice, several customers have filed suit over an interpretation of the Santa Clara Settlement. Pending resolution of that dispute, Western will not withdraw under these procedures the purportedly "nonwithdrawable" power from those customers that are parties to the Santa Clara Settlement.

ADDRESS: For further information concerning this notice contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, Phone: (916) 978–4418.

Summary of Customer Comments and Illustrative Examples.—Western has prepared a booklet of examples illustrating the execution of the Final Withdrawal Procedures. This booklet will be mailed to all customers and interested parties. This booklet will also be made available upon request. Such requests may be in writing or by phone to the address given above.

Final Procedures

1. Explanation of Terms

1.1 *Anniversary Date* means the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the Counties of Origin. The next Anniversary Date for First Preference Customers in Trinity County is January 1, 1987, and for First Preference Customers in Tuolumne and Calaveras Counties is April 5, 1987.

1.2 *Annual Average Generation* when used in reference to the entitlements of First Preference Customers means the average output of the plants located in the Counties of Origin as presented in Western's official planning forecast (see procedure 3.2, definition of variable A).

1.3 *Average Annual Load Factor or AALF* means the average of the most current 12 monthly load factors available, preceding the determination of the Maximum Entitlement of First Preference Customers.

1.4 *Project Auxiliary Service* for the purpose of these procedures, means power, other than Project Use, required to meet the needs of the CVP for such purposes as station service, plant load, lighting, station office loads, and other purposes, as determined by the United States, necessary for supporting the operations of the CVP. This power is deducted from gross generation prior to determining the amount of power available for project pumping and preference sales.

1.5 *Contract 2948A or 2948A* means Contract No. 14–06–200–2948A, dated July 13, 1967, between Western and the Pacific Gas and Electric Company (PGandE) as amended, supplemented, replaced, or superseded.

1.6 *Contract Rate of Delivery or CRD* means the amount of capacity committed to a contractor pursuant to power sales contracts between Western and such contractor to provide firm electric power from the CVP.

1.7 *Counties of Origin* means Trinity, Calaveras, or Tuolumne Counties.

1.8 *Diversity Allocation* means allocations of CVP power made in accordance with the Power Marketing Plan of 1981 and sold pursuant to Diversity Contracts.

1.9 *Diversity Contracts* means those contracts with the National Aeronautics and Space Administration–Ames Research Center (NASA–Ames) and the Department of Energy (DOE) Laboratories providing for additional CVP allocations to such customers in exchange for their participation in Western's load control program.

1.10 *Firm CRD* means any power sale described herein which is not referred to as a Diversity Allocation, Renewable Resource Allocation, Type I Withdrawable Power, Type II Withdrawable Power, or Westlands Water District (Westlands) Withdrawable Power.

1.11 *First Preference Customers* means those CVP customers in either Trinity, Tuolumne, or Calaveras Counties, as the case may be, which have satisfied the statutory requirements according to Reclamation law for a right to power service of up to 25 percent of the additional power made available from the CVP power system as a result of the construction of the Trinity Division of the CVP or the New Melones Powerplant and their integration with the CVP.

1.12 *Load Level* means the maximum allowable simultaneous demand for power during any month of all of those CVP customers whose CRDs are designated as contributing to the simultaneous demand.

1.13 *Maximum Entitlements of First Preference Customers (MEFPC)* means the maximum amount of power which is available to satisfy the rights of First Preference Customers. Such amounts will be calculated for preference customers located in Trinity County, and separately for preference customers located in Calaveras and Tuolumne Counties.

1.14 *Maximum Entitlement of Westlands* means the maximum amount of CRD which is available to satisfy Westlands' contract rights to preference power. Currently this amount is 50 MW, but is subject to reduction as provided herein.

1.15 *Maximum Simultaneous Demand or MSD* means the maximum level of simultaneous customer demand for power of preference customers of the CVP at the 1,152–MW load level, adjusted for losses to the CVP load center, in accordance with the provisions of Contract 2948A and the Santa Clara Settlement.

1.16 *Power Marketing Plan of 1981* means that Power Marketing Plan created to market the additional 102 MW of MSD made available as a result of the Santa Clara Settlement (46 FR 51224, October 16, 1981).

1.17 *Project Use*, for the purposes of these procedures, means the power from the CVP required to operate the pumping facilities of the CVP. As such, this definition refers only to the pumping aspects of the CVP and does not include the power required to fulfill the other needs of the project (see the definition for Project Auxiliary Service).

1.18 *Renewable Resource Allocation* means allocations of CVP power made in accordance with the 1981 Power Marketing Plan and sold pursuant to Western's Renewable Resource Contracts.

1.19 *Renewable Resource Contracts* means those contracts with Western customers providing Renewable Resource Allocations in exchange for renewable resource or cogeneration development by the customer.

1.20 *Santa Clara Settlement or MOU* means the Memorandum of Understanding among Western, PGandE, the City of Santa Clara, and other CVP customers, dated February 8, 1980, providing for settlement of issues raised in the case of the *City of Santa Clara* v. *Andrus*, 572 F. 2d 660 (9th Cir.), cert. denied, 439 U.S. 859 (1978), and for PGandE's agreement to allow Western the option of increasing the load level from 1,050 MW to 1,152 MW.

1.21 *Type I Withdrawable Power or Type I* means that portion of a customer's CRD which may be reduced by Western to maintain the 925–MW load level.

1.22 *Type II Withdrawable Power or Type II* means the 60–MW portion of the City of Santa Clara's CRD which may be reduced by Western to maintain the 1,050–MW load level pursuant to the Santa Clara Settlement.

2. Withdrawals to Serve Project Use—Under Western's existing contract with PGandE, its imports from the Northwest, and the low growth rate of Project Use, there is no immediate need to withdraw power for Project Use. Therefore, at this time, Western will not be formulating procedures for withdrawals to serve Project Use. Such procedures will be promulgated when the need for Project Use withdrawals arises.

3. Allocations to First Preference Customers

3.1 Western will serve the First Preference Customers from the capacity available under the 1,152–MW load level. Withdrawals of power required to provide such service will be as provided in sections 4 and 6 herein.

3.2 MEFPC is an annual number, which can vary from year to year, and is determined for each year of a 5-year period in advance, once every 5 years, in accordance with the following formula:

$$\mathrm{MEFPC}=(A-L-P)*0.25$$

Where:

A—The Annual Average Generation of the plants in the Counties or Origin taken from the Western Long-Term Annual Average Generation Study (AAGS) done for the Power Repayment Study. The AAGS used shall be the most recent AAGS available prior to the Anniversary Date in the respective County or Counties of Origin.

L—Transmission losses from generation to the CVP load center (currently 4 percent).

P—Project Use Withdrawals apportioned to the New Melones or Trinity River Division (since Project Use Withdrawals have been delayed, P is currently equal to zero).

3.3 CRD requested by First Preference Customers will be converted to an energy entitlement by multiplying the requested CRD by the AALF of the First Preference Customer and the number of hours in the year (8,760) and then adjusting for losses to the CVP load center (AALF*CRD*8,760+losses from point of delivery to the CVP load center). The entitlement so determined will be used to award allocations to requesting First Preference Customers. To convert an entitlement to a CRD, the entitlement will be reduced for losses to the delivery point(s), and the result divided by the product of the AALF and 8,760.

3.4 All requests for allocations shall not exceed the peak demand experienced prior to the date of the request or the estimated peak for the year in which the request is made. Western reserves the right to reduce any request which in Western's opinion is unreasonable.

3.5 If the request(s) of First Preference Customers for power becomes greater than the MEFPC, then Western will distribute the remaining entitlement in the following fashion, unless otherwise agreed among Western and all affected First Preference Customers:

3.5.1 An attempt will be made to first meet the request of First Preference Customers not previously allocated a share of the entitlement before any of the remaining entitlement is distributed in accordance with the formula in 3.5.2.

3.5.2 The remaining entitlement will be distributed among the requesting First Preference Customer(s) in accordance with the following formula:

$$\mathrm{CE}=(\mathrm{IR}/\mathrm{TR})*\mathrm{RE}$$

Where:

CE—Customer entitlement rounded to the nearest kWh then converted to a CRD in accordance with procedure 3.3.

IR—Individual amount (CRD) requested by a First Preference Customer (converted to an entitlement in accordance with procedure 3.3, and subject to the conditions of 3.4).

TR—Sum total of all of the IR's.

RE—Amount of the MEFPC remaining (not allocated).

3.5.3 Power allocated to First Preference Customers in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

3.5.3.1 Each county shall use New Melones power only to the extent that its permanent use shall not cause the total amount in that county to exceed one-half of the power allocated by Western.

3.5.3.2 If Preference Customers in one county are not utilizing its full one-half share and a Preference Customer in the other county has need of power, which would cause the other county to exceed its one-half share, then Western will allocate such power on a withdrawable basis to the requesting customers. Such power may be withdrawn for use by a qualified first preference customer in the county not utilizing the full one-half share after notice is given pursuant to 3.5.3.3 below.

3.5.3.3 If Western is required to withdraw power allocated in accordance with 3.5.3.2 above, Western will notify such customer as soon as practicable in writing after the receipt of a request for a return of power allocation, in accordance with 3.6 below.

3.6 A First Preference Customer may request an increase in CRD by notifying Western in writing at least 6 months in advance of the month in which the increase is to be effective (increases in CRDs are effective the 1st day of a month). All such requests will be subject to the conditions of 3.4 and 3.5 above.

3.7 The MEFPCs will be redetermined once every 5 years using the AAGS (referred to as the "original AAGS") presented in 3.2 above. If the MEFPC determined from any subsequent AAGS, during the 5-year period, is less than 90 percent or greater than 110 percent of the MEFPC determined from the original AAGS, then Western reserves the right to redetermine the MEFPC based upon the new AAGS.

3.7.1 Should Western choose to redetermine the MEFPC and all of the MEFPC has been allocated, then the allocations of CRDs to the First Preference Customers will be adjusted in accordance with the following formula:

$$\text{New CRD}=(\mathrm{MEFPC}/\mathrm{TE})*\text{Old CRD}$$

Where:

CRD=Contract Rate of Delivery

TE=Summation of the energy entitlements of the First Preference Customers in the County or Counties of Origin calculated as the sum of:

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$AALF*Old\ CRD*8{,}760+losses$ (to the CVP load center).

3.7.2 Should Western decide to change the MEFPC, then Western will inform the affected First Preference Customers of the change in the MEFPC and any resultant changes in their CRDs in writing at least 6 months in advance.

3.8 The CRDs of First Preference Customers, determined in accordance with the above procedures and by application of Reclamation law are not withdrawable for load level withdrawals.

3.9 First Preference Customers may reduce their CRDs upon 6-months' written notice to Western (subject to the provisions of Article 14(b) of Contract 2948A), unless otherwise agreed by Western.

3.10 All power sales to First Preference Customers are subject to the availability of facilities or the execution of contracts necessary, as determined by Western, to provide for the sale and delivery of CVP power.

3.11 The contract of any First Preference Customer which does not reflect the provisions of these procedures will be modified to be in accordance with these procedures prior to granting any increase in CRD to such First Preference Customer.

4. Withdrawals To Serve the Rights of First Preference Customers

4.1 First Preference Customer withdrawals, under this section 4, will be made only for First Preference Customers in Tuolumne and Calaveras Counties. Such withdrawals shall be initiated as a result of a 1,152–MW load level withdrawal.

4.2 Withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties will be made from the Firm CRD of the customers subject to such withdrawal.

4.3 CRD allocated to Westlands is withdrawable to serve the rights of First Preference Customers. Such withdrawals will reduce the entitlement of Westlands, and will necessitate a Westlands Withdrawal (see section 5).

4.4 Should a First Preference Customer withdrawal become necessary (as the result of a 1,152–MW load level withdrawal), then withdrawals will be made in accordance with the following formula:

$WD=A*(P/SP)$

Where:

WD—The amount to be withdrawn from the customer's CRD (rounded up to the nearest kW).

A—The total amount of CRD withdrawn for First Preference Customers in Tuolumne and Calaveras Counties as a result of a 1,152-MW load level withdrawal.

P—The total CRD of the customer.

SP—The sum of all the customer Ps.

4.5 The formula given in 4.4 will be repeated, as necessary, until the sum of the WDs is greater than or equal to A. Withdrawals of CRD made pursuant to this section 4, to satisfy the rights of the First Preference Customers, will be subject to the limitations of procedures 6.4 and 6.5.3.

4.6 Should a withdrawal become necessary, Western will notify the affected customers at least 17 months in advance of such withdrawals. Notification of a pending 1,152-MW load level withdrawal will constitute notification of a pending First Preference Customer withdrawal.

4.7 There will be no separate reinstatement of power withdrawn to serve a First Preference Customer.

5. Withdrawals To Serve Westlands Water District

5.1 For the term of its CVP power sales contract and for the purposes specified in such contract, Westlands is entitled to increase its CRD up to a total CRD of 50 MW, except as reduced by withdrawals described in these procedures.

5.2 Only those customers receiving allocations of Westlands Withdrawals Power, as a result of the Power Marketing Plan of 1981, are subject to Westlands withdrawals. The amount of power allocated to such customers was determined in the following fashion:

$WW=(TWWA/(TOACRD-10\ MW))*OCRD=0.7136*OCRD$

Where:

WW—The Westlands withdrawable portion of a customer's CRD.

TWWA—The original entitlement of Westlands (50 MW) less Westlands CRD as of January 28, 1982 (41.4 MW).

TOACRD—Total of the original allocations to those customers with Westlands Withdrawable Power (66 MW).

OCRD—Original customer allocation of power from the Power Marketing Plan of 1981 less 0.5 MW.

5.3 Westlands Withdrawable Power will be reduced to satisfy the needs of Westlands Water District as a result of a request for an increase in CRD from Westlands, as the result of a First Preference Customer withdrawal, or as a result of a 1,152–MW load level withdrawal.

5.4 Should a withdrawal be necessary, withdrawable will be made in accordance with the following formula:

$WD=A*(WW/WWS)$

Where:

WD=Amount of Westlands withdrawals CRD to be deducted from a customer's CRD (rounded up to the nearest kW).

A—Total amount of CRD to be withdrawn.

WW—The Westlands Withdrawable Power of a customer prior to the withdrawal.

WWS—The sum of the WWs of all of the customers.

5.5 Western will notify the affected customers at least 90 days in advance in writing of any pending withdrawals. Notice of a pending 1,152—MW load level withdrawal will constitute notification of a pending Westlands withdrawal.

5.6 Should Westlands Withdrawable Power become available for reinstatement, it shall be reinstated in accordance with section 7 of these procedures.

6. Load Level Withdrawals

6.1 In any month in which a load level is exceeded, Western will withdraw power according to the procedures described below.

6.2 Withdrawals at the 925– and 1,050–MW load levels will be completed before any withdrawals are made at the 1,152–MW load level. Western does not anticipate changing the procedures currently used to withdraw at the 925– and 1,050–MW load levels.

6.3 All withdrawals of power at the 1,152–MW load level will be made from a customer's Firm CRD (as provided in procedure 6.5 below).

6.4 No customer's Firm CRD will be reduced below 0.5 MW, unless, as determined by Western, such reduction is necessary to comply with Reclamation law.

6.5 Withdrawals of CRD to satisfy the 1,152–MW load level limit will be made in the following order:

6.5.1 Type I Withdrawable Power (as a result of a 925–MW withdrawal).

6.5.2 Type II Withdrawable Power (as a result of a 1,050–MW load level withdrawal).

6.5.3 Twenty percent of a customer's Firm CRD, unless otherwise specified by contract.

6.6 Should the 1,152–MW load level be exceeded, then Western will withdraw power from its customers using the following formula:

$WD=A*(C/MSD)$

Where:

WD—Amount of CRD to be withdrawn from a customer (rounded up to the nearest kW).

A—Total amount to be withdrawn (MSD—1,152 MW).

C—The contribution of the customer to the MSD.

MSD—The Maximum Simultaneous Demand of the Western system at the 1,152–MW load level (should equal the sum of the Cs).

6.7 The formula given in 6.6 will be repeated as necessary, until the sum of the Cs (redetermined after withdrawal) is less than or equal to 1,152 MW.

6.8 First Preference Customers in Trinity, Tuolumne, and Calaveras Counties are not subject to load level withdrawals. First Preference Customers in Tuolumne and Calaveras Counties will be included in the 1,152–MW load level withdrawals, necessitating a First Preference Customer withdrawal, immediately following the 1,152–MW load level withdrawal, to restore the power withdrawn from the customers in Tuolumne and Calaveras Counties. This withdrawal will be subject to the terms and conditions of section 4 of these procedures.

6.9 Following the withdrawal for First Preference Customers, a Westlands withdrawal will be made, as required, to serve the needs of Westlands Water District. This withdrawal will be subject to the terms and conditions of section 5 of these procedures. The amount of CRD to be withdrawn will be the sum of the amount withdrawn from Westlands to serve the needs of the 1,152–MW load level, and the needs of the First Preference Customers in Tuolumne and Calaveras Counties.

6.10 If, during the 12 months following a withdrawal to meet the 1,152–MW load level, there have been no such additional withdrawals, CRDs which have been reduced to meet the 1,152–MW load level will be reinstated effective on the 1st day of the 13th month following the month of withdrawal, subject to any agreement determined by Western to be necessary with PGandE prior to such reinstatement. Power reinstated will be subject to the terms and conditions of section 7 of these procedures.

6.11 Western will engage in a load monitoring system and will promote its own and customer load control programs to minimize withdrawals of power. In this regard, Western will provide incentives (including rate discounts and possible early reinstatements of power) for load management and control for customers which materially contribute (as determined by Western) to Western's programs.

6.12 Western reserves the right to include the First Preference Customer loads in that load level which will minimize withdrawals from all of its customers.

Reinstatement of Power

7.1 Except as provided in procedures 7.2 through 7.4, all reinstatements will be made in accordance with the following formula:

$AR=A*(AW/SAW)$

Where:

AR—Amount of CRD to be reinstated to the customer.

A—Total amount of CRD or power to be reinstated.

AW—Amount of CRD withdrawn from the customer prior to reinstatement.

SAW—Sum of the AWs.

7.2 The amount of power to be reinstated for a 1,152–MW load level reinstatement will be the difference between the highest Maximum Simultaneous Demand during the 12-month period following the month of withdrawal and 1,152 MW or the total amount withdrawn to date, whichever is less. The amount withdrawn (AW) will include withdrawals made to serve the rights of First Preference Customers.

7.3 The ARs which result from the computation presented in procedure 7.1 will be rounded up to the nearest kW and the computation will be repeated until the difference between the MSD and 1,152 MW equals zero or until no further reinstatements can be made without causing the MSD to exceed 1,152 MW.

7.4 The amount of power to be reinstated for a Westlands Withdrawable Power reinstatement will be the amount of CRD returned to Western by Westlands, the amount of the entitlement returned to Westlands as a result of a 1,152–MW load level reinstatement, or the amount withdrawn, whichever is less.

7.5 The final ARs resulting from the computation presented in procedure 7.1 will be rounded down to the nearest kW to ensure that the sum of the reinstated CRDs is less than or equal to the amount to be reinstated (the sum of the ARs is less than or equal to A).

7.6 Western reserves the right to deny any reinstatement of power if in Western's opinion circumstances warrant such denial.

SUPPLEMENTARY INFORMATION: Following is a statement of rationale for each of the final procedures:

Procedure 2: Under Contract 2948A, it is not necessary for Western to make Project Use withdrawals. This is because Project Use and Project Auxiliary Service are first supplied from the project facilities, and the remaining CVP hydrogeneration is available for serving Preference Customer loads. The deficiency, if any, between the supported customer load and the hydrogeneration is purchased from PGandE or other resources. The net impact of an increase in Project Use is an increase in purchases rather than a reduction in the load served. In addition, current Bureau of Reclamation forecasts show little growth in project loads. Therefore, Western does not anticipate making Project Use withdrawals. If it should appear that Project Use withdrawals may be required, Western will develop appropriate procedures at that time.

Procedure 3.1: Western has selected this procedure for dealing with the First Preference Customer withdrawals as a means of distributing the benefits of Federal power to the greatest extent possible, while minimizing and equitably sharing the impact of withdrawals on all customers.

Procedure 3.2: Western has interpreted the phrase, "additional electric energy," as it appears in Reclamation law, to mean the average gross output of the plants in the County or Counties of Origin less the plant's share of Project Use and Project Auxiliary Service (realistically this is all that is available to serve any preference customer since the needs of the project take precedent over preference power sales). In addition, since CRDs are allocated at delivery point and not at the generator, the sale of power to preference customers, via a CRD allocation, must be adjusted for the losses required to get the power from the generator to the point of delivery. Consequently, Western has selected Alternative 1 of the entitlement formulas as the means of determining the magnitude of the First Preference Customer allocations. However, recognizing that other preference allocations are not reduced for the effects of increased Project Use, Western has decided to extend this feature of its Power Marketing Program to the First Preference Customers (since they pay for it in Western's rates). Doing so will require that the MEFPC be reduced if and when Project Use withdrawals are required. Consequently, the P in Alternative 1 has been defined as the Project Use withdrawals apportioned to the plants located in the Counties of Origin. The exact details of the apportionment will be part of any future procedures developed to deal with Project Use withdrawals.

Western has rejected Alternative 2 because it does not embody Western's interpretation of the phrase "additional electric energy," nor does it take into account the circumstances related to the delivery of power from the generator to the customer.

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Western has rejected Alternative 3 because it would base the entitlement and subsequent allocations of First Preference Customer power on a percentage of total power sold by the CVP as integrated with PGandE under Contract 2948A. Western does not believe that this method was intended by the First Preference Customer statutes because the entitlement is not just based upon the contribution to the CVP of the specified units. An entitlement so determined would include, within its basis for determination, diversity in the system (a portion of which is there as a result of Western's load monitoring program), unused allocations of other customers, and the conservation efforts of Western's other customers (which includes but is not limjted to direct conservation efforts, high-side metering expenditures, and the conversion of some customer receiving systems to voltages higher than 44 kV or direct service). Such a basis for determination of the MEFPC is in Western's opinion not consistent with the intent of Reclamation law, or equitable to the other customers. See discussion of Alternatives 1, 2, and 3 in the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

Procedure 3.3: The MEFPC is determined at the CVP load center. To convert the MEFPC to a CRD to be applied at a customer's point(s) of delivery will require that the MEFPC be adjusted for losses from load center to the point(s) of delivery. Since these losses and customer load factors may vary among First Preference Customers, the MEFPC might not be convertible to a CRD. It is the intent of these proceedings that the summation of all the First Preference Customer CRDs (in a County or Counties of Origin) converted to an entitlement in accordance with procedure 3.3 shall not exceed the MEFPC for the County or Counties of Origin.

Procedure 3.4: Western recognizes that there may be some incentive to overstate load projections to obtain the remaining MEFPC to exclusion of other First Preference Customers. To preclude this from happening, Western will examine all requests for reasonableness by comparing them against historical peaks, adjusted for reasonable growth based on historical growth patterns, and further adjusted for anticipated huge increases in load (such as sudden industrial growth or annexations). Should the customer's request exceed Western's estimate of the customer's load, Western will reduce such customer's request to match Western's estimate of that customer's load.

Procedure 3.5.1: Western's "wide spread use policy" dictates that Western consider, to the extent possible, allocating First Preference Customer power to those qualifying entities which do not possess an allocation. The inclusion of procedure 3.5.1 implements this policy.

Procedure 3.5.2: This procedure recognizes that at some point in time, the requests for First Preference Customer power may exceed the available power. This procedure distributes the remaining power in accordance with the needs of the customers (i.e., their requests).

Procedure 3.5.3: Based upon the comments and requests of Tuolumne and Calaveras Counties, Western is including this provision in its final procedures for withdrawals. Western recognizes and supports the desire of the two counties to have the MEFPC split equally between First Preference Customers within the counties. However, Western must emphasize that the responsibility for making allocations is Western's, and if First Preference Power is available, Western cannot deny an allocation to a qualified First Preference Customer (though it may be willing to allocate power on a withdrawable basis), nor support the idea that one First Preference Customer within a county has greater rights to preference power than another First Preference Customer. Western considers this rule responsive to the comments received from the counties.

Procedure 3.6: Six-months' notice should give Western sufficient time to evaluate each customer request and allocate additional CRD based upon the customer request.

Given the uncertainty in forecasting loads, Western recognizes that actual loads may exceed requested allocations. If the customer does not posess a contract with an auxiliary supplier for the additional load, or if the unauthorized overrun is small, Western will generally (with PGandE's concurrence) agree to serve the unauthorized overrun at 10 times the applicable CVP power rates. Should this situation occur, the customer will be responsible for initiating an immediate request for an increase in CRD in accordance with Western's procedure 3.6.

Procedure 3.7: Western believes that determining the MEFPC in advance for an extended period will make the administration of the First Preference Customer allocations easier. The 5-year period was chosen to coincide with the opening of the statutory window for serving new First Preference Customers.

The 10-percent provision was included to ensure that the First Preference Customers, as well as Western's other customers, are protected from adverse conditions not anticipated in the AAGS.

Procedure 3.8: First Preference Customers are entitled up to a fixed percentage of the additional output of the powerplants in the Counties of Origin by Reclamation law. Since this entitlement can only be reduced to meet the needs of the project, a load level withdrawal would only reduce a First Preference Customer's current allocation. The resulting lost allocation could be immediately requested by the First Preference Customer, returning its CRD to the before-withdrawal magnitude. The ultimate result is that the load level withdrawal would have no impact on the CRD of the First Preference Customers. Therefore, Western will not subject First Preference Customers to a load level withdrawal.

Procedure 3.9: Western believes that 6-months' advance notice will be sufficient time to process the reduction and modify its billing records accordingly. Given the manner in which Western is triggering its First Preference Customer withdrawals, it will not be reinstating any power returned by a First Preference Customer. Such returns will be used to serve the loads of the customers at the 1,152–MW load level, which may or may not be reinstated depending upon the MSD at that load level.

Procedure 3.10: As with other power sales contracts, sales of power to First Preference Customers are dependent upon the availability of facilities to deliver the power. To the extent that the availability of facilities is dependent upon the existence of additional contracts, then the sale of power to First Preference Customers will depend upon the existence of such contracts.

Procedure 3.11: Contractual changes might be required to implement these procedures with respect to some First Preference Customers. Western will not grant any increases in CRD to such First Preference Customers until the power sales contract of that customer has been modified to reflect the provisions of these procedures.

Procedure 4.1: First Preference Customers are guaranteed by Reclamation law up to 25 percent of the additional output made available to the CVP by the integration of the generating plants in the Counties of Origin into the CVP. Since this quantity is fixed once the MEFPC has been determined, it is not subject to withdrawal for load level, or to serve the loads of other First Preference Customers. As a consequence of this fact, a load level withdrawal (1,152–MW load level withdrawal) will, through the computational process of determining an amount to be withdrawn from each customer, reduce the amount of CRD allocated to a First Preference Customer, precipitating a First Preference Customer withdrawal to restore the withdrawn CRD. Because the customer group for a First Preference Customer withdrawal to serve preference customers in Trinity County is the same as the customer group for a 1,152–MW load level withdrawal, a First Preference Customer withdrawal for preference customers in Trinity County can be eliminated by excluding First Preference Customers in Trinity County from the 1,152–MW load level withdrawal. However, since Sacramento Municipal Utility District (SMUD) is not subject (by contract) to withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties, the customer group for the 1,152–MW load level withdrawal and a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties is not the same, and therefore, a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties will have to be initiated each time there is a 1,152–MW load level withdrawal.

Procedure 4.2: First Preference Customers in Trinity are exempt from withdrawal and SMUD currently has a contract exemption from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties.

Procedure 4.3: A Westlands withdrawal will be necessary only to the extent that Westlands' entitlement exceeds its CRD. Prior to that time, any withdrawal of CRD from Westlands will result in a request from Westlands for additional CRD from their entitlement, forcing a Westlands withdrawal. The net effect of this whole process is that each time there is a First Preference Customer withdrawal, there will be a subsequent Westlands withdrawal, and the amount of Westlands CRD to be withdrawn will equal the amounts of CRD withdrawn from Westlands to serve the rights of the First Preference Customers.

Procedure 4.4: Western believes that, with respect to First Preference withdrawals, every customer subject to such withdrawals should share equally in the withdrawals in accordance with the amount of CRD allocated to such customer. To allocate such withdrawals on the basis of contribution to the MSD would be to unfairly burden those customers contributing the most to the MSD with an inordimate share of the amount of power to be withdrawn to serve the First Preference Customers.

Procedure 4.5: Because the 0.5–MW limitation (see procedure 6.4) on withdrawal is not removed prior to the computations, multiple iterations of the formula in procedure 4.4 may be required to complete the withdrawal.

Procedure 4.6: Since Western expects that sometime within the next 18 to 24 months the Western system will be capable of exceeding the 1,152–MW load level limit at any time, necessitating a 1,152–MW load level withdrawal, First Preference Customer withdrawal, and a Westlands withdrawal, Western issued a notice to all CVP customers of pending withdrawals on May 31, 1985, to be effective 17 months from the date of the letter and remain effective until the expiration of most contracts in the year 2004.

The 17-month notice period is consistent with the longest notification period in any of Western's customer power sales contracts.

Procedure 4.7: Since reductions in CRD by First Preference Customers either will not affect the MSD or will be manifested in a reduced MSD, and possibly a reinstatement of power at the 1,152-MW load level, Western will not separately reinstate withdrawals of power for First Preference Customers.

Procedure 5.1: See Supplementary Information procedure 4.3.

Procedure 5.2: Since Western's position is that no customer shall have its CRD reduced below 0.5 MW, and because some of Western's customers have CRDs equal to 0.5 MW, the 0.5 MW is Firm CRD and must be removed from a customer's CRD prior to determining the amount of Westlands Withdrawable Power included in a customer's CRD. This adjustment is reflected in the 10 MW (20 customers *0.5 MW) subtraction from the total of the original allocations of Westlands unused entitlement under the Power Marketing Plan of 1981 in the formula presented in procedure 5.2.

Procedure 5.3: Self explanatory.

Procedure 5.41: The application of the formula is straightforward. The results are rounded up to ensure that sufficient entitlement is recovered from the allocations of Westlands Withdrawable Power to satisfy the needs of Westlands Water District.

Procedure 5.5: The 90-day advance notice provision is consistent with the longest period required by all of Western's power sales contracts.

Procedure 5.6: Refer to procedure 7.4.

Procedure 6.1 and 6.2: Western reserves the right to change the procedures for withdrawing at the 925- and 1,050-MW load levels, but does not anticipate doing so at this time. In addition, no such change will be promulgated without consent of the affected parties, as required.

Procedure 6.3: Withdrawing from a customer's total CRD, and not just its Firm CRD, will violate many of the principles and policies Western has adopted to encourage energy conservation, load management, and the widespread use of Federal power. In addition, withdrawing from the total CRD would increase Western's administrative burden by requiring Western to determine and keep track of the withdrawals made from the different categories of CRD. To avoid this problem, Western will determine the amount to be withdrawn based on a customer's contribution to the MSD and subtract it from a customer's Firm CRD.

Procedure 6.4: Western, in previous withdrawals, established a policy of withdrawing until a customer's CRD reached less than 25 kW before it terminated the customer's contract. Once the contract was terminated, the customer ceased to be a customer of Western. The impact of such a policy, given Western reinstatement policy, was to shift that CRD to the larger customers at the expense of the smaller customers. Western no longer considers this an equitable policy, and therefore, has decided to place a limit on the amount of CRD that can be withdrawn from a customer. At 0.5 MW, the average annual cost of serving a customer roughly equals the revenues obtained from such service. Consequently, it is generally not economical for Western to serve customers with CRDs below 0.5 MW. In addition, Western feels that the policy of guaranteeing all of its customers a CRD of 0.5 MW embodies the principle of its widespread use policy in that each customer is assured that it will remain a customer of Western, and retain benefits from Federal power for the term of the customer's power sales contract.

Procedure 6.5: Western believes that 20 percent of the Firm CRD of all of our customers should be sufficient to serve the needs of the First Preference Customers and the limitations of the 1,152–MW load level. In addition, the expiration of the Renewable Resource, Diversity, and other contracts in 1994 offer additional sources of reductions in CRD to support the First Preference

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Customers as well as the 1,152–MW load level limit. It is not Western's intent to announce at this time that any contracts will not be renewed in 1994; Western is simply pointing out that one alternative to further withdrawals, if necessary, is allowing these contracts to expire.

These procedures do not apply to a situation where more power is required to be withdrawn than the amounts listed in procedure 6.5. If it appears that such a situation will exist, Western will formulate additional procedures, as necessary, at that time.

Procedure 6.6: This formula contemplates withdrawing WD from the allocation of a customer whether or not that customer is making full use of the allocation. In this way the formula does not penalize a customer for not using its allocation, although multiple iterations of the formula may be required to reduce the MSD to 1,152 MW. In addition, this formula does not penalize those customers with lower loss factors, or those customers which contribute less to the MSD.

Procedure 6.7: This procedure recognizes that the formula of procedure 6.6 will not yield a number in CRD units. The consequence is that multiple iterations will be required to reduce the MSD to 1,152 MW.

Procedure 6.8: By application of Reclamation law, First Preference Customers are not subject to withdrawals to serve load level. It is necessary to include First Preference Customers in Calaveras and Tuolumne Counties only to satisfy other contractual commitments. The consequence of such action is that each 1,152–MW load level withdrawal will necessitate a First Preference Customer withdrawal to serve the needs of the First Preference Customers in Calaveras and Tuolumne Counties.

Procedure 6.9: Since both the 1,152–MW load level withdrawal and the First Preference Customer withdrawal will reduce Westlands' CRD, a Westlands withdrawal may be necessary to restore the withdrawn CRD to Westlands. A Westlands withdrawal may also be necessary any time Westlands requests additional CRD.

Procedure 6.10: Consistent with past practice, Western may reinstate CRD under the conditions described in procedure 6.10 (see section 7).

Procedure 6.11: Western intends to continue its current load control program. In addition, Western is considering reinstating CRD lost as the result of a withdrawal in months when Western's MSD is not expected to exceed 1,152 MW to encourage customer participation in Western's load control program.

Procedure 6.12: Western recognizes that it may be possible for a 1,152-MW load level withdrawal to occur without withdrawals occurring at the 925- or 1,050-MW load levels. Western reserves the right to assign the loads to that load level which will minimize withdrawals to all of its customers.

Procedure 7.1: Western will reinstate Westlands Withdrawal Power or Firm CRD in proportion to the amount of CRD withdrawn.

Procedure 7.2: In the case of a 1,152-MW load level reinstatement, the amount to be reinstated will be equal to the difference between the MSD and 1,152 MW (MSD-1,152) or the amount of CFR withdrawn to date. A 1,152-MW load level reinstatement will necessitate a reinstatement of Westlands Withdrawal Power.

Procedure 7.3: Since the formula in procedure 7.1, under the conditions of a 1,152-MW load level reinstatement, will not yield an answer in CRD units, multiple iterations of the formula will be required to complete a reinstatement. Since each iteration of a withdrawal at the 1,152-MW load level involves rounding up, the reinstatement procedure must also employ this rounding mechanism to be equitable to all customers. Any other rounding procedure would require more iterations, which would favor those customers with the greatest amount of power withdrawn. The ultimate result of another procedure would be to shift power from those customers with the least amount of CRD withdrawn (generally those customers with the smaller CRDs), to those customers with the most withdrawn CRD (generally those customers with the larger CRDs).

Procedure 7.4: This procedure contemplates that a Westlands reinstatement may occur if Westlands Water District should return any portion of their allocated CRD to Western, or as a result of a 1,152-MW load level reinstatement, a previously withdrawn portion of the Westlands entitlement is reinstated.

Procedure 7.5: Because normal rounding may result in reinstating more CRD than is available for reinstatement, the results of the computation of procedure 7.1 will be rounded down to the nearest 1 kW.

Procedure 7.6: Conditions may occur which would necessitate a withdrawal of CRD immediately following a reinstatement of CRD. Such an occurence increases the administrative workload with little, if any, benefit to the customers. In general, if Western determines that the cost or benefits of a reinstatement do not justify the reinstatement, Western, under such circumstances, may deny a reinstatement.

Responses to Customer Comments

Presented below are the responses to customer comments received following the public comment forum of September 17, 1985.

City of Palo Alto

1. Nonwithdrawable CRDs are provided for by the Santa Clara Settlement.

Response: On August 2, 1985, the City of Palo Alto filed an application in the U.S. District Court for the Northern District of California for an order confirming its interpretation of the meaning of the Santa Clara Settlement. Palo Alto argued that the settlement prohibited Western from withdrawing power from it for any purpose. The cities of Redding and Roseville, and the Plumas Sierra Rural Electric Cooperative, then filed a similar application. In its response, the United States opposed the applications, contending that the settlement did not prohibit Western from withdrawing power from Palo Alto, Roseville, Redding, or Plumas Sierra to meet Project Use requirements, the requirements of the First Preference Customers, and load level limitations under Contract 2948A. By order of October 11, 1985, the District Court granted the applications, holding that the CVP power allocated to Palo Alto, Roseville, Redding, and Plumas Sierra under the Santa Clara Settlement is not subject to withdrawal:

(1) To supply energy to preference customers in Trinity, Tuolumne, and Calvaras Counties, California; (2) to supply Projects Use power requirements of the CVP; and (3) in the event power available to service the total load of preference agencies contracting for CVP power exceeds the amount PGandE is obligated to supply under Contract 2948A. (Order, page 5).

After the order was issued, the City of Santa Clara filed a Motion requesting the court to alter or amend the October 11 order to grant similar relief to Santa Clara. The court has granted Santa Clara's motion. The United States has appealed the District Court decision to the U.S. Ninth Circuit Court of Appeals.

Western believes that the outcome of this litigation will not change the application of the final Withdrawal Procedures but only the pool of customers to which the procedures apply. In addition, Western must proceed with promulgation of these final procedures so that it may render accurate and final power bills to its customers. Pending resolution of this dispute, Western will not withdraw the purportedly nonwithdrawable power from those customers that are party to the Santa Clara Settlement.

2. The city believes that the First Preference Customers are entitled to energy only. If Western wants to firm this energy, Western should purchase capacity from PGandE or some other source.

Response: Western is purchasing firming capacity and energy to support preference customer loads including the loads of the first preference customers. These purchases are made in accordance with Contract 2948A. Regarding the argument that the first preference customers are only entitled to energy, please see "Responses to Comments on the Proposed Formulas for Withdrawals," page 2, under the title "CITY OF ALAMEDA," subtitle "General Comments," comment 4.

3. Palo Alto believes a utility must be more than a "paper shell" with a utility responsibility who leases the distribution system and contracts out all other services.

Response: Western evaluates each customer receiving an allocation on their ability to receive power from Western. Such evaluation ensures that each Western customer is not a "paper shell" utility. Refer to "Responses to Comments on the Proposed Formulas for Withdrawals," page 9, under the title "PALO ALTO," subtitle "General Comments," comment 3.

4. By not using the Westlands allocation to protect the various load levels Western has in effect created a new class of customer with an allocation derived from a specific marketing plan that was righting a wrong created in the past. Had the wrong not been done then Westlands would be like the rest of the CVP customers. It should not make any difference who is using a piece of Westlands' allocation when a withdrawal is required—pro rata, withdrawals from each user of Westlands power is a separate reduction. That's the risk when one uses another's allocation.

Response: Though Type I Withdrawal Power is now a separate class of power, that power was allocated, initially, as that portion of the power not being used by the load growth customers of which Palo Alto is one. As the loads of the load growth customers grew, the load level was exceeded and power was withdrawn from those customers possessing Type I Withdrawal Power. The Westlands situation is very similar. The process being used with the Westlands power is an extension of a process previously used to handle Type I Withdrawal Power. Consequently, Western will not include the City's suggestion in the final procedures for withdrawal.

5.a. Palo Alto believes that rules which allow a customer to manipulate its take from Western for the sole purpose of protecting its Type I, Type II, Westlands, or CRD allocations from withdrawals are unfair.

Response: Western has stated that it will be withdrawing Type I and Type II Withdrawal Power before it does a 1,152–MW load level withdrawal. However, there still exists the possibility, although remote, where a 1,152–MW load level withdrawal would be made while there is still Type I or Type II Withdrawal Power in existence. Even so, the City should recognize that a customer's attempt to reduce Western's share of its load, for whatever the reason, protects the Firm CRD of the City at the 1,152–MW load level. Western's goal is to retain as much of every customer's CRD as possible, and not to sacrifice the CRDs of a few to maintain the CRDs of other customers. Western does not consider any policy or procedure which helps its customers to retain as much of their CRD as possible to be unfair, but to be beneficial to all customers. In this regard, Western is developing incentives to encourage action which will preclude or reduce Firm CRD withdrawals.

5.b. Some customers, but not all, have the opportunity to use the spot market for purchases to displace a specific kind of CVP service, thereby not having that specific service subject to withdrawals.

Response: This is true for 925–MW load level withdrawals, but not for 1,152–NW load level withdrawals. CRD preserved by this process will only be available as long as Type II Withdrawable Power is not withdrawn. At this point in time it becomes necessary to withdraw Type II Withdrawable Power, Type I Withdrawable Power will cease to exist, whether it is being used or not.

5.c. Some customers are being financially compensated to schedule their operations so as not to be coincident with the Western monthly peak. Not all customers have this freedom. Withdrawal for these customers should be based upon the total allocation of CVP power because compensation for their efforts is already being provided for.

Response: Western concurs with the City on this point, and in fact the current withdrawal procedures base withdrawals on such customers total CRD.

5.d. There is need of a rule that establishes the classes of CVP power and the order in which each is used in that customer's load during Western's coincident peak and thereby subject to withdrawal.

Response: Western believes that CRD classification, and withdrawals based upon such classification, are a means of preserving the CRD of one group of Western's customers at the expense of another group of Western's customers. Western believes that such a method would provide no benefit to CVP customers as a whole, and will not be adopted.

6. The various contracts between Western and PGandE which made it possible for the U.S. Government to make firm sales to other CVP customers were so structured that the First Preference Customers were not a part of any load level limitations. Therefore, withdrawals for load level which include First Preference Customers is inappropriate.

Response: Western disagrees that the load level limitations do not include the First Preference Customers. The supported load level deals with Western's Preference Customer simultaneous load, and the First Preference Customers must be a part of that load for they are Preference Customers.

City of Redding

1. Western has been exceedingly generous in converting energy entitlements into firm power for the Counties of Origin, while ignoring the 5-year window provisions for these entities and allowing them to receive load growth power.

Response: Western does not believe that it has been overly generous in the formula it developed for converting energy entitlements to firm power. The formula applies the same principles to the determination of firm power for First Preference Customers that are applied to Western's other customers. In addition, Western has not ignored the 5-year window provisions of the statutes. The provisions in the statutes apply to the initial allocation of power and not to any subsequent increases in power allocations. Finally, the First Preference Customers are entitled to receive up to 25 percent of the output of the plants located in the Counties of Origin, as integrated with the CVP power system. To the extent that such a limitation allows for load growth, then the First Preference Customers are entitled to load growth.

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2. With the Palo Alto versus Western legal action pending in the courts, the City strongly recommends that these procedures be set aside until such time that the outcome of that action is more defined.

Response: See the response to Palo Alto comment 1.

3. The City cannot support the concept of any firm power being withdrawn while withdrawable power is available, nor do we find possible withdrawals from the 925 group to be fair and equitable when such withdrawals would cover the over-allocated 102 group.

Response: Western intends to utilize the loads of the First Preference Customers to preclude the withdrawal of firm power instead of withdrawable power. However, the possibility exists that firm power might be withdrawn before all withdrawable power is gone. Consequently, while Western cannot guarantee that it will not withdraw firm power before all withdrawable power is gone, it will attempt to prevent such as occurence.

The "over-allocation" referred to is actually an allocation of diversity power. Those allocations have resulted in the restoration of power to the 925 group, sustained CRD allocations to that same group which would not be possible without such allocations, and protected the Firm CRDs of all of Western's customers. However, the power so allocated can not be sustained indefinitely, and current withdrawals are a result of a decrease in diversity for that group and an increase in First Preference Customer load. As such, Western believes that such withdrawals are equitable and represent the occurrence of anticipated events.

4. The City does not understand the equity of exempting SMUD from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties based upon past contractual deals.

Response: Western is legally bound to honor its contractual commitments. The particular commitment referred has been in existence since March of 1966, and would have been in existence until 1994 (when the SMUD contract was due to expire) except for the settlement agreement which was reached in 1983. The extension of this commitment in the settlement agreement was part of an overall settlement package which benefited all of Western's customers. Regardless of the conditions surrounding the existence of the commitment, Western is legally bound to honor that commitment and incorporate them into the withdrawal procedures.

5. The 17-month notice proposed by Western is inadequate for any utility to obtain alternative firm power resources.

Response: Western believes that the 17-month notice provision, which is currently in effect, is all that it can reasonably give and still retain the functionality of its withdrawal procedures. To increase the notice period would be to place Western in a position where it would be required to withdraw by contract, and be unable to do so because of the increased notification period. Such a position is untenable, and consequently, Western cannot increase the notice period.

6. The City recommends that the demand charge be waived for that firm power (20 percent) which is withdrawable.

Response: Western's power rates must reflect certain costs, which include but are not necessarily limited to, operation, maintenance, replacement, and certain project construction costs, which are to be repaid within certain timeframes as stated in Federal laws and regulations.

An increase in the rate for nonwithdrawable power would be required if Redding's recommendation were implemented. In view of this, Western cannot agree to eliminating the capacity charge for withdrawable power.

City of Santa Clara

1. Request that the rulemaking proceedings be delayed until the court's position on the Palo Alto lawsuit is known.

Response: See the City of Palo Alto, comment 1.

2. The City notes that there are no specific references in the procedures concerning the reinstatement of Type II withdrawable power. Since the procedures are complex and their implications are not easily understood, the City is concerned that its comments not be interpreted as acceptance of anything less than the full rights to reinstatement as were provided by the Santa Clara Settlement and the City's contract for electric service with Western.

Response: The reinstatement of Type II withdrawable power is part of the 1,050–MW withdrawal procedures, which are not changed by these procedures. In addition, the right to reinstatement of Type II withdrawable power is spelled out in the MOU.

Department of the Navy

1. The Navy supports the use of customer contributions to the MSD as the basis for load level withdrawals.

Response: Western appreciates the comment.

2. The Navy supports the use of purchase power for Project Use and the deferral of rules relating to their withdrawal.

Response: Western appreciates the comment.

3. The Navy suggests that Western consider using contributions to the MSD as a basis for First Preference Customer withdrawals.

Response: See Supplementary Information, procedure 4.4.

Modesto Irrigation District (MID)

1. MID disagrees with the apparent change which would drop the preferred protection for renewable resource and cogeneration allocations.

Response: Western has not dropped the protection given to the renewable resource and cogeneration allocations. Instead, it has substituted Firm CRD withdrawals for renewable resource and cogeneration withdrawals in the withdrawal process. The protection provision was criticized by many of Western's customers, and in addition, SMUD has argued that giving preference to one type of CRD over another is a violation of Western's contract with SMUD. Although Western may not agree with all of the arguments, Western believes that the particular method chosen manages to preserve the preferred status of the renewable resource and cogeneration allocations, while at the same time accounting for the magnitude of the CRDs in the withdrawal process.

2. The 17-month notification period and retroactive withdrawals could create a hardship for many customers in power resource acquisition and planning.

Response: See SMUD comment 2 and City of Redding comment 5.

3. Modesto recommends that a demand rate adjustment be instituted to lighten the burden of retroactive withdrawals.

Response: See City of Redding comment 6.

Sacramento Municipal Utility District (SMUD)

1. The use of SMUD's total CRD in the formula for pro rata withdrawal's is a violation of paragraph 12 of Contract No. DE–MS65–83WP59070 between Western and SMUD.

Response: The total CRD is used for all of Western's customers. Consequently, it treats the other customers the same as it treats SMUD, and therefore, is not a violation of paragraph 12 of the referenced contract.

2. For the withdrawal procedures to be fair, and at a minimum consistent with Western's contracts with CVP customers, Western should notify CVP customers of a withdrawal at the time that the withdrawal actually occurs or, if that is in fact not possible due to the terms of 2948A, give advance notice that a withdrawal of a certain magnitude will occur within a specified range of time.

Response: Western has indicated that it expects approximately 7–10 percent of all Firm CRD to be withdrawn, gradually, during the term of a customer's contract. It would be impossible, with any degree of accuracy, to predict the magnitude of withdrawals over a smaller period of time for there are many things which impact the magnitude of withdrawals, not the least of which is Western's load monitoring program and conservation efforts. Furthermore, any number provided by Western would probably be the least accurate of any of the pieces of the customer resource plan, and would be small enough in magnitude to be covered by whatever contingency planning is in effect to cover the inaccuracy inherent within the resource plan. Consequently, rather than contribute to the overall inaccuracy of the customer resource plan, Western would prefer not to refine the general guidelines provided above. In addition, Western is willing to work with any customer to assist in arranging for resources or contracts (such as with PGandE) to cover the load of that customer when a withdrawal occurs.

Shasta Dam Area Public Utility District

1. Shasta Dam Area Public Utility District (SDPUD) feels that the first preferential customers should be included in the denominator to determine the ratio of reduction of all participants in the Central Valley Project (CVP).

Response: The load of the First Preference Customers is included in the denominator of the formula for determining the amount of power to be withdrawn from Western's customers.

2. Projection loads forecast by the Bureau of Reclamation may or may not be correct, depending upon the circumstances of the area.

Response: Western recognizes that projections differ from actual quantities. However, estimates tend to fluctuate around the actual in such a manner that the long-term difference between the actual and the estimated quantity is zero or near zero. Consequently, Western feels that the use of estimated quantities in the determination of the entitlement of the First Preference Customers is appropriate and consistent with good utility practice.

3. Western has selected Alternative 1 of the entitlement formulas as the recommended procedure. Example A illustrates this alternative.

Response: Example B illustrates the selected alternative.

4. SDPUD favors any of the examples except Examples F, H, and I.

Responses: The examples simply illustrate the application of the proposed final withdrawal procedures. Western recognizes that the SDPUD would prefer not to be subject to any withdrawals (as illustrated by Examples F, H, and I).

5. Western should subject First Preference Customers to a load level withdrawal. It is not correct to gouge taxpayers and existing long-time customers of Western in an attempt to distribute the remaining with the needs of the customers without considering that all customers should be treated equally from the standpoint of actual need.

Response: Every customer of Western expresses a need for power. To the maximum extent it can, Western has allocated power to meet those needs. The First Preference Customers are now beginning to express their needs. Western is obligated by law to meet those needs. Since all power has been allocated to meet the needs of its other customers, Western must withdraw. The particular method selected by Western will minimize the amount of that withdrawal. The entitlement of the First Preference Customers is guaranteed by law.

6. The load losses based upon point of delivery should be included in the procedure for determining benefits to SDPUD.

Response: The direct application of the result of the withdrawal formula to the CRD does take into account the impact of SDPUD's direct service connection to Western. The benefit of SDPUD varies from 14 percent to 10.5 percent over Western's other customers.

7. Procedure 7.6 should be amended to indicate that Western will base its determination of whether or not a reinstatement will be made on engineering facts and studies, and not by political means.

Response: The decision to reinstate or not reinstate power is a very complex one. It may involve not only engineering considerations, but budgetary, direct financial, and contractual considerations as well. It is not possible for Western to determine in advance what conditions will ultimately determine whether power is reinstated or not reinstated, and therefore, Western prefers the flexibility offered by the current language over the more specific language recommended by SDPUD.

Trinity County Public Utility District (TCPUD)

The comments presented below are those that were submitted by Trinity County Public Utility District. The exact same comments were received by Western for Union Public Utility District, Calaveras Public Power Agency, Hayfork Valley Public Utility District, and Tuolumne Public Power Agency. To eliminate unnecessary repetition, only one set of comments and responses will be presented.

1. TCPUD supports Western's proposal to delay promulgating procedures for project use withdrawals.

Response: Western appreciates TCPUD's support.

2. The proposal to serve the First Preference Customer's (FPC) needs 1,152-MW load level must leave Western the right to withdraw from any load level to meet the needs of the FPCs.

Response: Western intends to use whatever load level is necessary to serve the needs of the FPCs. This intent is expressed in procedures 6.5 and 6.12.

3. The minimum bill provision should be removed (proposed final procedure 3.2).

Response: Western concedes that the controls embodied in final procedure 3.4 herein are sufficient to ensure that the FPCs request only the power they will use. Therefore, proposed final procedure 3.2 is removed from the final procedures.

4. The formula proposed by Western to determine the Maximum Entitlement of the First Preference Customers (MEFPC) is inconsistent with the operation of the CVP and power marketing policies. Losses to load center and losses from load center to the customer point of delivery are made up by purchases from PGandE. In addition, that formula does not consider that such items as diversity, conservation, and renewable resource programs have been enhanced by the "additional electric energy" made available to the CVP due to the construction of the New Melones Powerplant.

Response: The formula for determining the MEFPC is consistent with Western's power marketing policies and the operation of the CVP. All customers pay for losses, some of them pay for the losses directly while the other customers pay for the losses in the rates Western charges for power. However, this does not mean that Western purchases all of these losses from PGandE. The allocation process for the other customers is different than the

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allocation process for the First Preference Customers. For the other customers, allocations are made to the customer at delivery point, and those allocations are adjusted by the withdrawal process for excesses over the supported level. Losses are included in the determination of the amount to be withdrawn. First Preference Customers are not subject to withdrawals; therefore, to be consistent, Western must reduce the entitlement for losses from generation to load center and from load center to point of delivery.

The idea that items such as conservation, diversity, and renewable resources have been enhanced by the addition of New Melones or the Trinity River Division is erroneous. If anything, the additional electric energy made available by the addition of the Trinity River Division or New Melones Powerplants has been enhanced by conservation, diversity, and the renewable resource program. Such efforts (conservation, etc.) allow Western to allocate more CRD for a given amount of generation (plus imports) than would be available without such programs. In addition, those customers involved in the programs are contributing to the support of the programs, which are benefiting all customers, including the First Preference Customers, by increasing the revenue base, and thereby, decreasing rates. Under such circumstances, Western cannot agree that the First Preference Customers are entitled to anything more than the "additional energy" made available by the addition of the Trinity River Division and New Melones Powerplants, and therefore, cannot accept TCPUD's position on this issue.

With respect to the proposed Alternative 4, Western cannot agree with the concept embodied in that formula. For the reasons given in the last **Federal Register** notice (50 FR 33314, August 16, 1985), Western will not adopt that alternative in the final withdrawal procedures.

5. Requests for allocations are made based on estimated need, and Western must accept responsibility if requests of FPCs are denied or modified.

Response: The responsibility for justifying a request lies with the First Preference Customer making the request. To the extent those requests are justified, Western would have no reason to deny such requests. To ensure that all requests for power are not denied, the justification for each request should be prepared very carefully.

6. TCPUD requests Western reduce the 6-month notification period to 4 months, and under circumstances not anticipated at the time the rulemaking is being promulgated, the notification can be reduced further at Western's discretion.

Response: Western is attempting to preserve the alloctions to all of its customers. A request for an increased allocation is a signal that loads will be increasing. To compensate for such increases, Western will have to make arrangements to reduce its simultaneous load, the 6-month notice period will give Western time to accomplish this reduction. Consequently, Western prefers the 6-month notice period and will incorporate it into the final withdrawal procedures.

7. TCPUD supports a 5-year determination of the MEFPC adjusted annually.

Response: Western appreciates TCPUD's support.

8. Power sales to FPCs should not be subject to the availability of facilities, because the congressional action establishing First Preference includes transmission being provided by the Federal Government.

Response: The statute which authorized the development of the Trinity River Division of the CVP clearly states that First Preference Customers must be "ready, able, and willing . . . to enter into contracts for the . . . ." The availability of facilities, as outlined in final procedure 3.10, is part of the conditions to be satisfied in order that a First Preference Customer become ready, willing, and able to enter into a contract with Western for power.

9. The wording of proposed final procedure 3.12 should be changed to include all customers and not just First Preference Customers.

Response: Section 3 deals with allocations to First Preference Customers, and cannot possibly apply to Western's other customers. Western, therefore, can see no reason to change the language of final procedure 3.11.

10. TCPUD supports the concept, presented in procedure 6.8, that First Preference Customers are not subject to load level withdrawals.

Response: Western appreciates TCPUD's support.

Regulatory Requirements

Regulatory Flexibility Act of 1980—Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that this rulemaking relates to an administrative service under contracts, and therefore is not a rule within the purview of the Regulatory Flexibility Act. Under 5 U.S.C. 6012(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291—DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

National Environmental Policy Act—Western is required to conduct an environmental evaluation of certain power marketing actions in compliance with the National Environmental Policy Act of 1969, and the DOE regulations published in the **Federal Register** (45 FR 20694, as amended). Under the DOE guidelines, Western has made an evaluation of the possible environmental impacts of the proposed withdrawal of allocation and determined that such withdrawals will not significantly impact the environment.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for this proceeding will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 978-4418.

Issued at Golden, Colorado, February 7, 1986.

William H. Clagett,
Administrator.

[FR Doc. 86-4715 Filed 2-28-86; 11:29 am]

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**Wednesday
March 5, 1986**

Part IV

Environmental Protection Agency

40 CFR Part 61

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Clarification and Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2976-6]

Clarification and Correction of Previously Published Notice on the Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification and correction of previously published **Federal Register** notice on Trichloroethylene.

SUMMARY: This notice describes the clarification of a previously published **Federal Register** notice on the chemical trichloroethylene (TCE). The previously published notice was incorrectly identified as a Proposed Rule rather than as a Notice of Intent to List Trichloroethylene under section 112 of the Clean Air Act (CAA) and Solicitation of Information. In addition, the previously published notice erroneously included an amendment to 40 CFR Part 61. The amendment to 40 CFR Part 61 for TCE is correctly being published elsewhere in today's **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone 919-541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION: On Monday, December 23, 1985, a notice entitled "Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule" was published in the **Federal Register** (50 FR 52422). This notice incorrectly identified the action as being a proposed rule rather than as a notice of the Agency's intent to list TCE under section 112 of the Clean Air Act and solicitation of information. In addition, this notice erroneously included an amendment to 40 CFR Part 61. The purposes of today's notice are to clarify the form of the action intended in the previously published notice; to refer to the appropriate amendment to 40 CFR Part 61 (see notice published elsewhere in today's issue of the **Federal Register**); and to correct the following transcriptional errors appearing in 50 FR 52422.

The information presented in 50 FR 52422 is to be corrected as follows:

The correct phone number for ORD Publications in Cincinnati, Ohio, is 513-569-7562 commercial/684-7562 FTS.

Two sentences within the Risks to Public Health section of 50 FR 52422 were truncated and combined. The correct sentences read as follows:

The upper-bound nature of the unit risk estimate is such that the true risk is not likely to exceed this value and may be lower. Using the unit risk estimate for air (1.3×10^{-6}), the aggregate risk of cancer due to exposure to TCE for persons living within 50 kilometers of production sites or chemical plants or drinking water treatment facilities, and resulting from emissions from metal degreasing or publicly owned treatment works or miscellaneous solvent uses, is 4.1 cases of cancer per year (Table 2).

The following references to 50 FR 52422 were deleted and should be added at the end of the notice:

EPA (Environmental Protection Agency) (1985a). Survey of Trichloroethylene Emission Sources, Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA-450/3-85-018.

EPA (Environmental Protection Agency) (1985b). Health Assessment Document for Trichloroethylene. Environmental Criteria and Assessment Office, Office of Research and Development, Research Triangle Park, NC. EPA-600/8-82-006F.

Federal Register Notice:

45 FR 39766, June 11, 1980. Standards of Performance for New Stationary Sources of Organic Solvent Cleaners.

Fukuda, K., Takemoto, K., and H. Tsurata (1983). Inhalation Carcinogenicity of Trichloroethylene in Mice and Rats. Industrial Health 21: 243-254.

Henschler, D. Elsasser, H., Romen, W., and E. Eder (1984). Carcinogenicity study of trichloroethylene, with and without epoxide stabilizers, in mice. Cancer Res. Clin. Oncol. 107: 149-156.

Hunt, W.F., Jr., R.B. Faoro, T.C. Curran, and J. Muntz (1984). Estimated Cancer Incidence Rates for Selected Toxic Air Pollutants using Ambient Air Pollution Data. U.S. EPA, Office of Air Quality Planning and Standards. June 3, 1984, revised April 23, 1985.

Memorandum from Co-Chairpersons of Risk Technical Panel to Dr. Betty Anderson on the Classification of Carcinogenicity for Trichloroethylene and Perchloroethylene. October 18, 1984.

SAB (Science Advisory Board) (1984). Letter from SAB to William Ruckelshaus on Key Findings and Conclusions on the Draft Health Assessment Document for Trichloroethylene. December 17, 1984.

Vandenberg, J.J. (1985). Exposure and Cancer Risk Assessment for Trichloroethylene. Memorandum to the Files, October 11, 1985.

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-4758 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[A-4-FRL-2976-7]

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On Monday, December 23, 1985 a notice entitled "Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant" was published in the **Federal Register** (50 FR 52422). Based on the assessment presented in that notice, and corrections to that notice published elsewhere in today's **Federal Register**, 40 CFR Part 61 is amended as described in this notice.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (telephone: 919-541-5645 commercial/629-5645 FTS).

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Trichloroethylene (50 FR 52422; December 23, 1985.)

* * * * *

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-4759 Filed 3-4-86; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 61

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant; Clarification and Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2978-9]

Clarification and Correction of Previously Published Notice on the Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Clarification and correction of previously published **Federal Register** notice on Perchloroethylene.

SUMMARY: This notice describes the clarification of a previously published **Federal Register** notice on the chemical Perchloroethylene (PERC). The previously published notice was incorrectly identified as a Proposed Rule rather than as a Notice of Intent to List Perchloroethylene under section 112 of the Clean Air Act (CAA) and Solicitation of Information. In addition, the previously published notice erroneously included an amendment to 40 CFR Part 61. The amendment to 40 CFR Part 61 for PERC is correctly being published elsewhere in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone 919-541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION: On Thursday, December 26, 1985, a notice entitled "Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule" was published in the **Federal Register** (50 FR 52880). This notice incorrectly identified the action as being a proposed rule rather than as a notice of the Agency's intent to list PERC under section 112 of the Clean Air Act and solicitation of information. In addition, this notice erroneously included an amendment to 40 CFR Part 61. The purposes of today's notice are to clarify the form of action intended in the previously published notice; to refer to the appropriate amendment to 40 CFR Part 61 (see notice published elsewhere in today's issue of the **Federal Register**); and to correct the following transcriptional errors appearing in 50 FR 52880.

The information presented in 50 FR 52880 is to be corrected as follows:

The correct phone number for ORD Publications in Cincinnati, Ohio, is 513-569-7562 commercial/684-7562 FTS. To receive information on SAB transcripts, the correct phone number for Janet Workcuff is 202-382-5036 commercial/382-5036 FTS.

The following references to 50 FR 52880 were deleted and should be added at the end of the notice:

Anderson, E. (1985a). Memorandum from Dr. Elizabeth Anderson, Director, Office of Health and Environmental Assessment to John O'Connor, Director, Strategies and Air Standards Division, on the Interim Carcinogenicity Weight of Evidence for Tetrachloroethylene Based on New NTP Inhalation Bioassay. September 29, 1985.

Anderson, E. (1985b). Memorandum from Dr. Elizabeth Anderson, Director, Office of Health and Environmental Assessment to Don Clay, Director, Office of Toxic Substances and Gerald Emison, Director, Office of Air Quality Planning and Standards, on the Interim Revised Inhalation Unit Risk Estimate for Tetrachloroethylene (Perc) Based on Recent NTP Inhalation Bioassays. November 18, 1985.

EPA (Environmental Protection Agency) (1985a). Survey of Perchloroethylene Emission Sources, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA 450/3-85-017.

EPA (Environmental Protection Agency) (1985b). Health Assessment Document for Tetrachloroethylene (Perchloroethylene). Environmental Criteria and Assessment Office, Office of Research and Development, Research Triangle Park, N.C. EPA 600/8-82-005F.

Hunt, W.D. Jr., R.B. Faoro, T.C. Curran and J. Muntz (1984). Estimated Cancer Incidence Rates for Selected Toxic Pollutants Using Ambient Air Pollution Data. U.S. EPA, Office of Air Quality Planning and Standards, July 3, 1984.

Memorandum from Co-Chairpersons of the Risk Forum Technical Panel to Dr. Betty Anderson on the Classification of Carcinogenicity for Trichloroethylene and Perchloroethylene, October 18, 1984.

National Toxicology Program (NTP) (1985). NTP Technical Report on the Toxicology and Carcinogenesis Studies of Tetrachloroethylene (Perchloroethylene) in F344/N Rats and B6C3F1 Mice. Board Draft 8/85.

Science Advisory Board (SAB). Letter from SAB to William Ruckelshaus on Key Findings and Conclusions on the Draft Health Assessment Document for Perchloroethylene, January 4, 1985.

Vandenberg, J.J. (1985). Exposure and Cancer Risk Assessment for Perchloroethylene. Memorandum to the files, November 15, 1985.

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-4760 Filed 3-4-86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[A-4-FRL-2978-8]

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On Thursday, December 26, 1985 a notice entitled "Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant" was published in the **Federal Register** (50 FR 52880). Based on the assessment presented in that notice, and corrections to that notice published elsewhere in today's **Federal Register**, 40 CFR Part 61 is amended as described in this notice.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (telephone: 919-541-5645 commercial/629-5645 FTS).

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Perchloroethylene (50 FR 52880; December 26, 1985.)

* * * * *

Dated: February 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-4761 Filed 3-4-86; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

Federal Hazardous Waste Facilities; Policy and Interpretation, and Intent to Propose Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

[FRL-2978-3]

Hazardous Waste Management System; Supplement to Preamble to Final Codification Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy and interpretation.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. EPA today is supplementing that preamble by explaining the resolution of three issues of statutory interpretation concerning federal agency compliance. In a separate notice also published today EPA is announcing its intent to propose rules addressing three related issues.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. Also, Denise Hawkins, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at the facility regardless of when waste was placed in the unit.

On July 15, 1985 (50 FR 28702) EPA promulgated a final rule codifying statutory changes to its hazardous waste regulations. In the preamble to this rule, EPA presented its view on the meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Today EPA is supplementing the preamble to the codification rule by giving notice of its views on three issues of statutory interpretation concerning federal compliance with section 3004(u). In a separate notice published elsewhere in today's **Federal Register** EPA is also announcing that it intends to address three additional issues through rulemaking.

As a result of the promised review, EPA has concluded that section 3004(u) subjects federal facilities to corrective action requirements to the same extent as any facility owned or operated by private parties. Furthermore, EPA has determined that the statute requires federal agencies to operate under the same property-wide definition of "facility." These results are consistent with section 6001 of RCRA, 42 U.S.C. 6961, which generally requires each department, agency and instrumentality of the federal government to comply with RCRA requirements to the same extent as any other person.

The federal agencies, however, have raised several issues that merit special consideration. These issues involve the scope of federal ownership interests and the need to set priorities for the use of federal cleanup funds.

EPA is resolving the first of these issues as a matter of statutory interpretation. The federal agencies have pointed out that the United States could be considered the "owner" of a federal hazardous waste facility. Under EPA's interpretation of the definition of "facility" for section 3004(u), contiguous tracts of federal lands owned by the United States but administered by different federal agencies could be considered a single "facility" for corrective action purposes. A permit for a hazardous waste unit located anywhere on this collective federal "facility" would trigger corrective action requirements for every solid waste management unit found within its boundaries. In the western half of the United States, contiguous federal lands cover large portions of several states. Moreover, the agency that operates a hazardous waste unit might not have authority to require or manage cleanup of solid waste units on lands administered by other agencies. The size of the facility and the administrative limitations could make corrective action very difficult.

EPA believes that Congress did not intend section 3004(u) to require such wide-ranging cleanups on federal lands. Congress has consistently expected individual federal departments and agencies to obtain RCRA permits and manage hazardous waste. For example, section 6001 of RCRA specifically requires "departments, agencies and instrumentalities of the Federal government" to comply with RCRA requirements. The legislative history of this provision also requires "federal agencies" to comply with RCRA. S. Rept. 94-938, 94th Cong., 2d Sess. at 24 (1976). Congress could easily have referred to the "United States" if it intended the entire federal government to respond together. Consequently, EPA is today interpreting the concept of ownership for the purposes of section 3004(u) as referring to individual federal departments, agencies, and instrumentalities.

EPA has concluded that it would be more appropriate to resolve the remaining issues through rulemaking. EPA intends to propose rules in the near future to resolve these issues, which are described in greater detail in a separate notice published in today's **Federal Register.**

Dated: February 28, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-4754 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271 and 280

[FRL-2978-4]

Hazardous Waste Management System; Intent To Propose Rules for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to propose rules.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. Elsewhere in today's **Federal Register** EPA is supplementing that preamble by stating its views on three issues of statutory interpretation. In this notice EPA announces its intent to propose rules addressing three additional issues related to federal agency compliance.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. Also Denise Hawkins, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at the facility regardless of when waste was placed in the unit.

On July 15, 1985 (50 FR 28702) EPA promulgated a final rule codifying statutory changes to its hazardous waste regulations. In the preamble to this rule, EPA presented its view on the meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Elsewhere in today's **Federal Register** EPA is publishing a policy notice that supplements the preamble to the codification rule by giving notice of EPA's views on three issues of interpretation concerning federal compliance with section 3004(u). In this notice EPA is announcing that it intends to address three additional issues through rulemaking. This notice is not a proposal and EPA is not yet requesting comments on these issues.

In the policy notice published separately today, EPA is announcing that it interprets the concept of on "ownership" for the purposes of defining facility boundaries under section 3004(u) as refering to individual departments, agencies and instrumentalities. In some cases EPA believes that "ownership" should refer to major departmental subdivisions that exercise independent management authorities. For example, within the Department of Defense, EPA believes that the term should be viewed as referring separately to the separate branches of the Armed Services. Similarly, within the Department of the Interior, EPA believes that "ownership" should refer to major subdivisions such as the National Park Service and the Bureau of Land Management. If ownership is not defined in terms of these smaller units, the logistical problems described in the other notice will continue to hamper federal corrective actions. EPA therefore believes that recognition of these subdivisions is consistent with Congressional intent. EPA will propose a rule to clarify position and explain more fully the rationale for recognizing specific subdivisions. In the interim, EPA intends to recognize principal subdivisions as a matter of statutory interpretation on a case-by-case basis in individual permit proceedings.

The Department of the Interior has expressed concern that federal agencies might be considered "owners" of hazardous waste facilities on federal lands operated by private parties with partial property interests such as leases or mineral extraction rights. The Department urges that the federal government should not be held responsible for releases from such operations. Furthermore, it believes that the federal agency should not have to clean up releases on contiguous federal land when such a private party applies for a RCRA permit for its hazardous waste facility.

EPA intends to propose a rule that limits Federal agency responsibility for facilities operated by private parties with legal ownership interests by identifying a "principal owner" for the purpose of defining the "facility" boundary under section 3004(u). The "principal owner" probably would be the person most directly associated with operation of the hazardous waste facility. Only property within the scope of the "principal owner's" legal interest would be considered the "facility" for corrective action purposes. The federal agency that administers the same land for the United States would not be responsible for complying with section 3004(u) within the principal owner's "facility." To determine whether a private party on federal lands should be treated as a "principal owner", EPA might consider factors such as the degree of control the federal agency exercises over the private party's actions, or the amount of benefit the agency derives from the private party's waste management operation. EPA will also need to consider the impact of this concept on private lands where one private party has granted legal ownership interests to a second private party that operates a hazardous waste "facility."

Finally, all of the federal agencies that discussed these issues with EPA have advocated the establishment of national priorities for cleaning up hazardous releases at federal facilities under section 3004(u). EPA agrees that it is rational as a matter of public policy to address the most seriously contaminated facilities first. Moreover, since the funding for corrective action is not unlimited, priorities would help maximize the use of available funds. EPA also recognizes that states, which will have the authority to issue hazardous waste permits requiring corrective action after EPA authorizes them to exercise this new authority, may not share the same national perspective or have the same priorities.

EPA intends to develop rules that would allow federal agencies, subject to EPA approval after consultation with the states, to set priorities for correcting releases from solid waste management units at facilities that they own or operate. These rules would also assure a state's full participation in establishing

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the priorities as a part of the authorization process. Further, EPA would ensure that any priority setting scheme would not disturb the authorized state's traditional role as the primary issuer of RCRA permits. After a State obtains authorization to implement 3004(u) the State would issue the corrective action portion of a hazardous waste permit in authorized state. EPA is not proposing any specific rules on these issues today, but it intends to propose rules soon.

EPA has resolved three of the basic issues concerning federal compliance with section 3004(u): The applicability of section 3004(u) to Federal agencies; the definition of "facility"; and the concept that the United States is not the "owner" for the purpose of defining RCRA facilities.

EPA will work as quickly as possible to resolve the remaining issues concerning the "principal owner" and national priorities. In the interim, EPA and the states will proceed to review and issue RCRA permits, and EPA will implement 3004(u) requirements at federal facilities. EPA will address issues not yet resolved by rulemaking on a case-by-case basis.

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" or "minor" rule as defined by the Order and to submit all regulations to OMB for review. Since this notice does not propose or promulgate any rules, EPA has not assessed its impacts or classified it as a "major" or "minor" rule under E.O. 12291. EPA, however, did submit this notice to OMB for review.

Dated: February 28, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-4755 Filed 3-4-86; 8:45 am]

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March 5, 1986

Part VII

Department of Health and Human Services

Public Health Service

Health Resources and Services Administration

42 CFR Part 51a

Special Project Grants—Maternal and Child Health Services; Final Rule

Availability of Funds for Maternal and Child Health Projects; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 51a

Special Project Grants—Maternal and Child Health Services

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The rules below provide for a single regulation for funding projects under the Maternal and Child Health Services Set-Aside Program established by Title V of the Social Security Act (Act). Section 502(a) of the Act, as amended, which is referred to as the Federal Set-Aside Program, provides that between 10 and 15 percent of the appropriation for Title V in each fiscal year shall be retained by the Secretary for the purpose of carrying out special projects of regional and national significance; maternal and child health research and training; genetic disease testing, counseling and information; and hemophilia diagnostic and treatment centers; with funding provided through grants, contracts or other arrangements.

EFFECTIVE DATE: The rules set forth below are effective on March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Siegel E. Young, Jr., Director, Office of Program Development, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A–21, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2853.

SUPPLEMENTARY INFORMATION: On January 12, 1983, the Secretary of Health and Human Services published proposed rules implementing the Maternal and Child Health Services Federal Set-Aside Program and invited public comments (48 FR 1323). Twenty-two individuals and organizations commented on the proposed rules. Set out below is a brief discussion of the statutory basis for the regulation and summaries of the comments received, the Department's response to those comments and the changes to the proposed regulation. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) revised Title V of the Act to establish the Maternal and Child Health Services Block Grant. Between 10 and 15 percent of the funds appropriated for Title V in each fiscal year are to be retained by the Secretary for the award of grants, and for contracts and other arrangements for the purposes specified above. The statute specifically provides for only grant funding for training projects for public and nonprofit private institutions of higher learning (sec. 502(a)(2)(A) of the Social Security Act). The statute provides for funding for research projects through grants, contracts or jointly financed cooperative agreements with public or nonprofit institutions of higher learning or public or nonprofit private agencies and organizations engaged in research or in maternal and child health programs (sec. 502(a)(2)(B)). There are no statutory restrictions relating to the other types of projects to be funded under section 502(a).

These programs were previously funded under sections 503(2) and 504(2), 511 and 512 of the Act and sections 1121 and 1131 of the Public Health Service Act as in effect prior to the enactment of Pub. L. 97–35.

On June 25, 1982, the Secretary amended the regulations issued under the previous authorities to make them applicable to Federal funding awards for the same purpose awarded under the new section 502(a) authority (47 FR 27824). Those regulations were applicable until these final regulations could be published.

Comments:

1. For-Profit Eligibility

Proposed § 51a.3 would make profit making entities eligible for certain Federal funding under this program.

Comment: Seventeen commenters objected to opening up eligibility for Federal funding to for-profit entities, and no commenters supported the proposal. The commenters raised two major objections. The first is that, with limited and decreasing resources, the available funds should be used strictly to provide services and not to provide profit to organizations. The second objection concerns the potential to disrupt the relationship that States have developed with public and private nonprofit organizations. Several States commented that their efforts to develop a State-wide system of maternal and child health services and the integration of their activities in administering the Maternal and Child Health Services Block Grant in their State with the Set-Aside Program would be jeopardized since relationships already exist between the Block Grant activities and the public and private nonprofit entities.

Response: The first objection is without merit, because for-profit entities would not be authorized to use Federal funds for profit and, thus, would use such funds for the provison of services to the same extent as would nonprofit entities. (See 47 FR 53009, November 24, 1982.) The second objection is equally unpersuasive. To prevent the disruption of relationships between the States in their administration of the Maternal and Child Health Block Grant and the public and private nonprofit entities now receiving Federal funding under the Set-Aside Program, it would be necessary to restrict eligible applicants to those entities now receiving such funding. Clearly, it would be inappropriate to give present grantees an exclusive right to continued Federal funding.

In light of the Department's recently adopted policy of making for-profit entities eligible for Federal funds whenever consistent with legislative intent and program purposes, we have decided to publish the regulation as proposed. Thus, while only public or private nonprofit institutions of higher learning will be eligible for training grants, and only public or private nonprofit agencies will be eligible for research grants, contracts or jointly financed cooperative agreements, any public or private entity will be eligible for the remaining types of assistance under this Set-Aside Program. As we noted in the document adopting the new policy regarding for-profit entities, this will likely increase competition and help the Department's programs to better achieve their objectives by increasing the number of proposed projects from which we may select our awardees. (See 47 FR 53007, Nov. 24, 1982.) We note, however, that the concern of the commenters regarding the ongoing relationships between States and recipients of Set-Aside Program funds is addressed elsewhere in the regulations. Section 51a.5(b)(4) sets forth, as one of the funding criteria to be used, the "extent to which the project will be integrated with the administration of the Maternal and Child Health Services Block Grants and other block grants" made to the State. Thus, where the ongoing relationship is a crucial factor in evaluating competing applications for Set-Aside Programs funds, the Department can consider that factor.

II. Third Party Reimbursement

The proposed rule contains no specific requirement that third party reimbursements be collected for services provided for which third parties are obligated to pay.

Comment: One commenter suggested that the previous specific requirement to collect third party payments be retained.

Response: The Department agrees that projects should seek reimbursement from third parties for those services which third parties would ordinarily cover. A provision has been added to the regulations at § 51a.5(b)(6) to indicate that one of the funding criteria to be used is the extent to which the

applicant is or will be successful in obtaining such reimbursement.

III. Priority for Funding

Section 502(a) combines previously categorical programs into a single program. The statute does not specify minimums or maximums for awarding funds from the funds available from the Set-Aside Program for any one type of program nor does it specify that one type of program should be given any additional weight when allotting funds among the various programs. The percentage of funds to be available for each category of projects is also not specified.

Comment: Two commenters suggested that the public be given the opportunity to comment on the priority for funding the different activities within the Set-Aside Program and to have an input into the proportion of funds available for each activity.

Response: It is the belief of the Department that the legislative intent of the Set-Aside Program was to permit administrative discretion in the distribution of funds among these programs. While the public is always free to suggest priorities for funding, the Department will not adopt a formal priority procedure in order to maintain the administrative discretion allowed by the legislation.

IV. Application Review

The proposed regulation does not specify the review procedure used in approving application projects in the Set-Aside Program.

Comment: Several commenters suggested that the proposed rule should specifically require non-governmental review of applications for projects. The commenters suggest that the approval of applications for such large sums of money should not be left solely to government employees.

Response: It is standard practice in the review of maternal and child health services research activities for the applications to be reviewed and approved by the Maternal and Child Health Research Advisory Committee composed of non-governmental consultants. Non-Federal consultants are also always used routinely as panelists on other categories of applications.

The Department believes, however, that it is inappropriate to specify in regulation the particular details of the Department's review process, and we have not adopted this suggestion.

V. Number of Persons To Be Served

The proposed rule specified in § 51a.5(b)(1) that one of the criteria for reviewing applications is the number of persons to be served by the applicant.

Comment: Two commenters argued that this provision should be deleted because it is biased toward urban populations and is vague.

Response: The Department does not agree that this position should be changed, because it is important to know the number of people to be served. Also, the approval of an application is not based solely on the number to be served but on the relationship of the number to be served to the amount of funds requested. In order for the Department to be able to compare applications to ensure that funds are proposed to be spent effectively and efficiently, the application must contain information on the number of persons to be served. We have, however, modified the requirement (renumbered as § 51a.5(b)(3)) to request applicants to describe the special circumstances and differences associated with the provision of care in urban and rural areas so that this can be taken into consideration in reviewing applications.

VI. Applicability to Indian Tribes and Tribal Organizations

The proposed regulation does not specifically designate Indian tribes or tribal organizations as eligible entities.

Comment: One commenter requested that Indian tribes and tribal organizations be specifically included in § 51a.3 as eligible entities.

Response: As provided in section 502(a) of the Act, public or private nonprofit institutions of higher learning may apply for training grants, and public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or programs relating to maternal and chiild health or crippled children's services may apply for awards for research in maternal and child health services or crippled children's services. The remaining Federal awards under this regulation are available to any public or private entity including an Indian tribe or tribal organization. Nevertheless, to dispel any confusion that may exist, we have added to the regulation at section 51a.3 a specific reference to tribes or tribal organizations.

Prohibition Against Discrimination

In addition to the nondiscrimination regulations listed at § 51a.7(a) which are applicable to awards under the Set-Aside Program, the Department points out that the statute, at section 508(a)(2) of the Social Security Act, provides that "(n)o person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title."

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a "major rule" because: it will not cause a major increase in costs or prices for individual industries, government agencies or geographic regions; nor will it have any significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis is not required in connection with the publication of this rule.

Regulatory Flexibility Act

The Secretary has also determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule allows major flexibility and imposes fewer requirements on grantees. Therefore, the Department has determined that this rulemaking does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511) the reporting provisions included in § 51a.4 of this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0915–0050.

List of Subjects in 42 CFR Part 51a

Colleges and universities, Federal support programs—Health, Infants and children, Maternal and child health, Blood diseases, Genetic diseases, Health care, Health facilities.

Dated: July 9, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: July 25, 1985.

Margaret M Heckler,

Secretary.

1. Part 51a of 42 CFR is added to read as follows:

PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

Sec.
51a.1 To whom does this regulation apply?
51a.2 Definitions.
51a.3 Who is eligible to apply for Federal funding?
51a.4 How is application made for Federal funding?

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Sec.
51a.5 What criteria will DHHS use to decide which projects to fund?
51a.6 What confidentiality requirements must be met?
51a.7 What other DHHS regulations apply?

Authority: Section 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); section 502(a) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a)).

§ 51a.1 To whom does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) of the Social Security Act, as amended (42 U.S.C. 702(a)), for special projects of regional and national significance; maternal and child health or crippled children's research and training projects; genetic disease testing, counseling and information projects; and comprehensive hemophilia diagnostic and treatment centers.

§ 51a.2 Definitions.

"Act" means the Social Security Act, as amended.

"Genetic diseases" means inherited disorders caused by the transmission of certain aberrant genes from one generation to another.

"Hemophilia" means a genetically transmitted bleeding disorder resulting from a deficiency of a plasma clotting factor.

"Institution of higher learning" means any college or university accredited by a regionalized body or bodies approved for such purpose by the Secretary of Education, and any teaching hospital which has higher learning among its purposes and functions and which has a formal affiliation with an accredited school of medicine and a full-time academic medical staff holding faculty status in such school of medicine.

"Secretary" means the Secretary of Health and Human Services or his or her designee.

§ 51a.3 Who is eligible to apply for Federal funding?

Any public or private entity including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding for a special project of regional or national significance; genetic disease testing, counseling, and information project; comprehensive hemophilia diagnostic and treatment center; or for a special maternal and child health improvement project. Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or programs relating to maternal and child health and crippled children's services programs may apply for grants, contracts or jointly financed cooperative agreements for research in maternal and child health services or crippled children's services.

§ 51a.4 How is application made for Federal funding?

The application must include a budget and narrative plan of the manner in which the project has met, or plans to meet, each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project. Since the Department anticipates a limited number of renewals, the application must include (except for research projects described at the end of this paragraph) a description of the project's past attempts and current plans to secure other sources of funding.

By their very nature, research projects are generally not continuing activities and do not generate reimbursement. They are therefore not included under the requirement in this paragraph to provide information on other sources of funding.

(Approved by the Office of Management and Budget under control number 0915–0050)

§ 51a.5 What Criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under section 502(a) of the Act for each of the activities described in section 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of Title V of the Social Security Act taking the following factors equally into account:

(1) The quality of the project plan or methodology.

(2) The need for the services, research, or training.

(3) The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefitted, served or trained, taking into consideration, where relevant, whether the proposed project is urban or rural and the special circumstances associated with providing care or training in various areas.

(4) The extent to which the project will contribute to the advancement of maternal and child health and crippled children's services.

(5) The extent to which rapid and effective use of grant funds will be made by the project.

(6) The effectiveness of procedures to collect the cost of care and services from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payments for any service (including diagnostic, preventive and treatment services).

(7) The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants and other block grants made to the appropriate State(s).

(8) The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

§ 51a.6 What confidentiality requirements must be met?

All information as to personal facts and circumstances obtained by the project's staff about recipients of services shall be held confidential, and shall not be disclosed without the individual's consent except as may be otherwise required by applicable law or as may be necessary to provide for medical audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability:
  Subpart B—Sterilization of persons in federally assisted family planning projects.
  Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.
  Subpart E—Maximum allowable cost for drugs.

42 CFR Part 122 Health systems agencies:
  Subpart E—Health systems agency reviews of certain proposed uses of Federal health funds.

45 CFR Part 19—Limitations on payment or reimbursement for drugs

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

(b) In addition to the above regulations, the following apply to projects funded through grants:

45 CFR Part 50 Policies of general applicability
  Subpart D—Public Health Service grant appeals procedure.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are now available for grants for carrying out the following activities: Special Maternal and Child Health (MCH) projects of regional and national significance which contribute to the improvement of services for mothers, children and handicapped children; MCH research and training projects; genetic disease testing, counseling and information projects; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act which is known as the MCH Federal Set-Aside Program. HRSA, through this notice, invites potential applicants to inquire about application packages for the particular grant in which they are interested and then to make their applications for funding. It is anticipated that approximately $13.6 million will be available to support new and competing continuation projects under the MCH Federal Set-Aside Program.

DATE: Dates by which applications must be received differ for the several categories of grants and are as follows:

(1) Research: Two cycles, due dates are April 1, 1986 and August 1, 1986;

(2) Training: Long-term training, May 1, 1986;

(3) Genetic diseases testing, counseling and information: April 15, 1986;

(4) Hemophilia diagnostic and treatment centers: May 1, 1986;

(5) Special MCH improvement projects of regional and national significance, e.g., those which test or show the effectiveness of a given approach or technique in the provision of MCH care: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Potential applicants wishing to inquire about possible grant support should address their inquiries *in writing* to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, HRSA, Room 6-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All requests for application information must be *in writing*. Requests for grant application materials should be addressed to: Grants Management Officer, Office of Program Support, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A-18, 5600 Fishers Lane, Rockville, Maryland 20857. Requests should specify the grant category or categories for which an application is requested, or present a summary of the project for which support is being requested to permit the agency to provide the applicant with the appropriate materials.

SUPPLEMENTARY INFORMATION: Under section 502(a) of the Social Security Act, between 10 and 15 percent of the funds appropriated for Title V in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above.

Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds under the above categories (with the exception of hemophilia) as competing applications and will fund those which in the Department's view will best promote improvements in maternal and infant health care and will best deal with associated problems, including the unacceptably high rates of low birthweight, neonatal and postneonatal mortality and the barriers to initiation and continuation of breastfeeding. Funds also will be available for the development or improvement of services for the handicapped and chronically ill child and young adult. Funds will be available under the special MCH improvement projects category for a project to test and show the combined effectiveness of educational, physical health and mental health approaches to remedy the effects of birth injury or other developmental impairments through applied innovative techniques in relation to the infant, child and the families.

In terms of what types of entities may apply for the various types of set-aside grants, it should be noted that the statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. There are no statutory or regulatory limitations on the type of entity which may apply for the other categories of grants.

One cooperative agreement may be awarded under this announcement for a project to develop and test comprehensive psychosocial, educational, and health approaches to screening, diagnostic assessment and intervention for infants, young children and their families evidencing, or at-risk for, emotional and emotionally related developmental difficulties. In carrying out these functions, the successful applicant under any such cooperative agreement would be expected to carry out activities such as the following as part of its responsibility under a cooperative agreement:

1. Development of principles and technology to identify (screen) infants, young children and their families for psychosocial and developmental difficulties;

2. Development and description of comprehensive approaches to assessment and diagnosis;

3. Development and description of comprehensive approaches to preventively oriented intervention; and

4. Participate in the development of and dissemination of technical assistance approaches.

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance provided under grants, would include the following:

1. Making available the services of experienced Federal personnel as participants in the planning and development of all phases of this activity, including:

(a) Participation in the identification of principles and the development of approaches to identify (screen) infants, young children and their families for psychosocial and developmental difficulties,

(b) Development of critical elements and tracking of progress and study components,

(c) Establishing Federal interagency and interorganizational contacts necessary in carrying out of the program, and

(d) Participation in the preparation of articles for professional journals and descriptive materials for technical assistance programs.

2. Assuming the major role in the development and dissemination of technical assistance approaches and materials based on project outcomes.

Applicants interested in competing for this specific cooperative agreement project should so state in their written request for application to the grants management officer.

The final rule for implementing this program is published elsewhere in this issue of the **Federal Register**. This rule revises 42 CFR Part 51a (Grants for Maternal and Child Health and Crippled Childrens Services), Part 51d (Grants for Hemophilia Treatment Centers), and

Part 51f (Project Grants for Genetics Diseases Testing and Counseling Programs) by eliminating repetitive and unnecessary provisions in those regulations and by providing for a single regulation to govern the various project activities included in the set-aside program.

The MCH Federal Set-Aside Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The MCH program is listed as No. 13.110 in the OMB Catalog of Federal Domestic Assistance.

Dated: February 19, 1986.

John H. Kelso,
Acting Administrator.

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S. 2036/Pub. L. 99-253

To make certain technical corrections to amendments made by the Food Security Act of 1985, and for other purposes. (Feb. 28, 1986; 100 Stat. 36; 2 pages) Price: $1.00

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Thursday
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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
General Accounting Office

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Buses
Urban Mass Transportation Administration

Electric Power
Reclamation Bureau

Freedom of Information
Agriculture Department

Government Procurement
Defense Department

Hazardous Waste
Environmental Protection Agency

Loan Programs—Housing and Community Development
Veterans Administration

Marine Safety
Coast Guard

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Maritime Administration

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Navigation (Water)
Coast Guard

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Economic Analysis Bureau

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

	ST. LOUIS, MO	WASHINGTON, DC	DENVER, CO	DALLAS, TX
WHEN:	March 11; 9 am.	March 20; 9 am and 1 pm. (identical sessions)	March 24; 9 am.	April 23; 1:30 pm.
WHERE:	Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.	Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC	Room 239, Federal Building, 1961 Stout Street, Denver, CO.	Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
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Presidential Documents

Title 3—

The President

Proclamation 5446 of March 4, 1986

Women's History Week, 1986

By the President of the United States of America

A Proclamation

Women have contributed mightily to the growth of the United States and the success of the American experiment with democracy. Today, women of every race and ethnic background, whether single or married, with children or other dependents, continue to play leading roles in the enrichment of our Nation. They are contributing substantially to the growth of the economy and the development of our educational, political, commercial, judicial, and social systems. And they continue to sustain those family values so essential to the health of the Nation.

Women are making significant achievements in government and the private sector that will enhance employment opportunities for all Americans. As obstacles to full equality of opportunity are overcome, more and more women are successfully occupying an ever greater variety of demanding and rewarding careers. At the same time, women make an incomparable contribution as mothers and homemakers, whose vision, love, and example will shape the destiny of our country in the years to come.

It is appropriate that all Americans recognize the outstanding achievements of women and celebrate their unique and immense contributions to our Nation and its well-being.

The Congress, by House Joint Resolution 499, has designated the week beginning March 2, 1986, as "Women's History Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning March 2, 1986, as Women's History Week, and I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Part 28

General Accounting Office Personnel Appeals Board—Procedures

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: This rule amends the Board's regulations (1) to clarify, simplify and expedite the investigations by the Board General Counsel, (2) to remove the General Counsel from cases involving only attorney's fee issues, (3) to reflect a recent Board decision that expands the basis for reconsideration by the full Board of a Presiding Member's decision, (4) to reflect a recent Board decision that established criteria for vacating a Board-ordered stay of a personnel action, and (5) to provide more details on the procedures the Board General Counsel is to follow in corrective action proceedings.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Carl D. Moore, General Counsel, PAB, (202) 275–1663.

SUPPLEMENTARY INFORMATION: In the spirit of keeping the length of the Board's rules to a minimum, the Board has added § 28.1(d) to notify the parties that in any procedural matters not covered by these rules, the Board will be guided, but not controlled, by the Federal Rules of Civil Procedure.

Under the Board's regulatory scheme, an employee in required to file an action with the Board's General Counsel. After investigation by the General Counsel, the employee must file again with the Board in order to pursue the matter. The prior regulations referred to both the initial filing with the General Counsel and the ultimate filing with the Board, as a "petition for review." This led to some confusion. Thus, § 28.3(b) and (c) have been added to rename the filing with the General Counsel as a "charge" and to rename the individual who files such a charge from "petitioner" to "charging party." The renaming required amendments to §§ 28.11, 28.17, 28.47 and 28.83.

The Board also amended the rules by adding §§ 28.11(a)(2) and 28.45(c). These provisions provide, respectively, that non-EEO class allegations must be filed as a "charge" with the Board General Counsel and that EEO class allegations must be filed directly with the Board as a "petition for review." The difference in treatment is based on the EEO complaint procedure. An EEO class complaint goes through the agency complaint process before coming to the Board. The agency process involves a hearing and requires that the class be represented by competent counsel. The subsequent review by the Board is intended to be primarily a review of the record; although the Board retains the discretion to order a hearing to gather more evidence should circumstances so warrant. Since counsel is already involved on behalf of the class in EEO class actions and since the Board's review is primarily appellate in nature, the Board determined that it would constitute an unwarranted expenditure of government funds and unduly delay an already extended process to require the Board General Counsel to review the record and make determinations as to whether to assume responsibility for the class action.

On the other hand, allegations raising non-EEO class issues (*e.g.*, agency practices that are alleged to constitute a pattern of prohibited personnel practices affecting a substantial number of employees) come before the Board without prior administrative processing. Thus, the role of the General Counsel would be the same in these cases as in an individual case.

Section 28.11(e) has been amended to provide that the Board General Counsel will not participate in cases that are limited to requests for attorney's fees. As in the case of EEO class actions, the Board determines that it was unnecessary for the General Counsel to become involved as lead counsel when, by definition, counsel was already deeply involved in the case.

The provisions for the Board General Counsel investigative procedures were modified in three ways. First, the requirement that GAO formally respond to a charge was eliminated. While the General Counsel is required to serve the agency with a copy of the charge, the General Counsel's investigation is to begin without delay. Second, § 28.17(e) states that when the General Counsel participates in a case, the General Counsel shall be lead counsel. Third, a new subsection (f) at § 28.17 provides that when the General Counsel is not involved in a case, the General Counsel may, nevertheless, request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

In referring to time limits, the rules in a few places used the phrase "calendar days." Since the term "days" was already defined as "calendar days" at § 28.3(c) (28.3(e) as amended herein), use of the term "calendar" in other portions of the rules was redundant. Therefore, the term "calendar" was deleted from other portions of the rules.

The Board amended § 28.7 placing a limit of 60 pages on pleadings and attachments to pleadings and requiring that all submissions to the Board be on standard letter-size paper.

Provisions appearing at §§ 28.11(e) and (f), 28.13 and 28.15 that dealt with filing and responding to "petitions for review" were incorporated into the provisions that deal with petitions to the Board at §§ 28.19(a), 28.19(e), 28.19(c) and 28.19(b), respectively.

Section 28.19(b)(1) is a new provision in the rules which is intended to ensure that, whenever defenses become reasonably known to the agency, they are raised in a timely fashion. It is not intended to preclude the agency from raising defenses during the process that were not reasonably known at the time the petition for review was filed.

Section 28.21 was amended by adding subsection (n). This subsection provides guidance for motions to correct the official transcript.

Section 28.25 was amended by adding paragraphs (c)(3) through (c)(5). These subsections include the statutory bases upon which the courts review the decisions of the Board as bases for reconsideration by the full Board of a Hearing Officer's decision.

The Board amended § 28.25(c) requiring that a motion to reopen and reconsider include "all supporting material" and that, after the responding

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party files a reply, additional responsive pleadings may be filed only with the approval of the Board.

List of Subjects in 4 CFR Part 28

Aministrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

PART 28—[AMENDED]

Accordingly, 4 CFR Part 28 is amended as follows:

1. The authority citation for Part 28 continues to read as follows:

Authority: 31 U.S.C. 753

2. The table of contents is amended by adding a new section to Subpart A immediately below "28.3 General definitions" as follows:

Sec.
28.4 Time limits.

3. The table of contents for Subpart B is revised to read to follows:

Subpart B—Procedures

28.5 Informal procedural advice.
28.7 Procedures—general.
28.9 Notice of appeal rights.
28.11 Filing a charge with the General Counsel.
28.17 General Counsel procedures.
28.18 Filing a petition for review with the Board.
28.19 Board procedures—pre-hearing.
28.21 Board procedures—formal hearings.
28.23 Burden and degree of proof.
28.25 Board procedures—decisions and orders.
28.27 Board procedures—judicial review.

4. In the table of contents the headings for Subpart D and for §§ 28.45 through 28.49 are revised to read as follows:

Subpart D—Special Procedures—Equal Employment Opportunity (EEO) Cases

* * * * *

28.45 Class actions in EEO cases.
28.47 Individual charges in EEO cases.
28.49 Petitions for review to the Board in EEO cases.

* * * * *

5. In the table of contents, the headings for Subpart G and for § 28.103 are revised to read as follows:

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

Sec.

* * * * *

28.103 Corrective action proceedings.

* * * * *

6. Section 28.1 is amended by adding paragraph (d) which reads as follows:

§ 28.1 Purpose and scope.

* * * * *

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not controlled, by the Federal Rules of Civil Procedure.

7. Section 28.3 is revised to read as follows:

§ 28.3 General definitions.

In this part—

(a) "Board" means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

(b) "Charge" means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

(c) "Charging Party" means any person filing a charge with the General Counsel for investigation.

(d) "Comptroller General" means the Comptroller General of the United States.

(e) "Days " means calendar days.

(f) "GAO" means the General Accounting Office.

(g) "General Counsel" means the General Counsel of the General Accounting Office Personnel Appeals Board, as provided for under 31 U.S.C. 752.

(h) "Hearing Officer" means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. A Hearing Officer may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing.

(i) "Person" means an employee or applicant for employment, a labor organization or the GAO.

(j) "Petition" means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

(k) "Petitioner" means any person filing a petition for Board consideration.

8. Subpart A is amended by adding § 28.4 to read as follows:

§ 28.4 Time limits.

(a) To compute the number of days for filing under theose rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) The Board may waive the time limits in these rules for good cause shown.

9. Subpart B is revised to read as follows:

Subpart B—Procedures

§ 28.5 Informal procedural advice.

(a) Charging parties or prospective charging parties may seek informal advice on all aspects of the Board's procedures by contacting the General Counsel.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.7 Procedures—general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) All pleadings and attachments thereto shall not exceed 60 pages. The Board may waive this limitation for good cause shown. Pleadings filed with the Board shall be on standard letter-size paper (8½ X 11).

§ 28.9 Notice of appeal rights.

The GAO shall be responsible for ensuring that employees are regularly advised of their appeal rights to the Board and that employees who are the object of an adverse action are, at the time of the action, adequately advised of their appeal rights to the Board.

§ 28.11 Filing a charge with the General Counsel.

(a) *Who may file.* (1) Any GAO employee or applicant for employment claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(2) *Non-EEO class actions.* One or more employees or applicants for employment may file a charge as representatives of a class of employees or applicants for employment in any matter within the Board's jurisdiction. See § 28.45 for EEO class actions.

(b) *When to file.* (1) Charges relating to adverse actions based on conduct or performance must be filed within 20 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 20 days after the effective date of the action or 20 days after the charging party knew or should have known of the action.

(3) Charges relating to adverse actions or performance-based actions (paragraph (b)(1) of this section) or other personnel actions (paragraph (b)(2) of this section) that also raise an allegation of prohibited discrimination must be

filed in accordance with paragraph (b)(4) of this section.

(4) Charges relating to discrimination complaints may be filed any time after 80 days have passed since the filing of a formal complaint of discrimination with GAO, except that, when GAO has issued a final agency decision, the charge must be filed within 20 days from receipt by the charging party of the final agency decision.

(5) Charges relating to continuing violations may be filed at any time.

(c) *How to file.* Charges may be filed at the Office of the General Counsel (Academy Building, 717—5th Street, NW, Washington, D.C.) or by mail addressed to the General Counsel, Personnel Appeals Board, Academy Building, General Accounting Office, Washington, D.C. 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the General Counsel.

(d) *What to file.* The charging party should include in any charge the following information:

(1) Name of the charging party or a clear description of the group of class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) When attorney's fees are the only issue before the General Counsel, the General Counsel shall transmit the charge to the Board for processing under § 28.19 through § 28.25 as a petition for review. The General Counsel shall not participate in the case pursuant to § 28.17(d).

§ 28.17 General Counsel procedures.

(a) The General Counsel shall serve the agency with the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt settlement of all matters at issue.

(b) The General Counsel's investigation may include gathering information from GAO and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there is not reasonable evidence to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code have been violated, then the General Counsel shall not represent the charging party. If the General Counsel determines that there is reasonable evidence to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code have been violated, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent himself/herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any GAO employee or applicant for employment who has received a Right to Appeal Letter from the General Counsel and who is claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(b) *When to file.* Petitions for review must be filed within 20 days after receipt by the petitioner of the Right to Appeal Letter from the General Counsel.

(c) *How to file.* Petitions may be filed at the Office of the Board (Academy Building, 717—5th Street, NW, Washington, D.C.) or by mail addressed to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, D.C. 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petitioner should include in any petition for review the following information:

(1) Name of the petitioner of a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter;

(7) Whether a hearing is requested; and

(8) Signature of the petitioner or petitioner's representative.

(e) *Non-EEO class actions.* One or more employees may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction. The Hearing Officer shall hear the case as a class action if he/she finds a class action will be the most efficient and fair way to adjudicate the appeal and will adequately protect the interests of all the parties. See § 28.45 for EEO class actions.

§ 28.19 Board procedures—pre-hearing.

(a) *Service on respondent.* Upon receipt of a petition for review, the Board shall serve a copy on the respondent.

(b) *Response by GAO.* Within 20 days after receiving a copy of a petition for review, the GAO shall file a response containing at least the following:

(1) A statement of the GAO position with respect to each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition, and any other defenses to the petition, and

(2) Designation of, and signature by, the GAO representative authorized to act for GAO in the matter.

(c) *Amendments to petitions.* The Board at its discretion may allow amendments to a petition as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations.

(d) All motions of the parties shall be filed with the Hearing Officer assigned

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by the Board after receipt of the petition, and copies shall be served simultaneously upon the other parties to the petition. Responses in opposition to such motions must be filed with the Hearing Officer and served simultaneously upon the other parties to the petition within 20 days of receipt of the motion, unless the Hearing Officer requires a shorter response time. A certificate of service will be filed with all pleadings showing service by mail or personal delivery of the pleadings to the other parties. Additional responsive pleadings may be filed only with the approval of the Hearing Officer.

(e) Requests for discovery may be served upon a party following the filing of a petition for review. Objections to any or all portions of a request must be served within 10 days of receipt of the request. Otherwise, compliance with the request shall be made within 20 days of receipt. If the parties are unable to agree as to the scope of discovery, the Hearing Officer shall, upon the filing of a motion to compel, rule on such questions, having in mind the need to provide a full and fair consideration of the relevant and material facts of the case. Appropriate safeguards for the confidentiality of information discovery may be imposed by the Hearing Officer.

(f) The Board shall order a hearing on its own motion or at the request of either party. Absent a request for a hearing, the Board may issue a decision and order based upon the written submissions of the parties and, where it deems necessary, on oral argument called for the purpose of eliciting further views.

(g) Where the General Counsel under § 28.17(a) transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.21 Board procedures—formal hearings.

(a) Where two or more parties have filed petitions containing identical or similar issues, the Board may, following appropriate notice to the parties and opportunity for comment by the parties, consolidate such petitions for hearing purposes.

(b) Where a petitioner has filed two or more petitions, the Board may, following appropriate notice to the parties and opportunity for comment by the parties, join these petitions for purposes of conducting the hearing.

(c) A formal hearing on a petition may be conducted:

(1) Before the Board as a whole, in which case the Chair shall preside;

(2) Before one of its members chosen by the Board to be the Hearing Officer;

(3) Before a panel of two or more Board members chosen by the Board, one of whom shall preside; or

(4) Before a qualified Hearing Officer chosen by the Board for the purpose.

(d) The Board shall issue a notice to all parties specifying the date, time and place of the scheduled hearing. In no case shall the hearing be held earlier than 15 days after the notice is issued, unless all parties agree to an earlier date.

(e) Upon request by the Board, the GAO shall provide appropriate space to hold the hearing.

(f) The Hearing Record shall be prepared and maintained under the supervision of the Hearing Officer. It shall include exhibits, motions, and other material submitted by the parties and accepted by the Hearing Officer. It may also, at the election of the Hearing Officer, include the transcript of the hearing. This Record shall consitute the sole official record of the proceeding. Copies of all or portions of the Record shall be provided to the petitioner and the respondent upon request; other parties may be furnished a copy, at their request and at their own expense, or they may examine a copy at a time and place set by the Board.

(g) Generally, hearings shall be closed to the public unless the petitioner requests the Hearing Officer to order the hearing or part of the hearing to be open. However, the Hearing Officer may, for good cause shown, close any or all portions of the hearing, over the petitioner's objections, stating the reason therefor on the Record.

(h) Although the rules of evidence shall not apply, the Hearing Officer shall conduct the hearing so as to ensure that all relevant and material facts are placed into the Record and all parties are given full opportunity to present their evidence on the issues.

(i) The Hearing Officer shall conduct the hearing in a manner designed best to achieve a balance of fairness, justice and equity in terms of the objectives of Subchapter IV of Chapter 7 of Title 31, United States Code and the proper interests of the parties; he/she shall have the authority needed to function effectively, including, but not restricted to, authorizing the taking of depositions, ruling on admissibility of evidence, issuing subpoenas, requiring briefs, and administering oaths.

(j) The Hearing Officer shall rule on all questions of procedure and conduct raised at the hearing following appropriate administrative procedures consistent with 5 U.S.C. 7701 and 7702. Objections to rulings of the Hearing Officer, with reasons therefor, shall be part of the Record; however, the hearing shall proceed as ordered by the Hearing Officer.

(k) Upon application to the Hearing Officer, any party affected by matters at issue in any petition may be given, at the discretion of the Hearing Officer, the status of an intervenor in all formal proceedings relating to the petition. As such, any intervenor shall have the right to participate in the hearing and to be notified, as is the petitioner, of all Board actions respecting the processing of the case. However, intervenors shall pay any costs related to their participation in the processing of the petition.

(l) The costs involved in the appearance of witnesses in any Board hearing shall be allocated as follows:

(1) Persons employed by the GAO shall, upon request by the Hearing Officer to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a Board hearing shall, at the request of the Hearing Officer and with the approval of the employing agency, be in official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraphs (l)(3) and (m) of this section.

(3) The fees and expenses of other persons called to testify at a Board hearing shall, in the first instance, be paid by the party requesting their appearance, subject to a subsequent decision otherwise in accordance with paragraph (m) of this section.

(m) Within 20 days after receipt of a notice of final decision by the Board, the petitioner may submit a request for the award of reasonable attorney's fees and costs. GAO may file a response to the request within 20 days after its receipt. Motions of the parties shall be filed in accordance with § 28.19(d) of these regulations. Rulings of the Board on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The Board's decision on attorney's fees and costs shall be a final decision, in accordance with § 28.27.

(n) Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within 20 days of the receipt of the transcript. Corrections of the official transcript will be permitted thereafter only in compelling and extraordinary circumstances and only

upon approval of the Hearing Officer. The Hearing Officer or the Board may at any time on its own motion order the correction of the official transcript.

§ 28.23 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner—

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other appeal to the Board, the petitioner shall have the responsibility of presenting the evidence in support of the appeal and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

§ 28.25 Board procedures—decisions and orders.

(a) Where a Hearing Officer who is not a Board member conducts a hearing, the Hearing Officer shall transmit to the parties and the Board a Report of Findings of Fact and Recommendations. Based upon this Report, a member or panel of members of the Board shall issue a decision. The decision shall contain the date upon which the decision will become final, which will be at least 30 days from issuance. The decision shall become final on that date unless a party files a motion to reopen and reconsider within 30 days from issuance of the decision or unless the Board reopens on its own motion.

(b) Where a Board member or panel of Board members hears a case, a decision shall be issued to the Board and to the parties. The decision shall contain the date upon which the decision will become final, which will be at least 30 days from issuance. The decision shall become final on that date unless a party files a motion to reopen and reconsider within 30 days from issuance of the decision or unless the board reopens on its own motion.

(c) A motion to reopen and reconsider may be filed at the Office of the Board or by mail. When filed by mail, the postmark shall be the date of filing. The party filing the motion to reopen and reconsider shall serve a copy of the motion on other parties. The motion to reopen and reconsider shall include all supporting material and shall set forth objections to the decision, with references to applicable laws or regulations, and with specific reference to the Record. The responding party shall have 20 days from receipt of the motion to file any reply. Additional responsive pleadings may be filed only with the approval of the Board. The Board may grant a motion to reopen and reconsider when it is established that:

(1) New material evidence is available that, despite due diligence, was not available when the Record was closed;

(2) The decision of the Hearing Officer is based on an erroneous interpretation of statute or regulation;

(3) The decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(4) The decision is not made consistent with required procedures; or

(5) The decision is unsupported by substantial evidence.

(d) If the Board reopens a case, the subsequent decision of the Board shall be final.

(e) Where the full Board initially hears a case, the subsequent decision shall be final and appealable under § 28.27.

(f) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes final, provide the Board with a compliance report specifying:

(1) The manner in which the provisions of the decision or order have been complied with;

(2) The reasons any provisions have not yet been fully complied with; and

(3) The steps being taken to ensure full compliance. A copy of the report shall be served on all parties to the proceeding.

(g) The Administrative Officer of the Board shall take all necessary action to ascertain compliance with the final decision of the Board. If the Administrative Officer finds non-compliance, he/she shall undertake efforts to obtain compliance. If the Administrative Officer is unable to obtain satisfactory agency compliance with the final order, he/she shall report to the Board.

(h) Any person may petition the Board for enforcement of a final decision. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(i) Upon receipt of a non-compliance report from its Administrative Officer or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance.

(j) Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§ 28.27 Board procedures—judicial review.

(a) Appeals other than discrimination complaints. A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), and (7) may be appealed to the United States Court of Appeals for the Circuit in which the petitioner resides or to the United States Court of Appeals for the District of Columbia within 30 days after the date the petitioner receives notice from the Board of the final decision.

(b) Judicial review of discrimination complaints. The provisions for review of discrimination complaints are provided in § 28.51.

(c) The Board may designate the General Counsel or any other qualified individual to represent it in any judicial appeals from its decisions taken in accordance with 31 U.S.C. 755.

10. The heading of Subpart D is revised to read as follows:

Subpart D—Special Procedures—Equal Employment Opportunity (EEO) Cases

11. Sections 28.45 through 28.51 are revised to read as follows:

§ 28.45 Class actions in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination on behalf of a class of GAO employees or applicants for employment, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A petition for review of GAO's disposition of any EEO class complaint may be submitted to the Board when:

(1) GAO issues a determination rejecting or canceling the class complaint;

(2) GAO issues a determination accepting the class action, but with modifications that are not satisfactory to the agent of the class;

(3) A period of more than 180 days has elapsed since the formal class complaint was filed and the GAO has not issued a final decision; or

(4) The complaint has been resolved by a GAO decision that, in whole or in part, has not satisfied the agent for the class.

(c) In class actions in EEO cases, no charge shall be filed or investigated by the General Counsel prior to filing a

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petition for review with the Board. However, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(d) The parties shall not have a right to a hearing on a petition for review in class actions under this section. Upon a showing of good cause as to why an evidentiary hearing is necessary, the Board may order such a hearing. Alternatively, the Board may, after a review of the administrative record and on its own motion, order a hearing for the purpose of gathering additional evidence. If no hearing is ordered, the Board's decision shall be based upon a review of the administrative record developed in the GAO class complaint process.

§ 28.47 Individual charges in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A charge relating to GAO's disposition of any individual EEO complaint may be submitted to the General Counsel when:

(1) The complaint or a portion thereof has been rejected by the GAO; or

(2) A period of more than 80 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or

(3) The complaint has been resolved by a GAO decision which, in whole or in part, has not satisfied the complainant.

(c) Where a charging party wishes to file a combination of claims, only a portion of which involve discrimination, the charging party must first file a complaint in the agency EEO complaint process. Where a complaint filed in the agency EEO complaint process relates to non-EEO issues that are within the Board's jurisdiction in addition to EEO-related allegations, the subsequent charge filed with the General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issues.

(d) A charge filed with the General Counsel under the provisions of this subpart shall state the issue briefly, and shall spell out clearly the reason the charging party believes the action of the GAO to be contrary to the law.

(e) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.17.

§ 28.49 Petitions for review to the Board in EEO cases.

(a) The provisions of § 28.18 through § 28.25, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(b) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes proper to correct the effect of the discrimination found to have occurred.

§ 28.51 Civil action—discrimination complaints.

(a) An employee or applicant alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO.

(b) An employee or applicant alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(c) An employee or applicant alleging discrimination based upon a handicapping condition (29 U.S.C. 791, 794a—Rehabilitation Act), or age discrimination (29 U.S.C. 631, 633a—Age Discrimination in Employment Act), or salary inequity due to sex (29 U.S.C. 206d—Equal Pay Act provisions of the Fair Labor Standards Act) need not exhaust administrative appeals to GAO or to the Board before filing suit in the Federal District Court. 12. Section 28.63 is revised to read as follows:

§ 28.63 Unfair labor practices—Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1 dated October 1, 1980. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in Subpart B for the filing of charges, investigation by the General Counsel, and the Board's disposition, except as set forth in paragraph (c) of this section.

(c) No petition for review may be filed based on any alleged unfair labor practice which occurred or was discovered more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 14b of GAO Order 2711.1, or more than 9 months before the filing of a charge with the General Counsel.

13. The heading for Subpart G is revised to read as follows:

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

14. Section 28.103 is revised to read as follows:

§ 28.103 Corrective action proceedings.

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the General Counsel may file a petition for review with the Board. Such petition for review shall be processed in accordance with §§ 28.19 through 28.25.

§ 28.107 [Amended]

15. Section 28.107 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) In the event that a stay is ordered pending adjudication of the merits of a personnel action, the Presiding Member may vacate the stay if, after hearing the evidence presented by both sides on the factual allegations which formed the basis for granting the stay, the Presiding Member determines that the agency did not commit a prohibited personnel practice.

Ira F. Jaffe,

Chairman, Personnel Appeals Board.

[FR Doc. 86–4574 Filed 3–5–86; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable, Reserve, and Export Percentages for the 1985–86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1985–86 crop year, which began July 1, 1985. The salable percentage is increased from 80 percent to 85 percent, and the reserve percentage is correspondingly decreased from 20 percent to 15 percent. This action is taken under the marketing order for almonds grown in California to promote orderly marketing conditions.

EFFECTIVE DATES: July 1, 1985 through June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 50 handlers of almonds are subject to regulation under the marketing order for almonds grown in California during the course of the current season and the great majority of this group may be classified as small entities. While regulations issued during a season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action releases restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It also is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year apply to all marketable almonds received by handlers from the beginning of that year. The 1985–86 crop year began July 1, 1985.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for an increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On September 4, 1985, a final rule was published in the Federal Register (50 FR 35788) establishing salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, for the 1985–86 crop year. That action was based on a unanimous recommendation of the Almond Board of California, which works with USDA in administering the order, at its July 25, 1985, meeting.

On January 28, 1986, the board met to review the salable and reserve percentages established for the 1985–86 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 85 percent and a corresponding decrease in the reserve percentage to 15 percent. In arriving at this recommendation, the Board noted that the current estimate of 1985 production is down 37.8 million pounds from its July 25, 1985, estimate to 457.4 million pounds. The Board's current estimate of loss and exempt almonds is down 3.0 million pounds to 22.0 million pounds. The Board increased its estimate of export trade demand by 75.0 million pounds to 325.0 million pounds. The Board also decreased the quantity of almonds deemed desirable to be carried out on June 30, 1986, from 204.9 million pounds to 122.6 million pounds to reflect the smaller crop and increased trade demand. Therefore, an increase in the salable percentage is necessary to ensure that ample supplies of almonds are available to meet 1985–86 trade demand needs.

The estimates used by the Board in recommending the revised salable and reserve percentages are tabulated below. The Board's July 25, 1985, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1985 CROP

[Kernel Weight Basis]

	Million pounds	
	Initial estimate (7/25/85)	Revised estimate (1/28/86)
Estimated production:		
1. 1985 production	495.0	457.4
2. Loss and exempt	25.0	22.0
3. Marketable production	470.0	435.4
Estimated trade demand:		
4. Domestic	150.0	150.0
5. Export	250.0	325.0
6. Total	400.0	475.0
Inventory adjustment:		
7. Carryin 7/1/85	230.0	227.5

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MARKETING POLICY ESTIMATES—1985 CROP—Continued

[Kernel Weight Basis]

	Million pounds	
	Initial estimate (7/25/85)	Revised estimate (1/28/86)
8. Desirable carryover 6/30/86	204.0	122.6
9. Adjustment	(24.0)	(104.9)
Salable/reserve:		
10. Adjusted trade demand (8 plus 9)	376.0	370.1
11. Reserve (3 minus 10)	94.0	65.3
12. Salable % (10÷3×100)	[1] 80	[1] 85
13. Reserve % (100% minus 12)	[1] 20	[1] 15

[1] Percent.

The reserve of 15 percent (65.3 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated 43.5 million pounds of these almonds for use chiefly in almond butter and school lunch projects and other outlets designed to develop new long-term uses and markets for almonds. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in § 981.66(c) of the order or as approved by the Board.

The remaining portion of the reserve (21.7 million pounds) will be held as a contingency for allocation at a later date. All or part of these almonds could be released to salable markets to augment 1985–86 or 1986–87 salable supplies if it is later found that the quantity of salable almonds made available by this revision of the salable percentage is still insufficient to satisfy trade demand and desirable carryover requirements. The Board is required to make all recommendations to the Secretary to increase the salable percentage prior to May 15, 1986. Alternatively, the Board could use contingency reserve almonds to augment supplies for almond butter, school lunch, or other market development projects or dispose of these almonds in other noncompetitive outlets specified in § 981.66(c) of the order or as approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 981.234 of Subpart—Salable, Reserve, and Export Percentages is revised to read as follows: (This subpart and section will not appear in the Code of Federal Regulations).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Salable, Reserve, and Export Percentages

§ 981.234 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1985.

The salable, reserve, and export percentages during the crop year beginning July 1, 1985, shall be 85 percent, 15 percent, and 0 percent, respectively.

Dated: February 28, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division.

[FR Doc. 86–4927 Filed 3–5–86; 8:45 am]

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7 CFR Part 1124

[Docket No. AO–368–A14]

Milk in the Oregon-Washington Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This decision amends the Oregon-Washington milk order to enable handlers to pool producer milk that is surplus to the fluid (bottling) needs of the market without costly, inefficient and unnecessary handling and hauling of the milk. The changes reduce the amount of milk that supply plants must deliver to pool distributing plants in order to meet pool performance standards, eliminate some of the deliveries of individual producers' milk that are required to be made to pool plants if the remainder of the producers' milk is to be eligible to be diverted to nonpool plants, and increase the amount of a handler's supply of milk not needed for fluid use that may be moved from producers' farms directly to nonpool plants for manufacturing use.

Other amendments cause the fluid equivalent of nonfluid milk receipts used in Class II products to be allocated to Class II use instead of to Class III, and provide that nonmember producers who are not paid under the Oregon State Quota plan may be paid directly by their handler rather than the the market administrator.

These amendments, which are based on industry proposals considered at a public hearing held in Portland, Oregon, on July 24, 1985, are necessary to reflect current marketing conditions and to assure orderly marketing in the Oregon-Washington marketing area. Cooperative associations representing more than the required two-thirds of the producers supplying milk for the market during the representative period of October 1985 have approved issuance of the amended order.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 3, 1985; published July 9, 1985 (50 FR 27972).

Recommended Decision: Issued November 20, 1985; published November 27, 1985 (50 FR 48776).

Final Decision: Issued February 11, 1986; published February 14, 1986 (51 FR 5531).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than March 1, 1986. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Programs, was issued November 20, 1985 (50 FR 48776), and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued February 11, 1986 (51 FR 5531). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective March 1, 1986, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing order, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Oregon-Washington marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. The authority citation for 7 CFR Part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1124.2 is revised to read as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk previously has been received at a pool plant, if during the month milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority is received at a nonpool plant (except an other order plant) as other than a diversion from a pool plant.

3. In § 1124.9, paragraph (b) the text preceding paragraph (b)(1) is revised to read as follows:

§ 1124.9 Pool plant.

* * * * *

(b) A supply plant from which not less than 60 percent is any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid products (except filled milk) processed and packaged at such plant; *Provided,* That:

* * * * *

4. In § 1124.11, paragraphs (a) and (b) are revised to read as follows:

§ 1124.11 Producer.

* * * * *

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is received subsequently at a pool plant in the same month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. No diversion limit shall apply during the months of May through August. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

(b) A handler in its capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is subsequently received at a pool plant in the same month, and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 60 percent in the months of December, March and April, of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month. No diversion limit shall apply during the months of May through August.

* * * * *

5. A new § 1124.33 is added to read as follows:

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end of the month, each handler paying

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producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 1124.46, paragraphs (a)(4) and (5)(i) are revised to read as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * * * *

7. In § 1124.82, paragraphs (c) (1) and (2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * * * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

Effective date: March 1, 1986.

Signed at Washington, D.C., on: February 28, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–4928 Filed 3–5–86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Final Procedures and Standards on No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97–415, NRC is amending its regulations in final form (1) to provide procedures under which, before granting or denying an amendment, normally it would give notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities and prior notice and reasonable opportunity for public comment on proposed determinations about whether these amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment for amendment requests where emergency situations exist and for shortening the comment period for amendment requests where exigent circumstances exist, and (3) to furnish procedures for consultation on these determinations with the State in which the facility involved is located. Amendment requests for research reactors and construction permits are handled case by case. These procedures normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

EFFECTIVE DATE: May 5, 1986.

ADDRESSES: Copies of comments received on the amendments and of the other documents described below may be examined, or copied for a fee, in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. Named document may be purchased from the U.S. Government Printing Office (GPO) by calling 202–275–2060 or by writing to the GPO, P.O. Box 37082, Washington, DC 20013–7082. They also may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–8690.

SUPPLEMENTARY INFORMATION:

Introduction

Pub. L. 97–415, signed on January 4, 1983, among other things, directed NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing, or, in emergency situations, dispensing with, prior notice and public comment on any such determination, and (c) procedures for consulting with the State in which the facility involved is located on such a determination about an amendment request. *See* Conf. Rep. No. 97–884, 97th Cong., 2d Sess. (1982). The legislation also authorized NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing.

The two interim final rules published in the **Federal Register** on April 6, 1983 ((48 FR 14864) and (48 FR 14873)), responded to the statutory directive that NRC expeditiously promulgate regulations on the three items noted above. The first dealt with the standards themselves and the second with the notice and State consultation procedures. These regulations were issued as final, through in interim form, and comments have been considered on them.

The following discussion is divided into three parts. The first discusses the background for this final rule, including a discussion of the proposed rule on the standards published before passage of the legislation, as well as an overview of the interim final rules published after the legislation was enacted. *See* 45 FR 20491 (March 28, 1980). The second analyzes and responds to the public comments on the two interim final rules. And the third discusses the present practice and modification made to it by the final rule.

I. Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or an operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power reactors and certain other facilities. *See* Pub. L. 85–256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. *See, e.g.* Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d. Sess. (April 17, 1962), at 6. Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (*see*, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49–50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

> Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulation 50.59. House Report No. 1966, 87th Cong., 2d. Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, as modified by the 1962 amendments, provided that upon thirty-days' notice published in the **Federal Register**, the Commission was permitted to issue an operating license, an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act or for a testing facility licensed under section 104c., without a public hearing if no hearing was requested by an interested person. Section 189a. also permitted the Commission to dispense with such thirty-days' notice and **Federal Register** publication for the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by it that the amendment involved no significant hazards consideration. These provisions were incorporated into the Commission's regulations, which were subsequently changed. *See* §§ 2.105, 2.106, 50.58 (a) and (b) and 50.91.

The Commission's regulations before promulgation of the two interim final rules provided for prior notice of an application for an amendment when a determination was made that there is a significant hazards consideration, and also provided an opportunity for interested members of the public to request a hearing. Hence, if a requested license amendment were found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing were completed or after expiration of the notice period. In addition, § 50.58(b) further explained the Commission's hearing and notice procedures, as follows:

> The Commission will hold a hearing after at least 30 days notice and publication once in the **Federal Register** on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the **Federal Register** or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the **Federal Register** of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission noted in its interim final rules that, after it has made its determination about whether a proposed license amendment does or does not present a signficiant hazards consideration, its hearing and attendant notice requirements come into play. Under its former rules, the Commission made its determination about whether it should provide an opportunity for a hearing before issuing an amendment together with its determination about whether it should issue a prior notice—

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and the central factor in both determinations was the issue of "no significant hazards consideration." It had been argued that in practice this meant that the staff often decided the merits of an amendment together with the issue of whether it should give notice before or after it has issued the amendment. *See* 48 FR 14864, at 14865 (April 6, 1983). The argument arose, in part, because of some concern that the Act and the regulations did not define the term "significant hazards consideration" and did not establish criteria for determining when a proposed amendment involves "significant hazards considerations." Section 50.59 has, of course, all along set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question" but it was and is clear that not every such question involves a "significant hazards consideration."

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the **Federal Register** a "notice of issuance." *See* § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

It is important to bear in mind as one reads this background statement and the final regulations that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Neither as a notice standard nor as a standard about when a hearing may be held does it have a substantive safety significance. Whether or not an action requires prior notice or a prior hearing, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. *See, e.g.,* § 50.57(a). In short, the "no significant hazards consideration" standard is a procedural standard which governs whether an opportunity for a prior hearing must be provided before action is taken by the Commission, and, as discussed later, whether prior notice for public comment may be dispensed with in emergency situations or shortened in exigent circumstances.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in *Sholly* v. *NRC,* 651 F.2d 780 (1980), *rehearing denied,* 651 F.2d 792 (1981), *vacated and remanded,* 459 U.S. 1194 (1983), *vacated,* 706 F.2d 1229 (Table) (1983) (*Sholly*). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a hearing before issuing an amendment to an operating license for a nuclear power plant, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the **Federal Register**.

At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. On February 22, 1983, the Supreme Court vacated the Court of Appeals' opinion as moot and directed the Court of Appeals to reconsider the case in light of the new legislation. On April 4, 1983, the Court of Appeals, having considered the legislation, found that the portion of its opinion holding that a hearing requested under section 189a. of the Act must be held before a license amendment becomes effective would be moot as soon as NRC promulgated the regulations to which the legislation referred. The Court also found that NRC, of course, was still under a statutory mandate to hold a hearing after an amendment became effective, if requested to do so by an interested party. Appeal Nos. 80–1691, 80–1783, and 80–1784.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments without prior notice or hearing when the public health, safety, or interest so requires. *See,* Administrative Procedure Act, section 9(b), 5 U.S.C. 558(c); section 161 of the Atomic Energy Act, 42 U.S.C. 2201(c); 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact, an "interested person" within the meaning of section 189a.—that is, whether the person has demonstrated standing and identified one or more issues to be litigated. *See, BPI* v. *Atomic Energy Commission,* 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

The Commission believed that legislation was needed to change the result reached by the Court in *Sholly* because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. It also believed that, since most requested license amendments involving no significant hazards consideration are routine in nature, prior hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants by imposing regulatory burdens unrelated to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) expressly authorizing the NRC to issue a license amendment before holding a hearing requested by an interested person, when it made a determination that no significant hazards consideration was involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R. 2330 and S. 1207, they agreed on a unified version (*see* Conf. Rep. No. 97–884, 97th Cong., 2d. Sess. (1982)) and passed Pub. L. 97–415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations;

> (2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.
>
> (B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.
>
> (C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

> (b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards considerations, even though NRC has before it a request for a hearing from an interested person. In this regard, the Conference Report states:

> The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Conf. Rep. No. 97–884, 2d. Sess., at 37 (1982).

And the Senate has stressed:

> Its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. *See* S. Rep. No. 97–113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

> The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.
>
> The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.
>
> In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 38 (1982).

C. Basis for Interim Final Rule on Standards for Determining Whether an Amendment to an Operating License Involves No Significant Hazards Considerations and Examples of Amendments that Are Considered Likely or Not Likely to Involve Significant Hazards Considerations

Many of the comments on the interim final rules were the same or were similar to those on the proposed rule. To provide a convenient means for future reference, the comments and responses on the proposed rule and the petition for rulemaking are consolidated and repeated here with references to the earlier **Federal Register** citations. The comments received on the interim final rules are then discussed and the Commission's responses are provided.

1. Petition and Proposed Rule

General. The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration resulted from a notice of proposed rulemaking issued in response to a petition for rulemaking (PRM 50–17) submitted by letter to the Secretary of the Commission on May 7, 1976, by Mr. Robert Lowenstein. For the reasons discussed below, the petition was denied. *See* 48 FR 14867. However, the Commission published proposed standards, as intended by the petitioner, though not the standards requested. (PRM–50–17 was published for comment in the **Federal Register** on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY/79–660 (December 13, 1979). The notice of proposed rulemaking was published in the **Federal Register** on March 28, 1980 (45 FR 20491). Note that the proposed rule was published before passage of the legislation and that the Congress was aware of this rule during passage of the legislation. The staff's recommendations first on a final rule and later on the interim final rules are in SECY–81–366, 81–366A, 83–16, 83–16A and 83–16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.)

In issuing the proposed rule, the Commission sought to define more precisely the standards for determining when an amendment application involved no significant hazards considerations. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permit amendments, to whatever extent considered appropriate. The Commission later decided that these standards should not be applied to amendments to construction permits, since such amendments are rare and normally would not be expected to involve a significant hazards consideration. It therefore modified the proposed rule accordingly. Additionally, the Commission stated in the interim final rules that it would review the extent to which and the way standards should be applied to research reactors. It also noted that meanwhile it would handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations. (48 FR 14867.)

Before the proposed rule on standards was published, the Commission's staff was guided, in reaching its

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determinations with respect to no significant hazards consideration, by standards very similar to those described in the proposed rule and in the interim final rules. In addition, the staff used a list of examples of amendments likely to involve, and not likely to involve, significant hazards considerations when the standards are applied. These examples were employed by the Commission in developing both the proposed rule and the interim final rules. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into 10 CFR Part 50 and the statement of considerations contained examples of amendments to an operating license that are considered "likely" and "not likely" to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, it was clear that the standards themselves ultimately would have to govern determinations about whether or not proposed amendments involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether operation in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety. The interim final rules did not change these standards. They did, however, change the introductory phrase to make the standards easier to understand and to use.

As a result of the legislation, the Commission formulated separate notice and State consultation procedures that provide in all (except emergency) situations prior notice of amendment requests. The notices usually make a "proposed determination" about whether or not significant hazards considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued; if a hearing request is received, a final determination is made about whether or not significant hazards considerations are involved. The decision about whether or not to issue an amendment has continued to remain one that, as a separate matter, is based on public health and safety.

2. Comments on Proposed Rule and Responses to these Comments

a. *General.* Nine persons submitted comments on the petition of rulemaking and nine persons submitted comments on the proposed amendments. One of the commenters stated that all three standards were unclear and useless in that they implied a level of detailed review of amendment applications far beyond what the staff normally performs. When it promulgated the interim final rule, the Commission stated in response to this comment that the standards have been and will continue to be useful in making the necessary reviews. 48 FR 14864, at 14867 (April 6, 1983). It added that the standards, when used along with the examples, will enable it to make the requisite decisions. *Id.* In this regard, it noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation, quoting the Senate Report:

> . . . the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. S. Rep. No. 97–113, 97th Cong., 1st Sess., at 15 (1981).

Similarly, the House noted:

> The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. *Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.* . . . H. Rep. No. 97–22 (Part 2), 97th Cong., 1st Sess., at 28 (1981) (Emphasis added).

In regard to the second criterion in the proposed rule, a number of commenters recommended that the Commission establish a threshold level for accident consequences (for example, the limits in 10 CFR Part 100) to eliminate prior notice for insignificant types of accidents. This comment was not accepted. The Commission stated that setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated. (48 FR 14868.)

The Commission explained that it is possible, for example that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involves a significant hazards consideration because it results in operation of a reactor with a reduced safety margin due to other factors or problems (*i.e.*, the net effect is a reduction in safety of some significance). *Id.* Such a class of amendments typically is also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license—and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the license was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue ultimately would be satisfactorily resolved by the issuance of the amendment. Accordingly, the Commission added a new example (vii) to the list of examples considered likely to involve a significant hazards consideration. *Id. See* section I(C)(1)(d) below.

When the Senate Committee on Environment and Public Works was considering the legislation described above, it commented upon the Commission's proposed rule before reporting S. 1207:

> The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pool. S. Rep. No. 97–113, 97th Cong., 1st Sess., at 15 (1981).

The Commission agreed with the Committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it tried "to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." (48 FR 14868.) (Reracking is discussed in section I(C)(2)(b) and II(D), *infra.*) The Commission stated that the standards coupled with examples used as guidelines help draw as clear a distinction as practicable. It decided not to include the examples in the text of the interim final rules in addition to the original standards, but, rather, to keep them as *guidelines* under the standards for use by the Office of Nuclear Reactor Regulation. *Id.*

In promulgating the interim final rules, the Commission also noted to licensees that when they consider license amendments outside the examples, it may need additional time for its determination on no significant hazards considerations, and that they should factor this information into their schedules for developing and implementing such changes to facility design and operation. *Id.*

The Commission stated that the interim final rules thus went a long way toward meeting the intent of the legislation, quoting the Conference Report:

> The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 37 (1982). *Id.*

The Commission stated that it had attempted to draft standards that are as useful as possible, that it had tried to formulate examples that will help in the application of the standards, and that the standards in the interim final rules were the product of a long deliberative process. (48 FR 14868.) (As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration.) The Commission then explained with respect to the interim final rules that the standards and examples were as clear and certain as the Commission could make them, noting the Conference Report admonition that the standards and examples "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." *Id.* The Commission repeats this admonition to the staff in the response to comments in section II(C) below.

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," the Commission recalled that it was its general practice to make a decision about whether to issue a notice before or after issuance of an amendment together with a decision about whether to provide a hearing before or after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. *Id.* For instance, a commenter on the proposed rule suggested that application of the criteria with respect to prior notice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. *Id.*, at 14868–69. The implication of the comment was that the Commission at the prior notice stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards, was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits.

The Commission noted in response that the legislation had mooted these comments by requiring separation of (1) the criteria used for providing or dispensing with public notice and comment on determinations about no significant hazards considerations from (2) the standards used to make a determination about whether or not to have a prior hearing if one is requested. *Id.*, at 14869. The Commission explained that under the two interim final rules, the Commission's criteria for public notice and comment had been separated from its standards on the determination about no significant hazards considerations. *Id.* It noted, in fact, that under the interim final rule involving the standards it would normally provide prior notice (for public comment and an opportunity for a hearing) for each operating license amendment request. It also stated that use of these standards and examples would help it reach sound decisions about the issues of significant versus no significant hazards considerations, and that their use would not prejudge the safety merits of a decision about whether to issue a license amendment. *Id.* Rather, it explained, the standards and the examples were merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and could not be said to prejudge the Commission's final public health and safety decision to issue or deny the amendment request. *Id.* As explained above, that decision has remained a separate one, based on separate public health and safety findings.

b. *Reracking of Spent Fuel Pools.* Before issuance of the two interim final rules, the Commission provided prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. When the interim final rule on standards was published, the Commission explained that it was not prepared to say that reracking of a spent fuel storage pool will necessarily involve a significiant hazards consideration. It stated, nevertheless, as shown by the legislative history of Pub. L. 97–415, specifically of section 12(a), that Congress was aware of the Commission's practice, noting that members of both Houses stated, before passage of that law, that they expected that this practice would continue. *Id.* The report on the Senate side has been quoted above; the discussion in the House is found at 127 *Cong. Record* at H 8156, Nov. 5, 1981.

The Commission decided not to include reracking in the list of examples that are considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission stated that it felt that the matter deserved further study. Accordingly, it instructed the staff to prepare a report on this matter, and stated that it would revisit this part of the rule upon receipt and review of the staff's report. *Id.* The report is described in detail in section II(D) below.

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In the interim final rule on standards, the Commission stated that while it is awaiting its staff's report, it would make findings case by case on the question of no significant hazards consideration for each reracking application, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. *Id.* It also stated that it did not intend to make a no significant hazards consideration finding for reacking based on unproven technology. It added, however, that, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. And it noted that, if it determines that a particular reracking involves significant hazards considerations, it would provide an opportunity for a prior hearing. *Id.*

The Commission also noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. It stated that it would publish in the near future a **Federal Register** notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel. *Id.* That notice can be found at 50 FR 41662 (October 15, 1985).

c. *Amendments Involving Irreversible Consequences.* Congress expressed some concern about amendments involving irreversible consequences, as evidenced in the Conference Report:

> The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (*such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections.*). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 37–38 (1982).

The Commission noted (48 FR, at 14869) that this statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

> Mr. DOMENICI. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?
>
> Mr. SIMPSON. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.
>
> Mr. DOMENICI. I thank the Senator for the clarification. That is consistent with my readings of the language. . . . 134 *Cong. Rec.* (Part II), at S. 13056 (daily ed. Oct. 1, 1982).

The Commission then noted, 48 FR 14869, that the statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

> Mr. MITCHELL. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commission "should be especially sensitive . . . to license amendments that have irreversible consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?
>
> Mr. HART. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in Sholly against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor—an irreversible action.
>
> As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing. 134 *Cong. Rec.* (Part III), at S. 13292.

In light of the Conference Report and colloquies it had quoted, the Commission stated that it would ensure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing" (48 FR 14870), and that it would do this by providing in § 50.92 for review of proposed amendments with a view about whether they involve irreversible consequences. *Id.* In this regard, it made clear in example (iii) that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards consideration, in that it is likely to meet the criteria in § 50.92. *Id.*

The Commission also emphasized that the example did not cover all possible cases, were not necessarily representative of all possible concerns, and were set out simply as guidelines. *Id.*

The Commission left the proposed rule intact to the extent that the interim final rules stated standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rules were identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 was revised to make the determination easier to use and understand. To *supplement* the standards incorporated into the Commission's regulations, the guidance embodied in the examples was referenced in the procedures of the Office of Nuclear Reactor Regulation, copies of which were placed in the Commission's Public Document Room and sent to licensees, States, and interested persons. It was the Commission's intention that any request for an amendment meet the standards in the regulations, and that the examples simply provide supplementary guidance.

d. *Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations Are Listed Below.* The statement of considerations for the interim final rules listed the following examples of amendments that the Commission considered likely to involve significant hazards considerations. *Id.* It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under

§ 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

(i) A significant relaxation of the criteria used to establish safety limits.

(ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.

(iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).

(iv) Renewal of an operating license.

(v) For a nuclear power plant, an increase in authorized maximum core power level.

(vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.

(vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued. *Id.*

e. *Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations Are Listed Below.* The statement of considerations for the interim final rules listed the following examples of amendments the Commission considered not likely to involve significant hazards considerations. 48 FR 14869. It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, *e.g.*, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

(v) Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, *e.g.*, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license. *Id.*

[As discussed below, the Commission has added examples (ix) and (x) in response to comments on the interim final rules.]

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

II. Responses to Comments on Interim Final Rules

The comments are described in somewhat greater detail in an attachment to SECY–85–209A.

A. Clarity of Standards

1.1 Comments—A group of commenters state that the three standards in § 50.92(c) are unclear and argue that the examples in the statement of considerations—which they believe are clearer than the standards—should be made part of the rule; otherwise, they argue, the examples have no legal significance.

Response—The Commission disagrees with the request. As explained in response to the comments on the proposed rule (*see* 48 FR 14864), the commenters are correct that the examples have no binding legal significance. However, they do provide guidance to the staff, licensees and to the general public about the way the standards may be interpreted by the Commission. The Commission did consider combining the standards and examples as a single set of criteria in the interim final rules, but decided against this because (i) the standards and examples had proved useful over time, (ii) the staff had used all three standards

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and most of the examples well before they were published in rule form, and (iii) the approach had proved adequate. Upon reconsideration, the Commission has decided to retain the standards as they were set out in the interim final rule. *See* the response in section II(D) below for a description of the standards.

1.2 Comment—One commenter believes that the interim final rules "unduly" and "improperly" limit freedom of speech and that minor changes in a plant can lead to severe health and safety consequences, such as the 1983 anticipated transient without scram (ATWS) at the Salem nuclear power plant.

Response—It is unclear how the interim final rule might limit freedom of speech. It is clear, though, that some amendment requests entail changes to a plant requiring a review of whether or not previously unevaluated accidents pose severe consequences. As explained above, before issuing any amendment, the Commission is required by the Atomic Energy Act (Act) to find that there is adequate protection for the public health and safety. However, a determination that an amendment involves "no significant hazards consideration" includes a finding under the three standards that the change does not involve a significant increase in previously evaluated accident probabilities or consequences, that it does not present a new type of accident not previously evaluated, and that it does not involve a significant decrease in safety margins.

Thus, the concern raised by the comment is related, if at all, only to amendments that involve significant hazards. Procedures governing these types of amendments are unaffected by this rule change. *See, e.g.,* section 182a. of the Act.

1.3 Comment—One commenter suggests that the only standard that is needed is one that simply identifies those license amendments which make an accident possible.

Response—The standard suggested by the commenter is simple to state but impractical. An amendment may involve a previously reviewed issue and not alter the conclusions reached concerning accident probabilities or consequences. In such a case, the amendment may involve a system or component that is significant to an evaluation of a design basis accident yet not involve a significant hazards consideration. This suggestion changes the definition of "significant hazards considerations" and, thereby, changes the standards. The three standards given in the interim final rules together with the examples are directed to the issue of significant hazards. *See,* for instance the discussion in section II(F)(1.3) below.

1.4 Comments—One commenter requests that NRC should consider only "credible accident scenarios" in evaluating amendment requests against the first two standards. It also suggests that, with respect to the third standard (significant reduction in safety margins), the Commission initially should determine the extent of the existing safety margin before deciding the significance of a reduction, because the extent of the existing margin is clearly relevant to the Commission's determination.

On the other hand, another commenter argues that it is inappropriate to specify a percentage change above which the change becomes significant. It notes that when the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant, and that when the safety margin is fifteen percent, a comparable percentage reduction may be significant. It also suggests that the cumulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

Response—The first comment is similar to the original petition (*see* section I(C)(1) above) which proposed standards limited to "major credible reactor accidents." The Commission disagrees with this comment—as it did previously—because it allows too much room for argument about the meaning of "credible" in various accident scenarios and does not include accidents of a type different from those previously evaluated, which is one of the criteria for evaluating no significant hazards considerations.

The second commenter suggests that, in assessing the degree of reduction in margin in determining whether an amendment involves significant hazards considerations, the Commission should assess the cumulative effects (on margin) of successive changes to one system, not merely the individual change in margin brought about by the amendment in question. The Commission believes that such a suggestion would be inconsistent with its staff's long-time practice in assessing the degree of reduction in margin, would be inconsistent with the thrust of the three standards on no significant hazards consideration, and would result in multiple counting of margin changes. The standard states that the Commission is to determine whether the amendment will result in a significant reduction in margin. The intent is to compare the safety margin before the amendment to that which would exist after the amendment to determine whether *that* amendment would significantly reduce the margin. In applying this standard to determine whether a certain amendment involves significant hazards considerations, the intent is to assess just the reduction in margin from that amendment and not to assess all prior reductions in margin that resulted from prior amendments because these have already been considered. Consequently, the Commission has not accepted this suggestion.

1.5 Comments—One commenter points out that the three standards are virtually identical to the criteria in § 50.59 for determining whether unreviewed safety questions exist, and states that this similarity is appropriate.

Another commenter makes the same point but notes an important difference in § 50.59, namely, that the word "significant" is absent in paragraphs (a)(2)(i) to (a)(2)(iii) of that section. It suggests that § 50.59 should be amended to make it identical with § 50.92(c).

Response—Sections 50.59 and 50.92 serve two different purposes. The criteria in § 50.59(a)(2) are used to decide whether a proposed change, test, or experiment involves an "unreviewed safety question." Section 50.59 is used to decide, in part, whether prior Commission approval is necessary for the licensee of an operating reactor to make changes to it or to the procedures as described in the safety analysis report, or to conduct tests or experiments not described in the safety analysis report. The licensee may not make a change without such approval, if the change involves an unreviewed safety question. To insert the term "significant" into the criteria obviously would raise the threshold for making a determination. It would permit licensees to exercise far greater discretion in judging which changes require Commission review. Wide variations among licensees might be expected. If the Commission has not reviewed an issue, it should deliberate and decide whether its review is appropriate. Therefore, the comment has been rejected. The Commission is considering this subject, as discussed in Section II(K) below.

1.6 Comment—One commenter generally agrees with the interim final rules but believes that the word "significant" should be defined, if only to forestall court challenges by persons disagreeing with NRC. It suggests that NRC should create some sort of mechanism to resolve disputes between

the staff, a State, or other parties over whether or not an amendment request involves significant hazard considerations.

Response—The advantage of the notice provisions of the interim final rules is that they provide an opportunity for comment on proposed determinations. Based on a particular proposal in an amendment request, the Commission welcomes any and all persons' comments about the "significance" of the proposed action. Aside from using examples as guidelines, it believes that the term "significant" should not be defined in the abstract, but should be left to case-by-case resolution.

B. Clarity of Examples

Many commenters argue about the clarity of the various examples in the "likely" and "not likely" categories. Additionally, some want to change, to add to, or to subtract from the examples, noting for instance that the issue of repairs is problematic. A complete set of comments (as summarized) is attached to SECY–85–209A.

Additionally, two commenters argue that the word "significant' in the examples should be defined so as not to leave "critical decisions to the unreviewable judgment of the staff."

Finally, another commenter requests that the guidance embodied in both sets of examples should not only be referenced in the procedures of the Office of Nuclear Reactor Regulation, but that it should also be formally transmitted to all licensees in the form of a generic letter, regulatory guide, or other such document.

Response—The examples are merely guidelines and the Commission feels the present examples are adequate. A list of examples of all possible situations would be interminably long, and it is not the Commission's intent to provide such a listing. However, to clairfy the Commission's position on the repair or replacement of a major component or system important to safety, the following example has been added to the list of examples (in section 1(C)(2)(e)) above considered not likely to involve significant hazards considerations:

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

In this context, it once again bears repeating that the examples do not cover all possible examples and may not be representative of all possible concerns and problems. As problems are resolved and as new information is developed, the staff may refine the examples and add new ones, in keeping with the standards of this final rule.

As to the second set of comments, *see* the response to comment I(A)(1.6) above. Finally, as noted above, the guidance in the examples already has been sent to all licensees and others.

C. Classification of Decisions

Comments— Two commenters argue that the standards pose complex questions that "require a level of analysis that goes far beyond the initial sorting of issues that Congress authorized." They repeat an argument made when the standards were published as a proposed rule, namely, that "the use of these standards cannot help but require the NRC staff to make an initial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment." And they argue that Congress did not authorize NRC to make such a determination in advance of the hearing on the merits. (A third commenter agrees with this argument.) In sum, these commenters would prefer standards that simply allow for the sorting of issues, rather than, as they argue, standards that allow the staff to determine issues which are "virtually the same" as those it determines when deciding whether or not to grant the license amendment.

In this same vein, both commenters argue that the standards contravene Congress' intent in that the Commission does not avoid resolving "doubtful or borderline cases with a finding of no significant hazards consideration."

Response—The Commission disagrees with the commenters, as explained in the previous discussion above on this very point. It should also be noted that one reason that determinations on significant hazards considerations are divided into "proposed determinations" and "final determinations" is to help sort the issues initially. In this process of sorting, the Commission hereby charges the NRC staff to assure that doubtful or borderline cases are not found to involve no significant hazards consideration. As explained above, the decision about whether to issue an amendment is based on a separate health and safety determination, not on a determination about significant hazards considerations.

D. Rerackings

Comments—A group of commenters state that rerackings should be considered amendments that pose significant hazards considerations, in light of the Commission's past practice and the understanding of Congress that the practice would be continued.

Another group of commenters agrees with the Commission's position that the significant hazards determination on each amendment request to expand a specific spent fuel pool should be based on the Commission's technical judgment.

Response—In its decision to issue the two interim final rules, the Commission directed the staff to prepare a report which (1) examines the agency's experience to date on spent fuel pool expansion reviews and (2) provides a technical judgment on the basis for which various methods to expand spent fuel pools may or may not pose significant hazards considerations.

The staff contracted with Science Applications, Inc. (SAI) to perform an evaluation of whether increased storage of spent fuel could pose significant hazards considerations in light of the guidance in the interim final rules. SAI provided a report entitled, "Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations." SAI–84–221–WA Rev. 1 (July 29, 1983). On the basis of that report, the staff informed the Commission in SECY–83–337 (August 15, 1983) of the results of its study and included the SAI report. (Both the report and the study are available as indicated above.)

The staff provided the following views to the Commission.

> (1) NRC experience to date with respect to spent fuel pool expansion reviews:
>
> As the Commission noted, the staff has been providing prior notice and opportunity for prior hearing on amendments involving expansion of spent fuel pool storage capacity. *The applications were prenoticed as a matter of discretion because of possible public interest.* This was the basis cited for prenoticing these applications in statements to Congressional committees. Public comments or requests to intervene have been received on 24 of the 96 applications for amendments received to date to increase the storage capacity of onsite spent fuel pools. In most cases, the comments and requests to intervene have been resolved without actual

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> hearings before an ASLB [Atomic Safety and Licensing Board].
>
> Of the 96 applications, 31 have been a second or third application for the same pool(s). All of these applications have proposed reracking to increase the storage capacity—that is, replacing existing spent fuel storage racks with new racks that permit closer spacing of spent fuel assemblies. Two of the applications involved more than simply replacing the racks on the spent fuel pool floor. In one case, the capacity was increased by a method referred to as double-tiering. In this method, a rack is filled with aged spent fuel while sitting on the pool floor; once filled, the rack is raised and placed on top of another filled rack. Double-tiering was approved by the staff for Point Beach 1 and 2 by amendments issued on March 4, 1979. The other method that has been proposed to increase pool storage capacity is referred to as rod consolidation. Rod consolidation involves dismantling or cutting apart the fuel assembly and putting the individual fuel rods closer together. Storage of only the fuel rods, without the spacers, end caps and other hardware, can increase storage capacity by 60 to 100 percent compared to storage of non-disassembled fuel. Rod consolidation—in conjunction with reracking—has been requested for only one plant—Maine Yankee. The staff's review of this application was completed a year ago, but the application is pending before an Atomic Safety and Licensing Board. We have approved 85 amendments involving spent fuel pool storage expansions and the rest are still being processed. A detailed table indicating the agency's experience to date with respect to spent fuel pool expansion is contained in the SAI report. As of now, every operating reactor except Big Rock Point has received approval for at least one reracking or had the closer spacing storage method approved with their initial license.
>
> The technical review of requests to increase spent fuel pool storage capacity involves evaluating the physical and mechanical processes which may create potential hazards such as criticality considerations, seismic and mechanical loading, pool cooling, long term corrosion and oxidation of fuel cladding, and probabilities and consequences of various postulated accidents and failures of decayed spent fuel. Also, the neutron poison and rack structural materials must be shown to be compatible with the pool environment for a significant period of time due to the uncertainties as to how long the storage will actually be required on site. However, potential safety hazards associated with spent fuel pool expansions are not as large as those associated with the reactor operation because the purpose of the expansion is to allow longer term storage of aged spent fuel. Since most plants are now on an 18 month refueling cycle and the NRC is processing a second expansion request application in many instances, the present expansion requests are to allow continued storage of spent fuel that has decayed over a decade along with the normal discharge of relatively new spent fuel for which the pool was originally designed. Typically a PWR will replace about one third of its core at each refueling and a typical BWR will replace about one fourth of its core at each refueling. After a year of storage, about 99% of the initial radioactivity has decayed.
>
> (2) Technical judgement on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration:
>
> The technical evaluation of whether or not an increased spent fuel pool storage capacity involves potential hazards consideration is centered on the Commission's three standards in the interim final rule.
>
> First, does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? As discussed in the SAI report, reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed. However, the rod consolidation method may increase the probability of a fuel drop accident by a factor of two because of the increase in the number of assembly lifts and involves handling of highly radioactive fuel assembly components. Double tiering of racks requires an increased frequency in lifting heavy loads over the spent fuel pool which would also increase the probability of an accident.
>
> Second, does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff, as well as SAI, have not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. Double tiering and rod consolidation, however, do present new accident scenarios which may not be bounded by previous accident analysis for a given pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the valuations cited in the safety evaluation reports supporting each amendment.
>
> Third, does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? Neither the staff nor SAI have identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperatures by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, *i.e.*, by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (Keff). However after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool.
>
> The techniques utilized to calculate Keff have been bench-marked against experimental data and are considered very reliable.
>
> In the interim final rule, the Commission stated that it was not the intent to make a no significant hazards consideration finding based on unproven technology. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies. The double tiering method of expansion can also be done by proven technology. Rod consolidation, however, involves new technology and increased handling of highly radioactive components of fuel assemblies.
>
> In summary, both rod consolidation and double tiering represent potential safety hazards considerations. Rod consolidation involves relatively new technology and double tiering may significantly increase the probability of accidents previously analyzed. Replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits (a subset of reracking) is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the Keff of the pool is maintained less than or equal to 0.95. A Keff of greater than 0.95 may be justifiable for a particular application but it would go beyond the presently accepted staff criteria and would potentially be a significant hazards consideration. Reracking to allow closer spacing or the placing of additional racks of the original design on the pool floor, which satisfies the two preceding criteria, would be similar to example (iii) on nuclear reactor core reloading under examples of amendments that are not considered likely to involve significant hazards considerations. *Id.* (Emphasis added.)

The staff concluded in its technical judgement that a request to expand the storage capacity of a spent fuel pool which satisfies the following is considered not likely to involve significant hazards considerations:

> (1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits,
>
> (2) The storage expansion method does not involve rod consolidation or double tiering,
>
> (3) The Keff of the pool is maintained less than or equal to 0.95, and
>
> (4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

This judgment was based on the staff's review of 96 applications and the result of the SAI study, which indicates that if a spent fuel pool expansion request satisfies the above criteria then

it meets the three standards in the interim final rules in that it:

> (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated;
>
> (2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated; and
>
> (3) Does not involve a significant reduction in a margin of safety.

Finally, the staff stated to the Commission that:

> Applications which do not fall into the above category must be evaluated on a case-by-case basis. There are secondary issues which may be associated with a spent fuel pool expansion, but they must be considered on their own technical merit as a separate issue. As an example, transferring fuel to another site for storage or transferring fuel in a cask to another onsite spent fuel pool, if requested, must both be evaluated on a separate basis as to whether or not they involve significant hazards considerations.

The Commission has accepted its staff's judgment, discussed above. It has added the following new example (x) to the list of examples in the "not likely" category in section I(C)(2)(e) for reracking requests satisfying the four criteria noted above (Reracking requests that do not meet these criteria will be evaluated case by case.)

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

E. Irreversible Consequences

Comments—One commenter notes that license amendments involving irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections) require prior hearings so as not to foreclose the public's right to have its views considered. This commenter is especially concerned about the TMI–2 clean up and about the TMI–1 steam generator tube repairs. It argues that § 50.92(b) (which requires Commission "sensitivity" to significant, irreversible consequences) contravenes Congress' intent.

Another commenter requests that a State and the public should have a say about any amendment request involving an environmental impact before NRC issues an amendment. It wants more from the Commission than the statement in the interim final rules that the "Commission will be particularly sensitive" to such impacts.

Another commenter asserts that certain situations which involve "irreversible consequences," such as permanent increases in the amount of effluents or radiation emitted from a facility, should be treated like "stretch power" situations. It argues that this class of amendments should not be considered likely to involve significant hazards considerations as long as the discharge or emission level does not exceed those evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (*i.e.*, Part 50, Appendix I). This commenter adds that any temporary increase within generally recognized radiation protection standards, such as those in 10 CFR Part 20, should be treated similarly. Moreover, it requests that these situations should be included as examples in the "not likely" category.

On the other hand, another commenter argues that license amendments involving temporary waiving of radiation release limitations (so that airborne radioactive waste can be released at a rate in excess of that permitted—an issue in the *Sholly* decision), should involve significant hazards considerations and, consequently, a prior hearing.

Response—The Commission disagrees with the comment that § 50.92(b) contravenes Congress' intent. That section is taken almost verbatim from the Conference Report (*see* section I(C)(2)(c) in this preamble) and is entirely consistent with the colloquy of the Senators quoted in that section.

Before NRC issues an amendment, a State and the public can have a say about any amendment request that involves an environmental impact. The procedures described before have been designed so that at the time of NRC's proposed determination (1) the State within which the facility is located is consulted, (2) the public can comment on the determination, and (3) an interested party can request a hearing. Section 50.92(b) simply buttresses the point that the Commission will be especially sensitive to the types of irreversible impacts described by the commenters.

The Commission has not accepted the last two commenters' suggestions. The legislation clearly specified that the Commission should be sensitive to the kinds of circumstances outlined by the commenters. The interim final rule repeats this language and seeks to insure that the Commission's staff will evaluate each case with respect to its own intrinsic circumstances.

F. Emergency Situations

1.1 Comments—One commenter requests that the term "emergency" be deleted from the rule because it could be confused with a different use of this term in a final rule issued on April 1, 1983 (48 FR 13966) involving the applicability of license conditions and technical specifications in an emergency. *See* §§ 50.54(x) and 50.72(c). It suggests that the phrase "warranting expedited treatment" or some similar phrase could be used instead of the term "emergency."

Two other commenters request that § 50.91(a)(5) (involving emergency situations) be clarified to make clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or that a derated plant operate at a higher level of power generation. One of the commenters argues that unnecessary economic injury or impact on a generating system should also be classified as an emergency situation. It recommends that § 50.91(a)(5) be amended by inserting, after the words "derating or shutdown of the nuclear power plant" the words "including any prevention of either resumption of operation or increase in power output." The other commenter concurs with these words and would add the words "up to its licensed power level" after "power output."

Another commenter suggests that an emergency situation should also exist where a shutdown plant could be prevented from starting up because the Commission had failed to act in a timely way.

Several commenters agree with these comments, arguing that emergency situations should (1) be broadly defined, (2) be available when a plant is shutdown and cannot startup without a license amendment, and (3) include situations where an amendment is needed (as is the case with exigent circumstances) to improve protection to public health and safety.

Response—The Commission understands that the term "emergency" is used in different ways in various sections of its regulations. However, the legislation and its legislative history,

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quoted above in section II(A), are very clear on the use of that term and specifically do use that term; consequently, the term must be used as a touchstone for the Commission's regulations.

The Commission agrees with the commenters about need to broaden the definition of "emergency situations." The Conference Report quoted above described "emergency situations" as encompassing those cases in which immediate action is necessary to prevent the shutdown or derating of a plant. There may be situations where the need to prevent shutdown or derating can be equivalent in terms of impact to the need to startup or to go to a higher power level. The Commission believes that expanding the definition of "emergency situation" to include these situations in not inconsistent with Congress' intent. Thus the Commission has decided to adopt the thrust of these comments and has changed § 50.91(a)(5) accordingly. *See* also response to comment in section II(F)(1.3) below.

1.2 Comment—Section 50.91(a)(5) states that the Commission will decline to dispense with notice and comment procedure, "if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision." One commenter requests that the rule specify what is meant by the term "timely application".

Response—The provision cited by the commenter is clear enough. It is extracted almost verbatim from the Conference Report. The Report indicated that a "licensee should not be able to take advantage of an emergency itself" and thus that the Commission's regulations "should insure that the emergency situation" exception under section 12 of the conference agreement "will not apply if the licensee has failed to apply for the license amendment in a timely fashion." Further:

> To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility.

1.3 Comment—One commenter requests that NRC explain how it will process an amendment request that involves both an emergency situation and a significant hazard consideration. It suggests that, in this unlikely case, the Commission might issue an immediately effective order under 10 CFR 2.204.

Response—Since there is a possibility for confusion over the meaning of "emergency", § 50.91(a)(4) has been modified and a new § 50.91(a)(7) has been added to clarify the problem. With the "Sholly" regulations now in place, there are now two possible types of emergencies:

(a) a "safety-related emergency" in which immediate NRC action may be necessary to protect the public health and safety; and

(b) the "emergency" referred to in the "Sholly" legislation in which the prompt issuance of a license amendment is required in order, for instance, to avoid a shutdown. An example of this type of an emergency is where prompt action is needed for continued full-power operation but not necessarily to protect the public health and safety (health and safety, arguably, is protected by the shutdown, which would occur if the "emergency" license amendment were not issued). This "emergency" is more in the nature of an economic emergency for the licensee.

Two fundamentally different approaches to amending a license arise from these two different types of emergency:

(a) For a safety-related emergency, the Administrative Procedure Act and the Commission's own regulations (10 CFR 2.240) authorize (if not compel) the issuance of an immediately effective order amending a license without regard to whether the amendment involves significant hazards considerations and without the need to make a finding on no significant hazards considerations or to provide a prior Sholly-type of notice.

(b) For an "emergency" where a prompt amendment is required to prevent the shutdown but not to protect the public health and safety, an immediately effective license amendment, without prior notice, may be issued *only if* the amendment involves no significant hazards considerations.

Consequently: (a) Where an immediately effective license amendment is needed to protect the public health and safety, the Commission can issue an immediately effective order amending a license regardless of whether the amendment involves significant hazards considerations and without prior notice and prior hearing;

(b) Where an immediately effective license amendment is needed, for instance, only to prevent the shutdown but not to protect public health and safety, the Commission may issue such an immediately effective amendment only if the amendment involves no significant hazards considerations. If the amendment does involve a significant hazards consideration, the Commission is required by law to provide 30 days notice and an opportunity for prior hearing.

G. Exigent Circumstances

1.1 Comments—One commenter suggests that the two examples of exigent circumstances are unnecessarily narrow because both involve potentially lost opportunities to implement improvements in safety during a plant outage. The commenter recommends that the Commission make clear that these examples were not meant to be limiting and that exigent circumstances can occur whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant safety, environmental, reliability, economic, or other benefit.

Another commenter requests that exigent circumstances include instances (1) where a licensee's plant is shutdown and the licensee needs an amendment to startup and (2) involving significant hazards considerations. The commenter argues that both such cases entail delay and a significant financial burden on licensees.

Response—As explained above, the examples were meant merely as guidance and were meant to cover circumstances where a net safety benefit might be lost if an amendment were not issued in a timely manner. The Commission agrees with the first commenter that the examples should be read as also covering those circumstances where there is a net increase in safety or reliability or a significant environmental benefit.

As to the first point of the second comment, the Commission believes that there may be "exigent circumstances" which may involve start-up of a shutdown plant. In keeping with the thrust of the definition of "emergency situations," the "exigent circumstances" in § 50.91(a)(6) will include "start-up"and "increase in power levels". The discussion in section III(A) responds to the commenter's second point.

1.2 Comments—One commenter states that the public notice procedures for exigent circumstances should be no different from those for emergency situations.

Two commenters oppose the use of press releases or display advertising in local media, arguing that such notices would unnecessarily elevate the importance of amendment requests.

Another commenter recommends that if NRC believes that it must issue a press release, it should consult with the licensee on a proposed release before it acts. It also requests that NRC inform the licensee of the States's and the public's comments and that it promptly forward to the licensee copies of all correspondence.

Two commenters also oppose the toll-free "hot-line" in exigent circumstances, arguing that the concept implies imminent danger or severe safety concerns which normally will not be present. One of these commenters requests, instead, the use of mailgrams or overnight express. It also recommends, if a hotline system is implemented, that the system should be confined to extraordinary amendments involving unique circumstances. To ensure accurate transcription of the comments received, it suggests that the comments be recorded and retained. The other commenter requests that copies of the recorded comments be sent to the licensee.

Another commenter suggests that the rule specify the geographical area to be covered by a notice to the media.

Response—By definition, in emergency situations NRC does not have time to issue a notice; in exigent circumstances, the Commission must act swiftly but has time to issue some type of notice; in most instances it will be a **Federal Register** notice requesting public comment within less than 30 days, but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC cannot issue a **Federal Register** notice for at least two weeks public comment in exigent circumstances, then, with the help of the licensee, it will issue some type of media notice requesting public comment within a reasonable time. It will consult with the licensee on a proposed release, on the geographical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. And if it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

1.3 Comment—One commenter notes that exigent circumstances can arise after the publication of a Commission notice offering a normal public comment period on a proposed determination. It requests that in these circumstances the final rule should make clear that an expedited schedule would be established for receiving public comments and issuing the amendment.

Response—The Commission agrees that emergency situations and exigent circumstances could arise during the normal comment period. If this were to occur, as noted in the notices it now issues, it will expedite the processing of the amendment request to the extent it can, if the request and the exigency or emergency are connected. As explained above, of course the Commission may also issue an appropriate order under 10 CFR Part 2 if there is an imminent danger to the public health or safety.

H. Retroactivity

Comments—One commenter requests (and another agrees) that NRC should clarify § 2.105(a)(4)(i)—which explains how NRC may make an amendment immediately effective—to state that NRC will not provide notices of proposed action on no significant hazards consideration amendment requests received before May 6, 1983 (the effective date of the interim final rule). It suggests that the Commission should publish instead notices of issuance of amendments pursuant to § 2.106.

Another commenter suggests expedited treatment for amendment requests received before May 6, 1983, when these relate to refueling outages scheduled by licensees before that date.

Response—The Commission has noticed amendment requests it received before May 6, 1983, along with its proposed determinations.

I. Notice and Consultation Procedures

1.1 Comments—One commenter proposes the following changes (endorsed by another commenter) to the notice procedures to shorten the comment period and to clarify the method of publication:

> Routine, minor amendments should be published in the monthly **Federal Register** compilation only and a ten-day comment period accorded. There should be no individual **Federal Register** notice in routine cases. An individual notice should be published in the **Federal Register** for requests that are not routine, such as for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but the comment period should run from the date of the individual notice. As in the case for routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the **Federal Register** and that a reasonable comment period be accorded taking into account the facts of the particular case.

The commenter argues that expedited notice procedures would satisfy the statutory requirements, would eliminate a large source of delay, and would be approved by the courts, since expedited procedures are the appropriate solution when notice and hearing are statutorily required but time is of the essence.

Two commenters are also concerned about the potential for delay in the new notice procedures, one requesting that the rule indicate the normal time NRC needs to process routine and emergency applications.

Response—The interim final rules preserve the option to publish individual or periodic **Federal Register** notices, or a combination of both. The Commission stated in the interim final rules that the periodic notices would be published at least every 30 days, leaving the option of more frequent publication if appropriate. Though it agrees that minor routine amendments could be published in its periodic notice and that non-routine amendments could be published in individual notices, it does not want to establish by rule any particular mode of publication.

The Commission does not agree that a 10-day comment period should be the norm. It believes that its system, which normally allows for 30 days public comment, is more in keeping with the intent of the legislation, which provided for a reasonable opportunity for public comment, except in emergency situations where there is no time provided for public comment and in exigent circumstances where there is less than 30 days provided.

Section 50.91(a)(6) has been clarified to indicate that the comment period on any notice begins on the date of that notice. If there is an initial individual notice and a later periodic notice, the comment period begins with the first notice.

Finally, the Commission does not agree that it should prescribe normal time periods for processing routine and emergency requests. Its staff will process all requests as quickly as it can. The Commission hereby directs the staff to handle requests promptly and efficiently to insure that the staff is not the cause for a licensee's emergency or exigency request.

1.2 Comments—One commenter argues that the consultation procedures created by the interim final rules do not meet Congress' intent because they leave it to a State to decide whether it wants to consult on the licensee's amendment request and NRC's proposed determination. It seeks "formal, active consultation" (before NRC makes its proposed determination and publishes a **Federal Register** notice) through the "scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon

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written waiver of the State." It also seeks incorporation of the State's comments in the **Federal Register** notice along with an explanation of how NRC resolved these. Finally, it requests that NRC always telephone State officials before issuing an amendment, rather than merely "attempting" to telephone them as, the commenter states, the rule provides.

Another commenter is satisfied with the notice and consultation procedures, stating that "the regulations give the State no more authority in regulating the operation of the reactor then it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State."

Response—The State consultation procedures are well within Congress' intent. These procedures allow a State to take on as active a role as it wishes, consulting with NRC on every amendment request, if it wants to do so.

On the other hand, if it wants to conserve its resources and consult only on amendment requests it considers important, it may do that as well. The system of formal consultation envisaged by the first commenter is contrary to the intent of Congress, as discussed in section III(B) below.

Finally, § 50.91(b)(3) of the interim final rule clearly states that before NRC issues the amendment, it will telephone the appointed State official in which the licensee's facility is located for the purpose of consultation. The Commission believes that this last step is needed to ensure that the State indeed is aware of the amendment request and does not wish to be consulted about it. The rule has been changed in minor ways to clarify these points.

J. Notices in Emergency Situations or Exigent Circumstances

Comment—One commenter recommends that the Commission clarify that it intends to issue a "post notice" under § 2.106 rather than a "prior notice" under § 2.105 when it has determined that there is an emergency situation or exigent circumstances and that an amendment involves no significant hazards consideration. The commenter suggests replacement of the phrase in § 2.105(a)(4)(ii) that "it will provide notice of opportunity for a hearing pursuant to § 2.106" with the words "instead of publishing a notice of proposed action pursuant to this section, it will publish a notice of issuance pursuant to § 2.106".

Response—The Commission has not accepted the latter part of the commenter's request. In an emergency situation involving no significant hazards consideration, the Commission will publish a notice of issuance of the amendment under § 2.106. The licensee or any other person with the requisite interest may request a hearing pursuant to this notice. Thus, implicit in § 2.106 is the notion that a notice of issuance provides notice of opportunity for a hearing. The phrase in § 2.105 makes this notion explicit. Finally, contrary to the commenter's assertion, the Commission does provide prior rather than post notice in exigent circumstances.

K. Procedures to Reduce the Number of Amendments

Comment—One commenter suggests that many of the routine matters which require amendments should not be subject to the license amendment process. It argues that greater use should be made of § 50.59 (involving changes, tests and experiments without prior Commission approval, where these do not involve an unreviewed safety question or a technical specification incorporated in a license) for changes involving routine matters by not placing such changes into the technical specifications and thereby avoiding the need to issue license amendments. Two commenters also generally endorse the Commission's proposed rule (published on March 30, 1982 in 47 FR 13369) that would reduce the volume of technical specifications now part of an operating license, thereby reducing the need to request license amendments.

Response—The Commission is reconsidering the proposed rule noted above. It may issue a Policy Statement in its stead, or another different, simplified proposed rule, or both.

L. License Fees

Comment—One commenter argues that licensees should not be assessed additional fees to finance activities involving no significant hazards considerations determinations. It states that recently NRC proposed to amend the existing regulations governing payment of fees associated with, among other things, the processing of license amendment requests. (Proposed rule; 47 FR 52454 (November 22, 1982); final rule: 49 FR 21293 (May 21, 1984).) The key element of the proposed changes related to assessment of fees based upon actual NRC resources expended, rather than upon fixed fees for various classes of amendments. The commenter adds that if the Part 170 changes are issued as proposed, after May 6, 1983—the effective date of the interim final rules—NRC resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It asserts that licensees would *not* be the identifiable recipients of benefits resulting from this more involved process and thus licensees should not be assessed fees for expenses resulting from the public notice, State consultation, and other related activities. Finally, it argues that it is clear from the legislative history behind Pub. L. 97–415 that licensees are not the prime beneficiaries of this new license amendment process.

Response—It is clear that the issuance of a license amendment is a "special benefit" for the licensee, and that the Commission is therefore authorized to impose a fee to recover the cost to the agency of conferring that benefit. *Mississippi Power & Light Co. v. Nuclear Regulatory Commission*, 601 F.2d 223, 227 (5th Cir. 1979). The notice and consultation process established in the present rulemaking, together with all other aspects of the no significant hazards consideration determination, reflects statutory requirements that must be met in the issuance of a license amendment. Accordingly, the NRC resources expended in this part of the amendment proceedings are costs necessarily incurred by the agency on behalf of the licensee. Thus the Commission may include these costs in its fee for issuing the amendment.

While the Commission believes that the public as well as the licensee will benefit from this clarification and improvement in the amendment process, the "special benefit" of receiving a particular license amendment pertains to the licensee alone, and the Commission may therefore assess the full cost of providing it. *Mississippi Power & Light, supra,* at 230.

M. Regionalization

Comment—One commenter recommends that before NRC's headquarters transfers authority to the Regions to process "routine" amendments, there should be a clear understanding among the licensee, the Region and NRC's headquarters about the ground rules (1) on what would constitute "routine" versus "complex" amendments and (2) on the ways in which the amendments would be processed from the times they are requested, through notice and State consultation, to their grant or denial.

Response—The Commission agrees. For the time being, though, and perhaps in the future, NRC's headquarters will retain authority to process amendment requests for no significant hazards consideration determinations. *See, generally,* NRC Authorization Act for Fiscal Years 1984 and 1985 (Pub. L. 98–553, October 1984).

N. Exemption Requests

Comment—One commenter is concerned that NRC might automatically consider exemption requests as license amendments. It believes that exemption requests need not automatically be considered license amendments, even though NRC has occasionally elected to notice such requests in the **Federal Register** or has assigned license amendment numbers to the issuing documents.

Response—The Commission does not automatically consider exemption requests as license amendments. Most are not amendments. If an exemption to the regulations for a particular facility also entails or requires an amendment to the facility license, the amendment would be processed as a license amendment under the "Sholly" regulations and the requirements of the regulations could not be avoided simply because an exemption is also involved.

III. Present Practice, and Modifications Under the Final Rule

A. Notice for Public Comment and for Opportunity for a Hearing

In the two interim final rules, the Commission adopted the notice procedures and criteria contemplated by the legislation for no significant hazards consideration determinations. In addition it decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing. Thus, normally, for operating license amendments for facilities described in § 50.21(b) or § 50.22 or for testing facilities, the Commission provided both prior notice of opportunity for hearing and prior notice of public comment. The Commission also explained in the interim final rules that while the substance of the public comments on the no significant consideration finding could be litigated in a hearing, when one is held, neither the Commission nor its Licensing Boards or Presiding Officers would entertain hearing requests on the NRC staff's substantive findings with respect to these comments. It noted that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment. The Commission intends to continue this practice, as fully described below.

With respect to opportunity for hearing, the Commission amended § 2.105 to specify that normally it could issue in the **Federal Register** at least every 30 days, and perhaps more frequently, a list of "notices of proposed actions" or requests to amend operating licenses. These periodic notices—presently issued biweekly—now provide an opportunity to request a hearing within thirty days. The Commission also retained the option of issuing individual notices, as it sees fit. In the final rule, the Commission's procedures provide that a person whose interest may be affected by the proceeding may file a petition for leave to intervene and request a hearing. *See* § 2.105(d)(2). If the staff does not receive any request for a hearing on an amendment within the notice period, it takes the proposed action when it has completed its review and made the necessary findings. If instead it receives a request for a hearing, it acts under new § 50.91, which describes the procedures and criteria the Commission uses to act on applications for amendments to operating licenses.

To implement the main theme of the legislation, the Commission combined a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. *See* § 50.91. New § 50.91 also permits the Commission to make an amendment immediately effective in advance of the conduct and completion of any required hearing where there has been a no significant hazards consideration determination. To buttress this point, the Commission has modified § 50.58(b)(6) to state that only it on its own initiative may review the staff's final no significant hazards consideration determination. Thus, § 50.91 builds upon amended § 2.105, providing details for the system of **Federal Register** notices. For instance, exceptions are made for emergency situations, with no prior notice of opportunity for a hearing and for public comment, assuming no significant hazards considerations. In sum, this system added a "notice for public comment" under § 50.91 to the former system of "notice of proposed action" under § 2.105 and "notice of issuance" § 2.106.

Under this new system, the Commission requires an applicant requesting an amendment to its operating license (1) to provide its careful appraisal on the significant hazards issue, using the standards in § 50.92 (and whatever examples are applicable), and (2) if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points are discussed below.) The staff has frequently stated to applicants that the Commission wants a "reasoned analysis" from an applicant. An insufficient or sloppy appraisal will be returned to the applicant with a request to do a more careful analysis. Where an application has been returned for such reasons, *i.e.*, because of the applicant's negligence, the applicant cannot use the exigency or emergency provisions of the rule for any subsequent application for the same amendment.

When the staff receives the amendment request, as described below, it decides whether there is an emergency situation or exigent circumstances. If there is no emergency, it makes a preliminary decision—called a "proposed determination"—about whether the amendment involves no significant hazards considerations. Normally, this is done before completion of the safety analysis or evaluation. In the proposed determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion. With respect to the proposed determination, the staff views the term "considerations" in the dictionary sense, that is, as a sorting of factors as to which it has to make that determination. In this sorting, the three standards are used as benchmarks and, if applicable, the examples may be used as guidelines.

Amendment requests received before May 6, 1983 (the effective date of the interim final rules) have been processed in the same way, except that licensees have not been required to provide their appraisals.

At this stage, if the staff decides that no significant hazards consideration is involved, it can issue an individual **Federal Register** notice or list this amendment in its periodic—biweekly—publication in the **Federal Register**. This periodic publication lists not only amendment requests for which the Commission is publishing a notice under § 2.105, it also provides a reasonable opportunity for public comment by listing this and all amendment requests received since the last such periodic notice, and, like an individual notice, (a) providing a description of the amendment and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determinations which have not been previously noticed, and (d) providing for a 30-day comment period.

Out of a total of 2404 notices of no significant hazards considerations the Commission received requests for hearings on 13 notices and comments on 15 notices. Out of a total of 36 notices of significant hazards considerations, the Commission received requests for hearings on 3 notices and no comments.

Between May 6, 1983 and September 30, 1985, the Commission published

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various types of notices in addition to or to the exclusion of **Federal Register** notices (FRNs). Three were press releases only; four were press releases and paid announcements; one was a press release and an FRN; and one was a paid announcement only.

For the purpose of illustration, the following table lists the Commission's monthly FRNs between May 6, 1983, and September 30, 1985, on determinations about no significant hazards considerations (NSHC). The final rule clarifies that if an individual notice has been published, the periodic publication does not extend the deadline date for filing comments or providing an opportunity for a hearing. *See* § 50.91(a)(2).

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"SHOLLY" STATISTICS

May 6, 1983 through September 30, 1985	Biweekly FRN Proposed NSHC				Individual FRN Proposed NSHC				Individual FRN SHC				Totals			
PERIOD COVERED	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date	Sept. 1985	4th Qtr. FY 85	FY 85 to date	Total to date
Comment period:																
30 days	87	282	984	2155	2	5	47	249	0	6	10	36	89	293	1041	2440
Less than 30 days																
Short FRN					0	0	9	22					0	0	9	22
Press Release													0	1	5	9
Public comments received	0	0	0	1	0	0	3	11	0	0	0	0	0	0	3	(12 FRN 2 PR) 14
Requests for hearing	0	1	1	4	0	0	0	9	0	0	2	3	0	1	3	(15 FRN 1 PR) 16

Amendments Issued - Total	82	228	874	1647
(1) With 30 days notice	76	213	830	1555
(2) Less than 30 days or NO NOTICE	6	15	43	82
(3) Hearing requested but final NSHC determination made (50.91(a)(4))	0	0	0	10
(4) Proposed NSHC; hearing requested; hearing completed and amendment issued. No final NSHC determination was made because hearing was completed before amendment was needed	0	0	1	1

Backlog: (Applications received which were not noticed, either in biweekly FRN or individually through September 30, 1985): NUMBER: 227 (Includes items which were prepared and approved for publication in the next biweekly, items which are in concurrence, and items for which additional information was needed from licensee.)

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While it is awaiting public comment, the staff proceeds with the safety analysis. After the public comment period, the Commission reviews the comments, if any, considers the safety analysis, and makes its decision on the amendment request. If it decides that no significant hazards consideration is involved, it either may publish an individual "notice of issuance" under § 2.106 or, normally, a notice of issuance in its system of periodic **Federal Register** notices, thus closing the public record. As the Commission explained in the preamble to the interim final rules, it does not normally make and publish a "final determination" on no significant hazards consideration, unless there is a request for a hearing as well as an NRC decision to make the amendment immediately effective before the hearing. In this regard, the staff need not respond to comments if a hearing has not been requested.

If it receives a hearing request during the comment period and the staff has decided that no significant hazards consideration is involved, it prepares a "final determination" on that issue which considers the request and the public comments, makes the necessary safety and public health findings, and proceeds to issue the amendment. The hearing request is treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained above, where the Commission has determined that no significant hazards consideration is involved, the legislation permits the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing, notwithstanding the pendency before it of a request for a hearing.

The procedures just described have been the usual way of handling license amendments under the interim final rules because most of these amendments do not involve (1) emergency situations, (2) exigent circumstances, or (3) entail a determination that a significant hazards consideration is involved. As discussed below, however, these three cases and other anomalies could arise.

For example, returning to the initial receipt of an application, if the staff were to receive an amendment request and then determine that a significant hazards consideration is involved, it would handle this amendment request by first issuing an individual notice of proposed action providing an opportunity for a prior hearing under § 2105, and, afterwards, as appropriate, notifying the public of the final disposition of the amendment by noting its issuance or denial in an individual **Federal Register** notice. As explained above, even if the amendment request were to involve an emergency situation and if it were determined that a significant hazards consideration were involved, the Commission would be required to issue a notice providing an opportunity for a prior hearing. If the Commission were to determine, however, that there was an imminent threat to public health or safety, it could issue an appropriate order under 10 CFR Part 2, as has been explained above, and as is also discussed below.

Another unusual case might arise: The staff may receive an amendment request and find an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed below in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the staff might not necessarily be able to provide prior notice of opportunity for a hearing or prior notice for public comment; though it has not done this to date, it could issue an individual notice with an opportunity for a hearing after the amendment is issued (*see* § 2.106) or, as has been the case thus far, it could provide periodic notice (the Commission's periodic **Federal Register** notice system notes NRC's action on the amendment request and provides an opportunity for a hearing after issuance).

In the preamble to the interim final rules, in connection with emergency requests, the Commission stated that it expects its licensees to apply for license amendments in a timely fashion, explaining that it will decline to dispense with notice and comment on the no significant hazards consideration determination if it determines that the applicant has failed to make a timely application for the amendment because of negligence or in order to create the emergency so as to take advantage of the emergency provision. Whenever an emergency situation is involved, the Commission expects the applicant to explain to it why the emergency has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

An emergency situation might also occur during the normal 30-day comment period. Depending upon the type of emergency (safety-related versus emergency situation in the "Sholly" sense—*see* section II(F)(1.1) above), the Commission would act under the system described above.

Another unusal case might occur where the Commission receives an amendment request and finds an exigent circumstance, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement, and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

In the interim final rules, the Commission stated that extraordinary cases may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a **Federal Register** notice soliciting public comment or to provide the 30 days ordinarily allowed for public comment. As noted in the response to public comments on the two interim final rules, the Commission gave as examples two circumstances where expedited action by the Commission would result in a net benefit to safety. (*See* additional examples at II(G)(1.1).) For example, a licensee with a reactor shutdown for a short time might wish to add some component clearly more reliable than one presently installed or the licensee might wish to use a different method of testing some system and that method would be better than one provided for in its technical specifications. In either case, the licensee may have to request an amendment, and if the staff determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee resumes plant operation and loses the opportunity to improve the plant.

The Commission noted in the interim final rules that in circumstances such as the two just described, it may use media other than the **Federal Register** to inform the public of the licensee's amendment request. For example, it may use a local newspaper published near the licensee's facility which is widely read by the residents in the area surrounding the facility. The Commission stated that in these instances it will provide the public

a reasonable opportunity to comment on the proposed no significant hazards determination. It also stated that to ensure timely receipt of the comments, it may also establish a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request.

This method of prior notice for public comment is in addition to any possible individual notice of hearing. It does not affect the time available to exercise the opportunity to request a hearing, though the Commission may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission has modified slightly the procedure discussed above. In emergency situations the staff does not have time to issue a notice. In exigent circumstances, the staff has to act swiftly but has some time to issue a notice, usually a **Federal Register** notice requesting public comment within 30 days but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a **Federal Register** notice for at least two weeks public comment, it will issue a media notice. It may consult with the licensee on a proposed release and on the geographical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, the Commission may use that as opposed to a hotline; however, it has not ruled out the use of a hotline. If it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

As with its provisions on emergency situations, the Commission explained in the interim final rules that it would use these procedures sparingly and that it wants to make sure that its licensees will not abuse these procedures. It stated that it will use criteria similar to the ones it uses with respect to emergency situations to decide whether it will shorten the comment period and change the type of notice normally provided. It also stated in connection with requests indicating exigent circumstances that it expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment because of negligence or in order to create the exigent circumstances so as to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it must explain to the staff the reason for the exigency and why the licensee cannot avoid it; the staff will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

The staff could also receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure to allow for hearing requests. Whether or not a hearing is held, it would notify the public about the final disposition of the amendment in an individual **Federal Register** notice of issuance or denial.

It should also be re-emphasized that these procedures normally only apply to license amendments. The staff may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order the licensee to act without prior notice for public comment or opportunity for a hearing. In this case, the staff would follow its present procedure and publish an individual notice of issuance in the **Federal Register** and provide an opportunity for a hearing on the order.

The new system has changed only the Commission's noticing practices, not its hearing practices. The Commission explained in the two interim final rules that it has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, it is clear that they are burdensome and involve resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees can reduce these delays under the procedures by providing to the Commission their timely and carefully prepared appraisals on the issue of significant hazards, and the staff can further reduce delay by processing requests expeditiously.

B. State Consultation

As noted above, Pub. L. 97–415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribed procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report, cited earlier, stated that the conferees expect that the procedures for State consultation would include the following elements:

> (1) The State would be notified of a licensee's request for an amendment;
> (2) The State would be advised of the NRC's evaluation of the amendment request;
> (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
> (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
> (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

> (1) Give the State a right to veto the proposed NRC determination;
> (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
> (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
> (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.
>
> In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 39 (1982).

The law and its legislative history were quite specific. Accordingly, the Commission adopted the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. The Commission has decided to retain this procedure. Normally, the State consultation procedures works as follows. To make the State consultation process simpler and speedier, under the interim final rules the Commission has required an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The

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NRC compiled a list of State officials who were designated to consult with it on amendment requests involving no significant hazards considerations; it made this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The staff sends its Federal Register notice, or some other notice in the case of exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a timely manner, it concludes that the State has no interest in its determination. In this regard, the staff made available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials. Nevertheless, to insure that the State is aware of the amendment request and that it is really not interested, the final rule has been clarified to point out that the Commission will make a reasonable effort to telephone the appropriate State official before it issues the amendment.

In an emergency situation, the staff does its best to consult with the State before it makes a final determination about no significant hazards consideration before it issues an amendment.

Finally, in light of the legislative history, though the staff gives careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the amendment request; a State cannot veto the Commission's proposed or final determination. State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Separate Views of Commissioner Asselstine

I do not approve the Commission's final regulations implementing the "Sholly Amendment." I have two major concerns about the rule.

First, I believe that Congress did not intend that the Sholly provision be used to approve license amendments to allow the expansion of spent fuel storage, whether by reracking or by other means, prior to the completion of any requested hearing. I set out my reasons for this belief in my separate views on the interim final rule so I will not repeat them here. *See*, 48 FR 14864.

Second, the statement of considerations does not clearly describe the nature of the staff's determination of whether there are "significant hazards considerations." Failure to clarify this issue in the interim final rule led to much consternation when the Commission considered the repair of the TMI–1 steam generators. The Commission should clearly state that the determination should be whether the proposed amendment presents any new or unreviewed safety issues for consideration; the issue is not whether the staff thinks that ultimately it will be able to conclude that the amendment will present no additional risk to the public.

Regulatory Analysis

The Commission prepared a Regulatory Analysis on these amendments, when it issued the two interim final rules. It is contained in SECY–83–16B and it may be examined at the address indicated in "ADDRESSES" above. Experience to date indicates that the staff resource impacts predicted in the Analysis are low by about a factor of three. This is expected to change as experience is gained in implementing the final rule.

Backfit Statement

Under 10 CFR 50.109, the final rule is not a backfit and preparation of a backfit analysis is not necessary because the final rule imposes no requirements on licensees beyond those already imposed by the interim final rules.

Paperwork Reduction Act Statement

This final rule amends information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150–0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (Act), 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Act or in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Consequently, this rule does not fall within the purview of the Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 CFR Parts 2 and 50 are published as a document subject to codification.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4), (a)(6), and (d)(2) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 of this chapter or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 of this chapter that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under § 50.58 and § 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

* * * * *

(6) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, when such an amendment would authorize actions which may significantly affect the health and safety of the public; or

* * * * *

(d) * * *

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested.

* * * * *

§§ 2.300–2.309 [Removed]

3. Subpart C (§§ 2.300–2.309) is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 50.57 [Amended]

5. In § 50.57, paragraph (d) is removed.

6. In § 50.58, paragraph (b) is revised to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b)(1) The Commission will hold a hearing after at least 30-days' notice and publication once in the Federal Register on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22, or for a testing facility.

(2) When a construction permit has been issued for such a facility following the holding of a public hearing, and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30-days' notice and publication once in the Federal Register, or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30-days' notice and publication once in the Federal Register of its intent to do so.

(3) If the Commission finds, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and comment and may issue the amendment. If the Commission finds that exigent circumstances exist, as described in § 50.91, it may reduce the period provided for public notice and comment.

(4) Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards consideration is involved.

(5) The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

(6) No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

7. Section 50.91 is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) *Notice for public comment.*

(1) At the time a licensee requests an amendment, it must provide to the Commission its reasoned analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2)(i) The Commission may publish in the Federal Register under § 2.105 an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic Federal Register notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will (A) contain the staff's proposed determination, under

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the standards in § 50.92, (B) provide a brief description of the amendment and of the facility involved, (C) solicit public comments on the proposed determination, and (D) provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of **Federal Register** notices. In either event, it will not make and will not publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved in which case the Commission will provide an opportunity for a prior hearing.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106 of this chapter, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failing to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it:

(i)(A) Will either issue a **Federal Register** notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment; or

(B) Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

(ii) Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

(iii) When it has issued a local media release, may inform the license of the public's comments, as necessary and appropriate;

(iv) Will publish a notice of issuance under § 2.106;

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention called for in § 2.714 of this chapter;

(vi) Will require the licensee to explain the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedures.

(7) Where the Commission finds that significant hazards considerations are involved, it will issue a **Federal Register** notice providing an opportunity for a prior hearing even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR Part 2.

(b) *State consultation.*

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing that State with a copy of its application and its reasoned analysis about no significant hazards considerations and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the **Federal Register** notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, to ensure that the State is aware of the application, before it issues the amendment, it will make a good faith effort to telephone that official. (Inability to consult with a responsible State offical following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration.)

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary in an emergency situation.)

(5) After the Commission issues the requested amendment, it will send a copy of its determinaton to the State.

(c) *Caveats about State consultation.*

(1) The State consultation procedures in paragraph (b) of this section do not give the State a right:

(i) To veto the Commission's proposed or final determination;

(ii) To a hearing on the determination before the amendment becomes effective; or

(iii) To insist upon a postponement of the determination or upon issuance of the amendment.

(2) These procedures do not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

8. Section 50.92 is revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action (1) pursuant to § 2.105 of this chapter before acting thereon and (2) as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Dated at Washington, DC this 28th day of February 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary for the Commission.

[FR Doc. 86-4794 Filed 3-5-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-69-AD; Amdt. 39-5250]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires periodic inspections of the forward lavatory drain system and corrective action, if necessary, on all Boeing 727 airplanes. This action is necessary because ice formed by leaking drain systems, when it releases from the airplane, can cause damage to or loss of an engine.

DATE: Effective April 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic inspections of the forward lavoratory drain system and corrective action, if necessary, on all Boeing Model 727 airplanes was published in the **Federal Register** on October 21, 1985 (50 FR 42562).

The comment period for the NPRM, which ended December 9, 1985, afforded interested persons an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

A number of commenters stated that the leakage associated with lavatory drain systems is the result of inadequate or improper maintenance and/or servicing. Proper maintenance would eliminate leaks except for those resulting from debris trapped in the flush valve, and that type of problem should be caught in routine servicing. The Air Transport Association (ATA) of America, representing operators of Boeing Model 727 airplanes, noted that in the preamble to Amendment 39-106 (30 FR 8826; July 14, 1965), the FAA stated that it would not issue ADs as a substitute for enforcing maintenance rules. This statement is preceded in that preamble by the following statements:

> ". . . The responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation [Part 39] to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise, the proper subject of an AD. At the same time the Agency recognizes that use of ADs to correct improper or inadequate maintenance on the part of particular persons of organizations would impose an unreasonable burden on the vast majority of persons who comply with the regulations and properly maintain their aircraft."

While it is correct that proper maintenance will prevent the unsafe condition addressed by this AD from occurring, it is clear from the large number of incidents involving numerous operators that the maintenance deficiencies that result in the unsafe condition are not the sort of isolated incidents for which the issuance of an AD would be inappropriate. Rather, this is precisely the sort of situation which Amendment 39-106 was intended to address by broadening the scope of the applicability of the AD process: namely, widespread maintenance deficiencies resulting in unsafe conditions.

The Boeing Company suggested that this AD should apply only to airplanes with unmodified Monogram toilet tank flush valves. The FAA has determined that the number of "blue ice" incidents (where ice composed of lavatory waste water leaking from the lavatory drain systems and freezing on the outside of the airplane, has dislodged and impacted with the airplane itself or with buildings on the ground), in addition to the two incidents of engine loss referenced in the Notice, provide sufficient evidence of system malfunctions with modified and unmodified flush valves to warrant complete system leak checks on a periodic basis.

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In addition, Boeing noted that many airplanes do not incorporate the "donut" secondary seal. The FAA has determined that if the outer valves leak, whether they are "donut"-equipped or not, tank valve failures will result in leakage under pressurized conditions. Boeing also felt that pressurizing the entire airplane for the test was unnecessary, and stated that filling the tank and opening the tank valve would result in a static head nearly equal to the practical ground pressurization level of 4 psi differential. Further investigation reveals that such a test method would provide approximately 1.2 psi differential, which is not considered adequate for reliable leak testing. The FAA has determined, however, that pressurizing the airplane on the ground to 3 psi differential will be sufficient for these tests. The final rule has been changed to specify a 3 psi minimum pressure differential.

Several commenters expressed concerns over the cost and complexity of a leak test of the drain system with the airplane pressurized. Other carriers reported that this does not present a problem. One commenter also pointed out that, due to the design of the system, only the outer drain valve is exposed to differential pressure during flight. The FAA has determined that leaks can occur through the drain valve during pressurized flight that would not be detectable in an unpressurized leak check, and that pressurized leak checks of the drain valve are, therefore, warranted. One commenter also questioned the appropriate pressurization level. As a point of clarification, the final rule requires a leak check of the outer drain valve with the airplane pressurized to 3 psi, but the tank-mounted flush valve may be tested unpressurized.

One commenter noted that, in their experience, careful repair of the Monogram valves using existing procedures has provided improved reliability. Apparently, proper cleaning of the surfaces prior to applying adhesive has given a good bond between the rubber bellows and the valve base. For this reason, this commenter believes the service letter called out in this AD is not required. The FAA does not concur since other operators have not had similar experiences.

Two other carriers suggested alternate methods of improving the reliability of the Monogram flush valve. Alternate methods of compliance may be approved in accordance with paragraph F. of this AD. The only approved service information available at this time is the Monogram service letter referenced in the AD.

A number of commenters reported that major maintenance for which airplanes are brought to a maintenance center occurs at intervals approximating 13 months. Others requested a 15-month interval between inspections. The FAA has determined that the public interest will be served by retaining the Monogram unimproved flush valve unpressurized leak check at 60-day intervals, as proposed, and by changing the proposed 1-year interval for the leak check of the entire drain system to a 15-month interval. This change will significantly reduce the financial impact on operators while still providing improved drain system integrity.

One commenter requested that the compliance period for the initial inspection be extended from 60 days to 90 days to accommodate existing maintenance schedules. The FAA has determined that such an extension will not significantly affect safety and, therefore, has changed the rule accordingly.

The FAA has also reconsidered the proposed check of the Monogram-equipped airplanes. The probability of leakage of the external drain valve is no greater in airplanes with unmodified flush valves; hence, the 60 day periodic checks proposed in the NPRM for both valves will be required for the in-tank flush valve only. The external drain valve check with the airplane pressurized will be required for all airplanes at the new 15-month interval.

The DGAC, which is the Civil Aviation Authority of France, has noted that new designs in lavatory waste drain valves incorporating an inner sealing plate in addition to the drain tube cap, thus eliminating the donut, would be significantly more effective in preventing leaks at the service panel. One such valve has already been approved for installation on Boeing airplanes at the factory, and another has been installed by various carriers. DGAC has suggested that this modification be made terminating action for this AD. An airplane which lost an engine in 1985 after ingesting blue ice, had such a valve installed. Unfortunately, a sealing O-ring was damaged during installation and this resulted in a serious leak. This leak would not have occurred had the installation been properly accomplished, and would have been detected had a pressurized leak check been performed. The FAA has determined that the proper installation of a suitable double-sealing external drain valve, followed by a pressurized leak check, will essentially eliminate the hazard introduced by leaking fluids at the forward lavatory. The final rule reflects this determination by including such an installation as a terminating action for the repetitive inspection requirement.

For purposes of clarification, a format change has been introduced in the final rule which combines paragraphs A. and B.

It is estimated that 1,200 airplanes of U.S. registry will be affected by this AD. Of this number, approximately 400 airplanes are equipped with Monogram lavatory assemblies. The costs associated with the requirements of this AD are as follows:

—All 1,200 airplanes affected will require a leak check at 15-month intervals, which takes 4 manhours per airplane to accomplish, at an average labor charge of $40 per manhour. The total annual (recurring) cost of this check to U.S. operators will average $154,000.

—On the 400 airplanes equipped with Monogram lavatory assemblies, an initial flush valve inspection will be required. This inspection takes approximately 2.5 manhours to accomplish, at an average labor charge of $40 per manhour. The one-time total cost to U.S. operators will be $40,000.

—The 400 unmodified airplanes will also require a leak check of the in-tank valve at 60-day intervals until modification has been accomplished. Assuming that the average number of leak checks performed before—modification is 6, and that it would take approximately 1 manhour to accomplish each leak check, at an average labor charge of $40 per manhour, the total cost of these checks to U.S. operators will be $96,000.

Based on these figures, the total cost impact of the inspections required by this AD on U.S. operators will be $290,000 for the first year, and $154,000 for each year thereafter.

After a careful review of the available data, including comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 727 series airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Boeing Model 727 series airplanes, certificated in any category. To assure the integrity of the forward lavatory drain system, accomplish the following, unless already accomplished:

A. For airplanes with Monogram lavatory systems, within 90 days after the effective date of this AD:

(1) Determine, by inspection if necessary, whether the modification described in Monogram Service Letter 16000–SL–01, dated October 3, 1979, has been incorporated in the forward lavatory.

(2) If the modification has been accomplished, perform a leak check of the forward lavatory drain system (both flush valve and drain valve). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential.

(3) If the modification has not been accomplished, perform a leak check of the forward lavatory drain system (both flush valve and drain valve). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential. Repeat the check of the in-tank flush valve at intervals not to exceed 60 days. For these flush valve leak checks, the airplane does not need to be pressurized. Once the modification described in Monogram Service Letter 16000–SL–01, dated October 3, 1971, has been accomplished, the unpressurized flush valve leak checks (required at intervals not to exceed 60 days) may be discontinued.

B. For all airplanes with Monogram lavatory systems, repeat the leak check of the forward lavatory drain system (both valves) at intervals not to exceed 15 months following the initial leak check called out in paragraph A.(2) or A.(3) of this AD. The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential.

C. For airplanes with other than Monogram lavatory systems, within 90 days after the effective date of this AD, perform a leak check of the forward lavatory drain system (both valves). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential. Repeat these leak checks at intervals not to exceed 15 months.

D. If leaks are discovered during any leak check, either repair the leak before further flight, or drain the lavatory system and placard the lavatory inoperative until repairs can be accomplished.

E. Installation of a new drain valve incorporating an inner integral door with a second positive seal, when the valve and installation service information are approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, shall constitute terminating action for the periodic leak checks required by paragraph B. and C. of this AD.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the above specified service letter from the manufacturer may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 14, 1986.

Issued in Seattle, Washington, on February 26, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4830 Filed 3–5–86; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 85–ACE–08]

Alteration of Transition Area, Abilene, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Abilene, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Abilene Municipal Airport, Abilene, Kansas, utilizing the Salina, Kansas, VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Abilene Municipal Airport, Abilene, Kansas, is being established utilizing the Salina VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at Abilene, Kansas, at and about 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 53158 of the **Federal Register** dated December 30, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Abilene, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

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is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Abilene, Kansas

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Abilene Municipal Airport (Latitude 38°54' 20" N; Longitude 97°14'08" W); within 3 miles either side of the 360° bearing from the ADELA waypoint (Latitude 38°47'05" N; Longitude 97°14'08" W); extending from 8 miles south of the airport to the 5 mile radius area and within 2 miles either side of the 096° bearing from the Salina VORTAC extending from 5.75 miles west of the airport to the 5 mile radius area.

This amendment becomes effective at 0901 UTC May 8, 1986.

Issued in Kansas City, Missouri, on February 24, 1986.

Wayne A. Smith,

Acting Manager, Air Traffic Division.

[FR Doc. 86–4829 Filed 3–5–86; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 50636–5220]

International Trade Surveys: U.S. Trade in Services with Foreign Persons; Reporting and Recordkeeping Requirements

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This notice sets forth final rules for surveys of trade in services between U.S. and foreign persons, conducted by the Bureau of Economic Analysis (BEA). The rules shift the legal authority for conducting seven existing BEA surveys of U.S. services trade—the BE–29, BE–30, BE–36, BE–37, BE–47, BE–48, and BE–93—from the Bretton Woods Agreement Act to the International Investment and Trade in Services Survey Act. They also change reporting in four of these surveys—the BE–30, BE–37, BE–47, and BE–48—from voluntary to mandatory, primarily to prevent further erosion in survey response rates. To minimize the reporting burden, an exemption level below which reports are not required has been established for each survey; for the one survey (the BE–93) that already had an exemption level, the level has been raised substantially. These rules replace existing regulations regarding surveys of U.S. services transactions, as contained in 15 CFR Parts 802 and 803, which are hereby deleted.

The rules implement a portion of the President's responsibilities for collecting data on U.S. services trade under the International Investment and Trade in Service Survey Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA.

EFFECTIVE DATE: These rules will be effective April 17, 1986, commencing with annual reports covering transactions occurring in 1985 and with quarterly reports covering transactions occurring in the first quarter of 1986.

FOR FURTHER INFORMATION CONTACT: Anthony J. DiLullo, (202) 523–0621, for general information; Rafael Font, (202) 523–0611, for information on the BE–29, BE–30, BE–36, and BE–37 surveys; and Walter G. Kealy, Jr., (202) 523–0625, for information on the BE–47, BE–48, or BE–93 surveys. Alternatively, write Balance of Payments Division (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Changes From Proposed Rules

A "Notice of Proposed Rulemaking" setting forth proposed rules for surveys of services trade between U.S. and foreign persons was published in the September 18, 1985 Federal Register, Volume 50, No. 181 (50 FR 37867). Specifically, that notice:

(1) Set forth proposed rules for a new, BE–20, Benchmark Survey of U.S. Services Transactions With Unaffiliated Foreign Persons, covering the year 1985, and announced BEA's intention to conduct an annual sample survey in subsequent nonbenchmark years to update the information obtained in the benchmark survey. The benchmark survey and annual follow-on survey would have incorporated information from, and replaced, three existing BEA surveys of U.S. services trade—the BE–93, International Transactions in Royalties Licensing Fees, Film Rentals, Management Fees, etc., with Unaffililated Foreign Residents; the BE–47, Foreign Contract Operations of U.S. Construction, Engineering, Consulting, and Other Technical Services Firms; and the BE–48, Reinsurance Transactions with Insurance Companies Resident Abroad. Reporting in both the benchmark and annual follow-on surveys was to have been mandatory, whereas reporting in two of the three existing surveys that were to be replaced—the BE–47 and BE–48—was voluntary.

(2) Set forth proposed rules to bring four other existing surveys under the authority of the International Investment and Trade in Services Survey Act and to make reporting in all four surveys mandatory. The four surveys are the BE–29, Foreign Carriers' Ocean Freight Revenues and Expenses in the United States; the BE–36, Foreign Airline Operators Revenues and Expenses in the United States; the BE–30, Ocean Freight Revenues and Expenses—United States Carriers; and the BE–37, U.S. Airline Operators Foreign Revenues and Expenses. Previously, these four surveys were conducted under authority of the Bretton Woods Agreements Act and two of the four surveys—the BE–30 and BE–37—were voluntary.

After publication of the proposed rules and submission of the BE–20 benchmark survey forms to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), OMB disapproved the BE–20 survey. A letter dated October 21, 1985, from Wendy L. Gramm, Administrator for Information and Regulatory Affairs of OMB, to Allan H. Young, Director of BEA, stated that while OMB recognizes the importance of securing information on international trade in services, as reflected in the International Investment and Trade in Services Survey Act of 1984, it believes the BE–20 in its current form is unreasonably burdensome on reporting firms and would not yield the quality of data required to achieve the survey's purposes.

As a result of OMB's disapproval of the BE–20 benchmark survey, these final rules differ from the proposed rules in several respects:

(1) The rules for conducting the BE–20, Benchmark Survey of U.S. Services Transactions With Unaffiliated Foreign Persons, have been deleted.

(2) Separate rules for the three existing services surveys that were to have been incorporated in, and replaced by, the BE–20 benchmark survey, have been set forth. Authority for conducting these surveys—the BE–47, BE–48, and BE–93—has been shifted from the Bretton Woods Agreements Act to the International Investment and Trade in Services Survey Act. The information requested on these surveys is the same as in the past. However, reporting in the BE–47 and BE–48 will now be mandatory. In order to minimize the reporting burden, exemption levels below which reporting is not required have been established for the BE–47 and BE–48. A U.S. person is exempt from reporting on the BE–47 if gross income or operating revenue from covered contract operations is less than $1 million; a person is exempt from reporting on the BE–48 if reinsurance premium receipts, reinsurance premium payments, and reinsurance losses are each less than $1 million. For the BE–93, the existing exemption level of $25,000 of covered receipts and payments combined has been raised substantially, to $500,000, and is to be applied to receipts and payments separately. Coverage of the BE–47 has been limited to construction, engineering, architectural, and related consulting and technical services. Previously, this survey also covered other business and professional services, although, in practice, few companies providing such services actually reported to BEA. It is anticipated that these services will be covered by other surveys in the future.

(3) The proposed rules to bring four other existing surveys—the BE–29, BE–30, BE–36, and BE–37—under the International Investment and Trade in Services Survey Act, and to make mandatory the two surveys that previously were voluntary, are made final, with the following changes:

(a) To minimize the reporting burden, an exemption level below which reports are not required has been established for each survey. The level for each is $500,000 of annual covered revenues or annual covered expenses, as applicable.

(b) As a result of comments received, BEA has reinstated its past practice for the BE–29 of permitting, at its discretion, the submission of consolidated reports by foreign governments covering the operations of all of their national shipping concerns, if such consolidated reports would provide the required information. Under the proposed rules, separate reports from the U.S. agent of each individual foreign carrier would have been required. Where consolidated reports are accepted, the individual reports from foreign carriers' U.S. agents will not be required. BEA requests that it be notified by January 31 of each year that a foreign government intends to file a consolidated annual report for its national shipping concerns. Such notification is necessary so that BEA can instruct U.S. agents not to report for those shipping concerns.

As a result of comments received on the BE–37 survey, additional instructions will be added to clarify several items on the form. However, the requirement for each reporter to report expenses in the five countries in which most expenditures were incurred will be retained. Estimates, labeled as such, may be provided in accordance with § 801.8(b) of these final rules.

One comment received on the proposed rules for the BE–29 survey concerned a misconception that the information on the form had to be submitted within 30 days of being contacted by BEA. The 30-day requirement was only for notification to BEA that a person contacted did *not* have to report because it had no covered services transactions or was exempt from reporting. The due date for the BE–29, which is contained in the instructions to the form itself and not in the proposed rules, indicated that a person required to report had 90 days after the end of the year in which to file the report. Nevertheless, it should be noted that the 30-day notification requirement for all surveys has been dropped and a person to whom BEA sends forms need only indicate on the form itself that it has no reportable transactions. This must be done by the due date on the form, not within 30 days of being contacted by BEA.

In these final rules, the titles (but not the form numbers) of several of the existing surveys have been changed slightly to clarify their coverage and ensure consistency of terminology.

In bringing the existing services surveys under the International Investment and Trade in Services Survey Act, the confidentiality requirements of the surveys have been strengthened considerably. The Act stipulates that disclosure of the data of individual respondents is prohibited and that the data can be used solely for analytical and statistical purposes. Information can be made available to other Government agencies or officials only if those agencies or officials are specifically designated by the President to perform functions under the Act.

In sum, these final rules bring seven existing surveys of U.S. services transactions under the authority of the International Investment and Trade in Services Survey Act and make mandatory the four surveys—the BE–30, BE–37, BE–47, and BE–48—that previously were voluntary. Exemption levels for each survey have been established or raised to minimize the reporting burden. These rules replace the existing rules for these surveys, as contained in 15 CFR Parts 802 and 803, which are hereby deleted.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade, and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by section 306 of Pub. L. 98–573), hereafter "the Act." Section 4 of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons. It provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services . . .; (4) Conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and (5) publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn, redelegated this authority to BEA.

Executive Order 12291

BEA has determined that this final rulemaking is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

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enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Two collection of information requirements, for BE-47 and BE-48, are pending OMB approval. All other collection of information requirements in these final rules have been approved by OMB (OMB Nos. 0608-0011, 0608-0012, 0608-0015, 0608-0016, and 0608-0017).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of a regulatory flexibility analysis are not applicable to this final rulemaking because it will not have significant economic impact on a substantial number of small entities. The regulations raise the exemption levels which will act to eliminate reporting by many small entities. Moreover, relatively few small businesses currently engage in the types of international services transactions covered by the subject surveys.

Accordingly, the General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: January 27, 1986.

Allan H. Young,

Director, Bureau of Economic Analysis.

15 CFR, Chapter VIII is therefore amended by adding a new Part 801 and by removing Parts 802 and 803.

1. Part 801 is added as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

Sec.

801.1 Purpose.
801.2 Recordkeeping requirements.
801.3 General reporting requirements.
801.4 Response required.
801.5 Confidentiality.
801.6 Penalties.
801.7 General definitions.
801.8 Miscellaneous.
801.9 Reports required.

Authority. 5 U.S.C. 301; Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Section 306 of Pub. L. 98-573; and Executive Order 11961, as amended by Executive Order 12518.

§ 801.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program concerning international trade in services that is required by, or provided for in, the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." The overall purpose of the Act with respect to services trade is to provide comprehensive and reliable information pertaining to international trade in services, and to do so with the minimum burden on respondents and with no unnecessary duplication of effort. The data are needed for policymaking purposes, for conducting international negotiations on trade in services, and for improving the recording of services transactions in the U.S. balance of payments accounts.

§ 801.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C 3104), persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.3 General reporting requirements.

(a) In accordance with section 5(b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from any U.S. person, other than the U.S. Government, engaged in international trade in services. Specific reporting requirements for a given report form are set forth below and, in more detail, on the form itself.

§ 801.4 Response required.

Reports, as specified below, are required from all U.S. persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts by sending them report forms must respond in writing. The response must be made by the due date of the report, either by filing the properly completed report form or by certifying in writing on the form that the person has no international services transactions within the purview of the Act or the regulations contained herein. The latter requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 801.5 Confidentiality.

Information collected pursuant to § 801.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied it identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or by § 801.3, or to comply with any other rule, regulation, order or instruction promulgated under the Act, may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6 (a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or by § 801.3, or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent or any corporation who

knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 801.5 relating to confidentially, shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§ 801.7 General definitions.

(a) "Services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care;

(b) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States;

(c) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(d) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(e) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(f) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(g) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(h) "Unaffiliated foreign person" means, with respect to a given U.S. person, any foreign person that is not an "affiliated foreign person" as defined in paragraph (i) of this section;

(i) "Affiliated foreign person" means, with respect to a given U.S. person—

(1) A foreign affiliate of which the U.S. person is a U.S. parent; or

(2) The foreign parent or other member of the affiliated foreign group of which the U.S. person is a U.S. affiliate;

(j) "Parent" means a person of one country who directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(k) "Affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorported business, including a branch;

(l) "U.S. parent" means the U.S. person that has direct investment in a foreign business enterprise;

(m) "Foreign affiliate" means an affiliate located outside the United States in which a U.S. person has direct investment;

(n) "Foreign parent" means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch;

(o) "U.S. affiliate" means an affiliate located in the United States in which a foreign person has a direct investment;

(p) "Affiliated foreign group" means—

(1) The foreign parent;

(2) Any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person; and

(3) Any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

§ 801.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every applicable question on each form or schedule should be answered. When only partial information is available, an appropriate indication should be given.

(b) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(c) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line or column instruction.

(d) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item of column number and the form.

(e) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension.

(f) *Number of copies.* A single original copy of each form or schedule shall be filed with the Bureau of Economic Analysis. This should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report to facilitate resolution of problems. Both copies are protected by law; see § 801.5.

(g) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form.

§ 801.9 Reports required.

(a) *Benchmark surveys.* None required.

(b) *Annual surveys.* (1) BE-29, Foreign Ocean Carriers' Expenses in the United States:

(i) *Who must report.* A BE-29 report is required from U.S. agents on behalf of foreign ocean carriers transporting freight or passengers to or from the United States. U.S. agents are steamship agents and other persons representing foreign carriers in arranging ocean transportation of freight and cargo between U.S. and foreign ports and in arranging port services in the United States. Foreign carriers are foreign persons that own or operate ocean going vessels calling at U.S. ports, including VLCC tankers discharging petroleum offshore to pipelines and lighter vessels destined for U.S. ports. They include carriers who own or who operate their own or chartered (United States or foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts. Where the vessels under foreign registry are operated directly by a U.S. carrier for its own account, the operations of

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such vessels should be reported on Form BE–30, Ocean Freight Revenues and Foreign Expenses of United States Carriers. The Bureau of Economic Analysis may, in lieu of BE–29 reports required from foreign carriers' U.S. agents, accept consolidated reports from foreign governments covering the operations of their national shipping concerns when, in the Bureau's discretion, such consolidated reports would provide the required information. Where such reports are accepted, the individual reports from foreign carriers' U.S. agents will not be required.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total covered expenses are less than $500,000 in the reporting period. In addition, a U.S. agent is exempted from reporting for any foreign operator whose annual covered expenses are less than $500,000.

(2) BE–36, Foreign Airline Operators' Revenues and Expenses in the United States:

(i) *Who must report.* A BE–36 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office, agent, or other representative does not have all the information required, it must obtain the additional information from the foreign airline operator.

(ii) *Exemption:* A U.S. person otherwise required to report is exempted from reporting if total covered revenues and total covered expenses incurred in the United States are each less than $500,000 in the reporting period. If either total covered revenues or total covered expenses are $500,000 or more in the reporting period, a report must be filed.

(3) BE–47, Foreign Contract Operations of U.S. Construction, Engineering, Architectural, and Related Consulting and Technical Services Firms:

(i) *Who must report.* A BE–47 report is required from U.S. persons that provide construction, engineering, architectural, and related consulting and technical services on a contract or other basis to unaffiliated foreign persons. Firms that perform these services on their own account, rather than under contract, do not have to report.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if gross income or operating revenue from covered foreign contract operations is less than $1,000,000 in the reporting period.

(4) BE–48, Reinsurance Transactions with Insurance Companies Resident Abroad:

(i) *Who must report.* A BE–48 report is required from U.S. insurance companies that had reinsurance transactions with foreign persons, whether affiliated or unaffiliated.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if reinsurance premium receipts, reinsurance premium payments, and reinsurance losses are each less than $1,000,000 in the reporting period. If any one of these items is $1,000,000 or more in the reporting period, a report must be filed.

(5) BE–93, International Transactions in Royalties, Licensing Fees, Film Rentals, Management Fees, etc., With Unaffiliated Foreign Persons:

(i) *Who must report.* A BE–93 report is required from U.S. persons who have entered into agreements with unaffiliated persons, or governments, of foreign countries to buy, sell or use intangible assets or proprietary rights, including licensing of movie and TV film and tape. Oil royalties and natural resources (mining) royalties are not reportable.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total covered receipts and total covered payments are each less than $500,000 in the reporting period. If either total covered receipts or total covered payments are $500,000 or more in the reporting period, a report must be filed.

(c) *Quarterly surveys.* (1) BE–30, Ocean Freight Revenues and Foreign Expenses of United States Carriers:

(i) *Who must report.* A BE–30 report is required from U.S. carriers, i.e., from U.S. persons that own or operate dry cargo, passenger (including combination), and tanker vessels regardless of whether the vessels are registered in the United States or in foreign countries. Operators are persons who enter into any form of transportation contract with shippers of merchandise (or their agents) for the transportation of freight and cargo between U.S. and foreign ports or between foreign ports, whether on the operators' own vessels or chartered vessels.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues on outbound, cross-trade, and inbound cargoes and charter hire received) and total annual covered expenses (i.e., charter hire paid and expenses in foreign countries) are, or are expected to be, each less than $500,000. If either total annual covered revenues or total annual covered expenses are, or are expected to be, $500,000 or more, a report must be filed.

(2) BE–37, U.S. Airline Operators' Foreign Revenues and Expenses:

(i) *Who must report.* A BE–37 report is required from all U.S. airline operators engaged in transportation of passengers and freight to and from the United States or between foreign points.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues from carrying U.S. export freight to foreign countries) and total annual covered expenses (i.e., expenses incurred outside the United States and aircraft leasing expenses) are, or are expected to be, each less than $500,000. If either total annual covered revenues or total annual covered expenses are, or are expected to be, $500,000 or more, a report must be filed.

PARTS 802 AND 803—[REMOVED]

2. Parts 802 and 803 are removed.

[FR Doc. 86–4853 Filed 3–5–86; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Electric Utilities; Construction Work in Progress and Anticompetitive Implications; Interim Rule and Request for Comment

Issued February 28, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Adopting Interim Rule and Requesting Comment Concerning Construction Work in Progress and Anticompetitive Implications.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting interim regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities, under Part II of the Federal Power Act. The Commission is simultaneously soliciting comments on the anticompetitive implications of CWIP in rate base, which concerned the United States Court of Appeals for the District of Columbia Circuit in its recent decision affirming in part but vacating in part the Commission's prior CWIP rule. *Mid-Texas Electric Cooperative, Inc., et al. v. FERC,* 773 F.2d 327 (1985). This action is designed to prescribe an interim treatment of CWIP filings, while initiating an expeditious process for assessing and minimizing the potential anticompetitive effects cited by the court. During the interim period, the Commission will consider requests for CWIP in rate base pursuant to the interim rule, which provides new interim safeguards for cases in which CWIP-related anticompetitive implications arise.

DATES: Effective date: February 27, 1986; initial comments: May 5, 1986; reply comments: June 4, 1986

ADDRESS: Comments should be filed with: Federal Energy Regulatory Commission, The Office of the Secretary, Room 3110, 825 N. Capitol St., NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Daniel L. Larcamp, Federal Energy Regulatory Commission, Room 8006–A, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8520.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is promulgating interim regulations concerning construction work in progress (CWIP) for public utilities by recodifying, with certain modifications, § 35.26 (construction work in progress), and by adopting in their present form §§ 35.13(h) (7), (13), and (38), all or portions of which were recently vacated by the United States Court of Appeals for the District of Columbia Circuit.[1] Pending final action in this rulemaking, the Commission intends to consider individual requests for CWIP in rate base pursuant to the interim rule which is published herein and discussed in Section III below.[2] In addition, in Section IV of this preamble, the Commission discusses and requests specific comments concerning the implications of "price squeeze" [3] and "double whammy" [4] in considering filings that include CWIP-related amounts.

The interim rule does not change the substance of the general provisions of the Commission's former CWIP rule under which public utilities could seek to include in rate base, in addition to pollution control and fuel coversion CWIP, up to 50% of all remaining CWIP. After reviewing the *Mid-Tex* decision, the Commission continues to believe that the principal reasons for departing from prior practice and adopting the present approach to CWIP remain sound.[5] However, it is apparent that the Commission must give further consideration to issues involving potential anticompetitive concerns, specifically price squeeze and double whammy. Thus, the Commission is specifying interim procedures regarding the treatment of price squeeze and double whammy issues in individual cases. The Commission believes that such interim procedures should largely mitigate any potential short-term harm to consumers while the Commission further considers the complex issues raised on remand.

The Commission wishes to make clear that, although it is in large measure repromulgating the rule addressed by the court in *Mid-Tex* and specifically implementing an interim approach to related price squeeze and double whammy issues, interested parties may suggest alternative mechanisms for dealing with price squeeze and double whammy matters. While the Commission intends to make appropriate use of the record underlying the prior CWIP rulemaking (Order No. 298), [6] the Commission assumes that parties may seek to demonstrate that the relevant conditions, particularly regarding price squeeze and double whammy, have changed since the close of the record in that proceeding. Therefore, parties will be permitted an opportunity to supplement comments submitted in the prior proceeding, if they so desire.

As discussed below, however, it is not the Commission's present intention to revisit the fundamental policy issues underlying the decision to permit some CWIP in rate base, except where circumstances clearly dictate. Rather, the Commission intends to use this proceeding as a vehicle to give further consideration to the particular anticompetitive concerns expressed by the *Mid-Tex* court. The Commission's tentative opinion is that if adequate procedures can be developed to handle individual instances of CWIP-related price squeeze and double whammy, the balance will continue to tip in favor of a rule permitting utilities to file rates which include CWIP in rate base. The Commission reaches this tentative conclusion based on the general objectives previously stated for the decision to permit CWIP in rate base, which were accepted by the *Mid-Tex* court, but for its concerns with anticompetitive implications.

II. Background

A. Order No. 555

Prior to Order Nos. 555 and 555–A,[7] the policy of this Commission's predecessor, the Federal Power Commission, was to prohibit the inclusion of any CWIP in rate base,[8] even though the Commission had the discretion to consider the justness and reasonableness of a rate supported by the inclusion of CWIP in rate base on a case-by-case basis.

In Docket No. RM75–13,[9] the Commission proposed a change in its policy of prohibiting any CWIP in rate base "primarily to help alleviate the current financing problems being experienced by utility companies."[10] In

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[1] *Mid-Tex Electric Cooperative, Inc., et al. v. FERC,* 773 F.2d 327 (D.C. Cir. 1985) (hereinafter referred to as *Mid-Tex.*)

[2] As discussed below, the Commission in the interim rule is reinstating the filing requirements previously in effect, while providing for further evaluation of the topics of concern to the *Mid-Tex* court. Section 35.26(g) of the interim rule sets forth additional procedures which will be followed in cases where CWIP is requested and where CWIP-related anticompetitive effects are alleged.

[3] A "price squeeze" occurs when a utility which sells at both wholesale and retail price discriminates against its wholesale customer creating the potential for an anticompetitive effect because the wholesale customer is inhibited in its ability to compete at the retail level against the wholesale supplier. Price discrimination is a difference in price not justified by a difference in costs. *See generally FPC v. Conway Corp.,* 426 U.S. 271 (1976).

[4] "Double whammy," as defined in the accompanying rule, is a situation which may arise when a wholesale electric rate customer embarks upon or participates in a construction program of its own to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level. It is argued that this is anticompetitive because it would cause the wholesale customer to essentially subsidize its competitor, since the responsible customer would shoulder less of the CWIP burden as a result. As suggested in Order No. 298, 48 FR 24323, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,496 (1983), the Commission anticipates that double whammy implications will arise principally, if not entirely, in the case of requirements rates as opposed to coordination rates, although comment on this assumption or the definition generally will be entertained.

[5] *See* 773 F.2d at 344.

[6] Order No. 298, 48 FR 24323, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 (1983). The Commission does not believe that it will be productive to recreate the entire record where circumstances have not materially changed. Therefore, as discussed *infra* in Section VII, the Commission is incorporating by reference into this docket the record in the underlying Docket No. RM81–38, as well as the record in the pending Notice of Inquiry proceedings in Docket No. RM85–17 (Phases I and II).

[7] 41 FR 51,392, 56 FPC 2939 (1976), and 42 FR 3022, 57 FPC 6 (1977).

[8] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591 (1944); *Georgia Power Co.,* 54 FPC 456 (1975); *Philadelphia Electric Co.,* 54 FPC 1394 (1975).

[9] 39 FR 40787 (1974).

[10] *Id.*

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Order No. 555 the Commission modified its prior CWIP policy and agreed to consider requests for CWIP in rate base in three instances:

(1) Where the construction involved facilities to be used for pollution control;

(2) Where the construction involved conversion of facilities to the burning of other fossil fuels which previously burned oil or gas; and

(3) Where the utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers.

As to pollution control and fuel conversion CWIP, the Commission determined that, because of the current generation's commitment to the control of pollution and to preserve existing stocks of natural resources, it was proper to allow CWIP for these types of facilities. Order No. 555 permitted pollution control and fuel conversion CWIP to be reflected in rates at the same time the non-CWIP portion of a requested rate became effective.

With respect to CWIP requests concerning severe financial distress, the Commission noted that it would permit such CWIP only where "the rate of return necessary to enable the utility to maintain its credit and attract capital in accordance with the standards of the *Bluefield* decision would be materially in excess of the cost of capital for otherwise similar utilities."[11] The Commission determined that under these circumstances it would be to the benefit of the consumer if the additional earnings necessary to attract capital were permitted by way of an immediate return on CWIP, rather than by way of an inflated return on rate base (excluding the CWIP), since the CWIP treatment would eventually be reflected in a lower rate base, while the rate of return treatment would not. However, the Commission decided to permit CWIP claimed under the severe financial distress test only after a final Commission determination on rehearing that financial circumstances justified such inclusion.[12]

During the six and one-half years that Order No. 555 remained in effect, over 275 CWIP rate increase applications were filed with the Commission. However, given the stringency of the severe financial distress threshold, only thirteen utilities attempted to meet this test; the Commission has not granted CWIP to any company under that very stringent test.[13]

B. Order No. 298

In Docket No. RM81–38, the Commission again considered its policy with respect to requests for CWIP in rate base. Ultimately, the Commission issued Order Nos. 298 and 298–A,[14] which modified the Commission's basic policy with respect to CWIP. Order No. 298 continued to permit electric utilities to file rates which included pollution control and fuel conversion CWIP in rate base. However, Order No. 298 discarded the prospective-only rule and the severe financial distress test, permitting electric utilities to file and attempt to support rates which, in addition to including pollution control and fuel conversion CWIP, also included up to 50% of all remaining CWIP in rate base.[15]

In Order No. 298, the Commission stated that including CWIP in rate base would advance three public interest objectives:

(1) Mitigation of any bias against the construction of new generating facilities;

(2) Providing for electric rates to more accurately reflect the costs of future service, allowing the need for new facilities to be tested, so far as possible, by the marketplace; and

(3) Furthering the goal of rate stability by providing for more gradual increases in electric rates to consumers.[16]

With respect to the first objective—mitigating bias against capital investment—the Commission concluded that economic regulation biases utility decisions concerning the construction of new generation facilities in two ways. First, economic regulation creates a bias against the creation of new capacity. Second, to the extent that new capacity is built, economic regulation creates a bias in favor of minimizing capital costs, rather than minimizing total economic costs. These regulatory biases have two sources: Utilities' inability to earn a return equal to their cost of capital; and a cash flow problem created by the high cost of new base load plant in relation to present rate base.[17]

The Commission concluded that inclusion of CWIP in rate base would reduce but not completely eliminate the first source of bias. As to the second source of bias, the Commission concluded that there were two ways to address this problem. The Commission could either increase the allowed rate of return to produce higher earnings or allow an immediate return on construction investments by including CWIP in rate base. The Commission elected to permit CWIP in rate base since this action would decrease future rate base, and, thus, lower futures rates, while increasing the allowed rate of return would not be matched by similar future reductions.[18]

The second public interest objective—ensuring more accurate price signals—was desirable in order to permit the need for new capacity to be tested, so far as possible, by the marketplace. The Commission noted that utilities build new capacity, in part, based upon estimates of future demands, and that these estimates had become more difficult for three reasons. First, the assumption that demand will grow faster than the economy may no longer be valid. Second, the increased length of time between the beginning and the completion of new capacity requires demand projections farther into the future. The third reason was the difference between the price of

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[11] 41 FR 51306, 56 FPC 2946 (1976).

[12] The Commission granted one waiver from the prospective-only requirement in *Montaup Electric Co.*, Docket No. ER82–325–000, 19 FERC 61,082 (1982). In that case, the Commission held that the particular facts and circumstances warranted an exception to the Commission's general rule. A CWIP surcharge was suspended for one day and permitted to go into effect subject to refund. The case is awaiting Commission action on appeal of the initial decision where the ALJ disapproved the CWIP surcharge. 28 FERC ¶ 63,015 at 65,046.

[13] Seven of these cases were settled before an initial decision was rendered. One case, *Public Service Company of New Hampshire*, Docket Nos. EL78–15 and ER78–339 (Phase I), was settled after an initial decision was rendered (the settlement agreement provided that the Phase I proceedings, which concerned CWIP and rate of return issues, would not be terminated before rates that included the Seabrook No. 1 generating plant in rate base went into effect, and that the company could move to reopen Phase I in the event it needed emergency wholesale rate increases). The case is pending on appeal of an initial decision which would terminate Phase I. 31 FERC ¶ 63,054 (1985). Four cases resulted in Commission opinions denying the requested CWIP, and one consolidated case (*Montaup Electric Company*, Docket Nos. ER81–749–000 and ER82–325–000) is pending before the Commission on appeal of the initial decision.

[14] 48 FR 24323, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 (1983), and 48 FR 46012, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,500 (1983).

[15] The 50% cap on non-pollution control and non-fuel conversion CWIP was subject until July 1, 1985, to the further limitation that any increase in the utility's wholesale revenues directly attributable to such CWIP could not exceed 6% of the utility's wholesale revenues under the rate schedules to be superseded. *See* 18 CFR 35.26(d) (1985).

[16] 48 FR 24329, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,497 (1983). The *Mid-Tex* court accepted the first two objectives as valid regulatory objectives. It also noted that the Federal Power Act gives the Commission discretion to give at least some weight to the third objective. 773 F.2d at 345.

[17] 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,498 (1983).

[18] 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,498–30,499 (1983).

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electricity at the time that demand estimates are made and the price at which electricity must be sold when the new capacity comes on line.[19]

The Commission recognized that it could only have an impact on the third cause since the first two causes were not within its regulatory reach. As to the third cause, the Commission determined that since the addition of new facilities is likely to mean higher prices rather than lower ones, CWIP-based rates would provide a more accurate picture of the trends in power costs and, therefore, including CWIP in rate base would tend to lead to more efficient investment decisions by utilities.[20]

The third public interest objective discussed in Order No. 298—rate stability—is closely related to the second objective. The Commission determined that "[r]atepayers should not face rates that fluctuate radically according to the completion of base load units. . . . Moreover, as large central station generation plants presently under construction are completed over the next few years, the Commission anticipates that the rate shock phenomenon will continue. By revising its CWIP policy, the Commission is attempting to minimize this problem, to the extent possible." [21]

As of December 1, 1985, twenty-six utilities had filed forty applications in which CWIP was requested in rate base pursuant to the Commission's Order No. 298 rule. As of December 1, 1985, twenty-four of these cases have been settled, four have been accepted for filing, one was withdrawn, eight are in litigation, one is awaiting initial decision, and two are awaiting Commission decision on appeal from the initial decisions. As discussed below, price squeeze was raised as an issue in twenty-six of these cases and double whammy was alleged in one.

C. The Mid-Tex Remand

On September 24, 1985, the court issued its opinion in *Mid-Tex* which vacated and remanded certain portions of Order No. 298. The court's mandate was issued on November 18, 1985.

The *Mid-Tex* court found that the Commission's stated purposes in adopting Order No. 298 were valid and affirmed the Commission's conclusion that CWIP in rate base would help achieve those purposes. 773 F.2d at 362. However, the court determined that the Commission had not adequately considered whether and to what extent the purposes of the rule outweigh the regulatory objective of promoting competition, in the context of potential price squeeze and double whammy effects.

Therefore, the court vacated those portions of Order No. 298 related to the following decisions: (1) The decision to allow CWIP in rate base; (2) the choice of a 50% CWIP allowance; (3) the rejection of a CWIP rule that tracks the regulatory policies of the several states; (4) the decision to resolve CWIP-related price squeeze issues only on a case-by-case basis; (5) the decision to resolve CWIP-related double whammy issues only on a case-by-case basis; and (6) the decision to allow CWIP in rate base subject to refund.

The Commission believes it is significant that the *Mid-Tex* court ratified in large measure the Commission's rationale for departing from its earlier CWIP policy and did not specifically reinstate the Commission's prior rule under Order No. 555. Clearly, the thrust of the court's concern, while significant, was relatively narrow. Given this posture, the Commission does not consider it appropriate to revert generically to the superseded CWIP approach of former Order No. 555 on a temporary basis.[22]

The Commission intends to thoroughly consider the anticompetitive concerns expressed by the *Mid-Tex* court. However, absent a significant demonstration that the circumstances and assumptions relied upon by the Commission have substantially changed, the Commission intends to focus primarily on the effect which the rule may have in cases where price squeeze and/or double whammy considerations are present rather than on the underlying policy decision to permit CWIP in rate base. There are two principal reasons for this approach. First, the *Mid-Tex* court accepted major portions of the Commission's rationale for adopting its prior CWIP rule. Second, while the Commission recognizes that some pertinent conditions may have changed since Order No. 298 was issued on May 16, 1983, the Commission is not at this point persuaded that such changes alone will result in a "regulatory setting within which the utility industry can supply the nation's needs for electricity at the lowest reasonable cost,"[23] absent a rule which permits electric utilities to file rates which include CWIP in rate base.

The Commission stresses that this conclusion is preliminary and will be evaluated in light of the comments received in this proceeding. The present intention is to reexamine the delicate balance between "the harm to utilities from delaying CWIP relief against the harm to wholesale customers from allowing CWIP subject to refund." 773 F.2d at 360. Until the Commission completes its reevaluation of the complex issues raised on remand by the *Mid-Tex* court, the Commission, as discussed below, is implementing interim procedures for dealing with price squeeze and double whammy issues.

III. Interim Procedures

A. Discussion

Because the Commission's evaluation of the matters remanded by the court may take some time to complete and since parties in both ongoing and prospective rate proceedings are uncertain[24] as to the proper procedures to be followed in cases where CWIP has been or will be requested, the Commission concludes that immediate guidance on both a policy and a procedural level is needed. Thus, the Commission is promulgating the interim rule, set forth herein, to be effective immediately.

The interim rule provides the filing requirements which must be followed in all future cases where a utility requests CWIP in rate base. These filing requirements, including those in §§ 35.13(h) (7), (13), and (38) (which are being adopted herein), are virtually identical to the requirements promulgated by Order No. 298. However, the requirements of vacated § 35.26 have been modified to delete the 6% initial CWIP limitation of § 35.26(d),

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[19] 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,498 (1983).

[20] 48 FR 24331, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,499 (1983).

[21] 48 FR 46019, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,500 at 30,726 (1983).

[22] The Commission in Order No. 298 consciously abandoned the prospective-only CWIP treatment of Order No. 555 and its severe financial difficulty standard as being contrary to sound regulatory goals. At this juncture, the Commission is of the view that it would be counterproductive, as a temporary measure to reinstate the Order No. 555 CWIP treatment. The Commission believes that the factual circumstances of this case are distinguishable from those in *Action on Smoking and Health v. CAB*, 713 F.2d 795 (D.C. Cir. 1983) and similar cases where complete vacation of a new rule was construed as effectively reinstating a prior rule. In any event, the Commission believes that its action in promulgating an interim rule which addresses the areas of concern to the court effectively moots this question.

[23] 48 FR 24329, III FERC Statutes and Regulations (Regulations Preambles) ¶30,455 at 30,497 (1983).

[24] The Commission notes that CWIP related motions have been filed in four pending cases since the *Mid-Tex* decision was issued. *Virginia Electric and Power Co.*, Docket No. ER85–400–000; *Montaup Electric Co.*, ER86–303–001; *Georgia Power Co.*, Docket No. ER85–659–001; and *Southwestern Public Service Co.*, Docket No. ER84–604–000. The Commission has acted on the motions in the first two cases.

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to add a section concerning anticompetitive procedures, and to define the term double whammy. The effect of the interim procedures to be implemented by the Commission is as follows.

On an interim basis, the Commission will not preclude a utility from seeking to include in rate base, in addition to pollution control and fuel conversion CWIP, up to 50% of all remaining CWIP. However, the Commission acknowledges the court's concern (773 F.2d at 356) regarding "regulatory" price squeeze and the Commission's past reluctance to remedy a price squeeze based solely on differences in isolated regulatory practices. Notwithstanding the Commission's ultimate resolution of the questions posed by the *Mid-Tex* court, the Commission wishes to clarify that on an *interim basis* it will attempt to identify such price squeezes in individual cases and to provide effective relief where warranted. The Commission further recognizes the court's concerns involving double whammy allegations, and will attempt to identify double whammy situations in individual cases and to provide a remedy where warranted.[25] Therefore, where the utility, on the basis of experience or advice communications, should reasonably anticipate CWIP-related price squeeze or double whammy objections by one or more of its customers, the Commission will require the utility to address these matters in its filing and to suggest measures to mitigate such concerns.

In order to allow the Commission to adequately assess double whammy implications, a rate applicant will be required to provide to the Commission in additon to its other materials supporting CWIP, a positive demonstration that the customer's demand was a significant factor in the utility's decision to build the facilities included as non-pollution control/fuel conversion CWIP, or other justification for assessing against the customer the particular allocated share of construction costs. This requirement will, on an interim basis, reverse the initial burden of going forward with evidence on this issue, which was of specific concern to the *Mid-Tex* court. (The court, 773 F.2d at 359, indicated that Order No. 298 had shifted this burden to the wholesale customer without a reasoned basis for doing so.)

If, in its initial pleadings, an intervenor alleges price squeeze or double whammy as a direct result of the inclusion of CWIP in the proposed rates, and makes a concrete, substantial showing that it is likely to incur imminent irreparable harm if CWIP is allowed, then the Commission may consider preliminary relief at the suspension order stage. Depending on the type of showing made by an intervenor, including the likelihood, the immediacy, and the severity of any anticompetitive harm, the Commission may consider a variety of options which include, but are not limited to, suspension of the entire rate increase or the CWIP-related portion for up to five months or allowance of non-pollution control or non-fuel conversion CWIP prospectively only. In this regard, the Commission previously has recognized that, absent *extraordinary* circumstances, price squeeze allegations are not appropriately considered at the suspension stage of an individual rate proceeding.[26] The Commission continues to emphasize that intervenors will be expected to make a concrete demonstration that extraordinary relief is required from the inception. Another preliminary action the Commission might consider under unusual circumstances, depending on the type of initial showing made, is to modify the normal phasing of proceedings under *Arkansas Power & Light Co., supra* note 26. In any event, whether or not relief is granted at the suspension stage will not preclude further remedies later in the proceeding, if warranted.

For pending cases in which CWIP has been sought and CWIP-related price squeeze or double whammy allegations have been made, the parties presumably have already complied with this interim rule in substantial part. To the extent they have not, they will be allowed to submit any additional information necessary to implement the policy objectives of this interim procedure, in accordance with the directions of the presiding administrative law judges. Any participant who alleges that a price squeeze is causing imminent, irreparable harm will be allowed to submit evidence to show why the judge, in his or her discretion, should modify any existing price squeeze phase of the proceeding. Lastly, the policy regarding potential remedies as stated herein will be applied, to the extent practicable, to ongoing cases as well as new ones.

The Commission recognizes that situations may arise which may not be covered by the policies announced herein. Because the Commission cannot anticipate these in advance, much less attempt to decide in advance the appropriate procedure to be followed, the Commission will deal with unusual situations as they arise. In the interim, the Commission believes that the above policies and procedures may be applied to the majority of cases filed, and will provide a workable mechanism to review CWIP requests and CWIP-related anticompetitive allegations on an interim basis.

B. Questions Concerning Interim Procedures

Under the interim rule promulgated today utilities will be permitted to file and seek to support rates which include up to 50% of all non-pollution control and non-fuel conversion CWIP in rate base. As noted, the Commission's preliminary views are that the pertinent circumstances relied upon in Order No. 298 continue to justify the current recovery of a portion of a utility's costs of constructing needed generation and transmission capacity. Thus far, the Commission has no reason to believe that improvements in the financial markets generally have overtaken the earlier considerations. Similarly, the Commission believes that the balance struck between utility and consumer interests through application of the 50% ceiling is generally a fair and equitable result. Thus, the Commission focuses here on these assumptions as they relate to the specific area of price squeeze and double whammy implications. With this narrowed scope in mind, the Commission requests comments concerning:

1. Whether modification of the 50% figure in individual cases may be an appropriate "remedy" if the interim rule would otherwise result in price squeeze or double whammy, especially the former. If commenters believe the 50% cap should be modified, generically or on a case-by-case basis, they should suggest an alternative percentage (or a means of arriving at such a percentage in a given case), the relationship of such a percentage to the potential for mitigating instances of price squeeze or double whammy, and a detailed justification for that percentage.

2. Whether the procedures outlined in the interim rule, although at this time to be applied solely for interim purposes, would be adequate for dealing with any anticompetitive effects that may occur as a result of a utility requesting CWIP. If so, whether those procedures should be incorporated in a final rule or implementated on a case-by-case basis.

The Commission is confronted with a time problem at the suspension stage of a proceeding in reviewing an intervenor's allegation that price squeeze or double whammy will result from the inclusion of CWIP in rate base, since the Commission must normally decide within 60 days of filing whether and for how long to suspend the filing. Therefore, the interim rule requires the utility, if it reasonably anticipates, on the basis of experience or advance communication that price squeeze or double whammy objections will be made by one or more customers, to address these matters in its filing and suggest measures to mitigate such concerns. In addition, where double whammy objections are expected, the utility is required by the interim rule to provide a positive demonstration that the customer's demand was a significant factor in the utility's decision to build the facilities included as allocable CWIP or other justification from assessing against the customers the particular allocated share of construction financing costs. This requirement, on an interim basis, reverses the initial burden of going forward with evidence on this issue which was originally placed on the wholesale customer. *See* 773 F.2d at 359. The Commission seeks comments concerning:

3. Whether the double whammy procedures in the interim rule would adequately address the issue if retained in a permanent rule and, in particular, whether the initial burden of going forward should or must remain with the utility on the double whammy issue.

The interim rule also requires an intervenor alleging price squeeze or double whammy as a direct result of the inclusion of CWIP in the proposed rates to make a concrete, substantial showing that it is likely to incur imminent, irreparable harm if CWIP is allowed in the rates subject to refund in order for the Commission to consider preliminary relief at the suspension stage. Depending on the showing made, the Commission may consider a variety of options. It is important to reiterate that the Commission has observed in a variety of contexts that price squeeze allegations are often raised in initial pleadings although they are frequently abandoned as the proceeding develops. Without speculating as to the scope of motives for this pleading pattern, the Commission remains reluctant to implement any procedure that will encourage unfounded or otherwise inappropriate price squeeze or double whammy allegations. Further, as noted, the Commission will typically have very little time in which to undertake a complete evaluation of the claims that are raised. Thus, it is the intent of the Commission to consider preliminary action in response to anticompetitive allegations only in truly extraordinary circumstances, where refund protection will not suffice. Without attempting to define the precise parameters of such circumstances, it is anticipated that the procedure will, in some senses, resemble a request for preliminary injunctive relief.

The Commission seeks comments concerning:

4. Whether this case-by-case procedure is an adequate response to allegations of CWIP-related price squeeze or double whammy.

5. Whether the imminent, irreparable harm standard is reasonable or some lesser standard is both desirable and feasible to implement.

6. Whether utilities, in all instances, should be required when filing rates which include CWIP to provide certain data in order to permit intervenors a more meaningful opportunity to demonstrate imminent, irreparable harm (or to meet some other standard) at the suspension stage, and, if so, what data should be required and why. Please quantify the additional filing burden that this would impose.

7. Whether additional remedies not set forth in the interim rule should be considered and, if so, what they are and what is the basis for the Commission's legal authority to implement them.

IV. Request for Additional Comments on Anticompetitive Effects

A. Price Squeeze

In *FPC v. Conway Corp.*, 426 U.S. 271, 279 (1976), the Court directed the Commission, in arriving at a rate level deemed to be just and reasonable in a particular case, to consider allegations that the proposed rates are discriminatory and anticompetitive in effect. In order to implement compliance with *Conway*, and to expedite consideration of price squeeze issues in wholesale rate proceedings, the Commission on July 29, 1976, issued a notice of proposed statement of policy in Docket No. RM76–29, 41 *FR* 32910.[27]

On March 21, 1977, the Commission issued Order No. 563 which promulgated § 2.17 of the Commission's General Policy and Interpretations and terminated Docket No. RM–76–29.[28] Section 2.17 provides the general procedures to be followed in raising price squeeze issues in wholesale rate proceedings "unless they are demonstrated in an individual case to be inadequate." Section 2.17 requires the intervening customer or other interested person alleging price squeeze to support its allegation by a *prima facie* case, and establishes procedures to be followed where a price squeeze allegation is made. Section 2.17(e) provides:

> The burden of proof (*i.e.*, the risk of nonpersuasion) to rebut the allegations of price squeeze and to justify the proposed rates are on the utility proposing the rates under section 205(e) of the Federal Power Act.[29]

The Commission is permitted by section 205(e) of the Federal Power Act to suspend the effectiveness of proposed rates for up to five months.[30] If the Commission has not concluded its review of such rate filing at the expiration of the suspension period, the Commission may require the utility to collect the new rates subject to refund. Section 205(e) of the EPA also specifies that the public utility proposing an increased rate bears "the burden of proof to show that the increased rate . . . is just and reasonable. . . ."

In filings where price squeeze is alleged, the Commission phases the case, absent a demonstration that such procedure is inadequate in the case.[31] In the first phase, the Commission determines a preliminary just and reasonable rate without regard to the price squeeze allegation. If, after the preliminary just and reasonable rate is determined, the party alleging price squeeze wishes to continue with its allegation, a second phase of the proceeding may be convened to

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[25] Cases involving CWIP-related double whammy allegations do not appear to be numerous. Out of forty cases filed under the Order No. 298 rule, as of December 1, 1985, only one appears to involve allegations of double whammy. *See Georgia Power Company*, Docket No. ER85–659.

[26] *See, e.g., Virginia Electric and Power Co.*, 28 FERC ¶ 61,113 (1984), in which the Commission stated that, under typical circumstances, consideration of unproved price squeeze allegations at the suspension stage, absent extraordinary circumstances, is inappropriate. This policy has been based on several considerations, including the fact that price squeeze allegations are often raised in a very generalized fashion and not ultimately supported (*Virginia Electric and Power Co.*, 14 FERC ¶ 61,224 (1981)), and the fact that the Commission historically has focused on the just and reasonable, but for price squeeze, rate in evaluating the existence of price discrimination (see policy announced in *Arkansas Power and Light Co.*, 8 FERC ¶ 61,131 (1979), under which the Commission bifurcates proceedings in which price squeeze is alleged so that the first phase deals with cost of service, capitalization, and rate of return issues and, if the price squeeze then persists in the view of the alleging party, a second phase of the proceeding may follow).

[27] The Commission issued a notice of amendment of proposed statement of policy to include a rulemaking in Docket No. RM76–29, on November 8, 1976, 41 *FR* 50278.

[28] Order No. 563, 42 *FR* 16131, 57 FPC 1743 (1977).

[29] In Order No. 563–A, *Order Denying Rehearing*, 42 *FR* 27574, 58 FPC 1783, 1784, (1977), the Commission clarified that there would be no allegations to rebut, and, therefore, no shifting of the burden of proof unless a *prima facie* case had been established.

[30] *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), discusses the factors the Commission generally considers in determining the length of the suspension period.

[31] *See Arkansas Power and Light Co., supra* n. 28 at p. 18.

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investigate the price squeeze allegations.

The interim CWIP rule does not seek to shift the burden of proof from the utility seeking a rate change to other parties. Rather, the interim rule merely permits a utility to *file* rates which include, in addition to CWIP related to pollution control and fuel conversion facilities, up to 50% of the remaining CWIP in rate base, and to support the filed rate through appropriate evidence.

The Commission seeks comments concerning:

8. Whether the foreseeable price squeeze effects of the 50% CWIP rule can be quantified in any reliable way or whether they are, as the Commission suggested in Order No. 298, so case-specific in nature and degree as to effectively compel a case-by-case analysis.

One type of price squeeze which has been characterized as "regulatory" price squeeze, is particularly troublesome to the Commission. The Commission position on this issue was succinctly stated in Order No. 298:

> The Commission must exercise independent judgment in all matters assigned to it by statute. By deferring to the disparate CWIP policies of the states, the Commission might be viewed as having abdicated its responsibility. The significance and impact of deference to state policy would vary dramatically from state to state.[32]

As a result, in Order No. 298, the Commission continued "our stated policy not to remedy a price squeeze if it is due solely to state regulatory action or inaction." [33] The Commission remains concerned that it is difficult to generically isolate what might be referred to as a "CWIP-related" price squeeze, given the wide variations in regulatory treatment of numerous ratemaking issues among the States. Indeed, without considering *all* ratemaking disparities as between this Commission and a particular State commission, it may be impossible to measure the net effect of a differing treatment of CWIP. Nonetheless, the Commission, on an interim basis, will exert its best efforts to identify "regulatory" price squeeze situations in individual cases and to remedy them where appropriate. To do so, we must depend heavily on information supplied both by the filing utility and its affected customers.

The Commission seeks comments concerning:

9. The implications, particularly for purposes of financial indices and implementation of Federal policy objectives, of a shift to a practice of remedying price squeezes that are attributable solely to a State commission's failure to allow the utility CWIP in rate base or the State commission's failure to allow as much CWIP as this Commision permits utilities subject to its jurisdiction to file for in proposed rates.[34]

10. Whether the disparities between Federal and State regulation tend to balance out so that the rate treatment of one issue, such as CWIP, is not likely to offset the rate effects of all other rules dealing with other regulatory issues.

The Commission is particularly interested in comments from the State commissions on the issue of "regulatory" price squeeze associated with the Commission's policy on CWIP.

As discussed above, the *Mid-Tex* court accepted the first two purposes which the Commission announced as the justification for adopting the rule in Order No. 298: Mitigating bias against capital investment and ensuring more accurate price signals. 773 F.2d at 344. The Commission seeks comments (particularly from the investment community on questions 11 and 12) concerning:

11. What impact, if any, would a Commission policy of remedying "regulatory" price squeeze associated with CWIP have regarding capital investment in the electric utility industry?

12. Whether such a policy would be likely to increase utilities' cost of capital and, if so, by how much and for how long.

13. How would such a policy affect the accuracy of price signals sent to consumers?

14. If the Commission determines (beyond the interim period) that the public interest requires it to remedy a "CWIP-related regulatory price squeeze,"[35] what ultimate remedies should the Commission consider?

B. Double Whammy

Double whammy is a special type of anticompetitive effect which may result if a wholesale customer embarks on a construction program, either under its direct management or through participation with others in a joint venture, and simultaneously pays rates which include CWIP to its current supplier. The wholesale customer pays rates including CWIP based on the assumption that it will continue its current level of service over the anticipated service lives of the facilities for which the CWIP is requested. If its level or length of service is less than that represented by the proposed allocation of CWIP, it may subsidize other customers, which may create a competitive disadvantage. On the other hand, if the customer's level or length of service is greater than that represented by the proposed allocation of CWIP, the customer may be subsidized by other customers which may create competitive disadvantages for those customers.

This is clearly a significant issue. However, it bears repeating that allegations of double whammy have not been common. Out of all the CWIP rate applications filed under Order No. 298, it appears that only one has involved a double whammy claim.[36]

From the Commission's experience to date, it appears that most utilities requesting CWIP allocate the CWIP on the same basis that they allocate other rate base items, *i.e.*, ratios reflecting expected test period service levels. With respect to existing wholesale customers, the test period allocation ratios may not exactly reflect the anticipated changes in the wholesale customer's and system loads that will actually occur during the period the facilities for which CWIP is requested are expected to be in service. For that reason, the Commission is considering requiring a utility to employ forward looking allocation ratios to allocate CWIP in those cases where a customer establishes that its own construction program will make it increasingly independent of its current supplier.[37] By using forward looking allocation ratios, which presumably would better reflect the wholesale customer's demand on the utility when the facilities for which CWIP is requested will be in service, any anticompetitive potential may be

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[32] 48 *FR* 24348, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,527.

[33] 48 *FR* 24348, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,541, n. 97.

[34] It appears that only eleven States completely disallow the inclusion of any CWIP in rate base for investor owned utilites. *See* Salomon Brothers, Inc., Stock Research, Electric Utility Regulation—Semiannual Review, pp. 10–19, August 8, 1985.

[35] According to Commission records, by December 1, 1985, 40 cases had been filed under Order No. 298 where non-pollution control and non-fuel conversion CWIP was requested. Price squeeze was alleged in 26 of those cases. Settlement was reached in 20 of the 26 cases where price squeeze was alleged. In 18 of the settled cases, the State regulatory authority, according to Solomon Brother (see n. 34, supra), allowed at least some CWIP in rate base.

[36] *Georgia Power Company*, Docket No. ER85-659.

[37] Forward looking ratios would be based on projections or estimates which look beyond the test year. This practice may better reflect a customer's anticipated relative use of the facility for which CWIP is requested.

avoided or substantially mitigated. The Commission seeks comments concerning:

15. What type of showing, if any, the customer should be required to make before the utility would be required to allocate CWIP based on forward looking allocation ratios. The Commission at this time believes that before the utility should be required to use forward looking ratios, there should be a probability, rather than a mere possibility, that a customer's construction program will result in reductions in future service affecting the need for the facilities for which CWIP is requested.

Forward looking ratios must be based on projected data. A requirement that utilities use forward looking allocation ratios might create additional burdens on rate case participants. Also, the accuracy of such data might be suspect, particularly the farther into future the utility must project. The Commission seeks comments concerning:

16. Would such a requirement be burdensome to rate case participants and, if so, can the extent of such burden be quantified?

17. If forward looking allocations are required by the Commission in cases involving the probability of double whammy, how far forward should the allocation ratios cover? How far ahead can the Commission expect reasonable accuracy in such projections?

The Commission believes that a better understanding concerning how utilities and their wholesale customers view a utility's "obligation to serve" [38] under the Federal Power Act may be of assistance in deciding how to deal with allegations of double whammy resulting from proposed rates which include CWIP:

18. Should a wholesale customer be permitted to waive any right to future service from its supplying utility and thereby avoid paying CWIP in rates, and, if so, how procedurally should such a waiver be accomplished?

19. How does a utility's obligation to serve differ, if any, when the customer is a full requirements customer; a partial requirements customer; a coordination customer?

20. Does a utility's legal or practical obligation to serve impede competition in the electric utility industry? If so, how is competition impeded?

V. Administrative Findings and Effective Date

The Commission is, by this order, adopting a final rule prior to providing notice and obtaining written comment, as required generally by the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c) (1982), for any rulemaking proceeding.[39] The Commission is invoking exceptions to this requirement for very special reasons relating to the limited nature of this rulemaking. This proceeding is designed to establish general rules that (1) outline what amount of construction work in progress the Commission will consider for inclusion in any public utility's rate base, and (2) specify the information that a utility must file in support of its application for CWIP in rate base. However, the rule adopted here is intended to be in effect for an interim period, while the Commission studies the issues relating to certain potential anticompetitive effects of the rule that formed the basis for the court's remand in the *Mid-Tex* decision. The Commission is initiating a public comment process to consider the issues presented by the court and outlined in this preamble. Second, the fundamental approach to including CWIP in rate base has been investigated by the Commission in an extensive prior proceeding. The *Mid-Tex* court recognized, in substantial measure, not only the legitimacy of the Commission's objectives but the support that it had for its methods of accomplishing those objectives. To a considerable degree, therefore, the interim rule is already supported by a broad and substantial record. Third, the Commission is making a special effort in new § 35.26(g) to minimize or eliminate any possibility of price squeeze or double whammy—the focal concerns of the *Mid-Tex* court—while the interim rule is in effect. Finally, the Commission believes that a binding rule is required to ensure rational administration of the CWIP applications in electric rate cases while it addresses itself to the court's concerns. Recognizing that it has other alternatives such as refusal to consider CWIP in rate base for the interim or consideration of CWIP on an ad hoc adjudicatory basis, the Commission prefers an interim rule that allows utilities to apply for CWIP in rates subject to specific limitations and in accordance with detailed filing requirements. Such limitations represent a concrete advantage both from the perspective of the utility and its customers.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment. Pending and imminent rate applications will present the CWIP issue for Commission consideration, in suspension and final rate orders as well as in the initial decisions of administrative law judges, well before the Commission can complete the public procedures and subsequent analysis desired by the court. The public interest is best served in this instance by the promulgation of a clear generic CWIP policy that will be administered in the interim consistent with the court's concerns about the potential anticompetitive effects of including CWIP in wholesale rates. It would therefore be impracticable, in light of pending cases, and contrary to the public interest in having a clear and identifiable CWIP rule, to delay readoption of any generic rule or policy until completion of all notice and comment procedures. 5 U.S.C. 553(b)(1982).

In addition, the Commission finds good cause to make this rule effective immediately, without a 30 day delay that is generally required to allow those directly affected to adjust to a new regulation. 5 U.S.C. 553(d) (1982). In this instance, a Commission CWIP approach similar to that adopted in this order has been administered in wholesale electric rate cases for nearly three years, following an extensive notice and comment rulemaking procedure. To provide clear guidance for CWIP-related rate cases that will continue to be filed, the Commission therefore believes that the public interest is further served in reestablishing its generic CWIP policies as soon as possible. The information collection requirements are subject to review and approval under the Paperwork Reduction Act, however.

VI. Paperwork Reduction Act

The information collection provisions in this Interim Rule and Request for Comment have been submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [40] and OMB's

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[38] In Order No. 298, the Commission touched briefly on the question of a utility's obligation to serve. *See* 48 FR 24,232, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,530, n.51

[39] With the exception of the anticompetitive procedures in § 35.26(g), the interim rule represents the same general approach, and will therefore have similar effects, as the rule adopted by Order No. 298. The Commission is therefore adopting its Order No. 298 certification under the Regulatory Flexibility Act, 5 U.S.C. 601–612, that the rule will not have a significant economic impact on a substantial number of small entities. *See* 48 FR 24,350, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,529–30,530. This determination was upheld by the *Mid-Tex* court. 773 F.2d at 343.

[40] 44 U.S.C. 3501–3520 (1982).

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regulations.[41] Once OMB approves the information collection provisions in 18 CFR Part 35, it will assign to them one or more control numbers. The Commission will in turn publish notice that it has received OMB approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Ellen Brown (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Public Comment Procedures

Interested parties are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should refer to Docket No. RM86–6–000, on the outside of the envelope and on all documents submitted to the Commission. To ensure proper consideration of their comments, it is essential that persons submitting comments identify specifically the question they are addressing.

As noted, the Commission is incorporating by reference into this docket the record in the underlying Docket No. RM81–38. The Commission also incorporates by reference the record in the Docket No. RM85–17 Notice of Inquiry proceedings,[42] particularly those comments concerning price squeeze and competition in the electric utility industry.[43] Any party may reference comments or portions of comments in Docket No. RM81–38, as well as in Docket No. RM85–17, to the extent deemed necessary. However, the Commission will require that persons referring to comments filed in Docket No. RM81–38 or Docket No. RM85–17 also file copies of the relevant portions of those comments in this docket in order to facilitate the Commission's review.

When persons submitting comments urge an approach different from the interim rule, a specific alternative provision with appropriate legal or empirical support should be submitted. Fourteen copies should be submitted with the original.

To facilitate the Commission's analysis, the Commission urges commenters to provide a 3–5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, provide a concise description identifying themselves, use the same numbering system as this preamble when answering questions, and indicate by "N/A" when they have not answered a question. Each answer should start at the beginning of a new page.

All comment received by the Commission by May 5, 1986, will be considered prior to the promulgation of a final rule. Reply comments received by the Commission by June 4, 1986, will be considered prior to the promulgation of a final rule. Reply comments should be so identified and conform to all requirements applicable to initial written comments. Copies of the written comments may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

List of Subjects in 18 CFR Part 35

Filing of rate schedules.

VIII. Commission Order

In consideration of the foregoing, the Commission, effective immediately:

A. Readopts § 35.13(h)(7), (h)(13), (h)(38), as they currently appear in Part 35, Chapter I, Title 18, Code of Federal Regulations; and

B. Amends Part 35, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 35—FILING OF RATE SCHEDULES

1. In Part 35, the authority citation continue to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order No. 12009,, 3 C.F.R. 142 (1978).

2. Section 35.26 is revised to read as follows:

§ 35.26 Construction work in progress.

(a) Applicability. This section applies to any rate sechedule filed under this part by any public utility as defined in subsection 201(e) of the Federal Power Act.

(b) *Definitions.* for purposes of this section

(1) "Construction work in progress" or "CWIP" means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of Part 101 of this chapter, the Uniform system of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Major and Nonmajor).

(2) "Pollution control facility" means an identifiable structure or portions of a structure that is designed to reduce the amount of pollution produced by the power plant, but does not include any facility that reduces pollution by substituting a different method of generation or that generates the additional power necessitated by the operation of a pollution control facility.

(3) "Fuel conversion facility" means any addition to public utility plant that enables a natural gas-burning plant to convert to the use of other fuels, or that enables an oil-burning plant to convert to the use of other fuels, other than natural gas. Such facilities include those that alter internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems and concomitant air pollution control facilities, and any facility needed for receiving and storing the fuel to which the plant is being converted, which facility would not be necessary if the plant continued to burn gas or oil.

(4) "Double whammy" means a situation which may arise, when a wholesale electric rate customer embarks upon or participates in a construction program of its own to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level.

(c) *General rule.* For purposes of any initial rate schedule or any rate schedule change filed under § 35.12 or § 35.13 of this part, a public utility may include in its rate base any costs of construction work in progress (CWIP), including allowance for funds used during construction (AFUDC), as provided in this section.

(1) *Pollution control facilities.* (i) Any CWIP for pollution control facilities allocable to electric power sales for resale may be included in the rate base of the public utility. (ii) In determining whether a facility is a pollution control facility for purpose of this section, the Commission will consider:

(A) Whether such facility is the type facility described in the Internal Revenue Service laws, 26 U.S.C. 169(d)(1), as follows: "a new identifiable treatment facility which is used. . . to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emmission of pollutions, contaminants, wastes or heat";

(B) Whether such facility has been certified by a local, state, or federal agency as being in conformity with, or required by, a program of pollution control;

(C) Whether such facility is the type facility described in the schedule of "Environmental Protection Facilities," sections 4(A) through 4(D), page 428, FERC Form No. 1, Anual Report of Electric Utilities, Licensees and Other (Major and Nonmajor) (Revised 12–85); and

(D) Other evidence showing that such facilities are for pollution control.

(2) *Fuel conversion facilities.* Any CWIP for fuel conversion facilites allocable to electric power sales for resale may be included in the rate base of public utility.

(3) *Other CWIP.* Not more than 50 percent of any CWIP allocable to electric power sales for resale not othewise included in rate base under paragraphs (c)(1) and (2) of this section, may be included in the rate base of the public utility.

(d) *Effective date.* If a public utility proposes in its filed rates to include CWIP in rate base under this section, that portion of the rate related to CWIP is collectable at the time the general rate becomes effective pursuant to Commission order, whether or not

subject to refund, except as provided in paragraph (g) below.

(e) *Discontinuance of AFUDC.* On the date that any proposed rate that includes CWIP in rate base becomes effective, the public utility must discontinue the capitalization of any AFUDC related to those amounts of CWIP in rate base.

(f) *Accounting Procedures.* At the time that a public utility files to include CWIP in rate base pursuant to this section, it must propose accounting procedures in that rate schedule filing that:

(1) Ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP proposed to be included in rate base; and

(2) Ensure that wholesale customers will not be charged for any corresponding AFUDC capitalized as a result of different accounting or ratemaking treatments accorded CWIP by state or local regulatory authorities.

(g) *Anticompetitive Procedures*

(1) If a utility requests CWIP pursuant to § 35.26(c)(3) and, on the basis of past experience or advance communication should reasonably anticipate that one or more of its wholesale customers may raise price squeeze or double whammy objections as a direct result of such CWIP, the utility must address these matters in its filing and suggest measures to mitigate such objections.

(2) If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the utility's request for CWIP pursuant to § 35.26(c)(3), and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission may consider preliminary relief at the suspension stage of the case pursuant to paragraph (5) of this section.

(3) If an intervenor in its initial pleading alleges that a double whammy will occur as a direct result of the utility's request for CWIP pursuant to § 35.26(c)(3), and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission may consider preliminary relief at the suspension stage of the case pursuant to paragraph (5) of this section.

(4) In order to request CWIP pursuant to § 35.26(c)(3), a utility must, in addition to any other requirements, also provide a positive demonstration that the wholesale customers' demands were a significant factor in the utility's decision to build the facilities for which such CWIP is requested or other justification for assessing the particular share of CWIP to such customers.

(5) Where an intervenor meets the requirements of paragraphs (g)(2) or (g)(3) of this section, the Commission, depending on the type of showing made including the likelihood, immediacy, and severity of any anticompetitive harm, may:

(i) Suspend the entire rate increases or the CWIP portion for up to five months;

(ii) Allow such CWIP only prospectively from the issuance of a final order on rehearing; or

(iii) Take such other action as is proper under the circumstances.

[FR Doc. 86–4788 Filed 3–5–86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 152

[T.D. 86–56]

Entry of Merchandise Imported From Countries Imposing Export Restrictions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Policy.

SUMMARY: In recent years, importers of merchandise from countries which impose minimum price requirements to obtain quota or permission to export have been importing such merchandise using documents procured from the government of the country of origin by means of fraud or false statements. The documents in question are usually "visaed invoices" (an invoice stamped with or otherwise recording export approval by an appropriate authority of the government of the country of origin), where the export approval was based on false (inflated or deflated) merchandise values supplied by the exporter and set forth on the invoice. The acceptance of these documents by Customs is inconsistent with the requirement, under the law and regulations, that the invoice set forth the purchase price of the merchandise, and is precluded by the regulations, which call for the rejection of any documents which appear, or are known, to be erroneous. Customs will adhere to the law and regulations.

EFFECTIVE DATE: The policy will become effective with respect to all merchandise entered or withdrawn from warehouse for consumption on or after May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC. 20229 (202–566–2938).

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[41] 5 CFR 1320.14 (1985).

[42] Docket No. RM85–17–000 (Phase I and Phase II), *Regulation of Electricity Sales-for-Resale and Transmission Service,* 50 FR 23445 (1985), and 50 FR 27604 (1985).

[43] Docket No. RM85–17 is a more comprehensive examination of how the Commission's policies promote, or impede, efficiencies in electricity markets. Here, the intended focus is much more narrow. In particular, the Commission is concerned with the effects of its *CWIP* policies on competition at the wholesale and retail levels, how these policies should be affected by the objectives of other regulatory agencies, and any credible attempts to quantify the relative positive effects of CWIP versus the potential anticompetitive consequences. The Commission does not believe that the Notice of Inquiry in any way limits the Commission's policy review of competition in this rulemaking or that this proceeding will limit in any way the Commission's review in that inquiry. Rather, the two processes, each of which has distinctive advantages as vehicles for reviewing the Commission's role in fostering competition in the electric industry, are essentially complementary.

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SUPPLEMENTARY INFORMATION

Background

In recent years, certain importers of merchandise from countries which impose export restrictions on such merchandise (an export quota, for example) have gained export approval from the government of the country of origin by means which result in the presentation to Customs, upon the entry of the merchandise into the U.S., of documents—usually "visaed invoices"—which contain false statements. A "visaed invoice" is an invoice which is stamped with or otherwise signifies the export approval of the appropriate government authority in the country of origin but, in the situations in question, such approval is premised on false (inflated or deflated) merchandise values set forth in the invoice by the exporter.

For example, the exporter and the U.S. importer may agree on a unit price of $10 for merchandise which the government of the country of origin will not approve for export to the U.S. at a unit price of less than $20. To obtain export approval, therefore, the exporter prepares an invoice setting forth a unit price of $20 for the merchandise; the appropriate authority of the government of the country or origin, based on the invoice information, stamps the invoice or otherwise signifies its approval for the export of the merchandise to the U.S. This document is required to be presented to Customs upon the entry of the merchandise into the U.S. and becomes a part of the entry package.

In many instances, the importer—for duty purposes—will allege the existence of a lower selling price than that recorded on the invoice, offering other evidence of the actual selling price, including: (1) A second invoice prepared by the exporter showing the actual selling price, and evidence of payment by the importer of the latter price; (2) evidence of receipt of a refund from the exporter in an amount of the difference between the invoice price and the actual agreed-upon selling price; or (3) evidence that the "overpayment" to the exporter per the inflated invoice price has been used to create an artificially low priice for other goods shipped to the importer (other merchandise not subject to the same export restrictions). Although many importers have revealed the actual purchase details to Customs (in order to avoid any overayment of duty, to avoid a possible penalty assessment for presenting Customs with a document known to contain false information, or for other reasons), others may not have done so—electing instead to pay the additional duty and to accept the risk of penalties in an effort to facilitate the processing of the entry by Customs.

Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), requires that importers file with Customs documentation which, among other things, allows Customs "to assess properly the duties on the merchandise, [and] collect accurate statistics with respect to the merchandise * * *." Clearly, an invoice which sets forth a false purchase price does not satisfy this requirement. Equally clearly, such an invoice fails the requirement imposed by 19 U.S.C. 1481(a)(5), that each invoice of imported merchandise set forth "[t]he purchase price of each item * * *." These requirements are confirmed in the corresponding implementing regulations (*e.g.*, §§ 141.81, 141,83 and 141.86, Customs Regulations, 19 CFR 141.81, 141,83, and 141.86). Sections 141.61(e)(4) and 141.64, Customs Regulations (19 CFR 141.61(e)(4) and 141.64), provide that Customs shall not accept entry and entry summary documentation which clearly appears, or is known by Customs, to be erroneous.

Action

On or after the effective date of this document, any differences or inconsistencies in the information contained in documents presented to Customs in connection with the importation of merchandise shall be considered as an indication that one or more of such documents contains false or erroneous information. In such circumstances, the entry documentation will not be accepted by Customs but will instead be returned to the importer for correction.

In situations where the visaed invoice or document presented to Customs (and necessary for the entry of the merchandise) contains erroneous value or price information, such invoice or document can only be corrected by the presentation to Customs of a new, corrected invoice or document stamped with the visa of the government of the country of origin. Customs will not accept pro forma invoices in any case involving apparent differences in price or value information in the documents required to be submitted to Customs and which involve the production of a document which is required to contain a foreign country's visa.

Customs will fully investigate any suspected attempts to circumvent the foregoing policy, including unusual resales and the submission of other entry documentation corroborating the value or price information set forth in a visa document and otherwise suspected to be false. In appropriate circumstances, Customs will initiate actions under the civil and criminal penalty statutes it administers, including but not limited to 19 U.S.C. 1592, 18 U.S.C. 542, and 18 U.S.C. 1001.

Previous Customs Rulings

To the extent that any ruling previously issued by Customs, including those discussing whether a transaction value exists in situations similar to those described above, may have indicated that entry documentation containing inconsistencies or differences in price or value information would be accepted by Customs (either because the ruling failed to address the acceptability of such documentation or otherwise), those rulings are hereby amended and modified to conform with the policy hereinabove set forth.

Dated: February 20, 1986.

William von Raab,

Commissioner of Customs.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-4910 Filed 3-5-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of two new animal drug applications (NADA's) from Vitamin Premixers of Omaha (V.P.O., Inc.) to SmithKline Animal Health Products, Division of SmithKline Beckman Corp.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, P.O. Box 2650, West Chester, PA 19380, has informed FDA that it has acquired ownership of two new NADA's from Vitamin Premixers of Omaha (V.P.O., Inc.) (NADA 98-431, tylosin; and NADA 100-127, tylosin/

sulfamethazine). V.P.O., Inc. has confirmed the sale. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations providing for use of the premixes are amended to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.625 [Amended]

2. In § 558.625 *Tylosin* in paragraph (b)(25) by removing the sponsor number "043743" and inserting in its place "000007".

§ 558.630 [Amended]

3. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(3) by removing the sponsor number "043743" and adding in numerical sequence "000007".

Dated: February 26, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-4836 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects letter designations of two subchapters of the Pennsylvania permanent program regulations printed in the **Federal Register** notice published February 19, 1986, which announced the approval of a program amendment to the State of Pennsylvania's permanent regulatory program (51 FR 5997).

The corrections pertain to 30 CFR 938.15(j) which codified the approval of an amendment to the Pennsylvania code of regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

Dated: February 27, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 938.15(j) is correctly revised as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment submitted to OSMRE on September 5, 1985 is approved effective February 19, 1986: Act 158 of 1984; Subchapter F of Chapter 87 and Subchapter G of Chapter 88 of the Pennsylvania code of regulations; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.

[FR Doc. 86-4855 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 84-091]

International Regulations for Preventing Collisions at Sea; 1972 COLREGS Demarcation Lines

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is authorized to establish identifiable lines to delineate waters upon which International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) apply and waters upon which Inland Navigation Rules apply. Regulations establishing these lines were promulgated July 11, 1977. Since the establishment of these lines, geographic and marking changes have outdated descriptions contained in the regulations. The rulemaking will update all the 1972 COLREGS Demarcation Lines. The intent of this final rule is to provide accurate and current location descriptions and identification of these lines as shown on nautical charts.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: CDR Charles K. Bell, (202) 245-0106.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on September 19, 1985 (50 FR 38013), and interested parties were given until November 4, 1985, to comment. Seven comments to the proposal were received. All seven comments further updated the Demarcation Lines by identifying seven additional locations where the lines had been altered due to reference objects being destroyed or relocated. The Coast Guard has incorporated all the changes suggested by the comments. The additional changes are 33 CFR 80.135(b), 33 CFR 80.305(i), 33 CFR 80.320(a), 33 CFR 80.735(c), 33 CFR 80.830(h), 33 CFR 80.845(a), and 33 CFR 80.1160.

Drafting information: The principal persons involved in drafting this rulemaking are LCDR Charles K. Bell, Project Manager, Office of Navigation, and LT Sandra Sylvester, Office of the Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely updates the 1972 COLREG Demarcation Lines. Since the impact is expected to be minimal, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 80

Navigation, Navigable waters.

For the reasons stated above, the Coast Guard is amending Title 33 CFR Part 80 to read as set forth below.

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for Part 80 is revised to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 151(a); 49 CFR 1.46(b).

2. In § 80.115, paragraph (b) is revised to read as follows:

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§ 80.115 Portland Head, ME to Cape Ann, MA.

* * * * *

(b) A line drawn from the southernmost tower on Gerrish Island charted in approximate position latitude 43°04.0′ N. longitude 70°41.2′ W. to Whaleback Light; thence to Jaffrey Point Light 2A; thence to the northeasternmost extremity of Frost Point.

* * * * *

3. In § 80.135, paragraph (b) is revised to read as follows:

§ 80.135 Hull, MA to Race Point, MA.

* * * * *

(b) A line drawn from Canal Breakwater Light 4 south to the shoreline.

4. In § 80.145, paragraph (c) is revised to read as follows:

§ 80.145 Race Point, MA to Watch Hill, RI.

* * * * *

(c) A line drawn from Sakonnet Breakwater Light 2 tangent to the southernmost part of Sachuest Point charted in approximate position latitude 41°28.5′ N. longitude 71°14.8′ W.

* * * * *

5. In § 80.305, paragraphs (h) and (i) are revised to read as follows:

§ 80.305 Watch Hill, RI to Montauk Point, NY.

* * * * *

(h) A line drawn from Threemile Harbor West Breakwater Light to Threemile Harbor East Breakwater Light.

(i) A line drawn from Montauk West Jetty Light 1 to Montauk East Jetty Light 2.

6. In § 80.310, paragraph (a) is revised to read as follows:

§ 80.310 Montauk Point, NY to Atlantic Beach, NY.

(a) A line drawn from the Shinnecock Inlet East Breakwater Light to Shinnecock Inlet West Breakwater Light 1.

* * * * *

7. In § 80.320, paragraphs (a), (b), and (c) are revised to read as follows:

§ 80.320 Sandy Hook, NJ to Cape May, NJ.

(a) A line drawn from Shark River Inlet North Breakwater Light 2 to Shark River Inlet South Breakwater Light 1.

(b) A line drawn from Manasquan Inlet North Breakwater Light 4 to Manasquan Inlet South Breakwater Light 3.

(c) A line drawn from Barnegat Inlet North Breakwater Light 4A to the seaward extremity of the submerged Barnegat Inlet South Breakwater; thence along the submerged breakwater to the shoreline.

* * * * *

8. In § 80.505, paragraphs (a) and (b) are revised to read as follows:

§ 80.505 Cape Henlopen, DE to Cape Charles, VA.

(a) A line drawn from the seaward extremity of Indian River Inlet North Jetty to Indian River Inlet South Jetty Light.

(b) A line drawn from Ocean City Inlet Light 6, 225° true across Ocean City Inlet to the submerged south breakwater.

* * * * *

9. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower 255° true to the eastern end of Ocracoke Island.

* * * * *

10. In § 80.525, paragraphs (d) and (f) are revised to read as follows:

§ 80.525 Cape Lookout, NC to Cape Fear, NC.

* * * * *

(d) A line drawn from the southeasternmost extremity on the southwest side of New Rives Inlet at latitude 34°31.5′ N. longitude 77°20.6′ W. to the seaward tangent of the shoreline on the northeast side on New River Inlet.

* * * * *

(f) A line drawn from the seaward extremity of the jetty on the northeast side of Masonboro Inlet to the seaward extremity of the jetty on the southeast side of the Inlet.

* * * * *

11. In § 80.712, paragraphs (a) and (f) are revised to read as follows:

§ 80.712 Morris Island, SC to Hilton Head Island, SC.

(a) A line drawn from the easternmost tip of Folley Island to the abandoned lighthouse tower on the northside of Lighthouse Inlet; thence west to the shoreline of Morris Island.

* * * * *

(f) A line drawn from the westernmost extremity of Bull Point on Capers Island to Port Royal Sound Channel Range Rear Light, latitude 32°13.7′ N. longitude 80°36.0′ W.; thence 258° true to the easternmost extremity of Hilton Head at latitude 32°13.0′ N. longitude 80°40.1′ W.

12. In § 80.727, paragraphs (d) and (g) are revised to read as follows:

§ 80.727 Cape Canaveral, FL to Miami Beach, FL.

* * * * *

(d) A north-south line (longitude 80°09.7′ W.) drawn across St. Lucie Inlet.

* * * * *

(g) A line drawn across the seaward extremity of the Boynton Inlet Jetties.

* * * * *

13. In § 80.735, paragraphs (a) and (c) are revised to read as follows:

§ 80.735 Miami, FL to Long Key, FL.

(a) A line drawn from the southernmost extremity of Fisher Island 212° true to the point latitude 25°45.2′ N. longitude 80°08.6′ W. on Virginia Key.

* * * * *

(c) A line drawn from Cape Florida Light to Biscayne Channel Light 8; thence to the northernmost extremity on Soldier Key.

* * * * *

14. Section 80.740 is revised to read as follows:

§ 80.740 Long Key, FL to Cape Sable, FL.

A line drawn from the radar dome charted on Long Key at approximate position latitude 24°48.8′ N longitude 80°49.6′ W. to Long Key Light 1; thence to Arsenic Bank Light 1; thence to Arsenic Bank Light 2; thence to Sprigger Bank Light 5; thence to Schooner Bank Light 6; thence to Oxfoot Bank Light 10; thence to East Cape Light 2; thence through East Cape Daybeacon 1A to the shoreline at East Cape.

15. In § 80.745, paragraph (a) is revised to read as follows:

§ 80.745 Cape Sable, FL to Cape Romano, FL.

(a) A line drawn following the general trend of the mainland, highwater shoreline from Cape Sable at East Cape to Little Shark River Light 1; thence to westernmost extremity of Shark Point; thence following the general trend of the mainland, highwater shoreline crossing the entrances of Harney River, Broad Creek, Broad River, Rodgers Rives First Bay, Chatham River, Huston River, to the shoreline at coordinate latitude 25°41.8′ N. longitude 81°17.9′ W.

* * * * *

16. In § 80.748, paragraph (d) is revised to read as follows:

§ 80.748 Cape Romano, FL to Sanibel Island, FL.

* * * * *

(d) A line from the seaward extremity of Gordon Pass South Jetty 014° true to the shoreline at approximate coordinate latitude 26°05.7′ N. longitude 81°48.1′ W.

* * * * *

17. In § 80.750, paragraph (k) is revised to read as follows:

§ 80.750 Sanibel Island, FL to St. Petersburg, FL.

* * * * *

(k) A line drawn from the northernmost extremity of Mullet Key across Bunces Pass and South Channel to Pass-a-Grille Channel Light 8; thence to Pass-a-Grille Channel Daybeacon 9; thence to the southwesternmost extremity of Long Key.

18. In § 80.753, paragraph (d) is revised to read as follows:

§ 80.753 St. Petersburg, FL to the Anclote, FL.

* * * * *

(d) A line drawn from the northernmost extremity of Honeymoon Island to Anclote Anchorage South Entrance Light 7; thence a straight line through Anclote River Cut B Range Rear Light to the shoreline.

19. In § 80.757, paragraphs (d) and (h) are revised to read as follows:

§ 80.757 Suncoast Keys, FL to Horseshoe Point, FL.

* * * * *

(d) A north-south line drawn through the Cross Florida Barge Canal Daybeacon 48 across the canal.

* * * * *

(h) A north-south line drawn through Suwannee River Wadley Pass Channel Daybeacons 30 and 31 across the Suwannee River.

20. In § 80.805, paragraph (c) is revised to read as follows:

§ 80.805 Rock Island, FL to Cape San Blas, FL.

* * * * *

(c) A line drawn from St. Mark's (Range Rear) Light to St. Mark's Channel Light 11; thence to the southernmost extremity of Live Oak Point; thence in a straight line through Shell Point Light to the southernmost extremity of Ochlockonee Point; thence to Bald Point along longitude 84°20.5′ W.

* * * * *

21. In § 80.810, paragraphs (a), (b) and (g) are revised to read as follows:

§ 80.810 Cape San Blas, FL to Perdido Bay, FL.

(a) A line drawn from St. Joseph Bay Entrance Range A Rear Light through St. Joseph Bay Entrance Range B Front Light to St. Joseph Point.

(b) A line drawn across the mouth of Salt Creek as an extension of the general trend of the shoreline to continue across the inlet to St. Andrews sound in the middle of Crooked Island.

* * * * *

(g) An east-west line drawn from Fort McRee Leading Light across the Pensacola Bay Entrance along latitude 30°19.5′ N.

* * * * *

22. In § 80.815, paragraph (b) is revised to read as follows:

§ 80.815 Mobile Bay, AL to the Chandeleur Island, LA.

* * * * *

(b) A line drawn from Mobile Point Light to Dauphin Island Channel Light No. 1 to the eastern corner of Fort Gaines at Pelican Point.

* * * * *

23. In § 80.825, paragraphs (b) and (c) are revised to read as follows:

§ 80.825 Mississippi Passes, LA.

* * * * *

(b) A line drawn from coordinate latitide 29°21.5′ N. longitude 89°11.7′ W. following the general trend of the seaward, highwater shoreline in a southeasterly direction to coordinate latitude 29°15.3′ N. longitude 89°06.5′ W.; thence to coordinate latitude 29°13.3′ N. longitude 89°01.7′ W. located on the northwet bank of North Pass.

(c) A line drawn from coordinate latitude 29°13.0′ N. longitude 89°01.3′ W., to coordinate latitude 29°12.7′ N. longitude 89°00.9′ W.; thence to coordiante latitude 29°10.6′ N. longitude 88°59.8′ W.; thence to coordinate latitude 29°03.5′ N. longitude 89°03.7′ W.; thence to Mississippi River South PAss East Jetty Light 4.

* * * * *

24. In § 80.830, paragraphs (c), (e) and (h) are revised to read as follows:

§ 80.830 Mississippi Passes, LA to Point Au Fer, LA.

* * * * *

(c) An east-west line drawn from the westernmost extremity of Grand Terre Islands in the direction of 194° true to the Grand Isle Fishing Jetty Light.

* * * * *

(e) A line drawn from the westernmost extremity of the Timbalier Island to the easternmost extremity of Isles Dernieres.

* * * * *

(h) A line drawn on an axis of 103° true through Taylors Bayou Entrance Light 2 across the entrances to Jack Stout Bayou, Taylors Bayou, Pelican Pass, and Bayou de West.

25. In § 80.835, paragraphs (a) through (f) are revised to read as follows:

§ 80.835 Point Au Fer, LA to Calcasieu Pass, LA.

(a) A line drawn from Point Au Fer to Atchafalaya Channel Light 34, to Point Au Fer Reef Light 33; thence to Atchafalaya Bay Pipeline Light D latitude 29°25.0′ N. longitude 91°31.7′ W.; thence to Atchafalaya Bay Light 1 latitude 29°25.3′ N. longitude 91°35.8′ W.; thence to South Point.

(b) Lines following the general trend of the highwater shoreline drawn across the bayou and canal inlets from the Gulf of Mexico between South Point and Calcasieu Pass except as otherwise described in this section.

(c) A line drawn on an axis of 140° true through Southwest Pass Vermillion Bay Light 4 across Southwest Pass.

(d) A line drawn across the seaward extremity of the Freshwater Bayou Canal Entrance Jetties.

(e) A line drawn from Mermentau Channel East Jetty Light 6 to Mermentau Channel West Jetty Light 7.

(f) A line drawn from the radio tower charted in approximate position latitude 29°45.7′ N. longitude 93°06.3′ W. 115° true across Mermentau Pass.

* * * * *

26. In § 80.845, paragraph (a) is revised to read as follows:

§ 80.845 Galveston, TX to Freeport, TX.

(a) A line drawn from Galveston North Jetty Light 6A to Galveston South Jetty Light 5A.

* * * * *

27. In § 80.850, paragraph (c) is revised to read as follows:

§ 80.850 Brazos River, TX to the Rio Grande, TX.

* * * * *

(c) A line drawn from the seaward tangent of Matagorda Peninsula at Decros Point to Matagorda Light.

* * * * *

28. Section § 80.1110 is revised to read as follows:

§ 80.1110 San Diego Harbor, CA.

A line drawn from Zuniga Jetty Light "V" to Zunige Jetty Light "Z"; thence to Point Loma Light.

27. In § 80.1135, paragraph (a) is revised to read as follows:

§ 80.1135 San Pedro Bay—Anaheim Bay, CA.

(a) A line drawn across the seaward extremities of the Anaheim Bay Entrance Jetties; thence to Long Beach Breakwater East End Light 1.

* * * * *

28. Section 80.1160 is revised to read as follows:

§ 80.1160 Ventura Marina, CA.

A line drawn from Ventura Marina South Jetty Light 6 to Ventura Marina Breakwater South Light 3; thence to Ventura Marina North Jetty Light 7.

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29. Section 80.1226 is revised to read as follows:

§ 80.1226 Santa Cruz Harbor, CA.

A line drawn from the seaward extremity of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater Light.

30. Section 80.1230 is revised to read as follows:

§ 80.1230 Pillar Point Harbor, CA.

A line drawn from Pillar Point Harbor Light 6 to Pillar Point Harbor Entrance Light.

31. Section 80.1275 is revised to read as follows:

§ 80.1275 Crescent City Harbor, CA.

A line drawn from Crescent City Entrance Light to the southeasternmost extremity of Whaler Island.

32. Section 80.1305 is revised to read as follows:

§ 80.1305 Chetco River, OR.

A line drawn across the seaward extremities of the Chetco River Entrance Jetties.

33. Section 80.1310 is revised to read as follows:

§ 80.1310 Rogue River, OR.

A line drawn across the seaward extremities of the Rogue River Entrance Jetties.

34. Section 80.1315 is revised to read as follows:

§ 80.1315 Coquille River, OR.

A line drawn across the seaward extremities of the Coquille River Entrance Jetties.

35. Section 80.1320 is revised to read as follows:

§ 80.1320 Coos Bay, OR.

A line drawn across the seaward extremities of the Coos Bay Entrance Jetties.

36. Section 80.1325 is revised to read as follows:

§ 80.1325 Umpqua River, OR.

A line drawn across the seaward extremities of the Umpqua River Entrance Jetties.

37. Section 80.1330 is revised to read as follows:

§ 80.1330 Siuslaw River, OR.

A line drawn across the seaward extremities of the Siuslaw River Entrance Jetties.

38. Section 80.1340 is revised to read as follows:

§ 80.1340 Yaquina Bay, OR.

A line drawn across the seaward extremities of the Yaquina Bay Entrance Jetties.

39. Section 80.1355 is revised to read as follows:

§ 80.1355 Tillamook Bay, OR.

A line drawn across the seaward extremities of the Tillamook Bay Entrance Jetties.

40. Section 80.1375 is revised to read as follows:

§ 80.1375 Grays Harbor, WA.

A line drawn across the seaward extremities (above water) of the Grays Harbor Entrance Jetties.

41. Section 80.1460 is revised to read as follows:

§ 80.1460 Kahului Harbor, Maui, HI.

A line drawn from Kahului Harbor Entrance Breakwater Light 1 to Kahului Harbor Entrance Breakwater Light 2.

Dated: March 3, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Office of Navigation.

[FR Doc. 86-4917 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-85-18]

Drawbridge Operation Regulations; Bayou LaBatre, AL

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Bayou LaBatre and the Alabama Highway Department (AHD), the Coast Guard is changing the regulation governing the operation of the lift span bridge on St. Hwy. 188 over Bayou LaBatre, mile 2.3 at Bayou LaBatre, Mobile County, Alabama, by permitting the draw to remain closed from 8 p.m. to 4 a.m. daily, and from 7:00–8:00 a.m. and 2:15–3:30 p.m. from September 15 through June 15. The bridge will open on signal outside these hours. Presently, the draw is closed from 7:30–8:30 a.m. and 3–4:30 p.m. Monday through Friday except Federal holidays, throughout the year. This change is being made because there have been no openings for navigation between 8 p.m. and 4 a.m. since 1955, and because there is no need to close the draw on weekdays while area schools are not in session. This action will relieve the bridge owner of the burden of having a person available at the bridge during the closure periods, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On November 21, 1985 the Coast Guard published a proposed rule (50 FR 48099) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 3 December 1985. In each notice interested persons were given until 6 January 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Three letters were received in response to the public notice. Two offered no objections to the proposal. The third, from a small shipbuilding and repair facility located upstream of the bridge, suggested alternative bridge closure periods to permit its employees uninterrupted use of the bridge. In a subsequent meeting with the applicants, shipyard representatives stated acceptance of the proposed closure periods.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the regulation merely revises the rush hour bridge closure periods to accommodate the revised school bus schedule and permits the bridge to remain closed to navigation during nighttime hours when there have been no bridge openings for navigation since 1955. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.103 is revised to read as follows:

§ 117.103 Bayou LaBatre.

The draw of the S188 bridge, mile 2.3 at Bayou LaBatre, shall open on signal; except that, the draw need not be opened from 8 p.m. to 4 a.m., and from September 15 through June 15 from 7:00 to 8:00 a.m. and 2:15 to 3:30 p.m. Monday through Friday except holidays.

Dated: February 21, 1986.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 86-4913 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, and Veterans.

Approved: February 28, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective March 3, 1986, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective March 3, 1986, 11¼ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective March 3, 1986, 11½ percent simple interest per annum for a loan which will finance the

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simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9½ per centum per annum, effective March 3, 1986, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9¾ per centum per annum, effective March 3, 1986, the interest rate on any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective March 3, 1986, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum. (38 U.S.C. 1811 (d)(1) and (2)(A))

* * * * *

[FR Doc. 86-4891 Filed 3-5-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. 9-85-31, FRL-2972-3]

Air Quality Implementation Plan: Delayed Compliance Order: Weiser Lock, Huntington Beach, CA

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA hereby issues an administrative order to Weiser Lock. The Order requires the company to bring volatile organic compounds emissions from its metal parts coating lines in Huntington Beach, California into compliance with the South Coast Air Quality Management District's Rule 1107(6)(B), part of the Federally approved California State Implementation Plan (SIP). The SIP requires final compliance with Rule 1107(6)(B) by January 1, 1985. Because the company is unable to comply with these regulations at this time, the Order establishes an expeditious schedule requiring final compliance by May 1, 1986. Source compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The proposed Order was published in the **Federal Register** on November 7, 1985. The proposed Order was agreed to and signed by the source, and was signed by the Administrator of EPA.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Abra Bennett, Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105 at (415) 974-8057.

SUPPLEMENTARY INFORMATION: Weiser Lock operates eight metal parts coating lines in Huntington Beach, California. The Order addresses volatile organic compounds (VOC) emissions from the coating lines at this facility, which are subject to the South Coast Air Quality Management District's (SCAQMD) Rule 1107, which is part of the Federally approved California SIP. Rule 1107 limits the VOC emissions from manufactured metal parts and products coatings. Rule 1107(6) specifies the date by which Weiser Lock must be in compliance with the Rule, January 1, 1985. The Order requires final compliance with Rule 1107 by September 1, 1986 by conversion to the use of complying liquid coatings or powder coatings, or by November 1, 1986 by means of the installation of an add-on control device. Weiser Lock is to continue to evaluate its compliance options until December 31, 1985, at which time it will decide whether it will be able to convert to the use of complying coatings by September 1, 1986, or must purchase an add-on control device consisting of either a thermal or catalytic incinerator or carbon adsorption system and reach final compliance by November 1, 1986. The source has consented to the terms of this Order.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). This order being issued, source compliance with its terms will preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcemrnt against the source under the citizen suit provisions of the Act (section 304) is similarly precluded. However, Weiser Lock has been notified that its failure to achieve final compliance by the date specified in the Order may result in a requirement to pay a noncompliance penalty under section 120 of the Act.

During a 30 day comment period following the publication of the proposed Order in the **Federal Register** on November 7, 1985, no comments were received, nor were there any requests for a public hearing on the matter.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: January 30, 1986.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 86-3830 Filed 3-5-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Vessel Obligation Guarantees; Vessel Requirements; United States Construction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule under statutory authority in Title XI of the Merchant Marine Act, 1936, as amended (Act). This rule effects a change in policy concerning the so-called "Buy American" requirement. MARAD now imposes this requirement through its regulations for obtaining financial assistance in the form of Government guarantees of debt instruments (obligations). Shipowners issue these obligations to finance the construction of U.S.-flag vessels in U.S. shipyards. By amending its regulation, MARAD will allow owners of new U.S.-flag commercial ships to purchase vessels containing less costly and/or higher quality foreign-manufactured materials and components so that these ships can be more competitive with foreign flag carriers and more efficient in domestic trade operation.

DATE: This rule is effective April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Norman O. Hammer, Acting Director, Office of Naval Architecture and Engineering, (202) 426-5733, or Mr. John M. Hotaling, Staff Project Engineer, (202) 426-5727. The mailing address for both is room 2103, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Act (46 U.S.C. § 1271-1279) provides authority for MARAD to give financial assistance to shipowners who are U.S. citizens and who construct vessels in U.S. shipyards and document them under U.S. laws. This financial assistance is in the form of a full faith and credit guarantee by the Government of each obligation that the shipowner undertakes to finance the construction of one or more vessels. If the shipowner defaults on the payment of principal or interest on these obligations at any time, the Government guarantees payment, in full, of the unpaid principal and interest. The existence of the guarantees generally allows owners of eligible vessels to obtain favorable interest rates on the obligations, that are secured by the vessels, for a period of up to 25 years. Under the Act, obligations may not exceed an aggregate of 87½ percent of the cost of these vessels, although the actual limit that MARAD will approve is 75 percent of the cost.

Buy American laws, policies and regulations that are implemented by government agencies were developed with the intent of protecting segments of the U.S. economy from excessive foreign competition, enabling domestic industries to be self-sustaining and ensuring an industrial base that is adequate for defense mobilization purposes. While there is no Buy American provision in Title XI of the Act, it has been MARAD's longstanding policy that one of the conditions imposed on shipowners for receipt of Title XI guarantees is compliance with a Buy American requirement. That requirement is modeled on a provision in the Act for the award of construction-differential subsidy (CDS), a program the MARAD has administered. This policy has been effected through a Title XI program regulation at 46 CFR 298.11. It provides, in part, that any vessel built with Title XI guarantees must be constructed, reconstructed or reconditioned entirely in a U.S. shipyard and, "where practicable, only from articles, materials and supplies of the growth, production or manufacture of the United States."

MARAD verifies compliance with this regulation through examination of vessel specifications, on-site inspections of the vessel and information received from interested parties, e.g., competing United States manufacturers of marine equipment and supplies. If a shipowner elects to use foreign materials or components, the cost of these items is excluded from the actual cost figure that is used as a basis for determining the maximum amount of the guarantees, unless the Secretary approves a waiver. A waiver may be based only on a finding either that the materials or articles are not available for purchase in the United States, or that use of domestically produced material or articles would cause an unreasonable delay in the ship's construction (46 CFR 298.11(a)). MARAD experience suggests that less than 10 percent of all directly purchased materials that are now used in vessels financed with Title XI guarantees are of foreign origin.

In recent years, the 100 percent Buy American requirement has caused problems for shipbuilders. It has become increasingly onerous to comply with this requirement, in part because the domestic marine supplier industry is shrinking. The reduced number of commercial vessels that are built in the United States has, in some instances, not provided a market of sufficient size to make it profitable for some domestic companies to engage in the development and manufacture of various types of marine equipment (e.g., slow-speed marine diesel engines, lifeboat engines). The result has been reduced competition, higher costs, and long delivery delays.

In some other instances, American manufacturers that traditionally geared their products to domestic markets, in which shipbuilding is only a minor part, have been unable or unwilling to produce products with the quality of foreign-built equipment, and shipbuilders have suffered a competitive penalty. Some items manufactured by domestic marine equipment companies are technically inferior to the less expensive, more sophisticated marine equipment developed by other shipbuilding nations of the world. For instance, some foreign companies produce superior ship navigation communications, and propulsion systems.

Further, sometimes an American marine equipment manufacturer becomes the sole source for a product required to have 100 percent domestic content, e.g., some medium-speed diesel engines, anchors and chains, radar, and controllable pitch propellers. Moreover, decreasing market demand for some domestic items tends to perpetuate these monopolies as long as 100 percent domestic content is required, and precludes the development of a competitive marketplace.

In summary, MARAD has concluded that the continuation of the present 100 percent Buy American regulation, which unduly inhibits the use of international marine products, would appear to be harmful to the U.S. shipbuilding industry. A less restrictive material purchasing regulation is desirable for U.S.-flag ship purchasers with Title XI guarantees as well as for domestic shipbuilders. The result will be a move toward producing more efficient, higher quality ships at a reduced cost of construction. The Title XI ships can be more competitive with foreign flag vessels in serving the foreign trades and more efficient in domestic trade operations, resulting in lower freight rates that would be reflected in the cost of both domestic and foreign goods to the U.S. consumer. Lower shipyard costs and prices can offer a chance for domestic shipyards to increase sales.

Notice of Proposed Rulemaking (NPRM)

In a NPRM published in the **Federal Register** on March 21, 1985 (50 FR 11398), MARAD proposed to relax and Buy American requirements under the Title XI program by adopting one of four alternatives. MARAD initiated this rulemaking with the intention of benefitting U.S. shipowners and shipbuilders by providing an incentive to build more efficient ships in U.S. shipyards, with the highest quality materials and state-of-the-art components, at a significantly reduced cost.

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The four alternatives presented in the NPRM were:

(1) Require that each item of equipment be assembled in the United States.

(2) Allow shipyards to use foreign materials and components, not to exceed 50 percent of the total cost of the materials, and also allow United States marine equipment manufacturers to include foreign content in domestically produced equipment, not to exceed 50 percent of the cost of the materials in that equipment.

(3) Allow shipyards to use foreign materials and components, not to exceed 75 percent of the total cost of the materials, and allow United States marine equipment manufacturers to include foreign content in domestically produced equipment, not to exceed 75 percent of the cost of the materials in that equipment.

(4) Eliminate the Buy American requirements.

In the NPRM preamble's discussion of the alternatives, MARAD rejected Alternative 1 because it would be the most difficult to administer and unnecessarily costly, and isolation and assignment of the assembly process to domestic companies would be insufficient and costly.

The discussion in the NPRM of the economic impact of these alternatives contained estimates of annual savings to shipowners and shipbuilders from the adoption of any one of the other three alternatives. The estimated savings would range from about $22 to about $33 million, dependent on the alternative selected. There could be a negative impact on the domestic marine component supplier industry ranging from an estimate of up to $66 to $150 million, dependent on which alternative was selected. However, MARAD believes that, for various business reasons, the level of foreign material purchases is not likely to exceed 40 percent of material cost, irrespective of the choice of alternatives. These estimates are based on Title XI vessel orders at the fiscal 1984 level of $331 million.

Summary of Comments

MARAD received comments from 16 interested persons. Some of the comments were forwarded by members of Congress, to whom they had been directed. Six commenters opposed any relaxation of the Title XI Buy American requirements. Five favored a relaxation that would allow up to 50 percent foreign material and componentry. Five commenters argued for the total elimination of Buy American requirements.

Comments Opposing Any Relaxation of the 100 Percent

The comments opposing any relaxation of MARAD's existing requirements were submitted by: equipment suppliers; an individual shipowner that has participated in the Title XI program; and an association representing shipyards that build and repair barges for the domestic water carrier industry, vessels for the offshore service industry, towing and fishing vessels. A summary of these comments and MARAD's responses are as follows:

- A commenter argued that relaxation of the 100 percent Buy American requirement is contrary to the policy set forth in the Act to ensure an adequate domestic industrial base for defense mobilization purposes.

The Act declares a policy to foster the development and encourage the maintenance of a "merchant marine" that will be adequate to serve the nation's needs in the conduct of foreign and domestic commerce, that is capable of serving as a naval and military auxiliary in time of war or national emergency and that is supplemented by an adequate shipyard base. An initiative by MARAD that will encourage the construction of new vessels in U.S. shipyards, with state-of-the-art technology and at significantly lower cost, is certainly consistent with the commercial aspect of the policy in the Act and with ensuring an adequate domestic industrial base for defense mobilization purposes.

- Another argued that since shipbuilding involves more than the assembly of components, to truly have a shipbuilding base, the United States must retain the domestic capability to supply materials and essential equipment.

MARAD disagrees with the contention that to have a shipbuilding base, a domestic capability to supply all materials and essential equipment is required. MARAD anticipates that these items will be available to the shipyards through domestic companies, foreign subsidiaries and affiliates of domestic companies.

- Several commenters asserted that the Government should not guarantee loans that provide benefits to foreign manufacturing companies.

MARAD is convinced that expanding the market for Title XI vessel equipment to include foreign sources of supply would principally benefit U.S. shipowners and shipbuilders (and ultimately consumers) because they would be able to purchase products that are either lower in cost or of higher quality, or that possess both advantages.

- Another commenter stated that, even if there were no U.S. suppliers, there, nevertheless, would be the prospect of a sole source foreign supplier with the ability to control pricing.

MARAD believes that a sole source supplier problem is far less of a prospect where the market includes foreign companies. MARAD is hopeful that this rule, by expanding the supplier base for equipment eligible for Title XI guarantees, will foster competition and generate new Title XI shipbuilding activity.

- Several commenters argued that, while the purpose of opening our markets to foreign competition is to keep American industry competitive, it is impossible to be competitive when the foreign competition is receiving direct and indirect assistance from their governments and while the U.S. maritime industry suppliers receive no such assistance. Morever, they commented that since there are items of vessel equipment produced in the U.S. that are technically competitive with any available in the world, a price advantage would be the only reason for purchasing such items foreign.

MARAD recognizes that some foreign governments provide assistance to various industries that enhances their advantage in competing with domestic manufacturers in the U.S. market. It also agrees that price alone may dictate the foreign purchase of some vessel equipment items that are of no better quality than those of domestic origin. MARAD believes that it also has a responsibility to assist and promote the U.S. merchant marine. It believes that it will benefit the merchant marine by removing ship construction restrictions that discourage competitive pricing and quality. Moreover, it is the policy of this Administration to approach trade issues through negotiation, rather than with legislation and regulations that may help segments of U.S. industry, but hurt the general economy. Increased competition will result in better quality domestic and foreign goods. It will encourage market place choices that are based on relative cost and quality, regardless of the origin of the product.

- A commenter also alleged that relaxation of the Buy American policy would "shrink the skilled manufacturing labor base" and "reduce the U.S. labor content (American jobs)" in the supplier industry, instead of creating the additional jobs in the domestic shipbuilding sector that MARAD predicts will result from increased orders.

MARAD recognizes that this rule could (but is not expected to) result in the loss of domestic supplier industry jobs, and estimates that resulting increased shipyard and competitive activity, in general, will create additional (but fewer) jobs in the shipbuilding sector. This net loss of jobs must be viewed in light of an expected reduction in domestic shipbuilding costs of as much $33 million.

- A commenter criticized MARAD's proposal to bring its Buy American regulation "into line" with the Navy's Buy American requirements for military vessels and the Coast Guard's for coastwise (Jones Act) trade documentation, since the commenter believes those requirements do not concern the guarantee of loans for commercial ventures.

MARAD disagrees with this contention. First, it believes that its action to harmonize its rule with others will benefit shipowners in their compliance with a variety of similarly applicable shipping regulations. Further, MARAD believes that the Federal government is entitled to impose or remove conditions on the provision of financial assistance, whether it involves the total payment for Navy vessels or obligation guarantees for Title XI commercial vessels. Furthermore, many of the coastwise trade vessels referred to by the commenter are Title XI commercial vessels.

- Another commenter stated that any relaxation of the Buy American requirement would penalize shipowners who made commitments prior to this rulemaking. It argued that, in the past, it has built ships for the domestic trade with Title XI obligation guarantees and it elected to use foreign materials that were not subject to a waiver. Therefore, the cost of those foreign materials was not includable in the actual cost used as the basis for determining the maximum amount of guarantees. The commenter further contended that owners should be allowed to use foreign materials, but should not be allowed to use Title XI benefits to do so.

MARAD believes that the commenter's description of its prior purchases of better quality foreign materials, without benefit of guarantees, supports the agency's rationale in revising the requirements. The purchase of foreign goods should not be denied to shipowners when they may be superior in quality or lower in cost than domestic items. Moreover, if a shipowner is unable to lower costs through foreign purchases due to Title XI restrictions, healthy competition will not develop. Again, MARAD intends to finance the construction of U.S. ships built with the highest quality, lowest cost equipment available in the international market. That is MARAD's primary purpose in revising its rule.

That commenter also submitted a cost analysis that reflected an even greater cost saving under three of the regulatory alternatives than that estimated by MARAD in its Preliminary Regulatory Impact Analysis (14.4% v. 8.5% for 50% foreign, 16.8% v. 9% for 75% foreign and 17.5% v. 10% for no Buy American requirements). However, the commenter rejected MARAD's conclusion that adoption of any of the alternatives to a 100 percent Buy American requirement will produce higher quality ships at lower cost.

MARAD's initial expectation of reduced ship prices was based upon its general experience with purchases of materials under the CDS program. For a major vessel type (e.g. oceangoing tanker), MARAD assumed that between 71 and 76 percent of the required material would be procured foreign if shipowners and builders were permtted to freely purchase from any source. There are certain materials for which there appears to be little or no savings available through foreign procurement. In those cases, American companies would be viable resources. On an overall basis, MARAD assumed foreign material prices to be about 70 percent of U.S. cost and allowed 10 percent of the foreign price as an additional cost for import duties and extra ocean freight.

By allowing for ocean freight costs, MARAD was more conservative in its consideration of potential savings to be achieved from anticipated foreign purchases. Therefore, the Preliminary Regulatory Impact Analysis for the NPRM reached a different conclusion than did the commenter. After isolating the elements that MARAD factored into the foreign cost and comparing it to the commenter's estimated costs, e.g., "0.77 for 0.65", a lower savings of only 9.15 percent is computed instead of 14.4 percent for materials that are 75 percent foreign in origin. A savings of 10.95 percent is computed instead of 16.8 percent for materials that are 94 percent foregn in origin.

MARAD attempted to analyze the percentage of foreign components presently being procured under Title XI construction and discounted the savings generated from that portion of the material. Its review of a number of Title XI projects suggested that presently less than 10 percent of all direct purchase materials presently come from foreign sources. It further concluded that it would be unlikely that allowing guarantees for foreign material would reduce ship prices by much more than 10 percent.

- Another commenter compared MARAD's proposal to Coast Guard's NPRM allowing government-subsidized foreign laboratories to carry out preapproval testing and inspection of lifesaving equipment. It claimed that both would benefit foreign manufacturers while harming domestic suppliers.

As stated in the NPRM, this rule could have some adverse effects on the ability of some domestic businesses to compete with foreign businesses in the United States marine equipment market. However, MARAD believes a less restrictive rule is desirable for U.S.-flag ship purchasers with Title XI guarantees, as well as for domestic shipbuilders. The result will be a move toward producing more efficient, higher quality ships at a reduced cost of construction.

Comments on the 50 and 75 Percent Alternatives

Five commenters favored the alternative that would allow up to 50 percent foreign material content on Title XI vessels. Two of these, representing shipbuilding interests, cited the need for an adequate defense mobilization base. However, they stated a willingness to accept this alternative, or a modification thereof, as a compromise, rather than see the total demise of the Buy American requirement. Summaries of these comments, with MARAD's responses, follow:

- One commenter claimed that Coast Guard's recent rulemaking to eliminate the 50 percent domestic component requirement for vessels documented for the coastwise trade "was a unilateral move made without a thorough evaluation of its impact, and should not be taken as precedence."

The Coast Guard observed the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 553) in promulgating its rule. The subject Coast Guard rule, which eliminated the requirement that at least 50 percent of the cost of all machinery and components of a vessel, excluding an integral part of the hull or superstructure, be procured in the United States for the vessel to be considered "built in the United States" and, therefore, qualified for coastwise trade documentation (49 FR 4944; February 9, 1984). MARAD affirms the belief that it will benefit shipowners and shipbuilders in regulatory compliance if agencies strive to achieve some

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uniformity in the rules that affect their industry.

- One commenter asserted that, in the interests of national security, 100 percent of marine equipment should remain of U.S. origin but that U.S. marine equipment be allowed to include foreign content of up to 50 percent in domestically produced equipment. A second commenter also supported the 50 percent option on the ground that "at least the American businesses have a 50/50 chance of survival in an already highly competitive environment." This commenter criticized the 75 percent option on the grounds that, if foreign competition is allowed at the rate of 25 percent over the 50 percent option, small supplier businesses possibly could be crippled or lost. Under the first commenter's recommendation, shipowners would not be allowed to use foreign equipment covered by the guarantees, even pursuant to a waiver. That commenter acknowledged, however, that "American firms must become more competitive in terms of both price and quality and this is occurring in procurements of equipment of naval ships."

A requirement that 100 percent of marine equipment be of U.S. origin, with allowable foreign content of up to 50 percent, would result in items that are foreign manufactured, yet sent for assembly in the United States. As we stated in the NPRM, MARAD has concluded that this would make "domestic" products available that are comparable to the foreign-made products, but at an artificially and unreasonably high cost.

One of the other three commenters favoring the 50 percent alternative states that it accepts the eventual logical extension of the 50 percent requirement to total elimination of the Buy American requirement, i.e., a two-stage relaxation of Buy American. It stated that:

> "Our membership supports a conservative first-step approach during which time effects can be carefully monitored. If, after a period of experience, it can be observed that the benefits are approximately as projected in the Notice of Proposed Rulemaking and that the domestic losses were accurately predicted, consideration could be given to a further relaxation of the Buy American Requirement."

MARAD does not believe that a delay in implementation will assist the domestic marine equipment industry to become more competitive with foreign suppliers. A delay would perpetuate the problems of high cost and inferior quality for ship purchasers while only postponing the inevitable for domestic suppliers that cannot compete in an unregulated market. Presently, there exist viable American manufacturers that gear their products to domestic maritime markets, produce quality products and operate in highly competitive markets (e.g. pumps, oil rig gear, motors, refrigeration equipment, satellite navigation gear). These manufacturers continue to exist even with the downturn in domestic shipping. MARAD believes that this already competitive group is fully capable of operating without delays or adjustments in the effective date of a final rule.

With respect to the comment opposing waivers for foreign equipment covered by guarantees, MARAD has granted waivers only after making regulatorily required findings, based on a careful review of all relevant facts. Adopting this recommendation would diminish the benefit of allowing up to 50 percent foreign material content by imposing further restrictions on procurement under the Title XI program that would add to shipbuilding costs.

- One commenter urged retention of the existing requirement that 100 percent of the hull construction steel be acquired from U.S. steel mills when that steel is reasonably available.

MARAD does not believe that there is sufficient justification to support the commenter's position that there be a requirement for use of 100 percent domestic steel. The requirement to fabricate and assemble the steel hull and superstructure in a U.S. shipyard will remain a requirement, but the source of the basic steel will be open to full competition.

- Another commenter urged that elimination of the Buy American requirement should be prospective, i.e., applicable only to guarantees issued after this amendment becomes effective. The commenter also urged a delay in implementation of any rule. Two reasons were cited: (1) To give the domestic marine equipment industry fair warning and time to become more competitive with foreign suppliers; and (2) to eliminate a "windfall" gain, in the form of a competitive advantage, for owners of those vessels under construction at the time of the rulemaking with guarantees that were issued prior to the effective date of the regulation.

As stated before, we do not believe that a delay or phase-in of a relaxation rule will assist suppliers in competing or result in the benefits that should accrue to Title XI shipowners. In response to the comment concerning "windfall gain," we recognize that retroactive application might bestow an unanticipated benefit on those that have already received guarantees, since it would reduce their capital costs, both equity contribution and debt service on their total borrowings. MARAD agrees with the recommendation and, therefore, this rulemaking will have prospective application only, i.e., to letters of commitment issued after the effective date of this rule—30 days after the publication date. However, MARAD is providing for prospective application, primarily to avoid administrative complexities.

Comments Supporting Total Elimination

The five commenters supporting total elimination of Buy American requirements under the Title XI program include an association representing subsidized operators of U.S.-flag vessels, a domestic supplier of marine systems, a naval architecture and marine engineering firm, a law firm representing a foreign manufacturer of marine equipment, and a nonsubsidized U.S.-flag operator.

The association stated that complete elimination of restrictive procurement requirements will increase the quantity and lower the cost of U.S.-built ships, benefit ship operators and eventually benefit shippers and consumers. It argued that "vigorous competition has traditionally resulted in the best use of available resources and the greatest technological advancement. The restriction of competition has generally led to inefficiency and, eventually decay." It stated that lack of competition makes it difficult to negotiate reasonable delivery time with a vendor, and reasonable delivery time by suppliers is essential to efficient ship construction. While it acknowledged that there is some merit to the argument for maintaining domestic marine equipment manufacturing capability for national security reasons, that commenter noted that the U.S. Navy has a 50 percent domestic procurement requirement, and the U.S. Coast Guard has none. It concluded with the assessment that "ultimately, increased competition by equipment manufacturers could permit shipbuilders to construct modern, efficient ships at a reasonable cost and in a reasonable amount of time with state-of-the-art technology."

The domestic marine equipment supplier stated that the maritime construction industry can best be benefitted by a total elimination of prohibitions on the purchase of foreign components, so long as the hull and superstructure are fabricated in the United States and the vessel is assembled in the United States. The naval architecture and marine engineering firm agreed with the Coast Guard's statement, in its final rule eliminating a Buy American test for coastwise trade documentation, that the laws were intended to protect the U.S. shipbuilding industry and not those industries that supply the shipbuilders. It believes that MARAD's estimate that, under this alternative, 40 percent of the total material purchase would be foreign could be correct initially. However, it believes that total would increase steadily to at least 75 percent as the shipyards and owners become familiar with the foreign products, "unless the domestic industries gear up to compete. In this case there would be a double benefit."

The foreign manufacturer of marine equipment stated that, where Title XI guarantees have been a crucial factor for building U.S.-flag vessels, the 100 percent Buy American requirement for equipment and materials has resulted in these vessels having either inferior or less technologically advanced features than similar foreign-flag vessels. Where comparable domestic origin items are available, they are substantially more expensive. That commenter stated that elimination of Buy American requirements would not only give U.S. shipowners the same flexibility as their foreign competition in selecting vessel equipment available on the international market, but would benefit domestic shipyards. The inability of the shipyards to offer the best and most cost efficient equipment, machinery and components available for Title XI vessels is creating a further burden on an already depressed industry. Improved procurement flexibility for the shipyards should improve their productivity and efficiency and possibly lead to lower prices, shorter construction times, and more technologically advanced ships.

With respect to the other alternatives offered by MARAD in the NPRM, that commenter agrees that a requirement that foreign source equipment be assembled by domestic firms would be unacceptably difficult and costly to administer and lead to inefficient and artificial manufacturing and production schemes. With respect to Alternatives 2 and 3 (50 percent and 75 percent allowance of foreign materials and equipment, respectively), that commenter believes that setting a maximum percentage of allowable foreign content, in terms of cost, poses a number of administrative problems and promotes the use of "creative accounting and questionable cost allocation decisions." That commenter cited Coast Guard's experience, prior to its 1984 rulemaking, in applying a 50 percent rule to determine whether a vessel was "U.S.-built" for documentation purposes in the coastwise trade. It alleged that, from 1982, when the Coast Guard adopted its longstanding 50 percent guideline by regulation, until 1984, when it eliminated that provision, the regulation had generated so much confusion and so many differing interpretations that it was rarely enforced. The commenter predicts that adoption of a 50 percent or 75 percent foreign content limit for vessels built with Title XI guarantees would be similarly difficult to enforce and could not be effective without substantial administrative cost. That commenter concurs with MARAD's assessment that the level of foreign material and component purchase is not likely to exceed 40 percent of vessel cost under any of the alternatives proposed.

The nonsubsidized operator commented that eliminating Buy American requirements would most significantly assist the U.S. shipbuilding industry in becoming more cost competitive. It recommended that MARAD expand this proposal to its regulations governing the Capital Construction Fund (CCF) (46 CFR Part 390).

The main thrust of the arguments advanced by the commenters supporting total elimination of the Buy American requirement is that such action offers one major step toward the construction, by U.S. shipbuilders, of commercial vessels with state-of-the-art technology at a significant reduction in cost. MARAD agrees that the increased competition among marine equipment manufacturers and suppliers would greatly expand the choice of vessel equipment, accelerate deliveries to the U.S. shipyards, and shorten vessel construction times. The existing Buy American requirement for Title XI vessels has deterred some U.S. shipowners from obtaining the best equipment, either because the cost of superior foreign equipment would not be allowable in determining the maximum amount of guarantees, or because the cost of obtaining comparable equipment of domestic manufacture would be prohibitive.

In addition, MARAD concurs with the comment that there would be administrative problems in determining whether the vessel meets the allowable foreign content requirement under either alternative 2 or 3 and acknowledges that the Coast Guard's formal adoption of its 50 percent "rule of thumb" proved troublesome. MARAD would encounter the same "creative accounting and questionable cost allocation decision" problems.

In response to the recommendation concerning the CCF, MARAD cannot support application or extension of the Buy American proposal to the CCF, as that is a matter beyond the scope of this final rule.

Final Rule Decision

In reviewing the public comments on what was perceived as a very critical issue for the U.S. maritime industry, MARAD was impressed by the consensus that most segments of the domestic marine equipment industry cannot produce state-of-the-art shipboard equipment for delivery to U.S. shipyards at a price competitive with foreign manufacturers. Those commenters that would retain the existing Buy American policy, or adopt either the 50 or 75 percent alternative, or a modification of those alternatives, rely mainly on the national security justification and charges of unfair foreign competition in the form of direct and indirect foreign government assistance. Yet, none of these commenters has offered convincing arguments to support the contention either: (1) That the defense mobilization base will be significantly eroded by MARAD's total elimination of a Buy American requirement; or (2) that the domestic marine supplier industry can technically compete with foreign manufacturers "across the board."

Those commenters favoring the total elimination of a Title XI Buy American requirement have persuasively argued that the one strong element in significant improvement in domestic shipbuilding activity is vigorous competition among domestic and foreign marine equipment manufacturers for the Title XI vessel equipment market. It would promote the policy of the Act to foster the development and encourage the maintenance of an adequate merchant marine. MARAD believes that eliminating Title XI Buy American requirements now, rather than postponing this inevitable policy change, will provide an immediate incentive to build more efficient Title XI ships for operation in the domestic trade and more competitive ships for the foreign trade.

Since elimination of the Buy American requirement in a Federal guarantee program will generate shipments of foreign materials and equipment, MARAD will amend its Title XI agreements, consistent with its regulation at 46 CFR 381.7, with respect to the required carriage of at least 50 percent of the freight revenue and tonnage of cargo generated in privately owned U.S.-flag commercial vessels.

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Applicable Laws and Regulations

This final rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policy and Procedures dated February 26, 1979 (DOT Order 2100.5). It is considered to be a major rule since it could (but is not expected to) have a maximum annual effect on the economy of $100 million or more and have significant adverse effects on the ability of some domestic businesses in the United States marine equipment market. This estimate is based on the amount of Title XI financing guarantees for vessel construction which have totaled several hundred million dollars annually. In fiscal 1984, which was used as the base year for calculating the economic impact of the alternatives considered, the total construction cost for all vessels constructed with Title XI financing was $331 million. Approximately one-half of that figure represented purchases of ship construction components and materials. The rule's principal benefits would be to enhance the competitive posture of domestic shipbuilders and ship operators and reduce the paperwork burden on vessel owners. It is also considered to be a significant rule, since it is costly and involves an area in which there is significant public and Departmental interest.

A Final Regulatory Impact Analysis has been prepared by the Maritime Administration, which examines in more detail the existing Buy American regulations, the alternative selected and the rejected alternatives. It will be placed in the rulemaking docket created for this rule and will be available for review in Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

The great majority of applicants for Title XI financing guarantees—shipbuilders and many of the domestic marine equipment manufacturers—have revenues or employment in excess of the existing Small Business Administration criteria for small businesses (13 CFR 121.3). Moreover, the primary suppliers of marine equipment, components or materials in the maritime industry are not small businesses. However, if small businesses are affected by this rule, MARAD believes that any effects will be minimal. Accordingly, the Maritime Administrator certifies, under the Regulatory Flexibility Act of 1980 (Pub. L. 96–3543), that this rule will not, exert a significant economic impact on a substantial number of small entities.

This rule contains no new or expanded requirements for the collection of information within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Environmental Impact

MARAD has previously evaluated the environmental impact of ship operations and ship construction, conversion, repair, and scrapping activities contracted under its maritime aids programs.

The environmental impact created by the additional ship construction and ship operation that would result from relaxing the Buy American restrictions is substantially the same as that considered by MARAD in the earlier environmental impact statements. Any additional ship construction or ship operation would be small in proportion to general shipyard industry activity and would not require the expansion of any existing shipbuilding facilities. Neither will it require the diversion of any significant raw materials or the development of new raw material sources. The elimination of the present Buy American restrictions will have a negligible effect on the environment.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs-Transportation, Mortgage, Mortgage insurance, Maritime carriers, and Uniform System of Accounts.

In consideration of the foregoing, the Maritime Administration adopts, as a final rule, amendments to 46 CFR Part 298 as follows:

1. The citation of authority for Part 298 is revised to reads as follows:

Authority: Secs, 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b); 49 CFR 1.66).

2. Amend § 298.11 by revising paragraph (a) to read as follows:

§ 298.11 Vessel requirements.

(a) *United States Construction.* A vessel financed by obligation guarantees for which a Letter Commitment is issued on or after April 7, 1986 is considered to be of United States construction if:

(1) It is built entirely in a shipyard or shipyards of the United States within the meaning of section 505 of the Act;

(2) All components of the hull and superstructure are fabricated in the United States; and

(3) The vessel is assembled entirely in the United States.

§ 298.21 [Amended]

3. Amend § 298.21 by removing existing paragraph (c)(12) and redesignating paragraphs (c)(13) and (c)(14) as paragraphs (c)(12) and (c)(13).

Dated: February 28, 1986.

Murray A. Bloom,

Assistant Secretary, Maritime Administration.

[FR Doc. 86–4920 Filed 3–5–86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–514; RM–4431; RM–4561]

FM Broadcast Station in Susanville, CA and Reno, NV; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein grants a petition for partial reconsideration filed by AMERICOM, licensee of Station KHTX(FM) (Channel 279), Carnelian Bay, California, by imposing an additional site restriction on Channel 225 at Reno, Nevada to permit KHTX to improve its facilities.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation/for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Susanville, California and *Reno, Nevada*), MM Docket No. 83–514, RM–4431 and 4561.

Adopted: January 31, 1986.
Released: February 27, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for partial reconsideration of the *Report and Order* herein, 50 FR 24643, published June 12, 1985, filed by AMERICOM (formerly the December Group) ("petitioner"), licensee of Station KHTX(FM) (Channel 279), Carnelian Bay, California. No oppositions to the petition were received.

2. Petitioner seeks partial reconsideration of the Commission's action allotting Class C Channel 225 to Reno, Nevada with a site restriction 17.4 kilometers (10.8 miles) northeast of the community. Petitioner requests that an additional 8 kilometer restriction be placed on Channel 225 to permit it to improve its facilities from Class B to Class C1 status at its present site.

3. Petitioner is authorized to operate Station KHTX as a Class C station in Zone I to serve Carnelian Bay. However, due to terrain obstacles, it was granted a waiver of the Class C facility requirements of Section 73.206(b) of the Commission's Rules, thus permitting it to operate as a Class B station with its transmitter in the State of Nevada. Petitioner advises that it desires to improve its facilities in order to provide a wider coverage signal to residents of the area. However, it notes that due to the topography of the area, it is unable to move its transmitter to accommodate an increase in power to attain Class C1 status. Moreover, petitioner adds that although it may now operate as a Class C1 in Zone II without the necessity of a waiver, the distance between its present transmitter site and the Channel 225 allotment to Reno is 40 kilometers, whereas a minimum distance separation of 48 kilometers is required in this instance to avoid Intermediate Frequency (IF) interference. Unless the requested additional site restriction is imposed on Channel 225 at Reno, its proposal would contravene 73.207(b) of the Commission's Rules.

4. In consideration of the above, and absent any formal objections, we believe petitioner's proposal is justified and is in accord with the Commission's policy to encourage broadcast licensees to improve their facilities. See, *Modification of FM and TV Station Licenses,* 98 F.C.C. 2d 916 (1984). We do not view petitioner's proposal as an upgrade since Channel 279 can be used as either a Class B or C classification depending upon the location of the transmitter. As such, petitioner may file an application to increase its facilities as a Class C1 station.

5. In view of the above, the current applicants for Channel 225 at Reno, Nevada will be mailed a copy of this *Order* to apprise them of our action herein.[1]

6. Accordingly, it is ordered, That the petition for partial reconsideration filed by AMERICOM is granted and the *Report and Order* herein is modified to the extent a site restriction on Channel 225 at Reno of 24.3 kilometers (15.1 miles) northeast of the community is imposed.

7. It is further ordered, That the Secretary of the Commission shall send a copy of this *Order* by certified mail, return receipt requested, to the applicants for Channel 225 at Reno, Nevada, as follows:

Cynthia Escajeda Cart, 704 Douglas Avenue, Prescott, AZ 86301, (850711MY)
Reno 93–FM Broadcasters, 5530 Highline Court, Sun Valley, NV 89433 (850711OE)
Dennis L. Martin, 14760 Rimrock Drive, Reno, NV 89511 (850712ON)
Washoe Wireless Associates, 863 Bollen Circle, Gardnerville, NV 89410 (850712OO)
Reno Radio, Inc., 2204 Dickerson Road, Reno, NV 89503 (850712OP)
Reno FM Services Partnership, Ltd., 6472 Ridge Manor Ave., San Diego, CA 92120 (850712OQ)
Q Prime, Inc., 212–11th Street, Hoboken, NJ 07030 (850712OR)
High Sierra Communications Company, 626 Smithridge, Reno, NV 89502 (850712OV)
Condor & Associates, Inc., 872 East Front Street, Ventura, CA 93001 (850712OZ)
LC Broadcasting, Inc., 18400 Prairie Street, #229 Northridge, CA 91324 (850712PA)
Susan Lundborg, Suesspath, Quogue, NY 11959 (850712TU)
Tropic-Air, Ltd., 1018 Cedar Grove Rd., Wynnewood, PA 19096 (850712TV)

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–4842 Filed 3–5–86; 8:45 am]

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47 CFR Part 97

[PR Docket No. 85–168; RM–4880; FCC 86–84]

Amendment of the Amateur Rules To Permit the Transmission of Emission F2A in the 29.5–29.7 MHz Repeater Subband

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur service rules by permitting amateur stations to transmit emission F2A in the 10-meter repeater subband. The rule is necessary since that emission mode is not presently authorized for that subband. The effect of the rule is to allow amateur stations in repeater operation to transmit emission F2A when identifying the station.

EFFECTIVE DATE: April 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Repeaters.

Report and Order

In the matter of amendment of § 97.61 (a) of the Amateur Radio Service Rules to permit emission F2A in the 29.5–29.7 MHz repeater subband, PR Docket No. 85–168, RM–4880.

Adopted: February 19, 1986.
Released: February 28, 1986.

By the Commission.

1. On May 23, 1985, the Commission adopted a Notice of Proposed Rule Making (50 FR 24548, June 11, 1985) to permit the transmission of emission F2A (telegraphy for aural reception) in the 10-meter repeater subband (29.5–29.7 MHz). Two comments were filed in this proceeding. Both supported the proposal.

2. The commenters, Robert A. Scupp and the American Radio Relay League, Inc. (ARRL), observe that since emission F2A is the primary emission mode used to identify amateur emission F3E repeaters by telegraphy, it should be available in the 10-meter repeater subband.

3. In its comments, the ARRL suggests that the emission designator G2A (phase-modulated telegraphy) also be shown in the table in Section 97.61 as available for the 10-meter repeater subband. This is unnecessary since the Third Report and Order concerning emission designators[1] permits both phase-modulated and frequency-modulated emission under the prefix F.

4. In our Notice of Proposed Rule Making, we specifically solicited information concerning the adverse effects on amateur communications of allowing the transmission of emission

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[1] A staff analysis has determined that the transmitter sites proposed by the tendered applications for Channel 225 at Reno comply with the new site restriction imposed herein.

[1] Paragraph 16, Third Report and Order, General Docket No. 80–739; FCC 84–510; 49 FR 48694, December 24, 1984.

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F2A in the 10-meter repeater subband. No such information was received. We conclude that there will be no negative impact.

5. Mr. Scupp and ARRL state that 29.5–29.7 MHz is the only amateur repeater subband not authorized for emission F2A. Actually, emission F2A is not currently listed in § 97.61(a) for any repeater subbands. To correct this, we have editorially amended § 97.61(a) to show emission F2A in the amateur bands 50.1–54.0, 144.1–148.0, 220–225, 420–450, 902–928, 1215–1300, 2300–2310 and 2390–2450 MHz. Also, the emission designator F2A is added for all of the line entries under Gigahertz in the table in that section. Frequency-modulated and phase-modulated telegraphy are already authorized. They were previously listed in those bands under the prior emission designator F2. The emission deignator F2A [8] was inadvertently omitted from those bands when the emission designators were converted to the new system. [9]

6. In view of the foregoing, we adopt the rules in our Notice of Proposed Rule Making with modifications discussed herein.

7. It is ordered, That Part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303 (e) and (r) of the Communications Act of 1934, as amended.

8. It is further ordered, That these rule amendments shall become effective, April 23, 1986.

9. It is further ordered, That the Secretary shall cause a copy of this Report and Order to be published in the **Federal Register**.

10. It is further ordered, That this proceeding is terminated.

11. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 97 continues to read, as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. The table in § 97.61(a) is revised by adding two line entries after 28000–28300, as follows:

§ 97.61 Authorized emissions.

(a) *kilohertz:*

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
*	*	*
28300–29500	A1A, A3E, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	
29500–29700	A1A, A3E, F2A, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	
*	*	*

3. Section 97.61(b) is revised to read, as follows:

§ 97.61 Authorized emissions.

* * * * *

(b) *50–144.1 MHz:*

Frequency band (MHz)	Emissions
50.0–50.1	A1A.
50.1–51.0	A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2A, F2B, F3E, G3E, F3C, F3F, H3E, J3E, R3E.
51.0–54.0	NoN, A1A. A2A, A2B, A3E, A3C, A3F, F1B, F2A, F2B, F3E, G3E, F3C F3F, H3E, J3E, R3E.
144.0–144.1	A1A

* * * * *

4. Section 97.61(c) is amended by adding two new sentences at the end thereof, as follows:

§ 97.61 Authorized emissions.

* * * * *

(c) *Above 144.1 MHz:* * * *

Emission F2A may also be used in the following frequency subbands: 144.1–148.0, 220–225, 420–450, 902–928, 1215-1300, 2300–2310 and 2390–2450 MHz. Emission F2A may also be used on all Gigahertz frequencies.

* * * * *

[FR Doc. 86–4841 Filed 3–5–86; 8:45 am]

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[8] The suffix A denotes telegraphy for aural reception.

[9] Third Report and Order in General Docket No. 80–739, *supra*.

Proposed Rules

Federal Register
Vol. 51, No. 44
Thursday, March 6, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowance and Post Differential; Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking; notice of further extension of public comment period.

SUMMARY: OPM is extending the public comment period for responding to the proposed regulations covering the nonforeign area cost-of-living allowance and the post differential. The proposed regulations were published at 50 FR 42531 on October 21, 1985. The original expiration date of the comment period was December 20, 1985, and was extended to February 21, 1986 (50 FR 53330). One commenter has requested extension of the comment period until March 31, 1986, to provide additional opportunity for analysis and comment. The public comment period is now extended to March 31, 1986. A request was also made to hold hearings in the allowance areas. In view of the five-month comment period now provided, the request to hold hearings is denied.

DATES: Comments are now due on or before March 3, 1986.

ADDRESS: Send or deliver written comments to U.S. Office of Personnel Management, Compensation Group, Allowances and Special Rates Division, Room 3353, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632–7471.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86–4831 Filed 3–5–86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Freedom of Information Act Implementing Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Agriculture proposes to amend its regulations (7 CFR Part 1, Subpart A) implementing the Freedom of Information Act (FOIA). The Department also proposes to amend Appendix A of the regulations which pertains to the assessment of fees under the Act.

DATE: Written comments must be received by the contact person listed below on or before April 7, 1986.

ADDRESS: Submit comments to Department of Agriculture, Office of Governmental and Public Affairs, Office of Information, Special Programs Division, Room 536–A, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Milton Sloane, U.S. Department of Agriculture, Office of Governmental and Public Affairs, Office of Information, Special Programs Division, Washington, D.C. 20250; (202) 447–8164.

SUPPLEMENTARY INFORMATION: It is proposed to amend 7 CFR Part 1, Subpart A to: list the primary agency in USDA for admininstering the Freedom of Information Act; specify the individuals responsible for acting on FOIA requests and appeals to the Office of the Secretary and the Office of Governmental and Public Affairs; outline the procedure for forwarding FOIA requests to USDA's central processing unit; announce new § 1.8 to reflect guidance on handling data submitted by private businesses; and to update Appendix A (the fee schedule) to reflect the higher costs for providing certain materials and services under the Act.

This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). Nor will these regulations cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of subjects in 7 CFR Part 1

Freedom of Information.

It is proposed to revise 7 CFR Part 1, Subpart A to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.
1.1 Purpose and scope.
1.2 Policy.
1.3 Agency implementing regulations.
1.4 Implementing regulations for the Office of the Secretary.
1.5 Public access to certain materials.
1.6 Requests for records.
1.7 Agency response to requests for records.
1.8 Handling information from a private business.
1.9 Date of receipt of requests or appeals.
1.10 Appeals.
1.11 Extension of administrative deadlines.
1.12 Failure to meet admininstrative deadlines.
1.13 Fee schedule.
1.14 Exemptions and discretionary release.
1.15 Annual report.
1.16 Compilation of new records.
1.17 Authentication.
1.18 Compulsory process.
1.19 Records in formal adjudication proceedings.
Appendix A—Fee Schedule

Subpart A—Official Records

Authority: 5 U.S.C. 301 and 552. Appendix A also issued under 7 U.S.C. 2244; 31 U.S.C. 9701, and 7 CFR 2.75 (a)(6)(xiii).

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (FOIA), 5 U.S.C. 552, pursuant to which official records may be obtained by any person. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, "Agency implementing regulations") for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Governmental and Public Affairs. The Office of Governmental and Public Affairs has the primary administrative

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responsibility for the FOIA in the Department of Agriculture (USDA). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals for agency documents, unless there are exceptional circumstances within the meaning of 5 U.S.C. (a)(6)(B). An agency shall notify a requester whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as Appendix A of this regulation, with regard to the charging of fees for providing copies of documents and related services to requesters.

§ 1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by § 1.5 to be made available for public inspection and copying.

(2) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements thereto which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b).

(b) The title(s) and mailing address(es) of the official(s) of the agency who is/are authorized to receive requests for records submitted in accordance with § 1.6(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 10-day administrative deadline for reply pursuant to § 1.11;

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart.

(c) The title and mailing address of the official of the agency who is authorized to receive appeals from denials of requests for records submitted in accordance with § 1.6(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20-day administrative deadline for reply pursuant to § 1.11 (to the extent the maximum extension authorized by § 1.11(c) was not used with regard to the initial request);

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart.

(d) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Implementing regulations for the Office of the Secretary.

For the Office of the Secretary and for the Office of Governmental and Public Affairs, the information required by § 1.3 is as follows:

(a) Records available for public inspection and copying may be obtained in Room 547–A, Administration Building, USDA, Washington, D.C. 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(b) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 547–A, Administration Building, USDA, Washington, D.C. 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(c) The person authorized to receive FOIA requests and to determine whether to grant or deny such requests is the Director of Information, Office of Governmental and Public Affairs, USDA, Washington, D.C. 20250.

(d) The official authorized to receive appeals from denials of FOIA requests and to determine whether to grant or deny such appeals is the Deputy Assistant Secretary for Governmental and Public Affairs, USDA, Washington, D.C. 20250.

§ 1.5 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2) each agency within the Department will make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) Each agency of the Department shall also maintain and make available current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution, copies of such indexes and supplements thereto at least quarterly, unless it determines by Notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such Notice, the agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

§ 1.6 Request for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by the agency. The requester may in his or her petition ask for a waiver if there is likely to be a charge for the requested information. To inspect or obtain copies of records of the Office of the Secretary or the Office of Governmental and Public Affairs, requesters should submit their requests to the Director of Information, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether that Act is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, etc. which may help identify the records. If the request relates to a matter pending in litigation, the court and its location should be identified.

(c) If an agency determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances, for purposes of § 1.9(a), shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude an agency from honoring an oral request for information, but, if the requester is dissatisfied with the response, the agency official involved shall advise the requester to

submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.9(a), shall be the date of receipt of the written request. For recordkeeping purposes, an agency responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records made under this subpart is denied, the person making the request shall have the right to appeal the denial. This appeal must be in writing and addressed to the offical designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) Requests that are nonagency-specific, i.e., are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency or which are sent to the wrong agency of USDA, should be forwarded to the Department's central processing unit for FOIA in the Office of Governmental and Public Affairs, Office of Information, Special Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250.

(g) The central processing unit will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency (agencies). The unit will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(h) Each agency shall develop and maintain a record of all written and oral requests and appeals received in that agency, which shall include in addition to any other information the name and address of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the exemption(s) for making any denials, and the amount of fees associated with the request or appeal.

§1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.6(a) shall inform the requester of its determination concerning that request within 10 days of its date of receipt (exception Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.11. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the appropriate date upon which compliance will be effected. If it grants only a portion of the request, it shall treat the portion not granted as a denial. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and of the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the agency shall notify the requester of that fact.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which appeal of a denial is submitted in accordance with § 1.6(e) shall inform the requester of its determination concerning that appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.11, of its date of receipt. If the agency determines to grant the appeal it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) If in compliance with the request, a charge is to be made in accordance with Appendix A of this subpart, the agency's response shall inform the requester of the amount and basis for the charge. It may, in accordance with Appendix A of this subpart, require payment of the entire fee, or a portion thereof, before it provides the requested records. In instances where a requester refuses to remit payment in advance, an agency may likewise refuse to process the request with written notice to that effect forwarded to the requester. The "date of receipt" of a request for which advance payment has been required shall be the date that payment is received.

(e) In the event compliance with the request involves inspection of records by the requester rather than the forwarding of copies, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(f) In the event the records requested contain some portions which are exempt from mandatory disclosure and others which are not, the official responding to the request shall insure that all nonexempt portions are disclosed, and that all exempt portions are identified according to the nature of information contained and the specific exemption or exemptions which are applicable.

§1.8 Handling information from a private business.

(a) The USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business. When in the course of responding to an FOIA request, an agency cannot determine readily whether the information is business information obtained from a person that is privileged and confidential, it is the policy of USDA to obtain and consider the views of the submitter of the information, and to provide the submitter an opportunity to object to any decision to disclose the information. Whenever a request is received in USDA for information which has been submitted by a business, all agencies of the Department should:

(1) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed, or on the other hand, that the information is not exempt by law from disclosure).

(2) Notify the requester of the need to inform the submitter of a request for submitted business information.

(3) Afford business information submitters time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information

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provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(4) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention.

(5) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§1.9 Date of receipt of requests or appeals.

(a) The date of receipt of a request or appeal, which contains the phrase FOIA REQUEST or FOIA APPEAL and is addressed in accordance with applicable agency regulations, shall be the date it is received in the office responsible for the administrative processing of FOIA requests or appeals.

(b) The date of receipt of a request or appeal which is hand-delivered to the address specified in agency regulations shall be the date of such hand delivery.

(c) The date of receipt of a request or appeal which does not comply with paragraphs (a) or (b) of this section shall be the date it is received by the official designated in agency regulations to make the applicable determination.

§1.10 Appeals.

(a) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(b) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, Research and Operations Division, Office of the General Counsel. When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(c) The Assistant General Counsel shall promptly review the matter (including necessary consultation with the Department of Justice and coordination with the Office of Governmental and Public Affairs) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension thereof.

§1.11 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section either of the administrative deadlines prescribed in §1.7 may be extended by an authorized agency official. Written notice of the extension shall be sent to the requester within the applicable deadline, setting forth the reasons for such extension and the date a determination is expected to be dispatched. In no event shall the extension exceed a total of 10 working days.

(b) As used in this section, "unusual circumstances" shall be limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. (Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Governmental and Public Affairs, or the Department of Justice is not a basis for extension under this section.)

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement shall be confirmed in writing and shall specify clearly the total time agreed upon.

§ 1.12 Failure to meet administrative deadlines.

In the event an agency fails to meet either of the administrative deadlines set forth in § 1.7, plus any extension authorized by § 1.11, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 522(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.13 Fee schedule.

Pursuant to authority delegated in § 2.75 of this title, the Director, Office of Finance and Management, has issued regulations, following notice and public comment, setting forth a uniform schedule of fees applicable to all agencies of the Department regarding requests for records under this subpart. (See Appendix A of this subpart.) Any amendments thereto will be made by the Director pursuant to notice and opportunity for comment. Said regulations provide reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such duplication. The regulations provide that documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 1.14 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, an agency may release records exempt from mandatory disclosure under 5 U.S.C. 552(b) whenever it determines that such disclosure would be in the public interest.

§ 1.15 Annual report.

(a) Each agency of the Department shall compile the following information for each calendar year:

(1) The number of determinations made by such agency not to comply with initial requests for records made to it under § 1.6(a), and the reasons for each such determination;

(2) The number of appeals made by persons under § 1.7(d), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name and title or position of each person responsible for the denial of records requested under this subpart and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding this subpart;

(6) The total amount of fees collected by the agency for making records available under this subpart; and

(7) Such other information as indicates efforts to administer fully this subpart.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding calendar year into a report and submit this report to the Director of Information, Office of Governmental and Public Affairs, by February 1 of each year.

(c) The Director of Information shall combine the reports from the various agencies within USDA into a Departmental report, and shall arrange for submission of this report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year in accordance with 5 U.S.C. 552(d).

§ 1.16 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency compile a new record in order to fulfill a request for records. Such compilation may be undertaken voluntarily if the agency determines this action to be in the public interest.

§ 1.17 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk may authenticate copies of documents in the records of the Hearing Clerk.

§ 1.18 Compulsory process.

(a) (1) In any case where it is sought by subpoena, order, or other compulsory process (hereinafter in this section referred to as a "demand") to require the production or disclosure of any record or material which is exempt from disclosure under 5 U.S.C. 552(b) or information related thereto acquired by an employee of this Department in the performance of his or her official duties, the matter shall be referred to an official authorized by agency regulations to make releases pursuant to § 1.14(b). For the Office of the Secretary and for the Office of Governmental and Public Affairs, this official is the Deputy Assistant Secretary for Governmental and Public Affairs.

(2) Such official may authorize release. However, if such official determines that it would be improper to comply with the demand, the official shall refer it to the agency head. The agency head may authorize release; however, if the agency head concurs with the initial conclusion, the matter shall be referred to the Secretary through the General Counsel for final determination.

(3) If the Secretary determines that the records, material, or information should not be produced, or if no final determination has been made, the employee shall be notified not to produce or disclose the records. The employee who appears in answer to the demand shall respectfully decline to produce or disclose the records, material, or information demanded on the ground that the disclosure is prohibited by this section. The employee shall provide the court or other authority with a copy of this subpart and a copy (when available) of the Secretary's determination, and shall respectfully request the court or other authority to withdraw or stay the demand.

(b) (1) Whenever a demand of the type described in paragraph (a) of this section is made upon an employee of this Department not authorized to make releases pursuant to § 1.14(b), by a court or other authority while he/she is appearing before, or is otherwise in the presence of the court or other authority, the employee, or other appropriate Government official or attorney acting on behalf of the employee, shall (i) immediately inform the court or other authority that this section prohibits the employee from producing or disclosing the information or material demanded and (ii) offer to refer the demand for the prompt consideration of authorized officials, providing the court or other authority a copy of this subpart and respectfully requesting that the demand be stayed pending his/her receipt of appropriate instructions concerning the demand.

(2) If the employee is authorized to make a release pursuant to § 1.14(b), but determines that such release would be improper, the employee shall offer to refer the demand for the prompt consideration of the agency head and/or Secretary and shall otherwise comply with paragraph (b)(1)(ii) of this section.

(c) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraphs (a) or (b) of this section pending the receipt by the employee of instructions or directions, or if the court or other authority rules adversely on any assertion made in conformity with the provisions of this subpart, the employee upon whom the demand has been made may tender the records, material, or information demanded with a request they be held in camera until an appeal can be taken from the adverse ruling.

§ 1.19 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Information Resources Management, U.S. Department of Agriculture, Washington, D.C. 20250, and shall be made available to the public.

Appendix A—Fee Schedule

Sec. 1 *General.* This schedule sets forth fees to be charged for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture.

Sec. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of procedures to facilitate public inspection and copying of their records. Any material offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such material for public sale. Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

Sec. 3. *Fees for materials and services.* All agencies of the Department shall comply with the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

Sec. 4. *Fees for records and related services.*

a. The fee for photocopies of pages 8½"×14" or smaller shall be $0.10 for the first copy and $0.10 for each additional copy of the same page.

b. The fee for photocopies larger than 8½"×14" shall be $0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of $8.00 per hour for clerical time and $14.60 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charges will be assessed the requester.

e. Computer services will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except that where commercial time-sharing computer sources are the required search

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media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual: Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

New Orleans Computer Center Users Manual: New Orleans Computer Center, U.S. Department of Agriculture, 13800 Old Gentilly Road, Building 350, New Orleans, La. 70129.

Kansas City Computer Center Users Manual: Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Paryway (P.O. Box 205), Kansas City, Mo. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S–100, South Building, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the St. Louis Computer Center will be based on actual expenses incurred in performing the search. Address is: St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, Mo. 63103.

f. The fees do not include, and no charge shall be made for, (a) time spent examining records to detemrine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, (c) time spent in resolving legal or policy issues, or (d) time spent in monitoring a requester's inspection of agency records.

g. The fee for Certifications shall be $2.00 each; Authentications under Department Seal (including aerial photographs), $5.00 each.

h. Except as provided in Section 9 below, for services not subject to the Freedom of Information Act and not covered by (g) above, agencies may set their own fees in accordance with appicable law.

i. The fees specified in paragraphs a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 U.S.C. 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 5. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in paragraphs g and h of this Section and in Sections 9 through 15 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees is at 31 U.S.C. 9701 (formerly 31 U.S.C. 483a) and other applicable laws.

Sec. 5. *Circumstances governing exceptions to the charging of fees for records and related services.* (For photographic reproductions, see Sec. 11 of this Appendix.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are $25.00 or less;

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare;

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved;

(5) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefitting the general public.

(6) In determining whether a fee waiver is appropriate for purposes of paragraph (a)(5) of this Section, an agency should consider the following factors:

(i) Whether there is a genuine public interest in the subject matter of the documents for which a fee waiver or reduction is sought;

(ii) The value to the public of the records themselves;

(iii) Whether the requested information is already available in the public domain;

(iv) The requester's specific qualifications, nature of research, and the purposes for which the requested materials will be used (the identity of a requester is usually not a proper factor to consider in granting or denying access, but should be considered in acting on a request for a fee waiver);

(v) The amount of personal benefit expected to accrue to the requester as the result of disclosure, compared with any discernible public benefit (FOIA fee waiver or reduction is appropriate only where the benefit to the general public is primary).

(7) An agency may, at its discretion, waive or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the agency determines that disclosure will primarily benefit the general public.

b. *Fees not to be charged for records and related services.* Documents shall be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case no copying fee will be charged (although search fees may still be assessed);

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceedings or matter before any Department agency.

c. Where both paragraphs a and b above apply to a matter, paragraph b shall be controlling.

Sec. 6. *Limitations of copies.*

a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

Sec. 7 *Search services.*

a. Search services are services of agency personnel—clerical, supervisory, or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

Sec. 8. *Payments of fees and charges.*

a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Payment shall be made by check, draft, or money order payable to the Treasury of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed $50.00, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search that could result in a high search cost, the requester should be notified of that fact and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform the request to meet the needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 5a(5), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a deposit of 50 percent of the estimated fee where appropriate.

Sec. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

Sec. 10. *Agencies which furnish photographic reproductions.*

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a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA–ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Soil Conservation Service (SCS) USDA, Cartographic Division, Washington, D.C. 20250, or Cartographic Facility in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (FS), USDA, P.O. Box 2417, Washington, D.C. 20013, or nearest Forest Service Regional Office.

Office of Governmental and Public Affairs, USDA, Photography Division, Room 4425 South Building, Washington, D.C. 20250.

Soil Conservation Service, USDA, Information Division, Audio Visual Branch, Washington, D.C. 20250.

National Agricultural Library, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, Md. 20705.

Sec. 11. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Sec. 12. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Sec. 13. *Sales of positive prints under government contracts.* The annual contract for furnishing single and double frames slide film negatives and positive prints to agencies of the Department, County Extension Agents, and other cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Sec. 14. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Sec. 15. *Reproduction prices.* The prices for reproductions listed here are for the most generally requested items.

a. National Agricultural Library. The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—$3.00 for the first 10 pages or fraction thereof, and $2.00 for each additional 10 pages or faction thereof. Dupliction of NAL-owned microfilm—$10.00 per reel. Duplication of NAL-owned microfiche—$3.00 for the first fiche, and $0.50 for each additional fiche. Magnetic tape containing bibliographic files—$45 per reel. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with Section 4, subsections c–e of this fee schedule. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Room 111, Information Access Division, USDA, Beltsville, Maryland 20705 (301–344–3834).

b. General photographic reproductions. Minimum charge $1 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white copy negatives and film positives:	
4 by 5 (each)	$4.20
5 by 7 (each)	4.50
8 by 10 (each)	5.40
11 by 14 (each)	8.40
2. Black and white enlargements:	
Up to 8 by 10 (each)	3.30
11 by 14 (each)	4.80
Over 11 by 14 (per square foot)	4.20
3. Reductions (from any size negative)	4.20
4. Slides: Black and white (from copy negative):	
2 by 2 cardboard mounted (each)	3.00
3¼ by 3¼ (each)	4.20
Original color (from flat copy) (each)	2.25
Duplicate color (2 by 2 cardboard mounted) (each)	.35
(Duplicate color slides are slides copied from 35mm color slides only.) Slides made from black and white material, or from transparencies larger or smaller than 35mm, will be charged at the same rates shown for black and white and original color slides	
5. Color transparencies (4 by 5) (each)	8.00
6. Color prints	(1)
7. Current USDA slide sets in stock:	
1 to 50 frames	14.50
51 to 60 frames	16.50
61 to 75 frames	18.50
76 to 95 frames	21.50
96 to 105 frames	23.00
106 to 130 frames	26.50
(Prices include printed narrative guide.)	
The following can be purchased for the corresponding slide sets above: Cassettes	3.00
8. Milk sedimentation standards (5 by 7 black and white photograph) (each)	1.25
9. Seeds and seedlings (any size (each)	2.40

(1) By quotation.

c. Aerial photographic reproductions. There is no minimum charge on aerial photography orders. The prices for various types of aerial photographic reproductions are set forth below. Size measurements refer to the approximate size in inches of the paper required to produce the print.

1. Black-and-white contact prints.

Size	Price each
10 x 10 Paper	$3
10 x 10 Diapositive (film)	6
10 x 10 Copy Negative	4

2. Aerial Photo Index Sheets.

Size	Price each
20 x 24 RC (Resin coated base) Paper	$5
24 x 36 Oxlid	4
Microfilm (Photo indexes):	
Aperture Cards	1
Microfiche	2

3. Black-and-white enlargements (projection prints).

Size	Price each	
	RC paper	Film positive transparency
12 × 12	$6	$12
17 × 17	8	14
24 × 24	12	20
36 × 36	25	35

4. Reproductions from color negatives.

Size	Price each	
	RC color paper	Color film positive transparency
10 × 10 contact	$5	15
12 × 12 enlargement	20	
20 × 20 enlargement	25	
24 × 24 enlargement	30	
36 × 36 enlargement	45	

5. Reproductions from color positive transparencies (natural color or color infrared).

Size	Price each	
	White opaque base color print film	Color film positive transparency
10 × 10 contact	$6	$12
12 × 12 enlargement	25	
20 × 20 enlargement	30	
24 × 24 enlargement	35	
36 × 36 enlargement	60	

6. Special need. For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in section 10a or the Departmental aerial photography coordinator, Aerial Photography Field Office, USDA–ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

d. Audio and videotape reproductions. For reproductions of audio or videotapes, requesters must supply their own recording tape, and will be assessed a fee of $20.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time videotapes or audiotapes are accepted by the requester.

Dated: March 3, 1986.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 86–4935 Filed 3–5–86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Branch Technical Position Statement on Licensing of Alternative Methods of Disposal for Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft branch technical position statement; requests for comments.

SUMMARY: This draft branch technical position statement proposes to answer licensing questions regarding the land disposal of low-level radioactive waste (LLW) and improve and simplify the licensing process. This statement would provide answers to certain questions that have arisen regarding the applicability of 10 CFR Part 61 to near-surface disposal of waste, using methods that incorporate engineered barriers or structures, and other alternatives to conventional shallow land burial disposal practices. Also, there have been general requests for regulatory guidance on alternative disposal methods. The specific alternative methods of interest to the requesters, however, are undetermined, as is the type and extent of desired guidance. This statement identifies a recently published NRC contractor report which addresses the applicability of 10 CFR Part 61 to a range of generic disposal concepts and which provides guidance that the staff intends to use for these concepts. To ensure prompt and meaningful regulatory guidance during the development of new disposal capacity for LLW, NRC staff encourages early and continuing interactions between the NRC and other entities involved in efforts to develop or regulate new LLW disposal sites. Finally, this notice solicits the States and other interested persons to identify any additional alternative disposal methods that they may be considering, so that they can be included in NRC actions to fulfill the requirements of section 8(a) of Pub. L. 99–240, the Low-Level Radioactive Waste Policy Amendments Act of 1985.

DATES: The comment period expires May 5, 1986.

ADDRESSES: Send written comments to the Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of all comments received by the NRC may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. R. John Starmer, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (202) 427–4170.

SUPPLEMENTARY INFORMATION: This statement would provide technical guidance for licening and regulation of alternative methods for near-surface land disposal of LLW. The statement describes general design concepts for several alternative disposal methods and discusses related licensing considerations. For the purpose of this statement, alternative disposal methods are defined as disposal facility designs or disposal concepts which incorporate engineered barriers or structures, or otherwise differ from the past and present methods of near-surface land disposal of LLW by shallow land burial.

With the enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240), on January 15, 1986, the NRC is required, in consultation with the States and other interested persons, to identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods. These actions are to be completed by January 1987. Further, the Act requires that by January 1988, the NRC, again in consultation with the States and other interested persons, identify and publish all relevant technical information regarding such alternative disposal methods that must be provided to the Commission in order to pursue such methods. For the NRC to meet these statutory requirements in a timely manner, it must immediately hear from the States and other interested parties as to what additional alternatives should be identified, as licensing guidance must be developed and published over very short time frames. Alternatives identified after the comment period will be noted, but licensing guidance for them not be available within the statutory time frames.

Draft Branch Technical Position Statement on Licensing of Alternative Methods of Disposal for Low-Level Radioactive Waste

A. Introduction

This technical position statement on alternative methods of land disposal of low-level radioactive waste (LLW) is provided in response to the question of whether disposal methods employing engineered structures and barriers can be licensed under the existing requirements in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste". The answer to the question is, "yes". This technical position statement is further prompted by the receipt of general requests for guidance on alternative disposal methods. These requests, however, have been indefinite regarding the disposal methods of specific interest, and the extent and type of regulatory guidance desired. The NRC staff has met with a number of different State and Regional Compact officials over the past six months to discuss regulatory guidance needed for the development of new disposal sites. Such discussions will continue and we hope they will begin to focus more sharply on specific technical questions as States and Regional Compacts reach decisions on choice of disposal method. A major purpose of this technical position statement is to provide guidance in response to requests received to date and to help ensure that States and Compacts are able to make timely decisions. The specific information contained in this technical position is intended to:

- Clarify the scope of disposal methods included within the meaning of the term "near-surface disposal";
- Define the characteristics of alternative land disposal concepts considered to be within the framework of the existing regulatory requirements in 10 CFR Part 61;
- Provide general guidance regarding the varous components of the disposal system for alternative near-surface land disposal concepts which may present problems in light of the performance objectives of 10 CFR Part 61;
- Encourage early and continuing interactions between potential license applicants, the LLW disposal service industry, States, other government agencies, and the NRC regarding efforts to develop and regulate new disposal capacity for LLW;
- Encourage design engineers, vendors, and prospective license applicants to submit detailed technical information on proposed disposal methods as far in advance of license application as possible; and
- Encourage focus on the fewest possible approaches to ensure standardization and resultant ability to use limited NRC resources most effectively.

The NRC staff will apply existing licensing criteria, performance objectives, and most of the technical requirements of 10 CFR Part 61 to proposed alternative disposal methods employing engineered structures and barriers. The NRC staff believes it will be possible to complete reviews of disposal alternatives with an expectation of fully resolving the licensing questions that may arise in the review process provided that an adequate pre-licensing dialogue is established.

B. Background Considerations

As a part of its work in developing 10 CFR Part 61 and its supporting environmental impact statement, NRC conducted a study of alternative low-level waste disposal methods. This was intended to help ensure that all viable disposal methods were considered and that the initial issuance of the regulation and subsequent amendments would be based on the disposal methods most likely to be used. The results of studies and public comments in response to the Advance Notice of Proposed Rulemaking for Part 61 led NRC to concentrate its efforts to develop regulations on land disposal methods.

Land disposal methods readily divide into two categories: Those that take place near the earth's surface and those that involve deeper disposal. Near-surface disposal encompasses the full range of technology that can be applied to low-level waste disposal near the earth's surface; that is, shallow land burial, deeper burial at depths up to 30 meters, and the use of engineered structures, barriers, and other concepts, some of which may be partially above the surface.

Specific requirements for deeper land disposal methods such as mined cavities, either natural or man-made, were not considered in the initial rulemaking effort. This technology involves considerations for siting and facility design, operations, and closure which are sufficiently different from those for near-surface disposal, that certain technical requirements in Subpart D of 10 CFR Part 61 do not apply. Such methods were left to be addressed in action on a specific application, subsequent guidance, and rulemaking effort, if rulemaking is warranted. It was also recognized that other disposal methods such as hydrofracture and deep-well injection have been used (e.g., by the Department of Energy in Oak Ridge, Tennessee). These two alternatives were not specifically addressed in the initial Part 61 rulemaking effort since they are suited to a very narrow range of waste types and require specific geologic and hydrogeologic conditions. Consequently, they also were left to be addressed at a later time, if necessary. Mined cavity, hydrofracture, or deep-well injection disposal methods, could, however, be sited and licensed on a facility-specific basis under existing regulatory provisions in Part 61.

C. Position

1. Regulatory Framework

The regulatory framework established in 10 CFR Part 61 covers all phases of waste disposal from site selection through facility design, licensing, operations, closure, and post-closure stabilization, to the end of the period of active institutional control. This framework of regulations establishes the procedures, criteria, terms, and conditions forming the basis upon which the NRC will issue and renew licenses for the land disposal of LLW.

Subparts of the rule covering general provisions and procedural licensing aspects, as well as those subparts covering performance objectives, financial assurances, State and Tribal participation, and records, reports, tests and inspections apply to all methods of land disposal of LLW, both near-surface and at greater depths. The technical requirements in Subpart D are specified only for near-surface disposal methods with reserved sections for other than near-surface. As discussed in Section 5, the NRC staff believes that, except for the potential need to develop site specific alternative waste form and classification requirements, the technical requirements in Subpart D should apply to alternative methods of near-surface disposal using engineered barriers or structures. These alternative methods include, for example, disposal by emplacement in below-ground engineered vaults, partially above-ground engineered vaults, earth-mounded engineered bunkers, lined shafts or boreholes, caissons or pipes, and concrete-walled trenches.

2. Evaluation of Alternative Disposal Methods

This technical position is guided by the background of knowledge and experience reflected in the rulemaking which culminated in the issuance of 10 CFR Part 61. Both draft and final environmental impact statements for the rule address alternative disposal methods. Alternative disposal facility design and operating practices were also among the subjects covered in the background studies and information considered in the rulemaking.

Since the publication of Part 61 in December 1982, the staff has continued to evaluate alternative disposal methods. A NRC contractor report prepared by the U.S. Army Corps of Engineers, entitled "Alternative Methods for Disposal of Low-Level Radioactive Wastes" (NUREG/CR-3774)[1] was published in five volumes:

- Volume 1, "Description of Methods and Assessment of Criteria," published April 1984, examined the applicability of 10 CFR Part 61 requirements—siting, design, operations and closure, and monitoring—to five generic design concepts for alternative disposal methods. The five design concepts are below-ground vaults, above-ground vaults, earth-mounded concrete bunkers, mined cavities, and augered holes.
- Volumes 2–5 published October 1985, provide a more detailed assessment of the applicability of existing criteria for near-surface disposal (Subpart D, 10 CFR Part 61) to four of the five alternative disposal methods covered in Volume 1. The four methods covered in the reports were below-ground vaults, above-ground vaults, earth-mounded concrete bunkers, and shaft disposal. (Note that mined cavity disposal is being evaluated but the work is incomplete at the present time.)

The authors concluded that the siting and site design, operations, closure, and monitoring criteria of Subpart D, 10 CFR Part 61, should apply to the four alternative disposal methods. The staff agrees with those conclusions, differing with the contractor's report on only a few minor interpretive points of the regulation. The findings of these reports and clarification of the ways the criteria should be interpreted will be incorporated into future regulatory guidance. This guidance will be issued based on consideration of any specific disposal alternatives that may be received for review, and analysis of particular design features of the generic disposal concepts that have already been studied. Staff expects to issue the guidance as modifications to a standard format and content guide being prepared for shallow land burial applications under Part 61.

The NRC basis for selecting the conceptual designs for first study by the Army Corps of Engineers was that each method appears to be under practical consideration by other countries, U.S. agencies, or States. One of these concepts, mined cavities, does not

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[1] Copies of NUREG/CR-3774 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

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appear to be under serious domestic consideration at this time. Further, as noted earlier, mined cavity disposal represents a significant departure from the experience; data and knowledge base used in formulating the requirements for Part 61. The NRC staff is currently evaluating the recommendations made by the Corps of Engineers regarding technical requirements for mined cavity disposal prior to publication of a separate volume of NUREG/CR–3774 on that disposal alternative.

While NRC has studied design concepts for alternative disposal methods, NRC cannot complete detailed design work or developmental research on new concepts or specific designs for facilities that would have the effect of establishing or developing their commercial potential. These activities are developmental rather than regulatory in nature and should be supported by the entities responsible for establishing new waste disposal capacity or, on the Federal level, by the Department of Energy.

3. General Guidance

Section 9 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires that, to the extent practicable, NRC complete all activities associated with the review and processing of any license application within 15 months of receipt of the application. The NRC is moving ahead to provide information which will help to ensure the timely review of low-level waste disposal facility license applications. However, the NRC staff will also evaluate innovative disposal designs that might later be reflected in a license application. To promote timely regulatory decisions, designers, vendors, and prospective license applicants are encouraged to submit detailed technical information on proposed disposal facility designs in advance of formal license application. This will permit NRC staff to evaluate fundamental safety and performance aspects and provide pre-licensing guidance. However, such information should only be submitted when the designs are a part of a specific application being prepared, represent work sponsored by a potential applicant, or are based on some other type of commitment by a potential licensee. Advance review, and where feasible, approval of designs and related technical information can reduce considerably the time needed for license application review.

Designs for alternative disposal methods should reflect both the benefits of significant research and development work, and the experience gained from waste disposal operations in the United States and other countries. It is anticipated that alternative disposal methods may offer an enhanced margin of protection for the public and the environment. If the alternative design is coupled with innovative operations (e.g., automated handling and emplacement) or more conservative waste forms, content, or packaging, it may also offer an enhanced margin of protection for workers. Tradeoffs on worker exposure, operations, and waste form should be factored into designing as indicated in Section 4 which follows. The NRC particularly encourages design innovations which increase safety and reliability and which generally are supported by a proven technology or one which can be demonstrated by a satisfactory technology development program.

Early review of facility design can be requested on an individual applicant basis. However, the NRC believes that there are advantages to standardized approaches to waste disposal. Standard disposal design features can benefit public and environmental protection by concentrating the resources of waste management engineers and vendors on particular approaches, and by stimulating standardized programs of construction practice and quality assurance. The use of standardized approaches and design concepts can also facilitate more effective and efficient licensing and inspection processes. To this end, staff plans to give higher priority and focus resources on those approaches which are of greatest interest to States. Therefore, the NRC staff strongly encourages industry and the States to pursue standardization in developing alternative waste disposal methods. Procedures for reviewing standard designs could be patterned after the procedures for reviewing standard designs for reactors in Appendix 0 to 10 CFR Part 50.

The public should note that pre-application requests for NRC review that also request approval by NCR involve fees. There are two ways for NRC to give approval. Both involve fees under 10 CFR Part 170. Requests that are suitable and submitted as Topical Reports involve a $20,000 fee. If the request is not suitable and not submitted as a Topical Report, Part 170 requires full cost recovery as a Special Project (see 10 CFR 170.31, Item 12). Also see 10 CFR 170.11(b) which allows the Commission to consider exemptions from the fee requirements when consistent with law and the public interest.

The NRC intends, commensurate with its statutory responsibilities, to improve and simplify the licensing process and provide stability and predictability in the regulation of new LLW disposal facilities. To help accomplish this objective, the NRC staff encourages the earliest possible interaction between potential license applicants, the waste disposal service industry, States, other government agencies, and the NRC. This should also serve to provide all interested parties, including the public, with timely and objective assessments of the public and environmental protection aspects of proposed alternative waste disposal methods.

4. Descriptions of Alternative Disposal Concepts

Each of the design concepts described below has either been evaluated as a waste disposal alternative to shallow land burial or is currently being used or considered for that purpose in other countries. Descriptions of these design concepts are included here to help define the range of design characteristics considered to be within the framework of the existing regulatory requirements of 10 CFR Part 61. The concepts are described in more detail in NUREG/CR–3774.

a. *Below-ground Vaults.* The term below-ground vault refers to any enclosed engineered structure built totally below the surface of the earth and used for the disposal of low-level radioactive waste. No portion of the structure would protrude above the natural surface grade. A below-ground vault could be fabricated from the engineering materials discussed below for above-ground vaults. The vault could be built with engineered walls and roof; the floor could be natural soil or rock, treated soil or rock, or engineered materials. The vault, as an integrated structure, also has the characteristic of limited access to its interior space, such as a doorway or portal or hatch opening. Operational access to the vault from the surface may be in the form of an excavated ramp, which is built and then covered over at closure. During operations, however, the vault may have more extensive access, depending on its design. See Volume 2 of NUREG/CR–3774 for a more complete description of variations in conceptual design and operation of below-ground vaults.

b. *Above-ground Vaults.* An above-ground vault disposal unit is an engineered structure or building with floor, walls, roof, and limited access openings on a foundation near the ground surface. At least some portion of the structure would be above the final

post-closure surface grade. The vault is built from engineered structural materials. Fabrication could be of masonry blocks, fabricated metal shapes, reinforced cast-in-place or sprayed concrete, pre-cast concrete, or plastic or fluid media molded into various solid shells. All of these materials have been used to construct vaults. There are no existing regulatory constraints on material selection or shape of the vault as long as it can be demonstrated by the license applicant that the performance objectives of 10 CFR Part 61 can be achieved. See Volume 3 of NUREG/CR–3774 for a more complete description of variation in conceptual design and operation of above-ground vaults.

c. *Earth-mounded Concrete Bunkers.* The design of earth-mounded concrete bunkers may include features of trenches, below-ground vaults, and earth mounds. This disposal method may also rely on mandatory requirements on waste form or site operation, such as specialized packaging and encapsulation. The basic design of an earth-mounded concrete bunker currently used in France segregates wastes according to level of radioactivity. Wastes with higher levels of radioactivity are embedded in concrete below ground. Waste packages with lower levels of radioactivity are emplaced above ground at natural grade in earthen mounds (tumuli). Thus, an earth-mounded concrete bunker may involve both above-ground and below-ground construction, and may include waste encapsulation and backfilling with both concrete and earth. See Volume 4 of NUREG/CR–3774 for a more complete description of variations in conceptual design and operation of earth-mounded concrete bunkers.

d. *Shaft Disposal.* The term shaft disposal refers to a near-surface disposal alternative in which wastes would be disposed of in shafts or boreholes augered, bored, or sunk by conventional construction methods. The shafts could be lined or unlined and be of various sizes. Lining could be of concrete, metal, or other suitable structural material. See Volume 5 of NUREG/CR–3774 for a more complete description of variations in conceptual design, use, and operations of shaft disposal.

If specific disposal facility designs are brought to the NRC for evaluation, the NRC will provide pre-licensing guidance to help ensure that key issues will be identified and resolved prior to licensing and that NRC's regulatory requirements are incorporated into the applicant's program. However, until such time as detailed technical information on designs are submitted, the NRC staff believes that regulatory guidance must be sufficiently general to avoid placing unnecessary constraints on the development of new design concepts. The nature of any new NRC regulatory requirements will be based on the extent to which an individual proposed disposal design is shown to conform to the existing technical requirements of Part 61 or is compatible with meeting the performance objectives set out in Part 61 when combined with other components of the disposal system.

The following general guidance is provided for features and characteristics of various alternative disposal concepts which may present problems in demonstrating compliance with the 10 CFR Part 61 performance objectives. Requirements to reassess and potentially modify other components of the disposal system are also discussed. This guidance is intended to assist waste disposal engineers, license applicants, and States in identifying a preferred waste disposal design.

5. Design Considerations

Land disposal facilities must be sited, designed, operated, closed, and controlled after closure to achieve the performance objectives set forth in Subpart C of Part 61. The combination of performance objectives and technical requirements establish a systems approach to waste disposal. The components of the "system" include the site and its characteristics, the facility and disposal unit design, the waste, facility operations and closure, intruder barriers, and institutional controls. Environmental monitoring is used to assess the system's performance. Reliance is not placed on any one component of the system. Rather, all interact in achieving the performance objectives. Design of the facility and disposal units plays an important role in the performance of the waste disposal system.

a. *Stiting.* The disposal site suitability requirements of § 61.50 are minimum common sense requirements and apply to siting of all near-surface alternative disposal methods. The first critical step, as with any disposal facility, is to select a site where natural conditions favor disposal.

Engineered structures and barriers should not be viewed as a planned substitute for a suitable site. Rather, in conjunction with other disposal system components, the engineered features should offer enhanced confidence in protection for the public and environment.

Thus, States are encouraged to proceed expeditiously with their disposal siting programs while NRC develops supplemental standard format and content guidance for alternative methods.

b. *Design of Disposal Units.* The disposal site design requirements of § 61.51 are sufficiently flexible to apply to alternative disposal methods which fall within the four concepts described in section 4 of this statement. Although little experience concerning waste disposal in engineered structures is available, the technology exists to construct buildings and stuctures that will last for centuries. There are structures in use today that were built hundreds and even thousands of years ago. However, procedures are not well developed for obtaining assurance that structures will be left alone or will survive intact over the period required to safely isolate emplaced wastes from the human environment after the loss of institutional controls. Designs which actively rely on engineering should be evaluated for deterrence of intrusion and also the consequences of intrusion and failure of the structure sooner than expected.

Waste retrievability is not required or prohibited by 10 CFR Part 61. If waste retrievability is proposed as a design feature, several important factors should be considered. Retrievability should not compromise or otherwise lessen the ability of the combined features to meet the performance objectives of Part 61. The designer should be sure that retrievability measures do not result in increased problems in protecting the inadvertent intruder. If the retrievability concept requires action by the custodial agency during the active institutional control period to assure long-term performance (e.g., grouting around packages), funding and institutional commitments for the action should be included.

c. *Waste Classification.* The ability to dispose of all Class A, B, and C LLW, as currently specified in Subpart D of Part 61, may have to be reassessed for the specific concept finally developed. Existing concentration limits for Class A, B, and C are based on associated waste form and other components of the system to determine critical pathways. Certain disposal methods and associated operations may not accommodate all classes of LLW or parts of one or more classes. An alternative waste classification system may be proposed by the applicant because of the types of waste generated within the region served by the proposed facility, the specific design of

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disposal units, or other factors. The applicant may propose a waste classification system different from that described in § 61.55, provided the system is compatible with the performance objectives of Part 61 and the concentrations of radionuclides in the system proposed do not exceed the values specified in § 61.55 for Class C waste. Alternatives to current waste classification requirements can be considered under the flexibility in § 61.58. However, alternative waste classes have the potential to confuse waste generators. Staff believes that using other options such as more restrictive waste forms or packaging or alternative emplacement methods would minimize waste generator confusion.

d. *Intruder Barriers.* Part 61 requires Class C waste to be disposed of in such a manner that the top of the waste is a minimum of five meters below the top surface of the cover over the waste or that intruder barriers are included that are designed to protect against an inadvertent intrusion for at least 500 years (§ 61.42, § 61.52). Alternative disposal methods coupled with alternative waste classification systems should provide a level of protection for the inadvertent intruder equivalent to the existing requirements.

e. *Waste Characteristics:* The minimum requirements on waste characteristics specified in § 61.56(a) will apply for alternative disposal methods. The applicant may use the flexibility on stability requirements in 10 CFR 61.56(b)(1) if waste stability is to be provided by the engineered structure in which the waste is emplaced. However, proposed designs may need more stringent minimum waste forms or packaging to protect workers or design features to accommodate planned operations (e.g., weight or size limits). Supplemental requirements should be reasonable enough so that generators and processors can be relied on to comply with the requirements. Alternatives to current waste characteristics requirements can be considered under § 61.58.

f. *Facility Operations and Closure:* The requirements for facility operations and closure in § 61.52 will be applied to the alternative disposal methods described in this statement. The specific application of the individual requirements may vary with a particular alternative disposal design. Worker exposure and safe operations should obviously be a factor in developing designs. Volumes 2 through 5 of NUREG/CR-3774 contain a more complete explanation and discussion of individual requirements of § 61.52 and their application than is included in this position.

g. *Environmental Monitoring:* The requirements for monitoring specified in § 61.53 will apply for alternative disposal methods. The specific parameters to be monitored and the measurements and observations to be made may vary significantly between below-ground and above-ground disposal units and, for above-ground units, between earth covered and uncovered units. Provisions for monitoring should be included in design considerations.

h. *Institutional Requirements.* The land ownership and institutional control requirements of § 61.59 will apply to alternative disposal methods. Existing requirements related to active institutional controls may have to be modified by license to accommodate some engineered structure disposal concepts, such as those built above ground without cover. For example, the wastes may be more readily available for exposure, so additional controls and a more comprehensive program to exclude the public from the site during the active institutional control period may be necessary. Part 61 provides that active institutional controls cannot be relied on for more than 100 years. Part 61 does not prohibit longer periods of active controls. However, longer periods should only provide additional assurances and should not be necessary to assure long-term performance.

6. Summary

The NRC staff should be informed as early as possible of new design concepts under development by the industry or under consideration by States and Compacts that do not represent a variation on the four concepts in Volumes 2 through 5 of NUREG/CR-3774. New disposal concepts may involve technical issues that should be identified and resolved in order to assure timely regulatory actions on license applications. NRC resources are limited and their use must be planned and focused on real needs. Recent legislation also requires that licensing guidance on alternatives be prepared and published by January 1987. Also, if design questions on specific proposals raise serious problems in meeting the requirements of 10 CFR Part 61, the most cost-effective decision on the part of the applicant may be to eliminate a particular alternative or design feature from further consideration. Early consultation with the appropriate licensing authority will aid timely decisions.

Prospective applicants should understand that they are responsible for all research, data, and technical evaluations necessary to support a specific license application. NRC conducts research only to provide the technical bases for rulemaking and regulatory decisions, to support licensing and inspection activities, to assess the feasibility and effectiveness of safety features and to increase our understanding of phenomena for which analytical methods are needed to carry out regulatory responsibilities.

D. Questions

A number of basic issues have been identified by NRC staff in the course of its evalution of alternative disposal methods. The staff requests comments from States and all other interested parties on these questions as well as any other aspect of this proposed technical position.

1. Are there any alternative disposal methods under serious consideration that do not represent a variation or combination of the four concepts evaluated in Volumes 2 through 5 of NUREG/CR-3774?

2. With the publication and endorsement of NUREG/CR-3774 and plans for modified guidance on the content of applications for alternative methods, what additional specific regulatory guidance is needed regarding alternative disposal methods?

3. To concentrate the resources of designers, engineers, and vendors on particular approaches, and permit a more effective and efficient licensing process, should NRC's regulatory program include active solicitation and review of a reference design concept? The staff could review and approve a submitted generic design for most (or a major portion) of a near-surface land disposal facility outside the context of a application for a site-specific license. (An approval design may be referenced in later applications.) If so, what aspects of a disposal facility design are amenable to standardization?

4. To promote a more effective and efficient licensing process, should NRC's regulatory approach include early pre-application review of site suitability issues relating to the development of a low-level radioactive waste disposal facility separately from and prior to the application for a license to construct and operate such a facility? Such early review and documentation of staff findings could be patterned after the procedures for reactor construction permits in Appendix Q to 10 CFR Part 50. If so, what provisions in Appendix Q should be included or deleted?

Dated at Silver Spring, Maryland, this 26th day of February, 1986.

For the Nuclear Regulatory Commission.

Robert E. Browning,
Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86-4790 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 424

Retail Food Store Advertising and Marketing Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of Postponement of Scheduled Public Hearing.

SUMMARY: The Federal Trade Commission has postponed until April 1, 1986, the public hearing on the Proposed Amendment of the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule. The time for filing statements of testimony and exhibits by witnesses has not been extended.

DATE: The public hearing will commence at 9:30 a.m., April 1, 1986.

ADDRESS: The public hearing will be held in Room 532 of the Federal Trade Commission Building, Pennsylvania Avenue and Sixth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202-523-3564 of Jill Goodrich-Mahoney, Attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, 202-523-5998.

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice of October 24, 1985 (50 FR 43224) the Commission published the proposed amendment of the rule, announced the date for commencement of the hearing and set a deadline for filing statements of testimony by prospective witnesses and exhibits. The hearing was scheduled to commence on March 17, 1986. Prepared statements of testimony by witnesses and exhibits were to be filed on or before February 14, 1986.

The Presiding Officer has granted the motion of the Commission staff for a delay in the commencement of the hearing, and has postponed the commencement date of the hearing until April 1, 1986. The Presiding Officer has not extended the deadline for filing prepared statements of testimony and exhibits by witnesses.

Issued: February 28, 1986.

Henry B. Cabell,
Presiding Officer.

[FR Doc. 86-4845 Filed 3-5-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, 212, 241, and 250

Royalty Management; Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Addition to advance notice of proposed rulemaking and request for comments.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is supplementing its February 5, 1986, **Federal Register** Notice announcing an advance notice of proposed rulemaking. Two alternative product valuation methods are proposed for oil and gas and associated products.

DATES: Comments must be received on or before April 7, 1986. A public meeting will be held on March 18 and 19, 1986, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Comments should be mailed to Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, Attention: Vernon B. Ingraham. The public meeting will be held at the Denver Federal Center, Building 25, Room 1254, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, telephone: (303) 231-3360, (FTS) 236-3360.

SUPPLEMENTARY INFORMATION:

I. Background

An advance notice of proposed rulemaking giving notice of the availability of draft valuation regulations for coal, oil, gas and associated products, gas processing allowances, and transportation allowances was published in the **Federal Register** on February 5, 1986 (51 FR 4507). The background information in that notice applies also to this notice.

II. Draft Regulations

The draft regulations for each of the products being made available for review and comment (i.e. coal, oil, and gas) incorporate a procedure for valuing products disposed of under non-arm's-length-contract and no-contract situations that requires an intensive, up-front MMS approval process. However, future resources available to MMS may be inadequate to support the active MMS role required in the draft proposed regulations. Therefore, MMS specifically requests comments for each of the regulations regarding alternatives that may require fewer resources for both the lessee and MMS. In this regard, MMS has identified a few specific alternatives, but other alternative suggestions are requested.

In valuing oil, posted prices are a well-recognized valuation standard, and posted price bulletins cover almost all producing areas. MMS has proposed to use these posted prices as the primary valuation criteria. Under the draft regulations, MMS would review all transactions that do not occur under an arm's-length contract. This review would be based primarily upon information submitted to MMS by the lessee, and then MMS would specify a value, which in all probability would be based upon prices posted for the producing area. As an alternative, MMS would like comments on whether the regulations could require the lessee to compute royalties based on a price which is no more than 5 percent less than the highest price posted applicable to the producing area, adjusted for gravity. This would eliminate both the need for lessees to submit information and for MMS to review all that information before establishing a royalty value in non-arm's-length and no-contract situations. The lessee's valuation still would be subject to later audit by MMS.

For valuing gas, one alternative to the draft regulations would retain the basic approach of the draft proposed regulations, but up-front MMS approval would not be required for non-arm's-length-contract and no-contract situations. The lessee would be responsible for determining whether its non-arm's-length contract is equivalent to non-arm's-length contracts or, failing that, for determining which of the prioritized valuation criteria should be used. Thus, rather than requiring the lessee to propose a value, submit that proposal to MMS with supporting documentation, and then await MMS approval, this alternative would allow the lessee, in the first instance, to apply the prioritized criteria which would be set forth in the rules. Of course, the lessee's value would be subject to later audit to ensure its reasonableness. While this approach would reduce MMS's involvement in establishing value, comments are requested on

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whether it would provide the level of certainly to the lessee that MMS desires in the regulations. One purpose of the regulations is to eliminate, to the extent practicable, the situation which currently exists whereby lessees are uncertain as to what the royalty value of a product will be until MMS conducts an audit.

A second alternative for valuing gas in non-arm's-length-contract and no-contract situations would be to have the regulations prescribe, by geographical area, a minimum value for royalty purposes. This minimum value would change periodically based upon an index which would also be prescribed by the regulations. The index would be designed to reflect changing market conditions, and thus cause the minimum value to rise or fall with the market. For example, assume minimum value for NGPA section 102 gas for January 1986 is determined after the notice and opportunity for comment to be $2.10 per MMBtu for the Gulf of Mexico OCS. The index is prescribed to be the average projected base price reported to FERC for the Gulf of Mexico OCS under all Purchased Gas Adjustment (PGA) filings in effect for the current month divided by the average projected base price reported to FERC under all PGA filings in effect for January 1986. If the average projected base price reported to FERC for January 1986 was $2.00 per MMBtu, and for June 1986 it was $1.75 per MMBtu, the minimum value upon which royalties could be based for June 1986 Gulf of Mexico OCS production would be $1.84 per MMBtu.

PGA filings are required to be filed by all interstate pipeline companies that purchase gas for resale and these filings are publicly available. One concern with this alternative is that the PGA filing information may not represent the total gas sales from an area because it does not include intrastate gas sales, direct producer sales, etc. In the worst case, there may be no PGA filing information available, such as for the State of California where no gas produced is sold into the interstate market. The advantage of this alternative is that lessees would be able to determine with some certainty what their royalty obligation would be. For MMS, the audit burden would be decreased significantly because auditors would be required to determine only if the lessee paid either gross proceeds or the minimum value, whichever is greater.

MMS's objective is to have clear and concise valuation regulations which result in proper, reasonable values for royalty purposes. Our goal is to avoid a process that is burdensome on either the lessee or lessor. Therefore, comments are requested on the draft rules, the alternatives outlined in this notice, and any other suggestions lessees or others may have for inclusion in proposed regulations.

III. Availability of Draft Regulations

Interested persons may obtain a copy of the draft regulations upon request from the MMS at the address above in **ADDRESSES**.

The format of the public meeting will be the same as that specified in the preamble section of the draft regulations. The oil and gas draft regulations will be covered on March 18, the coal draft regulations will be covered in the morning session on March 19, and the gas processing and transportation allowance draft regulations will be covered in the afternoon session on March 19.

Dated: March 2, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-4884 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-85-81]

Special Anchorage Area; Hudson River, Tarrytown, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a special anchorage area in the Hudson River southwest of Tarrytown, New York and northeast of the Tappan Zee Bridge. This proposal is being considered because there is a reported shortage of dock space for recreational vessels in the lower Hudson River. The proposed special anchorage would help alleviate the shortage of space by providing a mooring area for approximately 45 small vessels.

DATE: Comments must be received on or before April 21, 1986.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T.S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3-85-81) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG T.S. Kuhaneck, Project Officer, Coast Guard Group New York, and Mrs. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The area proposed for designation as a special anchorage lies in an area southwest of Tarrytown, New York, and northeast of the Tappan Zee Bridge. This is an area of heavy recreational boating concentration but one lacking in available dock area. The proposed special anchorage would increase the area available for recreational boaters to anchor in this section of the Hudson River. This rule would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The area is well away from the navigable channel and is located where general navigation will not endanger or be endangered by unlighted vessels. It is projected that approximately 45 small vessels will use this designated area. The area would be open to the general public with access available at the Washington Irving Boat Club. The boat club has launching equipment, a paved launching ramp, and fueling and parking facilities. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed Special Anchorage Area will not require dredging or result in increased cost to any segment of the public. In fact, it may attract additional recreational boaters to the area which would have a favorable economic impact in commercial facilities providing services to these boaters.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, paragraphs (p-1) and (p-2) are redesignated (p-2) and (p-3), respectively, and a new paragraph (p-1) is added to read as follows:

§ 110.60. Port of New York and vicinity.

* * * * *

(p-1) *Hudson River, at Tarrytown, NY.* Beginning at a point on the shoreline at latitude 41°04'20" N., longitude 73°52'04" W.; thence due west to a point at latitude 41°04'20" N., longitude 73°52'12" W.; thence due south to a point at latitude 41°04'13" N., longitude 73°52'12" W.; thence due east to a point on the shoreline at latitude 41°04'13" N., longitude 73°52'00" W., thence along the shoreline to the point of beginning.

* * * * *

Dated: February 24, 1986.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86-4915 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 12-86-01]

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the California Department of Transportation the Coast Guard is considering a change to the regulations governing the Butte City bridge across the Sacramento River, mile 169.7, at Butte City, California to provide that the draw need not open. This proposal is being made because no requests have been made to open the draw since the bridge was completed in 1949. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and should still provide for the reasonable needs of navigation. The Coast Guard also proposes to delete the 1972 requirement that the draws above Chico Landing be returned to operable condition within six months after notification by the District Commander.

DATE: Comments must be received on or before April 21, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Twelfth Coast Guard District, Building 51-3, Government Island, Alameda, CA 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying in the Bridge Section at the above address. Normal office hours are between 6:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Assistant Chief, Bridge Section, Aide to Navigation Branch (telephone: (415) 437-3514.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Twelfth Coast Guard District will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Rose E. Guerra, project officer, and Lieutenant Commander Peter K. Mitchell, project attorney.

Discussion of Proposed Regulations

The Butte City drawbridge has not had any requests for an opening since it was completed in 1949. The bridge owner has made test openings every few years to make sure the operating mechanism was in working order. The fender system has been a maintenance problem due to debris carried by seasonal runoff. The closest downstream bridge is at Colusa, mile 143.5. This is a removable span bridge which is not required to open. The closest upstream bridge is at Ordbend, mile 185.0, and is a fixed bridge. Both bridges provide less vertical clearance than the Butte City bridge in the closed position.

The Hamilton City bridge, mile 203.5, and the Tehama railroad bridge, mile 232.5, are the only two remaining drawbridges above Chico Landing. The Hamilton City bridge is currently being replaced with a fixed bridge. The Tehama railroad bridge is immediately upstream of an adjacent fixed highway bridge. The bridge has not been opened since 1934. Therefore the regulation requiring the bridge(s) to be returned to service within six months of notice by the District Commander is no longer necessary.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since there has not been any requests for openings since the bridge was constructed it will not have any impact on navigation.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic

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impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

AUTHORITY: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section § 117.189 (b) and (c) are revised to read as follows:

§ 117.189 Sacramento River

* * * * *

(b) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(c) The draws of the bridges above Meridan need not be opened for the passage of vessels.

* * * * *

Dated: February 20, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 86–4914 Filed 3–5–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 166

[CGD 85–082]

Shipping Safety Fairways; Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish a shipping safety fairway in the vicinity of Heald Bank in the approach to Galveston, Texas. This shipping safety fairway is intended to increase navigation safety by providing a corridor free from fixed offshore structures. This proposal is necessary to permit deep draft vessels to navigate safely around the area off Heald Bank Shoals in the approach to Galveston, Texas. This proposal would also implement the results of the port access route study as reported in the **Federal Register** on March 11, 1985 (50 FR 9682).

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be submitted to Commandant (G–CMC/21) (CGD 85–082), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2110 between the hours of 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation (G–NSR–3), room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 245–0108.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 85–082, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or evelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation,and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations.

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (33 U.S.C. 1223). Prior to this amendment, fairways were established by the U.S. Army Corps of Engineers (COE). Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the COE.

A shipping safety fairway is an area or corridor of a waterway in which no fixed structures are permitted. In accordance with the PWSA, the right of navigation is paramount over other uses in these areas. A fixed structure in a fairway would be considered an obstruction to navigation and the COE will therefore not issue a permit for the construction of a structure therein. The fairways exist to ensure that an obstruction free corridor is available to navigation during development and production of offshore resources. Although the proposed fairways will be indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from United States ports. The results of a port access route study could cause restrictions on the manner in which specific offshore areas are leased after the date of the study notice. The study for this rulemaking was initiated by a notice in the **Federal Register** on March 19, 1984 (49 FR 10127, corrected on April 12, 1984 at 49 FR 14538) and on July 10, 1984 (49 FR 28074). The Eight Coast Guard District performed the study to determine the need for safe access in the approach to Galveston because of a problem with shoals in the vicinity of Heald Bank. This problem was brought to the Coast Guard's attention by the Houston/Galveston Navigation Safety Advisory Committee in 1983. Presently, there are four fairway segments leading into Galveston. The northwest-southeast leg of the Galveston Entrance Fairway (33 CFR 166.200(d)(10)) is the most direct route for the majority of traffic using the Houston/Galveston port complex. Within this fairway is a section of shallow water in the vicinity of Heald Bank (approximately 34 ft.). The Advisory Committee recommended that the Coast Guard designate a secondary fairway through deeper water. The Eighth District's study results concurred with this recommendation.

Study results were published in the **Federal Register** on March 11, 1985 (50 FR 9682). The study recommended a new fairway be established to permit deep draft vessels to navigate safely around the area of Heald Bank shoals in the approach to Galveston. The present rulemaking is intended to implement the Heald Bank deep draft fairway recommendation. The study also recommended the existing fairway system in the approach to the Louisiana Offshore Oil Port (LOOP) remain as it

was originally established, and the existing LOOP fairway system be incorporated into Part 166 of Title 33, Code of Federal Regulations, to consolidate all fairways in a single part. A final rule was published on July 1, 1985 (50 FR 26989) to incorporate the LOOP fairway system into 33 CFR 166.200(d)(52).

Heald Bank Cutoff Safety Fairway

A new shipping safety fairway is proposed around the area of Heald Bank Shoals in the approch to Galveston. The proposed fairway would connect the Northwest-Southeast leg of the Galveston Entrance Fairway with the North-South leg of the fairway. It would be approximately two miles wide, 125 miles long, approximately 40 miles offshore, and would run generally east-west. It would affect one tenth of one tract (High Island Area A–45) leased *after* the notice of study (49 FR 10127) was published, under the stipulation that development of the tract be in accordance with future fairway restrictions. The new fairway will provide a corridor free from fixed structures for deep draft vessel traffic in the approach to Galveston.

Regulatory Evaluation

This proposed rulemaking will not have adverse energy or environmental impact. On the contrary, the risk of environmental damage will decrease if the rule is implemented because deep draft vessels will have an established access route where structures will not be permitted, allowing for safer maritime navigation. The Coast Guard is directed by the PWSA to anticipate development on the Outer Continental Shelf (OCS) and to reconcile the potential conflict with navigation by establishing routing measures in frequently used corridors.

The proposed fairway was designed to have the least adverse impact upon future tracts and present leaseholders. As indicated above, there is one tract in the proposed fairway which was leased after the study was opened. The proposed fairway may interfere with direct exploration and production of oil in the portion of the leased tract within the designated area. However, it is impossible to determine what offshore resources, if any, would be inaccessible if the proposed fairway is established.

In cirumstances where the Coast Guard is convinced that fixed structures must be placed in an area designated as a fairway, to gain access to significant quantities of oil or gas, and that navigation safety would not be jeopardized by a modification of that fairway, a request for adjustment would be given the appropriate consideration in accordance with the PWSA and rulemaking procedures. In most cases, a fairway modification will require a PWSA port access study before rulemaking can be commenced.

This proposed regulation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the proposed fairway which can be identified and calculated at this time. This designation will contribute to navigation safety without significantly interfering with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal has been found to be so minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

In consideration of the foregoing, the Coast Guard proposes to amend Part 166 of Title 33 Code of Federal Regulations as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.200 is amended by adding a new paragraph (d)(53) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) * * *

(53) Heald Bank Cutoff Safety Fairway. The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
28°57'15" N.,	94°23'55" W.,
28°51'30" N.,	93°56'30" W.,
28°46'30" N.,	93°51'45" W.,
28°55'15" N.,	94°23'55" W.

Dated: March 3, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86–4916 Filed 3–5–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–2975–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at eight facilities from the list of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regualtions, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated three of the petitions which are discussed in today's notice. Based on our review at that time, two of the petitioners were granted a temporary exclusion, while the third petitioner was granted an informal exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions and the other five petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until April 7, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen whose address appears below, by March 21, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to EPA. One copy should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW.,

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Washington, D.C. 20460. A second copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Identify your comments at the top with this statement: "Section 3001—Delisting Petition; Proposed Exclusions Beginning with Chamberlain-Featherlite, Inc.; March 6, 1986."

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for these proposed exclusions is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous waste identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the wastes was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); Section 222 of the Hazardous and solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to waste listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) that the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent of the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose the submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be persent in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the receptor well equal to or less than that same level). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Chamberlain-Featherlite, Inc., Hot Springs, Arkansas;
Falconer Glass Industries, Inc., Falconer, New York;
Lake City Army Ammunition Plant, Independence, Missouri;
Loxcreen Company, Inc., Hayti, Missouri;
Olin Corporation, Augusta, Georgia;
SR of Tennessee, Ripley, Tennessee;
Tennessee Electroplating, Ripley, Tennessee;
Valley City Steel Company, Valley City, Ohio.

I. Chamberlain-Featherlite, Inc

A. Petition for Exclusion

Chamberlain-Featherlite, Inc. (Chamberlain), located in Hot Springs Arkansas, is involved in the manufacture of aluminum storm doors. Chamberlain has petitioned the Agency to exclude its treated sludge presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide. Chamberlian has petitioned to exclude its waste because it does not meet the criteria for which it is listed.[3]

Chamberlain's conversion coating process is a pretreatment process that applies a corrosion-resistant film to the metal surface before painting. Chamberlain claims that its wastewater treatment process generates a non-hazardous waste because the constitutents for which the waste was listed are not present in the waste or, if present, are in essentially an immobile form. Chamberlain further claims that this waste is not hazardous for any reason.

Chamberlain has submitted a detailed description of its manufacturing and wastewater treatment processes, including: schematic diagrams; total constituent analyses for total chromium and cyanide; EP toxicity test results for total chromium; distilled water leach test results for cyanide; and reactivity test results with respect to cyanide and sulfide content. Chamberlain also submitted total constituent-analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, nickel, selenium, and silver and test results for total oil and grease. Chamberlain further submitted a list of raw materials used in their manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

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[1] The Agency recently proposed a similar approach, including a ground-water transport model, as part of the land disposal restrictions rule (see 51 *FR* 1602, January 14, 1986). The Agency, however, has not yet received or evaluated the comments on this proposal. If this approach is promulgated, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground-water monitoring data or spot check verification data.

[3] Chamberlain originally submitted their petition of July 5, 1983. On November 8, 1984, the Hazardous and Soild Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Chamberlain. This additional information was submitted on May 10, 1984, and June 11 and September 17, 1985.

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Chamberlain manufactures aluminum storm doors. Their manufacturing process includes metal cutting, extrusion forming, cleaning with caustic baths, etching, and conversion coating with chromates to prepare the metal surface for painting. Chamberlain claims that the painting process is completely separate and that paint wastes do not contaminate the conversion coating wastes. Chamberlain also claims that cyanide is not used in the manufacturing process.

The chrome wastes generated from the 5-parts washer (conversion coating process) are collected in a sump and fed through a sulfonator where sulfuric acid and sulfur dioxide are added to reduce hexavalent chromium to trivalent chromium. This waste then flows to a neutralizing tank where it is combined with the alkaline rinse wastewater. The pH is adjusted with a lime slurry, and the waste flows into a bag filter vessel (BMD filter) where the waste achieves a 10–18% solids content. The sludges removed by the filtration are accumulated for dewatering in a holding tank and fed to the filter press on a batch basis. The effluent is recycled through the wastewater treatment system.

Four daily grab samples were collected from the filter press over a two-week period in August, 1985.[4] Samples were also collected from the filter press in May, 1985, and analyzed for lead using the EP toxicity test. Chamberlain claims that the samples collected are representative of any variation of the listed and non-listed constitutent concentrations in its wastestream, since the conversion coating pretreatment process does not vary. Chamberlain further claims that the use of raw materials does not vary over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

The total constituent and EP toxicity analyses of the chemical conversion coating waste, generated from the filter press for the listed constituents, revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (FILTER PRESS)

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
CN [1]	<1.0	<0.02 [2]
Cr (total)	23300	0.13

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make determination of hexavalent chromium unnecessary.

[2] From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedure.

The total constituent and EP toxicity analyses of the filter press waste for the non-listed constituents revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (FILTER PRESS)

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
As	<5.0	<0.5
Ba	1540	18.6
Pb	4.75	<0.04
Hg	<0.02	<0.002
Se	<5.0	<0.2
Ag	<0.5	<0.03
Cd	<0.1	<0.01
Ni	15.8	0.40

The maximum total oil and grease value reported for the filter press sludge was .1 percent. Chamberlain also analyzed their sludge, for sulfide and cyanide content, with respect to reactivity. Maximum concentrations of sulfide and total cyanide were less than 5 ppm and less than 1.25 ppm, respectively. Chamberlain also submitted a list of raw materials used in the chemical conversion coating process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process, and that formation of any of these constituents is highly unlikely. Chamberlain also provided test data indicating that the sludge is not ignitable or corrosive. Chamberlain claims to generate a maximum of 111 tons per year of filter press waste from this process.

B. Agency Analysis and Action

Chamberlain has demonstrated that the treatment sludge generated from its filter press is non-hazardous. The Agency believes that the samples collected were non-biased and adequately represent any variations that may occur in the waste petitioned for exclusion. Due to the nature and consistency of the manufacturing operations involved (*i.e.*, the facility is not a job shop and production does not vary seasonally), the Agency believes that the samples are representative of the waste generated by Chamberlain.

The Agency has evaluated the mobility of the constituents from Chamberlain's waste using a vertical and horizontal spread (VHS) model.[5] The Agency's evaluation of the 111 tons of filter press sludge generated annually and the corresponding maximum extract levels, using the VHS model for the listed constituents, predicted levels at the compliance point which are less than the applicable level of regulatory concern, as seen in Table 3.[6] (Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations).

TABLE 3.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	Cr(total)	CN
Filter press regulatory	0.004	0.0006
Standard	0.05	0.2

The filter press sludge exhibited chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standard, and cyanide levels below the U.S. Public Health Services' suggested drinking water standard.[7] Total cyanide levels in the waste are also below the air threshold limit set by the American Conference of Governmental Industrial Hygienists.[8] These constituents, therefore, are not of regulatory concern.

The Agency has also concluded, through the use of the VHS land-fill model, that no other hazardous inorganic constituents are present in the filter press waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point, see Table 4). In addition, we also

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[4] Chamberlain's demonstration was initially based on samples taken before the filter press was installed; four samples were collected over a two-month period from the "blowdown" wastestream, which was generated from the BMD filter and piped to the surface impoundment. Five core samples were collected from the impoundment in March 1983. In March 1984, the surface impoundment was closed as a hazardous waste facility, and the filter press installed.

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[6] The maximum EP value reported was used in the VHS model calculations because the sample size was small (4 samples were collected from the filter press for all of the EP toxic metals, except Pb). Ten samples were collected and analyzed during two different sampling periods for this parameter due to high concentrations found in the "blowdown" waste before installation of the filter press. The elevated lead concentrations were due to a billet masking compound which contained 70% lead. Chamberlain discontinued use of this compound in April 1985; the maximum lead level found in subsequent analyses of the waste was 4.5 ppm.

[7] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[8] See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, Third Edition, 1971, Cincinnati, Ohio.

find that no hazardous organic constituents are present in the waste; the Agency reviewed the list or raw materials used by Chamberlain in their manufacturing process (*i.e.*, they do not use any organic hazardous constituents).

TABLE 4.—COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag	Cd	Ni
Filter press regulatory	.015	.58	.001	<.0001	.008	<.001	<.001	.012
Standard	.05	1.0	.05	.002	.01	.05	.01	.35

The Agency believes that based upon the constituents and factors evaluated, Chamberlain's wastewater treatment sludge is non-hazardous and should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Chamberlain-Featherlite, Inc., located in Hot Springs, Arkansas, for its dewatered chemical conversion coating wastes, as described in its petition.

II. Falconer Glass Industries Inc.

A. Petition for Exclusion

Falconer Glass Industries, Inc. (Falconer), located in Falconer, New York, manufactures mirrors and mirror products. Falconer has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling of aluminmum. Falconer has petitioned to exclude its waste because it does not meet the criteria for which is is listed.[9]

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Falconer claims that its wastewater treatment process generates non-hazardous sludges from the filter press and magnetic drum separator, because the constituents of concern, although present in the wastes, are in essentially an immobile form. Falconer further claims that these wastes are not hazardous for any other reason.

Falconer has submitted a detailed description of its electroplating and wastewater treatment processes, including: a schematic diagram; total constituent analyses and EP toxicity test results of the sludges for cadmium, total chromium, and nickel; and total constituent analyses and distilled water leach test results for cyanide. Falconer also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and results of oil and grease analyses on representative waste samples. Falconer further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents, other than those for which the wastes were originally listed, are present in the waste at levels of regulatory concern.

Falconer manufactures mirrors and mirror products. The manufacturing process includes: glass cleaning and pretreatment; electrochemical silver deposition; galvanic copper plating; silver and copper film removal; and regeneration of ion exchange resin beds. Falconer claims that cadmium, nickel, chromium, and cyanide are not used in any of its processes.

Falconer's waste treatment system consists of two interconnected processes. Process I receives most of the waste iron generated from the galvanic copper plating process and uses a magnetic drum separator to remove the iron from the waste. The wastewater from the drum separator joins the regeneration wastes from the ion exchange resin beds (process II) where they are neutralized with sulfuric acid or sodium hydroxide, treated with an anionic polymer for flocculation, clarified, and pumped to a filter press where the sludge forms cakes of up to 40 percent solids.

Four grab samples were collected from both the filter press and from the magnetic drum separator (iron waste) over a two week period in July, 1985.[10] The petitioner claims that the manufacturing processes used at the facility are uniform and that the use of raw materials does not vary over time. Falconer claims, therefore, that the samples collected are representative of any variation of the listed and unlisted constituent concentrations in the wastes.

The total constituent and EP toxicity analyses of the final filter cake and separator wastes for the listed constituents revealed the maximum concentrations reported in Table 1.[11]

TABLE 1.—MAXIMUM CONCENTRATIONS

	Filter press waste		Separator waste	
	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
Cd	0.16	<0.10	0.17	0.290
Cr (total)[1]	7.51	<0.50	33.2	<0.50
Ni	26	<0.50	202	<0.50
CN	<2	[2] <0.033	<2	[2] <0.02

[1] Hexavalent chromium is listed as the constituent of concern for these wastes; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[2] From distilled water leach test.

The total constituent and EP toxicity analyses for the non-listed metals for the filter press and separator wastes are reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

	Filter press waste		Separator waste	
	Total constituent analysis (mg/kg)	EP Leachate Analysis (mg/1)	Total constituent analysis (mg/kg)	EP Leachate Analysis (mg/1)
As	<5	<0.5	<5	<0.5
Ba	183	3.33	7.42	2.06
Pb	430	<0.5	12.5	<0.5
Hg	0.15	<0.0004	<0.14	<0.0004
Se	<5	<0.1	<5	<0.1
Ag	36.6	<0.5	27.4	<0.5

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[9] Falconer originally submitted their petition on February 7, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Falconer. This information was submitted by Falconer on October 10, 1984, and May 13, and October 1, 1985.

[10] In the original submittal, Falconer collected grab samples, for seven days, from the filter press and composited them into a single sample (Process II). Falconer also submitted results from five past EP toxicity analyses on the filter press waste taken in July and October, 1981, and March, June, and August of 1982. Process I waste treatment (iron waste) previously involved a gravity settling tank and an evaporation pit. In their original petition, Falconer collected seven samples from the settling pit and composited them into a single sample. The magnetic drum separator was installed in 1984.

[11] Concentrations of nickel and chromium were found in Falconer's wastes even though these constituents are not used in either the manufacturing or wastewater treatment processes. The presence of these compounds is most likely a result of the stainless steel tanks, pumps, and conveyor belt ends, as well as the stainless steel magnetic drum separator, that are used at the facility. Although nickel and chromium are present in the wastes, the results from the EP toxicity test demonstrate that they are immobilized in the wastes.

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The maximum total oil and grease values reported for the filter press and separator wastes were 0.004 and 0.003 percent, respectively. Falconer also submitted a list of raw materials used in their process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in their process and that formation of any of these constituents is highly unlikely. Falconer claims to generate a maximum of 93 and 103 tons per year, respectively, of filter press and separator sludges.

B. Agency Analysis and Action

Falconer has demonstrated that the treatment sludges generated from its filter press and magnetic drum separator are non-hazardous. The Agency believes that the total of four grab samples and one weekly composite from the filter press, and the four grab samples from the separator, as well as the samples collected in 1981 and 1982, were non-biased. The Agency also believes that the samples adequately reflect any variations that may occur in the wastes petitioned for exclusion due to the nature and consistency of the operations performed by Falconer (*i.e.*, the facility is not a job shop and production does not vary seasonally). The Agency, therefore, believes that the samples are representative of the wastes generated by Falconer.

The Agency has evaluated the mobility of the constituents from Falconer's waste using a vertical and horizontal spread (VSH) model.[12] The Agency's evaluation of the 93 and 103 tons, respectively, of filter press and magnetic drum separator wastes generated annually and the corresponding maximum extract levels, using the VHS model, has generated the compliance point concentrations for the listed constituents exhibited in Table 3.[13] (Where concentrations were below detection limits, the detection limit value was used in the VHS model calculations.)

TABLE 3.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	Cd	Cr	CN	Ni
Filter Press Sludge	0.003	0.015	0.001	0.015
Separator Sludge	0.0092	0.015	<0.001	0.015
Regulatory Standards				
	0.01	0.05	0.2	0.35

The filter press sludge and the iron waste generated from the magnetic drum separator exhibited cadmium and chromium levels (at the receptor point) below the National Interim Primary Drinking Water Standards, nickel levels below the interim health-based standard[14] and cyanide levels below the U.S. Public Health Services' suggested drinking water standard.[15] Total cyanide levels in the waste are also below the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists.[16] These constituents, therefore, are not of regulatory concern.

TABLE 4.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	AS	Ba	Pb	Hg	Se	Ag
Filter Press Sludge	0.015	0.10	0.015	<0.0001	0.003	0.015
Separator Sludge	0.015	0.06	0.015	<0.0001	0.003	0.015
Regulatory Standard						
	0.05	1	0.05	0.002	0.01	0.05

Furthermore, the Agency has also concluded, through use of the VHS model, tht no other hazardous inorganic constituents are present in the petitioned waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point, see Table 4). In addition, no hazardous organic constituents are present in the waste; the Agency reviewed the raw materials list submitted by Falconer, which demonstrates that no organic hazardous constituents are used in their manufacturing process.

The Agency believes, based upon the constituents and factors evaluated, that Falconer's waste is non-hazardous, and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Falconer Glass Industries Inc., located in Falconer, New York, for its electroplating wastes, as described in its petition.

III. Lake City Army Ammunition Plant

A. Petition for Exclusion

Lake City Army Ammunition Plant (Lake City), located in Independence, Missouri, is involved in the manufacure of small arms ammunition and related items. Lake City has petitioned the Agency to grant a one time exclusion for their wastewater treatment sludge, which is contained in an on-site landfill. (Lake City's petition only addresses the waste already in the landfill; waste is no longer being put into this on-site landfill.) This waste is presently listed as EPA Hazardous Waste No. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds. The listed constituent of concern for EPA Hazardous Waste No. K046 is lead. Lake City's petition to exclude their waste is based upon their demonstration that the hazardous constituents contained in the sludge are present only in essentially immobile forms.[17]

At Lake City, clean-up water from blending and charging operations is treated to destroy the reactivity of residual explosive materials and then directed to the on-site industrial waste treatment facility. Prior to introduction into the treatment facility, the killed clean-up water stream is combined with non-hazardous waste streams and constitutes approximately 1% of the total stream to the facility. This treatment facility uses a flotation unit in a pH-controlled condition to remove oils and greases. (The oily waste from this unit was not addressed in Lake City's petition and is not, therefore, included in this proposed exclusion.) Heavy metals also are removed by using lime to increase the pH and precipitate metal hydroxides. The precipitate is

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[12] See footnote 5.

[13] The maximum EP value was used in the VHS model to determine constituent concentrations at the compliance-point due to the small sample population.

[14] In previous notices, the Agency has used 632 ppb as the regulatory standard for nickel. Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard and its intended use are explained at 50 *FR* 20239–20240, May 15, 1985.

[15] See footnote 7.

[16] See footnote 8.

[17] Lake City originally submitted their petition on May 18, 1982. In response to Agency requests, supplementary information was supplied on July 15, 1982 and on January 17, March 10, and June 7, 1983. On November 8, 1984, Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additonal constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or similar regulatory changes, the Agency requested information from petitioners which addresses these additional factors. Lake City supplied this information on May 1 and December 6, 1984, and on February 1, September 6, and October 18, 1985.

flocculated with alum and allowed to settle in holding ponds. The resultant lime-metal hydroxide sludge is allowed to partially dry in one of two settling lagoons and then removed to an on-site landill. The lime-metal hydroxide sludge in that landfill is the subject of Lake City's petition.

In support of their petition, Lake City submitted analytical data to characterize the sludge in its as-disposed conditon. Lake City also provided process descriptions, lists of raw materials, and material safety data sheets, in order to identify any hazardous constituents which could be present in the sludge, as well as ground-water monitoring data from the vicinity of the landfill.

Samples used to characterize the sludge were collected from both the on-site landfill and the east settling lagoon. (The sludge sampled while in the east lagoon was subsequently removed to the landfill and is included in this proposed exclusion.) The landfill was sampled by collecting five full-depth cores from each quadrant of the cell which receives the sludge. These cores were composited to produce one sample from each quadrant. The landfill was sampled in this manner in June 1983 and on February 23 and August 7, 1984. The June 1983 samples were analyzed for the EP leachate concentrations for EP toxic metals; the February 23, 1984 samples were analyzed for specific organic compounds; and the August 7, 1984 samples were analyzed for the EP leachate concentration of lead.

The sludge contained in the east lagoon was sampled by collecting five full-depth cores from each quadrant of the lagoon. These cores were composited to produce one sample from each quadrant. The lagoon was sampled in this manner on February 23 and August 8, 1984; on September 13 and 19, 1985; and on October 4, 1985. The February 23, 1984 samples were analyzed for specific organic compounds; the August 8, 1984 and September 13, 1985 samples were analyzed for the EP leachate concentration of lead; and the September 19 and October 4, 1985 samples were analyzed for the constituent and leachate concentrations of all EP toxic metals, nickel, and cyanide, as well as the constituent concentration of sulfide.

The results of EP leachate test for lead ranged from <0.25 mg/l to 0.43 mg/l for the eight samples from the landfill (average=0.32 mg/l) and from 0.04 mg/l to 1.53 mg/l for the 16 samples from the lagoon (average=0.28 mg/l).[18] Constituent analysis for the lead content of the sludge indicated a range of concentrations from 458 mg/kg to 1470 mg/kg for samples from the lagoon (average=952.5 mg/kg).[19]

In order to demonstrate that other metals are either not present or present only in essentially immobile forms, Lake City performed leachate tests for the remaining EP toxic metals and nickel. The results of these tests, as well as the results of constituents analysis of the sludge from the east lagoon, are presented in Table 1.

MAXIMUM CONCENTRATION

Toxicant	Landfill	East lagoon	
	EP leachate (mg/l)	EP leachate (mg/l)	Consistent (mg/kg)
As	0.063	<0.25	<1.0
BA	3.5	<5.0	105
Cd	0.07	<0.05	<1
Cr	0.04	<0.25	48
Hg	0.0023	<0.01	0.044
Se	<0.006	<0.05	<1
Ag	0.03	<0.25	<1
Ni	[1]	<0.25	22

[1] Since nickel was not expected to be present in significant quantities, the sludge was not initially analyzed for nickel.

Based upon the processes and raw materials used at Lake City, several hazardous organic compounds could be expected to be present in the sludge. In order to demonstrate that these compounds are present only in environmentally insignificant quantities, the sludges in both the landfill and the east lagoon were tested. The compounds and their maximum concentrations are presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Compound	Landfill (mg/kg)	East lagoon (mg/kg)
1,1,1-Trichloroethane	<0.01	<0.01
Methylene chloride	<0.01	<0.06
Toluene	<0.01	<0.01
Resourcinol	<0.15	<0.15

Lake City also analyzed their sludge for sulfide and cyanide content. These tests were performed on sludge from the east lagoon. Maximum concentrations of sulfide and total cyanide were 6.1 mg/kg and 0.062 mg/kg, respectively. In addition, the sludge was tested for leachable cyanide using a distilled water extraction procedure. The maximum cyanide concentration in the extract was 0.006 mg/l.

B. Agency Analysis and Action

Lake City has demonstrated that the sludge contained in their on-site landfill is non-hazardous (this includes the sludge that was sampled while in the east lagoon and later placed in the landfill). The Agency believes that the random samples collected by Lake City are non-biased and adequately characterize that sludge. The collection of full-depth cores from each quadrant of both the landfill and the lagoon takes into account any vertical or horizontal stratification that may have occurred as the landfill cell or the lagoon was being filled. The samples are believed, therefore, to be representative of Lake City's waste.

The Agency has evaluated the mobility of toxicants from Lake City's sludge by using the vertical and horizontal spread (VHS) model.[20] For lead, this evaluation, using the estimated volume of waste in Lake City's landfill (15,000 yd^3) and the average of the EP leachate analyses (0.29 mg/l)[21], resulted in a predicted maximum compliance point concentration of 0.047 mg/l. This concentration is less than the National Interim Drinking Water Standard of 0.05 mg/l. The presence of lead at the reported level is, therefore, not of regulatory concern.

For the other inorganic toxicants, the VHS model predicted the maximum compliance point concentrations

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[18] One of Lake City's earlier submissions indicated higher leachate concentrations of lead. (EP leachate tests performed on samples collected from the settling lagoons in June 1982 indicated lead concentrations that range from 0.50 mg/l to 1.70 mg/l). Lake City asserts that these results were artificially high due to analytical error or interferences. Lake City also states that, while they believed the June 1982 results to be erroneously high, the samples were not re-analyzed since they believed the values were less than the acceptable upper limit for delisting. Lake City further notes that this particular lot of sludge was removed to the landfill prior to the August 1984 landfill sampling, in which the lead leachate concentrations ranged from 0.25 mg/l to 0.35 mg/l.

[19] Constituent analysis for metals was only performed on the samples from the lagoon. While the Agency would typically require constituent analysis of the landfilled sludge as well, it was concluded that there was no reason to expect the sludge in the landfill to differ significantly from the sludge in the lagoon. The Agency did not, therefore, require Lake City to re-sample and analyze the landfilled sludge for the constituent concentration of metals.

[20] See footnote 5.

[21] Due to the large number of samples that Lake City collected and analyzed for the EP leachate concentration of lead (24), the Agency believes that the average concentration should be used in the VHS model. The Agency solicits comments on the use of average concentrations to evaluate a static lot of waste when a large number of samples (each a composite of several full-depth cores) has been analyzed.

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presented in Table 3.[22] Table 3 also presents, for each toxicant, the regulatory standard to which the compliance point concentration is compared.

TABLE 3.—PREDICTED COMPLIANCE-POINT CONCENTRATION

Toxicant	Maximum compliance point concentration (mg/l)	Regulatory standard (mg/l)
As	0.04	0.05
Ba	<0.81	1.0
Cd	<0.006	0.01
Cr	<0.04	0.05
Hg	<0.0016	0.002
Se	<0.008	0.01
Ag	<0.04	0.05
Ni	<0.04	0.35
CN	0.001	0.2

As indicated in Table 3, the maximum predicted concentrations of the EP toxic metals are all less than the National Interim Primary Drinking Water Standards. Also, the predicted nickel and cyanide concentrations are less than the Agency's interim nickel standard [23] and the U.S. Health Services suggested drinking water standard,[24] respectively. The presence of these toxicants at the reported levels is, therefore, not of regulatory concern.

The organic compounds listed in Table 2 were evaluated by first estimating their leachate concentrations, and then predicting their compliance point concentrations with the VHS model.[25] This procedure resulted in the compliance point concentrations presented in Table 4. Table 4 also presents, for each organic compound, the regulatory standard to which the predicted concentration is compared:

TABLE 4.—PREDICTED COMPLIANCE-POINT CONCENTRATION

Compound	Predicted leachate concentration (mg/l)	Predicted compliance-point concentration (mg/l)	Regulatory standard (mg/l)[1]
1,1,1-Trichloroethane	$<3.21\times10^{-4}$	$<5.10\times10^{-6}$	1
Methylene chloride	$<2.57\times10^{-3}$	$<4.15\times10^{-5}$	0.08
Toluene	$<1.16\times10^{-4}$	$<1.87\times10^{-6}$	10
Resorcinol	$<1.5\times10^{-1}$	$<2.42\times10^{-3}$	[2] 2

[1] An explanation of the derivation of these regulatory standards is available in the public docket.

[2] This value is derived from the TLV described in *Documentation of Threshold Limit Values*, 4th edition, American Conference of Governmental Industrial Hygienists, Cincinnati, Ohio (1980). The value is calculated as 0.23 mg/kg/day×70 kg2 l/day.

As indicated in Table 4, the maximum predicted compliance point concentrations of those organic compounds are each less than the compound's regulatory standard. The presence of these compounds at the preported levels is, therefore, not of regulatory concern. Also, the Agency's evaluation of the processes and raw materials used at Lake City indicates that no other hazardous organic compounds would be expected to be present in the sludge.

The sludge's sulfide and cyanide content (6.1 mg/kg, and 0.062 mg/kg, respectively) is low enough so as to preclude the generation-of hazardous levels of toxic gases. [26] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) Accordingly, this waste is not of regulatory concern through an air contamination route.

Based upon the constituents and factors evaluated, the Agency believes that Lake City has demonstrated that the sludge contained in their landfill (including the sludge that was sampled while in the lagoon and subsequently removed to the landfill) is non-hazardous and that, as such, it should be excluded from hazardous waste control. The Agency proposes, therefore, to grant an exclusion to Lake City Army Ammunition Plant, located in Independence, Missouri, for their wastewater treatment sludge from the manufacturing, formulation, and loading of lead-based initiating compounds that is currently contained in their on-site landfill. This is a one time only exclusion for the waste in the on-site landfill.

IV. Loxcreen Company, Incorporated

A. Petition for Exclusion

The Loxcreen Company, Inc. (Loxcreen), located in Hayti, Missouri, is involved in the manufacturing of extruded aluminum parts and decorative trim. Loxcreen has petitioned the Agency to exclude its wastewater treatment sludges, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. Loxcreen has petitioned to exclude its waste because it does not meet the criteria for which it was listed. The listed constituents of concern for these wastes are hexavalent chromium and cyanide (complexed). Loxcreen claims that its wastewater treatment system produces a sludge that is non-hazardous because the constituents of concern are present in essentially an immobile form.

Based upon the Agency's review of their petition, Loxcreen was granted an informal exclusion for the F019 filter press cake on March 11, 1982. [27] Our basis for granting the exclusion was the low migration potential of the constituents of concern. The Agency conditioned the informal exclusion, however, by requiring that the waste either be covered as a daily practice or that Loxcreen test each batch of waste to determine the level of cyanide in the waste. If the cyanide in the waste exceeded 10 ppm, the waste had to be covered as a daily practice. This decision was based on a concern that some of the complexed cyanide in the waste might be converted to free cyanide by sunlight. This condition was incorporated into the informal exclusion to prevent the possible photo-decompostion of total cyanide to free cyanide in the waste.

Since that time, the Hazardous and Solid Waste Amendments of 1984 have been enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Loxcreen's petition: (1) to determine whether the waste should be excluded based on the original listing criteria, and (2) to evaluate the waste for factors

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[22] For each toxicant, the leachate concentrations used in this evaluation was the greater of the two values reported in Table 1. While the use of average values also might have been appropriate, the more conservative approach of using the maximum values (and the fact that the compliance point concentrations are below the regulatory standards) illustrates that the presence of those toxicants at the reported levels is not of regulatory concern.

[23] See footnote 14.

[24] See footnote 7.

[25] The predicted leachate concentration is based upon an algorithm which incorporates each compound's solubility and constituent concentration in the waste. (For details of this calculation, see 50 FR 48943, November 27, 1985.) This predicted leachate concentration is then used in the VHS model to estimate the dilution that would occur due to dispersion in an underlying aquifer (See footnote 6). While the predicted compliance point concentration may be further reduced due to degradation processes (*e.g.*, hydrolysis, biodegradation), these processes were not considered. This is because the predicted leachate concentrations are sufficiently low that the levels in the waste are not of concern, without consideration of these effects.

[26] A copy of these calculations is available in the public docket for this notice.

[27] On March 11, 1982, a memorandum was sent from the Acting Deputy Associate Enforcement Counsel to the Regions indicating, among other things, that the Office of Solid Waste had made a preliminary determination to grant the delisting petition submitted by Loxcreen for the F019 wastes generated at their Hayti, Missouri plant. The memo suggested that the Regions use discretion when dealing with this waste until our decision was published in the **Federal Register**.

(other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is the Agency's re-evaluation of this petition.

Loxcreen has submitted a detailed description and a schematic diagram of its production processes; total constituent analyses and EP toxicity test results of the sludge for total chromium and hexavalent chromium; total constituent analyses and distilled water leach test results for total cyanide; total oil and grease analyses; and total constituent analyses for free cyanide and sulfides. Loxcreen also submitted total constituent and EP toxicity analyses for arsenic, barium, cadmium, lead, nickel, silver, mercury, and selenium. Furthermore, Loxcreen submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

In Loxcreen's process, extruded pieces are received into an anodizing process, which uses an electrolytic bath of sulfuric acid in combination with alkaline rinses, hot and cold water rinses, and caustic etching baths. The pieces are then sent to the paint preparation chromating line, which uses hot alkaline cleaning and degreasing sprays, a water rinse, bond coating, neutralization, and a final clear water rinse. Wastes from the caustic cleaning of extrusion dies and from daily boiler blowdown are also influent to the wastestream. Loxcreen claims that no cyanides are used in the manufacturing process. Loxcreen's waste treatment system combines pH adjustment; reduction of hexavalent chromium to trivalent with sodium bisulfite; polymer addition; flocculation; and press filtration.

Ten grab samples were taken after dewatering from random locations on the filter press, and composited to form single daily samples. Samples were collected in this way (during September 15–22, 1981, December 18, 1981, January 14–28, 1985, and May 8–10, 1985) and resulted in a minimum of four analyses for each EP toxic metal and nickel. Loxcreen claims that the raw materials, production processes, and treatment process do not vary over time. Loxcreen, claims, therefore, that the samples collected are representative of any variation of the listed and non-listed constituent concentrations of the waste.

The total constituent analyses and EP leachate analyses for the listed constituents in the sampled sludge yielded the maximum concentrations shown in Table 1.

TABLE 1.—FILTER PRESS SLUDGE

	Maximum total concentration (ppm)	Maximum EP concentration (mg/l)
Chromium (total)	11,000.0	0.12
Chromium (hex)[1]	<0.07	<0.004
Cyanide (total)	35.0	[2]<0.01

NOTES—[1] Difference in detection limits is due to separate analysis (*i.e.*, September 1981 and January 1985).

[2] Distilled water used in EP test.

The EP toxicity and total constituent analyses for the non-listed metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—FILTER PRESS SLUDGE

	Maximum total concentration (ppm)	Maximum EP concentration (mg/l)
Arsenic	0.54	<0.002
Barium	<0.03	<0.03
Cadmium	3.36	0.44
Lead	35.1	<0.05
Nickel	317.1	2.11
Silver	<0.1	<0.01
Mercury	0.166	<0.001
Selenium	<0.002	<0.002

Total oil and grease values were reported at a maximum of 0.08%. Loxcreen has also submitted a list of raw materials which indicates that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is not likely. The maximum amount of sludge produced by Loxcreen from its filter press is 240 tons per year.

B. Agency Analysis and Action

Loxcreen has demonstrated that the wastewater treatment system in use at its Hayti, Missouri facility generates a non-hazardous sludge. The Agency believes that the composite samples taken from the filter press over a four year interval are non-biased and adequately represent any variability which may occur in the petitioned waste stream. The Agency is satisfied that the daily compositing done by Loxcreen does not conceal concentration variations. The major factor which may vary constituent concentrations is the use of different raw materials, due to changes in the product being manufactured. Variation in raw materials can be expected when a facility performs as a job shop or has seasonal variations or production. Since this facility does not perform as a job shop and has no seasonal product variations, the Agency believes that Loxcreen's claim that the manufacturing and treatment processes are uniform and consistent has been substantiated.

The Agency has evaluated the mobility of the constituents from Loxcreen's waste by using a vertical and horizontal spread (VHS) model.[28] The Agency's evaluation of Loxcreen's 240 tons of filtered sludge and the maximum EP leachate levels for the listed constituents using the VHS model has generated the compliance point concentrations exhibited in Table 3.

TABLE 3.—VHS MODEL—CALCULATED COMPLIANCE POINT CONCENTRATION

	Compliance point concentration (ppm)	Regulatory standard (ppm)
Cr (total)	0.004	0.25
CN⁻ (total)	0.0003	0.20

Using the VHS model, the Agency's evaluation of levels for the non-listed constituents generated the compliance point concentrations shown in Table 4.

TABLE 4.—VHS MODEL—CALCULATED COMPLIANCE POINT CONCENTRATION

	Compliance point concentration (ppm)	Regulatory standard (ppm)
As	<0.00006	0.05
Ba	<0.0009	1.00
Cd	0.014	0.01
Pb	<0.001	0.05
Ni	0.065	0.35
Ag	<0.0003	0.05
Se	<0.00006	0.01
Hg	<0.00003	0.002

The filtered sludge exhibited arsenic, barium, chromium, lead, silver, mercury, and selenium levels (at the compliance point) at, or below, the National Interim Primary Drinking Water Standards, nickel levels below the Agency's interim standard,[29] and cyanide levels below the U.S. Public Health Services suggested standard.[30] The predicted maximum well concentration for cadmium (0.014 mg/l) exceeds the NIPDWS value of 0.01 mg/l. This prediction is based upon the highest reported cadmium leachate value. This value also exceeds the 95% confidence interval calculated for the cadmium data. Testing of three additional samples for cadmium (for a total of seven data points) indicated that the elevated value is probably an outlier. If the upper limit of the 95% confidence interval is used as the EP leachate value in the VHS calculations, the model predicts a maximum well concentration

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[28] See footnote 5.

[29] See footnote 14.

[30] See footnote 7.

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of 0.0061 mg/l. Since use of the maximum leachate value results in a concentration approximately equal to the NIPDWS, and the statistical evaluation results in a predicted concentration below the NIPDWS, the Agency concludes that cadmium levels in the waste are not of regulatory concern. Accordingly, none of the toxic heavy metals are present in the waste at levels of regulatory concern.

The free cyanide level documented in the petition (<0.5 ppm) is not expected to create a health hazard. The maximum total cyanide level reported in Table 1, in spite of the fact that cyanide is not used in the manufacturing process, can be attributed to the immersion cleaning of extrusion dies with a nitriting solution. This process has since been discontinued. Cyanide concentrations in the waste thus are not expected to be of regulatory concern.

The Agency has also reviewed the chemical components used in each raw material, as supplied by raw materials lists and material safety data sheets, in Loxcreen's conversion coating operation. The Agency has concluded from this review that no other Appendix VIII toxicants are present in the petitioned waste.

The Agency believes that this waste is non-hazardous and, as such, should be excluded from the hazardous waste management system. The Agency, therefore, proposes to grant an exclusion to Loxcreen Company, Incorporated, located in Hayti, Missouri, for its wastewater treatment sludge, as described in its petition.

V. Olin Corporation

A. Petition for Exclusion

The Olin Corporation (Olin) is involved in the production of chlorine and caustic soda at its facility in Augusta, Georgia. Olin has petitioned the Agency to exclude the water-washed brine muds generated by Olin's mercury cell chlorine process. These muds are listed as EPA Hazardous Waste No. K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. Olin has requested the Agency to exclude these muds because they do not meet the criteria for which they are listed.[31] [32]

The listed constituent for EPA Hazardous Waste No. K071 is mercury. Olin claims that its brine treatment and dewatering unit produces a calcium sulfate brine mud that is non-hazardous with respect to leachable mercury because the constituent of concern is present at low concentrations and is immobile. Olin further claims that the muds are not hazardous for any other reason.

Olin has submitted detailed descriptions of its production and treatment processes, including a schematic diagram; EP toxicity data for mercury; EP toxicity data for the other EP toxic metals and nickel; total constituent analyses for all the EP toxic metals; total oil and grease analyses; and test results for total cyanide. Olin also submitted a list of raw materials used in its manufacturing processes, as well as a contingency plan including daily sampling and testing of the waste prior to disposal. Much of this information was requested to determine if hazardous constituents, other than those for which the waste was listed, were present in the waste at levels of regulatory concern.

Olin uses a closed-loop mercury cell chlorine process, in which sodium chloride brine is brought to near saturation, purified and acidified, then pumped to a series of mercury cathode cells. In the cells, electrolysis of the brine produces chlorine, which is taken off as a gas and liquified, and sodium, which is processed with water to form caustic soda (sodium hydroxide). The brine exits the cells and is returned to be re-saturated and re-used in the process. Mercury is slowly lost from the cathode cells through this process, carried away by the brine, and deposited in the brine muds when brine purfication takes place.

The brine purification system involves the use of a baffle crystallizer to remove calcium sulfate ($CaSO_4$) solids from the brine. The accumulated solids are pumped to a horizontal vacuum filter for dewatering, while the recovered brine is returned to the crystallizer. At the vacuum filter, the $CaSO_4$ solids are spray washed with water to remove mercury. The mercury-laden washwater is processed to recover the mercury before the effluent is disposed of at an NPDES-permitted outfall. The solids are collected in a dumpster and landfilled.

Grab samples of washed brine mud filter cake were taken from the filter press over a two-month period while using a range of washing rates in the filtration process. This was done to determine which washing rate was the most effective in producing a non-hazardous waste. Olin claims that demonstration brine mud samples which were washed with at least 1.2 gallons of water per minute (all other variables held constant) exhibit uniformly lower EP leachate concentrations of mercury than either unwashed muds or muds washed with smaller volumes of water. Olin will, as the result of this testing, operate their treatment system using a wash rate of at least 1.2 gallons per minute (gpm) in order to maintain a lbs water/lbs waste ratio of approximately one, while maintaining a uniform process rate (filter belt speed) of 15 feet per minute and a sludge thickness of 0.25 inches on the vacuum filter. Olin also claims that the raw materials used in the production processes do not vary.

Maximum total constituent and EP toxicity values for the listed constituent are presented in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP (mg/l)
Mercury	2.80	0.012

Maximum total constitutent and EP toxicity data values for the non-listed toxic metal constituents are given in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP toxicity (mg/l)
Arsenic	<0.1	<0.1
Barium	0.3	0.21
Cadmium	0.04	0.04
Chromium	0.04	0.04
Lead	0.1	0.1
Selenium	<0.5	[2] <0.00005
Silver	0.04	0.02
Nickel	[1]	0.13

[1] Since the EP leachate levels for nickel are low, additional testing for total nickel was not required.

[2] Indicates differing detection limits due to different analytical techniques.

No oil and grease was detected in the waste. Olin claims that no cyanides are used in their processes, and total cyanide levels are correspondingly low (0.013 mg/kg). No samples demonstrated reactivity, corrosivity, or ignitability. Olin also provided material safety data sheets for the materials used in their process. This data indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of these constituents is highly unlikely. Olin claims to generate a maximum of 700 tons of brine muds per year.

B. Agency Analysis and Action

Olin has demonstrated to the Agency that non-hazardous brine muds are generated by the treatment process. The Agency believes that the 15 EP leachate analyses and six total constituent analyses (18 EP analyses for mercury) performed on brine mud samples washed with >1.2 gallons of water per minute have adequately characterized any variations that may occur. The Agency is satisfied that the grab samples taken by Olin have not concealed variations in concentrations. The samples presented in support of the petition are representative of the brine muds generated by Olin.

The Agency has evaluated the mobility of the inorganic constituents from Olin's waste using the VHS ground water model.[33] The Agency's evaluation of Olin's maximum generation rate of 700 tons per year and the maximum EP extract levels has produced the compliance point concentrations shown in Table 3. The maximum EP values were used in the model calculations because maximum values are more indicative of a worst case situation within an on-line treatment system, and will more accurately address the Agency's concerns about the inherent variability of the waste.

TABLE 3.—VHS MODEL: PREDICTED CONCENTRATIONS AT COMPLIANCE POINT (PPM)

	VHS model	Regulatory standard
As	<0.0045	0.05
Ba	0.009	1.0
Cd	0.0018	0.01
Cr (total)	0.00018	0.05
Pb	0.0045	0.05
Hg	0.0005	0.002
Se	<0.000002	0.01
Ag	0.0009	0.05
Ni	0.0059	0.35

The muds exhibited arsenic, barium, cadmium, total chromium, lead, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and nickel levels below the Agency's interim delisting criterion.[34] In addition, cyanide is not of concern due to the low total cyanide levels present in the waste (0.013 mg/kg), which does not exceed the Agency's regulatory standard.[35] These constituents are therefore not of regulatory concern.

The Agency has also concluded that no organic constituents are present in the waste based upon a review of the raw materials used in the process that potentially can enter the wastewater treatment system. It was determined from these sheets that no other Appendix VIII hazardous constituents are influent to Olin's waste treatment processes, and that formation of any of these constituents is unlikely.

The Agency believes that the treatment process employed by Olin, when used in conjunction with a washing rate equal to or greater than 1.2 gpm, generates a non-hazardous waste. Due to the severe neurotoxic effects associated with exposure to low concentrations of mercury, the Agency is concerned about the potential for significant amounts of mercury to be present in the waste. The Agency's experience with the inherent variability in the mercury content of chlor-alkali brine muds is such that it is believed that the exclusion should require continuous batch testing for mercury using the EP toxicity test prior to disposal. Each batch of Olin's waste must be tested, however, to assure that the waste exhibits mercury extract levels below 0.02 mg/l.[36] The Agency will review the data collected over an initial six-month period of treatment. If the data indicate that the mercury extract levels are characteristically low, the Agency may propose to amend the exclusion to require less frequent testing. Subject to this condition, the Agency proposes to grant an exclusion to Olin Corporation for the washed chlor-alkali brine purification muds produced by the calcium sulfate crystallizer at their Augusta, Georgia facility.

VI. SR of Tennessee

A. Petition for Exclusion

SR of Tennessee, (SR), located in Ripley, Tennessee, is involved in copper, nickel, and chromium electroplating of plastic parts (such as grilles and headlight bezels) for the automotive industry. SR has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. SR has petitioned to exclude its currently generated filter press sludge as well as the electroplating sludges previously disposed of in an on-site surface impoundment which has been closed and capped, because it does not meet the criteria for which it was listed.[37]

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide (complexed). SR claims that its wastewater treatment process generates a non-hazardous sludge, because cadmium and cyanide are not used in the process. In addition, chromium and nickel, although present in the waste, are in essentially an immobile form. SR further claims that this waste is not hazardous for any other reason.

Based on our review of their petition, SR was granted a temporary exclusion for its filter press sludge on November 22, 1982 (see 47 FR 52668). At that time, the petitioner's request pertained only to the filter press sludge that they generated after that date, since they did not realize that the impounded waste was also defined as listed F006 waste. Thus, the waste in their impoundment is still subject to Subtitle C control. Our basis for granting the exclusion for the filter press sludge was the low migration potential of chromium and nickel, and the absence of cadmium and cyanide in the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted.[38]

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[31] Olin originally submitted a petition in April 1982, based on bench-scale studies, to delist the brine muds. A second petition was forwarded to EPA in April 1985 after completion of Olin's new, full-scale operating unit in August 1984; the initial petition was withdrawn. Additional information was requested from Olin, which was submitted to EPA on September 5, 1985.

[32] Ground water contamination from the on-site disposal of untreated brine muds has been documented at this facility. The State of Georgia's environmental department has issued a compliance order to Olin regarding its groundwater contamination problems. This proposed exclusion, however, applies only to treated calcium sulfate brine purification muds currently generated at Olin's new treatment facility. These currently generated wastes are not responsible for producing the high concentrations of mercury presently found in the ground water at this site, and are not expected to produce ground water contaminant concentrations above the regulatory standard. The exclusion does not apply to any other wastes which have been generated, stored, or disposed on-site at the Augusta site.

[33] See footnote 5.

[34] See footnote 14.

[35] See footnote 7.

[36] Olin incorporated this testing requirement in the contingency plan filed in their petition. Wastes not meeting the imposed mercury extract limit of 0.02 ppm will be re-treated or disposed as hazardous by Olin.

[37] SR originally submitted their petition on October 14, 1981. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from SR. This additional information was submitted on May 17, September 26, and October 7, 1985.

[38] See footnote 37.

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As a result, the Agency has reevaluated SR's petition to determine whether the temporary exclusion should be made final. This evaluation was based on the original listing criteria as well as other factors.

SR submitted a detailed description of its electroplating and wastewater treatment processes, including: schematic diagrams; total constituent analyses for cadmium, chromium, and nickel; analyses for total, free, and reactive cyanide; and EP toxicity test results for cadmium, total chromium, and nickel. SR also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses on representative waste samples. SR also submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as indicated above, to determine if hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

SR's manufacturing process includes ABS® plastic injection molding, chrome etching, electroless nickel plating, and copper, nickel, and chromium plating. SR's waste treatment system involves chromium reduction, metals precipitation, neutralization, and vacuum filtration. In previous years, the petitioner used an on-site impoundment to contain sludge during times of filter press break down. The impoundment which has been inactive since 1982, is now dry, closed, and covered.

SR divided the impoundment into quadrants and collected six random complete depth core samples in each quadrant. The samples from each quadrant were then combined to form four composite samples. This procedure was repeated on a second day, creating eight composite samples which were then analyzed. SR claims that these samples were representative since their manufacturing process was uniform and the use of raw materials did not vary substantially over time. The petitioner further claimed that the random full core samples were representative of any vertical and horizontal stratification that could have occurred in the impoundment.

With respect to the filter press sludge, nineteen composite samples were collected at random times from the vacuum filter over a four-week period. Grab samples from three discrete areas of the filter press were collected and combined to form one composite sample on each sampling date. SR claims that the samples collected are represenative of any variation of the listed and non-listed constituent concentrations in the waste. SR further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, the petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line and, therefore, all raw materials used in the process are represented by the samples collected.

The total constituent analyses of the filter press sludge and the lagooned sludge for the listed constituents revealed the maximum concentrations reported in Table 1. Leachate analyses for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cd	Cr (total)	Ni	CN (total)
Vacuum filter sludge	0.2	300	408	<0.2
Lagooned sludge	0.2	297	381	<0.2

TABLE 2.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cd	Cr (total)	Ni	CN (total) (distilled-water)
Vacuum filter sludge	0.01	0.22	0.98	<0.02
Lagooned sludge	0.03	0.31	0.63	<0.02

The total constituent and EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.1	4.	2.7	<0.01	<0.1	<0.1
Lagooned sludge	<0.1	6.	2.2	<0.01	<0.1	<0.1

TABLE 4.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.01	4.0	0.17	<0.01	<0.01	<0.01
Lagooned sludge	<0.01	2.0	0.14	<0.001	<0.01	<0.01

The maximum total oil and grease content reported was 800 ppm. Ground water monitoring data submitted from a single downgradient well indicated that nickel, chromium, and cadmium were not detectable at detection limits of 0.005, 0.005, and 0.001 ppm, respectively. SR also submitted a list of raw materials used in the process. This list indicated that no other Appendix VIII hazardous constituents were used in the process and that formation of any of these constituents is highly unlikely. SR claims that it generates a maximum of 3300 tons of waste annually from its filter press and that 8750 tons of dry sludge are contained in the closed impoundment.

B. Agency Analysis and Action

SR has demonstrated that the waste treatment sludge generated from its filter press and that contained in its closed on-site impoundment are non-hazardous. The Agency believes that the nineteen composite samples collected from the filter press and the eight composite core samples collected from the impoundment were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion.

The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by SR was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by SR.

The Agency's conclusion that the sampling adequately represents SR waste was confirmed by a comparison of the total constituent analyses of each sample. This analysis would have, but did not, detect any significant variation in the waste (*i.e.*, the standard deviation was low).

The Agency has evaluated the mobility of the listed constituents of concern from SR's waste using a vertical and horizontal spread (VHS) model.[39] The VHS model generated compliance point values using the 3300 tons per year generation rate and the maximum reported extract levels. The sludge content of 8750 tons and the mean extract levels were used [40] to calculate

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[39] See footnote 5.

[40] SR's closed lagoon represents a fixed amount of waste which would leach as a unit. Since a large number of samples were collected (*i.e.*, 48 complete depth cores) which suitably represent the variation in the waste generated over a long period of time, the mean extract concentrations were used in the VHS calculation. The mean extract concentrations

Continued

compliance point values for the impoundment sludge. These compliance point concentrations are exhibited in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (PPM)

	Cd	Cr	Ni	CN
Vacuum filter sludge	<0.001	0.03	0.16	<0.003
Lagooned sludge	0.003	0.03	0.09	0.03
	Regulatory Standard			
	0.01	0.05	0.35	0.20

The vacuum filter sludge and lagooned sludge all exhibited cadmium and chromium levels (at the compliance point) well below the National Interim Primary Drinking Water Standards; nickel levels below the Agency's interim standard; [41] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[42] Total cyanide levels in the waste also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists.[43] These constitutents, therefore, are not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in either the filter press sludge or the lagooned waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

The Agency also reviewed SR's raw material lists, and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII hazardous constitutents are present in the petitioned waste.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.002	0.63	0.03	<0.0002	<0.002	<0.002
Lagooned sludge	0.002	0.22	0.02	<0.0002	<0.002	<0.002
	Health-Based Standards					
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that the treatment process used by SR generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to SR's facility located in Ripley, Tennessee for its filter press sludge and lagooned sludge, as described in its petition.

VII. Tennessee Electroplating

A. Petition for Exclusion

Tennessee Electroplating, located in Ripley, Tennessee, is involved in zinc diecasting and copper, nickel, and chromium electroplating of parts for ceiling fans, hood ornaments, and pay telephones. Tennessee Electroplating has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F0006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Tennessee Electroplating has petitioned to exclude its currently generated filter press sludge, as well as the electroplating sludges previously disposed of in an on-site surface impoundment which has been closed and capped, because they do not meet the criteria for which it was listed.[44]

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used were 0.016, 0.18, 0.54, and 0.2 ppm, for cadmium, chromium, nickel and cyanide, respectively. The mean extract values for arsenic, barium, lead, mercury, selenium, and silver were <0.01, 1.38, 0.098, <0.001, <0.01, <0.01ppm, respectively.

[41] See footnote 14.

[42] See footnote 7.

[43] See footnote 8.

[44] Tennessee Electroplating originally submitted their petition on April 27, 1981. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Tennessee Electroplating, this additional information was submitted on June 19 and August 20, 1981, and May 6, 1985.

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The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tennessee Electroplating claims that its wastewater treatment process generates a non-hazardous sludge, because cadmium is not used in the process. In addition, chromium, nickel, and cyanide, although present in the waste, are in essentially an immobile form. Tennessee Electroplating further claims that this waste is not hazardous for any other reason.

Based on our review of their petition, Tennessee Electroplating was granted a temporary exclusion for its filter press sludge on December 16, 1981 (see 46 FR 61281). At that time, the petitioner's request pertained only to the filter press sludge that they generated after that date since they did not realize that the impounded waste was also defined as listed F006 waste. Thus, the waste in their impoundment is still subject to Subtitle C control. Our basis for granting the exclusion was the low migration potential of chromium, nickel, and cyanide, and the absence of cadmium from the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted.[45] As a result, the Agency has reevaluated Tennessee Electroplating's petition to determine whether the temporary exclusion should be made final. This evaluation was based on the original listing criteria as well as other factors.

Tennessee Electroplating submitted a detailed description of its electroplating and wastewater treatment processes, including: schematic diagrams; total constituent analyses for cadmium, chromium, and nickel; analyses for total, free, and reactive cyanide; and EP toxicity test results for cadmium, total chromium, and nickel. Tennessee Electroplating also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses on representative waste samples. Tennessee Electroplating also submitted a list of raw materials used in the manufacturing process.

The Agency requested this information, as indicated above, to determine if hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

Tennessee Electroplating's manufacturing process includes a metal preparation system involving zinc diecasting metal cleaning, copper, nickel, and chromium plating, and glass cutting and grinding. Tennessee Electroplating's waste treatment system involves chromium reduction, metals precipitation, neutralization, and vacuum filtration. In previous years, the petitioner used an on-site impoundment to contain sludge during times of filter press break down. The impoundment which has been inactive since 1982, is now dry, closed, and covered.

Tennessee Electroplating divided the impoundment into quadrants and collected six random complete depth core samples in each quadrant. The samples from each quadrant were then combined to form four composite samples. This procedure was repeated on a second day, creating eight composite samples which were then analyzed. Tennessee Electroplating claims that these samples were representative since their manufacturing process was uniform and the use of raw materials did not vary substantially over time. The petitioner further claimed that the random full core samples were representative of any vertical and horizontal stratification that could have occurred in the impoundment.

With respect to the filter press sludge, twenty-five composite samples were collected at random times from the vacuum filter over a seven-week period. Grab samples from three discrete areas of the filter press were collected and combined to form one composite sample on each sampling date. Tennessee Electroplating claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. Tennessee Electroplating further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, the petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line and, therefore, all raw materials used in the process are represented by the samples collected.

The total constitutent analyses of the filtered press sludge and the lagooned sludge for the listed constituents revealed the maximum concentrations reported in Table 1. Leachate analysis for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENTS ANALYSES (PPM)

	Cd	Cr (total	Ni	CN (total)	CN (free)
Vacuum filter sludge	0.2	260	298	<10	<0.1
Lagooned sludge	0.2	236	251	165	<0.1

TABLE 2.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cd	Cr (total	Ni	CN (total) (distilled-water)
Vacuum filter sludge	0.03	0.82	0.78	<0.2
Lagooned sludge	0.2	0.4	0.86	0.15

The total constituent and EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM TOTAL CONSTITUENTS ANALYSES (PPM)

	AS	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.1	<5.0	2.5	<0.01	<0.1	<0.1
Lagooned sludge	<0.1	<6.0	3.1	0.01	<0.1	<0.1

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[45] See footnote 44.

TABLE 4.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.01	4.0	<0.29	<0.001	<0.01	<0.01
Lagooned sludge	<0.01	2.0	0.11	<0.001	<0.01	<0.01

The maximum total oil and grease content reported was 2400 ppm. Ground water monitoring data submitted from a single downgradient well indicated that nickel, chromium, and cadmium were not detectable at detection limits of 0.005, 0.005, and 0.001 ppm, respectively.

Tennessee Electroplating also ran tests for reactive and photodegradable cyanide on its lagooned sludge samples due to high levels of total cyanide present in this waste. The maximum concentration of reactive cyanide reported was 1.1 ppm. The maximum concentration of photodegradable cyanide reported was 0.03 ppm. Tennessee Electroplating also submitted a list of raw materials used in their process. This list indicated that no other Appendix VIII hazardous constituents were used in the process and that formation of any of these constituents is highly unlikely. Tennessee Electroplating claims that it generates a maximum of 840 tons of waste annually from its filter press and that 8300 tons of dry sludge are contained in the closed impoundment.

B. Agency Analysis and Action

Tennessee Electroplating has demonstrated that the waste treatment sludge generated from its filter press and that contained in its closed on-site impoundment is non-hazardous. The Agency believes that the twenty-five samples collected from the filter press and the eight composite core samples collected from the impoundment were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion.

The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by Tennessee Electroplating was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by Tennessee Electroplating.

The Agency's conclusion that the sampling adequately represents Tennessee Electroplating's waste was confirmed by a comparison of the total constituent analyses of each sample. This analysis would have, but did not, detect any significant variation in the waste (*i.e.*, the standard deviation was low).

The Agency has evaluated the mobility of the listed constituents of concern from Tennessee Electroplating's waste using a vertical and horizontal spread (VHS) model.[46] The Agency's evaluation of the maximum 840 tons generated yearly and the maximum extract levels for the vacuum filter sludge are shown in Table 5. The Agency used the lagoon content of 8300 tons and the mean extract values.[47] to generate the compliance point levels, also shown in Table 5, for the lagooned sludge.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (PPM)

	Cd	Cr	Ni	CN
Vacuum filter sludge	<0.002	0.04	0.04	<0.01
Lagooned Sludge	0.003	0.03	0.06	0.02
	Regulatory Standard			
	0.01	0.05	0.35	0.20

The vacuum filter sludge and lagooned sludge all exhibited cadmium and chromium levels (at the compliance point) well below the National Interim Primary Drinking Water Standards; nickel levels below the Agency's interim standard,[48] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[49] Total cyanide levels in the filter press sludge also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists (ACGIH).[50] Only that portion of total cyanide which is reported as reactive and photo-degradable can be considered available through an atmospheric exposure route. The reactive and photo-degradable cyanide levels in the impounded sludge are also below the air threshold limit set by the (ACGIH). These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in either the filter press sludge or the lagooned waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

The Agency also reviewed SR's raw materials lists, and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.0005	0.2	0.02	<0.00005	<0.0005	<0.0005
Lagooned sludge	0.002	0.22	0.01	<0.0002	<0.002	<0.0002
	Regulatory Standards					
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that the treatment process used by Tennessee Electroplating generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Tennessee Electroplating's facility, located in Ripley, Tennessee, for its filter press sludge and lagooned sludge, as described in its petition.

VIII. Valley City Steel Company

A. Petition for Exclusion

The Valley City Steel Company (Valley City), located in Valley City, Ohio, is involved in pickling of plain carbon and high strength-low alloy (HSLA) steel sheets, strips, and plates.

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[46] See footnote 5.

[47] Since the lagoon represents a cell of waste which would leach as a unit, the mean extract concentrations were used in the VHS calculation. The mean extract concentrations used were 0.016, 0.23, 0.53, and 0.11 ppm, for cadmium, chromium, nickel and cyanide, respectively. The mean extract values for arsenic, barium, lead, mercury, selenium, and silver were <0.01, 1.38, 0.08, <0.001, <0.01, <0.01 ppm, respectively.

[48] See footnote 14.

[49] See footnote 7.

[50] See footnote 8.

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Valley city has petitioned the Agency to exclude the metal oxide powder generated from the regeneration of spent pickle liquor from their pickling process. This oxide powder is classified as hazardous under 40 CFR § 261.3(c)(2) because it is derived from the treatment of spent pickle liquors listed as EPA Hazardous Waste No. K062—Spent pickle liquor from steel finishing operations. Valley City has petitioned to exclude their waste because it does not meet the criteria for which it was listed.[51]

The listed constituents of concern for this waste are hexavalent chromium and lead. Valley City claims that its pickle liquor regeneration process generates a non-hazardous waste because the constituents of concern are present at insignificant concentrations and in essentially an immobile form.

Valley City has submitted detailed descriptions of its steel pickling and wastewater treatment systems, including schematic diagrams; total constituent and EP toxicity analyses of the waste for all the EP toxic metals, hexavalent chromium, and nickel; total constituent analyses for cyanide, sulfide, and total oil and grease; and a distilled water leachate test for cyanide. Valley City also submitted material safety data sheets for the compounds used in their processes which have the potential to enter the wastestream. The Agency requested this information to determine if hazardous constituents other than those for which the waste was originally listed were present in the waste.

The acid pickling process at the Valley City facility involves the straightening of coiled steel, pickling in tandem hydrochloric acid (HCl) pickle tanks, washing in a series of fresh water rinses, and finishing the steel by either drying it, applying oil to prevent rust, or coating the steel with a lubricant to aid in future forming or sampling operations. There are approximately 400 gallons of waste pickle liquor generated per hour at the facility.

Treatment of the pickle liquor involves the use of a pickle liquor regeneration system. Spent acid (containing metallic chlorides) is collected during the daily operation of the pickling lines. The solution is filtered, then atomized in a gas-fired roasting furnace at temperatures up to 800 °C. Iron chloride particles gravitate downward in the furnace, away from the acid droplets and combustion products. The roasting of the iron chlorides produces iron oxides, which are continuously collected and removed to a storage bin, and HCl gas. The HCl gas is condensed by water sprays in an adsorption column, and the condensate is returned to the pickling line. The iron oxide is a high purity, 300-mesh powder with a density of 0.3–0.5 kg/l.

Samples of the dry oxide powder were collected from both the transport dumpster (composited samples) and the roasting furnace exit (grap samples taken during normal operation of the unit). Valley City claims that due to the blending of pickle liquors in the storage tank prior to treatment in the roaster, all samples of treated waste are uniform and non-biased in nature. They also claim that the raw materials and production operations at the facility will not vary over time, and that the waste samples are representative of the oxide recovered in normal operations.

The total constituents and EP toxicity analyses of the oxide powder for the listed constituents are reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUE

	Total (mg/kg)	EP (mg/l)
Cr (total	40.	1.41
Cr (hex)	<0.2	([52])
Pb	2.5	0.28

[52] Hexavalent chromium is the listed constituent of concern for the waste, but since the amounts of total hexavalent chromium and extractable total chromium in the waste are so small, EP tests for hexavalent chromium were not required.

The total constituent and EP toxicity analyses of the oxide powder for the non-listed inorganic constituents are reported in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP (mg/l)
As	<0.25	<0.005
Ba	50.	2.5
Cd	<0.25	0.008
Hg	0.1	0.0013
Se	0.04	<0.01
Ag	1.	0.01
Ni	32.	0.32
CN (total)	3.4	<0.005
$S^=$	<9.	

Oil and grease content of the waste averaged 314 ppm. This concentration is largely attributable to oils and rust preventatives present from the repickling of previously processed steel; most of the organic content of the pickle liquor would be expected to be incinerated in the spray roaster. No additives, solvents, or cleaners are added to Valley City's pickling process. An inspection of the material safety data sheets provided by Valley City did not indicate the presence of any other Appendix VIII hazardous constituents in the waste, nor are they likely to be generated in the waste. Valley City claims that a maximum of 2600 tons of waste is generated annually from the pickle liquor regeneration process.

B. Agency Analysis and Action

Valley City has demonstrated that its waste treatment system produces a non-hazardous waste. The Agency believes that the grab samples taken from the roaster and composites taken from the dumpster were non-biased and adequately represent any variations which may occur in the wastestream petitioned for exclusion. Samples were taken in May 1984 and August-September 1985, and represent a time period sufficient to reflect any variability in the waste. The Agency believes that Valley City's claim of the uniformity of the waste has been substantiated.

The Agency has evaluated the mobility of the inorganic constituents from Valley City's waste by means of the VHS groundwater model.[53] The Agency's evaluation of the 2600 tons of oxides generated yearly and the maximum EP extract levels described for this waste using the VHS model has generated the compliance point concentrations shown in Table 2.

TABLE 2.—VHS MODEL: PREDICTED CONCENTRATIONS AT COMPLIANCE POINT

	VHS Model (ppm)	Regulatory standard (ppm)
As	<0.0006	0.05
Ba	0.326	1.00
Cd	0.001	0.01
Cr (total)	0.184	0.05
Pb	0.037	0.05
Hg	0.0002	0.002
Se	<0.0013	0.01
Ag	0.001	0.05
Ni	0.042	0.35
CN (total)	<0.0006	0.20

The predicted levels for all the EP toxic metals except chromium are below their respective National Interim Primary Drinking Water Standards (NIPDWS); nickel levels are below the Agency's interim delisting criterion;[54] and cyanide levels are below the U.S. Public Health Service's suggested drinking water standard.[55] The predicted maximum well concentration for total chromium (0.184 mg/l) exceeds the NIPDWS value of 0.05 mg/l.

This prediction is based upon the highest reported chromium leachate value. The value, however, exceeds the next highest value by a factor of five. Statistical evaluation of all the reported chromium leachate values indicates that this aberrant chromium value is 2.5 times greater than the upper limit of the 95% confidence interval for all the chromium data. The value in question was generated by a separate laboratory analysis performed prior to the testing done for the petition, and no quality control information concerning this early analysis is available. All subsequent analyses (performed by another laboratory) produced verifiably accurate data. Consequently, the Agency believes that the elevated chromium value is an outlier that may be due to laboratory error, and so this value will be disregarded. If the 95% confidence interval is re-calculated after discarding the outlier, and the upper limit of this interval is used as the leachate value in the VHS calculations, the resultant compliance point toxicant concentration (0.0196 ppm) does not exceed the NIPDWS for chromium.

These constituents are, therefore, not of regulatory concern. The Agency has also concluded that no hazardous organic constituents are present in the waste based upon a review of the raw materials used in the process and the potential for those organics to exist after going through the roaster.

Valley City has demonstrated to the Agency that the metal oxide powder residue produced from their spent pickle liquor regeneration process is non-hazardous. The Agency proposes to grant an exclusion to Valley City Steel Company, located in Valley City, Ohio, for this oxide powder, as described in the petition.

IX. Effective Date

The rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

X. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

XI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 19, 1986.

Marcia Williams,
Director, Office of Solid Waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDES FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Chamberlain-Featherlite, Inc	Hot Springs, AR	Dewatered wastewater sludges (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [date of publication].
Falconer Glass Industries, Inc	Falconer, NY	Wastewater treatment sludges from filter press and magnetic drum separator (EPA Hazardous Waste No. F006) generated from their electroplating operations after [date of publication].
*	*	* * * *
Lake City Army Ammunition Plant	Independence, MO	Wastewater treatment sludge (EPA Hazardous Waste No. K046) generated from the manufacturing, formulation and loading of lead-based initiating compounds and contained in an on-site landfill on [date of publication]. This is a one time only exclusion for the waste contained in the on-site landfill.
Loxcreen Company, Inc	Hayti, MO	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [date of publication].
*	*	* * * *
Olin Corp	Augusta, GA	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production and produced in their brine treatment and dewatering unit after [date of publication]. There must be continuous batch testing for mercury using the EP toxicity test prior to disposal. Each batch of waste must exhibit mercury extract levels below 0.02 mg/l. This exclusion does not apply to a batch unless both of these conditions are met.

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[51] Valley City originally submitted its petition on August 10, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Valley City. This additional information was submitted by Valley City on August 9, and October 30, 1985.

[53] See footnote 5.

[54] See footnote 14.

[55] See footnote 7.

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TABLE 1.—WASTES EXCLUDES FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
SR of Tennessee	Ripley, TN	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after (date of publication) and wastewater treatment sludges contained in their closed on-site impoundment on that date.
Tennessee Elecroplating	Ripley, TN	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operated after (date of publicatiog) and wastewater treatment sludges contained in their closed on-site impoundment on that date.
Valley City Steel Co	Valley City, OH	Metal oxide powder (EPA Hazardous Waste No. K062) produced from the regeneration of spent pickle liquor from their picking process after (date of publication).

[FR Doc. 86-4867 Filed 3-5-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 260, 261, 262, 264, 265, 268, 270 and 271

[SWH-FRL 2927-3]

Hazardous Waste Management System; Land Disposal Restrictions

Correction

In FR Doc. 86-618 beginning on page 1602 in the issue of Tuesday, January 14, 1986, make the following corrections:

1. On page 1602, third column, second paragraph, seventh line, "achieved" should read "achievable".

2. On page 1605, second column, first complete paragraph, third from last line and last line, "6934" should read "6924".

3. On page 1606, second column, first complete paragraph, seventh line, "disposal" should read "disposed".

4. On page 1621, third column, second complete paragraph, sixth line, "Wasts" should read "Wastes".

5. On page 1623, second column, first paragraph, seventh line from the bottom, insert "not" between "has" and "been".

6. On page 1625, second column, second complete paragraph, fifteenth line, "interaction" was misspelled.

7. On page 1627, second column, first complete paragraph, eleventh line, "donated" should read "denoted".

8. On page 1633, third column, in the table, in the first entry, "$\pm 10^{-9}$" should read "$>10^{-9}$"; in the second entry, "±500" should read ">500".

9. On page 1641, second column, twenty-first line, "264,228" should read "264.228".

10. On page 1642, second column, second complete paragraph, eleventh line, "absorption" should read "adsorption".

11. On page 1643, first column, second complete paragraph, twelfth line, "absorbed" should read "adsorbed".

12. On page 1644, second column, second paragraph, third line, insert a dash after the first parenthesis.

13. On page 1649, first column, twelfth line, "γ" should read "α_L". In the third column, ninth line, "long-uniform" should read "log-uniform". In the same column, first complete paragraph, second line, "ρb" should read "P_b".

13a. On page 1650, second column, in the fifth line beginning "density", "ρp" should read "Pp". In the seventeenth line of the first complete paragraph, "K" should read "K_s".

14. On page 1651, first column, in the equation, insert "[" after "exp".

15. On page 1654, first column, in paragraph (v), first line, remove the parenthesis before "of".

16. On page 1656, insert "WASTE SITE" at the top of the illustration.

17. On page 1663, first complete paragraph, sixth line, "Control" should read "Quality".

18. On page 1666, first column, in every place that "m_g" and "m_L" appear, insert a • above "m".

19. On page 1668, second column, in paragraph iii, ninth line, "absorbed" should read "adsorbed".

20. On page 1669, second column, in the paragraph below Equation (A27), fourth line, "$_F$F" should read "K_F".

In the third column, in the paragraph below Equation (A30), fifth line, "one" should read "once".

21. On page 1672, third column, in the first paragraph and in the equation immediately following, insert a "ˆ" above "C_s".

22. On page 1673, in the text between Equations (B22) and (B23), in the first column, "^{k}ha" should read "k_{HA}". In the second column, "k_{hn}" should read "k_{HN}" and "k_{hb}" should read "k_{HB}".

23. On page 1675, in the first column, in the first line, "•g" should read "$\dot{m}_g$"; in the third line, "$\bullet_L$" should read "$\dot{m}_L$"; in the fifth line, "•P" should read "$\dot{m}_R$"; in the fourteenth line, "stream pH" should read "stream p^{OH}"; and in the twenty-seventh line, "Q^R" should read "Q_R".

24. Also on page 1675, in the second column, in the nineteenth line, "ζ" should read "γg".

25. On page 1678, in the first column, in the second complete paragraph, in the eleventh line, "data" should read "date".

26. On page 1682, in the first column, in paragraph (D), in the ninth line, "nonliner" should read "nonlinear"; in the second column, in the first line, "one-hundredth" should read "one one-hundredth"; in the last line, "factor is" should read "factor in"; and in the third column, in the first complete paragraph, in the eighth line from the bottom of the paragraph, "The" should read "Ten".

27. On page 1684, in the second column, in the last line, "outliner" should read "outlier".

28. On page 1690, in the second column, in the seventh line from the bottom, "5.0+0.2" should read "5.0±0.2".

29. On page 1694, in the first column, in the fifth line from the top, "waste group" should read "waste or waste group".

30. On page 1696, in the second column, in the fourth line from the bottom, "today become" should read "today to become"; in the third column, in the last line, "data" should read "date".

31. On page 1698, in the first column, in the first paragraph under "7. Granting of Extension Approval", in the eleventh line, "the disposal" should read "the duration of the extension and the name and location of any land disposal".

32. On page 1708, in the first column, in the first complete paragraph, in the seventh line, "effect" should read "effort".

33. On page 1712, in the first column, in entry F005, in the first line, "following non-halogenated" should read "following spent non-halogenated"; in the second column, in the second complete paragraph, in the seventh line, "derived for" should read "derived from".

34. On page 1715, in the second column, in paragraph v, in the third line, "inducted" should read "induced".

35. On page 1721, in the second column, in the seventh line, "choromium (VI)" should read "chromium (VI)".

36. On page 1730, in the second column, in footnote 14, in the fourth line, "CDFs—and" should read "CDDs—and".

37. On page 1732, in Table 16, in the last entry, the last column should read "^{2}1 mg/l".

38. On page 1752, in the third column, in paragraph 7.10.2, in the second line, "100±°C" should read "100±20°C".

39. On page 1753, in the second column, in paragraph 7.15.3, in the third line, "may be" should read "may not be".

40. On page 1755, in Table 2, in the third column, move the third line up under the first line.

41. On page 1764, in the first column, in entry U031, "alcohol" was misspelled.

42. On page 1765, in the third column, in the table in § 268.42, in the twenty-ninth entry, "1,2,2-tyrifluoroethane" should read "1,2,2-trifluoroethane".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 431

General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: In accordance with the Boulder Canyon Project Act of 1928 (Project Act), the Boulder Canyon Project Adjustment Act of 1940 (Adjustment Act), and the Hoover Power Plant Act of 1984 (Hoover Power Plant Act), the Bureau of Reclamation (Reclamation) has developed these proposed General Regulations for Power Generation, Operation, Maintenance and Replacement at the Boulder Canyon Project (General Regulations) to define the procedures to be used by Reclamation in providing contractors and the Western Area Power Administration (Western) with cost and power generation data associated with operation of the Project. These proposed General Regulations will supersede those portions of the "General Regulatitions for Lease of Power," dated April 25, 1930, and the "General Regulaitons for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act," approved and promulgated on May 20, 1941 (1941 Generation Regulations), which are under the jurisdiction of the Secretary of the Interior and which will terminate on May 31, 1987.

DATES: Written comments concerning the proposed General Regulations must be received within 45 days of the date of this notice.

ADDRESS: Written comments concerning the General Regulations should be sent to: Mr. Edward Hallenbeck, Regional Director, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8411.

FOR FURTHER INFORMATION CONTACT: Robert McCullough, Regional Supervisor of Power, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8104.

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 5 of the Project Act addresses the Secretary of the Interior's authority, under such regulations as the Secretary may prescribe, to contract for the generation and delivery of electrical energy upon charges that will provide sufficient revenue that will cover all expenses of operation, maintenance, and repayment of all amounts advanced from the Treasury with interest for the Boulder Canyon Project. Section 9 of the Adjustment Act provides for the operation, maintenance, and the making of replacements, however necessitated, of the Hoover Powerplant by the United States, either directly or through such agent or agents as the Secretary of the Interior may designate.

The Project Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof for electrical energy generated at Hoover Dam. In accordance with this authority, the Secretary of the Interior approved and promulgated the 1941 General Regulations. Those 1941 General Regulations provide the basis for computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project from Reclamation to the Western Area Power Administration (Western). The construction, power generation, operation, maintenance, and replacement responsibilities of the Project powerplant and appurtenant works remained with Reclamation. The power marketing function includes the responsibility for promulgating charges for the sale of power. General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project will be the subject of a separate rulemaking by the Secretary of Energy, acting through the Administrator of Western under 10 CFR Part 904.

These proposed General Regulations, promulgated pursuant to section 8 of the Adjustment Act, are necessary and appropriate for the administration of the Project in accordance with the Project Act and the Adjustment Act, as amended.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested parties are invited to submit comments concerning these proposed General Regulations to the location identified in the address section of this notice. The final General Regulations will be published by the Secretary of the Interior, acting through the Commissioner of Reclamation, 90 days from the date of this publication. Reclamation will review and consider each comment prior to the publication in the **Federal Register** of the final General Regulations. Included also in that **Federal Register** publication will be responses to all major comments, criticisms, and alternatives offered during the comment period.

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (CEQ) for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), and the Department of the Interior Manual (516 DM 1-7), the Bureau of Reclamation will evaluate the potential environmental impacts associated with the proposed regulations for power generation, operation, maintenance, and replacement activities at the Boulder Canyon Project.

Based on a preliminary analysis, Reclamation anticipates preparing a categorical exclusion. The environmental compliance will be completed prior to final implementation of the regulations.

List of Subjects in 43 CFR Part 431

Electric power, Power generation.

It is proposed to amend 43 CFR by adding a new Part 431 to read as follows:

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PART 431—GENERAL REGULATIONS FOR POWER GENERATION, OPERATION, MAINTENANCE, AND REPLACEMENT AT THE BOULDER CANYON PROJECT, ARIZONA/NEVADA

Sec.
431.1 Purpose.
431.2 Scope.
431.3 Definitions.
431.4 Power generation responsibilities.
431.5 Operation, maintenance, and replacement cost estimates.
431.6 Power generation estimates.
431.7 Administration and management of the Colorado River Dam Fund.
431.8 Disputes.
431.9 Future regulations.

Authority: Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), Colorado River Storage Project Act of 1956 (43 U.S.C. *et seq.*), Colorado River Basin Project Act of 1968 (43 U.S.C. 150 *et seq.*), and Hoover Power Plant Act of 1984 (98 Stat. 1333).

§ 431.1 Purpose.

(a) The Secretary of the Interior (Secretary), acting through the Commissioner of Reclamation, is authorized and directed to operate, maintain, and replace the facilities at the Boulder Canyon Project powerplant, and also to promulgate general regulations as the Secretary finds necessary and appropriate in accordance with the authorities in the Reclamation Act of 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto.

(b) In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) as amended and supplemented (Project Act), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 628 *et seq.*) as amended and supplemented (Adjustment Act), and the Hoover Power Plant Act of 1984 (98 Stat. 1333), Reclamation promulgates these General Regulations defining procedures to be used in providing contractors and Western with cost and power generation data associated with the operation of the Boulder Canyon Project. These General Regulations shall supersede those portions of the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations), approved and promulgated on May 20, 1941, and the "General Regulations for Lease of Power," dated April 25, 1930, which are under the jurisdiction of the Secretary of the Interior and which will terminate on May 31, 1987.

§ 431.2 Scope.

These General Regulations shall be effective on June 1, 1987, and shall apply to Power Generation, Operation, Maintenance, and Replacement activitites at the Boulder Canyon Project after May 31, 1987. Those portions of the General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, dated May 20, 1941, and the "General Regulations for lease of Power," dated April 25, 1930, which are under the jurisdiction of the Secretary of the Interior, are repealed as of the effective date of these regulations.

§ 431.3 Definitions.

As used in this part:

(a) "Additions and betterments" means such additions and betterments constructed or acquired which enhance or improve the Project and do more than restore the Project to a former good operating condition.

(b) "Colorado River Dam Fund" or "Fund" means that special fund established by Section 2 of the Project Act for the purpose of carrying out the provisions of the Project Act.

(c) "Contractors" means those entities which have a fully executed contract with Western for the purchase of power from the Project.

(d) "Project" or "Boulder Canyon Project" means all works authorized by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act, to be constructed and owned by the United States, and any future authorized additions, but exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal.

(e) "Replacements" means such replacements as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the words "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(f) "Western" means the Western Area Power Administration, an agency of the Department of Energy.

§ 431.4 Power generation responsibilities.

(a) Power generation, and associated operation, maintenance, and replacement activities, however necessitated, shall be the responsibility of the United States Department of the Interior, Bureau of Reclamation (Reclamation).

(b) Subject to the statutory requirement that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction or perfected rights mentioned in Section 6 of the Project Act; and third, for power, and subject to water availability or water releases necessary for river system operations or forced or planned powerplant outages that affect powerplant capability, as determined by Reclamation, Reclamation will release water and make available generating capacity in such quantities, and at such times, as are necessary for the delivery of the capacity and energy to which contractors are entitled.

(c) Reclamation reserves the right to temporarily discontinue or reduce the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs, and/or replacements, and for investigations and inspections necessary thereto, provided, however, that Reclamation shall, except in case of emergency, give Western reasonable notice in advance of such temporary discontinuation or reduction, and that Reclamation shall make such inspections and perform such maintenance and repair work at such times and in such manner as to cause the least inconvenience possible to contractors and that Reclamation shall prosecute such work with diligence and without unnecessary delay, resume delivery of water so discontinued or reduced.

§ 431.5 Operation, maintenance, and replacement cost estimates.

Reclamation shall submit annually to Western, cost estimates for operation, maintenance, replacements, additions and betterments, interest, and amortization of the Project for the next 5 fiscal years. Such cost estimates shall identify major items included in the cost estimates. Thirty (30) days after the President's budget has been submitted to Congress, Reclamation shall submit such cost estimates to Western and shall also provide such cost estimates to contractors for review with an opportunity to present written views within 60 days. Reclamation responses to written views shall be provided within 60 days of receipt.

§ 431.6 Power generation estimates.

At least once each fiscal year, Reclamation shall provide to Western and to contractors, an integrated annual schedule showing estimated power generation and estimated maintenance outages for review, and shall provide an

opportunity to present written views within 60 days. Reclamation responses to written views shall be provided within 60 days of receipt. The estimated annual operation schedule of Hoover Powerplant shall be subject to necessary modifications, either higher or lower, to allow for changing powerplant maintenance schedules and/or generation rates, and for changing reservoir and river conditions, as well as for release requirements for flood control.

§ 431.7 Administration and management of the Colorado River Dam Fund.

(a) All receipts to the Project shall be deposited in the Fund along with power sales revenues deposited by Western and shall be available without further appropriation for:

(1) The cost of operation, maintenance, and replacement of all Project facilities, including emergency replacements necessary to insure continuous operations;

(2) Payment of interest on the unamortized balance of capital investment;

(3) Repayment of capital investments including amounts readvanced;

(4) Payments to the States of Arizona and Nevada as provided in section 2(c) of the Adjustment Act and section 403(c)(2) of the Colorado River Basin Project Act;

(5) Transfers to the Lower Colorado River Basin Development Fund as provided in section 403(c)(2) of the Colorado River Basin Project Act and section 102(c) of the Hoover Power Plant Act;

(6) Transfers from the Lower Colorado River Basin Development Fund to the Upper Colorado River Basin Fund as reimbursement for the monies expended heretofore from the Upper Colorado River Basin Fund to meet deficiencies in generation at Hoover Dam during the filling period of storage units of the Colorado River Storage Project in accordance with the provisions of sections 403(g) and 502 of the Colorado River Basin Project Act, such transfers to be effected at the rate of $1,532,854.44 per year during the period 1988 to 2005; and

(7) Any other purposes authorized by existing and future Federal law.

(b) The Fund shall be administered and managed in accordance with applicable Federal law and regulation, by the Secretary of the Interior acting through the Commissioner of Reclamation.

§ 431.8 Disputes.

(a) Any disputes or disagreements as to interpretation or performance of the provisions of these regulations under the responsibility of the Secretary of the Interior shall first be presented to and decided by the Secretary or the Secretary's designated representative, hereinafter called the Federal Representative. The decision of the Federal Representative shall be final and binding unless a written request for arbitration is received by the Federal Representative within 30 days of the date of receipt of the notice of decision, or the disputing party files a claim in a proper Federal District Court within 6 months of receipt of the notice of decision. The Federal Representative shall have 90 days from the date of receipt of the request for arbitration to respond in writing by either concurring in or denying the request. Failure by the Federal Representative to take any action within the 90 days shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the disputing party's remedy lies with the appropriate Federal District Count.

(b) When a timely request for arbitration is received and the Federal Representative concurs in writing with the request, the disputing party and the Federal Representative shall each, within 30 days, name one arbitrator to the panel of arbitrators which will decide the dispute. In the event there is more than one disputing party in addition to the Federal Representative, the disputing parties shall collectively name one arbitrator to the panel of arbitrators. In addition, the Federal Representative shall make a request in writing to the appropriate Federal District Court that a third arbitrator be named to the panel of arbitrators by the Chief Judge of the Federal District Court which would have exercised jurisdiction over the dispute but for the mutually agreed to arbitration process. The third arbitrator shall act as chairperson of the panel. The panel of arbitrators shall render a final decision within 60 days of the date of the naming of the third arbitrator. A decision by any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute. Pending a final decision by the panel arbitrators, the Federal Representative's prior decision shall be binding upon the parties.

§ 431.9 Future regulations.

Reclamation may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law.

Dated: February 11, 1986.

Wayne Marchant,
Deputy Assistant Secretary—Water and Science.

[FR Doc. 86-4890 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-74; RM-5169]

FM Broadcast Station in De Witt, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 243A to De Witt, Michigan, in response to a petition filed by William S. Gannon. This allotment could provide a first FM broadcast service for the community.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communication Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (De Witt, Michigan); MM Docket No. 86-74, RM-5169.

Adopted: January 31, 1986.
Released: February 27, 1986.
By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by William S. Gannon ("petitioner"), seeking the allotment of FM Channel 243A to De Witt, Michigan, as that community's first broadcast service. Petitioner submitted information in support of the proposal and stated his intention to file an application for the channel.

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2. Channel 243A can be allocated to De Witt, Michigan, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules provided an application (BMPH850911IE) filed by Station WHNN, Channel 241, Bay City, Michigan, to relocate its transmitter and increase its facilities to the Class C standards is approved by the Commission.[1] At present, the proposal for Channel 243A at De Witt would be short spaced to the 16 kilometer buffer zone of Station WHNN. However, if the application is approved to allow Station WHNN to operate as a full Class C facility, the buffer zone would be removed and Channel 243A could be allocated to De Witt.[2] Since De Witt is located within 320 kilometers (200 miles) of the common U.S.-Canadian border, Canadian concurrence is required.

PART 73—[AMENDED]

3. In view of the fact that the proposed allocation could provide a first FM broadcast service to De Witt, Michigan, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

Community	Channel No.	
	Present	Proposed
De Witt, Mich.		243A

4. It is ordered, That the Secretary of the Commission shall send by certified mail, Return Receipt Requested, a copy of the *Notice* to the following: Mr. Steven J. Kuiper, 2049 Action Street, Grand Rapids, Michigan 49504 (851115MQ).

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 21, 1986, and reply comments on or before May 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: William S. Gannon, 4206 South Cedar Street, Lansing, Michigan 48910.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the persons(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

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[1] One of the applications filed for Channel 243A at Portage, Michigan (851115MQ), is short spaced to the proposed allotment of Channel 243A at De Witt. The applicant will be served a copy of this *Notice of Proposed Rule Making.* See paragraph 4, *infra.*

[2] Should the application filed by WHNN not be granted and the buffer zone for Channel 241, Bay City, remain until March 1987, FM Channel 227A could be allotted to De Witt. A site restriction of 8.8 kilometers northwest of the community would be necessary for the allocation of Channel 227A at De Witt.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-4843 Filed 3-5-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; Debarment and Suspension

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering the promulgation of a new rule in the DOD FAR Supplement (DFARS), Parts 209 and 252, with respect to Debarment and Suspension. The purpose of the proposed rule is to provide the contracting officer with current information regarding the debarment or suspension status of offerors and ensure that subcontracts are not awarded to firms which have been debarred or suspended.

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no late than May 5, 1986, to be considered in formulation of the final rule. Please cite DAR Case 83–72 in all correspondence related to this matter.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, OASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7268.

SUPPLEMENTARY INFORMATION:

A. Background

Current provisions in the FAR and DFARS essentially state that, absent compelling circumstances, DOD Components will not solicit bids or proposals from, award contracts to, or renew existing contracts with firms who are debarred or suspended or are pending debarment action, and in addition, will not consent to nor approve subcontracts with such firms. Debarred or suspended contractors are excluded from conducting business with the DOD as agents or representatives or other contractors. Currently, DOD contracting officers rely upon the Consolidated List of Debarred, Suspended and Ineligible Contractors specified in FAR 9.403 in giving effect to the above provisions. However, on occasion, contracts inadvertently have been awarded to firms which were debarred or suspended at the time of award or were pending debarment action, because of the administrative delay involved in preparation and distribution of the Consolidated List to DOD contracting offices worldwide. The proposed rule would address and cure this problem by requiring, in other than small purchases under FAR Part 13, that offerors certify their eligibility for award at the time of submission of bids and proposals and obtain similer certifications from prospective subcontractors, thereby assisting contracting officers in making informed responsibility determinations. As drafted, the proposed rule extends the prohibition on contracting with debarred or suspended firms to the subcontract level, as the prohibition would apply to circumstances other than those in which formal Government consent or approval is required under the terms of a Government prime contract.

B. Regulatory Flexibility Act

The proposed rule is expected to impact only upon a small number of firms which, although debarred or suspended, seek to do business under DOD prime contracts as subcontractors. Because the number of debarred or suspended firms which are small entities is itself currently limited to approximately 1200 firms, and because present DOD prime contractor purchasing practices and prime contract provisions concerning Government consent and approval of subcontracts tend to exclude such firms from receiving subcontract awards to a large extent, it is believed that an insubstantial number of small entities will be affected. Comments are solicited in this regard.

C. Paperwork Reduction Act

The proposed rule requires certification of status and does not impose information collection requirements under the statute. Therefore, OMB approval under 44 U.S.C. 3501, et seq., is not required.

List of Subjects in 48 CFR Parts 209 and 252

Goverment procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulator Council.

Therefore, it is proposed that 48 CFR Parts 209 and 252 be amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR Part 209 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 209.405–3 is added to read as follows:

209.405–3 Contract clause.

The contracting officer shall insert the clause at 52.209–7000, Representation Regarding Debarment and Suspension and Subcontracting with Debarred or Suspended Contractors, in all solicitations and contracts other than small purchases under FAR Part 13.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

4. Section 252.209–7000 is added to read as follows:

252.209–7000 Representation regarding debarment and suspension and subcontracting with debarred or suspended contractors.

As prescribed in 209.405–3, insert the following clause:

Representation Regarding Debarment and Suspension and Subcontracting With Debarred or Suspended Contractors (1986 MAR)

(a) The Offeror (Contractor) represents and certifies (with its submission of this offer) that it ( ) is, ( ) is not (check one) suspended, debarred or ineligible from entering into contracts with the executive branch of the Federal Government, or in receipt of a notice of proposed debarment from any department or agency of the Department of Defense. This representation concerns a matter within the jurisdiction of a department or agency of the United States so that the making of a false, fictitious or fraudulent representation will render the maker subject to punishment under Title 18, United States Code, Section 1001.

(b) The Offeror (Contractor) certifies that (, if awarded a contract under this solicitation,)

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it will knowingly enter into any subcontract exceeding $25,000 under the contract with a contractor that is suspended, debarred or ineligible from entering into contracts with the executive branch of the Federal Government, or in receipt of a notice or proposed debarment from any department or agency of the Department of Defense. The Contractor may rely on a representation by the subcontractor similar to that in paragaph (a), above, unless it has knowledge of a suspension, debarment, or eligibility of, or receipt of notice of proposed debarment by the subcontractor. If the Contractor does knowingly enter into a subcontract exceeding $25,000 with a contractor that is suspended, debarred, ineligible or in receipt of a notice of proposed debarment, the Contracting Officer may direct cancellation of the subcontract at no cost to the Government or terminate the prime contact for default.

(c) Prior to award of a contract under this solicitation, the Offeror shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of proposed debarment from any department or agency of the Department of Defense.

(d) (If awarded a contact under this solicitation,) the Offeror (Contractor) shall, during the performance of the contract, provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of proposed debarment from any department or agency of the Department of Defense.

(e) (If awarded a contact under this solicitation,) the Offeror (Contractor) shall include paragraphs (a) and (b), above, and this paragraph (e), modified and supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts exceeding $25,000 and shall include reference to the government contract number, contracting office, and Contracting Officer in such subcontracts.

(End of clause)

[FR Doc. 86-4886 Filed 3-5-86; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC-95; Sub-3]

Adequacy of Intercity Motor Common Carrier Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of discontinuance of rulemaking proceeding.

SUMMARY: This proceeding concerning adequacy of service, equipment, and facilities provided by motor passenger carriers operating over regular routes was reopened for further comments by decision served November 30, 1984. Notice of the action was published December 3, 1984, in the *ICC Register* and the **Federal Register** at 49 FR 47277. The supplemental comments that have been submitted have identified no reasons why any modifications to the existing regulations should be adopted. The Commission has concluded that the increasingly competitive environment fostered under the provisions of the Bus Regulatory Reform Act of 1982 makes it unnecessary to impose more stringent requirements upon the intercity bus industry.

DATES: This proceeding is discontinued, effective March 6, 1986.

FOR FURTHER INFORMATION CONTACT:

James L. Brown (202) 275-7898

or

Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision, which is available for public inspection at the Office of the Secretary, Room 2215, 12th Street and Constitution Ave., NW., Washington, DC 20423. Copies may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800) 424-5403, or (202) 289-4357 in the Washington, DC, Metropolitan area.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources, nor will it have a significant effect on a substantial number of small authorities.

List of Subjects in 49 CFR Part 1063

Buses.

This decision is issued pursuant to 5 U.S.C. 553 and 559 and 49 U.S.C. 10102, 10321, 10703, 10762, 10730, 10922, 11145, and 11702.

Dated: February 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-4863 Filed 3-5-86; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 51, No. 44
Thursday, March 6, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1986-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1986-crop and to propose additional program changes. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Written comments are invited from interested persons.

DATE: Comments must be received on or before March 24 in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harry A. Sullivan, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6758. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed deteminations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATON: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and have been classified "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more: (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to implement a price support program for the 1986 crop of honey by April 1, 1986, the beginning of the marketing season, it is necessary to limit the public comment period to less than 30 days. Accordingly, comments must be received by March 24 in order to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1986 of 550 million pounds.

Domestic honey production in 1986 is projected to be 196 million pounds from 4,350,000 colonies. This is 46 million pounds more than the estimated volume of honey produced during the 1985 crop year. Imports of honey in 1986 are projected to total 140 million pounds, about the same quantity imported in 1985. As of December 31, 1985, there were approximately 108.3 million pounds of honey remaining in CCC inventory while approximately 20 million pounds of honey remained in commercial stocks. Another 86 million pounds of honey were pledged as price support loan collateral under the honey program for the 1985 crop year. These figures may fluctuate due to domestic disappearance which, for the 1979 to 1981 crop years, averaged 247 million pounds per year. Disappearance, beginning with the 1981 crop year has been rising due to the added disposition of CCC inventories through noncommercial outlets.

The U.S. market price for honey in 1985 declined from, 49.5 cents per pound in 1984 to an estimated 45.5 cents per pound on a bulk, extracted, wholesale, unprocessed basis. The level of price support for the 1985 crop of honey was established at 60 percent of parity or 65.3 cents per pound. Thus, average market prices have lagged well behind the levels of price support, which have increased steadily to over 65 cents per pound in 1985.

Section 201(b) of the Agricultural Act of 1949 (the "1949 Act"), as amended by section 1041 of the Food Security Act of 1985, provides that the Secretary of Agriculture shall make available through loans, purchases, or other operations, price support to producers of 1986-crop honey at 64 cents per pound.

In accordance with section 403 of the 1949 Act, it is proposed that the loan rate for the 1986 crop of honey be adjusted to reflect floral source, color, class and grade, and other market differentials which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act the Secretary may permit producers who have obtained price support loans with respect to the 1986-1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1986-crop:

Proposed Determinations

The 1986 program will be a price support loan program with a loan rate of 64 cents per pound as required by statute.

The 1986-crop honey loan rate will be adjusted to reflect floral source, color, class and grade, and other market

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differentials under which honey is marketed.

Producers with price support loans for the 1986-crop honey will be permittted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 20 to 40 cents a pound, which roughly reflects the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign markets as well.

Consideration will be given to all views and recommendations that are received relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8:00 a.m. to 4:30 p.m.).

Signed at Washington, DC on: March 4, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-4989 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Mount St. Helens Scientific Advisory Board Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., April 15, 1986, at the Forest Supervisors Office, Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, to receive information on and discuss the following:

1. The final Comprehensive Management Plan.
2. Research access to Spirit Lake Basin.
3. Status of Monument Scientist position.
4. The National Volcanic Monument Science Panel.
5. Promoting research needs in the NVM.
6. Status of outlets at Coldwater and Castle Lakes.
7. Summer meeting and field trip.
8. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: February 27, 1986.

James C. Space,

Acting Regional Forester.

[FR Doc. 86-4875 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bush River-Beaverdam Creek Watershed, South Carolina

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bush River-Beaverdam Creek Watershed, Newberry and Laurens Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, telephone (803) 765-5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Billy Abercombie, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for erosion control on 7,410 acres of cropland in Newberry and Laurens Counties. The work will be accomplished through conservation plans and long-term contracts involving about 70 farms. The soil and water conservation districts will provide leadership for installing the project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: February 25, 1986.

Byron Thompson,

Asst. State Conservationist.

[FR Doc. 86-4874 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Perry County Roadbanks Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Perry County Roadbanks Critical Area Treatment RC&D Measure, Perry County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of 30 acres of bare and eroding banks, 2,000 feet of a severely eroding roadside ditch, and stabilization of one roadway slip. Planned works of improvement include seeding and mulching the bare and eroding areas, installation of design drains for surplus runoff, installation of a grade stabilization structure, installation of subsurface drains, and the rebuilding of the landslip areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Harry W. Oneth,

State Conservationist

February 26, 1986.

[FR Doc. 86-4861 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Scioto County Road 32 Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Scioto County Road 32 Critical Area Treatment RC&D Measure, Scioto County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of landslips along Scioto County Road 32, also known as Bear Creek Rarden Road. Planned works of improvement include the installation of approximately 400 feet of subsurface drains to intercept seepage in the slip area and the installation of a road ditch to divert surface water away from the slip area. The slip area will be regraded and seeded.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Harry W. Oneth,

State Conservationist

[FR Doc. 86-4862 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Springfield Township Road 22-50 Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Springfield Township Road 22-50 Critical Area Treatment RC&D Measure, Williams County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of a roadside slip approximately 400 feet long. The slip created a traffic safety hazard and erosion problem. Planned works of improvement include a 400 foot diversion to divert surface runoff away from the slip area and the installation of a subsurface drain to intercept seepage. After construction the area will be graded and seeded.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which

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requires intergovernmental consultation with state and local officials)

February 28, 1986.

Harry W. Oneth,

State Conservationist.

[FR Doc. 86-4863 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Tycoon Wildlife Area Public Water-Based Fish and Wildlife RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tycoon Wildlife Area Public Water-Based Fish and Wildlife RC&D Measure, Gallia County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the restoration and improvement of the public water-based fish and wildlife habitat on 10 acres of land owned and operated by the Division of Wildlife, Ohio Department of Natural Resources. It will restore a washed out dike and wetland area. Planned works of improvement include the installation of a dike and water control structure to manage the water level behind the dike for the benefit of the wildlife.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basis data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

February 28, 1986.

Harry W. Oneth,

State Conservationist.

[FR Doc. 86-4864 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Hardin Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, an the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Hardin Creek Watershed Creek Watershed project, Hardin and Wayne Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consulation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist

[FR Doc. 86-4893 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Lewis-Hunsaker Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Lewis-Hunsaker Creek Watershed project, Dyer County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-4894 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds, Little Bigby Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Lewis-Hunsaker Creek Watershed project, Dyer County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-4894 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Mill Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Mill Creek Watershed project, Overton and Clay Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-4896 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Mulberry Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Mulberry Creek Watershed project, Moore and Lincoln Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-4897 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; North Fork Obion River Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the North Fork Obion River Watershed project, Henry County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986

Donald C. Bivens,

State Conservationist

[FR Doc. 86-4898 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Wilson-Spring Creek Watershed, TN

AGENCY: Soil Conservation Service.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Wilson-Spring Creek Watershed project, Wilson County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: February 27, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-4899 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Tucson Plant Materials Center Land Exchange, AZ; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tucson Plant Materials Center Land Exchange, Pima County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, USDA Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona 85012, Telephone (602) 241-2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal action indicates that the exchange will not cause significant local, regional or national impacts on the environment. As a result of these findings, Verne Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this land exchange.

Tucson Plant Materials Center Land Exchange, AZ

Notice of a Finding of No Significant Impact

This activity concerns exchanging 27.77 acres (more or less) of agricultural land (surrounded by urban area) for 80 acres (more or less) in a rural agricultural area. The Government property will be transferred by quit claim deed. The property to be accepted by the Soil Conservation Service will be utilized as a new Plant Materials Center. This exchange was prompted by Section 4 of Executive Order 12348 as implemented by Subpart 101-47.8 of the Federal Property Management Regulations (FPMR). Based on the highest and best use analysis and land cost comparisons, the entire Tucson PMC property is not being put to

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optimum use. The appraised value of the Tucson PMC is $98,127.00 per acre. Comparably improved, ready-to-farm agricultural land, outside of the urban sprawl, is available for $3,000.00 per acre.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne Bathurst.

No administrative action on implementation of this land exchange will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901–Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: February 27, 1986.

Verne M. Bathurst,

State Conservationist.

[FR Doc. 86–4900 Filed 3–5–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on April 8, 1986 at 10:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: March 3, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–4922 Filed 3–5–86; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held March 27, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:00 a.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: March 3, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–4923 Filed 3–5–86; 8:45 am]

BILLING CODE 3510–DR–M

Applications for Duty-Free Entry of Scientific Instruments; Sam Houston State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86–111. Applicant: Sam Houston State University, Huntsville, TX 77341. Instrument: Spectrophotometer, Model DA3.25 with Accessories. Manufacturer: Bomen Inc., Canada. Intended use: The instrument will be used to investigate the optical and electrical properties of semi-insulating gallium arsenide (GaAs), neutron transmutation doped (NTD) GaAs, high purity silicon and NTD silicon using infrared absorption spectroscopy, photothermal ionization spectroscopy and electron paramagnetic resonance techniques. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86–114. Applicant: Ohio State University, Research Foundation, 1314 Kinnear Road, Columbus, OH 43210. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany, Intended use: The instrument will be used for the following research interests:

(1) Ultrastructural studies of green algae.

(2) Studies of the mechanism of double fertilization in angiosperms.

(3) Structure-function relationships in stomata and in higher plant graviperception.

(4) Ultrastructural studies of fossil plants.

In addition, the instrument will be used to teach electron microscopy techniques to graduate and advanced undergraduate students. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86–116. Applicant: State University of New York, Stonybrook, NY 11794. Instrument: Electron Microscope, Model CM 12 with

Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for the study of metallic and ceramic materials and light metal hydrides. Particular emphasis will be on hcp metals, refractory metals and binary alloys. Experiments will consist of microscopic imaging and diffraction studies and *in situ* straining. In addition, the instrument will be used for teaching the following courses:

(1) ESM 302 Techniques in Materials Science

(2) ESM 605 Diffraction Techniques

(3) ESM 607 Imperfections in Crystals

(4) ESM 696 Problems in Materials Science

(5) ESM 599 and 699 Research in Materials Science. Application received by Commissioner of Customs: February 10, 1986.

Docket No. 86–117. Applicant: Medical College of Ohio, 3000 Arlington Avenue, C.S. 10008, Toledo, OH 43699. Instrument: Electron Microscope, Model CM 10 with Accessories. Manfuacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for analysis of a wide range of vertebrate tissues involving both developing and mature forms. The primary biological tissues for study will be embryonic avian and mammalian heart, dog kidney, human bronchus and rodent pituitary gland, blood vessels and brain. Invertebrate studies will include the yeasts. The overall objectives of the experiments to be conducted are:

(1) A comparison of development in normal and experimental hearts;

(2) effects of renal necrosis induced by pharmacological agents;

(3) mechanics of bronchial and lung carcinogenesis;

(4) a description of alterations induced in the kidneys and blood vessels of hypertensive rats and

(5) the effect of mycococcal predation on cyanobacteria in planktonic communities. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86–121. Applicant: State University of New York, College of Optometry, 100 East 24th Street, New York, NY 10010. Instrument: CRT Display Unit and GRSYS-2 Microprocessor Grating Generator with Interface Hardware. Manufacturer: Joyce Electronics, Ltd., United Kingdom Intended use: The instrument will be used to study the human accommodation system (focussing mechanism of the eye). Experiments will be conducted with the hope of developing a better understanding of the stimuli that control the focus of the eye. Application received by Commissioner of Customs: February 7, 1986.

Docket No. 86–122. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Microscope Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of the neuroanatomy of the mammalian brain to gain insights of the basic structure and function of the brain, in particular Alzheimer's disease and epilepsy. The instrument will also be used for training undergraduate, graduate and postdoctoral students. Application received by Commissioner of Customs: February 7, 1986.

Docket No. 86–124. Applicant: NOAA, National Marine Fisheries Service, 3209 Frederick Street, Pascagoula, MS 39567 Instrument: Towed Underwater Submerisble System. Manufacturer: Sea-I Research Ltd., Canada. Intended use: The instrument is intended to be used in a project initiated to delineate the latent resource stocks in the Gulf of Mexico. This project will involve investigation of the potential of large mesh midwater trawls and high opening botton trawls as sampling and harvesting gear for coastal pelagics in offshore waters. The two major problems which must be addressed to effectively evaluate the gear potential are: (1) identification of acoustic signals from the research vessel's fish-finding sonar and acoustic color sounders and (2) determination of the fishing configuration of the gear and the behavior of fish in response to the gear so gear can be modified to efficiently sample and harvest the fish. Application received by Commissioner of Customs: February 10, 1986.

Docket No. 84–35R. Applicant: Stanford University, Department of Radiology, Stanford, CA 94305. Instrument: Radiotherapy Treatment Planning Simulator. Manufacturer: Varian, United Kindgom. Original notice of this rsubmitted application was published in the **Federal Register** of January 13, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86–4852 Filed 3–5–86; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Determination of Commercial Fishery Failure Due to a Resource Disaster Under the Authority of the Commercial Fisheries Research and Development Act of 1964

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: The coastal waters of Alabama and Florida support many individuals and firms that are engaged in the harvesting, processing, distribution, and marketing of oysters to meet consumer needs. These oyster resources make an important contribution to the economy and economic wellbeing of these States. As a result of Hurricane Elena on September 1, 1985, Florida officials estimated that the annualized loss of production is $31.4 million in that State alone. Alabama officials likewise estimated that the oyster loss in that State from Hurricane Elena is over $48 million.

The extreme tidal activity, hurricane force winds, and heavy rainfall that occurred from Hurricane Elena killed approximately 70 percent of the oysters in Mobile Bay, Alabama, and approximately 80 percent of those in Apalachicola Bay, Florida. These two areas combined totalled 1,634 productive acres of oyster reefs. Natural rehabilitation and subsequent production of these areas would take many years due to heavy siltation and fouling of cultch material.

Past experiences and practices have shown that damaged oyster resources can be effectively and economically restored through planting of cultch materials.

Therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that the damage caused by Hurricane Elena to the oyster resources of the States of Alabama and Florida constitutes a commercial fishery failure due to a resource disaster raising from natural causes within the meaning of subsection 779b of the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88–309, subsection 4(b)). I hereby authorize the use of funds appropriated by Pub. L. 99–180 for the purposes of subsection 4(b) of Pub. L. 88–309, to restore and return to production the damaged oyster resources of the coastal areas of Alabama and Florida.

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Dated: February 27, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 86–4924 Filed 3–5–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

Correction

In FR Doc. 86–2725 beginning on page 4781 in the issue of Friday, February 7, 1986, make the following corrections:

On page 4782, second column, in the table, in the second column, first line, the entry should read "4,000,000 pounds." In the first column of the table, third line from the bottom, "659" should read "569".

Billing Code 1505–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Environmental Impact Statement; Buffalo Bayou and Tributaries, Texas; Comprehensive Flood Damage Prevention Study

AGENCY: U.S. Army Corps of Engineers, DOD, Galveston District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS consists of a comprehensive plan for urban and suburban flood damage prevention throughout the Buffalo Bayou watershed in the Houston metropolitan area, Harris, and parts of Fort Bend and Waller Counties, Texas. The study area includes Buffalo Bayou Main Stem, major tributary drainage basins including Carpenters, Greens, Halls, Hunting, Brays and lower White Oak Bayous and several tributary basins about Addicks and Barker Flood Detention reservoirs. The proposed plan would provide for flood protection in the Houston area now subject to periodic stream flooding.

2. Alternatives to be considered in the DEIS for Buffalo Bayou and its several major tributaries include no action, various levels of channel modification and enlargement with and without erosion control measures, regional flood water retention facilities, diversion channels, and various combinations. Other plans to be investigated during the study include consideration of water supply storage feasibility as Addicks and Barker Reservoirs and recreational development on lands associated with proposed flood control improvements.

3. Coordination. a. The comprehensive study has been coordinated with Harris County Flood Control District, the local sponsor, and other local interests to assure that plans being considered are consistent with those planned by local government. The U.S. Fish and Wildlife Service has provided planning aid documents for study area drainage basins. Public meetings have been held in 1971, 1974, 1975 and 1982 in conjunction with interim studies on upper White Oak Bayou and Sims Bayou tributary basins; however, no public meetings have been held for the comprehensive study in recent years. A public meeting to present water resource problems in the watershed and results of formulation stage planning study is scheduled to be held in Houston, Texas in late 1986. Proposed plans for improvements on various bayous in the drainage basin are being developed in accordance with Corps of Engineers regulations considering the views expressed by the public and agencies of local, State and Federal governments.

b. Environmental considerations to be analyzed as a result of past coordination and participation include: (1) Limiting removal of vegetation on one or both sides of the bayous in proposed channel right-of-way areas to minimize disturbance of wildlife habitat and aesthetics, (2) minimizing impacts to populations of aquatic organisms in bayous from flood control improvements, (3) preserving or maintaining existing wetlands along bayous, (4) disposal of excavated material in areas where environmental damages would be minimal, (5) preserving and enhancing species of recognized importance that may occur in the area, (6) investigating environmentally oriented erosion control measures to control scouring of stream banks, and (7) considering development of recreational opportunities on project lands in recognition of documented metropolitan Houston parkland deficiences.

c. Further coordination and consultation will be continued with appropriate local, State and Federal agencies and interested organizations and individuals.

d. Environmental consultation and review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and all other applicable laws, regulations and guidelines.

4. All previous and future input to studies for the feasibility study will be considered in the scoping process. A public meeting specifically to determine the scope of the DEIS will not be held.

5. The DEIS is scheduled to be available to the public in late 1986.

ADDRESS: Questions about the ongoing study and DEIS can be answered by Mr. C.R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553–1229, (409) 766–3044.

Dated: February 26, 1986.

Gordon M. Clarke,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–4892 Filed 3–5–86; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Consent Order; Texas Pacific Oil Company, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Texas Pacific Oil Company, Inc. (Texas Pacific) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Texas Pacific with the federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period August 19, 1973 through Janaury 28, 1981. Texas Pacific will pay to DOE the sum of $1,300,000 within thirty (30) days of notification from DOE that the Consent Order has been adopted as a final order by the agency, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Texas Pacific Consent Order final was made after a review of all written comments received.

FOR FURTHER INFORMATION CONTACT: Alan R. Fedman, Office of the Solicitor (RG–43), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 252–2856.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Comments Received

III. Decision

I. Introduction

ERA previously issued a notice announcing a proposed consent order between DOE and Texas Pacific which would resolve matters relating to compliance by the firm with the federal petroleum price and allocation regulations for the period August 19, 1973 through January 28, 1981. (51 FR 426, January 6, 1986). The proposed consent order required Texas Pacific to pay $1,300,000 within thirty (30) days of the effective date of the Consent Order. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received three comments, which addressed the question of the ultimate disposition of the funds to be paid by Texas Pacific pursuant to the settlement, but which did not question the basis of the settlement or the adequacy of the settlement amount. These comments were submitted by the Controller of the State of California, the Director of the Governor's Energy Office for the State of Florida and by the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments, although formulated differently and differing in the nature and amount of supporting analysis, are devoted exclusively to establishing the proposition that monies received under the Texas Pacific Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by Texas Pacific related to the miscertification of crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements programs, and the refiners could then pass the overcharges on to others. *See United States* v. *Exxon Corp.*, ——F.2d ——, Slip op. at 110–112 (TECA, July 1, 1985) (Nos. 91 *et seq.*).

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: the Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertification, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

> Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. [sic] Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.
>
> OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, . . . is consistent with the conclusions of the two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27400 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

> It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comments on the Texas Pacific Consent Order appear to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by the firm's alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from Texas Pacific pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Texas Pacific and DOE shall become a final order of the DOE. Today DOE has issued notice to Texas Pacific of the agency's decision to make the Consent Order final, and the Consent Order shall become final upon delivery of that notice.

Issued in Washington, DC, on February 27, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86–4880 Filed 3–5–86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. 86-06-NG]

Natural Gas Imports; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 15, 1986, of the application of Tennessee Gas Pipeline Company (Tennessee) for (1) extension of its authorization to import up to 75,000 Mcf of Canadian natural gas per day through October 31, 2000, to be purchased from ProGas Limited (ProGas) at the international border near Emerson, Manitoba; (2) approval of new pricing provisions establishing a two-part rate, a ratable take provision, and reducing Tennessee's take-or-pay obligation; and (3) authorization to import gas for the account of third parties.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 7, 1986.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6050

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General

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Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: On April 24, 1981, DOE/ERA Opinion and Order No. 32 authorized Tennessee to import up to 75,000 Mcf per day from ProGas through October 31, 1987 (ERA Docket No. 79–15–NG). On April 16, 1984, Tennessee notified the ERA that it intended to seek an amendment to its ProGas contract to bring it into conformity with the policy guidelines issued by the DOE (49 FR 6684, February 22, 1984). Since that time it has reached agreement with ProGas on three amendments to their contract. The application describes the progressive amendments made to the contract to achieve the new contract for which Tennessee is requesting approval.

On November 1, 1984, according to Tennessee, the first amendment established an initial monthly demand charge of $15.21 (U.S.) per Mcf of daily contract quantity and a commodity charge of $2.68 (U.S.) per MMBtu, providing a 100 percent load factor price of $3.18 per MMBtu in substitution for the prior $4.94 per MMBtu border price. The minimum take-or-pay level was reduced from 75 percent to 60 and make-up provisions more favorable to Tennessee were provided. The amendment also provided for semi-annual pricing adjustments through semi-annual application of an index factor developed from the composite U.S. refiner acquisition cost of crude oil as published in the DOE Energy Information Administration's *Monthly Energy Review* for the relevant period. Through this adjustment procedure, the commodity charge was reduced on July 1, 1985, to $2.55 (U.S.) per MMBtu. In addition, the November 1, 1984, amendment provided opportunity for renegotiation of the pricing provisions.

A November 20, 1985, amendment made in response to declining natural gas prices, according to Tennessee, provided for the purchase of gas from November 20, 1985, until February 1, 1986, at a commodity rate of $2.00 (U.S.) per MMBtu. Tennessee was to purchase this gas from the date of approval by the Canadian National Energy Board (NEB)—November 19, 1985—at an annual daily volume of not less than 37,500 Mcf, or 50 percent of the daily contract volume authorized.

On November 25, 1985, Tennessee and ProGas reached another agreement as a result of their renegotiation. This agreement represents a new contract, supersedes all prior agreements, and is the arrangement for which Tennessee is requesting approval by this application. According to Tennessee, the new contract continues many of the elements of the original May 17, 1979, agreement although the pricing provisions were renegotiated.

According to Tennessee the new contract includes the two-part demand/commodity charge mentioned above. The monthly demand charge remains $15.21 per Mcf of daily contract quantity. This demand charge can be adjusted up or down to reflect transportation cost changes, but to the extent this is done, the commodity charge is decreased or increased to reflect the change. The commodity charge has been lowered to $2.00 (U.S.) per MMBtu and the contract terms provide for quarterly adjustment tied to changes in the average daily prices of No. 6 fuel oil and No. 2 heating oil, per spot cargoes, New York harbor. At full contract quantity, this results in the price on the date of application of $2.50 per Mcf. The price mechanism for the commodity charge can be renegotiated yearly and disputes are subject to binding arbitration.

In addition, Tennessee states that the contract provides that ProGas, from time to time, may offer certain volumes of the contract gas as "special purchase gas" for sale at a special commodity charge less than the commodity charge otherwise in effect under the agreement. Tennessee claims this portion of the agreement provides a mechanism for adjustment of prices to meet changing market conditions even more expeditiously than as provided by the quarterly adjustment provisions. The contract allows Tennessee to assign its rights and obligations with respect to the purchase, receipt and payment for any or all of this special purchase gas to third parties through spot sales. Sale of this special purchase gas would also serve to fulfill Tennessee's take-or-pay obligation of 60 percent under the new contract. There is also a ratable take provision based on all of Tennessee's long-term purchase if purchases from ProGas fall to 75 percent during the contract year. Tennessee requests authorization to import gas for the account of third parties, through October 31, 2000, the time period of the extension.

Tennessee's application also asks for an extension of the authorization to import gas after October 31, 1987, as presently authorized in DOE/ERA Opinion and Order No. 32. According to Tennessee, by the terms of its May 17, 1979, contract with ProGas, the initial daily contract quantity of 75,000 Mcf was to be in effect until October 31, 1979. However, because of waivers of certain rights by TransCanada Pipelines Limited (TransCanada), the 75,000 Mcf per day is now available to Tennessee through October 31, 1986. The November 25, 1985, agreement provides for annual stepdowns after October 31, 1986, of 20 percent in the daily contract quantity. These stepdowns will only occur, however, if TransCanada timely exercises its option to purchase certain quantities of gas from ProGas. If TransCanada waives its rights, the contract is ever-greened to provide for the sale of gas by ProGas to Tennessee until October 31, 2000. In the expectation that TransCanada will continue to waive its purchase rights, Tennessee requests that its authorization be amended to allow the import of up to 75,000 Mcf per day through October 31, 2000.

In support of its application, Tennessee asserts that the price adjustment and renegotiated provisions ensure that the price of gas under the contract will be responsive to the marketplace, and that all its contractual changes are consistent with the DOE's policy guidelines. Tennessee requests that the ERA find, pursuant to section 3 of the Natural Gas Act, that the import of natural gas under the terms of the new contract between Tennessee and ProGas, insofar as the agreement affects the prices to be paid and including the use of a two-part, demand-commodity pricing structure, with gas costs passed through on that basis, complies with the policy guidelines and is not inconsistent with the public interest.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served in the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable.

The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 7, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for a oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tennessee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–4861 Filed 3–5–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of February 10 Through February 21, 1986

During the period of February 10 through February 21, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Beard Oil and Supply Co., Mt. Pleasant, Michigan, KEE–0017.

Beard Oil and Supply Company filed an Application for Exception from the requirement that it file Form EIA–782B, the Resellers/Retailers' Monthly Petroleum Product Sales Report. The exception request, if granted, would permit Beard to be excused from the requirement that it file Form EIA–782B on a monthly basis. On February 18, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86–4879 Filed 3–5–86; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order; Period of February 3 Through February 21, 1986

During the period of February 3 through February 21, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

O.K. Oil & Gas, Inc., Enid, Oklahoma, KRO–0240 crude oil

On February 18, 1986, O.K. Oil and Gas, Inc. (O.K.) and Jack D. Pointer, Jr. (Pointer), 800 S I–35, Suite 106, Oklahoma City, Oklahoma 73149, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on January 17, 1986. In the PRO, the ERA found that during the period June 1979 through December 1980, O.K. and Pointer charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR § 212.79. According to the PRO the violation resulted in $261,495.64 of overcharges.

[FR Doc. 86–4878 Filed 3–5–86; 8:45 am]

BILLING CODE 6450-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51610; FRL-2969-6]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-3186, beginning on page 5592, in the issue of Friday, February 14, 1986, make the following correction.

On page 5593, second column, under "P86-478", third line, "[2-ethenediylbis]" should read "[1,2-ethenediylbis]".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 28, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0253

Title: Part 68, Connection of Telephone Equipment to the Telephone Network (§§ 68.106, 68.108, 68.110)

Action: Revision

Respondents: Telephone company customers

Estimated Annual Burden: 207,540 Responses; 10,377 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-4840 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This a notice of the Presidential declaration of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATE: February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of February 21, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

> I have determined that the damage in certain areas of the State of California resulting from severe storms, landslides, mudslides, and flooding, beginning on or about February 12, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of California.
>
> In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance in the affected areas, if necessary and requested, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.
>
> Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster and are designated eligible as follows:

Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-4868 Filed 3-5-86; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-758-DR]

California; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Glenn, Humboldt and Modoc Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-4870 Filed 3-5-86; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-759-DR]

Nevada; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA-759-DR), dated February 28, 1986, and related determinations.

DATED: February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of February 28, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

> I have determined that the damage in certain areas of the State of Nevada resulting from severe storms and flooding, beginning on or about February 15, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Nevada.
>
> In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nevada to have been affected adversely by this declared major disaster and are designated eligible as follows:

Douglas, Lyon, Storey, and Washoe Counties and Carson City eligible for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-4869 Filed 3-5-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

The Bank of New York Co., Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to engage *de novo* through its subsidiaries, Capital Trust Company, Albany, New York, and Eastern Trust Company, Albany, New York, in performing functions or activities that may be performed by a trust company, pursuant to § 225.25(b)(3) of Regulation Y. These activities are to be conducted in the State of New York.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company*, Oskaloosa, Iowa; to engage *de novo* directly in providing data processing services, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than March 24, 1986.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *FWNB Bancshares, Inc.*, Carrollton, Texas; to engage *de novo* through its subsidiary, FWNB Mortgage Services, Carrollton, Texas, in making, acquiring, and/or servicing loans of the type made by a mortgage company for itself or for the account of others, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 25, 1986.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4847 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Community Bankers' Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 27, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community Bankers' Corporation*, Marion Center, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Marion Center National Bank, Marion Center, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Advance BanCorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of South Chicago Savings Bank, Chicago, Illinois. Comments on this application must be received not later than March 28, 1986.

2. *First Interstate Corporation of Wisconsin*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Outagamie Bank Shares, Inc., Appleton, Wisconsin, thereby indirectly acquiring The Outagamie Bank, Appleton, Wisconsin. Comments on this application must be received not later than March 26, 1986.

3. *Outagamie Bankcorp, Inc.*, Sheboygan, Wisconsin; a wholly-owned subsidiary of First Interstate Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of 100 percent of the voting shares of Outagamie Bank Shares, Inc., Appleton, Wisconsin, thereby indirectly acquiring The Outagamie Bank, Appleton, Wisconsin. Comments on this application must be received not later than March 26, 1986.

4. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Akron Financial, Inc., Akron, Indiana, thereby indirectly acquiring Akron Exchange State Bank, Akron, Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CNB Bancshares, Inc.*, Evansville, Indiana; has applied to acquire The Posey County National Bank, Mount Vernon, Indiana and Peoples First Bancorp of Madisonville, Inc., Madisonville, Kentucky and thereby indirectly acquire Peoples Bank & Trust Company of Madisonville, Madisonville, Kentucky.

In a related application, *CNB Acquisition Company*, Evansville, Indiana, a proposed wholly-owned subsidiary of CNB Bancshares, Inc., Evansville, Indiana, has applied to become a bank holding company by merger with Peoples First Bancorp of Madisonville, Inc., Madisonville, Kentucky and thereby acquiring indirect control of Peoples Bank & Trust Company of Madisonville, Madisonville, Kentucky.

2. *Mega Bancshares, Inc.*, St. Ann, Missouri; to acquire at least 99.98 percent of the voting shares of Mega Bank of St. Charles County, St. Charles County, Missouri, a *de novo* bank.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *T N Bancshares, Inc.*, El Paso, Texas; to acquire 96.12 percent of the voting shares of Coronado Bancshares, Inc., El Paso, Texas, thereby indirectly acquiring Coronado Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4848 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Fidelity Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than February 28, 1986.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, DC 20551:

1. *Fidelity Bank, N.A.*, Rosemont, Pennsylvania; to establish a corporation to be known as Fidelity Overseas Investment, Inc., Wilmington, Delaware. This application may be inspected at the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4849 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Manfra, Tordella, & Brookes, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1986.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, DC 20551.

1. *Manfra, Tordella, & Brookes, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of MTB Bank, New York, New York.

Applicant has also applied to acquire MTB (Miami), Inc., Miami, Florida, and thereby engage in purchasing and selling bullion & bullion coins; purchasing and selling foreign currency and exchange; and money transmission. These activities would be conducted in Miami, Florida. This application may be inspected at the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4850 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question much be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.;* to indirectly acquire 100 percent of the voting shares of Midwest Commerce Corporation, Elkhart, Indiana, and thereby indirectly acquire Midwest Commerce Banking Company, Elkhart, Indiana.

Applicant has also applied to acquire each of the following companies: Midwest Commerce Insurance Corp., Elkhart, Indiana, and thereby engage in acting as agent or broker with respect to credit related insurance, pursuant to § 225.25(b)(8) of Regulation Y; Midwest Commerce Data Corp., Elkhart, Indiana, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of Regulation Y; Midwest Commerce Leasing Corp., Elkhart, Indiana, and thereby engage in leasing personal property and equipment, pursuant to § 225.25(b)(5) of Regulation Y.

In connection with this application, *NBD Indiana, Inc.*, Detroit, Michigan, a wholly-owned subsidiary of NBD Bancorp, Inc., has applied to become a bank holding company by acquiring 100 percent of the voting shares of Midwest Commerce Corporation, thereby indirectly acquiring Midwest Commerce Banking Company, Elkhart, Indiana.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4850 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Alveolar Type II Cells: Effects of Silica, etc.; NIOSH Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Alveolar Type II Cells: Effects of Silica

Date: April 4, 1986

Time: 9:00 a.m. to 10:30 a.m.

Place: Room 213, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To review the project entitled "Alveolar Type II Cells: Effects of Silica."

Additional information and copies of the research protocol may be obtained from: Jean Rabovsky, Ph.D., or Jane Ma, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4591, Commercial: (304) 291-4591

Effects of Benzo(A)Pyrene in Association With Occupational Related Particulates on the Interferon System

Date: April 4, 1986

Time: 10:30 a.m.–12 noon

Place: Room 213, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To review the project entitled "Effects of Benzo(a)pyrene in Association with Occupational Related Particulates on the Interferon System."

Additional information and copies of the research protocol may be obtained from: Nicholas Hahon, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4516, Commercial: (304) 291-4516.

Agricultural—Immunologic Disease Studies

Date: April 4, 1986

Time: 2:00 p.m.–3:30 p.m.

Place: Room 213, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

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Purpose: To review the project entitled "Agricultural—Immunologic Disease Studies."

Additional information and copies of the research protocol may be obtained from: Stephen Olenchock, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505 Telephones: FTS: 923–4256, Commercial: (304) 291–4256.

Laboratory Comparison of a Heat Stress Dosimeter With Conventional Instrumentation

Date: April 10, 1986
Time: 9:00 a.m.–4:00 p.m.
Place: Room B–60, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To review and discuss the validation of a personal heat stress dosimeter.

Additional information may be obtained from: W. Danny Brown, M.D., Ph.D., Division of Biomedical and Behavioral Science NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8465, Commercial: (513) 533–8465.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: February 27, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–4856 Filed 3–5–86; 8:45 am]

BILLING CODE 4160–19–M

Grants and Cooperative Agreements: State Smoking Cessation During Pregnancy Demonstration and Research Project

The Centers for Disease Control (CDC) announces that competitive Cooperative Agreement applications are being accepted for a State Smoking Cessation During Pregnancy Demonstration and Research Project. The Catalog of Federal Domestic Assistance number is 13.283.

Program Objective

To (1) reduce the prevalance of smoking among pregnant women who use public prenatal clinic and WIC services and increase the birthweight of their babies; (2) demonstrate the effectiveness of a smoking cessation/maintenance intervention program to produce changes in smoking behavior; and (3) demonstrate the cost-effectiveness of the intervention as an integral part of prenatal care.

Type of Assistance

Awards resulting from this announcement will be Cooperative Agreements. One to three awards will be made.

1. Recipient Activities

a. Assess their targeted public health clinic population to determine why pregnant smokers continue to smoke and why and how patients who quit smoking did so prior to coming for prenatal care.

b. Determine the smoking cessation/maintenance package of interventions to be used and develop protocols for their use by patients and service providers.

c. Design a smoking cessation/maintenance demonstration project for implementation in public prenatal clinics and associated WIC programs to include:

(1) Measurable objectives for smoking cessation and reduction of low birthweight incidence.

(2) A research design that will allow for the evaluation of effectiveness of interventions.

(3) An inventory of public prenatal clinics and associated WIC programs including a description of the client population and size of the caseload.

(4) Selection of public prenatal clinics and associated WIC programs for inclusion in the demonstration project.

(5) Data collection methods, which may include linkage between prenatal, obstetric, and postpartum patient records and linkage to birth certificates or other sources of birthweight data.

(6) Appropriate biochemical test(s) for confirming smoking behavior of all or a sample of participants, including a pretest of quality control procedures in at least a sample of clinics.

(7) A tracking system to follow up women who use prenatal clinics and WIC services.

d. Develop and implement a plan for introducing smoking cessation into prenatal clinics and associated WIC programs, including:

(1) A training approach that builds staff support for smoking cessation/maintenance activities.

(2) A Practitioner's Guide to smoking cessation/maintenance in prenatal clinics and associated WIC programs.

e. Publish study results in appropriate medical and scientific publications.

2. CDC Activities

a. Collaborate in the design of the demonstration project and provide consultation regarding data collection instruments and procedures, data analysis of information gathered, and preparation of a final report.

b. Provide state-of-the-art information and consultation on smoking cessation interventions, biochemical testing, and the development and evaluation of protocols for their use.

c. Collaborate in the preparation of publications and dissemination of results.

Availability of Funds

It is expected that approximately $200,000 to $450,000 will be available in Fiscal year 1986 to fund one to three awards. The awards will range from approximately $50,000 to $250,000. The award(s) will be funded for a 12-month budget period. The project period will be for 2 years. The funding estimate outlined above may vary and is subject to change. Funds may not be used to pay for recurrent costs associated with service delivery.

Authority

This program is authorized under section 301 of the Public Health Service Act as amended. Regulations applicable to this program are in Title 42 of the Code of Federal Regulations, part 52, entitled "Grants for Research Projects."

Eligibility Requirements

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–79) on or before April 23, 1986: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and are not subject to review under regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

5. Content

Applications must include a narrative which details the following:

a. Executive Summary.

b. Background Related to State's Smoking Policies and Programs.

(1) Smoking policies and programs, including existing programs for pregnant women.

(2) Prenatal care.

(3) WIC programs.

c. Proposed Demonstration Project Objectives and Research Objectives.

d. Approach to the Development of the Package of Interventions.

e. Evaluation/Research Design and Methods.

f. Project Organization, Use of Staff, Delineation of Responsibilities.

g. Proposed Implementation Plan and Schedule.

h. Project Budget.

i. Staff Qualifications.

Review Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Project Design

a. Evidence of the applicant's understanding of the objectives of the smoking cessation demonstration project.

b. Measurable behavioral and programmatic objectives as well as health outcomes and the means of evaluation that are identified and feasible.

c. A reasonable proposed schedule for accomplishing the activities of the Cooperative Agreement.

d. An approach to the development of the package of interventions that seems plausible and appropriate for the proposed setting and target population.

e. A feasible means of introducing smoking cessation into prenatal clinics and WIC programs based on State resources.

f. An estimate of the potential costs of sustaining smoking cessation/maintenance activities as an integral part of prenatal care and WIC programs.

g. A proposed budget which is consistent with the intended use of the CDC funds.

2. Capability

a. The experience of the proposed staff in conducting demonstration projects and other types of research, and, in particular, the qualifications of the proposed project coordinator.

b. The proportion of the project coordinator's time that the state is willing to make available to the project, preferably full time.

c. The risk reduction/health education and research expertise among the staff of the health departments and associated organizations (e.g., community, voluntary, university) that will be available to the project.

d. Nature of the information including smoking information currently collected as part of prenatal, WIC, obstetric, birth registration, and postpartum records; the ability of the state to link these records; and evidence of the use of this information by the State.

3. State Commitment

a. Prior and current nonsmoking activities and existing plans for new activities.

b. Ability and willingness to incorporate smoking cessation as an integral part of prenatal care, including the possibility of providing needed additional State/local funds or staff time.

c. Precedent for and commitment to providing prenatal care in smokefree client contact areas.

4. Potential for Public Health Impact

a. Evidence that the State has a relatively large number of low socioeconomic pregnant women, and provides publicly funded prenatal and WIC services to a substantial proportion of these women.

b. Evidence of the State health department's ability to field test effective improvements in patient education or risk reduction programs and to institute these changes throughout the State.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia, 30305, or by calling (404) 262–6575 or FTS 236–6575.

Technical assistance may be obtained from Michael E. Dalmat, Dr.P.H., Pregnancy Epidemiology Branch, Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone (404) 329–1319, FTS: 236–1319.

Dated: February 28, 1986.

William E. Muldoon,

Director, Office of Program Support, Center for Disease Control.

[FR Doc. 86–4857 Filed 3–5–86; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 85M–0065]

Blairex Laboratories, Inc.; Premarket Approval of Blairex ® Sterile Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Blairex Laboratories, Inc., Evansville, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Blairex ® Sterile Saline Solution for use with soft (hydrophilic) contact lenses. The Blairex ® Sterile Saline Solution is indicated for use in the rinsing, heat disinfection and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 7, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On June 28, 1985, Blairex Laboratories, Inc., Evansville, IN 47730, submitted to CDRH an application for premarket approval of the Blairex ® Sterile Saline Solution. The device is indicated for use in the rinsing,

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heat disinfection, and storage of soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Blairex® Sterile Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CFRH prescribes by letter to the applicant. Such labeling informs new users of soft contact lenses that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CFRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will published a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 7, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 27, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-4836 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

Cardiovascular and Renal Drugs Advisory Committee; Amendment of Meeting Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Cardiovascular and Renal Drugs Advisory Committee to reflect agenda changes. Notice of the meeting was published in the **Federal Register** of February 12, 1986 (51 FR 5262). The open committee discussion of the agenda is revised to read as follows:

Open committee discussion. The committee will discuss Bepridil (NDA's 19–001 and 19–002) Carter Wallace, McNeil, for use as an anti-anginal agent; Lidoflazine (Angex) (NDA 18–228) Janssen R & D, for use as an anti-anginal agent; Terazosin HC1 (Hytrin) (NDA 19–057) Abbott Laboratories, for use in hypertension; and Nimodipine (NDA 18–869) Miles Pharmaceuticals, for use in subarachnoid hemmorrhage.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4834 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming small business exchange meeting to be chaired by Joseph J. Faline, Director, New York Import District.

DATE: The meeting will be held 1 p.m. to 4:30 p.m., Thursday, March 27, 1986.

ADDRESS: The meeting will be held at the Adam Clayton Powell State Office Bldg., 2nd Floor Art Gallery 163 W. 125th St., New York, NY 10027.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4833 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0039]

Color Additives: D&C Red No. 8, 9, 19, and 37; D&C Orange No. 17; and FD&C Red No. 3; Report Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report of the Color Additive Scientific Review Panel

(the Panel) on D&C Red. No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Red No. 3. FDA convened this panel of expert government scientists to evaluate the available data, views, and information on these color additives and to develop a sound assessment of the carcinogenic risk presented to the human population by their use. The Panel members were selected from FDA and other agencies in the Public Health Service. The Panel has completed its work, and it has formally submitted its final report to FDA. The final report is available to the public on request.

ADDRESS: A copy of the report is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Paul D. Depore, Office of Regulatory Affairs (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: The subject color additives are provisionally listed for coloring cosmetics (externally applied as well as ingested), drugs, and externally applied drugs (and, in the case of FD&C Red No. 3, lakes for food use), pending the submission and review of data on the safety of their use. FDA's evaluation of the petitions for permanent listing of these additives and other information raised questions that created doubts about whether a valid risk assessment could be performed on the basis of the chronic testing that has been done on these color additives (see 50 FR 26377, 26379; June 26, 1985). To address these questions, FDA convened the Panel. The Panel was charged to evaluate the available data, information, and views on FD&C Red No. 3, D&C Red Nos. 8, 9, 19, and 37, and D&C Orange No. 17 and to provide answers to the following questions:

(1) Can valid quantitative risk assessments be performed for these color additives?

(2) Does the available information support the data analyses and risk assessments that have been performed and are before the agency?

The agency's decision to establish the scientific peer review panel is consistent with the recommendations contained in several recent publications (see, e.g., (1) National Academy of Sciences, "Risk Assessment: Managing the Process," NAS Press, Washington, DC, 1983; (2) Office of Science and Technology Policy, "Chemical Carcinogens: A Review of the Science and Its Associated Principles," published in the **Federal Register** of March 14, 1985 (50 FR 10371); (3) Committee to Coordinate Environmental and Related Programs, "Risk Assessment and Risk Management of Toxic Substances, a Report to the Secretary, April, 1985").

The Panel has completed its work and has formally submitted its final report to FDA. The report summarizes the available data on the color additives and presents risk estimates for their current uses. FDA is making the report available to the public on request.

A copy of the report is available for review at, and individual copies of the report may be obtained from, the Dockets Management Branch (address above). Requests for copies should be identified with the docket number found in brackets in the heading of this document.

Dated: March 3, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-4956 Filed 3-4-86; 11:36 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on the Integrated Approach to Pain Management; Meeting

Notice is hereby given of the NIH Consensus Development Conference of the "Integrated Approach to Management of Pain," sponsored by the Warren Grant Magnuson Clinical Center, the National Cancer Institute, the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Dental Research, and the Office of Medical Applications of Research, NIH. The conference will be held May 19–21, 1986, in the Masur Auditorium of the Warrent Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Health professionals and patients alike are concerned with the optimal approach to pain management. Contemporary perspectives on pain management combine pharmacological and nonpharmacological interventions, and are planned and implemented in a multidisciplinary effort. The conference will focus on such interventions and explore types of professional collaboration designed to provide significant benefit to patients.

The conference will bring together biomedical investigators, internists, surgeons, nurses, epidemiologists, and representatives of the public. Following two days of presentations by medical experts and discussions by the audience, a consensus panel, drawn from the medical and lay communities, will formulate a draft statement responding to the following key questions:

How should pain be assessed?

How should pharmacological agents be used in an integrated approach to pain management?

How should nonpharmacological interventions be used in an integrated approach to pain management?

What is the role of the nurse in the integrated approach to pain management?

What are the directions for future research in pain management?

Evidence relating to pain management will be presented by experts in the field and evaluated by a panel composed of scientists, medical professionals, nurses, clinical investigators, and public representatives. Presentations will include discussions of pharmacological agents as well as nonpharmacological interventions and how these approaches may be integrated. The information presented will be discussed by the panel and there will be opportunity for questions and comments from the audience.

On the third and final day of the conference, Consensus Panel Chairman, Dr. Laurel Copp, Dean, University of North Carolina School of Nursing, will read the draft consensus statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Mr. Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468-6555.

Dated: Feb. 26, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4871 Filed 3-5-86; 8:45 am]

BILLING CODE 4140-01-M

Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92-463 notice is hereby given of the meeting of the Dental Research Programs Advisory Committee from 1:00 p.m. to recess on April 17 and from 9:00 a.m. to adjournment on April 18, 1986, Conference Room #8, Building 31, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs.

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Attendance by the public will be limited to space available.

Dr. Marie Nylan, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone: 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845—Dental Research Institutes, National Institutes of Health)

Dated: February 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4672 Filed 3-5-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Riverside County et al., Riverside, CA 92501-3656—PRT-698685

The applicant, Riverside County and nine cities therein, request a permit to take Coachella Valley Fringe-toed Lizards (*Uma inornata*), a species listed as threatened, incidental to certain development and conservation activities proposed to be conducted in the area pursuant to a multi-party agreement (Agreement) implementing the Coachella Valley Fringe-toed Lizard (CVFTL) Habitat Conservation Plan (HCP). The permit is being applied for in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended and 50 CFR 17.22(b)(1).

A basic element of the application is the Agreement which legally binds all parties to carry out the elements of the HCP. In addition, the Agreement creates a funding mechanism that is able to support the research, enhancement, maintenance, management monitoring and other conservation and mitigation measures provided for in the HCP. Funding is to be provided through mitigation fees, assessments and other devices. The Agreement would establish a permanent institutional structure to insure uniform protection and conservation of the habitat throughout the area despite the division of the habitat by the overlapping jurisdictions and complex pattern of public and private ownership.

The HCP was developed to insure the long term conservation of the species by minimizing and mitigating the impacts development would have on the CVFTL by permanently preserving the species habitat through transfer of private lands to the public, providing funding in perpetuity through the limited development which would be allowed, improving existing habitat and reclaiming former habitat and researching and monitoring various aspects of the areas ecology.

Copies of this application, its supporting documents, Habitat Conservation Plan and implementing Agreement are on file at the following locations and are available for inspection by the public during normal business hours: Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, VA 22201 (703/235–10903); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance; Lloyd 500 Building, Suite 550, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6184); U.S. Fish and Wildlife Service Sacramento Office of Endangered Species, 2800 Cottage Way, Room #1823, Sacramento, CA 95825 (916/484–4935) and Riverside County Planning Department, 4080 Lemon Street, 9th Floor, Riverside, CA 92501 (714/787–6181).

Interested persons may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data to the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 28, 1986.

Bob Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-4617 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et. seq.*):

Applicant: Exotic Animals Tarzana, CA—PRT-704301

The applicant requests a permit to export and reimport a pair of leopards (*Panthera pardus*), one male tiger (*Panthera tigris*), and one male jaguar (*Panthera onca*), all captive-born, for the purpose of enhancement of propagation.

Applicant: Steven Beissinger, Smithsonian Institute, Washington, D.C.—PRT-704278

The applicant requests a permit to trap, band, and radio-tag adult snail kites (*Rostrhamus sociabilis*) to obtain behavioral data in an aquatic environment manipulated by man and to capture nestlings for obtaining growth data.

Applicant: Nichols/Hendrix-Post Corp., Key Largo, FL—PRT-691992

The applicant requests a permit for the incidental taking of Key Largo woodrats (*Neotoma floridana smalli*) and Key Largo cotton mice (*Peromyscus gossypinus allapaticola*) during the clearing on one acre of endangered species habitat, for the construction of a building and related site improvements.

Applicant: U.S. Fish & Wildlife Service, Regional Director, Region 4, Atlanta, GA—PRT-697819

The applicant requests a permit to amend their current permit to allow take of additional species of wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing or other Service work for those species.

Applicant: National Zoological Park, Washington, D.C.—PRT-704377

The applicant requests a permit to receive an interstate shipment of one female Cuban crocodyle (*Crocodylus rhombifer*) for the enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested person may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 28, 1986.

R.T. Kavetsky,

Acting Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 86-[illegible] Filed 3-5-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Education Contracts Under Johnson-O'Malley Act, Application and Regulatory Requirements, CFR 273, Monitoring Requirements 62 BIAM 1.

Abstract: Eligible contractors must meet application, reporting and other regulatory requirements for educational program funding which is supplemental to other sources of funding. Contractors and Indian education committees develop education programs to meet the special and unique needs of eligible Indian students. The Bureau also monitors projects and provides technical assistance.

Bureau Form Numbers: 62116, 62117, 62118

Frequency: Annually

Description of Respondents: Tribes, tribal organizations, public school districts and state education departments.

Annual Responses: 1,236

Annual Burden Hours: 28,644

Bureau clearance officer: Cathie Martin, (202) 343–1676

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-4866 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Realty Action; Recreation and Public Purposes Classification; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Cass County, Michigan, ES-32083.

SUMMARY: The following public island has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Michigan Meridian, Michigan

T. 6 S., R. 14 W., Tract 37 (a 1.90 acre island in Donnell Lake)

Penn Township has applied for this island. They plan to manage it for recreational purposes as Donnell Island Park.

The island is physically suited to the proposed use and is not of national significance. Since the island is valuable for a local governmental program, it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

The classification of the island will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Priscilla McLain at (414) 291–4427

Bert Rodgers,

District Manager.

[FR Doc. 86-4867 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-FN-M

Filing of Plats of Survey; Colorado

February 28, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., February 28, 1986.

The plat representing a corrective survey of a portion of the subdivision of section 7, T. 46 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 715, was accepted February 12, 1986.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat correcting erroneous acreage in previous lot 10 and now showing amended lottings and areas in N½SE¼ of section 35, T. 46 N., R. 11 E., New Mexico Principal Meridian, Colorado, was accepted February 13, 1986.

The supplemental plat showing a new lot and area in the S½S½ of section 18, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted February 13, 1986.

The supplemental plat correcting an erroneous lot in the SW¼ of section 18, T. 42 N., R. 10 E., New Mexico Principal Meridian, Colorado, was accepted February 13, 1986.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Marlin G. Livermore,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-4873 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-84-M

[OR-39055]

Partial Termination of Proposed Withdrawal and Reservation of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army has cancelled its application in part to withdraw certain public lands for the U.S. Army Central Oregon Test Facility. This action will open approximately 144.43 acres to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State

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Office P.O. Box 2965, Portland, Oregon 97208 (Telephone: 503–231–6905).

SUPPLEMENTARY INFORMATION:

1. Notice of Department of the Army application OR 39985 for withdrawal and reservation of lands was published as FR Doc. 85–17597 on page 38240 of the issue of July 24, 1985. The purpose of the proposed withdrawal is to protect the Central Oregon Test Facility of the U.S. Army Electronics Research and Development Command involving two separate parcels located near Bend and Redmond in central Oregon. The applicant agency has cancelled the application insofar as it affects the following described land:

Willamette Meridian

T. 15 S., R. 14 E.,
Sec. 31 SE¼, except the westerly 273 feet.

The area described contains approximately 144.43 acres in Crook County, Oregon.

2. Pursuant to the regulations contained in 43 CFR 2320.2–1 (c) at 8:30 a.m. on April 14, 1986, the land be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on April 14, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. Pursuant to the regulations contained in 43 CFR 2320.2–1 (c), at 8:30 a.m. on April 14, 1986, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 26, 1986.

B. LaVelle Black,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86–4877 Filed 3–5–86; 8:45 am]

BILLING CODE 4310-33-M

[AA-50578; AA-6689-A]

Alaska Native Claims Selection; Belkofski Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d.) notice is hereby given that the decision to issue conveyance (DIC) to Belkofski Corporation, notice of which was published in the Federal Register, 50 FR 231, on December 2, 1985, is modified by adding the provisions of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c).

A notice of the modified DIC will be published once in the *Aleutian Eagle* and once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until April 7, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given December 2, 1985, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–4889 Filed 3–5–86; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Producing Texas & New Mexico Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2393 and 2757, Blocks A–573 and A–382, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on February 25, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Managment Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979. (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 27, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–4868 Filed 3–5–86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on January 22, 1986, a proposed consent decree in *United States* v. *Wedtech Corp., et al.*, Civil Action No. 86 Civ. 0573 (PKL) was lodged with the United States District Court for the Southern District of New York. The proposed consent decree concerns the violations of the Clean Air Act at two facilities owned by defendant which either emitted or had the potential to emit volatile organic compounds (VOCs). The proposed consent decree requires defendant to pay the United States $28,000 as a civil penalty for past violations of the Clean Air Act with regard to these facilities. The consent decree also obliges the defendant to apply for a federally-enforceable permit from the New York State Department of Environmental Conservation, with conditions that will prevent the facility from becoming a major potential source of VOCs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Wedtech Corp. et al.*, D.J. Ref. 90–5–2–844.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of New York, One Saint Andrews Plaza, New York City, New York 10007 and at the Region II Office of the United States Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York City, New York 10278. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. If requesting a copy of the consent decree, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division.

[FR Doc. 86–4887 Filed 3–5–86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management Renewals

The National Science Foundation is renewing the following committees:

—Advisory Committee for Science and Engineering Education
—NSF Advisory Council

The Assistant Director for Science and Engineering Education and the NSF Director have determined that these committees are necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: March 3, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–4902 Filed 3–5–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

Correction

In FR Doc. 86–4030 beginning on page 6818 in the issue of Wednesday, February 26, 1986, make the following correction: The entries for Florida Power Corporation et al. and GPU Nuclear Corporation beginning on page 6822 were incorrect and are correctly set forth below:

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: January 16, 1986.

Description of amendment request: The proposed amendment would remove from the Technical Specifications (TSs) the tabular listing of hydraulic snubbers, as suggested by Generic Letter 84–13 dated May 3, 1984.

The licensee had previously requested (July 25, 1984) TS changes to the tabular listing of snubbers to add new snubbers and to revise the classification of several snubbers to "accessible" or "inaccessible" as applicable. That request was previously noticed (50 FR 47862), but has not yet been acted upon. In view of the licensee's request of January 16, 1986, which is the subject of this notice, the licensee has withdrawn that portion of its July 25, 1984 request dealing with snubbers, by letter dated January 24, 1986.

Basis for proposed no significant hazards consideration determination: Generic Letter 84–13, May 3, 1984, "Technical Specifications for Snubbers" concludes that the tabular listing of snubbers included in Technical Specifications may be deleted by any licensee submitting a license amendment.

The removal of the tabular listing of snubbers from the Technical Specifications is of an administrative nature and does not in itself affect plant design or operation, involve modifications to plant equipment, or make changes that would affect plant safety analyses. The Technical Specifications will continue to require the snubbers to be operable. Appropriate actions to be taken if the snubbers are inoperable will also remain in Technical Specifications. Additionally, the NRC staff has determined that inclusion of snubber listings in Technical Specifications is not necessary because any changes in snubber quantities, type or locations are controlled under the provisions of 10 CFR 50.59 as a change to the facility.

The proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the removal of the snubber listing does not impact the existing snubber operability requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. Involve a significant reduction in the margin of safety because it does not involve changes in plant design or operation or affect plant safety analyses. The purpose of the change is to conform to the NRC guidance in Generic Letter 84–13. Any proposed changes to the snubbers would be subject to the provisions of 10 CFR 50.59 and, as a result, should any proposed change significantly reduce the margin of safety, an application for a license amendment would be submitted.

Based on the above, the Commission's staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 10, 1982, and April 15, 1985, as

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superseded by the submittal of November 13, 1985.

Description of amendment request: Request approval of changes to the Appendix A Technical Specifications (TS) pertaining to shock suppressors (snubbers). These changes are to Section 3.5 and 4.5, Containment, and to Section 6.10.2, Administrative Controls-Record Retention, and the Basis for these Sections in the TS.

The changes to TS Section 3.5A.8. revise the existing limiting conditions for operation on snubbers to (1) delete Table 3.5.1. which lists the safety-related snubbers by number and location and (2) revise the existing requirements on when snubbers have to be operable and the actions to be taken if snubbers are inoperable. The existing requirements are in terms of the snubbers themselves with the requirements being that, if a snubber is inoperable in all modes of operation except cold shutdown and refueling and cannot be made operable within 72 hours, an orderly shutdown of the plant shall be initiated and the reactor shall be in cold shutdown within 36 hours. The proposed requirements are in terms of the systems containing the safety-related snubbers. The new requirements would be that, if a snubber is inoperable and cannot be made operable within 72 hours, the system is declared inoperable and the appropriate action statement for that system in the TS is followed.

The changes to TS Section 4.5.Q would (1) revise the existing surveillance requirements on safety-related hydraulic snubbers to add surveillance requirements for mechanical snubbers, (2) revise the existing surveillance requirements for hydraulic snubbers and (3) add a requirement for a record to be kept of the service life of each snubber. The record would be maintained as required by proposed TS 6.10.2.1. The revision to the surveillance requirements would delete the distinction in the existing surveillance requirements between hydraulic snubbers whose seal material has been demonstrated by operating experience, lab testing or analysis to be compatible with the operating environment and hydraulic snubbers whose seal material has not been demonstrated to be compatible. In the proposed TS, all hydraulic snubbers meet the same acceptance criteria and are tested on the same schedule. The proposed TS include a specific Visual Inspection Acceptance Criteria, Hydraulic Snubbers Functional Test Acceptance Criteria and Mechanical Snubbers Functional Test Acceptance Criteria. The proposed frequency of visual inspection and functional tests of snubbers is similar to that existing for hydraulic snubbers with seal material demonstrated to be compatible with the operating environment. The proposed acceptance criteria for hydraulic snubbers is similar to the existing acceptance criteria for hydraulic snubbers. The proposed TS delete existing TS 4.5.Q.2 which states that the initial inspection shall be performed within 12 months from the date of issuance of these TS and it shall be assumed that the facility had been on a 12-month inspection schedule. This existing TS is not needed because this initial inspection has already been performed.

On December 10, 1982, in accordance with 10 CFR 50.59 and 50.90, the licensee submitted proposed changes to the TS pertaining to shock suppressors (48 FR 33080). These changes were to TS Section 3.5.A.8 and Bases, Section 4.5.Q and Bases, Section 6.10.2 and Table 3.5.1. The proposed changes were to incorporate revision 1 of the inservice inspection surveillance requirements for snubbers which were transmitted by the Commission to the licensee on March 23, 1981, and to revise Table 3.5.1 to add mechanical snubbers and to reword the table to conform to the then existing NRC Standard TS.

On May 3, 1984, the Commission issued Generic Letter (GL) 84–13, Technical Specifications for Snubbers. The licensee reviewed GL 84–13. It submitted by letter dated April 15, 1985, (1) the proposed changes in its request dated December 10, 1982, with one exception and (2) its proposed changes in response to GL 84–13 (50 FR 20980). (The one exception was that the licensee proposed in its letter dated December 10, 1982, to only revise Table 3.5.1. and in its letter dated April 15, 1985, the proposed action was to delete Table 3.5.1.)

After discussions wth NRC Region I in IE Inspection 85–27, the licensee has again revised its proposed TS change for snubbers. This revision is dated November 13, 1985, which supersedes its submittals of December 10, 1982, and April 15, 1985. This latest revision will bring the TS closer to the requirements in the staff's Boiling Water Reactor Standard Technical Specifications, NUREG–0123, (BWR–STS). The BWR–STS are based on the Standard Review Plans. For snubbers, it is appropriate for the TS to conform to the BWR–STS.

Basis for proposed no significant hazards consideration determination: The commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the example (vi) of amendments not likely to involve significant hazards considerations is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS Section 3.5.A.8 and Bases and Table 3.5.1, the licensee has requested approval to delete Table 3.5.1 which lists the safety-related snubbers in the plant and to reword the TS to conform to the BWR-STS. The Commission stated in GL 84–13 that a snubber listing within the TS was not necessary provided the TS are modified to specify which snubbers are required to be operable. The staff's acceptance criteria for snubbers is in Standard Review Plan (SRP) 3.9.3, ASME Code Class 1, 2, and 3 Components, Component Supports and Core Support Structures. The BWR-STS and GL 84–13 provide criteria in the SRP on inspection and testing of snubbers. Therefore, this proposed change is one which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but the results of this change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS 4.5.Q and Bases, the licensee has requested approval to revise the existing surveillance requirements on hydraulic snubbers, add surveillance requirements on mechanical snubbers and delete the reference to Table 3.5.1. The revision to the existing surveillance requirements on snubbers is to reword the TS to conform to the BWR-STS. Therefore, this proposed change is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

Finally, the revision to TS 6.10.2 would add a requirement that the licensee maintain records of service lives of all safety-related snubbers. Because this is an additional control not currently in the TS, this change is encompassed by the Commission example (ii) of actions not likely to involve significant hazards consideration.

Because the proposed changes fall within examples (ii) or (vi), provided by the Commission in 48 FR 14870, of amendments that are not likely to involve significant hazards consideration, the staff proposes to determine that the requested action involve no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms, River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW. Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

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[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co., et al.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF–4 and No. NPF–7, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) located in Louisa County, Virginia, in accordance with the licensee's application for amendment dated February 6, 1986.

The proposed changes would revise the NA–1&2 Technical Specifications (TS), Section 3/4.6.3, Table 3.6–1, Containment Isolation Valves. The proposed changes reflect the planned installation of new containment isolation valves in the letdown line of the Charging and Letdown System (CLS). The new valve will function as the inside containment isolation valve and is designed to meet the operating criteria of three (3) existing parallel isolation valves, an in-line relief valve and a remote manual valve. The existing valves will not be physically removed but will no longer serve as isolation valves and, thus, would be deleted from Table 3.6.1 which specifies Containment Isolation Valves. The new valves would be added to Table 3.6.1.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulation in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change as discussed above does not increase the probability of occurrence or the consequences of an accident of malfunction of equipment important-to-safety as previously evaluated in the NA–1&2 Final Safety Analysis Report (FSAR). The new valve to be installed for each unit is functionally equivalent to and designed consistent with the original design criteria for the containment isolation valves which are being replaced. The proposed change does not affect any existing accident analyses specified in the NA–1&2 FSAR.

Also, the change does not create a possibility for an accident or malfunction of a different type than any previously evaluated in the FSAR. The modification does not functionally change the operation of the Letdown System or change the containment isolation function, and thus, the proposed change does not affect any existing accident analyses.

And, finally, the change does not reduce the margin of safety as defined in the basis of any TS. The safety limits as defined in the Technical Specifications are not changed. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By April 4, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

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present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Mauphin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated Febraury 6, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 27th day of February, 1986.

Lester S. Rubenstein,

Director, PWR Project Directorate #2, Division of PWR Licensing-A.

[FR Doc. 4926 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 13-15, 1986 in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on February 25, 1986.

Thursday, March 13, 1986

8:30 A.M.-8:45 A.M.: Reports of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-11:00 A.M.: Quantitative Safety Goals (Open)—The members will hear and discuss the report of its subcommittee regarding the evaluation of the two-years trial period for use of quantitative safety goals as a regulatory requirement. Representatives of the NRC Staff and the nuclear industry will make presentations and participate in the discussion, as appropriate.

11:000 A.M.-1:00 P.M.: ACRS Effectiveness (Open)—The members will discuss proposed implementation of the recommendations of the Panel on ACRS Effectiveness.

2:00 P.M.-4:30 P.M.: Perry Nuclear Power Plant, Unit 1 (Open)—The members will hear and discuss the report of its subcommittee regarding the impact of the recent earthquake on the Perry Nuclear Plant, Unit 1. Representatives of the NRC Staff and the Licensee will make presentations and participate in the discussion to the degree considered appropriate.

4:30 P.M.-5:00 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities. Topics proposed for consideration by the full Committee will also be discussed.

5:00 P.M.-6:00 P.M.: Safety Considerations in Future Reactors (Open)—The members of the Committee will discuss proposed ACRS comments and recommendations regarding safety considerations in the design of future reactors.

6:00 P.M.-6:30 P.M.: Discuss Topics for Meeting with NRC Commissioners (Open)—The members will discuss topics schedules for discussion with the NRC Commissioners, including the scope and procedures for conduct of ACRS activities; requirements for the GESSAR II standardized nuclear plant and safety considerations in future nuclear plants; and comments regarding the need/desirability for a federal facility to train nuclear power plant operators.

Friday, March 4, 1986

8:30 A.M.-9:45 A.M.: Quantitative Safety Goals (Open)—The members will continue discussion of the proposed ACRS report to the NRC regarding evaluation and implementation of quantitative safety goals in the regulation of nuclear facilities.

10:00 A.M.-11:30 A.M.: Meeting with NRC Commissioners (Open)—The members of the Committee will meet with members of the Commission to discuss items noted above.

11:45 A.M.-1:30 P.M. and 2:30 P.M.-3:00 P.M.: Integrity of Primary Coolant Systems (Open)—The members will hear and discuss reports from its subcommittee, representatives of the NRC Staff, and the nuclear industry, as appropriate, regarding proposed changes in NRC regulations on primary system design and inspection, and on pressurized thermal shock of reactor pressure vessels.

3:15 P.M.-5:15 P.M.: Severe Accident Policy (Open)—The members will discuss the proposed NRC implementation plan for the NRC severe accident policy regarding nuclear power plants. Members of the NRC and nuclear industry will participate, as appropriate.

5:15 P.M.-7:00 P.M.: Advanced Reactor Designs (Open/Closed)—The members will hear and discuss the reports of its subcommittee, representatives of the NRC Staff, and the Department of Energy regarding proposed advanced reactor designs for both gas cooled and liquid metal cooled nuclear plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this matter.

Saturday, March 15, 1986

8:30 A.M.-12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed reports to the NRC regarding items discussed during this and previous ACRS meetings, including proposed Committee reports on the evaluation and implementation of proposed quantitative safety goals, proposed changes in NRC policies and regulations regarding reactor pressure vessel pressurized thermal shock, and safety considerations in future reactors.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the facilities being discussed.

1:30 P.M.-3:00 P.M.: ACRS Subcommittee Activities (Open/Closed)—The members will hear and discuss reports of recent and anticipated ACRS subcommittee activities in designated areas, including the nomination of candidates proposed for appointment to the ACRS, licensing requirements for the storage of spent reactor fuel in independent storage facilities, and resolution of unresolved generic issue A-46, Seismic Qualification of Equipment in Operating Nuclear Power Plants.

Portions of this session will be closed as required to discuss information of a personal nature, the disclosure of which would represent a clearly unwarranty invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)] applicable to the matters being discussed and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M.

Dated: March 3, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86-4930 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. SS86-1]

Preferred Rate Study; Schedule of Hearings on Nonprofit Mail

March 3, 1986.

Notice is hereby given that following an opening hearing on March 12, 1986, at the Commission's Washington, D.C., headquarters, 1333 H Street, N. W., to obtain views and comments on federally subsidized mail, pursuant to Notice dated January 24, 1986 (51 FR 3867-3969), hearings will be held in:

Atlanta, Georgia: March 18, 1986, 9:00 a.m., L.D. Strom Auditorium, Lower Plaza, Richard B. Russell Federal Building, 75 Spring Street, SW.;

Denver, Colorado: March 18, 1986, 9:30 a.m., Denver Museum of Natural History, West Auditorium, City Park, 2001 Colorado Boulevard;

Los Angeles, California: March 24, 1986, 9:00 a.m., Veterans Administration Medical Center, West Los Angeles, Building 211, Brentwood Theatre, Wilshire & Sawtelle Boulevards;

Dallas, Texas: March 25, 1986, 9:00 a.m., Central Library, Ground Floor, Central Dallas Public Library, 1515 Young Street;

New York, New York: March 27, 1986, 9:30 a.m., Court of International Trade, Ceremonial Court Room, 2nd Floor, 1 Federal Plaza, Lafayette and Duane Streets;

Chicago, Illinois: April 2, 1986, 9:30 a.m., Everett McKinley Dirksen Building, Room 2525, 219 South Dearborn Street;

Minneapolis, Minnesota: April 2, 1986, 10:00 a.m., Hennepin County Government Center, Auditorium—A Level, 300 South 6th Street.

Persons interested in submitting a written statement for the record, or in presenting a five minute oral statement as well as written testimony, should promptly write the Office of the Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268, or call (202) 789-6840, for further details. The Commission will attempt to accommodate, on a first come first served basis, those wishing to testify at a specific time, if requests are received at least seven days before the hearing in which they would like to participate. Written statements will be accepted through April 21, 1986.

Cyril J. Pittack,

Assistant Secretary.

[FR Doc. 86-4835 Filed 3-5-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14962; 812-6204]

Allied Capital Corp., et al.; Application for Order Authorizing Joint Transactions

February 27, 1986.

Notice is hereby given that Allied Capital Corporation, 1625 Eye Street, NW., Washington, DC 20006, a registered closed-end management investment company ("Allied Capital"); Allied Investment Corporation and Allied Financial Corporation (together with Allied Capital, "Allied"), both registered closed-end management investment companies and wholly-owned subsidiaries of Allied Capital which are licensed as small business investment companies under the Small Business Investment Act of 1958 (together, "SBIC Subsidiaries"); Allied Advisory, Inc. ("Advisory") a wholly-owned subsidiary of Allied Capital; Allied Management Partners, a limited partnership of which Advisory is the general partner ("Management"); and Allied Venture Partnership ("Venture"), a limited partnership of which Management is the general partner, and certain limited partners ("Venture Partners") of Venture (collectively, "Applicants"), have filed an application on September 20, 1985, for an order of the Commission, pursuant to sections 6(c) and 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, to permit certain co-investments with affiliates. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are

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summarized below, and to the Act and the Rules thereunder for the complete text of the applicable provisions.

Applicants state that Allied Capital, originally organized in 1958 as a SBIC, is now a holding company over 95% of the assets of which consist of all of the outstanding capital stock of four subsidiaries, two of which are the SBIC subsidiaries. Applicants further state that the SBIC subsidiaries are principally engaged in the business of making venture capital-type investments in small business concerns, and normally seek out other venture capital investment entities to participate in the transactions.

According to the application, the Venture Partners with which Allied or Venture may co-invest are the following: (1) Affiliates of Entreprises Quilmes S.A. ("EQ"), a European holding company whose affiliates are affiliated persons of Allied both because one of its affiliates holds approximately 14% of the outstanding shares of Allied Capital (an executive of EQ is a director of Allied Capital and of Advisory) and because another of its affiliates is a copartner with Management in Venture; (2) Acacia Mutual Life Insurance Company, which owns shares in Allied Capital and an executive of which is a director of Allied and of Advisory, but which is an affiliate of Allied Capital solely because it is a copartner with Management in Venture; (3) Security Pacific Capital Corporation, an SBIC which is an affiliate of Allied solely because it is a copartner with Management in Venture; (4) Capital for Business, Inc., a subsidiary and affiliate of Commerce Bankshares, Inc., which is a bank holding company that is an affiliate of Allied solely because it is a copartner with Management in Venture; and (5) The First National Bank of Chicago as Trustee for the Institutional Venture Capital Fund, a national banking association which is an affiliate of Allied solely because, in its capacity as trustee for a fund other than the commingled trust fund for which it may desire to co-invest with Allied or Venture, it is a copartner with Management in Venture.

Applicants state that by a Commission order dated September 17, 1985 (Investment Company Act Release No. 14725), Allied Capital, Advisory, Management and Venture, and certain other affiliates were permitted to establish Venture as a venture capital limited partnership. Applicants further state that by an earlier Commission order (Investment Company Act Release No. 13461, August 23, 1983), co-investment transactions on the part of Allied and affiliates of EQ were permitted subject to certain conditions ("EQ Order"). Applicants, however, state that because of the organization of Venture and the participation as limited partners therein by an EQ affiliate as well as by the other Venture Partners, the EQ Order conditions can no longer be literally complied with. Therefore, Applicants seek a new order, pursuant to section 17(d) of the Act, and Rule 17d–1 thereunder, to permit the EQ affiliates to continue to co-invest with Allied as well as with Venture and to permit the other Venture Partners individually to co-invest with Allied or Venture or both. Applicants also seek relief from section 6(c) of the Act because relief from section 17(d) involves only individual, prospective transactions and applicants seek exemption for a class of transactions.

Applicants undertake, however, that they will be subject to the following rules: (i) Allied's board of directors will determine in the first instance the extent to which Allied and Venture combined will participate in any investment opportunity originated by Allied and the extent to which participations therein will be offered to others, or the extent to which Allied and Venture combined will participate in investment opportunities originated by others in which Allied is invited to participate; (ii) if the board of directors determines that any participations in investment opportunities originated by Allied are to be offered to others, the persons to whom such participations are to be offered may include one or more of the Venture Partners or their affiliates. Before, however, an offer of a participation may be made to any Venture Partner or an affiliate of a Venture Partner, the board of directors must specifically approve such offer, and such approval must be based on findings by the board of directors that the participation in the transaction of that Venture Partner (or affiliate) would be advantageous because of the specific contribution that such Venture Partner (or affiliate) is expected to make to the quality of the transaction; (iii) if Allied is invited to participate in an investment opportunity originated by others and the board of directors determines that the participation therein by Allied or Venture is in the best interests of Allied and Venture, then, if the other participants in the proposed transaction include one or more of the Venture Partners or their affiliates, the board of directors must specifically approve the amount of Allied's and Venture's participation and the amount of the proposed participation by each participant which is one of the Venture Partners or an affiliate of one of the Venture Partners; (iv) if the combined participation to be retained by Allied and Venture, is in an amount less than the then applicable combined prudential limit for Allied and Venture for exposure in a single risk, then, if the other participants in the proposed transaction include one or more of the Venture Partners or their affiliates, the board of directors must make a specific determination that such lesser participation is in the best interests of Allied and Venture; (v) the board of director's approval of the participation by Allied or venture in any transaction in which any of the Venture Partners or their affiliates is also to be a participant must be based on findings by the board of directors that: (a) The terms of the proposed transaction including the consideration to be paid and received, and including specifically any fees to be paid by any participant to any other participant in the transaction, are reasonable and fair to the shareholders of Allied Capital and do not involve overreaching of Allied, Venture or Allied Capital's shareholders on the part of any person concerned; and (b) the proposed transaction is consistent with the interests of the shareholders of Allied Capital and is consistent with the policy of Allied and Venture as recited in filings made by Allied with the Commission under the Securities Act of 1933 ("1933 Act") or the Act, the registration statements and reports filed by Allied Capital under the Securities Exchange Act of 1934, Allied Capital's reports to shareholders and the limited partnership agreement of venture; (vi) the bond of directors will record in its minutes and preserve in its records, for such periods as records are required to be maintained under section 31(a) of the Act, a description of each transaction in which Allied or Venture participates and in which any of the Venture Partners or their affiliates is also a participant, the findings on which any determination pursuant to paragraph (ii), (iii), (iv) or (v) is based, the information and materials on which such findings are based, and the basis therefor; (vii) no member of the board of directors will be a party to or have a financial interest in such transaction other than: (a) As the owner of securities of which Allied Capital is the issuer, or (b) as the owner, directly or indirectly, of a limited partnership interest in Venture, or (c) as the owner of securities of which any of the Venture Partners or their affiliates is the issuer; provided, however, that any member of the board of directors who is a director or officer of, or owner of

securities issued by, any of the Venture Partners or an affiliate thereof will not take part in any determination pursuant to paragraphs (ii), (iii), (iv) or (v) with respect to the participation by such Venture Partner or an affiliate thereof. For the purpose of this paragraph, a director, officer or employee of Allied or Advisory or a Venture Partner or an affiliate thereof who receives his usual and ordinary compensation for usual and customary services as a director, officer, employee or professional consultant to any such entity shall not be deemed to have a financial interest or in the transaction solely by reason of his receipt of such compensation; (viii) neither Allied nor Venture will make any investment in an entity in which a Venture Partner or a affiliate of a Venture Partner, but not Allied or Venture, has previously invested; (ix) the basis as to time of investment and unit prices on which any Venture Partner or an affiliate thereof participates in the propose transaction will be identical to the basic on which Allied or Venture participates therein. For this purpose, the payment to Allied or Advisory or the Venture Partner or an affiliate thereof, by any participant in the transaction other than Allied Capital, any subsidiary of Allied Capital, Venture, any of the Venture Partners or any affiliate thereof, of any reasonable fee will not be considered as differentiating the basis of the Venture Partner's or its affiliate's participation from that of Allied or Venture; (x) Allied and Venture, on the one hand, and any Venture Partner or its affiliates, on the other, will exercise any warrants, conversion privileges, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by Allied and or Venture on the one hand, and such Venture Partner or an affiliate thereof on the other, in a transaction in which they both participated, only at the same time and in amounts proportionate to their respective holdings of such rights; (xi) Allied and Venture on the one hand, and any Venture Partner or its affiliates on the other, will sell, exchange, or otherwise dispose of an interest in any security of a class held by Allied and or Venture, only at the same times and for the same unit consideration and in amounts proporationate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by the respective holder is made in such market; (xii) the expenses, if any, of the distribution of any securities registered under the 1933 Act and sold by Allied, Venture and any of the Venture Partners at the same time will be shared by the sellers in proportion to the respective amounts they are selling.

Applicants contend that the proposed transactions are consistent with the applicable standards under sections 6(c) and 17(d) of the Act and Rule 17d–1 thereunder. Applicants state that Allied and Venture would participate in these transactions on a basis identical to that of Venture Partners of their affiliates. Applicants further state that the payment to Advisory or a participating Venture Partner (or an affiliate thereof) of a financing fee for services in structuring and negotiating any specific transaction does not make the basis of its participation more or less advantageous than that of any other participant.

Applicants indicate that the board of directors of Allied capital, the SBIC subsidiaries and Advisory are identical. Applicants assert that all of the members of the board of directors have a personal financial stake (often substantial) in either Allied or Venture or both so that in any dealings with third persons, including Venture Partners, their interests are wholly congruent with those of Allied and Venture and adverse to those of the third person. Exceptionally, a possible conflict could arise where there is under consideration a participation in an investment transaction with a Venture Partner (or an affiliate thereof) of which one of the members of the board of directors is an executive or in which he otherwise has an interest, and in any such case, Applicants propose that that member may not take part in any determination with respect to such participation. Subject to that exception, Applicants undertake that any determination of the board of directors contemplated in the proposed co-investment rules be made by a majority of its members, regardless of whether they are interested persons of Allied Capital or have a personal financial interest in Venture.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–4885 Filed 3–5–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14964; 812–6257]

Applications, Hearings, Determinations, etc.: Pactel Capital Resources

February 28, 1986.

Notice is hereby given that Pactel Capital Resources, a California corporation ("Applicant"), 140 New Montgomery Street, San Francisco, CA 94105, filed an application on December 10, 1985, and an amendment thereto on February 28, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for a complete text of the applicable provisions.

According to the application, Applicant is a wholly-owned subsidiary of Pacific Telesis Group ("PTG"), a Nevada corporation and one of the seven regional holding companies formed pursuant to the consent decree ("Consent Decree") which arose out of anti-trust litigation by the Department of Justice ("DOJ") and which was agreed to by the American Telephone and Telegraph Company ("AT&T") and the DOJ with certain modifications required by the United States District Court for the District of Columbia ("Court"). Applicant states that PTG owns Pacific Bell and Nevada Bell, telephone operating companies subject to regulation by the California Public Utilities Commission and the Public Service Commission of Nevada, respectively. Both Pacific Bell and Nevada Bell are regulated as to authorized rates of return on their rate bases by the Federal Communications Commission and by the California and Nevada State Commissions. Applicant also states that PTG engages in other business activities through the activities

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of various subsidiaries ("Diversified Subsidiaries"), as permitted under the Consent Decree and pursuant to waivers obtained thereunder from the Court. The application indicates that PTG may establish additional subsidiaries in the future. Applicant represents that neither PTG nor any of the Diversified Subsidiaries which is to obtain financing through Applicant is an investment company under section 3(a) of the Act.

The applicant states that at December 31, 1984, PTG had total assets of $18.1 billion and at September 30, 1985, PTG's total assets were $19.5 billion. For the year ended December 31, 1984, PTG had net income of $829 million on revenue of $7.8 billion, and for the nine month period ended September 30, 1985, PTG's net income and revenue were $721 million and $6.3 billion, respectively. In the year ended December 31, 1984, Pacific Bell and Nevada Bell collectively declared payable $885.1 million in cash dividends to PTG, and an additional $174.1 million in net income was available for such dividends if required.

The Applicant states that its sole business will be to provide funds which PTG will use to finance its diversification activities and those of the Diversified Subsidiaries. The Applicant will issue debt instruments for sale in the United States and foreign commercial paper and debt markets ("Securities"), and, in turn, loan the proceeds of those issuances to PTG and the Diversified Subsidiaries. Applicants represents that all loans by it to PTG and the Diversified Subsidiaries will bear interest equal to that which Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Applicant further states that the amount and maturity of such loans will allow Applicant to make timely payments of principal and interest on its borrowings. According to the application, the Applicant will remit to PTG and/or the Diversified Subsidiaries at least 85% of the cash or cash equivalents raised by the Applicant as soon as practicable after receipt thereof, but in no event later than six months after the Applicant receives such as or cash equivalents. The Applicant represents that it will not issue voting securities to any person other than PTG, and that it will not hold securities other than government securities and other securities as permitted by Rule 3a–5(a)(6) under the Act.

Applicant states that the Consent Decree limits the lines of business which may be engaged in by the regional holding companies such as PTG. Applicant further states that, pursuant to the Consent Decree, the Court has held that regional holding companies may be permitted to engage in certain ventures (such as many of the activities of the Diversified Subsidiaries), so long as any guarantee of obligations owed on Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the telephone operating companies. Applicant represents that PTG is therefore prohibited from guaranteeing obligations owed on Securities issued by or for the benefit of Diversified Subsidiaries if the guarantee would permit recourse against the stock or assets of Pacific Bell or Nevada Bell.

The Applicant states that before it issues any Securities, PTG and the Applicant will enter into a Support Agreement ("Support Agreement") pursuant to which PTG will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium, if any, owed by it in connection with the Securities, PTG will then provide funds to the Applicant to assure that the Applicant will be able to meet its obligations in connection with the Securities. The Support Agreement will also provide that in the event of any default by PTG in meeting its obligations under the Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of Securities or, if applicable, a trustee acting on their behalf shall be entitled to proceed directly against PTG, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of Pacific Bell or Nevada Bell. The Support Agreement will also provide that PTG shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement, that without the written consent of all of the holders of the then outstanding Securities the Support Agreement may not be modified or amended in ways less favorable to holders of Securities than the existing agreement, and that it may be terminated only after all outstanding Securities have been retired.

Applicant represents that the Securities are expected to consist of short-term, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") or in public offerings of securities registered under the 1933 Act. The Applicant further represents that, in the case of a public offering of any of its securities not exempt from the registration requirements of the 1933 Act, the Applicant and PTG will, prior to offering such securities, file a registration statement under the 1933 Act with the Commission and will not sell such securities until the registration statement is declared effective by the Commission and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. The Applicant further represents that it and PTG will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such securities.

Applicant states that, in the case of an offering of securities not requiring registration under the 1933 Act, the Applicant will provide each offeree with disclosure materials which will include a description of the business of PTG and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, those materials will be updated at the time thereof to reflect material changes in the financial condition of PTG and its subsidiaries, taken as a whole.

Applicant represents that prior to any issuance and sale of its Securities in the United States capital market, those Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized rating organization. No such rating shall be required to be obtained, however, if in the opinion of counsel for Applicant an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

The Applicant represents that it was formed to function as a financing conduit for the diversification activities of PTG and PTG's Diversified Subsidiaries, and to advance the efficient administration and management of financing activities for PTG and certain of the Diversified Subsidiaries. The Applicant states that it meets all of the requirements for the Rule 3a–5 exemption under the Act except for the rule's requirement that the securities issued by a finance subsidiary be unconditionally guaranteed by its parent company. The Applicant argues that PTG's execution and delivery of the Support Agreement provides a satisfactory alternative to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against PTG in the

event of a failure by the Applicant to pay principal, interest or premium, if any, when due on the Securities, limited only so as to exclude the stock or assets of Pacific Bell and Nevada Bell. Applicant states that, despite this limitation, funds available to satisfy PTG's obligations under the Support Agreement include net income available for payment of dividends to PTG by Pacific Bell and Nevada Bell, as well as the assets of PTG and the Diversified Subsidiaries other than the stock or assets of Pacific Bell and Nevada Bell. Therefore, Applicant argues that the Support Agreement enables purchasers of Applicant's debt instruments to look utlimately to PTG, not the Applicant, for repayment. In addition, the Applicant points out that, given the limitations of the Consent Decree and the subsequent orders in which the Court has restricted the kind of guarantee that PTG is able to provide to the Applicant, by means of the Support Agreement PTG intends to support the Securities with all legally available assets. By means of the Support Agreement, PTG will make available to the holders of the Securities the same assets which would be available to the holders of PTG's own securities used to fund PTG's similar diversification activities, and thus Applicant argues that the Support Agreement will put the purchasers in the same position as if PTG itself had issued the Securities directly.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–4983 Filed 3–5–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22957; File Nos. SR-CBOE-85-49, SR-Amex-86-2, SR-NYSE-86-6]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., American Stock Exchange, Inc., New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Granting Accelerated Approval to Proposed Rule Changes

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on December 13, 1985 and the American Stock Exchange, Inc. ("Amex") and the New York Stock Exchange, Inc. ("NYSE") submitted on January 16, and February 4, 1986 respectively, copies of proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to extend the close of trading in index options traded on the above-named exchanges from 4:10 p.m. to 4:15 p.m. (New York time).[1]

Notice of the proposed rule changes together with their terms of substance was given by the issuance of Commission releases (Securities Exchange Act Release Nos. 22790, January 13, 1986, 22842, January 27, 1986, and 22881, February, 1986, respectively) and by publication in the Federal Register (51 FR 2614, January 17, 1986, 51 FR 4253, February 3, 1986, and 51 FR 5626, February 14, 1986, respectively). No comments have yet been received with respect to the proposed rule changes.

The CBOE is amending its Rules 6.1 (Days and Hours of Business), 6.2 (Trading Rotations), 11.1 (Exercise of Optionl Contracts) and 24.6 (Days and Hours of Business for Index Options) to extend the closing and exercise cut-off time for CBOE index options from 3:10 p.m. to 3:15 p.m. (Chicago time).[2] The Amex is amending its Rules 1 (Hours of Business) and 903C (Series of Stock Index Options) to extend the trading hours in its Major Market Index ("XMI") options from 4:10 p.m. to 4:15 p.m. (New York time), and to similarly extend the cut-off time for exercising XMI options.[3] The NYSE also plans to extend the closing and exercise time in its index options from 4:10 p.m. to 4:15 p.m. by amending Rules 717 (Trading Rotations, Halts and Suspensions), 780 (Exercise of Option Contracts), and Rule 702 (Days and Hours for Options Trading).[4]

Futures contracts and options on identical or substantially similar indexes allow investors and traders to hedge their positions in one contract with positions in the other. The purpose of the proposed rule changes is to coordinate the close of trading in index options on the CBOE, Amex and NYSE with the close of trading in broad-based stock index futures contracts traded elsewhere thus enhancing their ability to use these instruments for hedging purposes.

For example, at present on the CBOE, market makers in the Standard & Poor's ("S&P's") 100 Stock Index ("OEX") frequently assume positions in the S&P's 500 Index Future ("SP") traded at the Chicago Merchantile Exchange ("CME") to hedge their positions in OEX. Conversely, investors and traders with positions in SP often rely upon OEX to hedge their futures positions. Because trading at CBOE ceases at 3:10 p.m. (Chicago time) while trading at CME continues until 3:15 p.m., investors and market makers with positions in both OEX and SP are unable to adjust their positions in the former in response to price movements in the latter during the last five minutes of trading.

On the NYSE, investors with positions in NYSE Composite Index futures traded on the New York Financial Futures Exchange ("NYFE") frequently offset those positions with options positions on the NYSE Composite and Double Indexes. Conversely, positions held in NYSE index options are offset with positions in NYSE Composite Index futures. NYSE indicates that the current difference in closing times hobbles the adjustment of risk by investors and traders with futures-options offsetting positions. NYSE believes that synchronizing the closing times for the options and futures contracts will solve this problem.

On the Amex, market participants frequently assume positions in the Major Market Index ("XMI") futures contracts traded on the Chicago Board of Trade

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[1] The CBOE rule change would effectively extend trading in CBOE index options from 3:10 p.m. to 3:15 p.m. (Chicago time).

[2] Changes to CBOE Rule 6.2 clarify that open trading on expiring series of index options shall be permitted on the last business day prior to expiration until 3:15 p.m. (Chicago time), but a closing rotation for such expiring series of index options shall not be employed. Changes to Rule 11.1 extend to 3:15 p.m. the deadline for submission of exercise memoranda and advices.

[3] Amex Rule 903c clarifies that on the business day prior to expiration, index options shall trade until 4:10 p.m., unless the Board of Governors has established different hours of trading for certain index options.

[4] Changes to NYSE Rule 717.10(c) clarify that open trading in all index option series continues until the close of trading, even on the business day prior to expiration, and that should be closing rotation in index options be necessary, it should commence at 4:15 p.m. as well. Amendments to Rule 780.10 extend the deadline for submission of exercise memoranda and advices to 4:15 p.m. to coincide with the end of trading.

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("CBT") to hedge their positions in XMI options. Amex desires to coordinate the daily close of trading in XMI options with the 4:15 p.m. (3:15 p.m. Chicago time) close of trading in the CBT's XMI futures contracts. As present, market participants who assume positions in both XMI futures and options contracts are unable to adjust their positions in the XMI options in response to price movements in the XMI futures during the last five minutes of trading.

In addition to providing market participants with the opportunity to more fully hedge their positions, identical index option and futures closing times should provide a proportional increase in trading volume and add to the depth and liquidity of the market in index options.

The rule changes will also benefit market participants by ensuring the availability of last sale information of the respective indexes' component stocks. Currently, the tape "run-off" showing the last sales of the various indexes' component stocks occasionally continues beyond 4:10 p.m. (3:10 p.m. Chicago time). Extending the index option trading day by five minutes will enable market participants to take such information into account in their trading activity.

For these reasons, the Commission finds that the CBOE's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the Amex and NYSE proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** in that both proposed rule changes are substantially identical to the CBOE proposal which was noticed for comment for the full 21 day comment period and is being approved herein by the Commission. No comments on the CBOE proposal were received by the Commission. The Commission believes that extending the trading hours of index options to coordinate with the hours of trading of similar futures indexes will provide index options market participants with the opportunity to adjust index options positions to reflect price changes in corresponding futures indexes, thereby promoting fair hedging opportunities, enhanced last sale information and adding to the depth and liquidity of the market in index options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes are approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4866 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Heating; Cincinnati Stock Exchange, Inc.

February 25, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Triangle Industries, Inc., Cumulative Preferred Stock, $1.00 Par Value, (File No. 7–8845).

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 19, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4931 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22946; File No. SR–MSRB–86–2]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street NW., Washington, DC 20036–2491, submitted on January 2, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to establish a new rule governing transfer of customer accounts from one municipal security broker or dealer to another.

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22810 (January 17, 1986) and by publication in the **Federal Register** (51 FR 3288, January 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B(b)(2)(c) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 25, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-4932 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notce of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register**. notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Copies of the forms, request for clearance (S.F. 83), supporting statement, intructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200 Washington, DC 20416 Telephone: (202) 653-8538

OMB Reviewer: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Budget New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–3785

Title: Application for a Certificate of Competency

Form Nos. SBA 74, 74A, 74B, 183

Frequency: On occasion

Description of Respondents: The information obtained from the completed forms, will be used by the Small Business Administration to determine if the applicant (small concern) has the responsibility to perform a specific Government contract.

Annual Responses: 1900

Annual Burden Hours: 5700

Type of Request: Extension

Dated February 27, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, small Business Administration.

[FR Doc. 86-4859 Filed 3-5-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/947]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on March 27, 1986 at 9:30 AM in Room 6319 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington.

The purpose of the meeting is to review the results of the 55th Session of the International Maritime Organization Legal Committee, and to consider the U.S. position for the 56th Session. The 56th Session will be held in London on April 7–11, 1986.

At the 56th Session, the Legal Committee will continue its preparation of a draft Convention on salvage. The Legal Committee will also consider an UNCTAD proposal to establish a joint IMO/UNCTAD working group to address the international regime of maritime liens and mortgages. Finally, the Committee will consider a proposed resolution regarding participation in official inquiries into maritime casualties.

Members of the public may attend up to the seating capacity of the room.

For further information, contact Captain Frederick F. Burgess, Jr., U.S. Coast Guard (G–LMI), Washington, D.C., Telephone (202) 426–1527.

Dated: February 28, 1986.

Richard C. Scissors,

Director, Shipping Coordinating Committee.

[FR Doc. 86-4918 Filed 3-5-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Seminar on Annex II of the 1973 International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)

AGENCY: Coast Guard, DOT.

ACTION: Notice of Annex II seminar.

SUMMARY: The purpose of this notice is to inform the public of a seminar that will be conducted by the Coast Guard on April 9, 1986 to discuss Annex II of MARPOL 73/78. Annex II controls operational and accidental pollution from ships carrying hazardous chemicals in bulk and affects the ports and terminals at which the vessels are loaded and unloaded. Written comments and questions concerning Annex II requirements submitted during the comment period will be responded to at this seminar.

DATES: The seminar will take place on April 9, 1986 from 9:30 A.M. to 3:30 P.M. Any questions and comments to be responded to at this seminar must be submitted by March 26, 1986.

Place: Room 2415, 2100 Second Street SW., Coast Guard Headquarters, Washington, DC.

ADDRESSES: Persons interested in attending or in submitting any questions and comments should write to U.S. Coast Guard (G–MTH–1), 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: For any questions regarding the Annex II Seminar or this notice, contact Ms. Barylski, Hazardous Materials Branch (G–MTH–1), Room 1214, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593; (202) 426–1217, from 7:00 a.m. to 3:30 p.m., Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: This seminar is open to the public, but attendees must pre-register. Those interested in attending must notify Ms. Barylski (see **FOR FURTHER INFORMATION**) by April 2, 1986.

The Coast Guard will hold this seminar to inform the marine chemical transportation industry of impending requirements of Annex II of the MARPOL Protocol (MARPOL 73/78) (International Convention for the Prevention of Pollution from Ships, 1973 (done at London November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London February 17, 1978). The purpose of Annex II of MARPOL 73/78 is to control operational and accidental pollution from ships carrying hazardous polluting chemicals in bulk. Annex II will affect ocean going chemical vessels that transport polluting chemicals in bulk and the ports and terminals at which these chemicals are loaded and unloaded. These requirements will be discussed at this seminar, however, primary emphasis will be on vessel requirements. A public meeting is planned for discussing Annex II requirements for reception facilities. This meeting will be announced in a future **Federal Register**. The following IMO (International Maritime Organization) Papers will be included in discussions:

1. MARPOL Annex II as amended by the 22nd session of the IMO Marine Environment Protection Committee;

2. Unified interpretations of Annex II;

3. Standards for the Procedures and Arrangements for the Discharge of Noxious Liquid Substances;

4. Amendments to the Bulk Chemical Code and the International Bulk Chemical Code that include pollution concerns;

5. IMO Guidelines on the Provisions of Adequate Reception Facilities in Ports, Part II (Noxious Liquid Substances).

Members of the U.S. SOLAS Working Group on Bulk Chemicals will be mailed copies of these IMO papers. Others interested in obtaining copies in advance of the meeting may do so by a telephone or written request (see **FOR FURTHER INFORMATION**). Additional copies will be available at the meeting. Seminar Outline:

1. Introduction and opening remarks.
2. Introduction to IMO papers.
3. Requirements for ocean going chemical tank vessels.
4. Question and answer period on vessel requirements for comments received prior to March 26, 1986.
5. As time permits, verbal comments and questions will be answered.

Dated: March 3, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-4912 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

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Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 151—Airborne Microwave Landing Systems (MLS) Area Navigation Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing Systems (MLS) Area Navigation Equipment to be held on April 2–4, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Committee Meeting Held on December 16–18, 1985; (3) Review and Discuss Special Committee 137 (Aiborne Air Navigation Systems) and the European Organization for Civil Aviation Electronics (WG–27) Activities; (4) MLS Program Status Report; (5) Technical Presentations; (6) Report of Working Group Activities; (7) Review Sixth Draft of Committeee Report on Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment: (8) Working Groups Meeting in Separate Sessions; (9) Committee Meeting in Plenary Session; (10) Assignment of Tasks; (11) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCS Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on February 28, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86–4828 Filed 3–5–86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Madison Co., Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a four-lane highway from Federal-Aid Interstate 270 (FAI–270) at the northern terminus of FAI–255 to U.S. Route 67 north of Alton in Madison County, Illinois. The proposed project would be designated Federal-Aid Primary Route 413 (FAP 413).

FOR FURTHER INFORMATION CONTACT: Mr. P.L. Olson, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone: (217) 492–4627. Mr. M.J. Macchio, Engineer of Location and Environment, Division of Highways, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764, Telephone: (217) 782–1959.

SUPPLEMENTARY INFORMATION: The Proposed Action is to construct a divided, multi-lane highway facility within Madison County, Illinois, beginning at a point of intersection with I–270 at the northern terminus of I–255, and running in north and northwesterly directions to terminate at U.S. Route 67 north of Alton, Illinois. The project corridor is located generally in the urbanizing fringe of several cities and villages in the Illinois portion of the St. Louis Standard Metropolitan Statistical Area (SMSA).

The facility has been designated as Federal-Aid Primary (FAP) Route 413 and will be approximately 20 miles in length.

The need for construction of FAP 413 is based on several major factors including transportation demands, safety considerations, enhancement of economic development, and improved traffic circulation among communicaties in the project area.

At this time, it has not been determined if the facility will be a fully access controlled freeway or a limited access expressway. However, regardless of the nature of the highway, interchanges or intersections likely will be provided at all State routes and other major high-volume highways. Numerous alignment alternatives are presently being evaluated for the proposed project including the no-action alternative.

A formal scoping process will be undertaken as a part of this project. The process will include meetings, informal coordination, and review sessions as appropriate. The first scoping meeting with interested agencies is scheduled on March 12, 1986. Further details and a scoping information packet may be obtained from Mr. Max Landes, Illinois Department of Transportation, 2300 South Parkway, Springfied, Illinois 62764, Telephone: (217) 785–4315.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on February 24, 1986.

D.L. Merida,

Staff Specialist for Environment.

[FR Doc. 86–4859 Filed 3–5–86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86–55]

Customhouse Broker's License No. 5932; Suspension

Effective upon publication date of this notice, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR Part 111), the individual customhouse broker's license No. 5932 issued to Paul V. McCormack, for the Customs District of New York, New York is hereby suspended for a period of not less than four years. Pursuant to a negotiated settlement between the U.S. Customs Service and Paul V. McCormack, after the four year period has expired, Mr. McCormack may apply for reissuance of customhouse broker's license No. 5932.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

February 27, 1986.

[FR Doc. 86–4909 Filed 3–5–86; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

Dates: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 28, 1986.

By direction of the Administrator.

Randall H. Bryant,

Executive Assistant to the Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.
2. Compliance Report of Proprietary Institutions.
3. VA Form 27–4274.
4. On occasion.
5. Non-profit institutions; Small businesses or organizations.
6. 367 responses.
7. 367 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Annual Farm and Home Plan for Institutional On-Farm Course of Training (Chapter 31).
3. VA Form 28–1905p.
4. Annually.
5. Individuals or households; Farms.
6. 50 responses.
7. 150 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for Leader for Information RE: Status of Loan-Veteran Applied for Subsequent Loan.
3. VA Form Letter 26–247.
4. On occasion.
5. Businesses or other for-profit.
6. 113,268 responses.
7. 9,439 hours.
8. Not applicable.

Extension

1. Office of Construction.
2. Architect-Engineer Fee Proposal.
3. VA Form 08–6298.
4. On occasion.
5. Businesses or other for-profit; Small businesses or organizations.
6. 200 responses.
7. 800 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for Identifying Information RE: Veteran's Loan Records.
3. VA Form Letter 26–626.
4. On occasion.
5. Individuals or households; Businesses or other for-profit.
6. 2,400 responses.
7. 200 hours.
8. Not applicable.

[FR Doc. 86–4901 Filed 3–5–86; 8:45 am]

BILLING CODE 8320-01-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86–18]

Presidential Commission on the Space Shuttle Challenger Accident; Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces a forthcoming meeting.

DATE AND TIME: March 6, 1986, beginning at 9:30 a.m.

ADDRESS: NASA Kennedy Space Center, Galaxy Theater, Visitor's Center, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident (202/453–1797).

Purpose of meeting: To review photographic and film evidence of the Space Shuttle Challenger launch and accident and to receive testimony on the results of failure analysis.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle Challenger which occurred on January 28, 1986.

Exceptional circumstances requiring less than 15 days notice: the meeting is required to be held promptly due to the Presidential direction that the Commission investigate the January 28, 1986, Space Shuttle Challenger accident and submit a final report to the President and the Administrator of the National Aeronautics and Space Administration within 120 days of issuance of Executive Order 12546, dated February 3, 1986.

Type of meeting: Open.

March 5, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86–5110 Filed 3–5–86; 12:22 pm]

BILLING CODE 7510-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 44
Thursday, March 6, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Washington, DC, Room 512.

DATE AND TIME: Friday, March 7, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report for January
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Resolution Authorizing Further Hearing on Protection of Handicapped Infants
V. Consideration of the Statement on Indian Rights in Northern Wisconsin
VI. Consideration of the Central States SAC report, *State Enforcement of Nondiscrimination Requirements in Education programs*
VII. Further Discussion of Project Concepts
VIII. Panel Presentation on Religious Discrimination Issues
IX. Civil Rights Developments in the Rocky Mountain Region

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.

[FR Doc. 86–4934 Filed 3–3–86; 4:39 pm]

BILLING CODE 6335-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 11, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437, and 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnal rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, March 13, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of Minutes
Draft AO 1986–7
  William B. Dosland, American Crystal Sugar Company
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 86–5039 Filed 3–4–86; 3:53 pm]

BILLING CODE 6715-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: March 12–13, 1986, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Staff Presentation on Bonneville Power Administration, Corps of Engineers, Bureau of Reclamation, and Federal Energy Regulatory Commission Fiscal Year 1987 Budget.
2. Modeling of Salmon and Steelhead Life Cycles.
3. Public Comment on Issue Paper on Wildlife Mitigation for Hungry Horse Dam.
4 Council Business.
5. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 86–4953 Filed 3–4–86; 10:15 am]

BILLING CODE 0000-00-M

4

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 6199 February 20, 1986].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, February 11, 1986.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting held on Thursday, February 20, 1986, following the 10:00 a.m. open meeting.

Consideration of *amicus* participation.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald A. Schy at (202) 272–2468.

John Wheeler,
Secretary.
February 28, 1986.

[FR Doc. 86–5040 Filed 3–4–86; 3:58 pm]

BILLING CODE 8010-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 6613 February 25, 1986].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 20, 1986.

CHANGE IN THE MEETING: Additional item/meeting.

The following additional item was considered at a closed meeting held on Tuesday, February 25, 1986, at 2:30 p.m.

Litigation matter.

The following items were considered at a closed meeting held on Thursday,

February 27, 1986, following the 10:00 a.m. open meeting.

Consideration of *amicus* participation.

Subpoena enforcement action.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272–2092.

John Wheeler,
Secretary.
February 28, 1986.

[FR Doc. 5041 Filed 3–4–86; 3:59 pm]

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federal register

Thursday
March 6, 1986

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. 24929; Notice No. 86–3]

Proposed Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise noise certification standards for aircraft to add provisions applicable to helicopters. These proposals would apply to civil helicopters in the normal, transport, and restricted categories, and would provide noise level limits and test procedures for the issuance of original and amended type certificates. The notice also proposes to prohibit changes in type design of helicopters that might increase their noise levels beyond certain limits. While this notice contains several provisions similar to those contained in an earlier notice withdrawn in 1981, it differs from that notice in several important aspects. One of these is the absence of any proposal to limit the further manufacture of older non-complying helicopter types; another is the commonality between the proposed standards and those adopted by the International Civil Aviation Organization (ICAO). The FAA believes that these rules are necessary to provide current and future relief and protection to the public health and welfare from the noise of affected helicopters.

DATE: Comments must be received on or before June 5, 1986.

ADDRESSES:

Send comments on the proposed rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 24929, 800 Independence Avenue, SW., Washington, D.C. 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755–9027.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasonable regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24929." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. As the part is currently organized, Subparts B and C and Appendices A, B, and C apply to transport category large airplanes and subsonic turbojet powered airplanes regardless of category. Appendix F contains the provisions applicable to propeller-driven small airplanes. This notice proposes to prescribe noise levels and test procedures for civil helicopters certificated in the normal, transport, and restricted categories. These proposals include rules governing the issuance of original and amended type certificates for helicopters for which application is made on and after the adoption date of this proposed amendment. The proposed rule would prohibit certain growth or other design changes if those changes might result in noise levels beyond prescribed limits. The proposed rule also provides the test conditions and procedures for conducting helicopter noise tests to demonstrate compliance with the prescribed noise levels, including the technical noise measurement and evaluation specifications employing Effective Perceived Noise Level (EPNL) as the evaluation unit.

The proposed helicopter noise standards, if adopted, would have the following effects:

A. Certification Procedure Provisions

FAR Part 21, as amended would prescribe the procedural requirements for noise certification of civil helicopters certificated in the normal, transport, and restricted categories. Those proposed amendments apply to issuance of new type certificates in the normal, transport, or restricted categories for which application is made on or after the publication date of this notice. The effect of these provisions would be to prohibit issuance of the affected certificates after the effective date of the amendments for helicopters which have not been shown to comply with the applicable noise requirements of Part 36. Thus, newly type certificated helicopters (except those for which application was made before the publication date of this notice) would be required to comply with Part 36 noise standards. Further, proposed "acoustical change" provisions would prescribe requirements for certain changes in type design of helicopters which might increase their noise levels. Appropriate references to Part 36 acoustical change requirements would be contained in Part 21. The proposed acoustical changes for helicopters would apply to any type design change (including operational limitations) that the Administrators determines might increase noise levels of that helicopter, such as changes in rotor size or trim, rpm, number of blades, weight or power. Under the proposal, test procedures, conditions, and noise limits for acoustical changes would be prescribed under Part 36.

B. Noise Standard Provisions

FAR Part 36 would be amended to prescribe noise standards for civil helicopters certificated in the normal, transport, and restricted categories. These provisions are similar to those currently applicable to many other aircraft under Part 36 and are summarized as follows:

1. *General.* The general provisions of Part 36, Subpart A, would be amended to provide applicability, definitional, and acoustical change provisions covering civil helicopter noise certification. For example, the word "aircraft" is substituted for "airplane" in those provisions whose applicability simply would be expanded to include helicopters. Under the proposal, definitions identify *two* "stages" or levels of *noise* ("Stage 1" and "Stage 2" helicopter noise levels). *Stage 2* helicopters are those which have been shown to comply with the proposed Stage 2 noise levels. Stage 1 helicopters are those which have not been shown to comply.

A new section would be added to prescribe noise requirements for those changes in type design defined as "acoustical changes" under FAR Part 21. Those provisions would apply to acoustical change approvals applied for on and after the publication date of this notice. Specifically, Stage 1 helicopters would be prohibited from increasing any noise level (takeoff, flyover, or approach) after a change in the type design. For acoustical changes in Stage 1 helicopters, the proposed tradeoff provisions could not be used to increase any Stage 1 noise level. A Stage 2 helicopter before a change in type design could not be a Stage 1 helicopter after the design change. It should be noted that the ICAO standards applying to acoustical changes of Stage 1 helicopters are more stringent than those proposed herein. Under ICAO Annex 16, all helicopters must meet the State 2 limits after such a change.

As proposed, the helicopter noise standards would apply to all helicopters, as defined under FAR Part 1, except helicopter configurations designated exclusively for agricultural aircraft operations, for dispensing fire fighting materials, or for carrying external loads. This exception is similar to the one for small propeller-driven airplanes, but it is especially important for helicopters since nearly every type has provisions for at least occasionally carrying external loads. Such loads would make it extremely difficult to meet either the weight or performance requirements; thus, the proposed noise standards would only apply to internal load configurations. On the other hand, an exclusion of all helicopters with external load capability would defeat the entire purpose of the regulation, unless that exclusion applies only to those aircraft type certificated exclusively for external load operation. It should be noted that it is proposed to make these standards applicable to type certification actions for which applications are received on or after the date of this notice. The intent here is to preclude premature applications by those seeking to avoid compliance with the proposed standards.

At a May 1983 ICAO meeting in Montreal, U.S. helicopter manufacturers suggested excluding helicopters "designed for mineral exploration and recovery, off shore, ranching, or similar remotely located purposes." ICAO did not accept the proposal and FAA has not included it in this notice, since it is felt that the wording is too broad and might reasonably include every current and future helicopter type. The FAA solicits public comment on this issue.

2. *Manuals, Markings, and Placards.* The Part 36 provisions regarding requirements for operating limitations in manuals, markings, and placards under current Subpart G would be redesignated under Subpart H and amended to extend their applicability by including approved Rotorcraft Flight Manuals, manual materials, or placards, as appropriate.

3. *Helicopter Noise Rule.* A proposed new Subpart H to Part 36 would prescribed the basic requirements for demonstrating compliance with the helicopter noise rules. The technical standards, conditions, and procedures for conducting helicopter noise tests and the helicopter noise limits under the proposed new Appendix H are specifically referenced.

4. *Noise Measurement and Evaluation.* The proposed new Subpart H to Part 36 would contain, among other things, the technical noise measurement and evaluation specifications for conducting helicopter noise tests. With exceptions necessary to account for the unique operating characteristics of helicopters, the FAA proposes to apply the specifications currently applicable to tests of transport category large airplanes and turbojet-powered airplanes under Appendices A and B of Part 36 (as amended by FAR Amendment 36–9; 43 FR 8731, March 2, 1978 and as may be amended as a result of Notice 85–2, 50 FR 4172, January 29, 1985).

Highlights of the proposed differences for helicopter noise test under Appendix H from the requirements of Appendices A and B may be summarized as follows:

(a) Three noise test series would be used—takeoff, flyover, and approach noise series with simultaneous measurements for each test series at a flight-track noise measuring station and two sideline noise measuring stations, one on each side of the reference flight track.

(b) The helicopter's height and lateral position over the noise measuring station would be relative to the center line of the reference flight path rather than the runway.

(c) The approach angle for the helicopter approach noise test would be 6°(±0.5°) rather than 3.0° ±0.5°.

(d) Numerous symbols and units for helicopter noise certification would be substituted for airplane noise symbols under the § A36.7 "Flight Profile Identification Positions" and "Distance-Unit-Meaning" descriptions used in Part 36. The proposal includes graphic depictions and textual descriptions of the various helicopter test profiles.

Comments are specifically invited on the appropriateness of the proposed flight procedures. While it is necessary to specify rigid reference flight path profiles so that the corrected data may be compared to the standard (and to each other), some leeway in test profiles is necessary to allow realistic variations in aircraft performance and piloting techniques.

Another issue upon which the FAA solicits comments is the need for a "no-correction window." The ICAO standard does not require adjustment of the reported noise levels for small variations from reference conditions of flight path, airspeed, weight, ambient temperature and relative humidity, and rotor rpm. This notice would not exclude these corrections. The FAA believes that since the measurements have to be made anyway, either to make corrections or to determine which are inside the "window", it serves no purpose to avoid making all appropriate corrections. Cost savings, if any, would be negligible and would be far outweighed by the quality of the data available to the applicants.

5. *Noise Levels.* The proposed new Appendix H to Part 36 would also contain the provisions governing helicopter noise levels for which compliance must be shown by actual flight tests. These provisions include: (1) "Stage 1" and "Stage 2" noise limits for each test series (related to the maximum certificated takeoff weight of the helicopter); (2) tradeoff provisions

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(governing limited "exceedances" of noise levels for one or two tests series when completely offset by reductions in the noise levels of the other required noise levels); and (3) separate test conditions for each of the three noise test series (including requirements for airspeed, altitude, or operational profile over the noise measuring station, power, and helicopter position relative to the flight-track noise measuring station).

"Stage 1" noise limits represent the prohibition on noise level increases prescribed for "acoustical changes" of those helicopters which cannot achieve Stage 2 noise levels before a change in type design. "Stage 2" noise limits would be prescribed separately for the three test series (takeoff, flyover, and approach). The respective noise levels would range, according to maximum certificated weights of the helicopter, between 89 and 109 Effective Perceived Noise Level in decibels (EPNdB) for takeoff, between 88 and 108 EPNdB for flyover, and between 90 and 110 EPNdB for approach. Under the proposal, the highest noise limit applies to maximum weights of 176,370 pounds or more, which is reduced by 3.01 EPNdB for incremental, 50% reduction ("halving") of the 176,370-pound weight down to the lowest noise limit, which applies to maximum weights of 1,764 pounds or less.

Tradeoffs of any "exceedances" would be limited to a sum not greater than 4 EPNdB with no single exceedance greater than 3 EPNdB consistent with the ICAO standard. For turbojet powered airplanes, these numbers are 3 and 2, respectively. The exceedances must be completely offset by noise levels below those required at the other two points.

As proposed, the noise level limits would apply to helicopters of all weights, just as the noise level limits for other categories of aircraft are applied. However, few United States civil helicopters have maximum weights above 50,000 pounds. Therefore, the FAA is considering a proposal from the Helicopter Association International for an alternative limit. Under this alternative, the noise level limits proposed in this notice for takeoff, approach, and sideline would end at an upper weight of 56,000 pounds. Accordingly, comments are specifically invited regarding the appropriate upper bound to the weight versus noise standards proposed herein.

For the purposes of considering compliance with the acoustical change provisions, this notice would allow the first civil derivative of a military helicopter to be treated as though the military "parent" were a Stage 1 civil helicopter whose noise levels are more than two decibels above the Stage 2 noise level limit. This would have the the effect of removing the requirement for noise data from the parent aircraft. Among the reasons for proposing this are: (1) Lack of availability of noise level data for military aircraft and; (2) the costs associated with performing tests on both versions. It should also be noted that the term military aircraft includes those operated by the U.S. Coast Guard.

6. *Applicability to current production types.* As mentioned earlier, the rule proposed in this notice would not be applicable to helicopter types currently in production as long as they are not changed to increase their noise (an "acoustical change"). However, public comment is invited on the economic reasonableness and technological practicability of adding such a provision. Specifically, comments are sought on the following questions:

(a) Would such a rule be appropriate for application to helicopters currently in production.

(b) What effective date (such as January 1, 1990) would best balance the legitimate concerns of all affected parties?

(c) Should such a rule be applied across the board to all helicopter types of should military derivatives be exempted?

Regulatory History

On December 28, 1973, the FAA published an advanced notice of proposed rulemaking (ANPRM) (Notice No. 73–32; 38 FR 35487) in which it announced that it was considering proposing noise standards for aircraft that were expected to be developed for efficient short stage length operations. It was anticipated that such a class of aircraft, referred to as "short-haul," would include aircraft having short, reduced, or vertical (or near vertical) takeoff and landing capabilities. Since the noise technologies appropriate to those aircraft as a separate class required further study, original FAR Part 36 in 1969 did not prescribe separate rules for those aircraft; some, such as helicopters, were not covered by any regulation. Notice No. 73–32 (ANPRM) was issued as part of an additional study to invite early public participation in the identification and selection of a course, or alternative courses, of action concerning development of proposed noise standards which would provide relief and protection to the public health and welfare from aircraft noise.

On July 9, 1979, a notice of proposed rulemaking (NPRM) (Notice No. 79–13; 44 FR 42410) was published by the FAA. This notice proposed helicopter noise certification standards and limits on further production of older, noiser helicopter types. The procedures proposed for noise testing were similar (although not identical) to those proposed in this notice; however, the proposed noise level limits were significantly more stringent. Information submitted to the Docket revealed that the economic impact of limiting future production of existing helicopter types might result in an impact of several hundred million dollars, due to the general unavailability of an effective noise abatement technology to meet the specified noise levels. After careful consideration of the economic impacts of the proposed rule and of the Docket comments on the effects of those impacts, Notice No. 79–13 was withdrawn (December 17, 1981; 46 FR 61486). At the time of withdrawal, the FAA stated that the action neither precluded consideration of similar proposals in the future nor committed the agency to any further or future course of action on this subject.

In the time period since Notice No. 79–13 was withdrawn, the FAA has continued to study the issues surrounding noise level certification of helicopters. One of these is the ICAO rule, contained in Annex 16, Chapter 8. The United States has been an active participant in modifications to that rule (including raising the allowable noise levels) with the aim of bringing into better balance the economic costs and the environmental benefits.

Aircraft Noise Rules

Public Laws 90–411 and 92–574 were enacted to provide the statutory basis under the Federal Aviation Act of 1958, (the Act) for relief and protection to the public health and welfare from noise and sonic boom from civil aircraft. Under the Act, the Federal Aviation Administrator, after consultation with the Secretary of Transportation and the Administrator of The Environmental Protection Agency, is responsible for the adoption and amendment of rules which prescribe the necessary standards and regulations. On November 3, 1969, the Administrator adopted FAR Part 36 entitled "Noise Standards: Aircraft Type Certification" (34 FR 18355; November 18, 1969). That regulation initiated the FAA noise abatement regulatory program under the new statutory authority. It prescribed noise type certification standards for subsonic transport category large airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 also prescribed the technical specifications for measuring and evaluating flight test

noise data in demonstrating compliance with prescribed noise level limits.

In promulgating proposals and amendments under the authority of § 611 of the Act, factors which the FAA must consider include the following:

1. Available data relating to aircraft noise, including results of research, development, testing, and related evaluation activities.

2. The views and position of other Federal, state and interstate agencies.

3. Whether the proposed regulations are consistent with the highest degree of safety in the air commerce or air transportation in the public interest.

4. Whether proposed regulations are:

a. Economically reasonable;

b. Technologically practicable; and

c. Appropriate for the particular type of aircraft, aircraft engines, appliances, or certificates to which they would apply.

5. The extent to which the proposed regulations contribute to providing protection to the public health and welfare by carrying out the purposes of section 611 of the Act. The overall environmental impacts of the proposed regulations (including environmental factors other than noise) must be assessed in accordance with the National Environmental Policy Act of 1969, and implementing Federal guidelines and directives.

Need for Regulation

The latest industry directory of helicopter operators in the United States, Canada, and Puerto Rico lists 2,441 U.S. (including Puerto Rico) operators in 1982 using a fleet of 7,388 helicopters. The number of U.S. business/executive operators of helicopters in 1982 increases to 1,575 craft and U.S. commercial helicopters accounted for 4,627 craft. A 1984 industry directory of helicopters also indicated that there are 4,020 public and private heliports and helistops in the United States. Approximately 9 percent of these heliports are rooftop facilities located in urban areas.

Heliports are bring used for emergency, automobile traffic control, and law enforcement vehicles. Victims of traffic accidents, natural disasters, or other emergencies are frequently transported by helicopter directly from the scene to hospitals or shock trauma centers. There were 1,071 hospital heliports in the United States listed in the industry directory.

The emergency rescue capability of helicopters is fully recognized by responsible officials in several major metropolitan areas today. For example, city ordinances in Chicago and Los Angeles require that buildings above a certain height be provided with rooftop emergency landing facilities for helicopters because modern fire-fighting apparatus cannot reach above eight floors. As other governments recognize the need to provide increased protection for high-rise inhabitants, the number of heliports for both routine and emergency uses may increase significantly.

The growing civil helicopter fleet combined with increased and more diversified uses of helicopters has intensified the demand for establishing additional heliports. However, environmental concerns have slowed the rate of heliport establishment and, in some instances, has caused various restrictions to be imposed on heliport operations.

In other cases, environmental pressure has forced closing of certain heliports with the resultant loss of helicopter services at those locations. The FAA believes that the adoption of appropriate helicopter noise standards will help alleviate the adverse impacts on the public by reducing both the noise levels of helicopters and the trends toward impairing or losing the benefits of their services in the air transportation system.

One of the key issues in the withdrawal of Notice 79–13 was the general unavailability of effective noise abatement technology. As a result, an accelerated joint research program was set up in 1982 by the National Aeronautics and Space Administration (NASA), the FAA, and American helicoper manufacturers. This National Rotorcraft Noise Research Program is a five-year twenty-million dollar cooperative effort under the technical guidance of NASA. It has two major goals: The development of noise abatement technology for reducing helicopter external noise levels and the development of detailed parametric noise prediction techniques. This program is expected to furnish the technological basis for helicopter noise reduction into the twenty-first century and could significantly lower the cost impacts of the application of that technology. At the conclusion of the program, the FAA will consider the appropriateness of lowering the noise certification levels of helicopters.

The FAA, however, does not consider it appropriate in light of the considerations listed in section 611 of the Act to delay all rulemaking on noise standards for helicopters until such times as the cooperative research program is completed.

The FAA has reviewed the helicopter as a noise source affecting persons and property in the areas in which they operate. As a result, the FAA believes that it should now adopt appropriate helicopter noise regulations to provide the necessary relief and protection to the health and welfare contemplated by section 611 of the Act. The proposals contained in this notice, if adopted, will achieve that objective by preventing further escalation of helicopter noise levels and laying the regulatory foundation for assuring that future helicopter types and eventually all newly produced helicopters of older type designs comply with firm but realistic noise standards. The FAA has determined that sufficient noise control technology exists to meet the considerations under section 611(d) of the Act. Economic aspects of the need for the proposed regulations are discussed in more detail in the regulatory assessment prepared in conjunction with this notice, and placed in the Docket. However, it should be noted that U.S. manufacturers of rotorcraft are already subject to the ICAO noise certification standards for each heliport type that they wish to export. Since exports account for approximately 40 percent of the civil sales of U.S. helicopter manufacturers and since the standards proposed in this notice (except for "acoustical changes" of older, Stage 1 aircraft) are nearly identical to ICAO's, only minimal costs impacts are expected from this standard. Offsetting these minimal costs are savings which will accrue to American manufacturers by certificating in the U.S. rather than in foreign countries.

Rule Structure

As part of this proposal, the FAA is considering some reorganization and restructuring of certain portions of current Part 36 without any change in their substance. In order to improve their usefulness and understandability, the FAA believes that the technical provisions governing the measurement and evaluation of aircraft noise test data under Appendices A and B should contain only those matters that apply generally to all noise tests for all regulated classes of aircraft which employ EPNL as the qualifying unit. Those provisions which affect each particular regulated class should be prescribed separately in provisions that apply only to that class. In that way, the FAA believes that potential confusion over which portions of Appendices A and B apply in measuring and evaluating noise levels in terms of Effective Perceived Noise Levels (EPNL) would be eliminated since those provisions would apply generally unless otherwise expressly provided in those

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provisions applicable to the particular regulated class of aircraft.

Since Appendices A and B currently apply to only one regulatory class, transport category large airplanes and turbojet powered airplanes under Subpart C of Part 36, the current regulation achieves that objective. However, if a proposed noise standard for helicopters or any future regulatory class is adopted, the technical specifications would apply to additional regulatory classes and, thus, the statement of regulation would become more complex. Accordingly, comments are specifically invited regarding whether those provisions should be restructured, and, if so, specifically how should it be done in order to improve the presentation and the statement of the rules while retaining their substantive content. In order to indicate those substantive areas under the proposal which differ from the requirements of current Appendices A and B (as applied to transport category large airplanes and turbojet powered airplanes), the proposed helicopter noise rule contained in this notice states that the provisions of Appendices A and B apply, except as otherwise provided under proposed requirements that apply only to noise tests for helicopters.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all proposed changes to Parts 21 and 36. The FAA determined that the NPRM is consistent with the objectives of Executive Order 12291 and does not impose an unnecessary or unreasonable regulatory burden on the private sector or on the public.

The amendments proposed in the NPRM would provide benefits in the aggregate that would outweigh the costs associated with compliance. Specifically, the benefits would be associated with the greater acceptability of helicopters and heliports in urban environments and the increased markets for helicopters and helicopter services that would ensue. Thus, the economic benefits woud accrue not only to the manufacturers and operators, but to the general public as well. The environmental benefits woud accrue mainly to those working or residing near heliports, although some noise level improvements can be expected near helicopter flight corridors.

Costs would result from increased development and certification expenses borne originally by the manufacturers but which would be passed on to the operators of helicopters and eventually on to the aviation public. These costs would be mitigated by three factors: (1) The proposed noise levels are more realistic than earlier proposals and they represent attainable goals with today's technology; (2) the National Aeronautics and Space Administration has underway a joint helicopter noise reduction technology program with U.S. manufacturers and the FAA to improve the state-of-the-art and to lower the cost of application; and (3) all helicopter models for export will be required to comply with the ICAO noise standards even if the U.S. does not adopt the proposals contained in this notice.

Regulatory Flexibility Determination

As detailed in the evaluation, the only cost associated with the proposed changes to FAR Part 36 will be the cost to manufacturers related to the noise certification test. However, no domestic helicopter manufacturer is considered a small entity as is currently defined. Therefore, it is certified that the proposal, if enacted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this proposal would not constitute a major federal action significantly affecting the quality of the human environment. The proposed amendment would have the effect of limiting the growth of noise from new helicopter types and derivatives of existing types. This, in turn, would reduce noise levels around heliports and, to some extent, under helicopter flight corridors when compared to unconstrained growth. Since it would take from five to fifteen years after adoption for a significant number of affected aircraft to enter the nation's fleets, little noticeable short-term general effect is expected. However, some helicopter operations and heliports are expected to be designed based upon the lower noise capabilities of newer aircraft, making site-specific improvements in the noise environment. Therefore, no environmental assessment or environmental impact statement was prepared.

Trade Impact Analysis

There would be little or no impact on U.S. or foreign trade if this proposal were adopted. Absent the rule, U.S. helicopter exports may be placed at a comparative cost disadvantage since each helicopter model would be required to meet ICAO standards. The cost of multiple certifications would result in either higher selling prices or lower profits to U.S. manufacturers.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1357(d)(2), 1373, 1421 through 1430, 1432, 1443, 1472, 1510, 1522, 1652(c), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. In § 21.93 by revising paragraph (b) introductory text and by adding a new paragraph (b)(4) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) For the purpose of complying with Part 36 of this Chapter, and except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any voluntary change in the type design of an aircraft that may increase the noise levels of that aircraft is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following aircraft:

* * * * *

(4) Helicopters, as defined under Part 1 of this chapter, except helicopter configurations that are type certificated exclusively for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or designated for dispensing fire fighting materials or for carrying external loads as defined in § 133.1(b) of this chapter, as effective on December 20, 1976. For helicopters to which this paragraph applies "acoustical changes" include the following type design changes:

(i) Any changes to, or removal of, a muffler or other component designed for noise control.

(ii) Any other design or configuration change (including a change in the operating limitations of the aircraft) that, based on approved analytical or test data, the Administrator determines might result in any increase in noise level.

§ 21.115 [Amended]

3. By amending § 21.115 at the end of paragraph (a) by removing the words "§ 36.7 and 36.9 of this chapter" and

substituting for them the words "§§ 36.7, 36.9, or 36.11 of this chapter."

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et. seq.; Sec. 124 of Pub. L. 98-473; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 36.1 [Amended]

5. By amending § 36.1 as follows:

a. By adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) Type certificates, and changes to those certificates, for helicopters, as defined under Part 1 of this chapter, except helicopter configurations designated exclusively for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials or for carrying external loads as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

* * * * *

b. By amending paragraph (c):

(1) By removing the word "airplane" and substituting for it the word "aircraft"; and

(2) By removing the words "the applicable provisions of § 36.7 or § 36.9 of this part" and substituting for them the words "the applicable provisions of §§ 36.7, 36.9, or 36.11 of this part."

c. By adding a new paragraph (g) to read as follows:

(g) For the purpose of showing compliance with this part, for helicopters in the normal, transport, and restricted categories, the following terms have the specified meanings:

(1) A "Stage 1 noise level" means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(2) A "Stage 1 helicopter" means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters.

(3) A "Stage 2 noise level" means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in section H36.305(a)(2) of Appendix H of this part.

(4) A "Stage 2 helicopter" means a helicopter that has been shown under this part to comply with Stage 2 noise levels (including applicable tradeoffs) prescribed in section H36.305 of Appendix H of this part.

§ 36.2 [Amended]

6. By revising § 36.2(a) to read as follows:

(a) Notwithstanding § 21.17 of this chapter, irrespective of the date of application in the case of airplanes and on and after (date of publication of this NPRM) in the case of helicopters, each person who applies for a type certificate for an aircraft covered by this part must show compliance with the applicable provisions of this part.

§ 36.3 [Amended]

7. By amending § 36.3 by removing the word "airplane" wherever it appears and substituting for it the word "aircraft".

8. By amending Subpart A by adding a new § 36.11 to read as follows:

§ 36.11 Acoustical change: Helicopters.

This section applies to all helicopters in the normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on and after March 6, 1986.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in Parts B and C of Appendix H of this Part.

(2) Compliance with the noise limits prescribed in section H36.305 of Appendix H must be shown in accordance with the applicable provisions of Part D of Appendix H of this Part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to the change in type design, the helicopter may not, after the change in type design, exceed the noise levels specified in section H36.305(a)(1). The tradeoff provisions under section H36.305(b) may not be used to increase any Stage 1 noise level beyond these limits.

(c) *Stage 2 helicopters.* For each Stage 2 helicopter prior to the change in type design, the helicopter must be a Stage 2 helicopter after the change in type design.

By redesignating Subpart G as "Subpart O.—Operating Limitations and Information" and marking Subparts: G, I, J, K, L, M, and N as "[Reserved]"

§ 36.1581 [Amended]

10. By amending § 36.1581 as follows:

a. By amending paragraph (a) after the words "Airplane Flight Manual" in each place where those words appear by adding the words "or Rotorcraft Flight Manual."

b. By amending paragraph (b) in the prescribed statement by deleting the word "airplane" and substituting for it the word "aircraft."

c. By redesignating paragraph (e) as paragraph (f) and revising it to read as follows:

(f) Except as provided in paragraphs (c), (d), and (e) of this section, no operating limitations are furnished under this part.

d. By adding a new paragraph (e) to read as follows:

(e) For normal, transport, and restricted category helicopters for which the weight used in meeting the take-off, flyover, or approach noise requirements of this part is less than the cetificated maximum takeoff weight, established under either §§ 27.25(a) or 29.25(a) of this chapter. That lesser weight must be furnished, as an operating limitation, in the operating limitations section of the Rotorcraft Flight Manual, in approved manual material, or on an approved placard.

11. By adding a new Subpart H to read as follows:

Subpart H—Helicopters

Sec.
36.801 Noise measurement.
36.803 Noise evaluation and calculation.
36.805 Noise limits.

Subpart H—Helicopters

§ 36.801 Noise measurement.

For normal, transport, and restricted category helicopters, the noise generated by the helicopter must be measured under Part B of Appendix H of this part or under an FAA-approved equivalent procedure.

§ 36.803 Noise evaluation and calculation.

The noise measurement data obtained under § 36.801 must be evaluated and calculated under Part C of Appendix H of this part or an FAA-approved equivalent procedure.

§ 36.805 Noise limits.

(a) Compliance with this Subpart must be shown and demonstrated at the noise measuring points and under the test conditions prescribed under Part D of Appendix H of this part for helicopters for which application for issuance of a type certificate in the normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph

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(c), it must be shown, in accordance with this subpart, that the noise levels of the helicopter are no greater than the applicable limits prescribed under § H36.305 of Appendix H of this part.

(c) For helicopters for which application for issuance of an original type certificate in the normal, transport or restricted category is made on or after (the date of this NPRM), and whish the FAA finds to be the first civil version of a helicopter which was designed and constructed for, and accepted for operational use by, an Armed Force of the U.S. on or before (date of this NPRM), it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in section H36.305(a)(1)(ii). Subsequent civil versions must meet the Stage 2 requirements.

Appendix B [Amended]

12. By amending Appendix B of Part 36; section B36.1 at the end of the first sentence by deleting the words "under section 36.103" and substituting them for the words "under §§ 36.103 and 36.803."

13. By adding a new Appendix H to read as follows:

Appendix H—Noise Requirements for Helicopters Under Subpart H

Sec.

Part A—General

H36.1 *Scope.*

Part B—Noise Measurement Under § 36.801

H36.101 *Noise certification test and measurement conditions.*
H36.103 *Measurement of helicopter noise received on the ground.*
H36.105 *Reporting and correcting measured data.*
H36.107 *Symbols and units.*
H36.109 *Atmospheric attenuation of sound.*
H36.111 *Detailed data correction procedures.*

Part C—Noise Evaluation and Calculation Under § 36.803

H36.201 *Evaluation of measured noise values.*
H36.203 *Calculation of noise levels.*

Part D—Noise Limits Under § 36.805

H36.301 *Noise measurement, evaluation, and calculation.*
H36.303 *Noise measuring points.*
H36.305 *Noise levels.*
H36.307 *Takeoff test conditions.*
H36.309 *Flyover test conditions.*
H36.311 *Approach test conditions.*

Appendix H—Noise Requirements for Helicopter Under Supert H

Part A—General

Section H36.1 *Scope.* This appendix prescribes noise requirements for helicopters specified under § 36.1 including:

(a) The conditions under which helicopter noise certification tests under Part H must be conducted and the measurement procedures that must be used under § 36.801 to measure helicopter noise during each test;

(b) The procedures which must be used under § 36.803 to evaluate the measured noise data and to calculate the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL); and

(c) The noise limits for which compliance must be shown under § 36.805 at the prescribed noise measuring points under the prescribed test conditions.

Part B—Noise Measurement Under § 36.801

Section H36.101 *Noise certification test and measurement conditions.* (a)(1) Except as provided in paragraph (a)(2) of this section, the provisions of Section A36.1 Appendix A of Part 36 apply to helicopter noise certification tests conducted under this appendix. Section A36.1 includes requirements governing—

(i) Test site requirements;

(ii) Weather restrictions; and

(iii) Aircraft test procedures.

(2) Notwithstanding the provisions of Section A36.1 of Appendix A to the contrary, the following apply to helicopter noise certification tests:

(i) The test site requirements of paragraph (b) of this section apply to helicopter noise tests. The temperature and relative humidity measured at aircraft altitude and at 10 meters above ground shall be averaged and used to adjust for propagation path absorption.

(ii) The takeoff and approach testing procedure requirements of paragraph A36.1(d) apply to takeoff, and approach noise tests for helicopters, respectively. The requirements of paragraph A36.1(d)(5) also apply to flyover noise tests. The helicopter height and lateral position is relative to the centerline of the reference flight track (which passes through the noise measuring point) rather than the runway.

(iii) The approach angle under paragraph A36.1(d)(6) is 6.0°(±0.5°)

(iv) Each takeoff must comply with the provisions under Section H36.307 of this appendix.

(v) Each fly-over test must comply with the provisions under Section H36.309 of this appendix.

(vi) Each approach must comply with the provisions under Section H36.311 of this appendix.

(b) *Helicopter test site requirements.* (1) Tests to show compliance with established helicopter noise certification levels must consist of a series of takeoffs, flyovers, and approaches during which measuring stations are located at the measuring points prescribed in Section H36.303 of this appendix.z

(2) Each takeoff test, flyover test, and approach test includes simultaneous measurements at the flight-track noise measuring station vertically below the reference flight path and at two sideline noise measuring stations, one on each side of the reference flight track 492 feet (150m) from, and on a line perpendicular to, the flight track of the noise measuring station.

(3) The height of the ground at either sideline noise measuring station may not differ from that of the flight-track noise measuring station by more than 20 feet.

(4) Each noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(5) The wind velocity, temperature, and relative humidity measurements required under this appendix must be measured in the vicinity of noise measuring stations 10 meters above the ground. The location of the meteorological measurements must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geological area which aircraft noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(6) During the period when the takeoff, flyover, or approach noise/time record indicates the noise measurement is within 10dB of Maximum Tone Corrected Perceived Noise Level (PNLTM), no obstruction that significantly influences the sound field from the aircraft may exist—

(i) For any flight-track or sideline noise measuring station, within a conical space above the measuring position (the point on the ground vertically below the microphone), the cone being defined by an axis normal to the ground and by half-angle 80° from the axis; and

(ii) For any sideline noise measuring station, above the line of sight between the microphone and the helicopter.

Section H36.103 *Measurement of helicopter noise received on the ground.* The measurement of helicopter noise received on the ground during helicopter noise certification tests under this appendix must be accomplished in accordance with the provisions of Section A36.3 of Appendix A of Part 36. Section A36.3 includes requirements governing—

(a) Measurements which provide that data for determining the one-third octave band noise produced by aircraft during testing at specific noise measuring stations, as a function of time;

(b) Sound pressure level data for aircraft noise certification purposes which must be obtained with approved acoustical equipment and measurement practices;

(c) Equipment specifications and the calibration and measurement procedures which apply to each certification test series.

Section H36.105 *Reporting and correcting measured data.* (a) Except as provided in paragraph (b) of this section, the provisions of Section A36.5 and A36.11(a) of Appendix A of Part 36 apply to helicopter noise certification tests under this appendix. Detailed correction procedures applicable to helicopters are contained in Section H36.111 of this appendix.

(b) The following apply to helicopter noise certification tests:

(1) The reference approach angle is 6°.

(2) The provisions of paragraph A36.5(e)(1), regarding validity of tests results within the 90 percent confidence limits and each EPNL

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value, apply separately to each takeoff, flyover, and approach.

(3) To comply with Sections H36.307(b) H36.309(b), and H63.111(b), a minimum of six takeoffs, six approaches, and six level flyovers is required. To be counted toward this requirement, each flight event must be validly recorded at all three noise measuring stations.

(4) The approved values of V_H and V_y used in calculating test and reference conditions and flight profiles must be reported along with measured and corrected sound pressure levels. (See Note in Section H36.111(c).)

Section H36.107 *Symbols and units.* (a) Except as provided in paragraph (b) of this section, the symbols and units described in Section A36.7 of Appendix A of Part 36 apply to this appendix.

(b) Notwithstanding the meaning to the contrary prescribed in Section A36.7, for helicopter noise certification, the following symbols and units as used in the appendix have the following meanings—

FLIGHT PROFILE IDENTIFICATION POSITIONS

Position	Description
A	Location of the noise measuring point at the flight-track noise measuring station vertically below the reference (takeoff, flyover, or approach) flight path.
C	Start of noise certification takeoff flight path.
C_r	Start of noise certification reference takeoff flight path.
D	Start of noise certification flyover flight path.
D_r	Start of noise certification reference flyover path.
E	Start of noise certification approach flight path.
E_r	Start of noise certification reference approach flight path.
F	Position on takeoff flight path directly above noise measuring station A.
G	Position on flyover flight path directly above noise measuring station A.
H	Position on approach flight path directly above noice measuring station A.
I	End of noise type certification takeoff flight path.
I_r	End of noise type certification corrected takeoff flight path.
J	End of noise type certification flyover flight path.
J_r	End of noise certification reference flyover flight path.
K	End of noise certification approach type flight path.
K_r	End of noise type certification reference approach flight path.
L	Position on measured takeoff flight path corresponding to PNLTM at station A.
M	Position on measured flyover flight path corresponding to PNLTM of station A.
M_r	Position reference flyover flight path corresponding to PNLTM of station A.
N	Position on measured approach flight path corresponding to PNLTM at station A.
N_r	Position on reference approach flight path corresponding to PNLTM at station A.
S	Position on measured approach path nearest to station A.
S_r	Position on reference approach path nearest to station A.
T	Position on measured takeoff path nearest to station A.
T_r	Position on reference takeoff path nearest to station A.

FLIGHT PROFILE DISTANCES

[Units in feet]

Distance	Meaning
AF	*Takeoff Height.* The vertical distance between the helicopter and station A.
AG	*Flyover Height.* The vertical distance between the helicopter and station A.
AH	*Approach Height.* The vertical distance between the helicopter and station A.
AL	*Measured Takeoff Noise Path.* The distance from station A to the measured helicopter position L.
AL_r	*Corrected Takeoff Noise Path.* The distance from station A to the reference helicopter position L_r.
AM	*Measured Flyover Noise Path.* The distance from station A to the measured helicopter position M.
AM_r	*Reference Flyover Noise Path.* The distance from station A to helicopter position M on the reference flyover flight path.
AN	*Measured Approach Noise Path.* The distance from station A to the measured helicopter noise position N.
AN_r	*Reference Approch Noise Path.* The distance from station A to the reference helicopter position N_r.
AS	*Measured Approach Minimum Distance.* The distance from station A to the position S on the measured approach flight path.
AS_r	*Reference Approach Minimum Distance.* The distance from station A to the position S_r on the reference approach flight path.
AT	*Measured Takeoff Minimum Distance.* The distance from station A to the position T on the measured takeoff flight path.
AT_r	*Corrected Takeoff Minimum Distance.* The distance from station A to the position T_r on the reference takeoff flight path.
CI	*Takeoff Flight Path Distance.* The distance from position C at which the helicopter establishes a constant climb angle on the takeoff flight path passing over station A and continuing to position I at which the position of the helicopter and need no longer be recorded.
DJ	*Flyover Flight Path Distance.* The distance from position D at which the helicopter is established on the flyover flight path passing over station A and contineing to position J at which the position of the helicopter need no longer be recorded.
EK	*Approach Flight Path Distance.* The distance from position E at which the helicopter establishes a constant angle on the approach flight path passing over station A and continuing to position K at which the position of the helicopter need no longer be recorded.

Section H36.109 *Atmospheric attenuation of sound:*

The values of the one-third octave band spectra measured during helicopter noise certification tests under this appendix must conform, or be corrected, to the prescribed reference-day conditions in accordance with the provisions of section A36.9 of Appendix A of Part 36. Section A36.9 includes requirements governing—

(a) Correction of measured noise values to conform to reference-day conditions;

(b) Meteorological conditions at the noise measuring stations;

(c) Standards for sound attenuation rates; and

(d) Correction of noise values to account for sound attenuation rates.

Section H36.111 *Detailed data correction procedures.*

(a) *General.* If the test conditions do not conform to those prescribed as noise certification reference conditions under § H36.105 of this appendix, the correction procedures and requirements prescribed under section A36.11(a) of Appendix A of Part 36 apply. Section A36.11(a) includes requirements governing the correction precedures and standards for positive and

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negative values resulting from any differences between reference and test conditions.

(b) *Takeoff profile.* (1) Figure H1 illustrates a typical takeoff profile, includinig reference conditions.

(i) The reference flight path is defined as a straight line segment inclined from the starting point (1640 feet prior to the center microphone location at 65 feet above ground level) at an angle β defined by the certificated best rate of climb and V_y for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C_r and continues, crossing over station A to the position corresponding to the end of the type certification takeoff path represented by position I_r.

(ii) The takeoff parameters are functions of the helicopter's performance and weight and the atmospheric conditions of temperature, pressure, wind velocity and direction.

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either V_y ± 5 knots (± 9 km/hr) or the maximum speed of the curve contiguous to the ordinate of the height-speed envelope plus 3.0 knots (+ 5/−3 knots), whichever speed is greater. Rotor speed is stabilized at the normal operating RPM (± 1 percent) specified in the flight manual. The helicopter is stabilized at the best rate of climb using minimum engine specifications along a path starting from a point located 1640 feet forward of the flight-track noise measuring station and 65 feet (20 meters) above the ground. The helicopter climbs at a constant angle through point C to the end of the noise certification takeoff flight path represented by position I. The position of the helicopter shall be recorded for a sufficient distance (CI) to ensure recording of the entire interval during which the measured helicopter noise level is within 10dB of PNLTM as required. Station A is the flight-track noise measuring station. The relationships between the measured and corrected takeoff flight profiles can then be used to determine the corrections which must applied to the EPNL calculated from the measured data.

(3) Figure H1 also illustrates significant geometrical relationships influencing sound propagation. Position L represents the helicopter location on the measured takeoff flight path for which PNLTM is observed at station A and L_r is the corresponding position on the reference sound propagation paths AL and AL_r, respectively, which form angle ϕ with their flight paths. Position T represents the point on the measured takeoff flight path nearest station A, and T_r is the corresponding position on the reference flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AT and AT_r, respectively, which are normal to their flight paths.

(c) *Flyover profiles.* (1) The beginning of the noise type certification level flyover profile is represented by helicopter position D (Figure H2). The helicopter approaches position D in level flight 492 feet above ground level at station A. Airspeed is stabilized (within +5, −3 knots) at either 0.9 V_H or 0.45 V_H + 65 knots (0.45 V_H + 120 km/hr) whichever speed is lesser. For each run, the difference between airspeed and ground speed shall not exceed 10 knots between the 10dB down points. Rotor speed is stabilized at the maximum continuous RPM within one percent throughout the 10dB down time period. The helicopter crosses station A in level flight and proceeds to position J. If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

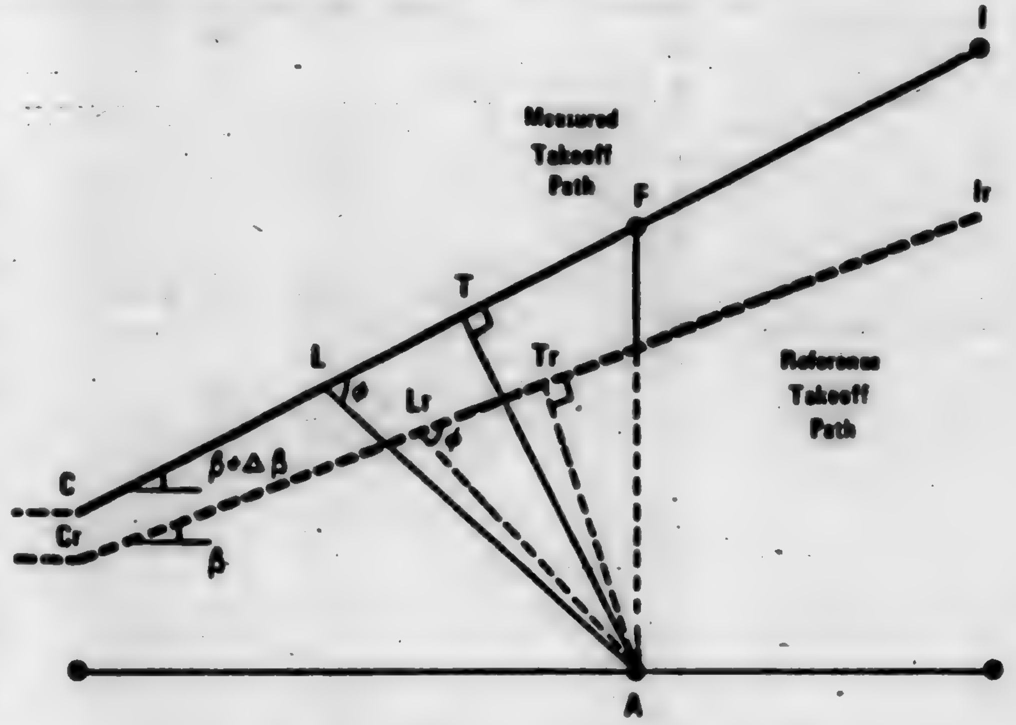

Figure H1. COMPARISON OF MEASURED AND CORRECTED TAKEOFF PROFILES

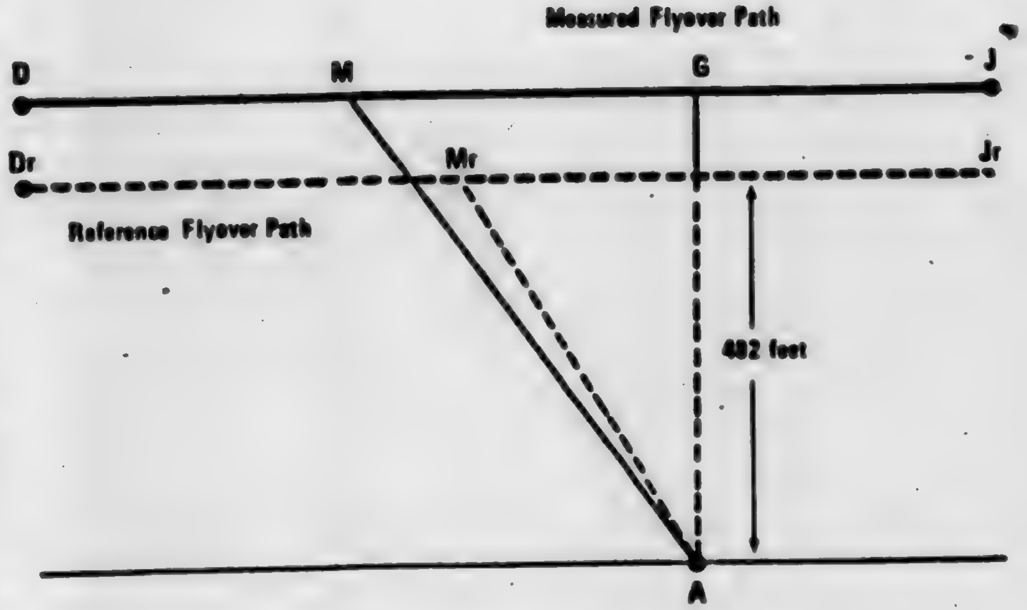

Figure H2. COMPARISON OF MEASURED AND CORRECTED FLYOVER PROFILES

(2) Figure H2 illustrates comparative flyover profiles when test conditions do not conform to prescribed reference conditions. The position of the helicopter shall be recorded for a sufficient distance (DJ) to ensure recording of the entire interval during which the measured helicopter noise level is within 10dB of PNLTM, as required. The flyover profile is defined by the height AG which is a function of the operating conditions controlled by the pilot. Position M represents the helicopter location on the measured flyover flight path for which PNLTM is observed at station A and M_r is the corresponding position on the reference flight path.

Note.—For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the torque corresponding to minimum installed, maximum continuous power available for sea level, 15°C ambient conditions. The value of V_H thus defined is to be listed in the Rotorcraft Flight Manual.

(d) *Approach profiles.* (1) Figure H3 illustrates a typical approach profile, including reference conditions.

(i) The beginning of the noise type certification approach profile is represented by helicopter position E. The position of the helicopter should be recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is with 10dB of PNLTM, as required. EK must represent a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° (± 0.5°) approach angle.

(ii) The approach profile is defined by approach angle η passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile.

(iii) The approach profile is defined by the approach angle and the height AH which are functions of the helicopter operating conditions controlled by the pilot. If the measured approach conditions are different from the corresponding reference conditions, corrections, if positive, must be applied to the EPNL calculated from the measured data.

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10dB down time period. The helicopter crosses position E and proceeds along the approach slope crossing over station A until it reaches position K. The approach procedure shall be acceptable to the FAA and shall be included in the Rotorcraft Flight Manual.

(3) Figure H3 illustrates portions of the measured and reference approach flight paths including the significant geometrical relationships influencing sound propagation. EK represents the measured approach path with approach angle η avd E_r and K_r represents the reference approach angle of 6°. Position N represents the helicopter location on the measured approach flight path for which PNLTM is observed at station A and N_r is the corresponding position on the reference approach flight path. The measured and corrected noise propagation paths and AN and AN_r, respectively, which form the same angle λ with their flight paths. Position S represents the point on the measured approach flight path nearest station A and S_r is the corresponding point on the reference approach flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AS and AS_r, respectively, which are normal to their flight paths.

(e) *Correction of noise at source during level flyover.* (1) If any combination of the following three factors, 1) airspeed deviations from reference, 2) rotor speed deviations from reference, and 3) temperature deviations from reference, results in an advancing blade tip Mach number during level flyover which deviates from the reference Mach value, then source noise adjustments shall be determined. This adjustment shall be determined from the manufacturer supplied data approved by the FAA.

(2) Off-reference tip Mach number adjustments shall be based upon a sensitivity curve of PNLTM versus advancing blade tip Mach number, deduced from overflights carried out at different airspeeds around the reference airspeed. If the test aircraft is unable to attain the reference value, then an extrapolation of the sensitivity curve is permitted if data cover at least a range of 0.03 Mach units. The advancing blade tip Mach number shall be computed using true airspeed, onboard outside air temperature, and rotor speed. A separate PNLTM versus advancing blade tip Mach number function shall be derived for each of the three certification microphone locations, centerline, sideline left, and sideline right. Sideline left and right are defined relative to the direction of the flight on each run. PNLTM adjustments are to be applied to each microphone datum using the appropriate function.

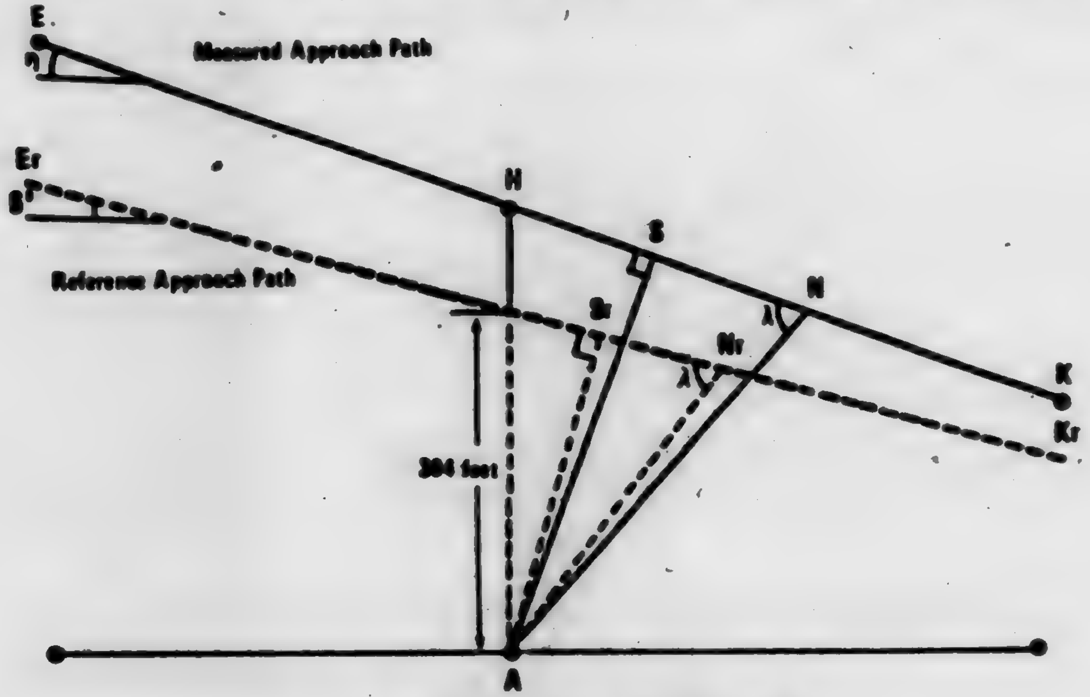

Figure H3. COMPARISON OF MEASURED AND CORRECTED APPROACH PROFILES

Part C—Noise Evaluation and Calculation Under § 36.803

Section H36.201 *Evaluation of measured noise values.*

(a) Except as provided in paragraph (b) of this section, the procedures in Appendix B of Part 36 must be used for helicopter noise certification tests under this appendix to determine the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL) in units of effective perceived noise decibels (EPNdB) for noise level values under § 36.803 of Part 36. Appendix B includes requirements governing determination of noise values, including calculations of:

(1) Instantaneous perceived noise levels;
(2) Corrections for spectral irregularities;
(3) Tone corrections;
(4) Duration corrections;
(5) Effective perceived noise levels; and
(6) Mathematical formulation of noy tables.

(b) Notwithstanding the provisions of section B36.5(a) to the contrary, for helicopter noise certification, corrections for spectral irregularities shall start with the corrected sound pressure level in the 50Hz one-third octave band.

Section H36.203 *Calculation of noise levels.*

(a) To demonstrate compliance with the noise level provisions of § H36.305, the noise values measured simultaneously at the three noise measuring points must be arithmetically averaged to obtain a single EPNdB value for each flight.

(b) The calculated noise level for each noise test series (takeoff, flyover, or approach) must be the numerical average of at least six separate flight EPNdB values. The 90 percent confidence limit for all valid test runs under section H36.105(b)(2) of this appendix applies separately to the EPNdB values for each noise test series.

Part D—Noise Limits Under § 36.805

Section H36.301 *Noise measurement, evaluation, and calculation.*

Compliance with this part of this appendix must be shown with noise levels measured, evalauted, and calculated as prescribed under Parts B and C of this appendix.

Section H36.303 *Noise measuring points.*

Compliance with the noise standards under Section H36.305 must be shown for the arithmatic average of the values measured at the three noise measuring points for each takeoff, flyover, and approach test series at noise measuring stations located at the following points:

(a) *Flight-track noise measuring point*—On the centerline of the flight track projected vertically below the reference flight path; and

(b) *Sideline noise measuring points*—On each side of flight-track noise measuring point and located 492 feet from and on a line perpendicular to, the centerline of the reference flight track.

Section H36.305 *Noise levels.*

(a) *Limits.* For compliance with this appendix, it must be shown by flight test that the calculated noise levels of the helicopter, at the measuring points described in Section H36.301 of this appendix, do not exceed the following (with appropriate interpolation between weights):

(1) *Stage 1* noise limits for acoustical changes for helicopters are as follows:

(i) For takeoff, flyover, and approach calculated noise levels—each Stage 1 helicopter whose noise levels exceed the Stage 2 noise limits plus 2 EPNdB may not, after change in type design, exceed the noise levels created prior to the change in type design.

(ii) For takeoff, flyover, and approach calculated noise levels—each Stage 1 helicopter whose noise levels do not exceed the Stage 2 noise limits plus 2 EPNdB may not, after the change in type design, exceed the Stage 2 noise limits plus 2 EPNdB.

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the 176,370-pound maximum weight down to 89 EPNdB for maximum weights of 1,764 pounds or less.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01, EPNdB per halving of the 176,370-pound maximum weight down to 88 EPNdB maximum weights fo 1,764 pounds or less.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the 176,370-pound maximum weight down to 90 EPNdB for maximum weight of 1,764 pounds or less.

(b) *Tradeoffs.* Except to the extent limited under § 36.11(b) of Part 36, the noise limits prescribed in paragraph (a) of this section may be exceeded by one or two of the takeoff, flyover, or approach calculated noise levels determined under section H36.203 of this appendix if—

(1) The sum of the exceedances is not greater than 4 EPNdB;

(2) No exceedance is greater than 3 EPNdB; and

(3) The exceedances are completely offset by reductions in the other required calculated noise levels.

Section H36.307 *Takeoff test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.111(b) of this appendix applies to all takeoff noise test conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations) as follows:

(1) An airspeed of either V_y (+5/−3 knots) or the maximum speed of the curve contiguous to the ordinate of the limiting height-speed envelope plus 3.0 knots (+5/−3 knots) whichever speed is greater, must be established during the horizontal portion of each test flight and maintained during the remainder of the test flight.

(2) The horizontal portion of each test flight must be conducted at an altitude of 65 feet (20 meters) above the ground level at the flight-track noise measuring station.

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter shall be stabilized at,

(i) for helicopters for which the determination of takeoff performance is required by airworthiness regulations, the torque used to establish the takeoff distanced for sea level, 25°C ambient conditions;

(ii) for all other helicopters, the torque corresponding to minumum installed power available for sea level, 25°C ambient conditions;

(4) The helicopter shall be maintained throughout the takeoff reference procedure at,

(i) for helicopters for which the determinaton of takeoff performance is required by airworthiness regulations, the speed used to establish takeoff distance for sea level, 25°C ambient conditions;

(ii) for all other helicopters, the best rate of climb speed V_y, or the lowest approved speed for climb after takeoff, whichever is greater, for sea level, 25°C ambient conditions.

(5) The rotor speed must be stabilized at the normal operating RPM (± 1%) during the entire period of the test flight when the measured helicopter noise level is within 10 dB of PNLTM.

(6) The helicopter must pass over the flight-track noise measuring station within ± 5° from the zenith.

Section H36.309 *Flyover test conditions.*

(a) This section, in addition to the applicable requirements of section H36.101 and H36.111(c) of this appendix, applies to all flyover noise tests conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights (three in each direction) over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

(1) In level flight;

(2) At a height of 492 feet ± 30 feet (150 ± 9 meters) above the ground level at the flight-track noise measuring station; and

(3) Within ± 5° from the zenith.

(c) Each flyover noise test must be conducted—

(1) At a speed of 0.9 V_H or 0.45 V_H + 120 km/h (0.45 V_H 65 kt), whichever is less, which speed shall be maintained throughout the measured portion of the flyover;

(2) At rotor speed stabilized at the normal operating rotor RPM (± 1 percent); and

(3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of PNLTM.

(d) The airspeed shall not vary from the reference airspeed by more than ±5 knots (±9 km/hr).

Section H36.311 *Approach test conditions.*

(a) This section, in addition to the requirements of sections H36.101 and H36.111(d) of this appendix, applies to all approach tests conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at the three noise measuring stations)—

(1) On an approach slope of 6° (±0.5°);

(2) At a height of 394 ± 30 feet above the ground level at the flight-track noise measuring station;

(3) Within ± 5° of the zenith;

(4) At a stabilized airspeed equal to the certificated best rate of climb V_y, or the lowest approved speed for approach, whichever is greater, with power stabilized during the approach and over the flight path reference point, and continued to a normal touchdown; and

(5) At rotor speed stabilized at the maximum normal operating rotor RPM (± 1 percent).

(c) The airspeed shall not vary from the reference airspeed by more than ± 5 knots (± 9 km/hr).

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, as promulgated, will not have a significant impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Issued in Washington, D.C., on February 27, 1986.

John E. Wesler,

Director of Environment and Energy.

[FR Doc. 86–4601 Filed 3–5–86; 8:45 am]

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Part III

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 604
Charter Bus Operations; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 604

[Docket No. 82-I]

Charter Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this notice, the Urban Mass Transportation Administration (UMTA) proposes to revise its existing regulation on Charter Bus Operations which governs the permissible charter bus operations that UMTA recipients can provide. This proposed revision modifies the existing regulation to ensure that federally assisted equipment is used to meet mass transit needs as intended by the UMT Act and to increase the protections for private intercity charter bus operators. At the same time, the revision should ease the existing paperwork burdens imposed on UMTA recipients.

DATE: Comments are due on May 5, 1986.

ADDRESS: Comments must be submitted to UMTA Docket No. 82-I, 400 7th Street, SW., Room 9228, Washington, D.C. 20590. All comments and suggestions are available for examination in room 9228 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with the comment.

FOR FURTHER INFORMATION CONTACT: Douglas G. Gold, Office of the Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, D.C. 20590; Telephone: (202) 426-1936.

SUPPLEMENTARY INFORMATION:

Introduction

Two provisions of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) (UMT Act), concern charter bus operations by recipients of financial assistance under the UMT Act and under 23 U.S.C. 103(e)(4) and 142(a) and (c) (the Acts). First, section 12(c)(6) defines "mass transportation" as "transportation by bus or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (*but not including school buses or charter or sightseeing service)* on a regular and continuing basis." (49 U.S.C. 1608(c)(6).) (Emphasis added.) The exclusion of school buses and charter and sightseeing service has been part of the definition of "mass transportation" since the UMT Act became law in 1964.

The Comptroller General in a 1966 opinion interpreted section 12(c)(6) to disallow the use of financial assistance under the UMT Act for the purchase of buses or other equipment for the sole purpose of providing charter service. The Comptroller General, however, stated that the "incidental" use for charter service of vehicles purchased for mass transit was permissible as long as the charter activity "does not detract from or interfere with urban mass transportation service for which the equipment is needed." Opinion of the Comp. Gen. B-160204 (Dec. 7, 1966). There is nothing in this opinion which prohibits the Secretary from prohibiting such incidental use if such a prohibition is deemed necessary.

The second provision that concerns charter bus service is section 3(f) of the UMT Act. Congress enacted section 3(f) in 1974 to protect private operators in the intercity charter bus industry from being foreclosed from this business by UMTA recipients, and operators for recipients, who use federally funded equipment. This provision requires that each recipient of Federal funds under the Acts for the purchase or operation of buses must, as a condition of such assistance, enter into a charter bus agreement with the Secretary of Transportation. As part of this agreement, each recipient must agree that it will not engage in any intercity charter bus operations (charter bus operations outside of the urban area in which it provides regularly scheduled mass transportation service) except as provided in the agreement.

Section 3(f) does not prescribe the terms that the agreement must include to protect private operators. It states, however, that the agreement shall provide for

> fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under the Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. (49 U.S.C. 1602(f)).

(For a discussion of the legislative history of this provision see 47 FR 44795 (October 12, 1982).)

Existing Rule

UNTA issued a regulation to implement these two statutory provisions on April 1, 1976 (41 FR 14123) (49 CFR Part 604). (For a detailed regulatory history of this regulation see 47 FR 44795 (October 12, 1982).) Section 604.11 of the existing rule implements the definition of mass transportation in section 12(c)(6) of the UMT Act, which excludes charter bus service, and the Comptroller General's related decision by prohibiting UMTA funded equipment and facilities to be used to provide charter bus service unless the service is incidental to the provision of mass transportation service. (Section 604.11(a).) The rule presumes that a recipient is using its equipment and facilities incidentally if it does not conduct weekday charters: (1) during peak morning and evening rush hours; (2) requiring a bus to travel more than 50 miles beyond the recipient's urban area; or (3) requiring the use of a particular bus for more than 6 hours in any one day. (Section 604.11(b).) These presumptions apply to all charter service, both intracity and intercity, but do not apply to any weekend charter service.

The existing rule implements section 3(f)'s protections for private intercity charter operators by requiring each recipient to enter into an agreement with UMTA that it will not perform any charter services outside of its urban area except as provided in the agreement. (Section 604.12.) This requirement applies to all recipients whether or not they plan to offer any intercity charter service. Although a recipient can negotiate its own agreement with UMTA (Section 604.14), the regulation provides a standard agreement that contains fair and equitable arrangements to protect private operators. (Section 604.13.)

The standard agreement contains two key provisions. The first requires any recipient conducting intercity charter service to cover its total charter costs with charter revenues on an annual basis. The costs that must be included are listed in Appendix B and include 79 separate items. The second provision prohibits a recipient from charging a predatory rate for any charter trip. If a recipient does not provide any intercity charter service, these economic restrictions do not apply.

If a recipient provides, or proposes to provide, intercity charter service, it must include several items in any grant application. First, it must include a statement that it has provided written notice to all private operators in the existing or proposed charter service area. Second, it must include a statement that it has published a notice in a local newspaper describing its existing or proposed charter service. Third, it must include a certification of costs and a cost allocation plan if it provides charter service. (Section 604.15.) If there are no private charter bus operators in the recipient's urban area, the recipient can make a certification in its application to that effect in lieu of including the above described documents. (Section 604.16.)

Although the charter bus regulation does not require an applicant to hold a specific public hearing on its proposed or existing charter operations, the regulation does permit private operators to comment on such operations at the public hearing required by section 3(d) of the UMT Act. (Section 604.4.) This hearing is required of all applicants for capital assistance under the UMT Act. If comments are offered, they must be submitted, with a transcript of the hearing, to the Administrator. (Section 604.17.)

The Administrator reviews the documents submitted by the applicant, including any comments by private operators. If the Administrator finds that the applicant has complied with the regulation, the Administrator may accept the certification of costs and cost allocation plan. The applicant is then permitted to enter into a charter bus agreement with UMTA. If the Administrator finds that the applicant has not complied with the regulation, the Administrator must notify the applicant and provide 30 days to submit revised documents. (Section 604.18.)

Any interested party (complainant) may file a complaint with the Administrator alleging that a recipient has violated the terms of its charter agreement. The Administrator will review the complaint to determine if probable cause of a violation exists. (Section 604.40.) If the Administrator determines that probable cause of a violation does exist, the Administrator notifies the recipient (respondent). (Section 604.41.) A respondent is provided 30 days to submit evidence and the complainant is provided with an equal amount of time to rebut the respondent's evidence. (Section 604.42.) After reviewing all of the evidence, the Administrator makes a written determination regarding whether a violation has occurred and, if so, the Administrator may order an appropriate remedy. Only when the Administrator determines that there has been a continuing pattern of violation can the respondent be barred from the receipt of further Federal assistance for mass transportation. (Section 604.43.) The Administrator's decision is deemed to be a final agency action, but may be judicially reviewed pursuant to 5 U.S.C. 701-706. (Section 604.45.)

A recipient who, together with all operators for the recipient, derived $15,000 or less in annual charter bus revenues, during its most recently completed fiscal year, is exempted from the scope of the regulation concerning intercity service. (Section 604.2.) Such recipients, however, must still comply with the incidental use presumptions.

Problems with the Current Regulation

The purpose of the UMTA charter bus regulations is to ensure that federally assisted equipment is used to meet mass transit needs as intended by the UMT Act and to protect the private intercity charter bus industry against subsidized and destructive competition by federally assisted grantees. The current regulation seeks to achieve this end by restricting the use of federally subsidized equipment for charter service to incidental operations and by requiring the revenues generated by such service annually to cover all costs, including subsidized costs and exempted taxes.

There are, however, a number of significant problems with the effectiveness of current regulation in either safeguarding the use of transit equipment or protecting the health of the private intercity charter industry.

First, since the charter bus regulations were first established, the economics of the intercity bus industry have become decidedly more fragile. Profitability has suffered a dramatic drop since 1970. In that year, the intercity charter bus industry enjoyed a 9.9 per centum profit margin. By 1984, however, the profit margin dropped to only 1.7 per centum. In addition, the industry net operating profit has dropped since 1970 by more than 50 percent to $39.9 million in 1984. The revenues taken away by Federal grantees is conservatively estimated to be $45 million annually. Loss of these reveneus could endanger the continued viability of the private bus industry, particularly in the face of new economic pressures such as dramatically escalating insurance rates. Additionally, the large spare ratio (national average has risen to 46 pecent) and new freedoms afforded by deregulation will encourage the public transit industry to seek an even greater share of the charter market.

Second, public transit operators are largely able to provide charter service because of the excess equipment and manpower available during off-peak hours. Peak-hour service which requires added equipment, facilities and labor, however, is generally acknowledged as the most expensive to provide. Even though revenues generated by rush-hour services are higher than other service, such revenues are not nearly enough to offset the high cost of rush hour service. The growth of such service is considered the greatest source of escalating transit deficits. Deficits have risen from $300 million in 1970 to $6 billion in 1984.

Rather than continuously expanding the rush-hour fleets and then seeking to forge into charter and other markets traditionally served by the private sector with excess transit equipment available during off-peak hours, it would be economically more prudent for Federal policy to encourage localities to reduce transit rush-hour requirements by greater reliance on significantly lower cost private sector strategies. Direct operation of premium express services by private operators and the establishment of active car and vanpool programs cost the public virtually nothing and have proven extremely satisfactory to customers. Contracting services that require subsidies has also proven very effective. Private operators have consistently demonstrated a 20- to 60-percent cost savings to the public when service has been competitively contracted to them.

The current UMTA charter bus regulations, however, are grounded in philosophy which encourages the accumulation of transit equipment to meet rush-hour needs while permitting utilization of that equipment to intrude into private markets during other periods. This philosophy is economically harmful to both the transit and private charter bus industries.

Third, in effect, the policing of the current charter bus regulations is left to private operators who are expected to report violations and protest unfair pricing practices by UMTA grantees. However, private operators cannot distinguish federally assisted buses from those that are not so assisted. It is also difficult to gauge the fairness of prices being charged, since only an annual accounting of costs and revenues is required.

It is also difficult for private operators to protest public agency charter service because in many cases they may receive or desire contracts with federally assisted grantees. In a few instances, they may even be regulated by this agency.

Fourth, even UMTA recipients complain that the current economic approach, i.e., the cost allocation plan, is not effective. They argue that it is a useless accounting exercise and that it does not account for all necessary costs or permit deductions that appropriately reduce charter costs.

Fifth, the current regulation is difficult to enforce. UMTA does not have adequate personnel to effectively enforce the current regulation. Effective enforcement would require UMTA

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financial audits of transit properties, evaluations of the cost allocation plans, as well as periodic audits of the manifests of transit agency's charter trips. To determine that no predatory pricing is occurring, UMTA would additionally need to review private charter bus companies' pricing structures. Given Federal budgetary constraints, UMTA cannot realistically expect to police the current regulations. Consequently, UMTA action in resolving complaints is often a very lengthy and time consuming process. Complaints have taken years to resolve and the burden of proof lies with the protesting private operator.

Sixth, the limitation in the existing regulation on the use of UMTA-assisted vehicles to incidental intracity charter service has been insufficient to safeguard the use of that equipment for mass transit purposes. The current regulation provides that the use of federally funded buses "will be presumed not to be incidental" when engaged in charter service during peak-hours, going more than fifty miles beyond the grantee's urban area, or for more than a total of six hours in any one day. Despite these presumptions, considerable confusion exists as to what constitutes incidental service. For example, varying interpretations of "peak-hours" have been made. Some recipients have narrowed their peak-hours to only the peak-of-the peak. In one such case, the peak period lasts only 14 minutes in the morning and 8 minutes in the afternoon rather than the traditional several hour period. This lack of uniformity undermines the presumption that any peak hour charter service by UMTA funded vehicles demonstrates a non-mass transit need.

The problem with incidental use is increased by the number of spare UMTA funded buses in the fleets of many transit agencies. As mentioned above, the national spare ratio has now risen to 46 per centum. Such high ratios, often far in excess of peak-hour service requirements, render the incidental use presumptions ineffective since they allow transit authorities to rebut those presumptions. This situation makes available a substantial amount of UMTA funded equipment for non-transit purposes, as well as permitting, perhaps encouraging, recipients to provide significant competition with private operators.

Seventh, it is important to note that the private charter industry, unlike UMTA's statute and regulations, is not divided into intracity and intercity segments. The same private operators providing intercity charter service also offer intracity service. Therefore, subsidized competition, which is permitted by the regulation if only intracity service is provided, poses a threat to their financial well-being. Thus, the current regulation fails to address this serious problem.

Some of these same concerns were brought to the attention of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). As a result, the regulation was placed on the review list of the Presidential Task Force on Regulatory Relief. UMTA, therefore, expedited its review process and published an advance notice of proposed rulemaking (ANPRM) on October 12, 1982 (47 FR 44795). UMTA issued this ANPRM since there were several fundamental issues that needed exploration and many areas for which public comment was needed before an effective revision of the regulation could be proposed. Although the ANPRM also included a related UMTA regulation on School Bus Operations, we have decided to separate the two at this point and to issue this NPRM separately to hasten publication of the final charter bus regulation. Nevertheless, UMTA is still committed to issuing an NPRM for School Bus Operations in the near future.

The ANPRM

In the ANPRM, UMTA proposed four alternative approaches to the existing regulation. The first alternative would have retained the existing regulation and would have made certain modifications such as adding or deleting specific costs in the cost allocation plan. Thus, no change was proposed to the existing implementation of sections 12(c)(6) and 3(f) of the UMT Act.

The second alternative would have modified the existing implementation of section 12(c)(6) by making the incidental use presumptions conclusive. As a result, UMTA recipients' intercity charter operations generally would have been limited to the weekends. This alternative would not have modified the existing approach for implementing the section 3(f) protections for private intercity charter operators. The same cost, revenue, and rate requirements would have applied. In an attempt, however, to reduce the administrative burdens on UMTA recipients, we proposed a self-certification process. Recipients would have been able to submit a certification to UMTA stating that its charter revenues equal or exceed its charter costs rather than submitting the detailed cost allocation plan and certification of costs required now.

The third and fourth alternatives only proposed modifications to the existing provisions implementing section 3(f). UMTA proposed in the third alternative to require recipients to charge charter rates comparable to those charged by private operators. Specifically, a recipient would have been prohibited from charging intercity charter rates that were lower than the lowest rate charged by the three largest private operators providing the same or similar service in the area. This approach was suggested in legislative history (H.R. Rep. No. 553, 93rd Cong. 1st Sess. 3 (1973)) and is consistent with the requirements of certain States, including Colorado. (Colo. Rev. Stat. 32–9–103(7)(b) (1973).

The fourth proposed alternative would have restricted a recipient's intercity charter bus activities based on passenger-miles. UMTA proposed to limit a recipient's intercity charter activities to 50 percent of the average number of intercity charter passenger-miles that the recipient had provided during its last three fiscal years. Under the proposal, a recipient could have exceeded its ceiling only if the private charter operators in the service area agreed to the additional miles.

In the ANPRM, UMTA recognized that there may be other alternatives to the four described. For example, UMTA possibly could implement section 3(f) by prohibiting a recipient from conducting any intercity charter activities, but allowing the recipient to lease its equipment to private operators for such charter trips. Another approach would be to propose legislative changes that would more clearly spell out the scope of permissible charter activities. Furthermore, UMTA could enter into individual agreements with recipients rather than issuing a regulation containing an agreement.

In the ANPRM, UMTA also discussed four collateral issues that are integral to the charter bus regulation. First, UMTA asked whether the current provision that excepts recipients from the regulation if their annual charter revenues are $15,000 or less should be retained. Second, UMTA proposed to revise the definition of "urban area" since the current expansive definition has often been criticized by private operators. Third, UMTA asked whether it might be helpful to require a recipient to limit the number of spare buses it could use in charter service. Finally, UMTA asked what revisions could be made to the current complaint process to make the resolution of complaints more meaningful and expeditious.

UMTA requested comments on each of the four alternatives and the four

collateral issues. In addition, UMTA requested that all charter bus operators, both UMTA recipients and private operators, provide UMTA with information on their charter bus operations.

Comments on the ANPRM

UMTA received 93 comments on the ANPRM. A total of 91 different commenters submitted these comments. The breakdown by category is as follows:

52—Public transit operators (UMTA recipients)
19—Private bus companies
3—Trade Associations representing public transit operators
5—Trade Associations representing private bus companies
3—Municipal governments
5—State Departments of Transportation
4—Others

In general, comments from public transit operators, and those trade associations representing them, favored those proposals that would ease the regulatory and administrative burdens placed on their charter bus operations. Specifically, these commenters argued that it is unfair for UMTA to further restrict their ability to provide charter service, and limit their ability to earn needed revenues to offset operating deficits, at a time when Federal operating assistance is being curtailed. These commenters also argued that restrictions proposed in several of the alternatives would prevent the best use of Federal tax dollars since they would result in federally assisted buses sitting idle when they could be put to good use.

Comments from private bus companies, and the trade associations representing them, in general urged UMTA to select the alternatives that would provide more protection for them. In several cases, these commenters urged UMTA either to prohibit charter operations by recipients or to at least apply the same requirements to intracity operations as to intercity operations.

UMTA will discuss the specific comments on the ANPRM below not by alternative, but by section of the UMT Act. Thus, there are two main sections, one on 12(c)(6) and the second on 3(f). We have taken this approach since it focuses on the philosophical differences in the proposed approaches.

A. Section 12(c)(6)

The existing rule implements the definition of mass transportation in section 12(c)(6) of the UMT Act and the related Comptroller General's decision by prohibiting a recipient from providing any charter service, whether intracity or intercity, unless it is incidental to the provision of mass transportation service. The rule states that certain weekday charter service is presumed to be not incidental if it: (1) Occurs during peak periods; (2) involves a trip that goes 50 miles beyond a recipient's urban area; or (3) requires the use of a particular bus for more than 6 hours in one day. If a complaint is filed alleging a violation of this requirement, a recipient is permitted to rebut the presumption with factual evidence.

As described above, only the first and second alternatives in the ANPRM addressed section 12(c)(6). The first alternative would not have modified the existing presumptions. The second alternative woud have made the presumptions conclusive. As a result, any charter service that was contrary to the presumptions would have automatically resulted in a violation. The recipient would not have been able to rebut the presumption once it was established that, in fact, it had operated charter service during peak periods, going 50 miles beyond the recipient's urban area, or requiring the use of a bus for more than 6 hours in any one day. UMTA's experience with charter bus complaints has been that this has been the source of many problems. In the ANPRM, we stated our opinion that by making the presumptions irrebuttable the number of alleged violations would be greatly decreased and it should be easy to determine if, in fact, a violation had occurred.

Fifty-four commenters commented on UMTA's second alternative. The majority of these comments were submitted by public operators. Seventeen, or almost one-third, of the commenters favored this alternative. These commenters represent a cross-section of the pool of commenters and include both public and private operators. The majority, however, are private operators and trade associations representing them.

More than one-half of the commenters addressing this alternative, most of whom were public operators, rejected it. These commenters provided a wide range of reasons to support their arguments against this alternative. In general, they stated that this approach would be too burdensome. Many stated that making the incidental use presumptions conclusive, and thus in effect limiting their charter operations to the weekend, decreases local flexibility and takes away needed management options as to the use of personnel, facilities, and equipment. Public operators also stated that the flat prohibition does not take into account seasonal variations in charter demand and could leave many consumers without needed charter services in the summer and other peak demand periods. One public operator stated that making the incidental use presumptions conclusive would take away 95 percent of its charter business.

One private citizen offered a comment indicating the practical problems that this approach would create. This person stated that the only charter service available in her area that is accessible to handicapped persons is provided by the local public operator. The commenter argued that if UMTA were to make the incidental use presumptions irrebuttable, the local public operator would not be available for charter trips for local handicapped organizations who would have their mobility restricted further.

Several commenters noted that one problem with this approach, and even with the current presumptions, is that UMTA does not define peak hours. Under the current presumptions, a charter service provided during "peak morning and evening rush hours" is presumed to be not incidental as to mass transit service. These commenters stated that peak hours vary from operator to operator and can even vary within one urban area depending on the season.

Moreover, the commenters stated that their need for buses during any peak period is not constant. Peak periods, like the day in general, have certain times when more buses are needed than at others. Thus, while a peak period may last from 6:30 a.m. to 9:30 a.m., the maximum buses are in use between 7:30 a.m. and 9:00 a.m. The time on either side of this maximum period is referred to as "shoulders." Commenters argued that they could begin or end some charter service during the "shoulders" without interfering with their regular transit service. They asked UMTA to modify this second alternative to account for this phenomenon if this approach were adopted.

UMTA, however, has decided not to adopt either of these approaches in the NPRM. Instead, as will be discussed below, we believe that section 12(c)(6) provides UMTA with broader discretion to impose stricter requirements that will provide better protections for UMTA equipment to ensure that its use is for mass transportation.

B. Section 3(f)

The existing regulation implements the section 3(f) protections for private intercity charter operators with two key provisions in the standard charter bus agreement in § 604.13 of the regulation.

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First, if a recipient conducts any intercity charter service, it must cover its total charter costs, both intracity and intercity, with charter revenues on an annual basis. Appendix B lists the 79 separate costs that must be accounted for. The second provision prohibits a recipient from charging a predatory rate for any charter trip.

1. The first alternative would not have altered this approach except to add or delete certain costs from the calculation in order to put a recipient's operations on a more equal footing with a private operator's operations.

A total of 49 commenters provided comments on UMTA's first alternative. A majority of these commentors, mainly public operators, favored either retaining the regulation as is or with modifications. The most commonly suggested modifications included making the cost allocation plan/certification of costs self-certifying, as UMTA proposed under the second alternative. A majority of the nine private operators that commented on this alternative also favored its retention. Only three commenters opposed the alternative outright.

By far the largest number of comments on this alternative addressed the problem with the current cost allocation plan. In general, public operators urged UMTA to eliminate this requirement on the grounds that it is too burdensome, a futile accounting exercise, and a waste of valuable personnel and resources. Several public operators, however, stated that the preparation of this plan is not burdensome and that they would, as good business practice, prepare such data even if not required to do so by UMTA.

Several private operators stated that the requirement that recipients who provide intercity charter service prepare a cost allocation plan to show that their charter revenues equal or exceed their charter costs provides little protection for them. These private operators argued that since most private charter bus operators are small companies, they do not have the money or personnel to thoroughly review or challenge a recipient's cost allocation plan.

As indicated in the ANPRM, many parties involved with the charter bus regulation have urged UMTA either to include or to permit deductions for specific costs in the current "List of Expenses" for the cost allocation plan found in Appendix B to the regulation. UMTA received many comments with specific suggestions. These suggestions include requiring recipients to add a factor for profit and to add the prorated general and administrative expenses attributable to charter operations. Several public operators stated that the cost of complying with Federal regulations, such as the cost of preparing the cost allocation plan or defending charter bus complaints, should be deducted from the total charter costs. The public operators argued that unless these costs, which private operators do not have to incur, are deducted, the comparison of costs between the two types of operators is not comparable.

Although this alternative received wide support from commenters, we do not believe it is a workable solution to the problems facing the private charter bus industry. As indicated above, both public operators and private operators find the current cost allocation plan useless or burdensome. Not only is it burdensome to prepare, but it apparently does not serve as a protection to private operators. The suggested modification of including or deleting certain costs does not, in UMTA's opinion, address the real problem.

Furthermore, the continuation of this current approach relies primarily on the regulation of rates charged by UMTA recipients in order to protect charter operators. This Administration opposes regulation of this sort. The Bus Regulatory Reform Act (Pub. L. No. 97-261) reduced the involvement of the Federal Government in reviewing and approving the rates that interstate bus carriers can charge. This is but one example in the trend away from the economic regulation of the transportation industry. A continuation of the approach in the current charter regulation would be contrary to this policy. Thus, UMTA has decided not to adopt the first alternative approach.

2. In the second alternative, UMTA proposed to continue the existing implementation of section 3(f) except to make it a self-certification process. As indicated above, this was one modification to the existing rule that many commenters supported. UMTA feels, however, that the reasons given for not adopting the first alternative are equally applicable here. As a result, UMTA has decided not to adopt this second alternative.

3. In the third alternative, UMTA proposed to implement section 3(f) of the UMT Act by requiring a recipient to charge a rate for all charter trips no lower than the lowest rate charged by the three largest private operators providing the same or similar service in the area. Of the 42 commenters commenting on this proposal, ten favored it. Several of these commenters, however, suggested modifications such as eliminating the requirement that it be "the same or similar service," or requiring a comparison with three private operators only if three exist.

Thirty-three of the commenters opposed this approach. Over half of these are public operators.

In the ANPRM, UMTA noted several practical problems associated with this alternative. For example, how should "largest" be determined? Should it be based on volume of business, number of passengers transported, annual revenues, number of employees, or number of buses? In addition, what should be done if there are only one or two public operators in the service area? Moreover, how should "service area" be defined? The majority of commenters opposing this alternative cited the difficulty in answering these and other questions as a reason for not adopting it.

One public operator provided a personal example of how difficult this approach would be to implement. This commenter stated that a provision in its State Public Utilities Code requires a similar rate-comparability approach. The commenter relates, however, that when it held a hearing in an attempt to establish charter rates not less than those charged by the three largest private operators operating the same or similar service in the area, "unbelievable confusion reigned." As a result, the commenter abandoned all plans to institute local charter service.

In the ANPRM, UMTA noted that the Bus Regulatory Reform Act also contributes to the problems with this approach. This Act makes it easier for private companies to enter the charter bus market and removes many restrictions on the rates they can charge. This could result in a large category of potential competitors whose rates would be unknown to a recipient. Many commenters agreed with UMTA's observations and cited them as a sufficient reason for rejecting the rate-comparability approach.

It is UMTA's opinion that these comments indicate that this approach would prove to be generally unworkable. In addition, this approach, like the first two alternatives, relies on regulating the rates UMTA recipients can charge to protect private operators. As stated above, the Administration is opposed to this form of regulation. Therefore, UMTA has not selected this approach.

4. Under the fourth alternative that UMTA proposed in the ANPRM, the protections for private intercity charter operators would have been implemented by limiting the amount of intercity charter service recipients could provide by placing a ceiling on the allowable number of charter passenger-miles. UMTA proposed that this ceiling be set once, be recipient-specific, and that it equal 50 percent of the average number of charter passenger-miles that a recipient had provided during its past three fiscal years. UMTA also proposed that a recipient would have been able to engage in charter operations in excess of its ceiling only if it received the approval of the local private operators, through a sign-off process, for those additional miles.

As noted in the ANPRM, UMTA, recognizes that this approach represents a marked difference from the existing charter bus regulation and the other alternatives. This alternative is based on the concept of volume of business, not the rates charged for that business. Although a close monitoring of the rates a recipient charges is one way to ensure that the recipient is not foreclosing private operators, the volume of business a recipient provides may be an equally effective means of preventing overall foreclosure. It may not, however, be as effective at preventing foreclosure on specific routes.

Thirty-nine commenters addressed this alternative. More than two-thirds of these commenters are public operators. Five commenters favored this approach. They stated that it would provide an easier regulation to enforce than the current rule. They suggested, however, that UMTA modify the proposal to raise the ceiling to 85 percent or 90 percent of the average past three years of charter passenger-miles and revise the ceiling every five years.

The remaining 34 commenters opposed this approach. More than 80 percent are public operators. Many of these commenters provided specific arguments against the passenger-mile ceiling. Many argued that this approach would be too inflexible and that it would force public operators out of the charter business. Others argued that setting the ceiling would be unfair to existing charter operators since it would enable operators who begin charter service to set their own ceiling by providing a certain level of charter service during the base period. Many commenters pointed out that setting the ceiling once would not accommodate areas with growing populations and, hence, expanding charter service demands. In addition, public operators stated that requiring private operators to sign off on any charter miles that exceed the ceiling would give the private operator veto power, would create a paperwork nightmare, and would harm not only the public operators but also the consumer who needs the service.

While UMTA still believes that this alternative may present a desirable alternative to the current rate regulating approach, we believe that the administrative burden it would impose, particularly on recipients, does not justify its adoption.

5. The four approaches that were presented in detail in the ANPRM do not exhaust the range of alternatives to the current charter bus operation. In the ANPRM, UMTA briefly listed alternatives such as restricting recipients' intercity charter bus activities to leasing arrangements with private operators, entering into individual agreements with recipients in place of a regulation, and proposing amendments to the UMT Act to clarify the permissible charter activities.

Eighteen commenters addressed these alternatives. Three of these commenters favored rescinding the regulation and requiring UMTA to enter into individual charter bus agreements with recipients. The three commenters who opposed this approach argued that while it may be one way to account for the variations in the charter industry from one urban area to another, it would be administratively cumbersome for UMTA. Furthermore, these commenters stated that individual ageements would not ensure any degree of uniformity from recipient to recipient. UMTA agrees with these commenters and feels that the burdens associated with this approach outweigh its benefits.

Four commenters addressed the proposed leasing approach. These four represent both the public and private sector and all opposed this approach. Similarly, the three commenters who commented on the proposal to change the UMT Act opposed it.

Commenters also proposed a variety of other approaches. Most of these, however, involved variations of the four main alternatives. While UMTA believes that these suggestions have merit, many would further complicate the existing regulation in an attempt to provide either more protections for private operators, or ensure greater freedom for recipients.

The NPRM

In this NPRM, UMTA proposes an approach different from those proposed in the ANPRM. For the reasons discussed above, there are sufficient problems with the existing rule and with each proposal to cause UMTA to propose a different approach which UMTA believes more effectively implements the existing statutory provisions.

In this NPRM, UMTA proposes to prohibit an UMTA recipient from providing any charter bus operations to the extent that there is a private charter but operator willing and able to provide such charter service in the area in which the recipient desires to provide charter bus operations. This general prohibition is set forth in § 604.9 and is rooted in the language of section 3(f) of the UMT Act which provides protections for willing and able private intercity charter bus operators. The NPRM proposes a definition for the key term of "willing and able." This and other proposed definitional changes will be discussed below.

For the purpose of this NPRM and this discussion, "charter bus operations" means charter service which a recipient provides using UMTA funded equipment or facilities. This proposal would not change the philosophy of the current rule that charter service provided with 100 per centum local assistance is not subject to any UMTA restrictions. As under the existing rule, UMTA operating assistance could not be used to support charter bus operations.

There are exceptions to this proposed general prohibition. Obviously, if there are no willing and able private charter bus operators, the recipient would be permitted to do any and all charter service using UMTA buses, equipment or facilities that it is requested to do. In this case, however, UMTA intends that the recipients' rates reflect the actual cost of providing the service. Under the NPRM, there would be no restrictions on the charter service provided if this exception were to apply. UMTA asks commenters to address this point. Should UMTA, for example, impose restrictions such as the current incidental use presumptions?

Proposed § 604.9 also sets forth two specific exceptions. First, a recipient would be able to provide charter bus operations if a willing and able private operator did not have the capacity requested. For example, suppose the request to A.B.C. Private Charter Co. (A.B.C.), were for 20 buses. A.B.C., however, only has 10 buses. The NPRM would permit the local UMTA recipient to provide some or all of the service *if* A.B.C. were unable to secure the necessary additional buses from the other private willing and able charter companies. Thus, the NPRM proposes the UMTA recipient as the charter provider of last resort. It is important to stress that the recipient would be providing the service *not* on its own, but only through a contract with, in the example, A.B.C.

The second exception is similar. A recipient would be able to provide charter bus operations if the willing and able private charter operator did not

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have equipment accessible to handicapped persons. Suppose A.B.C. is requested to provide wheelchair lift-equipped buses to take a local handicapped organization on an outing. If A.B.C. did not have any lift-equipped buses, but the UMTA recipient did, the recipient could provide the service. As with the first exception, however, the private operator could only use the recipient as a last resort after it was unable to secure the equipment from other willing and able private operators. Futhermore, the recipient would be providing the service under a contract with the private operator and not directly itself.

UMTA requests comments whether the final rule should provide other exceptions. For example, should an UMTA recipient be able to directly provide charter service, as opposed to under contract with a willing and able private operator, if the request were for a total number of buses that exceeds the total fleet capabilities of all willing and able private charter operators? Similarly, would it make more sense to permit the public to contract directly with the recipient if it alone possessed the requested type of accessible equipment such as wheelchair lift-equipped buses?

Given this basic prohibition, the NPRM proposes several procedural steps that an UMTA applicant and recipient, i.e., an applicant who receives UMTA funding, would have to comply with. First, following the language in section 3(f), all applicants for UMTA assistance to provide mass transportation service would have to enter into a charter agreement with UMTA. Section 604.7 proposes this requirement. UMTA proposes that the agreement be included in each grant application, but would permit an incorporation by reference in subsequent applications once the agreement were entered into.

The text of the proposed agreement is set forth in § 604.7 and applicants would be required to use it. Deviations would not be permitted. Basically, the applicant would agree to not provide any charter bus operations to the extent there were a private charter bus operator willing and able to provide charter service in the area it desires to provide charter bus operations unless one or more of the exceptions discussed above were to apply. In addition, the applicant would agree to comply with the regulation before commencing any charter bus operations. The applicant would have to include two copies of the agreement signed by the applicant's designated official with its application. The NPRM proposes to define the "designated official" as "the applicant's and recipient's employee authorized to execute and file applications on behalf of the applicant or to enter into agreements on behalf of the recipient." Thus, the person signing the agreement for the applicant would be the same person signing the grant application.

Under the NPRM, UMTA would only sign the agreement if it approves the grant application. Absent the type of legal relationship created by a grant agreement, it does not appear necessary for UMTA and an unsuccessful applicant to be bound in any way. The UMTA official approving the application, generally one of the Regional Administrators, would sign for UMTA and return one copy to the former applicant, now a recipient.

The second procedural section is proposed § 604.11. This is, in many respects, the heart of the NPRM since this section proposes the mechanism a recipient would have to follow to determine who are, if any, the willing and able private charter bus operators in the area in which it desires to provide charter bus operations. If a recipient did not desire to provide any charter bus operations, this and the rest of the rule would not apply to it until it were to decide it wanted to offer such service.

To make the determination of whether there were any private charter bus operators willing and able to provide charter bus service in the area within which the recipient desires to provide charter bus operations, the recipient would have to hold a public hearing. For a recipient that currently provides no charter bus operations, but desires to do so after the effective date of this rule when finalized, the public hearing would have to be held at least 60 days prior to offering to provide charter bus operations. For recipients currently providing charter bus operations under the existing regulation on Charter Bus Operations and desirous of continuing to offer such service, the public hearing would have to be held no more than 60 days after the rule as final becomes effective.

The NPRM would require the recipient to provide notice of its hearing in three distinct ways. First, the recipient would have to publish the notice in a newspaper, or newspapers, of general circulation within the proposed charter service area. UMTA has included the "or newspapers" language to provide for the situation where there is not one newspaper of general circulation that would cover the entire proposed charter service area. In such a case, the recipient would have to publish notices in as many newspapers as necessary to cover the entire proposed charter service.

Second, the recipient would have to send a copy of the notice to any private charter bus operator requesting that it be sent copies of such notices. This would provide actual notice to any private operator that requested it. Once a private operator requested notice, the recipient would provide it with a copy of the notice for all subsequent hearings held under Section 604.11.

Third, the recipient would have to send a copy of the notice to the United Bus Owners of America (UBOA), 1275 K Street, Suite 808, Washington, D.C. 20005, and the American Bus Association (ABA), 1025 Connecticut Avenue, NW., Washington, D.C. 20036. It is UMTA's opinion that notice to these organizations would be helpful. UBOA and the ABA are the trade associations representing virtually all private charter bus companies. Consequently, notice to them would be another way to ensure that notice is received by the potential willing and able private charter operators in the proposed service area. This could be effectively done by UBOA and the ABA through their newsletters.

The NPRM lists the information that would have to be included in the notice. This would include basic information such as the date, place and time of the hearing. The critical information that would have to be included would be a description of the area and type of charter bus operations the recipient desires to provide. If the recipient only desires to provide charter bus operation within its urban area, or only on certain days, the notice would need to so state. This is important since the rule would only prohibit a recipient from providing charter bus operations to the extent there is a willing and able private operator. Therefore, if no private operator is willing and able to provide charter service in part or all of the recipient's proposed charter service area or only on some of the proposed days, the recipient's would be able to provide the rest of the charter service since there would be no willing and able private charter bus operator.

In addition, the notice would have to state the evidence a private operator would have to present at the hearing to prove that it is willing and able. The NPRM proposes to define "willing and able" as "having the physical capability to actually provide charter bus service and the legal authority and necessary safety certifications, licenses and other legal requirements to provide charter bus service." Thus, under the first part of the definition, a willing and able

private operator would be one that has the capability to provide the service. A broker who has only an office and a telephone and arranges for the recipient or private operators to provide service would not, therefore, under the NPRM, be willing and able since the broker would never itself provide the service. UMTA asks commenters to address this point. If one goal of the revised rule is to open opportunities for the private sector, should not a private sector broker be considered just as willing and able as an operator to provide charter service?

In this NPRM, UMTA does not intend to include within the concept of capability any notion of capacity. Thus, a private operator that operates one bus is as capable as a private operator that operates 100 buses. A private operator would not be considered willing and able to provide charter service only up to its own actual capacity. As a result, if one private operator meets the definition of willing and able for the entire area and for all the days the recipient desires to provide charter bus operations, even though it operates only one bus, the recipient would be limited to providing charter bus operations through a contractual arrangement with that private operator when it lacks the capacity or accessible equipment.

The second part of the definition concerns the legal authority to provide charter bus service. To be willing and able, a private operator would have to have all the required operating authority, safety certifications, insurance requirements, and any other legally required documents, to provide the charter service it alleges it can provide. The evidence, therefore, that a private operator would have to provide for the recipient at the public hearing would be a statement of its capability to actually provide charter service and copies of the necessary legal documents.

UMTA asks commenters to address this definition and the type of evidence that would have to be submitted. Specifically, UMTA wonders what additional elements, if any, should be included in the definition.

Finally, the notice would have to summarize how the recipient would process the evidence submitted. These procedures are set forth in more detail in proposed § 604.13. First, the NPRM would require the recipient to complete its review of all the evidence submitted within 30 days of the hearing. Second, the recipient would have to notify each private charter bus operator within 60 days of the public hearing whether the recipient finds the private operator to be "willing and able." The recipient would have to include with the notification a list of all private operators that it determined were willing and able.

The NPRM states that the recipient would have to review the evidence submitted by the private operators to decide whether the evidence shows that the operator is willing and able. If the evidence proves that the operator meets the definitional requirements, the recipient must determine that it is willing and able. Thus, UMTA proposes to give recipients no discretion in making these determinations.

UMTA asks commenters to address particularly this aspect of the NPRM. For example, should a recipient be able to look behind the evidence submitted to determine if it is valid or should a recipient have to accept it on face value? Furthermore, if a recipient should be able to look behind the documents, should this extra scrutiny be permitted only in limited circumstances such as when the recipient has reason to believe the documents are falsified?

Proposed § 604.11(d) would require a recipient that desires to provide charter bus operations to annually redetermine the extent to which there are any willing and able private charter bus operators in the urban area. The recipient would have to hold a public hearing annually during the month in which it held its first hearing. The recipient would have to follow the same notice and evaluation procedures it did for the first hearing and send a copy of the notice to all previously determined willing and able private operators.

This provision is critical since it would provide an opportunity for new private operators to prove that they are willing and able and for existing willing and able private operators to extend the spheres of their operations. While the result of these reevaluations could be that the recipient would be able to provide less service, it would also enable a recipient to expand its charter bus operations if fewer private charter bus operators were in business.

It is UMTA's position that only an annual determination is necessary. More frequent public hearings would place unnecessary paperwork burdens on recipients. We would, however, be interested in comments on the frequency of hearings. For example, a hearing every other year may be adequate.

Complaint Process

UMTA proposes to modify the existing charter bus complaint procedures. In the ANPRM, UMTA proposed several modifications to the existing complaint process. First, we proposed to require that private operators attempt to settle disputes with recipients at the local level either before filing a complaint with UMTA or as the first stage of the UMTA complaint process. Second, UMTA proposed that neutral third parties, instead of the Administrator, act as the fact-finder in complaints. This third party could also prepare proposed decisions that the Administrator would have to ratify. Third, UMTA proposed that deadlines be imposed on all parties in the complaint process in order to ensure an expeditious resolution of complaint.

Twenty-five commenters commented on the proposed revisions. Three-fifths were public operators. Several commenters stated that the complaint process should not be changed. Nearly one-half of the commenters favored a required local conciliation process. UMTA agrees with these commenters. The NPRM proposes local conciliation as the first step in the complaint resolution process. Once the UMTA Regional Administrator determines that a complaint has merit and states a claim for which relief can be granted, the Regional Administrator would notify the parties and direct them to attempt to conciliate the dispute informally and without UMTA involvement.

Nearly one-half of the commenters favored a fixed timetable for processing complaints. UMTA also agrees with these commenters, and the NPRM proposes strict guidelines for all stages of the process. UMTA seeks specific comments on the appropriateness of the proposed time periods.

Of the eight commenters who addressed the use of the neutral fact-finder, six opposed it. The commenters cited several reasons for this opposition including the argument that UMTA should not delegate its statutory responsibility to resolve complaints, and the fear that the use of a fact-finder who was not an UMTA employee would delay the complaint process.

After thorough review, UMTA had decided not to propose the use of any third parties in the complaint process. UMTA will resolve the complaints in-house in an expeditious manner.

Commenters offered a variety of other suggestions on the complaint process. These include requiring a losing recipient to pay a complainants' costs, publishing all decisions in the Federal Register and encouraging UMTA to impose significant penalties.

UMTA has not adopted any of these suggestions in the NPRM. We have, however, made it clear that the initial decision would be made in UMTA's Regional Offices, with Headquarters concurrence. We also propose to provide an appeals process to the Administrator. In addition, UMTA will

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prepare an annual digest of charter bus decisions and publish it in the Federal Register. UMTA has decided to take this action in response to a recent General Accounting Office report.

The specific aspects of the complaint procedure are as follows. Under § 604.15, if an interested party believes a recipient has violated the regulation, the NPRM proposes that the party file a written complaint with the UMTA Regional Administrator for the region in which the complaint arises. If the Regional Administrator believes that the complaint is meritorious and states grounds on which some relief could be granted, the Regional Administrator notifies the parties in writing and directs them to conciliate the dispute informally. The NPRM would provide 20 days for this process. It would permit an extension of this time if the parties agreed it was needed.

If conciliation occurs, the process is complete. If not, the parties must so inform the Regional Administrator. The Regional Administrator then requests documents from the recipient as to its position in response to the complaint. The respondent has 20 days to produce the evidence. The complainant is then given 15 days to rebut the evidence.

Once the evidence is received, the Regional Administrator would either prepare a draft decision or the Regional Administrator would determine that more information is needed. This additional information could be obtained in written form or through a hearing. The preparation of the draft decision must be completed by 15 days after the complainant rebuts the respondent's evidence, after the additional information is received, or after a hearing is held.

The Regional Administrator then submits the draft decision to UMTA Headquarters for review. If Headquarters agrees with it, the decision is sent immediately to all parties. If Headquarters disagrees, it has 10 days to resolve the dispute and have the decision issued.

The NPRM, therefore, proposes a complaint process that lasts for approximately 80 days. The NPRM, however, would permit UMTA to extend any deadlines for administrative convenience.

Section 604.17 would permit the Regional Administrator to impose remedies that would be appropriate to the finding. If the Regional Administrator finds that a violation has occurred and it is one in a continuing pattern of violations, the Regional Administrator has the authority to bar the recipient from future Federal funding for mass transportation. These provisions do not differ in substance from existing §§ 604.43(b)–604.44. UMTA requests comments on whether the rule should define "continuing pattern" and, if so, what the definition should be. Furthermore, UMTA asks commenters whether the rule should specify a specific penalty for violations including a continuing pattern of violations. For example, the rule could specify that a violation would result in a 10 per centum withholding of UMTA funds and a continuing pattern would result in a complete bar of any UMTA funds in the future.

Section 604.19 would add a new step in the complaint process. Since the initial decision would be made at the regional level, the NPRM provides for an appeal to the Administrator for review. The request for review must be made by the losing party within 10 days after the Regional Administrator issues the initial decision. The Administrator will take action on an appeal only if the losing party produces evidence that there are new matters of fact or points of law that were not available or known when the initial decision was made. If the Administrator takes action on an appeal, the NPRM provides the prevailing party with 10 days to rebut the evidence. After that evidence is received, the Administrator has 15 days to issue a final decision.

UMTA asks commenters to address whether the rule should provide an appeal prior to that proposed in Section 604.19. Such an intermediate step would permit the losing party to receive a review of the initial decision even though no new matters of fact or points of law that were not available or known when the initial decision was made have come to light.

UMTA also asks commenters to address the issue of whether it would be advantageous for the rule to set up an advisory committee made up of representatives of both recipients and private operators to review the submissions by complainants and respondents and offer advice to the UMTA decisionmaker. Such a review panel may be of particular help in the intermediate appeal process discussed in the paragraph above.

Section 604.21, like current § 604.45, provides that judicial review of a final agency action is authorized pursuant to sections 701–706 of the United States Code.

Definitions

The NPRM proposes several new definitions to the regulation. The definitions of "designated official" and "willing and able" have been discussed above. UMTA proposes a minor change to the definition of "charter bus operations." We proposed adding the phrase "with UMTA equipment or facilities funded or operating assistance provided under the Acts." There are two reasons for this proposal. First, it makes clear that the only charter bus operations which this regulation affects are those an UMTA recipient provides using UMTA assistance. As stated above, it is UMTA's current policy, and we propose to continue it, that any charter bus services which a recipient provides with 100 per centum local funds are not touched by this rule.

The second reason is for economy of words. In the current regulation every time the phrase charter bus operations appears it must be modified by "with UMTA equipment or facilities funded under the Acts" or a similar phrase. Adding this language to the definition will make the regulatory language less cumbersome.

One definition which UMTA proposes to eliminate is "urban area." The definition of "urban area" serves a triggering function under section 3(f). Once a recipient engages in charter operations outside the "urban area within which it provides regularly scheduled mass transportation services," its charter operations become subject to agreed upon ". . . arrangements, appropriate in the judgement of the Secretary, to assure that the financial assistance granted under [the] Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry." (49 U.S.C. 1602(f).) So long as a recipient keeps its charter bus operations within its "urban area," it need not comply with the "fair and equitable arrangements" for the protection of private operators imposed by its section 3(f) agreement with UMTA, although it must comply with incidental use presumptions pursuant to UMTA's and the Comptroller General's interpretations of the definition of mass transportation in section 12(c)(6) of the UMT Act. Currently, the charter regulation makes all of a recipient's charter bus operations, both within and beyond its urban area, subject the arrangements of a recipient's section 3(f) agreement when a recipient engages in charter operations outside its urban area.

The definition of "urban area" for purposes of the UMT Act is left to the Secretary's discretion. Under the UMT Act, the term "urban area" means any area "which is appropriate, in the judgement of the Secretary, for a public

transportation system to serve commuters or others in the locality." (49 U.S.C. 1608(c)(10).

The definition of "urban area" in the existing charter bus regulation consists of three parts: (1) The area in which a recipient *is authorized* by local and State, or Federal law to provide regularly scheduled mass transportation services; (2) the "urbanized area" as defined by the Bureau of Census; and (3) other areas as determined by the Secretary pursuant to section 12(c)(1) of the UMT Act. This definition is broader than the "urban area" referred to in the charter bus section of the UMT Act, which refers to the area "within which [the operator] provides *regularly scheduled mass transportation services.*" (Emphasis added).

The regulation's definition of "urban area" has been the focus of many of the charter bus complaints filed with UMTA. Various State statutes permit public bus operators to provide service anywhere within the State. Recipients in these States argue that the entire State is their "urban area" since they are authorized to provide service there. Consequently, these recipients contend that the intercity charter restrictions in the regulation do not apply to them.

Since the regulation's expansive definition has led to a number of complaints, UMTA proposed to redefine "urban area" in the ANPRM. The proposal would have limited a recipient's urban area to "the area within which it can reasonably be assumed that a recipient can provide mass transportation service, in morning and evening peak periods, to and from a central city." This proposed definition is based on a recent UMTA charter bus decision. In that decision, UMTA stated that the fact that State law may authorize a recipient to provide service on a statewide basis does not preclude UMTA from limiting its definition of the urban area to the area in which it is reasonable for the recipient to provide regularly scheduled mass transportation service. The result in this situation, without the submission of additional evidence by the recipient, was to limit the recipient's urban area to the territorial limits of the counties in which it provides service.

Thirty commenters commented on the proposed redefinition of "urban area." Nine favored the proposal. These commenters represent a range of support from both public and/or private providers. An equal number of commenters favored retention of the current definition. In general, these commenters stated that it provides the needed flexibility to apply to a variety of situations and that if a few States have caused problems, they should be handled as exceptions to the rule and not as a reason to penalize other UMTA recipients.

An additional 11 commenters offered specific comments on the problems with the proposed definition. These commenters, mainly public operators, argued that the proposed definition is too restrictive and that it will harm the consumer by limiting the available charter service area for public operators. Other commenters stated that the proposed definition needs to be expanded so that "area" is defined, too. As proposed, a communter asked if the "area" a bus route services is just the streets it travels on, a corridor one-mile on each side of the route, or perhaps, the entire county in which it operates.

UMTA has reviewed this whole issue and we propose to eliminate the definition from the rule. The reason for this is that the NPRM, unlike the existing rule, does not make any distinctions based on whether activities are performed within or outside of an urban area.

Commenters are invited to address these proposed changes and to suggest additional definitions that they believe are necessary or would be helpful.

Other Matters

The NPRM would not continue the existing revenue exception. Thus, the proposed requirements would apply to all applicants and only those recipients desirous of providing charter bus operations.

Section 604.2 of the existing charter bus regulation excludes from the scope of the regulation concerning intercity service any recipient who, together with all operators for the recipient, earned $15,000 or less in charter revenues during its most recently completed fiscal year. This provision was added to the final rule in 1976 based on UMTA's opinion that $15,000 in charter revenues is an insignificant amount and any recipient earning that amount or less would not be foreclosing willing and able private operators in the area. UMTA sought comments on this exception in the ANPRM to determine if it should be retained and, if so, whether the dollar amount should be raised.

Twenty-six commenters commented on the revenue exception. Seven comments argued that the regulation should provide no revenue exception. Several of these commenters argued that since the regulation is supposed to protect private operators, any exclusion is harmful to them because it permits some UMTA recipients to conduct unsupervised intercity charter operations.

The rest of the commenters favored the continuation of a revenue exclusion and offered many suggestions on how to calculate the dollar level. A few of these commenters suggested that it be set individually for each recipient and be based on a percentage of its operating expenses or annual revenues. Other commenters suggested that UMTA set levels but that they be tiered to the size of the operator or the size of the urban area.

The majority of the commenters, however, favored raising the dollar level to a specific amount. Suggestions of $24,000, $26,500, $30,000, $50,000 and $100,000 were made.

UMTA's 1983 Section 15 data indicates that 168 recipients provide charter service. One hundred twenty of these also reported their annual charter revenues. Forty-nine of those 120 recipients, or 40 percent, are currently excepted. Almost all of these are small operators who claim that the administrative burden of complying with the current regulation is beyond their administrative and financial capabilities.

If UMTA were to raise the ceiling to $50,000 or $100,000 as some commenters suggested, the percentage of recipients excepted from the regulation would increase to 68 percent and 80 percent, respectively.

UMTA is sympathetic to the recordkeeping problems that the current exception overcomes for small operators. The NPRM would drastically reduce the paperwork burdens on recipients. Based on this and our recognition that the UMT Act requires protections for private intercity charter operators from foreclosure by all UMTA recipients, we propose to delete the current revenue exception.

One issue that UMTA raised in the ANPRM is whether the rule should set a limit on the number of spare buses (spare ratio) that a recipient could use for charter service. UMTA does not have any regulatory restrictions on the spare ratio that a recipient may have. Instead, UMTA reviews each grant for new buses on a case-by-case basis to determine if the requested additional or replacement buses are needed.

UMTA received a total of 33 comments on this issue. Two-thirds of these commenters are public operators. Ten commenters favored the imposition of a spare ratio. Over one-half of these commenters were public operators. These commenters, however, suggested that the ratio should be locally determined. Others indicated that a ratio of 5 percent or 10 percent would be acceptable, but not higher.

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The remainder of the commenters opposed the imposition of any spare ratios. Many argued that it limits local flexibility in providing charter service and that any decision on the number of spare buses should be left up to the local transit operators. Other commenters argued that even if UMTA were to impose a spare ratio, UMTA should continue to monitor and limit the number of a recipient's spare buses through the grant making process.

UMTA agrees with the majority of the commenters and does not propose in the NPRM to limit the number of spare buses a recipient can have. We believe that the grant making process and the Triennial Review are the correct processes to review and determine the number of buses a recipient needs.

Legal Basis for Proposed Approach

The NPRM represents a marked change from the existing rule. One paramount concern in administrative law is that there be a sufficient legal basis to support any changes to existing regulations. This is particularly of concern here since it can be argued that section 3(f) of the UMT Act provides protections for only willing and able intercity private charter bus operators and that the NPRM's protections for private intracity charter bus operators go beyond UMTA's statutory authority. It is UMTA's opinion that the UMT Act provides the needed statutory support for the proposed changes.

Section 12(c)(6) provides an absolute prohibition on the provision of charter bus operations with UMTA assistance. The Comptroller General's Opinion in 1966 interpreted this prohibition, however, to permit a narrow exception. That opinion holds that UMTA assistance can be used to provide charter bus operations so long as that service is incidental to the provision of mass transportation service. The Comptroller General's opinion provides UMTA with the discretion to permit its recipients to provide some charter service. The provision of such service is merely a privilege granted and controlled by UMTA, not an absolute right.

To date, UMTA has limited the restrictions on charter service based on section 12(c)(6) to the incidental use presumptions in § 604.11 of the current regulation. The rest of the regulation implements the restrictions on intercity charter service enacted by Congress in section 3(f). It is UMTA's opinion that the language in section 12(c)(6) provides UMTA with the discretion to impose restrictions, in addition to those in section 3(f), if UMTA determines such restrictions are warranted. Based on our research to date, we believe that added restrictions are needed to carry out the legislative mandates in the UMT Act.

Furthermore, even if UMTA did not have broad discretion under section 12(c)(6), an identical implementation of sections 12(c)(6) and 3(f) is permissible. It is UMTA's opinion that if private operators are given the opportunity to provide charter operations *before* UMTA recipients, the private operators and the mass transportation equipment will be protected. Thus, UMTA assistance would be used to provide charter operations only incidentally, i.e., when private operators are not willing and able to provide the services.

Executive Order 12291

This is not a "major" regulation as defined in Executive Order 12291.

DOT Policies and Procedures on Improving Government Regulations

This is a "significant" regulation as defined in "DOT's Policies and Procedures on Improving Government Regulations" because of substantial public interest and the effects on competition.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96–354) requires each Federal agency to prepare an initial regulatory flexibility analysis for each notice of proposed rulemaking that, if promulgated, would have a "significant economic impact on a substantial number of small entities." The Act requires that each agency also prepare a final analysis that takes into consideration those comments received on the initial analysis. If the head of the agency determines, however, that the regulation will not, if promulgated, have the requisite impact, he or she can certify that finding in the regulation and include a brief statement explaining the reasons for the certification.

Based on UMTA's analysis, to date, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The small entities that are UMTA recipients are mainly Section 18 recipients. The small private entities are small private charter bus operators. UMTA recognizes that the NPRM may reduce the amount of charter service that Section 18 recipients provide. Although this may affect a substantial number of Section 18 recipients, we do not believe that the negative impact will be significant.

Similarly, any decrease in charter service provided by UMTA recipients under this rule could result in an increase in service provided by private charter operators, both large and small. UMTA believes that while a substantial number of small private operators may realize increased business, the impact will not be significant.

UMTA, however, seeks comments on this certification. If these comments and additional in-house research indicate that a Regulatory Flexibility Analysis is appropriate, such an analysis will be prepared for the final rule.

Regulatory Analysis

A copy of the regulatory analysis has been placed in the docket for public inspection. A brief summary of the benefits, and costs is provided below.

First, the proposed approach does not in any way rely on the regulation of charter rates to achieve the twin goals of the UMT Act: protection of UMTA equipment for mass transportation and protection of private intercity charter operators. A continuation of regulating rates is contrary to the Bus Regulatory Reform Act and this Administration's regulatory policies.

Second, this approach attempts to improve the economics of the private intercity charter bus industry. Although it does so at a potential cost to UMTA recipients, we believe this UMTA Act supports and calls for such action:

UMTA's research to date, however, would indicate that instead of a potential costs, the NPRM would actually improve recipients' revenues on a nationwide basis. Although a more detailed discussion can be found in the Draft Regulatory Analysis, UMTA finds that the generating of $45 milion in annual charter revenues costs recipients $47.5 million. Consequently, recipients, nationwide, lose $2.5 million annually. Therefore, the NPRM would, by reducing charter opportunities, improve recipients' financial situations.

Admittedly, the nationwide view does overlook some recipients who actually realize net positive cash flows from charter service. For these recipients, the NPRM would increase their operating deficits. Currently, UMTA's Section 9 and 18 programs do provide some operating assistance to offset this deficit. UMTA strongly believes, however, that operating expenses are a local concern and should not be borne by the Federal Government. To that extent, we are confident that any potential negative impacts on mass transportation operating funds resulting from a reduction in charter revenues will be made up by State and local subsidies.

Furthermore, it should be noted that modest improvements in operating efficiency could entirely offset the

revenue reductions occasioned by the NPRM. As mentioned above, significant savings could be realized by bringing down the spare ratio, reducing peak requirements, as well as by making use of more cost-efficient providers.

Third, this NPRM would shift the burden of proof from private operators and UMTA to UMTA recipients. It would do so by prohibiting a recipient from doing any charter service so long as there were a willing and able private operator. As discussed above, private operators have a difficult time enforcing the current regulation's protections for them. Not only do private operators have a difficult time distinguishing when a federally assisted bus is being used for charter service, but the difficultly in interpreting and understanding the cost allocation plan further restricts a private operator's ability to challenge a recipient's charter service. By shifting the burden of proof, UMTA believes that the protected class of private operators will be better served.

Fourth, this rule would be easier for UMTA to enforce. Not only does this NPRM propose strict deadlines for the processing of complaints, but by eliminating the need to review cost allocation plant, UMTA's staff will be able to process complaints more quickly.

Fifth, the NPRM would provide additional protections for private intracity charter operators. The NPRM would do so by making no distinction between the type of charter bus operations provided. Before a recipient could provide any charter service it must ensure that there are no willing and able private operators in the area in which it desires to provide charter service. As described above, UMTA research indicates that the private intracity charter bus operators are facing competition from UMTA recipients. It is UMTA's opinion that this problem can be appropriately remedied through the provisions imposed in this NPRM.

Based on these benefits and costs, it is UMTA's opinion that this NPRM would successfully correct many of the problems with the current regulation. UMTA is interested in comments on this approach in this NPRM and invites proposals for alternative ways of achieving UMTA's goal of correcting the problems with the existing regulations. In addition, we are interested in receiving information that will be useful in evaluating this regulation.

Collection of Information Requirements

The collection of information requirements contained in the proposed rule are being submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511). Comments on the proposed information collection requests must be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Department of Transportation. UMTA requests that the commenter also transmit an information copy of any such comments to UMTA Docket 82–I.

List of Subjects in 49 CFR Part 604

Administrative practice and procedures, Buses, Mass transportation.

List of Subjects in 49 CFR Part 604

Administrative practice and procedures, Buses, Mass transportation, Reporting and recordkeeping requirements.

In consideration of foregoing, UMTA proposes to revise Part 604 of Title 49 Code of Federal Regulations, to read as follows and to remove Appendices A and B.

PART 604—CHARTER BUS OPERATIONS

Subpart A—General

Sec.
604.1. Purpose.
604.3. Applicability.
604.5. Definitions.
604.7. Charter Bus Agreement.
604.9. Charter Bus Operations.
604.11. Procedures for Determining if a Private Charter Bus Operator is Willing and Able.
604.13. Reviewing Evidence Submitted by Private Charter Bus Operators.

Subpart B—Complaint Process

604.15. Filing a Complaint.
604.17. Remedies.
604.19. Appeal.
604.21. Judicial Review.

Authority: Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 103(e)(4) and 142(a) and (c); and 49 CFR 1.51.

Subpart A—General

§ 604.1 Purpose.

The purpose of this Part is to implement section 3(f) and section 12(c)(6) of the UMT Act (49 U.S.C. 1602(f) and 1608(c)(6)).

§ 604.3 Applicability.

This part applies to all applicants and recipients of Federal financial assistance under:

(a) Section 3 (excluding sections 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act (49 U.S.C. 1601 et seq.); or

(b) Sections 103(e)(4) and 142(a) and (c) of Title 23 United States Code which permit the use of Federal-Aid Highway funds to purchase buses.

§ 604.5 Definitions.

(a) All definitions in the UMT Act (at 49 U.S.C. 1608) are applicable to this part, except as may otherwise be provided in this section.

(b) "The Acts" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*), and those parts of Title 23 of the United States Code, 23 U.S.C. sections 103(e)(4) and 142(a) and (c) that provide funds for assistance to public bodies purchasing buses.

(c) "Administrator" means the Administrator of the Urban Mass Transportation Administration.

(d) "Charter bus operations" means transportation using equipment or facilities funded under the Acts, by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charge for the vehicle or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the incidental use of buses for the exclusive transportation of school students, personnel, and equipment.

(e) "Days" means calendar days in Subpart A and Federal working days in Subpart B.

(f) "Designated Official" means the applicant's and recipient's employee authorized to execute and file applications on behalf of the applicant or to enter into agreements on behalf of the recipient.

(g) "Interested party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter bus operations.

(h) "Recipient" means one that has received or is receiving Federal financial assistance under the Acts. The term includes subrecipients of a recipient and public bodies that receive or assistance that will be passed on to another public or quasi-public body, and any operator for a recipient, whether publicly or privately owned and may include lessees of federally assisted buses and other equipment.

(i) "Regional Administrator" means the Administrator of one of the Urban Mass Transportation Administration Regional Offices.

(j) "UMT Act" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

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(k) "UMTA" means the Urban Mass Transportation Administration, United States Department of Transportation.

(l) "Willing and able" means having the physical capability to actually provide charter bus service and the legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service in the area it proposes to provide such service.

§ 604.7 Charter bus agreement.

(a) Every applicant for financial assistance under sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act or 23 U.S.C. 103(e)(4) and 142 (a) and (c) must include two copies of a charter bus agreement signed by the applicant's designated official with each grant application submitted to UMTA after [insert effective date of rule]. Once the applicant and UMTA enter into a charter bus agreement, the applicant may incorporate that agreement by reference into any subsequent grant application.

(b) The text of the agreement follows:

I, (name), (title), agree that (name of applicant) will provide charter bus operations with equipment or facilities provided under the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. Section 1601 *et seq.*), or under 23 U.S.C. Sections 103(e)(4) and 142(a) and (c) (the Acts) only to the extent that there are no private charter bus operators willing and able to provide charter bus operations in the area the (name of applicant) desires to provide charter bus operations unless one or more of the exceptions in 49 CFR 604.9 applies.

I further agree that (name of applicant) will comply with the provisions of 49 CFR Part 604 before it provides any charter bus operations with equipment or facilities, provided under the Acts, that the requirements of 49 CFR Part 604 will apply to any such charter bus service that is provided, and that the definitions in 49 CFR Part 604 apply to this agreement.

Applicant

____

Name

____

Title

____

Date

Urban Mass Transportation Administration

____

Name

____

Title

____

Date

(c) If UMTA approves the grant application, the approving official shall sign the agreement when the grant application is approved. One copy of the signed agreement will be returned to the applicant.

§ 604.9 Charter bus operations.

(a) If a recipient desires to provide any charter bus operations with UMTA funded equipment or facilities it must first determine if there are any private charter bus operators willing and able to provide charter service in the area in which it desires to provide charter bus operations. To the extent that there are such private bus operators, the recipient is prohibited from providing charter bus operations unless one or more of the exceptions in § 604.9(b) applies.

(b) *Exceptions.* A recipient may enter into a contract with a willing and able private charter bus operator to provide charter bus service for the private charter bus operator if:

(1) The willing and able private charter bus operator is requested to provide charter bus service that exceeds its capacity and it is unable to obtain the additional capacity from other willing and able private charter bus operators; or

(2) The willing and able private charter bus operator is unable to provide of equipment accessible to handicapped persons itself or obtain the equipment from other willing and able private charter bus operators.

§ 604.11 Procedures for determining if a private charter bus operator is willing and able.

(a) To determine if there are any private charter bus operators willing and able to provide charter service in the area in which it desires to provide charter bus operations, a recipient must hold a public hearing:

(1) At least 60 days before it desires to begin charter bus operations; or

(2) Not more than 60 days after [insert effective date of this Part] if the recipient is providing charter bus operations in accordance with former 49 CFR Part 604 on [insert effective date of this Part] and desires to continue to provide charter bus operations.

(b) The recipient must:

(1) Publish a notice in a newspaper, or newspapers, of general circulation within the proposed charter service area;

(2) Send a copy of the notice to each private charter bus operator that requests that it be sent copies of such notices; and

(3) Send a copy of the notice to the United Bus Owners of America, 1275 K Street, NW., Suite 800, Washington, D.C. 20005 and the American Bus Association, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

(c) The notice shall include:

(1) The name of the recipient;

(2) A statement that the recipient desires to provide charter bus operations;

(3) A description of the charter bus operations which the recipient desires to provide;

(4) A description of the area in which the recipient desires to provide charter bus operations;

(5) A statement that any private charter bus operator may attend the hearing and present evidence that it is willing and able to provide the proposed or a portion of the proposed charter bus operators;

(6) A statement that the evidence necessary for the recipient to determine if a private charter bus operator is willing and able includes only the following:

(i) A statement that the private charter bus operator has the physical capability to actually provide the charter bus operations; and

(ii) A copy of the documents to show that the private charter bus operator has the requisite legal authority to provide the proposed charter bus operation and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter bus operations;

(7) A statement that the recipient shall review all evidence presented at the public hearing within 30 days of the public hearing, and within 60 days of the public hearing shall notify each private charter bus operator that presented evidence of the recipient's determination whether the private operator is "willing and able"; and

(8) A statement that the recipient shall not provide any charter bus service with equipment, facilities or operating assistance funded under the Acts to the extent that there are willing and able private charter bus operators unless it qualifies for one or more of the exceptions in 49 CFR § 604.9(b).

(d) The recipient shall hold a public hearing annually during the month in which it held its first hearing to redetermine the extent to which there are private charter bus operators willing and able to provide charter service in its desired charter bus operations service area. The recipient shall follow the procedures in 49 CFR 604.11 (b) and (c) and 604.13 for this process and include in the list of private operators receiving notice under § 604.11(b)(2), all private operators the recipient has determined under this Part are willing and able.

§ 604.13 Reviewing Evidence Submitted by Private Charter Bus Operators.

(a) The recipient shall review all evidence presented at public hearings held under 49 CFR 604.11 within 30 days of the public hearing.

(b) Within 60 days of the public hearing held under 49 CFR 604.11, the recipient shall notify each private charter bus operator that presented evidence of the recipient's determination whether the private operator is "willing and able." In addition the recipient shall provide a list of all willing and able private charter bus operators with the notification.

(c) The recipient shall review the evidence submitted by each private charter bus operator to determine if the evidence proves that the private charter bus operator has:

(1) The physical capability to actually provide charter bus service; and

(2) The required legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service.

(d) The recipient must determine that a private charter bus operator which meets the requirements in 49 CFR 604.11(c) is a willing and able private charter bus operator.

Subpart B—Complaint Process

§ 604.15 Filing complaint.

(a) An interested party ("complainant") who believes that a recipient is in violation of the requirements of this Part may submit a written complaint to the UMTA Regional Administrator for the region in which the alleged violation has occurred. The Complainant shall also send a copy of the complaint to the recipient ("respondent").

(b) If the Regional Administrator determines that the complaint is not without obvious merit and that it states grounds on which relief may be granted, based on the information supplied by the complaint, the Regional Administrator in writing shall advise the complainant and respondent to attempt informally to conciliate the dispute. The period for informal conciliation shall last 20 days from the date that the Regional Administrator orders it, unless an extension is mutually agreed upon by the parties.

(c) If the parties are unable to conciliate the dispute, either party shall so notify the Regional Administrator in writing. The Regional Administrator shall then give notice to the respondent in writing that it has 20 days from the date of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant.

(d) After the Regional Administrator receives the respondent's evidence, the Regional Administrator shall inform the complainant that it has 15 days from the date of the notice to rebut the respondent's evidence. The complainant shall provide a copy of this information to the respondent.

(e) The Regional Administrator shall review the evidence submitted by the parties and prepare a recommended written decision, including recommended remedies, on the complaint based on the written record within 15 days after the time period provided in paragraph (d) of this section expires. If, however, the Regional Administrator determines within this 15-day period that further investigation is necessary, including the submission of additional information or the holding of an informal evidentiary hearing, the Regional Administrator shall so inform the parties in writing. In addition, either party may request an informal evidentiary hearing prior to the Regional Administrator's recommended written decision. The Regional Administrator may grant or deny such request. The date and location of the hearing shall be arranged by the Regional Administrator in consultation with the parties. If a hearing is held, the parties shall submit in writing any new evidence introduced at the hearing to the Regional Administrator within 10 days after the hearing. The notice to the parties of the need for additional information or a hearing shall stop the running of 15-day time period required in this paragraph. The Regional Administrator shall, however, prepare a recommended written decision based on the written record within 15 days after the additional information is received or 15 days after the hearing is held or the new evidence introduced at the hearing is submitted in writing, whichever is later.

(f) The Regional Administrator's recommended written decision shall include a statement on whether a violation has been found and an analysis and explanation of the findings upon which the decision is based.

(g) The Regional Administrator shall submit each recommended written decision to UMTA Headquarters for concurrence. Absent special circumstances, UMTA Headquarters shall inform the Regional Administrator of its concurrence or nonconcurrence 10 days after receipt. If UMTA Headquarters concurs in the recommended decision, it shall so inform the Regional Administrator who immediately will send a copy of the decision to the parties. If UMTA Headquarters nonconcurs, the disagreement will be worked out internally within 10 days. After an agreement on the decision is reached, the Regional Administrator shall immediately send a copy of the decision to the parties.

(h) UMTA may extend the deadlines imposed in this part for administrative convenience by notifying all parties in writing of the extensions.

§ 604.17 Remedies.

(a) If the Regional Administrator determines that a violation of this part has occured, the Regional Administrator may order such remedies as the Regional Administrator determines are appropriate.

(b) If the Regional Administrator determines that there has been a continuing pattern of violations of the terms of this part, the Regional Administrator, with UMTA Headquarters' concurrence, may bar the respondent from the receipt of further financial assistance for mass transportation facilities and equipment.

§ 604.19 Appeal.

(a) The losing party may appeal the decision to the Administrator within 10 days of its issuance. The losing party shall include in its appeal the basis for the appeal and evidence to support the position. A copy of the appeal shall be sent to the prevailing party by the losing party.

(b) The Administrator will only take action on an appeal if the losing party presents evidence that there are new matters of fact or points of law that were not available or known during the investigation of the complaint. If action is taken on an appeal, the Administrator shall provide the prevailing party with 10 days to rebut the evidence contained in the request and make a final determination of the complaint within 15 days of the receipt of such evidence.

§ 604.21 Judicial review.

The Regional Administrator's decision, or the Administrator's decision on appeal if so requested, shall be final

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and conclusive on all parties, but is subject to judicial review pursuant to sections 701–706 of Title 5 of the United States Code.

Issued on: March 3, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 86-4854 Filed 3-5-86; 8:45 am]

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federal register

Thursday
March 6, 1986

Part IV

Department of Education

Office of Vocational and Adult Education

34 CFR Parts 400, 401, and 415

Vocational and Adult Education: State Vocational Education and Discretionary Programs; Proposed Rule

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DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

34 CFR Parts 400, 401, and 415

Vocational and Adult Education: State Vocational Education Discretionary Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the State Vocational Education Program and make a technical amendment in the regulation governing one of the Secretary's Discretionary Programs of Vocational Education. These proposed regulations would implement statutory changes contained in Pub. L. 99–159 and make minor technical and typographical corrections.

DATE: Comments on these proposed regulations must be received on or before April 21, 1986.

ADDRESSES: Comments should be addressed to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5609. Telephone: (202) 732–2237.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, Chairperson, Vocational Education Regulations Task Force, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202–5609. Telephone: (202) 732–2237.

SUPPLEMENTARY INFORMATION:

Background

These proposed amendments implement recent changes to the Carl D. Perkins Vocational Education Act (Act), 20 U.S.C. 2301 *et seq.*, made by Title VII of the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99–159.

The regulations being amended affect the State Vocational Education Program which assists States in conducting, directly or through awards to local recipients, vocational education programs. The regulations that govern the State Vocational Education Program are in 34 CFR Parts 400 and 401, and were published in the Federal Register on August 16, 1985 (50 FR 33226).

Summary of Major Provisions

(a) Section 401.15(d) is revised to implement the new statutory requirement that States certify to the Secretary the establishment and membership of State councils by the beginning of each State plan period. Under the existing regulations State councils must be certified at least 90 days prior to the beginning of each State plan period.

(b) Section 401.19 is revised by eliminating the requirement that the State plan include a description of the manner in which the State reserves funds for services an activities for individuals with limited English proficiency. This requirement is unnecessary in light of the new statutory formula for reserving funds for such persons.

(c) Sections 400.4(b) and 401.30(b)(1) are revised to reflect the new statutory requirement that the Secretary provide funds to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for State councils on vocational education. The Territories were not provided funds to establish State councils under the current regulations.

(d) Section 401.96(b) is revised to implement the new statutory formula for utilizing funds to provide vocational education services and activities for individuals with limited English proficiency under the Vocational Opportunities Progam for disadvantaged individuals. These proposed regulations interpret the statute as distributing funds based on the number of individuals with limited English proficiency enrolled in vocational education. Because of interpretive difficulties with the original statutory formula, the existing regulations permit States to implement the formula in several ways.

(e) Section 401.97 is revised to reflect the new statutory provisions which authorizes the use, under certain conditions, of in-kind contributions to meet the matching requirement under the Vocational Education Opportunities Program for disadvantaged individuals. The current regulations allow for the use of cash expenditures only. The proposed regulations would authorize an eligible recipient to make an in-kind contribution to the extent it determines that it cannot otherwise contribute. Additional guidance regarding the permissible use of in-kind contributions in connection with projects, services, and activities under the Vocational Education Opportunities Program for disadvantaged persons may be found in Subpart G of 34 CFR Part 74.

(f) Sections 401.102 and 401.105 implement the new statutory requirements that a State may not expend for State administration of its Consumer and Homemaking Education Program and its Comprehensive Career Guidance and Counseling Program under Titles III–B and III–D, respectively, more than six percent of its allotment for each program. The existing regulations impose a six percent cap on expenditures for State leadership.

Executive Order 12291

These proposed regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Under the State Vocational Education Program, grants for vocational education purposes are available only to States and State agencies. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. To the extent that these regulations have an impact on small entities, they repeat statutory requirements. Federal regulations governing the State grant program do not impose any non-statutory requirements that will have a significant economic impact on the small entities affected. States are authorized to establish individual application requirements under the State program.

Intergovernmental Review

The State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education in 34 CFR Parts 401 and 415 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

General Comments

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments, suggestions, and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 45th day from the date of publication of these proposed regulations will be considered.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 620, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is also invited on whether there may be further oppurtunities to reduce any regulatory burdens found in these proposed regulations.

Special Issues

(a) Section 203(a)(3) of the Act, as amended, contains a new formula for utilizing funds for programs, services, and activities for individuals with limited English proficiency under the Vocational Education Opportunities Program for disadvantaged individuals. Comments are invited on the Secretary's interpretation of the formula (§ 401.96(b)). Of particular interest is whether the interpretation that funds are distributed on the basis of the number of individuals with limited English proficiency enrolled in vocational education raises special problems.

(b) Section 502(b) of the Act now permits the use of in-kind contributions in satisfying the matching requirement in Vocational Education Oppurtunities Programs serving disadvantaged individuals. However, section 201(c)(2) of the Act continues to require that Federal and matching funds reserved for disadvantaged individuals be used solely for the supplemental or additional costs of programs, services, and activities for such individuals. The Secretary is therefore inviting comments on—

(1) Whether additional guidance is needed on the use of in-kind contributions; and

(2) What problems users foresee in the implementation of this provision, including recommendations on how the problems might be solved.

(c) Sections 401.102 and 401.105 of the regulations now restrict expenditures under the Consumer and Homemaking Education Program and the Comprehensive Guidance and Counseling Program for State administration to six percent. Section 400.4(b) defines the term "administration," and the Secretary interprets "State leadership" activities to include, but not be limited to, curriculum development activities, personnel development, technical assistance, or research activities. Comments are requested on whether the regulations should provide more explicit guidance on State leadership activities.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 400 and 401

Adult education, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Private schools, Reporting and recordkeeping requirements, Schools, School construction, Vocational education, Women.

34 CFR Part 415

Educational facilities, Reporting and recordkeeping requirements, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Numbers 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), and 84.053 (State Councils on Vocational Education). Catalog of Federal Domestic Assistance Numbers have not been assigned for the Comprehensive Career Guidance and Counseling Program)

Dated: March 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Parts 400, 401, and 415 as follows:

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

1. The authority statement for 34 CFR Part 400 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.4 [Amended]

2. In § 400.4, paragraph (b) is amended by removing the definition of "Insular Area."

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

3. The authority statement for 34 CFR Part 401 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

4. in § 401.13, paragraph (a) introductory text is revised, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

* * * * *

(b) A State shall, in accordance with § 401.91(b), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 111(b); 20 U.S.C. 2321(b))

5. Section 401.14 is revised to read as follows:

§401.14 Must a State establish a State council on vocational education?

A State that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed—

(a) By the Governor; or

(b) In the case of States in which the members of the State board of education are elected, including election by the State legislature, by the State board of education.

(Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98–1129, 98th Cong. 2d Sess., p. 89 (1984))

6. In § 401.5, paragraph (d) is revised to read as follows:

§ 401.15 What are the membership requirements of the State council on vocational education?

* * * * *

(d) Each State shall certify to the Secretary the establishment and membership of the State council by the beginning of each State plan period described in § 401.17.

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(Sec. 112 (a), (b); 20 U.S.C. 2322 (a), (b))

7. In § 401.16, paragraph (b)(1) is revised to read as follows:

§ 401.16 What are the responsibilities of the State council on vocational education?

* * * * *

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

* * * * *

(Sec. 112 (c)–(f); 20 U.S.C. 2322 (c)–(f))

8. In § 401.19, paragraph (b)(6) is revised and paragraph (b)(14) is removed to read as follows:

§ 401.19 What must the State plan contain?

* * * * *

(b) * * *

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

* * * * *

§ 401.22 [Amended]

9. In § 401.22(b)(1), "national" is revised to read "natural".

10. In § 401.30, paragraph (b)(1) is revised to read as follows:

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

* * * * *

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

* * * * *

11. In § 401.73, paragraph (c)(2)(xi) is revised to read as follows:

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

* * * * *

(c) * * *
(2) * * *
(xi) State administration and leadership, including the activities of student organizations, subject to § 401.102(c).

(Secs. 311, 312 (a), (b); 20 U.S.C. 2361, 2362 (a), (b))

12. In § 401.76, paragraph (c)(2)(ix) is revised to read as follows:

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

* * * * *

(c) * * *
(2) * * *
(ix) State and local administration, including supervision, subject to §§ 401.93(b) and 401.105(c);

* * * * *

13. In § 401.93, paragraph (b)(1) is revised to read as follows:

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

* * * * *

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

* * * * *

14. In § 401.96, paragraph (b) is revised to read as follows:

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

* * * * *

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient to provide vocational education services and activities for individuals with limited English proficiency at least in proportion to the number of individuals with limited English proficiency enrolled in vocational education in that eligible recipient in the program year preceding the program year in which the determination is made, compared to the total number of disadvantaged individuals, including individuals with limited English proficiency, so enrolled in the preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for those individuals under § 401.92(b) and ⅛ (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of ½ of that same amount.

In addition to the assumptions made in the preceding paragraph, assume further that eligible recipient X serves 25 individuals with limited English proficiency in its vocational education program. In the succeeding program year, if eligible recipient X receives an award of $1,000 for disadvantaged individuals under the Vocational Education Opportunities Program, eligible recipient X must use $500 (or 25 individuals with limited English proficiency served by eligible recipient X/50 disadvantaged and limited English proficient individuals served by eligible recipient X times $1,000) for individuals with limited English proficiency.

(Sec. 203(a) (2), (3); 20 U.S.C. 2333(a) (2), (3))

15. Section 401.97 is revised to read as follows:

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for these costs from local sources.

(b) Contributions from local sources towards the non-Federal share of the costs of projects, services, and activities for disadvantaged individuals under the Vocational Education Opportunities Program must be in cash or, to the extent the eligible recipient determines that it cannot otherwise provide the contribution, in the form of in-kind contributions, fairly valued, including facilities, overhead, personnel, equipment, and services.

(Sec. 502(b); 20 U.S.C. 2462(b))

16. In § 401.102, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

* * * * *

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and preparation in home economics education.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

17. In § 401.105, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

* * * * *

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Secs. 332(c), 333; 20 U.S.C. 2362(c), 2363)

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

18. The authority statement for 34 CFR Part 415 is revised to read as follows:

Authority: 20 U.S.C. 2417, unless otherwise noted.

§ 415.31 [Amended]

19. In § 415.31, paragraph (i)(2)(ii), "to the types" is revised to read "of the types".

[FR Doc. 86–4921 Filed 3–5–86; 8:45 am]

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Federal Register

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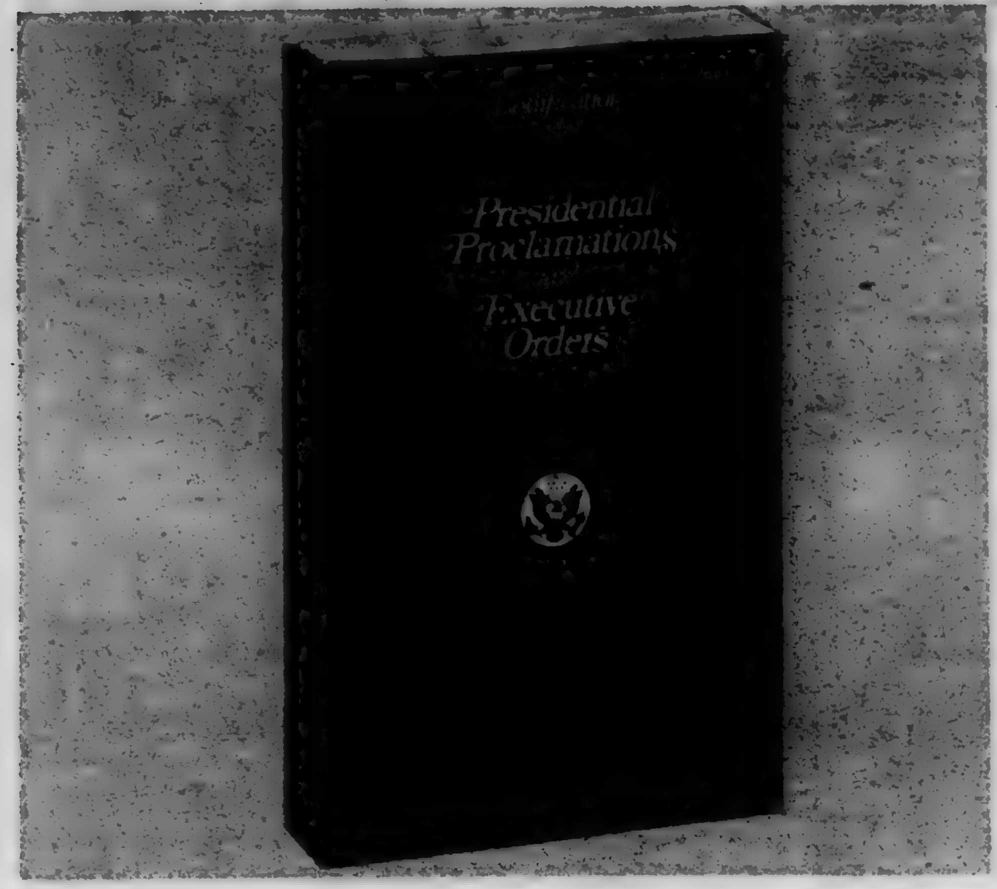

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federal register

Friday
March 7, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
  Environmental Protection Agency
Aviation Safety
  Federal Aviation Administration
Color Additives
  Food and Drug Administration
Communications Common Carriers
  Federal Communications Commission
Endangered and Threatened Species
  Fish and Wildlife Service
Foreign Trade
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  Housing and Urban Development Department
Hazardous Waste
  Environmental Protection Agency
Health Facilities
  Public Health Service
Labeling
  Food and Drug Administration
Marketing Agreements
  Agricultural Marketing Service
Natural Gas
  Federal Energy Regulatory Commission

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 20;
9 am and 1 pm.
(identical sessions)
WHERE: Office of the
Federal Register,
First Floor
Conference Room,
1100 L Street NW,
Washington, DC
RESERVATIONS: Ruth Reedy,
202-523-5320
for reservations

DENVER, CO

WHEN: March 24; at 9 am.
WHERE: Room 239,
Federal Building,
1961 Stout Street,
Denver, CO.
RESERVATIONS: Elizabeth Stout
Denver Federal
Information Center,
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.
WHERE: Room 7A23,
Earl Cabell Federal
Building,
1100 Commerce Street,
Dallas, TX.
RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471,
for reservations

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Price Support Programs
Commodity Credit Corporation

Railroads
Interstate Commerce Commission

Reporting and Recordkeeping Requirements
Minerals Management Service

South Africa
State Department

Wine
Alcohol, Tobacco and Firearms Bureau

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures; Request for Comments

Correction

In FR Doc. 86-4167, beginning on page 6729, in the issue of Wednesday, February 26, 1986, make the following correction:

On page 6729, second column, under "Regulatory Flexibility Act", eighth line, before "have", insert "not".

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 629]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 629 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 7–13, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 629 (§ 907.929) is effective for the period March 7–13, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended [7 CFR Part 907], regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674]. This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on March 4, 1986, at Yuma, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is good. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it it impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.929 Navel Orange Regulation 629 is hereby added to read:

§ 907.929 Navel Orange Regulation 629.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 7, 1986 through March 13, 1986, are established as follows:

(a) District 1: 1,050,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: March 5, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-5176 Filed 3-6-86; 9:21 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1430

Implementation of Dairy Termination Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the Dairy Termination Program authorized by section 201 of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Under the program the Commodity Credit Corporation (CCC) will enter into contracts with producers of milk in the forty-eight States of the continental United States who agree to sell for slaughter or export all dairy cattle in which they have an interest and who, for a period of five years, agree not to acquire any interest in dairy cattle or the production of milk or make available to any person any milk production capacity that becomes available because of the producer's compliance with the program.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box

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2415, Washington. DC 20013, Telephone: (202) 447-5621.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with procedures implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Section 201(d)(3) of the Agricultural Act of 1949 (the "1949 Act"), as amended by Title I of the Food Security Act of 1985 (Pub. L. 99-198) (the "1985 Act") provides that the Secretary of Agriculture shall establish and carry out a Dairy Termination Program for the 18-month period beginning April 1, 1986. Section 102 of the 1985 Act provides that the rulemaking requirements set forth in section 553 of title 5, United States Code, shall not apply with respect to the implementation by the Secretary of Agriculture of section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) as amended by section 101 of the 1985 Act, including determinations made regarding the Dairy Termination Program.

An Environmental Evaluation with respect to the Dairy Termination Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A Final Regulatory Impact Analysis of this regulation has been prepared. Copies of the analysis are available to the public by contacting Jerry W. Newcomb.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

These regulations implement the Dairy Termination Program as authorized by section 201(d)(3) of the 1949 Act, as amended. Under the program, the Commodity Credit Corporation (CCC) will enter into contracts with milk producers who agree to to sell their dairy cattle for slaughter or export and terminate milk production for five years. Generally, a producer will be eligible to participate in the Dairy Termination Program and receive payments under the program only if all producers on all units with respect to which such producer or any related person was a producer on or after January 1, 1986, execute a contract to participate in the program. Producers must submit bids to enter into the contracts with CCC. If a bid is accepted, CCC will pay the producer an amount which is equal to the bid in dollars and cents per hundredweight multiplied by the milk base established for the contract. Only producers of milk in the forty-eight contiguous States of the continental United States are eligible to participate in the program. At least one of the participating producers who is a party to a contract must: (1) Have been continuously engaged in milk production from January 1, 1985, through the bid date, unless prevented from doing so because of dairy herd conditions beyond the producer's control; or (2) Be entitled to claim, in establishing a milk base under the contract (i.e., a contract base), the quantity of milk marketed for commercial use by another producer. In establishing a contract base, a producer may claim the quantity of milk marketed for commercial use by another producer only if: (1) The producer claiming such milk marketings commenced the production of milk on or after January 1, 1985; (2) The other producer was, or is, a family member of the producer claiming such milk marketings; and (3) The other producer's entire herd and facility were transferred to the producer claiming such marketings directly by reason of a gift from, or death of, the other producer.

The contract base is determined based upon the lesser of the quantity of milk marketed for commercial use by the producers entering into a contract with CCC during the twelve-month period ending June 30, 1985 or the twelve-month period ending December 31, 1985.

Producers may submit bids to enter into contracts with CCC for one or more of the following periods: (1) April 1, 1986 through August 31, 1986; (2) September 1, 1986 through February 28, 1987; and (3) March 1, 1987 through August 31, 1987. The period for which a bid is accepted by CCC, if any, will be considered to be the "contract disposal period". With two limited exceptions, the following dairy cattle must be slaughtered or exported by the end of the contract disposal period: (1) All dairy cattle which, on or after the date the bid was submitted, were located on dairy units with respect to which the contracting producers or related persons were producers on or after January 1, 1986, and (2) All dairy cattle in which, on or after the bid date, any contracting producers or related persons had an interest.

The two exceptions to the foregoing requirements are that: (1) Calves and unbred heifers may be slaughtered by September 30, 1986, with respect to contracts entered into under which producers agree to slaughter their dairy cattle during the first contract disposal period, and (2) CCC may permit cattle sold for export during the third contract disposal period to be exported not later than September 30, 1987. After the disposal of such dairy cattle, the contracting producers or related persons will not be permitted for a five-year period (the "nonproduction period") to acquire any interest in dairy cattle or milk, or to acquire or make available any milk production facility that becomes available for use as a result of the compliance by any person with the terms and conditions of the Dairy Termination Program. In addition, any new milk production facility erected on any unit on which a contracting producer or related person was a producer on or after January 1, 1986, cannot be used during the nonproduction period.

Any person who knowingly purchases dairy cattle which are sold as a result of the requirements of a contract under the Dairy Termination Program will be subject to a penalty of up to $5,000 for each head of such cattle which are not slaughtered or exported within the time limits prescribed by the terms and conditions of the program regulations. The liability of such buyers for the failure to slaughter or export such dairy cattle within the prescribed time periods will not affect the liability of the contracting producers to assure that such dairy cattle are slaughtered or exported.

The regulations provide that dairy cattle which are destroyed because of a disease or for any other reason will be considered to have been sold for slaughter. The regulations also provide that any dairy cattle which are exported to meet the requirements of the program cannot reenter the fifty States of the United States, its territories or possessions.

In addition, the regulations specify that some sales of dairy cattle which are required to be sold for slaughter or export will be permitted prior to the beginning of the contract disposal period. This will permit normal culling and thus allows for the maintenance, consistent with the overall nature of the program, or normal seasonal marketing patterns.

The regulations also specify branding requirements for dairy cattle which are sold for slaughter or export under the program and limit the time period which may expire between the date the dairy cattle are sold for slaughter or export and the actual date such cattle are slaughtered or exported. The regulations limit to one the number of intermediate buyers between the sale of the dairy cattle by the owner for slaughter or export and the actual slaughter or export of such dairy cattle. Except as otherwise permitted by CCC, contracting producers will be required to present a certification of the slaughter of the dairy cattle by the slaughtering party or, for dairy cattle which are exported, an official certification of export.

The regulations provide for the assessment of other penalties by CCC as a result of the failure of the contracting producers to comply with the terms and conditions of the Dairy Termination Program. Penalties may be assessed in those situations where a contracting producer or related person acquires an interest in milk or in dairy cattle contrary to the terms and conditions of the program. In addition, if a contracting producer makes a false statement concerning herd sizes or sales of dairy cattle such producer will be subject to a penalty in the amount of $5,000 for each head of dairy cattle which is represented by such false statement. A penalty in the amount of $1,000 may also be assessed for any other program violation.

The regulations provide that successful bidders may elect one of two options to receive cash payments under the Dairy Termination Program. Under the first option, producers may receive up to 80 percent of their payment in the first year following herd disposition with the remainder paid in four equal annual installments thereafter. This option will permit the producer to receive payments in five equal installments by choosing a 20 percent payment as the first payment. Under the second option, a producer may choose to receive, as an initial payment, up to 85 percent of the payment in the second year following the herd disposition with the remainder paid in three equal annual installments thereafter.

If there is a failure to comply with any of the terms and conditions of the program, all payments previously made under a program contract must be refunded to CCC and no further payments will be made. Contracting producers will be jointly and severally liable for all refunds and related charges (i.e., interest and late payment charges) which are determined to be due and owing to CCC under the program.

The maximum bids which will be accepted under the program may vary by region if such variations are determined to be necessary to avoid undue market effects. These regulations also provide that bids will be accepted which will result in greater numbers of dairy cattle being sold for slaughter under the program in the first and third contract disposal periods rather than in the second contract disposal period.

CCC will not permit contracts to be assigned under the Dairy Termination Program unless a contracting producer dies, in which case CCC may permit the estate of the contracting producer to assign the contract. CCC will permit the assignment of payments under the program in accordance with the provisions of 7 CFR Part 1409, except that such assignments may also be made to secure or pay preexisting indebtedness of the contracting producer.

This final rule also sets forth other terms and conditions of the Dairy Termination Program.

The information collection requirements of this subpart have been approved by the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and OMB number 0560-0124 has been assigned.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

PART 1430—[AMENDED]

Accordingly, a new subpart is added to 7 CFR Part 1430 as follows:

Subpart—Dairy Termination Program

Sec.
1430.450 General statement.
1430.451 Administration.
1430.452 Definitions.
1430.453 Eligibility requirements.
1430.454 Related persons.
1430.455 Base establishment.
1430.456 Bid submission.
1430.457 Dairy herd disposal and nonproduction period requirements.
1430.458 Sales for slaughter or export.
1430.459 Payments.
1430.460 Producer and purchaser penalties.
1430.461 Misrepresentation, scheme and device, and fraud.
1430.462 Refunds to CCC; Joint and several liability.
1430.463 Cumulative liability.
1430.464 Assignment of payments.
1430.465 Setoffs and withholdings.
1430.466 Appeals.
1430.467 Performance based upon advice or action of Country or State Committee.
1430.468 Miscellaneous provisions.
1430.469 Other regulations.
1430.470 Paperwork Reduction Act assigned numbers.

Authority: Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat 1052, as amended (7 U.S.C. 1446(d)); Sections 4 and 5 of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

Subpart—Dairy Termination Program

§ 1430.450 General statement.

This subpart implements the Dairy Termination Program which is authorized by section 201(d)(3) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985 (Pub. L. 99-198) for the eighteen-month period beginning April 1, 1986. The purpose of the program is to achieve reductions in the quantity of milk marketed for commercial use. Under the program, the Commodity Credit Corporation will enter into contracts with producers under which producers will agree to sell their dairy cattle for slaughter or export and terminate milk production for a five-year period.

§ 1430.451 Administration.

(a) The program will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and shall be carried out in the field by Agricultural Stabilization and Conservation State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this subpart, or

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(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1430.452 Definitions.

In determining the meanings of the provisions of this subpart, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing reconstitution of farms in Part 719 of this chapter.

(a) *Acceptable evidence of milk marketed for commercial use* means documentation of the quantity of milk marketed for commercial use which is considered to be sufficient by CCC and verified through compliance checks and includes such items as:

(1) Monthly sales receipts or check stubs; or

(2) Computer printouts or handwritten reports prepared by a third party showing milk marketings certified to be complete and accurate by the preparer, and verified by actual marketing evidence.

(b) *Actively engaged in the production of milk* means engaged in the production and marketing of milk for commercial use in the United States.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(d) *Bid* means a bid(s) submitted to obtain a contract, such bids being the amount of the nearest penny per hundredweight which when multiplied by the contract base shall constitute the maximum payment allowable under the contract.

(e) *Bid date* means the date on which the participating producers in the contracting entity submit a signed bid.

(f) *Brand or Branded* means the marking of dairy cattle in accordance with instructions from the county ASCS office.

(g) *Calf* means any female dairy bovine which weighs less than 500 pounds and is not pregnant.

(h) *CCC* means the Commodity Credit Corporation.

(i) *Contract* means the DTP Contract when executed by CCC after acceptance of a bid by CCC.

(j) *Contract base* means the milk base for the contracting entity as determined in accordance with § 1430.455 of this subpart.

(k) *Contract disposal period* means the dairy herd disposal period applicable to the contract.

(l) *Contract units* means units which are either (1) used to establish a contract base or (2) units to which the exemption in § 1430.453(c) of this subpart is applicable.

(m) *Contracting entity* means the producer or producers who submit a bid and are party to the same contract.

(n) *County ASCS office* means the office of the county committee in the county in which all or a portion of one or more of the units from which marketings used to establish the contract base are located and which the contracting entity elects to be the location through which all business related to the bid and contract shall be conducted.

(o) *County committee* means an ASCS county committee as established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(p) *Cow* means any female dairy bovine that has had one or more calves.

(q) *Dairy cattle* means cows, heifers, and calves.

(r) *Dairy Termination Program (DTP)* means the program for purchasing by contract the termination of milk production by producers which is required by section 201(d)(3) of the Agricultural Act of 1949, as amended by the Food Secruity Act of 1985 (Pub. L. 99–198).

(s) *Dairy herd disposal* means the disposal of all dairy cattle in accordance with the provisions of this subpart and the contract.

(t) *Disposal period* means a period within which a producer must sell for slaughter or export all dairy cattle required to be sold by the contract.

(u) *Heifer* means any female dairy bovine which: (1) Weights 500 pounds or more or is pregnant; and (2) Has not yet had a calf.

(v) *Herd disposal completion date* means, except as otherwise specified in this subpart, the date on which the last of the participating producers in the contracting entity certifies to the satisfaction of CCC that the dairy cattle disposal which is required to be made by the end of the contract disposal period has been completed.

(w) *Interest in dairy cattle* means any ownership or financial interest of any kind, whether present, future, or conditional, in dairy cattle, including any interest as a lessee or lessor.

(x) *Interest in the production of milk* means sharing in the risk of production of or the proceeds from the sale of milk.

(y) *Marketed for commercial use* means milk which has been produced in the United States and also disposed of in the United States in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(z) *Marketed milk* means milk produced in the United States and marketed for commercial use.

(aa) *Milk* means milk of dairy cows.

(bb) *Milk production facility* means all buildings used for the production or handling of milk.

(cc) *Nonproduction period* means the five-year period that begins on the day after the earlier of: (1) The last day of the contract disposal period; or (2) the herd disposal completion date.

(dd) *Participating producer* means any of the actual producers who is a party to a DTP contract.

(ee) *Person* means an individual, partnership, association, corporation, trust, estate, or other business enterprise or other legal entity or a State, a political subdivision of a State, or any agency thereof.

(ff) *Principal producer* means the producer who is designated on the contract as the person to receive communications from the county ASCS office concerning the contract.

(gg) *Producer* means any person who: (1) Is involved in, contributes to, or has any interest, including any ownership or financial interest, in any unit that is used for the production of milk, and (2) shares in the risk and/or proceeds of the production of milk from such unit.

(hh) *Program regulations* means the regulations contained in this subpart.

(ii) *Related person* means with respect to any participating producer any person identified as a related person under the provisions of § 1430.454 of this subpart.

(jj) *Secretary* means the Secretary of Agriculture of the United States.

(kk) *Unit* means the dairy cattle, milk production facilities, and land used together to produce milk.

(ll) *United States* means, except as otherwise specified in this subpart, the forty-eight contiguous States in the continental United States.

§ 1430.453 Eligibility requirements.

(a) Except as provided in paragraph (c), in order for any producer to be eligible for payments under a contract under this subpart, all producers on all units with respect to which any participating producer or related person was a producer on January 1, 1986, must sign and be party to the same contract.

(b) Only those persons who were producers of milk in the United States as of the bid date are eligible for payments under the contract except with respect to an assignment of payments made pursuant to the terms and conditions of the contract and this subpart.

(c) The provisions of paragraph (a) shall not be applicable to any unit from which, at the election of the participating producers, no quantity of milk marketed for commercial use will be used to establish a contract base. However, with respect to any such unit:

(1) All dairy cattle on such unit on or after the bid date must be slaughtered or exported by the end of the contract disposal period;

(2) No milk production facility on any such unit may be used to produce milk during the five-year nonproduction period for the contract; and

(3) No new milk production facility may be utilized on such unit during the nonproduction period either for purposes of producing milk or to maintain dairy cattle.

(d) The contracting entity must submit a bid by the final date for submitting bids established by CCC for the program.

(e) Each participating producer must file, by the bid date, the herd report required by paragraph (h).

(f) A contract base must have been established for the contract by the bid date.

(g) All participating producers must sign the contract.

(h) Each participating producer must, by the bid date, file with the county ASCS office a report showing for all units with respect to which such producer or related person had an interest in dairy cattle or in the production of milk on January 1, 1985, January 1, 1986, or the bid date:

(1) The number of cows on each such unit as of each of those dates;

(2) The number of heifers on each such unit as each of those dates; and

(3) The number of calves on each of those units as of each of those dates.

(i) The herd report required by paragraph (h) shall also show:

(1) Any transfer on or after January 1, 1986, of any dairy cattle onto any unit, from which marketings of milk for commercial use will be used to establish a contract base;

(2) Any transfer on or after January 1, 1986, of any dairy cattle from any unit with respect to which any participating producer or related person had an interest in dairy cattle or in the production of milk on or after January 1, 1986; and

(3) Any dairy cattle with respect to which any participating producer or related person had an interest on or after January 1, 1986, if the participating producer or related person no longer has an interest in such dairy cattle.

(4) The disposition or status of all dairy cattle to which the provisions of paragraphs (i) (2) and (3) are applicable.

(j) At least one of the participating producers in the contracting entity must either: (1) have been actively engaged in the production of milk continuously from January 1, 1985 through the bid date unless CCC determines that such continuous production of milk was not possible due to dairy herd conditions beyond the producer's control; or (2) be entitled to claim the marketings of another producer toward the establishment of a contract base in accordance with the provisions of § 1430.455 of this subpart.

§ 1430.454 Related persons.

(a) For purposes of this subpart the following persons are considered to be "related persons" with respect to any participating producer and, in addition, the actions of such persons will be considered for compliance purposes and other purposes specified in this subpart to be the actions of the participating producer: (1) The spouse and minor child of such producer and/or guardian of such child; (2) Any corporation in which the producer is a stockholder, shareholder, or owner (except publicly-held corporations in which the producer has a less than one percent interest in such corporation); (3) Any partnership, joint venture, or other enterprise in which the producer has an ownership interest or financial interest; and (4) Any trust in which the participating producer or any person listed in paragraphs (a) (1) through (3) is a beneficiary or has a financial interest.

(b) If the participating producer is a corporation, partnership, or other joint venture, then, for purposes of applying paragraph (a), the participating producer shall be considered to be such corporation, partnership, or other joint venture, and each individual owner, participant, or stockholder therein, except for persons with less than a one percent share in a corporation.

§ 1430.455 Base establishment.

(a) A preliminary milk base shall be established for the contract based upon the quantity of milk marketed for commercial use by the participating producers from all units with respect to which any such person was a producer on the bid date. In establishing a preliminary milk base, a producer may only claim that quantity of milk marketed for commercial use with respect to which the producer shared in the risk of production and only to the extent that the producer was entitled to an individual share of the proceeds of such marketings. Notwithstanding the first sentence of this section, no quantity of milk marketed for commercial use from any unit to which the exemption in § 1430.453(c) is applicable shall be used to establish the preliminary milk base. The preliminary milk base for the contract shall be the lesser of the total quantities of milk marketed for commercial use which may be used to establish such base for the participating producers in the contracting entity for the following two periods: (1) the 12-month period ending June 30, 1985; and (2) the 12-month period ending December 31, 1985.

(b) Each producer must present acceptable evidence of the quantity of milk marketed for commercial use for the relevant periods to the county ASCS office.

(c) Except for dairy cattle slaughtered or exported by the bid date, the preliminary milk base shall be reduced by 20,000 pounds for:

(1) Each head of dairy cattle transferred on or after January 1, 1986, but before the bid date, from those units with respect to which any participating producer or related person was a producer on or after January 1, 1986; and,

(2) To the extent to which paragraph (c)(1) is not applicable, each head of dairy cattle in which any participating producer or related person had an interest on or after January 1, 1986, if, as of the bid date, no interest in such dairy cattle is retained by any participating producer in the contracting entity or related person with respect to any such producer. If the maximum interest which any such participating producer or related person had in such dairy cattle on or after January 1, 1986, was less than 100 percent, the 20,000 pound reduction provided for in this subparagraph shall be adjusted accordingly.

(d)(1) The preliminary milk base shall be adjusted in accordance with the provisions of paragraph (d)(2) if the number of cows as of the bid date on those units from which quantities of milk marketed for commercial use have been used to establish such base, less the number of all cows transferred onto such units on or after January 1, 1986, is less than 90 percent of: (i) the number of cows on those units on either January 1, 1985, or January 1, 1986; and (ii) the number of cows estimated needed to

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produce the preliminary milk base as adjusted under paragraph (c).

(2) If an adjustment is required under the provision of paragraph (d)(1), the preliminary milk base shall be further reduced to the extent necessary so that such base does not exceed the product of multiplying: (i) the number of cows as of the bid date on the units from which the quantities of milk marketed for commercial use have been used to establish such base, less the number of cows transferred onto such units on or after January 1, 1986, by (ii) the higher of: (A) 13,000 pounds or (B) the average annual milk production for the cows remaining on such units.

(3) For purposes of paragraph (d)(1), the estimated number of dairy cows needed to produce the preliminary milk base as adjusted in accordance with paragraph (c) shall be computed by dividing such adjusted base by 13,000 pounds.

(e)(1) Notwithstanding any other provision of this subpart, a participating producer may, in establishing a contract base, claim the quantity of milk marketed for commercial use by another producer if: (i) the participating producer commenced the marketing of milk after December 31, 1984; (ii) the other producer was or is a member of the family of the participating producer; and, (iii) the other producer's entire herd and facility were transferred to the participating producer directly by reason of the death of, or gift from, the other producer.

The participating producer may only claim that quantity of milk marketed for commercial use which such other producer would have been entitled to claim in establishing a milk base if such other producer had been a producer on the unit as of the bid date.

(2) For purposes of this paragraph, a member of the family of the participating producer means: (i) the parent, grandparent, or spouse of parent or grandparent, or legal guardian of such producer; (ii) the spouse of such producer; or (iii) the son, daughter, or grandson, or granddaughter of such producer, or the spouse of any such persons.

(f) The preliminary milk base as adjusted in accordance with the provisions of this section shall constitute the contract base. The contract base shall be determined by the county ASCS office. The adjustments provided for in this section shall be made to the extent practicable and CCC may make such additional adjustments in the contract base as are determined to be necessary in order to ensure that CCC receives the maximum value for the payments made by CCC under the program authorized by this subpart.

§ 1430.456 Bid submission.

(a) The bid shall be stated in a dollar amount per hundredweight to the nearest penny which, when multiplied by the contract base, shall equal the total payment which may be made by CCC under the contract if the bid is accepted. A producer's bid may not be withdrawn after the last date for bid submission established by CCC. CCC is not obligated to accept any bid and may give preference by contract disposal periods to submitted bids. The maximum bid per hundredweight which is accepted may vary by region if such variances are determined to be needed to avoid undue disruption of dairy markets. The bid shall be submitted by signing the contract which shall set forth the bid or bids of the producer(s). If a bid is accepted by CCC the requirements of the contract and this subpart shall be applicable even if, by reason of noncompliance with the eligibility requirements of § 1430.453 of this subpart, none of the participating producers are entitled to payment under the contract.

(b) A bid may be submitted for one or more of the three following disposal periods: (1) April 1, 1986 through August 31, 1986; (2) September 1, 1986 through February 28, 1987; (3) March 1, 1987 through August 31, 1987.

(c) When a bid is accepted by CCC, a representative of CCC will sign the contract and a copy of the executed contract will be supplied to each participating producer. The period for which the bid is accepted shall be the contract disposal period.

§ 1430.457 Dairy herd disposal and nonproduction period requirements.

(a) All dairy cattle, which on or after the bid date were located on any unit with respect to which any participating producer or related person was a producer on or after January 1, 1986, shall be sold for slaughter or export by the end of the contract disposal period in accordance with the provisions of § 1430.458 of this subpart. In addition, all dairy cattle in which any such producer or related person had an interest on or after the bid date shall be so sold by the end of the contract disposal period.

(b) During the five year nonproduction period as calculated under the provisions of § 1430.459 of this subpart, no participating producer or related person may have, retain, or acquire any interest in dairy cattle or in the production of milk.

(c) No participating producer or related person shall, during the nonproduction period, acquire or make available to any person any production facility that becomes available for use as a result of the compliance by any person with any DTP contract. This restriction shall be considered to include, but not be limited to, any milk production facility used by any participating producer or related person on or after January 1, 1986, to produce milk. The use by any person of such a facility during the nonproduction period for a contract shall be a violation of the terms and conditions of the contract regardless of whether the participating producer or related person owns, or has owned, the milk production facility.

(d) No milk production facility on any unit with respect to which any participating producer or related person was a producer on or after January 1, 1986, may be used by any person to produce milk or to maintain dairy cattle during the nonproduction period and no new milk production facility may be brought into use on such unit during the nonproduction period.

(e) Unless CCC shall otherwise agree in writing, if any participating producer or related person involuntarily acquires an interest in dairy cattle or in the production of milk as a result of the death of another person or otherwise, the total amount of payments which are due under the contract shall be reduced by the amount of any gross proceeds realized by any such producer or related person from the use or sale of such interest.

§ 1430.458 Sales for slaughter or export.

(a) All dairy cattle which are required to be sold for slaughter or export under the provisions of this subpart shall be branded if such dairy cattle have not been sold by the date that the principal producer receives notice that the contract has been accepted by CCC.

(b) There may be no more than one intermediate purchase of any dairy cattle which are required to be sold for slaughter or export under the provisions of this subpart between the date of sale for that purpose and the date of the actual slaughter or export of such dairy cattle.

(c) The participating producers in the contracting entity shall be responsible for ensuring that any purchaser of dairy cattle which are sold to meet the requirements of the contract has, with respect to each such sale, signed a notice on a CCC-approved form listing the type, weight, price and final slaughter or export date for the dairy cattle. Such notice will not relieve the participating producers of their liability for any failure of such cattle to be

slaughtered or exported by the required date. Any such failure shall be a violation of terms and conditions of the contract. Each notice signed by a purchaser of dairy cattle as prescribed in this subsection shall be submitted to the county ASCS office by the tenth day of the month following the month in which the sale to meet the requirements of the contract occurred.

(d) Not more than 50 percent of the dairy cows on any unit to which the requirements for slaughter and export in this subpart are applicable may be slaughtered before the beginning of the contract disposal period.

(e)(1) Except as provided in paragraph (e)(2), all dairy cattle which are to be sold for slaughter or export in accordance with the terms and conditions of the contract must be slaughtered or exported by the end of the contract disposal period.

(2) Notwithstanding the provisions of paragraph (e)(1), if the contract disposal period ends on August 31, 1986, calves and unbred (nonpregnant) heifers may be slaughtered not later than September 30, 1986. In addition, with respect to contracts entered into for the third disposal period, CCC may permit dairy cattle sold for export to be exported not later than September 30, 1987.

(f) Subject to the final date for slaughter or exports as prescribed by the provisions of paragraph (e), the sale of dairy cattle for slaughter or export shall be subject to the following additional time limitations:

(1) All cows and bred (pregnant) heifers sold for slaughter must be slaughtered within 15 days from the date such cows and bred heifers were sold for that purpose;

(2) Calves and unbred heifers sold for slaughter must be slaughtered within six months from the date such calves and unbred heifers were sold for that purpose;

(3) Dairy cattle sold for export must be exported within 45 days from the date such cattle have been sold for that purpose.

(g) Dairy cattle sold for export shall be considered to have been exported only if such cattle are exported outside the fifty States of the United States, its territories and possessions and do not reenter the fifty States of the United States, its territories and possessions at any time after such export.

(h) In order to establish the export or slaughter of any head of dairy cattle, the contracting entity must present to the county ASCS office with respect to such cattle:

(1) All sales receipts relating to such sale including any receipt generated by a sale by an intermediate buyer;

(2) All notices required by this subpart to be signed by the purchasers of such cattle; and

(3)(i) For any dairy cattle sold for slaughter, a certificate of slaughter by the slaughtering party unless other acceptable evidence of slaughter has been presented;

(ii) For any dairy cattle exported to a country other than Canada or Mexico, a certificate of inspection showing the export of the dairy cattle issued by the Animal and Plant Health Inspection Service, United States Department of Agriculture; and,

(iii) For any dairy cattle exported to Canada or Mexico, a certification of exportation issued by United States customs officials or a certification of importation by officials of the importing country, unless other acceptable evidence of export to Canada or Mexico is presented.

(i) Any dairy cattle which are destroyed because of disease or for any other reason shall be considered to have been sold for slaughter.

§ 1430.459 Payments.

(a) The total amount of payments which may be made by CCC to a contracting entity under the contract shall be that amount which is equal to the accepted bid miltiplied by the contract base. Such amount shall be paid by CCC only if it has been determined that there has been compliance with all of the terms and conditions of the regulations and the contract. If any terms, conditions, or requirements of the contract are not met, payments previously made by CCC shall be refunded and no further payments shall be made by CCC.

(b) Not later than 30 days following the end of the contract disposal period each participating producer shall file a certification showing whether the following dairy cattle have been exported or slaughtered:

(1) All dairy cattle, which, on or after the bid date, were on any unit with respect to which the producer or related person was a producer on or after January 1, 1986;

(2) Any dairy cattle with respect to which such producer or related person had an interest at any time on or after the bid date.

(c) If the contract disposal period ended August 31, 1986, the certification required by paragraph (b) may be filed on or before October 30, 1986.

(d) The herd disposal completion date for purposes of the contract and this subpart shall be the date of filing of the last certification which is required to be filed by participating producers under the provisions of paragraph (b).

(e) The five-year nonproduction period for the contract shall be the period which begins on the day after the earlier of: (1) The end of the contract disposal period; or (2) The herd disposal completion date.

(f) Each participating producer's share of the total contract payment shall be indicated on the face of the contract. After the acceptance of a bid, each producer shall elect one of the two following schedules for receiving payment of the producer's share:

(1) A schedule by which not more than 80 percent of the share will be paid by CCC within 30 days of the herd disposal completion date with the remainder to be paid in four equal installments within 30 days of each of the next four anniversaries of such date; or

(2) A schedule by which not more than 85 percent of the share will be paid on the first anniversary of the herd disposal completion date with the remainder to be paid in three equal installments payable within 30 days of each of the next three anniversaries of that date.

(g) On or within 30 days following each of the first five anniversaries of the herd disposal completion date, each participating producer shall certify to the county ASCS office whether there has been compliance with the requirements of the contract. The failure of any participating producer to file such a certification shall render all of the participating producers and any other person ineligible for any payment under the contract including any payments previously made. Payments previously made shall be refunded to CCC. If any participating producer has failed to file the certification required by paragraph (b), the herd disposal completion date for purposes of this paragraph shall be considered to be the date on which the contract disposal period ended. The filing by any participating producer of the certification required by this subsection after the first day on which such certification could be filed shall extend commensurately the time by which CCC shall make payment of any payment that becomes due with respect to the anniversary of the herd disposal completion date to which the certification is applicable.

§ 1430.460 Producer and purchaser penalties.

(a) (1) A participating producer shall be subject to a marketing penalty if such producer or related person as specified in § 1430.454 retains or acquires an interest in dairy cattle or the production of milk in violation of the terms and

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conditions of a contract entered into under this subpart. Such penalty shall be in addition to any other amount due CCC under this subpart and shall be applied against the full quantity of milk to which the interest in milk production applies and/or the full quantity of milk produced by the dairy cattle to which the interest applies. Such penalty shall be computed at the support price for milk in effect (as established in accordance with the provisions of 7 U.S.C. 1446) during the period in which the milk production occurred.

(2) Each person who makes a false statement with respect to a contract as to: (i) the quantities of milk marketed for commercial use by a producer, or (ii) the size or composition of the dairy herd that produced such marketings, or (iii) the size or composition of the dairy herd at the time the bid is submitted, shall be subject, in addition to any other amount due CCC, to a civil penalty of $5,000 for each head of dairy cattle to which such statement applied.

(3) In addition to any other amount due CCC, each person who makes a false statement as to the number of dairy cattle that were sold for slaughter or export under a contract under this subpart shall be subject to a civil penalty of not more than $5,000 for each head of cattle to which such statement applied.

(4) Each person who buys one or more head of dairy cattle sold for slaughter or export because of a DTP contract, who knows that such cattle are sold for slaughter or export, and who, after receiving such cattle, fails to cause the slaughter or export of such cattle within the time limits for slaughter or export as prescribed by § 1430.458 of this subpart, shall be liable for a civil penalty of not more than $5,000 with respect to each head of such cattle to which such failure of slaughter or export is applicable.

(5) Each person who knowingly violates any other provision of this subpart shall be liable for a civil penalty of not more than $1,000 for each such violation.

(b) Penalties under this subpart shall be assessed after notice and opportunity for an informal administrative hearing.

(c) Interest shall accrue on penalties at the rate which CCC is required to pay for its borrowing from the United States Treasury at the time the penalty is assessed. Further, the penalties assessed under this subpart shall be subject to late payment charges in the same manner and at the same rate which is set forth at 7 CFR Part 1403 with respect to delinquent debts which are owed to CCC.

§ 1430.461 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any participating producer has erroneously represented any fact or has adopted, participated in, or benefitted from, any scheme or device which has the effect of, or is designed to, defeat the purpose of this subpart and/or the contract, no person shall be eligible for payments under the contract and all payments previously made to any person under the contract shall be refunded to CCC. The amount paid to CCC shall include any interest or related charges as are prescribed in § 1430.462 of this subpart.

(b) If any misrepresentation, scheme or device or practice has been employed for the purpose of causing CCC to make a payment under a DTP contract which CCC otherwise would not make, all amounts paid by CCC under the contract to any person shall be refunded to CCC together with interest and related charges as provided for in § 1430.462 of this subpart, and no further payments shall be made by CCC.

(c) If the county committee finds that any person has adopted or participated in any practice which tends to defeat the purpose of the program, the county committee may withhold or require to be refunded all or part of the payments which otherwise would be due the producer under the program.

§ 1430.462 Refunds to CCC; joint and several liability.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment arising under the contract, or this subpart, or if any refund of a contract payment to CCC shall otherwise become due in connection with the contract, all payments made under the contract to any person shall be refunded to CCC, together with interest and late payment charges as provided for in this paragraph.

(b) The participating producers in the contracting entity shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of the contract or this subpart.

(c) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the monies to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the principal producer, no additional interest charges shall be assessed. However, the account shall thereafter bear late payments charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR Part 1403. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of 7 CFR Part 1403, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(d) Participating producers who are party to a DTP contract must refund to CCC any excess payments made by CCC with respect to such contract.

(e) In the event that the contract base was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the contract base shall be recomputed and the payments due under the contract shall be corrected as necessary Any refund of payments which are determined to be required as a result of such recomputation of the contract base shall be remitted to CCC.

§ 1430.463 Cumulative liability.

The liability of any person for any penalty under this subpart or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1430.464 Assignments of payments.

Payments which are earned by a producer under a DTP contract may be assigned in accordance with the provisions of 7 CFR Part 709, except that such assignments may also be made to secure or pay pre-existing indebtedness.

§ 1430.465 Setoffs and withholdings.

The regulations issued by the Secretary of Agriculture with respect to setoffs and withholdings, 7 CFR Part 13, and any amendments thereto shall be applicable to the Dairy Termination Program authorized by this subpart. Any amount due CCC under the program

provided for in this subpart shall be subject to setoffs and withholdings pursuant to those regulations.

§ 1430.466 Appeals.

Reconsideration and review of the determinations made under this subpart shall be made in accordance with the Administrative Appeal Regulations, 7 CFR Part 780. If any penalty determination is delegated to any agency of the Department other than ASCS such determination shall be made by such delegatee under procedures which, as near as practicable, shall comport with Part 780.

§ 1430.467 Performance based upon advice of action of county or state committee.

The provisions of 7 CFR Part 790 and any amendments thereto, relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to this subpart.

§ 1430.468 Miscellaneous provisions.

(a) It is the responsibility of participating producers that CCC, or its designee, have full and complete access to all units with respect in which any of the participating producers or related persons was a producer on or after January 1, 1986, and any unit on which were located any dairy cattle in which any such person had an interest in dairy cattle on or after that date.

(b) Each participating producer or knowing purchaser of dairy cattle sold pursuant to a DTP contract must, for a period three years from the date of the nonproduction period under this contract or for such longer period as CCC may specify, keep, maintain, and make available to CCC all records which CCC may require to enforce provisions of the contract, as well as any records necessary to establish compliance with the terms and conditions of this contract of this subpart.

(c) Any payment which is due any person shall be allowed without regard to questions of title under State law and without regard to any claim or lien against the unit or any milk produced from the unit, and the proceeds, thereof, which may be asserted by any creditor, except agencies of the United States Government.

(d) There shall be no succession of interest in any DTP contract except that, upon the death of a participating producer, the estate of such producer may perform the obligations of the producer under the contract or, upon approval of the CCC, may assign the contract.

(e) Notwithstanding any other provisions of this subpart, the retention or holding of dairy cattle otherwise prohibited by this subpart may be permitted if the Executive Vice President, CCC, or the Executive Vice President's designee, determines that such retention will not defeat the goals of the Dairy Termination Program.

(f) The participating producer shall execute all certifications specified in the contract or required by CCC or any other representative of the Department in the administration of this subpart.

(g) The burden shall be on participating producers to establish compliance with the requirements of the contract and this subpart. In addition, buyers of dairy cattle to which a DTP contract applies shall have the burden of establishing compliance with the provisions of this subpart.

§ 1430.469 Other regulations.

The following regulations and amendments thereto shall also be applicable to this subpart:

(a) 7 CFR Part 13—Setoffs and Withholdings;

(b) 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(c) 7 CFR Part 780—Appeal Regulations;

(d) 7 CFR Part 790—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(e) 7 CFR Part 791—Authority to Make Payments When There Has Been a Failure to Comply Fully With the Program;

(f) 7 CFR Part 796—Harvesting of Marijuana or Other Such Drug-Producing Plants for Illegal Use; and

(g) 7 CFR Part 1403—Interest on Delinquent Debts.

§ 1430.470 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 1430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0124.

Signed at Washington, DC, on March 4, 1986.

Frank W. Naylor,

Acting Secretary, U.S. Department of Agriculture.

[FR Doc. 86-5083 Filed 3-6-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-144-AD; Amdt. 39-5251]

Airworthiness Directives; British Aerospace Viscount Models 700 and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects an existing airworthiness directive (AD) applicable to British Aerospace Aircraft Group Viscount Models 700 and 800 series airplanes. AD 84-07-03 requires inspection and modification of the nose landing gear to prevent collapse. This amendment clarifies the compliance time of that AD.

DATE: Effective March 24, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued Amendment 39-4837, AD 84-07-03 on March 22, 1984 (49 FR 13014). This AD requires an inspection and modification to the nose landing gear on British Aerospace Viscount Models 700 and 800 airplanes. Paragraphs 1. and 2. of the airworthiness directive give the required compliance time as follows: "Within the next six months time in service after the effective date of this airworthiness directive . . ." The words *time in service* as defined in FAR Part 1, mean "the time from the moment an aircraft leaves the surface of the earth until it touches it at the next point of landing." Since the intent of the AD was to have compliance within six months after the effective date of the AD, an amendment is necessary to delete the words ". . . time in service" in paragraphs 1. and 2. of the AD.

Since this amendment only makes a correction to provide a clarification, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public

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procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

The FAA has determined that this amendment is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model BAe Viscount Series 700 and 800 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By revising Airworthiness Directive 84–07–03, Amendment 39–4837 (49 FR 13014; March 22, 1984), as follows:

Remove the words ". . . time in service . . ." from the first sentence of paragraphs 1. and 2.

This amendment becomes effective March 24, 1986.

Issued in Seattle, Washington, on February 27, 1986.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4943 Filed 3–6–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85–NM–84–AD; Amdt. 39–5252]

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a new airworthiness directive (AD), applicable to Fairchild Model F27 and FH227 series airplanes, which requires inspection and replacement, if necessary, of the main landing gear drag strut assemblies. Cracks in the tube bores in the vicinity of the lock strut attachments have been reported. These checks, if allowed to grow undetected, could cause failure of the main landing gear drag strut assemblies and loss of control of the airplane.

DATES: Effective April 13, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information specified in this AD may be obtained from Fairchild Industries, Inc., Fairchild Republic Division, Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred A. Maila, ANE–172, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6221.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by adopting an airworthiness directive (AD) which would require an eddy current or ultrasonic inspection for cracking in the tube bore in the vicinity of the lock strut attachments, and replacement, if necessary, of the main landing gear drag stay assembly of Fairchild F27 and FH227 series airplanes, was published in the **Federal Register** on November 29, 1985 (50 FR 49055). The comment period closed on January 20, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. Minor editorial changes have been made in the final rule to clarify the applicability of provisions of the referenced service bulletins.

It is estimated that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated to be $8323 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480,111.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($100 per inspection). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fairchild: Applies to all Model F27 and FH227 series airplanes certificated in any category. Compliance required as indicated.

To detect cracks in the FH227 and F27 main landing gear drag strut assemblies due to the bores of some tubes having surface break-up generated during the drawing process, accomplish the following, unless previously accomplished:

A. For airplanes which have accumulated 20,000 landings or more prior to the effective date of this AD, within 400 hours time-in-service after the effective date of this AD, using eddy current or ultrasonic inspection equipment and procedures, inspect the left and right upper main undercarriage drag stay for flaws, in accordance with the Accomplishment Intructions and sketches outlined in Dowty Rotol Service Bulletin 32–45N (for Model FH227 airplanes) or Service Bulletin 32–81C (for Model F27 airplanes), dated October 16, 1981.

B. For airplanes which have accumulated more than 10,000 landings but less than 20,000 landings prior to the effective date of this AD, within 800 hours time-in-service after the effective date of this AD, using eddy current or ultrasonic inspection equipment and procedures, inspect the left and right upper main undercarriage drag stay for flaws in accordance with the Accomplishment Instructions and sketches outlined in Dowty Rotol Service Bulletin 32–45N (for Model FH227 airplanes) or Service Bulletin 32–81C (for Model F27 airplanes), dated October 16, 1981.

C. Within 2,000 hours time-in-service after the effective date of this AD, visually inspect the left and right upper main undercarriage stay in accordance with Dowty Rotol Service Bulletin 32–45N (for Model FH227 airplanes) or Service Bulletin 32–81C (for Model F27 airplanes), Item 2B(1)(2)(3)(4), dated October 16, 1981.

D. If, as a result of the inspections referred to in paragraphs A. and B., above, flaws are detected, replace damaged part with a serviceable part prior to next flight.

E. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Fairchild Industries, Inc., Fairchild Republic Division, Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This Amendment becomes effective April 13, 1986.

Issued in Seattle, Washington, on February 27, 1986.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–4944 Filed 3–6–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80–8–001 through RM80–8–005; Order No. 95–A]

Right of First Refusal of Bona Fide Offers; Order Granting in Part and Denying in Part Applications for Rehearing, Reconsideration and Clarification of Order No. 95

Issued: February 28, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part applications for rehearing, reconsideration, and clarification of its final rule implementing section 315(b) of the Natural Gas Policy Act of 1978. That section provides that upon expiration of contracts for the sale of certain categories of natural gas removed from the Commission's Natural Gas Act (NGA) jurisdiction, the seller must make a bona fide offer to the purchaser and give the purchaser an opportunity to match a third party offer before selling the gas to a third party. The Commission grants rehearing in order to (1) eliminate the Commission's interpretation that § 154.93 of its NGA regulations governs the price escalation clauses which may be included in a bona fide offer, (2) remove the original purchaser's right to alter the delivery terms of a third party offer, (3) eliminate the prohibition on waivers of section 315(b) rights more than one year before contract expiration, (4) provide that the requirement that bona fide offers not be made more than eighteen months before contract expiration does not apply to implied contracts, and (5) limit the record retention requirement to three years.

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Order No. 95–A; Order Granting in Part and Denying in Part Applications for Rehearing, Reconsideration and Clarification of Order No. 95

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

Bona Fide Offers; Right of First Refusal: Docket Nos. RM80–8–001, RM80–8–002, RM80–8–003, RM80–8–004, and RM80–8–005.

Issued: February 28, 1986.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part and denying in part applications for rehearing, reconsideration, and clarification of Order No 95.[1] The final rule adopted by that order implemented section 315(b) of the Natural Gas Policy Act of 1978 (NGPA).[2] That section requires a seller of certain categories of natural gas, for which the existing contract expires, (1) to make a bona fide offer to the original purchaser to continue to sell that gas and, (2) if the bona fide offer is rejected, to extend to the purchaser the right of first refusal of the gas on the basis of a third party offer. The Commission is amending Parts 255 and 277 of its regulations to make necessary clarifications and revisions, both in response to the applications of rehearing and clarification and as a result of the Commission's March 14, 1985 request for further comment on its rules under Order No. 95 in light of deregulation.[3]

II. Background

Section 315(b) of the NGPA modifies the effect of the removal of certain gas from Natural Gas Act (NGA) jurisdiction by NGPA section 601(a)(1) (B). The gas so removed is gas committed or dedicated to interstate commerce on November 8, 1978, which is also (1) new natural gas as defined in NGPA section 102(c),[4] (2) natural gas produced from any new, onshore production well as defined in NGPA section 103(c), or (3) high-cost natural gas as defined in NGPA section 107(c)(1)–(4). Without section 601(a)(1)(B), the seller of such gas would be required to continue to make sales to the original purchaser, even after a contract expires, until the Commission authorized abandonment of service under section 7(b) of the NGA.[5]

Section 315(b) provided a form of substitute protection to purchasers. It gave the purchaser of gas removed from NGA jurisdiction two opportunities to contract with the seller for continued delivery of the gas—the opportunity to accept a bona fide offer which the seller must make to him and the right to match the terms of a third party offer to purchase the gas (right of first refusal). Congressman Dingell described the purpose of section 315(b) as follows:

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[1] Bona Fide Offers, Right of First Refusal, 45 FR 53,116, (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10 (1985)).

[2] 15 U.S.C. 3375(b) (1982).

[3] Bona Fide Offers; Right of First Refusal, 50 FR 10,243 (Mar. 14, 1985) (Notice of Request for Additional Comments). This notice is hereinafter referred to as the March notice.

[4] Thus, gas produced from a new lease on the Outer Continental Shelf (OCS) (NGPA section 102(c)(1)(A)) is removed from NGA jurisdiction, but OCS gas produced from a new reservoir under an old lease (NGPA section 102(d)) is not.

[5] 15 U.S.C. 717f (1982). *See Sunray Mid-Continent Oil Co. v. FPC,* 364 U.S. 137 (1960). Under the NGA, neither producer nor pipeline may cease deliveries to their respective customers without complying with section 7. *California v. Southland Royalty Co.,* 436 U.S. 519, 527 (1978).

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> This section was included principally to ensure a degree of continuity of gas supplies to the interstate system despite non-price deregulation of certain categories of gas. . . . It has been correctly observed that, in conjunction with the Commission's authority under sections 501 and 503, section 315 provides a mechanism to protect the security of present interstate pipeline supplies. . . .[6]

The Commission in Order No. 95 established Part 277 of its regulations in order to implement section 315(b). Section 277.205 of Part 277 requires a seller of gas covered by NGPA section 315(b) to make a bona fide offer to the original purchaser for the continued sale of gas generally before the expiration or termination of the contract covering the gas.[7] The purchaser may accept or reject the bona fide offer. If the purchaser accepts the bona fide offer, the matter is thereby concluded.

If the purchaser rejects the bona fide offer, § 277.206 requires the seller to extend to the original purchaser a right of first refusal of such natural gas before the seller may sell the gas to a third party. The right of first refusal gives the original purchaser the right to match the terms of the third party's offer to purchase the natural gas. If the offer is rejected, the seller can then sell the gas to the third party under the terms of the offer. If the original purchaser in its acceptance alters any terms of the offer, other than delivery point, treating, conditioning or compression, the purchaser is deemed to have rejected the offer and the seller is free to sell the gas to the third party. Once the gas is sold to a third party pursuant to an offer rejected by the original purchaser, the seller has no further obligation under section 315(b) to the original purchaser. The seller's obligation to the original purchaser could end sooner, however, should the purchaser waive its rights under section 315(b) and applicable regulations.

Three applications for rehearing, one application for reconsideration and one application for clarification were filed concerning Order No. 95.[8] On March 11, 1985, the Commission requested additional comments primarily concerning whether and how the recent changes in the natural gas market, including the January 1, 1985, price-deregulation of section 102(c) and some section 103(c) gas, should affect the Commission's disposition of the issues raised on rehearing. Seventeen companies, three trade associations, and one state commission filed comments.

This order grants rehearing in order to (1) eliminate the Commission's interpretation in Order No. 95 that § 154.93 of its NGA regulations governs the price escalation clauses which may be included in a bona fide offer, (2) remove the original purchaser's right to alter the delivery terms of a third party offer, (3) eliminate the prohibition on waivers of section 315(b) rights more than one year before contract expiration, (4) provide that the requirement that bona fide offers not be made more than eighteen months before contract expiration does not apply to implied contracts, and (5) limit the period for which records are required to be kept to three years.

III. Discussion

A. Interpretation of Section 315(b)

Several applicants for rehearing[9] allege that the final rule exceeded the Commission's statutory authority under section 315(b) by imposing what is effectively NGA regulation on sales of gas no longer subject to that Act. Some applicants[10] also contend that the final rule misinterpreted section 315(b) as requiring that a bona fide offer and an opportunity to reject a third party offer be given in all instances.

1. Terms Legal Under the Natural Gas Act

The applicants contend that the Commission reimposes NGA jurisdiction through its definition of "bona fide offer." Section 277.203(c) of the final rule defines bona fide offer to mean, in part, a "written offer by the seller to the original purchaser which would be *legal for such purchaser to accept under the Natural Gas Act* . . ." (emphasis added).[11] This language is in the NGPA Conference Report. The conferees explained that "the term bona fide offer is intended, at a minimum, to include terms that would be legal for any purchaser to accept under the Natural Gas Act."[12] Order No. 95 stated that this wording in § 277.203(c) applied to bona fide offers the legal restrictions in § 154.93 of the Commission's NGA rules (18 CFR 154.93).[13] Section 154.93 invalidates any pricing provisions in gas contracts under the NGA other than fixed price clauses, area rate clauses, or five-year price redetermination clauses. Accordingly, § 154.93 prohibits indefinite escalation clauses, such as favored nation clauses.[14]

Applicants argue that, by restricting the pricing provisions of the bona fide offer to the clauses permitted under § 154.93, the rule violates the intent of Congress in enacting NGPA section 601(a)(1)(B), which was to remove certain gas from NGA sales jurisdiction. Many of the commenters responding to the March notice support the applicants' contentions.[15] A few of the commenters oppose those contentions.[16]

The Commission agrees that section 315(b) was not intended to prevent parties from negotiating price escalation clauses that authorize collection of deregulated or NGPA maximum lawful prices. The preclusion of such clauses would frustrate the collection of prices authorized by the NGPA.

In *Pennzoil Co.* v. *FERC*,[17] the court held that Congress prohibited the Commission from applying § 154.93 to existing interstate contracts for the sale of committed or dedicated gas subject to NGPA sections 102(c), 103(c), or 107(c)(1)–(4) through removal of that gas from NGA jurisdiction by section 601(a)(1)(B). By the same reasoning, Congress must also have intended through section 601(a)(1)(B) to prohibit the Commission from applying § 154.93 to bona fide offers to enter into new contracts covering gas removed from NGA jurisdiction. It makes no sense to permit indefinite price escalation clauses in existing contracts but prohibit them in the subsequent new contracts.

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[6] 124 Cong. Rec. 38,366 (1978).

[7] The rule also requires a bona fide offer for gas sold in interstate commerce under an implied contract under the NGA for which no written contract is in effect. Under § 277.205(b)(2), the bona fide offer would have to be made within twenty days after gas is removed from NGA jurisdiction by a jurisdictional agency determination under section 503 of the NGPA.

[8] Arco Oil and Gas Co. (Arco) and Indicated Producers filed applications for rehearing on Aug. 25 and 27, 1980. Pennzoil Co., Pennzoil Producing Co., Pennzoil Oil and Gas, Inc., Pogo Producing Co., General American Oil Co. of Texas, Texasgulf, Inc., and Ashland Exploration, Inc., (Pennzoil *et al.*), filed a joint motion for rehearing on Aug. 27, 1980). American Natural Production Co. (American Filed a petition for reconsideration on Oct. 24, 1980. Bass Enterprises Production Co. (Bass) filed an application for clarification on Dec. 14, 1984.

[9] Indicated Producers and Pennzoil *et al.*

[10] Arco and Pennzoil *et al.*

[11] 18 CFR 277.203(c) (1985).

[12] H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8983, 9027.

[13] Bona Fide Offers; Right of First Refusal, 45 FR 53116, 53,117 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10 (1985)).

[14] *See* Pure Oil Co., 25 F.P.C. 383 (1961), *aff'd*, Pure Oil Co. v. FPC, 299 F.2d 370 (7th Cir. 1962).

[15] These include Oxley Petroleum (Oxley), Independent Oil and Gas Assoc. of West Virginia (IOGA), Amoco Production Co. (Amoco), Interstate Natural Gas Assoc. of America (INGAA), Bass Enterprises Production Co. and Samson Resources Co. (Bass), Tennessee Gas Pipeline Co. (Tennessee), and Natural Gas Pipeline Co. of America.

[16] Pacific Gas and Electric Co. (PG & E), Columbia Gas Transmission Corp., (Columbia) and Consolidated Gas Transmission Corp. (Consolidated).

[17] 645 F.2d 360, 381 (5th Cir. 1981), *cert denied*, 454 U.S. 1142 (1982).

Moreover, the Commission has established a practice of waiving § 154.93 to permit acceptance of contracts for the sale of gas subject to the NGA containing certain indefinite price escalation clauses.[18] In light of this practice, it would be unreasonable to apply a more stringent standard to gas removed from NGA jurisdiction by section 601(a)(1)(B). Accordingly, the Commission modifies Order No. 95 so as to permit the use in bona fide offers of indefinite price escalation clauses.

2. Must a Seller Give the Original Purchaser Both a Bona Fide Offer and Right of First Refusal? (§ 277.204(a))

Section 277.204(a) of the final rule provides that a seller may not make a first sale of natural gas covered by section 315 until the original purchaser has rejected *both* a bona fide offer *and* an offer substantially accepted in principle by a third party purchaser.

Some applicants for rehearing[19] assert that the Commission misinterpreted section 315(b) to establish cumulative rather than disjunctive requirements with respect to the seller's obligations to the purchaser.[20] They argue that section 315(b)(2) does not require a bona fide offer in the event a contract expires because section 315(b)(2) does not mention contract expiration. They also point out that section 315(b)(3) requires a seller to extend a right of first refusal if *either* a contract expires or if a bona fide offer is rejected. The applicants contend that this means that a bona fide offer need not be extended when a contract expires. They claim that such an offer should be extended only if gas has never been sold under a contract, for example when a seller negotiates with the pipeline for the initial sale of gas from committed or dedicated but undrilled reserves. In support of its interpretation that section 315(b) does not require a bona fide offer when a contract expires, Arco suggests that the Commission could avoid jeopardizing the pipeline's supply in the absence of a bona fide offer by amending the final rule to require continuation of deliveries after a contract expires until the purchaser fails to exercise its right of first refusal.

The Commission rejects the applicants' interpretation of section 315(b). Their interpretation reads paragraph (2) of section 315(b) out of the statute. That paragraph independently requires the Commission to develop regulations requiring that a bona fide offer to sell any gas "subject to the requirements of this subsection" be made to the person who, but for removal of the gas from NGA jurisdiction, would be entitled to receive that gas. Accordingly, the bona fide offer requirements of section 315(b)(2) apply to all gas removed from NGA jurisdiction by section 601(a)(1)(B) regardless of whether an existing contract has expired.

The Conference Report also supports the conclusion that a purchaser must receive a bona fide offer and right of first refusal in all cases. The conferees noted that:

> Following the expiration of any contract covering such natural gas, and any rejection of a bona fide offer by the purchaser who would have been entitled to receive the gas under the Natural Gas Act, such purchaser is granted a right of first refusal.[21]

The Commission interprets section 315(b)(3) to mean that the right of first refusal vests at the earlier of the time of contract expiration or rejection of the bona fide offer.[22] The Commission believes that it is left free to determine the appropriate procedural timing of any exercise of the right of first refusal in relation to the bona fide offer. Conditioning the exercise of the right of first refusal on the rejection of a bona fide offer is entirely consistent with section 315(b)(3).

If a disjunctive interpretation of section 315(b) were adopted, existing customers would be deprived of the protection, which a bona fide offer provides, against cessation of deliveries after expiration of the contract. By requiring a bona fide offer to be made by the seller whenever a contract expires or terminates, the final rule protects purchasers during the period between expiration of the contract and rejection of a bona fide offer.

B. Technical Aspects of Bona Fide Offers, Right of First Refusal, and Interim Protective Sales

Applicants for rehearing and some commenters argue that, in various respects, the bona fide offer, right of first refusal, and interim protective sales provisions of the final rule are not justified under section 315(b) in terms of contract practices. They contend in essence that the rules are too complicated and burdensome and interfere with private contracts concerning deregulated gas.

The Commission does not, as a general matter, believe that the final rule establishes unnecessary requirements or unduly interferes with the private contracting process. Any abridgment of the contracting process derives from the statute itself, which balances the rights of the seller to market gas at the highest lawful price and the rights of purchasers to continue receiving such gas. As discussed below, the Commission does grant rehearing to eliminate the original purchaser's right to alter the terms of delivery in a third party offer, to eliminate the prohibition on waivers of section 315(b) rights more than one year before contract expiration, and to clarify that a requirement concerning the making of bona fide offers does not apply to implied contracts. These changes should minimize the rule's interference with private contracts.

1. Timing of Bona Fide Offer (§ 277.205(b))

The final rule requires a bona fide offer to be made not later than 20 days before expiration of the contract or, if a final NGPA well determination is made less than 45 days before contract expiration, not later than 20 days after that determination. Some applicants for rehearing[23] argue that the Commission has no statutory authority to impose deadlines on making a bona fide offer. In addition, those applicants and one commenter[24] interpret the rule to mean that, if a seller fails to extend a bona fide offer 20 days before the contract expires, the seller may never abandon the sale to the pipeline. Other applicants believe that the rule is unnecessary or should be amended to consider such exigencies as oversight, delay in transmittal, or sudden termination which may preclude compliance with the rule.[25]

Although section 315(b) itself does not provide for the timing of bona fide offers, the Commission believes that the 20-day rule is necessary to effectuate the purpose of section 315(b). Accordingly, the Commission may establish the deadline pursuant to its authority under NGPA section 501 to issue such rules as are necessary to carry out its functions under the NGPA. The deadline provides sellers with a clear indication of the nature of their duty to satisfy their section 315(b) obligations promptly and encourages the negotiation of a new

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[18] *See* Exxon Corp., 13 FERC ¶ 61,105 (1980) (in which the Commission eliminated the § 154.93 condition from a producer certificate for sales of section 104 gas).

[19] Arco and Pennzoil *et al.*

[20] Applicants note that paragraphs (A) and (B) of section 315(b)(3) are separated by the word "or" rather than "and."

[21] H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8983, 9027.

[22] Bona Fide Offers; Right of First Refusal, 45 FR 53,116, 53,118 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10 (1985)).

[23] Pennzoil *et al.*

[24] Amoco.

[25] Indicated Producers.

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contract before expiration of the current contract by affording ample time for such negotiation before the contract expires. Furthermore, if the existing contract provides a higher price than the seller could otherwise expect, the seller's interests would lie in delaying a bona fide offer and continuing deliveries at the existing contract price under §§ 277.205(a) and 277.207. Consequently, without the deadline, a seller might never extend a bona fide offer. This would contravene the intent of section 315(b). On the other hand, if the seller could obtain a higher price under the new contract it would be in the seller's interest to make a timely bona fide offer in any event in order to avoid imposition of the less favorable terms of the expired contract.

The Commission believes that the 20-day rule should not unduly burden any contracting party subject to the requirements of section 315(b). A seller generally monitors individual contracts and this is especially true in light of its possible obligation to continue deliveries after a contract expires. Therefore, this requirement should have no adverse effect on the conduct of contract negotiations. In addition, if a seller fails to meet the 20-day deadline, the final rule does not, as applicants and one commenter apparently fear, compel a seller to continue sales to the original purchaser indefinitely at the existing contract price without the benefit of a new contract or the prospect of abandoning the service. A seller who misses the 20-day deadline is still required to extend a bona fide offer. Once the seller extends the bona fide offer, § 277.205(a) requires continued deliveries only until the existing customer rejects the bona fide offer. The purchaser must either accept or reject the offer within twenty days after its receipt (§ 277.205(c)).

2. Right of First Refusal (§ 277.206)

Section 277.206 of the final rule requires a seller to present any offer substantially accepted in principle by a third party purchaser in an arms-length transaction to the original purchaser. Applicants for rehearing and some commenters contend that the final rule (a) requires the third party offer to be overly detailed and specific, (b) improperly prohibits third party offers from affiliates of the seller, (c) improperly prohibits all sales to third parties until after a right of first refusal has been given, and (d) improperly allows the original purchaser to alter the provisions in the third party offer concerning the place and physical conditions of delivery and provides insufficient compensation to the seller when such changes are made.

(a) *Offer Substantially Accepted in Principle (§ 277.203(e))*—The NGPA requires that a purchaser must be given a chance to accept or reject an offer to sell the gas to a third party that is "substantially accepted in principle" by the third party. Although the statute does not define "offer substantially accepted in principle," § 277.203(e) defines it as a written acceptance of a written offer that is "sufficiently firm" that a binding contract will result if the original purchaser rejects the written offer. Some applicants [26] argue that the requirement imposes an undue burden on sellers without sufficient justification. They see no reason to require a high degree of completeness in an offer to a third party when the original purchaser can unilaterally alter major terms of that offer.

The Commission disagrees. The rule is necessary to ensure that the offer given to the original purchaser really reflects the "market conditions" it must meet if it wants to continue to receive the gas. The rule accomplishes this objective by requiring that the offer be clear on major terms. The rule, however, does not require a seller to negotiate comprehensive gas sales contracts with third parties. Such a requirement would be unduly burdensome. The Commission views the final rule as requiring the parties to reach an agreement on major substantive points, such as price, delivery point, pressure, and rate of take. The parties are free later to negotiate minor points if the original purchaser rejects the offer.

In the Commission's view, applicants may have misinterpreted the extent of the original purchaser's ability to vary the terms of the third party offer. The purchaser's only right to vary terms under that rule unilaterally was its option to take the gas at the delivery point and under the physical conditions of delivery specified in the existing contract. On rehearing the Commission has decided to eliminate that unilateral right, as discussed more fully below. Consequently, the original purchaser cannot unilaterally change any substantive terms of the third party offer.

(b) *Prohibition Against Affiliated Third Party Purchasers (§ 277.203(b))*—Section 315(b)(3) of the NGPA requires that the offer tendered to the original purchaser for first refusal must have been substantially accepted in principle by another person in an "arms-length transaction." The final rule defines "arms-length" as requiring adverse economic interests and excludes transactions between affiliates or family members. As a consequence of this rule, a seller may neither obtain a written acceptance from, nor make a first sale to, an affiliated pipeline, unless the original purchaser waives the prohibition under § 277.209.

Some applicants for rehearing [27] and commenters [28] argue that the Commmssion should eliminate the per se exclusion of affiliated transactions and apply the comparable sales standard found in NGPA section 601(b)(1)(E). They contend that, under a comparability standard, transactions between affiliates could be treated as arms-length transactions if the amounts to be paid for gas do not exceed the amounts paid in comparable transactions between non-affiliates. Hence, removing this prohibition would avoid disparate treatment between affiliated and non-affiliated third party purchasers. One commenter [29] states that that disparate treatment could place an affiliate pipeline at a substantial disadvantage in the marketplace by preventing it from competing for its affiliated producer's gas. Finally, while a purchaser may waive the rule requiring non-affiliated transactions, applicants allege that the purchasers could abuse those waiver rights. For example, when an affiliate is the original purchaser's only competitor for the gas, the original purchaser might refuse to waive the prohibition against affiliated transactions so as to avoid competition for the gas and secure a lower price.

In its final rule, the Commission rejected the argument that a third party comparable sales standard was more appropriate than an absolute prohibition. The Commission observed that:

> Inasmuch as the language of section 315 explicitly requires that transactions be at arms-length, the Commission finds that affiliate transactions were not intended to be included in the scheme of the right of first refusal.[30]

Applicants offer no new reasons to support a rescission or revision of this provision. The comparability test suggested by the applicants and some commenters would be administratively more difficult for the Commission to carry out. The Commission would have to analyze on a case-by-case basis which transactions between affiliates were comparable to those between non-affiliated entities. The factual inquiries thus necessitated would place a significant burden on the Commission. Moreover, the prohibition against affiliated transactions ensures the seller a price that is supported by the market. A purchaser's right of first refusal should not be subject to transactions between parties with a possible identity of interests unless the purchaser so chooses. There exist in such transactions the potential for prices higher than the market. Since the price paid by an affiliate does not affect the profit of the overall entity of which the affiliate is a part, an affiliated purchaser might not negotiate as hard for a low price as a non-affiliated purchaser.

Finally, there is no evidence that the problem of an affiliate being the original purchaser's only competitor for the gas occurs in a significant number of cases. When this problem does occur and the seller believes that permitting a third party offer from an affiliate is the only means of assuring that it receives a fair price for its gas, the seller may apply to the Commission for a waiver of the § 277.203(b) prohibition against affiliated third party purchasers.

Similarly, there is no evidence that foreclosing an affiliated purchaser from making an offer to purchase its affiliated producer's section 315(b) gas causes those purchasers difficulty in obtaining gas in a significant number of cases. However, if such a problem does occur, the purchaser could apply for a waiver of § 277.203.

(c) *Prohibition on Sales to Third Parties Until After Right of First Refusal Is Given (§ 227.204(a))*—One commenter [31] states that, regardless of the prohibition on a seller's tendering an offer from an affiliate for first refusal, the seller should be free to sell gas to an affiliate after rejection of a bona fide offer without giving the original purchaser a right of first refusal. The commenter argues that section 315(b)(3)'s requirement that the seller give the original purchaser a right of first refusal of offers accepted in arms-length transactions implicitly permits the seller to make non-arms-length sales without giving a right of first refusal.[32] Accordingly, the commenter proposes that the prohibition in § 277.204(a) on sales "to any third party purchaser" until after a right of first refusal has been given should be modified to prohibit only sales to third parties in arms-length transactions.[33]

The Commission does not believe that the statute permits sellers to sell gas to an affiliate without giving the original purchaser a right of first refusal. By granting the right of first refusal, the statute provides original purchasers a substitute for the protection previously afforded them by the requirement that the seller obtain abandonment authorization from the Commission before selling to a third party. To permit sales to affiliates without offering a right of first refusal, however, would allow a seller to nullify this substitute protection by the simple expedient of selling to its affiliates. The Commission believes that the language of the statute concerning arms-length transactions must be read solely to provide that the offer which must be tendered to the original purchaser for first refusal before a sale to any third party be one accepted by the third party in an arms-length transaction.

(d) *Delivery Terms Under An Accepted Offer (§ 277.206(d))*—The final rule provided that the original purchaser may accept the third party offer but receive the gas at the delivery point and under the physical conditions of delivery in the original contract even though the offer contains other terms (§ 277.206(d)). If the original purchaser exercises this option, the seller may apply to the Commission for increased costs incurred in delivering the gas under the old delivery terms as opposed to those in the third party offer, provided that collection of the allowance will not exceed any applicable maximum lawful price.

Some applicants for rehearing[34] and a number of commenters[35] argue that these provisions unjustifiably abridge the contracting process by overriding the seller's ability to negotiate such non-price terms of the contract as delivery, treating, conditioning, and compression. They believe the final rule improperly requires the producer to sell gas under the existing contract subject only to third party negotiations on price and "rates of take." The applicants contend that Congress intended to afford original purchasers only the protection of the market place and that accordingly the original purchaser must accept all the terms of the third party offer or forfeit further rights under section 315(b). If the Commission rejects these arguments, the applicants request that it provide greater guidance concerning (1) the compensation the seller may obtain for its increased costs resulting from the original purchaser's exercise of its rights under § 277.206(d) and (2) the method by which it may collect such costs.

The Commission, in the March notice, solicited comments on whether the provisions of § 277.206(d) should be altered in light of developments in the gas market since the final rule was issued and in light of the price-deregulation of section 102(c) and some section 103(c) gas on January 1, 1985. That deregulation, combined with the July 1, 1979 price-deregulation of section 107(c) (1) through (4) gas, means that most gas subject to section 315(b) is now price-deregulated. Numerous commenters addressed the issue, some supporting elimination of the original purchaser's right to alter delivery terms, others opposing elimination of that right.[36] After examining those comments, the Commission has determined that rehearing should be granted to eliminate the original purchaser's right to change the delivery terms of a third party offer.

Section 315(b) is silent concerning the original purchaser's ability to alter delivery terms in a third party offer. Instead, by delegating to the Commission authority to issue regulations governing the right of first refusal, that section gives the Commission discretion to develop practical and realistic solutions to such specific problems in the implementation of the right of first refusal. The Commission must, of course, exercise that discretion in light both of section 315(b)'s objective of giving the original purchaser an opportunity to retain access to the gas at market or NGPA maximum lawful prices and of other objectives of the NGPA including the deregulation of most categories of gas subject to section 315(b).

The original purchaser's unilateral right to alter delivery terms is inconsistent with deregulation. It deprives the seller of its ability to negotiate such terms of the contract as delivery and compression, terms which

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[26] Pennzoil *et al.*

[27] Indicated Producers and American.

[28] Tennessee, Texaco, Inc. (Texaco), and Bass.

[29] Tennessee.

[30] Bona Fide Offers; Right of First Refusal, 45 FR 53,110, 53,119 (Aug. 11, 1980) (Order No. 96) (codified at 18 CFR 277.201–10 (1985)).

[31] Texaco.

[32] The commenter concedes that at such time as the seller desired to sell to a non-affiliated third party it would have to give the original purchaser a right of first refusal.

[33] The applications for rehearing, reconsideration and clarification filed before issuance of the March notice did not raise this issue. Nor did the notice request comments on this issue. Accordingly, since the notice permitted comments only on the issues specifically raised in the notice or the previous filings, the commenter may not raise this issue as of right. Nevertheless, the Commission has chosen in its discretion to address this issue, and other new issues raised by commenters, on the merits.

[34] Indicated Producers and Pennzoil *et al.*

[35] These include Oxley, IOGA, Amoco, Tenneco Oil Co. (Tenneco), and Bass.

[36] These include Pacific Lighting Gas Supply Co. and Southern California Gas Co. (Pacific), Columbia, INGAA, Texas Eastern Transmission Corp. (Texas Eastern), Consolidated, Tennessee, and Natural.

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have a significant effect on the price it is willing to accept. This prevents market conditions from fully affecting the transaction. Moreover, so long as the Commission allows the original purchaser to alter delivery terms unilaterally, it must provde the seller compensation for its increased costs. If the seller made price concessions to a third party purchaser in return for cheaper delivery terms than those in the contract with the original purchaser, it would be inequitable to allow the original purchaser to take the gas under the original delivery terms but at the price agreed to with the third party. However, compensating the seller for a change in delivery terms would require the Commission to calculate the addition to the contract price necessary to compensate the sellers for its increased costs. This would be inconsistent with deregulation since it would prevent the market from determining the appropriate contract price in light of the delivery terms required by the original purchaser.[37]

Commission calculation of the compensation would also involve serious administrative and practical difficulties. The Commission would face complex legal and factual issues, including what costs to compensate the seller for, whether to grant the seller a fair return in any necessary capital investment, and, if so, what the fair return should be.

In addition, there would be numerous practical difficulties, most arising from the fact that determination of the compensation would inevitably take an extended period of time. The original purchaser would have to determine whether to accept the third party offer without knowing the total price it would ultimately have to pay for the gas. Questions would arise such as (1) whether the original purchaser could withdraw its offer if the Commission required greater compensation to be paid for the change in delivery terms than the original purchaser had expected; and (2) whether sales would begin before the compensation had been determined, and, if so, what price would the original purchaser pay the seller pending final determination of the compensation. In addition, the Commission proceeding to determine the compensation would be costly for both the seller and the original purchaser.[38]

Finally, given recent developments in gas market, original purchasers have little need of the absolute protection provided by the unilateral right to alter delivery terms in a third party offer. The terms of delivery in the third party offer are generally the same as those in the original contract at least with respect to existing wells. This is because the original purchaser's system is probably already connected to the seller's, often at the wellhead, with the result that it is generally taking the gas under the only delivery terms which are practicable in light of the physical configuration of the seller's system.[39] Moreover, even in cases in which the original purchaser cannot take the gas directly under the delivery terms of the third party offer, the original purchaser may be able to negotiate with someone else to deliver the gas to it under the necessary conditions. Some commenters [40] stated that this solution would be available in few cases because of difficulty in finding a willing transporter with the necessary facilities and obtaining regulatory approvals. However, such transactions have become increasingly common in recent years. In addition, the Commission has amended is regulations in order to encourage pipelines to offer transportation services.[41]

For all the reasons discussed above, the Commission, in the exercise of its discretion to establish procedures governing the right of first refusal, chooses not to give the original purchaser a unilateral right to alter the delivery terms of a third party offer. Instead, the Commission believes that a more practical solution to the delivery terms problem is to require the matter to be negotiated between the seller and the original purchaser. Accordingly, where the third party offer contains delivery terms different from those in the original contract, the Commission will permit the original purchaser to make a counteroffer to purchase the gas under the original delivery terms, with an appropriate adjustment in price, but without such counteroffer constituting a rejection of the third party offer for purposes of NGPA section 315(b). The seller, as part of its obligation to give the original purchaser a right of first refusal, must consider the counteroffer. It may, at its option, either accept or reject the counteroffer. If it rejects the counteroffer, it may proceed as if the original purchaser had rejected the offer presented to it.

This procedure is consistent with the objectives of the NGPA. It provides the original purchaser an opportunity to contract for continued access to the gas at market or NGPA maximum lawful prices even if the third party offer contains unacceptable delivery terms. The original purchaser is not forced either to accept an offer with unacceptable delivery terms or lose the gas. At the same time, however, market forces are allowed to determine the price of deregulated gas and the practical difficulties of giving the original purchaser a unilateral right to alter delivery terms are avoided.

3. Termination of Section 315(b) Obligations (§ 277.204(b)(3))

The final rule releases a seller from its section 315(b) obligations to the original purchaser once the seller has actually sold the natural gas to a third party purchaser under terms rejected by the original purchaser.[42] Some applicants for rehearing [43] believe that a seller's obligations under section 315(b) should terminate at the time the original purchaser rejects the offer substantially accepted in principle. They argue that the actual sale need not take place because there should be no concern about collusion between the seller and the third party subsequent to rejection of the offer. They add that the provision requiring arms-length transactions should avoid such collusion. These applicants, therefore, believe that the seller's section 315(b) obligations should cease once a third party offer has been rejected. The only commenter to address this issue [44] opposes the applicant's contention.

In rejecting the same argument in the final rule, the Commission stated that it intended to discourage sellers from making a frivolous offer substantially accepted in principle by a third party. A seller might otherwise present the original purchaser with an unacceptable offer simply to divest itself of an unwanted customer. This would be an abuse of section 315(b) which is intended to continue service on the basis of good faith bargaining in the marketplace. The Commission explained that § 277.204(b)(3) is necessary to:

> Avoid the presentation to the original purchaser of offers which, while "substantially accepted in principle by a third party," were never intended to apply to an actual sale of natural gas.[45]

Contrary to applicants' contention, the Commission believes that requiring an actual sale of gas to the third party more effectively prevents collusion and guarantees that the seller and third party purchaser seriously intended the written offer and written acceptance to result in a contract binding on the seller than does a mere requirement of an arms-length transaction. The former requirement is a largely self-implementing means of accomplishing this purpose. The latter requirement, on the other hand, is more difficult to enforce because determining if a transaction with a third party was arms-length is harder than determining if a sale to that party actually occurred.

4. Interim Protective Sales (§ 277.207)

The final rule provides that deliveries required by § 277.205(a) to be continued after expiration of a contract until rejection of a bona fide offer shall be made under the terms and conditions in effect on the last day of the expired contract. Citing NGPA legislative history, some applicants for rehearing [46] argue that the Commission is unlawfully limiting the price payable after the expiration of the contract to a price less than the otherwise applicable maximum lawful or deregulated price.[47]

Applicants overlook the fact that section 315(b) is intended to protect the original purchaser's continued access to natural gas previously committed or dedicated to it while giving the seller an opportunity to market such gas under a new contract up to NGPA or deregulated prices. By avoiding abrupt changes in price at the time the contract expires, the final rule furthers the statutory purpose of continuing the availability of gas supplies. Moreover, the requirement that continued deliveries be at the price provided for in the expired contract imposes only a small burden on the seller. The seller can terminate its obligation to make such deliveries within twenty days by simply making a bona fide offer since the original purchaser must either accept or reject that offer within twenty days of its receipt.

Finally, nothing in the NGPA prohibits the Commission from requiring that deliveries be continued at the contract price until rejection of a bona fide offer even though the contract price may be less than the applicable maximum lawful or deregulated price. On the contrary, by removing certain gas from NGA sales jurisdiction, Congress eliminated the option available to sellers under the NGA to increase the price of gas sold after a contract expired to a higher area or national rate without contractual authorization. This increase was accomplished by filing a notice with the Commission under section 4(d) of the NGA.[48] In eliminating NGA sales jurisdiction, Congress subjected gas covered by section 315(b) to the general NGPA requirement of contractual authorization to collect NGPA prices. The cited legislative history only means that, after a fixed price contract expires, a seller could collect and the purchaser could pay no more than the maximum lawful price only if the parties contractually authorize such collection.

One commenter [49] argues that, since in today's market the price under the expired contract is often higher than the current market price, the final rule shields sellers from current market conditions and keeps the price artifically high. Accordingly, the commenter requests that the Commission permit a purchaser to cease purchasing the gas or, if its weighted average cost of gas (WACOG) in its current Purchased Gas Adjustment filing is less than the price in the expired contract, to make any continued purchases under § 277.205(a) at the WACOG.[50]

The Commission believes that the commenter's requested change in the final rule is unnecessary. Purchasers already may cease taking the gas by waiving their right to a bona fide offer. The final rule requires sellers to make bona fide offers no later than twenty days before expiration of the existing contract or after an NGPA well determination.[51] Thus, the final rule should not cause purchasers to be locked into higher than market prices for a significant period of time.

C. Waiver of Section 315(b) Rights (18 CFR 277.209)

The final rule provides that the original purchaser may waive its section 315(b) rights, but requires that such waivers be made not more than one year before contract expiration. Some commenters [52] contend that the prohibition on waivers more than one year before contract expiration should be eliminated. The Commission agrees.

The Commission is currently seeking to encourage the renegotiation of gas supply contracts to bring gas supplies and prices into line with market clearing

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[37] Approximately half the commenters *supporting* the original purchaser's right to alter delivery terms (Pacific, Texas Eastern, and Tennessee) concede that it is inappropriate for the Commission to compensate the seller for increased costs in a deregulated environment. These commenters suggest that the Commission simply not provide the sellers any compensation for increased costs when the original purchaser alters the delivery terms in a third party offer. But this would be inequitable for the reasons stated above.

[38] Thus far the Commission has never had to confront these difficulties since no seller has ever applied to the Commission for compensation pursuant to § 277.205(d). However, this does not necessarily mean that no seller ever will. Nor does it seem wise for the Commission to include in its regulations a right for sellers to obtain compensation based on the assumption no seller will ever exercise that right. Futhermore, the fact no seller has ever requested compensation suggests that original purchasers rarely exercise the right to alter delivery terms and thus have little need for it. If original purchasers had been regularly exercising the right to alter delivery terms, one would expect that some seller would have applied to the Commission for increased compensation asserting that the change caused it increased costs.

[39] See also the discussion in footnote 38, *supra*.

[40] Columbia and Consolidated.

[41] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42,408 (Oct. 18, 1985) (Order No. 436); 50 FR 42,217 (Dec. 23, 1985) (Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petitions for Stay, and Granting Clarification) (Order No. 436–A). Some commenters, including Texas Eastern and Consolidated, note that the original purchaser may have invested in facilities to receive gas under the original delivery terms in reliance upon its right to continued access to the gas. They state that taking the gas under changed delivery terms could require new or additional facilities, increasing costs to their customers. The Commission does not believe that such a situation is likely to arise in a significant number of cases. For the reasons stated above, in most cases either the third party offer will contain the same delivery terms or the original purchaser will be able to arrange for another pipeline to transport the gas to it. In addition, the original purchaser would get the benefit of the price concessions presumably made to the third party offeror in return for more favorable delivery terms.

[42] This means that if the original purchaser rejects an offer by a third party but no contract is actually entered into between the seller and that third party, the seller cannot sell to another third party until it has given the original purchaser an opportunity to accept or reject that third party's offer.

[43] Indicated Producers.

[44] Tennessee.

[45] *See* Bona Fide Offers; Right of First Refusal, 45 FR 53,116, 53,119 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10 (1985)).

[46] Pennzoil *et al.*

[47] In support of this contention, applicants cite part of Congressman Dingell's statement during NGPA debate that "Once the existing contract no longer limits the price (of gas sold under sections 104 or 106) . . . . the producer could charge and the purchaser could pay any amount up to the maximum lawful price . . . which would be based upon the just and reasonable rate." 124 Cong. Rec. 38,366 (1978). Applicants did not cite the limiting phrase "which would be based upon the just and reasonable rate." The limiting phrase suggests that the gas could not qualify for NGPA incentive prices and that the Dingell statement has no bearing on gas covered by section 315(b). The producer is not limited to receiving a just and reasonable rate for that gas. *Id.*

[48] Pennzoil's reliance on the NGA case of Phillips v. FERC, 586 F.2d (5th Cir. 1978), in arguing that the Commission lacks authority under the NGPA to impose the requirement here at issue, is misplaced. That case held that a producer may file a unilateral rate increase, where not under contract, up to a higher small producer rate under section 4(d) of the NGA. It is irrelevant to the question of a producer's rights with respect to gas removed from NGA jurisdiction.

[49] Tennessee.

[50] The commenter also proposes to give purchasers under existing contracts which remain subject to the Commission's NGA jurisdiction a similar right. That proposal, however, is beyond the scope of this rulemaking and will not be considered here.

[51] If a seller refuses to make a bona fide offer in spite of this requirement, the purchaser should bring this situation to the Commission's attention.

[52] Bass, Natural, INGAA, and Williams Exploration Co.

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levels.[53] As one commenter [54] observed, eliminating the one-year limit should facilitate the renegotiation process by allowing purchasers to use waiver of the section 315(b) rights as a bargaining card for price or rate of take concessions from sellers regardless of the expiration date of the contract. If the purchaser believes that his interests would be better served by waiving his section 315(b) rights in return for such considerations from the seller, the Commission sees no reason why the purchaser should be prohibited from doing so.

D. Implied Contracts

One applicant[55] requests that the Commission clarify that the requirement that bona fide offers be made not more than eighteen months before expiration of a contract (18 CFR 277.205(b)(3)) does not apply to "implied contracts."[56] Implied contracts for purposes of Part 277 arise upon expiration of a contract for the sale of gas subject to the NGA. Part 277 treats the seller's continuing service obligation under the NGA in such a situation as an implied contract to sell the gas to the original purchaser (18 CFR 277.203(g)). Under § 277.203 (a) and (h)(1) such implied contracts expire when the gas is removed from NGA jurisdiction by a jurisdictional agency determination that it is section 102(c), 103(c), or 107(c)(1)–(4) gas.[57]

The applicant contends that applying the 18-month requirement to implied contracts would seriously impede the seller's ability to sell the gas to a third party. The applicant alleges that a seller generally could never make a bona fide offer with any assurance that it would cover all the gas subject to the implied contract, since the possibility would always exist that a new well would be drilled and receive a determination removing its production from NGA jurisdiction more than eighteen months after the bona fide offer had been made. That would mean that the implied contract with respect to that gas had expired more than eighteen months after the making of the bona fide offer. Accordingly, the bona fide offer could not cover that gas. The applicant contends that consequently a seller could never give a third party clear title to all gas to be produced in the future from acreage subject to the implied contract. The applicant concludes that the 18-month requirement would mean that the seller would have to make bona fide offers essentially on a well-by-well basis. The applicant requests that the Commission deal with this problem by (1) holding that the 18-month requirement applies only to written contracts and not implied contracts and (2) holding that a single bona fide offer may be made which will cover all wells for which determinations have or will be made in the acreage covered by the implied contract regardless of when those determinations are made.

The Commission's request for additional comments expressly requested comments on this issue. Most commenters agreed that the 18-month requirement in question should not apply to implied contracts.[58] The Commission also agrees. The requirement that bona fide offers be made no more than eighteen months before expiration of the contract was added in order to avoid the possibility that without such a provision "the purchaser might find itself in the position of having to consider a bona fide offer years before the contract expires."[59] Also, there was a fear that years could elapse between the making of a bone fide offer and expiration of the right of first refusal.

These concerns have less, if any, force in the context of an implied contract. Here the actual contract between the parties has already expired. Accordingly, it makes sense that negotiations for a new contract to govern the relationship between the parties should take place at any time after expiration of the old contract. Since contracts often cover undrilled as well as drilled acreage, there is no reason why those negotiations, including the making of a bona fide offer, should occur only within a particular amount of time before jurisdictional agency determinations for new wells. Given this fact, the Commission agrees that the 18-month requirement should be inapplicable to implied contracts so as to simplify the parties' task in complying with section 315(b) and negotiating a new contract. This will permit the seller to make one bona fide offer that will cover all gas subject to the implied contract which is or may in the future be subject to section 315(b), and thus to negotiate one contract coverning all the gas. The difficulty of having to make bona fide offers essentially on a well-by-well basis will thus be avoided.[60]

Accordingly, the Commission is amending § 277.205(b)(3) to make clear that the 18-month requirement does not apply to implied contracts.

E. Voluntary Releases

A number of contracts contain "market out" or similar clauses under which a purchaser may release the seller from its obligation to deliver all or a portion of the gas. One applicant [61] requests that the Commission clarify that a purchaser's exercise of its rights under such a clause constitutes an expiration or termination of the contract for purposes of triggering the purchaser's rights under section 315(b). The applicant expresses the concern that otherwise a seller could seek an alternate purchaser only for the period between the release and final expiration of the contract since at that time the original purchaser would be entitled to its rights under section 315(b). The Commission expressly requested comments on this issue in its March notice.

The Commission cannot state that a purchaser's exercise of its rights under a "market out" clause necessarily constitutes a termination of the contract. In some cases a purchaser may release the seller from its obligation to deliver gas only for a part of the remaining term of the contract and then later recommence taking gas under the contract. In such a case the purchaser's exercise of its rights under a "market out" clause clearly does not terminate the contract.

However, where the purchaser does exercise its rights under a "market out" clause so as to release the seller from its obigation to deliver any gas for the entire remaining term of the contract, the Commission believes that that action must be treated as a termination of the contract for purposes of triggering the purchaser's rights under section 315(b). The contract is effectively at an end since the purchaser no longer has any right to take gas under it. Allowing the seller to give the purchaser its section 315(b) rights immediately upon its exercise of the " market out" clause will enable the seller to find another buyer for the gas unencumbered by the need to give the purchaser its section 315(b) rights upon expiration of the term of the original contract.

Some commenters [62] contend that a purchaser's exercise of a "market out" clause should be treated as a termination of the contract only if the contract expressly states that exercise of the clause would terminate the contract. The commenters state that this would avoid any confusion as to whether the contract has terminated. The Commission believes that such an express contractual provision is unnecessary. The purchaser's loss of any further right to take gas under the contract is the crucial fact causing the contract to be terminated. In most cases, this fact should be clear regardless of any express contractual language concerning whether the purchaser's exercise of a "market out" clause terminates the contract.[63]

In the March notice, the Commission requested comment on whether the purchaser's exercise of its rights under a "market out" clause so as to release the seller from his obligation to deliver any gas for the remaining term of the contract should be treated as a waiver by the purchaser of its section 315(b) rights. The Commission asked whether it makes sense to grant the purchaser rights designed to protect its continued access to gas if the purchaser's exercise of the "market out" clause represents a determination that it no longer requires the gas. A number of commenters [64] oppose this proposal. They state that a purchaser's exercise of a "market out" clause does not necessarily represent a determination that it does not require the gas in question. Rather, the purchaser may exercise the clause because the gas is unmarketable at the price provided by the contract, but may desire to continue purchasing the gas at a renegotiated lower price. The commenters also contend that allowing implied waivers based on a purchaser's exercise of a "market out" clause without an express written waiver could lead to confusion as to when a purchaser's section 315(b) rights have been waived.

The Commission has determined that the purchaser's exercise of a "market out" clause should not be treated as an implied waiver of its section 315(b) rights. Apart from the concerns expressed by the commenters, the Commission believes that such treatment would be inconsistent with section 315(b). Congress provided that the right of first refusal is triggered by "the expiration or termination of any contract" for the sale of gas subject to the section. Expiration is the expiration of a contract in accordance with its express provisions. Termination, on the other hand, is the ending of a contract by either party pursuant to a power contained in the contract. Section 315(b) does not limit the triggering of the right of first refusal to termination by the seller, but also provides for the triggering of that right upon termination by the purchaser. Thus, to hold that the purchaser's termination of a contract through exercise of a "market out" clause automatically waives the purchaser's section 315(b) rights would be inconsistent with section 315(b) which requires that a purchaser be granted a right of first refusal upon its termination of the contract.

One commenter [65] observes that under the terms of some "market out" clauses a purchaser may stop taking gas but retain a right to again take gas during the remaining term of the contract. The commenter states that, if the purchaser never exercises the retained right, it should be treated as having waived its section 315(b) rights so that when the contract expires no bona fide offer or right of first refusal need be given. The Commission disagrees. For the reasons stated above, whenever the purchaser finally loses its right to take any more gas under the contract, whether through termination of the contract by exercise of a "market out" clause or expiration of the contract, it must be accorded its section 315(b) rights.[66]

F. Record-Retention Requirements (§ 277.210)

The final rule imposes a record-retention provision of unlimited duration on first sellers to retain copies of all bona fide offers to third parties. Also, purchasers must retain all documents created in the ordinary course of business relating to Part 277 regulations.

Applicants[67] request that the record retention requirement be limited to three years. The Commission agrees. An unlimited record-retention requirement is unnecessary. There should be no need to retain permanently the records relating to the sale of gas which will usually be sold to third parties under Part 277 within a relatively short time. Accordingly, § 277.210 is amended to restrict the record-retention requirement to a period of three years from the date of each relevant document. This amendment requires a conforming change to the Commission's schedule of records and periods of retention at § 225.3, Item 65(d).

G. New Tight Formation Gas and Section 315(b).

Paragraph (1) of section 315(b) provides that that section applies to new natural gas under section 102(c), gas from new onshore, production wells under section 103(c), and high cost gas under section 107(c)(1)–(4) which were committed or dedicated to interstate commerce on November 8, 1978. Paragraph (1) does not make section 315(b) applicable to section 107(c)(5) gas, including new tight formation gas. However, in the recent rulemaking implementing the January 1, 1985, deregulation of section 102(c) and some section 103 gas (as well as other types of gas),[68] the Commission observed that a

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[53] Statement of Policy and Interpretative Rule, 50 FR 16,076 (Apr. 24, 1985) (to be codified at 18 CFR 2.76). Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol: 50 FR 42,408, 42,404 (Oct. 18, 1985) (Order No. 436); 50 FR 42,217 (Dec. 23, 1985) (Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petitions for Stay, and Granting Clarification; Order No. 436–A).

[54] Natural.

[55] Bass.

[56] Bass also requested clarification that the prohibition on waiver of section 315(b) rights more than one year before contract expiration does not apply to implied contracts. Since the Commission has decided to eliminate the prohibition entirely, it need not address that request.

[57] The gas must of course have been committed or dedicated to interstate commerce on November 8, 1978 (§ 277.203(a)(1)).

[58] The only exception was Tennessee. Tennessee claims that, even in the context of an implied contract, the 18-month requirement is necessary to ensure that the purchaser will not have to decide whether it wants to continue taking the gas years before it knows what its needs are.

[59] Bona Fide Offers; Right of First Refusal, 45 FR 53,116 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10 (1985).

[60] Similarly, before expiration of an existing contract the seller may make one bona fide offer covering all the gas subject to the contract, including any not yet removed from NGA jurisdiction. The Commission made this clear in the Notice of Proposed Rulemaking before issuance of Order No. 95. 44 FR 66,208 (Nov. 19, 1979). Again, this avoids the necessity of seriatum, well-by-well bona fide offers. The addition to the rule of the 18-month requirement by Order No. 95 did not affect the seller's right to make a bona fide offer covering all gas subject to a contract. That requirement was intended only to affect the timing of a bona fide offers, not to limit the scope of timely bona fide offers.

[61] Bass

[62] Natural, PG&E and Texas Eastern.

[63] In some cases, a purchaser may exercise a "market out" clause so as to give up permanently the right to take some, but not all, of the gas subject to the contract. When this occurs, the contract is terminated for purposes of triggering section 315(b) as to the gas the purchaser can no longer take but not as to the remaining gas which it may still take.

[64] INGAA, Natural, PG&E, Pacific, Columbia, Consolidated, and Tennessee.

[65] Amoco.

[66] Amoco also states that some contracts contain clauses allowing the seller to terminate the contract if the purchaser exercises a "market out" clause. The commenter suggests that the purchaser's agreement to inclusion of such a clause in the contract should be treated as a waiver of its section 315(b) rights if it exercised the "market out" clause. The Commission does not believe waiver should be implied in such circumstances. If the contract was entered into before enactment of the NGPA, the purchaser should not be construed as having wavied a right it did not even know it had. If the contract was entered into after enactment of the NGPA, the purchaser may have agreed to such a clause in reliance on its being entitled to a bona fide offer and right of first refusal under section 315(b). The Commission believes that section 315(b) rights should be waived only through an express written waiver as provided by § 277.209.

[67] Indicated Producers.

[68] Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46,874 (Nov. 29 1984) (Order No. 406); 49 FR 50,637 (Dec. 31, 1984) (Order denying rehearing in part, granting rehearing in part, denying stay and making technical corrections); 50 FR 7333 (Feb. 22, 1985) (Order denying applications for rehearing and clarifying previous order).

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determination that gas is new tight formation gas includes gas which qualifies either as section 102 or section 103(c) gas. This is because in order to qualify as new tight formation gas a producer must file the same information, in addition to other information, that would be filed to qualify as section 102 or 103(c) gas. 18 CFR 274.205(e)(1)(i) (A) and (B) and 271.703(b)(2) (1985). The Commission concluded that in order to qualify as new tight formation gas under section 107(c)(5), the gas must meet section 102 or section 103 qualification requirements as a threshold to obtaining a section 107(c)(5) determination. This meant that new tight formation gas was price-deregulated since the applications for determination of such gas as new tight formation gas contained the data and met the requirements for section 102(c) or the appropriate section 103 gas.

In its March notice, the Commission sought comment as to whether the same principle should apply in the context of section 315(b). All but one of the commenters addressing the issue stated that it should.[69] The Commission agrees. Consistent with the Order No. 406, when applications for determinations that gas is new tight formation gas contain the data and meet the requirements for section 102(c) or 103(c), that gas must be considered section 102(c) or 103(c) gas for purposes of section 315(b) and the original purchaser must be given a bona fide offer and right of first refusal.

H. Other Issues

Commenters have raised three other issues in response to the March notice which the Commission briefly addresses. One commenter[70] requests that the Commission modify the final rule to prohibit clauses in third party offers which the original purchaser could not legally accept. It states that otherwise a third party offer from an intrastate pipeline might, for example, include a clause restricting sales of the gas to intrastate commerce. It further notes that inclusion in third party offers of clauses which the original purchaser could not legally accept would defeat Congress's purpose in enacting section 315(b) of providing a mechanism protecting the purchaser's continued access to gas. The Commission believes that this problem is best dealt with on a case-by-case basis rather than by inclusion in the regulations of a new provision prohibiting such clauses. The Commission is not aware of any instance in which an original purchaser has been unable to accept a third party offer because of a clause which could not legally be accepted under the NGA or the NGPA. If an original purchaser believes a third party offer which it would otherwise desire to accept contains such a clause it may file a complaint with the Commission.

Another commenter[71] raises the issue of how intracorporate transfers of gas from a company's production division to its pipeline division, which the Supreme Court has held are first sales within the meaning of the NGPA,[72] should be treated under section 315(b). It notes that the production division's giving the pipeline division a bona fide offer and right of first refusal when the company has decided to market the gas elsewhere would be a useless exercise. Instead, it suggests that the Commission require that the pipeline file a statement with its Purchased Gas Adjustment filing stating that the company has determined the pipeline no longer requires the gas. The Commission agrees that it makes no sense for a company to give itself a bona fide offer and right of first refusal. For that reason, the Commission does not believe that Congress intended section 315(b) to apply in the context of intracorporate transfers. Accordingly, no bona fide offer or right of first refusal need be given upon termination of intracorporate transfers, nor need any statement be filed with the pipeline's PGA clause.

Finally, one commenter[73] suggests that the Commission provide in the final rule for penalties for noncompliance with section 315(b). The Commission already has ample authority to enforce the requirements of section 315(b) pursuant to section 504 of the NGPA and sees no need to specify penalties for violations of section 315(b). Such penalties may be determined on a case-by-case basis.

IV. Paperwork Reduction Act Statement and Effective Date

The changes in information collection provisions in this rule that the Commission now makes on rehearing will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1985). Interested persons can obtain information concerning the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426 (Attention: Richard Howe, Jr., (202) 357–8308). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective May 21, 1986. If OMB's approval has not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects

18 CFR Part 225

Preservation of records of natural gas companies.

18 CFR Part 277

Continental shelf; natural gas; wage and price controls.

For the Reasons Above, the Commission Orders

(1) The Applications for Rehearing, Petition for Reconsideration, and Motion for Clarification are denied, except as granted consistent with the amendments to the rule below and with the discussion in the preamble; and

(2) Parts 225 and 277 of Chapter I, Title 18, of the Code of Federal Regulations, are amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 225—[AMENDED]

1. The authority citation for Part 225 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Federal Power Act, 16 U.S.C. 792–828c (1982).

2. Section 225.3, in the table "Schedule of Records and Periods of Retention", Item 65(d), is amended by removing the words "not specified by regulation" under the column "Retention period", and adding, in their place, the words "3 years" to read as follows:

§ 225.3 Schedule of Records and Periods of Retention

* * * * *

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[69] The exception is Indicated Producers. They rely on the fact that section 315(b) does not include section 107(c)(5) gas in the list of categories of gas to which section 315(b) applies.

[70] Texas Eastern.

[71] Consolidated.

[72] Public Service Comm'n v. Mid-Louisiana Co., 463 U.S. 319 (1983).

[73] Tennessee.

Description	Retention period
* * * * *	
65. Reports to Federal and State regulatory commissions:	
* * * * *	
(d) Records required to be retained under § 277.210 of this chapter, relating to the Natural Gas Policy Act of 1978.	3 years.
* * * * *	

PART 277—[AMENDED]

3. The authority citation for Part 277 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982), unless otherwise noted.

§ 277.205 [Amended]

4. Section 277.205(b)(3) is amended by removing the words "subject contract" and adding, in their place, the words "subject contract (other than an implied contract)".

§ 277.206 [Amended]

5. Section 277.206 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) If the offer provides for delivery of the natural gas to a different point or under different physical conditions than specified in the subject contract, the original purchaser may make a written counteroffer to purchase the gas under the delivery terms specified in the subject contract with such other changes in the terms of the offer presented by the seller as the original purchaser deems appropriate. Within 20 days of receipt of the counteroffer, the seller must inform the original purchaser in writing of its decision either to accept or reject the counteroffer. If the seller rejects the counteroffer, it may then proceed as if the original purchaser had rejected the offer presented it by the seller.

§ 277.209 [Amended]

6. Section 277.209(a) is amended by removing the last sentence.

7. Section 277.210 is revised to read as follows:

§ 277.210 Recordkeeping Requirements.

A seller of natural gas which is subject to this subpart must retain copies of all bona fide offers made under § 277.205 and offers to the original purchasers to satisfy the original purchaser's right of first refusal under § 277.206 for a three-year period from the date of the offer. The sellers and purchasers of natural gas which is subject to this subpart must also retain all other documents created in the ordinary course of business which relate to this subpart for a three-year period from the date of the document.

[FR Doc. 86–4986 Filed 3–6–86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability

Correction

In FR Doc. 85–28672, beginning on page 50068, in the issue of Friday, December 6, 1985, which was corrected on page 5989 in the issue of Wednesday, February 19, 1986, make the following additional corrections in Appendix 1 to Subpart P, Part 404:

1. On page 50093, second column, last paragraph, sixth line, "test" should read "rest".
2. On page 50097, third column, eighteenth line, "there" should read "three".
3. On page 50104, second column, seventh line from the bottom, "hemozygous" should read "homozygous".
4. On the same page, third column, thirteenth line from the bottom, the first "of" should read "or".
5. On page 50105, first column, second line from the bottom, "hyertonic" should read "hypertonic".
6. On page 50106, second column, last line, "test" should read "text".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 84N–0319 and 76N–0366]

FD&C Yellow No. 5 and Its Lakes; Postponement of Closing Date, Provisional Listing, and Continued Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Yellow No. 5 for use in coloring cosmetics generally and externally applied drugs and of its lakes for use in coloring food and ingested drugs. FDA is establishing a new closing date for FD&C Yellow No. 5 to give the agency time to complete its evaluation of the objections that it received in response to the final rule on the use of FD&C Yellow No. 5 that FDA published in the **Federal Register** of September 4, 1985 (50 FR 35774). The regulations that permanently list FD&C Yellow No. 5 and that remove it from the provisional list are stayed until May 6, 1986.

DATES: Effective March 7, 1986, the new closing date for FD&C Yellow No. 5 will be May 6, 1986. The effective date of the final rule published September 4, 1985, is stayed pending final FDA action on the objections that it received.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food and Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of March 7, 1986, for the provisional listing of FD&C Yellow No. 5 in a regulation published in the **Federal Register** of January 6, 1986 (51 FR 375). The agency established the March 7, 1986, closing date for FD&C Yellow No. 5 to provide time for its evaluation of three objections to the final rule on the use of this color additive, which FDA published on September 4, 1985.

Previously, after review and evaluation of the data relevant to the petition to list FD&C Yellow No. 5 for use in externally applied drugs and in cosmetics generally, the agency had concluded that FD&C Yellow No. 5 was safe for these uses. Therefore, FDA issued a final rule in the **Federal Register** of September 4, 1985 (50 FR 35774), that would permanently list FD&C Yellow No. 5 for those uses and would remove the stay on the use of FD&C Yellow No. 5 in external cosmetics. FDA stated that the final rule would become effective on October 7, 1985, unless stayed by the filing of proper objections.

FDA received three letters stating objections to this final rule. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the effect of this final rule is stayed until the agency can rule upon the objections. FDA expects that it will need only a small amount of additional time to complete its evaluation of the objections. Therefore, FDA concludes that only a brief postponement is necessary at this time. The regulation set forth below will postpone the March 7, 1986, closing date

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for the provisional listing of FD&C Yellow No. 5 until May 6, 1986.

Because the current closing date expires on March 7, 1986, FDA has concluded that the use of notice and public procedure on this regulation is impracticable. Thus, good cause exists for issuing the postponement as a final rule. Moreover, this action is consistent with the protection of the public health because the agency has previously concluded that FD&C Yellow No. 5 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of the color additive until May 6, 1986. To prevent any interruption in the provisional listing of FD&C Yellow No. 5 and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on March 7, 1986. Any person who wishes to comment on the regulation may do so in accordance with 21 CFR 10.40(e)(1).

List of Subjects

21 CFR Part 74

Color additive, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1705 [Stayed]

2. The modifications of § 74.1705 *FD&C Yellow No. 5* included in the September 4, 1985, final rule continue to be stayed.

§ 74.2705 [Stayed]

3. Section 74.2705 *FD&C Yellow No. 5* continues to be stayed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

4. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

5. Section 81.1 *Provisional list of color additives* is amended in paragraph (a) by revising the closing date for "FD&C Yellow No. 5" to read "May 6, 1986."

§ 81.27 [Amended]

6. Section 81.27 *Conditions of provisional listing* is amended in paragraph (d) by revising the closing date for "FD&C Yellow No. 5" to read "May 6, 1986."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

7. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.705 [Stayed]

8. The modifications of § 82.705 *FD&C Yellow No. 5* included in the September 4, 1985 final rule continue to be stayed.

Dated: February 20, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86–4837 Filed 3–6–86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OSWER FRL-2977-8]

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of the deletion of sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of eight sites from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Russel H. Wyer, Director, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

The eight sites EPA deletes from the NPL are:

1. Enterprise Avenue, Philadelphia, Pennsylvania
2. Friedman Property (once listed as Upper Freehold), Upper Freehold, New Jersey
3. Lehigh Electric and Engineering Co., Old Forge Borough, Pennsylvania
4. Morris Arsenic Dump, Morris, Minnesota
5. PCB Spills, 210 miles of roads, North Carolina
6. PCB Warehouse, Saipan, Commonwealth of the Northern Mariana Islands
7. PCB Wastes, Trust Territory of the Pacific Islands
8. Taputimu Farm, Island of Tutuila, American Samoa

An explanation of the criteria for deleting sites from the NPL was presented in section II of the December 31, 1985 Notice of Intent to Delete (50 FR 53448). A description of each of the eight sites, and how they met the criteria for deletion, was presented in section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was January 30, 1986. Three comments were received; the commentors concurred with EPA's determination that the sites pose no significant threat to public health and the environment and were supportive of the decision to delete them from the NPL.

One commentor requested that sampling wells at the Morris Arsenic site be properly closed before deletion. Closure operations on these test locations will begin as soon as weather conditions permit.

Another commentor stated he does not take responsibility for any future action at the Morris Arsenic site. Site

deletions from the NPL do not effect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B [Amended]

2. The NPL, Part 300; Appendix B, is amended as follows:

- In Group 2 remove:
  - PCB Wastes, Trust Territory of the Pacific Islands
  - Taputimu Farm, Island of Tutuila, American Samoa
  - PCB Spills, 210 miles of roads, North Carolina
  - PCB Warehouse Saipan, Commonwealth of the Northern Mariana Islands
- In Group 6 remove:
  - Enterprise Avenue, Philadelphia, Pennsylvania
- In Group 7 remove:
  - Morris Arsenic Dump, Morris, Minnesota
- In Group 9 remove:
  - Friedman Property, Upper Freehold, New Jersey
- In Group 11 remove:
  - Lehigh Electric and Engineering Co., Old Forge Borough, Pennsylvania

The NPL will reflect these deletions in the next final update.

Dated: February 21, 1986.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–5003 Filed 3–6–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 53 and 124

Grants for Hospital Construction and Modernization; Federal Right of Recovery and Waiver of Recovery

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: As a result of recent amendments to sections 609 and 1622 of the Public Health Service Act, the Public Health Service amends its regulations to provide for (1) written notification to the Secretary when a grant-assisted hospital is sold or no longer used as a health facility eligible for a grant under Title VI or XVI of the Act, (2) waiver of the Government's right of recovery under certain circumstances, and (3) methods of calculating interest on recovery amounts.

DATE: These regulations are effective on March 7, 1986.

ADDRESS: Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 11–03, Rockville, Maryland 20857, ATTN: Tuei Doong.

FOR FURTHER INFORMATION CONTACT: Tuei Doong, 301 443–3466.

SUPPLEMENTARY INFORMATION: Section 2381 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended sections 609 and 1622 of the Public Health Service Act (42 U.S.C. 291i, 300s–1a). These sections provide for recovery of funds by the United States when a health care facility that was constructed with the aid of a grant under Title VI (the Hill-Burton Act) or XVI of the Public Health Service Act is, within 20 years after the completion of the grant-assisted construction, transferred to an entity that would not have been qualified to receive a grant. The sections also provide for recovery of funds where, within the same 20-year period, an assisted facility "ceases to be" a health facility with respect to which a grant could have been made. In either case, the sections established the amount to be recovered as the Federal proportionate share of the value of the facility at the time it is transferred or ceases to be an eligible entity. The right of recovery can be exercised against either the transferor or any subsequent transferee of a facility or, in the case of a facility that has ceased to be an eligible health care facility, *e.g.*, where the facility is closed, against its owners.

The amendments to sections 609 and 1622—while continuing the basic recovery provisions—made certain significant changes which may be summarized as follows:

(1) The transferor of an assisted facility must provide written notice to the Secretary of a sale or transfer within 10 days of the sale or transfer.

(2) The owner of an assisted facility the use of which is changed must provide written notice to the Secretary within 10 days of the change of use.

(3) For facilities that take longer than 180 days from the date of the Department's receipt of the notice of change of status to agree to and pay a recovery amount, interest will accrue on the eventual recovery amount beginning 180 days after receipt of the required notice by the secretary, and ending when the recovery amount is collected.

(4) For facilities that fail to notify the Secretary of a change in status (sale, transfer, or change of use) within 10 days of the change, interest will begin to accrue on the date of the change of status.

(5) In the case of facilities which changed status before the date of enactment of Pub. L. 98–369 (July 18, 1984), interest would begin to accrue 30 days after the enactment (August 17, 1984), but in no case earlier than 180 days from the date of the change of status regardless of when the facility notified the Secretary of the change.

(6) A proprietary entity that acquires an assisted facility may be granted a waiver of the recovery by the Secretary if the entity establishes an irrevocable trust in accordance with the statute that pays for medical care delivered to persons unable to pay, in accordance with the facility's uncompensated service obligation under 42 CFR Part 124 Subpart F. The trust must be established in an amount equal to the greater of (a) twice the amount of the remaining uncompensated care obligations of the facility or (b) the amount that would have been due under recovery.

Discussion of Public Comments

On March 18, 1985, a Notice of Proposed Rule Making (NPRM) was published in the **Federal Register** (50 FR 10798) to implement the amendments to sections 609 and 1622, by adding a new Subpart H to Part 124 of Title 42, CFR. A period of 30 days was provided for the public to comment on the proposal. The comments have been carefully reviewed and are summarized and discussed below:

1. *Notification of Sale, Transfer or Change of Use.*—Commenters requested inclusion of more specific definitions of the types of status changes which should be reported to the Secretary, and the aspects of management contracts which will be reviewed by the Secretary.

In response to the comments, the term "transfer" in § 124.704(a) has been explained in more detail as occurring when a facility is conveyed to another entity through lease, merger, bankruptcy, foreclosure or other arrangement. This explanation reflects, in part, the judicial decisions in *United States* v. *Brady*, 385 F. Supp. 1347 (S.D. Fla. 1974), and *United States* v. *First*

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Georgia Bank, 529 F.Supp. 834 (N.D. Ga. 1982), where title to a Hill-Burton facility was conveyed following bankruptcy or foreclosure proceedings.

With regard to providing more guidance concerning management contracts, § 124.704(a)(ii) has been revised to provide that the managing organization will not be deemed to be the operator of the facility if the management agreement contains both of the following provisions:

1. The Board of Directors of the facility retains authority to terminate the agreement at any time upon reasonable notice to the contractor.

2. No employee of the contractor may be a member of the facility's Board of Directors. In the absence of either of these provisions, the Secretary will consider the degree of control granted to the managing organization over patient admission, determination of what services will be provided, and charges for services provided in the facility. The main criterion as expressed in the regulation is whether the contractor's responsibilities are so pervasive as to lead the Secretary to conclude that the contractor, rather than the grantee, is the operator of the facility, as opposed to its manager. The Department reiterates that a skilled management firm can develop a high level of administrative efficiency for a health care facility, and that it has no objection in principle to the use of management firms by hospitals constructed with Federal grant funds. In general, the Department will not examine the management details of such contracts provided the ultimate control clearly remains with the governing body of the hospital. In particular, we note that hiring and other personnel decisions made by a management firm would not cause a facility to cease to be "non-profit" as the term is defined in the Act. Nevertheless, the method of payment to firms managing hospitals may be examined. If payment to a management firm is calculated as a percentage of a facility's net income, then the facility would have ceased to be "non-profit" as the term is defined in section 645(e) of the Public Health Service Act (see also § 124.702 of these regulations). On the other hand, payments calculated as incentive fees based on management performance targets that do not violate the non-profit principle stated above will not trigger a recovery situation. The Department is reviewing existing guidelines to conform them with this rule. In the meanwhile, of course, any discrepancy is resolved by application of this rule.

Some comments noted that much of the information required for the notice of change of status is not readily available within the 10 day period following the change, contending that accounting and financial information related to the transaction are not usually available until 60 days after the transaction. They requested more time to submit this information, that it be limited solely to Hill-Burton assets, and that the grant information (type and amount of grant, etc.) maintained by the Department should not be provided by the owner.

The Department has eliminated the requirement that the owner provide grant information. With respect to the accounting and financial information, it is noted that § 124.704(b)(3) (proposed as (b)(4)) calls for *estimated* financial and accounting information for the assets involved in the transaction. The estimates are necessary to enable the Department to make its initial recovery calculation, and it is reasonable to assume that the parties to the transaction will have access to this type of information as part of normal business practice. Modifications to the submitted information can be made following the notice; the regulations provide a period of 30 days during which the Department will calculate the recovery amount and 60 days for a response to the Department's initial letter setting forth the recovery amount (see § 124.707(b)(ii)). It is noted that the accounting and financial information contemplated in § 124.704(b)(3) is generally regarded as confidential, commercial or financial information which is exempt from mandatory disclosure under the Freedom of Information Act.

2. *Timetables.*—Commenters requested that the timetable be modified to provide an opportunity for facilities to correct any deficiencies in the notice provided or to explain any delays in meeting the schedule before the Department imposes any penalty.

As previously noted, there is a period, which the Department believes to be ample, during which the information provided in the notice may be modified. That period includes the 30 days during which the Department is making the initial recovery calculation and the 60 days during which the owner can provide information in response to the initial recovery amount.

The comments stated that the timetable is contained in § 124.707(b) and is therefore limited to facilities which select the waiver option. They suggested that there be a similar timetable for recovery situations. A comment suggested that the Department should also be required to act on an independent auditor's certification of a facility's uncompensated care compliance within a specified time frame.

While the timetable is set out in § 124.707(b), it clearly applies also to purely recovery situations. Thus, section 124.707(b) provides that within 30 days after receiving the required notice, the Secretary will send a letter advising of the waiver option and the amount due as a recovery. If the waiver option is not selected, the parties have approximately 150 days remaining (180 from the date the notice is received) in which to negotiate and pay the recovery amount before interest can be imposed. The Department has considered and rejected imposing a timetable, other than that prescribed by the statute, in purely recovery situations. Certainly, the remaining 150 days is sufficient time to enable all parties to understand and evaluate the respective positions of each participant in the recovery process.

The Department has accepted the suggestion for a timetable regarding the Department's response to an auditor's certification of a facility's remaining uncompensated care obligation. That language is set out in § 124.707(c)(1)(ii).

3. *Amount of Recovery.*—Commenters suggested modifying the method set out in § 124.705 for calculating the recovery amount by (1) adjusting a transaction value for goodwill, (2) excluding the residual value of a facility (in lease situations), and (3) allowing appraisals in lieu of a calculation based upon depreciated reproduction value. They also questioned the appropriateness of the depreciated reproduction value and its exclusive use when a facility fails to provide the required information.

The Department has retained the methodology for calculating the amount of recovery as set forth in § 124.705 of the NPRM. Thus, the transaction value i.e. the sale price in the event of a sale and, in the case of a lease, the value of the lease plus the residual value of the facility when the lease terminates—will be used in each instance of an arms-length sale or transfer of a facility.

Goodwill is the value of a business in reputation over and beyond its tangible assets. Because of the speculative nature of goodwill and the difficulty of verifying its value, goodwill is recognized as excluded from the value of a facility in an arms-length transaction only when the adjusted transaction value, is greater than the replacement (reproduction) value and when the buyer enters goodwill as such in its new books.

The inclusion of the residual value of a facility that is leased is appropriate since recovery is based on the value of the *facility* at the time of transfer, not only on the value of the lease. Thus, the projected value of the facility at the conclusion of a lease is clearly relevant to its value at the time of the lease.

The Department believes it is justified in utilizing a depreciated reproduction valuation method where the required information is not provided since it is an objective method of determining value. Because an appraisal is a subjective method of arriving at value, the Department has adopted other more objective methods of transaction value or the depreciated reproduction valuation method.

4. *Calculation of Interest.*—The amendments to the statute expressly prescribe the period for charging interest for facilities which changed status before and after enactment of the amendments. The amendments also delay the imposition of interest charges for facilities which comply with the notice requirement. The Conference Report stated that:

> the conferees expect that the Department, upon notification will expedite recovery proceedings to avoid subjecting facilities to interest charges that might result from Departmental delays. The Secretary may in regulation provide that, where such delays are caused solely by the Department, the resulting interest charges may be waived.
>
> (130 Cong. Rec. H. 6742–43 (daily ed. June 22, 1984)).

It is in light of the statutory provisions concerning the calculation of interest and its legislative history that we turn to the comments.

A number of comments suggested waiving the interest during certain time periods and changing the time period. It was suggested that waiver of interest be tied to a timetable. It was also suggested that interest be waived during any period of disagreement between the Department and facility owner on the amount of the recovery or uncompensated care obligation. Finally, it was recommended that stronger language be used for waiver of interest when the Department is solely responsible for delays.

The time periods during which the Secretary is directed by statute to charge interest are set out in § 124.706(a). The Department has also incorporated the Conference Report statement relating to waiver of interest when delays are caused solely by the Department at § 124.706(b). In response to the comments, the Department does not intend to depart from the statutory directive by waiving interest during certain time periods or by tying negotiations to a specific timetable. The statute does provide a "grace period" of 180 days following receipt of the required notification. Congress thereby recognised that there would be instances of disagreement between the Department and other parties. It cannot be fairly concluded that delays resulting from such disagreements will in all cases be "caused solely by the Department". Rather, these instances are best resolved on a case-by-case basis. Further clarification or stronger regulatory language is, in our view, unnecessary.

It is noted that the statute required that regulations be prescribed within 180 days of enactment or by January 14, 1985. Since the issuance of implementing regulations is the responsibility of the Department, it could reasonably be argued that the failure to adopt regulations within the prescribed time frame represents a delay caused solely by the Department. Accordingly, interest charges will be suspended from the date prescribed by Congress for the Department to have promulgated its regulations (January 14, 1985) and the date the regulations actually are promulgated.

5. *Calculation of Uncompensated Care Obligation.*—Several comments related to the need to provide clarification on the methodology for calculating the uncompensated care obligation; specifically, guidance for the use of independent auditors, defining "expected useful life" of a facility, calculating the annual compliance level, consumer price index (CPI) adjustments, and treatment of wrongful denials of uncompensated care in the calculation.

Section 124.707(b)(1)(i) has been revised and clarified in response to the comments.

The most obvious change is the elimination of the uncompensated care calculation for facilities which changed status before May 8, 1979 (the effective date of Subpart F). Prior to that date, applicable regulations provided as a compliance alternative the so-called "open door option", which made it impossible to calculate a fixed uncompensated care obligation. Accordingly, for any such facility which opts for the waiver of recovery and establishment of the irrevocable trust to pay for medical care delivered to persons unable to pay, the amount to be placed in trust would be the recovery amount calculated under § 124.705.

In addition, § 124.707(b)(1)(i) as revised advises auditors to use Departmental procedures in Subpart F supplemented with special instructions to be provided by the Secretary.

For a facility which received a grant under Title XVI of the PHS Act, the remaining period of obligation is the "expected useful life" of the facility. That term has been defined as the period of time during which the structure may reasonably be expected to perform the functions for which it was designed or intended. The periods set out in the definition are consistent with the depreciation schedules adopted by the Internal Revenue Service, i.e., 40 years for buildings, 30 years for additions, 20 years for building renovations, 20 years for fixed equipment and 12 years for major movable equipment.

No provision has been made in the calculation to account for past wrongful denials of uncompensated care since such denials would not have applied toward satisfaction of the facility's uncompensated care obligation.

6. *Establishment and Monitoring of the Trust.*—Several commenters took the position that the seller as well as the buyer should have the option to establish a trust, and that the buyer should be required to contribute some minimum amount to the trust.

There is no authority to require the establishment of the trust or to require minimum contributions by any party. The statute requires that if the trust is established, it must be established by the buyer. Since there are no restrictions on who may capitalize the trust, however, contribution of the amount required for the trust is a matter that can be determined by the parties to the transaction involving the facility.

Commenters noted that any reporting requirements for the entity receiving the waiver should not be a burden and should not exceed those applicable to the uncompensated care obilgation. Commenters also proposed: That disbursements from the trust to pay for uncompensated care, costs associated with establishing and administering the trust, and costs associated with the independent audit should be made without any involvement by the Secretary; and that it is sufficient to provide an accounting for these costs by voucher or some other method. On the other hand, another commenter believed some control is necessary to prevent quick drawdowns of the trust.

The regulation attempts to strike a balance between reasonable monitoring and overregulation of the trust. The Secretary will monitor payments from the trust in accordance with Subpart F, and the reporting requirements for delivery of uncompensated care are no greater for a facility delivering such care pursuant to an irrevocable trust than for a facility operating its uncompensated care program without a trust. The Department will review the costs associated with establishing and

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administering the trust as provided in § 124.707(d).

7. Waiver of Recovery for Good Cause.—It was suggested that good cause waivers be considered where there is (1) loss of the facility due to damage or destruction, (2) the lack of community need results in facility closure, and (3) ownership or control is transferred to a Federal provider.

In some circumstances in which a facility may be lost due to damage, destruction, or natural disaster such as earthquake, it may cease to be used for a permissible use, triggering the recovery provision of the statute; it is possible to qualify for waiver under § 124.708 in a "cease to be" situation. On the other hand, the then-value of a particular facility—which, under some circumstances, might be nominal or nothing—would be taken into consideration in determining a recovery amount. In the case of a facility that closes as a result of lack of community need, it has ceased to be used for a permissible use and a waiver could be considered in accordance with § 124.708. Finally, where ownership or control of the facility is transferred to a Federal entity, the transfer is not considered to be one which triggers the recovery provisions of sections 609 or 1622 of the Act.

8. Withdrawal of Waiver.—Some commenters felt that the provissions for withdrawal of a waiver are punitive in nature and may affect the decision to select the waiver option since failure to meet the conditions of the waiver could lead to a withdrawal of the waiver and payment of the recovery amount plus interest.

In providing for withdrawal of a waiver, the Department sought some recourse if a waiver recipient continues to fail to comply with the waiver conditions after it receives reasonable notice and an opportunity to take corrective action. Certainly, it is not the Department's desire nor in anyone's best interest that waivers granted by the Department be withdrawn. However, the provision does guard against abuse by a waiver recipient. It should be noted that if the waiver is withdrawn, § 124.709(e) provides for interest from the date of notification of noncompliance not from the prior date of the sale or transfer.

Commenters asked for clarification of what happens to the trust when a waiver is withdrawn, particularly whether the owner/transferee is obligated to complete its uncompensated care obligation until the trust is depleted. One commenter questioned the disposition of the trust if a facility is transferred to a second ineligible entity before the trust is expended.

So long as the trust is administered in accordance with the regulations, the waiver is in effect and there is no recovery. If the waiver is withdrawn, the regulations provide for recovery. Once a waiver is withdrawn, all Federal interest in the administration of the trust will cease.

9. General.—Some commenters recommended that there be a review and hearing process for settling disputes on the recovery amount, terms of waiver, or withdrawal of waiver.

The statute provides the formula for calculating recovery amounts and for judicial resolution of disputes in this area. The Department sees no need for formal administrative review and hearing procedures for settling disputes; such procedures could, in fact, have the effect of prolonging such disputes.

A commenter suggested that requiring compliance with the community service obligation in perpetuity will discourage selection of the waiver option.

The preamble to the notice of proposed rulemaking had noted that the regulations governing the community service obligation place no durational limit on that obligation. After further consideration, the Department has determined that the community service obligation, as characterized in the NPRM, should continue indefinitely. The Deficit Reduction Act amendment requires the entity granted a waiver to "meet the obligations of the facility under [the community service provisions of Titles VI and XVI of the Public Health Service Act]," without specifying any limit on the duration of the obligation. Moreover, the Conference Report explaining the amendment stated that the new owner must agree to assume the community service obligation "as implemented by current regulations," which do not limit the duration of the obligation.

Also § 124.703(a) has been revised to reflect more clearly the Department's long-standing position, upheld in *United States* v. *Brady*, 385 F.Supp. 1347 (S.D. Fla. 1974), that in the case of a transfer or sale of a grant-assisted facility, any transferee, initial or successive, that would be ineligible for a grant is liable for the recovery.

Finally, since new subpart H encompasses the existing regulations in Subpart M of Part 53, the latter rules are being removed.

Executive Order 12291

E.O. 12291 required that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more, or certain other economic effects. The Secretary concludes that the regulations are not major rules within the meaning of the Executive Order, because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (15 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each proposed rule with a "significant economic impact on a substantial number of small entities," an initial analysis must be prepared describing the proposed rule's impact on small entities.

The impact of the interest charge provision and irrevocable trust option are not significant in relation to hospital revenues. In any case, these provisions are required by the terms of the statute and not as a result of this regulation.

Therefore, the Secretary hereby certifies that an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

The information collection requirements contained in §§ 124.704 and 124.707 have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and have been assigned control number 0915-0099.

List of Subjects

42 CFR Part 124

Grant programs—health, Health Facilities, Low income persons.

42 CFR Part 53

Grant programs—health, Health facilities; Hospitals, Loan programs—health, Public health, tuberculosis.

Accordingly, the Department of Health and Human Services is amending Parts 53 and 124 of Title 42 CFR.

Dated: February 3, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary for Health.

Approved: February 14, 1986.

Otis R. Bowen,

Secretary.

PART 53—GRANTS, LOANS AND LOAN GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND MEDICAL FACILITIES

Subpart M—[Removed]

1. Subpart M of Part 53 is hereby removed.

2. Subpart H of Part 124 is added to read as follows:

PART 124—MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION

Subpart H—Recovery of Grant Funds

Sec.
124.701 Applicability.
124.702 Definitions
124.703 Federal right of recovery.
124.704 Notification of sale, transfer, or change of use.
124.705 Amount of recovery.
124.706 Calculation of interest.
124.707 Waiver of recovery where facility is sold or transferred to proprietary entity.
124.708 Waiver of recovery—good cause for other use of facility.
124.709 Withdrawal of waiver.

Authority: The provisions of this subpart H are issued under sections 609 and 1622 of the Public Health Service Act as amended 98 Stat. 112 (42 U.S.C. 291i and 300s–1a).

§ 124.701 Applicability.

The provisions of this subpart apply to facilities with respect to which grant funds were paid for construction or modernization—

(a) Under Title VI or XVI of the Public Health Service Act; or

(b) Pursuant to the authority of the Secretary under any of the following statutes:

(1) The Public Works Acceleration Act of 1962, Pub. L. 87–658 (42 U.S.C. 2641 et seq.)

(2) The District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90–457)

(3) The Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.).

§ 124.702 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act.

"Department" means the Department of Health and Human Services.

"Expected useful life" means the period of time during which the structure may reasonably be expected to perform the function for which it was designed or intended.

"Facility" means a facility with respect to which grant funds were paid under any of the authorizations listed in § 124.701.

"Fiscal year" means the facility's fiscal year.

"Nonprofit", as applied to any facility, means a facility that is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State agency" means (1) in the case of a facility with respect to which a grant was made under Title VI of the Public Health Service Act or any of the statutes listed in § 124.701(b), the State agency designated pursuant to section 604 of the Public Health Service Act or its successor agency, and (2) in the case of a facility with respect to which a grant was made under Title XVI of the Public Health Service Act, the State health planning and development agency designated pursuant to Title XV of the Public Health Service Act.

"Then value" means the value of the facility on the date the facility is sold, transferred or ceases to be used for a permissible use as described in § 124.704.

§ 124.703 Federal right of recovery.

(a) If any facility is at any time within 20 years after the completion of the grant-assisted construction or modernization sold or transferred to any entity which is either not qualified for a grant under the statute pursuant to which the grant was awarded or not approved as a transferee by the State agency, the United States shall be entitled to recover on the basis of joint and several liability from any transferor, transferee, or successive transferee of the facility an amount determined in accordance with this subpart.

(b) If any facility at any time within 20 years after the completion of the grant-assisted construction or modernization ceases to be a public or other non-profit facility that would have been eligible for a grant under the statute pursuant to which the grant was awarded, the United States shall be entitled to recover from the owners of the facility an amount determined in accordance with this subpart.

§ 124.704 Notification of sale, transfer, or change of use.

(a) The transferor of a facility that is sold or transferred as described in § 124.703(a), or the owner of a facility which ceases to be a public or other nonprofit facility as described in § 124.703(b), shall provide the Secretary written notice of such sale, transfer, or other change not later than 10 days after the date on which the sale, transfer, or change occurs.

(1) *"Transfer."* For purposes of this subpart, a transfer occurs when a facility is conveyed to another entity through lease, merger, bankruptcy, foreclosure, or other arrangement.

(2) *"Cease to be."* For purposes of this subpart,

(i) A facility "ceases to be" a facility for which a grant could have been made under the statute pursuant to which the grant was awarded when it is no longer operated as such a facility; and

(ii) A facility "ceases to be a public or nonprofit facility" when an entity that is not a public or other non-profit corporation or association assumes management responsibilities with respect to the facility which, in the Secretary's judgment, are so pervasive as to constitute operation of the facility. The manager will not be deemed to be the operator of the facility if the management agreement contains both of the following provisions:

> The Board of Directors of the facility retains authority to terminate the agreement at any time upon reasonable notice to the contractor.
>
> No employee of the contractor may be a member of the facility's Board of Directors.

In the absence of either of these provisions the Secretary will consider the degree of control granted to the managing organization over patient admission, determination of what services will be provided, and charges for services provided in the facility.

(b) *Content of Notice.* The notice required by paragraph (a) of this section shall be sent to the Secretary by certified mail, and shall contain or be accompanied by

(1) The date of the sale, transfer, or other event that gives rise to the notice;

(2) Copies of any sales contracts, lease agreements, management contracts or other documents pertinent to the event giving rise to the notice;

(3) Estimates of current assets, current liabilities, book value of equipment, the expected value of land on the new owner's books, and the remaining depreciation for all fixed assets involved in the transaction calculated on a straight line basis using commonly adopted expected useful lifetimes.

(c) *Failure to provide notice.* Failure to provide the information required by paragraph (b) will be considered failure to provide the notice required by this section. In any case in which such

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information has not been provided, the Secretary will, promptly upon receiving an incomplete notice or otherwise discovering that a sale, transfer or other event giving rise to a recovery may have occurred, send a letter to the owner of the facility requesting the information needed to calculate a recovery amount.

(Approved by the Office of Management and Budget under control number 0915–0090)

§ 124.705 Amount of recovery.

(a) Except as provided in § 124.706, the amount that the United States shall be entitled to recover under this subpart is that amount bearing the same ratio to the then value of so much of the facility as constituted an approved project (or projects) as the amount of Federal participation bore to the cost of the construction or modernization under such project (or projects).

(b) The then value of the facility will be based on:

(1) The transaction value in the case of an arms-length sale or transfer, or

(2) A depreciated reproduction value in the absence of an arms-length sale or transfer or if the buyer fails to provide, within 60 days after the date of the Secretary's letter described in § 124.704(c), the information which, in the judgment of the Secretary, is necessary to establish, adjust, and apportion a transaction value. As used in this section, "transaction value" means in the case of a sale, the sale price, and in the case of a lease, the value of the lease plus the residual value of the facility at the termination of the lease (i.e., the reproduction value or, if appropriate, an alternative use value).

(c) The transaction value will be adjusted to account for the purchase or lease of other assets and the assumption of liabilities associated with the transaction. To determine the amount of Federal recovery, the adjusted value will be apportioned to the grant-aided assets by the ration of the remaining useful lifetime values of those assets to the sum of the remaining useful lifetime values of all assets not previously accounted for in adjusting the transaction value.

(d) A depreciated reproduction value will be established by calculating a reproduction value using construction cost indexes or current costs per square foot for construction, depending on which is more relevant to the type of construction associated with the grant. This reproduction value will then be adjusted by the ratio of the remaining useful life to the total useful life for the assets involved.

(e) In calculating the recovery amount, the Secretary will include as Federal participation any grant assistance received by the facility under an authority listed in § 124.701 and any assistance supplementary to that assistance received for the construction or modernization of the facility under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, et seq.) or the Local Public Works Capital Development Act of 1976 (Pub. L. 94–369).

§ 124.706 Calculation of interest.

(a) In addition to the amount of recovery calculated under § 124.705, the United States shall be entitled to recover interest on such amount in accordance with this section at the rate determined by the Secretary based on the average of the bond equivalent of the weekly ninety-day U.S. Treasury bill auction rate for the quarter previous to the quarter in which interest begins to accrue under this section.

(1) *Change of status before July 18, 1984.* For facilities that were sold or transferred or which ceased to be public or other nonprofit facilities before July 18, 1984, interest will be charged beginning August 17, 1984, or 180 days after the date of such sale, transfer or other, whichever is later, and ending on the date the amount the United States is entitled to recover is collected.

(2) *Change of status after July 17, 1984.* For facilities that are sold or transferred or which cease to be public or other nonprofit facilities after July 17, 1984, interest will be charged beginning 180 days after receipt by the Department of the notice required under § 124.704: *Provided, That* if such notice is not provided as prescribed, interest will be charged beginning on the date of the sale, transfer, or change of use, and ending on the date the amount which the United States is entitled to recover is collected.

(b) The Secretary may waive interest charges that result from delays caused solely by the Department.

§ 124.707 Waiver of recovery where facility is sold or transferred to a proprietary entity.

(a) *Conditions of the waiver.* The Secretary may waive the recovery rights of the United States arising under § 124.703(a) if the entity to which the facility was sold or transferred:

(1) Has filed a written request for the waiver within the time limits prescribed by this section;

(2) Has established an irrevocable trust in accordance with this section, in an amount equal to the greater of the amount that would otherwise have been recovered pursuant to § 124.705 (including accrued interest as calculated under § 124.706) or twice the cost of the remaining uncompensated services obligation of the facility as of the date of the change of status, that will be used by the entity only to provide services to those unable to pay in accordance with the requirements of Subpart F of this Part; and

(3) Has agreed to comply with the community service regulations set out in Subpart G of this Part.

(b) *Procedures for obtaining waiver.* (1) Within 30 days after the date of receipt of the information described in § 124.704(b), the Secretary will send a letter to the new owner of the facility advising of the United States' right of recovery and the opportunity to obtain a waiver. For the purpose of advising the new owner of the amount to be placed in the irrevocable trust should the owner wish to obtain a waiver, the letter will also state the dollar amount of the remaining uncompensated care obligation and the amount that would be due under § 124.705, computed as follows:

(i) *Computation of uncompensated care obligation.* (A) For a facility which changes status before the date that Subpart F of this part is effective for the facility, the remaining uncompensated services obligation is zero.

(B) For a facility which changes status after the date that Subpart F of this part is effective for the facility, the Secretary will multiply the annual compliance level, computed under the 10% method specified in 42 CFR 124.503(a)(1)(ii), for the fiscal year in which the change of status occurs times the number of years remaining in the facility's uncompensated services obligation. From this amount, the Secretary will subtract amounts of excess or add amounts of deficit for each fiscal year prior to the change of status for which the Secretary has previously conducted an audit of uncompensated services accounts. Excess and deficits will be adjusted by the percent change in the National Consumer Price Index for Medical Care between the year in which the excess or deficit occurred and the year in which the status change occurred. For each fiscal year prior to the change of status which the Secretary has not audited, the Secretary will add to the remaining obligation an amount equal to the annual compliance level in each such year adjusted by the percent change in the National Consumer Price Index for Medical Care between that year and the year of the status change. The amount computed as the total remaining obligation will then be multiplied by two. If the transferee chooses to accept the Secretary's calculation, no further assessments will

be made of uncompensated care provided prior to the change of status date. If the transferee does not accept the calculation, the transferor or transferee may hire, and may charge against the irrevocable trust established under this section, an independent auditor to certify the compliance level and any excess or deficit for the period from May 18, 1979, up to and including the date of the change of status, using standard Departmental procedures supplemented with instructions provided by the Secretary, and submit the results in accordance with paragraph (b)(2)(ii) of this section. The audit may be conducted for any years *not* included in a previous site assessment conducted by the Department. If the Secretary agrees that a change is appropriate, the Secretary will use this information to adjust the calculation as set out in paragraph (b)(3) of this section. If the independent auditor certifies that qualified care was rendered either at the facility or at a replacement facility operated by the transferee between the date of the change of status and the date of establishment of the trust, and the Secretary agrees, the post transfer level of care shall not affect the calculation of the total remaining uncompensated care obligation to be doubled, but instead shall be recognized as a credit to be drawn from the trust as provided in paragraph (c)(1)(ii) of this section. In the case of a facility with respect to which a grant was made under Title XVI of the Act, the remaining period of obligation will be the remainder of the expected useful life of the facility, as follows: 40 years for buildings, 30 years for additions, 20 years for building renovations, 20 years for fixed equipment and 12 years for major movable equipment.

(ii) *Computation of recovery amount.* The Secretary will determine the recovery amount as provided in § 124.705.

(2) Within 60 days following the date of the Secretary's letter provided pursuant to subparagraph (1), the owner of the facility shall notify the Secretary in writing that it either:

(i) Accepts the trust fund amount for the waiver as offered by the Secretary;

(ii) Provides a detailed statement of an alternative determination of the recovery amount or an independent audit of the remaining uncompensated services obligation as described in paragraph (b)(1)(i) of this section; or

(iii) Does not seek a waiver under § 124.707. Failure to provide a timely response to the Secretary under this subparagraph will be considered an election not to seek the waiver.

(3) Within 30 days following the receipt of the owner's views concerning the calculation, and after considering those views, the Secretary will send a final letter providing the Secretary's determination of twice the remaining uncompensated care obligation and the recovery amount under § 124.705. The amount to be placed in the irrevocable trust will be the higher of those two figures. (See paragraph (a)(2) of this section.)

(4) Within 30 days of the date of the final letter, the owner of the facility shall notify the Secretary in writing whether or not it accepts the terms of the waiver. Failure to provide timely notice to the Secretary under this subparagraph will be considered an election not to accept the waiver.

(c) *Establishment of the trust.* (1) Within 60 days of the date of its acceptance of a waiver under paragraph (b)(2) or (b)(4) of this section, the owner shall begin delivering services to those unable to pay in accordance with subpart F of this Part under an irrevocable trust established in the amount calculated pursuant to paragraph (b). *Provided, that*

(i) The owner shall provide a copy of the trust documents to the Secretary and no trust shall be considered established until the trust documents have been approved by the Secretary; and

(ii) The owner may credit against the trust any uncompensated services provided in accordance with subpart F of this Part between the date of the change of status of the facility and the establishment of the trust. For an owner to receive the credit before the establishment of the trust and deposit of funds therein, the auditor's report covering the post-transfer period shall be submitted with the notification of acceptance of the waiver, and in any event, not later than 30 days from the date of the Secretary's final letter described in paragraph (b)(3) of this section. Within 30 days following the receipt of the auditor's report, the Secretary will notify the owner of the allowable credit, if any. If the auditor's report is not timely submitted, the trust must be established and fully funded, in accordance with the time limits imposed by paragraph (c)(1) of this section, and the Secretary will notify the owner of the allowable credit, if any, within 30 days of the date of the establishment of the trust or within 30 days of the receipt of the report, whichever is later.

(2) The trust shall be administered by a Trustee who is neither an employee of the transferee nor an employee of a subsidiary or of the parent institution of the transferee.

(3) The trust shall provide that the trust corpus and income may be invested only in U.S. Government or U.S. Government insured securities.

(d) *Use of the trust.* The corpus and income of the irrevocable trust shall be used to pay for the costs of uncompensated services, which may include reasonable costs of establishing and administering the trust and the cost of the independent audit described in paragraph (b)(1)(i) of this section, until the trust is exhausted.

(Approved by the Office of Management and Budget under control number 0915–0099)

§ 124.708 Waiver of recovery—good cause for other use of facility.

The Secretary may for good cause waive the recovery rights of the United States arising under § 124.703(b). In determining whether there is good cause under this section for releasing the applicant or other owner of the facility from its obligation, the Secretary will take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public or nonprofit purpose which will promote the purpose of the Act;

(b) There are reasonable assurances that for the remainder of the 20-year period other public or nonprofit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and purpose.

§ 124.709 Withdrawal of waiver.

(a) Any waiver granted under this subpart is conditioned upon the recipient of the waiver carrying out the obligations imposed by § 124.707 or § 124.708 as applicable.

(b) The Secretary will monitor compliance with the community service and uncompensated care obligations of any entity that receives a waiver.

(c) Should a recipient of a waiver fail to comply with the applicable conditions, the Secretary will withdraw the waiver and seek recovery based on the value of the facility on the date the right of recovery first arose under § 124.703.

(d) No waiver will be withdrawn until the recipient has been notified in writing by the Secretary of the noncompliance and has failed to take corrective action within 90 days after the date of such notice.

(e) Should the waiver be withdrawn, the amount of the Government's recovery will be the amount set out in the Secretary's determination letter as described in § 124.707 (b)(1) or (b)(3) as

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applicable plus interest from the date of the notification sent in accordance with paragraph (d) of this section.

[FR Doc. 86-[illegible] Filed 3-6-86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 67 and 69

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 85-655]

MTS and WATS Market Structure; Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule (decision and order).

SUMMARY: The Commission adopts the Federal-State Joint Board's recommendations concerning: (1) The jurisdictional separations and access charge treatment of Centrex/CO service; (2) direct assignment of closed end WATS access line costs and the allocation of toll terminal line costs; (3) expansion of the customer premises equipment (CPE) phase-out to include additional CPE-related costs; (4) separations treatment of coinless public telephones; and (5) separations procedures for terminal equipment used by telephone companies in their internal business operations. The Commission adopted the separations and access charge provisions recommended by the Joint Board because they will produce a cost based jurisdictional allocation and recovery of these costs. Implementation of separations procedures and access charge provisions which reflect cost causation principles will promote efficient use of the telephone network.

EFFECTIVE DATE: Amendments set forth in Appendix A, numbers 6, 8, 9, and 10 and Appendix B, number 2, are effective April 7, 1986; all other amendments effective on June 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Siddall, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 67

Jurisdictional separations, Access charges, Communications Common Carriers.

47 CFR Part 69

Telephone.

Decision and Order

In the matter of MTS and WATS Market Structure (CC Docket No. 78-72), and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80-286).

Adopted: December 18, 1985.
Released: January 7, 1986.
By the Commission.

I. Introduction

1. In its *Recommended Decision and Order*[1] in this proceeding adopted July 12, 1985, the Joint Board made recommendations concerning: (1) The jurisdictional separations and access charge treatment of Centrex/CO service; (2) direct assignment of closed end WATS access line costs and the allocation of toll terminal line costs; (3) expansion of the customer premises equipment (CPE) phase-out to include additional CPE-related costs; (4) separations treatment of coinless public telephones; and (5) separations procedures for terminal equipment used by telephone companies in their internal business operations. The Commission adopts the Joint Board's recommendations concerning these issues for the reasons given by the Joint Board. The following sections contain a brief discussion of each issue.

II. Centrex/CO Service

2. Centrex/CO service is offered by local telephone companies under state tariffs as an alternative to the use of a Private Branch Exchange (PBX) on the customer's premises, with the central office switch performing intercom switching and other functions that can also be performed by a PBX. This service requires a separate line or its equivalent between the central office and each telephone station on the subscriber's premises while use of a PBX allows fewer circuits between the customer's premises and the central office.

3. The Joint Board recommended that the Commission continue application of the existing separations procedures for Centrex/CO subscriber line costs. Under these procedures, Centrex/CO line costs are allocated in the same manner as the cost of other subscriber lines used jointly for local exchange and toll service. We agree with the Joint Board's recommendations in this regard. Establishment of special separations procedures to recognize the intercom usage of Centrex/CO lines would be inconsistent with our previous decision establishing a flat twenty-five percent interstate allocation factor for all non-traffic sensitive (NTS) facilities regardless of usage.[2] We also agree with the Joint Board's conclusion that application of a PBX trunk equivalency ratio[3] for separating Centrex/CO line costs would not solve any of the potential problems, described in the comments, concerning implementation of subscriber line charges for Centrex/CO service. While this approach would reduce the number of Centrex/CO lines subject to the subscriber line charge, it would substantially increase the intrastate allocation of Centrex/CO costs.

The Joint Board also recommended that the Commission increase the subscriber line charge for embedded Centrex/CO lines from $2.00 to $3.00 per month (or the full multi-line business subscriber line charge, whichever is less) effective on June 1, 1986. In conjunction with this, the Joint Board recommended a clarification of the distinction between new and embedded Centrex/CO lines. Under this approach, rearrangements or changes in the configuration of Centrex/CO lines by a single organization at a single, discrete location would not result in reclassification of embedded lines as new if the total number of lines and the Centrex/CO service offering and features remain unchanged. We endorse the Joint Board's recommendations in this regard. A gradual transition to application of the full multi-line business subscriber line charge for embedded Centrex/CO lines is necessary. However, the $2.00 monthly subscriber line charge for embedded Centrex/CO lines became effective May 25, 1984, and sufficient time has elapsed to allow state regulators to make any necessary adjustments to intrastate Centrex/CO rates. Pursuant to the Joint Board's recommendation, we will also consider waiving application of the additional $1.00 charge if any telephone company demonstrates that the charge will cause significant stranded investment due to abandonment of Centrex/CO service.

5. In conjunction with this, we adopt the clarification of the distinction between embedded and new Centrex/CO lines recommended by the Joint Board. This will ease the transition to application of the full multi-line business subscriber line charge for Centrex/CO lines by allowing certain lines to retain their status as embedded. We agree with the Joint Board's conclusion that the Commission should not require retroactive application of this approach to Centrex/CO lines which have already been reclassified due to the administrative burden involved and the fact that all Centrex/CO lines should eventually be subject to the full multi-line business subscriber line charge. Lines which have not been reclassified as new despite past rearrangements and changes are to continue to be treated as embedded absent future changes which require reclassification.

III. WATS Closed End Access Lines and Toll Terminal Lines

6. WATS access lines are used exclusively for either state or interstate toll service. The Commission's original access charge rules included interstate closed end WATS access lines with certain private lines in a dedicated access line category.[4] The Joint Board subsequently recommended that closed end WATS access lines be directly assigned to the state or interstate jurisdiction rather than allocated between the jurisdictions on the same basis as jointly used local exchange subscriber lines.[5] However, we decided to continue the existing separations treatment pending further study of direct assignment by the Joint Board.[6] Upon completion of further proceedings concerning this issue, the Joint Board recommended direct assignment of closed end WATS access lines costs to the appropriate jurisdiction, effective June 1, 1986. The Joint Board also recommended allocation of toll terminal line costs based upon relative toll minutes of use.

7. We agree with the Joint Board's conclusion that direct assignment of closed end WATS access lines constitutes a rational separations treatment since these access lines are used exclusively for either state or interstate toll service. The arguments against direct assignment based on competitive considerations are unconvincing. We also endorse the Joint Board's recommendation that we allocate toll terminal line costs on the basis of relative state and interstate toll minutes of use since these lines do not carry local exchange traffic.

IV. CPE Phase-Out

8. In the *First Recommended Decision and Order*[7] in *Amendment of Part 67 of the Commission's Rules*, the Joint Board recommended a plan for phasing customer premises equipment out of the separations process gradually over a five year period. This plan was intended to alleviate possible effects on local rates due to the Commission's decision to detariff CPE in the *Second Computer Inquiry*.[8] Detariffing CPE would eliminate the contribution which CPE revenues made to recovery of the costs of providing local exchange service. The Commission adopted the Joint Board's recommendation with a few minor technical changes.[9] Under this approach, a base amount of embedded CPE investment, and related expenses, reserves, and taxes for each local exchange carrier was frozen as of December 31, 1982. This amount included the CPE book costs in accounts 231 and 234 and expenses associated with these costs, such as repairs of station equipment and CPE depreciation. The CPE base amount was then reduced one-sixtieth per month beginning January 1, 1983. However, certain CPE-related expenses, such as those related to the station handling process, and commercial expenses were not included in the phase-out plan.

9. The Joint Board recommended continuation of the existing CPE phase-out plan without expansion to include additional CPE-related costs. We agree with the Joint Board's conclusion that the existing CPE phase-out plan has served as a successful transition mechanism to allow state regulators and the industry to adjust to the new environment for the provision of CPE. We endorse the Joint Board's conclusion that expansion of the CPE phase-out plan is not warranted based on the existing cost data which does not allow a determination of whether these additional CPE-related expenses generated a contribution to local exchange service costs, the relatively small amount of costs involved, and the administrative burdens involved in revising the CPE phase-out at this time.

V. Coinless Public Telephones

10. Both local exchange carriers and interexchange carriers have placed coinless public telephones in locations such as airports in which a high volume of toll calling originates. These telephones can be used only for credit card and collect calls. On October 6, 1983, the Commission amended the Uniform System of Accounts (USOA) to establish new accounting classifications and procedures for coinless public telephones, among other things.[10] The new accounting rules provided that the costs associated with such telephones were to be restored in Account 235, "Public Telephone Equipment" and Account 607, "Repairs of Public Telephone Equipment."

11. The Joint Board recommended that this Commission allocate the costs associated with coinless public telephones between the jurisdictions based on the relative toll usage for this equipment. If measurement of traffic over this equipment is not practical, the Joint Board recommended use of study area measurements of relative state and interstate toll usage. We agree with the Joint Board's recommendations since it appears that these telephones will be used almost entirely for toll calling because they operate only on a credit card and collect basis. Provision is made for the use of study area measurements of relative toll traffic if actual measurement of toll traffic over these facilities is not feasible. This will alleviate potential administrative burdens.

VI. Terminal Equipment

12. The Commission *Order* of October 6, 1983, also established a new Account 262, "Other Communications Equipment," to record the costs of terminal equipment used by telephone companies in the course of their internal business operations.[11] The Joint Board recommended that this Commission allocate the costs in Account 262 on the same basis as other office equipment and furniture, which is allocated based on the wage portion of maintenance, traffic, commercial and revenue accounting expense, excluding the wage portion of maintenance expense related

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[1] *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 50 FR 47774 (November 20, 1985).

[2] *Decision and Order, Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

[3] Under this approach, a PBX trunk equivalency ratio would be applied to the actual number of Centrex/CO lines to calculate the equivalent number of PBX trunks. The existing separations procedures would be used to separate the cost of the PBX trunk equivalent Centrex/CO lines. The cost of the remaining Centrex/CO lines would be directly assigned to the state jurisdiction.

[4] *Third Report and Order, MTS and WATS Market Structure*, 93 FCC 2d 241 (1983). That category was merged with the special access category in the *First Reconsideration Order, MTS and WATS Market Structure*, CC Docket No. 78-72, 97 FCC 2d 682 (1984).

[5] *Second Recommended Decision and Order, Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 48 FR 46554 (Oct. 13, 1983).

[6] *Decision and Order, Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

[7] CC Docket No. 80-286, 46 FR 63344 (December 31, 1981).

[8] *Final Decision, Amendment of § 64.702 of the Commission's Rules (Second Computer Inquiry)*, Docket No. 20828, 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FPC 2d 512 (1981), *aff'd, sub nom. CCIA v. FCC* 693 F.2d (D.C. Cir. 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n. v. FCC*, 103S. Ct. 2109 (1983).

[9] *Decision and Order, Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 89 FCC 2d 1 (1982).

[10] *Report and Order, Detariffing of CPE and Customer-Provided Cable/Wiring*, CC Docket No. 82-681, 48 FR 50534 (Nov. 2, 1983).

[11] *Id.*

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to general office space. We endorse the Joint Board's conclusion that telephone terminal equipment used in a telephone company's internal business operations is a cost of doing business similar to other office equipment and furniture and should be allocated on the same basis.

VII. Regulatory Flexibility Certification

13. We certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding. Although some local exchange carriers are very small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceeding, 86 FCC 2d 23–24 (1980). To the extent that interexchange carriers may be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of small entities.

VIII. Ordering Clauses

14. Accordingly, it is ordered that, the Joint Board's recommendations concerning the issues discussed above are adopted.[12]

15. It is further ordered that, the amendments to Parts 67 and 69 of the Commission's Rules set forth in Appendix A and Appendix B, are adopted.[13] These amendments are to be effective 30 days after publication in the Federal Register unless otherwise indicated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 67—[AMENDED]

47 CFR Part 67 is amended as follows:

1. The authority citation for Part 67 continues to read as follows:

Authority: (47 U.S.C. 151), 48 Stat. 1064, as amended 50 Stat. 189 (47 U.S.C. 154(i)), 48 Stat. 1066 (47 U.S.C. 154(j)), 48 Stat. 1064 (47 U.S.C. 221(c)), 48 Stat. 1080 (47 U.S.C. 410(c)), 95 Stat. 383.

2. Effective June 1, 1986, § 67.122 is amended by revising paragraph (a)(3) to read as follows:

§ 67.122 Categories of outside plant.

* * * * *

(a) * * *

(3)—Subscriber Line Outside Plant Excluding Wideband— Category 1.3—This category includes outside plant between local central offices and subscriber premises used for message telephone, TWX subscriber lines, private line local channels and circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service. This category also includes outside plant between local central offices and public telephones.

3. Effective June 1, 1986, § 76.124 is amended by revising the introductory text of paragraphs (c) and (d), and revising (d)(1)–(d)(3) and (d)(7)(ii), to read as follows:

§ 67.124 Exchange outside plant categories and apportionment procedures.

* * * * *

(c) Exchange Trunk Outside Plant (Wideband and Non-Wideband)—Category 1.2—The cost of the exchange outside plant assignable to this category in the study area is separately identified for the following subsidiary categories: Category 1.21 Trunk plant used exclusively for exchange message services; Category 1.22 Trunk plant used exclusively for toll message services, excluding WATS closed end access, or jointly for exchange and toll message services, excluding WATS closed end access service; Category 1.23 Trunk plant used for TWX access lines; Category 1.24 Trunk plant used exclusively for interstate private line services and interstate WATS service; Category 1.25 Trunk plant used exclusively for state private line services and state WATS service.

* * * * *

(d) Subscriber Line Outside Plant Excluding Wideband—Category 1.3—The first step in apportioning the cost of the subscriber line outside plant among the operations is the determination of an average cost per working loop. This average cost per working loop is determined by dividing the total cost of subscriber line outside plant assigned Category 1.3 in the study area by the sum of the working loops described in subcategories 1.31, 1.32, 1.33, 1.34, and 1.35. The cost of the subscriber line outside plant assigned Category 1.3 is further assigned to the following subsidiary categories and apportioned in accordance with §§ 67.124(d)(1)–67.124(d)(4); Category 1.31—Subscriber line outside plant used exclusively for state private line services and state WATS closed end access service; Category 1.32—Subscriber line outside plant used exclusively for interstate private line services and interstate WATS closed end access service; Category 1.33—Subscriber line outside plant used jointly for exchange service and toll message services, excluding WATS closed end access; Category 1.34—Subscriber line outside plant used for TWX service; Category 1.35—Subscriber line outside plant used exclusively for toll message services, excluding WATS closed end access service.

(1) The cost of subscriber line outside plant assigned Category 1.35 for the study area is determined in the same manner as the plant assigned Category 1.34, and apportioned between state toll and interstate toll on the basis of the relative number of minutes of use of this plant in the study area.

(2) The average subscriber line outside plant cost per loop determined in § 67.124(d) is applied to the counts of working loops used in furnishing state and interstate private line local channels (excluding wideband) and state and interstate WATS closed end access lines, and the amounts so determined are assigned to categories 1.31 and 1.32 and are assigned directly to the appropriate operations.

(3) The cost of subscriber line outside plant assigned Category 1.33 is determined by subtracting amounts assigned Category 1.34, TWX service, Category 1.35, subscriber line outside plant used exclusively for toll message services excluding WATS closed end access service, and Categories 1.31 and 1.32 private line and WATS closed end access service in §§ 67.124(d)(1) and 67.124(d)(2) from the total cost assigned Category 1.3 in the study area.

* * * * *

(7) * * *

(ii) The determination of whether the decrease in the interstate allocation for a given study area resulting from the operation of §§ 67.124(d) and 67.941(a) through (c) exceeds ten percentage points shall be made by calculating a percentage interstate allocation for both of the years involved. This shall be done by dividing the interstate allocation of OSP Category 1.33, COE Category 8.13

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[12] The word "exchange" was inadvertently dropped from the revised version of § 67.313(b)(5) set out in Attachment A of the Joint Board's *Recommended Decision and Order.* Accordingly, we have revised the recommended language for § 67.313(b)(5) to the term "exchange service." (The word "service" is being added to make the wording follow that which the Joint Board used in referring to other services.)

[13] This action is taken pursuant to sections 4 (i) and (j), 201, 202, 203, 205, 220, 221, 403, and 410 of the Communications Act as amended, 47 U.S.C. §§ 154 (i), (j), 201, 202, 203, 205, 220, 221, 403, and 410.

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and inside wire plus associated expenses for each year as calculated pursuant to § 67.124(d)(7)(iv) by the total unseparated investment in OSP Category 1.33, COE Category 8.13 and inside wire plus associated expenses for the corresponding year as calculated pursuant to § 67.124(d)(7)(v). For this purpose, WATS closed end access lines shall be included in OSP Category 1.33 when comparing the interstate allocation for 1985 and 1986. WATS closed end access lines shall be excluded from OSP Category 1.33 when comparing the interstate allocation for 1986 and 1987.

* * * * *

4. Effective June 1, 1986, § 67.126 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 67.126 Host/remote message outside plant category and apportionment procedures.

(a) * * *

(1) The cost of host/remote message outside plant excluding WATS closed end access lines for the study area is apportioned on the basis of the relative number of study area minutes-of-use miles applicable to such facilities.

(2) The cost of host/remote message outside plant used for WATS closed end access for the study area is directly assigned to the appropriate jurisdiction.

5. Effective June 1, 1986, § 67.140 is amended by revising paragraph (e)(1)(i) to read as follows:

§ 67.140 Circuit equipment-category

* * * * *

(e) * * *

(1) * * *

(i) The category 8.3 cost of host/remote circuit equipment assigned to message services for the study area is apportioned among the exchange, intrastate toll, and interstate toll operations on the basis of the assignment of host/remote outside plant.

6. Section 67.151 is amended by revising paragraphs (a)(2), the introductory text to (b), and (b)(3) to read as follows:

§ 67.151 General

(a) * * *

(2) The first step in the separation of station equipment is the segregation of station connections in Accounts 232 and 234 (other than inside wiring provided for private line services and public telephone equipment) from all other investment. This plant is apportioned between the state and interstate operations on the same basis as OSP Category 1.33 described in § 67.124(d)(4) through § 67.124(d)(7).

(b) The next step is the assignment of the remaining plant to the six categories listed below and the determination of the cost of the plant so assigned. The basic procedures followed in making the assignments and cost determinations are: the identification of the units of station equipment installed on customers' premises assignable to Categories 1, 2, 3, 4, and 5; determination of the related costs in these categories by the application of an appropriate average unit cost to the units so identified; and the assignment of the remaining station equipment cost to Category 6.

* * * * *

(3) Only that station equipment provided under special service tariffs (e.g., special terminating equipment, trunk circuit equipment, idle circuit terminations, signaling equipment, telephone sets, keys, key sets and turrets which are used for the termination of special service circuits) is assigned to the special service categories. Correspondingly, station equipment used jointly for both special services and message telephone services (e.g., telephone keys, key sets, order turrets, private branch exchange switchboards which are used for the termination of both private lines and exchange lines) and provided under other than special service tariffs is assigned to Category 6.

7. Effective June 1, 1986, § 67.151 is further amended by revising paragraphs (a)(2), (b)(1), and (b)(3) to read as follows:

§ 67.151 General

(a) * * *

(2) The first step in the separation of station equipment is the segregation of station connections in Accounts 232 and 234 (other than inside wiring provided for private line services or WATS closed end access service, and public telephone equipment) from all other investment. This plant is apportioned between the state and interstate operations on the same basis as OSP Category 1.33 described in § 67.124(d)(4) through § 67.124(d)(7).

(b) * * *

(1) Identification of the units of station equipment installed on customers' premises is accomplished by the use of plant, accounting and engineering records supplemented by field inventories, where necessary. Where the numbers of units to be identified are large, sampling methods may be employed. Under such circumstances, however, the costs of telephone and miscellaneous telephone station apparatus in Account 231 and telephone and miscellaneous telephone station connections in Account 232 are assigned to Category 2 by applying to these costs in the study area the ratio of (i) the number of exchange loops used for telephone private line services and WATS closed end access service to (ii) the number of message telephone subscriber lines and exchange loops used for telephone private line services and WATS closed end access service, combined.

* * * * *

(3) Only that station equipment provided under special service tariffs or associated with WATS closed end access lines (e.g., special terminating equipment, trunk circuit equipment, idle circuit terminations, signaling equipment, telephone sets, keys, key sets and turrets which are used for the termination of special service circuits) is assigned to the special service categories. Correspondingly, station equipment used jointly for both special services, or WATS closed end access service and message telephone services excluding WATS closed end access (e.g., telephone keys, key sets, order turrets, private branch exchange switchboards which are used for the termination of both private lines or WATS closed end access lines and exchange lines) and provided under other than special service tariffs is assigned to Category 6.

8. Section 67.152 is amended to redesignate paragraph (e) as paragraph (f), to add a new paragraph (e), and to revise redesignated paragraph (f), to read as follows:

§ 67.152 Station equipment categories and apportionment procedures.

* * * * *

(e) Coinless Public Telephone Equipment—Category 5—This category includes the cost of coinless public telephone equipment contained in Account 235 used exclusively, or virtually exclusively, for toll service as well as the associated station connections. The cost of this coinless public telephone equipment, and the associated wiring in the study area, are apportioned between the state and interstate operations on the basis of the relative toll minutes of use of this equipment in the study area. Relative toll minutes of use for the entire study area may be used if calculation of the equipment-specific allocation factor would not be practical.

(f) Other Station Equipment—Category 6. This category includes all station equipment not assigned to other categories. The cost of station

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equipment assigned to this category in the study area is apportioned between state and interstate operations by the application of a subscriber plant factor developed as described in § 67.124(d)(4)–(d)(7).

9. Section 67.153 is amended by revising paragraph (b) to read as follows:

§ 67.153 Phase out and termination of interstate apportionment of customer premises equipment in accounts 231 and 234.

* * * * *

(b) Phase out of customer premises equipment recorded as of December 31, 1982. The recorded investments of customer premises equipment in Accounts 231 and 234 which are on the books as of December 31, 1982 shall be assigned to the categories set forth under § 67.152.

* * * * *

10. Section 67.161 is amended by revising paragraph (c) to read as follows:

§ 67.161 Furniture and office equipment—account 261; Other Communications Equipment—account 262.

* * * * *

(c) The cost of the other furniture and office equipment in Account 261 and the cost of other communications equipment in Account 262 is apportioned among the operations on the basis of the separation of the wage portion of maintenance, traffic, commercial and revenue accounting expenses excluding the wage portion of maintenance expense related to general office space.

11. Effective June 1, 1986, § 67.313 is amended by revising paragraphs (b)(2), (3), and (5) and (c)(4), (c)(5) introductory text, (c)(5)(i), (c)(5)(iii), and (c)(6) to read as follows:

§ 67.313 Test desk work—account 603.

* * * * *

(b) * * *

(2) Expense in this classification is segregated among (i) message services, excluding WATS closed end access; (ii) private line and WATS closed end access service; (iii) TWX; and (iv) wideband services, on the basis of the relative number of working subscriber loops provided for each of these services. In cases where substantial numbers of private line, WATS closed end access lines, TWX or wideband service loops are provided, and where either the analyses in §67.313(a) or analyses of trouble reports on private line, WATS closed end access lines, TWX and wideband services indicate that the exchange circuit plant testing expense per loop associated with any of such services is significantly different from the corresponding expense per loop associated with message services, excluding WATS closed end access, appropriate weighting factors are applied to the counts of loops used for private line, WATS closed end access, TWX and wideband services. These weighting factors are based on periodic analyses of accounting or other records for a representative period.

(3) Subscriber line and service order testing expense assigned message telephone, excluding WATS closed end access service, is apportioned between state and interstate operations on the same basis as that used for the apportionment of the cost of COSP Category 1.33.

* * * * *

(5) Exchange circuit plant testing expense assigned private line services and WATS closed end access service is apportioned among the operations on the basis of the relative number of working loops (weighted if appropriate) used in furnishing exchange services, state private line services, state WATS closed end access service, interstate private line services, and interstate WATS closed end access service.

* * * * *

(c) * * *

(4) The expense of testing all other inter-office circuit plant is further segregated among exchange trunk plant, interexchange circuit plant, host/remote message circuit plant on the basis of the relative number of circuit miles provided for each of these classifications in the study area. In cases where substantial numbers of circuit miles are provided for TWX service, private line services (other than wideband special services), WATS closed end access service, or exchange trunks, and where analyses of trouble reports or other records indicate that the testing expense associated with any of these classifications is significantly different from the corresponding expense per circuit mile associated with message interexchange service, excluding WATS closed end access circuit miles, appropriate weighting factors are applied to the counts of circuit miles for individual classifications to recognize this difference in testing expense. These weighting factors are based on periodic studies of charges to Account 603 for interoffice circuit plant testing during a representative period.

(5) The interexchange circuit trunk testing expense is further segregated among message telephone excluding WATS closed end access, TWX, private line and WATS closed end access services on the basis of the relative number of interexchange circuit miles (weighted, if appropriate) provided for each of these services in the study area.

(i) Interexchange circuit plant testing expense assigned message telephone excluding WATS closed end access is apportioned between state and interstate operations on the basis of the relative number of interexchange message telephone circuit miles, excluding WATS closed end access circuit miles, in the study area assigned to each operation. Jointly used circuit miles are apportioned between state and interstate operations on the basis of conversation-minute-miles.

* * * * *

(iii) Interexchange circuit plant testing expense assigned private line and WATS closed end access services are apportioned between state and interstate operations on the basis of the relative number of interexchange private line and WATS closed end access circuit miles (weighted, if appropriate) in the study area assigned each operation.

* * * * *

(6) Exchange circuit plant testing expenses assigned wideband services is apportioned among the operations on the basis of the assignment of host/remote message outside plant.

* * * * *

12. Effective June 1, 1986, § 67.611 is amended by revising paragraph (a)(1)–(4) and (8) to read as follows:

§ 67.611 Submission of information to the National Exchange Carrier Association.

(a) * * *

(1) Unseparated, i.e., state and interstate, gross plant investment in Outside subscriber Line Plant (OSP) Category 1.33, and COE Category 8.13. This amount shall be calculated as of December 31st of the year preceding each June filing.

(2) Unseparated depreciation reserve and accumulated deferred federal income taxes attributable to OSP Category 1.33 investment, and COE Category 8.13 investment. These amounts shall be calculated as of December 31st of the year preceding each June filing, and shall be stated separately.

(3) Unseparated depreciation expense attributable to OSP Category 1.33 investment, and COE Category 8.13 investment. This amount shall be the actual depreciation expenses for the calendar year preceding each June filing.

(4) Unseparated maintenance expenses attributable to OSP Category 1.33 investment and COE Category 8.13 investment. This amount shall be the actual maintenance expense for the calendar year preceding each June filing.

* * * * *

(8) The number of working subscriber line outside loops used jointly for non-wideband exchange and message telephone service, excluding WATS closed end access and TWX service, but including subscriber line outside plant associated with pay telephone (OSP Category 1.33). This figure shall be calculated as of December 31st of the year preceding each June filing.

13. Effective June 1, 1986, § 67.621 is amended by revising paragraph (a) to read as follows:

§ 67.621 National and study area average unseparated loop cost per working loop.

(a) Study area unseparated loop cost. For the purposes of calculation of the expense adjustment, the study area unseparated loop cost is equal to the sum of the following:

(1) Return component for net unseparated OSP Category 1.33 investment, and COE Category 8.13 investment. This amount is calculated by deducting the depreciation reserve and accumulated deferred federal income taxes attributable to OSP Category 1.33 investment and COE Category 8.13 investment reported pursuant to § 67.611(a)(2) from the gross plant investment in OSP Category 1.33, and COE Category 8.13 reported pursuant to § 67.611(a)(1) to obtain the net unseparated OSP Category 1.33 investment, and COE Category 8.13 investment. The net unseparated OSP Category 1.33 investment, and COE Category 8.13 investment is multiplied by the study area's cost of capital. The cost of capital is calculated by multiplying the embedded cost of debt times the percent of the total capital that is debt and adding to this amount the product of the authorized interstate rate of return on equity times the percent of total capital that is equity as this information is reported in § 67.611(a)(9).

(2) Depreciation expense attributable to OSP Category 1.33 investment, and COE Category 8.13 investment as reported in § 67.611(a)(3).

(3) Maintenance expense attributable to OSP Category 1.33 investment, and COE Category 8.13 investment as reported in § 67.611(a)(4).

(4) General, other expenses and taxes attributable to OSP Category 1.33 investment, and COE Category 8.13 investment. This amount equals the net unseparated OSP Category 1.33 investment, and COE Category 8.13 investment as calculated in § 67.621(a)(1) multiplied by the unseparated general and other expenses and taxes as reported in § 67.611(a)(5) divided by the unseparated net investment for total telephone plant for the study area. The unseparated net investment for total telephone plant for the study area equals the unseparated gross telephone plant investment as reported in § 67.611(a)(6) minus the unseparated depreciation reserve and accumulated deferred federal income taxes attributable to total telephone plant as reported in § 67.611(a)(7).

14. Effective June 1, 1986, § 67.701 is revised by removing the definition of "Message service" and inserting the new term "Message service or message toll service", to read as follows:

§ 67.701 Glossary.

* * * * *

Message service or message toll service—Switched service furnished to the general public (as distinguished from private line service). Except as otherwise provided, this includes exchange switched services and all switched services provided by interexchange carriers and completed by a local telephone company's access services, e.g., MTS, WATS, Execunet, open end FX and CCSA/ONALS.

* * * * *

Appendix B

PART 69—[AMENDED]

47 CFR Part 69 is amended as follows:

1. The authority for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.202 is amended by revising paragraph (c) to read as follows:

§ 69.202 Initial End User Common Line Charges.

* * * * *

(c) A charge that is the lesser of the charge computed pursuant to § 69.104(d) or $2 shall be assessed for each line used for Centrex/CO service that was in place or on order on July 27, 1983. Effective June 1, 1986, each such line shall be assessed a charge that is the lesser of the charge computed pursuant to § 69.104(d) or $3.

* * * * *

[FR Doc. 86-4960 Filed 3-6-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2403, 2407, 2414, 2415 and 2416

[Docket No. R-86-1270; FR-2196]

Acquisition Regulations; Technical Amendments and Corrections

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule amends and corrects the HUD Acquisition Regulation (HUDAR) to redesignate certain delegations of authority in various sections of the HUDAR to the Department's "Senior Procurement Executive" as defined in HUDAR 2402.101. In addition, this rule revises HUDAR 2416.405 to rephrase certain terms to read "Clause" or "Clauses". Finally, HUDAR 2415.506 is revised to delegate to the Office of the Assistant Secretary for Community Planning and Development the responsibility for ensuring that unsolicited proposals for funding under the Secretary's Discretionary Fund Program are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755–5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The uniform regulations for the procurement of supplies and services by Federal departments and agencies—the Federal Acquisition Regulation (FAR)—were promulgated on September 19, 1983 (48 FR 42102). HUD promulgated its acquisition regulation (HUDAR) implementing the FAR in the Federal Register of March 1, 1984 (49 FR 7686). The HUDAR is codified at Title 48, Chapter 24 of the Code of Federal Regulations, and has been later revised in the Federal Register of November 8, 1985 (50 FR 46572).

The HUDAR revisions in this rule implement modifications of the FAR and HUD internal procedures since the effective date of the HUDAR (April 1, 1984). Many of these revisions concern the substitution of the term "Senior Procurement Executive" for "Procurement Executive". The term

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"Senior Procurement Executive" was added to the definitions in FAR 2.100 as part of the FAR revisions published in the **Federal Register** of January 11, 1985 (50 FR 1726). In addition, other revisions concern the substitution of the term "Clause" or "Clauses" for "Articles". The term "Clause" or "Clauses" for "Articles" is used in the FAR, particularly in Part 52. Finally, HUDAR 2415.506 is revised to delegate to the Office of Program Policy Development for the Assistant Secretary of Community Planning and Development the responsibility for ensuring that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

The Department has determined that this document need not be published as a proposed rule, as is generally required by the Administrative Procedure Act (APA), since this rule merely makes technical amendments to existing HUD regulations.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary, since these technical amendments are categorically excluded under HUD regulations at 24 CFR 50.20(k).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of this rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. There are no information collection requirements contained in these technical amendments to the HUDAR.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes technical amendments to the Department's regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166).

List of Subjects in 48 CFR Parts 2401, 2403, 2407, 2414, 2415 and 2416

Government procurement.

Accordingly, the Department amends Title 48, Chapter 24 of the Code of Federal Regulations as follows:

PART 2401—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Part 2401 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.403 [Amended]

2. In HUDAR 2401.403, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

2401.404 [Amended]

3. In HUDAR 2401.404, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. The authority citation for 48 CFR Part 2403 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2403.203 [Amended]

5. In HUDAR 2403.203, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

2403.204 [Amended]

6. In HUDAR 2403.204, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

2403.303–70 [Amended]

7. In HUDAR 2403.303–70, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

2403.601 [Amended]

8. In HUDAR 2403.601, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

PART 2407—ACQUISITION PLANNING

9. The authority citation for 48 CFR Part 2407 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2407.102 [Amended]

10. In HUDAR 2407.102, the term "Procurement Executive" is replaced with the term "Senior Procurement Executive".

PART 2414—SEALED BIDDING

11. The authority citation for 48 CFR 2414 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2414.407–701 [Amended]

12. In HUDAR 2414.407–701, the second paragraph "(b)" in that section is corrected to read "(d)".

PART 2415—CONTRACTING BY NEGOTIATION

13. The authority citation for 48 CFR Part 2415 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. In HUDAR 2415.506, the current paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added, to read as follows:

2415.506 Agency procedures.

* * * * *

(b) * * *

(2) *For funding under the Secretary's Discretionary Fund Program*—Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

* * * * *

PART 2416—TYPES OF CONTRACTS

15. The authority citation for 48 CFR 2416 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2416.405 [Amended]

16. In HUDAR 2416.405, the term "Article" is replaced with the term "Clause", and the term "Articles" or "General Provisions" is replaced with the term "Clauses".

Dated: February 27, 1986.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 86–5059 Filed 3–6–86; 8:45 am]

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VOL 51 ISS 45 MR 7 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 45
Friday, March 7, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-009]

9 CFR Parts 1, 2, and 3

Animal Welfare Standards; Laboratory Animals

AGENCY: Animal and Plant Health Inspection Services, USDA.

ACTION: Solicitation of information for drafting proposed regulations and standards under Pub. L. 99–198.

SUMMARY: Pub. L. 99–198, title XVII, Subtitle F, commonly known as the "Improved Standards for Laboratory Animals Act," amends the Animal Welfare Act. This law was signed by the President on December 23, 1985, and requires the Secretary to develop and promulgate standards and regulations in certain areas of animal care and use not previously regulated. In order to develop more workable and equitable regulations and standards, the Department is soliciting comments and suggestions.

DATE: Written comments must be received by May 6, 1986.

ADDRESS: Written comments should be submitted to Dr. R. L. Crawford, Animal Care Staff, Animal and Plant Health Inspection Service, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 756 of the Federal Building between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Animal Care Staff, Animal and Plant Inspection Service, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Telephone (301) 436–7833.

SUPPLEMENTARY INFORMATION: The Secretary will promulgate additional standards and regulations for the care and treatment of animals in research and by licenses. By this notice, the Department invites interested parties to submit any relevant comments on the following areas:

1. Exercise for dogs held by dealers, research facilities, and exhibitors.

a. What is the minimum period of exercise and the types of exercise that should be required.

b. How often should dogs be exercised.

c. What dogs require exercise (i.e., long-term holding, short-term holding, or all dogs).

2. Psychological well-being of primates held by dealers, research facilities, and exhibitors.

a. What is the minimum space and time period of exercise that should be required.

b. What types of devices or articles should be provided for environmental enrichment.

c. How often should this exercise and enrichment be provided.

d. Should it apply to long-term animals, short-term animals, or all animals,

3. A general listing of painful procedures which should require the use of anesthetics, analgesics, or tranquilizers in research animals at research facilities.

4. A general listing of major operative experiments from which an animal is allowed to recover, which should prohibit the same animal being used in another major operative experiment from which it is allowed to recover for surgical animals used by research facilities.

Comments received will be reviewed and considered during the drafting of proposed regulations and standards under the Animal Welfare Act amendment. It is anticipated that regulations in 9 CFR part 2 will be drafted and published as proposed rulemaking during the summer of 1986. Standards in 9 CFR Part 3 will be drafted and published at a later date.

Done at Washington, DC, this 4th day of March 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86–5037 Filed 3–6–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–ASW–1]

Proposed Amendment of Transition Area; Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Dallas/Fort Worth, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Bourland Field Airport, Cresson, TX. This action is necessary since there is a proposed VOR/DME SIAP to the Bourland Field Airport utilizing the Action VORTAC (AQN). This proposed action is an amendment to the existing Dallas/Fort Worth, TX, transition area which already provides part of the necessary controlled airspace for Bourland Field Airport. Coincident with this proposed action, the airport status will be changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before April 21, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86–ASW–1, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW–535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877–2822.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASW–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Dallas/Fort Worth, TX, transition area, thereby establishing a 700-foot transition area for aircraft conducting IFR activity at Bourland Field Airport, Cresson, TX. To enhance airport usage, a new instrument approach procedure is being developed for the Bourland Field Airport, Cresson, TX, utilizing the Action VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails amending the Dallas/Fort Worth, TX, transition area to encompass Bourland Field Airport and the SIAP, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.65.

2. Section 71.181 is amended as follows:

Dallas/Fort Worth, TX Amended

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 33°11'00"N., longitude 97°27'00"W.; to latitude 33°11'00"N., longitude 97°19'00"W.; to latitude 33°26'00"N., longitude 97°15'00"W.; to latitude 33°26'00"N., longitude 97°07'00"W.; to latitude 33°19'00"N., longitude 97°06'00"W.; to latitude 33°19'00"N., longitude 96°57'00"W.; to latitude 33°08'30"N., longitude 96°36'00"W.; to latitude 33°08'30"N., longitude 96°25'00"W.; to latitude 33°00'15"N., longitude 96°25'15"W.; thence clockwise along the arc of a 5-mile radius circle centered at latitude 32°56'00"N., longitude 96°26'00"W.; to latitude 32°51'30"N., longitude 96°25'30"W.; to latitude 32°44'00"N., longitude 96°26'00"W.; to latitude 32°41'00"N., longitude 96°29'30"W.; to latitude 32°37'30"N., longitude 96°30'15"W.; to latitude 32°37'45"N., longitude 96°32'45"W.; to latitude 32°34'00"N., longitude 96°37'00"W.; to latitude 32°29'00"N., longitude 96°32'00"W.; to latitude 32°25'00"N., longitude 96°38'00"W.; to latitude 32°31'00"N., longitude 96°44'00"W.; to latitude 32°29'00"N., longitude 97°01'00"W.; to latitude 32°23'00"N., longitude 97°05'00"W.; to latitude 32°16'30"N., longitude 97°25'30"W.; to latitude 32°19'30"N., longitude 97°33'00"W.; to latitude 32°25'00"N., longitude 97°33'00"W.; to latitude 32°25'00"N., longitude 97°42'00"W.; thence north along longitude 97°42'00"W., to and clockwise along the arc of a 23-mile radius circle centered at latitude 32°46'20"N., longitude 97°26'30"W.; to latitude 32°55'00"N.; to longitude 97°56'00"W.; to latitude 33°15'30"N., to longitude 97°49'00"W.; to latitude 33°13'30"N., thence clockwise along the arc of a 5-mile radius circle centered at latitude 33°15'30"N., longitude 97°34'40"W.; to latitude 33°12'00"N., longitude 97°31'30"W.; to point of beginning and within a 6.5-mile radius of the McKinney Municipal Airport (latitude 33°10'43"N., longitude 96°35'25.5"W.) and within 3 miles either side of the 010-degree bearing from the NDB (latitude 33°10'43"N., longitude 96°35'34.5"W.) extending from the 6.5-mile radius area to 8.5 miles north of the NDB; and within a 6.5-mile radius of the Cleburne Municipal Airport (latitude 32°21'16"N., longitude 97°26'02"W.).

Issued in Fort Worth, TX, on February 24, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86–4939 Filed 3–6–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–ASW–6]

Proposed Amendment of Transition Area; Shawnee, OK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Shawnee, OK. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument

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approach procedure (SIAP) to the Prague Municipal Airport, Prague, OK. This action is necessary since the city of Prague intends to establish a nonfederal nondirectional radio beacon (NDB) approximately 2 miles north of the Prague Municipal Airport. This proposed action is an amendment to the existing Shawnee transition area which already provides part of the necessary controlled airspace for Prague. Coincident with this proposed action, the airport status will change from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before April 21, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86–ASW–6, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW–535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (617) 877–2822.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASW–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Shawnee, OK, transition area, thereby establishing a 700-foot transition area at Prague, OK. To enhance airport usage, a new instrument approach procedure is being developed for the Prague Municipal Airport, Prague, OK, utilizing the Prague NDB (GGU) as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails amending the Shawnee, OK, transition area to encompass Prague Municipal Airport and the new SIAP at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.65.

2. Section 71.181 is amended as follows:

Shawnee, OK Amended

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Shawnee Municipal Airport (latitude 35°21'16" N., longitude 96°56'33" W.); within 3.5 miles each side of the 007-degree bearing from the Shawnee NDB (latitude 35°20'52" N., longitude 96°56'48" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Seminole Municipal Airport (latitude 35°16'15" N., longitude 96°40'30" W.); and within 3.5 miles each side of the 353-degree bearing from the Seminole NDB (latitude 35°16'08" N., longitude 96°40'30" W.) extending from the 8.5-mile radius area to 11.5 miles north of the NDB; within an 8.5-mile radius of Prague Municipal Airport (latitude 35°28'45" N., longitude 96°43'03" W.); and within 4 miles each side of the 360-degree bearing from the Prague NDB (latitude 35°31'00" N., longitude 96°43'06" W.) extending from the 8.5-mile radius area to 14 miles north of the NDB, excluding the portion which overlies the chandler, OK, transition area.

Issued in Fort Worth, TX, on February 24, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86–4940 Filed 3–6–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–ASW–4]

Transition Area: Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Mountain View, AR. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Wilcox Memorial Airport, Mountain View, AR. This action is necessary because the proposed new SIAP on which the existing transition area is based has been revised. This amendment will not change the volume of controlled airspace needed to accommodate instrument flight rules (IFR) activity, but will reorient the transition area extension approximately 60 degrees clockwise.

DATES: Comments must be received within April 7, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86–ASW–4, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW–535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (617) 877–2822.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASW–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NRPM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Mountain View, AR, transition area by reorienting that portion which extends beyond the 6.5-mile radius approximately 60 degrees clockwise. The intended effect of this action will ensure segregation of aircraft using the new SIAP under IFR and other aircraft operating under visual flight rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Control zones, Safety, Transition areas, etc.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.65.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mountain View, AR

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Wilcox Memorial Airport (latitude 35°51'52" N., longitude 92°05'33" W.) and within 3 miles each side of the 104-degree bearing of the NDB (latitude 35°52'05" N., longitude 92°04'40" W.) extending from the 6.5-mile radius area to 6.5 miles east of the NDB.

Issued in Fort Worth, TX, on February 25, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86–4941 Filed 3–6–86; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 86-ASW-7]

Transition Area; Bonham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Bonham, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Jones Field Airport, Bonham, TX. This action is necessary since the FAA has under consideration the proposed establishment of a nonfederal nondirectional radio beacon (NDB). The NDB will be located on the airport east of Runway 17/32 at (latitude 33°36′50″ N., longitude 96°10′33″ W.). This proposed action will benefit aircraft conducting instrument flight rules (IFR) activity at Jones Field Airport.

DATES: Comments must be received by April 21, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86-ASW-7, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2622.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposed notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASW-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional 700-foot transition area at Bonham, TX. To enhance airport usage, a new instrument approach procedure is being developed for the Jones Field Airport, Bonham, TX, utilizing the Bonham NDB as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of additional transition area at Bonham, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control service.

Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, etc.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.65.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bonham, TX

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jones Field Airport, Bonham, TX, (latitude 33°36′41″ N., longitude 96°10′45″ W.) and within 4.5 miles each side of the 025-degree radial of the Blue Ridge VORTAC extending from the 6.5-mile radius area to 42.5 miles northeast of the VORTAC, and within 2.5 miles each side of the 346-degree bearing from the Bonham NDB (latitude 33°36′50″ N., longitude 96°10′33″ W.) extending from the 6.5-mile radius to 8.5 miles north of the Bonham NDB.

Issued in Fort Worth, TX, on February 25, 1986.

Donald R. Guempel,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-4942 Filed 3-6-86; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 213

Trade Remedy Assistance

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rules would create a new section of the Rules, Part 213, entitled *Trade Remedy Assistance*. Part 213 covers trade remedy assistance to be provided by the Commission pursuant to new section 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by section 221 of the Trade and Tariff Act of 1984. Section 339 of the Tariff Act of 1930 requires the Commission to establish a Trade Remedy Assistance Office to provide information to the public concerning remedies and benefits available under the trade laws, and the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits. Section 339 further requires the Commission to provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications to obtain remedies and benefits that may be available under the trade remedy laws administered by the Commission.

The rules proposed herein establish guidelines for small business eligibility to receive technical assistance, the procedure for applying for such assistance and procedures governing the provision of such assistance by the Trade Remedy Assistance Center Members of the public seeking general information from the Center would not be subject to the application procedures set forth in these proposed rules.

DATE: The Commission will consider comments on these proposed rules received on or before April 21, 1986.

ADDRESS: Comments should conform with Commission rule § 201.8 (19 CFR 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gertler, Esq., Trade Remedy Assistance Center, U.S. International Trade Commission, Room 130, 701 E Street, NW., Washington, DC 20436, telephone (202) 523-0686.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 724-0002.

SUPPLEMENTARY INFORMATION: Authority for this proposed rulemaking is contained in 19 U.S.C. 1335, which authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

Explanation of Proposed rules

The rules being proposed are designed to fulfill the Congressional mandate set forth in section 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by section 221 of the Trade and Tariff Act of 1984 (Pub. L. 98-573, approved Oct. 30, 1984, 98 Stat. 2989), which led to creation of the Trade Remedy Assistance Center ("the Center") to provide, in part, technical assistance to eligible small businesses petitioning the Commission for trade relief. The Center was established at the Commission on January 28, 1985 in accordance with section 339 of the Tariff Act of 1930. In providing technical assistance to an eligible small business, the Center operates independently of other Commission employees.

Congress determined that the technical assistance should be provided to those small businesses which because of their size have neither adequate internal resources nor financial ability to obtain qualified outside assistance. Congress further directed that the provision of technical assistance be limited to such assistance to enable an eligible small business to prepare and file petitions and complaints (other than those which, in the opinion of the Commission, are frivolous) to obtain the remedies and benefits that may be available under an applicable trade law.

In order to fulfill this Congressional mandate, the Commission proposes to adopt a procedure for determining eligibility based upon an applicant's certification that it is a small business (with reference to the Size Standards of the Small Business Administration) and to provide technical assistance up to the filing of the petition for trade remedy relief. Pursuant to new section 339 of the Tariff Act of 1930, the Commission's determination as to eligibility is not reviewable.

The proposed rules first set out definitions of, *inter alia*, technical assistance and eligible small business. Following this definitional section, the proposed rules set out the application procedure. Separate requirements are identified for joint applicants and applications filed by trade associations or unions. The proposed rules then set out the procedures for Commission determination and notification to the applicant and, where appropriate to the Department of Commerce as to the applicant's eligibility to receive technical assistance. Finally, the proposed rules set out a disclosure requirement and address the relationship created between eligible small businesses, the Center and the Commission.

These proposed rules describe the procedure for determining the eligibility of small businesses for purposes of receiving technical assistance only. The Center will of course provide general information on U.S. trade laws in response to every inquiry regardless of whether the inquirer is an eligible small business.

Basis for Referencing SBA Size Standards for Small Business

The Commission proposes to adopt the Small Business Size Standards of the Small Business Administration ("SBA") as the basis for determining the eligibility of business entities seeking technical assistance from the Center. The SBA's size standards are chosen because they offer an objective and readily measurable definition of small business developed from a comprehensive data base.

The SBA's criteria are referenced in section 339 of theTariff Act of 1930 which states in pertinent part that "[i]n determining whether a business concern is an 'eligible small business', the agency may consult with the Small Business Administration. . . . " As a result of discussions with the SBA, the Commission believes that the Small Business Size Standards provides reliable empirical data on what are generally considered to be small businesses.

The SBA's Standards, which classify industries on the basis of the number of employees and the dollar volume of business, among other criteria, are promulgated pursuant to the Small Business Investment Act of 1958, as amended. The applicable measure is the entire business entity, independently owned and operated. Divisions and subsidiaries are counted in determining whether the entity is a small business. Factors considered by the SBA in formulating its size standards include the maximum size of firms, average firm size, the extent of industry dominance by large firms, the number of firms, the distribution by firm size of sales and

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employees in the industry, the presence of Federal procurement, and relation to other SBA programs 13 CFR 121.1(b)(3). SBA has promulgated size standards for a variety of programs. The general size standards set forth in 13 CFR 121.2 classify businesses on the basis of number of employees or dollar volume of business and are pertinent to determination of what is a small business under section 339. The size standards in 13 CFR 121.2 are comprehensive; they classify the entire field of economic activities covered by the Bureau of the Census Standard Industrial Classification ("SIC") code. Separate categories are provided for the following major divisions of industry; agriculture; mining; construction; manufacturing; transportation, communications, electric, gas and sanitary services; wholesale trade; retail trade; finance, insurance and real estate; and services. 13 CFR 121.2. In virtually all investigations under the trade statutes, manufacturing or agriculture is the relevant category. These size standards, based on employment or annual receipts, are easily measured and provide a simple, cost-effective definition of small business under section 339.

For most industries, the SBA size standards promulgated in 13 CFR 121.2 classify a business concern as small if it has an average of 500 employees or less in the most recent 12-month period. A few businesses are still classified as small with as many as 1500 employees. In addition, the SBA classifies service businesses as small based upon annual average gross receipts for the preceding three years.

These specific size standards are used for determinations of eligibility for most SBA financial assistance programs and for Government procurement programs. 13 CFR 121.4 and 121.5. Similar size standards are also used by other federal agencies. For example, the Patent and Trademark Office of the U.S. Department of Commerce defines a business concern as small for purposes of paying reduced fees to the Patent and Trademark Office if, *inter alia*, the number of employees does not exceed 500 persons. 13 U.S.C. 121.12. The International Trade Administration of the Department of Commerce proposes to provide technical assistance, pursuant to section 339 of the Tariff Act of 1930, to any business that applies, without reference to any particular size limitation. Proposed Rule 19 CFR 355(i) (50 FR 24220, June 10, 1985). The Commission believes that the SBA Size Standards provide an appropriate threshold for determining eligibility pursuant to these rules.

Certification

In order to apply for technical assistance, an applicant (which may be any entity that may file a petition or a complaint) must certify to the Center in a written application that it meets the SBA Size Standards for the appropriate SIC classification. The certification must be signed under oath by an officer or principal of the applicant. The certification shall include the SIC number and the number of employees or annual receipts of the business concern. An appropriate format for the certification is attached to the proposed rules as Exhibit A.

In the case of a business concern applying for technical assistance, the officer or principal must certify that the business concern is independently owned and operated. If several business concerns jointly or simultaneously from the same industry apply for technical assitance, each business concern must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that each of the trade association's members meets the appropriate size standards. If a union applies for technical assistance, an officr of the union must certify that the union has less than 10,000 members within the industry for which trade relief is being sought.

Determination and Notification

Within ten (10) days of receiving a properly completed application, the Center will notify an applicant of its eligibility to receive technical assistance. The Center encourages all applicants to discuss their requests for technical assistance with the Center's staff prior to filing the application.

If an application is granted, the receipt of technical assistance by an eligible small business must be disclosed in any resulting petition or complaint filed with the Commission.

The Center will promptly notify the Department of Commerce of the Commission's determination to provide technical assistance to an eligible small business where that assistance relates to an antidumping or a countervailing duty investigation under Title VII of the Tariff Act of 1930. The Commission will then consult with the Department of Commerce with regard to the provision of technical assistance to that eligible small business.

A determination of the Commission that an applicant is eligible to receive technical assistance in accordance with these rules is not and shall not be construed as a determination on the merits of any request subsequently filed by an eligible small business. Nor will such a determination carry any other legal consequence. Eligibility to receive technical assistance from the Center will not give an eligible small business any special rights of access to Commission resources other than those of the Center itself.

Technical Assistance to Eligible Small Businesses

If a small business is determined to be eligible in accordance with the above-proposed criteria, the Center will provide appropriate technical assistance to that small business up to the date of filing of a petition or a complaint with the Commission.

The Commission's decision to limit the availability of technical assistance to the period prior to the filing of a petition or a complaint is based upon the language and legislative history of the Trade and Tariff Act of 1984. New section 339 of the Tariff Act of 1930, as added by section 221 of the 1984 Act, limits technical assistance to that enabling eligible small businesses "to prepare and file petitions and applications . . . ." Continuing assistance past the time of filing petitions and complaints is not contemplated. Moreover, the legislative history indicates that technical assistance from the Commission should not include advocacy services:

> [The Commission's Trade Remedy Assistance Center] would assist in the preparation and filing of the necessary petitions. This assistance would include the legal and economic information support (including any non-confidential data available to the agency) necessary to file, but would not include advocacy services. Since the agency must remain in the role of investigator and fact-finder, it would not be appropriate for it to take a partisan role in the dispute.

H. Rep. 98–725, 98th Cong., 2d. Sess. (1984), at 49.

In addition, the Commission believes that there is no need for continuing assistance to eligible small businesses once an investigation has been instituted and the Commission has assigned its investigative staff to the investigation.

Technical assistance may include informal advice and assistance, including legal advice, to enable eligible small businesses to prepare petitions and complaints to obtain the remedies and benefits under one or more trade remedy laws administered by the Commission.

It is contemplated that the Center will assist eligible small businesses at the pre-institution stage in organizing and assembling relevant background material and in preparing its petition or complaint. The Center's staff will work closely with the small business in reviewing drafts, advising as to compliance with the statute and the rules, and suggesting additions, deletions and possible alternative presentations of the relevant material in light of Commission precedent. The Center's staff will also discuss the eligible small business' further development of the case through the various stages of the investigation. Nevertheless, small business petitioners/complainants should be fully aware that the Center will only be providing assistance and will not be advocating on their behalf. Technical assistance to be provided by the Center is not the equivalent of representation by private counsel.

List of Subjects in 19 CFR Part 213

Foreign trade, Small businesses, Technical assistance.

Proposed Rules

19 CFR Chapter II is amended by adding a new Part 213, to Subchapter C to read as follows:

PART 213—TRADE REMEDY ASSISTANCE

Sec.
213.1 Purpose and applicability of part.
213.2 In general.
213.3 Definitions.
213.4 Determination of small business eligibility.
213.5 Disclosure of receipt of technical assistance.
213.6 Access to Commission resources.
213.7 Information concerning assistance.
Exhibit A—Application for Technical Assistance from the Trade Remedy Assistance Center of the U.S. International Trade Commission

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984; 98 Stat. 2989); sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335).

§ 213.1 Purpose and applicability of part.

Section 339 of the Tariff Act of 1930 establishes a Trade Remedy Assistance Office in the Commission and directs the Comission to provide: (a) general information to the public concerning the remedies and benefits available under certain trade laws and the procedures followed in investigations under those trade laws; and (b) technical assistance to eligible small businesses seeking remedies and benefits under the trade remedy laws administered by the Commission.[1] The rules in this part govern the establishment of the Trade Remedy Assistance Center, its function, small business eligibility for technical assistance, and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Center are not subject to the application procedures set forth in this Part.

§ 213.2 In General.

An eligible small business may receive appropriate technical assistance from the Trade Remedy Assistance Center in accordance with this Part if due to its small size it has neither adequate intenal resources nor the financial ability to obtain qualified outside assistance.

§ 213.3 Definitions.

(a) *Center.* The Trade Remedy Assistance Center shall be referred to as the Center. The Center provides (1) general information to the public concerning the remedies and benefits available under certain trade laws and the procedures followed in investigations undert those trade laws; and (2) technical assistance to elibible small businesses seeking remedies and benefits under the trade remedy laws administered by the Commission.

(b) *Trade Remedy Laws.* The trade remedy laws (with respect to which technical assistance is available) are defined as: Section 201 of the Trade Act of 1974, 19 U.S.C. 2251 ("escape clause" investigations); section 406 of the Trade Act of 1974, 19 U.S.C. 2436 (market disruption investigations); Title VII of the Tariff Act of 1930, 19 U.S.C. 1671 et seq. (countervailing and antidumping duty investigations); and section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (unfair practices in import trade).

(c) *Technical Assistance.* Technical assistance is informal advice and assistance, including legal advice, to enable eligible small business to prepare petitions and complaints (other than those which are frivolous) to obtain the remedies and benefits available under the trade remedy laws enumerated in § 213.3(b) of this Part. Technical assistance shall be available to eligible small businesses up to the date of the filing of a petition or complaint at the Commission. The Center provides such technical assistance independently of other Commission staff.

(d) *Applicant.* An applicant is any entity which may file a petition or a complaint, including but not limited to an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers or certified or recognized union.

(e) *Eligible Small Business.* An eligible small business is an applicant that the Commission has determined to be entitled to technical assistance in accordance with the eligibility criteria and procedures set forth in this Part.

(f) *SBA Size Standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.4 Determination of small business eligibility.

(a) *Certification of Eligibility.* An applicant that qualifies under the SBA size standards shall be eligible for

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[1] Section 339 of the Tariff Act of 1930 provides in pertinent part as follows:

"(a) There is established in the Commission a Trade Remedy Assistance Office which shall provide full information to the public, upon request, concerning—

"(1) remedies and benefits available under the trade laws, and

"(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

"(b) Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under the law.

"(c) For purposes of this section—

"(1) The term 'eligible small business' means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an 'eligible small business', the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

"(2) The term "trade laws" means—

"(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

"(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

"(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

"(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

"(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

"(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

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technical assistance from the Center. In order to apply, an applicant must certify to the Commission that it meets the appropriate SBA size standard and provide said certification to the Trade Remedy Assistance Center, U.S. International Trade Commission, 701 E Street, NW., Washington 20436. The certification shall be signed under oath by an officer or principal of the applicant in a form similar to that shown in Exhibit A.

(b) *Business Concerns, Joint Applications, Trade Associations, Unions.* A business concern applying for technical assistance must certify that it is independently owned and operated. If several business concerns jointly or simultaneously from the same industry apply for technical assistance, each business concern must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, and officer of the trade association must certify that each of the trade association's members meets the appropriate size standards. If a union applies for technical assistance, an officer of the union must certify that the union has less than 10,000 members within the industry for which trade relief is being sought.

(c) *Notification of Determination.* The Center shall notify an applicant of that applicant's eligibility to receive technical assistance within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the determination is not reviewable by any other agency or by any court.

(d) *Notification to Commerce.* Where an applicant seeks technical assistance on a trade matter involving Title VII of the Tariff Act of 1930, 19 U.S.C. 1671 et seq. (antidumping or countervailing duty investigations), the Center shall: (1) Promptly notify the U.S. Department of Commerce of the Commission's determinations as to the eligibility of the applicant to receive technical assistance; and (2) consult with the U.S. Department of Commerce as to the provision of technical assistance to that applicant.

§ 213.5 Disclosure of receipt of technical assistance.

The receipt of technical assistance from the Center by or on behalf of an eligible small business shall be disclosed in any resulting petition or complaint filed with the Commission.

§ 213.6 Access to Commission resources.

Commission resources other than those of the Center shall be available to eligible small businesses to the same extent that such resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to eligible small businesses.

§ 213.7 Information concerning assistance.

Interested parties may contact the Center with any questions regarding eligibility. Summaries of the import relief statutes and the SBA Size Standards can be obtained by writing to the Trade Remedy Assistance Center, U.S. International Trade Commission, Room 130, 701 E Street NW., Washington, DC 20436.

Exhibit A—Application for Technical Assistance From the Trade Remedy Assistance Center of the U.S. International Trade Commission

Certification of Applicant

The undersigned certifies that applicant
(Name of business entity) ______
(hereinafter referred to as "applicant") is independently owned and operated and qualifies as a small business under the Small Business Size Standards set forth in 13 CFR 121.2. The undersigned further certifies that:

(1) The Standard Industrial Classification ("SIC") code for applicant's line of business is
(4-digit SIC code): ______
and

(2) Applicant employs
(Number of employees):[1] ______
or, if a service industry, (3) Applicant has
(Annual receipts in dollars)[2] ______
(Date) ______
(Signature of Authorized Official) ______
______
(Name and Title of Authorized Official) ______
______
(Address and Phone Number) ______
______
______

Sworn to before me this —— day of
————, 19 ——
(Notary Public) ______
My commission expires on
(Date) ______

By order of the Commission.

Issued: February 28, 1986.

Kenneth R. Mason,
Secretary.
[FR Doc. 86-4780 Filed 3-6-86; 8:45 am]
BILLING CODED 7020-02-M

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[1] "Number of Employees" is defined in 13 CFR 121.2(b).

[2] "Annual Receipts" is defined in 13 CFR 121.2(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N-0032]

Biological Products; Blood and Blood Products; Serologic Test for Antibody To Human T-Lymphotropic Virus Type III (HTLV-III); Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that proposed to amend the biologics regulations to require that each unit of human blood and blood components intended for use in unit of human blood and blood components intended for use in preparing a product be tested and found nonreactive by an approved serologic test for antibody to human T-lymphotropic virus type III (HTLV-III), using the licensed reagent "Human T-Lymphotropic Virus Type III" (51 FR 6362; February 21, 1986). The contact person's telephone number was in error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Steve F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-3820 appearing on page 6362 in the issue of Friday, February 21, 1986, the following correction is made: In the first column, under "**FOR FURTHER INFORMATION CONTACT,**" the telephone number is changed to read "301-295-8046."

Dated: March 3, 1986.

Adam J. Trujillo,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 86-4955 Filed 3-6-86; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 7

[SD-197]

Board of Appellate Review; South Africa Fair Labor Standard Cases

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Board of Appellate Review proposes to revise its regulations to reflect jurisdiction acquired pursuant to 22 CFR 64.1(b), which entitles any U.S. national operating in South Africa, who, under 22 CFR 64.1(a), has been determined by the Department of State to have failed to comply with the Fair Labor Standards set forth in 22 CFR 61.2, to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review.

DATE: Comments must be submitted on or before April 7, 1986.

ADDRESS: For mailing public comments: Board of Appellate Review, Department of State (L/BAR), SA-1, Room W-115, Washington, DC 20520.

For hand delivery of public comments: Board of Appellate Review, Columbia Plaza, 2401 E Street, NW., Room W-115, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alan G. James (Chairman), Board of Appellate Review. (202) 663-1364.

SUPPLEMENTARY INFORMATION: 22 CFR Parts 60 through 65 implement the Fair Labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861), which provide that no department or agency of the United States may intercede after December 31, 1985 with any foreign government regarding the export marketing activities of certain U.S. firms operating in South Africa unless they adhere to the Fair Labor Standards set forth in the Executive Order.

22 CFR 64.1(b), provides that any U.S. national who has been determined by the Department of State to have failed to adhere to the principles specified in 22 CFR 61.2 shall be entitled to appeal the determination to the Board of Appellate Review within 30 days of receipt of notification of the decision.

The Board of Appellate Review proposed to revise regulations to reflect this newly acquired jurisdiction.

List of Subjects in 22 CFR Part 7

Administrative practices and procedures, Citizenship and naturalization, Organization and functions (Government agencies), Passports and visas, South Africa.

In consideration of the foregoing, the Board of Appellate Review proposes that in Chapter I of Title 22, Code of Federal Regulations Part 7 be amended as follows:

PART 7—BOARD OF APPELLATE REVIEW

1. The authority citation for 22 CFR Part 7 is revised to read as follows:

Authority: Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended, 22 U.S.C. 211a, 2658; secs. 104, 360, 66 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36 FR 10603; 3 CFR 1966-1970 Comp., page 507; 22 CFR 60-65; E.O. 12532, 50 FR 36861, unless otherwise noted.

2. In § 73, paragraph (d) is redesignated as (e) and a new (d) is added as follows:

§ 7.3 Jurisdiction.

* * * * *

(d) Appeals from administrative determinations under 64.1(a) of this Chapter, denying U.S. Government assistance to U.S. nationals who do not comply with the Fair Labor Standards in 61.2 of this Chapter.

* * * * *

3. In § 7.5, paragraph (b)(3) is redesignated as (b)(4) and a new (b)(3) is added as follows:

§ 7.5 Procedures

* * * * *

(b) *Time limit on appeal.* * * *

(3) A national who has been subject of an adverse decision under 61.1(a) of this Chapter shall be entitled to appeal the decision to the Board within 30 days after receipt of notice of such decision.

* * * * *

4. Sections 7.8 through 7.11 are redesignated as §§ 7.9 through 7.12 and a new § 7.8 is added as follows:

§ 7.8 South African Fair Labor Standards Cases

(a) Scope of Review—With respect to appeals taken from the Assistant Secretary for African Affairs denying assistance to U.S. nationals operating in South Africa which do not comply with the Fair Labor Standards outlined in 61.2 of the Chapter, the Board's review except as provided in paragraph b of this section shall be limited to the record on which the Assistant Secretary's decision was based.

(b) Admissibility of Evidence—the Board shall not receive or consider evidence or testimony not presented pursuant to §§ 63.3(a) or 63.3(b) of this chapter unless it is satisfied that such evidence was not available or could not have been discovered by the exerciser of reasonable diligence prior to entry of the decision of the Assistant Secretary for African Affairs.

Dated: February 26, 1986.

Alan G. James,
Chairman, Board of Appellate Review.
[FR Doc. 86-4865 Filed 3-6-86; 8:45 am]
BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 86-008]

Port Access Routes; Approach to Mobile, AL

Correction

In FR Doc. 86-4267 beginning on page 6923 in the issue of Thursday, February 27, 1986, make the following corrections:

On page 6923, second column, second paragraph, under "*Longitude*", "8830°" should read "88°" in all three lines.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2980-4; NC-013-014]

Approval and Promulgation of Implementation Plans; North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the North Carolina State Implementation Plan for Air Quality which were submitted by the North Carolina Division of Environmental Management on March 18, 1985, and April 15, 1985. These revisions include: the addition of control standards for three Volatile Organic Compound (VOC) source categories; the addition of test methods for VOC sources; the deletion of mandatory source registration; a clarification of how to determine allowable particulate emissions from existing fuel and wood burning indirect heat exchangers when new boilers are added to a site; an explanation of how to correct to twelve percent oxygen when determining emissions from incinerators; a new regulation for controlling mercury emissions; and additional permit application provisions. Most of the regulation changes are minor in nature and serve merely to update the North Carolina code.

DATES: To be considered, comments must be received on or before April 7, 1986.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

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Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611;
Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the Region IV EPA Air Programs Branch, at the above address and following phone (404) 881–3286 or (FTS) 257–3286.

SUPPLEMENTARY INFORMATION: On March 18, 1985, and April 15, 1985, the North Carolina Division of Environmental Management submitted numerous regulation changes and nonregulatory revisions to the North Carolina State Implementation Plan (SIP). These submittals contained certification that the revisions were preceded by adequate notice and a public hearing. EPA is proposing to approve these revisions, as submitted on the above dates. All interested persons are invited to comment on this action; comments received within 30 days of the publication of this notice will be considered by EPA. A discussion of these revisions and the basis for EPA action now follows:

Submittal of March 18, 1985

- Regulation 15 NCAC 2D.0606 (Other Coal or Residual Oil Burners) was amended to correct a cross reference. The regulation previously referenced 15 NCAC 2D.0603 (Sources Covered by New Source Performance Standards), which has been repealed. Regulation 15 NCAC 2D.0524 (New Source Performance Standards) was substituted for the repealed 15 NCAC 2D.0603.
- Regulation 15 NCAC 2D.0939 (Determination of Volatile Organic Compound Emissions) was amended by adding three test methods for quantifying VOC emissions.
- Regulation 15 NCAC 2D.0943 (Synthetic Organic Chemical and Polymer Manufacturing); 2D.0944 (Manufacturing of Polyethylene, Polypropylene and Polystyrene); and 2D.0945 (Petroleum Dry Cleaning) are new regulations which were adopted to control additional sources of volatile organic compounds. The rules are consistent with the Group III Control Technology Guideline Documents for those source categories. The regulations in Section 2D.0900 are only mandatory for sources in Mecklenburg County (the State's only nonattainment area for ozone) which have the potential to emit 100 tons per year or more of VOCs. There are presently no sources in Mecklenburg County to which these three rules apply.
- Also included in the March 18, 1985, submittal were revisions to regulation 2D.0524 (New Source Performance Standards) and 2D.0525 (National Emission Standard for Hazardous Air Pollutants). North Carolina revised their rules by adding six New Source Performance Standards (NSPS) and two National Emission Standards for Hazardous Air Pollutants (NESHAP). They also requested delegation of authority for implementing and enforcing the NSPS and NESHAP for these source categories. A letter delegating this authority to the State was signed by Charles R. Jeter, Regional Administrator, on April 2, 1985. The delegation was announced in the **Federal Register** on August 1, 1985 (50 FR 31182).

Submittal of April 15, 1985

- Regulation 15 NCAC 2D.0202 (Registration of Air Pollution Sources) was amended to require sources to register only when requested to do so by the State. In the past, registration was mandatory for all sources of air pollution, but this procedure is no longer necessary because the State requires virtually all sources to have permits. Permit applications contain essentially the same information contained in the registration form. To eliminate this unnecessary duplication, North Carolina has eliminated the requirement for all sources to register.
- Regulation 15 NCAC 2D.0501 (Compliance with Emission Control Standards) was amended to remove the requirement for mandatory source registration and to correct a cross reference. Test methods for mercury and for VOC's were also added and updated.

Revisions to Subparagraph (f)(1)(A) of regulation 2D.0501 were also submitted on April 15, 1985. EPA will take action on the changes to 2D.0501(f)(1)(A) in a separate **Federal Register** notice.

- Regulation 15 NCAC 2D.0503 (Control of Particulates from Fuel Burning Indirect Heat Exchangers) and 2D.0504 (Particulates from Wood Burning Indirect Heat Exchangers) were amended to clarify how allowable particulate emissions from existing boilers are determined when a new boiler is added to the site.
- Regulation 15 NCAC 2D.0505 (Control of Particulates from Incinerators) was amended to explain how to correct to twelve percent carbon dioxide when determining the amount of particulate emissions from incinerators.
- Regulation 15 NCAC 2D.0537 (Control of Mercury Emissions) is a new regulation. It limits the emissions of mercury to 2300 grams per day from any plant site. It applies to all sources of mercury not covered by other regulations, and is identical to the national emission standard for mercury, which is found in 40 CFR 61.52.
- Regulation 15 NCAC 2D.0603 (Applications) was amended to allow the State to request information from a source (in addition to what is required on the permit application) when it is necessary to properly evaluate that source's application for a permit. New source impact analyses and permit applications, for sources proposed to be located in nonattainment areas, are now available for public inspection. The public also has the opportunity to request a public hearing on such permit applications and impact analyses.

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action

EPA proposes to approve the above regulation changes which were submitted to EPA on March 18, 1985, and April 15, 1985.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Particulate matter, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: December 18, 1985.

John A. Little,
Deputy for Regional Administrator.

[FR Doc. 86–5009 Filed 3–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-10-FRL-2980-8]

Approval and Promulgation of State Implementation Plan; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA is proposing approval of the Alaska State Implementation Plan (SIP) revisions pertaining to the carbon monoxide attainment plan for the Fairbanks area. The SIP revisions were submitted by the Alaska Department of Environmental Conservation, (ADEC) September 29, 1982 and updated on May 31, 1985. The plan relies heavily on the aggressive implementation of a mandatory vehicle inspection and maintenance (I/M) program. In addition, EPA is proposing to approve the SIP elements dealing with reasonably available control measures (RACM), basic transportation needs, and conformity. Upon final approval by EPA, the CO plan will become a federally enforceable part of the SIP as required by the Clean Air Act.

EPA is also proposing to remove all conditions of approval on the 1979 Fairbanks CO Plan as published in the December 30, 1980 Federal Register (45 FR 85744).

DATE: Comments must be postmarked on or before April 7, 1986.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:
Air Programs Branch (10A–82–17), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101;
State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, AK 99871.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone: (206) 442–4233, FTS: 399–4233.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1980 (45 FR 85744), EPA conditionally approved the first phase of the Fairbanks carbon monoxide (CO) State Implementation Plan (SIP). At that time an extension of the attainment date for the CO standard to December 31, 1987, was also approved.

The second phase of the Fairbanks CO SIP was officially submitted to EPA on September 29, 1982, amd was further updated by the Alaska Department of Environmental Conservation (ADEC) on January 5, 1983 and November 15, 1983. The 1982 SIP revision indicated that a 45.2 percent reduction in 1979 baseline emissions is necessary in order to attain the eight-hour CO standard of 9 parts per million (ppm) prior to December 31, 1987. Part of this reduction would come from the Federal Motor Vehicle Emission Control Program, while another portion of the required reduction (21 percent) was to come from a tentative mandatory vehicle (I/M) program. The 1982 SIP revision noted that EPA would not take final action to approve the SIP until ADEC either fully committed to implement I/M or adopted other equally effective control measures.

However, on January 18, 1984 (49 FR 2119), EPA changed its original position, disapproving the Fairbanks plan because state and local officials failed to demonstrate adequate commitment to the I/M program. Since then, state and local officials have adopted appropriate I/M legal authority and have sufficiently committed to the I/M program which began July 1, 1985.

II. Plan Review

A. Approvable elements of the SIP

EPA is proposing to approve the transportation control strategies that were contained in the original SIP. The following is a list of control measures that still contain adequate commitments for implementation or continued implementation:

1. Federal Motor Vehicle Emission Control Program. (FMVECP).
2. Transit Improvements.
3. Traffic Improvements.
4. Vehicle Preheating.
5. District (Centralized) Heating System.
6. Inspection and Maintenance (I/M) program.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized. Therefore, EPA is proposing to approve the element dealing with basic transportation needs as well as the six elements listed above.

Conformity will be determined in accordance with the procedures set forth in the SIP. After determining conformity of the plans and programs, all federal aid projects will still be evaluated in accordance with procedures specified in the National Environmental Policy Act. If the analysis indicates that the project will create new violations or exacerbate existing violations, then the project will not be constructed without modifications to the project or plan sufficient to maintain reasonable further progress toward attainment.

Therefore, EPA is also proposing to approve the element of the plan dealing with conformity of federal actions with the SIP. A detailed discussion of these approvable elements is contained in the February 3, 1983 (48 FR 5133) **Federal Register**.

B. Attainment Demonstration

As mentioned previously, the 1982 SIP revision indicated that a 45.2 percent reduction in 1979 baseline emissions is necessary in order to attain the eight-hour CO standard of 9 parts per million prior to December 31, 1987. That goal would be reached with the current plan. Since the original air quality analysis is somewhat dated, EPA also conducted an analysis based upon the most recent three years of monitoring data. That analysis also demonstrated attainment prior to December 31, 1987, based upon the aggressive implementation of a mandatory I/M program, the continuation of the head bolt heater program and the FMVECP, and partial credit from the anti-tampering program. Accordingly, EPA is proposing approval of the attainment demonstration contained in the original SIP. If attainment is not reached by the statutory deadline, re-analysis and additional controls may be required.

C. Inspection and Maintenance Program

Fairbanks began its I/M program on July 1, 1985. Owners of model year 1975 and newer cars and trucks are required to have their vehicles annually inspected for emissions problems, or upon initial registration in the state. The model year of vehicles subject to the program changes over time because inspections are not required for vehicles that are more than 15 years old. Vehicles determined to have excessive pollution levels are required to be repaired prior to renewal of registration by the Alaska Division of Motor Vehicles (DMV). A seasonal waiver is also available for those vehicles that are not driven during the CO season. Local officials have also adopted a tampering check as part of the I/M program. Basically, the tampering test includes a visual check for the catalytic converter, fuel restrictor, air pump, PCV valve, hose and wire connectors, and a plumbtesmo (lead) test.

Since the program is decentralized, inspections required under the I/M program must be made at a Certified I/M Station. Up to a $35.00 fee may be charged for the inspections, and vehicles which fail the inspection because of defects in their emission control system must be repaired and then retested by a Certified I/M Station. The program incorporates the use of Bar-84 analyzers which are calibrated on a regular basis.

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Repairs required under the I/M Program may be performed by anyone, including vehicle owners. However, incentives are provided for the repair of vehicles by Certified I/M Mechanics working at Certified I/M Stations. Except for certain Fleet Operator owned vehicles, vehicle owners are guaranteed of either passing the retest or receiving a waiver if they have repairs performed at a Certified I/M Station. A cost waiver is available if repairs exceed $150.00 during the first year. The cost limit will gradually be increased to $500.00 by January 1, 1987. Work done or parts purchased and installed by vehicle owners or at uncertified facilities will not count toward this cost ceiling. It should be noted that since the cost waiver provisions apply to the required replacement of emissions control devices, the actual effectiveness of the tampering check is uncertain.

The Fairbanks North Star Borough (FNSB) is responsible for conducting quality assurance tests at the individual stations. Currently there are approximately 30 certified stations. The FNSB is also responsible for collecting data and ensuring program effectiveness.

D. Removal of Previous Conditions

In response to EPA's conditions of approval on the 1979 SIP (December 30, 1979 (45 FR 85744), FNSB has included in the 1982 SIP revision: (1) An expanded 1980 CO emission inventory to include emissions from off-street parking, (2) verification that population projections for air and water planning activities are consistent, and (3) a procedure for determining conformity of federal projects with the SIP.

III. Proposed Action

The EPA proposes (1) to approve the Fairbanks I/M program and the attainment demonstration portions of the plan; (2) to approve the SIP elements contained in the Fairbanks CO attainment plan which was submitted to EPA on September 29, 1982, and January 5, 1983, dealing with basic transportation needs conformity and other control measures including I/M; and (3) to remove the three conditions on the EPA approval of the 1979 Fairbanks CO SIP which EPA imposed on December 30, 1980 (45 FR 85744).

Interested parties are invited to comment on all aspects of this proposed approval of the Alaska SIP revision. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by April 7, 1986 will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping.

Dated: September 20, 1985.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 86–5014 Filed 3–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-3-FRL-2980-6]

Designation of Areas for Air Quality Planning Purposes; Commonwealth of Pennsylvania; Section 107 Redesignation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to redesignate the attainment status of two areas within Allegheny County with respect to the National Ambient Air Quality Standards (NAAQS) for Total Suspended Particulates (TSP) pursuant to section 107 of the Clean Air Act and the implementing regulations at 40 CFR Part 81.

The request is to revise the attainment status of one area from "Cannot Be Classifed" to "Better than National Standards," and for a second area the requested revision is from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards." The requests for redesignation are based upon eight consecutive quarters of ambient air monitoring data.

The intent of this notice is to discuss the results of EPA's review of the redesignation request and to solicit public comment on the proposed actions.

DATE: Comments must be received on or before April 7, 1986.

ADDRESSES: Copies of the documents relevant to these proposed redesignations are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Denis Lohman;

Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett;

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, PA 15201, Attn: Roger Westman.

All comments on the proposed redesignations submitted within 30 days of publication of this notice will be considered. Comments should be directed to Mr. Glenn Hanson, Chief PA/WV Section, EPA, Region III, 841 Chestnut Bldg., Philadelphia, PA 19107, EPA Docket Nos. 107–PA–25, 107–PA–26, and 107–PA–27.

FOR FURTHER INFORMATION CONTACT: Denis Lohman (3AM11) at the EPA, Region III address above or call (215) 597–8375.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act, the Administrator of EPA has promulgated the NAAQS attainment Status for all areas within each State (*See* 43 FR 8962 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

Background

The Pennsylvania Department of Environmental Resources (PaDER) endorsed and submitted to the U.S. Environmental Protection Agency (EPA) requests, initiated by the Allegheny County Bureau of Air Pollution Control (BAPC), to revise the Total Suspended Particulate (TSP) attainment status designation for two areas within Allegheny County under Section 107 of the Clean Air Act and 40 CFR Part 81. In this notice the review of each area will be discussed.

A. Area #1

Area #1 is a three-mile wide strip within a perpendicular distance two miles north and east of the Ohio river center line, and one mile south and west of the Ohio river center line, terminating at the I–79 highway bridge and at the Beaver County line. This area is now designated as "unclassifiable" with respect to the NAAQS for TSP.

At the time of the designation, there were no TSP monitors in this area. The only major source of TSP in the area—Philips Power Station—had an undetermined impact upon air quality. The Philips station has a stack height which, at 104 meters, is greater than the de minimis good engineering practice (GEP) height of 65 meters. However, the GEP stack height calculated by the formula of the EPA stack height regulation promulgated on July 8, 1985 (50 FR 72892) is 105 meters so the actual stack height is slightly less than the maximum creditable height. The TSP emission limit for the Philips station is the county established limit for fuel burning or cumbustion equipment (Section 402 of Allegheny County Article XX). The allowable emission rate of 0.08 lbs (TSP)/MMBtu is less than the new source performance standard of 0.10 lbs/MMBtu. There were, in addition, major sources upriver and downriver from the area, with uncertain impact upon the air quality.

The BAPC installed two special purpose monitors in the area to determine the existing air quality. One monitor was placed in Leetsdale and a second monitor was placed in Sewickley. The BAPC has certified that both sites are representative for the purpose of attainment designation.

A site description form for Sewickly was reviewed. It indicates that the station satisfies the requirements of 40 CFR Part 58.

No exceedance of any TSP standard has been recorded at either monitoring site. Sources in the area cannot significantly increase emissions under the existing rules and regulations which have been approved by EPA. Although the sources in adjacent areas could operate at higher levels of operation, their impact in Area #1 is expected to be minor because of their comparatively long distance from the area.

Therefore, after reviewing the data submitted and considering the information summarized above, EPA is proposing to approve this redesignation request.

B. Area #2

Area #2 is defined as the circular area within a 0.5 mile radius of the Greater Pittsburgh Airport monitor. This monitor is on the roof of the main terminal building.

This area is now designated as "Does Not Meet Primary Standards" with respect to the NAAQS for TSP. The nonattainment classification was requested because of high annual values of TSP recorded in 1979 and 1980. At that time, the airport terminal was undergoing a major construction project. The construction project was completed in 1980. The average TSP values since then have been well below the primary standard.

In both the first and second quarters of 1984 a daily value of TSP in excess of the secondary standard (150 micrograms per cubic meter) was recorded. Although these were the only exceedances since 1980, the second occurrence in one year constitutes a violation of the secondary standard. For this reason, the revised designation is requested to be "Does Not Meet Secondary Standards."

The site overlooks the central boarding and deplaning area and is probably affected by re-entrained dust caused by jet exhaust wash at loading gates. The nearest such gate is 35 feet below and 75 feet away from the monitor. The effect of the jet exhaust re-entrainment is considered to bias the TSP readings toward high values. Due to the very local influences at the Greater Pittsburgh Airport, the monitor is only representative at a middle scale (up to 0.5 km).

The airport is located in the western part of the county in an area of low population density. The area around the monitor site is generally level and is either devoted to airport operations or associated commercial and light industrial activities. There are no large point sources of TSP within a radius of 7500 feet. The largest sources of TSP near the monitor are Route 60, 1100 feet north of the monitor site; the driveways within the airport; and the reentrained dust from the movements of airplanes near the terminal.

Because there are no significant combustion or process sources generating particulate matter, the majority of the TSP, in excess of background, being measured at the monitor is attributed to re-entrained dust by the automotive and aviation traffic. At the present time the traffic is sufficiently great and constant enough that the roadways and runways are virtually in a perpetually stirred condition except for unusual events such as heavy rain or snowfall. Consequently the "source" for TSP is relatively insensitive to changes in traffic density. The principal reasons for day to day variations in TSP measurements are weather related. The wind direction determines the upwind "source" area and the wind speed determines the dilution factors. Therefore, increases in traffic are not expected to cause increases in monitored TSP.

After reviewing the data submitted and considering the information summarized above, EPA is proposing to approve the redesignation request.

Proposed Action

EPA is proposing to approve the two requests for redesignation of two areas within Allegheny County. The unclassifiable Area #1 would be designated as "Better Than National Standards" for TSP. The nonattainment Area #2 would be designated as "Does Not Meet Secondary Standards".

The public is invited to submit, to the EPA, Region III address stated above, comments on either of the proposed redesignations. The Administrator's decision to approve or disapprove the proposed redesignations will be based upon the comments received and on a determination of whether or not the requirements of section 107 of the Clean Air Act have been met.

Administrative Procedures

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (*See* 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7462.

Dated: November 11, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 86–5008 Filed 3–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-4-FRL-2980-5, SC—014]

Designation of Areas for Air Quality Planning Purposes; Redesignation of an Ozone Nonattainment Area in South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve the request by South Carolina to redesignate York County from nonattainment to attainment for ozone. The redesignation of York County to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 and implementation of an EPA-approved control strategy.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before April 7, 1986.

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ADDRESSES: Written comments should be addressed to Jill Thomas of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Jill Thomas, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/881–4253 or FTS 257–4253.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 FR 8962), EPA designated York County, South Carolina as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that York County had experienced oxidant violations. Several areas in South Carolina were designated nonattainment for ozone and, therefore, the State was required to revise their state implementation plan (SIP) for ozone. South Carolina drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources in nonattainment and unclassified areas. Through the Federal Motor Vehicle Control Program (FMVCP) and implementation of the VOC regulations, South Carolina demonstrated attainment of the ozone standard in the urban nonattainment areas. Because York County was a non-urban area, a demonstration of attainment of the ozone standard was not required. EPA approved South Carolina's accommodative ozone SIP on January 29, 1980.

South Carolina has requested that EPA change the attainment status of York County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0. The most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy. South Carolina has submitted ambient air quality data collected at the Chester Airport monitoring site located in Chester County. This monitor was moved from York County on March 1, 1980, in order to conform to 40 CFR Part 58 siting criteria. The Chester County site is located approximately 16 miles southwest of the former York County site. The move was reviewed by EPA and determined to be representative of York County.

South Carolina's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1982, 1983, and 1984) show the number of expected exceedances to be less than or equal to 1.0, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances[1]	NAAQS ozone (ppm)[2]
Chester Airport:			
1982	.125	0.67	12
1983	.143		
1984	None		
(Total: 2 exceedances)			

[1] Three year average.
[2] Not to be exceeded more than once a year

Furthermore, York County has experienced no ozone exceedances during the first three quarters of 1985.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposes to approve the redesignation of York County from ozone nonattainment to attainment.

Proposed Action

EPA is today proposing to approve the redesignation of the York County ozone nonattainment area on the basis of three years of air quality data and an EPA-approved control strategy.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), I certify that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: November 27, 1985.

Jack E. Ravan,
Regional Administrator.

[FR Doc. 86–5011 Filed 3–6–86; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-20)]

Exemption From Regulation; Storage Leases

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking and Exemption.

SUMMARY: The Commission proposes to exempt from regulation under 49 U.S.C. 10505 the leasing of surplus railroad equipment for storage. This would enable rail carriers to compete more effectively with private car companies in the leasing of idle cars for storage purposes. In Ex Parte No. 346 (Sub-No. 12), *Petition to Exempt Storage Leases of Norfolk and Western* (not printed), served March 9, 1983, the Commission exempted the storage leases of covered hopper cars by Norfolk and Western Railway Company. This proposal would expand that exemption to cover storage leases for all surplus equipment for all carriers.

DATE: Comments are due April 7, 1986.

ADDRESS: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Railroads, Exemption, Leases.

Dated: February 28, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

Appendix

Title 49 of the CFR would be amended as follows:

PART 1039—[AMENDED]

1. The authority citation for 49 CFR Part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, 11105; 5 U.S.C. 553.

2. A new § 1039.20 would be added to read as follows:

§ 1039.20 Storage leases.

Storage leases for all surplus equipment for all carriers are exempt from the provisions of 49 U.S.C. subtitle IV. Nothing in this exemption should be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent decision of this Commission.

[FR Doc. 86–5042 Filed 3–6–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Ranched Nile Crocodile Populations in Zimbabwe From Endangered to Threatened by Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reclassify ranched populations of the Nile crocodile in Zimbabwe from endangered to threatened by "similarity of appearance" status under section 4 of the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (hereinafter the "Act" or "ESA"). This change is supported by available biological information on the status of these populations of the species and recent changes in its status from Appendix I to II on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The wild population of Nile crocodiles in Zimbabwe would not be affected. If this proposal is made final, the Service would be concluding that the ranched populations of Nile crocodiles in Zimbabwe have biologically recovered; live animals or whole skins of ranched Nile crocodiles originating in Zimbabwe would then be imported, as long as the ESA regulations governing permits for species listed as threatened by similarity of appearance and the laws of Zimbabwe are satisfied, and CITES requirements are met for trade in Appendix II species.

DATES: Comments from the Government of Zimbabwe and all other interested parties must be received by May 6, 1986. Public hearing requests must be received by April 21, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Associate Director—Federal Assistance/Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Nile crocodile, *Crocodylus niloticus*, is one of the largest crocodilians, second in six only to the slatwater crocodile, *Crocodylus porosus*. Adults may weight up to 1000 kg. and reach a length of 5 m (Pooley and Gans 1976). Like other crocodilians, the species is behaviorally sophisticated, and many aspects of its ecological requirements are reasonably well known as a result of studies in various parts of its range (see Cott 1961, Modha 1967, Watson *et al.* 1971). Historically, the species occurred along the Mediterranen coast as far west as Tunis and as far north as Syria (Pooley and Gans 1976), although today it is confined to the lower Nile, tropical and southern Africa, and Madagascar.

Throughout much of its range, the Nile crocodile has been eliminated, or populations have been seriously reduced, due to hunting for the hide industry, killing animals because of their potential threat to humans and livestock, a mistaken notion that crocodilians compete with fishermen for desired fish species, or habitat alteration. The Nile crocodile was listed as endangered in the **Federal Register** of June 2, 1970 (35 FR 8495) because of the wide spread decline of the species from overharvesting throughout its range. In some areas, including Zimbabwe, habitat alteration has increased available habitat through the creation of lakes and lagoons from damming swift flowing rivers. In Africa today, some populations are apparently increasing or at least stabilized, while others continue to decline (Pooly 1982). the most serious threat continues to come from the uncontrolled exploitation of wild populations for the hide industry.

A number of African countries, however, now recognize the Nile crocodile as a valuable part of their natural heritage, both in terms of the service it plays in its ecological role, as well as a source of economic benefit from the tourist industry and in the potential for ranching animals for a controlled harvest of hides. Various measures have been used, including complete protection, to conserve populations, and most countries now recognize the need for sound biological data prior to instituting management, even if their present resources restrict their ability to conduct the required studies. Of those countries that have started ranching operations, Zimbabwe appears to have the best data base on native populations. Other nations; particularly Zambia, Mozambique, South Africa, and Botswana are presently gathering data on their crocodilian populations in connection with established ranches or ranching proposals in those countries.

In Zimbabwe, the Nile crocodile inhabits streams and lakes, primarily under 1500 m in altitude, in the Zambezi River watershed (Pooley 1982). In addition, sizeable populations occur in Lake Kariba. Research has centered on the Lake Kariba population to determine numbers of animals, movement patterns, and ecological requirements; counts in this area alone estimate 29,000±4,000 animals. Additional surveys throughout the range of the Nile crocodile raise the estimate to 50,000 within the country (Convention of International Trade in Endangered Species of Wild Fauna and Flora, CITES 1983). Information on research within Zimbabwe may be found in CITES (1983) and Hutton (1982). The Zimbabwe Wildlife Department considers the species "out of danger" (CITES 1983).

At present, there are five crocodile ranches in Zimbabwe. These are: (1) Kariba Crocodile Farm (Pvt.) Ltd., at Kariba, established in 1965; (2) Binga Crocodile Rearing Station at Binga (on Lake Kariba), established in 1967; (3)

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Spencer Creek Crocodile Ranch (Pvt.) Ltd., at Victoria Falls, established in 1971; (4) Sengwa River Mouth Rearing Station at Sengwa Mouth, Lake Kariba, established in 1977; and (5) Rokani Crocodile Ranch on Lake Kariba, established in 1981.

Ranches follows a set of general procedures to rear crocodiles to a size that produces marketable skins (CITES 1983). First, a ranch must obtain a permit from the Department of National Parks and Wildlife Management to collect eggs from wild crocodile nests. Although an entire clutch can be taken, the Department limits wild egg collection to designated areas; cumulatively, for all ranches, egg collection has been limited to under 10,000 per year.

Eggs are transported in styrofoam containers from wild nests to the ranch where they are incubated in boxes with moist vermiculite. Hatchlings are placed in holding pens for at least 24 hours and are then transferred into 10–15 m long x 1.5 m wide x 1 m deep concrete hatchling pens. Each pen has two ponds which house 200–300 hatchlings. When crocodiles become 9–10 months old, they are placed into 20 x 8 x .75 m rearing pens where they remain until their skins are harvested. Animals are cropped when they reach approximately 1.5 m in length. The skins are salted, rolled, and stored for dispatch to tanneries; heads and feet are sold as tourist curios, carcasses are used for food for other ranched crocodiles, and some meat is sold in restaurants.

In 1982, these ranches held 10,346 hatchlings, 12,742 slaughter stock, and 149 breeding stock. Although eggs collected under permit from wild nests supply the bulk of the animals for the ranches, attempts are being made to supply future needs for eggs from breeding stocks. In 1981, Kariba and Spencer ranches produced between 30–50 percent of the total eggs from captive breeding stocks (CITES 1983).

In 1981, Zimbabwe exported a total of 2,890 skins to France; it is expected that most future exports will continue to be made to European countries.

The Fourth Meeting of the Conference of the Parties to CITES occurred on April 19–30, 1983, in Gaborone, Botswana. At the meeting, the Parties considered proposals to amend the appendices. The proposals were listed in three **Federal Register** notices (47 FR 51772, November 17, 1982, and 47 FR 57524, December 27, 1982, for proposals by the United States, and 48 FR 9545, March 7, 1983, for proposals by other Parties). Included among the proposals was that of Zimbabwe to reclassify the ranched Nile crocodiles within that country from Appendix I to II. This proposal (Document 4.38; summary report considered at Plen. 4.10) was accepted by the Parties. The Service published notice of the change in CITES status for Zimbabwe's ranched population of Nile crocodiles in the Federal Register of July 5, 1983 (48 FR 30722). The change in CITES classification does not affect Zimbabwe's wild crocodiles, which remain on Appendix I.

After considering the documentation provided by Zimbabwe during the CITES meeting in Botswana, as well as the references provided in the "Literature Cited" section of this proposed rule, the Service no longer considers the ranched population of Nile crocodiles in Zimbabwe to be "in danger of extinction throughout all or a significant portion of its range" (i.e., endangered). This finding is based on substantial increases in the total number of breeding crocodiles on ranches and ranch egg production (see Pooley 1982, CITES 1983, and Caldwell 1983). The captive ranched populations of the species in Zimbabwe appear to have biologically recovered to the point where reclassification as threatened by similarity of appearance is warranted. This proposed rule recognizes the improved status of the ranched population, and will allow, if approved as a final rule, regulated trade of live animals and whole skins of Nile crocodiles ranched in Zimbabwe as long as CITES requirements are met and the laws of Zimbabwe are followed. It will not change protection given to the wild population of *C. niloticus* in Zimbabwe and elsewhere in Africa as endangered. However, this final rule will probably enhance wild populations by reducing illegal powching since a larger legal market will become available.

Regulations published at 50 CFR 424.11(d) state that a species may be delisted if it: (1) Becomes extinct, (2) recovers, or (3) if the original classificatin data were in error. The Service believes that the ranched population of *C. niloticus* has biologically recovered in Zimbabwe. Moreover, section 4(e) of the Endangered Species Act establishes the "similarity of appearance" concept by authorizing the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though it is not otherwise biologically threatened with extinction if it is found:

(a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species;

(b) That the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and

(c) That such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

Although the Service believes the ranched population of the Nile crocodile in Zimbabwe to be fully recovered biologically, it is being retained under the reclassified status of threatened due to similarity of appearance because Zimbabwe Nile crocodiles are hard to distinguish from other populations of the species. Therefore, any commercial trade in legally harvested ranched Zimbabwe Nile crocodiles must be in conformance with the Service's permit requirements for species listed by similarity of appearance (see 50 CFR 17.52), CITES requirements for Appendix II species (see CITES 1983), and the laws of Zimbabwe (see CITES 1983).

Although data suggest that wild populations are increasing in Zimbabwe (see CITES 1983), the Service believes that threats, such as illegal commercialization, still exist to wild populations in Zimbabwe. Therefore, the Service has separated ranched from wild Nile crocodile populations, and recommends reclassification to threatened by similarity of appearance for ranched populations in Zimbabwe, only.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors, and their applicability to ranched populations of the Nile crocodile in Zimbabwe, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Ranched populations of Nile crocodiles are dependent on manmade habitats consisting mostly of concrete ponds that are surrounded by artificially maintained areas of trees and shrubs (see Background). As ranches become more self-sufficient (i.e., more eggs produced from captive animals), facilities will likely grow, thus increasing the amount of habitat. Additionally, juvenile survival rates should increase with improvements in captive feeding schmes (i.e., dietary mix).

The number of ranches has remained relatively constant since 1971 (see CITES 1983). However, the number of ranches could increase if efficiency and profit in production of crocodile skins continue to improve. Increases in the number of ranches will increase the amount of habitat of ranched Nile crocodiles in Zimbabwe.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial use of the ranched populations is strictly controlled (see section D. below), and ranched populations enhance populations in the wild by reducing illegal commercialization of wild animals. Overutilization, therefore, is not considered a threat to the ranched Nile crocodile in Zimbabwe. The prohibition of entry of animals, parts, or products from wild Nile crocodile populations in Zimbabwe will be unaffected if this rule is finalized.

C. *Disease or predation.* Not applicable to the status of ranched *C. niloticus* in Zimbabwe.

D. *The inadequacy of existing regulatory mechanisms.* Crocodiles in Zimbabwe are regulated through the development of an 11-point policy administered by the Department of National Parks and Wildlife Management (Zimbabwe Department of National Parks and Wildlife Management 1982, CITES 1983). Among the provisions of this policy are: (1) All crocodiles are fully protected in National Parks and conserved in all Safari Areas, (2) wild crocodiles will normally not be harvested for the skin industry, (3) wild eggs can be harvested only by permit, with the allowance for a 5 percent return of crocodiles to the wild, or for other conservation purposes, as appropriate, (4) problem crocodiles will be destroyed if relocation is not possible, (5) education is stressed about the importance and value of crocodiles, (6) strict control is maintained of the rearing stations, (7) permits are allowed for export only to persons who are managing and conserving the crocodile, and (8) live crocodiles can only be exported if the Department is satisfied that animals will be cared for under proper scientific and aesthetically acceptable conditions. Most of these regulations, with the exceptions of regulation of rearing stations and export of live animals, are internal management regulations designed to ensure that Nile crocodiles are managed and conserved as a renewable resource and valued part of Zimbabwe's wildlife heritage.

Zimbabwe, as a Party to CITES, is fully prepared to comply with Appendix II export requirements. All unworked skins legally exported by breeding/ranching operations are wet salted, cut in a specified manner, and are worked individually with a serially numbered plastic tag attached to the edge of the skin in a specified place. These tags are similar to those used in the U.S. on American alligator hides, and numbers are recorded on the export permit. Manufactured items will be identified through accompanying documentation which carries a security stamp. Samples of the export permit have been submitted to the CITES Secretariat, as well as copies of the security stamp to be affixed to all permits.

The Service believes that the regulations and policies of Zimbabwe are sufficient to ensure the survival of the ranched population and allow trade in live ranched Nile crocodiles and whole skins. The laws of Zimbabwe, coupled with CITES requirements, appear adequate to allow a change to threatened by similarity of appearance for ranched populations.

E. *Other natural or manmade factors affecting its continued existence.* Not applicable.

Effects of This Rule

If made final, this proposed rule will change the status of ranched populations of the Nile crocodile in Zimbabwe from its present endangered status to threatened by similarity of appearance. As such, those regulations specifically pertaining to threatened species (50 CFR 17.21 and 17.31) would be applicable; since endangered species regulations are already in effect, the proposed change has little additional effect with regard to permits. This is in accordance with regulations as specified in 50 CFR 17.51 ("Treatment as endangered or threatened"). The Service notes that 50 CFR 17.52 ("Permits—similarity of appearance") would now apply, and it is reprinted below in its entirety for reader convenience.

Section 17.52 Permits—similarity of appearance.

Upon recept of a complete application and unless otherwise indicated in special rule, the Director may issue permits for any activity otherwise prohibited with a species designated as endangered or threatened due to its similarity or appearance. Such a permit may authorize a single transaction, a series of transactions or a number of activities over a specified period of time.

(a) *Application requirements.* An application for a permit under this section must be submitted to the Director by the person who wishes to engage in the prohibited activity. The permit for activities involving interstate commerce of plants must be obtained by the seller; in the case of wildlife, the permit must be obtained by the buyer. The application must be submitted on an official application form (Form 3–200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. It must include, as an attachment, all of the following information: documentary evidence, sworn affidavits, or other information to show species identification and the origin of the wildlife or plant in question. This information may be in the form of hunting licenses, hide seals, official stamps export documents, bills of sales, certification, expert opinion, or other appropriate information.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making his decision whether or not a permit should be issued. In making his decision, the Director shall consider, in addition to the general criteria, in § 13.21(b) of this subchapter, the following factors:

(1) Whether the information submitted by the applicant appears reliable;

(2) Whether the information submitted by the applicant adequately identifies the wildlife or plant in question so as to distinguish it from any endangered or threatened wildlife or plant.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) If indicated in the permit, a special mark, to be specified in the permit, must be applied to the wildlife or plant.and remain for the time designated in the permit;

(2) A copy of the permit or an identification label, which includes the scientific name and the permit number, must accompany the wildlife or plant or its container during the course of any activity subject to these regulations.

(d) *Duration of permits.* The duration of a permit issued under this section shall be designated on the "face of the permit.

Questions concerning permit applications for animals listed by similarity of appearance should be directed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903). Such permits are information collections that have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The information collection is necessary to determine the eligibility of applicants for permits.

The Service notes that the proposed change in the status of the ranched population of the Nile crocodile in Zimbabwe, if made final, will not affect the wild population, which remains on the List of Endangered and Threatened Wildlife as endangered.

In addition, all requirements of CITES with respect to Appendix II species, as well as the laws of Zimbabwe, must be

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met prior to allowing the importation of live ranched crocodile or whole skins into the United States. These requirements are already in effect.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and as effective as possible in the conservation of the species in question. Therefore, any comments or suggestions from the public, other concerned governmental agencies including those in Zimbabwe, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments are particulary sought concerning biological commercial trade impacts on other crocodiles, or other relevant data concerning any threat (or lack thereof) to the ranched population of the Nile crocodile in Zimbabwe.

Final promulgation of the regulation on the ranched population of the Nile crocodile in Zimbabwe will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of proposal. Such requests must be made in writing and addressed to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the Authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244)

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Blake, D.K. 1982. Crocodile ranching in Zimbabwe. Zimbabwe Sci. News 16(9):208–209.

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Zimbabwe Department of National Parks and Wildlife Management. 1982. National Parks policy—conservation and management of crocodiles in Zimbabwe. Zimbabwe Sci. News 16(9):214–215.

Author

The primary author of this proposed rule is K. Bruce Jones, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington D.C. 20240 (Dr. C. Kenneth Dodd drafted the initial proposal).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–362, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et. seq.).

2. It is proposed to amend § 17.11(h) by revising the entry for the Nile crocodile under "Reptiles" on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Reptiles							
*	*	*	*	*	*	*	
Crocodile, Nile	*Crocodylus niloticus*	Africa	Entire (except ranched populations in Zimbabwe).	E	3	N/A	N/A
Crocodile, Nile	*Crocodylus niloticus*	Africa	Zimbabwe (ranched populations only).	T(S/A)		N/A	N/A
*	*	*	*	*	*	*	

Dated: February 9, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–4949 Filed 3–6–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 45
Friday, March 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meeting

The Committee on Regulation of the Administrative Conference of the United States will meet at 9:30 a.m., March 14, 1986, at 1330 Connecticut Avenue NW (Offices of Steptoe and Johnson, 9th Floor Conference Room) Washington, DC. The committee will discuss a report and proposed recommendation by Zona Hostetler on the topic of representation by non-lawyers in federal agency proceedings. For further information contact William C. Bush at 202–254–7065.

Attendance is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time. Minutes of the meeting will be available on request.

Dated: March 4, 1986.

Richard K. Berg,

Genreal Counsel.

[FR Doc. 86–5001 Filed 3–6–86; 8:45]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA is revising one of its Privacy Act Systems of records maintained by the Farmers Home Administration, USDA/FmHA–3, "Credit Report File, USDA/FmHA." This action is necessary to recognize organizational changes involving custodianship of FmHA records and to permit release of information to Congressional officers, collection or servicing contractors, and local, State, or Federal Agencies. The intended effect is to enable FmHA to provide information from borrower's, grantee's, or applicant's Credit Report file to effectively make, collect, and service loans.

EFFECTIVE DATE: April 7, 1986. Comments must be received by the contact person listed below on or before April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Virgle L. Cunningham, Jr., Freedom of Information Officer, Directives and Administrative Services Division, Farmers Home Administration, USDA, Room 6865, South Building, Washington, D.C. 20250, telephone (202) 382–9638.

SUPPLEMENTARY INFORMATION: USDA hereby amends its system of records, USDA/FmHA–3, by: recognizing that District Directors are custodians of USDA/FmHA–3 Credit Report files administered by District Offices; amending the "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" to permit referral of information to other Government agencies, courts, magistrates, Administrative tribunals, opposing counsels, and servicing contractors; and making other minor revisions.

By this action FmHA will (1) clarify its authority to turn borrower, grantee, or applicant Credit Report Files over to servicing contractors; and (2) be able to use such information in effectively making, collecting, and servicing loans. Accordingly, USDA revises the full text of FmHA's systems of records, USDA/FmHA–3, "Credit Report File, USDA/FmHA" (Privacy Act issuances, 1984 Compilation, Volume I, pages 24–25), to read as printed below.

Signed at Washington, D.C., on March 3, 1986.

Frank W. Naylor,

Acting Secretary of Agriculture.

USDA/FmHA–3

SYSTEM NAME:

Credit Report File, USDA/FmHA.

SYSTEM LOCATION:

Each borrower's, grantee's, or applicant's credit report file is located in the County, District, or State Office through which the financial assistance is sought or was obtained. The addresses of State, District, and County offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration." Correspondence about borrower's, grantees, or applicant's credit reports and personal reference are located in the National, State, District, and County Offices Applicant/Borrower or Grantee file. A list of State Offices is included under the system titled "USDA/FmHA Applicant/Borrower or Grantee file."

The National Office is located at 14th and Independence Avenue, SW, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All FmHA borrowers, grantees, and recent applicants are included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consist of credit reports and personal references from credit agencies, lenders, and individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto.

Referral to employers, businesses, landlords, creditors and others in order for FmHA to validate information and otherwise determine repayment ability and eligibility for FmHA programs.

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry

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from the Congressional office made at the request of that individual.

Referral to a collection or servicing contractor, or a local, State, or Federal agency, when FmHA determines such referral is appropriate for making or servicing loans, collecting the borrowers's account or as provided for in contracts with servicing or collection agencies.

Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any records within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the Applicant/Borrower or Grantee file folders at the State, District, and County Offices.

RETRIEVABILITY:

Records are indexed by name and identification number.

SAFEGUARDS:

Records are kept in locked offices at the State, District, and County Office. Access is restricted to authorized FmHA personnel.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and in accordance with FmHA's disposal schedules. Disposal of records at the State, District, and County Office is accomplished through deposit in office waste containers. Credit reports and personal references relating to applications which are rejected, withdrawn, or otherwise terminated are retained in the County, District, or State Office 1 full fiscal year after the fiscal year in which final action was taken on the application.

Credit reports concerning borrowers who have paid or otherwise satisfied their obligation are retained in the County, District, or State Office 1 full fiscal year. Correspondence records at the National Office which concern borrowers, grantees, or applicants are retained 3 fiscal years after the last year in which there was correspondence.

SYSTEM MANAGER(S) AND ADDRESS:

The County Supervisor at the County Office, District Director at the District Office, State Director at the State Office, and the Administrator, FmHA, for the National Office file.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the appropriate System Manager. If the specific location of the record is not know, the individual should address his/her request to the Administrator (Attention: Freedom of Information Officer), USDA/FmHA, Washington, D.C. 20250. A request for information pertaining to an individual should contain: Name, address, FmHA Office where loan/grant was applied for/approved, and particulars involved (i.e., date of request/approval; which FmHA program, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to one of the Systems Managers referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as Record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from credit agencies and creditors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Information contained in this system which would reveal the identity of a source who furnised information under an expressed or implied promise of confidentiality prior to May 1, 1979, and an expressed promise of confidentiality after May 1, 1979, is exempt from the provisions of 5 U.S.C. 522a(d)(1) on the basis of 5 U.S.C. 552a.(k)(5).

[FR Doc. 86-4997 Filed 3-6-86; 8:45 am]

BILLING CODE 3410-07-M

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of publication of list of warehouses licensed under the U.S. Warehouse Act and availability of list of cancellations and/or terminations occurring during calendar year 1985.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et. seq.*) as of December 31, 1985, as required by section 26 of that Act. Also available is a list of cancellations and/or terminations that occurred during calendar year 1985. A copy of the list of warehouses as of December 31, 1985, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, ASCS, Warehouse Division, Warehouse Licensing Branch, U.S. Department of Agriculture, P.O. Box 2415, Room 5966, South Agriculture Bldg., Washington, DC 20013, Telephone: 202-447-3822.

Dated: March 4, 1986.

Signed at Washington, DC.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service (ASCS).

[FR Doc. 86-5036 Filed 3-6-86; 8:45 am]

BILLING CODE 3410-05-M

CIVIL RIGHTS COMMISSION

Montana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on April 4, 1986, at the Northern Hotel, First & Broadway, Billings, Montana. The purpose of the meeting is to review a briefing memorandum on the Harlem School District and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission

Dated at Washington, DC, March 3, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-5002 Filed 3-6-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 7-86]

Foreign Trade Zone 124—Gramercy, LA; Application for Subzone at TransAmerican Natural Gas Refinery

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of Foreign-Trade Zone 124, requesting special-purpose subzone status for the crude oil refinery of TransAmerican Natural Gas Corporation (formerly GHR Energy Corp.) located in Destrehan, Louisiana, adjacent to the Gramercy Customs port of entry. TransAmerican is currently negotiating with prospective purchasers or operators of the refinery and indicates that subzone status would be a factor in these transactions. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 21, 1986.

The proposed subzone would encompass the 600-acre oil refinery located on the east bank of the Mississippi River at River Mile Point 126, in Destrehan, 20 miles northwest of New Orleans. The facility, which has been closed since 1983, has the capacity to refine 300,000 barrels per day of crude oil, gas oil, and residual fuel oil, employing 1,000 persons. It is anticipated that mostly foreign inputs would be used and that some of the finished products would be exported.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On its domestic sales it would be able to take advantage of the same duty rate available to importers of refined products. Motor fuel has a duty rate of 1.25¢/gal., crude oil's rate varies from 0.125¢ to 0.25¢/gal., and butane and kerosene are duty free. The savings from zone status would encourage reactivation of the facility.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consist of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Eugene S. Witherspoon, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, LA 70160.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 10, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, 423 International Trade Mart, No. 2 Canal Street, New Orleans, LA 70130;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: March 3, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-4986 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-614-504]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. We are not including New Zealand Steel Ltd. (NZS) in our countervailing duty order because benefits received by NZS are *de minimis*. The estimated net bounty or grant for Pacific Steel Ltd. (PSL) and for all other manufacturers, producers, or exporters in New Zealand of carbon steel wire rod, except for NZS, is 25.69 percent *ad valorem*.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of carbon steel wire rod from New Zealand, except that exported by NZS, that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit on such entries equal to the estimated net bounty or grant.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Ellie Shea, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0186 (Letort), 377-0184 (Shea), or 377-2438 (Tillman).

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION AND ORDER

Based on our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI)
- Export Market Development Taxation Incentive (EMDTI)
- Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery
- Crown Loan to New Zealand Steel Ltd.

We determine the estimated net bounty or grant for the review period to be 25.69 percent *ad valorem* for Pacific Steel Ltd. (PSL) and for all other manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. New Zealand Steel Ltd. (NZS) is not included in this countervailing duty order because benefits received by NZS are *de minimis*.

Case History

On September 23, 1985, we received a petition in proper form from Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of carbon steel wire rod, directly or indirectly, receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 15, 1985, we initiated such an investigation (50 FR 43590). We stated that we expected to issue our preliminary determination on or before December 17, 1985.

Since New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

On October 25, 1985, we presented a questionnaire to the Embassy of New Zealand in Washington, DC concerning the petitioners' allegations. On November 25, 1985, we received responses to our questionnaire from New Zealand Steel Ltd. (NZS), Pacific Steel Ltd. (PSL), and the government of New Zealand. We received supplementary responses from NZS on December 4, 1985, December 12, 1985, and December 13, 1985, and from PSL on December 13, 1985, and December 17, 1985. On the basis of the information contained in these responses, we made our preliminary determination on December 17, 1985 (50 FR 52351). From January 27 to February 3, 1986, we verified the responses submitted by the government of New Zealand, NZS and PSL.

We received supplemental submissions from NZS on January 16, 1986, and from PSL on January 14, 1986, February 12, 1986, and February 25, 1986. We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). No public hearing was requested. On February 7, 1986, we received initial briefs from petitioners and respondents. On February 20, 1986, we received written comments on the verification reports and rebuttal briefs.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States (TSUS)*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this final determination, the period for which we are measuring bounties or grants (the review period) is April 1, 1984 through March 31, 1985. Pacific Steel Ltd. (PSL) is the only known producer of carbon steel wire rod in New Zealand. Both NZS and PSL exported wire rod to the United States during the review period. Based upon our analysis of the petition, the responses to our questionnaire submitted by the government of New Zealand, NZS, and PSL, our verification, and written comments submitted by interested parties, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod under the following programs:

A. Export Performance Taxation Incentive

Petitioners allege that, under section 156A of the Income Tax Act of 1976, as amended, the New Zealand wire rod industry receives tax credits under the Export Performance Taxation Incentive (EPTI) program, based on the f.o.b. value of qualifying goods exported.

In its response, the government of New Zealand stated that an EPTI tax credit can be taken as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives a cash payment for the difference. The rate of the tax credit depends on the value-added category or "band" into which a product falls. The amount of the tax credit is calculated by multiplying the rate corresponding to the value-added band into which a product falls by the f.o.b. value of export sales of that product. At verification, we ascertained that carbon steel wire rod falls into value-added band B, for which the EPTI tax credit rate is 10.5 percent. We also found that the rates specified under this program will be progressively reduced in the 1986 and 1987 fiscal years, and that EPTI tax credits will no longer be available starting with the 1988 fiscal year. We verified that NZS claimed EPTI tax credits on the income tax return it filed during the review period, but not on its exported carbon steel wire rod. PSL did claim and EPTI tax credit with respect to exported carbon steel wire rod on the tax return filed during the review period.

Because eligibility for this program is limited to exporters, we determine that it provides a bounty or grant within the meaning of the countervailing duty law to manufacturers, producers and exporters of carbon steel wire rod, except NZS.

Under our tax methodology, we calculate the benefit from this program by dividing the EPTI tax credit claimed by PSL during the review period on exports of wire rod to the United States by the value of PSL's exports of wire rod to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 24.95 percent *ad valorem* for PSL.

B. Export Market Development Taxation Incentive

Petitioners allege that the New Zealand wire rod industry receives EMDTI tax credits for certain qualifying export expenditures under the Export Market Development Taxation Incentive (EMDTI) program, pursuant to section 156F of the New Zealand Income Tax Act of 1976, as amended.

Under the 1979 Amendment of the Income Tax Act of 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit of 67.5 percent of the total expenditure. Any company that has such expenditures may claim them in calculating taxable income. However, an exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating the taxable income. Because the normal corporate tax rate in New Zeland is 45 percent, and exporters may claim a tax credit of 67.5 percent, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditure amount.

Because eligibility for this program is limited to exporters, we determine that it confers a bounty or grant within the meaning of the countervailing duty law.

We verified that both NZS and PSL claimed EMDTI on their tax returns filed during the review period. To calculate the benefit from this program, we divided 22.5 percent of the qualifying expenditures which were calimed by each company on their tax returns filed during the review period by the total f.o.b. value of each company's export sales during the review period. On this basis, we find an estimated net bounty or grant amount of 0.25 percent *ad valorem* for NZS and 0.02 percent *ad valorem* for PSL.

C. Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery

Petitioners alleged that the New Zeland wire rod industry receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export.

At verification, we ascertained that New Zeland exporters may receive sales tax remissions (exemptions) or refunds on imported machinery and equipment used principally in the production of export goods. At the company level, we verified that NZS had been exempted from sales tax on some imported machinery and equipment used in its pipe mill. Because NZS did not receive during the review period any sales tax exemptions or refunds on imported machinery and equipment used to produce wire rod, we determine that no benefit accrues to exports of wire rod by NZS. Although PSL had stated in its responses that it did not receive sales tax exemptions or refunds during the review period, we verified that it had, in fact, received a number of these exemptions and refunds, which it was unable to quantity.

Because information on the record indicates that sales tax exemptions or refunds are available only on machinery and equipment used principally in export production, we determine that this program provides a bounty or grant to manufacturers, producers, and exporters of carbon steel wire rod within the meaning of the countervailing duty law.

To calculate the benefit, we used the best information available and multiplied the net increase in the value of PSL's plant and equipment from 1984 to 1985, as reported in the company's 1985 financial statement, by the sales tax rate for machinery as listed in Chapter 84 of the New Zealand Customs Tariff. We then divided the benefit by the value of PSL's export sales during the review period. On this basis, we calculate an estimated net bounty or grant of 0.72 percent *ad valorem* for PSL.

D. Crown Loan to New Zealand Steel Ltd.

At verificiation, we found that NZS had received a direct loan from the Crown in 1974. This loan was divided into two parts: "Mode A," which was earmarked for the expansion of the company's steel-making activities, and "Mode B," which was expressly provided for the construction of worker housing. NZS used Mode B funds to build housing units which it rents out to its workers.

The terms of the Mode A portion of the loan specify that the interest rate is variable. From its initial 1974 level, the interest rate was increased in 1977. Pursuant to an agreement between the Crown and NZS, NZS repaid the principal and all interest accrued during the life of the loan in July 1985, subsequent to the review period but prior to our preliminary determination. The interest on the Mode B portion of the loan, which is not due to be repaid until 1999, has been increased several times since 1974. We verified that NZS has been paying interest at regular intervals on this portion of the loan.

Given the dual nature of this Crown loan to NZS, we are examining Mode A and Mode B separately.

With respect to Mode A, neither the government of New Zealand nor NZS has denied that the Crown loan was limited to a single enterprise or industry, nor has any evidence been provided that such loans are available to a broad range of enterprise or industries in New Zealand. Accordingly, we determine that this loan was provided to a specific enterprise, and is countervailable to the extent that it was given on terms inconsistent with commercial considerations.

To determine whether this loan was made on terms inconsistent with commercial considerations, we compared the interest rate on the Mode A portion of the loan for each year in which the loan was outstanding with the national average short-term commercial interest rate, as published by the Reserve Bank of New Zealand and quoted in the government response. We used short-term commercial interest rates as our benchmark because this is a variable-rate loan, and we have no information on commercial interest rates for variable-rate long-term loans in New Zealand. Because commercial interest rates were higher than the interest rates on Mode A, we determine that this portion of the Crown loan was made on terms inconsistent with commercial considerations, and confers a countervailable benefit. Using our loan methodology for variable-rate long-term loans, we calculate a benefit of 0.13 percent *ad valorem* for NZS.

Because the principal amount of this loan was repaid, along with all interest accrued during the life of the loan, on July 31, 1985, which is subsequent to the review period but prior to our preliminary determination, we determine that any benefits to the company from this loan are not accruing to current exports of wire rod to the United States. Therefore, we are not including this benefit amount in the cash deposit rate.

With respect to Mode B, the potential countervailability of this portion of the loan raises the complex issue of whether the loan benefits accrue to NZS or to its workers. Since any potential benefit to NZS would be 0.02 percent *ad valorem*, and since this rate, when combined with the rate found for NZS in the EMDTI program, yields an overall rate which is *de minimis*, we believe that it is inappropriate at this time to determine whether, in fact, this portion of the loan would be countervailable.

II. Programs Determined not to Confer Bounties or Grants

A. Import Duty Exemptions or Refunds

Petitioners allege that the New Zealand wire rod industry receives import duty exemptions or refunds on machinery and equipment used in the production of goods for export.

At verification, we found that import duty exemptions and refunds are available to all importers when no equivalent local product is available on commercially reasonable terms, and that such import duty exemptions are not contingent upon export performance. We saw no evidence that such exemptions or refunds were limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that import duty exemptions or refunds do not confer a countervailable benefit.

B. Technical Assistance from the Department of Scientific and Industrial Research

Petitioners allege that the Department of Scientific and Industrial Research (DSIR) provides facilities for testing international standards and advice on implementation and mangement of quality assurance systems to the wire rod industry in New Zealand.

At verification, we found that DSIR conducts studies and research for a wide variety of enterprises and industries, the results of which are publicly available. We also ascertained that such assistance is not contingent upon export performance. Because such assistance is not limited to a specific enterprise or industry or group of enterprises or industries, we determine that DSIR technical assistance does not confer a countervailable benefit.

C. Technical Assistance From the Testing Laboratory Registration Council

Petitioners allege that the Testing Laboratory Registration Council (TELARC) provides audits of export manufacturers' quality assurance systems.

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At verification, we ascertained that TELARC's services to its members are unrelated to their export perofrmance. Further, we ascertained that any enterprise in New Zealand may become a member of TELARC on a fee-paying basis in order to use its services. Because TELACR's services are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that TELARC assistance does not confer a countervailable benefit.

III. Programs Determined not to be Used

Based on our verification of the repsonses of the government of New Zealand, NZS, and PSL, we determine that manufacturers, producers, and exporters in New Zeland of carbon steel wire rod did not use the following programs:

A. Export Credits and Development Financing from the Development Finance Corporation

Petitioners allege that the Development Finance Corporation (DFC) provides export credits and development financing on preferential terms. At verification, we ascertained that neither of the respondents had any DFC loans outstanding during the review period.

B. Export Suspensory Loan Scheme

Petitioners allege that the Development Finance Corporation provides financing under the Export Suspensory Loan Scheme (ESLS) for up to 40 percent of actual expenditures on plant and machinery used in the manufacture of designated products. The export suspensory loans are repayable at commercial rates but can become grants if the exporter meets predetermined export sales targets. At verification, we ascertained that neither of the respondents had any ESLS loans outstanding during the review period.

C. Export Programme Grants Scheme

The Export Programme Grants Scheme (EPGS) was superseded by the EPSLS in June 1982. However, petitioners allege that grants under EPGS could continue until June 1985. Grants under EPCS were given to exporters to encourage marketing research in targeted foreign markets. The grants, amounting to 64 percent of budgeted expenditures, were available for up to three years. At verification, we ascertained that neither of the respondents participated in this program.

D. Export Programme Suspensory Loan Scheme

Petitioners allege that loans are available under the Export Programme Suspensory Loan Scheme (EPSLS) for up to 40 percent of eligible expenditures to established exporters who increase their net foreign exchange earnings through the marketing of specific goods or services in a designated foreign market. If a predetermined export sales forecast is met, the suspensory loan is converted to a grant; if the forecast is not met, the exporter must repay the loan with interest. At verification, we ascertained that neither of the respondents had received any EPSLS loans or grants.

E. Export Marketing Assistance from the New Zealand Export-Import Corporation

Petitions allege that the New Zealand Export-Import Corporation (EIC) provides export marketing assistance such as the arrangement of overseas promotion displays, negotiations of overseas sales, and assistance to smaller companies that lack the resources or skills to export. At verification, we ascertained that neither of the respondents used EIC's services in exporting carbon steel wire rod to the United States during the review period.

F. Technical Assistance from the Standards Association of New Zealand

Petitioners allege that the Standards Association of New Zealand (SANZ) provides service which include translation of technical documents and assistance in obtaining foreign standards, regulations, and testing requirements. At verification, we found that SANZ provides such assistance to companies in New Zealand on a fee-paying basis. However, SANZ also receives operating assistance in the form of a government grant.

We ascertained that neither NZS nor PSL purchased standards, specifications, or other services from SANZ pertaining to carbon steel wire rod during the review period.

G. Technical Help to Exporters

Petitioners allege that SANZ also provides information often free of charges, regarding technical specifications incident to overseas marketing under the Technical Help to Exporters (T*H*E) program. At verification, we ascertained that neither of the respondents had participated in this program during the review period.

H. Technical Assistance from the Building Research Association of New Zealand

Petitioners allege that the Buidling Research Assocation of New Zealand (BRANZ) provides research and testing assistance to New Zealand exporters. At verification, we learned that BRANZ, a private research organization, provides research and testing services on a fee-paying basis to members of the building industry. These services are not contingent upon export performance. We ascertained that neither NZS nor PSL used the services offered by BRANZ during the review period.

I. Export Marketing Assistance from the Department of Trade and Industry

Petitioners allege that the Department of Trade and Industry (DTI) provides financial and organizational support for participation in overseas trade fairs, advice on foreign market conditions, advice and assistance on transportation to foreign markets, and help in placing advertisements free of charge in overseas trade publications. At verification, we ascertained that neither of the respondents participated in this program during the review period.

J. Preferential Treatment to Exporters in Granting Import Licenses

Petitioners allege that import licensing concessions are provided to companies which import materials for incorporation in goods to be exported. Such concessions may include additional availability of import licenses on components for incorporation in goods to be exported. At verifications, we ascertained that neither of the respondents participated in this program.

K. Research and Development Incentives

Petitioners allege that the New Zealand wire rod industry receives research and development incentives under the Applied Technology Program (ATP) administered by the DFC and under the previous Industrial Research and Development Grants Advisory Committee of the Department of Trade and Industry. At verification, we ascertained that neither of the respondents participated in this program.

L. Regional Development Investment Incentives

Petitioners allege that New Zealand wire rod producers receive a variety of regional development incentives based on their location in regions classified as either priority or slow-growth.

Petitioners also allege that the wire rod industry recieves concessions on electricity, water rights, and rail freight for any facilities located on the South Island. At verification, we ascertained that neither company has any facilities in the classified regions or on the South Island.

M. Special Industrial Development Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits from the Industrial Develoment Plan Investment Allowance (IDPIA) under section 121 or the High Priority Investment Allowance (HPIA) under section 121A of the New Zealand Income Tax Act of 1976, as amended. At verification, we ascertained that neither of the respondents had claimed any tax benefits under these programs on the tax return filed during the review period.

N. Goverment Loan Guarantees to New Zealand Steel Develoment Ltd.

At verification, we discovered that New Zealand Steel Development Ltd. (NZSD), a joint venture in which the government of New Zealand owns 60 percent of the stock and NZS 40 percent, had received guarantees from the New Zealand Treasury on a number of loans and bond issues denominated in foreign currencies. The proceeds from these loans and bond issues are being used to finance the expansion of NZS's steel-making facilities. We verified that the expanded steel mill is not scheduled to come on stream until 1988 and is intended to produce flat-rolled steel products, rather than round steel products such as carbon steel wire rod.

IV. Programs Determined to be Terminated

Based on our verification of the responses of the New Zealand Government, New Zealand Steel Ltd. and Pacific Steel Ltd., we determine that the following programs have been terminated:

A. Increased Exports Taxation Incentive

Under the Increased Exports Taxation Incentive (IETI) program, an exporter can claim an income tax deduction proportionate to the exporter's increased export earnings. We verified that the IETI program was terminated on March 31, 1983, and that neither NZS nor PSL claimed IETI tax credits on their tax returns filed during the review period.

B. New Markets Increased Exports Taxation Incentive

Petitioners allege that the New Zealand wire rod industry is eligible to receive tax benefits under the New Markets Increased Exports Taxation Incentive (NMIETI) program, pursuant to section 157 of the New Zealand Income Tax Act of 1976, as amended. We verified that the NMIETI program was terminated on March 31, 1983, and that neither NZS nor PSL claimed tax benefits under this program on their tax returns filed during the review period.

C. Export Investment Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits under the Export Investment Allowance program, which was terminated on March 31, 1983, and the Export Manufacturing Investment Allowance program. We verified that these tax programs were terminated on March 31, 1983, and that neither NZS nor PSL claimed tax benefits under these programs on their tax returns filed during the review period.

D. Research and Development Incentives from the Industrial Research Grants Advisory Committee

Petitioners allege that the Industrial Research Grants Advisory Committee on the Department of Trade and Industry provides research and development incentives to the wire rod industry in New Zealand. At verification, we ascertained that this program was terminated in 1974.

Petitioners' Comments

Comment 1: Petitioners contend that, in calculating the value of the benefit to the respondents from the EPTI program, the Department should divide total EPTI credits taken by the respondents by the value of exports that are eligible for this program, rather than by the value of total exports.

DOC Position: We believe that the most accurate way to calculate the benefit accruing to exports of wire rod to the United States under the EPTI program is to divide the value of the EPTI credits claimed by PSL on the tax return filed during the review period for its exports of wire rod to the United States by the value of it wire rod exports to the United States during the review period.

Comment 2: Petitioners contend that the Department should countervail EPTI tax credits taken by NZS on exported products other than carbon steel wire rod.

DOC Position: We disagree. We verified that NZS did not claim EPTI credits on exports of carbon steel wire rod. Therefore, no countervailable benefit accrues to carbon steel wire rod exported by NZS.

Comment 3: Petitoners suggest that the Department should compute separate benefit rates for each respondent with respect to the EPTI and EMDTI programs or, alternatively, use PSL's rate as the country-wide rate since PSL is the only manufacturer, and the only regular exporter, of carbon steel wire rod in New Zealand.

DOC Position: We have, in fact, calculated separate rates for each company. Because benefits provided to NZS are *de minimis*, NZS is excluded from this determination. Therefore, PSL's rate is the countrywide rate.

Comment 4: Petitioners claim that the discrepancy between the amount of EMDTI benefit received by PSL as reported in the questionnaire response and in the company's financial statement has not adequately been explained.

DOC Position: As stated in the verification report, although the tax benefit is calculated by taking 67.5 percent of total qualifying expenditures, the actual benefit from the EMDTI program is 22.5 percent of total qualifying expenditures. The corporate tax rate in New Zealand is 45 percent. Absent EMDTI, these expenditures would qualify as normal business deductions at the 45 percent rate. Thus, PSL's annual report for fiscal 1984 shows the total export tax savings which includes EPTI tax credits and the 67.5 percent of the total qualifying expenditures. In PSL's questionnaire response, however, the benefit under EMDTI is appropriately reported as 22.5 percent of the qualifying expenditures.

Comment 5: Petitioners argue that, in calculating the benefits received from sales tax exemptions or refunds on imported machinery and capital equipment, the Department should include all such exemptions and refunds received by NZS and discovered at verification.

DOC Position: We excluded sales tax exemptions and refunds received by NZS because NZS was able to demonstrate at verification that all sales tax exemptions and refunds it received were tied to its pipe mill, so that no such benefits were tied to exports of carbon steel wire rod.

Comment 6: Petitioners argue that sales tax exemptions and refunds received by PSL and discovered at verification should be multiplied by two to reflect the fact that records for the first six months of the review period were unavailable.

DOC Position: Because PSL could not provide complete and accurate data on the sales tax exemptions or refunds it received, as best information available

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we are assuming that all machinery and capital equipment purchased during the review period were imported and were exempted from sales tax (see section I.C above).

Comment 7: Petitioners contend that the Crown loan received by NZS was made on terms inconsistent with commercial considerations, and that, although the interest rate on Mode A increased, the increase was merely partial compensation for the time value of the interest payments which were deferred over the span of the loan without compounding or penalty. Petitioners contend that this deferral of interest payments confers an additional benefit to the company.

DOC Position: Although we agree with petitioners that this loan confers a bounty or grant and that the deferral of interest payments confers an additional benefit upon NZS, we determine that any benefits to the company from the Mode A portion of this loan are not accruing to current exports of wire rod to the United States because this portion of the loan was repaid prior to our preliminary determination.

Respondents' Comments

Comment 1: Respondents argue that the Department should not calculate the EPTI benefit on the basis of EPTI tax credits received for exports made prior to the review period, since the government of New Zealand has reduced the level of EPTI benefits subsequent to the review period. Rather, the Department should calculate the value of the EPTI benefit received by the respondents based on the EPTI credit rate for exports made during the review period.

DOC Position: We disagree. We believe that benefits from tax programs accrue when a company actually receives the benefits, rather than when a company becomes eligible to receive them. Tax law changes, such as the EPTI phase-out schedule, cannot be considered to be in effect until fully implemented by the government and used by the respondent. We verified that PSL claimed and received a 10.5 percent EPTI tax credit on carbon steel wire rod in its most recently completed tax return, filed in March 1985 and covering the company's 1984 tax year. NZS did not claim an EPTI tax credit for its exports of carbon steel wire rod on its tax return filed during the review period. We also verified that NZS and PSL will be eligible to claim a 10.5 percent EPTI credit on their 1986 tax returns, which are scheduled to be filed later this year.

The EPTI tax credit rate will not be lowered until the company's 1986 fiscal year, and, under our tax methodology, these benefits are not effectively realized until the year in which the 1986 tax return is filed. If the scheduled EPTI changes are claimed in future tax returns, we will consider these changes in any future administrative review requested under section 751 of the Act.

Comment 2: Respondents contend that the Department erroneously excluded export sales of NZS from its denominator in calculating the EPTI benefit received by the respondents during the review period.

DOC Position: To calculate the EPTI benefit received by PSL, we have divided the EPTI tax credit claimed by PSL on its tax return filed during the review period for its exports of wire rod to the United States by the value of such exports during the review period. Since NZS did not claim any EPTI benefits on exports of carbon steel wire rod, and since NZS and PSL received materially different benefits, we have calculated company-specific rates for each program. Because the overall rate for NZS is *de minimis*, PSL's company-specific rate becomes the country-wide rate and NZS is not included in the countervailing duty order.

Comment 3: Respondents contend that no bounty or grant should be calculated as a result of sales tax exemptions received by NZS, as none of the sales tax exemptions were for goods used to make wire rod or billets, which are the major input into wire rod.

DOC Position: We agree. Because sales tax exemptions received by NZS were for machinery and equipment not used to produce wire rod or billet, we do not find this program to confer a bounty or grant on the subject merchandise sold by NZS.

Comment 4: Respondents contend that no bounty or grant should be calculated as a result of sales tax exemptions received by PSL since all items purchased for which sales tax exemptions and refunds were available fall under specific codes of the Schedule of Goods Exempt from Sales Tax in New Zealand Customs Tariff, and were not dependent upon actual or projected export performance.

DOD Position: We disagree. At verification, we were unable to examine PSL's complete records on sales tax exemptions and refunds on imported capital equipment and machinery. Files were available for the last six months of the review period only. At the Sales Tax Division of the Auckland Customs office, we were unable to verify that items purchased by PSL for which sales tax exemptions and refunds were received fall under specific codes of the Schedule of Goods Exempt from Sales Tax. Furthermore, the laws on sales tax exemptions and refunds clearly tie such exemptions and refunds to export performance.

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the accounting records of NZS and PSL, the companies producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). No public hearing was requested. In accordance with the Department's regulations [19 CFR 355.34(a)], written views were received on February 7 and 20, 1986, and were considered in this determination.

Suspension of Liquidation

Suspension of liquidation ordered in our preliminary affirmative countervailing duty determination will remain in effect until further notice, except with respect to carbon steel wire rod exported by NZS. The estimated net bounty or grant for PSL and for all other manufacturers, producers, or exporters in New Zeland of carbon steel wire rod, except for NZS, is 25.69 percent ad *valorem.*

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from New Zealand, other than that exported by NZS, which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Dated: March 3, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-5033 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-805]

Extension of Final Countervailing Duty Determination; Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 7, 1986, we received a letter from counsel for petitioners requesting that we extend the final countervailing duty determination on oil country tubular goods from Canada to coincide with the final antidumping duty determination on a simultaneously initiated investigation of the same merchandise from the same country. This request was made pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended.

Pursuant to petitioners' request, we are extending the date of the final countervailing duty determination on oil country tubular goods from Canada until not later than April 16, 1986, to correspond to the date of the final antidumping duty determination.

Under Article 5.3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (1979), we would have to terminate suspension of liquidation of countervailing duties if the final injury determination date, as extended, was more than four months after the date of publication of the preliminary affirmative countervailing duty determination, December 30, 1985 (50 FR 53172). Therefore, if our final determination is affirmative, we will terminate the suspension of liquidation of countervailing duties for all oil country tubular goods from Canada entered, or withdrawn from warehouse, for consumption on or after May 1, 1986, and before the date on which the International Trade Commission (ITC) makes a final affirmative injury determination in this investigation. If our final determination or that of the ITC is negative, the investigation will be terminated.

Dated: February 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-5034 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-501]

Postponement of Final Antidumping Duty Determination; Oil Country Tubular Goods from Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 11, 1986, we received a request from counsel for the respondent Dalmine Siderca S.A.I.C. (Dalsid) in the antidumping duty investigation of oil country tubular goods from Argentina that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of oil country tubular goods from Argentina have been made at less than fair value until not later than May 21, 1986.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION: On August 12, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of oil country tubular goods from Argentina are being, or are likely to be sold at less than fair value (50 FR 33386). We issued our preliminary affirmative determination on January 27, 1986 (50 FR 3387). This notice stated that we would issue a final determination on or before Aoril 8, 1986. On February 11, 1986, counsel for the respondent requested that we extend the period for the final determination until not later than the 135th day after the date of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. In order that this investigation may proceed concurrently with that of oil country tubular goods from Taiwan, we are postponing the date of the final determination until May 21, 1986. Accordingly we grant the request and postpone our final determination until not later than May 21, 1986.

The public hearing is also being postponed until 10:00 a.m. on April 9, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by April 2, 1986.

This notice is published pursuant to section 735(d) of the Act.

John Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 3, 1986.

[FR Doc. 86-5035 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have amended our preliminary determination that petroleum wax candles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. The corrected weighted-average margin applicable to all exporters is 135.73 percent.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2613 or 377-1769.

SUPPLEMENTARY INFORMATION: On February 19, 1986, we published our preliminary determination that petroleum wax candles from the PRC are being, or are likely to be sold in the United States at less than fair value (51 F.R. 6016). We have subsequently learned of errors in the import statistics upon which we based our calculation of foreign market value. Specifically, the value recorded for a shipment from Malaysia was understated. Also the country of origin of a shipment of candles from the PRC was erroneously recorded as being Guinea. In fact there were no imports of the subject merchandise from Guinea during the period of investigation. Using corrected statistics regarding imports of candles from Malaysia, we recalculated foreign

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market value and the weighted-average dumping margin. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the corrected estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below.

Manufacturer/producer/exporter	Weighted-average margin percentage
China National Native Produce & Animal By-Products Import & Export Corporation	136.73
All others	136.73

John L. Evans,
Acting Deputy Assistant Secretary for Import Administration.
March 3, 1986
[FR Doc. 86-5036 Filed 3-6-86; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-505]

Preliminary Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware. The estimated net subsidy is 2.29 percent *ad valorem.*

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in an amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by May 13, 1986.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Betsy Killian or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-2830.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon the questionnaire responses, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX).
- Fund for Industrial Development (FONEI).
- Foreign Currency Financing of Imports (PROFIDE).

We preliminarily determine the estimated net subsidy to be 2.29 percent *ad valorem* for all manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Mexico.

Case History

On December 4, 1985, we received a petition in proper form filed by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Mexico receive, directly or indirectly, subsidies within the meaning of section 701 of the Act and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on December 24, 1985, we initiated this investigation (50 FR 53355). We stated that we expected to issue a preliminary determination by February 27, 1986.

On April 23, 1985, the Office of the United States Trade Representative announced that Mexico is a "country under the Agreement," within the meaning of section 701(b)(2) of the Act. Consequently, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On January 16, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure a U.S. industry (51 FR 3862).

On January 3, 1986, we presented questionnaires concerning the petitioners' allegations to the government of Mexico in Washington, DC. The government of Mexico, Cinsa, S.A., and Troqueles y Esmaltes, S.A., provided responses to our questionnaires on February 3, 1986.

Scope of the Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824 and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchen ware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 F.R. 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

In establishing a rate of cash or bond deposit, the Department normally considers program-wide changes that occur before a preliminary determination. On January 1, 1986, the Mexican government raised the interest rate on the Fund for Promotion of Exportation of Manufactured Products (FOMEX) pre-export financing to 44.8 percent and on FOMEX export financing

to 7.4 percent. The Mexican government made these changes in observance of the stipulation in the Understanding, reached between the United States and Mexico regarding subsidies and countervailing duties, that two-thirds of the subsidy element of such financing would be eliminated as of January 1, 1986. If this were a program-wide change, to calculate the cash deposit or bond the Department would compare the January 1986 FOMEX rates to a benchmark based on commercial interest rates as of January 1, 1986. However, because the Department has reason to believe or suspect that the FOMEX rates established as of January 1, 1986 may be effective for only one month and has no information on FOMEX rates after January 1986, we have used the actual rates for FOMEX loans during the review period for purposes of this determination. At verification, we intend to seek clarification of the Mexican government's export financing rates on FOMEX loans.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon analysis of the petition and the responses to our questionnaries, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that the following programs provide countervailable subsidies to manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Mexico:

A. FOMEX

FOMEX is a trust of the Secretaria de Hacienda y Credito Publico to promote the manufacture and sale of exported products with the Bank of Mexico acting as the trustee. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade. The National Bank for Foreign Trade administers the financing of FOMEX pre-export and export loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters.

During the review period, exporters could obtain FOMEX pre-export loans denominated in pesos with a maximum nominal annual interest rate of 39.6 percent, or export loans denominated in dollars with a maximum annual interest rate of 6.9 percent. According to the responses, during the review period, both companies under investigation received pre-export peso-denominated FOMEX loans to finance exports to the United States. In addition, Troqueles y Esmaltes, S.A. received expert dollar-denominated FOMEX loans.

Because the FOMEX pre-export financing program provides loans for export-related purposes at interest rates significantly lower than those for comparable commercially available loans, we preliminarily determine that this program confers a subsidy upon the exportation of porcelain-on-steel cooking ware.

In prior Mexican countervailing duty cases, we chose as our benchmark the average of the nominal rates published monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate), which the weighted average for the rates charged by commercial banks on peso loans. However, as of January, 1985, the Banco de Mexico no longer publishes these rates. Therefore, we consider the most appropriate benchmark to be the Banco de Mexico's Costo Porcentual Promedio ("CPP"), the average cost of funds to Mexican banks, plus a spread equal to the average differential between the CPP and the nominal IE rate from 1981 to 1984, the only period for which we have nominal IE rates. Using this information, we have calculated a comparable peso-denominated average loan rate of 61.10 percent for the review period.

With respect to FOMEX export loans, because exporters may obtain dollar-denominated loans from export-related purposes at interest rates lower than those for comparable commercially available loans, we preliminarily determine that this program confers a subsidy upon the exportation of the products under investigation. In the past, to calculate the benefit from the short-term dollar-denominated FOMEX export loans, we used as the benchmark the weighted average of the interest rates for commercial and industrial loans of less than one million dollars from table 1.34 of the *Federal Reserve Bulletin.* The Federal Reserve no longer publishes this table, but includes similar information in table 4.23. The main difference, for our purposes, is that table 4.23 differentiates between fixed-rate and floating-rate loans. Since FOMEX loans carry fixed rates, we have considered only the fixed-rate section of the commercial and industrial loans reported in table 4.23. We continue to exclude loans of greater than one million dollars. Using that information, we conclude that comparable dollar-denominated loans were available commercially at an average rate of 12.93 percent during the review period.

We determined the amount of the benefit from these pre-export and export loans based on the interest rate differentials between the FOMEX financing rates and the applicable aforementioned benchmarks. Because these loans are export-related, we allocated the benefit over the companies' total exports of the products under investigation during the review period. On this basis, we calculated an estimated net subsidy of 1.90 percent *ad valorem.*

B. Fund for Industrial Development (FONEI)

FONEI is a specialized financial development fund administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion, or modernization of enterprises in order to foster industrial decentralization and promote the efficient production of goods capable of competition in the international market. FONEI loans are available under various programs having different eligibility requirements.

The responses stated that Troqueles y Esmaltes, S.A. received FONEI loans for investment in equipment. FONEI loans for investment in equipment are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans are limited to companies in particular geographic regions and are made at below-market rates, we preliminarily determine that FONEI lonas for investment in equipment confer a subsidy upon the subject merchandise.

Because the interest rates on the FONEI loans under review have changed over the life of the loans, we treated these loans as a series of short-term loans. To evaluate the benefit of these loans, we compared the rates of the FONEI loans to our benchmark, which is equal to the Banco de Mexico's CPP rate plus a spread equal to the average differential between the CPP and the nominal IE rates from 1981 to 1984. We then divided the amount of the benefit (i.e., the difference in the rates of the two loans) by the total sales of all products of the companies under investigation during the review period. In this manner, we calculated an estimated net subsidy of 0.28 percent *ad valorem.*

C. Foreign Currency Financing of Imports (PROFIDE)

PROFIDE, under the auspices of FOMEX, provides exporters with access to dollar-denominated loans with variable interest rates to finance the importation of inputs. These inputs can be used for the production of merchandise for sale in domestic or foreign markets.

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The responses stated that only Troqueles y Esmaltes, S.A. received short-term PROFIDE loans during the review period. These loans were used for the production of a variety of products, not only the products under investigation.

Since this loan program is only available to exporters and because the rates of interest on these loans are below our commercial dollar-denominated short-term benchmark (from the *Federal Reserve Bulletin*), we preliminarily determine this program to be countervailable.

To calculate the benefit conferred by these loans, we took the interest rate differential between Troqueles y Esmaltes, S.A.'s PROFIDE loans and our dollar-denominated short-term benchmark. Because these loans are export-related, we allocated the benefit over the total exports of all products by the companies under investigation. On this basis, we calculated an estimated net subsidy of 0.11 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs have not been used by the companies that manufacture, produce, or export porcelain-on-steel cooking ware in Mexico:

A. Export Credit Insurance

Under this FOMEX program, exporters may be granted insurance credit against expropriations, defaults and other political risks. Petitioners allege that FOMEX premiums are inadequate to cover the long-term operating risks of the program and that these programs may offer subsidies to exporters. Because the responses stated that both of the companies under investigation did not receive preferential export credit insurance, we preliminarily determine that this program was not used.

B. Accelerated Depreciation

Companies may benefit from accelerated depreciation at preferential rates based on their status as a priority industry or their location in specific regions of the country. The response stated that neither company claimed accelerated depreciation on its tax return filed during the review period; therefore, we preliminarily determine that this program was not used.

C. NAFINSA

Companies in priority areas may receive certain countervailable loans at preferential interest rates through NAFINSA. The responses stated that neither company under investigation received NAFINSA loans, therefore we preliminarily determine that this program was not used.

D. Energy Subsidies

The Mexican government provides subsidies for electrical, fuel and petrochemical purchases of firms locating or expanding in certain zones of the country. The responses stated that the porcelain-on-steel cooking ware companies did not apply to participate in this program. For this reason, we preliminarily determine that this program was not used.

E. Import Duty Reductions and Exemptions

Producers of export products may receive import duty reductions or exemptions on imported machinery and equipment to be used in manufacturing exported products, based on export performance and location within priority zones. The two companies under investigation stated in their responses that they did not use this program. We preliminarily determine, therefore, that this program was not used.

f. Bancomext

Bancomext provides financing for capital investment, production costs, and importation of raw materials for the manufacture of exports. The responses stated that no Bancomext funds were given to the companies under investigation. We preliminarily determine, therefore, that this program was not used.

G. Preferential State Investment Incentives

Certain Mexican states may offer Mexican industries partial or total exemption from state taxes, free or low cost land, or certain local infrastructure improvements as incentives for establishing or expanding industrial facilities, or as incentives for exporting. Since the responses stated that neither company benefitted from state investment incentives, we preliminarily determine that this program was not used.

H. Article 94 Loans

Under section II of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations, the Bank of Mexico provides preferential loans to exporters for the financing of manufactured products and the production and/or inventory of goods produced in Mexico for export. Based on the responses to our questionnaire, we preliminarily determine that this program was not used.

I. Fondo Nacional de Fomento Industrial (FOMIN)

FOMIN operates as a trust fund, providing funding to certain small- and medium-sized companies by either buying stock or providing loans at below-market rates. Since the responses stated this program has not been used by the companies under investigation, we preliminarily determine that it was not used.

J. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)

FOGAIN is a program that provides financing at interest rates below prevailing commercial rates to all small- and medium-sized firms in Mexico. Interest rates vary depending upon whether a small- or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Since the responses stated that neither company under investigation is eligible to participate in this program, we preliminarily determine that this program was not used.

K. Preferential Federal Tax Credits (CEPROFI)

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms. CEPROFI tax credits are also granted for investments in plant and equipment and for certain payments relating to increased employment and wages. According to the responses to our questionnaire, this program was not used by the companies under investigation during the review period. Therefore, we preliminarily determine that this program was not used.

L. New Exchange Risks Trust Program (FICORCA II)

Ficorca II, established on February 15, 1984, is a trust fund set up by the Mexican government and the Bank of Mexico operating through the country's credit institutions. The responses stated that this program is similar to Ficorca I (which was terminated on December 20, 1982) and is available to Mexican firms with registered debt in foreign currency as of December 20, 1982 and payable abroad to Mexican credit institutions or foreign financial entities. Such firms may purchase, at a controlled rate, the amount in dollars necessary to pay principal on these loans. Ficorca II also allows companies to receive credit in pesos equal to the amount of dollars

obtained [to pay the principal on their foreign currency loans]. According to the responses, neither company under investigation received benefits under the Ficorca II program. Therefore, we preliminarily determine that this program was not used.

M. Government-Financed Technology Development

Under the Industrial Development Plan 1979–1982–1990, certain Mexican companies may receive grants to purchase technological services for new plants. Based upon the responses to our questionnaire, we preliminarily determine that this program was not used.

N. The Mexican Institute of Foreign Trade (IMCE)

Certain Mexican companies may receive benefits from IMCE, which was created in 1970 to promote Mexican foreign trade by organizing foreign trade fairs, promoting visits of foreign trade missions to Mexico, and providing exporters with technical assistance. On December 20, 1985, the law establishing IMCE was repealed and ICME is currently being dismantled. Because the response stated that neither company received benefits from this program, we preliminarily determine that this program was not used.

O. Trust for Industrial Parks, Cities and Commercial Centers (FIDEIN)

Companies in priority areas may receive low-interest loans or other benefits from FIDEIN, a program aimed at developing industrial parks and cities. The responses stated that neither company under investigation is located in an industrial park. Therefore, we preliminarily determine that this program was not used.

P. Port Facilities

The Mexican porcelain-on-steel cooking ware manufacturers, producers and/or exporters were alleged to have benefitted from preferential rates at Mexican port facilities. The questionnaire responses stated that the companies under investigation did not receive any benefits for the use of port facilities. Thus, we preliminarily determine that this program was not used.

Q. Preferential Vessel, Freight, Terminal, and Insurance Benefits

Certain Mexican companies may benefit from rebates or other discounts on transportation, storage, and insurance expenses involved in exporting products to the United States. Since both companies under investigation stated that they did not receive preferential vessel, freight, terminal, or insurance charges, we preliminarily determine that this program was not used.

IV. Programs for Which Additional Information Is Needed

We preliminarily determine that additional information is needed on the following programs:

A. Drawback Adjusted for Changes in Exchange Rates

The Mexican government may provide an overrebate of import duties. A recent decree published in the *Diario Official* on April 24, 1985, provides that the drawback of import duties may be adjusted by the changing relationship of the peso to the dollar, thus rebating import duties in pesos, but in terms of constant dollars. Since, in recent years, there has been a consistent devaluation of the peso against the dollar, this program may result in the rebate of more duties than were paid. The government's response stated that none of the companies under investigation received drawbacks of import duties for non-physically incorporated inputs, while the companies' responses stated that they did not use this program.

Because the questionnaire responses contained insufficient information with respect to this program (i.e., how the program operates, whether a substitution drawback provision exists, etc.), we preliminarily determine that more information is needed.

B. Temporary Importation Scheme

This scheme exempts exporters from the payment of import duties on inputs physically incorporated into exported products. It also exempts exporters and domestic producers from import duties on non-physically incorporated inputs so long as the imported items remain in Mexico for a defined period of time (as established by the Mexican Customs Law). The response of the government of Mexico states that the firms under investigation have used the temporary importation scheme under the general terms of the Mexican Customs Law. Because the responses of the government of Mexico as well as the companies under investigation are unclear (i.e., how the program operates, the *de facto* and *de jure* availability, what is meant by the "general terms" of the Customs Law, etc.), we preliminarily determine that additional information is needed.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept for our final determination any statement in the responses that cannot be verified.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, providing the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is later.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise equal to 2.29 percent *ad valorem. This suspension will remain in effect until further notice.*

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on April 3, 1986, at the U.S. Department of Commerce, Room 1413, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten (10) days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearings in at least ten (10) copies must be submitted to the Deputy Assistant Secretary by March 13, 1986.

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Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: February 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–4991 Filed 3–6–86; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-509]

Preliminary Negative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminary determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters of porcelain-on-steel cooking ware in Taiwan. The estimated net subsidy is 0.005 percent *ad valorem.* This rate is *de minimis,* and therefore our preliminary countervailing duty determination is negative. We have notified the United States International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make our final determination by May 13, 1986.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0189 or (202) 377–2830.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon the questionnaire responses, we preliminarily determine that the following program is countervailable:

- Export Loss Reserves.

We preliminarily determine the estimated net subsidy to be 0.005 percent *ad valorem.* Although we have determined this program to be countervailable, the respondents received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan.

Case History

On December 4, 1985, we received a petition in proper form filed by the Porcelain-on-Steet Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of our Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on December 24, 1985, we initiated the investigation (50 FR 53354). We stated that we expect to issue a preliminary determination by February 27, 1986.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On January 16, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure a U.S. industry (51 FR 3862).

We received a timely request for exclusion from any countervailing duty order from Four Star International Trading Company (Four Star), an exporter of porcelain-on-steel cooking ware from Taiwan, who indicated that they receive no benefits under the countervailing duty law. On February 14, 1986, the Department requested that the authorities on Taiwan certify whether Four Star received any benefits from the programs under investigation.

On January 3, 1986, we presented questionnaires concerning the petitioners' allegations to the American Institute in Taiwan in Washington, D.C. Responses to the questionnaires were received on February 6, 1986 and February 18, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824 and 654.0827 of the *Tariff Schedules of the United States, Annotated (TSUSA).* Kitchen ware, currently provided for under item 654.0828 of the *TSUSA,* is not subject to this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Program Preliminarily Determined to be Counterviable

We preliminarily determine that the following program provides countervailable benefits to manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan.

A. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively for compensating export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then balance the account and carry the reserve funds forward as taxable income for the next year. Tian Shine Enterprise Co., Ltd. (Tian Shine), a producer of porcelain-on-steel cooking ware, reported that it used this program during the review period.

Because export loss reserves are contingent on export sales, we preliminarily determine that it confers a benefit which constitutes an export subsidy. To calculate the benefit, we treated tax savings from the export loss reserve as a one-year interest-free loan. We compared the interest-free rate with the maximum lending rate set by the Central Bank, multiplied the difference by the amount of the tax savings, then allocated the benefit over the value of Tian Shine's 1985 exports of porcelain-on-steel cooking ware. The estimated net subsidy is 0.005 percent *ad valorem.*

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs are not used by the manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters to apply for low-cost export loans upon presentation of a letter of credit. Authorized commercial banks provide export loans at normal commercial rates, then apply for interest-rate reductions from the Central Bank. If the Central Bank approves the reduction, commercial banks correspondingly reduce the lending rate to the exporters.

The responses stated that none of the companies under investigation obtained export financing under the Export Loan Discount Regulations of the Central Bank of China. Therefore, we preliminarily determine this program was not used.

B. Preferential Income Tax Ceiling—22 Percent

Article 15 of the SEI permits capital-intensive and/or technology-intensive enterprises engaged in the basic metal production industry, heavy machinery industry, or petrochemical industry to use a marginal tax rate of 22 percent instead of the 25- or 35-percent rate required by Taiwan's graduated income tax law.

The responses stated that none of the companies under investigation claimed the 22-percent income tax rate. Therefore, we preliminarily determine this program was not used.

C. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI allows newly established "productive enterprises" to accelerate depreciation on fixed assets, machinery and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding firms may participate in a four-year tax holiday on increased profits from expansion or a rapid depreciation of newly purchased buildings or equipment.

The responses stated that none of the companies under investigation received benefits under Article 6 of the SEI. Therefore, we preliminarily determine this program was not used.

D. Duty Exemptions and Deferrals on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties and dues on selected capital equipment in a series of installments beginning one year from the date of importation. In addition, qualified enterprises are exempt from import duties on selected machinery and equipment used for the establishment or expansion of an approved project or for research and development.

The responses stated that none of the companies under investigation used dtuy exemptions or deferrals on imported equipment. Therefore, we preliminarily determine this program was not used.

E. Preferential Long-Term Loans

Article 84 of the SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. The response stated that none of the companies under investigation obtained Article 84 loans. Therefore, we preliminarily determine this program was not used.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination. As previously stated, we will not accept for our final determination any statement in the responses that cannot be verified.

ITC notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on April 14, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participtate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs with at least 10 copies must be submitted to the Deputy Assitant Secretary by April 7, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: February 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–4992 Filed 3–6–86; 8:45 am]

BILLING CODE 3510-DS-M

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[C-489-502]

Countervailing Duty Order; Certain Welded Carbon Steel Pipe and Tube Products from Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce (the Department) determined that certain welded carbon steel pipe and tube products (standard pipe and tube, and line pipe) from Turkey are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. In a separate investigation, the United States International Trade Commission (ITC) determined that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of standard pipe and tube from Turkey, and that an industry in the United States is threatened with material injury by reason of imports of line pipe from Turkey.

Therefore, based on these findings, all entries, or withdrawals from warehouse, for consumption of standard pipe and tube from Turkey, on or after October 28, 1985, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, will be liable for the possible assessment of countervailing duties. In addition, all entries, or withdrawals from warehouse, for consumption of line pipe from Turkey, on or after March 3, 1986, the date on which the ITC published its final affirmative injury determination in the **Federal Register**, will be liable for the possible assessment of countervailing duties.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Peter Sultan or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-1439 (Sultan) or (202) 377-2830 (Martin).

SUPPLEMENTARY INFORMATION: The products covered by this order are:

(1) Welded carbon steel pipe and tube, with an outside diameter of .375 inch or more, but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53 or A-135; and

(2) Welded carbon steel line pipe with an outside diameter of .375 inch or more, but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the TSUSA, under items 610.3208 and 610.3209. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API-L or API-LX.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on October 28, 1985, the Department published preliminary determinations which stated that there was reason to believe or suspect that imports of certain welded carbon steel pipe and tube products from Turkey received benefits which constitute subsidies within the meaning of the countervailing duty law (50 FR 43597). In accordance with section 705 of the Act (19 U.S.C. 1671b), on January 6, 1986, the Department published its final determinations that these imports are being subsidized (51 FR 1268).

On February 21, 1986, in accordance with section 705(d) of the Act (19 U.S.C. 1671d), the ITC notified the Department of its determinations that imports of standard pipe and tube from Turkey materially injure a U.S. industry, or threaten a U.S. industry with material injury, and that imports of line pipe from Turkey threaten a U.S. industry with material injury.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs the United States Customs Service to assess, upon further advice by the administering authority pursuant to section 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy for all entries of certain welded carbon steel pipe and tube products from Turkey. These countervailing duties will be assessed on all unliquidated entries of standard pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**. In accordance with section 706(b)(2) of the Act [19 U.S.C. 1671e(b)(2)], countervailing duties will be assessed on all unliquidated entries of line pipe from Turkey entered, or withdrawn from warehouse, for consumption, on or after March 3, 1986, the date on which the ITC published notice of its final affirmative injury determinations. The Department also directs that suspension of liquidation be lifted for all entries of line pipe from Turkey entered, or withdrawn from warehouse, for consumption, before March 3, 1986, and that all estimated countervailing duties deposited on such entries be refunded and the appropriate bonds or other security be released.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit of 17.80 percent *ad valorem* on all entries of certain welded carbon steel pipe and tube products from Turkey. This determination constitutes a countervailing duty order with respect to certain welded carbon steel pipe and tube products from Turkey pursuant to section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of an updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377-2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Dated February 28, 1986.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-4990 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; State University of New York et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301).

Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-028. Applicant: State University of New York at Buffalo, Buffalo, NY 14214. Instrument: Electron Microscope, Model JEM-100CXII with Accessories (Side Entry Type). Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 46806. Instrument ordered: April 15, 1986.

Docket No. 86-030. Applicant: California State University, Dominquez Hills, Carson, CA 90747. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 48450. Instrument ordered: September 6, 1985.

Docket No. 86-035. Applicant: Mount Sinai School of Medicine of the City of New York, New York, NY 10029. Instrument: Electron Microscope, Model EM 10CA/C/CR with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 48451. Application received by Commissioner of Customs: November 1, 1985.

Docket No. 86-040. Applicant: Good Samaritan Hospital and Medical Center, Portland, OR 97210. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 48451. Application received by Commissioner of Customs: October 31, 1985.

Docket No. 86-018. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM-100CX. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 51 FR 3486. Instrument Ordered: May 13, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-4993 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona Foundation; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-061. Applicant: University of Arizona Foundation, Tucson, AZ 85721. Instrument: ICP Quadrupole Mass Spectrometer. Manufacturer: VG instruments Inc., United Kingdom. Intended use: See notice at 51 FR 667.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides simultaneous qualitative and quantitative data for trace metal and major cations and abundance sensitivity of at least 10^{-8} for both high and low mass. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-4994 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois Urbana-Champaign Campus; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-048. Applicant: University of Illinois Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Electron Energy Analyzer, Model EA10/100 with Accessories. Manufacturer: Leybold-Heraeus Vacuum Products Inc., West Germany. Intended Use: See notice at 50 FR 52821.

Comments: none received.

Decision: Approved. No instrument of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application relates to an accessory for an existing instrument. The accessory is pertinent to the applicant's intended use.

We know of no similar accessory manufactured in the United States scientifically equivalent to the foreign article for the intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Progams Staff.

[FR Doc. 86-4995 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Sanctuaries; Weeks Bay, AL

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is announcing that on February 19, 1986 the Assistant Administrator for NOS (NOAA) designated Weeks Bay, Alabama as a National Estuarine Sanctuary under authority of section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461(1), and the National Estuarine Sanctuary Program Regulations, 15 CFR Part 921.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Lindelof, Sanctuary Programs Division, 3300 Whitehaven Street NW., Washington, DC 20235, 202/634-4236 or Mr. Sherman Shores, Alabama Department of Economic and Community Affairs, Montgomery, Alabama 36105, 205/284-8764.

SUPPLEMENTARY INFORMATION: Section 315 of the Coastal Zone Mangement Act, 16 U.S.C. 1461(1), and implementing regulations at 15 CFR Part 921 established the National Estuarine Sanctuary Program (NESP). The purpose of the NESP is for ". . . acquiring,

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developing, or operating estuarine sanctuaries to serve as natural field laboratories in which to study and gather data on the natural and human processes occurring within the estuaries of the coastal zone . . ."

NOAA provides financial assistance to States on a fifty percent matching basis for land acquisition and development of research, education, and resource protection programs for the estuarine sanctuary.

A Draft Environmental Impact Statement and Management Plan for an Estuarine Sanctuary at Weeks Bay, Alabama was distributed to Federal and State agencies and the general public for review in September 1984. During the comment period, a public hearing was held in Fairhope, Alabama, to receive input on the proposed designation by NOAA and/or the plan proposed by the State to manage the site. Based on the written comments received and testimony presented during the public hearing, NOAA prepared a Final Environmental Impact Statement/Management Plan. The FEIS was distributed December 6, 1985. The 30 day comment period ended January 6, 1986. On February 19, 1986, Weeks Bay, Alabama, and portions of adjacent wetlands and fastlands were designated as a National Estuarine Sanctuary.

The boundary of the Sanctuary consists of the 1,718 acres of the waters constituting Weeks Bay up to mean high water (mhw), including the tidal reaches of the rivers and tributaries which drain into the embayment. The boundaries of the estuarine sanctuary also include 335 acres of fastland (property above mhw) within an "ecological core" between the mouths of the Fish and Magnolia Rivers and a 615-acre parcel possessing nearly 3 miles of shoreline frontage lying immediately south of Weeks Bay. The designation will result in the implementation of a plan which will establish a comprehensive management framework for carrying out surveillance and enforcement, resource studies, and interpretive programs.

Under the management scheme no new regulations have been proposed. The Interpretive Program provides a broad-based public education agenda that includes on-site and off-site activities geared to all visitors and users of the Sanctuary's resources. A Resource Studies Plan proposes to gather baseline data, monitor and assess water quality, and conduct comparative estuarine studies and wildlife research projects. Data from these studies will be used as the basis for improving coastal resource management decisions by the State and providing for the long-term protection of the Weeks Bay ecosystem.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Estuarine Sanctuaries)

[FR Doc. 86-4936 Filed 3-6-86; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Army Department

Army Science Board (ASB); Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday-Wednesday, 24-26 March 1986.

Place: Ft. McNair, Washington, DC 20319.

Time:

24 March 1986, 1300–1700, C³I FSG, Pentagon, Closed Mtg
24 March 1986, 0900–1200, Weapons FSG, Pentagon, Closed Mtg
25 March 1986, 0730–1730, General Membership Mtg, Open Mtg
26 March 1986, 0830–1630, Log FSG, Pentagon, Closed Mtg
26 March 1986, 0815–1645, Human Capabilities & Resources FSG, Pentagon, Open Mtg.

Agenda: The 1986 Army Science Board General Membership Meeting program will include briefings of all Ad Hoc Subgroups and Summer Studies, and will include four Functional Subgroup meetings. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed in this portion of the meeting are so inextricably intertwined so as to preclude opening them to the public. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-5032 Filed 3-6-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board (ASB) TRADOC Operations Research Activity Ad Hoc Subgroup; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB), TRADOC Operations Research Activity Ad Hoc Subgroup.

Dates of Meeting: Thursday and Friday, 27-28 March 1986.

Times of Meeting: 0830–1630 hours.

Place: The Pentagon, Washington, DC 20310.

Agenda: The Army Science Board Ad Hoc Subgroup for TRADOC Operations Research Activity (TORA) will meet for briefings by TRADOC Headquarters and selected industry representatives. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-5031 Filed 3-6-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Education Appeal Board Hearings; Intent To Compromise Claim; California Department of Education

AGENCY: Department of Education.

ACTION: Notice of Intent to Compromise Claim.

SUMMARY: Notice is given that the Department intends to compromise a claim against the California Department of Education now pending before the Education Appeal Board (EAB), Docket No. 39-(171)-84 (20 U.S.C. 1234a(f)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before April 21, 1986.

ADDRESS: Comments should be addressed to Effie Forde-Williamson, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit conducted by the Office of Inspector General in the U.S. Department of Education. The auditors examined programs funded under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*) (Title I) as administered by the California Department of Education (SEA) and as implemented by the Richmond Unified School District during the period from July 1, 1980 through June 30, 1982.

Under Title I, Federal funds were provided to local educational agencies (LEAs) through SEAs such as the California Department of Education, for programs "which contribute[d] particularly to meeting the special educational needs of educationally deprived children" in areas with high concentrations of children from low-income families (20 U.S.C. 2701). Title I funds could be used only to provide supplemental educational services to children who were both educationally deprived and resided in specified low-income areas. SEAs had the responsibility for administering the Title I program. In order to participate in Title I, an SEA had to provide assurances that Title I funds would be used only for projects that met all the Title I requirements and that had been approved by the SEA.

During the course of the audit, the auditors discovered that the Richmond Unified School District had charged to its Title I project costs for certain expenses which were not directly related to the Title I program. For example, the auditors found that certain State Board Meetings and training conferences were either not directly related to the Title I program, not for the primary purpose of disseminating technical information related to the Title I program, or not necessary for the efficient operation of the program. Therefore, the auditors concluded that these costs were not allowable. Based on these findings, the Assistant Secretary for Elementary and Secondary Education notified the SEA in a final determination letter dated August 15, 1984 that the SEA had to repay $21,255 for the misexpenditure of Title I funds by the Richmond Unified School District.

The SEA did not contest $3,046 of the $21,255, leaving a balance of $18,209 in dispute. The SEA appealed the remaining amount to the EAB.

The Department proposes to compromise the full amount of the claim of $21,255 for $12,150. This $12,150 includes the $3,046 which the SEA did not contest, plus an additional $9,104. Given the percentage of the amount being repaid and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that the practice which resulted in the claim has been corrected and will not recqr

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Effie Forde-Williamson, Esq. at the address given at the beginning of this notice.

(20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies and No. 84.012, Educationally Deprived Children—State Administration)

Dated: March 5, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-5118 Filed 3-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Amendment of Rate Schedule NF-85 and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for Comments. *BPA File No:* NF-85.

SUMMARY: Pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(i), the Bonneville Power Administration (BPA) proposes to modify nonfirm energy rate schedule NF-85.

Responsible Official: Shirley Melton is the responsible official.

DATE: Deadline for filing comments is 5 p.m., March 18, 1986.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. BPA File No. NF-85 should be referenced in all comments.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Johnson, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seatttle, Washington 98109, 206-442-4130.
Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 505-230-4551.
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.
Mr. Wayne R. Lee, Upper Columbia Area Manger, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.
Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.
Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.
Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Bosie, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION

I. Background

BPA sells nonfirm energy under its NF-85 rate schedule, which specifies several prices. The NF-85 rate became effective July 1, 1985, and will remain in place through September 30, 1987.

The majority of BPA's nonfirm energy is sold to utilities in California, which generally use this energy in place of generating resources that run on natural gas and oil. In the past, relatively high gas and oil prices have allowed BPA to successfully sell its nonfirm energy in California at a price approximating BPA's costs of production and transmission. Currently that price is 23.4 mills per kilowatthour, which is the sum of the NF-85 Standard rate (22.2 mills per kilowatthour) and an adder for transmission over the Pacific Northwest-Pacific Southwest Intertie (1.2 mills per kilowatthour).

The recent and continuing decline in oil and gas prices in Calfornia has severely jeopardized BPA's ability to market its nonfirm energy in Calfornia at 23.4 mills per kilowatthour. In many cases the cost of generating electricity with oil and gas is now below the NF-85 Standard rate, making energy priced at the Standard rate, making energy priced at the Standard rate uneconomic to California utiltiies. Therefore, BPA proposes to increase the marketability of its nonfirm energy by selling at a lower-priced rate available in the NF-85

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schedule: The 18.1 mill per kilowatthour Contract rate.

II. Proposed Amendment to NF–85 Rate Schedule

The current NF–85 rate schedule indicates that the Contract rate is applicable to contracts that refer to the Contract rate. The schedule does not state that the Contract rate, like other NF–85 rate components, is available for marketing on an hourly basis. BPA therefore proposes to amend Section V. E. of the schedule by adding the following paragraph:

> In order to increase the marketability of Nonfirm Energy, the Contract Rate may be used in lieu of the Standard Rate for sales on an hourly basis, notwithstanding whether BPA and a purchaser have executed a contract that refers to the Contract Rate. Hourly Contract Rate sales for delivery over the Pacific Northwest-Pacific Southwest Intertie shall not include the Intertie Service charge specified in Section III. B. Hourly Contract Rate sales may be offered on a guaranteed basis as specified under Section VI. B., in which case the guaranteed delivery surcharge specified in Section III A. 1. will apply.

Use of the Contract rate in this manner will give BPA the flexibility to collect as much of the costs of nonfirm energy as possible and will yield revenues that enhance BPA's ability to meet its repayment obligations to the U.S. Treasury.

III. Reopening of the Record

BPA developed the NF–85 rate through a lengthy hearing process undertaken in 1984 and 1985 pursuant to section 7(i) of the Northwest Power Act. 16 U.S.C. 839e(i). This process culminated in the Administrator's Record of Decision (ROD), the decisionmaking document containing BPA's final rate determinations. The ROD together with the entire hearing record was filed with the Federal Energy Regulatory Commission (FERC) pursuant to section 7(i)(6) of the Northwest Power Act. 16 U.S.C. 839e(i)(6). FERC ordered the NF–85 rate to become effective as of July 1, 1985. 31 FERC ¶ 61,388 (1985).

BPA proposes to reopen the record compiled under section 7(i) for the sole purpose of amending application of the NF–85 Contract rate, as described above. BPA proposes to take official notice of the fact of declining gas and oil prices in California. This fact, together with the evidence contained in the existing record, fully supports the proposed rate amendment.

On or about March 4, 1986, BPA will issue a Draft ROD containing the facts proposed to be officially noticed and a discussion of the rationale and evidence in the existing record supporting the proposed rate amendment. Parties to BPA's 1985 rate case will be given an opportunity to file Briefs on Exception to the Draft ROD on or about March 18, 1986. Participants in BPA's 1985 rate case will be given an opportunity to submit comments on or about March 18, 1986. After consideration of all comments received, BPA proposes to issue a final ROD on or about March 25, 1986. At the same time BPA will file its ROD with the FERC and seek rate approval effective on or about April 16.

Authority: Section 7(i) of the Northwest Power Act. 16 U.S.C. 839e(i).

In consideration of the foregoing, BPA solicits comments regarding the proposed modification of rate schedule NF–85.

Issued in Portland, Oregon, February 28, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

[FR Doc. 86–5143 Filed 3–6–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER86–313–000]

Central Louisiana Electric Co., Inc.; Notice of Filing

February 28, 1986.

Take notice that on February 21, 1986, Central Louisiana Electric Company, Inc. (CLECO) submitted for filing a copy of an executed contract for the sale of Replacement Energy by CLECO to the City of Alexandria.

CLECO requests an effective date of January 1, 1986 and therefore request waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4966 Filed 3–6–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78–024

Columbia Gas Transmission Corp.; Declaratory Order February 28, 1986.

Take notice that on February 13, 1986, Corning Glass Works (Corning), Shenandoah Gas Company (Shenandoah) and West Virginia Public Service Commission (PSC) jointly filed pursuant to Rule 207(a)(2) [1] a petition for a declaratory order.[2] Petitioners request the Commission to issue an order declaring that the Cost Verification Committee (CVC) established by the Commission in Opinion No. 101 [3] has the authority to receive and consider Corning's claims for reimbursement of costs Corning incurred to convert its facilities to receive and use LNG supplied by Columbia through shenandoah. Petitioners further request the Commission to order Columbia to pay Corning all amounts approved by the CVC.

Petitioners allege that Opinion No. 101 does not state whether any particular from of state proceeding or order is a condition precedent to Columbia's obligation to reimburse Corning through Shenandoah. Petitioners assert that the joining of the PSC and Shenandoah with Corning in the instant petition satisfies the substantive concerns of comity with the state and the avoidance of windfall to Shenandoah that gave rise to the Commission's initial refusal to require direct reimbursement of indirect customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

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[1] 18 C.F.R. 385.207(a)(2)(1985).

[2] Although the joint petition was physically filed on January 24, 1986, according to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 13, 1986.

[3] Columbia Gas Transmission Corp., 13 FERC ¶ 61,102 (1980), *reh'g denied*, 14 FERC ¶ 61,073 (1981). *Aff'd sub nom.* Corning Glass Works v. FERC, 675 F.2d 392 (D.C. Cir. 1982). Petitioners claim that in Opinion No. 101 the Commission found that direct wholesale customers of Columbia could recover for costs incurred in adjusting their facilities to use LNG upon verification of such costs by the CVC, but that an indirect customer such as Corning could not recover such costs unless and until the proper state authority first decided that the indirect customer should recover through or from the direct customer.

North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure (18 CFR 385.214, 385.211 (1985)) All such motions or protest should be filed on or before March 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4967 Filed 3–6–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86–230–000 and ER86–76–001]

Commonwealth Edison Co.; Order Summarily Rejecting Filing in Part and Ordering New Filing, Granting Waiver, Granting Interventions, Establishing Hearing Procedures, and Granting Motion To Consolidate

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On January 3, 1986, Commonwealth Edison Company (Edison) filed a proposed rate for transmission service (Rate 81) to the City of Rock Falls, Illinois (Rock Falls).[1] The rate was filed pursuant to a settlement approved by the Commission in Docket No. ER83–437–000.[2] Rock Falls presently receives full requirements service from Edison. However, under the terms of the settlement agreement, Rock Falls, as well as Edison's other full requirements customers, may obtain transmission and/or partial requirements service upon one year notice. In that event, Edison is required to file a rate for the service requested no later than 180 days prior to termination of full requirements service. In 1984, Rock Falls began to explore the possibility of purchasing its power and energy requirements from a source other than Edison, and thereafter, entered into an agreement with the Illinois Municipal Electric Agency (IMEA), a municipal corporation formed to provide a mechanism by which its members jointly plan, finance, own, and operate facilities for the generation and transmission of electric power and energy. Rock Falls intends to become a full requirements customer of IMEA on July 3, 1986. On July 1, 1985, Rock Falls issued to Edison a notice of termination and request for transmission service. Accordingly, Edison has submitted this filing which, as discussed below, mirrors a similar filing for the City of Geneva in Docket No. ER86–76–000. Edison proposes an effective date for Rate 81 of July 2, 1986. Edison therefore requests waiver of the advance filing requirements. The company has characterized its filing as an initial rate.

Notice of Edison's filing was published in the **Federal Register**,[3] with comments due on or before January 21, 1986. Timely motions to intervene were filed jointly by the Cities of Rock Falls, Batavia, Geneva, and Naperville, Illinois (Cities), the Illinois Commerce Commission (ICC), and IMEA.

The Cities request that the Commission: (1) Find Edison's proposed rate to be a change in rate rather than an initial rate and suspend the filing for one day; (2) find Edison's submittal to be deficient and order Edison to file all information required by section 35.13 of the Commission's regulations, including a cost of service study based on fully-distributed costs; (3) require Edison to place in effect and collect on a subject-to-refund basis commencing July 3, 1986, a transmission rate based on Edison's fully-distributed embedded costs; (4) summarily reject the proposed stand-by charge and Edison's alternative justification for Rate 81; and (5) set the matter for expedited hearing. In support of its requests, the Cities contend that the proposed rate is anticompetitive and constitutes an unlawful attempt by Edison to retain monopoly power in its service area. The Cities further argue that the filing is unduly discriminatory in that it is much higher than the transmission component of Edison's firm wholesale and retail rates, and therefore, will result in price squeeze. As to the proposed stand-by charge, Rock Falls states that it does not want or need standby service, and did not request it from Edison. The Cities also filed a separate motion requesting the consolidation of this docket with the proceedings in Docket No. ER86–76–000, due to the similarity of the two proposals.[4]

IMEA seeks rejection of Edison's filing, alleging that the company has not justified pricing its transmission rate on marginal costs, that it has not justified including generation capacity costs in Rate 81, and that the stand-by charge included in the proposed rate schedule is discriminatory.

The ICC requests to be made a party to the proceedings, but raises no specific issues.

On February 5, 1985, Edison filed a response to the pleadings on the Cities and IMEA. Edison contends that only Rock Falls should be permitted to intervene, as it is the only movant with an interest in this proceeding. The company denies that its filing is deficient or a change in rate. However, Edison volunteers to hold all amounts collected under Rate 81 subject to refund if the Commission decides that a lower rate should be charged. As to the motions for summary disposition, Edison first argues that the facts relied upon by Rock Falls in support of its request for summary disposition differ from those presented by Geneva, and relied upon by the Commission, in Docket No. ER86–76–000, in one significant respect: that Rock Falls has no contract with an alternative supplier. Thus, according to Edison, there is no need for summary rejection of Rate 81 in order to preserve an existing relationship with another power supplier or avert potentially anticompetitive consequences. Second, Edison argues that the motions raise disputed questions of material fact. Edison opposes the Cities' motion for consolidation, contending that while there is an overlap with in issues with regard to the theoretical basis for the calculation of rates for service to Rock Falls and Geneva, the factual circumstances are different. Finally, Edison concurs in the request that the Commission set the matter for hearing on an expedited schedule.

On January 30, 1986, IMEA filed an answer in support of the Cities' motion to consolidate the instant proceeding with Docket No. ER86–76–000.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.214), the timely, unopposed motions to intervene of Rock Falls and the ICC serve to make them parties to these proceedings. Notwithstanding Edison's opposition to the interventions of Batavia, Geneva, Naperville, and IMEA, we find that good cause exists to grant their motions. We are satisfied that they have expressed interests in the outcome of this proceeding that may not be represented by any other party, and that their participation may be in the public interest. Accordingly, we shall grant their motions to intervene.

We shall grant Edison's motion for waiver of the 120-day advance filing limitation in section 35.3 of our

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[1] *See* Attachment for rate schedule designations.

[2] 29 FERC ¶ 61,084 (1984).

[3] 51 FR 1834 (1986).

[4] Edison proposes a rate of $8.27/kW for service to Rock Falls as opposed to the $6.93/kW for service to Geneva.

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regulations. inasmuch as none of the intervenors objects to the request, and the timing of Edison's filing is in accordance with the terms of the settlement agreement previously approved by the Commission.

The rate proposed here is virtually identifical to the one addressed in our order of January 30, 1986, in Docket No. ER86-76-000.[5] In that order, we determined that Edison's proposed rate for transmission service to Geneva, presently a full requirements customer, constituted a change in service and a change in rate schedule for that customer. Furthermore, we stated our disagreement with Edison's characterization of its filing as a rate decrease, finding that the proposed charge for transmission service, when compared to an unbundled transmission component of its present service to Geneva, would necessarily reflect a rate increase. We declined to find Edison's filing deficient, however, in light of the affected customer's desire to effectuate the modified form of service; instead, we directed Edison to submit full cost of service data and testimony in order to proceed to hearing. For the reasons set forth in that order, we find that Edison's filing here constitutes a change in rate, and a rate increase as well. Further, given Edison's obligation to make the filing and Rock Fall's desire to implement transmission service by July 3, 1986, we shall not reject the filing as deficient. As in Docket No. ER86-76-000, we shall direct Edison to submit cost of service data and testimony prior to hearing.

In Docket No. ER86-76-000, we stated that, in the circumstances surrounding the filing, Edison's proposed transmission rate to Geneva presented a clear potential for substantial anticompetitive effects that would immediately subject Geneva to an observable and irremediable prejudice or disadvantage in the power supply market. We further found that no material issues of fact required resolution in order to reach this determination or to conclude that operation of the rate, subject to refund, would be contrary to the public interest. While we did not go so far as to foreclose Edison outright from attempting to show that a form of marginal cost pricing might be supported, we were not prepared to allow the filed rate to take effect under circumstances where the potential harm could not be remedied. Thus, we summarily rejected Edison's proposed rate and directed Edison to file a rate which excluded stand-by charges and reflected Edison's average transmission costs.

In this case, Rock Falls, like Geneva, was a signatory to the settlement which resulted in a commitment by Edison that full requirements customers could obtain transmission service from Edison so that they could satisfy their power needs through purchases from alternative power suppliers. Having considered the pleadings, the purposes of the prior settlement and the current filing, and the bases advanced by Edison to support its rates, we conclude that the proposed rate now before us raises the same concerns as those we expressed with regard to the rate filed in Docket No. ER86-76-000. We are not persuaded by Edison's attempt to distinguish the facts now before us from those in Docket No. ER86-76-000 on the basis that Rock Falls apparently has no formal purchase contract with IMEA. As we noted above, IMEA was created to provide its members with the means of satisfying their own energy requirements. Rock Falls is among the members of IMEA and has given Edison express notice of its desire to convert from full requirements service to transmission-only. Thus, there is no less of a relationship between Rock Falls and IMEA than exists between Geneva and its potential supplier, and we perceive no less of a potential for a direct irremediable prejudice or disadvantage in the power supply market. Accordingly, for the same reasons enunciated in our order entered in Docket No. ER86-76-000, we shall summarily reject Edison's proposed Rate 81 to Rock Falls and require Edison to file a rate which reflects its average embedded system transmission costs and excludes Edison's proposed stand-by component. As in the prior docket, however, we shall permit the company to adduce additional evidence in an effort to seek prospective application of its transmission pricing proposal and its proposed stand-by charge. Because Edison has not yet filed this revised rate, we must conclude that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Edison's revised rate as specified above to become effective on July 3, 1986, subject to refund.

We shall, further, grant the Cities' motion to consolidate the proceedings in the instant docket with those in Docket No. ER86-76-000. The rates proposed by Edison in the two dockets are developed in a similar manner and are proposed for the same type of service. The filing of the rates in both instances arises out of the same settlement agreement. Consequently, the rate submittals in the two dockets present common questions of law or fact. Furthermore, Geneva and Rock falls are represented by the same counsel and consultants. Consolidation of the two dockets at this time is particularly appropriate and will avoid unnecessary duplication of effort by all the parties and the Commission staff.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors to the extent that it may continue to exist following Edison's submission of revised rates.

The Commission orders:

(A) Batavia's, Geneva's, Naperville's, and IMEA's motions to intervene are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Edison's request for waiver of the 120-day advance filing requirement is hereby granted.

(C) Edison's proposed rate is summarily rejected, and Edison is directed to file, within thirty (30) days of the date of this order, a rate based on its average system transmission costs and excluding a stand-by component.

(D) Edison's transmission rate, as amended by summary disposition in Ordering Paragraph (C), is accepted for filing and suspended to become effective on July 3, 1986, subject to refund.

(E) All other requests for rejection or summary disposition not specifically granted herein are denied.

(F) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Edison's rates and charges.

(G) Subdocket 000 of Docket No. ER86-230 is hereby terminated Docket No. ER86-230-001 is assigned to the evidentiary proceeding ordered herein.

(H) Docket Nos. ER86-76-001 and ER86-230-001 are hereby consolidated for purposes of hearing and decision.

(I) The administrative law judge designated to preside in Docket No. ER86-76-001 shall determine procedures, including the submission of a case-in-chief by Edison, best suited to accommodate consolidation of this docket with the pending proceeding.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

Commonwealth Edison Company, Docket No. ER86-230-000

Rate Schedule Designations

Designation	Description
(1) Original Sheet Nos. 1R, 1T and 1U to FPC Electric Tariff, Original Volume No. 1.	Rate 81
(2) 3rd Revised Sheet No. 59 to FPC Electric Tariff Original Volume No. 1.	Blank Service Contract for Rate 81
(3) 5th Revised Sheet No. 59 to FPC Electric Tariff, Original Volume No. 1.	Do.
(4) Service Agreement No. 13 to FPC Electric Tariff, Original Volume No. 1 (Supersedes Service Agreement dated October 2, 1984).	City of Rock Falls.

[FR Doc. 86-4968 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

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[5] 34 FERC ¶ 61,115.

[Docket No. RA86-2-000]

Commonwealth Oil Refining Company, Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

March 3, 1986.

Take notice that Commonwealth Oil Refining Company, Inc. on February 24, 1986, filed a Petition for Review under 42 U.S. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before March 18, 1986, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before March 18, 1986, in accordance with the Commission's Rules of practice and procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, DC. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4969 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-12-000]

Connecticut Natural Gas Corp.; Petition for Exemption From Incremental Pricing and for Interim Relief

Issued: February 27, 1986.

Take notice that on February 3, 1986, Connecticut Natural Gas Corporation (Connecticut) filed with the Director, Office of Pipeline and Producer Regulation, pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) a petition for interim and permanent exemptions from the Commission's incremental pricing regulations which impose a surcharge on its natural gas sales to four non-exempt industrial boiler fuel customers located in the State of Connecticut.

In support of its petition, Connecticut states that without exemption relief the incremental pricing surcharge will cause the price of its natural gas to exceed the actual cost of alternative fuel in the area and that such increased costs will likely cause its four non-exempt industrial customers to switch to less expensive alternative fuel and that such a switch will result in its high-priority customers paying a larger portion of its fixed costs. Connecticut requests interim relief from the incremental pricing regulations pending Commission action for its petition for a permanent exemption.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101-1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4970 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI80-59-003, et al.]

Exxon Corp.; Applications for Limited-Term Abandonment and Limited-Term Certificates of Public Convenience and Necessity With Pre-Granted Abandonment

March 3, 1986.

Take notice that the Applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for authorization to sell gas in interstate commerce or to abandon service as described herein.

The circumstances presented in the applications appear to meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

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Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure Base
CI80-59-003, Feb. 24, 1986	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Transcontinental Gas Pipe Line Corporation, High Island 193 Area, Offshore Texas.	(¹)	
CI86-214-000 Feb. 24, 1986	do	Columbia Gas of Ohio, Inc., West Cameron Block 630, Offshore Louisiana.	(²)	
CI86-216-000, Feb. 25, 1986	do	Transco Energy Marketing Company, High Island 193 Area, Offshore Texas.	(³)	

[1] Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests partial abandonment authorization for its sale to Transco of NGPA section 102(d) gas for a limited-term of three years from the date of authorization. Applicant states that the gas has has been shut-in by Transco due to lack of demand and that Applicant is subject to substantially reduced takes without pay. Applicant and Transco have entered into a release agreement dated February 21, 1986, in which Transco agrees to release that portion of applicant's delivery capacity which is in excess of Transco's daily requirements and Applicant agrees that volumes released and sold under the agreement will be considered as having been purchased by Transco for take-or-pay, minimum takes, or other quantity provisions set forth in the subject contract. Applicant states that this application is being filed to provide for abandonment authority to extend beyond March 31, 1986, the date of expiration of Applicant's blanket certificate and limited-term abandonment authorization in Docket No. CI85-685-000. Applicant filed a related application for authorization to sell the subject gas in Docket No. CI86-216-000.

[2] Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests that it be issued a limited-term certificate with pre-granted abandonment authorizing it to sell NGPA section 102(d) gas under a Gas Purchase Contract dated November 1, 1984, as amended, for a term of three years. Applicant filed related applications for limited-term partial abandonment authorization under § 2.77 in Docket Nos. CI78-223-003 and CI78-226-003 which have already been noticed.

[3] Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests that it be issued a limited-term certificate with pre-granted abandonment authorizing it to sell NGPA section 102(d) gas under a Gas Purchase Contract dated December 5, 1985, for a term of three years. Applicant filed its related application for limited-term partial abandonment authorization udner § 2.77 in Docket No. CI80-59-003.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-4974 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-685-001]

Exxon Corp; Application for Extension of Limited-Term Partial Abandonments and Blanket Limited-Term Certificate Authorization for Sales for Resale

February 28, 1986)

Take notice that on February 18, 1986. Exxon Corporation (Exxon) of P.O. Box 2180, Houston, Texas 77001, filed an application requesting the Federal Energy Regulatory Commission (Commission) to extend, until March 31, 1987, its authority to (a) abandon temporarily sales for resale of Natural Gas Act (NGA) gas for which the maximum lawful price is higher than the NGPA section 109 price and which were previously certificated by the Commission, to the extent that such gas in released by Exxon pursuant to such conditions as may be imposed by the Commission, and (b) make sales for resale in intersate commerce of NGA gas for which the maximum lawful price is higher than the NGPA section 109 price.

The extensions herein sought would (1) extend for a period of one year the authorizations granted on October 29, 1985, in Docket No. C185-685-000; (2) provide pipelines with take-or-pay relief; (3) provide lower-cost gas to consumers; and (4) provide Exxon with additional market outlets for certain higher-priced NGPA categories of gas.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-4972 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI78-223-003 and CI78-226-003]

Exxon Corp.; Applications for Limited-Term Abandonment of Service

February 28, 1986.

Take notice that the Applicant listed herein has filed applications pursuant to Section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commissin and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Comission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure base
CI78-223-003, Feb. 20, 1986	Exxon Corporation P.O. Box 2180, Houston, Texas 77252-2180.	Trunkline Gas Company, West Cameron Block 630 Field, Offshore Lousiana.	¹	
CI78-226-003, Feb 20, 1986	do	Norther Natural Gas Company, West Cameron Block 630 Field, Offshore Louisiana.	¹	

[1] Pursuant to the expedited procedures set forth in §2.77 of the Commission's rules, Applicant request partial abandonment authorization for its sale to Buyer of NGPA section 102(d) gas for a limited-term of three years from the date of authorization. Applicant states that the gas has been shut-in by Buyer due to lack of demand and indicates that Applicant is not being paid for gas not taken. Applicant and Buyer have entered into a release ageement dated November 8, 1985, in which Buyer agrees to release that portion of Applicant's delivery capacity which is in excess of Buyer's daily requirements and Applicant agrees to credit volumes released and sold under the agreement against any deficiency payments Buyer may be obligated to make under gas purchase contracts with Applicant and/or its affiliates for gas which Buyer has not taken. Applicant states that this application is being filed to provide for abandonment authority to extend beyond March 31, 1986, the date of expiration of Applicant's blanket certificate and limited-term abandonment authorization in Docket No. CI85-685-000.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to all Acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-4973 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

March 3, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on February 24, 1986, tendered for filing Fifty-Fifth-B Revised Sheet No. 57 and Second Substitute Fifty Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provides for a new pricing arrangement related to gas purchased from Great Lakes by ANR Pipeline Company ("ANR"). Under the new proposed arrangement, the monthly demand component of the gas cost component of the gas price will be reduced from the current $15.21 per Mcf (of contract quantity) per month to $12.35 per Mcf per month. The commodity component will be reduced from a rate that varied between $2.50 and $4.25 per MMBtu to a single rate of $2.09 per MMBtu. The estimated annual savings to ANR based on full contract volumes would be approximately $5 million. Prices are subject to monthly adjustment by application of an index designed to create prices competitive in the markets than ANR serves.

Great Lakes is requesting an effective date of December 19, 1985, for Fifty-Fifth-B Revised Sheet No. 57. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

On January 21, 1986 Great Lakes filed Substitute Fifty-Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1 to reflect the GRI Adjustment related to the Gas Research Institute's 1986 Research and Devlopment Program which superseded Fifty-Sixth Revised Sheet No. 57 filed by Great Lakes on December 13 1985 and was approved by the Commission on December 27, 1985. Fifty-Fifty-B Revised Sheet No. 57, was filed to implement the pricing arrangements for ANR effective December 19, 1985, requiring a further change to the GRI Tariff Sheet to be effective January 1, 1986. Accordingly Great Lakes filed Second Substitute Fifty-Sixth Revised Sheet No. 57 to be effective January 1, 1986 which reflected the appropriate PGA rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before March 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-4975 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-238-000 and ER86-239-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Granting Requests for Waiver, Terminating Docket, and Establishing Hearing Procedures

Issued February 28, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On January 29, 1986, New England Power Company (NEP) completed the filing, in Docket No. ER86-238-000, of an interim fuel and purchased economic power adjustment clause in compliance with a waiver of the fuel clause regulations granted by the Commission in Docket No. EL86-4-000.[1] That waiver permits NEP to defer billing, through the fuel clause, replacement power costs related to the forced outage of Brayton Point Unit No. 3 to the extent that those costs may be reimbursed by insurance proceeds. NEP proposes that its revised fuel clause become effective on September 25, 1985, the first date as of which the company may be reimbursed for the costs under the terms of its insurance policy.

On January 9, 1986, NEP submitted for filing, in Docket No. ER86-239-000, a proposed modification to its fuel adjustment clause to account for fuel cost savings anticipated from the generation of test energy from units under construction, including the Millstone Nuclear Generating Station Unit No. 3 (Millstone 3), in which NEP has a twelve percent ownership interest.[2] NEP alleges that the amendment would conform to the Commission's treatment of similar costs in *Pennsylvania Power & Light Company*, Opinion No. 176, 23 FERC ¶ 61,395 (1983) (*PP&L*), and to the Commission's Uniform System of Accounts, Electric Plant Instructions, Section 3, Paragraph 18 (18 CFR Part 101). That procedure, according to NEP, requires a utility to treat the value of its share of the test energy from a unit under construction as a reduction in plant investment rather than as a reduction in the fuel costs to be flowed through to customers under the fuel clause, thus preserving the benefits of this power for future ratepayers who will ultimately bear the cost of the project.

NEP's filing states that Millstone 3 was expected to begin producing test energy on or about January 20, 1986. By its filing in Docket No. ER86-239-000, NEP seeks to calculate its fuel costs as if there were no test energy being generated and to reduce its investment cost in Millstone 3. In order to accomplish this, NEP requests a waiver

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[1] 33 FERC ¶ 61,274 (1985). The Commission's order granting the waiver directed NEP to file an interim fuel clause within 30 days.

[2] *See* Attachment for rate schedule designations.

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of § 35.14 of the Commission's regulations (18 CFR 35.14). The company proposes that its revised fuel clause become effective on January 20, 1986, or the actual date on which test energy commences, whichever is sooner. Accordingly, NEP requests waiver of the notice requirements.

NEP plans to value the test energy at an amount equal to its avoided cost, *i.e.*, the cost to NEP to produce the same amount of energy from its system as if it had not received any test energy. The company contends that this will result in valuing test energy at its "fair value" as required by the Uniform System of Accounts. NEP acknowledges, however, that its current wholesale customers have already paid a portion of the carrying costs of Millstone 3 in their current rates [3] and should, therefore, receive credit for a portion of the test energy generated from the unit. The company requests that the question of what portion should be passed on to customers be set for hearing. NEP further requests waiver of the Commission's accounting rules to the extent that they would require NEP to credit the cost of construction with the fair value of test energy savings flowed through to customers. Under the Uniform System of Accounts, Electric Plant Instructions, Section 3, Paragraph 18, a utility is required to credit and charge Account 107 with all revenues and expenses related to test energy generation. NEP submits that to the extent the savings of test energy are passed on to its customers on a current basis, NEP should only be required to credit Account 107 with the actual revenues received. Otherwise, NEP alleges, it would be required to credit its CWIP account with an amount greater than revenues received for test energy. This would have the effect of giving current customers a portion of the savings from test energy and, at the same time, reducing the cost of construction by the amount of the fair value of that portion of test energy.

Notices of NEP's filings were published in the **Federal Register**,[4] with comments due on or before January 27, 1986, in Docket No. ER86–239–000, and on or before February 12, 1986, in Docket No. ER86–238–000. No comments were filed in Docket No. ER86–238–000. An untimely motion to intervene was filed in Docket No. ER 86–239–000 by the Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island). Rhode Island does not object to NEP's filing, so long as all aspects of test energy allocation are resolved in a hearing.

Discussion

We shall grant Rhode Island's late-filed motion to intervene in Docket No. ER86–239–000. We are satisfied that Rhode Island has expressed an interest in the outcome of this proceeding that is not represented by any other party, that its participation may be in the public interest, and that, because of the early stage of this proceeding, no undue prejudice or delay should occur.

We have reviewed the revised fuel clause filed in Docket No. ER86–238–000 and have determined that it appropriately implements the waiver previously granted in Docket No. ER86–4–000. Given the purposes of the filing and the absence of any objection to the proposed effective date, we find that good cause exists to waive the notice requirements. We shall therefore accept NEP's filing in Docket No. ER86–238–000 without suspension or hearing, to become effective on September 25, 1985.

With respect to NEP's proposed treatment of test energy submitted in Docket No. ER86–239–000, we have previously accepted several similar applications. In *PP&L, supra,* we granted the company's request for waiver and approved the modifications to its fuel adjustment clauses. In that case, we found that, absent waiver of the fuel clause regulations, current ratepayers would receive the benefits of the test energy in the form of decreased fuel costs. Future ratepayers would, however, incur all the costs associated with the test energy through higher rates which result from inclusion of such costs in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, future ratepayers who ultimately bear the costs associated with the facility undergoing testing will receive benefits through lower rates. We determined that this ratemaking treatment would avoid problems of intergenerational inequity.

In this proceeding, NEP's wholesale customers have been paying for some, but not all, of the total carrying costs associated with the Millstone 3 through CWIP charges. Therefore, some retention of test energy savings by NEP is appropriate. Unlike *PP&L,* however, it appears that retention of all the benefits by NEP is inappropriate in light of its recovery of some CWIP-related amounts. Accordingly, we shall grant waiver of § 35.14 of the regulations, accept NEP's proposed modification to its fuel clause for filing, but set for hearing the question regarding the portion of the savings that should be passed on to the wholesale customers.[5]

Pending such hearing and a determination as to the just and reasonable apportionment of test energy savings, we shall impose a nominal suspension in order to afford refund protection, while allowing implementation of the proposed fuel clause to coincide with the period of testing for Millstone 3. Under the circumstances presented, including the lack of any adverse interventions, we find that good cause exists to waive the notice requirements and allow NEP's submittal to take effect, subject to refund, as of the initiation of testing at Millstone 3.

We shall also grant NEP's request for waiver of the Commission's accounting rules. As in *PP&L, supra,* if the utility were required to flow through to current customers savings from test energy and to reduce the cost of construction at the same time with those savings, ratepayers would unfairly benefit twice from the same cost savings. 23 FERC at 61,844.

The Commission orders:

(A) The untimely motion to intervene of Rhode Island in Docket No. ER86–239–000 is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) NEP's requests for waiver of the notice requirements are hereby granted.

(C) NEP's submittal in Docket No. ER86–238–000 is hereby accepted for filing, to become effective without suspension or hearing on September 25, 1985.

(D) NEP's requests for waiver of section 35.14 of the Commission's regulations and the Commission's accounting rules in Docket No. ER86–239–000 are hereby granted.

(E) NEP's proposed fuel adjustment clause submitted in Docket No. ER86–239–000 is hereby accepted for filing and suspended, to become effective on the date test energy from Millstone 3 commences, subject to refund.

(F) NEP shall file a report with the Commission of the Commencement of generation of test energy from Millstone 3, within ten (10) days of such date.

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[3] NEP's currently effective rates, which include some construction work in progress (CWIP) associated with the plants that will generate test energy, have been collected, subject to refund, since January 1, 1984 (Docket Nos. ER83–647–000, *et al.*, 24 FERC ¶ 61,330 (1983)).

[4] 51 FR 2,753 (Docket No. ER86–239–000); 51 FR (1986) (Docket No. ER86–238–000).

[5] *See Gulf States Utilities Co.*, 32 FERC ¶ 61,231 (1985), where the Commission similarly set for hearing the question of what portion of the test energy savings should be retained where the affected customers have contributed to CWIP-related costs.

(g) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket No. ER86–239–000 to determine the appropriate portion of fuel savings to be immediately passed on to NEP's customers in recognition of their prior contributions to CWIP.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) day of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by NEP, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) Docket Nos. ER86–238–000 and ER86–239–000 are hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER86–239–001.

(J) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,
Secretary.

The following designations are under FPC Electirc Tariff, Orginal Volume No. 1.

Docket No. ER86–238–000

(1) 34th Revised Sheet No. 2 of Schedule IIA (Supersedes 33rd Revised Sheet No. 2).

(2) Original Sheet No. 2–X of Schedule II–A.

(3) Original Sheet No. 2–Y of Schedule II–A.

(4) Second Revised Sheet No. 2–A of Schedule II–A (Supersedes First Revised Sheet No. 2–A).

Docket No. ER86–239–000

(5) 35th Revised Sheet No. 2 of Schedule II–A (Supersedes 34th Revised Sheet No. 2).

[FR Doc. 86–4976 Filed 3–6–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. SA86–11–000]

Phelps Dodge Corp.; Petition for Exemption From Incremental Pricing and for Interim Relief

Mrach 3, 1986.

On January 29, 1986, petitioner Phelps Dodge Corporation (Phelps Dodge) filed with the Federal Energy Regulatory Commission a petition for adjustment under sections 206(d) and 502(c) of the Natural Gas Policy Act of 1978,[1] and §§ 385.1104 and 385.1113 of the Federal Energy Regulatory Commission's Rules of Practive and Procedure.[2]

Phelps Dodge seeks temporary adjustment relief from the Commission's incremental pricing rules with respect to non-exempt natural gas which it purchases from El Paso Natural Gas Company for use at petitioner's copper mining facility at Bisbee, Arizona, and its copper mining and smelting facility at Ajo, Arizona. Petitioner also seeks interim relief pending Commission action on its request for temporary relief. By order issued January 28, 1985, in Docket No. SA84–25–000,[3] the Director of the Office of Pipeline and Producer Regulation (Director) granted Phelps Dodge temporary relief from incremental pricing for a 12-month period beginning with the billing month of February 1985. In the instant filing Phelps Dodge seeks a 12-month extension of that relief with regard to the Bisbee and Ajo facilities.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.[4] Any person desiring to participate in this adjustment proceeding must file a motion to intervene under Subpart K within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4977 Filed 3–6–86; 8:45 am]
BILLING CODE 6717–01–M

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[1] 15 U.S.C. 3346(d) and 3412(c) (1982).

[2] 18 CFR 385.1104 and 385.1113 (1985).

[3] 30 FERC ¶ 62,106.

[4] 18 CFR 385.1101–.1117 (1985).

[Docket No. CI85–633–003]

Tenneco Oil Co., et al.; Application

March 3, 1986.

Take notice that on February 25, 1986, Tenneco Oil Company, Houston Oil Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and Tenneco West Inc., (hereinafter referred to collectively as Tenneco Oil), filed an application in accordane with sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717–717z, and Part 157 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), requesting that the Commission amend its Order Permitting and Approving Limited-term Abandonments and Granting Certificates, issued on October 29, 1985, in Docket Nos. CI85–633–000, *et al.* (October 29th Order), to extend the term thereof through March 31, 1987. Absent such extension, Tenneco Oil will be without authority, as of March 31, 1986, to make self-implementing spot market sales of gas that remains subject to the NGA's certificate and abandonment requirements. The temporary extension requested herein will prevent a possible hiatus in spot market sales and will be consistent with the transitional rationale contained in Order No. 436.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–4978 Filed 3–6–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CI85–632–002]

Tenngasco Corp. and Tenngasco Exchange Corp.; Petition of Tenngasco Corp. and Tenngasco Exchange Corp. for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pre-Granted Abandonment

March 3, 1986.

Take notice that on February 24, 1986, Tenngasco Corporation and Tenngasco Exchange Corporation (hereinafter referred to collectively as "Tenngasco")

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pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717–717z (1982)(NGA) and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a one (1) year extension of the limited-term sales and abandonment authority granted in this proceeding. Tenngasco states that such an extension is in the public interest as it will allow a smooth transition into the abandonment procedures established in Order No. 436.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 18, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4979 Filed 3–6–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–218–000]

Transco Energy Marketing Co.; Application

February 28, 1986.

Take notice that on February 25, 1986. Transco Energy Marketing Company (TEMCO), P.O. Box 1396, Houston, Texas 77251, filed in this proceeding an application, pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Commission's regulation, requesting a blanket certificate of public convenience and necessity to be effective or or before April 1, 1986, authorizing (1) sales for resale of certain natural gas in interstate commerce, without market restriction, by TEMCO and the producers from which TEMCO purchases such gas, (2) sales for resale of certain natural gas in interstate commerce, without market restriction, by producers through TEMCO acting as their agent, and (3) blanket pre-granted abandonment of the sales described in TEMCO's application, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TEMCO states that the purpose of its application is to enable TEMCO to resell in the spot market natural gas which it purchases from producers who have received abandonment authorization from the Commission in separate proceedings, including those authorizations granted pursuant to the Commission expedited abandonment procedures now codified at 18 CFR 2.77, and will permit TEMCO to act as agent for such producers in the sale for resale of their gas in the spot market. TEMCO in this proceeding is requesting no abandonment of producer-pipeline commitments, nor any transportation authority, and states that any transportation necessary to effect the sales for which authorization is sought in this proceeding will be implemented pursuant to order No. 436 and the Commission's rules and regulations. TEMCO further states that since the Commission has stated that it will consider requests for abandonment of natural gas irrespective of the NGPA category of such gas, all gas subject to the Commission's NGA jurisdiction would be potentral sources, of gas under the authorizations sought in its application. TEMCO also states that to the extent that the abandonment authority granted to a producer in a separate proceeding is not a permanent release of reserves or is restricted in some other way, the sales and pregranted abandonment authorizations requested would likewise be restricted. TEMCO requests that, in any order approving its application, the Commission expressly find that with respect to TEMCO and its operations, the Commission's NGA jurisdiction is limited to the specific non-exempt activities for which TEMCO is seeking authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 12, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–4980 Filed 3–6–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–210–000]

TXP Operating Co.; Application

February 28, 1986.

Take notice that on February 20, 1986, TXP Operating Company (TXPO), P.O. Box 1396, Houston Texas 77251 filed an application requesting that the Commission issue an order that grants TXPO the necessary authorizations for a limited term (1) to abandon temporarily sales for resale of certain NGA-gas listed on Exhibit "A" of the application that is produced by TXPO and its joint interest owners, to the extent that such joint interest owners agree to same, which were previously certificated by the Commission, and to the extent that such gas is released by the interest pipeline purchasers, (2) to make sales for resale in interstate commerce of such NGA-gas; and (3) to abandon (pre-granted abandonment) any sale for such limited term. In that regard TXPO requests the authorizations described in said application for a limited term beginning on April 1, 1986 and ending on March 31, 1987. TXPO further requests that the Commission handle the application on an expedited basis in accordance with Order No. 436 in Docket No. RM85–1–000.

TXPO states that the authorizations requested in its application are necessary so that it can continue to make spot sales at market responsive prices from certain offshore blocks that qualify for the NGPA Section 102 ceiling price. TXPO reports that it is experiencing substantially reduced takes from those blocks without payment under its long-term contract with its purchaser(s).

Any person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unncessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

[As of February 13, 1986]

Block	NGPA section *	Deliverability (MCF/D)	TXPO'S share of deliverability (MCF/D)	Purchaser's takes from TXPO under long-term contract (MCF/D)
High Island A-313	102(d)	10,000	1,800	41
High Island A-446	102(d)	42,500	8,806	2,498
High Island A-447	102(d)	31,350	3,527	561
High Island A-563/564	102(d)	80,700	7,265	1,017
High Island A-582	102(d)	55,000	5,825	91
Mustang Island A-85	102(d)	46,300	21,808	96
Mustang Island A-111	102(d)	149,840	122,869	2,460
North Padre Island A-42	102(d)	45,130	33,848	1,779
Vermilion 310	102(d)	20,000	7,863	1,678

[FR Doc. 86–4981 Filed 3–6–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86–317–000, et al.]

Electric Rate and Corporate Regulation Filings; York Haven Power Co., et al.

February 28, 1986.

Take notice that the following filings have been made with the Commission:

1. York Haven Power Company

Docket No. ER86–317–000]

Take notice that the York Haven Power Company, Reading, Pennsylvania, on February 24, 1986, tendered for filing a proposed change in its rate schedule for the sale of power to its parent, Metropolitan Edison Company, from FPC licensed Project No. 1888. This change in rates is proposed to be effective for deliveries of power and energy on or after May 1, 1986. the proposed changes would increase revenues from jurisdictional sales and service by $3,478 based on the 12-month period ending April 30, 1986.

York Haven states that under the affected rate schedule, all of the power and energy from Project No. 1888 is sold to Metropolitan Edison on a rate based upon York Haven's cost and expenses in generating and transmitting such power and energy. Under its agreement with Metropolitan Edison, York Haven is entitled to the same return on net investment as was most recently allowed Metropolitan Edison by the Pennsylvania Public Utility Commission. That Commission on October 25, 1985 allowed a rate of return to Metropolitan Edison of 11.03 percent. This filing is submitted to reflect that rate of return. York Haven indicates that its current rate of return is 10.97 percent under its rate schedule. Copies of the filing have been mailed to Metropolitan Edison and the Pennsylvania Public Utility Commission.

Comment date: March 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER86–316–000]

Take notice that, on February 24, 1986, Southern California Edison Company ("Edison") tendered for filing two agreements entitled (1) "Edison-Vernon Palo Verde Nuclear Generating Station ("PVNGS") Firm Transmission Service Agreement" as a rate schedule and (2) "Supplemental Agreement to the Integrated Operations Agrement ("IOA") Between the City of Vernon and the Southern California Edison Company, Dated August 25, 1982, for the Integration in the Palo Verde Nuclear Generating Station" as a supplement to the IOA.

The Supplemental Agreement to the IOA provides for certain specific details relating to the integration of Vernon's PVNGS entitelment as required by the IOA.

Under the terms and conditions of the Firm Transmission Service Agreement, Edison will make available to Vernon transmission service for its entitlements in the capacity and energy from PVNGS to the Point of Delivery at Vernon, California.

The Agreements are proposed to become effective when executed by the Parties and accepted for filing by the Commission and as such, Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Comment date: March 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company

[Docket No. ER86–318–000]

Take notice that Ohio Edison Company (Ohio Edison) on February 24, 1986 tendered for filing proposed changes in its FERC Electric Tariff Schedule No. 150 and Supplements 1 through 5 applicable to sales and service to American Muncipal Power-Ohio (AMP-Ohio). The proposed changes would increase revenues for jurisdictional sales and service as the result of an increase in the transmission charge by $768,389.96 but would decrease those revenues by $19,671.57 based on the twelve months ending December 31, 1986 due to changes in the charges for Regulation Capacity and Regulation Energy.

Ohio Edison proposed an effective date of January 2, 1986 for the decrease in charges for Regulation Capacity and Regulation Energy and October 1, 1985 for the transmission charge increase.

Ohio Edison states that the reason for the proposed decrease for Regulation Capacity and Regulation Energy charges is to conform them with the retail General Service Large Customers tariffs as approved by The Public Utilities Commission of Ohio in the manner provided for and as described in Schedule 150 and its Supplements.

For the increase in transmission charge, Ohio Edison states that it is to reflect the mutual agreement of the parties and to provide a recovery of increased costs of service and to increase the rate of return of its facilities to an acceptable level.

Comment date: March 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER86–320–000]

Take notice that Consumers Power Company ("Consumers Power") on February 24, 1986 tendered for filing Consumers' Supplemental Agreement No. 4 to the Coordianated Operating Agreement with the City of Lansing, Michigan dated as of January 1, 1986.

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Supplemental Agreement No. 4 increases the rate charged for transmission service to 30¢/kW/week and 6¢/kW/day. Supplemental Agreement No. 4 also increases the rate for transfers of Emergency Energy to 2.5 mills/kWh.

The extent and use of transmission service and transfers of Emergency Energy among the parties for the next twelve months is not known at the present time, as such transactions will only be scheduled from time to time as load and capacity conditions on either system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Consumers Power states that copies of the filing were served on the City of Lansing, Michigan and on the Michigan Public Service Commission.

Comment date. March 13, 1986, in accordance with Standard Paragraph E at the end of this document.

5. The Connecticut Light and Power Company

[Docket No. ER86-315-000]

Take notice that on February 24, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Vermont Electric Generation and Transmission Cooperative (VEG&T) dated as of November 1, 1985.

CL&P states that the Purchase Agreement provides for a sale to VEG&T of capacity and energy from four CL&P gas turbine units (the Units), together with related transmission service, starting on November 1, 1985 and terminating thirty days after either party gives written notice of termination. The percentage of capacity and related energy will be determined on a monthly basis by mutual agreement prior to each transaction.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1, 1985. CL&P states that the capacity charge rate for the proposed service is a cost-of-service rate based upon the fixed costs of the units. The monthly transmission charge rate is equal to one-twelfth of the annual average costs of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW/month) and (ii) the number of kilowatts of winter capability which VEG&T's is entitled to receive during such month. The Energy Variable, and Additional Maintenance Charges are based on VEG&T's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by CL&P and WMECO pursuant to purchase agreements with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267), and with the Village of Hyde Park Electric Department (FERC Rate Schedule No. WMECO 215).

CL&P states that a copy of the rate schedules have been mailed or delivered to CL&P, Hartford, Connecticut and to VEG&T, Johnson, Vermont.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: March 13, 1986, in accordance with Standard paragraph E at the end of this notice.

6. The Connecticut Light and Power Company

[Docket No. ER86-319-000]

Take notice that on February 24, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with respect to Various Gas Turbine Units between CL&P and Newport Electric Corporation (Newport) dated as of December 1, 1985.

CL&P states that the Purchase Agreement provides for a sale to Newport of a specified percentage of capacity and energy from CL&P's South Meadow Units Nos. 11, 12, 13, and 14 (the Units) during the period December 1, 1985 through October 31, 1991.

CL&P requests that the Commission permit the rate schedule filed to become effective on December 1, 1985.

CL&P states that the capacity charge rate for the first eleven months for the proposed service is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The capacity charge for the remainder of the term is determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which Newport is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charges are based on Newport's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as services by CL&P and WMECO pursuant to purchase agreements with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267), and with the Village of Hyde Park Electric Department (FERC Rate Schedule No. WMECO 215).

CL&P states that a copy of the rate schedules have been mailed or delivered to CL&P, Hartford, Connecticut and to Newport, Middletown, RI.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: March 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4984 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9134-000, 8627-000]

D & D Stauffer, Inc., City of Ithaca; Availability of Environmental Assessment and Finding of No Significant Impact

February 27, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
9134-000	Dry Creek Hydroelectric	ID	Dry and Wet Creeks	Howe	D&D Stauffer, Inc.
8627-000	Van Natta	NY	Six Mile Creek	Ithaca	City of Ithaca.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4971 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4349-003, 2548-002]

Long Lake Energy Corp., and Georgia-Pacific Corp.; Availability of Environmental Assessment and Finding of No Significant Impact

February 27, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
4349-003	Moose River	NY	Moose River	Lyonsdale	Long Lake Energy Corp.
2548-002	Lyons Falls	NY	Black River	Lyonsdale & West Turin.	Georgia-Pacific Corp.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4982 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9648-000, et al.]

Hydroelectric Applications; Westinghouse Electric Corp., et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Minor License.

b. Project No.: 9648-000.

c. Date Filed: November 22, 1985.

d. Applicant: Westinghouse Electric Corporation and the Town of Springfield, Vermont.

e. Name of Project: Fellows Dam.

f. Location: On the Black River in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: John F. Andreas, Plant Manager, Westinghouse Electric Corporation, 169 Tapley Street, Springfield, MA 01104, (413) 734-3197.

i. Comment Date: May 5, 1986.

j. Description of Project: The Applicants propose to refurbish the existing project which consists of: (1) The 10-foot-high and 200-foot-long concrete Fellows Dam with a crest elevation of 435 feet mean sea level owned by the town of Springfield; (2) an impoundment with a surface area of 21 acres; (3) an intake structure; (4) a 4-foot by 8-foot reinforced concrete open flume, 30-feet long; (5) a powerhouse with a turbine generator unit with an installed capacity of 150 kW; (6) a 4.16-kV and 100-foot-long transmission line; and (7) other appurtenances. Applicants estimate an average annual generation of 700,000 kWh.

k. Purpose of Project: Project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2a. Type of Application: Preliminary Permit.

b. Project No.: 9810-000.

c. Date Filed: December 30, 1985.

d. Applicant: CON-REL Corporation.

e. Name of Project: Gunpowder No. 1.

f. Location: Gunpowder Creek, Caldwell County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Charles B. Mierek, CON-REL Corporation, Route 2, Box 302A, One Clifton-Glendale Road, Spartanburg, SC 29302, (803) 579-4405.

i. Comment Date: May 1, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam structure, 56 feet high and 271 feet long; (2) an existing reservoir with a surface area of approximately 150 acres and a gross storage capacity of about 1,200 acre-feet at normal pool elevation; (3) an existing penstock, 42" in diameter and approximately 300 feet long; (4) a proposed powerhouse containing two generating units with a total capacity of 500 kW; (5) a proposed, 1000-foot-long transmission line to interconnect with the existing power grid; and (6) appurtenant facilities. The estimated average annual generation is 1.6 GWh.

k. Purpose of Project: The project power would be sold to Duke Power Company or to Carolina Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued,

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does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $45,000.

3a. Type of Application: Preliminary Permit.

b. Project No.: 9637–000.

c. Date Filed: November 22, 1985.

d. Applicant: Johnson/Iowa Associates.

e. Name of Project: Coralville Dam.

f. Location: Iowa River, Johnson County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan Walker, Great Western Power & Light Inc., 484 East 300 North, Manti, UT 84642, (801) 835–0202

i. Comment Date: May 1, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Coralville Dam and would consist of: (1) A proposed penstock, approximately 450 feet long and 6 feet in diameter; (2) a proposed powerhouse located on the east bank of the river below the dam, and containing a single generating unit with a capacity of 6.3 MW; (3) a proposed 250-foot-long, 12.5 kV transmission line to interconnect with the existing power grid; and (4) appurtenant facilities. The estimated average annual generation is 27.5 GWh.

k. Purpose of Project: The Applicant intends to sell the project power to a local utility or power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $35,000.

4a. Type of Application: Preliminary Permit.

b. Project No: 9620–000.

c. Date Filed: December 31, 1985.

d. Applicant: Cross Flow Hydroelectric, Inc.

e. Name of Project: Cabazon Hydroelectric Power Project.

f. Location: On domestic water supply conduit of Cabazon County Water District in Riverside County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Neal F. Dunlevy, P.E., Stetson-Dale, Architects & Engineers, 185 Genesee Street, Utica, NY 13501.

i. Comment Date: May 5, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing upper intake structure collecting water from springs located at elevation 3,500 feet above msl; (2) 1 15-inch-diameter, 17,000-foot-long water supply pipeline; (3) an upper powerhouse containing a single 560 kW generating unit; (4) an existing lower intake structure at located elevation 2,580 feet msl; (5) an 18-inch-diameter, 10,000-foot-long water supply pipeline; (6) a lower powerhouse containing a single 375 kW generating unit; and (7) a 14,000-foot-long 13.2-kV transmission line interconnecting the project to Southern California Edison Company's (SEC) existing transmission line. The estimated 1.89 GWh generated annually would be sold to SCE.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $9,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

5a. Type of Applicant: Preliminary Permit.

b. Project No: 9478–000.

c. Date Filed: September 25, 1985.

d. Application: Pan Pacific Hydro, Inc.

e. Name of Project: Weber Flat #2.

f. Location On Elk Gulch, a tributary to Stuart Fork, near Weaverville, within the Trinity National Forest, in Trinity County, California (In Sections 16, 21, and 28 of T35N, R9W, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Tompkins, Pan Pacific Hydro, Inc., 215 Main Street, P.O. Box 2142, Weaverville, CA 96093, (916) 623–2914.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An intake structure located at a natural waterfall on Elk Gulch at elevation 4,200 feet msl; (2) a 16-inch-diameter, 12,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 400 kW and operating under a head of 900 feet; and (4) a 12-kV, 3,200-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The project's estimated average annual generation of 1.5 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $20,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 9737–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower Inc.

e. Name of Project: Owego Hydropower Project.

f. Location: On Owego Creek near Owego, Tioga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawerence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547.

Mr. Neal F. Dunlevy, Stetson Dale, Engineering PC, 185 Genesse St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed project would consist of: (1) Rebuilding an existing breached concrete dam approximatly 120 feet long and 10 feet high; (2) an existing 6-acre reservoir with 30 acre-feet of storage at an elevation of 810 msl (breakaway wooden flashboards 3 feet high would be added to the dam); (3) an existing intake channel approximately 200 feet long; (4) rebuilding an existing concrete powerhouse approximately 60 feet by 15 feet which would house a 500 kW bulb turbine-generator; (5) an existing 60 foot wide by 2,000 foot long tailrace channel which would require cleaning and dredging; (6) a new 13.2 kV transmission line approximately 300 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 2.2 GWh. The project energy would be sold to New York State Electric and Gas Company. The dam is owned by Cindy Rudin, Owego, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. *Proposed Scope of Studies under Permit*—A preliminary permit, is issued does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $42,000.

7a. Type of Application: Preliminary Permit.

b. Project No.: 9677–000.

c. Date Filed: December 9, 1985.

d. Applicant: Georgia J. Ure.

e. Name of Project: Locustville Pond.

f. Location: Brushy Brook, Washington County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Georgia J. Ure, Prospect Square, P.O. Box 123, Wyoming, R.I. 02898, (401) 539–2160.

i. Comment Date: April 28, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing earthfill dam 18 feet high and 320 feet long; (2) an existing impoundment of 128 acre-feet at a normal maximum surface elevation of 95 feet mean sea level; (3) an existing sluiceway 124 feet long and 8 feet wide, (4) a proposed turbine/generator of 50 kW capacity in a proposed weatherproof enclosure; (5) a proposed 45-foot-long 480 volt transmission line; and (6) appurtenant facilities.

The estimated annual energy production is 186,000 kWh at a net hydraulic head of 16 feet. Project power would be sold to Narragansett Electric Company. The existing facilities are owned by the applicant.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. *Proposed Scope under Permit:*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $7,000.

8a. Type of Application: Minor License.

b. Project No.: 7352–002.

c. Date Filed: July 2, 1985.

d. Applicant: Sven Elov Ericson.

e. Name of Project: Kings Falls.

f. Location: On the Deer River in Denmark Township, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Sven Elov Ericson, 6 Harrison Rd. Willowdale, Ontario, M2L IV2, Canada, 416–361–4668.

i. Comment Date: April 25, 1986.

j. Description of Project: The project would consist of the following proposed facilities: (1) A concrete weir or dam, 100 feet long and a maximum of 6 feet high (The crest elevation of the dam will be 891 feet msl, with the addition of 3-foot-high flashboards, the effective crest will be 894 feet msl); (2) a 2.5-acre reservoir with a gross storage capacity of 10 acre-feet; (3) an intake channel 450 feet long and 12 feet wide; (4) a 7-foot-diameter penstock 120 feet long; (5) a concrete masonry powerhouse 40 feet in lenght and 20 feet in width, that will house a turbine-generator unit with a total installed capacity of 1,500 kW; (6) a 70-foot-long and 20-foot-wide tailrace channel; (7) a 4,000-foot-long 23-kV transmission line that will connect to the existing line of Niagara Mohawk Power Corporation; (8) a 12-foot-wide 3,000-foot-long access road; and (9) appurtenant facilities. The Applicant estimates that the average annual energy production would be approximately 4.0 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Niagara Mohawk Power Corporation.

l. This notice consists of the following standard paragraphs: A3, A9, B, C and D1.

9a. Type of Application: Preliminary Permit.

b. Project No.: 9538–000.

c. Date Filed: October 9, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Mill Point.

f. Location: Schoharie Creek, Montgomery County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03035, (603) 934–4202 or (514) 273–8891.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed project would consist of (1) An existing stone masonry dam 380 feet long, 20 feet high, with a breached section 140 feet long to be repaired; (2) an existing intake structure and power canal, 4,100 feet long, to be repaired; (3) a proposed reservoir of surface area equal to 113 acres and storage volume of 712 acre-feet at a normal maximum surface elevation of 410 feet mean sea level; (4) an existing powerhouse to be repaired and to contain two proposed turbine/generators with a total capacity of 3.58 MW; (5) an existing tailrace to be cleared; (6) a proposed 13.2 kV, 2,100-foot-long transmission line; and (7) appurtenant facilities. The estimated annual energy production is 10,146,000 KWh. The net hydraulic head is 36 feet. Project power would be sold to Niagara Mohawk Power Corporation. The existing facilities are owned by George Pilicki and Stanley Korona Jr.

k. This notice consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. *Proposed Scope of Studies under Permit.*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $75,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9731–000.

c. Date Filed: December 26, 1985.

d. Applicant: Summit Hydropower.

e. Name of Project: Willimantic No. 3.

f. Location: On the Willimantic River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Duncan Broatch, Summit Hydropower, P.O. Box 122, Putnam, CT 06260, (203) 928–2002.

i. Comment Date: April 28, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 10-foot-high and 100-foot-long granite block gravity dam; (2) a small impoundment with a surface

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elevation of 227 feet mean sea level; (3) a new intake structure and powerhouse at the north side of the dam with a 390-kW turbine-generator unit; (4) a short tailrace; (5) a new 400-foot-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 1,755,000 kWh. Existing facilities and water rights are owned by the Boland Oil Company and the Northeast Utilities Company.

k. Purpose of Project: Project energy would be sold to the Northeast Utilities Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.

a. Type of Application: Minor License.

b. Project No.: 9650-000.

c. Date Filed: November 22, 1985.

d. Applicant: Westinghouse Electric Corporation and Factory Falls Associates.

e. Name of Project: Gilman Dam.

f. Location: On the Black River in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John F. Andreas, Plant Manager, Westinghouse Electric Corporation, 160 Tapley Street, Springfield, MA 01104, (413) 734–3197.

i. Comment Date: April 28, 1986.

j. Description of Project: The Applicants propose to refurbish the existing project which consists of: (1) The 7-foot-high and 190-foot-long concrete Gilman Dam with a crest elevation of 421 feet mean sea level owned by Factor Falls Associates; (2) a small impoundment with a surface area of 1 acre; (3) an intake structure; (4) a 4-foot-diameter and 175-foot-long steel penstock; (5) a powerhouse with one 125-kV unit; (6) a 4.16-kW and 50-foot-long transmission line; and (7) other appurtenances. Applicants estimate an average annual generation of 660,000 kWh.

k. Purpose of Project: Project energy would be sold to local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: Minor License.

b. Project No: 9649-000.

c. Date Filed: November 22, 1985.

d. Applicant: Westinghouse Electric Corporation and Lovejoy Tool Company, Inc.

e. Name of Project: Lovejoy Dam.

f. Location: On the Black River in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John F. Andreas, Plant Manager, Westinghouse Electric Corporation, 160 Tapley Street, Springfield, MA 01104, (413) 734–3197.

i. Comment Date: April 28, 1986.

j. Description of Project: The Applicants propose to refurbish the existing project that consists of: (1) The 15-foot-high and 150-foot-long concrete Lovejoy Dam owned by the Lovejoy Tool Company, Inc.; (2) one-foot-high flashboards; (3) an impoundment with a surface area of 3.6 acres; (4) an intake structure; (5) a 4-foot by 6-foot reinforced concrete penstock, 5 feet long; (6) a powerhouse with 2 turbine-generator units with a total installed capacity of 150 kW; (7) a 4.16-kV and 100-foot-long transmission line; and (8) other appurtenances. Applicants estimate an average annual generation of 500,000 kWh.

k. Purpose of Project: Project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

13a. Type of Application: Preliminary Permit.

b. Project No: 9692-000.

c. Date Filed: December 18, 1985.

d. Applicant: Pacific Sunshine Power, Inc.

e. Name of Project: White River—Mud Mountain Dam.

f. Location: On the White River at the U.S. Army Corps of Engineers Mud Mountain Dam in Sec. 9, 16, 17, 8, 7, 6 T.19N. R.7E. and Sec. 1 T.19N. R.6E. near Enumclaw and Buckley in King and Pierce Counties, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael D. Kuntz, 4100 Seafirst Fifth Avenue Plaza, 800 5th Avenue, Seattle, WA 98104, (206) 622–1818.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed project would involve constructing a powerplant at the existing Mud Mountain Dam. The project would consist of: (1) Three existing 2,000-foot-long, 8½-foot-diameter penstocks; (2) a proposed powerhouse containing one generating unit with a rated capacity of 11,000 kW; and (3) a 2½-mile-long transmission line. Applicant estimates the average annual energy production to be of 37 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $250,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14a. Type of Application: Major License.

b. Project No.: 8296-001.

c. Date Filed: June 7, 1985.

d. Applicant: Malacha Power Project, Inc.

e. Name of Project: Muck Valley Project.

f. Location: On Pit River, in Lassen County, California; partially within U.S Bureau of Land Management lands.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas J. Vestal, President, Malacha Power Project, Inc., P.O. Box 250, Fall River Mills, CA 96028, (916) 336–5528.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4.5-foot-high, 300-foot-long diversion dam located at elevation 4,064 feet m.s.l. in the NE¼ of the SW¼ of Section 27, Township 37 North, Range 7 East of the Mount Diablo Meridian; (2) a 144-foot-long, 29.5-foot-high intake structure; (3) a 12-foot-diameter, 22,200-foot-long lined diversion tunnel; (4) a 19-foot-diameter, 4,000-foot-long low-pressure conduit; (5) an 8-foot-diameter, 8,000-foot-long penstock; (6) a powerhouse located in the SW¼of the NW¼ of Section 11, Township 36 North, Range 6 East, containing a single 29,900 kW generating unit operating under a head of 664.5 feet; (7) a substation, adjacent to the powerhouse, containing a 12.47/115-kV power transformer; (8) a 16-mile-long, 115-kV transmission line interconnecting the project to the Pacific Gas and Electric Company's (PG&E) Pit No. 1 Powerhouse; (9) a 1-mile-long access road; and (10) appurtenant facilities.

The estimated 97 GWh generated annually by the project would be sold to PG&E. The estimated cost of

constructing the project is $36,306,480. No recreational facilities are proposed. The license application was filed pursuant to a 24-month preliminary permit issued to the Applicant on March 12, 1985, 30 FERC ¶ 62,271 (1985).

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

15a. Type of Application: Minor License.

b. Project No.: 8391–001.

c. Date Filed: November 27, 1985.

d. Applicant: Prodek, Inc.

e. Name of Project: Silver Jack Dam.

f. Location: On the Cimarron River, near Montrose, in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, Prodek, Inc., 3314 E. 51st St., Suite B, Tulsa, OK 74135, (918) 749–7749.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed run-of-the-river project would utilize the existing U.S. Bureau of Reclamation's Silver Jack Dam and would consist of: (1) A 24-inch-diameter, 160-foot-long penstock which would be connected to the existing 38-inch-diameter outlet pipe located inside the outlet tunnel, upstream from two existing high-pressure gates; (2) a 16 feet by 17 feet concrete powerhouse located adjacent to the existing low level outlet stilling basin, containing a single Francis turbine-generator unit with a rated capacity of 215 kW, and producing an estimated average annual generation of 1.19 GWh; (3) a 30-inch-diameter, 60-foot-long concrete pipe tailrace discharging water to the Cimarron River via the existing stilling basin; and, (4) a 7.2–kV, 190-foot-long underground transmission line interconnecting the project to an existing Delta-Montrose Electric Association, Inc. line. Applicant estimates project construction cost at $325,000 and intends to sell project power to the Colordo-Ute Electric Association, Inc.

The proposed project would utilize reservoir releases as ordered by the USBR and the Bostwick Park Water Conservancy District.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and Dl.

16a. Type of Application: Preliminary Permit.

b. Project No.: 9711–000.

c. Date Filed: December 23, 1985.

d. Applicant: Inghams Corporation.

e. Name of Project: Inghams Dam.

f. Location: East Canada Creek in Herkimer and Fulton Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. C. William Carter, Inghams Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986–0440.

i. Comment Date: April 17, 1986.

j. Description of Project: The Applicant proposes to develop the presently unutilized capacity at the Inghams Dam owned by the Niagara Mohawk Power Corporation for the existing unlicensed East Canada Creek Project No. 2648. The proposed project would consist of Option #1 or Option #2.

Option #1 would consist of: (1) A concrete gravity dam consisting of: (a) a 125-foot-high, 400-foot-long section, and (b) a 28-foot-high, 205-foot-long section; (2) a reservoir with a surface area of 135 acres, a storage capacity of 3,500 acre-feet, and a water surface elevation of 661.8 feet m.s.l. with; (3) 4.5-foot-high wood flashboards; (4) a new concrete intake structure; (5) a new 12-foot-diameter steel penstock 520 feet long; (6) a new 30-foot-diameter steel surge tank; (7) a new powerhouse containing one generating unit with a capacity of 9,600 kW; (8) a new 80-foot-wide, 700-foot-long tailrace; (9) a new transmission line, 400 feet long; (10) a new 80-foot-long bridge; and (11) appurtenant facilities.

Option #2 would consist of the same as Option #1 except that: (1) the penstock would be 1,000 feet long; (2) the tailrace length would be reduced to 150 feet; and (3) a new 800-foot-long access road.

The Applicant estimates the average annual generation would be 10,000,000 kWh. The existing dam is owned by Niagara Mohawk Power Corporation.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard Paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $160,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9747–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Spruce Creek Camp Power Project.

f. Location: On Spruce Creek near Salisbury, Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence R. Taft P.E., 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547.

Mr. Neal F. Dunlevy, P.E., Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed would consist of: (1) Reconstruction of an existing timber crib dam with concrete and stone-masonry abutments approximately 85 feet long; (2) a proposed one-acre reservoir with four acre-feet of storage at an elevation of 1,084 MSL; (3) reconstruction of the existing concrete power flume (10 feet wide and 15 feet long) containing a proposed submerged 125-kW generator; (4) an existing tailrace which would require dredging; (5) a proposed 13.2-kV transmission line 1,500 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 600 MWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam owner is Robert Geffken, Melville, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $7,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 9770–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Upper Stottville.

f. Location: On the Claverack Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

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h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 16-foot-high and 140-foot-long concrete dam with a spillway crest elevation of 82 feet msl; (2) an existing reservoir of negligible size and storage capacity at elevation 82 feet msl; (3) a new gated intake structure and flume approximately 18 feet long; (4) a proposed powerhouse to contain one turbine/generator for an installed capacity of 250 kW; (5) a proposed tailrace; (6) a new 4.8-kV transmission line approximately 100 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 1.1 million kWh operating under a hydraulic head of 12 feet. The existing facilities are owned by John Fiorillo and East Coast Pulp Sales, Inc.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk, Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $36,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 9778–000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: North Hoosick.

f. Location: On the Walloomsac River in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high and 160-foot-long concrete dam with a spillway crest elevation of 422 feet msl; (2) an existing 5.8-acre reservoir with a storage capacity of 35 acre-feet at 422 feet msl; (3) a proposed 20-foot-wide and 15-foot-long gated intake structure; (4) a proposed powerhouse to contain one turbine/generator with an installed capacity of 350 kW; (5) a new 13.8-kV transmission line approximately 1700 feet long; (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1.5 million kWh operating under a hydraulic head of 16.5 feet. The existing facilities are owned by the Flomatic Corporation.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $48,000.

a. Type of Application: Preliminary Permit.

b. Project No.: 9816–000.

c. Date Filed: December 31, 1985.

d. Applicant: Cash Flow Systems.

e. Name of Project: Port Henry.

f. Location: Mill Brook in Essex County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence R. Taft, Cash Flow Systems, P.O. Box 665, Troy, NY 12181, (518) 272–3431.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 30-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 12.8 acres, a storage capacity of 130-acre-feet, and a normal water surface elevation of 475 feet m.s.l.; (3) a new concrete intake structure; (4) a new 46-inch-diameter, 5,000-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of of 1,200 kW; (6) a new 8-foot-wide, 20-foot-long earth tailrace; (7) a new transmission line, 200 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 5,000,000 kWh. The existing dam is owned by Niagara Mohawk Power Corporation.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $40,000.

a. Type of Application: Preliminary Permit.

b. Project No.: 9843–000.

c. Date Filed: December 30, 1985.

d. Applicant: Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 and Prodek, Inc.

e. Name of Project: Medina Dam Water Power Project.

f. Location: On the Medina River in Medina and Bandera Counties, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, Vice President, Prodek, Inc., 3314 E. 51st Street, Suite B, Tulsa, OK 74135, (918) 749–7749.

i. Comment Date: April 28, 1986.

j. Description of Project: The proposed project would consist of: (1) the existing Medina Dam approximately 1,580 feet long and 164 feet high; (2) an existing 5,573-acre reservoir having a storage capacity of 254,000 acre-feet at an elevation of 1,072 feet (Medina Dam Datum); (3) an existing spillway 880 feet long; (4) three existing steel pipe irrigation conduits 60 inches in diameter with lift type gates; (5) a new penstock approximately 220 feet long and 54 inches in diameter leading to; (6) a new powerhouse containing six turbine/generator units having a total installed capacity of 1500 kW; (7) a new 12.47-kV transmission line approximately 500 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy would be 4,500,000 kWh. The Applicant proposes to sell all project energy to the Lower Colorado River Authority.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would range from $60,000 to $90,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

22a. Type of Application: Preliminary Permit.

b. Project No: 3493–007.

c. Date Filed: August 16, 1984.

d. Applicant: The Town of Summersville.

e. Name of Project: Summersville.

f. Location: At the U.S. Army Corps of Engineers' Summersville Dam, Gauley River in Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Carroll T. Lay, 717 Main Street, Summersville, West Virginia 26651.

i. Comment Date: April 25, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Summersville Dam and Lake and would consist of: (1) 3 new 11-foot-diameter and 200-foot-long steel penstocks connected to the existing outlet works; (2) a new powerhouse with 3 turbine-generator units with a total installed capacity of 70,000 kW; (3) a new 138-kV and 8.5-mile-long transmission line; and (4) other appurtenances. Applicant estimates an average annual generation of 188,000,000 kWh.

k. Purpose of Project: Project energy would be sold to the Monogahela Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. Proposed Scope of Studies under Permit: A prelimianry permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $150,000.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later tha 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to inervene must be received on or before the specified date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application," "Protest" or "Motion To Intervene", as applicable and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Keneneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB,

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at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 4, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4985 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Companies; Texas American Bank/Fort Worth, N.A., Trustee of the Myron A. Smith Estate, Acct. 4312, (Myron A. Smith), et al.; Applications for "Small Producer" Certificates [1]

February 28, 1986.

Take notice that each of the applicants listed herein has filed an Application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before March 17, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-156	[1]12-13-85	Texas American Bank/Fort Worth, N.A., Trustee of the Myron A. Smith Estate Acct. 4312, (Myron A. Smith), P.O. Box 2605, Fort Worth, TX 76113.
CS70-425	[2]1-27-86	William H. Martin, as Trustee of the Daltha Martin Revocable Trust (Daltha Martin), 1204 First National Bank Building, Midland, TX 79701.
CS86-29-000	2-3-86	Bill J. Mullins, dba Cardinal Oil Company, P.O. Box 6184, Lubbock, TX 79418.
CS86-30-000	2-3-86	Enex Oil and Gas Income Program I, Series 7, One Kingwood Place, Suite 205, Kingwood, TX 77339.
CS86-34-000	2-10-86	McKenzie Management, Inc., 7318 South Yale, Tulsa, OK 74136.
CS86-35-000	2-10-86	Gale/Hansen, 711 Polk Street, Suite 721, Houston, TX 77002.
CS86-36-000	2-10-86	Ronnie H. Westbrook, 2600 Haynes, Midland, TX 79705.

[1] Letter dated February 10, 1986, reflecting change in name of certificate holder.

[2] By letter dated January 24, 1986, as supplemented by letter dated January 31, 1986, Applicant requests that the small producer certificate issued to Daltha Martin be redesignated under the name of William H. Martin as Trustee of the Daltha Martin Revocable Trust.

[FR Doc. 86-4963 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: March 27, 1986 from 9:00 a.m. to 6:00 p.m.; March 28, 1986 from 9:00 a.m. to 12:00 noon.

Place: Department of Energy, 1000 Independence Avenue SW., Room 1E-245, Washington, DC 20585.

Contact: John R. Erskine, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545, (301) 353-3613.

Purpose of the Committee

To advise the Department of Energy and the National Science Foundation on the scientific priorties within the field of basic nuclear science research.

Tentative Agenda

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- Briefings and discussions of FY 1986 and FY 1987 budgets for nuclear physics research and programmatic trends.
- Review status and activities of existing subcommittees, and discuss formation of new subcommittees.
- Brief presentations of proposals for upgrades or construction of new facilities at Brookhaven National Laboratory, University of Illinois, Lawrence Berkeley Laboratory, Los Alamos National Laboratory (physics presentation only), Massachusetts Institute of Technology, and Oak Ridge National Laboratory.
- Public comment.

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- Complete presentation of facility proposals, if necessary.
- Discussion of procedure for full review of the facility proposals.
- Public comment.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact John Erskine at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-5069 Filed 3-6-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2980-2]

Environmental Impact Statements; Availability Comments

Availability of EPA comments prepared February 17, 1986 through February 21, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 383-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EIS's

ERP No. D-BLM-J01006-CO, Rating EO2, James Creek Coal Preference Right Lease Application, Development and Leasing, CO. Summary: EPA identified significant environmental impacts related to water quality, wetlands and riparian areas, fisheries, and ground water, including potential violation of water quality standards, arising from the proposed coal mining activities.

ERP No. D-BLM-J70005-WY, Rating EC2, Lander Resource Area, Resource Mgmt. Plan, WY. Summary EPA is concerned that protection and improvement of air and water related values be more clearly described, and recommended several corrective actions. These include a better description of objectives consistent with water quality standards (WQS); further development of mineral activity constraints for riparian-wetland areas and WQS; more definitive standards for reparian-wetland restoration and improvement; requirements for quantifying and reporting sulfur dioxide emissions from oil and gas well flaring; and inclusion of a more specific comprehensive resource monitoring strategy.

ERP No. D-BPA-L04500-00, Rating EC2, Direct Service Industry Options on Reducing Load Fluctuations and Revenue Uncertainty, WA. Summary: EPA recommends that all the environmental tradeoffs among the options and the implementation steps which would lead to a selected option be concisely described in the final EIS. Additionally, EPA is concerned that all beneficial and adverse economic impacts of the proposed rate revisions be fully evaluated in the final EIS.

ERP No. D-COE-C36059-00, Rating EC2, Port Jervis Ice Related Flood Control Plan, Upper Delaware River Basin, NJ, NY, and PA. Summary: EPA is concerned that the proposed project may cause adverse impacts to the aquatic ecosystems and water quality. Accordingly, EPA requests that the mitigation plan be provided to EPA for review and comment prior to issuance of the final EIS. An agreed upon mitigation and compensation plan should then be incorporated into the final EIS.

ERP No. D-COE-E36157-TN, Rating LO, Mill Creek Basin Flood Damage Reduction Plan, Mill and Sevenmile Creeks Dry Dam Construction and Channel Widening, TN. Summary: EPA has reviewed the draft EIS and from the information provided has no objections to the project.

ERP No. D-MMS-K02003-CA, Rating EC2, San Miguel Project, Northern Santa Maria Basin Area Study, Lease OCS-P 0409, Outer Continental Shelf (OCS) Development Plan, Approval and Permits, CA. Summary: EPA is concerned that adequate mitigation measures to offset adverse air quality impacts, and impacts associated with dredge or fill activities, be adopted. EPA also requests more information on the predicted effects of discharges upon marine environment.

ERP No. DS-SFW-A86084-00, Rating EO1, Migratory Bird Hunting in the US, Use of Lead Shotgun Pellets, Regulations, US. Summary: EPA recommends that Alternative V, a four-year phase out of lead shot in migratory waterfowl flyways, be selected as the Preferred Alternative. The Preferred Alternative selected by the US Fish and Wildlife Service prohibits the use of lead shot only in areas where lead poisoning has been identified as a threat to waterfowl or Bald Eagles, but does not adequately protect these biological resources, and offers no economic advantage over Alternative V. The final supplement EIS should also address more completely the impact of the proposed action on Peregrine Falcons and the economic impact of new developments in non-toxic shot.

ERP No. D-UPS-C81011-NY, Rating LO, Manhattan General Mail Facility Development, NY. Summary: EPA anticipates that no significant environmental impacts would result from implementation of this project. However, EPA requests that additional

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at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 89-29, and other applicable statutes. No formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 405 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 4, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-4985 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

Natural Gas Companies; Texas American Bank/Fort Worth, N.A., Trustee of the Myron A. Smith Estate, Acct. 4312, (Myron A. Smith), et al.; Applications for "Small Producer" Certificates [1]

February 28, 1986.

Take notice that each of the applicants listed herein has filed an Application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before March 17, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-156	[1]2-13-86	Texas American Bank/Fort Worth, N.A., Trustee of the Myron A. Smith Estate Acct. 4312, (Myron A. Smith), P.O. Box 2605, Fort Worth, TX 76113.
CS79-425	[2]1-27-86	William H. Martin, as Trustee of the Deltha Martin Revocable Trust (Deltha Martin), 1094 First National Bank Building, Midland, TX 79701.
CS86-29-000	2-3-86	Bill J. Mullins, dba Cardinal Oil Company, P.O. Box 6794, Lubbock, TX 79413.
CS86-30-000	2-3-86	Enex Oil and Gas Income Program I, Series 7, One Kingwood Place, Suite 205, Kingwood, TX 77339.
CS86-34-000	2-10-86	McKenzie Management, Inc., 7318 South Yale, Tulsa, OK 74136.
CS86-35-000	2-10-86	Gile/Hanson, 711 Polk Street, Suite 721, Houston, TX 77002.
CS86-36-000	2-10-86	Ronnie H. Westbrook, 2009 Haynes, Midland, TX 79705.

[1] Letter dated February 10, 1986, reflecting change in name of certificate holder.

[2] By letter dated January 24, 1986, as supplemented by letter dated January 31, 1986, Applicant requests that the small producer certificate issued to Deltha Martin be redesignated under the name of William H. Martin as Trustee of the Deltha Martin Revocable Trust.

[FR Doc. 86-4963 Filed 3-6-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: March 27, 1986 from 9:00 a.m. to 6:00 p.m.; March 28, 1986 from 9:00 a.m. to 12:00 noon.

Place: Department of Energy, 1000 Independence Avenue SW., Room 1E-245, Washington, DC 20585.

Contact: John R. Erskine, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545, (301) 353-3613.

Purpose of the Committee

To advise the Department of Energy and the National Science Foundation on the scientific priorties within the field of basic nuclear science research.

Tentative Agenda

March 27

- Briefings and discussions of FY 1986 and FY 1987 budgets for nuclear physics research and programmatic trends.
- Review status and activities of existing subcommittees, and discuss formation of new subcommittees.
- Brief presentations of proposals for upgrades or construction of new facilities at Brookhaven National Laboratory, University of Illinois, Lawrence Berkeley Laboratory, Los Alamos National Laboratory (physics presentation only), Massachusetts Institute of Technology, and Oak Ridge National Laboratory.
- Public comment.

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- Complete presentation of facility proposals, if necessary.
- Discussion of procedure for full review of the facility proposals.
- Public comment.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact John Erskine at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-5069 Filed 3-6-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2980-2]

Environmental Impact Statements; Availability Comments

Availability of EPA comments prepared February 17, 1986 through February 21, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 383-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EIS's

ERP No. D-BLM-J01006-CO, Rating EO2, James Creek Coal Preference Right Lease Application, Development and Leasing, CO. Summary: EPA identified significant environmental impacts related to water quality, wetlands and riparian areas, fisheries, and ground water, including potential violation of water quality standards, arising from the proposed coal mining activities.

ERP No. D-BLM-J70005-WY, Rating EC2, Lander Resource Area, Resource Mgmt. Plan, WY. Summary EPA is concerned that protection and improvement of air and water related values be more clearly described, and recommended several corrective actions. These include a better description of objectives consistent with water quality standards (WQS); further development of mineral activity constraints for riparian-wetland areas and WQS; more definitive standards for reparian-wetland restoration and improvement; requirements for quantifying and reporting sulfur dioxide emissions from oil and gas well flaring; and inclusion of a more specific comprehensive resource monitoring strategy.

ERP No. D-BPA-L04500-00, Rating EC2, Direct Service Industry Options on Reducing Load Fluctuations and Revenue Uncertainty, WA. Summary: EPA recommends that all the environmental tradeoffs among the options and the implementation steps which would lead to a selected option be concisely described in the final EIS. Additionally, EPA is concerned that all beneficial and adverse economic impacts of the proposed rate revisions be fully evaluated in the final EIS.

ERP No. D-COE-C36059-00, Rating EC2, Port Jervis Ice Related Flood Control Plan, Upper Delaware River Basin, NJ, NY, and PA. Summary: EPA is concerned that the proposed project may cause adverse impacts to the aquatic ecosystems and water quality. Accordingly, EPA requests that the mitigation plan be provided to EPA for review and comment prior to issuance of the final EIS. An agreed upon mitigation and compensation plan should then be incorporated into the final EIS.

ERP No. D-COE-E36157-TN, Rating LO, Mill Creek Basin Flood Damage Reduction Plan, Mill and Sevenmile Creeks Dry Dam Construction and Channel Widening, TN. Summary: EPA has reviewed the draft EIS and from the information provided has no objections to the project.

ERP No. D-MMS-K02003-CA, Rating EC2, San Miguel Project, Northern Santa Maria Basin Area Study, Lease OCS-P 0409, Outer Continental Shelf (OCS) Development Plan, Approval and Permits, CA. Summary: EPA is concerned that adequate mitigation measures to offset adverse air quality impacts, and impacts associated with dredge or fill activities, be adopted. EPA also requests more information on the predicted effects of discharges upon marine environment.

ERP No. DS-SFW-A86084-00, Rating EO1, Migratory Bird Hunting in the US, Use of Lead Shotgun Pellets, Regulations, US. Summary: EPA recommends that Alternative V, a four-year phase out of lead shot in migratory waterfowl flyways, be selected as the Preferred Alternative. The Preferred Alternative selected by the US Fish and Wildlife Service prohibits the use of lead shot only in areas where lead poisoning has been identified as a threat to waterfowl or Bald Eagles, but does not adequately protect these biological resources, and offers no economic advantage over Alternative V. The final supplement EIS should also address more completely the impact of the proposed action on Peregrine Falcons and the economic impact of new developments in non-toxic shot.

ERP No. D-UPS-C81011-NY, Rating LO, Manhattan General Mail Facility Development, NY. Summary: EPA anticipates that no significant environmental impacts would result from implementation of this project. However, EPA requests that additional

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information on air quality impacts be provided in the final EIS.

Final EIS's

ERP No. FA-COE-K36014-CA, Upper Santa Ana River Main Stem and Santiago Creek Flood Control Project, Mentone Dam Upstream Flood Storage Alternative, CA. Summary: The final EIS included analysis which adequately addessed EPA's prior concerns. EPA has no objections to the project.

Amended Notice

The following review was completed during the week of January 20, 1986 through January 24, 1986 and should have appeared in the Federal Register Notice published on February 7, 1986.

ERP No. DS-FHW-F40207-MI, Rating LO, MI-59 Reconstruction, Mound Rd. to I-94, New One-Pair and Boulevard Alternate Alignment, Right-of-Way Acquisition, 404 Permit, MI. Summary: EPA's review concluded that air quality, noise, water quality, and wetland impacts were adequately addressed. EPA has no objection to the project.

Dated: March 3, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-5021 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2980]

Environmental Impact Statements; Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 24, 1986 Through February 28, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860067, Draft, AFS, MT, ND, SD, Custer National Forest, Noxious Weed Treatment Program, Due: April 21, 1986, Contact: Susan Zike (406) 657-6361.

EIS No. 860068, DSuppl, COE, MN, Upper Mississippi River Lower Pool 5 Channel Maintenance and Weaver Bottoms Rehabilitation Plan, Dredged Material Maintenance, Wabasha County, Due: April 21, 1986, Contact: Robert Whiting (612) 725-5934.

EIS No. 860069, Final, COE, FL, Occidental Wetlands Phosphate Mining Operations, Dredge and Fill Permit, Hamilton County, Due: April 7, 1986, Contact: Dan Malanchuk (904) 791-1689.

EIS No. 860070, Final, FHW, MN, Hennepin Avenue/CSAH 52, Bridge Replacement, North 2nd Street to Main Street Southeast, Mississippi River, Hennepin County, Due: April 7, 1986, Contact: Steven Bahler (612) 725-7001.

EIS No. 860071, Draft, COE, NY, Cazenovia Creek Flood Damage Reduction Plan, Erie County, Due: April 21, 1986, Contact: Tod Smith (716) 876-5454.

EIS No. 860072, Draft, FHW, MN, MN Forest Highway-11 Construction, St. Louis CSAH-10 and St. Louis CR-565 in Hoyt Lakes to TH-61 in Silver Bay, Lake and St. Louis Cos., Due: April 21, 1986, Contact: Stan Groczyk (612) 349-5246.

EIS No. 860073, Draft, FHW, CA, I-5/Santa Ana Freeway Widening and Interchange Reconstruction, I-405 to CA-55, Orange County, Due: May 9, 1986, Contact: C. Glenn Clinton (916) 551-1310.

EIS No. 860074, Final, Adoption, COE, TN, MS, Tuscumbia River Flood Control Plan, Alcorn and Prentiss Cos., MS and McNairy Co., TN, Due: April 7, 1986, Contact: Ken Bright (901) 521-3852.

EIS No. 860075, Final, FWS, CA, Coachelle Valley Fringe-Toed Lizard Habitat Conservation Plan, Adoption/Implementation and Section 10(A) Permit, Riverside County, Due: April 7, 1986, Contact: Merle Richmond (503) 231-6131.

EIS No. 860076, Draft, COE, NJ, Manasquan Reservoir System, Oak Glen Reservoir Construction, Timber Swamp Lake and Manasquan River, Monmouth County, Due: April 21, 1986, Contact: Jerry Pasquale (215) 597-6848.

EIS No. 860077, Draft, BLM, CA, California Desert Conservation Area Plan, 1985 Amendments, Approval or Disapproval, Due: June 5, 1986, Contact: Bob Barnay (916) 978-4722.

EIS No. 860078, DSuppl, BLM, OR, Western Oregon Competing Vegetation Managment Program, Impacts of Herbicides on Human Health, Due: April 30, 1986, Contact: Gregg Simmons (503) 231-6272.

EIS No. 860079, Final, FHW, MD, MD-26 Improvement, Eldersburg to Randallstown, Carroll and Baltimore Cos., Due: April 7, 1986, Contact: Edward Terry (301) 962-4010.

EIS No. 860080, Report, COE, MO, Harry S. Truman Dam and Reservoir Operations, Future Direction of Hydropower, Benton County, Contact: Robert Amrine (816) 374-3245.

Dated: March 4, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR 86-5022 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2980-7]

Science Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a change in the date of the Environmental Health Committee meeting of the Science Advisory Board (SAB) to be held March 25, 1986. Publication of the original agenda appeared in the Federal Register on Monday, February 24, 1986, page 6467. The amended notice is to inform the public that the one-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on March 25, 1986. For further information, contact Dr. Daniel Byrd, Executive Secretary, Science Advisory Board (202) 382-2552.

Dated: February 27, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-5015 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59213, FRL-2979-1]

Monohydric Alcohol Ester of Tall Oil Fatty Acids, Oxidized Certain Chemical Test Marketing Exemption Application; Werner G. Smith, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: March 24, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59213]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances,

Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-29

Close of Review Period. April 6, 1986.

Manufacturer. Werner G. Smith, Inc.

Chemical. (G) Monohydric alcohol ester of tall oil fatty acids, oxidized.

Use Production. (G) Confidential. Prod. range: 135,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 3 workers.

Environmental Release/Disposal. Disposal by public water treatment.

Dated: March 1, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-4903 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59755, FRL-2979-2]

Certain Chemicals Premanufacture Notices; NL Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-83—March 13, 1986;

Y 86-84 and 86-85—March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-83

Manufacturer. NL Industries, Inc.

Chemical. (G) Alkyd copolymer.

Use/Production. (G) A copolymer resin to be used in an open, non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-84

Manufacturer. Confidential.

Chemical. (G) Acrylic modified alkyd.

Use-Production. (G) Resin in coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-85

Manufacturer. Sicpa Industries of Virginia, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Site-limited and commercial manufacture of printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 5 workers, up to 6 hrs/da, up to 220 da/yr.

Environmental Release/Disposal. 0.01 to 1 kg/batch released to land. Disposal in accordance with government regulations.

Dated: February 28, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-4904 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51613; FRL-2979-4]

Certain Chemicals Premanufacture Notices; Reichhold Chemicals, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-562, 86-563, 86-564, 86-565, and 86-566—May 21, 1986.

P 86-567, 86-568, 86-569, and 86-570—May 24, 1986.

P 86-571, and 86-572—April 21, 1986.

P 86-573, 86-574, 86-575 and 85-576—May 25, 1986.

P 86-577, 86-578, 86-579, 86-580, 86-581, 86-582, 86-583, 86-584, 86-585 and 86-586—May 26, 1986.

P 86-587, 86-588, 86-589, 86-590 and 86-591—May 27, 1986.

Written comments by:

P 86-562, 86-563, 86-564, 86-565 and 86-566—April 21, 1986.

P 86-567, 86-568, 86-569 and 86-570—April 24, 1986.

P 86-571 and 86-572—March 22, 1986.

P 86-573, 86-574, 86-575 and 86-576—April 25, 1986.

P 86-577, 86-578, 86-579, 86-580, 86-581, 86-582, 86-583, 86-584, 86-585 and 86-586—April 26, 1986.

P 86-587, 86-588, 86-589, 86-590 and 86-591—April 27, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51613]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

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FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–562

Manufacturer. Confidential.

Chemical. (G) Perfluoroalkyl epoxide.

Use-Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Manufacture: dermal, a total of 16 workers.

Environmental Release/Disposal. Release to water.

P 86–563

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Hydrocarbon and Bisphenol—A modified rosin maleic adduct.

Use-Production. (S) Industrial printing ink. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 91 da/yr.

Environmental Release/Disposal. 66 kg/batch released to air with 500 gm/day released to land. Disposal by sanitary landfill and mechanical filter system.

P 86–564

Manufacturer. Mazer Chemicals, Inc.

Chemical. (G) Modified fatty acids, esters.

Use-Production. (G) Metal working fluid componnt. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–565

Manufacturer. Confidential.

Chemical. (G) Urethane-modified polyester-acrylic copolymer.

Use-Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 70,000–210,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch released. Disposal by landfill.

P 86–566

Manufacturer. Ethyl Corporation.

Chemical. (S) 1-decanamine, N-decyl-N-methyl-N-oxide.

Use/Production. (S) Commercial and consumer ingredient in hair conditioners, fabric conditional hard-surface cleaning and as brake fluid corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. Acute oral: 894 mg/kg; Acute dermal: >2.0 gm/kg; Irritation: Skin—Irritant, Eye—Irritant; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–567

Importer. American Hoechst Corporation.

Chemical. (G) Peri acid phenetidide alkylanilide

Use/Import. (S) Industrial coloration of plastic. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–568

Manufacturer. Confidential.

Chemical. (S) Methoxyacetyl chloride.

Use/Production. (S) Chemical intermediate. Prod. range: 200 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 5 workers, up to 0.1 hr/da, up to 4 da/yr.

Environmental Release/Disposal. No release. Less than 4 kg/batch incinerated.

P 86–569

Manufacturer. Eastman Kodak Company.

Chemical. (S) N-[3-(dibutylamino)-1,3-propadienylidene]-N-butyl-1-butanaminium chloride.

Use/Production. (G) Chemical intermediate. Prod. range: 30–40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and ocular.

Environmental Release/Disposal. No release.

P 86–570

Manufacturer. Eastman Kodak Company.

Chemical. (S) N-[3-(dibutylamino)-1,3-propadienylidene]-N-butyl-1-butanaminium hexapluorophosphate.

Use/Production. (G) Highly controlled non-dispersive use. Prod. range: 30–40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 0.5 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Less than 5 kg/batch disposed by biological treatment system with less than 1 kg/batch incinerated.

P 86–571

Manufacturer. Confidential.

Chemical. (G) Alkenes, reaction products with 2,5-furandione.

Use/Production. (S) Site-limited and industrial chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 27 workers, up to 8 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water with 1.0 kg/batch to land. Disposal by publicly owned treatment works (POTW) and incineration.

P 86–572

Manufacturer. Confidential.

Chemical. (G) Alkenes, reaction products with 2,5-furandione and substituted alkyl amine.

Use/Production. (G) Surface active agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 36 workers, up to 8 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water with 1.0 kg/batch to land. Disposal by POTW and incineration.

P 86–573

Importer. Confidential.

Chemical. (G) 4,4'-bis(4-anilino-6-substituted-1,3,5-triazin-2-ylamino)substituted stilbene.

Use/Import. (S) Industrial and consumer fluorescent brightener for use in detergents. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Biodegradability test: Not biodegradable; Ames test: Negative; Skin sensitization: Non-sensitizing; LC_{50} 96 hr (Rainbow trout): 351 mg/1; LC_{50} 48

hr (Daphnia magna): 210 mg/1; Hypersensitivity: Negative.

Exposure. Processing: dermal and inhalation, a total of 2 persons/shift, 1 hr/shift.

Environmental Release/Disposal. Release to water. Disposal by POTW or a private disposal system.

P 86–574

Importer. Confidential.

Chemical. (G) Substituted furanone.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 3,340 mg/kg; Irritation: Skin—Slight, Eye—Irritant; Skin sensitization: Negative; Phototoxicity test: Not phototoxic; Photoallergenicity test: Not photoallergenic; Maximazation test: Contact allergenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86–575

Manufacturer. Sylvachem Corporation.

Chemical. (G) Imidazoline.

Use/Production. (G) Co-reactant to be used in open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 17 workers, up to 3 hrs/da, up to 26 da/yr.

Environmental Release/Disposal. ½ to 1 lb released to land. Disposal by approved landfill.

P 86–576

Manufacturer. Allied Corporation.

Chemical. (G) Aryl alkyl oxime.

Use/Production. (S) Industrial extractant for recovery of palladium metal. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Moderate, Eye—Non-irritant; Ames test: Not mutagenic; Maximization test: Positive.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–577

Importer. Celanese Speciality Resins, Inc.

Chemical. (G) Diphenol dicyanate.

Use/Import: (S) Industrial monomer for polymerization and binder for use in fiber reinforced composite or encapsulating resins for electronic components. Import range: Confidential.

Toxicity Data. No date on the PMN substance submitted.

Exposure. Processing: dermal, a total of 3 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by Resource Conservation and Recovery Act (RCRA).

P 86–578

Manufacturer. Celanese Specialty Resins, Inc.

Chemical. (G) Dicyanate ester oligomer.

Use/Production. (S) Industrial thermoset resin for use in fiber reinforced structural and electrical composites, encapsulation of electronic components, and heat curable adhesives. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 12 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 to 100 kg/yr released to land. Disposal by RCRA.

P 86–579

Importer. Celanese Specialty Resins, Inc.

Chemical. (G) Diphenol dicyanate.

Use/Import. (S) Industrial monomer for polymerization and binder for use in fiber reinforced composite or encapsulating resins for electric components. Import range: Confidential.

Toxicity Data. No date on the PMN substance submitted.

Exposure. Processing: dermal, a total of 3 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by RCRA.

P 86–580

Manufacturer. Celanese Speciality Resins, Inc.

Chemical. (G) Dicyanate ester oligomer.

Use/Production. (S) Industrial thermoset resin for use in fiber reinforced structural and electrical composites, encapsulation of electronic components, and heat curable adhesives. Prod. range: Confidential.

Toxicity Data. No date on the PMN substance submitted.

Exposure. Manufacturer: dermal, a total of 4 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 to 100 kg/yr released to land. Disposal by RCRA.

P 86–581

Manufacturer. Confidential.

Chemical. (G) A copolymer of 4,4-isopropylidene diphenol-epichlorohydrin resin and phosphoric acid ethylene oxide adduct.

Use/Production. (S) Industrial thermoset epoxy acrylic copolymer for coating metal surfaces. Prod. range: 12,000–24,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 5 workers, up to 10 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. Confidential.

P 86–582

Manufacturer. Reichhold Chemicals Inc.

Chemical. (G) Hydrocarbon and octylphenol modified rosin maleic ester.

Use/Production. (G) Constitutent of a lithographic printing ink vehicle for offset and sheetfed lithographic printing processes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 91 da/yr.

Environmental Release/Disposal. 66 kg/batch released to air with 500 g/day to land. Disposal by sanitary landfill and mechnical filter system.

P 86–583

Manufacturer. Confidential.

Chemical. (G) Unsaturated dimer, acids, esters with carboxy terminated butadiene—nitrile rubber expoxidized.

Use/Production. (G) Automotive adhesive. Prod. range: Confidential.

Toxicity Date. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–584

Manufacturer. Confidential.

Chemical. (G) Polyhydric phenol, poly diazo naphthoquinone sulfonate.

Use/Production. (G) Coating component. Prod. range: Confidential.

Toxicity Date. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–585

Importer. Xerox Corporation.

Chemical. (G) Quaternary ammonium salt.

Use/Import. (G) Plastics static control agent. Import range: Confidential.

Toxicity Date. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild.

Exposure. Minimal.

Environmental Release/Disposal. 6.3 kg/yr disposed.

P 86–586

Importer. Xerox Corporation.

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Chemical. (G) Substituted naphthalene carboxamide.

Use/Import. (G) Colorant for plastics, contained use. Import range: Confidential.

Toxicity Data. Ames test: Negative; CHO test: Negative.

Exposure. Minimal.

Environmental Release/Disposal. 6.3 kg/yr disposed.

P 86-587

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate homopolymer.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 86-588

Manufacturer. Alcolac Inc.

Chemical. (S) Poly(oxy-1,2-ethandediyl), alpha-(2-methyl-1-oxo-2-propenyl-beta-(dodecyloxy)-.

Use/Production. (S) Aqueous-Thickeners. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 2 to 4 kg/batch released to water. Disposal by POTW and bioponds.

P 86-589

Importer. Confidential.

Chemical. (G) Alkylamine distillation residues.

Use/Import. (S) Industrial stabilizer for polymers in drilling fluids. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-590

Importer. Confidential.

Chemical. (G) Thermoplastic polyurethane.

Use/Import. (S) Industrial thermoplastic polyurethane for extruded goods. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-591

Manufacturer. Advanced Glass Systems Corporation.

Chemical. (G) Ionomer polymer (ethylene-methacrylic acid copolymer in salt form).

Use/Production. (S) Site-limited and industrial windshields, bullet resistant or security glass transparencies, and sloped glazing as laminating resin film between glass layers. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 3 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 0.5 to 1 lb/day released. Disposal by POTW.

Dated: February 28, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-4905 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-436; FRL-2969-8]

Pesticide Tolerance Petitions; American Hoechst Corp. et al.

Correction

In FR Doc. 86-3182, appearing on page 6034, in the issue of Wednesday, February 19, 1986, make the following correction:

On page 6034, second column, under "Initial Filings", the tenth line should read "acid and 2-[4-(2,4-dichloro-".

BILLING CODE 1505-01-M

[OW-FRL-2979-6]

Bacteriological Ambient Water Quality Criteria; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of bacteriological ambient water quality criteria document.

SUMMARY: Environmental Protection Agency (EPA) announces the availability of a bacteriological criteria document. This document provides guidance on ambient indicator bacterial densities which provide protection from risk of gastro-intestinal disease from swimming in bacteriologically contaminated waters. These criteria are intended to form the basis for enforceable State water quality standards and are published pursuant to section 304(a)(1) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Mr. Kent Ballentine, Environmental Protection Agency, Standards Branch (WH-585), Washington, DC 20460, (202) 245-3030.

SUPPLEMENTARY INFORMATION: Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with the publication of the "Blue Book" (*Water Quality Criteria, 1972*). In 1976 the "Red Book" (*Quality Criteria for Water*) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act; a criterion for the 65th pollutant, dioxin, was published on February 15, 1984 (49 FR 583). On July 29, 1985 (50 FR 30784) EPA announced the availability of water quality criteria documents for Ammonia, Arsenic, Cadmium, Chlorine, Chromium, Copper, Cyanide, Lead, Mercury, and Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses.

Today EPA is announcing the availability of a water quality criteria document that updates and revises the bacteriological criteria previously published in, *Quality Criteria for Water.* The Criteria document entitled, *Bacteriological Ambient Water Quality Criteria for Marine and Fresh Recreational Waters,* may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (phone number (703) 487-4650). The order number of the NTIS publication is PB 86-158-045 (cost $9.95). This revision is based on the relationship between swimming-associated gastrointestinal illness and ambient densities of indicator bacteria. The enumeration of the recommended indicators is based on analytical procedures which have recently been approved by the Agency and described in the report, EPA 600/4-85/076. The research upon which the criteria are based was conducted on beaches officially designated for swimming and which had well defined sources of human fecal pollution. EPA concluded from these studies that the indicator organism group recommended in *Quality Criteria for Water,* the fecal coliforms, is inadequate. The EPA studies demonstrated that the enterococci have a far better correlation with swimming associated gastrointestinal illness in both marine and fresh waters than fecal coliform; and that *E. coli,* a specific bacterial species included in the fecal coliform group, has a correlation with gastro-intestinal illness in fresh waters equal to the enterococci, but does not correlate as well in marine waters.

Although the waters and pollution sources, of necessity, were rigorously defined in the research, EPA believes that the criteria can be applied to a broader range of waters and conditions than those defined in the research. The State water quality standards currently use the fecal coliform criterion for waters in which incidental swimming may occur and are classified for primary contact. With the exception of shellfish harvesting waters which must relate to shellfish sanitation guidelines and FDA marketplace requirements, EPA believes that all other waters that are classified for primary contact could benefit from the application of the revised and updated criteria.

In response to the request for comments, EPA received fifty one comments from a wide range of private individuals and organizations. About one-half of the responses were from public health officials, approximately one fourth from treatment plant officials and allied engineering firms and the remaining one-fourth from university and government scientists. The comments from the public health sector were generally supportative of the need for an improved criteria but many felt that the criteria proposed on May 24, 1984 (49 FR 21987) did not reflect accepted levels of protection. Those associated with water pollution treatment generally felt that the proposed change offered no significant improvement over the existing fecal coliform criteria and that careful monitoring of the treatment plants, coupled with sanitary surveys, could provide the adequate protection. Increased cost was also cited as a concern. The comments from scientists pointed out technical factors that should be addressed. In addition to the written responses, verbal comments were expressed by those attending the 13 workshops conducted by EPA on the laboratory methodology. These comments, as would be expected, were of the same tenor as those from other public health officials. The interest shown and the depth of the comments, which are sumarized in Appendix A, gives assurance that the general public and those specifically affected have a good understanding of the issues involved. EPA believes that all germane comments have been addressed and that the basic concept upon which the criteria were proposed remains valid. EPA, therefore, recommends that criteria based on *E. coli* and the enterococci organisms be included in State water quality standards for the protection of primary water contact recreation in place of fecal coliforms or the more general total coliforms.

The recommended densities of indicator organisms (*E. coli* and enterococci), upon which the criteria are based, were calculated to approximate the degree of protection now accepted with the currently used indicator organisms (fecal coliforms). The new criteria recommendations by EPA are:

Fresh water: *E. coli*—not to exceed 126/100ml, or enterococci—not to exceed 33/100ml;

Marine water: enterococci—not to exceed 35/100ml;

These criteria are calculated as the geometric mean of a statistically sufficient number of samples, generally not less than five samples equally spaced over a thirty day period.

Different confidence intervals for these criteria are recommended for four levels of swimming use described in the criteria document.

EPA expects a gradual transition from the fecal coliform criteria to the new indicator bacteria by the States. The transition would first involve the inclusion of the updated criteria in the well defined bathing beach waters where the greatest potential for illness exists. Inclusion of the criteria for other primary contact waters would follow on a priority basis for waters with less swimming or full body contact use. The Agency expects the States to include the criteria for applicable waters as soon as practicable.

Dated: February 21, 1986.

Lawrence J. Jensen,

Assistant Administrator for Water.

Appendix A—Response to Public Comments on the Proposed Bacteriological Ambient Water Quality Criteria

Introduction

On May 24, 1984, the U.S. Environmental Protection Agency (EPA) announced the availability of the proposed bacteriological ambient water quality criteria for public comment. In response the Agency received fifty one letters of comment. Technical aspects of the public comments were reviewed by the Agency's Research and Development staff who performed the research leading to the proposed criteria and those responsible for criteria publication. The Agency herein summarizes those comments and addresses the issues raised.

Comment—A number of public health officials felt that the criteria proposed on May 24, 1984 (FR 21987) was more stringent than that now accepted as protective of swimmers and should more closely approximate the level recommended in *Quality criteria for Water.*

Response—A recalculation of the data was made to make the final criteria more closely approximate the currently accepted level.

Comment—Most commenters associated with treatment plants offered the opinion that there was general agreement that the current recommended fecal coliform criterial for full body contact recreational waters was based on inadequate and flawed technical data. They further suggested that the proposed indicators suffer from similar flaws.

Response—Because the proposed indicators, as well as the current indicator species, are comprised of non-pathogenic organisms that are consistently found in the feces of warm blooded animals, the basic problems of using surrogates for expected pathogens remain. The problem include: (1) limited epidemiological data to relate indicator organism densities and illness rates, and (2) a variation in the ratio of indicator organisms to pathogens that can be due to the natural variation of illness in human populations (especially prevalent in areas of small populations). The Agency recognizes that problems associated with non-human indicator organisms and differences due to population variations are not completely solved by the proposed criteria but believes that there is sufficient evidence of the epidemiological relationship between illness and indicator species to warrant use of the proposed criteria. The establishment of indicator species is not intended to replace the use of sanittary surveys to determine unsafe conditions caused by improperly treated sewage discharges or other overt contaminating events.

Comment—A number of commenters were critical of various aspects of the experimental data base. Concern was expressed about the adequacy of the definition of the pollution sources in the study area, the variation of illness between the high and low polluted beaches studied, variation in analytical methods, variation in rate of illness and bacterial levels, and lack of studies on a fecal coliform to illness ratio.

Response—The pollution sources for marine beaches were described as diffuse and most were raw sewage. The freshwater beaches were within ¾ miles to five miles from sewage treatment plants outfalls.

In experimental work of a biological nature it is expected that results will vary and reliance on statistical analysis

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is needed to ascertain the overall effect. The Agency believes that the data and the analysis warrant the conclusion that the proposed criteria provide a reasonable degree of improvement in relating bacterial indicator densities to the potential of contracting gastrointestinal illness from swimming in polluted waters. It was determined that the relationship correlating fecal coliform and illness was poor relative to that found for enterococci in marine waters and with *E. coli* and enterococci in fresh waters. One commenter indicated that his statistical evaluation of the data showed a good correlation between fecal coliform and swimmers' illness rate at on location. It would be expected that at individual locations a reasonable correlation between fecal coliforms *E. coli* and swimmer illness would occur. However, the EPA studies demonstrated that such correlation does not exist in general, and were not useful for prediction at other locations. Thus, relative to enterococci and *E. coli*, the fecal coliform relationship to swimming-associated disease was not a good one in general and, therefore, fecal coliforms were not considered an appropriate predictor of disease potential.

Comment—One commenter stated that his statistical analysis indicated that the data collected from the swimming beach studies provided no evidence which warrants the replacement of fecal coliform with *E. coli* and enterococci as a measure of the suitability of beach waters for recreational purposes.

Response—It is EPA's judgment that the variations shown by statistical analyses do not affect the overall results of the EPA studies. EPA's studies confirm that even though bacterial parameters are highly variable, proper statistical analysis yields predictable results. However, because the bacterial densities were low and the disease incidence low, occasional anomalous results may occur. Seldom in comparative studies did the control population disease rate exceed the swimmers disease rate.

Comment—A few commenters were concerned that the use of enterococci to monitor water quality would not measure the risk due to contamination by animal feces.

Response—This concern is not considered a serious problem since the two enterococci that grow best on the recommended medium are *S. faecalis* and *S. faecium* which are found together or singly in most animals. Thus, the Agency believes that any risk associated with contact with water contaminated with animal fecal material will be indexed by the recommended analytical procedures.

Comment—Commenters in areas where non-point animal fecal material runoff was a source of contamination of waters designated for recreational swimming were concerned that runoff associated organisms may cause indicator densities to exceed the recommended criteria.

Response—It has been the Agency's policy to consider waters polluted by animal fecal material to be as hazardous as waters polluted by human fecal contamination. There is, however, no direct evidence that swimming-associated disease, other than leptospirosis, can be traced to animal sources. EPA has ongoing research aimed at determining the impacts on gastroenteritis in humans from non-point source pollution. At the present time, there is no reason to change the Agency's policy.

Comment—Some commenters noted that only gastroenteritis was considered in the data leading to the recommended criteria.

Response—Many other symptomatic illnesses were observed during the Agency's recreational water quality studies, however none showed a functional relationship to bacteriological quality of the water. In general, swimmers appeared to have more eye, ear, and nose infections, respiratory infections and skin infections than nonswimmers, but these differences were seldom statistically significant. Gastrointestinal illnesses, on the other hand, were significantly associated with polluted water and did show a functional relationship to water quality measured with bacterial indicators of fecal contamination. Since non-gastrointestinal illnesses are associated with polluted and non-polluted waters, no form of intervention is available to prevent them. Thus, these illnesses were not addressed. The Agency has supported other research on *otitis externa* in swimmers to evaluate the effect of water quality on this disease and these studies found that there was no association between abnormal ear flora and bacterial indicators of water quality, such as *E. coli*, enterococci and *Pseudomonas aeruginosa*.

Comment—Many of those involved in laboratory analysis expressed concern about the length of time needed for the enterococci test.

Response—The method for enumerating enterococci in water samples does require 48 hours to complete. This added time is not considered vital because these criteria are not intended to be used for daily decisions on closures, but rather more general assesaments of the suitability of water quality for the use. The day-to-day evaluation of the suitability of a beach for swimming would be a local health department consideration. Health Departments, for instance, may develop a relationship between rainfall and microbiological quality of water at beaches so that daily decisions could be made on beach closure. These daily decisions must be made with knowledge of the adequacy of impacting sewage plants or other known containment discharges. Timely reports must be made to health authorities on the bypassing of sewage and breakdown of disinfection procedures.

Comment—Most commenters associated with microbiological laboratories indicated that laboratory workers had little or no handson experience with the analytical methodology described in the criteria document for *E. coli* and enterococci. Additionally, these commenters were concerned about the formal publication of the methods and the commercial availibility of the bacteriological media for the analytical procedures.

Response—Recognizing that many of the State and municipal laboratory staff had no direct experience with the methods, the Agency conducted 13 analytical methodology workshops throughout the United States and Canada during 1985. Over two hundred people associated with laboratories attended these workshops, giving the Agency good assurance that experience with the procedures was well distributed. Additionally the Agency conducted extensive precision and bias testing on the methods in eleven different laboratories to assure users of the procedures that results were accurate and reproducible. The results of the precision and bias testing provide the justification to include the method in the Agency's methods manual. The EPA report, EPA-600/485/076, entitled *Test methods for Escherichia coli and Enterococci In Water By The Membrane Filter Procedure*, outlines the procedures. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (phone number (703) 487-4650). The order number of the NTIS publication is PB 86-158-052 (cost $6.95). The Agency also received assurance from a major commercial distributor of bacteriological media that the special media would be placed on the market.

Comment—Some commenters were concerned that turbidity could interfere with the use of membrane filter methods.

Response—The use of the membrane filter procedures during the course of ther EPA recreational water quality studies was not compromised because of turbidity. The MPN procedure for fecal coliform was used during the first year of the studies and abandoned when it became obvious that membrane filter procedures would be adequate.

Comment—Several commenters asked why there was a poor correlation of *E. coli* to illness at marine water beaches.

Response—The poor correlation between swimming-associated gastroenteritis and *E. coli* or fecal coliforms at marine beaches was most likely due to the injurious effects of seawater on coliform bacteria causing high die-off rates. The variability of the response of coliforms to seawater probably is more evident for *E. coli* than for fecal or total coliforms because of the heterogeneity of the fecal or total coliform groups.

Comment—One commenter asked if *Streptococcus faecalis var. liquifaciens* species would affect risk determinations, when using enterococci.

Response—The effect of these species on the relationship between water quality and swimming-associated illiness apparently is not great, at least with bathing beach waters contaminated by point sources of pollution. Despite the probable presence of *S. faecalis var. liquifaciens*, the Density of the enterococci indicator group in seawater showed the best relationship to swimming-associated gastroenteritis. This would probably not occur if there was significant interference from this enterococci which is not a species normally inhabiting the intestines of warm blooded animals.

Comment—Concern was expressed that the use of the proposed criteria will result in increased capital and operating expenses for municipal sewage treatment disinfection facilities.

Response—In most cases the risk currently being accepted at swimming beaches will continue to be accepted. Since currently accepted levels of protection will continue EPA does not believe that State adoption of the recommended criteria will generate a widespread need for improved treatment nor a general increase in cost of treatment.

Comment—The point was made that the adoption of the proposed national bacterial bathing beach criteria for *E. coli* and enterococci will result in confusing and overlapping environmental regulations for protecting drinking water and shellfish harvesting waters which are based on fecal coliform or total coliforms. For example, marine bathing beaches, drinking water supply intakes, and shellfish harvesting areas will be required to comply with two conflicting and overlapping sets of bacterial water quality criteria.

Response—The recommended criteria are aimed at waters classified for recreational swimming. Where the criteria can be advantageously used for this and other ambient water uses, they will replace existing criteria through the States' water quality standards review and revision process. Regulations pertaining to drinking waters and shellllfish harvesting are not affected by this criteria recommendation. It is true that some overlap will occur but EPA believes that risk prediction capability of the new indicators justifies their adoption into State Water Quality Standards.

Comment—Several respondents made the point that no evidence was offered to show that *E. coli* and enterococci are indicators of viral enteritis, postulated as the probable cause of most cases of swimming contracted gastroenteritis.

Response—There is no practical way to confirm that enteric viruses were the cause of the illiness reported. Based on the best medical and epidemiological information, viruses were assumed to be the most likely causes. The indicator procedure is designed to detect feces associated organisms contained in sewage and cannot differentiate between causes of illness.

Comment—Some commenters indicated that the statistical model used in the criteria document cannot be used to obtain a single value for *E. coli*, enteroccocci, or any other bacterial indicator systems. Rather the model can only be used to obtain a possible range of values for such use.

Response—EPA recognizes that the criterion is based on a statistical model and that there will be variation around the prediction. These variations should be considered in the monitoring approach.

Comment—A question was raised concerning the nomenclature for *E. coli*. A commenter offered the opinion that the proposed protocol for identifying the bacterial species, *E. coli*. in fresh water is based on counting colonies differentiated on a new membrane filter MF medium (M-TEC) which does not fully define *E. coli*. Therefore, the use of a nomenclature that is species specific is not defensible in the scientific community.

Response—The use of a minimal number of biochemical or physical tests to identify an indicator bacterium species is a well established procedure. Bacteriologists in England have been doing it for many years. Report No. 71 on Public Health and Medical Subjects, The Bacteriological Examination of Water Supplies, which contains standard methods followed in England states that the indole test carried out on colonies which ferment lactose at 44° C provides a means of distinguishing *E. coli*. from other coliforms that ferment lactose at that temperature. Unlike the European bacteriologists who use the term "fecal coli", the British bacteriologists use the term *E. coli*. The nomenclature associated with the mTEC method uses the same reasoning to identify the organisms isolated by this procedure. Colonies that ferment lactose at 44.5° C on the mTEC medium are, in fact, fecal coliforms which generally include *E. coli*., *Klesiella* sp. and sometimes *Enterobacter* and *Citrobacter* species. The latter three species can be differentiated with an *in situ* test for the enzyme urease which they possess. *E. coli*. comprise about 87% of the total organism enumerated. Although some few may be erroneously named, the density of this indicator bacterium and its correlation to the rate of swimming-associated illness is not affected.

Comment—Some commenters expressed concern about the implied correlation of *E. coli*. and the traditional fecal coliform to risk of illness in the draft criteria document.

Response—In the final document a direct mathematical calculation was used to determine equivalent stringency between fecal coliform and the new indicators. The calculations were based on all data collected by Dufour and Cabelli.

Comment—A question was raised about why current and past fecal coliform data were not used.

Response—Current and past fecal coliform data would not provide meaningful information about potential health effects associated with any particular body of water since this indicator group did not show a direct relationship to swimming associated illness in the EPA recreational water quality studies. *E. coli*. densities were shown to be directly related to the swimming associated illness rate in fresh water environments. In general, this means that, relative to swimming associated illness, fecal coliform and *E. coli*. are poorly related.

Comment—A number of those associated with laboratories were concerned about increased cost of performing the analysis.

Response—The additional cost for materials alone, i.e., the medium, is negligible. For the *E. coli*. method, there is no difference. For the enterococci

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method, the cost of the medium is approximately 50% more. The actual time spent assaying each sample is somewhat longer for the new methods because of the need to physically transfer the membrane, but even this part of the procedure does not significantly increase the time needed to complete the test.

Comment—Commenters involved with shellfish harvesting asked if the criteria would be applicable to shellfish harvesting waters.

Response—No, it is not applicable to shellfish waters. However, the Agency is currently examining the relationship between shellfish harvesting water quality and health effects in shellfish consumers. Future plans call for the examination of the relationship between bacterial indicator systems and health effects with water consumption.

[FR Doc. 86-5013 Filed 3-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

California; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: February 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Calaveras, El Dorado, Mendocino, Placer, Plumas, and San Joaquin Counties for Individual Assistance
Alpine, Amador, Butte, Colusa, Lassen, Sierra, Sutter, Tehama, Tuolumne, and Yolo Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 86-4965 Filed 3-6-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Sierra Federal Savings & Loan Association, Denver, CO; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board replaced D. J. Fair as conservator for Sierra Federal Savings and Loan Association, Denver, Colorado ("Association") with the Federal Savings and Loan Insurance Corporation as sole receiver for Sierra Federal Savings and Loan Association on February 28, 1986.

Dated: March 4, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-5030 Filed 3-6-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-015.

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Associated Container Transportation (Australia Ltd.)
Atlantic Container Line G.I.E.
Barber Blue Sea Line
Companhia de Navegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Columbus Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A. P. Moller-Maersk Line
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
South African Marine Corp.
United States Lines, Inc.
Venezuelan Line
Yamashita-Shinnihon Steamship Co., Ltd.
Yang Ming Line
Zim Israel Navigation Co., Ltd.
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Seapac Services, Inc.
Showa Lines, Ltd.

Synopsis: The proposed amendment would add Showa Line, Ltd. as a party to the agreement.

Agreement No.: 207-009882-006.

Title: Pacific Australia Direct Line Joint Service Agreement.

Parties:

Associated Container Transportation (Australia) Ltd.
Rederiaktiebolaget Transatlantic

Synopsis: The proposed agreement would extend the date which the parties may give notice of termination of the agreement (in the event a party desires to terminate the agreement as of October 21, 1986) from March 1, 1986 to May 1, 1986.

Dated: March 4, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-5029 Filed 3-6-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Precondoc, Inc. d.b.a. Pecan International Forwarders, 147-02 Farmers Blvd., Jamaica, NY 11434. Officers: Norman Cruz, President; Angel Ithier, Executive Vice President.

Brian A. Hill & Company, Inc., Hill Cargo Bldg., Logan International Airport, East Boston, MA 02128. Officers: Brian A. Hill, President Treasurer/Director; William A. Zarella, Vice President; Herbert J. Lynch, Clerk/Director; Deborah Borneheimer, Director.

By the Federal Maritime Commission.

Dated: March 3, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-4948 Filed 3-6-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; New York Forwarding Services, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2769.
Name: New York Forwarding Services, Inc.
Address: 744 Broad Street, Suite 1324A, Newark, NJ 07102.
Date Revoked: February 12, 1986.
Reason: Failed to maintain a valid surety bond.

License Number: 2476.
Name: Quick International Service, Inc.
Address: 5220 N.W. 72nd Avenue, Bay 23, Miami, FL 33166.
Date Revoked: February 14, 1986.
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-4958 Filed 3-6-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Reissuance of License; S & Z International Air Forwarders, Inc.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date Reissued
2668	S & Z International Air Forwarders, Inc., P.O. Box 8776, BWI Airport, MD 21240.	Feb. 14, 1986.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-4959 Filed 3-6-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank South Corp. et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to engage *de novo* through its subsidiary, Bank South Services Corporation, Atlanta, Georgia, to own, install, and operate electronic fund transfer (EFT) terminals and equipment in retail locations owned and operated by unaffiliated entities, and to provide data processing and transmission of financial, banking and economic data, pursuant to § 225.25(b)(7) of Regulation Y; and to engage in management consulting to depository institutions, pursuant to § 225.25(b)(11) of Regulation Y. These activities would be conducted throughout the State of Georgia.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ameritex Bancshares Corporation*, Dallas, Texas; to engage *de novo* through its subsidiary, Ameritex Service Corporation, Dallas, Texas, in providing to others financially related data processing, data transmission services, facilities and data bases or access to them, pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4961 Filed 3-6-86; 8:45 am]

BILLING CODE 6210-01-M

Champlain Bank Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §§ 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

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an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 29, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Champlain Bank Corporation*, Willsboro, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Essex County-Champlain National Bank, Willsboro, New York.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to acquire 100 percent of the voting shares of National Bank of Commerce, Washington, D.C. Comments on this application must be received not later than March 31, 1986.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 60 percent of the voting shares of The Bank of Ozark, Ozark, Alabama.

2. *Union Bancshares of Campbell County, Inc.*, Jellico, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Union Bank, Jellico, Tennessee.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Polk County Bancorporation, Inc.*, Polk County, Iowa; to become a bank holding company by acquiring 84.90 percent of the voting shares of The Polk City Savings Bank, Polk City, Iowa.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First FSB Bancshares, Inc.*, Italy, Texas; to become a bank holding company by acquiring 100 percent of the FSB Bancshares, Inc., Waco, Texas, thereby indirectly acquiring First State Bank, Coolidge, Texas; First State Bank, Italy, Texas; and First State Bank, Mount Calm, Texas.

Board of Governors of the Federal Reserve System, March 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4962 Filed 3-6-86; 8:45 am]

BILLING CODE 6210-01-M

Creditanstalt-Bankverein et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Creditanstalt-Bankverein*, Vienna, Austria; to acquire Pacific Overseas Finance Corporation, San Francisco, California, and thereby engage in trade financing services for exporters and importers, pursuant to section 225.25(b)(1), including: the arranging of buyer credit, supplier and distributor credit, and trade related preexport and inventory financing; the issuing of confirmations of payment in connection with international trade transactions in favor of United States suppliers of goods; and the provision of such other servicing of trade financing transactions as may be agreed upon between Pacific Overseas Finance Corporation and the financial institutions providing the trade financing. Comments on this application must be received not later than March 26, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bancshares, Inc.*, Wausau; to acquire First American Investment, Incorporated, Wausau, Wisconsin, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4963 Filed 3-6-86; 8:45 am]

BILLING CODE 6210-01-M

The First of Long Island Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 27, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The First of Long Island Corporation*, Glen Head, New York; to engage *de novo* through its subsidiary, Island Computer Corporation, Bohemia, New York, in the processing of incoming and outgoing cash letters, DDA checking (which includes deposit sorting and posting) and account reconciliation, time deposit accounting, club accounting, and certain certificate of deposit accounting, which includes the computation and posting of interest, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Suffolk Bancorp*, Riverhead, New York; to engage *de novo* through its subsidiary, Island Computer Corporation, Bohemia, New York, in processing of incoming and outgoing cash letters, DDA checking (which includes deposit sorting and posting) and account reconciliation, time deposit accounting, club accounting, and certain certificate of deposit accounting, which includes computation and posting of interest, pursuant to § 225.25(b)(7) of the Board's Regulation Y

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial corporation*, Norfolk, Virginia; to acquire 5.4 percent of the voting shares of Internet, Inc., Reston, virginia and thereby engage in electronic funds transfer activities, pursuant to § 225.25(b)(1) and (7) of the Board's Regulation Y. These activities would be conducted in Washington, DC, Maryland, and Virginia. Comments on this application must be received not later than March 20, 1986.

2. *Sovran Financial corporation*, Norfolk, Virginia; to acquire Suburban Service Corporation, Bethesda, Maryland, a wholly-owned subsidiary of Suburban Bancorp, Bethesda, Maryland, and thereby engage in electronic funds transfer activities through a joint venture with giant automatic Money Systems, Inc., a wholly-owned subsidiary of Giant Foods, Inc., Landover, Maryland. The joint venture will provide support services to cash dispensing machines including managing a computerized electronic transfer switch, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities would be conducted in Maryland and Washington, DC. Comments on this application must be received not later than March 20, 1986.

Board of Governors of the Federal Reserve System, March 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-4964 Filed 3-6-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Statements of General Policy or Interpretation Proposed Official Staff Commentary on Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Proposed official staff commentary.

SUMMARY: The Commission staff is seeking comment on its proposal for a commentary on the Fair Debt Collection Practices Act that will supersede all previously issued staff interpretations of the Act. The purpose of the commentary is to clarify and codify these interpretations.

DATE: The Commission staff is requesting public comment on the proposed official staff commentary until May 6, 1986.

ADDRESS: Comments on the commentary should be sent to: Secretary, Federal Trade Commission, Attention: FDCPA Commentary, Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff, Attorney, John F. LeFevre, Program Advisor, General Credit Program, Division of Credit Practices, Federal Trade Commission, Washington, DC. 20580, (202) 724-1143 or 724-1185.

SUPPLEMENTARY INFORMATION:

Background

The Fair Debt Collection Practices Act (15 USC 1692 et seq.) was enacted on September 20, 1977, and became effective on March 20, 1978. The Act regulates the collection activities of independent debt collectors and specifically proscribes certain practices found by Congress to be deceptive, unfair, or abusive to consumers. It also requires debt collectors to disclose certain information to consumers about the debts being collected, as well as about consumers' rights to dispute and obtain verification of their debts. Finally, it requires debt collectors to abide by consumers' written requests to cease all further communication about their debts.

Section 814 (15 USC 1692l(1)) gives the Federal Trade Commission primary responsibility for the Act's administration and enforcement, using all the functions and powers that it has under the Federal Trade Commission Act. Although the Commission has initiated a number of formal actions against debt collectors in the eight years since the Fair Debt Collection Practices Act became effective, a significant part of its activity has involved informal staff interpretations issued by the staff of the Bureau of Consumer Protection's Division of Credit Practices in response to hundreds of requests from consumers and industry. There are now approximately 210 interpretations totally more than 1,000 pages. Although many interpretations have been published in three volumes as official staff interpretations, they are inadequately indexed and are only occasionally cross-referenced. Some have been superseded or overruled by court opinions, by subsequent interpretations, or by consent judgments obtained in the Commission's enforcement program. Others reflect a reading of the statute that is either inconsistent with the Act's language or purpose, or is inappropriate in light of subsequent experience. As a result, these informal staff letters appear to be of little assistance to debt collectors, consumers, or their respective counsel, in interpreting the Act.

The Bureau of Consumer Protection staff believes that this system of interpreting the Act needs to be streamlined and brought up-to-date. For this reason, the staff has prepared a "commentary" on the Act. The staff reviewed all the interpretations, resolved inconsistencies, and discarded those that it believes are not supported by the Act or that merely paraphrase the Act without clarifying its meaning. The Consumer Protection staff summarized the remaining interpretations that the staff believes need clarification in one document that comments upon each

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provision of the statute that has given rise to questions.

Changing the current system will offer three benefits. First, modifying and simplifying the format of the staff interpretations will make it easier for interested parties to find answers to their questions. Currently, the interpretations are voluminous and difficult to handle and, in their present format, cannot effectively communicate staff's views about the Act to the public.

Second, the commentary will present a more comprehensive view of the statute. Previously, a particular interpretation might have been useful only for parties whose specific problems were similar to the factual situation addressed in the interpretation, since the interpretations did not provide a rationale that could be more generally applied, when appropriate, to a larger number of factually related cases. Additionally, there are portions of the statute that may need clarification but have not been interpreted at all. The staff has addressed these problems in the proposed commentary by (1) expanding the discussion of certain portions of the statute, where appropriate, and (2) providing views on some portions of the statute that have not been the subject of previous interpretations.

Third, the commentary's pre-emption of inconsistent and inaccurate advice in some prior interpretations should increase compliance with the Act. Members of the debt collection industry are more likely to rely on staff interpretations for guidance if the interpretations consistently offer sound advice.

The proposed commentary presents the most helpful of the existing interpretations and interprets other portions of the statute, where needed, in a clear and comprehensible format. Some previous interpretations have been eliminated, some have been recast, and some remain as originally published. All have been drafted to include only the essential elements of the principle involved to make them easy to understand. Since they are only interpretations, however, they are not trade regulation rules or regulations, and therefore have no binding effect on the Commission or the public.

The following paragraphs highlight some subjects where the views expressed in the commentary are different either in substance or emphasis from those expressed in prior informal staff interpretations. This list is not all-inclusive.

1. *Inclusion of Taxes and Fines in the Definition of "Debt"* (section 803(5)). The commentary overrules interpretations that taxes and fines may be "debts" within the meaning of the Act, because they do not result from a transaction involving purchase of a property or service. It is in accord with the well-reasoned opinion of the Court of Appeals in *Staub* v. *Harris*, 626 F.2d 275 (3d Cir. 1980), which specifically rejected the prior staff opinions that taxes are debts.

2. *Scope ofthe exemption for attorneys* (section 803(6)(F)). The meaning of the phrase "collecting a debt as an attorney on behalf of and in the name of a client" has been the subject of much discussion and confusion. The commentary eliminates all previous interpretations and substitutes the standards outlined in the Commission's statement accompanying its recent consent judgment in *United States* v. *Shaffner*, Civil Action No. 83–C–3130 (N.D. Ill. 1983). It includes within the exemption attorneys conducting professional legal services, but excludes attorneys operating traditional debt collection agencies.

3. *Calls at Inconvenient Times* (section 805(a)(1)). Some previous staff interpretations stated that Sunday calls by a collector to a consumer are illegal *per se*. The commentary overrules these opinions, which are inconsistent with the Act's flexible treatment of this issue.

4. *Incidental Contacts with Telephone Operators* (section 805(b)). Previously issued interpretations considered certain incidental collection contacts with telephone operators, which occurred in the course of calling a consumer, to be illegal third party contacts. The commentary overrules these opinions, and states that there is no violation where the sole purpose of the contact with an operator (or telegraph clerk) is transmission of a message, and the information conveyed is limited to that necessary to enable the debt collector to make contact with the consumer. It is staff's view that the communication is with the consumer, not the operator, and that this section was not intended to prohibit incidental contacts with intermediaries who are assisting a debt collector to communicate with the consumer.

5. *Reference to "Copy of a Judgment" in Validation Notice* (sections 807(2)(A); 809(a)(4)). Previous staff interpretations stated that there must be a judgment in existence if the words "copy of a judgment" are included in the validation notice sent out by a debt collector to comply with § 809(a)(4), or the notice including this phrase would violate § 807(2)(A) by misleading the consumer as to the legal status of the debt. Because the practical effect of these interpretations has made compliance with one section of the Act (section 809(a)(4)) a violation of another (section 807(2)(A)), the commentary overrules this position and states that the phrase may be used in the notice, whether or not a judgment in fact exists. The staff's current position is in accord with the decision in *Blackwell* v. *Professional Business Services of Georgia, Inc.*, 526 F. Supp. 535 (N.D. Ga. 1981), which specifically rejected the staff opinions to the contrary.

6. *Reference to Impending Action* (section 807(5)). A number of previous interpretations imposed differing, and sometimes inconsistent, standards concerning the circumstances under which a debt collector is permitted to represent that legal action or other action may or will occur. The commentary supersedes these interpretations and substitutes the more uniform standards imposed in the Commission's most recent consent judgments concerning this issue.

7. *Required Disclosures in Collection Communications* (section 807(11)). Some courts have required the designated disclosures in every single written and oral collection communication to the consumer and third parties. The commentary interprets the subsection less strictly, taking into account situations where the disclosures do not appear necessary, in accordance with the Commission's Sixth and Seventh Annual Reports to Congress and with the most recent Court of Appeals decision in *Pressley* v. *Capital Credit and Collection Service, Inc.*, 760 F.2d 922 (9th Cir. 1985).

8. *General Elements of Unfairness* (section 808). Previous staff interpretations have not addressed what criteria will be used in determining whether an act or practice violates the basic requirements of § 808. The commentary addresses these issues, stating that an act by a debt collector will be deemed "unfair" if it causes injury to a consumer that is substantial, not reasonably avoidable, and is not outweighed by countervailing benefits.

9. *Surcharges* (Section 808(1)). A number of early interpretations have attempted to prescribe varying standards concerning (1) when a "surcharge" is permitted and (2) how much it should be. The commentary overrules these interpretations and establishes that state law will determine the result, because this approach is consistent with the specific language of the Act.

10. *Form of Validation Notice* (Section 809(a)). Several staff interpretations have indicated that the statement of consumer rights required by section

809(a)(3–5) may be on a separate piece of paper from (or the reverse side of) the disclosure of the debt required by section 809(a)(1–2) only if there is clear notice on the first piece (or in front of) the disclosure. The commentary overrules these opinions, because the Act contains no requirements as to particular form, sequence, or location for such a statement.

Requests for Information

The staff of the Bureau of Consumer Protection's Division of Credit Practices will accept written comments on the proposed staff commentary for a period of sixty days. The Commission staff is interested in receiving comments to aid in its consideration of the commentary, because it recognizes that it may have a substantial impact on the debt collection industry and the consuming public. Comments may be addressed to any aspect of the commentary, including the following:

(1) Is a commentary and acceptable format in which to communicate staff views on the FDCPA? Are members of the public (including the debt collection industry, consumers, and others) more likely to rely on the commentary than on existing staff interpretations of the Act? Why or why not?

(2) The proposed commentary (A) eliminates interpretations that are considered to be relatively unimportant, (B) recasts or overrules other interpretations that appear inaccurate, or inconsistent with other more recent interpretations, and (C) restates the remaining interpretations in a more understandable format. Are the modifications made by the proposed commentary beneficial to the industry and members of the public?

(13) Are there any changes from prior staff interpretations reflected in the commentary that you think are particularly valuable? If so, which one(s) and why?

(4) Will any part of the commentary as presently drafted impose unnecessary burdens on industry or cause unnecessary injury to consumers?

By direction of the Commission.

Emily H. Rock,

Secretary.

Federal Trade Commission Staff Commentary on the Fair Debt Collection Practices Act

Introduction

This Commentary is the vehicle by which the staff of the Bureau of Consumer Protection publishes its interpretations of the Fair Debt Collection Practices Act (FDCPA). It is a guideline intended to clarify the staff interpretations of the statute, but does not have the force on effect of statutory provisions. It is not a formal trade regulation rule or advisory opinion of the Commission, and thus is not binding on the Commission or the public.

The Commentary is based primarily on issues discussed in informal staff letters responding to public requests for interpretations and on the Commission's enforcement program, subsequent to the FDCPA's enactment. It is intended to synthesize staff views on important issues and to give clear advice where inconsistencies have been discovered among staff letters. In some cases, reflection on the issues posed or relevant court decisions have resulted in a different interpretation from that expressed by staff in those informal letters. Therefore, the Commentary supersedes the staff views expressed in such correspondence. However, the Bureau of Consumer Protection staff will not recommend an enforcement action for prior conduct in reliance upon previous staff advice that we now overrule or otherwise modify.

In many cases several different sections or subsections of the FDCPA may apply to a given factual situation. This results from the effort by Congress in drafting the FDCPA to be both explicit and comprehensive, in order to limit the opportunities for debt collectors to evade the underlying legislative intention. Although it may be of only technical interest whether a given act violates one, two, or three sections of the FDCPA, the staff has attempted to refer to all applicable sections so that the Commentary may serve as a comprehensive reference for its users. The Commentary contains discussions of the most common overlapping references (usually under the heading "Relation to other sections"), and deals with issues raised by each factual situation under the section or subsection that staff deems most directly applicable to it.

The Commentary will be revised and updated by the staff as needed, based on the experience of the Commission in responding to public inquiries about, and enforcing, the FDCPA. The Commission welcomes input from interested industry consumer, and other public parties on the Commentary and on issues discussed in it.

Staff will continue to repond to requests for informal interpretations. Updates of the Commentary will consider and, where appropriate, incorporate issues raised in correspondence and other public contacts, as well as the Commission's enforcement efforts. Therefore, a party who is interested in raising an issue for inclusion in future editions of the Commentary does not need to make any formal submission or request to that effect. However, requests for formal advisory opinions of the Commission must still be made in accordance with Commission rules [16 CFR 1.2].

The Commentary should be used in conjunction with the statute. The abbreviated description of each section or subsection in the Commentary is designed only as a preamble to discussion of issues pertaining to each section, and is not intended as a substitute for the statutory text.

The Commentary should not be considered as a reflection of all court rulings under the FDCPA. Indeed, the staff's enforcement position may not be in accord with some judicial interpretations of the statute, particularly on issues that have been addressed only by lower courts or that have been addressed by the courts in ways that are not consistent with one another.

Section 801—Short Title

Section 801 names the statute the "Fair Debt Collection Practices Act."

The Fair Debt Collection Practices Act (FDCPA) is Title VIII of the Consumer Credit Protection Act, which also includes other federal statutes relating to consumer credit, such as the Truth in Lending Act (Title I), the Fair Credit Reporting Act (Title VI), and the Equal Credit Opportunity Act (Title VII).

Section 802—Findings and Purpose

Section 802 recites the Congressional findings that serve as the basis for the legislation.

Section 803—Definitions

Section 803(1) defines "Commission" as the Federal Trade Commission.

1. *General.* The definition includes only the Federal Trade Commission, not necessarily the staff acting on its behalf.

Section 803(2) defines "communication" as the "conveying of infoirmation regarding a debt directly or indirectly to any person through any medium."

1. *General.* The definition includes oral and written transmission of messages which refer to a debt.

2. *Exclusions.* The term does not include situations where the debt collector does not convey information regarding the debt, such as:

- A request to a third party for a consumer to return a telephone call to the debt collector, if the debt collector does not refer to the debt or the caller's status as (or affiliation with) a debt collector.

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- A request to a third party for information about the consumer's assets, if the debt collector does not reveal the existence of a debt.

Section 803(3) defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt."

1. *General.* The definition includes only a "natural person" and not an artificial person such as a corporation or other entity created by statute.

Section 803(4) defines "creditor" as "any person who offers or extends credit creating a debt or to whom a debt is owed." However, the definition excludes a party who "receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another."

1. *General.* The definition includes the party that actually extended credit or became the obligee on an account in the normal course of business, and excludes a party that was assigned the debt only for collection purposes.

Section 803(5) defines "debt" as a consumer's monetary obligation "arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes . . ."

1. *Examples.* The term includes:

- Overdue obligations such as medical bills that were originally payable in full within a certain time period (e.g., 30 days).
- A dishonored check that was tendered in payment for goods or services acquired or used primarily for personal, family, or household purposes.

2. *Exclusions.* The term does not include:

- Unpaid taxes and fines, because they are not debts incurred from a "transaction (involving purchase of) property . . . or services . . . for personal, family or household purposes."
- A credit care that a cardholder retains after the card issuer has demanded its return. The cardholder's account balance is the debt.

Section 803(6) defines "debt collector" as a party "who uses any instrumentality of interstate commerce or the mails in [connection with] . . . any debt owed . . . another."

1. *Examples.* The term includes:

- Employees of a debt collection business, including a corporation, partnership, or other entity whose business is the collection of debts owed another.
- A management firm that regularly collects overdue rent on behalf of real estate owners, because it "regularly collects . . . debts owed or due another.
- A party based in the United States who collects debts owed by consumers residing outside the United States, because he "uses . . . the mails" in a collection business. The residence of the debtor is irrelevant.
- A firm that collects debts for a creditor solely by mechanical techniques, such as (1) placing phone calls with pre-recorded messages and recording consumer responses, or (2) making computer-generated mailings.

2. *Exclusions.* The term does not include:

- Any person who collects debts (or attempts to do so) only in isolated instances, because the definition includes only those who "regularly" collect debts.
- A credit card issuer that collects its cardholder's account, even when the account is based upon purchases from participating merchants, because the issuer is collecting its own debts, not those "owed or due another."

3. *Application of definition to creditor using another name.* Creditors are generally excluded from the definition of "debt collector" to the extent that they collect their own debts in their own name. However, the term specifically applies to "any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is" involved in the collection.

A creditor is a debt collector for purposes of this Act if:

- He uses a name other than his own to collect his debts, including a fictitious name.
- His salaried attorney employees who collect debts use stationery that indicates the attorneys are employed by someone other than the creditor or are independent or separate from the creditor.
- He regularly collects debts for another creditor; however, he is a debt collector only for purposes of collecting these debts, not when he collects his own debt in his own name.
- The creditor's collection division is not clearly designatedas being affiliated with the creditor; however, the creditor is not a debt collector if the creditor's correspondence is clearly labeled as being from the "collection unit of the (creditor's name)," since the creditor is not using a "name other than his own" in that instance.

Relation to other sections. A creditor who is covered by the FDCPA because he uses a "name other than his own" also may violate § 807(14), which prohibits using a false business name. When he uses an attorney's name, he violates section 807(3).

4. *Specific exemptions from definition of debt collector.*

(a) *Creditor employees.* Section 803(6)(A) provides that "debt collector" does not include "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor."

The exemption includes a collection agency employee, who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision, because he has become the *de facto* employee of the creditor.

The exemption does not include a creditor's former employee who continues to collect accounts on the creditor's behalf, if he acts under his own name rather than the creditor's.

(b) *Creditor-controlled collector.* Section 803(6)(B) provides that "debt collector" does not include a party collecting for another, where they are both "related by common ownership or affiliated by corporate control, if the (party collects) only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts."

The exemption applies where the collector and creditor have "common ownership or . . . corporate control." For example, a company is exempt when it attempts to collect debts of another company after the two entities have merged.

The exemption does not apply to an entity whose principal activity is debt collection, even if it is under common ownership with a differently-named creditor and collects debts only for that party.

The exemption does not apply to a party related to a creditor if it also collects debts for others in addition to the related creditors.

(c) *State and federal officials.* Section 803(6)(C) provides that "debt collector" does not include any state or federal employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties."

The exemption applies only to such governmental employees in the performance of their "official duties" and, therefore, does not apply to an attorney employed by a county government who also collects bad checks for local merchants where that activity is outside his official duties.

(d) *Process servers.* Section 803(6)(D) provides that "debt collector" does not include "any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt."

The exemption covers marshals, sheriffs, and any other process servers while conducting their normal duties relating to serving legal papers.

(e) *Non-profit counselors.* Section 803(6)(E) provides that "debt collector" does not

include "any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors."

This exemption applies only to non-profit organizations; it does not apply to for-profit credit counseling services that accept fees from debtors and regularly transmit such funds to creditors.

(f) *Attorneys.* Section 803(6)(F) provides that "debt collector" does not include "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client."

The exemption includes attorneys who collect debts in the course of providing professional legal services to either a creditor or debt collector.

The exemption includes an attorney's non-attorney employees only when they are participating in the provision of legal services by attorneys.

The exemption includes firms that are engaged primarily in the provision of professional legal services. For example, it includes a firm whose clientele includes merchants who expect their attorneys to handle delinquent accounts, among other legal chores (e.g., leases, licenses, contract negotiations).

The exemption does not include firms that are engaged primarily in the collection of debts rather than the provision of professional legal services, even if they are owned by attorneys. For example, firms that primarily collect debts and typically delegate primary or exclusive responsibility to their non-attorney employees to handle all aspects of collection work, such as evaluating consumer files, handling mail and telephone contracts, negotiating settlements, making payment arrangements and the like, are not within the exemption.

Whether or not an attorney or law firm is providing professional legal services to a creditor is a question of fact that will turn on a number of factors including the nature of the attorney-creditor relationship, the type and variety of legal work done by the attorney for the creditor, and the degree to which such work requires the unique exertise, training, and background of an attorney.

(g) *Miscellaneous.* Section 803(6)(G) provides that "debt collector" does n ot include collection activity by a party about a debt that "(i) is incidental to a bona fide fiduciary obligation or . . . escrow arrangement; (ii) . . . was originated by such person; (iii) . . . was n ot in default at the time it was obtained by such person; or (iv) (was) obtained by such person as a secured party in a commercial credit transaction involving the creditor."

The exemption (i) for bona fide fiduciary obligations or escrow arrangements applies to entities such as trust departments of banks, and escrow companies.

The exemption (ii) for a party that originated the debt applies to the original creditor collecting his own debts in his own name. It also applies when a creditor assigns a debt originally owed to him, but retains the authority to collect the obligation on behalf of the assignee to whom the debt becomes owed. For example, the exemption applies to a creditor who makes a mortgage or school loan and continues to handle the account after assigning it to a third party. However, it does not apply to a party that takes assignment of retail installment contracts from the original creditor and then reassigns them to another creditor but continues to collect the debt arising from the contracts, becaust the debt was not "originated by" the collector/first assignee.

The exception (iii) for debts not in default when obtained applies to parties such as mortgage service companies whose business is servicing current accounts.

The exemption (iv) for a secured party in a commercial transaction applies to a commercial lender who acquires a consumer account that was used as collateral, following default on a loan from the commercial lender to the original creditor.

Section 803(7) defines "location information" as "a consumer's place of abode and his telephone number at such place, or his place of employment."

This definition includes only residence, home phone number, and place of employment. It does not cover work phone numbers, names of supervisors and their telephone numbers, salaries or dates of paydays.

Section 803(8) defines "state" as "any State territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing."

Section 804—Acquisition of Location Information

Section 804 requires a debt collector, when communicating with third parties for the purpose of acquiring information about the consumer's location to "(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested identify his employer," (2) not refer to the debt, (3) usually make only a single contact with each third party, (4) not communicate by post card, (5) not indicate the collection nature of his business purpose in any written communication, and (6) normally limit communications to the consumer's attorney, where the collector knows of the attorney.

1. *General.* Although the FDCPA generally protects the consumer's privacy by limiting debt collector communications about personal affairs to third parties, it recognizes the need for some third party contact by collectors to seek the whereabouts of the consumer.

2. *Identification of debt collector [section 804(1)].* An individual employed by a debt collector seeking location information must identify himself, but must not identify his employer unless asked. When asked, however, he must give the true and full name of the employer, to comply with this provision and avoid a violation of section 807(14).

An individual debt collector may use an alias if it is used consistently and if it does not interfere with another party's ability to identify him (e.g., the true identity can be ascertained from the employer).

3. *Referral to debt [section 804(2)].* A debt collector may not refer to the consumer's debt in any third party communication seeking location information, including those with other creditors.

4. *Reference to debt collector's business [section 804(5)].* A debt collector may not use his actual name in his letterhead or elsewhere in a written communication seeking location information, if the name indicates collection activity, such as a name containing the word "debt", "collector", or "collection."

5. *Communication with consumer's attorney [section 804(6)].* Once a debt collector learns a consumer is represented by an attorney, he must limit his request for location information to the attorney. [See also comments on section 805(a)(2)].

Section 805—Communication in Connection With Debt Collection

Section 805(a)—Communication with the consumer. Unless the consumer has consented or a court order permits, a debt collector may not communicate with a consumer to collect a debt (1) at any time or place which is unusual or known to be inconvenient to the consumer (8AM–9PM is presumed to be convenient), (2) where he knows the consumer is represented by an attorney with respect to the debt, or (3) at work if he knows the consumer's employer prohibits such contacts.

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to contacts with the consumer related to the collection of the

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debt, whether or not the debt is specifically mentioned.

2. *Inconvenient or unusual times or places [section 805(a)(1)].* A debt collector may not call the consumer at any time, or on any particular day, if he has credible information (from the consumer or elsewhere) that it is inconvenient. If the debt collector does not have such information, a call on Sunday is not *per se* illegal.

3. *Consumer represented by attorney [section 805(a)(2)].* If a debt collector learns that a consumer is represented by an attorney, even if not formally notified of this fact, the debt collector must contact only the attorney and must not contact the consumer.

A debt collector who knows a consumer is represented by an attorney with respect to a debt is not required to assume similar representation on other debts; however, if a consumer notifies the debt collector that the attorney has been retained to represent him for all current and future debts that may be placed with the debt collector, the debt collector must deal only with that attorney.

The creditor's knowledge that the consumer has an attorney is not automatically imputed to the debt collector.

4. *Calls at work [section 805(a)(3).* A debt collector may not call the consumer at work if he has reason to know the employer forbids such communication.

Section 805(b)—Communication with third parties. Unless the consumer consents, or a court order or § 804 permits, "or as reasonably necessary to effectuate a postjudgment judicial remedy," a debt collector "may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector."

1. *Consumer consent to the third party contact.* The consumer's consent need not be in writing. It may be presumed from circumstances, such as if a third party volunteers that a consumer has authorized him to pay the consumer's account. However, consent may not be inferred only from a consumer's reaction when the debt collector requests such consent.

2. *Location information.* Although a debt collector's search for information concerning the consumer's location (provided for in § 804) is expressly excepted from the ban on third party contacts, a debt collector may not call third parties under the pretense of gaining information already in his possession.

3. *Incidental contacts with telephone operator or telegraph clerk.* A debt collector may contact an employee of a telephone or telegraph company in order to contact the consumer, without violating the prohibition on communication to third parties, if the only information given is that necessary to enable the collector to transmit the message to, or make the contact with the consumer.

4. *Accessibility by third party.* A debt collector may not send a written message that is easily accessible to third parties. For example, he may not use a computerized billing statement that can be seen on the envelope itself.

A debt collector may use an "in care of" letter only if the consumer lives at, or accepts mail at, the other party's address.

A debt collector does not violate this provision when an eavesdropper overhears a conversation with the consumer, unless the debt collector has reason to anticipate the conversation will be overheard.

5. *Non-excepted parties.* A debt collector may contact only the parties specified in this section (consumer, creditor, a party's attorney, or credit bureau). For example, a collector may not contact a bank about a dishonored check, or (without the consumer's consent) make a report on a consumer to a non-profit counseling service.

6. *Judicial remedy.* The words "as reasonably necessary to effectuate a postjudgment judicial remedy" mean a communication necessary for execution or enforcement of the remedy. A debt collector may not send a copy of the judgment to an employer, except as part of a formal service of papers to achieve a garnishment or other remedy.

7. *Audits or inquiries.* A debt collector may disclose his files to a government official or an auditor, to respond to an inquiry or conduct an audit, because the disclosure would not be "in connection with the collection of any debt."

8. *Receipt to third party.* A debt collector does not violate this section when he gives a receipt to a consumer's friend or relative who makes a payment on a debt, as long as the collector does not convey information about the details of the debt to the payer.

Section 804(c)—Ceasing communication. Once a debt collector receives written notice from a consumer that he or she refuses to pay the debt or wants the collector to stop further collection efforts, the debt collector must cease any further communication with the consumer except "(1) to advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy."

1. *Scope.* For purposes of this section, the term "communicate" is given its commonly accepted meaning. Thus, the section applies to any contact with the consumer related to the collection the debt, whether or not the debt is specifically mentioned.

2. *Request for payment.* A debt collector's response to a "cease communication" notice from the consumer may not include a demand for payment, but is limited to the three statutory exceptions.

Section 805(d)—"consumer" definition. For Section 805 purposes, the term "consumer" includes the "consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

1. *Broad "consumer" definition.* Because of the broad statutory definition of "consumer" for the purposes of this section, many of its protections extend to parties close to the consumer. For example, the debt collector may not call the consumer's spouse at work, or a time known to be an inconvenient time. Conversely, he may call the spouse (guardian, executor, etc.) whenever he could call the consumer.

Section 806—Harassment or Abuse

Section 806 prohibits a debt collector from any conduct that would "harass, oppress, or abuse any person in connection with the collection of a debt." It provides six examples of harassment or abuse.

1. *Scope.* Prohibited actions are not limited to the six subsections listed as examples of activities that violate this provision.

2. *Unnecessary calls to third parties.* A debt collector may not leave telephone messages with many different neighbors when the debt collector knows the consumer's name and telephone number and could have reached him directly.

3. *Multiple contacts with consumer.* A debt collector may not engage in repeated personal contacts with a consumer with such frequency as to harass him. For example, the debt collector may not follow the consumer, or contact him six times in one day. Subsection (5) deals specifically with harassment by multiple phone calls.

4. *Abusive conduct.* A debt collector may not pose a lengthy series of questions or comments to the consumer without giving the consumer a chance to reply. Subsection (2) deals specifically

with harassment involving obscene, profane, or abusive language.

Section 806(1) prohibits "the use or threat of use of violence or other criminal means to harm . . . any person."

1. *Implied threat.* A debt collector may violate this section by an implied threat of violence. For example, a debt collector may not pressure a consumer with statements such as "We're not playing around here—we can play tough" or "We're going to send somebody to collect for us one way or the other."

Section 806(2) prohibits the use of obscene, profane, or abusive language.

1. *Abusive language.* Abusive language includes religious slurs, profanity, obscenity, calling the consumer a liar or a deadbeat, and the use of racial or sexual epithets.

Section 806(3) prohibits "the publication of a list of consumers who allegedly refuse to pay debts," except to report the items to a "consumer reporting agency," as defined in the Fair Credit Reporting Act.

Section 806(4) prohibits "the advertisement for sale of any debt to coerce payment of the debt."

1. *Shaming prohibited.* These provisions are designed to prohibit debt collectors from "shaming" a customer into payment, by publicizing the debt.

2. *Exchange of lists.* Debt collectors may not exchange lists of consumers who allegedly refuse to pay their debts.

3. *Informtion to creditor subscribers.* A debt collector may not distribute a list of alleged debtors to its creditor subscribers, because the statute permits it to provide such information only to consumer reporting agencies.

Section 806(5) prohibits contacting the consumer by telphone "repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."

1. *Multiple phone calls.* "Continuously" means making a series of telephone calls, one right after the other. "Repeatedly" means calling with excessive frequency, such as six phone calls in an hour.

Section 806(6) prohibits, except where section 804 applies, "the placement of telephone calls without meaningful disclosure of the caller's identify."

1. *Aliases.* A debt collector employee's use of an alias that permits identification of the debt collector (i.e., where he uses the alias consistently, and his true identify can be ascertained by contact with the employer) constitutes a "meaningful disclosure of the caller's identity."

2. *Identification of caller.* An individual debt collector must disclose his employer's identity, when contacting consumers or third parties permitted by section 805(b).

3. *Relation to other sections.* A debt collector who uses a false business name in a phone call to conceal his identity violates section 807 (14), as well as this section.

Section 807—False or misleading representation

Section 807 prohibits a debt collecter from using any "false, deceptive, or misleading representation or means in connection with the collection of any debt." It provides sixteen examples of false or misleading representations.

1. *Scope.* Prohibited actions are not limited to the sixteen subsections listed as examples of activities that violate this provision. In addition, section 807(10), which prohibits the "use of any false representation or deceptive means" by a debt collector, is particularly broad and encompasses virtually every violation, including those not covered by the other subsections.

Section 807(1) prohibits "the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the Untied States or any State . . . "

1. *Symbol on dunning notice.* A debt collecter may not use a symbol in correspondence that make him appear to be a government official. For example, a collection letter depicting a police badge, a judge, or the scales of justice, violates this section.

Section 807(2) prohibits falsely representing either "(A) the character, amount, or legal status of any debt; or (B) any services rendered or compensation which may be lawfully received by" the collector.

1. *Legal status of debt.* A debt collector may not falsely imply that legal action has begun.

2. *Amount of debt.* A debt collector may not claim an amount more than actually owed, or falsely assert that the debt has matured or that it is immediately due and payable, when it is not.

3 *Judgment.* When a debt collector provides the validation notice required by section 809(a)(4), the notice may include the words "copy of a judgment" whether or not a judgment exists, because section 809(a)(4) provides for a statement including these words. This information avoids making compliance with section 809(a)(4) a violation of section 807(2)(A)

Section 807(3) prohibits falsely representing or implying that "any individual is an attorney or that any communication is from an attorney."

1. *Form of legal correspondence.* A debt collector may not send a collection letter from a "pre-Legal department," where no legal department exists. An attorney may use a computer service to send letters on his own behalf, but a debt collector may not send a computer-generated letter using an attorney's name.

2. *Names individual.* A debt collector may not falsely represent that a person named in a letter is his attorney.

3. *Relation to other sections.* If a creditor uses an attorney's name rather than his own in his collection communications, he both loses his exemption from the FDCPA's definition of "debt collector" (section 803(6)) and violates this provision.

Section 807(4) prohibits falsely representing or implying to the consumer that nonpayment "will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person . . ."

Section 807(5) prohibits "the threat to take any action that cannot legally be taken or that is not intended to be taken."

1. *Debt collector's statement of his own definite action.* A debt collector may not state that he will take any action unless he intends to take the action when the statement was made, or ordinarily takes the action in similar circumstances.

2. *Debt collector's statement of definite action by third party.* A debt collector may not state that a third party will take any action unless he has reason to believe, at the time the statement is made, that such action will be taken.

3. *Statement of possible action.* A debt collector may not state or imply that he or any third party may take any action unless such action is legal and there is a reasonable likelihood, at the time the statement is made, that such action will be taken. A debt collector may state that certain action is possible, if it is true that such action is legal and is frequently taken by the collector or creditor with respect to similar debts; however, if the creditor has reason to know there are facts that make the action unlikely in the particular case, a statement the action was possible would be misleading.

4. *Threat of criminal action.* A debt collector may not threaten to report a dishonored check or other fact to the police, unless he actually intends to take this action.

5. *Threat of attachment.* A debt collector may not threaten to attach a consumer's tax refund, when he has no authority to do so.

6. *Threat of legal or other action.* Section 807(5) refers not only to a false threat of legal action, but also a false

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threat by a debt collector that he will report a debt to a credit bureau, assess a collection fee, or undertake any other action if the debt is not paid. A debt collector may also not misrepresent the imminence of such action.

A debt collector's implication, as well as a direct statement, of planned legal action may be an unlawful deception. For example, reference to an attorney or to legal proceedings may mislead the debtor as to the likelihood or imminence of legal action.

A debt collector's statement that legal action has been recommended is a representation that legal action may be taken, since such a recommendation implies that the creditor will act on it at least some of the time.

Lack of intent may be inferred when the amount of the debt is so small as to make the action totally unfeasible or when the debt collector is unable to take the action because the creditor has not authorized him to do so.

7. *Illegality of threatened act.* A debt collector may not threaten that he will illegally contact an employer, or other third party, or take some other "action that cannot legally be taken" (such as advising the creditor to sue where such advice would violate state rules governing the unauthorized practice of law). If state law forbids a debt collector from suing in his own name (or from doing so without first obtaining a formal assignment and that has not been done), the debt collector may not represent that he will sue in that state.

Section 807(6) prohibits falsely representing or implying that a transfer of the debt will cause the consumer to (A) lose any claim or defense, or (B) become subject to any practice prohibited by the FDCPA.

1. *Referral to creditor.* A debt collector may not falsely state that the consumer's account will be referred back to the original creditor, who would not be bound by the FDCPA.

Section 807(7) prohibits falsely representing or implying that the "consumer committed any crime or other (disgraceful) conduct."

1. *False allegation of fraud.* A debt collector may not falsely allege that the consumer has committed fraud.

2. *Misrepresentation of criminal law.* A debt collector may not make a misleading statement of law, falsely implying that the consumer has committed a crime, or mischaracterize what constitutes an offense by misstating or omitting significant elements of the offense. For example, a debt collector may not tell the consumer that he has committed a crime by issuing a check that is dishonored, when the statute applies only where there is a "scheme to defraud."

Section 807(8) prohibits "communicating or threatening to communicate to any person (false) credit information . . . , including the failure to commuicate that a disputed debt is disputed."

1. *Disputed debt.* If a debt collector knows that a debt is disputed by the consumer, either from receipt of written notice (§ 809) or other means, and reports it to a credit bureau, he must report it as disputed.

2. *Post-report dispute.* When a debt collector learns of a dispute after reporting the debt to a credit bureau, the dispute need not also be reported.

Section 807(9) prohibits "the use of any document designed to falsely imply that it issued from a state or federal source.

1. *Relation to other sections.* Most of the violations of this section involve simulated legal process, which is more specifically covered by § 807(13). However, this subsection is broader in that it also covers documents that fraudulently appear to be official government documents.

Section 807(10) prohibits "the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer."

1. *Relation to other sections.* The prohibition is so comprehensive that violation of any part of § 807 will usually also violate subsection (10). Actions that violate more specific provisions are discussed in those sections.

2. *Communcation format.* A debt collector may not communicate by a format or envelope that misrepresents the nature, purpose, or urgency of the message. It is a violation to send any communication that conveys to the consumer a false sense of urgency. However, it is usually permissible to send a letter generated by a machine, such as a computer or other printing device. A bona fide contest entry form, which provides a clearly optional location to enter employment information, enclosed with a request for payment, is not deceptive.

3. *False statement or implications.* A debt collector may not falsely state or imply that a consumer is required to assign his wages to his creditor when he is not, that the debt collector has counseled the creditor to sue when he has not, that adverse credit information has been entered on the consumer's credit record when it has not, that the entire amount is due when there is no acceleration clause, or that he cannot accept partial payments when in fact he is authorized to accept them.

4. *Misrepresentation of law.* A debt collector may not mislead the consumer as to the legal consequences of the consumer's action (e.g., by implying that a failure to respond is an admission of liability).

A debt collector may not state that federal law requires a notice of the debt collector's intent to contact third parties.

5. *Misleading letterhead.* A debt collector's employee who is an attorney may not use "attorney-at-law" stationery without referring to his employer, so as to falsely imply to the consumer that the debt collector had retained a private attorney to bring suit on the account.

Section 807(11) requires the debt collector to "disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," except where section 804 provides otherwise.

1. *Oral communications.* A debt collector must make the required disclosures in both oral and written communications.

2. *Disclosure to consumers.* When a debt collector contacts a consumer and clearly discloses that he is seeking payment of a debt, he need not state that all information will be used to collect a debt, since that should be apparent to the consumer. The debt collector need not repeat the required disclosure in subsequent contacts.

A debt collector may not send the consumer a note saying only "please call me right away" unless there has been prior contact between the parties and the collector is thus known to the consumer.

3. *Disclosures to third parties.* The debt collector must state in his first communication with a third party that he is attempting to collect the debt and that information will be used for that purpose, but need not do so in subsequent communications with that party.

Section 807(12) prohibits falsely representing or implying that "accounts have been turned over to innocent purchasers for value."

1. *Relation to other sections.* Section 807(6)(A) prohibits threatening to affect the consumer's rights by transferring the account; this subsection forbids falsely stating or implying that this has been done.

Section 807(13) prohibits falsely representing or implying that "documents are legal process."

1. *Simulated legal process.* A debt collector may not send written communications that deceptively resemble legal process forms. He may not send a form or a dunning letter that, taken as a whole, appears to simulate legal process. However, one legal phrase (such as "notice of legal action" or "show just cause why") alone will not result in a violation of this section unless it contributes to an erroneous impression that the document is a legal form.

Section 807(14) prohibits "the use of any business, company, or organization name other than the (collector's) true name."

1. *Permissible business name.* A debt collector may use a name that does not misrepresent his identity or deceive the consumer. Thus, a collector may use its full business name, the name under which it usually transacts business, or a commonly used acronym. When the collector uses multiple names in its various affairs, it does not violate this subsection if it consistently uses the same name when dealing with a particular consumer.

2. *Creditor misrepresentation of identity.* A creditor may not use any name that would falsely imply that a third party is involved in the collection. The in-house collection unit of "ABC Corp." may use the name "ABC Collection Division," but not the name "XYZ Collection Agency" or some other unrelated name.

A creditor violates this section if he uses the name of a collection bureau as a conduit for a collection process that the creditor controls in collecting his own accounts. Similarly, a creditor may not use a fictitious name or letterhead, or a "post office box address" name that implies someone else is collecting his debts.

A creditor does not violates this provision where an affiliated (and differently named) debt collector undertakes collection activity, if the debt collector does business separately from the creditor (e.g., where the debt collector in fact has other clients that he treats similarly to the creditor, has his own employees, deals at arms length with the creditor, and controls the process himself).

3. *All collection activities covered.* A debt collection business must use its real business name, commonly-used name, or acronym in both written and oral communications.

4. *Relation to other sections.* If a creditor uses a false business name, he both loses his exemption from the FDCPA's definition of "debt collector" [§ 803(6)] and violates this provision. If a debt collector falsely uses the name of an attorney rather than his true business name, he violates section 807(3) as well as this section. When a debt collector uses a fasle business name in a phone call, he violates section 806(6) as well as this section.

When using the mails to obtain location information, a debt collector may not use a name that indicates he is in the debt collection business, or he will violate § 804(5). When a debt collector's employee who is seeking location information replies to an inquiry about his employer's identity under § 804(1), he must give the true name of his employer.

Section 807(15) prohibits falsely representing or implying that documents are not legal process forms or do not require action by the consumer.

1. *Disguised legal process.* A debt collector may not deceive a consumer into failing to respond to legal process by concealing the import of the papers, thereby subjecting the consumer to a default judgment.

Section 807(16) prohibits falsely representing or implying that a debt collector operates or is employed by a "consumer reporting agency," as defined in the Fair Credit Reporting Act.

1. *Dual agencies.* The FDCPA does not prohibit a debt collector from operating a consumer reporting agency.

2. *Misleading names.* Only a bona fide consumer reporting agency may use names such as "Credit Bureau," "Credit Bureau Collection Agency," "General Credit Control," "Credit Bureau Rating, Inc.," or "National Debtors Rating." A debt collector's disclaimer in the text of a letter that the debt collector is not affiliated with (or employed by) a consumer reporting agency, will not necessarily avoid a violation if the collector uses a name that indicates otherwise.

3. *Factual issue.* Whether a debt collector that has called itself a credit bureau actually qualifies as such is a factual issue, to be decided according to the debt collector's actual operation.

Section 808—Unfair Practices

Section 808 prohibits a debt collector from using "unfair or unconscionable means" in his debt collection activity. It provides eight examples of unfair practices.

1. *Scope.* Prohibited actions are not limited to the eight subsections listed as examples of activities that violate this provision.

2. *Elements of unfairness.* A debt collector's act in collecting a debt is "unfair" if it causes injury to the consumer that is (1) substantial, (2) not outweighed by countervailing benefits to consumers or competition, and (3) not reasonably avoidable.

Section 808(1) prohibits collecting any amount unless the amount is expressly authorized by the agreement creating the debt or is permitted by law.

1. *Kinds of amounts covered.* For purposes of this section, "amount" includes not only the debt, but also any incidential charges, such as collection charges, interest, service charges, late fees, and bad check handling charges.

2. *Legality of charges.* A debt collector may attempt to collect a fee for charge in addition to the debt if either (A) the charge is expresaly provided for in the contract creating the debt and the charge is not prohibited by state law, or (B) the contract is silent but the charge is otherwise expressly permitted by state law. Conversely, a debt collector may not collect an additional amount if either (A) state law expressly prohibits collection of the amount or (B) the contract does not provide for collection of the amount and state law is silent.

3. *Legality of fee under state law.* If state law permits collection of reasonable fees, the reasonableness and consequential legality of these fees is determined by state law.

4. *Agreement not in writing.* A debt collector may establish an "agreement" without a written contract. For example, he may collect a service charge on a dishonored check based on a posted sign on the merchant's premises allowing such a charge, if he can demonstrate that the consumer knew of the charge.

Section 808(2) prohibits accepting a check postdated by more than five days unless timely written notice is given to the consumer prior to deposit.

Section 808(3) prohibits soliciting any postdated check for purposes of threatening or instituting criminal prosecution.

Section 808(4) prohibits depositing a postdated check prior to its date.

1. *Postdated checks.* These provisions do not totally prohibit debt collectors from accepting postdated checks from consumers, but rather prohibit debt collectors from misusing such instruments.

Section 808(5) prohibits causing any person to incur telephone or telegram charges by concealing the true purpose of the communication.

1. *Long distance calls to the debt collector.* A debt collector may not ask a consumer to call him long distance without disclosing the debt collector's identity and the communication's purpose.

2. *Relation to other section.* A debt collector who conceals his purpose in asking consumers to call long distance may also violate section 807(11), which requires the debt collector to disclose his purpose in some communications.

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Section 808(6) prohibits enforcing a security interest on property, or threatening to do so, where (A) there is not present right to the collateral, (B) there is no present intent to exercise such rights, or (C) the property is exempt by law.

1. *Security enforcers.* Because the FDCPA's definition of "debt collector" includes parties whose principal business is enforcing security interests only for § 808(6) purposes, such parties are subject only to this provision and not to the rest of the FDCPA.

Section 808(7) prohibits "Communicating with a consumer regarding a debt by post card."

1. *Debt.* A debt collector does not violate this section if he sends a postcard to a consumer that does not communicate the existence of the debt. However, if he had not previously disclosed that he is attempting to collect a debt, he would violate Section 807(11), which requires this disclosure.

Section 808(8) prohibits showing anything other than the debt collector's address, on any envelope on any written communication to the consumer, except that a debt collector may use his business name if it does not indicate that he is in the debt collection business.

1. *Business names prohibited on envelopes.* A debt collector may not put on his envelope any business name with "debt" or "collector" in it, or any other name that indicates he is in the debt collection business. A debt collector may not use the American Collectors Association logo on an envelope.

2. *Collector's name.* Whether a debt collector/consumer reporting agency's use of his own "credit bureau" or other name indicates that he is in the collection business, and thus violates the section, is a factual issue to be determined in each individual case.

3. *Telegrams.* A debt collector does not violate this section by using an actual telegram or similar service, notwithstanding a Western Union (or other provider) logo and the word "telegram" (or similar word) on the envelope.

4. *Transparent envelopes.* A debt collector may not use a transparent envelope, which reveals language or symbols indicating his debt collection business, because it is the equivalent of putting information on an envelope.

Section 809—Validation of Debts

Section 809(a) requires a collector, within 5 days of the first communication, to send the consumer a written notice containing (1) the amount of the debt and (2) the name of the creditor, along with a statement that he will (3) assume the debt's validity unless the consumer disputes it within 30 days, (4) send a verification or copy of the judgment if the consumer timely disputes the debt, and (5) identify the original creditor upon written request.

1. *Who must send notice.* If the employer debt collection agency sends the required notice, employee debt collectors need not also send it. A debt collector's agent may send the notice, as long as it is clear that the information is being sent on behalf of the debt collector.

2. *Single notice required.* The debt collector is required to send only one notice for each debt. A notice need not offer to identify the original creditor unelss the name and address of the original creditor are different from the current creditor.

3. *Form of notices.* The FDCPA imposes no requirements as to the form, sequence, location, or typesize of the notice. However, an illegible notice does not comply with this provision.

4. *Alternate terminology.* A debt collector may condense and combine the required disclosures, as long as he provides all required information.

5. *Oral notice.* If a debt collector's first communication with the consumer is oral, he may make the disclosures orally at that time in which case he need not send a written notice.

6. *Legal action.* A debt collector's institution of formal legal action against a consumer is not a "communication in connection with collection of any debt," and thus does not confer section 809 notice-and-validation rights on the consumer.

Section 809(b) requires that, if the consumer disputes the debt or requests identification of the original creditor in writing, the collector must cease collection efforts until he verifies the debt and mails a response. Section 809(c) states that a consumer's failure to dispute the validity of a debt under this section is not an admission of liability.

1. *Pre-notice collection.* A debt collector need not cease normal collection activities within the consumer's 30-day period to give notice of a dispute until he receives a notice from the consumer.

A debt collector may report a debt to a credit bureau within the 30-day notice period, before he receives a request for validation or a dispute notice from the consumer.

Section 810—Multiple Debts

Section 810 provides that when a debt collector is collecting multiple debts and the consumer directs that a payment be applied to a certain debt or debts, the debt collector must honor those directions. A debt collector may not apply a payment to a disputed debt even if the consumer gives no direction in this regard.

Section 811—Legal Actions by Debt collectors

Section 811 provides that a debt collector may sue a consumer only in the judicial district where the consumer resides or signed the contract sued upon, except that an action to enforce a security interest in real property which secures the obligation must be brought where the property is located.

1. *Waiver.* Any waiver by the consumer must be provided to the debt collector, because the forum restriction applies to actions initiated by that party.

2. *Multiple defendants.* Since a debt collector may sue only where the consumer (1) lives or (2) signed the contract, the collector may not join an ex-husband as a defendant to a suit against the ex-wife in the district of her residence, unless he also lived there or signed the contract there. The existence of community property at her residence that is available to pay his debts does not alter the forum limitations on individual consumers.

3. *Real estate security.* A debt collector may sue based on the location of a consumer's real property only when he seeks to enforce an interest in such property that secures the debts.

4. *Services without written contract.* Where services were provided pursuant to an oral agreement, the debt collector may sue only where the consumer resides. He may not sue where services were perfomed (if that is different from the consumer's residence), because that is not included as a permissible forum location by this provision.

Section 812—Furnishing Certain Deceptive Forms

Section 812(a) prohibits any party from designing and furnishing forms, knowing they are or will be used to deceive a consumer to believe that someone other than his creditor is collecting the debt, and imposes FDCPA civil liability on parties who supply such forms.

Practice prohibited. This section prohibits the practice of selling to creditors dunning letters that falsely imply that a debt collector is collecting the debt, when in fact only the creditor is collecting.

2. *Coverage.* This section applies to anyone who designs, compiles, or furnishes the forms prohibited by this section.

3. *Pre-collection letters.* A form seller may not furnish a creditor with (1) a letter on a collector's letterhead to be used when the collector is not involved in collecting the creditor's debts, or (2) a letter indicating "copy to (the collector)" if the collector is not participating in collecting the creditor's debt. A form seller may not avoid liability by

including a statement in the text of a form letter that the sender has not yet been assigned the account for collection, if the communication as a whole, using the collector's letterhead, represents otherwise.

4. *Knowledge rquired.* A party does not violate this provision unless he has knowledge that his form letter will be used to mislead consumers into believing that someone other than the creditor is involved in collecting the debt.

5. *Participation by debt collector.* A debt collector that uses letters as his only collection tool does not violate this section, merely because he charges a flat rate per letter, if he is meaningfully "participating in the collection of a debt." The consumer is not misled in such cases, as he would be in the case of a party who supplied the creditor with form letters and provided little or no additional service in the collection process. The performance of other tasks associated with collection (e.g., handling verification requests, negotiating payment arrangements keeping individual records) is evidence that such a party is "participating in the collection."

Section 813—Civil Liability

Section 813 (A) imposes civil liability in the form of (1) actual damages, (2) discretionary penalties, and (3) costs and attorney's fees, (B) discusses relevant factors a court should consider in assessing damages, (C) exculpates a collector who maintains reasonable procedures form liability for an unintentional error, (D) permits actions to be brought in federal or state courts within one year from the violation, and (E) shields a defendant who relies on an advisory opinion of the Commission.

1. *Employee liability.* Since the employees of a debt collection agency are "debt collectors," they are liable for violations to the same extent as the agency.

2. *Damages.* The courts have awarded "actual damages" for FDCPA violations that were not just out-of-pocket expenses, but included damages for personal humiliation, embarrassment, mental anguish, or emotional distress.

3. *Application of statute of limitation period.* The section's one year statute of limitations applies only to private lawsuits, not to actions brought by a government agency.

4. *Advisory opinions.* A party may act in reliance on a formal advisory opinion of the Commission pursuant to 16 CFR §§ 1.1–1.4, without risk of civil liability. This protection does not extend to reliance on this Commentary or other informal staff interpretations.

Section 814—Administrative Enforcement

Section 814 provides that the principal federal enforcement agency for the FDCPA is the Federal Trade Commission, but assigns that power to other authorities empowered by certain federal statutes to regulate financial, agricultural, and transportation activities, where FDCPA violations relate to acts subject to those laws.

Section 815—Reports to Congress by Commission

Section 815 requires the Commission to submit an annual report to Congress which discusses its enforcement and other activities administering the FDCPA, assesses the degree of compliance, and makes recommendations.

Section 816—Relation to State laws

Section 816 provides that the FDCPA pre-empts state laws only to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. A State law is not inconsistent if it gives consumers greater protection than the FDCPA.

1. *Inconsistent laws.* Where a state law provides protection to the consumer equal to, or greater than, the FDCPA, it is not pre-empted by the federal statute.

Section 817—Exemption for State Regulation

Section 817 orders the Commission to exempt any class of debt collection practices from the FDCPA within any State if it determines that State laws regulating those practices are substantially similar to the FDCPA, and contain adequate provision for enforcement.

1. *State exemptions.* A state with a debt collection law may apply to the Commission for an exemption. The Commission must grant the exemption if the state's law is substantially similar to the FDCPA, and there is adequate provision for enforcement. The Commission has published procedures for processing such applications (16 CFR 901).

Section 818—Effective Date

Section 818 provides that the FDCPA took effect six months from the date of its enactment.

1. *Key dates.* The FDCPA was approved September 20, 1977, and became effective March 20, 1978.

[FR Doc. 86-4846 Filed 3-6-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 28, 1986

Social Security Administration

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960–0131)
Respondents: Individuals or households

Subject: Chinese Custom Marriage Statement and Statement Regarding Chinese Custom Marriage—Revision—(0960–0086)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh.

PUBLIC HEALTH SERVICE

Food and Drug Administration

Subject: Medical Device Reporting—Revision—(0910–0201)
Respondents: Medical Device Manufacturers
OMB Desk Officer: Bruce Artim.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: February 28, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-5063 Filed 3-6-86; 8:45 am]

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Alcohol, Drug Abuse, and Mental Health Administration Request for Nominations for Members of the National Institute of Mental Health Initial Review Committees

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: Request for nominations for members of the National Institute of Mental Health initial review committees.

SUMMARY: This notice is to advise interested parties that the National Institute of Mental Health (NIMH) invites nominations for membership on its initial review committees. The initial review committees provide technical and scientific merit review of grant applications and contract proposals.

The primary requirement for serving on a scientific review group is competence as an independent investigator in a basic scientific or clinical discipline or research specialty. Assessment of such competence is based on the quality of research accomplished, publications in referred scientific journals, and other significant scientific activities, achievements, and honors. Usually a doctoral degree or its equivalent is required. Service also requires mature judgment, balanced perspective, objectivity, ability to work effectively in a group context, commitment to complete work assignments, and assurance that the confidentiality of applications will be protected.

Any person may nominate one or more qualified candidates for consideration on one or more specific committees. Self nominations are accepted. NIMH has a special interest in assuring that women and ethnic minority scientists are adequately represented on advisory committees and, therefore, encourages their nomination. Nominations must be received by April 1, 1986. Submit a curriculum vita for each nominee which includes a complete mailing address. The nominee must be aware of the nomination and be willing to serve. Nominations should be sent to the Committee Management Officer, NIMH, at the address below.

Although the NIMH will carefully consider all nominations, it reserves the right to make final selections.

FOR FURTHER INFORMATION CONTACT: Additional information about the functions of each committee and the expertise required may be obtained from Helen Garrett, Committee Management Officer NIMH, Parklawn Building, Room 9–94, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: Initial review committees for which nominations will be considered are listed below:

Basic Behavioral Processes Research Review Committee
Cognition, Emotion, and Personality Research Review Committee
Criminal and Violent Behavior Research Review Committee
Epidemiologic and Services Research Review Committee
Life Course and Prevention Research Review Committee
Mental Health Behavioral Sciences Research Review Committee
Mental Health Research Education Review Committee
Mental Health Small Grant Review Committee
Neurosciences Research Review Committee
Psychopathology and Clinical Biology Research Review Committee
Research Scientist Development Review Committee
Treatment Development and Assessment Research Review Committee.

Dated: March 4, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–5026 Filed 3–6–86; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Cooperative Agreement for a Project To Assess Fertility and Family Planning in Puerto Rico; Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 to continue a cooperative agreement with the University of Puerto Rico School of Public Health to assess the fertility and family planning of reproductive aged women in Puerto Rico. The Catalog of Federal Domestic Assistance Number is 13.283.

Request for Application Not Available

This is not a formal request for application and other applications will not be accepted.

Avaiability of Funds

It is expected that approximately $38,000 will be available in Fiscal Year 1986 to fund this cooperative agreement. The award will be funded for 12-month budget and project period.

Authority

This program is authorized under section 301 of the Public Health Service Act, as amended. Regulations applicable to this program are in Title 42 of the Code of Federal Regulations, Part 52.

Information

FOR FURTHER INFORMATION CONTACT: Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone Number (404) 262–6275 or FTS 236–6575.

Dated: February 28, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86–4090 Filed 3–6–86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85N-0569]

Study of Certain Effects of Sugar Alcohols and Lactose Observed in Animal Experiments; Request for Additional Information; Meeting of Ad Hoc Expert Panel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ad Hoc Expert Panel on Sugar Alcohols and Lactose (the Expert Panel), which was formed by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) under a contract with FDA, will hold an open meeting. The purpose of this meeting is to obtain scientific data and information on the effects of sugar alcohols and lactose that have been observed in animal experiments. The questions that have been posed to FASEB by FDA, and that will be considered by the Expert Panel, are set forth in this notice. The Expert Panel will meet in closed executive session after the open meeting, on April 8 and 9, 1986, and on June 23 and 24, 1986, to discuss this subject.

DATES: The open meeting will be held on Monday, April 7, 1986, at 9 a.m. As stated at 51 FR 2577 (January 17, 1986), relevant scientific data and information may be submitted until March 15, 1986. Requests to make oral presentations at the open meeting must be in writing, be postmarked before March 15, 1986, and be received by March 22, 1986. The executive session will be held following the open meeting on April 7, 1986, resume at 9 a.m. on April 8, 1986, and conclude on April 9, 1986. The Expert Panel will also meet in executive session on June 23 and June 24, 1986, at 9 a.m.

ADDRESS: The open and executive session meetings will be held in the Milton O. Lee Bldg. at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT:

F.R. Senti, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030

or

Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1986 (51 FR 2577), FDA announced that FASEB, under its contract with FDA (No. 223–83–2020), is conducting a study, by means of the Expert Panel, of certain effects that have been observed in animal experiments in which the animals were fed sugar alcohols or lactose. (For complete information about this study, see 51 FR 2577). The notice advised that an open meeting of the Expert Panel would be announced in the **Federal Register**. The open meeting has now been scheduled and will be held on April 7, 1986, at the address given above. The Expert Panel will also meet at the same location in a closed executive session after the open meeting and on April 8 and 9, 1986, and on June 23 and 24, 1986, to discuss this subject.

The Expert Panel is conducting the open meeting to receive all relevant information on the following questions, which have been posed by FDA:

A. Questions Related to Sugar Alcohols and Adrenals

1. Are adrenal hyperplasia and pheochromocytoma characteristic responses of certain strains of rats to being fed high levels of sugar alcohols?
2. Do the lesions seen in the rat adrenal correlate physiologically or biochemically to adrenal lesions occurring in humans?
3. Is there a mechanistic explanation for the occurrence of the lesion in rats?
4. If the answer to question 3 is yes, is there evidence that this mechanism operates in the rat only? In other species?

B. Questions Specific to Xylitol and Mouse Bladder

1. Is there a physiologic or biochemical explanation for the occurrence of oxalate crystals in the bladder of mice fed high levels of xylitol?
2. Is there, in general, a correlation between bladder crystals (stones) and hyperplastic changes in bladder epithelium of rodents?
3. Is the urinary stone formation a reasonable explanation for the occurrence of bladder tumors in mice fed high levels of xylitol?

C. Questions Specific to Xylitol and Dog Liver

1. Are the physiological responses of the dog to high levels of xylitol different from those of other species?
2. If there are differences, are they sufficient to explain the liver histopathology as well as the clinical and biochemical changes noted in dogs fed high levels of xylitol?
3. Would the responses in dogs be sufficiently unique so as to expect that they would not be significant for humans?

D. Questions Specific to Lactitol and Lactose

1. Was there or is there now any information to suggest that lactitol or lactose would have induced testicular tumors in rats fed diets containing 10 percent lactitol or lactose?
2. Is there a mechanistic explanation for the occurrence of these lesions in rats?
3. What is the relevance of this lesion to humans?
4. Can lactose as it occurs in milk be considered differently from a toxicologic point of view than lactose as a generally recognized as safe substance in foods?

The conference room in which the open meeting will be held has limited seating. Advance registration is strongly encouraged (contact F.R. Senti—address above). Additionally, because parking space is limited, use of public transportation is encouraged.

The Expert Panel meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: March 5, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–5081 Filed 3–5–86; 10:06 am]

BILLING CODE 4160-01-M

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H., Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 43 FR 16418, April 18, 1978; 47 FR 46142, October 15, 1982; and 50 FR 34759, August 27, 1985;) is amended to reflect the insertion of additional organizational functional statements.

Public Health Service (PHS) organizational guidelines, require that functional statements for oganizations that report directly to an Associate Commissioner or Center Director be published in the **Federal Register**.

Therefore, the Food and Drug Administration is publishing functional statements for staffs in the Office of Planning and Evaluation, the Office of Legislative Affairs, Office of Public Affairs, and the Office of Health Affairs.

Section HF–B, Organization and Functions is amended as follows:

1. Following paragraph (b) Office of Planning and Evaluation (HFAA) insert new subparagraphs (b–1) through (b–3) reading as follows:

(b–1) *Planning and Management Communications Staff (HFAA3).* Directs the agency long-range planning process, including strategic and program planning, and coordinates it with the HHS long-range planning process.

Prepares the FDA Forward Plan and Annual Report.

Assists and consults with agency components in their planning.

Analyzes base line data and determines importance of external factors, including consumer safety and regulatory expectations, which affect the agency.

Consults with and supports the Office of Management and Operations in preparation of the agency budget; consults with and supports the Office of Legislative Affairs in the preparation of legislative proposals.

Conducts special planning-related studies and critiques as requested.

Coordinates the agency functional (regulatory, research, etc.) planning processes and supports agency staff units in planning design, preparation, coordination, and execution.

Represents the agency in Department planning activities.

Conducts analysis of resource requests submitted by agency components in order to develop resource recommendations for the Commissioner,

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to support the planning process, and to fulfill PHS and HHS requirements.

Designs and operates management communications systems.

Coordinates and presents an annual regulatory development plan.

Conducts the agency manpower management system.

(b–2) *Evaluation and Analysis Staff (HFAA4).* Performs agency program and policy evaluations. Recommend alternative courses of action to increase effectiveness of agency allocation of resources and to improve program and project performance.

Performs analyses of significantly broad agency issues identified in the planning process. Recommends and/or implements steps to resolve these issues.

Assures that appropriate program evaluation activities are taken in agency components. Monitors and coordinates these efforts to assure uniqueness and a contribution to agency program goals.

Develops the annual evaluation plan for the agency and coordinates with PHS/HHS.

Conducts special evaluation and economic-related studies in support of agency policy development and in resolution of broad agency problems.

Evaluates impact of external factors on agency programs, including industry impact, consumer expectations, and protective legislation.

Evaluates the impact of agency operations and policies on regulated industries and other agency constituents.

Evaluates Program Management System (PMS) projects to provide a basis for agency decisionmaking. Recommends PMS project selections for evaluation, conducts the evaluations, and provides written reports to the Commissioner.

Provides staff support to the agency Evaluation Review Board.

(b–3) *Economics Staff (HFAA8).* Provides economic analyses as input to and support for decisions regarding agency policy issues.

Serves as the agency focal point for economic analysis assistance and consultation; provides economic analysis assistance to agency components for regulatory and other program functions.

Advises and assists the Commissioner and other key officials on a day-to-day basis concerning economic factors relating to current and proposed agency activities.

Provides a resource of economic research material for use by agency officials in preparing testimony before congressional committees and in developing replies to inquiries directed to the agency.

Conducts economic studies of FDA-related industries as a basis for forecasting trends, needs, and major problems affecting the agency.

Provides agency representation to Congress, OMB, HHS, PHS, and others, as appropriate, on economic issues relating to agency regulatios and other current and proposed actions.

2. Following paragraph (d) Office of Legislative Affairs (HFAD) insert new subparagraph (d-1) reading as follows:

(d–1) *Legislative Affairs Staff (HFADB).* Serves as the agency focal point for legislative liaison activities within the agency and with the Department, PHS, and other agencies and for responding to congressional and priority inquiries and on proposed legislation which may affect the agency.

Initiates, coordinates, and/or provides in-depth analyses for the Commissioner, other agency officials, Congress, or OMB on agency legislative needs and legislation affecting the agency including problem-solving with other agencies, preparation of supporting documents for agency views on proposed or pending legislation, and the development of legislative proposals and position papers.

Develops and/or coordinates testimony and data for the agency and Department for presentation to congressional committees; monitors hearings, edits transcripts of agency testimony, and provides any requested additional information.

Provides information on the agency's legislative programs and proposals to consumers and regulated industry.

Initiates and conducts appraisals of Agency policies which may be subject to congressional investigation, in collaboration with center program managers; provides requested information, in cooperation with the General Counsel, to committees investigating agency activities, policies, and programs.

Prepares and signs responses to priority correspondence from Congress and consumers controlled by the Office. Controls and processes correspondence referred by Congress, the White House, and other sources.

3. Following paragraph (e) *Office of Public Affairs (HFAJ)* insert new subparagraphs (e–1) through (e–3) reading as follows:

(e–1) Press Relations Staff (HFAJA). Advises and assists agency officials on press and related matters involving mass media communications.

Plans, develops, and implements an agencywide media strategy for disseminating regulatory and educational material to the public through the mass media.

Serves as the agency focal point for preparing, clearing, and disseminating press releases and other media statements representing agency policy and responding to media inquiries; maintains liaison with the news media and pertinent publications.

Establishes policy for and coordinates all media information activities, including interviews and responses to inquiries, conducted through agency field and center operations; prepares position and policy statements for use by agency employees in responding to media questions.

Coordinates the research and drafting of major public statements by the Commissioner including transmittal documents and supportive statements for use in transactions with the Department, other agencies, and the White House; provides editorial consultation and review for manuscripts, articles, and speeches written by the staff offices serving the Commissioner to ensure consistency of information and policy interpretation and maintains mailing lists for these documents.

Compiles, publishes, and distributes the weekly FDA Enforcement Report and the FDA Public Calendar; maintains the FDA Daily Clipping Service.

(e–2) *Communications Staff (HFAJB).* Identifies consumer communication and educational requirements for the agency and creates, implements, and coordinates appropriate programs conducted through the media, agency consumer affairs officers, and other communication sources.

Plans, designs, produces, publishes, and disseminates audiovisual materials, exhibits, posters, publications, and periodicals, including *FDA Consumer, FDA Today*, and the *FDA Drug Bulletin*; participates in the planning and development of all publications and audiovisual aspects of communications programs directed at mass audiences.

Provides centralized agency graphic arts and editorial services for public information materials.

Acts as the public information liaison with the Department for all publications and audiovisual needs; provides prepublication clearance of publications, exhibits, and audiovisual materials in accordance with procedures established by the agency PHS, the Department, OMB, and the White House.

Provides Agencywide advice and consultation in the production of audiovisual materials; maintains centralized files of photographs and

audiovisual materials for use by all agency components.

(e–3) *Freedom of Information Staff (HFAJC).* Establishes agencywide policy and provides overall direction and leadership for the Freedom of Information (FOI) program and Privacy Act program.

Serves as the agency expert and focal point for Headquarters and field personnel in the development and implementation of effective policies and procedures in accordance with the Freedom of Information Act, the Privacy Act, FDA regulations, and other relevant statutes.

Receives, reviews, controls, coordinates, and routes all FOI requests to the proper action office; designs and implements control mechanisms to assure that FOI and Privacy Act inquiries are processed and responded to within established time frames.

Reviews all recommendations for denials submitted by Headquarters and field FOI Officers. Determines the need for supplemental information and/or changes in the denial recommendation and coordinates required action with the submitting office.

Analyzes, compiles, and prepares reports on privacy and FOI activities in the agency for the annual reports to the Department and for other reporting requirements.

Maintains copies of agency manuals, indexes, and other records required to be on public display.

4. Following paragraph (g) *Office of Health Affairs (HFA5)* insert new subparagraphs (g–1) through (g–3) reading as follows:

(g–1) *Medicine Staff (HFA51).* Provides leadership and direction on medical issues and stimulates medical effort and achievement for the agency.

Conducts hearings and provides medical reviews of hearing requests and proposed findings of fact and conclusions of law recommended by the Administrative Law Judge after evidentiary hearings.

Provides an agencywide focal point for communications with professional organizations and publications.

Maintains continual awareness of changing concepts in health care delivery and medical research. Evaluates their impact on medical programs and policies of the agency.

Advises the Commissioner on the impact of major medical policy initiatives of the Department and makes recommendations for agency implementation of these programs.

Represents the agency on task forces, committees, and before Congress on medical policies and long-term program direction and goals of the agency.

Initiates and coordinates liaison with medical, pharmacy, nursing, and related professions to promote understanding and support of agency programs.

(g–2) *Health Assessment Policy Staff (HFA52).* Provides staff support in conducting of evidentiary hearings. Provides reviews of hearing requests and proposed findings of fact and conclusions of law as recommended by the Administrative Law Judge after evidentiary hearings.

Serves as the agency focal point for the coordination of specific health issues, particularly those related to the approval of new products having significant impact on health care practices, activities of other Federal agencies, and costs.

Advises the Commissioner, Associate Commissioner, and other key agency officials, of human protection needs and of initiatives which will affect agency activities in regard to human protection. Provides staff support to the Research Involving Human Subjects Committee.

Proposes resolutions to intra-agency program problems related to FDA health policies. Evaluates the effectiveness of initiatives and actions affecting major health policies and conducts studies of health program activities.

Provides advice on identifying needs for and the development of new legislation which impacts on agency health policies and public health. Develops implementation plans for agency actions required by new legislation.

Reviews and participates in the preparation of congressional testimony which impacts upon agency health policies.

(g–3) *International Affairs Staff (HFA56).* Serves as the agency focal point for developing and maintaining international communications, policies, and programs, including the development of an agency international strategy plan.

Establishes and provides an agency liaison on international activities with the Department, PHS, other Federal agencies, foreign governments, and international organizations.

Represents the agency at meetings relating to international obligations and/or briefs agency participants in international conferences.

Establishes, identifies, interprets, and clarifies, in cooperation with appropriate agency components, the Agency's international obligations and needs, including the Special Foreign Currency Program. Initiates and monitors programs to meet these responsibilities, and provides policy guidance and advice to agency components.

Maintains an international information exchange program concerning agency policies and programs to provide interchange between FDA and counterpart agencies in foreign countries and international organizations.

Assists in the development, negotiation, and monitoring of agreements with foreign governments and international agencies in cooperation with appropriate agency components; and acts as the agency focal point for intergovernmental conferences.

Negotiates the preparation and implementation of technical assistance programs (including formal training programs and surveys) with foreign governments in areas related to the agency mission. Coordinates ongoing technical assistance operations with the HHS Office of International Affairs, the PHS Office of International Health, and appropriate agency components.

Directs the Agency Foreign Visitors and Foreign Officials Programs, providing participants with policy briefings, technical training, and/or assistance in response to specific needs.

Effective Date: February 25, 1986.

Dated: February 25, 1986.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 86–5065 Filed 3–6–86; 8:45 am]

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Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 50 FR 50847, December 12, 1985), is amended to reflect a reorganization within the National Center for Health Services Research and Health Care Technology Assessment (NCHSR), Office of the Assistant Secretary for Health. Specifically, budget activities will be transferred from the Office of Management, Office of Resource Management, Division of Financial Management, OASH Financial Management Branch, to NCHSR, Office of Program Support.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA–20 Functions, under the heading for *the National Center for Health Services Research and Health Care Technology Assessment (HAR),* revise the functional statement for the *Office of Program Support (HAR13)* by deleting item #3 and inserting the following: "(3) serves as principal advisor in areas of financial management activities and manages a system of budgetary, expenditure and employment controls."

Effective Date: February 28, 1986.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 86–5064 Filed 3–6–86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86–1595]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Participating Lender (Commitment Correspondent/Coinsurance Lenders)
Office: Housing
Form Number: HUD–92001, 92001B, 92001C, 92001D, 92001E, and 92001K
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 3,380
Status: Revision
Contact: William Park, HUD, (202) 755–6700; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1986.

Proposal: Consolidated Supply Program: Procurement Needs Survey
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 1,600
Status: New
Contact: Joyce Roberson, HUD, (202) 472–4703; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 20, 1986.

Proposal: Consolidated Supply Program (CSP)—Reporting Requirements
1. Submission of Sales Reports by CSP Suppliers
2. Submission of Testing/Certification Reports by Potential CSP Suppliers
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion and Semi-annually
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 4,860
Status: New
Contact: Joyce Roberson, HUD, (202) 472–4703; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 20, 1986.

Proposal: Restriction on Use of Assisted Housing
Office: Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: Individuals or Households and Business or Other For-Profit
Estimated Burden Hours: 167,220
Status: New
Contact: Judy Lemeshewsky, HUD, (202) 755–6870; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 11, 1986.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 86–5060 Filed 3–6–86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Bureau of Mines. Except as noted below, all changes being published are editing corrections, updating and clarifying amendments, and other minor administrative revisions which have occurred since the previous publication of the notice in the **Federal Register** on October 4, 1983 (48 FR 45314). The notice being revised, which is published in the entirety below, is titled "Safety Management Information System—Interior, Mines–6".

The existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. The statements on storage and retrieval are revised to document the conversion of the records to magnetic media for desk top computer use. The conversion will not result in any new uses of the information or result in substantially greater access to the records in the system.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective April 7, 1986. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

Dated: February 28, 1986.

INTERIOR/WBM–6

SYSTEM NAME:

Safety Management Information System—Interior, Mines–6.

SYSTEM LOCATION:

(1) Bureau of Mines, U.S. Department of the Interior, 2401 E Street, NW., Washington, D.C. 20241. (2) All field and headquarters organizations of the Bureau of Mines retain copies of source documents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, concessioners and public visitors to Bureau facilities who have been involved in an accident resulting in personal injury, illness, and/or property damage, or exposed to a health hazard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, social security number (employees only), occupation, date and location of accident; data elements about the accident for analytical purposes; and descriptive narraive concerning the reason for the loss producing event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) 28 U.S.C. 2671–2680, (3) 31 U.S.C. 3701, 3721, (4) Executive Order 12196, (5) 29 CFR Part 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the automated and manual records are to (a) provide summary data of injury, illness, and property loss information to Bureau managment in a number of formats for analytical purposes in establishing programs to reduce or eliminate loss producing problem areas, (b) provide listings of individual cases to Bureau management to ensure that accidents occuring are reported through the Bureau Safety Management Information System for forwarding to the Department of the Interior Safety Management Information System, and (c) adjudicate tort and employee claims. Disclosures outside the Bureau of Mines may be met: (1) To a Federal, State, or local government agency that has partial or complete jurisdiction over the claim or related claims; (2) to provide the Department of Labor through the Department of the Interior quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 29 CFR 1960.66–.74; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license, and (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Automated records are maintained on flexible disks. (2) Source documents (manual records) are maintained at Bureau field and headquarters organizations from which the accident is reported. (3) Manual records are maintained in book format and/or file folders.

RETRIEVABILITY:

(1) Automated records are retrievable by name or document control number. (2) Manual records are retrievable by name or document control number.

SAFEGUARDS:

(1) Automated records are maintained with safeguards meeting the FIPS PUB 41, "Computer Security Guidelines for Implementing the Privacy Act of 1974." (2) Security is provided to meet the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

(1) The retention and disposal determination for the automated records stored on flexible disks is pending approval of the Archivist of the United States. (2) Disposal determination for the manual records is suspended until further notice per GSA FPMR Bulletin G–136, March 21, 1984.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety Management Staff, Bureau of Mines, 2401 E Street, NW., Washington, D.C. 20241.

NOTIFICATION PROCEDURE:

To determine whether automated and/or manual records are maintained on you in this system, write to the System Manager or field or headquarters organizations in which the source document pertaining to yourself would be filed. A written and signed request stating that the requestor seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

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RECORDS ACCESS PROCEDURES:

A request for access should be addressed to the System Manager or the field or headquarters organization in which the source document for the individual would be filed. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request correction or the removal of material from your file(s), write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Supervisor of employees involved in accidents. Investigative reports by supervisors, safety and health professionals, other management officials, or any combination thereof

[FR Doc. 86-5005 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Land Management

1985 Amendments to the California Desert Plan and Eastern San Diego Draft Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared Draft Environmental Impact Statement (DEIS) on the 1985 Amendment review of the California Desert Plan and Eastern San Diego County Managment Framework Plan..

DATE: Comments on the DEIS are being accepted for 90 days from the date of this notice.

ADDRESS: For further information contact Gerald E. Hillier, District Manager, California Desert District, 1696 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: Twenty amendments were accepted for consideration. The amendments propose changes in planning guidelines for waste disposal and agriculture, as well as site-specific measures. The latter include changes in vehicle access restrictions, Areas of Critical Environmental Concern (ACECs) and Special Areas, grazing allotments, wild horse and burro management, and multiple use class designation. Under the preferred alternative, 18 amendments would either be accepted or accepted with modification, and two would be rejected.

Comments on the DEIS should be submitted to the following address to assure timely processing: 1985 Plan Amendments, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of the Draft Environmental Impact Statement are available upon request at the address listed above for comments. Copies are also available for review at two other locations:

USDI, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825
USDI, Bureau of Land Management, 1725 I Street, N.W., Suite 906, Washington, D.C. 20240.

Dated: February 27, 1986.

Ed Hastey,

State Director.

[FR Doc. 86-5079 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-40-M

[A-20348]

Realty Action; Exchange of Federal Lands For State Lands in Mohave and Coconino Counties, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action—Exchange of Federal lands for State lands in Mohave and Coconino Counties, AR.

SUMMARY: The following described public land has been determined to be available for disposal by state exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Selected Public Lands

Gila and Salt River Meridian, Mohave County, Arizona—5,807.72 acres.

T. 39 N., R. 16 W.,
  Sec. 1, Lots 3 & 4, S½NW¼, SW¼;
  Sec. 3, NE¼SE¼, SW¼SE¼;
  Sec. 4, Lot 2;
  Sec. 5, Lots 2, 3 & 6, N½S½SE¼;
  Sec. 8, Lots, 2, 3 & 4, S½NE¼SE¼;
  Sec. 9, SW¼NE¼, NE¼NW¼, S½NW¼, S½;
  Sec. 10, W½NE¼, SE¼NW¼, NE¼SE¼;
  Sec. 12, W½;
  Sec. 13, N½NW¼;
  Sec. 14, SW¼SE¼;
  Sec. 17, Lots 1, 2, 3, & 4, W½E½;
  Sec. 22, W½NW¼.
T. 40 N., R. 15 W.,
  Sec. 3, SE¼NE¼, S½SW¼, SE¼;
  Sec. 4, S½SE¼;
T. 40 N., R. 16 W.,
  Sec. 33, SW¼SE¼;
  Sec. 34, NE¼, N½NW¼, N½SE¼, SE¼ SE¼.
T. 41 N., R. 12 W.,
  Sec. 5, Lots 3 & 4, S½NW¼;
  Sec. 6, Lots 1, 2, 3, 4, & 5, S½NE¼, SE¼ NW¼;
  Sec. 8, SW¼NW¼, W½SW¼.
T. 41 N., R. 13 W.,
  Sec. 1, Lots 1, 2, 3 & 4, S½N½S½.
41 N., R. 15 W.,
  Sec. 20, SW¼;
  Sec. 28, All;
  Sec. 33, Lots 1, 4 & 5, NE¼, SE¼SW¼, N½ SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
  Sec. 35, SE¼.

Gila and Salt River Meridian, Coconino County, Arizona—1,960.00 acres.

T. 41 N., R. 2 W.,
  Sec. 9, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
  Sec. 21, Lots 1, 2, 3 & 4, NE¼,NE¼SE¼;
  Sec. 22, All;
  Sec. 27, All.

In exchange for the above described 5,807,72 acres in Mohave County and the 1,960.00 acres in Coconino County, the Federal Government will acquire scattered state-owned land of equal or greater value to that disposed of in each of the respective counties.

Under the provisions of 43 CFR 2201.1 this Notice of Realty Action shall segregate the lands from appropriation under the mining laws and mineral leasing laws subject to valid existing rights or leases. This segregation shall terminate upon publication in the **Federal Register** of a termination notice or after two years and the exchange is not consummated, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Arizona Strip District, 196 Tabernacle, St. George, Utah 84770.

G. William Lamb,

District Manager.

February 26, 1986.

[FR Doc. 86-4951 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Application for Permit; Monterey Bay Aquarium

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*), and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Monterey Bay Aquarium, 886 Cannery Row, Monterey, CA 93940.

File No.: PRT-703927.

Type of permit: Scientic research.

Name and number of animals: At least one adult female S. sea otter (*Enhydra lutra nereis*).

Summary of activity to be authorized: The applicant proposes to take this animal for scientific research.

Source of marine mammals for display: Monterey Peninsula.

Period of activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 W. Glebe Road, Arlington, Virginia.

Dated: March 4, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-5052 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Rio Grande Zoo, Albuquerque, NM

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant: Rio Grande Zoo, 903 Tenth Street, SW, Albuquerque, New Mexico 87102. *File No:* PRT-702986.

Type of permit: Scientific research.

Name and number of animals: 1.2 Polar bears (*Ursus maritimus*).

Summary of activity to be authorized: The applicant proposes to import these animals for the purpose of scientific research.

Source of marine mammals for display: Manitoba, Canada; one mother bear and her two cubs; taken as nuisance bears.

Period of activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:14 pm) in Room 601, 1000 North Glebe Road, Arlington, Virginia.

Dated: March 4, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-5051 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313, with copies to David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Room 6A110; Reston, Virginia 22091.

Title: Notice of Processing of Geological and Geophysical Information, 30 CFR 251.11 and 251.12

Abstract: Respondents conducting exploration for oil or gas provide the Minerals Management Service with geological and geophysical data, processed and analyzed information, and interpretations which are used to properly evaluate Federal Outer Continental Shelf (OCS) resources and environmental conditions as required by the OCS Lands Act.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS permittees.

Annual Responses: 620.

Annual Burden Hours: 32,240.

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Dated: January 27, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-5006 Filed 3-6-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 21215 (Sub-3)[1]]

Seaboard Air Line Railroad Co.; Merger; Atlantic Coast Line Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Proceeding reopened and modified procedure scheduled.

SUMMARY: Southern Railway Company (Southern) and Seaboard System Railroad, Inc. (Seaboard) have filed a petition to reopen this merger to consider removing or amending a condition. The condition requires Seaboard to "maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Commission." [2] Seaboard and Southern want to eliminate the Seaboard-Southern interchange at Lincolnton, NC that is required to be maintained and kept open under the condition. We are reopening this proceeding to consider removing this condition with regard to the Lincolnton interchange. Our analysis will be based on the criteria of 49 U.S.C. 11344(b)(1).

ADDRESSES: Send an original and 10 copes of all pleadings referring to Finance Docket No. 21215 (Sub-No. 3) to:

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[1] This proceeding is given a new sub-number to distinguish it from earlier proceedings.

[2] *Seaboard Air Line R. Co.—Merger -Atlantic Coast Line,* 320 I.C.C. 122, 267 (1963).

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Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Send one copy of each pleading to petitioners' representatives:

William H. Teasley, Norfolk Southern Corp., 8 North Jefferson Street, Roanoke, VA 24042

R. Lyle Key, Jr., Seaboard Ssytem Railroad, Inc., 500 Water Street, Jacksonville, FL 32202

DATES: Comments are due April 7, 1986. Replies are due April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Lincolnton interchange is served by Seaboard three times per week, and by Southern two or three times per week, or as needed. Petitioners state that a minimal number of cars (65 loaded and 43 empty in 1984, and 38 loaded and 22 empty in the first 6 months of 1985) is interchanged at Lincolnton. Petitioners argue that these cars could be interchanged more efficiently and expeditiously at Charlotte, NC, 40 miles east of Lincolnton, where Seaboard and Southern interchange cars two or three times per day, seven days per week. Eliminating the Lincolnton interchange would also permit elimination of one main line turnout at Lincolnton..

Decided: February 27, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–5044 Filed 3–6–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–208 (Sub-1X)]

Wolfeboro Railroad Associates; Abandonment Exemption in Carroll County, NH; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its entire line of railroad extending from Wolfeboro to Sanbornville, a distance of 12 miles in Carroll County, NH.

Applicant has certified (1) that no local freight traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

The Commission does not normally impose labor protective conditions in an entire line abandonment unless the evidence shows that the applicant has a corporate affiliate that will continue carrier operations or a corporate parent that will realize significant benefits as a result of the abandonment. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784 (1978). Because neither of these exceptions appear to apply, we will not impose employee protective conditions.

The exemption will be effective April 6, 1986, (unless stayed pending reconsideration). Petitions to stay must be filed by March 17, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 27, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: T.S.L. Perlman, 1401 New York Avenue, NW., Washington, DC 20005.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 3, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–5043 Filed 3–6–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on February 24, 1986, a proposed consent decree in *United States of America* v. *Murfreesboro Water and Sewer Department of the City of Murfreesboro, Tennessee and The State of Tennessee,* Civil Action No. 3–85–0218 was lodged with the United States District Court for the Middle District of Tennessee. The proposed consent decree concerns discharge of pollutants from the City of Murfreesboro's sewage treatment plant. The proposed consent decree requires the defendant to comply with its Clean Water Act permit and pay civil penalties for past violations. The consent decree provides that defendant will undertake a program of construction and modifications to its sewage collection system in accordance with a schedule set forth in the decree, sets interim discharge limits, and requires defendant to achieve compliance with its permit no later than July 1, 1988. Stipulated penalties are mandated for failure to achieve interim discharge limits or meet compliance schedules. The City of Murfreesboro is required to pay a civil penalty of $10,000 in settlement of the government's civil panalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 50530, and should refer to *United States of America* v. *Murfreesboro Water and Sewer Department of the City of Murfreesboro,* D.J. Ref. 90–5–1–1–2255.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Tennessee, 879 U.S. Courthouse, Nashville, Tennessee 37203 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–5007 Filed 3–6–86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. S.p.A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited: Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)–(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Maryland in *United States of America* v. *S.p.A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited.*

The complaint of the United States in this case alleges that the effect of the 1983 acquisition of Terra Aqua Inc. by River and Sea Gabions (London) Limited may be substantially to lessen competition in the United States market for the manufacture and sale of gabions, in violation of section 7 of the Clayton Act (15 U.S.C. 18).

Gabions are rectangular, wire mesh containers which are filled with hand-size stones and wired together to form large structures that are used in river training, flood control, landscaping, and erosion control. Gabions are used primarily in municipal, state and federal public works projects.

Officine Maccaferri, through its subsidiary, River and Sea Gabions (London) Limited, acquired Terra Aqua on February 15, 1983. River and Sea was named as a defendant in the complaint, as was Maccaferri Gabions Manufacturing Company, Inc. ("MGMC"). MGMC, which is also controlled by Maccaferri, manufactures gabions at its plant in Williamsport, Maryland and sells them throughout the United States. Prior to the acquisition in 1983, Terra Aqua and MGMC were the only two manufacturers of gabions in the United States. Officine Maccaferri now accounts for almost 99% of the approximately $12 million United States market for gabions.

The proposed final judgment required Officine Maccaferri and River and Sea to divest all of their interest in Terra Aqua, with the exception of certain proprietary equipment installed by Maccaferri, within six months of the date of entry of the proposed final judgment. If they fail to do so, the proposed final judgment provides that Terra Aqua shall be sold by a trustee to a purchaser acceptable to the United States.

The proposed final judgment also requires the defendants to maintain and make certain repairs and improvements to Terra Aqua's production equipment prior to divestiture. In addition, the proposed final judgment contains other provisions designed to protect Terra Aqua's ability to compete after its divestiture.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Comments should be directed to John W. Clark, Chief, Professions and Intellectual Property Section, Antitrust Division, United States Department of Justice, Room 9120, Star Building, 414 11th St. NW., Washington, D.C. 20530 (telephone (202) 724–6335).

Joseph H. Widmar,

Director of Operations Antitrust Division.

U.S. District Court for the District of Maryland

[Civil Action No. B–86–612]

United States of America, Plaintiff, v. *S.p.A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited,* Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalities Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposal Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 24, 1986.

Douglas H. Ginsburg, *Assistant Attorney General.*

Mark Leddy, Joseph H. Widmar, John W. Clark, *Attorneys, Department of Justice.*

John F. Greaney, J. Robert Kramer, II, Phillip R. Malone, *Attorneys, Department of Justice, Antitrust Division,* Washington, DC 20530, Telephone: 202/724–7469.

For the defendants S.p.A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited:

Pavia & Harcourt,
By: Jeffrey E. Livingston, *A Member of the Firm,* 600 Madison Avenue, New York, NY 10022, 212/980–3500.

Kaye, Scholer, Fierman, Hays & Handler.
By Michael Malina, *A Member of the Firm* 425 Park Avenue, New York, NY 10022, 212/407–8000.

U.S. District Court for the District of Maryland

Civil Action No. B–86–612

United States of America, Plaintiff, v. *S.p.A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited,* Defendants.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on February 24, 1986, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this final Judgment constituting any evidence against, or any admission by, any party with respect to any such issue;

And whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under

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Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Gabions" means rectangular, compartmented containers fabricated from a triple-twisted hexagonal mesh of heavily galvanized steel wire, sometimes with an additional polyvinyl chloride coating, designed to be filled with hand-size stones and wired together with other gabions of form flexible and permeable structures used in river training and flood control, soil erosion control and shore and coastal protectio applications.

B. "Defendants" means S.p.A. Officine Maccaferri, Maccaferri Gabions Manufacturing Company, Inc., River and Sea Gabions (London) Limited, each division, subsidiary or affilicate thereof and each officer, director, employer, attorney, agent or other person acting for or on behalf of any of them.

C. "Terra Aqua" means Terra Aqua, Inc., each division, subsidiary or affiliate thereof and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them. The term Terra Aqua shall exclude all Retained Assets.

D. "4930 Property" means the real property and structure owned by Terra Aqua located at 4950 Energy way, Reno, Nevada.

E. "Retained Assets" means the machinery, identified in Appendix A to this Final Judgment, which was installed by defendants at the 4930 Property in 1984 and has been used in the production of Maccaferri Gabions. If the buyer of Terra Aqua does not exercise its right to purchase the 4950 Property, the 4930 Property shall also be considered a Retained Asset.

F. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to the defendants, to each of their divisions, subsidiaries, affiliates, successors and assigns, to each of their officers, directors, agents, attorneys and to all other persons in active concert or participation with any of them who receive actual notice of this final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets involved in the production of gabions other than Terra Aqua, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. Within six (6) months of the date of entry of this Final Judgement, defendants are hereby ordered and directed to divest to a purchaser or purchasers all of their direct and indirect ownership in and control over Terra Aqua.

B. Divestiture of Terra Aqua shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Terra Aqua can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of gabions. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that (i) the purchase is for the purpose of competing effectively in the manufacture and sale of gabions, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of gabions.

C. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, by usual and customary means, the availability of Terra Aqua for sale as an ongoing business. The defendants shall notify any person making an inquiry regarding the possible purchase of Terra Aqua that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The defendants shall also furnish to all bona fide prospective purchasers who so request all pertinent information regarding Terra Aqua and shall permit them to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of Terra Aqua.

D. The purchaser or purchasers shall have the right, but not the obligation, to purchase the 4930 Property. If the purchaser or purchasers exercise their right to purchase such property, defendants shall remove all Retained Assets from the 4920 Property at their own expense. In the event the purchaser or purchasers elect not to purchase the 4930 Property, one or more of the defendants or an agent thereof will assume any mortgage liability appertaining to the 490 Property.

V.

A. If the defendants have not divested all of their ownership interest in Terra Aqua within the time period specified in Section IV(A) of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective not more than 45 days following the filing of the petition. The trustee shall dispose of Terra Aqua at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgement, and shall have such other powers as this Court shall deem appropriate. The trustee shall have the exclusive right and power to divest Terra Aqua, and defendants shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If defendants have not divested all of their ownership interest in Terra Aqua within five (5) months of the date of entry of this Final Judgment, the plaintiff and the defendants (acting jointly) shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify this Court of the person upon whom the parties agreed and this Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish this Court the names of each party's nominees. This Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of the defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of Terra Aqua and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to the defendants and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the facility, personnel, books and records of Terra Aqua, and defendants shall develop such financial or other information relevant to the assets to be divested as the trustee may request. Defendants shall take no actior to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustees' judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in Terra Aqua together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, the plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. The defendants and, if applicable, the trustee shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing the defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the periods specified, or if the plaintiff notifies in writing the defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale on the ground set forth in Section V(A). Upon objection by the plaintiff, or by the defendants on the ground set forth in section V(A), the proposed divestiture shall not be accomplished unless approved by the Court. The defendants shall have no right to object to any divestiture of Terra Aqua proposed by the trustee except on the ground set forth in Section V(A).

VII

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, the defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer, expressed an interest or desire to acquire, or entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in, Terra Aqua, and shall describe in detail each contact with any such person during that period. The defendants shall maintain full records of all efforts made to divest Terral Aqua.

VIII

Before the divestiture required by this Final Judgment has been accomplished, the defendants shall make improvements and repairs sufficient to restore the gabion production machinery of Terra Aqua at least to its original design performance capability and to assure the sale of Terra Aqua as a viable competitor in the manufacture and sale of gabions. Such improvements and repairs shall include, but not be limited to, those specified in the March 19, 1985 quotation of Mecon Industries Limited, and shall be performed by Mecon Industries Limited or other contractor acceptable to plaintiff.

IX

Until the divestiture required by this Final Judgment has been accomplished, the defendants shall:

A. Maintain the gabion production machinery of Terra Aqua in good working order;

B. Upon completion of the improvements and repairs required in Section VIII above, refrain from producing gabions at Terra Aqua with the Retained Assets and commence gabion production at Terra Aqua using the gabion production machinery that is to be divested;

C. Refrain from altering or selling any assets of Terra Aqua, other than in the ordinary course of business or as required in Sections VIII or IX B above, or from taking any action that will have the effect of reducing the scope of Terra Aqua's manufacturing or sales operations or its product line from that existing at the time of the defendants' acquisition of Terra Aqua, without the prior approval of the plaintiff;

D. Maintain adequate inventories of Terra Aqua gabions to allow the purchase of Terra Aqua as a viable ongoing business;

E. Refrain from taking any action that would jeopardize the sale of Terra Aqua as a viable competitor in the manufacture and sale of gabions; and

F. Maintain the existing marketing organization for the sale of gabions by Terra Aqua separate and apart from the marketing organization of MGMC in the same manner and to the same extent as if Terra Aqua and MGMC were competitors, and there shall be no understanding, agreement, consultation, or other communication direct or indirect, between the two organizations or their members with regard to prices or terms of sale to customers of gabions or as to the allocation or division of trade or customers. Defendants shall forthwith advise in writing all their managerial employees having any responsibilities with regard to the marketing of gabions in the United States of the provisions of this paragraph.

X

For the purposes of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Atttorney General in charge of the

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Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XI

A. Defendants are hereby enjoined and restrained for a period of three (3) years from the date of divestiture of Terra Aqua from attempting to have any gabion product standard written in a way that would exclude gabions produced by Terra Aqua. Nothing herein, however, shall preclude defendants from recommending that potential customers use specific sizes or types of gabions on specific projects or from competing on the basis of quality.

B. Defendants are hereby enjoined and restrained for a period of one year from the date of divestiture from manufacturing gabions in the States of California, Oregon, Washington, Idaho, Montana, Nevada, Utah, Wyoming, Colorado, Arizona and New Mexico, provided, however, that such injunction shall terminate if the purchaser or purchasers of Terra Aqua manufacture gabions in a location in the United States outside the above states.

C. Defendants are hereby enjoined and restrained for a period of one year from the date of divestiture from offering any employment contract to any officer, director or employee of Terra Aqua who was not an officer, director or employee of the defendants prior to the acquisition of Terra Aqua and who has been offered employment by the purchaser on terms equivalent to or better than those in effect on July 1, 1985.

XII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII

This Final Judgment will expire on the tenth anniversary of the date of its entry or upon motion by plaintiff.

XIV

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Appendix A

Maccaferri Gabion Production Line Components

I. Equipment Used in the Manufacture of Double Twist Hexagonal Wire Mesh

A. *Steel wire payoff frame* for 52 coil payoff, complete with unwinding (swinging) pressure roller pullies, wire guide combs and rollers, wire straighteners attached to connecting bar, electrical ground wiring, receptacle and wiring for butt welding machine, 200 custom-design wire stands and 149 wire stand "top hats", replacement parts, and two motorized hand pallet trucks (BT LIFT modified) for moving and handling wire coils on carriers.

B. *Double twist hexagonal wire mesh making machine* (4.2 m maximum wire mesh width), complete with elevated walkway, extra set of spiral holding tubes, two sets (one spare) of electrical motors and variable speed transmissions, electrical control panel (fully wired) and control sensors. (Custom tools and replacement parts).

C. Steel wire payoff frame for 6 coil payoff, complete with unwinding (swinging) pressure roller pullies, wire guide combs and rollers, wire straighteners attached to connecting bar, electrical ground wiring, receptacle and wiring for butt welding machine. (Replacement parts).

D. Automatic wire spiral making machine for producing spirals used in mesh making machine, complete with gear reducer motor and electrical control panel, various replacement parts, and 26 steel spiral containers (custom-designed) to hold spirals manufactured on the spiral making machine.

E. *butt welder machines* (two machines) for joining the ends of wire used in the mesh making machine, the spiral making machine, the take-up coiler and elsewhere.

F. *Take-Up Coiler* for reclaiming unused ends of wire spirals, complete with gear reducer motor and electrical control panel.

II. Equipment Used in the Production of Gabion Bodies (in Large Panels)

A. *Automatic mesh feeder and cutting machine* (4.2 m maximum wire mesh width) for measuring and cutting wire mesh into panels, complete with fully wired electrical control panel, control sensors, gear reducer motors and two waste wire trays.

B. *Steel conveyer line bench* (8 m x 4.8 m) for moving cut panels to edging machines, complete with electrical gear reducer motor rollers and belts (fully wired). (Replacement belts).

C. *Edging machines for Gabion mesh panels* (two machines) (4.2 m maximum mesh width) for attaching reinforcing selvage wires to two edges of the panels, complete with gear reducer motors and electrical control panels and lubricant tank with submerged pump. (Replacement parts).

III. Equipment Used in the Production of Diaphragm Panels

A. *Automatic mesh feeder and cutting machine* (1.2 m maximum wire mesh width) for measuring and cutting mesh into diaphragms, complete with fully wired electrical control panel, control sensors, gear reducer motors and wire waste tray.

B. *Steel conveyer line bench* (2.5 m x 1.4 m) for moving cut diaphragms to edging machines, complete with gear reducer motor, rollers and belts (fully wired).

C. *edging machine for diaphragm mesh panels* (two machines: 1.2 m maximum wire mesh width, located on-line; 2.1 m maximum wire mesh width, located off-line) for attaching reinforcing selvage wire to one edge of the diaphragm panels, complete with reducer motor, electrical control panel and lubricant tank with submerged pump. (Replacement parts).

D. *Steel diaphragm pallets* (69) (custom designed) to hold diaphragms in stacks.

IV. Equipment Used in the Assembly of Gabions

A. *Machines to open and shape diaphragm edge* (two machines), complete with gear reducer motor and electrical control panel.

B. *Machines to fasten side diaphragm to gabion Body* (two machines), complete with gear reducer motors and electrical control panel (two motors and one control panel for each), and transversal connecting bars. (Replacement parts).

C. *Machines to fasten center disphragms to Gabion body* (three machines), complete with motors and electrical control panel (two motors and one control panel for each), complete payoff stands (three). (Replacement parts).

D. *Wire rod straightener and cutting machine* for making wire reinforcing selvage rods of various lengths, complete with motor, electrical control panel and heavy duty payoff stand (custom made tools and various replacement parts), and 27 steel feed trays of various sizes to contain manufactured selvage wire rods.

V. Equipment Used in Folding, Stacking and Bundling of Finished Gabions

A. *Steel conveyer line benches* (two benches) (4 m x 2 m) for moving completed gabions to the folding station.

B. *Adjustable floor folding pins* (one unit) for holding gabions in position while they are folded.

C. *Calendar machine* for pressing folded gabions, complete with gear reducer motors and mechanical feed bench.

D. *Gabion stacker* for automatically stacking preset number of gabions, complete with gear reducer motors and electrical control panels.

E. *Steel gabion pallets* (10) custom designed to fit into gabion stacker and hold bundles of stacked gabions.

F. *Power stacker* (BT lift) custom built to fit notches on hydraulic press, for lifting and removing custom gabion pallets and gabions from gabion stacker and for moving gabions to hydraulic press, complete with battery charger.

G. *Hydraulic press* for compressing and banding gabion bundles, complete with hydraulic and electrical control panels.

VI. Equipment Used in Production of Wire Mesh in Rolls

A. *Steel wire mesh rolling machines* for accumulating in rolls the output of wire mesh making machine, complete with gear reducer motor, electrical control and payoff stand.

U.S. District Court for the District of Maryland

[Civil Action No. B-86-612]

S.p. A. Officine Maccaferri; Maccaferri Gabions Manufacturing Company, Inc.; and River and Sea Gabions (London) Limited, Defendants.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I—Nature and Purpose of the Proceeding

On February 24, 1986 the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the February 15, 1983 acquisition of Terra Aqua Inc. ("Terra Aqua") by S.p.A. Officine Maccaferri ("Officine") through its subsidiary, River and Sea Gabions (London) Limited ("R&S"), as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. Also named in the Complaint was Maccaferri Gabbions Manufacturing Company, Inc. ("MGMC"), which is also controlled by Officine. The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in the United States market for the manufacture and sale of gabions. The Complaint seeks the divestiture of Terra Aqua and a permanent injunction preventing defendants from carrying out any future acquisition of Terra Aqua.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify and enforce the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II—Events Giving Rise to the Alleged Violation

On or about February 15, 1983, Officine, through its subsidiary, R&S, acquired all of the capital stock of Terra Aqua for $2.46 million in cash and notes. Prior to its acquisition by R&S, Terra Aqua operated as a division of Bekaert Steel Wire Corporation ("BSWC") and was engaged in the manufacture and sale of gabions from a facility located in Reno, Nevada. At the time of the acquisition, Officine competed directly with Terra Aqua through its subsidiary, MGMC, which manufactures gabions in Williamsport, Maryland.

Gabions are rectangular, compartmented containers fabricated from a triple-twisted hexagonal mesh of heavily galvanized steel wire. Gabions are designed to be filled with hand-size stones and wired together with other gabions to form a monolithic, flexible and permeable structure used in soil conservation and ecology projects. Gabions are also available with an additional polyvinyl chloride coating when they are used in corrosive conditions, such as salt water.

Gabion structures are well suited to soil conservation and ecology projects. Their applications fall within three broad categories: river training and flood control; consolidation and protection from erosion on such projects as roads, railways, airports and parks; and, shore and coastal protection. Gabions have unique uses and characteristics, including flexibility, permeability, durability, versatility and economy which differentiate them from other methods of erosion control.

From 1976 until early 1981, MGMC and BSWC conspired to fix the prices at which they sold gabions in the United States. On March 6, 1985, MGMC pled guilty to a criminal Information charging it with conspiring to fix prices and divide the United States gabion market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. MGMC and the United States agreed, among other things, to recommend jointly that MGMC be sentenced to pay a $500,000 fine as punishment for that offense. Subsequently, MGMC paid the United States $115,340 in settlement of its claim for civil damages.

On March 6, 1985, BSWC and its Belgian parent company, N.V. Bekaert S.A. ("Bekaert"), were indicted for conspiring to fix prices and divide the United States gabion market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. On October 16, 1985, BSWC and Bekaert pled guility to the offense charged in the Indictment. Bekaert paid a $300,000 fine and BSWC paid a $325,000 fine. Thereafter, BSWC paid the United States $112,731 in settlement of its claim for civil damages.

Prior to the February 15, 1983 acquisition of Terra Aqua by R&S, the gabion market in the United States was highly concentrated. Officine, through its subsidiary, MGMC, had a market share of approximately 60 percent and Terra Aqua had a market share of approximately 40 percent. As a result of the acquisition of Terra Aqua by R&S, Terra Aqua and MGMC are under the common control of Officine and Officine has acquired a virtual monopoly in the United States gabion market. The

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Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers, currently approaches 10,000.

Based upon the foregoing and other facts, the Complaint alleges that the manufacture and sale of gabions comprise a relevant market for antitrust purposes, and that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of gabions in the United States in violation of Section 7 of the Clayton Act.

III—Explanation of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment requires defendants to divest their entire interest in Terra Aqua, with the exception of certain proprietary equipment installed by Maccaferri in late 1984, absolutely and unconditionally, by their own efforts within six months of the entry of the Final Judgment. If defendants cannot accomplish the required divestiture within the above time period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee who shall sell Terra Aqua.

Terra Aqua must be divested to a purchaser who can and will operate it as a viable, ongoing business that can compete effectively in the gabion market. The purchaser has the option to purchase Terra Aqua's plant in Reno or to remove the production equipment to a location of its choice. The defendants will take all reasonable steps necessary to accomplish divestiture and shall cooperate with bona fide prospective purchasers and the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestitute is accomplished. If after six months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

The proposed Final Judgment provides that before divestiture the defendants must make certain improvements to the machinery that would have been made had defendants not installed proprietary equipment at the plant. Until the required divestiture has been accomplished, the defendants must properly maintain Terra Aqua's production equipment. Defendants are also enjoined from taking any action that would reduce the scope of Terra Aqua's manufacturing or sales operations or product line or that would jeopardize the sale of Terra Aqua as a viable competitor in the manufacturing or sale of gabions. Also, the marketing organizations of Terra Aqua and defendants must be kept separate until divestiture of Terra Aqua is accomplished. Finally, there are post-divestiture restrictions on defendants' ability to manufacture in certain western states, to attempt to have gabion product standards written in such a way as to exclude gabions manufactured by Terra Aqua and to offer employment to Terra Aqua employees.

IV—Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damages actions. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V—Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may within the statutory 60-day comment period submit written comments to John W. Clark, Chief, Professions and Intellectual Property Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the Department's responses will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI—Alternatives to the Proposed Final Judgment

The Government's original divestiture plan included, in addition to what is included in the proposed Final Judgment, gabion production equipment installed by defendants in Reno in late 1984. During negotiations between the Department and defendants it became clear that defendants would not enter into a consent decree that included such a requirement because of the proprietary nature of the machinery. Defendants eventually convinced the Department that the machinery was in fact proprietary, that it was installed to allow defendants to produce a uniform "Maccaferri" gabion and that the Terra Aqua machinery, at the time of its acquisition by R&S, was competitive. To assure the continued competitiveness of the Terra Aqua machinery, however, the proposed Final Judgment provides that, before divestiture, the defendants must make certain improvements to the machinery that would have been made had defendants not installed proprietary equipment at the plant.

An alternative considered by the Department to granting the purchaser of Terra Aqua the option of purchasing the Reno, Nevada land and building in which Terra Aqua's manufacturing facility is located (hereinafter the "Reno Property") was to insist on their divestiture. It was clear to the Department, however, that the gabion production equipment in Reno was readily moveable. Since the gabion market is both small and not well known, the Department believed that there was probably a small group of prospective purchasers. We were, therefore, concerned that requiring the divestiture of the Reno Property, which is worth more than the production machinery, would further limit the number of prospective purchasers. We decided, therefore, not to require the divestiture of the Reno Property, but to give a prospective purchaser the flexibility of either purchasing it or moving the production machinery to a location of its choice.

The Department also considered whether to agree to the defendants' request that a minimum price be set on the Reno Property in the event the purchaser of Terra Aqua decides to

purchase it. The Department usually opposes such requests. In this case, because the value of the real estate is higher than the value of the gabion production machinery, we considered whether a minimum sales price would discourage potential purchasers not interested in producing gabions.

The defendants have subsequently informed the Department, however, that they plan to convert a portion of an existing Terra Aqua debt to a mortgage on the Reno Property. The Department believes that the existence of this assumed liability will effectively discourage a potential purchaser who is not interested in producing gabions from acquiring the Reno Property solely for the purpose of reselling its real property. We decided, therefore, not to accept, and defendants now have withdrawn, the request for a provision setting a minimum price on the Reno Property.

As the proposed decree will completely cure the anticompetitive consequences of the acquisition of Terra Aqua by R&S, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII—Determinative Materials and Documents

There are no materials or documents that the United States considered determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: February 24, 1986.

Respectfully submitted,

John F. Greaney, J. Robert Kramer II,
Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, Telephone: 202/724–7469.

Certificate of Service

I hereby certify that I have served the foregoing Competitive Impact Statement upon the following counsel by causing copies thereof to be deposited in the United States mail, postage prepaid, on February 24, 1986:

Jeffrey E. Livingston, Pavia & Harcourt, 600 Madison Avenue, New York, New York 10022

Michael Malina, Kaye, Scholer, Fierman, Hays and Handler, 425 Park Avenue, New York, New York 10022

Phillip R. Malone,
Attorney, Department of Justice.

[FR Doc. 86–4947 Filed 3–6–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilites under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, D.C. 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Collection of Information in Current Rules

Occupational Safety and Health Administration, Coke Oven Emissions, OSHA–249, 1218–0010. On occasion; businesses and other for profit; small businesses or organizations; 25 respondents; 108,105 hours; 0 forms.

The purpose of this information collection requirement is to provide protection for employees against the health effects associated with occupational exposure to coke oven emissions. Employers must monitor employee exposure, keep employee exposures within permissible limits and provide employees with medical exams and training.

Signed at Washington, D.C., this 4th day of March 1986.

Harry Echols,
Acting Departmental Clearance Officer.

[FR Doc. 86–5070 Filed 3–6–86; 8:45 am]

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Employment and Training Administration

[TA-W-16, 228]

Stackpole Corp.; St. Marys, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Stackpole Corporation, St. Marys, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–16,228; Stackpole Corporation, St. Marys, Pennsylvania (February 28, 1986)

Signed at Washington, DC this 28th day of February 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–5019 Filed 3–6–86; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85–16]

Denial of Application; Michael Alva Marshall, M.D.

On February 22, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an order to show cause to Michael Alva Marshall, M.D., of 28509 River Crest drive, Southfield, Michigan 48075 (Respondent) proposing to deny his application for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's felony conviction on February 3, 1983, of distribution of Percodan, a controlled substance, in violation of 21 U.S.C. 841(a)(1). Respondent, acting *pro se*, requested a hearing on the issues raised in the order to show cause. Administrative Law Judge Francis L. Young thereafter issued an order for prehearing statements. Both sides submitted prehearing statements.

On October 21, 1985, Government counsel filed a motion for summary disposition on the ground that Respondent is not duly authorized to handle controlled substances in the State of Michigan. Respondent was given the opportunity to respond to this motion for summary disposition, but he has not done so. Upon expiration of Respondent's time to respond to the Motion, the Administrative Law Judge held that an evidentiary hearing was not necessary as there were no factual issues to be resolved.

On December 9, 1985, Administrative Law Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed, and on January 10, 1986, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirely and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Government counsel learned by affadivit from Ann M. Keilen, Clerk of the Michigan Board of Pharmacy, Department of Licensing, that Michael Alva Marshall, M.D., was ordered to surrender his controlled substance license pursuant to a final order of the Michigan board of Medicine effective February 2, 1983, and that Respondent has not possessed a Michigan controlled substance license since that date. Further, as of October 10, 1985, no application for such a license had been submitted to the Michigan Board of Pharmacy by Respondent. Respondent, therefore, is without authority to manufacture, distribute, prescribe, dispense or possess controlled substances in the State of Michigan. This agency has consistently held that if a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices, or proposes to practice, DEA is without statutory authority to issue or maintain a registration. See *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), *Leo M. Mullen, M.D.*, Docket No. 84–7, 50 FR 5827 (1985), *Floyd A. Santner, M.D.*, Docket No. 79–23, 47 FR 51831 (1982). The Controlled Substances Act of 1970 specifically provides that: "Practioners shall be registered to dispense or conduct research with controlled substances. . . if they are authorized to dispense or conduct research under the law of the state in which they practice." 21 U.S.C. 823(f). Since Respondent does not possess a controlled substance license in Michigan, he has no state authority to handle controlled substances. Therefore, a motion for summary disposition is properly entertained and granted.

The Administrative Law Judge notes that the order to show cause does not recite lack of state registration as a ground for the proposed denial of Respondent's application. However, this new ground was clearly set out in the motion for summary disposition and Respondent was given ample time to object to it or state a defense against it. Respondent has not done so. In the circumstances, it would be a needless exercise in formalism to require that the order to show cause be amended, or that a new one be issued.

Judge Young found that the record clearly shows that an evidentiary hearing is not necessary in this case. There is no lawful basis for DEA to grant a registration to Respondent since he has no state license to dispense controlled substances. Therefore, the Administrative Law Judge concluded that Respondent's application for registration should be denied.

The Administrator adopts the Administrative Law Judge's findings of fact, conclusions of law and recommendations in their entirety.

Having concluded that there is no lawful basis for granting Respondent's registration, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration executed by Michael Alva Marshall, M.D., be, and hereby is, denied.

Dated: March 3, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–4967 Filed 3–6–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter Interpreting the Work-Training and Work-Relief Exemption

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as one of several conditions for certain tax credits to employers, that employees of State and local government entities and certain nonprofit organizations be covered by State unemployment insurance (UI) laws. However, section 3309(b)(5), FUTA, permits exemptions from this mandatory coverage requirement for participants in unemployment work-relief and work-training programs.

Questions have arisen several times over the years as to what is and what is not a work-relief or work-training program. Those questions were addressed as they arose but it has become apparent that a more formal statement of the criteria for determining whether a program is work-relief or work-training is needed. Consequently, the Employment and Training Administration (ETA) published a proposed Unemployment Insurance Program Letter (UIPL) in the **Federal Register** July 24, 1985, 50 FR 30249. One of the possible characteristics of an exemptable program inadvertently omitted from the July 24 publication was published in the **Federal Register** on August 9, 1985, 50 FR 32328 and there was a commensurate extension of the 45 days within which written comments were requested and accepted. This final UIPL incorporates, wherever appropriate, changes and improvements submitted in those comments.

The ETA received 5 written responses, consisting of letters, listed below in the order received, from: (1) Illinois Department of Employment Security (IDES), (2) New York Department of Labor (NYDL), (3) Wisconsin Department of Industry, Labor and Human Relations (WDILHR),

(4) Maryland Department of Employment and Training (MDET), and (5) Wisconsin Department of Health and Social Services (WDHSS).

Illinois (IDES) commented that under the Job Training Partnership Act (JTPA) participants placed with governmental or nonprofit employers are exempt from UI coverage while participants placed with private employers are not exempt. A question is raised as to whether individuals placed with private (for-profit) employers may be exempted from coverage by interpretation of section 3309(b)(5), FUTA. Wisconsin (both WDILHR and WDHSS) letters also contained language indicating concerns with the problems of work-relief and work-training program employers.

These concerns are addressed here through a review of the basic considerations:

1. Section 3304(a)(6)(A) requires coverage of employees of State or local governmental entities and certain non-profit organizations, but

2. A State *may* at its option, exempt employees of such employers if the employees are employed only as participants in a work-relief or work-training program which is financed or assisted, in whole or in part, by a Federal, State, or local government agency.

Therefore, the answer to the Illinois question is no—neither section 3304(a)(6)(A), FUTA, nor section 3309(b)(5), FUTA, have any bearing upon UI coverage of employees of private, for-profit employers, either directly or by interpretation.

However, Illinois and Wisconsin comments on the problems of employers (especially JTPA employers) affected do highlight a possible source of some confusion—i.e., including characteristic A.(4.) in a list as though it were on a par with the other 3 characteristics listed. The characteristic stipulated that "the program is financed or assisted in whole or in part by a Federal agency or a State or a political subdivision thereof." This is merely a restatement of certain language in section 3309(b)(5), FUTA, while characteristics (1), (2) and (3) under 4.A. are all based upon a reasonable interpretation of that FUTA provision. Consequently, characteristic A.(4) is deleted and subsection A. is reworded as follows: "In order to qualify for the exemption provided by section 3309(b)(5), FUTA, an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a State or a political subdivision of a State, must have as a minimum the following characteristics."

Several other comments were concerned with the minimum characteristics of a work-relief or work-training program listed under Section 4.A. of the proposed UIPL.

Both New York (NYDL) and Wisconsin (WDILHR) are dissatisfied with the phrase "normal economic considerations" under A.(1). New York thinks a more explicit definition necessary and Wisconsin comments that an explanation of the meaning of those terms will probably eliminate misunderstandings about requirements. Accordingly, the paragraph is changed to read as follows: "the employer-employee relationship is based more on the participants' and the communities' needs than on normal economic considerations such as increased demand for a product or service or the filling of a bona fide job vacancy."

Wisconsin (WDILHR) asked for clarification of the phrase under A.(2) "taking into account as indispensable factors the economic and social status of the applicants." Accordingly, the paragraph is changed to read as follows: "(2) qualifications for the jobs take into account as indispensable factors the economic status (i.e., the standing conferred by income and assets) of the applicants." "Social" is deleted because it contributes nothing which cannot be inferred from the words "economic status," a term which is now defined.

Wisconsin (WDILHR) recommended that A.(3) be rewritten so as to require that the services performed by participants *provide* financial assistance, training or work experience. ETA disagrees with this comment because the criteria as stated is basic to distinguishing work-relief and work-training programs from other types of employment. Accordingly, no change has been made.

Some comments were directed to subsection B. which lists four characteristics, one of which must be present in a program for which employment may be exempted from coverage.

Wisconsin (WDILHR) commented that it should not be necessary for a work-training or work-relief program to have any of the characteristics stated under 4.B and the B should therefore, be rewritten to state that the category B. characteristics *may* be present, rather than that the least one will be present. ETA disagrees. We believe the criteria are broad enough the encompass any bona fide work-relief or work-training program. Accordingly, the requirement that such programs meet one or more of the characteristics has been retained.

Wisconsin (WDILHR) also commented that the meaning of B.(1) is unclear as to whether wages, hours and conditions of work need not be commensurate with those prevailing in the locality. ETA agrees. Accordingly, "necessarily" is deleted from the paragraph.

Wisconsin's (WDILHR) final comment urges discussion of the application of the interpretation of section 3309(b)(5), FUTA, to current Federally funded training and work-relief programs.

Since States under JTPA have considerable latitude in establishing programs, it is not possible to make a blanket statement that all JTPA-funded work-relief or work-training programs meet the criteria for exemption. But it is clear that the criteria apply to all government-assisted work-training or work-relief programs.

Mayland (MDET) commented that the following should be added to 4.B.(2) ". . . and there is little likelihood they will be continued when the program is discontinued." The final UIPL contains the suggesfed change.

Finally, Wisconsin's Department of Health and Social Services (WDHSS) stated that it shared the concerns of the State's Department of Industry, Labor, and Human Relations; those concerns have been addressed above. Another concern of the WDHSS is what constitutes public financing for work-relief and work-training programs. It is not appropriate here to do more than quote from section 3309(b)(5), FUTA: ". . . assisted or financed in whole or in part. . . ." What constitutes partial assistance or financing will have to be determined on a case-by-case basis, according to the facts of each case.

The UIPL published below takes effect upon publication.

Dated: February 26, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Unemployment Insurance Program Letter No. 15–86—All State Employment Security Agencies

Barbara Ann Farmer, Acting Administrator for Regional Management

Interpretation of Section 3309(b)(5), FUTA, Work Relief or Work-Training Program Exceptions to Section 3304(a)(6)(A), FUTA, Coverage Requirement

1. *Purpose.* To provide an interpretation of Section 3309(b)(5) of the Federal Unemployment Tax Act (FUTA) which permits an exception to coverage requirements of section 3304(a)(6)(A), FUTA, for services performed as part of an unemployment

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work-relief or work-training program by individuals receiving such work-relief or work-training.

2. *References.* Sections 3304(a)(6)(A), 3309(a), 3309(b)(5), 3306(c)(7), and 3306(c)(8) of the Federal Unemployment Tax Act (FUTA).

3. *Background.* Section 3304(a)(6)(A), FUTA, requires State unemployment insurance (UI) laws to provide for coverage of services to which section 3309(a)(1), FUTA, applies. Section 3309(a)(1), FUTA, applies to services performed for certain nonprofit organizations and to practically all services for State and local government entities, with certain permitted exceptions to both requirements. Section 3309(b)(5), FUTA, states one of those exceptions. If an unemployment work-relief or work-training program is assisted or financed in whole or in part by any Federal agency or an agency of a State or a political subdivision of a State, then services performed as part of such programs by individuals receiving work-relief or work-training *may* be exempted by State law from the mandatory UI coverage requirement. States are not precluded from covering such services; they are simply not required to provide such coverage in their laws as a condition for conformity with section 3304(a)(6)(A), FUTA. Over the years, questions have arisen many times about what constitutes a work-relief or work-training program for purposes of this exemption. State legislation has sometimes presented potential issues based on an incomplete understanding of the work-relief exemption. It is apparent that an interpretation of the exemption provided by section 3309(b)(5), FUTA, is needed.

4. *Interpretation.* As Federal law provides, an unemployment work-relief or work-training program must be assisted or financed in whole or in part by a Federal or State agency or a political subdivision of a State before services performed by individuals receiving such work relief or work training may be exempted from coverage.

A. In order to qualify for the exemption provided by section 3309(b)(5), FUTA, an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a State or a political subdivision of a State, must have as a minimum the following characteristics:

(1) The employer-employee relationship is based more on the participant's and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy;

(2) Qualifications for the jobs take into account as indispensable factors the economic status, i.e., the standing conferred by income and assets, of the applicants;

(3) The products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

B. Such an unemployment work-relief or work-training program will also have one or more of the following characteristics:

(1) The wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

(2) The jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

(3) The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors; and

(4) The jobs do not displace regularly employed workers or impair existing contracts for services.

5. *Action Required.* State employment security agencies should take the actions appropriate to assure that the State's UI law is consistent with Federal requirements as interpreted herein.

6. *Inquiries.* Direct questions to the appropriate regional office.

[FR Doc. 86–5020 Filed 3–6–86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basis hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494), as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II.

New Mexico	
NM86-3	pp. 660a–660f.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office doucment entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I.

Connecticut:	
CT86-1 (Jan. 3, 1986)	p. 67.
Maryland:	
MD86-1 (Jan. 3, 1986)	p. 384.
New York:	
NY86-10 (Jan. 3, 1986)	p. 725.
Pennsylvania:	
PA86-2 (Jan. 3, 1986)	pp. 804, 806, pp. 811–812.
Pennsylvania:	
PA86-5 (Jan. 3, 1986)	pp. 831–832.
Pennsylvania:	
PA86-8 (Jan. 3, 1986)	pp. 850–860.
Pennsylvania:	
PA86-9 (Jan. 3, 1986)	p. 872.
Pennsylvania:	
PA86-11 (Jan. 3, 1986)	p. 885.
Pennsylvania:	
PA86-12 (Jan. 3, 1986)	p. 887.
Pennsylvania:	
PA86-16 (Jan. 3, 1986)	p. 904.
Pennsylvania:	
PA86-17 (Jan. 3, 1986)	pp. 908–910.
Pennsylvania:	
PA86-19 (Jan. 3, 1986)	p. 922.
Pennsylvania:	
PA86-20 (Jan. 3, 1986)	pp. 927–931.
Pennsylvania:	
PA86-22 (Jan. 3, 1986)	pp. 943–945.
Pennsylvania:	
PA86-23 (Jan. 3, 1986)	pp. 948, 950.
Virginia:	
VA86-5 (Jan. 3, 1986)	pp. 1065–1068.
Virginia:	
VA86-15 (Jan. 3, 1986)	pp. 1089–1090.

Volume II.

Iowa:	
IA86-3 (Jan. 3, 1986)	p. 35.
Iowa:	
IA86-5 (Jan. 3, 1986)	pp. 45–48.
Indiana:	
IN86-6 (Jan. 3, 1986)	pp. 286–299.
Kansas:	
KS86-6 (Jan. 3, 1986)	pp. 327–328.
Kansas:	
KS86-8 (Jan. 3, 1986)	pp. 336–337.
Michigan:	
MI86-2 (Jan. 3, 1986)	pp. 400–402.
Michigan:	
MI86-5 (Jan. 3, 1986)	p. 429.
Missouri:	
MO86-1 (Jan. 3, 1986)	pp. 540–541, pp 543–544, pp. 553, 557.
New Mexico:	
NM86-2 (Jan. 3, 1986)	pp. 655–660.
Ohio:	
OH86-2 (Jan. 3, 1986)	p. 681.
Ohio:	
OH86-3 (Jan. 3, 1986)	p. 698.
Ohio:	
OH86-29 (Jan. 3, 1986)	pp. 757–766, pp. 768–770, pp. 772–773, p. 783.
Oklahoma:	
OK86-13 (Jan. 3, 1986)	pp. 821–822, p. 826.
Oklahoma:	
OK86-14 (Jan. 3, 1986)	pp. 831–832.
Texas:	
TX86-14 (Jan. 3, 1986)	p. 881
Listing by Decision (Index):.	p. lliii.
Listing by Location (Index):.	pp. xxx, xxxvi, p. xxxvii.

Volume III.

California:	
CA86-4 (Jan. 3, 1986)	pp. 64,69.
Nevada:	
NV86-2 (Jan. 3, 1986)	pp. 236–239.
Utah:	
UT86-1 (Jan. 3, 1986)	pp. 282, 294.
Washington:	
WA86-1 (Jan. 3, 1986)	pp. 319–321.
Washington:	
WA86-2 (Jan. 3, 1986)	pp. 328–329, p. 334.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of notice in the **Federal Register** are listed with each State. Seuersedeas decision numbers are in parentheses following the number of the decision being superseded.

Indiana:	
IN81-2038 (IN86-15)	June 26, 1981.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of February 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–4768 Filed 3–6–86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

South Carolina Standards; Approval

I. Background.

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 6, 1972, notice was published in the **Federal Register** (37 FR

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25932) of the approval of the South Carolina plan and the adoption of Subpart C to Part 1952 containing the decision.

The South Carolina plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 of 29 CFR provides that "When . . . any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." By letter dated September 11, 1984 from Edgar L. McGowan, Commissioner, South Carolina Department of Labor, to Alan C. McMillan, Regional Administrator, and incorporated as part of the plan, the State submitted the following amended State standards comparable to Federal Standards: 29 CFR 1910.1047, Ethylene Oxide (49 FR 25738), dated June 22, 1984; 29 CFR 1910.19(h), Special Provisions for Air Contaminants, Ethylene Oxide (49 FR 25738), dated June 22, 1984; Deletion in Table Z–1 of 29 CFR 1910.1000, Ethylene Oxide (49 FR 25738), dated June 22, 1984.

These standards were promulgated after public hearings held on August 14, 1984 and filed with the South Carolina Secretary of State August 14, 1984, pursuant to Act 379, South Carolina Acts and Joint Resolutions, 1971 (sections 40–261 through 40–274 South Carolina Code of Laws, 1962).

By letter dated October 23, 1985 from Edgar L. McGowan, Commissioner, South Carolina Department of Labor, to Alan C. McMillan, Regional Administrator, and incorporated as a part of the plan, the State submitted the following amended State standards comparable to Federal Standards: 29 CFR 1910.243(e)(1)(i), (e)(3)(vii), and (e)(4)(vi), Guarding of Portable Powered Tools, Power Lawnmowers (50 FR 4649), dated February 1, 1985; 29 CFR 1910.1047(m), Ethylene Oxide, dates (50 FR 9801), dated March 12, 1985; 29 CFR 1910.1047(j)(1)(iii), Ethylene Oxide (50 FR 12828), dated April 1, 1985; Appendix B to Subpart T, 29 CFR Part 1910, Guidelines for Scientific Diving (50 FR 1050), dated January 9, 1985.

These standards were promulgated after public hearings held on September 10, 1985 and filed with the South Carolina Secretary of State October 17, 1985 pursuant to Act 379, South Carolina Acts and Joint Resolutions, 1971 (sections 40–261 through 40–274 South Carolina Code of Laws, 1962).

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards.

The state standards are hereby approved.

3. Location of Supplement For Inspection And Copying

A copy of the standards supplement along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, South Carolina Department of Labor, 3600 Forest Drive, Columbia, South Carolina 29211; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30367; and Director of Federal State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the South Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are essentially identical to the comparable Federal standards and are deemed to be at least as effective.
2. The standards were adopted in accordance with procedural requirements of State Law and further participation would be unnecessary.

This decision is effective March 7, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 16th day of January, 1986.

Alan C. McMillan,

Regional Administrator.

[FR Doc. 86–5016 Filed 3–6–86; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1943.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated December 23, 1985, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1000: Air Contaminants, and 29 CFR 1910.1047: Ethylene Oxide, 49 FR 122, Friday, June 23, 1984).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, section 27–11–105(a)(viii). In addition, the standards were published in newspapers or general/major circulation throughout the State pursuant to the Wyoming Administrative Procedures Act 1977, section 16–3–103(a)(1).

State standards for 29 CFR Part 1910: Air Contaminants and Ethylene Oxide were adopted by the Health and Safety Commission of Wyoming on November

9, 1984 (effective January 3, 1985) pursuant to Wyoming statute 1977, section 27–11–105. The State standard on Air Contaminants is substantially identical to the federal standard action, with the only exception being paragraph numbering. Wyoming's Air Contaminant Substance list at their Chapter VII, section 1, is also identical to the Federal Standard. The State's Ethylene Oxide Standard of substantially identical, with the exception of paragraph numbering and location of the requirement to provide the examining physician and the employees of information of Federal Appendices A, B, and C. Rather than this requirement being noted within the body of the standard to follow the Federal format, Wyoming has placed this requirement within the Appendices. Also, the State's delayed effective date(s) in its standard are different from the Federal dates(s). Since the Wyoming engineering controls implementation date has passed, there is no negative impact on the State program that requires corrections.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standards. OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyominng 82002; and the Office of State Programs, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective March 7, 1986.

(Sec. 18, Pub. Law 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this 21st day of January, 1986.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 86–5017 Filed 3–6–86; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated July 19, 1985, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.243: Power Lawnmowers; Amendments, 50 FR 4648, February 1, 1985).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, section 27–11–105(a)(viii). In addition, the standards were published in newspapers of general/major circulation throughout the State pursuant to the Wyoming Administrative Procedures Act 1977, section 16–3–103(a)(1).

State standards for 29 CFR 1910.243: Power Lawnmowers; Amendment was adopted by the Health and Safety Commission of Wyoming on September 13, 1985 (effective November 12, 1985) pursuant to Wyoming statute 1977, section 27–11–105. The State standard on Power Lawnmower; Amendment is identical to the federal standard action, with the only exception being paragraph numbering.

2. DECISION

The above State Standard has been reviewed and compared with the relevant Federal Standard and OSHA has determined that the State Standard is at least as effective as the comparable Federal Standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves this standard.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street,

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Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective March 7, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this 14th day of December, 1985.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 86–5018 Filed 3–6–86; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–16]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space.

DATE AND TIME: March 13–14, 1986, 8:30 a.m. to 5:30 p.m. each day.

ADDRESS: 490 L'Enfant Plaza East SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Hartman, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW., Washington, DC 20024 (202/453–8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members.

The meeting must be held at this time in order to meet the publishing deadline of the final report. This is the earliest opportunity to assemble the Commissioners subsequent to the distribution of the final draft report for review. The meeting will be closed to the public in order to control the premature disclosure of information in the case of the Commission report that would likely to significantly frustrate the implementation of the proposed Commission action pursuant to the exemption contained in 5 U.S.C. 552b(c)(9)(b).

Type of meeting: Closed.

Dated: February 28, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86–4937 Filed 3–6–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

National Endowment for the Arts; Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 24–28, 1986 from 9:00 a.m. to 6:00 p.m., Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 3, 1986.

[FR Doc. 86–5004 Filed 3–6–86; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Qualifications Review Panel for the Position of Director, John Fitzgerald Kennedy Library; Meeting

Notice is hereby given that the Qualifications Review Panel for the Position of Director, John Fitzgerald Kennedy Library, will meet on Monday, March 24, 1986, at 10:30 a.m. at the Kennedy Library, Columbia Point, Boston, Massachusetts.

The agenda for the meeting will be:

1. Discuss personnel procedures leading to the selection of the Director.
2. Propose individuals who might be solicited to apply for the position.
3. Discuss qualifications of those who have applied for the position.

The meeting will be closed to the public in accordance with 5 U.S.C. 552b(6) in order to avoid unwarranted invasion of the personal privacy of the applicants.

Dated: March 5, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–5127 Filed 3–6–86; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Submitted for Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regultory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reducation Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Survey of Licensees Possessing Strategic Special Nuclear Material.
3. The form number if applicable: Not applicable.
4. How often the collection is required: One time.
5. Who will be required or asked to report: Nonpower reactor licensees, including research, test, and critical facilities, and certain other research licensees, possessing strategic special nuclear material.
6. An estimate of the number of responses: 33.
7. An estimate of the total number of hours needed to complete the requirement or request: 264.
8. An indication of whether section 3504 (h), Pub. L. 96–511 applies: Not applicable.
9. Abstract: The Nuclear Regulatory Commission will survey nonpower reactor and certain other licensees to evaluate plans for reduction quantities of strategic special nuclear material stored at sites and to evaluate the need for additional physical protection measures.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 4th day of March 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–5053 Filed 3–6–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co. and McGuire Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Duke Power Company (the licensee) for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Indentification of Proposed Actions: Section III C.2(a) of Appendix J to 10 CFR Part 50 which addresses the test pressure to be used in the performance of local leak rate tests provides: "Valves, unless pressurized with fluid (e.g., water, nitrogen) from a seal system, shall be pressurized with air or nitrogen at a pressure of Pa." The proposed exemption from Section III C.2(a) would allow performance of the local leak rate test for the ice condenser refrigeration system without draining the gylcol from the seats of the diaphragm valves at the mechanical containment penetrations. The proposed exemption and the bases thereto, are in accordance with the licensee's letters dated September 24, 1985 and February 14, 1986.

The Need for the Proposed Actions: The proposed exemption would reduce the downtime for the ice condenser refrigeration system, which maintains the temperature and mass of the ice bed at acceptable levels. The exemption would also reduce the amount of toxic waste (approximately 200 gallons of glycol for each McGuire unit) which might otherwise require disposal.

Evironmental Impacts of Proposed Actions: The proposed exemption would provide for the substitution of an alternate test for the mechanical containment penetration diaphragm valves in the ice condenser refrigeration system. The proposed test procedure includes a glycol leakage rate acceptance criterion on those diaphragm valves of zero indicated leakage (not including instrument error). We find that a valve meeting a zero leakage criterion using glycol would allow no leakage of containment atmosphere. If the leak rate using glycol should be found to be greater than zero, the penetration would then be fully drained and the valves leak tested in accordance with Appendix J. Thus, performing the local leakage rate test on these penetrations without fully draining them would not compromise containment integrity. Plant operation with the exemption would be at least as safe as requiring compliance with the leak testing requirement of the regulations. The probability of an accident would not be increased and the post-accident radiological releases would not be greater than previously detemined, nor would the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption would not adversely affect non-radiological plant effluents or have other adverse environmental impact. Therefore, the Commission concludes that there would be no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Actions: Because we have concluded that there would be no significant adverse environmental impact associated with the proposed exemption, any alternative to this exemption would have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of plant operation but would increase the amount of toxic waste (glycol) requiring disposal. Also, denial of the exemption would require the ice condenser refrigeration system to be down for 24 to 36 hours which has a potential negative impact on the mass of ice in the ice bed.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connnection with the "Final Environmental Statement Related to Operation of McGuire Nuclear Station," dated April 1976.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests that support the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed actions, see the licensee's requests for exemption dated September 24, 1985, and February 14, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 4th day of March 1986.

For the Nuclear Regulatory Commission.

Darl Hood, Acting Director,

PWR Project Directorate No. 4, Division of PWR Licensing-A, NRR.

[FR Doc. 86–5054 Filed 3–6–86; 8:45]

BILLING CODE 7590–01–M

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Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee on TVA; Meeting

The ACRS Ad Hoc Subcommittee on TVA will hold a meeting on March 27, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, March 27, 1986—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss TVA reorganization and related technical and management issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–5058 Filed 3–6–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–416]

Mississippi Power & Light Co., Middle South Energy, Inc. and South Mississippi Electric Power Association; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Mississippi Power & light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would change a Technical Specification surveillance requirement for the heaters in the standby gas treatment system (SGTS). To demonstrate operability of the SGTS, the heaters would be required to dissipate 48±5.0 KW instead of the presently required 50±5.0 KW when tested in accordance with Technical Specification 4.6.6.3.d.5 This change was requested in the licensees' application for amendment dated February 17, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (vi) is a change which may reduce a safety margin, but where the results of the change are clearly within acceptable criteria with respect to the component specified in the Standard Review Plan (SRP) (NUREG–0800).

The SRP Section 6.5.1 "ESF Atmospheric Cleanup Systems" states in relevant part that systems such as the SGTS are acceptable if they meet the guidelines of Regulatory Guide 1.52. The relevant recommendation in Regulatory Guide 1.52 is that the heater should be designed to reduce the relative humidity of the air flowing through the SGTS from 100% to 70% under design basis accident conditions. The licensee has determined in its submittal of February 17, 1986 that a heater dissipating 21.5 KW will meet the design recommendation in Regulatory Guide 1.52. The staff concludes, based on a preliminary review of the licensees' submittal that the small change in the minimum heater dissipation requirement (from 45 KW to 43 KW) is clearly within the relevant criterion in the Standard Review Plan. Therefore, the proposed change is similar to Example vi. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By April 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 3rd day of March 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86–5056 Filed 3–6–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–323]

Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant, Unit 2; Exemption

I

Pacific Gas and Electric Company (the licensee) holds Facility Operating License No. DPR–82, which authorizes operation of the Diablo Canyon Nuclear Power Plant, Unit No. 2 (the facility or Diablo Canyon 2) at power levels not in excess of 3411 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located on the licensee's site in San Luis Obispo County, California.

II

Section 50.46(a)(1) to 10 CFR Part 50 requires, in part, that for a reactor its ECCS cooling performance shall be calculated in accordance with an acceptable evaluation model. Furthermore, § 50.46 to 10 CFR Part 50 requires that the calculated maximum fuel element cladding temperature or peak cladding temperature (PCT) shall not exceed 2200° F.

III

By letter dated February 21, 1986 the licensee requested an Exemption from the requirement of 10 CFR 50.46(a)(1) identified in II above for a temporary relief to complete the ECCS cooling performance calculations for Diablo Canyon 2 using plant specific data and actual operating conditions with an approved ECCS evaluation model in

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order to verify that the calculated peak cladding temperature (PCT) for Diablo Canyon 2 does not exceed the criterion of 2200° F specified in 10 CFR 50.46(b). In an earlier letter dated February 14, 1986 the licensee had informed the staff that the calculated ECCS cooling performance for Diablo Canyon 2, as discussed in the Final Safety Analysis Report (FSAR), is not based on the actual operating conditions for the facility. The letter provided substantial information demonstrating the safe operation of Diablo Canyon 2 under those conditions as discussed below.

The large break ECCS analysis for Diablo Canyon 2, as documented in FSAR Section 15.4.1, was performed with the Westinghouse 1978 Evaluation Model. It resulted in a peak cladding temperature of 2187° F. The analysis was based on the nominal average reactor coolant temperature, Tavg, of 577.6° F, a heat flux hot channel factor, Fq, of 2.32, and a discharge coefficient, Cd, of 0.8. The Diablo Canyon 2 startup testing has shown that there is little or no steam generator heat transfer fouling. Consequently the licensee has projected that the reactor coolant system (RCS) will operate more efficiently at a Tavg of 572° F. Westinghouse sensitivity studies using the approved 1978 Westinghouse ECCS Evaluation Model show that operation at a Tavg of 572° F could result in a PCT increase of 20° F, causing the peak cladding temperature to exceed the 2200° F limit specified in 10 CFR 50.46(b) by as much as 7° F.

The change in the PCT with a variation in Tavg was the subject of many discussions between the staff and Westinghouse in mid-1977. It was found that a decrease in Tavg could result in either an increase of decrease of PCT. Therefore, the staff concluded that plant specific analyses should be performed for the nominal Tavg for the plant under evaluation.

Since the staff approval of the 1978 Westinghouse Evaluation Model, the staff has approved a new Westinghouse analytical method, called BART, for reflooding calculations. This model describes the LOCA phenomena in a more mechanistic way. The 1978 Evaluation Model uses empirical correlations to calculate reflooding heat transfer. The BART method models the heat transfer and fluid flow processes during reflood, including entrainment and deentrainment of droplets, the heat transfer at the quench front and, as an option, the effect of spacer grids. Because BART is more mechanistic, calculations made with an evaluation model including BART show increased margin to the peak cladding temperature limit.

Westinghouse has informed the licensee that a reanalysis of the PCT for Diablo Canyon 2 using the BART Model is expected to result in a decrease in peak clad temperature of 70° F or more. This is supported by analyses done for other Westinghouse four-loop plants designed and operated similarly to Diablo Canyon 2. While the magnitude of this margin differs from plant to plant, the staff agrees that an analysis of the large break LOCA for Diablo Canyon 2 using the BART model would demonstrate sufficient margin to accommodate the 7° F by which the 1978 analysis would exceed the 10 CFR 50.46(b) peak cladding temperature limit using actual plant operating conditions. In addition, there is no reason to expect that the other criteria of 10 CFR 50.46 in terms of cladding oxidation and long term cooling would not continue to be met.

To provide further assurance that Diablo Canyon 2 will continue to meet the PCT criterion of 10 CFR 50.46(b), the licensee has limited the heat flux hot channel factor, Fq, by administrative control to a value of 2.30, which is a reduction of 0.02 in Fq units from the value of 2.32 used in Technical Specification 3.2.2. The licensee has revised the applicable operating procedures for Diablo Canyon 2 which implement the Technical Specifications to ensure that the appropriate action statements in Technical Specification 3.2.2 will be implemented if Fq has a value of 2.30 or greater. Diablo Canyon 2 currently is operating with a measured Fq of less than 2.00. The licensee has stated that using the 1978 Evaluation Model, this decrease of 0.02 in Fq would result in a reduction of the calculated PCT of approximately 20° F. These results are based upon sensitivity studies performed by Westinghouse with the 1978 Model and are consistent with previous analyses reviewed by the staff for other facilities.

Based on the above discussion, the licensee's proposed reanalysis of the calculated ECCS cooling performance with the more recent BART Model and using actual plant operating conditions, in conjunction with the interim reduction of the heat flux hot channel factor, Fq, to a value of 2.30 under administrative control is acceptable. This is a one-time only exemption for temporary relief from the requirement of 10 CFR Part 50, § 50.46(a)(1) regarding the plant specific ECCS cooling performance calculated with an approved model. The staff also finds acceptable the schedule proposed by the licensee in the February 21, 1986 letter to complete the reanalysis by July 25, 1986 and to submit the results to the staff no later than August 19, 1986.

IV

Accordingly, the Commission had determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstance for the short period involved is not necessary to achieve the underlying purpose of the regulation to assure the integrity of the fuel cladding in the event of a postulated design basis LOCA by requiring that the peak cladding temperature as calculated with an approved model and using appropriate plant conditions does not exceed the 2200 °F limit specified in 10 CFR 50.46(b). Specifically, based on the discussion above and on its experience with the BART Model as applied to similarly designed and operating four-loop Westinghouse plants, the staff concludes that requiring the shutdown of the facility solely to perform a reanalysis confirming these results on a plant specific basis for Diablo Canyon Unit 2 is not necessary for this temporary period. The licensee has demonstrated a good faith effort to achieve compliance by: promptly informing the staff upon notification by Westinghouse of the discrepancy between system preformance and the model assumption; by immediately directing Westinglhouse to perform necessary studies to assess the safety significance of this difference; and by requesting Westinghouse to provide as promptly as possible a revised plant specific analysis using an improved Westinghouse ECCS evaluation model.

Accordingly, the Commission hereby grants an exemption as described in Section III above from 10 CFR 50.46(a)(1), provided:

1. Heat flux hot channel factor, Fq, shall not exceed 2.30.

2. All other operating conditions shall conform with the requirements of License No. DPR–82 and the associated Technical Specifications.

3. The Licensee shall complete a revised plant specific ECCS analysis for Diablo Canyon Unit 2, in accordance with the schedule stated in its letter of February 21, 1986 and shall not submit the results of such analysis no later than August 20, 1986.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (February 28, 1986, 51 FR 7160).

This exempiton is effective upon issuance.

Dated at Bethesda, Maryland, this 3rd day of March 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licesnsing-A.

[FR Doc. 86–5055 Filed 3–6–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–338]

Virginia Electric and Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–4, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for operation in the North Anna Power Station, Unit No. 1 (NA–1) located in Louisa County, Virginia, in accordance with the licensee's application for amendment dated January 17, 1986.

The proposed change would allow 7 percent Steam Generator (SG) tube plugging levels at NA–1 to support power operation at the currently licensed reactor thermal power of 2775 Megawatts thermal (MWt). The currently approved level for SG tube plugging is 5%.

Recent eddy current inspections of the NA–1 SG tubes indicated a need to plug additional tubes beyond the Fuel Cycle 5 level of 3.17%. The plugging level was increased to 3.89% during the recent NA–1 Cycle 5 to Cycle 6 refueling outage. Since it is possible that future eddy current inspections may require that the plugging level be increased to a level beyond the currently approved 5% limit, the licensee has provided an evaluation of the impact on Loss-of-Coolant Accidents (LOCA) and non-LOCA analyses at higher levels of SG tube plugging up to 7%.

Since sufficient tube plugging can reduce primary system flow, result in more severe pump coastdown characteristics, and reduce the primary system volume, the impact of tube plugging on non-LOCA transient analyses was previously evaluated by the licensee and submitted to the NRC by letter dated February 12, 1982. The evaluation provided a conservative estimate of actual Reactor Coolant System (RCS) flowrate versus SG tube plugging level for NA–1&2. The evaluation showed that at 7% tube plugging the primary system flowrate would still be more than 2.5% greater than the current NA–1&2 thermal design flow. Thus the current licensing analyses, in which flowrate is an important concern (DNB limited events), remain valid at 7% plugging. Seven percent SG tube plugging results in a 3% change in the total loop resistance. The evaluation indicated that this change would have a minimal impact on the pump coastdown curve. Also, the evaluation determined that 7% steam generator tube plugging would reduce the RCS volume by 2% and this would reduce the dilution time by 2%. However, during dilution events it was determined that sufficient time (approximately 60 minutes) remained to criticality to allow operator action.

The currently docketed analysis is based on a SG tube plugging level of 5%. A new LOCA analysis has recently been submitted by the licensee to the NRC (by letter dated May 2, 1985) in support of the Phase 3 NA–1&2 core uprate program which assumes a SG tube plugging level of 7%. This analysis, which is being submitted by the licensee to support the proposed change for 7% SG tube plugging at the currently licensed thermal power level for NA–1, bounds the currently licensed design conditions for NA–1.

The primary conservatisms in the new LOCA analysis are the higher reactor power and the lower reactor coolant flow, both of which tend to increase the peak clad temperature during a LOCA. The 50 pounds per square inch absolute (psia) reduction in steam pressure and the one degree difference in vessel average coolant temperature are shown to have a minor impact on peak clad temperature. Previous experience has shown that the effects of the power and RCS flow will dominate the other differences to produce a conservative peak clad temperature. Therefore, operation at the current licensed reactor thermal power of 2775 MWt will be bounded by the results of the uprated analysis when operating at the FQ limit (2.15) determined from the new analysis.

Three aspects must be considered when evaluating the effect of steam generator tube plugging level on small break LOCA transients. They are reduced heat transfer area, the increased initial temperature difference between the primary and secondary side and the countercurrent flow limit (CCFL). Since only a small portion of the steam generator heat transfer area is required to provide an effective heat sink during a small break transient, plugging some steam generator tubes will not affect small break LOCA transients in view of the available heat transfer area. The increased temperature difference between the primary and secondary side disappears immediately after the break when the secondary side pressur reaches the steam generator safety valve setpoint and therefore, has no impact on the peak clad temperature for small levels of steam generator tube plugging (up to approximately 20%). Since the plugging levels will not exceed 7%, there will be no impact on small break LOCA and the currently approved small break LOCA analysis (Section 15.3.1 of the NA–1&2 Updated Final Safety Analysis Report) remains bounding.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signficant reduction in a margin of safety. Specifically, as discussed above, the proposed change will not increase the probability of occurrence or consequences of any malfunction or accident previously addressed. The re-analyzed large break LOCA analysis, which is attached, shows that operation under the revised specifications would not result in any increase in accident consequences. The analysis assumptions for the remainder of the UFSAR Chapter 15 transient analyses have not changed and they remain bounding. Also, new accident types or equipment malfunction scenarios will be introduced as a result of operating in accordance with the revised specifications. And, finally, the margin of safety, as defined in the basis for the affected Technical Specifications, is not reduced. Operation at the lower FQ limit will not reduce the margin to the LOCA acceptance limits. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received

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within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By April 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which mush include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specifity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Mauphin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 17, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia, 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 3rd day of March, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing–A, Office of Nuclear Reactor Regulation.

[FR Doc. 86–5057 Filed 3–6–86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C Appendix I, 1–4. Activities will include:

- Contributions issue review.
- Hydropower obligation issue scoping.
- Other.
- Public comment.

DATE: March 17, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Meeting Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–4954 Filed 3–6–86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Postal Rates, Fees, and Mail Classifications; Adjustment of Preferred Rates of Postage

On February 4, 1986, the Governors of the Postal Service announced that the preferred rates of postage might change on March 9, 1986, and that they were considering implementing one of two sets of rates. Their action took into account the original reductions in revenue forgone appropriations which have already been enacted plus further reductions contemplated under the Balanced Budget and Emergency Reduction Act, commonly known as Gramm-Rudman-Hollings. The Governors of the Postal Service on March 4, 1986, adoped Resolution 86–6, adjusting preferred rates of postage to the levels shown in the attached schedules. The new rates will be effective at 12:01 a.m. on March 9, 1986.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

Preferred Rate Schedule

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Schedule 1—Second-Class Preferred Rate: In-County
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SCHEDULE 1.—SECOND-CLASS PREFERRED RATE: IN-COUNTY

Rate category	Preferred rate (cents)
Pound-rate matter:	
Per pound	9.3
Per piece	
Presorted to carrier route	3.2
Other	5.0

SCHEDULE 2.—SECOND-CLASS PREFERRED RATE: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

Rate category	Postage rate unit	Preferred rate (cents)
Non-Advertising	Pound	8.6
Advertising:		
1 and 2	do	11.5
3	do	12.8
4	do	14.8
5	do	17.9
6	do	21.2
7	do	25.0
8	do	28.4
Pieces:		
A	Piece	8.8
B	do	6.2
C	do	4.3
SCF difference	do	−1.0

SCHEDULE 3.—SECOND-CLASS PREFERRED RATE: CLASSROOM PUBLICATIONS

Rate category	Postage rate unit	Preferred rate (cents)
Non-Advertising	Pound	7.6
Advertising:		
1 and 2	do	10.1
3	do	11.2
4	do	13.2
5	do	16.3
6	do	19.5
7	do	23.2
8	do	26.7
Piece: A	Piece	6.7
SCF difference	do	−1.0

SCHEDULE 4.—SECOND-CLASS PREFERRED RATE: REGULAR-RATE PUBLICATIONS OUTSIDE COUNTY

Rate category	Postage rate unit	Preferred rate (cents)
Science of Agriculture		
Advertising zones 1 and 2	Pound	11.5
SCF difference	Piece	−1.0
Limited circulation		
A	Piece	9.0
B	do	8.4
C	do	4.5
SCF difference	do	−1.0

SCHEDULE 5.—THIRD-CLASS PREFERRED RATE: NONPROFIT BULK

Rate category	Preferred rate (cents)
Minimum per-piece rate:	
Required presort	8.7
Presorted to 5-digit ZIP	7.2
Presorted to carrier route	5.7
Pound rate:	
Required presort	25.9
Plus per piece	3.0
Presorted to 5-digit ZIP	25.9
Plus per piece	1.5
Presorted to carrier route	25.8

SCHEDULE 6.—FOURTH-CLASS PREFERRED RATE: LIBRARY

Rate category	Preferred rate (cents)
First pound	55
Each additional pound through 7 pounds	19
Each additional pound	10

[FR Doc. 86–5028 Filed 3–6–86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22960; File No. SR-CBOE-85-22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On January 27, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] Amendment No. 2 to

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

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a proposed rule change providing that the Exchange's Order Support System ("OSS") be utilized to route orders on options on stocks selected by the Exchange to printers at trading posts for handling by floor brokers.

The proposed rule change was noticed in Securities Exchange Act Release No. 22879 (February 7, 1986), 51 FR 5624 (February 14, 1986). No comments were received on the proposed rule change.[3]

The proposal to grant CBOE the discretion to select those options for which OSS may be utilized is an amendment to a previous proposal which would have permitted the electronic routing of OSS-eligible options orders on over-the-counter stocks to a printer at the trading post for direct representation by floor brokers in the trading crowd. The proposal as originally submitted to the Commission was not approved in order that the CBOE could clarify how the process would work. This amendment to the proposed rule change is intended to broaden the options classes where the crowd printer may be used, and to describe more fully how the process will operate.

OSS currently allows a firm's public customer orders to be routed either to the book or the firm's booth. The proposed rule change provides a third alternative for orders on options on stocks selected by the Exchange by permitting member firms to have an OSS order print at the trading crowd when the parameters do not allow the order to be accepted by the book.[4] Under the proposed rule change, member firms will have the ability to set individual parameters for routing orders to the book, the printer at the crowd, or the firm's booth on the floor; or to set one parameter for routing orders to the book with all other orders directed either to the crowd printer or the firm's booth.

The CBOE believes that the proposed rule change will expedite both the delivery of orders and fill reporting. The Commission concurs with the CBOE in this belief and finds therefore, that the proposed rule change is consisent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [5] and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the CBOE would like to make the efficiencies of the system available to member firms at the earliest possible date, and initially will limit the availability of the proposed enhancements to OSS to four posts on the trading floor.[6] Moreover, although the filing as originally submitted to, and noticed by, the Commission contemplated the use of direct routing to the trading crowd in certain options classes, the Commission did not receive any comment on that proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: February 28, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5049 Filed 3-6-86; 8:45 am]

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[3] SR-CBOE-85-22 and Amendment No. 1 to the rule filing were noticed in Securities Exchange Act Release No. 22105 (May 31, 1985), 50 FR 24073.

[4] The current parameters for determining acceptance of an order by the book will remain unchanged.

[5] 15 U.S.C. 78f (1982).

[6] Expansion of the system to additional trading crowds is dependent on the success of the project in initial crowds. *See* letter dated February 24, 1986, to Eneida Rosa, Branch Chief, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE.

[7] 15 U.S.C. 78s(2)(1982).

[8] 17 CFR 200.30-3)a—)12—)1985).

[Release No. 34-22959; File No. SR-NYSE-85-47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On December 31, 1985, the New York Stock Exchange, Inc. ("NYSE") submitted for Commission consideration, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act"), comprehensive amendments to the NYSE Constitution. The proposed amendments will result in a significant re-organization in the current Exchange Constitution, including numerous drafting changes, deletions of outdated provisions[1] and placement of several existing constitutional provisions into the NYSE's rules.[2] The Exchange states that a substantial majority of the changes are intended primarily to streamline, update, or clarify the current Exchange Constitution, and do not represent major substantive revisions.[3]

In addition to the drafting and organizational changes, several significant changes to the NYSE's governance procedures have been proposed:

(1) The composition of the NYSE Board of Directors would be modified to: (a) Increase the size of the Board from 20 to 24 (12 public directors and 12 industry directors), as well as a Chairman, Executive Vice Chairman, and a President (the latter two positions are not required to be filled); (b) provide that at least one public director must be associated with an NYSE listed company, and at least one must be associated with a financial institution that is a significant investor in equity securities; (c) provide that, of the 12 industry directors, three must be registered as NYSE specialists, one must be associated with an NYSE specialty firm, and one must be an NYSE floor broker; and (d) change the eligibility requirements for industry or public directors on the NYSE Board.

(2) Future NYSE electronic access members would not be permitted to vote at any NYSE election or on any matter requiring a membership vote, with current electronic access members retaining their ½ vote.

(3) The Exchange would delete an existing provision prohibiting participation by a person in any matter in which he is personally interested.

The Commission regards the proposed constitutional revisions as appropriate. The Commission, however, has determined to take no action on the proposed deletion of the provision in Article III, Section 2, paragraph 7 of the current Constitution relating to conflicts of interest by board members. The Commission believes that retention of such a provision, which is not otherwise explicitly included in the proposed NYSE Constitution or current NYSE rules, is critical. In response to a request from the Commission staff, the NYSE has committed to propose at the next meeting of its membership an amendment to the NYSE Constitution reinserting this conflicts of interest provision.[4]

II. Proposed Constitutional Amendments

Section 19(b) of the Act provides that, to be approved by the Commission, a proposed rule change must be consistent with the requirements of the Act and the rules and regulations thereunder. Section 6(b) of the Act sets forth the general requirements for exchange rules. Section 6(b)(3) of the Act requires exchange rules to "assure a fair representation of its members in the selection of its directors and administration of its affairs." Section 6(b)(3) also requires that the exchange "provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer." Section 6(b)(5) requires that exchange rules promote just and equitable principles of trade and that they not be designed to permit unfair discrimination between issuers, brokers, or dealers. Section 6(b)(7) requires that exchange rules provide a fair procedure for the disciplining of members and persons associated with members. Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the changes made in the proposed revised Constitution have resulted in a more streamlined and efficient document. Provisions which were eliminated generally were either redundant, outdated, were clearly implied in other provisions, or could be dealt with in the NYSE's rules. The drafting changes condensed and clarified the wording of the parallel provisions in the current Constitution. The reorganization of the Constitution served primarily to provide a more topical placement of functionally related provisions.

In regard to the three specific changes highlighted above, the Commission believes that the change in the number and composition of directors on the NYSE's Board of Directors and the elimination of voting rights for new electronic access members are reasonable and appropriate changes by the Exchange and has determined to approve them. As noted above, however, the Commission is not taking action in this order with respect to the deletion in Article III, Section 2, paragraph 7 of the current Constitution relating to conflicts of interest; the NYSE has indicated to the Commission that it will propose to reinsert this provision at the NYSE's next membership vote.[5]

A. Composition of NYSE Board of Directors

1. Description of Changes

Under Article II of the current NYSE Constitution, the Board of Directors is composed of 20 directors elected by members of the Exchange,[6] 10 of whom are public directors (not affiliated with brokers or dealers in securities) and 10 of whom are members or allied members of the Exchange. In addition, the Chairman (the Chief Executive Officer of the Exchange) is elected by the Board. The Board also may elect an Executive Vice Chairman, and the Chairman may appoint a President.

Under Article IV, Section 2 of the proposed revised Constitution, the size of the Board of Directors would be increased by 4 to a total of 24 directors plus the Chairman, Executive Vice Chairman and President (if the latter two positions are filled).[7] The 24 directors would include 12 public directors and 12 industry directors. At least one public director must be associated with an NYSE-listed issuer; at least one other public director must be associated with a financial institution that is a significant investor in equity securities.[8] The 12 industry directors would be required to come from the following industry categories: 7 directors from firms doing a public business (including 5 based in the New York City metropolitan area and 2 from outside New York), 3 NYSE specialists, 1 from a specialty firm based in the New York area, and 1 floor broker.[9]

As in the current Constitution, each year half of the Board of Directors, (i.e., six public directors and six industry directors) are elected. The revised Constitution designates each year's group of 12 elected directors as a class whose terms of office expire in alternate years.

The proposed amendments would revise the notice requirements for Board meetings to provide that notice be given no later than five (rather than the current two) days before the meeting or will be given by electronic means. The quorum requirement would be increased from six Board members to a majority of the entire Board.[10]

The proposed revised Constitution also changes the eligibility requirements for industry and public directors. Article II of the current NYSE Constitution requires that an industry director be a member or allied member [11] of the Exchange who is a principal executive officer and a director of a member corporation, a member of the managing committee or a principal partner of a member firm, or a member of the Exchange who does not hold voting stock in a member firm and who is not a partner in a member firm. Article I, Section 3(q) of the proposed revised Constitution would also make eligible a general partner of a member firm who has primary executive responsibilities, as well as the chief executive officer, a principal executive officer, or a director of a member corporation.

Under Article II of the current NYSE Constitution public directors are not permitted to be affiliated with brokers

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[1] For example, many of the provisions in Article III of the current NYSE Constitution concerning the powers of the Board of Directors have been deleted in the proposed revised Constitution's Article IV (Board of Directors). Provisions governing Board procedures, contracts of employment, the Board's control of the finances of the Exchange and its authority to buy and sell real estate were deleted as unnecessary. The Board has inherent authority to act in such situations and its power to purchase or sell real property is governed by state law.

[2] For example, provisions governing arbitration procedures contained in Article XIII of the current Constitution have been deleted from the proposed revised Constitution's Article XI. Those procedures will be included in the NYSE's rules and filed with the Commission as proposed rule changes in the near future.

[3] Notice of this proposed rule change together with the terms of substance of the proposed rule change was given in Securities Exchange Act Release No. 22766 (January 6, 1986), 51 FR 1461 (January 13, 1986). No comments were received on this proposal, although the NYSE supplemented its filing by submitting two letters. *See* Letter to Michael Cavalier, Branch Chief, Division of Market Regulation, from James E. Buck, Secretary, New York Stock Exchange, Inc., dated February 6, 1986 (hereafter "February 6, 1986 letter") and letter from James E. Buck to Michael Cavalier, dated February 19, 1986 ("February 19, 1986 letter").

These amendments were submitted to the Exchange membership for approval on December 20, 1985, and were approved by a vote of 861 to 25.5.

[4] *See* February 6, 1986 letter. In a February 24, 1986, telephone conversation between Brandon Becker, Assistant Director, Division of Market Regulation, and James C. Buck, Secretary, NYSE, the NYSE agreed to the Commission's determination to take no action with respect to deletion of the conflict of interest provision.

[5] *See* February 6, 1986 letter.

[6] A class of five public and five industry directors is elected each year.

[7] Under Article II of the current Constitution, the Chairman and Executive Vice Chairman are prohibited from engaging in other business during their incumbency. This prohibition would be removed under proposed Article IV, Section 2(a).

[8] *See* Article IV, Section 2(a) of the proposed Constitution. The proportion of public directors under the revised Constitution would increase from 43% to 44% of the total Board (assuming an Executive Vice Chairman and President were sitting).

[9] *See* Article IV, Section 2(b) of the proposed Constitution. Article II of the current Constitution is somewhat less structured. It provides that the 10 industry directors include 4 from firms doing a public business (including 2 from the New York area) and at least 2 NYSE specialists. Not more than 3 industry directors may spend a substantial part of their time on the NYSE floor.

[10] *See* Article IV, Section 5 of the proposed Constitution.

[11] Under Article I, Section 3(c) of the proposed revised Constitution, an "allied member" means (i) a general partner in a member firm, or an employer who controls a member firm, who is not a NYSE member, or (ii) an employer of a member corporation who is not an exchange member and who is either (a) a principal executive officer of such corporation, or (b) a person who controls such corporation.

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or dealers in securities. Article I, Section 3(r) of the proposed revised Constitution would add a definition of affiliations as being where a "person is a partner, officer, employee or director of such broker or dealer, or controls such broker or dealer, or is an officer of employee of a person, one of the significant subsidiaries of which is such broker or dealer." The proposal also would bar from a public director position any person who is an employee of an issuer of securities that are admitted to dealings on the Exchange unless that person is the chief executive officer or a principal officer of such issuer at the time of their first election to the Board as a public director.

2. Discussion

The change in the size and makeup of the NYSE Board of Directors retains the current balance between public and industry directors, thus retaining the essential input and representation of the interests of issuers, users and members in decisions affecting the operation of the Exchange.[13] The requirement that at least one public director be associated with a corporation that is not a financial institution and is the issuer of securities that are admitted for dealings on the Exchange and that at least one other public director be associated with a financial institution that is a significant investor in equity securities serves to ensure a minimum level of representation for these two important constituencies. In this regard, the Commission also notes that under the NYSE proposal the level of public director representation will remain equivalent to industry representation, and that the proportionate representation of public directors will actually increase slightly. In addition, amendments to Article IV, Section 2(b) of the proposed Constitution providing for one specialty firm industry director and one floor broker industry director impose additional representation requirements that are appropriate to ensure minimal representation by important Exchange constituencies.

The new definition of public director loosens the provisions which bar brokers or dealers or their affiliated persons generally from becoming public directors on the NYSE Board. The proposed revised Constitution would retain the general prohibition,[13] but would, according to the interpretation provided by the Exchange, permit to become a public director of the NYSE Board either (i) an outside director of a parent corporation with a broker dealer subsidiary, or (ii) an officer or employee of a corporation with a broker-dealer subsidiary, so long as it is not a significant subsidiary.[14]

The Commission recognizes that, in revising the eligibility requirements for public directors, the Exchange seeks to enable persons who have strong qualifications as public representatives but who may also be indirectly affiliated with a broker-dealer to become public directors. This is, in part, a response to the increasing proliferation of corporate subsidiaries which conduct some broker or dealer activity in the course of their business. We do not regard the presence of such individuals to be inconsistent with the *per se* section 6(b)(3) requirement of public representation on the boards of exchanges. The legislative history makes it clear that the level of public representatives— particularly on an exchange such as the NYSE with 50% public directors—is a flexible standard. In the Commission's view, however, the NYSE's decision to have multiple public directors does not relieve the NYSE from the basic requirement in section 6(b)(3) that at least one of their public directors have no association with a broker or dealer as that term is defined in section 3(a)(18).

The Commission has serious reservations as to whether the proposed definition is consistent with the standard in section 3(a)(18) of the Act defining persons associated with a broker or dealer.[15] In the Commission's view, it is questionable whether the statutory definitions will permit directors of corporations with "significant" broker or dealer subsidiaries or officers or employees of parent corporations with "non-significant" broker-dealer subsidiaries to be deemed not to be associated persons of a broker-dealer.

The requirements of this provision were intended to assure a fair representation of exchange members, issuers of securities listed on the exchange, and the public.[16] However, beyond the minimum level of one or more public directors required under section 6(b)(3), the question of the actual number of public representatives on the board of an exchange was left to each exchange and the Commission.[17]

In response to discussions between the Commission staff and the NYSE on this matter, the NYSE submitted a letter from the Exchange stating that it would ensure that at least one of the public directors will conform to this standard.[18] This letter also stated that the NYSE would base its definition of the term "significant subsidiary" on the definition of that term contained in Rule 405 of the Securities Act of 1933.[19] In addition, under the Board's authority to interpret the terms of the Constitution, the Exchange staff has stated that in considering the definition of the term "significant" the Board would independently consider the size of the subsidiary and the nature of its activities, for purposes of determining whether it was a significant subsidiary, regardless of the 10% standard in Rule 405.[20] In light of this commitment by the

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[12] The NYSE and the American Stock Exchange, Inc. ("Amex") far exceed the minimum public director representation under section 6(b)(3) of the Act, which requires that "one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer." Both exchanges have equal numbers of public and industry directors. The Boston Stock Exchange ("BSE") has 3 public governors (13.6% of the Board), the Midwest Stock Exchange ("MSE") has 8 (29.7%), the Pacific Stock Exchange ("PSE") has 3 (16.8%), and the Philadelphia Stock Exchange ("Phlx") has 3 (10%).

[13] Article I, Section 3(r) of the proposed revised Constitution provides in pertinent part:

[a] person shall be considered to be affiliated with a broker or dealer in securities if such person is a partner, officer, employee or director of such broker or dealer, or controls such broker or dealer, or is an officer or employee of a person, one of the significant subsidiaries of which is such broker or dealer.

[14] The NYSE has stated that "significant" subsidiary is intended to comport with the definition of "significant subsidiary" in Rule 405 of the Securities Act of 1933 (*i.e.*, over 10% of the parent).

[15] The term "person associated with a broker or dealer" is defined in section 3(a)(18) of the act to include "any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly contolling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer. . . ."

[16] *See* H. Rep. No. 94–123, at 60 (April 7, 1975).

[17] *Id.*, at 61.

[18] *See* February 19, 1986 letter. The NYSE stated that it would comply with the requirements of section 6(b)(3) of the act and that, as a matter of course, several of the NYSE's public directors have no affiliation with a broker or dealer.

[19] Rule 405 provides, generally, that a significant subsidiary is one where: (1) The investment in and advances to the subsidiary by the parent corporation and its other subsidiaries are over 10% of the total consolidated assets of the parent corporation and its other subsidiaries; (2) the share of the total assets of the subsidiary by the parent corporation and its other subsidiaries exceeds 10% of the total consolidated assets of the parent corporation and its other subsidiaries; or (3) the income from the subsidiary exceeds 10% of the consolidated income of the parent corporation and its other subsidiaries.

[20] For example, a large broker-dealer, even if a subsidiary of a major national corporation, still could be regarded as a significant subsidiary regardless of whether it met the test established under Rule 405. Telephone conversation on

Continued

NYSE, the Commission regards the new definition of industry and public directors as satisfying both the basic requirements of section 6(b)(3) and the provision's overall objective in seeking to ensure substantial public representation on the governing boards of the exchanges.[21] The Commission, therefore, concludes that the proposed amendments to Article IV are consistent with section 6(b)(3) of the Act.

B. Voting Rights for Electronic Access Members [22]

1. Description of Change

The current NYSE Constitution, Article IX, Section 1(c), provides for a membership class which is entitled to have electronic or telephonic access to the floor facilities of a member and access to the Designated Order Turnaround ("DOT") System of the Exchange.[23] Such members are entitled under Article VII, section 10(c) of the current Constitution to one half vote on each position to be filled in the election of Directors and on other matters at meetings of members of the Exchange. These members are required to pay annual dues and hold no equity interest in the Exchange.

Under the proposed NYSE Constitution, Article II, Section 1(c), electronic access members would remain a member class of the Exchange with the same level of access to NYSE facilities. Moreover, current electronic access members who remain in good standing would, under Article III, Section 9(b), retain their one half vote on the election of NYSE Directors and other matters presented at meetings of members. Under Article III, Section 9(c), however, an electronic access member who becomes a member on or after the "effective date" [24] would have no vote in any election or on any matter at any meeting of the exchange.

2. Discussion

The NYSE has indicated that it anticipates a large increase in the number of broker-dealers desiring direct access to the NYSE's "new and enhanced electronic order routing and execution systems." It believes that a substantial number of new electronic access memberships may add depth and liquidity to the Exchange's market. In light of the potential admission of a significant number of new electronic access members, who have no equity interest in the exchange and whose membership is of limited duration, the Exchange believes it is not "necessary or appropriate for the new electronic access members to be given the right to vote." [25]

The Exchange asserts that section 6(b)(3) of the Act, requiring that the rules of an exchange provide fair representation of its menbers in the election of directors and the administration of an exchange, does not require that all categories of members be given full voting rights. It states that the requirement of section 6(b)(3) is met when equity members of the Exchange are provided full voting rights and physical access members are given partial voting rights.[26]

In its 1978 order approving the NYSE's proposal creating a class of electronic access membership, the Commission recognized that the voting rights of electronic access and regular seat-holders would not be co-extensive, but concluded that electronic access members with only ½ of a vote would be accorded "fair representation in the selection of directors and administration

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February 24, 1986, between Brandon Becker, Assistant Director, Division of Market regulation, and James C. Buck, Secretary, NYSE.

[21] In two recent actions, the Commission has addressed issues of proportional representation on the boards of directors of exchanges. The Commission disapproved a proposal by the CBOE (Securities Exchange Act Release No. 22056 (May 21, 1985), 50 FR 23090) which would have increased the minimum number of On-Floor Directors. The Commission noted that domination by the floor membership of the CBOE Board and a resulting decrease in the proportion of retail firm and public governors on the Board would have seriously weakened the ability of the Board to carry out the purposes of the Act and enforce compliance with Exchange and Commission rules, as required by section 6(b)(1). In addition, the Commission stated that the numerical domination by one faction of the CBOE membership, in contravention of Section 6(b)(3), might make it difficult for the Board to act in the best interests of the public or the CBOE as a whole and could impede efforts by the Board to vigorously enforce Commission or Exchange rules not favored by the floor membership. The Commission also viewed the proposal as being inconsistent with section 6(b)(5) which requires the rules of an exchange to be designed to protect investors and their public interest.

Subsequently, in Securities Exchange Act Release No. 22728 (December 19, 1985), 50 FR 53051, File No. SR–Phlx–85–23, the Commission approved a proposal by the Phlx to amend its by-laws to create a classified Board of Governors and specify the number of Governors that would serve as On-Floor, Off-Floor, At Large and Public members of the Board. Phlx's rule change was viewed as conforming to the Commission's governance policy set out in the CBOE proceedings. The Commission noted in its order that then current Phlx By-Laws, which proivded no limitations on the number of On-Floor or Off-Floor representatives who could be elected to the 21 unclassified broker governor positions, had the potential for allowing the domination of the 30 member Board by one sector of the Phlx membership. The Commission stated that Phlx's By-Law amendment would conform the structure of the Phlx Board of Governors with the fair representation principles the Commission set out in reviewing CBOE's proposal. *See CBOE Order at 2, 3.*

[22] There are currently 82 NYSE electronic access members who pay $37,000 annually for such access. On the date of the membership vote on the constitutional amendments, December 20, 1985, there were 77 such members. Of these, 29 voted for the proposed amendments and 3 voted against (the remaining such members not voting).

[23] DOT is computerized order routing system for small orders (currently the system is limited to orders of 2,099 shares or less). DOT routes these orders directly to the specialist post.

[24] The "effective date" means the date that is thirty days after the proposed new Constitution becomes effective.

[25] *See* February 6, 1986 letter.

[26] In its February 6, 1986 letter, the NYSE points out that the Amex, Phlx, and the CBOE all have member categories which have trading privileges but no right to vote. It also notes that options trading right holders on the NYSE have trading rights but no voting rights.

Options trading right holders for the NYSE were approved by the Commission in Securities Exchange Act Release No. 20202, September 20, 1983 (File Nos. SR–NYSE–83–29, SR–NYSE–83–30). Under Article XIII of the current NYSE Constitution, options trading right holders are permitted to maintain facilities on the trading floor for the execution of options orders but are not provided with any membership rights in the Exchange. The proposed revised NYSE Constitution retains this provision substantially unchanged in Article II, Sections 8 and 9.

In addition, as the NYSE suggests, several other exchanges have categories of non-voting participants. The Amex has two such membership categories. Options Principal Members ("OPM's") are only permitted to trade in options on the trading floor of the Amex. OPM's have no vote in election of Governors or officers of the Exchange or in other matters which require a membership vote except for those matters which would affect any provision in the Amex's certificate of incorporation and which would adversely affect the OPM's rights upon dissolution or liquidation of the Amex. Amex also has an Associate Member category. Those members are only permitted electronic access tothe trading floor of the Exchange and have no voting rights in any of the affairs of the Exchange.

CBOE has two categories of permit holders (foreign currency options and debt options) who are only allowed to trade on the floor of the Exchange in their specific type of option. These are three year non-renewable permits and the permit holders have no voting rights in any of the affairs of the Exchange. CBOE also has a Special Membership which was granted to former MSE options members. Such membership is for a ten year period (non-renewable) and it only permits the member to trade in 16 options on the Exchange. Special Members have 1/6 the vote of a regular member in the affairs of the Exchange.

At the Cincinnati Stock Exchange, Inc., Access Participants have a one year renewable membership that entitles them to access the trading floor of the Exchange but only allows them to conduct trading through regular Proprietary Members (who have a full vote and equitable interest in the Exchange). Access Participants may only vote for access participants to the Exchange's Board of Trustees and on issues which would have the effect of either increasing or decreasing their membership rights.

On the Phlx, Foreign Currency Options Participation holders are only permitted to trade foreign currency options on the Exchange. They have no equity interest in the Exchange and have no vote in any of its affairs.

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of the NYSE's affairs."[27] The order focused on the temporary nature of these annual memberships, and the lack of any equity interest in the Exchange by such members, as the basis for its decision to approve the NYSE's limitation on such members' voting privileges. Specifically, the Commission approved a one-half vote for electronic access members, with a limitation on voting on matters involving the disposition of Exchange assets or matters "relating to the rights, privileges or limitations of annual membership. . . ."[28] With respect to the latter provision, the Commission stated that "it is pertinent to note that annual members, upon expiration of their memberships, would have no unalterable claim to acquire future memberships which confer precisely the same rights and privileges as earlier memberships."[29] The Commission noted in the order, however, that proposed NYSE constitutional amendments limiting "the rights or privileges of *then current* annual members would raise questions as to the fair representation and unfair discrimination provisions of the Act. . . ."[30]

The Commission recognized in its 1978 order that, in creating means of Exchange access in addition to purchase of a regular seat, the NYSE was not required to grant equivalent voting powers among various membership classes, in light of the temporary nature of these memberships and the lack of any equity interest in the Exchange accruing from such membership. In view of the fact that the sole interest of the electronic access member is, by payment of $37,000 annually, to gain direct access to the NYSE's DOT system or a member's floor facilities for more efficient and less expensive order execution, the Commission believes that the NYSE is not required to provide these members the voting rights provided to regular members who pay substantially more for their privileges and who have a considerably greater stake in membership decisions relating to the conduct of business on the Exchange floor and to Exchange governance procedures. In addition, the Commission notes that, under the amended voting provisions, electronic access members would be able to appeal to the Commission, under section 19(d) of the Act, any disciplinary action taken by the Exchange against such member or any denial or limitations on access imposed by the Exchange upon such member.

The Commission concludes the proposed amendment is consistent with sections 6(b)(5) and 6(b)(8) of the Act in that the proposal in no way impinges on the rights of electronic access members to access the NYSE's DOT system or other Exchange facilities to which such members are currently permitted access.

C. Directors' Participation in Matters in Which They Have a Personal Interest

1. Description of Change

The current NYSE Constitution, Article III, Section 2, provides that no person shall participate in the adjudication of any matter in which he is personally interested. This provision would be deleted in the proposed Constitution and no comparable conflict of interest provision in the Constitution exists which would replace its requirement of mandatory disqualification of persons with a personal interest in an adjudication.

2. Discussion

The NYSE has stated that it regards the Constitution's current conflict of interest provision as unnecessary and that it intends to move this provision to the rules. The NYSE has noted, however, that if the Commission finds it is necessary to retain this provision, the Exchange will commit to proposing an amendment to reinsert this provision.

The Commission believes that section 6(b)(7) of the Act, which provides that the Commission shall insure that the rules of the exchange provide a fair procedure for the disciplining of members and persons associated with members, makes it essential that an appropriate conflict of interest provision—applying equally to proceedings by the Board of Directors as well as actions by all other members of the Exchange—be present in the NYSE Constitution.

Accordingly, the Commission has determined to take no action on the proposed deletion of the conflict of interest provision contained in Article III, Section 2, paragraph 7 of the current Constitution. The NYSE has committed to propose to its members at the next NYSE membership vote that a conflict of interest provision similiar to that included in current Article III, Section 2 be added to its revised Constitution.[31]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

Dated: February 28, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–5050 Filed 3–6–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 28, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

First Wachovia Corporation
  Common Stock, $5.00 Par Value (File No. 7–8847)
Morton Thiokol, Inc.
  Common Stock, $1.00 Par Value (File No. 7–8848)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 21, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5048 Filed 3–6–86; 8:45 am]

BILLING CODE 8010-01-M

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[27] Securities Exchange Act Release No. 14535 (March 7, 1978), 43 FR 16650. In its order, the Commission also approved a class of "physical presence annual membership," permitting physical as well as electronic access to the floor and facilities of the Exchange. Such members have a full vote but, like current electronic access members, are unable to vote on matters involving (1) the sale, lease or disposition of Exchange assets; (2) an Exchange merger or consolidation; (3) dissolution or liquidation of the Exchange; (4) any proposal to amend any of the rights and privileges or limitations pertaining to physical or electronic access members; or (5) any election or amendment concerning the Exchange Gratuity Fund. *See* Article VII, Sec. 10 (b) and (c) of the present Constitution.

[28] Securities Exchange Act Release No. 14535 (March 7, 1978), 43 FR 16650.

[29] *Id.*

[30] *Id.*, note 9.

[31] *See* February 6, 1986 letter. The NYSE has agreed to the Commission's determination to take no action on the deletion of the conflict of interest provision from Article III, Section 2 of the current Constitution, and to propose to the NYSE membership that such a provision be reinstated into the Constitution. February 24, 1986 telephone conversation between Brendon Becker, Assistant Director, Division of Market Regulation, and James C. Buck, Secretary, NYSE.

A similar issue was raised in a By-Law amendment submitted for approval by the National Association of Securities Dealers, Inc. ("NASD") (File No. SR–NASD–84–14) where, among other proposed changes, a conflict of interest provision was removed from the NASD By-Laws and placed instead in NASD's Code of Procedure. After discussions with the Commission staff, the NASD subsequently filed a new proposed rule change (File No. SR–NASD–85–2) which restored the conflict of interest language to its By-Laws. *See* Order Approving Proposed Rule Change, Securities Exchange Act Release No. 21955, SR–NASD–85–2, April 17 1985, 50 FR 16035.

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[File No. 1–1790]

Issuer Delisting; Application To Withdraw From Listing and Registration; Russell Corp.; Common Stock, Par Value $.01 per Share

February 28, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Directors of Russell Corporation determined that, in connection with the listing of the Company's common stock on the New York Stock Exchange, Inc., it is desirable to withdraw the Company's common stock from listing on the American Stock Exchange to eliminate the expenses attendant in maintaining a dual listing of the Company's common stock.

Any interested person may, on or before March 21, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5045 Filed 3–6–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14965; File No. 812–6274]

Banco Central, S.A.; Application for an Order Granting Exemption From all Provisions of the Act

February 28, 1986.

Notice is hereby given that Banco Central, S.A. ("Applicant"), c/o Sydney H. Mendelsohn, Esq., Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey, 1120 Connecticut Avenue, NW, Washington, DC 20036, filed an application on January 3, 1986, and an amendment thereto on February 25, 1986, for an order of the Commission, purusant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant and certain United States subsidiaries thereof from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicant represents that it is a recognized bank under the laws of Spain and that it is subject to extensive regulation by Spanish, American, and other banking authorities by virtue of its worldwide activities. According to the application, Applicant currently ranks as the largest bank in Spain in terms of equity (approximately U.S. $811 million), total assets (approximately U.S. $14.4 billion) and deposits (approximately U.S. $13.4 billion).

Applicant intends to form one or more wholly-owned subsidiaries organized under the laws of the State of Delaware ("Subsidiary") to facilitate Applicant's access to the United States commercial paper market. Applicant states that the Subsidiary will serve exclusively as a financing vehicle for Applicant's proposed issuance of debt securities in the United States.

Applicant proposes to issue bearer promissory notes (the "Notes") in minimum denominations of $100,000 through commercial paper dealers to be sole only to institutional investors and other entities and individuals that ordinarily purchase commercial paper in the United States commercial paper market. Applicant states that the Notes will not be advertised, offered or sold to the general public and will have maturities not exceeding 270 days. According to the application, the Notes will be issued in one of two ways: (1) Applicant will be the issuer, in which case the Subsidiary's sole function will be to sign the Notes on behalf of Applicant as its agent. Applicant will be directly liable as principal for the payment of all Notes signed on its behalf by the Subsidiary and the Subsidiary will have no liability with respect thereto; or (2) the Subsidiary will issue the Notes which will be guaranteed by Applicant. Where the Subsidiary is the issuer it will promptly transfer to Applicant substantially all of the process of any offering of the Notes. In either case, Applicant will unconditionally guarantee the payment of principal and interest (if any) on the Notes. Applicant represents that such guarantees will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness (including deposit liabilities) of Applicant and superior to rights of shareholders, and that holders of the Notes will have a direct cause of action against Applicant in the event of any default in payment on the Notes.

According to the application, the proceeds from sales of the Notes are expected to be used for current transactions in the ordinary course of Applicant's business and the Notes will qualify for exemption from the registration requirements of the Securities Act of 1933 (the "1933 Act"). Applicant further represents that it will not issue or sell any Notes until it has received an opinion of its United States counsel that the Notes are entitled to such exemption.

According to the application, the initial issuance of the Notes by Applicant or any Subsidiary will be for a principal amount not to exceed $500 million. However, Applicant states that in the future, it or a Subsidiary may, from time to time, offer and sell in the United States debt securities other than the Notes, which may be in denominations of less than $100,000, but neither Applicant nor a Subsidiary will offer or sell equity securities in the United States in reliance upon or pursuant to the order requested herein. In the case of any such offering of debt securities in the United States, Applicant will provide a direct, unconditional guarantee for the payment of principal, premium (if any) and interest. Such guarantees will rank *pari passu* with other debt securities of Applicant having the same degree of

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subordination. With respect to any public offering of securities requiring registration, Applicant represents that it will not sell such securities until the registration statement pertaining thereto has been declared effective by the Commission.

Applicant states that the proposed issuance of the Notes and any future offering of debt securities in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized investment rating organization, and that Applicant's United States counsel shall have certified that such rating has been received. However, no such rating will be required if, in the opinion of Applicant's United States counsel, an exemption from registration is available with respect to such issue under section 4(2) of the 1933 Act or Regulation D thereunder.

Applicant undertakes to ensure that each dealer of the Notes, or of any future debt securities offered by Applicant or any Subsidiary, will provide each offeree, prior to any sale of such securities, a memorandum (the "Offering Memorandum") describing Applicant's business and containing Applicant's most recently published financial statements audited in accordance with Spanish auditing practices. Applicant represents that the Offering Memorandum will describe the material differences between generally accepted accounting principles employed by United States banks and accounting principles applicable to Spanish banks and used by Applicant. Applicant states that the Offering Memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated as promptly as practicable to reflect material changes in Applicant's business or financial status. Applicant consents to any order granting the requested relief being expressly conditioned upon compliance by Applicant with the foregoing undertakings regarding the Offering Memorandum.

With respect to the Notes and any future issuances of debt securities in the United States, Applicant represent that it (and the Subsidiary if it is the issuer) will appoint one of its general managers or a corporate entity which acts in such capacity to accept service of process in any action commenced in any state or federal court in the United States by holders of the Notes against the Applicant based on the Notes or the guarantees thereon. Applicant (and the Subsidiary if it is the issuer) will expressly accept the jurisdiction of any state or federal court in the Borough of Manhattan and the City and State of New York in respect of any such action. Such Appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes or other debt securities shall have been paid. The application also states that both the Applicant and the Subsidiary will be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering or otherwise.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5046 Filed 3-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24034; 70-7203]

The Southern Co., et al.; Proposal To Issue and Sell Short-Term Notes, Term-Loan Notes and Commercial Paper; Exception From Competitive Bidding

February 28, 1986.

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public utility subsidiaries, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32520 and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport Mississippi 39501, have filed an application-declaration subject to sections 6(a) and (b), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2) and 50(a)(5) thereunder.

Southern, Georgia, Gulf and Mississippi propose to issue and sell from time to time, prior to April 1, 1988, short-term notes to banks and, in the case of Georgia, Gulf and Mississippi, commercial paper to dealers up to an aggregate principal amount of $100 million for Southern, $1 billion for Georgia, $35 million for Gulf and $35 million for Mississippi. In addition, Georgia is also seeking term-loan authorization. For the period ending April 1, 1987, Southern also proposes to make capital contributions to its subsidiaries, Alabama Power Company, Georgia, Gulf and Mississippi, in amounts not to exceed $45, $320, $10 and $5 million, respectively.

Southern has obtained commitments aggregating $100 million from certain banks. Each commitment currently matures December 31, 1986 and is subject to renewal in accordance with its terms. Southern can elect one of three rate options, currently producing an effective cost range of between 8.9% and 10%.

Pursuant to separate commitment agreements with 11 banks ("Bank") Georgia may borrow, through December 31, 1990, on a short-term unsecured revolving credit basis, up to an aggregate of $1.565 billion in principal amount at any one time outstanding. These borrowings have a maximum maturity of 270 days, are renewable at maturity and may be converted to term loans at any time at Georgia's option. Under the term-loan option, borrowings would be repaid in 12 equal quarterly installments beginning March 31, 1991 through December 31, 1993, or at an earlier date at Georgia's option. Under each agreement, Georgia is obligated to pay a commitment fee of .5% based upon the unused portion of the Bank's commitment. The current effective annual interest rates on individual borrowings would range from 8.5% to 9.8%, and from 8.6% to 10.1% for term-loan borrowings.

Georgia, Gulf and Mississippi also may effect short-term borrowings hereunder in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5047 Filed 3-6-86; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission.

Title of Information Collection: Southeastern Biomass Reporting Form.

Frequency of Use: Once per respondent.

Type of Affected Public: Businesses or other for-profit, non-profit institution, and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 800.

Estimated Total Annual Burden Hours: 200.

Need For and Use of Information: Preliminary data indicates the existence of 800 installations in the Southeastern U.S. using cellulosic fuels for energy conversion. The states comprising the S.E. region will be surveyed to collect data describing those installations. The data will be published to serve the community by enabling biomass industries to match their needs with local resources, and by encouraging adoption of proven technologies.

Dated: February 28, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-4950 Filed 3-6-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412, and 414 During the Week Ending February 28, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Feb. 26, 1986	43818, R-1—R-22	Members of International Air Transport Association.	Europe-Japan/Korea Fares	Apr. 1, 1986.
Do	43819, R-1—R-7	do	Europe-Libya Fares	Do.
Do	43820	do	CO-rates NY-Africa	Feb. 22, 1986.
Do	43821	do	Proportional fares—Egypt	Apr. 1, 1986.
Do	43822	do	Amend Mileage Manual	Mar. 1, 1986.
Do	43823, R-1—R-3	do	Fares—Pakistan-Mali	Apr. 1, 1986.
Do	43824	do	Proportional Fares—U.S.-Europe.	Mar 15, 1986.
Feb. 28, 1986	43830	do	Adjustment factors Canada-Mideast.	May 1, 1986.
Do	43831	do	Two percent increase in rates from France to So. America.	Mar. 1, 1986.
Do	43832	do	Postpone effectiveness of TC123 North/Mid Atlantic.	Apr 1, 1986.
Feb. 26, 1986	43828	Continental Air Lines, Inc., c/o Elliott M. Seiden, Suite 300, 1201 Pennsylvania Avenue, NW., Washington, DC 20004. Texas International Airlines, Inc., et al., c/o Clark H. Onstad, 1201 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20004. Joint Application of Continental Air Lines, Inc. and Texas International Airlines, Inc., et al., pursuant to section 416 of the Act, requests an exemption from sections 401 and 408 of the Act, to the extent necessary to permit Continental and TI formally to merge and transfer all regulatory authorities, including their certificates of public convenience and necessity to Continental Airlines Corporation.		
Feb. 28, 1986	43825	Texas Air Corporation, c/o Calvin J. Collier, Hughes Hubbard & Reed, 1201 Pennsylvania Ave., NW., Washington, DC 20004. Eastern Air Lines, Inc., c/o Robert N. Duggan, 1030 Fifteenth Street, NW., Washington, DC 20005. Joint Application of Texas Air Corporation and Eastern Air Lines, Inc. applies for approval of the proposed acquisition of control of Eastern by Texas Air, pursuant to section 408 of the Act.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-5024 Filed 3-6-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended February 28, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Feb. 25, 1986	43817	Northland Air Manitoba Limited, c/o Edwin T. Nobbs, Nobbs, Woods & Clark, 70 University Avenue, Suite 250, Toronto, Canada, M5J 2M4. Application of Northland Air Manitoba Limited pursuant to Section 402 of the Act and Subpart Q of the Regulations requests nonscheduled or charter foreign air transportation between any point or points in Canada and any point or points in the United States using large aircraft. Answers may be filed by March 25, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-5023 Filed 3-6-86; 8:45 am]

BILLING CODE 4910-62-M

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Scottsdale Municipal Airport; Noise Exposure Map

Federal Aviation Administration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Scottsdale, Arizona, for the Scottsdale Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 7, 1986.

FOR FURTHER INFORMATION CONTACT: L. Yvonne Gibson, Airport Planner, AWP–611.5, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297–1621.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Scottsdale Municipal Airport, Scottsdale, Arizona, are in compliance with applicable requirements of FAR Part 150, effective February 7, 1986.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Scottsdale, Arizona, on May 25, 1985. The FAA has determined that the noise exposure maps for the Scottsdale Municipal Airport are in compliance with applicable requirements. This determination is effective on February 7, 1986. FAA's determination on an airport operator's noise exposure map is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, CA 90261

Mr. Carder Hunt, Airport Director, Scottsdale Municipal Airport, 3939 Civic Center Plaza, Scottsdale, AZ 85251

Issued in Hawthorne, California, on February 14, 1986.

H.C. McClure,
Director, Western-Pacific Region.

[FR Doc. 86–4945 Filed 3–6–86; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–86–4]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 27, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 3, 1986.

John H. Cassady,
Assistant Chief Counsel, Regulations and enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23386	Mid Pacific Airlines, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize all Nippon Airways Company, Ltd., Air Asia Company, Ltd., and Toa Domestic Airlines and its affiliate Nitto Maintenance company for the inspection and overhaul of aircraft, including certain selected airframe accessories and appliances.
23608	Lone Star Helicopters, Inc	14 CFR 43.3(g)	To allow petitioner's appropriately trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs in the Allison 250 series turbine engines, aircraft transmissions, and tail rotor gearboxes installed on Bell 206 series helicopters.
20049	T.B.M. Inc	14 CFR 91.211(a)(1)	To allow petitioner to conduct operations of its McDonnel Douglas DC–6, and DC–7B aircraft without a flight crewmember holding a current flight engineer certificate.
20044	Air Transport Association of America	14 CFR 61.63 (b) and (c)	To allow pilots employed by Part 121 certificate holders to be issued additional category and class ratings based on normal upgrade training to second-in command.
20314	Flight Training Devices	14 CFR 61.63(d)(2)	To allow petitioner to complete a portion of the practical test for the issuance of an airplane transport pilot certificate or a type rating to be added to any grade of pilot certificate, by substituting the flight test requirement of § 61.157(a) for those of § 61.63(d)(2) and (3), limited to the items and procedures for testing in an airplane simulator as set forth in Appendix A of Part 61.
22558	Boeing Commercial Airplane Company	14 CFR 47.69(b)	Extension of Exemption 3513c to permit petitioner to use Dealer's Aircraft Registration Certificates outside the United States for flight testing and sales demonstrations.
24795	Consulting Aerospace Engineers, Inc	14 CFR 21.19(b)	To allow petitioner, to engineer and direct the modification of a Cessna 337G aircraft from the existing two Commercial 0360 engines to one Pratt and Whitney PT6A–124 engine.
24814	Centre Airlines, Inc	14 CFR 135.267(d)	To allow petitioner's pilots to accept duty during flight time without having had at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of time of the assignment.
24818	Piedmont Airlines	14 CFR 121.308	To allow petitioner to use a lavatory trash receptacle without installing a self-containing fire agent bottle internally on its F28–1000 aircraft.
24630	Gulfstream Aerospace Corporation	14 CFR 21.181	To allow petitioner to operate certain types of aircraft utilizing the provisions of a minimum equipment list.
24675	Shoukat Ali Shah	14 CFR 65.91C(1) and C(2)	To allow petitioner to take the written test for the issuance of inspection authorization without having to wait 3 years.
24924	Civil Air Patrol	14 CFR 91.79(c)	To permit petitioner to conduct operations at distances less then 500 feet from people, vehicles, structures, and vessels.
24901	United Airlines	14 CFR 61.57(c)	To allow petitioner's test pilots to accomplish a minimum of six takeoffs and landings in a 90-day period in any and/or all types of large transport category airplanes operated by petitioner in lieu of accomplishing a minimum of three takeoffs and landings in each type in which rated each 90 days to maintain currency.
15691	Air Logistics	14 CFR 43.3(g)	To allow petitioner's appropriately trained and certified pilots to remove, check and reinstall magnetic chip detector plugs in the Allison C250C series turbine engines and transmissions and tail rotor gear boxes installed on Bell Model 206 series, Aerospatiale Model 355 series, and magnetic chip detector plugs in 42° and 90° tail rotor gear boxes installed on Bell Model 212–412 series helicopters.
23869	The Relative Workshop	14 CFR 105.43(a)	To allow petitioner and Strong Enterprises to continue to make tandem parachute jumps using dual harnesses and dual parachute jacks.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24373	Transportes Aereos Mercantiles Panamericanos, S.A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. To permit petitioner to operate two noncompliant Boeing 707–320 aircraft in foreign air commerce until December 31, 1985. *Denied February 24, 1986.*
23863	Florida Express	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1–11:N1542, N1544, N1545, N1546, N1548, N1549, N1135J, N1136J, N102EX, and N108EX. *Granted February 3, 1986*
24800	Tennessee Air Cooperative, Inc	14 CFR 103.1(a)(1)	To allow petitioner's pilots and other disabled pilots to exceed the maximum 254 pounds empty weight requirement for ultralight aircraft up to a maximum 350 pounds to allow installation of special safety and operational equipment for the disabled. *Granted January 30, 1986.*
24670	Executive Helicopters, Inc.	14 CFR 91.169 (a) and (b)	To permit petitioner to inspect its Westland helicopters in accordance with a continous inspection program. *Granted January 31, 1986.*
24806	The Kroger Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted January 31, 1986.*
24762	George Lee	14 CFR 65.91(c)(2)	To allow petitioner to apply for an Inspection Authorization Certificate prior to completing the required two years of actively maintaining aircraft. *Granted February 5, 1986.*

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DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23707	Ford Motor Company	14 CFR 21.181	To allow petitioner to operate the following aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted February 5, 1986.*
24636	United Airlines, Inc.	14 CFR 121.371 (a) and 121.378	To permit petitioner to contract with Hong Kong Aircraft Engineering Company (HAECO) for maintenance, preventive maintenance, alterations, and required inspections on Rolls Royce RB-211 engines, Auxiliary Powerplant Units (APU's); and components in support of United-operated L-1011-500 aircraft and also to cross-utilize United-owned common L-1011-500 components with Cathay Pacific Airways, Ltd. (Cathay Pacific) and Gulf Air L-1011 components. *Granted February 6, 1986.*
22441	United Airlines	14 CFR 121.433, 121.441(a)(l), 121.441(l)(e)	To extend the July 31, 1985 termination date of Exemption 3451A. That exemption allows petitioner to conduct an FAA-monitored program under which flight crewmembers are able to meet the annual ground and flight recurrent training requirements and the annual proficiency check requirements without specifically meeting requirements to the cited sections. *Granted August 1, 1985.*
21516	U.S. Epperson Underwriting Co.	14 CFR 21.181	To allow petitioner to add an aircraft and renumber an aircraft already listed in a minimum equipment list exemption. *Granted February 10, 1986.*
24485 24486	National Medical Enterprises, Inc.	14 CFR 21.181	To allow petitioner to operate a Dassault DA-10 aircraft, N150BG, using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted February 10, 1986.*
24144	Air Atlanta	14 CFR 63.37	To allow petitioner to substitute training in a simulator for the required 5 hours of flight training in the duties of a flight engineer. *Denied February 10, 1986.*
20771	US Air	14 CFR 91.307	To amend Exemption No. 3116b to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1-11:N2111J, N1113J, N1122J, N1127J, N1128J, N1117J, N1112J, N1114J, N1115J, N1118J, N1119J, N1120J, N1123J, N1124J, N1126J, N1129J, N1130J, N1131J, N1132J and N1134J. *Amended Grant February 11, 1986.*
24645	Seven Bar Flying Service Inc.	14 CFR 141.35(b)(3)	To allow Sam Puma to serve as chief instructor for the Seven Bar Part 141 private course without meeting the regulation's full 500 hour, two-year certification requirements. *Denied February 12, 1986.*
24432	Susquehanna Airlines	14 CFR 135.175	To allow petitioner to operate DeHavilland Heron Aircraft without radar equipment. *Denied February 25, 1986.*
24753	Burnside-Ott Aviation	14 CFR 147.21 and 147.31	To allow petitioner relief from the general curriculum requirements, attendance, enrollment test, and credit for prior instruction or experience given to eleven of its students who were enrolled in the Burnside-Ott Aviation Technical School in Pensacola, Florida, prior to it having obtained Federal Aviation Administration (FAA) approval for its established curriculum. *Denied February 24, 1986.*
24582	Mr. John R. Mullin	14 CFR 61.151	To allow petitioner to qualify for an Airline Transport Pilot certificate (simulator-only) and to exercise the privileges of a simulator instructor without a first class medical certificate. Petitioner suffers from diabetes and is not eligible for a medical certificate under Part 67. *Denied February 24, 1986.*
23883	Tenneco Inc.	14 CFR 21.181	To permit petitioner to operate its fleet of corporate airplanes using a minimum equipment list (MEL) and a configuration deviation list (CDL). *Granted February 24, 1986.*
24367	Empresa Ecuatorian Island Airways, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended Grant February 26, 1986.*
24660	Lineas Aereas Del Caribe, S.A. (LAC)	14 CFR 91.307	To amend Exemption No. 3116b to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: SE-210: HK2850, HC-BAJ *Amended Grant February 26, 1986.*
24630 24631	Gulfstream Aerospace Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted February 12, 1986.*
24278	Richard F. Main	14 CFR 61.73(c)	To allow the addition of a multiengine rating to petitioner's commercial single-engine land instrument rating based on military competence. *Denied February 12, 1986.*
21959	Deere & Company	14 CFR Portions of Parts 21 & 91	To permit operation of a Grumman G-1159 (N400JD); Three Cessna C-550's, (N30JD, N60JD, N90JD) and a Lockheed L-1329 (N500JD) using the provisions of a FAA-approved minimum equipment list for each type of aircraft. *Granted February 12, 1986.*
24632	Crown Central Petroleum Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted February 12, 1986.*
24276	Western Airlines	14 CFR 63.37 (b) and Part 63, Appendix C	To allow an applicant for a flight engineer certificate with a turbojet class rating to obtain the certificate without having received the required 5 hours of flight training in an airplane. *Denied February 14, 1986.*
24648	Allied Corporation	14 CFR 21.181	Amendment to exemption No. 4524 to allow petitioner to operate additional aircraft utilizing the provisions of a minimum equipment list. *Granted February 13, 1986.*
24776	Eagle Jet Charter	14 CFR 43.3	To allow pilots of the petitioner who have been properly trained to remove or install aircraft seats on its Cessna and Learjet aircraft. *Granted February 19, 1986.*
20796	Prince Corporation	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Withdrawn January 31, 1986.*
22867	Executive Helicopters	14 CFR 141.41 (a)(1) and (iii)	To allow petitioner to utilize the HTS-100 Primary Helicopter Training system in their Part 141 Helicopter Pilot School, No. PC-205-2. The amendment would increase the maximum flight training credits up to 5 hours. *Withdrawn February 13, 1986.*
24146-2	South Pacific Island Airways	14 CFR 91.303	To allow petitioner to operate one Stage 1 B707-323B aircraft until hush kits are installed. *Granted February 26, 1986.*

[FR Doc. 86-4946 Filed 3-6-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 153; Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on April 7-8, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held on January 14-15, 1986; (3) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Working Groups WG-5 and WG-7A Activities; (4) Review Third Draft of Committee Report on Minimum Operational Performance Standards for Airborne ILS Glide Slope Equipment; (5) Review Fourth Draft of Committee Report on Minimum Operational Performance Standards for Airborne ILS Localizer Equipment; (6) Consideration of Further Changes to Eighth Draft of Committee, Report on Minimum Operational Performance Standards for Airborne VOR Receiving Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 27, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86-4938 Filed 3-6-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 11-86]

Treasury Notes, Series J-1991

Washington, February 27, 1986.

The Secretary announced on February 28, 1986, that the interest rate on the notes designated Series J-1991, described in Department Circular—Public Debt Series—No. 11-86 dated February 19, 1986, will be 8-⅛ percent. Interest on the notes will be payable at the rate of 8-⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-4957 Filed 3-6-86; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Privacy Act of 1974; Reinstated System of Records

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of Reinstatement of a System of Records. Treasury/IRS 00.001, Corresponding Files and Correspondence Control Files

SUMMARY: The Internal Revenue Service consolidated System 00.001 with System 00.002 in the 1977 annualy compilation of Privacy Act Systems of Records, 42 FR 49099, September 26, 1977, in an effort to reduce the number of systems of records for ease of use. The consolidation combined a system which was not exempt from any provisions of the Privacy Act with one that contains investigatory material exempt under (k)(2). Although not intended, this merger resulted in a system which was entirely exempt from access. The substance (contents and uses) of the systems were not intended to be changed, only the systems description. For this reason, the systems or records, as they appeared in 41 FR 45285, October 14, 1976, and the full text of their descriptions with a few editorial changes, are reinstated to replace consolidated system IRS 00.002, Correspondence Files (Including inquiries about enforcement activities), last published in the Department's 1985 republication of Notices of Systems of Records; 50 FR 29894, July 22, 1985.

This is an administrative action which has been initiated for the benefit of the public to properly reflect the system descriptions in the **Federal Register**. It does not require submissions to the Congress and OMB, nor does it require a public comment period as it is a reinstatement of a previously approved system of records.

DATE: These changes are effective March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Marcus Farbenblum, (202) 566-3359, Chief, Public Services Branch.

Dated: February 27, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

Treasury/IRS 00.001

SYSTEM NAME:

Correspondence Files and Correspondence Control Files—Treasury/IRS.

SYSTEM LOCATION:

Various offices of the Internal Revenue Service maintain files of correspondence received. (See IRS Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of the correspondence. (2) Persons upon whose behalf the correspondence was initiated. (3) Subjects of the correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received. (2) Responses to correspondence. (3) Associated records. Special categories of correspondence may be included in other systems of records described by specific notices. Files are maintained in connection with a variety of correspondence received and the uses vary widely in accordance with the content of the correspondence. Correspondence may include letters, telegrams, memoranda of telephone calls, and other forms of communication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use: (1) To the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes. (2) To other agencies to the extent provided by law or regulation and as necessary to report apparent violation of law to appropriate law enforcement agencies. (3) To appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, registration, order, or license. (4) To a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or

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other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit. (5) In response to a court subpoena, to appropriate parties engaged in litigation or in preparation of possible litigation such as potential witnesses for the purpose of securing their testimony to courts, magistrates or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, to individuals seeking information through established discovery procedures in connection with civil, criminal or regulatory proceedings. (6) To foreign governments in accordance with formal or informal international agreements. (7) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (8) To the news media, in accordance with guidelines contained in 28 CFR 50.2, concerning this agency's functions relating to civil and criminal proceedings. (9) To unions recognized as exclusive bargaining representatives under Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (10) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation. (11) To the extent that any records in this system constitute return information, they may be disclosed only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING FOR RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or magnetic media.

RETRIEVABILITY:

Controlled items are generally retrievable by name; some items are not retrievable, depending upon the controls established locally. No centralized index exists.

SAFEGUARDS:

Access controls will be not less than provided for by the Physical and Document Security Handbook, IRM 1(16)41.

RETENTION AND DISPOSAL:

Disposition varies in accordance with the nature of the correspondence file, but is made in accordance with the Records Disposition Handbook, IRM 1(15)59.

SYSTEM MANAGER(S) AND ADDRESS:

Head of the office maintaining the file. (See IRS Appendix A.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if a system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the office believed to have received the correspondence. (See IRS Appendix A).

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in a system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the office believed to have received the correspondence.

CONTESTING RECORD PROCEDURES:

See Access above.

RECORD SOURCE CATEGORIES:

Information supplied by the initiators of the correspondence and information secured internally from other systems of records.

SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/IRS 00.002

SYSTEM NAME:

Correspondence Files/Inquiries About Enforcement Activities—Treasury/IRS.

SYSTEM LOCATION:

National Office, National Computer Center, Date Center, Regional Offices, District Offices, and Service Centers. (See IRS Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence. (2) Persons upon whose behalf the correspondence was initiated. (3) Persons who are subjects of the correspondence. Includes individuals for whom tax liabilities exist, individuals who have made a complaint or inquiry relative to an Internal Revenue tax matter, or individuals for whom a third party is intereeding relative to an Internal Revenue tax matter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number (if applicable), information about tax matters (if applicable), chronological investigative history. Other information relative to the conduct of the case and/or the taxpayer's compliance history (if applicable). Correspondence may include letters, telegrams, memoranda of telephone calls and other forms of communication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7802; 26 U.S.C. 7801, 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. (2) To appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, registration, order, or license. (3) To a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement informaiton or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureaus's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit. (4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (5) In response to a court subpoena, to appropriate parties engaged in litigation or in preparation of possible litigation such as potential witnesses for the purpose of securing their testimony to courts, magistrates or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, to individuals seeking information through established discovery procedures in connection with civil, criminal or regulatory proceedings. (6) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (7) To the news media, in accordance with guidelines contained in 28 CFR 50.2, concerning this agency's functions relating to civil and criminal proceedings. (8) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (9) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation. (10) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. (11) Disclosure may be made to other agencies to the extent provided by law or regulation and as necessary to report apparent violation of law to appropriate law enforcement agencies. (12) Information may be disclosed to States, the District of Columbia, the Commonwealth of Puerto Rico, or possessions of the United States, to assist in the administration of tax laws. (13) Disclosure may be made to other parties when necessary in the administration and enforcement of law as authorized by 26 U.S.C. 7801 and 7802. (14) Disclosure may be made during judicial processes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or magnetic media.

RETRIEVABILITY:

Controlled items are generally retrievable by name; some items are not retrievable, depending upon the controls established locally. No centralized index exists.

SAFEGUARDS:

Access controls will be not less than provided for by the Physical and Document Security Handbook, IRM 1 (16) 41.

RETENTION AND DISPOSAL:

Disposition varies in accordance with the nature of the correspondence file, but is made in accordance with the Records Disposition Handbook, IRM 1 (15) 59.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioners, Regional Commissioners, District Directors and Service Center Directors of Internal Revenue.

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURE:

This system is exempt from the Access and Contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been designated as exempt from certain provisions of the Privacy Act.

[FR Doc. 86–4996 Filed 3–6–86; 8:45 am]
BILLING CODE 4830-01-M

VOL 51 ISS 45 MR 7 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 45
Friday, March 7, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
Consumer Product Safety Commission	1, 2
Equal Employment Opportunity Commission	3
Federal Energy Regulatory Commission	4
Federal Reserve System	5, 6

1

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, March 13, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Section 15 Guidelines

The staff will brief the Commission on the staff's response to comments on the Statement of Enforcement Policy on Substantial Product Hazard Reports, published in the **Federal Register** on April 6, 1984.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 5, 1986.

[FR Doc. 86–5116 Filed 3–5–86; 1:19 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 12, 1986.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Monitoring Voluntary Standards

The staff will brief the Commission on policy options for monitoring industry conformance to voluntary standards and will review recent comments received on plans by staff to monitor industry enforcement of voluntary standards.

2. Cost Benefit Analysis

The staff will brief the Commission on the use of cost benefit analysis.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

March 5, 1986.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86–5117 Filed 3–5–86; 1:20 pm]

BILLING CODE 6355-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 7361, Dated March 3, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, March 10, 1986.

CHANGE IN THE MEETING: Cancellation of Meeting.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: March 4, 1986.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued March 4, 1986.

[FR Doc. 86–5124 Filed 3–5–86; 2:41 pm]

BILLING CODE 6750-06-M

4

FEDERAL ENERGY REGULATORY COMMISSION

TIME AND DATE: March 12, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 831st Meeting—March 12, 1986, Regular Meeting (10:00 a.m.)

- CAP–1.
  - Project No. 9631–001, Robert Z. Walker and John F. Foster
- CAP–2.
  - Project No. 7802–003, Natural Energy Resources Company
- CAP–3.
  - Project No. 4332–002, Long Lake Energy Corporation
  - Project No. 5698–001, Tiriton Power Company
- CAP–4.
  - Project No. 8713–002, Kittitas Reclamation District
- CAP–5.
  - Project No. 4914–001, Philip Morris Industrial Incorporated
- CAP–6.
  - Project No. 7492–004, Michiana Hydro-Electric Power Corporation
- CAP–7.
  - Project No. 8383–002, Palisade Irrigation District
- CAP–8.
  - Docket No. ER85–644–001, Duke Power Company
- CAP–9.
  - Docket Nos. ER86–256–000, ER85–461–001 and ER85–521–000, Kansas Gas and Electric Company
- CAP–10.
  - Docket No. ER86–36–000, Pacific Power & Light Company, an assumed business name of Pacificorp.
- CAP–11.
  - Project No. 2934–009, New York State Electric and Gas Corporation

Consent Miscellaneous Agenda

- CAM–1.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (industrial groups)
- CAM–2.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Trunkline Gas Company)
- CAM–3.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Colorado Interstate Gas Company)
- CAM–4.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Oregon Steel Mills and Northwest Natural Gas Company)

- CAM–5.
  - Docket No. RM85–1–000 (Parts A–D) regulation of natural gas pipelines after partial wellhead decontrol (Sohio Petroleum Company)
- CAM–6.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Texcol Gas Services, Inc.)
- CAM–7.
  - Docket No. GP80–43–008 (Phase II), Northern Natural Gas Company, Division of Internorth, Inc.
- CAM–8.
  - Docket No. GP82–35–000, El Paso Natural Gas Company
- CAM–9.
  - Docket No. GP81–26–000, ANR Production Company
- CAM–10.
  - Docket No. GP84–8–000, Colorado Interstate Gas Company
- CAM–11.
  - Docket No. RO85–12–000, Dorchester Gas Corporation
- CAM–12.
  - Docket No. RO85–16–000, Warrior Oil Company
- CAM–13.
  - Docket No. RO85–17–000, Glen A. Martin
- CAM–14.
  - Docket Nos. RO85–3–000, and RA86–1–000, Petro-Thermo Corporation
- CAM–15.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Panda Resources, Inc.)

Consent Gas Agenda

- CAG–1.
  - Docket No. RP86–47–000, Northwest Alaskan Pipeline Company
- CAG–2.
  - Docket No. RP79–10–023, Great Lakes Gas Transmission Company
- CAG–3.
  - Docket No. RP86–35–001, Great Lakes Gas Transmission Company
- CAG–4.
  - Docket No. RP85–177–009, Texas Eastern Transmission Corporation
- CAG–5.
  - Docket No. RP85–141–007, Texas Gas Transmission Corporation
- CAG–6.
  - Docket Nos. 84–108–006 and 007, Texas Eastern Transmission Corporation
- CAG–7.
  - Docket No. TA86–1–33–007, El Paso Natural Gas Company
- CAG–8.
  - Docket Nos. TA85–2–9–010, TA85–3–9–003 and RP80–97–053, Tennessee Gas Pipeline Gas Pipeline Company, a Division of Tenneco Inc.
- CAG–9.
  - Docket No. TA86–1–43–003, Northwest Central Pipeline Corporation
- CAG–10.
  - Docket No. RP85–206–001, Northern Natural Gas Company, Division of Internorth, Inc.
- CAG–11.
  - Docket Nos. ST81–280–000 and CP82–206–003, Mustang Fuel Corporation
- CAG–12.
  - Docket Nos. RP85–125–002 and RP85–165–010, Distrigas of Massachusetts Corporation
- CAG–13.
  - Docket Nos. TA85–2–61–000, 001 and 003, Bayou Interstate Pipeline System
- CAG–14.
  - Docket No. CP85–711–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. v. Columbia Gas Transmission Corporation
- CAG–15.
  - Docket Nos. RI74–188–076, RI75–21–071, RI74–188–077, RI75–21–072, RI74–188–078 and RI75–21–073, Independent Oil & Gas Association of West Virginia
- CAG–16.
  - Docket No. CP85–544–001, International Paper Company
  - Docket No. CP79–469–002, Southern Natural Gas Company
  - Docket No. CP85–852–000, Arkla Energy Resources, a Division of Arkla, Inc.
- CAG–17.
  - Omitted
- CAG–18.
  - Docket No. CP86–40–000, Northern Natural Gas Company, Division of Internorth, Inc.
- CAG–19.
  - Docket No. CP85–860–000, Sea Robin Pipeline Company
- CAG–20.
  - Docket No. CP85–532–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
- CAG–21.
  - Docket No. CP86–5–000, Lone Star Company, a Division of Enserch Corporation
- CAG–22.
  - Docket No. CP86–317–000, Panhandle Eastern Pipe Line Company
- CAG–23.
  - Docket No. CP85–548–000, Southern Indiana Gas and Electric Company v. ANR Pipeline Company
- CAG–24.
  - Docket No. IS85–15–000, Southern Pacific Pipe Lines, Inc.
- CAG–25.
  - Docket Nos. RP82–16–005, 006 and RP85–209–000, United Gas Pipe Line Company

I. Licensed Project Matters

- P–1.
  - Project No. 7105–002, Davenport-Rock Island Associates
- P–2.
  - Project No. 9401–001, the Halecrest Company
- P–3.
  - Project No. 1962–006, Pacific Gas and Electric Company
  - Project No. 3223–002, Sacramento Municipal Utility District, Northern California Power Agency, and the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California
- P–4.
  - Project Nos. 5248–005, 5250–004 and 5862–004, West Slope Power Company
- P–5.
  - Project No. 6913–002, Weber Basin Water Conservancy District
- P–6.
  - Project No. 9027–002, SNC Hydro, Inc.
- P–7.
  - Project No. 69.02–002, City of New Martinsville, West Virginia
- P–8.
  - Project No. 7899–006, Renewable Resources Development and Jungert Corporation, Inc.
- P–9.
  - Project No. 7610–000, City of Rome, New York
  - Project No. 8303–000, Power Authority of the State of New York

II. Electric Rate Matters

- ER–1.
  - Docket Nos. ER81–428–001 and ER82–483–026 (qualifying facility issues), Middle South Services, Inc.
  - Docket No. EL81–12–001, State of Arkansas v. Middle South Utilities, Inc.
- ER–2.
  - Docket No. EL85–18–000, City of Tacoma, Washington v. the Washington Water Power Company, the Montana Power Company, Portland General Electric Company, Pacific Power and Light Company and Puget Sound Power and Light Company

Miscellaneous agenda

- M–1.
  - Reserved
- M–2.
  - Reserved
- M–3.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (the Board of Trustees of the University of Illinois)
- M–4.
  - Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)

I. Pipeline Rate Matters

- RP–1.
  - Omitted
- RP–2.
  - Docket No. RP85–30–003, Wyoming Interstate Company, Ltd.

II. Producer Matters

- CI–1.
  - Reserved

III. Pipeline Certificate Matters

- CP–1.
  - Docket No. CP85–879–000, Williston Basin Interstate Pipeline Company
- CP–2.
  - Docket No. RP86–14–004, Columbia Gulf Transmission Company
  - Docket No. RP86–15–004, Columbia Gas Transmission Corporation

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C-3.

Docket No. CP84-342-002, Southern Natural Gas Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5131 Filed 3-5-86; 3:01 pm]

BILLING CODE 6717-01-M

5

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 12, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5086 Filed 3-5-86; 10:50 am]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of an application by the State of Wisconsin for an exemption from Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices).

Discussion Agenda

2. Proposed revisions to Regulations D (Reserve Requirements of Depository Institutions) and Q (Interest on Deposits) to reflect the expiration of the Depository Institutions Deregulation Act. (Proposed earlier for public comment; Docket No. R-0565)
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5087 Filed 3-5-86; 10:51 am]

BILLING CODE 6210-01-M

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federal register

Friday
March 7, 1986

Part II

Department of State

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1985

VOL 51
ISS 45
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DEPARTMENT OF STATE

[Public Notice 958]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1985

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1985 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: February 21, 1986.

Ronald I. Spiers,

Under Secretary for Management.

Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars

REPORT OF TANGIBLE GIFTS

[Jan. 1 through Dec. 31, 1985]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Historic artifacts; Antique platter, Strasbourg faience, manufactured by the workshop of Paul and Pierre Hannong between 1754–1762; 15" x 11⅝". Archives, foreign. Recd: May 8, 1985. Est. value: $250.	His Excellency and Mrs. Pierre Pflimlin, President of the European Parliament.	Non-Acceptance would have caused Donor Embarrassment.
Do	Photograph: And inscribed black and white photograph of President and Mrs. Alfonsin in a silver frame with gold Argentine seal at top; 13" x 17"1⅝" wide. Residence; for official use/display. Recd: Mar. 19, 1985. Est. value: $1000.	His Excellency Raul R. Alfonsin, President of the Argentine, Nation, Argentina.	Do.
Do	Flowers: Fifty long-stemmed red California roses with baby's breath. Residence; for official use/display. Recd: Dec. 20, 1985. Est. value: $200.	His Excellency and Mrs. Ghazi Mohamed Algosaibi, Ambassador of the State of Behrain, Behrain.	Do.
Do	Photograph: Leather album of 28 color photographs of the Reagans and the Mulroneys, Et Al.; gold-stamped cover lettered "The Shamrock Summit. Quebec City, March 17–18, 1985" with the names of the Prime Minister and the Reagans, inscribed; 11½" x 13". ($375); Archives, foreign.	The Right Honorable, Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
	Photograph: an inscribed color photograph of the Prime Minister and Mrs. Mulroney by Karsh in a navy blue lether frame, 12" x 15". ($275). West Wing; for official use/display. Recd: Mar. 17, 1985. Est. value: $650.		Do.
Do	Household: Handblown glass vase with blue-green swirl design by Jean Vallieres. Signed; 9" HIGH x 7" diameter. Archives, Foreign. Recd: Mar. 15, 1985. Est. value: $300.	The Honorable Jean Pelletier, Mayor of Quebec City, Canada.	Do.
Do	Photograph: Color photograph of President and Mrs. Li, inscribed; in black wood frame with gold painted liner; 12" x 14" overall. Archives, foreign. Recd: July 23, 1985. Est. value: $20.	His Excellency Xiannian Li, President of the People's, Republic of China, People's Republic of China.	Do.
Do	Flowers: 2,000 long-stemmed red roses, boxed; imported from Colombia. Residence; for official use/display. Recd: Apr. 4, 1985. Est. value: $9000.	His Excellency and Mrs. Belisrio Betancur, President of the Republic of Colombia, Colombia.	Do.
Do	Photograph: An inscribed black and white photograph of Prime Minister and Mrs. Schluster in a silver-plated frame; 10⅛" x 13⅛" Archives, foreign. Recd: Sept. 10, 1985. Est. value: $65.	His Excellency and Mrs. Poul Schluster, Prime Minister of Denmark, Denmark.	Do.
Do	Household: A 12" x 18" black and navy blue calfskin leather photograph Album; thirty hardboard pages with deep blue moire end sheets; decorative hand-tooleld gold borders and lettered "Ronald and Nancy." ($600); Residence; for official use/display.	Their Royal Highnesses, The Prince and Princess of Wayles, England.	Do.
	Flowers: A bouquet of pink roses and begonias, baby's breath, Queen Anne's lace, and larkspur. ($75). Residence; for official use/display. Recd: Nov. 9, 1985. Est. value: $675.		
Do	Artwork: Color lithographic print of Strasbourg Cathedral, inscribed to the President from Mayor Rudloff and lettered "May 8, 1985 Strasbourg and Europe welcome President and Mrs. Reagan;" in paper-covered folio in slipcase; 9½" x 13" Archives, foreign. Recd: May 8, 1985. Est. value: $50.	His Excellency and Mrs. Marcel Rudloff, Mayor of Strasbourg, France.	Do.
Do	Household: Ninety-six crystal glasses (12 sets of 8 different styles); each piece etched with the seal of the United States; made by Stanka Glass. ($2400); Archives, foreign.	His Excellency and Mrs. Richard Von Weizsaecher, President of the Federal Republic of Germany, Federal Republic of Germany.	Do.
	Photograph: Color Photograph of the Von Weizsaeckers, inscribed; in silver frame ($835) with gold German eagle at top; 11" x 13½" overall. ($265). Archives, foreign. Recd: May 2, 1985. Est. value: $2665.		
Do	Clothing and accessories: Two brown leather jackets with slash and flap pockets and shearling collars; "RR" and "NR" on pockets and inside each jacket; labeled "Trussardi." Contained in black nylon zippered bags with leather handles; one bears leather disc lettered "RR, the President," and the other "NR" and the Trussardi label. Archives, Foreign. Recd: Mar. 5, 1985. Est. Value: $1020.	His excellency Bettino Craxi, President of the Council of Ministers of the Italian Republic, Italy.	Do.
Do	Artwork: Silk embroidered picture of three horses in a 3-dimensional effect by Ms. Kyung Sook Chun; in a leather-covered wood frame with inscription; image: 25½" x 50½"; overall: 34" x 60" Archives, foreign. Recd: Apr. 26, 1985. Est. value: $1500.	His Excellency and Mrs. Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do.
Do	Household: Sterling silver cigarette box engraved with facsimile signatures of the Prince and Princess, the royal crest, and "9–30–85" on lid; wood lined and crafted by "Texler"; 11" x 6" x 2½"; plaque inside lid lettered "in memory of the visit by the reigning Prince Franz Joseff II and Princess Gina of Liechtenstein to the White House Sept. 30, 1985", 3⅛" x 2". Enclosed in a velvet-covered, fitted box 13½" x 9" x 3" Residence; for official use/display. Recd: Sept. 30, 1985. Est. value: $800.	Their Serene Highnesses Frank Josef II and Gina the Prince and Princess of Liechtenstein, Liechtenstein.	Do.

Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars—Continued

[Jan. 1 through Dec. 31, 1985]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Photograph: Color photograph of President Machel, inscribed; under glass in handmade wood frame; 19" x 23" overall. Archives, foreign. Recd: Sept. 19, 1985. Est. value: $120.	His Excellency Samora Moises Machel, President of the People's Republic of Mozambique, Mozambique.	Do.
Do	Flowers: Topiary teddy bear, designed from boxwood and decorated with pine cones, lily of the valley, and ribbons. Residence; for official use/display. Recd: Dec. 20, 1985. Est. value: $200.	His Excellency and Mrs. Abdelkader Braik Al-Ameri, Ambassador of the State of Qatar, Qatar.	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 12, 1985. Est. value: $250.	His Majesty Fahd Ibn Abd Al-Aziz Al Saud, King of Saudi Arabia, Saudi Arabia.	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 16, 1985 Est. value: $250.	do	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 18, 1985. Est. value: $250.	do	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 22, 1985. Est. value: $250.	do	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 24, 1985. Est. value $250.	do	Do.
Do	Flowers: A large basket of mixed flowers. Residence; for official use/display. Recd: July 26, 1985. Est. value: $250.	do	Do.
Do	Household: A gold pitcher and tray set consisting of a pitcher (925) designed as an eagle with hinged head and "feather-tipped" amethysts, 13" tall x 5" wide; two tumblers with "feather-tipped" amethysts at base, 4⅝" tall x 3" diameter; and a tray with "feather-tipped" amethyst handles, 19" x 9⅝". All contained in a green leather case with Saudi gold seal, 22½" x 19" x 11"; created by Wolfres of Brussels. ($5000); Residence; for official use/display.	do	Do.
	Photograph: Color photograph of King Fahd, inscribed; in sterling silver frame with gold bordered design by Asprey of London; frame is 15⅝"K x 11⅝"; in a green leather case with gold-stamped Saudi crest; 16⅝" x 13" x 1⅛". ($1000). West wing; for official use/display. Recd: Feb. 11, 1985. Est. value: $6000..		
Do	Photograph: A color photograph of Prime Minister and Mrs. Lee, inscribed; displayed in a sterling silver frame; 9⅛" x 11⅛". Archives, foreign. Recd: Oct. 8, 1985. Est. value: $100.	His Excellency Lee Kuan Yew, Prime Minister of the Republic of Singapore, Singapore.	Do.
Do	Photograph: Color Photograph of King Juan Carlos and Queen Sofia, inscribed; in sterling silver frame, 15⅝" x 11⅝"; in blue leather case with royal seal. ($320); Archives, foreign.	Their Majesties Juan Carlos I and Queen Sofia, the King and Queen of Spain, Spain.	Do.
	Photograph: Album of color photographs of their Majesties King Juan Carlos and Queen Sofia with the President and Mrs. Reagan; navy blue vinyl album with gold-stamped crest on cover. ($350). Archives, foreign. Recd: May 6, 1985. Est. value: $670.		
Do	Photograph: Color photograph of Queen Sirikit in a sterling and niello frame. Residence; for official use/display. Recd: Mar. 11, 1985. Est. value: $1000.	Her Majesty Sirikit, Queen of Thailand, Thailand.	Do.
Do	Household: A 100% wool, late 19th century antique Turkish kelim carpet in colors of dark blue, red, green, black, and pink; 40½" x 69½" ($1200); Archives, foreign.	His Excellency Turgut Ozal, Prime Minister of the Republic of Turkey, Turkey.	Do.
	Book: "L'Orient" by Eugene Flandin, Published by Jules Claze and Company, Paris, 1984; Number 1978, in conformity with the 1852 edition. ($800); Archives, foreign.		
	Artwork: Two Turkish Hereke handwoven silk wall-hangings; One depicts President Reagan (signed, dated and numbered: 1984, # 10894), 15⅛" x 20"; and, one of the President and Mrs. Reagan (signed, dated and numbered: 1985, ± 10893), 15" x 21½". ($1000); Archives, foreign.		
	Photograph: Color photograph of Prime Minister and Mrs. Ozal, signed and dated April 2, 1985; in silver frame with matt finish, hand-chased with applied geometric design border and leaf swag decoration; 9⅛" x 11⅝" ($750); Archives, foreign.		
	Artwork: Portrait of the President and Mrs. Reagan, oil on canvas, by Cemil Karababa, Ankara, signed, 1985; canvas, 89" x 61"; included is a diemantled wooden, pegged frame. ($2500). Archives, foreign. Recd: Apr. 2, 1985. Est. value: $6050.		
Do	Consumables: Twelve 2-ounce jars of caviar and three bottles of vodka; all produced in the U.S.S.R. Perishable. Recd: Nov. 27, 1985. Est. value: $750.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Household: A Samovar, 10" wide x 14" tall, and matching tray, 12" x 16"; both with a lacquered floral and fruit design. ($200); Archives, foreign.	His Excellency and Mrs. Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republic, Union of Soviet Socialist Republics.	Do.
	Household: A lacquered box with a medieval scene pictured on top, black sides with decorative painted gold border and solid red interior; 6½" x 4" x 1½" deep. ($450). Residence; For official use/display. Recd: Sept. 27, 1985. Est. value: $650.		
President	Athletic equipment: Birchwood saddle with camel skin and kidskin cover, breast, and bellyband; handforged iron bit; a heavy embroidered pure gold cover in floral designs done in relief with brass stirrups; contained in a wood chest, 40" x 34" x 36"; all items hand-crafted. ($2100); Archives, Foreign.	His Excellency Colonel Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria, Algeria.	Do.
	Consumables: 36 bottles of assorted Algerian wine and 2 baskets of dates on vine. ($336); Perishable.		
	Stamps: Leather Album of assorted New Algerian Postage stamps. ($50). Archives, foreign. Recd: Apr. 17, 1985. Est. Value: $2486.		
Do	Clothing and Accessories: A brown leather Gaucho belt with three sizes of Argentine coins dated 1882, contained in box with engraved silver plaque; and, silver and leather, handcrafted spurs in a box with an engraved plaque. Archives, foreign. Recd: Mar. 19, 1985. Est. Value: $2000.	His Excellency Raul R. Alfonsin, President of the Argentine Nation, Argentina.	Do.
Do	Audio/Visual recording: Three VHS videocassettes of the films "The Man From Snowy River," "My Brilliant Career," and "Gallipoli." Archives, foreign. Recd: Feb. 07, 1985. Est. Value: $180.	The Honorable and Mrs. Robert Hawke, M.P. Prime Minister of Australia, Australia.	Do.

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Do	Coin: A 1984 $100 22 kt. Gold Canadian coin, struck by the Royal Canadian Mint; enclosed in leather case bearing Maple Leaf Emblem. Archives, foreign. Recd: Jan. 18, 1985. Est. Value: $260.	The Honorable Edward M. Lawson, Senator, The Senate, Canada.	Do.
Do	Artwork: Eskimo stone carving of a walrus, by J. Eyeadiuluk: 19" long x 8" wide x 8½" high. West wing; for official use/display. Recd: Mar. 17, 1985. Est. Value: $1400.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
Do	Household: A six panel folding screen, rosewood frame with bird and floral motifs of soapstone, malachite, sodalite, mother-of-pearl, etc., on a cinnabar background; handcarved; each panel measures 80" high x 20¼" wide x 2" thick. ($3500); Archives, foreign. Household: Chops or seals, marble with carved floral motif and Chinese characters etched on side; included is a white china dish containing red wax for seals, with a blue dragon design depicted on lid. ($80). Archives, foreign. Recd: July 23, 1985. Est. value: $3580.	His Excellency, Xiannian Li, President of the People's Republic of China, People's Republic of China.	Do.
Do	Artwork: Scroll depicting an oriental gentleman, with calligraphy at right side done on paper with simulated fabric ends attached to wood poles; enclosed in fabric-covered case; 105" x 27". Archives, foreign. Recd: Sept. 20, 1985. Est. value: $200.	The Honorable Renzhong Wang, Vice Chairman, Standing Committee on the National People's Congress, People's Republic of China.	Do.
Do	Artwork: Sculptured metal figure of a nude woman with bow in hair by Botero, signed; number 4 of a limited edition of 9: 14" high x 16" long x 13" deep; displayed on removable white base with engraved brass presentation plaque attached; contained in white wood box, measuring 19¼" x 20" x 15¾". ($20,000); Oas Museum of Modern Latin American Art; for official use/display. Artwork: Clay sculpture of a "Precolumbian" figure with brass ring in nose, entitled "Retablo"; 7½" high x 4½" deep x 7" wide; included is a certificate authenticating figure to be from the Quimbaya Culture originating in the Montenegro Area of Colombia and made between 800 A.D. to 1600 A.D.. ($500); Archives, foreign. Book: "Atlas de Cartografia Historica de Colombia" published by the Instituto Geografico Agustin Codazzi, Instituto Colombiano de Cultura, Archivo Historico Nacional, 1985; a reproduction of the original maps; Spanish text; simulated leather binding. ($200). Archives, foreign. Recd: Apr. 4, 1985. Est. value: $20700.	His Excellency and Mrs. Belisario Betancur, President of the Republic of Colombia, Colombia.	Do.
Do	Household: A glazed ceramic birdbath, blue and white pedestal design, depicting a young girl in modernistic motif; made in Denmark; 24" tall, 13½" in diameter across top. Archives, foreign. Recd: Sept. 10, 1985, Est. value: $250.	His Excellency and Mrs. Poul Schlueter, Prime Minister of Denmark, Denmark.	Do.
Do	Artwork: Portrait of President Reagan with the Great Sphinx at the left and a Cartouche with the President's name at the right; on papyrus by Hassan Said, Signed; 20¼" x 14⅝"; under glass in brown wood frame; overall: 19½" x 25". Archives, foreign. Recd: Mar. 12, 1985. Est. value: $800.	His Excellency Mohammed Hosni Mubarak, President of the Arab Republic of Egypt, Egypt.	Do.
Do	Medallion: Bronze medallion lettered "Strasbourg" and depicting Cathedral and Porte de France, Ville D'Europe on reverse; 2⅝" diameter. Archives, foreign. Recd: May 8, 1985. Est. value: $50.	His Excellency and Mrs. Marcel Rudloff, Mayor of Strasbourg, France.	Do.
Do	Photograph: Album of twenty-seven color photographs of President Reagan, Chancellor Kohl, et al.; in black simulated leather album with German Eagle on cover; inscribed. ($75); Archives, foreign. Household: Hexagonal amethyst-quartz bowl by H. Wolf, signed; 7" diameter, 4⅛" deep. ($800). Archives, foreign. Recd: May 10, 1985. Est. value: $875.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Do.
Do	Consumables: 2 bottles of Riesling Beerenauslese Wine, 1976; 2 bottles of Rheinpfalz Wine, 1976; 8 bottles of Riesling Spatlese Wine, 1979 through 1983; enclosed in a wood crate, bearing the German Eagle Emblem. Perishable. Recd: Dec. 19, 1985, Est. value: $280.	do	Do.
Do	Stamps: Black leather album of uncancelled and cancelled German postage stamps, Cachets, etc., covering all those issued from 1988 through 1984, including sets of stamps commemorating the occupation of Berlin, printed in Washington, DC London, and Braunschweig. Archives, foreign. Recd: Aug. 5, 1985. Est. value: $1150.	His Excellency Dr. Christian Schwarz-Schilling, Federal Minister of Posts and Telecommunications, Federal Republic of Germany.	Do.
Do	Photograph: Leather album of 48 color photographs of the President, Mrs. Reagan, Chancellor Kohl, et al., taken during visit to the Federal Republic of Germany; each photograph is 7" x 9½". Archives, foreign. Recd: Aug. 2, 1985. Est. value: $335.	His Excellency Richard Von Weizsaecker, President of the Federal Republic of Germany, Federal Republic of Germany.	Do.
Do	Artwork: Modernistic oil painting of a horse with human hand in background signifying goodwill, entitled "Ashwamedh" by Hussain, signed, 1985; on stretcher frame; 48½" x 48⅝". Archives, Foreign. Recd: June 12, 1985. Est. value: $500.	His Excellency Rajiv Gandhi, Prime Minister of India, India.	Do.
Do	Artwork: set of ten color serigraphs titled "Ben Gurion," by Yaacov Agam, each signed by artist and inscribed by Shimon Peres; published by Armand and Georges Israel publishers with preface by Abba Eban and printed in Paris especially for Shimon Peres; editor's proof 14 of 40; each print is 17" x 21⅛"; included is a multigraph depicting facsimile signature of artist; all contained in a blue velvet case. Archives, foreign. Recd: Oct. 17, 1985. Est. value: $10000.	His Excellency Shimon Peres, Prime Minister of Israel, Israel.	Do.
Do	Artwork: Model of one of Christopher Columbus' three sailing ships; silver and gold filigree design, mounted on inscribed base; overall: 10" x 6" x 3½"; in a navy blue fabric-covered box, 11¼" x 8½" x 4½". West wing; for official use/display. Recd: Mar. 5, 1985. Est. value: $1000.	The Honorable Rinaldo Magnani, President, Liguria Regional Government, Italy.	Do.
Do	Household: Two deep blue cloisonne covered bowls with silvered bases by Hinode; 4½" high x 3½" diameter and 6" high x 4½" diameter. ($90); Archives, foreign. Artifact: Gourd, inscribed, "Ron, Yasu, souvenir of Hinode, Tokyo, Nov. 11, 1983;" 13" high; displayed on a wood stand. ($20). Archives, foreign. Recd: Jan. 2, 1985. Est. value: $110.	His Excellency and Mrs. Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Household: Demitasse set consisting of a pitcher, tray, and six cups; all of sterling silver (925) with decorative gold inlaid design; made by Deyhle, Germany; six additional porcelain cup liners by Limoges, with gold band and bearing crown design; tray, 14" in diameter; pitcher, 11" tall; and cups 2½" in diameter. Archives, foreign. Recd: May 29, 1985. Est. value: $2600.	His Majesty Al Hussein I, King of the Hashemite Kingdom of Jordan, Jordan.	Do.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Flowers: Thirty-eight pink roses in a basket. ($144); Residence; for official use/display. Consumables: Two tins of Red Ginseng. ($26). Perishable. Recd: Feb. 5, 1985. Est. value: $170.	His Excellency and Mrs. Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do.
Do	Flowers: A large arrangement of mixed flowers. Residence; for official use/display. Recd: July 13, 1985. Est. value: $400.	His Majesty Hassan II, King of Morocco, Morocco.	Do.
Do	Flowers: A large arrangement of mixed flowers. Residence; for official use/display. Recd: July 15, 1985. Est. value: $400.	do	Do.
Do	Flowers: A large arrangement of mixed flowers. Residence; for official use/display. Recd: July 16, 1985. Est. value: $800.	do	Do.
Do	Flowers: A large arrangement of mixed flowers. Residence; for official use/display. Recd: July 18, 1985. Est. value: $425.	do	Do.
Do	Flowers: A large arrangement of mixed flowers. ($400); residence; for official use/display. Consumables: Six one-pound boxes of Lenotre (Paris) candies and a fruit basket. ($250). Perishable. Recd: July 19, 1985. Est. value: $650.	do	Do.
Do	Flowers: A large arrangement of mixed flowers. ($425); residence; for official use/display.	do	Do.
	Consumables: A ten-pound box of "Teuscher" chocolates from Switzerland. ($300). Perishable. Recd. July 20, 1985. Est. value: $725.		Do.
Do	Artwork: Rosewood carving of five human heads and hands touching one another, entitled "We all see the problems of the world," carved from one piece of wood, by Alberto Chissano; detached engraved brass plaque; 29½" high x 34" deep x 19" Wide. Archives, foreign. Recd: Sept. 19, 1985. Est. value: $3500.	His Excellency Samora Moises Machel, President of the People's Republic of Mozambique, Mozambique.	Do.
Do	Athletic equipment: A "Sporting Shot Gun" No. A-0003, 12-bore, 43½" long, 5¾ pounds, specially manufactured for President Reagan by Messrs. Kamal Din & Sons; engraved on barrel; broken down and stored in brown leather case attached with engraved presentation plaque. ($8000); Archives, foreign. Books: Eleven leather-bound volumes on Pakistan's history and culture; and two cloth-bound books, "An Historical Atlas of Islam," edited by William C. Brice, 1981, and "Iqbal" (poet of the East), an illustrated volume with Pakistani text; matching slipcase. All enclosed in a dark brown leather carrying case with brass combination locks, measuring 19" x 14" x 9>. ($300). Archives, foreign. Recd: Oct. 23, 1985. Est. value: $8300.	His Excellency General, M. Zia-Ul-Haq, President of the Islamic, Republic of Pakistan, Pakistan.	Do.
Do	Artwork: White marble column with a brass sliver at top, titled "Sun Dial," by Charters de Almeida; 38¾" high x 7¼" wide x 4⅛" deep. ($2,000); Archives, foreign. Artwork: A silkscreen print of the sculpture, "Sun Dial," signed by the artist; number 1 of 15; on heavy paper displayed in plexiglass shadowbox frame; 35½" x 27¾"; included is a frontispiece in folio and a booklet on the artist. Archives, foreign. Recd: May 8, 1985. Est. value: $2095.	His Excellency General Antonio Dos Santos Ramalho, Eanes, President of the Portuguese, Republic, Portugal.	Do.
Do	Consumables: Eight bottles of port wine: "Pocas Junior, 40-year-old port bottled 1984; " "Cockburn's 1963 vintage;" "Croft 20-year-old finest tawny port;" "Dalva Porto Colheita 1952 Golden White", bottled 1982; "Krohn Port Colheita 1960," bottled 1985; "Tayler's 30-year-Old tawny port;" "Porto Ca'lem 10 years old;" and "Duque de Braganca Port Wine Grande." ($190); perishable. Household: Handcrafted wood chest with wrought iron hardware and engraved plaque on lid; key included; 19" x 13½" x 12¾". ($150). Archives, foreign. Recd: July 17, 1985. Est. value: $340.	His Excellency General, Antonio Dos Santos Ramalho Eanes, President of the Portuguese Republic, Portugal.	Do.
Do	Photograph: Sixty-eight 5" x 7" color photographs of the President, et al., during visit to Portugal, by Alves Pinto; stamped on reverse and displayed in a manila folder. Archives, foreign. Recd: July 5, 1985. Est. value: $204.	The Honorable, Fernando Monteiro Do Amaral, President of the National Assembly of the Portuguese Republic, Portugal.	Do.
	Household: Porcelain vase, a copy of Japanese amari, by Vista Alegre, 16" High. Archives, foreign. Recd: May 9, 1985. Est. value: $350.	The members of the National Assembly of the Portuguese Republic Portugal.	Do.
Do	Household: Porcelain inkstand, white with blue and gold decoration, "RWR" on two sides and an American eagle design depicted on removable lid; removable interior ink receptacle; four openings for quills on top; by "Vista Alegre," Portugal; handpainted; inscribed on underside; 5" x 3" x 3"; contained in velvet box; included is a silver ballpoint "quill" pen, 8¾" long. Archives, foreign. Recd: May 8, 1985. Est. value: $375.	His Excellency Mario Soares, Prime Minister of Portugal, Portugal.	Do.
Do	Flowers: A large mixed flower arrangment in birdsnest style basket. Residence; for official use/display. Recd: Feb. 7, 1985. Est. value: $200.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia, Saudi Arabia.	Do.
Do	Artwork: An enameled egg with gold interior, containing a gold clock with hinged panels bearing the Saudi seal and the U.S. Presidential seal surrounded by diamond chips, with spaces for photographs on inside; a miniature gold easel is included for clock as well as one for the egg; by Asprey & Co., London. overall, 1½" x 1½"; contained in a black leather box, 4¾" x 3¾" x 3". ($12,500); Residence; for official use/display. Photograph: Two color photographs of "Al Hamdaniyah" (Chestnut) and "kuhailan" (Gray) breed of Arabian horses, maintained, for decades by the Royal Family of Saudi Arabia; in bright gold wood frames; 24" x 28" overall; included are two gold-metal framed "Certificates of Origin" and two framed pedigrees on the breeds; 28" x 24". and 12" x 16" ($690). Archives, foreign. Recd: Feb. 11, 1985. Est. Value: $13,190.	His Majesty Fahd Ibn abd Al-Aziz Al Saud, King of Saudi Arabia, Saudi Arabia.	Do.
Do	Artwork: A gold medallion (999.9 fine gold) depicting likenesses of the President and Mrs. Reagan and Seals of the U.S. and Singapore; 1⅞" in diameter. Archives, foreign. Recd: Oct. 8, 1985. Est. Value: $640.	His Excellency Lee Kuan Yew, Primer Minister of the Republic of Singapore, Singapore,	Do.
Do	Artwork: Two original engravings of bullfighting scenes from Francisco Goya's collection, "La Tauromaquia", unsigned, numbered 13 and 27 respectively; 17" x 13"; under glass in walnut frames, 24" x 20". Residence; for official use/display. Recd: May 7, 1985. Est. Value: $1000.	His Excellency and Mrs. Felipe Gonzalez Marquez, President of the Government of Spain, Spain.	Do.

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Do.	Athletic equipment: Black leather saddle, lambswool sheath, black and white fabric tie lettered "R" in leather; Attached with two large black iron stirrups attached to brown leather straps; brown cover; including a brown leather bridle with black iron bit archives, foreign. Recd: May 6, 1985. Est. Value: $500.	Their Majesties, Juan Carlos I and Queen Sofia, the King and Queen of Spain, Spain.	Do.
Do.	Assortment: Color Photograph of Prime Minister Premadasa and his family in golden wood frame, 12½" x 15" overall, in velvet case; shirt and overgarment in handmade batik, x=Large; copy of book, "Ranasinghe Premadasa" (Prime Minister with a vision), edited by Christy Cooray; and two folders of information on Sri Lanka and the Prime Minister. Archives, foreign. Recd: Oct. 23, 1985. Est. Value: $485.	His Excellency R. Premadasa, Prime Minister of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
Do.	Artwork: Elephant figure made of rosewood overlaid with silver and decorated with semi-precious stones 10½" High X 7" Long x 4½" Wide: Displayed in a velvet case depicting seal of Sri Lanka on lid. Archives, foreign. Recd: Oct. 20, 1985. Est. value: $700.	Mrs. R. Premadasa, wife of the Prime Minister of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
Do.	Household: Atmos (works on air) clock, 14-jeweled, brass works with roman numeral face, displayed in a brass-framed glass case: by Jaeger-Lecoultre; Engraved plaque attached; 9" x 8" x 6½". Archives, foreign, Recd: Nov. 19, 1985. Est. Value: $950.	Mr. Rene Emmenegger, Mayor of the City of Geneva Switzerland.	Do.
Do.	Household: clock, key-wound and strike model, footed-pedestal style, black case with gold-painted trim and finial, beige-painted floral design, white enameled face with black roman numerals; crafted by Le Castel in Switzerland; 15" Wide, 5½" Deep, 37" Tall. Archives, foreign. Recd: Nov. 16, 1985. Est. Value: $2700.	His Excellency Kurt Furgler, President of the Swiss Confederation, Switzerland.	Do.
Do.	Books: "Switzerland Illustrated," by William Beattie, M.D. (in a series of views taken on the spot and expressly for this work), by W. H. Bartlett, Esq.: Volumes I and II; Published by George Virtue. London, 1836; Volume I only inscribed; navy blue leather binding with gold tooling. Archives, foreign. Recd: Nov. 19, 1985. Est. value; $400.	Mr. Jacques Vernet, President, Stat Council of the Republic and Canton of Geneva, Switzerland.	Do.
Do.	Artwork: Ivory Elephant, overlaid with gold and containing rubies, sapphires, and diamonds, on a teak base. (From the King of Thailand's personal collection). Residence; For official use display. Recd: Mar. 11, 1985 Est. Value: $15000.	Her Majest Sirikit, Queen of Thailand, Thailand.	Do.
Do.	Award: The "Grand Cordon De L'Ordre De L' Independence" (a starburst pin with smaller starburst drop-pin on ribbon) and certificate conveying Tunisia's highest award. ($270); Archives, foreign. Photograph: A black and white photograph of President Bourguiba, inscribed; in a silver (800) frame with Tunisian crest at top; Overall 9½" x 11¾"; contained in green leather case with crest. ($250); Archives, foreign. Photograph: A black and white photograph of President Bourguide and former American consul in Tunis, Mr. Doolittle; inscribed to the President by President Bourguiba; in silver (835) frame; overall 11" x 13½" and contained in a green leather case with crest. ($275); Archives, foreign. Artwork: Circular mosaic of a male figure resembling a roman governor, unsigned, in sepia tones in brown wood frame; 31½" in diameter. ($850). Archives, foreign. Recd: June 18, 1985. Est. Value: $1645.	His Excellency Habib Bourguiba, President of the Republic of Tunisia, Tunisia.	Do.
Do.	Medallions: A set of fifteen bronze medallions; each depicting the name of a Soviet territory and the flag of the U.S.S.R.; each measures 1¾" in diameter; and one 3" square bronze medallion lettered "CCCP;" all displayed in a fitted red vinyl case. ($250); Archives, foreign. Artwork: Lacquered plaque depicting the Kremlin, by C. Pedocknho, 1985, signed; 15" x 11¼"; included in a simulated wood box. ($1000). Archives, foreign. Recd: Nov. 19, 1985. Est. value: $1250.	His Excellency, Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do.	Medallions: A set of fifteen bronze medallions, each depicting the name of a Soviet territory and the flag of the U.S.S.R.; each measures 1¾" in diameter; on one 3" square bronze medallion lettered "CCCP;" all displayed in a fitted red vinyl case ($250); Archives, foreign. Book: "Moscow," Planeta Publishers, Moscow, 1984. ($45). Archives, foreign. Recd: Mar. 7, 1985. Est. value: $295.	The Honorable Vladmir Vasil'yevich Shcherbitskiy, First Secretary of the Central Committee of the Communist Party of the Ukraine, Union of Soviet Socialist Republics.	Do.
Do.	Fabric: "Mensoudj" fabric, white silk with silver yarn design, handmade; 115" long x 45" wide. ($450); Archives, foreign. Household: Jewely box, 7" x 5" x 4", and a handheld mirror, 8" long; all made of silver ($950) with coral and enameled motifs, called "Benni Yenni"; handcrafted. ($600); Residence; for official use display". Assortment: Bracelet, 3" wide, and a perfume vial, 5" tall; all made of silver (950) with coral and enameled motifs, called "Benni Yenni;" handcrafted; with a 7½" x 10½" x 8½" wood box container. ($335). Archives, foreign. Recd: Apr. 17, 1985. Est. value: $1385.	His Excellency Colonel Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria, Algeria.	Do.
Do.	Clothing and accessories: Wool (vicuna) poncho, burgundy with black stripe and black fringe handwoven and handsewn. ($3000); Archives, foreign. Clothing and accessories: Black leather belt with silver ($800) chains and mother-of-pearl silver buckle with "NR" in gold; contained in box with silver presentation plaque. ($750). Archives, foreign. Recd: Mar 19, 1985. Est. value: $3750.	His Excellency, Raul R. Alfonsin, President of the Argentine Nation, Argentina.	Do.
Do.	Book: "Historic Buildings" by Australia's National Trusts, Edition Published in 1984 by Reed Books, Ltd., New South Wales. Archives, foreign. Recd: Feb. 7, 1985. Est. value: $33.	The Honorable and Mrs. Robert Hawke, M.P., Prime Minister of Australia, Australia.	Do.
Do.	Fabric: One bolt of light Taupe color silk with overall floral design; 18 feet long x 43 inches wide. Archives, Foreign. Recd: Nov. 4, 1985. Est. value: $180.	Mrs. Raushan Ershad, wife of the President of the People's Republic of Bangladesh, Bangladesh.	Do.
Do.	Household: Pewter coffee and tea service consisting of a coffee pot with wooden handle, 10" high; teapot with wooden handle, 8" high; creamer 4½" high; sugar pot with spoon, 5" high; and, a polished wood serving tray with pewter handles, 22" long x 12¾" wide x 4" deep; by John Somers, Brazil; (crafted in President Neves' hometown). Archives, foreign. Recd: Jan. 31, 1985. Est value: $325.	Mrs. Tancredo de Almeida Neves, wife of the President of Brazil, Brazil.	Do.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do.	Artwork: Eskimo stone carving of a bird by S. Elsiyakta, 10" high. ($480); West Wing; for official use/display. Household: Sixteen placemats (2 sets of 8 each) depicting a color print of an original painting of an outdoor Canadian scene by Cornelius Krieghoff; mounted on red background with gold felt backing; permanized coating; each print 7½"x11"; overall 12"x16"; in two blue leatherette-covered cases; 13"x17" ($460). Archives, foreign. Recd. Mar. 17, 1985. Est. value: $940.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
Do.	Household: White organdy tablecloth with floral motif; 8 feet long x 67 inches wide; included are twelve matching napkins, each 17" square. ($250); Archives, foreign. Fabric: Two bolts of Chinese silk brocade fabric; one is red with white floral motif and the other is a pale pink with white floral motif; each bolt is 20 feet long x 30 inches wide. ($240); Archives, foreign. Consumables: A selection of tea. ($15); perishable. Recd: July 23, 1985. Est. value: $505.	His Excellency Xiannian Li, President of the People's Republic of China, People's Republic of China.	Do.
Do.	Household: Cloissone vase, multicolored floral design, brass-rimmed; 12" high. ($250); Archives, foreign. Fabric: Red satin with white and red bamboo floral design; 16½ feet x 30½ inches, ($110). Archives, foreign. Recd: Apr. 1, 1985. Est. value: $360.	Mrs. Ying Zheng, wife of the Ambassador of the People's Republic of China, People's Republic of China.	Do.
Do.	Household: A white softpaste porcelain bonbonniere or covered dish decorated with green floral design and handles and a gold-bordered motif; by Flora Danica of Royal Copenhagen; 3¼" in diameter, 2" high. Archives, foreign. Recd: Sept. 10, 1985. Est. value: $525.	His Excellency and Mrs. Poul Schlueter, Prime Minister of Denmark, Denmark.	Do.
Do.	Clothing and accessories: A bat-style lined wool pullover top, red with black stripe design, ribbed cuffs and bottom, by Olga Fisch, labeled; a brown suede and leather purse, zippered, with two handles and brass-bit hardware; and a triangular poncho, dark brown with lighter brown and beige floral design bordered by hand. By Olga Fisch, labeled, ($420); Archives, foreign. Household: Off-white wool rug with multi-colored design, fringed on two ends; 53" long x 31" wide. ($75) Archives, foreign. Recd. Apr. 24, 1985. Est. value: $495.	Mrs. Eugenia Cordovez de Febres-Cordero, wife of the President of the Republic of Ecuador, Ecuador.	Do.
Do.	Jewelry: A handcarved Turquoise and gold scarab pendant, 1¼" in diameter. ($500) Archives, foreign. Household: A tabriz animal carpet, (new) depicting birds, camels, etc., in a forest setting with a building in background; green, brown, blue, black, and orange on a beige background; fringed on two ends; handcrafted; 76" x 53". ($2800) Archives, foreign. Recd: Mar. 12, 1985. Est. value: $3300.	His Excellency, Mohammed Hosni Mubarak, President of the Arab Republic of Egypt, Egypt.	Do.
Do.	Household: A Covered tureen and platter, crafted of heavy tin with beaded edge by Eugene Marchand signed; the tureen measures 6½" in diameter, 6½" high and the platter is 7¾" in diameter; enclosed in a maroon leather case with gold-tooled design and "NR" in center. Archives, foreign. Recd: May 8, 1985. Est. value: $800.	His Excellency and Mrs. Marcel Rudloff, Mayor of Strasbourg, France.	Do.
Do.	Artwork: Miniature portraits of Emperor Akbar and Empress Jodhabai, painted on ivory in the Mughal style and dipsayed in oval silver-plated filigree frames; 4½" x 3½" overall. Residence; for official use/display. Recd: June 12, 1985. Est. value: $950.	Mrs. Sonia Gandhi, wife of the Prime Minister, India.	Do.
Do.	Clothing and accessories: Three bracelets and one belt, all of handcrafted Iraqi silver; made by "Iraqi Silversmiths Long Time Ago.". Archives, foreign. Recd: Dec. 19, 1985. Est. value: $225.	Mrs. Seher Hamdoon, wife of the Ambassador of Iraq, Iraq.	Do
Do.	Jewelry: Antique glass beads necklace, made between 63 B.C.E.–330 C.E., Roman period 20" long; displayed in a 10" x 9" x2" Myrtlewood box. Including a Certificate of antiquity from Arieh Klein Ltd. Antiquities, Jerusalem. Archives, foreign. Recd: Oct. 17, 1985. Est. value: $5000.	His Excellency Shimon Peres, Prime Minister of Israel, Israel.	Do.
Do.	Household: Six white cotton travel bags trimmed in lace and monogrammed "J" (manufacturer "Jesurum") in graduated sizes with drawstrings, button closures, etc. Archives, foreign. Recd; Mar. 5, 1985. Est. Value: $240.	His Excellency Bettino Craxi President of the Council of Ministers of the Italian Republic, Italy.	Do.
Do.	Household: A coin silver filigree bowl or bombonniere with enameled flowers on a hinged lid; A separate silver filigree base is included; Handmade by the women of Campoliguer especially for Mrs. Reagan; Displayed in a fabric-covered box; bowl is 3" x 5"; box is 9" x 8½" x 5". ($450); Archives, foreign.	The Honorable Rinaldo Magnani, President, Liguria Regional Government, Italy.	Do.
Do.	Household: Silver, ring with raised castle motif in white gold with ruby and diamond chips, engraved "Nancy Reagan, Genoa;" and an inscribed copy (paperback) of "Christopher Columbus" by Lia Pierotti Cei. ($380). Archives, foreign. Recd: Mar. 5, 1985. Est. value: $3450.		
Do.	Jewelry: A gold bracelet with a row of emeralds and two rows of diamond chips. Archives, foreign. Recd: May 3, 1985. Est. value: $380.	His Excellency Sandro Pertini President of the Italian Republic, Italy.	Do.
Do.	Clothing and accessories: Evening bag or minaudiere; "Saga-Nishiki" (gold brocade) on brass frame with gold chain; separate interior mirror; handcrafted in Japan; 7½" x 4" 4 2½". Archives, foreign. Recd: Apr. 24, 1985. Est. value: $550.	Mrs. Tsutako Nakasone, Wife of the Prime Minister of Japan, Japan.	Do.
Do.	Household: An electric lamp white porcelain imari vase style with handpainted floral and bird design (new); 17" high, 8" diameter; and a black lacquered tray, 8" x 11". Archives, foreign. Recd: Jan. 2, 1985. Est. value: $310.	His Excellency and Mrs. Yasuhiro Nakasone Prime Minister of Japan, Japan.	Do.
Do.	Household: A sterling silver (925) cigarette box, wood lined, engraved with facsimile signatures of the King and Queen and the Royal Jordanian crest on hinged lid; crafted by "Deyhle" in Germany; 7½" x 5¼" x 1½"; Enclosed in a suede box; 10" x 7½". Residence; for official use/display. Recd: May 29, 1985. Est. value: $250.	Their Majesties Al Hussein, King and Queen of the Hashemite Kingdom of Jordan, Jordan.	Do
Do.	Household: Silver (999) tea set coated with "Chilbo" (multi-colored korean pigments); teapot (9" x 6" x 4"), two sugar bowls (6" x 3" x 3½"), two silver spoons, and a silver tray (13" x 9"); teapot and bowls depict Phoenix bird and floral designs; tray is plain except for minor work on handles; displayed in velvet box with interior presentation plaque. Archives, foreign. Recd: Apr. 29, 1985. Est. value: $835.	His Excellency and Mrs. Chun Doo Hwan President of the Republic of Korea, Republic of Korea.	Do.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Six placemats and a table scarf; black cotton with overall gold geometric design; 18⅞" x 13" and 44" x 20"; contained in a woven sisal-type open weave box; included are three woven straw envelopes or containers filled inside one another; 12" x 6½". ($1470); Archives, foreign. Book: "Drug Abuse in East Asia" (paperback) by C.P. Spencer and V. Navaratnam, published by Oxford University Press. ($8). Archives, foreign. Recd: Apr. 24, 1985. Est. value: $1478.	Dr. Siti Hasmah Mahathir, wife of the Prime Minister of Malaysia, Malaysia.	Do.
Do	Household: Beveled oval mirror in mirrored lucite frame with wood back; engraved plaque on reverse; 22½" x 12¾"; contained in wood chest, 25" x 14½" x 2½". Archives, foreign. Recd: Apr. 14, 1985. Est. value: $250.	Mrs. Sarojini Jugnauth, Wife of the Prime Minister of Mauritius, Mauritius.	Do.
Do	Artwork: Handcarved ivory figure of a woman in a contorted position, 3" x 8". Archives, foreign. Recd: Sep. 19, 1985. Est. value: $300.	Mrs. Graca Machel, wife of the President of the People's Republic of Mozambique, Mozambique.	Do.
Do	Fabric: Deep red chiffon with gold, silver, and pearls in overall floral embroidered motif; 51" wide x 122" long; in velvet box. ($1050); archives, foreign. Household: Silk carpet, New Pakistani, overall floral medallion style motif, predominate shades of blue on beige background with darker blue borders; white fringe on two ends; 77" x 48". ($2500). Archives, foreign. Recd: Apr. 24, 1985. Est. value: $3550.	Mrs. Muhammed Zia-Ul-Haq, wife of the President of the Islamic Republic of Pakistan, Pakistan.	Do.
Do	Household: Kes, a bedspread, whose pieces can also be used as a shawl; multi-colored polished cotton fabric in patterned squares; woven by a family of weavers in district of Sukkur who expended three months in creating the Kes and whose reputation goes back 300 years; 70 inches x 16 feet, 8 inches; enclosed in a velvet-covered case. ($1500); Archives, foreign. Fabric: Black chiffon embroidered with real gold floral design overall; 13 feet x 4 feet, 3 inches; contained in a velvet-covered box. ($8000). Archives, foreign. Recd: Oct. 21, 1985. Est. value: $9500.	do	Do.
Do	Jewelry: Rhodocrosite beads with gold beads attached to a 14 kt. gold reproduction of a pre-Columbian artifact. Archives, foreign. Recd: Apr. 24, 1985. Est. value: $375.	Mrs. Maria Consuelo de Ardito Barletta, wife of the President of the Republic of Panama, Panama.	Do.
Do	Two gowns: One is black velvet and floor length with a silver sequined and rhinestone Phoenix bird design; the other is a red silk strapless gown with a rhinestone butterfly design at top and a matching jacket with same design repeated at top; both unsized and sewn by J. Moreno, Manila. Archives, foreign. Recd: Oct. 21, 1985. Est. value: $610000.	Mrs. Imelda Marcos, first lady of the Philippines, Philippines.	Do.
Do	Household: Handmade Portuguese "Arraiolos" rug depicting a medieval countryside scene of a figure on horseback, 69" x 45¾". Archives, foreign. Recd: May 8, 1985. Est. value: $800.	Mrs. Maria Manuela Eanes, wife of the President of the Portuguese Republic, Portugal.	Do.
Do	Household: White linen tablecloth with bluish embroidered tree design; 49" x 54"; and six matching napkins; made in Portugal. Archives, foreign. Recd; Oct. 21, 1985. Est. value: $800.	do	Do.
Do	Household: Beige organdy tablecloth embroidered with floral design; 104" x 98". Archives, foreign. Recd: May 13, 1985. Est. value: $500.	Mrs. Maria Barroso Soares, wife of the Prime Minister of the Portuguese Republic, Portugal.	Do.
Do	Clothing and accessories: Evening bag or minaudiere, gold (stamped 684 on left and 750 on right), depicting "NR" in diamond chips (13 & 14) and clasp in graduated diamonds (30); beveled interior mirror; made by Boucheron in France; 6½" x 3¾" x 1¾"; contained in a beige suede box lettered "NR"; 8¼" x 6" x 3". ($20,000); Archives, foreign. Clothing and accessories: A green silk outfit with hand-embroidered sequined floral and gold-thread designs, and a fuchia shaql of same design. ($5,000). Archives, foreign. Recd: Feb. 11, 1985. Est. Value: $25000.	His Majesty Fahd Ibn Abd Al-Aziz Al Saud, King of Saudi Arabia, Saudi Arabia.	Do.
Do	Jewelry: A gold chain bracelet depicting Oriental characters. ($700); Archives, foreign. Flowers: A box of orchids. ($200). Residence; for official use/display. Recd: Oct. 8, 1985. Est. value: $900.	His Excellency Lee Kuan Yew, Prime Minister of the Republic of Singapore, Singapore.	Do.
Do	Household: A mirror in scalloped wood frame depicting handpainted polychromed native figures; 42" x 36" overall. Ranch; for official use/display. Recd: May 7, 1985. Est value; $650.	His Excellency and Mrs. Felipe Gonzalez Marquez, President of the Government of Spain, Spain.	Do.
Do	Household: A gold-washed oval trinket box with incised design on hinged lid. seal and facsimile signatures of King Juan Carlos and Queen Sofia on inside of lid; 2¾" long x 7'8" thick; in blue leather box with royal seal. ($110); Archives foreign. Clothing and accessories: Yellow clutch handbag, envelope style, in soft leather with four interior compartments lined in black leather, by "Loewe"; 11½"8½" x 2". ($315); Archives, foreign. Clothing and accessories: Scarf in green, yellow, and blue shades, overall geometric design spelling out "Loewe" twice; 34" x 35". ($100). Archives, foreign. Recd: May 6, 1985. Est. value: $525.	Their Majesties Juan Carlos I and Queen Sofia, the King and Queen of Spain, Spain.	Do.
Do	Household: Amphora Style glass vase, handblown oxblood and glazed by Maurice Pittet, Saint Prex Glassworks, 1932; 12¾" x 5" across mouth, ($175). Archives, foreign. Artwork: Color engraving of Lake Geneva, by Pietro Sarto, signed; matted and displayed in a paper-covered and leather-spined folio; Image: 13" x 20½"; Folio 26" x 17½". ($200). Archives, foreign. Recd: Nov. 16, 1985. Est. value: $375.	The Honorable Gerard Desseuz Mayor of Saint Prex, Switzerland.	Do.
Do	Household: Tablecloth, white openworked style with geometric pattern overall and light blue undercover; 38" x 37"; and, four matching placemats and four plain white napkins; all cotton; machine-made in Switzerland ($150). Archives, foreign. Consumables: A box of chocolates ($30). Perishable. Recd: Nov. 16, 1985. Est. value: $180.	Mrs. Ursula Furgler, wife of the President of the Swiss Confederation, Switzerland.	Do.
Do	Jewelry: Rolex Oyster Wristwatch, date window, stainless steel band; in a blue leather presentation case with coat of arms on lid and lettered "Geneve November 1985;" and, a navy blue lizard "Rolex" wallet and a small "Rolex" handkerchief ($1,150). Archives, foreign.	Mr. Jacques Vernet, President, State Council of the Republic and Canton of Geneva, Switzerland.	Do.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Flowers: Floral arrangement ($50). Residence; for official use/display. Recd: Nov. 19, 1985. Est. value: $1200.		
Do	Eight books: "Faberge;" "Royal Ceremonies For the Rattanakosin Bicentennial;" "The Chakri Monarchs And The Thai People, 1982;" "The Ramakien" (Mural paintings/galleries of the temple of the Emerald Buddha); one on the Thai Palace; "Busy Finger" (on the birthday of Her Royal Highness Princess Sirindhorn) No. 294 of 500 special copies numbered and signed by author, and a set of five booklets on Thai procelain ($172). Archives, foreign. Clothing and accessories: Silk scarf, orchid design colored border stripes on blue background, lettered "Queen Sirikit"; 30" x 31" ($90) Archives. foreign. Jewelry: Two 18 kt. gold with diamond beetle pins (made from real beetles); 1" and 2½" respectively ($3250). Archives, foreign. Recd: Mar. 11, 1985. Est. value: $3512.	Her Majesty Sirikit, Queen of Thailand, Thailand.	Do.
Do	Household: White Linen tablecloth with silver threaded designs, 7½ feet x 16 feet, 2 inches, and twenty matching napkins, 16½ inches square each; Handmade in Tunisia. Archives, foreign. Recd: June 20, 1985. Est. value: $300.	Madame Habib bourguiba, wife of the President of Tunisia, Tunisia.	Do.
Do	Household: Circular mirror with chain, silver medallion motif with scalloped edge; 9" diameter; in red Archives, foreign. Recd: Oct. 21, 1985. Est. value: $300.	Mrs. Turgut Ozal, wife of the Prime Minister of the Republic of Turkey, Turkey.	Do.
Do	Jewelry: Necklace of graduated beads and a bracelet; both of pressed amber ($100). Archives, foreign. Household: A blue and white porcelain tea set, decorated with floral motif and gold trim; tray 12" x 8½"; pot, 9¼" high; and two cups and saucers; all signed and made in the U.S.S.R.,1985; contained in a fitted vinyl-covered chest ($350). Archives, foreign. Recd: Nov. 19, 1985. Est. value: $450.	Mrs. Raisea Gorbachev, wife of the General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Book: "Paintings" (of the Tretyakov Gallery Russian Museum) by the Novosti Press Agency Publishing House. 1979 ($50). Archives, foreign. Household: Lacquered box depicting a hand-painted Troika scene on hinged lid, made in the Soviet Union, 1984; 7¾" x 5¼ x 2¼" ($200). Archives, foreign. Recd: Mar. 7, 1985. Est. value: $250.	The Honorable Vladmir Vasil'Yevich Shcherbitskiy, First Secretary of the Central Committee, of the Communist Party of the Ukraine, Union of Soviet Socialist Republics.	Do.
Michael K. Deaver, Deputy Chief of Staff and Assistant to the President.	Artwork: Eskimo carving of a bird made out of Alberta Jade; 6" high, 12" long. GSA. Recd: Mar. 19, 1985. Est. value: $440.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada.	Do.
Gahl Hodges, Social Secretary to First Lady.	Jewelry: A Women's watch with black leather strap and gold face with diamond chips for numbers in a black leather and suede portfolio-style purse with double-folded strap closure made by Vacheron Constantin of Geneva. Switzerland, GSA.	His Majesty Al Hussein I, King of the Hashemite Kingdom of Jordan.	Do.
Do	Jewelry: An 18 kt. gold watch made by Longines in Switzerland, GSA. Recd: Feb. 21, 1985. Est. value: $2,500.	His Majesty Fahd Ian Abd Al-aziz Al Saud, King of Saudi Arabia.	Do.
Alton G. Keel, Jr., OMB Associate Director for National Security and International Affairs.	Household: Silver urn covered with etched designs; 9½" high. GSA. Recd: July 18, 1985. Est. value: $300.	The Government of Egypt	Do.
Robert C. McFarlane Assistant to the President for National Security Affairs.	Artwork: Eskimo carving of a penguin made out of Alberta Jade; 8" high, 6" long. GSA Recd: Mar. 19, 1985. Est. value: $275.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
Do	Heeshold: Cloisonne vase, beige backgorund with bird and floral motif, 15½" high. GSA. Recd: July 25, 1985. Est. value: $400.	His Excellency Xiannian Li, President of the People's Republic of China, People's Republic of China.	Do.
Do	Small Egyptian arm chair made of ivory; carved and incised with various Egyptian motifs; 9" high x 5" wide x " deep; encased in a blue velvet and satin case. GSA. Recd: Mar. 1, 1985. Est. value: $2000.	His Excellency Abu Ghazala, Minister of Defense, Egypt.	Do.
Do	Household: Oval silverplate tray with the emblem of Qatar etched in center and fruit relief as handles; 15" x 13"; made in Portugal. GSA. Recd: Dec. 20, 1985. Est. value: $250.	His Excellency Abdelkader Braik Al-Ameri Ambassador of the State of Qatar, Qatar.	Do.
Do	Photograph: A small autographed photograph of the donor and his wife in a silver frame; 7" x 9"; enclosed in a red velvet case. GSA. Recd: Apr. 4, 1985. Est. value: $225.	His Excellency Turgut Ozal, Prime Minister of the Republic of Turkey, Turkey.	Do.
Do	Clothing and accessories: A dark brown dyed muskrat hat with ear flaps that tie together at top of hat; made in Russia. GSA. Recd: Jan. 22, 1985. Est. value: $350.	His excellency Anatoliy F. Dobrynin, Ambassador of the Union of Societ Socialist Republics, Unin of Soviet Socialist Republics.	Do.
Do	Household: Box of assorted Russian items: Matching hand-painted wood spoon, bowl, and plate; set of wodden nesting dolls; one black hand-painted lacquered box with royal personage motif; one enamelled pin; one ceramic troika pendent; one ceramic candle holder; one metal tray with floral motif; and one ceramic chariot. GSA. Recd: Nov. 25, 1985. Est. value: $515.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
Do	Atwork: A laquered oval plaque with hand-painted scene of two carts with four riders and three horses each, against a rural setting; 16½" long x 11½" High; signed by "Padochuno, 1981–Hoisilmob". GSA. Recd: Nov. 7, 1985. Est. value: $825.	His excellency Eduard Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
John M. Poindexter, Assistant to the President for National Security Affairs.	Black wooden plate with inlaid mother-of-pearl and ivory in geometric patterns in center and around edge, 12" in diameter; and a black lizard skin man's wallet and matching belt with brown and black metal buckle. GSA. Recd: Dec. 11, 1985. Est. value: $215.	Major General Moustafa Eid Moustafa, Defense, Military, Naval and Air Attache, Egypt.	Do.
Donald T. Regan, Chief of Staff and Assistant to the President.	Artwork: Eskimo carving of a bird made of Alberta jade, 12" high. Presidential staff; for official use/display. Recd: Mar. 19, 1985. Est. value: $320.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
Do	Household: A pair of matching cloisonne vases, deep blue background with floral motif, 9½" high; and two wooden stands. Presidential staff; for official use/display. Recd: June 25, 1985. Est. value: $350.	His Excellency Wang Bingqian, State Councillor and Minister of Finance, People's Republic of China.	Do.
Do	Artwork: A reproduction of a native figure, 24 Kt. gold plated; mounted on a round wood base; 3" x 3" figure; base, 3" in diameter, 3" tall; with an attached brass plaque lettered "Augusto Ramirez Ocampo—Ministro de Relaciones Exteriores—de Columbia". Presidential staff; for official use/display. Recd: Apr. 9, 1985. Est. value: $500.	His Excellency Augusto Ramirez Ocampo, Minister of Foreign Relations of the Republic of Columbia, Colombia.	Do.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Red leather covered desk diary for 1986 produced by the Ministry of Information for Qatar; also included is an oval silver-plated tray with the state emblem of Qatar etched in center and fruit relief as handles; 15" x 13"; made in Portugal. GSA. Recd: Dec. 24, 1985. Est. value: $325.	His Excellency and Mrs. Abdelkader Braik Al-Ameri, Ambassador of the State of Qatar, Qatar.	Do.
Do	Photograph: Color Photograph of three camels against a desert background; under glass with gold colored matting and black lacquer frame; 25" x 31". GSA. Recd: Apr. 25, 1985. Est. value: $215.	Mohammad Abalkhail, Minister of Finance and National Economy, Riyadh, Kingdom of Saudi Arabia, Saudi Arabia.	Do.
Do	Household: Box of assorted Russian items: Matching hand-painted spoon, bowl, and plate; set of wooden nesting dolls; one black hand-painted lacquered box with seated figure on top; one enamelled pin; one ceramic troika pendant; one ceramic candle holder; one metal tray with floral motif; and one small black metal cannon. GSA. Recd: Nov. 25, 1985. Est. value: $515.	His Excellency and Mrs. Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, Union of Soviet Socialist Republics.	Do.
James Scott Rosebush, Deputy Assistant to the President, Chief of Staff for the First Lady.	Artwork: Inuit carving of a mother carrying a child on her back; made out of a black-green stone, stylized Eskimo garb. GSA. Recd: Mar. 20, 1985. Est. value: $350.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Do.
Do	Jewelry: Gold watch with leather band made by Jaeger-Lecoultre, Switzerland; also included is a set of white and yellow gold cuff links with the Palm and Saber Emblem of Saudi Arabia. GSA. Recd: Feb. 27, 1985. Est. value: $1950.	His Majesty Fahd Ibn Abd Al-Aziz Al Saud, King of Saudi Arabia, Saudi Arabia.	Do.
Gaston J. Sigur, Jr., Special Assistant to the President for National Security Affairs.	Household: Cloissone plate, white background with floral and butterfly motif, 10" in diameter; also included is a carved wooden stand. Presidential staff; for official use/display. Recd: July 25, 1985. Est. value: $225.	His Excellency Li Xiannian, President of the People's Republic of China, People's Republic of China.	Do.
Do	Household: A set of six, 80 percent silver dessert spoons with flat finish and a gold and green rosette attached to the handle of each; stamped on the back of each spoon are the words, "presented by Prime Minister Shinyong Lho, Republic of Korea." GSA. Recd: Oct. 31, 1985. Est. value: $300.	His Excellency Shinyong Lho, Prime Minister of the Republic of Korea, Republic of Korea.	Do.
Larry M. Speakes, Assistant to the President and Principal Deputy Press Secretary.	Jewelry: Omega watch with leather band and gold face; bearing the seal of King Hussein on face and on cover of maroon watch case. GSA. Recd: May 27, 1985. Est. value $350.	Mr. Fouad Ayoub, Press Secretary to the King, Jordan.	Do.
Leonard B. Zuza, Budget Examiner, International Affairs Division, NSIA, OMB.	Household: Silver plate covered with etched designs: 10¼" in diameter. GSA. Recd: July 8, 1985. Est. value: $250.	The Government of Egypt, Egypt	Do.

Office of the Vice President

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Bush	Val St. Lambert decantur and six glasses: Recd. June 6, 1985. Est. Value—$490.00. Accepted for Residence.	King Baudouin I and Queen Fabiola, Belgium.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	40 pounds of dates and wine: Recd. Feb. 4, 1985. Est. Value—$60.00. Dates destroyed; wine consumed.	President Chadli Bendjedid, Algeria	Do.
Do	Bracelet: Recd. Feb. 1985. Est. Value—$200.00. Morehouse School of Medicine.	....do	Do.
Do	Necklace: Recd. Feb. 1985. Est. Value—$250.00. Morehouse School of Medicine.	....do	Do.
Do	5 pounds of figs & case of Algerian wine: Recd. April 23, 1985. Est. Value—$10.00. Consumed.	President and Mrs. Chadli Bendjedid, Algeria.	Do.
Mrs. Bush, Wife of Vice President.	Fabric—Natural silk yarns and mirocal golden yarns, 3 yds. Recd. April 1985. Est. Value—$450.00. Morehouse School of Med.	Mrs. Chadli Bendjedid, Wife of President	Nonacceptance would have caused embarrassment to donor.
Vice President and Mrs. Bush	Silver treasure chest with gold handles and gold design on top filled with Fauchon chocolates: Recd. Nov. 1, 1985. Value: $250.00. Chest in storage pending transfer to GSA for disposition; chocolates consumed.	Lt. Sharif Zeid Bien-Shaker, Jordan	Do.
Vice President Bush	Firabaldi coin set: Recd. July 11, 1985. Value—$200.00. Accepted for West Wing Office.	Prime Minister Bettino Craxi, Italy	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Bush (Wife of Vice President).	Porcelain cache-pot: Recd. July 11, 1985. Value—$400.00. Accepted for Residence.	Signora Anna Craxi (Wife of Prime Minister).	Nonacceptance would have caused embarrassment to donor.
Vice President Bush	Ivory piece shaped like vase with deer carved on it; vase with eagle carved on it; ivory and ebony wood stand: Recd. Oct. 1985. Value—$750.00. Storage pending transfer to GSA for disposition.	Prime Minister El Girouli Dal'afa, Sudan	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	13" Waterford Crystal vase with foot base: Recd. July 23, 1985: Value—$520.00. Broken and destroyed.	Stephen Daly, Irish Teachers Project, ITP House, 29 Terenure East, Dublin, Ireland.	Nonacceptance would have caused embarrassment to donor
Do	Box made of malachite and gold: Recd. Feb. 1985. Value—$4000.00. Accepted for Residence.	King Fahd, Saudi Arabia	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	Gold and Silver picture frame 8x10: Recd. Feb. 1985. Value—$1800.00. Accepted for Residence.	....do	Do.
Do	Silver and gold chalice: Recd. Feb. 1985. Value—$1200.00. Accepted for Residence.	....do	Do.
Do	Leather portfolio; silver letter opener; two ivory carved heads: Recd. March 1985. Value—$610.00. Portfolio and opener in storage pending transfer to GSA for disposition; Ivory heads at Morehouse School of Medicine.	Albert Ferrhal, National Museum of Niger, Niamey, Niger.	Nonacceptance would have caused embarrassment to donor.
Vice President and Mrs. Bush	Small bidri vase with black and silver decoration; reproduction of antique urn: Recd. June 12, 1985. value—$650.00. Accepted for Residence.	Prime Minister and Mrs. Rajiv Gandi, India.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Vice President Bush	Hand embroidered quilt "Folklore Borders": Recd. Feb. 15, 1985. Value—$800.00. Storage pending transfer to GSA for disposition.	A.Z.M. Obaidullah Khan, Bangladesh	Nonacceptance would have caused embarrassment to donor.

Office of the Vice President—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Bush	Fabric; picture of angora cat in wooden frame; chinese vase 13" high: Recd. July 24, 1985. Value—$765.00. Fabric in storage pending transfer to GSA for disposition; Picture and vase accepted for Residence.	President and Mrs. Li Xannian, PRC	Nonacceptance would have caused embarrassment to donor and U.S. Government
Vice President Bush	Ebony statue, 16" x 9" of figures intertwined on bark: Recd. Sept. 20, 1985. Value—$1200.00. Morehouse School of Medicine.	President Samora Moises Machel, Mozambique.	Do.
Do	Camel Saddle; 2 daggers; handbags (6); camel blanket: Recd. March 1985. Value—$320.00. Saddle and Daggers to Morehouse School of Medicine; handbags fell apart and were destroyed; Blanket to Morehouse School of Medicine.	Amadou Seyni Maiga, Niger	Nonacceptance would have caused embarrassment to donor.
Do	Medallion of the Elysee Palace: Recd. July 11, 1985. Value—Rare	President Francois Mitterrand, France	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	Small jade incense burner: Recd. March 15, 1985. Value $300.00. Accepted for Residence.	Sir Yue-Kong Pao, World Shipping Center, 7 Canton Road.	Nonacceptance would have caused embarrassment to donor.
Mrs. Bush (Wife of Vice President).	Silver cigarette box with gold medallion applied on lid: Recd. June 24, 1985. Value—$175.00. Accepted for Residence.	President Sandro Pertini, Italy	Do.
Vice President Bush	Cherry Blossom Schroll 83" x 80": Recd. Oct. 15, 1985. Value—$350.00. Storage pending transfer to GSA for disposition.	Government of the PRC	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	Embroidered batiste table-cloth with 8 napkins: Recd. Oct. 15, 1985. Value—$350.00. Accepted for Residence.	....do	Do.
Do	Two wood carvings and framed reproduction of print from Palau museum: Recd. Oct. 12, 1985. value—$170.00. carvings in storage pending transfer to GSA for disposition; print accepted for residence.	President Lazarus Salii, Western Caroline Islands.	Do.
Vice President and Mrs. Bush	Straw mat; red cotton fabric; 4' sword; silver bracelet: Recd. March 1985. Value—$725.00. Mat and bracelet to Morehouse School of Medicine: sword in storage pending transfer to GSA for disposition; fabric kept.	Hamid Ali Shaah, Sudan	Nonacceptance would have caused embarrassment to donor.
Vice President Bush	Original painting from Thailand: Recd. April 9, 1985. Value—$740.00. Pending disposition.	The Surawongse Gallery, Bangkok, Thailand.	Do.
Vice President and Mrs. Bush	Small shell necklace; small shell bracelet; ifil wood carving of oxen; solid silver belt buckle; ifil wood box: Recd: Oct. 12, 1985. Value—$260.00. Wood Carving accepted for Residence; others are pending disposition.	Governor and Mrs. Pedro Tenorio, Northern Mariana Islands.	Nonacceptance would have caused embarrassment to donor and U.S. Government
Do	Bracelet and Necklace made of brass and tin; two handwoven rugs; wooden spirit mask; 1 bou bou dresses; carved wooden door; alligator leather briefcase: Recd. March 1985. Value—$500.00. Rugs, dresses, mask, door to Morehouse School of Medicine; jewelry kept; briefcase in storage pending transfer to GSA for disposition.	President and Mrs. Traore, Mali	Do.
Mrs. Bush	Gold pendant; wooden mask; gold bracelet: Recd. June 11, 1985. Value—$745.00. Morehouse School of Medicine.	Mrs. Moussa Traore, Mali	Nonacceptance would have caused embarrassment to donor.

U.S. Senate

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Max Baucus, U.S. Senator	Cuff links; Recd Dec. 5, 1985. Est. Value—$380.00. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mr. Ta-Hai-Li, Minister of Economic Affairs, Republic of China.	Refusal would likely cause offense or embarrassment.
Diana D. Cohen, Wife of U.S. Senator William Cohen.	Coral Necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mrs. Yu Kuo Hwa, Taipei, Taiwan (Premier's Wife).	Do.
Bob Dole, U.S. Senator	Chinese silk rug, 73" x 111", made in manner and design of 16th century Safavidi Dynasty of Persia; Recd Sept. 28, 1985. Est. Value—$10,000. Requested and received approval from the Select Committee on Ethics on Oct. 21, 1985, for official use of item during tenure in the Senate.	Zheng Shu Guang, Governor of Hebei Province, Shijazhuang, People's Republic of China.	Do.
Do	Herend china coffee set, coffee pot, covered sugar bowl, and creamer, handpainted bone china with a magenta floral design with gold accents; Recd June 13, 1985. Est. Value—$499.00. Requested and received approval from the Select Committee on Oct. 1, 1985, for official use of item during tenure in the Senate..	Dr. Laszlo Kapolyi, Hungarian Minister of Industry.	Do.
Do	Cufflink set, silver and amethyst with cabochon cut; Recd Oct. 28, 1985. Est. Value—$200.00. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Prime Minister Shinyong Lho, Republic of Korea.	Do.
Elizabeth Dole, Wife of U.S. Senator Bob Dole.	Coral 18K gold ring; Recd Oct. 28, 1985. Est. Value—$350.00. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Minister of Foreign Affairs and Mrs. Fu-sung Chu, Republic of China.	Do.
Do	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mrs. Yu Kuo Hwa, Taipei, Taiwan (Premier's Wife).	Do.
Nancy Domenici, Wife of U.S. Senator Pete Domenici.	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	....do	Do.
Daniel J. Evans, U.S. Senator	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	....do	Do.
John Kerry, U.S. Senator	Mother of Pearl Desk Set; Recd April 1985. Est. Value—in excess of $200. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	President and Mrs. Marcos, Philippines	Do.
Do	Jewelry set including diamond and baroque pearl and gold earrings and matching ring and matching cufflink set; Recd April 1985. Est. Value—$375-$575. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	....do	Do.
Louise McClure, Wife of U.S. Senator James McClure.	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mrs. Yu Kuo-Hwa, Taipei, Taiwan (Premier's Wife).	Do.

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U.S. Senate—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Moynihan, Wife of U.S. Senator Daniel P. Moynihan.	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	...do	Do.
Sam Nunn, U.S. Senator	Jewelry set, 3-piece, gold and smoke quartz; Recd Sept. 26, 1985. Est. Value—$240.00. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Kim Lyun Joon, President of Han Yang University, Seoul, South Korea.	Do.
Gayle Wilson, Wife of U.S. Senator Pete Wilson.	Coral necklace; Recd August 1985. Est. Value—$250-$300. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Mrs. Yu Kuo-Hwa, Taipei, Taiwan (Premier's Wife).	Do.
Jesse Helms, U.S. Senator	Aug. 5-12, 1985; Recd travel within Israel	Government of Israel	Do.
James P. Lucier, Chief Legislative Assistant to Senator Helms.	...do	...do	Do.

U.S. House of Representatives

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sam Gibbons, Member of Congress	Choker length string of pearls. Recd August 8, 1985. Est. value—$460. Delivered to Clerk of House for disposition October 17, 1985	Prime Minister Nakasone, Japan	Nonacceptance would have caused embarrassment to donor
Jack Kemp, Member of Congress	Items of jewelry (earrings, rings, cufflinks, studs, broach, and necklaces). Recd September, 1985. Est. Value—$10,420. Delivered to Clerk of House for disposition November 7, 1985	President and Mrs. Ferdinand Marcos, Republic of the Philippines	Do.
Do	Three vases, tablecloth set, album of painting reproductions. Recd November, 1985. Est. Value—$345. Delivered to Clerk of House for disposition December 10, 1985	Minister of Foreign Affairs, Republic of China.	Do.
Thomas P. O'Neill, Jr., Member of Congress	Ceramic horse. Recd July 23, 1985. Est. Value—$600. Transferred to Speaker's Dining Room for Official Use	President, People's Republic of China	Do.
Bill Richardson, Member of Congress	Set of five books. Recd January, 1985. Est. Value—$207.50 Delivered to Clerk of House for disposition December 12, 1985	Embassy of Saudi Arabia	Do.
Do.	Desk set, mirror, dress, flower arrangement. Recd April 14, 1985. Est. Value—$245. Delivered to Clerk of House for disposition December 12, 1985	Republic of the Philippines	Do.
Ike Skelton, Member of Congress	Watch, 2 vases. Recd September 6, 1985. Est. Value—$300. Delivered to Clerk of House for disposition December 30, 1985	Republic of China, Taiwan	Do.

U.S. House of Representatives

Report of Travel or Expenses of Travel

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Kenneth B. Kramer, Member of Congress.	Air transportation to Windhoek—UNITA headquarters—Johannesburg	Republic of South Africa	Visit with UNITA leadership as part of fact finding trip.

Department of the Air Force

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Col. Robert E. Cunniff, Comdr. AFOSI District 42, Clark AB Pl.	Rattan furniture (2 small glass, top end tables, 1 glass top coffee table, 2 easy chairs and a matching love seat). Rcvd. October 17, 1985. Estimated value—$430.00. Approved for official use in break room at AFOSI District Headquarters.	Brig. Gen. Pedrito de Guzman, Armed Forces of the Philippines.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Gabriel, wife of Gen. Charles A. Gabriel, USAF, Chief of Staff.	Silk tablecloth (4'4" x 4'4", flower print in rose, beige and gold colors, gold fringe all around). Rcvd. September 1985. Estimated value—$600.00. Stored at Office of Chief of Staff, USAF (reported to GSA to transfer item to GSA vault).	Brig. Gen. Mohammed Kabbaj, Inspector, Moroccan AF.	Do.
Do	Two silk pillowcases (17" x 17" rust and gold colors and 18" x 18", green and gold colors). Rcvd. September 1985. Estimated value—$300.00. Stored at Office of Chief of Staff, USAF (reported to GSA to transfer items to GSA vault).	...do	Do
Do	Silk tablecloth (3'2" x 3'2", flower print in pink, rust and green colors, rust fringe all around) Rcvd. October 9, 1985. Estimated value—$200.00. Stored at Office of Chief of Staff, USAF (reported to GSA to transfer item to GSA vault).	Gen. Wang Hai, Comdr., Chinese AF	Do.
Gen. Charles A. Gabriel, USAF Chief of Staff.	F-4 oil painting (canvas 24" x 18", frame 28" x 22") Rcvd. October 15, 1985. Estimated value—$185.00. Stored at Office of Chief of Staff, USAF (reported to GSA to transfer item to GSA vault).	Group Captain Prapin Thongpoonsak, Comdr., Wing 23, Royal Thai AF.	Do.
Maj. Gen. Charles A Horner, Comdr., USAF, Air Defense Weapons Center, Tyndall AFB, FL.	Sterling silver plate, emblazoned with the crest of the Combat Commanders School, Pakistani AF, with a red velvet case with gold trim (8" in diameter). Rcvd. April 22, 1985. Estimated value—$175.00. Approved for permanent display at HQ USAF Defense Weapons Center at Tyndall AFB FL.	Group Captain M. Abbas Khattak, Combat Commanders School, Pakistan AF.	Do.
Col. James J. LeClair, Comdr., 438 Military Airlift Wing, McGuire AFB, NJ.	Two 2.5' x 4.5' red, blue, and white Moroccan carpets Rcvd. January 29, 1985. Estimated value—between $200.00 and $400.00. Approved for official use at the Distinguished Visitors Quarters, McGuire AFB, NJ.	Queen of Morocco, Kingdom of Morocco	Do.

Department of the Air Force—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Capt. Cynthia M. Mackey, Protocol Officer, 438 Military Airlift Wing, McGuire AFB, NJ.	Two 2.5' x 4.5' off white with black and red designs Moroccan carpets Rcvd. January 29, 1985. Estimated value—between $200.00 and $400.00. Approved for official use at the Distinguished Visitors Quarters, McGuire AFB, NJ.	...do	Do.
Honorable Verne Orr, Secretary of the Air Force.	Far Eastern Silver Filigree Ship Model (approx 15" long, 9½" high, weighs 7 oz.). Rcvd. June 1985. Estimated value—$350.00. Stored at the Office of the Secretary of the Air Force (reported to GSA to transfer item to GSA vault).	Secretary General Yogi Supardi, Jakarta, Indonesia.	Do.
Do.	Silver cigarette box (stamped "Sterling Thailand"). Rcvd. June 1985. Estimated value—$950.00. Stored at the Office of the Secretary of the Air Force (reported to GSA to transfer item to GSA vault).	Air Chief Marshall Prapan Dhupatemiya, Commander-in-Chief, Royal Thai AF.	Do.
Maj. Karl J. Rodenhauser, Executive Officer 438 Military Airlift Wing, McGuire AFB, NJ.	Two 2.5' x 4.5' red, blue, and white Moroccan carpets. Rcvd. January 29, 1985. Estimated value—between $200.00 and $400.00. Approved for display in the Distinguished Visitors Quarters, McGuire AFB, NJ.	Queen of Morocco, Kingdom of Morocco	Do.
Maj. Gen. Robert D. Springer, Comdr., 21st AF.	One 5.5' x 7.5' royal blue and white Mosoccan carpet. Rcvd. January 29, 1985. Estimated value—between $380.00 and $1,580.00. Approved for official use at the Distinguished Visitors Quarters, McGuire AFB, NJ.	...do	Do.

Department of the Army

Report of Tangible Gifts

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
SP4 Eric Baez, Patient Care Specialist, Walter Reed AMC, Washington.	Longines men gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	Prince Mohamed Abdulaziz, Saudi Arabia	To preclude potential embarrasment to the Government and donor.
SP4 Stefan E. Biberfeld, Patient Care Specialist, Walter Reed AMC, Washington.	Longines men gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
1LT Gail Booker, Staff Nurse, Walter Reed AMC, Washington.	Geneve lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
LTC Bruce W. Booth, Staff Surgeon, Walter Reed AMC, Washington.	Rolex gold watch. Recd November 1985. Est. Value—$3,000. Gift returned by LTC Booth to the Prince.	...do	Do.
CPT Young B. Chung, Staff Nurse, Walter Reed AMC, Washington.	Geneve lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
SP4 Ann C. Drazba, Patient Care Specialist, Walter Reed AMC, Washington.	Longines lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
LTC Charles L. Dandy, Anesthesiologist, Walter Reed AMC, Washington.	Riviera men gold watch. Recd November 1985. Est. Value—$2,000. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
MAJ Steven F. Gouge, Nephrology Consultant, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$2,000. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
CPT Stephen D. Harris, Anesthesiologist, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$2,000. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
1LT Peggy Iverson, Staff Nurse, Walter Reed AMC, Washington.	Geneve lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
Honorable John O. Marsh, Jr., Secretary of the Army, Pentagon, Washington.	Silkscreen. Recd November 1985. Est. Value—$228. General Officers' Mess #1, Pentagon.	The Honorable Yoon Sung Min, Minister of National Defense, Republic of Korea.	Do.
SFC Milton W. Mercer, Wardmaster, Walter Reed AMC, Washington.	Longines men gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	Prince Mohamed Abdulaziz, Saudi Arabia.	Do.
CPT Victor L. Modesto, General Surgeon, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$3,000. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
MG Lewis A. Mologne, Commander, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$8,000. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
1LT John Nulty, Staff Nurse, Walter Reed AMC, Washington.	Omega men watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
COL William J. Oetgen, Asst. Chief, Cardiology, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$1125. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
GEN William R. Richardson, Commander, TRADOC, Fort Monroe, VA.	9mm Argentine Army Pistol. Recd November 1985. Est. Value—$249. US Army Military Personnel Center, Alexandria, VA.	BG Ernesto A. Alais, Argentina	Do.
LTC Guillermo Quiepo, General Surgeon, Walter Reed AMC, Washington.	Rolex men gold watch. Recd November 1985. Est. Value—$10,000. US Army Military Personnel Center, Alexandria, VA.	Prince Mohamed Abdulaziz, Saudi Arabia.	Do.
SP4 Lori A. Renner, Patient Care Specialist, Walter Reed AMC, Washington.	Longines lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
CPT Francisca M. Stone, Head Nurse, Walter Reed AMC, Washington.	Geneve lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.
SP4 Juanita L. Stephens, Records Technician, Walter Reed AMC, Washington.	Longines lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	...do	Do.

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Department of the Army—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
SP4 Kathie Tiller, Patient Care Specialist, Walter Reed AMC, Washington.	Longines lady gold watch. Recd November 1985. Est. Value—$200. US Army Military Personnel Center, Alexandria, VA.	do	Do.
Mr. Fouad K. Aide, Allied Liaison Officer, US Army Military Police, School, Ft McClellan, AL.	Gold watch and 3 diamond rings. Recd November 1985. Est. Value—$1,722. Mr Fouad K. Aide, Ft McClellan, AL.	MAJ Dahem Al-Otaibi, Saudi Arabia	Do.
MG Henry Doctor, Commander, 2nd Infantry Division, Republic of Korea.	Sam Jung Do. Saber, scabbard and box, container. Recd November 1983. Est. Value—$1,000. HQ, 2nd Infantry Division Museum.	President, Republic of Korea	Do.
COL Richard D. Hooker, DCS, USMTM, Saudi Arabia.	Rolex men gold watch. Recd November 1985. Est. Value—$800. US Army Military Personnel Center, Alexandria, VA.	Vice Chief of Staff, Saudi Arabian Armed Forces.	Do.
CPT William S. Knoebel, SGS, USAMILPERCEN, Alexandria, VA.	Gold cuff link set. Recd November 1985. Est. Value—$300. US Army Military Personnel Center, Alexandria, VA.	Chief of Staff, Jordanian Army	Do.
COL John R. Pietak, Post Commander, Camp King, Federal Republic of Germany.	Gold pen/pencil set. Recd November 1985. Est. Value—$276. US Army Military Personnel Center, Alexandria, VA.	Mr Herr Bechtel, Federal Republic of Germany.	Do.

Central Intelligence Agency

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated, value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William J. Casey, Director, CIA	Lalique molded crystal vase. Inscribed on bottom "Lalique France." H: 8. Recd November 1985. Est Value—$200.00. To be reported to GSA for disposition.	Public Law 95-105 (A(F)(4)	Nonacceptance would have caused embarrassment to donor.
Do	(a) French revolver. Maker, d'Armes St. Etienne, 1892 model. Serial number F88612. In fitted case. (b) 'Sevres' bottle vase. Cobalt ground with gilt flowers. H: 5¾. Recd December 1985. Est Value—$425.00. To be reported to GSA for disposition.	do	Do.
Do	Two African bronze sculptures. (a) Brown patina, with elaborate headdress and holding two objects, H: 16; and (b) Bust, gold patina, H: 15½. Recd December 1985. Est Value—$300.00. To be reported to GSA for disposition.	do	Do.
Do	English silver and marble hinged cigarette box. The medallion top with map of Egypt, seal, compass and sailing vessel. Maker Asprey, London, Contemporary. Recd February 1985. Est. Value—$1,500.00. Retained for official display.	do	Do.
Do	Chinese silver miniature of turtleboat. Replica of the earliest ironclad war ship. After design by Adm. Lee Sun Shin. Within a dust proof case. L: of model 6. Recd October 1985. Est. Value—$175.00. To be reported to GSA for disposition.	do	Do.
Do	Middle Eastern sword. Bone pommel with gilt and silvered metal sheath. Probably Thai. Within a glazed and wood trim case. L: of sword 23. Recd May 1985. Est. Value—$175.00. To be reported to GSA for disposition.	do	Do.
Do	Chinese green hardstone necklace with pi pendant and good luck roundel medallion. 14 karat yellow gold mounts. Recd 1985. Est. Value—$250.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Chinese onion jade pi brooch. 10 Karat yellow gold mount. (b) Chinese hardstone ensemble. Consisting of a necklace, bracelet, pair pendant earrings, and a finger ring. Each with yellow gold mount. 5 pieces. (c) Chinese carved wood orb-form bowl. With relief calligraphy body. H: 13½. Recd May 1985. Est. Value—$700.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Fiberglass replica plaque. A Model of a Scene Representing Two Men Carrying Corn from Tomb of Noble. Plaque size 14 x 23. (b) Emerald, ruby and diamond ring. Unmarked yellow gold mount with a cartouche design top centering a round faceted emerald, round faceted ruby and twenty-six rose diamonds. Recd April 1985. Est. Value—$275.00. To be reported to GSA for disposition.	do	Do.
John N. McMahon, Deputy Director, CIA.	Egyptian silver gilt highlighted sultan's dagger. With country seal and Farsi medallion. Encased Recd October 1985. Est. Value—$175.00. To be reported to GSA for disposition.	do	Do.
Do	Indo-Keshan rug. 8.1 x 5. Ivory ground with trellising floral field centering a pulled lobed medallion on blue ground, beige spandrels, palmette and trellising vine guard border on blue ground. Recd October 1985. Est Value—$800.00. Retained for official display.	do	
Do	Middle Eastern Bokhara-type rug. 5.8 x 4.3. Three rows of six octagon medallions on beige ground. five guard borders. Recd October 1985. Est Value—$175.00. Retained for official display..	do	Do.
Agency employee	(a) Diamond, ruby and emerald "safety pin" brooch. The unmarked yellow gold safety pin mount set with sixty-two round diamonds weighing approximately 4 carats, seventeen square cut rubies, and four emeralds. (b) Diamond pendant-brooch. Unmarked wreath and ribbon mount set with thirty-two round diamonds weighing approximately .75 carats. Recd June 1985. Est Value—$1,200.00. To be reported to GSA for disposition.	do	Do.
Do	(a) Three French color prints. Parisian Street Scenes. Each entitled; after paintings by Arno. (b) Oriental silver card tray with gilt seal medallion. Together with a folding wood stand. D: of tray 6¾. (c) Thai gilt metal and niello silver presentation plate. D: 11. Together with folding wood stand. (d) Pair Chinese cloisonne vases. Each baluster body with green ground with flowering bush and bird. H: 7½. (e) Chinese silver and enameled plaque. With gilt metal and enameled seal above a presentation, easel-back frame. Recd Unknown. Est Value—$280.00. To be reported to GSA for disposition.	do	Do.
Do	German luger. Model 1917. With clip magazine. Recd 1984. Est Value—$1,100.00. To be reported to GSA for disposition.	do	Do.

Central Intelligence Agency—Continued

Name and title of recipient	Gift, date of acceptance, estimated, value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Men's Audemars Piguet wrist watch. 18 Karat yellow gold case with black reptile band. Case number B72321. Recd June 1985. Est Value—$400.00. Retained for official use.	do	Do.
Do	African carved ivory figure of standing male. Wearing elaborate headdress. On an oval wood base. H: overall 19¼. Recd June 1985. Est Value—$350.00. To be reported to GSA for disposition.	do	Do.
Do	Filigree gold ensemble. Probably African. Consisting of a necklace, and a flexible bracelet. Wt. approximately 5 oz. Recd June 1985. Est. Value—$1,200.00. To be reported to GSA for disposition.	do	Do.
Do	Men's Cartier watch. Yellow gold filled case and attachment, quartz movement. Serial Number 653472. Recd July 1985. Est Value—$275.00. To be reported to GSA for disposition.	do	Do.
Do	Pair pearl and sapphire earrings. 14 Karat yellow gold mounts, each set with a cultured pearl, three marquise blue sapphires and a round faceted blue sapphire. Pierced type mounts. Recd July 1985. Est. Value—$175.00. To be reported to GSA for disposition.	do	Do.
Do	Diamond and emerald ensemble. Consisting of a pendant necklace with chain, and a pair of earrings. The pendant set with pear shaped emerald, two square cut emeralds, two emerald cut diamonds and fourteen round diamonds. The pair of pierced earrings each set with twelve round diamonds and two square cut emeralds. Total wt. of diamonds 1 carat; total wt. of emeralds approximately 1 carat. Each in 18 karat yellow gold mount. 3 pieces. Recd May 1983. Est Value—$800.00. To be reported to GSA for disposition.	do	Do.
Do	Middle Eastern dagger. Repousse silver mounts and horn pommel. (b) Two English vermeil silver perfume bottle housings. Each in the Persian manner. (c) Middle Eastern repousse silver table garniture. Consisting of a rectangular two-handle tray with vermeil radiating ground, trifid censer, spice box, and a round covered box. Total wt. 75 oz. Recd March 1985. Est Value—$675.00. To be reported to GSA for disposition.	do	Do.
Do	Diamond initial tie tac "T." The unmarked yellow gold initial mount set with eighteen round diamonds weighing approximately .55 carats. Recd June 1985. Est Value—$350.00. To be reported to GSA for disposition.	do	Do.
Do	Man's diamond ring. Unmarked yellow gold mount with punchwork top centering a round brilliant cut diamond weighing approximately .35 carats. Recd June 1985. Est Value—$750.00. To be reported to GSA for disposition.	do	Do.
Do	Man's Cartier date watch. Stainless steel and gold filled case and band attachment, with blue sapphire crown. Serial number 296184373. Recd December 1984. Est Value—$175.00. To be reported to GSA for disposition.	do	Do.
Do	Epson model ET-12G battery operated AM/FM radio-color television. Recd 1985. Est Value—$175.00. To be reported to GSA for disposition.	do	Do.

Department of Commerce

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lionel Olmer, Under Secretary for International Trade.	Silver brooch with eight pearls. Recd Jan. 2, 1985. Est. Value—$200. Reported to GSA and stored in Operations Support Services pending disposition by GSA.	Mr. Taiji Kohara, President, International Public Relations, Japan.	Nonacceptance would have caused embarrassment to donor.

U.S. Court

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
United States Court of Appeals for the District of Columbia Circuit (gift given to court as opposed to any individual judge in that court).	Hand embroidered linen tablecloth with matching napkins. Received May 8, 1985. Est. Value—$200. Designated by the Director for official use in the United States Courthouse, Washington, DC.	President, Vice President, and members of the Supreme People's Court of the People's Republic of China.	Nonacceptance would have caused offense to and embarrassment of donor.
United States Court of Appeals for the Ninth Circuit (gift given to court as opposed to any individual judge on that court).	Late 19th/early 20th century copy of Ming Dynasty dish. Received May 15, 1985. Est. Value—$250.	do	Do.

Department of Defense

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Men's 18K gold Piaget watch w/small diamonds surrounding the face, and a gold band; matching cuff links, with small diamonds around the edges; and ladies' double strand cultured pearl necklace, with gold clasp. Recd Nov. 18, 1985. Est. Value—watch—$10,000, cuff links—$2,000, necklace—$400, Total—$12,400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	The Amir of Bahrain	Nonacceptance would have caused embarrassment to donor.

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Department of Defense—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do.	Onyx-marble chess set w/board and pieces. Recd Dec. 12, 1985. Est. Value—$175. Stored in Space Management and Services pending transfer to GSA for disposition.	Admiral Tariq K. Khan, Chief of Naval Operations, Pakistan.	Do.
Col. Burton Bacheller, USAF, Weapons Systems Division, Plans Directorate, Defense Security Assistance Agency.	Breitling Geneve aviator's watch, Navitimer, Swiss made, stainless steel, #81470-11108. Recd July 23, 1985. Est. Value—$400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Col. Hamid Abdelli, Commander, Armed Forces, Democratic and Popular, Republic of Algeria.	Do.
Lt. Col. James Carney, USAF, Office of the Assistant Secretary of Defense (International Security Affairs), Near Eastern/South Asian Affairs.	Breitling Geneve aviator's watch, Navitimer, Swiss made, stainless steel, #81470-11765. Recd July 1985. Est. Value—$400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	do	Do.
ADM William J. Crowe, Jr., Chairman, Joint Chiefs of Staff.	Graphic artwork by Senegalese artist (woman and child). Recd Nov. 21, 1985. Est. Value—$250. Approved for official display in office of donee.	Gen. Joseph Tavares Da Souza, Chod, Senegal.	Do.
Lt. Gen. Philip C. Gast, USAF, Director, Defense Security Assistance Agency.	18K gold cartouche cuff links. Recd Jan. 11, 1985. Est. Value—$400. Delivered to GSA for disposition Feb. 27, 1985.	Lt. Gen. Ibrahim E. Orabi, Chief of Staff, Egyptian Armed Forces.	Do.
Do.	Ivory carving of Egyptian barge. Recd Feb. 27, 1985. Est. Value—$400. Approved for official display in government quarters at Bolling Air Force Base.	Field Marshal Abu-Ghazala, Minister of Defense, Arab Republic of Egypt.	Do.
Do.	Egyptian rug, 30" x 58½". Recd Mar. 31, 1985. Est. Value—$200. Approved for official display in government quarters at Bolling Air Force Base.	Lt. Gen. Ibrahim E. Orabi, Chief of Staff, Egyptian Armed Forces.	Do.
Do.	Onyx decorator plate, inlaid w/mother-of-pearl. Recd Apr. 22, 1985. Est. Value—$500. Approved for official display in office of donee.	Maj. Gen. M. Rahim Khan (Ret.), Secretary General, Ministry of Defense, Government of Pakistan.	Do.
Do.	18K gold cartouche cuff links; 18K gold cartouche necklace. Recd June 18, 1985. Est. Value—cuff links—$350, necklace—$125, Total—$475. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Dr. Gamal Said, Director of Military Production, Arab Republic of Egypt.	Do.
Do.	Ivory carving, 13" tall. Recd Aug. 27, 1985. Est. Value—$500. Approved for official display in office of donee.	Maj. Gen. Ali, Defense Attache, Embassy of Somalia.	Do.
Do.	Baume & Mercier Riviera watch, stainless steel and gold, w/Roman numerals; matching cuff links. Recd Nov. 18, 1985. Est. Value—watch—$2500, cuff links—$200, Total—$2700. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	The Amir of Bahrain	Do.
Dr. Fred C. Ikle, Under Secretary of Defense for Policy.	Set of four wooden tables (nested), w/inlaid gold design. Recd May 15, 1985. Est. Value—$200. Approved for offical display in office of donee.	Gen. Zia-Ul-Haq, President of Pakistan	Gift presented to Dr. Ikle during his official visit to Pakistan. Nonacceptance would have caused embarrassment to donor and US Government.
Dr. Jeanne S. Mintz, Director for Far East/South Hemisphere Affairs, Office of the Under Secretary of Defense for Research and Engineering.	Sterling silver, rhodium-plated brooch w/six cultured pearls. Recd Feb. 13, 1985. Est. Value—$300. Delivered to GSA for disposition Feb. 27, 1985.	Gen. Osamu Namatame, JASDF (Ret), Senior Adviser, C. Itoh Electronics Corporation, Tokyo, Japan.	Nonacceptance would have caused embarrassment to donor.
Robert H. Pelletreau, Jr., Deputy Assistant Secretary of Defense (Near East and South Asia Affairs), Office of the Under Secretary of Defense for Policy.	18K gold Chopard Geneve watch w/gold band; 18K gold matching cuff links. Recd Nov. 18, 1985. Est. Value—watch—$5,000, cuff links—$400, Total—$5,400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	The Amir of Bahrain	Do.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Breitling Geneve aviator's watch, Navitimer Quartz C, Swiss made, stainless steel, #80970-7902. Recd July 1985. Est. Value—$595. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Col. Hamid Abdelli, Commander, Armed Forces, Democratic and Popular, Republic of Algeria.	Do.
Do.	Large brass tray. Recd July 23, 1985. Est. Value—$300. Stored in Space Management and Services pending transfer to GSA for disposition.	do	Do.
Dr. Michael Ryan, Analysis Division, Plans Directorate, Defense Security Assistance Agency.	Breitling Geneve aviator's watch, Navitimer, Swiss made, stainless steel, #81470-11816. Recd July 23, 1985. Est. Value—$400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	do	Do.
William Howard Taft, IV, Deputy Secretary of Defense.	Brass water bird, approx. 4' tall; two carved ivory tusks, approx. 18" tall. Recd Feb. 21, 1985. Est. Value—bird—$100, tusks—$150, Total—$250. Approved for official display in office of donee.	General of the Army Likulia Zaire	Do.
Mrs. William Howard Taft, IV, Wife of the Deputy Secretary of Defense.	Brass figure of a woman, approx. 18" tall. Recd Feb. 21, 1985. Est. Value—$15. Approved for official display in office of the Deputy Secretary of Defense.	Mrs. Likulia, Wife of the General of the Army, Zaire.	Do.
William Howard Taft, IV, Deputy Secretary of Defense.	Men's 18K gold Omega watch, Quartz, date calendar window, w/crocodile veritable strap (brown). Recd Apr. 1, 1985. Est. Value—$450. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Minister of Defense Delamuraz of Switzerland.	Do.
Lt. Col. James W. Tilley, USAF, Weapons Systems Division, Plans Directorate, Defense Security Assistance Agency.	Breitling Geneve aviator's watch, Navitimer, Swiss made, stainless steel, #81770-11764. Recd July 23, 1985. Est. Value—$400. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Col. Hamid Abdelli, Commander, Armed Forces, Democratic and Popular, Republic of Algeria.	Do.
Caspar W. Weinberger, Secretary of Defense.	Asprey clock from London, in leather box. Recd Feb. 13, 1985. Est. Value—$300. Approved for official display in office of donee.	King Fahad of Saudi Arabia	Do.
Do.	Eskimo art statue. Recd Mar. 17, 1985. Est. Value—$300. Approved for official display in office of donee.	Prime Minister Mulroney of Canada	Do.
Do.	Men's 18K gold Omega watch, Quartz, date calendar window, w/crocodile veritable strap (brown). Recd Apr. 1, 1985. Est. Value—$450. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Minister of Defense Delamuraz of Switzerland.	Do.
Mrs. Caspar W. Weinberger, Wife of Secretary of Defense.	Ladies' 18K gold Omega watch w/crocodile veritable strap (brown). Recd Apr. 1, 1985. Est. Value—$350. Stored in office of the Deputy Assistant Secretary (Admin) pending transfer to GSA for disposition.	Mrs. Delamuraz, Wife of Minister of Defense of Switzerland.	Do.
Caspar W. Weinberger, Secretary of Defense.	Pakistani rug, approx. 3' x 5', red and beige. Recd Apr. 23, 1985. Est. Value—$200. Approved for official display in office of donee.	M/Gen Rahim Khan, Secretary General of Defense of Pakistan.	Do.

Department of Defense—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do.	Large Kutani vase w/cradle; a Japanese contemporary print (framed). Recd June 10, 1985. Est. Value—vase—$75, print—$150, Total—$225. Approved for official display in office of donee.	Minister of Defense Kato of Japan	Do.
Do.	Small silver bowl, embossed design, with 4 coral beads on top of cover. Recd June 19, 1985. Est. Value—$500. Approved for official display in showcase, 8th corridor, E ring, Pentagon.	President Bourgiba of Tunisia	Do.
Do.	Green serpentine eagle w/stand. Recd July 24, 1985. Est. Value—$600. Approved for official display in office of donee.	President Li of People's Republic of China.	Do.
Do.	Sterling silver box w/small pieces of driftwood inside. Recd Oct. 4, 1985. Est. Value—$395. Approved for official display in office of donee.	Prince Sultan Bin Abdulaziz, Minister of Defense of Saudi Arabia.	Do.
Do.	Large blue vase, Tao-KUANG Ware, in red box. Recd Nov. 5, 1985. Est. Value—$800. Approved for official display in office of donee.	Gen. Hau Pei-Tsun, Chief of General Staff, Ministry of Defense, Republic of China.	Do.

Defense Intelligence Agency

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Leonard H. Perroots, Lieutenant General, USA, Director.	Books about Korea. Recd November 1985. Est. Value—$606. Transferred to DIA Library for official use.	Yun Tae-Kyun, Lieutenant General, Republic of Korea.	Nonacceptance would have caused embarrassment to donor and US Government.
James A. Williams, Lieutenant General, USA, Director.	Books about Korea. Recd March 1985. Est. Value—$1,440. Transferred to DIA Library for official use.	Lee Sang-Kyu, Lieutenant General, Republic of Korea.	Do.

Federal Aviation Administration

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald D. Engen, Administrator, Federal Aviation Admin.	Reproduce Ch'ing Dynasty porcelain bowl, 14½" in diameter, depicting birthday ceremony for Empress of China. Received during official visit to China, June 1985. Estimated value: $250. Delivered to agency property custodian for appropriate disposition.	Director of Civil Aviation, Peoples Republic of China.	Do.

Federal Communications Commission

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Kenneth C. Howard, Jr., Legal Asst. to Commissioner Quello, and spouse J. Nellie Liang.	The travel expenses consisted of: (1) round-trip transportation for two from Rome, Italy to Cagliari, Sardinia (Italy); (2) hotel accommodations from September 14 to September 18, 1985; (3) several meals during the course of the Prix Italia Conference; and (4) a day-tour of southern Sardinia with conference members on September 15. Estimated Value: $700.	Mr. Alvise Zorzi, Secretariat of the Prix Italia, Radio-Televisione Italiana (RAI), a branch of Italian Government.	These expenses were provided to allow Ken Howard to participate in the Prix Italia Conference on politics and the media, at the request of the Italian Government and RAI.

Federal Deposit Insurance Corporation

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert F. Miailovich, Associate Director, Planning and Program Development Branch.	Native decorative wall hanging, multi-colored, wool with metal handwork attached. Estimated Value: $250.00. Leather Business Portfolio. Estimated Value: $25.00 Book entitled: "Paisaje de Chile." Estimated value: $20.00. Retained at the agency for official display. Received April 1985.	Superintendent of Banks of Chile	Gift delivered following conclusion of conference.

Board of Governors of the Federal Reserve System

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Volcker, Chairman	Set of 3 Uruguayan coins. Recd. June 26, 1985. Est. Value $170. Retained for Board use.	Ricardo Pascale, President, Central Bank of Uruguay; Ricardo Zerbino, Finance Minister, Uruguay.	To have refused would likely have caused offense or embarrassment.
Do.	Set of 4 Venezuelan coins. Recd. November 25, 1985. Est. Value $615. Retained for Board use.	Manuel Azpurua, Minister of Finance, Venezuela.	Do.

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Department of Justice

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Edwin Meese III, Attorney General of the United States of America.	Eskimo Statue, soapstone. Recd. March 18, 1985. Est. Value—$540. Retained for official display in the Office of the Attorney General.	Prime Minister of Canada	Nonacceptance would have caused embarrassment to donor and U.S. Government
Do	Tea Service, silverplate. Recd. July 7, 1985. Est. Value—$260. Retained for official display in the Office of the Attorney General.	Police Chief, Casablanca, Morocco	Do.
Alan C. Nelson, Commissioner, Immigration and Naturalization Service.	Jewelry Box, lidded, 10" octagonal. Recd. October 3, 1985. Est. Value—$200: Reported to GSA for disposition instructions on October 29, 1985. Being held at INS Central Office.	Deputy Minister of Justice, Republic of Korea.	Do

Office of Personnel Management

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald J. Devine, Director	Model of Korean Warship. Recd: April 22, 1985. Est. Value—$1,000. Immediately delivered to OPM for display in Civil Service Historical Room, where it remains.	Mr. Cho Ki Hyun, Ministry of Justice, Republic of Korea.	Presented officially to OPM before 20 senior Korean officials. Nonacceptance on return would have caused embarassment to Korean and U.S. Governments.

Department of State

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Walter Cutler, Wife of U.S. Ambassador to Saudi Arabia.	(1) Gold bracelet with five gold coins—1" in diameter. (2) Gold Medallion with Saudi emblem surrounded by 20 diamond chips, 3 small emeralds, 1 small ruby on gold chain. Recd December 1985. Est. Value—(1) $1800; (2) $800. Delivered to GSA for disposition Jan. 31, 1986.	Member of Royal Family of Saudi Arabia	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Mrs. John J. Eddy, Wife of Principal Officer Dhahran, Saudi Arabia.	Gold pendant with Saudi coin framed with gold filagree weighing approx. 20 grams with gold chain. Recd October 30, 1985. Est. Value—$344. Being held in the Office of Protocol pending transfer to GSA.	Wife of Mohammed bin Fahd, Governor of Eastern Province, Saudi Arabia.	Do.
Cindy Gossom, Department of State.	Omega watch, gold plated with crown insignia and face; brown band. Recd March 1984. Est. Value)—$200. Delivered to GSA for disposition Jan. 31, 1986.	Her Majesty Queen Noor of Jordan	Do.
Richard W. Murphy, Assistant Secretary of State, NEA.	Man's gold watch, dual-dial, black alligator strap. Recd May 16, 1985. Est. Value)—$500. Delivered to GSA for disposition Oct. 24, 1985.	His Majesty King Hassan of Morocco	Do.
Rozanne L. Ridgway, U.S. Ambassador to German Democratic Republic.	Leatherette satin-lined carrying case containing a hand-painted meissen porcelain coffee service for six. Recd July 9, 1985. Est. Value—$3000. Delivered to GSA for disposition Jan. 31, 1986.	H.E. Erich Honecker, Chairman, Council of State GDR and General Secretary of Socialist Union Party of Germany.	Do.
Selwa Roosevelt, Chief of Protocol.	Longines Gold Watch, gold band; in green velvet case (18478416). Recd Feb. 15, 1985. Est. Value—$1200. Delivered to GSA for disposition Oct. 24, 1985.	His Majesty King Fahd of Saudi Arabia	Do.
Do	Sterling silver cigarette box (Sterling DEYHLE Germany). 5" by 7"; 1⅜" deep; bottom laminated plastic; inside wood. Recd October 2, 1985. Est. Value—$200. Approved for official display in office of donee.	His Majesty King Hussein of Jordan	Do.
Do	14½" oval silver tray with sail boat, palm tree and two cross swords engraved in center; ornate handles apple, pear, and strawberry in silver. Recd December 20, 1985. Est. Value—$650. Delivered to GSA for disposition Jan. 31, 1986.	Ambassador of Qatar and Mrs. Al-Ameri	Nonacceptance would have caused embarrassment to donors and U.S. Government.
Peter Sebastian, U.S. Ambassador to Tunisia.	Rug: berber wool, beige with brown motif; 94 x 68". Recd January 8, 1985. Est Value: $400. Approved for official display at American Embassy Tunis.	Governor of Kasserine, of Tunisia	Nonacceptance would have caused embarrassment to donor and U.S. Government.
George P. Shultz, Secretary of State.	Jaeger-LeCoultre pendulate timepiece; approx. 8" high, 4¾" wide, ¾" thick. Gold-tone movement and gold-tone attached stand. 1" border of green-dyed reptile skin, with gold-tone corner protectors. Recd Feb. 13, 1985. Est. Value—$1000. Approved for official display in office of donee.	His Majesty King Fahd of Saudi Arabia	Do.
Do	(1) Book: "Inconografia de Montevideo" and tourism pamphlets. (2) Silver metal commenorative coin, approx. 1½" wide, marking President Sanguinetti's inauguration. (3) Blue/green/black glass wall hanging approx. 20" round. Recd March 1, 1985. Est. Value—Combined $200. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Julio Maria Sanguinetti, President of Rep. of Uruguay.	Do.
George P. Shultz, Secretary of State, and Mrs. Shultz.	(1) Hand-woven wall hanging, approx. 4'4" x 5'7", Egyptian village scene. (2) Framed embroidery panel from town of Akhmim, approx. 2'4" x 5½ brownish-gold background material with embroidered gold, beige, and rust flowers and leaves. (3) Two framed papyrus paintings, 1'6" x 1'10", gold-tone frames; Pharonic scene, and two girls in garden. Recd March 13, 1985. Est. Value—Combined $200. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Hosni Mubarak, President, Arab Rep. of Egypt.	Do.
George P Shultz, Secretary of State.	Eskimo sculpture of walrus, green soapstone, approx. 14¾" high with removable tusks. Recd March 18, 1985. Est. Value—$1000. Approved for official use in office of donee.	R.H. Brian Mulroney, PM of Canada	Do.
George P. Shultz, Secretary of State, and Mrs. Shultz.	(1) Metal sculpture approx. 12½" by Edgar Negret "Arbol de la Paz (Tree of Peace)" with brass presentation plaque. (2) Folio of 53 botanical prints "Melastomataceae." Recd April 3, 1985. Est. Value—Combined $250. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Belisario Betancur, President, Rep. of Columbia and Mrs. Betancur.	Nonacceptance would have caused embarrassment to donors and U.S. Government.
Do	(1) Glass vase Roman period, approx. 9" high, 11" widest part—olive wood base—in case. (2) Rock crystal necklace with carnelian and gold beads, 24" long. Recd May 10, 1985. Est. Value—Combined $500. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Shimon Peres, PM of Israel, and Mrs. Peres.	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Book: "Atlas de Joan Martinez 1587" in matching maroon sleeve, No. 86 approx 23½" tall x 16" wide. Recd May 24, 1985. Est. Value—$250. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Fernando Moran Lopez, Minister of Foreign Affairs, Spain.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	(1) Silk Chinese tablecloth approx. 8' x 14' tan on tan flower design. (2) Jade peach tree, approx. 22" high incl. Cloissonne pot base (19 peaches). Recd July 25, 1985. Est. Value—Combined $400. Delivered to GSA for disposition Oct. 24, 1985.	H.E. Li Xiannian, Pres. of PR China, and Madame Lin.	Nonacceptance would have caused embarrassment to donors and U.S. Government.
Mrs. George P. Shultz, Wife of the Secretary of State.	Oval pendant 1 9/16" long, 1" wide, encasing Old Roman coin; gold surrounding coin in sort of fleur-de-lis pattern. Recd May 10, 1985. Est. Value—$250. Delivered to GSA for disposition Oct. 24, 1985.	Wife of the President of Israel	Nonacceptance would have caused embarrasement to donor and U.S. Government.
George P. Shultz, Secretary of State, and Mrs. Shultz.	(1) Roman glass fragment, approx. 3" wide (63 BCE 330 CE) on silver filigree base; presentation case of olive wood base; certificate of antiquity included. (2) Map of "Iudaea seu Terra Sancta quae Hebraeorum sive Israelitarum" framed; approx. 33" x 23"; outer frame approx. 40" x 30". (3) 12 bottles Israeli wine, Yarden Galil Sauvignon Blanc 1984. Recd October 17, 1985. Est. Value—Combined $300. Items (1) and (2) Delivered to GSA for disposition Jan. 30, 1986. Item (3) Approved for Department of State official use.	H.E. Shimon Peres, PM of Israel	Do.
George P. Shultz, Secretary of State.	(a) Leather briefcase; burgandy with gold-tone fittings; burgandy keycase; approx. 12" x 17½" x 3¼". (b) Lacquer box; black background w/hand painted winter scene: 2 troikas with passengers. Approx. 7¾" x 2¼" x 1¼". (c) Two books: "The Tretyakov Gallery"; "The Andrei Rubliov Museum of Early Russian Art." Recd November 20, 1985. Est. Value—Combined $300. Delivered to GSA for disposition Jan. 31, 1986.	H.E. Mikhail Gorbachev, Gen. Secretary of the Central Committee of the Communist Party of U.S.S.R.	Do.
George P. Shultz, Secretary of State, and Mrs. Shultz.	(a) 18K gold "Ebel" watch, Roman numerals, leather case; separate leather case for guarantee, black leather band—approx 1¼" across face. (b) Ballpoint pen and holder with quartz watch/calendar "Caran d'Ache", in shape of "C", gold plated; in beige suede presentation case. (c) Swiss music box—approx. 12½" x 6¾" x 4"—Model 5705; plays Rigoletto and Aida; brown lacquer with flor and musical design on top and sides. Recd November 20, 1985. Est. Value—Combined $4,000. Delivered to GSA for disposition Jan. 31, 1986.	H.E. Rene Emmenegger, Mayor of the City of Geneva.	Do.
Do	(a) 18K gold necklace, approx. 17¼" long with removable pendentil which opens to encase different stones for decoration; total of 8 stones. (b) Lithography "View of Geneva" No. 86; matted and framed; 19½" x 17¼" overall size. Recd November 20, 1985. Est. Value—Combined $3500. Delivered to GSA for disposition Jan. 31, 1986.	H.E. Jaques Vernet, President of the Council of States, Geneva, Switzerland.	Do.
Do	(a) One table runner, approx. 38½" x 12"; brown velvet with gold-trim; floral motif embroidered in center, approx. 7½" x 9". (b) Herend porcelain table lamp approx. 14½" high (without shade) butterflies and flowers; handpainted Herand lampshade for lamp; approx. 11¾" high, white background with handpainted flowers and butterflies, gold-rope trim. Recd December 18, 1985. Est. Value—Combined $500. (a) Delivered to GSA for disposition Jan. 31, 1986. (b) Approved for official use at Blair House.	H.E. Peter Varkonyi, Foreign Minister of Hungary, and Mrs. Varkonyi.	Nonacceptance would have caused embarrassement to donors and U.S. Government.
Allen Wallis, Under Secretary of State for Economic Affairs.	Wool/silk rug, approx. 52" x 78½", gold, beige and black. Recd November 18, 1985. Est. Value—$700. Approved for official display in office of donee.	H.E. Mahbub-ul-Haq, Minister of Finance of Pakistan.	Do.

Office of the U.S. Trade Representative

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Michael B. Smith, Deputy U.S. Trade Representative.	.900 silver coffee server. Florentino Bogotas. Recd October 1985. Est. Value—$500. Being held in General Counsel's office pending transfer to GSA for disposition.	Head of Columbian Coffee Federation.	Nonacceptance would have caused embarrassment to donor.

Department of Treasury

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, III, Secretary of the Treasury.	Pair of 8" Cloissone vases. Recd June 24, 1985. Est. Value—$225. Being held in Gift Unit pending transfer to GSA for disposition.	Wang Bingqian, Minister of Finance, People's Republic of China.	Do.
Do	Sterling silver sword. Recd February 20, 1985. Est. Value—$400. On display in the Secretary's office.	King Fahd, Saudi Arabia	Do.
Julie Brink, Deputy Director, Scheduling Office.	18 K gold key chain. Recd April 24, 1985. Est. Value—$355. Being held in Gift Unit pending transfer to GSA for disposition.	Mohammed Abalkhail, Saudi Arabia	Do.
Robert A. Cornell, Deputy Assistant Secretary for International Affairs.	Pair of Cloisonne vases. Recd August 26, 1985. Est. Value—$250. Being held in Gift Unit pending transfer to GSA for disposition.	Li Fenggang, Ministry of Finance, China	Do.
Richard G. Darman, Deputy Secretary of the Treasury.	18 K gold key chain. Recd April 24, 1985. Est. Value—$355. Being held in Gift Unit pending transfer to GSA for disposition.	Mohammed Abalkhail, Saudi Arabia	Do.

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DEPARTMENT OF TREASURY

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David Mulford, Assistant Secretary, International Affairs.	18 K gold key chain. Received April 24, 1985. Estimated value—$355. Being held in Gift Unit pending transfer to GSA for disposition.	......do	Do.
Charles Schotta, Deputy Assistant Secretary for International Affairs.	18 K gold key chain. Received April 24, 1985. Estimated value—$355. Being held in Gift Unit pending transfer to GSA for disposition.	......do	Do.
Dorothy Mazaka, G. William Moser, Laura Deemon, Bonnie Pounds, Paul Ellis, Geoffrey Pope, Ken Harbinson.	18 K gold key chain. Received April 25, 1985. Estimated value—$355. Being held in Gift Unit pending transfer to GSA for disposition.	......do	Do.
Thomasina Gray, Richard Trent	Large 18K gold cuff links. Received April 25, 1985. Estimated Value—$450. Being held in Gift Unit pending transfer to GSA for disposition.	......do	Do.
Marilyn Sansbury, Thomas Davis, Priscilla Tester, Phyllis Davis, Debra Wilson, Theodore Bruce.	Small 18K gold cuff links. Received April 25, 1985. Estimated Value—$350. Being held in Gift Unit pending transfer to GSA for disposition.	......do	Do.

Veterans Administration

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Roland C. Blantz, M.D., Chief, Nephrology-Hypertension, VAMC, San Diego, CA.	Air fare to Acapulco, Mexico, and lodging while attending a nephorology meeting. Value—Unkown, in excess of $185. Rec'd. Nov. 20–24, 1985.	The Mexican Society of Nephrology, Mexico.	As an academic nephrologist and renal physiologist who published research in this field and discussions on basic research, clinical and renal transplantation papers were presented at the meeting; on annual leave during course of meeting.
James Boyle, Supervisory Personnel Management Specialist, VAMC, Bedford, MA.	Air fare to and lodging in Netherlands. Value—$10,000. Rec'd. April 30–May 15, 1985.	Netherlands	Recognition for World War II combat; on annual leave during the time.
Samuel E. Halpern, Acting Chief, Nuclear Medicine Service, VAMC, San Diego, CA.	Air fare to and expenses while visiting Europe. Value—$1,130. Rec'd. May 15, 1985.	Congress of Society of Nuclear Medicine, Europe.	Was invited to speak at the Nuclear Medicine in Clinical Oncology Symposium, held at Bonn, West Germany; on annual leave during time of visit.
Eli A. Ramirez, M.D., Physician, VAMC & ROC, San Juan, PR.	Air fare to and expenses while visiting Spain. Value—$800. Rec'd. September 24–29, 1985.	Sociedad Española De-Cardiologia, Spain	Presentation of lecture on VA research results; on annual leave during time of visit.
Rosalyn S. Yalow, Ph.D., Senior Medical Investigator, VAMC, Bronx, NY.	Prepaid ticket from New York to Geneva and from Zurich to New York. Value—$1,050. Rec'd. September 19–20, 1985.	Swiss forum on science and energy	Invited to present two lectures; on annual leave at during time of lectures.

[FR Doc. 86-4359 Filed 3-6-86; 8:45 am]

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federal register

Friday
March 7, 1986

Part III

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 24, 170, 231, and 240

Revision and Recodification of Wine Regulations; Proposed Rule

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 24, 170, 231, and 240

[Notice No. 584; re: Notice No. 320]

Revision and Recodification of Wine Regulations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is publishing for comment a proposed revision and recodification of all Internal Revenue Code (IRC) wine regulations. When viewed from current perspectives, many existing regulations inadequately reflect wine industry technological advances. Some present regulations may also be unclear or overly complex. The intent of the extensive revision is to simplify, modernize and, to the maximum extent possible under existing law, liberalize the wine regulations to achieve a reduced regulatory burden and a resource savings for the wine industry and the Government.

This proposal will also locate all the regulations pertaining to wine issued under the IRC into a new 27 CFR Part 24. Currently, wine regulations are dispersed among several different regulatory parts within Title 27, Chapter I of the Code of Federal Regulations (27 CFR Chapter I). This system of organization is inefficient and imposes a burden on a user who is without knowledge of the entire system.

DATE: Written comments must be received by July 7, 1986.

ADDRESS: Send written comments to Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 584).

FOR FURTHER INFORMATION CONTACT: James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566–7626.

SUPPLEMENTARY INFORMATION:

General

The wine regulations have remained essentially unchanged for over 30 years while the wine industry has changed dramatically, especially in the past few years. Because of technological advances, the wine regulations are in need of updating and many of the present regulatory requirements are unnecessary. A revision of the wine regulations was started in 1979 with an advance notice of proposed rulemaking, Notice No. 320. Information was received from the wine industry and other interested persons on how the wine regulations could be revised. Regulations on records and reports were determined to be in particular need of revision and this project was completed with the publication of Treasury Decision ATF–63 in the **Federal Register** on January 24, 1980.

In early 1982, the Wine Institute submitted a number of suggested wine regulation changes for ATF's consideration. About this time most of the regulatory research and drafting work for the distilled spirits all-in-bond project was done, the number of viticultural area petitions became manageable, and other major legislative project requirements eased so that attention could be given to analyzing the Wine Institute's proposals and the suggestions accumulated from the Notice No. 320 (44 FR 29691).

The first action was to delete Subpart XX from 27 CFR Part 240, thereby eliminating approximately 80 regulatory sections. At the same time, the complex and somewhat controversial subject of materials and processes authorized for treatment of wine was opened for public comment with the publication of Notice No. 413 (47 FR 26399). Significant progress was made on this subject with the publication of Treasury Decision ATF–182 (49 FR 37510). However, a few issues are still unresolved and are being aired under Notice No. 543 (49 FR 37527).

In this notice, a revision of all IRC wine regulations in 27 CFR parts 170, 231 and 240 and a consolidation of these regulations into a new 27 CFR Part 24 is proposed. The revision recognizes technological advances in production, deletes numerous outdated and repetitive regulations, simplifies and clarifies regulatory language, reduces many regulatory burdens placed on the wine industry and on the Government. Specifically, the revision reduces the number of regulatory subparts for 60 to 15, the number of regulatory sections from 450 to 225, and the regulatory verbiage by about 65 percent. In addition, over 90 ATF rulings and revenue rulings would be eliminated or incorporated into the new regulations and 8 of 14 winery forms are eliminated.

Because the revision is extensive, the preamble of this notice is divided into two parts: (1) A brief explanatory discussion of each new subpart and (2) an indexed (Derivation) table which shows the present law, regulation or ruling from which each new regulatory section is derived.

Discussion of 27 CFR Part 24 Subparts A–O

Subpart A–Scope is revised to conform to the part headings in Subpchapter F of 26 U.S.C. Chapter 51. Also, the status and operation of previously approved bonded winery, bonded wine cellar, or taxpaid wine bottling house premises after the effective date of these regulations is addressed.

Subpart B—Definitions contains numerous definitions which are revised to be closer conformity with applicable statutory provisions. A few new definitions which reflect advances in wine technology or which improve understanding of the wine regulations have been added such as chaptalization, Brix, and use of gram per liter instead of parts per thousand.

Subpart C—Administrative and Miscellaneous Provisions is a new subpart which consolidates many wine regulations which are currently widely dispersed among 27 CFR Parts 170, 231, and 240. Several provisions in this subpart are not repeated in other subpart sections but are referenced. Found in this subpart are the regulations pertaining to authorities of the Director, regional director (compliance), and ATF officers; facilities and assistance; employer identification number; occupational taxes; assessments; claims; tax exempt wine; formulas; essences; conveyance of wine and spirits on wine premises; and samples. Provisions of Treasury Decision AFT–149 (48 FR 46426) regarding samples submitted with formulas are incorporated. The notice requirement for samples of spirits is eliminated. Also, specific requirements relating to office facilities are deleted.

Subpart D—Establishment and Operations contains regulations relating to the establishment of wine premises. This includes the types of wine premises, application procedures, changes in existing wine premises, alternation of the wine premises, bonds and consents of surety, and discontinuance of wine operations. The new regulations provide for the establishment of a bonded winery, bonded wine cellar, or taxpaid wine bottling house which are operationally termed wine premises. Wine premises may include both bonded wine premises and taxpaid wine premises. Segregation and identification of untaxpaid wine or spirits, taxpaid wine or spirits, and other products on wine premises is required, but a physical barrier such as a partition, fence, or wall would rarely be required. The new sections on alternation reflect changes in the way wine premises are used in the wine industry. A taxpaid wine bottling house may be established if only operations involving taxpaid wine are desired. Application requirements are reduced. Many reguirements relating to information in making a decision on whether an application should be approved which ATF already has or which is determined to be unnecessary are eliminated. A single application form, ATF Form 5120.25 (698), is used to apply for the establishment of a bonded winery, bonded wine cellar or taxpaid wine bottling house. The requirement to submit a plat depicting the premises is deleted because, in most applications, a description of the premises is sufficient. Also, plats were usually prepared by an architect or engineer which put an added burden on the proprietor of a small winery. The provisions relating to the execution and filing of bonds and consents of surety are extensively revised. It is proposed that the obligation of the bonded wine cellar bond with respect to taxes which have been determined but not paid on wine removed from bonded wine premises be raised from $100 to $500. This will save most winery proprietors the expense and paperwork involved in obtaining a tax deferral bond. In addition, ATF is proposing that the obligation of the bond be broadened to cover volatile fruit-flavor concentrate or other commodities subject to tax under 26 U.S.C. Chapter 51 which are in transit to or on bonded wine premises. This change eliminates the need for a separate bond covering volatile fruit-flavor concentrate and for many of the currently required consents of surety. Further, ATF is proposing that a single form be used for both the bonded wine cellar bond and the tax deferral bond.

Subpart E—Construction and Equipment regulations are significantly reduced. The proposed requirements for construction and equipment allow for a greater degree of flexibility in establishing and operating a wine premises.

Subpart F—Production of Wine regulations are completely revised. The time of determining and reporting wine as produced is modified. The separate provisions which currently exist for grape and fruit wine production are consolidated, and, when appropriate, it is noted whether a provision is applicable to grape, fruit, or berry wine production. A new section allows for chaptalization, i.e., the addition of pure sugar to juice for the purpose of developing alcohol, so that wine may be produced from juice having both low sugar and low acid. The sections on amelioration and sweetening are completely revised and should be clearer and easier to understand. One provision on calculating the amount of ameliorating material allowed requires an acid level determination of juice before blending that juice with juice from another State. The sections on use of concentrated and unconcentrated fruit juice, sugar, acid, distillates containing aldehydes, and volatile fruit-flavor concentrate are revised and put into this new subpart.

Subpart G—Production of Effervescent Wine is revised to eliminate the requirement for filing a formula and statement of process. This is done because the processing methods and basic materials used for effervescent wine production are no longer considered unique. The subpart incorporates industry technological advances such as the bulk process and tank transfer methods of production in the section revisions.

Subpart H—Production of Special Natural Wine is reduced to the essentials by moving to another subpart the regulations on essences and procedures involved with obtaining formulas. This is done because the requirements for essences and formulas are also applicable to wine other than special natural wine.

Subpart I—Production of Agricultural Wine is also reduced in volume by combining a few of the sections and referencing the formula requirements.

Subpart J—Production of Other Than Standard Wine regulations are revised to be clearer and easier to understand. Added to this subpart is a provision which provides for the blending of wines made from different kinds of fruits. An increased interest in producing wine with sugar and water added beyond the limitations for standard wine resulted in an analysis and revision of the regulation covering these wines. The section on "Other wine", 24.218, will allow for the production of wine with sugar and water beyond the limitations prescribed for standard wine if the basic character is derived from the primary winemaking material. Also, the addition of wine spirits to "Other wine" is specifically provided for in § 24.218(b). Additionally, specifications for salted wine are incorporated in the section covering wine and wine products not for beverage use.

Subpart K—Spirits contains the provisions for use of wine spirits in beverage wine production and for use of spirits in nonbeverage wine production. Section 455 of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 72 Stat. 1362, as amended), signed into law and effective on July 18, 1984, provides for the use of spirits other than wine spirits in the production of nonbeverage wine and wine products in the United States. Because the regulations implementing Section 455 were published as a final rule without public comment (T.D. ATF–186, 49 FR 42567), this is the first opportunity for public comment on these regulations. The application to withdraw wine spirits and the report of wine sprits added to wine are eliminated. The new regulations incorporate rulings allowing for the addition of spirits without Government supervision, which has proved to be an efficient method of operation for the wine industry and the Government for several years.

Subpart L—Storage, Treatment and Finishing of Wine contains, in sections 24.246 through 24.250, regulations relating to materials and processes authorized for the treatment of standard wine, juice and distilling material, the subject of Notice No. 413 (47 FR 26399) published on June 18, 1982, and Notice No. 543 (49 FR 37527) and Treasury Decision ATF–182 (49 FR 37510) published on September 24, 1984. These complex and somewhat controversial sections are again opened for review and comment by the issuance of this notice. Also, included in this new subpart are several sections which deal specifically with the bottling, packing, and labeling of wine. Due to the increased use of larger sized containers as consumer units in the marketing of wine and a need to achieve a uniform understanding of the terms "bottle" and "container" for regulatory purposes, the following definitions (also found in Subpart B) are under consideration for use in this part: a *bottle* is four liters (one gallon) or less; a *container* is larger than four liters; a *bulk container* is over 60 liters; a *case* is two or more bottles, or one or more containers enclosed in a box or fastened together; a *bottler* is a wine premises proprietor who fills wine into a bottle; and a *packer* is a wine premises proprietor who fills wine into a container. Additionally, a new section is proposed to cover the aging of wine after bottling or packing. Fill tolerances based on the sizes of bottles and containers and allowing for a level of overfill not to exceed 0.5 percent are proposed as well as requirements to determine bottle or container net contents and the alcohol content. Due to the advent to low alcohol wine not covered by the labeling provisions of the FAA Act, a label for any wine under 7 percent alcohol by volume will be required to show the actual alcohol percent by volume with a tolerance of

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plus or minus 10 percent and be designated a wine.

Subpart M—Losses of Wine consolidates this important subject into one subpart to allow for an easy reference to the method of reporting and accounting for losses of wine.

Subpart N—Removal, Return and Receipt of Wine is divided into sections addressing taxpaid removals and payment by check, cash, money order or EFT, transfer of wine in bond, removals without payment of tax, return of taxpaid wine to bond, and taxpaid wine operations. One form, Excise Tax Return, ATF F 5000.24, will replace the Wine Tax Return, ATF F 5120.27, and Prepayment Return—Wine Tax, ATF F 5120.37, forms. Due to a significant increase in the past five years in the number of small wineries paying less than $500 in wine tax annually, ATF is proposing to allow these taxpayers to file returns annually rather than twice a month. In addition, it is proposed that proprietors who paid less than $5,000 the previous calendar year be allowed to file quarterly returns. These changes, if adopted, would eliminate the necessity of filing and processing over 12,000 tax returns which are currently being filed each year. ATF Form 703, Transfer of Wine in Bond, is eliminated, resulting in another significant reduction in paperwork burden. The new section on taxpaid wine operations incorporates much of what is now in 27 CFR Part 231—Taxpaid Wine Bottling Houses.

Subpart O—Records and Reports is updated and revised to make it easier to find the recordkeeping requirements. Even though the regulations on records and reports were the subject of a revision recently, several further reductions in recordkeeping and reporting requirements are proposed. Recordkeeping requirements on maintaining an audit trail to allow verification of label information is more clearly defined. A significant change for a winery with limited operations which are not difficult to audit would be allowing source records to be used as the daily record and use of an abbreviated monthly summary record of operations, such as use of an adding machine tape.

Outline of Derivation and Revision for 27 CFR Part 24

The following table is provided to aid in the understanding of the regulation changes proposed. The table provides the applicable statutory authority, the regulatory section, or the ruling from which the proposed regulation is derived. In addition, the extent to which a regulation is revised or whether it is a new regulatory section is indicated.

Action Legend:
C=Complete revision.
O=No revision.
P=Partial revision.
N=New section.

PART 24—WINE

Subpart A—Scope

Sec.		
24.1	General	170.681, 231.1, 240.1/C
24.2	Teritorial extent.	5065/N
24.3	Status and operation of existing premises.	231.63, 240.123/C
24.4	Related regulations.	Reference Section/ N
	SUBPART B—DEFINITIONS	
24.10	Meaning of terms.	231.10, 240.10/P
	Affiliated person or firms.	5392/P
	Agricultural wine.	5387/P
	Allied products	5361/P
	Amelioration	5383/P
	Area supervisor.	N
	Artificially carbonated wine.	5041/P
	ATF officer	O
	Bank	O
	Banking day	O
	Bonded wine premises.	N
	Bonded winery	5351/P
	Bonded wine cellar.	5351/P
	Bonded wine warehouse.	5353/N
	Bottle	5368/N
	Bottler	5368/N
	Brix	N
	Bulk container	5368/N
	Business day	O
	Calendar year	N
	Case	5368/N
	Concentrate plant.	5511/O
	Container	5368/N
	Chaptalization	5382, 5383/N
	Director	O
	Director of the service center.	P
	Distilled spirits plant.	5002/P
	Distilling material.	5222/N
	District director.	P
	Effervescent wine.	5041/C
	Electronic fund transfer or EFT.	O
	Executed under the penalties of perjury.	O
	Export or exportation.	N
	Fiduciary	7701/N
	Financial institution.	N
	Fold	O
	Foreign wine	231.10/O
	Fruit must	N
	Fruit wine	N
	Gallon or wine gallon.	5041/O
	Grams per liter	N
	Grape wine	N
	Heavy bodied blending wine.	5392/O
	High-proof concentrate.	N
	In bond	5362/P
	Invert sugar syrup.	5392/P
	Juice	P
	Kind	N
	Lees	O
	Liter	O
	Liquid sugar	5392/P
	Lot	ATF Ruling 80–14/ N
	Natural wine	5381/N
	Nonbeverage wine.	5362, 170.682/P
	Own production.	5392/N
	Packer	5368/N
	Person	5690, 7701/P
	Proof	O
	Proof gallon	5002/C
	Proprietor	P
	Pure sugar	5392/P
	Reconditioning	N
	Region	N
	Regional director (compliance).	N
	Same kind of fruit.	5392/O
	Secretary	N
	Service center	P
	Sparkling wine	5041/P
	Special natural wine.	5386/C
	Specially sweetened natural wine.	5385/P
	Spirits or distilled spirits.	5002/N
	Standard wine	5392/O
	Still wine	5041/C
	Sugar	O
	Sweetening	5383/N
	Tax year	O
	Taxpaid wine	P
	Taxpaid wine bottling house.	N
	Taxpaid wine premises.	N
	This chapter	N
	Total solids	5392/O
	Treasury account.	O
	U.S.C.	O
	United States or U.S. wine.	P
	Volatile fruit-flavor concentrate.	5511/P
	Wine	5041/C
	Wine premises	N
	Wine spirits	C
	SUBPART C—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS	
	Authorities of the Director	
24.20	Forms prescribed.	231.2, 240.2/P
24.21	Modified forms	5367, 5555, 240.905/ C
24.22	Alternate method or procedure.	231.120, 240.940–240.942/P
	Authorities of the Regional Director (Compliance)	
24.25	Emergency variations from requirements.	240.120/P
24.26	Authority to approve.	231.60, 240.211, 240.235/P
24.27	Segregation of operations.	240.131, 240.511, 240.891/P
24.28	Installation of meters, tanks, and other apparatus.	5552/N
24.29	Claims	5008, 5370/N
24.30	Supervision	5366, 5553, 240.821/ P
24.31	Submission of forms and reports.	5555/N
24.32	Records	5367, 5555/N
	Authorities of ATF Officers	
24.35	Right of entry and examination.	231.130, 240.925, 240.950/P
24.36	Instruments and measuring devices.	5357, 5366, 5368/N
24.37	Samples for the United States.	5362, 5373, 5511, 5557/N
	Facilities and Assistance	
24.40	Gauging and measuring.	5357, 5366, 5368/N
24.41	Office facilities	240.143/C
	Employer Identification Number	
24.45	Use on returns	240.594a/P
24.46	Application	40.594b/P
24.47	Execution of IRS Form SS-4.	240.594c/P
	Occupational Taxes	
24.50	Payment of tax	231.52, 240.340/P
24.51	Exemption from occupational tax.	240.341, 240.342/P
24.52	Wholesale dealer.	240.342a/P
24.53	Filing of return	231.52, 240.343, 240.344/P
24.54	Hand-carried returns.	240.345/P
24.55	Special tax stamp.	5141, 5143, 5146/N
	Assessments	
24.60	General	240.881, 240.943/P
24.61	Assessment of tax.	240.881, 240.943/C
24.62	Notice	240.943/P
	Claims	
24.65	Claims for wine or spirits lost or destroyed in bond.	240.787, 240.789, 240.857, 240.859/ C
24.66	Claims on wine returned to bond.	240.802, 240.805–240.809/C
24.67	Other claims	Reference Section/ N
24.68	Insurance coverage.	240.790, 240.809, 240.851/O
24.69	Filing of claims	240.788, 240.789, 240.806, 240.807, 240.857, 240.858/ C
24.70	Claims for credit of tax.	5044, 5370/N
	Tax Exempt Wine	
24.75	Wine for personal or family use.	240.540, 240.541/C
24.76	Cider	240.544/P
24.77	Experimental wine.	240.545–240.550/C
	Formulas	
24.80	General	170.686, 240.441, 240.465, 240.482/ C
24.81	Filing of formulas.	170.686, 240.441, 240.465, 240.482/ C
24.82	Samples	170.686, 240.441, 240.465, 240.482/ C
	Essences	
24.85	Essences	240 Subpart S/C
24.86	Essences produced on wine premises.	240 Subpart S/C
24.87	Essences made elsewhere.	240 Subpart S/C
	Conveyance of Wine and Spirits on Wine Premises	
24.90	Taxpaid products.	5365/N
24.91	Conveyance of untaxpaid wine or spirits within a bonded wine premises.	5357, 240.195/C
24.92	Products in customs custody.	5361/N
	Samples	
24.95	General	240.740, 240.840/C
24.96	Use off premises.	240.741–240.744, 240.840, 240.841/ C
24.97	Use off premises.	240.745, 240.746, 240.840, 240.841/ C
	SUBPART D—ESTABLISHMENT AND OPERATIONS	
24.100	General	231.30, 240.120/C
	Premises and Operations	
24.101	Bonded wine premises.	240.120–240.122, 240.208/C
24.102	Taxpaid wine premises.	231.30, 240.124/C
24.103	Other operations.	231.31, 240.134/C
	Application	
24.105	General	231.50, 240.190, 240.200/C
24.106	Basic permit requirements.	231.51, 240.191/P
24.107	Designation as bonded winery.	240.193/C
24.108	Bonded wine warehouse application.	240.201/P
24.109	Data for application.	170.683, 231.50, 240.190, 240.194, 240.198, 240.210, 240.513, 240.890/ C
24.110	Organizational documents.	231.54–231.56, 240.202–240.204/ C
24.111	Description of premises.	231.50, 240.195, 240.196/C
24.112	Description of equipment.	240.197/C
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24.114	Description of volatile fruit-flavor concentrate operations.	5361, 5511, 240.890/ P
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Public Participation

Although many specific changes are proposed to make the wine regulations as simple and clear as possible, it is recognized that other changes which have merit may not have been considered. Therefore, ATF invites comments on additional regulatory changes that consumers, industry members, and other interested parties feel should be made to the proposed wine regulations. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future agency action.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosurre.

All comments received and copies of the proposed regulations will be available for public inspection during normal business hours at the:

ATF Reading Room, Office of Public Affairs and Disclosure, Ariel Rios Federal Building, Room 4406, 1200 Pennsylvania Avenue, NW., Washington, DC

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Director within the comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this notice of proposed rulemaking have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. Comments relating to AFT's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

Drafting Information

The principal authors of this document are James A. Hunt and Jim Whitley, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC.

Obsolete Wine Rulings

The provisions of the following Revenue Rulings and ATF Rulings and Procedures are either incorporated into or are obsoleted by the proposed regulations: Revenue Rulings 54–351, 1954–2 C.B. 462; 54–375, 1954–2 C.B. 559; 54–495, 1954–2 C.B. 522; 55–213, 1955–1 C.B. 596; 55–214, 1955–1 C.B. 597; 55–215, 1955–1 C.B. 599; 55–322, 1955–1 C.B. 596; 55–344, 195–1 C.B. 597; 55–363, 1955–1 C.B. 595; 55–489, 1955–2 C.B. 499; 55–535, 1955–2 C.B. 707; 55–536, 1955–2 C.B. 710; 55–667, 1955–2 C.B. 710; 55–668, 1955–2 C.B. 711; 55–742, 1955–2 C.B. 706; 55–743, 1955–2 C.B. 705; 55–744, 1955–2 C.B. 706; 56–8, 1956–1 C.B. 749; 56–10, 1956–1 C.B. 748; 56–32, 1956–1 C.B. 750; 56–201, 1956–1 C.B. 748; 56–494, 1956–2 C.B. 1044; 56–535, 1956–2 C.B. 1032; 56–536, 1956–2 C.B. 1032; 56–550, 1956–2 C.B. 1042; 57–99, 1957–1 C.B. 609; 57–158, 1957–1 C.B. 561; 57–197, 1957–1 C.B. 607; 57–291, 1957–1 C.B. 608; 57–413, 1957–2 C.B. 965; 57–477, 1957–2 C.B. 966; 57–557, 1957 C.B. 965; 58–87, 1958–1 C.B. 598; 58–597, 1957–2 C.B. 1003; 59–353, 1959–2 C.B. 606; 59–413, 1959–2 C.B. 518; 60–94, 1960–1 C.B. 710; 61–125, 1961–2 C.B. 282; 62–25, 1962–1 C.B. 356; 63–31, 1963–1 C.B. 300; 63–71, 1963–1 C.B. 82; 63–192, 1963–2 C.B. 136; 64–299, 1964–2 C.B. 574; 66–166, 1966–1 C.B. 333; 66–361, 1966–2 C.B. 536; 67–83, 1967–1 C.B. 410; 67–84, 1967–1 C.B. 410; 69–521, 1969–2 C.B. 274; 70–113, 1970–1 C.B. 332; 70–210, 1970–1 C.B. 332; 71–54, 1971–1 C.B. 457; 71–500, 1971–2 C.B. 455; 72–204, 1972–1 C.B. 422; 72–272, 1972–1 C.B. 411; ATF Rulings 72–2, 1972–ATF C.B. 84; 73–4, 1973–ATF C.B. 83; 73–15, 1973–ATF C.B. 78; 74–10, 1974–ATF C.B. 40; 75–2, 1975–ATF C.B. 50; 75–8, 1975–AFT C.B. 38; 75–13, 1975–ATF C.B. 52; 75–19, 1975–ATF C.B. 51; 75–34, 1975–ATF C.B. 49; 76–21, 1976–ATF C.B. 90; 79–12, ATF Quarterly Bulletin 1979–2, 6; 80–14, ATF Quarterly Bulletin 1980–3, 19; 81–9, ATF Quarterly Bulletin 1981–4, 25; 82–1, ATF Quarterly Bulletin 1982–1, 16; and Revenue Procedures 62–34, 1962–2 C.B. 534; 72–30, 1972–1 C.B. 759; and ATF Procedure 74–2, 1974–ATF C.B. 69.

Authority and Issuance

Paragraph 1. 27 CFR PART 170—Miscellaneous Regulations Relating to Liquors authority citation is revised to read as follows:

Authority: 6 U.S.C. 6, 7; 18 U.S.C. 926; 22 U.S.C. 2778; 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 26 U.S.C. 205; 44 U.S.C. 3504(h).

Par. 2. 27 CFR Part 170 is amended by reserving the heading for Subpart Z, Regulations Respecting Wine and Wine Products Rendered Unfit for Beverage Use, and removing both the table of sections and all the regulatory sections (170.681 through 170.691), and revising and incorporating these provisions, after revision, into a new 27 CFR Part 24—Wine

Par. 3. 27 CFR PART 231—TAXPAID WINE BOTTLING HOUSES is removed and the provisions revised and incorporated into a new 27 CFR PART 24—WINE.

Par. 4. 27 CFR PART 240—WINE is revised and redesignated as 27 CFR PART 24—WINE to read as follows:

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Authority: 5 U.S.C. 552(a); 6 U.S.C. 6, 7, 15; 26 U.S.C. 5001, 5008, 5041–5044, 5061, 5062, 5064, 5065, 5111–5113, 5121, 5122, 5142, 5143, 5146, 5173, 5179, 5206, 5214, 5215, 5332, 5351–5354, 5356–5358, 5361–5373, 5381–5388, 5391, 5392, 5511, 5512, 5551–5553, 5555–5557, 5661, 5662, 5684, 6065, 6091, 6109, 6201, 6301, 6302, 6311, 6651, 6656, 6676, 6806, 6861, 7011, 7110, 7302, 7342, 7502, 7503, 7601, 7602, 7606, 7805, 7851; 27 U.S.C. 203, 206; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—Scope

§ 24.1 General.

The regulations in this part relate to the establishment and operation (including incidental activities) of wine premises and to the treatment and classification of wine.

§ 24.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1337, as amended (26 U.S.C. 5065))

§ 24.3 Status and operation of existing premises.

(a) *Qualification.* Proprietors of a previously approved bonded winery, bonded wine cellar, or taxpaid wine bottling house may continue to operate, pursuant to their prior qualification, after the effective date of this part. All wine premises hereafter established, and changes in existing premises, will be in conformity with the provisions of this part.

(b) *Continuing operations.* All operations at a bonded winery, bonded wine cellar, or taxpaid wine bottling house will be conducted pursuant to the provisions of this part. The proprietor will determine whether operation under any previous approved alternate method or procedure, emergency variation from requirements, or exceptions to construction and equipment requirements or methods of operation is consistent with the provisions of this part. The proprietor will immediately discontinue the conduct of any operation determined to be inconsistent with the provisions of this part. Each proprietor shall submit to the regional director (compliance), within 60 days after the effective date of this part, a list which describes and gives the original approval date of each authorization to be continued. Any prior authorization not listed by the proprietor will automatically terminate 60 days after the effective date of this part.

§ 24.4 Related regulations.

Regulations related to this part are listed below:

26 CFR Part 301—Procedure and Administration.
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 13—Gauging Manual.

27 CFR Part 18—Production of Volatile Fruit-Flavor Concentrates.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 24.10 Meaning of terms.

When used in this part and in the forms prescribed under this part, terms will have the meanings ascribed in this section. Words in the plural form also include the singular, and *vice versa,* and words imparting the masculine gender also include the feminine. The terms "includes" and "including" do not exclude items not enumerated which are in the same general class. The definitions in this section do not supersede or affect the requirements of Part 4 of this chapter, relative to the labeling of wine under the provisions of the Federal Alcohol Administration Act (49 Stat. 981; 27 U.S.C. 205).

Affiliated persons or firms. When used in connection with "own production", one or more bonded wine premises proprietors associated as members of the same farm cooperative, or any one or more bonded wine premises proprietors affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended (49 Stat. 989; 27 U.S.C. 211).

Agricultural wine. Wine made from suitable agricultural products other than the juice of grapes, berries, or other fruits.

Allied products. Commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine.

Amelioration. The addition to juice or natural wine before, during, or after fermentation, of either water or pure sugar, or a combination of water and pure sugar, or liquid sugar or invert sugar syrup, to adjust the acid level.

Area supervisor. The supervisory officer of a Bureau of Alcohol, Tobacco and Firearms area office.

Artificially carbonated wine. Effervescent wine artificially charged with carbon dioxide and containing more than 0.392 grams of carbon dioxide per 100 milliliters.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part.

Bank. Any commercial bank or other financial institution.

Banking day. Any day during which a bank or other financial institution is open to the public for carrying on substantially all its banking functions.

Bonded winery. The designation given to bonded wine premises established under the provisions of this part on which wine production operations are conducted and other authorized operations may be conducted.

Bonded wine cellar. The designation given to bonded wine premises established under the provisions of this part including premises designated as a bonded winery.

Bonded wine premises. Wine premises established under the provisions of this part on which operations in untaxpaid wine are authorized to be conducted.

Bonded wine warehouse. The designation given to warehouse facilities established under the provisions of this part on bonded wine premises by a warehouse company or other person for the storage of wine and allied products for credit purposes.

Bottle. A receptacle four liters or less in capacity, regardless of the material from which it is made, used to store wine or to remove wine from wine premises.

Bottler. A proprietor of wine premises established under the provisions of this part who fills wine into a bottle.

Brix. The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution at 60 degrees F. (Percent by weight of sugar).

Bulk container. Any container larger than 60 liters.

Business day. Any day, other than Saturday, Sunday, or a legal holiday. (The term "legal holiday" includes all holidays in the District of Columbia and statewide holidays in a particular State in which a claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Calendar year. The period which begins January 1 and ends on the following December 31.

Case. Two or more bottles, or one or more containers, enclosed in a box or fastened together by some other method.

Chaptalization. The addition of pure sugar to juice before or during fermentation to develop alcohol by fermentation.

Concentrate plant. An establishment qualified under Part 18 of this chapter for the production of volatile fruit-flavor concentrate.

Container. A receptacle larger than four liters, regardless of the material from which it is made, used to store wine or to remove wine from wine premises. (Also see the definition of bulk container).

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits plant. An establishment qualified under Part 19 of this chapter (excluding alcohol fuel plants) for the production, warehousing, or processing of distilled spirits (including denatured spirits), or the manufacture of articles.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Effervescent wine. A wine containing more than 0.392 grams of carbon dioxide per 100 milliliters.

Electronic fund transfer (EFT). Any transfer of funds effected by a proprietor's financial institution, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this ______ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Export or exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country and will include shipments to any possession of the United States. For the

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purposes of this part, shipments to the Commonwealth of Puerto Rico and to the territories of the Virgin Islands, American Samoa, and Guam will also be treated as exportations.

Fiduciary. A guardian, trustee, executor, receiver, administrator, conservator, or any person acting in any fiduciary capacity for any person.

Financial institution. A bank or other financial institution, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury account at the Federal Reserve Bank of New York.

Fold. The ratio of the volume of the fruit must or juice to the volume of the volatile fruit-flavor concentrate produced from the fruit must or juice; for example, one gallon of volatile fruit-flavor concentrate of 100-fold would be the product from 100 gallons of fruit must or juice.

Foreign wine. Wine produced outside the United States.

Fruit must. Any unfermented mixture of juice, pulp, skins, and seeds prepared from fruit, berries, or grapes.

Fruit wine. Wine made from the juice of sound, ripe fruit (including wine made from berries or wine made from less than 100 percent grapes).

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

Grams per liter. For the purposes of this part, the unit of measure equivalent to the "parts per thousand" unit of measure prescribed in the Internal Revenue Code of 1954, as amended.

Grape wine. Wine made from the juice of sound, ripe grapes.

Heavy bodied blending wine. Wine made from fruit without added sugar, with or without added wine spirits, and conforming to the definition of natural wine in all respects except as to maximum total solids content.

High-proof concentrate. A volatile fruit-flavor concentrate (essence) that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e., without the addition of other substances.

In bond. When used with respect to wine or spirits, "in bond" refers to wine or spirits possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes any wine or spirits on the bonded premises of a bonded winery, bonded wine cellar or distilled spirits plant, or in transit between bonded premises (including in the case of wine, bonded wine premises). Additionally, the term refers to wine withdrawn without payment of tax under 26 U.S.C. 5362 and to spirits withdrawn without payment of tax under 26 U.S.C. 5214 (a)(5) or (a)(13) with respect to which relief from liability has not yet occurred.

Invert sugar syrup. A substantially colorless solution of invert sugar which has been prepared by recognized methods of inversion from pure sugar and contains not less than 60 percent sugar by weight (60 degrees Brix).

Juice. The unfermented juice (concentrated or unconcentrated) of fruit, berries, grapes, and authorized agricultural products exclusive of pulp, skins, or seeds.

Kind. Kind means the class and type of wine prescribed in this part and in 27 CFR Part 4.

Lees. The settlings of wine.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 U.S. fluid ounces.

Liquid sugar. A substantially colorless pure sugar and water solution containing not less than 60 percent pure sugar by weight (60 degrees brix).

Lot. Wine of the same type. When used with reference to a "lot of wine bottled", lot means the same type bottled or packed on the same date into bottles or containers of the same measure on the same bottling line.

Natural wine. The product of the juice of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by Subparts F and L of this part and containing not more than 21 percent by weight (21 degrees Brix) of total solids.

Nonbeverage wine. Wine, or wine products made from wine, rendered unfit for beverage use in accordance with § 24.215.

Own production. When used with reference to wine in a bonded winery, the term means wine produced by fermentation in the same bonded winery, whether or not produced by a predecessor in interest at the bonded winery. The term includes wine produced by fermentation in bonded wineries owned or controlled by the same or affiliated persons or firms when located within the same State.

Packer. A proprietor of wine premises established under the provisions of this part who fills wine into a container.

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A United States gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person qualified under this part to operate a wine premises, and includes the term "winemaker" when the context so requires.

Pure sugar. Pure refined dry sugar, suitable for human consumption, having a dextrose equivalent of not less than 95 percent on a dry basis, and produced from cane, beets, or fruit, or from grain or other sources of starch.

Reconditioning. The conduct of operations, after original bottling or packing, to restore wine to a resalable condition. The term includes the filtration, clarification, stablization, or reformulation of a product, and relabeling or recasing operations.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal regional official responsible for administering regulations in this part.

Same kind of fruit. In the case of grapes, all of the species and varieties of grapes. In the case of fruits other than grapes, this term includes all of the several species and varieties of any given kind; except that this will not preclude a more precise identification of the composition of the product for the purpose of its designation.

Secretary. The Secretary of the Treasury or the Secretary's delegate.

Service center. An internal revenue service center.

Sparkling wine. An effervescent wine charged with carbon dioxide resulting solely from the secondary fermentation of the wine within a bottle or closed container.

Special natural wine. A product produced from a base of natural wine (or heavy bodied blending wine) to which natural flavorings are added, and made pursuant to an approved formula in accordance with Subpart H of this part.

Specially sweetened natural wine. A product made with a base of natural wine and having a total solids content in excess of 17 percent by weight (17 degrees Brix) and an alcoholic content of not more than 14 percent by volume.

Standard wine. Natural wine, specially sweetened natural wine, special natural wine, and agricultural wine, produced in accordance with Subparts F, H, and I of this part.

Still wine. Wine containing not more than 0.392 grams of carbon dioxide per 100 milliliters.

Sweetening. The addition of juice, concetrated juice or sugar to wine after the completion of fermentation and before taxpayment to correct natural sugar deficiencies.

Sugar. Pure sugar, liquid sugar, and invert sugar syrup.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid wine. Wine on which the tax imposed by law has been determined, regardless of whether the tax has actually been paid or the payment of tax has been deferred.

Taxpaid wine bottling house. The designation given to taxpaid wine premises, established under the provisions of this part, the operations of which are not integrated with the operations of an adjacent or contiguous wine premises.

Taxpaid wine premises. Wine premises established under the provisions of this part on which operations in taxpaid wine are authorized to be conducted.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Total solids. The degrees Brix of unfermented juice or dealcoholized wine.

Treasury Account. The Department of Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

United States or U.S. wine. Wine produced on bonded wine premises in the United States.

Volatile fruit-flavor concentrate. Any concentrate (essence) produced by any process which includes evaporations from any fruit mash or juice.

Wine. When used without qualification, the term includes every kind (class and type) of wine, excluding wine containing less than one-half percent of alcohol by volume or more than 24 percent of alcohol by volume, produced from fruit, berries, or other suitable agricultural products. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine.

Wine premises. Premises established under the provisions of this part on which wine operations or other operations are authorized to be conducted.

Wine spirits. Brandy and other distilled spirits authorized under 26 U.S.C. 5373 for use in beverage wine production.

Subpart C—Administrative and Miscellaneous Provisions

Authorities of the Director

§ 24.24 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form will be furnished as indicated by the headings on the form and the instructions on or pertaining to the form and as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms may be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

§ 24.21 Modified forms.

(a) *General.* The Director may approve the use of a modified form in lieu of the prescribed form required by this part, when in the judgment of the Director: (1) Good cause has been shown for the use of the modified form and (2) The use of the modified form will not result in a net increase in cost to the Government or hinder the effective administration of this part. Except to adapt tax returns for use with data processing equipment, no proposal for modification of a prescribed form relating to qualification, to the giving of any bond, or to the assessment, payment, or collection of tax will be approved under this section.

(b) *Application.* The proprietor who desires to modify a prescribed form shall submit a written application to the regional director (compliance). The application will state the reasons a modified form is necessary and be accompanied by a copy of the proposed form with typical entries.

(c) *Conditions.* A modified form may not be used until the application has been approved by the Director. Authorization for the use of a modified form is conditioned on compliance with the procedures, conditions, and limitations specified in the approval of the application. The use of a modified form does not relieve the proprietor from any requirement of this part. Authority for use of a modified form may be withdrawn whenever in the judgment of the Director the effective administration of this part is hindered by the continuation of the authority.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

§ 24.22 Alternate method or procedure.

(a) *General.* The proprietor, on specific approval of the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. As used in this section, an alternate method or procedure also includes alternate construction or equipment. No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, will be authorized under this section. The Director may approve an alternate method or procedure, subject to stated conditions, when in the judgment of the Director:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, will not result in an increase in cost to the Government, and will not hinder the effective adminstration of this part.

(b) *Application.* The proprietor who desires to employ an alternate method or procedure shall submit a written application to the regional director (compliance) for transmittal to the Director. The application will specifically describe the proposed alternate method or procedure, and will set forth the reasons therefor. Alternate methods or procedures will not be employed until the application is approved by the Director.

(c) *Conditions.* The proprietor shall, during the period of authorization for an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the regional director (compliance), or the Director, the revenue is jeopardized or the effective administration of this part

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is hindered by the continuation of the authorization.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5556))

Authorities of the Regional Director (Compliance)

§ 24.25 Emergency variations from requirements.

(a) *General.* The regional director (compliance) may approve construction, equipment, and methods of operation other than as specified in this part, when in the judgment of the regional director (compliance) an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations:

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

(b) *Application.* The proprietor who desires to employ an emergency variation from requirements shall contact the area supervisor requesting approval until a written application is acted upon by the regional director (compliance). The application will be submitted within 24 hours of any approval by the area supervisor and describe the proposed variation and set forth the reasons. Where the emergency threatens life or property, the proprietor may take immediate action to correct the situation without prior notification; however, the proprietor shall promptly contact the area supervisor and file with the regional director (compliance) through the area supervisor a report concerning the emergency and the action taken to correct the situation.

(c) *Conditions.* Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approved application. A failure to comply in good faith with any procedures, conditions, and limitations will automatically terminate the authority for a variation and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variation was authorized. Authority for any variation may be withdrawn whenever in the judgment of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the variation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5556))

§ 24.26 Authority to approve.

The regional director (compliance) is authorized to approve, except as otherwise provided in this part, all applications, bonds, consents of surety, qualifying documents, claims, and any other documents required by or filed under this part, whether for original establishment, for changes subsequent to establishment, for discontinuance of business, for remission, abatement, credit, or refund of tax, or for any other purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

§ 24.27 Segregation of operations.

The regional director (compliance) may require the proprietor to segregate operations within any wine premises established under this part, by partitions or otherwise, to the extent deemed necessary to prevent jeopardy to the revenue, to prevent confusion between operations, to prevent substitution with respect to the several methods of producing effervescent wine, and to prevent the commingling of standard wine with other than standard wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.28 Installation of meters, tanks, and other apparatus.

The regional director (compliance) is authorized to require the proprietor to install meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install a required apparatus will not be permitted to conduct business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 24.29 Claims.

The regional director (compliance) may require the proprietor or other person liable for the tax on wine or spirits to file a claim and to submit evidence of loss in any case where wine or spirits are lost or destroyed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended 1381, as amended (26 U.S.C. 5008, 5043, 5370))

§ 24.30 Supervision.

The regional director (compliance) may require that operations on wine premises be supervised by any number of ATF officers necessary for the protection of the revenue or for the enforcement of 26 U.S.C. Chapter 51 and applicable regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5366, 5553))

§ 24.31 Submission of forms and reports.

The regional director (compliance) may require the proprietor to submit to a designated ATF officer copies of prescribed transaction forms, records, reports, or source records used to prepare records, reports or tax returns.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5555))

§ 24.32 Records.

The regional director (compliance) may require the proprietor to maintain any record required by this part in a prescribed format or arrangement or otherwise change the method of recordkeeping in any case where the required information is not clearly or accurately reflected.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

Authorities of ATF Officers

§ 24.35 Right of entry and examination.

Under 26 U.S.C. 7601, 7602, and 7606, ATF officers have authority to inspect during normal business hours the records, stocks, and wine premises (including any portion designated as a bonded wine warehouse) of the proprietor to determine compliance with all provisions of the internal revenue laws and regulations. In addition, for the purposes prescribed in 27 CFR 70.22, AFT officers may examine financial records, books of account, and any other books, papers, records, and data relevant to an inquiry. ATF officers desiring to make inspections will show an official ATF identification. Any denial or interference with any inspection by the proprietor, or by agents or employees of the proprietor, is a violation of 26 U.S.C. 7342 and may be subject to an appropriate penalty.

(August 16, 1954, Ch. 736, 68A Stat. 872, as amended, 901, as amended, 903, as amended (26 U.S.C. 5367, 7342, 7601, 7602, 7606))

§ 24.36 Instruments and measuring devices.

All instruments and measuring devices required by this part to be furnished by the proprietor for the purpose of testing and measuring wine, spirits, volatile fruit-flavor concentrate, and materials will be maintained by the proprietor in accurate and readily usable condition. The area supervisor may disapprove the use of any equipment or means of measurement found to be unsuitable for the intended purpose, inaccurate or not in accordance with regulations. In this case, the proprietor shall promptly provide suitable and accurate equipment or measuring devices.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5357, 5366, 5368, 5552))

§ 24.37 Sample for the United States.

ATF officers are authorized to take samples of wine, spirits, volatile fruit-flavor concentrate, or any other material which may be added to wine products, for analysis, testing, etc., to determine compliance with the provisions of law and regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1392 as amended, 1396, as amended (26 U.S.C. 5362, 5373, 5511))

Facilities and Assistance

§ 24.40 Gauging and measuring.

ATF officers may require the proprietor to furnish the necessary facilities and assistance to gauge or measure wine or spirits in any container or to examine any apparatus, equipment, container, or material on wine premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended, 1395, as amended, 1396, as amended (26 U.S.C. 5357, 5366, 5368, 5555, 5557))

§ 24.41 Office facilities.

The regional director (compliance) may require the proprietor to furnish suitable office facilities for the exclusive use of ATF officers in performing Government duties. The facilities will be subject to approval by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended, 1395, as amended (26 U.S.C. 5357, 5366, 5553))

Employer Indentification Number

§ 24.45 Use on returns.

The employer identification number (as defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned a number will be shown on each return filed pursuant to the provisions of this part. Failure of the taxpayer to include the employer identification number on any return filed pursuant to the provisions of this part may result in the assertion and collection of the penalty prescribed in 26 CFR 301.6676–1.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 24.46 Application.

(a) An employer identification number will be assigned pursuant to application on Internal Revenue Service (IRS) Form SS–4 filed by the taxpayer. IRS Form SS–4 may be obtained from the director of the service center or from any district director.

(b) An application on IRS Form SS–4 will be made by the taxpayer who has neither secured nor made application for an employer identification number prior to filing the first return. An application on IRS Form SS–4 will be filed on or before the seventh day after the date on which the first return is filed.

(c) Each taxpayer shall make application for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a tax return under the provisions of this part.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 24.47 Execution of IRS Form SS–4.

(a) *Preparation.* The application on IRS Form SS–4, together with any supplementary statement, will be prepared in accordance with the form instructions and applicable regulations. The application will be filed with the director of the internal revenue service center with which the applicant is required to file a return.

(b) *Signature.* The application will be signed by:

(1) The individual, if the taxpayer is an individual; or,

(2) The president, vice president, other principal officer, or other person authorized to sign, if the taxpayer is a corporation; or,

(3) A responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or,

(4) The fiduciary, if the taxpayer is a trust or estate.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

Occupational Taxes

§ 24.50 Payment of tax.

Except as provided in §§ 24.51 and 24.52, the proprietor who sells wine shall file a return on Internal Revenue Service (IRS) Form 11, Special Tax Return, and pay occupational tax as a wholesale dealer or retail dealer, in accordance with 27 CFR Part 194.

(August 16, 1954, Ch. 736, 68A Stat. 846, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1343, as amended, 1346, as amended (26 U.S.C. 5111, 5112, 5121, 5122, 5142))

§ 24.51 Exemption from occupational tax.

(a) *General.* The proprietor of a bonded winery or bonded wine cellar will not be required to pay the occupational tax as a wholesale dealer or retail dealer on account of the sale, at the bonded winery or bonded wine cellar, or at the principal business office as designated in writing to the regional director (compliance), of wine or spirits which, at the time of sale, are stored at the bonded winery or bonded wine cellar, or have been removed from the bonded winery or bonded wine cellar to taxpaid wine premises, the operations of which are integrated with the operations of the bonded winery or bonded wine cellar and which is adjacent to or in the immediate vicinity of the bonded winery or bonded wine cellar. The proprietor may not have more than one place of sale, as to each bonded winery or bonded wine cellar, that will be exempt from occupational tax under this section.

•(b) *Place of exemption.* Unless the proprietor has claimed the exemption elsewhere, the exemption will be claimed at the bonded winery or bonded wine cellar where the wine or spirits are stored. If exemption from payment of occupational tax is to be claimed for sales at the principal business office rather than for sales at the bonded winery or bonded wine cellar, the proprietor shall, unless stated in the approved application, file a notice in letter form of this intention with the regional director (compliance) of the region in which the bonded winery or bonded wine cellar is located. Where the exemption is claimed for a place other than the bonded wine cellar, the occupational tax will be paid for any sales made at the bonded winery or bonded wine cellar.

(c) *Exception.* Where the proprietor of a bonded winery or bonded wine cellar has not paid occupational tax as a wholesale dealer and consummates sales of wine to another dealer at the purchaser's place of business through a delivery route salesman or otherwise, the proprietor of the bonded winery or bonded wine cellar is required to pay occupational tax as a wholesale dealer at each place the sale is consummated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

§ 24.52 Wholesale dealer.

The proprietor who has paid occupational tax as a wholesale dealer for the place at which sales are conducted will not again be required to pay occupational tax as a dealer because of sales of wine to wholesale or retail dealers, or to limited retail dealers, consummated at the purchaser's place of business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

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§ 24.53 Filing of return.

(a) *Time.* The occupational tax year commences on July 1 of each year and ends on June 30 of the next succeeding year. All persons liable for occupational tax shall file IRS Form 11 and pay the occupational tax on or before July 1 of each tax year. Where business is commenced in any month except July, the tax will be prorated on a monthly basis from the first day of the month in which business was commenced to June 30 following. If the IRS Form 11, with remittance, is not actually delivered on or before July 1, or on or before the day on which business was commenced, the date of the postmark stamped on the cover of a return which is mailed will be the date of filing.

(b) *Place.* IRS Form 11 with remittance will be filed with the director of the internal revenue service center serving the internal revenue district in which the business is located or, in the case of a single return prepared under the provisions of 27 CFR Part 194 to cover liability at two or more locations, with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or the principal office of a corporate taxpayer) is located.

(August 16, 1954, Ch. 736, 68A Stat. 846, as amended, 895, as amended (26 U.S.C. 7011, 7502); sec. 201, Pub. L. 85–859, 72 Stat. 1346, as amended, 1347, as amended (26 U.S.C. 5142, 5143))

§ 24.54 Hand-carried returns.

Notwithstanding the provisions of § 24.53, returns on IRS Form 11 for occupational tax which are hand-carried, will be filed with the district director of the internal revenue district in which the taxpayer's place of business is located or, in the case of a single return prepared under the provisions of 27 CFR Part 194 to cover liability at two or more locations, the return will be filed with the district director of the internal revenue district in which the taxpayer's principal place of business (or the principal office of a corporate taxpayer) is located.

(August 16, 1954, Ch. 736, 68A Stat. 752, as amended (26 U.S.C. 6091))

§ 24.55 Special tax stamp.

Upon filing a properly executed return on IRS Form 11, together with a remittance in the full amount due, the taxpayer will be issued an appropriately designated "special (occupational) tax stamp." This special tax stamp will be kept available at the taxpayer's place of business for inspection during normal business hours by ATF officers. If the special tax stamp is not timely received, a cancelled check showing payment of the occupational tax may be kept available for inspection until the special tax stamp is received.

(August 16, 1954, Ch. 736, 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85–859, 72 Stat. 1346, as amended, 1346, as amended (26 U.S.C. 5142, 5143, 5146))

Assessments

§ 24.60 General.

Where the regional director (compliance) determines by examinatin of records, inventories, or otherwise that the proprietor has incurred liability for the tax on wine, distilled spirits, or occupational tax, and the proprietor does not pay the tax upon notification of the liability, the tax will be assessed.

(August 16, 1954, Ch. 736, 68A Stat. 767, as amended (26 U.S.C. 6201))

§ 24.61 Assessment of tax.

When wine or spirits in bond are lost or destroyed (except wine or spirits on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the wine or spirits fails to file a claim as provided in this part or when the claim is denied, the tax will be assessed. In any case where wine is produced, imported, or received otherwise than as authorized by law, or where wine or spirits are removed, possessed, or knowingly used in violation of applicable law, or volatile fruit-flavor concentrate is sold, transported, or used in violation of law, the tax will be assessed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1323, as amended, 1332, as amended, 1335, as amended, 1361, as amended, 1387, as amended, 1392, as amended (26 U.S.C. 5001, 5008, 5043, 5061, 5370, 5391, 5512))

§ 24.62 Notice.

If an investigation or an examination of records discloses that liability for the tax on wine or distilled spirits, or occupational tax has been incurred by the proprietor, the regional director (compliance) will notify the proprietor by letter of the basis and the amount of the proposed assessment in order to afford the proprietor an opportunity to submit a protest, with supporting evidence, within 45 days, or to request a conference with regard to the tax liability. However, if collection of the tax liability may be jeopardized by a delay, the regional director (compliance) may take immediate jeopardy assessment action pursuant to 26 U.S.C. 6861.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1361, as amended (26 U.S.C. 5008, 5370; 6861))

Claims

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

(a) *Claim for remission of tax on spirits.* All claims for remission of tax required by this part, relating to the loss or destruction of spirits in bond, will be filed with the regional director (compliance) within 30 days of discovery of the loss. A claim filed under this paragraph will set forth the following information:

(1) The name, registry number, and location of the distilled spirits plant which produced the spirits;

(2) The serial numbers of the containers from which the spirits were lost, the quantity lost from each, and the total quantity of spirits covered by the claim;

(3) The total amount of tax for which claim is filed;

(4) The date of the loss or destruction (or, if not known, the date of discovery);

(5) The nature and cause (if known) of the loss will be stated specifically and in sufficient detail to disclose all material facts and circumstances surrounding the loss;

(6) If lost in transit, the name of the carrier and the points between which shipped; and

(7) If lost by theft, evidence establishing that the loss did not occur as the result of negligence, connivance, collusion, or fraud on the part of the proprietor, owner, consignor, consignee, bailee or carrier, or the agents or employees of any of them.

(b) *Claim for allowance of loss on wine.* A claim for allowance of loss required by this part, relating to the loss or destruction of wine in bond, will be filed with the regional director (compliance). A claim for allowance of loss for wine lost in transit, by fire or other casualty, or any other extraordinary or unusual losses, including a loss by theft, will be filed immediately. Any other claim for allowance of loss will be attached to and submitted with the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, for June or, in the case of discontinuance of the premises or change in proprietorship, to the final monthly report filed. A claim filed under this paragraph will set forth the information required by paragraphs (a)(5) to (a)(7) of this section and, in addition, will set forth the following information:

(1) The original volume of wine which sustained the loss, the tax class, the quantity of wine lost, and the percentage of wine lost;

(2) Where the claim covers losses sustained at a bonded winery or bonded wine cellar during the tax year, the claimant shall state: (i) The quantities of wine on hand at the beginning of the tax year, received in bond, and produced during the tax year; (ii) where the percentage of loss is calculated separately by tax class, the volume of wine by tax class; and (iii) if effervescent wine is produced, the volume of wine produced by fermentation in bottles, by artificial carbonation, and by bulk processing; and

(3) Claims covering losses of wine during transit in bond will show the volume lost from each container, the serial number, if any, and the volume shipped.

(c) *Claim for abatement, credit or refund.* A claim for abatement of an assessment under § 24.61, or credit or refund of tax which has been paid or determined, will be filed with the regional director (compliance) in accordance with the provisions of this paragraph and the provisions of 27 CFR 170 Subpart E. A claim filed under this paragraph with respect to spirits, wine, or volatile fruit-flavor concentrate, will set forth the applicable information required by paragraphs (a), (b), or (a)(5) to (a)(7) of this section. In addition, any claim filed under this paragraph will set forth the following information:

(1) The date of the assessment for which abatement is claimed; and

(2) The name, registry number, and address of the premises where the tax was assessed (or name, address, and title of any other person who was assessed the tax, if the tax was not assessed against the proprietor).

(d) *Indemnification or recompense.* A claim filed under paragraph (a) or (b) of this section will specify whether the claimant has been or will be indemnified or recompensed for the spirits or wine lost and, if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wine, less the tax.

(e) *Supporting documents.* A claim filed under paragraph (a), (b), or (c) of this section will be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. If filed for tax on wine or spirits lost in transit, the claim will be supported by a copy of the carrier's bill of lading.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1361, as amended, 1362, as amended (26 U.S.C. 5008, 5370, 5373))

§ 24.66 Claims on wine returned to bond.

(a) *General.* A claim for credit or refund, or relief from liability, of tax on unmerchantable U.S. wine returned to bonded wine premises will be filed with the regional director (compliance) within six months after the date of the return of the wine to bond. A single claim may not be filed under this section for a quantity on which credit or refund of tax would be in an amount less than $25. This limitation does not apply with respect to any returned wine on which the six month period for filing a claim will expire.

(b) *Filing.* A claim filed under this section will set forth the following information:

(1) The kind, volume, and tax class of the wine;

(2) As to each tax class, the amount of tax previously paid or determined; and

(3) The date the wine was returned to bond.

(c) *Indemnification or recompense.* A claim filed under this section will specify whether the claimant has been or will be indemnified or recompensed for the wine returned to bond and if so, the amount and nature of indemnity or recompense and the actual value of the wine, less the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1380, as amended (26 U.S.C. 5044, 5361, 5371))

§ 24.67 Other claims.

The requirements with respect to a claim for:

(a) Remission of tax on wine withdrawn without payment of tax under the provisions of § 24.292, and lost in transit to the port of export, vessel or aircraft, foreign-trade zone, customs bonded warehouse, or manufacturing bonded warehouse, as applicable, are contained in 27 CFR Part 252.

(b) Refund or credit of any tax imposed on wine or other liquors by 26 U.S.C. Chapter 51, Part I, Subchapter A, on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that the amount was excessive, are contained in 27 CFR Part 170, Subpart E.

(c) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on wine or other liquors previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official as the result of (1) a major disaster, (2) fire, flood, casualty, or other disaster, or (3) breakage, destruction, or damage (excluding theft) resulting from vandalism or malicious mischief, are found in 27 CFR Part 170 Subpart O.

§ 24.68 Insurance coverage.

The remission, abatement, refund, credit, or other relief, of taxes on wine or spirits provided for under this part will be allowed only to the extent that the claimant does not have insurance coverage to indemnify or recompense for the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5064, 5372))

§ 24.9 Filing of claims.

(a) *Claims.* All claims filed under this part for abatement or refund of tax will be filed on Internal Revenue Service (IRS) Form 843. All claims filed under this part for credit or remission of tax will be filed on ATF Form 5620.8 (2635). Each claim filed under this part will:

(1) Show the name, address, and title of the claimant;

(2) Be signed by the claimant or the duly authorized agent of the claimant; and

(3) Be executed under the penalties of perjury.

(b) *Supporting documents.* Forms, supporting statements, and any other documents required by this part to be submitted with a claim will be attached to the claim and be considered a part of the claim. The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1361, as amended (26 U.S.C. 5064, 5370))

§ 24.70 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. Where a claim for credit of tax is filed, the claimant shall, upon receipt of notification of allowance of credit from the regional director (compliance), make an adjusting entry on the next succeeding tax return (or returns) to the extent necessary to exhaust the credit. The claimant shall also make an explanatory statement on each tax return specifically identifying the notification of allowance of credit. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return until ATF has acted on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1335, as amended, 1361, as amended, 1395, as amended (26 U.S.C. 5043, 5044, 5061, 5370, 5555))

Tax Exempt Wine

§ 24.75 Wine for personal or family use.

(a) *General.* Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(b) *Quantity.* The aggregate amount of wine that may be produced exempt from

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tax with respect to any household may not exceed:

(1) 200 gallons per calendar year for a household in which two or more adults reside, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) *Definition of an adult.* For the purposes of this section, an adult is any individual who is 18 years of age or older. However, if the locality in which the household is located has established by law a greater minimum age at which wine may be sold to individuals, the term "adult" will mean an individual who has attained that age.

(d) *Limitation.* This exemption should not in any manner be construed as authorizing the production of wine in violation of applicable State or local law. While this exemption is also applicable to bonded winery individual owners and partnerships, this exemption does not otherwise apply to partnerships, corporations, or associations.

(e) *Removal.* Wine produced under this section may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions, such as homemaker's contests, tastings or judgings, but may not under any circumstances be sold or offered for sale. The proprietor of a bonded winery shall pay the tax on any wine removed for personal or family use in excess of the limitations provided in this section and shall also enter all quantities removed for personal or family use on ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

§ 24.76 Cider.

Cider is the noneffervescent product of the normal alcoholic fermentation of apple juice only, produced without the use of any preservative method or material. When produced at a place other than a bonded winery and sold or offered for sale as cider, and not as wine or as a substitute for wine, cider will not be subject to tax as wine, nor to the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

§ 24.77 Experimental wine.

(a) *General.* Any scientific university, college of learning, or institution of scientific research may, without payment of tax, produce, receive, blend, treat, and store wine for experimental or research use, but not for consumption (other than organoleptic tests) or sale, and receive spirits in quantities as may be necessary for the production of wine.

(b) *Qualification.* An institution desiring to conduct experimental wine operations shall make application in letter form to the regional director (compliance). The application will show the name and address of the institution, the nature, extent, and purpose of the operations to be conducted, describe the operations and equipment and the location at which operations will be conducted (including identification of the building or buildings, or portions thereof, to be used), and the security measures to be provided. If spirits are to be used, that fact will be stated together with the estimated annual requirements in proof gallons. A secure place of storage under lock will be provided for spirits and will be described in the application. The applicant shall, when required by the regional director (compliance), furnish as part of the application, additional information as may be necessary to determine whether the application should be approved. Operations may not begin until authorized by the regional director (compliance).

(c) *Procurement of Spirits.* Where the approved application provides for the use of spirits in experimental wine operations, spirits may be procured to the extent stated in the approved qualifying application. However, an application will be filed with the regional director (compliance) and authorization obtained for each spirits procurement.

(d) *Records.* All approved qualifying documents and applications will be retained in the files of the institution and will be exhibited on request to ATF officers. No reports concerning wine or spirits need be filed unless required by the regional director (compliance), but records appropriate to the experiments to be conducted and records documenting the disposition of the wine and spirits will be retained and will be made available for inspection by ATF officers. If spirits are used, the records will show the quantities of spirits received and used each day.

(e) *Discontinuance.* When an institution discontinues experimental wine operations, all remaining wine or spirits will be disposed of either by destruction or shipment to premises authorized to receive wine or spirits. A letter application will be filed with the regional director (compliance) and authorization obtained prior to the destruction or shipment of the wine or spirits. When the authorized destruction or shipment has been completed, a letter notification will be sent to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

Formulas

§ 24.80 General.

The proprietor shall, before production, obtain approval of the formula and process by which special natural wine, agricultural wine, and other than standard wine (except distilling material and vinegar stock) are to be made. The formula will be prepared and filed with the Director on ATF Form 5120.29 (698-Supplemental), Formula and Process for Wine, in accordance with the instructions on the form. A nonbeverage wine formula will show the intended use of the finished wine or wine product. Any formula approved under this section will remain in effect until revoked, superseded, or voluntarily surrendered. Except for research, development, and testing, no special natural wine, agricultural wine, or, if required to be covered by an approved formula, wine other than standard wine may be produced prior to approval by the Director of a formula covering each ingredient and process (if the process requires approval) used in the production of the product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1386, as amended, 1395, as amended (26 U.S.C. 5361, 5367, 5386, 5387, 5555))

§24.81 Filing of formulas.

The proprietor shall on each formula filed designate all ingredients and, if required, describe each process used to produce the wine. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production, or any other change in an approved formula, will require the filing of a new ATF Form 5120.29 (698-Supplemental). After a change in formula is approved, the original formula will be surrendered to the Director. The proprietor shall serially number each formula, commencing with "1" and continuing thereafter in numerical sequence. Nonbeverage wine formulas will be prefixed with the symbol "NB." The Director or the regional director (compliance) may at any time require the proprietor to file a statement of process in addition to that required by the ATF Form 5120.29 (698-Supplemental) or any other data to determine whether the formula should be approved or the approval continued.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

§ 24.82 Samples.

Except for salted wine or salted wine products, the proprietor shall submit under separate cover at the time of filing any nonbeverage wine formula, a 750 ml sample of the base wine used and a 750 ml sample of the finished wine or wine product. The latter sample will be considered representative of the finished product. Any material change in the flavor or other characteristics of the finished product from that of the approved sample will require the filing of a new formula even though the ingredients may be the same. In addition, the Director or the regional director (compliance) may, at any time, require the proprietor to submit samples of any wine or wine product made in accordance with an approved formula or of any materials used in production.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

Essences

§ 24.85 Essences.

Essences or extracts (preparations of natural constituents extracted from fruit, herbs, berries, etc.) may be used in the production of any formula wine except agricultural wine. The essences may be produced on wine premises or elsewhere. Where an essence contains spirits, use of the essence may not increase the volume of the wine more than 10 percent nor its alcohol content more than four percent by volume.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.86 Essences produced on wine premises.

Wine, taxpaid spirits, or spirits withdrawn tax-free may be used in the production of essences on wine premises. The description of the process for producing the essence may be included as part of a formula for the production of a formula wine or a separate formula may be field on ATF Form 5120.29 (698-Supplemental). If a separate formula is filed for the essence, the serial number of the formula by which it is produced will be shown in the ATF Form 5120.29 (698-Supplemental) covering the formula wine in which it is to be used. If an essence is to be made in quantities greater than required for individual lots of formula wine, and stored on the premises, a separate formula will be filed for the essence. Essences made on wine premises with the use of tax-free spirits may only be used in the production of a formula wine and may not be removed from the premises where made. The ATF Form 5120.29 (698-Supplemental) for the production of an essence is filed in the same manner as for the production of formula wine and a sample of the essence produced will be at least four fluid ounces.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.87 Essences made elsewhere.

Before an essence not made on wine premises may be used in the production of formula wine, the manufacturer of the essence shall obtain approval from the Director. The request for approval will identify the essence by name or number and by the name of the manufacturer, and a sample of at least four fluid ounces of the essence will be submitted. However, a request for approval and submission of a sample is not required if the essence is made pursuant to approval of a formula on ATF Form 5530.5 (1678), Formula and Process for Nonbeverage Product. Essences made under an approved formula on ATF Form 5530.5 (1678) will be described on ATF Form 5120.29 (698-Supplemental) by showing the name of the manufacturer, the manufacturer's nonbeverage drawback formula number, and the date of approval by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

Conveyance of Wine or Spirits on Wine Premises

§ 24.90 Taxpaid products.

Taxpaid wine or other taxpaid products may be conveyed across bonded wine premises, but may neither be stored nor allowed to remain on bonded wine premises and will be kept separate from untaxpaid wine or spirits. However, upon payment or determination of the tax bulk wine may remain on bonded wine premises until the close of the business day following the day the tax was paid or determined, or the bonded wine premises on which the tank is located may be alternated as taxpaid wine premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.91 Conveyance of untaxpaid wine or spirits.

Untaxpaid wine or spirits may be conveyed between different portions of the bonded wine premises of the same bonded winery or bonded wine cellar. Untaxpaid wine or spirits may also be conveyed by uninterrupted transportation over any public thoroughfare, or over a private roadway if the owner or lessee of the roadway agrees, in writing, to allow ATF officers access to the roadway to perform their official duty. The conveyance of wine or spirits as authorized in this section is subject to the following conditions:

(a) The untaxpaid wine or spirits are not stored or allowed to remain on any premises other than bonded wine premises;

(b) The untaxpaid wine or spirits are kept completely separate from taxpaid wine or spirits; and

(c) A description of the means and route of conveyance and of the portions of the bonded wine premises between which wine or spirits will be conveyed, as well as a copy of any agreement furnished by the owner or lessee of a private roadway, have been submitted to and approved by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5357, 5365))

§ 24.92 Products in customs custody.

Products in customs custody may be conveyed across bonded wine premises subject to the following conditions:

(a) The products are not stored or allowed to remain on bonded wine premises; and

(b) The products are kept separate from wine and spirits on bonded wine premises and are moved expeditiously.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5357, 5361, 5365))

Samples

§ 24.95 General.

Wine or spirits may be withdrawn free of tax from a bonded winery or bonded wine cellar for use by or for the account of the proprietor or the agents of the proprietor, for analysis or testing, or organoleptically or otherwise. Wine or spirits may be used for testing purposes, and wine may be used for tasting or sampling on bonded wine premises free of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended (26 U.S.C. 5362, 5372, 5373))

§ 24.96 Use off premises.

The proprietor may remove samples of wine or spirits free of tax for analysis or testing purposes.

(a) *Size.* The size of each sample may not be more than one liter for each lot of wine or spirits to be analyzed or tested unless the regional director (compliance) authorizes a larger quantity.

(b) *Statement.* The proprietor shall, prior to removing any samples, obtain a written statement of agreement that records of receipt, use, and disposition for all samples received will be maintained, and that the records and operations with respect to the samples

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will be available during normal business hours for inspection by ATF officers.

(c) *Disposition of samples.* Remnants or residues of samples remaining after analysis or testing, and which are not retained as specimens, will be destroyed or returned to bonded wine premises. Free of tax samples or residues may not be consumed or sold.

(d) *Records.* The proprietor shall maintain records of all samples taken for analysis or testing, showing the size of each sample, the kind of wine or spirits, date, and the name and address to where sent. Entries in the records will be made prior to actual removal of the samples from bonded wine premises.

(e) *Labeling of samples.* Each sample taken for analysis or testing will be labeled "Sample for Analysis Only". The label will show the name, address, and registry number of the bonded winery or bonded wine cellar, date, and the kind of wine or spirits.

(f) *Limitation.* The proprietor may not take samples in excess of the amount necessary for the purpose intended. The tax will be collected on any wine or spirits found to have been used or disposed of in a manner not authorized by this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5362, 5367, 5368, 5373))

§ 24.97 Use on premises.

(a) *Analysis or testing.* The proprietor may take samples of wine or spirits free of tax for analysis or testing on bonded wine premises. The proprietor shall maintain records showing the size, kind of wine or spirits, date, and disposition of each sample. The label of each sample retained as a laboratory specimen will be marked "Sample for Analysis Only" and will show the kind of wine or spirits.

(b) *Tasting.* The proprietor may take samples of wine free of tax for organoleptic tasting on bonded wine premises. If a room or area is set aside for tasting purposes, a record will be maintained showing the date, quantity and kind of wine transferred to the room or area for tasting.

(c) *Limitation.* The tax will be collected on any wine or spirits withdrawn under this section which are used for purposes other than as authorized or when the quantity of wine or spirits withdrawn under this section exceeds the amount necessary for the purpose intended.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5372))

Subpart D—Establishment and Operations

§ 24.100 General.

Each person desiring to conduct operations in wine (other than the production of wine free of tax as provided in §§ 24.75 to 24.77) shall, prior to commencing operations, provide wine premises, make application to the regional director (compliance), file bond, and receive permission to operate wine premises as provided in this part. After approval, the wine premises will be designated a bonded winery, bonded wine cellar or taxpaid wine bottling house. As provided in § 24.107, the designation bonded winery will be used if production operations are to be conducted. In addition, wine premises may be used, in accordance with the provisions of this part, for the conduct of certain other operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351, 5352))

Premises and Operations

§ 24.101 Bonded wine premises.

(a) *General.* A person desiring to conduct operations involving untaxpaid wine, including the use of spirits in wine production, shall file an application and bond with the regional director (compliance). Further, a warehouse company or other person may, upon obtaining the consent of the proprietor and the surety on the bond and upon filing an application with the regional director (compliance) and receiving approval, establish on bonded wine premises a bonded wine warehouse for the storage of wine and allied products for credit purposes.

(b) *Authorized operations.* Except as provided in this part, no operation may be conducted on bonded wine premises other than those authorized. The following operations are authorized:

(1) The receipt, production, blending, cellar treatment, storage, and bottling or packing of untaxpaid wine;

(2) The use of wine spirits in beverage wine production and the use of spirits in nonbeverage wine production;

(3) The receipt, preparation, use, or removal of fruit, concentrated or unconcentrated fruit juice, or other materials to be used in the production or cellar treatment of wine; and

(4) The preparation, storage, or removal of commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379 as amended, (26 U.S.C. 5351, 5353, 5361))

§ 24.102 Taxpaid wine premises.

A person desiring to conduct operations in taxpaid wine at a bonded winery or a bonded wine cellar, or a person desiring to conduct taxpaid wine operations at a taxpaid wine bottling house, shall file an application as provided in § 24.105 to establish taxpaid wine premises. The following operations may be conducted on taxpaid wine premises:

(a) The receipt, storage, bottling or packing, and removal of taxpaid wine;

(b) The mixing of taxpaid wine of the same kind, tax class, and country of origin to facilitate handling; and

(c) The treatment of taxpaid wine to preserve, filter, or clarify.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1381, as amended (26 U.S.C. 5252, 5363))

§ 24.103 Other operations.

Upon the specific approval of the regional director (compliance), other operations not provided for in this part may be conducted on wine premises. Authority to conduct other operations may be obtained by submitting an application to the regional director (compliance). The application will specifically describe the operation to be conducted and the wine premises and equipment to be used. The regional director (compliance) may make any inquiry necessary to determine whether the conduct of other operations on wine premises would jeopardize the revenue, conflict with wine operations, or be contrary to law. Other operations may not be conducted on wine premises until the application has been approved by the regional director (compliance). Other operations authorized under this section will be conducted in accordance with the conditions, limitations, procedures, and terms stated in the approved application. Authority to conduct other operations may be withdrawn whenever the regional director (compliance) determines the conduct of the other operations on wine premises jeopardizes the revenue, conflicts with wine operations, or is contrary to law.

(Sec. 210, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5361, 5363))

Application

§ 24.105 General.

A person desiring to establish a bonded winery, bonded wine cellar or taxpaid wine bottling house shall file an application on ATF Form 5120.25 (698), Application to Establish and Operate Wine Premises. Approval of ATF Form 5120.25 (698) will constitute

authorization for the proprietor to operate. The premises may not be used for the conduct of operations under this part unless the proprietor has a valid approved application for the operations. The application will be executed under the penalties of perjury and all written statements, affidavits, and any document incorporated by reference will be considered a part of the application. In any instance where a bond is required to be given or a permit obtained to engage in an operation, the currently approved application will not be valid with respect to that operation if the bond or permit is no longer in effect. In this case, the proprietor shall again file an application and obtain approval before engaging in operations at the wine premises. A new application is not required when a strengthening bond is filed pursuant to § 24.153 or a new bond or superseding bond is filed pursuant to § 24.154. The regional director (compliance) may require the filing of a new or an amended application in any instance where the currently approved application is inadequate or incorrect in any respect. Within 60 days after receipt of a notice, the proprietor shall file the application.

(August 16, 1954, Ch. 736, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

§ 24.106 Basic permit requirements.

Any person intending to engage in the business of producing or blending wine or purchasing wine for resale at wholesale is required under the Federal Alcohol Administration Act (49 Stat. 978; U.S.C. 203) to obtain a basic permit. A State, a political subdivision of a State, or officers or employees of a State or political subdivision acting in their official capacity are exempted from this requirement. The issuance of a basic permit under the Act is governed by regulations in 27 CFR Part 1. Where a basic permit is required to engage in an operation, an application for a basic permit will be filed with the regional director (compliance) at the time of filing an original or amended application on ATF Form 5120.25 (698). Operations requiring a basic permit may not be conducted until the basic permit application is approved. No Wine Producer's and Blender's Basic Basic Permit or Wine Blender's Permit is required for a bonded wine cellar established only for the purpose of storing untaxpaid wine even though an approved application, ATF Form 5120.25 (698), and bond are required.

(Sec. 210, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

§ 24.107 Designation as a bonded winery.

Bonded wine premises which will be used for the production of wine or for production processes involving the use of wine will be designated a bonded winery unless the proprietor applies for a bonded wine cellar designation. Prior to engaging in wine production operations the proprietor will obtain the basic permit required by the Federal Alcohol Administration Act. If the proprietor of a bonded wine premises designated as a bonded winery does not engage in wine production operations, the regional director (compliance) may change the designation of the premises from bonded winery to bonded wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

§ 24.108 Bonded wine warehouse application.

A warehouse company or other person desiring to establish a bonded wine warehouse on bonded wine premises for storing wine or allied products for credit purposes shall file an application, in letter form, with the regional director (compliance). The name and address of the applicant and of the bonded winery or bonded wine cellar, and the approximate area and storage capacity (in gallons) of the bonded wine warehouse, will be stated in the application. The application will be accompanied by a signed statement from the proprietor of the bonded winery or bonded wine cellar requesting the establishment of the warehouse, and the consent of the surety of the bond for the bonded winery or bonded wine cellar.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

§ 24.109 Data for application.

The ATF Form 5120.25 (698) is prepared in accordance with the instructions on the form and will include the following, as applicable:

(a) Serial number;

(b) Name and principal business address of the applicant and the address of the wine premises if different from the business address;

(c) Statement of the type of business organization and of each person having an interest in the business, supported by the items of information listed in § 24.110;

(d) Indicate whether the application is for the purpose of establishing a bonded winery, bonded wine cellar, or taxpaid wine bottling house. Also, indicate if taxpaid wine premises are to be established in the case an application for a bonded winery or bonded wine cellar;

(e) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the applicant's name;

(f) Description of the premises (see § 24.111);

(g) List of equipment (see § 24.112);

(h) Trade names (see § 24.113);

(i) Description of spirits operations;

(j) With respect to wine premises for which the application relates, a list of the applicant's basic permits and bonds (including those filed with the application) showing the name of the surety for each bond;

(k) Description of volatile fruit-flavor concentrate operations (see § 24.114); and

(l) If other operations not specifically authorized by this part are to be conducted on wine premises, a description of the operations, a list of the premises and any major equipment to be used, and a statement as to the relationship, if any, of the operation to wine operations on wine premises.

If any of the information required by paragraph (c) of this section is on file with the regional director (compliance) of any ATF region in connection with any other premises operated by the applicant, that information, if accurate and complete, may be incorporated by reference and made a part of the application. In this case, the name, address, and if any, registry number of the premises where the information is filed will be stated in the application. The applicant shall, when required by the regional director (compliance), furnish as part of the application, additional information as may be necessary to determine whether the application should be approved.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

§ 24.110 Organizational documents.

The supporting information required by paragraph (c) of § 24.109, includes, as applicable, copies of:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation.

(2) List of the directors and officer, showing their names and addresses.

(3) Certified extracts or digests of minutes of meetings of the board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and

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outstanding, and the voting rights of the respective owners or holders of stock.

(b) *Articles of partnership.* True copies of the articles of partnership, if any, and of the certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another party. If a corporation is wholly-owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need to be furnished only upon the request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the wine premises, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents which may be required by the regional director (compliance) such as articles of incorporation, bylaws, and any certificate issued by a State authorizing operations will be made available to any ATF officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.111 Description of premises.

The application will include a description of each tract of land comprising wine premises. The description will be by directions and distances, in feet and inches (or hundredths of feet), with sufficient particularity to enable ready determination of the bounds of the wine premises. When required by the regional director (compliance), a diagram of the wine premises, drawn to scale, will be furnished. The description will clearly indicate any area of the wine premises to be used as bonded wine premises, used as taxpaid wine premises, or alternated for use as bonded wine premises and taxpaid wine premises. The means employed to afford security and protect the revenue will be described. If required by the regional director (compliance) to segregate operations within the premises, the manner by which the operations are segregated will be described. Each building on wine premises will be described as to size, construction, and use. Buildings on wine premises which will not be used for wine operations will be described only as to size and use. If the wine premises consist of a part of a building, the rooms or floors will be separately described. The activities conducted in the adjoining portions of the building and the means of ingress and egress from the wine premises will be described.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5365))

§ 24.112 Description of equipment.

The following items of equipment, if on wine premises, will be described in the application:

(a) The approximate number and total capacity of tanks and other bulk containers of 100 gallons or more in volume used in the production, storage, cellar treatment, bottling or packing of wine, and the number and total volume of tanks used to measure or gauge wine and spirits. A statement of certification of accurate calibration will be included for any tank or other bulk container that will be used for taxpayment of wine or spirits, the storage of spirits, and the addition of spirits to wine. (A list of tanks and other bulk containers by serial number, designated use or uses, capacity, and method of measurement will be maintained by the proprietor at the wine premises);

(b) The total number of barrels or other readily movable containers used for the production or storage of wine of less than 100 gallons in volume;

(c) The number and approximate capacities of any crushers and presses;

(d) Description of any laboratory facility and a listing of any wine or spirits tests which will be done on wine premises; and

(e) Stills used in the production of volatile fruit-flavor concentrate (serial number and capacity). The capacity will be stated as the maximum quantity in wine gallons of volatile fruit-flavor concentrate capable of being produced in 24 hours.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1379, as amended, 1392, as amended (26 U.S.C. 5179, 5356, 5511))

§ 24.113 Trade names.

Except as provided in this section, the applicant shall list on the application each trade name to be used in connection with operations on wine premises. If State or local law requires registration of a trade name, the applicant shall certify that each trade name listed on the application is so registered. Where operations conducted on wine premises are required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), the regulations issued in 27 CFR Part 1 govern the approval and use of a trade name in connection with these operations. If a trade name is approved for use under the labeling provisions of the Act (49 Stat. 981; 27 U.S.C. 205), the applicant may use the trade name in connection with any other operation conducted on wine premises without listing the trade name on the application. Operations under a trade name may not be conducted prior to approval of the application or issuance of a basic permit covering the use of the name.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.114 Description of volatile fruit-flavor concentrate operations.

Each applicant intending to produce volatile fruit-flavor concentrate shall include on the ATF Form 5120.25 ([illegible]) application a step-by-step description of the production procedure to be employed. The description will commence with the obtaining of juice from the fruit and continue through each step of the process to removal of volatile fruit-flavor concentrate from the system. If volatile fruit-flavor concentrate containing more than 24 percent alcohol (high-proof concentrates (essences)) is to be produced, indicate any step in the production procedure at which any spirits may be fit for beverage purposes. The maximum quantity in gallons of fruit most used and volatile fruit-flavor concentrate produced in 24 hours, the maximum and minimum fold, and the maximum percent of alcohol in the volatile fruit-flavor concentrate will be stated for each kind of fruit used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1389, as amended, 1392, as amended (26 U.S.C. 5356, 5361, 5511))

§ 24.115 Registry of stills.

Any still intended for use in the production of volatile fruit-flavor concentrate will be set up on bonded wine premises. Each still is subject to the provisions of Subpart C of Part 170 of this chapter and will be registered with the regional director (compliance). The listing of a still in the application, and the approval of the application, will, as provided in 27 CFR 170.55, constitute registration with the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1379, as amended, 1392, as amended (26 U.S.C. 5179, 5356, 5511))

§ 24.116 Registry number.

Upon approval of the application, the regional director (compliance) will assign a registry number to the bonded winery, bonded wine cellar, or taxpaid wine bottling house. The registry number will be used in all correspondence and on all documents filed subsequently in connection with the operation of the premises and will be shown where required on labels and markings of containers or cases filled at the wine premises.

§ 24.117 Powers of attorney.

The proprietor shall file with the regional director (compliance) ATF Form 5000.8 (1534), Power of Attorney, for each person authorized to sign or to act on behalf of the proprietor as an attorney-in-fact. A power of Attorney is not required for any person whose authority has been furnished in the application. The ATF Form 5000.8 (1534) will be prepared in accordance with the instructions on the form. If not limited in duration, the power of attorney will continue in effect until written notice of revocation is received by the regional director or operations are terminated.

§ 24.118 Maintenance of application file.

(a) The proprietor shall maintain an application file in looseleaf form in complete and current condition, readily available at the wine premises for inspection by ATF officers. The application file will be divided into three sections as follows: (1) A section consisting of the latest approved application and the current pages with the information required by paragraphs (e) through (l) of § 24.109; (2) a section consisting of the current pages with the information and documents or an incorporation by reference as required by paragraph (c) of § 24.109; and (3) a section consisting of the current pages with the additional information and/or documents the regional director (compliance) has requested.

(b) The proprietor shall file an amended application covering any change in, or addition to, items of information currently on file as provided in § 24.120.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356, 5367))

Changes Subsequent to Original Establishment

§ 24.120 Amended application.

Where there is a change in any of the information included in the current approved application, the proprietor shall, within 30 days of the change (except as otherwise provided in this part), submit an amended application to the regional director (compliance) and set forth the information necessary to make the application file accurate and current. Where the change affects only pages or parts of pages of the current application, as many complete pages as will enable the replacement of the pages affected and maintenance of the file as provided in § 24.118 will be submitted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.121 Changes affecting permits.

The proprietor shall follow the provisions of 27 CFR Part 1 to effect any change pertaining to a permit issued under the Federal Alcohol Administration Act.

(49 Stat. 978; 27 U.S.C. 203)

§ 24.122 Change in name of proprietor or trade name.

Where there is to be a change in the name of the business, the proprietor shall file an amended application and, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. Where there is a change in or addition of a trade name, the proprietor shall file an amended application or, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. In either case, if the proprietor has filed bond, a new bond or consent of surety will not be required. Operations under the new name or trade name may not be conducted before approval of the amended application and/or issuance of an amended permit.

(Sec. 201, Pub. L. 85–859 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.123 Change in stockholders.

If there is a change in the list of stockholders furnished under the provisions of § 24.110(c)(1), the proprietor may, in lieu of submission within 30 days of the change under the provisions of § 24.120, submit a new list of stockholders annually on May 1, or any other approved date, to the regional director (compliance) which has on file the list of stockholders, provided the sale or transfer of capital stock does not result in a change in the control or management of the business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.124 Change in corporate officers.

Where there is any change in the list of corporate officers furnished under the provisions of § 24.110(a)(2), the proprietor shall submit, within 30 days of the change, an amended application supported by a new list of corporate officers and a statement of the changes reflected in the new list. Where the proprietor has shown that certain corporate officers listed on the original application have no responsibilities in connection with the operations covered by the application, the regional director (compliance) may waive the requirement for submitting an amended application to cover a change in those corporate officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.125 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of wine premises qualified to operate under this part, the outgoing proprietor shall comply with the requirements of § 24.140, and the successor shall, before commencing operations, apply for and obtain any required permits, file any required bonds, and file an application for and receive permission to operate in the same manner as a person qualifying a new wine premises; however, the successor may, in the manner provided in § 24.127, adopt the approved formulas of the outgoing proprietor. Wine, spirits, and winemaking materials may be transferred from an outgoing proprietor to a successor in the manner provided in § 24.145.

(b) *Fiduciary.* A successor to the proprietorship of wine premises who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall, except as otherwise provided in this section, comply with the provisions of paragraph (a) of this section. However, in lieu of filing a new bond, if a bond is required, the fiduciary may furnish a consent of surety extending the terms of any bonds of the predecessor, and any pertinent information contained in the predecessor's application may be incorporated by reference. In addition, the fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing appointment as such fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the effective date of the court order, or the date specified for the fiduciary to assume control. If the fiduciary was not appointed by a court, the date of assuming control will coincide with the effective date of the qualifying documents filed by the fiduciary.

(c) *Exception.* A fiduciary intending to liquidate the business conducted on wine premises, i.e., disposition of any wine and spirits on hand, including use of any cellar treatment necessary to put the wine in merchantable condition,

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who does not intend to produce wine, or use spirits, or receive wine in bond may be exempted from qualifying as the proprietor of the wine premises upon filing with the regional director (compliance) a statement to that effect, a copy of a foreclosure action, or a copy of the court order directing the liquidation of the business, and if the wine premises is covered by bond, a consent of surety wherein the surety and the fiduciary agrees to remain liable on the bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.126 Change in proprietorship involving a bonded wine warehouse.

Where a bonded wine warehouse has been established on wine premises and it is desired to continue the operation of the bonded wine warehouse subsequent to a change in the proprietorship of the bonded winery or bonded wine cellar, the proprietor of the bonded wine warehouse shall file a letter application, accompanied by an affirming statement from the new proprietor of the bonded winery or bonded wine cellar, requesting the continuation of the bonded wine warehouse and also file evidence of sufficient bond coverage.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

§ 24.127 Adoption of formulas.

The adoption of approved formulas by a successor proprietor will be in the form of an application, filed with the Director. The application will list the formulas for adoption by formula number, name of product, and date of approval. The application will clearly show that the outgoing proprietor has authorized the successor proprietor's use of the approved formulas.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.128 Continuing partnerships.

If, under the laws of the particular State, the partnership is not terminated upon the death or insolvency of a partner but continues until the dissolution of the partnership is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the wine premises under the prior qualification of the partnership, provided a consent of surety is filed wherein the surety and the surviving partner agree to remain liable on any bond covering the bonded wine premises. A surviving partner who acquires the business on completion of the dissolution of the partnership shall qualify from the date of acquisition, as provided in § 24.125(a). The rule set forth in this section will also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.129 Change in location.

Where there is a change to the location of wine premises, the proprietor shall file an amended application and an application for amendment of the basic permit, if any, and if bond has been filed, either a new bond or a consent of surety. Operation of wine premises may not be commenced at the new location prior to approval of the amended application and issuance of any amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

§ 24.130 Change in volatile fruit-flavor concentrate operations.

If the proprietor desires to make any change in the process employed to produce volatile fruit-flavor concentrate and the change affects the accuracy of the description of process included in the application, the proprietor shall file an amended application to include the amended or new process. The new or changed process may not be used prior to approval of the amended application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

§ 24.131 Change in construction and use of buildings and equipment.

Where a material change is to be made to buildings or major equipment located on wine premises, or in the use of any portion of the wine premises, which affects the accuracy of the application, the proprietor shall, before making the change, submit a letterhead application to the regional director (compliance), through the area supervisor. The letterhead application will describe the proposed change in detail. Upon approval of the application, the proprietor may effect the proposed change. The proprietor shall include the change covered by the letterhead application in the next amended ATF Form 5120.25 (698) required to be filed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

Alternation

§ 24.135 Wine premises alternation.

(a) *General.* The proprietor of a bonded winery or bonded wine cellar may alternate all or a portion of wine premises for use as bonded wine premises or use as taxpaid wine premises. The proprietor may also alternate the use of adjacent or contiguous premises qualified under 26 U.S.C. Chapter 51 (distilled spirits plant, brewery, etc.) for use as wine premises or *vice versa.*

(b) *Qualifying documents.* Where the proprietor desires to alternate wine premises as bonded wine premises, or taxpaid wine premises, or other premises qualified under 26 U.S.C. Chapter 51, the following qualifying documents will be filed with the regional director (compliance):

(1) A statement on the application ATF Form 5120.25 (698) that an alternation of wine premises will occur;

(2) Evidence of existing bond, consent of surety, or a new bond covering the alternation;

(3) A description of how taxpaid wine or spirits, or untaxpaid wine or spirits will be identified and segregated; and

(4) Any other document or additional information the regional director (compliance) may require.

(c) *Alternation.* After the necessary qualifying documents have been approved by the regional director (compliance), the proprietor may alternate wine premises as described in the application. Any portion of wine premises on which taxpaid wine is located will be considered taxpaid wine premises and any portion of the premises on which wine not identified as taxpaid is located will be considered bonded wine premises. The proprietor shall, prior to the initial alternation of the premises, identify by portable signs or tags, or by any other method or manner satisfactory to the regional director (compliance), either all taxpaid wine on taxpaid wine premises or all untaxpaid wine on bonded wine premises.

(d) *Segregation.* The proprietor shall keep untaxpaid wine or spirits physically separated from taxpaid wine or spirits and on the designated premises. This separation will be by use of tanks, rooms, buildings, partitions, pallet stacks, or complete physical separation, or by any other method or manner which will clearly and readily distinguish untaxpaid wine or spirits from taxpaid wine or spirits and is satisfactory to the regional director (compliance). Where necessary for the protection of the revenue or enforcement of 26 U.S.C. Chapter 51, the regional director (compliance) may require that the portions of wine premises alternated under this section be separated by partitions or otherwise.

(e) *Conditions.* Authority for the alternation of bonded wine premises, taxpaid wine premises, or other premises qualified under 26 U.S.C. Chapter 51 is conditioned on compliance by the proprietor with the provisions of this section. Failure to comply in good faith with these provisions will automatically terminate this authority. Authority for the alternation of bonded wine premises, taxpaid wine premises, or other premises qualified under 26 U.S.C. Chapter 51 may be withdrawn whenever in the judgment of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5363, 5365, 5367))

§ 24.136 Procedure for alternating proprietors.

(a) *General.* Wine premises, or parts thereof, may be operated alternately by proprietor who have each filed and received approval of the necessary applications and bonds and have qualified under the provisions of this part. Where operations by alternating proprietor are limited to parts of the wine premises, the application will describe areas, buildings, floors, or rooms which will be alternated and will be accompanied by a diagram delineating the parts of the wine premises to be alternated. A separate diagram will be submitted to depict each arrangement under which the wine premises will be operated. Once the qualifying documents have been approved, and operations initiated, the wine premises, or parts thereof, may be alternated. Any transfer of wine, spirits, or other accountable materials from one proprietor to the other proprietor will be indicated in the records and reports of each proprietor. Operation of a bonded winery engaged in the production of wine by an alternate proprietor will be at least one calendar day in length.

(b) *Alternation.* All operations in any area, building, floor, or room to be alternated will be completely finished and all wine, spirits, and other accountable materials will be removed from the alternated wine premises or transferred to the incoming proprietor. However, wine, spirits, and other accountable materials may be retained on wine premises to be alternated, if in locked tanks, the keys to which are in the custody of the outgoing proprietor.

(c) *Bonds.* The outgoing proprietor who has filed bond and intends to resume operation of the alternated areas, buildings, floors, or rooms following suspension of operations by an alternating proprietor shall execute a consent of surety to continue in effect all bonds. Where wine, spirits, or other accountable materials subject to tax under 26 U.S.C. Chapter 51 are to be retained in tanks on the wine premises to be alternated, the outgoing proprietor shall also execute a consent of surety to continue the liability of all bonds for the tax on the materials, notwithstanding the change in proprietorship.

(d) *Records.* Each proprietor shall maintain separate records and submit a separate ATF Form 5120.17 (702), Monthly Report of Bonded Wine Cellar Operations. All transfers of wine, spirits, and other accountable materials will be reflected in the records of each proprietor. Each proprietor shall maintain a record showing the name and registry number of the incoming or outgoing proprietor, the effective date and hour of alternation, and the quantity in gallons and the percent alcohol by volume or proof of any wine, spirits, or other accountable materials transferred or received.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended 1379, as amended, 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5351, 5352, 5354, 5356, 5361, 5362, 5363, 5367, 5373))

§ 24.137 Alternate use of the wine premises for customs purposes.

(a) *General.* The wine premises may be alternated to be used temporarily by customs officers, under applicable customs laws and regulations, for the purpose of measuring, gauging, and bottling or packing wine. The use of the portion of the wine premises alternated for customs use is subject to the approval of the district director of customs. When it is necessary to convey wine in customs custody across bonded wine premises, the proprietor shall comply with the provisions of § 24.86.

(b) *Qualifying documents.* Where the proprietor desires to alternate a portion of wine premises for customs use, the following qualifying documents will be filed with the regional director (compliance):

(1) ATF Form 5120.25 (698) to cover the alternation;

(2) A diagram clearly depicting any area, building, floor, room or major equipment in use during the alternation; and

(3) Any other documents or additional information the regional director (compliance) may require.

(c) *Alternation.* After approval of the qualifying documents by the regional director (compliance), the proprietor may alternate the wine premises. Portions of the wine premises to be excluded by curtailment or included by extension may not be used for purposes other than those authorized. Prior to the effective date and hour of the alternation, the proprietor shall remove all wine and spirits from the portion of the wine premises to be alternated for customs purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5365, 5367))

Permanent Discontinuance of Operations

§ 24.140 Notice.

(a) *General.* Where all operations at the wine premises are to be permanently discontinued, the proprietor shall file with the regional director (compliance) a notice in letter form to cover the discontinuance. The proprietor shall state in the notice the date on which operations will be discontinued and, if the wine premises are to be transferred to a successor proprietor, the name of the successor proprietor. Any basic permit issued to the proprietor under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203) will be submitted to the regional director (compliance) with a written request for cancellation.

(b) *Bonded wine premises.* The proprietor shall certify in the notice, as applicable, that (1) all wine, spirits, or volatile fruit-flavor concentrate have been lawfully removed from bonded wine premises, destroyed, or transferred to a successor as of the effective date of discontinuance, (2) no wine, spirits, or volatile fruit-flavor concentrate are in transit to bonded wine premises, and (3) all approved applications covering the transfer of spirits to bonded wine premises have been returned to the regional director (compliance). The proprietor shall submit a report marked "Final" on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations. Any wine, spirits, or volatile fruit-flavor concentrate transferred to a successor will be identified as "Transferred to successor" on the report and identified as "Received from predecessor" on the initial report filed by the successor.

(c) *Taxpaid wine premises.* The proprietor shall certify in the notice that all domestic and foreign taxpaid wine on hand has been disposed of, or if not yet disposed of, the manner of disposition and the time period in which the disposition will occur. The proprietor shall include domestic taxpaid wine on the ATF Form 5120.17 (702) report marked "Final." Any domestic taxpaid wine transferred to a successor will be identified as "Transferred to successor" on the report

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and identified as "Received from predecessor" on the initial report filed by the successor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.141 Bonded wine warehouse.

Where all operations at a bonded wine warehouse are to be permanently discontinued, the warehouse proprietor shall file with the regional director (compliance) a notice in letter form to cover the discontinuance. The warehouse proprietor shall state in the notice the name, registry number, and address of the bonded wine cellar on which the warehouse facilities are located and the date on which operations of the bonded wine warehouse will be discontinued.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

Bonds and Consents of Surety

§ 24.145 General requirements.

Each person required to file a bond or consent of surety under this part shall prepare and execute the bond or consent of surety on the form prescribed in accordance with this part and the instructions printed on the form, and shall submit the form to the regional director (compliance). A person may not commence or continue any business or operation relating to wine until all bonds and consents of surety required under this part with respect to the business or operation have been approved by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 24.146 Bonds.

(a) *Wine bond.* The proprietor shall give bond on ATF Form 5120.36(700), Wine Bond, to cover the liability for excise taxes imposed by the Internal Revenue Code of 1954, on wines produced or received by the proprietor. This includes liability for special taxes and penalties and interest. The bond will apply to wine, spirits, and volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C. Chapter 51, in transit to or on bonded wine premises, and to the operations of the bonded winery or bonded wine cellar, whether the transaction or operation on which the proprietor's liability is based occurred on or off the proprietor's premises. The bond will provide that the proprietor shall faithfully comply with all provisions of law and regulation relating to activities covered by the bond. This bond has a tax obligation limit of $500 for wine removed from bonded wine premises on which the tax has not been paid.

(b) *Tax deferral bond.* Where the proprietor removes wine from bonded wine premises for consumption or sale, after determination and before payment of tax, and the tax unpaid at any one time amounts to more than $500, the proprietor shall, in addition to any other bond required by this part, furnish a tax deferral bond on ATF Form 5120.36(700), Wine Bond, to ensure payment of the tax on the wine. The Tax deferral bond and the Wine bond may be submitted on the same ATF Form 5120.36(700).

(c) *Wine vinegar plant bond.* The proprietor of a wine vinegar plant who withdraws wine from a bonded winery or bonded wine cellar without payment of tax for use in the manufacture of vinegar shall file bond on ATF Form 5510.2(1676), Bond Covering Removal to and Use of Wine at Vinegar Plant, to ensure the payment of the tax on the wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

§ 24.147 Operations bond or unit bond.

Notwithstanding the provisions of § 24.146, each person intending to commence or to continue business as the proprietor of a bonded winery or bonded wine cellar with an adjacent or contiguous distilled spirits plant qualified under 27 CFR Part 19 for the production of distilled spirits shall, in lieu of a winery bond and the bonds required under the provisions of 26 U.S.C. 5173, as amended, give an operations bond or unit bond in accordance with the applicable provisions of 27 CFR Part 19.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 24.148 Penal sums of bonds.

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum minimum/maximum
(a) Wine Bond, ATF Form 5120.36(700).	(1) Not less than the tax on all wine or spirits possessed, in transit, or unaccounted for at any one time.	$1,000/$50,000
	(2) Where the liability in (a)(1) of this section exceeds $250,000.———/.	$100,000
	(3) Where the unpaid tax amounts to more than $500, not less than the amount of tax which, at any one time, has been determined but not paid.	$500/$250,000
(b) Wine vinegar plant bond, ATF Form 5510.2(1676) [1].	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time.	$500/———

[1] The proprietor of a bonded winery or bonded wine cellar who operates an adjacent or contiguous wine vinegar plant with a Wine Bond which does not cover the operation may file a consent of surety to extend the terms of the Wine Bond in lieu of filing a wine vinegar plant bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

§ 24.149 Corporate surety.

(a) Surety bonds required by this part may be obtained from corporate sureties which hold certificates of authority from and are subject to the limitations prescribed by the Secretary as set forth in the current revision of Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies).

(b) Treasury Department Circular No. 570 is published in the **Federal Register** yearly on the first working day in July. As revisions of the circular occur, the revisions are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

§ 24.150 Powers of attorney.

Each bond, and each consent to changes in the terms of a bond, will be accompanied by a power of attorney whereby the surety authorizes the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) may require additional evidence of the authority of the agent or officer of the surety to execute the bond or consent. The power of attorney will be prepared on a form provided by the surety and executed under the corporate seal of the surety. If the power of attorney is other than a manually signed original, the regional director (compliance) may require a certification of validity.

(July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

§ 24.151 Deposit of collateral security.

(a) Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited as collateral security in lieu of corporate sureties in accordance with the

provisions of Treasury Department Circular No. 154 (31 CFR Part 225, Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds). Cash, postal money orders, certified checks, cashiers' checks, or treasurers' checks may also be furnished as collateral security in lieu of corporate sureties.

(b) Treasury Department Circular No. 154 is periodically revised and contains the provisions of 31 CFR Part 225 and the forms prescribed in 31 CFR Part 225. Copies of the circular may be obtained from the Audit Staff, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); August 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

§ 24.152 Consents of surety.

Consents of surety to changes in the terms of bonds will be executed on ATF Form 5000.18 (1533), Consent of Surety, by the principal and by the surety with the same formality and evidence of authority as is required for the execution of bonds.

§ 24.153 Strengthening bonds.

In any instance where the penal sum of the bond on file becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum or give a new bond covering the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full penal sum. Strengthening bonds will show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 24.154 New or superseding bonds.

When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the validity of the bond becomes impaired in whole or in part for any reason, the principal will be required to give a new bond. A new bond will be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, to continue or to liquidate the business of the principal, will execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When under the provisions of § 24.157 the surety has filed an application to be relieved of liability under any bond given under this part and the principal desires or intends to continue business or operations to which the bond relates, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds will show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1394, as amended (26 U.S.C. 5354, 5362, 5551))

§ 24.155 Disapproval and appeal from disapproval.

(a) *Disapproval.* The regional director (compliance) may disapprove any bonded wine premises bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond, or owning, controlling, or actively participating in the management of the bonded wine premises of the individual, firm, partnership, corporation, or association giving the bond, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of any law of the United States, if any provision relates to internal revenue taxation of distilled spirits, wine, or beer, or if the offense will be compromised with the person on payment of penalties or otherwise, or

(2) Any felony under a law of any State, or of the District of Columbia, or of the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal from disapproval.* Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal the disapproval to the Director. The decision of the Director will be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 24.156 Termination of bonds.

A bond prescribed in § 24.146 may be terminated as to future liability (a) pursuant to application by the surety as provided in § 24.157; (b) pursuant to approval of a superseding bond; or (c) on notification by the principal that the business has been discontinued. In the case of a tax deferral bond, the termination may be a notification by the principal that removals of wine requiring a tax deferral bond have been discontinued.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5354))

§ 24.157 Application by surety for relief from bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file, that it desires after a specified date, to be relieved of liability under the bond. The date may not be less than 10 days after the date notice is received by the regional director (compliance) in the case of a tax deferral bond, and not less than 90 days after the date the notice is received in the case of a bonded winery, bonded wine cellar or wine vinegar plant bond. The surety will also file with the regional director (compliance) an acknowledgment, or other evidence of service, of a notice on the principal. If a notice is not thereafter in writing withdrawn, the rights of the principal as supported by the bond will be terminated on the date specified in the notice, and the surety will be relieved from liability to the extent set forth in § 24.158.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

§ 24.158 Extent of relief.

(a) *General.* The surety on any bond required by this part who has filed a notice for relief from liability as provided in § 24.157 will be relieved from liability under bond as set forth in this section.

(b) *Wine bond.* Where a new or superseding bond is filed, the surety will be relieved of future liability with respect to wine, spirits, volatile fruit-flavor concentrate, or any other commodities subject to tax under 26 U.S.C. Chapter 51 on hand or in transit to bonded wine premises on or after the effective date of the new or superseding bond. Notwithstanding a relief, the surety will remain liable for the tax on all wine or volatile fruit-flavor concentrate produced at, and for wine, spirits, and volatile fruit-flavor concentrate consigned to, the bonded wine premises, and for all other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety will, in addition to the continuing liabilities specified above, remain liable for all wine, spirits, volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C Chapter 51 on hand or in transit to bonded wine premises on the date specified in the notice, until all the wine, spirits, volatile fruit-flavor concentrate, or commodities subject to tax under 26 U.S.C Chapter 51 have been lawfully disposed of, or a

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new bond has been filed covering the liability.

(c) *Tax deferral bond.* The surety will be relieved of liability for the tax on any wine removed from the bonded wine premises after the date specified in the notice. The surety will continue to be liable for the tax on wine removed for consumption or sale on or before the date specified in the notice, until all tax is fully paid.

(d) *Wine vinegar plant bond.* The surety will be relieved of liability for tax on wine withdrawn for the manufacture of vinegar after the date specified in the notice. The surety will continue to be liable for the tax on wine withdrawn on or before the date specified in the notice, until all wine is fully accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

§ 24.159 Release of collateral security.

Collateral security pledged and deposited will be released only in accordance with the provisions of 31 CFR Part 225. The collateral security will not be released by the regional director (compliance) until liability under the bond for which it was pledged has been terminated. If satisfied that the interests of the Government may not be jeopardized, the regional director (compliance) will fix the date or dates on which a part or all of the collateral security may be released. At any time prior to the release of the collateral security, the regional director (compliance) may, for proper cause, extend the date of release for any additional length of time.

(July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 650 (6 U.S.C. 15))

Subpart E—Construction and Equipment

§ 24.165 Premises.

Wine premises will be located, constructed, and equipped, subject to approval by the regional director (compliance), in a manner suitable for the operations to be conducted and to afford adequate protection to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5351, 5352, 5357, 5361, 5363))

§ 24.166 Buildings or rooms.

All buildings or rooms on wine premises in which wine operations or other operations as are authorized in this part are conducted will be located, constructed, and equipped in a manner suitable for the intended purpose and to afford adequate protection to the revenue. Each building or room will be constructed of substantial materials and separated from adjacent or contiguous buildings, rooms, or designated areas in a manner satisfactory to the regional director (compliance). Where spirits are to be received and stored in packages, a storage room equipped for locking will be provided. The proprietor shall make provisions to assure ATF officers have ready ingress to and egress from any building or room on wine premises, and shall furnish at the request of the regional director (compliance) evidence that the means of ingress and egress by ATF officers are assured. Where the regional director (compliance) finds that any building or room on wine premises is located, constructed, or equipped as to afford inadequate protection to the revenue, the proprietor will be required to make changes in location, construction, or equipment to the extent necessary to afford adequate protection to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

§ 24.167 Tanks.

(a) *General.* All tanks on wine premises used for wine operations or for other operations as are authorized in this part will be suitable for the intended purpose. Each tank used for wine operations will be located, constructed, and equipped as to permit ready examination and determination of the contents. Any tank used for wine operations not enclosed within a building or room will be enclosed within a secure fence unless the premises where the tank is located is enclosed by a fence or wall, or all tank openings are equipped for locking and locked when used for wine operations and there is no proprietor's representative on the wine premises, or the regional director (compliance) has approved some other adequate means of revenue protection. All open tanks will be under a roof or other suitable covering.

(b) *Other requirements.* Each tank used for the taxpayment of wine, storage of spirits, or spirits additions will be constructed and equipped as follows:

(1) An accurate means of measuring the contents of each tank will be provided by the proprietor. When a means of measuring is not a permanent fixture of the tank, the tank will be equipped with a fixed device to allow the approximate contents to be determined readily;

(2) Safe access to all parts of a tank will be provided by the proprietor;

(3) Tanks may not be used until they are accurately calibrated and a statement of certification of accurate calibration is included in the application;

(4) If a tank or its fixed measuring device is moved in location or position subsequent to original calibration, the tank may not be used until recalibrated; and

(5) All openings in tanks used for the storage, weighing, or measuring of spirits, or for the addition of spirits to wine, will be equipped for locking or have a similar means of revenue protection. Any vents, flame arrestors, foam devices, or other safety devices affixed to a spirits tank will be constructed to prevent extraction of the contents of the tank.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended 1395, as amended (26 U.S.C. 5352, 5357, 5552))

§ 24.168 Identification of tanks.

(a) *General.* Each tank, barrel, puncheon, or similar bulk container, used to ferment wine or used to process or store wine, spirits, or wine making materials will have the contents marked and will be marked as required by this section.

(b) *Tank markings.* (1) Each tank will have a unique serial number. A single series of numbers will be used for all tanks, except that separate series, preceded by an identifying letter, may be used for tanks in different buildings or rooms;

(2) Each tank will be marked to show its current use, either by permanent markings or by removable signs of durable material;

(3) If of uniform dimensions from top to bottom, the capacity per inch of depth will be marked on the tank; and

(4) If used to store wine made in accordance with a formula, the formula number will be marked or otherwise indicated on the tank.

(c) *Puncheon and barrel markings.* Puncheons and barrels, or similar bulk containers over 100 gallons capacity, will be marked in the same manner as tanks. A permanent serial number need not be marked on puncheons and barrels, or similar bulk containers of less than 100 gallons capacity, used for storage, but the capacity will be permanently marked.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

§ 24.169 Pipelines.

Pipelines, including flexible hoses, used to convey wine, spirits, or volatile fruit-flavor concentrate will be constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. The regional director (compliance) may approve pipelines which cannot be readily examined if no jeopardy to the revenue is created.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357, 5552))

§ 24.170 Measuring devices and testing instruments.

(a) *Measuring devices.* The regional director (compliance) may at any time require proprietors to provide at their own expense equipment for ascertaining the capacity and contents of tanks and other storage containers, and scales and measuring devices for weighing and measuring wine, spirits, volatile fruit-flavor concentrate, or materials received and used in the production or treatment of wine. Where winemaking materials or other materials used in the treatment of wine are used immediately upon receipt on wine premises, or received and stored on bonded wine premises in original sealed shipping containers with a stated capacity, the quantity shown on the commercial invoice or other document covering the shipment may be accepted by the proprietor and entered into records in lieu of measuring the materials upon receipt.

(b) *Testing instruments.* The proprietor shall have ready access to equipment for determining the alcohol content unless the proprietor only receives and stores on wine premises bottled or packed wine with evidence showing the alcohol content had been determined. The proprietor who bottles or packs wine shall have ready access to equipment for determining the net contents of bottled or packed wine. The regional director (compliance) may require other testing instruments based upon the proprietor's operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1395, as amended (26 U.S.C. 5357, 5552))

Subpart F—Production of Wine

§ 24.175 General.

The kinds of wine which may be produced on bonded wine premises are:

(a) Natural wine produced in accordance with Subpart F and G of this part;

(b) Special natural wine produced in accordance with Subpart H of this part;

(c) Agricultural wine produced in accordance with Subpart I of this part; and

(d) Other than standard wine produced in accordance with Subpart J of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5361, 5362, 5384, 5385, 5386, 5387))

§ 24.176 Crushing and fermentation.

In producing natural wine, water may be used to flush equipment during the crushing process or to facilitate fermentation but the density of the juice may not be reduced below 22 degrees Brix. However, if the juice is already less than 23 degrees Brix, the use of water to flush equipment or to facilitate fermentation is limited to a juice density reduction of no more than one degree Brix. At the start of fermentation no material may be added in the production of natural wine except water, sugar, concentrated fruit juice from the same kind of fruit, malo-lactic bacteria (grape wine only), yeast or yeast cultures grown in juice of the same kind of fruit, and yeast foods, sterilizing agents, precipitating agents or other approved fermentation adjuncts. Water may be used to rehydrate yeast to a maximum of two gallons of water for each pound of yeast; however, the maximum volume increase of the juice after the addition of rehydrated yeast is limited to 0.5 percent. After fermentation natural wines may be blended with each other only if produced from the same kind of fruit. Upon completion of fermentation or removal from the fermenter, the volume of wine will be accurately determined, recorded, and reported on ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, as wine produced (any grape wine in fermenters when an annual inventory pursuant to § 24.314 is taken will be recorded and reported as produced). Any wine or juice remaining in fermentation tanks at the end of the month will be recorded and reported on ATF Form 5120.17 (702).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1383, as amended, 1384, as amended, 1385, as amended (26 U.S.C. 5367, 5381, 5382, 5383, 5384))

§ 24.177 Chaptalization.

In producing natural wine from juice having a low sugar content, pure sugar may be added before or during fermentation to develop alcohol. The quantity of pure sugar added may not raise the original density of the juice above 25 degrees Brix. If the juice or wine is ameliorated, the quantity of pure sugar added to juice for chaptalization will be included as ameliorating material.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1385, as amended (26 U.S.C. 5382, 5384))

§ 24.178 Amelioration.

(a) *General.* In producing natural wine from juice having an acid level exceeding 5.0 grams per liter, the winemaker may adjust the acid level by adding ameliorating material (water, sugar, or a combination of both) before, during and after fermentation. The acid level of the juice is determined prior to fermentation and is calculated as tartaric acid for grapes, malic acid for apples, and citric acid for other fruit. Each 20 gallons of ameliorating material added to 1,000 gallons of juice or wine will reduce the acid level of the juice or wine by 0.1 gram per liter.

(b) *Limitations.* (1) Amelioration is permitted only at the bonded wine premises where the natural wine is produced.

(2) The ameliorating material added to juice or wine may not reduce the total acid level of the ameliorated juice or wine to less than 5.0 grams per liter.

(3) The amount of ameliorating material which may be added to juice derived from fruit grown in more than one State is limited to the acid level and the volume of the juice from each State determined before the juices are blended.

(4) Except for loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(5) For wine produced exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1384, as amended, 1385, as amended (26 U.S.C. 5383, 5384))

§ 24.179 Sweetening.

(a) *General.* In producing natural wine, sugar, juice or concentrated fruit juice of the same kind of fruit may be added after fermentation to sweeten wine. When juice or concentrated fruit juice is added, the solids content of the finished wine may not exceed 21 percent

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by weight. When liquid sugar or invert sugar syrup is used, the resulting volume may not exceed the volume which would result from the maximum use of pure sugar only. Except as provided in paragraphs (a) and (b) of this section, when sugar is added, the alcohol content of the finished wine may not exceed 14 percent by volume and the solids content may not exceed 21 percent by weight.

(b) *Grape wine.* Any natural grape wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 17 percent total solids by weight if the alcohol content is more than 14 percent by volume or 21 percent total solids by weight if the alcohol content is not more than 14 percent by volume.

(c) *Fruit wine.* Any natural fruit wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 21 percent total solids by weight and the alcohol content is not more than 14 percent by volume.

(d) *Specially sweetened natural wine.* Specially sweetened natural wine is produced by adding to natural wine of the winemaker's own production sufficient pure sugar, juice or concentrated fruit juice of the same kind of fruit so that the finished product has a total solids content between 17 percent and 35 percent by weight, and an alcohol content of not more than 14 percent by volume. Natural wine containing added wine spirits may be used in the production of specially sweetened natural wine; however, wine spirits may not be added to specially sweetened natural wine. Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine (including juice or concentrated fruit juice to which wine spirits have been added), in the further production of specially sweetened natural wine only if the wines (or juice) so blended is made from the same kind of fruit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5382, 5383, 5384, 5385))

§ 24.180 Use of concentrated and unconcentrated fruit juice.

Concentrated fruit juice reduced with water to its original density, or to 22 degrees Brix, or to any degree of Brix between its original density and 22 degrees Brix, and unconcentrated fruit juice reduced with water to not less than 22 degrees Brix, is considered juice for the purpose of standard wine production. The proprietor, prior to using concentrated fruit juice in wine production, shall obtain a statement in which the producer certifies the kind of fruit from which it was produced and the total solids content of the juice before and after concentration. Concentrated or unconcentrated fruit juice may be used in juice or wine made from the same kind of fruit for the purposes of chaptalizing, ameliorating or sweetening, as provided in this part. Concentrated fruit juice, or juice which has been concentrated and reconstituted, may not be used in standard wine production if at any time it was concentrated to more than 80 degrees Brix.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.181 Use of sugar.

Only sugar, as defined in § 24.10, may be used in the production of standard wine. The use of liquid sugar or invert sugar syrup is limited so that the resulting volume will not exceed the volume which would result from the maximum use of pure sugar only. The quantity of sugar used will be determined either by measuring the increase in volume or by considering that each 13.5 pounds of pure sugar results in a volumetric increase of one gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1387, as amended (26 U.S.C. 5382, 5383, 5384, 5392))

§ 24.182 Use of acid to correct natural deficiencies.

Acids of the kinds occurring in fruit or berries may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is chaptalized or ameliorated to correct natural deficiencies.

(a) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes and, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies only to the extent that the fixed acid level of the finished wine (calculated as tartaric acid) does not exceed 8.0 grams per liter.

(b) *Fruit wine.* Only citric acid may be added to citrus fruit, juice or wine, only malic acid may be added to apples, apple juice or wine, and only citric acid or malic acid may be added to other fruit or berries or to juice or wine derived from other fruit or berries, to bring the acid level (calculated as malic acid for apples and citric acid for other fruit and berries) to 7.0 grams per liter.

(c) *Other use of acid.* A winemaker desiring to use an acid other than the acids allowed in paragraphs (a) and (b) of this section to correct natural deficiencies shall follow the procedure prescribed in § 24.250. A winemaker desiring to use acid to stabilize standard wine shall follow the requirements prescribed by § 24.244.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.183 Use of distillates containing aldehydes.

Distillates containing aldehydes may be received on wine premises for use in the fermentation of wine and then returned to the distilled spirits plant from which distillates were withdrawn as distilling material. Distillates produced from one kind of fruit may not be used in the fermentation of wine made from a different kind of fruit. Distillates containing aldehydes which are received at bonded wine premises and not immediately used will be placed in a locked room or tank on bonded wine premises. Distillates containing aldehydes may not be mingled with wine spirits. If the distillates contain less than 0.1 percent of aldehydes, the proprietor shall comply with any additional condition relating to the receipt, storage, and use which the regional director (compliance) may require to assure that the distillates are properly used and accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

§ 24.184 Use of volatile fruit-flavor concentrate.

(a) *General.* In the cellar treatment of natural wine of the winemaker's own production there may be added volatile fruit-flavor concentrate produced from the same kind of fruit or from the same variety of berry or grape so long as the proportion of volatile fruit-flavor concentrate added to the wine does not exceed the equivalent proportion of volatile fruit-flavor concentrate of the original juice or must from which it was produced.

(b) *Use of juice or must from which volatile fruit-flavor has been removed.* Juice, concentrated fruit juice, or must processed at a concentrate plant is considered to be pure juice, concentrated fruit juice, or must even though volatile fruit-flavor has been removed if, at a concentrate plant or at bonded wine premises, there is added to the juice, concentrated fruit juice, or

must (or in the case of bonded wine premises, to wine of the winemaker's own production made therefrom), either the identical volatile fruit-flavor removed or an equivalent quantity of volatile fruit-flavor concentrate derived from the same kind of fruit or from the same variety of berry or grape.

(c) *Certificate required.* The proprietor, prior to the use of volatile fruit flavor concentrate in wine production, shall obtain a certificate from the producer stating the kind of fruit or the variety of berry or grape from which it was produced and the total solids content of the juice before and after concentration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Subpart G—Production of Effervescent Wine

§ 24.190 General

Effervescent wine may be made on bonded wine premises. Where the effervescence results from fermentation of the wine within a closed container or bottle, the wine is classed and taxed as sparkling wine. The use of carbon dioxide, nitrogen gas, or a combination of both, is permitted to maintain counterpressure during the transfer of sparkling wine from bottles to processing tanks or *vice versa.* Wine carbonated by injection of carbon dioxide is classed and taxed as artificially carbonated wine. Sparkling wine, artificially carbonated wine, and any wine used as a base in the production of sparkling wine or artificial carbonated wine, may not have an alcohol content in excess of 14 percent by volume even though wine containing more than 14 percent of alcohol may be used in preparing a dosage for finishing sparkling wine or artificially carbonated wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.191 Segregation of operations.

Where more than one process of producing sparkling wine or artificially carbonated wine is used, the regional director (compliance) may require the portion of the premises used for the production and storage of wine made by each process (bottle fermented, bulk fermented or artificially carbonated) to be segregated as provided by § *24.27*.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.192 Process and materials.

In preparing still wine for the production of sparkling wine or artificially carbonated wine, sugar and a small amount of acid may be added with yeast or yeast culture to acclimate the yeast and to facilitate the process of secondary fermentation or to correct the wine. Fruit syrup, sugar, wine, wine spirits, and acid may be used in preparing a finishing dosage for sparkling wine or artificially carbonated wine provided the dosage does not exceed 10 percent by volume of the finished product. Where the proprietor desires to use more than 10 percent by volume finishing dosage, the proprietor shall file for a formula approval under § 24.80. The fruit syrup, wine spirits and wine used will come from the same kind of fruit as the wine from which the sparkling wine or artificially carbonated wine is made. In the production of sparkling wine or artificially carbonated wine, taxpaid wine spirits or wine spirits withdrawn tax-free may be used. Tax-free wine spirits may only be used in the production of sparkling wine or artificially carbonated wine which is a natural wine. In the refermentation and finishing of a sparkling wine, the acids and materials specifically authorized in § 24.246 may be used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.193 Conversion into still wine.

Sparkling wine or artificially carbonated wine may be dumped for use as still wine. The dumping process will allow the loss of carbon dioxide remaining in the wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041, 5361))

Subpart H—Production of Special Natural Wine

§ 24.195 General.

Special natural wine is a flavored wine made on bonded wine premises from a base of natural wine. The flavoring added may include natural herbs, spices, fruit juices, natural aromatics, natural essences or other natural flavoring, in quantities or proportions that the resulting product derives character and flavor distinctive from the base wine and distinguishable from other natural wine. Fruit juices may not be used to give to one natural wine the flavor of another but may be used with herbs or spices to produce a wine having a distinctive flavor. Caramel may also be added for coloring.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.196 Formula required.

Before producing any special natural wine, the proprietor shall receive approval of the formula by which it is to be made as provided by § 24.80. Any change in a formula will be approved as provided by § 24.81.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.197 Production by fermentation.

In producing special natural wine by fermentation, flavoring materials may be added before or during fermentation. Special natural wine produced by fermentation may be ameliorated in the same manner and to the same extent as natural wine made from the same fruit. Spirits may not be added to special natural wine with the exception of wine spirits contained in authorized essences made on bonded wine premises as provided in § 24.86 or approved essences made elsewhere. Upon removal of the wine from fermenters, the volume of liquid will be determined accurately and recorded as wine produced. The quantity of liquid in fermenters at the close of each month will be reported on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations. Caramel and sugar may be used in special natural wine made under this section; however, the minimum 60 degrees Brix limitation prescribed in the definition of "Liquid sugar" and "Invert sugar syrup" in § 24.10 and in this section do not apply to materials used in the manufacture of vermouth. Finished vermouth produced under this section will contain a minimum of 80 percent by volume natural wine. Heavy bodied blending wine and juice or concentrated fruit juice to which wine spirits have been added may be used in the production of special natural wine pursuant to formula approval.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.198 Blending.

Special natural wine of the same class and kind may be blended with each other, and with heavy-bodied blending wine, or natural wine of the same kind of fruit, in the further production of special natural wine. The blending of special natural wines produced under different formulas requires the filing and approval of a formula authorizing a blending; however, where two or more formulas have been approved for the production of special natural wine of the same type, i.e., producing a sweet vermouth by blending sweet vermouths produced under two or more approved formulas, the submission and approval of an additional formula is not required.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

Subpart I—Production of Agricultural Wine

§ 24.200 General.

Agricultural wine may be produced on bonded wine premises from suitable agricultural products other than the juice of fruit. Water or sugar, or both, may be used within the limitations of this subpart in the production of agricultural wine. Agricultural wine may not be flavored or colored; however, hops may be used in the production of honey wine. Spirits may not be used in the production of the wine and a wine made from one agricultural product may not be blended with a wine made from another agricultural product. Agricultural wine made with sugar in excess of the limitations of this subpart is other than standard wine and will be segregated and clearly identified. Since grain, cereal, malt, or molasses are not suitable materials for the production of agricultural wine, these materials may not be received on bonded wine premises. Beverage alcohol products made with these materials are not classed as wine and may not be produced or stored on bonded wine premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

§ 24.201 Formula required.

Before producing any agricultural wine, the proprietor shall obtain from the Director approval of the formula and process by which it is to be made pursuant to the provisions of § 24.80. Any change in a formula will be approved in advance as provided by § 24.81.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

§ 24.202 Dried Fruit.

In the production of wine from dried fruit, a quantity of water sufficient to restore the moisture content to that of the fresh fruit may be added. If it is desired not to restore the moisture content of the dried fruit to that of the fresh fruit, or if the moisture content is not known, sufficient water may be added to reduce the density to 22 degrees Brix. If the dried fruit liquid after restoration is found to be deficient in sugar, sufficient pure sugar may be added to increase the total solids content to 25 degrees Brix. After addition of water to the dried fruit, the resulting liquid may be ameliorated with either water or sugar, or both, in such total volume as may be necessary to reduce the natural fixed acid level of the mixture to a minimum of five grams per liter; however, in no event may the volume of the ameliorating material exceed 35 percent of the total volume of the ameliorated juice or wine (calculated exclusive of pulp). Pure sugar may be used for sweetening. After complete fermentation or complete fermentation and sweetening, the finished product may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.203 Honey wine.

In the production of wine from honey, a quantity of water may be added to facilitate fermentation provided the density of the mixture of honey and water is not reduced below 22 degrees Brix. Hops may be added in quantities not to exceed one pound for each 1,000 pounds of honey. Pure sugar or honey may be added for sweetening. After complete fermentation or complete fermentation and sweetening, the wine may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.204 Other agricultural products.

In the production of wine from agricultural products, other than raisins and honey, water and sugar may be added to the extent necessary to facilitate fermentation; *Provided*, that the total weight of pure sugar used for fermentation is less than the weight of the primary winemaking material and the density of the mixture prior to fermentation is not less than 22 degrees Brix, if water, or liquid sugar, or invert sugar syrup is used. Additional sugar may be used for sweetening, provided the alcohol content of the finished wine after complete fermentation or after complete fermentation and sweetening, is not more than 14 percent by volume and the total solids content is not more than 35 degrees Brix.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

Subpart J—Production of Other Than Standard Wine

§ 24.210 Classes of wine other than standard wine.

The following classes of wine are not standard wine:

(a) High fermentation wine, produced as provided in § 24.212;

(b) Heavy bodied blending wine, produced as provided in § 24.213;

(c) Spanish type blending sherry, produced as provided in § 24.214;

(d) Wine products not for beverage use, produced as provided in § 24.215;

(e) Distilling material, produced as provided in § 24.216;

(f) Vinegar stock, produced as provided in § 24.217;

(g) Wine other than those in classes listed in paragraphs (a), (b), (c), (d), (e), and (f), of this section produced as provided in § 24.218; and

(h) Spoiled wine, of the kind described in § 24.219.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

§ 24.211 Formula required.

The proprietor who desires to produce wine other than standard wine shall first obtain approval of the formula by which it is to be made, except that no formula is required for distilling material or vinegar stock. The formula is filed with the Director as provided by § 24.80. Any change in the formula will be approved in advance as provided by § 24.81.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

§ 24.212 High fermentation wine.

High fermentation wine is wine made with the addition of sugar within the limitations prescribed for natural wine except that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent and wine spirits have not been added. Although high fermentation wine is not a standard wine, it is produced, stored, and handled on bonded wine premises subject to the same marking or labeling requirements.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

§ 24.213 Heavy bodied blending wine.

Heavy bodied blending wine is wine made for blending purposes from grapes or other fruit without added sugar, and with or without added wine spirits, and having a total solids content in excess of 21 percent. Heavy bodied blending wine may be used in blending with other wine made from the same kind of fruit or for removal upon payment of tax, not for sale or consumption as beverage wine. Upon removal, the shipping containers and shipping records will be marked "Heavy Bodied Blending Wine—Not for Sale or Consumption as Beverage Wine."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

§ 24.214 Spanish type blending sherry.

Blending wine made with partially caramelized grape concentrate may be produced, stored, and handled on, or transferred in bond between bonded wine premises, or removed upon payment of tax, not for sale or consumption as beverage wine. Wine of a high solids content and dark in color, produced under this section, is designated "Spanish Type Blending Sherry." Upon removal, the shipping containers will be marked with the applicable designation and the legend "Not for Sale or Consumption as Beverage Wine." Spanish type blending sherry is not standard wine and may not be blended with standard wine except pursuant to an approved formula or in the further production of this type of wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1387 as amended (26 U.S.C. 5361, 5388))

§ 24.215 Wine or wine products not for beverage use.

(a) *General.* Wine, or wine products made from wine, may be treated with methods or materials which render the wine or wine products unfit for beverage use. No wine or wine products so treated may contain more than 21 percent of alcohol by volume at the time of withdrawal free of tax from bonded wine premises; nor may any wine or wine product so withdrawn be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in the compounding. Wine or wine products produced under this section may be stored on and transferred in bond between bonded wine premises. Each container used to remove such wine or wine product from bond will be marked with the legend "Not for Sale or Consumption as Beverage Wine."

(b) *Salted wine.* Salted wine is a wine or wine product not for beverage use produced in accordance with the provisions of this section and having not less than 1.5 grams of salt per 100 milliliters.

(Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1380, as amended (26 U.S.C. 5361, 5362))

§ 24.216 Distilling material.

Wine may be produced on bonded wine premises from grapes and other fruit, natural fruit products, or fruit residues, for use as distilling material, using any quantity of water desired to facilitate fermentation or distillation. No sugar may be added in the production of distilling material. Distillates containing aldehydes may be used in the fermentation of wine to be used as distilling material. Lees, filter wash, and other wine residues may also be accumulated on bonded wine premises for use as distilling material.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5361, 5373))

§ 24.217 Vinegar stock.

Vinegar stock may be produced on bonded wine premises with the addition of any quantity of water desired to meet commercial standards for the production of vinegar. Vinegar stock may be made only by the addition of water to wine or by the direct fermentation of the juice of grapes or other fruit with added water.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5361))

§ 24.218 Other wine.

(a) Wine produced with sugar and water beyond the limitations prescribed for standard wine, or wine made by blending wines produced from different kinds of fruit, or wine made with sugar other than pure sugar, or wine made with materials not authorised for use in standard wine, may be produced on bonded wine premises but will remain segregated from standard wine. Upon removal, the wine will be marked or labeled with a designation which will adequately disclose the nature and composition of the wine.

(b) Wine which is other than standard as a result of fermentation with sugar and water in excess of the limitations prescribed for standard wine will have a basic character derived from the primary winemaking material. The aggregate weight of any sugar used before and during fermentation will be less than the weight of the primary wine producing matrial. Wine spirits may be added to wine produced with sugar and water beyond the limitations for standard wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

§ 24.219 Spoiled wine.

Whenever a standard wine becomes spoiled by reason of its condition, the spoiled wine will be immediately removed from the wine premises, unless the condition is corrected. Where the condition is not corrected, the wine will be removed for use as distilling material, for use in the manufacture of vinegar, or for destruction. Conditions requiring correction or removal are the development of volatile acidity in excess of the maximum level prescribed in 27 CFR Part 4, or disease or decomposition which causes the wine to lack the composition, color and other characteristics of standard wine of the same type.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1383, as amended (26 U.S.C. 5361))

Subpart K—Spirits

§ 24.225 General.

Wine spirits may be added to natural wine on bonded wine premises if both the wine and the spirits are produced from the same kind of fruit. In the case of still wine, wine spirits may be added in any State only to natural wine, produced by fermentation on bonded wine premises located within the same State. If wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added) only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation. Spirits other than wine spirits may be received, stored and used on bonded wine premises only for the production of nonbeverage wine and similar nonbeverage wine products. Wooden storage tanks used for the addition of spirits may not be used for the baking of wine.

(Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended, 1384, as amended (26 U.S.C. 5366, 5373, 5382, 5383))

§ 24.226 Receipt or transfer of spirits.

When spirits are received at the bonded wine premises, the proprietor shall determine that the spirits are the same as described on the transfer record and follow the procedures prescribed by 27 CFR 19.510. A copy of the transfer record, annotated to show any difference between the description of spirits and quantity received, will be maintained by the proprietor as a record of receipt. If spirits are to be transferred to a distilled spirits plant or to bonded wine premises, the proprietor shall use the transfer record and procedures prescribed by 27 CFR 19.508.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.227 Transfer of spirits by pipeline for immediate use.

Spirits transferred by pipeline for immediate use are gauged either by weight or by volume on the bonded premises of the distilled spirits plant. Where the spirits are gauged on the bonded premises of the distilled spirits plant, the pipeline will be directly connected with the spirits addition tanks. The valves in the pipeline will be closed and locked with a lock at all times except when necessary to be opened for the transfer of spirits. Where the proprietor has placed wine in a

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spirits addition tank and has determined the quantity of spirits to be added, the spirits may be transferred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.228 Transfer of spirits by pipeline to a spirits storage tank.

Where it is desired to transfer spirits by pipeline to bonded wine premises and store the spirits prior to use, there will be provided a suitable tank for storing the spirits. The spirits to be transferred, if not gauged on the bonded premises of the distilled spirits plant, will be gauged by weight or volume on bonded wine premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.229 Tank car and tank truck requirements.

Railroad tank cars and tank trucks used to transport spirits for use in wine production will be constructed, marked, filled, labeled, and inspected in the manner required by regulations in 27 CFR Part 19.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5214))

§ 24.230 Examination of tank car or tank truck.

Upon arrival of a tank car or tank truck at the bonded wine premises, the proprietor shall carefully examine the car or truck to see whether the seals are intact and whether there is any evidence of tampering or loss by leakage or otherwise. Any evidence of loss will be reported to the area supervisor. The contents of the tank car or tank truck will be gauged by weight or volume at the time of receipt by the proprietor. If the tank car or tank truck has been accurately calibrated and the calibration chart is available at the bonded wine premises, the spirits may be gauged by volume in the tank car or tank truck. In any case where a volume gauge is made, the actual measurements of the spirits in the gauging tank, tank car, or tank truck, and the temperature of the spirits will be recorded on a copy of the transfer record accompanying the shipment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1381, as amended (26 U.S.C. 5206, 5214, 5366))

§ 24.231 Receipt of spirits in sealed bulk containers.

The proprietor shall examine sealed bulk containers (packages) of spirits received at the bonded wine premises to verify that the containers are the same as those described on the transfer record accompanying the shipment. Any container which appears to have been tampered with or from which spirits appear to have been removed or lost will be gauged by the proprietor and the proprietor shall prepare and submit to the regional director (compliance) a statement setting forth fully the circumstances and apparent cause of any loss.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5366, 5367, 5368, 5373))

§ 24.232 Gauge of spirits.

(a) If the spirits to be used are in a spirits storage tank on bonded wine premises, or received immediately prior to use from a distilled spirits plant not adjacent or contiguous to bonded wine premises, the proprietor shall determine the proof of the spirits and the quantity used by volume gauge or by weight. Upon completion of the transfer of spirits from the spirits storage tank to the spirits addition tank, the proprietor shall lock the spirits storage tank.

(b) If the spirits are received from the adjacent or contiguous bonded premises of a distilled spirits plant and are transferred directly into a spirits addition tank, the gauge of the spirits made on the distilled spirits plant premises will be used. The proprietor at the distilled spirits plant premises shall deliver a transfer record to the proprietor of bonded wine premises who shall acknowledge receipt of the spirits on the transfer record.

(c) If the spirits are received in packages and the quantity of spirits needed for the addition is not equal to the contents of full packages, a portion of one package may be used and the remnant package returned to the spirits storage room. The proprietor shall gauge the remnant package and attach to it a label showing the date of gauge, the weight of the remnant package, and the proof. The remnant package will be used at the first opportunity.

(Sec. 201; Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5368, 5373))

§ 24.233 Addition of spirits to wine.

(a) *Prior to the addition of spirits.* Wine will be placed in tanks approved for the addition of spirits. The proprietor shall accurately measure the wine, determine its alcohol content, determine the proof of the spirits to be added, calculate the quantity of spirits required, and enter the details in the record of spirits added to wine.

(b) *After the addition of spirits.* The proprietor shall thoroughly agitate the contents of the tank to assure a complete mixture of the wine and spirits. The proprietor shall then measure the volume of wine in the tank, take a representative sample of the wine, and test for alcohol content. The result of the measurement and test and the quantity of spirits added will be entered in the record of spirits added to wine. The volume of wine used and the volume of wine resulting from the addition of spirits will be entered in the bulk wine record. The alcohol content of wine after the addition of spirits may not exceed 24 percent by volume.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373, 5382))

§ 24.234 Other use of spirits.

The proprietor producing sparkling wine, artificially carbonated wine, formula wine, or essences for which spirits are required may use tax-free wine spirits. For nonbeverage wine, tax-free spirits other than wine spirits or brandy may also be used. The spirits received by the proprietor will be locked in a secure room or locker on bonded wine premises. The spirits will remain in the original container in the storeroom until withdrawn for use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

§ 24.235 Taxpayment or destruction of spirits.

(a) *Taxpayment of spirits.* The proprietor who wants to taxpay spirits shall follow the prepayment of tax procedures of 27 CFR 19.522(c).

(b) *Destruction of spirits.* The proprietor who wants to destroy spirits shall file an application with the area supervisor stating the quantity of spirits, the proposed date and method of destruction, and the reason for destruction. Spirits may not be destroyed prior to approval by the area supervisor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

§ 24.236 Losses of spirits.

Losses by theft or any other cause of spirits while on bonded wine premises or in transit are to be determined and reported at the time the losses are discovered. A physical inventory of the spirits storage tanks will be taken at the close of any month during which spirits were used in wine production, or upon completion of spirits use for the month or at any other time required by the regional director (compliance). Any loss which has not previously been reported will be determined by the inventory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008, 5373))

§ 24.237 Spirits added to juice or concentrated fruit juice.

Juice or concentrated fruit juice to which spirits have been added may not have an alcohol content exceeding 24 percent by volume. Although not considered to be wine, juice or concentrated fruit juice to which spirits have been added, will be included in the appropriate tax class of any wine inventory and will be properly identified. Juice or concentrated juice to which wine spirits are added will be reported on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, as wine, but a separate record will be maintained.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Subpart L—Storage, Treatment and Finishing of Wine

§ 24.240 General.

Wine is to be stored on bonded wine premises in buildings or tanks constructed and secured in accordance with the provisions of §§ 24.166 and 24.167. Wine may be stored in tanks, casks, barrels, cased or uncased bottles, or in any suitable container, which will not contaminate the wine. Specifically authorized materials and processes for the treatment and finishing of wine are listed in §§ 24.246 and 24.248 of this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1383, as amended, 1385, as amended (26 U.S.C. 5352, 5357, 5382, 5552))

§ 24.241 Decolorizing wine.

(a) *Conditions and limitations.* If the proprietor wishes to use activated carbon or other decolorizing material to remove excess color from white wine (other than vermouth), or from pale dry sherry or cocktail sherry, the proprietor shall meet the following conditions and limitations:

(1) *White wine.* (i) The vinous character of the wine treated will not be reduced; (ii) the quantity of activated carbon or other decolorizing material used to treat white wine, including any decolorizing material used in the basic wine-producing material may not exceed nine pounds per 1,000 gallons; (iii) the total amount of decolorizing material used in the white wine before and after a transfer of wine in bond may not exceed the prescribed limitations of nine pounds per 1,000 gallons (see paragraph (b) of this section); and (iv) white wine treated with decolorizing material will have a color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per AOAC Method 11.003–11.004 (see paragraph (c) of this section). However, the proprietor may produce a white wine having a color of less than 0.6 Lovibond or more than 95 percent transmittance per AOAC Method 11.003–11.004 by using normal methods and without the use of decolorizing material.

(2) *Pale dry sherry or cocktail sherry.* (i) The amber color and flavor characteristics generally attributed to sherry will be retained; (ii) the quantity of activated carbon or other decolorizing material used, including any decolorizing material used in the basic wine-producing material, may not exceed 25 pounds per 1,000 gallons of wine; (iii) the total amount of decolorizing material used in pale dry sherry or cocktail sherry before and after a transfer of wine in bond may not exceed the prescribed limitation of 25 pounds per 1,000 gallons (see paragraph (b) of this section); and (iv) the pale dry sherry or cocktail sherry treated with decolorizing material will have a color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per AOAC Method 11.003–11.004 (see paragraph (c) of this section). However, the proprietor may produce a pale dry sherry or cocktail sherry having a color of less than 0.6 Lovibond or more than 95 percent transmittance per AOAC method 11.003–11.004 by using normal methods and without the use of decolorizing material.

(b) *Transfer in bond.* When a consignor proprietor transfers white wine, or pale dry sherry, or cocktail sherry treated with activated carbon or other decolorizing material to a consignee proprietor, the consignor proprietor shall record on the shipping record:

(1) The amount of the white wine, pale dry sherry, or cocktail sherry which has been treated under the provisions of this section; and

(2) The amount of decolorizing material used in treating the white wine or pale dry sherry or cocktail sherry before its transfer. The consignee proprietor may further treat the white wine or pale dry sherry or cocktail sherry with decolorizing material as long as the consignee proprietor has a copy of the shipping record and complies with the requirements of this section.

(c) *Incorporation by reference.* The "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC Method 11.003–11.004; 13th Edition 1980) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on May 7, 1981, and is available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC. The publication is available from the Association of Official Analytical Chemists, 11 North 19th Street, Suite 210, Arlington, Virginia 22209.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.242 Authority to use greater quantities of activated carbon in juice and in white wine.

(a) *Proprietor's notice.* If the proprietor desires to remove color from juice prior to fermentation or if color in excess of that normally present in white wine develops during the production or storage of a particular lot or lots, and if the proprietor desires to use activated carbon in excess of nine pounds per 1,000 gallons (1.08 grams per liter) of juice or white wine to remove this color, the proprietor, prior to starting the treatment, shall submit to the regional director (compliance) a written notice for each lot of juice or white wine to be treated with activated carbon for decolorization. The written notice will state (1) the reason for the treatment; (2) the volume, kind, and type of juice or white wine to be treated; (3) the kind and quantity of activated carbon to be used for decolorization; and, (4) the length of time the activated carbon is in contact with the juice or white wine.

(b) *Action by the regional director (compliance) on proprietor's notice.* Upon receipt of the proprietor's notice, the regional director (compliance) may require the proprietor to submit samples representative of the lot of juice or white wine for examination by the ATF laboratory.

(c) *Samples and chemical analysis.* (1) *Samples.* If the regional director (compliance) requires samples under paragraph (b) of this section, the proprietor shall prepare samples representative of the lot of juice or white wine for examination. The samples will consist of (i) the juice or white wine before treatment with activated carbon, (ii) the juice or white wine after treatment with activated carbon, and (iii) the activated carbon used for decolorization.

(2) *Chemical analysis.* If the ATF chemical analyses of the samples shows that the proposed treatment would remove only the color of the juice, or in the case of white wine only the excess color and will not remove any of the usual natural color or other vinous characteristics of the white wine, the regional director (compliance) will return a copy of the proprietor's written

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notice. If the ATF chemical analysis shows that the proposed treatment is not acceptable, the regional director (compliance) will send the proprietor a letter stating the reason(s) for disallowing the proposed treatment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.243 Filtering aids.

Inert fibers, pulps, earths, or similar materials, may be used as filtering aids in the cellar treatment and finishing of wine. Agar-agar, carrageenan, cellulose, and diatomaceous earth are commonly employed inert filtering aids. In general, there is no limitation on the use of inert materials and no records need be maintained concerning their use. However, if the inert material is dissolved in water prior to addition to wine, then the records required by § 24.301 will be maintained. Filtering aids which contain active chemical ingredients or which may alter the character of wine, may be used only in accordance with the provisions of § 24.246.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.244 Use of acid to stabilize standard wine.

Standard wine other than citrus wine, regardless of acid level, may be stabilized as a part of the finishing process by the addition of citric acid within the limitations of § 24.246. Standard wine made from grapes, apples, or citrus fruit may be stabilized by the addition of fumaric acid within the limitations of § 24.246.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.245 Use of carbon dioxide in still wine.

The addition of carbon dioxide to (and retention in) still wine is permitted if at the time of removal for consumption or sale the still wine does not contain more than 0.392 grams of carbon dioxide per 100 milliliters of wine. However, a tolerance of not more than 0.009 grams per 100 milliliters to the maximum limitation of carbon dioxide in still wine will be allowed where the amount of carbon dioxide in excess of 0.392 grams per 100 milliliters is due to mechanical variations which can not be completely controlled under good commercial practice. A tolerance will not be allowed where it is found that the proprietor continuously or intentionally exceeds 0.392 grams of carbon dioxide per 100 milliliters of wine or where the variation results from the use of methods or equipment determined by the Director not in accordance with good commercial practice. The proprietor shall determine the amount of carbon dioxide added to wine using authorized test procedures announced by the Director. Penalties are provided in 26 U.S.C. 5662 for any person who, whether by manner of packaging or advertising or by any other form of representation, misrepresents any still wine to be effervescent wine or a substitute for effervescent wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended 1381, as amended, 1407, as amended (26 U.S.C. 5041, 5367, 5662))

§ 24.246 Materials authorized for treatment of wine and juice.

Materials used in the process of filtering, clarifying, or purifying wine may remove cloudiness, precipitation, and undesirable odors and flavors, but the addition of any substance foreign to wine which changes the character of the wine, or the abstraction of ingredients which will change its character, to the extent inconsistent with good commercial practice, is not permitted on bonded wine premises. The materials listed in this section are approved as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine, and, where applicable, in the treatment of juice, within the limitations specified in this section. However, when the specified use or limitation of any material on his list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the production, cellar treatment, or finishing of wine. And further, if water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water based treating materials, may not total more than one percent of the volume of the treated wine or juice, or both, used to produce the wine.

Materials	Use	Reference or limitation
Acacia (gum arabic)	To clarify and to stabilize wine	The amount used will not exceed 2 lbs/1,000 gals. (0.24 g/l of wine. 21 CFR 184.1330 (GRAS [1]). See footnotes at end of table.
Activated	To assist precipitation during fermentation.	§ 24.176. GRAS per FDA advisory opinion dated 1/26/79.
	To clarify and to purify wine	The amount used to clarify and to purify wine will be included in the total amount of activated carbon used to remove excessive color in wine. §§ 24.241 and 24.242 (GRAS).
	To remove excessive color in white wine.	The amount used will not exceed 9 lbs/1,000 gals. (1.08 g/l) of wine. If the amount used exceeds this limit, a notice is required pursuant to § 24.242 (GRAS).
	To remove excessive color in pale dry sherry or cocktail sherry.	The amount used will not exceed 25 lbs/1,000 gals. (3.0 g/l) of wine. § 24.241 (GRAS).
	To reduce color in the juice from red and black grapes.	The amount used to reduce color may not exceed 4 lbs/1,000 gals. (0.48 g/l) of juice. Wine made from juice so treated will have a color of not more than 95 percent transmittance per AOAC [2] Method 11.003–11.004 (13th Ed.) or equivalent.
Albumen (egg white)	Fining agent for wine	May be prepared in a light brine: 1 oz. (28.35 grams) potassium chloride, 2 lbs (907.2 grams) egg white, 1 gal. (3.785 l) of water usage not to exceed 1.5 gals. of solution per 1,000 gals. of wine. (GRAS).
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin.	To clarify wine	21 CFR 182.2727, 182.2729, 184.1155 (GRAS) and 186.1256. The sodium content of the wine shall not be increased by such treatment. Request for GRAS advisory opinion pending.
Ammonium carbonate	Yeast nutrient to facilitate fermentation in wine.	The amount used may not exceed 2 lbs/1,000 gals. (0.24 g/l). 21 CFR 184.1137 (GRAS).
Ammonium phosphate (mono- and dibasic).	Yeast nutrient in wine production and to start secondary fermentation in the production of sparkling wine.	As a yeast nutrient in wine production, the amount may not exceed 1.7 lbs/1,000 gals. (0.20 g/l). In the production of sparkling wine, the amount used may not exceed 8 lbs/1,000 gals. (1.00 g/l) of wine. 21 CFR 184.1141 (GRAS).
Ascorbic acid, iso-ascorbic acid (erythorbic acid).	To prevent oxidation of color and flavor components of juice and wine.	May be added to fruit, grapes, berries, and other materials used in wine production, to the juice of such materials, or to the wine, within the limitations which do not alter the class or type of the wine. 21 CFR 182.3013 and 182.3041 (GRAS).
Autolyzed yeast	Yeast nutrient to facilitate fermentation in the production of grape or fruit wine.	21 CFR 172.896, 184.1983. GRAS per FDA advisory opinion of 10/6/59.
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess-natural acids in high acid wine.	The natural or fixed acids may not be reduced below 5 g/l. 21 CFR 184.1086, 184.1069, and 184.1191 (GRAS).
	A fining agent for cold stabilization	The amount used may not exceed 30 lbs/1,000 gals. (3.59 g/l) of wine.
Calcium sulfate (gypsum)	To lower pH in sherry wine	The calcium sulfate content of the finished wine may not exceed 16.69 lbs/1,000 gals. (2.0 g/l). 21 CFR 184.1230 (GRAS)

Materials	Use	Reference or limitation
Carbon dioxide	To stabilize [3] and to preserve wine	§24.245. 21 CFR 184.124 (GRAS).
	To maintain counterpressure during the transfer of sparkling wine.	The carbon dioxide content of the finished wine may not be increased during the transfer operation. §24.190.
Casein, potassium salt of casein.	To clarify wine	GRAS per FDA opinions of 2/23/60 and 8/25/61. §24.243.
Citric acid	To correct natural acid deficiencies in wine.	§§24.182 and 24.192; 21 CFR 182.1033 (GRAS).
	To stabilize wine other than citrus wine.	The amount of citric acide may not exceed 5.8 lbs/1,000 gals. (0.7 g/l). §24.244; 21 CFR 182.1033 (GRAS).
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) may not exceed 0.5 part copper per million parts of wine with the residual level of copper not to be in excess of 0.2 part per million. GRAS per FDA advisory opinion of 7/23/68.
Defoaming agents: (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpolysiloxane, and sorbitan monostearate).	To control foaming	Defoaming agents which are 100% active may be used in amounts not exceeding 0.15 lbs/1,000 gals. (0.018 g/l) of wine. defoaming agents which are 30% active may be used in amounts not exceeding 0.5 lbs/1,000 gals. (0.06 g/l) of wine Silicon dioxide will be completely removed by filtration. The amount of silicon remaining in the wine may not exceed 10 parts per million and no soluble residue in excess of 25 parts per million will remain in the wine. 21 CFR 173.340.
Enzymatic activity		The enzyme preparation use will be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha-Amylase*).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis*, or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*beta-Amylase*).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amylogluco-sidase).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Catalase	To clarify and to stabilize wine	The enzyme activity will be derived from *Aspergillus niger* or bovine liver per FDA advisory opinion dated 8/18/83 (GRAS).
Cellulase	To clarify and to stabilize wine and to facilitate separation of the juice from the fruit.	The enzyme activity will be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Glucose oxidase	To clarify and to stabilize wine	The enzyme activity will be derived from *Aspergillus niger* per FDA advisory opinion of 8/18/83 (GRAS).
Pectinase	To clarify and to stabilize wine and to facilitate separation of juice from the fruit.	The enzyme activity will be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (general)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from *Aspergillus niger* or *Bacillus subtilis* per FDA advisory opinion dated 8/18/83 or from *Bacillus licheniformis* per 21 CFR 184.1027 (GRAS).
Protease (Bromelin)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from *Ananus comosus* or *Ananus bracteatus* (*L*) per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Ficin)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from *Ficus spp.* per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Papain)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from *Carica papay* (*L*) per 21 CFR 184.1585 (GRAS).
Protease (Pepsin)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from porcine or bovine stomachs per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Trypsin)	To reduce or to remove heat labile proteins.	The enzyme activity used will be derived from porcine or bovine pancreas per FDA advisory opinion dated 8/18/83 (GRAS).
Ethyl maltol	To smooth wine	Use limited to not more than 100 mg/l. 21 CFR 172.515.
Ferrocyanide compounds (sequestered complexes).	To remove trace metal from wine to remove objectionable levels of sulfide and mercaptans from wine.	No insoluble or soluble residue in excess of 1 part per million will remain in the finished wine and the basic character of the wine may not be changed by the treatment. GRAS per FDA advisory opinion of 6/22/82.
Ferrous sulfate	To clarify and to stabilize wine	The amount used may not exceed 3 ozs./1,000 gals. (0.022 g/l) of wine. 21 CFR 182.8315 (GRAS).
Fumaric acid	To correct natural acid deficiencies in grape wine.	§§ 24.182 and 24.192 21 CFR 172.350. The fumaric acid content of the finished wine may not exceed 3.0 g/l.
	To stabilize wine	Use may not exceed 25 lbs/1,000 gals. (3.0 g/l). § 24.244. and 21 CFR 172.350. The fumaric acid content of the finished wine may not exceed 3.0 g/l.
Gelatin (food grade)	To clarify juice or wine	(GRAS).
Granular cork	To treat wine	The amount used may not exceed 10 lbs/1,000 gals. of wine (1.2 g/l). Request for GRAS advisory opinion pending.
Hydrogen peroxide	To facilitate secondary fermentation in the production of sparkling wine.	Amount used may not exceed 3 parts per million. The finished wine will contain no residual hydrogen peroxide. (GRAS).
	To remove color from the juice of red and black grapes.	The amount used may not exced 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. 21 CFR 182.1366 (GRAS).
Isinglass	To clarify wine	Request for GRAS advisory opinion pending.
Lactic acid	To correct natural acid deficiencies in grape wine.	§§ 24.182 and 24.192; 21 CFR 182.1061 (GRAS).
Malic acid	To correct natural acid deficiencies in juice or wine.	§§ 24.182 and 24.192. 21 CFR 184.1069 (GRAS).
Malo-lactic bacteria	To stabilize grape wine	Malo-lactic bacteria of the type *Leuconostoc oenos* may be used in treating wine. Request for GRAS advisory opinion pending.
Maltol	To smooth wine	Use limited to not more than 250 mg/l. 21 CFR 172.515.
Nitrogen gas	To maintain pressure during filtering and bottling of wine and to prevent oxidation of wine.	21 CFR 184.1540 (GRAS).
Oak chips or particles, uncharred and untreated.	To smooth wine	21 CFR 172.510.
Oxygen and compressed air.	In baking or maturing wine and aeration of sherry.	May be used provided it does not cause changes in the wine other than those occuring during the usual storage in wooden cooperage over a period of time.
Parabens (n-alkyl esters of p-hydroxl-bezoic acid: heptyl-, propyl-, and methyl-.	To preserve wine	Use, separately or in combination may not exceed 0.1 percent by weight (w/w). Use of n-heptyl-paraben may not exceed 12 parts per million. 21 CFR 172.145, 184.1490, 184.1670 (GRAS).
Polyvinyl- polypyr-rolidone (PVPP).	To clarify and to stabilize wine	The amount used may not exceed 6 lbs/1,000 gals. (0.72 g/l) of wine. Material will be removed during filtration. 21 CFR 173.50.
Polyvinyl-pyrrolidone (PVP).	To clarify wine	The residual level of PVP in the finished wine may not exceed 60 parts per million. 21 CFR 173.55.
Potassium benzoate	To preserve wine	Use separately or in combination with other approved antimicrobial agents may not exceed 0.1 percent of the volume of juice and/or wine so treated. GRAS advisory opinion pending.
Potassium bitartrate	To stabilize grape wine	The amount used may not exceed 35 lbs/1,000 gals. (4.19 g/l) of grape wine. 21 CFR 184.1077 (GRAS).
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine.	The natural or fixed acids may not be reduced below 5 grams per liter. 21 CFR 184.1613 and 184.1619 (GRAS).

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Materials	Use	Reference or limitation
Potassium citrate	pH control agent and sequestrant in treatment of citrus wine.	The amount of potassium citrate may not exceed 25 lbs/1,000 gals. (3.0 g/l) of finished wine. § 24.182; 21 CFR 182.1625 and 182.6625 (GRAS).
Potassium meta-bisulfite	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine may not exceed the limitations prescribed in 27 CFR 4.22 21 CFR 182.3637 (GRAS).
Propylene glycol	Solvent for parabens	The amounts used may not exceed 40 parts per million in wine. 21 CFR 184.1666 (GRAS).
Silica gel (colloidal silicon dioxide).	To clarify wine	Use may not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1,000 gals. of wine. (2.4 g/l). Silicon dioxide will be completely removed by filtration. (GRAS)
Sorbic acid and potassium salt of sorbic acid.	To sterilize and to preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine will contain not more than 30 milligrams of sorbic acid per liter of wine. 21 CFR 183.3089 and 182.3640 (GRAS).
Soy flour (defatted)	Yeast nutrient to facilitate fermentation of wine.	The amount used may not exceed 2 lbs/1,000 gals. (0.24 g/l) of wine. (GRAS)
Sulfur dioxide	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine may not exceed the limitations prescribed in 27 CFR 4.22(b)(1). 21 CFR 182.3862 (GRAS).
Tannin	To adjust tannin content in apple juice or wine.	The residual amount of tannin may not exceed 3.0 g/l, calculated as gallic acid equivalents (GAE). GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60.
	To clarify or to correct tannin deficiencies in grape juice or wine.	The residual amount of tannin, calculated in gallic acid equivalents, may not exceed 0.8 g/l in white wine and 3.0 g/l in red and rose wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. GRAS per FDA advisory opinion dated 4/6/59 and 3/29/60.
Tartaric acid	To correct natural acid deficiencies in grape juice or grape wine.	Use as prescribed in §§ 24.182 and 24.192; 21 CFR 184.1099 (GRAS).
Thiamine hydrochloride	Yeast nutrient to facilitate fermentation of wine.	The amount used may not exceed 0.005 lb/1,000 gals. (0.6 mg/l) of wine or juice. 21 CFR 184.1875 (GRAS)
Urea	Yeast nutrient to facilitate fermentation of wine.	The amount used may not exceed 2 lbs/1,000 gals. (0.24 g/l) of wine. 21 CFR 184.1923 (GRAS).

[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

[2] AOAC—Association of Official Analytical Chemists.

[3] To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

§ 24.247 Materials authorized for treatment of distilling material.

The materials listed in this section as well as the materials listed in § 24.246 are approved as being consistent with good commercial practice for use by the proprietor of a bonded winery or bonded wine cellar in the treatment of distilling material within the limitations specified in this section. However, when the specified use of limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Amonium phosphate (mono- and dibasic).	Yeast nutrient in distilling material	The amount used may not exceed 10 lbs/1,000 gals. (1.2 g/l). 21 CFR 184.1141 (GRAS).[1] See footnote at end of table
Amylase enzyme activity		The enzyme preparation used will be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion
Carbohydrase (*alpha-Amylase*).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis,* or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*beta-Amylase*).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amyloglucosidase).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity will be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae per 21 CFR 173.130 or from Rhizopus niveus* per 21 CFR 173.110.
Copper sulfate	To eliminate hydrogen sulfide and mercaptans.	The finished brandy or wine spirits produced from distilling material to which copper sulfate has been added may not contain more than 2 parts per million (2 mg/l) residual copper. GRAS per FDA advisory opinion of 7/23/69.
Hydrogen peroxide	To reduce the bisulfite aldehyde complex in distilling material.	The amount used may not exceed 200 parts per million. 21 CFR 182.1366 (GRAS).
Potassium permanganate	Oxidizing agent	The finished brandy or wine spirits produced from distilling material to which potassium permanganate has been added will be free of chemical resid resulting from such treatment. (GRAS)
Sodium benzoate	To prevent fermentation of the sugar in special natural wine being accumulated as distilling material.	The amount used may n exceed 0.1% (w/w). 21 CFR 184.1733 (GRAS).
Sodium hydroxide	Acid neutralizing agent	The finished brandy or wine spirits produced from distilling material to which sodium hydroxide has been added will be free of chemical residue resulting from the treatment. 21 CFR 184.1763 (GRAS).
Sulfuric acid	To effect favorable yeast development in distilling material; to prevent fermentation of the sugar in special natural wine being accumulated as distilling material; to lower pH to 2.5 to prevent putrefaction and/or ethyl acetate development.	§ 24.216; 21 CFR 184.1095 (GRAS).

[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

§ 24.248 Processes authorized for treatment of wine, juice, and distilling material.

The processes listed in this section are approved, as being consistent with good commercial practice, for use by the proprietor of a bonded winery or bonded wine cellar in the production, cellar treatment, or finishing of standard wine, juice, and distilling material, within the limitations specified in this section. However, when the specified use or limitation of any process on this list is determined to be unacceptable for use in foods and beverages by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of standard wine, juice, and distilling material.

Processes	Use	Reference or limitation
Ion exchange	Various applications in the treatment of wine.	Anion, cation, and non/ionic resins, except those anionic resins in the mineral acid state, may be used in batch or continuous column processes as total or partial treatment of wine, provided that with regard to the finished wine: 1. The treatment will not alter the vinous character of the wine. 2. The treatment will not reduce the color of the wine to less than that normally contained in the wine. 3. Treatment will not increase inorganic anions in the wine by more than 10 mg/l. 4. The treatment will not reduce the metallic cation concentration in the wine to less than 300 mg/l. 5. The treatment will not reduce natural or fixed acid in grape wine below 4 g/l for red table wine, 3 g/l for white table wine, 2.5 g/l for all other grape wine, 4 g/l for wine other than grape wine. 6. Treatment will not reduce the pH of the wine to less than pH 3 nor increase the pH to more than pH 4.5. 7. The resins used will not impart to the wine any material or characteristic (incidental to the resin treatment) which may be prohibited under any other section of the regulations in this part. The winemaker may employ conditioning and/or regenerating agents consisting of water, fruit acids common to the wine being treated, and inorganic acids, salts and/or bases provided the conditioned or regenerated resin is rinsed with water until the resin and container are essentially free from unreacted (excess) conditioning or regenerating agents prior to the introduction of the wine. 21 CFR 173.25.
Thermal gradient processing.	To separate standard wine into low alcohol and high alcohol wine fractions.	The fractions derived from the processing will retain the color, taste, and other vinous characteristics of the wine prior to treatment. The treatment may not reduce the ethyl alcohol content of the low alcohol fraction to less than 3 percent by volume nor increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. Blending is restricted to wine of the proprietor's own production. Reconstitution, i.e., the addition of water other than that originally present in the wine prior to processing, is prohibited.
Thin-film evaporation under reduced pressure.	To separate standard wine into a low alcohol wine fraction and into a higher alcohol distillate.	The wine treated will retain the color, flavor and other vinous characteristics of the wine prior to treatment. The treatment may not reduce the ethyl alcohol content of the low alcohol fraction to less than 3 percent by volume. Blending is restricted to wine of the proprietor's own production. Reconstitution, i.e., the addition of water other than that originally present in the wine prior to processing, is prohibited. Water lost in processing may be recovered by refluxing in a closed continuous system and returned to the wine from which it was extracted.
Elimination of sulfur dioxide by physical process.	To reduce the sulfur dioxide content of juice.	Use of a physical process to remove sulfur dioxide from juice may not alter the basic character of the juice so treated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

§ 24.249 Experimentation with new treating material or process.

(a) *General.* The proprietor may, under the provisions of this section, conduct on bonded wine premises experimentation with a treating material or process as the Director finds may be conducted in a manner that will not jeopardize the revenue, conflict with wine operations, or be contrary to law.

(b) *Application.* The proprietor who desires to conduct experimentation shall file an application with the regional director (compliance) setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. The proposed experimentation will not be conducted until the Director has determined that the conduct of such experimentation will not jeopardize the revenue, conflict with wine operations, or be contrary to law; and the regional director (compliance) has approved the application. Where the Director has determined previously that an experiment may be conducted on bonded wine premises, the regional director (compliance) may approve applications to conduct a similar type of experiment, unless the regional director (compliance) finds that there are particular conditions in respect of the applicant's premises or operations that would cause the conduct of this experiment to be a jeopardy to the revenue or to conflict with wine operations.

(c) *Segregation of operations.* Experimentation authorized under this section will be conducted with the degree of segregation from wine operations as may be required by the regional director (compliance) under the provisions of § 24.27.

(d) *Records.* The proprietor shall, with respect to each experiment authorized under this section, keep records of the kind and quantity of materials received and used and the volume of wine treated. The disposition of the wine will be done in accordance with the provisions of § 24.97.

(Sec. 201, Pub. L. 85–859 (72 Stat. 1383, as amended (26 U.S.C. 5361, 5362))

§ 24.250 Application for use of new treating material or process.

(a) *General.* If the proprietor desires to use a material or process which is not specifically authorized in §§ 24.246, 24.247, 24.248, or elsewhere in this part, an application shall be filed with the regional director (compliance) of the region in which the bonded wine premises is located to show that the proposed material or process is a cellar treatment consistent with good commercial practice.

(b) *Data required.* The application will include the following: (1) The name and description of the material or process; (2) the purpose, the manner, and the extent to which the material or process is to be used together with any technical bulletin or other pertinent information relative to the material or process; (3) a sample, if a proposed material; (4) documentary evidence of the U.S. Food and Drug Administration's approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated; (5) the test results of any laboratory-scale pilot study conducted by the winemaker in testing the material and an evaluation of the product and of the treatment including the results of tests of the shelf life of the treated wine; (6) a tabulation of pertinent information derived from the testing program conducted by the chemical manufacturer demonstrating the function of the material or process; (7) a list of all chemicals used in compounding the treating material and the quantity of each component; (8) the recommended maximum and minimum amounts, if any, of the material proposed to be used in the treatment and a statement as to the volume of water required, if any, to facilitate the addition of the material or operation of the process; and, (9) two 750-milliliter samples representative of the wine before and after treatment. Information of a confidential or proprietary nature to the manufacturer or supplier of the treating material or process may be forwarded by the manufacturer or supplier to the Director with a reference to the application filed by the winemaker.

(c) *Use of cellar treatment.* The proprietor may not use the proposed treating material or process until a determination has been made by the Director that the intended use of the material or process is acceptable in

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good commercial practice. If the regional director (compliance) has been advised by the Director that the use of the material or process has been previously approved, the proprietor will be informed of the approval and of any limitations which will be observed. However, if the regional director (compliance) has not been advised, the application will be forwarded to the Director for a decision regarding the use of the material or process.

(d) *Processing of application.* After evaluation of the data submitted with the application, the Director will make a decision regarding the acceptability of the proposed treatment in good commercial practice. The Director will notify the regional director (compliance) of the approval or disapproval of the application. The regional director (compliance) will then inform the proprietor of the Director's decision.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Bottling, Packing, and Labeling of Wine

§ 24.255 Bottling or packing wine.

(a) *General.* Bottles or containers will be filled as nearly as possible to conform to the amount shown on the label or blown in the bottle or marked on the container; but in no event may the net contents of any bottle or container vary from the amount stated more than: 1.0 percent for 15.0 liters and above, 1.5 percent for 1.0 liter to 14.9 liters, 2.0 percent for 750 ml, 3.0 percent for 375 ml, 4.5 percent for 187 ml and 100 ml, and 9.0 percent for 50 ml. There will be substantially as many bottles or containers overfilled as there are bottles or containers underfilled for each lot of wine bottled or packed; however, the quantity of wine filled into bottles or containers, for each tax class, may not exceed 0.5 percent of the net contents stated on the bottles or containers during a consecutive three month period, calculated on the basis of the proprietor's fill test records. The proprietor is liable for the tax on the entire amount of a tax class removed, without benefit of tolerance, when the fill of bottles or containers for that tax class exceeds the tolerance for the three month period, or when filling is not conducted in compliance with good commercial practice. Short-filled bottles of wine which are sold or otherwise disposed of by the winery to its own employees for personal consumption need not be labeled, but, if labeled, need not show an accurate statement of net contents.

(b) *Fill tests.* The proprietor shall test at representative intervals wine bottled or packed during the bottling or packing operation to determine if the wine contained in the bottle or container is in agreement with that stated on the label, bottle, or container.

(c) *Alcohol tests.* The proprietor shall test the alcohol content by volume to determine the tax class of the wine and to ensure the alcohol content to be stated on the label is in agreement with the requirements of § 24.257.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5368))

§ 24.256 Bottle aging wine.

Wine bottled or packed and stored for the purpose of aging need not have labels affixed until the wine is removed for consumption or sale. However, the bins, pallets, stacks, cases or containers of unlabeled wine will be marked in some manner to show the kind (class and type) and alcohol content of the wine. If the unlabeled wine is stored at a location other than the bottling or packing winery, the registry number of the bottling or packing winery will also be shown.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5662))

§ 24.257 Labeling wine bottles or containers.

(a) The proprietor shall securely affix to each bottle or container of beverage wine prior to removal for consumption or sale a label showing:

(1) The name and address of the wine premises where bottled or packed;

(2) The brand name (the name and address required by (a)(1) of this section may be the brand name);

(3) The kind of wine. The designation as to kind will be shown as follows: (i) For wine requiring a label approval under 27 CFR Part 4, the class, type, or other designation provided in that Part. (ii) For wine labeled under an exemption from label approval, an adequate statement of composition may be the designation in lieu of the kind (class and type) stated in 27 CFR Part 4. (iii) For wine with less than 7 percent alcohol by volume, the word "wine" or the words "carbonated wine" if the wine contains more than 0.392 grams of carbon dioxide per 100 milliliters will appear as part of the brand name or in a phrase in direct conjunction with the brand name;

(4) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR Part 4. For wine with less than 7 percent alcohol by volume there will be allowed a tolerance of plus or minus 10 percent of the stated alcohol content; and

(5) The net content of the bottle or container unless the net content is permanently marked on the bottle or container as provided in 27 CFR Part 4.

(b) The information shown on any label applied to bottled or packed wine is subject to the recordkeeping requirements of § 24.315.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

§ 24.258 Certificates of approval or exemption.

The proprietor shall obtain a certificate of label approval or a certificate of exemption from label approval as required by 27 CFR Part 4.

(August 29, 1935, ch. 814, Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205))

§ 24.259 Marks.

(a) *Required marks.* Each case or container used to remove wine for consumption or sale will be durably marked to show the following information:

(1) The serial number or filling date as provided in § 24.260;

(2) The name (or trade name) and the registry number of the bottling wine premises;

(3) The kind (class and type) and the alcohol content of the wine. The kind of wine and alcohol content will be stated in accordance with § 24.257. The formula number will be marked on containers of special natural wine or other wine produced under § 24.218;

(4) The net contents of the case or container in wine gallons or, for cases or containers filled according to metric measure, the contents in liters. If wine is removed in cases, the cases may be marked to show the number and size of bottles in each case in lieu of the net contents of the case; and

(5) Except for cases, the date of removal or shipment.

(b) *Application of marks.* Required marks may be cut, printed, or otherwise legibly and durably marked upon the case or container, or placed on a label or tag securely affixed to the case or container. Abbreviation of words may be used if the abbreviation is universally understood.

(c) *Location of marks.* Required marks will be placed on a container or on the side of a case for ready examination by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

§ 24.260 Serial numbers or filling date.

All cases or containers used for removing wine for consumption or sale are to be marked with a serial number or filling date at the time the cases or

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containers are prepared for removal. Serial numbers will commence with "1" and continue until the numeral "1,000,000" is reached, whereupon the series may recommence with the numeral "1." However, the proprietor may initiate a new series after the numeral "100,000" has been reached provided no numeral will be used more than once during a 12-month period. If desired, a separate series of numbers with letter prefixes may be used for containers and for cases, or for cases filled on different bottling lines, or for removals from different loading docks. The proprietor may mark the cases with the filling date in lieu of using a serial number or use both a serial number and the filling date. However, if the proprietor desires to change from the use of a serial number to use of a filling date, or *vice versa,* a notice will be sent to the regional director (compliance) before making the change. Where domestic or foreign wine is recased, the cases will be marked with the date of recasing, preceded by the letter "R", in lieu of a serial number or filling date.

(72 Stat. 1381; 26 U.S.C. 5367, 5368)

Subpart M—Losses of Wine

§ 24.265 Losses by theft.

The proprietor shall be liable for and pay the tax on wine unlawfully removed while on bonded wine premises, or while in transit thereto or therefrom in bond, unless the proprietor or other person responsible for the tax, establishes to the satisfaction of the regional director (compliance) that the theft did not occur as the result of connivance, collusion, fraud or negligence on the part of the proprietor or other person responsible for the tax or the owner, consignor, consignee, bailee, or carrier, or their agents or employees.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

§ 24.266 Inventory losses.

(a) *General.* The proprietor shall take a physical inventory of all untaxpaid wine on-hand on bonded wine premises as of the close of business each tax year, or where a cycle different from the tax year has been established as provided in § 24.314, the inventory will be taken annually at the end of that cycle, or at any time required by an ATF officer. The physical inventory of bulk and bottled or packed wine will be recorded and reported as required by § 24.314.

(b) *Bulk wine losses.* The physical inventory of bulk wine will determine losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering since the previous physical inventory required by this section. A claim for allowance of loss, under the provisions of § 24.65, is required for inventory losses in production or storage: (1) where there are circumstances indicating that all or a part of the wine reported lost was unlawfully removed, or (2) where the loss on bonded wine premises during the annual period exceeds three percent of the aggregate volume of wine on-hand at the beginning of the annual period and the volume of wine received in bond during the annual period; or the loss exceeds six percent of the still wine produced by fermentation; or the loss exceeds six percent of the sparkling wine produced by fermentation in bottles; or the loss exceeds three percent of the special natural wine produced under § 24.195 or other wine produced under § 24.218; or the loss exceeds three percent of the artificially carbonated wine produced; or the loss exceeds three percent of the bulk process sparkling wine produced. The percentage applicable to each tax class of wine will be calculated separately, unless the calculation is impracticable because of the mixture of different tax classes by addition of wine spirits or blending during the annual period, in which case the percentage will be calculated on the aggregate volume. Wine removed immediately after production for use as distilling material and on which the usual racking, clarifying, and filtering losses are not sustained, will not be included in the calculations.

(c) *Bottle and container wine losses.* Wine filled into a bottle or container is not subject to losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering. In addition, wine that has been filled into a bottle or container can be accurately accounted for and any unexplained shortage is considered evidence of an unreported removal. Therefore, the proprietor shall pay the tax on any unexplained loss of untaxpaid bottled or packed wine disclosed by inventory or otherwise.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369, 5370))

§ 24.267 Losses in transit.

Where the loss of wine in transit of a shipment in bond or the total daily in bond shipments received from the same winery exceeds one percent (two percent on transcontinental shipments) of the volume shipped, the proprietor of the receiving bonded wine premises shall immediately notify the regional director (compliance) or nearest designated ATF officer and file a claim under the provisions of § 24.65.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

§ 24.268 Losses by fire or other casualty.

The proprietor shall report any loss by fire or other casualty, or any other extraordinary or unusual loss, including a loss by theft, immediately to the regional director (compliance) or nearest designated ATF officer and file a claim under the provisions of § 24.65. The volume of wine loss will be reported on the ATF Form 5120.17 (702) for the month the loss occurred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

Subpart N—Removal, Return and Receipt of Wine

Taxpaid Removals

§ 24.270 Determination of tax.

The tax on wine is determined at the time of removal from bonded wine premises for consumption or sale. Section 5041 of Title 26, United States Code, imposes an excise tax, at the rates prescribed, on all wine (including imitation, substandard, or artificial wine, and compounds sold as wine, which contain 24 percent or less of alcohol by volume) produced in or imported into the United States. Wine containing more than 24 percent of alcohol by volume is classed as distilled spirits and taxed accordingly. The tax is determined and paid on the volume of wine:

(1) In bottles or containers filled according to U.S. measure; or,

(2) In bottles or containers filled according to metric measure, on the volume of wine in U.S. wine gallons; or

(3) In the case of pipeline removals, on the volume of bulk wine removed recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041))

§ 24.271 Payment of tax by check, cash, or money order.

(a) *General.* Unless prepaid, the tax on wine is paid by a semi-monthly, quarterly, or annual Excise Tax Return, ATF F 5000.24, which is filed with remittance (check or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form.

(b) *Return periods.* Except for quarterly and annual returns filed under the provisions of § 24.273, return periods are from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through

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the last day of that month. The proprietor shall file a return, with remittance, for each return period no later than the last day of the return period next succeeding that period, excluding any Saturday, Sunday, or legal holiday in the District of Columbia, or any Statewide holiday of the State in which the return is required to be filed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061)

§ 24.272 Payment of tax by electronic fund transfer.

(a) *General.* (1) During a calendar year any taxpayer who is liable for a gross amount of wine excise tax equal to or exceeding $5 million combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall during the succeeding calendar year use a financial institution in making payment by electronic fund transfer (EFT) of wine taxes for that year. A taxpayer who is required by this section to make remittance by EFT may not effect payment of wine taxes by cash, check, or money order, as described in § 24.271.

(2) For the purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including wines brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawback, credit, or refund, for all premises from which the activities are conducted by the taxpayer.

(3) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1–1.1563–4.

(4) The taxpayer who is required by this section to make remittances by EFT shall, for each bonded wine premises from which wine is withdrawn upon determination of tax, make a separate EFT remittance and file a separate tax return.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable during the previous calendar year for a gross amount of wine excise tax equal to or exceeding $5 million, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall give written notice to the regional director (compliance) of each ATF region in which taxes are paid agreeing to make remittances by EFT.

(2) For each return filed in accordance with this subpart, the taxpayer shall direct the taxpayer's financial institution to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury account by no later than the close of business on the last day of the next succeeding return period, excluding any Saturday, Sunday, or legal holiday in the District of Columbia, or any Statewide holiday in the State of New York. The request will take into account any time limit established by the financial institution.

(3) If the taxpayer was liable during the preceding calendar year for less than $5 million in wine excise taxes, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 24.271. Upon filing the first return on which the taxpayer chooses to discontinue remittance of the tax by EFT and to begin remittance of the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the tax form stating that no wine excise tax is due by EFT because the tax liability during the preceding calendar year was less than $5 million, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) The taxpayer shall show on the tax return information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance) in accordance with the instructions on the tax form.

(2) Remittances will be considered as made when a taxpayer unconditionally directs the financial institution to effect immediately an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the financial institution.

(3) When the taxpayer directs the financial institution to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, the transfer data record furnished to the taxpayer through normal banking procedures will serve as the record of payment, and will be retained as part of the required records.

(d) *Failure to request an electronic fund transfer.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, and 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer follows when preparing returns and EFT remittances in accordance with this subpart. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service for payment of excise tax on imported wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 24.273 Exception to filing semi-monthly tax returns.

(a) Any proprietor who has paid less than $500 in wine excise tax during the previous calendar year may file the Excise Tax Return, ATF F 5000.24, and remittance, if any, within 15 days after the end of the calendar year instead of semi-monthly as required by § 24.271. However, if before the close of the current calendar year the wine excise tax owed will exceed $500 (or at any other subsequent $500 tax interval), the Excise Tax Return with remittance will be filed on that date and also within 15 days after the end of the calendar year.

(b) The proprietor who paid less than $5000 the previous calendar year in wine excise tax may file the Excise Tax Return and remittance, if any, within 15 days after the end of each calendar quarter of a calendar year instead of semi-monthly. However, if during a calendar quarter the wine excise tax owned will exceed $5000 (or at any other subsequent $5000 tax interval), the Excise Tax Return with remittance will be filed on that date and also within 15 days after the end of that calendar quarter.

(c) A proprietor who files tax returns under paragraphs (a) and (b) of this section is subject to the failure to pay or file provisions of § 24.274. The regional director (compliance) may deny the exceptions to filing tax returns in this section at any time.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 24.274 Failure to timely pay tax or file a return.

Penalties for failure to pay tax at the time required, for willful refusal to pay the tax and for fraudulent nonpayment of tax are provided for in 26 U.S.C. 5661 and 6656. In addition to these penalties, there is a penalty for the delinquent filing of a tax return, imposed as an addition to the tax shown on the return, amounting to five percent for each month or fraction thereof of the delinquency, not exceeding 25 percent in the aggregate, unless it is shown that the delinquency is due to reasonable cause and not to willful neglect.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1407, as amended, 1410, as amended (26 U.S.C. 5661, 5684, 6651, 6656))

§ 24.275 Prepayment of tax.

(a) *General.* The proprietor shall, before removal of wine for consumption or sale, file Excise Tax Return, ATF F 5000.24, with remittance, where (1) required to prepay tax under § 24.276; or, (2) the tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than $100; or, (3) there is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds $500. The return with remittance is forwarded pursuant to the instructions printed on the return. For the purpose of complying with this section, the term "forwarding" means deposit in the U.S. mail properly addressed to the Internal Revenue Service.

(b) *Electronic fund transfer.* When the proprietor is required by § 24.272 to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by (1) completing the Excise Tax Return and by mailing it, as instructed on the form, to the director of the service center, district director, or regional director (compliance) and (2) by directing the proprietor's financial institution to effect an electronic fund transfer.

(August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

§ 24.276 Prepayment of tax; proprietor in default.

When the proprietor fails to forward a payment for wine excise tax due by presentment of a check or money order, or when the proprietor is otherwise in default of payment of the tax, no wine may be removed for consumption or sale until the tax has been paid for the period of the default and until the regional director (compliance) finds the revenue will not be jeopardized by the late payment of the tax. Any remittance made during the period of the default will be in cash, or will be in the form of a certified, cashier's, or treasurer's check drawn on any financial institution incorporated under the laws of the United States, or under the laws of any State, territory, or possession of the United States, or in the form of a money order, as provided in 26 CFR 301.6311–1 (payment by check or money order) or in the form of an electronic fund transfer.

(August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

§ 24.277 Date of mailing and delivering of returns.

(a) When the proprietor sends the Excise Tax Return, ATF F 5000.24, with or without remittance, by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, is treated as the date of delivery of the tax return and, if accompanied, the remittance.

(August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

Transfer of Wine in Bond

§ 24.280 General.

Wine may be removed for transfer in bond, from one bonded wine premises to another bonded wine premises or to a distilled spirits plant. For bulk wine transferred in bond between adjacent or contiguous bonded wine premises or to an adjacent or contiguous distilled spirits plant, an accurately calibrated tank for measuring the wine is required on at least one of the premises. The volume of wine transferred will be recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1395, as amended (26 U.S.C. 5362, 5552))

§ 24.281 Consignor premises.

Prior to transferring wine in bond, the proprietor shall prepare the transfer record prescribed by § 24.309. Except as provided in § 24.282, a transfer record will be prepared for each shipment. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record for the files and forward the original and one copy of the transfer record to the consignee (to accompany the shipment, if by truck). Upon receipt of a signed copy from the consignee, the file copy of the transfer record may be discarded. The signed copy of the transfer record will be maintained as a record of removal as required by Subpart O of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.282 Multiple transfers.

(a) *Truck.* The proprietor may use one transfer record for all wine shipped by truck on the same day to other premises. The proprietor shall prepare a shipment or delivery order for each shipment showing date of transfer, name and address of the proprietor and consignee, number of cases or containers, serial numbers of cases (if any) of container identification marks, and quantity shipped in gallons or liters. A copy of the shipping or delivery order will be retained by the proprietor and a copy sent with the shipment. On completion of lading the last truck for the day, the proprietor shall prepare and process a transfer record as provided in § 24.281.

(b) *Pipeline.* The proprietor may use one transfer record for all wine (including distilling material and vinegar stock) transferred by pipeline to adjacent premises during a month. The proprietor shall prepare a record for each transfer showing date of transfer, name and address of the proprietor and consignee, and quantity transferred in gallons or liters. At the end of the month, the proprietor shall prepare and process a transfer record as provided in § 24.281.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.283 Reconsignment.

Where, prior to or on arrival at the premises of a consignee, wine transferred in bond is not accepted by the consignee, or by a carrier, the wine may be reconsigned by the proprietor. The bond of the proprietor to whom the wine is reconsigned will cover the wine while in transit after reconsignment. Notice of cancellation of the shipment will be made to the consignee by the proprietor who shipped the wine. Where reconsignment is to other than the shipping proprietor, a new transfer record prominently marked "Reconsignment" will be prepared and and processed as provided by § 24.281.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.284 Consignee premises.

When wine is received by transfer in bond, the consignee shall check the shipment against the transfer record and determine by volumetric measure or weight the quantity received. The date received and, if different from the

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quantity shipped, the quantity received will be recorded on the transfer record. Sealed containers and cases received without apparent loss need not be measured or weighed. The consignee will retain the original of the transfer record and send the copy to the consignor. The retained copy of the transfer record will be maintained as a record of receipt as required by Subpart O of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

Removals Without Payment of Tax

§ 24.290 Distilling material.

(a) *General.* Still wine may be removed without payment of tax to the production facilities of a distilled spirits plant for use as distilling material in the distillation of spirits. The volume of distilling material may be determined at either the bonded wine premises or the distilled spirits plant.

(b) *Formula wine.* Unmarketable formula wine may be removed to a distilled spirits plant for use as distilling material in the production of wine spirits (but not brandy). Where sugar has been used in the production of formula wine, the wine may not be removed for use as distilling material if the unfermented sugars therein have been fermented prior to the removal. If wine spirits produced from formula wine contain any flavor characteristics of the formula wine, the wine spirits may be used only in the production of a formula wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended 1395, as amended (26 U.S.C. 5362, 5373, 5552))

§ 24.291 Vinegar.

(a) *General.* Where the proprietor is also the proprietor of a vinegar plant located adjacent or contiguous to bonded wine premises, still wine may be removed free of tax for use in the manufacture of vinegar upon the filing of ATF Form 5000.18 (1533), Consent of Surety, extending the terms of the wine bond to cover the removal and use of wine in the manufacture of vinegar. The proprietor of a vinegar plant filing ATF Form 5510.2 (1676), Bond Covering Removal to & Use of Wine at Vinegar Plant, may have wine shipped thereto, free of tax, for use in the manufacture of vinegar. Still wine which has acetified and contains not less than four percent of acetic acid by volume may also be removed, free of tax, for use as vinegar.

(b) *Vinegar plant records.* Each proprietor of a vinegar plant to which wine is shipped, free of tax, for use in the manufacture of vinegar shall keep a record of all wine received and used for the manufacture of vinegar and of all vinegar produced and disposed of. The record will show the following information:

(1) The volume and alcohol content of all wine received, the date of receipt, and the name, registry number, and address of the bonded wine premises from which received;

(2) The volume and alcohol content of all wine used in the manufacture of vinegar, and the date of use;

(3) The volume and grain strength of the vinegar produced, and the date of production. (This volume will be reported on a 100-grain strength basis and will be determined by multiplying the wine gallons of vinegar produced by the grain strength thereof and dividing the rest by 100); and

(4) The names and addresses of all persons to whom vinegar is shipped, the volume and grain strength shipped to each, and the date of shipment. (Grain strength is a measure of the acetic content of vinegar, expressed as 10 times the grams of acetic acid per 100 ml).

(c) *Inspection of vinegar plants.* The proprietor of a vinegar plant receiving wine, free of tax, for use in the manufacture of vinegar shall make the premises and records available for inspection by ATF officers during regular business hours.

(August 16, 1954, ch. 736, 68A Stat. 903, as amended (26 U.S.C. 7606); Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.292 Exported wine.

(a) *General.* Wine may be removed from a bonded wine cellar without payment of tax for exportation, for use on vessels and aircraft, for transportation to and deposit in a "Class 6" manufacturing bonded warehouse, for transfer to and deposit in a customs bonded warehouse, and for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation. Removals of wine for export will be in accordance with the procedures in Part 252 of this chapter.

(b) *Return of wine to bonded storage.* Wines which have been lawfully withdrawn, without payment of tax, under the provisions of Part 252 of this chapter may be returned to bonded wine premises from which withdrawn for storage pending subsequent removal for lawful purposes. On return of wine to bonded wine premises, the proprietor shall record the receipt showing the gallonage of each tax class received and returned to storage on bonded wine premises and shall report the return on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, for the month with an explanatory notation. All provisions of this part applicable to wine in bond at bonded wine premises and to removals from bond are applicable to returned wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5361, 5362))

§ 24.293 Wine for Government use.

(a) *General.* Wine may be removed from bonded wine premises, free of tax, for use of the Government of the United States, or any agency thereof, upon receipt of a proper Government order signed by the office in charge of the department, institution, station, or similar establishment, to which the wine is to be shipped or other officer duly authorized to sign the order. Wine may also be removed for use by the governments of the several states and the District of Columbia, or of any subdivision thereof, or by any agency of the governments, free of tax, from bonded wine cellars for analysis, testing, research or experimentation.

(b) *Bill of lading and report of shipment.* Where wine is shipped by common carrier, the proprietor shall return a copy of the bill of lading, covering the shipment, with the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, for the month in which the shipment is made. The bill of lading will show the name and address of the agency to which the wine is shipped, identifying marks on containers or cases, and alcohol content of the wine. The governmental order, or a copy of the order, will be filed at the bonded wine premises available for inspection by ATF officers.

(Sec 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5362, 5367))

§ 24.294 Destruction of wine.

(a) *General.* Wine on bonded wine premises may be destroyed on or off wine premises by the proprietor without payment of tax. A proprietor who desires to destroy wine on or off wine permises shall file with the area supervisor an application stating the kind, alcohol content, and approximate volume of wine to be destroyed, where the wine is to be destroyed, and the reason for destruction. Wine to be destroyed will be inspected and the destruction supervised by an ATF officer, unless the area supervisor authorizes the proprietor to destroy the wine without inspection and supervision. The wine may not be destroyed until the proprietor has received authority from the area supervisor.

(b) *Record of destruction.* The proprietor shall maintain a record of the volume destroyed and include the quantity on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations. If part of the volume of the material destroyed is not wine, the volume destroyed will be reported on the basis of actual wine content of the material, excluding any dilution by water or other substance.

(Sec. 201, Pub: L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5370))

Return of Taxpaid Wine to Bond

§ 24.295 Return of Taxpaid wine to bond.

(a) *General.* Domestically produced wine which has been taxpaid, removed from bonded wine premises, and is subsequently determined to be unmerchantable may be returned to bonded wine premises for reconditioning or destruction. The tax paid on the wine may, when the wine is returned to bond, be refunded or credited, without interest, to the proprietor of the bonded wine cellar to which the wine is delivered. However, no tax paid on any wine for which a claim has been or will be made under the provisions of Subpart O of Part 170 of this chapter will be refunded or credited. If the tax on the wine has been determined but not paid, the person liable for the tax may, when the wine is returned to bond, be relieved of the liability. Claims for refund or credit, or relief from liability, of tax paid or determined on wine returned to bond are filed in accordance with § 24.66.

(b) *Receipt.* The amount of unmerchantable taxpaid wine returned to bond is determined upon receipt on bonded wine premises. The quantity determined will be entered on the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, for the month during which the wine is returned.

(c) *Records.* The proprietor shall maintain records covering each lot of unmerchantable taxpaid wine returned to bond in accordance with § 24.311.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1382, as amended (26 U.S.C. 5044, 5371))

Taxpaid Wine Operations

§ 24.296 Taxpaid wine operations.

(a) *General.* The proprietor may conduct taxpaid wine operations authorized by § 24.102 in an area designated as taxpaid wine premises at a bonded winery or bonded wine cellar, or at a taxpaid wine bottling house. Any taxpaid wine operations will be separate from all nontaxpaid wine operations and taxpaid wine will be clearly identified as provided in § 24.135. The regional director (compliance) may require any additional segregation and identification of taxpaid wine operations as deemed necessary to protect the revenue.

(b) *Treatment.* Taxpaid wine may be treated with sulfur dioxide compounds, refrigeration or pasteurization and may also be preserved, filtered or clarified by the use of methods or materials which will not change the basic character of the wine. The proprietor who desires to treat wine in any manner (other than by simple filtration or the use of sulfur compounds, refrigeration or pasteurization) shall first file with the regional director (compliance) an application giving the details of the proposed treatment. The proprietor may not use the treatment prior to approval. The proprietor may incur civil or criminal liability for using an unauthorized treatment of taxpaid wine. Wine of the same kind (class, type, or national origin) and tax class may be mixed to facilitate handling; otherwise, the blending of taxpaid wine is prohibited. Also, water may not be added to the taxpaid wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1407 (26 U.S.C. 5352, 5661))

Subpart O—Records and Reports

§ 24.300 General.

(a) *Records and reports.* A proprietor who conducts wine operations shall maintain wine transaction records and submit reports as required by this part. Transaction records may be recorded in wine gallons or in liters. However, required reports submitted to the regional director (compliance) will show wine volumes in wine gallons. The equivalent wine gallons of wine bottled and labeled according to metric measure will be determined using the following conversion factors:

(1) Per case. Equivalent gallonage may be determined using the following conversion factors for cases of metric bottles:

Bottles per case	Net content each bottle	Equivalent gallonage
120	50ml	1.58502
60	100ml	1.58502
48	187ml	2.37119
24	375ml	2.37753
12	750ml	2.37753
12	1 liter	3.17004
6	1.5 liter	2.37753
4	3 liter	3.17004

(2) Per liter. Equivalent gallonage may be determined by multiplying total liters by a conversion factor of 0.26417 gallons per liter.

(b) *Time of making entries.* Any operation or transaction is to be entered in records or commercial papers at the time the operation or transaction occurs, except that where records are posted from source records or from supplemental auxiliary records prepared at the time the operation or transaction occurs, entries in another record may be deferred to not later than the close of business of the third business day succeeding the day on which the operation or transaction occurs. The proprietor shall retain all source records and all supplemental or auxiliary records which support entries in other records or commercial papers in order to facilitate verification of operations by ATF officers. Source records and supplemental or auxiliary records may be used as the record of an operation or transaction and to prepare the ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, provided the record will readily allow for verification of an operation or transaction by ATF officers.

(c) *Prescribed forms.* All reports required by this part are to be submitted on forms prescribed by the Director. Entries will be made as indicated by the headings of the columns and lines and as required by the instructions on the form. Report forms filed with the regional director (compliance) are furnished free of cost.

(d) *Period of retention.* All prescribed returns, reports and records (including source records) will be retained by the proprietor for a period of not less than three years from the record date or the date of the last entry required to be made in the record, whichever is later. However, the regional director (compliance) may require records to be kept an additional period not exceeding three years in any case where retention is determined to be necessary.

(e) *Data processing.* (1) Notwithstanding any other provision of this section, data maintained on data processing equipment may be kept at a location other than the wine premises if the original operation or transaction source records required by this subpart are kept available for inspection at the wine premises.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted recording media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an ATF officer.

(f) *ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations.* A proprietor who conducts wine operations shall summarize transaction entries and submit an ATF Form 5120.17

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(702) to the regional director (compliance) in accordance with instructions on the form. If the proprietor does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months, a statement may be attached to the ATF Form 5120.17 (702) filed that, until a change in the inventory or a reportable operation occurs, an ATF Form 5120.17 (702) will not be filed. The information reported on the ATF Form 5120.17 (702) will be maintained in accordance with the requirements of this part. Any fractional parts of a gallon will be expressed in decimals to the nearest one-tenth gallon, five-hundredths gallon being converted to the next full one-tenth gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.301 Bulk still wine record.

A proprietor who produces or receives still wine, (including wine intended for use as distilling material or vinegar stock to which water has not yet been added) shall maintain records of transactions for bulk still wine. Records will be maintained for each tax class of still wine including the date the transaction occurred. The bulk still wine record will contain the following:

(a) The volume produced by fermentation in wine gallons determined by actual measurement;

(b) The volume received, shipped taxpaid, removed (e.g., taxpaid, in bond, export, family use, samples) and used in sparkling wine production;

(c) The specific type of production method used, e.g., natural fermentation, sweetening, addition of spirits, amelioration, blending;

(d) The volume of wine used and produced by sweetening, amelioration, or addition of spirits as determined by measurements of the wine before and after production;

(e) The volume of wine used for and produced by blending if wines of different tax classes are blended together;

(f) The volume of wine used to produce vinegar stock and distilling material;

(g) The volume of wine removed to fermenters for refermentation or removed directly to the production facilities of a distilled spirits plant or vinegar plant;

(h) Where a process authorized under § 24.248 is employed, records will be maintained to allow for verification of any limitation specified for the process employed and to ensure that the use of the process is consistent with good commercial practice;

(i) Where a treating material is dissolved or dispersed in water as authorized in this part, the volume of water and treating material added to the wine; and

(j) An explanation of any unusual transaction.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.302 Effervescent wine record.

A proprietor who produces or receives sparkling wine or artificially carbonated wine shall maintain records showing the transaction date and details of production, receipt, storage, removal, and any loss incurred. Records will be maintained for each specific process used (bulk or bottle fermented, artificially carbonated) and by the specific kind of wine, e.g., grape, pear, cherry. The record will contain the following:

(a) The volume of still wine filled into bottles or pressurized tanks prior to secondary fermentation or prior to the addition of carbon dioxide;

(b) The quantity of any first dosage used;

(c) Any in-process bottling losses, e.g., refilling, spillage, breakage;

(d) The volume of bottle fermented sparkling wine in process, transferred and received;

(e) The volume returned to still wine;

(f) The quantity of any finishing dosage used;

(g) The volume of finished sparkling wine or artificially carbonated wine bottled or packed (amount produced);

(h) The quantity of each item used in the production of dosages, e.g., wine, sugar, spirits; and

(i) An explanation of any unusual transaction.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.303 Formula wine record.

A proprietor who produces formula wine shall maintain records showing by transaction date the details of production. The formula wine record will contain the following:

(a) A number for each lot produced;

(b) The approved formula number for each lot;

(c) The volume of wine used in the production;

(d) The volume produced and the gain or loss resulting from the production of each lot as determined by comparing the volume finished with the volume used (report the total monthly loss or gain on the ATF Form 5120.17 (702));

(e) An explanation of unusual loss or gain;

(f) The production of essences showing the formula number, quantities of spirits and herbs used, and the amount produced;

(g) The quantity of essences purchased, and the use, transfer or other disposition of essences produced or purchased; and

(h) A record of the receipt and use or other disposition of all herbs, aromatics, essences, extracts, or other flavoring materials used in the production of formula wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.304 Chaptalization and amelioration record.

(a) *General.* A proprietor who chaptalizes juice or ameliorates juice or wine, or both, shall maintain a record of the operation and the transaction date. Records will be maintained for each kind of wine produced (grapes, fruit, or berry). No form of record is prescribed, but the record maintained will contain the information necessary to enable ATF officers to readily determine compliance with amelioration limitations. All quantities will be recorded in wine gallons, and, where pure sugar is used, the quantity will be determined either by measuring the increase in volume or by considering that each 13.5 pounds of pure sugar results in a volumetric increase of one gallon. If juice is chaptalized and subsequently this juice or wine is ameliorated, the quantity of pure sugar added to juice will be included as ameliorating material. The record will include the following:

(1) The volume of juice (exclusive of pulp) deposited in fermenters;

(2) The maximum volume of ameliorating material to which the juice is entitled, as provided in § 24.178;

(3) The volume of ameliorating or chaptalizing material used, including sugar used for adjustment of the total solids; and

(4) The volume of material authorized but not yet used.

(b) *Supporting records.* The amelioration record will show the basis for entries and calculations, including determination of the natural fixed acid level and total solids content of juice, as applicable. The records are maintained on the basis of annual accounting periods, with each period commencing on July 1 of a year and ending on the following June 30, except the record for an accounting period may be continued after June 30, where the juice or wine included therein is to be held after that date for completion. When the amelioration of wine included in the record for one accounting period is complete, the record is closed and any

unused amelioration material may not be used. Wines included in the records for different accounting periods may not be mixed with each other until the amelioration of both wines is complete.

(c) *Variation.* Notwithstanding the provisions of paragraph (b) of this section prohibiting the mixing of wines included in the records for different accounting periods, the proprietor may mix wines before amelioration of the wine is completed. However, the proprietor shall additionally maintain records necessary to establish the quantity of unused authorized material to which the resultant mixture would be entitled so that ATF officers may readily ascertain compliance with amelioration limitations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1385, as amended (26 U.S.C. 5367, 5384))

§ 24.305 Sweetening record.

A proprietor who sweetens natural wine with sugar under the provisions of this part shall maintain a record of sweetening by transaction date. The record will contain the following:

(a) The gallons and degrees Brix of the wine before sweetening;

(b) The gallon equivalent of pure sugar that would be required to sweeten the volume of wine to its maximum authorized total solids content;

(c) The quantity of sugar used for sweetening; and

(d) The gallons and degrees Brix of the wine produced by sweetening.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.306 Distilling material or vinegar stock record.

A proprietor who produces or receives wine containing excess water which will be used expressly as distilling material or vinegar stock shall maintain a record by transaction date showing the amount and kind produced, received, from whom received, removed, and to whom sent. The proprietor shall keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, fruit, berry). The volume of distilling material or vinegar stock produced, including wine lees refermented for use as distilling material, will be recorded upon removal from fermented tanks. However, the provisions of this section do not apply to standard wine or unwatered wine lees recorded on the proprietor's record of bulk still wine and removed for use as distilling material or vinegar stock.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.307 Nonbeverage wine record.

A proprietor who produces nonbeverage wine shall maintain a record by transaction date of each formula number produced and withdrawn as follows:

(a) The kind, volume, and percent alcohol by volume of wine, or wine products made from wine, which was rendered unfit for beverage use;

(b) The kind and quantity of materials received and used to render wine, or wine products made from wine, unfit for beverage use;

(c) The name, volume, percent alcohol by volume, and formula number of each nonbeverage wine or wine product produced;

(d) The volume, percent alcohol by volume, and formula number of nonbeverage wine removed; and

(e) The name and address of the consignee if the removal is more than five wine gallons or two cases, or if the nonbeverage wine is shipped for resale.

When the proprietor sends nonbeverage wine free of tax to an adjacent or contiguous premises operated by the proprietor, records required by paragraphs (d) and (e) of this section will be maintained at each location.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.308 Bottled or packed wine record.

A proprietor who bottles, packs, or receives bottled or packed wine in bond shall maintain a record, by tax class, as follows:

(a) The date, kind of wine, and volume of wine bottled or packed, received in bond, returned to bond, and removed, e.g., taxpaid removals, in bond removals, dumped to bulk or destroyed, breakage, used for tasting. The number and size of bottles or containers filled will be shown in the record and will determine the volume bottled or packed. The volume recorded as bottled for bottle fermented sparkling wine is determined after the disgorging and refilling process.

(b) The label used on bottles or containers will be shown in the record by using the "Applicant's Serial No." which appears as item 2 on the label approval form, ATF Form 5100.31 (1649).

(c) The record of fill tests and alcohol tests required by § 24.255 will be maintained for each lot of wine bottled or packed showing the date, type of test, item tested and the test results.

(Sec. 201. Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.309 Transfer in bond record.

A proprietor who transfers wine in bond shall prepare a transfer record. The transfer record will show:

(a) The name, address and registry number of the proprietor;

(b) The name, address and registry number of the consignee;

(c) The shipping date;

(d) The kind of wine (class and type);

(e) The alchohol content or the tax class;

(f) The number of cases or containers;

(g) The serial numbers of cases (if any);

(h) Any container identification marks;

(i) The volume shipped in gallons or liters;

(j) The serial number of any seal used;

(k) For unlabeled bottled or packed wine, the registry number of the bottler or packer;

(l) Information necessary for compliance with § 24.315, e.g., the varietal, vintage, appellation of origin designation of the wine or any other information that may be stated on the label; and

(m) Information as to any added substance or cellar treatment for which a label declaration is required for the finished product, or any other cellar treatment for which limitations are prescribed in this part, e.g., amount of decolorizing material used, quantity of ameliorating material used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.310 Taxpaid removals from bond record.

A proprietor removing wine from bond for consumption or sale on determination of tax shall maintain a record of wine removed at the time of removal either to taxpaid wine premises or for direct shipment. The record will show the date of removal, the name and address of the person to whom shipped, and the volume, kind (class and type) and alcohol content of the wine. The proprietor who removes taxpaid bulk wine to another wine premises shall prepare the shipping record and follow the procedures prescribed by § 24.281. The volume of wine removed taxpaid will be summarized daily by tax class. If the wine is not sold for resale or shipped for sale, the name and address of the person to whom sold or shipped may be omitted from the record. On sales of not more than one case or one demijohn, the name and address of the consignee need not be recorded.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

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§ 24.311 Taxpaid wine record.

A proprietor who has taxpaid wine premises shall maintain records as follows:

(a) *Record of receipts.* (1) The name and address of the person or wine premises from whom received;

(2) The registry number (if any) of the wine premises from which received;

(3) The date of receipt;

(4) The kind of wine (class, type and, in the case of foreign wine, country of origin);

(5) Alcohol content or tax class of the wine; and,

(6) The volume of wine received in gallons.

(b) *Record of removals.* (1) The name and address of the person to whom removed; however, on sales of not more than one case or one demijohn made direct to consumers the name and address of the consignee need not be shown;

(2) The date of removal;

(3) The kind of wine (class, type and, in the case of foreign wine, country of origin); and

(4) The volume of wine shipped in gallons.

(c) *Record of cases or containers filled.* (1) The date the cases or containers were filled;

(2) The kind (class, type and, in the case of foreign wine, country of origin) of wine bottled or packed;

(3) The number of the tank used to fill the bottles or containers;

(4) The size of bottles or containers and the number of cases or containers filled;

(5) The serial number or date of fill marked on the cases or containers filled; and

(6) The total volume of wine bottled or packed in liters or wine gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367)).

§ 24.312 Taxpaid wine returned to bond record.

A proprietor shall maintain a record of any unmerchantable taxpaid wine returned to bond as follows:

(a) The kind, volume, and tax class of the wine;

(b) With regard to each tax class, the amount of tax previously paid or determined;

(c) The location of the wine premises at which the wine was bottled or packed and, if known, the identity of the bonded winery or bonded wine cellar from which removed on determination of tax;

(d) The date the wine was returned to bond;

(e) The serial numbers or other identifying marks on the cases or containers in which the wine was received; and

(f) The final disposition of the wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.313 Reconditioned foreign wine record.

A proprietor shall maintain a record of any taxpaid foreign wine received on taxpaid wine premises for reconditioning as follows:

(a) The name and address from whom the wine is received;

(b) The date of receipt and the kind, volume, and tax class of the wine received;

(c) The serial numbers or other identifying marks of the cases or containers in which the wine is received;

(d) The date of reconditioning; and the volume and tax class of the wine reconditioned;

(e) The name and address of the person to whom the reconditioned wine is shipped; and

(f) The date of shipment and the kind (class, type, and, in the case of foreign wine, country of origin), volume, and tax class of the wine shipped.

If the information required in regard to receipts and shipments is shown or the taxpaid wine record, the record of reconditioning need not include information as to receipt and disposition of the wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.314 Inventory record.

A proprietor shall prepare a record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period. (Proprietors may begin with an annual inventory period different from the period beginning on July and ending on June 30 (tax year); however, if the proprietor wants to change an inventory period, a notice will be submitted to the regional director (compliance)). The inventory record will be retained on file with the proprietor's ATF Form 5120.17 (702), Monthly Report of Wine Cellar Operations, for the month the inventory was taken. If at other times a complete inventory of all wine is taken, losses disclosed will be reported on the ATF Form 5120.17 (702) and the inventory record will also be retained on file with the report for that month. The proprietor's inventory record will include:

(a) *Description of wine.* (1) State the generic name (e.g., port, claret) or designated as a white, rose or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage date, varietal name, or geographical designation will be appropriately identified, e.g., 1977 Napa Valley Pinot Noir; and

(3) If the wine is other than grape wine, state the type, e.g., orange, honey.

(b) *Bulk containers.* Tanks containing wine will be listed by tank number. Bulk containers which are barrels or puncheons containing the same kind of wine may be summarized, e.g., 10 barrels-red table wine 500 gals.;

(c) *Cases, containers and bottles.* The total volume of one kind of wine in cases, containers and bottles may be entered as one item and appropriately identified;

(d) *Inventory summary.* The volume of bulk and bottled or packed wine will be totaled separately in wine gallons or in liters, by tax class, and reported on the ATF Form 5120.17 (702). Spirits will also be totaled and reported on the ATF Form 5120.17 (702); and

(e) *Inventory record.* All inventory pages will be numbered consecutively and the last inventory page will be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wine and spirits required to be inventoried."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369))

§ 24.315 Label information record.

A proprietor who removes bottled or packed wine with information stated on the label (e.g., varietal, vintage, appellation of origin, analytical data, date of harvest) shall have complete records so that the information appearing on the label may be verified by an ATF audit. A wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material received or initial operation conducted to removal of the wine for consumption or sale. All records necessary to verify wine label information are subject to the record retention requirements of § 24.300(d).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.316 Materials received and used record.

(a) *General.* A proprietor who produces wine shall maintain a record showing the receipt and use or other disposition of basic winemaking materials received on wine premises. The record will show the date of receipt, the quantity received, the name and address from whom received, and the date of use or other disposition of the materials. For any material stored off wine premises, invoices or other commercial papers covering the purchase will also be kept available for inspection. Where grapes (or other fruit) received on wine premises are used in producing juice to be stored for future use or for removal, the record will show the quantity used and juice produced.

(b) *Concentrated fruit juice.* When concentrated fruit juice or must is produced or received, the record will show the degrees Brix of the juice before and after concentration, the maximum volume of water authorized to restore one gallon of concentrated juice, the volume of juice before and after reconstitution, the volume of reconstitution water used, and, if volatile fruit flavor was added, the kind and volume. Where fruit or juice is used to produce concentrated juice, the record will also show the quantity of fruit or volume of juice used. If the concentrated fruit juice is removed for use by another proprietor, a copy of the certificate required by § 24.180 will be retained. The record of concentrated fruit juice will contain the information necessary to determine compliance with the limitations prescribed in § 24.180. Incomplete or inaccurate records of concentrated fruit juice may result in the wine produced from the concentrated juice to be designated substandard.

(c) *Volatile fruit-flavor concentrate.* If volatile fruit-flavor concentrate is received, the record will show the volume received, the fold, the percent of alcohol by volume, any loss in transit, and the use or other disposition of the volatile fruit-flavor concentrate.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.317 Spirits record.

A proprietor who receives, stores, or uses spirits shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises and to whom. The proof gallons of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each month and reported on the ATF Form 5120.17 (702).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373))

§ 24.318 Sugar record.

A proprietor who receives, stores, or uses sugar shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and quantity. Invoices covering purchases will be retained. When sugar is used for chaptalization, amelioration or sweetening, the record will show the date, kind, and quantity used. The sugar record will also show sugar used in the production of allied products and any sugar removed from the wine premises. At the close of each month the account will be balanced and the quantity of each kind of sugar remaining on hand will be shown.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.319 Acid record.

A proprietor who adds acid to correct a natural deficiency in juice or wine or to stabilize wine shall maintain a record showing date of use, the kind and quantity of acid used, the kinds and volume of juice or wine in which used, and the fixed acid level of juice or of wine before and after the addition of acid. The record will account for all acids received and be supported by purchase invoices.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.320 Carbon dioxide record.

A proprietor who uses carbon dioxide in still wine shall maintain a record of the laboratory tests conducted to establish compliance with the limitations prescribed in § 24.245.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.321 Chemical record.

A proprietor who uses chemicals, preservatives, or other such materials shall maintain a record of the purchase, receipt and disposition of these materials. The record will show the kinds and quantities received, the date of receipt, and the names and addresses from whom, purchased. A record of use in juice or wine of any of these materials, except for filtering aids, inert fining agents, and oxygen, will be maintained, showing the kind, quantity, and date of use, and kind and volume of juice or wine in which used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.322 Activated carbon record.

A proprietor who treats juice, white wine, pale dry sherry, or cocktail sherry with activated carbon or other decolorizing material shall maintain a record to show:

(a) The type (e.g. grape variety or kind of wine) and volume of juice, white wine, pale dry sherry, or cocktail sherry;

(b) The kind and quantity of the decolorizing material used per 1,000 gallons of wine or juice;

(c) The complete cellar treatment given each lot of juice, white wine, pale dry sherry, or cocktail sherry, and the date and the length of time the decolorizing material is in contact with the juice, white wine, pale dry sherry, or cocktail sherry;

(d) The temperature of the juice or wine during treatment; and

(e) The range of color (Lovibond scale in a one-half inch cell) or the percentage of transmittance per AOAC 11.003–11.004 of the expressed juice or the wine before treatment with any decolorizing material and the range of color or the percentage of transmittance per AOAC 11.003–11.004 after treatment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.323 Allied products record.

A proprietor who uses fruit, fruit juice or concentrated fruit juice in the production of allied products shall maintain a record of these materials in accordance with § 24.316. The record will also show the production and disposition of other allied products. If sugar, acids, or chemicals are used in allied products, the receipt and use will also be recorded.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 24.324 Excise Tax Return form.

A proprietor who removes wine subject to tax shall prepare an Excise Tax Return form unless exempted under the provisions of § 24.273. Any increase or decrease in tax due to previous return errors or for authorized credits will be shown on the return. The Excise Tax Return will be prepared and filed by the proprietor in accordance with the instructions printed on the form.

(August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended, 917, as amended (26 U.S.C. 6301, 6311, 6302, 7805))

Signed: May 29, 1985.

Stephen E. Higgins,
Director.

Approved: September 20, 1985.

David D. Queen,
Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86–4370 Filed 3–6–86; 8:45 am]

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Part IV

National Archives and Records Administration

Privacy Act of 1974; Systems of Records; Notice

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new systems and amendments of systems of records.

SUMMARY: NARA proposes to publish all its systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes to the notices being amended are set forth below followed by the systems notices, as amended, published in their entirety.

DATE: NARA filed a new systems report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB) on November 6, 1985. The proposed systems shall be effective without further notice on April 7, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Comments should be addressed to Adrienne C. Thomas, Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, D.C. 20408. Telephone (202) 523–3214.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard, Program Policy and Evaluation Division (NAA). Telephone (202) 523–3214 or (FTS) 523–3214.

SUPPLEMENTARY INFORMATION: On April 1, 1985, the National Archives and Records Service ceased to be a part of the General Services Administration. It became the National Archives and Records Administration, an independent agency in the executive branch. This required NARA to establish its own Privacy Act Notice of Systems. NARA's 24 systems of records subject to the Privacy Act include 22 modifications of the existing General Services Administration's systems. These modifications involved changing the name and number of the existing system of records, changing the name of the system manager, and changing the location of the records.

NARA's two new systems are NARA 15, Editorial Freelance Vendor Files, and NARA 16, Library Circulation Files. The categories of individuals covered by NARA 15 include former and current freelance vendors qualified to perform editorial services. The categories of records in this system includes correspondence with the editorial vendors, including all or parts of the following: Name; address; telephone number; education; professional vita; samples of work; assignments and evaluations of work done for the National Archives; and purchase order documents. The authority for maintenance of this system is 44 U.S.C. 2104. NARA procedures for contesting records are contained in 36 CFR Part 1202.

NARA 16, Library Circulation Files, is located in the Library of the National Archives Building at 8th and Pennsylvania Avenue NW., Washington, D.C. The mailing address is National Archives (NNIL), Washington, D.C. 20408. All NARA employees who have borrowed books and other materials from the Library are included in this category. The categories of records in this system includes specialized forms listing the names of individuals, materials borrowed and dates of loan. The authority for the maintenance of this system is 44 U.S.C. 2104. NARA rules for access to records and for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

Dated: February 28, 1986.

Frank G. Burke,

Acting Archivist of the United States.

National Archives and Records Administration (NARA) Privacy Act Notice of Systems

NARA 1	Researcher Application Files.
NARA 2	Reference Request Files.
NARA 3	Donors of Historical Materials Files.
NARA 4	National Archives Committees Files.
NARA 5	Conference and Related Activities Files.
NARA 6	Mailing List Files.
NARA 7	Mandatory Review of Classified Documents Request Files and Freedom of Information Act Request Files.
NARA 8	Restricted and Classified Records Access Authorization Files.
NARA 9	Authors Files.
NARA 10	Employee Drug Abuse/Alcoholism Files.
NARA 11	Credentials, Passes, and Licenses.
NARA 12	Emergency Notification Rosters and Files.
NARA 13	Defunct Agency Records.
NARA 14	Payroll and Time and Attendance Reporting System.
NARA 15	Editorial Freelance Vendor File.
NARA 16	Library Circulation Files.
NARA 17	Grievance Records.
NARA 18	General Law Files.
NARA 19	Workers Compensation Case Files.
NARA 20	Reviewer/Consultant File.
NARA 21	OPM Government-wide Notices.
NARA 22	Employee Related Files.
NARA 23	Investigation Case Files.
NARA 24	Personnel Security Files.

NARA 1

SYSTEM NAME:

Researcher Application Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Center, National Personnel Records Center, Federal Records Centers, and National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Researchers who apply to use records in the National Archives, Presidential Libraries, and National Archives Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications to use records including name, address, telephone number, occupation, research topic, educational level, and field of interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2203(f)(1), and 2907.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties to identify and record the individuals who use records in the National Archives and other repositories listed above, to provide a means of contacting the individual if additional information of research interest to him or her is found, and to mail notices of events and programs of interest to users of the records in the National Archives. The routine use statements A, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files and file folders.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal hours of operation, records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are

secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records are cut off annually, held one year, and retired. After 14 additional years they are destroyed. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NARA officials with responsibility for this geographically dispersed system of records are the Assistant Archivist for the National Archives at the National Archives Building, the directors of the Presidential Libraries, the directors of the National Archives Field Branches, and the directors of the Federal Records Centers at the addresses listed for these locations in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials cited above at the appropriate repository where individuals have used records.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the directors of the Presidential Libraries, the directors of the National Archives Field Branches, or the directors of Federal Records Centers, depending on where individuals have used records. In person requests may be made during business hours listed for each location in the appendix following the NARA Notices. For written requests, the individual should provide full name, address, and telephone number, and the approximate dates records were used. For personal visits, individuals should be able to provide some acceptable identification, such as a driver's license or student or employee identification. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Researchers.

NARA 2

SYSTEM NAME:

Reference Request Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Centers, National Personnel Records Center, National Archives Field Branches, Federal Records Center, and the National Audiovisual Center. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Researchers and correspondents requesting information from the records in the National Archives, Presidential Libraries, National Archives Centers, and the National Audiovisual Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, reference slips, receipts for money, deposit account records, reproduction orders, reference logs, lending files, and reference files pertaining to requests for information, including all or parts of the following: Requester's name, address, telephone number, occupation, research topic, educational level, and field of interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2203(f)(2) and 2907.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties to record requests for information and the responses to those requests; to maintain control over information requests received and answered; to enable later contact with the requester if required; to assist in the preparation of standard replies to similar questions; to facilitate preparation of statistical and other reports; to maintain control of records being used; to establish researcher accountability for records; to record payment for reproduction orders and funds placed on deposit; to record loans of materials or records from the above locations; and, when requested by a researcher, to write recommendations for researchers for grants or employment. The routine use statements A, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files and file folders.

RETRIEVABILITY:

The records within this system are primarily retrieved by name.

SAFEGUARDS:

During normal working hours of operation, records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records which are:

(1) Created in the administration of loans are cut off after the return of the materials, held one year, and destroyed.

(2) Created in the process of providing reference service by mail are cut off annually, held two years, and destroyed.

(3) Created in the process of providing records to researchers in National Archives research rooms are cut off annually, held one year and retired. After 14 additional years they are destroyed.

These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Depending on where the records are located the system managers are the Assistant Archivist for the National Archives, the Director of the National Audiovisual Center, the directors of the Presidential Libraries, the directors of the National Archives Field Branches, and the directors of Federal Records Centers at the address listed for these locations in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials listed above at the appropriate repository where individuals have used records or directed inquiries. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the directors of the Presidential Libraries, the directors of National Archives Field Branches, or the directors of Federal Records Centers, or the Director of the National Audiovisual Center depending on where individuals used records or directed inquiries. In person requests may be made during normal business hours listed for each location in the appendix following NARA notices. For written requests, provide full name, address, telephone number, and the approximate dates of the correspondence or transaction. For personal visits, individuals should be able to provide

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some acceptable identification, such as a driver's license or student or employee identification. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Researchers, correspondents, and employees of the National Archives.

NARA 3

SYSTEM NAME:

Donors of Historical Materials Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building and the Presidential Libraries. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors and potential donors of papers or other historical materials to the National Archives and Presidential Libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, deeds of gift, deposit agreements, accession files, accession cards, administrative files, inventories of museum objects, oral history use agreements, tapes, and transcripts, all of which are related to the solicitation and preservation of donations. Also included are biographical data on donors as well as their addresses, telephone numbers, and occupations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2111 and 2112.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties primarily to record solicitation efforts and accessioning of papers and other historical materials for preservation in the above locations; to maintain control over the accessions program; to facilitate future solicitations of gifts; to record deeds of gift; and to record agreements of use. The routine uses of records also include releasing biographical material about donors and prospective donors to the public as well as the routine use statements A, F, and G, described in the appendix following the NARA Notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; sound recordings.

RETRIEVABILITY:

Filed alphabetically at each location by name of donor.

SAFEGUARDS:

Buildings have security guards, and records and other materials are maintained in areas accessible only to authorized personnel of NARA.

RETENTION AND DISPOSAL:

Records are permanent. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Depending on where the records are maintained the system managers are the Assistant Archivist for the National Archives and the Assistant Archivist for Presidential Libraries at the National Archives Building, and the directors of the Presidential Libraries. The addresses are listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURES:

Information may be obtained from the officials listed above at the appropriate repository where individuals have donated materials or from which they have received requests for donations. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the Assistant Archivist for Presidential Libraries, or a director of a Presidential Library depending on which repository the individual has been associated with. In person requests may be made during normal business hours listed for each location in the appendix following the NARA Notices. For written requests, provide full name, address, telephone number, and the approximate dates of the correspondence or transaction. For personal visits individuals should be able to provide some acceptable identification such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Donors, potential donors, and employees of the National Archives.

NARA 4

SYSTEM NAME:

National Archives Committees Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building. The address is listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former, current, and prospective advisory committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with and biographical information about former, current, and prospective advisory committee members including all or parts of the following: Name, address, telephone number, education, professional vita, and publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104(f)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for these records in the performance of their duties to review professional qualifications of prospective committee members; to document activities of the committees themselves; to serve as a mailing list of current and past members; to record the committee members' role; and to help formulate advisory committee policy. Biographical material relating to advisory committee members is made available to the public for purposes of publicizing the membership and activities of the committees. The routine use statement F, described in the appendix following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual.

SAFEGUARDS:

During normal hours of operation, records are maintained in areas

accessible only to authorized personnel of NARA. After hours, the building has security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

These records are cut off after each meeting, held five years, and offered to the National Archives. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The NARA official with overall responsibility for the system records is the Assistant Archivist for Management and Administration (NA), National Archives Building, 8th and Pennsylvania Avenue NW., Washington, DC 20408.

NOTIFICATION PROCEDURE:

Information may be obtained from the official listed above at the address listed above.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for Management and Administration (NA). In person requests may be made during normal business hours listed in the appendix, following the NARA Notices. For written requests, provide full name, address, telephone number, and if applicable, dates of service. For personal visits, individuals should be able to provide some acceptable identification, such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Former, current, and prospective advisory committee members, associates of committee members, and employees of the National Archives.

NARA 5

SYSTEM NAME:

Conference and Related Activities Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Center, National Personnel Records Center, Federal Records Centers, and National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants or potential participants in symposia, conferences, lectures, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information about individuals involved in these activities including name, address, telephone number, area of expertise, research interest, occupation, education, and publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2109, and 2204.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties in the various archival programs indicated above; to provide a record of previous activities; to promote the use of archival materials; to provide mailing lists; to facilitate publication of the activity's proceedings; and to register persons attending the activity. The routine use statement F, described in the appendix following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files and file folders.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal hours of operations, records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

These records are cut off after the event, held for one year, and destroyed. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NARA officials with responsibility for this geographically dispersed system of records are the Assistant Archivist for the National Archives and the Assistant Archivist for Public Programs at the National Archives Building, the directors of the Presidential Libraries, the directors of the Federal Records Centers, and the directors of the National Archives Field Branches at the addresses listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials listed above at the appropriate location which sponsored the activity which the individual attended or in which he or she participated. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the Assistant Archivist for Public Programs, the directors of Presidential Libraries, the directors of Federal Records Centers, or directors of National Archives Field Branches. In person requests may be made during normal working hours listed for each location in the appendix following the NARA Notices. For written requests, provide full name, address, telephone number, and the dates of activity. For personal visits, provide some acceptable identification, such as a driver's license or an employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Participants, attendees, and employees of the National Archives.

NARA 6

SYSTEM NAME:

Mailing List Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Center, National Personnel Records Center, National Audiovisual Center, National Archives Field Branches, and Federal Records Centers. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Researchers; buyers of NARA products and those making inquiries or receiving price quotations on possible orders; tourists; Government officials; professional colleagues; professionals in

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related fields, such as librarians and teachers; and others with an interest in National Archives activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include primarily the individual's name and address. Some lists also include telephone number, title, occupation, and institutional affiliation. Some mailing lists include type and subject of materials purchased, date purchased, and dollar value.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2109, 2112, 2307, 2902, and 2904.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The mailing lists are used by employees of NARA who have a need for the records in the performance of their duties, to address newsletters, announcements, programs, and material about special events; to bill researchers for reproduction orders; and to mail press releases and other information. On occasion the mailing lists are donated to or exchanged with private and public organizations to further scholarship and NARA programs. The routine use statement F, described in the appendix following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files, index cards, address plates, magnetic cards, punch cards, cassettes, and magnetic tape.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal hours of operation, these records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

These mailing lists are reviewed annually and updated. Outdated information is purged. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Officials responsible for the geographically dispersed system of records are the Assistant Archivist for Management and Administration, Assistant Archivist for the National Archives, the Assistant Archivist for the Presidential Libraries, and the Assistant Archivist for Public Programs at the National Archives Building, and the Assistant Archivist for Records Administration, at 801 D Street NW., Washington, DC 20408. Other officials are directors of the Presidential Libraries, the directors of Federal Records Centers, and directors of National Archives Field Branches. The addresses for these locations are listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials cited above at the appropriate location in which the individual has expressed an interest or in which he or she has a potential interest. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests from individuals to access records should be addressed to the Assistant Archivist for Management and Administration, the Assistant Archivist for the National Archives, the Assistant Archivist for Presidential Libraries, the Assistant Archivist for Public Programs, the Assistant Archivist for Records Administration, the directors of the Presidential Libraries, the directors of Federal Records Centers, and the directors of National Archives Field Branches, depending on which archives activity maintains the specific records. In person requests may be made during normal business hours listed for each location in the appendix following the NARA Notices. For written requests, provide full name, address, and telephone number, and the approximate date of communications with the repository. For personal visits, individuals should be able to provide some acceptable identification, such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Individuals expressing an interest in archives activities and NARA employees.

NARA 7

SYSTEM NAME:

Mandatory Review of Classified Documents Request Files and Freedom of Information Act Request Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Center, Federal Records Centers, and National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Researchers requesting mandatory review of security classified documents and requesting records under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records under the Freedom of Information Act include requestor's name, address, and material requested. Requests for mandatory review of classified documents include requestor's name, address, telephone number, occupation, employer, and research topic.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12356, April 2, 1982 (3 CFR, 1982 Comp., P. 166) and 5 U.S.C. 552, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties to record requests for access to security-classified records and requests to obtain records under the Freedom of Information Act; to record status of each request; to record actions taken on requests, and to compile information for statistical reports. Records in this system may be made available for access review to the agency that created the documents requested under the Freedom of Information Act or a Mandatory Review request. The routine use statements A, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files and file folders.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal hours of operation, these records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records are cut off annually, held one year, and retired. They are subsequently destroyed in accordance with NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NARA officials with responsibility for this geographically dispersed system of records are the Assistant Archivist for the National Archives and the Assistant Archivist for Management and Administration at the National Archives Building, the directors of the Presidential Libraries, the directors of the National Archives Field Branches, and the director of the Federal Records Centers at the addresses listed for these locations in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials listed above at the appropriate repository where individuals have requested mandatory review of classified records or have requested records under the Freedom of Information Act. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for Management and Administration, the Assistant Archivist for the National Archives, the directors of the Presidential Libraries, directors of the National Archives Field Branches, and the directors of the Federal Records Centers, depending on where the individual requested the mandatory review or requested records under the Freedom of Information Act. In person requests may be made during normal business hours listed for each location in the appendix following NARA Notices. For written requests, provide some acceptable identification. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Researchers who have requested mandatory review of records or who have requested records under the Freedom of Information Act.

NARA 8

SYSTEM NAME:

Restricted and Classified Records Access Authorization Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, Washington National Records Center, National Personnel Records Center, Federal Records Centers, and National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Researchers who apply to use agency-restricted, donor-restricted, or classified records in the locations listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and letters of authorization to use restricted and/or classified records, including name, address, telephone number, occupation, employer, security clearance, social security number, date and place of birth, purpose, field of interest, citizenship, intention to publish, and type of publication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108 and 2204.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties to control access to restricted materials; to maintain a record of requests for access; and to authorize access to restricted/classified materials. Records in this system may be made available for access review to agencies whose restricted records are the subject of an access request. The routine use statements A, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in card files and file folders.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal hours of operation, these records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

These records relating to private individuals requesting access are cut off annually, held one year, and retired. After 14 additional years they are destroyed. Records relating to agency officials requesting access are destroyed on supersession or obsolescence of the authorization document, or on transfer or separation of the individual concerned. These procedures are in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NARA officials with responsibility for this system or records are the Assistant Archivist for the National Archives at the National Archives Building, the directors of Presidential Libraries, the directors of the National Archives Field Branches, and the directors of Federal record centers at the addresses listed for these locations in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the officials listed above at the appropriate repository where individuals have applied for access to records. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the directors of the Presidential Libraries, directors of National Archives Field Branches, or the directors of the Federal Records Centers, depending on where the individual submitted his or her application for access to the records. In person requests may be made during normal business hours listed for each location in the appendix following the NARA Notices. For written requests, provide full name, address, telephone

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number, and the approximate dates the application was made. For personal visits, individuals should be able to provide some acceptable identification, such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 Part CFR 1202.

RECORD SOURCE CATEGORIES:

Researchers and agency officials.

NARA 9

SYSTEM NAME:

Authors Files, NARA.

SYSTEM LOCATION:

This system of records is located in the National Archives Building, Presidential Libraries, and National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors whose publications are based on National Archives holdings and authors who have submitted manuscripts which have been published or considered for publication in *Prologue: The Journal of the National Archives.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information about the authors including name, address, telephone number, occupation, education, and research interests, and manuscript copies of writings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2307.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by employees of NARA who have a need for the records in the performance of their duties to provide an indication of areas of interest in archival holdings and the extent to which the scholarly community relies on National Archives holdings as primary source material; and to maintain a record of manuscripts which *Prologue* has rejected or accepted and published. The routine use statement F, described in the appendix following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

During normal business hours of operation, these records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Disposition of these records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

NARA officials responsible for this geographically dispersed system of records are the Assistant Archivist for the National Archives and the Assistant Archivist for Public Programs at the National Archives Building, the directors of the Presidential Libraries, and the directors of the National Archives Field Branches. The addresses are listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information may be obtained from the official listed above and at the appropriate repository where individuals have used records or submitted manuscripts for publication. The addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Assistant Archivist for the National Archives, the Assistant Archivist for Public Programs, the directors of the Presidential Libraries, or the directors of National Archives Field Branches. In person requests may be made during normal business hours listed for each location in the appendix following NARA notices. For written requests, provide full name, address, telephone number, and the title of publication. For personal visits, individuals should be able to provide some acceptable identification such as a driver's license or an employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Authors and National Archives employees.

NARA 10

SYSTEM NAME:

Employee Drug Abuse/Alcoholism Files, NARA.

SYSTEM LOCATION:

This system of records is located in the personnel offices of NARA at the addresses listed in the appendix following the NARA Notices; in the offices of designated counselors; and in the offices of supervisors who supervise employees suspected or known to have drug abuse problems (including alcoholism).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NARA employees who have been suspected of known to have an alcohol or drug abuse problem.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes referrals for counseling, counseling files, and referrals for rehabilitative assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 1101 et. seq. and 5 U.S.C. 7901.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used to document that supervisors have properly dealt with employees whose work is affected by alcohol or other drug abuse; to communicate information to personnel having a need for the information in connection with their duties, such as medical or health personnel, alcohol or other drug abuse counselors and program administrators, and qualified service organizations; to provide a basis for meeting reporting requirements to the Office of Personnel Management; and to disclose information to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim is based upon an employee's mental or physical condition and is alleged to have arisen because of the activities of NARA in connection with such individual. Such disclosure will be restrictively made; in particular, disclosures of information pertaining to an individual with a history of alcohol or other drug abuse will be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug

Abuse Patient Records regulation, 42 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file drawers or cabinets.

RETRIEVABILITY:

Filed alphabetically at each location by name of individual.

SAFEGUARDS:

When not in normal use by an authorized person, these records are stored in lockable metal file cabinets or in secured rooms.

RETENTION AND DISPOSAL:

These records are maintained for 1 year after the employee's last contact with the counselor, or until the employee's separation or transfer, whichever comes first. These records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Director of Personnel at 601 D Streets NW., Washington, DC 20408. Mailing address: National Archives and Records Administration (NAP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Current NARA employees may obtain information about whether they are part of this system of records from their supervisor or from their personnel officer at the appropriate address listed in the appendix following the NARA Notices, or from the NARA Director of Personnel at the address noted above, whichever is applicable. Former NARA employees should direct requests to gain access to information pertaining to them to the appropriate NARA personnel officer at the address listed in the appendix. For identification requirements refer to the NARA regulations outlined in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Supervisors, counselors, personnel specialists, and the employees themselves.

NARA 11

SYSTEM NAME:

Credentials, Passes, and Licenses, NARA.

SYSTEM LOCATION:

This system of records is maintained by the Administrative Services Division, National Archives Building, 8th and Pennsylvania Avenue NW., Washington, DC; the Director of the Washington National Records Center, 4205 Suitland Road, Suitland, Maryland; and by the Administrative Officer at other NARA facilities listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NARA employees and volunteers whose assigned responsibilities require the issuance of credentials for identification and security purposes, or a license to operate a motor vehicle.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Standard Form 47, Physical Fitness Inquiry for Motor Vehicle Operators (Name, date of birth, title of position, home address, agency, medical inquiry, applicant's signature and date, signature of designated official, and date).
2. NA Form 6006, Request for and Record of Credential or Pass (Name, description of individual, SSN, and place of employment).
3. NA Form 6000, National Archives Identification Card (Photo, signature of employee, name of employee, signature of issuing official, date issued, identification serial number, height, weight, color eyes, color hair, and date of birth).
4. NA Form 7001, Application for Motor Vehicle Operator's identification Card (SF 46) (Name, organization, type of vehicle, personal data and driving record, applicant's signature and date, physical fitness certification by signature of certifying official, and certification of eligibility by signature of certifying official).
5. OF 7, Property Pass (Name, building, description of property, agency, and effective date).
6. OF 55, U.S. Government Identification.
7. NA Form 6009, Parking Control Record (Name, address, agency, correspondence symbol, office telephone number, and length of service).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used primarily to facilitate the issuance and control of cards, parking permits, building passes, drivers licenses, and similar credentials. The routine use statements A, B, and F, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms.

RETRIEVABILITY:

By name.

SAFEGUARDS:

When not in use by an authorized person, these records will be stored in lockable metal file cabinets or in secured areas.

RETENTION AND DISPOSAL:

Disposition of these records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The official NARA responsible for this system of records is the NARA Director of Administrative Services, 8th and Pennsylvania Avenue NW., Washington, DC 20408. Since this is a geographically dispersed system, individuals may gain access to it by contacting the Administrative Officers at locations listed in the appendix following the NARA Notices or the Director, Washington National Records Center (NCW), Washington, DC 20409.

NOTIFICATION PROCEDURE:

The address of the NARA offices to which inquiries should be addressed and addresses at which an individual may request whether a system contains records pertaining to himself or herself is the same as that shown in the appendix following NARA notices. Individuals should provide name, social security number, period of employment, and position held to assist the office in locating the record.

RECORD ACCESS PROCEDURES:

Individuals can obtain information on the procedures for gaining access to or contesting records from the Director, Office of Administrative Services, the Director of the Washington National Records Center, or the Administrative Officers at NARA facilities, as shown in the appendix following the NARA Notices.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

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RECORD SOURCE CATEGORIES:

Information is provided by the employee being issued the credential and by the issuing official.

NARA 12

SYSTEM NAME:

Emergency Notification Rosters and Files, NARA.

SYSTEM LOCATION:

This system of records is maintained in the NARA Administrative Services Division, 8th and Pennsylvania Avenue NW., Washington, DC and in all NARA facilities outside the Washington, DC metropolitan area listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NARA officials at division director level and above, and NARA employees with emergency assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of roster of NARA officials; NARA employee emergency assignments; and essential employees' residence telephone numbers. Information includes name, office and home telephone numbers, home address, title and emergency assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used primarily to maintain current directory information on key NARA officials or for use by the Central Office contact point during weekends, holidays, and emergencies; to provide essential telephone service to key employees during emergencies; and to notify officials and employees of emergency conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

When not in use by an authorized person, these records will be stored in lockable metal file cabinets or in secured areas.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The NARA official with overall responsibility for the system of records is the Director of Administrative Services, 8th and Pennsylvania Avenue NW., Washington, DC 20408. Since this is a geographically dispersed system of records, individuals may gain access to it by contacting the officials at locations listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

NARA employees may obtain information as to whether they are part of this system of records from the Director of Administrative Services or the applicable director of a Presidential Library, Federal Records Center, or National Archives Field Branch listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

An individual can obtain information on the procedures for gaining access to records from the Director of Administrative Services or the applicable director of a Presidential Library, Federal Records Center, or National Archives Field Branch listed in the appendix following the NARA Notices.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Information if provided by subject individuals and their supervisors.

NARA 13

SYSTEM NAME:

Defunct Agency Records, NARA.

SYSTEM LOCATION:

This system of records is located in the Federal Records Centers at the locations listed in the appendix following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of defunct agencies and individuals who may have had dealings with the defunct agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records other than those covered by Government-wide systems which are arranged or can be retrieved alphabetically by name or other personal identifiers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM:

The routine use of statements A, B, C, F, and G, described in the appendix following the NARA notices, apply to this system of records. The records, if unscheduled for disposition, are routinely used during the appraisal process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files, microfilm records in reels, and computer records on tapes. All records stored in record center containers.

RETRIEVABILITY:

Records are retrieved generally by name or social security number.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in record center containers located in Federal records center storage areas.

RETENTION AND DISPOSAL:

Records appraised as permanent will be transferred to the custody of the Office of the National Archives. Records appraised as temporary will be destroyed immediately or after a fixed period of time, whichever is approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS;

The system manager is the Deputy Archivist of the United States, 8th and Pennsylvania Avenue NW., Washington, DC 20408. Mailing address: National Archives and Records Administration (ND), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Requests for assistance should be made to the Deputy Archivist of the United States, National Archives and Records Administration (ND), Washington, DC 20408.

RECORD ACCESS PROCEDURES:

NARA procedures for record access are contained in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Upon termination of an agency, the agency transfers its records to the custody of NARA.

NARA 14

SYSTEM NAME:

Payroll and Time and Attendance Reporting System, NARA.

SYSTEM LOCATION:

This system of records is located in the NARA offices wherever there are timekeepers and at the addresses listed in the appendix following the NARA Notices. Two automated series of records in this system, the Personnel Information Resources System (PIRS) and the Payroll Information Processing System (PIPS), are maintained for NARA by the General Services Administration under a reimbursable agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NARA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides for reporting each employee's pay status as either on the job time or as paid or unpaid time, including absences without authorized leave. Accordingly, records include but are not limited to name, home address, telephone number, work location, social security number, hours of duty, and payroll and attendance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Part III, (sec. 2101–8901) is the authority for the overall system. Specific authority for use of social security numbers is contained Executive Order 9397, 26 CFR 31.6011(b) 2, and 26 CFR 31.6109–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent necessary, the records are available outside NARA to monitor and document grievance proceedings, EEO complaints, and adverse actions; and to conduct counseling sessions. The information contained in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process. A record from this system of records may be provided to the Office of Personnel Management in its production of summary descriptive statistics for which these records are collected and maintained, or for related work studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in a way to make individuals identifiable by inference. The routine use statements A, B, C, D, E, F, G, and H, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, and cabinets; microfilm records in reels and cabinets; microfiche in cabinets; magnetic tapes and cards in cabinets and storage Libraries; and computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in guarded buildings and/or in controlled areas.

RETENTION AND DISPOSAL:

Disposition of these records will be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Services Division, National Archives and Records Administration, 601 D Street NW, Washington, DC 20408. Mailing address: National Archives (NAP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Current NARA employees may obtain information about this system of records from their supervisor or from the Director, Personnel Services Division, National Archives and Records Administration, 601 D Street NW, Washington, DC 20408. Former NARA employees may obtain information at the address listed above.

RECORD ACCESS PROCEDURE:

Requests from current or former NARA employees to access records should be directed to the employee's supervisor or to the Director, Personnel Services Division, at the address noted above, whichever is applicable. For written request, former NARA employees should provide full name, social security number, address, telephone number, and approximate dates and places of employment. For identification requirements, refer to the agency regulations as outlined in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

The individuals themselves, other NARA employees, supervisors, other Federal agencies, and management officials.

NARA 15

SYSTEM NAME:

Editorial Freelance Vendor File, NARA.

SYSTEM LOCATION:

The system is located in the National Archives Building.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current freelance vendors qualified to perform editorial services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with and biographical information about former and current editorial freelance vendors, including all or parts of the following: name, address, telephone number, education, professional vita, samples of work, assignments and evaluations of work done for the National Archives, and purchase order documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by the employees of NARA who have a need for the records in the performance of their duties to review professional qualifications of freelance contract editors; to make editorial assignments to freelance contract editors; to review progress being made on an assignment; to evaluate the quality of work performed during an assignment; and to account for money spent on contract editorial work.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual.

SAFEGUARDS:

System is in a locked file cabinet.

RETENTION AND DISPOSAL:

Disposition of these records will be in accordance with the NARA Records Maintenance and Disposition Manual.

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SYSTEM MANAGER(S) AND ADDRESS:

The agency official with overall responsibility for the system of records is the Director, Publications Division, National Archives Building, 8th and Pennsylvania Avenue NW, Washington, DC 20408. Mailing address: National Archives (NEP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Information may be obtained from the official listed above.

RECORD ACCESS PROCEDURES:

Requests for these records should be addressed to the Director, Publications Division, Office of Public Programs. In person requests may be made during normal business hours. For written requests, provide full name, address, telephone number, and date span. For personal visits, individuals should provide some acceptable identification, such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Former and current freelance vendors qualified to perform editorial services and NARA employees.

NARA 16

SYSTEM NAME:

Library Circulation Files, NARA.

SYSTEM LOCATION:

This system of records is located in the Library in the National Archives Building at 8th and Pennsylvania Avenue, NW, Washington, DC 20408. Mailing address: National Archives (NNIL), Washington, DC 20408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NARA employees who have borrowed books and other materials from the Library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specialized forms giving the names of individuals, materials borrowed, and dates of loan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are primarily used by the Library staff for controlling the circulation of Library monographs and serials. The routine use statements A and F, described in the appendix following the NARA Notices, apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file trays.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are stored in an area available to authorized Library personnel only.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief, Library and Printed Archives Branch (NNIL) 8th and Pennsylvania Avenue, NW, Washington, DC 20408. Mailing address: National Archives (NNIL), Washington, DC 20408.

NOTIFICATION PROCEDURE:

NARA employees may obtain information about whether they are part of this system of records from the Library staff at the address listed above.

RECORD ACCESS PROCEDURES:

Requests from NARA employees to gain access to information pertaining to them should be directed to the Chief, Library and Printed Archives Branch (NNIL), 8th and Pennsylvania Avenue, NW, Washington DC 20408. For identification requirements refer to the agency regulations as outlined in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

NARA employees borrowing books and other materials from the National Archives Library.

NARA 17

SYSTEM NAME:

Grievance Records, NARA.

SYSTEM LOCATION:

These records are located in the personnel offices of NARA at the location listed in the appendix following the NARA Notices or designated offices in NARA where the grievances were filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former NARA employees who have submitted grievances with NARA in accordance with the Office of Personnel Management (OPM) Regulations (5 CFR Part 771) or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records relating to grievances filed by NARA employees under the OPM regulations. These case files contain all documents related to grievances including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system also includes files and records of internal grievance and arbitration systems that are established through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302; E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); E.O. 10987 (3 CFR 1959–1963 Comp. p. 549).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used to disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify an individual, inform the source of the purpose(s) of the request and identify the type of information requested. They are also used to provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive presentation concerning personnel policies, practices, and matters affecting work conditions. The routine use statements D, F, G, and H, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Personnel Services Division, 601 D Street NW, Washington, DC 20408. Mailing address: National Archives (NAP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the NARA personnel, or other designated office, where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: Name, date of birth, approximate date of closing of the case and kind of action taken, and the organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the NARA personnel or other designated office where the action was processed. Individuals must provide the following information for their records to be located and identified: Name, date of birth, approximate date of closing of the case, kind of action taken, and organizational component involved. Individuals requesting access must also follow the NARA regulations as outlined in 36 CFR Part 1202 regarding access to records.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determine if the record accurately documents the action of NARA's ruling on the case and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment of their records to correct factual errors should contact the NARA personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified: Name, date of birth, approximate date of closing of the case, kind of action taken, and organizational component involved. Individuals must also follow the NARA Privacy Act regulations outlined in 36 CFR Part 1202 regarding amendment to records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual on whom the record is maintained, by testimony of witnesses, by agency officials, and from related correspondence from organizations or persons.

NARA 18

SYSTEM NAME:

General Law Files, NARA/NSL.

SYSTEM LOCATION:

This system of records is maintained by the Legal Services Staff, National Archives Building, 8th and Pennsylvania Avenue NW., Washington, DC 20408. Mailing address: National Archives (NSL), Washington, DC 20408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers one or more of the following categories of individuals: NARA employees, past and present; other Federal agency employees; members of the public (including individuals, corporations, and firms); witnesses in litigation; persons who have Freedom of Information and Privacy Act requests and persons about whom such requests have been made; persons pursuing tort claims against the Government or who are involved in litigation with NARA and/or have filed grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system covers one or more of the following categories of records: Among other data, name of individual; position description, grade, salary; SSN; work history; complaint; history of the case; applicable law; working papers of attorneys; testimony of witnesses; background investigation materials, records subject to complaint, request, or litigation; correspondence; damage reports; contracts, accident reports, pleadings; affidavits; credit ratings; medical diagnoses and prognoses; doctor's bills; estimates of repair costs; invoices; litigation reports; and financial data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is authorized by one or more of the following statutes or Executive Orders:

Freedom of Information Act, 5 U.S.C. 552 as amended; the Privacy Act of 1974, 5 U.S.C. 552a; 5 U.S.C., Part II (Civil Service Commission); 5 U.S.C., Chapter 33 (examination, selection and placement); Equal Employment Opportunity Act of 1972, 5 U.S.C. 5108, 5314–5316 and 42 U.S.C. 20003, et seq.; 5 U.S.C. 7151–7154 (antidiscrimination in employment); 5 U.S.C. 7301 (regulation of conduct); 5 U.S.C. 7501, note (adverse actions); 5 U.S.C., Chapter 77 (appeals); title 11 U.S.C. (bankruptcy); Federal Tort Claims Act, 28 U.S.C. 1291, 1346(b)(c), 1402(b), 1504, 2110, 2401(b), 2402, 2411(b), 2412(c), 2671–2680; 31 U.S.C. 191 (debts owed by or due to U.S.); Federal Claims Collection Act of 1972, 31 U.S.C. 951–953, 341 U.S.C. 240–243 (settlement of claims); E.O. 6166 Reorganization of Executive Agencies; E.O. 10577, Amending the Civil Service Rules and Authorizing a new Appointment System for the Competitive Service; E.O. 11491, Labor-Management Relations in the Federal Service; E.O. 11787, Revoking Executive Order 10987, Relating to Agency Systems for Appeals from Adverse Actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to give general legal advice, as requested, throughout NARA and to prepare attorneys for hearings and trials, to reference past actions, and to maintain internal statistics. Information may be released to the Department of Justice in review, settlement, defense, and prosecution of claims, complaints, and law suits involving contracts, torts, debts, bankruptcy, personnel adverse action, EEO, unit determination, unfair labor practices, and Freedom of Information and Privacy Act requests. The routine use statements A, B, C, E, F, and G, described in the appendix following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Manual, by name.

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SAFEGUARDS:

Records are stored in secured buildings; available to authorized persons only.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the system is: Director, Legal Services; Staff (NSL).

NOTIFICATION PROCEDURE:

NARA notification procedures are contained in 36 CFR Part 1202.

RECORD ACCESS PROCEDURES:

NARA procedures for record access are contained in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from one or more of the following sources: Federal employees and private parties involved in torts, contracts, personnel actions, unfair labor practices, and debts concerning the Federal Government; general law texts and sources; Dun and Bradstreet and other sources of financial information; law enforcement officers; and witnesses.

NARA 19

SYSTEM NAME:

Workers Compensation Case Files, NARA.

SYSTEM LOCATION:

This system of records is located in the personnel offices of NARA at the locations listed in the appendix following the NARA Notices and the offices of all supervisors who have had employees injured on the job or other occupational health problems with employees supervised.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NARA employees who have sustained injuries or other occupational health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains accident reports (including CA-1 & 2: Federal Employees Notice of Injury or Occupational Disease); claims for compensation for injury or occupation disease (CA-4); and claims for continuance of compensation on account of disability (CA-8).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chap. 81 (Compensation for Work Injuries) and 5 U.S.C. 7293 and 7901.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used to identify and record those employees who have sustained injuries or other occupational health problems and provide information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition and is used in connection with a claim for benefits filed by an employee. The routine use statements A, B, C, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

Filed alphabetically at each location by name.

SAFEGUARDS:

When not in use by an authorized person, these records are stored in lockable metal file cabinets or in secured rooms.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Personnel Services Division, 601 D Streets NW, Washington, DC 20408. Mailing address: National Archives (NAP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Current NARA employees may obtain information about whether they are a part of this system of records from their supervisor or from their personnel officer at the appropriate address listed in the appendix following the NARA Notices, or from the Director, Personnel Services Division at the address noted above, whichever is applicable. Former NARA employees may obtain information from the personnel officers at the addresses listed in the appendix.

RECORD ACCESS PROCEDURE:

Requests from current NARA employees to gain access to information pertaining to them should be directed to their supervisor or to their personnel officer at the appropriate address listed in the appendix following the NARA Notices, or to the Director, Personnel Services Division at the address noted above, whichever is applicable. Former NARA employees should direct requests to gain access to information pertaining to them to the appropriate personnel officer at the address listed in the appendix. For identification requirements, refer to the agency regulations as outlined in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

The information in this system of records is provided by the individuals to whom the records pertain, by supervisors required to complete various forms, or by the personnel specialists who prepare various records or claims.

NARA 20

SYSTEM NAME:

Reviewer/Consultant File, NARA.

SYSTEM LOCATION:

This system of records is located at the National Historical Publications and Records Commission, 1100 Pennsylvania Avenue NW, Washington, DC 20408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Archival reviewers and consultants who apply to serve as consultants or reviewers for the National Historical Publications and Records Commission's (NHPRC) records grant program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information about the reviewers and consultants including name, address, telephone number, education, professional vita, publications, archival skills, archival and historical records experience, and program evaluation experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2501–2506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The biographical material is used by NHPRC staff principally in the records grant program for selecting reviewers to

evaluate proposals received by NHPRC and for proposing possible archival consultants for those individuals who have received grants. The routine use statement F, described in the appendix following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual.

SAFEGUARDS:

During normal hours of operation, records are maintained in areas accessible only to authorized personnel of NARA. After hours, the building has security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for the system is the Executive Director, National Historical Publications and Records Commission, 1100 Pennsylvania Avenue NW., Washington, DC 20408. Mailing address: National Historical Publications and Records Commission (NP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Inquiries by individuals as to whether the system contains a record pertaining to themselves should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager. In person requests may be made during normal business hours at 1100 Pennsylvania Avenue NW., Washington, DC. For written requests individuals should provide full name, address, telephone number, and approximate date of communication with the Commission. For personal visits, individuals should be able to provide some acceptable identification such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Archival experts who have volunteered to serve as reviewers or consultants.

NARA 21

SYSTEM NAME:

OPM Government-wide Notices. The National Archives and Records Administration maintains personnel records and files which are part of the Office of Personnel Management's (OPM) system of records or subject to control by OPM. These systems are as follows:

OPM/GOVT–1 General personnel records.
OPM/GOVT–3 Records of Adverse Actions and Actions Based on Unacceptable Performance.
OPM/GOVT–4 Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.
OPM/GOVT–7 Applicant race, sex, ethnicity and disability status records.
OPM/GOVT–9 Position classification review and retained rate of pay appeals.

SYSTEM LOCATION:

The above designated systems are located in the NARA personnel offices at the locations listed in the appendix following the NARA notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

See OPM/GOVT–1, 3, 4, 7, and 9.

CATEGORIES OF RECORDS IN THE SYSTEM:

See OPM/GOVT–1, 3, 4, 7, and 9.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See OPM/GOVT–1, 3, 4, 7, and 9.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See OPM/GOVT–1, 3, 4, 7, and 9.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files, magnetic tapes and disks, and computer printouts.

RETRIEVABILITY:

The records within this system are primarily retrieved by name.

SAFEGUARDS:

When not in use by an authorized person, these records are stored in lockable file cabinets, lockable desk drawers, and/or in secured rooms.

RETENTION AND DISPOSAL:

Disposition of these records shall be in accordance with General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Personnel Services Division, 601 D Street NW., Washington, DC 20408. Mailing address: National Archives (NAP), Washington, DC 20408

NOTIFICATION PROCEDURE:

Current NARA employees may obtain information about whether they are a part of these systems of records from their personnel officer at the appropriate address listed in the appendix following the NARA Notices. Former NARA employees may obtain information as set forth in the OPM system notices.

RECORD ACCESS PROCEDURES:

Requests from current NARA employees to gain access to information pertaining to them should be directed to their personnel officer at the appropriate address listed in the appendix following the NARA Notices. Former NARA employees should direct requests to gain access to information pertaining to them as set forth in the OPM system notices.

CONTESTING RECORD PROCEDURES:

NARA rules for access to records and for contesting the contents and appealing initial determination are found in 36 CFR Part 1202. OPM rules are found in 5 CFR Part 297.

RECORD SOURCE CATEGORIES:

See OPM/GOVT–1, 3, 4, 7, and 9.

NARA 22

SYSTEM NAME:

Employee Related Files, NARA.

SYSTEM LOCATION:

This system of records may be maintained at the supervisory or administrative offices at all NARA facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current NARA employees, applicants for employment, volunteer workers, and relatives of employees of the National Personnel Records Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of employee related records maintained by operating officials for the purpose of administering personnel matters affecting their employees and uncompensated workers. The documents include, but are not limited to, information on the individuals relating to name, social security number,

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birth date, home and emergency addresses and telephone numbers, personnel actions, professional registration, qualifications, training, congressional employee relief bills, injuries, employment history, awards and other recognition, counseling, warnings, reprimands, grievances, appeals, conduct, leave, pay, attendance, work assignments, performance, assessments, applications for permits and passes, indebtedness complaints, travel, and outside employment. The documents include military service data on employees of the National Personnel Records Center and their relatives accumulated by operating officials in administering the records security program at the Center. This system does not include official personnel files which are covered by the Office of Personnel Management's systems of records OPM/GOVT-1 through 9.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles 5 and 31 U.S.C. generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used to initiate requests for personnel actions, to plan and schedule training, to counsel employees on their performance, to establish a basis for proposing recommendations for disciplinary actions, and to carry out personnel management responsibilities in general. The routine use statements A, B, C, D, F, and G, described in the appendix following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files, magnetic tape and disks, and computer printouts.

RETRIEVABILITY:

The records within this system are primarily retrieved by name.

SAFEGUARDS:

When not in use by an authorized person, these records are stored in lockable file cabinets, lockable desk drawers, and/or in secured rooms.

RETENTION AND DISPOSAL:

Records are reviewed annually, documents are updated, and irrelevant documents destroyed. No copies of records are retained in this system after the original or copies of the same records have been purged from the Official Personnel Folders. When an employee leaves the agency through transfer or other separation, the records in this system are immediately forwarded to the office maintaining the Official Personnel Folder. There the records are screened to ensure that there are no records that should be permanently filed in the Official Personnel Folder. The records in this system are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative officers in NARA field facilities and all NARA supervisors maintaining employee related files. The addresses of Administrative officers and NARA supervisors are listed in the appendix following the NARA Notices.

NOTIFICATION PROCEDURE:

Information about whether an individual is a part of this system of records may be obtained from the supervisors at the appropriate repository where the individuals have records. If not known, general inquiries should be made to the appropriate Head of the Offices or Staffs. Their addresses are listed in the appendix following the NARA Notices.

RECORD ACCESS PROCEDURES:

Requests from current NARA employees to gain access to information pertaining to them should be directed to their supervisor or to their personnel officer at the appropriate address listed in the appendix following the NARA Notices, or to the Director, Personnel Services Division at the address noted above, whichever is applicable. Former NARA employees should direct requests to gain access to information pertaining to them to the appropriate personnel officer at the address listed in the appendix. For identification requirements refer to the agency regulations as outlined in 36 CFR Part 1202.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

The individuals themselves, other employees, supervisors, personnel records, and third parties submitting indebtedness complaints.

NARA 23

SYSTEM NAME:

Investigation Case Files, NARA.

SYSTEM CLASSIFICATION:

Some of the material contained in the system has been classified in the interests of the national security pursuant to Executive Order 12356.

SYSTEM LOCATION:

The system is located in the Administrative Services Division, National Archives Building, 8th and Pennsylvania Avenue NW, Washington, DC 20408.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Individuals covered by the system are employees, applicants for employment, and former employees of NARA and advisory committee members. Also included are researchers, employees of contractors performing custodial or guard services in buildings under NARA jurisdiction, individuals who have been the source of a complaint or an allegation that a crime has taken place, witnesses having information or evidence concerning an investigation and suspects in criminal, administrative, or civil actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files contain information such as name, date and place of birth, experience, and investigatory material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. Section 2 et seq.; Executive Order 10405, April 27, 1953; Executive Order 11478, August 8, 1969; Executive Order 12356, April 2, 1982; Executive Order 11246, September 24, 1965; and 40 U.S.C. 276a through a–7, 276c, 318 (a) through (d), and 327 through 331.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine use statements A, B, C, and G, described in the appendix following the NARA Notices, apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files and file folders.

RETRIEVABILITY:

Paper records are retrieved manually by name from files that are indexed alphabetically and filed numerically by location and incident.

SAFEGUARDS:

Paper records are stored in locked alarmed vault type rooms and/or three-way combination dial safes with access limited to authorized personnel.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for the system is the Director of Administrative Services, 8th and Pennsylvania Avenue NW., Washington, DC 20408. Mailing address: Administrative Services Division (NAS), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Inquiries made by individuals as to whether the system contains a record pertaining to themselves should be addressed to the Director, Administrative Services Division (NAS), 8th and Pennsylvania Avenue NW., Washington, DC 20408.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the Administrative Services Division, and should include full name (maiden name where appropriate), address, and date and place of birth. Only general inquiries may be made by phone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Individuals, employees, informants, law enforcement agencies, other Government agencies, intelligence sources, employers, references, co-workers, neighbors, and educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified material, but only to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence.

This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Administrative Services Division's law enforcement responsibilities and responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

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SYSTEM NAME:

Personnel Security Files, NARA.

SYSTEM CLASSIFICATION:

Some of the material contained in the system has been classified in the interests of the national security pursuant to Executive Order 12356.

SYSTEM LOCATION:

Personnel security files are maintained in the Personnel Services Division (NAP), 601 D Street NW., Washington, DC 20408. Records relating to violations of information security regulations are maintained by the Administrative Services Division (NAS), National Archives Building, 8th and Pennsylvania Avenue NW., Washington, DC 20408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are employees, applicants for employment, and former employees of NARA. Also included are researchers, experts or consultants, and employees of contractors performing services under NARA jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security files contain information such as name, date and place of birth, address, social security number, education, occupation, experience, and investigatory material. Information security files contain records of security violations which may include employees' names and positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, April 27, 1953, as amended; Executive Order 12356, April 2, 1982; 31 U.S.C. 686; and 40 U.S.C. 318 (a) through (d).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used as a basis for issuance of security and ADP clearances and for recommending administrative action against employees found to be in violation of NARA information security regulations. The routine use statements A and F, described in the appendix following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche in cabinets.

RETRIEVABILITY:

Paper records are retrieved manually by name from files that are indexed alphabetically and filed numerically by location and incident. Microfiche records are filed alphabetically or by social security number.

SAFEGUARDS:

Records are stored in locked, alarmed room and/or three way combination dial safes with access limited to authorized employees. Information is released only to officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Disposition of these records is in accordance with the NARA Records Maintenance and Disposition Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for the personnel security files is the Director of Personnel Services (NAP), 601 D Street, NW., Washington, DC 20408. The official responsible for files relating to violations of information security regulations is the Director of Administrative Services (NAS), 8th and Pennsylvania Avenue NW., Washington, DC 20408.

NOTIFICATION PROCEDURE:

Inquiries by individuals as to whether the system contains a record pertaining to themselves should be addressed to the applicable system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the applicable system manager and should include full name (maiden name where appropriate), address, and date and place of birth. Only general inquiries may be made by telephone.

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CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Individuals, employees, informants, law enforcement agencies, other Government agencies, employees references, co-workers, neighbors, educational institutions, and intelligence sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5), the personnel security case files in this system of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974, as amended. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified material, but only to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence.

This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Administrative Services Division's and the Personnel Services Division's responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Appendix

The following routine use statements will apply to National Archives and Records Administration notices where indicated:

A. Routine Use-Law Enforcement: In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

B. Routine Use-Disclosure When Requesting Information: A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. Routine Use-Disclosure of Requested Information: A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, conducting a security or suitability investigation, classifying a job, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. Routine Use-Grievance, Complaint, Appeal: A record from this system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with its responsibility for evaluation of Federal personnel management. To the extent that official personnel records in the custody of NARA are covered within the system of records published by the Office of Personnel Management as Government-wide records, those records will be considered as a part of that Government-wide system. Other official personnel records covered by notices published by NARA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

E. Routine Use-Congressional Inquiries: A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

F. Routine Use-NARA Agents: A record from this system of records may be disclosed as a routine use to an expert, consultant, or a contractor of NARA to the extent necessary for them to assist NARA in the performance of its duties.

G. Routine Use-Department of Justice/Courts: A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body before which NARA is authorized to appear, when (a) NARA, or any component thereof; or, (b) any employee of NARA in his or her official capacity; or, (c) any employee of NARA in his or her individual capacity where the Department of Justice or NARA has agreed to represent the employee; or (d) the United States, where NARA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or by NARA before a court or adjudictive body is deemed by NARA to be relevant and necessary to the litigation, provided, however, that in each case, NARA determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

H. Routine Use-MSPB, FLRA, and EEOC. Information from this system of records may be disclosed to officials of the Merit Systems Protection Board or Federal Labor Authority, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

Appendix—Addresses of Locations

Washington, DC Metropolitan Area Facilities

National Archives Building, 8th and Pennsylvania Avenue NW., Washington, DC. Mailing Address: National Archives and Records Administration, Washington, DC 20408.

National Audiovisual Center, 8700 Edgeworth Drive, Capitol Heights, MD 20743–3701.

National Historical Publications and Records Commission, Old Post Office Building, 1100 Pennsylvania Avenue, Washington, DC. Mailing Address: National Historical Publications and Records Commission (NP), Washington, DC 20408.

Office of the Federal Register, 1100 L Street NW., Washington, DC. Mailing Address: National Archives and Records Administration (NF), Washington, DC 20408.

Pickett Street Annex, 841–885 South Pickett Street, Alexandria, VA. Mailing Address: National Archives and Records Administration (NNSC), Washington, DC 20408.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing Address: Washington National Records Center, Washington, DC 20409.

Presidential Libraries

Herbert Hoover Library, Parkside Drive, West Branch, IA 52358.

Franklin D. Roosevelt Library, 259 Albany Road, Hyde Park, NY 12538.

Harry S. Truman Library, U.S. Highway 24 and Delaware Street, Independence, MO 64050.

Dwight D. Eisenhower Library, Southeast Fourth Street, Abilene, KS 67410.

John Fitzgerald Kennedy Library, Morrissey Boulevard, Columbia Point, Boston, MA 02125.

Lyndon Baines Johnson Library, 2313 Red River Street, Austin, TX 78705.

Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114.

Gerald R. Ford Museum, 303 Pearl Street, NW, Grand Rapids, MI 49504.

Carter Presidential Materials Staff, 77 Forsyth Street, SW, Atlanta, GA 30303.

Nixon Presidential Materials Staff, 845 South Pickett Street, Alexandria, VA. Mailing Address: National Archives and Records Administration (NLN), Washington, DC 20408.

National Archives Centers containing Federal Records Centers and National Archives Field Branches

380 Trapelo Road, Waltham, MA 02154.

Building 22, Military Ocean Terminal, Bayonne, NJ 07002–5388.

1557 St. Joseph Avenue, East Point, GA 30344.

7358 Pulaski Road, Chicago, IL 60629.

2312 East Bannister Road, Kansas City, MO 64131.

501 West Felix Street (Mailing address: P.O. Box 6216), Fort Worth, TX 76115.

Denver Federal Center, Building 48 (Mailing address: P.O. Box 25307), Denver, CO 80225.

1000 Commodore Drive, San Bruno, CA 94066.

24000 Avila Road (Mailing address: P.O. Box 6719), Laguna Niguel, CA 92677–6719.

6125 Sand Point Way, NE, Seattle, WA 98115.

National Archives Field Branches Not Located in National Archives Centers

9th and Market Streets, Room 1350, Philadelphia, PA 19107.

Federal Records Centers Not Located in National Archives Centers

5000 Wissahickon Avenue, Philadelphia, PA 19144.

3150 Springboro Road, Dayton, OH 45439.

National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118.

National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132.

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Part V

Department of the Interior

Minerals Management Service

30 CFR Part 216

Production Accounting and Auditing System; Reporting and Recordkeeping Requirements; Final Rule

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

Production Accounting and Auditing System; Reporting and Recordkeeping Requirements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule prescribes the information collection requirements necessary to verify that mineral production quantities have been correctly reported and used in calculating royalties due from Federal and Indian leases, including the Outer Continental Shelf. This system is called the Production Accounting and Auditing System (PAAS).

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Lucy R. Querques on (303) 231–3865 or FTS 326–3865.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Peter Rutledge, John Price, Billie Clark, and Martin Grieshaber of the Minerals Management Service, Lakewood, Colorado.

I. Background

On April 1, 1985 (50 FR 12828), MMS proposed regulations for the implementation of the PAAS.

In January 1982, the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) made several recommendations to improve internal controls of accounting for royalties due the Government from Federal and Indian leases. The term "Federal leases" includes Outer Continental Shelf (OCS) lands. One of the primary purposes for which the PAAS was developed by the MMS was to respond to the Commission recommendation:

"That the Royalty Managers incorporate production data into the . . . system in order to cross-check the data for all leases for each payment period."

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (Act), 30 U.S.C. 1711(a), provides that, "The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system. . . ." In addition, section 103(a) of the Act, 30 U.S.C. 1713, states that:

> "A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act. . . ."

The Department is implementing similar cross-checks for solid materials in response to the statement of the Commission that, ". . . it appears that the general problems of verifying production, . . . and designing an effective audit program are common to all minerals." Report of the Commission at 181.

The PAAS is an integrated computer system, based upon production and processing reports submitted by lease and facility measurement point operators, designed to track mineral production on Federal and Indian lands, including the Outer Continental Shelf, from the source of production to the point of disposition with emphasis on the point of royalty determination, and/or point of sale, whichever is applicable.

The Auditing and Financial System (AFS), operated by MMS, will provide payment and sales volumes and values reported by payors. These data will be compared to lease-level production and processing volumes reported to PAAS by producers and facility operators. This comparison will enable the MMS to verify that proper royalties are being received for all minerals produced.

The PAAS is based upon an information collection system composed of eight forms of oil and gas. Three forms are needed for solid mineral leases; one form is applicable to all minerals. Some of these forms are one-time reports. However, all lease operators are required to periodically (usually monthly) submit either Form MMS–4054 for oil and gas, or Form MMS–4059 for solid minerals. Other forms are for selected use, such as the Form MMS–4056, which is required monthly only from gas plant operators, and Form MMS–4058, required only from operators of facilities or measurement devices handling commingled production.

The regulations herein prescribe which person is to file each form and when the report is due. They also designate when the rules will become applicable to operators who are not already reporting to the PAAS on the effective date of this rule. All offshore leases and all solid mineral leases issued on or after the effective date of this rule shall be subject to the requirements of this part without any conversion period. The report forms covered by this rule are listed below, together with the applicable section number that explains the use of the form:

Form No. and Name of form	Section reference
MMS–4050—Mine Information Form (MIF)	216.201
MMS–4051—Facility and Measurement Information Form and Supplement (FMIF and FMIF–S).	216.202 and 216.51
MMS–4052—Well Information Form (WIF)	216.52
MMS–4053—First Purchaser Report (FPR)	216.53
MMS–4054—Oil and Gas Operations Report (OGOR).	216.54
MMS–4055—Gas Analysis Report (GAR)	216.55
MMS–4056—Gas Plant Operations Report (GPOR).	216.56
MMS–4057—Fractionation Plant Operations Report (FPOR).	216.57
MMS–4058—Production Allocation Schedule Report (PASR).	216.58
MMS–4059—Solid Minerals Operations Report (SMOR).	216.203
MMS–4060—Solid Minerals Facility Report (SMFR).	216.204
MMS–4061—API Well Number Change Report (ANCR).	216.61

The Mine Information Form (Form MMS–4050) is required by MMS to identify the mine, the products recovered, the leases that make up the mine, and the mining methods used on each lease.

The Facility and Measurement Information Form (Form MMS–4051) is required by MMS to precisely identify the facilities where oil and gas production is stored or processed and the metering points where production is measured for sale or transfer. The information is used for reference by field operations personnel and auditors to assure that all production is accounted for properly.

The Well Information Form (Form MMS–4052) is required by MMS to obtain data or confirmation of data from each lease operator to assure that all wells are identified. Primary identification is by the American Petroleum Institute (API) number. Each well on a lease is identified by API and operator well number, producing interval, location, well status, date of first production, and producing reservoir or formation name.

The First Purchaser Report (Form MMS–4053) is required by MMS to obtain product prices from selected first purchasers of any product attributable to a Federal or Indian mineral lease. The information is used by MMS auditors to independently verify prices and quantities reported by lease operators.

The Oil and Gas Operations Report (Form MMS–4054) is required by MMS to identify all operations on production and disposition of oil and gas from Federal and Indian lands. Monthly production information will be compared with monthly data on sales and royalty from Form MMS–2014, Report of Sales and Royalty Remittance, to ensure that proper royalties are paid on the oil and gas reported as produced or sold.

The Gas Analysis Report (Form MMS–4055) is required by MMS to identify the separate components of natural gas production. The information on the GAR is used in conjunction with the GPOR and OGOR to make lease-level AFS/PAAS comparisons on processed and natural gas liquids.

The Gas Plant Operations Report (Form MMS–4056) is required by MMS to identify the disposition and components of natural gas produced from or allocated to Federal and/or Indian leases. MMS uses the data to expected residue gas and natural gas liquids production and to determine royalties due.

The Fractionation Plant Operators Report (Form MMS–4057) is required by MMS to identify the volumes of raw make transferred to the plant and of natural gas liquids produced. MMS uses the information to determine the production of specific components on which royalties are due, in conjunction with data from the Gas Plant Operations Report.

The Production Allocation Schedule Report (Form MMS–4058) is required by MMS to determine whether sales reported by the leasee are reasonable in cases where such sales are from production which has been commingled. Each line identifies a lease or measurement point and its delivered production and allocated sales or transfer volumes.

The Solid Minerals Operations Report (Form MMS–4059) is required by MMS to identify, for each lease and lease product, the beginning inventory, quantity produced, processing losses, net production, quality of production, type of disposition, quantity disposed of, identification of the processing facility, measurement point number at which disposition quantity is determined, and ending inventory. For mines from which production is sold after secondary processing or from remote storage, the form identifies the lease or development contract credited with an allocated part of the production, the product and quantity sold, and the facility from which it was sold.

The Solid Minerals Facility Report (Form MMS–4060) is required by MMS to identify for each mineral processed by a mineral processing facility the mine and measuring point from which a mineral was received, the type of product received, and the quantity and quality of inputs and outputs. The report is also used by MMS to identify, for each product and its source mine, the beginning inventory, raw materials received during the reporting period, amount of production, type of disposition, quantity sold or transferred, the facility or measuring point to which it is transferred, and ending inventory. MMS uses this information to insure that lease production is accurately tracked from the mine to the point of royalty determination, when royalty is determined after secondary processing. The information obtained is compared with that from the Solid Minerals Operations Report.

The API Well Number Change Report (Form MMS–4061) is required when a well with a temporary identification number is assigned a permanent American Petroleum Institute (API) well number or when the API well number and producing interval code combination used in the PAAS is in error and needs to be changed. The report gives the existing well number and producing interval and the new well number and producing interval. MMS uses the information to change the identification of the well in the data base.

The PAAS pilot program was operated with voluntary participants from both the onshore and offshore environment. Subsequent conversions have brought all OCS operators into the system as well as most of the solid mineral operators. These regulations will apply immediately to all reporters currently submitting reports to the PAAS. If, in the future, reporters are to be converted to the PAAS, they will be given notice one year prior to the date of first reporting (the conversion period). This period is intended to provide the reporter with ample time to gather reference data and receive training with respect to the PAAS reporting requirements. The time period between the notification of conversion and the date of first reporting may be less than one year at the request of the reporter being converted to the PAAS reporting guidelines and regulations.

During the conversion period, the reporter is required by the rules to file the Facility and Measurement Information Form (Form MMS–4051), the Well Information Form (Form MMS–4052), or the Mine Information Report (Form MMS–4050), as applicable. The provisions on applicability are in § 216.20 of the rules.

MMS will specifically notify each reporter being converted to the PAAS of the startup schedules for reporting under the PAAS. Simultaneously with startup notification, MMS will provide each reporter with a schedule to discontinue reporting using existing production reports 3160–6 (formerly 9–329 and 9–329–1), 9–152, 9–373A, 9–128, 9–128a, 9–128b, 9–128c, 9–128d, 9–368, 9–1146, etc. For some reporters there may be a short period of overlap of the old and new reporting systems to assure a smooth transition. These regulations will apply to newly converted reporters as MMS directs during the conversion period. Following the completion of the conversion to the PAAS, the Department will promulgate regulations removing the regulatory requirements for submission of existing production reporting forms from the regulations in 43 CFR Part 3160. This rulemaking amends 30 CFR Part 216 by adding Subparts A, B, and E containing §§ 216.1, 216.2, 216.6, 216.10, 216.20, 216.25, 216.30, 216.40, 216.50, 216.51, 216.52, 216.53, 216.54, 216.55, 216.56, 216.57, 216.58, 216.61, 216.200, 216.201, 216.202, 216.203, and 216.204.

II. Summary of Rules Adopted

The rule being adopted is substantially the same as the proposed rule. Therefore, much of the discussion in the preamble to the proposed rule applies to the final rule. Where significant changes are being made to the final rules, they are discussed in the preamble.

The provisions of Part 216 establish the reporting requirements for the PAAS. This part indicates the types of reports which must be filed in order for the PAAS to accomplish its stated goal of tracking mineral production on Federal and Indian lands from the source of production to the point of disposition with emphasis on the point of royalty determination and/or point of sale, whichever is applicable.

III. Comments Received on Proposed Rule—General

The proposed rulemaking published April 1, 1985 (50 FR 12828), provided for a 60-day public comment period which ended May 31, 1985, and was extended to June 17, 1985. All comments received during that time period are addressed in this section, and the text of these regulations has been changed to reflect comments as appropriate.

Six commenters thought the conversion of onshore operations to the PAAS should be delayed until the system can be reevaluated and a decision reached on the final scope and design of the PAAS. Two commenters stated that the onshore conversion should never occur and that current reporting requirements are adequate. Seven commenters said the design and reporting requirements of the system exceeded the information reasonably required and that the system would be

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overburdened by details concerning the amount and type of data being collected.

The Royalty Management Action Plan recently issued by DOI, calls for a study of the PAAS, including the advantages and disadvantages of proceeding with the conversion of the remaining onshore Federal and Indian leases to the PAAS. At present, 2.5 percent of onshore leases are in the PAAS as a result of the pilot program effort. To date, two reporters participating in the pilot program have requested to convert the remainder of their onshore leases to PAAS to eliminate the need for maintaining two separate production reporting systems—one automated and one manual. MMS is allowing these conversions to take place on a case-by-case basis to reduce reporting burden and also to obtain additional information about the feasibility of large-scale onshore lease PAAS reporting.

As part of the Department's Lease Management Information Study, a report will be prepared and issued in late fall 1986. Among the specific aspects of onshore reporting to be studied are:

—Experiences of offshore reporters that affect large onshore operators.
—The problems associated with developing and maintaining a large reference data base for onshore leases.
—Alternatives for PAAS reporting for small operators with few leases or minimal production.
—Industry burden associated with extension of PAAS into the onshore environment.
—The feasibility of obtaining some or all of the PAAS data requirements from other sources.
—The feasibility of a less frequent reporting cycle for onshore Federal and Indian leases.

Four commenters stated that the PAAS implementation should be delayed until the valuation guidelines have been finalized.

The PAAS is a production accounting system. The current valuation guidelines, as well as any future revisions, will not affect the reporting requirements in the PAAS nor will the PAAS affect the valuation guidelines.

Four commenters said that MMS should delay further expansion of the PAAS until the AFS is correct and fully operational.

The PAAS collects production volume, well status, and disposition information which is then compared with volumes reported to the AFS. Functionally, the PAAS does not depend on the AFS which is undergoing conversion to the new mainframe computer purchased by MMS.

Two commenters said that MMS should test and prove the capability of the AFS/PAAS exception processing subsystem.

The complete exception processing subsystem of the PAAS, including the AFS/PAAS comparison, has been tested. The system has proven its capability to make accurate comparisons of PAAS and AFS data using information from pilot companies and data being collected from all offshore reporters.

Six commenters stated that, based upon experience gained during the PAAS pilot and subsequent offshore conversion, the proposed 180-day notice of conversion was too short.

MMS agrees and has changed this time interval to one year, allowing a shorter period if requested by the reporter.

One commenter thought that the PAAS would be limited by hardware capacity if further conversion efforts were not delayed.

The acquisition of a new mainframe computer by Royalty Management and the conversion of the AFS to the more sophisticated and larger computer will make available the hardware which currently houses the AFS data bases. This additional computer capacity should alleviate any concerns about the potential expansion of the PAAS to onshore operations.

One commenter stated that the PAAS Reporter Handbook should be included in the regulations because it contains the complex and sophisticated requirements of the PAAS.

The purpose of the regulations is to outline which forms and what data are required by the PAAS. The various codes, field by field explanations, and edits are part of the implementation of the PAAS, not the regulatory requirements.

Numerous commenters questioned the necessity of reporting more than operations and production data at the lease level. They thought the reporting should end with the OGOR and corroborative reporting was not warranted; therefore, the GAR, GPOR, FPOR, and PASR forms should be eliminated.

The information contained on the GAR, GPOR, and FPOR is necessary to meet the stated objective of the PAAS which is to track the product from the source to the point of sale or royalty determination. In the case of gas, this may be the tailgate of the gas or fractionation plant. Volumes for which royalties are due are reported to the AFS at this level. Because of the nature of the comments received, we intend to establish a nine-month trial period to assess the effectiveness of the data being collected on these forms. One year from the effective date of these regulations, MMS will report the results of this analysis. If the reporting requirements for these forms change, based upon this analysis, the appropriate regulatory action will be pursued. Until such time, pursuant to the regulations, reporting is required on these forms.

The PASR provides the PAAS with corroborative data pertaining to the allocation of sales back to the individual lease/agreements involved in commingling situations. Upon recommendations from industry representatives, following the pilot phase, the form was extensively redesigned to more accurately reflect actual operations. It is the opinion of MMS that PASR reporting is essential to the integrity of the PAAS.

Fifteen commenters questioned the accuracy of the $1.5 million cost burden of the proposed regulations. One main reason given for doubting the estimated cost was that the development and implementation of a PAAS reporting system had already been costly considerable sum.

In general, commenters failed to understand the basis for the $1.5 million estimate associated with additional burden on industry. The $1.5 million figure included only the estimated cost of *additional* burden hours over and above estimated burden associated with existing manual production reporting. The figure did not include costs associated with the development of automated systems or acquired or developed software which industry may have chosen to purchase to comply with the PAAS requirements. The choice to automate was not a requirement of the PAAS reporting. Currently, nine of the one hundred ninety-seven operators providing PAAS reports submit OGOR information via magnetic tape.

It is the opinion of MMS that the costs of systems purchased by industry should not be included in burden cost analysis for the following reasons:

—Trends in industry over the last ten years have led to the development of automated production accounting systems to meet industry needs. Some of those systems have been enhanced or modified to allow a company to comply with the PAAS reporting requirements. These incremental costs are minimal when compared to the sunk costs of systems development which was initiated voluntarily by industry.
—Many of the software programs acquired by industry at considerable expense are not required by MMS to meet the PAAS reporting requirements. They are primarily aimed at allowing industry to test report data prior to submission to MMS against replicated PAAS edits to determine the extent of compliance with lease management requirements and potential liability for noncompliance.

Hence, when looked at in the proper context, MMS still maintains that the $1.5 million figure is a good estimate of the increased burden hours associated with the PAAS reporting.

Four commenters thought training should be provided to any "Reporter" required to submit a PAAS report to MMS. They questioned the intent of the wording "the MMS provides special training and assistance to small organizations" under the heading of Regulatory Flexibility Act in the preamble to the proposed rule.

The PAAS, since its inception, has relied heavily on contact with the industry. Through the American Petroleum Institute (API), Council of Petroleum Accountant Societies (COPAS), and several major oil and gas company representatives, a good working relationship with industry has been maintained. This cooperation continued during the Pilot Phase and the conversion of all OCS operators. From the beginning of the conversion effort, PAAS personnel have been available to assist the reporter through conversion training sessions and necessary follow-up visits. The knowledge gained from these experiences will continue with all future PAAS conversions.

One commenter questioned the statement made under the heading Paperwork Reduction Act of 1980 in the preamble to the proposed rule that "Information collection under provisions of § 216.30 will affect less than 10 respondents annually . . . ."

Since the inception of the PAAS, no requests for information under these provisions have been made. The 10 respondents estimate appears reasonable.

One commenter believes that some of the proposed requirements under §§ 216.201, 216.202, 216.203, and 216.204 are not needed to determine royalty payments for its Federal leases and, therefore, wants to avoid the time and cost involved in reporting information not required.

For MMS to ensure that proper royalties are being received for all minerals produced and sold, the PAAS is needed to track production and sales prior to royalty determination. Therefore, the reporting guidelines for solid minerals are necessary and appropriate.

IV. Comments Received on Proposed Rules—Specific by Section

Section 216.1 Purpose

Three commenters stated that the purpose as outlined in the proposal was broader than that enumerated in section 101(a) of the Federal Oil and Gas Royalty Management Act and, therefore, the PAAS would be expanded into a broader data collection system than was contemplated by Congress.

MMS believes that the scope of PAAS conforms with section 101(a) of the Act in that it sets up a comprehensive production accounting system that will provide the capability to accurately determine if proper royalties are being paid. The Department's Lease Management Information Study will reassess lease information data currently being received by the Department and the industry burden in supplying these data. This reassessment will include the relationship of current and future data requirements and the PAAS.

One commenter wondered if the term "agreement" used in this section is the same as "agreement" as defined in § 216.6.

Yes, the term "agreement" as used in this section is the same as defined in § 216.6.

One commenter stated that the purpose should consider the future possibility that comparisons between the PAAS and AFS can be done at the First Purchaser Division Order level.

The PAAS is designed to collect data from operators at the lease/agreement or facility level. The First Purchaser Report is included in the PAAS to be responsive to recommendations of the Linowes Commission. It provides a mechanism for collection of data for audit purposes at the request of the Royalty Compliance Division and, as such, will not be required for all reporters.

One commenter stated that the purpose should address the full implementation of the PAAS for both onshore and offshore.

The decision concerning any further implementation of the PAAS will be made as part of the Department's Lease Management Study. The regulations are appropriate for complete and accurate production reporting for both onshore and offshore operations.

Section 216.2 Scope

One commenter stated that the scope was too broad without the issuance of formal valuation guidelines because the point of royalty determination could not be conclusively identified.

The PAAS has the ability to modify the royalty determination point data so that it will be consistent with the applicable valuation guidelines.

One commenter felt that all conversion data from the calendar year in which conversion to the PAAS is being done should be loaded into the system.

The PAAS is not intended to collect historical data that has previously been supplied but simply to begin accepting reports on a monthly basis, beginning with the first month of conversion.

One commenter questioned whether leases, as mentioned in this section, include sand and gravel permits on which royalties are also paid.

Yes, sand and gravel permits are included in the intent of this section. The change in definitions in § 216.6 reflects this intent.

Section 216.6 Definitions

The commenters stated that the definition of "operator" should be identical to the definition used in the Federal Oil and Gas Royalty Management Act of 1982. They believed that the expanded definition would cause problems because it is too broad.

The PAAS definition of "operator" is meant to include all entities who have a reporting responsibility under the PAAS data collection formats. Operators of gas plants, for example, are required to submit the appropriate reports but lease-level reporting by operators of plants or facilities is not the intention of the PAAS. The definition of operator in the PAAS was expanded to include the wording found in section 103(a) of the Act. MMS believes no change is necessary.

Five commenters agreed with the definition of "first purchaser" as long as a sale between affiliates is considered a first sale for royalty purposes.

MMS does not consider a sale between affiliates to be a first sale for most royalty purposes. However, for purposes of the PAAS reporting requirements only, a transfer between affiliates falls within the definition of "first purchaser."

Four commenters stated that the definition of "raw make" should not include the phrase "and transferred to a fractionation plant for further processing" because not all raw make is transferred but is sometimes sold "as is."

The word "and" in the fourth line of the definition has been changed to "which sometimes" in order to address

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all situations involving the disposition of raw make.

One commenter stated that the definition of "facility" may cause invalid information to be supplied on the FMIF and FMIF–S without formal valuation guidelines being in effect. This would result in an additional cost to industry in the event much of the data base would need to be redeveloped.

MMS believes that the final valuation guidelines, when ultimately published, will not seriously affect the PAAS in regard to the data submitted on the FMIF and FMIF–S. No compehensive changes are anticipated to be necessary.

One commenter stated that the definition of "oil or gas" did not reflect condensate.

The proposed definition has been changed to explicitly cover condensate.

One commenter noted that the definition of "measurement device" was silent as to industry-recognized metering standards.

For PAAS purposes, a "measurement device" is the mechanism (meter, scale, tank gauging) by which the volume to be reported is determined. The authority for approval of such devices is contained in 43 CFR 3162.7–2 and 3162.7–3 for onshore Federal and Indian leases and 30 CFR 250.60 and 250.61 for offshore Federal leases.

Section 216.10 Information collection

One commenter stated that a reference should be made to the comparison of production data with revenue data.

There are references made to the AFS/PAAS comparison in the final regulations.

One commenter thought that § 210.10 should be amended to reflect that the forms, together with their documentation and instructions, should have been published for public comment as a proposed rule.

The forms and their documentation have in fact been made available for public comment in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and the implementing regulations. We have issued information collection notices regarding the PAAS forms in the **Federal Register** (48 FR 31473) and (50 FR 25335). These notices referenced the availability of the forms and explanatory materials for public comment. The PRA provides a mechanism for commenting of forms.

Section 216.20 Applicability

A new § 216.20 Applicability, has been added to the final rule to state clearly when the PAAS rules will become applicable to a reporter.

Section 216.21 General obligations of the reporter

Five commenters questioned the reference made to the PAAS Reporter Handbook as a source of specific guidance on the use of the forms. They thought it was possible that the Handbook could become a vehicle for changing the existing rules and regulations.

As stated above, the Handbook is intended to be an instructional tool which provides guidelines and reference data (including examples) to assist the reporter in completing the appropriate forms.

One commenter thought that the regulations should require a reporter to give notice to the lessor that reporting under the PAAS was to begin with a certain report period.

MMS believes that the one-year notification of conversion included in the regulations will provide sufficient time for contact between reporters and lessors concerning PAAS reporting.

Section 216.25 Confidentiality

Eight commenters noted that the proposed regulations made no reference to "tight hole" data and test production nor mentioned how the PAAS was going to treat such data.

The PAAS gathers production data. After acceptance of the information into the system, reports are supplied to the BLM in the case of onshore reporters and the MMS in the case of offshore reporters. Because these are the agencies that classify wells as tight holes, it is their responsibility to keep operations and test production information confidential until such time as the data is available for public inspection. Royalty Management has no facilities for the public inspection of PAAS data. If, in the future, the necessity arises for the PAAS to keep particular information confidential, a method and procedure for doing so will be developed and the reporter notified.

Seven commenters questioned the reference to geologic geophysical information and whether the PAAS intended to collect this data.

The only geologic and geophysical data collected by the PAAS is the reservoir/formation name gathered on the Well Information Form. This data is provided back to the individual reporters and the BLM on the appropriate confirmation reports. The PAAS will not collect any other geologic or geophysical information.

One commenter stated that § 216.25(a)(1) should be expanded to include references to the Tribal Leasing Act of 1938 (25 U.S.C. 396a et seq.) and the Allotted Indian Land Leasing Act of 1909 (25 U.S.C. 396).

The references have been included in the regulations.

One commenter urged the MMS to expand the confidentiality provisions of § 216.25 to also include coal quality information.

Information collected by the PAAS on the solid minerals reporting forms is regarded as confidential and all monthly activity reports supplied to the Bureau of Land Management are marked as such.

Section 216.30 Special forms and reports

Six commenters stated that this section was too vague. They thought that if special reports were required, the reports should be subject to public comment via proposed rulemaking procedures prior to implementation.

The first sentence of the regulation has been eliminated. The term "MMS" in the second sentence has been replaced with "Associate Director." The regulation has been reworded so that it will conform more closely with 30 CFR 210.105 and 250.96. Section 216.30 is included in the regulations to establish the rule referenced in section 103(a) of the Act, which empowers the Secretary to collect data determined to be necessary.

MMS disagrees that forms always must be issued through rulemaking. When MMS has the authority to collect the information, the form for doing so does not require rulemaking unless the form substantially affects the rights or obligations of the reporter.

Section 216.40 Assessments for incorrect or late reports and failure to report

Twelve commenters requested a further clarification of "incorrectly completed" because the term is so vague that assessment of penalties would be arbitrary. Nine comments contended that the proposed penalty system was excessive and made no provisions for reporters who were making a good faith effort as compared to habitually bad reporters. Two comments concerned the complexity of the system and the inability to submit 100 percent correct data. Two commenters thought the reporter should not be penalized for errors caused by typographical or footing problems or errors attributable to problems within the PAAS data base.

It is the opinion of MMS that an incorrectly completed report is one that fails to pass the system edits. The edits, as outlined in the Reporter Handbook, are designed to prevent the acceptance

of erroneous data. All late or incorrect reports, regardless of the cause, are detrimental to the PAAS and the efficient operation of the Royalty Management Program; thus, MMS wants PAAS reporting to be as accurate and timely as possible. However, MMS recognizes that some reporting problems are beyond the control of the reporters. MMS will not make assessments for those types of problems (e.g., reports delivered late because of bad weather).

Incorrect reporting may be penalized under the provisions of § 216.40 of these regulations. Assessments made under the provisions of § 216.40 do not preclude the issuance of civil penalties under 30 CFR Part 241 for habitual misreporting. Failure to report could also result in the imposition of civil penalties.

Seven commenters took exception to the interpretation of a report as being an individual line of production information.

MMS believes that for the purpose of determining accurate assessments for incorrect reporting, each line of production information on the stated forms constitutes a report. This also is consistent with the MMS definition of reports relating to assessments for reporting errors in the AFS, 30 CFR 218.56.

One commenter stated that this section should be deleted because any civil penalty authority of the Secretary related to production accounting has been subsumed into and/or preempted by section 109 of the Act.

MMS disagrees with this interpretation of the Act. Section 304(a) of the Act provides that the penalties and authorities of the Act are supplemental to, and not in derogation of, any penalties or similar authorities in other laws. The Secretary's authority for the assessments provided by § 216.40 is derived not from the Act but from the Secretary's responsibilities to administer the Mineral Leasing Act, the Outer Continental Shelf Lands Act, and other mineral leasing laws.

One commenter asked if there would be a grace period on assessments after conversion to PAAS, recommending that no assessments be made until the system is fully operational and all conversions have been made.

Assessments will not be considered until an appropriate period of time has passed following an operator's conversion to the PAAS. This time period could be as many as four report periods.

Section 216.50 [Reserved]

Section 216.51 Facility and Measurement Information Form and Supplement (FMIF and FMIF–S)

One commenter stated that the second "of" in line 19 of § 216.51(a) should be "or".

The change has been made in the final regulations.

One commenter suggested a clarification of the word "party" referenced in line 11 of § 216.51(b).

The word "party" has been changed to "person."

One commenter thought the regulations should require the operator to certify that the measurement device meets recognized standards, that a flow chart referencing measurement location with respect to the wellhead be provided, and that the regulations should provide guidance as to proper placement of the metering loop.

All these comments fall under the auspices of the appropriate operations agency and are not within the scope of the PAAS functions. No changes will be made to the proposed regulations.

One commenter was concerned about the use of zeroes and alpha o's in the same fields. He thought it was "only asking for trouble" within an already complex system.

MMS realizes that some problems may arise from allowing these two characters in the same fields. If the system is redesigned in the future, consideration will be given to not allowing these two characters in the same field.

One commenter requested a clarification as to who was responsible for submittal of the FMIF subsequent to conversion.

After conversion, Form MMS–4051 must be filed by the operator with MMS/RMP for all new, or changes to, facilities or measurement devices which are under the administrative control of the Bureau of Land Management. Updates to the PAAS data base for MMS OCS approved facilities and measurement devices will be made by the appropriate MMS office. The regulation has been rewritten to reflect this understanding.

Section 216.52 Well Information Report (WIF)

One commenter stated that because the producing interval is assigned by MMS, MMS should bear the responsibility of change and notification of industry.

MMS provides confirmation reports to the operator of the well when changes are made to the API well number and/or producing interval code.

One commenter stated that the regulation requires the submittal of a WIF on a one-time-only basis. He questioned subsequent changes to the API well number, well status, and producing interval code and who was required to file these forms.

Only the initial WIF is to be submitted by the operator prior to conversion. Subsequent additions of wells or changes to existing wells will be made by the appropriate BLM or MMS/OCS office.

One commenter thought that the following data items should be required on the WIF: purchaser name and number, purchaser assigned lease/property number, windfall profit tax tier, and Natural Gas Policy Act certification category.

The items that the commenter requested to be added to the WIF are not necessary for the accurate reporting of production. They are royalty/valuation related items and as such do not belong in the PAAS. MMS believes that including these items would be inappropriate.

Section 216.53 First Purchaser Report (FPR)

One commenter stated that a more reasonable time limit for record retention than six years should be applicable to first purchasers.

The six-year recordkeeping requirement is provided by section 103(b) of the Act. A lesser time limitation would be impractical and incompatible with statute of limitation requirements found in Federal and State law.

Two commenters questioned the usefulness of the report, considering the additional review work necessary by the audit program which this report serves.

The FPR the result of a Linowes Commission recommendation, is intended as a preliminary mechanism for data gathering for audit activities. MMS believes that the report will serve a useful purpose when deemed necessary.

One commenter requested that the wording in the proposed regulation be changed so that all first purchasers file the report monthly.

It is not the intent of the report to gather all purchaser data on a monthly basis but only when a specific request is necessary in relation to audit activities. The wording is not changed.

Two commenters stated that the FPR should be eliminated from the PAAS as the system should not require information beyond the OGOR.

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Although the report need only be filed as directed by MMS, it is still important because it enables MMS to perform its data gathering function more efficiently.

Section 216.54 Oil and Gas Operations Report (OGOR)

Five commenters thought the words "and sold" should be added after the word "produced" in line 10 of the regulation because royalty is paid on quantities produced and sold.

The wording has been changed to "produced or sold." The wording is meant to include the intention of the regulations in 30 CFR 202.100, 202.150, 206.151, and 206.152.

Four commenters stated that the third sentence should be clarified to create a separate reporting requirement for each operator on Federal or Indian lease, unit, or communitization agreement.

The third sentence has been changed to "The report must be filed by every operator of the lease or agreement . . . ." The term "operator" is defined in § 216.6.

One commenter stated that all volumes reported on the OGOR should be metered, specifically flared/vented volumes.

The PAAS will allow reporting of estimated or calculated volumes when no actual measurement has occurred. The requirements of determining which volumes are to be measured is an operational function and beyond the scope of the PAAS.

One commenter stated the PAAS should be reevaluated to determine if quarterly or semiannual reporting is feasible.

The study currently underway within the Department will cover all options concerning future PAAS reporting.

Section 216.55 Gas Analysis Report (GAR)

Nine commenters thought that § 216.55 should be amended so that reporting frequency outlined in the regulations corresponds to that in the Reporter's Handbook.

The fifth sentence of this section has been changed to read "The form is due monthly or as specified by the gas sales contract terms but no less frequently than semiannual, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies."

Seven comments received stated that the GAR should be eliminated from the PAAS reporting requirements.

The GAR provides necessary data which is used in association with the GPOR and OGOR. MMS can then make lease-level AFS/PAAS comparisons on processed gas and its related liquids.

Section 216.56 Gas Plant Operations Report (GPOR)

All twelve comments received on this specific section recommended that the GPOR reporting requirements be eliminated from the PAAS because the data being collected will result in numerous errors in the AFS/PAAS comparison. This, in turn, would cause the reporters to spend time answering inquiries from MMS. The commenters thought that MMS would be better served by audit procedures.

As previously stated, MMS requires additional time to assess the value of this report. Reporters will be notified if the reporting requirements change at a later date.

Section 216.57 Fractionation Plant Operations Report (FPOR)

The twelve comments received concerning the FPOR were identical to those in the previous section. The need for this report will be assessed simultaneously with the GPOR.

Section 216.58 Production Allocation Schedule Report (PASR)

Twelve commenters thought that the PASR should be eliminated from the PAAS reporting requirements. They believe that the PAAS reporting should end at the lease and no corroborative reports should be required.

The PASR provides MMS with a mechanism for verifying the allocation of sales from the onshore or offshore commingled sales point to the individual leases or agreements which produce to that point. The information is currently being provided by the sales point operator. The PASR organizes the data in a readily useful manner.

Two commenters stated that the requirements of who is required to file a PASR should be included in the regulations.

The section has been reworded to include the criteria of who must file a PASR.

One commenter stated that in line 14, the word "of" should be "or."

The requested change has been made.

One commenter wanted the regulations to require a certification as to the accuracy of all allocation meters and, upon initial submittal of a PASR, the reporters to include a flow chart detailing product flow lines, metering, and gathering points.

The information which these recommendations would require is unnecessary for the PAAS to accomplish its purpose. The proposed requirements are of an operational nature and will not be included in the PAAS.

Section 216.61 API Well Number Change Report. (ANCR)

One commenter stated that the form should be redesigned to include the operator's internal assigned well number in addition to the API well number.

The API well number provides a unique identifier and as such is a key to the PAAS. An operator's internally assigned well number would not necessarily be unique to all operators. The operator's internally assigned well number does provide a convenient mechanism for identifying each individual operator. The comments field of the form can be used for these data.

One commenter stated that, because MMS assigns the producing interval code, it was the responsibility of MMS to notify industry of subsequent changes.

The PAAS provides a confirmation report of each ANCR processed to the appropriate operator.

Section 216.202 Facility and Measurement Information Form (FMIF)

One commenter pointed out that the FMIF is not submitted on a one-time-only basis and that the statement is confusing.

MMS agrees with this comment and will clarify this section by eliminating "on a one time only basis."

Section 216.203 Solid Minerals Operation Report (SMOR)

One commenter requested that the SMOR be submitted only for those operations that are producing mines.

MMS agrees that if a mine is not producing, is not expected to produce in the next twelve months, and has no outstanding inventory, then the SMOR is not required. MMS will eliminate "or inactive mines" from this section.

V. Procedural Matters

Executive Order 12291

The Department of the Interior has considered all comments received on the proposed rule and has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291.

Although the final rule establishes certain assessments for improper reporting, there is no economic effect so long as there is compliance with the regulations.

The increased regulatory burden on industry due to the information collection requirements for establishing production quantities is estimated to be approximately $1.5 million. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Some portion of the approximately $1.5 million cost burden to the public will fall on the small businesses that are among the potential respondents. Since the total cost to the public is relatively small, and because the MMS provides special training and assistance to small organizations, there will be no significant economic effect on small entities. Although the rule establishes certain penalty assessments for improper reporting, as long as there is compliance with the regulations, there is no cost. Consequently, it does not require a Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis.

Paperwork Reduction Act of 1980

The information collection requirements contained in Subparts B and E of this proposed rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and granted OMB Clearance Number 1010–0040 and 1010–0063, respectively. Information collection under provisions of § 216.30 will affect less than 10 respondents annually and does not require OMB approval.

National Environmental Policy Act of 1969

This action is categorically excluded (40 CFR 1508.4) from the requirements of the National Environmental Policy Act 42 U.S.C. 4321 *et seq.*, and has been so designated by the Department. (516 DM 2 appendix 1.6; and 516 DM 6, appendix 2.4 (B)(1)(k).)

List of Subjects in 30 CFR Part 216

Mineral production, Mineral royalties, Reporting and recordkeeping requirements, Oil and gas, Solid minerals.

Under the authority of the Secretary of the Interior contained in 30 U.S.C. 1751, 30 CFR is amended by the addition of a new Part 216.

Dated: January 17, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

Title 30 of the Code of Federal Regulations is amended by adding Part 216 to read as follows:

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 216—PRODUCTION ACCOUNTING

Subpart A—General Provisions

Sec.
216.1 Purpose.
216.2 Scope.
216.6 Definitions.
216.10 Information collection.
216.20 Applicability.
216.21 General obligations of the reporter.
216.25 Confidentiality.
216.30 Special forms and reports.
216.40 Assessments for incorrect or late reports and failure to report.

Subpart B—Oil and Gas, General

Sec.
216.50 [Reserved]
216.51 Facility and Measurement Information Form and Supplement.
216.52 Well Information Form.
216.53 First Purchaser Report.
216.54 Oil and Gas Operations Report.
216.55 Gas Analysis Report.
216.56 Gas Plant Operations Report.
216.57 Fractionation Plant Operations Report.
216.58 Production Allocation Schedule Report.
216.61 API Well Number Change Report.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas, and Sulphur, Offshore [Reserved]

Subpart E—Solid Minerals, General

Sec.
216.200 [Reserved]
216.201 Mine Information Report.
216.202 Facility and Measurement Information Form.
216.203 Solid Minerals Operations Report.
216.204 Solid Minerals Facility Report.

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—Indian Land [Reserved]

Authority: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Minerals Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney Generals's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), as amended; Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; Secretarial Order 3087, as amended; The Indian Mineral Development Act of 1982 (25 U.S.C. 2101, *et seq.*); and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*).

Subpart A—General Provisions

§ 216.1 Purpose.

The purpose of this part is to ensure that the Federal Government receives proper information regarding energy and mineral resources removed from Federal and Indian leases and federally approved agreements, including the Outer Continental Shelf (OCS).

§ 216.2 Scope.

This part governs the reporting of oil, gas, and solid minerals operations information on Federal and Indian leases or federally approved agreements including the OCS. This part also governs the reporting of other operational information associated with production from Federal and Indian leases or federally approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to continue to submit existing production reports (3160–6 (formerly 9–329 and 9–329–1), 9–152, 9–373A, 9–128, 9–128a, 9–128b, 9–128c, 9–128d, 9–368, 9–1146, etc.) until conversion to PAAS. The appropriate MMS official will notify reporters being converted to PAAS of the proper schedules for start-up of reporting under PAAS and for discontinuing reporting using the existing production report forms.

§ 216.6 Definitions.

For purposes of this part:

(a) *"Agreement"* means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitizations, unitization, gas storage, or compensatory royalty agreements.).

(b) *"Alaska Native Corporation"* means a corporation created pursuant to the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

(c) *"Approved mining plan"* as used in this part means an approved resource recovery and protection plan (43 CFR 3480.5) or approved mining plan (43 CFR 3572.1).

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(d) *"Associate Director"* means the Associate Director for Royalty Management of the MMS.

(e) *"Conversion period"* means that period of time between the date an operator not subject to the rules of this part is notified that the rules are to be made applicable to that operator, and the effective date of applicability. The conversion period will not be less than one year unless the operator requests a shorter period.

(f) *"Facility"* means a structure(s) used to store or process Federal or Indian mineral production prior to or at the point of royalty determination.

(g) *"Federal lease"* means a lease concerning minerals owned by the United States and includes a lease where an Alaska Native Corporation receives all or part of the royalties accruing from that lease, and the MMS has not waived administration of that lease.

(h) *"First purchaser"* means any entity receiving the lease production in a first transfer for value transaction.

(i) *"Gas"* means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(j) *"Indian lease"* means a lease concerning lands or interest in lands of an Indian Tribe or an Indian allottee, his heirs or devisees, held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian Tribe or an Indian allottee, his heirs or devisees thereto in the conveyance of a surface or non-mineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539).

(k) *"Lease"* means any contract, profit-share arrangement, joint venture, permit, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil, gas, or solid minerals—or the land area covered by that authorization, whichever is covered by the context.

(l) *"Lessee"* means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

(m) *"MMS/RMP"* means the Royalty Management Program of the Minerals Management Service.

(n) *"Measurement device"* means a mechanical or electrical device that is used to measure production of oil, gas, or solid minerals for sales, transfers, and/or royalty determination.

(o) *"Mine"* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal or other solid minerals.

(p) *"Mineral Leasing Law"* means any Federal law administered by the Secretary authorizing the disposition under lease of oil, gas, or solid minerals.

(q) *"Oil"* means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered in a liquid state from gas.

(r) *"Operator"* means any person, including a lessee who has control of, or who manages operations on, any oil and gas or solid minerals lease site on Federal (including the OCS) or Indian lands. "Operator" also means any entity engaged in the business of developing, drilling for, producing, transporting, purchasing, selling, or processing oil, gas or solid minerals and/or which has the responsibility of reporting production from a lease or a portion thereof.

(s) *"Outer Continental Shelf (OCS)"* has the same meaning as provided in section 2 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331.

(t) *"Person"* means any individual, firm, corporation, association, partnership, consortium or joint venture.

(u) *"Production Accounting and Auditing System (PAAS)"* means an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by reporters, the PAAS will track oil, gas, and solid minerals produced from or allocated to Federal and Indian leases, including the OCS, from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable.

(v) *"Raw make"* means natural gas liquids (NGL's) that are extracted from the wet gas stream at a gas plant (e.g., ethane through natural gasoline) which sometimes is transferred to a fractionation plant for further processing.

(w) *"Reporter"* means any reporting entity required to submit a PAAS report or form to the MMS.

(x) *"Secretary"* means the Secretary of the Interior or his/her designee.

(y) *"Solid minerals"* means those minerals including but not limited to coal, potash, sodium, phosphate, sulfur, lead, zinc, copper, silica sands, sand and gravel, and other minerals under mineral leasing laws originating from or allocated to Federal or Indian leases, excluding oil or gas, oil shale, and geothermal resources.

§ 216.10 Information collection.

(a) The information collection requirements contained in Subpart B require the filing of forms which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507, and assigned clearance number 1010–0040. The information is being collected for Federal and Indian royalty accounting purposes. The information collection requirements contained in Subpart E also require the filing of forms which have been approved under 44 U.S.C. 3507 and assigned clearance number 1010–0063.

(b) The information collected will be used to permit accounting and auditing of production information submitted by the reporter for mineral production from Federal and Indian leases and federally approved agreements. Information reporting forms are available from the MMS. Requests shall be addressed to: Minerals Management Service, Royalty Management Program, Box 17110, Denver, Colorado 80217.

§ 216.20 Applicability.

(a) The requirements of this part shall apply to all operators already reporting to the PAAS on April 7, 1986.

(b) The requirements of this part shall not apply to any operator not included in subsection (a) until MMS notifies the operator in writing, certified mail, return receipt requested, at least one year in advance of the date the rules are to be applicable to that operator, except such operators shall be required during the conversion period to file the reports required by § 216.51, § 216.52a, § 216.201, or § 216.202 as applicable.

(c) Notwithstanding subsection (b), any operator may request and MMS may approve a conversion period of less than one year.

(d) Notwithstanding any of the provisions of this section, operators on all offshore leases and all solid mineral leases issued on or after April 7, 1986, shall be subject to the requirements of this part without any conversion period.

§ 216.21 General obligations of the reporter.

The reporter shall submit accurately, completely and timely, pursuant to the requirements of this part, all information

forms and other information required by MMS. Specific guidance on the use of the required forms is contained in the Production Accounting and Auditing System Reporters Handbook. Copies of the handbook are available from the MMS.

§ 216.25 Confidentiality.

(a) Information obtained by MMS pursuant to the rules of this part shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Notwithstanding any other provision of this part, information obtained from a reporter under this part relating to a minerals agreement approved pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101 *et seq.*, the Tribal Leasing Act of 1938 (25 U.S.C. 396a *et seq.*), or the Allotted Indian Mineral Development Act of 1909 (25 U.S.C. 396), shall not be released without the written consent of the Indian Tribe(s) or individual Indian(s) who are parties to the mineral agreement.

(2) Information obtained from a reporter pursuant to this part that constitutes a trade secret and/or commercial or financial information which is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data concerning wells, shall be available for public inspection in accordance with 43 CFR Part 2. When such information is related to Indian lands, consent to release the information must also be obtained from the cognizant Tribe or allottee.

(b) If any geologic and/or geophysical data is submitted under this part, these shall be made available to the public only in accordance with the provisions of 30 CFR 250.3, 250.4 and 252.7, if these relate to an offshore lease, and in accordance with 43 CFR 3162.8 if these relate to an onshore Federal or Indian lease.

§ 216.30 Special forms and reports.

When special forms or reports other than those referred to in the regulations in this part are necessary, instructions for the filing of such forms or reports will be provided by the Associate Director. Such requests will be made in conformity with the requirements of the Paperwork Reduction Act of 1980, and are expected to involve less than 10 respondents annually.

§ 216.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Oil and Gas Operations Report (Form MMS–4054), Gas Analysis Report (Form MMS–4055), Gas Plant Operations Report (Form MMS–4056), Fractionation Plant Operations Report (Form MMS–4057), and Production Allocation Schedule Report (Form MMS–4058).

(d) For purposes of solid minerals reporting under PAAS, a report is defined as each line of production information required on the Solid Minerals Operation Report (Form MMS–4059) and Solid Minerals Facility Report (Form MMS–4060).

(e) The MMS will not make assessments for reporting problems which are beyond the control of the reporter (e.g., reports received late because of bad weather). The reporter shall have the burden of proving that a reporting problem was unavoidable.

(f) An assessment under this section shall not be shared with a State, Indian tribe, Indian allottee, or Alaska Native Corporation.

Subpart B—Oil and Gas, General

§ 216.50 [Reserved]

§ 216.51 Facility and Measurement Information Form and Supplement.

(a) The Facility and Measurement Information Form (Form MMS–4051) must be filed for each facility or measurement device which handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by the operator of the facility or measurement device initially at the request of MMS during the conversion of facility and measurement device operators to the PAAS. After conversion, Form MMS–4051 must be filed with MMS/RMP no later than 30 days after establishment of a new facility or measurement device, or a change to an existing facility or measurement device which is not approved by the MMS/OCS.

(b) The Facility and Measurement Information Form-Supplement (Form MMS–4051 Supplement) must be filed for each facility or measurement device that handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later, when such facility or measurement device is operated by any party other than the operator(s) of the lease(s) or approved agreement(s) served by said facility or measurement device. The completed form must be filed by each operator of the lease(s) or federally approved agreement(s) served by said facility or measurement device if that operator is not the same person that operates said facility or measurement device. Form MMS–4051 Supplement must be filed at the request of the MMS initially during the conversion of lease and agreement operators to PAAS.

§ 216.52 Well Information Form.

The Well Information Form (Form MMS–4052) must be filed at the request of MMS for each Federal or Indian lease, or federally approved agreement, on which there exists at least one well that is not permanently plugged and abandoned. The completed form must be filed by the operator of the lease or agreement initially during the conversion of lease and agreement operators to the PAAS.

§ 216.53 First Purchaser Report.

The First Purchaser Report (Form MMS–4053) must be filed by first purchasers only upon the specific request of MMS.

§ 216.54 Oil and Gas Operations Report.

The Oil and Gas Operations Report (Form MMS–4054) must be filed by every operator of the lease or agreement for each Federal or Indian lease, or federally approved agreement, on which there exists at least one well that is not permanently plugged and abandoned. Completed Form MMS–4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated or the last well is permanently plugged or abandoned or until omission of the report is authorized by the MMS.

§ 216.55 Gas Analysis Report.

The Gas Analysis Report (Form MMS–4055) must be filed for each Federal or Indian lease, or federally approved agreement from which gas is transferred for processing prior to the point of royalty computation. The completed form must be filed by the

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operator of the lease or approved agreement. The form is due monthly or as specified by the gas sales contract terms but no less than semiannually, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies.

§ 216.56 Gas Plant Operations Report.

The Gas Plant Operations Report (Form MMS–4056) must be filed for each gas plant that processes gas that originates from a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation, by the operator of the gas plant. Completed Form MMS–4056 must be filed for each calendar month, beginning with the month in which processing of gas originating from a Federal or Indian lease or federally approved agreement is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

§ 216.57 Fractionation Plant Operations Report.

The Fractionation Plant Operations Report (Form MMS–4057) must be filed for each fractionation plant that fractionates raw make attributable to a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation for such lease or agreement. The completed form must be filed by the operator of the fractionation plant. Form MMS–4057 must be filed for each calendar month, beginning with the month in which fractionation of raw make originating from a Federal or Indian lease, or federally approved agreement is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

§ 216.58 Production Allocation Schedule Report.

The Production Allocation Schedule Report (Form MMS–4058) shall be filed for each facility or measurement device where the production from a Federal or Indian lease or agreement is commingled with the production from one or more other Federal, Indian or non-Federal leases or agreements prior to measurement for royalty computation purposes. A report is not required whenever the leases/agreements involved are all Federal or all Indian; all have the same fixed royalty rate; all are operated by the same person; and the facility/measurement device is operated by the same person as the leases/agreements. The completed form must be filed by the operator of such facility or measurement device. Form MMS–4058 must be filed for each calendar month, beginning with the month in which handling or production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

§ 216.61 API Well Number Change Report.

The API Well Number Change Report (Form MMS–4061) must be filed whenever there is a change to an existing API well number and/or the MMS assigned producing interval code within the PAAS, on which an Oil and Gas Operations Report (Form MMS–4054) have been filed. The completed form must be filed by the operator of the Federal or Indian lease, or federally approved agreement, with which the well is associated. Form MMS–4061 must be filed at least 10 days prior to the submission of an Oil and Gas Operations Report containing the new API well number and/or the MMS assigned producing interval code.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas, and Sulfur, Offshore [Reserved]

Subpart E—Solid Minerals, General

§ 216.200 [Reserved]

§ 216.201 Mine Information Report.

The Mine Information Form (Form MMS–4050) must be filed for each mine that includes Federal or Indian leases in its approved mining plan. The completed form must be filed by the operator of the mine/lease(s). Form MMS–4050 must be filed at the request of the MMS initially during the conversion of the mine/lease(s) to the PAAS.

§ 216.202 Facility and Measurement Information Form.

The Facility and Measurement Information Form (Form MMS–4051) must be filed for each facility or measurement device which handles solid mineral production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is applicable. The completed form must be filed by the operator of the facility or measurement device. Form MMS–4051 must be filed initially at the request of the MMS during the conversion of facility and measurement device operators to the PAAS. Subsequent to conversion, Form MMS–4051 must be filed with MMS/RMP no later than 30 days after establishment of a new facility or measurement device, or a change to any existing facility or measurement device that handles production attributable to any Federal or Indian lease, or federally approved agreement, through the point of first sale or royalty computation, whichever is applicable.

§ 216.203 Solid Minerals Operations Report.

The Solid Minerals Operation Report (Form MMS–4059) must be submitted by all Federal and Indian lease operators of producing mines that are part of an approved mine plan. Form MMS–4059 must be filed for the same period established for payment for royalties in the lease terms, unless a different reporting frequency is established by an MMS authorized official, and on or before the 15th day of the second month following the period being reported until all the leases within a mine are terminated or until omission of the report is authorized by the MMS.

§ 216.204 Solid Minerals Facility Report.

The Solid Minerals Facility Report (Form MMS–4060) must be filed by operators of secondary processing facilities that handle production attributable to Federal or Indian leases where royalty is determined after processing. The report period is monthly, unless a longer period is specified in the lease document, or otherwise approved by the MMS. The Form MMS–4060 must be filed on or before the 15th day of the second month following the period being reported.

Subpart F—Coal [Reserved]

Subpart G—Other Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—Indian Land [Reserved]

[FR Doc. 86–4996 Filed 3–6–86; 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 85N-0553]

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require that the labeling of oral and rectal over-the-counter (OTC) aspirin and aspirin-containing drug products for human use bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome, a rare but serious illness. FDA is taking this action in order to bring uniformity and consistency to the marketplace and to aid in increasing the public awareness about this disease.

DATES: These final regulations are effective June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Smith, Office of the Commissioner (HF-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5133.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 17, 1985 (50 FR 51401), FDA proposed to require that the labeling of oral OTC aspirin and aspirin-containing drug products for human use bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome, a rare but serious illness. FDA proposed this rule in order to bring uniformity and consistency to the marketplace and to aid in increasing the public awareness about this disease.

In the proposal, FDA described: (a) Reye syndrome and its symptoms; (b) the early scientific studies that were conducted to look at the possible association between the use of aspirin and the onset of Reye syndrome; (c) the Public Health Service (PHS) study now being conducted under the direction of the PHS Reye Syndrome Task Force; and (d) the educational activities that have been carried out by FDA and aspirin industry about the use of aspirin and Reye syndrome. FDA acknowledged in the proposal and the successful voluntary public education and labeling efforts made by the aspirin industry, but noted that these voluntary efforts led to considerable diversity in the specific message being conveyed to consumers, particularly through product labeling. A complete discussion of this diversity along with examples of product labeling and the concerns expressed by several organizations are contained in the proposed rule.

FDA also noted that, under the voluntary program, it was unable to ascertain with certainty whether all aspirin-containing products that should be labeled with the warning statement have, in fact, been labeled.

II. Highlights of the Final Rule

As described further below, all the comments received on the proposal expressed support for the new regulation. Thus, to increase consumer awareness, to avoid public confusion, and to achieve uniformity in the marketplace, FDA is issuing a final regulation which closely parallels the proposal.

As in the proposal, the final rule requires the following labeling statement:

"WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness."

Also like the proposal, FDA is requiring that this warning precede any additional warnings that may appear on the product labeling in order to assure the prominence of the message.

In addition, in response to comments received on the proposal (described below), FDA is adding rectal OTC aspirin and aspirin-containing products within the scope of this regulatory action, and is making it clear that this final rule preempts State and local labeling requirements that are not identical to it with respect to oral and rectal OTC aspirin and aspirin-containing drug products for human use. The final rule and this preamble also contain some minor clarifications to statements in the proposal or to comments received.

III. Comments

FDA received 17 comments on the proposed rule: 4 from industry, 6 from trade associations, 3 from health professional associations, 2 from State agencies, 1 from a consumer group, and one from FDA staff. All comments were positive and expressed support for the agency's action. Some suggested changes in the proposal or expressed concerns with specific portions of the proposal.

A. Individual Manufacturer's Comments

FDA received comments from four pharmaceutical firms. Two expressed concern that since they had participated in the voluntary program and were labeling their products with a warning statement, they should be allowed to use up existing supplies of labels now in inventory, or that, at a minimum, FDA should extend the effective date in order to allow for most such inventories to be used. Two other firms suggested that their present labeling contains warning statements that, although not exactly as that proposed by FDA, are close enough in their language to be acceptable.

FDA disagrees that stocks of labels that are in inventory or labeling that is not exactly like that in the final rule, but close to that in the final rule, should be allowed to be used as a matter of course. While FDA recognizes that some firms may be inconvenienced after having already changed their labels in order to participate in the voluntary program, the purpose of this rule is specifically to bring uniformity and consistency to the marketplace. However, FDA points out that the new regulatory requirement is directed to the initial introduction of the product into interstate commerce. Thus, products in retail packaging that are labeled with an earlier Reye syndrome warning, and that have been initially introduced into interstate commerce prior to the effective date of this rule, will be permitted to be sold. In contrast, products produced in retail packaging, and initially delivered for introduction into interstate commerce on or after the effective date of this rule, will be required to be in compliance with the new requirements.

FDA also is not extending the rule's effective date. This is to help ensure that aspirin and aspirin-containing products that are on the store shelves by the next flu season will be labeled according to this final rule. FDA recognizes that there may be a few small manufacturers for whom, for various financial or other reasons, it is impossible to comply with this final rule by the effective date. In these unusual circumstances, FDA will consider requests for limited extensions. Such requests should be sent to Office of Compliance, Center for Drugs and Biologics, HFN-300, Food and Drug Administration, 5600 Fishers Lane,

Rockville, Maryland 20857, and should document both the need for an extension and the duration of time requested.

B. Comments From Trade Associations

FDA received comments from six trade associations. While none of the industry trade associations that commented suggested a delay in the effective date for the rule, or a time period during which labels printed with the voluntary warning should still be allowed, several of the comments did request that FDA allow for the "sell-through" of current stocks already in the distribution chain. FDA agrees with these comments and, as discussed earlier, will allow the "sell-through" of products already in interstate commerce.

Comments also were received expressing concern that the proposal was unclear about the exact type of product material on which the warning statement must appear. In response to the comments, the final rule has been clarified to state that the warning statement must appear in several places. First, the warning is required to appear on the label of the immediate container. Second, in cases where the immediate container is not the retail package (e.g., where a bottle of tablets is packaged in a box), the retail package must also bear the warning statement. Finally, the warning statement must appear on any labeling that contains other warnings, and, in such cases, the Reye warning is required to be the first warning under the heading "Warnings." However, items such as "shelf talkers," store displays or money-saving coupons would not be required to bear the warning statement.

Two trade association comments suggested that FDA preempt State requirements for label warnings regarding Reye syndrome. While FDA is unaware of any such requirements at this time, FDA agrees with the comments. FDA is authorized to assure the safety of drugs marketed in interstate commerce in this country. The manufacturing and distribution system for these products is national in scope and the measures adopted by FDA to regulate this national system should be adequate to safeguard the interests of the entire population. While State and local requirements for products may on occasion be appropriate and necessary, such measures should not interfere with FDA's accomplishing those purposes that are within its Congressionally mandated area of responsibility. State and local requirements for the labeling of oral and rectal OTC aspirin-containing drug products that differ from those established by this final rule would interfere with the accomplishment of FDA's objective to bring consistency and uniformity to the marketplace with respect to the labeling of these products regarding Reye syndrome. Thus, FDA intends that the regulations issued in this document preempt State and local packaging requirements that are not identical to it with respect to oral and rectal OTC aspirin-containing drug products for human use.

C. Comments From Health Professional Associations

FDA received comments from three health professional associations. Two comments urged that the warning include more explicit language about aspirin and Reye syndrome such as "Studies show that aspirin may increase the risk of developing Reye syndrome." While FDA has stated that the available data do not establish a definitive cause-and-effect relationship between aspirin-containing products and the disease, the agency has concluded that the studies that have been done to date suggest a possible association between aspirin use and Reye syndrome. Thus, FDA felt it was appropriate to carry out a public awareness campaign and to encourage voluntary industry public education efforts. However, in the proposal FDA specifically states that the impetus for the rule is to bring consistency and uniformity to the marketplace with respect to the warning statement. For these reasons, FDA believes that the warning statement as proposed is sufficient at this time and the agency disagrees with the comment. The final rule is, however, an interim measure in that it will expire in 2 years. FDA will consider the need for a change in the warning statement based upon the available data at that time.

One comment suggested that the final rule be extended to cover aspirin-containing prescription drug products as well as those available OTC. FDA does not agree at this time that this final rule should be applied to prescription drugs. The warning statement required by the rule is aimed at consumers buying and using aspirin-containing products without the advice of a physician. Thus, the statement required by the final rule suggests that persons consult a doctor before using the drug in certain circumstances. Prescription drugs are dispensed only on the order of a physician. FDA informs physicians of such matters as the possible association between aspirin and Reye syndrome in many ways including information bulletins and requirements under the prescription drug regulations. Therefore, FDA believes it is taking the appropriate action with regard to Reye syndrome and OTC drugs at this time. However, in 2 years, upon expiration of this final rule, if the agency seeks to continue the requirement based upon new information available then, the agency may reconsider the need for a warning in the professional labeling for prescription drug products.

Finally, one health professional group suggested that the required warning statement include pharmacists as a group that might be consulted prior to the use of the medication. FDA disagrees with this comment because the warning statement suggests that consultation be obtained about a disease, Reye syndrome, rather than information about a pharmaceutical product.

D. State Comments

FDA received comments from two State organizations. One comment simply expressed support for the proposal. The other, while advocating the labeling requirement, suggested that the warning also require a listing of the symptoms of Reye syndrome. FDA agrees that the public should be knowledgeable of the symptoms of Reye syndrome, and both FDA and the aspirin industry have included that information as part of the public education campaign described in the proposal. However, the purpose of the label warning is preventive—i.e., that aspirin should not be used for certain purposes without first consulting a physician. Thus, including the symptoms of Reye syndrome on the product label would not further that purpose.

E. Consumer Group Comments

FDA received comment from one consumer organization. While supportive of the agency's efforts to require a warning, the group did offer several suggested changes. The comment supported the proposal and called for the effective date to be May 30, 1986, even if the time period between publication and the effective date needed to be shortened from 90 days. FDA disagrees. The effective date of this regulation is June 5, 1986, which is not appreciably different from the proposed effective date of May 30, 1986.

The comment also suggested that the warning statement be required to be boxed so that it will be highlighted to the consumer. FDA does not believe a boxed warning is necessary. The requirement that the warning be the first warning under the heading "Warning" appropriately highlights the information.

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Another part of the comment suggested that the warning include the statement that Reye syndrome is "often fatal." While FDA agrees that Reye syndrome can be fatal, in the majority of cases it is not. FDA therefore believes the warning, as proposed, is appropriate, and that the consumer's physician can discuss such specifics as the disease's fatality rate as the need arises.

The comment also suggested that products subject to this rule that are indicated for use by both children and adults be required to have in the "Indications" section a clarification that the product should not be used by persons under 21 for the treatment of flu or chicken pox or, at a minimum, that the "Indications" section should contain a cross-reference to the Reye syndrome warning elsewhere in the labeling. FDA does not agree that an additional statement should be required in the "Indications" section or that a cross-reference is needed. FDA believes that the placement of the required warning statement as the first warning under the "Warning" section is an appropriate method of conveying the information to teenagers who may use adult aspirin products and to those who may consider the use of these products to treat children with flu or chicken pox.

Finally, the comment urged that FDA extend the labeling requirements to prescription drugs. FDA disagrees with this suggestion for reasons already discussed.

F. FDA Staff

One comment was filed by employees of the agency's Center for Drugs and Biologics who suggested that the rule be extended to include aspirin and aspirin-containing OTC rectal suppository drugs. The comment pointed out that such products are aften used in patients unable to take oral medication, expecially in infants, or when oral medication is not retained. The comment also noted that comparison of absorption of rectal versus oral doses of aspirin show that the rectal absorption can be equivalent to that obtained by the oral dose. FDA agrees with the comment and is including rectal OTC aspirin and aspirin-containing drug products in the final rule.

IV. Agency Action

FDA has evaluated the comments as well as information already in the agency's files and concludes that, for the reasons stated above, the proposed labeling for oral and rectal OTC aspirin and aspirin-containing drug products is necessary and appropriate and that the regulations should be amended as set forth below.

The agency laid out its legal authority and assessed the economic and environmental impact of this rule in the proposal of December 17, 1985 (50 FR 51401). This assessment concluded that the proposed rule was not a major rule as defined by Executive Order 12291. No new information or comments were received that would alter this determination or the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1056 as amended (21 U.S.C. 321, 352, 355, 371); 21 CFR 5.10 and 5.11.

2. In § 201.314 by adding new paragraph (h) to read as follows;

§ 201.314 Labeling of preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter aspirin and aspirin-containing drug products subject to this paragraph is required to prominently bear a warning. The warning shall be as follows: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness."

(2) This warning statement shall appear on the immediate container labeling. In cases where the immediate container is not the retail package, the retail package also must bear the warning statement. In addition, the warning statement shall appear on any labeling that contains warnings and, in such cases, the warning statement shall be the first warning statement under the heading "Warnings."

(3) Over-the-counter drug products subject to this paragraph and labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox.

(4) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after June 5, 1986, is misbranded under sections 201(n) and 502 (a) and (f) of the Federal Food, Drug, and Cosmetic Act.

(5) The requirements of this paragraph shall expire June 6, 1988 unless extended by the Food and Drug Administration by publication for notice and comment in the **Federal Register**.

Dated: February 27, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

[FR Doc. 86-5027 Filed 3-6-86; 8:45 am]

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H.J. Res. 499/Pub. L. 99-254

Designating the week beginning March 2, 1986, as "Women's History Week". (Mar. 4, 1986; 100 Stat. 38; 1 page) Price: $1.00

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

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Immigration and Naturalization Service

Aviation Safety
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Selected Subjects

Savings and Loan Associations
Federal Home Loan Bank Board

U.S. Constitution Bicentennial
Bicentennial of the United States Constitution Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 20;
9 am and 1 pm.
(identical sessions)
WHERE: Office of the
Federal Register,
First Floor
Conference Room,
1100 L Street NW,
Washington, DC
RESERVATIONS: Ruth Reedy,
202-523-5329
for reservations

DENVER, CO

WHEN: March 24; at 9 am.
WHERE: Room 239,
Federal Building,
1961 Stout Street,
Denver, CO.
RESERVATIONS: Elizabeth Stout
Denver Federal
Information Center,
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.
WHERE: Room 7A23,
Earl Cabell Federal
Building,
1100 Commerce Street,
Dallas, TX.
RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 443

[Doc. No. 0077A]

Hybrid Seed Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the Federal Register on Tuesday, February 18, 1986, at 51 FR 5695, revising and reissuing the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1986 and succeeding crop years. The provision added in § 443.7(d) 1.b. (7) inadvertently cited inadequate germination as the basis for determining the loss of production to timely plant the male seed. This notice is published to correct that error and to clarify the FCIC's intent with respect to the necessity of referring to the male seed being timely planted in order to pollinate the female plant.

ADDRESS: Written comments on this correction should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 86-3440, appearing at page 5698 is corrected as follows:

§ 443.7 [Corrected]

1. 7 CFR Part 443.7(d) 1.b. (7) is corrected as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Hybrid Seed Crop Insurance Policy

* * * * *

(7) The failure to plant the male seed at a time sufficient to assure adequate pollination of the female plant;

* * * * *

2. The authority citation for 7 CFR Part 443 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 27, 1986.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-5080 Filed 3-7-86; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule reflects a title change of the custodian of records at the El Paso Intelligence Center (EPIC). The Immigration and Naturalization Service Program Coordinator, or the designee authorized in writing, is delegated the authority to certify records in the custody of that facility.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

For Specific Information: Tedd Spears, Management Analyst, Records Services Section, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2442.

SUPPLEMENTARY INFORMATION: This change has been made to reflect the current organizational structure and position title of the custodian for the records at EPIC. As a Supervisory Border Patrol Agent is no longer assigned to the El Paso Intelligence Center (EPIC), the position title of the custodian for the records at EPIC is now the Immigration and Naturalization Service Program Coordinator.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency organiation and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on substantial number of small entities. This is not a rule within the definition of section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Archives and records, Authority delegation, Fees, Forms.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103).

2. Section 103.7 is amended by revising paragraph (d)(3) to read as follows:

§ 103.7 Fees.

* * * * *

(d) * * *

(3) The Immigration and Naturalization Service Program Coordinator, El Paso Intelligence Center, or the designee, authorized in writing to make certification in event of the Program Coordinator's absence—copies of files, documents, and records of the Immigration and Naturalization Service in the custody of that office

* * * * *

Dated: March 3, 1986

John W. Murray,
Associate Commissioner, Information System, Immigration and Naturalization Service.

[FR Doc. 86-5123 Filed 3-7-86; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563g

[No. 86–200]

Securities Offerings

Dated: February 28, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical and clarifying corrections.

SUMMARY: The Federal Home Loan Bank Board (the "Board") has adopted technical corrections and clarifications to its final regulation governing securities offerings made by insured institutions. Besides correcting certain typographical and punctuation errors, the amended regulation: (1) Clarifies the exemption from the offering circular requirements for offers and sales to officers, directors and employees by revising the exemption to cover employee benefit plans and dividend or interest reinvestment plans and provides for definitions of such plans; (2) clarifies the definition of "security" to make clear that accounts insured by the Federal Deposit Insurance Corporation ("FDIC"), like accounts insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), are not securities subject to the Board's securities offerings regulation; (3) clarifies the definition of "underwriter" by incorporating a safe harbor holding period of two years and deletes the two year consent transfer restriction which was originally a part of § 563g.4 (relating to certain exempt non-public offerings); (4) clarifies other exemptions to the offering circular requirements by more clearly defining when an offering commences for purposes of § 563g.3(a) and that cash is a permissible form of collateral for purposes of § 563g.3(f); (5) clarifies the effective date of post-effective amendments by adding new 563g.6(e) providing for effectiveness on such date as the Corporation may determine; and (6) clarifies that the accounting requirements for offering circulars set forth at § 563g.7(b) includes the accounting requirements of Regulation S–X promulgated by the Securities and Exchange Commission ("Commission") as provided for in Part 563c of the Board's Insurance Regulations. For ease of reference, the regulations are being republished in their entirety, with the foregoing technical and clarifying amendments incorporated therein.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Scott E. Bartel, Attorney, Corporate and Securities Division, (202–377–6963), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Board, as operating head of the FSLIC, adopted final regulations governing securities offerings by insured institutions. *See* Board Res. No. 85–1197, dated December 20, 1985, effective March 1, 1986 (50 FR 53284 (December 31, 1985)). In response to public comments, the final regulations contained substantial revisions to the regulations first proposed in March of 1983 and later re-proposed in September of 1985. *Compare* Board Res. No. 85–1197, dated December 20, 1985 (50 FR 53284 (December 31, 1985)) *with* Resolution No. 83–126, dated March 3, 1983 (48 FR 10684 (March 14, 1983)) and Board Res. No. 85–822, dated September 13, 1985 (50 FR 38839 (September 25, 1985)). Since adoption of the final regulations, the Office of General Counsel, Corporate and Securities Division, has received a variety of requests for clarification with respect to the scope and meaning of certain provisions of the regulation. While the majority of the requests concerned provisions which were not in need of clarification, the Board has recognized that other provisions, which are being amended today, should be amended to make clear the Board's intention in adopting such regulations. In addition, the Board is taking this opportunity to correct certain typographical and technical errors which appear in the regulations as adopted on December 20, 1985. See Board Res. No. 85–1197, dated December 20, 1985 (50 FR 53284 (December 31, 1985)). For the convenience of the public, the Board is republishing the entire text of new Part 563g, as amended by its action today.

Exemption for Employee Benefit Plans and Employee Dividend or Interest Reinvestment Plans—§ 563g.3(h)

As originally adopted, the regulations provided an exemption from the offering circular requirements of § 563g.2 for offers and sales "to its [an issuer's] employees or directors pursuant to any qualified pension, profit-sharing, or stock bonus plan meeting the requirements of Section 401(a) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 401(a)]. See § 563g.3(h), 50 FR 53284, 53290 (December 31, 1985.) Originally, the Board believed that the vast majority of other employee compensation plans, such as option, appreciation and reinvestment plans, would be exempt from the offering circular requirements of § 563g.2 by reason of other available exemptions, such as the Board's non-public offering safe-harbor exemption § 563g.4. However, because of a perceived reluctance by counsel and others to use the Board's safe-harbor exemption for compensation plans not specifically included in the above quoted § 563g.3(h) exemption, the Board has decided to clarify its intention to exempt employee compensation plans, including stock option and rights plans, from the offering circular requirement of § 563g.2. As amended today, § 563g.3(h) provides an exemption from the offering circular requirements of § 563g.2 for offers and sales of securities by an issuer to its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan. To qualify for the exemption, however, the plan must be approved by the shareholders at a legal meeting and must be an employee benefit plan or a dividend or interest reinvestment plan as defined in the regulation. "Employee benefit plan" is defined in new § 563g.1(a)(4) and includes most of the common types of employee compensation, option, and pension plans. "Dividend or interest reinvestment plan" is defined in new § 563g.1(a)(3). To qualify for the exemption, however, the dividend or interest reinvestment plan must be limited to the issuer's officers, directors or employees. Plans which are not so limited, but instead allow all shareholders of an insured institution to participate, are not included in the amended § 563g.3(h) exemption. Unless another independent exemption is available, these unlimited plans would be subject to § 563g.2's offering circular requirements.[1] When drafting the offering circular for non-exempt plans, the issuer should refer to Commission Form S–8 as a guide to disclosure pertaining to the plan.

Safe-Harbor Definition of Underwriter—§ 563g.1(a)(14)

The offering circular requirements of § 563g.2 apply to insured institutions that offer or sell, directly or indirectly, any security issued by it. *See,* § 563g.2(a), 50 FR 53284, 53289 (December 31, 1985). In turn, "insured institution" is defined to include, solely for purposes of § 563g.2, any underwriter participating in the distribution of the securities offered. *See,* § 563g.1(a)(7), 50 FR 53289 (December 31, 1985). Therefore, the offering circular requirements of Part 563g work in a manner similar to the registration requirements of Section 5 of the Securities Act of 1933, as amended (15 U.S.C. 77e (1982)) ("Securities Act"), except that different approaches were taken to reach similar results. For example, in enacting the Securities Act, Congress made the registration provisions applicable to all persons, but then provided an exemption for all persons *except* issuers, underwriters and dealers. *Compare,* section 5 of the Securities Act (15 U.S.C. 77e (1982)) with section 4(1) of the Securities Act (15 U.S.C. 77d(1) (1982)). In contrast, the Board made the offering circular requirements of its securities offerings regulation applicable only to insured institutions and then, solely for purposes of the offering circular requirements, defined insured institution as including, *inter alia,* underwriters participating in the distribution. *See,* §§ 563g.1(a)(7), § 563g.2(a), 50 FR 53284, 53289 (December 31, 1985).

In the final regulations as adopted by the Board on December 20, 1985, § 563g.1(a)(14) defined "underwriter" to mean the same as the meaning set forth in the Board's Conversion Regulations at § 563b.2(a)(36), 12 CFR 563b.2(a)(36) (1985). *See,* 50 FR at 53289. This definition,[2] retained many of the uncertainties which exist in the Securities Act's definition of underwriter.[3] Whether a person has purchased with a view to distribution, or is participating, directly or indirectly, in a distribution of securities and hence is an underwriter of the securities, has been one of the more difficult questions in securities regulation. These uncertainties motivated the Commission to adopt a safe-harbor rule, Rule 144, which purports to define persons not engaged in a distribution and, therefore, not underwriters. *See,* 17 CFR 230.144 (1985). Basically, the Commission's Rule 144 requires a two (2) year holding period, after which the restricted securities may be "trickled" into the market in small amounts provided there is adequate public information available on the issuer in the market place.

Instead of promulgating a separate regulation similar to the Commission's Rule 144, the Board has decided to incorporate a safe-harbor directly into its definition of "underwriter." As amended, § 563g.1(a)(14) specifically provides that an "underwriter" does not include persons who have purchased from an issuer where the persons have continually held the securities being transferred for a period of two (2) consecutive years, and the amount of securities sold in any one (1) transaction is less than ten percent (10%) of the issued and outstanding securities of the same class. The safe-harbor also includes tacking provisions similar to Commission's Rule 144(d) (17 CFR 230.144(d) (1985)) for purposes of calculating the holding period of the securities. In addition, the safe-harbor also allows the tacking of holding periods in transactions involving exchanges of securities of one issuer for the securities of another issuer.

Sales made prior to the completion of the two (2) year holding period or sales made in an amount greater than, or equal to, ten percent (10%) of the issued and outstanding securities of the same class will not necessarily be deemed a sale by an underwriter under § 563g.1(a)(14). In interpreting § 563g.1 (a)(14), the Board will apply an analysis, on a case by case basis, similar to the analysis used by the courts and the Commission in interpreting the Securities Act's definition of underwriter. [4] In addition, the language of § 563g.1(a)(14) is in the disjunctive. Therefore, it is insufficient to conclude that a person is not an underwriter solely because such person did not purchase the securities with a view to their distribution to the public. It must also be established that the person is not offering or selling for the insured institution in connection with the distribution of the securities or participating in nor have a direct or indirect interest in any such distribution.

Whether a person is an underwriter by reason of participation in a distribution of securities depends upon the facts and circumstances surrounding the transaction. An investment banking firm which arranges with the issuer for a public sale of the issuer's securities is clearly an underwriter under § 563g.1(a)(14). Likewise, individual investors who are not securities professionals could be underwriters within the meaning of § 563g.1(a)(14). Because it is difficult to ascertain the mental state of the purchasers at the time of acquisition, subsequent acts and circumstances may be probative in determining whether the purchaser took with a view to distribution at the time of the acquisition. Factors to be considered in making such a determination include, but are not limited to, the length of time the purchaser has held the securities prior to re-sale, whether there has been an unforeseeable change in the circumstances of the purchaser, and whether the purchaser has assumed the economic risks of the investment, and therefore, is not acting as a conduit for sales to the public of the securities, directly or indirectly, on behalf of the issuer.

A notable difference between § 563g.1(a)(14)'s definition of underwriter and the Securities Act's definition of underwriter is that § 563g.1(a)(14) does not include the Securities Act's control clause." Under the Securities Act, for purposes of the Act's definition of underwriter only, " . . . the term 'issuer' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."[5] The Board has decided not to adopt a "control clause" at this time because it believes that the regulation's current definition of underwriter, as amended, adequately implements the Board's securities offering regulation without being overly broad or expansive. However, the Board may reconsider the necessity of a "control clause" as part of § 563g.1(a)(14)'s definition of underwriter if, in the future, it appears that the absence of such clause is undermining the effectiveness of the Board's securities offerings regulation.

Finally, with the incorporation of a safe-harbor provision in the Board's definition of underwriter, the Board is

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[1] Under certain limited conditions, the filing of an offering circular may not be required. In this respect, the Board intends to follow the position of the Commission set forth in SEC Release 33–5515 (August 8, 1974). *See also* SEC Release 33–4790 (July 13, 1965). *See generally,* SEC Releases 33–6281 (July 15, 1981); 33–6188 (February 1, 1980).

[2] 12 CFR 563b.2(a)(36) (1985) provides the following definition for "underwriter": The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

[3] *See,* Section 2(11) of the Securities Act, 15 U.S.C. 77(b)(11) (1982) which provides: The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, participates or has participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter of dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph, the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

[4] For example, it is possible for a person to be an underwriter within the meaning of § 563g.1(a)(14) even though such person has no contractual relationship or understanding with the issuer. *See,* Securities and Exchange Commission v. Chinese Consolidated Benevolent Assn., Inc., 120 F.2d 738, 740 (2d Cir). *cert. denied.* 314 U.S. 618 (1941); L. Loss, Fundamentals of Securities Regulation, 277–296 (1983).

[5] 15 U.S.C. 77b(11)(1982).

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also amending its safe-harbor non-public offering exemption in § 563g.4 by deleting the two (2) year consent transfer restriction. As originally adopted, § 563g.4(d) required, for a period of two (2) years, the written consent of the Corporation prior to any re-sale of securities purchased in reliance on the safe-harbor. *See,* § 563g.4(d), 50 FR 53284, 53290 (December 31, 1985). At the time the exemption was adopted, the Board believed that the consent transfer restriction was necessary to prevent unlawful distributions of securities in circumvention of Part 563g's offering circular requirements. From the inquiries made to the staff since the adoption of the exemption in final form on December 20, 1985, the Board is concerned that the exemption's consent transfer restriction is deterring its use, thereby undermining the Board's intent to provide certainty and comfort in this area by adopting a safe-harbor non-public offering exemption. With the Board's revision to § 563g.1(a)(14) providing a safe-harbor in connection with its definition of underwriter, the Board is amending § 563g.4(d) by replacing the two (2) year consent transfer restriction with the requirement that, *inter alia,* the issuer exercise reasonable care to ensure that purchasers of securities relying on the safe-harbor are not underwriters within the meaning of § 563g.1(a)(14). Reasonable care includes, but is not limited to, (a) reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser, or for other persons; (b) written disclosure to the purchaser that the securities are not offered pursuant to an offering circular filed with, and declared effective by, the Corporation; and (c) placement of a legend on the certificate evidencing the security stating that the securities have not been offered under an offering circular filed with, and declared effective by, the Corporation and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of § 563g.1(a)(14).

FDIC Insured Accounts not a Security—§ 563g.1(a)(13)

As originally adopted, § 563g.1(a)(13) provided that "security" means the same as the meaning set forth at 561.41 of the Board's Insurance Regulations (12 CFR 561.41 (1985)). *See,* §§ 563g.1(a)(13), 50 FR 53284, 53289 (December 31, 1985). Section 561.41 specifically excludes from the definition of security any "insured account" which, in turn, is defined in § 561.3 as including only accounts insured by the FSLIC. (12 CFR 561.3 (1985)). Because the Board's securities offerings regulation applies to federally chartered savings banks whose accounts are insured by the Federal Deposit Insurance Corporation, the Board is clarifying its definition of "security" in § 563g.1(a)(13) by providing that a security shall not include accounts insured by either the FSLIC or FDIC. However, the amendment is not intended to affect the applicability of § 563.3–10 regulating earnings-based accounts.

Grandfather Provision—§ 563g.3(a)

As originally adopted, § 563g.3(a) provided that the offering circular requirements of § 563g.2 shall not apply to offers and sales of securities "made" prior to March 1, 1986 provided, *inter alia,* that the "offer or sale" does not continue for more than 60 days after March 1, 1986. In clarification of the words "made" and "offer or sale", the Board is amending § 563g.3(a) by substituting the word "commencing" for "made" and the word "offering" for "offer or sale." In this respect, whether an offering has commenced prior to March 1, 1986 depends upon the facts and circumstances of each situation. However, the Board is of the view that an offering will commence at least at the time an offering document, such as a preliminary prospectus or offering circular, is first publicly distributed to potential purchasers. An offering ceases on the last date consideration may be received from the purchasers pursuant to the terms of the offering. With respect to foreign offerings the Board recognizes that different practices are followed in offering securities abroad and is of the view that, for purposes of § 563g.3(a), an offering commences on the publication of the invitation to subscribe for the securities.

Cash Permitted as Collateral—§ 563g.2(f)

The Board is also amending its exemption for collateralized debt securities by revising the list of permissible collateral in § 563g.3(f) to include cash. This amendment is intended to clarify that the Board intended cash to be a permissible form of collateral and to more fully conform with industry practices.

Effective Date-Post Effective Amendments—§ 563g.6

Section 563g.6(c) currently requires post-effective amendments to be filed with the Corporation reflecting changes in material fact which are not reflected in the offering circular on the date it was declared effective by the Corporation. While § 563g.6(c) is clear in providing that such post-effective amendments are not automatically effective in twenty (20) days, but instead must be declared effective by the Corporation, the Board is taking this opportunity to amend § 563g.6 which generally discusses the effective date of an offering circular by adding a new paragraph (e) which provides that an amendment to an offering circular filed after the effective date shall become effective on such date as the Corporation may determine. The other paragraphs in § 563g.6 have been re-lettered to incorporate new paragraph (e).

Content of the Offering Circular—§ 563g.7(a)(4)

The Board is amending § 563g.7(a)(4) for the purposes of clarifying the information required to be included in an offering circular filed pursuant to § 563g.2. As amended, § 563g.7(a)(4) provides that, in addition to the information required by the Commission's Regulation S–K, all of the information required by Item 7 of the Board's Form PS (12 CFR 563b.101) should be included in the offering circular.

Accounting Requirements—§ 563g.7(b)

The Board is also amending § 563g.7(b) concerning the accounting requirements for offering circulars filed with, and declared effective by, the Corporation. The Board is revising the language of § 563g.7(b) to make clear that Subpart A of Part 563c of the Board's Insurance Regulations set forth the applicable accounting requirements for offering circulars, which includes, to the extent required by Part 563c, applicable provisions of the Commission's Regulation S–X.

Other Technical Amendments

By its action today, the Board is also taking the opportunity to make other amendments which are generally technical in nature. The Board is deleting the definitions of "Beneficial Owner" (§ 563g.1(a)(3), 50 FR 53284, 53289 (December 31, 1985)) as unnecessary at this time; and is also making non-substantive corrections of punctuation and form to §§ 563g.1(a) (6), (7), (9); 563g.1(c); 563g.2(b) (1), (2); 563g.3(g); 563g.4(b)(1); 563g.7(a) (7), (8); 563g.10; 563g.11; 563g.12(a), (b) (1), (2); 563g.17 and 563g.18(a), 563g.20; 563.21; 50 FR 53284, 53289, 53291–93 (December 31, 1985).

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the technical and clarifying nature of the amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date. Furthermore, the Board is making the amendments effective as of March 1, 1986, in order to secure for insured institutions the full benefit of the exemption granted and the restrictions relieved.

List of Subjects in 12 CFR Part 563g

Savings and loan associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby revises Part 563g, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth and republished in its entirety below.

PART 563g—SECURITIES OFFERINGS

Sec.

563g.1 Definitions.
563g.2 Offering circular requirement.
563g.3 Exemptions.
563g.4 Non-public offerings.
563g.5 Filing and signature requirements.
563g.6 Effective date.
563g.7 Form, content, and accounting.
563g.8 Use of the offering circular.
563g.9 Escrow requirement.
563g.10 Unsafe or unsound practices.
563g.11 Withdrawal or abandonment.
563g.12 Securities sale report.
563g.13 Public disclosure and confidential treatment.
563g.14 Waiver.
563g.15 Requests for interpretive advice or waiver.
563g.16 Delayed or continous offering and sale of securities.
563g.17 Direct sales of securities at an office.
563g.18 Current and periodic reports.
563g.19 Approval of the security.
563g.20 Form for securities sale report.
563g.21 Filing of copies of offering circulars in certain exempt offerings.
563g.22 Delegation of authority.

Authority: Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended 12 U.S.C. 1725, 1726 and 1730; sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, 16, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, 896, and 901, as amended, 15 U.S.C. 78c(b), 78*l*, m, n, p, and w; the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.;* Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563g.1 Definitions.

(a) For purposes of this Part, the following definitions apply:

(1) "Accredited investor" means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any insured institution.

(2) "Commission" means the Securities and Exchange Commission

(3) "Dividend or interest reinvestment plan" means a plan which is offered solely to existing security holders of the insured institution which allows such persons to reinvest dividends or interest paid to them on securities issued by the insured institution, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) "Employee benefit plan" means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for offices, directors or employees.

(5) "Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) "Filing date" means the date on which a document is actually received during business hours, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, by the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, DC 20552. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such document may be filed on the next business day.

(7) "Insured institution" means the same as in § 561.1 of this Subchapter, and includes a federally-chartered insured institution in organization under this Chapter, and a state-chartered institution in organization which is granted conditional approval of insurance of accounts by the Corporation. In addition, for purposes of § 563g.2 of this part, "insured institution" includes any underwriter participating in the distribution of securities of an insured institution.

(8) "Issuer" means an insured institution which issues or proposes to issue any security.

(9) "Offer;" "Sale" or "sell." For purposes of this Part, the term "offer," "offer to sell," or "offer for sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(10) "Person" means the same as in § 563b.2(a)(24) of this subchapter, and includes an insured institution.

(11) "Purchase" and "buy" means the same as in § 563b.2(a)(26) of this Subchapter.

(12) "Securities Act" means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(13) "Security" means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization or subscription, transferable share, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing, except that a "security" shall not include an account insured, in whole or in part, by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. Nothing in this part shall affect the applicability of § 563.3–10 of this Subchapter.

(14) "Underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission and such term shall also not include any person who has continually held the securities being transferred for a period of two (2) consecutive years provided that the securities sold in any one (1) transaction shall be less than ten percent (10%) of the issued and oustanding securities of the same class. The following shall apply for the

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purpose of determining the period securities have been held:

(i) *Stock Dividends, Splits and Recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions.* If the securities sold were acquired from the issuer for a consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for conversion.

(iii) *Contingent Issuance of Securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged Securities.* Securities which are bona fide pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of Securities.* Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Securities acquired from the settler of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the settler.

(vii) *Estates.* Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

(viii) *Exchange Transactions.* A person receiving securities in a transaction involving an exchange of the securities of one issuer for securities of another issuer shall be deemed to have acquired the securities received when such person acquired the securities exchanged.

(*b*) A term not defined in this Part but defined in another part of this Subchapter, when used in this Part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in the rules, regulations, or forms of the Commission referred to in this Part, the term "Commission" shall be deemed to refer to the Corporation or the Board, the term "registrant" shall be deemed to refer to an issuer defined in this Part, and the term "registration statement" or "prospectus" shall be deemed to refer to an offering circular filed under this Part, unless the context otherwise requires.

§ 563g.2 Offering circular requirement.

(a) *General.* No insured institution shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this Part and which has been filed and declared effective pursuant to this Part; or

(2) An exemption is available under this part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this section:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act;

(2) Subsequent to filing an offering circular, any notice circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act; and

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the Corporation.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this part;

(2) The preliminary offering circular includes the information required by this part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Corporation is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

§ 563g.3 Exemptions.

The offering circular requirement of § 563g.2 of this part shall not apply to an issuer's offer or sale of securities:

(a) Commencing prior to March 1, 1986: *Provided,* that (1) the offering does not continue for more than 60 days after March 1, 1986, and (2) the issuer is not a *de novo* federally-chartered institution in organization;

(b) Complying with the requirements for retail repurchase agreements of § 563.8–4 of this subchapter, except where the issuer has a net-worth deficiency under that section;

(c) Exempt from registration under either section 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings and loan associations), and section 3(a)(11) (for intrastate offerings) of the Securities Act;

(d) In a conversion from the mutual to the stock form of organization pursuant to Part 563b of this subchapter, except for a supervisory conversion undertaken pursuant to Subpart C of Part 563b of this subchapter;

(e) In a non-public offering which satisfies the requirements of § 563g.4 of this part;

(f) That are debt securities issued in denominations of $100,000 or more, which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;

(g) Distributed exclusively abroad to foreign nationals: *Provided,* that (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures

that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(h) To its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of the insured institution.

§ 563g.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 563g.3(c) and 563g.3(e) of this part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of this paragraph (b), a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or at trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer, shall file with the Corporation a report describing the results of the sale of securities as required by § 563g.12(b) of this part.

(d) *Limitation on resale.* The issuer shall exercise reasonable car to assure that the purchasers of the securities are not underwriters within the meaning of § 563g.1(a)(14) of this part, which reasonable care shall include, but not be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the Corporation pursuant to § 563g.2 of this part, but instead are being sold in reliance upon the exemption from the offering circular requirement provided for by this section; and

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the Corporation and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of § 563g.1(a)(14) of this part.

§ 563g.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this part shall, unless otherwise indicated, be filed in accordance with the requirements of § 563b.8(e) (1), (3) and (4), (f) through (q), and (s), of this subchapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall inlcude 10 copies of the document to be filed with the Corporation, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Corporate and Securities Division, Office of General Counsel; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the Principal Supervisory Agent.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Corporation, as follows: 22 copies to the Corporate and Securities Division, Office of General Counsel, and three copies to the Principal Supervisory Agent.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Corporation in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the Corporation pursuant to this Part shall include an attached manually signed signature page which authorizes the filing and has been signed by:

(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this Part shall be signed by a person authorized to do so.

(3) At least *one copy* of every document filed pursuant to this Part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State and capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

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§ 563g.6 Effective date.

(a) Except as provided for in paragraph (d) of this section, an offering circular filed by an insured institution shall be deemed to be automatically declared effective by the Corporation on the twentieth day after filing or on such earlier date as the Corporation may determine for good cause shown.

(b) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed.

(c) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment.

(d) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section.

(e) An amendment filed after the effective date of the offering circular shall become effective on such date as the Corporation may determine.

(f) If it appears to the Corporation at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the Federal Home Loan Bank Board, as the operational head of the Corporation, may pursue any remedy it is authorized to pursue under section 407 of the National Housing Act of 1934, as amended, (12 U.S.C. 1730) including, but not limited to, institution of cease-and-desist proceedings.

§ 563g.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this part shall:

(1) Be filed under cover of Form OC, which is under Part 563b of this subchapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR Part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S–1 (17 CFR Part 239) for registration under the Securities Act, if the institution issuing the securities is not in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S–K (17 CFR Part 229) should be furnished, include such information and all of the information required by Item 7 of Form PS, which is under Part 563b of this Subchapter;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in Part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 563g.18 of this Part, include in Part II of Form OC the following undertaking: "The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this Part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed;"

(8) In offerings involving the issuance of options, warrants, subscription rights or conversion rights within the meaning of § 563g.1(a)(9), include in Part II of Form OC an undertaking to provide a copy of the issuer's most recent audited financial statements to persons exercising such options, warrants or rights promptly upon receiving written notification of the exercise thereof;

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for permission to organize for federally-chartered institutions, and a copy of the application for insurance of accounts for state-chartered institutions; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective, an offering circular or amendment shall satisfy the accounting requirements in Subpart A of Part 563c of this subchapter.

§ 563g.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the Corporation shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this part shall not extend the period for which an effective offering circular or amendment may be used under paragraph (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the Corporation.

§ 563g.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the Corporation otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

§ 563g.10 Unsafe or unsound practices.

It shall constitute an unsafe or unsound practice within the meaning of Section 5(d) of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464(d)) and section 407(e) of the National Housing Act of 1934 (12 U.S.C. 1730(e)) for any person, directly or indirectly,

(a) To employ any device, scheme or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of an insured institution. Nothing in this section shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

§ 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any document withdrawn will not be removed from the files of the Corporation, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the Corporation for a period of nine months and has not become effective the Corporation may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this Part or be withdrawn within 30 days after the date of such notice. When a filing is abandoned, the filing will not be removed from the files of the Corporation, but will be marked "Declared abandoned by the FSLIC on (date)."

§ 563g.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after such 30 day period and not later than 30 days after the later of the last sale of securities in an offering pursuant to § 563g.2 of this part or the application of the proceeds therefrom, the issuer shall file with the Corporation a report describing the results of the sale of the securities and the application of the proceeds, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this part and shall also include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to § 563g.4 of this Part, the issuer shall file with the Corporation a report describing the results of the sale of securities, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this part, and shall also include the following:

(1) All of the information required by paragraph (a) of this section; and

(2) A detailed statement of the factual and legal grounds for the exemption claimed.

§ 563g.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Parts 505 and 505a of this chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this Part shall be made as required under Commission Rule 24b–2 (17 CFR 240.24b–2) under the Exchange Act.

§ 563g.14 Waiver.

(a) The Corporation may waive any requirement of this Part, or any required information:

(1) Determined to be unnecessary by the Corporation;

(2) In connection with a transaction approved by the Corporation for supervisory reasons, or

(3) Where a provision of this Part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by an insured institution which seeks to waive compliance with any provision of this Part shall be void, unless approved by the Corporation.

§ 563g.15 Requests for interpretive advice or waiver.

Any requests to the Corporation for interpretive advice or a waiver with respect to any provision of this Part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the Office of General Counsel, Corporate and Securities Division;

(b) The provisions of this Part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made.

§ 563g.17 Direct sales of securities at an office.

Securities of an insured institution or an affiliate may only be offered or sold at an office of an insured institution or an affiliate, if:

(a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(c) Offers and sales are made only by regular, full-time employees; and

(d) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.8–4 of this subchapter.

§ 563g.18 Current and periodic reports.

(a) Each insured institution which files an offering circular which becomes effective pursuant to this Part, after such effective date, shall file with the Corporation periodic and current reports on Forms 8–K, 10–Q and 10–K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the insured institution is registered pursuant to

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section 12 of the Exchange Act (15 U.S.C. 78l). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons.

(b) For purposes of registering securities under sections 12(b) or 12(g) of the Exchange Act, an issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Forms 8–A or 8–B as applicable.

§ 563g.19 Approval of the security.

Any securities of an insured institution which are not exempt under this Part and are offered or sold pursuant to an offering circular which becomes effective under this Part, are deemed to be approved as to form and terms for purposes of § 563.1 of this subchapter.

§ 563g.20 Form for securities sale report.

Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552

[Form G–12]

Securities Sale Report Pursuant to Section 563g.12

FHLBB No.
Issuer's Name:
Address:
If in organization, state the date of certification of insurance of accounts:........
State the title, number, aggregate and per-unit offering price of the securities sold:........
State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees:........
State the aggregate and per-unit dollar amounts of the net proceeds raised:........
Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used:........
State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering:........
For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary):........
For a non-public offering, all offering materials used should be listed:........
Person to Contact:........
Telephone No.:........

This issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report........
Issuer:........
Signature:........
Name:........
Title:........

Instruction: Print the name and title of the signing representative under his signatures. Ten copies of the securities sale report should be filed, including one copy manually signed, as required under 12 CFR 563g.5.

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.18(b)).

§ 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of § 563g.2 by reason of §§ 563g.3(f) or 563g.4 of this part shall be mailed to the Corporation within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Corporation and shall not be deemed to be "filed" with the Corporation pursuant to § 563g.2 of this part. The mailing to the Corporation of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 563g.2 of this part.

§ 563g.22 Delegation of authority.

The General Counsel, Deputy General Counsel, Associate General Counsel for Corporate and Securities or their designee, is authorized to act on, or exercise the Corporation's authority pursuant to, this Part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,
Secretary.

[FR Doc. 86–5169 Filed 3–7–86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–ANE–27; Amdt. 39–5240]

Airworthiness Directives; McCauley Accessory Division, Models 2A34C66, E2A34C73, and 2A36C23 Constant Speed Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires a one-time inspection of certain McCauley Model 2A34C66 and E2A34C73 propellers. The amendment is needed to make the AD applicable to the Model 2A36C23 propeller because the FAA has determined that these propellers are susceptible to blade retention failure to which the AD is directed.

DATES: Effective March 12, 1986.

Compliance required as prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective on March 12, 1986.

ADDRESSES: The applicable service bulletin may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377.

A copy of the service bulletin is contained in the Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 83–ANE–27, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alpiser, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone 312–694–7130.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–4768, 48 FR 54588, AD 83–24–11, which currently requires a one-time inspection of the retention threads on the blades and ferrules for scratches and sharp edges, and repair as necessary, on certain McCauley 2A34C66 and E2A34C73 model propellers. After issuing Amendment 39–4768, the FAA has determined, through service experience, that the Model 2A36C23 propellers are susceptible to the same blade retention failure to which the AD is directed. Therefore, the FAA is amending Amendment 39–4768 by requiring a one-time inspection of the retention threads on the blades and ferrules for scratches and sharp edges, and repair as necessary, on certain McCauley Model 2A36C23 propellers.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending Amendment 39–4768 (48 FR 54588) AD 83–24–11, as follows:

(a) By revising the applicability statement to read as follows:

Applies to certain McCauley Model 2A34C66/90AT–2, E2A34C73/90AT–8, and 2A36C23/84B–0 constant speed propellers with specific serial numbers listed in McCauley Service Bulletin No. 151A dated December 6, 1985, or FAA approved equivalent, installed on, but not limited to, Cessna 180, 180A through 180J, Cessna 188, 188A, and 188B, Cessna P206, P206A through P206E, Cessna 210E through 210L, and Beech 33, 35, and 36 series aircraft certificated in any category.

(b) By revising paragraphs (1), (2), and (4) of the amendment by changing the McCauley Service Bulletin citation from "No. 151 dated September 15, 1983," to "No. 151A dated December 6, 1985, or FAA approved equivalent".

McCauley Service Bulletin No. 151A dated December 6, 1985, identified and described in this directive, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, P.O. Box 430, Vandalia, Ohio 45377. This document also may be examined at the Office of the Regional Counsel, FAA, Attn: Rules Docket No. 83–ANE–27, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on March 12, 1986.

This amendment amends Amendment 39–4768 (48 FR 54588), AD 83–24–11.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,
Director, New England Region.

[FR Doc. 86–5073 Filed 3–7–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–AWA–8]

Alteration of VOR Federal Airway V–181, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of V–181 located in the vicinity of Yankton, SD. The Yankton very high frequency omni-directional radio range distance measuring equipment (VOR/DME) has been relocated and is currently on the Yankton Airport. The NPRM was originally published in the Federal Register on December 23, 1983, as Airspace Docket 83–AWA–28 (48 FR 56769). However, due to engineering and technical problems associated with the new site location Yankton VOR/DME did not receive a satisfactory flight check for commissioning and acceptance in the National Airspace System (NAS). We have now been advised that Yankton, SD, VOR/DME has successfully passed the required flight check for commissioning into the NAS.

EFFECTIVE DATE: 0901 G.m.t., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On December 23, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V–181 located in the vicinity of Yankton, SD (48 FR 56769). Due to engineering and technical problems associated with the new site location, the Yankton, SD, VOR/DME did not receive a satisfactory flight check for commissioning and acceptance into the NAS, therefore, ASD 83–AWA–23 was cancelled on February 19, 1986 (51 FR 5989). We have been advised that Yankton, SD, VOR/DME has now successfully passed the required flight check for commissioning into the NAS. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for this action being given a new docket number this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of V–181 located in the vicinity of Yankton, SD. Yankton VOR/DME has been relocated on the Yankton Airport from its present position to a position approximately 1,350 feet north. The only airway description change is for V–181W. This action redescribes V–181W to insure adequate divergence from V–181 for air traffic control purposes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

By deleting the words "Sioux Falls, SD, including a W alternate via INT Yankton 016° and Sioux Falls, SD, 230° radials; Watertown, SD," and substituting the words "Sioux Falls, SD, including a W alternate via INT Yankton 015° and Sioux Falls 231° radials; Watertown, SD,"

Issued in Washington, DC, on March 3, 1986.

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-5076 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-10]

Realignment of VOR Federal Airways V–144 and V–45

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns V–144 in the states of Indiana and Ohio and V–45 in the states of Ohio and West Virginia. This action is taken to help relieve traffic congestion, provide a more direct route for airspace users and enhance air traffic control nonradar services.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 14, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V–144 from Ft. Wayne, IN, to Appleton, OH, to alleviate traffic congestion and to provide a more direct route for airspace users and extend V–45 from Charleston, WV, to Henderson, WV, to Appleton, OH (50 FR 47061). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received expressing concern for the effect the extended airway V–45 would have on sport flying in the area. The commenter subsequently concurred after dialog with the FAA and the common conclusion that safety in aviation was the uppermost concern. Also, due to budgetary and workload consideration, flight check action for the proposed V–45 segment between Henderson, WV, and Charleston, WV, cannot be completed in the foreseeable future. Therefore, that segment of the proposed route will not be implemented with this docket. Except for the above, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns V–144 from Ft. Wayne, IN, to Appleton, OH, and extends V–45 from Henderson, WV, to Appleton, OH. This action is taken to help relieve traffic congestion and provide a more direct route for airspace users and enhance air traffic control nonradar services.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–144 [Amended]

By removing the words "Findlay, OH; INT Findlay, 131° and Appleton, OH, 312° radials; Appleton;" and substituting "Appleton, OH;"

V–45 [Amended]

By adding the words "From Henderson, WV; Appleton, OH." after the words "Charleston, WV."

Issued in Washington, DC, on March 3, 1986.

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-5077 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-3]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of the Palm Beach International Airport, West Palm Beach, FL, Airport Radar Service Area (ARSA). In the final rule an error was made in the radius of the cutout for Palm Beach County Park Airport. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Smith, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 86-2712 was published on February 7, 1986, in which an ARSA was designated for Palm Beach International Airport, West Palm Beach, FL. A cutout was provided for Palm Beach County Park Airport delineated by a 1.5-mile radius of the latter and west of Interstate 95. It should have been a 2-mile radius. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86-2712, as published in the **Federal Register** on February 7, 1986 (51 FR 4872) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Palm Beach International Airport, FL [Amended]

By removing the words "within a 1½-mile radius" and by substituting the words "within a 2-mile radius"

Issued in Washington, DC, on March 3, 1986.

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-5075 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-ANM-5]

Alteration of VOR Federal Airways and Jet Routes; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of all airways and jet routes that have Gunnison, CO, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) in their route/airway alignments. The Gunnison VORTAC has been renamed Blue Mesa and these actions make editorial changes to those descriptions. These actions make no changes to controlled airspace.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations reflect the change in name of the Gunnison, CO, VORTAC to Blue Mesa, CO, VORTAC, which requires changes to all airway and jet route descriptions that have Gunnison, CO, in their route alignment. Since these actions are merely editorial in nature, and involve no changes to the current controlled airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Section 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

Adoption of the Amendments

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–26, V–95, V–244, V–421 and V–484 [Amended]

By removing the word "Gunnison" and substituting the words "Blue Mesa".

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J–10, J–26, J–128, J–146, J–197 and J–206 [Amended]

By removing the word "Gunnison" and substituting the words "Blue Mesa".

Issued in Washington, DC, on March 3, 1986

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-5074 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Regulation 85–17]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area

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within 100 yards (91.5 meters) of the cruiser pier (berths J–K) and within 300 yards (275 meters) of the carrier pier (quay wall, berths L–P). This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island.

EFFECTIVE DATE: This regulation is effective on April 9, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: On January 3, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 224).

Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received on the notice of proposed rule making, and no changes have been made in the regulation as proposed.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1105 is added, to read as follows:

§ 165.1105 Security Zone: San Diego Bay, California.

(a) *Location.* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 yards (91.5 meters) of the Cruiser (J–K) Pier and within 300 yards (275 meters) of the Carrier (L–P) Pier, described as follows:

From a point on the shoreline of Naval Air Station North Island, on North Island, Coronado, California, at latitude 32°42'47.5" N., longitude 117°11'25.0" W. (Point A), for a place of beginning; thence northeasterly to latitude 32°42'52.0" N., longitude 117°11'21.5" W. (Point B); thence southeasterly to latitude 32°42'44.5" N., longitude 117°11'11.0" W. (Point C); thence southerly to latitude 32°42'31.0" N., longitude 117°11'16.4" W. (Point D); thence southeasterly to latitude 32°42'21.4" N., longitude 117°10'44.5" W. (Point E); thence southerly to latitude 32°42'12.6" N., longitude 117°10'47.8" W. (Point F); thence generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning (Point A).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: February 24, 1986.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–5154 Filed 3–7–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Regulation 85–19]

Security Zone Regulations: San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Submarine Base, San Diego, California. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Commander, Naval Base San Diego, the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast, or the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on April 9, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: On January 3, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 225). Interested persons were requested to submit comments, and one comment was received.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

One commenter from the Defense Mapping Agency stated that the area of the security zone as proposed overlaps two existing restricted areas established under 33 U.S.C. 1, and that this could create confusion and conflict in the enforcement of these regulations. The commenter suggested that the boundary of the security zone be redrawn to eliminate these conflicts. The Coast Guard concurs with this comment and the boundary of the security zone has been changed slightly to eliminate conflict with the existing restricted areas. The eastern boundary has been moved westward approximately 200 feet (61 meters), and the northern boundary

has been moved southward approximately 250 feet (77 meters). This change slightly reduces the area of the security zone, and is not a significant change.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1104 is added to read as follows:

§ 165.1104 Security Zone: San Diego Bay, California.

(a) *Location.* The following area is a security zone: The water area adjacent to Naval Submarine Base, San Diego, California, described as follows:

Commencing at a point on the shoreline of Ballast Point, at latitude 32°41'11.2" N., longitude 117°13'57.0" W. (Point A), for a place of beginning; thence northerly (approximately 352 °T) to latitude 32°41'31.8" N., longitude 117°14'00.6" W (Point B); thence westerly (approximately 243 °T) to latitude 32°41'24.5" N., longitude 117°14'18.7" W. (Point C); thence generally southeasterly along the shoreline of the Naval Submarine Base to the place of beginning (Point A).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast. Section 165.33 also contains other general requirements.

Dated: February 24, 1986.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–5155 Filed 3–7–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Regulation 85–20]

Security Zone Regulations: San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Ocean Systems Center and Naval Supply Center, San Diego, California. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, the the Commander, Naval Base, San Diego, the Commander, Naval Ocean Systems Center, San Diego, or the Commanding Officer, Naval Supply Center, San Diego.

EFFECTIVE DATE: This regulation is effective on April 9. 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: On January 3, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 226). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received on the notice of proposed rule making, and no changes have been made in the regulation as proposed.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1103 is added to read as follows:

§ 165.1103 Security Zone: San Diego Bay, California.

(a) *Location.* The following area is a security zone: The water area adjacent to the Naval Ocean Systems Center, San Diego, California, and the Naval Supply Center, San Diego, California, described as follows:

Commencing at a point on the shoreline of Point Loma, at latitude 32°41'57.8" N, longitude 117°14'17.5" W (Point A), for a place of beginning; thence easterly to latitude 32°41'56.0" N, longitude 117°14'09.9" W (Point B); thence northeasterly to latitude 32°42'03.8" N, longitude 117°14'04.7" W (Point C); thence northeasterly to latitude 32°42'10.2" N, longitude 117°14'00.6" W (Point D); thence northwesterly to latitude

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32°42′14.6″ N, longitude 117°14′02.1″ W (Point E); thence northwesterly to latitude 32°42′22.7″ N, longitude 117°14′05.8″ W (Point F); thence northwesterly to latitude 32°42′28.3″ N, longitude 117°14′09.4″ W (Point G); thence westerly to latitude 32°42′28.3″ N, longitude 117°14′09.6″ W (Point H); thence generally southerly along the shoreline of Point Loma to the place of beginning (Point A).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base, San Diego, the Commander, Naval Ocean Systems Center, San Diego, or the Commanding Officer, Naval Supply Center, San Diego. Section 165.33 also contains other general requirements.

Dated: February 24, 1986.

E. A. Harmes,

Commander, U.S. Coast Guard Captain of the Port, San Diego, California.

[FR Doc. 86-5156 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Regulation 85-21]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Station, San Diego, California. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

EFFECTIVE DATE: This regulation is effective on April 9, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATON: On January 3, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 227).

Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received on the notice of proposed rule making, and no changes have been made in the regulation as proposed.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1102 is added, to read as follows:

§ 165.1102 Security Zone: San Diego Bay, California.

(a) *Location.* The following area is a security zone: The water area within Naval Station, San Diego, California, described as follows:

Commencing at a point at the mouth of Chollas Creek, at latitude 32°41′12.5″ N, longitude 117°07′0.57.0″ W, (Point A), for a place of beginning; thence southwesterly to a point on the U.S. Pierhead Line 100 yards (92 meters) northwest of the head of Pier 1, at latitude 32°41′05.8″ N, longitude 117°08′05.8″ W, (Point B); thence southeasterly along the U.S. Pierhead Line to the south side of Pier 13 (Point C); thence northeasterly along the south side of Pier 13 to the shoreline of the Naval Station (Point D); thence generally northwesterly along the shoreline of the Naval Station to the place of beginning (Point A).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego. Section 165.33 also contains other general requirements.

Dated: February 24, 1986.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86-5157 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Regulation 85-23]

Security Zone Regulations; Pacific Ocean off Mission Beach, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around the Naval Ocean Systems Center (NOSC) Research Tower located approximately 0.9 mile off Mission Beach, San Diego, California. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Naval Ocean Systems Center, San Diego.

EFFECTIVE DATE: This regulation is effective on April 9, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: On January 3, 1986, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (51 FR 228).

Interested persons were requested to submit comments and two comments were received.

Drafting Information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

One commenter, a marine biologist with San Diego State University, stated that these regulations would restrict access to the NOSC Tower for research on marine species that are unique to that environment. He stated that they have enjoyed unrestricted access to the tower for their research, and that restricting that access would significantly impact on their scientific research. The commenter stated that he has not routinely sought or obtained NOSC permission to collect specimens at that location. In the past, the Captain of the Port, San Diego, has been requested by NOSC to assist in removing unauthorized persons from the area around the tower, because of sensitive or dangerous projects in place there. A key provision of these regulations is the ability of the Captain of the Port and certain Naval commanders to allow access to the area of the security zone under certain conditions. Access to the tower can be permitted if the necessary permission has been obtained. These regulations will enhance safety of the public by providing for contact between prospective visitors to the tower and the tower operators to ensure there is no danger to visitors during the planned visit. No change has been made to the regulations as a result of this comment.

Another commenter from the Defense Mapping Agency pointed out that the latitude of the research tower was described in error as 323°46.4′ N. It should read 32°46.4′ N, and has been corrected accordingly.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1101 is added to read as follows:

§ 165.1101 Security Zone: Pacific Ocean off Mission Beach, San Diego, California.

(a) *Location.* The following area is a security zone: The water area within 100 yards (92 meters) of the Naval Ocean Systems Center Research Tower (Light List Number 6) located approximately 0.9 mile off Mission Beach, San Diego, California at latitude 32°46.4′ N, longitude 117°16.1′ W.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base, San Diego, or the Commander, Naval Ocean Systems Center, San Diego. Section 165.33 also contains other general requirements.

Dated: February 24, 1986.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86-5153 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2981-2]

National Emission Standards for Hazardous Air Pollutants: Asbestos Standard; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule for amendments to the asbestos standard that was published April 5, 1984 (49 FR 13658). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy, Standards Development Branch, ESED (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

Dated: March 3, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

PART 61—[AMENDED]

40 CFR Part 61 is amended as follows:

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. In § 61.152 of Subpart M, the introductory text is corrected to read as follows:

§ 61.152 Standard for waste disposal for manufacturing, demolition, renovation, spraying, and fabricating operations.

Each owner or operator of any source covered under any of the provisions of §§ 61.144, 61.147, 61.148, and 61.149 shall:

* * * * *

§ 61.154 [Corrected]

3. In section 61.154 the introductory text of paragraph (a) is corrected to read as follows:

(a) The owner or operator who elects to use air cleaning, as permitted by §§ 61.142, 61.144(b)(2), 61.147(c)(2), 61.147(d)(2), 61.148(b)(2), 61.149(b)(2), 61.151(b), 61.151(c)(1)(ii), 61.152(b)(1)(ii), and 61.152(b)(2)(ii) shall:

* * * * *

[FR Doc. 86-5162 Filed 3-7-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

Qualification and Disqualification of Drivers; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule concerning disqualification of drivers for criminal offenses that appeared at page 44215 in the Federal

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Register on Monday, November 5, 1984 (49 FR 44215). The action is necessary to replace a paragraph that was inadvertently omitted in the rule.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755–1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday except for legal holidays.

The FHWA amends 49 CFR Part 391 as follows:

PART 391—[AMENDED]

1. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48 and 301.60.

2. In 391.15, paragraph (c)(3)(ii) is returned to its rightful place and reads as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(3) * * *

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction of forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 391

Highways and roads, Motor carriers, Motor vehicles, Qualification of drivers.

Issued on February 28, 1986.

Anthony J. McMahon,

Chief Counsel, Federal Highway Administration.

[FR Doc. 86–5100 Filed 3–7–86; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register

Vol. 51, No. 46

Monday, March 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 982 and 999

Filberts/Hazelnuts Grown in Oregon and Washington; Filbert Imports; Grade Requirements for Domestic and Imported Shelled Filberts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: The proposed rules would amend the grade requirements under Marketing Order No. 982 for domestic shelled filberts, by reducing from two percent to one percent the tolerance for mold, insect injury, rancidity, or decay. The proposal would make the same changes in the grade requirements for imported shelled filberts under § 999.400. The proposed amendments were developed by the Filbert Marketing Board and submitted to the Department for evaluation and approval. Public comments on the Board's proposal, and related alternatives thereto, are invited.

DATE: Comments due April 9, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC, 20250, (202) 447–5053.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

This rule proposes amendment of the grade requirements for domestic shelled filberts under Marketing Order No. 982 and grade requirements for imported shelled filberts under § 999.400.

It is estimated that approximately 14 handlers and 22 importers of filberts/hazelnuts will be subject to regulation under the marketing order for filberts/hazelnuts grown in Oregon and Washington during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities if present at all is not significant.

Notice is hereby given of a proposal to amend Subpart—Grade and Size Regulation (7 CFR 982.101), by amending § 982.101, Exhibit A. This subpart is issued under the marketing agreement, as amended, and Order No. 982, as amended (7 CFR 982), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are collectively referred to in this document as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act".

Notice also is given of a proposal to amend the grade requirements for imported shelled filberts in § 999.400; Exhibit A. That section is issued pursuant to section 8e (7 U.S.C. 608e-1) of the Act. Section 8e provides, in part, that whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of the Act contains any terms and conditions regulating the grade, size, quality, or maturity of filberts produced in the United States the importation of filberts into the United States shall be prohibited unless the commodity complies with the grade, size, quality, and maturity provisions of the order or comparable restrictions promulgated under section 8e.

The current requirements for domestic shelled filberts under the order and imported shelled filberts under the import regulation were published in the **Federal Register** March 24, 1982 (47 FR 12609; 13504). These requirements include a tolerance of two percent for mold, rancidity, insect injury, or decay, but not more than one percent for mold, rancidity, or insect injury. They became effective May 24, 1982, and were scheduled to continue in effect until July 31, 1983. During this time, interested parties were given an opportunity to review and evaluate the effects of the standards on quality improvement, trade, and consumption, and to determine whether a further reduction of the tolerance levels was justified. Prior to May 24, 1982, the requirements for both imported and domestic shelled filberts allowed a five percent tolerance for serious defects including decay, but not more than one percent for mold, rancidity, or insect injury.

When it became apparent that the review and evaluation could not be completed by July 31, 1983, this date was suspended (48 FR 34014) to keep the standards from reverting to those standards in effect prior to May 24, 1982, which would have caused unnecessary confusion and disruption in the marketplace for both domestic and imported shelled filberts. It has not been proposed by the domestic filbert industry that the current tolerances for domestic and imported shelled filberts be reduced.

With respect to the standards for domestic shelled filberts, the Filbert/Hazelnut Marketing Board, which works with the Department in administering the filbert/hazelnut marketing program, recommended tightening the two percent tolerance in those standards for mold, insect injury, rancidity, or decay to one and one-half percent for one year. It

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further proposed that one year after this tolerance becomes effective, the total tolerance for these four defects would be reduced automatically to one percent.

The Board indicated that domestic packers currently pack at better than the one percent overall defect level. The domestic industry believes that if the less restrictive standards continue in effect, some handlers in the industry will begin packing at the higher tolerance level to decrease processing costs.

The Board states that if that occurred, the high quality image associated with the domestic shelled filberts could suffer which could have an adverse effect on the domestic consumption of shelled filberts. The Board indicated that some brokers, confectionery manufacturers, and other potential users have already expressed concern about inconsistent filbert quality and have therefore been reluctant to develop new bakery and confectionery products containing shelled filberts.

Pursuant to section 8e, the same change in defect tolerances is proposed to be applied to filberts offered for importation. However, the proposed change in the import regulation requirement has been met by serious objections from filbert importers and users of imported filberts. Importers have expressed concern that any further reduction of the tolerance, especially to the one percent level, would have a severe adverse effect on their ability to import shelled filberts. They state that while imported shelled filberts have generally been able to meet the tolerance level in effect since May 1982, a large quantity of the imported filberts would have failed to meet import requirements if the proposed reduced tolerances were in place. A survey of imports indicates that 15 percent of the lots which passed the current requirements would have failed at the one and one-half percent tolerance level and 34 percent would have failed at the one percent tolerance level during the period August 1983 through November 1985. For these reasons, some importers have proposed that the current two percent defect tolerance be established as the permanent standard for both domestic and imported filberts. On the other hand, the major user of imported filberts processed into filbert paste has suggested the establishment of an industrial standard for filberts that would raise the tolerance for mold, insect injury, rancidity, or decay to three percent but not more than one percent for mold, insect injury, or rancidity.

Most of the imported shelled filberts are solar dried and stored in non-refrigerated facilities as opposed to domestically produced filberts which are mechanically dried and held in refreigerated storage.

Because of the divergent positions that exist on this issue, namely (1) the domestic industry represented by the Board which proposed to reduce the defect tolerance to one percent, (2) the importers which proposed to retain the current two percent defect tolerance, and (3) the major user of imported filberts which proposed to establish an industrial grade with a three percent defect tolerance, the Department is not only interested in receiving comments on the proposed rule, but on all possible alternatives to the proposal set forth in this notice as well. For instance, one alternative that has not been specifically suggested but would address the different positions expressed by the domestic filbert industry and the importers would be to establish a tolerance for defects applicable to both domestic and imported shelled filberts at not more than one and one-half percent for mold, rancidity, decay, or insect injury, with no more than one percent for mold, rancidity, or insect injury. Adoption of such a compromise tolerance level would assure that the domestic industry could continue to maintain a supply of filberts that meet the high quality standards it has achieved, would allow for a supply of imported shelled filberts as necessary to meet the needs of importers and would give the Department, the Board, and the importers time to evaluate the effects of the reduced tolerances before consideration of any further reduction in tolerance levels is considered. Of course, other alternatives may exist that would likewise accommodate both points of view, and the Department reiterates that comments on such alternatives would likewise be welcomed.

List of Subjects

7 CFR Part 982

Marketing agreements and orders, Filberts, Hazelnuts, Oregon, Washington.

7 CFR Part 999

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, Filberts.

1. The authority citation for 7 CFR Parts 982 and 999 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

Therefore, §§ 982.101 and 999.400, for domestic and imported filberts, respectively, are proposed to be amended as follows:

PART 982—FILBERTS GROWN IN OREGON AND WASHINGTON

1. The tolerances in subparagraph (2) of Exhibit A of § 982.101 of Subpart—Grade and Size Regulation are revised to read as follows:

§ 982.101 Grade requirements for shelled filberts.

* * * * *

Tolerances

* * * * *

(2) *For Defects:* Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: One and one-half percent for mold, rancidity, decay, or insect injury, with no more than one percent for mold, rancidity, or insect injury: *Provided,* That there shall be no more than one percent for mold, rancidity, decay, or insect injury beginning one year after the date such one and one-half percent tolerance becomes effective.

* * * * *

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

2. The tolerances in subparagraph (2) of Exhibit A of § 999.400 are revised to read as follows:

§ 999.400 Regulation governing importation of filberts.

* * * * *

Tolerances

(2) *For Defects:* Five percent for kernels or portions of kernels which are below the requirements of this grade, including not than the following: One and one-half percent for mold, rancidity, decay, or insect injury, with no more than one percent for mold, rancidity, or insect injury; *Provided,* That there shall be no more than one percent for mold, rancidity, decay, or insect injury beginning one year after the date such one and one-half percent tolerance becomes effective.

* * * * *

Dated: March 5, 1986.

Thomas R. Clark,

Deputy Director, Fruit and and Vegetable Division.

[FR Doc. 86–5177 Filed 3–7–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 85N–0373]

New Animal Drugs; Proposed Amendment

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the animal drug regulations by consolidating the exemptions from certification requirements for certain antibiotic drugs. The proposal would revoke the regulation providing for exemption from certification for antibiotic drugs for treating fish disease and would amend another regulation to cover the products that are subject to the regulation to be revoked.

DATE: Comments by April 9, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Pugliese, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4500.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act), requires that antibiotic drugs for human use and certain antibiotics for animal use (i.e., antibiotic drugs composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivative thereof) be batch certified before being marketed unless FDA determines that certification is not necessary. When FDA finds that certification is not necessary, it is required to publish a regulation exempting the drug or class of drugs from certification. A prerequisite for exempting an antibiotic from the certification requirements is that the antibiotic meet the premarket approval requirements for new drugs or for new animal drugs. (See sections 507 and 512(n) of the act (21 U.S.C. 357, 360b(n).)

FDA determined that certification was not necessary for certain classes of antibiotic drugs for treating fish diseases if the fish so treated are not intended for human consumption. FDA exempted such products from the certification requirements of the act in § 510.505 *Antibiotic drugs subject to section 512(n) of the act for fish diseases* (originally § 146.72 *Antibiotics for fish diseases;* 17 FR 2359, March 19, 1952). On September 7, 1982, FDA published regulations (47 FR 39155) exempting all classes of antibiotic drugs from the certification requirements of the act. The regulations included new § 510.520 *Exemption from batch certification requirements for antibiotic drugs for animal use subject to section 512(n) of the act* which exempts from certification all antibiotic animal drugs not previously exempted.

FDA has reviewed §§ 510.505 and 510.520 and concludes that they can be consolidated. This change would make the animal drug regulations more concise. The agency is, therefore, proposing to revoke § 510.505 and to amend § 510.520 so that it covers antibiotic drugs for treating fish diseases.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the economic effects of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule does not impose new or different requirements on industry, as it consolidates into one regulation the exemptions from the certification requirements of the Federal Food, Drug, and Cosmetic Act that are currently contained in two regulations. The agency therefore concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Furthermore, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small business entities, as defined in the Regulatory Flexibility Act.

Comments

Interested persons may, on or before April 9, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 510 be amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10.

§ 510.505 [Removed]

2. By removing § 510.505 *Antibiotic drugs subject to section 512(n) of the act for fish diseases.*

§ 510.520 [Amended]

3. In § 510.520 *Exemption from batch certification requirements for antibiotic drugs for animal use subject to section 512(n) of the act,* paragraph (a) is amended by revising the phrase "in §§ 510.505, 510.510, and 510.515" to read "in §§ 510.510 and 510.515."

Dated: February 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–5082 Filed 3–7–86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2981-1]

Approval and Promulgation of State Implementation Plan; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA is proposing approval of the Alaska State Implementation Plan (SIP) revision pertaining to the carbon monoxide (CO) attainment plan for the Anchorage area. The SIP revisions were submitted to EPA by the Alaska Department of Environmental Conservation (ADEC) on September 29, 1982, resubmitted on November 15, 1983, and updated on May 31, 1985. Successful implementation of the plan will result in attainment of the CO standard prior to the statutorily required date of December 31, 1987. The plan relies heavily upon the aggressive implementation of a vehicle inspection and maintenance (I/M) program and check for tampering. When approved, this plan will become a federally enforceable part of the SIP.

EPA is also proposing with this notice to remove all conditions of approval on

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the 1979 Anchorage CO SIP published on December 30, 1980 (45 FR 85744), based upon the original CO SIP revision submitted to EPA on September 29, 1982.

DATE: Comments must be postmarked on or before April 9, 1986.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch, (10A–82–9), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.
Alaska Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99871.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4233, FTS: 399–4233.

SUPPLEMENTARY INFORMATION:

I. Background

The original Anchorage CO SIP was submitted in June 1979 to satisfy the requirements of Part D of the Clean Air Act. At that time an extension of the attainment date was requested. EPA conditionally approved the plan with the understanding that the Municipality of Anchorage (MOA) would (1) expand its 1980 emission inventory to include emissions from off-street parking, and (2) verify that population projections for air and water planning activities are consistent.

On February 3, 1983 (48 FR 5135), EPA proposed to remove the two conditions of approval based upon a SIP revision submitted on September 29, 1982. However, there was a disagreement between the EPA analysis and the Anchorage analysis as to the value of the design concentration and the location of the representative CO monitor as chosen by MOA. A CO design value verification study with saturation monitoring was then required and was completed in Spring, 1983.

Results of this study showed that the monitor at Spenard and Benson was more representative of the CO problem than the monitor at 7th and C Streets. A design value of 18.1 parts per million (ppm) was selected, and revisions of traffic control strategies were made, and submitted to EPA showing attainment in all areas by December 31, 1987.

On the February 3, 1983 (48 FR 5135), EPA also requested that if the results of the cold climate study conducted by EPA and the Alaska Department of Environmental Conservation (ADEC) determines that an inspection/maintenance (I/M) program is effective in cold climates, then Anchorage must make the commitment to implement an I/M program in order to attain the CO standard prior to December 31, 1987.

The cold climate definitely concluded that the I/M program results in significant reduction of CO emission levels in cold temperatures and specifically during cold starts. The program effectiveness is significantly increased when a check or vehicular tampering is incorporated into the program. The Anchorage Assembly adopted the necessary ordinances and legal authority, thus showing their commitment to implement the I/M program in their May 31, 1985, amendment to the CO plan.

II. Plan Review

The 1985 Anchorage CO Plan contains several control measures and elements which were originally proposed for approval as part of the 1982 SIP revision. Those measures and elements are briefly described in the next subsection. For additional information, see the February 3, 1983 **Federal Register** (48 FR 5135). Two new components, I/M and Attainment Demonstration, are discussed in Section B.

A. Original Elements of the SIP

EPA is proposing to approve the following control strategies that were contained in the original 1982 SIP revision. The following is a list of these control measures:

1. Mechanics training;
2. Public transit improvement and expansion;
3. Traffic flow improvements;
4. Carpool program; and
5. Staggered work hours.

The commitment to these measures ensures that the requirements for basic transportation needs are met and that improved mobility will be emphasized. Therefore, EPA is proposing to approve the element pertaining to basic transportation needs.

Additionally, the SIP revision contains procedures to ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 (45 FR 21590) notice on conformity. Procedures for specifically evaluating Department of Transportation plans and programs are included in the SIP. After determining conformity of the plans and programs, all federal aid projects will still be evaluated in accordance with procedures specified in the National Environmental Policy Act. If the analysis indicates that the project will create new violations or exacerbate existing violations, then the project will not be constructed without modifications to the project or plan sufficient to maintain reasonable further progress toward attainment. It should be noted that the most recent EPA emissions factors must be used in these analyses.

Therefore, EPA is also proposing to approve the element of the plan pertaining to conformity of federal actions with the SIP.

B. New Elements of the SIP

1. Attainment Demonstration

Numerous violations of the 8-hour CO standard of 9 ppm have been recorded in the Anchorage area. Based upon an analysis of ambient air quality monitoring data for the latest full three years, the adjusted CO design concentration is 18.1 ppm, which corresponds to a required emission reduction of 50.8 percent in order to meet the standard. To offset the anticipated growth, emissions would have to be reduced by an additional 4.2 percent or a total of 55.0 percent.

A rollback model was used to predict air quality concentrations. The analysis shows that the controls adopted in this plan will more than achieve the 55.0 percent reduction and bring the area into attainment by December 31, 1987. More specifically, transportation control measures such as carpooling, traffic improvements, and transit improvements will reduce emissions 10.7 percent; the federal motor vehicle emission control program, 24.5 percent; and the I/M program, 20.4 percent, for a total of 55.6 percent, slightly more than enough to attain. In order to help ensure attainment of the National Ambient Air Quality Standard by December 31, 1987, local officials also adopted a tampering check as a part of the I/M program. Because cost waiver provisions apply to the required replacement of emission control devices, the actual effectiveness of the tampering check is uncertain.

2. Inspection and Maintenance (I/M) Program

Anchorage began its I/M program on July 1, 1985. Owners of model year 1970 and newer cars and trucks are required to have their vehicles annually inspected for emissions problems, or upon initial registration in the state. The model year of vehicles subject land to the program changes over time because inspections are not required for vehicles that are more than 15 years old. Vehicles determined to have excessive

pollution levels are required to be repaired prior to renewal of registration by the Alaska Division of Motor Vehicles (DMV). A tampering check is also conducted as part of the I/M program. Basically the tampering test includes a visual check for the catalytic converter, fuel restrictor, air pump, PCV valve, hose and wire connections, and a plumbtesmo (lead) test.

Since the program is decentralized, inspections required under the I/M program must be made at a Certified I/M Station. Up to a $50.00 fee may be charged for the inspections, and vehicles which fail the inspection because of defects in their emission control system must be repaired and then retested by a Certified I/M Station. The program incorporates the use of Bar–84 analyzers which are calibrated on a regular basis.

Repairs required under the I/M program may be performed by anyone, including vehicle owners. However, incentives are provided for the repair of vehicles by Certified I/M Mechanics working at Certified I/M Stations. Except for certain Fleet Operator owned vehicles, vehicle owners are guaranteed of either passing the retest or receiving a waiver if they have repairs performed at a Certified I/M Station. A cost waiver is available if repairs exceed $150.00 during the first year. The cost limit will gradually be increased to $500.00 by January 1, 1987. Work done or parts purchased and installed by vehicle owners or at uncertified facilities will not count toward this cost ceiling.

The MOA is responsible for conducting quality assurance tests at the individual stations. Currently there are approximately 100 independent, certified stations. The MOA is also responsible for collecting data and ensuring program effectiveness.

C. Removal of Previous Conditions

As proposed in the February 3, 1983 **Federal Register** (48 FR 5135), EPA is again proposing to remove all conditions of approval published December 30, 1980 (45 FR 85744), dealing with emission inventory omissions, population projection consistency, and a procedure for determining conformity of federal projects with the SIP.

III. Proposed Rulemaking

EPA is proposing to approve the Anchorage CO attainment plan and its attainment date of December 31, 1987. This proposed approval is based upon plan revisions submitted by the ADEC to EPA on September 29, 1982, and May 31, 1985. EPA is also proposing to remove all conditions of approval on the 1979 Anchorage CO SIP published on December 30, 1980 (45 FR 85744).

Interstated parties are invited to comment on all aspects of this proposed approval of the Alaska SIP revision. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by April 9, 1986 will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping.

Dated: September 20, 1985.

Ernesta B. Barnes,
Regional Administrator.

[FR Doc. 86–5111 Filed 3–7–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[AD-FRL-2981-6]

National Emissions Standards for Hazardous Air Pollutants: Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings; Rescheduled Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of new date for public hearing.

SUMMARY: The hearing date, previously announced by EPA to consider a proposed emission standard for radon-222 emissions from licensed uranium mill tailings, has been changed to March 25–26, 1986.

DATES: A public hearing on the proposed rule will be held on March 25–26, 1986, in Denver, Colorado. Interested parties are invited to testify. Requests to participate in the hearing should be make in writing by March 21, 1986. Written statements and comments on the proposed rule may be entered into the record by April 28, 1986.

ADDRESSES: The hearing will be held at the Holiday Inn, 1450 Glenarm Place, Denver, Colorado, from 9:00 a.m. to 5:00 p.m. each day. Requests to participate in the hearing should be made in writing to Richard J. Guimond, Director, Criteria and Standards Division (ANR–460), U.S. Environmental Protection Agency, Washington, DC 20460. All requests should include an outline of the topics to be addressed in the opening statements and the names of the participants. Presentations should be limited to 30 minutes. Please indicate a preferred date for testimony

Written comments should be submitted to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, Washington, DC 20460, Attention: Docket No. A–79–11. The rulemaking docket, containing information used by EPA in developing the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, Chief, Environmental Standards Branch, Criteria and Standards Division (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (703) 557–8977.

SUPPLEMENTARY INFORMATION: The previous date was the result of a Court-ordered schedule (Civil No. C–84–0656 WHO, In the United States District Court for the Northern District of California). The revised date is the result of a tentative agreement between the Sierra Club and EPA to revise the schedule. The revised schedule must still be submitted to and approved by the Court. However, EPA is rescheduling the public hearing and the comment period based on the tentative agreement.

The proposed standard was announced in the **Federal Register** on February 21, 1986 (51 FR 6382), and considers alternative work practices for limiting radon-222 emissions from tailings at licensed uranium mill sites. This action is being taken because EPA has preliminarily concluded that radon-222 emissions from uranium mill tailings cause significnt risks to nearby people and to populations. The proposed rule is intended to reduce these risks to levels that are protective of public health with an ample margin of safety.

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Dated: March 5, 1986.

Charles L. Elkins,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–5160 Filed 3–7–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 261

[SWN-FRL-2961-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments.

SUMMARY: On November 29, 1985, the Agency proposed under Subtitle C of the Resource Conservation and Recovery Act (RCRA) to amend its regulations by listing used oil as a hazardous wase. At the same time, EPA proposed special management standards for used oil that is recycled. During the public hearings on these proposed rules, a number of commenters suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while retaining the proposed special management standards for used oil that is recycled. EPA is making the transcripts of these hearings available for public inspection and requesting comments on this regulatory option. EPA also is requesting public comments on additional data that the Agency has obtained as well as certain other issues that have been raised during the public comment period.

DATE: EPA will accept public comment on this notice until April 9, 1986.

ADDRESSES: Comments on this notice should be addressed to the Docket Clerk (Docket No. 3001/Listing of Used Oil), Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in Room S–212, U.S. Environmental Protection Agency, 401 Street SW., Washington, D.C. from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, call toll-free at (800) 424–9346 or (202) 382–3000. For technical information contact Robert Scarberry, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7735.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1985, the Agency proposed to amend the hazardous waste regulations by listing used oil as a hazardous waste (50 FR 49258). The Agency evaluated this waste against the criteria for listing (§ 261.11(a)(3)) and determined that used oil typically and frequently contains highly toxic contaminants in significant quantities, that these contaminants are mobil and persistent in the environment, and that used oil is generated is large quantities. Thus, these wastes may pose a substantial present or potential threat to human health or the environment if improperly managed. This notice also proposed a regulatory definition of used oil and proposed to exempt certain mixtures containing used oil from the mixture rule. See proposed § 261.3(a)(2)(iv) (F) and (e)(1) at 50 FR 49269, 49270. The effect of this proposal, if promulgated, would be to control used oil that is disposed of (including its generation, transportation, accumulation, storage, treatment, or disposal), by subjecting it to the full hazardous waste regulations under Subtitle C of RCRA. At the same time, used oil that is recycled would be subject to the special management standards for recycled oil that were also proposed on November 29, 1985 (see 50 FR 49212–49258).

II. Notice of Data Availability

A. Listing of Used Oil as a Hazardous Waste

Public hearings were held in Dallas, TX; San Francisco, CA; and Washington, DC on January 8, 10, and 16, respectively, to discuss the used oil rules were proposed on November 29, 1985. The vast majority of speakers urged the Agency *not* to list used oil as a hazardous waste when the oil is recycled. The commenters argued that if used oil were listed as a hazardous waste, it could discourage its recylcing because of concerns associated with the term "hazardous waste." For a number of reasons which are discussed in detail in the hearing transcripts, the commenters argued that by calling used oil which is recycled a hazardous waste, it would lead to increased disposal and dumping of used oil (especially uncontrolled do-it-yourself (DIY) used oil) and, therefore, could lead to increased harm to human health and the environment. In addition, commenters argued that if used oil were listed as hazardous waste, generators, transporters, collectors, processors, and users of the used oil would become subject to Superfund liability which would further discourage the recycling of used oil (i.e., joint and several liability and increased insurance costs). It should be noted, in this regard, that even if used oil were not listed as a hazardous waste, but contained hazardous substances at levels exceeding those normally found in petroleum, the used oil would be (and currrently is) subject to Superfund liability. Therefore, we wonder whether this argument is really valid or whether this is a perception problem. The Agency specifically solicits comment on this point.

The Agency is inviting the public to further comment and provide specific documentation on the issue of whether or not, and to what extent, listing used oil as a hazardous waste when recycled will have a discouraging effect on used oil recycling activities. The Agency is requesting comment on the regulatory option of listing used oil as a hazardous waste only when disposed, but retaining the proposed management standards for used oil that is recycled. We specifically request comments and data on the following points:

1. Will insurance costs increase if recycled used oil is listed as hazardous waste? If so, given that used oil contains hazardous substances and therefore is subject to Superfund liability, what is the incremental cost associated with listing used oil as a hazardous waste?

2. The Agency also solicits information on non-Superfund liabilities. How do generators, transporters, processors, and burners perceive potential liabilities from used oil mismanagement (including on-site and off-site mismanagement)? How would the proposed special management standards change this?

3. If recycled used oil is listed a hazardous waste, to what extent will burners stop using it and use some other fuel? In particular, how much used oil fuel that is used by burners will be sold as specification fuel, and off-specification fuel? What is the price differential between burning used oil (both specification and off-specification fuel) and other fuels? How is the price differential likely to change over the next few years? What other factors (other than cost) will burners consider in deciding whether to accept used oil as a fuel? (The Agency's predictions of burners' response to the proposed rules appears in the Used Oil Regulatory Impact Analysis (RIA), which is available in the public docket at the address cited above.)

4. If recycled used oil is listed as a hazardous waste, what impact will it have on service stations, oil change stations, and retailers who perform oil

changes? If compliance with the special management standards will result in an increase in costs, provide documentation which supports what this increase will be. Are there data to support whether this impact or cost will significantly reduce the number of stations that change used oil? Are there data to indicate what percentage of oil change service operators will become unwilling to accept DIY used oil? (The Agency's evaluation of the proposed rules' impact on non-industrial generators appears in the Used Oil RIA, which is available in the public docket at the address cited above.)

5. Approximately 12 states currently list used oil as a hazardous waste or subject it to special management standards. What impact have these rules had on the recycling of used oil in these states? In particular, has there been a significant change in the quantity of used oil managed in the recycled oil system? How has the recycling of DIY used oil been affected by these rules? Have the used oil regulations in these states affected liabilities and insurance rates? [1]

6. If used oil is not listed as a hazardous waste when recycled, then the proposed special management standards for recycled used oil would be promulgated under authority of Section 3014(a). This approach has a number of implications on which we invite comment. Section 3014(a) does not explicitly provide for delegation of a regulatory program to States under the established 40 CFR Part 271 authorization procedures. Also, EPA's criminal enforcement under Section 3008 (d) and (e) would be limited. In addition, if used oil is not listed as a hazardous waste, there is no delisting mechanism in these proposed management standards that would be available to generators who feel that their wastes do not contain significant levels of toxic constituents and, therefore, should not be subject to the special management standards for recycled used oil.

B. Other Issues Raised During the Public Comment Period

In addition to the general listing issue, several other points were raised during the public comment period on which the Agency requests further comment. These comments can be separated into three major categories: (1) Mixture rule exemptions, (2) halogen testing, and (3) analytical data to support exemptions from the used oil regulations for certain used oils or residues from used oil recycling.

1. Mixture Rule Exemptions

EPA's general policy concerning mixtures has been incorporated into the recycled oil rules. If used oil is listed as a hazardous waste, then a mixture of used oil and other solid waste will be considered a hazardous waste subject to all applicable requirements under Parts 262–265 when it is disposed. See 40 CFR 261.3. The November 29 **Federal Register** notice, however, proposed an amendment to the mixture rule that would exempt from regulatory control (1) industrial wipers [2] that are contaminated with small amounts of used oil and (2) wastewaters that are contaminated with small amounts of used oil, which are subject to regulation under section 402 or 307(b) of the Clean Water Act. During the public comment period, the Agency received requests to exempt from the mixture rule sorptive minerals [3] that are placed on the floors of industrial establishments primarily to clean up spills of used oil resulting from incidental or routine drips, sprays, or seepages. The Agency specifically requests comment as to whether oil-soaked sorbent minerals also should be exempt from regulation. In particular, the Agency requests any technical data to support such exemptions. For examle, what is the basis for exempting these oil-soaked materials from regulations? Do the toxic contaminants become irreversibly bound up in the sorptive minerals? What percentage of the sorptive minerals will the oil comprise? Should there be a quantitative limit (either total amount of used oil cleaned up or a per spill limit) placed on such an exemption? The Agency will consider exempting these sorptive minerals from regulations based on the additional information provided.

2. Test Method for Determining Halogen Level

In the proposed used oil management standards, the Agency proposed to exempt used oil fuel meeting certain specifications from most requirements (see § 266.40(a)(2)(i)). (This specification standard has already been adopted in the final burning and blending rules—Phase I (see 50 FR 49161, November 29, 1985).) Among other things, the specification standard includes a specification for total halogens of 4,000 ppm. In addition, the Agency is proposing to adopt a rebuttable presumption that *any* recycled oil containing an excess of 1,000 ppm total halogen will be presumed to be mixed with a hazardous waste and, thus, the resulting mixture will be a hazardous waste.[4] Several used oil processors and re-refiners have claimed that the test method currently recommended by EPA to test for total halogen (ASTM D808–81) has a number of problems.[5] Therefore, we are today making available for comment other test methods that EPA is evaluating as possible alternate methods. One method is a modification of ASTM Method D808–81 which employs a closed system (bomb) to combust the oil sample. The modified procedure would analyze the combustate for chlorine, bromine, and fluorine anions by ion chromatography to avoid the difficulties encounterd when carrying out gravimetric determinations. Another method, X-ray fluorescence, is suitable for the determination of chlorine in used oils. The sample is placed in an X-ray beam and the intensity of the appropriate fluorescence X-ray is measured with correction to its background.[6]

The Agency further intends to propose additional procedures employing pyrolysis/microcoulometric, flame photometric, and visible spectrophotometric methods upon completion of our evaluation of these procedures. Comments and information are requested on these methods and any others that may be available.

3. New data on the Composition of Used Oil and Used Oil Processing Residues

EPA has obtained certain new information on the composition of certain types of used oil as well as residues which may result from the recycling used oils. These new data are

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[1] The Agency has conducted preliminary discussions with State officials from California, Delaware, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, Oklahoma, South Carolina, Texas, and Vermont to assess the impact from their used oil regulatory programs. Their comments are available for public inspection in the RCRA docket at the address cited above.

[2] The term industrial wipers (as discussed in this regulation) includes shop towels, rags, and disposable wipers.

[3] The term "sorptive minerals" includes absorbent clay or absorbant diatomaceous earth.

[4] EPA has already adopted this presumption in the final Phase I burning rule to determine when hazardous waste has been mixed with used oil fuel (see 50 FR 49170–49178 (November 29, 1985). The presumption can be rebutted if it can be shown that hazardous waste (e.g., spent halogenated solvents) have not been mixed with the used oil.

[5] A method to detect total halogen in new and used petroleum products (bomb method).

[6] The reader should note that this method measures chlorine, not halogen. However, EPA would allow chlorine measurement in lieu of halogen because we are not aware of hazardous bromine or fluorine compounds in used oil. In fact, we only promulgated a halogen limit because we were not aware of methods to measure chlorine only. See 50 FR 49178, November 29, 1985. In the event that the X-ray fluorescence method is approved by EPA, the specification for chlorine would be 1,000 ppm.

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available for public inspection in the RCRA docket at the address listed above.

III. Availability of Documents

Copies of the transcripts for the three public hearings, the summary of discussions with State officials regarding their used oil regulations, documentation for the evaluation of halogen test methods, and additional data on the composition of used oils and used oil processing residues are available for public inspection in the RCRA Docket, Room S-212. In addition, copies of all comments received by the Agency as of February 21, 1986, on the used oil proposals also are available for inspection.

Comments on the issues raised in this notice of data availability must be received by EPA on or before April 9, 1986 to ensure their consideration. It should be noted that we are reopening the comment period for only those issues discussed in this notice. Any comments received on any other issues will be considered as late.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 28, 1986.

J. W. McGraw,

Acting Assistant Administrator Office of Solid Waste and Emergency Response.

[FR Doc. 86-5159 Filed 3-7-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-326-P]

Medicare Program; Clarification of Policy on Adjusting the Hospital-Specific Portion of the Prospective Payment Rate

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify Medicare's policy regarding changes to the hospital-specific portion of the prospective payment rate for inpatient hospital services. We would clarify that exemptions, exceptions, and adjustments to base year costs permitted under the Medicare cost limits and rate-of-increase ceiling authority will affect the hospital-specific portion of the prospective payment rate.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 19, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-326-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.;
or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BERC-326-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Edward Rees (301) 597-6403.

SUPPLEMENTARY INFORMATION:

I. General Background

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list currently contains 471 specific categories.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d) of the Act, we published the following documents in the **Federal Register**.

- On September 1, 1983, we published an interim final rule with comment period (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).
- On January 3, 1984, we published a final rule (49 FR 234) that made changes to the regulations as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections for this document were issued on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for Federal fiscal year 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984 (49 FR 40167).
- On March 29, 1985, we published a final rule (50 FR 12740) redesignating the prospective payment regulations, originally set forth in 42 CFR Part 405 (§§ 405.470 through 405.477), to a new 42 CFR Part 412 (§§ 412.1 through 412.125). That final rule was a technical document, the purpose of which was to make the prospective payment regulations easier to use.
- In order to update the prospective payment rates for Federal fiscal year 1986, we published a proposed rule June 10, 1985 (50 FR 24366) and a final rule on September 3, 1985 (50 FR 35646), for which technical corrections were issued on October 28, 1985 (50 FR 43570). However, section 5 of Pub. L. 99-107, as amended by section 2 of Pub. L. 99-201, postponed implementation of the revised Medicare payment rules through March 14, 1986. (See the February 3, 1986 **Federal Register** notice (51 FR 4166).)

As a result of our experience with the prospective payment system to date, we are now proposing to clarify 42 CFR 412.72 (formerly § 405.474(b)), which describes modifications to base year costs.

II. Current Policy and Proposed Clarification

A. Background

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of a hospital's total prospective payment amount (that is, the "hospital-specific portion") is based on a hospital's historical Medicare costs in a given base year, and a gradually increasing portion of the payment (that is, the "Federal portion") is based on a regional rate per discharge in the first year and a blend of regional and national rates per discharge in the second and third years. Beginning with the fourth year, and continuing thereafter (that is, for hospital cost reporting periods beginning on or after October 1, 1986), Medicare payments for inpatient hospital services will be determined under a national DRG payment methodology.

The hospital-specific portion of the prospective payment rate paid during the transition period is calculated in

accordance with section 1886(d)(1)(A)(i)(I) of the Act for cost reporting periods beginning in Federal fiscal year 1984, and in accordance with section 1886(d)(1)(A)(ii)(I) of the Act for cost reporting periods beginning in Federal fiscal years 1985 and 1986. Under these provisions, the hospital-specific portion of the rate is a specified percentage of the hospital's "target amount" for the cost reporting period, as defined in section 1886(b)(3)(A) of the Act.

The "target amount" is a concept introduced into the Act for purposes of the reimbursement system that preceded the prospective payment system. The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) established limits on the permissible rate of increase of Medicare reimbursement for hospital operating costs during cost reporting periods beginning in fiscal year (FY) 1983 through FY 1985. These limits were defined in terms of a target amount, which, under section 1886(b)(3) of the Act, was in turn defined for each hospital as the allowable operating costs per case incurred by the hospital during the cost reporting period immediately preceding the first cost reporting period subject to the rate-of-increase ceiling (that is, generally, cost reporting periods beginning between October 1, 1981 and September 30, 1982), adjusted by a specified annual update factor. Thus, for example, the target amount for a hospital whose cost reporting period began October 1, 1982, was determined by reference to the hospital's operating costs per case during the year beginning October 1, 1981 (its "base year"). Under section 1886(b)(3) of the Act, the target amount for each succeeding year is determined by applying the specified increase factor to the previous year's target amount. For a further explanation, see our regulations at 42 CFR 405.463, which explain the ceiling on the rate of hospital cost increases.

For most hospitals, the rate-of-increase limitations were in effect for only one year when they were superseded by the prospective payment system. However, in accordance with §§ 405.463(a)(2) and 412.22(b) (formerly § 405.471(b)), the rate-of-increase limits continue to apply to those hospitals that are excluded from the prospective payment system. Because the prospective payment system bases the hospital-specific portion on a percentage of the hospital's "target amount" (determined using its base year costs), each hospital's costs during its base year continue to be relevant under the prospective payment system.

B. Current Policy

Although section 1886(d)(1)(A) of the Act bases the hospital-specific portion of the prospective payment rate on the target amount without any reference to adjustments or modifications of that amount, our implementing regulations at § 412.71(b) (formerly § 405.474(b)) provide for a number of modifications to base year costs that affect the amount of the hospital specific portion of the prospective payment rate. These regulations were issued in accordance with section 1886(d)(5)(C)(iii) of the Act, which authorizes the Secretary to provide by regulation for such exceptions and adjustments to the prospective payment rates as the Secretary deems appropriate.

In determining what changes are appropriately made to base year costs (and hence to the hospital-specific portion of the prospective payment rate), we must be consistent with the statute's reliance on a particular base year as the foundation for determining the amount of the hospital-specific portion of the rate. The hospital-specific portion of the rate was not intended to reflect a hospital's actual current per-case costs, but rather its per-case costs during the designated base year, increased by an annual update factor. The legislative history for Pub. L. 98-21 explains in the House Committee on Ways and Means report that, "the payment amount, like the target amount under present law, is projected from the hospital's cost base. Because the payment can be determined without reference to the hospital's costs in the current year, it can be prospectively determined." (See H.R. Rep. No. 98-25 Part 1, 98th Cong., 1st Sess., 136 (1983).) Similarly, the conference committee report for Pub. L. 98-21 noted that the hospital-specific portion is related to each hospital's own experience in a base cost reporting year. (See H.R. Rep. No. 98-47, 98th Cong., 1st Sess., 181 (1983).)

The statute's use of base year per-case costs rather than more current information is not surprising in light of the limited purpose of the hospital-specific portion of the rate. For hospitals other than sole community providers, the hospital-specific portion of the prospective payment rate exists for transitional purposes only, and is completely eliminated after a hospital has been subject to the prospective payment system for three years. Many hospitals have per-case costs that differ significantly from the Federal rates that will apply when the transition is complete and that form an increasingly large portion of a hospital's payments during the transition period. In light of the potentially poor correlation between a hospital's current costs and the important national (and regional) rates, it is not plausible that Congress intended for the hospital-specific portion of the rate to be finely adjusted to reflect the hospital's current situation. Rather, the hospital-specific portion of the rate was designed simply to cushion, to some degree, the transition to a prospective payment system based on Federal rates. The Senate report on Pub. L. 98-21 states that "the phase-in of national DRG rates over the three-year period is designed to minimize disruption that might otherwise occur because of sudden changes in reimbursement levels." (See S. Rep. No. 98-23, 98th Cong., 1st Sess., 53 (1983).)

Thus, the regulations governing modifications to base year costs authorize only those adjustments that do not undermine the statute's reliance on a particular year of hospital operations as the basis for the amount of the hospital-specific portion of the payment rate. Modifications are limited to those necessary to make the hospital's base year experience comparable to costs that will be paid under the prospective payment system. In other words, the modifications currently authorized in § 412.71(b) of our regulations are made for the purpose of more accurately estimating the costs that would be incurred in the future by a hospital that carried on the same operations that it did in the base year. This approach is consistent with the conference committee managers' statement expressed in the Conference Committee Report on Pub. L. 98-21 that "the managers recognize that, in some cases, the Secretary will have to use estimates to adjust some portions of the hospital's base year experience to make it comparable to inpatient operating costs that will be paid under the prospective system—e.g., FICA taxes that would have been paid if the hospital had been in the Social Security system or the adjustment needed to exclude the nursing differential which is no longer payable." (See H.R. Rep. No. 98-47, noted above, at 181-182.)

C. Proposed Clarification of Current Policy

Since the hospital-specific portion relates to the target amount under the rate-of-increase ceiling, some hospitals have questioned whether changes to inpatient operating costs permitted under §§ 405.460 and 405.463 of our regulations will affect the hospital-specific portion of the rate under the prospective payment system. Because the regulations do not address this

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question specifically, this proposal would clarify our position on this issue.

Our current policy is to revise the hospital-specific portion of the prospective payment rate to take into account exceptions, exemptions and adjustments granted under §§ 405.460 and 405.463 to the extent that they apply to base year costs. Exceptions, exemptions, or adjustments granted for periods subsequent to the base year do not change the hospital-specific portion of the prospective payment rate since neither base year costs nor the target amount itself is altered by such action.

Under current operating procedures, it is the onset of the event that caused the distortion that dictates which period's costs are adjusted. Thus, if a cost distorting event occurs in the base year, operating costs in the base year (for purposes of application of the rate-of-increase ceiling) are adjusted.

Since the target amount is defined as base year operating costs increased by a target percentage, an adjustment due to an event that occurs in the base year would result in an increase in the target amount. Likewise, since section 1886(d)(1)(A) of the Act, which defines the hospital specific portion of the prospective payment rate, references the target amount, the hospital-specific portion of the rate would also be revised. Because at least a portion of the cost for the service that gives rise to the adjustment occurred in the base year, we believe this policy is consistent with the legislative history of Pub. L. 98–21, which states that "during the phase-in period, some portion of the prospective payment rate will be related to each hospital's own experience in a base cost reporting year." (See H.R. Rep. No. 98–47, 98th Cong., 1st Sess., 181 (1983).) This is also consistent with the position, previously discussed in this preamble, that modifications of base year costs be limited not those necessary to make the hospital's base year experience comparable to the inpatient operating costs that will be incurred under the prospective payment system by a hospital that carried on the same operations that it did in the base year.

In granting an exception or adjustment for a cost distorting event that occurs in a period subsequent to the base year, operating costs of that period would be adjusted downward for purposes of comparison to the target amount. In this situation, however, the target amount is not altered, and therefore would not give rise to a change in the hospital-specific portion of the rate. Thus, we believe that neither the statutory language, which references the target amount, nor the committee reports, which reference the hospital's experience in the base year, contemplates that costs arising from a change in operations subsequent to the base year would be recognized in the prospective payment rates.

Moreover, we believe any policy of allowing rate-of-increase adjustments for post-base year experience to affect the hospital-specific portion of the prospective payment rate would create difficult problems. If changes were limited to those resulting in increased hospital reimbursement, there would be an unwarranted upward bias in Medicare expenditures. If, however, HCFA pursued a policy of reducing rate-of-increase target amounts to account for lowered hospital costs, the result might unfairly penalize hospitals throughout the prospective payment transition period for cost-reduction efficiencies introduced in anticipation of the prospective payment system.

Accordingly, for all these reasons, we are proposing to amend § 412.72(a)(3) (formerly § 405.474(b)(3)) of the regulations to make clear that any exemptions, exceptions, or adjustments granted under §§ 405.460 and 405.463 of the regulations for the base year would result in a change in the hospital-specific portion of the prospective payment rate.

In view of the prospective nature of the payment system and the conference committee's expectation that determinations would be made on the basis of the best information available at a time prior to a hospital's entering the system (See H.R. Rep. No. 98–47 Part 1, 98th Cong., 1st Sess., 182 (1983)), we believe that changes to base year costs arising from the granting of an exception, exemption, or adjustment to base year costs should affect the hospital-specific portion of the rate only on a prospective basis. Since the hospital-specific portion of the rate was to be determined by an intermediary in accordance with the regulations, based on its assessment of the best information available for a base period, we do not believe that a subsequent change to the base period costs that occurs as the result of HCFA granting an exception, or adjustment under §§ 405.460 and 405.463 would impugn the validity of the intermediary's efforts to make a good faith assessment of the data available to it. Therefore, a retroactive revision would be inappropriate. However, we believe a prospective revision for subsequent years would be appropriate. Therefore, the proposed regulation specifies that changes to the hospital-specific portion of the rate that result from exemptions, exceptions or adjustments granted under §§ 405.460 and 405.463 would be made on a prospective basis effective with the first day of the hospital's first cost reporting period beginning on or after the date of a favorable determination by HCFA on the hospital's exemption, exception or adjustment request.

We have also considered whether additional regulations should be issued under section 1886(d)(5)(C)(iii) of the Act, the general authority for the prospective payment system exceptions and adjustments, to recognize changes (other than those already permitted in § 412.72 (formerly § 405.474) in a hospital's cost per case after the base period. For the same reasons stated above in connection with statute's and legislative history's dependence upon base year costs, we do not believe that, in general, it would be appropriate to adjust base year costs to reflect changes in a hospital's operations subsequent to the base year.

We have, however, considered it appropriate to recognize certain changes in operations for sole community hospitals. We intend to propose to these adjustments in a separate proposed notice.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to perform and publish a regulatory impact analysis for any major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based ones.

We have determined that this proposed rule does not meet any of the criteria for a major rule. This proposal would clarify our current policy and practice, not change it, and would not affect the level of payments that hospitals receive under existing regulations. Therefore, it would not have an effect that would meet any of the major rule criteria of E.O. 12291. For these reasons, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires us to perform and publish an initial regulatory flexibility analysis for any proposed rule unless the Secretary certifies, in accordance with 5 U.S.C. 605(b), that the

rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities. However, as discussed above with reference to E.O. 12291, this proposed rule would merely clarify our current policy, not change it. We do not expect this proposal to significantly affect hospitals, since they will continue to be paid at the same level as they are paid under existing reguations. Therefore, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed change would not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

IV. Other Required Information

A. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 412

Health Facilities, Medicare.

42 CFR Part 412 would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww).

2. In § 412.72, the introductory language of paragraph (a) is reprinted unchanged for the convenience of the reader; a new paragraph (a)(3)(ii) is added; and current paragraph (a)(3)(ii) is revised and redesignated as paragraph (a)(3)(iii) to read as follows:

§ 412.72 Modification of base-year costs.

(a) *Bases for modification of base-year costs.* Base-year costs as determined under § 412.71(d) may be modified under the following circumstances:

* * * * *

(3) *Recognition of additional costs.* * * *

(ii) The intermediary may adjust base year costs to take into account any exception, exemption, or adjustment to base year costs granted under §§ 405.460 or 405.463 of this chapter. Exceptions, exemptions or adjustments to a hospital's operating costs for a period subsequent to the base year that arise from an event that occurs after the base year may not be used for the purposes of changing the base year costs used in determining the hospital-specific rate.

(iii) The intermediary will recalculate the hospital's base-year costs, incorporating the additional costs recognized as allowable for the hospital's base-year. Adjustments to base-year costs to take into account these additional costs and any exceptions, exemptions, or adjustments permitted under paragraph (a)(3)(ii) of this section—

(A) Will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order, finding, review decision, or granting of the exception, exemption or adjustment.

(B) Will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the revision, order, finding, review decision, or granting of the exception, exemption, or adjustment.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: March 15, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 86–5067 Filed 3–7–86; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 412

[BERC-329-P]

Medicare Program; Payment Adjustments for Sole Community Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change Medicare prospective payment regulations for inpatient hospital services in order to allow an adjustment (if warranted) of the hospital-specific portion of the prospective payment rate for sole community hospitals.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 9, 1986.

ADDRESS: Mail comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-329-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave., SW.,
Washington, DC;
or
Room 132; East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland

In commenting, please refer to file code BERC-329-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Ed Rees, (301) 597-6403.

SUPPLEMENTARY INFORMATION:

I. General Background

Section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services, effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d) of the Act, we published the following documents in the **Federal Register**.

- On September 1, 1983, we published an interim final rule (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).

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- On January 3, 1984, we published a final rule (49 FR 234) that made changes as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections were issued for this document on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for fiscal year 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984 (49 FR 40167).
- On March 29, 1985, we published a final rule (50 FR 12740) to redesignate the prospective payment regulations under a new Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.
- In order to update the prospective payment rates for fiscal year 1986, we published a proposed rule on June 10, 1985 (50 FR 24366) and a final rule on September 3, 1985 (50 FR 35646), for which technical corrections were issued on October 28, 1985 (50 FR 43570). However, section 5 of Pub. L. 99–107 as amended by section 2 of Pub. L. 99–201 postponed implementation of the revised Medicare payment rules through March 14, 1986 (51 FR 4166).

As a result of our experience with the prospective payment system to date, we are proposing in this document, to amend the Medicare rules that provide for special treatment of certain facilities under the prospective payment system, to allow an adjustment of the hospital-specific rate for sole community hospitals. We are also proposing to make other technical conforming changes to the prospective payment regulations.

II. Provisions for Sole Community Hospitals

A. Background

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of sole community hospitals (SCHs) be taken into account under the prospective payment system. The statute specifies a special payment formula for hospitals so classified and further provides for additional payments to SCHs experiencing a significant volume decrease because of extraordinary circumstances beyond their control. This section of the Act defines SCHs as those hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions or absence of other hospitals (as determined by the Secretary), are the sole source of impatient hospital services reasonably available to individuals in a geographic area, who are entitled to benefits under Part A of Medicare. Regulations regarding the special treatment of SCHs under the prospective payment system are set forth in 42 CFR 412.92.

B. Current Policy

As noted above, section 1886(d)(5)(C)(ii) of the Act provides that unlike other short term, acute care hospitals that are paid under the prospective payment system, SCHs are to be paid under a unique payment formula. Generally, under section 1886(d)(1)(A) of the Act, hospitals paid under the prospective payment system progress through a three-year transition period during which a declining portion of their prospective payment rate is based on their historical Medicare costs, and an increasing portion is based on a Federal rate. However, rather than progressing through the transition period to fully national payment rates, SCHs continue to receive payment rates comprised primarily from their individual historical cost base (that is, 75 percent of the hospital-specific rate and 25 percent of the Federal rate) adjusted by an update factor. Therefore, the hospital-specific portion of the prospective payment rate has a unique significance for SCHs, when compared to other hospitals under the prospective payment system in which the hospital-specific portion of the rate rapidly declines in importance during a relatively short transition period.

C. Proposed Changes

In enacting the Social Security Amendments of 1983 (Pub. L. 98–21), Congress clearly acknowledged the unique contribution and vulnerability of SCHs by providing a special payment formula that places a continuing, heavy reliance on the hospital-specific rates calculated from Medicare costs in the base year, generally the 12-month hospital cost reporting period that ended on or after September 30, 1982 and before September 30, 1983. The legislative history of Pub. L. 98–21 expresses Congressional intent that the Secretary provide exceptions and adjustments under the prospective payment system to take into account the special circumstances faced by SCHs. (See Senate Report No. 98–23, 98th Cong., 1st Sess., p. 54 (1983) and House Report No. 98–25 Part I, 98th Cong. 1st Sess., p. 141 (1983)). Congress provided in section 1886(d)(5)(C)(iii) of the Act that, "the Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts as the Secretary deems appropriate." Thus, additional adjustments under the prospective payment system for SCHs are authorized as the Secretary believes appropriate.

Generally, SCHs tend to be small hospitals in rural areas furnishing a limited range of services. However, the payment mechanism for SCHs, relying as it does on historic costs, clearly discourages the addition or expansion of services in a group of hospitals that are most likely to need to respond to changing local circumstances. However, for these hospitals there are no provisions for the recognition of such changes other than additional payments for SCHs experiencing a decline in the volume of discharges due to extraordinary circumstances (available for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986, as described in § 412.92(e)). Consequently, we believe it appropriate to utilize the Secretary's authority under section 1886(d)(5)(C)(iii) of the Act to provide for an additional adjustment for SCHs under certain circumstances. Without such an adjustment, we believe that the current payment mechanism for SCHs would not fully respond to the obvious congressional intent that these unique providers be accorded special recognition.

Because such a large portion of the payment to SCHs is based on the hospital's individual historical cost experience, we believe SCHs should be afford the opportunity to request an adjustment of the hospital-specific portion of the payment rate. Consequently, we are proposing to amend § 412.92 to allow SCHs experiencing certain significant cost distortions to request an adjustment of the hospital-specific portion of their prospective payment rate. The SCHs would be required to submit documentation to their fiscal intermediaries of the circumstances that give rise to the cost distortion, the community need for the additional health care services or change in circumstances that has occurred and its resulting cost impact. Adjustments would not be granted if the cause of the cost distortion is not related to community medical needs. For example, an adjustment would not be authorized for any additional costs arising from entering a management contract or for expansion of beds in a hospital operating at low occupancy levels, regardless of the fact that a certificate of need had been granted for the expansion, because the changes are not required for purposes of the delivery of patient care.

The intermediary would forward, within 90 days of receipt of the necessary information, all submitted documentation, its analysis of the provider's claims, a copy of the overall cost data for the base year and the year in which the the distortion occurs, and its recommendation for acceptance or rejection of the request to our central office for processing. We would determine if an adjustment to the hospital-specific portion is justified based on the overall costs in the year of the cost distortion as compared to the overall base-year costs and, if so, the amount of the adjustment granted. We would notify the intermediary of our decision within 90 days of receiving all the necessary information. Adjustments granted under this provision would be made on a *prospective basis* beginning with the first day of the first cost reporting period after a favorable determination.

Generally, when hospital adds to or expands existing services there may be significant cost distortions arising from the initiation of the services (that is, start-up costs). Additionally, there is likely to be an initial period of abnormally low utilization until the availability of the new services becomes well known in the medical community. This combination of abnormally high costs and minimal utilization is likely to result initially in cost per treatment that does not represent costs that the hospital would incur in future cost reporting periods.

Because the adjustment made to the hospital-specific portion of the prospective payment rate under this proposed provision would carry forward to future cost reporting periods (when utilization should be higher and start-up costs no longer exist), we believe it would be inappropriate to establish an amount to be used for all future cost reporting periods that represents mainly start-up costs and intital low utilization. Similarly, we believe the costs recognized must be subject to a test of reasonableness. Consequently, if we determine that an adjustment is warranted, we would calculate the per discharge adjustment amount recognizing reasonable costs and utilization levels appropriate to the time period involved. At the end of a year from the effective date of the final rule, we would evaluate the adjustment process to assess whether revisions are necessary or appropriate. If changes are warranted, we would propose appropriate changes in the Federal Register.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, or innovation. As of October 1, 1985, 363 hosptials were classified as sole community hospitals. We expect that a small number of these hospitals would meet the criteria for an adjustment based on factors resulting in significant distortions in operating costs. Additionally, we expect that in most cases the amounts of adjustments would be small relative to total payment for all hospitals. Therefore,—

- We do not expect an annual effect on the economy to approach the $100 million threshold.
- The effects on costs or prices for consumers, hospitals and the Medicare program would be small.
- While it is possible that there may be a small effect on employment, for those hospitals that qualify for an adjustment, the effect would not be adverse.

In summary, the provisions of this proposal are not likely to bring about effects that would qualify it as a major rule under section 1(b) of Executive Order 12291. Therefore, an impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires us to prepare and publish a regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals as small entities. However, we expect that a relatively small number of hospitals will apply and qualify for an adjustment under this regulation. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not result in a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Section 412.92(f) of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of these requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Agency address stated earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB New Executive Office Building (Room 3208), Washington, DC 20503, Attn: Desk Officer for HCFA.

IV. Other Required Information

A. Public comment

Because of the large number of comments we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date specified in the "Date" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

We are proposing to amend 42 CFR Part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continue to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395ww).

2. Section 412.72 is amended by adding a new paragraph (a)(6) to read as follows (the introductory language of paragraph (a) is being reprinted without change for the convenience of the reader):

§ 412.72 Modification of base-year costs.

(a) *Base for modification of base-year costs.* Base-year costs as determined under § 412.71(d) may be modified under the following circumstances: * * *

(6) *Adjustments for sole community hospitals.* (i) For sole community hospitals, to take into account factors necessary for delivery of patient care that result in significant cost distortions subsequent to the base year, in accordance with § 412.92(f). Adjustments that are authorized by HCFA under § 412.92(f), or that are based on an administrative decision (§ 405.1871 of this chapter) or judicial review decision (§ 405.1877 of this chapter) that is no longer subject to

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reveiw by a higher reviewing authority, are effective beginning with the first day of the first cost reporting period after a final determination on a sole community hospital's request is made.

(ii) Adjustments granted are effective for one cost reporting period and may be renewed by HCFA, in whole or in part, based upon the submission of such information as HCFA may require. In addition, HCFA may—

(A) Request information from the hospital at any time to determine whether an adjustment previously granted remains appropiate; and

(B) Terminate or revise an adjustment upon 30 days' notice to the hospital whenever HCFA determines that such action is appropriate.

* * * * *

3. Section 412.92 is amended by adding a new paragraph (f) to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(f) *Adjustment of the hospital-specific rate for sole community hospitals*—(1) *General rule.* HCFA may adjust the amount of operating costs considered in establishing the hospital-specific base payment rate for SCHs (as determined under § 412.71) to take into account factors necessary for patient care that would result in a significant distortion in the operating costs of inpatient hospital services. These factors may include, but are not limited to, the addition of needed health care services that were not available in the hospital during its base year.

(2) *Documentation.* To qualify for an adjustment to its hospital-specific rate under this section, an SCH must submit documentation, including cost information as requested by HCFA, to the intermediary demonstrating the—

(i) Occurrence responsible for the cost distoration;

(ii) Necessity of, and justification for, the occurrence; and

(iii) Amount of the distortion that results from the specified event.

(3) *Intermediary recommendation.* The intermediary forwards the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation.

(4) *Determination by HCFA.* HCFA determines, within 90 days of receiving all the necessary information from the intermediary, whether a per discharge payment adjustment amount is justified based on—

(i) The needs of the SCH and of the community;

(ii) The increase in the SCH's operating costs arising from the additional health care service or other change; and

(iii) Reasonable utilization of the services, if the cost distortion is caused by the addition or expansion of services.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: March 15, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 22, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 86-5098 Filed 3-7-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket R-102]

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public hearing.

SUMMARY: On December 23, 1985, the Maritime Administration (MARAD) published a Notice of Proposed Rulemaking (NPRM) on Operating-Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in World-Wide Services. (50 FR 52338) The proposed rule would expedite and simplify the determination of final amounts for all ODS items. The notice provided a period of public comment that expired on February 21, 1986. Based on a request from law firms representing affected subsidized operators, MARAD extended the comment period until March 26, 1986. MARAD has now decided to hold a public hearing, pursuant to an informal request by counsel for three of the subsidized operators.

DATE: The meeting will be held on Tuesday, March 18, 1986, at 10:00 a.m.

ADDRESS: Room 8442, Nassif Building, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590 Tel. (202) 382-6036. Persons desiring to particiapte in this hearing should notify the contact person by March 13, 1986. Prepared statements and comments may be submitted by persons unable to be at the hearing. MARAD should receive these submissions by March 13, 1986, to facilitate their reproduction and availabity at the hearing.

SUPPLEMENTARY INFORMATION: MARAD is responsible for administering provisions in Title VI of the Merchant Marine Act 1936 (46 U.S.C. 1173, 1176), concerning the determination of ODS rates and the payment of ODS. The Act is specific in prescribing the method for determining ODS wage rates, but provides no guidance for the determination of other subsidizable expenses of the subsidized ship operator, namely, maintenance and repair (M&R), hull and machinery premiums (H&M) and protection and indemnity insurance premiums and deductible (P&I). MARAD now determines ODS for wages on a fiscal period basis, paid as a daily rate, while ODS for other expenses is paid for calendar periods and based on estimated expenses accrued by the operators. This system of calculation and payment is reflected in existing MARAD regulations at 46 CFR Part 252. The NPRM proposes to provide for the payment of all components of ODS as a fixed and final daily amount under ODS contracts currently in force. The NPRM provided a comment period of 60 days that expired on February 21, 1986. During that comment period MARAD received written requests from two law firms that represent subsidized operators, for a 30-day extension of the comment period. One law firm cited the complexity of the issues involved and the inability to schedule a meeting with its clients as reasons for the extension. By notice published in the **Federal Register** on February 26, 1986, MARAD extended the comment period to March 26, 1986. (51 FR 6760) MARAD has now decided, based on representations made by a law firm representing three subsidized operators, to hold a public hearing. The purpose is to clarify the procedure for calculating ODS for wages and enhance the understanding of the methodology being proposed to calculate the final daily ODS rate.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034); February 26, 1979. This rulemaking would place the ODS receipts of the operators and the obligations of the government on a current basis, with no appreciable overall change in such receipts and obligations. Since it would only facilitate the payment of final ODS amounts in a more timely manner, the economic impact of this proposal has been found to be minimal and further evaluation is unnecessary.

Since this proposal would affect principally ship operators with substantial annual revenues, the Maritime Administrator certifies that, if finalized, this rulemaking would not exert a significant economic impact on a substantial number of small entities under The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133-0004 and 2133-0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Dated: March 5, 1986.

By Order of the Maritime Administrator.

Murray A. Bloom,

Assistant Secretary.

[FR Doc. 86-5152 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Proposed Rule To List the Fish Creek Springs Tui Chub as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The Service is withdrawing the proposed rule published in the **Federal Register** of June 6, 1984 (49 FR 23409), that the Fish Creek Springs tui chub (*Gila bicolor euchila*) be listed as a threatened species with critical habitat. New data indicate that the Fish Creek Springs tui chub is presently more abundant and widely distributed in its habitat, and subject to less threat, than believed at the time of the propose rule. The species is not considered likely to become threatened or endangered in the foreseeable future.

DATES: The withdrawal is effective March 10, 1986.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Service is withdrawing the proposed rule to list the Fish Creek Springs tui chub (*Gila bicolor euchila*) as a threatened species. On December 30, 1982, the Service published a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58453), which included the Fish Creek Springs tui chub as a category 1 taxon. Such inclusion indicated that the Service had substantial information on hand to support the proposal of this fish for listing under provisions of the Endangered Species Act. Subsequently, the Service received a petition from the Desert Fishes Council on April 12, 1982, to list 17 species of southwestern fishes, including the Fish Creek Springs tui chub. The Service reviewed the petition and determined that it did present substantial information indicating that the petitioned action was warranted. On June 6, 1984, the Fish Creek Springs tui chub was proposed for listing as a threatened species with critical habitat. The only known population of this species occurs in Fish Creek Springs, located entirely within private land in Little Smoky Valley of southeastern Eureka County, Nevada. The proposed listing was undertaken because the range and numbers of this species appeared to have substantially decreased since collections of the fish were first made in 1938. Primary threats identified in the proposed rule included predation by introduced trouts, and overgrazing of adjacent lands. Critical habitat was included with the proposed rule, as were special rules to allow take of the Fish Creek Springs tui chub for certain purposes in accordance with Nevada State laws and regulations.

The Service sought data and comments from the public, and from State, local, and Federal agencies on the proposal, and received five written letters of comment. Additionally, a status report on the Fish Creek Springs tui chub funded under Section 6 of the Endangered Species Act, was completed in July 1984 by University of Nevada, Las Vegas, personnel. Also in July 1984, Service biologists from the Great Basin Complex, Reno, Nevada, and Region I office in Portland, Oregon, conducted field observations at Fish Creek Springs.

Of the written comment letters received, none provided additional data regarding the status of the Fish Creek Springs tui chub. The Nevada Department of Wildlife (NDOW) and the Nevada Division of State Parks opposed the listing on the basis of adverse effects to the recreational fishery. Letters supporting the proposed listing came from the Desert Fishes Council and the International Union for Conservation of Nature and Natural Resources. The Eureka County Planning Commission voiced concern for the rights of the private landowner but neither supported nor opposed listing.

Tui chub (*Gila bicolor*) were originally observed and documented from Fish Creek Springs in 1938, but the population was not described as a unique subspecies, *Gila bicolor euchila*, until 1972 (Hubbs and Miller 1972). Fish Creek Springs historically consisted of a series of four interconnected springs which formed the headwaters of Fish Creek. In 1938, tui chub range included all four springs and associated outflow creeks (Hubbs, *et al.* 1974). Since the original field work in 1938, the Fish Creek Springs habitat, primarily the spring outflow channels, has been modified for livestock, irrigation, and domestic uses. In addition, rainbow (*Salmo gairdneri*) and brown trout (*Salmo trutta*) were introduced to provide sport fishing. Surveys conducted in 1978 and 1979 recorded tui chub from only one of the four springheads and reported no chub present in any of the outflows or in the creek (Hardy 1980a, 1980b). In addition, livestock had trampled the surrounding area and caused the elimination of most riparian vegetation.

In July 1984, biologists from the University of Nevada, Las Vegas (UNLV), under contract to the NDOW, conducted a status survey of Fish Creek Springs tui chub. UNLV biologists reported the presence of large numbers of both *Gila bicolor euchila* adults and fry throughout the spring system (Deacon 1984). In addition, the species was found 3 to 4 miles further downstream than previously reported. No trout were seen or captured although stocking of rainbow trout by NDOW occurred each spring. Deacon (1984) reported that channelization of Fish Creek had proceeded from the Fish Creek Ranch headquarters upstream to a point approximately 1 mile below the springhead.

Also, in late July 1984, Service personnel from Reno, Nevada and

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Portland, Oregon visited the site and observed large numbers of chub, especially fry, throughout the headwater system. Though livestock use of the area was evident, substantial riparian vegetation was present and no evidence of bank trampling, erosion, or visible pollution was observed except around the westernmost springhead which had been modified to serve as a livestock watering pond. Thousands of chub fry were present in all vegetated spring outflows, including the outflow from the westernmost spring. Because of the obvious conflict between information presented in the proposed rule and information received during the comment period, the Service requested a 6-month extension of the proposed rule. The notice of such extension was published in the **Federal Register** on June 18, 1985 (50 FR 25283).

UNLV biologists surveyed the Fish Creek Springs system again in June 1985 and reported similar numbers as in 1984 including fish 3 to 4 miles downstream from the originally described limit of occurrence (Pedretti *et al.* 1985). Catch per trap-hour was greater at all sites sampled in 1985 than in 1984 even though additional channeling and deepening of spring pools and outflows had occurred during winter and spring, 1985.

NDOW stocking records from 1973 to 1985 report that between 620 and 3195 rainbow trout have been stocked annually into the waters at Fish Creek Springs. Apparently more important, however, brown trout were stocked in 1973, 1976–1978, and in 1981. From 1976–1978, a total of over 7,000 catchable-sized brown trout were released in the springheads, which collectively cover less than one-half acre of open water. Since 1979, brown trout have been stocked only once, in 1981. Rainbow trout have continued to be stocked annually, but at much reduced levels when compared with stocking rates in the mid-to-late 1970's. The dramatic increase in tui chub numbers and range corresponds with the cessation of brown trout stocking in the springheads. As brown trout grow larger, they tend to become more and more piscivorous (Staley 1966, Minckley 1973, Moyle 1976). Rainbow trout, on the other hand, tend to feed more heavily on aquatic invertebrates, and are not generally regarded as being piscivorous, even at large sizes (McAfee 1966, Minckley 1973, Moyle 1976).

Because of considerable evidence that the observed decrease in tui chub abundance in the late 1970's and early 1980's was due to presence of brown trout, the Service met with NDOW to discuss trout stocking procedures at Fish Creek Springs. NDOW (1985) has subsequently agreed "not to stock brown trout in Fish Creek Springs to enhance the protection of the tui chub in that locale." Additionally, NDOW stated that the rainbow trout "is not a significant predator and anglers remove a large percentage of the annual planting within 3 months. We consider this practice compatible with the Fish Creek Springs tui chub population and plan to continue to stock this water with low levels of rainbow trout, similar to what has occurred from 1980 through 1985." The Service concurs that continued stocking of rainbow trout at current levels will not detrimentally affect the tui chub population.

The Service believes that the documented large numbers of individuals and different age classes of tui chubs, combined with the cessation of brown trout stocking, and stocking of rainbow trout only at current low levels, insures that the major threat to the Fish Creek Springs tui chub has been eliminated. Data and observations do not indicate that overgrazing of riparian vegetation or livestock trampling of pool and outflow banks causing siltation problems is an identifiable threat, at this time, nor has channelizing and deepening of portions of the system by the landowner appeared to have detriminentally affected the tui chub range or abundance. In actuality, the range of the species now appears to be larger than when initial collections were made by Hubbs and Miller in 1938 (Deacon 1984, Pedretti *et al.* 1985).

For the above stated reasons, the Service concludes that listing the Fish Creek Springs tui chub or delineating critical habitat under authority of the Endangered Species Act of 1973, as amended is not warranted at this time. The Service will continue to monitor the species and its habitat. Listing would be appropriate in the future if any of the previously identified or additional threats are identified and documented.

Findings and Withdrawal

In compliance with Sections 4(b)(6)(A)(i)(IV) and 4(b)(6)(B)(ii) of the Endangered Species Act, as amended, the Service hereby withdraws its proposed rule of June 6, 1984 (49 FR 23409), to list the Fish Creek Springs tui chub (*Gild bicolor euchila*) as threatened with critical habitat. Recent data document the presence of a large population of different age classes of the tui chub throughout its historical habitat, and indicate that the primary threats upon which the proposal was based are no longer present.

References Cited

Deacon, J.E. 1984. Population status and distribution of *Gila* in Fish Creek Springs. Report to Nevada Department of Wildlife, Project E–1–1, Job No. 1.

Hardy, T. 1980a. Interbasin report to the Desert Fishes Council 1978. Proceeding Desert Fishes Council 10:69–70.

Hardy, T. 1980b. The interbasin area report-1979. Proceedings Desert Fishes Council 11:5–21.

Hubbs, C.L., and R.R. Miller. 1972. Diagnoses of new cyprinid fishes of isolated waters of the Great Basin of western North America. Transactions San Diego Society Natural History 17:101–106.

Hubbs, C.L., R.R. Miller, and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Academy Sciences 7:1–259.

McAfee, W.R. 1966. Rainbow Trout. Pages 192–215 *in* A.J. Calhoun (ed.). Inland Fisheries Management. California Department of Fish and Game. 546 pp.

Minckley, W.L. 1973. Fishes of Arizona. 293 pp. Arizona Game and Fish Department.

Moyle, P.B. 1976. Inland Fishes of California. University of California Press, Berkeley. 405 pp.

Nevada Department of Wildlife, 1985. Letter dated September 5, 1985, from William Molini, Director, to Bill Shake, Assistant Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

Pedretti, J.W., T.M. Baugh, and J.E. Deacon. 1985. Status of the Fish Creek Springs tui chub, *Gila bicolor euchila*. Report to Nevada Department of Wildlife, Project E–1–1. Job No. 1

Staley, J. 1966. Brown Trout. Pages 233–242 *in* A.J. Calhoun (ed.). Inland Fisheries Management. California Department of Fish and Game. 546 pp.

Author

The primary author of this notice is Dr. Randy McNatt, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502 (702/784–5227 or FTS 470–5227).

Authority

The authority for this action continues to read as follows:

Authority:

16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884, Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 2, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–5171 File 3–7–86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Trifolium Stoloniferum (Running Buffalo Clover) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Trifolium stoloniferum* (running buffalo clover) as an endangered species. Until perhaps the mid-1800's, this clover ranged from eastern Kansas to West Virginia and was apparently abundant in certain locations. Presently, only two extant populations of *T. stoloniferum* are known. Both occur in West Virginia on private land and are very small, totalling 22 individuals. The status of one of these populations is uncertain. This species is endangered by its rarity alone; additional threats include trampling and other inadvertent destruction by humans and livestock, crushing by off-road vehicles, and competition from weedy species. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Trifolium stoloniferum*. Critical habitat is not being proposed at this time. The Service seeks data and comments from interested parties on this proposal.

DATE: Comments from all interested parties must be received by May 9, 1986. Public hearing requests must be received April 24, 1986.

ADDRESS: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs, at the above address (301/269–6324 or FTS 922–4197).

SUPPLEMENTARY INFORMATION

Background

Running buffalo clover, *Trifolium stoloniferum*, a member of the pea family (Fabaceae), is one of four species of clover native to the eastern United States. This short-lived perennial forms long runners from the base. The flowerheads are terminal and large, up to an inch in diameter. Flowers are white tinged with purple. Flowering normally occurs from mid-April to June and fruits (seed heads) are present into July.

Trifolium stoloniferum was originally named by Henry Muhlenberg in 1813; however, the name was invalid, since it was published without a description. The name was validiated by Amos Eaton in his *Manual of Botany for the Northern and Middle States*, published in 1818. *T. stoloniferum* is morphologically similar to the native buffalo clover, *T. reflexum*, but, as the name implies, the former species is stoloniferous (i.e. produces prostrate stems from the base of the plant) while the latter is not. *T. stoloniferum* has also been considered very similar to the introduced stoloniferous species, *Trifolium repens*; however, the former has a chromosome number of $n=16$, while the number for *T. repens* is $n=32$ (Norman Taylor, University of Kentucky Herbarium, pers. comm.).

A detailed character analysis by Brooks (1983) reveals further differences among these three species in growth habitat and flower and seed morphology.

Documented specimens of *Trifolium stoloniferum* are available from the states of Arkansas, Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and West Virginia, indicating the original range of this plant (Brooks 1983). A recent review of historical accounts indicates that before the arrival of European settlers, this species was abundant in several areas of the Ohio Valley and adjacent regions, and may have been a local dominant within the "bluegrass region" of Kentucky. Running buffalo clover was apparently adapted to rich soils in "relatively stable ecotones, with continual, moderately intense disturbance," between open forest and pastures or prairies (Campbell 1985). Campbell speculates that the vegetation of these areas was likely maintained by "buffalo" (*Bison bison bison*). After the extirpation of bison from the East, the abundance of *T. stoloniferum* apparently decreased. Brooks (1983) indicates that by the late 19th century, populations of running buffalo clover were "limited and widely scattered . . . shortly thereafter . . . the number of collections dwindled rapidly, with a mere five sites documented after 1900." Brooks field checked all the documented locations as well as other likely habitat for *T. stoloniferum* in Missouri and Kansas, without finding any extant populations (R. Brooks, pers. comm.). Extensive field work in Kentucky has also revealed no extant populations of *T. stoloniferum* (J. Campbell, pers. comm.). The plant is also believed to be extirpated in Arkansas, Illinois, Indiana, Missouri and Ohio (pers. comms. with Heritage Programs of the affected States). Based on this information and his conversations with field botanists, Brooks (1983) concluded that *T. stoloniferum* was possibly extinct.

In 1983 and 1984, two small populations of running buffalo clover were discovered in West Virginia (Bartgis 1985). One of these, a relocation of the most recent historical record (Webster County, 1940), occurs at the margin of a mowed field and in 1984 contained only four plants. During a recent field inspection (summer, 1985), these plants could not be relocated. Therefore the status of this population is questionable; the plants may or may not reappear next spring. The other population, located along an off-road vehicle trail adjacent to the New River in Fayette County, presently contains 18 plants. The Fayette County site, which may be the only remaining population of this species, occurs within the area of an existing hydropower project licensed by the Federal Energy Regulatory Commission. At present, *T. Stoloniferum* is not impacted by any aspect of the hydropower facility. A live shoot from the Fayette County population was sent to the University of Kentucky, where it has been vegetatively propagated; the greenhouse population presently contains some 40 plants. To summarize, based on current information, *T. stoloniferum* is indeed "one of the rarest members of the North American flora" (Bartgis 1985).

Trifolium stoloniferum was first recognized by the Service in the *Federal Register* notice of review published on November 28, 1983 (48 FR 53641). That notice, which covered plants being considered for classification as endangered or threatened, included *Trifolium stoloniferum* in category 2*. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not currently available to support a proposed rule. The asterisk (*) indicates taxa that are possibly extinct. The Service was informed of the extant populations of this species in December of 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and

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their application to *Trifolium stoloniferum* Muhl. *ex.* Eaton are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* It is difficult to determine the original extent and abundance of running buffalo clover, since elimination of the natural ground cover within its range began during the 1790's, before *T. stoloniferum* was even described, and long before the area was adequately botanized. By 1850, native vegetation of the Kentucky Bluegrass region had been largely replaced by pasture plants, including bluegrass (*Poa pratensis*) and introduced white clover (*Trifolium repens*) (Campbell 1985). Therefore, we must rely on early, nontechnical accounts, such as those summarized by Campbell (1985) to infer the original extent of running buffalo clover. Quotations from early observers in the Kentucky Bluegrass region indicate at least localized abundance: "rich soil . . . adorned with great patches of fine white clover" (Ranck 1901, re 1775), "covered with clover in full bloom" (Walker 1924, re 1775), "a turf of white clover" (Henderson 1775) "an abundance of wild rye, clover and buffalo grass covering vast tracts of country" (Filson 1784) (all quoted in Campbell 1985). Campbell argues that these and other accounts could only have referred to *Trifolium stoloniferum*, the only clover known to have been native to the region. By the late 1800's, when the majority of collections were made, the species was known only from localized, widely scattered localities. Today, *T. stoloniferum* is believed to be extirpated throughout its range, with the exception of the two recently discovered West Virginia populations.

The precise reasons for this striking decline are unclear. It is likely that running buffalo clover was to some extent dependent on bison for soil enrichment, periodic intense disturbance, and seed dispersal (Campbell 1985, Larson 1940, Reynolds *et al.* 1982). In this regard it is interesting that one of the extant West Virginia populations is in the immediate vicinity of the last recorded site for bison in the State, and all other West Virginia records are in the immediate vicinity of known buffalo traces (Bartigis 1985). Other factors contributing to the species' demise could include clearing of its habitat for pasture and agriculture, competiton with introduced species, and other habitat changes subsequent to the industrial revolution (Brooks 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Running buffalo clover is not known to be used for any commercial or recreational purpose. Because of its rarity, it is subject to collection by botanists and/or curiosity seekers. Given the fact that fewer than thirty individuals of this species are known to exist in the wild, any collection could be considered overutilization. The species could also be largely eliminated in the wild by a single act of vandalism.

C. *Disease or predation.* While *T. stoloniferum* may once have been maintained by grazing, the extant populations are so small that they could easily be eliminated by deer, cattle, or any other herbivore. Similarly, any disease, even if localized in extent, could now virtually render the species extinct.

D. *The inadequacy of existing regulatory mechanisms.* The extant populations of *T. stoloniferum* presently receive no protection under any Federal, State, or local law or regulation.

E. *Other natural or manmade factors affecting its continued existence.* The Fayette County population of running buffalo clover, covering approximately one square yard, is located immediately adjacent to an off-road vehicle path that provides the only public access to a 10-mile stretch of the New River. Due to its location, the population is extremely vulnerable to being run over, trampled, covered by trash, or killed by petroleum pollutants.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the running buffalo clover as endangered. The Act defines an endangered species as ". . . any species which is in danger of extinction throughout all or a significant portion of its range. . ."

Due to the very small population numbers and vulnerability of *Trifolium stoloniferum*, endangered status is most appropriate. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Trifolium stoloniferum* because its very restricted distribution makes it vulnerable to extinction from taking. Public access to published habitat descriptions and precise maps could result in vandalism, which could easily cause the extinction of this species. Therefore, it would not be prudent to determine critical habitat for *Trifolium stoloniferum.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection requireed of Federal agencies and the prohibition against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critial habitat, the responsible Federal agency must enter into consultation with the Service. The Federal Energy Regulatory Commission has permit jurisdiction over the project area on which the Fayette County population of *T. stoloniferum* offurs. The existing project does not directly impact *T. stoloniferum;* however, any future project developments possibly impacting this species would require section 7 consultation to ensure protection for this species and its habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62,

and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Trifolium stoloniferum* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endngered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas uder Federal jurisdiction. This prohibition would apply to running buffalo clover. Regulations regarding permits for exceptions to this prohibition were published on September 30, 1985 (50 FR 39681). Because this species is not known to occur on Federal land, it is anticipated that few collecting permits for the species would ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurated and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commerical trade, or other relevant data concerning any threat (or the lack thereof) to *Trifolium stoloniferum*;

(2) The location of any additional populations of *Trifolium stoloniferum* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Trifolium stoloniferum.*

Final promulgation of a regulation on *Trifolium stoloniferum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusette 02158.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Reynolds, H.W., R.D. Glaholt, and A.W.L. Hawley. 1982. Bison. pp. 972–1007 *IN* J.A. Chapman and G.A. Feldhamer (eds.), Wild Mammals of North America. Baltimore: The Johns Hopkins Univ. Press, 1147 pp.

Author

The primary author of this proposed rule is Judy Jacobs, Endangered Species Staff, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–6324 or FTS 922–4197).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*	*	*
Trifolium stoloniferum	Running buffalo clover	U.S.A. (AR, IL, IN, KS, KY, MO, OH, WV)	E		NA	NA
*	*	*	*	*	*	*

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Dated: February 9, 1986.

P. Daniel Smith,

Deputy Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-5170 Filed 3-7-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 60326-6036]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule..

SUMMARY: NOAA issues a proposed rule to implement conservation and management measures as prescribed in the proposed Amendment 1 (amendment) to the Fishery Management Plan for the American Lobster Fishery (FMP). This rule: (1) Institutes a uniform lobster fishing gear marking requirement for the offshore lobster fishery; (2) exempts all fish trap fishermen including Mid-Atlantic black sea bass fishing gear from the escape vent requirement in a specified fishing area; (3) provides the Regional Director the authority to grant research exemptions from any lobster FMP regulations and/or establish closed areas for research purposes; and (4) distinguishes red crab fishing gear from gear capable of taking lobster. The intended effect is to promote fishing efficiency by reducing the incidence of gear conflicts and ensuring that black sea bass and red crab gear are not unnecessarily included in measures intended for the lobster fishery.

DATE: Comments on the proposed rule must be received on or before April 18, 1986.

ADDRESSES: Comments on the proposed rule, the amendment, or supporting documents should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Amendment 1 to the Lobster FMP".

Copies of the amendment, the environmental assessment, and the draft regulatory impact review are available from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Management Specialist, 617-281-3600, ext. 324, or Carol J. Kilbride, Resource Policy Analyst, 617-281-3600, ext. 331.

SUPPLEMENTARY INFORMATION: Final regulations implementing the Fishery Management Plan for the American Lobster Fishery were implemented on September 7, 1983 (48 FR 36266, August 10, 1983). A notice of availability for the proposed amendment was published on February 6, 1986 (51 FR 4640).

Amendment 1 proposes to establish a consistent and identifiable gear marking system that will afford mobile gear operators a chance to avoid fixed lobster gear. The need for a gear marking system arises from the increase in utilization of fishery resources by different gear types which, in turn, increases competition and congestion on fishing grounds and results in a greater incidence of gear conflicts. The number of vessels participating in the offshore lobster fishery has increased by 47 percent from 1982 to 1984.

Gear conflicts are costly in terms of lost fishing gear and fishing time. The replacement cost of pot/trap gear reported lost or damaged as a result of gear conflicts, and for which claims were filed, averaged almost $265,000 from 1980 to 1982. Attempts to retrieve and disentangle gear can be dangerous to the vessel and crew.

The minimum marking standards consist of the following: (1) The westernmost end of a lobster trawl must be marked by at least an 8 inch standard tetrahedral corner radar reflector and a single flag or pennant; (2) the easternmost end of a trawl must be marked by at least an 8 inch standard tetrahedral corner radar reflector only. In addition, lobster trawls would be limited to a length of 1½ miles.

Also included in the amendment is an exemption designed to redress what the Council considers an unnecessary restriction that may have the effect of reducing revenues for the black sea bass fishery. In the present FMP, sea bass traps must be vented according to the same specifications for lobster traps. The exemption, limited to all fish trap fishermen including black sea bass trap fishermen operating south of Barnegat Light, NJ, and shoreward of the 30 fathom contour, would alleviate the unintended and potentially negative impact of the FMP on a fishery outside the management until. The Council has determined that this exemption would have no significant effect on the conservation of the lobster resource.

The Council's determination in favor of this exemption is based on landings data that show that the lobster bycatch from sea bass traps is 1.3 percent of the total lobster landings taken for the three States involved (New Jersey, Maryland and Virginia). The Council believes that because the amount of lobster bycatch is insignificant compared to directed lobster fishery landings, the impact on the lobster resource as a whole would also be insignificant were black sea bass fishermen allowed to retain their bycatch as before.

Calculations of potential revenue loss to the sea bass fishery are primarily derived from public testimony and State landings records from New York, New Jersey, and Maryland. The landing records reveal a small market category of black sea bass of 7 to 11½ inches that represents 24 percent of the landings and 8 percent of the revenue of this fishery. Public testimony from black sea bass fishermen suggests that this entire small market category would be lost if the venting requirement were to be imposed on the fishery.

The exemption as proposed would allow all fish trap fishermen and especially black sea bass trap fishermen, operating south of Barnegat Light and shoreward of the 30 fathom contour, to be exempt from the escape vent requirement provided that: (1) They possess a valid federal lobster permit; (2) their total lobster landings do not exceed 100 pounds per trip; and (3) their traps are fished in an unbaited condition and all traps are marked so as to identify the owner.

The amendment further provides authority to the Regional Director, upon the recommendation of the New England Fishery Management Council, to allow exemptions to any of the provisions of the FMP. In addition, the amendment provides authority to the Regional Director, upon the recommendation of the appropriate council, to close areas for the purpose of research that will be beneficial to the lobster resource. Such closures are to be implemented through a regulatory amendment.

The amendment also draws a distinction between red crab fishing gear which is operated deeper than 200 fathoms, and gear capable of taking lobsters. All available evidence indicates that the red crab fishery is devoid of any lobster bycatch and operates in an area where there is no mobile gear. Therefore, it should not be subject to the regulations of the FMP. Such restrictions would preclude the operation of an economically viable red crab fishery.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council within 30 days of receipt of an amendment and proposed regulations. At this time the Secretary has not determined that the amendment proposed to be implemented by these rules is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address given above.

The NOAA Administrator determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule will result in a net benefit of $143,000 or more to the lobster industry each year. This figure was obtained by subtracting the worst case fishery-wide initial cost of $121,000 from the $264,000 average replacement cost of gear reported lost or damaged in gear conflicts. The venting exemption for sea bass fisherman will prevent an 8 percent decline to that fishery's revenue. The lobster fishery may experience an increase in landing due to increased efficiency; however, prices and employment should remain the same. Administrative enforcement, paperwork, and record-keeping requirements are also expected to remain unchanged, and therefore, there will be no increase in costs to Federal, State, or local government agencies. The Council prepared a regulatory impact review which concludes that the industry will not be adversely affected by the proposed rule. Instead, the Council believes that the rule will enhance competition, productivity, and thus potentially promote investment and innovation in the fishery. A copy of this review may be obtained from the Council at the address listed above.

The proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule within 30 days of its receipt. The proposed rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the review procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities because the requirement to mark the westernmost end of a lobster trawl with a radar reflector and a single flag or pennant would only involve a maximum, one-time cost of $1,173 per vessel (less than one percent of average gross revenues of $227,757) and would be more than offset by savings in the reduction of lost gear estimated to be about $2,563 per vessel.

The proposed rule to eliminate escape vents in all fish traps including black bass traps will impose no new costs on the fishery because it does not require adjustments in equipment or fishing practice but merely allows fisherman to eliminate escape vents at their discretion. At the same time the action allows retention of smaller size, marketable sea bass that would otherwise escape through the vents. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Delaware, Maryland, North Carolina, and Virginia. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirement.

Dated: March 5, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

PART 649—[AMENDED]

1. The authority citation for 50 CFR Part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by revising the title of § 649.21 to read "Gear identification, marking, and escape vent requirement.", and adding a new section title that reads "§ 649.22 Exemption and area closure.".

3. Section 649.1 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 649.1 Purpose and scope.

"* * * Red crab fishing gear which is fished deeper than 200 fathoms is not gear capable of taking lobsters, and not subject to the provisions of these regulations."

4. Section 649.21 is revised to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

(a) *Identification.* All lobster gear deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) The vessel's Federal fishery permit number; and/or

(2) Whatever positive identification marking is required by the vessel's homeport State.

(b) *Marking.* In the area of the FCZ described in paragraph (b)(4) below, lobster pot trawls are to be marked as follows:

(1) Lobster pot trawls of three or less pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westermost end (marking the half compass circle from magnetic south through west to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east to and including south) of a lobster trawl must be marked with a radar reflector only. Standard tetrahedral corner radar reflectors (see figure 1) of at least 8 inches must be employed.

(3) No lobster pot trawl shall exceed 1.5 miles in length as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas:

(i) *Gulf of Maine.* All waters of the FCZ north of 42°20′ N. latitude seaward of a line drawn 12 miles from the baseline of the territorial sea;

(ii) *Georges Bank.* All waters of the FCZ south of 42°20′N. latitude and east of 70°00′ W. longitude and seaward of the 25 fathom depth contour;

(iii) *Southern New England.* All waters of the FCZ west of 70°00′ W.

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longitude, east of 71°30′ W. longitude and seaward of the 25 fathom depth contour; and

(iv) *Mid-Atlantic.* All waters of the FCZ west of 70°30′ W. longitude and seaward of the 40 fathom depth contour.

(c) *Escape vents.* All lobster traps or traps capable of taking lobster that are deployed in the FCZ or possessed by a person whose vessel is fishing in the FCZ, unless exempted as described in paragraph (c)(2) below, must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1)(i) A rectangular portal with an unobstructed opening not less than 1¾ inches (44.5 mm) by 6 inches (152.5 mm);

(ii) Two circular portals with unobstructed openings not less than 2¼ inches (57.2 mm) in diameter; or

(iii) Any other vent certifed by the Regional Director to release a substantial number of lobsters under 3-3/16 inches carapace length from the trap.

(2) Traps capable of taking lobster, either being fished or in possession, are exempt from the venting requirement under the following conditions—

(i) The traps are fished in an unbaited condition; and

(ii) The traps are deployed in the area south of Barnegat Light, NJ (south of LORAN C 9960–Y–43300), seaward of the outer boundary of the territorial sea, and within the 30 fathom depth contour; and

(iii) The bycatch of lobster may not exceed 100 pounds per trip.

(d) *Enforcement action.* Unmarked, unvented, or improperly vented traps, unless exempted under the terms of paragraph (c)(2) of this section, will be seized and disposed of in accordance with the provisions of 50 CFR Part 219.

5. A new § 649.22 is added to read as follows:

§ 649.22 Exemption and area closure.

(a) *Exemption.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research or education beneficial to the lobster resource or lobster fishery.

(2) The Regional Director may not grant such exemption unless he determines that the purpose, design, and administration of the exemption is consistent with the objectives of the American Lobster Fishery Management Plan, the provisions of the Magnuson Act and other applicable law, and that granting the exemption will not—

(i) Have a detrimental affect on the lobster resource and fishery; or

(ii) Create significant enforcement problems.

(3) Each vessel participating in any exempt activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

(b) *Area closure.* Upon the recommendation of a Council, the Regional Director may close, through a regulatory amendment, an area of the FCZ within that Council's area of authority to fishing for the conduct of scientific research provided that such closure will not—

(1) Increase gear conflicts; or

(2) Interfere significantly with common fishing practices.

[FR Doc. 86–5025 Filed 3–5–86; 3:44 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 46
Monday, March 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreement With International Rice Research Institute

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to award a cooperative agreement.

Activity

The Office of International Cooperation and Development intends to enter into a cooperative agreement with the International Rice Research Institute to provide assistance in the development of socio-economic training modules and a training manual for use in Farming Systems Research (FSR) programs in developing countries.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the International Rice Research Institute (IRRI) in the amount of $30,000. Using its own resources, IRRI has conducted extensive preliminary research in development of a training manual and audio-visual module for using in strengthening the economic and other social science elements of Farming Systems Research (FSR) programs in developing countries. Funding to be provided by OICD will facilitate the printing, production and distribution of the training manual and audio-visual module.

Assistance will be provided only to IRRI which has the requisite resources, as well as a long experience in FSR endeavors, and has close working relationships with FSR programs in the South East Asia region through its development and coordination of the Asian Farming Systems Research Network.

Based on the above, this is not a formal request for applications. It is estimated that approximately $30,000 will be available in fiscal year 1986 to support this work. It is anticipated that the cooperative agreement will be funded over a budget period of 12 months.

Information may be obtained from: Ms. Kay Hatch, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture (58–319R–6–024).

Dated: March 5, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86–5093 Filed 3–7–86; 8:45 am]

BILLING CODE 3410-DP-M

Forest Service

Environmental Impact Statement; Chevron USA Oil and Gas Well Application for Permit to Drill; Lewis and Clark National Forest, Great Falls, MT

The U.S. Department of Agriculture, Forest Service as lead agency and the U.S. Department of the Interior, Bureau of Land Management as cooperating agency, will prepare an environmental impact statement for a proposal to drill an exploratory oil and gas well on the Rocky Mountain Ranger District.

Chevron USA, Inc., Casper, Wyoming, has filed an application for a permit to drill an exploratory well on lease No. M–25173. The proposed well site is located in the SW¼,NE¼ of Section 35, T. 29 N., R. 12 W., Pondera County, Montana.

A range of alternatives for this proposal will be considered. One of these will be the no action alternative. Other alternatives will analyze approval of the permit considering different access means and/or route locations and examining scenarios using different timing and location guidelines.

Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion on the effects of Threatened and Endangered Species, including on the grizzly bear and gray wolf.

The responsible officials are: John D. Gorman, Lewis and Clark Forest Supervisor and Nancy Cotner, Great Falls Resource Area Manager for the Bureau of Land Management.

The Forest Supervisor will hold three open house meetings:

April 3—Rocky Mountain Ranger District Office, Choteau, Montana. 10 AM–4 PM and 7 PM–9 PM
April 9, Lewis and Clark Forest Supervisor's Office, Great Falls, Montana. 10 AM–4 PM and 7 PM–9 PM
April 10—CCD Center, Little Flower Parish, Browning, Montana. 3 PM–5 PM and 7 PM–9 PM

The public is invited to comment. Written comments should be mailed by April 16, 1986, to John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, Running Owl APD, P.O. Box 871, Great Falls, MT 59403.

The analysis is expected to take about 12 months. The draft environmental impact statement should be available for public review by March 1987. The final environmental impact statement is scheduled to be completed by July 1987.

Questions about the proposed action and environmental impact statement should be directed to Norman Yogerst, Team Leader, Lewis and Clark National Forest, P.O. Box 871, Great Falls, MT 59403. Phone (406) 727–0901.

Dated: March 4, 1986.

John D. Gorman,

Forest Supervisor.

[FR Doc. 86–5132 Filed 3–7–86; 8:45 am]

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 AM to 1:30 PM, on Wednesday, March 12, 1986, to take place in Department of Transportation Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Item on the agenda: Publication of proposed advisory standards on aircraft boarding chairs for a 60 day public comment in the **Federal Register**; approval of draft ATBCB 504 rule; approval of the preamble to the revised ATBCB Authorities and Delegations, for publication in the **Federal Register**; approval of the proposed amendment to 36 CFR 1150.41(f), Practices And Procedures For Compliance Hearings; revisions to Rehabilitation Act of 1973; FY 1986 research contracts; discussion of proposal that the positions of Executive Director and General Counsel be combined into a single position; approval of candidate for ATBCB General Counsel position.

The portion of the meeting relating to FY 1986 research contracts will be closed to all non-government employees and the portion dealing with personnel matters will be closed to non-Board members.

DATE: Wednesday, March 12, 1986, 10:00 AM–1:30 PM.

ADDRESS: Department of Transportation, Conference Room 2230, 400 Seventh Street SW., Washington, DC.

All other committees of the ATBCB will meet on Monday and Tuesday, March 10 and 11, 1986, at the Department of Transportation, Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 86–5078 Filed 3–7–86; 8:45 am]

BILLING CODE 6820-BP-M

COMMISSION ON CIVIL RIGHTS

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Education Subcommittee of the Maryland Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on March 20, 1986, at the Baltimore-Washington International Airport Terminal, Conference Room, Baltimore, Maryland 21240. The purpose of the subcommittee meeting is to review a transcript of the community forum on equity issues in special education programs in preparation to draft a briefing memorandum on the subject.

Person desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lorretta Johnson or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717 (TDD 202/254–5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 5, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–5158 Filed 3–7–86; 8:45 am]

BILLING CODE 6335-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos: CRT 80–4, 81–1, 82–1, and 83–1]

Order Granting Final Distribution of 1979–1982 Cable Royalty Fees

On February 24, 1986, the Supreme Court denied the petition for writ of certiorari filed by Christian Broadcasting Network, Inc. There is no longer any controversy with respect to the distribution of the 1979, 1980, 1981 and 1982 cable copyright royalty funds.

Accordingly, distribution of the remainder of the 1979–1982 cable royalty funds is hereby ordered for March 20, 1986 in the same percentage amounts identified at 50 FR 9112 (March 6, 1985).

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Washington, DC 20036, (202) 653–5175.

Dated: March 5, 1986.

Edward W. Ray,

Chairman.

[FR Doc. 86–5109 Filed 3–7–86; 8:45 am]

BILLING CODE 1410-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 5, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated May 24, 1985 (See 50 FR 21923) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including men's and boy's outer coats of man-made fibers in Category 634, and women's girls' and infants'man-made fiber sweaters in Category 646, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986. In the CITA directive published below the limit for Category 646 is being increased to 78,877 dozen to account for carryforward and swing according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. The limit for Category 634 is being reduced to 107,263 dozen to account for the swing applied to Category 646.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF

SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

March 5, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 24, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on March 5, 1986, you are directed to adjust the restraint limits established for the following categories in the directive of May 24, 1985 to the limits indicated, according to the terms of the Bilateral Cotton, Wool and Men-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka:[1]

Category	Adjusted 12-mo. limit [1] (dozen)
634	107,263
646	78,877

[1] The limits have not been adjusted to account for any imports exported after May 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–5217 Filed 3–7–86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The agreement provides, in part, that: (1) Specific limits may be exceeded by designated percentages, provided on equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Amended System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended system of records.

SUMMARY: The Department of the Navy proposes to amend one system of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice April 9, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc 85–10237 (50 FR 22735) May 29, 1985
FR Doc 85–16564 (50 FR 28442) July 12, 1985
FR Doc 85–20719 (50 FR 35290) August 30, 1985
FR Doc 85–21577 (50 FR 36914) September 10, 1985
FR Doc 85–30586 (50 FR 52997) December 27, 1985
FR Doc 86–4185 (51 FR 6777) February 28, 1986

The proposed amendment is not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 4, 1986.

NO5300–2

System name:

Administrative Personnel Management System (50 FR 22791) May 29, 1985.

Changes:

Categories of records in the system:

In line 9, after the phrase: "* * * experience characteristics * * *, add the phrase: "* * * and training histories * * *".

Purpose(s):

In line 5, after the word: "* * * training; * * *", add the phrase: "* * * identifying routine and special work assignments; * * *"

NO5300–2

SYSTEM NAME:

Administrative Personnel Management System.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence/records concerning identification, location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade vehicle parking, disaster control, community relations, (blood donor, etc.), employee recreation programs, grade and series or rank/rate, retirement category, awards, property custody, personnel actions/dates, violations of rules, physical handicaps and health data, veterans preference, mutual aid association memberships, union memberships, qualifications, and other data needed for personnel, financial, line and security management, as appropriate.

* * * * *

PURPOSE:

To manage, supervise and administer programs for all Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; and similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

* * * * *

[FR Doc. 86–5106 Filed 3–7–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Information Collection Requests; Request for Comments

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information

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collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before April 9, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 5, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Preapplication and Application for Federal Assistance (Construction)
Agency Form Number: ED 355 and 355–1
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
  Responses: 38
  Burden Hours: 380
Recordkeeping Burden:
  Recordkeepers: 25
  Burden Hours: 625

Abstract: Local education agencies in federally impacted areas use the preapplication/application to provide data needed for Departmental evaluation and determinations of eligibility, extent of need, and amount of entitlement.

Type of Review Requested: Extension
Title: State Performance Report, Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: ED 686–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
  Responses: 54
  Burden Hours: 21,870
Recordkeeping Burden:
  Recordkeepers: 54
  Burden Hours: 540

Abstract: This report is used to obtain necessary participation and performance data on the Education Consolidation and Improvement Act (ECIA) Chapter 1 program throughout the Nation, to manage the program effectively, and to provide the Department with the information needed to comply with sections 417(a), 418(a) and 422 of the General Education Provisions Act and Chapter 1, ECIA.

Office of Postsecondary Education

Type of Review: Extension
Title: Performance Report for the Special Services for Disadvantaged Students Program, 34 CFR Part 646
Agency Form Number: ED 1231
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
  Responses: 663
  Burden Hours: 1989
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: Special Services grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments, compliance, prior experience, and college impact data for budget submissions and congressional hearings.

Type of Review Requested: Extension
Title: Student Confirmation Report for the Federal Insured Student Loan Program
Agency Form Number: ED 1072
Frequency: Semi-annually
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden
  Responses: 22,500
  Burden Hours: 22,500
Recordkeeping Burden
  Recordkeepers: 11,250
  Burden Hours: 8,438

Abstract: The Student Confirmation Report for the Federal Insured Student Loan (FISL) Program is completed twice a year by postsecondary institutions and records information on the status of students who have Federal insured student loans outstanding.

Type of Review: Revision
Title: Lender's Request for Interest and Special Allowance
Agency Form Number: 799
Frequency: Quarterly
Affected Public: Businesses or other for-profit
Reporting Burden:
  Responses: 48,000
  Burden Hours: 67,200
Recordkeeping Burden:
  Recordkeepers: 12,000
  Burden Hours: 18,000

Abstract: The ED Form 799 is used by approximately 12,000 participants in the Guaranteed Student Loan Program to apply for interest and special allowance. Pub. L. 99–177 requires a new category of loans be added effective 3/1/86. An addendum to the form will be used to request interest and special allowance for loans made as of March 1, 1986.

Type of Review: Revision
Title: Lender's Request for Interest and Special Allowance for Loans Made From Tax-Exempt Funds
Agency Form Number: 799A
Frequency: Quarterly
Affected Public: Business or other for-profit
Reporting Burden:
  Responses: 300
  Burden Hours: 277
Recordkeeping Burden:
  Recordkeepers: 75
  Burden Hours: 112.50

Abstract: The ED Form 799A is used by 75 entities to apply for interest and special allowance on tax-exempt loans. Pub. L. 99–177 requires a new category of loans be added, effective 3/1/86. An addendum to the form will be used to request interest and special allowance for loans made as of March 1, 1986.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement

Title: FY 1987–89 State Plan Under Part B of the Education of the Handicapped Act, as amended
Agency Form Number: ED 9055
Frequency: Triennial
Affected Public: State and local governments
Reporting Burden:
  Responses: 19
  Burden Hours: 475
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: States are required to submit a State plan in order to receive funds under the Education of the Handicapped Act, as amended. The information will be used as a basis for determining (1) grant eligibility, (2) compliance review and enforcement, and (3) the kinds of technical assistance the State may require.

[FR Doc. 86–5119 Filed 3–7–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Survey Task Group; Reschedulled meeting

The date and location of the March 12, 1986, eighth meeting of the Refinery Survey Task Group has been changed. The meeting will now be held on Thursday, March 13, 1986, starting at 9:00 a.m., in the Reading Room of the National Petroleum Council, 1625 K Street, NW., Suite 600, Washington, DC. Notice of this meeting first appeared in 51 FR 6164, Thursday, February 20, 1986 (FR Doc. 86–3706).

Issued at Washington, DC, February 28, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–5149 Filed 3–7–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. WH–005]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Lochinvar Water Heater Corp.

AGENCY: Conservation and Renewable Energy Office, Energy.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Lochinvar Water Heater Corporation (Lochinvar) of Nashvile, Tennessee, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. Lochinvar manufactures a Model BRE030 oil-fired water heater which has a high mass heat exchanger. The petition requests DOE to grant Lochinvar relief from the DOE test procedure for water heaters for its Model BRE030 oil-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data, and information not later than April 9, 1986.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–005, Mail Station CE–132, Forrestal Building, 1000 Indepedence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513.

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain cosumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one of more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are some of the products covered by the Federal Trade Commission's (FTC) Applicance Labeling Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which the FTC requires manufacturers of water heaters to disclose on an Energy Guide label on each unit to assist consumers in making a purchasing decision.

By letter dated January 2, 1986, Lochinvar filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model BRE020 oil-fired water heater. Lochinvar states that the high mass of the water heater results in a penalty when testing the water heater in accordance with the DOE test procedures.

Lochinvar requests a "hot start" test method instead of "cold start" test method prescribed by the DOE test procedure. The DOE test procedure requires that the mass of a water heater plus the water in its tank be in thermal equilibrium at a temperature of 70 °F at the beginning of the test. The water heaters then heat the tank of water through a 90 °F temperature rise (i.e. to 160 °F). The amount of energy consumed by the water heater is measured directly. Lochinvar states that this period of time during which the tank is heated from "cold" to "hot" only occurs during the start-up period after installation and, therefore, does not result in a true measure of the water heater's efficiency.

Lochinvar mistakenly requests to be allowed to use a "hot start" test method granted to Bock Water Heaters Inc. (Bock) (Case No. WH–002). The test procedure waiver granted Bock on November 15, 1985, for its Model 32E oil-fired water heater specified a "simulated use", not a "hot start" test method. 50 FR 47108. The simulated use test method involves withdrawing water from the hot water outlet in three separate consecutive water draws. The recovery efficiency is then calculated based upon the total energy consumed over the three consecutive water draws.

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In addition to comments for or against DOE granting Lochinvar's request for a waiver, DOE invites comments on the efficacy of the simulated use test method, the "hot start" test method or any other test methodology which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data and information respecting the petition.

Issed in Washington, DC, February 28, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

January 2, 1986.

Assistant Secretary of Conservation and Renewable Energy,

Department of Energy, Washington, D.C. 20585.

Re A Petition for Waiver, Reference Case Nos. HEL-0188, WH-002.

Dear Sir: Please accept this letter as our Petition for Waiver, to the current D.O.E. method of testing oil-fired water heater for efficiency.

We are aware that other manufacturers have applied, and have been given a waiver from, what is referred to as the "cold start" method of testing.

We at Lochinvar feel that the "cold start" method currently used in D.O.E. efficiency testing penalizes the "high mass" type water heater when determining its reality. The period of time during which the energy from the burner is used to heat the tank from "cold" to "hot" only occurs during the start-up period after installation. Therefore this is not a true efficiency the customer would receive on an ongoing basis.

The design of our heater, Lochinvar BRE030, is that of a tank type water heater which contains several pounds of steel in the tank refractory which must be heated to equilibrium before the water efficiency can be obtained correctly.

The method of test that we desire is the "hot start" method which as I mentioned earlier has been granted to other manufacturers of a like product.

Thank you for your consideration in this matter.

Lochinvar Water Heater Corporation.

Al Gatlin,

Vice President, Manufacturing and Engineering.

AK:kr

cc: Lawrence Welize—ETL.

[FR Doc. 86–5147 Filed 3–7–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA–FC–85–018; OFP Case No. 63028–9281–21–22]

Powerplant and Industrial Fuel Use Exemption Requests; Golden Valley Electric Association

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Extension of Decision Period on Peitition for Exemption by Golden Valley Electric Association near The Seward Meridian, Alaska.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days to May 28, 1986, the Decision Period within which to either grant or deny the request for a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA) filed by Golden Valley Electric Association for a proposed 80 MW gas turbine powerplant to be located west of The Seward Meridian, Alaska.

Section 501.68(a)(2) of 10 CFR Part 501.—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a date certain by publishing such notice in the Federal Register and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary due to required additional analysis of environmenal data submitted by the petitioner.

Issued in Washington, DC on March 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–5148 Filed 3–7–86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee

Date and Time: Thursday, April 10, 1986, 1:30 p.m.–5:30 p.m.; Friday, april 11, 1986, 9:00 a.m.–3:30 p.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–74, Washington, DC 20585, Telephone : (202) 252–2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 10, 1986

A. Opening Remarks.
B. Major Topics:
1. The View from OMB.
2. Alternative Long-Range Forecasts of Nuclear Output.
3. Validation of Uranium Financial Statistics.
4. Public Comments.

Friday, April 11, 1986

5. User Needs for State Energy Data System (SEDS)/State Energy Price and Expenditure Data System (SEPEDS).
6. State-of-the Data: Reconciling SEDS and Consumption Estimates.
7. Use of Models in Evaluating Natural Gas Data.
8. Adjustments to Crude Oil Price Data.
9. The Office of Statistical Standards.
10. Public Comments.
C. Topics for Future Meetings.

Public Participation: The meeting is open to the public. The chairperson of the panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above. Requests must be received at least five days prior to the meeting. Reasonable provisions will be made to include such presentations on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, D.C., on March 5, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–5150 Filed 3–7–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP86–50–000]

Arkla Energy Resources, a Division of Arkla, Inc., Tariff Filing

March 4, 1986.

Take notice that on February 24, 1986, Arkla Energy Resources, a division of Arkla, Inc., hereinafter referred to as "AER" tendered for filing six (6) copies of the following tariff sheets to its FERC Gas Tariff, Revised Volume No. 2, to be effective on March 1, 1986.

Original Sheet Nos. 227, 228, 229, 230, 231, 232, and 233.

AER states that these sheets provide for interim rates for firm and certain interruptible self-implementing transportation services to be offered pursuant to Order No. 436 that are not covered by AER's existing transportation tariffs. AER further states that the proposed rates are based on its jurisdictional costs of service approved in Docket No. RP84–107 and that it, therefore, is not proposing any increase in its presently allowed revenues by the instant filing. AER requests such approvals and waivers as may be necessary to permit these tariff sheets to become effective March 1, 1986.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before march 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of AER's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5133 Filed 3–7–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–1–22–002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on February 14, 1986, tendered for filing revised tariff sheets to remove the effect of concurrent exchange imbalances from the calculation of the Account No. 191 balance in compliance with the Commission's order issued August 30, 1985, in Docket No. TA85–3–22. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 21, 1986.

Consolidated states that Substitute Eighth Revised Sheet No. 31 to Original Volume No. 1 of its tariff revises Consolidated's semiannual PGA to be effective March 1, 1986. Consolidated further states that revisions to Sheet Nos. 128 and 129 of the General Terms and Conditions of its tariff change the PGA clause to reflect the change in treatment of exchange imbalances.

Consolidated indicates that copies of this filing were served upon its jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before March 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5134 Filed 3–7–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 86–4–34–000, 001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 4, 1986.

Take notice that on February 28, 1986, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

7th Revised Sheet No. 8
8th Revised Sheet No. 8
4th Revised Sheet No. 9

Original Volume No. 2

30th Revised Sheet No. 128
31st Revised Sheet No. 128

Reason for Filing

7th Revised Sheet No. 8 and 30th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T–3 respectively to adjust the Primary Adjustment to reflect reductions in FGT's average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges. FGT requests the Commission to waive such parts of its Regulations and FGT's FERC Gas Tariff as it deems necessary to allow FGT to make such tariff sheets effective March 1, 1986 in order to allow these reductions in gas costs to be passed through to FGT's jurisdictional customers on March 1, 1986 in lieu of the scheduled effective date of April 1, 1986.

8th Revised Sheet No. 8 and 31st Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T–3, respectively to adjust: (i) The Primary Adjustment consistent with the adjustments reflected in 7th Revised Sheet No. 8 and 30th Revised Sheet No. 128; and, (ii) the Balancing Adjustment to amortize over the six-month adjustment period (April 1, 1986 through September 30, 1986), the balance in the current period Unrecovered Purchase Gas Cost Account as of December 31, 1985.

4th Revised Sheet No. 9 contains the estimated Incremental Pricing Surcharges for the adjustment period.

8th Revised Sheet No. 8, 4th Revised Sheet No. 9 and 31st Revised Sheet No. 128 are to be effective on April 1, 1986.

The above-mentioned changes to the Primary and Balancing Adjustments are being made pursuant to Section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the

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General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and §154.38 *et seq.*, of the Commission's Regulations (18 CFR 154.38, *et seq.*).

The net effect of the adjustments being filed for Rate Schedules G and I, and for Rate Schedule T-3 are summarized below.

	Rate schedules		
	G (cents per therm)	I (cents per therm)	T-3 (cents per 1,000 ft ³)
Currently effective rates ¹	29.197	27.424	47.37
Primary adjustment (to be effective March 1, 1986)	(5.476)	(5.476)	(1.65)
March 1, 1986 rates	23.721	21.948	45.72
Balancing adjustment (to be effective April 1, 1986)	1.840	1.840	.52
April 1, 1986 rates	25.561	23.788	46.24

¹ Reflects rates filed by FGT to be effective February 1, 1986 pursuant to Docket No. TA86-3-34-000.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested state commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5135 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-37-005]

High Island Offshore System; Tariff Filing

March 4, 1986.

Take notice that on February 20, 1986, High Island Offshore System ("HIOS") tendered for filing Thirteenth, Fourteenth and Fifteenth Revised Sheet Nos. 4 to be included in the High Island Offshore System FERC Gas Tariff, Original Volume No. 1 to be effective on October 1, 1985, December 1, 1985 and January 1, 1986, respectively.

HIOS states that the tariff sheets are being filed in compliance with Article IV of the Stipulation and Agreement submitted by HIOS on May 15, 1985 at Docket No. RP85-37, which was approved by the Federal Energy Regulatory Commission ("Commission") on July 22, 1985. Article IV provides for the adjustment of the demand portion of HIOS rates relating to reductions in charges HIOS is paying for measurement, dehydration and separation at the Grand Chenier and Cameron Meadows facilities, subject to refund under ANR Pipeline Company's Rate Schedule X-64 and under U-T Offshore System's Rate Schedule X-1, respectively.

Also included are various revised tariff sheets to update the Table of Contents in both Original Volume Nos. 1 and 2 of HIOS's FERC Gas Tariff and a corresponding update to the Schedule of Shippers and List of Contract Demands in Original Volume No. 1 of HIOS's FERC Gas Tariff. The aforementioned updates reflect the Commission's approval on October 25, 1985, in Docket No. CP75-104-047, of Rate Schedule T-17 to Original Volume No. 2 of HIOS's FERC Gas Tariff. HIOS has requested that these sheets be made effective January 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5136 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1871-002]

Edwin A. Lupberger; Application

March 3, 1986.

Take notice on February 5, 1986, Edwin A. Lupberger filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Arkansas Power & Light Company
Director, Louisiana Power & Light Company
Chairman, President, and Director, Middle South Energy, Inc.
Director, Mississippi Power & Light Company
Director, New Orleans Public Service Inc.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's rules and practice and procedures (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests wil be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5137 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-87-003]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 4, 1986

Take notice that United Gas Pipe Line Company (United), on February 20, 1986, tendered for filing Sixteenth Revised Sheet No. 99-A to its FERC Gas Tariff, First Revised Volume No. 1.

United states that this tariff sheet reflects a reduction in the maximum daily quantity and minimum billing demand volumes for Mississippi River Transmission Corporation as approved by the Commission's Order of December 11, 1985, in *Mississippi River Transmission Corporation* v. *United Gas Pipe Line Company*, Docket No. RP84-87. The tariff sheet is proposed to become effective on February 1, 1986 and will confirm United's presently effective tariff with the Commission's Order.

Copies of the filing will be served upon United's jurisdictional customers and the public service commissions of the States of Alabama, Florida, Louisiana and Mississippi, and the Texas Railroad Commission.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. all such motions or protests should be filed on or before March 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5138 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. EL86-25-000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power & Light Co. et al.

March 3, 1986.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Co.

[Docket No. EL86-25-000]

Take notice that on February 24, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a petition for Declaratory Order, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure. AP&L seeks a declaratory order stating that AP&L is not required to provide transmission service, pursuant to section 211 and 212 of the Federal Power Act (FPA or Act), for the City Water and Light Plant of Jonesboro, Arkansas (Jonesboro) or Farmers Electric Cooperative Corporation (Farmers) in connection with the September 24, 1985, Wholesale Power Contract between Jonesboro and Farmers pursuant to which Jonesboro intends to supply all of Farmer's power and energy requirements. Such requirements are now being met by AP&L, which has supplied power and energy to Farmers for over 20 years. If AP&L is required to provide the requested transmission service, AP&L says it will result in the total loss of sales to one of its existing customers.

Comment date: March 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. ER86-275-000]

Take notice that on February 25, 1986, Central Illinois Light Company (CILCO) tendered for filing proposed amendments to its filing of January 31, 1986 of an executed transmission agreement with the Illinois Municipal Electric Agency (IMEA) providing for specified transmission service to a designated interconnection point between CILCO and the Village of Chatham, Illinois. CILCO, with the support of IMEA and Chatham, requests waiver of the Commission's notice requirements to permit an effective date fo February 1, 1986.

Comment date: March 14, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Delmarva Power & Light Company

[Docket No. ER86-322-000]

Take notice that Delmarva Power & Light Company (Delmarva) on February 25, 1986, tendered for filing proposed Supplement Nos. 10 and 11 to its FERC Rate Schedule No. 66. Under the Supplements, Delmarva would provide partial requirements service at 138 kV instead of 12 kV when The Board of Water and Light Commissioners of New Castle, Delaware, (New Castle) completes its 138 kV/4 kV substation and would also provide transformer firming service to New Castle for a 5-year period. Completion of the 138 kV/4 kV substation is scheduled to take place on or about March 3, 1986. Copies of the filing were served upon New Castle and the Delaware Public Service Commission.

Comment date: March 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company

[Docket No. ER86-101-002]

Take notice that on January 29, 1986, Northern States Power Company (NSP) tendered for filing revised Step II requirements rates pursuant to the Commission's Order of December 30, 1985. As set forth in that Order, the proposed coordination sales adjustment clause has been deleted and the revised rates reflect all off-system revenues as a revenue credit.

Comment date: March 13, 1986, in accordance with Standard Paragraph H at the end of this notice.

5. Wisconsin Power & Light Company

[Docket No. ER86-321-000]

Take notice that on Feb. 25, 1986, Wisconsin Power & Light Company (WPL) tendered for filing an electric temporary, normally open, distribution voltage, interconnection and power supply agreement dated December 9, 1985, between the Commonwealth Edison Company (Edison), South Beloit Water, Gas & Electric Company (a WPL subsidiary), and WPL. WPL states that this temporary agreement shall be effective for three years from the date service is first available which is expected to be on or about April 1, 1986.

The purpose of this temporary interconnection is to provide an alternate power source to certain retail Edison customers when those customers are separated from their normal Edison source is times of emergency. WPL states that emergency power will be provided to Edison on essentially the same rate as provided currently under their transmission interconnection agreement, except that the rate will be slightly higher to adjust for 2% additonal losses for delivery at the distribution voltage level.

WPL requests that an effective date concurrent with the contract effective date, be assigned this filing based upon the parties' mutual consent to the agreement. WPL states that copies of the agreement and the filing have been provided to Edison, the Illinois Commerce Commission, and the Wisconsin Public Service Commission.

Comment date: March 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Company

[Docket No. ER84-566-000]

Take notice that Gulf States Utilities Company (Gulf States), on February 21, 1986, pursuant to the order issued January 22, 1986 in Docket No. ER84-568-000 and the settlement agreement approved therein, tendered for filing Amendments, executed as of February 20, 1986, to its Agreements for Wholesale Electric Service with the Cities of Erath, Gueydan and Kaplan (the Cities) dated March 15, 1983, for the Cities of Erath and Gueydan and dated February 14, 1983, for the City of Kaplan. The Amendment does not provide for a rate increase.

The Amendment provides that a portion of the Cities' loads that would otherwise be supplied by purchases of wholesale electric service from Gulf States shall instead be served by power purchased from others and delivered to the Cities by transmission service provided by Gulf States. The power the Cities will purchase from others will be power Gulf States has contracted for or will contract for with other utilities and will share, by assignment, with the Cities.

The Amendments would remain in effect for four (4) years from May 1, 1985, unless terminated earlier pursuant to rights reserved in the Amendments.

Gulf States requests that any necessary waivers be granted so that the Amendments, Rate Schedule WST

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and Rider A thereto can become effective on May 1, 1985, and so that the purchased power provisions can become effective on the date they are accepted or approved by the Commission without conditions which are unacceptable to Gulf States or the Cities.

Copies of the filing have been served upon the Cities, and upon the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: March 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5141 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-312-000 et al.]

Consolidated Gas Transmission Corp. et al. Natural Gas Certificate Filings;

Take notice that the following filings have been made with the Commission:

1. Consolidated Gas Transmission Corporation

[Docket Nos. CP86-312-000]

February 28, 1986.

Take notice that on February 10, 1986, Consolidated Gas Trasmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket Nos. CP86-312-000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for (1) an order authorizing the temporary abandonment of certain natural gas produced by Consolidated, and (2) a blanket certificate of public convenience and necessity authorizing the sale for resale of such gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated seeks Commission authorization on a blanket basis for (1) the abandonment, on a temporary basis, of the company-produced gas that is subject to the Commission's Natural Gas Act jurisdiction, to the extent such gas is sold by Consolidated, and (2) for sales of gas for resale in interstate commerce, without supply or market limitations, of such company-produced gas.

Consolidated states that its company-owned production is surplus to the needs of its customers and proposes to sell such gas in the spot market. It is also stated that the proposed spot sales of company production would be for short terms and would not involve the dedication of specific gas reserves. Consolidated also states that title to the gas would pass at or near the wellhead and that other particulars would vary.

Consolidated states the application is made pursuant to a stipulation and agreement filed contemporaneously by Consolidated in Docket Nos. RP85-169-000, RP82-115-000 and RP81-80-000. Consolidated indicates that it is also applying contemporaneously for a certificate of public convenience and necessity authorizing transportation services for others on a blanket basis and that any transportation of gas by Consolidated necessary to effect deliveries of the proposed sales would be peformed pursuant to such blanket authorization.

Consolidated states that if it needs to replace its company-owned production, such additional quantities would be acquired at a price equivalent to or lower than the price which would otherwise be required under the above-described stipulation and agreement.

Consolidated requests that the authorizations commence March 1, 1986, and continue until February 28, 1989, and indicates that it does not anticipate the construction of any new or additional facilities.

Comment date: March 21, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP86-309-000]

February 27, 1986.

Take notice that on February 7, 1986, El Paso Natual Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-309-000 a request pursuant to § 157.205 of the Regulations under the Natual Gas Act (18 CFR 157.205) for authorization to construct and operate facilities to upgrade an existing sales tap for the delivery of gas to Southwest Gas Corporation (Southweste) for resale under the certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to construct a dual 4½-inch sales meter station on its exisiting 12¾-inch Rivers transfer line in Pinal County, Arizona. It is stated that the upgraded sales station would permit El Paso to sell 618,697 Mcf of gas per year to Southwest for resale to residential, commercial, and industrial customers in Pinal County Arizona. El Paso estimates the cost of the facilities to be $72,000 which cost would be financed from internally generated funds.

Comment date: April 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP86-306-000]

February 28, 1986.

Take notice that on February 4, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-306-000 an application pursuant to section 7 of the Natural Gas Act for a limited term certificate of public convenience and necessity authorizing best-efforts transportation service for Atlanta Gas Light Company (Atlanta) and for permission and approval to abandon such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that Atlanta has requested transportation service in accordance with the terms and conditions of a transportation agreement between Atlanta and Southern, dated January 29, 1986 (agreement). Southern has agreed to transport on an interruptible basis up to 310 billion Btu of natural gas per day that Atlanta has arranged to purchase from SNG Trading Inc. (SNG Trading). Southern states that such transportation service would continue for a term of two years

commencing from the date of Commission authorization.

The agreement provides that Atlanta would cause gas to be delivered to Southern for transportation at 70 existing points of delivery on Southern's contiguous system. Southern states that it would redeliver to Atlanta at the existing Atlanta area delivery points as set forth in the service agreement between Atlanta and Southern dated September 23, 1969, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Atlanta's account which is lost or vented for any reason.

Southern states that Atlanta has agreed to pay the following transportation charge:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, where added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate would be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta, the transportation rate for the excess volumes would be 77.6 cents per million Btu.

Southern would collect from Atlanta the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Atlanta obtains alternative sources of supply of natural gas.

Comment date: March 21, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP86-289-000]

March 3, 1986.

Take notice that on January 24, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84110, filed in Docket No. CP86-289-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment of certain leasehold properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests permission to abandon by transfer to T. H. McElvain, *et al.* (McElvain), effective January 1, 1985, 100 percent of its working interest in the gas and gas rights under leases which originally were acquired by Pacific Northwest Pipeline Corporation (Pacific Northwest), a predecessor of Northwest, from McElvain. It is explained that the proposed transfer of working interest would be effectuated in accordance with a settlement agreement between Northwest and McElvain dated December 17, 1985. Northwest states that under the settlement agreement Northwest agreed, upon receiving Commission approval, to assign to McElvain effective as of January 1, 1985, 100 percent of its working interest conveyed by McElvain to Pacific Northwest under the PLA-4 agreements to the extent such working interest is now owned by Northwest.

Northwest further states that the PLA-4 Agreements cover approximately 31,000 gross acres in Rio Arriba and San Juan Counties, New Mexico. It is stated that there are approximately 360 gas wells associated with the PLA-4 leases in which Northwest has an ownership interest and that for the 12-month period ending November 30, 1985, Northwest's PLA-4 production from these wells was approximately 0.46 Bcf of gas.

Northwest avers that the subject leasehold production properties are not included in Northwest's rate base and the production therefrom has been deemed to be sold to the transmission division of the Company at the wellhead. It is asserted that each of the PLA-4 wells in which Northwest has an interest either has received or is pending final Commission approval for a maximum lawful price under section 103 or section 108 of the Natural Gas Policy Act of 1978 (NGPA) or presently is subject to a ceiling price under section 104 of the NGPA.

It is stated that Northwest and McElvain have entered into a gas purchase contract, dated December 17, 1985, to provide for the continued purchase by Northwest of volumes of gas to be produced from the PLA-4 interests proposed to be transferred to McElvain. Northwest states that the price to be paid by it for gas purchased under the gas purchase contract would be the lower of the applicable NGPA maximum lawful price of the current alternate fuel price. The alternate fuel price is defined in the gas purchase contract to be 85 percent of the price of No. 6 fuel oil at Seattle, Washington, less Northwest's average gathering, processing and transportation costs, it is said.

Northwest asserts that the assignment described above is consistent with the public convenience and necessity and that the settlement agreement represents a fair and reasonable compromise by the parties of disputed issues which would conclude long and costly litigation. Northwest states that the PLA-4 leasehold production which is currently committed to Northwest and its customers, including potential future development of the subject leases, would remain committed to Northwest and its customers under the gas purchase contract between McElvain and Northwest. Further, Northwest states that the price to be paid for the gas purchased under the gas purchase contract does not exceed the value which Northwest otherwise would have placed on the gas as pipeline production in its purchased gas adjustment filings and that the transfer of the assigned interest to McElvain would not increase the cost of gas produced from the assigned interest in the PLA-4 properties to Northwest's customers.

Comment date: March 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within

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the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5139 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases

Issued: March 3, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508, September 28, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 13, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 195 leases were issued as a result of OCS Sale 102 for the Western Gulf of Mexico on August 14, 1985. Included in this offering were lease numbers OCS-G 8065 through OCS-G 8274. Bids were rejected for lease numbers OCS-G 8088, 8102, 8106, 8107, 8112, 8118, 8119, 8122, 8152, 8158, 8173, 8178, 8182, 8191, and OCS-G 8196. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA secion 102:

Outer Continental Shelf, Western Gulf of Mexico Oil and Gas Lease Sale 102 (August 14, 1985).

A. Effective Dates and Expiration Dates: 10/1/85-9/30/90.

8065	8096	8165
8066	8097	8168
8067	8098	8169
8068	8099	8170
8069	8100	8171
8071	8101	8175
8072	8104	8176
8073	8108	8177
8074	8111	8183
8075	8113	8184
8076	8114	8185
8077	8120	8186
8078	8127	8187
8079	8128	8193
8080	8131	8194
8081	8136	8197
8084	8140	8198
8087	8145	8199
8089	8146	8200
8090	8147	8201
8091	8148	8202*
8092	8149	8203*
8093	8150	8205*
8094	8154	8206*
8095	8155	8215

8217	8231*	8244*
8219	8232*	8245*
8220	8233*	8246*
8221	8234	8249*
8222	8235	8250*
8223*	8236	8251*
8224	8237*	8255*
8225	8238*	8256*
8226*	8239*	8257*
8227	8240	8258*
8228*	8241*	8259*
8229*	8242*	8262*
8230*	8243*	8270*

*Stipulation No. 5: 8 year lease terms.

B. Effective Dates and Expiration Dates: 10/1/85-9/30/95.

8204	8247	8265
8207	8248	8266
8208	8252	8267
8209	8253	8268
8210	8254	8269
8211	8260	8271
8212	8261	8272
8213	8263	8273
8214	8264	8274

C. Effective Dates and Expiration Dates: 11/1/85-10/31/90.

8070	8130	8161
8082	8132	8162
8083	8133	8163
8085	8134	8164
8086	8135	8166
8103	8137	8167
8105	8138	8172
8109	8139	8174
8110	8141	8179
8115	8142	8180
8116	8143	8181
8117	8144	8188
8121	8151	8189
8123	8153	8190
8124	8156	8192
8125	8157	8195
8126	8159	8216
8129	8160	8218

For each oil and gas lease in the 400-meter to 900-meter water-depth range, the lessee must commence the drilling of an exploratory well within 5 years of the date the lease becomes effective. The exploratory well shall meet the depth and other criteria established in an approved exploration plan.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5140 Filed 3-7-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals Applications for Exception; Cases Filed; Week of January 31 Through February 7, 1986

During the Week of January 31 through February 7, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs fist. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585

George B. Breznay,

Director, Office of Hearings and Appeals.

February 27, 1986.

List of Cases Received by the Office of Hearings and Appeals

[Week of Jan. 31 through Feb. 7, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 3, 1986	Roger Dingman, Los Angeles, CA	KFA-0016	Appeal of an Information Request Denial. If granted: The November 15, 1985 Freedom of Information Request Denial issued by the Office of Classification would be rescinded, and Roger Dingman would receive access to deleted portions of General George C. Stratemeyer's papers (168-7018-16, Vol. 1, Annex, June 1950 through May 1951).
Feb. 4, 1986	Palo Pinto/Nevada, Carson City, NV	RM5-15	Request for Modification/Rescission in the Palo Pinto Second Stage Refund Proceeding. If granted: The August 18, 1983 Decision and Order (Case No. RQ5-8) issued to Nevada would be modified regarding the state's application for refund submitted in the Palo Pinto Second Stage Refund Proceedings.
Do	Palo Pinto-Georgia, Atlanta, GA	RM5-16	Request for Modification/Rescission in the Palo Pinto Second Stage Refund Proceeding. If gmated: The January 10, 1985, Decision and Order (Case No. RM5-2) issued to Georgia would be modified regarding the state's application for refund submitted in Palo Pinto Refund Proceedings.
Feb. 5, 1986	Dearybury Oil Company, Cowpens, SC	KEE-0020	Exception to the Reporting Requirements. If granted: Dearybury Oil Company would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report".
Feb. 6, 1986	Rek-Chem Manufacturing Corporation, Albuquerque, NM	KFA-0017	Appeal of an Information Request Denial. If granted: The January 28, 1986 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Rek-Chem Manufacturing Corporation would receive access to information on RFQ No. 60-6002.
Feb. 7, 1986	Economic Regulatory Administration, Washington, DC	KRZ-0019	Interlocutory. If granted: The Exhibit D of the Economic Regulatory Administration November 28, 1983 Response to the Statement of Objections filed by the National Hydrocarbons Group, Inc. (Case No. HRO-0164) would be placed under seal.
Do	Economic Regulatory Administration and Atlantic Richfield Company, Washington, DC.	KRS-0170	Request for Stay. If granted: The Economic Regulatory Administration and Atlantic Richfield Company would receive a stay of the Proposed Remedial Order issued to Atlantic Richfield Company by the Economic Regulatory Administration pending a final determination on the Proposed Consent Order.
Do	W.D. Brooks, Inc., Whiteville, NC	KEE-0021	Exception to the Reporting Requirements. If granted: W.D. Brooks, Inc, would no longer be required to file form EIA-782B "Reseller/Retailers. Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Jan. 31 to Feb. 7, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Feb. 3, 1986	Mobil/Steve Raneri	RF225-36
Do	Mobil/Parham Mobil	RF225-37
Do	Mobil/Mike Zoolis	RF225-38
Do	Mobil/Pelham Heights Service Station	RF225-39
Do	Mobil/County of Burlington	RF225-40
Do	Mobil/Kissena Expressway Service Station	RF225-41
Do	Quaker State/Community Distributors, Inc	RF213-62
Do	Quaker State/M.A.K. Corp	RF213-63
Do	Quaker State/Logan Clay Products Co	RF213-64
Do	Quaker State/Ralph L. Toy Co	RF213-65
Do	Leese/School District No. 25	RF211-9
Do	Quaker State/Repine's Quaker State Station	RF213-66
Do	Quaker State/Garry's Quaker State	RF213-67
Do	Mobil/Charles Bowen Swann	RF225-42
Do	Amoco/Runyon Oil Company, Inc	RF21-12569
Do	Eastern N.J./Bogen Division	RF232-1
Do	Eastern N.J./Acme Metal Goods Mfg. Co	RF232-2
Do	Eastern N.J./Magruder Color Company, Inc	RF232-3
Do	Eastern N.J./Hastings Gardens	RF232-4
Do	Eastern N.J./Briar Hill Apts	RF232-5
Do	Eastern N.J./Chateau Apts	RF232-6
Do	Eastern N.J./River West Apts	RF232-7
Do	Eastern N.J./Short Hills Village	RF232-8
Do	Eastern N.J./Gretchen Grant Kitchens	RF232-9
Do	Eastern N.J./S.A. Wald & Co	RF232-10
Do	Eastern N.J./Abeles-Lewit	RF232-11
Do	Eastern N./A.J. & J.O. Pilar	RF232-12
Do	Amoco/Briner Oil Company, Inc	RF21-12568
Do	Quaker State/Masters Garage	RF213-68
Do	Eastern N.J./Mulberry Metal Products, Inc	RF232-13
Do	Eastern N.J./Bigel, Shoeholz and Lieberman	RF232-14
Do	Eastern N.J./Bergen Point Brass Foundry, Inc	RF232-15
Do	Eastern N.J./Trio Dyeing & Finishing Co., Inc	RF232-16
Do	Eastern N.J./Repak Corp	RF232-17
Do	Mobil/Bobba's Service Center	RF225-43
Do	Mobil/Wm. R. Peterson Oil	RF225-44
Do	Mobil/Southern Counties Oil Co	RF225-45
Do	Mobil/Gerald W. Newman	RF225-46

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REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 31 to Feb. 7, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Mobil/Dale City Mobil	RF225-47
Do	Mobil/Nass Mobil	RF225-48
Do	Mobil/Webster Mobil	RF225-49
Do	Saber/Trans American Natural Gas Corp	RF182-16
Do	Appalachian/W.P.W. Co	RF234-2
Do	Charter/Florida	RQ23-270
Do	Coline/Florida	RQ2-271
Feb. 4, 1986	Crystal/Hi-Test Gas Co	RF233-1
Do	Pride/L&L, Inc	RF235-1
Do	Quaker State/Nassau Garage	RF213-70
Do	Quaker State/J.D. Hinkle & Sons, Inc	RF213-71
Do	City Service/Main Street Husky Appalachian/Pendley Constructions, Inc	RF234-1
Do	Mobil/Vinnin Sq. Mobil	RF225-50
Do	Eastern N.J./Atlantic Industries, Inc	RF232-18
Do	Eastern N.J./Tamburelli Properties, Inc	RF232-19
Do	Quaker State/Raker Oil Corp	RF213-69
Do	Good Hope/Trans American Natural Gas Corp	RF189-21
Do	Mobil/Interchange Service Station	RF225-51
Do	Mobil/Roger Rolo Mobil	RF225-52
Do	Mobil/Alan Watson	RF225-53
Do	Eastern N.J./Liberty Optical	RF232-20
Do	Eastern N.J./Equitable Bag Company, Inc	RF232-21
Do	Eastern N.J./Estate of Ercole Tamburelli	RF232-22
Do	Eastern N.J./Perma-Foam, Inc	RF232-23
Do	Eastern N.J./R & J Realty	RF232-24
Do	Eastern N.J./J.K. Smit & Sons, Inc	RF232-25
Feb. 5, 1986	Mobil/Oldbury's Mobil Service	RF225-54
Do	Mobil/Kesh Service	RF225-55
Do	Mobil/Glenn Nissen Mobil	RF225-56
Do	Eastern N.J./U.K. Dye Works	RF232-26
Do	Eastern N.J./Bushwick Realty Corp	RF232-27
Do	Eastern N.J./Passaic Rubber Co	RF232-28
Do	Eastern N.J./Scandia Packaging Machinery Co	RF232-29
Do	Eastern N.J./Royal Gardens #2	RF232-30
Do	Eastern N.J./Omni Properties, Inc	RF232-31
Do	Eastern N.J./Wigton-Abbott Corp	RF232-32
Do	Eastern N.J./A. Foschini	RF232-33
Do	Eastern N.J./Royal Gardens #1	RF232-34
Do	Canto/Jimmy's	RF236-1
Feb. 6, 1986	Eastern N.J./Metal Wash Machinery Corp	RF232-37
Do	Eastern N.J./Dairy Pak	RF232-36
Do	Eastern N.J./Towne Cleaners, Inc	RF232-35
Do	Mobil/Feltroop Service Station	RF225-58
Do	Mobil/Philip M. Palma	RF225-57
Do	Quaker State/Frish Construction	RF213-72
Do	Eastern N.J./Tzeses Bros., Inc	RF232-42
Do	Eastern N.J./Redmond Realty Mgt. Co	RF232-41
Do	Eastern N.J./Constantine Village	RF232-40
Do	Eastern N.J./Tzeses Bros., Inc	RF232-39
Do	Eastern N.J./Leo Tzeses	RF232-38
Do	Eastern N.J./New Providence Gardens	RF232-43
Do	Eastern N.J./Elm Gardens Co	RF232-44
Do	Eastern N.J./Halsey Gardens Co	RF232-45
Do	Eastern N.J./Murray Hill Apts	RF232-46
Do	Eastern N.J./Hutton LaFayette Apt. Co	RF232-47
Do	Eastern N.J./Scotland Gardens	RF232-48
Do	Eastern N.J./Rabbinicial College of America	RF232-49
Do	Eastern N.J./Matheson Gas Products	RF232-50
Do	Eastern N.J./Fisher-Stevens, Inc	RF232-51
Do	Eastern N.J./Liberty Provisions	RF232-52
Do	Eastern N.J./Tudor Hall, Inc	RF232-53
Do	Mobil/D&R Mobil	RF225-63
Do	Mobil/LeRoy J. Burns	RF225-62
Do	Mobil/Eldon L. Hasstedt	RF225-61
Do	Mobil/Dolduc's Mobil Self Serve	RF225-60
Do	Mobil/Don Harris Mobil	RF225-59
Do	Quaker State/Upchurch Oil & Supply Co	RF213-73
Do	Quaker State/Joe's Quaker State	RF213-74
Do	Eastern N.J./North Village	RF232-54
Do	Eastern N.J./Kruvant Brothers	RF232-55
Do	Eastern N.J./Kruvant Brothers	RF232-56
Do	Eastern N.J./Polyplastex United Inc	RF232-57
Do	Eastern N.J./Warner Theatre	RF232-58
Do	Eastern N.J./Wincenter Associates	RF232-59
Do	Eastern N.J./West Park Apts	RF232-60
Do	Eastern N.J./Grand Lee Apts	RF232-61
Do	Eastern N.J./Knollcroft Gardens	RF232-63/64
Do	Eastern N.J./Hudson Terrace Association	RF232-62
Do	Mobil/Sports Oil Corp	RF225-64
Do	Aminoil/Moorman Manufacturing Co	RF139-147
Do	Vickers/Minnesota	RQ1-267
Do	Pennzoil/Minnesota	RQ1-268
Do	Betridge/Minnesota	RQ8-269
Feb. 7, 1986	Mobil/J & LF Mobil Service	RF232-70
Do	Eastern N.J./Lafayette Gardens	RF232-65
Do	Eastern N.J./Springview Gardens	RF232-66
Do	Eastern N.J./General Greene Village	RF232-67
Do	Eastern N.J./O.K. Towel & Uniform	RF232-68
Do	Eastern N.J./Atlantic Tubing Co	RF232-69
Do	Mobil/Brunner Brothers	RF225-67

REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 31 to Feb. 7, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Mobil/Gene's Service Station	RF225-66
Do	Mobil/Epler's Mobil Service	RF225-65
Do	Conoco/Zephyr, Inc	RF220-8

[FR Doc. 86-5144 Filed 3-7-86; 8:45 am]

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Applications, for Exception; Cases Filed; Week of February 7 Through February 14, 1986

During the Week of February 7 through February 14, 1986, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be apprieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 3, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 7 through Feb. 14, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 20, 1985	Economic Regulatory Administration, Washington, DC	KRZ-0020 through KRZ-0024	Interlocutory. If granted: The three Proposed Remedial Orders issued to Barkett Oil Co. and the Proposed Remedial Orders issued to Lawrence Oil Co. and Anchor Distributors (Case Nos. BRO-1352, BRO-1357, HRO-0033, HRO-0034 and HRO-0036) would be revised to reflect recalclations performed by the Economic Regulatory Administration in accordance with the September 17, 1985 Decision and Order.
Feb. 10, 1986	Burlile Oil Company, Gallipolis, OH	KEE-0022	Exception to the Reporting Requirements. If granted: Burlile Oil Company would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Feb. 12, 1986	Bublitz Oil Company, Tawas City, MI	KEE-0023	Exception to the Reporting Requirements. If granted: Bublitz Oil Company would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Do	Martin-Eagle Oil Company, Denton, TX	KEE-0024	Exception to the Reporting Requirements. If granted: Martin-Eagle Oil Company would no longer be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Feb. 13, 1986	M&M Minerals Corporation, et al., Jackson, MS	KRX-0010	Supplemental Order. If granted: The Proposed Remedial Order issued to M&M Minerals Corporation, *et al.*, (Case No. HRO-0018) would be remanded to the Economic Regulatory Administration to enable the Economic Regulatory Administration to recalculate any overcharges consistent with the finding that the firm produced from four properties during the audit period.
Feb. 14, 1986	Economic Regulatory Administration, Washington, DC	KRZ-0025	Interlocutory. If granted: The Proposed Remedial Order issued to North American Petroleum Company and Mellon Energy Products Company (Case No. HRO-0297) would be amended to delete all allegations against Mellon Energy Products Company.
Do	Schaal Oil Company, Jefferson, IA	KEE-0025	Exception to the Reporting Requirements. If granted: Schaal Oil Company would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Feb. 7 through Feb. 14, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Feb. 7, 1986	Gulf/Lyles L-P Gas Co., Inc	RF40-3105
Do	Mobil/Joseph F. Skalski, Jr	RF225-68
Do	Eastern NJ/Kruvant Brothers	RF232-71
Do	Eastern NJ/Georgian Gardens	RF232-72
Do	Eastern NJ/Joseph J. Branelli Construction	RF232-73
Do	Eastern NJ/Beechwood Gardens	RF232-74
Do	Eastern NJ/Maybrook Plaza Apts	RF232-75
Do	Eastern NJ/Sycamore Terrace Apts	RF232-76
Do	Amoco/Indiana	RQ21-272
Do	Nation Helium/Indiana	RQ3-273
Do	Mobil/J & F Mobil Service	RF225-77
Feb. 10, 1986	Leese/Mitchell Construction Company	RF211-10
Do	Eastern NJ/Triangle Apts	RF232-77
Do	Eastern NJ/Johnson House 2	RF232-78
Do	Eastern NJ/The Johnson House	RF232-79
Do	Eastern NJ/Teaneck Gardens	RF232-80
Do	Eastern NJ/Raven 4	RF232-81
Do	Eastern NJ/Bergen Investment Company	RF232-82

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REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 7 through Feb. 14, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Eastern NJ/Cedar Lane Apts	RF232-83
Do	Eastern NJ/Grand Lawn Associates	RF232-84
Do	Eastern NJ/Fort Lee Corporation	RF232-85
Do	Eastern NJ/Allyn & Bacon, Inc	RF232-86
Do	Eastern NJ/Geerlings Greenhouses, Inc	RF232-87
Do	Eastern NJ/Gustave Goldschmidt	RF232-88
Do	Eastern NJ/Our Lady of Mount Virgin Church	RF232-89
Do	Eastern NJ/Cohn Construction Co	RF232-90
Do	Eastern NJ/Wesley, Winter & Moore	RF232-91
Do	Eastern NJ/Thermal American Fused Quartz	RF232-92
Do	Eastern NJ/Hewitt-Robins	RF232-93
Do	Eastern NJ/James E. Hanson Management	RF232-94
Do	Eastern NJ/Manning & Lewis Engineering	RF232-95
Do	Eastern NJ/Pesley Corp	RF232-96
Do	Eastern NJ/Bamberger's	RF232-97
Do	Eastern NJ/David E. Zeitz	RF232-98
Do	Eastern NJ/S. D. Serr Company	RF232-99
Do	Eastern NJ/Cloverland Gardens, et al	RF232-100 through RF232-104
Do	Quaker State/Coastal Tank Lines, Inc	RF213-75
Do	Quaker State/Plaquemine County Board of Education	RF213-76
Do	Quaker State/Tri-County Rural Electric Coop. Inc	RF213-77
Do	Quaker State/Monroe-Woodbury Central School District	RF213-78
Do	Quaker State/Neely Farms	RF213-79
Do	Quaker State/Paul's Motor Sales	RF213-80
Do	Quaker State/W & F Mfg. Co	RF213-81
Do	Quaker State/Ohio Oil Gatherings	RF213-82
Do	Quaker State/Burke-Parsons-Bowlby	RF213-83
Do	Quaker State/Smith's Farm Supply	RF213-84
Do	Mobil/Stewart-Webster Gas	RF225-69
Do	Mobil/Anthony Colangelo	RF225-70
Do	Mobil/Elben Mobil	RF225-71
Do	Mobil/Grade A Fuel Service	RF225-72
Do	Petrolane/Dashner Gas Service	RF208-3
Do	Conoco/Franklin Oil Company	RF220-9
Do	Belcher/Jerry J. Klug Oil Co	RF227-5
Do	Amoco/Gaddis Oil Company, et al	RF21-12570 through RF21-12577
Feb. 11, 1986	Amoco/Northville Industries Corp	RF21-12578
Do	Amoco/Northville Industries Corp	RF21-12579
Do	Eastern NJ/Wells Corporation	RF232-105
Do	Eastern NJ/Readington Associates	RF232-106
Do	Eastern NJ/Atlantic Highland Real Estate Company	RF232-107
Do	Eastern NJ/Claraco	RF232-108
Do	Eastern NJ/Norman Kruvant	RF232-109
Do	Eastern NJ/Norman Kruvant	RF232-110
Do	Eastern NJ/Norman Kruvant	RF232-111
Do	Mobil/Sal Timpani Mobil Service Station	RF225-73
Do	Mobil/Harbor Heights Fuel Company	RF225-74
Do	Mobil/White's Mobil Service	RF225-75
Do	Mobil/Tucker's Servicenter	RF225-76
Do	Quaker State/Smith's Autocenter, Inc	RF213-85
Do	Quaker State/Whiteacre's Store	RF213-86
Do	Gulf/Callaway Butane Company	RF40-3106
Do	Gulf/Butane Gas Company of Greenwood	RF40-3107
Do	Hicks/Patterson Bros. Oil & Gas, Inc	RF237-1
Feb. 12, 1986	St. James/Sherman Bros. Heating Co	RF160-34
Do	Quaker State/Kendl's Quaker State	RF213-87
Do	Quaker State/Service Petroleum Co	RF213-88
Do	Quaker State/Choura Brothers	RF213-89
Do	Mobil/Maggiotto's Mobil Service	RF225-78
Do	Mobil/Maggiotto's Mobil Service	RF225-79
Do	Mobil/Art Ford's Service Station	RF225-80
Do	Mobil/Meridian Mobil	RF225-81
Do	Mobil/Fulton's Service Center	RF225-82
Do	Eastern NJ/Howard J. Zindel	RF232-112
Do	Eastern NJ/Pfizer, Inc	RF232-113
Do	Eastern NJ/Garden State Plaza	RF232-114
Do	Eastern NJ/Willow Holding Co	RF232-115
Do	Eastern NJ/Genaf Co	RF232-116
Do	Eastern NJ/Weinstein Steiner Co	RF232-117
Do	Eastern NJ/A. Weinstein	RF232-118
Do	Eastern NJ/S Holding Co	RF232-119
Do	Eastern NJ/Pantasote, Inc	RF232-120
Do	Eastern NJ/Town & Country Homes	RF232-121
Do	Eastern NJ/Lehigh Construction	RF232-122
Do	Belcher/Canary Oil Co	RF227-6
Do	Eastern NJ/Beecham Products	RF232-123
Do	Eastern NJ/Louis T. Ostenstock	RF232-124
Do	Mobil/Mockingbird Mobil	RF225-83
Do	Mobil/Nassau Mutual Fuel Co., Inc	RF225-84
Do	Mobil/Fort Hill Fuel Oil Co., Inc	RF225-85
Do	Boswell/ARMCO, Inc	RF170-15
Do	Aminoil/Russell P. Case	RF139-48
Do	Aminoil/Dana Corporation	RF139-49
Feb. 13, 1986	Aminoil/Dietrich Industries, Inc	RF139-50
Do	Husky/Rapp's Inc	RF161-60
Do	LARCO/Rapp's Inc	RF112-160

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 7 through Feb. 14, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Mobil/Richard J. Toeppler	RF225-86
Do	Mobil/Huntington Oil Company	RF225-87
Do	Mobil/Snowdon Place Oil Company	RF225-88
Do	Mobil/Snowdon Place Oil Company	RF225-89
Do	Gulf/Hays, Bleakley & Tobin, Inc	RF40-3108
Do	Eastern NJ/J. C. Penney Company	RF232-125
Do	Eastern NJ/General Rubber Corp	RF232-126
Do	Eastern NJ/Sika Corporation	RF232-127
Do	Eastern NJ/The Falcon	RF232-128
Do	Eastern NJ/Howell Electric Motors	RF232-129
Do	Quaker State/Don Hinson	RF213-90
Do	Quaker State/Sperry Automotive Warehouse	RF213-91
Do	Quaker State/John Gratton	RF213-92
Do	Quaker State/Harry Drake	RF213-93
Do	Mobil/Cronin Asphalt Corporation	RF225-90
Do	Mobil/Briar Service	RF225-91
Do	Mobil/Campwoods Service Station	RF225-92
Do	Mobil/Eagle Cornice Co., Inc	RF225-93
Do	Mobil/Duane H. Neu	RF225-94
Do	Mobil/Girard & Peterson Service	RF225-95
Do	Pacer/Highway Oil, Inc	RF218-2
Do	Applachian/H. Ron Smith	RF234-3
Do	Pride/Sunflower Electric Cooperative, Inc	RF235-3
Do	Conoco/Sunflower Electric Cooperative, Inc	RF220-10
Do	Amoco/Sunflower Electric Cooperative, Inc	RF21-12580
Feb. 14, 1986	Mobil/Baird's Mobil Service Station	RF225-96
Do	Mobil/Worley Ingram Mobil	RF225-97
Do	Mobil/Arena Auto S/S	RF225-98
Do	Mobil/David E. Gerenyi	RF225-99
Do	Eastern NJ/National-Standard Co	RF232-130
Do	Eastern NJ/Dura Electric Lamp	RF232-131
Do	Eastern NJ/Leonard J. Schlesinger	RF232-132
Do	Eastern NJ/Overlook Terrace	RF232-133
Do	Eastern NJ/Chilton Towers	RF232-134
Do	Eastern NJ/Sak Co	RF232-135
Do	Eastern NJ/Executive House	RF232-136
Do	Eastern NJ/Linden Arms	RF232-137
Do	Eastern NJ/Beier Realty Co	RF232-138
Do	Eastern NJ/Our Lady Queen of Peace	RF232-139
Do	Eastern NJ/Arbor Realty Co	RF232-140
Do	Quaker State/Storck Baking Co	RF213-94
Do	Quaker State/Sweeney's Service Station	RF213-95
Do	Quaker State/Carroll Dunn	RF213-96
Do	Hicks/Cender Oil Co	RF237-2
Do	General Equities/Alan R. Burell	RF224-8
Do	A. Tarricone/Hays, Bleakley & Tobin	RF156-3

[FR Doc. 86-5145 Filed 3-7-86; 8:45 am]

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Applications for Exception; Cases Filed; Week of February 14 Through February 21, 1986

During the Week of February 14 through February 21, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 3, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 14 through Feb. 21, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 18, 1986	Mid-Missouri Oil Company, Keiser, MO	KEE-0026	Exception to the Reporting Requirements. If granted: Mid-Missouri Oil Company would not be required to file Form EIA-782B, "Reseller-Retailers' Monthly Petroleum Products Sales Report."
Do	Sierra Club Radioactive Waste Campaign, New York, NY	KFA-0018	Appeal of an Information Request Denial. If granted: Sierra Club Radioactive Waste Campaign would receive a copy of the draft environmental review of options for disposal of project-generated waste at West Valley, New York.
Feb. 19, 1986	Perry Bros. Oil Company, Americus, GA	KEE-0027	Exception to the Reporting Requirements. If granted: Perry Bros. Oil Company would not be required to file Form EIA-821.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 14 through Feb. 21, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 21, 1986	Economic Regulatory Administration, Washington, DC	KRR-0007	Request for Modification/Rescission. If granted: The February 11, 1986 Decision and Order (Case No KRZ-0019) issued to National Hydrocarbons Group, Inc. would be modified regarding the Economic Regulatory Administration's motion to place documents under seal.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 14 to Feb. 21, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Feb. 19, 1986	OKC/Hamilton Oil Company	RF13-41
Do	Colina/Idaho	RQ2-274
Do	National Helium/Idaho	RQ3-275
Do	Conoco/Blu-Gas Service, Inc	RF220-11
Do	Pasco/Quick Petroleum Company	RF222-3
Do	Gulf/Fremann & Endens Gulf	RF40-3110
Do	LARCO/Stobbe Oil Company	RF112-189
Feb. 13, 1986	Amoco/Marathon Oil Company	RF21-12581
Feb. 18, 1986	Sid Richardson/Lamoine, LP Gas	RF26-27
Do	Sid Richardson/Central Butane Co	RF26-28
Do	Appalachian/Valleydale Packers, Inc	RF234-4
Do	Amoco/Park Propane	RF139-151
Do	City Service/Bigfork Husky	RF219-6
Feb. 20, 1986	Hicks/Allerton Supply Co	RF237-3
Do	Conoco/System Fuels, Inc	RF220-12
Feb. 19, 1986	Tiger/Roseman's Dairies	RF196-2
Feb. 18, 1986 to Feb. 21, 1986	Eastern of New Jersey Refund Applications	RF232-141 to RF232-185
Feb. 18, 1986, to Feb. 24, 1986	Mobil Oil Corporation Refund Applications	RF225-100 to RF225-154
Do	Quaker State Oil Refining Corporation Refund Applications	RF213-97 to RF213-117

[FR Doc. 86-5146 Filed 3-7-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2979-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740, or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Graphic Arts Industry Survey (EPA ICR #0657). (This is a reinstatement of a previously approved ICR; no changes are proposed.)

Abstract: Sources must notify EPA of construction, modification, startup, shutdowns, malfunctions, and dates and results of performance tests. The initial performance averaging period must be thirty consecutive days, including startups and shutdowns. The amounts of solvent and water used, solvent recovered, and the estimated emission percentage must be recorded monthly. the administrator may request additional performance tests. No periodic reporting is required.

Respondents: Owners or operators of graphic arts and publication rotogravure printing facilities.

Title: New Source Performance Standards (NSPS) for Asphalt Processing and Asphalt Roofing Manufacturing (EPA ICR #0661). (This is a reinstatement of a previously approved ICR; no changes are proposed).

Abstract: Owners/operators must notify EPA of construciton, modifications, startups, shutdowns, malfunctions, and dates and results of performance tests. Owners/operators must continually monitor and record temperature in specified pollution control devices. EPA will determine parameters to be recorded in other control devices upon description of that device by the source. No excess emission reports are required. Information is used to implement and enforce the standard.

Respondents: Owners or operators of asphalt processing and asphalt roofing manufacturing plants.

Title: New Source Performance Standards (NSPS) for Bulk Gasoline Terminals—Information Requirements (EPA ICR #0664). (This is a reinstatement of a previously approved ICR: no changes are proposed.)

Abstract: Owners/operators must notify EPA of construction modifications, startups, shutdowns, malfunctions, and dates and results of peformance tests. Owners/operators must record the tank identification number of each gasoline truck that is loaded, notify the owner/operator of each non-vapor-tight gasoline truck, and record each leak detected during a calendar month. They must inspect control equipment during loading operations. No Excess Emission Reports

are required. Information is used to implement and enforce the standard.

Respondents: Owners or operators of bulk gasoline terminals.

Title: New Source Performance Standards (NSPS) for Emission Monitoring for Nitric Acid Plants (EPA ICR #1056). (This is a reinstatement of a previously approved ICR: no changes are proposed).

Abatract: Owners/operators must nottify EPA of construction, modification startups, shutdowns, malfunctions, and dates and results of performance tests. Owners/operators must record the daily production rate and hours of operation, and must continuously monitor NO_x emissions and submit semi-annual excess emissions reports. The information is used to implement and enforce the standard.

Respondents: Owners or operators of nitric acid plants.

Title: New Source Performance Standards (NSPS) for Primary Aluminum Reduction Plants (EPA ICR #1067). (This is a reinstatement of a previously approved ICR; no changes are proposed.)

Abatract: Owners or operators must monitor and maintain records of daily production rates for aluminum and anode, raw material feed rates, and potline voltages for two years. Monthly performance tests and reports are also required, along with reports of operation and maintenance conditions when tests reveal high emission levels. This information is used to ensure continuing compliance with the standard.

Respondents: Owners or operators of primary aluminum reduction plants.

Title: New Source Performance Standards (NSPS) for Stationary Gas Turbines (EPA ICR #1071). (This is a reinstatement of a previously approved ICR; no changes are proposed.)

Abstract: Owners/operators must notify EPA of construction, modifications, startups, shutdown, malfunctions, and dates and results of performance tests. Periods of excess SO_2 and NO_x emissions will be reported semi-annually. The sulfur and nitrogen content of the fuel must be recorded. Owners/operators using water injection to control NO_x must install a continuous monitoring system to record fuel consumption and the fuel-to-water ratio. Information is used to implement and enforce the standard.

Respondents: Owners or operators of stationary gas turbines.

Office of Pesticides and Toxic Substances

Title: Notice of Arrival of Pesticides or Devices (EPA ICR #0152). (This is a renewal of an expired ICR; no change is proposed.)

Abstract: An importer desiring to import pesticides or pest-mitigating devices into the United States is required by FIFRA Section 17 to notify EPA prior to the arrival of the shipment in the United States.

Respondents: Importers of pesticides or pest-mitigating devices.

Title: Supplemental Registration of a Distributor (EPA ICR #0278). (This is an extension of an approved ICR; no changes are proposed.)

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides that any person may obtain a supplemental registration allowing distribution of a Federally registered pesticide product under a private label, provided that the registrant's permission is obtained and EPA is notified of the arrangement.

Respondents: Distributors requesting supplemental registration, and basic registrants.

Office of Research and Development

Title: Non-occupational Pesticide Exposure Study (EPA ICR #1259). (This is a request for a new collection.)

Abstract: The Environmental Protection Agency will use this study to estimate the exposure of consumers/households to selected pesticides and the relative importance of the routes of exposure. The Agency will use these data to evaluate product registrations for home applications of pesticides, and to formulate new requirements.

Respondents: Households.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (ICRs #0657, #0661, #0664, #1056, #1067, and #1071), Carlos Tellez (ICRs #0152 and #0278), or Rick Otis (ICR #1259), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: March 3, 1986.

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-5012 Filed 3-7-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-2981-9]

New Source Performance Standards for Residential Wood Combustion Units Negotiated Rulemaking Advisory Committee; Establishment and Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee to negotiate New Source Performance Standards for Residential Wood Combustion Units. We have determined that this is in the public interest and will assist the Agency in performing its duties prescribed in section 111 of the Clean Air Act, as amended.

Copies of the Committee charter will be filed with appropriate committees of Congress and the Library of Congress.

The committee's initial meeting will be held on Thursday, March 20, and Friday morning, March 21, 1986. Due to the need for an expeditious regulation, as a result of a January 1987 court-ordered deadline to issue a proposed rule, notice of this two-day meeting is being given less than 15 days prior to the meeting itself. The Agency issued this Notice promptly once the meeting dates were confirmed. The Committee has notified interested parties on its mailing list of the meeting dates.

Both March 20th and 21st, the meeting will be held at the National Institute for Dispute Resolution, 1901 L Street NW., Suite 600, Washington, DC. On March 20th, the meeting will start at 9:00 a.m. and run until completion; on March 21st, the meeting will start at 9:00 a.m. and run until approximately 12:00 noon.

The purpose of the meeting is to complete any outstanding procedural matters, to determine how best to address the substantive issues, and to begin to address them.

If interested in attending, or in receiving more information, please contact Chris Kirtz at (202) 382-7565.

Dated: March 6, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-5294 Filed 3-7-86; 10:19 am]

BILLING CODE 6560-50-M

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FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. app. § 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 113-010892.

Title: South Seas/Polynesia Line Cross Space Charter and Sailing Agreement.

Parties:

South Seas Steamship Co.
Polynesia Line Limited.

Synopsis: The proposed agreement would enable each party to provide approximate fortnightly service to its customers in the trade through more efficient utilization of vessels already serving the trade by having each party charter capacity on the vessel of the other party.

Filing Party: Lawrence N. Minch, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 102-010893.

Title: Pacific Coast/American Samoa Rate Agreement.

Parties:

South Seas Steamship Company
Blue Star Line Ltd.
Polynesia Line, Ltd.

Synopsis: The proposed agreement would establish a conference agreement between the parties in the trade between ports on the Pacific Coast of the United States and ports in American Samoa.

Filing Party: Lawrence N. Minch, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Dated March 5, 1986.

By order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.

[FR Doc. 86-5086 Filed 3-7-86; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 024-000015-006.

Title: Board of Commissioners of the Port of New Orleans & Continental Grain Company Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans (Board)
Continental Grain Company (Continental).

Synopsis: The proposed amendment would (1) recognize ownership of and payment by the Board for a wharf extension constructed by Continental adjacent to the already existing wharf; (2) make extension subject to the "First Call on Berth Privilege"; (3) confirm and grant this Board's consent to an assignment to Continental by American Commercial Barge Lines (ACBL) of a First Call on Berth Privilege that had been granted by this Board covering a barge mooring area that will service the wharf facility; and (4) confirm this Board's consent to Continental to the erection of certain grain loading or unloading facilities owned by Continental located in the bed or on the bank of the Mississippi River.

Agreement No.: 021-000861-003.

Title: Port Authority of New York and New Jersey, Flota Mercante Grancolombiana, S.A. and Universal Maritime Service Corp. Lease Assignment Agreement.

Parties:

Port Authority of New York and New Jersey (Port)
Flota Mercante Grancolombiana, S.A. (Grancolombiana)
Universal Maritime Service Corporation (Universal).

Synopsis: The proposed agreement would assign the agreement of lease between the Port and Grancolombiana to Universal in preparation for the leased premises being included in the Red Hook Container Terminal which is under lease to Universal. The parties have requested a shortened review period.

Agreement No.: 221-002582-003.

Title: City of Kodiak Terminal Agreement.

Parties:

City of Kodiak
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify agreement provisions related to overhead, maintenance and repair charges and provide for a periodic review of such charges.

Agreement No.: 212-009848-015.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritime Nacional
United States Lines (S.A.), Inc.

Synopsis: The proposed amendment would modify pool accounting procedures to ensure proper accounting for intermodal cargo movements and would increase the carrying rate for bulk cargoes from 50% to 70%.

Agreement No.: 203-009857-003.

Title: Agreement—Florida-Caribbean Cruise Association.

Parties:

Carnival Cruise Line
Chandris Fantasy Cruises
Commodore Cruise Line
Costa Line
Eastern Cruise Lines
Home Lines
Norwegian Caribbean Lines
Pacquet French Cruises
Premiere Cruise Line
Royal Caribbean Cruise Line, Inc.
Ulysses Lines.

Associate Member: Cunard/NAC.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 203-010984.

Title: Australia-United States Discussion Agreement.

Parties:

Columbus Line
Associated Container Transportation (Australia) Ltd. (Pace Line)
Pacific Australia Direct Line
Shipping Corporation of New Zealand Limited.

Synoposis: The proposed agreement would permit the parties to exchange data relating to the terms and conditions of designations of carriers by the Australian Meat and Livestock Corporation. The parties have requested a shortened review period.

Agreement No.: 021-010897

Title: City of Kodiak Ground Lease Agreement.

Parties:

City of Kodiak (City)
Sea-Land Service, Inc. (Sea-Land).

Synopsis: The proposed agreement would permit the City to lease to Sea-Land a combined total of 42,300 square feet of its port property for the storage of chassis, containers and tractors. The agreement will remain in effect for a period of five years.

Dated: March 5, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.

[FR Doc. 86-5142 Filed 3-7-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; Notification of New Routine Use

AGENCY: Social Security Administration (SSA), HHS.

ACTION: New routine use disclosure.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in many of the systems of records which SSA maintains. The proposed routine use will permit SSA to provide the General Services Administration (GSA) and the National Archives and Records Administration (NARA) access to the systems of records for the purpose of conducting records management inspections in accordance with 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984 (hereinafter referred to as the NARA Act of 1984). We invite public comments on this publication.

DATE: The proposed routine use will become effective as proposed without further notice on April 9, 1986, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESS: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Sikora, Records Administration Branch, Office of Management, Budget and Personnel, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-5770.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Administration, GSA and the Archivist, NARA are charged by 44 U.S.C. 2904, as amended by the NARA Act of 1984, with promulgating standards, procedures and guidelines with respect to records management and the conduct of records management studies. Section 2906 of this law, also amended by the NARA Act of 1984, provides that GSA and NARA shall have access to Federal agencies' records and that agencies shall cooperate with GSA and NARA. In carrying out these responsibilities, GSA and NARA are planning to conduct a review of SSA's enumeration and Retirement and Survivors Insurance (RSI) claims processes. The review will encompass all records created and processed in a particular case, beginning with the initial application and ending with the final action taken. GSA's portion of the review will focus on records imput, processing and output and will survey such items as mail, forms, reprographics and directives; NARA's portion of the review will focus on records documentation and records retention and disposition.

In conducting the inspection, GSA and NARA wish to review "live" cases (i.e., a sample of RSI claim folders and enumeration records). This will require that they be given access to various SSA systems of records which are utilized in the RSI claims and enumeration processes. The Privacy Act (5 U.S.C. 552a(b)(6)) permits a Federal agency to disclose (without the consent of the subject individual) to the National Archives a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by GSA to determine whether the record has such value. This provision, however, does not apply in this instance since GSA and NARA would be accessing our systems of records for a purpose unrelated to this provision. Therefore, to meet the requirements of the Privacy Act before providing GSA and NARA access to the systems of records, we are proposing to establish the routine use below.

Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

The proposed routine use will apply only to Social Security information. It will not apply to any earnings, self-employment or other information which constitutes tax return information as define in section 6103 of the Internal Revenue Code.

The routine use would facilitate disclosure for the review described above as well as for subsequent in which GSA and NARA wish to conduct records management inspections of other SSA processes. We are proposing to include the routine use in the systems of records listed below. Because of the number of systems of records involved and the costs incurred in republishing them, we are publishing only the identification number and name each system and the volume, page number and date of the **Federal Register** issue in which notices of the systems last appeared in the **Federal Register**. The system of records are as follows:

09-60-0001—Commissioner's Correspondence File, HHS/SSA/OC (47 FR 45590 October 13, 1982).
09-60-0002—Automated Document Control and Retrieval System, HHS/SSA/OGA (47 FR 45591 October 13, 1982).
09-60-0003—Attorney Fee File, HHS/SSA/OHA (47 FR 45592 October 13, 1982).
09-60-0004—Working File of the Appeals Council, HHS/SSA/OHA (Formerly named Appeals File, HHS/SSA/OHA) (47 FR 45593 October 13, 1982).
09-60-0005—Hearing Office File, HHS/SSA/OHA (47 FR 45594 October 13, 1982).
09-60-0006—Storage of Hearing Records: Tape Cassettes and Audiograph Discs, HHS/SSA/OHA (47 FR 45595 October 13, 1982).

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09-60-0008—Administrative Law Judge's Docket, HHS/SSA/OHA (47 FR 45596 October 13, 1982).
09-60-0009—Hearings and Appeals Case Control Sysem, HHS/SSA/OHA (47 FR 45597 October 13, 1982).
09-60-0012—Listing and Alphabetical Name File (Folder) of Vocational Experts, Medical Advisors and Medical Consultants, HHS/SSA/OHA (47 FR 45597 October 13, 1982).
09-60-0013—Records of Usage of Medical Advisors, Medical Consultants and Vocational Experts, HHS/SSA/OHA (47 FR 45598 October 13, 1982).
09-60-0014—Curriculum Vitae and Professional Qualifications of Medical Officers, Medical Advisors, Medical Consultants and Resume of Vocational Experts, HHS/SSA/OHA (47 FR 45599 October 13, 1982).
09-60-0015—List of Physicians Utilized as Readers of Black Lung X-Ray Films, HHS/SSA/OHA (47 FR 45600 October 13, 1982).
09-60-0017—Personnel Research and Merit Promotion Test Records, HHS/SSA/OMBP (47 FR 45601 October 13, 1982).
09-60-0031—Employee Production and Accuracy Records, HHS/SSA/OMBP (47 FR 45602 October 13, 1982).
09-60-0032—Employee Indebtedness Counseling System, HHS/SSA/OMBP (47 FR 45603 October 13, 1982).
09-60-0033—Report on Paid Consultants, HHS/SSA/OMBP (47 FR 45604 October 13, 1982).
09-60-0037—General Criminal Investigations Files, HHS/SSA/OMBP (47 FR 45605 October 13, 1982).
09-60-0038—Employee Building Pass Files, HHS/SSA/OMBP (47 FR 45605 October 13, 1982).
09-60-0040—Quality Review System, HHS/SSA/OA (47 FR 45606 October 13, 1982).
09-60-0042—Quality Review Case Files, HHS/SSA/OA (47 FR 45607 October 13, 1982).
09-60-0044—Disability Determination Service Processing File, HHS/SSA/OD (47 FR 45609 October 13, 1982).
09-60-0045—Black Lung Payment System, HHS/SSA/OSR (47 FR 45610 October 13, 1982).
09-60-0046—Consultative Physician File, HHS/SSA/OD (47 FR 45611 October 13, 1982).
09-60-0050—Completed Determination Record—Continuing Disability Determinations, HHS/SSA/OP (47 FR 45612 October 13, 1982).
09-60-0057—Quality Evaluation Data Records, HHS/SSA/OA (47 FR 45615 October 13, 1982).
09-60-0058—Master Files of Social Security Number Holders, HHS/SSA/OSR (49 FR 27630 July 5, 1984).
09-60-0059—Earnings Recording and Self-Employment Income System, HHS/SSA/OSR (49 FR 23697 June 7,1984).
09-60-0063—Resource Accounting and Project Management System, HHS/SSA/OSM (47 FR 45620 October 13, 1982).
09-60-0066—Claims Development Record, HHS/SSA/RO (47 FR 45621 October 13, 1982).
09-60-0075—Congressional Bills Tracking System, HHS/SSA/OLRP (Formerly named Congressional Bills File, HHS/SSA/OP) (47 FR 45621 October 13, 1982).
09-60-0077—Congressional Inquiry File, HHS/SSA/RO (47 FR 45622 October 13, 1982).
09-60-0078—Public Inquiry Correspondence File, HHS/SSA/RO (47 FR 45623 October 13, 1982).
09-60-0089—Claims Folders System, HHS/SSA/OP (48 FR 6788 February 15, 1983).
09-60-0090—Master Beneficiary Record, HHS/SSA/OSR (49 FR 34091 August 28, 1984).
09-60-0094—Recovery Accounting for Overpayments, HHS/SSA/OSR (47 FR 45630 October 13, 1982).
09-60-0095—Health Insurance Overpayment Ledger Cards, HHS/SSA/OSR (47 FR 45631 October 13, 1982).
09-60-0103—Supplemental Security Income Record, HHS/SSA/OSR (47 FR 45635 October 13, 1982).
09-60-0110—Supplemental Security Income File of Refunds, HHS/SSA/OSR (47 FR 45636 October 13, 1982).
09-60-0111—Depit Voucher File Supplemental Security Income (SSI), HHS/SSA/OSR (47 FR 45637 October 13, 1982).
09-60-0118—Non-Contributory Military Service Reimbursement System, HHS/SSA/OACT (47 FR 45638 October 13, 1982).
09-60-0119—Special Age 72 Benefit Trust Fund Transfer Project, HHS/SSA/OACT (47 FR 45639 October 13, 1982).
09-60-0184—Hearing Office Master Calendar, HHS/SSA/OHA (47 FR 45644 October 13, 1982).
09-60-0186—SSA Litigation Tracking System, HHS/SSA/OR (47 FR October 13, 1982, page 45645).
09-60-0206—Repatriate Records System, HHS/SSA/OFA (47 FR 45652 October 13, 1982).
09-60-0210—Record of Individuals Authorized Entry to Secured Automated Data Processing Area, HHS/SSA/OS (47 FR 51796 November 17, 1982).
09-60-0212—Supplemental Security Income Quality Initial Claims Review Process System, HHS/SSA/OA (Formerly named Supplemental Security Income Operational Quality Maintenance System, HHS/SSA/OA) (47 FR 45654 October 13, 1982).
09-60-0213—Quality Review of Hearing/Appellate Process, HHS/SSA/OHA (Formerly named Quality Review of Hearing Process, HHS/SSA/OHA) (47 FR 45655 October 13, 1982).
09-60-0216—Indochina Refugee Data System, HHS/SSA/ORR (Formerly named Indochina Refugee, Refugee Financial Assistance System, HHS/SSA/ORR) (47 FR 45657 October 13, 1982).
09-60-0217—Cuban Refugee Data System, HHS/SSA/ORR (Formerly named Cuban Refugee Registration Records, HHS/SSA/ORR) (47 FR 45658 October 13, 1982).
09-60-0219—Representative Disqualification/Suspension Information System, HHS/SSA/ORSI (50 FR 5821 February 12, 1982).

II. Compatibility of the Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(b)(3)) and our diclosure regulation (20 CFR 401.310) both permit us to disclose information for a routine use if the information will be used for a purpose which is compatible with the purpose for which we collected it. Section 401.310 of the regulation permits us to disclose information as a routine use for administering our programs or administering similar income-maintenance or health-maintenance programs of other agencies. In the subject instance, disclosure will assist SSA in its records management. In addition, § 401.205 of the regulation requires us to disclose information when a law specifically requires it. In the subject instance, 44 U.S.C. 2906, as amended by the NARA Act of 1984, requires disclosure to GSA and NARA. Thus, we believe the routine use is compatible and meets the criteria in the regulation.

III. Effect on the Rights of Individuals

The purpose of the GSA/NARA inspection is to review SSA's records management practices and access will be given them only for this purpose. We, therefore, do not anticipate that the routine use would have an unwarranted adverse effect on the privacy or other rights of individuals.

Dated: February 27, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 86-5126 Filed 3-7-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Sunday, March 23, 1986, starting at 9:00 a.m., in the Capitol Room 1, on the lobby level of the MGM Grand Hotel, 2500 East Second Street, Reno, Nevada 89595.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street NW., Washington, DC 20036-6547, (202) 634-7310.

Dated: March 4, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-5094 Filed 3-7-86; 8:45 am]

BILLING CODE 4310-70-M

Privacy Act of 1974; Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting a notice describing a system of records maintained by the Minerals Management Service. The notice being deleted is titled "Outer Continental Shelf (OCS) Lease Sale Qualification Files—Interior, EMM-6" and was previously published in the Federal Register on June 2, 1983 (48 FR 24704). A recent review of the recordkeeping practices for the OCS lease sale qualification files indicates that they are not subject to the provisions of the Privacy Act of 1974.

This notice shall be effective March 10, 1986. Additional information regarding this change may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: February 28, 1986.

Oscar W. Mueller, Jr.

Director, Office of Information, Resources Management.

[FR Doc. 86-5104 Filed 3-7-86; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AA-16620, AA-6689-B]

Alaska Native Claims Selection; Shumagin Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Shumagin Corporation for approximately 175 acres. The lands involved are in the vicinity of Sand Point, Alaska, within T. 55 S., R. 75 W., Seward Meridian.

A notice of the decision will be published once in the *Aleutian Eagle*, and once a week for four (4) consecutive weeks in the *Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until April 9, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-5125 Filed 3-7-86; 8:45 am]

BILLING CODE 4310-JA-M

California Desert District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on Thursday, April 10, 9 a.m. to 5 p.m.; Friday, April 11, 8:30 a.m. to 5 p.m.; and Saturday, April 12, 8 a.m. to 5 p.m. at the Holiday Inn, 1200 University Avenue, Riverside, CA 92507

Agenda items for the April 10 session will include comments from the Council on the Draft Environmental Impact Statement covering the 1986 Amendments to the California Desert Plan. The Council will also be presented with a preliminary review of proposed 1986 Amendments to the California Desert Plan which have been received in response to the annual call for proposed amendments.

A two-day Recreation Seminar will be the focus at the April 11 and 12 sessions. Recreation groups throughout Southern California have been invited to attend and to make presentations to the Council on various aspects of such recreation activities as rockhounding, hiking, trailriding, horseback riding, land-sailing, hunting, shooting, all-terrain vehicle use, mountain climbing, four-wheel-drive vehicle use, and ultra-light aircraft flying.

All formal Council meetings are open to the public, with time allocated for public comment. The Recreation Seminar is also open to the public and time has been allotted for public comment during this time. The Council Chairman may allow comment during the presentation of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Written comments are also accepted at the time of the meeting and, if provided to the recorder, will be incorporated in the minutes of the meeting.

For Further Information and Meeting Confirmation: Contact the Bureau of Land Management, California Desert District Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507, (714) 351-6383.

Dated: February 28, 1986.

Richard M. Barber,

Acting District Manager.

[FR Doc. 86-5108 Filed 3-7-86; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Guidelines for Historic and Archeological Resource Management; Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with subsection 101(f) of the National Historic Preservation Act ("the Act"), 16 U.S.C. 470 *et seq.*, the Secretary of the Interior, in consultation with the Advisory Council on Historic Preservation, has developed the following guidelines for carrying out Federal agency responsibilities under section 110 of the Act. These guidelines are being published for a 60-day comment period. The Secretary will also conduct an orientation program for Federal agencies that will address the requirements of section 110 and the advice in these Guidelines. Written comments should be submitted to the Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

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DATES: Comments should be submitted by April 9, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Preservation Planner, Interagency Resources Division, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

Dated: February 20, 1986.

P. Daniel Smith,

Acting Assistant Secretary, Fish and Wildlife and Parks.

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III. Definitions
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V. Developing a Historic Preservation Process

Authority: The National Historic Preservation Act, 16 U.S.C. 470 *et seq.*

I. Purposes

(a) *Section 110 Guidelines.* Section 110 of the Act prescribes general and specific responsibilities of Federal agencies in the identification, evaluation, registration, and protection of properties possessing historic, archeological, architectural, engineering, or cultural significance. These *Guidelines for Historic and Archeological Resource Management: Federal Agency Responsibilities Under section 110 of the National Historic Preservation Act (section 110 Guidelines)* present a model process for use by Federal agencies as a reference standard when establishing, revising, and operating their programs for historic and archeological resource management. These Guidelines assist agencies in carrying out their missions, programs, and projects in a manner consistent with the requirements and purposes of section 110 of the Act, existing regulations, and the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Secretary's Standards).* Their purpose is to identify the requirements of the Act, to cite, and othewise to guide Federal agencies in implementing successful protection of historic and archeological properties as they perform their respective missions. It is not expected that Federal agencies will employ this model process literally but rather that agencies will ensure that their existing or proposed historic and archeological resource management processes are consistent with this model.

(b) *Relationship of 110 Guidelines to Secretary's Standards.* The project and program standards and guidelines for implementing section 110 are the *Secretary's Standards,* prepared pursuant to 101(h) of the Act. They are the Secretary's performance standards for carrying out historic preservation activities, such as planning, identification, evaluation, documentation, and preservation, and are applicable to all users, public and private. Rather than repeat the informaton in the *Secretary's Standards* in the *Section 110 Guidelines,* the *Secretary's Standards* are frequently referenced. It is, therefore, important for Federal agencies to consult both documents in meeting the responsibilities stated in section 110 of the Act. The *Secretary's Standards* were published in the **Federal Register,** Vol. 48, No. 190, Part IV, pp. 44716–44740, September 29, 1983, and are also available on request from the National Park Service. The Service plans to publish, in revised form if necessary, the *Secretary's Standards* when the *Section 110 Guidelines* are published in final.

(c) *Carrying out programs and projects in accordance with the purposes of the Act.* Section 110(d) requires that all agencies carry out their programs and projects in accordance with the purposes of the Act, and consider programs and projects that will further the Act's purposes. This section includes the definition of agency program and projects "those under which any Federal assistance is provided or any Federal license, permit, or other approval is required." Agency responsibility to act in accordance with the Act's purposes is conditioned upon such actions being "consistent with the agency's mission and mandates."

(1) *Purposes of the Act.* The purposes as stated in Section 2 of the Act are as follows:

Section (2)(1). "Use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;"

Section (2)(2). "Provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;"

Section (2)(3). "Administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;"

Section (2)(4). "Contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;"

Section (2)(5). "Encourage the public and private preservation and utilization of all usable elements of the Nation's historic built envrionment; and,"

Section (2)(6). "Assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities."

(2) *Balancing mission and purposes of the Act.* In carrying out agency programs and projects in accordance with the purposes stated in section 2 of the Act, agencies should:

(i) Seek ways to harmonize their actions with the preservation of historic properties, and put such properties to productive uses in the public interest;

(ii) Encourage others, including non-Federal agencies and foreign governments with which the agency interacts, to give due consideration to historic properties;

(iii) Identify historic properties owned by the agency, and take steps to protect, preserve, rehabilitate, and properly use them;

(iv) Ensure that their actions, and the actions of those to whom they provide assistance, permits, licenses, or approvals, are preceded by effective planning to identify and mitigate effects on historic properties;

(v) Design their programs and projects to foster the rehabiliation and appropriate use, including re-use, of historic buildings and structures;

(vi) Design their programs and projects to foster the cost effective management of archeological properties eligible for the National Register; and,

(vii) Solicit the opinions of State Historic Preservation Officers and the National Trust for Historic Preservation.

(3) *Programs and projects which further the purposes of the Act.* In addition to the above actions carried out in the course of their missions, agencies are encouraged to consider participating in programs specifically designed to advance the purposes stated in section 2 of the Act, such as:

(i) Provision of financial and technical assistance to historic preservation activities and to the adaptive use of historic properties;

(ii) Demonstration historic preservation projects and cooperative historic preservation programs with non-Federal entities and foreign governments;

(iii) Special projects to study, document, and make productive use of historic properties under the agency's ownership;

(iv) Cooperation with non-Federal entities in the identification, protection, study, documentation, and appropriate use of historic properties;

(v) Use of their programs and financial and technical assistance in the rehabilitation and adaptive use of historic buildings and structures;

(vi) Use of their programs and financial and technical assistance in the effective utilization of archeological information; and,

(vii) Cooperative programs with the State Historic Preservation Officers (SHPOs), the National Trust for Historic Preservation, and Certified Local Governments, if appropriate, in the identification, recordation, study, documentation, and appropriate use of historic properties, specifically including cooperation with the SHPOs in their development and maintenance of statewide inventories of historic properties and comprehensive State historic preservation plans.

II. Authorities

(a) *Legal Requirements of Section 110.* The Legal requirements of section 110 of the Act are as follows:

110(a)(1). "The heads of all Federal agencies shall assume responsibility for the presevation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(f), any preservation, as may be necessary to carry out this section." These guidelines outline a model historic preservation process that will assist agencies in meeting this requirement.

110(a)(2). "With the advice of the Secretary and in cooperation with the State Historic Preservation Officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101(a)(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly." These guidelines outline a model historic preservation process that will assist agencies in meeting this requirement.

110(b). "Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference." The *Secretary's Standards* provide documentation guidance that will assist agencies in meeting this requirement.

110(c). "The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(g)." Section V(a) of these guidelines addresses this requirement.

110(d). "Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act." These guidelines outline a model historic preservation process that will assist agencies in meeting this requirment.

110(e). "The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced." Regulations governing the transfer of federally owned surplus historic property are found in 41 CFR Part 101–47.308–3.

110(f). "Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking." Section IV(a)(8) discusses this requirement further.

110(g). "Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit." These guidelines discuss reasonable project costs in section IV(a)(8)(iii).

110(h). "The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed $1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary." Contributions to the preservation of historic resources are recognized through the Department of the Interior's Conservation Service Award and Public Service Award.

110(i). "Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act."

110(j). "The Secretary shall promulgate regulations under which the requirments of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security." Federal regulations entitled, "Waiver of Federal Agency Responsibilities under section 110 of the National Historic Preservation Act," can be found in the Code of Federal Regulations under 36 CFR Part 78, entitled "Waiver of Federal Agency Responsibilities under section 110 of the National Historic Preservation Act."

(b) *Related Requirements.*

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The following requirements are referenced elsewhere in these Guidelines:

(1) *Section 101(a)(7) of the National Historic Preservation Act.* Regulations required by section 101(a)(7) concerning the curation of federally owned archeological collections are being prepared by the Secretary and will be included under 36 CFR Part 79, entitled "Curatorial Responsibilities of Federal Agencies."

(2) *Section 106 of the National Historic Preservation Act.* Federal agencies having direct or indirect jurisdiction over a proposed Federal, federally licensed, or federally assisted undertaking shall take into account the effect of the undertaking on any property that is included in or eligible for inclusion in the National Register. As part of this consideration, Federal agencies must provide the Advisory Council with a reasonable opportunity to comment with regard to such undertaking. The procedures for section 106 are found in 36 CFR Part 800. At the earliest stage of planning or consideration of a proposed undertaking, and in all cases prior to agency final decision concerning an undertaking, the agency shall determine the need to comply with section 106 of the Act based on the provisions of Section 110 and consistent with the *Section 110 Guidelines.* The *Section 110 Guidelines* recommend that agencies consult with the Advisory Council early in the review of agency program planning documents so as to facilitate the required commenting process under section 106.

(3) *Section 304 of the National Historic Preservation Act.* These are provisions relative to the disclosure of sensitive locational information on historic or archeological properties. An agency shall not disclose information to the public relating to the location or character of historic or archeological properties if the agency determines that the disclsoure of such information may create a substantial risk of harm, theft, or destruction to such properties or to the area or place where such properties are located. Regulation implementing this requirement are found in 36 CFR Part 60, entitled "National Register of Historic Places."

(4) *The Archeology and Historic Preservation Act (Pub. L. 93–291).* This legislation authorizes Federal agencies to expend regular project funds to recover important scientific, archeological, historic, and prehistoric data that otherwise would be lost as a result of Federal construction projects or federally licensed projects, programs, or activities. Agencies shall notify the Secretary when such activities may result in the loss or destruction of data. The Secretary shall determine whether important data will be lost and shall conduct or cause to be conducted appropriate investigations. Regulations implementing these and other requirements are being prepared by the Secretary and will be included in 36 CFR Part 66, entitled "Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Procedures for Notification, Reporting and Data Recovery."

III. Definitions

(a) "The Act" means the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*

(b) "Advisory Council" means the agency, fully titled the Advisory Council on Historic Preservation, established pursuant to Title II of the National Historic Preservation Act; that is afforded a reasonable opportunity to comment with regard to proposed Federal, federally licensed, or federally assisted undertakings which may affect properties which are included in or eligible for inclusion in the National Register of Historic Places.

(c) "Agency Official" means the head of the Federal agency, or designee, having responsibility for the agency's historic preservation activities.

(d) "Federal Preservation Officer (FPO)" means the official, or designee, specifically responsible for coordinating an agency's activities under the National Historic Preservation Act of 1966, as amended.

(e) "Historic Preservation Process (HPP)" means the preservation process adopted by Federal agencies outlining strategies for carrying out historic preservation responsibilities. The process organizes information in a way that allows the manager to target surveys and identify, evaluate, register, and protect historic properties.

(f) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. The term "eligible for inclusion in the National Register" includes both properties formally determined as such and all other propeties which meet National Register listing criteria.

(g) "Historic resource" (see definition for "historic property").

(h) "Historic resource values" means those qualities of a historic property which determine its relative importance in agency decisionmaking. Section IV(a)(5) lists the considerations which should be made in assessing the historic resource values of a property.

(i) "Intensive survey" means a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against National Register criteria.

(j) "Inventory" means a list of properties identified during a survey.

(k) "Mitigation" means an action to minimize ameliorate, or compensate for the degradation and/or loss of those characteristics of a property that make it eligible for the National Register.

(l) "National Historic Landmark (NHL)" means a district, site, building, structure or object that the Secretary of the Interior has determined to be of national significance and has so designated.

(m) "National Register" means the inventory of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior and fully titled the "National Register of Historic Places."

(n) "Professionals" means historians, architectural historians, and historical architects meeting the training and experience criteria set forth in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,* and archeologists meeting the training and experience criteria set forth in 36 CFR Part 66. Although professional standards for landscape architects, preservationists, or planners are not established in these guidelines, such professionals should have training and experience of a comparable level to that for historians, architectural historians, and historical architects in the *Secretary's Standards.*

(o) "Reconnaissance survey" means an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present. It should include the identification and location of specific properties to the extent necessary to determine whether more intensive evaluation is appropriate.

(p) "Sectretary" means the Secretary of the Interior.

(q) "Secretary's Standards" means the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,* the project and program standards and guidelines for implementing section 110. They are technical advice concerning archeological and historic preservation activities and methods. The complete *Secretary's Standards* currently address each of the following activities: Preservation Planning, Identification, Evaluation, Registration, Historical Documentation, Architectural and Engineering Documentation, Archeological Documentation, and Preservation Projects (including Rehabilitation).

(r) "State Historic Preservation Officer (SHPO)" means the official designated by the Governor or by State law to administer the State's historic preservation program.

IV. The Secretary of the Interior's Model Historic Preservation Process (HPP).

The Secretary sets forth this model process and the *Secretary's Standards* for use by Federal agencies to ensure adequate consideration of historic properties in carrying out programs. The Secretary recommends that HPPs adopted by Federal agencies contain provisions for the historic preservation activities of planning, identification, evaluation, registration and protection.

(a) *Planning.*

(1) *Level of operation of the HPP.* Federal agencies with land management responsibilities should adopt HPPs or have planning procedures that serve the purposes of the suggested process in these guidlines. Agencies should adopt HPPs as part of ongoing land management responsibilities. Such HPPs must be useable at the different administrative levels within an agency. In some cases, especially for large agencies, HPPs may need to be developed for use at various administrative or regional levels. Where the HPP will be operating at multiple levels, the agency should develop internal guidelines to ensure consistency.

(2) *Relationship to the Secretary's Standards for Preservation Planning.* The HPP should meet the *Secretary's Standards* in that the HPP:

(i) Is based on historic contexts;

(ii) Describes historic contexts;

(iii) Identifies survey needs;

(iv) Identifies known properties and assesses significance;

(v) Identifies property types likely to be present;

(vi) Identifies treatments appropriate to those properties;

(vii) Integrates archeological, as well as historic, values as a routine consideration in agency planning, development and management practices; and,

(viii) Establishes priorities for management and protection of historic resources based on historic resources values.

(3) *Assuming responsibility.* Section 110(a)(1) requires Federal agencies to "assume reponsibility for the preservation of historic properties which are owned or controlled by such agency." In assuming such responsibility, agencies are encouraged to:

(i) Undertake a program to identify historic properties under its jurisdiction or control;

(ii) Maintain a systemmatic body of inventory documentation on properties as well as the overall identification effort;

(iii) Identify opportunities for the effective use and preservation of historic properties;

(iv) Identify potential conflicts between preservation of historic properties and implementation of agency mission requirements;

(v) Identify areas where information is insufficient to make decisions about historic properties.

(vi) Consider the effects of proposed activities on historic properties early in planning activities;

(vii) Give thorough consideration to historic resource values in the use and reuse of historic properties for agency program purposes as alternatives to the construction of new facilities and to the demolition of historic properties; and,

(viii) Seek opportunities for cooperative efforts with other Federal agencies, State and local agencies, and the private sector in the preservation and use of historic properties;

(4) *Integration of preservation with agency mission.* Agencies are encouraged to integrate the HPP with agency systems for property management, land use planning, and project planning so as to:

(i) Conduct activities to avoid damage to any historic properties known in advance, identified through survey, or discovered in the course of exploration, consistent with the historic resources values of those properties;

(ii) Include consideration of the views of the SHPO in the evaluation and protection of historic properties;

(iii) Take into account the views of local governments, appropriate Federal agencies, other interested parties, and the public in the evaluation and protection of historic properties;

(iv) Conduct all preservation activities in a manner consistent with the *Secretary's Standards;*

(v) Incorporate, consistent with the agency's missions and mandates, measures that enhance the preservation of historic properties; and,

(vi) Fully document the rationale for making decisions concerning historic properties;

(5) *Historic resource values.* In managing historic properties, agencies should consider resource values in addition to the significant aspects of the property that make it eligible for the National Register. Agencies should determine the historic resource values of specific properties eligible for the National Register in order to establish management priorities for those properties. These values are not constant; rather they vary depending on many considerations, including the general and specific cultural interests of the public.

(i) *Determination of historic resource values.* A number of considerations should be included in the determination of historic resource values. Several of these considerations, such as level of significance and integrity, are discussed in greater detail in National Park Service guidance, "How to Apply the National Register Criteria."

(A) *Level of significance.* National Register levels of significance are national, State, or local. National Historic Landmarks and units of the National Park System are of the highest significance.

(B) *Integrity.* Integrity is the completeness of the original material elements that are essential to the class of properties to which a particular property belongs. If, for example, a building is primarily significant for its architectural design, and it is stripped off most of its exterior elements as part of structural improvements, it will have lost some of its integrity. It might be in better structural condition, but its value as a historic resource has been lessened.

(C) *Rarity.* The rarity of a property type and/or features (e.g., interior woodwork, method of construction) may be of importance in determining a property's historic resource values.

(D) *Research/information value.* Potential of a property to reveal important information and fill research needs enhances its historic resource values.

(E) *Interpretive value.* Properties are particularly valuable if they aid historical interpretation.

(F) *Condition.* A property's value may be enhanced because it is in relatively good condition.

(G) *Cost to maintain/operate the property.* Properties which require smaller investments to maintain or operate may be more valuable because their preservation is cost effective.

(H) *Existing use or potential re-use.* Properties which serve, or have the potential to serve, other management needs have functional value that enhances their historic resource values. For example, when historic properties are used for administrative offices or housing in a manner that does not

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destroy their integrity, such use serves practical, as well as preservation, needs.

(ii) The determination of the historic resource values of a property will vary depending on the mission of the agency, its needs, and the money available for preservation. Because all agencies operate within limited budgetary constraints, it is necessary to balance the considerations which determine relative historic resource value. An agency may choose to make a substantial investment in order to preserve a nationally significant property that is in poor condition, while another agency may make the same investment to preserve a dozen properties of local significance which are in good condition justification for either choice is possible. Some agencies may have a greater need than others to adaptively re-use historic properties. In such cases, the consideraton of the condition, potential for re-use, and maintenance costs of historic properties will be weighed heavily in determining the historic resource values of those properties. Where agencies have very little need to re-use historic properties, such considerations will not be as important.

(iii) Agencies should use a system which considers the above factors relative to the normal considerations in cost/benefit analyses. Attempts should be made to evaluate historic resource values within given project or management areas. The system should be straightforward and easy to replicate. Once the historic resource values of properties have been determined and considered in light of the agencies other mission concerns, sound decisions about preservation activities can be made.

(6) *Coordination with States.* Federal agencies should ensure that HPPs are coordinated with the preservation planning system instituted by the States in which they are operating, so long as State processes comply with law, regulations, and the *Secretary's Standards.* The National Park Service reviews State planning processes for conformance to the *Secretary's Standards* during required State historic preservation program reviews. Information concerning the capability of State planning processes to assist Federal agencies in the development of HPPs is available from the National Park Service.

(7) *Data bases.*-Pursuant to sections 101(b)(3) and 110(d) of the Act, Federal agencies should assist the Secretary, in his cooperative effort with the Advisory Council and appropriate SHPOs, in undertaking and encouraging the development of statewide and regional data bases, archeological and historic research designs, and management plans that can be used in developing HPPs. This will ensure that there exist progressively more complete inventory records of potentially significant properties. The automation of such inventories should be done using state of the art data base systems to facilitate incorporation of additional information into, and communication between, data base systems.

(8) *National Historic Landmarks.* In order to meet the requirement in section 110(f) of the Act, Federal agencies should take the approach that the importance of National Historic Landmarks, and hence their preservation, may in some instances transcend agency operational and/or project objectives.

(9) *Other planning considerations.*

(i) *Lease terms, etc.* Lease terms and stipulations, and conditions of Federal land transfers, permits, and other entitlements should be consistent with the intent of the Act.

(ii) *Environmental Assessments.* Nothing in these guidelines shall be construed as requiring preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) where one would not otherwise be required. When an EA or EIS is prepared, the lead agency should ensure to the extent feasible that its preparation is coordinated with implementation of these guidelines.

(iii) *Reasonable Project Costs.* Section 110(g) directs Federal agencies to include the costs of preservation activities as eligible project costs in all agency undertakings. This provision is intended to ensure that historic preservation activities may be eligible for agency support. It is not to be construed as otherwise conflicting with the cost-benefit ratio determined by the agency for a specific project. Where preservation activity is a condition of obtaining a Federal license or permit, the licensee/permittee may be charged for reasonable preservation costs. The term reasonable should be interpreted to mean at a rate commensurate with the extent of the licensee's or permittee's interest in or benefit from the undertaking that impacts the historic properties. It should also take into consideration the historic resource values of properties, i.e. there is a strong argument for a larger public investment in properties with greater historic resource values. Because it is difficult to establish fair standards that would be applicable in all cases, "reasonable" project costs should not be determined using an inflexible criteria, such as a flat fee or a standard percentage of a budget, but rather should be determined on a case-by-case basis.

(b) *Identification.*

(1) *Priority areas.* General areas in which the Federal agency has proposed undertakings or where threats to the resources from other factors, such as significant environmental deterioration or vandalism, have been identified should receive priority in resource management planning. Agencies should ensure that identification and evaluation activities are completed prior to the approval of any action that may have an effect upon properties which may be eligible for the National Register. Generally, background research and field survey conducted in accordance with the *Secretary's Standards for Identification* are appropriate where areas subject to effect have not been surveyed in the past, unless reliable data indicate that it is very unlikely that historic properties will be found in such areas. Where poorly defined areas are involved, such as where project effects are indirect and difficult to predict, it may be feasible to conduct only background research and minor field survey, but sufficient study should be done to provide a basis for decisionmaking about the effects of the project and about possible mitigation measures.

(2) *Continuing responsibility.* Agencies should schedule similar location, identification, evaluation, and registration activities for any properties not included in the initial consideration of properties in priority areas. Agencies should set realistic goals for completion of surveys of particular types. For practical reasons, agencies should document in initial surveys those properties less than 50 years old that would otherwise be eligible for the National Register.

(3) *Newly acquired lands.* Agency HPPs should specifically provide for surveys and identification of historic properties on any newly acquired lands, especially if acquired for construction or alteration. In consultation with the appropriate SHPO, a reconnaissance or intensive survey should be conducted to identify historic properties in the event that adequate resource surveys have not previously been conducted.

(4) *Use of existing data.* Agencies should determine, in consultation with the SHPO, and, as appropriate, local governments and Native American tribal councils, if adequate surveys have been conducted and, if so, consult those survey reports. Such lists include the National Register, State inventories and other published sources. Certified Local

Governments may also be able to provide information on existing surveys.

(i) *National Register.* The National Register of Historic Places was published in its entirety in the Federal Register, February 6, 1979. Annual updates of properties added to the National Register were published on March 18, 1980; February 3, 1981; February 2, 1982; March 1, 1983; and February 7, 1984. Annual lists are scheduled for publication each February. The National Register listings are also accompanied by a list of properties which have been determined to be eligible for inclusion. Detailed information concerning the boundaries of historic properties listed in, or determined eligible for, the National Register can be obtained from the SHPO or the National Park Service. An automated National Register Information System is scheduled for on-line access in 1986.

(ii) *State registers and inventories.* Any State registers or inventories of properties that may include properties meeting the criteria for listing in the National Register may be obtained from the appropriate SHPO. The State preservation plan will assist in identifying those historic contexts that may be present in the planning area, the property types expected to represent those contexts, and the possible significance of the properties. Where adequate historic contexts have been fully developed by the State, the agency should adopt those contexts for use in its HPP. This will save considerable time and effort and will ensure that the agency and the State are operating under the same assumptions concerning the historic and archeological significance of resources. The SHPO may also identify specific properties that might qualify for inclusion in the National Register.

(iii) *Historic American Buildings Survey and the Historic American Engineering Record (HABS/HAER).* HABS/HAER catalogues maintained by the National Park Service, or any similar statewide surveys and published reports, should be used to identify properties that may qualify for the National Register.

(iv) *National Archeological Data Base (NADB).* The NADB, maintained by the Archeological Assistance Division, National Park Service, includes bibliographical reports prepared by Federal agencies, information on Federal agency projects that included archeological work, and names and locational information on other archeological data basis.

(v) *Other sources.* State, university, or society historians, architects, architectural historians, and archeologists may also have registers, inventories, catalogues, or other lists of sites or areas with values that may qualify them for the National register. In addition to checking registers and inventories, agencies should review available ethnographic and oral historical sources for information that may be helpful in projecting where historic properties might be located. The SHPO can direct agencies to relevant data sources.

(5) *Marine lands.* For submerged lands, documentary and field research may serve to indicate the need for, and recommended location of, physical and/or electronic surveys for submerged archeological sites or sunken vessels. A sound methodology for conducting surveys on the continental shelf is found in Enclosures 1 and 2 of the Minerals Management Service's Notice to Lessees and Operators 75–3, Revision 1 (see *Recommended Sources of Information).* Because of the specialized nature and problems attending underwater survey activities, agency officials may wish to review specific survey, inventory, and documentation procedures with the Departmental Consulting Archeologist, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Additional expertise is available from those SHPOs whose programs include underwater archeology.

(6) *Alternative identification strategies.* Federal agencies are urged to experiment with different identification strategies. Sampling techniques and predictive modelling may be tested to determine their effectiveness in supplementing traditional identification strategies. There are a variety of approaches currently in use, designed to serve different objectives. Agencies should evaluate these approaches to determine if they are compatible with their own cultural resource management objectives. Such testing is best done in consultation with the SHPO. The *Secretary's Standards for Identification* provide more information on alternative strategies which would be particularly useful to agencies, especially in light of the limited funding available for surveys.

(7) *Reporting identification results.*

(i) *Findings of surveys.* The agency, in consultation with the SHPO, should compile a report containing the findings and records of any surveys conducted for the identification of historic properties within the area of the survey. Upon completion of the report, a copy should be provided to the appropriate SHPO for inclusion in the statewide comprehensive site survey and the Comprehensive Statewide Historic Preservation Plan. Such information should be in a form compatible with the State's inventory system, provided that system is compatible with the *Secretary's Standards.* Agencies should also continue to maintain survey records indicating what lands and properties under Federal jurisdiction or control have been surveyed and by whom.

(ii) *Records of surveys.* Agencies should maintain documentation demonstrating that required surveys have been conducted. Such documentation should include the type of survey employed, scaled maps showing those areas actually inspected during the surveys mentioned above, a historic resource inventory file containing documentation on all identified properties, site photographs, data on areas where historic properties are not located, and a description of the methodology used for identification.

(c) *Evaluation.*

(1) *Inventory of evaluated resources.* The agency in consulation with the SHPO, should create an inventory by evaluating all properties identified in the survey in accordance with National Register criteria for evaluation found in 36 CFR Part 60. The resulting inventory file should contain survey records of all properties located during a survey. Inventory files should contain the information used to evaluate the property under the National Register criteria. The values and attributes of properties which make them eligible for the National Register should not be inadvertently damaged or destroyed during the evaluation.

(2) *Special considerations.* In the case of archeological properties, testing during evaluation should be kept to a minimum and not proceed beyond the point of providing sufficient information for evaluations of eligibility for the National Register and for management purposes. Evaluations of properties against the National Register Criteria should include consideration of historic landscapes.

(3) *Procedures used.* Evaluation records should include the procedures used to collect and evaluate information. Published information sources, qualified informants, the detail with which project areas were examined on the ground and by what techniques (surface inspection, subsurface testing, aerial photography and other remote sensing, etc.) should be described. Maps showing areas actually inspected and by what means should be included. Any documents prepared during the evaluation should be appended as supporting material. Evironmental

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statements reflecting negative historic property findings should be accompanied by supporting information indicating the factual basis for this finding.

(d) *Registration.*

(1) *Nomination to the National Register.* In accordance with the procedures in 36 CFR Part 60, those properties determined to meet the criteria will be nominated to the National Register. The National Park Service provides a variety of technical information materials in addition to the *Secretary's Standards for Evaulation and Registration* helpful in interpreting the National Register criteria (see Recommended Sources following Guidelines).

(2) *Determinations of eligibility.* Where registration of properties must be accomplished as quickly as possible because of the impacts of proposed undertakings or other threats to properties, agencies shall request determinations of eligibility from the Keeper of the National Register in accordance with the procedures in 36 CFR Part 63, entitled "Determinations of Eligibility for Inclusion in the National Register of Historic Places," (to be incorporated in 36 CFR Part 60 during 1986). In the revised Part 60, and under certain circumstances, agencies may make decisions on eligibility without seeking a formal determination from the Keeper and thereby satisfy the requirements of section 106 of the Act.

(3) *Multiple property documentation.* All nominating authorities are encouraged to nominate properties to the National Register using the multiple property nomination format. Because many properties have similar historic contexts, this facilitates the registration of properties because the nominating authority does not have to prepare, nor does the reviewing authority have to review, a great deal of repetitive documentation. For example, Federal agencies can nominate properties to the National Register under the multiple property documentation approach using sampling surveys to characterize the resources of an area. Once eligible resources are identified as having similar attributes, and the geographic area of their location has been defined, the eligible properties within such a class of properties can be listed in the National Register. Although only those properties specifically identified in the sample survey will be included in the Register at first, this approach facilitates the inclusion of properties discovered in later surveys in the same geographic area with matching significant attributes. Registration documentation on classes of properties should include:

(i) A determination of the general classes of historic properties likely to occur, based on background research in the area(s) of history, ethnography, architecture, archeolgy, environment, and land-use;

(ii) A general projection of the likely distribution of each class of such properties; and,

(iii) A general projection of the kinds of historic significance that each class of such properties is likely to represent.

(e) *Protection.* The HPP should include information about protection strategies. Such information should be directly related to the historic resource values of properties.

(1) *Using properties.* Section 110(a)(1) requires agencies to "use, to the maximum extent feasible, historic properties available to the agency." Agencies should use historic properties in a manner that does not cause significant damage to or deterioration of the property. If the use of the property requires that the property be modified, such modifications should be consistent with the recommended protection strategies in the *Secretary's Standards for Preservation Projects.* To effectively use historic properties, agencies should:

(i) Identify those program activities that presently involve the use of historic properties and ensure, to the maximum extent possible, that such activities continue to maintain such properties in active use, provided the activities are not causing damage to or deterioration of such properties;

(ii) Identify those program activities that could use historic properties in ways that advance both agency purposes and preservation of the properties, and adjust such activities to the maximum extent possible to cause such use to occur; and,

(iii) Whenever a new activity or program is planned, consider ways that it could be designed in order to use historic properties to the maximum extent possible, and integrate such use into activity or program design.

(2) *Exercising caution.* Section 110 (a)(2) requires agencies to "exercise caution to assure that any such property . . . is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly."

(i) In planning projects and programs, agencies should take steps early in the planning process to identify historic properties and to comply with the regulations of the Advisory Council, 36 CFR Part 800, implementing section 106 of the Act.

(ii) In managing historic building and structures, agencies should establish maintenance plans that are responsive to the *Secretary's Standards for Rehabilitation,* train maintenance personnel in the use of such plans, and ensure that any alterations are consistent with the *Secretary's Standards,* and are reviewed in accordance with section 106.

(iii) In general land management activities, agencies should ensure that historic preservation concerns are taken into account in decisionmaking, in a manner consistent with section 106 and 36 CFR Part 800. Special consideration should be given to properties that, although not necessarily endangered by agency actions, are subject to damage or deterioration as the result of weather, erosion, vandalism, or natural attrition. In consultation with the SHPO and the Advisory Council, steps should be taken to identify such properties, as needed, document their existence and nature, and take such action as may be necessary consistent with the properties' historic resource values. Such actions may include making properties available to non-Federal parties for adaptive use, conducting detailed documentation or archeological salvage, physical stabilization, or altering the property's environment to protect it.

(3) *Determination of threats.* A determination should be made of known threats and the effects if all or part of the treatened resource was lost. This determination should include careful consideration of the following:

(i) Impacts that cause degradation and/or loss of those characteristics that make a property eligible for the National Register, including the introduction of physical, visual, audible, or atmospheric elements that are out of character with the property and its setting;

(ii) Duration of adverse effects;

(iii) Adverse effects resulting from natural forces or vandalism;

(iv) The impact of any proposed action upon the property taken in consideration with impacts from other sources;

(v) Secondary or indirect impacts resulting from associated activities induced or promoted by the proposed action on the property;

(vi) The relationship between local short-term uses of the property and the long-term preservation and enhancement of the property, indicating to what extent long-term consideration of preservation and enhancement are foreclosed by any proposed action; and,

(vii) The likelihood of unexpected discoveries of significant resources.

(4) *Mitigation.*

(i) Recommendations for mitigation of unavoidable losses should be made. Such recommendations should describe

efforts that will be made to prevent or minimize damage to, loss of, or intrusion upon, historic properties. Where destruction of such resources is unavoidable, or the preservation of archeological resources in place is not prudent or possible, the recommendations should include procedures to recover archeological, historic, architectural, or ethnological specimens and data. Federal agencies should adopt mitigation mesures for use when waiving section 110 responsibilities as provided in regulations 36 CFR Part 78.

(ii) Such mesures may include:

(A) Archeological excavation to recover data and materials (see *Secretary's Standards for Archeological Documentation* and 36 CFR Part 79);

(B) Removal of structures or salvage of architectural components (see 36 CFR Part 79 concerning the curation of federally owned archeological collections);

(C) Provision for publication of information thus gained and initial deposition of artifacts and materials in a repository where they may be of public and educational benefit; and,

(D) Other preservation steps as may be necessary consistent with the historic resource values of the threatened property.

(iii) *Recrodation.* A determination of the necessity to record properties should take into account their historic resource values.

(A) 110(b) requires that each agency initiate measures "to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited...in the Library of Congress or with such other appropriate agency as may be designated by the Secretary for future use and reference." Minimum standards for recordation are provided in the *Secretary's Standards for Historical Architectural, and Archeological Documentation.*

(B) Appropriate records may range from survey documentation to extensive archival, archeological data recovery, or architectural documentation. It includes the use of sampling procedures when these are sufficent to address the resource management issues represented by particular properties. In conducting data recovery on archeological sites to address specific research questions, it may be particularly useful to apply sampling techniques rather than examining all sites subject to damage.

(C) *Establishing the need for recordation.* Agencies should determine whether recordation is needed and establish standards for property specific recordation through consultation with the SHPO, Advisory Council, and other concerned parties under 36 CRF Part 800. Consultations with the Secretary under the Archeology and Historic Preservation Act (Pub. L. 93–291) may also be appropriate to determine the need for recordation (see section II(b)(4)).

(D) *Deposition of records.* Information on the deposition of records can be found in the *Secretary's Standards for Documentation.* Further, records and materials concerning National Register eligible properties should be deposited with the National Register Information System and the SHPO. In addition, archeological documentation should be deposited with any institution meeting the standards set forth in 36 CFR Part 79 when promulgated (see section II(b)(1)) and with the National Archeological Data Base. Until 36 CFR Part 79 is promulgated, agencies should consult with the Departmental Consulting Archeologist, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127 concerning appropriate depositories.

(5) *Unexpected discoveries.* Subject to such revisions as may be necessary because of unexpected discoveries during execution of a HPP or clarifications of a HPP necessary as a result of monitoring, an approved HPP should be considered to be a statement of an agency's historic preservation responsibilities and planned actions. 36 CFR Part 66 outlines procedures to be followed by Federal agencies when there is an unexpected discovery of data which may be important. For assistance in resolving issues under Part 66, agencies should contact the Interior Departmental Consulting Archeologist.

(6) *Preservation.* Section 110(a)(1) also requires agencies to "undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(f), any preservation, as may be necessary to carry out this section." As part of the HPP, recommended treatments should be identified for expected property types. Recommendations should take into account historic resource values, prudent and feasible treatments, achievable preservation goals, and past treatments to similar properties. Treatments for historic or archeological properties include a broad range of activities. *The Secretary's Standards for Historic Preservation Projects* provides technical information on acquisition, protection, stabilization, preservation, rehabilitation, restoration, and reconstruction activities. These are elaborated upon by a variety of information sources cited in the *Secretary's Standards.*

V. Developing a Historic Preservation Process

(a) *Federal Preservation Officers (FPOs).* Section 110(c) requires each agency, unless exempted by the Advisory Council, to designate a qualified official as its "preservation officer." It establishes that the preservation officer "shall be responsible for coordinating that agency's activities under this Act." It provides for preservation officers to be considered qualified upon completion of a training program established by the Secretary.

(1) *Qualifications.* The FPO shall be considered qualified as a preservation officer upon meeting the professional qualification standards in the *Secretary's Standards* or upon completing a training program established by the Secretary. FPOs should maintain or have access to the services of staff or other professionals meeting the qualifications outlined in the *Secretary's Standards.* The Secretary will offer an orientation program for Federal agencies addressing the requirements of section 110 and the advice in these Guidelines.

(2) *Position within agency structure.* FPOs should have agency-wide authority in order to effectively carry out their section 110 responsibilities. The FPO should occupy a position in the agency's organizational structure from which he or she can effectively monitor agency compliance with the requirements of the Act. Generally this means that the preservation officer should occupy a position close to the agency head, with direct access to both the agency head and to the agency's day-to-day operations. Decentralized agencies will find it helpful to designate officials in their bureaus or field offices who meet the same standards as the FPO. Administrative systems should be established to ensure that the FPO can review all agency activities that might affect historic properties. FPOs should be authorized to participate in the establishment of identification and management procedures for historic properties, in nominating properties to the National Register, in making National Register eligibility determinations, in consultations with the Advisory Council and SHPOs, and in training agency staff with reference to

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their historic preservation responsibilities.

(3) *Delegations of responsibilities.* Where an agency delegates any of its section 110 responsibilities to non-Federal authorities, the agency should establish, as part of the HPP, clear lines of authority and responsibility to ensure accountability for section 110 implementation. Any process developed by the delegated authority needs to be consistent with those developed at other levels within the agency.

(4) *Use of professionals.* All HPPs should be developed and implemented by or under the supervision of qualified professionals in appropriate historic preservation disciplines, although the use of paraprofessionals, students, and avocational organizations under professional supervision is encouraged in the actual implementation of the HPP. Persons selected to supervise development and implementation of the HPP should meet the professional qualifications standards described in Section III(m) to undertake this work.

(b) *Consultations.* Federal agencies should make every reasonable effort to involve appropriate SHPO(s) and the public in the development and review of the HPP.

(1) *Providing copy of the HPP to SHPOs and other interested parties.* Copies of the proposed HPP should be provided to the appropriate SHPO(s). In addition, other agencies, parties having land or rights to land in or contiguous to the areas covered by the HPP, and other interested parties should be afforded a reasonable opportunity to review and comment to the agency on the HPP as early as possible in the process.

(2) *Providing copy of the HPP to the Advisory Council.* The agency should provide a copy of the HPP to the Advisory Council when appropriate to assist in consultations under section 106 of the Act. If programmatic memoranda of agreement between the agency and the Advisory Council are appropriate, such agreements should be made as early in the development of the HPP as is possible. Involving the Advisory Council in the early stages of review of the HPP should facilitate all aspects of the Advisory Council comment process later on when consulting on specific projects under section 106. Procedures implementing section 106 are found in 36 CFR Part 800.

(3) *Response to comments.* If, during the agency review period or the public comment period, the lead agency receives a comment on the HPP or a suggestion for a change which it believes merits possible revision of the proposed HPP, it should revise the HPP in consultation with the appropriate SHPO(s) and such other persons as it may deem appropriate.

(4) *Public notice.* Upon receipt of review comments from the appropriate SHPO(s) and agencies, and following revisions to the HPP, if necessary, the Federal agency should publish notice in the **Federal Register** and provide a reasonable opportunity for public comment. Where the impact of the HPP is only local or regional, publication of notice in a journal of local or regional circulation is advised.

(5) *Conflict Resolution.* Where SHPOs, relevant agencies, local governments, or the public object to the HPP, a mechanism should be provided for considering the objection. Any mechanism included in the HPP should consider the State's role in historic preservation as established in the State plan. Where a State is commenting pursuant to Section 106 of the Act, the role of the State and a mechanism for resolving conflicts will be more formally established.

(6) *Review by the Secretary.* The Secretary will review and comment on the HPPs should the initiating Federal agency seek such a review. Where review of HPPs is sought, copies should be forwarded to the Associate Director for Cultural Resources, Interagency Resources Division, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

(c) *Actions the agency should take following approval of the HPP.* After agency approval of the HPP, the agency should:

(1) Provide to the appropriate SHPO(s) copies of final HPPs and related studies and records developed pursuant to these guidelines for use in the comprehensive Statewide preservation inventory;

(2) Provide copies of the HPP and its supporting documentation to purchasers, lessors, and other users of Federal lands who may be affected;

(3) Notify the public through **Federal Register** or other appropriate means of the HPP;

(4) Provide for regularly scheduled updating of the HPP in consultation with the SHPO; and,

(5) Ensure that such HPPs and incorporated into or summarized or referenced in environmental impact statements, environmental assessments, and other assessments, if prepared.

RECOMMENDED SOURCES[1]

Prepared by the National Park Service to Accompany the Guidelines for Historic and Archeological Resource Management: Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Published in the **Federal Register**, September 29, 1983; Vol. 48, No. 190, Part IV, pp. 44716–44740. Issued by the Interagency Resources Division, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

Directory of Technical Information. Issued to accompany the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.* Available from the Interagency Resources Division, National Park Service, United States Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf, Gulf of Mexico OCS Region, Number 75–3, Revision Number 1, Enclosures 1 and 2. Available from the Gulf of Mexico OCS Region, Minerals Management Service, United States Department of the Interior, P.O. Box 7944, Metairie, LA 70010.

Code of Federal Regulations:

36 CFR Part 60, "National Register of Historic Places" (scheduled to be revised in 1986).

36 CFR Part 63, "Determinations of Eligibility for Inclusion in the National Register of Historic Places" (scheduled to be incorporated into a revised 36 CFR Part 60 in 1986).

36 CFR Part 66, "Guidelines for Recovery, of Scientific, Prehistoric, Historic, and Archeological Data: Procedures for Notification, Reporting and Data Recovery" (scheduled to be proposed in 1986).

36 CFR Part 78, "Waiver of Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act"

36 CFR Part 79, "Curatorial Responsibilities of Federal Agencies" (scheduled to be proposed in 1986).

36 CFR Part 800, "Protection of Historic and Cultural Properties" (proposed revisions published in **Federal Register**, October 15, 1985; Vol. 50, No. 199, Part IV, pp. 41828–41833).

[FR Doc. 86–5175 Filed 3–7–86; 8:45 am]

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[1] *The Directory of Technical Information,* prepared by the National Park Service to accompany the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,* contains an exhaustive list of sources dealing with the preservation activities of planning, identification, evaluation, registration, and protection. The list of Recommended Sources prepared to accompany the *Section 110 Guidelines* includes only those documents relevant to Federal agency preservation activities which are not already included in the Directory of Technical Information. Agencies are urged to consult the Directory when seeking detailed guidance for all phases of agency preservation activities.

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Lease No. M–46292]

Availability of the Final Environmental Impact Statement on the Proposed CX Ranch Mine, Bighorn County, MT

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a final environmental impact statement (OSM–EIS–20).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Montana Department of State Lands (DSL) are making available a jointly prepared final environmental impact statement (ESI) on the proposed CX Ranch mine. These agencies have prepared this EIS to assist the Department of the Interior and Montana DSL in making a decision on whether to approve Consolidation Coal Company's (Consol's) application for a permit to surface mine coal approximately 2 miles northwest of Decker, Montana.

ADDRESSES: Copies of the EIS may be obtained from Allen D. Klein, Administrator, Attn: Acting Chief, Environmental Analysis Branch, OSMRE, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202 or from Kit Walther, Environmental Analysis Bureau, Montana DSL, Capitol Station, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Analysis Branch (telephone: 303–844–2451 (commercial) or 564–2451 (FTS)) at the Denver, Colorado, location given under **ADDRESSES**.".

SUPPLEMENTARY INFORMATION: Consol's proposed CX Ranch mine would be a new surface coal mine located in Big Horn County, Montana, 2 miles west of Decker, Montana, and 22 miles north of Sheridan, Wyoming. The mine would lie along the lower reaches of Squirrel Creek, just north of the Tongue River.

Consol is currently seeking approval of a permit application it has submitted to OSMRE and Montana DSL to mine 46.9 million tons of coal, over a 12-year period and at an average rate of approximately 8 million tons per year, at this proposed mine. During this period, Consol would disturb 974 acres of its proposed 1,905-acre permit area, which includes all or part of secs. 14, 15, 23, 25, and 26, T. 9 S., R. 39 E., and secs. 29, 30, and 31, T. 9 S., R. 40 E., Montana principal meridian.

Should Consol acquire additional coal leaseholds adjacent to its current proposed permit area, the company proposes to extend the life of the CX ranch mine by 21 years, eventually increase production to approximately 16 million tons per year, disturb 2,200 acres more for mining, and expand the permit area by 3,720 acres. Consol would excavate a total of 233 million tons of coal from this 33-year, extend life-of-mine area; 3,174 acres of a total 5,694-acre permit area would be disturbed in the process.

The EIS identifies and analyzes the impacts to the human environment that would result should Consol implement both the 12-year operation it has currently proposed for the permit area and the 33-year operation it has proposed for the life-of-mine area. The EIS also analyzes a cumulative-impact scenario, whereby all mines formally proposed in Montana would be fully developed. Under this scenario, OSMRE and Montana DSL have identified and analyzed the probable impacts of maximum projected growth, assuming that three new coal mines would be developed in the Decker area of Montana: CX Ranch, Youngs Creek/Tanner Creek (about 5 miles east of the proposed CX Ranch mine), and Wolf Mountain (1 mile north of the proposed CX Ranch mine). In the EIS, five alternative decisions that are available to the Department of the Interior and Montana DSL regarding Consol's permit application have been evaluated: approve the application as proposed, reject the application, selectively reject the application, approve the application with mitigating measures, and take no action. OSMRE and Montana DSL have identified "approve the application with mitigating measures" as their preferred alternative.

Dated: March 4, 1986.

H. Leonard Richeson,

Acting Assistant Director, Program Operations.

[FR Doc. 86–5095 Filed 3–7–86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Agency Information Collection Activities Under OMB Review

March 6, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *And* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse 202/633–4312.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312
(2) Justice Management Division, Department of Justice
(3) Department of Justice Procurement Blanket Clearance
(4) n/a
(5) On occasion
(6) Businesses and other for-profit. 48 CFR requires contractors to submit data in response to solicitation requirements. These representations and certifications pertain to the

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contractor's business status and eligibility for contract awards.
(7) 800 respondents
(8) 16,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Existing Collection in Use Without an OMB Control Number

(1) Larry E. Miesse, 202/633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners
(4) n/a
(5) On occasion
(6) Businesses or other for-profit, non-profit institutions, small businesses or organizations. To maintain a closed system of records by requiring individual practitioners to keep records of complimentary samples of controlled substances dispenses and narcotic and non-narcotic controlled substances both administered and dispensed.
(7) 500 respondents, 100,000 recordkeepers
(8) 50,250 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

New Collection

(1) Larry E. Miesse, 202/633-4312
(2)Bureau of Justice Statistics, Department of Justice
(3) Directory of Justice Agencies: National Survey of Courts in the United States and National Survey of Law Enforcement Agencies in the United States
(4) CJ-39 (Courts) . CJ-38 (Law enforcement agencies)
(5) One time
(6) State and local governments. Survey will collect data needed to update the courts and law enforcement sectors of the Directory of Justice Agencies.
(7) 21,600 respondents
(8) 2,700 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Reinstatement of a Previously approved collection for Which Approval Has Expired

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Report of Alien Person Institutionalized
(4) G-340
(5) On occasion
(6) State and local governments, Federal agencies or employees. Data needed to determine deportability of aliens under Section 241 of the I&N Act.
(7) 6,000 respondents
(8) 1,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Data Relating To Beneficiary of a Private Bill
(4) G-79-A
(5) On occasion
(6) Individuals or households. Information needed to make a report to the Congress on private bills re: 8 U.S.C. 1182.
(7) 100 respondents
(8) 100 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 86-5174 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-10-M

Pollution Control; Lodging of Consent Decree for Conducting Remedial Investigation and Feasibility Study Pursuant To Cercla and RCRA; Berlin and Farro Liquid Incineration, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 27, 1986, a proposed consent decree for conducting a remedial investigation and feasibility study ("RI/FS") was lodged in *United States* v. *Berlin and Farro Liquid Incineration, Inc., et al.*, Civil Action No. 84-CV-8478-FL, with the United States District Court for the Eastern District of Michigan. The Berlin and Farro Liquid Incineration, Inc., hazardous waste site is located near Swartz Creek, Michigan. The RI/FS is to determine the appropriate groundwater remedy, if any is required, as well as any remaining subsurface and surface cleanup work necessary for the protection of human health and the environment. The proposed consent decree requires the defendants to conduct the RI/FS.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Berlin and Farro Liquid Incineration, Inc., et al.*, D.J. Ref. No. 90-11-2-77.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 113 Federal Building, 600 Church Street, Flint, Michigan 48502, at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount $53.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-5099 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Modifications To List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prison institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating a new Federal Detention Center at Oakdale, Louisiana. To institution is scheduled for formal dedication during the month of March 1986.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202-272-6874).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 4001, 4003, 4042, 4081, and 4082 and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of

confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutons:

(1) Alderson, West Virginia;
(2) Ashland, Kentucky;
(3) Bastrop, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut;
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Fort Worth, Texas;
(9) La Tuna, Texas;
(10) Lexington, Kentucky;
(11) Loretto, Pennsylvania;
(12) Memphis, Tennessee;
(13) Milan, Michigan;
(14) Morgantown, West Virginia;
(15) Otisville, New York;
(16) Oxford, Wisconsin;
(17) Petersburg, Virginia;
(18) Phoenix, Arizona;
(19) Pleasanton, California;
(20) Ray Brook, New York;
(21) Safford, Arizona;
(22) Sandstone, Minnesota;
(23) Seagoville, Texas;
(24) Talladega, Alabama;
(25) Tallahassee, Flordia;
(26) Terminal Island, California; and
(27) Texarkana, Texas.

C. Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Allenwood, Pennsylvania;
(2) Big Spring, Texas;
(3) Boron, California;
(4) Duluth, Minnesota;
(5) Eglin Air Force Base, Florida; and
(6) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Flordia;
(3) New York, New York;
(4) San Diego, California; and
(5) Tucson, Arizona.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakdale, Louisiana, is designated as the Federal Detention Center.

Dated: February 28, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 86-5084 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-05-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Johnson Matthey, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 19, 1985, Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 9, 1986.

Dated: March 3, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-5098 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; Marion Laboratories Inc.

Pursuant to § 1301.43(a) of Title 21 of Code of Federal Regulations (CFR), this is notice that on January 13, 1986, Marion Laboratories Inc., Analytical Systems Inc. Division, 23162 La Cadena Drive, Laguna Hills, California 92653, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC)	II
Benzoylecgonine (9187)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 9, 1986.

Dated: March 3, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-5097 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application; Sterling Drug, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 16, 1986, Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pethidine (meperidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator,

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Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (April 9, 1986.).

Dated: March 3, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-5098 Filed 3-7-86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

February 27, 1986.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Jefferson Lecture Committee of the National Council on the Humanities will be held on Friday, April 4, 1986 at 10:30 a.m. in Room 506 in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the meeting is to consider specific individuals who have been nominated for the 1987 Jefferson Lectureship. The meeting will be closed to the public pursuant to subsections (c)(6) and 9(B) of section 552b of Title 5, United States Code because the Committee will consider information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call area code 202-786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-5113 Filed 3-7-86; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-397]

Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix J, section III.D.2.(a) to the Washington Public Power Supply System (WPPSS or the licensee), holder of Facility Operating License No. NPF-21 which authorizes operation of the WPPSS Nuclear Project No. 2 (WNP-2 or the facility). The facility is a boiling water reactor and is located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action: The exemption from 10 CFR 50, Appendix J, section III.D.2.(a) would allow the licensee to delay the performance of a type B leak test on the drywell head "O" ring seals for not more than two months beyond the two year frequency established by Appendix J.

The Need for the Proposed Action: The exemption is needed to avoid the requirement of a special plant shutdown prior to March 19, 1986, for the sole purpose of performing this test. Such a shutdown would come at a time when there is a high demand for the electric output from the facility (prior to the spring runoff) and would result in plant personnel receiving greater radiation exposure than if the test were delayed till the next refueling outage (scheduled to commence not later than May 15, 1986).

Environmental Aspects of the Proposed Action: There are no environmental impacts of the proposed action. The proposed exemption involves a change in the installation or use of the facility's components located within the restricted areas as defined in 10 CFR Part 20. The staff has determined that the proposed exemption involves no significant increase in the amounts, and no significant change in the types of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupational radiation exposure. As indicated above, it is expected that granting the exemption will result in a reduction in cumulative occupational exposure.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and, by allowing better management of hydroelectric resources may have a positive environmental impact. Therefore, the Commission concludes there are no significant adverse non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: We have concluded there is no measurable adverse environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operation.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2." dated December 1981.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 17, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Richland Public Library, Swift and Northgate, Richland, Washington 99352.

Dated at Bethesda, Maryland, this 4th day of March 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-5164 Filed 3-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Arizona Public Service Co., et al.

The Nuclear Regulatory Commission is considering an application dated February 5, 1986, filed by the Arizona Public Service Company (APS), as Project Manager and Operating Agent of Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2 and 3, on behalf of Public Service Company of New Mexico (PNM), a licensee under Facility Operating License No. NPF-41 for PVNGS Unit 1. APS requests that the Commission amend the PVNGS Unit 1 license to allow (i) the transfer by PNM to equity investors of a portion of its fee interest in PVNGS Unit 1 and (ii) the simultaneous transfer by the equity investors back to PNM of a long term (approximately 28½ years) possessory leasehold interest of this share under the terms described in this application. Under the proposed transaction, it is represented that PNM will remain in possession of its present interests in PVNGS under a leasehold rather than by virtue of ownership.

Under Facility Operating License NPF-41, issued June 1, 1985, PNM, APS, and other named utilities are licensed to possess PVNGS Unit 1, and APS is licensed to use and operate the facility. PVNGS Unit 1 is part of a three unit PVNGS project jointly owned by those utilities. Under an Arizona Nuclear Power Project (ANPP) Participation Agreement, each owner of the PVNGS project is obligated to pay a share, equal to its ownership interest, of all costs of construction, maintenance, operation, capital improvements, and decommissioning of each of the PVNGS units, and entitled to share equal to its ownership interests in the electrical output of the units. APS is authorized to act as agent for the other licensees of PVNGS Unit 1, and has exclusive responsibility and control over the physical construction, maintenance and operation of the facility.

On October 18, 1985, APS filed an application regarding a sale and leaseback transaction by PNM of a portion of PNM's ownership interests in PVNGS Unit 1. 50 FR 45955 (1985). By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS license was amended, conditioned pursuant to the Commission's order. See 51 FR 1883 (1986). This amendment added a new paragraph, 2.B(b) to the license, which stated:

> Pursuant to an Order of the The Nuclear Regulatory Commission dated December 12, 1985, the Public Service Company of New Mexico (PNM) to transfer and PNM has transferred a portion of its ownership share in Palo Verde Unit 1 to certain institutional investors on December 31, 1985, and at the same time has leased back from such purchasers the same interest in the Palo Verde Unit 1 facility. The term of the lease is to January 15, 2015, subject to a right of renewal. the sale and leaseback transaction is subject to the respresentations and conditions set forth in the above application and Commission's Order of December 12, 1985, consenting to such transaction. Specifically, the lessor and anyone else who may acquire on interest under this transaction are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde Nuclear Generating Station, Unit 1. For purposes of this conditon, the limitations in 10 CFR 50.81 "Creditor Regulations" as now in effect and as they may be subsequently amended are fully applicable to the lessor and any successor in interest to that lessor as long as the license for Palo Verde Unit 1 remains in effect; this financial transaction shall have no effect on the license for the Palo Verde Nuclear Faility throughout the term of the license.
>
> Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) The terms or conditions of any lease agreements executed as part of this transaction; (ii) the ANPP Participation agreement, (iii) the existing insurance for the Palo Verde Nuclear Facility, Unit 1 and (iv) any action by the lessor or others that may have an adverse effect on the safe operation of the facility.

On December 31, 1985, as permitted by this License Amendment, PNM sold to and leased back from equity investors approximately 7.367% of its 10.2% interest in PVNGS Unit 1.

In the instant application, APS requests an amendment to the PVNGS Unit 1 license which allows PNM to sell and leaseback its remaining interest in PVNGS Unit 1 by adding a provision at the end of paragraph 2.B(b) which would allow PNM to enter into additional sale and leaseback transactions on or before August 31, 1986. APS presently contemplates that sale and leaseback of a $75 million portion of the remaining Unit 1 interest will be consummated with a third-party equity investor not affiliated with PNM and a $50 million portion with an affiliate of PNM. PNM represents that these transactions will have essentially the same terms and conditions as the sale and leaseback transactions entered into on December 31, 1985, under which the equity investors have no right of possession in, absent a further license amendment, or control over PVNGS Unit 1. Those rights remained solely in PNM, as a lessee rather than an owner, and the other present licensees of PVNGS Unit 1, and APS continued to be the sole licensee authorized to use and operate PVNGS Unit 1. Throughout the term of the leaseholds PNM has the full and exclusive authority and responsibility to exercise and perform all of the rights and duties of a Participant in PVNGS under the ANPP Participation Agreement. PNM also retains responsibility for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for 10.2% of the costs of decommissioning associated with PVNGS Unit 1.

APS asserts that the grant of the relief requested, which essentially is a recognition of the conversion of PNM's right of possession of an interest in PVNGS Unit 1 from a fee interest to a leasehold, does not present an unreviewed environmental impact and that no environmental impact statement or appraisal need to be prepared in acting upon the application.

The Commission has made a proposed determination that this amendment would involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a signficant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The applicant's request is for approval of the sale and leaseback transaction with PNM remaining in possession of its present interests in PVNGS and continuing to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any right of possesion in, absent further license amendment, or control over PVNGS Unit 1. APS would be the sole licensee authorized to use and operate the facility. Based on the above, and under the criteria in 10 CFR 50.92(c), the Staff proposed to determine that amendment to the license would not involve significant hazards considerations.

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The Commission is seeking public comments on the application and this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make final determination unless it receives a request for a hearing.

Comments should be addressed to Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday.

Further, although no determination has been made to hold hearings on the subject application, by April 9, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment of the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in any hearings which may be held. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date and it is determined that a hearing be held, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. The petition should identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at lease one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration and whether hearings are necessary. The final determination will serve to decide when the hearing, if any, is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that a license amendment involving a significant hazards consideration is necessary, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rules and Procedures Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message address to George W. Knighton: (petitioner's name and telephone number), date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Arthur C. Gehr, Snell & Wilmer, 3100 Valley Bank Center, Phoenix, AZ 85073.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(2)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated February 5, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the local public document room at the Phoenix Public Library, 12 E. McDowell Road, Phoenix, AZ 85004.

Dated at Bethesda, Maryland, this 4th day of March, 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Director No. 7, Division of PWR Licensing–B.

[FR Doc. 86–5165 Filed 3–7–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–382]

Louisiana Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Louisiana Power Light Company (the licensee), for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The amendment would revise the Appendix A Technical Specifications in accordance with the licensee's application for amendment dated February 19, 1986, as supplemented by letters dated February 27, 1986 and March 4, 1986, (1) by modifying the surveillance requirements for the emergency diesel generators and (2) by extending the interval for Type B and C containment leakage rate testing to the first refueling outage.

(1) Emergency Diesel Generator Surveillance

Surveillance Requirement 4.8.1.1.2.d.1 specifies that "at least once per 18 months during shutdown" the emergency diesel generators will be subjected "to an inspection in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service." The proposed change will modify the surveillance interval by specifying that the inspection be performed during refueling outages.

The Standard Review Plan and the Technical Specification Base cite various Regulatory Guides as the basis for operability demonstration of the diesel generators. Functional testing is primarily addressed by Regulatory Guide 1.108, Periodic Testing of Diesel Generator Units as Onsite Electric Power Systems at Nuclear Power Plants. This Regulatory Guide discusses most of the testing requirements of Surveillance Requirements 4.8.1.1.2.d.2–13. However, the Regulatory Guide, the Standard Review Plan and the Waterford 3 Technical Specification Bases are silent on the subject of diesel generator inspection as described in Surveillance Requirement 4.8.1.1.2.d.1. In satisfying Surveillance Requirement 4.8.1.1.2.d.2–13, the operability of the diesel generators is demonstrated.

LP&L recently retained the services of the diesel manufacturer, Cooper-Bessemer, to perform on-line diagnostic analyses of the diesel generator operation. Cooper-Bessemer determined that no significant deficiencies were present and that those areas identified as recommendations would not adversely affect the operation of the diesel generators. Further, Cooper-Bessemer recommended that a refueling cycle interval is adequate for inspection purposes. Although Surveillance Requirement 4.8.1.1.2.d.1 appears to allow flexibility with respect to manufacturer's recommendations (i.e. perform inspections, "in accordance with . . . manufacturer's recommendations"), this change will make explicit the manufacturer's recommendation that inspections be performed at refueling outages.

LP&L will utilize the EN–SPEC 2000 Engine Analyzer to perform periodic diagnosis testing on the diesel generators. The 2000 Engine Analyzer is a multi-purpose test instrument designed to evaluate the performance of reciprocating engines and compressors. By comparing current operational characteristics with previously recorded baseline data, any appreciable performance degradation should be detected and remedied. Therefore, based on the Cooper-Bessemer results and planned preventive maintenance, a full plant outage to satisfy Surveillance Requirement 4.8.1.1.2.d.1 at a time other than refueling is not recommended by the manufacturer as being technically justified and would serve no useful purpose.

The NRC staff proposed to determine that the proposed change does not involve a significant hazards consideration because it meets the three criteria of 10 CFR 50.92(c). The basis for this proposed finding is given below.

(a) Operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously analysed. The bases for diesel generator operability requirements are contained in the Standard Review Plan, Regulatory Guide 1.108 (among others), and the Technical Specification Bases. Through Surveillance Requirements 4.8.1.1.2.a–c and 4.8.1.1.2.d.2–13, Waterford 3 continues to fully demonstrate operability of the diesel generators. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(b) Operation of the facility in accordance with this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no new systems, modes of operation, failure modes or other plant perturbations. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. Emergency diesel generator operability will continue to be functionally tested in accordance with Surveillance Requirements 4.8.1.1.2a–c and 4.8.1.1.2d.2–13. Functional testing provides an objective demonstration of operability as mandated by the Standard Review Plan.

On the basis that the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety, the staff has made an initial determination that the proposed amendment is not likely to involve a significant hazards consideration.

(2) Type B and C Containment Leakage Rate Testing

Surveillance Requirement 4.6.1.2.d states that Type B and C containment leakage rate tests shall be conducted at intervals no greater than 24 months. Surveillance Requirement 4.6.1.2.f requires, in part, that the bypass leakage rate be determined through Type B and C testing at least once per 24 months. The proposed change would allow for an extension of the above Type B and C testing interval to the refueling outage for the first cycle of operation only.

LP&L successfully completed the pre-operational Type A integrated leak rate testing (ILRT) on May 1, 1983, and Type B and C local leak rate testing (LLRT) on April 22, 1984. The results of the ILRT results were submitted to the NRC in a letter dated July 19, 1983. The LLRT results demonstrated a low level of leakage. Against the allowable Technical Specification leakage limit of 630,697 cc/day, testing revealed an actual leakage of 15,952 cc/day. The current leakage is 21,547 cc/day, a minor increase. Similar results were obtained for the bypass leakage—against an

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allowable limit of 63,069 cc/day, bypass leakage was demonstrated to be 5,400 cc/day, with a current leakage of 6,150 cc/day. (Note: The Technical Specifications use the term L_a to define allowable leakage. L_a (in %/24 hours) is the maximum allowable leakage rate at peak containment DBA pressure. In the Technical Specifications, $0.60L_a$ corresponds to 630,687 cc/day and $0.06L_a$ corresponds to 63,069 cc/day.)

The performance of the pre-operational ILRT/LLRT testing was scheduled to be consistent with what appeared, at the time, to be a reasonable fuel load date. The intent of the scheduling was to allow adequate time for the first cycle of operation so as to satisfy the 24 month Type B and C testing requirements of Surveillance Requirements 4.6.1.2.d/f at the first refueling outage. Due to various factors, the full power licensing of Waterford 3 was delayed to March 16, 1985 and commercial operation of the facility was declared in September 1985. Therefore, absent the proposed change, LP&L would be faced with an extended mid-cycle outage in order to perform the Type B and C testing.

Containment leakage rate is primarily affected by equipment wear and maintenance. During periods of inactivity little, if any, increase in leakage rate would be expected. From the time of performance of the ILRT/LLRT testing to receipt of the low power operating license in December 1984 (a period of approximately 8 months), LP&L was primarily occupied with addressing licensing issues rather than exercising plant systems.

Thus, B Type and C equipment was subject to only minimal wear during that time.

To determine the effect on Type B and C equipment due to maintenance, LP&L has conducted a review of the LLRT logbook. This review has determined that maintenance was performed on only a few components out of a total of 117 and that in these cases acceptable Type B testing was performed post-maintenance.

Given the low burden placed on Type B and C components during a significant portion of the time since ILRT/LLRT testing, and the low level of maintenance on these components, it would be expected that increases in the containment and bypass leakage rates would be minor. This is borne out by Waterford 3's history of minor problems with containment pressure control. With a farly tight Technical Specification on containment pressure, 14.9–15.4 psia depending on containment temperature, LP&L has found it necessary to frequently "burp" containment to maintain pressure at an acceptable level. Presently, pressure control is required every one to two days.

The containment air locks and the containment purge system (supply and exhaust) are systems exercised on fairly frequent basis and provide potential leakage paths. However, operability and leak testing of these systems are required seperately through Technical Specifications 3.6.1.3 and 3.6.1.7, respectively. The proposed change has no effect on the leakage rate testing of the air locks and containment purge system.

Precedents for the proposed change exist. For example, on September 26, 1985 in response to an August 26, 1985 request, the NRC granted on exemption to Appendix J to allow Dresden Unit 3 to continue operation to their scheduled refueling. The request was primarily based on the presence of a four-month outage during which leak-sensitive components were not exercised. The proposed change for Waterford 3 will realign the scheduling to be consistent with the first refueling outage, which is anticipated to start between December 15, 1986 and March 1, 1987.

In summary, the proposed change is supported by:

- The large margin to Technical Specification limits demonstrated during the pre-operational LLRT.
- The low component usage factor prior to low power licensing.
- The minimal component maintenance and successful post-maintenance testing of a minor number of components.
- The continued leakage rate testing of the air locks and containment purge system, as already required.
- Granting of similar requests to other operating nuclear plants.
- The intent of Standard Technical Specification to require LLRT only at refueling intervals, as long as refueling takes place within a reasonable period of time.

The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because it meets the criteria of 10 CFR 50.92(c). The basis for this proposed finding is given below.

(a) Operation of the facility in accordance with the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The FSAR Chapter 15 safety analyses assume the maximum allowable Technical Specification leakage in calculating off-site dose consequences. As stated above, the current leakage rate is estimated to be about 4% of the leakage rate allowed by the technical specifications. This low estimate for current actual leakage confirms the expectation that leakage would be low based on the low component usage factor in the first 8 months since the last tests were performed and the limited amount of component maintenance that has been required to date.

(b) Operation of the facility in accordance with this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed. Specifically, the proposed change introduces no new systems, modes of operation, failure modes or other plant perturbations. The change is schedular in nature and for one-time only, as all required valve and penetration testing will be conducted at the first refueling outage. Taking credit for the low component usage factor between previous leak rate testing and plant licensing will align the leakage rate testing with the first refueling outage. Leakage rate testing will then be conducted at subsequent refueling outages which will occur at 18-month intervals, well within the 24 months allowable. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previousy evaluated.

(c) Operation of the facility in accordance with this proposed amendment does not involve a significant reduction in a margin of safety. Specifically, estimates of current local leakage rate about 4% of the leakage rate allowed by the technical specifications. The actual period of plant operation is well within the two-year period originally intended by the technical specifications. Current plant performance indicates little, if any, degradation in containment leakage. The low level of required maintenance and successful post-maintenance testing, combined with the performance of leakage rate testing during the remainder of Cycle 1, provide adequate assurance that any reduction in safety margin is minimal. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

On the basis that the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety, the staff has made an initial determination that the proposed

amendment is not likely to involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Rules and Procedures Branch, Office of Administration.

Service Branch

By April 9, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the peitition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amendment petition must satisfy the specificity requirements described above.

Not later than (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Rules and Procedures Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 1717 H Stree, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date pefition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.7714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washinton, DC, and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans 70122.

Dated at Bethesda, Maryland, this 4th day of March 1986.

For the nuclear regulatory commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–5166 Filed 3–7–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30–07022, License No. 29–13613–02, EA 86–17]

Radiation Technology, Inc.; Order Suspending the License (Effective Immediately)

I

Radation Technology, Incorporated, Lake Denmark Road, Rockaway, New Jersey 07866 (the licensee) is the holder of a materials license issued by the Nuclear Regulatory Commission (the

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Commission or NRC) pursuant to 10 CFR Part 30. The license, which was issued on November 18, 1970, most recently renewed on August 17, 1981, and due to expire on August 31, 1986, authorizes the licensee to perform certain activities using byproduct material in accordance with criteria specified therein. This authorization includes, among other activities, the use of specified radioactive sources not to exceed 12,000 curies per source and 2,000,000 curies total, for service irradiation in the licensee's Radiation Technology Model 2102 service irradiator.

II

Products are irradiated in the Model 2102 service irradiator at the licensee's facility by placing them in metal boxes (totes) which enter and exit the service irradiator on a conveyor system. There are two conveyor openings in the irradiator room barrier with two "swing type"doors for each opening.

These openings are approximately 3½ ft by 3½ ft. A personnel access door is located adjacent to the two conveyor openings. Each of these three openings is protected with an interlock system.

The conveyor openings interlock system, which is described in documents incorporated into the license and required by the regulations, is designed to lower the sources, if exposed, when entry through a conveyor opening is made other than a tote. This system consists of tote-recognition switches located on each side of each of the two conveyor openings and a switch for each conveyor door. The tote-recognition switches function to identify a tote and disable the conveyor door switches so that the totes can pass through the conveyor door into the irradiator without the sources returning to the shielded position. If a conveyor door is opened during irradiator operation without the proper actuation of these tote-recognition switches, the switch on the conveyor door will cause the sources to be lowered to the shielded position and and an alarm to be sounded.

The personnel access door interlock system, described in documents incorporated into the license and required by the regulations, prevents opening the access door from the outside if the sources are exposed,and lowers the sources if the door is opened while the sources are in the exposed position. This system consists of: (1) An electrical key-operated lock; (2) a circuit which disables the key and prevents opening the door, except from inside the irradiator room by use of the inside dooorknob, whenever a high radiation condition exists in the irradiator room as detected by a radiation monitor; (3) a switch on the door jam which senses the position of the door and returns the sources to the shielded position in the service irradiator pool if the door is opened; and (4) an electric eye beam located approximatley six feet inside the door, which, if interrupted by the presence of an individual, wil also return the sources to the shielded position.

III

During an NRC inspection conducted at the licensee's facility on February 28, 1986, the NRC found that, because of a malfunction of the radiation monitor associated with the personnel access door interlock on February 20, 1986, the electrical lock on the personnel access door could not be opened with the door key. Also, the NRC found that in spite of this condition, licensee personnel continued to operate the irradiator while the monitor was not functioning. These personnel established a method of opening the door following an irradiator shutdown that consisted of inserting fingers and/or a screwdriver through the wire mesh door and minipulating the inside doorknob, which opened the door. Life threatening radiation levels exist in the irradiator room during irradiator operations and may continue to exist if the sources fail to lower into their shielded position following completion of operations or further interlock failures. Bypassing the electrical lock and opening the door using the inside doorknob could allow inadvertent personnel entry into the irradiator room. Bypassing of the personnel access door interlock consitituted violation of the requirements on License No. 29-13613-02.

IV

Another violation of NRC requirements was identified during an NRC inspection on September 21, 1984 at the licensee's facility in Rockaway, New Jersey, involving bypassing of the safety interlock system for one of the two conveyor openings to the service irradiator. Specifically, in accordance with a memorandum dated April 2, 1984 issued by the President/Radiation Safety Officer of the Company, the doors for the lower conveyor were tied open and the tote-recognition switches were tied back, disabling the protective interlocks. Consequently, an individual could have gained access to the irradiator through the lower conveyor doors while the sources were exposed without the sources being lowered to the shielded position as required. In response to this violation, NRC Region I issued a Confirmatory Action Letter to the licensee on September 28, 1984. The letter confirmed the licensee's commitment to:

1. Operate the irradiators in the facility only if all the safety interlocks described in the correspondence referenced in Conditions 17 and 18 of License No. 29-13613-02 are operable and functioning, and

2. Immediately cease the operation of the irradiator if a safety interlock referenced in Item 1 becomes inoperable or incapable of functioning as described in the correspondence referenced in Conditions 17 and 18 of License No. 29-13613-02.

As a result of the identification of this violation, an investigation was initiated. Although this investigation is still continuing, the investigation determined that after the Confirmatory Action Letter was issued, the licensee at times continued to operate the irradiator facility with the required interlock systems for the conveyor doors disabled.

In addition, contrary to the licensee's commitment to operate the facility in strict accordance with the license as described in the above Confirmatory Action Letter, the licensee replaced the approved conveyor interlock system with a new system in October or November 1985, and subsequently operated the irradiator, without informing the NRC and obtaining the required approval. A license amendment request and approval are required to permit the NRC to ensure that operation of the replacement interlocks would be in accordance with regulatory requirements. Approval was not requested until January 9, 1986, and approval has not yet been granted.

V

From the foregoing it is apparent that the licensee has not taken adequate actions to comply with Commission regulations, including 10 CFR 20.203 and Conditions 17 and 18 of its license and, consequently, the NRC lacks reasonable assurance that the facility will be operated in a manner to assure that the health and safety of the public (licensee employees) will be protected. Operation of the service irradiator with any safety interlock bypassed has potentially serious adverse effects for individuals at the facility. For example, in an earlier incident in 1977 at this same facility, when the personnel access door interlock system was rendered inoperable, a licensee employee entered the irradiator cell while the radioactive sources were exposed and received a radiation dose to the whole body in the range of 150-300 rem, an amount well in excess of the regulatory limit. As a result, the NRC issued an Order suspending the license on September 23, 1977. The suspension Order was subsequently lifted on October 14, 1977.

In view of the events at this facility since 1984, a full investigation of the foregoing must be completed before I can determine whether there is reasonable assurance that the licensee will comply with Commission requirements, whether the health and safety of the public, including employees, will be protected and, whether, therefore, facility operation should be permitted to continue. Accordingly, I have determined that continued operation of the facility is an immediate threat to the public health and safety. Therefore, the public health, safety and interest require that License No. 29-13613-02 be suspended, effective immediately, until a full investigation is completed and I have further determined that no prior notice under 10 CFR 2.201 is required.

VI

In view of the foregoing, and pursuant to sections 81, 161b and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, pending completion of the Commission's investigation of these events and further order of the Commission: It is hereby ordered, effective immediately, that:

A. All operations authorized by License No. 29-13613-02 are suspended;

B. The licensee shall place and maintain all sources in their fully shielded position at the bottom of the irradiator pools, and conduct only those licensed activities required to maintain the facility in a safe condition.

C. The Regional Administrator, Region I, may relax or rescind any of the above provisions upon demonstration of good cause by the licensee.

VII

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmative within 20 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order.

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of its issuance. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section VI of this order.

If a hearing is requested by the licensee, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this order should be sustained.

Dated at Bethesda, Maryland, this 3rd day of March 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-5167 Filed 3-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System, WPPSS Nuclear Project No. 2; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), for operation of the WPPSS Nuclear Project No. 2 located in Benton County near Richland, Washington.

The amendment would modify the WNP-2 Technical Specifications to allow deferring the Type B leak rate test on the drywell head "O" rings from March 19, 1986, until the spring 1986 refueling outage. The spring 1986 refueling outage is presently scheduled to begin April 15, 1986. Concurrently the Supply System is seeking a one time only exemption to the maximum test interval requirement of 10 CFR Part 50, Appendix J requirements.

The Technical Specifications and Appendix J specify that the Type B and C leak tests are to be conducted at intervals no greater than 24 months. The WNP-2 drywell head "O" ring Type B test was last completed on March 19, 1984, making the next test due no later than March 19, 1986. This test requires plant shutdown and shield plug removal to allow access. The WNP-2 refueling outage is scheduled to begin less than one month later and the licensee requests this one time only Technical Specification and Appendix J exemption to defer this test to the forthcoming refueling outage. These revisions to the technical specifications would be made in response to the licensee's application for amendment dated January 17, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Accordingly, the licensee has determined, and the staff agrees, that the requested amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, due to outages and the power ascension test program completion during the two year period, there were six months in which the "O" rings were not exposed to an operating environment; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated becasue no new designs or plant operating modes are affected by this amendment; or (3) involve a significant reduction in a margin of safety because, as discused in (1) above, the total time of operation under the amended technical specifications will not exceed that of the Appendix J requirement, i.e. 24 months. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in shutdown of the power facility on March 20, 1986, because the last surveillance test of the containment lead "O" ring seals will have been performed more than 24 months prior. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

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If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Elinor G. Adensam, Director of BWR Project Directorate No. 3, by collect call to (301) 492–8180 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. All comments received by March 14, 1986, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethsda, Maryland, this 4th day of March, 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–5168 Filed 3–7–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on March 19 and 20, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 19, 1986—8:30 A.M. until the conclusion of business.
Thrusday, March 20, 1986—8:30 A.M. until the conclusion of business.

The Subcommittee will meet to: (1) Examine the potential for automating more of the monitoring and control functions in nuclear power plants to relieve the burden on plant operators and enhance safety, (2) review 1985 progress on the Human Factors Program Plan, and (3) be briefed on the status of EOP Implementation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommitte, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statement's and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 4, 1986.

Morton W. Liberkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–5163 Filed 3–7–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Deadline for Acceptance of Petitions Requesting Modification of List of Articles Eligible for Duty-Free Treatment Under the GSP

Notice is hereby given that, in order to be considered during the 1986 GSP annual review, all petitions to modify the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) and requests to review the GSP status of any beneficiary developing country must be received no later than the close of business, Monday, June 2, 1986. The GSP provides for the duty-free importation of qualifying eligible articles when imported from designated beneficiary developing countries: The GSP is authorized by Title V of the Trade Act of 1974, as amended, and has been implemented by Excecutive Order 11888 of November 24, 1975, and mofified by subsequent Executive Orders and Presidential Proclamations.

Interested parties or foreign governments may submit petitions (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage. Also, any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation critieria listed in subsections 502(b) or 502(c) of the Act (19 U.S. 2662 (b) and (c)).

Petitions and requests to modify GSP treatment should be submitted in English, in 20 copies, in conformity with regulations codified in 15 CFR, Chapter XX, especially Part 2007 and addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 517, 600 Seventeenth Street, NW., Washington, DC 20506. Further information may be obtained by calling the GSP Information Center at (202) 395–6971.

Prospective petitioners and requestors are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986, (51 FR 5035). Petitions and requests that do not conform to the requirements of these regulations will not be accepted for review.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about Tuesday, July 15, 1986. The notice will also provide information concerning the opportunity for interested parties to comment on petitions and requests accepted for review through public hearings and written submissions. Any modifications to the GSP resulting from the 1986 GSP annual review will be

announced on or about April 1, 1987 and will take effect on July 1, 1987.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–5114 Filed 3–7–86; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14966, File No. 812–6207]

Fidelity California Tax-Free Fund et al.; Application

March 4, 1986.

Notice is hereby given that Fidelity California Tax-Free Fund; Fidelity Cash Reserves; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Bond Fund; Fidelity Corporate Trust; Adjustable Rate Preferred Stock Fund; Fidelity Daily Income Trust; Daily Money Fund; Daily Tax-Exempt Money Fund; Fidelity Destiny Fund; Fidelity Discoverer Fund; Fidelity Equity-Income Fund; Equity Portfolio: Growth; Equity Portfolio: Income; Fidelity Exchange Fund; Financial Reserves Fund; Fixed-Income Portfolios; Fidelity Freedom Fund; Fidelity Fund; Fidelity Government Securities Fund; Fidelity High Income Fund; Fidelity High Yield Municipals; Institutional Cash Portfolios; Institutional Tax-Exempt Cash Portfolios; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Mercury Fund; Fidelity Money Market Trust; Fidelity Mortgage Securities Fund; Fidelity Municipal Bond Fund; Fidelity New York Tax-Free Fund; North Carolina Cash Management Trust; Fidelity Overseas Fund; Fidelity Puritan Fund; Fidelity Qualified Dividend Fund; Rodney Square Fund; Fidelity Securities Fund: OTC Portfolio; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Tax-Exempt Money Market Trust; Tax-Exempt Portfolios; Fidelity Thrift Trust; Fidelity Trend Fund; Fidelity U.S. Government Reserves Fund; and Variable Insurance Products Fund ("Applicants"), 82 Devonshire Street, Boston, Massachusetts 02109, filed an application on September 25, 1985, and an amendment thereto on February 13, 1986, for an order, pursuant to section 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of section 17(a) to the extent necessary to permit the Applicants to pay an equitable portion of the premium of a professional services liability insurance policy to be issued by an affiliate and to allow certain claims thereunder to be settled. The exemption is also sought with respect to all investment companies that may in the future be advised by Fidelity Management & Research Company ("FMR"), and whose trustees, managing general partners, and officers may be covered by such insurance policy. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicants are all registered investment companies, and, although the boards are not identical, they have common trustees. FMR, a registered investment adviser, provides investment advice and administrative and portfolio management services to Applicants. Fidelity Distributors Corporation, a wholly-owned subsidiary of FMR, acts as principal underwriter to Applicants. One of the Applicants is Daily Money Fund ("Daily Money"), an open-end diversified investment company which operates as a money market fund and is organized as a Massachusetts business trust. Daily Money is divided into two portfolios: the U.S. Treasury Portfolio and the Money Market Portfolio.

Old Republic International Corporation ("ORIC") is primarily a commercial lines underwriter providing insurance, reinsurance and related financial services to all of the major market areas and is comprised of about 125 separate subsidiaries, joint ventures, divisions and associated companies ("ORIC Group"). One of the first-tier subsidiaries of ORIC is Old Republic Marketing, Inc. ("Marketing"). Old Republic Equity Plans, Inc. ("Plans"), a broker-dealer, is a subsidiary of Marketing. Plans distributes Daily Money to numerous subsidiaries, divisions, and associated companies of ORIC. The accounts of all the companies in the ORIC Group on occasion hold in excess of 5% of the shares of either of Daily Money's portfolios, and of Daily Money as a whole. From time to time these accounts may also hold a presumptively controlling block of the securities of either portfolio and/or of Daily Money as a whole.

Old Republic General Insurance Group, Inc. ("General") is another first-tier subsidiary of ORIC. One of General's subsidiaries is Old Republic Insurance Company, Inc. ("Insurance Company"). According to the application, Insurance Company is one of a decreasing number of insurers that currently offer mutural fund errors and omissions and trustee liability insurance coverage to investment companies, and is also one of the few insurers willing to issue a policy following the policy from provided by the Applicants' primary insurance carriers.

Applicants' errors and omissions insurance coverage is structured such that several insurance companies have provided the various policies that in the aggregate constitute comprehensive coverage. Following notification in early 1985 that the Applicants' two primary errors and omissions insurance carriers would provide substantially reduced coverage, and based on the recommendation of FMR's insurance broker after analysis and comparision of various policies, Applicants' trustees determined that the interests of the Applicants would be furthered by the Applicants' joint participation in the purchase of additional errors and omissions coverage in the amount of $4,000,000 from Insurnace Company. The total premium to be paid to Insurance Company for this coverage is $90,000, of which $24,894 or 27.66% would be allocated to all mutual funds advised by FMR, including Applicants. As with the Funds' primary insurance coverage, payment of the premium would be allocated among the Funds, FMR, and affiliated non-fund entities on a basis determined by each Fund's board of directors to be fair and reasonable to that Fund, pursuant to Rule 17d–1(d)(7) under the Act. It is anticipated that the allocation among the Funds of premiums relating to the Insurance Company coverage will correspond to the allocation among the Funds of premiums relating to the Funds' primary insurance coverage. The Funds' primary insurer currently determines the allocation of premium payments among the Funds based on the ratio of each Fund's net assets to the total net assets of all covered Funds, and has represented that as a result the premium allocated to each Fund is less than its share of the sum of the premiums that would have been paid if such insurance coverage were purchased separately by the insured parties.

The management of Applicants additionally believes that the interests of the Applicants would be served by permitting extra-judicial settlement of certain claims arising under the proposed policy. In order to ensure fairness and eliminate any possibility of overreaching, the officers of each Applicant will continue to be required to report all losses or costs under the policy to that Applicant's Board. In the event of a loss or cost, the Board of the Applicant in question, including its independent members, would determine the amount of such loss or costs. If the amount exceeded the coverage provided

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by the two primary carriers, the Board would submit a claim for its payment to Insurance Company. Where a proposed settlement offer by Insurance Company was in an amount less than the claim submitted to it, and where the indemnification provisions of an Applicant's governing documents might cause a claim to be made to that Applicant for such difference, the independent members of the Board of the Applicant in question, with the advice of their independent counsel, would determine the adequacy of the offer by Insurance Company. In determining the adequacy of such offer, the standards specified in section 17(b) would be considered.

Since certain subsidiaries or affiliates of ORIC may from time to time be deemed to be affiliated persons of Daily Money because of the ORIC Group's ownership of its securities, and certain other Applicants may be deemed affiliated persons of Daily Money because of the identity of their investment adviser and of certain of their trustees, Insurance Company may be deemed an affiliated person, or an affiliated person of an affiliated person, of Daily Money and the other Applicants. As such, Insurance Company may be deemed to be prohibited by section 17(a) of the Act from selling an errors and omissions policy to Applicants. In addition, these affiliations also may be deemed to prohibit the settlement of certain claims under the policy by Insurance Company for less than the full amount of the claim.

Applicants assert that, in view of the terms, quality and increasing scarcity of the insurance in question, coupled with the safeguards built into the settlement process through the role of the independent trustees or managing general partners, the purposes of the Act and the public interest would be furthered by granting an order pursuant to section 17(b) of the Act to the extent necessary to permit the Applicants to pay an equitable portion of the premiums of an errors and omissions policy provided by Insurance Company, and to permit the extra-judicial settlement of certain claims arising under such policy for less than the applicable amount of the claim without the need for further exemptive orders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5172 Filed 3-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14967, File No. 812-6156]

Hutton Advantaged Properties II Limited Partnership; Application

March 4, 1986.

Notice is hereby given that Hutton Advantaged Properties II Limited Partnership ("Partnership"), a Delaware limited partnership, and its general partners, Related Advantaged Residential Associates Inc., Hutton Advantaged Housing Associates Inc. ("Hutton General Partner"), and Related and Hutton Associates Limited Partnership ("Related/Hutton Associates") (collectively, "General Partners", and together with the Partnership, "Applicants"), 645 Fifth Avenue, New York, New York 10022, filed an application on July 17, 1985, and an amendment thereto on January 8, 1986, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, the Partnership intends to publicly offer an initial maximum of 10,000 units of limited partnership interests at a price of $5,000 per interest ("Interests"). The Interests will be offered through E.F. Hutton & Company Inc. ("Dealer Manager"), an affiliate of the Hutton General Partner and Related/Hutton Associates, on a "best efforts" basis. Applicants state that the Partnership has the right, exercisable in its sole discretion, to sell and require the Dealer Manager to offer up to 10,000 Interests in addition to the initial maximum of 10,000 Interests. Applicants state that on July 2, 1985, the Partnership filed a Registration Statement on Form S-11 with the Commission under the Securities Act of 1933, as amended, relating to the offering of Limited Partnership Interests in the Partnership, and such Registration Statement was declared effective on August 9, 1985.

Applicants state that the Partnership will operate as a "two-tier" partnership that is, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Partnerships") which will own and operate residential housing developments ("Apartment Complexes") primarily in suburban locations, which are existing or under construction and benefit from financing at rates below those otherwise available from conventional lenders made available through various federal and state government programs or through the issuance of tax exempt bonds. Applicants state that the Partnership will generally acquire a 98% interest in the profits, losses and cash distributions of the Local Partnerships, although the Partnership may acquire a lesser interest, but not less than 90%. Applicants expect that Related/Hutton Associates, one of the General Partners, will become a local affiliated partner of the Local Partnership ("Local Affiliated Partner").

Applicants state that the existing Apartment Complexes owned by the Local Partnerships are expected to be subject to substantial mortgage obligations and will therefore be highly leveraged. Applicants state that the Partnership will obtain additional leverage with respect to Local Partnerships owning existing Apartment Complexes through the use of purchase money notes ("Purchase Money Notes"). Applicants further state that the Purchase Money Notes will be issued to the original partners of such Local Partnerships, evidencing the obligation of the Partnership to pay the deferred portion of the purchase price for its interest in the Local Partnerships, and will be secured by the Partnership's limited partnership interest in the Local Partnerships. Applicants represent that it is the intention of the General Partners that the majority of the Local Partnerships will own Apartment Complexes receiving the benefits of mortgage insurance under sections 221(d)(4) and 207 of the National Housing Act, as amended, tax exempt bond financing under section 103(b)(4) of the Internal Revenue Code of 1954, as amended, or rental assistance under Section 8 of the United States Housing

Act of 1937, as amended. Applicants state that tax-exempt bond financing of a residential rental project under section 103(b)(4) is expressly conditioned upon the occupancy of at least 20% of the units of such project by individuals of low and moderate income. Applicants further state that such occupancy by low and moderate income individuals must be on an ongoing basis and continue during the entire time that the bonds are outstanding.

Applicants state that any subscriptions for Interests will be approved by the General Partners, which approval will be required to be conditioned upon representations as to suitability of the investment for each subscriber. Applicants state that the form of subscription agreement for Interests provides that each subscriber represent, among other things, that he either (i) has an annual gross income of at least $30,000 and a net worth (exclusive of home, home furnishings and personal automobiles) of at least $30,000; or (ii) has a net worth (exclusive of home, home furnishings and personal automobiles) of at least $75,000; or (iii) is purchasing in a fiduciary capacity for a person having the net worth and annual gross income set forth in clause (i) or the net worth set forth in clause (ii).

Applicants state that the General Partners and affiliates of the General Partners ("Affiliates") will receive substantial reimbursements, fees and other compensation from the proceeds of the sale of the Interests. Applicants state that the General Partners and Affiliates will be reimbursed for the actual cost of organizational expenses and will each receive a distributive share of 1% of all items of cash flow, profits and losses of the Partnership and the Local Partnerships respectively. The General Partners and their Affiliates will receive additional fees for managing the conduct of the affairs of the Partnership and the local Partnerships and the continuing operation of Apartment Complexes owned by the Local Partnerships. Applicants represent that all compensation to be paid to the General Partners and Affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partners or Affiliates not so specified.

Applicants state that the Partnership has received an opinion of Partnership Counsel that it does not come within the definition of "investment company" as defined in section 3(a) of the Act and, therefore, is not required to register as an investment company under the Act. Applicants state that the opinion of Partnership Counsel is based in part upon the existence of the right of both the Partnership and the Local Affiliated Partner, upon a vote of a majority in interest of the Limited Partners, to remove a local general partner from a Local Partnership without cause. Applicants represent that these rights will expire upon the granting of the exemption requested in this Application.

Applicants state that at the time the Registration Statement was declared effective, several significant changes to the Internal Revenue Code of 1954 had been proposed by President Reagan in "The President's Tax Proposals to the Congress for Fairness, Growth and Simplicity" and were under consideration by Congress. Applicants represent that several of the proposed changes would have had an adverse effect on the ability of the Partnership to provide certain tax benefits to investors. Among these, according to Applicants, was the extension of at-risk limitations to real estate, the proposed amendments to the depreciation rules, and changes in the treatment of construction costs and construction period interest. Applicants further represent that many of these proposals would apply to property acquired or placed in service or to costs incurred, after January 1, 1986. Applicants determined, therefore, that it would be in the best interests of investors and consistent with the public policy in favor of providing housing for low and moderate income persons to commence the offering as soon as practicable, in order to raise sufficient proceeds to enable the Partnership to purchase interests in Local Partnerships which acquire Apartment Complexes in 1985.

Applicants believe that expediting the offering, and raising sufficient funds to permit the Partnership to acquire interests in approximately 13 Local Partnerships by the end of 1985, has been beneficial to investors. Applicants state that although the final form of the changes to the tax laws which will be enacted is still uncertain, Partnership Counsel believes that transitional rules may preserve certain tax benefits for Apartment Complexes acquired by Local Partnerships in 1985.

Furthermore, Applicants believe that the relief requested herein is justified in light of the unusual circumstances surrounding the proposed tax legislation. Applicants state that the scope of the tax changes being discussed is very broad and the uncertainty surrounding the legislative process has made planning transactions extremely difficult. Applicants submit that given these factors, the ability to expedite transactions and realize some certainty as to their tax consequences has become crucial in order to permit the realization of the investment objectives described in the Prospectus.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5173 Filed 3-7-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2232]

Nevada; Declaration of Disaster Loan Area

Carson City and Douglas, Lyon, Storey and Washoe Counties in the State of Nevada constitute a disaster area because of heavy rainstorms and winds causing flooding and mudslides which occurred February 15 through 20, 1986. Applications for loans for physical damage may be filed until the close of business on May 1, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000

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	Percent
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223206 for physical and for economic injury the number is 636400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 28, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86-5092 Filed 3-7-86; 8:45 am]

BILLING CODE 8025-01-M

Indiana District Advisory Council Meeting

The U.S. Small Business Administration, Region V, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 10:30 a.m., EST, on Wednesday, March 12, 1986, at the North Meridian Inn, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana, 46204-1584—(317) 269-7275.

March 4, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86-5088 Filed 3-7-86; 8:45 am]

BILLING CODE 8025-01-M

San Francisco District Advisory Council Meeting

The U.S. Small Business Administration, Region IX, located in the geographical area of San Francisco, California, will hold a public meeting at 10:00 a.m., EST, on Tuesday, March 18, 1986, at 211 Main Street—5th Floor—Conference Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call the Office of the District, Director San Francisco District Office, 211 Main Street—4th Floor, San Francisco, California, 94105, (415) 974-0642.

Dated: March 4, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86-5089 Filed 3-7-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0262]

Benox, Inc.; License Surrender

Notice is hereby given that Benox Incorporated, P.O. Box 1299, Industry, California 91749 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Benox Incorporated was licensed by the Small Business Administration on June 26, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on February 7, 1986, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 3, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-5090 Filed 3-7-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0291]

Hinsley Venture Capital, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On November 22, 1985, a notice was published in the **Federal Register** (50 FR 48289), stating that Hinsley Venture Capital, Inc. (Hinsley Venture), located at 9494 Southwest Freeway-Suite 100, Houston, TX 77074, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1985), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on December 22, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0291 to Hinsley Venture, effective February 21, 1986.

Dated: February 27, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-5091 Filed 3-7-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a capital construction fund established under section 607 of the Act shall be 13.32 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1985.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

So ordered by: *Acting Deputy Administrator Maritime Administration.*

Administrator, National Oceanic and Atmospheric Administration.

Assistant Secretary for Tax Policy, *Department of the Treasury.*

Dated: March 3, 1986.

Richard E. Bowman,

Acting Deputy Maritime Administrator.

Anthony J. Calio,

Administrator, National Oceanic and Atmospheric Administration.

J. Roger Mentz,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 86-4919 Filed 3-7-86; 8:45 am]

BILLING CODE 4810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP85-14; Notice 2]

Motor Vehicle Safety Standards; Metzeler Kautschuck GmbH; Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Metzeler Kautschuck GmbH of Munchen, West Germany, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, *et seq.*) for a noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of this petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on October 16, 1985, and an opportunity afforded for comment (50 FR 41978).

Paragraph S6.5(d) of Standard No. 119 requires tires to be marked with the maximum load rating and corresponding inflation pressure. Previous agency interpretations of this requirement have noted that only one load rating may appear on the sidewall of tires. Metzeler manufactured 9,000 ME88 Marathon motorcycle tires, in tire size designations 150/90H15, 140/90H16, 130/90H17, 120/90H18, wherein a second maximum load rating was marked for operational purposes. The subject tires were manufactured during the period from March through July 1985. These "H" speed rated motorcycle tires are designed for a maximum load at speeds up to, but not exceeding 130 mph. The second maximum load rating on these tires has been labeled for operations not exceeding 60 mph, and the maximum load rating has been adjusted accordingly. All other labeling is correct.

Metzeler argued that the noncompliance is inconsequential because the failure to label properly has no impact on safety and the tires otherwise comply with all requirements of Standard No. 119. Metzeler contended that it is providing information useful to riders who are using these motorcycle tires that are designed for heavily loaded touring motorcycles. It indicated that the violation only involves additional information, and not the lack of safety labeling. Metzeler further states that when apprised of the agency interpretation on August 8, 1985, it discontinued the use of the second load rating on August 9, 1985.

One comment was received on the petition, which supported it.

The tires covered by this petition have been manufactured for use on touring-type motorcycles. Such vehicles are usually operated at normal highway speeds, with one passenger and occasionally luggage. It is doubtful that a motorcycle tourist would load the motorcycle to the indicated maximum load for 60 mph and subsequently operate the motorcycle (with a passenger and luggage) at speeds up to 130 mph (where the maximum load rating would be lower). Thus, NHTSA has concluded that the error does not compromise safety. It notes that any attempt to correct the noncompliance by buffing off the superfluous information could create a safety problem, as the sidewalls of motorcycle tires are such that the buffing operation could quickly expose the cord material.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance with Standard No. 119 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on March 5, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-5128 Filed 3-7-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1985

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1985 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. 29(d)(2)(A) (formerly 44D renumbered by the Tax Reform Act of 1984).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATE: The 1985 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1985.

Inflation factor: The inflation adjustment factor for calendar year 1985 is 1.4211.

Price: The reference price for all qualified fuels is $24.08 per equivalent barrel for the 1985 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

Note.—After December 31, 1984, gas produced from a tight formation that also falls under any of the categories of gas specified in 18 CFR 272.103(a) (as amended) under the Natural Gas Policy Act of 1978 (NGPA) will no longer be eligible for the credit allowed by section 29 (formerly section 44D) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor—Robert O'Keefe, PM:PFR:R, 1111 Constitution Avenue, NW., Internal Revenue Service, Washington, DC 20224, Telephone Number (202) 376-0720 (not a toll-free number).

For the reference price—Noel J. Sheehan, CC:C:E:1:2, Room 5232, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 566-4463 (not a toll-free number).

Peter K. Scott,

Acting Deputy, Associate Chief Counsel (Technical).

[FR Doc. 86-5122 Filed 3-7-86; 8:45 am]

BILLING CODE 4830-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 46
Monday, March 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., April 28–30, 1986.

PLACE: RFE/RL Broadcast Center, Oettingenstrasse 67, Am Englischen Garten, 8000 Munich 22, Federal Republic of Germany.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Angelo R. Manginelli, Acting Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036, 202–254–8040.

Board Meeting: April 28–30, 1986
Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036

Certification of Closed Meeting

The Acting Executive Director, in accordance with Section 3(f)(1) of the Government in the Sunshine Act (5 U.S.C. 552b(f)(1) and the Board's rules issued under that Act (22 CFR 1302), hereby certifies that the Board meeting of April 28–30, 1986, at which will be discussed matters concerning the broad foreign objectives of the United States Government, may properly be closed to the public on the basis of the exemptions set forth in the Board's rules in 22 CFR 1302.4 (c) and (h).

Dated: February 19, 1986.

Angelo R. Manginelli,
Acting Executive Director.

[FR Doc. 86–5220 Filed 3–6–86; 11:02 am]
BILLING CODE 6155-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 17, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operation (Optional)
3. Report on Pre-complaint Counseling and Complaint Processing for FY 1984
4. Proposed Revisions of the Commission's Regulations on Employee Responsibilities and Conduct
5. Proposed Revision to section 603 of Volume II of the Compliance Manual, Processing Cases Which Raise Issues Included on the Priority on Pending Lists.

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: March 5, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

[FR Doc. 86–5209 Filed 3–6–86; 10:24 am]
BILLING CODE 6750-06-M

3

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 11:00 a.m. Monday, April 14, 1986.

PLACE: Harry S. Truman Library, Independence, Missouri, 64050.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order.
2. Welcome—Director, Harry S. Truman Library
3. Adoption of proposed agenda.
4. Approval of minutes of September 9, 1985 meeting.
5. Discussion of economy measures mandated by Pub. L. 99–177.
6. Future scholar recruitment.
7. Report of the Chairman.
8. Report of the Executive Secretary.
9. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
10. New business.
11. Discuss and set date, time and place of Fall Board meeting.
12. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary Telephone 202/395–4831.

Malcolm C. McCormack,
Executive Secretary.

[FR Doc. 86–5234 Filed 3–6–86; 12:48 pm]
BILLING CODE 9000-01-M

4

INTER-AMERICAN FOUNDATION BOARD

TIME AND DATE:

March 10, 1986, 6:00–9:00 p.m.
March 11, 1986, 9:00 a.m.–12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

The Inter-American Foundation's Board meeting scheduled for March 10–11, 1986 has been cancelled. No new date has been set.

CONTACT PERSONS FOR MORE INFORMATION:

Robert W. Mashek, Secretary to the Board of Directors (703) 841–3844

Charles M. Berk, General Counsel, (703) 841–3812

Dated: March 5, 1986.

Charles M. Berk,
Sunshine Act Officer.

[FR Doc. 86–5213 Filed 3–6–86; 10:32 am]
BILLING CODE 7025-01-M

5

NUCLEAR REGULATORY COMMISSION

Correction

In FR Doc. 86–4163 appearing on page 6859 in the issue of Wednesday, February 26, 1986, make the following correction in the second column: The telephone number in the fourth line from the bottom should read "(202) 634–1498".

BILLING CODE 1505-01-M

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federal register

Monday
March 10, 1986

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Medical Benefits Under the Federal Employees' Compensation Act; Final Rule

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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising the regulations concerning the procedures for submitting bills for medical services provided to Federal employees under Federal Employees' Compensation Act, and establishing limits for fees for medical procedures and services according to a published schedule developed and maintained by the Director of the Office of Workers' Compensation Programs (OWCP).

The final rule provides for the implementation of a schedule of maximum allowable charges; directs its maintenance and revision by the Director of the Workers' Compensation Programs; sets forth procedures for providers to seek reconsideration of fee determinations under the schedule; and establishes requirements for medical bills.

EFFECTIVE DATE: June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7552.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** on June 7, 1984 (49 FR 23658–63) and provided a 60-day period for comment. On August 24, 1984 (49 FR 33695), the comment period was extended for 60 days to allow additional time for comment. On January 31, 1985 (50 FR 4525), the period for comment was reopened for the period through March 4, 1985, to allow interested persons to evaluate additional information made available by the Department and to comment on the proposed rule. During the comment period, the Department of Labor received fifteen written comments, including five comments from labor organizations which represent Federal employees, five comments from Federal agencies, two comments from medical association, and three comments from private citizens.

The Department's analysis of the comments received are set forth below, starting with comments on the need for the schedule and its application to certain types and groups of medical providers.

Two labor organizations, one Federal agency, and one private citizen questioned the need for regulations establishing maximum allowable charges for medical procedures and services. We believe that the increasing costs of providing medical care to injured Federal workers make a variety of cost containment measures desirable. During the Fiscal Year 1984, the Secretary of Labor authorized payment of $165,000,000 from the Employees' Compensation Fund for medical services and expense associated with workplace injuries and illnesses. This represented a 9.1% increase over Fiscal Year 1983. Moreover, medical costs rose from about $15 million in FY 1967 to $69 million in FY 1977 and to $165,000,000 in FY 1984. An investigation by the Senate Permanent Subcommittee on Investigations, and hearings held by the Subcommittee in March 1982, concluded that while OWCP had a general policy of reviewing bills for reasonableness of charges, there was no consistent application of this policy in OWCP's local district offices, and no guidelines were provided for this purpose. Citing the disproportionate rise in medical outlays as compared to general compensation outlays, the Office of Inspector General strongly recommended adoption of a fee schedule as a first step in cost containment, in successive reports from 1982 until proposed regulations were published. Therefore, we conclude that the fee schedule will assist OWCP in its medical cost containment efforts. The OWCP will continue to monitor and analyse the expenditures for medical procedures and services, including the impact of the schedule of maximum allowable charges.

The comments of one Federal agency reflected an apparent misunderstanding of the scope of application of the schedule of maximum allowable charges. The commentator suggested that significant problems could arise in the case of hospital charges where the hospital would be subject to both the Department's schedule of maximum allowable charges and to a State-mandated billing system (such as the Diagnostic Related Group (DRG) billing systems implemented in the States of New York and New Jersey) or the nation-wide DRG billing system being implemented by the Health Care Financing Administration (HCFA) under the Medicare program. It is not the intent of the Department to apply the schedule of maximum allowable charges to hospitals, pharmacies or nursing homes as the structure of the schedule is not suited to this purpose. Thus, the conflict envisioned by the commentator will not arise. Being cognizant of the efforts of HCFA to utilize DRG billing systems for hospital charges, the Department will, after HCFA has gained experience with and had an opportunity to evaluate DRGs, revisit the issue of cost-containment measures for hospital charges. To eliminate possible future confusion, § 10.411(d)(1) is being amended to exclude hospitals, pharmacies and nursing homes from the medical providers subject to the schedule of maximum allowable charges. However, physicians' charges for services or treatment provided in a hospital or nursing home setting are subject to the schedule. For example, in the case of a laminectomy, charges for supplies and services furnished by the hospital such as operating room and recovery room charges would not be subject to the schedue of maximum allowable charges, but the physician's charges for the surgical procedure and any followup hospital room visits would be subject to application of the schedule.

To bring these regulations into conformance with the practices of Medicare, Medicaid, CHAMPUS, and most states, § 10.411(a) was modified to permit hospitals to submit bills on Uniform Bill (UB–82), or on the provider's own billing form.

One Federal agency commented on the negative impact the proposed rule would have on Federal agency medical facilities which request reimbursement for service rendered to injured Federal workers on a standardized per diem basis rather than by itemized costs per patient. It is not the intent of the Department to require a significant modification to the basic record-keeping and billing structure of these medical facilities. Therefore, § 10.411(d)(1) has been further revised to exempt from application of the schedule of maximum allowable charges requests for reimbursement from medical facilities of the U.S. Public Health Service, Army, Navy, Air Force, and Veterans Administration.

One medical association pointed out that the proposed CPT coding system for identifying the service or procedure performed by the provider does not address all distinctive procedures utilized by providers in diagnosing and treating illnesses. We have amended the rule to indicate that the Health Care Financing Administration Common Procedure Coding System (HCPCS),

which expands CPT–4 to cover a wider range of services, and the *International Classification of Disease, 9th Revision, Clinical Modification* (ICD–9–CM), are to be used to identify services and diagnosed conditions. These are the systems which have been adopted by the Health Care Financing Administration (HCFA), which administers Medicare and Medicaid, and by major insurance companies, and therefore should be most familiar to providers. The Department notes that the Washington State Relative Value Schedule (RVS), which serves as the model for OWCP's proposed fee schedule, regulates some fees by review of the provider's medical report, imposing no standard fee. Similarly, for procedures and services for which no unit value is established in the OWCP fee schedule, payment commensurate with the service performed will be made, taking into consideration the individual circumstances described in the medical report. This is provided for in the regulations at § 10.411(e), which is not revised.

Identical suggestions were made by two labor organizations that the Department should consider adopting the medical fee schedule of the Health Insurance Association of America (HIAA) inasmuch as the HIAA schedule is utilized by a large number, if not the majority, of OPM authorized Federal Employee Health Benefits Plans. The schedule of HIAA was one of the existing schedules of fees which were reviewed by the OWCP. However, it was found that the HIAA schedule was not sufficiently comprehensive in that it covers only surgical fees and does not address medical fees or procedures such as radiololgy, pathology, and physical therapy. In addition, the regional divisions to account for geographic cost variations were larger and thus less reflective of such variations than the Metropolitan Statistical Areas (MSA) established by the Bureau of the Census, which provided a high statistical correlation between HCFA and industry data.

Comments were also received concerning the possible negative effects the proposed schedule could have for the injured worker.

The proposed rule, or components thereof, led several commentators (two labor organizations, three agencies, one medical association, and one private individual) to contend that physicians may choose not to treat injured Federal employees thereby limiting the injured worker to fewer physicians from whom to obtain treatment with a possible result of reduced quality of care. Bases for this argument included the contentions that physicians do not utilize the CPT coding system and would not be willing to make the conversion, and that physicians will not be willing to risk the possible reduction of charges under the schedule of maximum allowable charges with the end result in either situation being the refusal by some physicians to accept injured Federal workers as patients. With regard to the first contention, the Department notes that HCFA is requiring all physicians (hospitals being excluded) to utilize the HCPCS coding system (an expansion of the CPT coding system) in billings under the Medicare program, and that the American Medical Association and the Health Insurance Association of America are involved in HCFA's ongoing work in devising HCPCS. Thus, the Department concludes that the vast majority of physicians have adopted or will adopt the HCPCS/CPT coding system in their billing procedures and that the requirement for the use of HCPCS/CPT will not result in injured Federal workers being refused medical treatment. With regard to the contention that providers will simply choose not to be subject to the possibility of fee reduction, the system as planned will subject approximately 5% of all billed medical procedures to question. Within this 5%, reduction will not occur or will be lessened where justification for a higher fee is shown. Further, it is expected that some percentage of medical providers will accept the maximum allowable fee as reasonable and will not contest the reduction of fee. Lastly, the fact that the fee for a particular service or procedure is reduced under the schedule does not necessarily mean that the fee for other services or procedures performed by that same provider will also be reduced. The Department concludes that the schedule of maximum allowable charges will not result in a significant number of providers refusing to treat injured Federal workers solely on the basis of the existence and application of the schedule.

The most frequently mentioned area of concern in the comments received pertained to §§ 10.411(i) and 10.412 (c) and (d) and the potential for injured workers having to bear some of the cost of the medical care for job-related injuries. Two labor organizations questioned the authority of the Department under 5 U.S.C. 8103 to establish a schedule of maximum allowable charges which may place injured Federal employees in a position where they may become vulnerable for payment of medical charges not accepted or approved by the OWCP. Three additional labor organizations, three Federal agencies, and one private citizen also expressed concern that under the proposed rule an injured employee could be liable for that amount of the charge over the allowable maximum, especially where the employee (who, as one labor organization pointed out, probably would not know the maximum allowable charge for a particular service or procedure) paid the medical provider directly and then requested reimbursement from OWCP.

Possible solutions put forth by the commentators to minimize or eliminate the envisioned vulnerability of injured workers for such payments included the recommendations to: Provide legal defense of injured workers who may become subject to litigation by the medical provider; pay all reimbursement requests in full; make direct billing of claim to OWCP mandatory for providers, thus removing the injured worker from the payment process; and establish criminal penalties against any provider who seeks payment from an injured employee for an amount over and above the maximum allowable charge. The Department agrees that injured workers should not be subject to payment of any portion of a charge above the allowable maximum. However, the proposed solutions taken individually are either impractical or unacceptable. The Department does not possess sufficient resources to defend injured workers in the event the medical provider attempts litigation. Further, this method of protection of the employee (whether provided by the Department of Labor or by the Department of Justice) would not, in and of itself, tend to reduce the instances of litigation. Payment of all employee requests for reimbursement of paid medical charges without regard to reasonableness is unacceptable as it simply ignores the cost-containment intent of the proposed rule.

With regard to the requirement for direct provider billing, we view such action as impractical. Although most providers bill OWCP directly, there are a significant number of cases in which, because OWCP has not yet accepted a case, because of an ongoing family-physician relationship with the provider, or because of the physician's preference, the claimant has already reimbursed the physician. This practice would continue unless an effective sanction were adopted, and it is difficult to imagine a sanction (such as OWCP's refusal to pay for treatment) which would not exacerbate the problem it was intended

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to solve. Finally, the imposition of criminal sanctions is beyond the purview of these regulations.

To the extent that this problem may occur, the Department believes it will occur infrequently. However, in order to provide the injured worker with protection against being made vulnerable to payment for injury-related medical charges, the Department proposes a combination of sanctions against the provider and indemnification of the injured worker. Existing regulation (20 CFR 10.450; 49 FR 18980) provides for exclusion of medical providers from participation in the Federal Employees' Compensation program and for denying payment to such providers out of the Employees' Compensation Fund. The Department is revising § 10.450 to provide for exclusion for any single collection or any single formal and deliberate attempt by a provider or by anyone acting on the provider's behalf (to include billing, referral to a collection agent, or initiation of litigation) to collect from the injured worker any amount in excess of the maximum allowable charge. Thus, unless the provider agrees to cease such action, an attempt to collect the disallowed portion of the provider's charge will result in initiation of procedures to exclude the provider from payment under the Federal Employees' Compensation Act. Where a provider is excluded, notification of the exclusion will be provided, in accordance with 20 CFR 10.456(a), to certain individuals and agencies including the Health Care Financing Administration and the State or local authority responsible for licensing or certifying the excluded party.

In order to provide protection to the injured worker who pays the provider an amount which may exceed the maximum allowable charge under the schedule and subsequently requests reimbursement from OWCP, § 10.412 is modified to provide for OWCP to advise the provider of the maximum allowable fee for the service and request that the provider reimburse the injured worker for that amount of the payment above the allowable fee or provide justification for the additional charge. Failure of the provider to make such reimbursement within a reasonable time or to provide satisfactory justification will be deemed collection of a fee warranting initiation of the exclusion procedures (20 CFR 10.450–10.457). In addition, in determining the amount to be reimbursed to an employee who has paid a bill which exceeds the normal rate, the Office will take into consideration all the circumstances, including the fact that the employee paid the bill in good faith reliance on full reimbursement.

Section 10.411(i) has been expanded as a result of comments from a labor organization, a Federal agency, and one individual, to provide that if a fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable fees, the provider shall bill at the lower rate. A charge to an injured Federal worker for a particular service or procedure which is higher than the provider's charge to the general public for that same service or procedure will be considered as a charge "substantially in excess of such provider's customary charges" for the purpose of the provisions of § 10.450(d) concerning exclusion of providers. The Department believes that this will minimize the potential for providers selectively increasing their usual and customary charges to equal the maximum allowable fee under the schedule. Further, as previously stated, the OWCP will continue to monitor and analyse the expenditures for medical procedures and services, including the impact of the schedule of maximum allowable charges.

The processing of provider requests for reconsideration of fee determinations and the requirements for payee verification of receipt of payment in claimant reimbursement situations were also commented upon.

One Federal agency expressed concern that the appeals procedure involved in adjudication of fees which exceed the schedule could result in a significant increase in paperwork processing requirements and concern over OWCP's ability to respond to providers within 30 days as specified by § 10.411(g)(2). We also appreciate the potential for increased paperwork but view it as an unavoidable consequence of the necessity to provide due process to providers whose charges are partially reduced under the schedule. However, we do not anticipate such processing to be overburdening or to endanger our ability to respond to the provider in 30 days givern the rather limited circumstances enunciated in § 10.411(g)(1) which will justify reevaluation of the amount paid.

The requirement in § 10.412(a)(1) for the signature of the provider or the provider's designee on a claimant's request for reimbursement certifying that payment for the service was received was viewed by one Federal agency as causing, in many cases, an unneccessary additional contact with the provider where the bill otherwise showed evidence of payment. The Department agress that such extra step is not essential. Therefore, § 10.412(a)(1) is revised to eliminate the signature requirement in all instances, and in lieu thereof, to include as "evidence . . . that payment for the service was received" a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the claimant's cancelled check (both front and back), or a copy of the claimant's credit card receipt. The elimination of the need in all instances for the signature of the provider (or official designee) certifying receipt of payment by the claimant in no way affects the requirement for such signature as provided by § 10.411(b), which also applies to bills submitted for reimbursement.

One medical association submitted extensive comments primarily related to the construction of the schedule of maximum allowable charges. These comments covered the general areas of selection of the Washington State RVS, development of the geographic cost index, and update procedures for the system.

On selection of the Washington State RVS, the commentator stated that the Washington State RVS, which is based on the 1969 California Relative Value Studies, is a "charge-based" system (i.e., is based upon an analysis of actual physician charge patterns), and that a "resource cost-based" system which includes such factors as time, complexity, cost of advanced professional education, and overhead is more appropriate. Also, while recognizing that the Washington State RVS has been modified over time with the involvement of the Washington State Medical Association, and that the revisions have taken such factors as time and complexity into account, the commentator noted that such modifications were not done with the contemplation of nationwide application in light of legitimate regional variations in care and that consensus judgments of physicians in any one state are not necessarily appropriate to physicians nationwide. The Washington State Department of Labor and Industry adopted the California system following a careful and thorough evaluation of the California unit values by a team of medical physicians appointed by that Washington State Department. Since then, a similar panel of physicians has updated the Washington State RVS annually to take account of new technologies in the practice of medicine by adjusting the unit values according to the risk, time, and ability involved in

performing the procedure. Additional annual adjustments, based on the same set of criteria, have been made by the panel to unit values for procedures whose technology may have remained constant, but whose relative "value" is now considered different from the California system. Moreover, the Department views the "charge-based" RVS to be a reasonably accurate indicator of resource costs based on the economic theory which purports that prices are a reflection of resource costs plus a reasonable profit. While it is agreed that the modifications to the Washington State RVS did not contemplate nationwide application, we believe that the procedures reviewed by the Washington State panel of physicians are accepted nationwide, are coded using a system usable nationwide (i.e., CPT), and on average are generally not viewed differently in terms of their relative "value" by physicians of different regions. Further, in reviewing existing schedules of medical fees, the Department did not find a comprehensive "resource cost-based" system of nationwide scope. However, should such a system be developed, it would be evaluated for possible application by the Department.

With regard to the geographic cost index developed to account for regional variations in charges, the commentator agreed that the use of MSAs and non-MSAs to define the geographic units appears to be preferable to the other options considered by the Department, but expressed concern that fees of physicians with practices based in teaching hospitals located outside of an MSA and physicians practicing in non-MSA regions located near an MSA may differ significantly from the non-MSA average. A similar concern was expressed by a Federal agency. It is acknowledged that fees of physicians with practices based in teaching hospitals, many of which are in MSA rather than non-MSA regions, are usually higher than those with practices in non-teaching hospitals. The schedule of maximum allowable charges reflects this phenomena to some extent by incorporating teaching hospital physician fee data into the development of the geographic costs indices for both MSA and non-MSA regions. Also, the fact that a provider possesses unusual qualifications (such as professorial rank) serves as a basis for requesting reevaluation of the maximum allowable charge. The use of MSA/non-MSA regional divisions may create a degree of imprecision in the indices near the "border areas" between an MSA and non-MSA region. The creation of a "transition zone" between regions is not possible due to lack of available data concerning location and geographic size of and procedure unit values for such "zones." Some degree of imperfection is difficult, if not impossible, to avoid when dividing an area into regional units such as MSAs. However, it is our judgment that a regional application of the schedule is appropriate given the fact that medical costs vary across the country and the benefits yielded from reflecting these variances far outweigh the imperfections associated with the MSA/non-MSA structure.

The commentator also questioned the appropriateness of using Medicare expenditure information as a starting point in developing the geographic cost indices since that information may not necessarily reflect physician charges given possible reduction by carrier "reasonable charge" determinations, and since it covers a population quite different from the FECA population. Recognizing the imperfections of Medicare data, as discussed by the Department in the Supplemental Information of the original proposal, the data was used as a starting point where the OWCP could not rely solely on FECA data. Medicare data was also used to substantiate the reliability of the FECA data as an indicator of regional variations in the cost of providing medical care, and it was found that the Medicare data correlated highly with both FECA and private sector based surgical data. Thus, the Department views Medicare data as a reliable measure of the degree of regional cost variations as opposed to a measure of actual costs.

With regard to the use of FECA costs in developing the indices, the commenter questioned the validity of the indices where data on some services was based on a limited number of claims, and also questioned the appropriateness of applying an index of FECA expenditures to a relative value unit to arrive at a physician payment. In developing the geographic cost indices, OWCP analyzed an average of 400 records per MSA/non-MSA and observed consistency in service mix throughout the country and in procedure price within each MSA/non-MSA (i.e., all procedures in a high cost area tended to be high relative to the cost of all procedures in a low cost area). Therefore, the fact that there were limited claims for certain specific procedures is not seen as undercutting the validity of the estimate which was based on an evaluation of several procedures and an average of 400 records within an MSA/non-MSA region, especially since the indices were based on a weighted average which accorded those procedures with fewer records less weight in the overall computation, and in view of the high correlation among FECA, Medicare, and private sector based surgical data. Finally, FECA expenditures were used to provided a reliable measure of regional variation in the cost of providing medical care, and not as a basis for setting prices for various medical procedures. The latter function is provided by the Washington State RVS.

Lastly, with regard to the maintenance of the schedule of maximum allowable charges, the commentator suggested that a national price index, preferably the medical care component of the Consumer Price Index, be used to update the dollar conversion factors, and that the Department should consider establishing its own process to maintain the RVS which underlies the schedule. Having found the Washington State RVS to have the most current and comprehensive data available, and given the process used by Washington State to assign and adjust its relative values, the Department will utilize the most recent revision of the relative value assignments published by the State of Washington Department of Labor and Industries. With regard to the internal procedure for updating the geographic cost indices to reflect economic change, the OWCP will adjust these indices by the annual percent change in the Medicare Economic Index for Physicians' Services as determined by the Health Care Financing Administration. The Medicare Economic Index consists of two components: one measuring increases in general earnings level (attributable to factors other than increases in productivity) and the other measuring increases in expenses of the kind incurred by physicians. This index was selected on the basis that it is clearly applicable to the medical community, easy to obtain, administratively facile to implement, and a valid and reliable measure of annual adjustments in both physicians' medical practice expenses and general earnings.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory revision does not constitute a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect of the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government

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agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations were previously approved by OMB under OMB Control Nos. 1215–0055 and 1215–0142. As no changes in these requirements were made in the final regulations, these control numbers remain valid.

Regulatory Flexibility Act

The Department believes that this rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule is applicable to small entities it should not result in or cause a significant economic impact to any small entity subject to its provisions. This conclusion is reached because application of the schedule of maximum allowable charges established by this rule will not significantly reduce the amount of money paid to most medical providers for the medical services rendered to FECA beneficiaries. The Secretary has certified these facts to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and Records, Health records, Freedom of Information, Privacy, Penalties, Health professions, Workers' compensation, Employment, Administrative practice and procedure, Wages, Health facilities, Dental health, Medical devises, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney disease, Lung disease, Tort claims.

Accordingly, Part 10 of Chapter I of Title 20 of the Code of Federal Regulations is amended as set forth below.

PART 10—[AMENDED]

1. The authorities citation for Part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 6–84, 49 FR 32473; Employment Standards Order 78–1, 43 FR 51469.

2. Section 10.1 is amended by revising paragraph (b) to read as follows:

§ 10.1 Statutory provisions.

* * * * *

(b) The Act provides for the payment of dollar benefits to enumerated classes of persons who are injured or disabled while in the performance of their duties in service to the United States and to persons within such classes who become sick or disabled as a result of their employment with or service to the United States. The Act further provides for the payment of dollar benefits to certain survivors of persons who have died as a result of or while in the performance of employment or services rendered to the United States. In addition to dollar benefits, eligible beneficiaries who have become disabled as a consequence of a service related injury, disease or other compensable condition, shall be entitled to receive the full range of medical benefits and services made necessary by the compensable condition, which shall be provided at the expense of the United States, subject to the limitations imposed by §§ 10.411 and 10.412 of this part. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries. In the case of death due to a compensable injury, disease or other condition, certain burial expenses shall be paid, subject to the provisions of 5 U.S.C. 8134.

* * * * *

3. Section 10.411 is revised to read as follows:

§ 10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.

(a)(1) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by hospitals, pharmacies and nursing homes, shall be supported by medical evidence as provided in § 10.410, itemized by the physician or provider on the American Medical Association standard "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form," and shall be forwarded promptly to the Office for consideration. The provider of such service shall identify each service performed, using the Health Care Financing Administration Common Procedure Coding System (HCPCS as periodically revised), with brief narrative description or, where no code is applicable, a detailed description of services performed. The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9–CM). A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(2) Charges for appliances, supplies, services or treatment provided by hospitals shall be supported by medical evidence as provided in § 10.410. Such charges should be itemized by the provider on Uniform Bill (UB–82), or in lieu thereof, on the provider's billhead stationery, and shall be forwarded promptly to the Office for consideration.

(3) Charges for appliances, supplies or services provided by pharmacies and nursing homes shall be itemized on the provider's billhead stationery or a standard form and forwarded promptly to the Office for consideration. Bills for prescription drugs must include the generic or trade name of the drug provided, the prescription number, and the date the prescription was filled.

(b) The physician or other provider (or official designee) shall sign the billing form signifying that services were performed as described and were necessary, and signifying agreement to accept the fee determined by the Office as payment in full for each itemized service.

(c) Bills submitted by providers, other than hospitals, pharmacies and nursing homes, which are not itemized on the American Medical Association "Health Insurance Claim Form," or are not signed by the provider and the claimant, or on which procedures are not identified by the provider using HCPCS/CPT codes, or on which diagnoses are not identified using ICD–9–CM codes, may be returned to the provider for correction and resubmission.

(d)(1) Payment for medical and other health services furnished by physicians and other persons for work-connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service as determined by the Director. The schedule of maximum allowable charges is not applicable to charges for appliances, supplies, services or treatment provided and billed for by hospitals, pharmacies or nursing homes, but is applicable to charges for services or treatment furnished by a physician in a hospital or nursing home setting. The schedule of maximum allowable charges is also not applicable to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service, the Departments of the Army, Navy and Air Force, and the Veterans Administration. The Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of an assignment of a value to procedures identified by HCPCS/CPT which represents the relative skill, effort, risk, and time required to perform the procedure, as compared to other procedures of the same general class; a classification of the procedure into one of the following categories: medical, surgical, pathology, radiology; an index representing the average cost of medical care per capita in the locality where service is provided, in relation to other areas, as a measure of the reasonable cost of a single service in that area; and a monetary value assignment (conversion factor) for one unit of value in each of the four categories of service. Payment for performance of a procedure identified by a HCPCS/CPT code shall not be more than the amount derived by multiplying the relative value for that procedure by the geographic index for services in that area and by the dollar amount assigned to one unit in that category of service.

(2) The "locality" which serves as a bases for determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(3) The relative value assignments published by the State of Washington Department of Labor and Industries shall be adopted, using the most recent revision. The conversion factors for each of the four categories of service used in the State of Washington will be adopted as the base dollar multipliers for those categories and will be associated with the average cost of medical care derived from HCFA data for Washington State. The geographic index factor for a given MSA shall be based on statistical analyses of charges to OWCP, for groupings of MSA's that have similar HCFA per capita medical costs when compared to the per capita cost of medical care for the State of Washington. Index factors will be further adjusted to reflect statistical data concerning charges submitted for services to OWCP.

(4) Thus, if the unit value for a particular surgical procedure is 14.0, and the dollar value assigned to one unit in that category of service (surgery) is $59.49, then the maximum allowable charge for one performance of that procedure, in a locale whose index is 1.0, would be the product of 14, 1.0, and $59.49, or $832.86.

(e) Where there is wide variation in the time, effort and skill required to perform a particular procedure from one occasion to the next, the Director may choose not to assign a relative value to that procedure, but the allowable charge for the procedure may be set individually based on consideration of a detailed medical report and other evidence. The Office may, at its discretion, set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

(f) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when deemed necessary or appropriate.

(g)(1) A provider's designation of the HCPCS/CPT code to identify a procedure being billed shall be accepted by the Office if it is consistent with medical reports and other evidence.

Where no code is supplied, the Office may determine the correct procedure code based on the narrative description of the procedure supplied on the billing form and in associated medical reports, and pay no more than the maximum allowable fee for that procedure. If the charge submitted by a provider for a treatment or service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, the Office shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. The provider shall also be notified of procedures for requesting reconsideration of the balance of the charge.

(2) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination. Such request should be made to the OWCP District Office having jurisdiction over the injured employee's case, and must be accompanied by documentary evidence that the actual procedure performed was incorrectly identified by HCPCS/CPT code; that the presence of a severe or concomitant medical condition made treatment especially difficult; or that the provider possessed unusual qualifications. Board-certification in a specialty is not sufficient evidence in itself of unusual qualification to justify an exception. These are the only circumstances which will justify reevaluation of the paid amount. A list of OWCP District Offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210. Within 30 days of receiving the request for reconsideration, the OWCP District Office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(h) If an appealed amount continues to be disallowed by the decision of the OWCP District Office, the provider may apply, within thirty days of the date of that decision, to the Assistant Regional Administrator of the region having jurisdiction over the district office. The application may be accompanied by additional evidence. Within 60 days of receipt of the application, the Assistant Regional Administrator shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

(i)(1) A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with these regulations shall not request reimbursement from the employee (patient) for additional amounts.

(2) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at a lower rate. A charge to an injured Federal employee for a particular service or procedure which is higher than the provider's charge to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 10.450(d).

(3) A provider whose fee for service is partially paid by OWCP as the result of the application of its schedule of maximum allowable charges and who collects or attempts to collect from the injured employee, either directly or through a collection agent, any amount in excess of the charge allowed by the Office, and who does not cease such action or make appropriate refund to the injured employee within 60 days of the date of the decision of the Office, shall

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be subject to the exclusion procedures as provided by § 10.450(h).

4. Section 10.412 is revised to read as follows:

§ 10.412 Reimbursement for medical expenses, transportation costs, loss of wages and incidental expenses.

(a)(1) If bills for medical, surgical, or dental services, supplies, or appliances have been paid for by an injured employee on account of an injury incurred in the performance of duty, an itemized bill on the American Medical Association "Health Insurance Claim Form," OWCP 1500a "Instructions for Completing Health Insurance Claim Form," together with a medical report as provided in § 10.410, may be submitted to the Office for consideration. The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM diagnostic code and identify each service performed using the applicable HCPCS/CPT procedure code, with a brief narrative description of the service performed, or where no code is applicable, a detailed description of that service. The bill must be accompanied by evidence that payment for the service was received from the injured employee and the amount of that payment. Acceptable evidence that payment was received includes, but is not necessarily limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the claimant's cancelled check (both front and back), or a copy of the claimant's credit card receipt.

(2) If services were provided by a hospital, pharmacy or nursing home, the bill should be submitted in accordance with the provisions of § 10.411(a) (2) or (3), as appropriate. Any request for reimbursement must be accompanied by evidence, as described in paragraph (a)(1) of this section, that payment for the service was received from the employee and the amount of that payment.

(3) These requirements may be waived by the Office if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the claimant to obtain the required information.

(b) Copies of bills shall not be paid unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.411.

(c) If a claimant is only partially reimbursed for medical expenses because the amount paid by the claimant to the physician for a service exceeds the maximum allowable charge set by the Director's schedule, the Office shall advise the provider of the maximum allowable charge for the service in question and allow the provider the opportunity to refund to the claimant, or credit to the claimant's account, the amount paid by the claimant which exceeds the maximum allowable charge, or to request reconsideration of the fee determination as provided by § 10.411 (g) and (h). Failure of the provider to make appropriate refund to the claimant, or to credit the claimant's account, within 60 days after the date of this notification by the Office, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, shall result in initiation of exclusion procedures as provided by § 10.450(h).

(d) After notification as provided in paragraph (c) of this section, if the amount of money paid in excess of the charge allowed by the Office is not refunded by the provider or credited to the claimant's account, the Office may make reasonable reimbursement to the claimant based on a review of the facts and circumstances of the case.

5. Section 10.450 is revised by adding paragraph (h) to read as follows:

§ 10.450 Exclusion for fraud and abuse: Grounds.

* * * * *

(h) Collected or attempted to collect from the claimant, either directly or through a collection agent, an amount in excess of the charge allowed by the Office for the procedure performed, and has failed or refused to make appropriate refund to the injured employee, or to cease such collection attempts, within 60 days of the date of the decision of the Office.

Signed at Washington, DC, this 3rd day of March, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–5071 Filed 3–7–86; 8:45 am]

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March 10, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-4]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at the 11 airports listed below. The designation date for Metropolitan Oakland International Airport, CA, is April 9, 1987, due to an unforeseen delay in delivery and installation of equipment at Oakland Tower. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, April 10, 1986, except for Metropolitan Oakland International Airport, CA, ARSA which will be effective 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 11 ARSA's as published in the **Federal Register** on November 1, 1985 (50 FR 45718), 11 ARSA's on December 9, 1985 (50 FR 50254), and 12 on February 7, 1986 (51 FR 4872), in the implementation of this NAR recommendation.

On September 30, 1985, the FAA proposed to designate ARSA's at 11 airports under Airspace Docket No. 85-AWA-4 (50 FR 39822). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here and those previously designated, the FAA published proposed ARSA designations for 17 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others claimed that the notification for some of the informal airspace meetings held for some of the candidate airports was inadequate. The schedule of the meetings was published in the Notice of Proposed Rulemaking (NPRM) (September 30, 1985, 50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 126-day comment period was provided for Airspace Docket No. 85-AWA-4 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA and the Experimental Aircraft Association (EAA), disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus

additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

SSA claimed that the ARSA rule should state that the ultimate responsibilty for separation from other aircraft operating in VFR conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. Estimates of costs and benefits were based upon the ARSA proposed for the individual locations whether they were standard or modified.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

SSA claimed that some FAA field personnel had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact

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of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is significantly reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, the State of Montana Aeronautics Division, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR§ 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but participation which would not require deviation and would result in controllers providing radar assistance for see-and-avoid. However, the above claim was that ARSA designation would require pilots to violate other regulations. In light of the foregoing the FAA does not agree.

SSA, and other commenters, claimed that designation of these ARSA's would negatively impact cross-country glider flights operating out of airports 20 miles, or more, from these ARSA's. While some deviations may be required, the FAA does not agree that the minor deviations that may be required will result in negatively impacting cross-country glider operations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, EAA, and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is

inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with the assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

AOPA and SSA objected to the ARSA's based upon a claim that an insufficient amount of pilot education had been accomplished by the agency. AOPA cited Birmingham as an example where there were 19 days between the informal airspace meeting and the closing of the comment period, and SSA claimed that the comment period and a single informal airspace meeting were insufficient. The FAA does not agree. The example cited by AOPA references the comment period, not the total period to provide for pilot education. Pilot education will continue after the comment period has ended and until the effective date of the ARSA's. In addition to the comment period and the informal airspace meeting, user meetings will be held for each designated location.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA and others commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** NPRM (50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

SSA, and other commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit

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organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14. "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Particular Locations

Beale AFB, Mather AFB, McClellan AFB, and Sacramento

The United States Air Force (USAF) supported the designations as improvements in aviation safety. However, the USAF recommended that the base altitude of the 5- to 10-mile shelf at Mather AFB be lowered to 1,100 feet MSL to contain aircraft executing an ILS approach to Runway 22L. The FAA does not agree with the recommendation. To incorporate that modification would require a departure from the standard floor of 1,200 feet above ground level that has not been done at any location. Furthermore, the purpose of the ARSA, unlike Terminal Control Area's, is not to contain aircraft. The National Airspace Review Task Group was aware that the standard configuration would not contain all final approaches across the country. However, the recommended model provides an increased level of safety at all locations.

Several commenters, including AOPA, objected to the designations based upon a claim that the proposed ARSA's had no relationship to flight patterns in the Sacramento area. These commenters suggested that any such proposal should be based upon quantitative data showing the number and direction of flights and past conflicts. The FAA agrees that the proposed ARSA's were not based upon such information. However, the ARSA program has not been proposed as an en route program but a terminal program centered around the candidate airports. Thus, the recommendation goes well beyond the scope of the proposals and could not be adopted by the FAA without additional rulemaking.

AOPA and several other commenters objected to the designation based upon their belief that insufficient time was allowed by the agency to properly evaluate the comments received. The FAA does not agree. Although the period of time from the closing of comments until the effective date is somewhat short, the agency has not waited until the closing of comments to begin the evaluation of the comments received prior to closing.

AOPA, SSA, and several other commenters objected to the designations at Mather and McClellan AFB's claiming that the latter did not meet the criteria. The FAA does not agree. All candidates meet the recommended and adopted criteria.

The Sacramento Director of Airports submitted comments that were generally supportive of the ARSA as an improvement in safety. However, the Director suggested that only one ARSA be designated in the area at this time and that it be evaluated prior to making a decision on the others. The FAA appreciates the Director's suggestion. However, the implementation of the ARSA program on a revised schedule as suggested would require considerably more time during which both users and the agency were faced with multiple terminal radar programs for the same geographic area. The agency believes the simultaneous designations to be preferable.

Several commenters objected to the base altitudes of the 5- to 10-mile circles claiming that during periods of marginal VFR weather the shelf altitudes would invite the compression of air traffic. The FAA has addressed the possibility of compression discussed above. However, the agency believes that participation in such programs as ARSA is even more important during periods of marginal VFR weather, regardless of the base altitude of the ARSA shelf.

Several commenters objected to the ARSA but requested that if designation was to occur that the ARSA's be limited to the 5-mile circle plus 2-mile wide extensions to coincide with arrival and departure paths. The FAA does not agree. The configuration of the ARSA was specifically designed to provide ARSA services to all aircraft, arriving, departing, and transiting, within the proposed proximity of the candidate airport. Furthermore, there is a sufficient amount of air traffic that does not conform to the suggested airspace configuration to warrant adoption of the standard configuration.

Several commenters suggested that the Sacramento VORTAC should be included in the ARSA because it serves as the final approach fix for instrument approaches and is the point at which several airways cross. The FAA does not agree. First, the suggestion goes well beyond the proposal and would require additional rulemaking and notification to establish. Additionally, the ARSA program has not been proposed to contain all approaching aircraft nor those transiting outside the proposed airspace. Finally, such would be a sharp departure from the standardization sought by the recommending Task Group and the agency.

Several commenters objected to the ARSA but requested that if designation was to occur that VFR corridors be established along Highways 50 and 80 to provide for greater nonparticipative access to secondary airports. The FAA does not agree. Both highways pass through airport traffic areas. Cutouts have been provided for three secondary airports in the area and a corridor has been provided for the two airports between Sacramento and McClellan. Although the configurations alter past requirements for some aircraft operating at these airports, that alteration was specifically addressed and intended (49 FR 47184, 47186, November 30, 1984).

SSA objected to the designations claiming that the FAA should further evaluate combination or multiple ARSA's prior to proceeding with such designations. The FAA does not agree. The ARSA program has been adopted as a replacement for the TRSA program. These airports fall within that criteria.

SSA objected to the designations claiming that the ARSA's would negatively impact cross-country glider activity and eliminate the possible use of these airports as landing sites. The FAA does not agree. Glider activity from nearby locations can be accommodated on a prior approval basis, traffic permitting. Cross-country flights would be impacted to only a minor extent, and landing at these locations previously required two-way radio communications due to the airport traffic areas.

Some commenters objected to the ARSA designation at Sacramento Metropolitan claiming that if designation was to occur at any airport in the area, it should be at Sacramento Executive Airport. The FAA does not agree. The ARSA program is a TRSA replacement program, and since Executive Airport was not contained within a TRSA it did not qualify as a candidate.

Birmingham Municipal Airport, AL

Some commenters claimed the ARSA was proposed for Birmingham based upon anticipated growth which according to their claim would not occur. The FAA does not agree. An ARSA was proposed for Birmingham based upon the current status and traffic without regard to any projections.

Some commenters claimed that the amount of air traffic at Birmingham was only sufficient to justify an ARSA for a few hours each day. The FAA does not agree. The recommended and adopted criteria covers this point, namely, an airport with an operating airport traffic control tower. Thus, according to that criteria the ARSA should be effective during the operational hours of the airport traffic control tower.

Burlington International Airport, VT

Several commenters, including AOPA, objected to the designation of an ARSA but requested that if designation was to occur that the base altitude of the 5- to 10-mile shelf to the west be raised to 2,200 feet MSL to coincide with the shelf altitude to the east. The bases for these comments were to provide greater standardization and simplification and to provide for greater nonparticipative access to the Bostwick and Shelburne Airports. The FAA has raised the base altitude to the east to 1,500 feet MSL in partial response to this suggestion. However, if the altitude were raised to 2,200 feet MSL, such would not provide the level of safety and service envisioned for air traffic using Burlington International. The FAA believes this deviation from the standard is warranted due to the terrain east of the airport.

Several commenters requested the base altitude be raised citing the pervailing weather conditions during the months of October through January. The FAA does not agree. Radar service is of even greater importance during periods of marginal VFR weather and should be encouraged, rather than making provision for nonparticipation.

Castle AFB, CA

The Office of the Director of Transportation of Merced Airport objected to the designation at Castle AFB claiming that such would negatively impact commercial aviation at Merced. The FAA does not agree. The designation at Castle will enhance aviation safety in the area and improve the efficiency of air traffic control. Both of these will improve rather than impede commercial flight.

A group of citizens commented that since Castle is a military facility general aviation aircraft are prohibited from using the airport, and therefore, an ARSA was unnecessary. The FAA does not agree. ARSA designation is being made at Castle AFB to provide a level of safety and efficiency of service in the airspace in proximity to a relatively busy airport, regardless of whether a particular category of air traffic use the airport itself.

Some commenters objected to the designation claiming that to do so without a study of local conditions and without obtaining local input was not in the best interest of aviation safety. The FAA does not agree with the premise of the objection. A study and evaluation of local conditions began prior to the publication of the proposal and continued until this rule was issued. During that period local input was received from local users and was given full consideration prior to the agency reaching a decision.

Several commenters objected to designation because the ARSA does not contain all of the final approach into Castle AFB. The purpose of the ARSA is not to contain all of any final approach course. No ARSA has been proposed that fully encompasses that amount of airspace, and the FAA does not agree that designation should not occur simply because the final approach is not fully contained.

Several commenters, including AOPA, requested that if designation were to occur that the Castle ARSA be limited to the east side of the airport. This request was based upon the claim that all military air traffic into Castle remained to the east side of the airport. The FAA does not agree. The military segregates the air traffic at Castle using the east side for the heavy jets, but the west side is used for lighter aircraft.

Several commenters objected to the designation claiming that it would encourage pilots to violate the interagency agreement, to which the FAA is party, regarding flying over wildlife refuges at no less than 2,000 feet above ground level. The FAA does not agree. The refuges in the vicinity of Castle AFB are well beyond 10 miles from Castle, and the designation does not impact upon that agreement.

The USAF supported the ARSA as a positive step to increase aviation safety. However, the USAF recommended that the 1,900 feet MSL base altitude to the east be lowered to 1,800 feet MSL; that the 320° bearing which delineates an altitude segment be moved to the 290° bearing from the airport; and, that the cutout for Atwater Airport be enlarged. The bases for these recommendations were that the base altitude to the east

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had been incorrectly computed; that the proposed segment line did not provide protection for arrivals to Runway 13 or for departures off Runway 31; and, that enlarging the cutout would not decrease the level of safety and service envisioned by the proposal and would provide increased ease of access to the Atwater Airport. The FAA agrees with the later recommendation, and the cutout for Atwater has been enlarged. The first and second recommendations by the USAF would increase the degree of restriction envisioned in the proposal. Therefore, they are not adopted by the agency, and would of necessity require additional rulemaking and notification to establish.

In the NPRM, the FAA estimated 9 no radio (NORDO) aircraft based at Atwater Airport would have to install two-way radios to continue operations as they did prior to the implementation of the ARSA. A large cutout has been provided for Atwater Airport to allow these operators to continue operations to and from this airport without the expense of installing two-way radios.

Charlotte/Douglas International Airport, NC

The Air Transport Association supported the designation as an improvement in aviation safety and service. The FAA agrees.

Comments received opposing designation of the Charlotte ARSA have been addressed above.

Columbus Metropolitan Airport, GA

One commenter objected to the designation claiming that one of the FAA representatives had said at the informal airspace meeting that Columbus air traffic controllers would not be allowed to apply ARSA procedures, and therefore, there would be no advantage in the ARSA program. The FAA does not agree. The representative gave assurances at the meeting that air traffic controllers at Columbus would provide safety alerts to VFR pilots if they did not see one another after the issuance of traffic advisories, one of the procedures utilized in the ARSA program.

Several commenters objected to the designation because the Columbus ARSA is nonstandard in dimensions. While the FAA agrees that the Columbus ARSA is nonstandard, the agency does not agree that such is a valid objection. In adoption of the ARSA program the FAA indicated that several proposed locations would have nonstandard configurations. Other regulatory airspace, such as exists at Columbus, was one of the reasons cited for such nonstandard configurations.

Several commenters objected to the designation claiming that the ARSA would negatively impact recreational flying. Some of these commenters indicated at the informal airspace meeting that the air traffic controllers at Columbus had been most cooperative in the past. The FAA envisions no charge in that level of cooperation and recreational flying can be accommodated on the same basis as it has been in the past. If that should prove unsatisfactory, a local agreement can be established between such operators and the air traffic control facility to provide for this activity.

Metropolitan Oakland International Airport, CA

The operator of Sky Sailing Airport claimed that sailplane operations would be unacceptable affected because of the proximity of the Oakland ARSA. The FAA does not agree. Sky Sailing Airport is 8 miles from the ARSA boundary with the major area of sailplane activity 12 miles east of the ARSA. The modifications to the original proposal will provide additional areas of no restriction from the ARSA.

Several commenters, including the San Francisco Chamber of Commerce, claimed that the proposed ARSA would hinder eastbound helicopter operations from a new heliport on the San Francisco waterfront. The FAA does not agree. The communications requirement for the ARSA is no different from that presently required of the helicopter operations in the present airport traffic areas.

The United States Navy at Alameda Naval Air Station objects to the ARSA as proposed due to the omission of the airspace beyond 5 miles from the Oakland 347° radial to the Oakland 060° radial. They state the large concentration of light civil air traffic in this area will conflict with Navy traffic to Runway 25 at Alameda Naval Air Station. The FAA does not agree. The terrain in this area is such that the base altitude of the shelf would afford less than 200 feet of ARSA airspace. The FAA recognizes the concerns of the Navy but feels that including this airspace would be more restrictive than is required.

Several commenters, including AOPA, claimed that approaches to Hayward Airport from the east and Lake Chabot area would require too many frequency changes for landing at Haywood. The FAA agrees. For this reason, the airspace boundaries in these areas have been modified to allow access to Hayward Airport from the northeast, east, and south without entering the ARSA.

Several commenters claimed that traffic arriving and departing Hayward Airport would cause additional workload for controllers at Oakland Approach Control. The FAA does not agree. Comments concerning workload have been previously addressed. Letters of agreement between FAA facilities for use of the airspace in the Hayward Airport traffic area will be addressed by the facilities involved.

Oakland Tower was originally scheduled to receive a piece of replacement radar equipment in the summer of 1985. Due to unforeseen delay in equipment delivery, associated software development and installation scheduling, the earliest this radar equipment can be installed and certified will be late 1986. For these reasons, the effective date of the Metropolitan Oakland International Airport ARSA will be April 9, 1987.

Nashville Metropolitan Airport, TN

Several commenters objected to the designation claiming that the ARSA would negatively impact balloon operations in the area. Some of these commenters indicated that under the TRSA program they had called the radar approach control facility and had received good cooperation from the air traffic controllers, but they anticipated the ARSA would curb their activity. The FAA envisions no change to the procedure followed by these balloonists. The designation of the ARSA simply requires the type of approval and coordination that has been occurring previously on a voluntary basis or mandatory basis within the airport traffic area.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of the final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of

reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at the 11 airports listed below. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.501 is amended as follows:

Beale AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of Beale AFB (lat. 39°08'10" N., long. 121°26'06" W.), and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Beale AFB from the 127° bearing from the airport clockwise to the 007° bearing from the airport, and that airspace extending upward from 2,600 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from the 007° bearing from the airport clockwise to the 127° bearing from the airport.

Birmingham Municipal Airport, AL [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Birmingham Municipal Airport (lat. 33°33'50" N., long. 86°45'16" W.), and that airspace extending upward from 2,400 feet MSL to 4,600 feet MSL within a 10-mile radius of Birmingham Municipal Airport from the 343° bearing from the airport clockwise to the 231° bearing from the airport, and that airspace extending upward from 1,900 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport from the 231° bearing from the airport clockwise to the 343° bearing from the airport.

Burlington International Airport, VT [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Burlington International Airport (lat. 44°28'17" N., long. 73°09'12" W.), and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of Burlington International Airport from the 360° bearing from the airport clockwise to the 180° bearing from the airport, excluding the airspace within Restricted Area R–6501; and that airspace extending upward from 1,500 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 180° bearing from the airport clockwise to the 360° bearing from the airport.

Castle AFB, CA [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Castle AFB (lat. 37°22'52" N., long. 120°34'00" W.), excluding that airspace within an area bounded by a line beginning at the point where the 186° bearing from Castle AFB intersects the 5-mile radius of Castle AFB and thence northerly via the 186° bearing to the point where the 186° bearing intersects the 1.5-mile arc from the Atwater Airport (lat. 37°20'05" N., long. 120°36'15" W.) and thence counterclockwise via the 1.5-mile arc from Atwater Airport to the point where it intersects the 240° bearing from Castle AFB and thence southwesterly via the 240° bearing to the point where the 240° bearing intersects the 5-mile radius of Castle AFB; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 126° bearing from Castle AFB clockwise to the 306° bearing from Castle AFB, and that airspace extending upward from 1,900 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 306° bearing from Castle AFB clockwise to the 126° bearing from Castle AFB.

Charlotte-Douglas International Airport, NC [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Charlotte-Douglas International Airport (lat. 35°12'52" N., long. 80°56'37" W.), and the airspace extending upward from 2,000 feet MSL to 4,700 feet MSL within a 10-mile radius of the Charlotte/Douglas International Airport.

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Columbus Metropolitan Airport, GA [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of Columbus Metropolitan Airport (lat. 32°30'58" N., long. 84°56'20" W.), excluding that airspace within Restricted Area R–3002; and that airspace extending upward from 1,700 feet MSL to and including 4,400 feet MSL within a 10-mile radius of Columbus Metropolitan Airport from the 079° bearing from the airport clockwise to the 325° bearing from the airport,excluding that airspace within Restricted Area R–3002; and that airspace extending upward from 1,900 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the airport from the 325° bearing from the airport clockwise to the 079° bearing from the airport, excluding that airspace within Restricted Area R–3002. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Mather AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Mather AFB (lat. 38°33'23" N., long. 121°17'44" W.) to the points where the 5-mile radius intersects the 5-mile radius of the McClellan AFB, CA, Airport Radar Service Area (ARSA), and that airspace extending upward from 1,600 feet MSL to and including 4,100 feet MSL within a 10-mile radius of Mather AFB to the points where the 10-mile radius intersects the 10-mile radius of the McClellan AFB ARSA.

McClellan AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of McClellan AFB (lat. 38°40'02" N., long. 121°23'58" W.) to the points where the 5-mile radius intersects the 5-mile radius of the Mather AFB, CA, Airport Radar Service Area (ARSA), excluding that airspace within an area bounded by a line beginning at a point where the 321° bearing from McClellan AFB intersects the 5-mile radius of McClellan thence southeasterly via this 321° bearing to a point where it intersects the 007° bearing from Rio Linda Airport (lat. 38°40'34" N., long. 121°26'40" W.) and thence direct to the point where the 187° bearing from Rio Linda Airport intersects the 215° bearing from McClellan AFB and thence southwesterly via the 215° bearing to the 5-mile radius of McClellan AFB; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of McClellan AFB to the points where this 10-mile radius intercepts the 10-mile radii of the Sacramento Metropolitan Airport, CA, ARSA and the Mather AFB ARSA.

Metropolitan Oakland International Airport, CA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Metropolitan Oakland Airport (lat. 37°43'17" N., long. 120°13'11" W.), excluding that airspace contained within the San Francisco, CA Terminal Control Area (TCA); and that airspace extending upward from 1,500 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Metropolitan Oakland Airport, excluding that airspace contained within the San Francisco TCA, and that airspace beyond 5 miles from the Metropolitan Oakland Airport from the Oakland VORTAC 004° radial clockwise to the Oakland VORTAC 092° radial, and that airspace beyond the 15-mile radius of the San Francisco TCA.

Nashville Metropolitan Airport, TN [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Nashville Metropolitan Airport (lat. 36°07'37" N., long. 86°40'53" W.), excluding that airspace within a 1.5-mile radius of lat. 36°12'00" N., long. 86°42'10" W. (in the vicinity of Cornelia Fort Airport); and that airspace extending upward from 2,100 feet MSL to and including 4,600 feet MSL within a 10-mile radius of Nashville Metropolitan Airport from the 018° bearing from the airport clockwise to the 198° bearing from the airport, and that airspace extending upward from 2,400 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport from the 198° bearing from the airport clockwise to the 018° bearing from the airport.

Sacramento Metropolitan Airport, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento Metropolitan Airport (lat. 38°41'44" N., long. 121°36'01" W.), excluding that airspace within a 2-mile radius of Riego Flight Strip (lat. 38°45'15" N., long. 121°33'43" W.), and that airspace within a 2-mile radius of Natomas Field (lat. 38°38'18" N., long 121°30'51" W.), and that airspace east of the 002° bearing from Natomas Field; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento Metropolitan Airport to the points where this 10-mile radius intercepts the 10-mile radius of McClellan AFB, CA, Airport Radar Service Area.

Issued in Washington, DC, on March 4, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–5115 Filed 3–7–86; 8:45 am]

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federal register

Monday
March 10, 1986

Part IV

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program Proposed Rule; and Application Notice for Noncompeting Continuation Projects for Fiscal Year 1986

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DEPARTMENT OF EDUCATION

34 CFR Part 280

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Secretary proposes to amend three sections of the regulations which implement the Magnet Schools Assistance Program. These amendments to the regulations are necessary to implement the statutory changes to the Magnet Schools Assistance Act (Title VII of the Education for Economic Security Act, Pub. L. 98–377) which were enacted on November 22, 1985 as part of the National Science, Engineering, and Mathematics Authorization Act of 1985, Pub. L. 99–159.

DATE: Comments must be received on or before April 9, 1986.

ADDRESS: Comments should be addressed to M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB–6) 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: M. Patricia Goins. Telephone: (202) 472–7960.

SUPPLEMENTARY INFORMATION:

Summary of Proposed Amendments

Section 703 of the Act which describes the purposes of the Magnet Schools Assistance Program has been amended by combining the four clauses in the statement of purpose into two clauses. This change in language does not significantly alter the purposes of the Magnet Schools Assistance Program. Section 280.1 of the regulations is amended to conform to the statutory change.

Section 706 of the Act has been amended to narrow the range of activities for which magnet schools funds may be used. Under Section 706, grants may be used by an eligible local educational agency (LEA) for—

(1) Planning and promotional activities directly related to expansion and enhancement of academic programs and services offered at magnet schools;

(2) The acquisition of books, materials, and equipment (including computers) and the maintenance and operation thereof, necessary for the conduct of programs in magnet schools; and

(3) The payment of or subsidization of the compensation of elementary and secondary school teachers who are certified or licensed by the State and who are necessary for the conduct of programs in magnet schools.

With respect to clauses (2) and (3), assistance must be directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

Only the above-described activities may be supported with magnet schools funds. A new § 280.40 setting out these authorized activities has been added to the regulations.

Section 709 of the Act has been amended by deleting the prohibitions on secular humanism instruction. This prohibition, presently codified at § 280.40(d) of the regulations, is deleted. The remaining provisions currently in § 280.40 are redesignated as § 280.41.

Executive Order 12291

These proposed amendments have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

The small entities affected by this program are LEAs. The amendments do not impose burdensome reporting or recordkeeping requirements and will not have a significant economic impact on the limited number of LEAs affected.

Intergovermental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed amendments.

All comments submitted in response to these proposed amendments will be available for public inspection, during and after the comment period, in Room 2023 FOB–6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs-education, Magnet schools.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. The citation is the appropriate section of the Act (Title VII of the Education for Economic Security Act, Pub. L. 98–377, 98 Stat. 1299–1302 (20 U.S.C. 4051–4062).

(Catalog of Federal Domestic Assistance number 84.165, Magnet Schools Assistance Program)

Dated: March 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 280 as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 is revised to read as follows:

Authority: 20 U.S.C. 4051–4062, unless otherwise noted.

2. Section 280.1 is revised to read as follows:

§ 280.1 What is the Magnet Schools Assistance Program?

The Magnet Schools Assistance Program provides grants to eligible local educational agencies (LEAs) for use in magnet schools that are part of an approved desegregation plan and that are designed to bring students from different social, economic, ethnic and racial backgrounds together. The purposes of the program are to support, through financial assistance to eligible LEAs,—

(a) The elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial portions of minority students; and

(b) Courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending such schools.

(20 U.S.C. 4053)

§ 280.4 [Amended]

3. In § 280.4(b), under the definition, "special curriculum", the "of" is changed to "or" between the words, "elementary" and "secondary".

§ 280.10 [Amended]

4. Section 280.10 is amended by: removing "for planning and conducting programs" from paragraph (a); removing paragraphs (d) and (e); and revising the citation of authority to read "(20 U.S.C. 4054)".

§ 280.40 [Redesignated as § 280.41]

5. Section 280.40 is redesignated as § 280.41 and paragraph (d) is removed. After the semicolon at the end of paragraph (b) insert "or". At the end of paragraph (c) replace the semicolon and the "or" with a period.

6. A new § 280.40 is added to read as follows:

§ 280.40 What costs are allowable?

An LEA may use funds received under this part for the following activities:

(a) Planning and promotional activities directly related to the expansion and enhancement of academic programs and services offered at magnet schools, though planning activities are subject to the restriction in § 280.41(a).

(b) The acquisition of books, materials, and equipment (including computers) and the maintenance and operation thereof. Any books, materials or equipment purchased with grant funds must be—

(1) Necessary for the conduct of programs in magnet schools; and

(2) Directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

(c) The payment or subsidization of the compensation of elementary and secondary school teachers—

(1) Who are certified or licensed by the State;

(2) Who are necessary to conduct programs in magnet schools; and

(3) Whose employment is directly related to improving the knowledge of mathematics, science, history, English, foreign languages, art, or music, or to improving vocational skills.

(20 U.S.C. 4056)

[FR Doc. 86–5121 Filed 3–7–86; 8:45 am]

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DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Application Notice for Noncompeting Continuation Projects for Fiscal Year 1986.

Applications are invited for noncompeting continuation projects under the Magnet Schools Assistance Program (MSAP).

Authority for this program is contained in Title VII of the Education for Economic Security Act, Pub. L. 98–377. (20 U.S.C. 4051–4062)

The MSAP provides Federal financial assistance for projects in magnet schools that are part of approved desegegration plans that local educational agencies (LEAs) are implementing. LEAs may use funds to plan and promote magnet schools; to purchase books, materials, and equipment (including computers) for magnet school programs; and to pay or subsidize certified or licensed school teachers in magnet schools. A "magnet school" is defined by the Act as a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before May 2, 1986.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Washington, DC 20202. Applications for the MSAP should be marked Attention: 84.165.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3635, Regional Office Building 3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, or Federal holidays.

Program Information: The present recipients of MSAP awards are eligible to apply for the continuation of those awards. Section 280.33 of the MSAP regulations states that the Secretary is authorized to approve the continuation of an existing MSAP award if the recipient of that award "is making satisfactory progress toward achieving the purposes of [the program]" and meets the conditions of 34 CFR 75.253(a).

Applicants should be aware that the range of authorized activities for which magnet schools funds may be used has been narrowed by an amendment to the Magnet Schools Assistance Act. Applicants should review the Notice of Proposed Rulemaking for the Magnet Schools Program published in this issue of the **Federal Register** to ensure that their proposed activities for fiscal year 1986 meet the criteria in the new § 280.40 of the regulations.

Intergovernmental Review: This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Magnet Schools Assistance Program is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by June 2, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.165) 400 Maryland Avenue, SW., Washington, DC 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATIONS. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds: The amount of funds available for fiscal year 1986 for MSAP is $71,775,000. (This amount reflects a reduction of $3,225,000 from the fiscal year 1986 appropriation pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177.)

In fiscal year 1985, the Department awarded 44 grants for MSAP projects. These grantees are eligible to apply for fiscal year 1986 continuation awards.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing on April 1, 1986. They may be obtained by writing to the Magnet Schools Assistance Program Staff, U.S. Department of Education (Room 2023, FOB–6), 400 Maryland Avenue SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

(The application is approved under OMB Control Number 1810–0516)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Magnet Schools Assistance Program, 34 CFR Part 280 published in the **Federal Register** on May 22, 1985 at 50 FR 21190 and the proposed amendments published in this issue of the **Federal Register**. (If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(b) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 78, and 79.

FOR FURTHER INFORMATION: For further information contact M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB–6), Mail Stop 6264, 400 Maryland Avenue, SW Washington, DC 20202. Telephone: (202) 472–7960.

(20 U.S.C. 4051–4062)

(Catalog of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program)

Dated: March 3, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 86–5120 Filed 3–7–86; 8:45am]

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Part V

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2001

Project Recognition and Support; Final Rule

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COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2001

Project Recognition and Support

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations set forth general provisions and policies governing the process adopted by the Commission on the Bicentennial of the United States Constitution for project recognition and support. These policies will apply to all projects, programs and other activities designed to commemorate the 200th anniversary of the drafting, signing, ratification and adoption of the United States Constitution, in 1787 and 1788, and the beginnings of the Federal Government under the Constitution in 1789, including the election of the First Congress and of America's first President and Vice President, the creation of the first cabinet departments and the creation of the Federal judiciary system.

These regulations are necessary so that the mandates of Congress may be carried out by the Commission in accomplishing its principal purpose, to promote and coordinate activities to commemorate the bicentennial of the Constitution. (See sec. 3, Pub. L. 98–101; 97 Stat. 719.) The provisions of these regulations will enable individuals and private and public groups, including governmental agencies and states, to obtain official recognition of the Commission for their proposed projects and to use the Commission's National Bicentennial Logo. The regulations will also make clear the criteria for Commission involvement with projects and the limitations on such involvement.

DATES: Interim rule effective January 23, 1986; comments must be received on or before May 9, 1986.

ADDRESS: Comments should be mailed or delivered to the General Counsel of the Commission at 734 Jackson Place, NW., Washington, DC 20503. Comments received may also be inspected at this address between 9:00 p.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Tel. (202) USA–1787.

SUPPLEMENTARY INFORMATION:

Background

These regulations were approved by the Commission on November 25, 1985 as an interim rule to govern policies on project recognition and support during the organizational phase of Commission operations. It is intended that the regulations will be published as a final rule following consideration of comments received and further review by the Commission.

Classification

This is not a major rule under E.O. 12291 since it is not likely to have any effect on the economy, on costs or on prices, nor does it affect competition, employment, investment, productivity, innovation or the ability of U.S. based enterprises to compete with foreign enterprises. A regulatory analysis is not required for this rulemaking. The rule has no effect on the environment and an environmental impact statement under the National Environmental Policy Act is not required.

Statutory Authority

This regulation is authorized under Pub. L. 98–101, 97 Stat. 719. No previous regulation on these subject matters has been issued. The principal draftsmen of this regulation were Dr. Bradford P. Wilson and Joseph B. McGrath of the Commission staff.

Request for Comments

A 60 day public comment period ending [insert date] has been provided for the purpose of receiving comments and recommendations for improvement of the regulation prior to publication of a final rule. Comments should be mailed or delivered to the General Counsel of the Commission at 734 Jackson Place, NW., Washington, DC 20503.

Paperwork Reduction Act

The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with the information collection requirement until it has been approved and assigned an OMB control number. The OMB control number, after it has been assigned, will be announced in the final rule or by separate notice in the **Federal Register**.

List of Subjects in 45 CFR Part 2001

National Bicentennial logo, State Bicentennial Commission, Designated bicentennial community, National Register of Bicentennial Projects, U.S. Constitution Bicentennial, Officially recognized projects, Seals and insignia.

Issued in Washington, DC on January 23, 1986.

Mark W. Cannon,
Staff Director.

For the reasons set out in the preamble and under the authority of Pub. L. 98–101, 97 Stat. 719, a new Chapter XX is established and a new Part 2001 is added to Title 45, *Code of Federal Regulations* to read as follows.

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2001—PROJECT RECOGNITION AND SUPPORT

Subpart A—General Policies

Sec.
2001.10 Commission policy.
2001.11 Financial support decisions.
2001.12 Nonexclusive involvement.

Subpart B—National Bicentennial Logo

2001.20 Design and adoption.
2001.21 Authorized use of logo.
2001.22 No commercial use permitted.

Subpart C—Involvement with Bicentennial Projects

2001.30 Commission decisions.
2001.31 Withdrawal of involvement.
2001.32 Types of projects.
2001.33 Commission projects.
2001.34 Cosponsored projects.
2001.35 Officially recognized projects.
2001.36 State bicentennial commissions.
2001.37 Designated bicentennial communities.

Subpart D—Selection Process

2001.40 Submission of application.
2001.41 Application requirements.
2001.42 Evaluation.
2001.43 State commission approval.
2001.44 Interim letter.
2001.45 Commission approval.

Subpart E—Coordination and Information

2001.50 National register of bicentennial projects.

Appendix A to Part 2001—National Bicentennial Logo.
Appendix B to Part 2001—Application for Recognition.

Authority: Pub. L. 98–101; 97 Stat. 719, 5 U.S.C. 552.

Subpart A—General Policies

§ 2001.10 Commission policy.

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101 to promote and coordinate activities to commemorate the bicentennial of the Constitution. All public and private groups are encouraged to conduct activities that will foster awareness, knowledge and appreciation of the Constitution of the United States during

the bicentennial years of 1986–89. Insofar as its resources permit, the Commission will offer information, advisory assistance, and coordination to individuals and groups interested or involved in bicentennial activities.

§ 2001.11 Financial support decisions.

Commission involvement with a project in any of the ways herein described does not obligate the Commission to contribute financial support to that project. Any decision to provide financial support to a bicentennial project shall be considered by the Commission separately and on its own merits in relation to the resources of the Commission.

§ 2001.12 Nonexclusive involvement.

Unless otherwise indicated by the Commission in advance and in writing, Commission involvement with a project will not in any way limit the Commission from involving itself in other projects of the same or a similar nature.

Subpart B—National Bicentennial Logo

§ 2001.20 Design and adoption.

Under the authority granted by section 5(j) of Pub. L. 98–101, 97 Stat. 719, 721, the Commission has designed and adopted a Logo as the official emblem of the bicentennial. This design is depicted and described in Appendix A to this Part of the Commission's regulations. It is hereby designated by the Commission as the official National Bicentennial Logo and this designation includes any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo. Its use shall be governed by these regulations.

§ 2001.21 Authorized use of logo.

Authorization for use of the National Bicentennial Logo shall be granted only at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Authorized users may not delegate use of the Logo to others unless specifically authorized to do so in writing by the Commission or by these regulations.

§ 2001.22 No commercial use permitted.

No commercial use of the National Bicentennial Logo is authorized. The Commission shall review all requests for use of the Logo by commercial organizations. The Commission shall also review requests of a State Bicentennial Commission or a Designated Bicentennial Community (see below) for use of the Logo by a commercial sponsor of a project officially recognized by such Commission or Community. In exercising its discretion, the Commission shall determine each case on its merits.

Subpart C—Involvement With Bicentennial Projects

§ 2001.30 Commission decisions.

Unless delegated by vote of the Commission to a committee of the Commission, or to the Commission's Staff Director, authority to decide Commission involvement with projects remains with the full Commission. Commission involvement with bicentennial projects shall be determined by written decisions on each project as set forth herein.

§ 2001.31 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any project to withdraw its involvement or recognition, or both, including any authorization for use of the Logo.

§ 2001.32 Types of projects.

Initially, there will be five forms of Commission involvement with bicentennial projects. These are identified as Commission Projects, Cosponsored Projects, Officially Recognized Projects, State Bicentennial Commissions, and Designated Bicentennial Communities. The details as to each type of project recognition are set forth in the following sections of this Subpart.

§ 2001.33 Commission projects.

Commission Projects are defined as projects of national or international significance, for the development and implementation of which the Commission takes full responsibility. Such projects will be few in number and approved in advance by the Commission.

§ 2001.34 Cosponsored projects.

(a) *Commission participation.* The Commission may choose to cosponsor a limited number of projects with private and public organizations, domestic and foreign, including all branches and agencies of the Federal Government. In doing so, the Commission reserves the option to participate in a project's development and implementation, although primary responsibility for the project will ordinarily rest with the other sponsor or sponsors.

(b) *Use of logo.* Cosponsors shall be authorized to use the National Bicentennial Logo solely in connection with the project for which the Commission is a cosponsor. Such use shall include the legend, "Cosponsored by the Commission on the Bicentennial of the United States Constitution." A cosponsored project shall also be considered an Officially Recognized Project (see below).

(c) *Qualification criteria.* For a project to qualify for Commission cosponsorship the Commission must determine that (1) the project will make an exceptional contribution to advancing the national commemoration; (2) the project will increase public understanding and appreciation of the Constitution; (3) the cost to the Commission, if any, is reasonable in relation to what the project will accomplish; and, (4) the project will be adequately financed and directed.

§ 2001.35 Officially recognized projects.

(a) *Recognition requirements.* The Commission shall grant Official Recognition to projects of exceptional merit with regional, national, or international signficance. To be considered for Official Recognition, such projects must have substantial educational and historical value in relation to the U.S. Constitution and must be adequately financed and directed.

(b) *Implementation.* Responsibility to develop and implement an Officially Recognized Project lies with the Project's sponsor or sponsors. To the extent feasible the Commission shall monitor all Officially Recognized Projects.

(c) *Certificates of recognition.* Projects granted Official Recognition shall receive a Certificate of Official Recognition and such other symbolic recognition as may be approved by the Commission.

(d) *Use of logo.* Sponsors of Officially Recognized Projects are authorized to use the National Bicentennial Logo solely in connection with the Recognized Project. Sush use shall include the legend, "Officially Recognized by the Commission on the Bicentennial of the United States Constitution."

§ 2001.36 State Bicentennial Commission.

(a) *Recognition.* The Commission shall recognize any bicentennial organization as a State Bicentennial Commission upon the request of the Governor or the legislature of a State, or upon the request of the chief exective in the case of the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the Virgin Islands. A State Bicentennial Commission, so recognized, shall qualify as a State advisory

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commission under section 6(d) of Pub. L. 98–101, 97 Stat. 719, 722. The Commission is authorized to delegate authority to such State advisory commissions to assist the Commission in carrying out its purposes.

(b) *Use of logo.* Recognized State Bicentennial Commissions are authorized to use and to grant use of the National Bicentennial Logo. Permission to use the Logo may be granted only to nonprofit organizations which are sponsors of projects officially recognized by a State commission as a part of a State bicentennial program, provided such sponsors have been advised in writing by the State commission of such recognition. In order to grant use of the Logo, the State commission shall determine in advance that the project will increase public understanding and appreciation of the U.S. Constitution, and that it will be adequately financed and directed.

(c) *Nonprofit organizations.* Nonprofit organizations which are sponsors of State-recognized projects may be authorized to use the National Bicentennial Logo solely in connection with the recognized project. Such use shall include the legend, "Recognized by the [Name of State Bicentennial Commission]."

(d) *Monitoring responsibility.* A State commission which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98–101, 97 Stat. 719, and any amendments thereto.

§ 2001.37 Designated Bicentennial Communities

(a) *Definitions.* The Commission encourages local governing bodies to establish Bicentennial Communities. The term "community" includes all political subdivisions having an elected government, such as a city, county, town, village, township, borough, any Native American tribe or reservation, or any combination thereof. Unincorporated areas which have an established identity of their own may also apply for designation.

(b) *Qualification criteria.* A Designated Bicentennial Community is one which (1) has established a bicentennial committee broadly representative of the Community; (2) has developed a commemorative program that will educate its residents about the meaning and significance of the Constitution; and, (3) has received an official designation from the Commission.

(c) *Application Process.* To be considered as a Designated Bicentennial Community, a community should submit a completed application form to its State Bicentennial Commission. Upon approval, by the State commission, the application with the State commission's recommendation shall be sent to this Commission for its review and decision. (See Subpart D—Selection Process below.) The Commission shall prepare, publish and supply the required application forms and shall issue a Certificate of Designation to all communities whose applications are approved by the Commission.

(d) *Use of logo.* Designated Bicentennial Communities are authorized to grant use of the National Bicentennial Logo to nonprofit organizations which are sponsors of projects officially recognized by the Designated Community Bicentennial Committee as part of the community bicentennial program, provided the sponsors have been advised in writing by the local Bicentennial Committee of such recognition.

(e) *Nonprofit organizations.* Organization sponsors of Community-recognized projects are authorized to use the National Bicentennial Logo only in connection with the recognized project. Such use shall include the legend, "Recognized by [Name of Community], a Bicentennial Community."

(f) *Monitoring responsibility.* A Designated Bicentennial Community which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98–101, 97 Stat. 719, and any amendments thereto.

Subpart D—Selection Process

§ 2001.40 Submission of application.

To apply for Commission Cosponsorship or Official Recognition of a project, sponsors must complete a Commission application and submit it together with all required materials to: Commission on the Bicentennial of the United States Constitution, 734 Jackson Place NW., Washington, DC 20503.

§ 2001.41 Application requirements.

Applications should include a comprehensive description of the project and a narrative statement indicating how the project meets the criteria established by the Commission, as provided on the application form. The application form shall include a statement that the applicant agrees to be bound by all policies, requirements, regulations and other decisions made by the Commission affecting the applicant's project and responsibilities. See Appendix B for sample form.

§ 2001.42 Evaluation.

The Commission staff shall evaluate all requests for cosponsorship or official recognition and shall prepare recommendations for action thereon by the Commission or its committees, or both. The Commission shall be informed of all applications for cosponsorship or official recognition and of all requests for recognition of State Bicentennial Commissions and Designated Bicentennial Communities.

§ 2001.43 State Commission approval.

Approval of the appropriate State Bicentennial Commission shall be required if the project is to be conducted or carried out within a single State.

§ 2001.44 Interim letter.

The Commission may issue a Letter of Encouragement when a project demonstrates outstanding merit but has not reached that stage of development or obtained that level of support which would provide reasonable assurance of implementation. This Letter does not authorize use of the National Bicentennial Logo.

§ 2001.45 Commission approval.

Commission approval of an application shall be in writing and result in the issuance of a letter of agreement to cosponsorship or a Certificate of Official Recognition, or both.

Subpart E—Coordination and Information

§ 2001.50 National Register of bicentennial projects.

(a) As a means of coordination, and to enable the Commission to provide information and advisory assistance to all interested individuals and groups, the Commission shall maintain a National Register of Bicentennial Projects.

(b) This Register shall include all those projects, activities, and programs in which the Commission has involved itself. These may also be publicized by inclusion in commemorative calendars and schedules of bicentennial events published by the Commission.

(c) Within the limits of Commission resources, and to the extent feasible, the National Register shall be expanded to include officially recognized bicentennial projects approved and reported to the Commission by State Bicentennial Commissions and Designated Bicentennial Communities.

Appendix A to Part 2001—National Bicentennial Logo

This Appendix is intended to improve the utility of Part 2002 by setting forth a description and depiction of the National Bicentennial Logo adopted by the Commission on the Bicentennial of the United States Constitution. This Logo is the subject of Subpart B, §§ 2001.20–2001.22, and it is referred to repeatedly thereafter. Copies of the Logo may be obtained from the Commission. This Appendix contains no requirements or restrictions which are not already in the regulations.

Description: In color the Logo is intended to appear on a white or light-colored field. The canton of the American flag is dark blue and the stripes are bright red. The scroll lettering and borders are in gold; the eagle and flag staff are in gold. The circular lettering and dates are in dark blue. The Logo may also be duplicated wholly is black or dark blue on a light or white field.

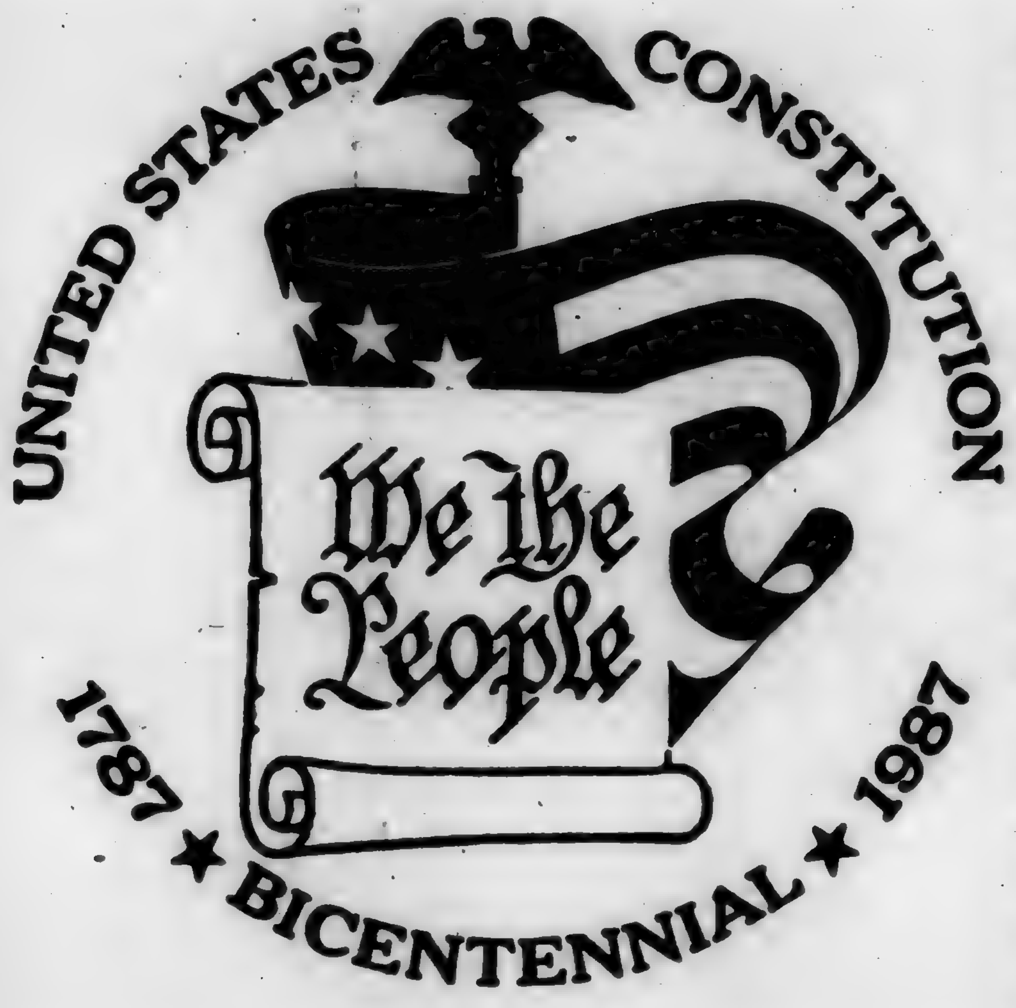

Appendix B to Part 2001—Application For Recognition

This Appendix is intended to improve the utility of Part 2002 by setting forth a sample application form for use in applying to the Commission on the Bicentennial of the United States Constitution for official project recognition and support under the regulations contained therein. It contains no requirements or restrictions which are not already in the regulations.

The expectation of the Commission is that this application form will be used by all applicants or that applicants will use the form as a guide in submitting information with their applications, modifying its requirements as may be necessary for particular projects or activities. As a general matter, however, the information requested on the form set forth below will be required by the Commission for its evaluation process prior to granting official recognition of a commemorative project or activity.

Commission File No. ____

Application for Official Recognition by the Commission on the Bicentennial of the United States Constitution

(please type or print)

____

Date of Application

I. *Identification*

1. ____
Name of Sponsor (individual, organization, or agency)
2. ____
____
Address of Sponsor
3. (   ) ____
Sponsor's Telephone Number
4. ____
Name of Projects for which Recognition is Sought
5. ____
Name of Project Director
6. ____
Address and Tel. Number (if different from sponsor)

General Background Information (attach separate sheet)

1. Brief identification and history of the sponsor, including names of the members of the Board of Directors or other leadership body of the sponsoring organization, relevant background of principal organization personnel, and description of sponsor's previous experience, if any, with this type of project.

Please indicate who will be responsible for the operation of the project and in what capacity they will be so responsible. (Please attach resumes of director and co-director or equivalents.) Note: If sponsor is a nonprofit 501 (c)(3) organization please attach IRS verification.

2. A summary of the operations and programs of the sponsoring organization during the year immediately preceding the date of this application, including income and budget date. (Not applicable to newly formed organizations.)

3. Please attach copies of significant or representative endorsements of the project by individuals and governmental, business, community, service, academic, Bicentennial, or other organizations.

III. *Project Description* (attach additional sheets)

1. Provide a brief (no more than one typewritten page) description of the project for which recognition is sought.

2. Attach a *comprehensive* description of the project in narrative form, including the ways in which the project will be carried out, dates at which significant progress will be reached, the approximate number and background of probable participants and/or audience, and any other information relevant to successful conduct of the project. Also, please indicate how the project meets the regulatory criteria established by the Commission on the Bicentennial of the U.S. Constitution (see attached regulations).

IV. *Timing and Budget Information*

1. Please state the beginning and ending dates of the project. If specific dates are not yet determined, please state the criteria that will determine the duration of the project.

____
____

Period of major emphasis: ____

2. Total Actual or Estimated Cost of Project:
$ ____
Actual __ Estimated __

3. Total Funds Available (Do not include funds committed but not yet received):
$ ____

4. Please indicate the sources of funds included in number 3 above:

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	Amount
Federal	
State	
Local Government	
Corporate	
Foundation Grants	
Other	

Please indicate below the government agencies and programs, if any, from which funds have been received and, if you choose to do so, the names of corporations and foundations that have provided funds.

5. Please indicate by source the amount of required funds not currently available for the project but that are committed or otherwise anticipated. Please indicate the status of any pending applications or requests, including approximate time receipt of funds is expected.

	Amount	Status
Federal		
State		
Local Government		
Corporation		
Foundation Grants		
Other		

If you choose to do so, please indicate the agencies, corporations, foundations, or other sources of anticipated funds.

6. Briefly describe the system of supervision of funds that will be employed for this project.

The signature below attests to the applicant's agreement to be bound by all policies, requirements, regulations, and other decisions that have been made, or will be made, by the Commission on the Bicentennial of the United States Constitution affecting the applicant's project and responsibilities.

Signature of Responsible Officer:

Title

Note to Applicants: It is not required, but it will be helpful to the Commission, for applicants to transmit three (3) copies of their Application together with the original. Also, to the fullest extent practicable, it will be appreciated if the Application and accompanying papers are printed or typed on 8½" x 11" pages, one-sided only.

[FR Doc. 86-5072 Filed 3-7-86; 8:45 am]

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federal register

Monday
March 10, 1986

Part VI

Department of Health and Human Services

Office of Human Development Services

Family Violence Prevention and Services; Availability of Funds for State and Tribal Grants

VOL
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Family Violence Prevention and Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notice of the availability of funds for State and Tribal grants for family violence prevention and services.

SUMMARY: FY 1985 and FY 1986 funds are now available for demonstration grants to States (including Territories and Insular Areas) and Indian Tribes and Tribal organizations to assist in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. This Notice sets forth the application process and requirements for these demonstration grants. The Department expects that these FY 1986 Family Violence Prevention and Services grants will serve as a one year transition into the Administration's proposed Family Crisis and Protective Services program in FY 1987.

DATE: Applications must be received by May 9, 1986.

ADDRESS: Address applications to: Enid A. Borden, Office of Policy and Legislation, Room 306-E Humphrey Bldg., 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Enid A. Borden, (202) 245-7027.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1984, the President signed into law the Child Abuse Amendments of 1984 (Pub. L. 98-457, 42 U.S.C. 10401 et. seq.). Title III of these Amendments is entitled the "Family Violence Prevention and Services Act" (Act). The purposes of this legislation are to: assist States in their efforts to prevent family violence and provide immediate shelter and related assistance for victims of family violence and their dependents; and carry out coordination, research, training, technical assistance, and evaluation activities. In addition, the Secretary may also make grants directly to Indian Tribes and tribal organizations.

The Department has been an active participant in ongoing family violence prevention service activities, child abuse and neglect prevention and service activities, and initatives and efforts in the areas of elder abuse, services to runaway youth and prevention of youth suicide. In addition to funding and administering categorical, block grant, and discretionary grant programs that address these concerns, the Department has undertaken several national initiatives:

- A Federal government-wide interagency meeting was held in April of 1985 with representatives of 22 Federal departments and agencies as an initial step in coordinating Federal activities concerning the prevention and treatment of family violence as required under the Act.
- The Department sponsored the "Surgeon General's Workshop on Violence and Public Health" in 1985, which focused on the impact of domestic violence on family life.
- The Family violence segment of PROJECT SHARE, a Department-operated human services clearinghouse, has been expanded.

Funds under the Act will supplement the many excellent activities and programs currently being carried out by the public and private sectors. We particularly urge the continuation of private sector involvement, through in-kind or monetary contributions, to community-based family violence prevention activities.

Funds Available

Public Law 99-88, the Supplemental Appropriations Act of 1985, made $6 million available for the program through FY 1986. The Department's FY 1986 appropriation bill, Pub. L. 99-178, appropriated an additional $2.5 million. Public Law 99-177, the Gramm-Rudman-Hollings legislation, reduces this $8.5 appropriation to $8.393 million.

The Department will make $7.1 million (85% of total funds) available for grants to States (see section 310(b) of the Act). State allocations are listed at the end of this Notice and have been computed based on the formula in section 304. Section 304 also contains a provision for reallotment to other States of any funds not made available to a State because of such State's failure to meet the requirements for a grant.

The Department has also set aside $400,000 for direct grants to those Indian tribes or tribal organizations which: (1) Meet the definition of "Indian tribe" or "tribal organization" in sections 4(b) and (c) of the Indian Self-Determination and Education Assistance Act (25 USC 450(b)) (or any consortium of such Indian tribes or tribal organizations); and (2) which have current "638" contracts with the Bureau of Indian Affairs (BIA) to carry out social services programs and activities. According to the BIA, this represents 102 Tribes and tribal organizations.

We explored the possibility of funding all Tribes based on Indian population in proportion to the State's population, but that was not feasible given the amount of funds available. In view of the requirement in section 303(g) that 60% of grant funds be made available for "immediate shelter and related assistance," the Department believes that those Indian Tribes already operating social services programs will be able to utilize these funds most effectively. Since section 304(a) specifies a minimum base amount for State allocations, we have set a base amount for eligible Tribes. Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population is less than 3,000 will receive a minimum of $3,000; tribes which meet the application requirements and whose reservation and tribal trust lands population exceeds 3000 will receive a minimum of $8,000, except for the Navajo Tribe which will receive a minimum of $20,000. The Department will use the best available population figures from the Census Bureau. Where Census Bureau data is unavailable, we will use figures from the BIA Indian Population and Labor Force Report.

The remaining funds under Pub. L. 99-88 and Pub. L. 99-178 will be used to carry out the research, training, technical assistance, evaluation, coordination, and clearinghouse activities required by the Act.

Eligibility

"States" as defined in section 309(6) of the Act are eligible to apply for funds. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau in accordance with section 514 of Pub. L. 99-178.

"Indian tribes" and "Tribal organizations" are eligible to apply if they meet the definitions in section 4(b) and (c) of the Indian Self-Determination and Education Assistance Act (section 309(2)) and have FY 1985 "638" contracts with the BIA for the delivery of social services.

Application Requirements—General

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law. We suggest that this Notice be read in conjunction with the

statute and specifically call to your attention the definitions of "family violence," "shelter," and "related assistance" in section 309 and, for States, the sub-state matching requirements in section 303(f).

State Application Requirements

The Secretary will approve any application that meets the requirements of the Act and this Notice and will not disapprove an application unless the State has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

The application must be signed by the Chief Executive of the State and must contain the following information and assurances:

(1) The name of the State agency designated as responsible for the administration of State programs and activities related to family violence carried out under the Act and for coordination of related State programs (section 303(a)(2)(D)).

(2) The procedures designed to involve knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (section 303(a)(2)(C)).

(3) The following assurances:

(a) That funds under the Act will be distributed in demonstration grants to local public agencies and nonprofit private organizations for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims and their dependents (section 303(a)(2)(A)).

(b) That not less than 60% of the funds distributed shall be used for immediate shelter and related assistance (section 303(g)).

(c) That not more than 5% of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the State will give special emphasis to the support of the projects specified in section 303(a)(2)(B)(ii), i.e., community-based projects of demonstrated effectiveness carried out by nonprofit private organizations (particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents) and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims.

(e) That no entity funded by the State will receive more than $50,000 in any one fiscal year, no entity will be funded for a total period in excess of three years, and no entity will receive more than a total of $150,000 under this Act (section 303(c)).

(f) That demonstration grants funded by the State will meet the matching requirements in section 303(f), i.e., 35% in the first year, 55% in the second year, and 65% in the third year; that, except in the case of a public entity, not less than 50% of the local matching share shall be raised from private sources; the local share may be in cash or in-kind; and the local share may not include any Federal funds provided under any authority other than this title.

(g) That demonstration grants funded by the State may not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(h) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(i) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(j) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(k) That all demonstration grants made by the State under the Act must prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(l) That within one year after receiving a grant, the State will provide assurances that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence (section 303(a)(2)(F)).

(m) That States will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 74.

Indian Tribe and Tribal Organization Application Requirements

The application from the Indian Tribe or Tribal organization must be signed by the Chief Executive Officer of the Indian Tribe or Tribal organization and must contain the following information and assurances:

(1) The name of the organization or agency designated as responsible for the administration of the programs and activities related to family violence carried out under the Act and for coordination of related programs (section 303(a)(2)(D)).

(2) A statement that the applicant has obtained the authority to submit an application on behalf of the Indian individuals in the Tribe(s) (section 303(a)(2)(G)).

(3) The procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(a)(2)(C)).

(4) A brief description of how the Indian Tribe or Tribal organization plans to use the grant funds to prevent incidents of family violence and to provide immediate shelter and related assistance to victims of family violence and their dependents (section 303(a)(2)(G)).

(5) The following assurances:

(a) That not less than 60% of the funds shall be used for immediate shelter and related assistance (section 303(g)).

(b) That no funds under the Act will be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(c) That no income eligibility standard will be applied to individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(d) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(e) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written autorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(f) That Indian grantees will comply with Department recordkeeping and reporting requirements and general grant administration requirements of 45 CFR Part 74.

Additional information

As a part of the legislative history for these Amendments, the Conference Report (H.R. Rep. No. 1038, 98th Cong., 2nd Sess., page 30, 1984) contained a statement of Congressional concern regarding a number of programmatic issues for this program. In order to share all available information with States for this new program, we have paraphrased the language of the Conference Report as follows:

> States may wish to consider giving priority to applicants in communities currently without a family violence prevention program or who can demonstrate that current services or programs are inadequate to meet the needs of the community.

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States and Indian tribes are also encouraged to coordinate at all levels of service delivery with other public and private programs; and to include personnel with appropriate skills training, and experience in the administration of the programs and projects funded. We also suggest that recipients of funds under this title should take all reasonable steps to facilitate the reconciliation, where possible, of spouses and the family. In that regard we believe it would be inappropriate for demonstration grant recipients that provide temporary shelter for abused spouses to require a minimum length of stay for shelter residents, to censor mail or telephone calls of shelter residents, or to interfere with reconciliation efforts unless requested to do so by the resident.

Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally recognized Indian Tribes are exempt from the provisions and requirements of E.O. 12372.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0980–0175.

State Allocations: Family Violence Prevention and Services Act

Alabama	$111,280
Alaska	50,000
American Samoa	8,918
Arizona	85,154
Arkansas	65,518
California	714,649
Colorado	88,041
Connecticut	87,971
Delaware	50,000
District of Columbia	50,000
Florida	306,142
Georgia	162,805
Guam	8,918
Hawaii	50,000
Idaho	50,000
Illinois	321,084
Indiana	153,350
Iowa	81,166
Kansas	68,001
Kentucky	103,842
Louisiana	124,454
Maine	50,000
Maryland	121,302
Massachusetts	161,718
Michigan	253,120
Minnesota	116,080
Mississippi	72,483
Missouri	139,683
Montana	50,000
Nebraska	50,000
Nevada	50,000
New Hampshire	50,000
New Jersey	209,808
New Mexico	50,000
New York	494,684
North Carolina	171,954
North Dakota	50,000
No. Mariana Islands	8,918
Ohio	299,894
Oklahoma	91,988
Oregon	74,563
Pennsylvania	331,942
Puerto Rico	90,958
Rhode Island	50,000
South Carolina	92,049
South Dakota	50,000
Tennessee	131,568
Texas	445,965
Palau [1]	8,918
Utah	50,000
Vermont	50,000
Virgin Islands	8,918
Virginia	157,199
Washington	121,302
West Virginia	54,445
Wisconsin	132,933
Wyoming	50,000
Total	7,134,050

[1] Replaces Trust Territory of the Pacific Islands.

Indian Tribal Eligibility

Based on BIA data, below are two lists of Indian Tribes (or in one instance, a consortium of Tribes) which have FY 1985 contracts with the BIA to provide social services. Tribes are listed by BIA Area Office based on Census Bureau population data or, where that is not available, BIA data.

Tribes Under 3,000 Population

Eastern Area Office

Houlton Bank of Maliseet Indians of Maine
Indian Township Passamaguoddy Reservation of Maine
Miccosukee Tribe of Indians of Florida
Mississippi Band of Choctaw Indians, Mississippi
Narragansett Indian Tribe of Rhode Island
Penobscot Tribe of Maine
Pleasant Point Passamaguoddy Reservation of Maine
Seminole Tribe of Florida

Aberdeen Area Office

Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Devil's Lake Sioux Tribe of the Devil's Lake Sioux Reservation, North Dakota
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Yankton Sioux Tribe of South Dakota

Minneapolis Area Office

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
Menominee Indian Tribe of Wisconsin
Michigan Inter-Tribal Council on behalf of:
  Bay Mills Indian Community
  Hannahville Indian Community
  Keweenah Bay Indian Community
  Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Michigan
  Sault Saint Marie Tribe of Chippewa Indians of Michigan

Anadarko Area Office

Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Indian Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Wichita Indian Tribe of Oklahoma

Billings Area Office

Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana

Phoenix Area Office

Cocopah Tribe of Arizona
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Elko Band Council
Ft. McDermitt Paiute and Shoshone Tribes of the Ft. McDermitt Indian Reservation, Nevada
Ft. McDowell Mohave-Apache Indian Community, Arizona
Ft. Mojave Indian Tribe of Arizona
Hualapai Tribe of the Hualapai Reservation, Arizona
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Paiute Indian Tribe of Utah
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pascua Yaqui Tribe of Arizona
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quechan Tribe of the Ft. Yuma Indian Reservation, California
Reno-Sparks Indian Colony, Nevada
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada

Te-Moak Bands of Western Shoshone Indians, Nevada
Ute Indian Tribe of the Unitah and Ouray Reservation, Utah
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada and California
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch

Albuquerque Area Office

Jicarilla Apache Tribe, New Mexico
Pueblo of Acoma, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Zia, New Mexico
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Ute Mountain Tribe of the Ute Reservation, Colorado, New Mexico and Utah

Portland Area Office

Burns Paiute Indian Colony, Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation, Oregon
Kootenai Tribe of Idaho
Metlakatla Indian Community, Alaska
Nez Perce Tribe of Idaho
Quinault Tribe of the Quinault Reservation, Washington
Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho

Juneau Area Office

Fairbanks Native Association, Alaska
Ketchikan Indian Corporation, Alaska
Kuskokwim Native Association, Alaska
Orutsaramuit Native Council, Alaska
Sitka Community Association, Alaska
Tanana Indian Reorganization Act Council, Alaska
United Crow Band, Alaska

Tribes Over 3,000 Population

Eastern Area Office

Eastern Band of Cherokee Indians of North Carolina

Muskogee Area Office

Cherokee Nation of Oklahoma

Aberdeen Area Office

Oglala Sioux Tribe of the Pine River Reservation, South Dakota
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Standing Rock Sioux Tribe of the Standing Rock Reservation, North and South Dakota
Turtle Mountain Band of Chippewa Indians, Turtle Mountain Indian Reservation, North Dakota

Billings Area Office

North Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

Phoenix Area Office

Gila River Pima-Maricopa Indian Community of the Gila River Reservation, Arizona
Hopi Tribe of Arizona
Papago Tribe of the Sells, Gila Bend and San Xavier Reservations, Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona

Navajo Area Office

Navajo Tribe of Arizona, New Mexico and Utah

Albuquerque Area Office

Pueblo of Laguna, New Mexico
Zuni Tribe of the Zuni Reservation, New Mexico

Portland Area Office

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Colville Reservation, Washington

Juneau Area Office

Association of Village Council Presidents, Alaska
Central Council of the Tlingit and Haida Indians of Alaska
Tanana Chiefs Conference, Alaska

Dated: February 20, 1986.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

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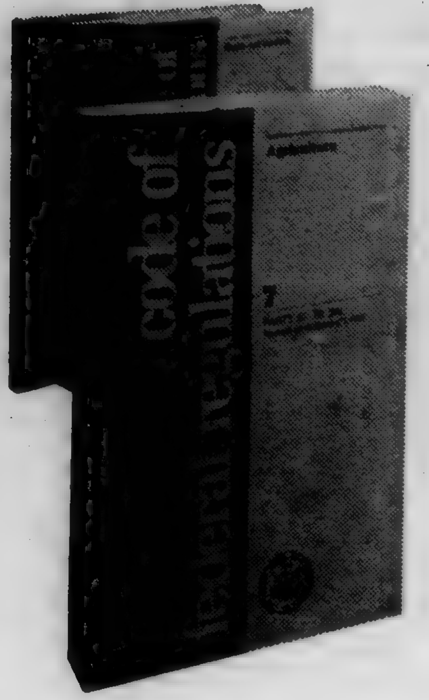

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Rules and Regulations

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 216

Defense Priorities and Allocations System

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is amending the regulation in accordance with the newly established Defense Priorities and Allocations System by the Department of Commerce (15 CFR Part 350).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT:

Gilbert J. Breer, Property and Equipment Management Division (MA-422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-4920
Elliot Winnick, Office of the AGC for Procurement and Financial Incentives, GC-43, Washington, DC 20585, (202) 252-1526

SUPPLEMENTARY INFORMATION: DOE finds that advance notice and comment, which are generally required by the Administrative Procedure Act, are unnecessary for this technical amendment. This finding is based on the fact that the changes are limited to procedural guidance and that the changes will not adversely affect the public or impose any additional burden on the public.

As a result, the following sections are affected: The "Authority," is revised by removing the outdated authority citation and inserting the new authority citation. Revise section 216.1, "Introduction," paragraph (a) by adding a new sentence between the fourth and last sentence; paragraph (c) is amended by removing "Defense Materials System ("DMS") and the Defense Priorities System ("DPS") established by the Department of Commerce.", and inserting in its place "Defense Priorities and Allocations System ("DPAS") regulation established by the Department of Commerce, 15 CFR Part 350." Section 216.2, "Definitions," paragraphs (e) and (h) are revised by removing the definitions for "BDC" and "FPA" and inserting in their places the definitions for "DOC" and "FEMA," respectively. Section 216.3, "Requests for assistance," paragraph (a), introductory text, is amended by revising the second sentence by removing the out-of-date mailing address for applications and inserting the correct mailing address; paragraph (a)(11) is amended by removing "DMS Regulation 1" and inserting in its place "the DPAS Regulation, Section 350.31(e)(2)"; paragraph (b) is amended by removing "BDC" and inserting in its place "DOC." Section 216.5 paragraphs (a) and (b) are amended by removing "BDC" and inserting in its place "DOC"; paragraph (b) is further amended by removing "DMS Regulation 1 and DPS Regulation 1" and inserting in its place "the DPAS Regulation,". Section 216.6, "Petition for reconsideration," is amended by removing "216.9" and inserting in its place "216.8." Section 216.7, "Conflict of priority orders," is amended by removing "BDC" and "FPA" and inserting in their places "DOC" and "FEMA," respectively. Section 216.8, "Communications," is amended by revising the address, communications are addressed to.

List of Subjects in 10 CFR Part 216

Energy, Maximize domestic energy supplies, Government contracts.

For reasons set out in the preamble, Chapter II to Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on March 5, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES

1. The authority citation for Part 216 is revised to read as follows:

Authority: Section 104 of the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, 89 Stat. 871; and section 101(c) of the Defense Production Act of 1950 (DPA) (50 U.S.C. App. 2071(c)), as amended; section 7, E.O. 11912, April 13, 1976; Defense Mobilization Order No. 13, September 22, 1976; 44 CFR Part 330; Defense Priorities and Allocations System Delegation No. 2, 49 FR 30430.

2. In § 216.1, paragraph (a) is amended by adding a sentence between the fourth and last sentence, and by revising the last sentence of paragraph (c) to read as follows:

§ 216.1 Introduction.

(a) * * *Delegation No. 4 was superseded by Defense Priorities and Allocations System Delegation No. 2, effective date August 29, 1984, 49 FR 30430. * * *

* * * * *

(c) * * * If these additional two findings are made, the Department of Commerce will notify DOE, and DOE will inform the applicant that it has been granted the right to use priority ratings under the Defense Priorities and Allocations System ("DPAS") regulation established by the Department of Commerce, 15 CFR 350.

3. Section 216.2 is amended by revising paragraphs (e) and (h) to read as follows:

§ 216.2 Definitions.

* * * * *

(e) "DOC" means the Department of Commerce, acting through the Secretary or the delegate of the Secretary.

* * * * *

(h) "FEMA" means the Federal Emergency Management Agency.

* * * * *

4. Section 216.3 is amended by revising the second sentence of paragraph (a) introductory text; by revising paragraph (a)(11); and by revising paragraph (b) to read as follows:

§ 216.3 Requests for assistance.

(a) * * * The application should be sent to: Department of Energy, Procurement and Assistance Management Directorate, Attn: MA-422, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585. * * *

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(11) Quarterly estimates of requirements for controlled materials, if applicable, by shapes and forms as prescribed by the DPAS regulation. § 350.31(e)(2).

(b) DOE, on consultation with the DOC, may prescribe standard forms of application or letters of instruction for use by all persons seeking assistance.

* * * * *

§ 216.5 [Amended]

5. Section 216.5 paragraphs (a) and (b) are amended by removing "BDC" and inserting in its place "DOC"; paragraph (b) is further amended by removing "DMS Regulation 1 and DPS Regulation 1," and inserting in its place "the DPAS Regulation,".

§ 216.6 [Amended]

6. Section 216.6 is amended by changing the reference "216.9" to read "216.8" in the third sentence.

§ 216.7 [Amended]

7. Section 216.7 is amended by removing "BDC" and inserting "DOC" in its place, and removing "FPA" and inserting in its place "FEMA."

8. Section 216.8 is amended by revising the DOE mailing address to read as follows:

§ 216.8 Communications.

* * * * *

Department of Energy, Procurement and Assistance Management Directorate, Attn: MA–422, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

[FR Doc. 86–5151 Filed 3–10–86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9133]

Boise Cascade Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order requires a Boise, Idaho distributor of office products to cease accepting from any supplier a net price for office products that is lower than the price at which the supplier sells the products to other retailers with whom respondent competes. The Commission ruled that respondent violated the Robinson-Patman Act by knowingly receiving wholesaler discounts on goods it sold at retail in competition with other dealers.

DATES: Complaint issued April 23, 1980. Final Order issued Feb. 11, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Harold E. Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., Room 1000, Atlanta, GA 30367. (404) 347–4836.

SUPPLEMENTARY INFORMATION: In the Matter of Boise Cascade Corporation, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Discriminating In Price Under section 2, Clayton Act—Knowingly Inducing or Receiving Discriminating Price Under 2(f): § 13.855 Inducing and receiving discriminations. Subpart—Discrimination in Price Under Section 5, Federal Trade Commission Act: § 13.892 Knowingly inducing or receiving discriminating payments.

List of Subjects in 16 CFR Part 13

Office products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Before Federal Trade Commission

Final Order

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the matter of Boise Cascade Corp., a corporation.

[Docket No. 9133]

This matter has been heard by the Commission upon the appeal of respondent from the Initial Decision, and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to affirm the Initial Decision. Accordingly, the appeal of Boise Cascade Corporation is denied, and

It is ordered that the following order to cease and desist be, and the same hereby is, entered:

I

The following definitions shall apply in this order:

A. "Boise Cascade" shall mean Boise Cascade Corporation, its divisions and subsidiaries, its officers, directors, agents and employees, and its succesors and assigns.

B. "Office Products" shall mean furniture and supplies commonly used in offices such as those which are sold or distributed by Boise Cascade Corporation's Office Products Division.

C. "Net Price" shall take into account all discounts, rebates, allowances, deductions or other terms and conditions of sale.

II

It is further ordered that Boise Cascade shall, in connection with the offering to purchase or purchasing in commerce, as "commerce" is defined in the Clayton Act, of office products for resale, cease and desist from directly or indirectly inducing, receiving or accepting from any seller a net price that Boise Cascade knows or has reason to know is below the net price at which office products of like grade and quality are being offered or sold by such seller to other purchasers with whom Boise Cascade is competing in the resale or distribution of said office products to end-users.

III

It is further ordered that Boise Cascade shall, within sixty (60) days of the effective date of this order, distribute a copy of this order to each of its suppliers of office products.

IV

It is further ordered that Boise Cascade shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Boise Cascade, such as the creation or dissolution of subsidiaries or divisions, or any other change in the corporation, which may affect compliance obligations arising out of the order.

V

It is further ordered that Boise Cascade shall, within ninety (90) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner in which it has complied with this order and shall file such other reports as the Commission may from time to time require to assure compliance with the terms and conditions of this order.

Issued: February 11, 1986.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86–5226 Filed 3–10–86; 8:45 am]

BILLING CODE 6750-01-M

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[1] Copies of the Complaint, Initial Decision and Opinion of the Commission are filed with the original documents.

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16 CFR Part 13

[Docket 9183]

The Electrical Bid Registration Service of Memphis, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order requires a Memphis, Tenn. bid depository set up by electrical subcontractors to cease taking disciplinary action against firms that negotiate prices after bidding is closed or that accept a contract at a price other than that filed with the registry. Additionally, respondents may not require firms using the registry to deal only with other registry participants and cannot restrict in any way negotiations between electrical subcontractors and general contractors. Further, respondents are required to reinstate any firm it suspended for violation of the illegal rules and remove the illegal provisions from its by-laws or other rules.

DATES: Complaint issued Aug. 6, 1984. Final Order issued Feb. 12, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Truett Honeycutt, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., Room 1000, Atlanta, GA 30367. (404) 347–4836.

SUPPLEMENTARY INFORMATION: In the Matter of The Electrical Bid Registration Service of Memphis, Inc., a corporation, and C.H. Dennis, Jr., individually and as an officer and director of said corporation, and James L. Overton, Wayne A. Allen, and Jack Gross, individually and as directors of said corporation, and The National Electrical Contractors Association, Memphis Chapter, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.367 Members. Subpart—Combining or Conspiring: § 13.388 To control allocation and solicitation of customers; § 13.390 To control employment practice; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–60 Release of general, specific or contractual constrictions, requirements, or restraints. Subpart—Cutting Off Access To Customers or Market: § 13.570 Interfering with competitors' bids or price quotations; § 13.580 Organizing and controlling seller-suppliers.

List of Subjects in 16 CFR Part 13

Electrical subcontractors, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9183]

Final Order

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of The Electrical Bid Registration Service of Memphis, Inc., a corporation, and C.H. Dennis, Jr., individually and as an officer and director of said corporation, and James L. Overton, Wayne A. Allen, and Jack Gross, individually and as directors of said corporation, and the National Electrical Contracters Assoc., Memphis Chapter, a corporation.

The Administrative Law Judge filed his Initial Decision in this matter on November 21, 1985, finding the corporate respondents Electrical Bid Registration Service of Memphis, Inc., and National Electrical Contractors Association, Memphis Chapter, Inc. to have violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by engaging in acts and practices as alleged in the complaint.

On December 11, 1985, the Respondents filed a notice of their intention to appeal the Initial Decision. That notice was withdrawn on January 10, 1986. Counsel Supporting the Complaint filed a notice of intention to appeal the Initial Decision on December 13, 1985, but withdrew their notice on January 8, 1986.

The Commission has determined that the case should be placed on its own docket for review and that the Initial Decision, with the exception of Finding 56 and the associated discussion, should become effective as the decision of the Commission. Accordingly,

It is ordered that the Initial Decision, except as noted above, and the Order contained therein shall become effective on February 12, 1986.

By the Commission. Acting Chairman Calvani would not have placed this matter on the Commission's docket for review and would have allowed the Initial Decision in its entirety to become effective as provided in § 3.51(a) of the Commission's Rules. The Commission having determined to take this procedural step, he concurs in the issuance of the Order contained in the Initial Decision.

Issued: February 12, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86–5229 Filed 3–10–86; 8:45 am]

BILLING CODE 6750-01-M

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[1] Copies of the Complaint and Initial Decision are filed with the original documents.

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16 CFR Part 13

[Docket No. C-3182]

Health Care Management Corp. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Columbus, Ga. owner and operator of North Mobile Community Hospital near Mobile, Ala., and the hospital's medical staff, among other things, to cease imposing unlawful restrictions relating to the practice of podiatry at the hospital. The hospital and its staff are prohibited from imposing such restrictions by not enacting any bylaw or policy that would have the effect of: (1) Coercing or intimidating any staff member not to co-admit podiatrists' patients; (2) Requiring an amount of residency training for podiatrists that is not reasonably related to legitimate quality-of-care grounds; or (3) Prohibiting podiatrists with hospital privileges from attending medical staff meetings.

DATE: Complaint and Order issued Feb. 20, 1986[1].

FOR FURTHER INFORMATION CONTACT: Paul K. Davis, Director, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Atlanta, GA 30367 (404) 881–4836.

SUPPLEMENTARY INFORMATION: On Tuesday, Oct. 15, 1985, there was published in the Federal Register, 50 FR 41693, a proposed consent agreement with analysis In the Matter of Health Care Management Corporation, a corporation, and Medical Staff of North Mobile Community Hospital, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair or unlawful act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.405 To discriminate unfairly or restrictively, in general; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Hospital privileges, Podiatrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–5225 Filed 3–10–86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C–3181]

Sunbeam Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Pittsburgh, Pa. marketer of Oster brand air cleaners, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants. Additionally, respondent is required to have competent and reliable substantiation for all future claims about its products' efficacy.

DATE: Complaint issued Feb. 11, 1986. Order issued Feb. 11, 1986 [1].

FOR FURTHER INFORMATION CONTACT: Janet Grady, Director, San Francisco Regional Office, Federal Trade Commission, Room 12470, Box 36005, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 29, 1985, there was published in the **Federal Register**, 50 FR 49058, a proposed consent agreement with analysis In the Matter of Sunbeam Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.05–5 Knowingly by advertising agent; § 13.170 Qualities or properties of product or service; § 13.170–16 Cleansing, purifying; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–5228 Filed 3–10–86; 8:45 am]

BILLING CODE 6750-01-M

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 86–57]

Customs Regulations Amendment Relating to Textiles and Textile Products

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the importation of textiles and textile products into the U.S. Due to recent changes in the Tariff Schedules of the United States resulting from Presidential Proclamation 5365, dated August 30, 1985, effectuating the U.S.-Israel Free Trade Area agreement, certain general headnotes upon which portions of the Customs Regulations are predicated no longer exist. Accordingly, this document revises the Customs Regulations to reflect those changes.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Phil Robins, Classification and Value Division (202–566–8181);

Operations Aspects: Bill Marchi, Duty Assessment Division (202–566–2957); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

By T.D. 85–38, published in the **Federal Register** on March 5, 1985 (50 FR 8710), § 12.130, Customs Regulations (19 CFR 12.130), was amended to provide specific regulatory authority mandating that "country of origin" rules be applied in determining whether textiles or textile products are subject to any of the multilateral or bilateral textile agreements negotiated by the U.S. pursuant to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Section 12.130(a), Customs Regulations, now states that textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise subject to General Headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E) of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). In addition, § 12.130(f), Customs Regulations, states that all importations of textiles and textile products covered by General Headnotes 3(g)(iii)(C)(2) or 3(g)(iii)(E), TSUS, shall be accompanied by the appropriate declaration(s) of the manufacturer, producer, exporter or

importer of the textiles or textile products.

Pursuant to the U.S.-Israel Free Trade Area (FTA) agreement, which became effective September 1, 1985, certain changes were made to the TSUS; including the deletion of General Headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E).

The FTA agreement is a program providing for free or reduced rates of duty for merchandise from Israel to stimulate trade between Israel and the U.S. This program was authorized by §§ 401–405 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) and implemented by the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note) and Presidential Proclamation 5365 of August 30, 1985, published in the **Federal Register** on September 5, 1985 (50 FR 36220). On January 1, 1995, all currently eligible reduced rate importations from Israel will be accorded duty-free treatment.

The deletion of the above mentioned general headnotes from the TSUS necessitates their deletion from § 12.130. These are nonsubstantive changes which will merely conform the Customs Regulations to the TSUS.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), do not apply.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as this amendment merely conforms the Customs Regulations to the TSUS, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Drafting Information

The principal author of the document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Textile products and apparel.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows. All other statutory authority cited at the end of various sections in Part 12 remains the same.

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

2. Paragraph (a) and the introductory text of paragraph (f) of § 12.130 are revised to read as follows:

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is classifiable under the provisions contained in Schedule 3, Subpart 6D of Schedule 6, Part 1 of Schedule 7, and Subparts 4A, 5D, 5E, 7B, 12C, and 13B of Schedule 7 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202); provided that such merchandise:

(1) Is in chief value of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof; or

(2) Contains 50 percent or more by weight of cotton or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement; or

(3) Contains 17 percent or more by weight of wool; or

(4) If in chief value of textile fibers or textile materials, contains a blend of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof, which fibers, in the aggregate amount to 50 percent or more by weight of all component fibers.

* * * * *

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. Textiles or textile products subject to section 204 include that merchandise described in § 12.130(a). All importations of textiles and textile products not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s)

* * * * *

Approved: February 24, 1986.

William Von Raab,

Commissioner of Customs.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–5216 Filed 3–10–86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Dichlorophene and Toluene Capsules

Correction

In FR Doc. 85–28631 appearing on page 49537 in the issue of Tuesday, December 3, 1985, make the following correction: The Effective Date should read "December 13, 1985".

BILLING CODE 1505-01-M

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21 CFR Part 579

[Docket No. 84F–0441]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Laboratory Animal Diets

Correction

In FR Doc. 86–3501 beginning on page 5992 in the issue of Wednesday, February 19, 1986, make the following correction on page 5993 in the first column:

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In the regulatory text, the section heading "§ 570.22" should read "§ 579.22".

BILLING CODE [illegible]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R–86–1277; FR–2229]

Mortgage Insurance, Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 10.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 4166) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs—Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before March 3, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before March 3, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after March 3, 1986, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new

rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: February 28, 1986.

Susan K. Zagame,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86–5278 Filed 3–10–86; 8:45 am]

BILLING CODE 4210–27–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–8

[FIRMR Amdt. 6]

Implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), and Joint FIPS/FED–STDS in the FIRMR

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates implementation provisions for a number of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), and Joint Federal Information Processing Standards/Federal Telecommunications Standards (FIPS/FED–STDS) to provide associated standard terminology that shall be used in solicitation documents, including requirements documents, where the standard is applicable. Some general language has been added to more fully explain the kinds and purpose of standards and how copies may be obtained. Additionally, clarification has been added to explain that if a FIPS waiver or FED–STD exception is obtained, a deviation from the FIRMR is not required. The intended effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing/telecommunications equipment and services.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch (KMPP), Information Resources Management Service, telephone (202) 566–0194 or FTS 566–0194.

SUPPLEMENTARY INFORMATION: (1) Among the changes is an update of FIPS PUB 1–1 to FIPS PUB 1–2 which consolidates FIPS PUBS 1–1, 7, 15, 35, and 36. FIPS PUB 1–2 specifies the codes and character sets for use in Federal information processing systems, communication systems, and associated equipment. This consolidation reduces the number of closely related FIPS PUBS in the family of standards based upon the voluntary American National Standard Code for Information Interchange. Other revisions implement new FIPS PUB 2–1, 8–5, and 33–1. FIPS PUBS 107, 108, and 111 and FED–STDS 1015, 1026 and 1028 are also implemented. FIPS PUB 98 is suspended indefinitely with the implementing text being removed with a note of explanation.

(2) The changes being made by this issuance are explained in the following paragraphs.

a. Section 201–8.100–1 is revised to explain more completely what is provided in the standards index.

b. Section 201–8.101–1 is revised to separate regulatory coverage on implementation of standards from that of deviations.

c. Section 201–8.101–2 is amended to state that if a waiver is obtained from the use of an individual FIPS, a FIRMR deviation is not required. Also, a statement is added that if specifications for waiver approval are not included in the FIPS, waiver approval responsibility rests with the head of the agency.

d. Section 201–8.101–3 is amended to state that if an exception is obtained from the use of an individual FED–STD, a deviation from the FIRMR is not required.

e. Section 201–8.101–4 is added to provide separate coverage of deviations from that of standards implementation and to state that if a waiver or exception is obtained from the use of an individual standard, a deviation from the FIRMR is not required.

f. Section 201–8.102 is amended to advise agencies that Federal standards for information resources are issued under authorities and procedures set forth in this section.

g. Section 201–8.102–1 is amended to advise agencies that FIPS PUBS fall into two general categories, FIPS PUB Standards and FIPS PUB Guidelines. It further advises that qualifications concerning use and special implementing information are explained where applicable in the FIPS PUBS.

h. Section 201–8.102–2 is revised to state that FED–STDS are developed by the National Communication System under delegation from GSA. It also advises DoD activities and contractors how and where they may obtain copies of the standards.

i. Section 201–8.103 is revised to replace MIL–STD–188–120 with FED–STD 1037 as the official authority for Federal telecommunications standards terms and definitions.

j. Section 201–8.104 is amended to provide that if a FIPS PUB is waived or a FED–STD is expected relative to a specific requirement, the agency is not required to apply the standard to the acquisition nor is a deviation from the FIRMR required.

k. Section 201–8.105–1 is revised to reflect that FIPS PUB 1–1 has been updated to FIPS PUB 1–2 by consolidating and superseding FIPS PUBS 1–1, 7, 15, 35, and 36.

l. Section 201–8.105–2 is revised to reflect that FIPS PUB 2 is being updated to FIPS PUB 2–1 by superseding FIPS PUB 7. FIPS PUB 7 was referred to in FIPS PUB 2 as a future FIPS PUB and was subsequently developed to provide relevant implementation guidance for FIPS PUB 2.

m. Section 201–8.105–4 is revised and reserved reflecting the deletion of FIPS PUB 7 that is superseded by FIPS PUB 1–2.

n. Section 201–8.105–7 is revised and reserved reflecting the deletion of FIPS PUB 15 which is superseded by FIPS PUB 1–2.

o. Section 201–8.105–12 is revised to reflect that FIPS PUB 33 is being updated to FIPS PUB 33–1 by replacing American National Standard Institute X3.45–1974, Character Set for Handprinting, with X3.45–1982, Character Set for Handprinting. The updated standard incorporates editorial and technical modifications that are not substantive.

p. Section 201–8.105–13 is revised and reserved reflecting the deletion of FIPS PUB 35 that is superseded by FIPS PUB 1–2.

q. Section 201–8.105–14 is revised and reserved reflecting the deletion of FIPS PUB 36 that is superseded by FIPS PUB 1–2.

r. Section 201–8.105–18 is revised to change the reference to FIPS PUB 1–1 to FIPS PUB 1–2.

s. Section 201–8.105–30 is revised to change references to FIPS PUB 1–1 to FIPS PUB 1–2 and delete references to FIPS PUB 35.

t. Sections 201–8.105–31 and 201–8.105–32 are amended to remove the words, "Federal Standard," from the sections' captions.

u. Section 201–8.105–33 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2.

v. Section 201–8.105–35 is added by incorporating FIPS PUB 107, Local Area Networks: Baseband Carrier Sense

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Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol.

w. Section 201–8.105–36 is added by incorporating FIPS PUB 108, Alphanumeric Computer Output Microform Quality Test Slide.

x. Section 201–8.105–37 is added by incorporating FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

y. Section 201–8.106–6 is revised by deleting the existing text, reserving the section, and adding a note to explain that implementation of FIPS 98, Message Format for Computer Based Message Systems, has been suspended indefinitely pending its revision.

z. Sections 201–8.107–1, 201–8.107–2, and 201–8.107–3 are amended to remove the words, "Federal Standard," from the sections' captions.

aa. Section 201–8.109 is amended to state that if the entire Federal Standard language specification has been waived, no compiler validation is required for that acquisition.

bb. Section 201–8.110–1 is amended to revise paragraph (b) that updates FIPS PUB 8–4 to FIPS PUB. 8–5 and add to its title the parenthetical, "(Including CMSAs, PMSAs and NECMAs)."

cc. Section 201–8.112–8 is added to incorporate FED–STD 1015, Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding.

dd. Section 201–8.112–12 is revised to add FED–STD 1026, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications.

ee. Section 201–8.112–14 is revised by relocating coverage on FED–STD 1030A to Section 201–8.112–16 and replacing it with coverage on FED–STD 1028.

ff. Section 201–8.112–16 is revised by relocating coverage on FED–STD 1061 to Section 201–8.112–25 and replacing it with coverage on FED–STD 1030A.

gg. Section 201–8.112–17 is revised by relocating coverage on FED–STD 1062 to Section 201–8.112–26 and reserving this section.

hh. Section 201–8.112–18 is revised by relocating coverage on FED–STD 1063 to Section 201–8.112–27 and reserving this section.

ii. Section 201–8.112–19 through 201–8.112–24 are established and reserved.

jj. Section 201–8.112–25 is established to relocate the coverage on FED–STD 1061.

kk. Section 201–8.112–26 is established to relocate the coverage on FED–STD 1062.

ll. Section 201–8.112–27 is established to relocate the coverage on FED–STD 1063.

mm. Section 201–8.113–2 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2.

nn. Section 201–8.113–3 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2.

oo. Section 201–8.113–4 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2 and delete the reference to FIBS PUB 15.

(2) The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management, acquisition, and use regulation that will have little or no net cost effect on society.

Lists of Subjects in 41 CFR Chapter 201

Computer technology, Telecommunications, Information resources activities, Standards for information resources.

Chapter 201 of Tile 41 of the Code of Federal Regulation is amended as set forth below.

PART 201-8—IMPLEMENTATION AND USE OF FEDERAL STANDARDS

1. The table of contents for Part 201–8 is changed by amending, reserving, or adding the following entries and the authority citation for the part continues to read as follows:

201–8.100–1 Standards Index.
201–8.101–1 Implementation.
201–8.101–4 Deviations.
201–8.105–4 [Reserved]
201–8.105–7 [Reserved]
201–8.105–13 [Reserved]
201–8.105–14 [Reserved]
201–8.105–31 FIPS PUB 89, Optical Character Recognition (OCR) Character Positioning.
201–8.105–33 FIPS PUB 91, Magnetic Tape Cassettes for Information Interchange, Dual Track, Complementary Return-to-Bias (CRB) Four-States Recording on 3.81 mm (0.150 in) Tape.
201–8.105–35 FIPS PUB 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol.
201–8.105–36 FIPS PUB 108, Alphanumeric Computer Output Microform Quality Test Slide.
201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).
201–8.106–6 [Reserved]
201–8.107–1 FIPS PUB 21–1, COBOL.
201–8.107–2 FIPS PUB 68, Minimal BASIC.
201–8.107–3 FIPS PUB 69, FORTRAN.
201–8.112–8 FED–STD 1015, Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding.
201–8.112–12 FED–STD 1026, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications.
201–8.112–14 FED–STD 1028, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment Communications.
201–8.112–16 FED–STD 1030A, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits.
201–8.112–17 [Reserved]
201–8.112–18 [Reserved]
201–8.112–19 [Reserved]
201–8.112–20 [Reserved]
201–8.112–21 [Reserved]
201–8.112–22 [Reserved]
201–8.112–23 [Reserved]
201–8.112–24 [Reserved]
201–8.112–25 FED–STD 1061, Group 2 Facsimile Apparatus for Document Transmission.
201–8.112–26 FED–STD 1062, Group 3 Facsimile Apparatus for Document Transmission.
201–8.112–27 FED–STD 1063, Telecommunications: Procedures for Document Facsimile Transmission.

Authority: Sec. 205(c), 63 stat. 390; 40 U.S.C. 486(c).

2. Section 201–8.100–1 is revised to read as follows:

§ 201.8.100–1 Standards Index.

GSA publishes periodically, usually annually, a handbook titled, the ADP and Telecommunications Standards Index. It provides guidance to agencies on the application of standards in the acquisition and use of ADP and telecommunications equipment and services. it specifies standard terminology for use in requirements documents, including solicitations, for each standard. The handbook also provides status on standards under development. Its availability and ordering information is provided through the issuance of a FIRMR bulletin.

3. Section 201–8.101–1 is revised to read as follows:

§ 201–8.101–1 Implementation.

Agencies shall implement Federal standards for the acquisition and use of automatic data processing and telecommunications equipment, services and related software as prescribed by this subpart.

4. Section 201–8.101–2 is revised to read as follows:

§ 201–8.101–2 Waiver to a Federal Information Processing Standard (FIPS).

Waiver procedures, together with exemption and waiver approval authority from the mandatory use of a specific FIP, are contained in each FIPS. If specifications for waiver approval are not included in the FIPS, waiver approval responsibility rests with the head of the agency. Exceptions, waiver authority approval, and criteria upon which to base exemptions and waiver approval are explained where applicable. For some standards, a waiver approval response from the Secretary of Commerce to an agency request for waiver is required before acquisition action can commence. If a waiver is obtained from the use of an individual FIPS, a deviation from the FIRMR is not required.

5. Section 201–8.101–3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 201–8.101–3 Exception to a Federal Telecommunication Standard (FED–STD).

(a) Exceptions to the mandatory use of a FED–STD required by this Subpart 201–8 may be granted by GSA only upon submission of adequate justification to GSA. If an exception is obtained from the use of an individual FED–STD, a deviation from the FIRMR is not required. Circumstances under which exceptions may be granted include, but are not limited to, the following—.

* * * * *

6. Section 201–8.101–4 is added to read as follows:

§ 201–8.101–4 Deviations.

Deviations to the implementation of standards as prescribed by this subpart shall be handled as provided in Subpart 201–1.4. If a waiver or exception is obtained from the use of an individual standard, a deviation from the FIRMR is not required.

7. Section 201–8.102 is revised to read as follows:

§ 201–8.102 Types of Federal standards.

Federal standards for information resources are adopted and issued under authorities and procedures set forth in the following subsections of this § 201–8.102. These standards are applied and implemented into Federal information resources activities by this Subpart 201.8.1 by GSA. Federal standards discussed in this part are categorized as Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), or as Joint Federal Information Processing and Federal Telecommunications Standards (FIPS/FED-STUDS). Each of these standard categories is described in detail below.

8. Section 201–8.102–1 is revised to read as follows:

§ 201–8.102–1 Federal Information Processing Standards Publications (FIPS PUBS).

(a) Federal Information Processing Standards Publications (FIPS PUBS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(f)), and Executive Order 11717, dated May 9, 1973 (38 FR 12315, May 11, 1973). FIPS PUBS, issued by the National Bureau of Standards (NBS,) fall into general categories, FIPS PUB Standards and FIPS PUB Guidelines. FIPS PUB Guidelines are informational documents whereas FIPS PUB Standards are mandatory.

(b) Qualifications concerning use and special implementing information are explained where applicable.

(c) Requests for FIPS PUBS (except for Department of Defense (DoD) activities and DoD contractors), including discounts for quantity orders, should be sent to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (Telephone (703) 487–4650 or FTS 737–4650).

(d) Requests for FIPS PUBS subscriptions should be sent to: Subscriptions, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (Telephone (703) 487–4630, or FTS 737–4630).

(e) Requests from Department of Defense (DoD) activities and DoD contractor, should be sent to: Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) Requests should include a complete mailing address.

(2) Requests from DoD contractors must include the solicitation or contract number where applicable.

(3) List requested documents in alphabetical order and indicate quantity of each document.

(4) Telephone requests may be made by calling (215) 697–3321 or AUTOVON 442–3321.

9. Section 201–8.102–2 is revised to read as follows:

§ 201–8.102–2 Federal Telecommunications Standards (FED-STDS).

(a) Federal Telecommunications Standards (FED-STDS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 206 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 390, as amended (40 U.S.C. 487). These Federal publications are issued by GSA and collectively constitute the Federal Supply Class (FSC) of "Telecommunications" in the Federal Standards Index. These standards are developed by the National Communications System under delegation from the GSA.

(b) Federal agencies may obtain one copy of each FED-STD free of charge. Copies are available to the public on a cost-reimbursable basis. Requests for these publications, specifying the FED-STD number, should be sent to: General Services Administration (WFSI), Washington, DC 20407 (Telephone (202) 472–2205 or FTS, 472–2205).

(c) Requests from Department of Defense (DoD) activities and DoD contractors, should be sent to: Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) Requests should include a complete mailing address.

(2) Requests from DoD contractors must include the solicitation or contract number where applicable.

(3) List requested documents in alphabetical order and indicate quantity of each document.

(4) Telephone requests may be made by calling (215) 697–3321 or AUTOVON 442–3321.

10. Section 201–8.103 is revised to read as follows:

§ 201–8.103 Categories of Federal standards.

The following categories of Federal standards are implemented by this Subpart 201–8.1. For terms not defined in an individual FIPS PUB, see FIPS PUB 11–2, Guidelines: American National Standard Vocabulary for Information Processing Systems, available as indicated in § 201–8.102–1(d). Federal telecommunications standards terms and definitions are defined in FED–STD 1037, Glossary of Telecommunications Terms, available as indicated in § 201–8.102–2(d).

11. Section 201–8.104 is amended by revising paragraph (a) to read as follows:

§ 201–8.104 Application of Standards to requirements.

(a) FIPS PUBS and FED–STDS, unless waived or excepted, shall be applied to ADP and telecommunication acquisitions. Standard terminology for use in requirements documents, including solicitations for offers, is provided for each standard implemented

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by GSA in the subsections of this Subpart 201–8.1 entitled with FIPS PUB, FED–STD, or join FIPS/FED–STD numbers. When a FIPS PUBS is waived or a FED–STDS is excepted with respect to a specific requirement, the agency is not required to apply the standard to the acquisition. No deviation from the FIRMR is required (see §§ 201–8.101–2 and 201–8.101–3).

* * * * *

12. Section 201–8.105–1 is revised to read as follows:

§ 201–8.105–1 FIPS PUB 1–2, Code for Information Interchange, Its Representations, Subsets, and Extensions.

(a) FIPS PUB 1–2 promulgates the American National Standard Code for Information Interchange (ASCII) and specifies the code and character set for use in Federal information processing systems, communications systems, and associated equipment.

(b) The standard terminology for use in requirements documents, including solicitations, is:

ASCII System Requirements (DEC 85 FIRMR)

The system, upon receiving a hardware or software command, must accept data on magnetic tape, paper tape, or any other input/output media covered by an approved Federal Information Processing Standards Publication (FIPS PUB) in ASCII code and collating sequence prescribed in FIPS PUB 1–2 and in the format prescribed in FIPS PUBS 2–1, 3–1, 25, 50, or other applicable FIPS PUBS. Such data may be translated, if necessary, into a form that the equipment can internally process, provided that, upon receiving a hardware or software command, the equipment can produce processed data on magnetic tape, paper tape, printers, and other output media in the ASCII code and collating sequence prescribed in FIPS PUB 1–2 and in the format prescribed in FIPS PUBS 2–1, 3–1, 25, 50, or other applicable FIPS PUBS.

(End of requirement statement)

13. Section 201–8.105–2 is revised to read as follows:

§ 201–8.105–2 FIPS PUB 2–1, Perforated Tape Code for Information Interchange.

(a) FIPS PUB 2–1 specifies the representation of the ASCII code and format on perforated tape to be used in Federal information processing systems, communication systems, and associated equipment.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Punched Paper Tape Readers and Punches (DEC 85 FIRMR)

Punched paper tape equipment must be capable of reading and punching in the prescribed ASCII code and format specified in FIPS PUBS 1–2 and 2–1.

(End of requirement statement)

§ 201–8.105–4 [Reserved]

14. Section 201–8.105–4 is removed and reserved as follows:

§ 201–8.105–7 [Reserved]

15. Section 201–8.105–7 is removed and reserved as follows:

16. Section 201–8.105–12 is revised to read as follows:

§ 201–8.105–12 FIPS PUB 33–1, Character Set for Handprinting.

(a) FIPS PUB 33–1 announces the adoption of the American National Standard X3.45–1982, Character Set for Handprinting, as a Federal standard. The standard provides the description, scope, and application rules for a character set for handprinting.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Reading Handprinted Material (DEC 85 FIRMR)

All applicable Optical Character Recognition (OCR) equipment or services which result from this requirement and which are capable of reading handprinted material must comply with FIPS PUB 33–1. The applicable services include data preparation and processing of information represented in OCR form.

(End of requirement statement)

§ 201–8.105–13 [Reserved]

17. Section 201–8.105–13 is removed and reserved as follows:

§ 201–8.105–14 [Reserved]

18. Section 201–8.105–14 is removed and reserved as follows:

19. Section 201–8.105–18 is amended by revising paragraph (b) to read as follows:

§ 201–8.105–18 FIPS PUB 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (0.250 in), 63 BPMM (1600 BPI), Phase Encoded.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Recorded Characteristics—63 BPMM 6.30 mm Tape (DEC 85 FIRMR)

All magnetic tape cartridge recording and reproducing equipment which results from this requirement and employs 6.30 mm (0.250 in) wide magnetic tape with one, two, or four independent serial data tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUB 1–2 and FIPS PUB 52.

(End of requirement statement)

20. Section 201–8.105–30 is revised to read as follows:

§ 201–8.105–30 FIPS PUB 86, Additional Controls for Use With American National Standard Code for Information Interchange.

(a) FIPS PUB 86 specifies a set of encoded control functions to supplement the basic control functions defined in FIPS PUB 1–2 to facilitate data interchange between data processing equipment and two-dimensional, character-imaging, input-output devices.

(b) The architectural assumptions for devices for use with FIPS PUB 86 are contained in American National Standard X3.64–1979, which is part of the FIPS PUB.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Additional ASCII Controls for Character-Imaging ADP Equipment of Services (DEC 85 FIRMR)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting composers, word processors, and related devices or services using such devices) must comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1–2, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANSI X3.64–1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards and CRT displays or printers that may be used in any form of on-line interactive application or stand alone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified elsewhere in this document [*insert reference here*].

(End of requirement statement)

21. Section 201–8.105–31 is amended by revising the section heading to read as follows:

§ 201–8.105–31 FIPS PUB 89, Optical Character Recognition (OCR) Character Positioning.

* * * * *

22. Section 201–8.105–32 is amended by revising the section heading to read as follows:

§ 201–8.105–32 FIPS PUB 91, Magnetic Tape Cassettes for Information Interchange, Dual Track, Complementary Return-to-Bias (CRB) Four-States Recording on 3.81 mm (0.150 in) Tape.

* * * * *

23. Section 201–8.105–33 is amended by revising paragraph (b) to read as follows:

§ 201–8.105–33 FIPS PUB 93, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track 6.30 mm (0.250 in), 63 BPMM (1600 BPI), Phase Encoded.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Magnetic Tape Cartridge Equipment and Associated Software (DEC 85 FIRMR)

All magnetic tape cartridge recording and reproducing equipment which results from this requirement and employs 6.30 mm (0.250 in) wide magnetic tape with data recorded across four parallel tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUB 1–2 and FIPS PUB 93.

(End of requirement statement)

24. Section 201–8.105–35 is added to read as follows:

§ 201–8.105–35 FIPS PUB 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol.

(a) FIPS PUB 107 applies to local area networks that employ the carrier sense multiple access with collision detection (CSMA/CD) access method where compatibility with the architecture of the ISO Reference Model for Open Systems Interconnection is required. The standard provides the mechanical, electrical, functional and procedural specifications and the link protocol required to establish physical connections to transmit bits and to send data link frames between nodes of a local area network. The local area network spans a local area with a baseband coaxial cable of up to 2500 meters in length, transmitting at 10 megabits per second.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Local Area Network Equipment and Services Employing CSMA/CD (DEC 85 FIRMR)

All local area network services and equipment employing CSMA/CD which result from this requirement shall provide the capability to transmit bits and to send data link frames between nodes in compliance with the requirements set forth in FIPS PUB 107.

(End of requirement statement)

25. Section 201–8.105–36 is added to read as follows:

§ 201–8.105–36 FIPS PUB 108, Alphanumeric Computer Output Microform Quality Test Slide.

(a) FIPS PUB 108 provides information necessary for the preparation of a test form slide to ensure the generation of quality microforms by computers. It should be used for the acquisition of test form slides procured to verify and monitor the quality of microforms generated by alphanumeric computer output microform devices.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Test Form Slides for Computer Output Microform Devices (DEC 85 FIRMR)

All test form slides that verify and maintain the quality of microforms generated by computer output microform devices offered as a result of this requirement must comply with FIPS PUB 108.

(End of requirement statement)

26. Section 201–8.105–37 is added to read as follows:

§ 201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

(a) FIPS PUB 111 defines the mechanical, electrical, and functional requirements for attaching disk drives to their control unit. This resulting interface will facilitate the interconnection of disk drives and the control unit, as part of a storage module subsystem, providing a common interface specification for both controller and disk subsystems that are employed with small to medium sized computer systems which are generally excluded from the provisions of FIPS 60–2, 61–1, 63–1, and 97.

(b) This standard adopts American National Standard X3.91M–1982, Enhanced Storage Module Interfaces, and may be used as an alternative to FIPS 60–2, FIPS 61–1, and either FIPS 63–1 or FIPS 97 for those instances when FIPS 60–2 would otherwise be applicable. When FIPS 111 is employed, FIPS 60–2 need not be used. However, any waiver of FIPS 60–2 is also a waiver of FIPS 111.

(c) While it is not economical or practical to require extensive verification of storage module drives (SMD) products offered to the Government, procuring agencies may, at their option, require that correct operation of all interfaces conforming to FIPS 111 be verified through demonstration or other means acceptable to the Government prior to acceptance of applicable equipment. In special cases, NBS may assist agencies in evaluating conformance to the SMD interface. Arrangements for verification assistance can be made by contacting the Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

(d) The standard terminology for use in requirements documents including solicitations, is:

Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces) (DEC 85 FIRMR)

Unless a waiver is granted following the waiver procedures specified in FIPS PUB 111, or unless this requirement requires conformance with FIPS PUB 60–2, ADP systems and disk storage subsystems that may result from this requirement must conform to FIPS PUB 111. Waivers applicable to this requirements document are identified elsewhere in this document. At the option of the Government, the correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment.

(End of requirement statement)

27. Section 201–8.106–6 is removed and reserved and a note of explanation is added to read as follows:

§ 201–8.106–6 [Reserved]

Note.—The Secretary of Commerce has decided to suspend the implementation of FIPS 98, Message Format for Computer Based Message Systems, indefinitely pending its revision (see 50 FR 9480, March 8, 1985).

28. Section 201–8.107–1 is amended by revising the section heading to read as follows:

§ 201–8.107–1 FIPS PUB 21–1, COBOL.

* * * * *

29. Section 201–8.107–2 is amended by revising the section heading to read as follows:

§ 201–8.107–2 FIPS PUB 68, Minimal BASIC.

* * * * *

30. Section 201–8.107–3 is amended by revising the section heading to read as follows:

§ 201–8.107–3 FIPS PUB 69, FORTRAN.

* * * * *

31. Section 201–8.109 is amended by revising paragraph (c) to read as follows:

§ 201–8.109 Validation of compilers.

* * * * *

(c) Federal agencies shall use these test results to confirm that the compiler meets the language elements specifications of that Federal Standard. When an agency has indicated in a requirements document that a waiver applies to a Federal Standard language specification, only the portions of the language that have been waived are

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excluded from the validation requirements. If the entire Federal Standard language specification has been waived, there is no compiler validation requirement for that acquisition action.

* * * * *

32. Section 201–8.110–1 is amended by revising paragraph (b) to read as follows:

§ 201–8.110–1 FIPS PUBS applicable to the interchange of machine processable data between and among agencies.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Interchange of Machine Processable Data (DEC 85 FIRMR)

All application programs resulting from this requirement that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal agencies, State and local governments, industry, and the public must implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4, Calender Date.
FIPS PUB 5–1, States and Outlying Areas of the United States.
FIPS PUB 6–3, Counties and County Equivalents of the States of the United States and the District of Columbia.
FIPS PUB 8–5, Metropolitan Statistical Areas including CMSAs, PMSAs and NECMAs).
FIPS PUB 9, Congressional Districts of the United States.
FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.
FIPS PUB 58, Representations of Local Time of the Day for Information Interchange.
FIPS PUB 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.
FIPS PUB 66, Standard Industrial Classification (SIC) Codes.
FIPS PUB 70, Representation of Geographic Point Locations for Information Interchange.
FIPS PUB 95, Code for the Identification of Federal and Federally-Assisted Organizations.
FIPS PUB 103, Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas.

(End of requirement statement)

33. Section 201–8.112–8 is added to read as follows:

§ 201–8.112–8 FED–STD 1015, Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding.

(a) FED–STD 1015 specifies requirements relating to the conversion of analog voice to 2400 bit/second digitized voice by Linear Predictive Coding (LPC–10) and reconversion back to analog voice. It applies to all synchronous (not packetized) 2400 bit/second digitized voice telecommunications equipment procured or leased.

(b) The standard terminology for use in requirements documents, including solicitations, is:

2400 Bit/Second Digitized Voice Telecommunications Equipment (DEC 85 FIRMR)

All synchronous (not packetized) 2400 bit/second digitized voice telecommunications equipment offered as a result of this requirement shall be capable of Linear Predictive Coding (LPC–10) operation in conformance with FED–STD 1015.

(End of requirement statement)

34. Section 201–8.112–12 is revised to read as follows:

§ 201–8.112–12 FED–STD 1026, Telecommunications: Interoperability and Security Requirements for use of the Data Encryption Standard in the Physical Layer of Data Communication.

(a) The purpose of FED–STD 1026 is to facilitate the interoperation of Government data communication facilities systems and data that require cryptographic protection using the Data Encryptioms Standard (DES) algorithm.

(b) FED–STD 1026 specifics interoperability and security related requirements using encryption at the Physical Layer of the International Standards Organization's (ISO) Open Systems Interconnection (OSI) Reference Model (International Standard 7498) in telecommunications systems conveying Automatic Data Processing (ADP) and/or narrative text information. The algorithm used for encryption is the Data Encryptions Standard (DES), FIPS PUB 46, Data Encryptions Standard. Requirements contained in this standard relate to the interoperation of Physical Layer Data Encryptions Equipment, or their interoperation with associated Data Terminal Equipment of Data Circuit-terminating Equipment.

(c) Additional security requirements, not directly related to interoperatibility, are contained in FED–STD 1027, Telecommunications: General Security Requirements for Equipment Using the Data Encryptions Standard (DES). The DES algorithm is specified in FIPS PUB 46.

(d) In Physical Layer encryption, all of the Physical Layer Service Data Unit is encrypted except the START and STOP bits during asynchronous operation, and the parity bits when parity is restored.

(e) The standard terminology for use in requirements documents, including solicitations, is:

Cryptographic Components, Equipment Systems, and Services (DEC 85 FIRMR)

All applicable DES cryptographic components, equipment or services used for encryption of ADP and/or narrative text information in the Physical Layer data communications using the Data Encryptions Standard (DES) algorithm must comply with the requirements specified in FED–STD 1026. The Physical Layer is further defined in International Standard 7498, Open Systems Interconnection Reference Model.

(End of requirement statement)

35. Section 201–8.112–14 is revised to read as follows:

§ 201–8.112–14 FED–STD 1028, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment.

(a) FED–STD 1028 specifies interoperability and security related requirements for use of encryption with the International Telegraph and Telephone Consultative Committee, (CCITT) Group 3-type facsimile equipment conveying Automatic Data Processing (ADP) and/or narrative text information. The algorithm used for encryption is the Data Encryption Standard (DES), FIPS–PUB 46, Data Encryption Standard. Requirements contained in this standard relate to the interoperation of DES Equipment, or their interoperation with associated CCITT Group 3 facsimile equipment. Group 3 facsimile apparatus are described in Electronic Industries Association Standard RS–465.

(b) Additional security requirements, not directly related to interoperability, are contained in FED–STD 1027, Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard (DES). The DES algorithm is specified in FIPS PUB 46.

(c) Additional requirements for interoperability and security at the physical layer are contained in FED–STD 1026, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications.

(d) The standard terminology for use in requirements documents, including solicitations, is:

CCITT Group 3 Facsimile Equipment, Systems, and Services (DEC 85 FIRMR)

All applicable cryptographic components, equipment or services used for the encryption of documents transmitted by CCITT Group 3-type facsimile equipment using the Data Encryption Standard (DES) algorithm must comply with the requirements specified in FED–STD 1028.

(End of requirement statement)

36. Section 201–8.112–16 is revised to read as follows:

§ 201–8.112–16 FED–STD 1030A, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits.

(a) FED–STD 1030A specifies the electrical characteristics of unbalanced voltage digital interface circuits employed for the interchange of serial binary information conveyed at the DC baseband level at signaling rates of up to 100 kilobits per second. It adopts, with the additional requirements stated therein, Electronic Industries Association (EIA) Standard RS–423–A. Federal agencies shall use this standard in the design and/or acquisition of equipment requiring these interface circuits. Note that some digital interfaces; e.g., EIA RS–232–C or CCITT V.35, do not require the use of these circuits. Therefore, FED–STD 1030A is required only to the extent that user applications or specific digital interfaces dictate the use of these circuits.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Digital Interface Circuits—Unbalanced Voltage (APR 84 FIRMR)

All equipment using unbalanced voltage digital interface circuits that is offered as a result of this requirement shall comply with the electrical characteristics addressed by FED–STD 1030A.

(End of requirement statement)

§ 201–8.112–17 [Reserved]

37. Section 201–8.112–17 is removed and reserved as follows:

§ 201–8.112–18 [Reserved]

38. Section 201–8.112–18 is removed and reserved as follows:

39. Sections 201–8.112–19 through 201–8.112–24 are reserved as follows:

§ 201–8.112–19 [Reserved]

§ 201–8.112–20 [Reserved]

§ 201–8.112–21 [Reserved]

§ 201–8.112–22 [Reserved]

§ 201–8.112–23 [Reserved]

§ 201–8.112–24 [Reserved]

40. Section 201–8.112–25 is added to read as follows:

§ 201–8.112–25 FED–STD 1061, Group 2 Facsimile Apparatus for Document Transmission.

(a) FED–STD 1061 establishes the machine specifications for Group 2 facsimile apparatus used on voice band analog circuits. This group exploits bandwidth compression techniques to achieve a transmission time of approximately 3 minutes for a 216 mm by 297 mm size document with a nominal resolution of four (4) lines per millimeter.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Facsimile Apparatus (Group 2)—Voice Band Analog Circuits (APR 84 FIRMR)

All Group 2 facsimile apparatus offered as a result of this requirement for use with voice band analog circuits shall comply with FED–STD 1061.

(End of requirement statement)

41. Section 201–8.112–26 is added to read as follows:

§ 201–8.112–26 FED–STD 1062, Group 3 Facsimile Apparatus for Document Transmission.

(a) FED–STD 1062 establishes machine specifications for Group 3 facsimile apparatus, as defined in the FED–STD, for use over voice band analog circuits. Federal departments and agencies shall comply with this standard in the design, development, and procurement of facsimile terminals/systems with the following exception: Military Standard 188–161 applies to tactical users within the Department of Defense.

(b) FED–STD 1062 does not apply to the transmission of mixed mode information such as coded character data and image data. Technical specifications of the standard are contained in Electronic Industries Association Standard RS–465.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Acquisition, Design or Development of Group 3 Facsimile Apparatus (APR 84 FIRMR)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1062.

(End of requirement statement)

42. Section 201–8.112–27 is added to read as follows:

§ 201–8.112–27 FED–STD 1063, Telecommunications: Procedures for Document Facsimile Transmission.

(a) FED–STD 1063 specifies procedures for transmitting facsimile documents over voice band analog circuits. Federal departments and agencies shall comply with this standard in the design, development, and procurement of facsimile terminals/systems with the following exception: Military Standard 188–161 applies to tactical users within the Department of Defense.

(b) FED–STD 1063 does not apply to the transmission of mixed mode information such as coded character data and image data. Technical specifications of the standard are contained in Electronic Industries Association Standard RS–466. Group 1, 2, and 3 facsimile apparatus are described in Electronic Industries Association Standard RS–465.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Acquisition, Design or Development of Group 1, 2, and 3 Facsimile Apparatus (APR 84 FIRMR)

All group 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1063.

(End of requirement statement)

43. Section 201–8.113–2 is revised to read as follows:

§ 201–8.113–2 FIPS PUB 16–1/FED–STD 1010, Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Data Transmission.

(a) FIPS PUB 16–1/FED–STD 1010 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in serial-by-bit, serial-by-character data transmission. FIPS PUB 16–1 reflects changes necessary to accommodate FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable to the transmission of the standard code in a serial bit stream form at the interface between data terminal and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 16–1/FED–STD 1010. This standard adopts the technical specifications contained in American National Standard X3.15–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Bit Sequencing—Serial Data Transmission (DEC 85 FIRMR)

All applicable equipment or services that may result from this requirement, transmitting in a serial-by-bit, serial-by-character mode, must be capable of bit sequencing as prescribed in FIPS PUB 16–1/FED–STD 1010 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–2, at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

44. Section 201–8.113–3 is revised to read as follows:

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§ 201–8.113–3 FIPS PUB 17–1/FED–STD 1011, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 17–1/FED–STD 1011 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in serial-by-bit, serial-by-character data transmission. FIPS PUB 17–1 reflects changes necessary to accommodate revisions prescribed in FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 17–1/FED–STD 1011. This standard adopts the technical specifications contained in American National Standard X3.16–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Character Structure/Parity—Serial Data Transmission (DEC 85 FIRMR)

All applicable equipment that may result from this requirement, transmitting in a serial-by-bit, serial-by-character synchronous or asynchronous mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 17–1/FED–STD 1011 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–2, at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

45. Section 201–8.113–4 is revised to read as follows:

§ 201–8.113–4 FIPS PUB 18–1/FED–STD 1012, Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 18–1/FED–STD 1012 specifies the channel assignment for transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in parallel-by-bit, serial-by-character data transmission. FIPS PUB 18–1 reflects changes necessary to accommodate revisions prescribed by FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal equipment and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 18–1/FED–STD 1012. This Standard adopts the technical specifications contained in American National Standard X3.25–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Character Structure/Parity—Parallel Data Transmission (DEC 85 FIRMR)

All applicable equipment or services that may result from this requirement, transmitting in a parallel-by-bit, serial-by-character mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18–1/FED–STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, or an approved Federal subset at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

Dated: February 10, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–5210 Filed 3–10–86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50718–6023]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMPS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to place a minimum size limit of seven pounds (3.2 kilograms (kg)) on the landing of bigeye tuna in the Atlantic tuna fishery. This management measure was recommended by the International Commission for the Conservation of Atlantic Tunas (Commission) and will eliminate any advantage to identifying yellowfin as bigeye tuna by establishing identical regulations for both species.

EFFECTIVE DATE: April 9, 1986.

ADDRESS: Copies of the regulatory impact review prepared for this rule are available from E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, (213) 548–2518.

SUPPLEMENTARY INFORMATION: At its fourth special meeting in 1984, the Commission recommended that the size limit on bigeye tuna, first established in 1981, remain in effect indefinitely to conform the fishing regulations to the limitations on the landing of yellowfin tuna.

On October 30, 1985, proposed rules implementing a permanent minimum size limit on bigeye tuna (*Thunnus obesus*) of seven pounds (3.2 kg), in conjunction with an incidental catch allowance of three percent by weight, were published in the Federal Register (50 FR 45134). The public comment period ended on November 29, 1985; no comments were received. Therefore, the Secretary issues this final rule unchanged from the proposed rule published on October 30, 1985 (50 FR 45134).

Classification

A regulatory impact review (RIR) was prepared which presents the effects of implementing the minimum size limit. Copies of the RIR are available at the above address. Based on the RIR, the Administrator of NOAA determined that the rule is not major as defined by E.O. 12291. It also was determined that this action is not significant under the Regulatory Flexibility Act because it will not have a significant economic effect on a substantial number of small entities. The rule will have little or no effect because the domestic fleet generally harvests fish above seven pounds.

Since this final regulation clarifies and improves implementation of the Commission's recommendations without altering the management regime, it is excluded from the requirements of the National Environmental Policy Act and no environmental assessment or environmental impact statement has been prepared.

This rule has no information collection provision for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 285 is amended as follows:

PART 285—[AMENDED]

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

§ 285.50 [Amended]

2. Section 285.50 is amended by removing the last sentence "The prohibition against fishing for bigeye tuna less than seven pounds is to remain in effect until December 31, 1983."

[FR Doc. 86–5271 Filed 3–10–86; 8:45 am]

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50 CFR Part 642

[Docket No. 60339–6039]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce issues an emergency rule amending the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This rule provides for reductions in the total allowable catch, allocations, and quota for the Gulf group of king mackerel based on recent data and socio-economic considerations. The intended effect is to protect the Gulf group of king mackerel which has been depleted to the point where the fishery is nearing collapse.

EFFECTIVE DATES: In § 642.21, the introductory text of paragraph (a), paragraphs (a) (1), (2) and (3), and (c) are suspended from March 6, 1986, through June 4, 1986, and new paragraphs (f), (g), and (h) are effective from March 6, 1986, through June 4, 1986. All other paragraphs remain effective. The amendments to § 642.7 are effective from March 6, 1986 through June 4, 1986.

ADDRESS: Copies of documents supporting this action may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: King mackerel is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and its implementing regulations at 50 CFR Part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 1 to the FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985).

Intensive fishing effort is jeopardizing the biological integrity of the Gulf migratory group of king mackerel. The Gulf migratory group, which inhabits the Gulf of Mexico during the summer and supports a winter fishery in southeast Florida, has been severely overfished. Amendment 1 to the FMP estimated the possible range of allowable biological catch (ABC) for the Gulf migratory group at 10,713,000 to 14,997,000 pounds annually with a best point estimate of 14,225,000 pounds. At this level of harvest the population was expected to recover within 3 to 5 years.

The latest stock assessment (August 15, 1985), made at the request of the Councils, estimated the possible range of ABC at 980,000 to 2,340,000 pounds annually for the Gulf migratory group. Recruitment has declined to 16 percent of the 1979 level, whereas the spawning stock has declined to 26 percent of the 1979 level. This analysis indicated that current problems exist with the Gulf migratory group which threaten complete collapse of the fishery if fishing mortality is not reduced below current levels.

The Councils considered the stock assessment report, information obtained from 15 public hearings, and the social and economic impacts associated with imposing more severe management restrictions including a moratorium. They determined that to leave total allowable catch (TAC) for the Gulf migratory group at 14.225 million pounds would ignore the depleted status of the resource, but that implementation of a TAC within the limits of the revised stock assessment would be devastating to the valuable commercial and recreational users dependent upon this resource. The Councils decided that a 22 percent reduction of the average catch over the last three years would be sufficient to protect and begin to restore the Gulf migratory group and would be an acceptable level of economic and social short-term sacrifice on the part of the commercial and recreational fishermen. Therefore, the Councils recommended that the TAC for the Gulf migratory group of king mackerel be set at 5.20 million pounds for the current fishing year (1985–1986) which began July 1, 1985. Therefore, TAC for the Gulf group of king mackerel is set at 5.20 million pounds. This is allocated according to the formulas in the FMP as follows:

(1) Recreational—3.54 million pounds.
(2) Commercial—1.66 million pounds.

The commercial allocation under § 642.21 (f) and (g) is further divided into the following quotas:

(1) Eastern zone—1.08 million pounds.
(2) Western zone—0.48 million pounds.
(3) Purse seine—0.10 million pounds.

The commercial fishery will be closed individually or collectively, as appropriate, by notice under § 642.22 when each quota is exceeded or is projected to be reached.

The recreational fishery allocation established by this emergency rule under § 642.21(h) is regulated by a bag limit of two fish per person per trip on private vessels and three fish per person per trip on charter boats (excluding the captain and crew) or two fish per person per trip (including captain and crew), whichever is greater. The harvest of the recreational allocation will be closely monitored by use of the NMFS Marine Recreational Fishing Statistics Survey, charterboat survey, and State data. If the recreational sector reaches or is projected to reach its allocation of 3.54 million pounds, that fishery will be closed by notice under §642.22.

The Councils are unable to respond to this problem under the framework measure at § 642.27 because modifications of TAC or other regulations are restricted to preseason actions that become effective only at the beginning of each fishing year (i.e. July 1). These emergency regulations lowering TAC are therefore implemented under section 305(e)(2)(B) of the Magnuson Act to prevent further stress on the resource by fishing at an unacceptable level, i.e. the level set in Amendment 1, while still allowing the recreational and commercial fisheries to operate.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds for good cause (i.e. to prevent further stress on the Gulf migratory group of king mackerel) that the reasons justifying promulgation of this rule on an emergency basis also makes it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. This determination has been submitted for review by the responsible

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State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded there will be no significant impact on the human environment. A copy of the EA is available from the NMFS Southeast Regional Office at the ADDRESS listed above.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 642.7 is amended by adding a new paragraph (a)(27) to be effective from March 6, 1986, through June 4, 1986, to read as follows:

§ 642.7 Prohibitions.

(a) * * *

(27) Possess Gulf migratory group king mackerel harvested in the FCZ under the recreational allocation set forth at §642.21(h) after closure has been invoked as specified in § 642.22.

* * * * *

3. Section 642.21 is amended by suspending all of paragraph (a) except the last sentence, from March 6, 1986, through June 4, 1986, and adding new paragraphs (f), (g), and (h) to be effective from March 6, 1986, through June 4, 1986, to read as follows:

§ 642.21 Quotas.

* * * * *

(f) The commercial allocation for the Gulf migratory group of king mackerel is 1.66 million pounds for the current fishing year (July 1, 1985—June 30, 1986). This allocation is divided into quotas as follows:

(1) 1.08 million pounds for the eastern zone;

(2) 0.48 million pounds for the western zone; and

(3) 0.10 million pounds for purse seines (see Figure 2 of § 642.29, and paragraph (e) of this section for a description of allocation zones).

(g) *Purse seine quota for king mackerel.* (1) The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 0.10 million pounds for the current fishing year.

(2) The total harvest of king mackerel by purse seines from the Atlantic ocean is limited to 400,000 pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraphs (e) and (f) of this section.

(h) *Recreational quota for king mackerel.* The recreational allocation for the Gulf migratory group of king mackerel is 3.54 million pounds for the current fishing year (July 1, 1985–June 30, 1986).

[FR Doc. 86-5269 Filed 3-6-86; 5:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 41270-5026]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to continue size limit adjustment.

SUMMARY: NOAA issues this notice to continue the size limit adjustment to 5 inches for the surf clam fishery made effective November 8, 1985. Public comments were requested through December 31, 1985. The intended effect of the rule is to reduce the discard rate, resulting in greater short and long term yield from the fishery.

EFFECTIVE DATE: November 8, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600, extension 283.

SUPPLEMENTARY INFORMATION: Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) implemented an FMP framework managment measure which allows adjustment of the minimum size limit for surf clams by authorizing the Director of the Northeast Region, NMFS (Regional Director), in consultation with the Mid-Atlantic Fishery Management Council (Council), to select a minimum size limit for surf clams from among the following values: 5½, 5¼, 5, and 4¾ inches.

The size limit is selected to reduce discards of surf clams to less than 30 percent, on average, of trip catches. The Regional Director monitors current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate. Under these adjustment criteria, a minimum size limit of 5¼ inches was in effect from October 14, 1984, through November 7, 1985.

The Council voted at its September, 1985, meeting to recommend that the Regional Director reduce the size limit to 5 inches. The Council's Surf Clam Committee, at its meeting on October 28, 1985, advised the Regional Director to construct the discard rate by combining landed undersized surf clams with actual discards, i.e., those undersized clams that are thrown overboard.

The NMFS Northeast Fisheries Center (NEFC) analyzed surf clam discarding rates and size composition of landings in the Mid-Atlantic Area from January 1, 1985 through October 4, 1985. This information showed that the percentage of discards, as defined by the Council criteria, was between 40 and 50 percent for the ten month period, exceeding the target discard level of 30 percent.

Based on this information, statements from industry, and guidance from the Council, the Regional Director determined that the minimum size limit for surf clams should be reduced from 5¼ inches to 5 inches. On November 8, 1985, NOAA filed a notice with the Office of the Federal Register to reduce the minimum size limit to 5 inches in all three areas of the fishery, effective November 8, 1985 (50 FR 46671; November 12, 1985). Comments on this action were invited from the public for 15 days following publication. The notice specified that, pursuant to provisions of the FMP and implementing regulations, the Secretary would consider the comments and publish notice of any changes in the size limit. On December 5, 1985, the public comment period was extended through December 31, 1985, due to the complexity of the issue and industry interest (50 FR 49852).

Five written comments were received. Four of the commentors opposed the adjustment; one endorsed it. The comments opposing the adjustment

questioned the definition of discards, the time period of information used to calculate the discard rate, the procedures by which the size change was accomplished, and suggested that a 5 inch minimum size would lead to more rapid harvest of allowable quotas and be inconsistent with stock conservation.

Comment 1: Defining discards to include landed undersized clams is an overboard interpretation encouraging the landing of undersized clams.

Amendment 5 authorizes the Regional Director to change surf clam minimum sizes to prevent waste of the stock through excessive discards. While providing no definition of discards, the amendment does provide that "in adjusting the size limit the Regional Director shall consider current stock assessments, catch reports, and other relevant information." Using this guidance, the Regional Director could consider, in determining to adjust the minimum surf clam size, the large volume of undersized clams landed which, because of the prevailing size distribution of surf clam stocks, would with a more rigorous enforcement program have been discarded at sea and wasted, contrary to the purpose of the Amendment. Although under ideal conditions fishermen might have responded to the minimum size regulations by directing fishing effort in areas with larger surf clams, in practice they were limited in doing so by the prohibition on fishing more than six hours every other week.

No evidence of deliberate and manipulative non-compliance with the size limit during the period upon which the adjustment was based has come to light; if it had, public policy would compel the Regional Director to exclude evidence arising from such practices from his assessment of discard rates.

Comment 2: The period of time used in calculating the discard percentage was adopted arbitrarily. A different time period might have resulted in a lower apparent discard rate.

In deciding to reduce the minimum size, the Regional Director was authorized to act on his own initiative to view landed undersized clams as "constructive discards" and base the adjustment on industry performance over a six month period. The Regional Director was empowered to and, because of the policy implications of the size limit change, did, during required consultations, ask the Council for its preference in his construction of the available facts. Advice of the Council's Surf Clam Committee to use a base period at least six months in length was later affirmed by the full Council. The base period used to calculate the average discard rate, January through October of 1985, was a period when excessive discards, and hence the possible need for a size limit adjustment, was at issue in industry and government forums. A different base period may have led to marginally different results, but would have been equally subject to criticism by fishermen concerned that the size limit should be reduced to limit discards.

Comment 3: The public was not afforded adequate opportunity to influence and respond to deliberations concerning the size limit selection.

The adjustment procedure provides considerable opportuntiy for Council consultation, notice, and public comment. The discard problem and large landings of undersized clams were discussed at Council meetings in June, August, September, and December, 1985, and at the Surf Clam Committee Meeting on October 28, 1985, attended by representatives from the industry. The Federal Register notice announcing the adjustment provided ample opportunity for public comment. The public comment period was extended at industry request to allow commentors time to develop and present their positions to NMFS and the Council prior to final agency action.

Comment 4: The reduction in minimum size increases harvest rates and is inconsistent with stock conservation.

Size limit adjustments promulgated under the implementing regulations are concerned only with which of four alternative minimum surf clam sizes will reduce surf clam discard rates below 30 percent. While stock conservation is a primary objective of the overall surf clam management program, it is not an issue here since each of the alternative size specifications available under the rule is within a range which promotes harvest of surf clams leading to maximum yield per recruit. In fashioning the size limit adjustment provision, the Council expressly recognized and accepted the trade-off of increased harvests with a reduced size limit to prevent excessive discards and waste of the stock.

Although a smaller legal minimum size does make a greater proportion of the standing stock subject to legal harvest, thus potentially increasing catch rates, the objective of the size limit is to optimize surf clam yield per recruit, not control harvests within quotas. Other FMP measures, including fishing time restrictions and closures, are used to keep harvest within optimum yield for the fishery.

Therefore, based on the record of public comment and the presentations and actions taken by the Council, the Secretary continues the surf clam minimum size limit at 5 inches in all three areas of the fishery.

Other Matters

This action is taken under the authority of 50 CFR 652.25 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, and under the Regulatory Flexibility Analysis, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-5270 Filed 3-10-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Use of Federal Rules of Evidence in Federal Agency Adjudications

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Adjudication has under consideration a draft recommendation on the use of the Federal Rules of Evidence in Federal Agency Adjudications. Interested persons are invited to comment on the draft recommendation.

DATES: Comments due by Wednesday, April 9, 1986.

ADDRESS: Send comments to: Richard K, Bert, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Richard K, Berg, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Adjudication has under consideration a draft recommendation of the use of the Federal Rules of Evidence in Federal agency adjudications. The draft recommendation is based on a study prepared for the Administrative Conference by Professor Richard J. Pierce, Jr. of the University of Pittsburgh Law School. Copies of the report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. (Telephone: 202–254–7065).

Professor Pierce's report finds that agency rules governing the admissibility of evidence in adjudicatory proceedings fall into three general categories: (1) Rules which track the standard, set out the Administrative Procedure Act, "Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence,"; (2) the rules which require the application of the Federal Rules of Evidence "so far as particable;" and (3) rules which permit or encourage resort to the Federal Rules of Evidence for guidance, but leave the decision whether to apply them in the discretion of the presiding officer. Professor Pierce concludes that the third model has advantages over the other two, and the draft recommendation urges that it be adopted by the agencies.

The Committee on Adjudication invites comments on the proposed recommendation, and, in addition, requests comments addressed to the four issues listed below the text of the proposed recommendation. The committee requests that comments be filed at Conference's office by the close of business, Wednesday, April 9, 1986. However, comments received subsequent to that date will be considered to the extent the committee's schedule permits.

Draft Recommendation

Use of Federal Rules of Evidence in Federal Agency Adjudication.

Preamble

Federal agencies have adopted hundreds of different sets of rules governing admission of evidence in formal adjudications.[1] While those rules vary in their details, they can be placed in three general categories: (1) Rules that reflect the wide open standard of APA section 556(d); (2) rules that require presiding officers to apply the Federal Rules of Evidence (FRE) "so far as practicable;" and, (3) rules that permit presiding officers to use the FRE as a source of guidance in making evidentiary rulings. In a few instances, Congress has required the agency to adopt a standard that refers to the FRE; in other cases the agency voluntarily adopted such a standard.

Presiding officers vary substantially in the extent of their use of the FRE as a source of guidance in making evidentiary rulings. Presidint officers at agencies whose rules refer to the FRE rely on the FRE as a source of guidance much more frequently than presiding officers at agencies whose rules reflect only the APA standard. Presiding officers at agencies with rules that refer to the FRE are more satisfied with the rule they apply than presiding officers at agencies with rules that reflect only the APA standard. The relative dissatisfaction expressed by many presiding officers in the latter group seems to be based on their perception that the APA standard does not accord them sufficient discretion to engage in responsible case management. Because they perceive that they do not have the discretion to exclude evidence they consider clearly unreliable, they must devote valuable hearing and opinion-writing time to reception and consideration of such evidence.

Because the APA evidentiary standard is broadly permissive, courts routinely decline to reverse agencies that have adopted this standard on the basis of alleged erroneous admission of evidence. However, courts seem confused by the FRE "so far as practicable" evidence standard. Some courts apparently interpret it to accord near total discretion to agencies. Other courts interpret it as a mandate to comply with the FRE except in unusual circumstances. Still others apparently view the standard as a mandate to admit evidence inadmissible under the FRE except when unusual circuemtances require application of the FRE. Independent of the evidentiary standard adopted by the agency, reviewing courts apply three general rules: (1) An agency must respect evidentiary privileges; (2) an agency can be reversed if it declines to admit evidence admissible under the FRE; and, (3) an agency will be reversed if it bases a finding on unreliable evidence.

The FRE "so far as practicable" standard has four significant disadvantages: (1) Courts seem confused as to what it means or how to enforce it; (2) instructing presiding officers to exclude evidence based on the standard forces them to undertake a difficult and hazardous task; (3) excluding evidence on the basis that it is inadmissible in a jury trial is totally unnecessary to insure that agencies act only on the basis of reliable evidence; and, (4) agencies, like other experts, should be permitted to rely on classes of evidence broader than those that can be considered by lay jurors. Yet, the APA standard alone has the disadvantage that presiding officers perceive it as an inadequate tool for effective case management. A standard that *permits* presiding officers to use the FRE as a source of guidance in making evidentiary rulings avoids the disadvantages of both the APA standard and the FRE "so far as practicale" standard. In addition, under any set of evidentiary rules, an agency can materially assist presiding officers in their evidentiary decisionmaking by specifying with greater particularity the substantive standards the agency intends to apply in resolving various classes of adjudications and the types of evidence it considers reliable and probative with respect to recurring factual issues.

Recommendations

1. Congress should not require agencies to apply the Federal Rules of Evidence to limit the discretion of presiding officers to admit evidence in formal adjudications. (This recommendation is inconsistent with some existing statutory provisions, *e.g.*, 29 U.S.C. 160(B).)

2. Agencies should not limit the discretion of presiding officers to admit evidence in formal adjudications by requiring them to apply the Federal Rules of Evidence. (This recommendation is inconsistent with some agency regulations, *e.g.*, 47 CFR 1.351.)

3. Agencies should adopt evidentiary regulations applicable to formal adjudications that clearly confer on presiding officers discretion to exclude unreliable evidence and evidence the probative value of which is substantially outweighed by its potential for undue consumption of time. Those regulations should include descretion to use the Federal Rules of Evidence as a source of general guidance in determining reliability and to use the weighted balancing test in Federal Rule 403, which allows exclusion of evidence the probative value of which is substantially outweighed by its potential for undue consumption of time. (*See, e.g.*, 29 CFR 1844.)

4. Agencies should assist presiding officers in their evidentiary decisionmaking by announcing in advance of a formal adjudication the substantive standards the agency intends to apply in resolving the adjudication. (This recommendation is intended to assit presiding officers assigned to formal adjudications governed by extremely broad statutory standards, *e.g.*, public convenience and necessity. If the agency does not specify the applicable substantive standard with greater particularity in advance of the formal adjudication through some means, *e.g.*, rulemaking, prior adjudication or scoping order, the presiding officer will have difficulty making informed decisions concerning the relevance or relative probative value of evidence tendered.)

5. For purposes of these recommendations, formal adjudication means an adjudication required by statute or regulation to be determined on the record after opportunity for a hearing. For purposes of these recommendations, presiding officer means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence in such a proceeding.

Additional Issues To Consider

1. The proposed recommendation is drafted with the intention of providing a flexible evidentiary standard adaptable to any agency formal adjudication. It is desirable to promulgate any recommendation suggesting an evidentiary standard applicable to all agency formal adjudications, given the wide variety in the functions and in the types of adjudications conducted by agencies?

2. The proposed recommendations are entirely precatory in their reference to the Federal Rules of Evidence. Should some degree of reliance on the Federal Rules be mandatory?

3. The proposed recommendations apply only to formal adjudications required by staute or regulation to be on the record. Should they be broadened to include the many proceedings conducted as formal adjudications by agency custom of because the agency voluntarily chooses for other reasons to proceed by formal adjudication? Should they apply to all proceedings involving evidentiary hearings?

4. Should the recommendations apply to nonadversarial formal adjudications, *e.g.*, Social Security Administration disability proceedings?

List of Subjects

Administrative practice and procedure, Evidence.

(5 U.S.C. 574)

Dated: March 7, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86–5424 Filed 3–10–86; 8:45 am]

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[1] The term "formal adjudications" refers to adjudications required by statute to be determined on the record after opportunity for an agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, and also includes agency adjudications which by regulation are conducted in conformance with these provisions.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1501

Operations of the International Organizations Employees Loyalty Board

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its current regulation to conform it to recent Federal court decisions, which have ruled that certain terms and conditions of the regulation (which is derived from Presidential Executive Order 10422) are overly broad and vague and, therefore, may violate individual rights guaranteed by the First Amendment of the U.S. Constitution. These regulations would respond to these concerns and limit and tighten applicability of the standard by substituting more precise, tested language with appropriate safeguards that should successfully withstand legal challenge and protect the purposes served by the Presidential Executive Order on which they are based.

DATE: Comments must be received on or before May 12, 1986.

ADDRESS: Send or deliver written comments to George Woloshyn, Associate Director, Compliance and Investigations Group, Room 5478, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: George Woloshyn, 202/632–4426.

SUPPLEMENTARY INFORMATION:

Evaluation Required

Executive Order 10422, first promulgated in 1953, by President Harry S. Truman, requires that U.S. citizen working, or wishing to work, for the United Nations or other public international organizations be evaluated for loyalty to the United States. The Order sets out the terms and conditions for making such determinations.

The results of such evaluation are provided to the Secretary of State who, after appropriate investigation, reports his or her findings to the international organization for its use in making employment decisions.

Challenges to Evaluation

Specific instances have occurred in which employees or candidates for employment have challenged the investigation process in Federal court of the basis of putative effects on their

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First Amendment rights of freedom of speech and assembly. They argued that in order to obtain employment as a private citizen with an international organization, they were required by the loyalty criteria to refrain from lawful behavior or speech in which they desired to engage. The courts agreed and decided in their favor. The principal difficulty, according to the courts, is that certain terms of the loyalty determination criteria are unconstitutionally board. They specifically focused on two phrases containing prohibitions involving the *advocacy of* certain acts or beliefs as examples of how the loyalty standard went further in trying to influence the behavior of individual citizens than First Amendment rights would permit.

Features of this amendment

This amendment more precisely states the content of each evaluation criterion so that its application is more narrowly and tightly construed. The proposed changes are noted below, along with a brief rational for each change.

(a) The phrase "knowingly associating with spies and saboteurs" is eliminated from § 1501.8(b)(1). *Reason:* courts have expressed doubts regarding its constitutionality

(b) The phrase "sedition or advocacy therof" is eliminated from § 1501.8(b)(1). *Reason:* courts have found this languate to be unconstitutional.

(c) The word "treason" is added to 1501.8(b)(1). *Reason:* it adds clarity and consistency to the sentence.

(d) The advocacy proscription in § 1501.8(b)(3) is limited by addition of language that requires a threat of imminent lawless action. *Reasons:* the additional words are required by the courts, and their absence was noted in one court decision.

(e) The word "may" in the phrase "which may indicate disloyalty . . ." is eliminated from § 1501.8(b)(4). *Reason:* elimination of the word serves to limit application of the provision. Moreover, the disclosures in question are limited to classified documents of information. *Reason:* clarifies and limits the nature of the information disclosed.

(f) the wording "and to the deteriment of the Government of the United States" is added to § 1501.8(b)(5). *Reason:* the added wording serves to reasonably narrow application of the provision.

(g) The membership provision of § 1501.8(b)(6) is repleced with more recent wording from the amended Executive Order 10422, Part II, 2(f). *Reason:* the newer language is required by previous court decision.

E.O. 12291, Federal Regulaiton

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it involves only private individuals seeking to work for public international organizations.

List of Subjects in 5 CFR Part 1501

Administrative practice and procedure, International organizations, Organizations and functions (Government agencies).

U.S. Office of Personnel Management

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 1501 as follows:

PART 1501—OPERATIONS OF THE INTERNATIONAL ORGANIZATIONS EMPLOYEES LOYALTY BOARD

1. The authority citation for Part 1501 continues to read as follows:

Authority: E.O. 10422, as amended; 3 CFR, 1949–1953 Comp., p. 921.

2. Section 1501.8(b) is revised to read as follows:

§ 1501.8 Grounds for determinations of the Board.

* * * * *

(b) *Activities and associations.* Among the activities and associations of the employee or person being considered for employment which may be considered in connection with a determination of disloyalty may be one or more of the following:

(1) Sabotage, espionage, or treason, or attempts thereat or preparations therefor.

(2) Advocacy of revolution or force or violence to alter the constitutional form of government of the United States, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(3) Intentional, unauthorized disclosure to any person, under circumstances which indicate disloyalty to the United States, of classified United States documents or United States information obtained by the person making disclosure as a result of his or her previous employment by the Government of the United States or otherwise.

(4) Performing or attempting to perform his or her duties, or otherwise acting, while an employee of the U.S. Government during a previous period, with the intent to serve the interest of another government in preference to the interests of the United States and to the detriment of the Government of the United States.

(5) Knowing membership in, with the specific intent of furthering the aims of, or adherence to and active participation in with the specific intent of furthering the aims of, any foreign or domestic organization, association, movement, group, or combination of persons, which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States, or any State, or which seeks to overthrow the Government of the United States or subdivision thereof by unlawful means.

[FR Doc. 86-5423 Filed 3-10-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to (1) prescribe a formula by which the Secretary of Agriculture will derive the prevailing world market price (adjusted to United States quality and location) for the 1986 through 1990 crops of upland cotton (hereinafter referred to as the "adjusted world price"), (2) provide a mechanism by which such adjusted world price will be announced periodically, and (3) invite public comment on the proposals. These actions are required by section 103A(a)(5)(E)(i–iii) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

DATE: Comments must be received on or before March 26, 1986, in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major". It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases–10.051, and Cotton Production Stabilization–10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this proposed rule and an initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Basis for Adjusted World Price Determination

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act") provides that the Secretary of Agriculture shall prescribe by regulation:

(a) A formula to define the prevailing world market price for cotton; and

(b) A mechanism by which such prevailing world market price shall be announced periodically.

Section 103A(a)(5)(E)(ii) provides that the Secretary, not later than 90 days after the date of enactment of the Food Security Act of 1985 (Pub. L. 99–198), shall:

(a) Publish in the **Federal Register** proposed regulations specifying the formula for determining the prevailing world market price for cotton and the mechanism for periodically announcing such price; and

(b) Invite public comment on the proposed regulations.

The prevailing world market price for upland cotton, adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price"), as determined in accordance with the formula set forth in this proposed rule, shall be utilized under several provisions of the upland cotton program for the 1986 through 1990 crops.

For example, if the adjusted world price for any of the 1986 through 1990 crops of upland cotton is below the loan level for a crop of upland cotton, the Secretary must implement one of two programs designed to make United States upland cotton competitive in world markets.

Further, if the program which is implemented by the Secretary fails to make United States upland cotton fully competitive in world markets and if the adjusted world price is below the loan repayment rate for a crop of upland cotton, the Secretary shall provide for the issuance of negotiable marketing certificates to first handlers of cotton (persons regularly engaged in buying or selling upland cotton) in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the United States available at competitive prices, including such payments as may be necessary to make raw cotton in inventory on August 1, 1986, available on the same basis.

Under the provisions of this proposed rule, the prevailing world market price for upland cotton shall be determined based upon the average price quoted each Thursday for the five lowest-priced growths of the growths quoted for Middling (M) $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe price"). The Northern Europe price was selected as the basis for determining the prevailing world market price for upland cotton because it is readily available and is widely accepted as the most accurate indication of the competitive level of offering prices for upland cotton. The quotations are published daily and reflect offering prices from around the world. Furthermore, the Northern Europe price has been included as a part of the U.S. price support loan rate formula since the 1978 crop.

The Act provides that the prevailing world market price for upland cotton shall be adjusted to United States quality and location. Accordingly, the adjusted world price for upland cotton shall be equal to the Northern Europe price adjusted to average U.S. quality and location.

The Northern Europe price shall be adjusted to average U.S. spot market location by deducting the average difference during the preceding 52-week period between the average of the U.S. Northern Europe price quotations each Thursday for M $1\frac{3}{32}$ inch cotton and the average U.S. designated spot market price quotations each Thursday for M $1\frac{3}{32}$ inch cotton. The price so derived shall be further adjusted to Strict Low Middling (SLM) $1\frac{1}{16}$ inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by deducting the difference between the loan rate for a crop of upland cotton for M $1\frac{3}{32}$ inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary. This price shall then be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton for the U.S. base quality in the designated spot markets and the national average loan rate for the U.S. base quality, as announced by the Secretary, to determine the adjusted world price for upland cotton.

The adjusted world price will be determined weekly beginning August 1, 1986, and continuing through the last Thursday of July 1991. Such price will be announced on or before 10:00 a.m. Eastern time each Friday. The initial determination will be made and announced as soon as possible after publication of a final rule in the **Federal Register** setting forth the formula for determining the adjusted world price for upland cotton.

Interested persons are invited to submit written comments on both the proposed formula for determining the adjusted world price and the proposed mechanism for periodically announcing such price. Comments must be received by March 26, 1986 in order to be assured of consideration. The adjusted world price for upland cotton must be determined and announced by the Secretary of Agriculture before final determinations regarding the 1986 upland cotton program can be announced. The comment period is being limited to 15 days because farmers and the entire cotton industry need to know all the detailed provisions of the 1986 upland cotton program as soon as possible in order for planting decisions to be finalized for the 1986 crop. Farmers are already planting 1986-crop upland cotton in some areas. Others are currently preparing land for planting.

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List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Proposed Rule

Accordingly, it is proposed to amend 7 CFR Subtitle A by adding a new Part 26 to read as follows:

PART 26—DETERMINATION OF WORLD MARKET PRICE FOR CERTAIN COMMODITIES

Subpart A—Determination of World Market Price for Upland Cotton

Sec.
26.1 Applicability.
26.2 Determination of the prevailing world market price for upland cotton.
26.3 Adjusted world price for upland cotton.

Authority: Sec. 501, Pub. L. 99-198.

Subpart A—Determination of World Market Price for Upland Cotton

§ 26.1 Applicability.

This subpart sets forth the procedures for determining the prevailing world market price for upland cotton and the mechanisms for periodically announcing such price as required by section 103A(a)(5)(E) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act").

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture based upon the average of the prices quoted each Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-seconds inch (M $1\frac{3}{32}$ inch) cotton C.I.F. (cost, insurance, and freight) northern Europe (hereinafter referred to as the "Northern Europe price"). If no Thursday quotes are available, the latest available quotes will be used.

§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted to average U.S. quality and location (hereinafter referred to as the "adjusted world price"), determined in accordance with paragraph (b) of this section, shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2 and adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i) The average of price quotations from the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M $1\frac{3}{32}$ inch cotton C.I.F. Northern Europe; and

(ii) The average price of M $1\frac{3}{32}$ inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with subparagraph (b)(1) shall be adjusted to reflect the price of Strict Low Middling (SLM) $1\frac{1}{16}$ inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by deducting the difference, as announced by the Secretary of Agriculture, between the applicable loan rate for a crop of upland cotton for M $1\frac{3}{32}$ inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with subparagraph (b)(2) shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary of Agriculture.

(c) If Thursday quotes are not available for either the Northern Europe or the spot market quotations for any week, that week will not be taken into consideration in determining the average difference in the 52-week period as provided in subparagraph (b)(1).

(d) The adjusted world price for upland cotton, as determined in accordance with paragraph (b), shall be determined weekly by the Secretary of Agriculture and shall be announced, to the extent practicable, on or before 10:00 a.m. Eastern time each Friday, beginning August 1, 1986, and continuing through the last Friday of July 1991. In the event that Friday is a nonworkday, the determination will be announced the next workday.

(e) The adjusted world price, determined in accordance with paragraph (b), shall be subject to further adjustments, as determined by the Executive Vice President, Commodity Credit Corporation, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop of upland cotton.

Signed at Washington, DC, on March 6, 1986.

Frank W. Naylor, Jr.,

Acting Secretary.

[FR Doc. 86-5237 Filed 3-6-86; 4:24 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-1]

Airworthiness Directive; General Electric Co. (GE) CF6-50 and -45 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the removal from service of certain high pressure turbine rotor (HPTR) stage 1 disks installed on certain GE CF6-50 and -45 turbofan engines. The proposed AD is needed to prevent crack initiation in the HPTR stage 1 disk forward embossment radii which could result in an uncontained HPTR stage 1 disk failure.

DATE: Comments must be received on or before April 10, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-1, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-1.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215. A copy of the SB is contained in Rules Docket Number 86-ANE-1, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jeff Blazey, Engine Certification Branch,

ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7090.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-1". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain CF6-50 and -45 HPTR stage 1 disks may contain forward embossment radii contours which do not conform to the FAA approved type design. This condition adversely affects the fatigue strength of the disk, requiring its removal from service. The proposal AD would require removal of certain CF6-50 and -45 HPTR stage 1 disks in accordance with GE Alert SB A72-859, Revision 1, dated January 31, 1986, and inspection to detemine conformance with the FAA approved type design.

Conclusion

The FAA has determined that this proposed regulation involves 99 stage 1 disks installed in some CF-50 and -45 engines, core modules, or stocked as spares, and the approximate cost to each engine is $99,000. It has also been determined that a substantial number of small entities are not affected as the engines are only used on large aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transporation, Aircraft, Aviation safety, Engines, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new AD:

General Electric Company: Applies to General Electric (GE) CF-50 and -45 turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of high pressure turbine rotor (HPTR) stage 1 disk, accomplish the following:

(a) Remove from service, in accordance with GE Alert Service Bulletin (SB) A72-859, Revision 1, dated January 1, 1986, those HPTR stage 1 disks identified by specific serial numbers listed in GE Alert SB A72-859, Revision 1, under paragraph 2., Table 1, for inspection to determine conformance with the FAA approved type design.

(b) Compliance required as follows:

(1) For those disks with less than 5,490 flight cycles since new on the effective date of this AD, comply prior to the accumulation of 5,500 flight cycles.

(2) For those disks with 5,490 or greater flight cycles since new on the effective date of this AD, comply within the next 10 flight cycles.

(c) For HPTR stage 1 disks which do not conform to the approved FAA type design will be retired from service.

(d) Those HPTR stage 1 disks which conform to the approved FAA type design may be returned to service.

Note.—For the purpose of this AD, the number of flight cycles equals the number of flights that involve an engine operating sequence consisting of engine starting, takeoff operation, landing and engine shutdown.

Upon request, an alternate means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submissen of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, Burlington, Massachusetts may adjust the compliance time specified in this AD.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified in this document.

Issued in Burlington, Massachusetts, on February 27, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-5203 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 85-ANE-31]

Airworthiness Directives: Rolls-Royce, Ltd. RB211-22B and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directives (AD) which would require the removal and retirement from service, in accordance with a Rolls-Royce, Mandatory service bulletin (SB), of certain intermediate pressure (IP) compressor rotor asssemblies and IP turbine disks on certain Rolls-Royce RB211 engines that have been oversped in excess of 115 percent IP rotational speed (N2). The affected disks and rotors may have suffered unacceptable damage when oversped which could lead to an uncontained disk burst.

DATE: Comments must be received on or before April 30, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 85-ANE-31, 12 New England Executive Park, Burlington, Massachusetts 01803

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or delivered in duplicate to Room Number 311 at the above address.

Comments delivered must be marked: Docket Number 85–ANE–31.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the SB is contained in Rules Docket Number 85–ANE–31 in the Office of the Regional Counsel, New England Region, and may be examined between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85–ANE–31." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain IP compressor rotor assemblies and IP turbine disks have been oversped beyond 115 percent N2 and must be removed from service for inspection and possibly retired in accordance with the requirements of the compliance section of Rolls-Royce Mandatory SB RB211–72–5887, Revision 2, dated August 23, 1985. Though no failures of disks or rotors have occurred, testing and analysis has shown that it is possible to sustain unacceptable damage from such an overspeed. It is therefore deemed prudent to remove and inspect disks that have oversped beyond 115 percent N2 through and including 120 percent N2. Disks that have been oversped in excess of 120 percent N2, can not be returned to serviced and must be retired.

Conclusion

The FAA has determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using Lockheed L–1011 and Boeing 747 aircraft in which the RB211 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291 as the total cost of this AD is estimated at $44,000 per year; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Engines, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulation (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new AD:

Rolls-Royce Limited: Applies to Rolls-Royce RB211–22B and RB211–524 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent IP compressor and IP turbine disk failures, as a result of overspeeding which can cause uncontained engine failures, accomplish the following in accordance with the compliance schedules of Rolls-Royce Mandatory SB RB.211–72–5887, Revision 2, dated August 23, 1985, or FAA approved equivalent:

(a) Remove IP compressor rotor assemblies and IP turbine disks that have been oversped beyond 115 percent N2 through and including 120 percent N2. Assemblies may be reinstalled after obtaining a satisfactory inspection as directed in the SB.

(b) Remove from service IP compressor rotor assemblies and IP turbine disks that have been oversped beyond 120 percent N2.

Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–5202 Filed 3–10–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–4]

Proposed Establishment of Transition Area—Paxton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Paxton, Illinois transition area to accommodate a new VOR Runway 18 instrument approach procedure to Paxton Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to:

Federal Aviation Administration,
Regional Counsel, AGL–7,
Attn: Rules Docket No. 86–AGL–4,
2300 East Devon Avenue,
Des Moines, Illinois 60018

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The development of a new VOR Runway 18 instrument approach procedure requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AGL–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition airspace area near Paxton, Illinois.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Paxton, IL

That airspace extending upward from 700 feet above the surface, within a 5 mile radius of Paxton Airport (lat. 40°26'55" N., long. 88°07'40" W.) and within 3 miles each side of the 106° radial of the Roberts VORTAC, extending from the 5 mile radius area to the Roberts VORTAC, excluding that portion which overlies the Gibson City, Illinois, transition area.

Issued in Des Plaines, Illinois, on February 21, 1986.

Kenneth C. Patterson,

Manager, Air Traffic Division.

[FR Doc. 86–5204 Filed 3–10–86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 862 3006]

Albert Schneider; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the President of Cellular Capital Corporation to cease making misrepresentations to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission. Additionally, respondent would be required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment, and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

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DATE: Comments must be received on or before May 12, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/H–272, Michael McCarey, Washington, DC 20580. (202) 523–1415.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Cellular lottery preparation services, Trade practices.

Commissioners: Terry Calvani, Acting Chairman; Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of Albert Schneider, Agreement Containing Consent Order to Cease and Desist; File No. 862–3006.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Albert Schneider and it now appearing that Albert Schneider is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by Albert Schneider and counsel for the Federal Trade Commission that:

1. Albert Schneider is President of Cellular Capital Corporation, a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office located at One Erieview Plaza, Eighth Floor, Cleveland, Ohio 44144. As such, he formulates, directs, and controls the acts and practices of said corporation, and his address is the same as that of said corporation.

2. Albert Schneider admits all the jurisdictional facts set forth in draft of complaint here attached.

3. Albert Schneider waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act, 28 U.S.C. 2412.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the complaint filed in the district court, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify the proposed respondent.

5. This agreement is for settlement purposes only and does not constitute an admission by Albert Schneider that the law has been violated as alleged in the draft of complaint here attached or that any statements alleged in such complaint are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Albert Schneider, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Albert Schneider's address as stated in this agreement shall constitute service. Albert Schneider waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order. Upon issuance of the order, the Commission shall dismiss the complaint in the district court with prejudice as it relates to Albert Schneider, subject only to the right of the Commission to reopen the proceeding pursuant to the provisions of Paragraph IV of this Order.

7. Albert Schneider has read the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Albert Schneider further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that Respondent Albert Schneider, his agents, representatives, brokers, and employees, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline cellular telephone system application preparation service, do forthwith cease and desist from the following activities:

(1) Representing, directly or indirectly, that any applicant in the Federal Communications Commission ("FCC") non-wireline cellular telephone license lottery ("lottery") is certain or substantially certain to obtain all or part of a cellular telephone license ("license"), or otherwise misrepresenting the likelihood that an applicant will obtain all or part of a license;

(2) Representing, directly or indirectly, that past agreements to share licenses (settlement agreements) entered into by applicants in the second and third tiers of the FCC lottery provide a basis for concluding that future applicants in the FCC lottery are likely to receive an interest in a license through similar agreements;

(3) Misrepresenting, directly or indirectly, the value or profit potential of a license awarded through the FCC lottery. At the time of making any representation of value or profit potential, defendant must possess and rely upon a reasonable basis for the representation consisting of competent and reliable data;

(4) Misrepresenting, directly or indirectly, past or current profit performance of cellular telephone systems; or making any representation regarding past or current profit performance of cellular telephone systems unless at the time of making such representation defendant possesses and relies upon a reasonable basis consisting of competent and reliable data;

(5) Misrepresenting, directly or indirectly, any financing arrangements made for purchasers of defendant's application services;

(6) Misrepresenting, directly or indirectly, the nature of the services provided by the application preparers or the qualifications of those providing technical services;

(7) Misrepresenting, directly or indirectly, any material fact relevant to a customer's decision to purchase application preparation services for the FCC lottery; and

(8) Making any representations with respect to income tax benefits available to purchasers of defendant's products or services other than to refer the prospective applicant to their own tax accountant or attorney.

II

It is further ordered that Respondent Schneider, his agents, representatives, brokers and employees, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline cellular telephone system application preparation service are hereby enjoined from failing to disclose to prospective applicants statements (1) and (2) below in all sales brochures, in every oral presentation, and on the front page of all sales or service contracts or agreements with ultimate consumers:

(1) "The purchase of an application for the Federal Communication Commission's cellular telephone lottery is a high-risk investment. Do not purchase an application unless you can afford and are prepared to lose all the money invested."

(2) "An operating cellular system is unlikely to return any profits to its owners in at least the first three years of operation."

It is further ordered that the statements required above shall be set forth in a clear and conspicuous manner in print at least as large as the capitalized corporate name within the text of the brochure, contract or agreement then used by the defendant(s), but in no event smaller than 10 point type; that such disclosure shall be in 100% black ink against a light background, and boxed; that the copy of the foregoing statements set forth on the front page of each sales or service agreement or contract shall be preceded by the heading "RISK FACTORS YOU SHOULD CONSIDER PRIOR TO PURCHASE", and shall also include a signature line for the customer preceded by a declaration that the customer has read and understands the statement; and that no agreement or contract shall be deemed valid or complete unless the customer has signed and dated the required declaration.

III

It is further ordered that Respondent Schneider shall fully comply with the Paragraphs IV and VII of the Consent Decree and Permanent Injunction entered by the United States District Court for the Northern District of California in the case *Federal Trade Commission v. The Cellular Corporation, et al.* (Civ. No. C85–8231 WHO), which paragraphs are attached hereto and incorporated herein.

IV

It is further ordered that this settlement agreement is premised on the sworn financial statements of Respondent Schneider previously provided to the Commission. If the Commission finds any material misstatement or misrepresentation in the sworn financial statements, that finding shall cause this Order to be set aside and the Commission in that event shall be permitted to reopen this matter and proceed against Respondent Schneider to the full extent of any possible monetary liability he may have for the acts and practices alleged in the Commission's complaint in this matter in excess of the liability imposed herein. Prior to the making of any such motion, the Commission will notify Respondent Schneider of any alleged discrepancy and provide him with a reasonable opportunity to explain or justify the disputed entry.

V

It is further ordered that Respondent Schneider shall immediately provide a copy of this Order to each officer, employee, sales representative, or independent contractor engaged in the promotion or sale of respondent's non-wireline MSA cellular telephone system application preparation services.

VI

It is further ordered that Respondent Schneider shall, within sixty (60) days after the order is approved by the Commission, file with the Federal Trade Commission a report setting forth in detail the manner and form in which he has complied with this order.

Attachment

IV

It is further ordered that defendants TCC, CCC, Spectra, Wilson and Maerki shall contribute the sum of $400,000 to be used to complete the application process. Upon entry of this Order, $80,000 shall be deposited in a segregated account subject to the supervision of the Federal Trade Commission, which sum shall be earmarked for the final amounts required to be paid under this paragraph. The $400,000 sum obligated under this paragraph shall be used solely for necessary and proper expenses relating to the preparation, completion and filing of applications for the 5th tier of the FCC's cellular telephone license lottery, paid or accrued from December 1, 1985 through March 31, 1986, and cannot be used for payments, directly or indirectly, to defendants Wilson, Maerki or Schneider, whether in the form of salaries or otherwise. On or before April 15, 1986, the Defendants shall submit to the Federal Trade Commission a detailed account of all sums expended or accrued for this purpose from December 1, 1985 to date. Any difference between $400,000 and the amount actually expended or accrued for preparation, completion and filing of said applications from December 1, 1985, through March 31, 1986, as approved by the FTC, shall be paid to the Federal Trade Commission on or before June 1, 1986 to provide redress to consumers pursuant to a plan approved by the Commission. *Provided, however,* that the FTC shall have discretion to pay over the funds received to the United States Treasury, if the FTC determines in light of the administrative or distribution costs of redress that such action is in the public interest.

VII

It is further ordered that defendant TCC shall notify by mail all persons who are obligated to it for a portion of the purchase price for its lottery application services, pursuant to a limited recourse note or otherwise (the "Note"), advising them that the Note is due and payable only out of revenues from the operation of the cellular system and/or from the sale of his/her interest in the license and shall be enjoined from collecting or attempting to collect on the Notes in any manner inconsistent with this reformation. Nothing in this paragraph shall prevent defendants from discounting the Notes or preclude defendant TCC from assigning, hypothecating or otherwise disposing of any Note for such consideration as defendant TCC in its sole discretion deems appropriate; provided, however, that any taker of any Note from TCC shall be notified of and be bound by the reformation provisions contained in this paragraph.

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Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Albert Schneider, President of Cellular Capital Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Albert Schneider has made misrepresentations of material facts to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission (FCC). The complaint futher alleges that, in light of the representations made, consumers are likely to be misled by Mr. Schneider's failures to disclose certain material facts, including the fact that the purchase of cellular application services is a high-risk investment.

The proposed consent order would prohibit Mr. Schneider, and persons in active concert or participation with him, from misrepresenting any fact "material to a customers's decision to purchase application services for the FCC lottery." In particular, he would be prohibited from making any representation that an applicant in the FCC lottery "is certain or substantially certain to obtain all or part of a cellular telephone license." He would also be required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

Under the agreement, Mr. Schneider and certain individuals working with him would be required to spend up to $400,000 from December 1, 1985 to March 15, 1986 for the completion of the cellular applications that they have agreed to prepare. Any difference between $400,000 and the amount actually expended would be paid to the Federal Trade Commission.

Consumer redress would be provided by the reformation of the $10,000 limited recourse notes used by most of Mr. Schneider's customers to pay for a portion of the application price. The notes now provide that they are automatically due two years from the date that the applicant or the applicant's settlement group receives a construction permit from the FCC. They would be rewritten to provide that they are payable only out of revenues from the operation of the cellular system and/or from the sale of the applicant's interest in the cellular license.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-5227 Filed 3-10-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Solicitation of Public Comments Regarding Tariff Classification of Prefinished Hardboard Siding

AGENCY: Customs Service, Treasury.

ACTION: Solicitation of public comments.

SUMMARY: Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard lap siding. The product in question is a plank of hardboard, 7/16-inch thick, and either 9 or 12 inches wide. Approximately 1-inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation with acrylic latex paint. The current tariff classification was challenged administratively by the filing of a domestic interested party petition. That petition was denied by Customs. In the subsequent court proceeding contesting the denial by Customs, an alternative classification not previously considered was suggested. Customs has been directed by the court to consider the alternative classification, which we are publishing for public comments in order to make an administrative decision on the claim. The Court further directed Customs to communicate its administrative decision within 60 days from the date of the Court order, January 27, 1986.

DATE: Comments (preferably in triplicate) must be received on or before April 10, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Jeremy N. Baskin, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard lap siding. The product in question is a plank or hardboard, 7/16-inch thick, and either 9 or 12 inches wide.

Approximately 1 inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation with acrylic latex paint. The current tariff classification is under the tariff provision for "Other boards, of vegetable fibers (including wood fibers) . . .", in item 245.90, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), a duty-free provision.

Customs published a notice in the **Federal Register** on March 22, 1982 (47 FR 12258), acknowledging receipt of a petition form a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). The notice solicited public comments on the merits of the petition. The deadline for receipt of comments was subsequently extended by a **Federal Register** notice published on May 27, 1982 (47 FR 23249). The petitioner claimed that the proper classification of the siding should be under the tariff provision for other hardboard in item 245.30, TSUS. The current duty rate under item 245.30, TSUS, is 7,5 percent ad valorem.

In accord with proper administration practice, by a ruling dated October 29, 1982, Customs informed the petitioner that the comments solicited by the March 22, 1982, notice had been considered and, upon review of the matter, it was decided to deny the petition and to continue to classify the imported siding in item 245.90, TSUS.

In response to the October 29, 1982, ruling, by letter of November 29, 1982, the petitioner filed notice of its intention to contest the decision in accordance with § 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

By publication of T.D. 83-104 in the **Federal Register** on May 11, 1983 (48 FR 21231), Customs informed the public of the petitioner's desire to contest the decision, and gave a detailed account of the proceedings to that date together with a full explantion of the reason for denying the petition.

In the subsequent proceeding contesting the classification before the Court of International Trade, *American Hardboard Assocaition* v. *United States and MacMillan Blodel, Ltd.*, Party-in-Interest, Court No. 83-9-01301, a tariff classification not previously considered was suggested. On January 27, 1986, the Court remanded the case for decision on the correctness of the current tariff classification as opposed to the newly suggested alternative classification under the provisions for "Building boards. . . Laminated boards. . .", in tiem 245,80, TSUS. Materials classified under item 248.80, TSUS, are currently subject to a compound rate of duty of 1.4 cents per pound, plus 2.6 percent ad valorem.

Accordingly, in order to properly consider the issue Customs is requesting the views of the public on classification of the imported prefinished hardboard lap siding in item 245.80, TSUS, as opposed to classification in item 245.90, TSUS. A comment period of 30 days is being allowed in view of the short deadline imposed upon Customs by the Court to report on our decision.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquaters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs office participated in its development.

William von Raab,

Commissioner of Customs.

Approved: February 24, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-5370 Filed 3-10-86; 8:34 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[LR-3-77]

Income Tax; Recapture of Overall Foreign Losses

Correction

In the document beginning on page 3193, in the issue of Friday, January 24, 1986, make the following corrections:

1. On page 3193, in the third column, in the last paragraph, in the eighth line, "904(d)(1)(EA)" should read "904(d)(1)(E)".

2. On page 3194, in the second column, in the first complete paragraph, in the eighteenth line, "§ 1.904 (f)-(d)" should read "§ 1.904 (f)-1(d)".

3. On page 3196, in the second column, in the first complete paragraph, in the nineteenth line, "national" should read "notional".

§ 1.904(f)-1 [Corrected]

4. On page 3197, in § 1.904(f)-1(a), in the second column, in the twelfth line from the top of the page, "904(d)(E)" should read "904(d)(1)(E)". In the same column, in paragraph (b), in the sixth line from the bottom of the paragraph, "Form 116" should read "Form 1116", and in the fourth line from the bottom, "blance is" should read "balance in".

5. On page 3198, in § 1.904(f)-1(d)(3)(ii)(A), in the first column, in the third line of paragraph (A), between "capital" and "loss" insert "gain net income reduced by the foreign source net capital".

6. On page 3199, in § 1.904(f)-1(f), in the first column, in the twentieth line from the top of the page, "904(d)(1)(e)" should read "904(d)(1)(E)".

§ 1.904(f)-2 [Corrected]

7. On page 3199, in the third column, in § 1.904(f)-2(c), in the second line, "mount" should read "amount".

8. On page 3200, in the first column, in Example (4), in the fifteenth line, "904(d)(1)(E)(B)" should read "904(d)(1)(B)".

9. On page 3201, in the first column, in § 1.904(f)-2(d)(4)(iii), in the second line, "of" should read "to".

§ 1.904(f)-3 [Corrected]

10. On page 3202, in the third column, § 1.904(f)-3(a), in the tenth line from the bottom of the page, "carryback" should read "carryover".

§ 1.1502-9 [Corrected]

11. On page 3206, in the first column, § 1.1502-9(a), in the eleventh line from the bottom of the page, "national" should read "notional". In the second column, in paragraph (iii), in the sixth line, "oveall" should read "overall".

12. On page 3208, in the third column, in the file line at the end of the document, the FR Doc. number should read "86-1463".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85-349]

47 CFR Part 76

Amendment of the Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems; Extension of Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; Extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the *Notice of Inquiry and Notice of Proposed Rule Making* in MM Docket No. 85-349. This *Notice* requested comments and specific rule proposals regarding matters concerning carriage of television broadcast stations by cable television systems. The National Association of Broadcasters and the National Cable Television Association requested the extension of time.

DATE: Reply comments are due March 21, 1986.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Order Granting Request for Extantion of Time To File Reply Comments

In the matter of Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television System; MM Docket No. 85-349.

Adopted: February 28, 1986.

Released: March 3, 1986.

By the Acting Chief, Mass Media Bureau.

1. On November 14, 1985, the Commission adopted a combined *Notice of Inquiry and Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 85–349, 50 FR 48232, to consider the matter of cable carriage of broadcast television signals. Reply comments in this proceeding are currently due March 4, 1986, pursuant to an *Order Extending Time for Filing Reply Comments* that was issued on February 21, 1986 (Mimeo No. 2767).

2. On February 27, 1986, the National Association of Broadcasters (NAB) and the National Cable Television Association (NCTA) submitted a joint motion to extend the date for filing reply comments in the proceeding referenced above until March 21, 1986. The parties state that they reached a compromise agreement on February 27, 1986, to recommend to the Commission new requirements for the carriage of local television broadcast signals by cable systems. The Television Operators Caucus (TOC) and the Independent Television Association (INTV) are also parties to the agreement. The NAB and NCTA indicate that the extension is necessary to permit the NCTA to obtain approval of its board of directors which is scheduled to meet on March 19, 1986. They also submit that they believe that it is important to file reply comments consistent with the compromise agreement.

3. As we stated in the *Notice*, we believe that it is important that the must carry proceeding be completed expeditiously. However, we also recognize the significance of this matter to broadcasters, cable operators, and the public. In this respect, we believe it is desirable to give consideration to the forthcoming must carry compromise agreement between broadcast and cable interests. Thus, we find that the requested 17-day extension is warranted to permit the necessary NCTA board approval and the filing of reply comments reflecting the results thereof.

4. Accordingly, It is ordered that the date for filing reply comments in response to the above-reference *Notice of Inquiry and Notice of Proposed Rule Making* is extended to March 21, 1986. This action is taken pursuant to authority provided in 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 86–5240 Filed 3–10–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Lindera Melissifolia (Pondberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service reopens the comment period on the proposal to determine *Lindera melissifolia* (Walt.) Blume (pondberry) to be an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). The Service seeks data and comments from the public on this proposal.

DATE: Comments from all interested parties must be received by April 10, 1986.

ADDRESSES: Comments and materials concerning this notice should be sent to Mr. V. Gary Henry, Acting Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address, (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the Federal Register (50 FR 32581) the Service proposed that *Lindera melissifolia* (pondberry), a small wetland shrub limited to 18 locations in the Southeastern United States, be designated as an endangered species under the authority of the Endangered Species Act of 1973, as amemnded. *Lindera melissifolia* is endangered by land clearing operations, timber harvesting, drainage activities, and encroachment by competitor species. That proposal, if made final, would implement the protection provided by the Act for *Lindera melissifolia.*

The Act requires that a legal notice of proposed rules, such as the one for *Lindera melissifolia*, be published in local newspapers during the comment period for the proposed rule. Inadvertently, the Service did not publish a newspaper notice in a newspaper within the vicinity of the two Mississippi populations. The purpose of this action is to reopen the comment period for this proposed rule, publish newspaper notices in Mississippi, and thereby meet all public notification requirements of the Act. The appropriate Federal, State, and local officials, landowners, and other interested parties throughout the range of pondberry, including Mississippi, were informed of this proposal during the original comment period which extended from August 13, 1985, through September 27, 1985.

Author

The primary author of this notice is Mr. Robert R. Currie, Endangered Special Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlfife, Fish, Marine mammals, Plants (agricuture).

Dated: March 3, 1986.

James W. Pulliam, Jr.,

Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 86–5212 Filed 3–10–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA)
Title: Unemployment Insurance Benefit Payments by County
Form number: Agency—N/A; OMB—0608–0038
Type of request: Extension of a currently approved collection
Burden: 28 respondents; 156 reporting hours
Needs and uses: BEA requests data directly from the responsible State agencies to produce county estimates of unemployment insurance benefit payments, part of county estimates of personal income.
Affected public: State or local governments
Frequency: Annually
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–5218 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A–549–502]

Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce determined that circular welded carbon steel pipes and tubes from Thailand were being sold at less than fair value within the meaning of the antidumping duty law. In a separate investigation, the United States International Trade Commission (the ITC) determined that circular welded carbon steel pipes and tubes from Thailand are materially injuring a United States industry. Additionally, the Department and the ITC found that "critical circumstances" do not exist with respect to circular welded carbon steel pipes and tubes from Thailand. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of Circular Welded Carbon Steel Pipes and Tubes from Thailand made on or after October 3, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION: The products under investigation are certain circular welded carbon steel pipes and tubes (referred to in this notice as "pipes and tubes"), also known as "standard pipe" or "structural tubing," which includes pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the *Tariff Schedules of the United States Annotated* (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on October 3, 1985, the Department published its preliminary determination that there was reason to believe or suspect that circular welded carbon steel pipes and tubes were being sold at less than fair value (50 FR 40427). On January 27, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 3384).

On February 21, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipes and tubes from Thailand. These antidumping duties will be assessed on all unliquidated entries of pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 3, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 40427).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

MANUFACTURERS/PRODUCERS

Exporters	Weighted-average margins (pct)
Saha Thai Steel Pipe Co	15.69
Thai Steel Pipe Industry Co	15.60
All other manufacturers/producers	

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MANUFACTURERS/PRODUCERS—Continued

Exporters	Weighted-average margins (pct)
Exporters	15.87

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attribetable to export subisidies. In the final countervailing duty determination on certain circular welded carbon steel pipes and tubes from Thailand, we found export subsidies (50 FR 32751). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the expert subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

This determination constitutes an antidumping order with respect to pipes and tubes from Thailand, pursuant to section 736 of the Act (19 U.S.C 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 4, 1986.

[FR Doc. 86-5249 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-501]

Amended Anitdumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 14, 1986, the United States Department of Commerce (the Department) published an antiumping duty order in the Federal Register stating that all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after February 14, 1986, the date of publication of the order, would be liable for the assessment of antidumping duties.

This amended order changes the effective date for the assessment of antidumping duties to February 8, 1986, the date of publication of the notice of an affirmative determination of threat of material injury by the International Trade Commission (ITC), in accordance with the "Special Rule" provision of section 736(b)(2) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5286.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

March 4, 1986.

[FR Doc. 86-5250 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-507-502]

Certain In-Shell Pistachios From Iran; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by May 19, 1986.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: telephone: (202) 377-1769.

Preliminary Determination

We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We found that all sales during the period of investigation were at less than fair value. The weighted-average margin is 192.54 percent. We have preliminarily determined that "critical circumstances" exist with respect to pistachios from Iran.

Case History

On September 26, 1985, we received a petition from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duché Nut Co., Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of certain in-shell pistachios (pistachios) from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated an investigation on October 15, 1985 (50 FR 42978). On November 12, 1985, the ITC determined that there was a reasonable indication that imports of pistachios from Iran were materially injuring, or threatening material injury to, a U.S. industry (US ITC Publication 1777).

On October 25, 1985, we presented a questionaire to the Rafsanjan Pistachio Cooperative since it was the only known seller of pistachios from Iran. We received a response on November 26, 1985 from the Government of the Islamic Republic of Iran through the Embassy of the Democratic and Popular Republic of Algeria. We requested additional information since the initial response was inadequate for use in a preliminary determination. On January 10, January 15, and January 24, 1986, we received additional responses to the initial October 25, 1985 questionaire. By

correspondence of January 30, 1986, the Department declared the combined additional responses of January 10, January 15, and January 24, 1986, to be inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionaires to the Rafsanjan Pistachio Cooperative to be forwarded to their customers who export the subject merchandise to the United States. If timely and complete responses are received from these customers, they will be used for our final determination.

Product Under Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, as currently provided for under item number 145.26 of the *Tariff Schedule of the United States* (TSUS). The period of investigation is April 1, through September 30, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less then fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because appropriate responses were not submitted.

United States Price

For purposes of our preliminary determination, we have not used sales data presented by respondents to calculate United States price since it did not contain data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. values for the six month period of investigation as derived from the IM 145 statistics compiled by the Bureau of Census.

Foreign Market Value

We have used price information provided in the petition, as the best information available, pursuant to section 776(b) of the Act since we did not have specific data respective to quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Preliminary Affirmative Critical Circumstances Determination

Petitioners have alleged that imports of certain in-shell pistachio nuts present "critical circumstances" within the meaning of section 733(e)(1) of the Act. Critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of the merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In preliminarily determining whether there is a history of dumping pistachios from Iran in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the experter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margins in this case exceed this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

For the reasons described above, we preliminarily determine that critical circumstances exist with respect to Pistachios from Iran.

Verification

If timely and complete submissions are provided, in accordance with section 776(a) of the Act, we will verify them for use in our final determination by using standard verification procedures, including examination of revelant sales, financial and cost records of the companies.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain in-shell pistachios from Iran. Liquidation shall be suspended on all unliquidated entries filed for consumption on or after December 11, 1985. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to the investigation exceeds the United States price. In the case of in-shell pistachios the amount is 192.54%. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on Pistachios from Iran will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days

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after we make our final determination. In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on April 2, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 25, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 5, 1986.

[FR Doc. 86-5251 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-501]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to growers, processors, or exporters in Iran of in-shell pistachios. The estimated net bounty or grant is 99.52 percent *ad valorem*.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after December 30, 1985, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174 or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to growers, processors, or exporters in Iran of in-shell pistachios. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Preferential Exchange Rate for Exporters.
- Foreign Exchange Retention Scheme.
- Price Support/Guaranteed Purchase of all Production.
- Preferential Provision of Fertilizer and Machinery.
- Credit on Terms Inconsistent with Commercial Considerations.
- Tax Exemptions.
- Preferential Provision of Water and Irrigation.
- Preferential Provision of Technical Support.

We determine the estimated net bounty or grant for in-shell pistachios to be 99.52 percent *ad valorem*.

Case History

On September 26, 1985, we received a petition in proper form filed by the California Pistachio Commission, Blackwell Land Company, California Pistachio Orchards, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T. M. Duché Nut Company, Inc., on behalf of growers and processors in the U.S. pistachio nuts industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processors, and exporters in Iran of pistachios receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and that U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry (19 U.S.C. 1303(a)(1), (b)).

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 16, 1985, we initiated such an investigation (50 FR 42960). We stated that we expected to issue a preliminary determination on or before December 20, 1985.

We presented a detailed questionnaire to the government of Algeria in Washington, DC on October 25, 1985, and requested that the Embassy forward the questionnaire to the appropriate Iranian authorities in its capacity as the protecting power for Iran in the United States. We requested a response to our questionnaire by November 25, 1985. On November 27, 1985, the Embassy of Algeria forwarded to the Department a message from the Iranian authorities requesting that the deadline for submitting a response be extended by two months. On December 6, 1985, we informed the Iranian authorities, through the Embassy of Algeria, that if we did not receive a response to our questionnaire by December 9, 1985, we might have to use the best information available for our preliminary determination. We did not receive a response on December 9, either from the government of Iran or the growers, processors, or exporters of the subject merchandise in Iran.

On December 20, 1985, we made our preliminary affirmative determination stating that benefits which constitute bounties or grants are being provided to growers, processors, or exporters in Iran of in-shell pistachios (50 FR 53178). Because we had not received a response from the respondents, we based our preliminary determination on the best information available, which was information supplied by the petitioners.

On December 30, 1985, the government of Iran filed an incomplete response to the Department's questionnaire. On January 3, 1986, the government of Iran requested that the deadline for a response be further extended. On January 17, 1986, we informed the government of Iran that we would consider for our final determination a complete response if submitted to us in proper form no later than January 24, 1986.

On January 27, 1986, two months after the original due date for a complete response, the government of Iran submitted a partial response to our questionnaire. We thoroughly reviewed

this partial response of the Iranian government and determined that none of the questions in the questionnaire was answered adequately. The response failed to provide even the most basic information requested in all countervailing duty questionnaires such as laws and regulations governing the alleged bounty or grant programs. The submission also did not include most of the official government documents and statistical reports requested, and omitted specific information pertaining to agricultural cooperatives, in particular the Rafsanjan Pistachio Producers Cooperative. The response also did not provide meaningful information regarding the Iranian financial system and lending practices. Such information is a necessary part of any response, because it provides the Department with the information to identify the normal commercial patterns of financial transactions in a given country. In relation to specific questions on the alleged programs, the response either denied outright the existence of the programs or stated that there was no preferential provision of benefits under the programs. Although we must consider each response in a given case individually, in this instance the omissions, particularly considering the late date of the submission, are of such a degree as to render the response inadequate.

On February 7, 1986, we informed the government of Iran, through the government of Algeria, that the December 30, 1985 and the January 27, 1986 responses were inadequate and that, therefore, our final determination would be based on the best information available, as required by § 355.39 of our regulations (19 CFR 355.39).

Scope of Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, currently specifically provided for under item 145.26 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Because we did not receive a sufficient response to our questionnaire, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits. The Department has no record of past countervailing duty investigations or administrative reviews involving Iran and, therefore, we are unable to include our own information in determining whether the benefits alleged in the petition are bounties or grants within the meaning of the countervailing duty law. In addition, we have been unable to obtain information from independent sources regarding the alleged bounties or grants that would supplement or replace that supplied by the petitioners. Therefore, as best information available, we are using petitioners' information, where provided, regarding the countervailability and level of benefits of the alleged bounty or grant programs.

For certain domestic programs, the petitioners did not provide a numerical estimate of the level of benefit, or information from which no calculate a benefit consistent with Department practice. For each of these alleged domestic bounties or grants, we are applying, as best information available, the *ad valorem* subsidy rate from that domestic program for which petitioners did supply information from which to calculate benefit. In addition, for the sales values used in calculating the *ad valorem* rates for the domestic bounties or grants, we are using, as baest information available, the total production values provided in the response. We are using these values because petitioners provided no information on total production values and we were unable to generate figures.

Programs Determined To Confer Bounties or Grants

I. We determine that bounties or grants are being provided to growers, processors or exporters in Iran of in-shell pistachios under the following programs.

A. Preferential Exchange Rate

Petitioners allege that exporters of pistachios in Iran are entitled to exchange foreign currency earned from export sales at a premium of 10 percent above the official rate and that this preferential rate is limited to exporters.

As best information available, we determine that the growers, processors, and exporters under investigation received an additional 10 percent above the official exchange rate on repatriated foreign exchange earned from export sales. On this basis, we determine an estimated net bounty or grant of 10.00 percent *ad valorem*.

B. Foreign Currency Retention Scheme

Petitioners allege that exporters of pistachios in Iran may benefit from retained foreign exchange earned from export sales. According to information submitted in the petition, exporters of pistachios in Iran may benefit from retained currency in two ways.

First, the exporter may use the extra foreign exchange gained as a result of the preferential exchange rate to import goods for resale in Iran at whatever price the market will bear. According to the petition, the free market price of imported goods is often five to six times higher than the price set by the government of Iran.

Second, a pistachio exporter may sell retained foreign exchange at the free market rate to any person in Iran with a need for foreign currency. According to the most recent International Monetary Fund statistics provided by the petitioners, there is a significant difference between the official and free market dollar/rial exchange rate.

Because we have not received an adequate response in this investigation, we have no information beyond that in the petition to use in analyzing this program. We have no way of knowing whether pistachio exporters in Iran do, in fact, have the ability to import goods and sell them, or foreign exchange gained from export sales at a premium over official prices or exchange rates, and whether this right would confer a countervailable benefit. Therefore, as best information available, we determine that this program confers a bounty or grant. To calculate the benefit, we assume that the exporters use both methods of foreign exchange retention, and we averaged the two estimates of benefits provided by the petitioners. On this basis, we determine an estimated net bounty or grant of 46.86 percent *ad valorem*.

C. Price Support/Guaranteed Purchase of all Production

Petitioners allege that pistachio growers in Iran may benefit from a government agricultural policy of guaranteeing the purchase of, and subsidizing prices for, certain major food commodities. Petitioners contend that the government of Iran gave the Rafsanjan Cooperative, the country's principal pistachio cooperative, a $100 million loan on terms inconsistent with commercial considerations to purchase and stockpile pistachios, as a means by which to implement government agricultural policy.

Because we did not receive an adequate response in this investigation we are assuming, as best information available, that this type of financing is limited to a specific enterprise, or industry or group of enterprises or industries, and that loan was extended on terms inconsistent with commercial considerations.

Peitioners have suggested that we treat this loan as a long-term, cost-free

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loan and that the benefit be calculated consistent with the Department's methodology as outlined in the *Subsidies Appendix* for long-term loans (see, "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina," 49 FR 18006). We have assumed that the loan was given in 1983, when, according to information supplied by the petitioners, the Iranian banks still operated under a system of charging interest on loans. To determine a benchmark interest rate for loans in Iran, we are relying on information contained in the *Middle East Economic Digest*, submitted by the petitioners. This publication indicates that interest rates on bank loans in 1983 ranged from 12 to 18 percent. To quantify the benefit from this loan, we assumed the loan was given interest free and used 18 percent as our commercial benchmark rate. Because information in the record of this investigation indicates that the Rafsanjan Pistachio Producers Cooperative is the only pistachio cooperative in Iran, we divided the benefit received during the review period by the total value of pistachio production in the response and calculated an estimated net bounty or grant of 7.11 percent *ad valorem*.

D. Preferential Provision of Fertilizer and Machinery

Petitioners allege that agricultural cooperatives, such as the Rafsanjan Cooperative, can obtain fertilizer and machinery from the government at preferential prices.

According to the petition, the extent of the benefit varies with the crop produced. Petitioners further allege that these cooperatives, in turn, provide both fertilizer and machinery to their members on a preferential basis.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

E. Preferential Credit

Petitioner's allege that agricultural cooperatives in Iran make credit available on terms inconsistent with commercial considerations from funds provided by the government to their members. Petitioners argue that the Rafsanjan Cooperative is the principal cooperative for pistachios in Iran and that this organization may provide loans on terms inconsistent with commercial considerations to its members. Because the respondents did not provide an adequate response in this case and the peititoners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

F. Tax Exemptions

Petitioners allege that pistachio farmers may benefit from legislation exempting farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. We determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

G. Preferential Provision of Water and Irrigation

Petitioners allege that pistachio growers in Iran may benefit from construction of soil dams, flood barriers, canals and other irrigation projects undertaken by the government to increase agricultural production.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

H. Preferential Provision of Technical Support

Petitioners allege that pistachio growers in Iran may receive technical support as part of the government's program to support agricultural development. Petitioners argue that technical support has included research projects to improve cultivation techniques, and assistance in harvesting, and marketing produce as well as the use of fertilizer. Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

Petitioners' Comments

Comment 1· Petitioners argue that the response filed by respondents should be disregarded in its entirety by the Department. Important issues raised in the questionnaire have gone unaddressed, and requested background explanations and documentation have not been provided. The response is non-responsive and therefore, the final determination should be based upon the best information available.

DOC Position: We agree. See the "Case History" and "Analysis of Programs" sections of this notice.

Comment 2: Petitioners urge the Department to use the best information available to quantify the benefit conferred by the nine billion rial loan extended to the Rafsanjan Pistachio Cooperative based on the assumption that the loan was provided cost-free. Petitioners argue that the Department has sufficient information from the peitition and a subsequent submission by petitioners to calculate the benefit from this loan.

DOC Position: We agree. See our determination on this loan in section I.C., above.

Comment 3: Petitioners contend that the section of the January 27, 1986 response regarding the Iranian financial system and interest rate structure is misleading and that borrowers in Iran may incur certain costs which are comparable to interest expenses. According to petitioners an "Islamic" banking system, which prohibits interest charges, has been in place only since March 1984. Prior to this time; which is in the period of investigation, Iranian banks operated according to standard banking practices.

DOC Position: We agree that the response inadequately explained the operation of the Iranian financial system and lending practices. As explained in our determination, however, we are assuming the loan to the Rafsanjan Pistachio Cooperative we received in 1983 and we are using a benchmark interest rate based on a period when,

according to information submitted by petitioners, Iranian banks charged interest according to standard banking practice. See section I.C. of this notice.

Comment 4: Petitioners allege that a currency retention program exists in Iran and that it confers a countervailable benefit on exports. Exporters are permitted to retain foreign exchange earned from export sales or to import goods independent of the government's control. Petitioners argue that these privileges are limited to exporters and thus confer a bounty or grant.

DOC Position: Because we did not receive an adequate response in this investigation, we used the information provided in the petition to analyze this program. See section I.B. of this notice for our determination.

Comment 5: Petitioners contend that there is a preferential exchange rate program for pistachio exports. The Central Bank of Iran Annual Report, filed with the response, confirms its existence.

DOC Position: Because we did not receive an adequate response in this investigation, we used the information included with the petition to analyze this program. See section I.A. of this notice for our determination.

Comment 6: Petitioners contend that based upon the information contained in the Central Bank of Iran Annual Report, it is clear that the government of Iran provides massive assistance to the agricultural sector. Thus, many of the domestic programs alleged to be bounties or grants in the petition are provided by the government of Iran.

DOC Position: We agree that the Central Bank report provides evidence of the existence of these programs but it provides no evidence on which to base a decision of whether these programs are countervailable. Therefore, as best information available, we have adversely inferred countervailability and applied the highest rate found for a domestic bounty or grant. See our determination on these domestic subsidy programs in section I.D—H. above.

Comments by Interested Party

Comment 1: Interested party asserts that there is no preferential rate of exchange in Iran. Sufficient information has not been provided to support the existence of this export subsidy. The reference to this program in the Central Bank of Iran Annual Report is general and refers to the purchase of non-oil export proceeds at unspecified "preferential" rates.

DOC Position: It is the obligation of respondents in an investigation to provide complete documentation and explanations regarding bounty or grant allegations. Because the information submitted on January 27, 1986 was incomplete and inadequate, we have determined that we must use best information available as the basis for our analysis of all the alleged bounty or grant programs.

Comment 2: Interested party denies the existence of a foreign currency retention scheme in Iran for exporters. Iranian exporters may return foreign exchange only at the official rate or return imported goods for sale at locations and on terms designated by the Production and Distribution Center (PDC).

DOC Position: See our response to comment 1, above.

Comment 3: Interested party argues that should the Department agree with petitioners that a preferential exchange rate and/or foreign currency retention scheme exists, the benefit calculated would have to be limited to the level of "legitimate" pistachio exports to the U.S. quoted in the response. No benefits could accrue to illegal exports or imports conducted without the knowledge of the government of Iran.

DOC Position: Because the response was inadequate, we did not verify the information submitted by the respondents and are relying on best information available. In addition, there is no information to suggest that simply because certain exports to the United States were not recorded by the government of Iran, that these exports would somehow not benefit from bounties or grants provided to pistachio producers.

Comment 4: Interested parties claims petitioners have failed to establish that any domestic subsidies are available to, or are received by, growers of pistachios or pistachio cooperatives in Iran. The status of pistachios as a luxury item makes it ineligible to receive the alleged preferential benefits available only to basic food commodities.

DOC Position: See our response to interested party comment 1, above.

Comment 5: Interested party contends that all agriculture in Iran is exempt from payment of land taxes. Therefore, any benefit to pistachio farmers is non-countervailable.

DOC Position: See our response to interested party comment 1, above.

Comment 6: Interested party claims the Rafsanjan Pistachio Producers Cooperative did not receive countervailable benefits via a nine-billion rial government loan. There is no government program to provide capital to certain companies or segments of the agricultural sector.

DOC Position: See our response to interested party comment 1, above.

Best Information Available

In accordance with 776(d) of the Act, we used the best information available in making our final determination.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). Written comments were received from counsel for the petitioners on January 28 and February 4, 1986. Written comments were also filed on behalf of the Pistachio Group of the Association of Food Industries, an interested party to the proceedings, on February 5, 1986. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with section 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice (50 F.R. 53178). The estimated net bounty or grant for duty deposit purposes is 99.52 percent *ad valorem*. In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require cash deposit in the amount indicated above for each entry of in-shell pistachios from Iran which is entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(a) of the Act [19 U.S.C. 1617(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 5, 1986.

[FR Doc. 86-5248 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty orders.

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SUMMARY: In response to a request from the exporter in each case, the Department of Commerce has conducted an administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico. The review covers the period April 1, 1983 through December 31, 1983 and seven programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 4.54 percent *ad valorem* for toy balloons (including punchballs) and 3.45 percent *ad valorem* for playballs for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 45038) the final results of its last administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico (47 FR 57532, December 27, 1982). In accordance with § 355.10 of the Commerce Regulations, the exporter in each case requested on October 15, 1985, an administrative review of the orders. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican boy balloons (including punchballs) and playballs. Such merchandise is currently classifiable under items 735.0990 and 737.9536 of the *Tariff Schedules of the United States Annotated.*

The review covers the period April 1, 1983 through December 31, 1983 and seven programs: (1) FOMEX; (2) CEPROFI; (3) CEDI; (4) FONEI; (5) FOGAIN; (6) import duty reductions and exemptions; and (7) state tax incentives.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust fund of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since those loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for FOMEX pre-export financing, denominated in Mexican pesos, was 8 percent during the period of review. The annual interest rate for FOMEX export financing, denominated in the currency of the importing country, was 6 percent during the period of review.

Since we lacked information on effective FOMEX interest rates in this case, we chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans, we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board.

Based on this information, we preliminarily determine that, during the period of review, comparable peso-denominated loans were available commercially at 64.34 percent and comparable dollar-denominated loans were available at 12.60 percent. We found the resulting interest differentials during the review period to be 56.34 percent for peso-denominated loans and 6.60 percent for dollar-denominated loans.

The one known exporter of toy balloons (including punchballs) to the United States used these programs during the period of review, as did the one known exporter of playballs to the United States. Since neither firm could tie its FOMEX pre-export loans to exports to specific countries, we used all of each firm's FOMEX pre-export loans and allocated the benefits over each firm's total exports. Since both firms were able to tie FOMEX export loans to exports to specific countries, we used only FOMEX export loans on U.S. shipments and allocated the benefits over only the value of U.S. shipments during the period of review.

On this basis, we preliminarily determine the benefit for toy balloons (including punchballs) from FOMEX pre-export loans to be 2.88 percent, and from FOMEX export loans to be 1.66 percent, for a total benefit of 4.54 percent *ad valorem*. In the case of Mexican playballs, we preliminarily determine the benefit from FOMEX pre-export loans to be 2.36 percent, and from FOMEX export loans to be 1.09 percent, for a total benefit of 3.45 percent *ad valorem.*

On September 2, 1985, the Mexican government raised the interest rate on FOMEX pre-export financing to 39.8 percent and on FOMEX export financing to 6.6 percent. The calculate the estimated duty cash deposit rate, we compared the new FOMEX interest to our most recent commericial benchmarks. The interest differential for peso-denominated loans is 28.17 percent, and for dollar-denominated loans, 6.28 percent. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 2.92 percent *ad valorem* for toy balloons (including punchballs) and 1.98 percent *ad valorem* for playballs.

(2) Other Programs

We also examined the following programs and preliminarily find that exporters of toy balloons (including punchballs) and playballs did not use them during the review period.

(A) Certificates of Fiscal Promotion ("CEPROFI");

(B) Tax Rebate Certificates ("CEDI");

(C) Fund for Industrial Development ("FONEI");

(D) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");

(E) Import duty reductions and exemptions; and

(F) State tax incentives.

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be 4.54 percent *ad valorem* for playballs.

The Department intends to instruct the Customs Service to assess countervailing duties of 4.54 percent of the f.o.b. invoice price on shipments of toy balloons (including punchballs), and 3.45 percent of the f.o.b. invoice price on shipments of playballs exported on or after April 1, 1983, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.92 percent of the entered value on all shipments to toy balloons (including punchballs) and 1.98 percent of the entered value on all shipments of playballs entered, or withdrawn from warehouse, for consumption on or after the date of

publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final result of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the first workday before. Any request for an administrative protective order must be made no later than five days after date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: March 4, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–5219 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-DS-M

Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held April 2, 1986, 9:30 a.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Progress on the TAC 1986 plan.
4. New business.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes call 202–377–2583.

Dated: March 6, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–5247 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Mammals, Fish Import Certification From Chile

Regulations established in accordance with the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.* (50 CFR 216.24(e)) provide that a nation may certify that vessels fishing under its flag are (1) fishing in conformance with U.S. regulations, or (2) if not in conformance, were not fishing in a manner prohibited for U.S. fishermen under these regulations. This certification is necessary in order to permit the importation into the United States of certain of its fish and fish products.

The Assistant Administrator for Fisheries, National Marine Fisheries Service, has received and accepted a certification from the Government of Chile that vessels fishing for salmon under Chilean flag are fishing in conformance with U.S. regulations in regard to the taking of marine mammals incidental to commercial fishing operations. Therefore, salmon from Chile are hereby exempt from the provisions of 50 CFR 216.24(e)(3) and may be exported to the United States without an accompanying Standard Form 369–1 (Fisheries Certificate of Origin).

Copies of the certification are on file and available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–5273 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of experimental fishing permit applications and request for comments.

SUMMARY: This notice acknowledges receipt of nine applications for experimental fishing permits (EFPs) to harvest sablefish and other groundfish with set nets in the Pacific Ocean north of 38° N. latitude in 1986. These applications were submitted in response to a notice announcing that applications would be accepted until January 30, 1986. If granted, these permits would allow fishing which otherwise would be prohibited by Federal regulations.

DATE: Comments on these EFP applications must be received by March 14, 1986.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at § 663.10 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations.

Section 663.28(c) prohibits fishing for groundfish using set nets (anchored gillnets) north of 38° N. latitude because the Pacific Fishery Management Council (Council) when developing the FMP was

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concerned about (1) the potential for an unacceptably high incidental catch of salmon, (2) the lack of information on the potential incidental catch of other species such as halibut and protected groundfish species, (3) the ability of set nets to continue fishing indefinitely if lost or unattended, (4) the introduction of a new fishery when the stocks were already fully utilized by existing gear, and (5) the potential for conflict between fixed and mobile gear if used in the same area. This restriction on set nets is consistent with historic State groundfish regulations and on international understanding with Canada on ocean net fisheries.

Subsequent to implementation of the FMP, NMFS issued EFPs each year to obtain data on set nets and their use in harvesting sablefish and other incidentally taken groundfish species, and to determine whether such fishing gear can be incorporated into the FMP without undue negative impact on the resource or on other fishermen. One EFP was issued in 1982, three in 1983 and in 1984, and seventeen in 1985. NMFS observers accompanied the EFP vessels on over 30 percent of their trips to monitor the experiment and collect information. Most of this experimental fishing with set nets occurred in a small area in the deeper waters off the cost of northern Washington. Sablefish was the target species, although quantitites of lingcod and rockfish were also landed. Approximately 361, 572, and 704 metric tons of sablefish, lingcod, and rockfish were landed by EFP vessels in 1983, 1984, and 1985, respectively. Sablefish comprised 49 percent, 68 percent, and 40 percent of the landed catch in these three years. The incidental catch of salmon was negligible, as only five salmon were taken in over 500 sets observed during the three years. Further details are included in the annual reports on the experimental fishery which are available from the above address.

A notice in the **Federal Register** (50 FR 51279, December 16, 1985) announced that NMFS is considering issuing similar EFPs again in 1986 and would accept applications until January 30, 1986. The notice provided instructions to apply for an EFP and advised potential applicants that possibly no EFPs would be issued for 1986.

Nine applications were received by January 30, 1986. All but one of the applicants are previous participants in this experimental fishery and they all propose to fish experimentally with essentially the same gear and in the same manner as they did under the EFPs issued in 1985. All applicants chose the area off the coast of Washington, north of 47°30′ N. latitude, as their first choice. The target species are sablefish, lingcod, and rockfish. All applicants indicated they wanted to fish experimentally about the same time as last year, May 1 to October 31, using a maximum of 1800 fathoms of net with 5½- to 6-inch mesh size.

Advice on whether to approve or deny all or some of the applications will be sought from the Council at its March 10–13, 1986, meeting in Portland, Oregon. Considerations toward a decision will include a review of the information collected to date on use of this gear, recommendations of the Council, and comments received from the public. Since considerable information has been collected on the use of this gear, it may be adequate for evaluating this fishery and no further EFPs will be issued or, if issued, they may be restricted to the times and areas where further information is needed. The number of EFPs issued may be limited by the funds available to pay for observers to collect experimental data and monitor permit compliance. It is possible that no EFPs will be granted in 1986 because of resource and allocation concerns.

After a decision is made on how many, if any, EFPs will be issued in 1986, applicants will be selected, based on the proposals best suited to achieve the purpose of the EFP with regard to obtaining needed information. The evaluation will consider the applicants' experience and ability to comply with the conditions of the experiment which will be specified in their permits. Willingness to fish in any or all areas may improve an applicant's chance of being selected. If objective evaluation does not sufficiently limit the number to be selected, a random drawing may be used. If applicants do not voluntarily achieve an acceptable area distribution, area assignments may be imposed as conditions of the permits.

Copies of the applications are available for review at the address above.

(16 U.S.C. 1801 *et seq.*)

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, Resource Management, National Marine Fisheries Service.

[FR Doc. 86-5272 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 301/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, 2000 S.W. First Avenue, Portland, OR 97201 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels Joint Venture)

Nation, vessel name, and type	Application No.	Fishery	Activity
Government of Italy			
Giovanni C., medium stern trawler.	IT-86-0022.	NWA	1*
Government of Japan			
Reefer Beaver, cargo/transport vessel.	JA-86-1145.	BSA, GOA	3
Government of the Republic of Korea			
No. 1 Chil Bo San, cargo/transport vessel.	KS-86-0133.	BSA, GOA	3
Government of the Union of the Soviet Socialist Republics			
Kamenka, medium stern trawler.	UR-86-0791.	BSA, GOA	1*
Saluschi, medium stern trawler.	UR-86-0792.	BSA, GOA	1*

Joint Venture

Italy

The Italian vessel, GIOVANNI C., will participate in a joint venture with the IST Corporation, Cape May, NJ. Notice of receipt of that permit application for the joint venture was published December 6, 1985, 50 FR 50150.

Poland

The Government of Poland has submitted applications for joint venture activities in the WOC fisheries for 30,660 mt of Pacific whiting. Contract negotiations have not been concluded; therefore, an American partner was not designated on the application.

USSR

The USSR vessels listed will participate in the joint venture with Marine Resources Company, International (MRA), Seattle, WA. Notice was published December 2, 1985, 50 FR 49437.

[FR Doc. 86-5274 Filed 3-10-86 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming Executive Committee Meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 24, 1986.

ADDRESS: Fashion Institute of Technology, 227 West 27th Street, A Building, Room 802, New York, New York.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evalutions of programs carried out under this title and publish and distribute the results thereof.

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Council on Vocational Education from 9:00 AM to 5:00 PM, 2000 L Street, NW., Suite 580, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Edwards, NCVE Staff at above address. Telephone (202) 634–6110.

Signed at Washington, DC, on March 3, 1986.

Dated: March 3, 1986.

Carolyn J. Edwards,

Executive Assistant.

[FR Doc. 86-5214 Filed 3-10-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Nonresidential Buildings Energy Consumption Survey (NBECS) Forms

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments on the 1986 NBECS survey forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is seeking comments on the proposed survey forms for the 1986 Nonresidential Buildings Energy Consumption Survey (NBECS). The NBECS is a general purpose statistical survey conducted for non-regulatory purposes. It is being designed to meet the needs of public and private data users in addition to meeting the legislative requirements of EIA as specified in section 52 of the Federal Energy Administration Act of 1974, Pub. L. 93–275. Section 52 requires the EIA to establish a National Energy Information System which ". . . shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate. . . ."

The NBECS, which has been previously conducted in 1979 and 1983, is designed to provide limited basic information on energy consumption for benchmarking, forecasting, policy evaluation and planning.

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In both the 1979 and the 1983 NBECS, representative samples of nonresidential buildings in the 48 contiguous States and the District of Columbia were selected. Data were collected at the individual building level on characteristics of the building's structure, activities inside the building, energy conservation measures, heating and air-conditioning equipment, and both the types and the end uses of energy consumed. Information concerning the building unit was collected by personal interviews with the building owner/manager in the 1979 NBECS and through telephone interviews in the 1983 NBECS. These interviews, conducted by trained professional interviewers, were voluntary. For the 1979 and 1983 surveys, data concerning actual energy consumption were obtained from fuel records maintained by each building's energy suppliers by means of a mandatory mail survey.

The EIA has built a new area probability sampling frame for the 1986 and subsequent surveys. The design of the 1986 NBECS is expected to yield national estimates based on 5,500 completed interviews. Present plans call for data to be collected that will be valid for the four Census regions (Northeast, South, North Central, and West). The 1986 NBECS building characteristics data will be gathered in the first quarter of 1987 through voluntary personal interviews with the owners/managers of commercial buildings. At the conclusion of the interview, the building owner/manager will be asked to sign a waiver authorizing the survey contractor to obtain fuel consumption records from the building's energy suppliers. Data on energy consumption and expenditures will be collected through a series of mandatory mail surveys to the energy suppliers for each of the sampled buildings.

ADDRESS: To obtain additional information or copies of the proposed forms, contact: Ms. Julia Oliver, Energy End Use Division, Energy Information Administration, Department of Energy, Mail Stop 1H-053, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202-252-5744).

DATE: Written responses on the proposed forms should be submitted to Dr. Lynda T. Carlson, Director, Energy End Use Division at the above address within 30 days of the publication of this notice.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Written Comments

I. Background

The EIA solicited comments on the design of the 1986 NBECS through a Federal Register notice on January 31, 1985 (50 FR 4571). The proposed questionnaires have been developed using the knowledge gained by EIA through the public comments received in response to that notice, through discussions with NBECS data users and through discussions with industry representatives and trade associations.

II. Current Actions

In keeping with its mandated responsibility, EIA proposes to make changes, as described below, to the NBECS forms for the 1986 survey. Implementation of these changes, which will result in a net reduction of the reporting burden imposed on the public, will not impede EIA's ability to ensure that the potential needs of NBECS data users are met.

The proposed 1986 NBECS Building Interview form is a melding of the previous forms used on the 1979 and 1983 surveys. The major categories of data collected remain the same: building characteristic, heating and cooling equipment, fuels used and, conservations practices. However, within these categories, questions have been combined, reworded, reformatted, and in some cases droped altogether.

Major questions that have been dropped on the 1986 NBECS include: the Emergency Building Temperature Restrictions questions (1979 NBECS), detailed boiler characteristics questions (1983 NBECS), detailed insulation questions (1983 NBECS). Questions that have undergone major reformatting or rewording include the questions on heating and cooling, building activities, and conservations measures. Questions have been added on cogeneration, lighting, roof and wall construction materials, fuel switching, and measures of size for selected building uses. Two questions may also be added to the questionnaire for the Census Bureau—these would relate to expnditures for construction improvements and maintenance and repairs.

The Energy Supplier Forms for the 1986 NBECS are essentially the same as those used on previous surveys. Questions on data items which were not found useful have been deleted. As a result of our experiences in previous surveys, instructions have been clarified and some questions have been added to help clarify data responses. For example, an optional schedule has been added to the Energy Supplier Form (electricity) to help those electric utilities who maintain disaggregated records for a single building.

III. Written Comments

The following general guidelines are provided to assist in the preparation of comments. When providing comments, please indicate to which form the comment applies: (1) The personal interview with building owner/manager (Building Interview) or (2) the mail survey of the energy suppliers (Energy Supplier Forms).

As a potential data user:

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use these data? Please be specific.

C. How could the forms be improved to better meet your specific data needs?

D. Are there alternative source of these data? What are they? Do you use them? What are their deficiencies?

As a potential respondent:

A. Are the instructions clear and sufficient?

B. How can the forms be improved?

C. Can the data be submitted using the definitions included in the instructions?

D. What is the estimated cost of completing the forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs directly attributable to providing the information (such as administrative costs).

E. Do you know of other Federal, State, or local agencies that collect similar data? If so, specify the agency and the means of collection.

In addition to receiving comments to the general questions listed above, the EIA would like to receive comments from electric utilities and steam suppliers on several specific questions that have been added to the Energy Supplier Forms.

1. *Energy Supplier Forms: Electricity Usage—Schedule A.* A number of users of the NBECs data would like to relate the NBECs building data to Standard Industrial Classification (SIC) codes. Discussions with industry representatives have led EIA to believe that some electric utilities assign SIC codes to commercial buildings. Does your electric assign SIC codes to commercial buildings? Is the information readily available from your records?

2. *Energy Supplier Forms: Electricity Usage—Disaggregated by end Use.* On previous surveys, the EIA discovered that some utilities meter customers separately for different end uses: for example, they have one meter for hearing and air-conditioning and a separate meter for lighting and other end uses. To alleviate the burden of having the respondent aggregate the consumption data, the EIA has developed a separate form for use by utilities that have separate end-use meters in buildings. Does your utility disaggregate electricity data by end use? What changes would you suggest to this form?

3. *Energy Supplier Forms: Individual Steam.* In order to correct inconsistencies observed in the data collected on buildings using steam, the EIA has added two questions. The first question determines if the building is a Powerplant while the second is designed to determine if the building is billed for steam piped into it. Is this information available from existing records without creating additional respondent burden?

The EIA is also interested in receiving comments from other persons regarding their views on the need for this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, DC, on March, 6, 1986.

L.A. Pettis,

Acting Deputy Administrator, Energy Information Administration.

[FR Doc. 86-5233 Filed 3-10-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-404-000 et al.]

Electric Rate and Corporate Regulation Filings; Commonwealth Edison Co. et al.

March 5, 1986.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER85-404-000]

Take notice that on February 28, 1986, Commonwealth Edison Company filed a compliance report pursuant to the Commission's February 5, 1986 letter order in the above referenced proceeding. In compliance with the Commission's order, Edison submitted copies of the following:

(1) Summary tabulations, showing revenues under prior filed and settlement rates; the revenue refunds; and the related interests;

(2) Tabulations for each wholesale customer showing the monthly billing determinants; revenue receipt dates; revenues under prior, filed and settlement rates; the monthly revenue refund; and the monthly interest;

(3) A copy of the December 28, 1985 "Updated List of Interest Rates to be Applied to Commission-Ordered Refunds";

(4) Photocopies of the transmittal letters and refund checks sent to the two Cities on February 14, 1984; and

(5) A notarized statement that the enclosed tabulations are accurate.

Comment date: March 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

2. Central Illinois Public Service Company

[Docket No. ER86-327-000]

Take notice that on February 28, 1986, Central Illinois Public Service Company ("CIPS") tendered for filing a Power Supply Agreement, a Transmission Services Agreement and an Interim Agreement, each dated February 11, 1986, between CIPS, Soyland Power Cooperative, Inc. ("Soyland") and Western Illinois Power Cooperative, Inc. ("WIPCO"). The three interdependent agreements restructure the operational relationship between CIPS and the two cooperative customers.

Copies of the filing have been served on Soyland, WIPCO and the Illinois Commerce Commission. Copies of the transmittal letter have been served on CIPS' other wholesale customers.

Comment date: March 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. The Cincinnati Gas & Electric Company

[Docket No. ER86-305-000]

Take notice that The Cincinnati Gas & Electric Company (Cincinnati) tendered for filing on on February 28, 1986, new Service Agreements, between Cincinnati and the Village of Bethel (Bethel) dated January 10, 1986; between Cincinnati and the Village of Blanchester (Blanchester) dated January 27, 1986; between Cincinnati and the Village of Georgetown (Georgetown) dated January 22, 1986; between Cincinnati and the Village of Hamersville (Hamersville) dated January 20, 1986; and, between Cincinnati and the Village of Ripley (Ripley) dated January 22, 1986.

The new Service Agreements become effective April 1, 1986 and supersede existing Agreements with Bethel, Blanchester, Georgetown, Hamersville, and Ripley.

Cincinnati states that the Agreements are in the form as specified in the "Form of Service Agreements" included in and on file with the Commission as Original Sheet No. 11 of First Revised Volume No. 1. No rate change of any kind is contemplated by the Service Agreements until changed by an appropriate filing made in accordance with section 205(d) of the Federal Power Act.

A copy of the filing was served upon Bethel, Blanchester, Georgetown, Hamersville, and Ripley.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER85-130-000]

Take notice that on February 7, 1986, Illinois Power Company tendered for filing a Report of distribution of Refunds for all amounts plus interest collected from Soyland Power Cooperative, Inc. ("Soyland") an Western Illinois Power Cooperative, Inc. ("WIPCO") pursuant to paragraph five (5) of the Commission's letter order dated December 24, 1985 approving the Power Coordination Agreement between the parties.

The rate increase amounts being refunded to Soyland/WIPCO are those amounts collected in excess of the settlement rates for electricity consumed during the period from January 1, 1985 through October 31, 1985.

Interest has been applied to the amounts refunded in accordance with the Commission's Order Nos. 47 and 47-A and Section 35.19a of the Commission's Regulations. These refunds were made to Soyland/WIPCO on January 23, 1986.

Comment date: March 17, 1986, in accordance with Standard Paragraph H at the end of this notice.

5. Illinois Power Company

[Docket No. ER86-281-000]

Take notice that on February 27, 1986, Illinois Power Company tendered for filing a Facility Use Agreement and Appendix A to a Facility Use Agreement dated January, 1986 between Illinois Power Company ("Illinois Power") and Illinois Valley Electric Cooperative, Inc. ("Illinois Valley")

Illinois Power states that the purpose of the filing is to seek approval of a Facility Use Agreement between Illinois Power and Illinois Valley, and Appendix A thereto, covering a charge for the use of a 12 kv three phase electric service extension to serve customers of Illinois Valley in the Princeton, Illinois, area.

According to Illinois Power, copies of this filing have been mailed to Illinois Valley and the Illinois Commerce Commission, Springfield, Illinois.

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Illinois Power requests an effective date of July 19, 1985 and therefore requests waiver of the Commission's notice requirements.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Pacific Gas and Electric Company

[Docket No. ER86-328-000]

Take notice that on March 3, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing changes to the rate schedules under the "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara" (Santa Clara Agreement) and the "Interconnection Agreement Between Pacific Gas and Electric Company and the Northern California Power Agency, City of Biggs, City of Gridey, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (NCPA Interconnection Agreement) or (Interconnection Agreements).

The Santa Clara Agreement was filed initially under Docket No. ER 84-6-000 and was assigned FERC Rate Schedule No. 85. The NCPA Agreement was filed initially under Docket No. ER 83-683-000 and was assigned FERC Rate Schedule No. 84. The Interconnection Agreements provide for firm transmission service between points of Receipt and Points of Delivery. Under the provisions of existing letter agreements between PGandE and the Northern California Power Agency (NCPA) and between PGandE and the City of Santa Clara, certain points of Receipt and Delivery contained in NCPA's and Santa Clara's Exhibits A-4 will expire on May 1, 1986. Pursuant to these letter agreements, PGandE requests that the revised Exhibits A-4 contained in this filing become effective on May 2, 1986. No part of these letter agreements involves a change in the level of any rate, nor do the letter agreements amend the Interconnection Agreements.

Comment date: March 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER86-325-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on February 27, 1986, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8502). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER86-324-000]

Take notice that Portland General Electric Company (PGE) on February 27, 1986, tendered for filing a Second Revised Page 1 and a Second Revised Page 2 of its FERC Electric Service Tariff, Volume No. 1. PGE also tendered for filing on the same date a new service agreement with Sacramento Municipal Utility District.

PGE's letter of transmittal states that when the above tariff was originally accepted for filing, the Commission required a report of monthly sales under such tariff to be filed with the Commission. PGE states it is making the present filing and proposing the changes shown on second revised pages 1 and 2 to eliminate the monthly filing of sales requirement. In support of the filing, PGE has tendered certain cost data. PGE proposes elimination of the monthly reporting requirement upon acceptance of the filing by the Commission.

Portland General Electric Company requests an effective date of January 1, 1986, and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing were served upon parties having service agreements with Portland General Electric Company, parties to the Intercompany Pool Agreement (revised), Intervenors in Docket ER 77-131 and the Oregon Public Utility Commissioner.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Hampshire

[Docket No. ER86-312-000]

Please take notice that on February 21, 1986 Public Service Company of New Hampshire (PSNH) filed rate schedule supplements and revision revising PSNH's fuel adjustment clause to include a provision allowing PSNH to recover the total cost of economic purchases through the fuel adjustment clause. These revisions are made pursuant to Commission Order No. 352, issued December 7, 1983 in Docket No. RM 83-62-000, which modified 18 CFR 35.14 to provide for such recovery.

The filing consists of supplements and revisions to the following rate schedules:

Customer	Rate schedule
Concord Electric Company.	FERC No. 24.
Town of Ashland, New Hamshire Electric Light Department.	FERC No. 28.
New Hampton Village Precinct.	FERC No. 29.
Exeter & Hampton Electric Company.	FERC No. 35.
New Hampshire Electric Cooperative, Inc..	FERC Nos. 50 and 71.
Town of Wolfeboro, New Hampshire.	FERC No. 72.
Citizens Utilities Company.	FERC No. 110.

The language in the "Fuel Adjustment" sections of the rate schedules listed above has been revised in the present filing to allow PSNH to recover the cost of any purchase of less than twelve months duration where the total cost of the purchase is less than PSNH's total avoided variable cost, and which is made solely to displace higher cost generation.

PSNH is making this filing in order to bring its wholesale fuel clause in line with its retail mechanism and with the current FERC regulations. PSNH requests waiver of the sixty day notice requirement in order to place this filing in effect on March 1, 1986. In the alternative, PSNH requests that this filing become effective on April 22, 1986, sixty days after the filing date.

PSNH has served each affected wholesale customer and pertinent State commissions with copies of its filing.

Comments date: March 18, 1986, in accordance with Standard Paragraph E at the end of this document.

10. UtiliCorp United Inc., d/b/a Missouri Public Service

[Docket No. ER86-323-000]

Take notice that UtiliCorp United Inc. d/b/a Missouri Public Service, on February 26, 1986, tendered for filing a proposed change in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace the contract rate schedule presently in effect and on file with the Commission which relates to the City of El Dorado Springs located in the State of Missouri. The proposed contract would supersede and replace FERC Rate Schedule Number 41. The proposed contract reflects changes in delivery voltage, substation capacity and extends the expiration date of the contract. The new contract does not change anticipated annual revenues.

The proposed delivery voltage and substation capacity changes are in compliance with a request received from the City of El Dorado Springs. The extension in the term of the contract is to assure a long-term source of power to the City of El Dorado Springs and to justify the additional expenditures required by the Company to provide the revised delivery voltage and increased capacity.

Copies of the filing were served upon the City of El Dorado Springs whose contract would be affected thereby, and upon the Pubic Service Commission of Missouri. The rates and charges would not be affected.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5257 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-314-000, et al.]

Natural Gas Certificate Filing; K N Energy, et al.

March 5, 1986.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-314-000]

Take notice that on February 10, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-314-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering stations and appurtenant facilities for an service to certain direct sales customers, under the authorization issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to abandon by removal the metering stations and appurtenant facilities which were installed to deliver natural gas for alfalfa dehydration purposes to the following direct sales customers:

Name of customer	Docket number authorizing service
Central Alfalfa, Inc.—Josselyn Plant	G-1180
Continental Grain, Inc.—Elm Creek Plant	G-1180
Western Alfalfa Corp.—Lexington Plant	G-1857

It is stated that the Applicant would only abandon service to Central Alfalfa, Inc., at those measurement facilities related to alfalfa dehydration. It is further stated that service to Central Alfalfa, Inc.'s elevator, grain dryer and other requirements would continue through existing separate measurement facilities.

It is stated that deliveries to the direct sales customers for alfalfa dehydration have ceased and that each customer has notified Applicant that the facilities at the respective delivery points are no longer needed for alfalfa dehydration and that each customer has consented to the abandonment of these facilities by the Applicant.

Comment date: April 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-307-000]

Take notice that on February 5, 1986, Northern Natural Gas Company Division of InterNorth, Inc. (Northern Natural), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-307-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon a small meter set by transferral from Peoples Natural Gas Company, a Division of Utilicorp United, Inc. (Peoples), to North Central Public Service Company (North Central) and to use the delivery point to serve natural gas to Oakwood Terrace Sub-Division in Sherburne County, Minnesota (Oakwood Terrace), under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The Commission by order issued September 3, 1980, in Docket No. CP80-382-000, authorized Northern Natural to construct and operate a small meter set to serve natural gas to Peoples for resale to James E. Duemke (Duemke), a right-of-way grantor. It is explained that following construction of the meter set, Duemke declined service and Northern Natural did not place the facility in service. Northern Natural states that North Central determined the delivery point was located within its service area and proposed to use the delivery point to serve Oakwood.

By supplement to the application filed February 19, 1986, in Docket No. CP86-307-000, Northern Natural withdrew its request to abandon the Duemke meter set and instead requested prospective authority to operate such existing meter set for the delivery of natural gas to North Central for ultimate delivery and use of the residents of Oakwood Terrace, a residential subdivision. Northern Natural states further that Northern Natural agreed to assign the delivery point to North Central. Northern Natural asserts that in an effort to provide timely service for the 1985-86 winter heating season for the residential customers of Oakwood Terrace, Northern Natural's field employees, without prior regulatory approval, inadvertently performed a necessary change-out of the existing American 275 meter and replaced it with a Rockwell 415 meter and that the delivery point was then placed in service and deliveries of gas to North Central commenced September 16, 1985.

Northern Natural states that it estimates the deliveries of gas to North Central in the fifth year of operation would be 8.8 Mcf of gas on a peak day with annual deliveries of 920 Mcf of gas. Northern Natural indicates that the end-use of the gas would be for residential

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space heating and that the volumes are within North Central's firm entitlement that was authorized by Commission order issued July 29, 1983, in Docket No. CP82-500-001.

Comment date: April 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP86-313-000]

Take notice that on February 10, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-313-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increases in sales of natural gas to certain existing small general service (SG) customers of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that, pursuant to agreements between Applicant and certain of its existing SG customers, Applicant has agreed to increase the contract demand volumes for the following customers by a total of 24,536 Mcf per day, as follows:

Customer	Current (Mcf)	Requested (Mcf)	Increase (Mcf)
Kansas:			
Louisburg, city of	1,000	1,200	200
LaCygne, village of	800	1,600	800
Illinois:			
Auburn, city of	1,999	2,600	601
Bushnell, city of	2,300	3,150	850
Divernon, city of	1,000	2,000	1,000
Morton, village of	8,700	9,990	1,290
Pawnee, village of	1,500	1,900	400
Pleasant Hill, village of	950	1,000	50
Riverton, village of	1,800	1,900	100
Westville, village of	2,700	3,000	300
United Cities Gas Co. (Rurals)	1,600	3,200	1,600
United Cities Gas Co. (Towns)	5,600	9,999	4,399
Indiana:			
Bainbridge, town of	436	500	64
Montezuma, town of	1,500	3,000	1,500
Westfield Gas Corp	800	2,000	1,200
Missouri:			
Bowling Green Gas Co	2,650	3,000	350
Fulton, city of	8,900	9,999	1,099
Hermann, city of	3,160	5,160	2,000
Macon, city of	5,000	7,000	2,000
Monroe City, city of	2,600	3,000	400
Montgomery City, city of	1,800	2,700	900
Paris, city of	1,270	3,500	2,230
Perry, city of	750	1,550	800
Shelbina, city of	1,971	2,365	394
Total	60,726	85,262	24,536

Applicant states that it has sufficient capacity to provide these increased volumes and that the increased sales would have no significant affect on its gas supply.

Applicant additionally requests authorization to increase the delivery pressure from 100 psig to 200 psig for the City of Montgomery City.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Sea Robin Pipeline Company

[Docket Nos. CP73-162-006 & CP86-321-000]

Take notice that on February 7, 1986, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001 filed in Docket Nos. CP73-162-006 and CP86-321-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon one transportation service for Southern Natural Gas Company (Southern) and to amend the order issued April 5, 1974 in Docket No. CP73-162 so as to authorize an additional delivery point on another transportation service for Southern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin proposes to abandon the transportation service authorized in Docket No. CP85-412-000, wherein Sea Robin was authorized to transport up to 60,000 Mcf of natural gas per day for Southern from Block 248, East Cameron area, offshore Louisiana, to the terminus of Sea Robin's system in Erath, Louisiana. Sea Robin proposes to replace this transportation service by amending the transportation authorization in Docket No. CP73-162-000, wherein Sea Robin was authorized to transport up to 31,400 Mcf of gas per day for Southern from various offshore delivery points to Erath. Sea Robin proposes to amend the order of April 5, 1974 in CP73-162-000 by adding a delivery point at East Cameron Block 248. It is stated that the reason for the replacement of the one transportation service with another is that Southern's deliverability in the East Cameron area has declined. It is explained that no new facilities would be required to effect this change.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86-331-000]

Take notice that on Febraury 14, 1986, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP86-331-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Courtaulds North America Inc. (Courtaulds) and for permission to abandon such services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that Courtaulds owns a plant near the town of Axis in Mobile County, Alabama, that manufactures rayon staple fiber and that the plant uses up to 7,500 Mcf of gas per day as dryer fuel and boiler fuel. It is explained that Courtaulds has informed United that instead of relying on coal, Courtaulds secured a supply of natural gas by exploring for and developing its own reserves in Oklahoma at a cost of about $2.5 million. Courtaulds has advised that failure to utilize this supply of gas at the plant would result in an estimated annual cost of more than $3 million and that it is vital to its ability to compete in today's textile market that these costs be reduced.

United states that it has entered into a transportation agreement with Courtaulds dated February 11, 1986, pursuant to which United would transport on an interruptible basis up to 6,000 Mcf of gas per day from the existing interconnection between United and Arkla Energy Resources near Bistineau Bienville Parish, Louisiana, to the existing interconnection between United and Courtaulds' plant at meter No. 35-11-050 in Mobile County, Alabama.

United further states that it would charge Courtaulds an initial rate of 43.25 cents per Mcf, which is inclusive of United's fuel and company-used gas allowance and is equal to United's applicable mileage-based rate as shown on Sheet No. 4-E, Volume No. 1 of United's FERC Tariff. Transportation would continue for a primary term ending February 7, 1989, and would continue thereafter on a year-to-year basis. No facilities need to be installed.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5258 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-334-000, et al.]

Natural Gas Certificate Filings; Transylvania Gas Pipeline Co., Inc.

March 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Transylvania Gas Pipeline Company, Inc.

[Docket No. CP86-334-000]

Take notice that on February 14, 1986, Transylvania Gas Pipeline Company, (Applicant), P.O. Box 1398, Houston, Texas 77251, filed in Docket No. CP86-334-000 an application pursuant to section 7(c) of the Natural Gas Act and §284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of §284.221 of the Commission's Regulation. Applicant further states that it has filed its proposed transportation rates pursuant to Rate Schedules F and I of its Original Volume No. 1 of its FERC Gas Tariff, in Docket No. CP86-333-000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-327-000]

Take notice that on February 14, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-327-000, an application pursuant to section 7(b) of the Natural Gas Act, for permission to abandon and remove one 708 horsepower rental compressor unit located in Winkler County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to declining gas production, one 708 horsepower rental compressor unit is no longer needed at the Winkler County No. 1 gathering station. The remaining two compressor units have the capability to compress existing production, with additional horsepower remaining for any potential increased future ultilization or as back-up compression.

Northern further states that it proposes to return said compressor to the leasing agent.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Louisiana Intrastate Gas Corporation

[Docket No. CP85-923-000]

Take notice that on September 12, 1985, Lousiana Intrastate Gas Corporation (LIG), P.O. Box 90908, Lafayette, Louisiana 70509, an intrastate pipeline, filed in Docket No. CP85-923-000 an application pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 and § 284.127 of the regulations under the Natural Gas Act (18 CFR 284.127) for authority to transport natural gas on behalf of Freeport Interstate Pipeline Company (Freeport Interstate) until April 30, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LIG states that it has entered into a transportation agreement dated August 1, 1985, with Freeport Interstate whereby LIG would transport up to 300 million Btu's of natural gas per day for Freeport Interstate. It is further stated that Freeport Interstate would cause the natural gas to be delivered to LIG at a point of delivery located in St. Mary Parish, Louisiana. LIG indicates that it would transport and redeliver the natural gas to an interconnection point on its system with the facilities of another intrastate pipeline, Freeport Pipeline Company (Freeport Pipeline), in Jefferson Parish, Louisiana. It is stated that Freeport Pipeline has agreed to transport the natural gas on Freeport Interstate's behalf from the LIG-Freeport Pipeline interconnection point in Jefferson Parish to a point of interconnection with the facilities of Freeport Interstate in Jefferson Parish, Louisiana.

LIG states that it proposes to charge Freeport Interstate a fee of 29.8 cents per million Btu redelivered at the point of redelivery with Freeport Pipeline in Jefferson Parish, Louisiana.

Comment date: March 25, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Consolidated Gas Transmission Corporation

[Docket No. CP86-319-000]

Take notice that on February 11, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-319-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Consolidated to drill two new wells and to construct and operate related pipline facilities at its Sabinsville storage pool in Tioga

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County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated proposes to drill two new wells at its Sabinsville storage pool, to be known as Well Nos. N-2003-S and N-2004-S, and to construct and operate the pipeline facilities necessary to connect the wells to its storage pipeline system for injection and withdrawal use. Consolidated explains that the Sabinsville storage pool is developed from the depleted Oriskany Sand production field and is designed to provide a withdrawal rate at base gas conditions of 191,000 Mcf, at a pressure base of 14.73 psia. Consolidated explains that in recent years it has experienced a lower overall pool pressure than anticipated at minimum inventory conditions and has been unable to reach the expected late-season withdrawal rate. Consolidated states that the proposed new wells would be the most economical and efficient method of increasing the late-season withdrawal rate to the desired level.

Consolidated estimates that the proposed facilities would cost approximately $970,000, exclusive of filing fees, and states that the project would be financed from funds on hand or to be obtained from Consolidated's parent company, Consolidated Natural Gas Company. Consolidated would construct the proposed facilities in the spring of 1986 and estimates that the total project would take two months to complete. Consolidated proposes no new sales or services in connection with the proposed facilities.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Consolidated Gas Transmission Corporation

[Docket No. CP86-320-000]

Take notice that on February 11, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-320-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Consolidated to drill three new wells and to construct and operate related pipeline facilities at its Greenlick storage pool in Clinton and Potter Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated proposes to drill three new wells at its Greenlick storage pool, to be known as Well Nos. RW-67, -68, and -501, and to construct and operate the pipeline facilities necessary to connect the wells to its storage pipeline system for injection and withdrawal use. Consolidated explains that the Greenlick storage pool is developed from the depleted Orinskany Sand production field and is designed to provide a withdrawal rate at base gas conditions of 306,000 Mcf, at a pressure base of 14.73 psia. Consolidated explains that in recent years it has experienced a lower overall pool pressure than anticipated at minimum inventory conditions and has been unable to reach the expected late-season withdrawal rate. Consolidated states that the proposed new wells would be the most economical and efficient method of increasing the late-season withdrawal rate to the desired level.

Consolidated estimates that the proposed facilities would cost approximately $1,945,000, exclusive of filing fees, and states that the project would be financed from funds on hand or to be obtained from Consolidated's parent company, Consolidated Natural Gas Company. Consolidated would construct the proposed facilities in the spring of 1986 and estimates that the total project would take three months to complete. Consolidated proposes no new sales or services in connection with the proposed facilities.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP86-332-000]

Take notice that on February 14, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86-332-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon by sale to Union Light, Heat and Power Company (Union) approximately 10.7 miles of 24-inch pipeline and 0.8 mile of 20-inch pipeline and appurtenant facilities and to abandon 37 points of delivery to Union, all located in Campbell and Kenton Counties, Kentucky. Columbia also proposes to abandon service under an operating agreement between Columbia, Union and The Cincinnati Gas and Electric Company (CG&E), designated as Columbia's FERC Gas Traiff, Volume No. 2, Rate Schedule X-16, which is related to the operation of the facilities proposed for abandonment.

Columbia states that the proposed abandonments would not result in any change in the service provided by Columbia to its existing customers. It is explained that, as a result of the abandonments, Columbia would achieve a reduction in its operating expenses and Union would be able to obtain certain operating efficiencies on its system. It is further stated that Union has agreed to purchase the pipeline at its original cost less depreciation and retirements at the time of sale, which amount is estimated to be approximately $568,000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Erie Pipeline System

[Docket No. CP86-330-000]

Take notice that on February 14, 1986, Erie Pipeline System (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-330-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulation. Applicant further states that it has filed its proposed transportation rates pursuant to Rate Schedules F and I of its Original Volume No. 1 of its FERC Gas Tariff, in Docket No. CP86-329-000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Interstate Power Company

[Docket No. CP86-316-000]

Take notice that on February 11, 1986, Interstate Power Company (Petitioner), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-316-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure requesting a declaratory order wherein the Commission declines to assert jurisdiction over the transportation of natural gas by Petitioner through its distribution system and waives the Commisson's Regulations to the extent necessary to permit such transportation, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it is entirely dependent upon Natural Gas Pipeline Company of America (Natural) for its supply of natural gas to serve its residential, commercial and industrial customers in the communities and adjacent rural areas in northwestern Illinois and northeastern Iowa. Petitioner further states that it is a natural-gas company as defined in the Natural Gas Act by reason on its ownership of approximately 28 miles of pipeline and its use thereof for the transportation of the gas it purchases from Natural at Hooppole, Illinois, across the Mississippi River to Petitioner's gas distribution system in the Clinton, Iowa, area.

Petitioner states that it also operates a separate gas distribution system providing gas service for residential, commercial and industrial use in fourteen incorporated communities and adjacent rural areas in north central Iowa, western Illinois and southern Minnesota, and Petitioner further states it is entirely dependent upon Northern Natural Gas Company, Division of Inter-North, Inc. (Northern), for its supply of natural gas to serve these communities.

It is explained that Petitioner makes no gas sales for resale, all of its gas sales and transportation rates are regulated by the state utility agencies, and it operates only its own distribution system. Thus, Petitioner states that it is only engaged in the local distribution of gas, despite the fact that its facilities cross states lines and it is therefore subject to the Commission's jurisdiction.

Petitioner asks the Commission to treat it as a local distribution company, rather than an interstate pipeline, by declining to assert jurisdiction over one or more proposed transportation arrangements. Petitioner claims that its proposed transportation for large volume loads would cause a bifurcation of the ratemaking process, with retail gas sales and Iowa transportation rates set by the Iowa State Commerce Commission, and other rates set by the Commission, and that such bifurcation would cause serious problems. It is further stated that the policies of the Commission and the Natural Gas Act would be effectuated by granting the requested declaratory order and thereby affirming state control over key aspects of Petitioner's local distribution of natural gas.

Comment date: March 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Caplitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5259 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-514-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, etc.; ARS Group, Inc. et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. ARS Group, Inc.

[Docket No. QF86-514-000]

March 5, 1986.

On February 5, 1986, ARS Group, Inc. (Applicant), of 15 Clark Road, Wellesley Hill, Massachusetts 02181 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Stratton, Maine. The facility will consist of a wood fired boiler and a steam turbine generator. The electric power production capacity of the facility will be approximately 40 MW.

2. Greenwood Ironworks

[Docket No. QF86-301-000]

March 4, 1986.

On November 19, 1985, Greenwood Ironworks (Applicant), of 420 Grove Avenue, Petersburg, Virginia 23803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kilowatt hydroelectric facility is located on the Appomattox River near Ettrick and Petersburg in Chesterfield County, Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Kaibab Industries

[Docket No. QF86-505-000]

March 5, 1986.

On January 28, 1986, Kaibab Industries (Applicant), of 4602 East Thomas Road, Phoenix, Arizona 85018 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's

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regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Fredonia, Arizona. The facility will consist of a wood waste fired boiler and a condensing steam turbine generator. The next electric power production capacity of the facility will be 4,450 kW.

4. Texaco Producing Inc.

[Docket No QF86-524-000]

February 27, 1986.

On February 10, 1986, Texaco Producing Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the South Belridge Field, Kern County, California. The facility will consist of three units each comprising of a combustion turbine-generator and a heat recovery steam generator (HRSG). The steam from the HRSG will be used for enhanced oil recovery. The electric power production capacity of the facility will be 11.2 MW. The primary energy source will be natural gas. The facility was scheduled for start-up in January 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5256 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposed Firm Power Allocations; Pick-Sloan Missouri Basin Program-Eastern Division

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of Proposed Firm Power Allocations to the Townsites of Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota.

SUMMARY: These three townsites are currently under the jurisdiction of the Corps of Engineers (Corps) and are presently receiving project-use power from Corps powerplants on the mainstem of the Missouri River. Pub. L. 99-88, enacted on August 15, 1985, authorizes the Secretary of the Army to transfer all rights, title, and interest of the United States in these townsites to newly formed municipal governments serving the inhabitants of the townsites. This legislation also authorized the Secretary of the Army to continue operational service (such as the supply of project-use electric power) to each municipality upon request for a period not to exceed 3 years after the transfer. By that time, these entities must have made their own arrangements to secure a source of electric power.

The Administrator of the Western Area Power Administration (Western) proposes to provide for the continuation of electric service by means of a firm power allocation to each of the newly formed municipalities (or other preference entitly who would be responsible for serving the municipal load). By publication of this notice in the **Federal Register**, a 30-day public comment period is hereby initiated for this proposed action. After due consideration of all public comments, a final decision will be made by the Administrator of Western pursuant to the authority delegated by the Secretary of Energy. The final decision and a discussion addressing major comments, criticisms, and alternatives offered during the comment period shall be published in the **Federal Register**. Additional information regarding this proposed allocation may be obtained at the **ADDRESS** below.

ADDRESS: Requests for further information should be submitted to the following address throughout the 30-day comment period. All written comments must be received at the following address no later than April 10, 1986:

Mr. James D. Davies, Area Manager,
Billings Area Office, Western Area
Power Administration, P.O. Box EGY,
Billings, MT 59101, (406) 657-6532.

SUPPLEMENTARY INFORMATION: While some variations have been made, the generally accepted minimum criteria for a municipality to be eligible for an allocation of firm power from Western's Billings Area Office require that it be within the marketing area of the Eastern Division of the Pick-Sloan Missouri Basin Program (P-SMBP), be incorporated, and own or lease its electric distribution system. All three of the townsites are within the established marketing boundaries of the Eastern Division. Two have completed incorporation proceedings and are making arrangements to acquire the electrical distribution system in their municipalities. The other entity, Fort Peck, Montana, is in the process of becoming incorporated and acquiring its electrical distribution system. As of this date, all three entities have formally requested an allocation of power from Western.

Western proposes to allocate to each entity an amount of power equal to the entity's maximum load in the summer 1985 season and the winter 1985-1986 season. Once those seasonal allocations have been set, they would remain fixed through the year 2000, the end of the existing marketing plan for the Eastern Division of P-SMBP. Any increase in load over and above those fixed allocations will have to come from an auxiliary supplier through arrangements made by the individual municipalities.

An allocation of firm power by Western to each of the municipalities (or other preference entity who would be responsible for serving the municipal load) in those amounts will not adversely affect other existing firm power customers. The loads were previously served from Corps powerplants as project use and the associated power and energy were not available to Western for marketing. The proposed arrangements will not change the resource that Western anticipated in the formulation of its most recent marketing plan, all of which is presently under contract to Western's other firm power customers.

Environmental Compliance

Western will conduct an analysis of this proposal pursuant to the National Environmental Policy Act of 1969 and Department of Energy Regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694-20701), as amended on January 6, 1983 (48 FR 685-686), and on February 25, 1985 (50 FR 7629-7630).

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the proposal relates to nonregulatory services provided by Western. Under 5 U.S.C. 601(2), a proposal with particular applicability is not considered "a rule" within the meaning the Act. Since this proposal is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, February 24, 1986.

William H. Clagett,
Administrator.

[FR Doc. 86-4717 Filed 3-10-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2981-3]

Management Advisory Group Meeting

Under Pub. L. 92-463, notice is hereby given that a one and a half day meeting of the Management Advisory Group to the EPA Construction Grant Program (MAG) will be held on March 26-27, 1986, in Washington, DC, at EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting room will be Conference Room 2, at the EPA Washington Information Center located on the ground floor of the Waterside Mall area. The time of the meeting will be 9 a.m. to 5 p.m. on March 26, and 8 a.m. to 1 p.m. on March 27.

The principal agenda item will be work on a MAG report on compliance and operation and maintenance of publicly owned wastewater treatment works, specifically on recommendations to be made by MAG. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. For additional information, contact Georgette Brown at (202) 382-5859.

Dated: March 5, 1986.

Edwin L. Johnson,
Assistant Administrator for Water.

[FR Doc. 86-5243 Filed 3-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2981-4]

Water Quality Criteria; Ambient Aquatic Life Water Quality Criteria Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on ambient aquatic life water quality criteria documents.

SUMMARY: EPA announces the availability for public comment, and provides summaries of four ambient aquatic life water quality criteria documents. When published in final form after the review of public comments, these water quality criteria may form the basis for enforceable standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act.

DATE: Written comments should be submitted to the person listed directly below by May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 245-3030.

Availability of Documents

This notice contains summaries of four documents containing proposed ambient water quality criteria for the protection of aquatic life and its uses. Copies of the complete criteria documents may be obtained upon request from the person listed above. These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M St., SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries. A list of the proposed documents is presented below:

1. Ambient Water Quality Criteria for Aluminum.
2. Ambient Water Quality Criteria for Chlorpyrifos.
3. Ambient Water Quality Criteria for Nickel.
4. Ambient Water Quality Criteria for Pentachlorophenol.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria beginning in 1973 with the publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (FR 49 5831) completing the coverage of the 65 priority pollutants listed in 307(a)(1). Nine ambient water quality documents, including revision of seven of the 1980 documents, were released on July 29, 1985 (50 FR 30784).

Today EPA is announcing the availability for comment four proposed individual ambient aquatic life water quality criteria documents. Two of the documents, nickel and pentachlorophenol, upon final publication, will update and revise appropriate sections of the 1980 criteria documents. The other two, aluminum and chlorpyrifos, will address chemicals which have not been covered before.

The documents announced today will not contain information on the effects of these pollutants on human health. EPA anticipates the release of water quality advisories on aluminum and chlorpyrifos to specifically address human health concerns. Advisories will also be issued to update the human health section of the 1980 ambient water quality criteria documents for nickel and pentachlorophenol if a review of the available information indicate that such a revision is necessary. Both the criteria documents announced today and the water quality advisories addressing human health may form the basis for enforceable standards, when published in final form.

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Dated: February 18, 1986.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

Summary of Proposed Water Quality Criteria

1. Aluminum

Freshwater Aquatic Life. Freshwater organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, when the pH is between 6.5 and 9.0, if the four-day average concentration of aluminum does not exceed 150 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 950 μg/L more than once every three years on the average. EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgment of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. EPA feels there is no significant need for a saltwater criterion for aluminum.

2. Chlorpyrifos

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of chlorpyrifos does not exceed 0.033 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.083 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years is the Agency's best scientific judgment of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a local important species is very sensitive, if the four-day average concentration of chlorpyrifos does not exceed 0.0015 μg/L more than once every three years on the average, and if the one-hour average concentration does not exceed 0.0036 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution even in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for development water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Documents for Water Quality-Based Toxics Control (U.S. EPA, 1985).

3. Nickel

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration (in μg/L) of nickel does not exceed the numerical value given by ${}_{e}(0.8460[1n(hardness)]+1.1645)$ more than once every three years on the average, and if the one-hour average concentration (in μg/L) does not exceed the numerical value given by ${}_{e}(0.8460[1n\ (hardness)]+3.3612)$ more than once every three years on the average. For example, at hardnesses of 50, 100 and 200 mg/L as $CaCO_3$ the four-day average concentrations of nickel are 88, 160 and 280 μg/L, respectively, and the one-hour average concentrations are 790, 1400 and 2500 μg/L. EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be

established if adequate justifications is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of nickel does not exceed 7.9 μg/L more than once every three years on the average, and if the one-hour average concentration of nickel does not exceed 71 μg/L more than once every three years on the average.

EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

4. Pentachlorophenol

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration (in μg/L) of pentachlorophenol does not exceed the numerical value given by ${}_{e}(1.005[pH]-5.368)$ more than once every three years on the average, and if the one-hour average concentration (in μg/L) does not exceed the numerical value given by ${}_{e}(1.005[pH]-4.908)$ more than once every three years on the average. For example, at pH=6.5, 7.8, and 9.0, the four-day average concentrations of pentachlorophenol are 3.2, 12 and 40 μg/L, respectively, and the one-hour average concentrations are 5.1, 19 and 63 μg/L.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of pentachlorophenol does not exceed 8.1 μg/L more than once every three years on the average, and if the one-hour average concentration does not exceed 13 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years in the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

[FR Doc. 86-5161 Filed 3-10-86; 8:45 am]

BILLING CODE 6560-50-M

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1571]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

March 5, 1986.

The following listings of petitions for reconsideration and clarification and applications for review filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarifications and applications for review must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure (CC Docket No. 78–72)
  Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80–286)
Field By: Richard C. Schramm, Daniel J. Whelan & David K. Hall, Attorneys for the Bell Atlantic Telephone Companies on 2–10–86 & 2–24–86.
  William A. Spratley, Bruce J. Weston, Victoria L. Mayhew & Barry Cohen, Attorneys for Office of the Consumers' Counsel, State of Ohio on 2–11–86.
  William C. Sullivan, Linda S. Leggg, Paul G. Lane & Edward L. Eckhart, Attorneys for Southwestern Bell Telephone Company on 2–12–86.
  Vincent L. Sgrosso & G. Thomas Abernathy, Jr., Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company & Southern Bell Telephone and Telegraph Company on 2–21–86.
  Leon T. Knauer, Kenneth D. Patrick & Luisa L. Lancetti, Attorneys for Puerto Rico Telephone Company on 2–21–86.
  Saul Fisher, Melvin A. Cohen & Joseph DeBella, Attorneys for New York Telephone Company and New England Telephone and Telegraph Company on 2–21–86.
  David Cosson & Paul G. Daniel, Attorneys for National Telephone Cooperative Association on 2–20–85 & 2–24–86.
  Ronald T. LeMay, Vice President-General Counsel & James T. Roche, Attorney for United Telephone System, Inc., on 2–24–86.
  Robert L. Barada, Maya A. Mathews & Stanley J. Moore, Attorneys for Pacific Bell on 2–24–86.

Subject: Policy Regarding Character Qualifications In Broadcast Licensing. (Gen Docket No. 81–500)
  Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees. (BC Docket No. 78–108)
Filed By: Andrew J. Schwartzman & Henry Geller for The Office of Communication of the United Church of Christ and Telecommunications Research and Action Center on 2–13–86.
  Joseph DeFranco & Howard F. Jaeckel, Attorneys for CBS Inc., on 2–14–86.
  Jerome S. Boros, Attorney for Alden Television, Inc., & Alden Communications Corp on 2–24–86.
  Benito Gaguine & Heidi P. Sanchez, Attorneys for Kannapolis Television Company, A Joint Venture on 2–24–86.
  Richard L. Brown & David J. Kaufman, Attorneys for SPACE, The Satellite Television Industry Association, Inc. on 2–24–86.

Subject: Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979. (PR Docket No. 85–23)
Filed By: David B. Popkin on 2–18–86.

Subject: Amendment of Part 97 of the Commission's Rules to Permit Automatic Control of Amateur Radio Stations. (PR Docket No. 85–105, PM–4879)
Filed By: Walter E. Miller, (AJ6T) on 2–13–86.
  Donald Simon, (NI6A) on 2–14–86 & 2–20–86.
  S. E. Carlson, (KAERF) on 2–18–86.
  Edward Novak, (N6DAM) on 2–18–86.
  Robert T. Martin, (N6MZV) on 2–19–86.
  Robert F. Franklin, (K6TP) on 2–19–86.
  Alfred J. Dynarski, Jr., (WA6SYK) on 2–20–86.
  Karl Fraser, (KK1A) on 2–20–86.
  Robert J. Keller, (KY3R) on 2–21–86.
  Warren C. Struven (W6CB) on 2–21–86.
  Lawrence P. Kenney (WB9LOZ) on 2–24–86.
  William F. Dickson II, (N6BAH) on 2–24–86.
  William R. Danielson, (N6FQR) on 2–24–86.
  Eric C. Williams, (WD6CMU) on 2–24–86.
  John T. Smith, (KI4XO) on 2–24–86.
  Richard K. Whipkey, (AD6X) on 2–24–86.
  Donald M. McDougall, (W6OA) on 2–24–86.
  Thomas A. Clark, (WA7GKD), Director for Tucson Amateur Packet Radio on 2–24–86.
  Edward J. Ingber, (WA6AXX), President for Advanced Computer Controls, Inc., on 2–24–86.
  Christopher D. Imlay, Attorney for The American Radio Relay League, Incorporated on 2–24–86.

Application for Review

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Reno, Nevada and Redding, California) (MM Docket No. 83–374, RM's 4293 & 4484)
Filed By: Robert B. Jacobi & J. Brian DeBoice, Attorneys for Sarkes Tarzian, Inc., on 2–10–86.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 86–5242 Filed 3–10–86; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 86–68, et al.]

Comex, Inc., et al.; Applications

In re application of Comex, Inc., to establish additional facilities for one-way Station KC1296 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Nashua and Epsom, New Hampshire; CC Docket No. 86–68, File No. 23196–CD–P/L–1–85;

Ram Communications of Massachusetts, Inc., to establish an additional facility for one-way Station KSV956 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Andover, Massachusetts; File No. 21859–CD–P/L–1–85.

Memorandum Opinion and Order

Adopted February 27, 1986. Released March 5, 1986.

By the Common Carrier Bureau.

1. By *Memorandum Opinion and Order Designating Applications for Hearing,* Mimeo No. 2823, released February 14, 1986 (Designation Order), the captioned applications were designated for a consolidated hearing.

2. It has subsequently been brought to the Commission's attention that the Designation Order failed to dispose of a Petition to Deny and various related pleadings which had been filed by the parties. Accordingly, pursuant to § 1.113 of the Commission's Rules, we will set aside the Designation Order on our own motion. Such action will enable the Bureau to consider and decide the issues presented in the numerous pleadings which have been filed.

3. Accordingly, it is ordered, that the *Memorandum Opinion and Order Designating Applications for Hearing,* Mimeo No. 2823, released February 14, 1986, is set aside.

Federal Communications Commission.

Michael Deuel Sullivan,
Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 86–5241 Filed 3–10–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federl Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federl Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 022–003930B–001.

Title: The Port Authority of New York and New Jersey and Universal Maritime Service Corp.

Parties:

The Port Authority of New York and New Jersey (Port)
Universal Maritime Service Corp. (Universal)

Synopsis: The proposed agreement supplements the parties' basic agreement providing for Universal's lease of the Red Hook Container Terminal, Brooklyn, New York. The purpose of Agreement No. 022–003930B–001 is to provide for the erection and installation of a second additional crane at a project cost of approximately $3,100,000. It also provides for the equipment rental payable to the Port for Universal's use of both the additional and the second additional crane. The parties have requested a shortened review period.

Agreement No.: 021–003964–001.

Title: City of Milwaukee and Tanco Terminals, Inc. Lease Agreement.

Parties:

City of Milwaukee (Port)
Tanco Terminals, Inc. (Tanco)

Synopsis: The proposed amendment would renew and extend the March 10, 1981 lease agreement with Tanco for an additional period of five (5) years commencing on March 1, 1986 and ending on February 28, 1991. Tanco would have tenant's rights to utilize the property for receipt, preparation, processing, handling, storage and/or shipping of liquid and other cargoes. The parties have requested a determination of subjectivity and a shortened review period.

Dated: March 6, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.

[FR Doc. 86–5235 Filed 3–10–86; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 86–6]

A/S Ivarans Rederi, v. Compahia de Navegacao Lloyd Brasileiro, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by A/S Ivarans Rederi against Companhia de Navegacao Lloyd Brasileriro, Companhia de Navegacao Maritima Netumar, Empresa Lineas Maritimas Argentinas S.A., Van Nievelt Goudriaan & Co. B.V., A. Bottacchi S.A. de Navegacion C.F.I. e I. and United States Lines (S.A.) Inc. was served March 5, 1986. The complaint alleges violations of sections 5(a) 10(a) (2) and 10(a) (3) of the Shipping Act, 1984 arising as a result of conduct by Respondents contrary to an order of the Federal Maritime Commission and contrary to the written terms of a revenue pooling agreement (Agreement No. 10027–10) approved by the Commission under the Shipping Act, 1916 and in effect (as restated) under the Shipping Act, 1984.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502–61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502–61, the initial decision of the presiding officer in this proceeding shall be issued by March 5, 1987, and the final decision of the Commission shall be issued by July 6, 1987.

John Robert Ewers,
Secretary.

[FR Doc. 86–5180 Filed 3–10–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Independent American Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Fededal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 30, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Independent American Banc Corp.,* Parma, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Parma, Ohio. Comments on this application must be received not later than April 2, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp.,* Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Randall Bank, Madison, Wisconsin.

2. *Community Financial Corp.,* Avilla, Indiana; to become a bank holding company by acquiring 80 percent of the

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voting shares of Community State Bank, Avilla, Indiana.

Board of Governors of the Federal Reserve System, March 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5208 Filed 3-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0284]

Drug Stability of Liquid Feed Supplements; Availability of Guidelines

Correction

In FR Doc. 86-3504 beginning on page 6038 in the issue of Wednesday, February 19, 1986, make the following correction on page 6038 in the third column:

In the third complete paragraph, in the twelfth line, "§ 514.1(b)(x)" should read "§ 514.1(b)(5)(x)".

BILLING CODE 1505-01-M

National Institutes of Health

Consensus Development Conference on Preventing of Venous Thrombosis and Pulmonary Embolism; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Prevention of Venous Thrombosis and Pulmonary Embolism," sponsored by the National Heart, Lung, and Blood Institute; Division of Blood Diseases and Resources, and the NIH Office of Medical Applications of Research. The conference will be held March 24–26, 1986, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Deep venous thrombosis in the lower extremities is a common, age-related phenomenon. The importance of the problem lies not only in the significant morbidity associated with venous valve destruction and the postphlebitic syndrome, but also in the intimate but variable association between peripheral venous thrombosis and death from pulmonary embolism.

It has been estimated that venous thromboembolism accounts for some 300,000 hospitalizations per year and 50,000 deaths. It has long been recognized as one of the most important complications in medical and surgical patients. In addition, it is the most common cause of death in patients undergoing major orthopedic procedures, is the most frequent nonobstetrical cause of postpartum death, and is a major factor in the mortality of the large population of patients with chronic cardiac and pulmonary disease.

The high frequency of silent thrombosis and unpresaged embolism underlies the need for prophylaxis. Primary and secondary prevention are far superior to a policy based on treatment of clinical symptoms, and prevention should be the ultimate goal of the physician. In spite of the significance of the problem and the desirability of an aggressive approach to prophylaxis, however, prophylactic measures are not widely used by many physicians in their practice.

A number of high-risk groups of patients have been identified. This conference will assess the data concerning the relative risks in these groups and the various forms of prophylaxis that have been tested, including anticoagulants, antiplatelet agents, and mechanical methods. In this open forum, participants will evaluate the efficacy and safety of prophylaxis in the high-risk groups.

The key questions to be addressed at the conference include: What is the level of risk of venous thrombosis and embolism in various patient groups? What is the safety and efficacy of various forms of prophylaxis in these patient groups? What questions remain to be answered about prophylaxis of venous thromboembolism?

This consensus conference will bring together biomedical investigators, hematologists, surgeons, internists, epidemiologists, and representatives of the public. Following two days of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the morning of the third day, Consensus Panel Chairman Harold Roberts, M.D., Professor of Medicine, University of North Carolina, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Michele Dillon, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468-6555.

Dated March 4, 1986.

Betty Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-5179 Filed 3-10-86; 8:45 am]

BILLING CODE 4140-01-M

Establishment of the Interagency Committee on Learning Disabilities

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: As directed by section 9 of the Health Research Extension Act of 1985 (Pub. L. 99-158), the Director of the National Institutes of Health hereby establishes the Interagency Committee on Learning Disabilities (Committee). The Committee is to review and assess Federal research priorities, activities, and findings regarding learning disabilities.

The Committee is composed of representatives from the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Child Health and Human Development, the National Institute of Allergy and Infectious Diseases, the National Eye Institute, the National Institute of Environmental Health Sciences, the Division of Research Resources of the National Institutes of Health, the Food and Drug Administration, the National Institute of Mental Health, the Department of Education, the Centers for Disease Control, the Environmental Protection Agency, the Health Resources and Services Administration, and the Office of Human Development Services. The Director of the NIH will chair the Committee. The National Institute of Child Health and Human Development is assigned operational responsibility for the Committee and its activities.

The Committee shall report to Congress on its activities including:

(1) Its estimate of the number of persons affected by learning disabilities and the demographic data which describe such persons;

(2) A description of the current research findings on the cause, diagnosis, treatment, and prevention of learning disabilities; and

(3) Recommendations for legislation and administrative actions to increase the effectiveness of research on learning disabilities and to improve the disseminaiton of the findings of such research; and respecting specific priorities for research in the cause, diagnosis, treatment, and prevention of learning disabilities. The Committee

shall terminate 90 days after the date of the submission of its report of Congress.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Kavanagh, Ph.D., Associate Director, Center for Research for Mothers and Children, National Institute of Child Health and Human Development, Room 7C-03 Landow Building, 7910 Woodmont Avenue, Betheada, Maryland 20892, (301) 496-5097.

Dated: March 3, 1986.

James B. Wyngaarden,

Director.

[FR Doc. 86-5178 Filed 3-10-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-86-1596]

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act System of Records: HUD/H-11 Multifamily Tenant Certification System.

EFFECTIVE DATE: This notice shall become effective March 11, 1986.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Department Privacy Act Officer, (202) 755-6374. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Multifamily Tenant Certification System (HUD/H-11) contains information about individuals receiving housing assistance from the Department of Housing and Urban Development (HUD) under one of the following HUD programs: Section 8, Public/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)(3) BMIR, and Section 202/8. The system is used to improve the Department's capabilities to manage Housing Assistance Programs, to protect the Government's financial interest, and to assist in the verification of the accuracy of the tenant certification/recertification data furnished by the tenant. This amendment clarifies the categories of records in the system. It does not require the submission of a report of a new or amended system to the Congress or the Office of Management and Budget since there is no expansion in the types or categories of information maintained and no alteration in the purposes for which the information is maintained. The term "registration information" is substituted for the phrase "registration number or identification number." The notice is published below in its entirety, as amended. Previously, the system and a prefatory statement containing the general Routine Uses applicable to most of the Department's systems of record were published in the "Federal Register Privacy Act Issuances, 1984 Compilation, Volume II."

(5 U.S.C. 552a, 88 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. 3535(d))).

Issued at Washington, DC, February 25, 1986.

Judith L. Tardy,

Assistant Secretary for Administration.

HUD/H-11

SYSTEM NAME:

Multifamily Tenant Certification System.

SYSTEM LOCATION:

Headquarters and Field Offices. For a listing of Field Offices with addresses, see 24 CFR Part 16, Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving housing assistance from HUD under one of the following programs: Section 8, Pubic/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)3 BMIR, and Section 202/8.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes identification data such as name, Social Security Number (if available), alien registration information, address, and tenant unit number; financial data such as income and contract rent; tenant characteristics such as number in family, sex of family member and minority code; unit characteristics such as number of bedrooms; geographic data such as county code and census tract; and related information including information used to verify data in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*, and the Housing and Community Development Amendments of 1981, Pub. L. 97-35, 95 Stat. 408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: Federal, State, and local agencies—to verify the accuracy and completeness of the data provided; to HUD contractor—for processing certifications/recertifications; to the Social Security Administration and the Immigration and Naturalization Service—to verify alien status.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tape/disk/drum.

RETRIEVABILITY:

Name of tenant, address, Social Security or other identification number.

SAFEGUARDS:

File folders, automated records kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Housing Information and Statistics Division, Office of Managment, Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with in 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the

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contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, other individuals and organizations, Federal, State, and local agencies. PHA staff/private owners/management agents.

[FR Doc. 86-5276 Filed 3-10-86; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-86-1597]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the name and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Evaluation of the Housing Voucher Demonstration
Office: Policy Development and Research
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Non-Profit Institutions
Estimated Burden Hours: 14,076
Status: Revision
Contact: David Einhorn, HUD, (202) 755-5574; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 13, 1986.

Proposal: Relocation Requirements—Section 312 Rehabilitation Loan and Urban Development Action Grant (UDAG) Programs
Office: Community Planning and Development
Form Number: None
Frequency of Submission: Recordkeeping
Affected Public: State or Local Governments
Estimated Burden Hours: 300
Status: New
Contact: Melvin J. Geffner, HUD, (202) 755-6336; Robert Fishman, OMB, (2020) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 13, 1986.

Proposal: Public Housing Program—Demolition or Disposition of Public Housing Projects Final Rule—24 CFR 970, Public Housing Demolition, Disposition and Conversion Handbook 7486.1
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State of Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 3,600
Status: Revision
Contact: Richard L. Rivard, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1986.

Proposal: Relocation Payment Claim Forms
Office: Community Planning and Development
Form Number: HUD-4000, 4001, 4002, 4003, 4004, and 4004A
Frequency of Submission: On Occasion
Affected Public: Individuals or Household, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 5,500
Status: Reinstatement
Contact: Melvin Geffner, HUD, (202) 755-6336; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1986.

Proposal: Contract and Subcontract Activity Reporting
Office: Community Planning and Development
Form Number: HUD-2516
Frequency of Submission: Quarterly
Affected Public: State or Local Governments
Estimated Burden Hours: 2,800
Status: Revision
Contact: Leroy P. Gonnella, HUD (202) 755-6092; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 28, 1986.

Proposal: Procurement Policies and Procedures Handbook (2210.3, REV 3)
Office: Administration
Form Number: HUD-441, 441.1, 442, 443, 661, 661.1, 662, 663, and 770
Frequency of Submission: On Occasion, Monthly, and Quarterly

Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 148,302
Status: Extension
Contact: Gladys Gines, HUD, (202) 755-5294; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Proposal: Request for Termination of Multifamily Mortgage Insurance
Office: Administration
Form Number: HUD-9807
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 38
Status: Extension
Contact: Frances Jones, HUD, (202) 755-7022; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Proposal: Solicitation Mailing List Application
Office: Administration
Form Number: SF-129
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 120
Status: Extension
Contact: Gladys Gines, HUD, (202) 755-5294; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 86-5277 Filed 3-10-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meetings.

SUMMARY: This notice announces that representatives of the U.S. Fish and Wildlife Service (hereinafter the Service) will be in attendance at meetings of the Atlantic, Mississippi, Central, Pacific, and National Flyway Councils (Council) at the following times and locations:

DATES:

March 22, 1986—Pacific Flyway Council, 2:00 p.m.
March 23, 1986—Atlantic Flyway Council, 10:00 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3:00 p.m.

ADDRESS: Council meetings will be held at The MGM Grand Hotel, Reno, Nevada as follows:

Atlantic Flyway Council, Metro Room B, Mezzanine Level
Mississippi Flyway Council, Capitol Room 1, Lobby Level
Central Flyway Council, Capitol Room 4, Lobby Level
Pacific Flyway Council, Palace Room, Mezzanine Level
National Waterfowl Council, Capitol Room 4, Lobby Level.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, telephone (202) 254-3207.

SUPPLEMENTARY INFORMATION: Flyway councils are organizations of State conservation agencies that share responsibility for migratory game bird management with the Service. The Council meetings noted above are scheduled in conjunction with the 51st North American Wildlife and Natural Resources Conference to be held March 21-26, 1986, at The MGM Grand Hotel, Reno, Nevada. The Service will be represented at the above meetings to facilitate discussions of various migratory game bird management and research programs, many of which are conducted jointly with the Service and with the Canadian Wildlife Service.

Dated: March 4, 1986.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86-5244 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[N-43254]

Realty Action; Lease/Purchase for Recreation and Public Purposes, White Pine County, NV

The following described public land has been identified and examined and is hereby classified as suitable for lease/purchase under the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 16 N., R. 62 E.,
 Sec. 35, E½;
 Sec. 36, all.
T. 16 N., R. 63 E.,
 Sec. 31, unsurveyed, all that portion lying west of Bothwick Road.

This land contains approximately 1,440 acres. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

The State of Nevada Division of State Lands intends to use the land for a maximum security prison for the Nevada Department of Prisons. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for electric transmission line purposes which have been granted to Mt. Wheeler Power, Inc. by Permit No. N-35513, under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

2. Those rights acquired by White Pine County by construction of County Road No. 19, Bothwick Road, under R.S. 2477 (43 U.S.C. 932).

3. Those rights granted by oil and gas leases, N-18639 and N-18640, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittees or lessees to use so much of

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the surface of said land as is required for oil and gas exploration and development operations, without compensation to the lessee/patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas leases, N-18639 and N-18640, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Upon publication of this Notice of Realty Action in the Federal Register the above described public land will be segreated from all forms of appropriation under the public land laws and the general mining law, except for recreation and public purposes and leasing under the mineral leasing laws.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely District, Star Route 5, Box 1, Ely, Nevada. A public meeting will be held on April 1, 1986, between the hours of 2:00 p.m. to 4:00 p.m. and 7:00 p.m. to 9:00 p.m. in the BLM Ely District Office conference room.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301. In the absence of any objections, on the 60th day from the date of this publication, the classification will become effective and this notice of realty action will become the final determination of the Department of the Interior.

Dated: March 4, 1986.

Wayne M. Lowman,

Acting District Manager.

[FR Doc. 86-5130 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-HC-M

[W-63093]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-63093 for lands in Sheridan County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-63093 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 4, 1986.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-5223 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1294, Block 62, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 3, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5224 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Advisory Commission will be held at 1:00 p.m., Tuesday, April 1, 1986, at the San Jose Mission Parish Hall, 6710 San Jose, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed include:

—Minutes of previous meeting
—Park Operations Update
—Los Compadres Update
—Archdiocesan Report
—City Report
—County Report
—Open Discussion.

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206 (512) 229-6000.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: February 28, 1986.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 86-5255 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-70-M

Environmental Statements for Wilderness Recommendations for National Park Service Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare Environmental Impact Statements for Wilderness Recommendations for National Park Service Units in Alaska.

SUMMARY: The National Park Service (NPS) is beginning preparation of wilderness recommendations and environmental impact statements (EIS) for 14 national parks, preserves and monuments in the State of Alaska as mandated by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, section 1317 (16 U.S.C. 3205). The affected National Park System units are Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Denali National Park and Preserve, Gates of the Arctic National Park and Preserve, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Kenai Fjords National Park, Klondike Gold Rush National Historical Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve and Yukon-Charley Rivers National Preserve. Lands being considered within these units include those areas which have been determined, in the draft general management plans for each unit, to have the characteristics of wilderness required by the Wilderness Act. In total approximately 17.8 million acres will be considered for designation as wilderness.

Interested and affected groups, organizations, and individuals will be kept informed of progress of the effort and proposals developed.

Scoping meetings will be held throughout Alaska and in some cities in the contiguous United States. Meetings will be advertised in local media. The purposes of scoping meetings are (1) to familiarize the public with wilderness management by the National Park Service, with emphasis on aspects that are, under ANILCA, unique to Alaska units; (2) to offer for consideration various options for additions to the National Wilderness Preservation System; and (3) to solicit ideas and information from the public about the socioeconomic and environmental impacts of the designations of additional wilderness in 14 National Park System units in Alaska. The public will also be encouraged to suggest additional alternative actions which have not been considered by NPS and to describe measures which could be taken to mitigate impacts of proposed actions, so that they may be considered in preparation of the environmental impact statements (EIS).

FOR FURTHER INFORMATION CONTACT: Linda Nebel, Cheif of Planning, National Park Service, 2525 Gambell St. #107, Anchorage, Alaska 99503, Telephone: (907) 271-2690.

Dated: February 26, 1986.

Boyd Evison,

Regional Director.

[FR Doc. 86-5253 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 1, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 26, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

South Windsor, *Windsor Farms Historic District,* Roughly Main St. bounded by Strong Rd., US 5, I 291 and Connecticut River

Litchfield County

Torrington, *South School,* 362 S. Main St.

KENTUCKY

Campbell County

Newport, *Salem Methodist Episcopal Church and Parsonage,* 810 York St.

MARYLAND

Harford County

Darlington vicinity, *Gray Gables,* 4528 Conowingo Rd.

MONTANA

Cascade County

Great Falls, *Randall, Harry E., House,* 1003 Fourth Ave. N

Jefferson County

MacHaffie Site (24JF4)

Missoula County

Frenchtown, *St. John the Baptist Catholic Church,* Mullan Rd.

Park County

Cooke, *Cooke City Store,* Main St.

NEW HAMPSHIRE

Grafton County

Littleton, *United States Post Office and Courthouse—Littleton Main,* 165 Main St.

Strafford County

Dover, *United States Post Office—Dover Main,* 133-137 Washington St.

Winnipesaukee County

Laconia, *United States Post Office—Laconia Main,* 33 Church St.

NEW YORK

Onondaga County

Syracuse, *South Salina Street Historic District,* 111 W. Kennedy St., 1555-1829 and 1606-1830 S. Salina St.

OHIO

Mahoning County

Youngstown, *Reuben McMillan Free Library,* 305 Wick Ave.

OREGON

Baker County

Unity, *Unity Ranger Station (Depression-Era Buildings TR),* Wallowa—Whitman National Forest

Clackamas County

Zigzag vicinity, *Zigzag Ranger Station (Depression-Era Buildings TR), Mt. Hood National Forest*

Cook County

Prineville, *Lamonta Compound—Prineville Supervisor's Warehouse (Depression-Era Buildings TR),* Ochoco National Forest

Curry County

Gold Beach, *Gold Beach Ranger Station (Depression-Era Buildings TR),* Siskiyou National Forest

Deschutes County

Bend vicinity, *Pauline Lake Guard Station (Depression-Era Buildings TR),* Deschutes National Forest

Douglas County

Glide, *Glide Ranger Station (Depression-Era Buildings TR),* Umpqua National Forest

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Idleyld Park vicinity, *Diamond Lake Guard Station (Depression-Era Buildings TR),* Umpqua National Forest

Grant County

John Day, *John Day Compound, Supervisor's Office (Depression-Era Buildings TR),* Malheur National Forest
John Day, *Supervisor's Office No. 1001 (Depression-Era Buildings TR),* Malheur National Forest

Hood River County

Cascade Locks, *Cascade Locks Work Center (Depression-Era Buildings TR),* Mt. Hood National Forest
Parkdale, *Parkdale Ranger Station (Depression-Era Buildings TR),* Mt. Hood National Forest

Jackson County

Butte Falls vicinity, *Imnaha Guard Station (Depression-Era Buildings TR),* Rogue River National Forest
Butte Falls, *Butte Falls Ranger Station (Depression-Era Buildings TR),* Rogue River National Forest

Josephine County

Cave Junction vicinity, *Store Gulch Guard Station (Depression-Era Buildings TR),* Siskiyou National Forest
Cave Junction *Cedar Guard Station No 1019 (Depression-Era Buildings TR),* Siskiyou National Forest

Klamath County

Klamath Falls vicinity, *Lake of the Woods Ranger Station (Depression-Era Buildings TR),* Winema National Forest

Lake County

Bend vicinity, *Cabin Lake Guard Station (Depression-Era Buildings TR),* Deschutes National Forest

Wallowa County

Enterprise, *Lick Creek Guard Station (Depression-Era Buildings TR),* Wallowa-Whitman National Forest

SOUTH CAROLINA

Charleston County

Charleston, *Charleston Old and Historic District (Boundary Increase),* Corner E. Bay and Hasell Sts.

Cherokee County

Gaffney, *Gaffney Commercial Historic District (Gaffney MRA),* N. Limestone St. roughly bounded by
Granard St., Cherokee Ave., Petty, and E. Meadow Sts.
Gaffney, *Gaffney Residential Historic District (Gaffney MRA),* Roughly bounded by Floyd Baker Blvd.,
Johnson St., College and Rutland Aves., and Limestone St.
Gaffney, *Irene Mill Finishing Plant (Gaffney MRA),* W side of Buford St. between Liberty and Logan Sts.
Gaffney, *Jefferies House (Gaffney MRA),* 306 S. Grannard St.
Gaffney, *Limestone Springs Historic District (Gaffney MRA),* O'Neal St. Extension and Limestone College Campus
Gaffney, *Robbs House (Gaffney MRA),* 310 W. Buford St.
Gaffney, *Sarratt House (Gaffney MRA),* 217 Marion St.
Gaffney, *Settlemyer House (Gaffney MRA),* 915 N. Limestone St.
Gaffney, *Victor Cotton Oil Company Complex (Gaffney MRA),* W side of Frederick St. between Hill and Johnson Sts.
Gaffney, *West End Elementary School (Gaffney MRA),* Floyd Baker Blvd. and Broad St.

Richland County

Brevard, Keziah Goodwyn Hopkins, House (Lower Richland County MRA)
Chappell House
Laurelwood (Lower Richland County MRA)
Magnolia (Lower Richland County MRA)
Congaree, *Grovewood (Lower Richland County MRA),* SC 769
Eastover vicinity, *Farmers and Merchants Bank Building (Lower Richland County MRA),* Main St.
Eastover vicinity, *Good Hope Baptist Church (Lower Richland County MRA),* SC 270 near Sandhill Rd.
Eastover vicinity, *Goodwill Plantation (Lower Richland County MRA),* Off US 378
Eastover vicinity, *Scott, Claudius, Cottage (Lower Richland County MRA),* CR 1182
Eastover vicinity, *St. Thomas' Protestant Episcopal Church (Lower Richland County MRA),* Near jct. of US 601 and SC 263
Eastover, *Byrd, J.A., Mercantile Store (Lower Richland County MRA),* Main St.
Eastover, *Zion Protestant Episcopal Church (Lower Richland County MRA),* SC 263
Gadsden vicinity, *Oakwood (Lower Richland County MRA),* SC 48
Gadsden vicinity, *Richland Presbyterian Church (Lower Richland County MRA),* CR 1313
Gadsden, *Kaminer, John J., House (Lower Richland County MRA),* Near jct. SC 48 and SC 769
Hopkins vicinity, *Barber House (Lower Richland County MRA),* Off CR 37
Hopkins, *Hopkins Graded School (Lower Richland County MRA),* Jct. of CR 37 and CR 1412
Hopkins, *Hopkins Presbyterian Church (Lower Richland County MRA),* Near jct. of CR 66 and CR 86
Ballentine vicinity, *Koon, John Jacob Calhoun, Farmstead,* CR 27 off US 76/176
Blythewood, *Hoffman, George P., House,* N. of CR 54

UTAH

Box Elder County

Plymouth, *Plymouth School (Public Works Buildings TR),* 135 S. Main

Cache County

Logan, *Women's Residence Hall (Public Works Buildings TR),* Utah State University
Richmond, *Richmond Community Building (Public Works Buildings TR),* 6 W. Main

Morgan County

Morgan, *Morgan Elementary School (Public Works Buildings TR),* 75 N. 100 East
Morgan, *Morgan High School Mechanical Arts Building (Public Works Buildings TR),* 20 N. 100 East

Sanpete County

Fairview, *Fairview City Hall (Public Works Buildings TR),* 85 S. State
Manti, *Manti National Guard Armory (Public Works Buildings TR),* 50 E. 100 North
Mt. Pleasant, *Mt. Pleasant National Guard Armory (Public Works Buildings TR),* 10 N. State

Sevier County

Salina, *Salina Municipal, Building and Library (Public Works Buildings TR),* 90 W. Main

Utah County

Payson, *Payson Presbyterian Church,* 160 S. Main
Pleasant Grove, *Fugal Dugout House,* 630 N. 400 East
Provo, *Recreation Center for the Utah State Hospital (Public Works Buildings TR),* 1300 E. Center
Provo, *Superintendent's Residence at the Utah State Hospital (Public Works Buildings TR),* 1070 E. Center
Spanish Fork, *Spanish Fork National Guard Armory (Public Works Buildings TR),* 300 N. Main
Springville, *Springville High School Art Gallery (Public Works Buildings TR),* 126 E. 400 South

Wasatch County

Brighton vicinity *Cloud Rim Girl Scout Lodge (Public Works Buildings TR),* Lake Brimhall

Washington County

Hurricane *Hurricane High School (Public Works Buildings TR),* 34 S. 110 West

Wayne County

Grover *Grover School (Public Works Buildings TR),* Off UT 117

VIRGINIA

Petersburg (Independent City)
Centre Hill Historic District, Roughly bounded by Henry, Jefferson, Franklin and N. Adams Sts.

WASHINGTON

Chelan County

Leavenworth vicinity, *Chatter Creek Guard Station (Depression-Era Buildings TR),* Wenatchee National Forest
Leavenworth, *Leavenworth Ranger Station (Depression-Era Buildings TR),* Wenatchee National Forest

Lewis County

Packwood vicinity, *La Wis Wis Guard Station No. 1165 (Depression-Era Buildings TR),* Gifford Pinchot National Forest

Marion County

Detroit vicinity, *Breitenbush Guard Station (Depression-Era Buildings TR),* Willamette National Forest

Mason County

Hoodsport, *Hamma Hamma Guard Station (Depression-Era Buildings TR),* Olympic National Forest

Okanogan County

Tonasket, *Lost Lake Guard Station (Depression-Era Buildings TR),* Okanogan National Forest
Winthrop vicinity, *Early Winters Ranger Station Work Center (Depression-Era Buildings TR),* Okanogan National Forest

Randle County

Randle vicinity, *North Fork Guard Station No. 1142 (Depression-Era Buildings TR),* Gifford Pinchot National Forest
Randle, *Randle Ranger Station—Work Center (Depression-Era Buildings TR),* Gifford Pinchot National Forest

Snohomish County

Granite Falls, *Verlot Ranger Station—Public Service Center (Depression-Era Buildings TR),* Mt. Baker-Snoqualmie National Forest.

[FR Doc. 86-5252 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Garrison Diversion Unit, ND, Draft Supplemental Environmental Statement; Availability

[INT-DES 86-9]

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft supplemental environmental statement on the Garrison Diversion Unit.

This statement discusses impacts associated with modifications as proposed in the Garrison Diversion Unit Commission *Final Report* of December 20, 1984. Major modifications addressed in this draft supplemental environmental statement are (1) constructing and operating a 113,360-acre irrigation project; (2) developing lands for wildlife mitigation and enhancment; (3) restricting irrigation to lands that drain or can be drained into the Missouri River Basin; (4) deferring construction of Lonetree Reservior and building Sykeston Canal; (5) constructing Glover Reservior while preserving Kraft Slough; (6) providing water level control features for national wildlife refuges; and (7) providing for new and improved recreation areas. Written comments may be submitted to the Regional Director or Project Manager within 60 days after filing.

A public hearing will be held beginning at 9:30 a.m., CST, April 15, 1986, at the Doublewood Ramada Inn, Bismarck, North Dakota.

Copies are available at the following offices:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7624, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343-4991
Director, Management Operations Center, Attn: Code 823, Engineering and Research Center, P.O. Box 25007—Federal Center, Denver, CO 80225, Telephone: (303) 236-6963
Regional Director, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6605
Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, ND 58502, Telephone: (701) 255-4011, Ext. 541

Copies will also be available for inspection in libraries within the project area.

Dated: March 6, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-5260 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Software Productivity Consortium, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Software Productivity Consortium, Inc., has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of Software Productivity Consortium, Inc., by the addition of Martin Marietta Corporation. The additional notification was filed for the purpose of extending the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Software Productivity Consortium, Inc., and its general areas of planned activities are given below.

Software Productivity Consortium, Inc., with the addition of Martin Marietta Corporation, consists of the following firms: Allied Corporation; The Boeing Company; Ford Aerospace and Communications Corporation; General Dynamics Corporation; Grumman Aerospace Corporation; Harris Corporation; Lockheed Missile and Space Company, Inc.; McDonnell Douglas Corporation; Martin Marietta Corporation; Northrop Corporation; Science Applications International Corporation; TRW Inc., United Technologies Corporation; and Vitro Corporation. The purpose of the current effort is to undertake research and developmental engineering in advanced technologies relating to productivity tools and techniques to be used in the development of complex computer software.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-5238 Filed 3-10-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Preliminary Planning Estimates for Program Year (PY) 1986 for Basic Labor Exchange Activities Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the preliminary planning estimates for Program Year (PY) 1986 for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service (Attention:TEES), 601 D Street, NW., Washington, DC 20213. Telephone: 202-376-6750.

SUPPLEMENTARY INFORMATION: In accord with section 6(b)(5) of the Wagner-Peyser Act the Employment and Training Administration is publishing preliminary estimates for each State's projected allotment for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987). The total amount of funds currently available for distribution to States for public employment service activities is $744,135,000. This amount reflects a 4.2 percent reduction in the Fiscal Year (FY) 1986 appropriation mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177). An additional $14,000,000 is being withheld to finance postage costs associated with the conduct of employment service activities. Funds will be distributed in accord with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force and unemployment data for the twelve months ending September 1985 were used in making the formula calculations.

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The Secretary reserved 3 percent of the total available funds as authorized under section 6(b)(4) of the Wagner-Peyser Act and announced two proposed funding methodologies in the **Federal Register** on January 17, 1986 for public comment. 51 FR 2589. After careful review of all public comment, the Department has determined to allocate the set-aside by the same methodology used since the Wagner-Peyser Act was amended by the Job Training Partnership Act (Pub. L. 97-300).

Under this method, $22,324,050 of the funds currently available is distributed to States whose share of resources decreased from their total allotment in PY 1985 to the PY 1986 basic formula amount.

Signed at Washington, DC on March 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor for Employment and Training.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
PRELIMINARY PY 1986 WAGNER-PEYSER PLANNING ESTIMATES
02-24-1986

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,635,157	0	61,329	61,329	11,696,486
Alaska	7,061,254	1,027,850	0	1,027,850	8,089,104
Arizona	7,857,252	0	0	0	7,857,252
Arkansas	6,982,802	0	833,570	833,570	7,816,372
California	73,524,267	0	0	0	73,524,267
Colorado	9,240,337	0	0	0	9,240,337
Connecticut	8,772,462	0	0	0	8,772,462
Delaware	2,015,992	0	62,507	62,507	2,078,499
District of Columbia	5,195,434	0	620,203	620,203	5,815,637
Florida	28,831,979	0	0	0	28,831,979
Georgia	15,719,581	0	0	0	15,719,581
Hawaii	2,779,954	0	331,856	331,856	3,111,810
Idaho	5,883,280	856,381	0	856,381	6,739,661
Illinois	35,232,279	0	0	0	35,232,279
Indiana	16,425,895	0	0	0	16,425,895
Iowa	8,871,706	0	1,059,057	1,059,057	9,930,763
Kansas	6,363,426	0	0	0	6,363,426
Kentucky	10,546,314	0	0	0	10,546,314
Louisiana	13,202,830	0	0	0	13,202,830
Maine	3,498,731	509,282	0	509,282	4,008,013
Maryland	11,701,202	0	0	0	11,701,202
Massachusetts	15,089,185	0	7,997	7,997	15,097,182
Michigan	28,791,450	0	0	0	28,791,450
Minnesota	12,093,063	0	0	0	12,093,063
Mississippi	7,701,465	0	919,360	919,360	8,620,825
Missouri	13,761,450	0	0	0	13,761,450
Montana	4,807,847	699,840	0	699,840	5,507,687
Nebraska	5,778,086	841,070	0	841,070	6,619,156
Nevada	4,673,733	680,318	0	680,318	5,354,051
New Hampshire	2,667,524	0	0	0	2,667,524
New Jersey	20,520,989	0	0	0	20,520,989
New Mexico	5,395,249	785,343	0	785,343	6,180,592
New York	53,533,395	0	6,390,531	6,390,531	59,923,926
North Carolina	16,675,897	0	0	0	16,675,897
North Dakota	4,895,826	712,646	0	712,646	5,608,472
Ohio	31,858,383	0	0	0	31,858,383
Oklahoma	12,240,005	0	1,461,146	1,461,146	13,701,151
Oregon	8,567,493	0	1,022,742	1,022,742	9,590,235
Pennsylvania	33,329,929	0	0	0	33,329,929
Puerto Rico	9,202,746	0	0	0	9,202,746
Rhode Island	2,578,669	0	305,857	305,857	2,884,526
South Carolina	8,680,286	0	0	0	8,680,286
South Dakota	4,524,869	658,649	0	658,649	5,183,518
Tennessee	13,646,130	0	0	0	13,646,130
Texas	44,661,458	0	0	0	44,661,458
Utah	9,896,439	1,440,545	0	1,440,545	11,336,984
Vermont	2,119,708	308,549	0	308,549	2,428,257
Virginia	15,191,993	0	0	0	15,191,993
Washington	12,919,075	0	0	0	12,919,075
West Virginia	5,716,638	216,411	0	216,411	5,933,049
Wisconsin	13,625,281	0	0	0	13,625,281
Wyoming	3,510,613	511,011	0	511,011	4,021,624
FORMULA TOTAL	719,997,008	9,247,895	13,076,155	22,324,050	742,321,058
Guam	348,197	0	0	0	348,197
Virgin Islands	1,465,745	0	0	0	1,465,745
NATIONAL TOTAL	721,810,950	9,247,895	13,076,155	22,324,050	744,135,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1985 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 86-5390 Filed 3-10-86 8:45 am]

BILLING CODE 4510-30-C

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Mine Safety and Health Administration

[Docket No. M-86-4-C]

Petition for Modification of Application of Mandatory Safety Standard; Badger Coal Co.

Badger Coal Company, 145 Sago Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.505 (mines classed gassy; use and maintenance of permissible electric face equipment) to its Grand Badger No. 1 Mine (I.D. No. 46-04819) located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery receptacles on permissible, battery-powered machines.
2. As an alternate method, petitioner propose to use a spring-loaded pin in lieu of padlocks. The pin is permanently attached and eliminates the possibility of locks and keys being lost as well as mechanical failure of the lock due to dust and moisture in the mine atmosphere.
3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5181 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-201-C]

Petition for Modification of Application of Mandatory Safety Standard; Consolidation Coal Co.

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.
2. The conditions in the return air course in the DuPont Shaft Entries have deteriorated, resulting in adverse roof conditions which have made the return air course hazardous to travel and examine. Rehabilitation of the affected area would expose miners to hazardous working conditions.
3. As an alternate method, petitioner proposes to establish three monitoring stations where the air leaves the affected areas. Certified persons will take air and gas measurements when making weekly examinations of the affected return air course and record the results.
4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards; Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5182 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-209-C]

Petition for Modification of Application of Mandatory Safety Standard; D. & K. Coal Co., Inc.

D. & K. Coal Company, Inc., P.O. Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (electric face equipment; maintenance) to its No. 4 Mine (I.D. No. 46-06115) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible; mobile, battery-powered machines.
2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings form unintentionally lossening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.
3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.
4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.
5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5183 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-3-C]

Petition for Modification of Application of Mandatory Safety Standard; Eastern Associated Coal Corp.

Eastern Associated Coal Corp., One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundment and impounding structures; abandonment) to its Joanne Mine (I.D. No. 46-01430) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a plan for abandonment of an impoundment be submitted prior to abandonment.
2. As an alternate method, petitioner proposes to leave the impounding structure in its present condition and allow the present owner to be responsible for maintenance.
3. Eastern sold and conveyed the water impoundment to the Joanne Sportman's Club in 1976 and thereafter utilized the pond water for its cleaning plant. In June 1985, petitioner closed the mine, ceased taking water from the pond and currently has no control over the subject site. The impoundment is now inactive for coal mining purposes.
4. The present owner submitted a plan to MSHA and the West Virginia Department of Natural Resources Dam Control Section on May 12, 1983 showing their capability to maintain and monitor the pond.
5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5184 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-174-C]

Petition for Modification of Application, of Mandatory Safety Standard; H & B Coal Company, Inc.

H & B Coal Company, P.O. Box 6, Regina, Kentucky 41559 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-06807) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electic face equipment.
2. The mine is in the No. 1 Elkhorn Seam ranging from 41 to 48 inches in height, with ascending and descending grades creating dips in the coal bed.
3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy would restrict and cramp the operator's seating position and limit his or her field of vision, increasing the chances of an accident.
4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5185 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-3-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.14029 (machinery repairs and maintenance) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that repairs or maintenance on equipment not be performed until the power is off and the machinery is blocked against motion.
2. As an alternate method, petitioner proposes to replace worn out brushes on the generators of the Ross and Yates Hoist MG sets while the power is off but the armatures are rotating.
3. Petitioner states that the commutator is smooth and there are no protruding objects to strike a person or catch his or her clothing.
4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5186 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-9-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its B and M Tunnel (I.D. No. 36-01761) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separted from belt haulage entries.
2. The mine is currently being ventilated on a blowing system. The intake air splits and ventilates the belt tunnel, east gangway and west gangway. Intake air ventilating the east/west gangway maintains a positive pressure against the abandoned shuttle entries, ventilates active shuttle entries and exhausts out the return at the Lucas Slope in the east or ventilation/haulage drifts in the west.
3. Petitioner states that thirty-five to forty thousand cubic feet of air (235-270 FPM) passes through the gangway which is enough to dilute any gases, provide an adequate supply of oxygen and keep air velocities down (+/-250 FPM). With only one tunnel driven it is not possible to have a separate return or belt entry.

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nor are the normal hazards associated with flat lying bituminous seams present with the tunnel in rock behind the pitching seam.

4. In further support of this request, petitioner proposes to install regulators to increase the differential pressure between the intake and return airways, increase the capabilities of the ventilating system to dilute and carry away harmful gases and contaminants, and insure improved ventilation of the working faces.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5187 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-8-C]

Petition for Modification of Application of Mandatory Safety Standard; Kaiser Coal Corp.

Kaiser Coal Corporation, 102 South Tejon Street, Suite 800 P.O. Box 2679, Colorado Springs, Colorado 80901-2679 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its York Canyon Mine (I.D. No. 29-00095) located in Colfax County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Petitioner states that the use of a two-entry development system for longwall mining of blocks of coal is necessary for safety due to constant changes in roof conditions, roof composition and occurrence of numerous slips and faulting. Utilization of a three-entry system would introduce significantly greater roof exposure, increased roof falls, excessive chain pillar loading and rib roll hazards.

3. As an alternate method, petitioner proposes to use two-entry systems for development of retreating longwall panels. A computerized remote monitoring system for carbon monoxide and methane and a fire detection system will be installed.

Additional measures regarding ventilation, construction of stoppings and overcasts, roof support, communication and other precautions will be implemented.

4. For these reasons, petitioner requests a modification of the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5190 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-10-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its B and M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install a continuous carbon monoxide(CO) detection system in all belt haulage entries used to ventilate the working places. The system will be capable of identifying any activated sensor so that a map can be used to pinpoint the potential problem area.

3. The monitors will be located in by each transfer point, at intervals along the belt not to exceed 2,500 feet and in the immediate return. Monitors will be visually examined once every twenty-four hours when belts are operating, inspected weekly by a qualified person and calibrated monthly. CO monitors are set to indicate a warning at 20.00 ppm and danger at 40.00 ppm. The methane monitors are set to indicate a warning at 1.00 volume percentum and danger at 2.00 volume percentum.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5188 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-11-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petiton to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its B and M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennslyvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The section power center is located in the gangway outby the working faces in the mouth of a shuttle entry and there is no nearby return for the ventilating air.

3. As an alternative method, petitioner proposes to ventilate the working faces

and section power center with belt haulage air. In support of this request, petitioner proposes to install a continuous monitoring system for carbon monoxide and methane.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before April 10, 1986.

Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5189 Filed 3-10-86-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-5-C]

Petition for Modification of Application of Mandatory Safety Standard; Mid-Continent Resources, Inc.

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Dutch Creek No. 1 Mine (I.D. No. 05-00301) and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) both located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes that whenever the configuration of intake air entries does not permit an underground transformer station to be ventilated by intake air that is coursed directly into a return air course, the station will be housed in a fireproof structure equipped with fireproof doors and a fire suppression system. When the temperature within the fireproof structure reaches a temperature of not more than 200 degrees Fahrenheit, the fireproof doors will close, incoming power to the structure will be deenergized, and an alarm will be activated.

3. The return air coursed from such an installation will be coursed and maintained separate and apart from the intake air escapeway.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5191 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-13-C]

Petition for Modification of Application of Mandatory Safety Standard; Quarto Mining Co.

Quarto Mining Company, Box 231, Clarington, Oho 43915 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlocked.

4. Operators of permissible, mobile, battery-powered machines affected by this modifications will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under loads, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5192 Filed 3-10-86 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-7C]

Petition for Modification of Application of Mandatory Safety Standard; Saginaw Mining Co.

Saginaw Mining Company, P.O. Box 275, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from loosening.

3. Petitioner states that the proposed alternate method will provide the same

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degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5193 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-199-C]

Petition for Modification of Application of Mandatory Safety Standard; Skidmore Coal Co.

Skidmore Coal Company, 123 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Skidmore Slope (I.D. No. 36-07461) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face must be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5194 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-2-M]

Petition for Modification of Application of Mandatory Safety Standard; Southwestern Portland Cement Co.

Southwestern Portland Cement Company, P.O. Box 1547, Odessa, Texas 79760 has filed a petition to modify the application of 30 CFR 56.13020 (compressed air) to its Odessa Plant (I.D. No. 41-00060) located in Ector County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressed air not be directed toward a person.

2. As an alternate method, petitioner proposes to install blow-off stations for the purpose of removing cement dust from clothing to prevent skin irritation and discomfort.

3. In support of this request petitioner states:

a. Safety glasses or goggles will be worn by persons at blow-off stations whenever they are in use;

b. Persons will be forbidden to direct air at lacerations or other unhealed skin injuries or at any person's eyes or face; and

c. Signs will be posted at each station reminding employees to wear safety glasses, not to direct air toward eyes or face, or toward cuts, scratches or other skin openings.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5195 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-29-M]

Petition for Modification of Application of Mandatory Safety Standard; Stauffer Chemical Co.

Stauffer Chemical Company, P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.21097 (general requirements for blasting) to its Big Island Mine (I.D. No. 48-00154) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting units of capacity suitable for the number of holes in a round to be blasted are to used unless the round is fired from the surface when all persons are out of the mine.

2. The mine is a trona mine and methane gas is not generated by trona itself. At present, there is no permissible blasting machine of sufficient capacity available. The small capacity permissible machines available would introduce the hazard of misfires and poorly broken faces by having too much

resistance for the capacity of the machine, or not having sufficient holes per round to adequately break the trona.

3. As an alternate method, petitioner proposes to use nonpermissible blasting machines. Each shotfirer would check for methane before entering a working face and before shooting the face. The shotfirer would visually inspect the face area and muck pile after shooting. Each machine operator would independently check for methane gas before entering a face area.

4. For these reasons, petitioner requests a modification of the standard.

Request for comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5196 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-204-C]

Petition for Modification of Application of Mandatory Safety Standard; T.&R. Coal Co., Inc.

T.&R. Coal Company, Inc., P.O. Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (electric face equipment; maintenance) to its No. 3 Mine (I.D. No. 46-06114) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 2, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5197 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-20-M]

Petition for Modification of Application of Mandatory Safety Standard; Tri-Con Mining Inc.

Tri-Con Mining Incorporated, P.O. Box 83730, Fairbanks, Alaska 99708 has filed a petition to modify the application of 30 CFR 57.4560 (mine entrances) to its Grant Mine Project (I.D. No. 50-01314) located in Yukon River County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that timber used for ground support in exhaust openings that are designated as escapeways be provided with a fire suppression system, covered with shotcrete or gunite, or coated with fire-retardant paint for a distance of at least 200 feet inside the portal or collar.

2. Petitioner states that during spring and summer all the shaft timbers are water soaked from surface runoff and melting of frost and during fall and winter the shaft timber becomes coated with frost and ice. Both conditions make the shaft fire resistant.

3. Dry chemical fire extinguishers are located at the top and bottom of the shaft. The 200 foot is the only working level. There is an alternate escapeway located 250 feet from the shaft and additional escape exits from the 200 foot level will be completed in several months.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia, W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5198 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., on Tuesday, April 1, 1986 in Conference Room N-3437D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to discuss the following items on the Agenda summarized below:

1. ERISA Administration—Update.
2. Pension and Welfare Benefits Administration Priorities.
3. Role of the ERISA Advisory Council.
4. Establishment of Council Work Groups.

Individuals or organizations wishing to submit written statements pertaining to the items on the Agenda or any other aspects of ERISA, should send 20 copies to Edward F. Lyszczek, Executive Secretary, ERISA Advisory Council, U.S.

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Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8753. Papers will be accepted and included in the record of the meeting if received on or before March 28, 1986.

Signed at Washington, DC, this 4th day of March, 1986.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 86-5190 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-17]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Informal Subcommittee.

DATES: Date and time: April 9, 1986, 8:30 a.m. to 5:00 p.m.; April 10, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Activities Building, Hampton, Virginia 23665.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Code R, National Aeronautics and Space Administration, Washington, DC 20546; Telephone: (Area Code 202/453-2727).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST).

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and the Space Sytems and Technology Advisory Committee (SSTAC) and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. Total anticipated attendance is 75 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Subcommittee members and other participants).

Type of meeting: Open.

Agenda

April 9, l1986

8:30 a.m.—Chairperson's Remarks.
9 a.m.—NASA/OAST Overview.
9:45 a.m.—Aeronautics Overview.
11 a.m.—Parallel Program Review Sessions.
5:00 p.m.—Adjourn.

April 10, 1986

8:30 a.m.—Continuation of Parallel Program Review Sessions.
3 a.m.—Summary Session.
4:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 3, 1986.

[FR Doc. 86-5206 Filed 3-10-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

National Endowment for the Arts; Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Companies Section) to the National Council on the Arts will be held on March 25-29, 1986 from 8:30 a.m. to 5:30 p.m., Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 3, 1986.

[FR Doc. 86-5211 Filed 3-10-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Agency Policy and Procedures for Differing Professonal Opinions

The Nuclear Regulatory Commission (NRC) has made some revisions to its policy and procedures concerning Differing Professional Opinions. The basic policy has remained the same, but certain procedures have been added to increase timeliness and to strengthen the process. The policy of the Nuclear Regulatory Commission is to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. Each differing professional opinion of an NRC employee will be evaluated on its own merit. Further, each differing professional opinion will be pursued to resolution and the employee's statement of differing professional opinon, together with the agency's final response, will be made available to the public to ensure the opennesss of NRC decisions that may affect the public.

It is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers NRC employees' differing professional opinions that concern matters related to the Agency's mission. This policy is intended to assure all employees the opportunity to express differing professional opinions in good faith, to have these opinons heard and considered by NRC management, and to be protected against retaliation in any form.

The original policy and procedures for Differing Professional Opinions were issued as an NRC Manual Chapter in September of 1980. After several years of use as well as reviews by a Special Review Panel and the NRC Office of Inspector and Auditor, the Manual Chapter was revised and reissued. It is Manual Chapter NRC—4125 dated July 23, 1985.

During the process of revision, both the Commission and the Executive Director for Operations reaffirmed their continued full support for the Differing Professional Opinion policy and procedures.

Single copies of Manual Chapter 4125 can be obtained by writing to the U.S. Nuclear Regulatory Commission, Office of Resource Management, Washington, DC 20555. In addition, a single copy of the proposed policy and procedures is available, and may be inspected and copied in the Commission's Public Document Room at 1717 H Street NW., Washington, DC. For further information contact Richard A. Hartfield, telephone 301-492-7834.

Dated at Bethesda, Maryland, this 25th day of February 1986.

For the Nuclear Regulatory Commission.

Ronald Scroggins,

Director, Office of Resource Management.

[FR Doc. 86-5267 Filed 3-10-86 8:45 am]

BILLING CODE 7590-01-M

Intent To Establish a Federally Funded Research and Development Center

ACTION: Notice of intent.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces that it is considering the establishment and sponsorship of a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research as a potential solution to problems of conflict of interest and continutiy of technical assistance. A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operating the Center, draft proposal instructions and evaluation criteria, and mandatory requirements. The Commission is also requesting comments on specific questions included in this package. The Commission has not made a commitment to sponsor the FFRDC. Final approval by the Commission will be subject to review of the responses to this Notice and to finding a highly qualified contractor to manage and operate the FFRDC.

DATE: Comment period expires April 24, 1986.

ADDRESSES: A draft of certain elements of the solicitation package is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street NW., Washington, DC 20555, telephone 202/634-3273. Copies can also be obtained from the Division of Contracts, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814; or will be mailed upon written request to the Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Ms. Mary Mace, Contract Negotiator. Comments should be submitted to the address immediately above.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Mace, Contract Negotiator, Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301/492-4282).

SUPPLEMENTARY INFORMATION:

Background

Under the Nuclear Waste Policy Act of 1982 (NWPA), the U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing the construction, operation, and closure of facilities required for a high-level radioactive waste disposal system, which are to be designed, constructed, operated, and closed by the U.S. Department of Energy (DOE). The facilities of the DOE waste disposal system will include mined geologic repositories; monitored retrievable storage (MRS) facilities or other interim storage measures; and transportation vehicles, casks and handling equipment.

NRC's high-level waste licensing program currently faces two critical problems with respect to contracted technical assistance and research. First, the continued use of contractors who also have a contractual relationship with DOE's high-level waste program, or with any other party who might be a participant in NRC's high-level waste licensing hearings, may give rise to an organizational conflict of interest situation, and may draw into question the independence and freedom from bias af the contractors' work and, consequently, of NRC's licensing decisions. According to the definition in 41 CFR 20-1.54, an "organizational conflict of interest" means that:

> " . . . A relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage."

Second, the long-term continuity of NRC's waste management technical assistance and research program over the next twenty years or more is threatened as a result of efforts to avoid organizational conflict of interest situations (contractors are required to choose between doing work for NRC's program or for DOE's much larger program) and by the possible recompetition of technical work. The loss of contractor expertise has a significant impact to NRC's technical program because of its evolving nature and NRC's need for contractor experts to appear as expert witnesses at adjudicatory hearings.

In light of the problems discussed above, the NRC belives that the long-term contractual support offered by a Federally Funded Research and Devlopment Center (FFRDC) for waste management technical assistance and research is a potential solution for providing the special long-term contractual relationship needed by NRC in order to alleviate potential conflict of interest situations and provide long-term continuity.

Notice of Intent

This Notice of Intent indicates that NRC is considering the establishment and sponsorship of an FFRDC for waste management technical assistance and research as a solution to the problems of conflict of interest and long-term continuity. The FFRDC would be entitled, "The Center for Nuclear Waste Regulatory Analyses" (hereinafter referred to as the "Center"). The publication of this Notice of Intent, however, is not a commitment on the part of NRC to establish and sponsor an FFRDC. Any final decision to do so must be approved by the Commission and be in compliance with Office of Federal Procurement Policy (OFPP) Letter No. 84-1, "Federally Funded Research and Development Centers" (April 4, 1984).

Technical assistance and research tasks to be performed by the Center would encompass the following general areas: (1) Waste systems engineering and integration; (2) long-term performance of a geologic setting; (3) long-term performance of an engineered barrier system; (4) performance of an MRS and repository during opertion; (5) special analytical evaluations; and (6) transportation, environmental impacts, and other areas related to the Nuclear Waste Policy Act.

The period of performance for the Center would extend throughout the duration of NRC's high-level waste licensing responsibilitities estimated to be twenty years or more). The period of performance for the contract to manage and operate the Center would be for five years (to be renewed every five years, subject to comprehensive review by the NRC). The level of effort for the first five

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years would build up from about 20–25 staff years during the first year to about 50 staff years durig the fifth year and may increase by up to 50%, depending on program development and appropriations availability. ("Staff years" includes direct staff plus support staff.)

The NRC screening criteria for the Center are: (1) No conflict of interest with the high-level waste program; (2) operation of the Center as a not-for-profit organization free of control by any organization whose affiliations could give rise to conflict of interest; (3) capability to provide long-term continuity in resources to NRC throughout the duration of its high-level waste program under NWPA (e.g., 20 years or more); (4) multi-disciplined staff; (5) access to existing equipment and facilities (e.g., computational and experimental laboratories); (6) expertise in the areas of technical assistance and research identified above; and (7) capability to provide testimony by expert staff during NRC adjudicatory hearings.

A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operting the Center, draft proposal instructions and evaluation criteria, and mandatory requirements. The Commission is also requesting comments on specific questions included in this package. Final Commission approval to issue a solicitation package will be subject to review of the public comments on this draft solicitation package. Final Commission approval to establish and sponsor the Center will be subject to finding a highly qualified contractor to manage and operate the Center.

Dated at Bethesda, Maryland, this 6th day of March, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Acting Executive Director for Operations.

[FR Doc. 86-5266 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station Unit 1; Exemption

I

The Philadelphia Electric Company (PECo./the licensee) is the holder of Facility Operating License No. NPF–39 which authorizes operation of the Limerick Generating Station, Unit 1 at a power level not in excess of 3293 megawatts thermal for each unit. The facility is a boiling water reactor located at the licensee's site in Montgomery County, Pennsylvania. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Paragraphs III.C.3 and III.D.3 of Appendix J to 10 CFR Part 50 require that containment isolation valves which may provide a pathway for leakage of containment atmosphere are required, on at least a 24 month frequency, to have their leakage measured for comparison with the limiting value of 0.6 L_a for Type B and Type C tests.

The Philadelphia Electric Company proposed a one-time extension to the Surveillance Requirements for Technical Specification 4.6.1.2 which would allow the 24 month interval for conducting Type C tests with gas on 27 isolation valves to be extended by 12 weeks until May 26, 1986. The staff has found that approval of the proposed extension is warranted and is authorized by the granting of this one-time exemption so that Unit 1 may continue to operate until a shutdown is required on May 26, 1986 to perform other extensive surveillance and maintenance activities.

III

The NRC staff has evaluated the licensee's basis for requesting the extension in the surveillance interval and finds that not granting this exemption would require the licensee to shut down the plant on March 3, 1986 for a period of about two weeks to conduct the testing. Granting of this exemption is likely to result in a negligible reduction in containment integrity during the 12 week extension period. In evaluating the changes to the Technical Specifications and the associated exemption, the staff reviewed the licensee's technical justifications for the requested extension. The staff reviewed the licensee's position that these tests cannot be conducted during power operations and that therefore a shutdown would be required to perform the tests. The staff reviewed the types of valves involved to ascertain that these are not the types of valves used in boiling water reactors which have a greater propensity to require intensive maintenance to maintain their leaktight integrity. The staff considered the uses of these valves to ascertain that they are not used during normal plant operations in the relatively more demanding applications such as modulating valves to continuously control flow rates or pressure. The staff reviewed available data provided by the licensee on similar valves used elsewhere in the industry which supports the licensee's position that these valves have traditionally good maintenance histories in the industry. The staff also reviewed previous leakage test results on the specific valves subject to the exemption request and has found that there is substantial margin between the valves previously measured and the limiting values in Appendix J and the Technical Specifications to accommodate any additional degradation likely to occur during the period of the extension. The details of the above described review are discussed in the attached Safety Evaluation. Based on the information provided by the licensee, the staff's evaluation of the licensee's submittals, the NRC staff concludes that the licensee has provided an adequate basis for the conclusion that postponing the subject local leak rate tests until May 26, 1986 is likely to have little or no effect on containment integrity.

The Commission has amended its regulations, effective on January 13, 1986, in 10 CFR 50.12 (50 FR 50764–50778) to modify the criteria for granting exemptions from its regulations. The amended regulations in 10 CFR 50.12 state that the Commission will not consider granting an exemption unless special circumstances are present. In its letter of February 25, 1986 the licensee has addressed two of those special circumstances which are applicable to this exemption request.

The licensee states that the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in 10 CFR Part 50, Appendix J for the Type C leakage testing of 27 containment isolation valves within 24 months, i.e. by March 3, 1986, of their initial tests versus the requested one-time extension until May 26, 1986 is not necessary to achieve the underlying purpose of the rule. Appendix J states that a purpose of the tests is to assure that leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases.

The licensee has provided various bases for its conclusion that the requested delay of 12 weeks is not likely to result in a situation wherein the measured leakage from these valves would cause the limitations of the technical specifications to be exceeded. These bases, which are discussed in more detail in the enclosed Safety Evaluation and the licensee's submittals, include the licensee's characterization of these valves as being of the type which

traditionally have good maintenance histories, are not used in the relatively more demanding applications and which have shown in their initial leakage tests that they do not contribute an undue proportion of either the total measured containment leakage or the technical specification allowable leakage values. On these bases the staff agrees that it is unlikely that the delay in the testing of the subject 27 valves would result in measured leakage that would cause the allowable technical specification values to be exceeded. Thus the NRC staff concludes that the underlying purpose of Appendix J in this regard, to provide assurance that leakage shall not exceed technical specification allowable values, will be met with this one-time extension of the test schedule.

The licensee also states that the special circumstances of 10 CFR 50.12(a)(2)(v) are present in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The exemption is temporary since it provides relief from the requirement to conduct the subject tests only from March 3, 1986 until during a shutdown which shall begin no later than May 26, 1986. The licensee submits that it has made a good faith effort to comply with the requirements of the regulation in that it has tested al but 27 valves out of a total population of over 200 valves subject to such testing by the date initially required by Appendix J and the technical specifications. The licensee also describes its attempts to minimize the number of valves which would require the schedular relief by proceeding with the tests of all valves necessary to permit operations until May 26, 1986 which could be tested without requiring the shutdown of the plant. This effort was undertaken following the delay between the completion of low power testing activities and issuance of the full power license. Thus the NRC staff concludes that the requested exemption meets the criterion of providing only temporary relief and has been accompanied by a good faith effort to comply with the regulation.

Based upon the staff's findings that postponing the local leak rate tests from March 3 until May 26, 1986 is likely to have little or no effect on containment integrity and the staff's assessment of the special circumstances associated with this request for an exemption the NRC staff finds that operation of Limerick Unit 1 during the proposed extension period is acceptable. Therefore, the staff finds that the proposed temporary exemption from 10 CFR 50, Appendix J, Paragraph III.D.3 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

> An exemption is granted from the requirement to conduct Type C testing on containment isolation valves at an interval no greater than 24 months as stated in 10 CFR 50, Appendix J, Paragraph III.D.3. This exemption is granted for the period specified in the licensee's December 18, 1985 request for exemption (from March 3, 1986 until May 26, 1986) and is only applicable to 27 valves in Limerick Unit 1 as indicated in the modified Technical Specification Table 3.6.3–1 accompanying the issuance of Amendment No. 2 to License No. NPF–39.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 7344, March 3, 1986).

A copy of the Commission's Safety Evaluation dated March 3, 1986 related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

This Exemption is effective upon issuance and is to expire at midnight on May 26, 1986.

Dated at Bethesda, Maryland this 3rd day of March 1986.

For the Nuclear Regulatory Commission.

Robert Bernero,

Director, Division of BWR Licensing.

[FR Doc. 86-5268 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

Sequoyah Fuels Corp. (Sequoyah Facility); Memorandum and Order; Notice of Informal Hearing and Opportunity To Become a Party

[Docket No. 40-8027-MLA-2, ASLBP No. 86-524-01-MLA-2]

March 5, 1986.

I. Introduction

Please take notice that, on February 20, 1986, the Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order, the undersigned was designated presiding officer for this matter on February 25, 1986.

The Commission instituted this proceeding in response to petitions for a hearing filed by the Native Americans for a Clean Environment Client Council (NACE), the National Water Center (NWC), the Arkansas Peace Center (APC), Morton Newmark, Marjorie A. Spees, and Earth First! Austin (EFA). The hearing will concern Sequoyah Fuels Corporation's (SFC) application under 10 CFR 20.302(a) for disposal of floride sludge and contaminated noncombustible material and storage of raffinate sludge on site at its Sequoyah Facility near Gore, Oklahoma. By October 1, 1986, SFC is to propose a plan to dispose of, rather than store, the raffinate sludge.

II. How To Participate

The Commission's Order directed the presiding officer to request from NACE, NWC, APC, Newmark, Spees and EFA, filings detailing their standing to participate and their complaints concerning the license amendment. The Order also directed the presiding officer to provide a similar opportunity to petition to be heard by other interested persons. The Order authorised the presiding officer: (1) To request, at his discretion, written submissions and documents; (2) to set schedules; (3) to entertain statements from those who do not desire to become parties or cannot satisfy the requirements for party status, and (4) to hear oral presentations if necessary.

The Commission directed that those who wish to become parties (other than the NRC Staff and SFC) must set forth with particularity and in writing:

1. Their interest in the proceeding;
2. How their interest may be affected by the results of the proceeding, including a statement of the reasons why they should be made parties that makes particular reference to:
   a. Their right under the Atomic Energy Act to be made a party;
   b. The nature and extent of their property, financial, or other interest in the proceeding; and
   c. The possible effect of any order that may be entered in the proceeding on their interest; and
3. The specific aspect or aspects of the subject matter of the proceeding on which they wish to be heard.

Each of the foregoing points shall be addressed in separate paragraphs concisely stated. (Petitioners who are parties to the proceeding on SFC's application concerning the UF_6 to UF_4

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conversion facility may refer to their petition in that proceeding to the extent that information remains valid.)

In submitting the information called for in item 3 above, petitioners are to describe the matters raised in the application which they plan to address with specific complaints.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 CFR 2.714(d). See the Commission's Order and *Rockwell Internatonal Corp.* (Energy Systems Group Special Nuclear Materials License No. SNM-21), LBP-83-65, 18 NRC 774 (1983). The *Rockwell* case relied on *Nuclear Engineering* (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB-473, 7 NRC 737 (1978), and stated at page 3 that:

> . . . The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

If the presiding officer finds that the hearing petitions or any intervention petition should be denied *in toto* for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of that decision.

In furnishing the information called for above, petitioners may also respond to the March 3 letter to the presiding officer from counsel for SFC. Specifically, petitioners may respond to SFC's position stated in that letter that: (1) This proceeding should not be consolidated with the existing proceeding concerning the proposed UF_6 to UF_4 conversion facility, and (2) this proceeding should be deferred. If it so desires, NRC Staff may also respond.

Staff counsel has advised that Staff's review of the application pertaining to disposal of materials other than raffinate sludge is still in its early stages and might be impacted by the forthcoming application to dispose of raffinate sludge. The latter application is to be submitted by October 1, 1986. Staff is requested to provide bimonthly reports on the progress of its review to SFC, petitioners and the presiding officer.

In view of this, petitioners will not be required to submit their detailed complaints with regard to the application at this time. The dates for the submission of specific complaints and for Staff to indiate whether it wishes to be a party will be set after considering petitioners' and SFC's views on whether their proceeding should be consolidated with the proceeding concerning the UF_6 to UF_4 conversion facility and whether this proceeding should be deferred. At this time, petitioners must submit only the information called for above. This will permit a ruling on their standing to become parties.

Those petitioners who are admitted as parties will, in the future, be required to describe specifically any deficiencies in the application, cite particular sections or portions of the application which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application is deficient. This material is to be submitted under oath or affirmation and shall state the relief sought with respect to such deficiency complaint. Petitioners must also submit all data and material in their possession which supports or illustrates each of the deficiencies complained of. Data and material from generally availabale publications may be cited rather than furnished. Petitioners must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license or its amendment without stating why such extreme relief is appropriate will not satisfy the requirement to state the relief sought.

On or before April 10, 1986, NACE, APC, Newmark, Spees, EFA, and anyone else, including governmental entities, who wishes to become a party shall file the information called for in items 1 to 3, above.

III. How and Where To File

A. Information Called for by This Notice and Order

The original and two copies of information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. Single copies of such filings shall also be served on SFC, Stephen H. Lewis, Assistant Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by April 10, 1096.

B. Other Written Submissions

The original and two copies of all other written submissions made by a party shall also be filed with Docketing and Service Branch with single copies mailed or personally delivered to the presiding officer, SFC, Mr. Lewis, and all other parties on or before the due date. Attorneys representing a party or petitioner must file the orignial and two copies of their notice of appearance with the Docketing and Service Branch, with service on all other parties, upon being retained.

C. Service List

In the Memorandum and Order identifying the parties to this proceeding, the presiding officer will establish an official service list of parties who are to receive copies of written submissions in this proceeding.

IV. Duty of the Applicant

In order to permit petitioners to comply wtih the 30-day deadline to submit the information required, SFC must ensure that, to the extent not already provided, the application, the license sought to be amended, and all correspondence pertaining to its application, are immediately upon receipt of this Notice and Order: (1) Made available to petitioners for inspection and copying, and (2) forwarded to the presiding officer. This materal shall be made available at a convenient location in the vicinity of the SFC facility and at such other locations as may be indicated by requests. The material shall be available for inspection and copying during business hours and during reasonable periods evenings and weekends. This material, together with the material submitted by petitioners, and any other material called for by the persiding officer, will form the Hearing File on which the presiding officer will base his decision.

V. Presiding Officer's Initial Ruling

Upon receipt of petitioner's submissions, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioner's rithts to become a party to this proceeding. When submitted, the presiding officer will also review petitioners' complaints and supporting material. Im making this review, the presiding officer may rule that the petitioners's complaints: (1) Are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise

inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on the initial submission of complaints.

VI. Informal Hearing

To the extent the presiding officer finds petitioners complaints admissible, he either may order additional submissions from the parties, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the SFC facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however, suggest questions to the presiding officer to be posed by him. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

VII. Limited Appearances

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before April 10, 1986. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as such a limited appearance statement. Limited appearance statements are not part of the Hearing File.

VIII. Schedule for Decision

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' complaints, with a goal of 120 days if additional submissions are required following receipt of the complaints. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

Order

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 5th day of March 1986, Ordered:

1. That on or before April 10, 1986, the Native Americans for a Clean Environment Client Council, the National Water Center, the Arkansas Peace Center, Morton Newmark, Marjorie A. Spees, and Earth First! Austin shall file a petition to participate as described in the foregoing memorandum;
2. That any other person wishing to participate shall file a similar petition by the same date;
3. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.

John H. Frye, III,
Administrative Judge.

March 5, 1986.

[FR Doc. 86-5236 Filed 3-10-86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24042; 70-7095]

Consolidated Natural Gas Co.; Proposed Issuance of Common Stock for Long-Term Incentive Plan

March 5, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a post-effective amendment to its declaration with this Commission pursuant to sections 6(a) and 7, of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Consolidated proposes to issue, subject to stockholder approval, up to 4,000,000 shares of its common stock, $2.75 par value, or double (pursuant to a stock split) the 2,000,000 shares, $4 par value, authorized for issuance in the Commission's order of June 21, 1985 (HCAR No. 23738) for funding of its Long-Term Incentive Plan.

The post-effective amendment to the declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration, as filed or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-5261 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14968; File No. 812-6240]

Investment Trust of Boston; Renoticing of Application

March 5, 1986.

A second notice is hereby given that on December 6, 1985, a notice (Investment Company Act Release No. 14832) was issued on an application filed on October 30, 1985, by Investment Trust of Boston ("IBT") and Moseley Capital Management Inc. ("MCM"), both at 60 State Street, Boston, Massachusetts 02109; ITB High Income Plus Fund, Inc., ITB—Massachusetts Tax Free Income Fund, and The Empire Builder Tax Free Bond Fund, all at P.O. Box One, 60 State Street, Boston, Massachusetts 02101 (collectively, with ITB, the "Funds"); Warlick & Baker, Inc. ("W&B"), 163 Washington Street, Morristown, New Jersey 07960; and Empire Group, Inc. ("Empire"), 6 East 43rd Street, New York, New York 10017 (the Funds, MCM, W&B and Empire collectively, "Applicants") for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of section 15(a) of the Act to the extent necessary to permit the implementation, without prior shareholder approval, of certain new investment advisory and sub-advisory agreements. On January 29, 1986 Applicants filed an amendment to the application which, in general, concerns certain interim fees to be paid by the Funds for advisory services. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below and in the above release, and to the Act and rules thereunder for the text of the applicable provisions thereof.

Applicants state that each of the Funds is registered under the Act as an open-end, management investment company. Applicants further state that

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MCM is registered under the Investment Advisers Act of 1940 and is a wholly-owned subsidiary of Moseley, Hallgarten, Estabrook & Weeden Holding Corporation ("Holding"), whose principal operating subsidiary is Moseley, Hallgarten, Estabrook & Weeden, Inc. ("Moseley"), a New York Stock Exchange member firm. Under the new advisory agreements ("New Advisory Agreements"), MCM acts as investment adviser to ITB and Massachusetts Tax Free Income Fund and, subject to the granting of the relief requested herein, acts as investment adviser to High Income Plus Fund and the Empire Builder Fund, and furnishes a continuing investment program for the Funds and makes investment decisions on their behalf. W&B is also registered under the Investment Advisers Act of 1940, and, subject to the granting of the relief requested herein and at the direction and control of MCM, it may provide certain sub-advisory services to High Income Plus Fund pursuant to the interim sub-advisory arrangement ("Interim Sub-Advisory Arrangement") with MCM. On November 28, 1985, MCM owned 50% of the outstanding voting securities of W&B. Subject to the granting of the relief requested herein, Empire acts as sub-adviser to Empire Builder Fund pursuant to the new Empire sub-advisory agreement ("New Empire Sub-Advisory Agreement") with MCM. On November 28, 1985 Empire was 33⅓% owned by Moseley.

At the October 1985 meetings of the Boards of each of the Funds, the Director or Trustees who are not "interested persons", as that term is defined in the Act, reviewed the performance of MCM, W&B and Empire under the Former Advisory Agreements and the Former Sub-Advisory Agreements (collectively, Former Agreements), and approved new advisory and sub-advisory agreements in anticipation of a sale transaction possibly resulting in an assignment and termination. Thereafter, on December 9, 1985, MCM assumed direct responsibility for providing portfolio management services to High Income Plus Fund, and adopted its Interim Sub-Advisory Arrangement with W&B with respect to that Fund, pursuant to which W&B's modified sub-advisory services will be terminated on February 9, 1986.

On October 4, 1985, Holding and Amwal American Investment Limited ("Amwal") entered into a stock purchase agreement ("Purchase Agreement") pursuant to which Amwal agreed to purchase up to 1,200,000 shares of Series B Preferred Stock ("Preferred Stock") of Holding, resulting in an injection of additional capital for Holding. Amwal has acquired all 1,200,000 shares of Preferred Stock. Until July 31, 1986, each share of Preferred Stock is entitled to five votes and is entitled to vote together with Holding's common stock on all matters submitted to the common stockholders. On or before July 31, 1986, holders of Preferred Stock may convert all, but not less than all, such shares into shares of common stock. The 1,200,000 shares of Preferred Stock owned by Amwal represents approximately 39% of the voting power of all outstanding voting securities of Holding and if converted to common stock, would represent between 33% and 39% of the outstanding common stock. In addition, three representatives of Amwal have been elected to the eleven member Board of Directors of Holding, two of whom have been appointed officers of Holding or its subsidiaries (but not MCM). Thus, completion of the sale transaction under the Purchase Agreement may have resulted in a presumptive change of control of Holding and its subsidiaries and affiliated companies, including MCM, W&B and Empire, as "control" is defined in the Act. In such event, an assignment of each of the Former Advisory Agreements may have occurred under section 2(a)(4) of the Act, according to the application and, if such assignments have occurred, the application states that the Former Agreements would have terminated.

In view of the foregoing, Applicants determined to take the following steps: The Directors or Trustees of each of the Funds considered and approved the applicable New Advisory Agreements and the New Sub-Advisory Agreements, which are identical to the respective Former Agreements (except for modification to change the periods during which the New Agreements are to be in effect), and considered and accepted MCM's Interim Sub-Advisory Arrangement with W&B, which provides that MCM pay W&B a fee for the interim period that is possibly greater than that provided for in its Former Sub-Advisory Agreement. This interim arrangement will involve no additional expense to the Fund.

Applicants state that the shareholders of each of the Funds have been or will be provided with an opportunity, at their next regularly scheduled meeting, to approve the applicable New Advisory Agreements and the New Empire Sub-Advisory Agreement. Each Fund's proxy materials have made or will make clear that shareholder approval of the applicable New Advisory Agreement and the New Empire Sub-Advisory Agreement would result in approval of the terms and conditions thereunder (including the fees to be paid pursuant thereto) over the period from November 28, 1985 until the date of the shareholders meeting. All fees to be paid under each New Advisory Agreement, each of the New Sub-Advisory Agreements, and Interim Sub-Advisory Arrangement will be accrued by the respective Funds and paid only upon shareholder approval of the respective New Advisory Agreements and the New Empire Sub-Advisory Agreement. Until the applicable shareholders meeting, Moseley has undertaken to receive as compensation under each new advisory contract the lower of its costs of providing services thereunder or the fees accrued under the applicable contract. MCM's costs in this respect will include its obligation to pay sub-advisory fees to W&B and Empire; and the fees payable to Empire will not exceed materially its costs of providing services to MCM.

Applicants request relief from the provisions of section 15(a) of the Act so that the Directors or Trustees of each of the Funds may approve, and the Funds may enter into, the respective New Advisory Agreements and New Sub-Advisory Agreements as of November 28, 1985, and Interim Sub-Advisory Arrangements as of December 9, 1985 without shareholder approval prior to or at those times. The New Advisory Agreements and the New Empire Sub-Advisory Agreement will continue until they are approved, disapproved or replaced by alternative arrangements by action of the shareholders of each of the Funds at the next shareholders' meeting. The shareholders of ITB and Massachusetts Tax Free Income Fund have approved the applicable New Advisory Agreement. The next shareholders' meeting of High Income Plus Fund and Empire Builder Fund will be held no later than 240 days after the completion of the sale transaction.

In authorizing the original filing of the application in October 1985, Applicants state that the Directors or Trustees of each of the Funds determined that it was in the best interests of the respective Funds and their shareholders to continue the then-existing relationships with MCM, W&B and Empire after the completion of the sale transaction. Thereafter, on December 9, 1985, MCM assumed direct responsibility for providing portfolio management services to High Income Plus Fund, and adopted its Interim Sub-Advisory Arrangement with W&B with respect to that fund, pursuant to which W&B's modified sub-advisory services will be terminated on February 9, 1986. Applicants assert that the Directors' or Trustees' determinations as to the advisability of entering into the New Agreements complied with the requirements of section 15(c) of the Act.

MCM and Empire represent that for the period between the completion of the sale transaction and the next shareholders' meetings of each of the Funds (except High Income Plus Fund) there has not been, and with respect to Empire Builder Fund, there will not be any material change from the Former Agreements in the nature or substance of the services provided to the Funds or in the fees charged therefor, or in the persons providing such services or in their supervision. The Funds have been advised that they will not bear any of the costs of the preparation or filing of this application or of the consideration by shareholders of the New Advisory Agreements and New Empire Sub-Advisory Agreement, except to the extent that such costs also relate to the holding of shareholders' meetings for the purpose of obtaining approvals unrelated to the approval of the New Agreements.

For the following reasons, Applicants submit that the exemptions requested are consistent with the standards set forth in section 6(c) of the Act and should be granted: (1) No changes in the management or services rendered will result; (2) Board and shareholder approval will be obtained promptly; (3) the exemption would be consistent with the policies of Rule 15a–4 even though Applicants cannot avail themselves of this Rule; (4) the exemption would avoid certain adverse effects on the Funds not intended by the Act. Applicants submit that the exemption requested is consistent with the public interest and with the interest and protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5262 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14969; File No. 811-4326]

Lehman Institutional Funds Trust; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

March 5, 1986.

Notice is hereby given that Lehman Institutional Funds Trust ("Applicant"), 55 Water Street, New York, New York 10041, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 8, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it was established as a business trust under the laws of the Commonwealth of Massachusetts on June 7, 1985. Applicant further states that it filed a registration statement pursuant to section 8(b) of the Act on June 13, 1985; its registration statement did not become effective and the initial public offering of its shares was never commenced. Applicant also states that it does not have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5263 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24043; 70-7202]

New England Electric System et al.; Proposal To Provide Equity Funds to Subsidiary and of Permanent Financing of Construction Expenditures; Exception From Competitive Bidding

March 5, 1986.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01504, a registered holding company, and its electric utility subsidiary, New England Electric Transmission Corporation ("NEET"), 4 Park Street, Concord, New Hampshire 03301, have filed with this Commission an application-declaration pursuant to sections 6(a), 7, 9, 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45, 46, and 50(a)(5) thereunder.

By order dated June 10, 1983 (HCAR No. 22971), the Commission authorized NEET to enter into a credit agreement ("Credit Agreement") with a group of banks, providing for up to $120 million for construction, operation, and ownership of certain transmission facilities ("NEET Project") to constitute part of a major transmission interconnection ("Interconnections") between the electric utility systems comprising the New England Power Pool and Hydro-Quebec, the provincial electric utility of the Province of Quebec. NEET's obligations under the Credit Agreement are secured in part by an assignment to the banks of its rights under a Phase I Terminal Facility Support Agreement ("Support Agreement") executed with NEET by the members of the New England Power Pool participating in the Interconnection ("Participants"), including New England Power Company, Inc., the systems generating subsidiary. The Support Agreement obligates each Participant, beginning on the earlier of November 1, 1987, or commercial operation of the NEET Project, to pay to NEET a monthly

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support charge equal to that Participant's share of the total cost of service of the NEET Project.

In order to meet its commitment to, among other things, finance the NEET Project, NEET proposes to execute with NEES an Equity Funding Agreement whereby NEES will provide NEET with equity funding not to exceed $20,000,000, through capital contributions or through the purchase of NEET's common stock.

Additionally, NEET proposes to replace the Credit Agreement on the completion of the NEET Project, and fund the total amount of the construction debt, with permanent financing. It is expected that these permanent arrangements will include an infusion of equity by NEES, some form of long-term debt financing, and some short-term debt financing. The total amount of debt financing will range from $70 to $98 million. As in the case of the construction financing, the principal security for the permanent debt financing will be the assignment to the lenders of NEET's rights under the Support Agreement. NEET may also grant a first lien and security interest on the facility to the lenders. NEES and NEET have stated that development of favorable permanent financing arrangements will involve, to an unusual degree, a process of informing and educating lenders concerning NEET's circumstances, and negotiating mutually acceptable terms and conditions for the financing. NEET has requested permission, and is authorized, to commence negotiating the terms and conditions of the permanent financing pursuant to an exception from competitive bidding requirements of Rule 50 (b) and (c). After agreement has been reached on the terms and conditions of the permanent financing documentation of the loan and other arrangements will be provided by amendment to this filing and subject to Commission authorisation.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5204 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/945]

Shipping Coordinating Committee; Subcommittee on the Safety of Life at Sea (SOLAS); Working Group on Lifesaving Appliances. 18th Session of the Lifesaving Appliances Subcommittee; Meeting

The Working Group on Lifesaving Appliances, SOLAS Subcommittee of the Shipping Coordination Committee will conduct an open meeting at 10:00 AM on March 18, 1986 in Room 1103 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to finalize preparations for the 18th Session of the Lifesaving Appliances Subcommittee (LSA) of the International Maritime Organization (IMO) which is scheduled for June 23-27, 1986 in London. In particular, the working group will discuss development of U.S. positions dealing with, inter alia, the following topics:

—Clarification and interpretation of 1983 Amendments to the 1974 Safety of Life at Sea Convention (SOLAS).

—Revision of the lifesaving appliance and equipment requirements of Chapter 10 of the Mobile Offshore Drilling Unit (MODU) Code.

—Amendments to the Code of Safety for Special Purpose Ships in respect of survival craft on sail training ships.

—Symbols for emergency and operational purposes on board ships.

—Review of the forms of the Passenger Ship Safety Certificate and the Cargo Ship Safety Equipment Certificate under the harmonised system of survey and certification.

—Review of the lifesaving requirements of other IMO conventions, codes, and recommendations in respect of the 1983 SOLAS Amendments.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Robert Markle, Office of Merchant Marine Safety (G-MVI-3), Room 1404, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. Telephone: (202) [illegible]. Normal office hours are between 7:30 AM and 4:00 PM, Monday through Friday, except holidays.

Dated: February 28, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-5207 Filed 3-10-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Application of Air Transport International, Inc.; for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 86-3-12), Docket 43022.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Air Transport International fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections shall do so no later than March 25, 1986; answers to objections shall be filed no later than April 4, 1986.

ADDRESSES: Objections and answers to objections should be filed in Docket 43022 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, DC 20590, (202) 426-7631.

Dated: March 4, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-5248 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-3-17]

Department Findings in Employee Protection Program Cases

AGENCY: Department of Transportation.

ACTION: Notice of order finding major contractions at certificated air carriers (Order 86-3-17).

SUMMARY: The Department of Transportation has found that several airlines experienced major contractions in employment levels during the period from mid-1983 to September 1985. The Department's findings, in eleven cases triggered by employee applications for benefits, update those last made by the Civil Aeronautics Board before its sunset. The Department found that the following carriers experienced major contractions in the stated periods:

(a) Air New England in each of the twenty-one months from January 1982 through September 1983;

(b) Braniff Airways in each of the thirteen months from June 1982 through June 1983;

(c) Pan American World Airways in each of the six months from April 1985 through September 1985;

(d) Republic Airlines in the months of May 1982, December 1984 and February 1985;

(e) Trans World Airlines in the months of January 1983, March 1983, October 1983, November 1983, December 1983, March 1984 and April 1984; and

(f) Western Airlines in each of the five months from November 1984 through March 1985.

The findings are part of the Department's investigations to make threshold determinations regarding assistance for airline employees under the Employee Protection Program, section 43 of the Airline Deregulation Act, 49 U.S.C. 1552.

FOR FURTHER INFORMATION CONTACT: Bernard F. Diederich, Office of General Counsel (C-10, Room 10102), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 472-5580.

SUPPLEMENTARY INFORMATION: The complete text of Order 86-3-17 is available for inspection from our Documentary Services Division at the above address.

Dated: March 5, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-5246 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular; Static Strength Substantiation of Attachment Points for Occupant Restraint System Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This AC provides information and guidance regarding an acceptable means of compliance with Part 23 of the Federal Aviation Regulations (FAR) applicable to static strength substantiation of the attachment points for occupant restraint system installation which have a safety belt and shoulder harness.

DATE: Commenters must identify File AC 23-4X; Subject: Static Strength Substantiation of Attachment Points for Occupant Restraint System Installations, and comments must be received on or before May 12, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Joseph W. Burress, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Sections 23.785, 23.625(d), and 23.1413 require that the rated strength of safety belts and shoulder harnesses be no less than the loads resulting from applying the ultimate inertia forces specified in § 23.561(b). For small airplanes, amendment 23-32 of § 23.785 requires that each seat be equipped with a safety belt and shoulder harness. Procedures for approving safety belts are provided in TSO-C22f and performance standards for seats with safety belts only are provided in TSO-C39a. However, methods of demonstrating compliance with the installation strength requirements of attachment points for combined safety belt and shoulder harness installations have not been addressed in the Technical Standard Orders (TSOs).

Issued in Kansas City, Missouri, February 25, 1986.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 86-5201 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Custom Service

[T.D. 86-58]

Customs Broker's License Revocation by Operation of Law of Customs Broker's License No. 5234

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), notice is hereby given that Customs broker's license No. 5234 of Behring International, Inc., is revoked by operation of law.

William von Raab,

Commissioner of Customs.

[FR Doc. 86-5218 Filed 3-10-86; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 10-06.E section 12b (9-2-77): A report summarizing the closed meeting activities of the Art Advisory Panel during 1985, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies, at $2.55 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin

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Franklin Station, Washington, DC 20044, Telephone (202) 566-3770 (Not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone (202) 566-9259 (Not a toll free telephone number).

Roscoe L. Egger, Jr.,
Commissioner.

[FR Doc. 86-5275 Filed 3-10-86; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 86-1]

Director, Office of Small and Disadvantaged Business Utilization/Agency Advocate for Competition

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977, Executive Order 12048 of March 27, 1978; Pub. L. 95-507, Section 221, 92 Stat. 1771 (October 24, 1978); Executive Order 12388 of October 14, 1982; and by the Competition in Contracting Act of 1984, Pub. L. 98-369, Title VII, section 2732(a), 98-Stat. 1197 (July 18, 1984), I hereby delegate to the Director, Office of Small and Disadvantaged Business Utilization/Agency Advocate for Competition the following described authorities:

A. As Director, Office of Small and Disadvantaged Business Utilization—

1. The authority to manage the Office of Small and Disadvantaged Business Utilization established in this Agency by Pub. L. 95-907.

2. The authority to implement and execute the functions and duties of sections 8 and 15 of the Small Business Act (15 U.S.C. 637 and 644).

3. The authority to supervise personnel of this Agency to the extent that the functions and duties of such personnel relate to the functions and duties under sections 8 and 15 of the Small Business Act.

4. The authority to assign a small business technical advisor to each office to which the Small Business Administration has assigned a procurement center representative:

a. Who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the Activity; and

b. Whose principal duty shall be to assist the Small Business Administration procurement center representative in the representative's duties and functions relating to section 8 and 15 of the Small Business Act.

5. The authority to cooperate, and consult on a regular basis, with the Small Business Administration (with respect to carrying out the functions and duties described in paragraph 2 of this section A).

B. As Agency Advocate for Competition, and pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.* (as amended by the Competition in Contracting Act of 1984)—

1. The authority to:

(a) Challenge barriers to and promote full and open competition in the procurement of property and services by the Agency;

(b) Review the procurement activities of the Agency;

(c) Identify and report to the Agency Procurement Executive—

(i) Opportunities and actions taken to achieve full and open competition in the procurement activities of the Agency; and

(ii) Any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the Agency;

(d) Prepare and transmit to the Agency Procurement Executive an annual report describing—

(i) The Advocate's activities under this section;

(ii) New initiatives required to increase competition; and

(iii) Barriers to full and open competition that remain;

(e) Recommend to the Agency Procurement Executive goals and the plans for increasing competition on a fiscal year basis;

(f) Recommend to the Agency Procurement Executive a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs.

(g) Describe other ways in which the Agency has emphasized competition in programs for procurement training and research.

2. The authority to prepare fof the Director's review, approval and transmission to each House of Congress an annual report on competition, which report shall include:

(a) A specific description of all actions that the Director of the Agency intends to take during the current fiscal year to—

(i) Increase competition for contracts with the Agency on the basis of cost and other significant factors; and

(ii) Reduce the number and dollar value of noncompetitive contracts entered into by the Agency; and

(b) A summary of the activities and accomplishments of the Agency Advocate for Competition during the preceding fiscal year.

3. The authority to obtain, in coordination with the Bureau of Management, such staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the Advocate's duties and responsibilities.

In the discharge of the authority delegated under this Order, the Director, Office of Small and Disadvantaged Business Utilization/Agency Advocate for Competition shall be responsible and shall report directly and without intermediary to the Director of the United States Information Agency.

For administrative support purposes only, the officer to whom these functions have been delegated shall be attached to the office of the Associate Director for Management.

This delegation is effective immediately and supersedes Delegation Order No. 79-1 of June 20, 1979, made to the Director of Small and Disadvantaged Business Utilization.

Dated: February 25, 1986.

Charles Z. Wick,
Director, United States Information Agency.

[FR Doc. 86-5222 Filed 3-10-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

March 6, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 13, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: *Second Report and Order* In the Matter of Elimination of Unnecessary Broadcast Regulation, MM Docket 83-842. ["Underbrush"] Summary: The Commission will consider whether to eliminate three regulatory policies dealing with Fraudulent Billing, Network Clipping, and Combination Advertising Rates and Joint Sales Practices.

Common Carrier—1—Title: Preemption of State Entry Regulation in the Public Land Mobile Service, CC Docket No. 85-89. Summary: The Commission will consider whether to preempt state regulation that has the effect of prohibiting or impeding the entry of common carriers in the Public Land Mobile Service. The Commission will also consider whether such carriers are nondominant for purposes of Title II regulation and whether forbearance from interstate tariff regulation of such carriers is warranted.

Common Carrier—2—Title: Notice of Proposed Rulemaking, Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies. Summary: The FCC will consider whether to adopt a Notice proposing that the structural separation requirements for the BOC's provision of CPE be eliminated and replaced with certain nonstructural safeguards. The Notice further proposes to preempt state imposed structural separation requirements on the BOCs and the ITSs and to apply similar nonstructural safeguards to BOCs and ITCs presenting similar competitive concerns.

Common Carrier—3—Title: In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. Summary: The Commission will consider Petitions for Waiver and Reconsideration of the Phase I Order in CC Docket 84-800.

Common Carrier—4—Title: Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 86-1, In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules. Summary: The Commission will consider whether to adopt a Report and Order implementing certain changes to the Part 69 access charges rules concerned with direct assignment of WATS closed ends, peak/off-peak access pricing, and shifting carrier common line cost recovery to terminating minutes of use.

Mass Media—1—Title: Modification of television licenses and permits and switch of channel reservations pursuant to intra-band (UHF-UHF or VHF-VHF) exchange agreements. Summary: The Commission will consider adopting the proposal to amend its Rules to provide for an exchange of channels pursuant to intraband (UHF-UHF or VHF-VHF) exchange agreements between commercial and noncommercial educational television licensees and permittees.

Mass Media—2—Title: Petition for rule making filed by Northwest Indiana Public Broadcasting, Inc., permittee of Channel *50, noncommercial educational television Station WCAE, Gary, Indiana. Summary: The petition requests that the Commission institute a rule making to propose an exchange of noncommercial Channel *50 and commercial Channel 56 (television Station WDAI, Gary, Indiana).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congression, telephone number (202) 254-7674.

Issued: March 6, 1986.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 86-5290 Filed 3-7-86; 11:13 am]

BILLING CODE 6712-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 5, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(1)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;
2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;
3. Local Union 1609 UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C.

(Issues in these cases involve the interpretation and application of 30 U.S.C. § 821, the compensation provisions of the Mine Act.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-5320 Filed 3-7-86; 8:45 am]

BILLING CODE 6735-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, March 18, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items to be discussed will be open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report:* Continental Pipe Line Company, Pipeline Rupture and Fire, Kaycee, Wyoming, July 23, 1985.
2. *Report on Proceedings:* Alcohol/Safety Education Forum.
3. *Opinion and Order:* Administrator v. Curry, Docket SE-6696; disposition of the appeals of each party.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: March 6, 1986.

Catherine T. Kaputa,
Federal Register Liaison Officer.

[FR Doc. 86-5265 Filed 3-6-86; 4:16 pm

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NUCLEAR REGULATORY COMMISSION

DATES: Weeks of March 10, 17, 24, and 31, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 10

Tuesday, March 11

9:30 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Extension of the Comanche Peak Construction Permit
b. Review of ALAB-823 (In the Matter of Philadelphia Electric Company) (Tentative)
c. Final Rule to Modify General Design Criterion 4 of Appendix A, 10 CFR 50 (Tentative)
d. Review of ALAB-819 (In the Matter of Philadelphia Electric Company) (Tentative)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17—Tentative

Monday, March 17

2:00 p.m.
Continuation of Briefing by TVA on Status, Plans, and Schedules (Public Meeting) (Tentative)

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)
2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)
2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

Week of March 31—Tentative

Wednesday, April 2

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, April 3

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

Julia Corrado,
Office of the Secretary.
March 6, 1986.

[FR Doc. 86-5369 Filed 3-7-86; 3:40 pm]

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federal register

Tuesday
March 11, 1986

Part II

Office of Personnel Management

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System; Final Rule

5 CFR Parts 293 and 430

Performance Management System; Proposed Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Performance Management System (PMS). In response to agency requests, the regulations have been updated to make them more consistent with the final regulations recently published for the Performance Management and Recognition System (PMRS), mandated by title II of the Civil Service Retirement Spouse Equity Act of 1984, effective October 1, 1984. Additionally, the regulations modify and streamline the incentive awards program.

Proposed regulations related to some of the provisions of the PMS are being published elsewhere in today's **Federal Register**. The subjects of the proposed regulations are filing and transfer of performance records, establishment of Performance Appraisal Advisory Committees, and funding and payment of performance awards.

DATES: *Effective Date:* April 10, 1986.

Due Date: Performance Management Plans must be submitted to the Office of Personnel Management for review and approval no later than June 9, 1986.

Approval Date: Generally, OPM will review and approve each Performance Management Plan within 90 days after it is received in OPM.

Implementation Dates: Subpart A of Part 430 becomes effective 30 days from the date of publication of these regulations. Each agency's Performance Management Plan and all parts of the regulations become effective no later than 90 days from the date of OPM approval of the Plan. Performance appraisal provisions of the Plan become applicable to each employee at the beginning of the employee's next performance appraisal cycle. (See Issue 62 for clarification of dates for Plan implementation.)

ADDRESS: Send or deliver agency Performance Management Plans to John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan, (202) 632-5853.

SUPPLEMENTARY INFORMATION: On August 30, 1985, at 50 FR 35505–35508 and 50 FR 35513–35530, OPM issued proposed regulations on the Performance Management System. Those regulations were essentially the same as final rules that were published on October 25, 1983 (48 FR 49472), but did not go into effect until July 3, 1985. The only changes proposed on August 30, 1985, were:

1. A revised schedule for implementing the Performance Management System, reflecting the delay in the effectiveness of the regulations;
2. Removal of the portions dealing with the Merit Pay System that were superseded by the law and regulations implementing the PMRS; and
3. Editorial changes to conform to the PMRS regulations.

The proposed rules were published for a 30-day comment period, which ended September 30, 1985. During that comment period, OPM received comments from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. Most of the comments were very detailed, with constructive suggestions for improving the regulations. OPM has carefully reviewed and analyzed the comments, and these final regulations incorporate many of the commenters' suggestions.

Some changes requested by commenters were substantially different from the proposed regulations. OPM agrees that further changes are needed in the PMS, and is proposing changes elsewhere in today's daily issue in the areas of recordkeeping, performance awards, and administration of performance appraisal systems.

Overview of Changes

The overwhelming majority of the commenters suggested, either generally or on specific provisions, that OPM revise the regulations to make them as consistent as possible with PMRS regulations. (Final PMRS regulations were published August 30, 1985, at 50 FR 35488).

OPM agrees that wherever possible the performance appraisal and award systems for employees under the General Schedule (GS), Prevailing Rate System, Senior Executive Service (SES), and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems will foster ease of administration, reduce confusion, and clearly support pay for performance under the performance management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Therefore, except for the proposed regulations noted above, the regulations have been revised to provide as much consistency as possible in appraising and rewarding performance for all employees. Specific changes are outlined in the analyses of comments and changes to the final regulations.

Format Changes

The format of the regulations has been reorganized in several areas, for the ease of the user and to support the concept of pay for performance. Part 430, Performance Management, now contains performance appraisal regulations for all categories of Federal employees, along with performance award regulations for GS and Prevailing Rate employees.

With the placement of SES performance appraisal regulations in Part 430, OPM has removed Part 431 from Title 5, Code of Federal Regulations. With the placement of performance awards provisions in Part 430, the heading for Part 531 reverts to the heading under previous regulations: "Pay Under the General Schedule", and Subpart H in Part 532, covering performance awards for Prevailing Rate employees, is no longer necessary and has been removed.

Incentive Awards regulations, Part 451, are reorganized by separating Presidential Awards from all other incentive awards, now designated as superior accomplishment awards. Productivity Gainsharing regulations, currently under development, will be placed under Part 451, in Subpart C.

Specific Changes

Following is a detailed outline of the changes to the regulations, identifying each issue, a summary of comments, and a discussion of OPM rationale for the changes. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Change" paragraph indicating the new location of the final regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart D).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

One professional organization objects to the mandatory transfer of performance records, and two agencies prefer not to transfer performance plans (elements and standards) for each of the three ratings of record to be transferred in the OPF. One of those agencies requests that OPM change the section in the EPF subpart on retenion of ratings of record, to require agencies to retain performance plans for only one year, rather than three.

One agency requests clarification of the term "additional performance-related documents" found in the EPF subpart, and two agencies request clarification of the terms "rating" and "rating of record" as they are used in Part 293. One agency requests guidance on implementing the changes in Part 293.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. Reference to additional performance-related documents may be found in §§ 293.402(b)(1) and 293.403(b), Contents of Employee Performance Files. In response to the suggestion that agencies retain performance plans for only 1 year, the EPF regulations are not changed. They continue to require retention of performance plans for 3 years, because there are other personnel-related purposes for agency use of these performance-related documents. Agencies may file these performance plans in either the OPF or the EPF, as long as they transfer the plan on which the most recent rating was based in the OPF of a transferring employee. To clarify "rating" and "rating of record", agencies may refer to Part 430, Performance Management, in which these definitions have been revised and clarified.

OPM will provide further FPM guidance on filing and transferring performance records. However, beginning on the effective date of these regulations, agencies are required to transfer performance ratings in the OPF's of all employees who are leaving their positions.

Changes: Agencies have the option of filing performance ratings of record and the performance plans on which they are based in either the OPF or the EPF, provided that, whenever an employee changes positions, the agency transfers in the employee's OPF the three ratings of record and the performance plan on which the most recent rating was based. (See also Issue 1 of proposed PMS regulations published elsewhere in today's daily issue.)

2. *Issue:* Time-in-Grade Restrictions (§ 300.602).

Summary of Comments: One agency agrees with the proposed time-in-grade restrictions. One labor organization thinks that § 300.602 should be deleted and adjusted to show that employees can be promoted at any time to a higher grade when they demonstrate that they can perform the work.

Discussion: The 1 year time-in-grade requirement for promotion to positions at GS-6 or above is consistent with the performance requirements for career ladder promotions and the (usually) annual rating cycle for employees. Employees who are considered for career ladder promotions to positions at GS-5 or below must also receive a performance rating to be used as a basis for determining whether they are eligible for a career ladder promotion.

Change: No change.

3. *Issue:* Eligibility for Career-Ladder Promotion (§ 335.104).

Summary of Comments: Two agencies object to priority consideration for career ladder promotions to employees with the highest performance ratings. Reasons given are: the creation of an additional selection procedure, the creation of an additional administrative burden, and logistical problems that would result unless agencies have discretion as to the organizational and geographic areas of consideration to be used. One agency thinks that the section should be amended to permit an agency to give a more current rating at the time that a decision about a career-ladder promotion will be made, consistent with the procedure proposed in § 430.204(m) for within-grade increase decisions. One agency thinks that 5 U.S.C. 4301 *et. seq.* does not authorize OPM to issue regulations with regard to career or within-grade increases.

Two labor organizations object to provisions in § 335.104. Reasons given are that the provisions are contrary to the conditions under which an employee accepts a career ladder promotion, that the provisions replace seniority with competition, that employees rated "Fully Successful" should always be promoted after 1 year, that an exception to the use of merit procedures is given by FPM Chapter 335 for career ladder promotions, and that an employee should not have to compete for his or her own position.

Discussion: An agency may, at its discretion, prepare a more current rating of record at the time that the agency is deciding whether an employee should receive a career-ladder promotion. No employee should receive a career-ladder promotion based on a rating of record which is more than 12 months old. The authorities under which OPM is issuing regulations have been included in both the proposed and in these final regulations.

Change: Paragraph 335.104(b), which required that agencies give priority consideration for career ladder promotions to employees with the highest ratings, has been deleted from the regulations. However, OPM feels it is not appropriate to consider seniority as the only criterion for career ladder promotions. OPM remains committed to the concept that performance in the employee's current and/or past positions is just as significant as seniority, if not more so, in evaluating employees for career ladder and competitive promotions. OPM is studying how this may be done and may issue a regulatory proposal on the linkage between performance ratings and promotions in the future.

To be consistent with changes in terminology in Part 430, paragraph 335.104(a) has been revised by changing the phrase "most recent summary rating" to the phrase "current rating of record", and the "Fully Successful" rating level has been identified as level 3, (see Issue 14 on Names and Definitions of Rating Levels).

4. *Issue:* Purpose of performance appraisal (§ 430.201 and § 430.204(s)).

Summary of Comments: One agency suggests that the word "develop" in § 430.204(s) should be changed to "train" to cover not only enhancement training but also remedial training. One agency prefers a more concise statement of the purpose and use of performance appraisal, such as that found in the PMRS regulations at § 430.402. One labor organization notes that it did not

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find methods in the proposed regulations for communicating performance standards to employees on how they will be rated on the accomplishment of organizational goals and objectives.

Discussion: OPM agrees that the word "training" is more appropriate than the word "develop" in this section. The word "training" is used in 5 U.S.C. 4302(a)(3).

Changes: Sections 430.201 and 430.204(a) have been revised to express the purpose of performance appraisal in performance management, consistent with PMRS regulations, and moved to § 430.201(b). The requirement that the results of performance appraisal be used as a basis for "awards" has been changed to "performance awards" and the word "develop" has been changed to "training".

The final regulations also provide that accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

Although examples are no longer specifically listed, the requirement to use performance ratings as a basis for adjusting base pay includes within-grade increases, Prevailing Rate employee step increases, and quality step increases. A requirement is added at § 430.204(d)(2) that provides that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

5. *Issue:* Coverage (§ 430.202).

Summary of Comments: One agency thinks that § 430.202 should be modified to exclude all employees under temporary appointments which will not exceed 1 year.

Discussion: OPM does not have the legal authority to exclude positions in the competitive service from performance appraisal requirements. However, agencies may request OPM approval of exclusion of specified excepted service positions from appraisal requirements under the authority of 5 U.S.C. 4301(2)(G). But, since temporary appointments can be extended for longer than 1 year for temporary excepted service positions, exclusion of many of these positions from performance appraisal requirements would not be appropriate.

Change: This section has been revised so that it is consistent with PMRS regulations. A sentence has been added stating that employees covered by the PMRS are not covered by this subpart. The exclusion of Schedule C employees from requirements under this subpart has been deleted, consistent with the provision that Schedule C employees are covered by final performance appraisal regulations for PMRS employees.

6. *Issue:* Progress Reviews (§ 430.203).

Summary of Comments: Three agencies think that a requirement should be added to the regulations for a progress review meeting between employees and their supervisors, consistent with PMRS regulations. Three agencies recommend that "progress reviews" be defined in the regulations. Three agencies recommend that the sentence "This includes oral and written progress reviews" be deleted from the definition of "appraisal" in § 430.203.

Discussion: Since performance appraisal is a process done throughout the year, progress reviews should not be included in the definition of "appraisal". The requirement at 5 U.S.C. 4302(b)(3) for "evaluating each employee during the appraisal period on such standards" supports the concept that at least one progress review discussion should be required during an appraisal period, as is required for PMRS employees.

Changes: The second sentence in the definition of "appraisal," referring to progress reviews, is deleted. Also, a new definition of "progress review" is added, consistent with the PMRS regulations. Finally, § 430.205(e) has been added, consistent with PMRS regulations requiring that a progress review be held for each employee at least once during an appraisal period.

7. *Issue:* Other Definitions (§ 430.203).

Summary of Comments: Five agencies recommend that, wherever possible, the PMS regulations be revised to provide identical definitions in PMS and PMRS appraisal regulations. One agency recommends that all the definitions reflect the same wording as is used in the PMRS regulations. One agency recommends use of the same definitions as in PMRS regulations for the terms "rating", "rating of record", and "summary rating". One agency recommends that definitions of the following terms be added: "Performance Management Plan", "progress review", "summary rating", and "rating of record".

Four agencies ask that the definition of a "non-critical element" be revised to say that non-critical elements are optional and may be used at agency discretion. One congressional comment states that the definitions of the terms "critical element" and "Unacceptable" are vague and circular and offer insufficient guidance.

One labor organization states that in the definition of "critical element", the phrase "of assigned work" is not resistant to abuse and should not be included. One labor organization believes that a requirement for communication of organizational goals and objectives as they are related to a particular position should be included in the definition of "critical element". One labor organization recommends that the definition of "performance standard" be amended to state that standards must be adjusted to provide for full employee participation in the development of performance standards. One labor organization suggests changing the definition of "ratings" to permit negotiation of the number of descriptive levels for various ratings.

Discussion: OPM agrees that the definitions of terms for PMS performance appraisal should be as similar as possible to definitions provided in PMRS regulations. Use of the same definitions will provide greater equity, reduce confusion, and make it easier for everyone to understand and use performance appraisal regulations. (See also Issue 6: "Progress Reviews").

The term "Unacceptable" is not defined in the regulations, but is defined in 5 U.S.C. 4301(3) as performance which fails to meet established performance standards in one or more critical elements of such employee's position. The definition of "critical element" in the final regulations reflects this legal requirement and refers to performance "in the position" instead of performance "of assigned work" as was proposed. The revised language parallels the PMRS definition of "critical element". Although the definition of "critical element" does not require communication of organizational goals and objectives, the final regulations do state that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

Although the definition of "Performance Standard" does not refer to employee participation in establishment of standards, the final regulations do require that each appraisal system encourage employee participation in establishing performance plans. Examples of how this may be accomplished are listed in the regulations. Although five summary rating levels are required by the final regulations, the regulations only require a minimum of three rating levels for each critical element.

Changes: Section 430.203 has been revised as follows, consistent with PMRS regulations. The following words have been deleted from the definition of "appraisal period": "and for which a performance rating will be given". The definition of "critical element" has been revised by changing the word "job" to "position" and by changing the phrase "of assigned work" to "in the position". The definition of "non-critical element" has been revised by changing the word "job" to "position" and the phrase "appraisal and the assignment of an element rating" has been changed to "written appraisal". In addition, a sentence has been added which provides that non-critical elements are optional and may be used at agency discretion.

The definition of "performance" has been revised by changing the phrase "of assigned duties and responsibilities" to the phrase "of assigned work". A definition of "Performance Management Plan" has been added which corresponds to the same definition in the PMRS regulations. The term "rating" has been changed to "summary rating" and the definition has been revised by changing the phrase "and overall performance" to the phrase "and the assignment of a summary rating level (as specified in § 430.204(g) and (h) of this subpart)." A new definition of "rating of record" has been added, which parallels the definition of the same term in the PMRS regulations, except that it does not include the phrase "including the written notice at any time that an employee's performance is unacceptable on one or more critical elements".

8. *Issue:* Requirement to Establish Appraisal Systems (§ 430.204(a)).

Summary of Comments: One agency thinks that the statutory reference should be to 5 U.S.C. 4302, not 5 U.S.C. 4302(a).

Discussion: 5 U.S.C. 4302(a) referred to paragraph "a" of section 4302, not to § 4302a, which provides for establishment of appraisal systems for PMRS employees.

Change: This section has been revised, consistent with PMRS regulations, by eliminating the phrase "As required by 5 U.S.C. 4302(a)" and by changing the requirement to say that agencies shall "develop one or more performance appraisal systems for employees covered by this subpart" instead of saying that agencies "shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period".

9. *Issue:* Requirement for Appraisal and Rating Based on Established Performance Plans (§ 430.204(b) and § 430.204(i)).

Summary of Comments: One agency suggests revision of the second sentence of § 430.204(b) to say that an employee's performance must be appraised and rated on each critical element and in comparison to the relevant performance standard. One agency recommends that § 430.204(i) be clarified to provide that, in appraising employees, no consideration extraneous to performance as compared to standards may be given.

Discussion: OPM agrees that performance must be appraised and rated by comparison of actual performance to established performance standards. This requirement was proposed in § 430.204(i). It is also important that, to the extent feasible, individual performance plans reflect each employee's expected contribution to the accomplishment of established organizational objectives. In order for performance plans to be utilized as expected, they must be provided to employees as near to the beginning of established appraisal periods as possible.

Changes: Section 430.204(b), except for the last sentence, has been revised by adding the phrase "Under each appraisal system" and by deleting the words "and rated" from the second sentence. However, the requirement for appraisal on each element has been added under requirements for ratings in § 430.206(b). The requirement for appraisal on each element is also repeated in § 430.205(c), consistent with PMRS regulations.

Also, consistent with PMRS regulations, the first sentence of § 430.204(i) has been moved to § 430.204(d)(1), and revised slightly by adding that elements as well as standards must be based on requirements of employees' positions. Another revision states that performance plans must normally be provided to employees within 30 days after the beginning of each appraisal period. Finally, a new § 430.204(d)(2) has been added consistent with PMRS regulations providing that when appropriate, accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

10. *Issue:* Sub-elements (§ 430.204(b)).

Summary of Comments: Two agencies recommend deletion of the restriction on rating sub-elements, as was done in the final PMRS regulations. One agency thinks that agencies should be able to rate sub-elements. One labor organization states that MSPB decisions provide for balancing the rating on one component of an element against the ratings on other components of an element.

Discussion: The restriction on rating sub-elements was intended to discourage agencies from defining elements very narrowly and from defining numerous elements. However, in an effort to parallel PMRS regulations and provide agencies with flexibility in this area, the restriction on sub-elements was re-examined.

Change: The last sentence of § 430.204(b), prohibiting assignment of ratings to sub-elements, has been deleted.

11. *Issue:* Pass/fail Elements (§ 430.204(c)).

Summary of Comments: Two agencies cite an MSPS decision that states that pass/fail elements are properly used in cases where failure to meet the standard would result in death, injury, breach of security, or monetary loss. One agency recommends that the regulation discourage, rather than prohibit, pass/fail elements. One agency thinks that OPM should permit pass/fail non-critical elements.

Discussion: In *Calloway* v. *Department of the Army,* 23 M.S.P.B. 592 (1984), the Merit Systems Protection Board ruled that absolute performance standards may be compelled in certain circumstances. It should be noted that a pass/fail or absolute standard is not the same as a pass/fail element. It is evident that the restriction on pass/fail elements has been misinterpreted and has caused confusion.

Change: The last sentence of § 430.204(c), which prohibited use of pass/fail elements, has been deleted.

12. *Issue:* Number of Rating Levels for Individual Elements and Levels for Which Written Standards are Required (§ 430.204(c)).

Summary of Comments: One agency and two labor organizations think that the absence of performance standards for a rating level should negate a rating at that level. One labor organization believes that a rating should not be permitted unless standards are written at one contiguous rating level, citing FPM Letter 430–4, Statutory Requirement Concerning Use of Single and Multiple Performance Standards Under Non-SES Performance Appraisal Systems. One labor organization states that if there is only one critical element and three element rating levels, it is not possible to derive five summary rating levels, and recommends that there be an equal number of element and summary rating levels. One agency opposes a requirement for performance standards at the Fully Successful rating level, and states that such a requirement would be costly and would take time to implement.

Discussion: It is very time-consuming and costly for agencies to prepare performance standards at several rating levels. Most employees are likely to

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meet the "Fully Successful" standards and, for them, additional standards are not useful of needed. Each employee should be told what the requirements are for "Fully Successful" performance. If they have not already been provided, performance standards which indicate minimum performance requirements for retention must be given to those few employees whose performance is determined to be "Unacceptable", to meet legal requirements. Also, agencies are encouraged to write standards at more than one level to clarify performance requirements. However, due to cost or time considerations, this may not always be possible and, therefore, is not required. To avoid unnecessary confusion, guidance will be issued to provide additional interpretation on the subject of multiple standards.

Concerning the use of one element having only three rating levels, it would be unusual to have only one performance element since this would probably not reflect all the duties of the employee's position. However, if it did occur, undoubtedly the (required) rating levels would equate to "Unacceptable", "Fully Successful" and "Outstanding", which could then equate to the same summary rating levels.

Changes: This language has been moved to § 430.204(e). The only change is that the paragraph provides that in addition to the "Fully Successful" level, performance standards for all critical and non-critical elements may be written at other levels, which had previously only been implied. In addition, consistent with the PMRS regulations, new language at § 430.204(j)(2) provides that at the time that an agency identifies critical element(s) for which performance is "Unacceptable", an employee must be informed of the performance standards that must be reached in order to be retained.

13. *Issue:* Rules or Procedures for Deriving Summary Ratings (§ 430.204(d)).

Summary of Comments: Two agencies think that the requirement to use decision tables for deriving summary ratings is unduly restrictive and might preclude use of numerical procedures or narrative rules for deriving summary ratings. One agency suggests that the requirement for deriving summary ratings should be the same as stated in the final PMRS regulations. One agency objects to the statement that an "Unacceptable" rating on one critical element must result in an "Unacceptable" summary rating, citing 5 U.S.C. 4303(a).

Discussion: Although 5 U.S.C. 4303(a) states that an employee may be reduced in grade or removed for unacceptable performance, 5 U.S.C. 4302(b)(6) states that appraisal systems shall provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance. Unacceptable performance is defined in 5 U.S.C. 4301(3) as failure to meet performance standards in one or more critical elements of the employee's position.

The use of the phrase "decision tables" was not intended to preclude use of numerical procedures or narrative rules for deriving summary performance ratings from ratings on elements.

Changes: The language in § 430.204(d)(1) has been revised, consistent with the final PMRS regulations, and moved to § 430.204(g). Each appraisal system must describe the method to be used by the agency to derive summary ratings. The method must show that more weight will be given to critical elements than to non-critical elements.

Also, consistent with PMRS regulations, § 430.204(d)(2) has been revised and included in the definition of a "critical element" in § 430.203, indicating that a critical element is so important that unacceptable performance on the element would result in unacceptable performance in the position.

14. *Issue:* Names and Definitions of Rating Levels (§ 430.204 (d) and (h)).

Summary of Comments: Eight agencies recommend that the definitions of the rating levels be deleted, and that language be adopted which was used to describe summary rating levels in the final PMRS regulations. One agency thinks that the definitions did not appear to permit numerical procedures for deriving summary ratings from ratings on performance elements. One labor organization states that the definitions required peer comparisons and are illegal. One agency thinks that the definitions are ambiguous. Seven agencies request more flexibility in naming their rating levels. Five agencies suggest that names of rating levels should be consistent with those for PMRS employees.

Discussion: The definitions of rating levels were intended to indicate the level of difficulty of each rating level. They were not intended to be used to derive summary ratings from ratings on performance elements. They also were not intended to encourage peer comparison as opposed to comparison of an employee's actual performance to established performance standards. Each agency is encouraged to establish generic descriptions of the level of difficulty of each rating level as a guide for employees, supervisors, and approving officials for establishing performance requirements.

Change: Consistent with the final PMRS regulations, the definitions of the five rating levels have been deleted. Instead, § 430.204(h) provides for five summary rating levels and identifies them as levels 1 through 5 (with only the "Fully Successful" and "Unacceptable" levels described by adjective names).

15. *Issue:* Performance Improvement Plan (PIP) (§ 430.204(e)).

Summary of Comments: Seventeen agencies comment that the PIP provisions should be deleted from the PMS regulations. One reason given by all of these agencies is to achieve consistency with the PMRS regulations, where the PIP requirement was deleted. Other reasons for deleting the PIP included: The PIP will delay corrective actions by triggering a new appraisal period; the PIP will discourage managers from taking corrective actions; the PIP has been made unnecessary by MSPB decisions; requiring that assistance be provided to employees is a more constructive approach; the PIP is redundant with 5 CFR Part 432 procedures; and the PIP is confusing, burdensome, and requires unnecessary paperwork. One agency questions the applicability of the PIP requirements.

Discussion: It is evident from the many comments received that the PIP was viewed as redundant with the requirement to provide an opportunity to demonstrate acceptable performance. As stated above, OPM agrees that there should be parallelism with the PMRS regulations. Also the guidance provided in FPM Letter 430-4, which strongly contributed to the rationale behind the PIP, is being clarified, making the PIP unnecessary.

Change: The requirement for the PIP is removed from the regulations and its objective is met by the addition, at § 430.204(j)(2), of the requirement that an employee be informed of the performance standard necessary for retention in the position at the time that an agency identifies the critical element(s) for which performance is "Unacceptable". This change provides the same concept in a more streamlined, clearer manner, and fully takes into consideration the requirements of 5 U.S.C. 4302(b)(6). The new language is also more consistent with the PMRS regulations.

Also, consistent with the PMRS regulations, a provision has been added at § 430.204(i) that agencies must assist

employees in improving performance rated below the "Fully Successful" level.

16. *Issue:* Written Justification for an "Outstanding" Summary Rating (§ 430.204(f)).

Summary of Comments: Two agencies think that a well documented rating is sufficient justification for an Outstanding summary rating. One agency states that this requirement creates unnecessary and duplicative paperwork. One agency suggests that this requirement should be deleted, consistent with PMRS regulations. One agency states that this requirement is inconsistent with the guidance in FPM Letter 430-4.

Discussion: OPM agrees that a well-documented performance rating is sufficient justification for an "Outstanding" rating. Agencies may prepare performance standards above the "Fully Successful" level at their discretion. To avoid unnecessary confusion, the guidance provided in FPM Letter 430-4 is being clarified.

Change: Paragraph 430.204(f) is deleted, consistent with the PMRS regulations.

17. *Issue:* Pre-established Distributions of Ratings (§ 430.204(g)).

Summary of Comments: One agency suggests revising this paragraph so that it is consistent with language in the PMRS regulations. One agency suggests that this paragraph should also state that ratings cannot depend on the rating received by the employee's supervisor.

Discussion: The language of this paragraph was clarified when final PMRS regulations were prepared. OPM agrees that the same language should be used here. This prohibition may be interpreted to prohibit ratings based on the rating given to an employee's supervisor.

Change: This language has been moved to § 430.206(d) and has been revised, consistent with the PMRS regulations, to prohibit an agency from prescribing a distribution of ratings for employees.

18. *Issue:* Higher Level Review (§ 430.204(g), (n) and (o)).

Summary of Comments: Two agencies recommend that higher level review be limited to the highest local agency official. One agency suggests adding the phrase "unless there is no higher official in the agency" to the requirement for approval of performance plans. One agency thinks that higher level review of personnel decisions presents serious procedural difficulties. One agency suggests that there should be no requirement for approval of periodic (interim) ratings. One agency says that higher level review adds paperwork, adds a level to the grievance process, and conveys little faith in supervisors. One agency suggests that the language on higher level review in § 430.204(g) be revised consistent with the final PMRS regulations. One agency says that approval of a within-grade increase (WGI) decision is pointless once a performance rating has received higher level approval.

Two agencies and one labor organization object to an outright prohibition of discussion of a summary rating with an employee before it is approved. One labor organization states that restricting communication prior to approval of a rating violates the Privacy Act. Two agencies recommend that language on communication of ratings be revised consistent with the final PMRS regulations.

Discussion: Higher level approval ensures that supervisors are accurately appraising employee performance and using the results appropriately as a basis for personnel decisions. Higher level approval also ensures that higher level officials get involved with performance planning and assessment, so that organizational objectives may be achieved. Higher level approval is essential to productivity improvement, accountability, and pay-for-performance objectives. However, in the review of performance plans, OPM recognizes that certain unique situations might make it difficult or not feasible to carry out this requirement, e.g., lack of knowledge of the work by a higher level reviewer at a distant geographical location. Therefore, OPM feels that some flexibility is warranted in this situation.

Changes: Consistent with PMRS regulations, § 430.206(d) provides that agencies are to establish procedures to ensure that only employees whose performance exceeds normal expectations are rated above "Fully Successful." The procedures must be described in agency Performance Management Plans.

Section 430.204(n) has been moved to § 430.204(f). The section has been revised by using the phrase "performance plans" and by indicating that approval must occur at the beginning of the appraisal period, consistent with final PMRS regulations. To allow agencies some flexibility in accounting for unique situations which would make this provision difficult to accomplish, language has been provided to allow agencies to describe exceptions to higher level review and approval of performance plans in their Performance Management Plans, subject to OPM approval.

Section 430.204(o) has been moved to § 430.206(c). To reflect changes in terminology elsewhere in Part 430, this section has been revised to refer to ratings of record instead of periodic ratings. Consistent with final PMRS regulations, the section now states that higher level review does not preclude communication about appraisal of performance between a supervisor and an employee. Also consistent with PMRS regulations, language has been added requiring approval of ratings of record by official(s) with responsibility for managing the performance awards budget within the agency. In addition, language has been added which provides that agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans, subject to approval by OPM.

19. *Issue:* Employee Participation (§ 430.204(i)).

Summary of Comments: One agency thinks that the requirement to encourage employee participation in establishing performance plans should not be changed to require joint participation. Two agencies suggest adding a sentence providing that supervisors have the final decision on the content of performance plans. A congressional comment states that the regulations should guarantee that workers have the opportunity to discuss and agree on the critical elements of a position.

Discussion: 5 U.S.C. 4302(a)(2) requires that employee participation be encouraged in establishing performance standards for GS and Prevailing Rate employees, while 5 U.S.C. 4302a(a)(2) requires the joint participation of the supervising official and the PMRS employee in developing performance standards, with authority for establishing standards resting with the supervising official.

Change: The requirement for employee participation has been moved to § 430.204(c), and has been revised to require employee participation in establishment of performance plans, not just standards, consistent with PMRS regulations. Also, consistent with PMRS regulations, language has been added to provide examples of how employee participation may be accomplished and to clarify that final authority for establishing performance plans rests with supervising officials.

20. Issue: Basis for Performance Standards (§ 430.204(j)).

Summary of Comments: Two agencies suggest that this paragraph should be revised to indicate that elements and standards should be consistent with employees' position descriptions, as well as related to their assigned work.

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Discussion: Performance management systems cannot work unless performance elements and standards reflect duties and responsibilities actually performed by the employee. While position descriptions must be kept up to date and must be accurate, the overriding consideration is that performance plans and ratings reflect the employee's actual work assignments.

Change: The requirement in § 430.204(j) that performance plans be related to employees' "assigned work" has been revised, consistent with PMRS regulations, to say that performance elements and standards must be based on requirements of the employees' "positions". This requirement has been moved to § 430.204(d)(1).

21. *Issue:* Consideration of Ratings from an Entire Appraisal Period (§ 430.204(k)).

Summary of Comments: One agency recommends a modification to permit consideration of an "interim" rating, prepared when an employee transfers, when preparing an annual rating. One agency thinks that consideration should be given to all ratings prepared during an appraisal period when arriving at an annual rating, consistent with PMRS regulations. A congressional comment states that appraisals should be performed throughout the period of employment and not just once a year.

Discussion: OPM agrees that a rating should be prepared for all periods of employment equal to or exceeding the agency's minimum appraisal period, and should be considered in preparing the employee's (usually annual) rating of record.

Change: The first and second sentences of this section have been moved to § 430.205(a) where they more appropriately fit the description of an appraisal period. The third sentence, concerning the derivation of the rating of record from ratings during the year, has been incorporated into the last sentence of § 430.205(a). Consistent with PMRS regulations, the requirement now specifies that an employee must be given a summary rating when he or she changes positions during the appraisal period and that the rating must be taken into consideration in deriving the employee's next rating of record. In addition, § 430.206(a) has been added, consistent with PMRS regulations, requiring that a written rating of record be given to each employee as soon as practicable after the end of the appraisal period.

22. *Issue:* Ratings to be Used in Reduction-In-Force (RIF) Procedures (§ 430.204(l)).

Summary of Comments: Three agencies oppose giving a special rating just before a RIF. One agency suggests requiring extension of appraisal periods, consistent with § 430.407(f) of the PMRS regulations. One agency asks if a new rating must be prepared if an employee's rating of record is not an annual rating. One agency recommends that the language of this section be consistent with § 351.504(d) of the RIF regulations. One agency recommends deleting this section. One agency requests clarification of the rating to be used for RIF if the employee has not served for the minimum appraisal period.

Discussion: Requirements on providing credit for performance in reduction-in-force procedures are found in the reduction-in-force regulations, 5 CFR Part 351. It is necessary for agencies to prepare performance ratings for employees each year, so that the ratings will be available and can be used for RIF and for other performance-based determinations. This standard procedure usually precludes a need for special-purpose ratings prepared for a specific personnel action.

Change: Section 430.204(1) has been deleted from the regulations. Section 430.206(e) has been added, consistent with PMRS regulations, providing that, if a rating of record cannot be prepared at the time specified in the plan, the employee's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period, at which time a rating of record shall be prepared.

23. *Issue:* Minimum Appraisal Period and Determining the Rating of Record (§ 430.204(m)).

Summary of Comments: One agency notes that a 90-day minimum appraisal period is not consistent with the requirement in the PMRS regulations that written performance plans be provided to employees normally within 30 days after the beginning of an appraisal period. One agency recommends a minimum appraisal period of 60 to 90 days. Two agencies recommend a minimum appraisal period of 90 to 120 days.

Three agencies think that the second sentence of § 430.204(m) was not clear. One agency recommends that the sentence be deleted or revised. One agency asks how ratings for newly appointed and transferred employees are to be determined. One agency objects to permitting only annual ratings to be used, except where another type of rating is specifically permitted by law or regulation.

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. This refers to the amount of time that an employee has served under an approved performance plan which has been communicated to him or her.

It is recognized that agencies will not always be able to wait 12 months before preparing a rating of record. However, they must wait at least until after the minimum appraisal period. Also, the minimum appraisal period is intended to ensure that agencies are able to determine ratings for newly appointed and transferred employees in the same manner as for PMRS employees.

Change: The first sentence of § 430.204(m) has been revised and moved to § 430.205(b). Consistent with PMRS regulations, the paragraph now provides that agency appraisal systems establish a minimum appraisal period of at least 90 days but not more than 120 days.

The second sentence of § 430.204(m) has been deleted. In place of that sentence, language parallel to PMRS regulations has been provided at § 430.205(a) and § 430.206 (e) and (f). These paragraphs specify how a rating of record will be determined when one cannot be prepared at the (usually annual) time specified in the agency plan, when an employee is transferred, and when an employee changes positions during an appraisal period.

24. *Issue:* Performance Rating for a Within-Grade Increase (§ 430.204 (m)).

Summary of Comments: Five agencies prefer to prepare a justification or supplementary statement when a within-grade increase decision is not consistent with an employee's most recent rating of record. These agencies object to the requirement for preparing a more current rating of record which supports the decision. One agency states that the preparation of a more current rating is duplicative of the notice of determination requirement in 5 CFR 531.409(e).

Discussion: Consistent with the requirement for use of a rating of record as the basis for all performance pay decisions for PMRS employees, a rating of record is to be used as a basis for within-grade increase (WGI) determinations for GS employees. Therefore, use of a written justification, which is contrary to the employee's rating of record, as a basis for within-grade increase determinations, would be inconsistent with pay-for-performance principles.

The notice of determination requirement of § 531.409(e) is not duplicative of providing a rating of employee performance because the employee is specifically informed whether his or her performance meets

performance requirements for a within-grade increase and notifies an employee whose within-grade increase is denied of how performance must improve and of his or her right to request reconsideration of the determination.

Change: The third sentence of § 430.204(m) has been revised slightly and moved to § 531.404(a)(1), covering WGI determinations. The requirement now provides that when a within-grade increase decision is not consistent with the employee's most recent rating of record, a more current rating of record must be prepared.

25. *Issue:* Reconsideration of a Performance Rating (§ 430.204(p) and § 771.206(c)(3)).

Summary of Comments: Two agencies suggest that reconsideration and grievance language should be consistent with PMRS regulations. One agency thinks that there should be only one procedure for review of performance ratings. One agency states that the agency grievance procedure should be the only procedure available for review of ratings for both PMRS and PMS employees. One agency asked if reconsideration of ratings can be under either the administrative or negotiated grievance procedures. Two labor organizations state that ratings are subject to review under negotiated grievance procedures. One labor organization says that ratings are also subject to review by the MSPB Special Counsel. A congressional comment states that appeal of a rating should be a level above the supervisor who issued the appraisal.

Discussion: While a reconsideration procedure for an appraisal is required by 5 U.S.C. 4302a(c)(2) for PMRS employees, no parallel requirement is found in 5 U.S.C. 4302 for GS and Prevailing Rate employees. Furthermore, it is evident that this process is confusing and could easily duplicate the function of the agency grievance procedure, and/or the "additional procedures established at the discretion of the agency head" specified in the last sentence of § 430.204(p).

Change: Section 430.204(p) has been deleted. Section 771.206(c)(3), which provided agency discretion to exclude performance ratings from the agency administrative grievance procedure, has also been deleted.

26. *Issue:* Appraisals and Ratings for Details and Temporary Promotions (§ 430.204 (q) and (r)).

Summary of Comments: One agency recommends a clarification that a rating for a detail or temporary promotion must be considered in preparing an annual rating. One agency thinks that paragraph (q) should not refer to a 120-day period, but rather to a minimum appraisal period or longer established by the agency. One agency recommends a definition of "rating of record" similar to that in the PMRS regulations to help clarify the nature of ratings for details and temporary promotions. One labor organization thinks that it is unfair to rate an employee's performance in a job other than the one for which he/she was hired.

One agency states that paragraph (r) should be rewritten to conform with § 430.406(d) in the PMRS regulations. One agency states that it does not appear to be necessary to extend an employee's rating because there are no pay deadlines for GS and Prevailing Rate employees. One agency says that paragraphs 430.204 (r)(2) and (r)(3) should have broader application than to details or temporary promotions and recommends that a supervisor have discretion to extend the last rating or use a "presumptive" rating. One agency points out that a reference to § 531.409(d) should be to § 531.406(d). One agency suggests that paragraph (r) be revised to provide for extending the rating period and, if that is not feasible, to provide for extending the rating of record.

Discussion: An employee's performance throughout an entire appraisal period should be considered when preparing the employee's (usually annual) rating of record. This includes periods of time when an employee is detailed or temporarily promoted to another position. Note, however, that performance-based reductions-in-grade and removals must be based on the critical element(s) of the employee's position (5 U.S.C. 4303(b)).

Change: Section 430.206(e) now provides that an employee's appraisal period must be extended if a rating of record cannot be prepared at the time specified in the agency's Performance Management Plan. Section 430.205(d)(1) now provides the same requirements for employees detailed or temporarily promoted within the same agency as were proposed in § 430.204(q), except that the phrase "annual summary rating" has been changed to "rating of record." Section 430.205(d)(2) provides revised requirements for employees detailed outside the agency using the same language as is applicable for PMRS employees. The section revises § 430.204(r) and provides for making a reasonable effort to obtain appraisal information from an outside organization, which must be considered in deriving the employee's next rating of record.

27. *Issue:* Recommendation for Recognition of Outstanding Employees (§ 430.204(t)).

Summary of Comments: Two agencies object to requiring monetary recognition for "Outstanding" employees. One agency objects to mandatory awards for outstanding employees, stating that career ladder promotions provide adequate recognition for outstanding performance. One agency notes that it is not always appropriate to recognize "Outstanding" employees, such as when an employee has disciplinary problems. Two agencies oppose requiring a recommendation for awards, citing the extra paperwork required. They feel that performance ratings should be sufficient justification for performance awards.

One agency thinks that agencies should be required to recognize "Outstanding" employees through monetary, non-monetary or honorary awards. One agency states that cash awards should be mandated for PMS employees rated Outstanding, consistent with PMRS regulations.

Discussion: See also agency comments and final regulations on performance awards. OPM agrees that performance awards should be based on performance ratings and that additional justification is not necessary where an employee has received a properly documented "Outstanding" performance rating.

Change: Section 430.204(t), which required a recommendation for appropriate recognition of "Outstanding" employees, has been deleted.

28. *Issue:* Performance Ratings of Disabled Veterans (§ 430.204(u)).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to refer to "the performance appraisal and resulting rating" of a disabled veteran. The section has also been moved to § 430.205(i).

29. *Issue:* Training and Evaluation (§ 430.205).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to say that the purpose of training and evaluation is to "assure that the requirements of law will be effectively implemented". In addition, the results of evaluations must be used to "implement improvements as needed" instead of "to improve the systems". This section has been moved to § 430.208.

30. *Issue:* OPM Review of Appraisal Systems (§ 430.206).

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Summary of Comments: One agency thinks that agencies rather than OPM should be responsible for reviewing appraisal systems for their "contribution to agency effectiveness and efficiency".

Discussion: While OPM agrees that this review cannot fully assess the contribution of an appraisal system to agency effectiveness and efficiency, the review should include an assessment of conformance of systems with FPM guidance.

Change: Consistent with PMRS regulations, this section has been revised by deleting the requirement for OPM review of appraisal systems "with respect to their contribution to agency effectiveness and efficiency". Language has been added stating that OPM will review appraisal systems to determine conformance with "OPM performance management policy". This section has been moved to § 430.209. Also, § 430.210 has been added which provides that agencies must submit performance appraisal plans to OPM for approval as part of agency Performance Management Plans in accordance with Subpart A of Part 430 and provisions of Subpart B.

31. *Issue:* OPM Review and Approval of Performance Management Plans (§§ 430.207 and 431.207).

Summary of Comments: Four agencies comment on the provisions for OPM review and approval of agency performance management plans. Two agencies suggest that, to save them time and paperwork in initial implementation, OPM should review agencies' performance management plans after the plans are in operation. One of these agencies thinks this post-implementation review would assist in defending the plan before third-party agencies. One agency thinks the provision for OPM review and approval is unnecessary, but requests final regulations and guidance as soon as possible if the provision is retained. One agency objects to submitting the results of its performance management system operations to OPM, i.e., previous years' and projected expenditures.

One labor organization comments that the demonstration projects proposed at § 430.207(d) would not include an expanded scope of bargaining and therefore provide little chance to test private sector principles in Government. The labor organization also states that some of the ideas in the proposed regulations could be tested in a demonstration project and refined before possible implementation Government-wide.

Discussion: OPM is required by statute (5 U.S.C. 4304(b)(1) to "review each performance appraisal system developed by any agency . . . and determine whether the performance appraisal system meets the requirements" of the law. Those legal requirements include the linkage of performance appraisal results to "recognizing and rewarding employees" (5 U.S.C. 4302(b)(4)) and other personnel actions. To assist agencies in managing their employees' performance to accomplish agency missions, OPM has established the Performance Management System, integrating all performance-related actions. To meet the requirement to review agency systems for legal compliance, OPM must review the plans prior to their implementation, because so many consequences result from performance appraisal results. Further, OPM will need reports of the results of performance management plan operations to evaluate accurately the operation of the performance management system.

OPM believes these performance appraisal regulations should not include requirements on demonstration projects authorized by 5 U.S.C. 4703. OPM has previously issued regulations for demonstration projects at 5 CFR Part 470.

Change: Only editorial changes have been made to the regulations on OPM review and approval of performance management plans. To support and clarify the concept of performance management, these requirements have been placed in the new Subpart A of Part 430. Subpart A also assists agencies by consolidating agency performance management responsibilities in one place in the regulations. Section 430.207(d), on demonstration projects, has been deleted.

32. *Issue:* Conversion of a Position to Another Pay System.

Summary of Comments: One agency suggests adding a provision that ratings of employees whose positions are converted from a Prevailing Rate pay system to the GS may be used as a basis for performance-related personnel decisions under the GS, provided that both positions have the same duties and responsibilities. A similar provision is recommended when positions are converted from the GS to a Prevailing Rate Pay system.

Discussion: OPM agrees that, prior to the time when a new performance rating will be prepared after the conversion of a position to a new pay system, a performance rating prepared for an employee performing the same duties and responsibilities should continue to be used.

Change: A new § 430.204(k) has been added, consistent with § 430.405(k) of the PMRS regulations, which provides that when an employee's position under any Federal pay system is converted to a pay system covered by Subpart B of 5 CFR Part 430, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

33. *Issue:* Procedure When Employee's Performance is Unacceptable.

Summary of comments: Six agencies state the performance appraisal provisions of the PMRS and the PMS should be similar, wherever possible. One agency states that PMRS and PMS performance appraisal provisions on treatment of employees rated below "Fully Successful" should be consistent to the extent feasible. Also, see agency comments and regulation changes under issue 15, "Performance Improvement Plans".

Discussion: Legal requirements are somewhat different for PMRS employees than for PMS employees when performance on one or more critical elements is unacceptable. Section 4302a(b)(6) of title 5 U.S.C. provides that PMRS employees must receive a written notice of an "Unacceptable" rating before an opportunity to raise the employee's performance to the "Fully Successful" level is provided. On the other hand, 5 U.S.C. 4302(b)(6) does not require that a PMS employee receive a rating before being provided an opportunity to demonstrate acceptable performance nor, for that matter, at the end of an opportunity period.

Instead, an agency should provide a written notice to an employee at the beginning of an opportunity period which identifies critical element(s) for which performance is unacceptable and identifies performance standards which must be reached in order for the employeee to be retained in the position. Such a notice and an agency's determination about the level of an employee's performance at the end of an opportunity period are part of an agency determination that will be appealable to the Merit Systems Protection Board should the employee subsequently be reduced in grade or removed for unacceptable performance. The agency decision must be reviewed and approved as required by § 430.206(c) before the decision is final and subject to appeal.

Under PMRS regulations, if an employee's performance improves to level 2, but not to the "Fully Successful" level, an additional opportunity to demonstrate performance at the "Fully Successful" level is required. The difference in legal requirements does not necessitate an additional opportunity period for PMS employees. However, § 430.204(i) requires that agencies assist employees in improving performance rated below the "Fully Successful" level.

Change: A new § 430.204(j) has been added which is consistent with § 430.405(j) of the PMRS regulations except where differences in legal requirements are reflected as discussed above.

34. *Issue:* General Comments on Performance Appraisal for the Senior Executive Service (Part 431).

Summary of Comments: Five agencies support revising the SES performance appraisal regulations to make them as parallel as possible with performance appraisal provisions of the PMRS. Two agencies object to making parallels with PMRS.

Discussion: As indicated above in the "Overview" section, OPM agrees that wherever possible there should be consistency among the performance appraisal provisions for the SES, PMRS, GS, and Prevailing Rate Systems. This will foster ease of administration, reduce confusion, and clearly support an equitable pay-for-performance system. OPM believes that consistency and equity can be achieved while preserving congressional intent as reflected in statutory differences between the Senior Executive Service and the other systems.

Change: The provisions for Senior Executive Performance Appraisal are moved from Part 431 to Part 430, Subpart C and revised to provide for as much consistency as possible among performance appraisal systems for employees covered by the PMRS, SES, GS and Prevailing Rate Systems.

35. *Issue:* Definitions (§ 431.203).

Summary of Comments: Two agencies think that all definitions should be consistent with those in the PMRS. Three agencies request that "appraisal" be defined, as in the PMRS regulations, deleting reference to progress reviews; one requests that OPM add a separate definition of "progress review" as defined in PMRS regulations; two agencies suggest defining "critical element" as it is in PMRS; and one agency suggests revising the definition of "non-critical element", to indicate that these elements are optional. Two agencies request clarification of "rating official"; and one agency recommends revision of the definition of "performance".

Discussion: OPM agrees that wherever possible definitions should be consistent among performance appraisal systems except where definitions specific to the SES are provided in statute.

Change: Definitions are now contained in § 430.303 and have been revised to the extent possible to be consistent with the PMRS and the PMS (see discussion of progress reviews in Issue 6).

36. *Issue:* Use of Critical Elements, Non-critical Elements, Sub-elements, and Pass/Fail Elements (§ 431.204(b) and (c)).

Summary of Comments: Four agencies commented on the prohibition against rating employee performance on sub-elements, three objecting and one requesting clarification. Those objecting point to a recent MSPB decision allowing agencies to rate on sub-elements. One agency suggests requiring the use of critical elements only. One agency suggests that pass/fail elements should be allowed, citing a recent MSPB decision.

Discussion: (See Issues 10, 11 and 13.)

Change: Provisions on use of critical and non-critical elements have been placed in § 430.304. The last sentence in § 431.204(b) on sub-elements has been deleted and language in § 431.204(c) has been revised to remove the prohibition on pass/fail elements.

37. *Issue:* Use of Five Summary Rating Levels, and Requirement for Agency Decision Table to Arrive at Summary Ratings (§ 431.204(d)).

Summary of Comments: Two agencies disagree with using five summary rating levels, preferring the option to use three or four. One agency concurs with using five levels.

Five agencies object to the specific adjective labels prescribed for each of the rating levels; three of those objecting suggest paralleling PMRS rules, which provide for numbered rating levels (i.e., level 1 through level 5).

Three agencies think OPM should remove the requirement to use a decision table to derive summary ratings, because it is mechanistic and does not allow for supervisory judgment. One agency thinks that OPM should prescribe a Government-wide decision table all agencies must use.

Discussion: (See Issues 13 and 14.)

Change: The language in § 431.204 has been revised, consistent with the PMRS regulations, and moved to § 430.304. The definitions of the five rating levels have been removed. Section 430.304(g) provides for five summary rating levels and identifies them as levels 1 through 5. Adjective names are provided for levels 1 through 3 consistent with 5 U.S.C. 4314(a), permitting agency discretion to name the two levels about "Fully Successful". Additionally, reference to using a decision table has been removed, and language added to reflect that agencies must describe the method use to derive summary ratings and that the method must show that more weight will be given to critical elements than to non-critical elements.

38. *Issue:* Unsatisfactory Performance (§ 431.204(d)(2)).

Summary of Comments: Two agencies state that OPM should remove the requirement that an executive be given an unacceptable rating if his/her performance on one critical element is unacceptable.

Discussion: OPM believes that this regulatory provision reflects the statutory intent in 5 U.S.C. 4312(a) and is equitable with a similar provision in the PMRS and PMS regulations.

Change: This requirement has not been removed, but has been incorporated into the definition of "critical element" in § 430.303.

39. *Issue:* Performance Improvement Plan (PIP) (§ 431.204(e)).

All seven agencies commenting on the provision for a Performance Improvement Plan for executives request that OPM remove the provision. Five agencies say that the regulations should parallel the PMRS, and two object to the burden imposed by the PIP, believing it contrary to the intent of the Civil Service Reform Act to facilitate the removal of poor performers.

Discussion: (See Issue 15.)

Change: Language in § 431.204(e) providing for the PIP has been removed, consistent with the PMRS and PMS regulations.

40. *Issue:* Written Justification for "Outstanding" Rating (§ 431.204(f)).

Summary of Comments: Two agencies object to the requirement to write a justification for each "Outstanding" rating because of the additional paperwork; one thinks that the nature of the justification should be optional with the agency.

Discussion: (See Issue 16.)

Change: Paragraph 431.204(f), requiring written justification for an "Outstanding" rating, has been removed.

41. *Issue:* Definitions of the Five Summary Rating Levels (§ 431.204(h)).

Summary of Comments: Four agencies object to the rating level definitions provided in the proposed regulations. Three think that the definitions place too much emphasis on quantity and timeliness, which do not appropriately reflect SES work. One agency thinks that the regulations should require numbered rating levels, rather than the adjective labels in the proposed regulations.

Discussion: (See Issue 14.)

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Change: Consistent with PMRS regulations, definitions of rating levels have been removed.

42. *Issue:* Establishment of Performance Standards (§ 431.204(i)).

Summary of Comments: Two agencies suggest that OPM remove the requirement to provide executives with written performance elements and standards on or before the beginning of the appraisal period, because the process of clearing executives' standards and elements is more time-consuming that for non-SES employees. They prefer allowing agency flexibility.

Discussion: Statute requires that on or before the beginning of each rating period, performance requirements for each senior executive be established in consultation with the senior executive and communicated to the senior executive. OPM agrees that the requirement that performance plans be provided in writing on or before the beginning of the appraisal period places a burden on some agencies and that agency flexibility should be provided. However, agencies are not relieved of the statutory requirement to communicate elements and standards to each senior executive on or before the beginning of the rating period.

Change: Language in § 431.204(i) has been modified and moved to § 430.304(d)(1), and requires that elements and standards be communicated to executives on or before the beginning of the appraisal period, and that written performance plans be provided to senior executives normally within 30 days of the beginning of the appraisal period.

43. *Issue:* Higher Level Review of Executives' Performance Plans (§ 431.204(k)).

Summary of Comments: Four agencies suggest that OPM remove the requirement for higher level review of executives' performance plans allowing for the employee's option to request review, or allowing agency option to provide for higher level review. Four agencies think that this review is unnecessary. Two agencies request modification of the provision to take into account situations in which the heads of major components establish the executives' performance plans.

Discussion: OPM agrees that there are circumstances when higher level review of performance plans for senior executives is impractical. Agencies may require this higher level review if it is desirable for them to do so. Unlike other performance appraisal systems, the SES performance appraisal system includes the Performance Review Board (PRB), which is required by statute. The PRB provides an effective means to ensure equity and fairness in the SES appraisal system.

Change: The requirement for higher level review of senior executive performance plans have been removed.

44 *Issue:* Performance Ratings Before a Reduction in Force (RIF) (§ 431.204(m)).

Summary of Comments: Two agencies object to allowing for a rating just before a RIF in the case of employees who have served only a minimum appraisal period.

Discussion: (See Issue 22.)

Changes: Section 431.204(m) has been removed. Paragraph 430.306(e) has been added, consistent with PMRS regulations, and provides that, when an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period, at which time a rating of record shall be prepared.

45. *Issue:* Minimum Appraisal Period (§ 431.204(n)).

Summary of Comments: Two agencies commented on the minimum appraisal period provision; one agency supports the 90-day requirement and the other prefers the flexibility provided in the PMRS regulations (a minimum appraisal period of at least 90 days but not more than 120 days).

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. OPM agrees that agencies should have the flexibility provided in the PMRS regulations.

Changes: Language in § 431.206(n) has been revised and moved to § 430.305(b). Additionally, statutory language has been added in § 430.305(a)(3) regarding the appraisal of career appointees following the beginning of a new Presidential administration.

46. *Issue:* Appraisal of Executives' Performance on Details (§ 431.204 (p) and (q)).

Summary of Comments: Two agencies suggest elimination of the requirement to appraise executives' performance on details, because it is difficult to anticipate the length of details, and because it presents a burden for agencies. Two agencies comment on obtaining appraisal information for executives on details outside their agencies; one thinks this should be optional, and one requests clarification on the distinction between "performance information" and "performance ratings" required for details within agencies.

Discussion: OPM believes that as with other employees, an executive's performance throughout the appraisal period should be considered when preparing the executive's rating of record. This includes consideration of performance for periods of time when an executive is detailed or temporarily reassigned within the same agency for the minimum appraisal period, or detailed to another agency.

Change: Language in § 431.204 (p) and (q) has been moved to § 430.305(d). Paragraph (d)(2), covering details outside of the employing agency, has been modified to require the employing agency to make "a reasonable effort" to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

47. *Issue:* Opportunity for Executives to Respond to Their Ratings (§ 431.204(r)).

Summary of Comments: One agency thinks higher level review should take place after the Performance Review Board (PRB) review and the final rating take place. Two agencies think this provision should be revised to take into account the situation when the agency head is the rating official.

Discussion: Section 4312(b)(3) of title 5 U.S.C. requires that the senior executive be provided a copy of the appraisal and rating and given an opportunity to respond in writing to the initial rating and have that rating reviewed by an employee at a higher level before the rating becomes final. Additionally, 5 U.S.C. 4314(c)(2) requires that the PRB receive the initial rating, and any response to it by the senior executive. These provisions make it clear that the requirement for higher level review occurs prior to the review by the PRB. OPM agrees that this provision should take into account the situation when the head of the agency is the rating official.

Change: This provision is moved to § 430.306(a), and the language "unless there is no higher level" is added to take into account the situation when the agency head is the rating official.

48. *Issue:* **Federal Register** Notice of Appointments to a PRB (§ 431.204(s)).

Summary of Comments: One agency prefers to continue publishing in the **Federal Register** a roster from which PRB appointments may be made.

Discussion: The statute (5 U.S.C. 4314(c)(4)) provides that members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. It further states that notice of the appointment of an individual to serve as a member shall be published in the **Federal Register**.

Change: No change. This provision has been moved to § 430.307(b).

49. *Issue:* Requirement for a Written Recommendation for an Award for Each Executive Rated "Outstanding" (§ 431.204(w)).

Summary of Comments: Nine agencies object to the provision requiring a written recommendation for an award for each executive rated "Outstanding". Five of those agencies object to the increased paperwork, and offer several suggestions: make the award automatic or optional; require the rating official to recommend the award when recommending the "Outstanding" rating. Four agencies think that the provision requires awards, and think mandating awards is too restrictive on agencies.

Discussion: References to awards for senior executives more appropriately belong in other parts of the Code of Federal Regulations. Provisions for SES performance awards are found in 5 U.S.C. 5384 and rank awards are covered in 5 U.S.C. 4507 (see also Issue 27).

Change: The requirement for a written recommendation for an award for a senior executive is removed.

50. *Issue:* General Comments on Special Awards and Definitions (Part 451 and § 451.204).

Summary of Comments: Four agencies think that OPM should clarify the differences between Performance Awards (Part 531, Subpart F of the proposed regulations) and Special Awards.

Two agencies think that OPM should make the regulations on cash awards consistent for all populations covered. One agency believes that the heading of Part 451 should be changed. Four agencies think that, generally, the definitions in the special awards regulations are unclear. Five agencies request clarification of "meritorious action"; four agencies question "special act or service"; five agencies express difficulty with the definitions of "non-monetary award" and "honorary award"; and two agencies request a clearer definition of "contribution". One agency suggests adding a definition of "monetary award" which would be consistent with the definiton of that term under the Performance Awards regulations proposed for Part 531, Subpart F. One agency suggests additional language to indicate the type of award to be used for work on special task forces.

Discussion: OPM agrees with agencies that clarification is needed in this part and that a great deal of the confusion exists in the terminology in the awards program can be eliminated by establishing regulatory provisions and terminology which are consistent with the statutory bases in 5 U.S.C. Chapter 45 (Incentive Awards) and in 5 U.S.C. 5407.

OPM agrees that clarification is necessary to distinguish among the forms of recognition available for overall performance based on a current rating or record and those available for superior accomplishments, either within or outside of job requirements. Further, OPM agrees that cash awards regulations should be consistent for all populations.

Changes: To bring this part in line with its statutory authority, Part 451 is titled "Incentive Awards". A new Subpart A is titled "Agency Superior Accomplishment Awards". To make a clear distinction between performance awards for overall performance based on a current rating of record and awards under this part, performance awards provisions have been moved to Part 430, Subpart E. Additionally, a new Subpart B in Part 451 incorporates Presidential Awards to support the distinction made in statute between awards made by agencies and awards made by the President. Subpart C is reserved for Productivity Gainsharing Programs regulations.

Within Subpart A, definitions have been rewritten to clarify the types of accomplishments which can be recognized with agency Superior Accomplishment Awards. Definitions for "honorary award" and "meritorious action" have been removed. "Special act or service" has been redefined to include superior contributions or accomplishments either within or outside of the scope of the employee's job. The definition of "tangible savings" has been expanded to include accomplishments which result in dollar benefits (such as increased revenues) as well as dollar savings.

51. *Issue:* Awards Scale for Tangible Savings (§ 451.204).

Summary of Comments: Thirteen of the 29 agencies commenting on the proposed PMS regulations object to the awards scale for tangible savings. Two of those agencies think that the awards scale should remain in guidance.

Twelve of the agencies object to the reduction in amounts available to reward people who have saved money for the Government. Seven agencies think that this sends a negative message to employees at a time when the Government is emphasizing pay-for-performance, productivity and cost-savings.

One agency suggests eliminating the language in § 451.204(d) to "limit the use of monetary awards", because it is inconsistent with the intent of the Special Awards regulations.

Discussion: OPM agrees that the awards scale for contributions resulting in tangible benefits more appropriately belongs in guidance. This allows agency flexibility in establishing the amounts of awards for contributions resulting in dollar savings, particularly under appropriate special circumstances.

OPM agrees with agency comments that awards scales should not be reduced. The awards scale previously contained in guidance was comparable with awards practices in the private sector. OPM agrees that a reduction in the amount an employee receives for his or her efforts which save the Government money, or any limit on the use of monetary awards, would have an adverse impact, and would be inconsistent with the program's intended purpose.

Change: The awards scales for tangible benefits, awards over $10,000 and Presidential Awards contained in § 451.205(c) have been removed. The awards scales contained in FPM Chapter 451 will be retained and serve as a guide to agencies in establishing internal awards scales for contributions resulting in tangible and/or intangible benefits.

52. *Issue:* Agency Responsibilities (§ 451.209).

Summary of Comments: One agency disagrees with using the receipt of an award as a ranking factor in making promotions. The agency believes that it may not be valid in view of the Uniform Guidelines on Employee Selection Procedures, and that the use of such a ranking factor should be left to the agency's discretion.

One agency suggests adding a provision requiring that employees be informed of the availability of awards.

Discussion: Statutory provisions (5 U.S.C. 3362) require that receipt of an award be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

OPM agrees that provision should be made to inform employees at all levels about the program and how they can earn awards. Additionally, employees should be informed why other employees receive awards.

Change: Provisions have been added in § 451.104(i) to require that appropriate training and information be provided to supervisors and employees on the award program.

53. *Issue:* Acceptable Level of Competence (ALOC) Determination for Within-Grade Increases (§§ 531.403 and 531.404).

Summary of Comments: Four agencies and one labor organization comment on the definition of ALOC used in granting

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within-grade increases (WGI's). Three agencies support the requirement for a "Fully Successful" rating for an ALOC determination. Two of these agencies and one labor organization object to requiring a "Fully Successful" rating on all critical elements for performance to be determined at an ALOC. They prefer that the ALOC determination be based on the summary rating. Further, they believe agencies should have the option to rate an employee "Minimally Successful" on one element, while giving him or her a "Fully Successful" summary rating. One agency and one labor organization note that there is no comparable requirement for determining PMRS employees' merit increases. One agency points out that the definitions of ALOC were inconsistent, referring in instance to performance in the assigned position.

Discussion: OPM agrees that the definitions for ALOC should be consistent. OPM also agrees that the requirements for determining WGI's for GS employees should be parallel with the requirements for determining merit increases for PMRS employees, in that an ALOC determination should be based only on a summary rating of "Fully Successful".

Changes: To be consistent, the provisions on Acceptable Level of Competence in §§ 531.403 and 531.404 both refer to an employee's performance of the duties and responsibilities of his or her assigned position. The requirement for a "Fully Successful" rating on each critical element has been deleted; an employee can be determined to be at an Acceptable Level of Competence based on a current rating of record of at least "Fully Successful".

To reflect a change in definitions in Part 430, the term "rating of record" has been substituted for "summary rating". An additional provision on using current ratings of record for ALOC purposes has been added at § 531.404(a)(2) to parallel PMRS regulations. Also, a provision formerly included in Part 430, requiring a more current rating of record when an ALOC determination is inconsistent with the current rating of record, has been moved to § 531.404(a)(1); (see also Issue 24 "Performance Rating for a Within-Grade Increase").

54. *Issue:* Delay in ALOC Determinations for Granting Within-Grade Increases (WGI's) (Erroneously designated § 531.408).

Grade Increases (WGI's) (Erroneously designated § 531.406).

Note.—Due to a typesetting error, this material was misnumbered, and the revisions to § 531.408 were omitted. A correction notice, including the omitted material, was published October 7, 1985 at 50 FR 40805, for a 30-day comment period. OPM has received no comments on that portion of the regulations.

Summary of Comments: Four agencies object to delaying ALOC determinations and WGI's through no fault of the employees. Three of these agencies recommend that any such delayed within-grade increases be granted retroactively to the eligibility date. The fourth agency recommends that such employees be granted a within-grade increase based on a previous rating of record or a presumed "Fully Successful" rating. One agency recommends that OPM add Intergovernmental Personnel Act (IPA) assignments as a reason for waiving an ALOC determination and granting a within-grade increase. Several additional comments request clarification of the regulations and a closer linkage between these regulations and the PMRS regulations.

Discussion: It has always been the intent that, if an employee's ALOC determination is delayed because he or she has not been provided with performance requirements and also has not been rated within 90 days of the ALOC determination (both circumstances beyond his or her control), the employee would receive a WGI, if approved, retroactively to the eligibility date. It is OPM's intention that an up-to-date performance rating be used wherever possible in making an ALOC determination. This can be done in most cases by extending the appraisal period until the minimum appraisal period has been served under performance requirements, rating the employee, making the ALOC determination, and granting the WGI retroactively if warranted. An IPA assignment is currently covered for ALOC determination in § 531.406(c)(1)(v), so no change is necessary in these regulations.

Changes: Section 531.409(c)(2) has been amended to clarify that a within-grade increase based on a delayed ALOC determination will be granted retroactively to the eligibility date. Editorial changes have been made to § 531.409(d) to clarify the reasons for waiver of an ALOC determination.

55. *Issue:* Continuing Evaluation After Withholding a WGI (§ 531.411).

Summary of Comments: One agency indicates that employees who are denied a WGI should be rated again after no less than the minimum appraisal period and no more than 52 calendar weeks. This agency also recommends that an employee's right to appeal a within-grade denial should be eliminated.

Discussion: OPM believes that agencies should have flexibility to determine the time required for an employee to demonstrate sustained performance at an acceptable level of competence. However, fairness dictates that the employee's performance should be reevaluated after no more than 1 year. The right to appeal the denial of a WGI is a statutory right of all employees which cannot be denied by regulation.

Change: No change.

56. *Issue:* Level of Performance Required for Quality Step Increase (QSI) (§ 531.504).

Summary of Comments: Three agencies agree that QSI's should only be granted to employees who receive a performance rating of "Outstanding". Four agencies feel that limiting QSI's only to employees rated "Outstanding" is too restrictive, and would lead to inflated ratings, a reduction in the number of QSI's granted, and an inability to reward adequately employees rated "Exceeds Fully Successful" who substantially exceed performance standards on a continuing basis.

Discussion: Pay-for-performance dictates that the QSI should be granted only to employees with the *highest* quality performance because it constitutes an increase to base pay, the value of which continues over many years. Employees rated "Exceeds Fully Successful" can be rewarded through the agencies' authority to grant one-time performance awards.

Change: No change.

57. *Issue:* Effective Date of Quality Step Increases (§ 531.506).

Summary of Comments: One agency agrees with the provision to grant QSI's as soon as practicable after the performance rating to reinforce superior performance. Three agencies prefer greater flexibility in the granting of QSI's: to grant QSI's at any time during the appraisal period, as performance awards are granted; or to adjust timing of QSI's for employees in steps four and seven of the grade, so that within-grade increase waiting periods would not be prolonged; or to grant QSI's once each year in conjunction with performance awards. One agency thinks that QSI's should be granted within 60 days of the rating of record.

Discussion: OPM believes there must be a firm connection between exemplary performance and its rewards. The closer in time the reward is given for the "Outstanding" performance that triggers the reward, the more meaningful the reward. A QSI should be made as soon as practicable after a rating of record is approved. However, OPM also

believes each agency should have the flexibility to meet unusual requirements in the timing of QSI's in certain instances. The regulations provide sufficient flexibility so that an agency can ensure that the receipt of a QSI will not prolong the waiting period for a future WGI.

Changes: No change.

58. *Issue:* Agency Plans for Granting QSI's (§ 531.507).

Summary of Comments: One agency thinks that the requirements to develop a plan for QSI's and to inform all employees annually of the numbers of QSI's granted is an unwarranted administrative burden. Two other agencies disagree with the requirement that employees be informed of the number of QSI's granted each year by grade level, and think that the requirement should be eliminated or changed to require informing employees of only the total number of QSI's. One agency recommends addition of a provision requiring that guidance and training on QSI's be given to managers and supervisors.

Discussion: OPM believes that the QSI is an integral part of the pay-for-performance system for GS employees, and, therefore, a plan for awarding QSI's must be included as part of an *integral* Performance Management Plan. OPM also agrees that training on the appropriate use of the QSI should be an integral part of total training on the Performance Management System and Plan. E.O. 11721 requires that agencies report annually to employees the number of QSI's granted in the agency. To ensure employee perception of equity in the distribution of QSI's, OPM believes that it is essential that the report include not only the total number but also the distribution by grade level of QSI's in the agency.

Change: A new § 531.507(e) requires agency QSI plans to provide training and evaluation on the use of QSI's.

59. *Issue:* General Comments on Part 531, Subpart F, and Definitions (§ 531.604).

Summary of Comments: Two agencies believe that the performance awards provisions should be moved from Part 531 to another part Title 5, CFR, because awards are not additions to basic pay. These agencies think that Part 531 should only include pay-setting regulations.

Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations. One agency requests clarification of the distinction between special act or service awards as contained in this subpart, versus the same awards as contained in Part 451.

One agency suggests expanding definitions of the types of awards to make clearer distinctions between them. Two agencies ask for clarification of language in the definitions such as "monetary connotation for the agency but not for the employee", contained in the definition of "non-monetary award".

Discussion: OPM agrees that there should be consistency and equity between performance and cash awards programs for supervisors and employees. OPM further agrees that clarification in terminology is needed to clearly distinguish between awards based on overall performance (rating of record) and those based on superior accomplishments. Such a distinction will reduce existing confusion surrounding awards programs and assist agencies in administering programs. OPM concurs that performance awards provisions are inappropriately placed in Part 531 because these awards are not increases to basic pay.

Change: Part 531, Subpart F has been moved to Part 430, Subpart E and has been significantly revised to parallel, as consistently as possible, the provisions for performance awards for the PMRS. (Note: As indicated above, some of the changes to parallel the performance awards systems suggested by commenters are substantially different from the proposed rules. OPM agrees with the changes, and is proposing them at § 430.504 for comment elsewhere in today's daily issue. Therefore, § 430.504 is *reserved* in these final regulations.)

The changes in these final regulations result in the elimination of unclear or confusing definitions in the proposed regulations and facilitate a clear distinction between performance awards and superior accomplishment awards (cash awards) covered under Part 451, Subpart A (see also Issue 50). Additionally, because performance awards are moved to Part 430, the Part 532 provisions for performance awards for Prevailing Rate employees are removed as prevailing rate employees are covered under Part 430.

60. *Issue:* Agency Responsibilities (§ 531.609).

Summary of Comments: One agency objects to including a performance award component in agency Performance Management Plans, and objects to submitting the plan to OPM for review and approval. One agency agrees and one agency disagrees with the requirement that performance awards be considered as selective factors for merit promotions.

Discussion: Performance awards are an integral part of the PMS. In line with PMRS requirements for development of a comprehensive plan to administer all components of the system, plans for each component (performance appraisal, performance awards, pay, and superior accomplishment awards) must be submitted to OPM for review and approval.

Title 5, U.S.C., section 3362 requires that awards be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

Change: No change. (Agency responsibilities moved to § 430.506.)

61. *Issue:* Part 771—Agency Administrative Grievance System.

Summary of Comments: None.

Discussion: See Issue 25—"Reconsideration of a Performance Rating".

Changes: Section 771.206(c)(3) has been deleted (see change in Issue 25). Additionally, § 771.206(c)(1)(x) has been modified to make a technical correction by including the amount of an award under matters excluded.

62. *Issue:* Implementation Schedule (§§ 430.206 and 431.301).

Summary of Comments: Nineteen agencies and one labor organization object to the proposed implementation schedule for Performance Management Plans under the PMS as being too short and unrealistic. Some of the reasons include:

—Insufficient time to consult with labor organizations, make changes, and train employees;

—Limited resources;

—Logistical problems in large organizations;

—Continuing involvement with implementing the new PMRS; and

—Difficulty implementing in the middle of performance appraisal cycles.

Agencies recommend several alternatives, including:

—Implementation at the beginning of the agency's next appraisal cycle;

—Implementation by October 1, 1986;

—Submission of plans to OPM by July 1, 1986; and

—Deadlines expressed in terms of time after publication of the final regulations.

One labor organization recommends that OPM use a staggered 3-year schedule for submission and implementation of plans, as provided in the final regulations published in October 1983.

Discussion: OPM intends to implement the PMS as soon as feasible, to eliminate any unnecessary differences among SES, Prevailing Rate, GS, and PMRS employees. OPM is

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aware that agencies must be given adequate time to develop sound Performance Management Plans and to train employees, and experience with implementing PMRS has shown this process to be time consuming. However, experience developing PMRS plans should assist agencies and considerably shorten the time needed to develop plans and train employees.

In order to cause as little disruption as possible in agency performance appraisal cycles, OPM agrees that revised performance appraisal requirements should be implemented at the beginning of the employees' next performance appraisal cycle, rather than in mid-cycle. Because the plan submission and implementation dates have been significantly extended in the final regulations, and because OPM intends to eliminate as much as possible any disparity among systems, implementation staggered by grade levels is no longer needed.

Changes: As indicated in the "DATES" section above, agencies must submit their Performance Management Plans to OPM 90 days after the date of publication of these regulations. Generally, OPM will approve the Plans within 90 days after the Plans are received by OPM.

Agencies' Performance Management Plans must be implemented no later than 90 days after the date of OPM approval. At that time, all provisions of these regulations become applicable, except the new performance appraisal provisions. The performance appraisal provisions become applicable to each employee at the beginning of his or her next appraisal cycle after OPM approval of the Performance Management Plan.

For the purposes of taking performance-based personnel actions, including reassignment, reduction in grade or removal under 5 U.S.C. 4303, the agency's current performance appraisal plans remain in effect until OPM approves the performance appraisal parts of the new PMS Performance Management Plan, and those parts are implemented on the schedule outlined below.

Agencies must implement their Plans as specified above except where provisions of an existing negotiated agreement are in explicit conflict with these PMS regullations, in which case the provisions of the negotiated agreement will remain in effect until its expiration. Agencies may request OPM approval of the following exceptions:

1. For specific provisions of OPM regulations that are not in explicit conflict with existing provisions of a labor agreement, but would cause significant inequities if implemented in combination with provisions of the labor agreement; or

2. Where apparently conflicting provisions of negotiated agreements are consistent with the intent of OPM regulations.

For the convenience of agencies in application of the new regulations, following is the schedule for application of the PMS regulations.

Part 430 Subpart A—30 days after the date of publication.

Parts 293, 300, 335, Subpart E of Part 430,* Subparts D and E of Part 531, and Part 771—90 days after plan approval.

Subparts B and C of Part 430—At the beginning of the employee's next performance appraisal cycle.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 335

Government employees.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

5 CFR Part 451

Decorations, Medals, Awards, Government employees.

5 CFR Part 531

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 293—Personnel Records

1. The Authority citation for Part 293 is revised to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subpart D, § 293.402(a) and (b) are revised to read as follows:

Subpart D—Employee Performance File System Records

* * * * *

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with

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[*] Pending final rulemaking on § 430.504, OPM may extend the implementation date for the preformance awards component of the Performance Management Plan.

Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

* * * * *

3. Sections 294.404(a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee who changes positions, shall be as agencies prescribe and consistent with § 293.405(a).

* * * * *

4. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in Part 430 of this chapter. Also, the "losing" office will purge from the OPF all performance ratings and performance plans that are more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

PART 300—EMPLOYMENT [GENERAL]

5. The authority citation for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted. Secs. 300.101–300.104 also issued under 5 U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803, unless otherwise noted.

6. Section 300.602 is revised to read as follows:

* * * * *

Subpart F—Time-in-Grade Restrictions

* * * * *

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS–12 and above.* An agency may advance an employee to a position at GS–12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS–6 through GS–11.* An agency may advance an employee to a position at GS–6 through GS–11 only after he or she has served a minimum of —

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS–5 or below.* An agency may advance an employee to a position at GS–5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

* * * * *

PART 335—PROMOTION AND INTERNAL PLACEMENT

7. The authority citation for Part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp. page 218.

8. Section 335.104 is revised to read as follows:

Subpart A—General Provisions

* * * * *

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under Part 430 of this chapter is "Fully Successful" (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

PART 430—PERFORMANCE MANAGEMENT

9. The authority citation for Part 430 is revised to read as follows, and the authority for Subpart D is removed.

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

10. Subpart A is added to Part 430 to read as follows:

Subpart A—Performance Management System

Sec.
430.101 Authority.
430.102 Performance management.
430.103 Performance Management Plans.

Subpart A—Performance Management System

§ 430.101 Authority.

Chapters 43, 45, 53, and 54 of title 5, U.S. Code, provide for performance appraisal, awards, pay, and the Performance Management and Recognition System for Federal employees. This subpart supplements and implements those portions of the law as well as Parts 451, 531, and 540 of this chapter.

§ 430.102 Performance management.

Performance management is the systematic process by which an agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

§ 430.103 Performance Management Plans.

(a)(1) A Performance Management Plan is the description of an agency's system for implementing all aspects of performance management.

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(2) OPM will provide checklists for Performance Management Plans or parts of plans containing all the components necessary for approval of a plan or part of a plan.

(b) Agencies must submit all parts of proposed Performance Management Plans to OPM for review and approval. If major subcomponents of an agency propose to modify an element of the agency's system that is included in the Performance Management Plan Checklist, or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Performance appraisal systems plans required under 5 U.S.C. 4302, 4302a, and 4312 and Subparts B, C, and D of this part.

(2) Performance Management and Recognition System (PMRS) plans required under Part 540 of this chapter.

(3) Performance awards plans required under Subpart E of this part, including the agency's method for funding and payment of performance awards and the method for determining projected expenditures.

(4) Superior Accomplishment Awards plans required under Part 451, Subpart A.

(5) Productivity Gainsharing Program plans required under Part 451, Subpart C.

(6) Plans for determining and distributing within-grade increases under Part 531, Subpart D of this chapter; and

(7) Plans for awarding quality step increases under Part 531, Subpart E of this chapter.

(c) Agencies shall submit to OPM for review and approval any changes to their Performance Management Plans that modify any element of the agency's system that is included in a Performance Management Plan Checklist.

(d) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management System or any part of a plan.

11. Subpart B of Part 430 is revised to read as follows:

Subpart B—Performance Appraisal for General Schedule and Prevailing Rate Employees

Sec.
430.201 General.
430.202 Coverage.
430.203 Definitions.
430.204 Agency performance appraisal systems.
430.205 Appraisal of performance.
430.206 Ratings.
430.207 Performance appraisal advisory committees. [Reserved]
430.208 Training and evaluation.
430.209 OPM review of performance appraisal systems.
430.210 Performance appraisal plans.

Subpart B—Performance Appraisal for General Schedule and Prevailing Rate Employees

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code (5 U.S.C. 4301–4305) provides for the establishment of agency performance appraisal systems and for appraisal of employees. This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for Performance Appraisal Systems for General Schedule and prevailing rate employees, and implements and supplements the provisions of 5 U.S.C. 4301–4305.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying agency goals and objectives;

(2) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting basic pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(a) of title 5, United States Code, lists agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, lists employees covered by statute by this subpart. However, employees covered by the PMRS are not covered by this subpart.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission, or to employees covered by the PMRS consistent with 5 U.S.C. 4302a and 5 U.S.C. 5402.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by noncareer executive assignments under Part 305 of this chapter.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"Performance Appraisal System": see Appraisal system.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by Subpart A of this part.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standards).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Progress review" means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

"Rating": see Summary rating.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the Plan specifies for special circumstances.

"Summary rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.204 (g) and (h) of this subpart).

§ 430.204 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (h) of this section, must be assigned.

(c) Each appraisal system shall encourage employee participation in establishing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employee's positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than that of the appraising official. Agencies may describe exceptions to higher level review and approval of performance plans in their Performance Management Plans.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 231.3301 of this chapter—

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee whose performance is "Unacceptable", but only after affording the employee a reasonable opportunity to demonstrate acceptable performance, as required by 5 U.S.C. 4302(b)(6).

(2) At the time that an agency identifies the critical element(s) for which performance is "Unacceptable", the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity period referred to in paragraph (j)(1) of this section, the employee's performance continues to be "Unacceptable", the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5 U.S.C. 4303.

(k) When an employee's position under any Federal pay system is converted to a pay system covered by this subpart, and when there is no change of duties and responsibilities, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

§ 430.205 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall generally be given a rating of record on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has

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changed; agency Performance Management Plans must describe how these ratings and any other ratings given throughout the appraisal period will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) Appraisal of each element. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparision with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.206 Ratings.

(a) *Written rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and preformance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than that of the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency. Agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared as required by § 430.206(a) of this subpart, which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.207 Performance appraisal advisory committees. [Reserved]

§ 430.208 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.209 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.210 Performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with Subpart A of this part and provisions of this subpart.

12. Subpart C is added to Part 430 to read as follows:

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

Sec.

430.301 General.
430.302 Coverage.
430.303 Definitions.
430.304 SES performance appraisal systems.
430.305 Appraisal of performance.
430.306 Ratings.
430.307 Performance Review Boards (PRBs).
430.308 Training and evaluation.
430.309 OPM review of SES appraisal systems.
430.310 SES performance appraisal plans.

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, U.S. Code (5 U.S.C. 4311–4314) provides for the establishment of Senior Executive Service (SES) performance appraisal systems, and for appraisal of the performance of senior executives (as defined in 5 U.S.C. 3132(a)). This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for performance appraisal in

the SES, and supplements and implements the provisions of 5 U.S.C. 4311–4315.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying organizational goals and objectives;

(2) Identifying individual accountability for the accomplishment of agency goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting base pay, training, rewarding, reassigning, retaining, and removing employees.

§ 430.302 Coverage.

(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code, are covered by this part.

(b) Section 3132(a)(1) of title 5, United States Code identifies agencies covered by this subpart.

§ 430.303 Definitions.

In this subpart, terms are defined as follows:

"Appointing authority" means the agency or department head or his or her designee.

''Appraisal'' means the act or process of reviewing and evaluating the performance of the executive against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which the senior executive's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unsatisfactory performance on the element would result in unsatisfactory performance in the position.

"Final rating" means the rating of record assigned by an appointing authority after considering the recommendations of a Performance Review Board.

"Initial rating" means the summary rating made by the senior executive's supervising official and provided to the Performance Review Board.

"Non-critical element" means a component of an executive's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means the senior executive's accomplishment of assigned work as specified in the critical and non-critical elements of the executive's position.

"Performance Appraisal": (see Appraisal)

"Performance Appraisal System": see Appraisal system.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of the agency's mission and goals. The Performance Management Plan, which includes the SES performance appraisal plan, must be submitted to OPM for review and approval as required in § 430.310 of this subpart and in Subpart A of this part.

"Performance plan" means the aggregation of all of the senior executive's written critical and non-critical elements and performance standard(s).

"Performance requirement" means performance standard.

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

"Progress review" means a review of the executive's progress toward achieving the performance standards and is not in itself a rating.

"Rating of record" means the final rating.

"Summary rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.304 (f) and (g) of this subpart).

§ 430.304 SES performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.

(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.

(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives' positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each SES appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(g) Each SES appraisal system shall provide for five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally

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Satisfactory" level, a "Fully Successful" level and two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(h) Each SES appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(i) Subject to the provisions of Part 359, Subpart E of this chapter:

(1) Any executive receiving a level 1 ("Unsatisfactory") rating of record shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) Any executive who receives two level 1 ("Unsatisfactory") ratings of record in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(3) Any executive who twice in any period of 3 consecutive years receives less than a level 3 "Fully Successful" rating of record shall be removed from the Senior Executive Service.

§ 430.305 Appraisal of performance.

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency Performance Management Plans must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

(2) Except as provided in paragraph (b) of this section, a performance appraisal period may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance.

(3) Notwithstanding paragraphs (a)(2) and (b) of this section, in the case of a career appointee, an appraisal and rating may not be made within 120 days after the beginning of a new Presidential administration.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days and not more than 120 days, except as provied in paragraph (a)(3) of this section.

(c) *Appraisal of each element.* An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When senior executives are detailed or temporarily reassigned within the same agency, and the detail or temporary assignment is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to the executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment. Ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next rating of record.

(2) When senior executives are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

(i) If an executive has served in the employing agency for the minimum appraisal period, the executive must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an executive has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each executive at least once during the appraisal period. At a minimum, executives shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

§ 430.306 Ratings.

(a) *Initial Rating.* Appraisal systems shall provide for:

(1) A written initial rating of the executive's performance made by the executive's supervising official, and provided to the senior executive;

(2) An opportunity for the senior executive to respond in writing to an initial rating;

(3) An opportunity for review of the rating by an employee in a higher executive level than that of the supervisor, unless there is no one at a higher level, before review by the PRB as provided in § 430.307 (e) and (g);

(4) Provision of the senior executive's response to both the official making the higher level review and to the PRB; and

(5) Provision of copies of the reviewer's comments and recommendations to the senior executive, the supervising official, and the PRB.

(b) *Higher level review.* (1) Agency performance appraisal systems may provide for a mandatory second level review of all initial ratings.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(c) *Final rating.* A written rating of record of the executive's performance shall be made on an annual basis by the appointing authority only after considering the recommendations by the PRB with respect to the performance of the senior executive as provided in § 430.307.

(d) *Forced distribution.* An agency may not prescriber a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an executive moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.404(b)(2) of this chapter. A summary rating must be prepared as required in § 430.305(a) which must be taken into consideration by the gaining agency when deriving the next rating of record.

(g) *Documentation.* Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: the initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any comments and recommended changes by a higher level executive; and the final rating. As required in § 293.404(b)(1) of this chapter, agencies are required to maintain all performance related records for no less than 5 years from the date the rating is issued.

§ 430.307 Performance Review Boards (PRBs).

As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRBs to make recommendations to the appointing authority on the performance of senior executives in the agency.

(a) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(b) Notice of appointment to the PRB must be published in the Federal Register.

(c) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(d) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(e) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(f) Individual PRB members must not take part in any PRB deliberations involving their own appraisals.

(g) The PRB must make a written recommendation concerning each senior executive's rating of record.

§ 430.308 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.309 OPM review of SES appraisal systems.

(a) OPM will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.310 SES performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with Subpart A of this part and provisions of this subpart.

13. Subpart E is added to Part 430 to read as follows:

Subpart E—Performance Awards

Sec.
430.501 Authority and coverage.
430.502 Definitions.
430.503 Policy.
430.504 Funding and payment. [Reserved.]
430.505 Responsibilities of the Office of Personnel Management.
430.506 Agency responsibilities.

Subpart E—Performance Awards

§ 430.501 Authority and coverage.

(a) This subpart contains the Office of Personnel Management's (OPM) regulatory requirements for establishing and conducting the performance awards component of the Performance Management System, under the authority of title 5, United States Code, chapters 43 and 45.

(b) This subpart applies to employees as defined under section 2105 of title 5, United States Code, but does not include employees under the Performance Management and Recognition System, nor employees in the Senior Executive Service.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

(d) Refer to Part 451, Subpart A of this chapter for the regulatory requirements for granting Superior Accomplishment Awards to employees for suggestions, inventions, and special acts or services.

§ 430.502 Definitions.

In this subpart, terms are defined as folows:

"Performance award" means a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance awards plan, must be submitted to OPM for review and approval as required by § 430.506 of this subpart and Subpart A of this part.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the plan specifies for special circumstances.

§ 430.503 Policy.

(a) The purpose of performance awards is to motivate employees by recognizing and rewarding those who attain high levels of performance.

(b) An award under this subpart shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid.

(c) (1) Agency procedures for making performance awards determinations must include a requirement for review and approval of each determination by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) with responsibility for managing the performance awards budget within the agency.

(2) Higher level review and approval of performance awards determinations, as required in paragraph (c)(1) of this section must be made by the officials also responsible for making the performance appraisal decisions.

(d) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(e) A performance award shall be given due weight when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(f) OPM encourages agencies to make maximum use of their authorities under chapters 43 and 45 of title 5, United States Code, within existing appropriated funds to establish and administer performance awards programs that best support and enhance agency and national goals and meet employee recognition needs.

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§ 430.504 Funding and payment. [Reserved]

§ 430.505 Responsibilities of the Office of Personnel Management.

In accordance with Subpart A of this part, OPM shall review and approve the agency performance awards component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 430.506 Agency responsibilities.

(a) The head of each agency shall, within existing appropriated funds, establish a performance awards program as a component of the Performance Management System.

(b) The head of each agency shall submit to OPM—

(1) A performance awards plan, as part of the Performance Management Plan, which includes provisions for determining the agency performance awards fund, and the method for determining projected expenditures, for review and approval as provided in Subpart A of this part;

(2) Proposed plan revisions for review and approval as required in Subpart A of this part;

(3) All recommendations for performance awards in excess of $10,000 up to $25,000 for review and approval;

(4) At the beginning of each fiscal year, the estimated performance awards budget, including the funding level used; and

(5) An annual report on performance awards activities for the past fiscal year.

PART 431—[REMOVED]

14. Part 431 is removed.

PART 451—INCENTIVE AWARDS

15. The heading for Part 451 is revised as set out above and the authority citation for Part 451 is revised to read as follows:

Authority: 5 U.S.C. 4506 and 5407.

16. In Part 451, Subpart B is redesignated as Subpart A and revised to read as follows:

Subpart A—Agency Superior Accomplishment Awards

Sec.
451.101 Authority and coverage.
451.102 Purpose.
451.103 Definitions.
451.104 Policy.
451.105 Payment.
451.106 Responsibilities of the Office of Personnel Management.
451.107 Agency responsibilities.

§ 451.101 Authority and coverage.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management (OPM) for establishing and conducting the Superior Accomplishment Awards component of the Performance Management System under the authority of title 5, United States Code, chapters 43, 45, and 54.

(b) This subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, are covered by the provisions of this subpart.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.102 Purpose.

Superior accomplishment awards are designed to improve Government efficiency, economy and effectiveness by motivating employees to increase productivity and creativity by rewarding their efforts which benefit the Government.

§ 451.103 Definitions.

"Award" or "superior accomplishment award" means a monetary or non-monetary award for a contribution resulting in tangible benefits or savings and/or intangible benefits to the Government.

"Contribution" means an accomplishment achieved through an individual or group effort in the form of a suggestion, an invention or a special act or service in the public interest connected with or related to official employment, which contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork.

"Intangible benefits" means benefits to the Government which cannot be measured in terms of dollar savings.

"Non-monetary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the superior accomplishment awards plan, must be submitted to OPM for review and approval as required in Part 430, Subpart A and § 451.107 of this subpart.

"Special act or service" means a contribution or accomplishment in the public interest which is:

(a) A non-recurring contribution either within or outside of job responsibilities;

(b) A scientific achievement; or

(c) An act of heroism.

"Superior accomplishment award": see "Award".

"Tangible benefits" means benefits or savings to the Government that can be measured in terms of dollars.

§ 451.104 Policy.

(a) The Office of Personnel Management encourages agencies to make maximum use of their authorities under chapters 45 and 54 of title 5, United States Code to:

(1) Establish and administer superior accomplishment awards programs which best support and enhance agency and national goals, and meet employee recognition needs; and

(2) Provide for adequate funds to provide for payment of awards, and staffing and support services to assure prompt action on awards recommendations, and effective promotion and publicity of the program.

(b) Superior accomplishment awards programs shall provide for:

(1) The granting of recognition commensurate with the value of the contribution to the Government; and

(2) Obtaining maximum benefits for the Government, whenever possible, by considering the applicability of employee contributions throughout Government.

(c) An award under this subpart may be granted alone or in addition to a performance award granted under Parts 430, Subpart E, and 540 of this chapter, or a quality step increase granted under Part 531, Subpart E.

(d) An award under this part shall not be used as a substitute for other personnel actions, or as a substitute for pay.

(e) To be awarded under this subpart, a contribution must:

(1) Have been made while the contributor was a Government employee;

(2) Be supported by a written justification separate from the employee's rating of record; and

(3) Be approved at a management level higher than that of the individual who recommended use of the suggestion or invention, or recommended the award.

(f) Acceptance of a monetary award consitutes an agreement that the use by the Government of the idea, method, or device for which the award is paid does

not form the basis of a further claim against the Government.

(g) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(h) Due weight shall be given to an award under this part when rating and ranking an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall assure that superior accomplishment awards programs are effectively implemented by providing appropriate training and information to supervisors and employees on the program, and establishing methods and procedures to evaluate periodically the effectiveness of the program and implement improvements as needed.

(j) Superior accomplishment awards shall not be mandatory.

§ 451.105 Payment.

(a) An award under this subpart is in addition to regular pay and does not increase an employee's base pay. The award is subject to the withholding of income taxes.

(b) When an award is approved for an employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award.

(c) When an award is approved for a member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with Executive Order 11438, "Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces".

§ 451.106 Responsibilities of the Office of Personnel Management.

(a) OPM shall review and approve the agency superior accomplishment awards component of the Performance Management Plan, and any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist, as required in Part 430, Subpart A, of this chapter.

(b) OPM shall review and approve or disapprove all recommendations for agency awards under this subpart in excess of $10,000 up to $25,000.

§ 451.107 Agency responsibilities.

(a) The head of each agency shall submit to OPM:

(1) The superior accomplishment awards component of the Performance Management Plan for review and approval as required in Part 430, Subpart A;

(2) Any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist as required in Part 430, Subpart A, for review and approval;

(3) Award recommendations in excess of $10,000 up to $25,000; and

(4) An annual report on program activities and expenditures for the past fiscal year and the amount budgeted for superior accomplishment awards for the current fiscal year.

(b) Agencies shall give consideration to accomplishment and adopted ideas for wider application both within the agency and Government-wide, and provide for prompt referral when appropriate.

17. In Part 451, a new Subpart B is added to read as follows:

Subpart B—Presidential Awards

Sec.
451.201 Authority and coverage.
451.202 Payment.
451.203 Responsibilities of the Office of Personnel Management.

§ 451.201 Authority and coverage.

(a) Under title 5, United States Code, chapters 45 and 54, the President may pay a cash award to and incur necessary expenses for the honorary recognition of an employee who:

(1) By his/her suggestion, invention or other personal effort contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) Performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.

(b) During any fiscal year, the President may, subject to the provisions of 5 U.S.C. 4507, award to any Senior Executive career appointee recommended by OPM the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

(c) Except as provided in paragraph (b) of this section, this subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under title 5, United States Code, chapter 54 are covered by the provisions of this subpart.

(d) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.202 Payment.

(a) A Presidential award is paid by the agency(ies) primarily benefiting from the employee contribution.

(b) A Presidential award may be in addition to an agency award under Subpart A of this part.

§ 451.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management shall review annually agency recommendations for Presidential Rank Awards for career appointees of the Senior Executive Service under section 4507 of title 5, United States Code, and recommend to the President which of those career appointees should receive awards.

(b) The Office of Personnel Management, in accordance with Executive Order 10717, as amended, shall review agency recommendations for the President's Award for Distinguished Federal Civilian Service and recommend to the President which career employees should receive this award.

(c) Under Executive Order 11228, section 2, the Office of Personnel Management has the authority to determine the activity or activities primarily benefiting from any suggestion, invention, or other contribution which forms the basis for a Presidential award under 5 U.S.C. 4504 and 5407.

18. In Part 451, Subpart C is reserved, as follows:

Subpart C—Productivity Gainsharing Programs [Reserved]

PART 531—PAY UNDER THE GENERAL SCHEDULE

19. The heading for Part 531 is revised as set forth above and the authority citation for Part 531, Subpart D, is revised to read as follows:

Authority: 5 U.S.C. 5301, 5335, and 5336 and E.O. 11721 as amended, section 402, unless otherwise noted.

20. Section 531.401 is revised to read as follows:

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) Section 2301(b)(3) of title 5, United States Code, provides in part that "appropriate incentives and recognition should be provided for excellence in performance."

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(b) Section 5301(a)(2) of title 5, United States Code, provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Sevice Commission (Office of Personnel Management) shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

21. Section 531. 403 is amended by revising the terms "acceptable level of competence" and "critical element", to read as follows:

§ 531.403 Definitions.

In this subpart—

"Acceptable level of competence" means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

"Critical Element" has the meaning given that term in § 430.203 of this chapter.

* * * * *

22. Section 531.404 is revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

(a) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record as defined in the agency Performance Management Plan, must be at least level 3 ("Fully Successful").

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determinatio for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.

23. Sections 531.408 (b) and (c) are revised to read as follows:

§ 531.408 Communication of performance requirements.

* * * * *

(b) Employees covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by means of communication of performance standards established under Part 430, Subpart B of this chapter.

(c) Employees not covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

24. In § 531.409, paragraphs (b), (c), (d), and (e)(2)(i) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. chapter 43 and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade because of "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* (1) An acceptable level of competence determination must be delayed when either of the following applies:

(i) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within 90 days before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period of time established by the agency to demonstrate acceptable performance.

(2) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and the rating period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made upon completion of the minimum appraisal period established by the agency performance appraisal plan and shall be based on the employee's rating of record completed at the end of the appraisal period.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(1) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer for which no rating has been prepared; or

(5) Because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

* * * * *

(e) Notice of determination.

(2) * * *

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

* * * * *

25. Section 531.411 is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, prepare a new rating of record for the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

Subpart E—Quality Step Increases

26. The authority citation for Part 531, Subpart E, is revised to read as follows: Authority: 5 U.S.C. 5336 and E.O. 11721, as amended.

27. In Subpart E, §§ 531.503 and 531.504 are revised to read as follows:

* * * * *

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a rating of record at level 5 (Outstanding), as defined in Part 430, Subpart B, of this chapter.

28. Sections 531.505 through 531.507 are revised to read as follows:

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

§ 531.506 Effective date of quality step increase.

A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved. The quality step increase should be made effective as soon as possible after it is approved.

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases in the agency's Performance Management Plan, as required by Part 430, Subpart A of this chapter. The Plan shall—

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with the requirements in Part 430, Subpart A of this chapter;

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level; and

(e) Provide for appropriate training and information to all employees on QSI's and establish methods and procedures to evaluate periodically the effectiveness of the use of QSI's, and to implement improvements as needed.

29. In Part 531, Subpart F is removed.

30. In Part 532, Subpart H is removed.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

31. The authority for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pages 606–624, E.O. 11222, 3 CFR 1964–1969 Comp., page 306.

32. In § 771.206, paragraph (c)(3) is removed, and paragraph (c)(1)(x) is revised, to read as follows:

Subpart B—General

§ 771.206 Exclusions.

* * * * *

(c) Matters excluded.

(1) * * *

(x) The granting of or failure to grant or the amount of an award granted under Part 430, Subpart E; or the granting of or failure to grant or the amount of an award granted under Part 451; or the adoption of or failure to adopt an employee suggestion or invention under Part 451; or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under 4507 of title 5, United States Code and Part 451, Subpart B of this chapter.

* * * * *

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 430

Performance Management System: Performance Awards, Recordkeeping, Performance Appraisal Administration, etc.

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on the Performance Management System (PMS) in conjunction with the final rules published elsewhere in today's **Federal Register**. In response to agency requests, these proposed regulations contain provisions to make the PMS performance awards, recordkeeping, and performance appraisal administration more consistent with the regulations recently established for the Performance Management and Recognition System (PMRS). Because these provisions are substantially different from the proposed PMS regulations, OPM is publishing them for public comment.

DATE: To be considered, comments must be received no later than, April 10, 1986.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan (202) 632–5653.

SUPPLEMENTARY INFORMATION:

On August 30, 1985, at 50 FR 35505–35506 and 50 FR 35513–35530, OPM issued proposed regulations on the Performance Management System. Final regulations on most of the PMS provisions are published elsewhere in today's **Federal Register**. In response to the overwhelming majority of the commenters' suggestions, OPM has revised the regulations to make them as consistent as possible with PMRS regulations. These proposed regulations contain further provisions that would enhance consistency with PMRS, but are substantially different from the proposed regulations. OPM is providing a 30-day period for interested parties to comment on these changes, so that agencies will have ample time to prepare and implement complete Performance Management Plans for appraising and rewarding all employees' performance.

Proposed Changes

Following is a detailed outline of the proposed changes to the regulations, identifying each issue, a summary of any comments received on the issue in the proposed regulations, and a discussion of OPM rationale for the proposed changes. The comments reflected in these discussions were received from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Proposed Change" paragraph indicating the proposed new location of the regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart C).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. That change is provided in the final regulations, published elsewhere in today's **Federal Register** at Subpart D of Part 293, which provides for the Employee Performance File System.

Proposed Change: The proposed regulation would revise Part 293, Subpart C, which prescribes requirements for the maintenance and content of the OPF. The proposed regulation is a technical change that would bring the OPF subpart into conformance with the EPF subpart, indicating that performance ratings of records, and the performance plans on which they are based, may be filed in either the OPF or the EPF.

Additionally, due to a change in Part 430 regulations, agencies are required to prepare and forward a summary rating when the employee changes positions. A provision would be added to Part 293 to indicate that agencies must forward the summary rating in the OPF, along with ratings of record as described in the discussion above.

2. *Issue:* Performance Appraisal Advisory Committees.

Summary of Comments: One labor organization objects to the requirements for higher level management review, and to the restriction on communicating ratings of record prior to higher level management approval, stating that these requirements would result in the clandestine establishment of bell curves. One labor organization says that employees should be informed of how their performance plans and ratings reflect employee contributions to the accomplishment of organizational objectives. One agency thinks that the PMS and PMRS regulations should not be different in appraisal procedures. One agency states that the regulations should be consistent in "process". One agency thinks that creating procedures parallel to the PMRS would contribute to ease of understanding of the regulations.

Discussion: One mechanism in the PMRS regulations that promotes the equitable application of performance standards, guards against the establishment of bell curves, and helps assure that individual performance standards reflect the goals of the organization is the Performance Standards Review Boards. These Boards, through representation by the covered employees themselves, provide an opportunity for the employees to obtain an overview of the performance standards and performance ratings and to make recommendations for improving performance appraisal in the agency.

Proposed Change: The proposed regulations provide that a similar opportunity be created for PMS employees by providing for the establishment of Performance Appraisal Advisory Committees (§ 430.407). The Committees would have advisory functions similar to those provided to Performance Standards Review Boards.

3. *Issue:* General Comments on Part 531, Subpart F.

Summary of Comments: Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations.

Discussion: OPM agrees that wherever possible the performance awards systems for employees under the General Schedule (GS), Prevailing Rate System, and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems would foster ease of administration, reduce confusion and clearly support pay for performance under the Performance Management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Proposed Change: Because provisions for funding and payment of performance awards parallel to PMRS have not been previously proposed for public comment, OPM is requesting comments on those provisions, as outlined below.

4. *Issue:* Reduction of Performance Awards Amounts, Limiting Total Awards to 20 Percent of Base Pay (§ 531.605).

Summary of Comments: Two agencies recommend allowing higher awards, consistent with the PMRS provisions which allow for performance awards up to 20 percent of base pay for unusually outstanding performance. One agency objects to reducing award amounts because it is perceived as unfair, and an administrative burden for agencies. One agency suggests that within-grade increases be excluded when determining the 20 percent-of-base-pay limit. One agency thinks that an employee should not receive both a quality step increase and a performance award in the same 1-year period.

Discussion: OPM agrees that the "discounting" features of the performance awards program for GS and WG are inconsistent with performance awards provisions of the PMRS, and therefore, create inequity between the two systems.

Proposed Change: The language previously contained in § 531.6.5(b)(3) has been removed. New language would be added in § 430.504 (e)(1) and (e)(2) providing discretionary authority to consider recent promotions in determining the amount of a performance award. This new language would parallel the PMRS regulations.

5. *Issue:* Level of Performance Required for Performance Award (§ 531.606(a)(4)).

Summary of Comments: One agency thinks that OPM should permit performance awards for employees who receive a "Fully Successful" summary rating, as permitted for PMRS employees. One agency suggests adding the requirement that, when an employee receives a performance award for performance of "Exceeds Fully Successful" on an element, the employee's summary rating must be at least "Fully Successful". Another agency suggests clarifying that the elements for which the employee receives a performance award must be critical elements, and that the rating on which a performance award is based must be a current rating.

Discussion: OPM believes that in order to achieve an effective pay-for-performance program which is perceived by employees to be both fair and equitable, awards amounts must be commensurate with the level of performance sustained by employees as evidenced by their current rating of record. The higher the level of performance attained, the larger the reward should be. To provide for consistency and equity, employees covered by Part 430, Subpart E, should have the same opportunity for recognition of their high level performance as those who supervise them.

Proposed Change: Performance awards provisions contained in Part 430, Subpart E, would parallel the performance awards provisions of the PMRS and would not prohibit awards for performance rated "Fully Successful". Performance awards under the subpart would be granted only based on a current rating of record as is provided in PMRS.

6. *Issue:* Prohibition on Mandatory Performance Awards and Funding of Performance Awards (§ 531.606(b) and § 531.609).

Summary of Comments: One agency thinks that awards should be mandatory for General Schedule and prevailing rate employees who receive "Outstanding" ratings. One agency comments that it has a union contract requiring mandatory performance awards, and would be unable to implement this provision until the contract expires. Two agencies point out that the paragraphs cross-referenced in this provision (§§ 430.204(t) and 431.204(w) of the proposed regulations) do not mandate awards, and request that OPM clarify this language. Two labor organizations suggest that OPM delete the prohibition on mandatory awards, and one organization suggests that, on the contrary, awards should be made mandatory, to provide incentive to employees.

One agency recommends that OPM regulate funding levels for these awards, consistent with the PMRS regulations on performance awards. Three agencies request clarification of the provisions for determining funding for performance awards; one suggests using the same factors prescribed in the PMRS regulations for determining the funding level.

Discussion: OPM agrees that, within existing appropriated funds, there should be consistency with the provisions of the PMRS which provide for mandatory awards for overall outstanding performance. This would provide for equitable recognition of "Outstanding" performance by employees as is now provided for supervisors, and would support the pay-for-performance concept.

In line with agency comments to parallel the PMRS, OPM agrees that agencies should establish funding levels for performance awards for GS and WG employees within existing appropriated funds, thereby providing for consistency and equity between the two systems.

Proposed Change: Provisions in the new Part 430, Subpart E, would provide for performance awards that are consistent with those granted to employees covered by the PMRS. A new section on "Funding and Payment" (§ 430.504) would be added to provide that agencies should establish annual funding, within existing appropriated funds, and should expend these funds for performance awards. Section 430.504 would provide that agencies should pay performance awards of at least 2 percent of base pay for employees receiving a rating of record of level 5 ("Outstanding").

7. *Issue:* Payment of Performance Awards (§ 531.607).

Summary of Comments: One agency suggests that OPM add a paragraph to this provision, indicating that an employee cannot appeal non-payment of a performance award, similar to the provision on PMRS performance awards.

Discussion: Because of the provision to pay awards within the limit of existing appropriations, OPM agrees that non-payment of a performance award should not be appealable.

Proposed Change: Language has been proposed in § 430.504(g) stating that failure of an agency to pay an award may not be appealed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

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Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for Part 293 continues to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subpart C, § 293.304 is revised to read as follows:

Subpart C—Official Personnel Folder.

* * * * *

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plans on which they were based, may also be maintained in the Official Personnel Folder. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293–31.

3. Section 293.306(b) is revised to read as follows:

§ 293.306 Use of existing folders upon transfer or reemployment.

* * * * *

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for performance ratings of record and the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of non-SES employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder;

(3) Add the employee's summary rating, prepared when the employee changes positions, as provided in Part 430; and

(4) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

PART 430—PERFORMANCE MANAGEMENT

4. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

5. Section 430.207 is added, to read as follows:

§ 430.207 Performance appraisal advisory committees.

(a) Each agency shall establish one or more performance appraisal advisory committees. Each committee will consist of at least six members chosen by the agency head or his or her designee. One-half of the committee must be composed of employees covered by the PMS and in the competitive service. The chair of the committee will be chosen by the head of the agency or his or her designee.

(b) Agency Performance Management Plans shall set forth the composition and operating procedures for the committee(s). Committees shall become operational upon OPM's approval of the agency's Performance Management Plan and shall report to their respective agency heads or designees at least annually.

(c) The committee(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The committee shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans. Such reviews shall be conducted after performance plans have been approved and communicated to employees.

(d) Committees shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the application of standards but shall not recommend any distribution of ratings. Committees shall have no authority to approve or modify performance ratings. Such reviews shall be conducted after ratings of record have been approved and communicated to employees.

(e) Committees are also responsible for studying the feasibility of organizational awards.

6. Section 430.504 is added, to read as follows:

§ 430.504 Funding and payment.

Each agency will, within existing appropriated funds, fund and pay performance awards as follows:

(a)(1) At the beginning of each fiscal year, each agency shall determine the amount of money available for performance awards for that fiscal year.

(i) Each agency should pay a minimum of .75 percent of the estimated aggregate amount of covered employees' basic pay for that fiscal year; and

(ii) An agency should not spend more for performance awards than 1.5 percent of the estimated aggregate amount of covered employees' basic pay for any fiscal year.

(2) Agencies having 20 or fewer covered employees, that have determined that the funding under paragraph (a)(1) of this section is insufficient to provide an effective performance awards distribution, must submit to OPM, at the beginning of each fiscal year, a higher level of funding for performance awards, which should not exceed 10 percent of the aggregate amount of basic pay for covered employees in that fiscal year. The submission shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a mimimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Awards amounts that would be payable under paragraph (a)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(3) In determining the estimated aggregate amount of covered employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered during the previous year;

(ii) The aggregate rates of basic pay for those employees;

(iii) Significant changes in the number of covered employees expected in the current fiscal year, such as by attrition, reorganization, expansion, or reduction in force;

(iv) The distribution of performance ratings in the agency; and

(v) The amount of the general increases under 5 U.S.C. 5303 and 5 U.S.C. 5305, within-grade increases under 5 U.S.C. 5335, and quality step increases under 5 U.S.C. 5336, that will be paid to covered employees in the current fiscal year.

(4) Funds for incentive awards under Part 451 of this chapter shall not be included in the performance awards fund, inasmuch as incentive awards are sperarate from performance awards.

(b)(1) Performance awards shall be paid at least annually, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the employee's performance appraisal period as the agency deems practicable. This does not preclude agencies from granting Superior Accomplishment Awards under Part 451, Subpart A of this chapter at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a position covered by this subpart on the last day of the current performance appraisal period for which performance awards determinations are being made.

(c)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance awards are being made. An employee with a rating of level 5 ("Outstanding") should receive a performance award of at least 2 percent of base pay, but not more than 10 percent in any given year. Based on an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees related at level 5.

(3) An employee with a rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(d) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(e)(1) In granting performance awards as provided in paragraph (c) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan.

(2) Performance awards that have been adjusted because of promotions will not be considered in meeting the requirements of paragraphs (c)(2) and (c)(3) of this section for smaller awards at a lower rating level.

(f)(1) Except as provided in paragraph (f)(2) of this section, when an agency cannot prepare a rating of record for an employee when scheduled in the Performance Management Plan, the employee's rating period must be extended so that the minimum appraisal period is provided, after which a rating of record shall be prepared as required in § 430.206(e) and used as the basis for granting a performance award in accordance with the Performance Management Plan.

(2)(i) The agency head will determine whether an employee will be granted a performance award when an agency cannot prepare a rating of record for an employee when specified in the Performance Management Plan because the employee has not served during the agency appraisal period for the minimum appraisal period; and

(A) Is on long-term training; or

(B) Is on an approved absence that would be creditable service under § 531.406 of this chapter; or

(C) In an agency having established an annual appraisal period for all covered employees, is on leave without pay (LWOP) for a period of time such that the employee is not in a pay status during the agency's appraisal period for at least the minimum appraisal period; or

(D) Is newly appointed to the Government within 90 days of the end of the agency's appraisal period (the agency having established an annual appraisal period for all covered employees). For purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(ii) If an award is granted, the following procedures will be used to determine the award amount:

(A) The employee's rating of record under 5 U.S.C. 4302 or 4302a is extended and the appropriate award is granted, if that rating was given no earlier than the previous rating period; or

(B) If there is no rating of record that can be extended, the employee receives a performance award equivalent to that granted for a level 3 (Fully Successful) rating, as specified in the agency's Performance Management Plan.

(g) Failure of an agency to pay a performance award under this subpart may not be appealed.

(h) Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

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Part III

Department of Agriculture

Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

7 CFR Parts 713 et al.
Food Security Act; Implementation; Interim Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427

Food Security Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food Security Act of 1985 (the "Act"), which was enacted on December 23, 1985, amended the Agricultural Act of 1949 to authorize price support, payment, and production adjustment programs for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. This interim rule amends the regulations found at 7 CFR Parts 713 and 770 to set forth certain terms and conditions of these programs. The regulations found at 7 CFR Part 796 are amended by this interim rule to incorporate provisions of the Act with respect to the denial of program benefits to persons convicted of violations of Federal and State controlled substance statutes. The regulations set forth at 7 CFR Parts 795, 1421, 1425, and 1427 which relate to payment limitation, price support loans, and cooperative marketing associations also are amended to conform to the provisions of the Act, to delete references to obsolete provisions, and to improve the operation of these programs for the 1986 and subsequent crop years. Since numerous changes are made to 7 CFR Parts 713, 770, 796, and 1425, the interim rule sets forth the entire provisions of these parts.

EFFECTIVE DATE: March 6, 1986. Comments must be received on or before April 10, 1986, in order to be assured of consideration.

Submit Comments To: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2145, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Von Garlem, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2145, Washington, DC 20013 (202) 447-6761.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses are being prepared with respect to the programs for the 1986 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Dairy Indemnity Payments—10.053; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Water Bank Program—10.062; Agricultural Conservation Program—10.063; Forestry Incentives Programs—10.064; Rice Production Stabilization—10.065; Emergency Feed Program—10.066; Grain Reserve Program—10.067; Rural Clean Water Program—10.068, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0040, 0560–0071, 0560–0091, 0560–0092, 0560–0086, and 0560–0650 have been assigned.

Since producers participating in the programs authorized by 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 have already planted or are preparing to plant the crops affected by this interim rule and approved cooperatives will be obtaining price support loans and purchase agreements for their members with respect to the 1986 crop year, it has been determined that this interim rule shall be effective upon filing with the **Federal Register**. However, comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Statutory Background—Food Security Act of 1985

The Act added sections 101A, 103A, 105C, and 107D to the Agricultural Act of 1949, as amended (the "1949 Act"), effective for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat, respectively. The Act also amended section 103(h), 107C, and 406, added sections 107E and 107F and added a new title V to the 1949 Act which pertain to the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. Section 801 of the Act amended section 201 of the 1949 Act to provide discretionary marketing loans with respect to the 1986 through 1990 crops of soybeans. Section 310 of the Act amended sections 332, 333, 334, 335, 336, and 338 of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), with respect to the 1986 crop of wheat. The Act further suspended sections 331, 339, 379b, and 379c of the 1938 Act with respect to the 1986 through 1990 crops of wheat. The Act also suspended sections 342, 343, 344, 345, 346, and 377 of the 1939 Act, sections 103(a) and 203 of the 1949 Act with respect to the 1986 through 1990 crops of upland cotton, and section 105 of the 1949 Act with respect to the 1986 through 1990 crops of feed grains.

Section 1001 of the Act provides that the total amount of payments, excluding disaster payments, that a person may receive in accordance with one or more of the annual programs authorized for wheat, feed grain, rice, and upland and extra long staple cotton may not exceed $50,000.

The total amount of disaster payments which a person may receive under such programs is $100,000. Section 1764 of the Act provides that, if a person has been convicted under Federal or State law of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year, such a person shall be ineligible for specified program benefits for that crop year and the four succeeding crop years.

This interim rule amends 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 to set forth a number of terms and conditions with which producers must comply in order to be eligible for benefits with respect to various commodity programs for the 1986 and subsequent crops of upland cotton, feed grains, and wheat, and the 1985 and subsequent crops of rice. A summary of the significant provisions authorized for these crops is set forth in Section I, Statutory Basis. Section II, Changed Provisions, sets forth an explanation of the changes made by this interim rule in each part as compared to the regulations in effect with respect to the 1985 crop year.

I. Statutory Basis

A. The Food Security Act of 1985

(1) *Price support*—The Act provides that, with respect to the 1986 through 1990 crop years, price support shall be made available to producers of rice, upland cotton, feed grains, and wheat by means of nonrecourse loans and/or purchase agreements. The general terms and conditions for price support loans and purchase agreements are found generally in 7 CFR Parts 1421 and 1427. The loan and purchase rates for each such crop are determined annually by the Secretary of Agriculture in accordance with applicable statutory provisions. These statutory provisions further provide that the Secretary is authorized to adjust the loan and purchase rates for wheat and feed grains to maintain a competitive market position for such crop. For the 1986 through 1990 crops, the Secretary is authorized for feed grains and wheat, and is required for upland cotton and rice, to permit producers to repay such a loan at a reduced rate which reflects the world market price, a provision commonly known as "marketing loans." The Secretary is required to make marketing loans available for the 1985 crop of rice. Advance recourse loans also are authorized, at the Secretary's discretion, for feed grains, wheat, upland cotton, and rice, if eligible producers obtain crop insurance with respect to the crop securing such a loan.

(2) *Loan deficiency payments*—The Act authorizes the Secretary to make loan deficiency payments available with respect to the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat to producers who are eligible for price support loans and purchases but who agree to forego such loans and purchases. The Secretary is required to make available a loan deficiency program for the 1985 crop of rice. The payment rate for such payments is the difference between the loan rate and the loan repayment rate applicable for "marketing loans". The payment is made for the quantity of the crop which is eligible for a price support loan but may not exceed the product of the farm program acreage times the farm program payment yield.

(3) *Deficiency ("target price") payments*—The Act provides that deficiency payments shall be made available to producers of rice, upland cotton, wheat, corn, grain sorghum, oats, and, if designated by the Secretary, barley. Payments for any of these crops are computed by multiplying: (i) The payment rate, by (ii) the farm program acreage for the crop, and by (iii) the farm program payment yield for the crop. The payment rate for these commodities is the amount by which the higher of the national weighted average market price received by producers during the first five months of the marketing year for the crop (the calendar year which includes the first five months of the marketing year for such crop for upland cotton) or the national average price support loan level for such crop is less than the established "target" price.

With respect to wheat and feed grains, if the Secretary reduces the national average price support loan level in order to maintain a competitive market position for the commodity, the Secretary is required to increase the deficiency payments for the crop of such commodity by a corresponding amount. Such amount is computed by determining a separate deficiency payment for the commodity by using a payment rate that is the smaller of: (i) The difference between the national average price support loan level before the reduction is made and the national average price support loan level after the reduction is made, or (ii) the difference between the national average price support loan level before such a reduction and the national weighted average market price for the crop received by producers during the marketing year.

At the Secretary's option, the deficiency payment rate for each of the 1986 through 1988 crops of wheat and feed grains may be the amount by which the established "target" price exceeds the higher of: (1) The loan rate for the crop of the commodity before the loan rate is reduced by the Secretary to maintain a competitive market position or (2) a specified per bushel price for the crop of the commodity. With respect to corn, this specified price is $2.04 for the 1986 crop year, $2.19 for the 1987 crop year, and $2.24 for the 1988 crop. With respect to wheat, this specified price is $2.55 for the 1986 crop, $2.65 for the 1987 crop, and $2.82 for the 1988 crop. The deficiency payment rates for grain sorghum, oats, and, if designated by the Secretary, barley, are to be established at such rate which is determined to be fair and equitable in relation to the rate at which payments are made available for corn. The established "target" price for each crop will be announced by the Secretary annually.

(4) *Disaster payments*—The Act generally provides that the Secretary shall make prevented planting payments to producers of rice, upland cotton, feed grains, and wheat unless prevented planted crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage. The Act also generally provides that the Secretary shall make reduced yield payments to producers of rice, upland cotton, feed grains, and wheat unless reduced yield crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage.

(5) *National program acreage*—The Act generally provides that the Secretary is required to announce a national program acreage for each crop of rice, upland cotton, feed grains, and wheat. The national program acreage for any crop shall be the number of harvested acres the Secretary determines will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop. The national program acreage for any crop is announced by the Secretary annually. However, the national program acreage is not applicable for any crop of a commodity for which an acreage limitation program has been announced. The national program acreage, the program allocation factor, and the individual farm acreage determination are used in all crop years when an acreage limitation program has not been announced for a crop.

(6) *Program allocation factor*—The Act generally provides that the Secretary is required to determine a program allocation factor for each crop of rice, upland cotton, feed grains, and wheat. In general, the factor is determined by dividing the national program acreage for the crop by the

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number of acres that the Secretary estimates will be harvested for such crop. The program allocation factor is announced by the Secretary annually. However, the program allocation factor is not applicable for any crop of a commodity for which an acreage limitation program has been announced.

(7) *Individual farm acreage*—The Act generally provides that the individual farm program acreage for each crop of a commodity shall be determined by multiplying the allocation factor by the acreage of the crop of the commodity planted for harvest on the farm. However, this is not applicable for any crop of a commodity for which an acreage limitation program has been announced.

(8) *Acreage limitation (reduction) program*—The Act authorizes the Secretary to establish an acreage limitation program for any of the crops of rice, upland cotton, feed grains, and wheat if the Secretary determines that the total supply of any such commodity will be excessive in the absence of such a program. The limitation shall be achieved by applying a uniform percentage reduction to the acreage base for the crop for the farm. Producers who knowingly produce in excess of the permitted acreage of the crop are ineligible for loans and purchases and all payments with respect to that crop on that farm. The acreage which is reduced under the acreage limitation program is required to be devoted to conservation uses. Under this program, the individual farm program acreage is the acreage planted on the farm to the crop within the permitted acreage. Such program is commonly called an "acreage reduction program."

(9) *Set-aside program*—The Act authorizes the Secretary to establish a set-aside program for any crop of wheat or feed grains if the Secretary determines that the total supply of wheat or feed grains would be excessive in the absence of such a program. Under a set-aside program, producers on a farm are required to devote to conservation uses an acreage equal to a specified percentage of the acreage planted to the crop. There may also be a limit imposed on the acreage planted to the crop.

(10) *Land diversion program*—The Act authorizes the Secretary to make land diversion payments to producers of rice, upland cotton, feed grain, and wheat if a land diversion program is determined to be necessary in order to adjust the total national acreage of a crop of a commodity to desirable goals. The acreage diverted must be devoted to conservation uses. The extent of the diversion and the manner in which diversion contracts are made are to be determined by the Secretary. With respect to the 1986 crops of wheat and feed grains, if the Secretary determines that specified levels of each respective commodity will exist on the first day of the marketing year for that crop, a diversion program with in-kind payments is required. A land diversion program is required with respect to producers of the 1986 crops of wheat who planted their crop prior to the announcement of the 1986 Wheat Program.

(11) *Acreage conservation reserve*—The Act generally provides that the Secretary shall issue regulations with respect to the conservation uses to which reduced acreage, set-aside acreage, and diverted acreage must be devoted. This acreage is termed the "acreage conservation reserve" ("ACR"). These regulations are required to assure that the ACR is protected from weeds as well as wind and water erosion. The Secretary may permit the acreage to be devoted to certain crops and uses if the production is needed to provide an adequate supply of the commodity, is not likely to increase the cost of the price support program, and will not affect farm income adversely. This acreage may be devoted to wildlife food plots or wildlife habitat. The Secretary may pay a share of the cost of these practices or make additional payments if the producer agrees to permit public access to the land for hunting, fishing, trapping and hiking. State Agricultural Stabilization and Conservation committees are authorized to approve haying and grazing of this acreage for the 1986 crop year and grazing in the 1987 through 1990 crop years, except that haying and grazing may not be permitted during a 5-consecutive-month period of the year which is established by the State committee.

(12) *Cross compliance*—If a "cross compliance" requirement is implemented by the Secretary, producers on a farm who participate in a commodity program for a crop of rice, upland cotton, wheat or feed grains cannot exceed the crop acreage base established for the farm for any such commodity, including ELS cotton, if there is also an acreage limitation program in effect for any such commodity, including ELS cotton.

(13) *Normal Crop Acreage ("NCA")*—Section 1001 of the Food and Agriculture Act of 1977 was amended by the Act to provide that, whenever a set-aside program is in effect for a crop of wheat or feed grains, a requirement may be imposed as a condition of eligibility for program benefits that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary reduced by any set-aside or diverted acreage. When this NCA limitation is in effect, the Secretary may increase the deficiency payments or make payments to compensate the producers for not exceeding the NCA and participating in any required set-aside program.

(14) *Payment limitation*—The Act provides that the total amount of disaster payments that a person shall be entitled to receive under one or more of the rice, upland cotton, feed grains, and wheat programs shall be limited to $100,000. The total amount of deficiency and diversion and wheat haying and grazing payments that a person shall be entitled to receive under one or more of the rice, upland and EIS cotton, feed grains, and wheat programs shall be limited to $50,000. A portion of the deficiency payments may be exempt from the limitation, as are certain other types of payments. The Secretary is authorized to issue regulations defining the term "person." These regulations are found at 7 CFR Part 795.

(15) *Advance deficiency and diversion payments*—The Act requires the Secretary to make advance deficiency payments for the 1986 crops of rice, upland cotton, feed grains, or wheat for which an acreage limitation or set-aside program is announced and for which deficiency payments are projected. The Secretary is authorized to make available advance deficiency payments for the 1987 through 1990 crops and advance diversion payments for the 1986 through 1990 crops. Such payments are limited to producers who enter into a contract to comply with the terms and conditions of the program for the commodity for the crop year. Conditions for refunding unearned payments are also prescribed.

(16) *Acreage credited for payment*—The Act provides for including acreages devoted to nonprogram crops and conservation uses in excess of 8 percent of the permitted acreage of the program crop in the farm program acreage for a crop for which an acreage limitation program is in effect. However, such acreages of nonprogram crops and conservation uses may be included only if the acreage of the program crop planted for harvest is at least 50 percent of the permitted acreage for the crop. "Nonprogram crops" are defined by the Act as crops other than wheat, feed grains, upland and extra long staple (ELS) cotton, rice, and soybeans.

(17) *Farm acreage bases*—The Act authorizes the Secretary to establish a farm acreage base for the 1986 crop

year, and requires the establishment of a farm acreage base for the 1987 through 1990 crop years. The farm acreage base is generally the sum of the crop acreage bases plus the sum of the average of the acreages devoted to soybeans and conserving uses on the farm in the 1986 and subsequent crop years. The sum of the crop acreage bases may exceed the farm acreage base only in the case of an established practice of doublecropping.

(18) *Crop acreage bases*—The Act added section 504 to the 1949 Act to provide for establishing crop acreage bases for each crop of rice, upland cotton, feed grains and wheat based upon the average of the acreages planted and considered planted to such commodity in the previous 5 crop years. For cotton and rice, the average of the acreages planted and considered planted to each such commodity in the previous 5 years shall be computed disregarding all years in which such acreage is zero. Pub. L. 99–253, approved February 28, 1986, amended section 504 of the 1949 Act to provide that if a rice or upland cotton base is calculated by disregarding a year in which the acreage of such crop was zero, the crop acreage base established for such commodity shall not exceed the average of the acreages planted and considered planted to such commodity in the previous 2 crop years. The Act provides for the determination of acreages to be included as "considered planted" acreage, including cases of prevented planting or failed acreage due to natural disaster or other condition beyond the control of the producer, and for adjustments for rotations and other factors. The Act also authorizes the Secretary to make upward adjustments in the crop acreage base for a crop on a farm for a year for which a farm acreage base is established provided the upward adjustment is offset by an equivalent downward adjustment in another crop acreage base(s) for the farm. Any such adjustment is limited to 10 percent of the farm acreage base.

(19) *Farm program yields*—The Act provides for the establishment of a farm program payment yield for each farm for each program crop for each crop year. The farm program payment yield for 1986 and 1987 crops is required to be the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the highest and lowest yields. A farm program payment yield for a year may be assigned based on similar farms if such a yield has not been previously established for the farm. The Act authorizes the Secretary to establish the farm program payment yields for the 1988 through 1990 crops based upon the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the lowest and highest yields. Alternatively, the Secretary is authorized to establish the 1988 through 1990 farm program yields based upon the average of the yields for the 5 immediately preceding crop years using the yield per harvested acre for the 1987 and subsequent crop years and the farm program payment yields for the 1983 through 1986 crop years. The crop year with the highest yield, the crop year with the lowest yield, and any crop year in which the crop was not planted on the farm are excluded when computing such 5-year average.

(20) *Reporting requirement*—The Act authorizes the Secretary to require any producer to provide planting and production history of a farm for each of the five crop years immediately preceding the crop year.

(21) *Inventory reduction program*—The Act authorizes the Secretary to establish an inventory reduction program for any crop of rice, upland cotton, feed grains, or wheat for which an acreage limitation or set-aside program is in effect. Under such program, producers would reduce their acreage of the crop planted for harvest by one-half of the requirement otherwise applicable under the set-aside or acreage limitation program for the commodity. If such producers agreed to forego obtaining a loan or purchase agreement and deficiency payments, they would be eligible for payments in an amount equal to the loan deficiency payments.

(22) *Payments in CCC-owned commodities*—The Act authorizes the making of a portion of disaster payments, inventory reduction payments, deficiency and diversion payments in the form of CCC-owned commodities. In connection with such payments, the Secretary is authorized to acquire and use like commodities that have been pledged to CCC as security for price support loans and to use other commodities owned by CCC. The Secretary may make such payments by delivering the commodity to the producer by transfer of negotiable warehouse receipts, by issuance of certificates redeemable for a CCC-owned commodity, or by other methods as the Secretary determines to be appropriate.

(23) *Advance program announcement*—The Act permits the Secretary to offer an option to producers of the 1987 through 1991 crops of wheat, feed grains, upland cotton, and rice whenever the terms of the commodity price support, production adjustment, and payment program for such crop are not announced by a specific deadline. Under the option, the Secretary is authorized to make loans and purchases and deficiency payments available to producers of the crop on the same basis and under the same terms and conditions which are applicable to the program announced for such crop for the preceding year. The acreage base and farm program payment yield for the crop are required to be the same as those established for the preceding year.

(24) *Cost reduction options*—The Act authorizes the Secretary to take certain actions if the actions would reduce the total of the direct and indirect costs to the Federal Government of a commodity program without adversely affecting income to small and medium sized producers participating in such program. The actions include permitting participating producers to submit bids to convert the acreage of a crop planted for harvest to diverted acreage in return for payments in the form of CCC-owned commodities. The Secretary must determine that world supply or demand conditions have substantially changed after the announcement of the program for the crop and that further action to prevent a surplus is necessary. Commodity payments under this program are exempt from the $50,000 limitation which is applicable to deficiency and diversion payments but such payments are limited to a total of $20,000 per producer for each commodity for each crop year.

Other such options include the issurance of interest payment certificates to any producer who repays a price support loan, with interest. The producer would be able to redeem these certificates for commodities owned by CCC. The Act also provides that the Secretary may provide for the settlement of nonrecourse loans in an amount which is less than the principal loan amount, plus interest, if such action will reduce loan forfeitures, or storage expenses, or result in the payment of a portion, rather than none, of the accumulated interest which has occurred with respect to such loans.

(25) *Targeted Wheat Payments*—The Act authorizes the Secretary to adjust the established "target" price for a crop of wheat on the basis of (A) the percentage by which the producers reduce the acreage planted to wheat on the farm for harvest from the crop acreage base in accordance with an acreage limitation program or (B) a graduated scale of production under which the amount of payments made to producers would vary for specified

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quantities of wheat produced by a producer and such payments would be targeted to commercial family farmers who have annual gross sales over $20,000.

(26) *Multi-year set-aside*—The Act authorizes the Secretary to enter into multi-year set-aside contracts for a period which is not to extend beyond the 1990 crops. Only producers participating in the annual program for one or more crops would be eligible to contract with the Secretary. The contracts would include provisions for maintaining vegetative cover on the land withdrawn from production. The Secretary would be required to provide cost-share incentives for the establishment of such cover.

(27) *Conservation Reserve Program*—The Act provides for a Conservation Reserve Program under which producers will enter into contracts with CCC to take highly erodible land out of crop production for a period of 10 years. The terms and conditions of such program are set forth at 7 CFR Part 704. The Act provides, however, that the acreage bases established on a farm shall be temporarily reduced when the farm participates in the Conservation Reserve Program and shall be restored upon the expiration of the Conservation Reserve Program contract.

(28) *Sodbuster/Swampbuster Program*—The Act includes requirements which are commonly known as the "Sodbuster and Swampbuster" programs. Under these provisions, producers will be ineligible for any benefit under the programs set forth at 7 CFR Part 713 if they bring into crop production highly erodible lands or wetlands except under certain limited conditions.

(29) *Wheat Poll*—The Act requires that the Secretary conduct, no later than July 1, 1986, a poll by mail ballot of eligible producers of wheat to determine whether the producers favor imposition of mandatory limits on the production of wheat that will result in wheat prices that are not lower then 125 percent of the cost of production. The Secretary is required to have the poll reflect differences in size and type of farm operations, types and classes of wheat produced, and demographic information. An eligible producer is one who produced a crop of wheat during at least one of the 1981 through 1985 crop years on a farm with a wheat acreage base of at least 40 acres.

(30) *Proclamation of Wheat Marketing Quotas and Referendum*—The Act authorizes the Secretary to proclaim, by June 15, 1986, a national marketing quota for each of the 1987 through 1990 marketing years for wheat. Such quotas shall be the quantity estimated to be required to meet anticipated needs during the marketing year, considering domestic requirements, export demand, emergency food aid needs, and adequate carryover. If national marketing quotas are proclaimed, the Secretary is required to conduct, by mail ballot, by August 1, 1986, a referendum of eligible producers to determine whether they favor or oppose marketing quotas for the 1987 through 1990 marketing years for wheat. If at least 60 percent of the producers voting favor quotas, marketing quotas for wheat shall be in effect for such marketing years.

(31) *Farm Marketing Quotas*—If marketing quotas for wheat are proclaimed, the Act requires that the Secretary establish an apportionment factor for each crop. The factor generally is determined by dividing the national marketing quota by the average wheat production during the 1981 through 1985 crop years. The factor is used to compute a farm marketing quota for each farm on which wheat was planted for harvest, or considered planted to harvest, during the 1981 through 1985 crop years. For such farms, the quota is generally the result of multiplying the apportionment factor, times the average yield during such period, times the average number of acres planted or considered planted to wheat during the period. The farm marketing quotas shall be established by June 1 of the year before the crop year for which quotas are in effect.

(32) *Marketing Penalties*—The Act provides for the assessment of penalties on all marketing of wheat from a farm in excess of the farm marketing quota. Penalties also are imposed with respect to any producer who falsely identifies, or fails to certify, the acreage planted to wheat for harvest, or fails to account for the disposition of any wheat produced on such acreage. The penalty is 75 percent of the national average market price for wheat during the immediately preceding marketing year. The Act specifies who must pay the penalty and the collection and disposition of such penalties.

(33) *Conservation Easements*—The Act authorizes the Secretary to acquire conservation easements on wetland, upland, or highly erodible land. The easements are to be acquired by cancelling a portion of the outstanding loans of the landowner acquired under the programs administered by the Farmers Home Administration.

(34) *Wheat and feed grain export certificate program*—The Act provides that the Secretary may establish a program to provide incentives for the export of any of the 1986 through 1990 crops of wheat or feed grains.

(35) *Other provisions.* The Act includes provisions which relate to the loan and purchase programs made available in accordance with the 1949 Act. The provisions include advance recourse commodity loans, interest payment certificates, CCC sales price restrictions, and the farmer-owned reserve.

B. The Commodity Credit Corporation Charter Act, as Amended

The Commodity Credit Corporation Charter Act, as amended, provides CCC with broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses. Accordingly, when applicable, this act is cited as the authority for certain provisions of this interim rule.

II. Changed Provisions

A. Part 713, Feed Grain, Cotton, Rice, and Wheat

(1) *General.* The following is a discussion of a number of the significant provisions of the 1986 through 1990 rice, upland cotton, feed grains, and wheat programs which differ from the provisions which were applicable to these programs for the 1982 through 1985 crops of these commodities. The provisions of the 1986 through 1990 ELS cotton programs are generally not changed from the provisions which were applicable for the 1984 and 1985 crops. Where some changes have been deemed advisable to ensure more conformity between ELS cotton and the other commodities, such changes are noted below.

(2) *Farm program payment yields.* This interim rule provides that the 1986 and 1987 farm program payment yields for rice, upland cotton, feed grains, and wheat shall be the average of the farm program payment yields for the crop on the farm for the 1981 through 1985 crop years excluding the highest and lowest yields. If the crop is not produced in the crop year, a yield shall be assigned by the county Agricultural Stabilization and Conservation (ASC) committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, ASCS ("Deputy Administrator") based upon similar farms.

The farm program payment yields for rice, upland cotton, feed grains, and wheat for the 1988 through 1990 crop years may be either the farm program payment yield which is applicable for

the 1986 and 1987 crops of the commodities or the average of the actual yields for the 5 previous crop years, excluding the highest and lowest yields. If actual yields are used beginning with the 1988 crop year, the actual yield per harvested acre for each of the 1987 and subsequent years shall be used in computing the farm program payment yield for the current year and for the 1983 through 1986 crop years, the farm program payment yield for the commodity for such year shall be used. When the Secretary announces the 1987 commodity programs, the announcement will include a statement as to whether evidence of 1987 actual yields must be furnished in order to compute 1988 farm program payment yields. The interim rule includes provisions which are applicable to ELS cotton yields and provisions which may be applicable to actual yields for rice, upland cotton, feed grain, and wheat for the 1987 and subsequent crops.

(3) *Prevented planting and reduced yield payments.* This interim rule provides that prevented planting and reduced yield payments shall be made to producers of rice, upland cotton, feed grains, and wheat who are otherwise eligible for program benefits if prevented planting or reduced yield crop insurance, respectively, is not available under the Federal Crop Insurance Act with respect to the producer's acreage of the commodity.

(4) *Definition of conserving uses.* In order to distinguish between acreage which is designated under the Conservation Reserve Program, acreage which is designated as acreage conservation reserve ("ACR") under the annual commodity production adjustment programs, and the "conservation use" acreage which is specified in the Act, the phrase "conserving uses" has been adopted. For the purpose of determining acreage that can be credited as farm program acreage for payment and for history purposes when an acreage reduction program is in effect, this interim rule provides that acreages devoted to conserving uses shall include all cropland except: (1) Acreage devoted to crops for which price support loans and purchases are available, (2) acreage devoted to nonprogram crops, (3) acreage designated as ACR, (4) acreage devoted to conservation uses under the Conservation Reserve Program, Water Bank Program or similar program, and (5) other acreage not available as cropland in the current year as determined by the Deputy Administrator, State and County Operations (the "Deputy Administrator"). The farm operator will have the opportunity to designate the crop program to which the acreage of nonprogram crops and conserving uses shall be credited.

(5) *Planted and Considered Planted Credit for Determining Crop Acreage Bases.* For the purpose of determining acreage bases established for rice, upland and ELS cotton, feed grains, or wheat for the 1986 and subsequent crop years, this interim rule provides that the acreage planted and considered planted for the 1981 through 1985 crop years shall be that acreage which is so determined in accordance with the regulations in 7 CFR Part 713 applicable to such crop year. Because producers during these years were informed that they would not be penalized for underplanting a program crop, it would be unfair and inequitable to change the manner in which planted and considered planted credit was determined with respect to these crop years.

For 1986 and subsequent crops, the acreage planted and considered planted for farms on which producers participated in the program for such crop shall be the sum of the acreage planted for harvest, the required ACR, acreage which the producer was prevented from planting to the crop due to a natural disaster or similar conditions beyond the producer's control, and the acreage of nonprogram crops and conserving uses credited to the crop. The total shall not exceed the acreage base for the crop for such year. However, if a cross compliance requirement is not in effect for such crop for such year, the total acreage of nonprogram crops and conserving uses credited to all crops on the farm may cause the total of the crop acreage bases computed for the next year to increase from the total in the previous year.

These provisions permit a participating producer who underplants the permitted acreage of the crop on the farm to receive planted and considered planted credit equal to the acreage base for the crop. This applies regardless of whether the producer planted 50 percent of the permitted acreage in order to receive deficiency payments on the entire permitted acreage less 8 percent.

For farms on which producers do not participate in the program for the crop for the 1986 through 1990 crop years, the acreage planted and considered planted shall be the sum of the acreage planted for harvest and the acreage which the producer was prevented from planted to the crop due to a natural disaster or similar condition beyond the producer's control. As in prior crop years, a producer who does not plant any acreage of the program crop may still obtain considered planted credit equal to the crop acreage base for the farm. However, the considered planted credit is limited to the acreage of nonprogram crops and conserving uses on such farm which is not credited to other program crops.

(6) *Farm Acreage Bases*—This interim rule provides that the farm acreage base for a crop year shall be the sum of the crop acreage bases for all crops on the farm for the crop year plus the average of the acreages of soybeans and conserving uses as defined in paragraph (3) above for the 1986 and subsequent crop years. This interim rule provides that the farm acreage base cannot exceed the total cropland of a farm except if such excess is due to an established practice of double cropping. ELS cotton acreage bases as well as acreage allotments established for tobacco and peanuts are not taken into consideration in computing farm acreage bases.

(7) *Haying and Grazing ACR*—This interim rule permits State committees to determine a consecutive 5-month period during which haying and grazing of ACR is prohibited.

(8) *Failed Acreage and Prevented Planted Acreage Credit*—This interim rule provides that, whenever a natural disaster or similar condition prevents the planting of a program crop or causes a program crop to fail, the producer may plant another crop. The acreage of the crop initially planted or intended to be planted will be credited for the purpose of determining farm and crop acreage bases. The acreage initially planted will also be considered planted for the purpose of determining deficiency payments and program compliance. Except in the case of crops subject to marketing or poundage quotas and in the case of established doublecropping patterns, the acreage of the crop subsequently planted will not be considered as being planted for any program purpose, including determining deficiency payments, determining compliance with program requirements, and establishing farm and crop acreage bases in future years. With respect to the commodity programs established for the 1982 through 1985 crop years, the acreage of the crop which was subsequently planted was considered as having been planted to the subsequent crop for all program purposes.

(9) *Crop Acreage Bases*—This interim rule continues the provisions which were applicable to the 1982 through 1985 crop years for recognizing established crop rotations when establishing crop

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acreage bases. Because such rotations are commonly used by producers, continuing to recognize rotation patterns in establishing crop acreage bases will result in more crop acreage bases which reflect the actual production history of the farm. Previously, in order to establish a crop acreage base, the average of the acreages planted and considered planted to a commodity for the 2 prior years corresponding to the current year for which the acreage base is established were used in making such a determination. This interim rule provides that an average of the 3 prior corresponding years' planted and considered planted acreage shall be used to establish crop acreage bases since this will be more compatible with the 5 year base period used for computing nonrotation acreage bases.

Corn and grain sorghum are combined and barley and oats are combined for the purpose of computing crop acreage bases when the base period includes a year in which producers on the farm participated in the program for each of such crops. Because the acreage planted and considered planted in such crop year was determined by prorating the combined acreage bases between corn and rain sorghum and between barley and oats, failing to use the combined crops when 1986 crop acreage bases are computed would penalize those producers who participated in production adjustment programs in prior crop years.

The sum of the crop acreage bases for rice, upland cotton, feed grains, and wheat shall not exceed the cropland on the farm, except for an established practice of doublecropping. This provision will result in reducing some 1986 crop acreage bases which exceed the total acreage normally devoted to such crops. The operator will have the opportunity to choose the crop for which the acreage base will be reduced.

(10) *Adjustments of Crop Acreage Bases*—This interim rule provides for several types of adjustments of crop acreage bases. When a farm acreage base is in effect, any crop acreage base greater than zero may be increased by up to 10 percent of the farm acreage base if the other crop acreage bases on the farm are reduced by a corresponding amount. The interim rule continues provisions which are applicable to the 1982 through 1985 crop years with respect to: (i) The establishment of crop acreage bases on farms with a crop rotation history, (ii) the reduction of crop acreage bases due to lack of irrigation water, and (iii) the adjustment of crop acreage bases in order to be representative of the producer's normal farming operations.

(11) *Ineligible land*—For clarity, and for the purpose of implementing the provisions of section 1318 of the Act pertaining to the Farmer's Home Administration obtaining easements on certain lands, § 713.97 of this interim rule sets forth the terms and conditions under which land is ineligible for any consideration for program payment or ACR purposes.

(12) *Conservation Reserve Program*—This interim rule includes provisions for reducing the crop acreage bases and the farm acreage base established for a farm when a contract to withdraw cropland from production is entered into in accordance with 7 CFR Part 704, the Conservation Reserve Program. This interim rule provides for the cancellation of an existing contract to participate in the annual commodity programs or, at the operator or owner's option, to revise the contract to use the acreage bases, for purposes of program participation, as reduced in accordance with 7 CFR Part 704. There are also provisions for restoring any acreage bases which have been reduced under the Conservation Reserve Program after the expiration of the conservation reserve contract. Although the authority for crop acreage bases and farm acreage bases will expire with the 1990 crops, the Department will restore, subject to the statutory authority in effect at the time the Conservation Reserve Program contract expires, any reductions which have been made under the provisions of 7 CFR Part 704. The crop acreage bases will be restored by reducing the acreage base for the crop each year of the conservation reserve contract and giving considered planted credit equal to the amount of the reduction. When the conservation reserve contract expires, the crop acreage base for the next year will be computed using the rules in effect at that time.

(13) *Compliance with other restrictions*—Producers who participate in the annual commodity programs described in 7 CFR Part 713 are responsible for complying with the provisions of the Act prohibiting the cultivation of highly erodible land and certain wetlands ("sodbuster/swampbuster"). In addition, in accordance with 7 CFR Part 796, a person is not eligible to receive certain benefits if the person has been convicted of violation of Federal or State controlled substance laws. Persons participating in the annual commodity production adjustment programs are also subject to a total payment limitation of $50,000 (excluding disaster payments which are subject to a separate $100,000 limitation). The regulations set forth at 7 CFR Part 795 define the term "person" for payment limitation purposes and state the payments which are subject to the payment limitation.

For purposes of compliance with the terms and conditions of 7 CFR Part 713, the term "person" is set forth at § 713.3. However, in order to be in compliance with 7 CFR Part 713, a program participant must also comply with the terms and conditions of 7 CFR Parts 795 and 796 including compliance with respect to the definition of a "person" for purposes of such parts.

(14) *Requirements for ACR.*—During the 1983 through 1985 crop years, acreage which was eligible for designation as ACR and was devoted to permanent vegetative cover was eligible for designation as ACR throughout the period. This provision has not been extended to the 1986 commodity program. The purpose of the provision was to encourage the establishment of permanent vegetative cover on highly erodible cropland. Such cropland is now eligible for entry into the Conservation Reserve Program and, accordingly, the provision is no longer needed.

(15) *Yields for acreages of nonprogram crops and conserving uses.*—The Act provides that acreages of nonprogram crops and conserving uses may be included in the farm program acreage when deficiency payments are computed. This interim rule provides that, when there are both irrigated and nonirrigated yields established for the program crop for the farm, any acreage of nonprogram crops or conserving use shall be considered to be nonirrigated, except in accordance with instructions issued by the Deputy Administrator. This interim rule also provides that the farm program payment yield established for a crop may be reduced in accordance with instructions issued by the Deputy Administrator if an acreage of nonprogram crops or conserving uses is included in the farm program acreage for such crop and the acreage devoted to nonprogram crops or conserving uses would not normally produce the farm program payment yield for the program crop.

B. 7 CFR Part 770, Commodity Certificates and In-Kind Payments

All payments made by CCC to producers under the 1985 commodity production adjustment programs were in the form of a check payable to the producer. The 1983 wheat, feed grain, upland cotton, and rice production adjustment programs provided the

opportunity for producers who complied with acreage reduction and paid diversion programs established for such commodities to receive additional in-kind compensation in exchange for devoting an additional portion of their permitted crop acreage base to approved conservation uses. This in-kind compensation was in the form of the kind of commodity which the producer would have otherwise produced on the acreage devoted to approved conservation uses in accordance with 7 CFR Part 770 and was in a quantity which was equal to a specified percentage of the farm's yield of the commodity. A similar program was established for the 1984 crop of wheat. This interim rule deletes in their entirety the regulations at 7 CFR Part 770 setting forth the provisions of the 1984 Wheat Payment-In-Kind Program.

The Act establishes several mandatory and discretionary provisions with respect to the authority of the Secretary to make non-cash payments to producers who comply with the applicable program requirements. Section 1005 of the Act added section 107E to the 1949 Act to provide generally that, in making in-kind payments under any of the annual programs for wheat, feed grains, upland cotton, or rice (other than certain marketing certificates for upland cotton or rice), the Secretary may acquire and use like commodities that have been pledged to CCC as security for CCC commodity loans and the Secretary may use other like commodities owned by CCC. This section further provides that in-kind payments also may be made: (1) By delivery of the commodity to a producer at a warehouse or other similar facility; (2) by the issuance of negotiable warehouse receipts; (3) by the issuance of certificates redeemable for commodities; and (4) by such other means as the Secretary determines appropriate.

This interim rule amends the regulations set forth at 7 CFR Part 770 to provide that participating producers who comply with the terms and conditions of the programs administered by CCC or ASCS may receive payments from CCC in the form of in-kind payments, commodity certificates, and by other specified methods. The portion of the payment to be made in a form other than in cash shall be determined in accordance with the applicable regulations and announcements which authorize the making of program payments to the producer.

Payment made in a manner other than in cash may be subject to restrictions set forth in 7 CFR Part 770 regardless of the provisions of the contract executed by the producer to participate in the program.

Section 770.3 provides that CCC may make a non-cash payment by requiring the producer to: (1) Redeem a quantity of a crop pledged as collateral for a CCC loan, (2) sell such quantity to CCC, and (3) accept from CCC a like quantity of the commodity sold to CCC. CCC shall determine the quantity of the commodity which must be so redeemed, sold, and accepted. Similarly, § 770.5 provides that CCC may make a non-cash payment to a producer from the inventory of commodities owned by CCC. The documentary evidence of such a payment shall be in the manner prescribed by CCC and may include the issuance of negotiable warehouse receipts.

Section 770.4 provides that commodity certificates redeemable in commodities may be issued to the producer in an amount equal to the cash payment which would otherwise have been made to the producer. Commodity certificates may state certain restrictions which may be applicable to such certificate with respect to: (1) Persons who may receive the certificate; (2) persons who may redeem the certificate; (3) the value of the certificate; (4) issuance and expiration dates applicable to the certificate; (5) restrictions as to the manner in which the certificate may be redeemed; (6) restrictions as to the kind of commodities for which the certificate may be redeemed; and (7) such other terms and conditions which are determined to be necessary by CCC.

The interim rule provides that specific redemption requirements will be applicable to the commodity certificates. Unless otherwise stated on the commodity certificate, only a subsequent holder (i.e., a person other than the original holder) of a certificate may present the certificate for redemption in commodities owned by CCC. A subsequent holder may also use a certificate to repay an outstanding CCC loan. There is, in addition, a mimimum quantity value of certificates that a subsequent holder must submit for redemption in order to receive commodities (lesser amounts may be paid in cash). Except with respect to those cetificates which the original recipient may redeem for commodities, the original recipient may present a certificate to the county ASCS office in exchange for cash payment. CCC may establish permissible time periods and deadlines for any of the described transactions.

C. 7 CFR Part 795, Payment Limitation

Section 1101 of the Agriculture and Food Act of 1981 (the "1981 Act") provided that the total amount of payments which a person may receive under one or more of the annual commodity programs established for each of the 1982 through 1985 crops of wheat, feed grains, upland cotton, ELS cotton, and rice may not exceed $50,000, (excluding disaster payments) and $100,000 for disaster payments. Section 1101 of the 1981 Act provided that the term "payments", for purposes of that section, does not include loans or purchases, or any part of any payment determined by the Secretary to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation. Section 1101 of the 1981 Act also provided that the Secretary shall issue regulations defining the term "person" and further provided that the rules for determining whether corporations and their stockholders may be considered as separate persons shall be in accordance with the regulations issued by the Secretary on December 18, 1970 in accordance with section 101 of the Agricultural Act of 1970.

Section 1001 of the Act generally provides the same restrictions as section 1101 of the 1981 Act with two exceptions. Section 1001 of the Act provides that, in addition to the exclusions from the term "payment" provided for in the 1981 Act certain payments and gains realized by a producer from repaying a price support loan at a rate lower than the original loan rate in accordance with specified sections of the 1949 Act also will not be considered to be "payments" which are subject to the maximum payment limitation. Further, section 1001 of the Act provides that the aforementioned regulations issued by the Secretary on December 18, 1970 shall be used to establish the percentage ownership of a corporation by the stockholders of such corporation for the purpose of determining whether such corporation and stockholders are separate "persons." Those rules regarding percentage ownership of corporations are contained in the regulations set forth at 7 CFR Part 795.

Accordingly, this interim rule amends 7 CFR Part 713 to list those payments which are not subject to the maximum payment limitation. It also amends 7 CFR Part 795 to make a technical correction with respect to the exclusion of payments from lands owned by States, political subdivisions, or agencies thereof, so long as such lands

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are farmed primarily in the direct furtherance of a public function. While this exclusion was required by section 1101 of the 1981 Act and is also required by section 1101 of the Act, a final rule published on April 13, 1984 which amended 7 CFR Part 795 inadvertently removed this provision. Accordingly, this provision, as previously set forth in 7 CFR Part 795, is added by this interim rule. The interim rule also restores an exemption pertaining to Indian tribal ventures.

The regulations found at 7 CFR Part 713 provide that a producer is a person who shares in the crop, or the proceeds thereof, or would have shared in the crop if the crop had been produced. Some rental agreements provide for a person to receive both a minimum payment and a share in the crop. Determining whether such agreements constitute a share lease or a cash lease affects determinations of whether a person is a producer and eligible for payments in accordance with 7 CFR Part 713 and the determination of a "person" for the purposes of administering the maximum payment limitation provisions of 7 CFR Part 795. Accordingly, section 795.75 is amended by this interim rule to provide that, in order to be considered a share lease, an agreement must provide that the total amount of the rent paid to the landlord depends upon the quantity of the crop produced or the proceeds of the crop. 7 CFR Part 713 also is amended to refer to 7 CFR Part 795 in this respect.

When county or State committees make determinations that two or more entities are separate persons for the purpose of administering the requirements of 7 CFR Part 795, some time may pass before the determinations are reviewed by a higher reviewing authority. When such a review results in a determination that the entities should be combined, an inequity may result if the entities have lost the opportunity to reduce ACR requirements in accordance with § 713.57 or otherwise to change their farming operations. In order to remedy potential inequities, this interim rule adds a new § 795.24 to provide that relief will be granted to such persons for a crop year if there is a determination that the producer acted in good faith upon the initial determination of the county or State committee.

D. 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violations

Section 1764 of the Act provides for the denial of program benefits to any person who is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year. With respect to any commodity produced in the crop year of the conviction and during the four succeeding crop years, such person shall be ineligible for: (1) Any price support loan, purchase agreement, or payment made in accordance with the 1949 Act, the CCC Charter Act, or any other Act; (2) any disaster payment made in accordance with the 1949 Act; (3) a farm storage facility loan made in accordance with the CCC Charter Act; (4) crop insurance made available in accordance with the Federal Crop Insurance Act, as amended; (5) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act, as amended, or any other provision of law administered by the Farmers Home Administration; and (6) any payment made in accordance with sections 4 and 5 of the CCC Charter Act for the storage of an agricultural commodity produced in such crop years which is acquired by CCC.

Accordingly, this interim rule amends 7 CFR Part 796 to set forth provisions of section 1764 of the Act. Section 796.1 sets forth definitions of the terms "controlled substances", "person", and "state." The term "controlled substances" is defined to mean the term as defined by the Drug Enforcement Agency at 21 CFR Part 1308. The term "person" is defined in the same manner as is applicable to determinations of a "person" for purposes of applying the maximum payment limitation provisions of 7 CFR Part 795, Payment Limitations. The term "State" is defined in accordance with the provisions of section 1764 of the Act.

The interim rule further sets forth provisions that are applicable to protect tenants, sharecroppers, landlords and other persons on the farm when all such individuals on a farm have not been convicted of a violation of a Federal or State controlled substance State. The interim rule provides that such a person shall remain eligible for program benefits unless the person has also been convicted of such a violation. The interim rule provides that benefits specified in section 1764 of the Act which are made available in accordance with the 1949 Act and the CCC Charter Act shall not be made available to persons convicted of such violations during the crop year in which the violation occurred or in the four subsequent crop years. The interim rule also provides that a portion of the benefits otherwise due a corporation will not be made if a stockholder of the corporation is determined to be ineligible for program benefits as a result of the application of the provisions of 7 CFR Part 796.

E. Parts 1421, and 1427, Grains and Similarly Handled Commodities Cotton

The Act provides the Secretary discretionary authority to implement a recourse loan program for grain and similarly handled commodities and for upland cotton. The Act also requires as a condition of eligibility for recourse loans that the producer obtain crop insurance with respect to the commodity pledged as collateral for the recourse loan.

In order to set forth the authority of CCC to provide recourse loans to eligible producers, new §§ 1421.20 and 1427.26 are added to 7 CFR Parts 1421 and 1427, respectively.

Under the Act, the Secretary is required to offer producers of the 1985 through 1990 crops of rice and producers of the 1986 through 1990 crops of upland cotton the option of repaying price support loans at the lesser of: (1) The loan level or (2) for upland cotton, (A) a specified percentage of the loan level or (B) the prevailing world market price for upland cotton, and (3) for rice, the prevailing world market price for rice, but not less than a specified percentage of the loan level. The formulas for determining the prevailing world market prices for rice and upland cotton will be established by the Secretary and will be published in the Federal Register. The Act provides similar loan repayment provisions which may be implemented, at the Secretary's option, with respect to the 1986 through 1990 crops of wheat and feed grains.

The Act provides that, for the period August 1, 1986, through July 31, 1991, if the loan repayment rate for upland cotton is above the prevailing world market price and the marketing loan provisions of the Act fail to make United States upland cotton competitive in world markets, payments in the form of commodity certificates issued by CCC shall be made to first handlers of cotton. A first handler of cotton is a person regularly engaged in buying or selling upland cotton. The value of the commodity certificate is based upon the difference between the loan repayment rate in effect for a crop of upland cotton and the prevailing world market price for upland cotton, as determined by the Secretary. The Act further provides that if the Secretary makes such commodity certificate payments available, then the Secretary shall also make payments in the form of commodity certificates to persons who have raw cotton in inventory on August 1, 1986, in order to

make such cotton available on the same basis.

Beginning April 15, 1986, the Act also provides for payments to be made to certain producers of the 1985 crop of rice who did not obtain a CCC loan or purchase agreement with respect to their 1985 crop of rice.

In order to allow producers to repay a price support loan obtained with respect to grains and similarly handled commodities at less than the original principal amount of the loan when such a provision is determined and announced by CCC as being available, and in order for CCC to issue commodity certificates to eligible persons as required by the Act, §§ 1421.18, 1421.57, 1421.97, 1421.217, 1421.252, 1421.309, 1421.342 and 1421.467 are amended. With respect to upland cotton, similar amendments are made to §§ 1427.8 and 1427.22.

In addition, for purposes of clarity, § 1421.302(b) is revised by adding the words "Warehouse-stored" to the introductory phrase for such section. Currently, approved cooperatives only may obtain price support loans for eligible warehouse-stored commodities. In order to provide greater flexibility to approved cooperatives, the regulations found at 7 CFR Part 1421 are amended to provide that approved cooperatives also may request and obtain price support loans with respect to eligible farm-stored commodities. The regulations found at 7 CFR Part 1421 are further amended to remove obsolete subpart references which are no longer applicable to prior crops of grains and similarly handled commodities.

F. Part 1425—Cooperative Marketing Associations

(1) *Background.* Under the CCC Charter Act, CCC is authorized among its specific powers to "support the prices of agricultural commodities through loans, purchases, payments, and other operations." Section 12 of the CCC Charter Act further provides that CCC may use producer-owned and producer-controlled cooperative associations in conducting CCC's business.

(2) *Interim Rule.* This interim rule amends 7 CFR Part 1425 in order to ensure that cooperatives participating in price support programs will be able to better serve their members. These changes redefine the requirements that a cooperative must meet in order to participate in price support programs. Some of the changes will have a broad impact on how a cooperative may operate in all business areas, while others will only affect the commodity pooling operations of the cooperative.

This interim rule revises the regulations governing the eligibility of cooperative marketing association which obtain CCC price support loans and purchase agreements. It consolidates eight previous amendments, reorganizes and presents the regulation with greater clarity, and implements program changes. The rule: (A) Redefines the term "member" to include stock subscribers if so required under the law of the State in which the cooperative is incorporated; (B) deletes the provision that prevented inactive members having voting stock issued after May 14, 1980, from voting with respect to cooperative matters; (C) provides for an increase in the per unit rates for authorized commodities used in determining the adequacy of a cooperative's net worth; (D) allows some farm-stored commodities that have been delivered to a cooperative to be pledged as collateral for CCC price support loans; (E) deletes the requirements that individual sales must always be allocated to pool inventories and pool proceeds; (F) adds age, religion, and physical or mental handicap to the list of nondiscrimination provisions which a cooperative must meet with respect to its membership in order to be considered as an approved cooperative marketing association; (G) adds seed cotton as an authorized price support commodity; and (H) makes other minor administrative changes.

(3) *Major Program Changes.* The major program changes made by the interim rule are as follows:

(A) The definition of the term "member" is amended. Previously, the provisions of 7 CFR Part 1425 did not provide that stock subscribers were considered to be members of a cooperative. The interim rule, in § 1425.3(b)(i), provides that the term "member" shall include stock subscribers, if so required under the law of the States in which the cooperative is incorporated.

(B) Section 1425.5(f) previously provided that only "active" members of the cooperative may vote on decisions affecting the operation of the cooperative. The interim rule omits this restriction from the required provisions of the cooperative's charter and bylaws which are now set forth at § 1425.9.

(C) The unit rates used to determine the adequacy of a cooperative's net worth are increased. Previously, cooperatives were required to have a net worth equal to, or in excess of, the product of unit rates for commodities listed in the regulation times the volume of such commodities handled by the cooperative. Section 1425.10 provides increases in such rates to more closely reflect current levels of price support.

(D) The interim rule deletes the prohibition against pledging farm-stored commodities as collateral for CCC price support loans. Section 1425.16(b)(2) provides that price support will be available with respect to farm-stored commodities as provided in § 1421.3(g).

(E) Section 1425.16(c)(4) clarifies the authority of an approved cooperative to transfer the price support eligibility of a commodity from a warehouse to an approved warehouse.

(F) Accounting requirements with respect to proceeds and pool inventory are also amended. Previously, the proceeds of any pool of a commodity for which price support had been obtained could only be distributed to members participating in the pool on the basis of the quantity and quality of commodity delivered by each member. In addition, cooperatives were required to maintain a record of the commodity dispositions allocated to eligible and ineligible pools at the time of shipment or removal for processing. Sections 1425.17(b)(3) and 1425.20 of this interim rule provide that a cooperative may combine the sales proceeds from commodities constituting an eligible pool with commodities constituting ineligible pools or with other eligible pools for commodities. Section 1425.20 provides that records of the disposition of such commodities need not be maintained separately so long as sales proceeds from such pools are allocated among pools according to the quantity and quality of commodities included in such pools.

(G) Section 1425.19 adds: (1) Provisions prohibiting discrimination on the basis of age, physical or mental handicap, and religion, and (2) provisions of handling employee complaints as required by applicable statutes and regulations.

List of Subjects

7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, and Rice.

7 CFR Part 770

Cotton, Feed grains, Price support programs, Wheat, and Rice.

7 CFR Part 795

Price support programs.

7 CFR Part 796

Agriculture, Marihuana.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Surety bonds, Warehouses.

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7 CFR Part 1425

Commodity Credit Corporation, Cooperatives, Price support programs, Reporting requirements.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Price support programs, Packaging and containers, Surety bonds, Warehouses.

Accordingly, the regulations of Chapters VII and XIV of Title 7 of the Code of Federal Regulations are amended as follows:

CHAPTER VII

1. Part 713 is revised to read as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

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713.1 Applicability.
713.2 Administration.
713.3 Definitions.
713.4 Determining crop acreages.
713.5 [Reserved].
713.6 Farm program payment yields.
713.7 Crop acreage bases.
713.8 Farm acrage bases.
713.8a Normal crop acreages.
713.9 Notice of crop and farm acreage bases, yields, and NCA.
713.10 Reconstitution of farms.
713.11 Adjusting crop acreage bases.
713.12–713.48 [Reserved].
713.49 Nature of contract.
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713.52 Required set-aside.
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713.58–713.59 [Reserved].
713.60 Basic rules for ACR acreage.
713.61 Eligible land.
713.62 Approved cover crops and practices.
713.63 Use of ACR acreage.
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713.69 Noncrop uses or practices.
713.70 Insufficient ACR acreage.
713.71 Destroyed crop acreage.
713.72 Provisions applicable to certain small grains.
713.73 Late harvesting.
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713.75–713.96 [Reserved].
713.97 Ineligible land.
713.98 Participation in Conservation Reserve Program.
713.99 Compliance with sodbuster/swampbuster provisions.
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713.100 Cross compliance on the farm.
713.101 Offsetting compliance between farms.
713.102 Determination of farm program acreage.
713.103 General payment provisions.
713.104 Advance payments.
713.105 Disaster credit.
713.106 Established (target) prices.
713.107 National program acreage.
713.108 Deficiency payments.
713.109 Division of program payments.
713.110–713.129 [Reserved].
713.130 Eligibility for regular prevented planting and reduced yield payments.
713.131 Regular disaster payment computations.
713.132–713.149 [Reserved].
713.150 Provisions relating to tenants and sharecroppers.
713.151 Successors-in-interest.
713.152 Misrepresentation and scheme or device.
713.153 Setoffs and assignments.
713.154 Payments by commodities and commodity certificates and refunds.
713.155 Appeals.
713.156 Performance based upon advice or action of county or State committee.
713.157 Paperwork Reduction Act assigned numbers.

Authority. Secs. 308, 401, 501, 901, 1001, and 1031 of Pub. L. 99–198; secs. 107C, 109, 113, 401, and 403 of the Agricultural Act of 1949, as amended, 98 Stat. 766, as amended, 91 Stat. 950, as amended, 94 Stat. 2573, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445b–2, 1445d, 1445h, 1421, 1423); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

§ 713.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple. ("ELS") cotton, and wheat programs for the 1986 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) In accordance with section 1001 of the Food Security Act of 1985, and the regulations in Part 795 of this chapter, the total amount of payments (excluding disaster payments) which a person shall be entitled to receive annually under the rice, upland and ELS cotton, feed grain, and wheat programs shall not exceed $50,000. The term "payments" does not include:

(1) Loans or purchases;

(2) Any part of any payment that represents compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(3) Any gain realized by a producer for repaying a loan for a crop of rice, upland cotton, feed grains, or wheat under a marketing loan program;

(4) Any deficiency payment received for a crop of wheat or feed grains as the result of a reduction of the loan level for the crop and the resulting increase in established "target" price payments in accordance with § 713.108(a)(4);

(5) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice in accordance with a program established under § 713.55;

(6) Any inventory reduction payment for a crop of rice, upland cotton, feed grains, or wheat; and

(7) Any benefit received as a result of any cost reduction action taken in accordance with section 1009 of the Food Security Act of 1985.

(c) In accordance with the regulations in Part 796 of this chapter, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 713.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and County Agricultural Stabilization and Conservation Committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (2) require a county committee to withhold taking any action which is not accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any questions arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

§ 713.3 Definitions.

(a) *Applicablity.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter governing the reconstitutions of farms shall also be applicable except where these definitions conflict with those set forth in this part.

(b) *"Annually nonconserving crop"* shall mean any annual crop intended for harvest or use in any feed form except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet, and sudan grass;

(2) Legumes, including peas, beans or soybeans for seed, grain, or processing where planting of such crops was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or processing. In other cases, soybeans produced for seed, grains, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(c) *"Base period"* means the five crop years immediately preceding the current crop year.

(d) *"Conserving uses"* shall mean all uses of cropland as defined in Part 719 of this chapter except for acreage devoted at any time during the year to:

(1) A crop of rice, upland cotton, feed grains, wheat or ELS cotton;

(2) A crop of soybeans;

(3) Any nonprogram crop;

(4) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title;

(5) Any acreage designated as acreage conservation reserve ("ACR") in accordance with the annual program for wheat, feed grains, upland cotton and ELS cotton, and rice;

(6) Any land subject to the Water Bank Program in accordance with Part 752 of this chapter;

(7) Any land subject to the Great Plains Conservation Program in accordance with Part 631 of this title;

(8) Any land subject to a contract executed with respect to the Conservation Reserve Program in accordance with Part 704 of this chapter;

(9) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases; and

(10) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

(e) *"Considered planted acreage"* means for a crop the following:

(1) With respect to the 1981 through 1985 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1986 and subsequent crop years, the sum of the following except that for farms participating in a set-aside, acreage reduction, or diversion program for the crop, the sum of the planted acreage and considered planted acreage for the crop shall not exceed the crop acreage base for the crop for the crop year:

(i) Any acreage devoted to ACR for the crop under a set-aside, acreage reduction, or diversion program as set forth in this part or any other part;

(ii) For wheat, any acreage eligible for payment in accordance with the wheat grazing and hay program;

(iii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 713.105;

(iv) For farms participating in an acreage reduction program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102; and

(v) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 713.98 due to participation in the Conservation Reserve Program in accordance with Part 704 of this chapter.

(vi) For farms for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102.

(3) With respect to any crop year, the considered planted acreage may be adjusted in accordance with instructions issued by the Deputy Administrator for farms for which an acreage base adjustment is made in accordance with § 713.11.

(f) *"Corn"* means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(g) *"Cotton"* means upland cotton and ELS cotton.

(h) *"Crop"* or *"Commodity"* means barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(i) *"Current year"* means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

(j) *"Disposal deadline"* means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 713.62 of as a conserving or conservation use.

(k) *"Doublecropping"* means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(l) *"Farm program acreage"* means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 713.108(b).

(m) *"Farm program payment yield"* means the yield for the farm which is determined by the county committee in accordance with § 713.6 adjusted to reflect any determinations made with respect to such yield in accordance with Part 780 of this chapter.

(n) *"Extra Long Staple (ELS) cotton"* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Deputy Administrator: American-Pima; Sea Island; Sealand; all other varieties of the Bardadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

(o) *"Grain sorghum"* means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(p) *"Marketing year"* means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1–May 31.

(2) Cotton and rice. August 1–July 31.

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(3) Corn and grain sorghum. September 1–August 31.

(q) *"NCA crops"* means the crops which are so designated by the Secretary of Agriculture for any crop year in an announcement which establishes a normal crop acreage requirement.

(r) *"Nonprogram crops"* means any crop other than a crop of rice, cotton, feed grains, wheat, or soybeans as determined by a State committee in accordance with instructions issued by the Deputy Administrator.

(s) *"Person"* means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at Part 795 of this chapter for the purpose of administering maximum payment limitations;

(2) The regulations found at Part 796 of this chapter for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at Part 619 of this title and Part 718 of this chapter for the purpose of administering the provisions of sections 1201–1223 of the Food Security Act of 1985 (commonly known as "sodbuster and swampbuster" provisions).

(t) *"Planted acreage"* for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 713.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

(u) *"Producer"* means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producting the crop, or would have shared had the crops been produced.

(v) *"Rice"* means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(w) *"Small grains"* means barley, oats, wheat, and rye.

(x) *Soybeans"* means any variety of soybeans which is planted regardless of the intended use.

(y) *"Upland cotton"* means planted cotton and stub cotton other than ELS cotton.

§ 713.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator:

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield disaster payment in accordance with the provisions of §§ 713.120–713.127 or §§ 713.130 and 713.131 or failed acreage credit in accordance with the provisions of § 713.105.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 713.60–713.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instruction issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payments in accordance with the provisions of § 713.54; and

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator; and

(10) The acreage of barley, oats, or wheat which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer: (i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop;

(11) Any acreage designated under the Conservation Reserve Program in accordance with Part 704 of this chapter;

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 713.5 [Reserved]

§ 713.6 Farm program payment yields.

(a) *Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.* (1) The bushel or pound per acre farm program payment yield for the 1986 and 1987 crop years shall be established in accordance with instructions issued by the Deputy Administrator and shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. Separate farm program payment yields may be established for irrigated acreages and for nonirrigated acreages for feed grains and wheat if: (i) The county committee determines that irrigation is a normal practice on the farm in most years; (ii) irrigation makes a substantial difference in crop yields; and (iii) the producer submits adequate evidence to the county committee that sufficient irrigation water is available for use on the acreage designated by the producer as irrigated acreage and that reasonable irrigation practices have been performed with respect to the irrigated acreage.

(2) If no farm program payment yield for a crop was established for any of the 1981 through 1985 crop years, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program

payment yields for similar farms in the county or other surrounding area.

(3) The bushel or pound per acre farm program payment yield for the 1988, 1989, and 1990 crop years shall, as announced by CCC:

(i) Be equal to the farm program payment yield established for the farm in the 1986 and 1987 crop years, or

(ii) Be established in accordance with instructions issued by the Deputy Administrator. Such instructions shall provide that the farm program payment yield shall equal the yield per harvested acre for the crop for each of the five immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which the crop was not planted on the farm. For purposes of this paragraph, the yield per harvested acre shall mean:

(A) With respect to the 1983 through 1986 crop years, the farm program payment yield for the crop; and

(B) With respect to the 1987 and subsequent crop years, the actual yield per harvested acre if the actual yield per harvested acre for:

(1) A crop year is not available, the county committee may assign the farm a yield for the farm on the basis of actual yields for the crop for such crop year on similar farms in the area.

(2) Any program crop is not available, the county committee may assign the farm a yield for the crop for such crop year on the basis of actual yields for the crop for such crop year on similar farms in the area.

(b) *ELS Cotton.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area.

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided in § 713.108 or the amount of any disaster payment as provided in §§ 713.120–713.127 or §§ 713.130 and 713.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect:

(1) Any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice; or

(2) The inclusion in the farm program acreage of an acreage of nonprogram crops or conserving uses in accordance with § 713.108(b)(2) provided that such acreage would not normally produce the farm program payment yield for the applicable crop of rice, upland cotton, feed grains, or wheat.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1986 through 1990 crop years and, if applicable in accordance with paragraph (a) of this section for rice, upland cotton, feed grains, and wheat for the 1987 through 1990 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields in accordance with paragraph (a)(3) of this section or for ELS cotton yields in accordance with paragraph (b) of this section.

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1986 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (e) and (f) of this section, the crop acreage bases for any farm for the 1986 and subsequent crops of barley, corn, grain sorghum, oats, and wheat shall be the average of the acreage planted and considered planted to such program crop on the farm in the base period.

(c) For upland cotton and rice, except as provided in paragraphs (d), (e), and (f) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted in the base period, excluding years in which no planted and considered planted acreage has been determined for the farm.

(d) Any crop acreage base established in accordance with paragraph (c) of this section shall not exceed the average of the acreages planted and considered planted to the crop in the two crop years of the base period immediately preceding the current crop year, if an acreage of the crop was not planted or considered planted during one or more years of the base period.

(e) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(f) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(g) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

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§713.8 Farm acreage bases.

(a) For the 1986 crop year, a farm acreage base shall not be established for any farm.

(b) For 1987 and subsequent crop years, a farm acreage base shall be established for each farm for each such crop year when one or more crop acreage bases are established for the farm for crops of wheat, feed grains, upland cotton, and rice. Such farm acreage base shall equal the sum of:

(1) The crop acreage bases established for such crop year for wheat, feed grains, upland cotton, and rice;

(2) The average of the acreages planted to soybeans for harvest in 1986 and subsequent crop years; and

(3) The average of acreages devoted to a conserving use in 1986 and subsequent crop years, excluding acreages considered in computing crop acreage bases.

(c) In no case may the farm acreage base for a farm for a crop year exceed the cropland for the farm for such crop year, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator.

§713.8a Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the average of the sum of the acreages for the farm during a period of the NCA crops as designated by the Secretary of Agriculture in an announcement which establishes an NCA requirement for the crop year.

§713.9 Notice of crop and farm acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the farm acreage base and/or NCA which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§713.10 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The actual yield established and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§713.11 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2)–(4) of this section.

(2) Within 15 days from the day the county committee issues a notice of the crop and farm acreage bases established for the farm for such crop year, the operator must file with the county committee a request for an adjustment of such bases.

(3) Any upward adjustment in the acreage base established for one crop must be offset by an equivalent total downward adjustment in the acreage bases established for such crop year for one or more other crops produced on the farm.

(4) Any increased adjustment of a crop acreage base established for a farm shall not exceed 10 percent of the farm acreage base. If more than one crop acreage base is increased, the total of such increases shall be limited to 10 percent of the farm acreage base.

(5) A crop acreage base of zero shall not be increased under this section.

(b) *Other adjustments.* The acreage base established for a crop of a commodity produced on the farm may be adjusted in accordance with instructions issued by the Deputy Administrator:

(1) If, in accordance with the regulations set forth at Part 780 of this chapter, it is determined that the acreage base previously established for a crop of a commodity produced on the farm is not representative of the current operator's normal farming operations on the farm; or

(2) When the county committee approves a recomputation of the acreage base established for the crop of a commodity produced on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years.

(c) *Changes from rotation to regular or vice versa.* The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 713.7(e) or § 713.7(b)–(d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) *ELS cotton adjustments.* An acreage base reserve is established for the 1986 crop of ELS cotton that equals 5 percent of the total of the acreage bases established for such crop in accordance with paragraph (b) of this section. Such reserve is in addition to the total of the acreage bases established for such crop in accordance with paragraph (b) of this section and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1986 ELS crop acreage bases established for farms to correct for inequities and prevent hardship, and for the purpose of establishing ELS cotton acreage bases for farms on which no ELS cotton was planted during the period 1982–1985. The operator shall file a written request, in such manner as is prescribed by the Deputy Administrator, for an adjustment using the acreage base reserve. Such adjustments shall be in addition to, and not in lieu of, adjustments approved under paragraphs (b) and (c) of this section.

(e) *Reductions.* If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop of a commodity produced on the farm, the county committee shall reduce the acreage base established for such a crop for a crop year to the extent that irrigation water is not available.

§713.12-713.48 [Reserved]

§713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR acreage and

the planted acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with Parts 1421 and 1427 of this title. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, land diversion, or wheat grazing and hay program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the program.

(b) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with Part 795 of this chapter and instructions issued by the Deputy Administrator,

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred up on the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§713.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and minus any acreage which is required to be devoted to ACR in accordance with a land diversion program;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the reduced acreage, or, as determined in accordance with instructions issued by the Deputy Administrator, a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage; and

(3) Otherwise comply with all program requirements.

§713.52 Required set-aside.

(a) The Secretary will announce:

(1) Whether a set-aside requirement is in effect for a crop year for a specific crop of feed grains or wheat;

(2) The percentage of the planted crop acreage that is required to be set aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program and any wheat grazing and hay acreage; and

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the set-aside requirement, and

(3) Otherwise comply with all program requirements.

§713.53 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance program payments will be available;

(5) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage which is equal to the required diverted acreage.

§ 713.54 Wheat grazing and hay.

(a) The Secretary will announce whether a wheat grazing and haying program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage, immature wheat that was planted for harvest as grain;

(2) Report the acreage for grazing and hay on Form ASCS–477;

(3) Complete the cutting or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

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(2) 40 percent of the total acreage on the farm of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 713.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made to producers on a farm for a specific crop for a crop year. In order to be eligible for any loan deficiency payments if such payments are made available, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 and 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(b) The loan deficiency payment shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts 1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(1) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(2) The farm program yield for the farm provided in § 713.6.

(c) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(d) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and with respect to rice, an amount not to exceed one-half of such payments shall be made in accordance with Part 770 of this chapter.

§ 713.56 Inventory reduction program.

(a) The Secretary will announce whether an inventory reduction program is in effect for a crop year for a specific crop for producers on a farm.

(b) In order to be eligible for any inventory reduction payments, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain a loan or purchase agreement in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases;

(3) Agree to forego receiving deficiency payments made in accordance with § 713.108;

(4) Limit the acreage of the crop planted for harvest to the crop acreage base reduced by one-half of the acreage required to be diverted from production in accordance with any reduction and/or land diversion program for the crop; and

(5) Otherwise comply with all program requirements.

(c) Inventory reduction payments shall be computed in the same manner as set forth in § 713.55(b) and (c). Such payments shall be made in accordance with Part 770 of this chapter.

§ 713.57 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more countries, it shall be the producer's responsibility to furnish information concerning the producer's paticipation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by: (1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction or set-aside programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§ 713.58–713–59 [Reserved]

§ 713.60 Basic rules for ACR acreage.

Except as set forth in § § 713.65–713.74, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of § § 531.51–712.53 must:

(a) Be eligible land in accordance with § 713.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 531.62;

(d) Not be grazed or harvested, except as provided in § 713.63; and

(e) Be cared for in accordance with the provisions of§ 713.64.

§ 713.61 Eligible land.

(a) For 1986 and subsequent crop years, land designated as acreage conservation reserve ("ACR") acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section. (b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year or land on which water systems are installed may not be so designated;

(2) Is in a summer fallow rotation as shown by the past history of crops produced on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to, and in at least 2 of the 3 immediately preceding years was devoted to, grasses or legumes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals or exceeds acreage newly seeded to such grasses or legumes:

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section; or

(4) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland that was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with Part 704 of this chapter;

(iv) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 713.102;

(4) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in 7 CFR Part 718 of this chapter are met; and

(ii) The county committee determines that the area are normally planted to a crop;

(5) That is determined to be ineligible in accordance with § 713.97; or

(6) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring-seeded crops.

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreatge:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to when the practices will sufficiently protect the land from wind and water erosion.

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee may authorize grazing of ACR acreage for the 1986 through 1990 crops and haying for the 1986 crop, except during a 5-consecutive-month period for a county as determined by the State committee.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section and § 713.72, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during the 5 principal growing months as determined by the State committee.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens.

(d) *Emergency Uses.* Notwithstanding the provisions of § 713.63 (a)–(c), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

§ 713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control

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measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 713.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land also must meet the eligibility requirements of § 713.61.

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 713.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 713.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in § 713.61; and

(2) The requirements in §§ 713.62 and 713.63 are met.

(b) The following uses and practices are eligible on ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 713.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crops on an acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 713.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after destruction of the crop.

§ 713.71 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS–578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 713.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of Part 791 of this chapter.

§ 713.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1986 ACR acreage only:

(a) Acreage which was devoted to wheat, barley, or oats and was growing before announcement by the Secretary of the 1986 programs for such crops may be designated as ACR acreage and may be harvested or grazed in accordance with the provisions of this section and § 713.63. This provision shall be applicable only as specified in an announcement by the Secretary.

(b) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirement for the care of ACR acreage as set forth in § 713.64.

§ 713.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committed determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 713.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 713.61 and use and care of the acreage as set forth in §§ 713.63 and 713.64.

§§ 713.75–713.96 [Reserved].

§ 713.97 Ineligible land.

(a) Land described in paragraphs (b)-(e) of this section shall not be eligible for: (1) Payments under any program in accordance with this part; (2) designation as ACR; or (3) crediting to a crop in accordance with § 713.102.

(b) Land which the producer does not own, lease, or sharecrop.

(c) Land which the producer does not have authority to use for program crops, such as highway, railroad, or other right of way, airport buffer strips and other similar areas.

(d) Land which is subject to a restrictive easement on behalf of the Farmer's Home Administration which prohibits its use for program crops.

§ 713.98 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections 1231–1245 of the Food Security Act of 1985:

(1) The farm acreage base, if applicable, and the total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same protection as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine

which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 713.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the corps for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Cancelling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the farm acreage base and crop acreage bases for the next crop year shall be computed in accordance with §§ 713.7 and 713.8.

§ 713.99 Compliance with sodbuster and swampbuster provisions.

(a) Compliance with the sodbuster and swampbuster provisions of sections 1201–1223 of the Food Security Act of 1985 shall be determined in accordance with Part 718 of this chapter and any regulations issued to implement sections 1201–1223 of the Food Security Act of 1985.

(b) Whenever a producer is determined to have failed to comply with sections 1201–1223 of the Food Security Act of 1985 for a particular crop year, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 713.103(e).

(c) Notwithstanding any other provisions of this part, any acreage of highly erodible land or converted wetland that is planted to crops in violation of sections 1201–1223 of the Food Security Act of 1985 shall be disregarded in determining acreages planted for harvest, considered planted acreages, acreages devoted to nonprogram crops, and acreages devoted to conservation uses.

§ 713.100 Cross compliance on the farm.

(a) Whenever an acreage reduction is announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the secretary announces that cross compliance is in effect with respect to such a crop, as a condition of eligibility is in effect with respect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of rice, upland cotton, ELS cotton, feed grains, or wheat in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such crop of rice, upland cotton, ELS cotton, feed grains, or wheat.

(b) With respect to feed grains and wheat, whenever a set-aside program is announced by the Secretary for one or more of such crops, compliance on the farm with any one commodity program (i.e., wheat or feed grains) may be required as a condition of eligibility for loans, purchases and payments made in accordance with the other commodity programs.

§ 713.101 Offsetting compliance between farms.

(a) Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced by the Secretary the provisions of paragraphs (b) through (g) of this section shall be applicable.

(b) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop of feed grains, ELS cotton, or wheat, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the crop acreage base established for such crop.

(c) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator has an interest as landlord, landowner, or operator that the total acreage of NCA crops on the farm does not exceed the NCA for such farm.

(d) A landowner or landlord is subject to paragraphs (b)-(c) of this section even if the landowner or landlord leases for cash or other consideration all or part of a farm when the lease is executed after the Secretary announces any offsetting compliance requirement.

(e) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraphs (b) or (c) of this section if such person receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(f) For purposes of paragraphs (b) or (c) of this section, all persons or entities in each category listed below shall be considered as the same producer and shall be fully responsible for the action of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraphs (b) or (c) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(g) Notwithstanding the foregoing: (1) Any person who places land in a trust the beneficiary of which is such person's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraphs (b) or (c) of this section if such person acts as the trustee or trust officer for the trust or in any other way retains any management responsibility for the land subject to the trust even though such person does not receive any share of the crops or proceeds thereof from such land.

(2) When the State committee, or the county committee with the approval of the State committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose

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of circumventing paragraphs (b) or (c) of the section, the corporation and any stockholder of the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same producer and shall be fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraphs (b) or (c) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that the Secretary announced that offsetting compliance is a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraphs (b) or (c) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraphs (b) or (c) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

§ 713.102 Determination of farm program acreage.

(a) As a condition of eligibility for loans, purchases and payments in accordance with this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of nonprogram crops and conserving uses in accordance with instructions issued by the Deputy Administrator.

(c) In accordance with instructions issued by the Deputy Administrator, an acreage of nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed grains if: (1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains; (2) all or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and (3) the acreage of nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) The acreage of nonprogram crops and conserving uses credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committtee determines, in accordance with § 713.105, the producer was prevented from planting to the crop due to a natural disaster or similar conditions beyond the producer's control; and

(3) The ACR acreage for the crop.

§ 713.103 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 713.1 and the payment limitation regulations found at Part 795 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of Part 1403 of this title.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at Part 795 of this chapter, the controlled substance regulations found at Part 796 of this chapter, or the regulations pertaining to the sodbuster and swampbuster provisions of sections 1201–1223 of the Food Security Act of 1985:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm results in the detemination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at Part 13 of this title:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 731.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable;

(ii) Request the advance payment; and

(2) The farm must not have been detemined to be out of compliance with any of the requirements of the contract or the program at the of payment.

(b) *Advance deficiency payments.* Advance deficiency payments may be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and the time of payment.

(c) *Advance diversion payments.* Advance diversion payments may be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 713.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 713.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 713.103(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the date such payment is refunded. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 713.105 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage, except for established practices of double cropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part.

§ 713.106 Established (target) prices.

The established prices for each crop of a commodity will be announced by the Secretary.

§ 713.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced by the Secretary. The national program acreage shall equal the number of harvested acres the Secretary estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage which is established for any crop may later be revised if the Secretary determines that an adjustment is necessary, based upon the latest information available, for the purpose of determining an allocation factor for use as provided for in § 713.108.

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* Except as provided in paragraphs (a) (2) and (4) of this section:

(1) The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average loan rate established for the crop; or

(ii) The national weighted average market price received by producers for the crop during:

(A) The first 5 months of the marketing year for wheat, feed grains, and rice;

(B) The calendar year for upland cotton; and

(C) The first 8 months of the marketing year for ELS cotton.

(2) For each of the 1986 through 1988 crops of wheat and feed grains, the Secretary may announce that, if the national weighted average market price received by producers for the crop during the first 5 months of the marketing year exceeds the amount specified in paragraph (a)(3) of this section, the deficiency payment rate for such crop shall be the amount by which the established "target" price for such crop exceeds the higher of the amount specified in paragraph (a)(3) of this section and the loan rate determined for such crop before any adjustment made by the Secretary to maintain a competitive market position.

(3) The amounts applicable with respect to paragraph (a)(2) shall be:

(i) For wheat, $2.55 per bushel for the 1986 crop; $2.65 per bushel for the 1987 crop; and $2.82 per bushel for the 1988 crop; and

(ii) For corn, $2.04 per bushel for the 1986 crop; $2.19 per bushel for the 1987 crop; and $2.24 per bushel for the 1988 crop, and for grain sorghum, oats, and, if applicable, barley, such amounts as are determined to be fair and reasonable in relation to the amount which is determined for corn.

(4) For wheat and feed grains, whenever the Secretary announces a reduction in the loan and purchase level for a crop in order to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (a)(2) of this section. In accordance with section § 713.1, payments made as a result of such increase shall not be subject to the $50,000 maximum payment limitation. In such case, the amount of the deficiency payment rate shall be the smaller of:

(i) The difference between the national average loan rate for the crop before the reduction by the Secretary and the national weighted average market price received by producers during the entire marketing year, or

(ii) The difference between the national average loan rate before reduction and the national average loan rate after reduction by the Secretary.

(b) *Farm program acreage for payment.* (1) If no acreage reduction requirement is in effect for a crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year multiplied by an allocation factor. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 713.107, by the estimated national current year acreage for harvest of the crop. However:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat nor more than 100 percent for such crops and upland and ELS cotton;

(ii) The farm program acreage shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage announced by the Secretary; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year,

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not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect, and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop, the farm program acreage shall not be increased,

(ii) If the acreage of the crop planted for harvest is at least 50 percent of the permitted acreage of the crop for the year, the farm program acreage shall be the sum of:

(A) The acreage of the crop planted for harvest, plus

(B) The amount by which the sum of the acreages of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102 exceeds 8 percent of the permitted acreage for the crop; and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the State committee may recommend and the Deputy Administrator may approve that the acreage subject to the quarantine be eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 713.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of nonprogram crops and conservation uses credited to a crop in accordance with § 713.102 in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 713.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* March 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(5) *Increased payments.* If applicable, the increased payments for feed grains and wheat prescribed in paragraph (a)(4) of this section shall be made as soon as practicable after the following dates:

(i) *Wheat, barley, and oats.* July 1.

(ii) *Corn and grain sorghum.* October 1.

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have received had the crop been produced. Notwithstanding the preceding sentence, a different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 713.11.

(c) *Refund of payments not properly divided.* Payments which producers receive with respect to which they are determined not to be entitled shall be refunded to CCC as required by § 713.103. In the event of fraud, the producers shall be subject to the provisions relating to fraudulent representation as set forth at § 713.132.

§§ 713.110–713.129 [Reserved]

§ 713.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield disaster payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 713.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Regular disaster payments shall be computed in accordance with § 713.131.

§ 713.131 Regular disaster payment computations.

(a) *Prevented planting.*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 713.6 times the prevented planting payment rate.

(b) *Reduced yield.*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 713.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield disaster payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6 or the actual average yield from the harvested acreage of the crop.

§§ 713.132–713.149 [Reserved]

§ 713.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless: (A) Such tenant was living on the farm in the year immediately preceding the current year, or (B) at least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's production unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 713.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at Part 707 of this chapter.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

§ 713.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program

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determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly: (1) Adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract.

§ 713.153 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing setoffs and withholdings found at Part 13 of this title shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at Part 709 of this chapter.

§ 713.154 Payments by commodities and commodity certificates and refunds.

(a) Payment under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with Part 770 of this chapter.

(b) Whenever it is determined in accordance with § 713.103 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 713.155 Appeals.

A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter.

§ 713.156 Performance based upon advice or action of county or State Committee.

The provisions of Part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 713.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560-0092, 0560-0050, 0560-0091, 0560-0030, and 0560-0071.

2. Part 770 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.
770.1 Applicability
770.2 Payments in lieu of cash payments
770.3 Payments to persons with outstanding CCC loans
770.4 Commodity certificates
770.5 In kind payments
770.6 Miscellaneous provisions

Authority: Secs 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 306, 401, 501, 601, 1002, 1004, 1005, 1234 of Pub. L. 99–198.

§ 770.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) which are authorized by Title 7 of the Code of Federal Regulations, as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part.

§ 770.2 Payments in lieu of cash payments.

(a) CCC may, at its option, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate to enable the producer to receive payments so as to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payment made in the manner set forth in paragraph (b) shall be determined by CCC.

§ 770.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 770.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, which is in an amount equivalent to the value of the cash payment which would otherwise be made to the producer. If the person has more than one outstanding CCC loan, CCC may, be contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The quantity required to be redeemed may be adjusted by CCC for unearned storage costs, transportation costs, handling costs and any other costs determined by CCC to affect the value of such commodity. For the purpose of determining these adjustments, a commodity which has been pledged as collateral for a CCC loan shall, at redemption, be considered to have the same grade and other characteristics affecting its quality which it was considered to have had at the time the commodity was pledged as collateral for

such CCC loan. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity, as may have been adjusted by CCC in accordance with this part.

§ 770.4 Commodity Certificates.

(a) CCC may issue commodity certificates denominated in cash amounts redeemable for inventory of CCC. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions stated on the certificate. Commodity certificates shall state an "expiration date" and may state a "first transfer deadline." The "expiration date" shall be the last date on which a person may present the certificate to CCC for redemption in accordance with paragraphs (b)(4) and (b)(5) of this section. The "first transfer deadline" shall be the last date on which the original recipient of a certificate may transfer such certificate to another person.

(b)(1) The original recipient and any subsequent holder may transfer a commodity certificate to any other person. Such transfer may only be effected by a restrictive endorsement on the back of the certificate. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this part. Commodity certificates shall be redeemable for such commodities as are made available by CCC and as provided herein. CCC may discount or not accept commodity certificates presented for redemption after the expiration date of such certificate, as determined by CCC.

(2) CCC may require holders of a commodity certificate to redeem such certificate for commodities owned by CCC which are stored by such holder without making such commodities or kind of commodities available for redemption by other holders of commodity certificates.

(3) If a commodity certificate contains a first transfer deadline date, the person to whom the certificate is issued may not redeem the commodity certificate for commodities owned by CCC. The original recipient of a commodity certificate which bears a first transfer deadline date may, only during the ten business days following the first transfer deadline date, submit such certificate at the issuing county ASCS office in exchange for payment by check in the amount of the commodity certificate. Neither ASCS nor CCC will honor a certificate presented by the original recipient after such period, except as otherwise may be authorized by CCC.

(4) Except as otherwise provided in this section or on the certificate, any holder may submit commodity certificates for redemption at any time prior to the expiration date of the certificate if the holder has an amount of commodity certificates sufficient to acquire a carload lot of the applicable commodity, or any other quantity as may be determined by CCC. CCC shall determine the value of CCC-owned commodities made available for redemption of commodity certificates.

(5) Subsequent holders of commodity certificates who do not possess commodity certificates in the amount specified in paragraph (b)(4) of this section may, but only once during any calendar month and in no event later than the expiration date of any such certificate, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(6) Title to commodities owned by CCC which are transferred to a holder of a commodity certificate as the result of the redemption of a commodity certificate shall be transferred in store. Such a person shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government.

(7) At its option, CCC may allow any holder of a commodity certificate to use such commodity certificate to redeem, at any time before the expiration date of the certificate, commodities pledged as collateral for CCC loans, except that, notwithstanding any provision of any such certificate, no person may before August 1, 1986 use a commodity certificate to redeem upland cotton pledged as collateral for a CCC loan. CCC shall determine the value of commodities so pledged for purposes of redemption by a commodity certificate.

(8) State law and regulations shall not be applicable to the issuance, transfer, or redemption of commodity certificates. Commodity certificates, or the proceeds thereof, may not be subjected to any claim of lien by any creditor except agencies of the U.S. Government.

§ 770.5 In Kind Payments.

(a) Subject to the provisions of §§ 770.2 and 770.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 770.6 Miscellaneous provisions.

The following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.
(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.
(c) Part 718, Determination of Acreage and Compliance.
(d) Part 780, Appeal Regulations.
(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.
(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.
(g) Part 795, Payment Limitation.
(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.
(i) Part 1403, Interest on Delinquent Debts.
(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

PART 795—[AMENDED]

3. The authority citation for Part 795 is revised to read as follows:

Authority: Sec. 1001, Pub. L. 99–198, 7 U.S.C. 1308; 99 Stat. 1444.

3a. Part 795 of Chapter VII of Title 7 of the Code of Federal Regulations is amended as follows:

A. Section 795.2 is amended by adding paragraphs (c) and (d) to read as follows:

§ 795.2 Applicability.

* * * * *

(c) The limitation shall not be applicable to payments made to States, political subdivisions, or agencies thereof for participation in the programs

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on lands owned by such States, political subdivisions, or agencies thereof so long as such lands are farmed primarily in the direct furtherance of a public function. However, the limitation is applicable to persons who rent or lease land owned by States, political subdivisions, or agencies thereof.

(d) The limitation shall not be applicable to payments made to Indian tribal ventures participating in the programs where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that no more than the program payment limitation shall accrue directly or indirectly to any individual Indian and the State committee reviews and approves the exemption.

B. Section 795.15 is revised to read as follows:

§ 795.15 Determining whether agreement is a share lease or a cash lease.

(a) *Cash lease.* If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(b) *Share lease.* If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

C. Section 795.24 is added to read as follows:

§ 795.24 Relief.

If a producer relied on a county committee and/or State committee "person" determination for a crop year and higher reviewing authority makes a more restrictive determination, the Deputy Administrator may grant relief only for such crop year if the producer was not afforded an opportunity to exercise other alternatives with respect to the producer's farming operation and the program provisions and the county committee has determined that the producers acted in good faith based upon the original "person" determination.

4. Part 796 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 796—DENIAL OF PROGRAM ELIGIBILITY FOR CONTROLLED SUBSTANCE VIOLATION

Sec.
796.1 Definitions.
796.2 Prohibition against payments to producers or participants.
796.3 Protecting the interests of landlords, tenants, and sharecroppers, and special rule for corporations, partnerships, and trusts.

Authority: Sec. 1764 of Pub. L. 99-198, 21 U.S.C. 881a, 99 Stat. 1652; and Annual Agricultural Appropriation Acts.

§ 796.1 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) "Controlled Substances" means the term as set forth in accordance with 21 CFR Part 1308.

(b) "Person" means an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved,

(2) Exercise separate responsibility for such interest, and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

§ 796.2 Prohibition against payments to producers or participants.

(a) Any person who, on or after December 23, 1985, is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for:

(1) As to any commodity produced by such person during that crop year, and during the four succeeding crop years:

(i) Any price support loan and purchase agreement or other payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(ii) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(iii) A disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); and

(2) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is:

(i) Produced during that crop year, or any of the four succeeding crop years, by such person; and

(ii) Acquired by the Commodity Credit Corporation.

(b) Notwithstanding any other provision of Title 7 of the Code of Federal Regulations, with respect to all programs set forth in such title administered by the Agricultural Stabilization and Conservation Service under which production or other payments, including wheat marketing certificates, are made to program participants, no such payment for any crop year through the 1985 crop year shall be made after August 10, 1971, to any producer or program participant who, after August 10, 1971, harvests or knowingly permits to be harvested for illegal use, marihuana, or other such prohibited drug-producing plants on any part of the lands owned or controlled by such producer or participant. Prohibited plants include marihuana (*cannabis satiua*), opium poppies (*papauer somniferum*), coca bushes (*erythroxylum coca*), cacti of the genus *lophophora*, and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

§ 796.3 Protecting the interests of landlords, tenants, and sharecroppers, and special rule for corporations, partnerships, and trusts.

The tenant, sharecropper, landlord, or any producer on the farm separate from the person determined to be ineligible for program benefits in accordance with § 796.2 shall remain eligible for any or all of the program benefits listed in § 796.2 unless such tenant, sharecropper, landlord, or any such producer on the farm:

(a) Is also convicted of planting, cultivating, growing, producing, or storing a controlled substance; or

(b) Is otherwise determined to be ineligible to receive any or all of the benefits listed in § 796.2.

(c) Notwithstanding any other provision of this section, if any person denied benefits under this part is a shareholder of a corporation, partner in

a limited partnership, or beneficiary of a trust, benefits for which the corporation, limited partnership, or trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total percentage of ownership of such individual.

CHAPTER XIV

PART 1421—[AMENDED]

5. Part 1421 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

A. The authority citation for Part 1421 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended; 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 405, and 406 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99-198.

B. In Part 1421, the Table of Contents and the Subpart headings to §§ 1421.1 through 1421.30; §§ 1421.50 through 1421.60; §§ 1421.90 through 1421.100;
§§ 1421.210 through 1421.220;
§§ 1421.245 through 1421.254;
§§ 1421.280 through 1421.291;
§§ 1421.335 through 1421.345;
§§ 1421.365 through 1421.374; and
§§ 1421.460 through 1421.471 are amended by removing "1985" wherever it appears and inserting in lieu thereof "1986".

C. The table of contents to Subpart—General Regulations Governing Price Support for the 1986 and Subsequent Crops is amended by adding § 1421.30 as follows:

* * * * *

§ 1421.30 Recourse loans.

* * * * *

D. Part 1421 is amended by removing the following obsolete Subparts and Sections.

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops (§ 1421.530–1421.544); Subpart—Regulations Governing the Rice Reserve Program for the 1978 and Subsequent Crops (§ 1421.558–1421.572); Subpart—Regulations Governing the Grain Reserve Program for 1979 and Subsequent Crops and Alternative Program for 1979 and Prior Crops (§ 1421.630–1421.644); Subpart—Regulations Governing the Grain Reserve Program for 1980 and Subsequent Crops and Alternative Program for 1980 and Prior Crops (§ 1421.670–1421.684); and Subpart—Regulations Governing a Recourse Loan Program for 1980-Crop Aflatoxin-Contaminated Corn (§ 1421.800–1421.806).

E. In Part 1421, the first sentence of § 1421.1 is amended by removing "1985" and inserting in lieu thereof "1986".

F. In Part 1421, §§ 1421.50, 1421.90, 1421.210, 1421.245, 1421.280, 1421.335, 1421.365, 1421.460, 1421.745 are amended by removing "1985" wherever it appears and inserting in lieu thereof "1986".

G. Section 1421.3(g) is revised to read as follows:

§ 1421.3 Eligible producer.

* * * * *

(g) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, or the Executive Vice President's designee, pursuant to Part 1425 of this chapter, to obtain price support for a crop of barley, corn, oats, rice, rye, sorghum, soybeans, and wheat may obtain price support on the eligible production of such crop of the commodity on behalf of its members. When used in this subpart and on applicable forms, the term "producer" means both an eligible producer as defined by paragraphs (a), (b), and (c) of this section and an approved cooperative association.

H. Section 1421.18 (a) and (c) is revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released: (1) The principal amount of the loan which is outstanding plus interest, or (2) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (i) The expiration date of such marketing authorization, or (ii) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

* * * * *

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC: (i) The principal amount of the loan plus interest, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loans. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization

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which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment. (2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC–699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. (3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC: (i) The principal amount of the loan, plus interest and applicable charges, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

I. A new § 1421.30 is added to Subpart-General Regulations Governing Price Support for the 1986 and Subsequent Crops to read as follows:

§ 1421.30 Recourse loans.

CCC may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

J. Section 1421.302(b) is revised to read as follows:

§ 1421.302 Eligible rice.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the rice must also meet the following requirements: (1) The rice must grade No. 5 or better (rice of special grades shall not be eligible), and (2) the rice must not have moisture content of over 14.0 percent.

* * * * *

K. A new § 1421.309 is added to read as follows:

§ 1421.309 Marketing Loans and Marketing Certificates.

(a) *Producers with outstanding 1985 rice loans on April 15, 1986.* Producers with outstanding 1985 crop rice price support loans on April 15, 1986, may repay such loans at a level that is the lesser of: (1) The 1985 level of price support or (2) the prevailing world market price for rice, as determined and announced by CCC. As a condition of permitting a producer to repay such a loan, the producer may be required to purchase commodity certificates, which are made available in accordance with Part 770 of this title, in an amount equal in value to an amount that does not exceed the difference between the principal amount of the loan obtained by the producer and the amount of the loan repayment.

(b) *Producers without outstanding 1985 rice loans on April 15, 1986.* (1) Producers of the 1985 crop of rice who (i) although eligible to obtain a CCC price support loan or purchase agreement did not obtain such a loan or purchase agreement and have not sold or delivered such rice under a sales contract and (ii) have produced rice that is not eligible to be pledged as collateral for a CCC price support loan and have not sold or delivered such rice under a sales contract, shall be eligible for a payment made in accordance with paragraph (b)(2) of this section.

(2) Eligible producers may receive a payment computed by multiplying the payment rate by the quantity of rice that the producer has not sold or delivered under a sales contract. The payment rate shall be the amount by which the loan level determined for the 1985 crop of rice exceeds the level at which a loan may be repaid in accordance with paragraph (a) of this section.

(c) *1986 and subsequent crop years.* A producer may repay a loan at a level that is the lesser of the loan level determined for such crop or the higher of: (1) The loan level determined for such crop multiplied by 50 percent for the 1986 and 1987 crops; 60 percent for the 1988 crop and 70 percent for the 1989 and 1990 crop; or (2) the prevailing world market price, as determined by CCC. As a condition of permitting a producer to repay such a loan, the producer may be required to purchase commodity certificates, which are made available in accordance with Part 770 of this title, equal in value to an amount that does not exceed one-half the difference between the principal amount of the loan obtained by the producer and the amount of the loan repayment.

(d) *Commodity certificates.* If CCC determines that at any time between August 1, 1986 and July 31, 1991, the world market price for a class of rice, as determined by CCC, is below the current loan repayment rate for such class of rice, CCC shall issue commodity certificates, made available in accordance with Part 770 of this title, to persons who have entered into an agreement with CCC with respect to the issuance and redemption of such certificates. The value of such certificates shall be based upon the difference between: (1) The loan repayment rate for such class of rice and (2) the prevailing world market price of such class of rice, as determined by CCC.

(e) *August 1, 1986 rice inventory payments.* CCC may issue commodity certificates to persons with rice in inventory on August 1, 1986, in such amounts as CCC determines necessary to make such rice in inventory available on the same basis as 1986 crop rice.

(f) Payments made under this section shall be subject to such terms, conditions, and certifications as may be determined to be necessary by CCC.

L. Section 1421.97(c) is added to read as follows:

§ 1421.97 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the higher of (i) 70 percent of such level; (ii) if the loan level was reduced in accordance with section 105C(a)(3) of the Agricultural Act of 1949, as amended, 70 percent of the level that would have been in effect, but for such reduction; or (iii) the prevailing world market price for corn as determined by CCC.

M. In Part 1421, §§1421.57, 1421.217, 1421.252, and 1421.342, are amended by adding to each such section a new paragraph (c) to read as follows:

§ 1421.—Availability.

* * * * *

(c) As may be announced by CCC, a producer may be allowed to repay a loan at a level in accordance with § 1421.97(c).

N. Section 1421.372(c) is added to read as follows:

§ 1421.372 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the prevailing world market price for soybeans, as determined and announced by CCC.

O. Section 1421.467(c) is added to read as follows:

§ 1421.467 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the higher of: (i) 70 percent of such level; (ii) if the loan level was reduced in accordance with section 107D(a)(4) of the Agricultural Act of 1949; 70 percent of the level that would have been in effect, but for such reduction; or (iii) the prevailing world market price for wheat, as determined by CCC.

6. Part 1425 of Chapter XIV of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.
1425.1 General provisions.
1425.2 Administration.
1425.3 Definitions.
1425.4 Application for approval.
1425.5 Confidentiality.
1425.6 Approved cooperatives.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Charter or bylaw provisions.
1425.10 Financial condition.
1425.11 Operations.
1425.12 Conflict of interest.
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Eligible commodity and pooling.
1425.17 Distribution of proceeds.
1425.18 Member cooperatives.
1425.19 Nondiscrimination.
1425.20 Records required.
1425.21 Inspection and investigation.
1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.23 Appeals.

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c, and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1444 (a), 1441, 1446d, 1447, 1421(a)).

§ 1425.1 General provisions.

This part sets forth the terms and conditions which a cooperative marketing association ("cooperative") must meet in order to be approved to obtain from the Commodity Credit Corporation (CCC) price support on behalf of its members for the 1986 and subsequent crops of a commodity. A cooperative meeting such terms and conditions may obtain price support with respect to any crop of a commodity for which a price support program is in effect if regulations issued with respect to such price support program incorporate the provisions of this part or permit a cooperative which meets the provisions of this part to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

On behalf of CCC, Agricultural Stabilization and Conservation Service (ASCS), will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, State and County Operations, ASCS. In the field, the provisions of this part will be administered by the State and county ASC committees.

§ 1425.3 Definitions.

(a) *Active member* means a member who has utilized the services offered by a cooperative in one of the three preceding cooperative fiscal years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

(b) *Approved cooperative* means a cooperative that has been approved by the CCC to participate in price support programs authorized with respect to one or more authorized commodities.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture.

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, corn, cotton, honey, oats, rice, rye, seed cotton, sorghum, soybeans, and wheat.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Close relative* means a spouse or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship.

(g) *Eligible commodity* means a commodity which meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title which is delivered to, or which is acquired by, a cooperative.

(h) *Member* means a person who is a member of an agricultural cooperative or an agricultural cooperative member of another cooperative. A person applying for membership in an agricultural cooperative must have: (1) Fully paid for the membership stock or earned equity credits; (2) be accepted by the cooperative; and (3) be entitled to all membership rights including voting and holding office except where the law of the State in which the cooperative is incorporated provides for stock subscribers as members but does not allow them to hold office.

(i) *Person* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

(j) *Producer* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

§ 1425.4 Application for approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to each such authorized commodity to CCC.

(b) An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the cooperative including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the cooperative;

(3) A copy of the cooperative's articles of incorporation or articles of

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association, bylaws, all marketing agreements for eligible commodities and any other document which is requested by CCC with respect to the cooperative's methods of conducting business which an official of the cooperative has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) for each director, officer, and principal employee;

(5) Resolutions made by the cooperative's board of directors which provide that the cooperative will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any cooperative transactions that either have occurred in the preceding year before the initial application for approval is submitted or are contemplated by the cooperative as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which price support is obtained will be distributed as provided for in § 1425.17.

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative determined by CCC to be necessary to act upon the application for approval.

(c) *Annual recertification.* An approved cooperative must submit the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The cooperative's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the cooperative owned by active members, inactive members, and others, and the unallocated equity in the cooperative;

(5) The names of any members who own in excess of 10 percent of the equity of the cooperative and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the cooperative for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the cooperative to CCC as security for a price support loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for price support purchase during the prior year; and

(9) A statement of any cooperative transactions that either have occurred in the cooperative's prior fiscal year of operations or are contemplated to occur in the cooperative's current fiscal year as provided for in § 1425.12.

(d) *Changes.* An approved cooperative shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the cooperative;

(2) Any resolutions affecting price support operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the cooperative as an approved cooperative in accordance with this part.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets or financial or commerical operations or information concerning the financial condition of a cooperative, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a price support program or such information is required to be disclosed by law.

§ 1425.6 Approved cooperatives.

(a) *Determination of approval.* CCC shall, in accordance with the provisions of this part, approve a cooperative marketing association to obtain price support.

(b) *Type of approval.* CCC may approve a cooperative to participate in a price support program with respect to the 1986 or subsequent crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved. A cooperative may be conditionally approved if it has not met all of the requirements of this part but has substantially met all such requirements. Such a cooperative must agree in writing to meet all of the requirements for approval set forth in this part within the time period specified by CCC. Board resolutions in which the cooperative agrees to comply with provisions of this part may be accepted by CCC as substantial compliance with the requirements for approval for purposes of this section.

(c) *Term of approval.* A cooperative is approved to participate in a price support program for an authorized commodity until such time as the cooperative's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination. Ten days after the termination date, or at anytime thereafter, CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

(2) An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate the cooperative's approval to participate in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

§ 1425.8 Ownership and control.

(a) *Active members.* All approved cooperatives must be owned and controlled by active members of the cooperative.

(b) *Allocated equity.* The cooperative must establish that its active members own equity in the cooperative in an amount constituting more than 50 percent of the allocated equity of the cooperative. Such ownership equity shall be in the form of stock, revolving

fund certificates, capital retains, book credits, or other capital interests issued by the cooperative. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to such active members:

(1) The allocated equity held by any active member who owns more than 10 percent of the cooperative's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the cooperative unless such member is obligated to repay the loan within a reasonable period of time.

(c) *Active members.* The organization and operation of the cooperative shall be under the control of its active members. A cooperative shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) *Directors.* (1) All directors must be: (i) Active members of the cooperative; (ii) representatives of such active members who are also employed as a farm manager or its equivalent (including an officer of a corporation and a partner in partnership); or (iii) officers, employees, or active members of an active member cooperative.

(2) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) *Approved plan.* An applicant or an approved cooperative not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a price support program if the cooperative is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the cooperative can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

The articles of incorporation, articles of association, or the bylaws of the cooperative shall provide for each of the following requirements:

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meeting.* The cooperative shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who: (1) Applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative. The cooperative may, however, refuse membership to an applicant if the cooperative bases the refusal on reasonable grounds that the applicant's admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the cooperative.

(d) *Nominations.* (1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(e) *Balloting.* The election of directors, delegates, and officers shall be by balloting when there are two or more nominees for a position to be filled, or there are more nominees than there are positions to be filled.

(f) *Voting rights.* Each member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member except that CCC may approve another voting method which will adequately protect the ownership and control interests of the members of the cooperative.

(g) *Proxy or power of attorney.* (1) Except as provided in paragraph (g)(2) of this section, voting by proxy or under a power of attorney shall not be permitted.

(2) Voting by proxy or under power of attorney may be permitted if a cooperative: (i) Determines that it is necessary to amend the cooperative's articles of incorporation, articles of association, or bylaws, and (ii) establishes to the satisfaction of CCC that the law of the State in which the cooperative is incorporated permits voting by proxy or power of attorney, but does not permit members to vote by mail, with respect to such issue.

(h) *Financial statement.* Annually, each member of the cooperative shall be given a summary financial statement of the cooperative which is based on an annual audit conducted by a certified public accountant of the recordkeeping books and accounts of the cooperative.

§1425.10 Financial condition.

(a) *Financial ability.* An approved cooperative must be financially able to make financial advances to its members and to market commodities of such members.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include the following:

(1) The ability of the cooperative to meet current obligations, including the expenses of marketing the commodities on behalf of its members;

(2) The ability of the cooperative to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions; and

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is less than 34 percent of the amount computed (as shown in Table 1) and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount per unit set forth in Table 1, and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such an agreement shall be grounds for terminating a cooperative's approval.

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TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	$0.13
Corn	Bushel	.13
Cotton	Bale	6.40
Honey	Hundredweight	1.90
Oats	Bushel	.13
Rice	Hundredweight	.52
Rye	Bushel	.13
Seed Cotton (lint basis)	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	$0.07
Corn	Bushel	.07
Cotton	Bale	3.20
Honey	Hundredweight	.95
Oats	Bushel	.07
Rice	Hundredweight	.26
Rye	Bushel	.07
Seed Cotton (lint basis)	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Wheat	Bushel	.08

(c) For the purposes of paragraph (b) of this section, the net worth of the cooperative shall be reduced by the value of the amount of any assets or funds which are not reflected as a liability of the cooperative in the financial statement of the cooperative and which are: (1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the cooperative, or (2) deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the cooperative.

§ 1425.11 Operations.

(a) A cooperative shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the cooperative is so organized and staffed by individuals employed directly by the cooperative that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a cooperative cannot satisfactorily establish that it can provide an effective marketing operation for its members, the cooperative may enter into a marketing agreement with another cooperative marketing association to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the cooperative acquiring the marketing service and the marketing agreement such cooperative has entered into with its members provides the necessary authority to enter into such agreement;

(3) The cooperative acquiring the marketing service is a member of the cooperative which will provide the marketing service; and

(4) The cooperative which will provide the marketing service has been approved under this part to obtain price support for such commodity.

(c) Any marketing agreement entered into by a cooperative, as provided in paragraph (b) of this section, must, as determined by CCC: (1) Adequately protect the ownership of the members of the cooperative's interests; (2) be in the best interest of the members of the cooperative acquiring the service; and (3) require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

§ 1425.12 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be approved for participation in price support programs unless CCC determines that the cooperative's transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) of the cooperative with the following persons which differ from transactions entered into by the cooperative with its general membership:

(1) Any director, officer, or principal employee of the cooperative, or any of their close relatives;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any corporation in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the cooperative; or

(5) Any business entity in which an agent, director, officer or employee of the cooperative was an agent, director, officer or employee of such business entity.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragaph (b) of this section are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the cooperative shall submit a detailed explanation of such contemplated transaction and a statement of the reasons for such transactions.

(d) *Directors, officers, and employees.* The cooperative shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their close relatives with persons who engage in any business relating to a commodity for which the cooperative is approved to obtain price support. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The cooperative must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which price support is obtained on any quantity of the commodity in such pool.

(b) A cooperative may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of a commodity that is acquired by, or delivered to, the cooperative for marketing must be produced by its members in order for the cooperative to obtain price support for such crop. CCC may, for a period not to exceed two years, waive such requirement for a cooperative if:

(a) The quantity of such crop acquired by the cooperative for marketing from its members has a value greater than the value of the quantity acquired or

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received from nonmembers for marketing;

(b) The cooperative can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the cooperative; and

(c) The cooperative has a plan approved by CCC which will bring the cooperative into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved cooperative shall have the authority to pledge as collateral for a price support loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the cooperative.

§ 1425.16 Eligible commodity and pooling.

(a) *Pools.* (1) A cooperative may establish separate pools as needed for quantities of a commodity.

(2) Price support will be available to the cooperative with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (c) of this section.

(b) *Eligible pool.* (1) A pool shall be eligible for price support if: (i) Except as provided in paragraph (b)(2) of this section, all of the commodity included in the pool is eligible for price support; (ii) the eligible commodity in such pool was (A) delivered to the cooperative for marketing for the benefit of the members of the cooperative and (B) delivered by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.17; and (iii) all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

(2) A quantity of a commodity in a pool which is ineligible for price support because of grade or quality, or, in the case of cotton because of bale weight or repacking, shall not make the pool ineligible for price support.

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled equal to the smaller of: (i) The quantity of an eligible commodity received from members of the cooperative, or (ii) the quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in § 1421.3(g) for farm-stored commodities that have been delivered to the cooperative.

(3) Price support will be available to the cooperative for the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Eligibility of commingled commodities for price support may be transferred from a warehouse to an approved warehouse.

(d) *Allocation of costs and expenses.* If price support is obtained with respect to any quantity of a crop of a commodity which has been pooled, allocations by the cooperative of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(e) *Losses.* (1) Any losses incurred by the cooperative in the marketing of a crop of a commodity for which price support has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which price support was obtained.

(2) Except as provided in paragraph (e)(3) of this section, losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which price support is obtained.

(3) (i) CCC may authorize an approved cooperative to carry forward losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program.

(ii) The authorization referred to in paragraph (e)(3)(i) of this section will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved cooperative and will be continued on the condition that the approved cooperative remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(A) Factors which will be considered in determining whether to approve such a plan include, but are not limited to, the following: (*1*) The stability of the membership and participation between affected pools; (*2*) the financial condition of the cooperative; and (*3*) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(B) The plan submitted by the cooperative must include the following: (*1*) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (*2*) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(iii) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by CCC under the criteria specified in paragraph (e)(3) of this section.

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within 15 days from the date the cooperative receives the proceeds from CCC.

(2) Any advances made prior to pledging a commodity as security for a CCC loan or, prior to entering into a purchase agreement with CCC by the cooperative to its members who have commodity in the eligible pool may be credited by the cooperative against the distribution required in paragraph (a)(1) in this section.

(b) *Pool proceeds.* (1) If price support is obtained from CCC for any quantity

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of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool.

(2) Except as provided in paragraph (b)(3) of this section, all proceeds from an eligible pool for which price support has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained by means of price supports from CCC shall not be combined with proceeds from other eligible or ineligible pools.

(c) *Unclaimed funds.* If a cooperative has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the cooperative and has given notice of distribution both by publication and personal letter addressed to such members, the cooperative may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the cooperative;

(2) The cooperative, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1) of this section, has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1) of this section; and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1) of this section.

§ 1425.18 Member cooperatives.

(a) *Obtaining price support.* Except as provided in paragraph (c) of this section, in order for a cooperative to obtain price support for any quantity of an eligible commodity delivered by a member cooperative or for a cooperative to obtain price support for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member cooperative, the cooperative and such member cooperative must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member cooperative must be produced by the members of such member cooperative.

(2) The member cooperative must be authorized to: (i) Sell the commodity; (ii) pledge such commodity as collateral for a price support loan; (iii) place a lien on such commodity; and (iv) deliver such commodity to the cooperative for marketing.

(3) The cooperative must either: (i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member cooperative to meet the requirements of this part; or (ii) determine and certify annually to CCC that each such member cooperative meets the requirements of this part.

(b) *State law.* The cooperative shall determine and certify annually to CCC that its member cooperatives which are not subject to paragraph (a) of this section are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) *Exemption.* An approved cooperative is required to meet only the provisions contained in paragraphs (a)(1) and (2) of this section with respect to a member cooperative for whom the member cooperative markets the production of the members cooperative's members in accordance with § 1425.11(b).

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, physical or mental handicap, deny any producer from participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1–15.12 of this Title, and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and to handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperatives shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

§ 1425.20 Records required.

(a) *Acquisitions.* An approved cooperative and its member cooperatives shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity which is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) *Commodities not processed.* The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the

quantity and quality of commodity included.

§ 1425.21 Inspection and investigation.

(a) *Retention of records.* The books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, shall be maintained for a period of five years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) *Examination.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, and to make such investigations as are deemed necessary to determine whether the cooperative is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles of association, bylaws, and agreements with producers, the representations made by the cooperative in its application for appproval, and, where applicable, its agreements with CCC.

§ 1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0040.

§ 1425.23 Appeals.

A cooperative may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title.

PART 1427—[AMENDED]

6. Part 1427 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended to read as follows:

A. The authority citation for Part 1427 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 401 and 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1054, as amended (7 U.S.C. 1444, 1421, and 1423); sec. 501 of Pub. L. 99-198.

B. The table of contents to Subpart—Cotton Loan Program Regulations is amended by adding § 1427.26 as follows:

* * * * *

§ 1427.26 Recourse loans.

* * * * *

C. Section 1427.8 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1427.8 Weight, loan rate, and amount of loans.

* * * * *

(e) *Plan A and Plan B.* (1) If CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location, is less than the loan level established with respect to a crop of upland cotton, CCC shall implement the provisions of paragraphs (e)(2) or (e)(3) of this section.

(2) *Plan A.* CCC may announce a loan repayment level with respect to a crop of upland cotton at not less than 80 percent of the loan level established for such crop. The loan level and the loan repayment level shall be announced concurrently.

(3) *Plan B.* (i) If CCC does not elect to implement Plan A as specified in paragraph (e)(2) of this section, CCC shall, except as provided in paragraph (e)(3)(B) of this section, permit producers to repay a loan at a level that is the lesser of (A) the loan level established for such crop, or (B) the prevailing world market price for upland cotton, as determined by CCC.

(ii) With respect to the 1987 through 1990 crops of upland cotton, if the world market price for upland cotton, as determined by CCC, is less than 80 percent of the loan level established for such crop, CCC may permit a producer to repay a loan at a level, which is not in excess of 80 percent of such loan level.

(f) *Payment to first handlers of cotton.* (1) If CCC determines during the period August 1, 1986, through July 31, 1991, that either program implemented in accordance with paragraph (e) of this section: (i) Fails to make United States upland cotton fully competitive in world markets; and (ii) the prevailing world market price for upland cotton, as determined by CCC, is less than the current loan repayment rate for upland cotton, CCC shall issue to first handlers of cotton, subject to such terms and conditions as CCC may prescribe, commodity certificates in accordance with Part 770 of this title.

(2) For purposes of this paragraph, a first handler of cotton is a person regularly engaged in the buying or selling of upland cotton who has entered into an agreement with CCC participate in the program set forth in this section.

(3) The value of commodity certificates issued in accordance with this section shall be based upon the difference between: (i) The current loan repayment level for upland cotton and (ii) The prevailing world market price for upland cotton, as determined by CCC.

(g) *August 1, 1986 upland cotton inventory payments.* CCC may issue commodity certificates to persons with raw upland cotton in inventory on August 1, 1986, in such amounts as CCC determines necesary, to make such cotton in inventory available on the same basis as 1986 crop cotton.

D. Section 1427.22 is amended by revising and redesignating paragraph (a) as (a)(1) and adding paragraph (a)(2) to read as follows:

§ 1427.22 Repayment of loans.

(a)(1) If a producer desires to redeem one or more bales of cotton pledged to CCC as security for a loan, the producer may receive the warehouse receipts (and the classification memoranda applicable to such cotton, if requested) upon payment of the loan, interest, and charges applicable to the bales of cotton being redeemed at the local county ASCS office except that an authorized agent under agreement with CCC and designated by producers to repay loans on their behalf may repay loans through a central county ASCS office designated by CCC. The producer may also request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(2) Notwithstanding the method of loan repayments authorized in paragraph (a)(1) of this section, CCC may allow producers to redeem one or more bales of cotton pledged as collateral for a loan by paying of CCC an amount less than the principal amount of the loan and charges as may be set forth under the terms and conditions specified by CCC at the time

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the producer redeems the commodity pledged as collateral for such loan.

* * * * *

E. A new § 147.26 is added to Subpart—Cotton Loan Program Regulations to read as follows:

§ 1427.26 Recourse loan.

The Secretary may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

Signed at Washington, DC on March 5, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-5231 Filed 3-6-86; 12:43 pm]

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federal register

Tuesday
March 11, 1986

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its rules with respect to the consideration of cultural and historic properties to clarify existing provisions in its regulatory program. Provisions addressing the definition of cemetery, collection of information on known historic properties by applicants for permits to conduct coal mining operations, consideration of historic properties by State regulatory authorities, collection of environmental information by applicants for permits to conduct coal mining operations, and preparation of reclamation plans by applicants for permits to conduct coal mining operations are being proposed. These rules are being proposed (1) in response to a decision by the U.S. District Court for the District of Columbia, (2) in order to facilitate the implementation of OSMRE's responsibilities under the National Historic Preservation Act of 1966, as amended (NHPA), and (3) to respond to a petition for rulemaking filed with OSMRE by the Society of Professional Archeologists (SOPA). The proposed rules would clarify the responsibilities of the OSMRE, State regulatory authorities, and applicants for permits to conduct coal mining and exploration operations to ensure appropriate consideration of important historic properties.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. eastern time on June 9, 1986.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule at 9:30 a.m. local time in Washington, DC, on May 13, 1986; in Denver, Colorado on May 20, 1986; and Knoxville, Tennessee on May 27, 1986. Upon request, OSMRE will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on April 22, 1986.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B-L, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Street, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in other locations will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT" by the time specified under "DATES."

FOR FURTHER INFORMATION CONTACT: Dr. Annetta L. Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone: 202–343–7951.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rules
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed revisions should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit five copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, dates, and addresses scheduled for hearings at Washington, DC, Denver, CO, and Knoxville, TN, are specified previously in this notice (see "DATES" and "ADDRESSES"). The time, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Annetta L. Clark (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on April 22, 1986. If no one has contacted Dr. Cheek to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE to prepare responses to clarify issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

Consideration of historic properties is required by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), as well as by other Federal statutes. Historic properties are addressed in sections 507(b)(13), 522(a)(3)(B) and 522(e)(3) of the Act. Additional requirements applicable to OSMRE's programs are found in sections 106 and 110 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Section 507(b)(13) of the Act requires applicants for permits to conduct coal mining operations to include in their applications accurate maps showing all manmade features and significant known archeological sites existing on the date of application.

Section 522(a)(3)(B) of the Act authorizes regulatory authorities to determine that a surface area is unsuitable for all or certain types of coal mining if it would affect fragile or historic lands on which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

Section 522(e) of the Act lists several property types on which mining is prohibited. Specifically, this section states that no surface coal mining operations will be permitted "within one hundred feet of a cemetery" or "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless

approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." Exceptions exist for valid existing rights and operations existing on August 3, 1977.

Section 106 of the National Historic Preservation Act, as amended, requires Federal agency heads, prior to authorizing expenditure of Federal funds on a Federal or federally assisted undertaking, or prior to issuing a Federal license for such an undertaking, to consider the effect of the undertaking on historic resources and to provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment on the undertaking. Under the NHPA, OSMRE reviews State program provisions as well as its own operations to ensure that appropriate consideration is being given to important historic properties.

The revisions to the existing regulations proposed here respond to three basic concerns. First, opinions issued by the District Court of the District of Columbia require certain changes to the existing language. Second, the petition for rulemaking on this issue, submitted by SOPA, was determined to have merit and OSMRE has decided to propose regulations to respond to the issues raised in that petition. See the discussion of the Director's decision on this petition at 51 FR 3802, January 30, 1986, which is part of the basis and purpose for this rule. Third, OSMRE's experience with the process as it now operates, and comments from various interest groups, both suggest that greater clarity and specificity in the regulations is required so that the regulatory authorities can better assist the Secretary of the Interior (the Secretary) in implementing his responsibilities concerning historic resources.

Existing Regulatory Program

Provisions for consideration of historic properties were promulgated by OSMRE as part of the permanent regulatory program for surface coal mining reclamation operations on March 13, 1979 [44 FR 15324 *et seq.*] and on September 14, 1983 [48 FR 41348 *et seq.*]. Subsequent amendments to relevant sections of the individual parts which deal with historic properties were promulgated on the following dates: 30 CFR Part 731—June 17, 1982 (47 FR 26364), and January 18, 1983 (48 FR 2272); 30 CFR Part 732—January 23, 1981 (46 FR 7907), and June 17, 1982 (47 FR 26366 and 26367); 30 CFR Part 772—September 8, 1983 (48 FR 40634); 30 CFR Part 773—September 28, 1983 (48 FR 44391); and 30 CFR Part 779—August 24, 1979 (44 FR 49685), August 4, 1980 (45 FR 51550), April 5, 1983 (48 FR 14822), and September 14, 1983 (48 FR 41356). Taken together, these regulations establish certain procedures which affect the consideration of historic properties.

1. Applicants for a permit must identify eligible and listed properties based on all available information. §§ 779.12(b) and 779.24(i)]

The regulations further specify that available information includes, but is not limited to, data of State and local preservation agencies.

2. The State Historic Preservation Officer (SHPO) is notified of all permit applications, and given an opportunity to comment. [§§ 773.13(a)(3)(ii) and (b)]

3. The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [§ 773.13]

4. Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [§ 773.13(c)]

5. The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [§ 773.15]

This modification could include a requirement to obtain additional information and conduct new analyses to determine whether historic properties eligible for inclusion in the National Register of Historic Places are present in a proposed permit area.

Although not mandatory, the use of a field survey or background research could be required by the regulatory authority at this time.

6. Regulatory authorities should be able to demonstrate through the record of their decision that they have given consideration to a State Historic Preservation Officer's well reasoned comments. [§ 773.15]

7. The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures to preserve important historic resources. Such measures could include a variety of activities from photographic recordation through archeological data recovery. [§ 773.15]

8. Procedures are available for the administrative and judicial review of decisions on permits. [Part 775]

In the last year, OSMRE has directed substantial resources to interpreting the regulatory program to provide clearer guidance on appropriate consideration of important historic resources. OSMRE's historic preservation requirements were set forth in several letters to SHPO's and the State regulatory authorities. In these letters, OSMRE sets forth the following basic concepts:

1. In accepting financial assistance for its program from OSMRE, a State regulatory authority assures the Secretary that it will assist him in his compliance with section 106 of the NHPA by consulting with the State Historic Preservation Officer on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with his requirements to avoid or mitigate adverse impacts upon such properties. (This assurance is required to be included in every Federal grant by the Office of Management and Budget Circular A–102, Attachment M.)

2. State programs must contain provisions no less effective than the permanent program regulations.

3. OSMRE requires through the national regulations that individual permit decisions by the State regulatory authority take into account comments or recommendations from the State Historic Preservation Officer concerning the effect of the decision on historic properties.

4. The national regulatory program provides the basis and authority for State programs to assure that appropriate consideration is given to historic properties.

District Court Decisions

Provisions for the consideration of historic properties promulgated as part of OSMRE's permanent program rulemaking of March, 1979, at Part 761 provided protection under section 522 of the Act for historic properties both actually listed on the National Register of Historic Places, and properties eligible to be listed on the National Register of Historic Places. These provisions of the permanent program regulations were challenged in the U.S. District Court for the District of Columbia. In an order issued in December, 1979, *(In re: Permanent Surface Mining Regulation Litigation,* C.A. No. 79–1144 (Order filed December 21, 1979, pg. 2)), the Court suspended language in OSMRE's regulations which extended protection to properties eligible for listing. In the same order, the Court suspended the language in the regulations which provided protection for privately owned places listed on the National Register of Historic Places. Consequently, OSMRE revised these regulations to limit the protections of section 522(e)(3) of the Act to publicly

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owned properties listed on the National Register of Historic Places.

In an opinion resolving a subsequent challenge by the Society of Professional Archaeologists, other environmental groups, and industry to these same regulatory provisions, the District Court found (*(In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C. 1985), Mem. Op. filed July 15, 1985, pg. 77 *et seq.*)) that OSMRE had properly excluded properties eligible for listing on the National Register of Historic Places from the protections offered by section 522(e)(3) of the Act. However, the Court also determined that the exclusion of privately owned properties listed on the National Register of Historic Places from the protections offered by this same section was improper, and that the Congress intended to protect both privately owned and publicly owned places on the National Register of Historic Places. The provisions being proposed here would respond in part to these determinations of the District Court. (Part 761)

Citizen and environmental plantiffs in *In Re: Permanent II* also challenged OSMRE's definition of "cemetery" found in 30 CFR 761.5. Section 522(e)(5) of the Act prohibits surface coal mining operations "within one hundred feet of a cemetery." Regulations of March, 1979 defined a cemetery as "any area of land where human bodies are interred." However, subsequent revisions to these provisions in September, 1983, defined "cemetery" to be "any area of land where human bodies are interred, except private family burial plots" (48 FR 41348 of Sept. 14, 1983). This revision was in response to the type of situation that arose in *Holmes Limestone Co.* v. *Andrus*, 655 F. 2d 732 (6th Cir. 1981), *cert. denied*, 456 U.S. 995 (1982), in which the owners of a private burial plot wanted to permit mining closer to the plot than the regulations would provide. The court concluded in the opinion of July 15, 1985, cited above, that the definition in the 1983 regulations is inconsistent with the Act. Consequently, the Court remanded the definition of cemetery included in 30 CFR 761.5. The currently proposed regulations would respond in part to this order by eliminating the exclusion for "private family burial grounds" from the definition of cemetery and, with one minor exception, reinstating the original definition from the 1979 regulations. (Parts 761, 773, 779)

Petition for Rulemaking

The Society of Professional Archaeologists (SOPA) filed a petition for rulemaking with OSMRE on September 15, 1983. On August 23, 1985 (50 FR 34167), OSMRE published a notice requesting public comment on the rulemaking petition. The petition asserted that because of the absence of guidance in the regulatory program, State regulatory authorities are implementing historic preservation provisions inconsistently. Subsequently, SOPA joined with the National Trust for Historic Preservation in the legal challenge before the District Court of the District of Columbia to regulations implementing section 522 of the Surface Mining Control and Reclamation Act promulgated during regulatory reform. This case is discussed above under *District Court Issues.*

The SOPA's principal concerns in the petition were that the existing regulations are silent as to

1. How properties eligible for but not yet listed on the National Register of Historic Places are to be identified by applicants, and
2. What a State RA is to do when mining will impact such properties.

On December 13, 1985, the Director of OSMRE determined that the petition represented valid concerns. This decision is discussed in more detail in FR (cite of future notice responding to SOPA). The currently proposed rulemaking is the rulemaking the Director of OSMRE committed to do in his response to SOPA's petition.

Clarification of Existing Regulatory Provisions

OSMRE has received a large number of inquiries from State regulatory authorities, State Historic Preservation Offices, the professional archeological and historic preservation community, and the coal mining industry concerning the historic preservation requirements in the program. Clarification of the responsibility and authority of the State regulatory authorities regarding historic properties has been sought by a number of correspondents. Additionally, information on the effect of the provisions of the National Historic Preservation Act on the State programs has been sought by the States, industry, and the preservation community. Consequently, OSMRE has determined that clarification of provisions for the protection of historic peoperties is necessary to ensure that an appropriate balance is achieved between the public's interest in historic properties and the need to mine coal. (Parts 731, 732, 773, 779, 780, 783, and 784.)

Residual Issues

In addition to the three major factors which the proposed revisions would address, discussed above, several revisions are being proposed to improve consistency within the regulations and to improve coordination with other relevant statutes. (Parts 773, 779)

III. Discussion of the Proposed Rules

30 CFR Part 731

Part 731 currently provides authority to the States to submit a program to OSMRE for review which, when approved, allows the State to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries. It also establishes general content requirements for program submissions.

Two changes in the language of this part are being proposed, both within § 731.14. This section currently details the content requirements for program submissions. Section 731.14(g)(10) requires program submissions to include a narrative description or other appropriate document of the State's proposed system for consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values, and historic, cultural, and archeological resources. The proposed language would remove the reference to historic, cultural, and archeological resources from § 731.14(g)(10), and create a new § 731.14(g)(17), that would specifically address these resources. The new paragraph would include a provision that would require State program submissions to include a discussion of the State's proposed system for consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, as well as the State's system for making decisions regarding such resources. This provision is included to clarify the procedures to be followed in a specific State for the consideration of historic properties and to provide the Secretary with additional information to assess the effect of State program approval on cultural and historic resources.

30 CFR Part 732

Part 732 details the procedures and criteria that OSMRE uses in approving or disapproving State program submissions. Criteria for approval or disapproval of State programs and State program amendments are set forth at 30 CFR 732.15. For approval, such criteria require that a State's laws and regulations are in accordance with the provisions of the Surface Mining Act and consistent with the requirements of 30 CFR Chapter VII. The phrases

"consistent with" and "in accordance with" are defined at 30 CFR 730.5 and mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

A new paragraph is being proposed at § 732.17(h)(4). The proposed change would clarify the requirement to coordinate review of State program amendments with the State Historic Preservation Officer, and would require that such amendments which have an impact on historic properties must also be submitted to the Advisory Council on Historic Preservation for comment. Comments by the SHPO, Advisory Council, or other interested persons are considered by OSMRE during review of State programs or State program amendments using the criteria of Part 732.

Under the proposal, the Advisory Council would be provided the same comment period the public is provided under paragraph (h)(3) of § 732.17. This section provides a minimum of 30 days for public comment for each proposed State program amendment, with certain exceptions when 15 days are allowed.

A 30 day review period is necessary in many instances because of the requirements placed on OSMRE by this part to process the large number of State program amendments in a timely manner. These proposed changes respond to the requirements placed on OSMRE by the National Historic Preservation Act of 1966, as amended.

30 CFR Part 761

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations established by Congress in section 522(e) of the Act for those types of operations on certain Federal, public, and private lands. Section 761.5 defines a series of terms used consistently throughout the regulations. Cemetery is defined as any area of land where human bodies are interred, except private family burial grounds. Section 761.11 discusses areas where mining is prohibited. The list of prohibited areas includes any lands where mining would adversely affect any publicly owned park or any publicly owned places included in the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place.

Proposed changes to § 761.5 would revise the definition of "cemetery" to include any area of land where human bodies are purposely interred, consistent with the order of the District Court discussed above. The word "purposely" has been included in the proposal to emphasize that only intentional interments are considered cemeteries. This would include private family burial grounds and other sites, such as the Indian burial mounds found throughout the Ohio River Valley.

Proposed changes to § 761.11(c) would revise the provisions concerning areas where mining is prohibited by Act of Congress. The proposed language would remove the restriction of the prohibition to publicly owned sites listed on the National Register of Historic Places and extend the same prohibition to privately owned listed sites, subject to valid existing rights. This proposed change is in response to the decision of the District Court, discussed above.

For the same reason, § 761.12(f) would also be revised to extend the procedures implementing the prohibition against mining to privately owned, as well as publicly owned, properties listed on the National Register of Historic Places.

30 CFR Part 772

This part establishes the requirements and procedures applicable to coal exploration operations. Specific consideration of historic properties is found in §§ 772.12(8) (i through iii). These paragraphs require that applications for permits for exploration removing more than 250 tons of coal must include a description of resources listed on the National Register of Historic Places, resources known to be eligible for listing on the National Register, and known archeological resources located within the proposed exploration area.

Proposed changes to § 772.12(a)(8) would clarify that the regulatory authority could require additional information regarding known or unknown historic resources needed to process permits for coal exploration.

30 CFR Part 773

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits, coordination with other laws, public participation, permit decisions and notification, permit conditions, and permit term and right of renewal. Specific consideration of historic properties is found in § 773.12, which lists other laws with which surface coal mining regulatory programs must be coordinated. These include the National Historic Preservation Act of 1966, as amended, Executive Order 11593 (subsequently codified as section 110 of the NHPA), and for Federal programs only, the Archeological and Historic Preservation Act of 1974. Section 773.15 discusses the review of permit applications. It specifies that the regulatory authority must make a written finding prior to permit application approval that surface coal mining and reclamation operations will not adversely affect a private family burial ground. However, relocation of a private family burial ground, if authorized by applicable State law or regulations, shall not constitute an adverse affect.

Proposed changes to § 773.12 would add the Archaeological Resources Protection Act (ARPA) to the existing list of Federal statutes with which the processing of permits for coal mining operations needs to be coordinated for Federal and Indian lands only. Any archeological excavation or removal of archeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA. ARPA requires a permit for such activities, issued by the land manager. Because OSMRE is responsible for environmental compliance activities prior to the issuance of permits to mine coal on Federal and Indian lands, coordination of processing of permits to conduct coal mining operations with the specific provisions of ARPA is needed to prevent delay and duplication of compliance activities.

Section 773.15(c)(11), which provides protecton for private family burial grounds, would become unnecessary when the definition of cemetery would be revised to include family burial grounds. Under the proposed definition of cemetery, protection for private family burial grounds would be covered by the permit finding at § 773.15(c)(3)(ii) and by the prohibition of § 761.11. These two sections extend the requirements of section 522(e)(5) of the Act to *all* cemeteries. The statement appearing in § 773.15(c)(11) that cemeteries could be relocated if authorized under applicable State law would remain but be moved to § 761.11(g).

In place of existing § 773.15(c)(11), a new paragraph, § 773.15(c)(11), would be added, requiring that the regulatory authority make a written finding that it has taken into account the effect of a proposed permitting action on properties listed on and eligible for listing on the

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National Register of Historic Places. OSMRE intends that this be accomplished through a process similar to that listed above under the discussion of the *Existing Regulatory Program*, and under the clarifications enunciated in this proposal. In every case, the regulatory authority would be expected to evaluate concerns of the SHPO, if any, and take appropriate action.

30 CFR Parts 779 and 783

These two parts discuss minimum requirements for information on environmental resources for surface mining and underground mining permit applications, respectively. The two sections contain similar requirements and language for the two types of permits. Sections 779.12 and 783.12 discuss general environmental resources information which must be included in permit applications, including the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

Section 779.24 discusses the general requirements for maps which must accompany permit applications, which include an indication of the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas, and each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located on or within 100 feet of the proposed permit area.

Paragraph (b) of §§ 779.12 and 783.12 would be reformatted to place existing language in the introductory sentence and in paragraph (b)(1). A new paragraph (b)(2) would be added. A minor change is proposed for the existing language in §§ 779.12(b) and 783.12(b). A change in language from "archaeological features" to "archeological sites" in the discussion of environmental information required in permit applications would make the language in this section consistent with the Act and with the language in other sections of the regulations.

The new paragraphs would clarify that the regulatory authority can, when appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places. This could be accomplished through (1) the collection of additional information, (2) the conduct of field investigations, or (3) other appropriate measures. Because field investigations could be costly, it would be expected that they would be required only where substantial likelihood of undiscovered resources exists.

The proposed revisions include a minor change to §§ 779.24(j) and 783.24(j). These changes would remove specific references to Indian burial grounds, private cemeteries, and other areas where human bodies are interred, which would make the language in these sections consistent with the proposed definition of "cemetery" in § 761.5, discussed above.

30 CFR Parts 780 and 784

These parts discuss minimum requirements for reclamation and operation plans to be included in surface mining and underground mining permit applications, respectively. Changes are proposed for §§ 780.31 and 784.17. The changes would include restructuring by placing the existing provision, as modified, in paragraph (a), and by adding a new paragraph (b).

Current language at §§ 780.31 and 784.17 states that, for any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in § 761.12(f). The existing sections are intended to implement the provisions of section 522(e)(3) of the Act, which states that, subject to valid existing rights (VER), no surface coal mining operations shall be permitted which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park of the historic site (section 522(e)(3) of SMCRA). This statutory language does not provide for impacts to occur absent this joint approval, or unless VER exists.

OSMRE proposes to amend these sections of the rules to track the statutory requirements of section 522(e)(3) to prevent impacts and, if the prohibition is not applicable, to protect such parks or places using a minimization standard. Thus, each permit application would need to include a description of the measures to be used either (1) to prevent impacts to publicly owned parks or any places listed on the National Register of Historic Places, or (2) if VER exists or joint agency approval is to be obtained under § 761.12(f), to minimize impacts to such places. This revised language in §§ 780.31(a) and 784.17(a) would clarify that unless VER exists or joint approval is obtained, the statutory intent is avoidance, not minimization, of impacts.

The proposal would add a new paragraph (b) in §§ 780.31 and 784.17 to clarify the authority of the regulatory authority specifically to require operators to perform necessary mitigation and treatment activities for historic properties listed on or eligible for listing on the National Register of Historic Places prior to the commencement of any specific mining operations which would affect such properties. Paragraph (b) would not implement section 522(e)(3) of the Surface Mining Act, but would aid in enabling the States to assist the Secretary in fulfilling his responsibilities under section 106 of the National Historic Preservation Act. The proposed sections would allow regulatory authorities to require operators to perform the necessary activities either before or after permit issuance, so long as it occurs before the commencement of mining operations that would affect such properties.

Thus, proposed §§ 773.15(c)(11), 779.12(b), 780.31(b), 783.12(b) and 784.17(b) would clarify the State's authority and responsibility regarding historic properties.

V. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule contains information collection requirements requiring clearance from the Office of Management and the Budget (OMB) under The Federal Paperwork Reduction Act. Approval to include these new requirements is being requested from OMB.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial

number of small entities. The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 731

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 732

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 761

Coal mining, Historic preservation, Monuments and memorials, National Forests, National Parks, Reporting and recordkeeping requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 772

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

For the reasons set forth in this preamble it is proposed to amend 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 as set forth below.

Dated: February 14, 1986.

James E. Cason,
Acting Assistant Secretary, Land and Minerals Management.

PART 731—SUBMISSION OF STATE PROGRAMS

1. The authority citation for part 731 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 731.14 is amended by revising paragraph (g)(10) and by adding a new paragraph (g)(17) to read as follows:

§ 731.14 Content requirements for program submissions.

* * * * *

(g) * * *

(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values.

* * * * *

(17) Consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

* * * * *

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

3. The authority citation for part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

4. Section 732.17 is amended by redesignating paragraphs (h)(4) through (h)(12) as paragraphs (h)(5) through (h)(13), respectively, and by adding a new paragraph at (h)(4) to read as follows:

§ 732.17 State program amendments.

* * * * *

(h) * * *

(4) All State program amendments shall be provided to the State Historic Preservation Officer for review no later than the beginning of the public comment period provided under paragraph (h)(3). All State program amendments which may have a significant impact on historic resources shall be submitted to the Advisory Council on Historic Preservation for the same comment period provided in paragraph (h)(3) of this section.

* * * * *

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

5. The authority citation for part 761 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291).

6. Section 761.5 is amended by revising the definition of "cemetery" to read as follows:

§ 761.5 Definitions.

For the purposes of this part—

* * * * *

Cemetery means any area of land where human bodies are purposely interred.

* * * * *

7. Section 761.11 is amended by revising paragraphs (c) and (g) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

* * * * *

(c) On any lands where mining will adversely affect any publicly owned park or any places included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

* * * * *

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

* * * * *

8. Section 761.12 is amended by revising paragraph (f)(1) to read as follows:

§ 761.12 Procedures.

* * * * *

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation would adversely affect any publicly owned park or any place included in the National Register of Historic Places, regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or any place listed on the National Register of Historic Places a copy of applicable parts of the permit application, together with a

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request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

* * * * *

PART 772—REQUIREMENTS FOR COAL EXPLORATION

9. The authority citation for part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et. seq.*

10. Section 772.12 is amended by adding a new paragraph, (b)(8)(iv), to read as follows:

§772.12 Permit requirements for exploration more than 250 tons of coal.

* * * * *

(b) * * *

(8) * * *

(iv) Any other information which the regulatory authority may require regarding known or unknown historic resources.

* * * * *

PART 773—REQUIREMENTS ON PERMITS AND PERMIT PROCESSING

11. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a, Executive Order 11593, 16 U.S.C. 469 seq., and 16 U.S.C. 470aa *et seq.*

12. Section 773.12 is revised to read as follows:

§773.12 Regulatory requirements with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); Executive Order 11593; for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) Where OSMRE is the regulatory authority and where lands covered by that Act are involved.

13. Section 773.15 is amended by revising paragraph (c)(11) to read as follows:

§773.15 Review of permit applications.

* * * * *

(c) * * *

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places.

* * * * *

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

14. The authority citation for part 779 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

15 Section 779.12 is amended by revising paragraph (b) to read as follows:

§779.12 General environmental resources information.

* * * * *

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measures.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

16. Section 779.24 is amended by revising paragraph (j) to read as follows:

§779.24 Maps: General requirements.

* * * * *

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

17. The authority citation for part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

18. Section 780.31 is revised to read as follows:

§780.31 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under § 761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operator to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operation which would affect such properties.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

19. The authority citation for part 783 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

§783.12 General environmental resources information.

* * * * *

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, date of State and local archeological, historic, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measure.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through the (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

21. Section 783.24 is amended by revising paragraph (j) to read as follows:

783.24 Maps: General requirements.

* * * * *

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

22. The authority citation for part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

23. Section 784.17 is revised to read as follows:

784.17 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall described the measures to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under §761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operation to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operations which would affect such properties.

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H.R. 4130/Pub. L. 99-255

To establish, for the purpose of implementing any order issued by the President for fiscal year 1986 under any law providing for sequestration of new loan guarantee commitments, a guaranteed loan limitation amount applicable to chapter 37 of title 38, United States Code, for fiscal year 1986. (Mar. 7, 1986; 100 Stat. 39; 1 page) Price: $1.00

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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Agricultural Marketing Service
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Air Traffic Control
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National Parks
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2. The relationship between the Federal Register and Code of Federal Regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 20;
9 am and 1 pm.
(identical sessions)
WHERE: Office of the
Federal Register,
First Floor
Conference Room,
1100 L Street NW,
Washington, DC
RESERVATIONS: Ruth Reedy,
202-523-5239,
for reservations.

DENVER, CO

WHEN: March 24; at 9 am.
WHERE: Room 239,
Federal Building,
1961 Stout Street,
Denver, CO.
RESERVATIONS: Elizabeth Stout
Denver Federal
Information Center,
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.
WHERE: Room 7A23,
Earl Cabell Federal
Building,
1100 Commerce Street,
Dallas, TX.
RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
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Title 3—

The President

Executive Order 12555 of March 10, 1986

Protection of Cultural Property

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of Public Law 97–446; hereinafter referred to as the "Act"), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *United States Information Agency.* The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(1) concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement.

(c) The functions conferred by section 303(e) relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement.

(d) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(e) The functions conferred by section 303(g)(1)(B) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(b) to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(g) The functions conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee by the President prior to extensions of emergency import restrictions.

(h) The functions conferred by sections 306(f)(6) and 306(g) relating to the receipt of reports prepared by the Cultural Property Advisory Committee.

(i) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings.

Sec. 2. *Department of State.* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of State, acting in consultation with and with the participation of the Director of the United

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States Information Agency and in consultation with the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(2) relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(e) relating only to negotiation and conclusion of extensions of agreements under the Act.

(d) Except with respect to subsection 303(g)(1)(B), the functions conferred by section 303(g), relating to the notification of Presidential action and the furnishing of reports to the Congress.

(e) The functions conferred by section 304(c)(4) to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

Sec. 3. *Department of the Treasury.* The following functions conferred upon the President by the Act are hereby delegated to the Secretary of the Treasury, acting in consultation with the Director of the United States Information Agency and the Secretary of State:

(a) Subject to subsection (b) of Section 1 above, the functions conferred by section 303(d) to the extent that they involve the suspension of import restrictions.

(b) Subject to subsection (f) and (g) of Section 1 above, the functions conferred by section 304 to the extent that they involve the application of import restrictions set forth in section 307 and the extension of such import restrictions pursuant to section 304(c)(3).

Sec. 4. *Enforcement in Territories and Other Areas.* The Secretary of the Interior is designated to carry out the enforcement functions in section 314.

Ronald Reagan

THE WHITE HOUSE,
March 10, 1986.

[FR Doc. 86-5590
Filed 3-11-86; 10:54 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 48
Wednesday, March 12, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

Regulations Governing Inspection, Certification, and Standards for Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and other Products. This rulemaking would: (1) Provide authorization for inspector's signature to be affixed by computer on official certificates; (2) revise the schedule of fees and charges for inspection of fresh fruits, vegetables, and other products at destination markets to reflect increased costs associated with the program.

EFFECTIVE DATE: March 23, 1986, 12:01 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Paradis, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2482.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. If the increased fees for inspection of fresh fruits, vegetables and other special products were passed on by the wholesalers, the increase would represent less than 0.8 cent per package based on a carload of 1,000 packages of fresh produce. This is not considered to be a major increase in cost or price for consumers or individual industries. Likewise, this rule should have no impact on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The use of grades and inspection and certification services increases the efficiency in the marketing system and facilitates orderly marketing of agricultural products.

The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it represents, on a cost-per-unit graded basis, only a small increase in the cost currently borne by those entities utilizing the voluntary inspection and certification services.

Presently the regulations do not specifically provide for the signature of the inspector who performed the inspection, another employee of the Inspection Service who has been given power of attorney by the inspector, or another employee of the Inspection Service who has been authorized by the Administrator to act in a supervisory capacity to be mechanically applied to a completed official inspection certificate.

It has become necessary in some areas, especially shipping point locations where inspected shipments have increased dramatically, to key punch the information from the inspection notes and subsequently generate an official certificate by computer. This is usually carried out at a central office some distance from the original point of inspection. These offices are under the supervision of duly appointed Supervising Inspector who is also responsible for certifying the accuracy of computer generated official inspection certificates. The mechanically affixed signature on inspection certificates would be that of the person performing the inspection or that of another employee of the Inspection Service who has been authorized by the Administrator to act in a supervisory capacity.

It is found that good cause exists for making this final rule effective March 23, 1986, 12:01 a.m. because the present fees are not adequate to recover the costs of providing the different types of services. The need for the increase and the amount thereof are largely beyond the control of the Agricultural Marketing Service.

The fees and charges for services at destination markets rendered to the fresh fruit and vegetable industry are amended to reflect the costs associated with the program. Such services are authorized under the Agricultural Marketing Act of 1946, section 203(h), which requires that fees be reasonable and, as nearly as possible, cover the costs of rendering the services. Since the last fee increase was October 3, 1982, there have been three government-wide cost of living increases; Medicaid increased benefits costs, retirement benefits for employees hired after January 1984 increased agency costs 6 percent, inflation allowances have averaged 5 percent a year, health insurance costs to the agency have gradually increased and relocation allowances have also increased 3 to 4 percent for the last 2 years. No appropriated funds are provided to the agency to offset the costs of rendering the services. Therefore, such costs must be recovered in full through user fees charged to the applicants requesting the services.

The following table compares current fees and charges for fresh fruit and vegetable inspection with the new schedule.

	Current	New
(1) Quality and condition inspections:		
(i) Over one-half to full carlot of one product	$42.00	$50.00
(ii) One-half carlot or less of one product	35.00	42.00
(iii) Full carlot of more than one product—maximum fee	84.00	100.00
(2) Condition inspection only:		
(i) Over one-half carlot to full carlot of one product	35.00	42.00
(ii) One-half carlot or less of one product	28.00	33.00
(iii) Full carlot of more than one product—maximum fee	70.00	84.00
(3) The base fee for peanuts (shelled), pecans and other nuts per ton shall be	1.20	1.50
Minimum fee per lot	28.00	34.00
Farmers' Stock Peanuts (unshelled) per ton	3.50	4.00
(4) Hourly rate	21.00	25.00
(5) Small package fee:		
1 to 25 packages inclusive	5.50	6.25
26 to 50 packages inclusive	7.75	8.75
51 to 150 packages inclusive	11.00	14.00
151 to ½ customary carlot	15.50	18.00
(6) Hourly rate for overtime or equivalent work in addition to regular commercial lot or hourly fees specified	10.00	12.00

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Notice of proposed rulemaking, public procedure thereon, and the postponement of the effective time of this action later than March 23, 1986, 12:01 a.m., (5 U.S.C. 533) are impracticable, unnecessary, and contrary to the public interest in that: (1) The Agricultural Marketing Act of 1946 provides that the fees charged shall be reasonable and, as nearly possible, cover the cost of the service rendered; (2) the increases in fee rates set forth herein are necessary to more nearly cover such cost including, but not limited to, Federal employees salary adjustments; (3) it is imperative that these increases in fee rates become effective in time to cover such increased costs; and (4) additional time is not required by users of the inspection service to comply with these amendments.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624).

2. Section 51.19 paragraph (a)(4) is added before the proviso as follows:

§ 51.19 Issuance of certificates.

(a) * * *

(4) With the approval of the administrator, the signature of the person performing the inspection or that of an employee of the Inspection Service who has been authorized to act in a supervisory capacity may be affixed by computer to an official certificate.

* * * * *

3. Section 51.38 is revised as follows:

§ 51.38 Basis for charges.[3]

(a) The fee for each lot of products inspected by an inspector acting exclusively for the Department, except for peanuts, pecans, or other nuts, shall be on the following basis.

(1) Quality and condition inspections:

(i) $50 for each over one-half carlot equivalent of an individual product up to a full carlot.

(ii) $42 for each half-carlot equivalent or less of an individual product.

(iii) $100 maximum for inspection of each carlot equivalent when more than one kind of product is involved.

(2) Condition inspection only:

(i) $42 for each over one-half carlot equivalent of an individual product up to a full carlot.

(ii) $38 for each half-carlot equivalent or less of an individual product.

(iii) $84 minimum for inspection of each carlot equivalent when more than one kind of product is involved.

(b) The base fee for peanuts (shelled), pecans, or other nuts shall be $1.50 per ton: *Provided,* That the minimum fee shall be $24 per lot, the different grades and varieties of peanuts shall be considered separate lots, and the fee for Farmer's Stock peanuts (unshelled) shall be $4.00 per ton.

(c) When inspections are made and the products inspected cannot be readily calculated in terms of carlots, or when the services rendered are such that a charge on the carlot or other unit basis would be inadequate or inequitable, charges for inspections may be based on the time consumed by the inspector in connection with such inspections, computed at the rate of $25.00 per hour.

(d) Not withstanding the fee rates prescribed in the preceding paragraphs, fee and charges for the inspection of small lots where detailed reports of inspections are not normally required,[4] the following rates may be applied:

1 to 25 packages inclusive	$6.25
26 to 50 packages inclusive	8.75
51 to 150 packages inclusive	14.00
151 to ½ customary carlot equivalent	18.00

(e) Whenever inspections are performed at the request of the applicant during periods which are outside the inspector's regular scheduled workweek, a charge for overtime or holiday work shall be made at the rate of $12.00 per hour or portion thereof in addition to the regular commercial lot or hourly fees specified in this subpart. Holidays are those specified in Title 5 U.S.C. 6103(a).

(Paperwork Reduction Act Assigned Number 0581–1025)

Done at Washington, DC on: March 4, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–5230 Filed 3–11–86; 8:45 am]

BILLING CODE 3410-02-M

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[3] Carlot equivalent shall be based on the customary quantity of a product loaded in common railcars.

[4] For example, the inspection of small lots for export to Canada or delivery to private and public institutions.

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0560]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty; Regulation Q

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms, landslides, mudslides, and flooding in designated California counties.

EFFECTIVE DATE: February 21, 1986 for the California counties of Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba; February 25, 1986 for the California counties of Glenn, Humboldt, and Modoc; and February 27 for the counties of Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mendocino, Placer, Plumas, San Joaquin, Sierra, Sutter, Tehama, Tuolumne, and Yolo.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Senior Attorney (202/452–3711), Legal Division, or Ernestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (202/452–3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On February 21, 1986, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the California counties of Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba major disaster areas. On February 25, 1986, the Presidental declaration was amended to include the California counties of Glenn, Humboldt, and Modoc. The Presidential declaration was further amended on February 27, 1986, to include the California counties of Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mendocino, Placer, Plumas, San Joaquin, Sierra, Sutter,

Tehema, Tuolumne, and Yolo. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)) The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the severe storms, landslides, mudslides, and flooding beginning on or about February 12, 1986. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to February 21 for the counties of Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma and Yuba; February 25 for the counties of Glenn, Humboldt, and Modoc; and February 27 for the counties of Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mendocino, Placer, Plumas, San Joaquin, Sierra, Sutter, Tehama, Tuolumne, and Yolo, and will remain in effect until 12 midnight, August 30, 1986.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign Banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated California counties directly affected by the severe storms, landslides, mudslides, and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, March 6, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–5338 Filed 3–11–86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–17–AD; Amdt. 39–5255]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection for adequate self-locking capability of the nuts that support the nacelle strut attach fittings on Boeing Model 747 series airplanes, and replacement, if necessary. This action is prompted by a recent report of inadequate self-locking capability of some nuts. This action is necessary since inadequate self-locking capability of these nuts, if not corrected, could result in separation of the engine from the airplane.

DATE: Effective March 31, 1986.

ADDRESSES: Information on the inspection procedure may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been a recent report of self-locking nuts, part number BACN10HR162CS, not having the required self-locking capability. This was found to have been the result of improper processing of the nuts. Should the clamp up torque be lost, the nut may back off and allow the bolt to come out. Loss of a bolt could result in separation of an engine.

Boeing Commercial Airplane Company has issued Alert Service Bulletin 747–57A2233, Revision 1, dated January 24, 1986, which describes the specific procedures to be used to inspect for adequate self-locking torque on forward engine mount nuts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being issued which requires inspection of the nuts that support the nacelle strut attach fittings for adequate self-locking capability, and replacement, if necessary, in accordance with Boeing Alert Service Bulletin 747–57A2233, Revision 1.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category, listed in Boeing Alert Service Bulletin 747–57A2233, Revision 1, dated January 24, 1986.

To detect faulty self-locking nuts that could lead to separation of an engine, accomplish the following, unless already accomplished:

A. Within 100 landings after the effective date of this AD, perform a one-time inspection of the outboard attach fitting nuts of all nacelle struts for adequate self-locking torque of the nuts, part number BACN10HR162, in accordance with Boeing Alert Service Bulletin 747–57A2233, Revision

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1, dated January 24, 1986, or later FAA-approved revisions.

B. Within 600 landings after the effective date of this AD, perform a one-time inspection of the inboard attach fittings nuts of all nacelle struts for adequate self-locking torque of the nuts, part number BACN10HR162, in accordance with Boeing Alert Service Bulletin 747–57A2233, Revision 1, dated January 24, 1986, or later FAA-approved revisions.

C. Defective nuts must be replaced prior to further flight.

D. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection time in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for the operator.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received information on inspection procedures from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 31, 1986.

Issued in Seattle, Washington, on March 5, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86–5284 Filed 3–11–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85–NM–102–AD; Amdt. 39–5256]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires modification of anti-skid valve assemblies on the main landing gear and centerline gear on McDonnell Douglas DC–10 and KC–10A (Military) series airplanes. This AD is prompted by reports of failures of anti-skid valve assembly end cap screws which, if not corrected, could result in fluid loss from the affected hydraulic system when the brakes are applied. This AD is necessary to minimize the potential for reduced braking capability.

DATES: Effective April 21, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60); or Goodyear Aerospace Corporation, 1210 Massillon Road, Akron, Ohio 44315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Thompson, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) requiring modification of certain anti-skid valve assemblies on the main landing gear and centerline gear on McDonnell Douglas DC–10 and KC–10A (Military) series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on October 28, 1985 (50 FR 43572). The comment period for the proposal closed on December 16, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. A total of six comments were received.

Four of the commenters indicated that the DC–10 airplane has two hydraulic brake systems, and that loss of a single brake hydraulic system through anti-skid valve and cap screw failure would not measurably degrade the braking performance during landing operation up to the certified maximum landing weight of the aircraft. The FAA agrees. However, the primary concern does not involve landing braking distances, but, rather, the consequences involved in increases in rejected takeoff stopping distances should single brake system operation occur in combination with a rejected takeoff. For a rejected takeoff requiring high braking energy, the loss of available torque for stopping could approach 50% with only one brake system operative. The FAA considers the possibility of such an occurrence a potentially unsafe condition requiring corrective action.

These commenters felt that a dual hydraulic brake system failure would have to occur before an unsafe condition existed. One of these commenters provided analysis indicating that the probability of a dual hydraulic braking system fluid loss due to anti-skid valve end screw failure is extremely low. The FAA does not agree that a dual hydraulic brake system failure must occur to present a potential safety hazard. Rather, such a hazard exists should a high brake energy stop be required, utilizing a single hydraulic brake system. Recent service history indicates an increase in the total number of screw failures to 57, from the five originally reported. Though the likelihood of this failure occurring in combination with a high energy rejected takeoff is remote, the FAA considers that sufficient potential exists to require replacement of the affected screws.

One commenter noted that the proposed Airworthiness Directive states that the applicable valves are those that have serial number dates of January 1981 through April 1985, plus any valves overhauled during the same period having end cap screws replaced with screws obtained from Goodyear Aerospace Corporation. However, Goodyear Service Bulletin DC10–10–32–29 and DC–30/40/32/41 defines that affected valves as having serial numbers JUL81–8519 and subsequent, plus ones overhauled having end cap screws replaced from January 1981 to April 1985. Upon further investigation, it was confirmed that the suspect screws did not get incorporated into newly-manufactured anti-skid valves until serial number JUL81–8519, even though they were available for overhaul of valves in January 1981. The effectivity has been revised in the final rule to properly reflect the serial number valves affected.

Five commenters indicated that the six-month compliance time was not realistic, since inspection of certain anti-skid valves requires removal of the landing gear strut door, necessitating jacking of the airplane and retracting the gear to perform this task. For operators with large fleets, this could present a hardship disproportionate to the remote nature of the potential impact on continued airworthiness. Further, one of these commenters felt the estimate of 11

manhours per airplane to accomplish the required actions is unrealistic. The operator bases his statement on the fact that the suspect valves must be removed from the aircraft and sent to the shop for cleaning and screw replacement. In addition, the operator must take the aircraft out of service, depressurize the hydraulic systems, change the anti-skid valves, and functionally check the system prior to return to service. Without a complete shipset of serviceable valves in stock, the procedure must be repeated.

The FAA has determined that the 11 manhours is realistic for accomplishing the required modifications because few aircraft are expected to have suspect valves in both brake systems. Goodyear has indicated that, of 2,140 valves that they know are affected, 1,600 valves are at Goodyear, 540 valves are in service (including spares, as well as valves installed on aircraft), and 150 were overhauled by Goodyear. Goodyear has already modified enough of the 1,600 valves to support a rotatable program with the operators involved to allow line replacement of the suspect anti-skid valves, including those overhauled using the suspect screws by other than Goodyear. The 11 manhour estimate represents 6 manhours for the overhaul of four valves per airplane, and 5 manhours per airplane for removal, replacement, and hydraulic system servicing. Though a limited number of airplanes may exceed this estimate, depending on the installed position of the affected anti-skid valves, the estimate is considered by the FAA as reasonable and valid. To account, however, for additional manhours required to inspect for the suspect valves in cases where landing gear strut door removal is necessary, 50% of the estimated 105 airplanes in the final cost analysis are considered to require 5 manhours per airplane for the inspection.

Upon reconsideration, the FAA does agree that operators with large fleets may experience undue hardship in completing the required actions within the proposed six-month compliance time. Accordingly, the compliance time has been increased to twelve months, which the FAA has determined to be acceptable, considering the potential impact on continued airworthiness and the ability of those operators affected to complete the required actions without interruption of existing maintenance schedules.

One commenter noted that accomplishment of the procedures described in McDonnell Douglas Service Bulletin 32–209 is also necessary for removal of the anti-skid control valves from the airplane and should be included in the required actions. Though the removal and installation of the anti-skid valve assemblies follows normal DC–10 Maintenance Manual procedures, the FAA concurs with inclusion of reference to McDonnell Douglas Service Bulletin 32–209 for the sole purpose of clarification, and the final rule has been so revised.

It is estimated that up to 105 airplanes of U.S. registry will be affected by this AD, that it will take approximatly 13.5 manhours per airplane to accomplish the required actions, and that the average labor costs will be $40 per manhour. Parts required for the modification will be provided by the valve manufacturer upon request. Based on these figures, the total cost impact of the AD is estimated to be $56,700.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes discussed above.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC–10 or KC–10A airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category, equipped with anti-skid valve assemblies, Goodyear Aerospace Corporation Part Numbers 6000189, 6000189–2, and 6000183–3, having serial number dates of JUL81–8519 through serial numbers dated April 1985, or any valves overhauled during January 1981 through April 1985 having end cap screws replaced with screws obtained from Goodyear Aerospace Corporation. Compliance required as indicated, unless previously accomplished.

To preclude the potential of hydraulic system fluid loss with subsequent loss of braking system performance on anti-skid valve assemblies, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify and reidentify the anti-skid valve assemblies as outlined in the Accomplishment Instructions of Goodyear Service Bulletin DC10–10–32–29 and DC10–30/40–32–41, dated May 3, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Removal and installation of skid control manifold or skid control valve may be accomplished as outlined in McDonnell Douglas Service Bulletin 32–209, dated June 27, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60); or Goodyear Aerospace Corporation, 1210 Massillon Road, Akron, Ohio 44315. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective April 21, 1986.

Issued in Seattle, Washington, on March 5, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86–5283 Filed 3–11–86; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373, 376 and 385

[Docket No. 60105-6005]

Donations of Goods To Meet Basic Human Needs

AGENCY: Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Export Administration Amendments Act of 1985 (Pub. L. 99–64) amended section 6 of the Export Administration Act of 1979 by revising the provision that excludes from foreign policy controls exports of medicine, medical supplies and certain foods. The amended section, designated 6(g), expands the category of exempted items to include donations of goods intended to meet basic human needs. These have been identified in that section as including educational materials, seeds and hand tools, water resources equipment, clothing and shelter materials, and basic household supplies, as well as food, medicine and medical supplies.

This rule implements the new provision by amending Parts 373, 376 and 385 of the Export Administration Regulations to create a new special "Humanitarian License" that permits the export of donations subject to certain guidelines, including a requirement that the exporter be able to monitor delivery of the donated goods to the intended beneficiaries. A Humanitarian License authorizes an exporter to make multiple shipments of goods identified in a supplement to Part 373 as meeting basic human needs. Additional items may be exported pursuant to specific authorization. The use of this procedure will be limited in practice to the export of donations for humanitarian projects in those countries to which the export of such items would otherwise require a validated license. While this procedure applies to donations to any destination, in practice it will thus only affect shipments to the embargoed destinations, since shipments of such items to other destinations do not require individual validated licenses. The embargoed destinations are countries listed in Country Groups S and Z: Libya, Cuba, North Korea, Cambodia and Vietnam.

Note.—Effective February 1, 1986, all exports from the United States to Libya are subject to the Libyan Sanctions Regulations promulgated by the Department of the Treasury (31 CFR Part 550). Excepted from the Treasury regulations are publications and donated articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes. All other exports must be licensed by the Department of the Treasury. Therefore, even though an export may be authorized under the Humanitarian License, exporters should confirm with the Department of the Treasury that a particular export meets this exception.

EFFECTIVE DATE: This rule is effective May 12, 1986. Comments must be received by May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Peterson, Strategic Planning and Policy Division, Export Administration, (202) 377–5822, or David W. Mills, Office of the Assistant General Counsel for Export Administration, (202) 377–5305.

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 *et seq.*), but the paperwork burden is lessened because certain commodities that formerly required a validated export license (Form ITA-622P, approved by the Office of Management and Budget under control number 0625-0001) for individual shipments can now be shipped under a new special licensing procedure authorizing bulk shipments subject to renewal every two years. OMB approval is pending for the new reporting requirement contained in section 373.5 of the Export Administration Regulations. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce/International Trade Administration.

The period for submission of comments will close May 12, 1986. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comment and material to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be matter of public record and will be a available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Record in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copy of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Parts 373, 376, and 385

Exports, Communist countries.

Accordingly, Parts 373, 376, and 385 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 373 and 385 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. The authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 373—SPECIAL LICENSING PROCEDURES

3. A § 373.5 is added, reading as follows:

§ 373.5 Humanitarian license procedures.

A Humanitarian License Procedure is established that authorizes exports to any destination of donated goods to meet basic human needs under a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(a) *Basic Human Needs.* Under this licensing procedure, basic human needs are defined as those requirements essential to individual well-being: Health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence. This procedure permits the export of goods that are suitable for small-scale local improvement projects; for example: Seeds, tools, fertilizers, small-scale irrigation pumps, and agricultural materials and machinery suited to small-scale farming operations. It encompasses the export of goods of the kind normally donated by charitable organizations that address basic human needs directly and at the local level, where specific improvement projects can be closely monitored and adjusted as needed to ensure that the donated items are being delivered to the intended beneficiaries. The Humanitarian License procedure does not, however, permit exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants.

(b) *Donations.* To qualify for export under this procedure, the goods must be provided free of charge to the beneficiary. This requirement reflects a distinction between freely-donated goods of a people-to-people nature of the type exported by U.S. private and voluntary charitable organizations and those goods of a commercial nature, which are excluded from this procedure. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this section.

(c) *Ineligible Goods.* Among those goods *not* eligible under this procedure are those commodities controlled for national security, nuclear non-proliferation or crime control reasons in the "Reason for Control" paragraph on the Commodity Control List (CCL) (Supplement No. 1 to 399.1) and communications intercepting devices (ECCN 4517B). In addition, this procedure would not apply to any items controlled for export as hazardous goods or substances pursuant to section 3(13) of the Export Administration Act of 1979, as amended.

(d) *Eligible goods.* Supplement No. 7 to this Part 373 lists the kinds of items that have been determined to meet basic human needs. The exporter, however, is required to abide by the guidelines set forth in subsection (a) of this section to ensure that a given item to be exported is encompassed by this procedure. For example, even though "generators" are included in the Supplement, only small generators suitable and necessary to administer and operate a donative program are authorized for export under this procedure. In like manner, "laboratory supplies and equipment" covers items intended for use in local medical laboratories such as refrigerators, sterilization equipment and microscopes. If a license holder is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Office of Export Licensing, Special Licensing Division, Rm. 1614, U.S. Department of Commerce, Washington, D.C. 20230. The request should describe the type of goods intended for export and how it is intended to meet basic human needs. The Office of Export Licensing will notify the exporter whether the item is authorized for export under this procedure and any special conditions that may apply to such export.

(e) *Distribution.* To qualify for a Humanitarian License, the donor must demonstrate a means of ensuring that the donations exported are in fact used to meet the basic human needs of the intended beneficiaries. This requires a monitoring system that would alert the donor if goods are being diverted. See paragraph (f)(5) of this section for ways by which this requirement may be satisfied.

(f) *Application Procedure.* To apply for a Humanitarian License, the applicant shall prepare a Narrative Statement, in duplicate, explaining the nature and function of the donative program. This Narrative Statement should be submitted to the Special Licensing Division, Office of Export Licensing, Room 1614, Department of Commerce, Washington, D.C. 20230. The Narrative Statement shall include, as a minimum, the following information:

(1) The applicant's identity and past experience as an exporter of goods to meet basic human needs;

(2) A specific list of past and current countries to which the donative programs have been and are being directed, as well as any countries to which such programs are now planned, with particular reference to donative programs in Country Groups S and Z;

(3) A description of the types of projects and commodities involved in the donative programs;

(4) A description of the specific class(es) of beneficiaries of particular donated goods intended to be exported under this license;

(5) A description of the arrangements to ensure proper distribution of the donated goods. These arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff;

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place; and

(6) Information concerning the source of funding for the donative programs and the projected annual value of exports under the license.

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When a narrative statement is approved, the Office of Export Licensing will issue a validated letter authorizing export of eligible donations during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and conditions contained in the letter. Attached to this letter will be a validated copy of the narrative statement with a license number and an expiration date. This validated letter together with the validated copy of the Narrative Statement constitutes the "Humanitarian License." The license number must be displayed on the Shipper's Export Declaration (Commerce Form 7525–V).

(g) *Duration of License.* A Humanitarian License granted under this section will be valid for two years from the last day of the month in which it is issued. The license may be extended for two-year periods thereafter by submitting a certification to the Office of Export Licensing. This certification shall state the following:

For the purpose of requesting a two year extension of Humanitarian License No. ———, I (we) certify that all material facts concerning the license outlined in the Narrative Statement submitted to the Office of Export Licensing remain the same and that I continue to comply with the terms and conditions of said license and with the Export Administration Regulations (EAR). I am authorized to make this statement on behalf of our organization.

(Name and Title)

(Signature and Date)

If any material facts concerning the license have changed from those described in the Narrative Statement, the exporter shall submit an explanation of those changes at the time that renewal of the license is sought. This request for an extension of the Humanitarian License should be submitted 90 days prior to the license's expiration date. When this extension request is approved, the Office of Export Licensing will issue a validated letter with a new license number and expiration date.

(h) *Revocation of License.* In addition to any enforcement action under Part 387 of the EAR, the license may be suspended or revoked if any of the following occurs:

(1) The exporter discontinues use of the license for a period of more than one year;

(2) The exporter has failed to comply with the guidelines of the license by exporting items that do not qualify as donations intended to meet basic human needs, including the acceptance of any form of payment for the items donated;

(3) The donations are diverted to an unauthorized party;

(4) Any provision of the Export Administration Act of any regulation, order, or license issued pursuant thereto has been violated.

(i) *Recordkeeping Requirements.* In addition to the renewal request discussed in subsection (g) of this section, any exporter granted a Humanitarian License shall maintain records of all shipments made under that license, the values of said shipments, the countries and beneficiaries to which the donations are sent, the validated Department of Commerce letter and Narrative Statement, and any party charged with distributing the donations to the beneficiaries. These records shall be available upon request by the Office of Export Enforcement for review.

4. A Supplement No. 7 is added to Part 373, reading as follows:

Supplement No. 7—Kinds of Commodities That May Be Donated To Meet Basic Human Needs Under § 373.5

The following is a list of the kinds of commodities that have been identified as meeting basic human needs. The list is not definitive but will be amended on an ongoing basis to reflect additional items, as they are identified, that meet these needs. The list is divided into categories that parallel the five basic human needs set forth in § 373.5(a): Health, food, clothing, shelter, and education. A degree of overlap exists, however, since an item listed as meeting one need may serve as well to meet additional needs. A sixth category of items is added to cover the non-commercial export of basic support equipment and supplies necessary to operate and administer the donative programs. The list is limited by the guidelines outlined in § 373.5(a), which confine the scope of the list to those items appropriate in addressing basic human needs through *small-scale* projects at the *local* level. Each item itself must be able to be described as "basic" and "small-scale" if it is to be eligible for export under this procedure. If the exporter is unsure whether a prospective donation falls within these guidelines, the procedure outlined in § 373.5(d) should be followed. Where applicable, replacement and spare parts for items that qualify for export under this Supplement may also be exported. Specific goods that may not be exported under a Humanitarian License are described in § 373.5(c).

Note.—Motorized vehicles, watercraft and aircraft are not included in this Supplement. Requests to export such items to meet basic human needs may be made under the procedure described in § 373.5(d).

Health: equipment for the handicapped, hospital supplies and equipment, laboratory supplies and equipment, medical supplies and devices, medicine-processing equipment, medicines, vitamins, water resources equipment.

Food: agricultural materials and machinery suited to small-scale farming operations, agricultural research and testing equipment, fertilizers, fishing equipment and supplies suited to small-scale fishing operations, food, insecticides, pesticides, seeds, small-scale irrigation equipment, veterinary medicines and supplies.

Clothes and Household Goods: bedding, clothes, cooking utensils, fabric, personal hygiene items, soap-making equipment, weaving and sewing equipment.

Shelter: building materials, hand tools.

Education: books, individual school supplies, school furniture, special education supplies and equipment for the handicapped.

Basic Support Equipment and Supplies Necessary to Operate and Administer the Donative Program: audio-visual aids for training, generators, office supplies and equipment.

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

5. Section 376.15 is added as follows:

§ 376.15 Donations of goods to meet basic human needs.

Pursuant to section 6(g) of the Export Administration Act of 1979, as amended, exports of donations to meet basic human needs are authorized under a Humanitarian License Procedure set forth in § 373.5. Exports that qualify under this procedure are therefore exempt from the licensing requirements contained in §§ 385.1 and 385.7.

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

6. Section 385.1 is amended by revising the last sentence of paragraph (a) and adding two sentences to read as follows:

§ 385.1 Country Group Z; North Korea, Vietnam, Cambodia and Cuba.

(a) * * * Exports of donations to meet basic human needs may be authorized under a Humanitarian License, as described in § 373.5. Such exports may also be authorized for single transactions under an individual validated license. Exports to meet emergency needs that do not qualify for export under the Humanitarian License procedure will be considered on a case-by-case basis.

7. Section 385.7 is amended by revising the second sentence of paragraph (a) introductory text as follows:

§ 385.7 Country Group S: Libya.

* * * * *

(a) * * * Excepted from this licensing requirement are those goods exported under the Humanitarian License Procedure outlined in § 373.5, and commodities and data exported pursuant to special general licenses described in Parts 371 and 379 * * *

* * * * *

Dated: March 7, 1986.

Walter J. Olson,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-5875 Filed 3-11-86; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3178]

John William Costello Associates, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires two Washington, DC-based employment counseling services and four corporate officers, among other things, to cease misrepresenting: (1) The basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondents' services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee. Additionally, respondents are required to have a reasonable basis for any placement claims they make, and whenever such placement claims are made, to maintain records of their placements and make a composite of these records available to clients on request. Further, respondents are prohibited from accepting a fee until a client has obtained employment through respondents' services.

DATE: Complaint and Order issued Feb. 4, 1986.[1]

FOR FURTHER INFORMATION CONTACT: E. Charles Lane, FTC/H-272, Washington, D.C. 20580, (202) 523-3937.

SUPPLEMENTARY INFORMATION: On Wednesday, Nov. 27, 1985, there was published in the Federal Register, 50 FR 48789, a proposed consent agreement with analysis In the Matter of John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., individually and as an officer of said corporations, John William Costello, Jr., individually and as an officer of said corporations, James H. Sellors, individually and as an officer of said corporations, and William S. Spector, individually and as an officer of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.115 Jobs and employment service. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1553 Services.—Services: § 13.1843 Terms and conditions. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1995 Job guarantee and employment.

List of Subjects in 16 CFR Part 13

Employment counseling services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,
Secretary.

[FR Doc. 86-5330 Filed 3-11-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket 9198]

MidCon Corp. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Lombard, Ill., natural gas pipeline owner and operator to divest its interest in the Louisiana portion of the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas. The Acadian system is currently owned jointly by MidCon Corp. and Texas Oil and Gas Co. MidCon is also required to obtain Commission approval before acquiring certain gas pipeline operations in the New Orleans/Baton Rouge market. This consent order resolves part of a two-count administrative complaint issued by the FTC that challenges MidCon Corp.'s proposed merger with United Energy Resources, Inc.

DATES: Complaint issued Sept. 18, 1985. Order issued Feb. 6, 1986[1].

FOR FURTHER INFORMATION CONTACT: FTC/B-008, Ronald B. Rowe, Washington, D.C. 20580, (202) 724-1441.

SUPPLEMENTARY INFORMATION: On Thursday, Oct. 17, 1985, there was published in the Federal Register, 50 FR 42032, a proposed consent agreement with analysis In the Matter of MidCon Corp., a corporation, and United Energy Resources, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records.

List of Subjects in 16 CFR Part 13

Natural gas, Pipelines, Trade practices.

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 86-5329 Filed 3-11-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Electric Utilities; Construction Work in Progress and Anticompetitive Implications; Interim Rule and Request for Comment

Correction

In FR Doc. 86-4783, beginning on page 7774 in the issue of Thursday, March 6, 1986, make the following correction:

On page 7775, in the first column, in the third line of the **SUPPLEMENTARY INFORMATION**, delete the final period and add "; Docket No. RM86-6-000, Order No. 448."

BILLING CODE 1505-01-M

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18 CFR Part 292

[Docket No. RM83-69-002]

Qualifying Facility Status for Hydroelectric Projects Under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978; Rehearing Denial

Issued: March 6, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of an order that denied a petition for rulemaking. Petitioners requested the Commission to reopen a prior rulemaking proceeding to amend the Commission's rules governing qualification of certain hydroelectric facilities for incentives under the Public Utility Regulatory Policies Act of 1978 (PURPA). Petitioners assert that the Commission should reconsider whether (1) its rule is consistent with PURPA; (2) the Commission violated the National Environmental Policy Act; and (3) the Commission abused its discretion by refusing to reexamine the existing rule. The Commission denies rehearing because it believes that its prior order was correct and in compliance with statutory requirements.

FOR FURTHER INFORMATION CONTACT: A. Hays Butler, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. (202) 357-8548.

SUPPLEMENTARY INFORMATION:

[Docket No. RM83-69-002]

Qualifying Facility Status for Hydroelectric Projects Under Sections 202 and 210 of the Public Utility Regulatory Policies Act of 1978; Rehearing Denial; the Sierra Club et al.

Issue: March 6, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying rehearing of an order denying a petition for rulemaking[1] filed by several environmental groups.[2] Petitioners had requested the Commission to reopen a prior rulemaking proceeding,[3] in order to prepare a programmatic environmental impact statement (EIS) for that rulemaking, and to amend the Commission's rules governing qualification of certain hydroelectric facilities for incentives under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)[4] and the Commission's regulations promulgated thereunder. Under the existing rules, certain hydroelectric facilities are eligible for qualifying facility (QF) status, and thus the incentives available to such facilities under the Commission's regulations, without regard to whether the facility is already existing (old) or is proposed to be built in the future (new).

Petitioners contend that rehearing should be granted for three reasons. First, the Commission did not reconsider whether the existing rule is consistent with the intent of PURPA, as expressed in the legislative history. Second, the Commission violated the National Environmental Policy Act (NEPA)[5] by not undertaking a new, programmatic environmental review of the existing rule, in light of increased hydroelectric development activity after the rule was promulgated. Finally, the Commission abused its discretion by not reexamining the existing rule in light of new information showing that it was based on erroneous assumptions or information.

The Commission is denying rehearing because it is not persuaded that its prior order was incorrect and because the Commission believes that it is fully in compliance with its obligations under both PURPA and NEPA.

II. Discussion

A. Petitioners' Argument That Permitting QF Status for New Dams and Diversions Violates PURPA

Petitioners' first argument is that in enacting PURPA, Congress barred the Commission from granting QF status to new hydroelectric facilities. As the Commission noted in the order of January 8, 1986, Petitioners had an opportunity to request rehearing of the final rule and failed to do so.[6] Thus, for the reasons set forth in the order of January 8, 1986, the Commission again rejects Petitioners' request to reopen Docket No. RM79-54 on this ground.

B. Whether a New or Supplemental Programmatic Review of the PURPA Rules Is Required at This Time

Petitioners appear to have abandoned their claim that the Commission is not monitoring the environmental impacts of new, PURPA-induced hydroelectric projects. However, they continue to assert that a new, programmatic environmental assessment of the effects of permitting QF status for new facilities needs to be made at this time. We construe Petitioners' fundamental premise to be that such a review must be undertaken because new information has come to light indicating either that the original Environmental Assessment (EA)[7] conducted at the time the PURPA rules were promulgated was not valid or, if the EA was valid when conducted, circumstances have changed to such a degree that its conclusions are no longer valid.

The Commission acknowledges that the number of license and exemption applications has increased sooner than was anticipated in the EA. The Commission continues to believe, however, that this fact alone does not call into question the validity of the approach to further environmental review taken in the EA,[8] and does not constitute sufficient reason to compel a new, programmatic review of the PURPA rules at this time.

In this regard, the Commission reiterates that the fact that a license is issued for a hydroelectric project is not a guarantee that it will be built. A licensee's decision regarding whether to construct a project or to seek to surrender the license rests largely on economic factors. Thus, a hydroelectric QF developer may find, after having acquired the license, that its avoided cost projections were overstated, and that the project has become uneconomic. A downward trend in avoided cost rates (as discussed in the following paragraph) could result in many licensed projects being abandoned prior to construction.[9]

The Commission also believes there is good reason to think that recent increases in hydroelectric applications will abate substantially for the foreseeable future. First, the Federal energy tax credit applicable to, *inter alia*, hydroelectric QFs, expired on December 31, 1985. Moreover, avoided cost rates for purchases from QFs, as determined by the State regulatory authorities, have generally been declining over the past year.[10] This trend has been particularly evident in some States with significant hydropower potential.[11] From these developments, a decline in the number of hydroelectric applications might be expected. Thus, the Commission continues to adhere to its conclusion that sufficient cause has not been shown to warrant a new, programmatic review at this time.

Also with regard to preclusion of alternatives, Petitioners allege that the Commission erred legally and factually in holding, in the order of January 8, 1986, that the rule permitting QF status for new facilities has not resulted in an "irretrievable commitment" of resources which would preclude alternatives. With regard to the alleged factual error, Petitioners claim that promulgation of the rule has resulted in the commitment of substantial amounts of money to develop PURPA-induced hydroelectric projects.

The Commission believes that Petitioners have misapplied the "irretrievable commitment of resources" principle. That principle relates to the timing of environmental review *before* an agency takes action; that is, the agency must undertake its environmental review before making critical decisions which may result in the commitment of resources to action which will significantly affect the environment.[12] The Commission undertook such review at the time of its original rulemaking. In any event, as the prior order explained, obtaining QF status does not require a commitment of resources by the Commission or any other party, nor does it obviate the need for, or determine the outcome of, a hydroelectric licensing or exemption proceeding. All concerned parties have exactly the same options after QF status is obtained as before.[13]

Petitioners nonetheless contend that case-by-case review of hydroelectric applications and the Cumulative Impact Assessment Procedure (CIAP) is not adequate, on the ground that hydroelectric QF development may have environmental consequences extending beyond the river or watershed where any given project is located and that such consequences cannot be considered in the context of individual proceedings or the CIAP program. The Commission does not agree with this assertion. The Commission is not precluded from considering broad-based environmental concerns in individual license proceedings or in the CIAP program, where such consideration is appropriate. For instance, an intervenor in a hydroelectric proceeding might adduce evidence to support its belief that a particular project or group of projects would endanger the Nation's supply of whitewater rafting sites, or would threaten anadromous fisheries stocks in the Pacific Northwest, or might eliminate a critical habitat for an endangered species. The hydropower licensing or exemption procedures provide an ample forum for such concerns to be addressed.

Petitioners originally charged that the Commission has not abided by its pledge to continue monitoring the market penetration of technologies that qualify for PURPA benefits. On rehearing, they have abandoned this claim. Instead, they assert that the Commission's comprehensive PURPA implementation study is not enough. However, this assertion is based on the incorrect premise that continued environmental review in hydroelectric license and exemption proceedings and the CIAP does not provide a forum to address their concerns. It is further premised on their belief that the few, generalized facts set forth in their pleadings regarding increased hydroelectric license applications demonstrate that alternatives are fast being foreclosed. As set forth above and in the order of January 8, 1986, the Commission concludes that Petitioners' alarm is unwarranted.

There are additional reasons why a new, programmatic review of the PURPA regulations is not appropriate at this time. A programmatic review would necessarily be very general in nature and somewhat speculative. A much better way to evaluate the types of concerns raised by the Petitioners, such as the effects of water flow levels on aquatic life, is in the context of concrete project proposals that would, if built, affect identified areas in specific ways. For example, the effects on a given river of a single facility may be quite different than the effects of half a dozen like facilities on the same river. A five megawatt facility of River A might have little or no impact on other resource values, while the same size facility on River B might have significant impacts. A facility at one site on a river may have substantially different effects than a similarly sized facility twenty miles upstream. Some facilities may be detrimental to other resource values, while other facilities enhance them. In

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[1] "Qualifying Facility Status for Hydroelectric Projects under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978," 34 FERC ¶61,006.

[2] Petitioners are The Sierra Club, Friends of the River Foundation, National Wildlife Federation, California Trout, the Planning and Conservation League, Western River Guides Association, Friends of the Earth, The Wilderness Society, Natural Resources Council of Maine, and the American Wilderness Society.

[3] Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17,959 (March 20, 1980) (Order No. 70) (Docket No. RM79-54) (issued March 13, 1980).

[4] 16 U.S.C. 796, 824a-3 (1982).

[5] 42 U.S.C. 4321-4361 (1982).

[6] Petitioners state that they did not file a petition for rehearing of the final rule because the rule, on its face, was neutral on the question of the eligibility of new facilities. Request for Rehearing, p. 2. However, in their petition, Petitioners acknowledged that they were aware that § 292.204 permits new facilities to have qualifying status, and stated that they chose not to challenge the Commission's interpretation of renewable resources because the Commission had pledged to monitor the effects of the rule. Petition for Rulemaking, p. 17.

[7] Small Power Production and Cogeneration Facilities—Environmental Findings; No Significant Impact and Notice of Intent to Prepare Environmental Impact Statement, 45 FR 23661 (April 8, 1980) (10 FERC ¶ 61,314) (March 31, 1980).

[8] In the EA, the Commission stated that it would continue to monitor the market penetration of technologies that qualify for PURPA benefits (45 FR at 17965) and that any significant impacts caused by PURPA-induced hydroelectric development would be evaluated and subjected to mitigation measures in the traditional manner; that is, in hydroelectric license and exemption proceedings.

[9] As noted below at page 10, the Commission expects to have more specific information in this regard in a matter of months.

[10] *See* "Electric Utility Week," McGraw-Hill, February 17, 1986, p. 15; "Cogeneration Report," McGraw-Hill, February 14, 1986, p. 1; January 31, 1986, p. 3; January 17, 1986, p. 1; December 6, 1985, p. 5; August 10, 1985, p. 6; May 24, 1985, p. 1; "Cogeneration," Pequot Publishing, Nov-Dec. 1985, p. 6.

[11] "Cogeneration Report," McGraw-Hill, May 24, 1985, p. 5; April 26, 1985, p. 1, February 1, 1985, p. 4; January 18, 1985, p. 3; January 4, 1985, pp. 1, 3; "Electric Utility Week," McGraw-Hill January 6, 1986, p. 14, November 4, 1985, p. 13, September 16, 1985, p. 12; August 26, 1985, p. 10.

[12] *See Mobil Oil Corp.* v. *FTC*, 562 F.2d 170, 173 (2d Cir. 1977) and *American Public Transit Association* v. *Goldschmidt*, 485 F. Supp. 811 (D.D.C. 1980). Petitioners characterize this principle as "FERC's * * * test" and state that it is "not legally correct." Request for Rehearing, p. 15. However, the requirement to consider any irreversible commitment of resources that would result from the proposed action appears in NEPA itself. 42 U.S.C. 4332(2)(c)(v).

[13] 34 FERC at 61,006.

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short, each situation is unique, and the general information gathered in a programmatic review is very likely to be too abstract to significantly assist the Commission in determining whether licenses should be granted or denied, and if granted, what mitigative conditions are appropriate.

The Commission also concludes that contemplation of a new, programmatic review prior to completion of the PURPA implementation study would be unwarranted. That study, which was undertaken specifically for environmental monitoring purposes, should yield detailed and accurate information about the location, size, and construction status of PURPA-induced hydroelectric facilities. Until this information is gathered and evaluated, the true extent of market penetration will not be fully known.

The Commission believes that such specific information, as opposed to simple references to the numbers of license applications, is essential to determining whether any change in the existing rules should be proposed. To commit the substantial amount of scarce Commission resources necessary for a new, programmatic review of the regulations before this information is available seems, therefore, hasty and may be wasteful. In this connection, the Commission notes that the implementation study is proceeding on schedule and will be completed in a matter of months.

In addition, a new programmatic review now would, to some extent, duplicate the consideration of potential for cumulative impacts now taking place in the CIAP, and the activities of the PURPA implementation study. The Commission believes the most prudent use of its resources is to minimize the potential for duplicative or parallel procedures. If, upon review of the CIAP experience, the PURPA implementation study, and such other information as may come to light, the Commission concludes that further programmatic review of the PURPA rules is warranted, the Commission can use relevant data from those other sources in the review.

For the reasons set forth above and in the order of January 8, 1986, the Commission continues to believe that a new, programmatic review of the PURPA regulations as they pertain to QF status for new hydroelectric facilities is not warranted at this time. Petitioners' request for rehearing is, therefore, denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5344 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 381

[Docket No. RM82-30-000]

Fees Applicable to the Natural Gas Policy Act of 1978

Issued: March 7, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Update of Commission Filing Fees; Correction.

SUMMARY: The annual update of the Commission's filing fees (51 FR 4310, February 4, 1986) contained an error in calculation of the fee for the Initial or Extension Reports for Title III Transactions under the Natural Gas Policy Act. Subsequent review of the fee calculation process revealed that additional staff processing time needs to be included to recover the cost of processing the filing. The fee, therefore, will be raised from $200 to $600.

EFFECTIVE DATE: April 11, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION: In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below

List of Subjects in 18 CFR Part 381

General fees, Natural fees.

Kenneth F. Plumb,

Secretary.

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. Part 381 is amended as follows:

§ 381.404 [Amended]

Section 381.404 is amended by removing the number "$200" and inserting, in its place, the number "$600."

[FR Doc. 86-5343 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 6 and 162

[T.D. 86-59]

Customs Regulations Amendments Relating to Penalties for Failure to Manifest Narcotics or Marihuana

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify that the $500 penalty amount set forth for failure to manifest merchandise found aboard or unladen from aircraft does not apply to such violations involving narcotics or marihuana. The penalty amount for failure to manifest these substances is that provided for in 19 U.S.C. 1584, for failure to manifest narcotics or marihuana. This section is made applicable to aircraft by 19 U.S.C. 1431(b) and 1644. This action is necessary in order to avoid any confusion as to the penalties applicable to non-manifesting violations involving narcotics or marihuana.

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Office of Chief Counsel (202-566-2482), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Sections 6.7 and 6.11, Customs Regulations (19 CFR 6.7, 6.11), provide for civil penalties of $500 for failure to manifest merchandise carried by aircraft and other violations of the Customs laws and regulations respecting aircraft. Section 162.72(b), Customs Regulations (19 CFR 162.72(b)), provides for an identical penalty for failure to manifest merchandise found aboard or unladen from an aircraft, and a $10,000 or domestic value of merchandise penalty for unmanifested merchandise found aboard or unladen from a vessel or vehicle. Section 162.65(b), Customs Regulations (19 CFR 162.65(b)), states that the penalties applicable to violations involving unmanifested narcotic drugs found aboard or unladen from a vessel or vehicle are those

prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584). Since these penalties are based upon a flat rate of $10, $25, or $50 (depending upon the nature of the controlled substance found), times the number of ounces of the controlled substance, they are often greatly in excess of $500.

Customs routinely assesses penalties under 19 U.S.C. 1584 for failure to manifest narcotics and marihuana found aboard or unladen from aircraft. However, persons and some air carriers have alleged that, as written, the Customs Regulations do not permit penalties in excess of $500 for failure to manifest violations involving aircraft, regardless of the nature of the non-manifested merchandise. These parties maintain that §§ 6.7(h)(5) and 6.11, as well as § 162.72(b), mandate $500 penalties for all manifest discrepancy violations involving merchandise carried by aircraft.

We do not agree with these allegations. However, in order to remove any ambiguity and to preclude any misunderstanding that the $500 manifest discrepancy penalties are not applicable to violations involving narcotics or marihuana, we are amending §§ 6.7, 6.11, and 162.72(b), Customs Regulations, to make it clear that manifest discrepancy violations involving narcotics or marihuana are covered by the specific penalty provisions of 19 U.S.C. 1584. We are also amending §§ 162.65 (b) and (e), Customs Regulations, to include marihuana among the substances for which failure to manifest would result in a penalty under the provisions of 19 U.S.C. 1584, and to include aircraft among the conveyances which may be involved in a failure to manifest violation. The penalty provisions of 19 U.S.C. 1584 were made applicable to aircraft by sections 431(b) and 644, Tariff Act of 1930, as amended (19 U.S.C. 1431(b), 1644).

Other minor non-substantive amendments to Parts 6 and 162, Customs Regulations, are also made to update the regulations and to conform them to the other changes.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these are minor amendments which merely clarify existing statutes and regulations, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined by E.O. 12291, the regulatory analysis and review prescribed by the E.O. is not required.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). That Act does not apply to any regulations, such as these, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 6 and 162

Customs duties and inspection, Air carriers, Administrative practice and procedures, Law enforcement, Penalties.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 49 U.S.C. 1474, 1509; § 6.2 also issued under 19 U.S.C. 1322, 1448, 1450, 1451, 1644; § 6.6 also issued under 19 U.S.C. 1431; § 6.7 also issued under 19 U.S.C. 1431 and 1644; § 6.8 also issued under 19 U.S.C. 1644, 46 U.S.C. 91, 92; § 6.10 also issued under 19 U.S.C. 1644; § 6.11 also issued under 19 U.S.C. 1431; § 6.17 also issued under 19 U.S.C. 1551, 1552, 1553; §§ 6.18 and 6.20 also issued under 19 U.S.C. 1552, 1553.

§ 6.7 [Amended]

2. The first sentence of § 6.7(h)(5) is amended by inserting, after the phrase "under § 584, Tariff Act of 1930, as amended", a parenthetical reference to "(19 U.S.C. 1584)", and by inserting, after the word "overage", the phrase "other than narcotics or marihuana (see § 162.65 of this chapter),".

§ 6.10 [Amended]

3. Section 6.10 is amended by removing the word "part" and by inserting, in its place, the word "chapter".

§ 6.11 [Amended]

4. The first sentence of § 6.11 is amended by inserting, after the amount "$500," the phrase "except for failure to manifest narcotics or marihuana in which case the penalties set forth in § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply,".

5. Section 6.11 is further amended by inserting, in the second sentence, after the phrase "§ 466, Tariff Act of 1930, as amended," a parenthetical reference to "(19 U.S.C. 1466)".

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for Part 162 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; § 162.32 also issued under 19 U.S.C. 1603, 1610; § 162.44 also issued under 19 U.S.C. 1614; § 162.46 also issued under 19 U.S.C. 1609, 1611; §§ 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

2. Section 162.65 is amended by revising the heading to paragraph (b), and the text of paragraphs (b), (d), and (e), to read as follows:

§ 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

* * * * *

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility.

* * * * *

(d) *Referral to the U.S. attorney.* If the penalty incurred under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in Part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the district director, after required collection action, shall refer the case to the U.S. attorney.

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to

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manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the district director is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the district director is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs.

3. Section 162.72(b)(3)(ii) is revised to read as follows:

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

* * * * *

(b) * * *

(3) * * *

(ii) A penalty of $500 (see § 0.11 of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage").

William von Raab,
Commissioner of Customs.

Approved: February 24, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-5377 Filed 3-11-86; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8075]

Income Taxes; Treatment of Certain Hospital Services

Correction

In FR Doc. 86-3107 beginning on page 5320 in the issue of Thursday, February 13, 1986, make the following corrections:

1. On page 5321, in the first column in the fifth line from the bottom, insert "of" after "characterization".

2. On page 5322, in the first column, in amendatory instruction 2 and in the following section heading, the section number should read "§ 1.513-6".

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 7 and 25

[T.D. ATF-225; Re: Notice No. 573]

Principal Place of Business on Beer Labels

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule allows multiplant brewers to show their principal place of business as the only address on labels of beer bottles and cans, and on beer key bungs or tap covers, in lieu of listing the addresses of all breweries operated by the same company. This final rule is a result of a petition from Anheuser-Busch Companies, and a notice of proposed rulemaking, Notice No. 573, published in the Federal Register of October 15, 1985, at 50 FR 41701.

This amendment will benefit multiplant brewers by allowing them to use a "universal" label and a "universal" bung or tap cover at all of their breweries. It will relieve industry and Government of the necessity of approving new beer labels, including bungs or tap covers, whenever a brewing company buys, builds, acquires, sells, closes, or otherwise disposes of a brewing location.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Previous Label Requirements

Under previous regulations implementing the Internal Revenue Code of 1954, 26 U.S.C. 5412, labels of bottles and can of domestic beer, and bungs or tap covers of domestic draft beer were required to show the brewer's name and the address of the place of production. In 1968, the regulation on bottles and cans (27 CFR 245.126) was amended to pemit a brewer that owns or operates two or more breweries to show the actual place of production as part of a listing of all breweries owned and operated by the brewer in lieu of showing the actual place of production only. Brewers that chose this alternative, however, were also required to indicate the actual place of production by means of a coding system which cuts, notches, stamps or otherwise marks the label, crown, lid, chime or other part of the label or the bottle or can. This coding system allows the brewer and ATF to determine the actual location at which the beer in a particular package was produced and taxpaid. This information is necessary for the protection of the revenue.

Under the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), the Secretary of the Treasury is required to issue regulations to provide the consumer with adequate information as to the manufacturer or bottler or importer of malt beverages sold or offered for sale in interstate commerce. Regulations under the FAA Act, 27 CFR 7.25, require that containers of domestic malt beverages show the name of the bottler or packer and the place where bottled or packed. In line with the 1968 amendment previously described, ATF has permitted the listing on the label of all brewery locations operated by the brewer as long as the actual place of production of the malt beverage appears as part of the list. This FAA Act requirement permits the consumer to know the identity of the brewer responsible for producing the malt beverage.

Anheuser-Busch Petition

Anheuser-Busch Companies, Inc. petitioned ATF to amend 27 CFR 245.126 to allow showing the brewer's principal place of business on the label in lieu of listing the actual place of production or listing all of the breweries. Under their proposal, the actual brewing location would not be required to appear on a label but would be identified by means of the coding system established in 1968. As an example, all of the petitioner's breweries could utilize an identical label showing "Anheuser-Busch, Inc., St. Louis, Missouri" as the name and address of the brewer. The actual producing brewery would be indicated by means of their existing coding system.

Anheuser-Busch stated they now use a universal label, *i.e.*, the identical label is used at all of their breweries. This label lists all of their plants with the producing brewery indicated by a coding system. The petitioner stated that this label has numerous advantages over a label showing only the place of production because the universal label eliminates separate label inventories for each brewery, avoids misshipments of labels to breweries, and avoids mislabeled products which can result in product destruction or special label permissions.

In support of their petition, Anheuser-Busch stated that the listing of all brewery locations on a beer label is aesthetically undesirable and produces label clutter. They further stated that the

coding system employed under 27 CFR 245.126 would continue to be used in order to identify the producing brewery where the beer was taxpaid. Thus, the principal place of business label together with the coding system is sufficient to protect the revenue. From the consumer standpoint, Anheuser-Busch notes that the present listing of all brewery locations does not inform the consumer where beer in a particular package was produced. They further stated that public inquiries are generally directed to their corporate offices in St. Louis, and that the principal place of business address on a beer label would satisfy FAA requirements by enabling consumers to know who is responsible for manufacturing the beer.

Anheuser-Busch cited regulations of the Food and Drug Administration, 21 CFR 101.5(e), as a precedent to allow principal place of business address labeling on beer. Those FDA regulations state "If a person manufactures, packs, or distributes a food at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such food was manufactured or packed or is to be distributed, unless such statement would be misleading."

Discussion

ATF believes Anheuser-Busch's petition has merit and that there are additional reasons in support of it. If major brewers were to use a label showing only the principal place of business, the number of submissions of labels for approval under the FAA Act would be substantially reduced. Under the previous regulations, new labels were required to be submitted when the listing of breweries is affected by brewery openings, closings, sales or other changes. For brewers operating multiple breweries, producing several brands of beer, and producing numerous package sizes and styles, this may result in several hundred label submissions necessitated by the acquisition or disposition of a single brewery. Thus, switching to the principal place of business on the label would save paperwork for both brewers and the Government.

ATF does not believe that the listing of only the brewer's principal place of business on the label would be deceptive to consumers. We believe that consumers today know that many large brewers operate more than one brewery. Moreover, the present listing of all brewing locations on the label does not inform the consumer where beer in a specific bottle was produced because the consumer generally does not understand brewers' coding systems. ATF notes that many brewers market brands of beer nationwide and that they strive to achieve a uniform taste in their products regardless of the actual brewing location. Thus, ATF does not believe the actual place of production of beer produced by today's multiplant brewers is meaningful to consumers.

Proposal

ATF believes the listing of the principal place of business on a beer label in lieu of the actual place of business would meet statutory criteria under both the Internal Revenue Code and the Federal Alcohol Administration Act. Therefore, we proposed, in Notice No. 573, published in the Federal Register of October 15, 1985, at 50 FR 41701, to amend regulations in Parts 7 and 245 to permit listing of the principal place of business. [Part 245 was recodified as Part 25 at 51 FR 7666, May 5, 1986, effective May 1, 1986.]

In order to prevent consumer deception, ATF believes the brewer's principal place of business should be the location of a brewery. This is necessary to prevent, for example, a multiplant brewer from using a corporate office in some other city as the principal place of business.

ATF is also concerned that use of some addresses as the principal place of business of a brewer could be misleading or deceptive in conjunction with certain geographic brand names or slogans used on malt beverage labels. We therefore proposed to amend 27 CFR 7.25(a) to give the Director of ATF the authority to require the actual place of production be shown on a malt beverage label if use of the principal place of business would cause confusion or deception as to the geographic origin of the beer. In addition, Notice No. 573 proposed to amend 27 CFR 245.126 Bottles, and 245.127 Cases. [§§ 245.126 and 245.127 were recodified as §§ 25.142 and 25.143, respectively, at 51 FR 7684, May 5, 1986 effective May 1, 1986.]

In response to Notice No. 573, ATF received two comments both in favor of the proposed changes. In addition, one commenter, G. Heileman Brewing Co., was in favor of extending the same privilege to draft beer kegs, by allowing the principal place of business to appear on the keg, bung, tap cover, or on a separate label attached to the keg. Since Notice No. 573 specifically asked for comments on extending this labeling change to barrels and kegs, we are adopting this comment. Therefore, the final rule also amends 27 CFR 245.125 to provide for showing the principal place of business on barrels and kegs, in lieu of the actual place of production. [§ 245.125 was recodified as § 25.141 at 51 FR 7684, May 5, 1986, effective May 1, 1986.]

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirement to collect information proposed in Notice No. 573 was submitted to the Office of Management and Budget for review under sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. ATF received two public comments on this notice, including one comment, from G. Heileman Brewing Company, Inc., in favor of the reduced paperwork which would result from adoption of the proposed rule. The other comment, from Lauren Gleason, was in favor of adoption of the proposed rule, but did not cite reduced paperwork as one of her reasons. The Office of Management and Budget has assigned control number 1512-0474 to the collection of information in this document.

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List of Subjects

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

27 CFR Part 7 is amended as follows:

Paragraph 1. The authority citation for Part 7 is revised to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Paragraph (a) of § 7.25 is revised to permit showing the principal place of business in lieu of the address of the bottler or packer. As revised, § 7.25(a) reads as follows:

§ 7.25 Name and address.

(a) *Domestic malt beverages.* (1) On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. The bottler's or packer's principal place of business may be shown in lieu of the actual place where bottled or packed if the address shown is a location where bottling or packing operation takes place. The Director may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the beer.

(2) If malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu of), the name and address of such other person immediately preceded by the words "bottled for," "distributed by," or other similar appropriate phrase.

* * * * *

(Approved by the Office of Management and Budget under Control Number 1512–0474)

PART 25—BEER

27 CFR Part 25 is amended as follows:

Paragraph 3. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Paragraph 4. Paragraph (b) of § 25.141 is revised to permit showing the principal place of business on beer keg bungs, or on beer keg tap covers, or on a separate label attached to the beer keg, in lieu of showing the place of production. As revised, § 25.141(b) reads as follows:

§ 25.14 Barrels and kegs.

* * * * *

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the bung, or on the tap cover, or on a separate label attached to the keg;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the keg, bung, tap cover, or on a separate label attached to the keg (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the keg, bung, tap cover, or on a separate label attached to the keg. The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

* * * * *

(Approved by the Office of Management and Budget under Control Number 1512–0474)

Paragraph 5. Paragraph (b) of § 25.142 is revised to permit showing the principal place of business on a beer label in lieu of showing the place of production. As revised, § 25.142(b) reads as follows:

§ 25.142 Bottles.

* * * * *

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the label;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the label (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown on the label in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the label, bottle, crown or lid. The coding system employed will permit an ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer shall notify the regional director (compliance) prior to employing a coding system.

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

(Approved by the Office of Management and Budget under Control Number 1512–0474)

Paragraph 6. Paragraph (b) of § 25.143 is revised to permit showing the principal place of business on a beer case in lieu of the place of production. As revised, § 25.143(b) reads as follows:

§ 25.143 Cases.

* * * * *

(b) *Other information.* The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery, or of the brewer's principal place of business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

(Approved by the Office of Management and Budget under Control Number 1512–0474)

Signed: January 27, 1986.

Stephen E. Higgins,

Director.

Approved: February 24, 1986.

Francis A. Keating, III,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 86-5362 Filed 3-11-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

St. Croix National Scenic Riverway; Water Use Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking is an administrative change deleting the special regulation pertaining to water recreation at Saint Croix National Scenic Riverway. The existing regulation, which places restrictions on motorboats and water skiing activities, duplicates provisions of Minnesota and Wisconsin regulations that govern the same activities and that the National Park Service can adopt by using another authority. The existing regulation also includes restrictions that can be imposed by the superintendent without a formal rulemaking. Deletion of this regulation will result in no reduction in the levels of park and visitor protection measures provided. The same closures, restrictions and public use limits will remain in effect, but will be codified in other forms.

EFFECTIVE DATE: April 11, 1986.

FOR FURTHER INFORMATION, CONTACT: Henry Hughlett, Chief, RM & VP, Saint Croix National Scenic Riverway, P.O. Box 708, St. Croix Falls, WI 54024, Telephone: 715-483-3284.

SUPPLEMENTARY INFORMATION:

Background

The special regulations which are being deleted pertain to water surface use on the St. Croix National Scenic Riverway. Many of these restrictions duplicated those of Wisconsin and Minnesota, which the NPS can adopt under the authority of 36 CFR 3.1(a). Adoption of non-conflicting State regulations by the NPS helps attain consistency in the management of State and NPS water recreation and safety programs. The NPS considers 36 CFR 7.9(a) unnecessary since all the provisions of this particular special regulation are duplicated by State regulations that can be adopted and/or could be imposed by other means. The NPS considers this deletion an administrative change, since the restrictions will continue in effect after the deletion, but in other forms.

On October 4, 1985, the National Park Service, Department of the Interior, published in the **Federal Register** (50 FR 40567) a proposed rule to delete the special regulations pertaining to water recreation at St. Croix National Scenic Riverway. This proposal was made available for public review and comment for a period of thirty (30) days following publication in the **Federal Register**, and ending on November 4, 1985. One comment was received. The respondent commented favorably about the proposed change, stating that using existing State regulations was better than having separate Federal regulations.

Drafting Information

The following persons participated in the writing of these regulations: Hugh P. Beattie, Superintendent; Henry T. Hughlett, Chief, Resource Management and Visitor Protection, both of the St. Croix National Scenic Riverway.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the fact that, even though regulations are not contained in the Code of Federal Regulations, they do exist in the respective states of Minnesota and Wisconsin and can be adopted through 36 CFR 3.1(a).

The NPS has determined that this rulemaking will not have a significant effect of the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Department of the Interior regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation of Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

§ 7.9 [Amended]

2. By amending § 7.9 as follows:

a. By removing paragaph (a).

b. By redesignating paragraph (b) as (a) and paragraph (c) as (b).

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-5254 Filed 3-11-86; 8:45 am]

BILLING CODE 4310-70-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 20 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on addresses and return addresses, preferred rates, and post office box fee groups, have previously been published in the **Federal Register**.

EFFECTIVE DATE: November 14, 1985.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2980.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Code of

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Federal Regulations (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 20, dated November 14, 1985. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 20 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Note.—Issue 20 is a complete revision of the DMM. It contains all DMM revisions published between June 13, 1985 and November 14, 1985 (Postal Bulletins 21518 through 21540).

Summary of Changes

Major Revisions

1. * * *

2. * * *

3. *ZIP + 4 Mail.* Section 324 is revised to permit mailers to collect the ZIP + 4 discount on mail which is pre-printed with the bar code corresponding to the ZIP + 4 code. Section 324 has also been reorganized and renumbered for clarity (PB 21522, 7–11–85).

4. * * *

5. *Mailing List Services and Address Card Sequencing.* Section 945, pertaining to mailing list services and address card sequencing, is revised to clarify and reorganize the current instructions. Section 945 is now divided into 945 and 946. Section 945 provides regulations regarding mailing lists, and the new section 946 provides regulations regarding address card sequencing (PB 21522, 7–11–85).

6. * * *

Other Revisions

1. Section 113.234g(2) is revised to reflect the current address for the Postal Rate Commission (PB 21534, 10–3–85).

2. Section 121.44 is added to specifically state where endorsements for special services must be placed on articles (PB 21522, 7–11–85).

3. Section 121.345 is amended to prohibit improperly clinched staples in flats, envelopes and cards (PB 21519, 6–13–85).

4. Section 122.413a is revised to clarify the preparation requirements for mailings which bear a simplified address and are mailed at the First-, second-, or third-class carrier route presort rates (PB 21534, 10–3–85).

5. Exhibit 122.63c is revised to improve the handling of Presort First-Class Mailings (PB 21531, 9–12–85).

6. Exhibits 122.63f and 122.63i are revised to improve the handling of second-class mail (PB 21523, 7–18–85).

7. Section 122.812 (*not* section 122.822 as indicated in the *Postal Bulletin*) is revised to require a complete address, including military organization, on mail sent to Air Force personnel (PB 21540, 11–14–85).

8. Section 124.63c(1) and 753i are amended to clarify the regulations governing the collection of postage and fees for the shipment of bees and day old poultry (PB 21528, 8–22–85).

9. Exhibit 125.2, including its footnotes, is revised to reflect changes in the restrictions applied to mail that is addressed to military post offices overseas (PB 21539, 11–7–85).

10. Sections 134.21a and 134.21b are revised to reflect the termination of free mail privileges for military personnel serving in Grenada and Lebanon (PB 21524, 7–25–85).

11. * * *

12. Sections 143.421a–b, and 143.424a–b are revised to reflect the new precanceled stamps format (PB 21533, 9–26–85).

13. Sections 144.341a, 144.341e, 144.61a–k., and 144.62a–b are revised to strengthen the requirements for: (a) the quarterly examination of postage meters; and (b) the six-month postage meter examination (PB 21529, 8–29–85).

14. Sections 144.348 and 144,952j are amended to rescind the requirements for a post office to report the loss or recovery of a meter setting key to a regional director of finance; and for a meter manufacturer to report such a loss or recovery to a regional postmaster general (PB 21526, 8–8–85).

15. Sections 146.123 and 146.222 are revised to clarify the handling of non-postal mail found in Postal Service collection boxes or other receptacles or mailing areas (PB 21518, 6–13–85).

16. Sections 146.131, 146.133, 273.42, 286.1, 286.2 and 287 are revised to clarify the handling of shortpaid items (PB 21525, 8–1–85).

17. Section 159.527a–c is revised to permit post offices to provide undeliverable periodicals for use by individuals called for or assigned to jury duty (PB 21532, 9–19–85).

18. Section 159.561b-c is revised to reflect the closure of the Fort Worth Texas Dead Parcel Branch (PB 21538, 10–31–85)

19. Sections 211.3, 223.11, 223.24 (deleted), 224.3, 225a–h (added) and 230 are revised to clarify the policy on Express Mail pickup fee charges and to clarify Express Mail Reshipment procedures (PB 21538, 10–31–85).

20. Section 282a–d is revised to eliminate the minimum weekly shipment requirement for Express Mail Corporate Accounts, to provide that the minimum balance in such accounts is equal to the average weekly postage and fees or $50.00, whichever is higher, and the initial deposit is equal to two weeks' average postage or $100.00 whichever is higher (PB 21529, 8–29–85).

21. Sections 323.2, 468.12b(1), 468.12b(2), 468.12c, 468.12d, 622.11e(1), 622.11e(2)(a), 622.11e(2)(e), 622.11e(2)(f), 763.21, 763.221, 767.224, and 767.225 are revised to require mailers who submit First-, second-, third-, or fourth-class bulk mailings that are presorted to carrier routes to incorporate Carrier Route Information System (CRIS) changes within 75 days of the effective date of semiannual updates on February 15 and July 15 (PB 21522, 7–11–85).

22. Sections 362.44, 362.46, 365.32, 365.37, 365.38, 382.1, 382.21, 382.31, and 382.321 are revised to provide for an additional method of payment of postage by use of precanceled stamps in ZIP + 4 Presort First-Class mailings (PB 21521, 7–4–85).

23. Section 365.32 is revised to suspend, until April 6, 1986, the requirement that all non-ZIP + 4 coded pieces of a combined ZIP + 4 Presort and Presorted First-Class Mailing meet the ZIP + 4 mailing requirements of 324, except 324.2 (PB 21531, 9–12–85).

24. Sections 411.213, 411.343, 411.354, 411.361, 411.364, 411.374, and 468.12c are revised to cross reference Exhibit 122.63c and Exhibit 122.63d (PB 21518, 6–13–85).

25. Sections 411.21 is revised and 411.4 is added to clarify that, with the elimination of the second-class transient rate, mailers may now send noncommingled copies of second-class publications at any third- or fourth-class rate for which the mailing qualifies (PB 21525, 8–1–85).

26. Section 447.22 is amended to reference 447.53 which has been added to provide for an exception to the 3-year record retention requirement for publishers whose second-class publications receive a postal audit by an independent audit bureau (PB 21537, 10–24–85).

27. Section 448.1 is revised to permit publishers of general second-class periodicals to submit only one Form 3526, *Statement of Ownership, Management and Circulation* (PB 21519, 6–20–85).

28. Section 455.2 is amended to allow second-class publications to print the required identification statement on one of the last three editorial pages

preceding the inside back cover (PB 21534, 10–3–85).

29. Section 455.2a is revised to clarify that an ISSN number must be displayed in the identification statement of second-class publications (PB 21519, 6–20–85).

30. Sections 464.242b(1) and 464.242b(5) are revised to reflect changes in the authorized use of the optional endorsement line. The changes resulted from the introduction of the computerized Address Change Service (ACS) for second-class publishers (PB 21535, 10–10–85).

31. Sections 464.331a, 667.131a–b, 667.224 and 667.643a(1) are revised to require mailers to use pink-colored paper stock for labeling sacks containing copies of second-class publications (PB 21525, 8–1–85).

32. Section 642.134 is revised to extend, until July 1, 1986, the provisions which allow mailers to obtain temporary authorization at additional offices to mail at the special bulk rates of postage (PB 21527, 8–15–85).

33. Exhibits 711.2b and 711.2c are added so that correct postage for individually metered bulk rate bound printed matter may be quickly determined (PB 21524, 7–25–85).

34. Section 723.21 is revised to allow mailers of nonidentical weight pieces of bound printed matter to mail the pieces at the bulk rates, if the applicable bulk rate is affixed to each piece (PB 21524, 7–25–85).

35. Sections 767.433, 767.523a, 767.523b, 768.1, 768.2, and 768.3 are revised to allow mailers of bound printed matter to use optional endorsement lines currently in effect for presorted First-, second-, and third-class mailings (PB 21520, 6–27–85).

36. Section 767.7 is revised to clarify how to sort and label packages of addressed labels for mailings of fourth-class bound printed matter, presented under the provisions of 767.7 (PB 21534, 10–3–85).

37. Sections 911.232, 911.311a, 911.311b, 911.311c, 911.38 and 911.41 are revised to provide more specific instructions on the proper completion and use of registered mail forms and labels (PB 21520, 6–27–85).

38. Section 911.31 is revised to prohibit the use of padded envelopes to send domestic registered mail (PB 21531, 9–12–85).

39. Section 914.621a is revised to specifically instruct clerks to enter the name and address of the mailer and addressee in the "Pay To" and "Purchased By" sections of COD money orders (PB 21528, 8–22–85).

40. Sections 917.211, 917.22, 917.23c, 917.241a–b, 917.242a–b, 917.243a, 917.33a–b, 917.343c(4), 917.344b, 917.352b, 917.42b, 917.51, 917.524, 917.525a, 917.525c, 917.56a, 917.56c., and 917.58 are amended to more clearly state Postal Service requirements concerning Business Reply Mail (BRM). Areas affected include the formatting of BRM pieces, unique ZIP Code, use of permit holder names when authorized representatives are involved and permit renewals (PB 21538, 10–31–85).

41. Minor editorial and typographical changes have been made in Exhibits 121, 121.324a, 122.632, 132, 146.123, 147, 159.332, 411.2, 426.2, 426.3, 426.5, 426.6, 468, 471, 481, Exhibits 482c(p.2), 667.224, 681.221d, 711.2, 911.31, 951.86, 952.46.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 42 U.S.C. 1973cc–13, 1973cc–14.

2. In consideration of the foregoing 39 CFR 111.3 is amended by adding at the end thereof the following:

111.3 Amendment to the Domestic Mail Manual.

Transmittal letter issue	Dated	Federal Register publication
*	*	*
20	Nov. 14, 1985	51

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86–5315 Filed 3–11–86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2977-7]

Approval and Promulgation of Implementation Plans; California Plan Revisions for the South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice disapproves 1979 and 1982 New Source Review (NSR) rule deficiencies in the South Coast Nonattainment Area portion of the California State Implementation Plan. Specifically, the NSR rule exemptions for resource conservation (resource recovery) and energy projects (cogeneration) are disapproved. The effect of this disapproval is thus to clarify the requirement that any projects whose application for a permit becomes complete after January 1, 1986, must meet all federal NSR provisions including the requirement for full offsets prior to permitting, construction, or modification.

EFFECTIVE DATE: April 11, 1986.

ADDRESS: EPA's Technical Support Document and a copy of the disapproved rules are located at: New Source Section, Air Management Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Dave Jesson (A–3–1), New Source Section, Air Management Division, EPA, Region 9 (415) 974–8220, (FTS) 454–8220.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act (sections 172 and 173) requires that states incorporate in their State Implementation Plans (SIPs) an acceptable permitting program for the pre-construction review of new or modified major stationary sources in nonattainment areas. EPA's requirements are contained at 40 CFR 51.18, as amended on May 13, 1980, August 7, 1980, and in the Emissions Trading Policy Statement of April 7, 1982 (47 FR 15076).

January 21, 1981(46 FR 5965) EPA conditionally approved portions of the South Coast NSR rule (Regulation XIII) and disapproved other portions. The conditional approval was made contingent on revision of the NSR rule to meet EPA's NSR regulations as amended on August 7, 1980 and to correct those specific deficiencies cited in EPA's Evaluation Report Addendum. The revision was due to be submitted to EPA by May 7, 1981.

On October 26, 1983 (48 FR 49522), EPA proposed action on a revised South Coast Regulation XIII (adopted September 10, 1982 and submitted to EPA on November 8, 1982), which responds to many of EPA's NSR concerns. One deficiency noted in the Evaluation Report Addendum to the January 21, 1981 rulemaking has not yet been corrected and is now long overdue. That deficiency is the fact that the regulation provided an exemption from offsets and statewide compliance, where none is provided under federal law, for the following source categories:

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Resource Conservation (resource recovery) and Energy (congeneration) Projects (Rule 1304(e)). The exemption was slightly amended on September 10, 1982, and renumbered and retitled as Rule 1304(b)(2), Resource and Energy Conservation Projects.

In order to correct the deficiency, either the rule needs to be revised to remove the exemption altogether or the SIP needs to establish a valid growth allowance in lieu of offsets, as authorized in the Clean Air Act sections 172(b)(5) and 173(1)(B).

A valid growth allowance has not been submitted nor approved for the South Coast for any nonattainment pollutant. In the absence of an approved growth allowance, Authority to Construct permits issued after the effective date of this notice based on the referenced exemption would have a substantial adverse impact on the South Coast's ability to demonstrate attainment of the NAAQS.

Both the original and revised South Coast Rule 1304 exemptions for cogeneration and resource recovery responded to the requirements in then-existing State law that: (1) Districts issue permits to congeneration and resource recovery projects in the absence of full offsets (California State Health & Safety Code section 42314), and (2) Districts provide mitigation for the impact of these projects to protect the ambient standards and achieve reasonable further progress (section 41604).

In September 1985, the State adopted revisions to State law affecting congeneration and resource recovery sources. The 1985 revision to these sections of State law recognized that certain areas of the State, such as the South Coast, could not provide mitigation (a growth allowance) for any new source growth. Therefore, the new legislation (Stats. 1985, ch. 978, section 1) eliminates the mandate in previous law that these areas exempt congeneration and resource recovery projects from the offset requirement. (The legislation affects only projects whose applications for a permit were complete after January 1, 1986.) EPA's action today is consistent with the revised State law. Following the effective date of this disapproval, the offset exemptions for cogeneration and resource recovery projects are eliminated in the South Coast under federal law, as well as State law (but only as to projects whose permit applications are complete after January 1, 1986).

Public Comment

EPA received six comments in response to its October 26, 1983 proposal on revised South Coast Regulation XIII. Five commenters raised issues concerning the NSR rule exemptions referenced above that are in the SIP and EPA's proposed action thereon. EPA has responded to these comments in its Technical Support Document. The effective date of this disapproval, more than two years after publication of the proposal, moots the most common and emphatic of the 1983 public comments, urging that EPA minimize the dislocating impacts of the disapproval on sources undergoing permitting at that time.

EPA Action

In conformity with the General Preamble Supplement to the Conditional Approval Policy (44 FR 57182, November 23, 1979), EPA today takes final action to disapprove Rule 1304(e) in the South Coast SIP and the 1982 proposed revision to the SIP, as to projects whose applications for a permit become complete after January 1, 1986. EPA is temporarily deferring action on the balance of revised Regulation XIII, because the State may shortly submit revisions to Regulation XIII.

EPA has determined that an Authority to Construct issued under the now disapproved exemptions to a source whose application was complete on or before January 1, 1986, would not be, due to use of such exemption, inconsistent with the conditionally approved SIP when issued. Such a permit therefore, would not become invalid by reason of today's action. (EPA intends to express here no view as to the validity of such a permit under State law). However, any Authority to Construct issued under the exemptions to a source whose application for a permit became complete after January 1, 1986, would be inconsistent with the federally approved SIP and therefore would be invalid.

The effect of this disapproval is thus to clarify the requirement that any projects whose application for a permit becomes complete after January 1, 1986, must meet all federal NSR provisions including the requirement for full offsets prior to permitting, construction, or modification. This disapproval does not, however, trigger the construction ban under Section 100(a)(2)(I) of the Clean Air Act because the removal of the exemptions from the federally approved SIP leaves in place the requirement for offsets, thus satisfying sections 173 (1) and (3) of the Act.

Administration

Under 5 U.S.C. 605(b), EPA has determined that this action will not have a significant economic impact on a substantial number of small entities, since the action will not impose any more burdens than State law will have previously and independectly imposed.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Ozone, Sulfur oxide, Nitrogen oxides, Hydrocarbons, Carbon monoxide.

Dated: February 20, 1986.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Subpart F of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is revised by adding paragraph (c)(163) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(163 Rule 1304(e), Resource Conservation and Energy Projects, adopted on March 7, 1980, submitted on April 3, 1980 (See § 52.220(c)(68)(i), and conditionally approved on January 21, 1981 [See § 52.232(a)(3)(i)(A)] is disapproved but only with respect to projects whose application for a permit is complete after January 1, 1986.

§ 52.233 [Amended]

3. Section 52.233 is amended by adding new paragraphs (l) and (m) to read as follows:

* * * * *

(l) The following rules and regulations are disapproved because they do not meet the requirements of sections 110, 172, and 173 of the Clean Air Act, since they exempt certain source categories from the offset requirements of the Act:

(1) South Coast Air Quality Management District.

(i) Rule 1304(e), Resource Conservation and Energy Projects, submitted on April 3, 1980, but only with respect to projects whose application for a permit is complete after January 1, 1986.

(ii) Rule 1304(b)(2), Resource and Energy Conservation Projects, submitted on November 8, 1982, but only with respect to projects whose application for a permit is complete after January 1, 1986.

(m) Revised South Coast Regulation XIII, submitted on November 8, 1982, is not approved inasmuch as action on it is temporarily deferred.

[FR Doc. 86–4637 Filed 3–11–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300124B, FRL-2979-3]

Revocation of Tolerances for Ethyl 4,4′-Dichlorobenzilate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances for residues of the insecticide ethyl 4,4′-dichlorobenzilate (chlorobenzilate) in or on certain raw agricultural commodities. EPA is taking this action to remove pesticide tolerances for which related registered uses have been cancelled.

EFFECTIVE DATE: Effective on March 12, 1986.

ADDRESS: Written objections, identified by the document control number [OPP-300124B], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: James Tompkins, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 5, 1985 (50 FR 23720), which proposed the revocation of tolerances for residues of the insecticide ethyl 4,4′-dichlorobenzilate (chlorobenzilate) in or on a certain raw agricultural commodities listed in 40 CFR 180.109.

One public comment was received in response to the proposed revocation action from the National Food Processors Association (NFPA), which indicated its opposition to eliminating tolerances for chlorobenzilate on raw agricultural commodities and their replacement with action levels. NFPA believes it is inappropriate to eliminate tolerances for persistent environmental contaminants before the contaminants have dissipated from the environment. Second, NFPA fees that under the decision of the United States Court of Appeals for the District of Columbia Circuit, establishment of action levels to replace the revoked tolerances would be illegal. As stated previously in the Agency's proposed rule, no residues of chlorobenzilate are expected to occur in the food commodities affected by the revocation actions and therefore, no replacement action levels are being recommended.

No requests for referral to an advisory commodities were received in response to this notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in the June 5, 1985, proposal, the Agency is hereby revoking the tolerances in 40 CFR 180.109 for residues of chlorobenzilate in or on the following raw agricultural commodities:

Commodities	Existing tolerances (ppm) chlorobenzilate
Almonds	0.2
Almonds, hulls	15.0
Apples	5.0
Cottonseed	0.5
Melons	5.0
Pears	5.0
Walnuts	0.2

The Agency concluded, via the RPAR process (44 FR 9548, February 13, 1979), that by limiting the use to citrus, classifying chlorobenzilate products for restricted use, and upgrading the protective clothing requirements, the benefits would exceed the risks. Since chlorobenzilate is still registered and being used on citrus, and since citrus processed commodities (dehydrated and wet citrus pulp and citrus molasses) constitute major feed items, transmission of secondary residues to the meat, fat, and meat byproducts of livestock (except poultry) is anticipated. Therefore, it is appropriate to retain the tolerances, at the existing levels, for citrus and for the meat, fat, and meat byproducts of cattle and sheep.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This action has been reviewed by the Office of Management and Budget as required under section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for this chemical. This analysis is available for public inspection in Rm. 236 CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the June 5, 1985, proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 27, 1986.

J.A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.109 is revised to read as follows:

§ 180.109 Ethyl 4,4′-dichlorobenzilate; tolerances for residues.

Tolerances are established for residues of the insecticide ethyl 4,4′-dichlorobenzilate (chlorobenzilate) in or on the following raw agricultural commodities:

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Commodities	Parts per million
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Citrus fruits	5.0
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5

[FR Doc. 86-4907 Filed 3-11-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31 and 69

[CC Docket No. 79-105; FCC 86-63]

Detariffing the Installation and Maintenance of Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule; summary of report and order.

SUMMARY: The Commission has determined that the competitive environment is such that the maintenance and installation of inside wiring should not be performed under tariff after December 31, 1986. In addition, the Commission has decided to require the telephone carriers to relinquish ownership of inside wiring. In the case of wiring that has been directly expensed pursuant to Commission rules, relinquishment will occur on January 1, 1987. In the case of wiring costs that have been capitalized pursuant to Commission rules,relinquishment will occur at that point in time where costs have been fully amortized.

EFFECTIVE DATES: Amendments of the regulations will become effective January 1, 1987.

Installation and maintenance of inside wiring shall be detariffed January 1, 1987. In the case of wiring that has been directly expensed by telephone companies pursuant to Commission rules, telephone companies shall relinquish ownership on January 1, 1987. In the case of wiring costs that have been capitalized by the telephone companies pursuant to Commission rules, telephone companies shall relinquish ownership at that point in time where costs have been fully amortized.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting and Systems Branch, Common Carrier Bureau (202) 634-1861.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 31

Communications Common Carriers, Telephone, Uniform System of Accounts, Common Carrier, Accounting Order Common Carrier, Accounting Regulations.

47 CFR Part 69

Communications Common Carriers, Telephone, Common Carrier, Accounting Order, Common Carrier, Accounting Regulations.

Summary of Second Report and Order

In the matter of Detariffing the Installation and Maintenance of Inside Wiring. [CC Docket 79-105, FCC 86-63]. This is a summary of the Commission's second report and order, CC Docket 79-105, adopted January 30, 1986, and released February 24, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, D.C. The complete text of this decision may also be purchased from the commission's copy contractors International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, D.C. 20037.

1. On April 5, 1985, the FCC released a further notice of proposed rulemaking (Further Notice), CC Docket 79-105, 50 FR 13991 (April 9, 1985), proposing to detariff the installation of simple inside wiring and also to detariff the maintenance of all inside wiring both simple and complex. In addition, the FCC proposed that the telephone companies relinquish all claims to ownership of the inside wiring when their investment in the inside wiring account has been fully amortized. The principal aim of the detariffing proposals was to have the full costs of installing and maintaining inside wire borne by the customers who cause these costs to be incurred. The rationale underlying the proposal for relinquishment of ownership, was to prevent customers from being charged excessively through sale or lease of inside wiring after the telephone companies had recovered their costs in a regulated environment.

2. By this Second Report and Order, the FCC required detariffing the installation of simple inside wiring and detariffing the maintenance of all inside wiring by January 1, 1987. For the most part, commenting parties supported detariffing. Those who opposed detariffing expressed concerns over service availability, rate impact and jurisdictional separations, definitions of demarcation points and the structural separation requirement described in the Further Notice that would have required telephone companies to offer inside wiring services through a separate subsidiary. Several commenting parties both in favor and opposed to detariffing proposed phase-in periods, while some others supported immediate action. The FCC concluded that there was nothing in the record which compelled deferring detariffing beyond the current calendar year. The record indicated that an expanding competitive market was already in existence and that several states have already detariffed simple inside wiring installation and maintenance. Moreover, the FCC concluded that it will permit telephone companies to continue to provide inside wiring services on a deregulated basis after detariffing, without requiring such services to be provided through a separate subsidiary. Instead of requiring such services to be provided through a separate subsidiary, the FCC required telephone companies to use special accounts created specifically for nonregulated activities in CC Docket 81-893. With respect to rate impacts and jurisdictional separations, the FCC noted that detariffing would remove some costs from the regulated category in each jurisdictional and would not alter the jurisdictional allocation formula. To the extent there may be an indirect effect, the FCC expressed confidence that states would use their regulatory powers wisely to ensure greater economic efficiency. Finally, the Commission decided to retain its current definition of a demarcation point because it provided the kind of flexibility required to provide the widest range of services.

3. In connection with ownership, the FCC required telephone companies to relinquish ownership of inside wiring when their capitalized costs that are predominantly labor costs, have been fully recovered through amortization; or in the case of expensed wiring, the costs of which have already been recovered through revenue requirements, by January 1, 1987. The FCC noted that upon relinquishment, conflicting claims may arise if the subscriber is not the premises owner. The FCC concluded that in such circumstances ultimate ownership questions should be resolved through application of local property law and that no federal interest would be furthered by attempting a national standard that must be applied in all circumstances.

Ordering Clauses

4. Accordingly, it is ordered, That, under the authority contained in sections 1, 201-205, and 221(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 201-205, 221(c), subject to the exceptions discussed herein, the installation and maintenance of inside wiring shall not be offered pursuant to tariff after December 31, 1986. States may not impose common carrier tariff regulation on installation or maintenance of such inside wiring.

5. It is further ordered, That under the authority contained in section 4(i), 4(j), and 220 of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 154(j) and 220, Part 31 *Uniform System of Accounts for Class A and Class B Telephone Companies,* of the Commission's Rules is amended as shown in the Appendix to reflect that the installation of simple inside wiring will be performed on a detariffed basis effective January 1, 1987, and the maintenance of both simple and complex inside wiring shall be performed on a detariffed basis. This amendment will become effective January 1, 1987.

6. It is further ordered, That under the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. section 154(i), the telephone companies shall relinquish the ownership of inside wiring that has previously been expensed to Account 605 effective no later than January 1, 1987, and that with respect to inside wiring recorded in Account 232, telephone companies shall relinquish ownership effective on the date such investment has been fully amortized.

7. It is further ordered, That the amendment to Part 69 of the Commission's Rules set forth in the Appendix is adopted, effective January 1, 1987.

8. It is further ordered, That the Secretary shall, pursuant to section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i) cause this Report and Order to be served on each state commission having jurisdiction over intrastate communications service.

9. It is further ordered, That the Secretary shall cause a summary of this Report and Order to be published in the **Federal Register.**

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 31—[AMENDED]

Parts 31 and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Part 31 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154 Interpret or apply secs. 219, 220, 48 Stat. 1077 as amended, 1078; 47 U.S.C. 219, 220.

2. Section 31.605 "Installation and repairs of station equipment", paragraph (a) is revised to read:

§ 31.605 Installation and repairs of station equipment.

(a) This account shall include the cost of installing items of station apparatus (included in 231) and the cost of inside wiring under either the phase-in or flash-cut approach until such time as inside wiring has been detariffed pursuant to Commission order, whereupon new installation and maintenance costs of inside wiring shall be recorded in appropriate subaccounts of Account 106, Nonregulated investments. Under the phase-in approach this installation activity shall be charged to this account on the following basis: 25% between October 1, 1981, and September 30, 1982, 50% between October 1, 1982, and September 30, 1983; 75% between October 1, 1983 and September 30, 1984; and 100% after installation activity shall be charged to this account. Carriers shall maintain the cost of installing wiring under either of the above approaches in a separate subaccount. This account shall also include the cost of reconnecting customers' lines at customers' premises (Note also account 103, account 232 and account 316).

* * * * *

PART 69—[AMENDED]

3. The authority citation for Part 69 continues to read:

Authority: Secs. 4(i), 4(j), 201, 202, 203, 205, 218, 403 and 410 of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, 403 and 410.

4. Section 69.401(b) is revised to read:

§ 69.401 Direct expenses.

* * * * *

(b) Amortization of embedded inside wiring investment and any maintenance or depreciation expense that is apportioned to interstate and foreign services as a surrogate for CPE maintenance or depreciation shall be deemed to be associated with § 69.303(c) other station equipment investment for purposes of the apportionment described in paragraph (a) of this section.

[FR Doc. 86-4844 Filed 3-11-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 69

[CC Docket No. 85-88; FCC 86-31]

Detariffing of Billing and Collection Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; summary of report and order.

SUMMARY: This action detariffs interstate billing and collection services provided by local exchange carriers to interexchange carriers. Consequently, § 69.114 of the Commission's rules, which provides for a billing and collection rate element, is eliminated. This action also continues the Commission's deferral to state regulatory authorities with respect to the practice of disconnecting a subscriber's local telephone service for nonpayment of interstate toll charges.

This action is necessary because third party billing and collection is not an activity within the scope of Title II of the Communications Act since it is not a communications common carrier service. Moreover, no statutory purpose would be served by exercising ancillary jurisdiction over billing and collection under Title I because there is sufficient competition to allow market forces to respond to unreasonable rates or practices on the part of exchange carriers.

This action will give exchange carriers greater flexibility in structuring and pricing this service and it will enable interexchange carriers to get billing and collection packages tailored to their specific needs. This action will also serve to eliminate unnecessary regulation.

EFFECTIVE DATE: January 1, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

FOR FURTHER INFORMATION CONTACT: Mark Wolf at 202-632-6917.

SUPPLEMENTARY INFORMATION:

Summary of Report and Order

In the matter of Detariffing of Billing and Collection Services, [CC Docket 85-88]. This is a summary of the Commission's report and

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order, CC Docket 85-88, adopted January 14, 1986, and released January 29, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, D.C. 20037.

1. On April 9, 1985, the FCC released a *Notice of Proposed Rulemaking (Notice),* CC Docket 85-88, 100 FCC 2d 607, 50 FR 26266 (June 25, 1985), proposing to detariff billing and collection services, *i.e.,* the services provided by local exchange carriers (LECs) to interexchange carriers (ICs) in billing and collecting from end users for their use of an IC's services. In this *Report and Order,* the FCC affirmed the tentative conclusion it reached in the *Notice* that billing and collection services are not communications common carriage subject to regulation under Title II of the Communications Act of 1934, 47 U.S.C. 201 *et seq.* In reaching its decision, the Commission found that billing and collection is essentially a financial and administrative service, that it does not employ wire or radio facilities and that it does not allow customers of the service, *i.e.,* ICs, to communicate or transmit information of their own design and choice. The Commission also found that sufficient competition exists and will continue to develop for billing and collection services to allow market forces to respond to excessive rates or unreasonable practices on the part of LECs and that detariffing will enhance competition in the billing and collection market by giving LECs flexibility in structuring and pricing their offerings. Accordingly, the FCC also concluded that no regulatory purpose would be served by continuing to regulate billing and collection service indefinitely under its ancillary jurisdiction pursuant to Title I of the Communications Act, 47 U.S.C. 151 *et seq.* The FCC decided that its decision should have preemptive effect with respect to LEC billing and collection for interstate services of ICs because it found that state regulation in this regard was not necessary and could lead to excessive charges that would frustrate the goals of the Communications Act.

2. This *Report and Order* amended the FCC's access charge rules, effective January 1, 1987, to delete § 69.114, the Billing and Collection element. In addition, the FCC required LECs to file tariff revisions on 35 days' notice, to be effective January 1, 1987, removing provisions for interstate billing and collection from their access tariffs. The Commission stated that the delay to January 1, 1987 should afford the Bell Operating Companies ample time to obtain any waivers of the American Telephone and Telegraph Co. (AT&T) *Modification of Final Judgment (MFJ)* which may be necessary for those companies to provide untariffed billing and collection services. In addition, the FCC concluded that any temporary bottleneck monopoly of billing and collection facilities affecting AT&T as a result of the AT&T divestiture should be an insignificant problem by 1987, and that a transition period will allow LECs currently participating in the National Exchange Carrier Association (NECA) billing and collection pool to absorb the billing and collection function internally or to establish a non-tariffed pooling arrangement with NECA. The FCC's *Report and Order* authorized NECA to operate an untariffed billing and collection pool.

3. The FCC did not adopt the proposal in its *Notice* to detariff indefinitely the recording function of billing and collection, *i.e.,* the entering on magnetic tape or other acceptable medium of the details of IC messages originating through Switched Access Service. The comments indicated that ICs are apparently capable of performing this function and that no wasteful duplication of facilities will result from performance of recording by entities other than LECs. To ensure that ICs will be able to operate efficiently and economically, however, the FCC required LECs to continue offering recording service to all ICs upon reasonable request, and according to reasonable terms, through 1989 or until the equal access conversion process has been completed, whichever is later. The Commission concluded that this requirement should prevent any short-term dislocations and will allow ICs either to arrange with LECs for the continued provision of this service or to assume this function as part of their own operations. The FCC also concluded that continuing to require the offering of recording will not unreasonably burden the LECs, because they must generally record call detail anyway in order to bill ICs for access service, and that the *MFJ* is not a barrier to imposing this requirement.

4. The FCC also concluded that deregulation of billing and collection services should not shift costs between the state and interstate jurisdictions and that requiring carriers to offer these services under a separate subsidiary is not warranted. Most of the comments opposed the separate subsidiary requirement, and the FCC concluded that the efficiencies of joint operation in the provision of billing and collection clearly outweigh the potential for cross-subsidization. While the FCC's *Report and Order* did not prohibit the establishment of a separate subsidiary for providing billing and collection services, the Commission concluded that those services should not be provided by the same subsidiary which provides customer premises equipment and enhanced services.

5. The FCC decided to continue to defer to state regulatory authorites with respect to LEC termination of local exchange service for nonpayment of charges for interstate, non-LEC-offered services. However, the Commission held that state commissions may not impose charges upon ICs for a "cut-off service."

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the final rule does not have a significant economic impact on a substantial number of small entities because it is the FCC's expectation that marketplace alternatives will afford interexchange carriers adequate protection against any unreasonably high rates which may be set by local exchange carriers for billing and collection services. Further, the interests of end users concerning local service disconnections for nonpayment of interstate toll charges have been accommodated by the detariffing process.

7. The final rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements. It will not increase or decrease burden hours imposed on the public.

Ordering Clauses

8. Accordingly, it is ordered, pursuant to sections 2(a), 4(i), 4(j), 201-205, 218, 220, 403 and 410 of the Communication Act, 47 U.S.C. 152(a), 154(i), 154(j), 201-205, 218, 220, 403 and 410, that the policies and requirements set forth herein are adopted.

9. It is further ordered, pursuant to § 61.58(c)(3) of the Commission's Rules, 47 CFR 61.58(c)(3), that local exchange carriers are required to cancel their interstate billing and collection tariff pages on 35 days' notice to be effective January 1, 1987.

10. It is further ordered, that § 61.114 of the Commission's rules, 47 CFR 69.114, is deleted, effective January 1, 1987.

11. It is further ordered, pursuant to § 69.603(a) of the Commission's rules, 47 CFR 69.603(a), that the National Exchanged Carrier Association is authorized to operate a billing and collection pool on an untariffed basis.

12. It is further ordered that the Secretary shall cause this Report and Order to be published in the Federal Register.

13. It is further ordered, pursuant to section 202(i) of the Communications Act, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Report and Order on each state commission.

Federal Communications Commission

William J. Tricarico,

Secretary.

Appendix B

PART 69—[AMENDED]

Part 69, Chapter 1 of Title 47. Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 69 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 145, 201, 202, 203, 205, 218, and 403.

§ 69.114 [Removed]

2. Section 69.114 is removed.

[FR Doc. 86-5289 Filed 3-11-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-136; RM-4918; RM-5019]

FM Broadcast Station in Warren and Niles, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; summary of report and order.

SUMMARY: Action taken herein allocates FM Channel 291A to Niles, Ohio, as that community's first fulltime local service, at the request of Gary R. Zocolo, and denies the request of CKP, Inc. to allocate Channel 291A to Warren, Ohio, as that community's first local FM service.

EFFECTIVE DATE: April 7, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Summary of Report and Order

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Warren and Niles, Ohio), MM Docket No. 85-136, RM-4918, RM-5019. This is a summary of Chief, Policy and Rules Division, Mass Media Bureau, *Report and Order,* MM Docket 85-136, Adopted January 31, 1986, and released February 28, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Nortwest, Suite 140, Washington, D.C. 20037.

1. On May 6, 1985, the Commission adopted the *Notice of Proposed Rule Making,* 50 FR 21631, published May 28, 1985, proposing the allocation of Channel 291A to Warren, Ohio, as the community's first local FM service, at the request of CKP, Inc. ("CKP"). In response to the *Notice,* Gary R. Zocolo ("Zocolo") filed a counterproposal requesting the allocation of Channel 291A to Niles, Ohio, as the community's first local FM service. Comments were filed by CKP and Zocolo and reply comments were filed by CKP, Zocolo and Johnny Appleseed Broadcasting Company, licensee of Station WVNO-FM, Mansfield, Ohio.

2. These two proposals are mutually exclusive since the Commission's Rules specify a 65 mile separation between co-channel Class A allotments and here the distance between Warren and Niles is only 5 miles. Further, the staff's engineering study was unable to find another channel for use at either community. CKP urged the allocation of the channel to Warren based on the community's larger population and its status as both the county seat and an industrial center. Zocolo argued that the allocation at Niles would provide both Niles as well as associated unincorporated areas with a first fulltime local radio service.

3. The Commission allocated Channel 291A to Niles stating that in comparing the two communities, it found that the most important factor, that is the availability of local service, was the determining factor. The allocation at Niles would provide that commmunity with its first local fulltime aural service as well as its first competitive outlet which could provide the area with a diversity of viewpoints. No such benefit would accure if the channel were allocated to Warren since it already is served by two local radio stations, one of which operates fulltime.

4. Channel 291A can be allocated to Niles in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 5.8 kilometers (3.6 miles) north to avoid short-spacing to Station WAMO, Pittsburgh, Pennsylvania, and Station WWKS, Beaver Falls, Pennsylvania. Canadian concurrence was received since Niles is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

Ordering Clauses

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective April 7, 1986, the FM Table of Allotments, § 73.202(b) of the Rules is amended with respect to the community listed below, to read as follows:

City	Channel No.
Niles, Ohio	291A

6. The window period for filing applications for this channel will open on April 8, 1986, and close on May 8, 1986.

7. It is further ordered, That this proceeding is terminated.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-5286 Filed 3-11-86; 8:45 am]

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47 CFR Part 73

[MM Docket No. 84-752]

Changes in the AM Technical Rules To Reflect New International Agreements; Correction

AGENCY: Federal Communications Commission.

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ACTION: Final Rule; Correction.

SUMMARY: This document corrects errors appearing in the Commission's Second Report and Order in this proceeding concerning changes in the AM technical rules (published on February 7, 1986, 51 FR 4750).

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, (202) 632–7791.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of Changes in the AM Technical Rules to Reflect New International Agreements; MM Docket No. 84–752.

Released: February 19, 1986.

The Appendix to the *Second Report and Order* adopted in this proceeding on January 16, 1986, contains the text of several enumerated amendments to Part 73 of the Commission's Rules. The amendments enumerated as "1", "5" and "6" are corrected as follows:

§ 73.21 [Corrected]

No. "1" of the Appendix introduces a new note to § 73.21, which is designated as "Note 3". This is corrected to read: "Note 4".

§ 73.182 [Corrected]

No. "5" of the Appendix contains an amendment to a paragraph of § 73.182 that is designated as paragraph "(r)". The designation of the amended paragraph is corrected to read "(o)" instead of "(r)".

No. "6" of the Appendix amends the table in a paragraph of § 73.182 that is designated as paragaph "(v)". The designation of the amended paragraph is corrected to read "(s)" instead of "(v)".

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 86–5287 Filed 3–11–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 60337-6037]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of four fishing areas in the vicinity of Kodiak Island to nonpelagic trawling. This action is necessary to reduce the number of red king crabs killed during their molting and mating period by trawls that fish on, or with gear in contact with, the seabed. It is intended to help the king crab stocks rebuild from their depressed level of abundance.

EFFECTIVE DATES: This emergency rule is effective from noon, Alaska Standard Time (AST), Saturday, March 8, 1986, until noon, Alaska Daylight Time (ADT), June 6, 1986.

ADDRESS: Copies of documents supporting this action may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Comments may be sent to Mr. McVey at the same address.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the U.S. exclusive economic zone (coterminous with the fishery conservation zone) in the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), and was implemented by Federal regulations on December 1, 1978 (43 FR 52709). Since then, the FMP has been amended 12 times. Current regulations governing these fisheries are found at 50 CFR Parts 611 and 672.

At its January 15–17, 1986, meeting, the Council reviewed the condition of red king crab (*Paralithodes camtschatica)* stocks around Kodiak Island in the Gulf of Alaska. It also considered testimony from resource agencies and fishermen about possible effects of nonpelagic trawling on red king crab. These effects relate to fishing mortality imposed on red king crab by trawls, such as bottom and off-bottom trawls, that fish on or close to the sea bed during the time red king crab molt and mate. The Council determined that the abundance of red king crab around Kodiak Island is so reduced that fishing mortality resulting from nonpelagic trawling for groundfish during the molting and mating period should be avoided. The Council recommended, therefore, that the Secretary implement an emergency rule under section 305(e) of the Magnuson Act prohibiting the use of trawl gear that fishes in contact with the ocean bottom in four areas around Kodiak Island between February 15 and June 15. The Council considered the following information when it made this recommendation:

The numbers of adult red king crabs in the waters around Kodiak Island are at historically low levels. As a result, the commercial king crab fishery around Kodiak Island has been closed during 1983, 1984, and 1985 to allow the stocks to rebuild. Nevertheless, the abundance of adult and juvenile crabs is still extremely low. Extra protection must be given to those crabs remaining.

King crabs move inshore in the spring and congregate in certain areas where they molt and mate. Approximately 70 percent of the female red king crabs from Kodiak stocks are estimated to congregate in two areas, known as the Marmot Flats and the Alitak Flats. Past studies have shown that most red king crabs around Kodiak Island molt and mate in March, April, and May, although some begin as early as January. Adult female king crabs must molt annually to mate and extrude eggs. After molting, their exoskeleton (shell) is soft, and crabs in this stage are known as soft-shelled crabs. The new exoskeletons take 2 to 3 months to harden fully. During the soft-shell period, the crabs are particularly susceptible to damage from encounters with fishing gear and handling. Because many of the present groundfish trawling grounds overlap with the mating grounds of the king crabs, potential exists for substantial king crab mortality.

Nonpelagic trawling can kill or injure king crabs in two ways. First, crabs caught in the net can be crushed during the tow or injured (often fatally) as the net is unloaded on the fishing boat. Second, crabs might be struck by parts of the gear (e.g., trawl doors, towing cables, ground lines, roller gear) as the trawl is towed along the bottom. Recent observer studies estimate that about 70 percent of the crabs caught by nonpelagic trawls in the Bering Sea are killed. The percent of those killed by encountering the gear but not being caught is unknown, but one report suggests that as many as 15 crabs are killed for every one caught. For king crabs with soft shells, any contact with fishing gear or handling results in high levels of injury or death.

The domestic trawl fishery for groundfish (cod, pollock, and flounder) has developed rapidly in the last few years. Before 1984, the domestic trawl fisheries harvested primarily cod and pollock. These fisheries historically were conducted along the northwest side of Kodiak Island adjacent to Shelikof Strait, which is not prime habitat of king crabs. In 1984, the Kodiak domestic trawl fisheries began harvesting flounders on the northeast side of Kodiak Island, partially in an area known to be prime king crab habitat. One trawl trip averaged 82.6 king crabs per ton of groundfish.

In May 1984, the Alaska Department of Fish and Game sent a report to the Director, Alaska Region, NMFS (Regional Director) that pointed out the high bycatches of king crabs in the Kodiak area trawl fishery. Subsequently, the Kodiak nonpelagic trawlers voluntarily agreed to avoid those areas inhabited by molting and mating king crabs. Thus, no emergency action was required. In 1985, no trawlers fished for flounder in those areas.

NMFS predicts that the fishery for flounders and cod in the Kodiak area will increase substantially in 1986; these species are usually harvested with nonpelagic gear. If bycatch rates are as high as indicated in some of the observer samples, king crab mortality in the Kodiak area could be extremely high. With the expected influx of new vessels into the fishery in 1986, a voluntary agreement is not possible.

Unlike other fisheries that encounter soft-shell king crabs, (e.g., the pot fisheries for king, Tanner, or dungeness crabs), the trawl fishery for groundfish is not currently subject to seasonal restrictions. Prohibiting nonpelagic trawling on the mating grounds during the mating period is necessary to prevent a large number of king crabs from being killed and to help the king crab stocks rebuild.

In January 1986, the Alaska Department of Fish and Game and NMFS presented the Council with a report entitled "Conservation Concerns of the Kodiak King Crab Resource: A Discussion of Management Options." The Council considered the two options for time-and-area closure presented in the report at its January 1986 meeting.

The Council also considered two check-in/check-out and observer options. Although these options would have provided more data on the incidence of crabs in the trawl catch, the Council did not consider them because they would not have reduced substantially the number of crabs injured or killed—the goal of the Council.

The Council did not adopt either of the two alternative time-and-area closures as proposed. It did not adopt the first proposal to close only the Marmot Flats and Alitak Flats areas, because that closure would have protected only about 70 percent of the crabs. It did not adopt the second proposal to close most of the fishing areas around Kodiak, Chirikof, and Trinity Islands and a portion of the Portlock Bank, although that closure would have protected about 90 percent of the crabs, but at a cost of precluding nonpelagic trawling along the entire northwest side of Kodiak Island and the Portlock Bank.

After much public discussion of the suggested time-and-area closures, the Council recommended that nonpelagic trawling be prohibited from February 15 to June 15 in red king crab molting and mating areas around Chirikof and Trinity Islands and the Alitak Flats, Barnabas area, and Marmot Flats around Kodiak Island (see Figure 1). Closing these areas will protect from 80 to 90 percent of the molting and mating red king crabs in the Kodiak area.

The compromise closure the Council adopted was developed by the Council's Advisory Panel; it provides nearly as much protection to the crabs as the most restrictive option proposed in the report, but leaves considerable area open to trawl fishing. Most of the crab fishermen and trawl fishermen at the Council meeting testified that they supported the closures the Council adopted.

The Secretary, after reviewing the reasons supporting the Council's recommendation, has determined that the stocks of red king crabs are extremely depressed and that nonpelagic groundfish trawling operations would impose unacceptable mortality on red king crabs in the areas where they molt and mate. He, therefore, issues this emergency rule prohibiting fishing from a vessel having any trawl, other than a pelagic trawl, either attached or aboard in the areas described during the period from noon, AST, March 8, 1986, until noon, ADT, June 6, 1986; it may be extended until June 15, 1986, or later.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that early implementation of this rule is desirable to protect the crabs during their highly vulnerable stages during the late winter and spring. The Assistant Administrator recognizes that the public has had opportunity to comment on these closures of the areas to non-pelagic trawling at the January 1986 Council meeting, when this subject was discussed during open public hearings. The reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide advanced notice and opportunity for public comment or to delay for 30 days its effective date, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act.

The Regional Director has prepared an environmental assessment (EA) for this action and has concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the address above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the Alaska Office of Management and Budget under section 307 of the Coastal Zone Management Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule contains no requirement for collecting information and, therefore, is not subject to provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: March 6, 1986.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, 50 CFR Part 672 is amended as follows:

1. The authority citation for Part 672 continues to read as follows:

Authority:
16 U.S.C. 1801 *et seq.*

2. In § 672.2, definitions for "net-sonde device", "pelagic trawl", and "trawl" are added in alphabetical order to read as follows:

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§ 672.2 Definitions.

* * * * *

Net-sonde device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

* * * * *

Pelagic Trawl means a trawl in which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it any protective device (such as chafing gear, rollers, or bobbins) that would make it suitable for fishing in contact with the seabed.

* * * * *

Trawl means a funnel-shaped net that is towed through the water for fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes Danish and Scottish seines as well as otter trawls.

* * * * *

3. In § 672.24, paragraphs (c) and (d) are added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(c) *Trawls other than pelagic trawls prohibited in some areas.*

(1) No person may fish in any of the following areas in the vicinity of Kodiak Island (see Figure 1) from a vessel having any trawl other than a pelagic trawl either attached or on board.

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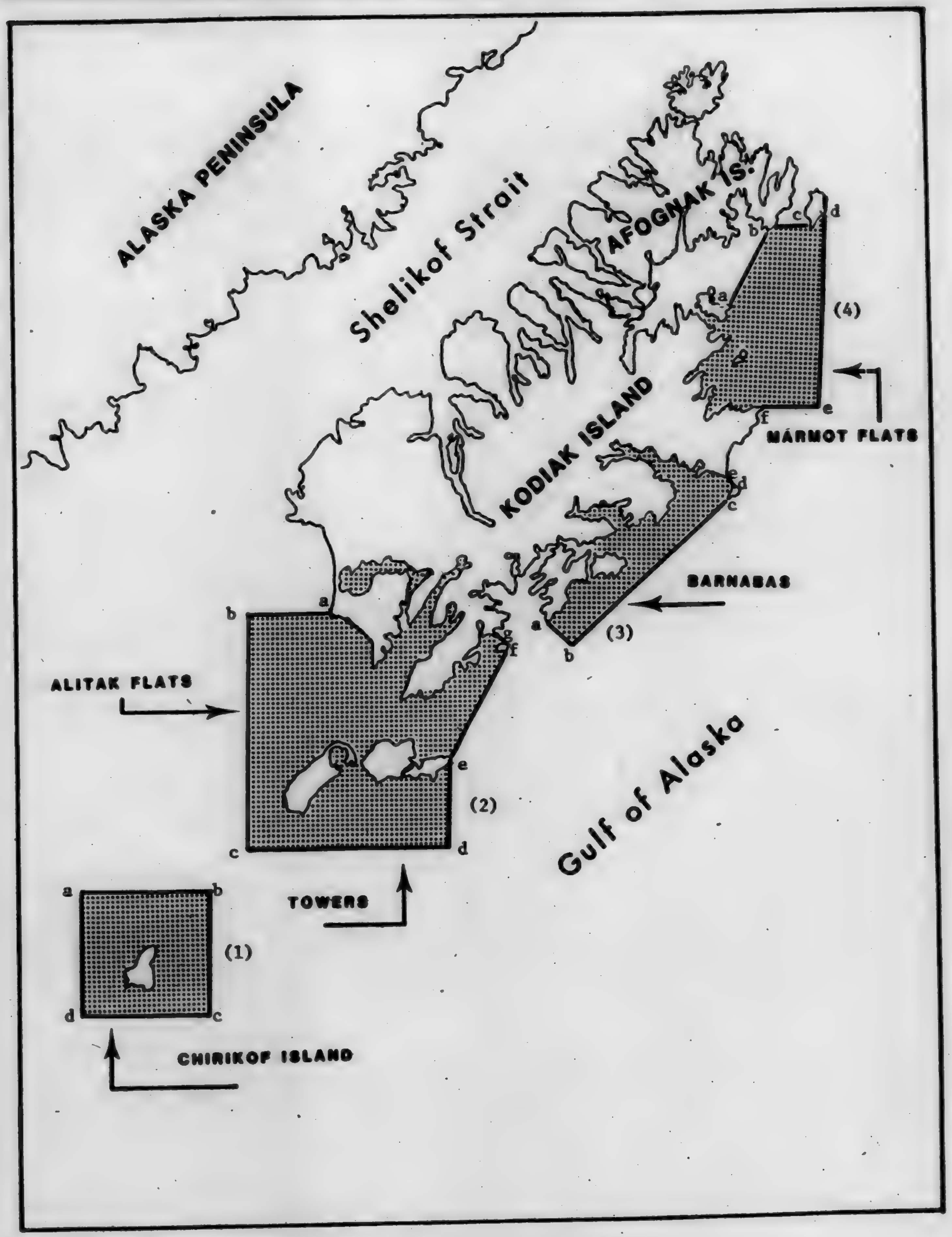
ALASKA PENINSULA
Shelikof Strait
AFOGNAK IS.
KODIAK ISLAND
Gulf of Alaska
MARMOT FLATS
BARNABAS
ALITAK FLATS
TOWERS
CHIRIKOF ISLAND
(1)
(2)
(3)
(4)
a
b
c
d
e
f

Figure 1. Areas closed to nonpelagic trawling.

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(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points:

	North latitude	West longitude
Point:		
a	56°07.0'	156°00.0'
b	56°07.0'	155°13.0'
c	55°41.0'	155°13.0'
d	55°41.0'	156°00.0' to
a	56°07.0'	156°00.0'.

(ii) *Alitak Flats and Towers Areas:* All waters of Alitak Flats and the Towers areas enclosed by a line connecting the following seven points:

	N. latitude	W. longitude	Place name
Point:			
a	57°00.0'	154°31.0'	Low Cape
b	57°00.0'	155°00.0'	
c	56°17.0'	155°00.0'	
d	56°17.0'	153°52.0'	
e	56°33.5'	153°52.0'	Cape Sitkinak
f	56°54.5'	153°32.5'	East point of Twoheaded Island
g	56°56.0'	153°35.5'	Point on Kodiak Island to
a	57°00.0'	154°31.0'	Low Cape, including inshore waters.

(iii) *Barnabas Area:* All waters enclosed by a line connecting the following five points:

	N. latitude	W. longitude	Place name
Point:			
a	56°58.5'	153°18.0'	Black Point
b	56°56.0'	153°09.0'	
c	57°22.0'	152°18.5'	South tip of Ugak Island
d	57°23.5'	152°17.5'	North tip of Ugak Island
e	57°26.0'	152°19.0'	Narrow Cape to
a	56°58.5'	153°18.0'	Black Point, including inshore waters.

(iv) *Marmot Flats Area:* All waters enclosed by a line connecting the following six points:

	N. latitude	W. longitude	Place name
Point:			
a	57°55.0'	152°19.5'	East Cape
b	58°09.0'	152°.06.0'	Pillar Cape
c	58°10.0'	151°52.0'	Marmot Cape
d	58°15.5'	151°47.0'	Cape St. Hermogenes
e	57°38.0'	151°47.0'	
f	57°37.0'	152°09.1'	Cape Chiniak Light to
a	57°55.0'	152°19.5'	East Cape, including inshore waters.

(2) Each person using a trawl to fish in any area described in paragraph (c)(1) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device.

(3) No person using a trawl to fish in any area described in paragraph (c)(1) of this section may allow the footrope of that trawl to be in contact with the seabed for more than 10 per cent of the period of any tow, as indicated by the net-sonde device that is attached to that trawl.

[FR Doc. 86-5341 Filed 3-7-86; 2:11 pm]

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50 CFR Part 681

[Docket No. 51221-6030]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement the partially approved Amendment 3 to the Fishery Management Plan for Spiny Lobster Fisheries of the Western Pacific Region (FMP). This rule establishes a different scheme for measuring a legal size spiny lobster and defines the point at which to measure spiny lobsters to facilitate compliance with the new approach for the Northwestern Hawaiian Island (NWHI) lobster fishery. This action is intended (1) to replace a currently unenforceable size limit; (2) to maintain an economically viable NWHI spiny lobster fishery; and (3) to maintain the reproductive capacity of the spiny lobster population in the fishery conservation zone (FCZ) of the NWHI.

EFFECTIVE DATE: April 6, 1986.

ADDRESSES: Copies of the amendment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813 (808-523-1368).

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Western Pacific Program Office, NMFS, 2570 Dole Street, P.O. Box 3830, Honolulu, HI 96812 (808-955-8831).

SUPPLEMENTARY INFORMATION: The FMP is implemented under the Magnuson Fishery Conservation and Management Act by regulations appearing at 50 CFR Part 681.

The Council approved Amendment 3 to the FMP at its August 7-8, 1985, meeting and submitted it to the Secretary of Commerce (Secretary for review. The Secretary is required by the Magnuson Act to approve, disapprove, or partially disapprove FMPs and amendments before the close of the 95th day following receipt. Following receipt of Amendment 3, the Director, Southwest Region (Regional Director) immediately commenced a review to determine whether it was consistent with the National Standards, other provisions of the Magnuson Act, and any other applicable law. A Notice of Availability of the amendment was published in the **Federal Register** on November 21, 1985 (50 FR 48108), and the receipt date was announced. Proposed regulations were published in the **Federal Register** on January 10, 1986 (51 FR 1282). Public review and comment were invited until February 5, 1986. The decisions on Amendment 3 take these comments into account; they are summarized below:

The purpose of the amendment is to establish an enforceable size limt which will protect the reproductive potential of the spiny lobster stock and maintain the economic viability of the fishery. Current regulations specify the following:

(a) *Whole lobsters.* Only spiny lobsters with a carapace length of 7.7 cm or greater may be retained.

(b) *Lobster tails.* If the carapace length cannot be determined, only lobsters with tails at least 5.0 cm wide may be retained, except for an allowance of up to 15 percent by number of the total catch per trip, which may have tail widths greater than or equal to 4.5 cm and less than 5.0 cm.

These regulations have been unenforceable. Agents are unable to ensure that they are obtaining a random sample of the catch to determine whether fishermen have observed the size limit and allowance for narrow lobster tails. It is impracticable to inspect an entire load of up to 75,000 lobsters; this would shut down unloading operations. In addition, measurement has sometimes been difficult because lobster meat may curl and freeze over the measuring site, or the lateral shell notches between which the present tail width measurement is made may break off. Inability to enforce the regulations raised a serious concern that the objectives of the FMP would not be met.

The amendment would have addressed this by proposing (1) to eliminate the present 15 percent tolerance for sublegal spiny lobsters; (2) to redefine the site on a spiny lobster tail where measurement is to be made to determine legal size; (3) to eliminate the use of the 7.7-cm carapace length for determining a legal-sized spiny lobster; and (4) to establish a 4.8-cm minimum tail width.

The Secretary supports the Council's selection of the first three measures, but cannot support the fourth measure. A 5.1-cm tail width is equivalent (on average) to a 7.7-cm carapace length, the nominal minimum size under the existing plan, whereas a 4.8-cm tail width would be equivalent to a smaller, 7.0-cm carapace. The Secretary has concluded that such lowering of protection for the spiny lobster stocks presents too great a risk of allowing overfishing, and therefore would violate National Standard 1, which requires that conservation and management measures prevent overfishing.

Studies by NMFS indicate that, while there is insufficient information to anticipate major biological trouble in the fishery under the Council's proposed Amendment 3, there has been a reduction in the biomass of legal, sublegal, and spawning stocks from 1977 to 1985. The Council's proposed action would provide no relief from this trend, and biologically there is no evidence that there would be a substantial increase in yield by reducing the minimum size. It cannot be stated with certainty that recruitment overfishing is likely, but it is almost certainly safe to say that the risk of recuritment overfishing is higher under the Council's proposed size limit than if a larger minimum size were set. NMFS is particularly concerned about the lag effects that are built into this biological system. The effects of the increased catch and effort in 1981 have not yet been determined; the consequences of the heavy fishing in 1984 and 1985 may not be seen for another three or four years.

Because of this concern, the Secretary has concluded that the increased risk of overfishing is not justified by the uncertain economic benefits that may be generated by the smaller size limit. Therefore, he has disapproved the proposed 4.8-cm tail size and left in the present 5.0-cm tail size.

The partially approved amendment eliminates the 15 percent tolerance, eliminates the use of the carapace length as a size limit, moves the location on the tail where the size is to be measured, and retains the 5.0-cm size for tails. This will facilitate compliance by the fishermen as well as enforcement by NMFS, while protecting the spawning stock.

Changes in the Final Rule From the Proposed Rule

The final rule has been changed from the proposed rule as discussed above because the minimum tail size has not been reduced to the limit proposed.

Public Comments Received

Five written responses on the amendment or proposed rule were received during the comment period. In addition, three written sets of comments were received in the time between the Council's submission of the proposed amendment and NMFS' publication of the proposed rule.

Two commenters opposed the amendment because in their view the proposed new size limit would raise too high a risk of overfishing. One commenter initially expressed questions and concerns about the proposed new size limit, but subsequently expressed satisfaction after receiving additional information. Three commenters expressly supported the proposal. Two commenters indicated that the amendment would not have any impact on their programs.

The principal issue in the view of most commenters making substantive comments was the Council's proposed new size limit. Opponents argued that this size limit would not protect against overfishing. They preferred a straight conversion from the 7.7-cm carapace length size limit, which had been selected to protect the reproductive capacity of the lobster stock, to a tail width which would be equivalent to that carapace length. This would have been 5.1 cm (on average), as had been recommended by the Council's plan development team and Scientific and Statistical Committee. The opponents argued that the 4.8-cm size limit would protect too low a proportion of the egg production capacity of the stock. This could not only deplete the stock in the NWHI; it could adversely affect main Hawaiian Island lobster populations, and in turn fishermen, if main island populations are dependent on spawning success in the NWHI. Also, the opponents pointed out that there is a 3- to 4-year lag between the time of spawning and subsequent recruitment to the fishery. Thus, the effect of continued heavy fishing with a small size limit would not be conclusively established within the Council's proposed one-year test period. They proposed a larger size limit until the effects of the heavy fishing in 1981, 1984, and 1985 could be firmly established.

Proponents of the amendment acknowledged this risk but did not find it unacceptable. They generally agreed with the fishermen that the smaller size limit was necessary to maintain the economic viability of the fishery. It was noted that about 15 percent of the catch consists of lobsters in the size range between 4.8 cm through 5.0 cm tail width. Proponents felt they could not require fishermen to release these lobsters without evidence that the lobster stock was being stressed and that such release would have conservation benefits. The proponents agreed that conclusive data may not be available, but pointed out that preliminary analyses would be available in a year, and that the fishery would be closely monitored throughout the year. One supporter emphasized the need to establish an escape gap requirement to permit escape of sublegal-sized lobsters. Another supported the amendment on enforceability grounds.

NMFS has carefully considered the points on each side of the issue and has concluded, as discussed above in **SUPPLEMENTARY INFORMATION**, that the Council's proposal is not sufficiently conservative to protect the reproductive capacity of the stocks. The Secretary therefore partially disapproves the amendment.

Over the next few years, NMFS will work with the Council to develop a framework amendment to the FMP to permit more rapid responses to future changes in stock or economic conditions.

Further, NMFS will monitor the fishery closely and will complete studies regarding the use of escape gaps to prevent mortality from taking and releasing undersized spiny lobsters. Emphasis will be placed on escape gap size and location combinations that release undersized spiny lobsters with minimal impact on slipper lobster catches. The analysis will include estimates of catch, revenues, and costs associated with different escape gap combinations.

Classification

The Council's amendment is a combined FMP amendment and environmental assessment which concludes that the aciton will not have a significant impact on the human environment. The Regional Director concurred in the determination.

The Administrator, NOAA, has determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The action will not have a cumulative effect on the economy of $100 million or more. The cost-effectiveness of Federal enforcement will be improved by the shift to a single size limit with no tolerance for lobsters below that size. The amendment incorporated the regulatory impact review and concluded that the Council's proposed rule would have had the following economic effects:

(1) Fishermen would have been able to retain lobsters in the premium price category (4- to 6-ounce tails);

(2) Compliance with the size limit would have been simplified;

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(3) Long-term economic productivity of the fishery would have been maintained; and,

(4) Enforcement burdens would have been reduced.

Under the rule implementing the partially approved amendment, there would be two differences in effects. First, fishermen would not be able to retain as many of the smaller lobster tails. If sampled catches in 1985 are representative of future catches, approximately 10 percent of the spiny lobsters which are now retainable under the FMP would have to be released. However, the cumulative effect on the economy will still be far under $100 million. Second, with greater protection of the reproductive capacity of the stocks, the new size limit should enhance the likelihood of the long-term stability of the lobster resource.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This is because only a slight increase in revenue (expected to be only 2 percent or less) would accrue to fishermen from a change in the point of measurement from the first to the second segment while maintaining a 5.0-cm legal size limit. That potential increase in revenue, however, would be more than offset by the elimination of the 15 percent tolerance for undersize lobsters now in effect. Cost savings could be realized from simplified compliance and enforcement procedures and from a reduction in the sorting of harvests which formerly was necessary with the tolerance allowance. A regulatory flexibility analysis was not prepared.

The Council determined, and the State of Hawaii has concurred, that Amendment 3 is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii under section 307 of the Coastal Zone Management Act. The coastal zone management programs of Guam and American Samoa are unaffected by this rule.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: March 7, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

For reasons set out in the preamble, 50 CFR Part 681 is amended as follows:

1. The authority citation for Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.2, the definition of *Tail width* is revised, and figure 2 is replaced, to read as follows:

§ 681.2 Definitions.

* * * * *

Tail width means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 2).

* * * * *

FIGURE 2. TAIL WIDTH

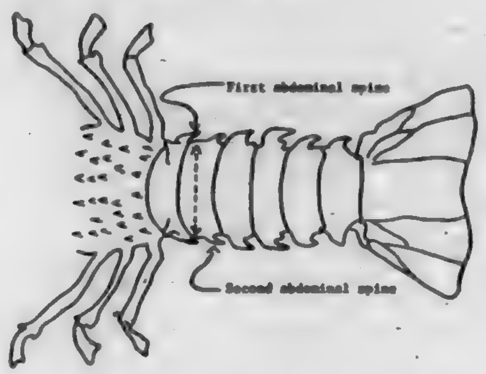

3. In § 681.7, in paragraph (b)(2), the comma is changed to a semi-colon and the phrase "except for the tail-width allowance of § 681.21(b);" is removed; and in paragraph (b)(3), the phrase "neither its carapace length nor" is removed and "can" is changed to "cannot".

4. Section 681.21 is revised to read as follows:

§ 681.21 Size restrictions.

Only spiny lobsters with a tail width of 5.0 cm or greater may be retained.

[FR Doc. 86–5404 Filed 3–7–86; 4:30 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 51, No. 48
Wednesday, March 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 762

Proposed Uranium Enrichment Services Criteria

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking, hearing.

SUMMARY: On January 29, 1986, (51 FR 3624), the Department of Energy (DOE) proposed to modify the criteria under which it provides uranium enrichment services. At that time, DOE announced that a public hearing would be held on the proposed criteria on March 18–19, 1986. DOE also announced that written comments must be received by February 28, 1986.

The one day public hearing will take place on March 18 beginning at 9:30 a.m. in the Department of Energy Auditorium, Room GE–086, 1000 Independence Avenue, SW., Washington, DC.

DOE has received requests that it provide additional information and analysis regarding certain aspects of the January 29, 1986 proposed criteria provisions. One of the requests concerns the "enrichment of foreign origin uranium." A second request involves "recovery of prior government costs." These comments were accompanied by requests for an extension of time within which to consider the additional information and an opportunity to submit written comments based on that information. DOE is in the process of considering these requests.

DATE: The public hearing will be held on March 18, beginning at 9:30 a.m.

ADDRESS: Hearing location: U.S. Department of Energy, Forrestal Building, DOE Auditorium, Room GE-086, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John P. Thereault, Office of Technology Deployment and Strategic Planning, Office of Uranium Enrichment, Room A-172, Germantown, Maryland 20545, (301) 353–4610.

Issued in Washington, DC on March 7, 1986.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

[FR Doc. 86–5443 Filed 3–10–86; 11:28 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–MN–29–AD]

Airworthiness Directives: Short Brothers, Ltd., Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking: Withdrawal and Reissuance.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) applicable to the Short Brothers Model SD3–30 airplanes that proposed an airworthiness directive (AD) that would have required modification of the fuel contents gauging system. The manufacturer has determined that the modification specified in the NPRM is not satisfactory. The original service bulletin has been revised and a new service bulletin applicable to the Model SD3–60, which describes modification to the fuel gauging systems, has been issued. The Model SD3–60 is included in this NPRM because it is also subject to similar failures of fuel quantity indications.

DATES: Comments must be received on or before May 5, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–29–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–29–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on certain Short Brothers, Ltd., Model SD3–30 and Model SD3–60 airplanes. Moisture ingress in eight co-axial connectors in the fuel quantity indication system, located adjacent to the fuel tanks, may result in the fuel gauges giving inaccurate or erratic readings. To prevent this from occurring, Short Brothers Service Bulletin SD3–28–22, dated September 1984, recommended

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that these co-axial connectors be weatherproofed by sealing them with a silicone compound. An NPRM was published in the **Federal Register** on May 3, 1985 (50 FR 18870), which requested comments concerning a proposal to require sealing of the co-axial cables in accordance with the previously mentioned service bulletin. Two comments were received. One comment stated that the proposed action had been tried and did not yield satisfactory results. The manufacturer performed additional tests and concurred that the original issue of the service bulletin cited in the NPRM did not provide a satisfactory solution to the problem. Revision 2 to the service bulletin has been issued, which describes an external sealing of the eight affected co-axial connectors. This method has been proven in service. The second comment stated that the NPRM should be amended to include the Model SD3–60 airplane because the same problem exists on that airplane. The manufacturer has issued Service Bulletin SD360–28–06, Revision 2, which describes a similar action for the Model SD3–60 airplane.

The FAA agrees with the commenters and has determined that the previous NPRM should be withdrawn and a new NPRM issued which would require sealing of the co-axial connectors in accordance with Service Bulletin SD3–28–22, Revision 2, dated July 1985, for the Model SD3–30 airplanes, and Service Bulletin SD360–28–06, Revision 2, dated July 1985, for the Model SD3–60 airplanes.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the sealing of the affected co-axial connectors in accordance with service bulletins previously mentioned.

It is estimated that 101 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, that total cost impact of this AD to U.S. operators is estimated to be $20,200.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact because of the minimal cost of compliance per airplane ($200.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Withdrawal

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, the proposed airworthiness directive published in the **Federal Register** on May 3, 1985 (50 FR 18870) is hereby withdrawn.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers, Ltd.: Applies to Model SD3–30 and DS3–60 airplanes listed in Short Brothers, Ltd. Service Bulletins SD3–28–22, Revision 2, dated July 1985 (for Model DS3–30 airplanes), and SD360–28–06, Revision 2, dated July 1985 (for Model SD3–60 airplanes), certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished. To prevent erroneous or erratic fuel quantity indications caused by moisture ingress into the fuel tank gauging system co-axial connectors, accomplish the following:

A. Seal the affected co-axial connectors in accordance with Short Brothers, Ltd., Service Bulletins SD3–28–22, Revision 2, dated July 1985, for Model SD3–30 airplanes, and SD360–28–06, Revision 2, dated July 1985, for Model SD3–60 airplanes.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 5, 1986.

Charles R. Foster,
Director, Northwest Mountain Region.

[FR Doc. 86–5285 Filed 3–11–86; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–ASO–4]

Proposed Alteration of Transition Area, LaGrange, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the LaGrange, Georgia, transition area to accommodate a new instrument approach procedure which has been developed to serve Callaway Airport. This action will lower the base of controlled airspace, southeast of the airport, from 1,200 to 700 feet above the surface. This additional controlled airspace is required for protection of Instrument Flight Rules (IFR) aeronautical activities.

DATES: Comments must be received on or before: May 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No.———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will alter the LaGrange, Georgia, transition area by designating additional controlled airspace southeast of Callaway Airport. This airspace is required to support IFR aeronautical activities in the LaGrange area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

LaGrange, Georgia—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Callaway Airport (Lat. 33°00'27" N., Long. 85°04'15" W.); within 1.5 miles each side of the LaGrange VORTAC 110° radial, extending from the 6.5-milek radius area to the VORTAC; within 4.5 miles southwest and 6.5 miles northeast of the Callaway Runway 31 localizer southeast course, extending from the localizer to 12.5 miles southeast of the outer marker, excluding that portion which coincides with the Pine Mountain, Georgia, transition area.

Issued in East Point, Georgia, on March 3, 1986.

James L. Wright,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86–5419 Filed 3–11–86; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83–14]

Truck Size and Weight; Lane Widths

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is requesting coments on a proposal to delete certain routes from the National Network for commercial motor vehicles established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. Certain routes in the States of Kentucky, New Jersey, North Carolina, South Carolina, and Virginia are proposed for deletion from the National Network. The issues relative to designated routes not on the primary system are the subject of a separate rulemaking issued on November 8, 1985, at 50 FR 46425.

DATE: Written comments on this docket must be received on or before May 12, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83–14, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 426–0233, Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, or Mr. John P. Eicher, Office of Motor Carrier Transportation, (202) 426–5370, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 416 of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. 2316, as originally enacted authorized the Secretary of Transportation to designate Federal-aid highways with traffic lanes designed to be a width of 12 feet or more for the operation of 102-inch wide commercial motor vehicles. For system continuity, some highways with lane widths of less than 12 feet were designated. The

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Tandem Truck Safety Act of 1984 (TTSA, Pub. L. 98–554, 98 Stat. 2829) amended 49 U.S.C. 2316 by giving authority to the secretary to designate highways on the Federal-Aid Primary System with lane widths less than 12 feet if such designations were determined to be consistent with highway safety.

On April 1, 1985, FHWA published an advanced notice of proposed rulemaking (ANPRM) (50 FR 12825) identifying for reexamination specific routes of the National Network containing sections with lanes less than 12 feet wide in those States which did not permit the operation of 102-inch wide vehicles on the National Network except under Federal authority. These States were Alabama, Florida, Kentucky, Maryland, Missouri, New Hampshire, New Jersey, New York, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virginia.

The proposed deletions are based on information, data, and comments provided in response to the ANPRM and on an extensive FHWA review of the applicable routes in these States. In making their review, FHWA Region and Division Offices were instructed to rely upon the criteria set forth in 23 CFR 658.9 (except par. (b)(5)) and 658.11(d). In the review, the field offices were to: (1) Determine lane widths, (2) gather other data on related geometrics such as horizontial curvature, width and type of shoulders, etc., (3) analyze accident and traffic data for the segment under review, and (4) consider truck operations and any physical evidence of operational problems. The FHWA field offices were requested to work with the States and to evaluate the characteristics of the routes and, where the potential for the existence of unsafe conditions warranted, to complete an additional examination by use of photologs or on-site reviews.

Docket Response

The FHWA received 24 responses to the Docket: Thirteen from the trucking industry, 5 from State/local transportation agencies, 2 from the manufacturing industry, 1 from the retail industry, 1 from the bus industry, 1 from the Center for Auto Safety (CAS), and 1 from the International Brotherhood of Teamsters. Of this group, one Teamsters Local recommended the banning of 102-inch wide trucks from two route sections, "U.S. 74 into Charlottee, N.C." and "N.C. 49, U.S. 52 at Richfield," in the State of North Carolina. In addition to its general contention that all less than 12-foot lanes were unsafe, the CAS specifically identified five routes in the State of South Carolina (US 15, US 52, US 76, US 123, and US 321) as illustrations of routes which it deemed unsafe for 102-inch wide vehicles. The trucking industry commentors generally requested that the designated system remain intact, with some of the commenters citing specific routes. One trucking company, after conducting an extensive review, identified a number of necessary priority routes and recommended their retention.

Results of State-by-State Review

In the State of Alabama, after thorough consideration of route characteristics and analysis of accident rates for route sections with lane widths of less than 12 feet, FHWA has determined that all of the sections listed in the ANPRM should remain on the designated Network. The factors considered are illustrated by the following two examples: (1) Posted Route Number US 72 between the Mississippi State Line and Jackson County Road 33 near Hollywood, a distance of 180 miles, is, except for approximately 35 miles, a four-lane divided highway in the rural areas and a multilane undivided highway in the urban areas. The 6.5-mile section between Ryland to east of Madison County Road 65 contains two 10-foot lanes in the westbound direction with 10-foot shoulders on both sides, less than 1 percent grades, and less than 2 degree horizontal curves. The 6.2 mile section between the Madison-Jackson County Line to SR 35 contains two 11-foot lanes in the westbound direction with 3-foot shoulders on both sides, less than 2 percent grades, and less than 3 degree horizontal curves. The accident rates on both sections during the period between January 1984 through April 1985 are relatively low with less than 0.74 accidents per million vehicle miles. The percentage of trucks is 12 percent with a 16 percent involvement in the accidents. However, no double trailer accidents have been reported on these sections. Posted Route Number US 72 is a heavily traveled Interstate-type route connecting several large cities. (2) Posted Route Number US 31 between SR 152, Montgomery, and AL 14, north of Prattville, a distance of 10 miles, is a four-lane divided highway containing a section with less than 12-foot lanes. The section from AL 152, Montgomery, to the Alabama River contains two 11-foot lanes on the southbound roadway, a 32-foot median, inside shoulders 5 feet wide and outside shoulders 10 feet wide. The southbound bridge over the Alabama River has two 9-foot travel lanes. Grades are relatively flat, less than 1 percent, and less than 3 degree horizontal curves. The accident rate of 0.49 accidents per million vehicle miles is low. The percentage of trucks is 6 percent, with 6 percent of the reported accidents involving trucks. No double trailer accidents have been reported on these sections. This segment connects the industrial area of Prattville with Montgomery giving access to the remainder of the statewide designated truck network.

In the State of Florida, two routes were identified in the ANPRM as having lane widths of less than 12 feet. In each instance, the lanes were restricted in only one direction of a divided highway, the restricted width being 11 feet. The FHWA Division Office review of videologs indicated that traffic movements, roadway characteristics, and pavement conditions were such that these routes can safely accommodate the STAA vehicles. Therefore, these routes are being retained on the Network.

In the State of Kentucky, the routes listed in the ANPRM were reviewed by the FHWA Kentucky Division Office using the criteria set forth in 23 CFR 658.9. The field office devised a subjective safety rating system ranked on a scale from 0 to 10 to be used in conjunction with the field reviews. Those sections rated at 6 or higher were to remain on the Network, while those falling below that level were recommended for deletion. At the time of the review, it also became apparent that in reporting the less than 12-foot lanes that appeared in the ANPRM for Kentucky, the reported width was based on the width at whole-numbered mileposts. For this review, the pavement width changes are recorded much more accurately, to the nearest one-thousandth of a mile. The review also revealed that several sections had either been reconstructed or overlaid in the past few years providing 12-foot lanes. Based on that review, the following routes are proposed for deletion from the Network: (1) Posted Route Number US 79 from the Tennessee State Line to US 68 at Russellville, which is propsed for deletion because of operational difficulties for STAA vehicles at a railroad underpass in Logan County. This section of the route consists of two 10-foot lanes with a severe "S" curve at the railroad underpass in addition to severely restricted horizontal and vertical clearances. The underpass opening is 25 feet wide and 12 feet 5 inches high. (2) Posted Route Number KY 61 (which was not listed in the ANPRM) from the Tennessee State Line to KY 90 at Burkesville is being proposed for modification by deleting the section between the Tennessee State

Line and Peytonsburg because this 0.3-mile segment of two-lane highway has 8-foot lanes and severe curvature. (3) Posted Route Number US 127 from the Tennessee State Line to US 60 in Frankfort is being proposed for modification by deleting the section between the Tennessee State Line and the US 127 Bypass south of Danville. This section has hills and curves which hinder sight distance thus interfering with the operation of the larger vehicles. The FHWA Kentucky Division Office review revealed that the section from the Tennessee State Line to the Cumberland Parkway consists of 80 percent 10-foot lanes, 6 percent 11-foot lanes, and 14 percent 12-foot lanes. The grades and curves between Jamestown and KY 90 are very severe. There is also a large volume of recreational traffic, particularly in the summer months. The inspection of the portion of US 127 between Cumberland Parkway and the US 127 Bypass south of Danville revealed that the section between KY 80 near Russell Springs and Liberty is the critical section of this portion. There are approximately 7.5 miles of 10-foot lanes and 3.3 miles of 9-foot lanes. The remaining miles to Liberty have 11-foot lanes. Although the portion of US 127 from Liberty to Danville is generally acceptable, there are some sharp curves and several locations with Reduced Speed (40 and 45 mph) Warning Signs. Also, there are three bridges with a curb-to-curb width of 19 feet.

In the State of Maryland, four routes were identified in the ANPRM as having lane widths of less than 12 feet. The FHWA field office review revealed that lanes on MD 301 are 12 feet wide. The lanes on the other three routes are no less than 11 feet and a field review of operations, accidents, and geometric information indicated that the larger vehicles could be accommodated safely. Therefore, all routes in Maryland are being retained on the National Network.

In the State of Missouri, one route, MO 13, was found to have all 12-foot lanes. Over the past 2 years, the FHWA Division Office has been reviewing the safety of the National Network. In addition, Missouri is one of the States cooperating in the national FHWA study, "Monitoring the Operation of Larger Dimensioned Vehicles." The State has upgraded its accident reporting forms, and a review of accident records has not indicated any clusters of truck accidents on the designated network, in general, or on those segments with lanes less than 12 feet, in particular. The most critical lane width situations occur on two Mississippi River bridges and one Missouri River bridge that have 10-foot lanes. These facilities are being monitored. The largest percentage of the less than 12-foot lane segments in Missouri have 11-foot lanes. There are a few locations in Missouri where an old two-lane highway facility has been utilized for traffic in one direction on a four-lane divided freeway or expressway. Therefore, a few of the less than 12-foot lane sections are on locations where one direction of travel has two 10- or 11-foot lanes, while the traffic in the opposite direction has two 12-foot lanes. Based on this review, all Missouri routes are being retained on the National Network.

In the State of New Hampshire, one route was identified as having lanes less than 12 feet wide. This particular route was a traveled way for a section of uncompleted Interstate. A portion of the Interstate section is now complete and the portion of NH 18 from the Vermont State Line to I–93 west of Littleton has been deleted from the National Network via the rulemaking published on November 8, 1985. Therefore, no less than 12-foot lanes remain on the Network in New Hampshire.

In the State of New Jersey, a section of the only route listed in the ANPRM is being proposed for deletion because this section of the New Jersey portion of the Outerbridge Crossing serves no useful purpose since neither the New York portion of the bridge nor the connecting roadway in New York is a part of the National Network. Posted Route Number NJ 440 from I–95 in Edison to the New York State Line at Outerbridge Crossing is, therefore, being proposed for modification by deleting the short section of Outerbridge Crossing in New Jersey. This modification would effectively terminate the designated route at State Street, Perth Amboy, which is the first interchange in New Jersey, and is consistent with the recommendation received from the New Jersey Department of Transportation.

In the State of New York, the field office review found that two of the routes, the Inner Loop in Rochester and NY 254, were erroneously identified as having less than 12-foot lanes when in actuality they have 12-foot lanes. Two remaining routes, NY 104 and US 20, have very short lengths of a half mile or less with lane widths less than 12 feet. STAA vehicles have been operating on these routes. Two additional routes, NY 365 and NY 8 (not listed in the ANPRM), were identified as having very short sections of lanes less than 12 feet wide. A review of lane widths and an evaluation of geometric and accident rates of all routes showed no problems and, therefore, these routes are being retained on the Network.

In the State of North Carolina, the field office review, which examined all routes including those on which the Teamsters Local recommended the banning of the 102-inch wide vehicles, consisted of the following: (1) An examination of data from the State's inventory log to determine lane and shoulder widths for individual segments on the Network. (2) The plotting on county maps of segments with less than 12-foot lanes. (3) Obtaining accident data from the State for all segments with less than 12-foot lanes. (4) An office review of relevant data of all segments by knowledgeable division personnel using county maps. (5) A field review of segments where a review of the county maps did not yield a conclusive opinion and where there were high accident rates. (6) The use of the State's photologs on some segments. (7) A field inspection of selected segments with representatives of the Regional and Washington Offices in conjunction with their review of the FHWA Division Truck Network procedures. (8) The entire Network was reviewed to check on the system classification for the routes. The factors considered are illustrated by the following two examples: (1) Posted Route Number US 401 between the South Carolina State Line and I–40 in Raleigh has less than 12-foot sections. The portion between 0.04 mile south of SR 1726 and Fayetteville City Line in Cumberland County, a distance of 2.09 miles, has six lanes with an overall width of 68 feet with curbs and gutters. The average daily traffic is 14,500 vehicles. The portion between the railroad overpass and Cape Fear River Bridge in Harnett County, a distance of 0.45 mile, has four lanes with an overall width of 53 feet, nine of which are shoulders. The average daily traffic is 14,000 vehicles. The portion between NC 42/55 and 0.46 mile north of SR 1404 in Wake County, a distance of 0.89 mile, has two lanes with an overall width of 32 feet, 10 of which are shoulders. (2) Posted Route Number US 64 between US 70/401 in Raleigh and US 17 in Williamston is a two-lane highway with an overall width of 30 feet, eight of which are shoulders and has one less than 12-foot segment from Rocky Mount City Line to NC 44 in Edgecombe County, a distance of 10.5 miles. Except as noted below, all of those segments with less than 12-foot lanes meet the safety requirements of the June 5, 1984, rule and their retention on the National Network is consistent with highway safety. Based on the review results, modifications to three

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routes are being proposed; (1) Posted Route Number US 19 in Cherokee, Macon, and Swain Counties is being proposed for modification by deleting a 21.86-mile segment from 0.23 mile northeast of SR 1391 to 0.28 mile southwest of SR 1123. This segment contains a 20-foot pavement with 4- to 6-foot unpaved shoulders through mountainous terrain. The horizontal and vertical alignments are servere. Only 13 percent of the length of the segment has passing sight distance of 1,500 feet or greater. (2) Posted Route Number US 421 for Kure Beach to I–95 Dunn in being proposed for modification by deleting the section between Kure Beach and Carolina Beach, which traverses built-up beach properties. Designation of this route as an access route by the State (if needed by industry) may be more appropriate. (3) Posted Route Number US 74 from I–277 Charlotte to US 17 near Wilmington is proposed for modification by deleting the section between I–277 Charlotte (Independence Avenue) and NC 24/27. This portion of US 74 contains a 2.8-mile section where the addition of turning lanes at intersections has narrowed the three through lanes in each direction to an average of 9 feet, with the curb lane being 8 feet plus gutter. The traffic flows at 35 to 45 mph between signals. A 35 mph speed limit has been imposed. The FHWA is especially interested in receiving comments and recommendations on mitigation measures that could improve operations on this route. Posted Route Number NC 49 at US 52 near Richfield (identified by the Teamsters Local) has been carefully reviewed, found consistent with highway safety, and is being retained on the Network.

The FHWA Division Office review in Puerto Rico found that few, if any, of the STAA vehicles are operating on the island. Trucks are restricted to major facilities connecting points of commerce. No problems with large vehicles were identified and, therefore, the Network is being retained unchanged.

In the State of South Carolina, the FHWA Division Office as part of a State/Federal team reviewed the routes identified in the ANPRM, including those identified by the CAS, focusing on the following criteria in particular: accident rates, narrow structures, curvature, vertical clearance, no passing zones, steep grades, and adequate turning radii. All routes mentioned by CAS was reviewed. Based on the results of our review, Posted Route Number US 52 from Lake City to Moncks Corner is the only route being proposed for deletion. The reasons for this deletion are: (1) The turn at the intersection with SC 261 and SC 527 is not adequate. Trucks making right turns at the intersection were observed to be encroaching into the adjacent lane in order to have enough room to make the turn. (2) The average accident rate for the last 3 years through Kingstree is higher than the State average for an urban section. (3) Several horizontal curves on the two-lane section from Black River to the Berkeley County Line are sharp and the speed limit has been reduced.

In Tennessee, the State records system permitted an initial review of the accident rates for identified sections with lanes less than 12 feet wide. Those with an accident rate less than the State developed critical accident rate (which is based on a statewide average accident rate for highway type and the vehicle-miles of travel on a specific section) or with a truck accident rate less than the percent of trucks using the facility were recommended for retention. Sections identified as having truck accident rates exceeding either of these two measures were reviewed utilizing photologs or field review. The reviews of geometric, accident, and photolog information indicated the routes could safely accommodate the larger vehicles. Therefore, no deletions are proposed. Tennessee has upgraded its accident record system to specifically identify twin-trailer combinations on accident reporting forms and is taking steps to enter this data into its accident data system which is used to develop the safety improvement program. Typical findings from the review in Tennessee are illustrated in the following two examples: (1) Posted Route Number SR 76 in Carroll County, a distance of 12.96 miles, is a two-lane highway 22 feet wide with 5-foot paved shoulders. It is mostly straight, has good visibility in a rural area, and poses no problems for wider trucks. The total number of accidents on that segment of SR 76 is 47, of which six involved trucks. The percentage of truck accidents is 13 percent, while the percentage of trucks using the segment was 7 percent. A photolog review of the segment did not identify any operational problems for STAA vehicles. (2) Posted Route Number SR 28 in Pickett County, a distance of 6.92 miles, is a two-lane highway 20 feet wide with 2-foot gravel shoulders and is on rolling terrain. The percentage of trucks is 24 percent. The total number of accidents on that segment of SR 28 is 21, of which four involved trucks. The percentage of truck accidents is 19 percent.

In the State of Virginia, the FHWA Virginia Division Office reviewed road inventory/maintenance logs to identify sections with lane widths less than 12 feet, graphic logs to identify any geometrics that could cause potential operating problems, and accident data for 1983, 1984, and (to the extent available) 1985. In addition, field reviews were made by a team including FHWA Headquarters, Region, and Division and State highway agency personnel. Findings are illustrated in the following examples of three sections of Posted Route Number Alternate US 58 between US 19 at Hansonville and US 23 in Norton in Wise County which were shown in the inventory data as having 18-foot wide pavement: (1) The section from Mile Post (M.P.) 0.00 to M.P. 0.36 in Saint Paul consists of a two-lane highway in a built up area with numerous paved entrances to businesses which in effect has resulted in a continuous pavement wider than 18 feet. The speed limit is 25 mph; the 1983/1984 annual average daily traffic is 11,000 with four accidents for the same time period, none of which involved tractor-trailers. No areas were noted that would cause operational problems for STAA vehicles. (2) The section from M.P. 9.50 to M.P. 11.45 in Coeburn consists of a two-lane highway, the surface width of which was measured at five locations and was found to be a minimum of 20 feet at one location and 21 to 22 feet at the other four. The shoulder width is 6 feet; the speed limit is 45 mph; the 1983/1984 average daily traffic is 4,800 with 3.4 percent of that figure consisting of tractor-trailers. For that same time period, there were 10 accidents, none of which involved tractor-trailers. While there are several curves on this segment, observation of several tractor-trailers did not indicate that any operational problems were being experienced. (3) A short section from M.P. 19.43 to M.P. 19.74 in Norton consists of a two-lane highway with 8-foot shoulders. The speed limit varies from 55 mph beyond the town limits to 25 mph within the town limits (there is a Maximum Safe Speed sign of 30 mph posted at a curve outside the town limits); the 1983/1984 average daily traffic was 7–9,000 with 3 percent of that figure consisting of tractor-trailers; there were four accidents for that time period, one of which involved a tractor-trailer. No problems were noted for this section. The following resurfacing projects were completed in mid-1985 on Alternate US 58: (1) from M.P. 9.44 (Route 725) to M.P. 11.91 (Route 1106) which was widened by 1 foot on each side; (2) from M.P. 1.74 (VA 611) to M.P. 3.18 (VA 651); (3) from M.P. 12.60 (North Corporate Limits of Coeburn) to M.P. 14.46 (0.87 mile east of

VA 613). Based on the findings from the review performed in Virginia, all routes are being retained except Posted Route Number VA 57 from US 220 (Bassett Forks) to VA 666 (Bassett) which is proposed for modification by deleting the section between VA 753 and VA 666. Data gathered during the joint FHWA and State review revealed that it is inappropriate for the National Network and is more appropriate as an access route if needed by industry. The STAA commercial vehicles will be permitted to use VA 57 alternate as well as small sections of VA 57 and VA 666 which the State of Virginia has placed on its access system.

The following is a listing of routes identified in the April 1, 1985, ANPRM which were reviewed as part of this evaluation and are being retained on the National Network. (This listing reflects all modifications made as a result of the reviews initiated by the ANPRM, including the deletion of those designated routes not on the primary system addressed in the Final Rule published on November 8, 1985). See the amendments following today's preamble for the exact modifications being proposed.

Posted Route No.	From—	To—
ALABAMA		
US 72	Mississippi St. Line	Jackson County Road 33 near Hollywood.
US 31	AL 152 Montgomery	US 82.
US 31	End of I–65 north of Birmingham.	I–65 north of Kimberly.
US 78	Beginning of four-lane west of AL 5 at Jasper in Walker County.	I–59 Birmingham.
US 80	AL 14 West of Selma	AL 152 Montgomery.
AL 20	US 72 Tuscumbia	US 231 Huntsville.
AL 21	US 431 Anniston	Jacksonville.
US 280	US 31 Mountain Brook	AL 22 at Alexander City.
US 280	I–85 Opelika	Georgia St. Line.
AL 77	I–59 Gadsden	US 431 Attalla.
FLORIDA		
US 27	South Bay	Leesburg.
US 27/US 301.	Belleview	Ocala.
KENTUCKY		
US 25	US 421 S. of Richmond.	KY 876 in Richmond.
US 25E	Virginia St. Line	I–75 N. of Corbin.
US 27	Tennessee St. Line	Ohio St. Line (via KY #4 in Lexington).
US 31W	US 31 W. Bypass in Elizabethtown.	I–264.
US 45	US 45 Bypass north of Mayfield.	US 62 in Paducah.
US 60	US 60 Bypass west of Owensboro.	KY 69 Hawesville.
US 60	KY 144 in Meade County.	US 31 West at Ft. Knox.
KY 61	Peytonsburg	KY 90 at Burkesville.
US 62	I–24 at Paducah	Western Kentucky Parkway.
US 68	I–24 in Trigg County	Green River Pkwy at Bowling Green,
US 68	US 27 at Paris	Ohio St. Line at Maysville (via Paris Bypass).
KY 69	US 60 at Hawesville	Indiana St. Line.
KY 79	KY 1051 in Brandenburg.	Indiana St. Line.
US 119	US 23 at Pikeville	KY 1441.
US 127	US 127 Bypass north of Danville.	US 60 in Frankfort (via Lawrenceburg US 127 Bypass).
KY 144	KY 448	US 60.
US 150	US 31E at Bardstown	US 27 N. City Limits of Stanford (via Danville Bypass).
KY 151	US 127 near Lawrenceburg.	I–64 near Graefenburg.
KY 259	Western Kentucky Parkway.	US 62 at Leitchfield.
KY 448	KY 1051 at Brandenburg.	KY 144.
US 641	Tennessee State Line	KY 348 in Benton.
KY 876	I–75 at Richmond	KY 52 East of Richmond.
MARYLAND		
MD 201 (Kenilworth Avenue).	D.C. Line	US 50 Cheverly.
US 48	West Virginia State Line.	MD 639 at Cumberland.
US 50	MD 201 Kenilworth Ave., Cheverly.	US 13 (bypass) Salisbury.
US 301	Virginia St. Line	Delaware St. Line.
MISSOURI		
US 36	Kansas State Line	Illinois State Line.
US 67	Arkansas St. Line	Exit 174 on I–55.
US 61	I–70 St. Charles County	Iowa St. Line.
US 63	Arkansas St. Line	Iowa St. Line.
US 65	Arkansas St. Line	Iowa St. Line.
US 71	Arkansas St. Line	I–435 Kansas City.
US 71	Exit 53 on I–29	US 136 Maryville.
US 136	Nebraska St. Line	Exit 110 on I–29.
US 54	South Junction US BR 54 at Lake Ozark.	Illinois St. Line.
US 60	MO 37 Monett	US 63 Willow Springs.
MO 13	I–44 Springfield	US 24 Lexington.
US 50	Exit 7 I–470 Kansas City.	Exit 247 on I–44.
US 412	Arkansas St. Line	Exit 19 on I–55.
MO 5	Arkansas St. Line	US 60.
MO 171	Kansas St. Line at KS 57.	US 71 at Webb City.
US 60	2 mi. E. of E. Jct. MO 21.	I–55/57 near Sikeston.
US 24	US 61 Taylor	Illinois St. Line.
US 59	Kansas St. Line	I–229 St. Joseph..
NEW HAMPSHIRE		
NH 18	I–93 West of Littleton	Temporary Connection with I–93 East of Littleton.
NEW JERSEY		
NJ 440	I–95 Edison	Outerbridge Crossing.
NEW YORK		
Inner Loop	I–490 Rochester	I–490 Rochester.
NY 254	I–87 Glen Falls	0.3 mile east of US #9.
NY 104	Maplewood Drive Rochester.	Monroe-Wayne County Line.
US 20	NY 75 Mount Vernon	Howard Road Mount Vernon.
NORTH CAROLINA		
US 19	US 64 near Ranger	0.23 mile NE of SR 1391.
US 19	0.28 mile SW of SR 1123.	US 19A near Bryson City.
US 1	US 74 at Rockingham	I–85 near Henderson.
US 15	US 1 [illegible]	US 64 Pittsboro.
US 401	South Carolina St. Line	I–40 Raleigh.
US 17	SR 1409	Virginia St. Line.
SR 1409 (Truck Rt.).	US 76	US 17.
US 64	US 1/70/401 Raleigh	US 17 Williamston.
US 64	US 29 Lexington	US 15 Pittsboro.
US 258	NC 24 near Richlands	US 64 Tarboro.
US 220	US 74 in Rockingham	Virginia St. Line.
NC 49	I–85 Charlotte	US 52 Richfield.
NC 18	US 64	US 321 near Lenoir.
US 321	South Carolina St. Line	I–85 near Gastonia.
US 52	NC 24/27 Albemarle	Virginia St. Line.
US 158	I–40 Winston-Salem	US 29 Reidsville.
US 158	I–85 Henderson	US 258 Murfreesboro.
US 70A	US 70 near Princeton	US 70 near Smithfield.
I–95 Bus	Kenly	Gold Rock.
US 74	NC 24/27 (Charlotte)	US 17 near Wilmington.
US 23	US 19A Dillsboro	US 441 Franklin.
US 258	US 158 Murfreesboro	Virginia St. Line.
US 521	South Carolina St. Line	I–77.
NC 24	US 74 Charlotte	US 52 Albemarle.
US 29	I–85 Greensboro	Virginia St. Line.
US 264	US 17 Washington	US 64 near Zebulon.
NC 11	US 70 Kinston	US 264 Greenville.
US 70	US 29/601 Salisbury	I–77 Statesville.
US 421	Carolina Beach	I–95 Dunn.
US 421	US 1 Sanford	US 64 Siler City.
NC 24	US 70 Mansfield	US 421 Clinton.
NC 24	I–95 Fayetteville	Spout Springs.
US 70	Beaufort	US 70A near Princeton.
US 19	I–240 Asheville	Jct. US 19/23 near Mars Hill.
NC 49	US 52 at Richfield	US 64 at Asheboro.
PUERTO RICO		
PR 2	PR 22 San Juan	PR 1 Ponce.
SOUTH CAROLINA		
US 123	Georgia St. Line	US 25 Greenville.
US 76	US 52, Florence	SC 576 near Marion.
US 321	I–26 South of Columbia	I–95 near Hardeeville.
US 15	North Carolina St. Line	US 52, Society Hill.
US 52	US 15, Society Hill	Lake City.
US 52	Moncks Corner	US 52/I–26 Connector at Goose Creek.
TENNESSEE		
US 79	Memphis near I–40	Guthrie at US 41 Kentucky St. Line.
US 641	I–40 near Natchez Trace State Park.	Kentucky St. Line near TN 140.
US 231	Alabama St. Line near Fayetteville.	Kentucky St. Line near TN 52
US 127	TN 29 in Chattanooga	Static at Kentucky St. Line.
US 27	TN 153 in Chattanooga	Kentucky St. Line.
US 25E	I–81	Cumberland Gap at Virginia St. Line.
US 70	Huntingdon at TN 22	Dickson at TN 96.
US 70S	Murfreesboro at US 231.	Sparta at TN 111.
US 64/41A	Memphis at TN 15	I–24 at Monteagle.
US 64	Cleveland near I–40	Near Belltown at North Carolina St. Line.
TN 96	US 70 in Dickson	I–40 near Dickson.
US 70	TN 155 in Nashville	Sparta.
TN 20	I–40 at Jackson	US 51 at Dyersburg.

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Posted Route No.	From—	To—
Virginia		
US 1	Route I-95 (Spotsylvania County).	Route 17 Bypass.
VA 2/US 17 Bus.	Route 17 (New Post)	SCL Fredricksburg.
VA 3	Route 1 By-pass (Fredericksburg).	Route 20 (Wilderness).
VA 7	Route I-81 (Winchester).	0.69 mile W. of W.C.L. Round Hill.
VA 10	E.C.L. Hopewell	0.37 mile W. Route 156 in Hopewell.
VA 10	Route 1 (Chesterfield County).	Route 827 (0.56 mile W. of W.C.L. of Hopewell).
US 11	N. Intersection Rt. 220 Alt. (Botetourt County).	2.15 miles S. of N. Intersection Route 220 Alt.
US 11	Route 100 (Town of Dublin).	Route 643 (Pulaski County).
US 17	Route 134 (York County).	Route I-64 (City of Newport News).
US 17	Route I-95 (Stafford County).	Route 29 (Opal).
US 19	Route I-81 via Routes 11 and 140 (Abingdon).	Temp. Route 460 (Route 720) (Bluefield).
US 23	Tennessee St. Line	Alt. Route 58 (Big Stone Gap).
US 23	0.33 Miles North Route 23 Business.	Kentucky State Line.
US 25	Tennessee State Line	Kentucky State Line.
US 29	North Carolina St. Line	Route I-66 (Gainesville).
US 33	North Carlton Street (Harrisonburg).	Route 340 (Elkton).
US 33	Route I-64 (New Kent County).	Route 30 E. Intersection (West Point).
VA 42	Route 257 (Bridgewater).	Route 290 (Dayton).
US 50	Route 259 (Gore)	Route 37 (Frederick County).
VA 57	Route 220 (Bassett Forks).	VA 753.
US 58	S. Fairy Street (Martinsville).	W.C.L. Emporia.
US 58	0.6 mile E. of ECL Emporia.	S. Int. Route 35.
US 58	N. Int. Route 35 (Courtland).	Routes 13 & I-264 (Bowers Hill).
Alt. US 58	Route 19 (Hansonville)	Route 23 (Norton).
Alt. US 58	Route 11 (Town of Abingdon).	0.40 Mile West Route 11.
US 60	0.03 mile W. Route 867.	Route 522 West of Powhatan.
VA 86	Route 29 (Danville)	North Carolina St. Line.
VA 114	Route 460 (Town of Christiansburg).	0.09 Mile East Route 750 (Montgomery County).
VA 207	Route I-95 (Caroline County).	0.20 Mile South Route 619.
US 220	North Carolina St. Line	Route I-581 (Roanoke).
US 220	Route I-81 (Botetourt County).	S.C.L. of Fincastle.
Alt. US 220	Route I-81 (Botetourt County).	Route 11.
VA 224	Route 460 (City of Lynchburg).	Route 29.
US 258	North Carolina St. Line	Route 58-Franklin By-pass.
VA 277	Route I-81 (Frederick County).	1.60 Miles East of Route I-81.
US 301	Route 301 Bus. (Bowling Green).	Maryland St. Line.
VA 337	(City of Norfolk) Routes 58 EB and 460 EB (St. Paul Blvd.).	Claremount Avenue (Route 58 Interchange).
US 340	Route 7 By-Pass (Berryville).	West Virginia St. Line.
US 340	I-66 (Warren County)	2.85 miles N. of I-66.
US 360	Route I-64 (City of Richmond).	Route 627 (Village).
US 360	Route 58 (South Boston).	Route 150 (Chesterfield County).
US 460	Route 67 at Raven	Route 19 at Claypool Hill.
US 460	Route 720	West Virginia St. Line.
US 460	West Virginia St. Line	Route I-81 at Christiansburg.
US 460	Route I-581 at Roanoke.	0.09 mile East Route 1512.
US 460	Route 224	1 Mile West of Route 24.
US 460	0.64 Mile East of Route 707.	Route 1-85 South of Petersburg (Dinwiddie County).
US 460	Route I-95 (Petersburg).	Route 58 (Suffolk).
US 501	Route 360 S. Int. (Halifax).	Route 58 (South Boston).
US 522	Route 37	1.07 miles N. of Rt. 705 (Frederick County) at Cross Junction.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1984, Final Rule by deleting certain highway segments in accordance with statutory provisions. The impacts of the deletions addressed in the proposed rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segment deletions represent a very small portion of the National Network with a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on March 3, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby proposes to amend Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the States of Kentucky, New Jersey, North Carolina, South Carolina, and Virginia, to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Sections 133, 411,413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A [Amended]

The Appendix to Part 658 is amended for the State of Kentucky by removing the Posted Route Number entries:

Route	From—	To—
*	*	*
US 79	Tennessee State Line	US 68 at Russellville.
*	*	*
KY 61	Tennessee State Line	KY 90 at Burkesville.
*	*	*
US 127	Tennessee State Line	US 60 in Frankfort (via Danville & Lawrenceburg Bypasses).
and inserting in place of KY 61 and US 127 the following:		
KY 61	Peytonsburg	KY 90 at Burkesville.
*	*	*
US 127	US 127 Bypass North of Danville.	US 60 in Frankfort (via Lawrenceburg Bypass).

3. The Appendix to Part 658 is amended for the State of New Jersey by removing Posted Route Number entry;

Route	From—	To—
NJ 440	I-95 Edison	New York State Line at Outerbridge Crossing.
and inserting in its place the following:		
NJ 440	I-95 Edison	Outerbridge Crossing.

4. The Appendix to Part 658 is amended for the State of North Carolina by removing Posted Route Number entries.

Route	From—	To—
US 19	US 64 near Ranger	US 19A near Bryson City.
*	*	*
US 74	I-277, Charlotte (Independence Avenue).	US 17 near Wilmington.
*	*	*
US 421	Kure Beach	I-95 Dunn.
and inserting in their respective places the following:		
US 19	US 64 near Ranger	0.23 mile NE of SR 1391.
US 19	0.26 mile SW of SR 1123.	US 19A near Bryson City.
*	*	*
US 74	NC 24/27 (Charlotte)	US 17 near Wilmington.
*	*	*
US 421	Carolina Beach	I-95 Dunn.

5. The Appendix to Part 658 is amended for the State of South Carolina by removing Posted Route Number entry:

Route	From—	To—
US 52	US 15, Society Hill	US 52/I-26 Connector at Goose Creek.
and inserting in its place the following:		
US 52	US 15, Society Hill	Lake City.
US 52	Moncks Corner	US 52/I-26 Connector at Goose Creek.

6. The Appendix to Part 658 is amended for the State of Virginia by removing Posted Route Number entry:

Route	From—	To—
VA 57	Route 220 (Bassett Forks).	Route 666 (Bassett).
and inserting in its place the following:		
VA 57	US 220 (Bassett Forks)	VA 753.

[FR Doc. 86-5129 Filed 3-11-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-216-84]

Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the taxation of fringe benefits.

DATES: The public hearing will be held on Tuesday, April 29, 1986, beginning at 10:00 a.m. If necessary to accommodate all speakers, the public hearing will be reconvened on Wednesday, April 30, 1986, at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, April 11, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-216-84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 61 and 132 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Monday, December 23, 1985 (50 FR 52333).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, April 11, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel or the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-5425 Filed 3-11-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action MO 1828; A-7-FRL-2983-1]

Approval and Promulgation of State Implementation Plans: Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking (PRM).

SUMMARY: This notice proposes to approve amendments to two regulations as part of the Missouri State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standards (NAAQS). The amendments change the exemption level for requiring a bulk gasoline plant to be equipped with a vapor recovery system for controlling volatile organic compounds (VOC). The emission limits on major sources of VOC are required by the Clean Air Act. The amended exemption level does not represent reasonably available control technology (RACT) for certain sources exempt under the State regulation; however, the State has shown that the emissions are within 5 percent of the emissions required by EPA in the control techniques guideline (CTG). Today's notice is published to advise the public of EPA's proposed action and to request comments.

DATE: Public comments must be submitted by April 11, 1986.

ADDRESSES: Comments should be sent to Deann K. Hecht, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submittal is available for inspection during normal business hours at the above address, and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht at (913) 236-2893 or FTS 757-2893.

SUPPLEMENTARY INFORMATION: On July 1, 1985, the State of Missouri submitted a request to approve a revision to the Missouri SIP. The revision is an amendment to State rules 10 CSR 10-5.220 for the St. Louis Metropolitan Area, and 10 CSR 10-2.260 for the Kansas City Metropolitan Area, both entitled, "Control of Emissions from Petroleum Liquid Storage, Loading, and Transfer." It was adopted by the Air Conservation Commission on March 21, 1985, after proper public hearing held on February 21, 1985.

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The regulations had an exemption level for requiring a bulk gasoline plant to be equipped with a vapor recovery system of 600,000 gallons average monthly throughput of gasoline. In reviewing the Missouri SIP, EPA determined that this exemption level was a deficiency and therefore, the bulk plant rules do not represent RACT. EPA believes that an exemption for bulk plants with a throughput of 4,000 gallons per day or less would be acceptable. The State then proceeded with a change in the exemption from 600,000 gallons average monthly throughput to 120,000 gallons. However, the CTG (Control of Volatile Organic Emissions from Bulk Gasoline Plants, December 1977, EPA-450/2-77-035) refers to 286 working days per year for a bulk plant instead of a 360 day year. Therefore, the CTG recommends an exemption only for sources equal to or less than 96,000 gallons average monthly throughput of gasoline.

The State surveyed bulk gasoline plants in the St. Louis and Kansas City Metropolitan Areas. The survey indicated that there were no bulk plants in Kansas City above a 96,000 gallon monthly throughput of gasoline. Therefore, lowering the exemption level from 120,000 gallons to 96,000 gallons would not affect any of the bulk plants in the Kansas City Metropolitan Areas or result in reduction of VOC emissions in that area.

The survey indicated that three bulk plants in the St. Louis Metropolitan Area would be affected by lowering the exemption level from 120,000 gallons to 96,000 gallons. Instead of changing the exemption level to 96,000 gallons, the State has shown that the change would result in a VOC emission decrease of less than 5 percent. According to EPA policy, deviation from a CTG is acceptable if the emissions from a source category are higher, but no more than 5 percent higher, than the emissions would be if the CTG is followed exactly. The demonstration showed VOC emissions for bulk gasoline plants with the State's exemption level of 120,000 gallons monthly throughput to be 371 kg/day. EPA maintains that the VOC emissions after full implementation of RACT should be 358 kg/day. Thus, the deviation results in emissions which are about 4 percent higher than are obtainable at the CTG exemption level.

Proposed Action

Today's notice proposes to approve the State of Missouri's amendments to the regulations 10 CSR 10-2.260 for the Kansas City Metropolitan Area, and 10 CSR 5.220 for the St. Louis Metropolitan Area, both entitled, "Control of Emissions from Petroleum Liquid Storage, Loading, and Transfer." The amendments change the exemption level in both regulations from 600,000 gallons average monthly throughput of gasoline to 120,000 gallons.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: December 18, 1985.

Morris Kay,
Regional Administrator.

[FR Doc. 86-5292 Filed 3-11-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3 FRL-2962-2]

Approval and Promulgation of Implementation Plans; Revision of Allegheny County Portion; Commonwealth of Pennsylvania Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a proposed revision to its State Implementation Plan (SIP) to incorporate an amendment, Appendix 22, to the Allegheny County portion of the Pennsylvania SIP. The proposed revision provides the Allegheny County Health Department (ACHD) with the authority to grant, on a case-by-case basis, extensions of the final air pollution compliance dates for surface coating and graphic arts sources in Allegheny County. For each case the extension would be granted only after being specifically approved by EPA.

Such extensions could extend the final compliance date until April 21, 1987. This amendment would make the Allegheny County regulations, as regarding the compliance dates for applicable sources, consistent with those of the Pennsylvania Department of Environmental Resources (PADER) which have been approved by EPA. It has been determined that approval of this revision will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone.

DATES: Comments must be submitted on or before April 11, 1986.

ADDRESSES: Copies of the proposed SIP revision and relevant support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Denis M. Lohman

Commonwealth of Pennsylvania, Departmentof Environmental Resources, Bureau of Air Quality Control, 200 North Third Street, Harrisburg, PA 17120, Attn: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thrity-ninth Street, Pittsburgh, PA 15201, Attn: Roger C. Westman

All comments on the proposed revision submitted on or before April 11, 1986, will be considered and should be sent to Mr. Glenn Hanson, Chief, PA/WV Section (3AM11), Air Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Mr. Denis M. Lohman (3AM11) at the EPA address above, or telephone (215) 597-8375.

SUPPLEMENTARY INFORMATION: The proposed change to the Pennsylvania SIP was submitted by the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Resources (PADER). The change is an amendment to section 512.G of Article XX, Rules and Regulations of the Allegheny County Health Department. The Amendment would provide the Bureau of Air Pollution Control (BAPC) with the authority to grant, on a case-by-case basis, extension of the final compliance dates for surface coating and graphic arts sources in Allegheny County. These extensions would be granted through the issuance of a Delayed Compliance Order (DCO). The DCO for each source extension must be appfoved by EPA in accordance with section 113(d) of the Clean Air Act. The final compliance date could be extended until April 21, 1987, or for up to three years after the original compliance date, whichever comes first.

The provisions of the amended section 512.G. specify that extended compliance dates, for the Surface Coating and Graphic Arts sources, may only be granted if the source demonstrates one or more of the following:

a. That it is physically impossible for the source to comply with the applicable compliance schedule; or

b. That, by allowing an extension of the compliance schedule, innovative technology will be applied which will result in the achievement of emission reductions which are significantly greater than those otherwise required; or

c. That additional time is necessary to allow for the development of low solvent systems when the only alternative is the application of add-on emission control equipment which would cause an undue economic burden.

Furthermore, the DCO must contain a commitment to install add-on emission control equipment if the low solvent development program is not successful.

There are four substantive changes to the current section 512.G. represented by the proposed amendment:

(1) A final compliance date of June 30, 1985, is replaced with the date of April 21, 1987;

(2) The conditions to be satisfied to qualify for a DCO are modified by deleting explicit reference to specific add-on emission control equipment and by deleting the participation in a statewide control prioritization program;

(3) The subsection pertaining to Graphic Arts—Non-Porous Substrates is deleted in entirety;

(4) The required commitment to install add-on control equipment if the low solvent development program fails, currently applicable to the non-porous substrate graphic arts sources, is extended to apply to all surface coating and graphic arts sources.

The rules and regulations of the Commonwealth of Pennsylvania, which pertain to the surface coating and graphic arts sources, are equivalent to the proposed rules for Allegheny County. The revision to section 512.G. Was proposed by the ACHD in order to have equitable treatment of the same classes of sources in and adjacent to Allegheny County.

Proposed Action

EPA is today proposing to approve a revision to the Allegheny County portion of the Pennsylvania SIP. The revision will permit, with sufficient justification, the extension of final compliance dates for certain sources in Allegheny County.

The public is invited to submit, to the EPA address above, comments on whether the proposed change should be approved as a revision to the Pennsylvania SIP. The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendment meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: November 8, 1985.

James M. Seif,
Regional Administrator.

[FR Doc. 86-5293 Filed 3-11-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 5E3210/P387, FRL-2979-6]

Pesticide Tolerances for Norflurazon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the herbicide norflurazon and its metabolite in or on the raw agricultural commodities asparagus and avocados. The proposed regulation to establish maximum permissible levels for residues of norflurazon in or on the commodities was requested in a petition submitted by the Inter-regional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 5E3210/P387], must be received on or before April 11, 1986.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Burnswick, NJ 08903, has submitted pesticide petition 5E3210 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Michigan, Texas, and Washington and the United States Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone and its desmethyl metabolite 4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-m-tolyl)-3-(2*H*)-pyridazinone in or on the raw agricultural commodities asparagus at 0.05 part per million (ppm) and avocados at 0.2 ppm. The petitioner proposed that use of the herbicide norflurazon on asparagus be limited to Michigan and Washington and on avocados to Florida only based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the adddress given above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include a 6-month

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dog feeding study with a no-observed-effect level (NOEL) of 150 ppm (3.75 milligrams (mg)/kilogram (kg)); a 90-day rat feeding study with a NOEL of 500 ppm (25 mg/kg); rat and rabbit teratology studies negative for teratogenic potential at 400 and 60 mg/kg/day (highest dose tested), respectively; a 3-generation rat reproduction study with a NEOL of 375 ppm (18.75 mg/kg); a 2-year rat chronic feeding/oncogenicity study with a NOEL of 375 ppm (18.75 mg/kg) and no observed oncogenic effects at any level tested (2, 125, 275, and 1,025 ppm); a 2-year mouse feeding study with a NOEL of 340 ppm (51 mg/kg) and no observed oncogenic potential at dose levels of 85, 340 and 1,360 ppm. Although pathological alterations (hepatoma/hyperplasia-hypertrophy) were observed in the liver of a statistically significant number of male mice at the 1,360 ppm dose level, the Agency concludes (Registration Standard of December, 1984) that these pathological alternations resulted from a toxic response to the high dose level and do not demonstrate a carcinogenic potential for norflurazon.

The Agency has determined that residues from the proposed tolerance would not result in a siginificant risk to humans. Data considered desirable, but lacking, include a rat metabolism study (female rat) defining tissue retention and the percentage and identity of the major metabolites and additional mutagenicity studies, both of these studies have been submitted and are under review.

The acceptable daily intake (ADI), based on the 6-month dog feeding study with a NOEL of 3.75 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.0375 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 2.25 mg/day. The theoretical maximum residue contribution (TRMC) from existing tolerances for 1.5-kg daily diet is calculated to be 0.0877 mg/day; the current action will increase the TMRC by 0.00020 mg/day (0.2 percent). Published tolerances utilize 3.90 percent of the ADI; the current action will utilize an additional 0.01 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography using an electron capture detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. No secondary residues in meat, milk, poultry or eggs are anticipated since asparagus and avocados are not considered livestock feed commodities. There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency concludes that the proposed tolerances will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fugicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 5E3210/P387]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regualtions establishing new tolerances or raising tolerance levels or establishing exemptions for tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 24, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Part 180 is amended in §180.356 as follows:

§ 180.356 [Amended]

a. By removing the italicized headings "*Specific tolerances.*" and "*Indirect or inadvertent tolerances.*" In the introductory text to the tables in paragraphs (a) and (b) respectively.

b. By adding a new paragraph (c) to read as follows:

§ 180.356 Norflurazon; tolerances for residues.

* * * * *

(c) Tolerances with regional registration are established for the combined residues of the herbicide norflurazon and its desmethyl metabolite in or on the following commodities.

Commodities	Parts per million
Asparagus	0.05
Avocados	0.20

[FR Doc. 86-4906 Filed 3-11-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 418

[FRL-2981-5]

Fertilizer Manufacturing Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for comments; Notice of Public Hearing.

SUMMARY: On July 25, 1984, EPA proposed to amend the applicability of the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), and the best conventional pollutant control technology (BCT) guidelines for the phosphate subcategory of the Fertilizer Manufacturing Point Source Category. The proposed amendment would exclude existing phosphate fertilizer manufacturing plants located in Louisiana from the phosphate subcategory. The public comment period on the proposed amendment closed on August 25, 1984.

In response to the public comments on the proposed amendment, EPA has expanded the data base relating to the proposed amendment. EPA announces today the availability for public review of technical and economic data and

supportive documentation developed subsequent to July 25, 1984. EPA requests comments on these supplementary record materials. EPA also announces today that a public hearing on the proposed amendment and on draft National Pollutant Discharge Elimination system (NPDES) permits for the four Louisiana plants affected by the proposed amendment will be held in Baton Rouge, Louisiana on April 10, 1986. EPA Region VI and the Louisiana Department of Environmental Quality are providing a separate notice of the draft NPDES and State permits.

DATES: Comments must be submitted by April 28, 1986. A public hearing will be held on April 12, 1986.

ADDRESSES: Send comments on the proposed amendment and the additional data to Dr. Thomas E. Fielding, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: ITD Docket Clerk. The supporting information is available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear), (PM-213) and at the EPA Region VI Office, InterFirst Two, 1201 Elm Street, Dallas, Texas 75270. The comments will be made available as they are received. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

The public hearing will be held in the Mineral Board Hearing Room in the State Land and Natural Resurces Building, 625 North Fourth Street, Baton Rouge, Louisiana, beginning at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding (202) 382-7156 for information regarding the technical data.

SUPPLEMENTARY INFORMATION:

I. Background

On July 25, 1984, EPA proposed to exclude existing Louisiana phosphate fertilizer plants from the effluent limitations guidelines and standards for the phosphate subcategory of the fertilizer manufacturing point source category (49 FR 29977).

In wet-process phosphoric acid manufacturing phosphate rock is mixed with sulfuric acid, producing phosphoric acid and gypsum. Approximately five tons of gypsum are produced for each ton of phosphoric acid manufactured. The effect of the existing effluent limitations guidelines and standards is to require that this gypsum be disposed on land rather than discharged into navigable waters. Land disposal of gypsum is the prevailing practice in the wet-process phosphoric acid manufacturing industry.

There are four wet-process phosphoric acid plants located in Louisiana: Agrico Chemical Company, at Donaldsonville; Arcadian Corporation at Geismar; Beker Industries, at Taft; and Freeport Chemicals, at Uncle Sam. All four plants are located on the Mississippi River between New Orleans and Baton Rouge.

Gyp stack operating experience gained over the past decade at the three Louisiana plants that have been impounding all of their waste gypsum has shown that due to geographic and climatological circumstances, gyp stack management at the Louisiana plants is much more difficult than anticipated. The Agrico and Arcadian plants together have had six gyp stack failures in the past eight years, including two in 1983.

The basic cause of the stack failures is the poor load-carrying capacity of the soft soils in the area. This problem is aggravated by the much higher amount of precipitation over evaporation that exists in Louisiana compared to that experienced at wet-process phosphoric acid plants in other areas of the country.

Impoundment of more gypsum on land will shortly use up all land available to the plants apart from wetlands. At current production rates, and disposing all gypsum on land, it is estimated that all available land will be used up in from two months (at Beker) to ten years (at Arcadian) from December 1985. (Agrico estimates that all available land will be used up in about two years while Freeport estimates that all available land will be used up in about five years.) Under the currently effective effluent limitations guidelines, when the available land is used up, all four plants would have to cease operation. All four plants would have been operating for less than half the life projected when built. Because of the lack of available land due to the poor soil conditions and the high rainfall of the area, and because no economically feasible technology to achieve the no discharge requirement has been identified, the Agency has proposed that the national BPT, BAT and BCT regulation not apply to existing wet-process phosphoric acid plants in Louisiana. Given the geographical and climatological conditions that exist in Louisiana, these effluent guidelines may not establish the appropriate technology based control levels. Accordingly, the Agency proposed to withdraw the applicability of the BPT, BAT and BCT effluent limitations guidelines for the phosphate subcategory of the Fertilizer Manufacturing Point Source category to the Louisiana wet-process phosphoric acid plants.

II. Notice of Availability of Data

EPA is today announcing the availability for public review of new and additional data, and is requesting comments on these supplementary materials. EPA is also announcing today that a joint public hearing on the proposed amendment, the draft NPDES permits prepared by EPA's Region VI office in Dallas, Texas, and the draft state permits prepared by the Louisiana Department of Environmental Quality will be held April 10, 1986 at 1:00 p.m. in the Mineral Board Hearing Room in the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana. EPA Region VI and the Louisiana Department of Environmental Quality are providing a separate notice of the draft NPDES and State permits. A court reporter will be available but for completeness of the record, persons wishing to make comments are urged to provide a written statement.

The record has been supplemented by the addition of more information, as follows:

1. Data acquired in the period 1976–81 for 21 plants which produce wet-process phosphoric acid. These plants are located in Florida, Mississippi, Louisiana, Texas, Illinois, and Idaho. These data demonstrated the general homogeneity of the industry and its gypsum disposal practices after promulgation of the guideline.

2. The Development Document, Economic Analysis, and related information for the Non-Fertilizer Phosphate Segment of the Phosphate Manufacturing Point Source Category, particularly information relating to the Defluorinated Phosphoric Acid Subcategory (40 CFR 422.50–422.57). Defluorinated Phosphoric Acid is produced from wet-process phosphoric acid at, among other plants, the Arcadian Corporation plant at Geismar. Discharges from the Arcadian Corporation's Geismar plant which result from the production of defluorinated phosphoric acid are not included in the proposed amendment to the phosphate subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR Part 418) and those discharges must comply with NPDES permit conditions based on the guideline for Defluorinated Phosphoric Acid. (Such discharges are minimal at Arcadian in any case.) Discharges from Arcadian which result from the production of wet-process phosphoric acid before it is defluorinated are

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included in the proposed amendment; this is the bulk of the discharge expected from Arcadian.

3. Data acquired during plant visits by EPA personnel in 1985–86 to IMC, New Wales, Florida; Agrico Chemical Corporation, South Pierce, Florida; Mississippi Chemical Corporation, Pascagoula, Mississippi; and Occidental Agricultural Chemicals Company, White Springs, Florida. These data are in trip reports, and include an update of information previously acquired and current costs for gypsum disposal. (The trip report for the plant visit to the Occidental Agricultural Chemicals Company plant will be available by March 21, 1986.)

4. Data on recent research on possible reuse of gypsum for roads, buildings, or as a source of sulfuric acid for wet-process phosphoric acid plants. Gypsum reuse was not believed to be technically feasible at proposal. However, recent research, much of it sponsored by the Florida Institute of Phosphate Research (FIPR), suggests that reuse of the gypsum for roads, buildings, or as a source of sulfur (for sulfuric acid, used in the production of wet-process phosphoric acid) may be feasible. Considerable additional research is necessary to determine the economic feasibility and the environmental effects of reuse of the gypsum. Five or more years may be necessary for this additional research. Three of the four plants do not have sufficient available land to stack gypsum for more than five years. Therefore these plants cannot continue stacking gypsum while waiting for the results of that research, which may show that gypsum reuse is neither economically feasible nor environmentally sound. The Agency believes, therefore, that gypsum reuse is not an available technology at this time.

5. The effect of withdrawing the effluent guidelines of the Phosphate Subcategory of the Fertilizer Industrial Category would be to place responsibility on the permit writer to develop best professional judgment (BPJ) permits on a case-by-case basis for the four Louisiana facilities.

EPA's Region VI office in Dallas, Texas will conduct the NPDES permit proceedings. The Regional office staff has prepared draft NPDES permits on a case-by-case basis for each of the four plants. The draft permits would establish conditions the permit writers have determined represent BAT for each plant if the guidelines are amended as proposed. In addition, the draft permits contain more stringent conditions necessary to maintain water quality standards and the finished drinking water standards for downstream water supplies. These draft permits were developed based on new data supplied by the industry. These new data, along with the fact sheet for each draft permit, the Region VI environmental analysis of the new data, and the draft permits have been added to the public record for the proposed amendment. EPA Region VI and the Louisiana Department of Enviornmental Quality are providing a separate notice of the draft NPDES and State permits.

Comments on the proposed amendment and the supplemental data should be submitted to Dr. Thomas E. Fielding, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: ITD Docket Clerk. Comments on the draft NPDES permits should be sent to Ms. Ellen Caldwell (6W–PS), United States Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270, while comments on the draft state permits should be sent to Ms. Kathy Gordon, Louisiana Department of Environmental Quality, 625 North Fourth Street, P.O. Box 44066, Baton Rouge, Louisiana 70804. All comments must be submitted by April 28, 1986.

Dated: March 5, 1986.

Edwin L. Johnson,

Acting Assistant Administrator, Office of Water.

[FR Doc. 86–5291 Filed 3–11–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 252

Department of Defense Federal Acquisition Regulation Supplement; Debarment and Suspension

Correction

In FR Doc. 86–4888 beginning on page 7837 in the issue of Thursday, March 6, 1986, on page 7838, first column, the first line should read: "it will not knowingly enter into any subcontract."

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 51, No. 46
Wednesday, March 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 7, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service

Child Nutrition Labeling Program
Manufacturers may request as many CN labels as desired
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 5,700 responses; 4,275 hours; not applicable under 3504(h)
Lori Hornfeck, (703) 756–3556

- Soil Conservation Service

Conservation Plan of Operations
SCS–CPA–11, SCS–CPA–11A, SCS–CPA–11B, SCS–CPA–12
Recordkeeping; On occasion; Annually
Individuals or households; Farms; 300,000 responses; 53,750 hours; not applicable under 3504(h)
Bobby E. Rakestraw, (202) 382–1866

New

- Food and Nutrition Service

WIC Administrative Funds Management Study
One time only
State or local governments; Non-profit institutions; 522 responses; 1,036 hours; not applicable under 3504(h)
Julie Kresge, (703) 756–3133

- Soil Conservation Service

RC&D Council Evaluation Worksheet
Worksheet will be completed once
Individuals or households; 192 responses; 768 hours; not applicable under 3504(h)
David J. Post, (202) 447–7533

Revision

- Agricultural Stabilization and Conservation Service Conservation Reserve Program Worksheet, CRP–1 (Appendix), CRP–1A

Addendum, CRP–2, Worksheet and 7 CFR Part 704, Conservation Reserve Program (CRP) Regulations
CRP–1, CRP–1 Appendix, CRP–1A (Addendum), CRP–2 and 7 CFR Part 704
On occasion, Annually
Individuals or households; State or local governments; Farms; 350,000 responses; 54,167 hours; not applicable under 3504(h)
Jack Webb, (202) 447–6825

- Animal and Plant Health Inspection Service

Prohibited and Restricted Importation of Meats, Animals, Animal by Products, Poultry Organisms and Vectors into the U.S.
VS 16–3, VS 16–23
Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 3,302 responses; 4,971 hours; not applicable under 3504(h)
Dr. M. Dulin, (301) 436–8499.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86–5403 Filed 3–11–86; 8:45 am]

BILLING CODE 3410-01-M

Foreign Agricultural Service

Increase of User Fees for Agricultural Information and Marketing Service (AIMS) to Private Sector

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public that the fees have been increased for the newsletter *Export Briefs* and trade lead mail-outs of the Foreign Agricultural Service. These services are available to the pubic for reasonable user fees to cover the cost of computer processing, printing, handling, and mailing. The increase in cost of *Export Briefs* is due to the increase in the number of leads. The increases in fees for trade lead mail-outs is due to the following: (1) The consolidation of commodities from 400 to 250, resulting in the increase in the number of trade leads received by each subscriber, and (2) the higher cost of a new system of electronic reception of trade leads. The new system will provide faster transmisison of joint venture and tender trade leads which generally have short deadline response times

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: James Sayre, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4649-South Building, Washington, D.C. 20250, Telephone: (202) 447–7103.

SUPPLEMENTARY INFORMATION: Pursuant to 31 U.S.C. 9701, the newsletter *Export Briefs*, trade lead mail-outs and INTERNATIONAL MARKETING PROFILES are subject to reasonable user fees to cover the cost of computer time, forms, printing, handling, and mailing. The fees will be as follows:

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1. $75 for a yearly subscription to *Export Briefs*. Currently, the fee is $50. This weekly newsletter contains trade leads from overseas received during a one-week period and contains other foreign trade development information.

2. $25 per commodity per year to receive individual foreign trade leads via direct, including electronic mail. Currently, the fee is $15 per commodity. Reduced rates are available for commodity groupings.

3. $50.00 per copy of an International Marketing Profile for a country or product grouping. Each profile contains information on trade activity for agricultural products and lists of foreign buyers of agricultural products.

Thomas O. Kay,

Administrator.

[FR Doc. 86-4600 Filed 3-11-86; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Cove-Mallard Area Access and Development; Nezperce National Forest, Idaho County, ID; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to assess the cumulative effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas on the Red River Ranger District, Nezperce National Forest. This area includes the previous Jersey-Jack Road assessment area.

The Draft Nezperce National Forest Land and Resource Management Plan has been released, with a Final Plan scheduled for release by mid-1986. The Forest Plan assigns the Cove-Mallard area to multiple use.

A range of alternatives for this proposed action will be considered, including nondevelopment of the area.

Federal, State, and local agencies, potential users, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insiginficant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Service will request a list of potentially Threatened and Endangered (T&E) species from the U.S. Fish and Wildlife Service. The Forest Service, in consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, will evaluate potential impacts on T&E plants and animals which may exist in the analysis area.

Tom Kovalicky, Forest Supervisor of the Nezperce National Forest in Grangeville, Idaho, is the responsible official. He will hold public meetings in his office in Grangeville, Idaho and at the Red River Ranger Station. The first meeting will be held on April 15, 1986 in Red River and the second meeting will be in Grangeville on April 17, 1986.

The analysis is expected to take approximately 9 months. The Draft Environmental Impact Statement should be available for public review by September, 1986. The Final Environmental Impact Statement is scheduled to be completed by December, 1986.

Written comments and suggestions concerning the analysis should be sent to Jerry Dombrovske, District Ranger, Nezperce National Forest, P.O. 23, Red River Route, Elk City, Idaho 83525.

Questions concerning the proposed action and Environmental Impact Statement should be directed to Jerry W. Berry, Resource Assistant, P.O. Box 23, Red River Route, Elk City, Idaho 83525.

Dated: March 4, 1986.

Tom Kovalicky,

Forest Supervisor.

[FR Doc. 86-5301 Filed 3-11-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

[Docket Nos. 5669-01; 5669-02; 5669-03; 5669-04; 5669-06]

Anton Elzar et al.; Second Order Modifying Temporary Denial of Export Privileges

In the matter of: Anton Elzar; Development and Consultant Elzar EDO AB; Helmut Keck; OTC MESS-UND Videoteknik GmbH; MeTab, Mellen Trading AB, Respondents.

By Order of July 11, 1985, 50 FR 29244 (July 18, 1985), MeTab, Mellen Trading AB, Fridkullagatan 19, Goteborg, Sweden was temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1985)),[1] all privileges of participating in any manner or capacity in the export or reexport of U.S.-origin commodities or technical data under the jurisdiction of the U.S. Department of Commerce (Department). An Order of August 23, 1985, 50 FR 35280 (August 30, 1985) subsequently modified the Order of July 11, 1986 be deleting one of the Respondents named therein.

Respondent MeTab, Mellen Trading AB moved to modify the Order of July 11, 1985 further by deleting it also from the Respondents named therein on the ground that it had had no connection with the activities cited in this Order such as to justify its inclusion therein as a Respondent. The Department did not oppose this motion.

Based on the representations made by MeTab, Mellen Trading AB and by the Department, I find that the requested motion is justified, and that granting it will not jeopardize the purposes of the Order of July 11, 1985.

Accordingly, it is hereby ordered that, effective immediately, the Order of July 11, 1985, is amended by deleting MeTab, Mellen Trading AB, Fridkullagatan 19, Goteborg, Sweden, from the Respondents named therein.

A copy of this amendment shall be delivered to MeTab, Mullen Trading AB and shall be published in the **Federal Register.**

Dated: February 28, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 86-5401 Filed 3-11-86; 8:45 am]

BILLING CODE 3510-DT-M

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[1] Revisions of these Regulations have subsequently been published at 50 FR 42666 (October 21, 1985) and at 50 FR 53130 (December 30, 1985)).

[Docket No. 4649-01]

Tencom Corporation; Order Amending Temporary Denial of Export Privileges and Confirming Withdrawal of Charging Letter

By Order of January 17, 1984 (49 FR 2002, January 17, 1984) (the "Order"), Tencom Corporation was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data pursuant to § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1985)).

Agency counsel has given notice of withdrawal of the charging letter against this named Respondent on the ground that this corporation no longer exists.

Based on said notice it is hereby ordered that, effective immediately, the Order of January 17, 1984, amended by deleting, from the parties named therein the following: Tencom Corporation, 3647 Woodhead Drive, Northbrook, Illinois 60062.

A copy of this Amendment shall be published in the **Federal Register.**

Dated: March 7, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-5402 Filed 3-11-86; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[Docket Number 5671-01]

Summagraphics Corporation; Order

On February 4, 1986, the Administrative Law Judge entered an Order adopting and implementing the consent proposal submitted by the parties in the above matter. The Order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420, as amended, for final action.

Having examined the record and based on the facts adduced in this case, I affirm the Order of the Administrative Law Judge. This constitutes the final agency action in this matter.

Dated February 28, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Order

In the matter of: Summagraphics Corp. Docket Number 5671-01.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), having initiated an administrative proceeding against Summagraphics Corporation (Summagraphics) pursuant to section 11(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration admendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12 1985)) (the Act) and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Part 368–399 (1985)) (the Regulations), alleging: (1) That Summagraphics violated § 387.5 and 387.6 of the Regulations in that, between August 1980 and August 1982, Summagraphics exported 47 shipments of U.S.-origin data digitizers and accessories from the United States to France, Holland, Israel, Japan, Norway, Switzerland and West Germany as temporary exports under a GTE license, declaring on the relevant Shipper's Export Declarations that the exports were pursuant to a GTE license when, in fact, the exports were to fulfill existing contracts and were not temporary exports; (2) that Summagraphics violated § 387.6 of the Regulations in that, between September 1981 and July 1982, Summagraphics exported 68 shipments of U.S.-origin data digitizers and accessories from the United States to France, Norway, Switzerland, the United Kingdom and West Germany in excess of the limits allowed in five separate export licenses (separate licenses authorized exports to each named country) which had been issued to Summagraphics; and (3) that Summagraphics violated § 387.6 of the Regulations in that, during October 1984, Summagraphics exported one shipment of U.S.-origin data digitizers and accessories from the United States to an unapproved consignee in Iceland under a distribution license that had been issued to Summagraphics; and

The Department and Summagraphics having entered into a Consent Agreement whereby the parties have agreed to settle this matter: (1) By Summagraphics' paying to the Department a civil penalty of $90,000; (2) by denying Summagraphics' export privileges for a period of 2 years following the date of entry of this Order, and (3) by Summagraphics' undertaking certain corrective measures regarding its future compliance with the Regulations and submitting a report on those corrective measures to the Director, Office of Export Enforcement, within 6 months following the date of entry of this Order.

The terms of the Consent Agreement are hereby approved in complete settlement of the matter.

It is therefore ordered, first, that Summagraphics shall pay to the Department a civil penalty of $90,000 in the following installments: (i) $10,000 on or before June 1, 1986; (ii) $25,000 on or before December 1, 1987; (iii) $25,000 on or before December 1, 1988, and (iv) $30,000 on or before December 1, 1989;

Second, For a period of 2 years following the effective date of this Order, Summagraphics is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data, from the United States or abroad. Without limiting the generality of the foregoing paragraph, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States, and subject to the Regulations, and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations. In addition such denial of export privileges shall extend not to Summagraphics, but also to its agents, employees and successors.

The denial period set forth above is suspended for 2 years pursuant to § 388.16(c) of the Regulations. The denial period will be remitted at the end of the suspension period, provided that Summagraphics commits no further violation of the Act, the Regulations, or this Order;

Third, Summagraphics shall, to the extent it has not already done so, take the measures specified in paragraph 3 of the Consent Agreement, incorporated herein by reference, concerning its future compliance with the Act and the regulations, and submit, within 6 months of the date of this Order, a report to the Director, Office of Export Enforcement, stating the corrective measures it has taken pursuant to the Consent Agreement.

This Order shall become effective upon entry of the Secretary's action in this proceeding, pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: February 4, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-5396 Filed 3-11-86; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 60338-6038]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for comments on need for establishing a laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program (LAP) under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated February 13, 1986, the General Services Administration/Federal Supply Service (GSA/FSS) requests NBS to establish a LAP to accredit laboratories that provide electrical and safety testing services. A copy of the GSA/FSS letter is appended to this notice. Announcement of this request and of the NBS request for comments with respect to the need for this LAP is being made under § 7.13(d) of the referenced procedures.

ADDRESS: Persons desiring to comment on the need for such a LAP are invited to submit their comments in writing on or before May 12, 1986, to Bob Bearden, GSA/FSS, Item Management Division (FCM), Crystal Mall Building 4, Room 709, Washington, DC 20406. A copy of such comments should be sent to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Contact Harvey W. Berger, Manager, Laboratory Accreditation, National

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Bureau of Standards, ADMIN A531, Gaithersburg, MD 20899; phone (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Scope of LAP

The scope of this LAP will cover electrical and safety testing services. The requestor has identified 78 standards and test methods in the enclosure that is part of the Appendix to this notice, and has indicated that any suggested additional test methods will be considered.

Procedure Following Receipt of Comments

After the 60 day comment period, GSA/FSS will evaluate all comments pertaining to the need for the proposed LAP. Upon completion of that evaluation and further consultation with NBS, interested persons (those who submit comments or request to be placed on the NVLAP, mailing list) will be notified of the decision by the Director of NBS whether NBS will proceed with the development of this LAP. NBS plans to coordinate this matter with GSA/FSS.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: March 6, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix

February 13, 1986.

Dr. Ernest Ambler, Director
National Bureau of Standards, ADMIN A1134,
Gaithersburg, Maryland 20899

Dear Dr. Ambler: As required by the Code of Federal Regulations 41 CFR 101–29, with regard to fire and casualty hazards, products furnished under contract must comply with the standards of nationally recognized technical associations, societies, or laboratories, such as Underwriters Laboratory (UL), or National Fire Protection Association (NFPA). This requirement includes electrical shock protection, explosion protection, and safety and health considerations. GSA purchases millions of dollars worth of electrical and other equipment which are being tested to ensure protection for the user. Consequently, in accordance with section 7.13 of the procedures for National Voluntary Laboratory Accreditation Program (NVLAP), we request that you establish a laboratory accreditation program (LAP) to accredit additional laboratories that have the capability of interpreting and properly testing in accordance with American National Standards Institute (ANSI) and UL standards as required. The scope of this LAP will cover electrical and safety testing services.

Laboratories are to be accredited under this proposed LAP for those standards and test methods identified in the enclosure to this letter. Any suggestions to include additional test methods will be considered.

Need for LAP. In order to expand the number of qualified independent testing laboratories and make convenient services available to our contractors and potential contractors, we propose to have qualified laboratories accredited by NVLAP. The expansion of available testing services should prompt additional potential contractors to bid, thus creating more competition and lowering Government cost. In order to ensure the electrical products are safe, it is essential that the independent laboratories be qualified to properly interpret and perform the required UL and ANSI standards.

National need. Currently there is no national (Government) program accrediting laboratories for UL and ANSI standards. However, once established, a nationally recognized group of laboratories would allow contractors nationwide to conveniently have their products tested for safety at qualified laboratories. Therefore, GSA would like to establish a LAP of national scope to identify competent laboratories that will provide reliable test results.

Number and users of laboratories. There are numerous laboratories in the country capable of testing electrical and other items which must comply with safety regulations. GSA, other Government agencies, and industry would be potential users of laboratories accredited by the NVLAP program.

Development of technical details. We are willing to negotiate the provision of sufficient resources to NBS to ensure establishment of this LAP. We understand that you would provide the overall administrative framework as well as the necessary technical support to operate the LAP.

Please let us know if we can provide any other information. In the meantime, we look forward to an expeditious publication of this request in the Federal Register for public comment. We request that public comments be sent to us, as we will assume responsibility in accordance with § 7.13 of the NVLAP procedure for determining the need for the LAP. Our points of contact are Mary McKiel and James Price on (703) 557–1930. Comments should be addressed to Bob Bearden, GSA/FSS, Item Management Division (FCM), Crystal Mall Building 4, room 709, Washington, DC 20406.

Sincerely,

J.L. DeProspero,

Assistant Commissioner, Office of Commodity Management.

Enclosure.

UNDERWRITERS LABORATORY (U.L.) LISTINGS

UL No.	Title of standard
4	Armored Cable.
8	Foam Fire Extinguishers.
18	Unlined Fire Hoses.
19	Woven-Jacketed Rubber-Lined Fire Hose.
38	Manually Actuated Signaling Boxes for Use with Fire Protection Signaling Systems.
45	Portable Electric Tools.
50	Electrical Cabinets and Boxes.
55A	Materials for Built-Up Roof Coverings.
55B	Class C Asphalt Organic-Felt Sheet Roofing and Shingles.
57	Electric Lighting Fixtures.
62	Flexible Cord and fixture Wire.
72	Tests for Fire Resistance of Record Protection Equipment.
112	Portable Wood Ladders.
114	Electric Office Appliances and Business Equipment.
122	Electric Photographic Equipment.
147	LP and MPS-Gas Torches.
153	Portable Electric Lamps.
154	Carbon Dioxide Fire Extinguishers.
174	Household Electric Storage Tank Water Heaters.
184	Portable Metal Ladders.
187	X-Ray Equipment.
217	Single and Multiple Station Smoke Detectors.
219	Lined Fire Hose for Interior Standpipes.
299	Dry Chemical Fire Extinguishers.
305	Play Pipes for Water Supply Testing in Fire Protection Service.
401	Portable Spray Hose Nozzles for Fire Protection Service.
430	Electric Waste Disposers.
437	Key Locks.
464	Audible Signal Appliances.
466	Electric Scales.
478	Information-Processing and Business Equipment.
486A	Wire Connectors and Soldering Lugs for Use with Copper Conductors.
489	Molded-Case Circuit Breakers and Circuit-Breaker Enclosures.
496	Edison-Base Lampholders.
498	Electric Attachment Plugs and Receptacles.
510	Insulating Tape.
521	Heat Detectors for Fire Protective Signaling Systems.
542	Lampholders, Starters, and Starter Holders for Flourescent Lamps.
626	2½-Gallon Stored Pressure Water Type Fire Extinguishers.
632	Electrically Actuated Transmitters.
711	Rating and Fire Testing of Fire Extinguishers.
719	Nonmetallic-Sheathed Cables.
746A	Polymeric Materials—Short Term Property Evaluations.
746B	Polymeric Materials—Long Term Property Evaluations.
746C	Polymeric Materials—Use in Electrical Equipment Evaluations.
746D	Polymeric Materials—Fabricated Parts.
768	Combination Locks.
775	Graphic Arts Equipment.
783	Electric Flashlights and Lanterns for Use in Hazardous Locations, Class 1, Groups C and D.
796	Electrical Printed-Wiring Boards.
810	Capacitors.
817	Cord Sets and Power-Supply Cords.
826	Household Electric Clocks.
854	Service-Entrance Cables.
863	Electric Time-Indicating and Recording Appliances.
864	Control Units for Fire-Protective Signaling Systems.
873	Electrical Temperature-Indicating and Regulating Equipment.
924	Emergency Lighting and Power Equipment.
935	Flourescent-Lamp Ballasts.
969	Marking and Labeling Systems.
983	Surveillance Cameras.
987	Stationary and Fixed Electrical Tools.
1012	Power Supplies.
1025	Electric Air Heaters.
1042	Electric Baseboard Heating Equipment.
1093	Halogenated Agent Fire Extinguishers.
1236	Electric Battery Chargers.
1262	Laboratory Equipment.
1283	Electromagnetic-Interference Filters.
1409	Low-Voltage Video Products Without Cathode-Ray-Tube Displays.
1412	Fusing Resistors and Temperature—Limited Resistors for Radio and Television Type Appliances.
1414	Across-the-Line, Antenna-Coupling and Line-by-Pass Capacitors for Radio and Television Type Appliances.
1418	Implosion Protected Cathode Ray Tubes for Television Type Appliances.
1436	Outlet Circuit Testers and Similar Indicating Devices.
1437	Electric Analog Instruments—Panelboard Types.
1564	Industrial Battery Chargers.
1569	Metal-Clad Cables.
1570	Flourescent Lighting Fixtures.

[FR Doc. 86–5295 Filed 3–11–86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Receipt of Application for General Permit; Marine Mammals

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. Fishery Conservation Zone during 1986 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: Scan Ocean, Inc., 42 Rogers Street, Gloucester, Massachusetts 01930.

Has applied for a Category 1: Towed or Dragged Gear general permit to take up to 20 small cetaceans and 5 harbor seals in the North Atlantic Ocean.

This application is available for review in the following office:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: March 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–5405 Filed 3–11–86; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for General Permit; Marine Mammals

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commerical fishing operations within the U.S. Fishery Conservation Zone during 1986 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: China National Marine
Fisheries Corporation, 817 W. 72nd
Avenue, Anchorage, Alaska 99502.

Has applied for a Category 1: Towed or Dragged Gear general permit to take up to 65 small cetaceans and 160 pinnipeds in the North Pacific Ocean.

The application is available for review in the following office:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC. 20235.

Dated: March 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–5406 Filed 3–11–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore

March 7, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 13, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

Pending completion of negotiations leading to a new bilateral agreement, the Governments of the United States and the Republic of Singapore have agreed to further extend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended and extended, for an additional three months, extending through June 30, 1986. The agreement, as amended and further extended, includes limits for the aggregate and three groups and for individual Categories 301, 331, 333, 334, 335, 336, 337, 338/339, 340, 341, 342, 347/348, 359, 442, 445, 446, 447, 448, 459, 604, 631, 633, 634, 635, 636, 637, 638, 639, 640, 641, 643, 644, 645/646, 647, 648, and 659, produced or manufactured in Singapore and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986. In the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the specifed aggregate, group and individual limits which are in excess of the six-month limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

March 7, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the three-month period which began on January 1, 1986 and extends through March 31, 1986.

Effective on March 13, 1986, the directive of December 23, 1985 is hereby amended to adjust the limits established for the following categories, exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986:

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Category	6-month restraint limit [1]
300-352, 359-369, 400-448, 459-469, 600-652, and 659-669.	177,396,430 square yards equivalent of which not more than 33,788,480 square yards equivalent shall be in Categories 300-320, 360-369, 600-627, and 665-669; no more than 138,208,782 square yards equivalent shall be in Categories 330-352, 359, 630-652 and 659; and not more than 1,849,752 square yards equivalent shall be in Categories 400-448, 459 and 464-469.
301	165,500 pounds.
331	150,000 dozen pairs
333	9,000 dozen.
334	25,000 dozen.
335	77,500 dozen.
336	16,453 dozen.
337	29,900 dozen.
338/339	389,365 dozen of which not more than 289,588 dozen shall be in Category 338 and not more than 245,941 dozen shall be in Category 339.

[1] The limits have not been adjusted to account for any imports exported after Dec. 31, 1985.

Category	Six restraint limit [2]
340	258,500 dozen.
341	65,000 dozen.
347/348	360,000 dozen of which not more than 225,000 dozen shall be in Category 347 and not more than 135,000 dozen shall be in Category 348.
369	78,967 pounds.
442	2,778 dozen.
447	2,778 dozen.
448	2,778 dozen.
459	25,000 pounds.
631	150,000 dozen pairs.
633	9,000 dozen.
634	78,500 dozen.
635	117,500 dozen.
636	25,000 dozen.
637	32,884 dozen.
640	55,000 dozen.
641	80,000 dozen.
647	125,000 dozen.

[2] See Footnote 1

Also effective on March 13, 1986, the directive of December 23, 1985 is hereby further amended to include limits for the following categories, produced or manufactured in Singapore and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986:

Category	Six restraint limit [2]
342	27,500 dozen.
445	3,360 dozen.
446	3,360 dozen.
604	710,000 pounds.
639	1,525,000 dozen.
645/646	55,000 dozen.
648	750,000 dozen.
659 pt. [3]	150,000 pounds.
659 pt. [4]	125,000 pounds.

[2] See footnote 1.

[3] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, and 384.9865.

[4] In Category 659, all TSUSA numbers in the category except those listed in footnote 3.

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 442, 447, 448, 459, 643/644, 645/646, 647, 648, and 659, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entires, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 442, 447, 448, 459, 643/644, 645/646, 647, 648, and 659, exported before January 1, 1986 shall not be subject to this directive.

The six month limits are subject to adjustment in the future on a prorata basis according to the provisions of the bilateral agreement of August 21, 1982, as amended and extended, between the Governments of the United States and the Republic of Singapore, which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86-5400 Filed 3-11-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Multi-Purpose Range Complex (MPRC) Fort Polk, LA

AGENCY: Department of the Army, Department of Defense.

ACTION: Availability of Record of Decision.

SUMMARY: This announces the availability of a Record of Decision regarding the site selection, construction and operation of the MPRC at Fort Polk, LA. The MPRC will provide the 5th Infantry Division (Mechanized) and Fort Polk with a modern computerized training facility required to challenge the new Abrams tank and Bradley fighting vehicles. None of the existing ranges at Fort Polk have this capability. The decision was based on the requirements that the selected option must fully meet the operational needs of the 5th Infantry Division (Mechanized) and Fort Polk while minimizing the environmental impact to the extent practicable.

SUPPLEMENTARY INFORMATION: On the December 23, 1985 the Fort Polk Commander approved selection of a site on Fort Polk for construction of the MPRC. Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1505.2) direct the preparation of a public Record of Decision concerning decisions reached on actions considered in Environmental Impact Statements. The establishment of the MPRC at Fort Polk and its potential environmental impact have been discussed in the final Environmental Impact Statement (EIS) filed by the Department of the Army with the Environmental Protection Agency, as announced on November 22, 1985 (50 FR 48284). The Record of Decision summarizes alternatives considered in making the decision, basis for selection of the approved siting alternative, and measures which will be undertaken to minimize environmental effects.

The following alternatives were considered in the EIS:

—*No Action:* This alternative was rejected because without this modern range facility the division will not be combat ready.

—*Option 1:* Main facilities to be sited on U.S. Forest Service Limited Use lands around Rustville Road (approximately one mile south of Lookout Road and about two miles northwest of Fullerton, Louisiana).

—*Option 2:* East of Birds Creek and Whiskey Chitto Roads and north of Holly Springs Road (about eight miles northeast of South Fort Cantonment Area).

—*Option 2A:* Bounded by Whiskey Chitto Creek and Birds Creek on the east and west, respectively (about four miles northwest of Cravens, Louisiana).

—*Option 3:* Tank gunnery Ranges 41 and 42 located on the eastern edge of the reservation and bounded on the east by Louisiana Highway 463 (about seven miles north of Pitkin, Louisiana).

Following careful study of training needs, costs and benefits, land use, and environmental concerns, Option 2 has been selected as the site for the MPRC. The terrain of Option 2 meets the construction and training requirements of an effective MPRC. Option 2 was not the environmentally preferred alternative of the four options; it was intermediate in the potential adverse environmental impacts. Mitigation measures that will be implemented will reduce these adverse impacts to acceptable levels.

Option 1 was rejected due to severe operational limitation of the terrain and adverse impacts to the public from increased off-post noise levels.

Option 2A was rejected for environmental reasons even though it had the greatest training potential of the four options. Construction and operation of the MPRC at Option 2A would have significantly increased off-post noise levels, would have the greatest adverse impact on a rare and endangered species inhabiting that area of the post, would have caused the loss of two significant archeological sites, and would have presented the greatest potential for soil loss and stream siltation.

Option 3 was the environmentally preferred site but was rejected as being operationally unsuitable. The existing tank ranges at Option 3 must be used during the construction period for the MPRC. In addition, these ranges will continue to be used after the MPRC is operational.

All practical means of avoiding or minimizing adverse impacts to the environment have been adopted. Fort Polk will be responsible for the implementation of monitoring and enforcement of mitigation measures as required by Army Regulations (AR 200-2) and the National Environmental Policy Act (40 CFR 1505.3).

Interested individuals or organizations may obtain copies of the Record of Decision for this action by contacting: Mr. Stephen D. Parris, Attn: AFZX-EHC, Fort Polk, Louisiana, 71459-5000, Telephone (318) 535-7006.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-5300 Filed 3-11-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Veterans' Cost-of-Instruction Payments Program

AGENCY: Department of Education.

ACTION: Application notice for new Awards under the Veterans' Cost-of-Instruction Payments Program for fiscal year 1986.

SUMMARY: Applications for new awards are invited from institutions of higher education under the Veterans' Cost-of-Instruction Payments Program. This program issues awards to institutions or consortia of institutions of higher education to assist them in providing specific services to veterans.

Authority for this program is contained in section 420 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070e-1)

Closing Date for Transmittal of Applications: Applications for new awards must be mailed or hand delivered by May 9, 1986.

Applications Delivered by Mail: Applications sent by mail must be addressed to the U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs, Attention: 84.064, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Division of Higher Education Incentive Programs, Room 3022, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Division of Higher Education Incentive Programs will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Division of Higher Education Incentive Programs after 4:30 p.m. on the closing date.

Program Information: The Veterans' Cost-of-Instruction Payments Program provides funds to institutions of higher education for educational needs of veterans. Institutions use their awards to establish and maintain Offices of Veterans Affairs that engage in outreach and recruitment activities, and provide counseling, tutorial services, and special programs for educationally disadvantaged veterans.

Available Funds: The Department of Education Appropriations Act, 1986, appropriated $3,000,000 for the Veterans' Cost-of-Instruction Payments' Program. Of that amount, only $2,871,000 will be available for obligation in Fiscal Year 1986 pursuant to the reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177.

In addition, the President's Fiscal Year 1987 Budget requests a rescission of all Fiscal Year 1986 funds for this program. In accordance with the Impoundment Control Act of 1974, the Congress is allowed 45 calendar days of continuous session to consider all rescission proposals. During this period, no funds proposed for rescission may be obligated by the Department.

Should the Fiscal Year 1986 funds for the Veterans' Cost-of-Instruction Payments Program become available, it is estimated that approximately six hundred grants averaging $4,225 will be awarded. These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be mailed to eligible institutions by March 24, 1986. They may be obtained by writing to the U.S. Department of Education, Division of Higher Education Incentive Programs (VCIP), Room 3022, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms

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included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed five pages in length. The Secretary further urges that only information required by the application form be submitted.

The Office of Management and Budget has approved the application form under the Paperwork Reduction Act of 1980 (control number 1840-0054).

Application Regulations: The following regulations apply to this program:

(1) Regulations governing the Veterans' Cost-of-Instruction Payments Program (34 CFR Part 629).

(2) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION: For further information contact William J. Craven, Jr., U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs, Room 3022, Regional Office Building #3, 7th and D Streets SW., Washington, DC. Telephone (202) 245-3253.

(20 U.S.C. 1070e–1)

(Catalog of Federal Domestic Assistance Number 84.064; Veterans' Cost-of-Instruction Payments Program)

Dated: March 7, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86-5379 Filed 3-11-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Availability of Information Package for "From Reactor Cask Procurement"

AGENCY: U.S. Department of Energy.

ACTION: Notice.

The Department of Energy's Office of Civilian Radioactive Waste Management (OCRWM) announces the availability of a program specific information package for "From Reactor Cask Program" for review and comment. This information when formally released under the DOE acquisition regulations after the comment period, will solicit requests for proposals to develop the next generation of spent fuel shipping casks. These casks will be used by OCRWM to transport fuel from reactor to the Monitored Retrievable Storage Facility (if approved by Congress) or the Repository.

The information package includes the statement of work, the performance specifications and interface guidelines, and the instructions to proposers. Solicitation of comments now on the programmatic aspects of this phase of the OCRWM program will allow public input prior to the initiation of the formal procurement cycle expected to begin in June 1986. Copies of the information package can be obtained from the Department of Energy, Public Affairs Office, Room 1E206, (202) 252-5575, 1000 Independence Avenue, S.W., Washington, DC 20585, or Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, Attn: K. Hastings.

Issued in Washington, DC, March 7, 1986.

J. Roger Hilley,

Associate Director for Storage and Transportation Systems, Office of Civilian Radioactive Waste Management.

[FR Doc. 86-5428 Filed 3-11-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-017; OFP Case No. 63027-9278-01,02,03,04-12]

Order Granting to the City of Huntsville, AL Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Order Granting to the City of Huntsville, Alabama Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to the City of Huntsville, Alabama ("Huntsville" or "the petitioner"). The permanent exemption permits the use of natural gas as the primary energy source for four (4) new package boilers to be located at its Refuse Fired Steam Plant in Huntsville, Alabama, based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on May 12, 1986. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Phone (202) 252-1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On July 30, 1985, Huntsville petitioned ERA under section 212 of FUA and 10 CFR 503.32 for a permanent exemption to permit the use of natural gas in four (4) new package boilers. The petition for exemption was based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Title II of FUA prohibits the use of natural gas or petroleum in new MFBIs that consist of a boiler unless an exemption for such use has been granted by ERA. Huntsville filed a petition with ERA requesting a permanent exemption to permit the use of natural gas or No. 5 fuel oil as the primary energy source for its Backup Package Boiler Steam System proposed for its Refuse Fired Steam Plant in the City of Huntsville, Alabama, in order to consistently supply the United States Missile Command's Redstone Arsenal steam requirements. Granting the requested exemption would permit efficient operation of each unit, reduce maintenance costs, reduce emissions, increase the useful life of the unit, and conserve energy.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(b), Huntsville has submitted the following evidence in order to make the demonstration required by that section:

(1) Duly executed certification required under paragraph (a) of that section;

(2) Exhibits containing the basis for certification required under paragraph (a) of that section; (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) Environmental impact analysis, as required under § 503.13 of those regulations;

(4) Fuels search, as required under § 503.14 of those regulations; and

(5) All data required by § 503.6 (cost calculation) of those regulations necessary for computing the cost calculation formula.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 503.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on October 30, 1985 (50 FR 45145), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 16, 1985; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that Huntsville has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(a). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to Huntsville to permit the use of natural gas as the primary energy source for the four (4) new package boilers at its Refuse Fired Steam Plant in Huntsville, Alabama.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C. on March 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-5383 Filed 3-11-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 85-10; OFP Case No. 55353-9247-01-12]

Order Granting to Owens-Illinois Inc. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Order Granting to Owens-Illinois Inc. Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to Owens-Illinois Inc. (Owens or "the petitioner"). The permanent exemptions permits the use of natural gas as the primary energy source for a package boiler located at its pulp and paper mill in Orange, Texas, based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on May 12, 1986. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone: (202) 252-1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113; 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: On October 28, 1985, Owens petitioned ERA under section 212 of FUA and 10 CFR 503.32 for a permanent exemption to permit the use of natural gas in a new boiler to be added to an existing system. The petition for exemption is based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(b), Owens has submitted the following evidence in order to make the demonstration required by that section:

(1) Duly executed certifications required under paragraph (a) of that section;

(2) Exhibits containing the basis for certifications required under paragraph (a) of that section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) Environmental impact analysis, as required under § 503.13 of those regulations;

(4) Fuels search, as required under § 503.14 of those regulations; and

(5) All data required by § 503.6 (cost calculation) of those regulations necessary for computing the cost calculation formula.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on December 9, 1985 (50 FR 50198), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public

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hearing. The comment period closed on January 23, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that Owens has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(b). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to Owens to permit the use of natural gas as the primary energy source for the new package boiler at its Orange, Texas, plant. Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on March 3, 1986.

Robert L. Davies,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 86-5322 Filed 3-11-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Crown Central Petroleum Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Crown Central Petroleum Corporation (Crown). The agreement proposes to resolve matters relating to Crown's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. ERA has assessed the effects of Crown's alleged regulatory violations resolved by this proposed agreement and has determined that the maximum amount Crown could have overcharged is approximately $10.6 million. This amount, plus an additional amount for interest, represents Crown's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. Crown disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that Crown's possible liability for overcharges and interest be settled for $8.3 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the significant areas of dispute between ERA and Crown.

Within thirty days of the effective date of the Consent Order, Crown will pay $8.3 million, plus interest from the date the Consent Order was executed by DOE. ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V. In that proceeding, any person who claims to have suffered injury from Crown's alleged overcharges would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice. Comments should be addressed to: Crown Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Following this comment period, on April 18, 1986, at 10:00 a.m. at the Department of Energy Auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, ERA will conduct a public hearing to provide interested persons an additional opportuity to present comments, information and recommendaitons as to whether the settlement should be finalized by DOE.

Requests to make presentations must be received in writing by 5:00 p.m., April 11, 1986, and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and the amount of time desired. Presentations should be limited to 15 minutes. Persons wishing to participate in the hearing who have not scheduled time will be allowed to make presentations following those who have been scheduled.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's Final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Results of the Audit
  A. Areas of Dispute
  B. Determination of Maximum Overcharge Liability
III. Determinaiton of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

Crown is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Crown engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA has conducted an intensified audit of Crown's compliance with the federal price and allocation regulations, which were terminated by the President on January 28, 1981 (Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Crown had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose in which ERA disagreed with Crown's calculation of the maximum lawful prices it could charge for refined products and crude oil.

ERA preliminarily determined that for the issues covered by this proposed settlement, Crown may be liable for a maximum calculated liability of $825,000 in crude oil and a maximum of $9.7 million in refined product overcharges. Crown's potential refund liability, therefore, is believed by ERA to total $10.6 million, plus the interest which could be assessed on that amount.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues.

The settlement calls for Crown to pay $8.3 million (plus interest from the date of execution by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Crown was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. The alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

In the enforcement documents filed by the ERA, overcharges for crude and refined products totalling $24.8 million are alleged against Crown. During the settlement negotiations, the company presented information relevant to its calculations of increased costs and selling prices which enabled ERA to make adjustments and corrections accruing both to the detriment and the benefit of Crown. Furthermore, intervening judicial and administrative decisions affected ERA's original overcharge allegations. After analyzing this information for settlement purposes, ERA determined that if it were successful on all of the issues, Crown would be liable for $9.7 million in overcharges on refined products plus interest on that amount. In addition, Crown's maximum calculated liability for crude oil overcharges would be $825,000 plus interest.

A. Areas of Dispute

The two major areas of dispute between ERA and Crown concern alleged errors in Crown's calculations of maximum lawful prices for crude oil produced by the company and alleged errors in Crown's calculations of maximum legal prices for refined products.

1. Crude Oil Overcharge Dispute

The crude oil overcharge disputes which are resolved by the Consent Order include the application of incorrect posted prices, improper aggregation and segregation of properties, improper application of the stripper well exemption, improper computation of base production control levels and other computational errors. These issues are before OHA in a Proposed Remedial Order proceeding in which the alleged overcharges total $1 million exclusive of interest.[1] During the settlement negotiations, ERA examined Crown's possible overcharge liability for crude oil violations and, after factoring into its calculations the effect of intervening OHA decisions and Crown's submission of additional materials, ERA determined that the overcharge allegation in the PRO was reduced to $670,000. In addition, ERA estimated that Crown's overcharge liability for the audited properties in the unaudited time period amounted to approximately $155,000. Thus, Crown's maximum calculated liability for crude oil overcharges is $825,000 plus interest.

2. Refinery Overcharge Disputes

ERA has initiated enforcement proceedings against Crown alleging overcharges for violations of the refinery pricing regulations totalling approximately $23,800,000 exclusive of interest. These claims include alleged failure to establish and maintain appropriate classes of purchaser and May 15, 1973 weighted average selling prices, failure to compute recoveries in accordance with the equal application rule, alleged overstatements of increased costs available for recovery, alleged understatements of costs recovered[2] and failure to use the alternative "vi" factor in calculating increased purchased product costs.[3] Based upon adjustments and corrections to its aduit data, ERA has determined that Crown's maximum liability for these violations would be $9.7 million, as discussed below.

During the negotiation process, Crown provided ERA with extensive information concerning its calculations of maximum lawful prices for refined products. ERA evaluated this information and determined that it was appropriate to take certain of these calculations into account when determining Crown's ultimate overcharge liability for refined products as alleged in PRO No. HRO-0072.

As the basis for settlement discussions, the parties agreed to use the original Refiners' Monthly Cost Allocation Reports (RMCARs) filed by Crown which ERA had audited previously, rather than Crown's unaudited 1981 refiled costs which ERA was challenging.[4] Use of the original cost filings eliminated all of ERA's allegations concerning retroactive reallocations and overstated costs under the H, R, and V factors.

During the administrative litigation proceeding, ERA had agreed that Crown was entitled to certain credits totalling approximately $17 million. However, the calculation which formed the basis for ERA's litigation claim did not factor in these cost credits on a monthly basis, but rather the credits were added to Crown's ending banks of unrecouped costs. When the credits are included in the months in which they accrued, Crown's permissible prices are increased and the amounts of possible overcharges in those months are accordingly reduced. Additionally, ERA had planned to recalculate Crown's correct May 15, 1973 weighted average selling prices and to amend the PRO to reflect this recalculation. Based upon ERA's information and additional data submitted by Crown, ERA performed that recalculation during the negotiation process. Also, ERA corrected the overcharge allegations to adjust for the PRO's application of the deemed recovery rule prior to September 1974.

B. Determination of Maximum Overcharge Liability

The effect of these adjustments, as well as several other smaller audit-related corrections, is to eliminate all of Crown's alleged refinery pricing overcharges, totalling $6.6 million, after 1973-1974. Application of the adjustments and corrections during the 1973-1974 period eliminates all of the gasoline overcharge allegations, totalling $6.3 million dollars, as well as $1 million in distillate overcharge allegations. This leaves $9.7 in potential overcharges during 1973-1974. The effect of the remaining refinery pricing litigation has been considered in arriving at this amount.[5]

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[1] PRO No. HRO-0196. The PRO also put Crown on notice that it may be liable for regulatory violations on non-audited properties and during the post-audit period. The PRO seeks a self-audit of unaudited properties and the post-audit period and a refund of any resulting overcharges.

[2] PRO No. HRO-0072, alleging $23,558,000 in overcharges exclusive of interest. The PRO as originally drafted alleged a higher overcharge amount. The allegation was reduced to $23,558,000 by subsequent amendment.

[3] RO No. 84-2-000, alleging $217,798 in overcharges exclusive of interest

[4] ERA opposed Crown's 1981 refiling before OHA. In a decision issued January 17, 1986 (Case No. HEA-0008), OHA upheld ERA's position that Crown's 1981 refiled costs are without force and effect for use in connection with the petroleum price and allocation regulations.

[5] RO84-2-000 (FERC appeal of DRO-0111). On September 30, 1985, the Federal Energy Regulatory Commission reversed the Remedial Order issued to Crown on October 17, 1983, which had found Crown liable for $217,798 plus interest for improperly

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In addition to the $9.7 million of possible overcharge liability for refined product sales, ERA determined that Crown's maximum calculated overcharge liability for the crude oil pricing issues resolved by the Consent Order is $825,000. Thus, Crown's maximum overcharge liability, excluding interest, for the matters resolved by this Consent Order totals approximately $10.6 million.

III. Determination of a Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA considered its maximum overcharge determinations totalling $10.6 million, as well as the interest which could be assessed on that amount. While this amount reflects appropriate adjustments to the overcharge amounts alleged in ERA's enforcement documents, it does not reflect any compromise of the regulatory issues upon which Crown and ERA disagree. The $10.6 million plus interest is based on audit samples, estimates, projections and extrapolations and represents the maximum recovery that could result if all issues resolved by this settlement were adjudicated in ERA's favor. The inherent risks in litigation make such an outcome unlikely. In determining an appropriate compromise of Crown's maximum overcharge liability, ERA considered the probabilities of success on each of the issues for purposes of proving overcharges.

The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from Crown was an important consideration in ERA's preliminary determination that Crown's agreement to pay $8.3 million is in the public interest. Furthermore, that analysis pressupposes that the government will prevail in litigating all other disputes.

In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the operative principle necessary for a successful settlement between capable adversaries—mutual recognition by the parties of the need to reasonably compromise their respective interests and expectations. Based on all of these considerations, ERA concludes that the resolution of these matters for $8.3 million is an appropriate settlement. In ERA's analysis, approximately 15–20% of the $8.3 million relates to settlement of crude oil overcharge issues; the remainder is for settlement of refiner pricing issues.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Crown will pay the principal amount of $8.3 million, plus interest, to DOE. If the settlement is not made final by July 1, 1986, Crown may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Crown provide necessary information to OHA.

Unless specifically excluded, Crown and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Crown, or of Crown or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) Any obligation or right to sell entitlements which may be imposed or made available to Crown should the entitlements notice of January 1981 be published or any obligation to buy or sell entitlements which may be imposed on Crown pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(b) Any entitlement obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67, *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(c) Crown's rights concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Crown.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litigated by Crown and DOE. This involves administrative and judicial litigation and includes the following cases:[7]

Administration Litigation

Proposed Remedial Orders:
OHA Case No. HRO–0072
OHA Case No. HRO–0198

Remedial Order:
OHA Case No. DRO–0111, FERC Case No: RO84–2–00

ERA Order:
OHA Case No. HEA–0008

Judicial Litigation:
Crown Central Petroleum Corporation v. DOE, Civil Action No. H–82–3283 (D. Md.)
Crown Central Petroleum Corporation v. DOE, Civil Action No. H–842–3827 (D.D.C.)

Submission of written comments: The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear at a public hearing, beginning at 10:00 a.m. on April 18, 1986. All comments received by the thirteenth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

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utilizing the refiner price rule's alternative "yi" factor in calculating purchased product costs. ERA is presently seeking reconsideration of the FERC decision.

[7] The issues in the administrative litigation are as described in detail above. The two judicial litigation cases which would be resolved by the proposed Consent Order involve actions initiated by Crown against DOE under the Freedom of Information Act.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.91(f).

Issued in Washington, DC, on March 6, 1986.

M. C. Lorenz,

Special Regulatory Administration.

Conset Order With Crown Central Petroleum Corporation

I. Introduction

101. This Consent Order is entered into between Crown Central Petroleum Corporation ("Crown") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Crown, as hereinafter defined, relating to Crown's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–04, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Crown, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Crown" shall include Crown Central Petroleum Corporation, its subsidiaries and affiliates (but only for the acts of such Companies while they were subsidiaries or affiliates of Crown), its predecessors and successors in interest, and crown's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and (except for references to "Crown" in Article IV, *infra*) directors, officers and employees of crown.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Crown was a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Crown engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Crown's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed an examination of Crown's policies and procedures pertaining to, and Crown's compliance with, specific federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Crown's books and records relating to Crown's compliance with the federal petroleum price and allocation regulations and the reporting requirements incidental to those regulations. In addition, at the DOE's request, Crown prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Crown's application of the Federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Crown, including the issuance of letters, notices of Probable Violation, Proposed Remedial Orders, and a Remedial Order. Crown maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Crown disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Crown's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, Crown has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

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Terms and Conditions

IV. Remedial Provisions.

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by the DOE against Crown for such matters under 10 CFR 205.199I or otherwise, Crown shall pay eight million three hundred thousand dollars ($8.3 million), plus interest accruing at the rate specified in paragraph 404 between the date of execution by DOE of this Consent Order and the date of payment, pursuant to paragraph 402, to be disbursed as provided in paragraph 403.

402. Crown agrees to pay eight million three hundred thousand dollars ($8.3 million) plus interest accrued for the period described in paragraph 401, to DOE within thirty (30) days of the effective date of this Consent Order.

403. OSC and Crown agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 402.

404. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the day of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interest earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such quarterly revision or since the immediately preceding quarterly revision in all other cases shall be computed and added to the balance at the end of the computation period. The interest for the computation period shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned as of 2:00 P.M. Eastern Standard Time.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Crown regarding Crown's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Crown by this Consent Order, except that this Consent Order does not cover or affect:

(a) Crown's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties;

(b) Any obligation or right to sell entitlements which may be imposed or made available to Crown should the entitlements notice of January, 1981 be published or any obligation to buy or sell entitlements which may be imposed on Crown pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(c) Any entitlements obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction.

502. (a) Except as otherwise provided herein, compliance by Crown with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Crown, except as to those matters excluded by paragraph 501, the DOE hereby releases Crown completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Crown before or after the date of this Consent Order, for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Crown or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Crown or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Crown has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Crown in derogation of this Consent Order.

(b) Nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations. The DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Crown for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Crown is a working interest or royalty interest owner in such crude oil production. However, if Crown was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any party for non-compliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. Crown and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Crown's activities as a working interest or royalty interest owner or properties on which it is not the operator. Furthermore, Crown and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties of which (but only for the times during which) Crown is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Crown and such working interest or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of Crown's liability

to the DOE under the federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from Crown, or against any civil action brought by an agency of the United States other than by the DOE under (i) section 210 of the Economic Stabilization Act or (ii) any statute or regulations other than the federal petroleum price and allocation regulations. However, the DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes the DOE form exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Finally, except as herein specifically provided, this Consent Order does not affect or prejudice any private action brought by a third party against Crown, or by Crown against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Crown, or the rights of Crown to seek contribution from third parties. Nothing herein shall preclude Crown from asserting any legal or factual position or argument in any action brought against Crown by any third party under Section 210 of the Economic Stabilization Act, the federal petroleum price and allocation regulations or any other statute, rule, regulation or order.

(d) Crown expressly agrees that in consideration for the DOE's performance under the Consent Order, Crown releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that Crown has asserted or may otherwise be able to assert against the DOE under the federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order.

503. Crown and the DOE agree to stipulate to the dismissal with prejudice of *Crown Central Petroleum Corporation v. DOE*, Civil Action No. 84–3827 (D.D.C.). Within fifteen (15) days after the effective date of this Consent Order, Crown will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit A.

504. Crown and the DOE agree to stipulate to the dismissal with prejudice of *Crown Central Petroleum Corporation v. DOE*, Civil Action No. H–82–3283 (D. Md.). Within fifteen (15) days after the effective date of this Consent Order, Crown will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit B.

505. Within thirty (30) days after the effective date of this Consent Order, the DOE and Crown will file or cause to be filed appropriate pleadings to dismiss with prejudice all proceedings against Crown covered by this Consent Order then pending before the DOE's OHA or on appeal from OHA to the Federal Energy Regulatory Commission.

506. Execution of this Consent Order constitutes neither an admission by Crown nor a finding by the DOE of any violation by Crown of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Crown pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures. Payments made by Crown pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of federal petroleum price and allocation regulations.

507. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Crown, but only if Crown has concealed facts relating to such violations. The DOE and Crown also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601. Crown shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, Crown shall also maintain sales volume data and customers' names and addresses regarding its initial sales of crude oil and refined petroleum products for the transactions covered by this Consent Order. Crown's obligations to maintain records under the preceding sentence shall cease six months after completion of payment to DOE of the amount set forth in paragraph 402, unless DOE notifies Crown in writing that this period is extended, in which case Crown shall maintain such information until the end of the extension. If requested, Crown shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 402 of this Consent Order, Crown is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order, and Crown will not be subject to any report orders, subpoenas, or other administrative discovery by DOE relating to Crown's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order for the period covered by this Consent Order; provided, however, that Crown will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

602. The DOE will treat the sensitive commercial and financial information provided by Crown pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order or obtained by DOE in its audit of Crown and related to matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Crown with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Crown's compliance with the federal petroleum price and allocation regulations in

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accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Crown may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Crown and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Crown (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with its Departmental policy, the DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Crown agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Crown hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Crown, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Crown, Crown reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Crown, hereby agree to and accept on behalf of Crown the foregoing Consent Order.

Dated: March 4, 1986.

Thomas L. Owsley,

Crown Central Petroleum Corporation.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Dated: March 4, 1986.

Milton C. Lorenz,

Special Counsel, Department of Energy.

In the United States District Court for the District of Columbia

In the matter of Crown Central Petroleum Corp., Plaintiff, v. Department of Energy, *et al.*, Defendants; Civil Action No. 84-3827.

Stipulation of Dismissal

Plaintiff, Crown Central Petroleum Corporation ("Crown") and defendants, the Department of Energy, et al. ("DOE"), hereby stipulate as follows:

1. Crown and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Crown and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Crown Central Petroleum Corp.

By: Paul D. Coleman,

Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036, Counsel for Plaintiff.

United States Department of Energy.

By: Robert F.L. Eaton, Jr.,

Assistant United States Attorney, U.S. District Courthouse, Room 2826, 3rd & Constitution Ave., NW., Washington, DC 20001.

Dennis M. Moore,

Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Room 6H085, Washington, DC 20585, Counsel for Defendants.

This —— day of ———, 1986, the foregoing Stipulation is approved, and

It is so ordered.

———,

United States District Judge.

In the United States District Court for the District of Maryland

In the matter of Crown Central Petroleum Corporation, Plaintiff, v. Department of Energy, et al., Defendants; Civil Action No. H-82-3283.

Stipulation of dismissal

Plaintiff, Crown Central Petroleum Corporation ("Crown") and the defendants, the Department of Energy, et al. ("DOE"), hereby stipulate as follows:

1. Crown and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Ordet has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(l)(ii) of the Federal Rules of Civil Procedure, Crown and DOE hereby stipulate that, as between Crown and DOE only, the instant action be dismissed with prejudice, each party to bear its own costs.

Crown Central Petroleum Corporation.

By: Thomas L. Crowe,

Cable, McDaniel, Bowie & Bond, 900 Blaustein Building, One North Charles Street, Baltimore, Maryland 21201.

United States Department of Energy.

By: Catherine C. Blake,

Assistant United States Attorney, United States Courthouse, 8th Floor, 101 West Lombard Street, Baltimore, Maryland 21201.

Paul D. Coleman,

Hoppel, Mayer & Coleman, 1000 Connecticut Aveue, NW., Washington, DC 20036, Attorneys for Plaintiff.

Erich T. Schwartz,

Department of Energy; 1000 Indendpendence Avenue, SW., Room 6H034, Washington, DC 20585, Attorneys for Defendants.

This —— day of ———, 1986, the foregoing Stipulation is approved, and

It is so ordered.

———,

United States District Judge.

[FR Doc. 86-5420 Filed 3-11-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-197-001, et al.]

Natural Gas Certificate Filings El Paso Natural Gas Co. et al.

March 6, 1986.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP86-197-001]

Take notice that on February 21, 1986, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-197-001 pursuant to Section 7(c) of the Natural Gas Act, an amendment to its application pending in Docket No. CP86-197-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

El Paso states that since the filing of its application on November 8, 1985, it has continued to evaluate its pending firm transportation proposal. This ongoing evaluation, according to El Paso, has permitted it (i) to address the impact of the Commission's final rule in Docket No. RM85-1-000 (Order No. 436, *et seq.*) on its business activities; (ii) to assess the effect of its election to participate as an open-access non-discriminatory transporter under Order No. 436, *et seq.*, on its pending application herein;[1] (iii) to consider the reaction of its existing firm sales customers regarding existing capacity rights on El Paso's system relating to El Paso's pending application herein; and (iv) to undertake additional studies involving new cases. Based on this evaluation, El Paso amends its application in Docket No. CP86-197-000 (i) to reflect the impact, on El Paso's system and its operation, of El Paso's January 21, 1986, tariff filing implementing as part of El Paso's FERC Gas Tariff the provisions of Order No. 436, *et seq.*; (ii) to set forth a revised base case and two additional cases including a new *Case IV*, which is intended to supplant *Case I* as El Paso's proposal for the construction and operation of additional facilities; (iii) to provide revised exhibits necessary to support the proposed *Case IV*; and (iv) to provide for a new, off-peak firm transportation service under a new proposed Rate Schedule T-4 to be contained in El Paso's FERC Gas Tariff.

El Paso states that on January 31, 1986, in Docket No. RP86-45-000 it filed certain tariff sheets it had revised to be consistent with the requirements of Order No. 436, *et seq.*,[2] and which would serve to establish as part of its FERC Gas Tariff rates, rate schedules and operating terms and conditions applicable to its open-access transportation on interruptible and firm bases, including provisions governing allocation of pipeline capacity. EL Paso stated in its tariff filing that, as measured against existing customer purchase rights, and except to the extent that customers may elect to reduce those purchase rights or to receive firm transportation through the capacity associated with such rights,[3] El Paso presently has no uncommitted capacity available to support new firm transportation services. El Paso also states that it has determined, with the advent of open-access transportation on its system, to recognize its customer's maximum purchase rights rather than market data as the determining factor in assessing its available pipeline capacity, it cannot provide the firm transportation service proposed in its original application in Docket No. CP86-197-000 absent the construction of additional incremental facilities on El Paso's system and/or some modification of existing customer purchase rights.

El Paso states it has developed a revised proposal which now comports with the requirements of Order No. 436, *et seq.*, on El Paso's system and the needs of El Paso's existing customers and prospective shippers requiring transportation service. For the purpose of its amendment, El Paso explains that it has presented engineering studies based on three cases: *Base Case-Revised* reflecting El Paso's existing system operation when fully satisfying El Paso's sales customers' sales entitlements, which for this purpose is assumed to be 1,000,000 Mcf per day for its east-of-California (EOC) customers, 1,750,000 Mcf per day for Southern California Gas Company and 1,140,000 Mcf per day for Pacific Gas and Electric Company; *Case IV* is the proposal which reflects the facilities for which El Paso now seeks specific section 7(c) authorization;[4] and *Case V* presents El Paso's sales customers' sales entitlements being satisfied at the levels described above.

Under *Case IV*, El Paso proposes to construct and operate approximately 16.0 miles of 34-inch O.D. loop pipeline, 110.4 miles of 30-inch mainline pipelines and install two 3,580 horsepower compressor units at the existing Bondad compressor station. In addition, El Paso states it would be required to make certain compressor modifications at its White Rock, Gallup B. Seligman A and B compressor stations; perform station pipeline modifications at its existing Wenden compressor station; and to install additional meter runs and modify certain existing meter runs at its existing Topock meter station. El Paso states that the gas supply to be received by El Paso has been assumed to be delivered to El Paso's system, for design purposes at the Ignacio, Colorado, receipt point in the quantity of 200,000 Mcf per day and a like quantity on the eastern portion of El Paso's system at the NGPL Lea County receipt point. Upon receipt of the 400,000 Mcf per day into its system, El Paso proposes to provide the proposed off-peak firm transportation service. According to El Paso this transportation service would be made available through the use of off-peak purchase capacity not required by its EOC customers and through the construction of the facilities described above.

El Paso states that the EOC customers' utilization of existing capacity on El Paso's system for purchases of natural gas equates to an average day volumes of approximately 700,000 Mcf per day on some 347 days (approximately ninety-five percent of the year). El Paso's EOC customers have required capacity on El Paso's system to receive volumes of natural gas in the range of 990,000 Mcf per day. Further El Paso states that inasmuch as its EOC customers require their total purchase capacity (1,000,000 Mcf per day) in El Paso's system approximately five percent of the year, the flow diagram supporting *Case IV* reflects the utilization by El Paso of this off-peak capacity of 300,000 Mcf per day

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[1] It is explained that, on January 17, 1986, El Paso commenced transportation of natural gas under the provisions of the Natural Gas Policy Act of 1978 Section 311 and in accordance with Order No. 436, *et seq.*, for, among others, Texaco Inc. and Shell California Production Inc., for use in California enhanced oil recovery operations. Thereafter, on January 31, 1986, El Paso filed to establish as part of its FERC Gas tariff the rates, rate schedules, operating terms and conditions applicable to transportation service under Order No. 436, *et seq.*

[2] El Paso states it would promptly file its application requesting blanket certificate authorization in order to become an open-access transporter pursuant to Order No. 436, *et seq.*, upon Commission approval of El Paso's January 31, 1986, tariff filing.

[3] Such rights, it is explained, equate to a total capacity of approximately 3,890,000 Mcf per day on El Paso's system, exclusive of required fuel.

[4] *Case I* in the original application is now considered an illustrative case.

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(1,000,000 Mcf less 700,000 Mcf) by offering such increment of capacity to any shipper for off-peak firm transportation service through El Paso's system. El Paso explains that on those days that its EOC customers require the use of any of their full purchase capacity, El Paso would make such capacity available to its EOC customers; however, El Paso anticipates that its EOC customers would require their full purchase capacity only approximately five percent of the year. Therefore, El Paso states that the *Case IV* facilities provide El Paso with the necessary additional transportation capacity increment of up to approximately 110,000 Mcf per day which facilitates the delivery of up to the full 400,000 Mcf of gas per day for those shippers desiring this off-peak firm transportation service. The total cost of the *Case IV* facility proposal is approximately $82,650,800, inclusive of overhead, contingency and filing fees, it is stated.

El Paso's proposed off-peak transportation service would be performed by El Paso under the provisions of its proposed Rate Schedule T–4, to be contained in El Paso FERC Gas Tariff, Original Volume No. 1–A,[5] and consistent with the general terms and conditions contained in such tariff and applicable to this service. El Paso claims the off-peak firm transportation service to be provided under the proposed Rate Schedule T–4 is a new and distinct service which is presently unavailable and which does not replace or supplant El Paso's firm transportation service to be rendered under Rate Schedule T–3 filed on January 17, 1986, as part of El Paso's tariff filing implementing non-discriminatory transportation service under Order No. 436, *et seq.*, pursuant to Subpart B of Part 284 of the Commission's Regulations. El Paso states that as proposed herein, off-peak firm transportation service under proposed Rate Schedule T–4 would be made available to any party upon occurence of the following conditions: (i) Approval of El Paso's application in Docket No. CP86–197–000, as amended, and El Paso's acceptance of the certificate granted upon such approval; (ii) completion of construction of the facilities necessary for the provisions of the proposed off-peak firm transportation service, as described herein; (iii) determination by El Paso that it has capacity available to render the off-peak firm transportation and (iv) execution by El Paso and off-peak firm shippers of transportation service agreements in the form contained in El Paso's tariff for off-peak firm transportation service.

Further, El Paso states that off-peak firm capacity would be made available to potential shippers to support new off-peak firm transportation service agreements on a first-come, first-served basis. El Paso indicates that requests for the reservation of off-peak firm transportation capacity would be received and recorded by El Paso commencing on the first business day following the date of the filing of the instant amendment pursuant to § 284.13(a) of the Commission's Regulations. Further, El Paso states that commencing on the effective date of the new Section 21 of El Paso's transportation general terms and conditions relating to proposed Rate Schedule T–4, a *pro forma* copy of which is contained in Exhibit P to the amendment, requests for the reservation of such off-peak firm transportation capacity as may be available at the time would be governed by paragraphs 21.2 and 21.3 of such transportation general terms and conditions.

Comment date: March 27, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Erie Pipeline System

[Docket No. CP86–329–000]

Take notice that on February 14, 1986, Erie Pipeline System (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–329–000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations, optional certificate and abandonment procedures, for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline and related facilities and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant, a partnership between ANR Eastern Pipeline Company, a wholly owned subsidiary of ANR Pipeline Company, and Transwestern Gas Pipeline Company, Inc., a wholly owned subsidiary of Transco Energy Company, requests authorization to construct and operate 379 miles of 30-inch pipeline, 33,000 horsepower of compression and related facilities, through which it would be able to transport up to 425,000 Mcf of natural gas per day from a point in Defiance County, Ohio, to a point of interconnection with Transylvania Gas Pipeline Company, Inc., located in Clinton County, Pennsylvania, at the Liedy storage field once the proposed facilities are operating. The proposed pipeline would traverse eight counties in Ohio (Henry, Wood, Seneca, Huron, Ashland, Wayne, Stark and Columbiana) and eight counties in Pennsylvania (Lawrence, Butler, Armstrong, Clarion, Jefferson, Clearfield, Elk and Cameron). Applicant states that the proposed construction would be done in two phases, first the pipeline construction and then the additional compression. The first phase would have a capacity of 210,000 Mcf of natural gas per day.

It is stated that the cost of the proposed facilities would be approximately $312,900,000. Applicant further states that these facilities would be financed on a conventional basis and would be capitalized with 75 percent debt and 25 percent equity.

It is explained that Applicant proposes to render firm and interruptible transportation service to Transco Gas Services Company, Inc., and others pursuant to Applicant's new proposed Rate Schedules F and I, respectively, in Original Volume No. 1 of its FERC Gas Tariff.

Applicant states that is has concurrently filed in Docket No. CP86–330–000 for a blanket certificate pursuant to Section 284.221 of the Commission's Regulations to perform such services.

Comment date: March 27, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86–324–000]

Take notice that on February 13, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–324–000, an application pursuant to section 7(b) of the Natural Gas Act for permission to abandon and remove one 165 horsepower compressor unit located in Beaver County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that due to declining natural gas production, one 165 horsepower compressor unit is no longer needed at the Beaver County No. 8 gathering station. The present production can be gathered and compressed by the Beaver County No. 9 gathering station, it is said.

Northern states that it proposes either to use this compressor elsewhere on its system or sell it to a potential buyer. Northern indicated that the estimated cost to remove the compression facilities would be $25,000 with an estimated $15,700 salvage value.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86–326–000]

Take notice that on February 14, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–326–000, an application pursuant to section 7(b) of the Natural Gas Act for permission to abandon and remove one 152 horsepower compressor unit located in Beaver County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that due to declining gas production and the connection of the Beaver County No. 14 system to the Beaver County No. 13 system, one 152 horsepower compressor unit is no longer needed at the Beaver County No. 14 gathering station. The present production can be gathered and compressed by the Beaver County No. 13 gathering station, it is said.

Northern states that it proposes either to use this compressor elsewhere on its system or sell it to a potential buyer. Northern indicated that the estimated cost to remove the compression facilities would be $20,000 with an estimated $7,600 salvage value.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86–335–000]

Take notice that on February 18, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–335–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 395 horsepower compressor unit located at the Texas County No. 4 gathering station in Texas County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Texas County No. 4 gathering station consists of one 395 horsepower single-stage compressor unit located in Texas County, Oklahoma. Applicant states that this gathering station was installed in 1976 to reduce pressure in the Hugoton field subsystem so that certain well deliverability and dedicated reserves could be attained. Applicant states that by early 1984 gas availability from this subsystem had declined to the point where the existing compressor unit could not operate efficiently. Applicant further states that the most economical way to allow this subsystem to produce at the correct pressure was to connect it to the adjoining Morton County No. 1 subsystem. This was done in 1984, it is stated, since the adjoining gathering system had a compatible operating pressure and the connection allowed the utilization of available capacity at the Morton County No. 1 gathering station.

Applicant states that the compressor is no longer needed and serves no useful purpose and, therefore, would be utilized elsewhere on Applicant's system or sold to a potential buyer. The estimated cost to remove the facilities is $62,000 with salvage value estimated at $31,000, it is stated.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP86–177–001]

Take notice that on February 25, 1986, Northwest Pipeline Corporation (Petitioner), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–177–001 a petition to amend the Commission's order, issued January 10, 1986, in Docket No. CP86–177–000, pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional delivery point to CPEX Pacific, Inc. (CPEX) and to authorize an increase in quantity of gas transported for CPEX, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it presently transports, on an interruptible basis, up to 10 billion Btu's of natural gas per day to Northwest Natural Gas Company (Northwest Natural) for the CPEX account. Petitioner states that on February 6, 1986, the transportation agreement with CPEX was amended to establish a second delivery point, the Finley fertilizer plant in Benton County, Washington, and to increase the maximum transportation volume from 10 billion Btu's to 25 billion Btu's per day. Petitioner further states that the transportation service as amended would facilitate CPEX's efforts to make economically priced gas supplies available to the Finley plant, which CPEX is in the process of acquiring.

Comment date: March 27, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP86–345–000]

Take notice that on February 25, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–345–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northwest to provide a limited-term natural gas transportation service for Oregon Steel Mills (Oregon Steel), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Northwest propses to provide an interruptible transportation service of up to 2.5 billion Btu's of natural gas per day for the account of Oregon Steel, for a term of two years, beginning on the date deliveries and transportation of the gas commence, pursuant to a gas transportation agreement (transportation agreement), dated February 17, 1986. Northwest also requests flexible authority to add and delete receipt points under the transportation agreement.

It is said that Oregon Steel has acquired, or intends to acquire, supplies of natural gas for its own use which it would cause to be delivered to Northwest for transportation at the receipt points listed in the transportation agreement. Northwest states that the initial receipt point is located at the junction between Northwest's gathering and transmission facilities at the Opal gasoline plant in Lincoln County, Wyoming. Northwest proposes to accept natural gas for Oregon Steel's account at the agreed upon receipt points and to transport and redeliver thermally equivalent volumes, less fuel, to Northwest Natural Gas Company (Northwest Natural) at Northwest's existing Portland West/Scappoose meter station in Multnomah County, Oregon, for Oregon Steel's account. Northwest Natural then would utilize its existing distribution facilities to transport Oregon Steel's gas to its steel plant in Portland, Oregon.

It is said that for all volumes of gas transported by Northwest under the

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[5] El Paso states that it would file with the Commission initial Rate Schedule T–4, pursuant to Part 154 of the Commission's Regulations, to effectuate the proposed off-peak firm transportation service, upon receipt of authorization under the amended application.

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transportation agreement, Northwest proposes to charge Oregon Steel at either its incremental on-system transportation rate or replacement on-system transportation rate, as applicable. The currently effective rates as shown on Northwest's Tariff Volume No. 2 are 20.0 cents per million Btu for incremental on-system transportation and 37.97 cents per million Btu for replacement on-system transportation. Oregon Steel, however, would be eligible for a 30.91 cents per million Btu gathering credit towards the replacement on-system transportation rate, it is asserted.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP86-318-000]

Take notice that on February 11, 1986, Southern National Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-318-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Southern to transport natural gas for a limited term on behalf of South Carolina Pipeline Corporation (South Carolina), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 80 billion Btu of gas per day on an interruptible basis for South Carolina for a term of two years. It is stated that gas purchased by South Carolina from SNG Trading Inc. would be delivered to Southern at any of 67 existing points of delivery on Southern's pipeline system, and that equivalent quantities of gas would be redelivered by Southern to South Carolina at the Aiken meter station, an existing interconnection between Southern and South Carolina near Aiken, South Carolina.

Southern also requests flexible authority to provide transportation from additional delivery points in the event South Carolina obtains alternative sources of natural gas. Southern states that the flexible authority would not be used to authorize a change in the recipient of the service, the location of the proposed redelivery point or the maximum daily quantity of gas transported by Southern. Southern indicates that it would file periodic reports with the Commission providing information about the addition of any delivery points.

Southern further requests that the Commission authorize the abandonment of the transportation service upon expiration of the proposed two-year term.

It is asserted that Southern would charge South Carolina 48.2 cents per million Btu for the transportation service except that it would charge 77.8 cents per million Btu for the volumes of gas delivered to South Caroline under Southern's OCD rate schedule that exceeded South Carolina's daily contract demand.

It is further stated that Southern would collect a Gas Research Institute surcharge of 1.35 cents per Mcf of gas redelivered to South Carolina.

Southern's application states that all transportation services would be conditioned upon the availability of sufficient capacity for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corporation, Union Exploration Partners, Ltd.

[Docket No. CP86-323-000, Docket No. CI86-203-000]

Take notice that on February 13, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, and Union Exploration Partners, Ltd. (UXP), 4635 Southwest Freeway, Houston, Texas 77027, filed in Docket No. CP86-323-000 and Docket No. CI86-203-000, respectively, a joint application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to deliver up to 15 billion Btu of gas per month to UXP at the Bayou Pigeon meter station for the purpose of assisting UXP in its gas lift system in the Bayou Pigeon field, Iberia Parish, Louisiana. It is stated that UXP would redeliver equivalent quantities to Texas Gas at a point in the Bayou Pigeon field where Texas Gas purchases gas from UXP, at a point where Texas Gas purchases gas from UXP in the Lake Pagie field, Terrebonne Parish, Louisiana, or at other mutually agreeable points.

The reserves located in the Bayou Pigeon field are in the last stages of depletion and due to mechanical difficulties with UXP's field compression facilities, UXP from time to time needs additional gas to supplement its gas lift system and get its compression facilities back in operation, it is explained. It is stated that the proposed exchange would provide UXP with the gas supplies needed to maximize UXP's recovery of the remaining gas and oil reserves in the Bayou Pigeon Field. No additional facilities are required to make the exchange, it is explained. It is further explained that since the proposed service is an exchange arrangement, no rate would be charged by either party.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Transylvania Gas Pipeline Company, Inc.

[Docket No. CP86-333-000

Take notice that on February 14, 1986, Transylvania Gas Pipeline Company, Inc. (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-333-000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations, optional certificate and abandonment Procedures, for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline, related facilities in Pennsylvania and New Jersey and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to loop the existing facilities of Transcontinental Gas Pipe Line Corporation (Transco) by the construction and operation of the following facilities in two phases:

Phase I

(1) 17.00 miles of 36-inch diameter pipeline loop on the Leidy Line between milepost 12.51 and milepost 29.51;

(2) 26.10 miles of 36-inch diameter pipeline loop on the Leidy Line between milepost 0.00 and milepost 26.10;

(3) 8.58 miles of 30-inch diameter pipeline loop on the Leidy Line between milepost 185.48 and milepost 194.06;

(4) 3.44 miles of 24-inch diameter pipeline loop on the Trenton-Woodbury Line between milepost 4.79 and milepost 8.23; and

(5) 4.13 miles of 36-inch diameter pipeline loop on the Caldwell Line between milepost 1812.36 and milepost 1816.49;

Phase II

(1) 21.20 miles of 36-inch diameter pipeline loop on the Leidy Line between milepost 29.51 and milepost 50.71;

(2) 6,000 horsepower of additional compression at the existing Compressor Station 515; and

(3) 6,500 horsepower of additional compression at the existing Compressor Station 520.

These facilities would provide a total capacity of 540,000 Mcf of natural gas per day.

Applicant states that the estimated cost of the proposed facilities is $132,000,000 which would be constructed and operated by Transco. Applicant states that financing would be obtained through short-term loans and funds on hand, with permanent financing arranged as part of Applicant's overall financing program.

Applicant also requests authority to render firm and interruptible transportation services to Transco Gas Services Company, Inc., and others on a non-discriminatory basis for the purpose of bringing new incremental Canadian and Gulf Coast supplies of market gas to market in the eastern United States. It is explained that these volumes would be transported through intermediate pipelines to the proposed Erie Pipeline System for redelivery to Applicant at a proposed interconnection at the Leidy storage field near Tamarack, Pennsylvania.

Applicant proposes to render transportation services in accordance with its new proposed Rate Schedules F and I contained in Original Volume No. 1 of its FERC Gas Tariff.

Applicant has concurrently filed in Docket No. CP86-334-000 for a blanket certificate of public convenience and necessity to transport gas pursuant to § 284.221 of the Commission's Regulations.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Utah Gas Service Company

[Docket No. CP86-188-000]

Take notice that on November 1, 1985, as supplemented on February 25, 1986, Utah Gas Service Company ("Utah Gas"), 5031 South Ulster Parkway, Suite 410, Denver, Colorado 80237, filed in Docket No. CP86-188-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as if Utah Gas were an intrastate pipeline as defined in Subpart C, D and E of Part 284 of the Commission's Regulations, all as more fully set forth with the Commission and open to public inspection.

Utah Gas states that it is a Hinshaw pipeline operating in the state of Utah and that it is subject to the regulatory jurisdiction of the Utah Public Service Commission. It is stated that during the twelve months ended September 30, 1985, Utah Gas received a total of 15,034 Mcf of gas from Northwest Pipeline Corporation (Northwest), which was exempt from the Commission's jurisdiction under the Natural Gas Act. It is further stated that during the same time period, Utah Gas received a total of 1,203,804 Mcf of gas from all sources, inclusive of the volumes received from Northwest. All of the non-Northwest gas is produced in the state of Utah and delivered from the field directly into the Utah Gas System, it is explained. It is stated that Utah Gas' demand will, for the next several years, be well below the deliverability of these areas. Utah Gas states that its system is situated such that it is the only logical conduit by which gas produced in these areas which is surplus to Utah Gas' need may be moved to supplemental markets (i.e., to or through the Northwest system). Utah Gas states that it expects to provide best-efforts transportation service for the purpose and may itself make Natural Gas Policy Act of 1978 section 311(b)-type surplus gas sales from time to time. Utah Gas states that it has calculated a fair and equitable transportation rate of $0.2247 per Mcf, exclusive of fuel and line loss.

Utah Gas states that it is aware of the requirements imposed on such operations by the Commission's Order Nos. 436 and 436-A, specifically as codified at 18 CFR 284.224, and is willing to comply with all such requirements at such time as it initiates service under its blanket certificate.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless oterwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5909 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-10-29-000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 6, 1986

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 28, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1: Twelfth Revised Sheet No. 203; Twenty-second Revised Sheet No. 213.

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules F-2 and S-IS, changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as reflected in Consolidated's February 14, 1986 filing, proposed to be effective March 1, 1986.

Algonquin Gas requests that the Commission accept Twelfth Revised Sheet No. 203 and Twenty-second Revised Sheet No. 213 to be effective March 1, 1986 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each

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affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5357 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-37-004, et al.]

ANR Pipeline Co. et al.; Filing of Pipeline Refund Reports and Refund Plans

March 7, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before March 21, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket no.	Type filing
1-30-86	ANR Pipeline Co.	RP85-37-004	Report.
2-18-86	Eastern Shore Natural Gas Co.	CP85-89-003	Report.
2-27-86	South Georgia Natural Gas Co.	RP77-32-018	Report.

[FR Doc. 86-5358 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-31-000, 001]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 6, 1986.

Take notice that on February 28, 1986, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule G-2

41st Revised Sheet No. 4
13th Revised Sheet No. 4A

Rate Schedule X-26

40th Revised Sheet No. 185
13th Revised Sheet No. 185A

AER states that the purpose of the above-described tariff sheet is to (1) reflect the average projected cost of purchased gas for the six-month period commencing April 1, 1986; (2) recover or refund accumulated deferred purchased gas costs as of December 31, 1985; (3) set forth the incremental pricing calculation applicable to this PGA period; and, (4) refund the balance of deferred transportation revenue as of December 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5359 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI73-494-000]

Columbia Gas Development Corp.; Informal Conference

March 6, 1986.

Take notice that an informal conference will be held to discuss the "Petition for Waiver of Optional Procedure Pricing Certificate Condition and Petition to Amend Certificate of Public Convenience and Necessity and To Issue Conditional Order of Partial Abandonment" filed by Columbia Gas Development Corporation in the above-captioned proceeding on December 5, 1985.

The conference will be held on March 24, 1986, commencing at 1:30 p.m. in Room 8306, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All interested persons are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5360 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA82-1-21-021]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1986, tendered for the filing following proposed changes to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1986:

One hundred and fifth Revised Sheet No. 16
Forty-first Revised Sheet No. 64
First Revised Sheet No. 88

Columbia states that these Tariff sheets are being filed in accordance with Article VIII of the Stipulation and Agreement (Stipulation), in the referenced proceeding, dated April 4, 1985, as approved by the Commission's Order issued June 14, 1985 and as modified by order issued June 25, 1985.

Therefore, consistent with Article VIII, the above listed tariff sheets reflect the following changes due to the reduced Total Daily Entitlement (TDE) levels; (1) an increase in the non-gas demand rates applicable to non-shielded customers, (2) an increase in the Demand Base Average Rate of Purchased Gas applicable to non-shielded customers, (3) an increase in the Demand Surcharge applicable to non-shielded customers, and (4) an update to the Index of Shielded and Non-Shielded customers. Also, consistent with Article VIII, Columbia filed supporting data with the Commission relative to the TDE reductions to become effective April 1, 1986.

Article VIII of the Stipulation provides that each of Columbia's customers, other than National Fuel, may reduce its TDE level with Columbia by up to a total of 15 percent of the respective customer's TDE level in effect as of March 31, 1985

On April 26, 1985, Columbia made a filing with the Commission, which reflects certain customers' TDE reductions pursuant to the Stipulation,

of up to a maximum of 10 percent of such customer's March 31, 1985 TDE level. The instant filing reflects additional reductions in certain customers' TDE levels which do not exceed 5 percent of the March 31, 1985 level, unless those customers did not participate in the first TDE reductions, and thereby are entitled to receive a 10 percent reduction in the instant filing.

Copies of the filing were served upon the Company's jurisdictional customers, interested state commissions and all parties on the official service list in Docket Nos. TA82-1-21-001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5361 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-54-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

(March 6, 1986).

Take notice that on February 28, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

Original Sheet No. 50A
Original Sheet No. 50B

Proposed Changes

The above-referenced tariff sheets propose to revise section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, 1st Revised Volume No. 1. The revision is limited solely to the addition of a new § 15.10 (Adjustment to Rates Between Adjustment Dates for Changes in Seller's Average Cost of Gas Purchased for Sale and Company Use) which, if approved, would permit FGT, from time to time and at any time at its sole discretion, to adjust its jurisdictional rates between PGA Adjustment Dates to recognize the cost effect of a change in FGT's average cost of gas purchased for sale and company use from the average cost of gas purchased for sale and company use utilized in the immediately preceding Purchase Gas Adjustment filing.

Such adjustments shall be limited to the Primary Adjustment and may reflect either an increase or decrease in FGT's jurisdictional rates, provided however, that FGT shall be precluded from adjusting its jurisdictional rates, pursuant to the new § 15.10, above the level established in FGT's immediately preceding Purchase Gas Adjustment filing.

The tariff sheets being filed require FGT to file such changes with the FERC at least one (1) day prior to the proposed effective date. Such filing will not be subject to either the posting requirements established by the Commission's Regulations or any filing fees. In addition, the proposed tariff sheets require FGT to demonstrate that its actions were appropriate under the circumstances and that it is entitled to recover the jurisdictional portion of under-recovered purchase gas costs which result from FGT's election to adjust its jurisdictional rates pursuant to the new §15.10. In recognition that FGT is unable to control precisely its average cost of gas, FGT's potential liability and such demonstration of appropriateness will be limited to amounts in excess of three percent (3%) of the jurisdictional portion of the Actual Gas Purchased during and PGA Adjustment Period that FGT elected to adjust its jurisdictional rates pursuant to the proposed tariff sheets.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested state commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5362 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-5-000,001]

Midwestern Gas Transmission Co., Rate Filing Pursuant To Tariff Rate Adjustment Provisions

March 6, 1986.

Take notice that on February 27, 1986, Midwestern Gas Transmission Company (Midwestern) filed Seventeenth Revised Sheet No. 5, to Original Volume No. 1 of its FERC Gas Tariff, to be effective on the date of the Commission's order accepting this revised tariff sheet.

Midwestern states that the purpose of the filing is to reflect for its Southern System, PGA rate adjustments based on an increase in purchases directly from Tenngasco and a decrease in purchases from Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-5363 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-5-000,001]

Midwestern Gas Transmission Co. Tariff Filing and Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 6, 1986.

Take notice that on February 28, 1986, Midwestern Gas Transmission

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Company (Midwestern), tendered for filing ten copies of Nineteenth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff proposed to be effective March 1, 1986, Twentieth Revised Sheet No. 6 and Eleventh Revised Sheet No. 8 to Original Volume No. 1 of its FERC Gas Tariff proposed to be effective April 1, 1986, and the following tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1986:

Original Volume No. 1

Eighteenth Revised Sheet No. 6
Substitute Third Revised Sheet No. 21
Sixth Revised Sheet No. 84

Original Volume No. 2

Substitute First Revised Sheet Nos. 64D, 66E, 66F

Midwestern also proposes to cancel Original Sheet No. 21A to Volume No. 1 effective January 1, 1986.

Midwestern states that the purposes of this filing are: first, to reflect in Midwestern's Northern System Rates as of March 1, 1986, a decrease in the rates charged to Midwestern by TransCanada Pipelines, Ltd. (TransCanada), the sole supplier of gas to Midwestern's Northern System; second, to implement a regular Purchased Gas Cost Rate Adjustment applicable to Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 to be effective April 1, 1986, pursuant to Article XVIII of the General Terms and Conditions (the Northern System PGA clause); and third, to make technical corrections to certain of the tariff sheets submitted with Midwestern's general rate decrease filing of December 30, 1985 in Docket No. RP86-33, including Sheet No. 21 to Original Volume No. 1 and Sheet Nos. 64D, 66E and 66F to Original Volume No. 2, which were rejected in Ordering Paragraphs (C) and (D) of the Commission's Order of January 29, 1986 in Docket No. RP86-33-000.

Midwestern states that the National Energy Board of Canada has granted interim approval of an agreement between Midwestern and TransCanada that provides for a substantial reduction in the rates that TransCanada charges Midwestern for gas for Midwestern's sales customers purchasing gas under Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 and for system operating requirements. Midwestern advises that permanent approval of the rate decrease is expected by mid-March, 1986.

Midwestern states that, in order to give Midwestern's customers the benefit of the price reductions obtained from TransCanada in advance of April 1, the date on which the regular Northern System Purchased Gas Cost Rate Adjustment in this filing will become effective pursuant to Section 1.2 of Article XVIII of the General Terms and Conditions, it has filed Nineteenth Revised Sheet No. 6 with a proposed effective date of March 1, 1986. The Current Purchased Gas Cost Rate Adjustment for Rate Schedules CR-2, CRL-2, SR-2 and I-2 reflected on Nineteenth Revised Sheet No. 6 consists of a negative $1.74 per Dkt Unit Demand Rate Change and a negative 73.77 cents per Dkt Unit Gas Rate Change.

In order to permit Ninteenth Revised Sheet No. 6 to become effective March 1, 1986, as proposed, Midwestern requests waiver of Sections 1.2 and 1.3 of Article XVIII of the General Terms and Conditions. § 154.38(d)(4)(iv)(a) of the Commission's Regulations and the 30-day notice provisions of § 154.22 of the Regulations.

Midwestern states that Twentieth Revised Sheet No. 6 includes Midwestern's regular Purchased Gas Cost Rate Adjustment for the Northern System to be effective April 1, 1986, pursuant to Article XVIII of the General Terms and Conditions. Midwestern states further that the Current Purchased Gas Cost Adjustment reflected on this sheet consists of negative $.21 per Dkt Unit Demand Rate Changes for Rate Schedules CR-2, CRL-2, negative 1.73 cents per Dkt for Rate Schedules SR-2 and negative .69 cents per DKt for Rate Schedule I-2, and a negative Unit Gas Rate Change of 30.73 cents per Dkt. Midwestern states that Twentieth Revised Sheet No. 6 also reflects the Surcharge for Amortizing the Unrecovered Gas Cost Account for the Northern System consisting of a Gas Surcharge of 11.24¢ cents per Dkt, and a demand surcharge of $1.31 per Dkt.

Midwestern states that Eleventh Revised Sheet No. 8 reflects zero Estimated Incremental Pricing Surcharges for Midwestern's customers under Rate Schedules CR-2, CRL-2, SR-2 and I-2 in accord wtih Article XXIII of the General Terms and Conditions.

Midwestern states that Ordering Paragraph (C) of the Commission's Order of January 29, 1986, in Docket No. RP86-33-000 rejected Third Revised Sheet Nos. 21 because it included language to flow-through minimum bill charges from Tennessee Gas Pipeline Company, which the Commission subsequently rejected in Docket No. RP86-27. Midwestern states further that Ordering Paragraph (D) of the same order rejected First Revised Sheet Nos. 64D, 66E and 66F or Original Volume No. 2 for failure to conform to dekatherm billing without prejudice to Midwestern's refiling revised tariff sheets.

Midwestern states that Substitute Third Revised Sheet No. 21 includes language changes to Section 3.2 of Rate Schedule CD-1 to reflect dekatherm billing and changes to section 4, the minimum bill provision, to conform the language to Order No. 380. As part of the revision of Section 4 of Rate Schedule CD-1, Midwestern proposes to cancel Original Sheet No. 21A. Midwestern states further that Substitute First Revised Sheet Nos. 64D, 66E and 66F of Original Volume No. 2 restate the affected services on a dekatherm basis and are filed consistent with Ordering Paragraph (D) of the Commission's Order of January 29, 1986 in Docket No. RP86-33-000.

Midwestern explains that Eighteenth Revised Sheet No. 6 and Sixth Revised Sheet No. 84 to Original Volume No. 1 correct Midwestern's filing in Docket No. RP86-33-000 by revising the Rate Schedule CD-2 Minimum Monthly Commodity Charge retroactive to January 1, 1986, to remove the cost of compression service provided by TransCanada. Upon acceptance of Eighteeth Revised Sheet No. 6 and Sixth Revised Sheet No. 84 as proposed, Midwestern states that it will recompute the Rate Schedule CD-2 Minimum Monthly Bill for January and February and make any necessary adjustments.

In order to permit the above tariff sheets to become effective January 1, 1986, as proposed, Midwestern requests waiver of the 30-day notice requirement of § 154.22 of the Commission's Regulations. In addition, Midwestern requests that the Commission grant any other waives it may deem necessary for the acceptance of this filing.

Midwestern states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5364 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-16-002]

National Fuel Gas Supply Corp., Compliance Filing

March 6, 1986.

Take notice that on March 3, 1986, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Sixth Revised Sheet No. 4 to be effective February 1, 1986.

National states that the purpose of Substitute Sixth Revised Sheet No. 4 is to comply with the Commission's Order of January 31, 1986 in this proceeding.

Substitute Sixth Revised Sheet No. 4 to National's FERC Gas Tariff, First Revised Volume No. 1, reflects a net decrease of 34.92¢ per Dth. This change consists of a decrease in current purchase gas cost of 6.58¢ per Dth, a decrease in the purchase gas cost surcharge adjustment of 28.13¢ per Dth and the elimination of the .21¢ surcharge to recover Pennsylvania capital stock tax.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5365 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-001]

North Penn Gas Co.; Motion To Place Tariff Sheets Into Effect

March 6, 1986.

Take notice that on 2-28-86, North Penn Gas Company (North Penn) tendered for filing Second Revised Sheet No. 1, Thirty-Eighth Revised Sheet No. 4, Thirty-Ninth Revised Sheet No. 5, Substitute Eightieth Revised Sheet No. PGA-1 and First Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1 with a motion to place these tariff sheets into effect on March 1, 1986.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit the revised tariff sheets to become effective March 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5366 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-51-000]

Northwest Pipeline Corp.; Petition for Hearing

March 6, 1986.

Take notice that on February 21, 1986, pursuant to Rule 207,[1] Northwest Pipeline Corporation (Northwest) filed a petition requesting the Commission to institute a proceeding under section 5 and/or section 7 of the Natural Gas Act which would establish a forum for certain Northwest customers to propose revisions to their contract demands with Northwest and would further enable the Commission to consider the appropriate reallocation among customers of fixed cost responsibility attributable to any such contract demand revisions.

Northwest claims that Article VIII of the contested settlement of Northwest's then pending rate proceeding in Docket No. RP85-13-000, approved by the Commission on May 31, 1985,[2] authorized the institution of such a proceeding, to commence on or after May 1, 1986. According to Northwest, although the settlement does not specify that Northwest should request such proceeding, it is doing so to ensure that the terms of Article VIII are implemented without delay. Northwest requests that the Commission assign the case to an administrative law judge and specifically provide for the establishment of a prehearing conference to facilitate the processing of the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5367 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-5-37-000,001]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1986.

Take notice that on February 28, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, and Original Volume No. 1-A the following tariff sheets:

First Revised Volume No. 1

Fifteenth Revised Sheet No. 10-A

Original Volume No. 2

First Revised Sheet No. 2.2 and Ninth Revised Sheet No. 2-B (Consenting Parties); Second Amended Substitute Original Sheet

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[1] 18 CFR 385.207 (1985).

[2] Northwest Pipeline Corp., 31 FERC ¶ 61,[illegible] (1985).

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No. 2.2 and Second Amended Substitute Seventh Revised Sheet No. 2-B (Non-Consenting Parties).

Original Volume No. 1-A

First Revised Sheet No. 282, and First Revised Sheet No. 418.

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage to be effective April 1, 1986, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 2, and 1-A.

The proposed effective date of the tendered tariff sheets is April 1, 1986.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5368 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA86-3-000]

Ozona Gas Processing Plants; Filing of Petition for Review

March 6, 1986.

Take notice that Ozona Gas Processing Plants on March 3, 1986, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene; however, any such person wishing to be a participant must file a notice of participation on or before March 21, 1986, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before March 21, 1986, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 5369 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-39-000,001]

Pacific Interstate Transmission Co., Proposed Changes in FERC Gas Tariff Pursuant To Purchased Gas Cost Adjustment Provision

March 6, 1986.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on February 28, 1986, tendered for filing as part of its FERC Gas Tariff, original Volume No. 2, the following sheets:

Twenty-Ninth Revised Sheet No. 4
Twelfth Revised Sheet No. 4-A
Twenty-Fourth Revised Sheet No. 5

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in sections 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is April 1, 1986.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed April 1, 1986 Pacific Interstate Rate Schedule S-G-1 commodity rate of 335.65¢ per decatherm, an increase of 13.04¢ per decatherm from the 322.61¢ per decatherm rate effective October 1, 1985, the date of the last S-G-1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $60,310 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning April 1, 1986 an amount of $22,132.55, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost Account at December 31, 1985. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 86-5370 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-62-000, 001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant To Purchased Gas Cost Adjustment Provision

March 6, 1986.

Take notice that Pacific Offshore Pipeline Company (Pacific Offshore) on February 28, 1986, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheets:

Fifth Revised Sheet No. 4
Substitute First Revised Sheet No. 36

Pacific Offshore requests an effective date of these tendered tariff sheets and the rates thereon of April 1, 1986.

Pacific Offshore also states that the above-tendered tariff sheets reflect a proposed April 1, 1986 Pacific Offshore Rate Schedule G-1 commodity rate of $2.019 per decatherm, a decrease of $.294 per decatherm from the $2.313 per decatherm rate effective October 1, 1985, the date of the last revised commodity rate, and that such decrease reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $625,880 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning April 1, 1986, an amount of $310,005.46 which is the amount of Pacific Offshore's Unrecovered Purchased Gas Cost account at December 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5371 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-28-000]

Panhandle Eastern Pipe Line Co.; Informal Conference

March 6, 1986

Pursuant to the Commission's suspension order issued February 28, 1986, an informal conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, March 13, 1986, at 2:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426.

All interested persons and Staff are permitted to attend. Direct any questions or comments concerning this meeting to:

James Bradford Ramsay, Attorney-Advisor, Officer of Pipeline Rates & Valuation, (202) 357-9123.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5345 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-194-005]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 4, 1986.

Take notice that on February 24, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Substitute Fifty-Third Revised Sheet No. 3-A
Third Substitute Thirtieth Revised Sheet No. 3-B
Substitute Twenty-Third Revised Sheet No. 22
Substitute Fifteenth Revised Sheet No. 24-A
Substitute Twenty-Sixth Revised Sheet No. 25
Substitute Seventeenth Revised Sheet No. 28-B
Substitute Seventeenth Revised Sheet No. 28-E

On December 13, 1985 in compliance with Ordering Paragraph (C) of the Commission Order issued September 30, 1985 in the above-referenced docket, Panhandle Eastern Pipe Line Company (Panhandle) filed revised tariff sheets to eliminate variable costs from its minimum bill. On Jaunary 10, 1986, the Commission issued an order "Rejecting Tariff Sheets and Deferring Motion for Partial Summary Disposition" which rejected the revised tariff sheets filed by Panhandle on December 13, 1985 and directed Panhandle to file revised tariff sheets within forty-five days. Therefore, pursuant to the Commission Order dated January 10, 1986, Panhandle submits herewith the attached revised tariff sheets.

In order to comply with the provisions of the Commission's Order of September 30, 1985, December 13, 1985 and January 10, 1086 in this proceeding, Panhandle is submitting herewith the above-described tariff sheets. The 3-A and 3-B tariff sheets reflect the separately stated gas cost and variable cost components, based on the underlying cost of service submitted with Docket No. RP85-194, in compliance with § 154.111(a)(2) of the Commission's Regulations. Workpapers supporting the derivation of these cost components are also submitted herewith. Therefore, Panhandle requests that the Commission accept these tariff sheets, effective October 1, 1985, subject to the outcome of this proceeding. Additionally, Panhandle states that this compliance filing in the instant case would result in a 1.5¢ increase in the commodity minimum bill rate charged those customers whose rate schedules contain a commodity minimum bill.

Panhandle states that in its original filing made August 30, 1985 in Docket No. RP85-194-000, the cost and revenue study therein demonstrates that Panhandle's jurisdictional cost of service is greater than the jurisdictional revenues for the applicable twelve-month period by at least $22.4 million. Panhandle further notes that it could have chosen to seek an increase in its rates by submitting revised tariff sheets designed to recover this jurisdictional revenue deficiency. Panhandle decided not to seek such an increase in any of its currently effective rates and instead chose to maintain its current rate levels, as further described in the August 30, 1985 letter which transmitted the material in Docket No. RP85-194. In the event the Commission chooses to accept these proffered tariff sheets, Panhandle is in the alternate submitting herewith the following alternate revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Alternate Third Substitute Fifty-Third Revised Sheet No. 3-A
Alternate Third Substitute Thirtieth Revised Sheet No. 3-B
Alternate Substitute Twenty-Third Revised Sheet No. 22
Alternate Substitute Fifteenth Revised Sheet No. 24-A
Alternate Substitute Twenty-Sixth Revised Sheet No. 25
Alternate Substitute Seventeenth Revised Sheeet No. 28-B
Alternate Substitute Seventeenth Revised Sheet No. 28-E

Panhandle is submitting these alternate tariff sheets in order to maintain its rate levels which were in effect immediately prior to October 1, 1985, although the cost and revenues submitted with the Docket No. RP85-194 filing would justify an increase in the minimum bill charge, as described above.

The proposed effective date of these revised tariff sheets and alternate revised tariff sheets is October 1, 1985. Therefore, Panhandle respectfully requests waiver of Section 154.22 of the Commission's Regulations.

Supporting computation sheets are enclosed and copies of this leter and enclosures are being served on all intervenors, jurisdicational customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 11, 1986. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5346 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–2–38–000,001]

Ringwood Gathering Co.; Filing of Revised Tariff Sheet

March 6, 1986.

Take notice that on February 28, 1986, Ringwood Gathering Company tendered for filing Thirty-Seventh Revised Sheet PGA–1. Ringwood Gathering Company states that Thirty-Seventh Revised Sheet PGA–1 will become effective on April 1, 1986, and revise its Base Tariff Rate to reflect the increase in the system cost of purchased gas and recover the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates for April 1, 1986.

Ringwood Gathering Company states that copies of this filing were served upon Northwest Central Pipeline Corporation and Westar Transmission Company, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5347 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–2–8–000,001]

South Georgia Natural Gas Co.; Proposed Changes FERC Gas Tariff

March 6, 1986.

Take notice that on February 28, 1986, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirty-Sixth Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed with a proposed effective date of April 1, 1986, pursuant to the Purchased Gas Cost Adjustments provisions set out in section 14 of South Georgia's tariff.

South Georgia states that its Thirty-Sixth Revised Sheet No. 4 reflects a decrease of 32.19¢ per MMBtu in the Current Adjustment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5348 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–3–7–000, 001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Southern Natural Gas Company (Southern) on February 28, 1986, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective April 1, 1986. Such filing is pursuant to section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net decrease in Southern's rates of approximately 32.412¢ per Mcf as a result of the following items:

(1) A Current Adjustment pursuant to Section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual decrease in the cost of purchased gas to jurisdictional customers of $106,323,651 or approximately 32.637¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas costs of (.226¢) per Mcf, which is an increase of .175¢ per Mcf from the present Surcharge Adjustment.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to Section 9.6(3) of the General Terms and Conditions of Southern's tariff of (.010¢) per Mcf, which reflects an increase of .050¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.601(a)(1)(ii) of the Commission's Regulations, Southern is also filing Thirteenth Revised Sheet No. 45R with a proposed effective date of April 1, 1986. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning April 1, 1986, to be zero. In addition, Southern is filing Sixth Revised Sheet No. 45E to reflect its implementation of a revised methodology for the treatment of exchange imbalances as prescribed by the Commission's order of January 19, 1986, in Southern's Docket Nos. TA86–1–7–000 and TA86–1–7–002.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5349 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–2–9–004]

Tennessee Gas Pipeline Company, A Division of Tenneco, Inc.; Tariff Revisions

March 6, 1986.

Take notice that on February 24, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee),

tendered for filing the following revised tarrif sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective Janaury 1, 1986.

Substitute First Revised Sheet No. 20
Substitute First Revised Sheet No. 21
Substitute First Revised Sheet No. 22

Tennessee states that these tariff sheets are submitted in substitution of revised tariff sheets filed on January 29, 1986 in this proceeding and reflect the purchased gas adjustments accepted in this proceeding on December 31, 1985 and the dekatherm rates required by Opinion Nos. 240 and 240–A.

Tennessee requests that the Commission grant any waivers necessary in order to permit (1) the withdrawal of the tariff sheets submitted in its January 29, 1986 filing and (2) approval of the revised tariff sheets filed February 21, 1986 to be effective January 1, 1986.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5350 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–2–17–002 and TA85–4–17–007]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 28, 1986 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Substitute Seventy-seventh Revised Sheet No. 14
Substitute Seventy-seventh Revised Sheet No. 14A
Substitute Seventy-seventh Revised Sheet No. 14B
Substitute Seventy-seventh Revised Sheet No. 14C
Substitute Seventy-seventh Revised Sheet No. 14D

The above tariff sheets are being issued in compliance with Ordering Paragraph (F) of the Commission's order issued January 31, 1986 in Docket No. TA86–2–17–000,001 and TA85–4–17–003. The above tariff sheets implement the methodology adopted in the January 31, 1986 order for the treatment of imbalanced concurrent exchanges. The instant impact on rates of adoption of such methodology reflected in the above tariff sheets is an increase of $.0004/dth. In compliance with Ordering Paragraph (G) of the Commission's January 31, 1986 order there were enclosed worksheets including related accounting entries and explanations with respect to the adoption of the methodology.

In addition the above tariff sheets reflect a reduction in cost of gas purchased from one of Texas Eastern's major pipeline suppliers, Texas Gas Transmission Corporation (Texas Gas), below the level included in Texas Eastern's original filing of its February 1, 1986 Semiannual PGA in Docket No. TA86–2–17–000,001. On February 5, 1986, Texas Gas filed reduced rates to be effective February 1, 1986 reflecting their settlement rate reduction in Docket No. RP85–141. Texas Eastern proposes to amend its February 1, 1986 Semiannual PGA filing to reflect the reduced cost of gas from Texas Gas effective February 1, 1986.

The overall impact on rates reflected in the above tariff sheets, including the Texas Gas reduction and the increase due to concurrent exchange gas imbalances, is a net decrease consisting of components as follows: (1) $.243/dth decrease in Demand-1 rates, (2) $.0140/dth increase in Demand-2 rates, and (3) $.0124/dth decrease in the commodity component of sale rates.

The proposed effective date of the above tariff sheets is February 1, 1986.

Texas Eastern respectfully requests waiver of any of the Commission's Regulations deemed necessary to accept the above tariff sheets to be effective on February 1, 1986.

In compliance with Ordering Paragraph (H) of the January 31, 1986 order in Docket No. TA86–2–17–000,001 and TA85–4–17–003 there were enclosed additional supporting materials in order to enable Commission Staff to trace the deferred gas costs and surchage recoveries to the applicable subaccounts of Account No. 191.

Ordering Paragraph (E) of the January 31, 1986 order requires Texas Eastern to file revised tariff language to the extent necessary to conform its tariff to the adopted methodology for treatment of out-of-balance concurrent exchanges. Texas Eastern adopts the methodology required by the Commission for the treatment of imbalanced concurrent exchanged. Texas Eastern submits that its tariff is in conformance with the methodology and no tariff language revisions are necessary.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86–5351 Filed 3–11–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–4–42–000,001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

32nd Revised Sheet No. 5
13th Revised Sheet No. 6A

The above tariff sheets are issued pursuant to Transwestern's Purchased Gas Cost adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets is a decrease of $.3552/dth.

The rate change therein consists of:

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(1) A decrease in the Cost of Gas Adjustment of $.2073/dth based upon decreases in the projected gas costs; and

(2) A decrease in the Surcharge Adjustment of $.1479/dth due to a decrease in the balance in the Gas Cost Adjustment account as of December 31, 1986.

The proposed effective date of the above tariff sheets is April 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5352 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-53-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

1st Revised Sheet No. 76D
Original Sheet No. 76E

Proposed Changes

The above-referenced tariff sheets revise section 19 (Purchase Gas Adjustment) of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revision Volume No. 1. The revision is limited solely to the addition of a new § 19.8 (Adjustment to Rates Between Adjustment Dates for Changes in Seller's Average Cost of Gas Per Unit of Sales) which, if approved, would permit Transwestern, from time to time and at any time at its sole discretion, to adjust its jurisdictional rates between PGA Adjustment Dates to recognize the cost effect of a change in Transwestern's average cost of gas per unit of sales from the average cost of gas per unit of sales utilized in the immediately preceding Purchase Gas Adjustment filing.

Such adjustments shall be limited to the Cost of Gas Adjustment and may reflect either an increase or decrease in Transwestern's jurisdictional rates, provided however, that Transwestern shall be precluded from adjusting its jurisdictional rates, pursuant to the new Section 19.8, above the level established in Transwestern's immediately preceding Purchase Gas Adjustment filing.

The tariff sheets being filed require Transwestern to file such changes with the FERC at least one (1) day prior to the proposed effective date. Such filing will not be subject to either the posting requirements established by the Commission's Regulations or any filing fees. In addition, the proposed tariff sheets require Transwestern to demonstrate that its actions were appropriate under the circumstances and that it is entitled to recover the jurisdictional portion of under-recovered purchased gas costs which result from Transwestern's election to adjust its jurisdictional rates pursuant to the new § 19.8. In recognition that Transwestern is unable to control precisely its average cost of purchased gas, Transwestern's potential liability and such demonstration of appropriateness will be limited to amounts in excess of three percent (3%) of the jurisdictional portion of the Actual Cost of Gas Purchased during any PGA Adjustment Period that Transwestern elected to adjust its jurisdictional rates pursuant to the proposed tariff sheets.

The proposed effective date of the above tariff sheets is April 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5353 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-52-002]

Western Gas Interstate Co.; Filing of Substitute Tariff Sheets

March 6, 1986.

Take notice that on March 3, 1986, Western Gas Interstate Company ("Western") submitted for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Fourth Revised Sheet No. 10
First Revised Sheet No. 214.
First Revised Sheet No. 215.

The proposed effective date is February 1, 1986. Western refers to these tariff sheets as the "primary tariff sheets."

In the alternative, Western has submitted for filing the following tariff sheet:

Alternate Substitute Fourth Revised Sheet No. 10

The proposed effective date is also February 1, 1986. Western refers to this as the "alternate tariff sheet."

Both sets of tariff sheets affect only Western's rate under Rate schedule G-S.

Western states that its filing is designed to reflect the following events, which occurred after its original PGA filing in Docket No. TA86-1-52-000 was submitted on December 31, 1985: (1) The filing by Western's supplier El Paso Natural Gas Company ("El Paso") of a "standby charge" applicable to Western's purchases under El Paso's Rates Schedule ABD-S; (2) an increase in the GRI surcharge, effective January 1, 1986, as it applies to purchases from El Paso under Rate Schedule ABD-S; (3) El Paso's filing, on February 7, 1986, of tariff sheets to implement the Commission's orders in Docket No. TA86-133-005, with respect to unpaid accruals, the effect of which is to increase the ABD-S rate by 3.0¢ per MMBtu; and (4) imposition by the Commission of an "at risk" condition with respect to Western's purchases of low-priced gas from El Paso Gas Marketing Company ("Gas Marketing").

Western states that, because it is currently unable to recover transportation costs incurred with respect to its sales to Rate Schedule G-S and because its operating margin under Rate Schedule G-S is so small, it must have both the most accurate possible

cost of purchased gas and curent recovery of gas transportation costs. In this connection, Western states that it is currently bound by a recent rate case settlement in Docket No. RP84-77 not to file for an increase in its G-S margin until August 1, 1986 at the earliest. Western therefore states that it is in danger of being unable to recover its entire rate of return and a large portion of its fixed costs unless the Commission allows it to revise its PGA filing effective February 1, 1986 and to implement a temporary mechanism to recover transportation costs related to the purchase of low-priced gas. Western's projected "Temporary Transportation Cost Recovery Mechanism" is therefore proposed to be effective from February 1, 1986 until Western's general system rates are changed pursuant to either section 4 or section 5 of the Natural Gas Act.

Western's alternate tariff sheet, which is proposed only if the Commission is unable to accept the primary tariff sheets, reflects the elimination of any purchase of low-priced gas for sale under Rate Schedule G-S.

The projected rate under the primary tariff sheets is 326.41¢ per MMBtu. The projected rate under the alternate tariff sheet is 336.80¢ per MMBtu.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions. The filing is on file with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5354 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT86-3-000]

Wyoming Interstate Co., Ltd.; Proposed Changes in FERC Gas Tariff

March 6, 1986.

Take notice that Wyoming Interstate Company, Ltd., (WIC) on February 28, 1986, tendered for filing certain revisions to its FERC Gas Tariff, Original Volume No. 1. WIC states that the purpose of this filing is to make miscellaneous administrative update changes. No substantive changes are proposed. An effective date of April 4, 1986, is requested for the revised tariff sheets.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or Rule 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1986. Protestes will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5355 Filed 3-11-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 10 Through February 14, 1986

During the week of February 10 through February 14, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Merit Petroleum, Inc., 02/12/86; HRO-0174

Merit Petroleum, Inc. objected to a Proposed Remedial Order in which the Economic Regulatory Administration alleged that the firm violated the layering rule at 10 CFR 212.186 and the permissible average markup (PAM) provisions of §§ 212.182 and 212.183. In considering the firm's objections, the DOE first rejected Merit's arguments that the layering regulation was not validly promulgated and that DOE enforcement actions against crude oil resellers were discriminatory. In addition, the DOE found that Merit had not provided a tangible service which facilitated the movement of crude oil from the producer to the refiner or which provided some other function of economic benefit to the crude oil market, as required by the layering rule. The DOE also found that the PAM rule was procedurally and substantially valid and that the firm had failed to comply with the rule. Accordingly, the PRO was issued as a final Remedial Order, directing Merit to remit $46,744,277.90, plus interest, to the DOE.

Motion for Discovery

National Hydrocarbons Group, Inc., HRD-0164; National Hydrocarbons Resources, Inc., HRH-0164; Economic Regulatory Administration, 02/11/86; KRZ-0019

The Office of Hearings and Appeals issued a Decision and Order considering three motions filed in connection with a Statement of Objections to a Proposed Remedial Order issued to National Hydrocarbons Group, Inc. (Group) and National Hydrocarbons Resources Inc. (Resources). The OHA denied the firms' Motion for Discovery, which sought information on the Economic Regulatory Administration's audit of the firm, as well as contemporaneous construction and administrative record material concerning regulations involved in the PRO. The firm's Motion for Evidentiary Hearing was granted in part, permitting presentation of evidence on the relationship between Group and Resources. In addition, the firms were allowed to submit documentation on traditional and historical reseller services that they performed. The OHA also denied an ERA motion to place under seal arguably confidential business data obtained from Shell Pipeline Corporation, finding that ERA had failed to comply with a request to furnish information to support nondisclosure of the documents.

Refund Applications

Aminoil U.S.A., Inc./Dale McFarland D/B/A, Hank's LP Gas and Midstate Propane, 02/14/86; RF139-4

Dale McFarland filed an Application for Refund in which he sought a portion of the fund obtained by the DOE through a consent order entered into with Aminoil U.S.A., Inc. The DOE found that McFarland paid above-market average costs for the natural gas liquid products that he purchased from Aminoil and, using a three-step competitive disadvantage methodology, the DOE determined that McFarland should receive a refund of $182,714, representing $113,797 in principal and $68,917 in accrued interest.

Apco Oil Corporation/ Dave's Apco, et al., 02/12/86; RF83-31, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of refined petroleum products from Apco Oil Corporation. Each applicant sought a refund of less than $5,000 from the settlement fund obtained by the DOE through a consent order with Apco, and each applied for refunds based upon the small claims procedures outlined in the decision implementing Apco refund procedures. After

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examining the applications, the DOE concluded that each of the six firms should receive a refund, based on its volumetric per gallon refund amount. The total refund granted was $3,661 in principal and $1,249 in interest.

Apco Oil Corporation/Malone Oil Company, U-Pump-It of Kansas, 02/12/86; RF83-61; RF83-141

The DOE issued a Decision and Order concerning two Applications for Refund filed by purchasers of refined petroleum products from Apco Oil Corporation. Each applicant sought a refund of no greater than $5,000 from the fund obtained by the DOE through a consent order with Apco and each applied for refunds based upon the small claims procedures outlined in the decision implementing Apco refund procedures. The total refunds granted was $5,813 in principal and $1,982 in interest.

Farmers Union Central Exchange, Inc., 02/12/86; RF171-33

The DOE issued a Decision and Order concerning a claim for payment of a finally adjudicated entitlements exception relief receive order filed by Farmers Central Union Exchange, Inc. (Cenex). The DOE determined that the claim was meritorious, and directed that an interest-bearing escrow account in the amount of $1,183,608, be established for the purpose of providing restitution to Cenex.

Gulf Oil Corporation/Colvin's Glass Shop, et al., 02/10/86; RF40-00834, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by retailers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $18,245 consisting of $15,457 in principal and $2,788 in interest.

Gulf Oil Corporation/Lowe's Gulf Station, et al., 02/14/86; RF40-01097, et al.

The DOE issued a Decision and Order concerning 61 Applications for Refund filed by retailers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $71,477, consisting of $60,584 in principal and $10,913 in interest.

Gulf Oil Corporation/National Rent-a-Car System, 02/14/86; RF40-1539, RF 40-1540

The DOE issued a Decision and Order concerning two Applications for Refund filed by National Rent-A-Car System, a purchaser of Gulf Oil Corporation petroleum products. National applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, resellers were required to demonstrate that they would not have been required to pass through to customers a cost reduction equal to the refund claimed. The DOE determined first that the refueling fees National charged to its car rental customers were resales of covered products. The DOE then found that National did not make the required demonstration that it would not have been required to pass through a cost reduction to its customers equal to the refund claimed. Accordingly, its applications were denied.

Gulf Oil Corporation/The Pittsburg & Midway Coal Mining Co., 02/14/86; RF40-2654

The DOE issued a Decision and Order concerning an Application for Refund filed by The Pittsburg & Midway Coal Mining Co., claiming a portion of the consent order fund made available by Gulf Oil Corporation. The DOE found that Pittsburg, a wholly owned subsidiary of Gulf during the Gulf consent order period, was subsequently sold to Chevron U.S.A. Inc. The DOE determined that Pittsburg would not be entitled to receive a refund if it were still owned by Gulf, since such a refund would effectively inure to the consent order firm. The DOE concluded that since Gulf had no right to a refund in this proceeding, it had no right to a refund to transfer to Chevron. Accordingly, Pittsburg's refund application was denied.

Little America Refining Company/U.S. Oil Company, Inc., et al., 02/12/86; RF112-35, et al.

The DOE issued a Decision and Order concerning six Applications for Refund from a consent order fund made available by Little America Refining Company (Larco). The applicants were all purchasers of Larco products. Each of the applicants showed evidence of having sizable cost banks during the consent order period. In addition, price data submitted by the firms indicated that each was charged above market prices in its purchases of Larco product. The DOE therefore concluded that the applicants were injured, and granted each firm a refund corresponding to its full volumetric share based on its Larco purchases. The refunds granted in this proceeding total $170,229 in principal and $91,942 in interest.

Standard Oil Company (Indiana)/United Power Association, Arch Minerals Corp., 02/13/86; RF21-12564, RF21-12565, RF21-12566, RF21-12567

The DOE issued a Decision and Order concerning Applications for Refund filed by United Power Association and Arch Minerals Corp., two consumers of Standard Oil Company (Indiana) (Amoco) refined petroleum products. The claimants applied for refunds based on the procedures outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds totaling $5,844, including interest.

VGS Corporation/Miller Transporters, Inc., Defense Fuel Supply Center, 02/11/86; RF191-3, RF191-4

The DOE issued a Decision and Order concerning Applications for Refund filed by Miller Transporters, Inc. and Defense Fuel Supply Center (DFSC), end-users of petroleum products purchased from VGS Corporation/Southland Oil Company. Each applicant applied for a refund based on the procedures outlined in *VGS Corp.*, 13 DOE ¶ 85,165 (1985), governing the disbursement of settlement funds received from VGS pursuant to a 1981 consent order. Those procedures provided that end-users of VGS products need only supply the DOE with a record of their purchases of regulated products from VGS during the consent order period. Each applicant provided either exact gallonage totals or an accurate estimate of its purchases. The DOE therefore concluded that Miller should receive a refund of $11,381, including interest, and that DFSC should receive a refund of $129,499, including interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Bo's Gulf Service Center; RF40-1493
CPI, Inc.; KRR-0006
Dipietro's Gulf Service Station; RF40-89
ERA/Atlantic Richfield Company; KRS-0170
State of Tennessee; RF40-733

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
March 6, 1986.
[FR Doc. 86-5430 Filed 3-11-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G3145/T507, FRL-2979-5]

Diethatyl-Ethyl; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide diethatyl-ethyl and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire February 1, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the Federal Register of March 27, 1985 (50 FR 12078), announcing the establishment of temporary tolerances for residues of the herbicide diethatyl-ethyl and its metabolites (free and bound) determinable as the *N*-acetyl *N*-(2,6-diethylphenyl) glycine derivative in or on the raw agricultural commodities peppers at 1.0 part per million (ppm); carrots at 0.2 ppm, and celery at 0.1 ppm. These tolerances were issued in response to pesticide petition PP 4G3145, submitted by Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 45639-EUP-25, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The Scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions.

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire February 1, 1987. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981, (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: February 24, 1986.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.
[FR Doc. 86-4906 Filed 3-11-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0031
Title: Federal Crime Insurance Program, Crime Insurance Applications—Proof of Loss
Abstract: Application forms needed to provide Federal Crime Insurance policies, Proof of Loss required before claim can be paid.
Type of Respondents:
  Individuals or households
  Businesses or other for-profit
  Non-profit institutions
  Small businesses or organizations
Number of Respondents: 15,000
Burden Hours: 3,100

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1986.

Walter A. Girstantas,
Director, Administrative Support.
[FR Doc. 86-5306 Filed 3-11-86; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-058.

Title: Atlantic & Gulf/West Coast of South America Conference.

Parties:

Compania Chilena de Navigacion Interoceania, S.A.
Compania Peruana de Vapores
Compania Sud Americana de Vapores, S.A.
Lineas Navieras Bolivianas, S.A.M.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment provides that any party which fails to post its required security deposit (deposit) within 30 days of its membership or which fails to maintain its deposit shall have its voting rights suspended, and if, after 90 days from the date of suspension, its deposit is still deficient it shall automatically be expelled from membership.

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Agreement No.: 221–003368–003.
Title: Palm Beach Terminal Agreement.
Parties:
The Port of Palm Beach (Port)
Eastern Cement Corporation (Eastern)

Synopsis: The proposed amendment extends the time allowed Eastern to submit to the Port construction plans and specifications for a general cargo warehouse and other permitted improvements proposed to be constructed on the "Additional Demised Premises" leased by Eastern.

Agreement No.: 202–008900–033
Title: The "8900" Lines Agreement.
Parties:
Barber Blue Sea
A.P. Moller-Maersk Line
National Shipping Company of Saudi Arabia
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
United States Lines
Waterman Steamship Corporation
United Arab Shipping Company (S.A.G.)

Synopsis: The proposed amendment revises the voting provision (1) to provide that a vote of 2/3 of the parties entitled to vote shall be required for an adoption of any matter by telex, telephone or cable poll; and (2) to eliminate language which provided that a tie vote would be deemed to carry an action. In addition, a provision has been added to provide for confidential treatment of all matters considered by the parties.

Agreement No.: 212–009847–013.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would clarify the cargo pooling provision of the agreement to assure that cargo carried by the parties from Atlantic ports to the United States to ports in Brazil, shall be subject to the provision except cargoes loaded in U.S. Atlantic ports as "Alternate Coast Port Service" from and via U.S. Gulf Ports.

Agreement No.: 212–010382–006.
Title: Argentina/U.S. Gulf Ports Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Cylanco S.A.
Empresa Lineas Maritimas Argentinas S.A.
Reefer Express Lines Pty., Ltd.
Transportacion Maritima Mexicana S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would modify the agreement to (1) clarify the applicability of the pool accounting procedures to ensure that cargoes discharged at U.S. Atlantic Coast ports but carried to "Alternate Coast Service" to and/or via U.S. Gulf ports continue to be accounted for in the Gulf pool, and not the East Coast pool; and (2) provide that containerized pool cargoes freighted as minimum, lump-sum or unit rate shall have a carrying rate of 55% of the container's ocean freight revenue and cargoes transshipped from Uruguayan ports shall have a carrying rate of 95% of that cargoes' ocean freight revenue from November 15th, 1985 through December 31st 1986.

Agreement No.: 212–010320–010.
Title: Brazil/U.S. Gulf Ports Pooling Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
United States Lines (S.A.) Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. De Navegacion C.F.I.I.
Transportacion Maritima Mexican, S.A.
Cylanco S.A.

Synopsis: The proposed amendment would (1) clarify the applicability of the pool accounting procedures in order to ensure that intermodal movements of cargo destined for U.S. Gulf ports be included in the Gulf pool and not in the East coast pool; (2) account for the parties' minimum sailing obligation and (3) increase the forfeiture rate of an undercarrier.

Agreement No.: 212–010386–007.
Title: Argentina/U.S. Atlantic Coast Pooling Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Cylanco S.A.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.
Van Nievelt Goudriaan & Co.
Reefer Express Lines Pty., Inc.

Synopsis: The proposed amendment is designed to assure that cargoes which are destined to U.S. Gulf ports and which move via intermodal service continue to be accounted for in the separate Gulf pool, and not in the East Coast pool. The agreement modification increases the carrying rate for containerized cargo rated as minimum, lump sum or unit, and for cargoes transshipped from Uruguayan ports.

Agreement No.: 212–010388–005.
Title: U.S. Atlantic Coast/Argentina Agreement.
Parties: A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would modify the agreement to (1) clarify the applicability of the pool accounting procedures to ensure that cargoes loaded at U.S. Atlantic Coast ports but carried to "Alternate Coast Service" from and/or via U.S. Gulf ports shall be accounted for in the Gulf pool, and not in the East Coast pool, provided that such cargoes be accounted for in the U.S. Gulf Ports Agreement FMC No. 212–010389–005; and (2) provide that containerized pool cargoes freighted as minimum, lump-sum or unit rate shall have a carrying rate of 55% of the container's ocean freight revenue and cargoes transshipped to Uruguayan ports shall have a carrying rate of 95% of that cargoes' ocean freight. Each of the aforementioned modifications is applicable from the period November 15th, 1985 through December 31st, 1986. The proposed amendment would also make certain nonsubstantive changes to the language of the agreement.

Agreement No.: 212–010389–005.
Title: U.S. Gulf Ports/Argentina Pooling Agreement.
Parties:
United States Lines (S.A.) Inc.
Empresa Lineas Maritimas Argentinas S.A.
A Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would (1) clarify the pool accounting procedures in order to ensure proper accounting of cargoes moving via intermodal service or included in the Gulf pool instead of the East Coast pool; (2) amend Article 15 so that containerized cargo that is rated on a lump sum, minimum or unit basis is not rated on a manifested revenue for basis and (3) increase the carrying rate for containerized cargo rated as lump sum, minimum or unit basis and for cargoes transshipped from Uruguayan ports.

Agreement No.: 221–010695.
Title: Port of Seattle and Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui-O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Showa Line, Ltd. and Yamashita-Shinnihon Steamship Company, Ltd. Lease Termination Agreement
Parties:
Port of Seattle
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui-O.S.K. Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Yamashita-Shinnihon Steamship Company, Ltd.

Synopsis: The proposed agreement provides the terms and conditions for termination of Agreement Nos. T–3516–33(T) and T–3788 between the Ports of Seattle and Lines, pursuant to which the lines occupy Terminal 37. The parties have requested a shortened review period.

Agreement No.: 224–010696.
Title: Agreement and Lease Between the Maryland Port Administration and Moller Steamship Company, Inc./Maersk Line.
Parties:
Moller Steamship Company, Inc. (Maersk)
Maryland Port Administration (MPA)

Synopsis: The Agreement and Lease provide Maersk with 22.66 acres at Dundalk Marine Terminal for three years. Maersk will receive an annual tonnage discount based on the achievement of a guaranteed level of cargo through the terminal and will receive application of an Acreage Utilization Program differing from those contained in the MPA Terminal Services Tariff No. 9. The parties have requested a shortened review period.

Dated: March 7, 1986.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,
Assistant Secretary.

[FR Doc. 86–5395 Filed 3–11–86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Nova Enterprises, Ltd., et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact with Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Nova Enterprises, Ltd., 2234 Landmeier Road, Elk Grove Village, IL 60007
Officers: Lloyd L. Garrod, President; Nancy Dugan, Vice President; Maynard P. Flikkema, Vice President

Alaska Pacific Trading Company dba ALPAC, 800 First Avenue, Seattle, WA 98104,
Officers: Takayuki Someya, Chairman of the Board; Setsuo Kimura, President/Secretary; Hidehiko Tsuru, Vice President

Kathleen Tansey Riggs dba Tansey & Riggs, 22709 Aspan Street, #304–307, El Toro, CA 92630

IMCM (USA), Inc., 2617 Bensen Avenue, Brooklyn, NY 11214
Officers: Kathleen McDowell, Director/President, Joseph Zamalkany, Secretary/Treasurer

Trax Cargo (U.S.C.), Ltd., 76 Main Street, Champlain, NY 12919
Officers: Arthur S. Spiegel, President/Director; Margaret C. Spiegel, Secretary; Lawrence B. Weiner, Vice President/Director; William Solomon, Vice President/Director

Ramiro Pastor Antequera, 2116 33rd Avenue, Long Island City, NY 11106

By the Federal Maritime Commission.

Dated: March 7, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86–5339 Filed 3–11–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Apollo Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Apollo Bancorp, Inc.*, Apollo, Armstrong County, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Apollo Trust Company, Apollo, Pennsylvania.

2. *Progressive Bancshares, Inc.*, Lexington, Kentucky; to acquire 98.05 percent of the voting shares of The Anderson National Bank of Lawrenceburg, Lawrenceburg, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Piedmont BankGroup Incorporated*, Martinsville, Virginia; to acquire 100 percent of the voting shares of The First National Bank of Stuart, Stuart, Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Group, Inc.* (formerly Marion Bancshares, Inc.), Jasper, Tennessee; to acquire 100 percent of the voting shares of Fentress County Bank, Jamestown, Tennessee.

D. Federal Reserve Bank of St. Louis (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Banc System, Inc.*, Granite City, Illinois; to acquire 100 percent of the voting shares of American Heritage Bank of Granite City, Granite City, Illinois.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central of Kansas, Inc.*, and its subsidiary *Central of Kansas V., Inc.*, both of Junction City, Kansas; to directly and indirectly acquire 100 percent of the voting shares of The Farmers and Drovers National Bank, Marion, Kansas.

2. *First Bancshares of Muskogee, Inc.*, Muskogee, Oklahoma; to acquire 89 percent of the voting shares of First City Bank, N.A., Tulsa, Oklahoma.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Northwest Crossing Bancshares, Inc.*, Houston, Texas; to become a bank

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holding company by acquiring 100 percent of the voting shares of Northwest Crossing National Bank, Houston, Texas.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bonneville Bancorp Employee Stock Ownership Plan and Trust*, Provo, Utah; to become a bank holding company by acquiring 35.97 percent of the voting shares of Bonneville Bancorp, Provo, Utah.

Board of Governors of the Federal Reserve System, March 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5302 Filed 3-11-86; 8:45 am]

BILLING CODE 6210-01-M

Delaware National Bankshares Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve bank indicated or the offices of the Board of Governors not later than March 30, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Delaware National Bankshares Corp.*, Georgetown, Delaware; to engage *de novo* through its subsidiary, Delaware National Insurance Agency, Inc., Georgetown, Delaware, in the sale of general insurance, pursuant to § 225.25(b)(8)(ii) of Regulation Y. Company will engage in the business from each of the office locations of Delaware National Bank, Georgetown, Laurel, Rehobeth Beach, Fenwick Island and Ocena View, Delaware.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cullen/Frost Bankers, Inc.*, San Antonio, Texas; to engage *de novo* through its subsidiary, Cullen/Frost Discount Brokers, Inc., San Antonio, Texas, in providing discount securities brokerage activities restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or the provision of investment advice or research services, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5303 Filed 3-11-86; 8:45 am]

BILLING CODE 6210-01-M

Hamptons Bancshares Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The oganization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hamptons Banchares, Inc.*, East Hampton, New York; to acquire Island Computer Corporation, Bohemia, New York; and thereby engage in the processing of incoming and outgoing cash letters, DDA checking (which includes deposit sorting and posting) and account reconciliation, time deposit accounting, club accounting, and certain cerfificate of deposit accounting, which includes computation and posting of interest, pursuant to § 2255.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5304 Filed 3-11-86; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Bank, Ltd.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)((1) of the Board's Regulation Y (12 CFR § 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to commence or to engage de novo, either directly or

through a subsidiary, in a nonbanking activity that is listed in 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Ltd.*, Tokyo, Japan; to indirectly engage *de novo* through its subsidiary, Diamond Lease (U.S.A.) Inc., New York, New York, in leasing real property, and acting as agent, broker or adviser in leasing such property, pursuant to § 225.25(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5305 Filed 3-11-86; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

March 6, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before March 27, 1986.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports.

1. Report title: Government Securities Dealers Reports
Agency form number: FR 2004a, b, c, and d
OMB Docket number: 7100-0003
Frequency: Weekly, Daily, Semi-monthly
Reporters: Primary dealers in U.S. government securities
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a) and 248(i)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This group of reports submitted by Government Securities Dealers are used to collect daily positions, daily transactions, weekly financings and semi-monthly futures, forwards, and options data from the primary dealers in U.S. Treasury Securities.

2. Report title: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB Docket number: 7100-0069
Frequency: event-generated
Reporters: State member banks, Edge and Agreement corporations and bank holding companies
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615 and 1844) and is not given confidential treatment.

This report notifies the Federal Reserve Board of the opening, closing, or relocation of a foreign branch of state member banks, Edge and Agreement corporations, or bank holding companies. This information enables the Board to ensure the safety and soundness of the U.S. banking system.

3. Report title: Report of Broker Carrying Margin Accounts
Agency form number: FR 2240
OMB Docket number: 7100-0001
Frequency: Annually
Reporters: Brokers and Dealers
Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 78q) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report is used to insure compliance of brokers and dealers with Federal Reserve Margin Regulations on Security Credit as authorized by section 17 of the Securities Exchange Act of 1934.

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Board of Governors of the Federal Reserve System, March 6, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-5337 Filed 3-11-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Hematology and Pathology Devices Panel

Date, time, and place. April 24 and 25, 9 a.m., Rms. 703A–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public meeting, April 24, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, April 25, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 6757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before April 9 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss:

(1) The role of FDA in regulating generic devices such as monoclonal antibodies, special stains, etc., to identify populations and subpopulations of T and B lymphocytes,

(2) A reclassification petition for automated differential cell counters, and

(3) A reclassification petition for automated heparin analyzers.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

March 5, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–5298 Filed 3–11–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M–0066]

CooperVision, Inc.; Premarket Approval of the QwikCare ™ System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision, Inc., Mountain View, CA, for premarket approval, under the Medical Device Amendments of 1976, of the QwikCare ™ System for use with soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 11, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Geogia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On July 11, 1983, CooperVision, Inc., Mountain View, CA 94039, submitted to CDRH an application for premarket approval of the QwikCare ™ System. The QwikCare ™ System is a 3% hydrogen peroxide system consisting of the

QwikCare ™ Disinfecting Solution, the QwikCare ™ Rinsing and Neutralizing Solution, and the QwikCase ™ lens storage case. The QwikCare ™ System is indicated for chemical (not heat) disinfection and storage of extended wear and daily wear soft (hydrophilic) contact lenses.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the OwikCare System states that the system is indicated wear and daily wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant. Such labeling new users of soft contact lenses that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 ((21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information,[1] identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(g), 360j(b))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 5, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc 86–5296 Filed 3–11–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M–0449]

Ocumed, Inc.; Premarket Approval of Ocu-Disal Salt Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ocumed, Inc., Freeport, NY, for premarket approval, under the Medical Device Amendments of 1976, of Ocu-Disal Salt Tablets (250 milligram salt tablets) for use with soft (hydrophilic) contact lenses. Ocu-Disal Salt Tablets are intended for use in the preparation of 27.7 milliliters of normal saline (0.9 percent) solution to be used in heat disinfection of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 11, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On March 8, 1985, Ocumed, Inc., Freeport, NY 11520, submitted to CDRH an application for premarket approval of Ocu-Disal Salt Tablets (250 mg salt tablets). The device is indicated for use in the heat disinfection of soft (hydrophilic) contact lenses.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 5, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above), and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of Ocu-Disal Salt Tablets states that the solution prepared from the salt tablets is intended for use in heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter

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to the applicant. Such labeling informs new users of soft contact lenses that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details

Petitioners may, at any time on or before April 11, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 5, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-5297 Filed 3-11-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing Reconsideration of Disapproval of a California State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 23, 1986 in San Francisco, California to reconsider our decision to disapprove California State Plan Amendment 85–8.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by March 27, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement, and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether portions of California's plan which would permit use of community property laws in determinations of eligibility for medically needy aged, blind and disabled, and which would permit an income disregard of spousal and child support made under a court order or by agreement with a district attorney in determinations of eligibility for aged, blind and disabled medically needy, violate section 1902(a)(10)(C)(i)(III), 1902(a)(17)(B), 1902(a)(19), and 1902(a)(4) of the Social Security Act.

Community Property Laws

The Medicaid statute at section 1902(a)(10)(C)(i)(III) of the Social Security Act requries that States apply the same methodologies as are applied in the Supplemental Security Income (SSI) program in determining financial eligibility of medically needy aged, blind, or disabled individuals. SSI regulations at 20 CFR 416 specify the methodology which States must apply in determining what is income and how it affects eligibility.

SSI regulations at 20 CFR 416.1102 define income as ". . . anything you receive in cash or in kind that you can use for food, clothing or shelter . . ." SSI by statute is a Federal program with uniform eligibility standards and requirements. It uses nationwide rules to determine what income will be considered as the individual's and what income will be considered as the spouse's. For example, Federal requlations require that benefit payments made under title II of the Act be considered as income to the individual beneficiary, and not be transferred or assigned to any other individual. Medicaid follows SSI rules as required by law. The SSI policy does not provide for any special treatment of income in those States which have in effect community property laws. Since the California plan amendment would apparently consider community property rules in determining attribution of all incomes received by married individuals, without regard to the Federal rules and would count the income of each spouse as his/her interest (one-half) of their own income and one-half of the other spouse's income, it conflicts with SSI policies on counting income for purposes of establishing eligibility. Thus, HCFA has determined the California proposal violates section 1902(a)(10)(C)(i)(III) of the Act because the State proposes to apply its community property rules in determining ownership of income rather than the required SSI methods.

Section 1902(a)(17)(B) of the Act requires the State plan to provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient (and, with respect to the medically needy, as would not be disregarded in determining the individual's eligibility for the relevant cash assistance program).

Section 1902(a)(17)(B) of the Act has a two-fold purpose. First, it precludes a State from considering any income or resource which is not available. Second, it requires a State to consider as available, all income and resources which are determined, in accordance with the Secretary's regulations, to be available (unless the cash program rules require this income or resource be disregarded). Regulations at 42 CFR 435.831(a)(2) require States covering all SSI recipients to deduct amounts that would be deducted in determining SSI.

HCFA has determined the California amendment violates section 1902(a)(17)(B) of the Act since it would exclude income which the Secretary determines to be available (under SSI rules) to the individual (by considering it to be his spouse's), and which is not disregarded under that program.

Disregard of Support Payments

Under Medicaid statute at section 1902(a)(10)(C)(i)(III) of the Act, States such as California, are required to employ the same methodologies in determining income eligibility for medically needy individuals as are employed in the related cash assistance programs. Thus, with respect to aged, blind and disabled individuals, the State must use the same income disregards and definition of income as used in the Supplemental Security Income (SSI) program.

Under the SSI program, support payments of the type encompassed by California SPA No. 85–8 are not excluded from income. The regulations at 20 CFR 416.1102 define income as ". . . anything you (an individual) receive in cash or in kind that you can use for food, clothing, or shelter. . . ." Moreover, under 20 CFR 416.1123(b)(2), SSI even considers as available income, amounts which are withheld from the individual to make certain payments (e.g., amounts of income withheld because of a garnishment). Thus, income actually received, which is later used to make support payments is certainly considered to be available income and is not excluded elsewhere in the SSI statute or regulations. Accordingly, the Secretary has determined these amounts to be available income and this SSI determination is applicable to the medically needy under sections 1902(a)(10)(C)(i)(III) of the Act. Therefore, HCFA has determined that this provision violates section 1902(a)(10)(C)(i)(III) of the Social Security Act.

Under Medicaid statute at section 1902(a)(17)(B) of the Act, States are precluded from considering any income or resource which is not available and to consider as available all income and resources which are determined in accordance with regulations of the Secretary to be available (unless the cash program rules require this income or resource to be disregarded). Medicaid regulations at 42 CFR 435.831(a)(2) require States covering SSI recipients to deduct amounts that would be deducted under SSI. HCFA has determined California SPA No. 85–8 violates 1902(a)(17)(B) of the Act because it would disregard income which the Secretary determines to be available and which is not disregarded under SSI.

Furthermore, under Federal statute at section 1903(f) of the Act and implementing regulations at 42 CFR 435.1007, Federal financial participation (FFP) is not available to any individual whose income after specified deductions exceeds 133⅓ percent of the highest money payment that would ordinarily be made under the State's AFDC plan to a family of the same size without income or resources. The disregard as proposed in SPA 85–8 is not included as one of the disregards specified under these provisions. The FFP requirements are not a specific State plan requirement. However, by applying an income disregard not permitted under the FFP provisions, the State could provide Medicaid to individuals whose income would otherwise exceed the FFP limitation expressly cited at section 1903(f). In light of this, HCFA has determined approval of the proposed State plan amendment would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act. Further, HCFA has determined such approval would not be "consistent with simplicity of administration" as required under section 1902(a)(19) of the Act.

It should be noted that a recent court decision *Cabanski v. Heckler*, No. 85–7123 (9th Cir. Feb. 7, 1986) apparently construes the moratorium provisions of section 2373(c) of Pub. L. No. 98–369 to preclude the Secretary from disapproving State plan amendments which contain an income or resource standard or methodology that is less restrictive than the applicable cash assistance standard or methodology. However, with regard to the community property provision of California State Plan Amendment 85–8, HCFA does not believe that it is precluded from disapproving the amendment based upon the moratorium because the application of community property rules to the medically needy is more restrictive for some individuals and more liberal for other individuals and therefore is not protected by the "less restrictive" language of the moratorium. This is based on *Camacho v. Perales*, No. 85–7139, slip op. at 7145 (2nd Cir. Jan. 24, 1986) which concluded that the moratorium does not authorize a State to adopt a procedure which is in some aspects more restrictive and in some aspects more liberal than the relevant cash assistance methodology.

With regard to the disregard of support payments provision of California State Plan Amendment 85–8, apart from disagreeing with the decision, HCFA believes *Cabanski v. Heckler* should be limited to its facts. It involved a situation in which the court found that a California State plan amendment which provided for a medically needy income level for families composed of two adults set at 133⅓ percent of the AFDC payment level for a family of three was consistent with an HHS manual issuance and thus could not be disapproved. The court also held that the disapproval was contrary to the moratorium on certain HHS actions imposed by section 2373(c) of Pub. L. No. 98–369 (the Deficit Reduction Act of 1984). Since the court has already decided the issue of the approvability of the amendment by virtue of its construction of the effect of HHS manuals, its conclusion on the effect of the moratorium was dictum. HCFA believes the court's conclusion on the moratorium is limited to those situations where HHS unrepealed policy issuances would result in the approval of the amendment, because this was the factual context facing the court.

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Kenneth W. Kizer, M.D., M.P.H.,
Director, Department of Health Services,
714/744 P Street, Sacramento, California 95814.

Dear Dr. Kizer: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 85–8 was received on February 7, 1986. California State Plan Amendment 85–8 would permit use of community property laws in determinations of eligibility for medically needy aged, blind and disabled and would permit an income disregard of spousal and child support made under a court order or by agreement with a district attorney in determinations of eligibility for aged, blind and disabled medically needy.

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You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under title XIX of the Social Security Act. The issues to be considered are: 1) Whether California's proposal to permit use of community property laws in determinations of eligibility for medically needy aged, blind and disabled, violates section 1902(a)(10)(C)(i)(III) and 1902(a)(17)(B) of the Social Security Act, and 2) whether California's proposal to permit an income disregard of spousal and child support made under a court order or by agreement with a district attorney in determinations of eligibility for aged, blind and disabled medically needy violates sections 1902(a)(10)(C)(i)(III), 1902(a)(17)(b), 1902(a)(4) and 1902(a)(19) of the Social Security Act.

I am scheduling a hearing on your request to be held on April 23, 1986 in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date if not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Henry R. Desmarais, M.D.,

Acting Administrator.

National Institutes of Health

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee (BRRC), Division of Research Resources (DRR), March 20-22, 1986, 9:00 a.m., Conference Room 7, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 20 from 9:00 a.m. to approximately 11:00 a.m. during which time there will be comments by the Director, DRR, a status report on the Biomedical Research Technology Program, and a report on supercomputer activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 11:00 a.m. on March 20 until adjournment on March 22 for the review, discussion, and evaluation of individual research grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, MD 20892, (301) 496-5545, will provide a summary of the meeting and a roster of committee members upon request. Dr. Caroline Holloway, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B-41, National Institutes of Health, Bethesda, MD 20892, (301) 496-5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: February 28, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-5380 Filed 3-11-86; 8:45 am]

BILLING CODE 4140-01-M

Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, April 3-4, 1986, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on April 3 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. on April 3 until recess and on April 4 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A-03, National Institutes of Health, Bethesda, Maryland 20892 (302) 496-4903, will provide summaries of the meeting and rosters of committee members.

Dr. Catherine Henley, Review and Special Projects Officer, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A-08, National Institutes of Health, Bethesda, Maryland 20892 (301) 496-5561, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensor and Motor Disorders of Visual Research: National Institutes of Health)

Dated: February 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-5381 Filed 3-11-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Grazing Administration—Exclusive of Alaska; Grazing Fee for the 1986 Grazing Year

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of establishment of grazing fee for the 1986 grazing year.

SUMMARY: The Secretary of the Interior hereby announces that the fee for livestock grazing for the 1986 grazing year is $1.35 per animal unit month on public lands administered by the Bureau of Land Management.

EFFECTIVE DATE: March 1, 1986 through February 28, 1987.

ADDRESS: Any inquiries should be sent to: Director (220), Bureau of Land Management, Room 5626, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templton, (202) 653-9193.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order 12548 of February 14, 1986. The minimum fee level of $1.35 per animal unit month prescribed in Executive Order 12548 shall be collected in the 1986 grazing year. This action extends the grazing fee established for the 1985 grazing year, the last year of operation under the grazing fee formula established in the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.). The grazing fee for grazing year 1986 was originally determined by using the formula adopted in the Public Rangelands Improvement Act of 1978 as continued in Executive Order 12548. By using the formula in the Public Rangelands Improvement Act, with its minimum fee of $1.35 per animal unit month as the basis for the grazing fee for the 1986 grazing year, the Department of the Interior is preserving the status quo to maintain stability in the western livestock industry. Therefore, the grazing fee for grazing year 1986 is set at $1.35 per animal unit month.

It is hereby determined that the establishment of this grazing fee does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

J. Steven Griles,

Assistant Secretary of the Interior.

March 5, 1986.

[FR Doc. 86-5299 Filed 3-11-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[I-22265]

Realty Action: Sale of Public Land in Cassia County ID

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice of realty action, Sale of Public Land in Cassia County Idaho.

DATE AND ADDRESS: The sale offering will be held on Wednesday, May 21, 1986, at 1:30 p.m. at the Burley District Office, 200 South Oakley Highway, Burley, Idaho, 83318. Should no valid bids be received, the parcel will be offered every Wednesday through October 29, 1986, on which date this sale offering will be suspended.

SUMMARY: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

Parcel no.	Legal description	Appraised fair market value	Sale type
I-22265	T. 13 S., R. 28 E., B.M., sec. 25: SE¼NW¼ (40 acres).	$4,000	Competitive.

When patented, the lands will be subject to the following reservations:

Ditches and Canals, Oil and Gas, and Geothermal rights will be reserved to the United States Government.

Existing county road right-of-way held by Raft River Highway District and State Highway 81 right-of-way held by Idaho Department of Transportation.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

Sale Procedures:

The parcel will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Burley District Office located at Route 3, Box 1, 200 South Oakley Highway, Burley, ID 83318. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e. "Sealed bid—Public Land Sale I-22265—May 21, 1986"). If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

Bids must be submitted for at least fair market values and will constitute an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit must accompany each bid as well as an additional $50 non-returnable mineral conveyance processing fee. The filing fee and deposit must be paid by certified check, money order, bank draft or cashier's check. Bids will be rejected if accompanied by a personal check.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Sharon LaBrecque, Snake River Realty Specialist at (208) 678-5514.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: March 4, 1986.

John S. Davis,

District Manager.

[FR Doc. 86-5316 Filed 3-11-86; 8:45 am]

BILLING CODE 4310-GG-M

[CA 17814]

California; Exchange of Public and Private Lands in Riverside County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The bureau of Land Management's goal is to acquire 6,700 acres of the preserve. Other State or Federal agencies will acquire the remaining portion of the preserve. Within the preserve there are habitat and non-habitat areas for the fringe-toed lizards. The land acquired in this exchange is within a non-habitat area and will be used as a source of sand for the lizards' habitat areas. The public interest was well served through completion of this exchange. The land acquired in this exchange will be open to the operation of the public land laws and to the full operation of the United States mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to The Nature Conservancy on December 27, 1985, for the following described land under the Federal Land Policy Management Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 5 S., R. 6 E.,
  Sec. 4, W½NE¼NW¼SW¼, W½NW¼NW¼SW¼, W½NW¼SW¼SW¼, and E½SW¼SE¼SW¼.

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Comprising 20.00 acres of public land.

In exchange for these lands, the United States acquired the following described land from the Nature Conservancy:

San Bernardino Meridian, California

T. 3 S., R. 6 E.,
Sec. 36: E½SE¼SW¼ and SE¼.

Containing 160 acres, more or less, of non-Federal land.

Except those portions conveyed to the County of Riverside, for Thousand Palms Canyon road, by Deeds recorded May 15, 1961, as Instrument Nos. 41377, 41378, 41379, 41381 and 41382 of Office Records of Riverside County, California;

Also except from the SW¼SE¼ of said section, 1/16th of all coal, gas, and other mineral deposits, as reserved to the State of California, in Certificate of Purchase recorded July 30, 1926, in Book 26, page 288 of Deeds, Records of Riverside County, California;

Also except from the remainder of said Section, all oil, gas, shale, coal, phosphate, sodium, gold, silver, and all other mineral deposits contained in said lands, and further reserving to the State of California, persons authorized by the State, the right to drill for and extract such deposits of oil and gas, and to prospect for, mine and remove such deposits of other minerals from said lands, and to occupy and use so much of the surface as may be required therefor, upon compliance with the conditions, and subject to the provisions and limitations of Chapter 5, Part 1, Division 6 of Public Resources Code, as reserved in the Patent from the State of California, recorded May 6, 1948, as Instrument No. 653, in Book 906, page 498, of Official Records of Riverside County, California.

T. 4 S., R. 6 E.,
Sec. 1: Lot 1 of NE¼ and Lot 1 of NW¼;

Containing 160 acres, more or less, of non-Federal land.

Except that portion in the 88.00 foot wide strip of land, conveyed to the County of Riverside, for Thousand Palms Canyon Road, by Deed recorded May 15, 1961, as Instrument No. 41383 of Official Records of Riverside County, California.

T. 4 S., R. 7 E.,
Sec. 6: Lot 1 of NE¼, the W½ Lot 2 of NW¼, the NW¼NE¼SE¼, and E½NE¼NW¼SE¼.

Containing 138.02 acres, more or less, of non-Federal land.

Except any portion within the 80.00 foot wide right-of-way, for an aqueduct road; the 50.00 foot wide right-of-way, for a transmission line, and the 80.00 foot wide right-of-way, for an aqueduct road, granted to the Metropolitan Water District of Southern California, by an Act of Congress approved June 18, 1932 (Ch. 270, 47 Stat. 324), as shown on the Maps of definite location thereof, approved by the Secretary of the Interior, May 2, 1933, and December 2, 1933;

Also except all oil and gas, together with the right to prospect for, mine and remove same, as reserved in the Patent from the United States of America, recorded April 8, 1964, as Instrument No. 43480 of Official Records of Riverside County, California.

The values of the public land and non-Federal lands in this exchange are equal.

At 10 a.m. on April 14, 1986, the non-Federal lands described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 14, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on April 14, 1986, the non-Federal lands described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: March 4, 1986.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86–5319 Filed 3–11–86; 8:45 am]

BILLING CODE 4310-40-M

Designation of Sand Mountain Recreation Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of Sand Mountain Recreation Area and establishment of supplemental rules at Sand Mountain Recreation Area.

SUMMARY: Pursuant to the authority of 43 CFR Part 8352 and the Nevada Delegation of Authority 1203, I have designated the public lands in the following described area, the Sand Mountain Recreation Area:

LANDS INVOLVED

Township	Range	Meridian	Sec.	Subdivision	Acres
16 N.	32 E.	Mount Diablo	4	Lots 1,2,3,4, inclusive	184.12
				SW¼ of NE¼	40
				S½ of NW¼	80
				N½ of SW¼	80
				SW¼ of SW¼	40
			5	Lots 1,2,3,4, inclusive	184.49
				S½ to N½	160
17 N.	32 E.	Mount Diablo	15	S½ of S½	160
			16	SE¼ of SE¼	40
			20	SE¼	160
			21	A11	640
			22	W½	320
				NE¼	160
			28	A11	640
			29	A11	640
			32	A11	640
			33	A11	640
Total acreage					4,808.61

The area aggregates approximately 4808.61 acres, all of which are public lands managed by the Bureau of Land Management in Churchill County, Nevada.

EFFECTIVE DATE: February 4, 1986.

Pursuant to the authority of 43 CFR Part 8365, and the Nevada Delegation of Authority 1203, I am establishing the following supplementary rules in connection with recreational use of the Sand Mountain Recreation Area:

1. Unless otherwise excepted by the authorized officer: All motorized vehicles utilizing the Sand Mountain Recreation Area are required to have a florescent orange "whip flag", a minimum of 25 square inches in size, which extends ten feet above the height of the vehicle, to provide extra visibility and warning to other recreationists. The only exception to this rule is vehicles on improved maintained roads and in camping zones within the management area boundaries.

2. Unless otherwise excepted by the authorized officer: Discharge or use of firearms within the confines of the Sand Mountain Recreation Area is prohibited.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas J. Owen, District Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701 (702) 882–1631.

Dated: February 24, 1986.

Thomas J. Owen,

District Manager, Carson City, Nevada.

[FR Doc. 86–5317 Filed 3–11–86; 8:45 am]

BILLING CODE 4310-HC-M

[U–43465–N]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–43465–N for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from November 1, 1985, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U–43465–N as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hedley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–5327 Filed 3–11–86; 8:45 am]

BILLING CODE 4310-DQ-M

Joint Meeting of Fairbanks and Anchorage District Advisory Councils: Cancellation

The joint meeting of the Advisory Councils of the Fairbanks and Anchorage Districts of the Bureau of Land Management, scheduled to be held in the auditorium of Fairbanks' Noel Wien Memorial Library on Tuesday, March 11 and Wednesday, March 12, 1986 has been cancelled. Major topics of discussion were to cover the organizational structure of the Bureau of Land Management/Alaska and future BLM programs in Alaska.

For additional information contact the Bureau of Land Management, Public Affairs Office, 1541 Gaffney Road, Fairbanks, Alaska 99703, telephone (907) 356–2345.

John R. Barnes,

Acting District Manager, Fairbanks District Office.

[FR Doc. 86–5328 Filed 3–11–86; 8:45 am]

BILLING CODE 4310-JA-M

California and Nevada Research Natural Area; Correction

SUMMARY: The notice published in the **Federal Register** Vol. 49, No. 213 p. 44026, November 1, 1984, concerning the designation of the Lassen Red Rocks Scenic Area, contained an error in the public land description. The Lassen Red Rocks Scenic Area land description is hereby corrected to read as follows:

Township	Range	Meridian	Sec.	Subdivision	Acres
LASSEN COUNTY, CALIFORNIA					
24 N.	18 E.	Mount Diablo	30	SE¼, E½ of SW¼	240
				31NE¼, E½ of NW¼	240
				N½ of N½ of SE¼	40
Total					520
WASHOE COUNTY, NEVADA					
24 N.	18 E.	Mount Diablo	29	W½ of SW¼	80
			30	Lots 3,4 inclusive	36.28
			31	Lots 1, 2, 3 inclusive	42.12
			32	Lot 4 inclusive	45.98
				SW¼ of NW¼	40
				NW¼ of SW¼	40
Total					284.38
Grand total California and Nevada					804.38

The area aggregates approximately 804.38 acres, all of which are public lands managed by the Bureau of Land Management in Lassen County, California and Washoe County, Nevada.

FOR FURTHER INFORMATION CONTACT: Thomas J. Owen, District Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, (702) 882–1631.

Dated: February 24, 1986.

Thomas J. Owen,

District Manager, Carson City, Nevada.

[FR Doc. 86–5318 Filed 3–11–86; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection:

The proposed information collection is for use by the Commission in connection with investigation No. 332–135 for the quarterly preliminary report on U.S. production of selected synthetic organic chemicals, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposal

(1) Number of forms submitted: One
(2) Title of form: Preliminary Report on U.S. Production of Selected Synthetic Organic Chemicals (Including Synthetic Plastics and Resins Materials)
(3) Type of request: Extension
(4) Frequency of use: Quarterly
(5) Description of respondents: Firms manufacturing selected synthetic organic chemicals in the United States
(6) Estimated number of respondents: 236

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(7) Estimated total number of hours to complete the forms: 944

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 523-0334. Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable and describing the problem in detail. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB on your intent within 2 weeks of the date this notice appears in the Federal Register. Ms. Picoult's telephone number is (202) 395–7231. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: March 7, 1985.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 86–5407 Filed 3–11–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–308 Through 310 (Preliminary)]

Certain Butt-Weld Pipe Fittings From Brazil, Japan, and Taiwan

AGENCY: International Trade Commission

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations No. 731–TA–308 through 310 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Japan, and Taiwan of carbon steel butt-weld pipe and tube fittings, under 14 inches (inside diameter), provided for in item 610.88 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by April 10, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–523–0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on February 24, 1986, by the U.S. Butt-Weld Fittings Committee.

Participation in the investigations.—Persons wishing to participate in these investigations are parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m. on March 20, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–523–0104) not later than March 17, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before March 24, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary of the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 3, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–5408 Filed 3–11–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–282 (Final)]

Candles From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–282 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of candles of petroleum wax, provided for in item 755.25 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before April 28, 1986, and the Commission will make its final injury determination by June 18, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–523–7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of Candles from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 4, 1985, by the National Candle Association, Arlington, Virginia. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 45172, Oct. 30, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on April 23, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 13, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 6, 1986. All persons desiring to appear at the hearing and make oral presentations should file perhearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 30, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 6, 1986.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 16, 1986. In addition, any person who has not entered an appearnace as a part to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 16, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 6, 1986.

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By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-5409 Filed 3-11-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-278, 279, and 280 (Final)]

Certain Cast-Iron Pipe Fittings From Brazil, Korea, and Taiwan

AGENCY: International Trade Commission.

ACTION: Clarification of the scope of final antidumping investigations.

EFFECTIVE DATE: January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202-523-0620), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission published notice in the **Federal Register** of the institution of the subject final antidumping investigations. Subsequently, we have received inquiries as to whether imports of cast-iron pipe fittings that were destined to be threaded, and that were imported under item 610.70 of the Tariff Schedules of the United States (TSUS), were within the scope of our investigations. We wish to clarify that the products covered by these investigations are certain malleable cast-iron pipe fittings, not of alloy cast-iron, whether or not advanced in condition by operations or processes (such as threading) subsequent to the casting process, other than groove-lock, as provided for in TSUS items 610.70 and 610.74. This description of the products covered by our investigations complies with the scope of the investigations being conducted by the Department of Commerce .

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 7, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-5410 Filed 3-11-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-235]

Certain Human-Powered Vehicles With Combination Steering, Braking, and Propulsion Means; Decision Not to Review an Initial Determination Amending Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Amendment of complaint and notice of investigation.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) amending the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

ON December 30, 1985, complainant Nashville Diversified, Inc., filed a motion (Motion No. 235-1) to amend the complaint and notice of investigation to allege infringement of claims 2, 3, 5, 12, and 35-38 of U.S. Letters' Patent No. 3,663,038. The presiding administrative law judge issued an ID granting the motion on January 29, 1986. No petitions for review of the ID were filed nor were any comments received from Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information in this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-5411 Filed 3-11-86; 8:45 am]

BILLING CODE 7020-02-M

[Docket No. Investigation No. 337-TA-225]

Certain Multi-Level Touch Control Lighting Switches; Decision Not to Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating a respondent on the basis of a settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an ID terminating respondent Leviton Manufacturing Co., Inc. (Leviton), in the above-captioned investigation. On December 19, 1985, complainant Southwest Laboratories, Inc., and respondent Leviton filed a joint motion (Motion No. 225-8) to terminate Leviton as a respondent in the above-captioned investigation on the basis of a settlement and licensing agreement. The presiding administrative law judge issued an ID (Order No. 12) granting the motion for termination on January 28, 1986.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 523-1638.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 C.F.R. 210.53). Notice of the ID was published in the **Federal Register** of February 6, 1986 (51 FR 4662). No petitioner for review of the ID were received, nor were any comments received from other Government agencies or the public.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 28, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-5412 Filed 3-11-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-147]

Certain Papermaking Machine Forming Sections for the Continuous Production of Paper and Components Thereof; Decision To Review Initial Determination and Schedule for Filing of Written Submissions on Violation and on Relief, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority

The authority for the Commission's disposition of this mater is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53—.56 of the Commission's Rules of Practice and Procedue (19 CFR 210.53—.56).

FOR FURTHER INFORMATION CONTACT: Charles Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTARY INFORMATION: On May 2, 1983, the U.S. International Trade Commission instituted an investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), upon the complaint of Beloit Corporation, 1 St. Lawrence Avenue, Beloit, Wisconsin 53511. Complainant alleged unfair methods of competition and unfair acts in the importation of certain papermaking machine forming sections for the continuous production of paper and components thereof into the United States, or in their sale, by reason of alleged (1) direct infringement, and (3) induced infringement of claims 1, 2, 3, 4, 7, 8, 10, 11, and 12 of U.S. Letters Patent 3,726,758. Complainant further alleged that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Named as respondents were the following companies: Valmet Oy of Helsinki, Finland and TVW Paper Machines, Inc., of Atlanta, Georgia.

On February 14, 1984, the presiding Commission administraive law judge issued an ID that there is no violation of section 337 of the Tariff Act of 1930 in the unauthorized importation and sale of certain papermaking machine forming sections for the continuous produciton of paper, and components thereof. Complainant and respondents filed petitons for review of various parts of the ID, pursuant to § 210.54(a) of the Commission's rules. Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission on March 15, 1984, determined not to review the ID as to the issue of noninfringement. The Commission took no position as to the other issues in the ID.

On April 2, 1985, the U.S. Court of Appeals for the Federal Circuit issued its mandate reversing the Commission's determination of no violation of § 337 and remanding the case to the Commission for "further appropriate proceedings."

Both complainant and respondents had petitoned for review of various parts of the initial determination pursuant to § 210.54(a) of the Commission's rules. Because the Commission took no position on these matters in its earlier determination, they are now again before the Commission for consideration and decision. After examining the petitions for review and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following questions:

1. Whether U.S. Letters Patent 3,727,758 (the '758 patent) is invalid by virtue of anticipation within the meaning of 35 U.S.C. 102. Specifically, the Commission is reviewing *only* those portions of the ID concerning anticipating of the '758 patent by U.S. Letters Patent 3,232,825 (Robinson).

2. Whether the '758 patent is invalid as obvious within the meaning of 35 U.S.C. 103.

3. Whether complainant's domestic activities with respect to the '758 patent constitute an "industry, . . . in the United States" within the meaning of section 337. In reviewing this portion of the ID, the Commission is concerned only with those findings of fact and conclusions of law relating to the level of complainant's domestic activity and not with those portions of the ID which concern specific cost allocations or methods thereof. Specifically, the Commission will not review the findings of fact concerning dollar amounts and percentages attributed to complainant's various activities. Further, the Commission has determined not to review the findings of fact which concern complainant's representations on the question of continued commitment to overall domestic operations.

4. Whether the importation or sale of respondent's devices has the tendency to destroy or substantially injure an industry in the United States.

If the Commission finds that a violation of § 377 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of § 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written submission

While the Commission has determined that no hearing will be held in this investigation, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the legal issues under review and on the issues of relief, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of relief, the public interest, and bonding.

Written submissions on the issues under review must be filed within 14 days of the date of publication of this

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notice in the **Federal Register**, and submissions on relief, the public interest, and bonding must be filed no later than 21 days after the publication date. Reply submissions on the issues under review and on relief, the public interest, and bonding must be filed not later than 28 days after the publication date.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of May 11, 1983 (48 F. 21213).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202.–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: March 4, 1986.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 86–5413 Filed 3–11–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–233]

Certain Pharmaceutical Closures; Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination amending the complaint and notice of investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) (Order No. 5) issued by the residing administrative law judge (ALJ) in the above-captioned investigation granting complaint West Company's motion to amend the complaint and notice of investigation to substitute Schubert Seals A/S for Bridana ApS, as a party respondent.

FOR FURTHER INFORMATION CONTACT: Carolyn Galbreath, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's rules (19 CFR 210.53).

On November 8, 1985, the Commission voted to institute the investigation and named as one of the respondents Bridana ApS., a manufacturer of pharmaceutical closures imported and sold by Tompkins Seals, Inc., and Tompkins Rubber Co., the other named respondents. On December 16, 1985, Schubert Seals A/S, successor to Bridana, responded to the notice of investigation and complaint. On January 10, 1986, complainant West Company filed a motion to amend the complaint and notice of investigation to substitute Schubert Seals A/S as a party respondent for Bridana ApS.

On January 29, 1986, the presiding ALJ issued an ID granting the motion to amend. No petitions for review of the ID or Government agency comments were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: March 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–5414 Filed 3–11–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–231]

Certain Soft Sculpture Dolls, Popularly Known as "Cabbage Patch Kids," Related Literature and Packaging Therefor; Determination Not To Review Initial Determination Finding Four Respondents in Default and Imposing Procedural Sanctions

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) finding four respondents in default.

SUMMARY: The Commission has determined not to review an ID (Order No. 10) of the presiding administrative law judge (ALJ) that finds respondents John and Jane Doe Murrell, d/b/a Murrell Marketing, Japan Instruments Corp., and Household Merchandising, Inc. in default and imposes procedural sanctions.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: By Order No. 8, the above-named respondents were ordered by the ALJ to show cause why they should not be held in default. None of the respondents in question responded to this order. On January 27, 1986, the ALJ issued an ID (Order No. 10) finding those respondents in default. The ALJ also ordered that those respondents had waived their rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petition for review was filed, nor were comments on the ID received from any Government agency.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: March 3, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–5414 Filed 3–11–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–64 (Sub-2A)]

Special Temporary Authority Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: At 45 FR 37912, June 5, 1980, the Commission proposed to add categories of factual situations to be handled by the special temporary authority procedures adopted in Ex Parte No. MC–64 (Sub-No. 2). These appeared to be recurrent problems where a need for service had consistently been found under 49 U.S.C. 10928. The action was proposed so that the Commission could react to the special situations in a more efficient and timely manner. The Commission has now decided against creating new categories of "emergency" situations in addition to the five that now can be handled under General Temporary Order (GTO) No. 22, adopted in Ex Parte No. MC–64 (Sub-No. 2), 45 FR 40680 (1980). Existing ETA procedures can handle adequately the emergency situations originally addressed in this proceeding.

FOR FURTHER INFORMATION CONTACT:

Paul Grossman, (202) 275–7976

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, DC 20423; or call toll free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

This action will not affect significantly either the quality of the human environment or the conservation of energy resources.

The subjects involved in this proceeding are: Motor Carriers; Temporary Authority.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10928 and 10321 and 5 U.S.C. 553.

Decided: March 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–5372 Filed 3–11–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. Specifically, Miron Inc. resigned from the Association effective January 3, 1986, and Rinker Portland Cement Corporation has resigned from the Association. In addition, C–E Raymond became a "Participating Associate" effective January 9, 1986. Accordingly, at present the members of the PCA are:

Aetna Cement Corporation
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Dragon Products Company
General Portland Inc.
Genstar Cement Company
Hawaiian Cement
Ideal Basic Industries, Cement Division
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Ltd.
Independent Cement Corporation
Lake Ontario Cement Limited
Lehigh Portland Cement Company
Lone Star Industries, Inc.
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

C–E Raymond
Holderbank Consulting, Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F.L. Smith and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 FR 5015 (1985).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–5340 Filed 3–11–86; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

[Order No. 1129–86]

President's Commission on Organized Crime: Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of the President's Commission on Organized Crime. This notice also set forth a summary of the agenda for the meeting, together with an explanation of why the meeting will be closed to the public. Notice of this meeting is required by the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 10(a)(2).

DATE: March 24, 1986, 9:00 a.m.—5:00 p.m. (closed meeting).

ADDRESS: President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, DC 20005; (202) 786–3500.

SUPPLEMENTARY INFORMATION: The closed meeting will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described in the Commission's final

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report. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the content of the information they made available to the Commission were to be made public. Pursuant to the authority vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(5), 552b(c)(7)(C), 552b(c)(7)(D), and 552b(c)(7)(F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of other issues specifically concerning the Commission's final report. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by U.S.C. 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

Dated: March 6, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-5331 Filed 3-11-86; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Department of Labor, BLS, Steven Newell, Telephone (202) 272-3470. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, D.C. 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Log and Summary of Occupational Injuries and Illnesses/Supplementary Record of Occupational Injuries and Illnesses/A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses/Recordkeeping Guidelines for Occupational Injuries and Illnesses.

1220-0029; OSHA No. 200; OSHA No. 101; BLS Recordkeeping Guidelines

Recordkeeping

Businesses or others for profit; farms (except those with fewer than 11 employees); non-profit institutions; prenotified small businesses and organizations; and prenotified businesses and organizations in low hazard industries; State and local governments as directed by individual State law.

5,420,000 recorded cases of injuries and illnesses; 479,900 burden hours for entry of cases. Two forms are supplemented by the recordkeeping guidelines: The Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200; and The Supplementary Record of Occupational Injuries and Illnesses, OSHA No. 101.

Submitted for approval are the OSHA Form Nos. 200 and 101, and the revised BLS recordkeeping guidelines for occupational injuries and illnesses. The information contained in the recordkeeping guidelines explains the requirements of the Occupational Safety and Health (OSH) Act of 1970 and 29 CFR Part 1904 for recording and reporting occupational injuries and illnesses. Records of job-related injuries and illnesses are necessary for carrying out the purposes of the OSH Act. They provide a basis for a statistical program which produces estimates of the Nation's injury and illness experience. The estimates are used by the Occupational Safety and Health Administration (OSHA) in directing the agency's efforts and allocating scarce resources, and are helpful to employers, employees, and others in identifying factors which cause workplace injuries and illnesses.

In July, 1984, a draft of the guidelines was submitted to OMB and made available to the public for comment. On July 17, 1985, a revised draft of the guidelines was published in the **Federal Register** (along with a new abbreviated version for small employers and others on site), 50 FR 29102, with a 90 day public comment period. During this period, BLS participated in a series of meetings involving several hundred representatives of employers, trade associations, unions, and others. Meetings on the guidelines were also held with the impacted Federal agencies and the Bureau's Business and Labor Research Advisory Committees.

Signed at Washington, D.C., this 6th day of March 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-5281 Filed 3-11-86; 8:45 am]

BILLING CODE 4510-23-M

Pension and Welfare Benefits Administration

[Application No. D-2834]

Withdrawal of the Proposed Exemption Involving Central States, Southeast and Southwest Areas Pension Fund Located in Chicago, IL

In the **Federal Register** dated December 4, 1981 (46 FR 59334), the Department of Labor published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned certain transactions relating to the independent management of the assets of the Central States, Southeast and Southwest Areas Pension Fund in Chicago, Illinois.

The applicant has requested that the exemption application be withdrawn.

Accordingly, the notice of pendency is hereby withdrawn.

Signed at Washington, DC, this 3rd day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations.

[FR Doc 86-5280 Filed 3-11-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-30; Exemption Application No. D-3613 et al.]

Grant of Individual Exemptions; First Hawaiian Bank et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

First Hawaiian Bank (FHB) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 86-30; Exemption Application No. D-3613]

Exemption

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between FHB and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by FHB provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of FHB who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and FHB involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to FHB with regard to such sales, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of FHB, causes a transaction to be make with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. FHB shall maintain for the duration of any Mortgage or Participation Interest which is sold to the Plans pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) Effective January 1, 1975, the restrictions of section 406(a) of the Act and sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to the Plan by virtue of providing services to the Plan (or whc has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46193.

Notice to Interested Persons: The applicant has represented that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by December 12, 1985. Interested persons were informed that they had until January 20, 1986 to comment with

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respect to the proposed exemption. No comments were received by the Department.

For Further Information Contact: Ms. Jan Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Roland Land Investment Co., Inc., Money Purchase Pension Plan and Roland Land Investment, Co., Inc. Profit Sharing Plan (the Plans) Located in Encino, California

[Prohibited Transaction Exemption 86-31; Exemption Application Nos. D-4952 and D-4953]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(b)(1) (A) through (E) of the Code, shall not apply to the proposed sale of second deeds of trust to the Plans by Roland Land Company (the Employer), to the guarantee by the Employer to repurchase any second deeds of trust which are in default and the repurchase by the Employer of such second deeds of trust, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 30, 1985 at 50 FR 53216.

Temporary Nature of Exemption

The exemption is temporary and will expire 5 years after the date of grant. Should the Employer wish to continue to sell second deeds of trust to the Plans beyond the 5 years period, the Employer may submit another application for exemption. Repurchase of second deeds of trust by the Employer may take place after the 5 year period provided the second deeds of trust were purchased by the Plans during the 5 year period.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

R.A. Gray & Company Retirement Plan (the Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 86-32; Exemption Application No. D-5297]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued leasing beyond June 30, 1984 of certain parcels of real property by the Plan to R.A. Gray & Company, provided all of the terms of the proposed leases are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: This exemption is effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50362.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Industrial, Production and Maintenance Health and Welfare Trust Fund (the Plan) Located in Riverside, California

[Prohibited Transaction Exemption 86-33; Exemption Application No. L-6262]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act shall not apply to the cash purchase of a certain unimproved parcel of real property by the Plan from Building Corporation of Laborers' Local 1184, a non-profit corporation solely owned by Laborers' International Union of North America, Local No. 1184, a party in interest with respect to the Plan, provided that the terms and conditions of the purchase are no less favorable to the Plan than those obtainable in a like transaction between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2603.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Robert P. Padousis, D.D.S., Constantine Kaminaris, D.D.S., P.A. Defined Benefit Pension Plan and Trust (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 86-34; Exemption Application No. D-6328]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a certain parcel of real property (the Property) by the Plan to Robert P. Padousis, D.D.S., a party in interest with resepct to the Plan, provided that the sale price of the Property is not less than the higher of either the sum of $62,[illegible] or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 30, 1985, at 50 FR 53220.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Northeast Georgia Pediatric Group Self-Employed Retirement Plan (the Plan) Located in Gainesville, Georgia

[Prohibited Transaction Exemption 86-35; Exemption Application No. D-6396]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a parcel of real property (the Property) to Dr. Larry Morris, a disqualified person with respect to the Plan, by this separate account in the Plan for the greater of $50,000 or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2607.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Charles G. Rogers, M.D., P.C. Target Benefit Plan and Trust (the Plan) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 86-36; Exemption Application No. D-6468]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of 18,562 shares of the common stock of American Folks, Inc. to Charles G. Rogers, M.D., a fiduciary and party in interest with respect to the Plan, for cash in the amount of $35,000, provided that such amount is not less than the fair

market value of the shares on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2611.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8194. (This is not a toll-free number.) National Bank of Alaska (NBA) Located in Anchorge, Alaska

[Prohibited Transaction Exemption 86-37; Exemption Application No. D-6493]

Exemption

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to certain transfers of mortgage loans represented by deeds of trust by NBA to the Alaska Carpenters Pension Plan (the Carpenters Plan) and the Alaska Electrical Pension Plan (the Electricians Plan) and to certain executions of certain participation certificates in mortgage loans by NBA in favor of the Carpententers Plan and the Electricians Plan that took place in 1975. The deeds of trusts and participation certificates represent interests in morgage loans secured by multi-family residential or commercial real property. Section I of this exemption is conditioned upon the satisfaction of the following:

A. Such transfer of a mortgage or execution of participation certificate was expressly approved by a fiduciary independent of NBA who has authority to manage or control the assets of the Carpenters or Electrician Plans which were invested in a mortgage or participation certificate.

B. The terms of all transactions between the Carpenters and Electricians Plans and NBA involving the mortgages or participation certificates were not less favorable to those plans than the terms generally available in arm's length transaction between unrelated parties.

C. The Carpenters and Electricians Plans paid no investment management, advisory, underwriting fee or sales commission or similar compensation to NBA with regard to such transfer of mortgages or execution of participation certificates.

D. The decision to invest in a mortgage or participation certificate was not part of an arrangement under which a fiduciary of a plan, acting with the knowledge of NBA, caused a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Carpenters or Electricians Plans.

E. NBA shall maintain for the duration of any mortgage or participation certificate which was transferred to, or executed in favor of, the Carpenters or Electricians Plans records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Carpenters or Electricians Plans during normal business hours by: any trustee, investment manager, employer of plan participants, employee organization whose members are covered by a plan, participant or beneficiary of a plan.

(II) The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (D) of the Code shalll not apply to the proposed sale by the Alaska Teamsters Pension Plan (the Laborers Plan) to NBA of certain mortgages or participation certificates described in the notice of proposed exemption provided the purchase price is equal to the greater of the fair market value or the unpaid principal amount plus accrued interest on the mortgage or participation certificate.

For a more complete statement of the fact and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1986 at 51 FR 134.

For Further Information Contact: Louis Campagna of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express conditions that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 6th day of March 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations.

[FR Doc. 86-5279 Filed 3-11-86; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Request for Comments on a Proposed Grant Award by the Legal Services Corporation to the National Legal Center for the Medically Dependent and Disabled, Inc.

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a nine (9) month National Support grant of $315,000 on or about April 1, 1986 to the National Legal Center for the Medically Dependent and Disabled, Inc. of Indianapolis, Indiana, to provide legal support services related to issues of the treatment of critically or terminally ill handicapped and medically dependent persons.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Steve Aronson, Coordinator for National and State Support, OFS/PDSS, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The National Legal Center is a not-for-profit public organization which focuses primarily on the medical and legal issues in the treatment of the critically or terminally ill handicapped and

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medically dependent persons. Under the direction of established legal experts in this field, the National Legal Center will utilize the combined efforts and skills of legal and medical scholars, members of the bar, and client representatives to provide assistance and training to legal services lawyers in this area.

The National Legal Center offers comprehensive support services to the legal services community that are designed to assist attorneys serving eligible clients in every stage of the litigation process and to keep them abreast of rapidly-changing developments in this complex field. These service include: (1) Technical assistance in the form of legal research, preparation of appellate briefs, consultation on litigation strategy, and the development and maintenance of an expert witness talent bank; and (2) informational assistance in the form of a bimonthly publication, training conferences, and litigation manuals that contain up-to-date materials on recent court rulings and federal and state statutes and regulations.

Interested persons are invited to submit written comments and/or recommendations concerning this intended grant action to Steve Aronson at the address noted above.

Dated: March 6, 1986.

James H. Wentzel,

President, Legal Service Corporation.

[FR Doc. 86-5538 Filed 3-11-86; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Availability of Proposed Records Schedules; Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before May 12, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthese immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, Records Managment Branch (N1-AFU-86-26). Family services program records.

2. Department of the Air Force, Directorate of Administration, Records Managment Branch (N1-AFU-86-27). Pay management records accumulated at base level offices.

3. Department of the Air Force, Directorate of Administration, Records Management Branch, (N1-AFU-86-28). Records relating to changes in Federal Acquisition Regulations.

4. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-32). Contractor capability records.

5. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-35). Forms and publications relating to the maintenance of radiac equipment and information systems equipment.

6. Departmentr of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-36). Forms used for accountability of drugs and drug paraphernalia used as training aids.

7. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-23). Publications relating to facility energy conservation programs, food management, laundry operations and similar activities.

8. U.S. Arms Control and Disarmament Agency, Multiple Components, (NC1-383-85-1). Administrative records including completed and settled contracts, budget and fiscal files, duplicate copies of arms transfer cases, congressional hearings, foreign language publications, and reference material.

9. Department of the Army, Records Management Operations Office (N1-AU-86-13). Savings bond program records.

10. Department of the Army, Records Management Operations Office (N1-AU-86-14). Contingency fund records.

11. Department of the Army, Records Management Operations Office (N1-AU-86-15). Military pay adjustment records.

12. Department of the Army, Records Management Operations Office (N1-AU-86-16). Currency control records.

13. Department of the Army, Records Management Operations Office (N1-AU-86-17). Military pay certificate accountability records.

14. Department of the Army, Records Management Operations Office (N1-AU-86-18). Indemnity bond records.

15. Department of the Army, Records Management Operations Office (N1-AU-86-19). Audit background records.

16. Department of the Army, Records Management Operations Office (N1-AU-86-20). Non-appropriated fund audit records.

17. Department of the Army, Records Management Operations Office (N1-AU-86-21). Audit records.

18. Department of the Army, Records Management Operations Office (N1-AU-86-22). Cost data concerning civil works projects.

19. General Services Administration (N1-162-86-1). Project files of the Federal Works Agency relating to the Veterans Educational Facilities Program, 1946-48. Includes applications for facilities and equipment, correspondence and agreements regarding the transfer of property, reports, and other related materials.

20. Department of the Interior, Office of Territories (N1-126-86-1). Administrative records of the Island Trading Company, 1946-54, consisting primarily of invoices, receipts, requisitions, orders, and correspondence relating to receipt of supplies and shipments of native products.

21. Department of Justice, Office of Justice Programs (NC1-423-85-1). Civil rights compliance records and public safety officer benefits records.

22. Tennessee Valley Authority, Office of Power and Engineering (N1-142-86-2). Quality assurance records on the procurement of spare parts for equipment at nuclear generating plants.

23. Department of the Treasury, United States Secret Service (N1-87-86-1). Internal employee investigation case files and internal analysis and review project files.

24. Veterans Administration, Department of Veterans Benefits (N1-15-86-1). Systematic Analyses of Operations Reports.

25. Veterans Administration, Department of Veterans Benefits (N1-15-86-2). Subdivision, Condominium and Planned-unit folders.

26. Veterans Administration, Department of Veterans Benefits (N1-15-86-4). Guaranteed and Insured Loan (GIL) ADP listings and printouts.

Dated: March 5, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86-5314 Filed 3-11-86; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Date: April 4, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review computer applications submitted to the Tools category, Reference Materials Program, (and the Editions Category, Texts Program), Division of Research Programs, for projects beginning after July 1, 1986.

Date: April 28-29, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Libraries Program, Division of General Programs, for projects beginning after October 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) Information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-5326 Filed 3-11-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463. The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.
Date and time: March 27 & 28, 1986—8:30 a.m. to 5:00 p.m. each day.
Place: Room 1141, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357-9596, Room 1140, National Science Foundation, Washington, D.C. 20550.
Purpose of panel: To provide advice and recommendations concerning support for research in ecosystem studies.
Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 7, 1986.

[FR Doc. 86-5416 Filed 3-11-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 an 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 28, 1986, in Rooms 1046 and 1130 at 1717 H Street, NW., Washington, DC. This meeting will consist of discussion among the members and a meeting with the NRC Commissioners to discuss ACRS comments and recommendations regarding proposed implementation of quantitative safety goals to be used in the regulation of nuclear power plants as follows.

8:30 A.M.–9:45 A.M.: (Room 1045–H)—Discussion among ACRS Members (tentative) (Open)—The members will discuss proposed comments and recommendations regarding the nature of and plans for implementation of

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proposed NRC quantitative safety goals which are to be discussed during the meeting with the NRC Commissioners.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191) and apply to this portion of the meeting.

10:00 A.M.–11:30 A.M.: (Room 1130-H)—Meeting with NRC Commissioners (Open)—Discuss items noted above.

In view of the possibility that the schedule for ACRS meetings may be adjusted as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: March 7, 1986

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–5391 Filed 3–11–86 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on March 26, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary infomation related to Westinghouse ECCS codes.

The agenda for the subject meeting shall be as follows:

Wednesday, March 26, 1986—8:30 A.M. until the conclusion of business.

The Subcommittee will: (1) Continue review of the Duke Power Company's request to delete use of the ECCS UHI system at McGuire, and (2) discuss the proposed NRR resolution position for Generic Issue 124, Auxiliary Feedwater System Reliability (tentative).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telphone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 7, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–5392 Filed 3–11–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Fort St. Vrain; Meeting

The ACRS Subcommitee on Fort St. Vrain will hold a meeting on April 2 and 3, 1986, at the Visitors Center of the Fort St. Vrain Power Plant at 16805 WCR 19½, Platteville, CO.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 2, 1986—8:30 A.M. until the conclusion of business.

Thursday, April 3, 1986—8:30 A.M. until the conclusion of business.

The Subcommittee will explore technical problems addressed during the recent extended outage, discuss management changes made as a result of the licensee's independent assessment of management controls, discuss regulatory issues, and review the status of technical development and support available to Fort St. Vrain.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, Public Service Company of Colorado, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John C. McKinley or to Mr. Richard K. Major (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 6, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 5393 Filed 3–11–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Reliability Assurance; Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on April 1, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 1, 1986—8:00 a.m. until the conclusion of business.

The purpose of the meeting will be to discuss the results of EPRI NP–4254, "Improvements in Motor-Operated Valves," dated November 1985. Also to be considered will be NUREG/CR–4380, "Evaluation of the Motor-Operated Valve Analysis and Test System (MOVATS) to Detect Degradation, Incorrect Adjustments, and Other Abnormalities in Motor Operated Valves," and NUREG–CR–4302, "Aging and Service Wear of Plants," both reports were prepared by the Oak Ridge National Laboratory for the Office of Nuclear Regulatory Research. The Subcommittee will also plan the format for a report which will encompass its considerations over the past year.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 6, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–5394 Filed 3–11–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320; License No. DPR-73; EA 84-137]

GPU Nuclear Corp. (Three Mile Island, Unit 2); Order Imposing Civil Monetary Penalty

I

General Public Utilities Nuclear Corporation (GPU Nuclear or licensee), Parsippany, New Jersey is the holder of License No. DPR–73 issued by the Nuclear Regulatory Commission (NRC). The license authorizes the licensee to operate the Three Mile Island Nuclear Station, Unit 2 in Middletown, Pennsylvania, in accordance with conditions specified therein. The license was issued on February 8, 1978 and modified by Order on July 20, 1979.

II

During the period between February 23, 1983 and March 24, 1983, Richard D. Parks, a Bechtel employee, was discriminated against for engaging in protected activities in reporting safety concerns to his management, requesting assistance from the NRC, and commencing a proceeding with the U.S. Department of Labor (DOL). The acts of discrimination were described in a DOL investigation (DOL Case 83–ERA–8) that was reviewed during an NRC OI investigation (OI Report H–83–002) and discussed in Section 10 of NUREG–0680, Supplement 5. As a result of the NRC staff's review of these reports, an apparent violation of NRC requirements was identified. Consequently, a written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was served upon the licensee by letter dated August 12, 1985. The Notice stated the nature of the violation, the NRC requirement that the licensee had violated, and the amount of civil penalty proposed for the violation. An answer dated October 21, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

After consideration of GPU Nuclear's response and the statements of fact, explanation, and denial of the violation contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the Sixty-Four Thousand Dollar ($64,000) penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty is proper and should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Sixty-Four Thousand Dollars ($64,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may request a hearing within thirty days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 4th day of March 1986.

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For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The licensee's October 21, 1985 response to the August 12, 1985 Notice of Violation and Proposed Imposition of Civil Penalty for the Three Mile Island Nuclear Station, Unit 2 (TMI–2) denies that the violation occurred as stated in the Notice. The violation involved acts of discrimination against Richard D. Parks, a Bechtel employee, for raising safety concerns associated with the TMI–2 polar crane refurbishment. A statement of the violation, a summary of the licensee's response, and the NRC evaluation and conclusion are as follows:

Statement of Violation

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The activities protected include but are not limited to providing the NRC information about possible violations of NRC requirements and requests to the NRC to take action against an employer for enforcement of NRC requirements.

Contrary to the above, Richard D. Parks, a Bechtel employee, was discriminated against for engaging in protected activities in reporting safety problems to his management, requesting assistance from the NRC, and commencing a proceeding with the Department of Labor. Parks reported safety concerns to his management on February 17, 1983. Parks contacted the TMI on-site office of the NRC on February 18, 1983 and on March 10, 1983, complaining first that his management was threatening to have him transferred and then that GPU Nuclear management was trying to implicate him in a conflict-of-interests charge because he had reported safety concerns. He also initiated a proceeding pursuant to section 210(b)(1) of the Energy Reorganization Act of 1974, 42 U.S.C. 5851, Pub. L. 93–438, on March 23, 1983. At least partly due to these activities, Mr. Parks, during the period between February 23, 1983 and March 24, 1983 was (1) removed as Alternate Startup and Test Supervisor, (2) subjected to improper and intimidating interrogation, (3) removed as the primary Site Operations Department representative for the Test Working Group, and (4) ultimately placed on leave of absence. These acts of discrimination were described in a U.S. Department of Labor investigation (DOL Case 83–ERA–8) which was reviewed during an NRC OI investigation (OI Report H–83–002), and discussed in Section 10 of NUREG–0680, Supplement 5.

This is a Severity Level II violation (Supplement VII). (Civil Penalty—$64,000)

Summary of Licensee's Response

The licensee denies the allegations in the Notice of Violation. The licensee states that the allegations of discrimination by Richard D. Parks were thoroughly investigated by GPU Nuclear (TMI–2 Report, Management and Safety Allegations, November 16, 1983) and by Bechtel (Report of Bechtel North American Power Corporation Regarding the Allegations of Richard D. Parks, October 1984) (hereinafter the Stier Report and the Bechtel Report, respectively).

Further, the licensee emphasizes that these investigations took place after the DOL investigation and that they were substantially more detailed than the DOL investigation. On the basis of the Stier and Bechtel reports, the licensee believes that none of the acts described in the Notice of Violation constituted reprisal, harassment, or intimidation. Instead, the licensee takes the position that each act was properly motivated by concerns for the proper functioning of the TMI–2 organization. Specifically, the licensee argues that the DOL investigation and the NRC review of that investigation failed to recognize the legitimate motives underlying the organizational changes that affected Parks.

Evaluation of Licensee's Response and Conclusion

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee has not provided any information that was not already considered in determining that the violation had occurred. The Stier Report, which by the licensee's own admission did not address the questioning of Parks by Bechtel employees or the suspension of Parks, was considered by the staff in preparing the staff's findings regarding this matter in NUREG–0680 Supplement 5. The Bechtel Report, which contained no new information except affidavits taken between September 28 and October 2, 1984 of several Bechtel personnel and a Bechtel synopsis of the case, was reviewed by the staff in October 1984. At that time the staff found that the report contained no information not already considered in determining that the violation had occurred. The information contained in the Bechtel report was again reviewed by the Staff in April 1985 together with information developed by Stier based on his review of the public record and his 1983 report. Again, the staff found no basis to change its conclusions regarding the discrimination against Parks.

The licensee's response simply interprets the information already considered by the staff to justify its position. In several respects the staff disagrees with the licensee's interpretation or characterization of the events. For example, the licensee asserts that the replacement of Parks on February 18, 1983 by Dwight D. Walker as Alternate Startup and Test Supervisor was done because an opportunity presented itself to restore the system of checks and balances and to assure that Site Engineering was properly represented. However, Mr. Walker had been assigned to the TMI site since early January 1983 and it was not until the day after Parks put his safety concerns in writing that the replacement took place. The licensee asserts that the March 14, 1983 interview of Parks by Messrs. Hofmann and Wheeler was conducted in a professional and nonintimidating manner and that the impartial witness at the meeting selected by Parks confirms this fact under oath. Yet the affidavit of the impartial witness states only that Mr. Hofmann from the Bechtel Internal Auditing Group asked his questions in a professional manner and tone of voice. The fact that questions were asked in a professional manner and tone of voice does not offset the obvious intimidating effect caused by conducting this unusual meeting in such close proximity to Parks having raised his safety concerns.

After reviewing the matter once more, the staff still does not believe that the acts described in the Notice of Violation that occurred within a four-week period of time and in close proximity to the time of Parks' complaints to authorities were unrelated management actions taken without regard to Parks having raised safety concerns. Instead, the staff remains convinced that the facts show that Parks' complaints were collectively the common factor which motivated the management actions regarding him. Those actions were acts of discrimination taken in retaliation for Parks having raised his safety concerns. The licensee's assertion that the Notice appears predicated on the assumption that once a safety concern has been voiced any subsequent change affecting the individual who raised the concern

demonstrates retaliatory animus is wrong. Retaliatory action is inferred when a pattern of changes subsequent to the voicing of a safety concern give evidence that a pattern was present here. Therefore, the staff concludes that the violation is correct as stated in the Notice of Violation and the civil penalty should be imposed.

[FR Doc. 86–5385 Filed 3–11–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70–143]

Nuclear Fuel Services; Erwin, TN, Plant

Notice is hereby given that the Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Mr. Robert E. Wages on behalf of the Oil, Chemical and Atomic Workers International Union, AFL–CIO (OCAW). This petition relates to the Nuclear Fuel Services fuel fabrication plant in Erwin, Tennessee (NFS-Erwin) and involves two communications to the Chairman of the Nuclear Regulatory Commission: a letter dated September 3, 1985, and a mailgram dated December 13, 1985. The petition requested that the Commission intervene to halt the reduced operations caused by a labor dispute presently being conducted at the Erwin facility, order an investigation of the allegations raised in the letter, require a formal hearing with notice prior to any future request to operate the Erwin facility, hold a public hearing in the Erwin, Tennessee area to establish that operations can be conducted at the facility without affecting the public health, safety or interest, and require the licensee to cease all operations until an investigation has been completed of an incident involving possession of a gun by a driver leaving the plant.

The reasons for denial of the petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c)

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 3rd day of March 1986.

James M Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–5384 Filed 3–11–86; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Waste Policy Act; Availability of Final Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Generic Technical Position on Borehole and Shaft Sealing of High-Level Nuclear Waste Repositories."

ADDRESSES: This document is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone 202/634–3273.

FOR FURTHER INFORMATION CONTACT: Dr. Mysore Nataraja, Section Leader, Engineering Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/427–4319.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA) (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA) which document staff reviews of DOE Site Characterization Plans (SCP) submitted according to the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP) establish the staff's position on broad technical issues that would be applicable to any site. STP's establish the staff's position on a site specific technical issue. A number of GTP's will be developed by the staff to establish staff positions on generic issues or information requirements for their resolution.

On July 11, 1983, the NRC published for comment a draft version of the "Generic Technical Position on Borehole and Shaft Sealing of High-Level Nuclear Waste Repositories" (48 FR 31761). Public comments on the draft version were received. Changes and clarifications have been made in the final GTP as a result of comments received. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room—1717 H Street, NW., Washington, DC 20555.

The DOE is required by 10 CFR Part 60 to seal boreholes and shafts at permanent closure of a nuclear waste repository. Further, the DOE is required to design the seals so that following permanent closure, they do not become pathways that will compromise the ability of the geologic repository to meet the performance objectives. In addition, the DOE is required to select materials and placement methods for seals to reduce, to the extent practicable (i) the potential for creating a preferential pathway for groundwater; or (ii) radioactive waste migration through existing pathways.

The design of borehole and shaft seals should be based on proven technical knowledge and capabilities, and performance assessments of the sealing system as part of the overall repository system. Changes in the design due to changes in either of the above may occur throughout the timeframe of sealing studies. Sensitivity analyses as well as sound engineering judgment should be utilized in the sealing progam to establish the importance and amount of work necessary in resolving sealing issues at a particular site. However, other work in the sealing progam such as materials studies, equipment development, placement techniques, etc., should not be delayed or eliminated based solely on these sensitivity analyses. These analyses will utilize a data base with high uncertainties and therefore may give an inaccurate indication of the importance of each component in the repository system. Such a determination as to the importance of each subsystem can be made after the Site Characterization Program has been completed when a data base with a higher level of confidence can be utilized.

An adequate program for borehole and shaft seal development should include development of design criteria, laboratory and field testing of materials, equipment, and placement techniques for seals. "verification program of seal performance." quality assurance program for sealing studies, and methods for integration of the sealing program to other activities, such as excavation and construction of the underground openings.

The GIP summarizes guidance which has been given to DOE through technical correspondence, documented technical meetings, and other mechanisms

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provided by the NRC/DOE Procedural Agreement (48 FR 38701, Dated August 25, 1983). The Borehole and Shaft Sealing program must be addressed in the SCP's for each site.

Dated at Silver Spring, Maryland, this 28th day of February 1986.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86-5383 Filed 3-11-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on February 26, 1986 (51 FR 6818), through March 3, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By April 11, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that

the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions of leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: December 20, 1985, as supplemented February 7, 1986.

Description of amendment request: The proposed amendments would revise section 6 (ADMINISTRATIVE CONTROLS) of the Technical Specifications (TS). The licensee's application for amendment for Unit 2 dated December 20, 1985 was noticed in the **Federal Register** on February 5, 1986 (51 FR 4545). The proposed TS changes are:

1. Changes to TS 6.5.2.2 for both units would be made to clarify the responsibility of Safety Review Committee (SRC) appointments and total membership of the committee. In addition, the job titles referenced in the current TS for the committee membership would be replaced with functional descriptions.

2. Editorial changes would be made to TS 6.5.2.8 for both units, and a typographical error for Unit 2, which was made with the issuance of Amendment No. 52 for Unit 2 dated February 1, 1984 would be corrected.

3. Changes to Figures 6.2-1 and 6.2-2 for both units would be made to reflect a reorganization of the Nuclear Operations Department of Arkansas Power & Light Company (AP&L).

4. Changes would be made to reflect title changes and changes in makeup of the Plant Safety Committee (PSC) due to reorganization.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations is a purely administrative change to TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

The proposed changes identified in item 2 above are purely administrative changes as in example (i) since they involve editorial changes and correction of an error.

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92 (c)]. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes identified in items 1, 3 and 4 above are the result of a recent reorganization of the Nuclear Operations Department of AP&L. The details of the reorganization are described in the licensee's applications dated December 20, 1985, as supplemented by letters dated February 7, 1986. There, the licensee indicates that the reorganization will enhance the effectiveness of the Nuclear Operations Department in responding to safety issues at Arkansas Nuclear One (ANO). In a similar manner, the effectiveness of PSC and SRC will be enhanced by the improved utilization of personnel with experience and expertise in the appropriate technical disciplines necessary to carry out their functions. Based on the above, the NRC staff believes that these proposed changes are administrative improvements and that these changes will not diminish, in any way, current administrative requirements of the ANO-2 TS. The staff therefore, proposes to conclude that the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety. On this basis, the staff had made an initial determination that the proposed amendments are not likely to involve a significant hazards consideration.

Local Public Document Room Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Project Director: George W. Knighton.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: November 20, 1985 as supplemented January 29, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) to allow storage of new fuel with a maximum enrichment of 4.1 weight percent U-235 in the new fuel storage racks. The existing TS 5.6.1.2 specifies that the new fuel storage racks are capable of storing new fuel having a maximum enrichment of 3.7 weight percent U-235. As the licensee is using fuel with an enrichment exceeding 3.7 weight percent U-235, an analysis was performed to evaluate the use of the new fuel storage racks with more highly enriched fuel.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 Fr 14870) of actions likely to involve no significant hazards consideration. One of the examples (vi) relates to a change which either may result in some increase to the probability and consequences of a

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previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): for example, a change resulting from the application of a small refinement of a previously used calculation model or design method.

The proposed amendment appears to be similar to the above example in that the licensee in its application states that the results of the analysis associated with the proposed change indicate that they are clearly within all acceptable criteria in Section 9.1.1 of the SRP. The analysis was submitted by letter dated January 29, 1986. The NRC staff's preliminary review of the analysis indicates that the worst case k_{eff} associated with the new fuel storage racks would be less than 0.95 under the proposed change. This value is within the SRP acceptance criteria.

Therefore, since the application for amendment involves a proposed change that is similar to an example of actions that are considered not likely to involve significant hazards considerations, the Commission has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Project Director: George W. Knighton.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of Amendment Request: November 27, 1985.

Description of Amendment Request: The proposed amendment would revise the Technical Specification (TS) to add requirements related to radiation monitoring of the HVAC exhaust for the licensee's new Low-Level Radwaste Storage Building (LLRWSB) in accordance with the NRC staff request. The NRC staff indicated to the licensee during the discussion pertaining to the construction and operation of the LLRWSB that since the LLRWSB exhaust may constitute a possible release pathway of low-level radioactivity to the environment, the TS requirements governing radiation monitoring of the HVAC exhaust serving areas for waste processing would be needed.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (ii) relates to changes that constitute additional limitations, restrictions, or control not presently included in the TS: for example, a more stringent surveillance requirement.

The proposed amendment is clearly similar to the above example in that TS requirements governing radiation monitoring of the HVAC exhaust for the LLRWSB would be an added restriction under the proposed changes.

Therefore, since the application for amendment involves a proposed change that is similar to an example of actions that are considered not likely to involve significant hazards considerations, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for Licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Project Director: George W. Knighton.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of Amendment Request: January 24, 1986.

Description of Amendment request: The proposed amendment would revise the Technical Specifications (TS) to delete the tabular listing (Tables 3.7–4 and 3.7–4a) of snubbers in accordance with the NRC staff guidance contained in Generic Letter 84–13 dated May 3, 1984. In addition, the proposed changes would add the criteria contained in Generic Letter 84–13 specifying which snubbers are required to be operable and which snubbers are exempted from this requirement. Deletion of these tables from the ANO–2 TS is expected to eliminate the need for frequent TS amendments to incorporate changes in the snubber listings. These lists of individual snubber location, size, and system affected will be maintained in plant procedures as required by 50.71(c) of 10 CFR Part 50.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff has previously evaluated the inclusion of the snubber listings in the TS and has concluded in Generic Letter 84–13 that such listings are not necessary provided the snubber TS is modified to specify which snubbers are required to be operable. The proposed amendment would add specific language to address which snubbers are required to be operable and which are exempted in the above referenced Generic Letter. Furthermore, the ANO–2 TS recordkeeping requirements in TS 4.7.8.h for snubbers would not be altered. These plant records must contain a record of the service life, installation date, etc., of each snubber. Since any change in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR 50.59 and these changes would have to be reflected in the records required. On May 3, 1984, the Commission sent a letter to all licensees which indicated the above conclusion regarding inclusion of snubber tables in the TS and indicated that such changes were not required but the licensee could choose to request an amendment to delete the tabular listing of snubbers.

The NRC staff finds that removal of the snubber tables with the added criteria specified in Generic Letter 84–13 would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because although the proposed changes would delete the snubber tables from the TS, plant records must still be maintained on each snubber; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because any changes in snubber quantities, types or location would still be subject to the provisions of 10 CFR 50.59, and these changes would have to be reflected in the plant records; or (3) involve a significant reduction in a margin of safety because the proposed change would add additional TS requirements which would specify which snubbers are required to be operable to maintain the designed margin of safety. Having made these findings, the Commission has proposed to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for Licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Project Director: George W. Knighton.

Arizona Public Service Company et al., Docket No. STN 50-529 Palo Verde Nuclear Generating Station (PVNGS), Unit No. 2, Maricopa County, Arizona

Date of amendment request: February 14, 1986.

Description of amendment request: The proposed amendment would allow (i) co-owner Public Service Company of New Mexico (PNM) to transfer a portion of its fee interest in PVNGS Unit 2 to equity investors and (ii) the simultaneous transfer by the equity investors back to PNM of a long term (approximately 29½ years) possessory leasehold interest of this share under the terms described in this application. Under the proposed transaction, it is represented that PNM will remain in possession of its present interests in PVNGS Unit 2 under a leasehold rather than by virtue of ownership.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by PNM of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45955 (1985). By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's order. See 51 FR 1883 (1986).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to any of the design or criteria of the plant. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For this reason, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design basis for any equipment in the plant. For this reason, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Furthermore, the proposed amendment would maintain PNM in possession of its present interests in PVNGS and PNM would continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, absent further license amendment, or control over PVNGS Unit 2. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 25, 1985 (partial response).

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specification (TS) 3.6.5.1, "Hydrogen Analyzers," to allow the use of a containment atmosphere grab sampling capability as a backup to the hydrogen analyzers; and TS 6.9.2, "Special Reports," to incorporate additional reporting requirements.

Consideration of the above changes to the Unit 1 and Unit 2 TS is in partial response to the application dated October 25, 1985; the remaining issues associated with this application will be addressed in future correspondence.

Basis for proposed no significant hazards consideration determination: BG&E has proposed a change to the Calvert Cliffs TS to allow the use of containment atmosphere grab sampling as a back-up means of measuring containment hydrogen concentration. Current TS require plant shutdown within 30 days when one hydrogen analyzer becomes inoperable. The proposed TS change would allow for continued plant operation provided a grab sampling capability is demonstrated.

The prime function of the hydrogen analyzers is to monitor the containment atmosphere for hydrogen following a Loss-of-Coolant Accident (LOCA). The hydrogen analying system is common to both units. The system consists of two hydrogen analyzing subsystems, each consisting of a hydrogen analyzer cabinet, sample select cabinet, hydrogen sequencer panel, and remote hydrogen recorder. Each hydrogen analyzing subsystem can monitor the containment hydrogen concentration at six points, three in each containment structure. These locations have been selected to provide representative samples of the containment atmosphere. The sampling lines are run in groups of three through two separate containment penetrations.

During any period when one analyzer subsystem is out of service, the second subsystem is available to perform all necessary sampling evolutions. In addition, the availability of the hydrogen "grab sampling" capability provides added redundancy. A sample bomb equipped with a septum plug is located on the 45′ level of the Auxiliary Building. The Laboratory Analyst can use a syringe to withdraw and subsequently analyze a containment atmosphere sample with the analyzer pump operating and the sequencer lined-up to the appropriate 135′ containment elevation sample point. This capability has been demonstrated at Calvert Cliffs and represents a capability that is equivalent to that of the installed analyzers.

The atmospheric grab sample capability incorporates design features, as enhanced by procedural controls, to prevent the uncontrolled release of containment atmosphere during sampling. The sample line from each containment contains two keys (capture) lock actuated valves to prevent inadvertent operation. Down-stream of

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the key-lock valves and prior to the sample point, a manual isolation valve is provided which would allow the operator to quickly isolate the sample line in the event of anomalous conditions. Finally, the sample point is provided with a double septum to minimize leakage.

The proposed change to TS 3.6.5.1 would, upon inoperability of one hydrogen analyzer, allow continued plant operation provided that the grab sampling capability is verified within 6 hours or the plant must be shut down. The licensee has also proposed that a special report be submitted within 30 days, ". . . outlining the ACTION taken, the cause for the inoperability, and the plans and schedule for restoring the system to OPERABLE status." This reporting requirement would also be incorporated in TS 6.9.2, "Special Reports," for consistency. The existing TS requirements specify that, in the event that one hydrogen analyzer becomes inoperable, the hydrogen analyzer must be made operable within 30 days or the plant must be shut down within 6 hours.

Since the atmospheric grab sample represents a hydrogen monitoring capability that is equivalent to an installed hydrogen analyzer, the operability of a single hydrogen analyzer with a grab sample backup capability would provide the same degree of redundancy as the operability of two hydrogen analyzers. Thus, there is no reduction in the margin of safety, regarding the post-accident detection of hydrogen, associated with the proposed changes to the the TS. Since the atmospheric grab sample capability contains design features, as enhanced by procedural controls, to prevent an uncontrolled release of containment atmosphere, no accidents of a new or different type will occur and neither the probability or consequences of previously analyzed accidents will be significantly increased.

Accordingly, the Commission proposes to determine that the proposed change to TS 3.6.5.1 to allow the use of an atmospheric grab sample to backup the installed hydrogen analyzers involves no significant hazards considerations.

With regard to the incorporation of the "special report" requirement in TS 3.6.5.1 and 6.9.2, these proposed changes represent additional requirements not previously contained in the TS. On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provided in 48 FR 14870 of amendments not likely to involve significant hazards considerations is example (ii) which provides for "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." Accordingly, the Commission proposes to determine that the proposed change to TS 3.6.5.1 and 6.9.2, to incorporate a "special report" requirement in the TS, involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M. Street, NW., Washington, DC. 20036

NRC Project Director: Ashok C. Thadani.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: February 7, 1986.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Units 1 and 2 Technical Specifications to eliminate the chlorine detectors because of recent surveys indicating that chlorine is not and has not been shipped in bulk quantities by highway, railroad, or river near the La Salle County Station. Regulatory Guide 1.78, "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room during a Postulated Hazardous Chemical Release," establishes chlorine as a hazardous chemical and requires a habitability analysis in case there is an accidental chlorine release from stationary or mobile sources near the plant. In addition, Position 1 of Regulatory Guide 1.78 states that chlorine stored or situated at distances greater than five miles from the control room would not need to be considered in evaluating the habitability of the control room. The closest industries to La Salle County Station where chlorine may be stored are greater than 5 miles away. The three modes of transportation of chemicals for these industries are railroads, highways, and the Illinois River. The railroads and highways transporting these chemicals are greater than 5 miles away, however, the Illinois river is 4.5 miles away. Nonetheless, the licensee indicates that there are no known bulk shipments or storage of chlorine within five miles of the plant. The licensee finds that at the present time the chlorine detectors are a high maintenance item which require significant man hours for surveillance and repair. In addition, these detectors have, on numerous times, accidentally actuated the trip initiating the recirculation mode of the control room and the auxiliary electric equipment room ventilation system; both of these systems are engineering safety features. The licensee believes these challenges to the safety systems are unwarranted. The licensee expects a net improvement in safety with regards to these proposed changes to the La Salle, Units 1 and 2 design as a result of the reduction in challenges to the engineered safety features systems.

Basis for proposed no significant hazards consideration determination. The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the potential hazard which the chlorine detectors were installed to protect against is believed to have been eliminated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the potential hazard of chlorine gas entering the control room and incapacitating the operators is considered to have been minimized.

(3) Involve a significant reduction in the margin of safety because the accidental release of chlorine is no longer considered to exist as a significant concern.

The likelihood of any chlorine release in the vicinity of La Salle County Station is negligible and the likelihood of any release reaching the control room ventilation is also considered negligible as no known bulk shipments or storage of chlorine exists within a 5 mile radius of La Salle Station.

Accordingly, the Commission proposes that the changes would fall into the category of a no significant hazards consideration determination.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue NW., Washington, D.C. 20036.

NRC Project Director: Elinor G Adensam.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: January 30, 1986.

Description of amendment request: The requested license amendment would modify the plant Technical Specification by incorporating the following changes:

(1) Reduce the allowable leakage rate of reactor coolant outside containment (Technical Specification 3.14.A.3) from six (6) liters/hr. to three (3) liters/hr.,

(2) Identify additional potential sources of reactor coolant leakage outside of containment as normal makeup, seal injection, and loop fill lines (Technical Specification 3.14.A.3),

(3) Change the valve tag number designations for two check valves in the emergency core cooling system (Technical Specification 3.14.A.6).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). Examples of actions not likely to involve significant hazards considerations are example (i) which relates to purely administrative changes and example (ii) which is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications.

The staff has reviewed the licensee's amendment request to reduce the allowable leakage rate of reactor coolant outside containment and to identify additional potential sources of reactor coolant leakage as normal makeup, seal injection and loop fill lines. We have concluded that it falls within the envelope or example (ii) because the proposed amendment would result in more restrictive conditions for operation than presently included in the Technical Specifications. Additionally, the change of valve tag number designations is an administrative change that falls into the envelope of example (i).

Based on the above, the staff therefore proposes to determine that this amendment request involves no significant safety hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: February 4, 1986.

Description of amendment request: The amendment would revise the technical specifications and bases to accommodate an increase in the capability of one of the three 120 VAC Non-Interruptible Instrument and Control Buses and add an alternate power source via the 1C static transfer switch.

Basis for proposed no significant hazards consideration determination: In the February 4, 1986 submittal the licensee states that the proposed change has been reviewed by the LACBWR Committees as prescribed in LACBWR technical specifications and it has been determined not to constitute an unreviewed safety question pursuant to 10 CFR 50.59. This conclusion has been reached because:

The proposed upgrading of the 1C Inverter will not change or increase the probability or consequences of an accident previously evaluated. The new static inverter will add a static transfer switch which the existing static inverter does not have. The static switch will provide an alternate source to the 1C Non-Interruptible Bus in the event the static inverter malfunctions. Current design of the 1C Non-Interruptible Bus would result in a reactor scram if the 1C Static Inverter failed.

The new design would reduce the probability of this challenge occurring to the reactor protection system.

The replacement of the 1C Static Inverter with a 5 KVA capacity unit and static transfer switch will not create a new or different kind of accident from any accident previously evaluated. The new static inverter is instrumented and alarm monitored more extensively than the existing unit. Installing the 1C static transfer switch would reduce the risk of losing the 1C Non-Interruptible Bus due to a 1C Inverter Malfunction.

The proposed amendment will not involve a significant reduction in the margin of safety. In fact, by adding an alternate power source via the 1C static transfer switch, the operational performance and reliability of the 1C Non-Interruptible Bus would increase.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that this action involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: Roy P. Lessy, Jr.; O. S. Heistand; Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C. 20036.

NRC Project director: John A. Zwolinski.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 14, 1986.

Description of amendment request: The licensee proposed this amendment to change the Technical Specifications to include lag compensation factors in the overtemperature delta T and overpower delta T equations specified in Table 2.2–1. In addition, the overtemperature delta T response time has been revised from 6 seconds to 4 seconds; this change would reflect the assumptions used in the Final Safety Analysis Report (FSAR) analysis. The licensee expects that these adjustments would reduce the number of spurious reactor trip signals.

The requested amendment is responsive to a letter from the staff dated April 22, 1985.

Basis for proposed no significant hazards consideration determination: The proposed change would bring the Technical Specification into conformance with the FSAR, and is just a refinement in some equations and minor modification of existing instruments to improve operation. Therefore, the proposed changes will not increase the likelihood of a malfunction of safety-related equipment, increase the consequences of an accident previously analyzed, or create the possibility of a malfunction different than previously evaluated. Based on the above, we propose to characterize the change as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and

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Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 15, 1986.

Description of amendment request: The licensee proposed to change the Technical Specifications in three ways:

(1) The index would be editorially changed to reflect the present status of the Technical Specifications,

(2) Titles and positions of employees would be changed to reflect the results of a reorganization, and

(3) Certain administrative procedures, such as time allowed to approve meeting minutes of the Offsite Review Committee, would be changed to reflect new procedures of the new organization.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Example (ii), involving no significant hazards consideration is "A purely administrative change to technical specifications . . . ." All items above match the example and we, therefore, propose to characterize this amendment as involving no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 24, 1986.

Description of amendment request: The Licensee requested the Technical Specifications be amended in the following ways:

(1) Clarify the Modes 5 and 6 charging pump surveillance requirements. The intent of surveillance requirement 4.1.2.3.2 is to allow only one operable charging pump when in Modes 5 and 6 to limit the sources of high pressure injection which could overpressurize the RCS during modes of low temperature operation. This is in accordance with the NRC safety evaluation on overpressure protection dated April 4, 1983. The same specification also limits the operability of the low head safety injection (LHSI) pumps. Since the LHSI pumps are physically not capable of posing an overpressure problem, the present limitation on their operability during Modes 5 and 6 is unnecessary.

(2) Mode 4 would be added to Table 4.3–2, Functional Unit 4.e, "Steamline Pressure Rate-High," to provide consistency with the applicable modes specified for this function on Table 3.3–3. This is an editorial change.

(3) Surveillance Requirement 4.4.6.3 would be revised by replacing "operational condition 1" with "Mode 1" to provide consistency with current nomenclature. This is an editorial change.

Basis for proposed no significant hazards consideration determination: Change (1) removes an administrative limitation on the LHSI pumps. As discussed above, the limitation is unnecessary due to physical limitations of the pumps themselves. The change would not result in modification of hardware or operating procedures. Changes (2) and (3) are editorial. Thus the proposed amendment would not increase the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident, and would not reduce the margin of safety. Therefore, we propose to determine the requested amendment as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 5, 1986.

Description of amendment request: The licensee requested to amend the Beaver Valley Power Station, Unit No. 1 Technical Specifications to revise the reporting requirements on reactor coolant specific activity from "Special Report" to an "Annual Report," in accordance with Generic Letter 85–19.

As part of the continuing effort to delete unnecessary reporting requirements, the NRC has determined that the reporting requirements for iodine spiking can be reduced from a short-term report (Special Report or Licensee Event Report) to an item to be included in the Annual Report. The information proposed for inclusion in the Annual Report is similar to that previously required in the Licensee Event Report but has been changed to more clearly designate inclusion of the specific activity analysis results and to delete the information regarding fuel burnup by core region.

Basis for proposed no significant hazards consideration determination: The requested amendment would not result in any alteration of hardware, operation limits and procedures. In addition, it is submitted in response to the staff's Generic Letter 85–19. We, therefore, conclude that the requested action will not increase the probability of occurrence or the consequences of an accident, will not create an accident or malfunction of a different type than previously evaluated, and will not involve a significant reduction of the margin of safety. Accordingly, we propose to determine this action as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: November 21, 1985.

Description of amendments request: The request for amendments responds to NRC Generic Letter 84–13 as related to the deletion of the list of snubbers from the Turkey Point Plant Unit 3 and 4 Technical Specifications (TS). The request also modifies the existing testing requirements for safety-related snubbers to define the snubber type, delete the test acceptance criteria regarding a 50% drag force increase, adds additional acceptance criteria for visual inspection and additional requirements for an engineering evaluation of functional test failures. The Standard Technical Specifications for Westinghouse Pressurized Water Reactors (WSTS) were used as guidance for the format and certain wording changes.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Turkey Point TS are:

Page i

The definition of ACTION has been added to the Table of Contents.

Page v

The Table of Safety Related Snubbers is deleted based on changes discussed below.

Page 1–4

The definition of Action has been added to the Definitions Section of the TS.

Page 3.13–1, Table 3.13–1 Sheets 1, 2, 3, 3a, 3b, 4, 5, 6, 7

The table of Safety Related Snubbers has been deleted. The limiting condition for operation (LCO) has been reformatted to be consistent with the format in the WSTS. No action statements or requirements have been added to or deleted from the current TS.

Page 4.14–1

A statement has been added for clarification of the requirements for the snubber surveillance program. The definition for "type of snubber" has been added for clarity. The reference to TS Table 3.13–1 has been deleted for reasons discussed above. The page along with the rest of this section have been revised to be consistent with the format in the WSTS.

Page 4.14–2

The reference to TS Table 3.13–1 has been removed for reasons discussed above. In Section 4.14.1.c, an additional requirement for visual inspection acceptance criteria has been added. This change adds the requirement to verify that the fasteners for attachment of the snubbers to the component and to the snubber anchorage are secure. The requirement to include the first snubber supporting main reactor coolant system (RCS) piping downstream of the reactor vessel nozzles has been removed because no snubber exist on RCS piping and there are no plans to install any snubbers there in the future.

Page 4.14–3

The functional tests section has been split into two sections with the new section being 4.14.1.e, titled "Functional Test Failure Analysis". No current requirements have been deleted from the TS in this new section. An additional requirement for an engineering evaluation of each function test failure to meet the functional test acceptance criteria to determine the cause of the failure is added. This evaluation is currently being done so addition of this requirement to the TS is not adding any new requirements. The reference to TS Table 3.13–1 has been removed for reasons discussed above. The wording that snubbers "support" components has been changed to "attached". This is because snubbers do not support components but are attached to components.

Page 4.14–4

The first requirement in Section 4.14.4.1.f has been revised to be consistent with the wording in the WSTS. The requirement for the 50% drag force has been removed. This is based on vendor's recommendations and consistent with WSTS. The reference to TS Table 3.13–1 has been removed for reasons discussed above.

Page 6–29

In section m, the reference to TS Table 3.13–1 has been replaced with a reference to TS 3.13. This is consistent with changes discussed above.

The proposed changes described above fall into six categories.

A. Definition of Type (TS Page 4.14–1)

The current Turkey Point TS require increased inspection (both number of tests and frequency of the testing) based upon the number of test failures. The proposed change makes clear that this increased testing is required for snubbers of the type that are failing the tests.

This portion of the TS change is justified in that there are substantial differences in the functional operation and dynamic response of snubbers to load, which are based on manufacturer and design. These differences are irrespective of capacity. To determine generic manufacturing problem caused failure, snubber sample test increases due to visual and/or functional test failures must be selected based on type, i.e., the same design and manufacturer. This is also true in order to determine whether the failure is associated with incorrect application or the failure is related to severe system transients and/or harsh environment.

B. Acceptance Criteria Regarding 50% Drag Force Increase (TS Page 4.14–4)

The current Turkey Point TS contain a requirement that testing verify the drag force has not increased more than 50% since the last surveillance test. Pacific Scientific, the snubber vendor, has issued a clarification on "In-Service" testing of Pacific Scientific shock arrestors (snubbers). The consideration of increasing drag force is not an appropriate requirement in that the acceptance criteria of snubbers is based upon the loading used in the piping seismic analysis.

Pacific Scientific has demonstrated in simulated 40 year tests that increases in snubber drag force do not indicate an imminent snubber failure as long as the drag force is within its design range. The requirement relating to 50% increase in drag force is not included in the WSTS.

C. Removal of Safety-Related Snubber Table (TS Pages v, 3.13–1, Table 3.13–1, 4.14–1, 4.14–2, 4.14–3, 4.14–4, 6–29)

This change was recommended by Generic Letter 84–13. There will be no change in the snubbers tested, merely a relocation of the listing from the Technical Specifications to procedures controlled on the Turkey Point plant site. The Turkey Point TS specify which snubbers are required to be operable and the record-keeping requirements are not altered by removal of the Safety-Related Snubber Table from the T.S.

D. Format and Wording Changes (TS Pages i, 1–4, 3.13–1, 4.14–1, 4.14–3, 4.14–4)

The requested amendments used the WSTS as guidance for format and wording changes to the existing TS. This has been done to clarify the existing TS and make them easier to understand and use. The changes also required inclusion of the WSTS definition of action. The use of WSTS wording results in no deletion of current TS requirements. Therefore, the format and wording were for clarification.

E. Visual Inspection Acceptance Criteria (TS Page 4.14–2)

This part of the amendments includes the addition of a third requirement for the acceptance criteria (i.e., verification that fasteners for attachment of the snubber to the component and to the snubber anchorage are secure). This adds an additional limitation, restriction or control not presently included in the current Turkey Point TS.

F. Functional Test Failure Analysis Section (TS Page 4.14–3)

This portion of this amendment added a new section to separate the analyses performed for functional test results from the functional test section. No existing requirements were deleted. A requirement for an engineering evaluation of each failure to meet functional test acceptance criteria to determine the cause of the failure has been added. This adds an additional limitation, restriction or control not presently included in the TS.

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The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) treate the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change which results in deletion of the acceptance criteria regarding 50% drag force increase on snubbers (Category B) from the Technical Specifications is based on recent clarification from the snubber vendor, Pacific Scientific. Deletion of the functional test acceptance criterion to verify that the drag force has not increased more than 50% since the last surveillance test will not affect the determination of operability. The vendor has demonstrated that such an increase is not indicative of imminent snubber failure if the snubber drag force is within its design range. Momentary drag forces as high as 5% of rated load for as long as 500 milliseconds as well as average drag loads of 5% of snubber design load are acceptable. Pacific Scientific has demonstrated in simulated 40 year tests that increases in snubber drag force do not indicate imminent snubber failure as long as the drag force is within its design range.

Drag force increase is not a consideration in either seismic or thermal analyses. In seismic analyses, snubbers are modeled as rigid restraints. In thermal analyses, only a maximum (design) drag force is considered.

Based on the above, this portion of the proposed changes will not involve a significant hazards consideration in that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because increases in drag force within the design limits do not affect snubbers during seismic or thermal transients and tests are required to demonstrate the snubbers remain within the design limits; or (2) create the possibility of a new or different kind of accident previously evaluated because neither the staff nor the licensee can identify a new or different accident resulting from an increase in drag force; or (3) involve a significant reduction in a margin of safety because the simulated 40 year tests performed by the vendor demonstrated that increases in drag force do not indicate imminent snubber failure as long as the drag force is within the design range. These proposed amendments will not change the existing test requirements which assure the snubber drag force remains within its design range.

The Commission has provided guidance for the application of the criteria in 10 CFR 50.92 by providing examples of amendments that are considered not likely to involve a significant hazards consideration.

The other proposed changes meet Examples (i) and (ii) of the Examples of Amendments That Are Considered Not Likely to Involve Significant Hazards Considerations are presented in the Federal Register Notice of April 6, 1983.

Example (i): "A purely administrative change to the Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature."

The removal of the table of safety-related snubbers (Category C) from the Technical Specifications was done in accordance with the guidance provided in Generic Letter 84–13. As stated in the generic letter, the staff has reassessed the inclusion of snubber listings within the TS and concluded such listings are not necessary. Since an equivalent list will continue to be maintained on the site, this change meets this Example. Deleting the list of safety-related snubbers will not affect the existing operability, surveillance or limiting conditions for operation requirements of the snubbers as defined in the TS. Changes to the list, as specified in the Generic Letter, would be subject to review and evaluation in accordance with the provision of 10 CFR 50.59, "changes, tests, and experiments."

The format and wording changes (Category D) which are in accordance with the WSTS also meet example (i) as discussed above. *Example (ii):* "A change that institutes and additional limitation restriction or control not presently included in the technical specifications: For example, a more stringent surveillance requirement."

The addition of the definition of type (Category A) meets this Example in that it provides a more accurate definition used in the snubber test programs as described above.

The addition of the third visual acceptance criterion and functional test failure engineering analyses (Category E and F) also meet example (ii) as discussed above.

Therefore, since the proposed changes in Category B would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety, as discussed above, and the proposed changes in Categories A, C, D, E, and F correspond to examples of changes which the Commission has found not likely to involve significant hazards considerations, the staff proposes to determine that the changes requested in the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 3, 1986, as supplemented January 31, 1986.

Description of amendment request: The Three Mile Island Unit 1 (TMI–1) current Technical Specifications (TSs) require submitting a Special Report when Dose Equivalent I–131 is above a specified limit for more than 500 hours in any consecutive six-month period. The TMI–1 TSs also require immediate shutdown if coolant iodine activity levels are above 1.0 microcurie/gram Dose Equivalent I–131 and the cumulative operating time under these circumstances exceeds 800 hours in any consecutive 12-month period. Otherwise the TSs permit power operation to continue for limited time periods with the primary coolant's specific activity greater than 1.0 microcurie/gram Dose Equivalent I–131, but within maximum limits, to accommodate possible iodine spiking phenomenon which may occur following changes in Thermal Power.

The proposed amendment changes the required reporting method from a Special Report to providing a more detailed report in the Annual Report. It also deletes the requirement to immediately shutdown if primary coolant activity levels are above 1.0 microcurie/gram Dose Equivalent I–131 and the cumulative operating time under these circumstances exceeds 800 hours in any consecutive 12-month period.

This amendment requested by the licensee is in response to Generic Letter 85–19 issued by the NRC on September 27, 1985. *Basis for proposed no significant hazards consideration determination:* The proposed amendment changes a reporting requirement from a Special Report to an Annual Report and deletes a requirement to shutdown the plant under certain circumstances. The purpose of the Special Report was to alert the NRC of potential fuel problems before reaching 800 hours of operation with iodine activity above a specified limit. The following criteria forms the basis, as specified in Generic Letter 85–19, for making the proposed change to the Technical Specifications. The quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (in the absence of iodine spiking) is well below the limit. Other operating limitations as defined in the TSs are not being revised. Therefore appropriate corrective actions would be initiated long before accumulating 800 hours above the iodine activity limit. Additionally, 10 CFR 50.72 would require the NRC to be immediately notified of fuel cladding failures that exceed expected values or are caused by unexpected factors. Therefore the present TS limitations are no longer considered necessary on the basis that proper fuel management by the licensee and other existing reporting requirements should preclude the facility from ever approaching the 800 hour limit.

The proposed amendment does not affect the plant design, operation, or safety analysis. Therefore, it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety. In accordance with 10 CFR 50.92, the Commission's staff proposes to determine that the application involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 30, 1986 (TSCR 133).

Description of amendment request: Requests changes to Section 3.5 of the Appendix A Technical Specifications (TS) pertaining to the limiting conditions for operation (LCO) when one of the two trains of the Standby Gas Treatment System (SBGTS) is declared inoperable. The changes are to the power operation and the refueling reactor operation modes in TS 3.5.B.3.a.1 and 3.5.B.3.b.1, respectively. The same change for both nuclear operation modes would lessen the requirement on when the other SBGTS must be demonstrated operable. The change is from within 2 hours in the current TS to the proposed requirement of within 2 hours unless significant painting, fire, or chemical release has taken place in the building within 12 hours and then within 1 hour of the end of the 12-hour period.

Basis for proposed no significant hazards consideration determination: The licensee has proposed its Technical Specification Change Request (TSCR) 133 to allow a delayed demonstration of the operability of the redundant SBGTS after one of the two SBGTS is declared inoperable. TSCR 133 would allow the delayed demonstration of the operable SBGTS train upon the loss of one train, if significant painting, fire, or chemical release has taken place in the reactor building within the previous 12 hours. Current TS surveillance tests provide adequate assurance that the SBGTS will operate upon demand. The proposed change would enhance plant safety by increasing system availability and avoiding unnecessary degradation of the system from a significant painting, fire, or chemical release.

The current TS for demonstrating the operability of the SBGTS, upon the loss of one train, do not address circumstances where significant painting, fire, or chemical release has taken place in the reactor building within the previous 12 hours. TS 4.5.K.1.a requires certain tests of the SBGTS following significant painting, fire, or chemical release in the reactor building while the SBGTS was in operation. Implementation of the current requirements, under these conditions, could degrade the system unnecessarily and would not enhance the safety of the plant. In addition, demonstrating operability during these events would require subsequent compliance with TS 4.5.K.1.a and would negatively affect system availability.

The function of the SBGTS is to treat and exhaust the atmosphere of the reactor building to the stack during containment isolation conditions with a minimum release of radioactive material from the containments to the environments. Two separate filter trains are provided, each having 100% capacity.

The current Oyster Creek TS require that with one SBGTS train inoperable, the other train must be demonstrated operable within 2 hours. Inspection Report 50–219/84–11 identified the need for a change in the specification based upon Licensee Event Report (LER) 84–7 involving the failure to test an SBGTS train within the required time.

In the inspection report on LER 84–7, it was stated that on April 2, 1984, Diesel Generator No. 1 (DG–1) was declared inoperable as a result of a failure to fast start during the monthly surveillance. This resulted in the associated SBGTS being declared inoperable, since DG–1 is the emergency power supply for SBGTS–1. TS 3.5.B.3.b.1 requires demonstration of the operability of the redundant SBGTS (in this case SBGTS–2) within 2 hours. This test had been performed 23 hours before the failure.

At the time of DG–1 failure, two operations relating to TS requirements for the SBGTS were in process: torus painting and rechanneling fuel assemblies. The torus painting operation was stopped but the SBGTS operability tests were delayed for 10 hours in accordance with station procedures. This delay was to prevent degradation of the charcoal filters due to absorption of paint fumes. An irradiated fuel assembly was moved from its spent fuel pool storage location to the fuel preparation machine for channeling and then back to the storage location during the 10 hours before SBGTS–2 was confirmed operational.

The BWR Standard Technical Specification applicable to Oyster Creek (BWR–STS) require the redundant SBGTS to be tested within 7 days of an SBGTS being declared inoperable for the power operation and refueling modes. The BWR–STS require testing the SBGTS following painting, fire, or chemical release in any ventilation zone communicating with the SBGTS because this may damage the SBGTS to the point it could be inoperable.

Therefore, based on the above, operation of Oyster Creek with this TSCR:

(1) *Does not involve a significant increase in the probability or consequences of a previously evaluated accident because:* The TSCR will not (a) affect a system which is an initiator of

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an accident previously evaluated and (b) will provide additional assurance the SBGTS has not been affected by significant painting, fire, or chemical release which could destroy the charcoal absorbers and HEPA filters and prevent the SBGTS from being able to mitigate the consequences of an accident.

(2) *Does not create the possibility of a new or different kind of accident from any accident previously analyzed because:* The TSCR will not affect a system which could be an initiator of an accident. If the redundant SBGTS is inoperable, reactor shutdown shall be initiated and the reactor shall be in cold shutdown within 24 hours.

(3) *Does not involve a significant reduction in a margin of safety because:* The TSCR is within the criteria of the applicable BWR-STS and the staff's Standard Review Plan 6.5.1, ESF Atmosphere Cleanup System. Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W. Washington, D.C. 20036.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 3, 1986 (TSCR 139).

Description of amendment request: The Technical Specification Change Request (TSCR) requests approval of changes to Section 1, 2, 3 and 4 of the Appendix B, Environmental Technical Specifications (TS) pertaining to Definitions, Environmental Monitoring, Special Monitoring and Study Activities, and Administrative Controls, respectively. These changes revise or delete the following: (a) revise the table of contents, (b) delete the list of tables and figures, (c) delete the definitions, (d) delete the introducing paragraph in section 2.1, (e) delete Table 2-1 and 2-2, (f) delete section 2.1.1.A, Impingement of Organism, (g) revise section 2.1.1.B, Fish Kill Monitoring Program, (h) delete section 3.1, Woodborer Monitoring Program, (i) delete the second paragraph in section 3.2, Unusual or Important Environmental Events, (j) revise section 4.1, Responsibility, Administrative Controls, and Figure 4-1 for new titles, (k) delete reference to section 4.4.3 in item F and H of section 4.3, Review and Audit, Administrative Controls, (1) revise Section 4.4.1 and delete sections 4.4.2 and 4.4.3, Procedure, (m) revise item 1 of section 4.5.1.A, Routine Reports, and (n) revise the page numbers of the TS.

Basis for proposed no significant hazards consideration determination: The licensee has proposed TSCR 139 to revise the Appendix B Environmental TS to revise or delete certain requirements and revise Section 4, Administrative Controls. These requirements are environmental monitoring requirements on impingement of organism, fish kill monitoring, woodborer monitoring, and reporting. This includes deleting references to limiting conditions for operation (LCO) which have been previously deleted from the Appendix B TS. These requirements are either in other enforceable documents which render the environmental monitoring requirements in the TS unnecessary, the extensive data base which has been developed has addressed the issue fully and it is no longer necessary to require the studies through the TS, or the licensee maintains an Environmental Control Plan which sets forth the policies and objectives for conservation and protection of the environment and it is no longer necessary for sections 4.4.2 and 4.4.3 to remain in the TS.

This TSCR refers to section 316 (a) and (b), Clean Water Act, demonstrations before the State of New Jersey, Department of Environmental Protection (NJDEP) whose objective is to assess the impingement, entrainment and thermal effects associated with station operation. The woodborer monitoring program has a data base developed and presented in 42 quarterly reports submitted to NRC. The licensee maintains an Environmental Control Plan which sets forth the policies and objectives for conservation and protection of the environment. The TSCR also includes administrative changes to achieve consistency throughout the Appendix B TS and to revise titles in the part of the licensee's organization which has responsibility for the implementation of the environmental TS.

This TSCR does not change a requirement with respect to the installation or use of facility equipment located within the restricted area as defined in 10 CFR Part 20 for operation of the station nor does it change the surveillance requirements on such equipment. This TSCR does not change a safety limit nor an LCO of the station or a surveillance requirement based on an LCO. It does not involve a change in the amounts or types of any effluents that may be released offsite and in any individual or cumulative occupational exposure. The TSCR does not affect the operation of the reactor. The TSCR only changes (1) requirements on what is monitored and reorted in the licensee's required Environmental TS and (2) the titles in the licensee's organization.

Therefore, based on the above, operation of Oyster Creek with this TSCR:

(1) *Does not involve a significant increase in the probability or consequences of a previously evaluated accident because:* The TSCR does not change a safety limit, an LCO or a surveillance requirement on equipment within the security fence to operate the station; it does not change the amounts or types of any effluents from the site; and it does not change any individual or cumulative occupational exposure.

(2) *Does not create the possibility of a new or different kind of accident from any accident previously analyzed because:* The TSCR does not change a safety limit, an LCO or a surveillance requirement on equipment within the security fence to operate the station; it does not change the amounts or types of any effluents from the site; and it does not change any individual or cumulative occupational exposure.

(3) *Does not involve a significant reduction in a margin of safety because:* The TSCR does not change a safety limit, an LCO or a surveillance requirement on equipment within the security fence to operate the station; it does not change the amounts or types of any effluents from the site; and it does not change any individual or cumulative occupational exposure.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W. Washington, D.C. 20036.

NRC Project Director: John A. Zwolinski.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 27, 1986

Description of amendment request: The proposed Technical Specification changes would delete the Reactor Coolant Pump Breaker Position Trip above permissive P-8 and would add Technical Specification provisions for independent testing of the undervoltage and shunt trip attachments during power operation for bypass breakers. Editorial changes are also proposed to delete action statements on Table 3.3-1 that are no longer used.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of these examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The change to add independent testing of the undervoltage and shunt trip attachments during power operation for bypass breakers is directly related to this example. The License Amendment 86/72 issued on August 5, 1985 added surveillance requirements for the undervoltage trip attachments and shunt trip attachments, however, the Safety Evaluation for that amendment concluded that technical specifications for the independent testing during power operation for bypass breakers were necessary for the licensee to meet all the provisions of Generic Letter 83-28, Item 4.3 and Generic Letter 85-09. Another example (vi) is a change which either may result in some increase to the probability or consequences of a previously analysed accident or may reduce in someway a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The change to delete the Reactor Coolant Pump Breaker Position Trip above permissive P-8 is directly related to this example. This trip, above the P-8 permissive, is only required for plant operation with one of the four reactor coolant loops not operating (referred to as N-1 loop operation). However, both facility Operating Licenses for Units 1 and 2 have license conditions prohibiting plant operation with less than four loops operating. In the present protective systems configuration, which is designed to accomodate the N-1 loop operation, a failure of a single inverter can produce a reactor trip. Deletion of the Reactor Coolant Pumps Breaker Position Trip above permissive P-8 will prevent these inverter induced reactor trips. Removing this trip may reduce some of the margin of safety, however, the safety analyses for both Units do not give credit for the trip above the P-8 permissive and the safety analyses have been performed with clearly acceptable criteria and all the other related reactor trips to assure safe operation. Another example (i) is a purely administrative change to technical specifications. The proposed change to delete actions in Table 3.3-1 which are no longer used is a purely administrative change and is directly related to this example.

Based on the above consideration, the staff, therefore, proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnof, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M. Street, N.W. Washington, D.C. 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 8, 1986

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications reflecting the Iowa Electric Light and Power Company's (licensee's) proposal to demonstrate feasibility of Hydrogen Water Chemistry System as a mitigator of Intergranular Stress Corrosion Cracking (IGSCC) of stainless steel piping at the DAEC. The licensee estimates that the addition of hydrogen to the reactor water will result in an approximate one to five-fold increase in the nigrogen (N-16) activity in the steam as a result of conversion of soluble N-16 to a volatile form. The increase in normal operating activity in the Main Steam Line for the duration of the proposed test necessitates a temporary increase in the current Main Steam Line radiation scram and containment isolation setpoints. The licensee has, therefore, proposed to change (a) Main Steam tunnel high radiation scram setpoint, (b) Main Steam Line tunnel high radiation containment isolation setpoint, and (c) the associated bases explaining the rationale for the changes.

The proposed amendment would permit, during a 17-day test, an increase in the calculated radiation background level used to determine setpoints. The main steam line high radiation level setpoint will remain at three times the background radiation level; however, due to the increased N-16 carryover in the steam, the background radiation level used to determine the high radiation setpoint will be increased prior to the test period. The increase in the background level would be based upon the calculated value of the radiation level expected during the tests (approximately a factor of five increase). During controlled power reduction, restoration to pretest setpoints will be done prior to going below 20% of rated power. If due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20% rated power without the setpoint readjustment, control rod withdrawal will be prohibited until the necessary trip setpoint readjustment is made.

The event which takes credit for the above discussed setpoint is the desgin bases control rod drop accident. The licensee states that the control rod drop accident is of concern only below 10% of rated power. The hydrogen injection will be stopped below 20% power and, as stated above, the setpoints will be returned to pretest positions. In addition, the capability to monitor for fuel failures will be maintained through: (1) The continued operability of the main steam radiation monitoring scram and isolation system; (2) routine radiation surveys; (3) the performance of daily primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector Off-Gas Monitor. Furthermore, radiation protection practices will be followed by the licensee during the course of the test based upon the licensee's pretest radiation (ALARA) review. During the hydrogen injection test, special radiation level surveys will be performed and protective actions will be taken, as appropriate, to control all onsite personnel exposure. Changes in gaseous effluent release rates for hydrogen injection are expected to be negligible due to the short decay times for N-16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if

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operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) invovle a significant reduction in a margin of safety.

We have reviewed the licensee's request which is similar to the request previously reviewed and approved for the Pilgrim, Peach Bottom, and FitzPatrick plants. We find that the proposed amendment:

(1) Does not involve a significant increase in probability and consequences of the control rod drop accident which was previously evaluated to determine the Main Steam Line radiation scram and containment isolation setpoints at the reactor power levels, below 20%, because (1) the licensee proposes to suspend the hydrogen addition below 20% of the rated power, (2) reset the setpoints to pretest values at power levels below 20% of the rated power, (3) continue to monitor for fuel failures, and (4) perform special radiation surveys during hydrogen addition test period.

(2) Does not create a possibility of a new or different kind of accident because the Main Steam Line high radiation scram and containment isolation setpoint changes are intended to mitigate against previously analyzed accident, i.e., control rod drop accident involving fuel failures.

(3) Does not involve a significant reduction of margin of safety, because pretest setpoints will be restored when power drops below 20% of the rated power, the capability to monitor fuel failures will be maintained, and special radiation level surveys will be performed and protective action taken if needed.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Kansas Gas & Electric Company, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 20, 1986 as supplemented by letters dated February 5, 1986, and February 26, 1986.

Description of amendment request: The purpose of this amendment is to revise section 4.6.1.2.d of the Wolf Creek Generating Station Technical Specifications to allow a one time deferment of the 24 month maximum surveillance interval for 10 CFR 50, Appendix J Type C local leak rate tests of eight containment penetrations. The request would defer the testing for a maximum period of three months until July 13, 1986 for eight penetrations containing 15 valves that require leak testing prior to July 13, 1986. This amendment is needed because of 25% extension of surveillance intervals in technical specification 4.0.2 does not apply to surveillance requirements specified in Appendix J. The related exemption to Appendix J is under consideration by the NRC staff.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not:

1. Involve a significant increase in in the probability or consequence of an accident previously analyzed. The change only extends the allowed surveillance interval from 24 months to a maximum of 27 months. This change of interval does not significantly extend the length of time between surveillance tests and is within the nominal 25% extension that is permitted for other surveillance requirements by technical specification 4.0.2., or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. This is based o the fact that the method and manner of plant operating is unchanged during the extension of these surveillance intervals, or

3. Involve a significant reduction in a margin of safety. There is no change in the method of operating or in analyses that establish safety margins. Therefore, all safety margins remain as previously analyzed during the extended period between the type C leak rate tests on these eight penetrations.

Accordinly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room locations: The William Allen White Library, Emporia State University, Emporia, Kansas; and the Washburn University School of Law, Topeka, Kansas.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts, & Towbridge, 1800 M Street NW., Washington, DC 20036

NRC Project Director: B.J. Youngblood.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: December 2, 1985.

Description of Amendment Request: The proposed change will revise Technical Specifications 3.2.1 "Linear Heat Rate"; "DNBR Margin"; 3.2.7 "Axial Shape Index"; and the associated Bases. The proposed change will also add Figure 3.2–1a "Allowable Peak Linear Heat Rate vs Tc for COLSS Out-of-Service"; delete Figure 3.2–2 "DNBR Margin Operating Limit Based on COLSS" and replace it with "DNBR Margin Operaing Limit Based on Core Protection Calculators (COLSS Out-of-Service, CEACs Operational);" Revise Figure 3.2–3 "DNBR Margin Operating Limit Based on Core Protection Caculators (COLSS Out-of-Service, CEACs Inoperable);" and revise action 6.b.1 of Table 3.3–1.

Waterford 3 operators use the Core Operating Limit Supervisory System (COLSS) to help monitor linear heat rate, DNBR margin, and axial shape index as presently required by Technical Specification 3.2.1, 3.2.4 and 3.2.7. However, whenever COLSS is out of Service, the operators must use the Core Protection Calculators (CPC) to perform the same function. Since CPC uses ex-core detectors and is required to take action during certain transients, its uncertainties and margins are more limiting than those of COLSS.

When CPC is being used to help monitor LCOs, the extra conservatisms built into CPC for transient protection are not required and thus can be removed. In order to not affect the CPC's transient protection, these conservatisms will be credited in the "COLSS Out-of-Service" limits of Technical Specifications 3.2.1, 3.2.4, and 3.2.7 rather than removed from the CPC. The COLSS Out-of-Service Margin Improvement Program performed for Waterford 3 Cycle 1 has determined the amount of credit available and the adjustment to these Technical Specifications that would be available to take advantage of this credit.

The proposed Technical Specification changes, as discussed above, result from taking advantage of conservatisms in the CPC monitoring of linear heat rate and DNBR margin.

The conservatism identified above provide approximately 10 percent linear heat rate and 12 percent DNBR power margin credits. These credits have been translated into COLSS Out-of-Service LCO adjustments in the proposed technical specification changes.

These proposed changes are similar to those changes (NPF–10–52) submitted by the Southern California Edison Company (SCE) on August 7, 1984 in a letter to Mr. H. R. Denton. The changes were approved by the NRC in Amendment Nos. 32 and 21 to the San Onofre Units 2 and 3 operating licenses, which were issued on March 1, 1985.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to change which either may result in some increase to the probability or consequence of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria specified in the Standard Review Plan (SRP).

Revising Technical Specifications 3.2.1, 3.2.4 and 3.2.7, revising Figure 3.2.3 and Action 6.6.1 of Table 3.3.–1, replacing Figure 3.2–2, and revising the associated Bases are clearly within acceptable criteria specified in Sections 4.2, 4.3 and 4.4 of the SRP for acceptable fuel design limits. In addition, SRP Section 7.2 requires that the reactor protective instruments system automatically inifiates reactor trip to assure that specified acceptable fuel design limits are not exceeded. Because the proposed change prevents acceptable fuel design limits from being exceeded, it satisfies the noted SRP criteria and, therefore, is similar to example (vi) of 48 FR 14870.

No change is proposed to CPC hardware, conservatisms or setpoints, rather credit is taken in the COLSS technical specification to allow use of the CPC to perform COLSS functions when COLSS is inoperable. Although the changes could result in a slight reduction in safety margin, the result would still be well within accpetable limits.

The proposed Technical Specification change do not affect the CPC transient protection. The conservatisms are not taken from the CPC but rather are credited in the COLSS out-of-service limits of Technical Specification 3.2.1, 3.2.4 and 3.3.7. Therefore, the proposed changes will not involve an increase in the probability or consequence of any accident previously evaluated.

The proposed changes in no way affect the safety functions of the CPC. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not affect the margin of safety for fuel damage during transients, because the CPC operation is in no way altered. Plant operators use the COLSS to help monitor linear heat rate, DNBR margin, and axial shape index as required by the Technical Specifications. However, when COLSS is Out-of-Service, the operators must use the CPC to perform the same function. Since the CPC uses ex-core detectors and is required to take action during certain transients, the uncertainties and margins are more limiting than that of COLSS.

When the CPC is used to help monitor LCOs, the extra conservatisms built into the CPC for transient protection are not required and thus can be removed. In order to not affect the CPC transient protection, these conservatisms will be credited in the "COLSS Out-of-Service" limits of Technical Specifications 3.2.1, 3.2.4 and 3.2.7 rather than removed from the CPC. Therefore, the proposed changes will not involve any reduction in a margin of safety during transients.

As the changes requested by the licensee's December 2, 1985 submittal fit the example provided, as well as satisfy the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a resonable assurance that the health and safety of the public will not be endangered by the proposed change; (3) this action will not result in a condition which significantly alters the impact of the station on the environment as descirbed in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orelans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., N.W., Washington, D.C. 20036.

NRC Project Director: George W. Knighton.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 10, 1985 and January 13, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to:

1. Correct an error in the BASES which defines limiting control rod pattern. The BASES would be revised to indicate that operation with a rod pattern which results in an operating limit MCPR (as opposed to a MCPR of 1.07), is a "limiting control rod pattern."

2. Change various administrative controls technical specification sections to reflect title changes (General Manager to President, Assistant General Manager—Nuclear to Vice President—Nuclear, and Reactor Engineer Supervisor to Operations Engineering Supervisor) and newly created positions Maintenance Manager and Outage and Modifications Manager).

3. Revise the BASES for the turbine stop valve scram. The BASES would be revised to indicate that the scram is bypassed at 25% rated turbine first stage pressure, vice 30% (the Limiting Condition for Operation permits bypass at less than 30%).

4. Revise instrumentation tables to accurately indicate the nomenclature used in the utility's equipment database for those instrumements.

5. Restore previously deleted instruments to an instrument table. The instruments had been inadvertantly deleted in an editorial error during an earlier amendment.

6. Change titles, text and BASES relating to "Jet Pump Flow Mismatch" (the Limiting Condition for Operation applies to recirculation pump flow, not jet pump flow).

7. Revise tables which list penetrations and containment isolation valves to include additional, existing, penetrations and valves which also need be listed to make the tables consistent with 10 CFR 50.54(o).

8. Revise a "Reactor Water Level Indication Correlation" figure to indicate that remote water level indication at Panel 9–3 is provided by a Rosemont instrument. The figure presently indicates that a Yarway instrument provides this indication. The instrument replacement is being made to eliminate electrical noise problems.

Basis for Proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed

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amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

With the exception of 8 above, the proposed amendment does not change any existing systems, structures or equipment, surveillance tests, or operating procedures. In the case of 8 above, the replacement instrument is of improved design. Based on these facts, the amendment would not affect the probability or consequences of an accident previously evaluated.

The proposed amendment would not alter the present modes of operation or the parameters which bound those modes, or create a new mode of operation. Based on this fact, they would not create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment does not change, in a non-conservative manner, any safety system setpoints, limiting conditions for operation, or surveillance intervals. Based on this fact, the amendment would not involve any reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Mueller.

Northeast Nucler Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 10, 1986.

Description of amendment request: The proposed amendment would rearrange the index pages to improve the format, change technical specification (TS 3.6.J.1.) to distinguish between (new) replacement resin and regenerated resin for the condensate dimineralizer, add a new limiting condition (TS 3.6.J.3.) for replacement resin, in contrast to reworded TS 3.6.J.2. for regenerated resin, reword the surveillance requirements (TS 4.6.J.2) for regenerated resin, add surveillance requirements (TS 4.6.J.3) for replacement resin and modify the wording in the bases for TS 3.6.J and 4.6.J to achieve consistency with the above changes. These sections specify limits and sampling frequency for condensate demineralizer resin to ensure sufficient reserve salt splitting capacity in the event of a significant condenser tube leak. The full flow condensate demineralizer system maintains the purity of the reactor water. It removes corrosion products picked up by the condensate main and extraction steam, protects the reactor against the effects of condenser tube leaks, and removes impurities which might enter the system in the make up water.

Basis for proposed no significant hazards consideration determination: The proposed additions to the Technical Specifications, TS 3.6.J.3 and 4.6.J.3, would set the limiting conditions and surveillance requirements for replacements resins. The other changes identified in the January 10, 1986 amendment request are for clarification and internal consistency with respect to regenerated and replacement resin. The requirements for regenerated resin remain unchanged.

The licensee states that the proposed change is not precisely enveloped by any of the examples provided by the Commission within the guidance concerning the application of standards in 10 CFR 50.92 (48 FR 14870, April 6, 1983). However, the proposed specification for replacement resins complies with the guidance in Regulatory Guide 1.56, Revision 1, "Maintenance of Water Purity in BWRs" and the technical specifications change does not involve a significant hazards consideration because:

1. The probability of occurrence of malfunction of equipment important to safety previously evaluated in the SAR is not increased since the minimum reserve chloride of the condensate demineralizer is unchanged.

2. The possibility for a new type of accident not previously evaluated has not been created. Fresh resin provides equivalent or better chloride protection than regenerated resin.

3. The margin of safety as defined in the basis for any technical specification is unchanges since the minimum reserve chloride protection ion capacity of the condensate demineralizer is unchanged.

Because the change essentially adds requirements not previously specified for condensate demineralizer replacement resin, which are in accord with NRC Regulatory Guide 1.56, and for the other reasons listed above, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 25, 1984 (Reference LAR 85–14).

Description of amendments request: The proposed amendment would revise the Diablo Canyon combined Technical Specifications for Units 1 and 2 by adding a new program as Technical Specification 6.8.4.f, "Containment Polar and Turbine Building Cranes," in Section 6.8.4, "Procedures and Programs" to ensure that (1) the position of the containment polar crane precludes it from becoming a jet impingement target from a postulated pipe rupture and (2) the operation of the turbine building crane is consistent with the restrictions associated with the Hosgri seismic analysis of the turbine building. The proposed program would include training of personnel and procedures for operation of the polar and turbine building cranes.

Crane operation has been previously reviewed by the NRC staff as reported in the Diablo Canyon Safety Evaluation Report, Supplement Nos. 7, 8, and 9. The staff requested this additional specification as reported in Supplement No. 32, July 1985.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the addition of a Technical Specification program requirement to ensure that (a) the position of the containment polar crane precludes it from becoming a jet impingement target from a postulated pipe rupture and (b) the operation of the turbine building cranes is consistent with the restrictions associated with the Hosgri seismic analysis of the turbine building, does not involve a change in plant equipment, and is a change that constitutes an additional procedural restriction that is not presently included in the Technical Specifications.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed change does not incude a change in plant equipment and constitutes an additional procedural restriction that is not presently included in the Technical Specifications.

Accordingly, the licensee has determined that the proposed change to the Technical Specification involves no significant hazards consideration.

The NRC staff has reviewed the proposed amendment and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that no significant hazards consideration is involved in the proposed amendment.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 95064.

NRC Project Directorate: Steven A. Varga.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: January 16, 1986.

Description of amendment request: The proposed amendment would revise the Unit 1 Technical Specifications (TS) to support the operation of Susquehanna Steam Electric Station (SSES), Unit 1 at full rated power during the upcoming Cycle 3. The proposed amendment request, to support this reload, changed the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for upcoming Cycle 3 operation; (2) establishes the Average Power Range Monitor setpoints; (3) reflects the replacement of approximately two fifths of the core with Exxon 8 x 8/2.89 w/o U235 (Exxon fuel assemblies fuel type XN–2) for the upcoming Cycle 3 operation (the original core was all GE fuel, the first reload replaced approximately one quarter of the GE fuel with Exxon 8 x 8/2.72 w/o U235 (Exxon fuel type XN–1) for Cycle 2 operation); and (4) modifies the bases section.

To support the license amendment request for operation of Susquehanna Unit 1 during Cycle 3, the licensee submitted as attachments to the application the following:

I. Susquehanna SES Unit 1 Cycle 3 Reload Summary Report.

II. Susquehanna Unit 1 Cycle 3 Reload Analysis (XN-NF-85–132, Rev. 1).

III. Susquehanna Unit 1 Cycle 3 Plant Transient Analysis (XN-NF-85–130, Rev. 1).

IV. Susquehanna SES Unit 1 Cycle 3 Proposed Startup Physics Test Summary Description.

During the second refueling outage, PP&L will be replacing approximately two fifths of the previous Cycle 2 core with fresh XN–2 fuel assemblies. The XN–2 fuel is similar to the XN–1 fuel used in the first reload with the exception of small differences in the enrichment and slight differences in the mechanical design. These differences have been analyzed by Exxon. As a result, several Technical Specification changes have been made to incorporate the additional safety analyses performed for Cycle 3.

Basis for Proposed No Significant Hazards Consideration: The Commission has provided examples of the types of amendments not likely to involve a significant hazards consideration (48 FR 14864). The proposed amendment to the Susequehanna Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission. Example (iii) is an amendment to reflect a core reload where: (1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved; (2) no significant changes are made to the acceptance criteria for the Technical Specifications; (3) the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and (4) the NRC has previously found such methods acceptable.

This reload will consist of 764 fuel assemblies, which includes 296 fresh (XN–2) assemblies, 192 once burned (XN–1) assemblies and 276 twice burned GE Type III assemblies. The XN–2 fuel is similar to the XN–1 fuel with the exception of small differences in the enrichment and mechanical design. Although the XN–2 fuel is very similar to the XN–1 fule and the GE fuel, these small differences warranted that a number of reanalyses be performed by Exxon Nuclear Company (ENC). This included reanalyzing for anticipated operational occurances, performing LOCA and MAPLHGR analyses for the XN–2 fuel, and analyzing for the rapid drop of a high worth control rod to assure that excessive energy would not be deposited in the fuel. Analyses for normal operation of the reactor consisted of fuel evaluations in areas of mechnical, thermal-hydraulic, and nuclear design.

The use of the ENC Type XN–2 fuel assemblies and the associated analytical methods used for the Cycle 3 reload analyses have been previously approved by the Commission's staff for use in other boiling water reactors (BWR's). Based on previous experience, the staff had determined that only small differences result between the use of Exxon and GE analytical methods. Additionally, the staff finds that the analytical methods applied to ENC type XN–2 fuel as opposed to ENC type XN–1 fuel also result in only small differences.

The core loading pattern for Cycle 3 is the same as that approved for Cycle 2. The Cycle 3 core will be based on the conventional scatter load principal with the lowest reactivity bundles placed in the periphery region of the core.

Thus, this core reload involves the use of fuel assemblies that are not significantly different from those previously found acceptable to the Commission for a previous core at this facility. This amendment request would change the TS's by providing new operating limits, associated with the Cycle 3 reload. These operating limits are based on the new core physics and are within the acceptance criteria.

In the analyses supporting this reload, there have been no significant changes in acceptance criteria for the Technical Specifications, and those analytical

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methods used have previously been found acceptable.

On the bases of the similarity between the proposed amendment and the Commission's Example (iii) and the fact that the analytical methods used have been previously approved by the staff and do not provide results significantly different, the Commission's staff has concluded that operation of the facility in accordance with the proposed reload would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The staff finds that the proposed Cycle 3 operation is virtually the same as the presently acceptable Cycle 2 operation; (2) create the possibility of a new or different kind of accident from any previously evaluated. The proposed Technical Specifications incorporate appropriate controls and safety limits to assure that operation in Cycle 3 is still bounded by the presently approved analysis; or (3) involve a significant reduction in the margin of safety (see 1 above).

Based on the foregoing discussion, the NRC staff proposes to find that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Project Directorate: E. Adensam.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: September 18, 1985.

Description of amendment request: The purpose of these changes is to implement Technical Specifications related to containment temperature commensurate with Westinghouse Standard Technical Specifications (W–STS). Limiting containment ambient temperature will ensure that the peak containment pressure does not exceed applicable limits during steam break and loss of coolant accidents.

Basis for proposed no significant hazards consideration determination: The Commission has provide guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain example (48 FR 14870). Example (ii) involves a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The proposed requirements do not currently exist in the Technical Specifications. Therefore, the staff proposes that the changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Directorate: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: December 31, 1985.

Description of amendment request: This proposed amendment incorporates the requirements for the licensee's Steam Line Rupture Detection/Isolation System (SLRDIS) at the Fort St. Vrain Nuclear Generating Station. Specifically, this proposed amendment adds new limiting conditions for operation and surveillance requirements to assure that SLRDIS will perform its design function should the reactor require this protective function. Requirements for the existing Steam Pipe Rupture Detection System will be deleted.

Basis for proposed no significant hazards consideration determination: Based upon PSC Safety Analysis Report (EE–EQ–0014), Steam Line Rupture Detection/Isolation System (SLRDIS), it is concluded that the SLRDIS is capable of performing its intended function to detect and isolate major secondary coolant line ruptures of high energy steam pipe lines of the secondary cooling system without operator intervention. The resulting harsh environments for a SLRDIS terminated leak are less severe than the harsh environment previously established on the basis of the operator manually terminating the leak at 4 minutes. These operator-terminated leaks previously established the harsh environments used for Fort St. Vrain equipment qualification.

The SLRDIS replaces the existing steam pipe rupture detection system. SLRDIS is designed to detect steam leaks in either the reactor or turbine buildings and isolate these leaks to preserve or maintain an environment in which electrical equipment is qualified. This change in steam leak detection and automatic action provides more inclusive coverage of potential steam leaks and results in no change in the radiological consequences. For certain steam leaks, the SLRDIS has a slower response than the existing system, but analysis demonstrates that equipment qualification is maintained and access required for manual actions is assured. Thus, the existing steam pipe rupture detection system will no longer be required.

Manual operator intervention for isolating high energy line breaks in the feedwater, condensate extraction steam systems and those line breaks not isolated by SLRDIS is adequate to assure that the resulting temperature profiles are enveloped by that to which the equipment will be qualified.

Consequences of other accidents analyzed in the FSAR were examined for adverse impact as a result of the installation of the SLRDIS. Design Basis Accident No. 2, "Rapid Depressurization/Blowdown Accident", was determined to have one assumption invalidated in that the SLRDIS could prevent initiation of forced circulation cooling at 5 minutes into the accident. (This is because the escaping hot helium gas could trigger SLRDIS, and interrupt steam drive to the operating circulators.) Reanalysis of the accident determined that forced circulation cooling could be delayed for at least 30 minutes without exceeding the conservative FSAR temperature for onset of fuel particle failure of 2900 degrees, a temperature well below that at which rapid fuel deterioration is expected to occur. This is more than ample time for the operator to restore forced circulation cooling.

The potential for the SLRDIS to create new or different types of accidents not previously analyzed was examined. The conclusion was that the SLRDIS could result in interruption of forced circulation cooling through inadvertent trips. It was further concluded that sufficient information is currently available in conjunction with new information available from the SLRDIS for the operator to properly diagnose and recover from the event by re-establishing forced circulation cooling within 30 minutes, an accident previously analyzed in the FSAR.

A review was conducted to determine if any margins of safety defined in the basis for a Technical Specification or in the FSAR were significantly decreased. It was concluded that SLRDIS isolating the secondary coolant system only causes a temporary interruption of forced circulation cooling in both loops. Recovery means exist to re-establish circulation cooling in ample time to mitigate the consequences of a pipe rupture. Thus, it is concluded that the

margin of safety is not significantly reduced.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, this change does not involve any significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201.

NRC Project Director: Herbert N. Berkow.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 25, 1985.

Description of amendments request: The proposed amendment would revise the Salem Nuclear Generating Station Units 1 and 2 Technical Specifications to delete the Boron Injection Tank (BIT) and its associated limiting conditions for operation and surveillance requirements. Public Service Electric and Gas Company has requested the elimination of the BIT in order to remove it as a source of operational and maintenance problems at Salem 1 and 2.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee's analyses show that for all Final Safety Analysis Report (FSAR) cases, the Departure from Nucleate Boiling Ratio (DNBR) is above the limiting value of 1.30. The removal of the BIT will not create the possibility of a new or different kind of accident previously evaluated because the function of the BIT is to provide a source of concentrated boric acid to provide additional shutdown margin following a main steam line break. No new or different accidents would be involved. The removal of the BIT will not involve a significant reduction in margin of safety because, as stated above, the DNBR will remain above the minimum value of 1.30.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Directorate: Steven A. Varga.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Plant, Wayne County, New York

Date of amendment request: January 22, 1986.

Description of amendment request: The proposed license amendment would clarify the visual surveillance requirement for inspections of outside fire hydrants. These inspections are designed to verify that the outside fire hydrants did not suffer any damage due to freezing during the winter months. This proposal is more restrictive than the current technical specifications.

Basis for proposed no significant hazards consideration determination: The proposed change which clarifies the optimal times to perform inspections to detect damage due to freezing was based on an NRC Safety Evaluation that was previously issued that addressed such surveillance. The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. An example of an action involving no significant hazards consideration is a change that relates to (ii), change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, DC 20036.

NRC Project Director: George E. Lear.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: December 10, 1985 and February 4, 1986 (Reference PCN–209).

Description of Amendment Request: The proposed change would revise Technical Specification 3/4.9.6 "Refueling Machine." Technical Specification 3/4.9.6 currently requires that the refueling machine be used for movement of fuel assemblies and control element assemblies (CEA's) within the reactor vessel and specifies operability requirements for the refueling machine, periodic testing to verify operability and actions to be taken when the refueling machine is inoperable.

The purpose of this technical specification is to ensure: (1) That the refueling machine will be used for all movements of fuel assemblies and CEA's in the reactor vessel; (2) that the refueling machine has sufficient load capability to lift a fuel assembly with or without a CEA; and (3) that the core intervals and pressure vessel are protected from excessive lifting force in the event that they are inadvertently engaged during lifting operations. The specified load capacity and overload cutoff requirements ensure that these provisions are met.

An auxiliary hoist is being added to the refueling machine. The proposed change will allow the auxiliary hoist to be used for movements of CEA's within the reactor vessel. The proposed change also revises Technical Specification 3/4.9.6 to add operability requirements for the refueling machine auxiliary hoist and will define surveillance requirements and actions to be taken in the event of auxiliary hoist inoperability. Specifically, Technical Specification 3/4.9.6 will require the auxiliary hoist to have an overload cutoff limit of less than or equal to 1,000 pounds and require demonstration of the operability of this overload cutoff within 72 hours prior to its use. Additionally, if the operability requirements for the auxiliary hoist are not satisfied, operations involving the use of the auxiliary hoist must be suspended.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes to determine that the proposed changes does not involve a significant hazards

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consideration because it meets the three criteria of 10 CFR 50.92(c). The basis for this proposed finding is given below.

(1) Operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Specifically, the probability or consequences of an accident are not increased by the proposed change since the refueling machine auxiliary hoist meets all the design criteria for CEA handling equipment specified in the Final Safety Analysis Report (FSAR) for San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 and the requirements of NUREG-0612. Thus, this proposed change will not involve a significant increased in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. Specifically, the refueling machine auxiliary hoist is equipped with interlocks which prevent the concurrent use of the refueling machine. Additionally, it also has mechanical interlocks to secure the CEA while it is being moved and will therefore not distort or damage such a CEA which it is being move under water. Since the refueling machine auxiliary hoist will not be used to move fuel assemblies, the operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with this proposed amendment does not involve a significant reduction in a margin of safety. Specifically, there is no reduction in the margin of safety previously established, since the operation of the refueling machine auxiliary hoist under the proposed LCO condition will not present any increased potential for damage to CEAs, nor will it affect the existing safety analysis and design criteria.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: January 24, 1986 (Reference PCN-3).

Description of Amendment Request: The proposed change would revise Technical Specification (TS) 3/4.9.8.1 "Shutdown Cooling and Coolant Circulation—High Water Level," and Technical Specification 3/4.9.8.2 "Shutdown Cooling and Coolant Circulation—Low Water Level." Technical Specifications 3/4.9.8.1 and 3/4.9.8.2 define requirements for the Shutdown Cooling System (SDCS) when the plant is in Mode 6 (refueling). Mode is defined as having reactor vessel head closure bolts not fully tensioned with reactor coolant system (RCS) temperature less than 140 °F. The purpose of TS 3/4.9.8 is to ensure that (1) sufficient cooling capacity is available to remove decay heat and maintain the water in the reactor pressure vessel below 140 °F as required during the refueling mode, and (2) sufficient coolant circulation is maintained through the reactor core to minimize the effects of a boron dilution incident and prevent boron stratification.

Technical Specifications 3/4.9.8.1 and 3/4.9.8.2 define the number of SDCS trains required to be operable or in operation depending on refueling water level, actions to be taken when the operability requirements are not met, and periodic surveillance requirements to verify operability. Specifically, surveillance requirements 4.9.8.1 and 4.9.8.2 require a minimum SDCS flow rate of 4000 gpm while in Mode 6. This high flow rate necessitates maintaining a high water level in the RCS to prevent vortexing in the SDCS suction. Thus, the RCS water level cannot be reduced to mid-loop until entry is made into Mode 5 (i.e., with the reactor vessel head closure bolts fully tensioned), where SDCS flow can be reduced. The high water level necessitates delaying removal of steam generator nozzle dams and reactor coolant pump seal replacement, both activities requiring RCS water level to be lowered to mid-loop, until entry into Mode 5. A reduction in the minimum required Mode 6 shutdown cooling flow rate requirements would allow mid-loop operation in Mode 6 without vortexing and would permit steam generator nozzle dam removal and RCP seal replacement to be carried out concurrently with reactor vessel head installation. The resultant savings in critical path outage time would be approximately five days. The proposed change to Technical Specification 3/4.9.8.2 would reduce to the minimum required SDCS flow to greater than or equal to 2200 gpm. Technical Specification 3/4.9.8.1 is similarly revised for consistency.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

In this case, the pertinent acceptance criteria are found in SRP sections 5.4.7, "Residual Heat Removal System," and 15.4.6, "Chemical and Volume Control System (CVCS) Malfunctions Resulting in a Decrease in Boron Concentrations in the Reactor Coolant (PWR)." SRP sections 5.4.7 requires, in part, that the residual heat removal system (i.e., the SDCS) provide long-term cooling for the RCS. SRP section 15.4.6 requires that a minimum of 30 minutes be available to credit operator action for mitigation of a boron dilution event in Mode 6. The proposed change reduces the minimum SDCS flow requirements from 4000 gpm to 2200 gpm. Regardless of the minimum SDCS flow requirement, the Mode 6 requirement for maintaining RCS temperature below 140 °F defines the actual SDCS flow rate. Thus at any point in time after shutdown the proposed change will require adequate SDCS flow to remove the decay heat generated to maintain RCS temperature below 140 °F. Therefore the proposed change satisfies the criteria of SRP section 5.4.7. The proposed reduced minimum flow is also sufficient to ensure good mixing in the RCS thereby minimizing the effects of an inadvertent boron dilution event. Good mixing is provided by a high ratio of SDCS flow to charging flow (the charging pumps are the postulated source of demineralized water during a boron dilution even in Mode 6). FSAR section 15.4.6 determines good mixing exists because of the high

ratio of SDCS flow to charging flow. The FSAR analysis to demonstrate good mixing assumes that 3 charging pumps are available. The resultant SDCS/charging flow ratio is 4000 gpm/132 gpm. However, the FSAR boron dilution event analysis assumes only one charging pump (44 gpm) is available. Administrative controls allow only one charging pump to be available in Mode 6. With the proposed change, the actual SDCS/charging flow ratio for the boron dilution event is 2200 gpm/44 gpm which is bounded by the existing FSAR analysis. Therefore, good mixing is maintained and the analyses of the boron dilution event presented in the FSAR remain bounding. These analyses demonstrate that more than 60 minutes are available for operator action, satisfying the 30 minute SRP acceptance criteria. Because the SRP acceptance criteria continue to be satisifed, the proposed change is similar to Example (vi) of 48 FR 14870.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Piggott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: October 28, 1985.

Description of amendment requests: This amendment would revise section 3.8 and 3.10 of the Technical Specifications by increasing the maximum K-effective allowable during refueling conditions from the current value of 0.90 to 0.95. The proposed change in K-effective would provide greater flexibility during the reload core design process; the 0.95 limit on K-effective is consistent with the limit specified in the Standard Technical Specifications. These amendments would also reduce the sampling frequency for boron concentration during refueling from at least once every eight hours, to at least once every 72 hours.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). An example of an action not likely to involve a significant hazards consideration is Example (vi), which states in part, "A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the systems or components specified in the Standard Review Plan . . .".

The proposed changes are similar to Example (vi) in that:

(a) A K-effective of 0.95 during refueling conditions will ensure a shutdown margin that will maintain the reactor subcritical, in accordance with General Design Criteria 26, 27, 28, and 29, although the shutdown margin would be less than that provided by a K-effective of 0.90. However, the minimum boron concentration of 2000 ppm will remain the same. Analyses in the facility's Updated Final Safety Analysis Report (UFSAR) shows that for the given initial boron concentration, its concentration must be reduced to approximately 1100 ppm before the reactor will become critical. In the event of either a refueling accident or boron dilution event, the results of the UFSAR analyses remains bounding. Therefore, the change would be within all acceptable criteria.

(b) In order to assure that the minimum boron concentration of 2000 ppm will be maintained, periodic surveillance is required. The decrease in the sample frequency for boron concentration during refueling from a minimum of at least once every 8 hours to at least once every 72 hours reduces the number of verifications for a given time interval. However, this reduced sampling frequency is consistent with the requirements of the Standard Technical Specification (STS) for this application. The eight hour surveillance frequency was originally an administrative constraint established by the staff. However, the staff has since determined that a surveillance frequency of 72 hours was more appropriate, and as such, is not reflected in the STS.

Thus, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubenstein.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of Amendment Request: January 17, 1986.

Description of Amendment Request: This proposed amendment, if approved, will modify the WNP-2 Technical Specifications by changing Valve FPC-V-149 from manual to automatic. Valve FPC-V-149 is the interface between the Suppression Pool Cleanup System and the Fuel Pool Cooling (FPC) System. At present it is manually closed and locked during normal power operation. The change was requested in order to provide a motorized isolation valve in the suppression pool cleanup return line so as to allow use of the FPC filter-demineralizers for suppression pool cleanup during reactor operations. The automatic valve will also be used to maintain level in the suppression pool without using an RHR pump, thereby avoiding unnecessary challenges of an ECCS function.

Basis for no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the change only enhances the performance of the suppression pool cleanup portion of the FPC system and changes no functional characteristics of the system design; or (2) Create the possibility of a new or different kind of accident from an accident previously evaluated because previous accident analyses encompassed breaks in larger lines following LOCA's and no new or different accident mode or scenario for radiological release is introduced; or (3) Involve a significant reduction in a

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margin of safety because the upgraded system will provide a duplicated, automatic isolation function as well as allowing manual valve closure at the valve as before.

Based on our review of the proposed modification, the staff finds that there exists reasonable assurance that this proposed change will have little or no impact on the public health and safety. Accordingly, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 8, 1986.

Description of amendment request: The proposed change updates the licensee's Technical Specifications to reflect modification of the containment isolation boundary. A containment isolation valve has been replaced with a double O-ring sealed blank flange.

Basis for proposed no significant hazards consideration determination: The licensee's current TS require isolation of the fuel chute dewatering pump discharge system with valve CS-CV-216. Current TS also provide for isolation of a line that has an inoperable valve with a blank flange. This identifies a blank flange as providing at least an equivalent level of containment isolation as that provided by an isolation valve. In addition, the following considerations are provided: (1) A change to the Containment Isolation Boundary does not affect the probability of an accident, since containment isolation is necessary only after specific postulate accidents have already occurred; (2) since an equivalent level of isolation is provided by a blank flange, the consequences of an accident would not be affected by the proposed change; (3) since blank flanges are used to isolate other lines through the containment, and since an existing line is being modified, no new or different types of accidents would be created by the proposed change; and (4) since the new isolation boundary will be leak tested, and the Vapor Container Leak Detection System remains operable, the margins to safety are maintained.

Based on this discussion, the staff finds that the proposed change does not (1) involve a significant increase in the probability or consequence of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

Based on these findings, the staff proposed to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room Location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: February 5, 1986.

Description of amendment request: The proposed change would modify the licensee's Technical Specification reporting requirements for: (1) reportable events in accordance with 10 CFR 50.73; and (2) primary coolant iodine spikes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (vii) of actions involving a no significant hazards consideration involves a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. Example (i) of actions involving a no significant hazards consideration involves a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The change proposed in item (1) above is necessary to make the licensee's technical specifications conform to the change in 10 CFR 50.73 regarding reporting requirements, or Licensee Event Reports, for reportable events. These changes only affect reporting requirements following a reportable event and do not affect plant operation. As such, the change proposed in item (1) above is encompassed by examples (i) and (vii).

The change proposed in item (2) above proposes changes to the licensee's technical specifications for reporting any spikes noted in primary coolant iodine samples. Sampling requirements for primary coolant iodine remain unchanged, as do the operational action statements associated with the limiting condition for operation for this technical specification. The report of primary coolant iodine spikes is no longer required to be a Licensee Event Report consistent with the change in 10 CFR 50.73, but is to be included in the licensee's annual report. As such, the change proposed in item (2) above is encompassed by examples (i) and (vii).

Based on this discussion, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room Location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Nos. 50.369 and 50.370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 21, 1986.

Description of amendment request: The amendments relate to primary containment leak rate. Surveillance Specification 4.6.1.2 requires that primary containment leak rates periodically be demonstrated in conformance with criteria specified in

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Appendix J of 10 CFR 50. (Appendix J defines three types of leakage tests, identified as Types A, B and C.) Subparagraph d of this Specification states that Type B and C tests are to be conducted with gas at a specified pressure and test interval with three indicated exceptions. The proposed amendments would add NRC approved exemptions to Appendix J as a fourth exception to Subparagraph d.

Date of publication of individual notice in **Federal Register**: February 24, 1986 (51 FR 6475).

Expiration date of individual notice: March 26, 1986.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina, 28223.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 18, 1985.

Brief description of amendment request: The amendment would revise Technical Specifications (TS) 4.6.3.4 to allow a one-time-only extension of time to satisfy local leak rate testing requirements on excess flow check valves as listed in the amendment application.

Date of publication of individual notice in **Federal Register**: December 26, 1985 (50 FR 52874).

Expiration date of individual notice: January 28, 1986.

Local Public Document room: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluation and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of applications for amendments: September 9, 1985 as supplemented by letter dated October 29, 1985.

Brief description of amendments: The amendments changed the Unit 1 and Unit 2 Technical Specifications (TS) to delete requirements for the post-accident sampling systems (PASS) in TS 3/4.7.13 and the post-accident main vent iodine and particulate monitors in TS Tables 3.3-6, "Radiation Monitoring Instrumentation," and Table 4.3-3, "Radiation Monitoring Instrumentation Surveillance Requirements." A new TS, 6.15, "Post-accident Sampling," addresses the requirements for the PASS and the post-accident main vent iodine and particulate monitors.

Date of issuance: February 19, 1986.

Effective date: February 19, 1986.

Amendment Nos.: 113 and 96.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1985 (50 FR 53326 at 53227).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of applications for amendments: April 26, 1985 and June 28, 1985.

Brief description of amendments: The amendments change the Unit 1 and Unit 2 Technical Specifications (TS) 3/4.8.2.3, "D.C. Distribution-Operating" and TS 3.8.2.4, "D.C. Distribution-Shutdown" as follows: (1) the Limiting Condition for Operation (LCO) and associated Actions are changed to reflect use of the station "Reserve Battery", (2) a modification is made to the battery cell voltage and capacity test, and (3) a grammatical error is corrected. Consideration of the above items concludes the actions on the applications dated April 26, 1985 and June 28, 1985.

Date of issuance: February 20, 1986.

Effective date: February 20, 1986.

Amendment Nos.: 114 and 97.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1985 (50 FR 53326 at 53227).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: July 12, 1985.

Brief description of amendments: These amendments would raise the enrichment limits to approximately 3.7 w/0 for the fuel pool and 4.0 w/0 for the new fuel vault.

Date of issuance: February 19, 1986.

Effective date: February 19, 1986.

Amendment Nos.: 94 and 84.

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 11, 1985 (50 FR 37076).

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The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 31, 1985.

Brief description of amendment: The license amendment revises Technical Specification 1.8, Containment Integrity (definition), and incorporates a new Table 3.11-2, Non-automatic Containment Isolation Valves, to allow for surveillance testing of normally closed, non-automatic containment isolation valves that are part of the Post-Accident Sampling System (PASS).

Date of issuance: February 19, 1986.

Effective date: February 19, 1986.

Amendment No. 72.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1986 (51 FR 1673).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: May 7, 1985, as modified November 7, 1985.

Brief description of amendment: The amendment changes Technical Specification 3/4.6.5.3 "Ice Condenser Doors" and its associated bases to limit the allowed time of power operation with the ice condenser inlet doors in a closed and inoperable condition and to clarify the definition of "inoperable."

Date of issuance: February 14, 1986.

Effective date: February 14, 1986.

Amendment No. 4.

Facility Operating License No. NPF-35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32793).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: July 13, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to increase the interval for diesel generator cold-start surveillance testing, in response to staff positions in Generic Letter No. 84-15.

Date of issuance: February 14, 1986.

Effective date: February 14, 1986.

Amendment No.: 5.

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1985 (50 FR 51621).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Dates of applications for amendments: March 15, August 7, October 30, November 7, December 17, December 20, and December 23, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications by making editorial and format changes to establish a single document that is common for Units 1 and 2 and by adding a new specification to provide the Limiting Condition for operation and Surveillance Requirements found in NUREG-0737 for the Reactor Coolant Systems Vents.

Date of issuance: February 24, 1986.

Effective date: February 24, 1986.

Amendment No.: 6.

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1986 (51 FR 455).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 26, 1984, as supplemented May 14, and October 4, 1984.

Brief description of amendment: The amendment revises the license to delete the Terrestrial Monitoring requirements and deletes Appendix B as well since the deleted requirement was the only item presently contained in Appendix B.

Date of issuance: February 18, 1986.

Effective date: February 18, 1986.

Amendment No.: 130.

Facility Operating License No. DPR-49: Amendment revised the license.

Date of initial notice in **Federal Register:** March 22, 1984 (49 FR 10736).

The subsequent submittals dated May 14, and October 4, 1984 provided copies of the reports referenced in the original submittal and were intended for clarification purposes only.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 23, 1982, and revised on November 24, 1982.

Brief description of amendment: The amendment provides new reporting requirements on nonradiological, nonaquatic environmental events and deletes the requirement for an Annual Nonradiological Environmental Monitoring and Ecological Studies Program Report.

Date of issuance: February 12, 1986.

Effective date: February 12, 1986.

Amendment No.: 38.

Facility Operating License No. DPR-22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46215).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated February 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania.

Date of application for amendments: June 13, 1985 as supplemented August 1, October 9, 1985, January 30, 1986.

Brief description of amendments: These amendments allow spent fuel pool storage capacity expansion from 2,608 to 3,819 for each Unit's spent fuel pool. The expansion is to be achieved by reracking with newer higher density racks.

Date of issuance: February 19, 1986.

Effective date: February 19, 1986.

Amendments Nos.: 116 and 120.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1985 (50 FR 50873).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the applications for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commissioner's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commissions's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under it regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 11, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference

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scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross/examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washignton, D.C. 20555, Attention: Docketing and Service Branch, or may be delivard to the Commission's Public Document Room, 1717 H. Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) 1(v) and 2.74-(d).

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan.

Date of application for amendments: February 14, 1986.

Brief description of amendments: The amendments revise the Technical Specifications for a period of one year to allow crane travel over the spent fuel in the spent fuel pit with the main hoist deenergized and the load block unloaded.

Date of issuance: February 24, 1986.

Effective date: February 24, 1986.

Amendment Nos.: 93 and 79.

Facility Operating License Nos. DPR-58 and DPR-74. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments Received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1986.

Attorney for licensee: General Charnoff, Esquire, Show, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland this 5th day of March 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Deputy Director, Division of BWR Licensing.

[FR Doc. 86-5386 Filed 3-11-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22967; File No. SR-MSTC-85-9]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of Midwest Securities Trust Company

On December 26, 1985 Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Notice of the proposal was published in Securities Exchange Act Release No. 22778 (January 8, 1986), 51 FR 2016 (January 17, 1986). No comments were received. As discussed below, the Commission is approving the proposed rule change.

The proposal enables MSTC to establish a Commercial Paper Division ("Division") to provide a system for recording commercial paper transactions, including book-entry issuance, custody, and presentment of commercial paper. MSTC states in its filing that it has acquired the Short Term Investment Clearing Service ("STICS") from the Chicago Clearing House Association ("CCHA"). STICS, upon which MSTC's system is based, has provided commercial paper processing for CCHA members since 1984. MSTC states that its Division will operate initially as a pilot program with four Division participants who are the CCHA members that presently use STICS.

MSTC's filing includes Division Rules to govern commercial paper processing. Those rules require Division participants to sign a Division Participant's Agreement whereby the participant agrees to be bound by all MSTC Rules and Procedures that apply to Division activity. MSTC's Division Rules set forth qualifications for applicants[1] and enable MSTC to waive standards if appropriate or to deny applications in certain cases.[2] Division Rules establish three categories of participants—Issuing Agent Participants, Custodial Participants, Paying Agent Participant—and set forth the responsibilities of participants and of the Division.

During the pilot phase, money settlement will not occur within the Division's system. The Division's system will process commercial paper transactions that will become negotiable issued securities only after money settlement in same-day ("Fed funds") occurs outside the system. Accordingly, Division participants will not be bound by MSTC's Participant Fund Rules nor be required to make Participant Fund contributions during the pilot program.

MSTC states in its filing that if Division services are expanded to include money settlements that may cause financial exposure to MSTC, MSTC will develop and file with the Commission appropriate safeguards.

MSTC believes that the proposal is consistent with the Act and Section 17A of the Act in particular because it will facilitate prompt and accurate clearance of commercial paper transactions. MSTC also believes that the proposal will reduce inefficient procedures and concomitant costs for commercial paper investors and persons facilitating transactions on behalf of investors..

The Commission agrees with MSTC that the proposal is consistent with the Act and should be approved. MSTC's acquisition of STICS enables MSTC to provide commercial paper processing services through an established system already used by the CCHA members that will participate in MSTC Division's pilot program. Moreover, the Commission notes that the proposal represents the first attempt to provide centralized book-entry processing facilities for commercial paper transactions within the National Clearance and Settlement System. Accordingly, the proposal is consistent with the Congressional goals of section 17A of the Act to increase automation and efficiency in the clearance and settlement of securities transactions.

The Commission recognizes the limited nature of the MSTC Division pilot program and that the Division system contemplates broader participation and service than in the pilot phase. Consistent with its obligations to safeguard securities and funds and operational integrity, the Commission expects MSTC to proceed prudently in expanding the program. The Commission notes that MSTC's Division Rules incorporate STIC's rules with only minor modifications. MSTC plans to study Division operations during the pilot phase and modify accordingly the Division Rules to conform to MSTC Division operations and planned system enhancements.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 5, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5323 Filed 3-11-86; 8:45 am]

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[1] An acceptable applicant includes a bank, savings and loan association, or trust company subject to state or federal banking laws or a subsidiary of such entity or of a bank holding company. Those entities also must have fully paid capital in excess of $50,000,000. Alternatively, an applicant must be a registered broker or dealer, or a subsidiary thereof, with net worth of not less than $10,000,000. In conversations with Commission staff, MSTC stated that it will consider broadening acceptable applicants to include corporate commercial paper issuers. MSTC Division Rules also require an applicant to have direct or indirect same-day funds transfer capability.

[2] Division Rules provide that MSTC can deny applications when it determines that the Division is unable at that time to service additional participants. These applications would be approved as promptly as possible once Division capabilities permit approval.

[Release No. 34-22974; File No. SR-NASD-86-3]

Self-Regulatory Organization; National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on February 20, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would delete Part VIII, Schedule C of the Corporation's By-Laws regarding Registration of Persons Previously Associated with SECO Program Broker/Dealers and renumber subsequent Parts thereof.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to delete Part VIII, Schedule C of the Corporation's By-Laws regarding Registration of Persons Previously Associated with SECO Program Broker/Dealers (and renumber subsequent Parts thereof), since the exemptive provisions incorporated in Part VIII, Schedule C are not available to any person whose application for registration is received by the Corporation on or after December 6, 1985.

Part VIII, Schedule C of the by-laws provides that a person previously associated with a SECO program broker-dealer may qualify for certain categories of registration with the Corporation without passing an examination of that person's association with the SECO broker-dealer has not been terminated for two years or more prior to the date the Corporation receives his application for registration. The SECO program terminated on December 6, 1983. Any person previously associated with a SECO broker-dealer who files an application for registration with the Corporation on December 6, 1985 or later cannot qualify for the exemption encompassed in Part VIII, Schedule C of the by-laws since two or more years have elapsed since that person was associated with the SECO broker-dealer. However, individuals may continue to request a waiver of the examination requirement pursuant to section 5, Part VI of Schedule C of the by-laws.

The statutory basis for the proposed rule change is found in section 15A of the Securities Exchange Act of 1934, as amended (the "Act") in that approval of the proposed rule change will serve to further assure that persons seeking registration with the Corporation are qualified to engage in the securities industry in the capacity in which they seek registration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted April 2, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: March 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5324 Filed 3-11-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Burger King Investors Masters
  Units, No Par Value (File No. 7–8849)
Duke Realty Investments Inc.
  Capital Shares, No Par Value (File No. 7–8850)
Zenith Laboratories, Inc.
  Common Stock, $.09 Par Value (File No. 7–8851)
Union Carbide Corporation
  Special Dividend Right (File No. 7–8852)
Gulf Canada Corporation
  Series 1 Preference Share (File No. 7–8853)
Lorimar Telepictures Corporation
  Common Stock, $0.01 Par Value (File No. 7–8854)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5325 Filed 3-11-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 5, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Insilco Corporation
  Common Stock, $1.00 Par Value (File No. 7–8802)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 86-5422 Filed 3-11-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5287]

BanCap Corp.; License Surrender

Notice is hereby given that BanCap Corporation, 155 East 42nd Street, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). BanCap Corporation, was licensed by the Small Business Administration on April 30, 1971.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on February 10, 1986, and, accordingly, all rights, privileges, and franchise derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 3, 1986.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-5333 Filed 3-11-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2231, Amendment No. 1]

California; Declaration of Disaster Loan Area

The above-numbered Declaration (51 FR 7514), issued in accordance with the President's declaration of February 21, 1986, is hereby amended in accordance with an amendment from the Federal Emergency Management Agency, to include the Counties of Glenn, Humboldt and Modoc because of damage from severe storms, landslides, mudslides and flooding beginning on or about February 12, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 24, 1986, and for economic injury until the close of business on September 2, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 26, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-5334 Filed 3-11-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-0227]

Leader Capital Corp.; Application for a Small Business Investment Co. License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Leader Capital Corporation (Leader), 158 Madison Avenue, Memphis, Tennessee 38103, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers and directors of the Applicant are as follows:

Name and Position

James E. Pruitt, Jr., 2208 Burlingate Drive, Cordova, Tennessee 38018—President/Director
Edgar H. Bailey, 315 Inkberry, Memphis, Tennessee 38117—Chairman/Director
James L. Ross, 151 Narvik Cove, Cordova, Tennessee 38018—Vice-Chairman/Director
W. Anderson Gester, 7194 Woodridge Lane, Germantown, Tennessee 38138—Secretary-Treasurer/Director
James E. Harwood, 1630 Clenlo, Memphis, Tennessee 38104—Director
Stephen H. Rhea, 4059 Dumaine Way, Memphis, Tennessee 38117—Director.

Leader's parent company will be Leader Services, Inc., a wholly owned subsidiary of Leader Federal Savings and Loan Association, 158 Madison Avenue, Memphis, Tennessee 38103.

The Applicant, Leader, a Delaware Corporation, will begin operations with $1,085,000 paid in capital and paid in surplus. Leader will conduct its activities primarily in the State of Tennessee but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Memphis, Tennessee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 4, 1986.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-5335 Filed 3-11-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0492]

NatWest USA Capital Corp.; Issuance of a Small Business Investment Co. License

On December 6, 1985, a notice was published in the Federal Register (50 FR 50029) stating that an application has been filed by NatWest USA Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business January 6, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0492 on February 6, 1986, to NatWest USA Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 3, 1986.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-5336 Filed 3-11-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/949]

Chairman's Special Ad Hoc Subcommittee of the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the CCIR National Committee will meet on April 3, 1986 at 9:30 a.m. in Room 1205, Department of State, 2201 C Street NW., Washington, D.C.

During the 23rd meeting of the CCIR National Committee the Chairman established a Special Ad Hoc Subcommittee to facilitate the activities of the Committee. The general purpose of this Subcommittee is to obtain both government and private sector input to advise the Chairman on a wide variety of radio issues related to the CCIR National Committee. In the short term, this Special Ad Hoc Subcommittee will focus on preparations for the XVIth CCIR Plenary Assembly, May 1986, especially those items of a general, nontechnical nature. In the longer term, the work will address general, nontechnical policy issues that encompass multiple study groups.

The primary purpose of the meeting on April 3 will be to complete the preparation of proposed U.S. positions on resolutions and opinions of a general nature for the XVIth CCIR Plenary Assembly. As time permits, there will be a general discussion of available papers related to each of the long-term study areas previously identified.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact Warren Richards, Department of State (telephone (202) 647-5841). All attendees must use the C Street entrance to the building.

Dated: March 3, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee

[FR Doc. 86-5373 Filed 3-11-86; 8:45 am]

BILLING CODE 4710-07-M

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[Public Notice CM-8/948]

Chairman's Ad Hoc Group on Communications Development of the National Committee of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 3, 1986 at 10:30 a.m. in Room 1406, Department of State, 2201 C Street NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The agenda of the meeting on April 3 will include the selection of an alternate U.S. Representative to serve on the Advisory Board of the Centre for Telecommunications Development. In addition, the Ad Hoc Group will make recommendations regarding appropriate United States positions on the agenda items to be considered at the April 22–24 meeting of the Centre's Advisory Board in Geneva.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Atendance will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647–1007.

Requests for further information should be directed to Mr. D. Clark Norton, State Department, Washington, D.C. 20520, telephone 202–647–1007.

Dated: February 28, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86–5374 Filed 3–11–86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket 38978]

Braniff International Airways, Employee Protection Program Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on Marh 18, 1986, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, D.C., March 6, 1986.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 86–5309 Filed 3–11–86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; T.F. Green State Airport, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Rhode Island Department of Transportation for T.F. Green State Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for T.F. Green State Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 30, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 3, 1986. The public comment period ends May 2, 1986.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration. New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, MA 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F. Green State Airport are in compliance with applicable requirements of Part 150, effective March 3, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 30, 1986. This notice also announces the availability of this program for public review and comment.

Under section 103 on Title I of the Aviation Safety and Noise Abatement Act of 1979 (Hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Rhode Island Department of Transportation (RI DOT) submitted to the FAA on December 6, 1985 noise exposure maps, descriptions and other documentation which were produced during Airport Noise Compatibility Planning Study at T.F. Green State Airport from September 1981 to September 1984. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by RI DOT. The specific maps under consideration are the Noise Exposure Map in the Noise Exposure Map Documentation Report cover pocket; Exhibits 2.1 and 2.5 in the Data Report in the submission. The FAA has determined that these maps for T.F.

Green State Airport are in compliance with applicable requirements. This determination is effective on March 3, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for T.F. Green State Airport, also effective on March 3, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 30, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150 § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SE., Room 617, Washington, DC.

Federal Aviation Administration, 12 New England Executive Park, Airports Division, ANE–610, 12 New England Executive Park, Burlington, MA 01803

Mr. Anthony Rosati, Assistant Director of Transportation, Division of Airports, RI DOT, T.F. Green State Airport, Warwick, RI 02886

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT."

Issued in Burlington, Massachusetts, March 3, 1986.

Robert E. Whittington,

Director, Federal Aviation Administration, New England Region.

[FR Doc. 86–5282 Filed 3–11–86; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular 20–124, Water Ingestion Testing for Turbine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This Notice announces the issuance of Advisory Circular (AC) 20–124, Water Ingestion Testing for Turbine Powered Airplanes. Advisory Circular 20–124 describes a method of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) concerning the ingestion of water from the runway/taxiway surface into the airspeed system, the engine, and essential auxiliary power unit air inlet ducts of turbine engine powered airplanes.

DATE: Advisory Circular 20–124 was issued by the Office of Airworthiness in Washington, DC, on September 30, 1985.

How to obtain copies: A copy of AC 20–124 may be obtained by writing to the U.S. Department of Transportation, M–494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on March 4, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 86–5418 Filed 3–11–86; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP86–04; Notice 1]

Sears, Roebuck and Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Sears, Roebuck and Co., of Chicago, Illinois, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3 of Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* requires that:

> "S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (g). . . ."
>
> S4.3(d) requires: "The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;"

The petitioner discovered that its supplier, Michelin Tire Corporation, had manufactured approximately 3,325 tires under its brand name, Sears Roadhandler P195/75R14, between August 2 and September 1, 1985, that were incorrectly labeled. The tread material indicated on one sidewall was "2 polyester plies + 2 fiberglass plies" instead of "2 polyester plies + 2 steel plies." The other sidewall was correctly labeled.

Of the approximate 3,325 tires produced, approximately 2,550 were shipped to Sears outlets and most of them have been sold. The labeling on the remaining 775 has been corrected by Michelin.

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Michelin Tire Corporation, Sears' supplier, contends that:

> "This noncompliance is inconsequential as it relates to motor vehicle safety. Even if a consumer were to read the incorrect labeling and mix these steel belted tires on a vehicle with tires that actually had fiberglass belt material, an unsafe situation could not be created because the tires would be compatible. Michelin, as well as the rest of the tire industry, does not have any restrictions on mixing radial tires of different materials on a vehicle."

Interested persons are invited to submit written data, views and arguments on the petition of Sears, Roebuck and Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 11, 1986.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 7, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–5310 Filed 3–11–86; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Notice of Applications for Exemptions; Altus Corp. et al.

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes April 9, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9577–N	Altus Corp. San Jose, CA	49 CFR 172.101, 173.106, 173.206, 173.247.	To authorize shipment of reserve-activated lithium/thionyl chloride IRSS battery modules packed in DOT Specification 19A wooden boxes. (Mode 2.)
9578–N	Daniel F. Young, Inc., Miami, FL	49 CFR 172.101 column 6(b)	To authorize shipment of three rocket motors, Class B explosive, exceeding the weight limitations presently authorized for cargo aircraft. (Mode 4.)
9579–N	IRECO Inc., Salt Lake City, UT	49 CFR 173.154.154(a)(18)	To authorize shipment of ammonium nitrate, classed as an oxidizer, containing 15 percent or more water in solution in specially designed non-DOT specification cargo tank. (Mode 1.)
9580–N	McDonnell Douglas Corp., St. Louis, MO.	49 CFR 173.120(b)	To authorize shipment on non-self propelled apparatus without draining their fuel tanks and as essentially non regulated (Mode 1.)
9581–N	RAMP Industries, Inc., Aurora, CO	49 CFR 173.410(e)	To authorize Type B quantities of a radioactive material, solid, in a DOT Specification 2R container overpacked in a concrete filled 55 gallon DOT Specification 17C placed inside a 20WC wooden overpack. (Mode 1.)
9582–N	Amoco Oil Co., Chicago, IL	49 CFR 171.2(c), 179.200–17	To authorize use of tank car tanks meeting DOT Specification 111A100W3 except the bottom outlet is equipped with a solid cap. (Mode 2.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 4, 1986.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86–5312 Filed 3–11–86; 8:45 am]

BILLING CODE 4910–60–M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption; U.S. Department of Defense et al.

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: List of applicants for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transporation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes March 28, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
1479–X	U.S. Department of Defense, Falls Church, VA.	1479
1479–X	Allied Chemical, Morristown, NJ	1479
3126–X	Hercules, Incorporated, Wilmington, DE.	3126
3737–X	U.S. Department of Defense, Falls Church, VA.	3737
4453–X	Maynes Explosives Company, Lee's Summit, MO.	4453
4807–X	Armstrong Laboratories, Inc., West Roxbury, MA.	4807
5038–X	Airco, The BOC Group Inc., Murray Hill, NJ (See Footnote 1).	5038
6045–X	Union Carbide Corporation, Danbury, CT.	6045
6064–X	Sandoz Chemicals Corporation, Sodyeco Plant, Charlotte, NC.	6064
6299–X	Minnesota Valley Engineering, Inc., New Prague, MN.	6299
6309–X	General Latex and Chemical Corp. of GA, Dalton, GA.	6309
6309–X	Freeman Chemical Corporation, Port Washington, WI.	6309
6418–X	Great Lakes Chemical Corp., El Dorado, AR.	6418
6418–X	Dow Chemical Co., Midland, MI	6418
6418–X	Wilbur-Ellis Company, Fresno, CA	6418
6611–X	L'Air Liquide, Paris, France	6611
6611–X	Teisan Kabushiki Kaisha, Tokyo, Japan.	6611
6614–X	Steelcrete Company, Novi, MI	6614
6614–X	Guard-Rite, Inc., Long Beach, CA	6614
6651–X	Park Chemical Company, Detroit, MI.	6651
6704–X	Dow Chemical Co., Midland, MI	6704
6765–X	L'Air Liquide, Paris, France, CA	6765
6824–X	Bio-Lab, Incorporated, Conyers, GA (See Footnote 2).	6824
6895–X	GTE Products Corp., Danvers, MA	6895
6984–X	IRECO Incorporated, Salt Lake City, UT.	6984
7024–X	Avondale Mills, Sylacauga, AL	7024
7024–X	B.I. Transportation, Inc., Burlington, NC.	7024
7052–X	Ocean Technology, Inc., Burbank CA.	7052
7052–X	General Motors Corp., Warren, MI	7052
7052–X	Panasonic Industrial Company, Secaucus, NJ.	7052
7052–X	Rayovac Corporation, Madison, WI	7052
7052–X	Matsushita Battery Industrial Company, Osaka, Japan.	7052
7070–X	Lea-Ronal, Inc., Freeport, NY	7070
7070–X	American Chemical & Refining Co., Inc., Waterbury, CT.	7070
7216–X	Structural Composites Industries, Inc., Pomona, CA.	7216
7277–X	Structural Composites Industries, Inc., Pomona, CA.	7277
7558–X	Union Carbide Corporation, Danbury, CT	7558
7594–X	Bromine Compounds, Limited, Beer Sheva, Israel.	7594
7657–X	Walker Engineering Company, Sugar Land, TX.	7657
7708–X	HTL Industries, Inc., Duarte, CA	7708
7737–X	Parker Hannifin Corporation, Eastlake, OH.	7737
7768–X	Plasti-Drum Corporation, Lockport, IL.	7768
7777–X	Sentry Chemical Company, Greeley, CO.	7777
7811–X	American Burdick & Jackson, Inc., Muskegon, MI.	7811
7811–X	EM Science, Cincinnati, OH	7811
7835–X	Wilson Oxygen and Supply, Inc., Austin, TX.	7835
7835–X	Ashland Chemical, Dublin, OH	7835
7891–X	Fisher Scientific Company, Fair Lawn, NJ.	7891
7909–X	Dow Chemical Co., Midland, MI	7909
7929–X	Austin Power Company, Cleveland, OH.	7929
7998–X	Dow Chemical Co., Midland, MI	7998
8006–X	Esquire Novelty Corp., Amsterdam, NY.	8006
8006–X	Strombecker Corporation, Chicago, IL.	8006
8074–X	Matheson Gas Products, Inc., Secaucus, NJ.	8074
8077–X	Rohm Haas and Company, Philadelphia, PA.	8077
8077–X	Dow Corning Corp., Midland, MI	8077
8091–X	AT&T Technologies, Inc., Greensboro, NC.	8091
8228–X	U.S. Department of Justice, Washington, DC.	8228
8284–X	Allied Chemical, Morristown, NJ	8284
8286–X	Alaska Explosives, Limited, Anchorage, AK.	8286
8303–X	Sandoz Chemicals Corporation, Sodyeco Plant, Charlotte, NC (See Footnote 3).	8303
8362–X	Altus Corporation San Jose, CA	8362
8369–X	Degussa Corporation, Teterboro, NJ.	8369
8386–X	B.W. Norton Manufacturing Co., Inc., Oakland, CA.	8386
8396–X	Catalyst Resources, Inc., Elyria, OH	8396
8408–X	Prevac Systems (Burlington), Limited, Burlington, Ontario, Can.	8408
8410–X	EM Science, Cincinnati, OH	8410
8414–X	SLEMI, Paris, France	8414
8414–X	Arbel Fauvet Rail, Paris, France	8414
8432–X	U.S. Department of Defense, Falls Church, VA.	8432
8445–X	Union Carbide Agricultural Products Company, Inc., Research, Triangle Park, NC.	8445
8445–X	Union Carbide Corporation, Danbury, CT.	8445
8445–X	The Upjohn Company, Kalamazoo, MI.	8445
8445–X	U.S. Department of Defense, Falls Church, VA.	8445
8445–X	Dow Chemical Co., Midland, MI	8445
8453–X	Nelson Brothers, Inc., Parrish, AL	8453
8457–X	Duracell Inc., Bethyl, CT	8457
8556–X	L'Air Liquide Corporation, Paris, France.	8556
8570–X	Snyder Industries, Inc., Lincoln, NE	8570
8582–X	Chicago and Northwestern Transportation Co., Chicago, IL.	8582
8582–X	The Atchison, Topeka and Santa Fe Railway Company, Chicago, IL.	8582
8627–X	Petrolite Corporation, Saint Louis, MO.	8627
8627–X	Chemlink Petroleum, Inc., Sand Springs, OK.	8627
8651–X	Rockwell International Corporation, Canoga Park, CA.	8651
8692–X	Mitsubishi International Corp., New York, NY (See Footnote 4).	8692
8722–X	Northrop Corporation, Hawthorne, CA.	8722
8781–X	Mauser-Werke, GmbH (Mauser Packaging Ltd.) New York, NY.	8781
8786–X	Stabilus, GmBh, Koblenz, West Germany.	8786
8788–X	Gas Spring Corporation, Colmar, PA.	8788
8791–X	Stauffer Chemical Company, Westport, CT.	8791
8795–X	The Marison Company, South Elgin, IL.	9795
8806–X	Natico, Inc., Chicago, IL	8806
8815–X	Nelson Brothers, Inc., Parrish, Al	8815
8839–X	Poly Cal Plastics, Inc., French Camp, CA (See Footnote 5).	8839
8870–X	EM Science, Cincinnati, OH	8870
8923–X	Union Carbide Corporation, Danbury, CT (See Footnote 6).	8923
8942–X	Poly Cal Plastics, Inc., French Camp, CA (See Footnote 7).	8942
9026–X	Continental Fibre Drum, Inc., Lombard, Il (See Footnote 8).	9026
9056–X	Hodgdon Power Co., Inc., Shawnee Mission, KS.	9056
9110–X	KemaNord, Inc., Columbus, MS	9110
9130–X	Bio-Lab, Incorporated, Conyers GA	9130
9157–X	RCA Corporation, Lancaster, PA	9157
9172–X	CECOS International, Inc., Buffalo, NY.	9172
9211–X	Maersk Line, Limited, New York, NY.	9211
9211–X	Salerman Steamship Corporation, New Orleans, LA.	9211
9232–X	U.S. Department of Defense, Falls Church, VA.	9232
9243–X	Abatar, Inc., Winter Park, FL	9243
9341–X	International Chempack Corporation, Hurst, TX (See Footnote 9).	9341

Application No.	Applicant	Parties to exemption
4453–P	Alaska Explosive Limited, Anchorage, AK.	4453
5403–P	Vann Systems, Division of Halliburton Company, Houston, TX.	5403
5701–P	Mallinckrodt, Inc., Paris, KY	5701
7607–P	The Singer Company, Stamford, CT	7607
7811–P	American Hospital Supply Corporation, McGaw Park, IL.	7811
7887–P	Model Rectifier Corporation, Edison, NJ.	7887
8111–P	Reuter-Stokes, Inc., Twinsburg, OH	8111
8451–P	The Ensign-Bickford Company, Simsbury, CT.	8451
8554–P	THR Corp., Pennsuco, FL	8554
8582–P	Southern Pacific Transportation Company, San Francisco, CA.	8582
8915–P	Ethyl Corporation, Baton Rouge, LA	8915
9281–P	B.R.J. III, Inc., Mansfield, TX	9281
9418–P	Mobay Corporation, Kansas City, MO.	9418
9467–P	Roadway Express, Inc., Akron, OH	9467
9467–P	Consolidated Freightways, Menlo Park, CA.	9467
9467–P	W. E. Aubuchon Co., Inc., Westminster, MA.	9467
9467–P	Agway, Inc., Syracuse, NY	9467
9505–P	Witcon Corporation, Richmond, CA	9505

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[1] To renew and to authorize carbon tetrachloride and chloroform, classed as ORM–A, as additional commodities.

[2] To authorize bromo-chloro-dimethylhydantoin, classed as an oxidizer, as an additional commodity.

[3] To renew and to allow transportation to an additional site.

[4] To authorize ammonium persulfate, classed as an oxidizer, as an additional commodity and to authorize a smaller 1,100 pound capacity bag.

[5] To authorize an additional classification of blasting agent.

[6] To authorize shipment of a 5 to 10 percent mixture of dichlorosilane with the balance being trichlorosilane.

[7] To authorize an additional classification of blasting agent.

[8] To authorize cargo aircraft only as an additional mode of transportation.

[9] To authorize 55 gallon polyethylene salvage drum to incorporate a 25 inch inside opening in top head.

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This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 4, 1986.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-5313 Filed 3-11-86; 8:45 am]

BILLING CODE 4910-60-M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in January 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3600-X	DOT-E 3600	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172.300, 173.87	To authorize shipment of Lance rocket engines in specific configurations which contain Class B and Class C explosives. (Modes 1, 2.)
5704-P	DOT-E 5704	Aerojet General Corporation, Sacramento, CA.	49 CFR 173.62, 173.93(e)	To become a party to Exemption 5704. (Modes 1, 2, 3.)
5749-X	DOT-E 5749	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of an insulated nickel-steel DOT Specification MC-331 cargo tank, for transportation of a certain flammable gas. (Mode 1.)
6501-X	DOT-E 6501	GOEX, Inc., Cleburne, TX	49 CFR 173.62	To authorize transport of liquid high explosives in DOT Specification 6D steel drums overpacked with a DOT Specification 2SL liner. (Mode 1.)
6517-X	DOT-E 6517	Coyne Cylinder Company, Huntsville, AL	49 CFR 173.303(a)	To authorize use of non-DOT specification steel cylinders comparable to DOT Specification 4BW for shipment of acetylene. (Modes 1, 2, 3.)
6530-X	DOT-E 6530	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6583-X	DOT-E 6583	Mada Medical Products, Inc., Carlstadt, NJ.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made in compliance with DOT Specification 3E with certain exceptions (Modes 1, 2, 3, 4, 5.)
6614-X	DOT-E 6614	Hill Brothers Chemical Company, Tucson, AZ.	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	Continental Chemical Company, Sacramento, CA.	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6614-X	DOT-E 6614	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
6746-X	DOT-E 6746	The Firestone Tire and Rubber Company, Akron, OH.	49 CFR 173.315(a)(1)	To authorize shipment of anhydrous ammonia in portable tanks built, marked and maintained in compliance with the DOT Specification MC-331 cargo tank. (Modes 1, 3.)
6765-X	DOT-E 6765	Union Carbide Corporation, Danbury, CT	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6808-X	DOT-E-6808	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3, 178.65	To authorize certain variances from the specifications for DOT Specification 39 cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 3, 4.)
6813-X	DOT-E-6813	Vista Chemical Company, Ponca City, OK.	49 CFR 173.315(a)(1)	To authorize transport of vinyl chloride in an non-DOT sepcification cargo tank. (Mode 1.)
6899-X	DOT-E-6899	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.120(b)	To authorize cargo loading hatches of vessels being loaded with military explosives to remain open overnight under certain conditions. (Mode 3.)
7052-P	DOT-E-7052	Macrodyne, Inc., Schenectady, NY	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E-7052	Tadiran Electronic Industries, Port Washington, NY.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7072. (Modes 1, 2, 3, 4.)
7052-P	DOT-E-7052	Crompton Parkinson Ltd., Tyne & Wear, England.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E-7052	Yardney Corporation, Pawcatuck, CT	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes, 1, 2, 3, 4.)
7087-X	DOT-E-7087	Unitek Corporation, Monrovia, CA	49 CFR 173.298(b), 175.3	To authorize shipment of small quantities of certain hazardous materials in non-DOT specification glass, polyethylene, or other plastic containers. (Modes 1, 2, 3, 4, 5.)
7209-X	DOT-E-7209	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101, 173.92, 175.3, 175.30(a)(1).	To authorize transport of Class B explosives in quantities exceeding present weight limitations, and in non-DOT specification containers. (Modes 1, 4.)
7255-X	DOT-E-7255	U.S. Department of Defense, Falls Church, VA.	46 CFR 146.29-45(a), 146.29-45(c)	To authorize simultaneous loading of two holds within the same hatch when handling military explosives. (Mode 3.)
7409-X	DOT-E-7409	Sea-Land Service, Inc., Elizabeth, NJ	49 CFR 173.119a, 173.125, 176.340	To authorize use of a modified DOT specification cargo tank, for transportation of flammable or combustible liquids. (Mode 3.)
7438-X	DOT-E-7438	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354(a)(6)	To Authorize use of non-DOT specification cargo tanks, for transportation of a Class B poisonous liquid. (Mode 1.)
7465-X	DOT-E-7465	State of Alaska, Department of Transportation, Juneau, AK.	49 CFR 173.119, 173.304, 176.83, 176.905(i), Part 172, Part 176 Subpart H.	To authorize stowage of transport motor vehicles, gasoline (including camp stove or lantern fuel) and liquefied petroleum gas aboard passenger vessels. (Mode 3.)
7595-X	DOT-E-7595	Rhone-Poulenc Inc., Monmouth Junction, NJ.	49 CFR 173.358, 173.359	To authorize transport of certain poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7595-X	DOT-E-7595	American Cyanamid Co., Wayne, NJ	49 CFR 173.358, 173.359	To authorize [illegible] poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7607-P	DOT-E-7607	Eisermann Corporation, Crystal Lake, IL	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7636-X	DOT-E 7636	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To renew and authorize an additional model cylinder (Modes 1, 2, 3, 4.)
7694-X	DOT-E 7694	Applied Companies, Woodland Hills, CA	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7694-X	DOT-E 7694	Borg-Warner Fluid Controls, Van Nuys, CA.	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (Modes 1, 2, 4.)
7753-X	DOT-E 7753	Monsanto Company, Saint Louis, MO	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, 3.)
7803-X	DOT-E 7803	Plastican, Inc., Leominster, MA	49 CFR 178.19, Part 173, Subpart D, F	To authorize manufacture, marking and sell of non-DOT specification removable head polyethylene drums, for shipment of corrosive liquids and flammable liquids. (Modes 1, 2, 3.)
7887-X	DOT-E 7887	Estes Industries, Inc., Penrose, CO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Flight Systems, Inc., Burns Flat, OK	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Flight Systems, Inc., Raytown, MO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-P	DOT-E 7887	Aero Technology Company, Rancho Cordova, CA.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To become a party to Exemption 7887. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Crown Rocket Technology, Mountlake Terrace, WA.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Centuri Engineering Co., Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7915-X	DOT-E 7915	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.93(b)	To authorize transport of certain propellant explosives in water in DOT Specification MC-307 or MC-312 cargo tanks. (Mode 1).
7943-X	DOT-E 7943	Hill Brothers Chemical Company, Tucson, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in fiberboard boxes complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in fiberboard boxes complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7946-X	DOT-E 7946	Westinghouse Electric Corporation, Horseheads, NY.	49 CFR 173.306(b)(4), 175.3	To authorize use of non-DOT specification nonrefillable containers, for shipment of nonflammable gases. (Modes 1, 2, 3, 4, 5.)
7983-X	DOT-E 7983	Stauffer Chemical Company, Westport, CT.	49 CFR 173.245, 173.356, 173.360(a)(5)	To authorize transport of perchloromethyl mercaptan, thiophosgene and thiophene-2-acetyl chloride, in monel tanks constructed in accordance with DOT Specification 51 with certain exceptions. (Modes 1, 2, 3.)
8006-X	DOT-E 8006	Blend Brothers, Incorporated, Miami, FL	49 CFR 173.400(a), 172.504 Table 2	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1000 pounds or more. (Mode 1.)
8037-X	DOT-E 8037	Mauser-Werke G.m.b.H (Mauser Packaging, Ltd.), New York, NY.	49 CFR 173.127, 173.184 173.224	To authorize additional fiber drums of 100 and 130 liters capacity having plywood bottoms and steel tops with inside polyethylene bag for shipment of certain flammable liquids or solids. (Modes 1, 2, 3.)
8081-X	DOT-E 8081	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101 Column 6(b), 175.30(a)(1).	To authorize transport of a Class B rocket motor having a gross shipping weight not exceeding 3000 lbs. by cargo-only aircraft. (Mode 4.)
8156-X	DOT-E 8156	Liquid Carbonic Corporation, Chicago, IL	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, [illegible]
8156-P	DOT-E 8156	Liquid Air Corporation, Walnut Creek, CA	49 CFR 173.121 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to Exemption 8156. (Modes 1, 2.)
8329-X	DOT-E 8329	Texas Instruments, Inc., Dallas, TX	49 CFR 173.266	To authorize use of DOT Specification 57 portable tanks in less than truckload quantities with other hazardous materials subject to 49 CFR 177.848. (Mode 1.)
8445-P	DOT-E 8445	Dow Consumer Products, Inc., Indianapolis, IN.	49 CFR 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8526-P	DOT-E 8526	Johnson & Bloy Canada Inc., Prescott, Ontario.	49 CFR 173.834(L)(2)(I)	To become a party to Exemption 8526. (Mode 1.)
8526-P	DOT-E 8526	Phelco Inc. Trucking, Hazelwood, MO	49 CFR 177.834(L)(2)(I)	To become a party to Exemption 8526. (Mode 1.)
8556-X	DOT-E 8556	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
8556-X	DOT-E 8556	Union Carbide Corporation, Danbury, CT	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1,3.)
8710-X	DOT-E 8710	GTE Products Corp., Waltham, MA	49 CFR 173.20(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8732-X	DOT-E 8732	Chemcentral Inc., Chicago, IL	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8735-X	DOT-E 8735	Letica Corporation, Rochester, MI	49 CFR 178.19, Part 173, Subpart D, F	To renew and authorize certain flammable liquids as an additional hazard class. (Modes 1, 2, 3.)
8837-X	DOT-E 8837	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.245(a)(30), 173.256(b)(1), 173.263(a)(8), 173.277(c).	To authorize manufacture, marking and sale of non-DOT specification steel jacketed polyethylene tanks, for transportation of certain corrosive liquids. (Modes 1, 2, 3.)
8871-X	DOT-E 8871	Chase Bag Co., Oak Brook, IL	49 CFR 173.182, 173.217, 173.245(b), 173.366.	To authorize shipment of arsenic trioxide, solid and arsenical flue dust, Class B poisons as additional commodities. (Modes 1, 2, 3.)
8962-X	DOT-E 8962	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To require flattening test without cracking of ten times wall thickness of the cylinder rather than six. (Modes 1, 2, 4.)
8966-P	DOT-E 8966	Vann Systems, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to Exemption 8966. (Modes 1, 3, 4.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8872-X	DOT-E 8872	Morton Thiokol, Inc., Brigham City, UT	49 CFR 173.92	To authorize shipment of rocket motors, Class B explosive in specially designed non-DOT specification containers. (Mode 1.)
8982-X	DOT-E 8982	West-Tex Equipment Company, Midland, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sell non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
9134-X	DOT-E 9134	I.B.C. Chemicals Limited, Avonmouth, England.	49 CFR 173.264, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain corrosive materials. (Modes 1, 2, 3.)
9136-X	DOT-E 9136	Plast-Drum Corporation, Lockport, IL	49 CFR 173.119, 173.221, 173.245b(a)(6), 173.271, 173.257(b), 178.19.	To authorize manufacture, marking and sale of DOT Specification 34 drums of up to 30 gallon capacity, for shipment of various poison B liquids, flammable liquids, organic peroxides, oxidizers and corrosive materials. (Modes 1, 2, 3.)
9146-X	DOT-E 9146	Stolz-Felser GmbH, Postbach, West Germany.	49 CFR 171.12(c), 178.116-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 guage, 55-gallon capacity, DOT Specification 17E drums. (Modes 1, 2, 3.)
9164-X	DOT-E 9164	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.119(a)(6)	To authorize manufacture, marking and sale of a non-DOT specification steel portable tank of 345 gallon capacity, with removable head, for shipment of waste paint and waste paint sludge. (Modes 1, 2.)
9175-X	DOT-E 9175	Marathon Oil Company, Littleton, CO	49 CFR 173.119(b)	To authorize shipment of crude oil, classed as a flammable liquid, in a cylindrical aluminum container, no more than six of which are overpacked in a wood box. (Mode 1.)
9198-X	DOT-E 9198	United States Department of the Interior, Boise, ID.	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9256-X	DOT-E 9256	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.20-19, 173.86, 175.30, Part 107, Subpart B.	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 3, 4.)
9262-P	DOT-E 9262	Owen Oil Tools Inc., Fort Worth, TX	49 CFR 173.100(v), 175.30.	To become a party to Exemption 9262. (Modes 1, 3, 4.)
9262-P	DOT-E 9262	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.100(v), 175.30.	To become a party to Exemption 9262. (Modes 1, 3, 4.)
9275-P	DOT-E 9275	Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	The Procter & Gamble Distributing Company, Cincinnati, OH.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	Warner Lambert Company, Morris Plains, NJ.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	McCormick & Company, Inc., Hunt Valley, MD.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	Amway Corporation, Ada, MI	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	International Flavors & Fragrances (IFF-US), Hazlet, NJ.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275-P	DOT-E 9275	Ortho Pharmaceutical Corporation, Somerset, NJ.	49 CFR Parts 100-199	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5.)
9329-P	DOT-E 9329	Dresser Atlas, Houston, TX	49 CFR 172.101, column 6, 173.110, 173.80, 175.30.	To become a party to Exemption 9329. (Mode 4.)
9355-X	DOT-E-9355	Eastman Kodak Co., Rochester, NY	49 CFR Parts 100-177	To authorize an additional battery composed of lithium manganese dioxide. (Modes 1, 2, 3, 4, 5.)
9364-P	DOT-E-9364	FMC Corporation, Philadelphia, PA	49 CFR 173.359	To become a party to Exemption 9364. (Mode 1.)
9379-P	DOT-E-9379	H.J. Baker & Bro., Inc., New York, NY	49 CFR 172.301, 173.182(b)(6)(ii), 176.410(D).	To become a party to Exemption 9379. (Mode 3.)
9431-X	DOT-E-9431	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.63, 173.65, 173.87, 173.93, 175.3.	To authorize cargo aircraft only as additional mode of transportation. (Modes 1, 2, 4.)
9545-X	DOT-E-9545	Medical Diagnostics, Inc., Columbia, MD	49 CFR 173.118(a)	To renew emergency exemption authorizing a mixture of 0.5% p-toluene sulfonic acid and 99-5% acetone to be shipped under the limited quantity provisions for flammable liquids. (Modes 1, 2.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9383-N	DOT-E 9383	Sexton Can Company, Inc., Everett, MA	49 CFR 173.304(a), 178.65	To authorize manufacture, marking and sell of non-DOT specification steel cylinders in compliance with DOT Specification 39, with certain exceptions for transportation of nonflammable gases. (Mode 1.)
9426-N	DOT-E 9426	Rheem Manufacturing Company, Edison, NJ	49 CFR 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sell of five-gallon and six-gallon capacity removable head molded polyethylene drums for transportation of corrosive liquids and flammable liquids. (Modes 1, 2, 3.)
9440-N	DOT-E 9440	Hoover Group, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sell of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks enclosed with a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
9448-N	DOT-E 9448	Union Carbide Corporation, Danbury, CT	49 CFR 172.101, 173.21, 173.315(i)(3), 173.346, 173.3a, 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51 portable tank for shipment of carbamate pesticide, liquid, toxic, n.o.s. (Modes 1, 3.)
9449-N	DOT-E 9449	Union Carbide, Agricultural Products Company, Inc., Danbury, CT.	49 CFR 172.101, 173.21, 173.315(i)(3), 173.346, 173.3a, 178.245.	To authorize use of a non-DOT specification portable tank equivalent to a DOT Specification 51 portable tank for shipment of carbamate pesticide, liquid, toxic, n.o.s. (Modes 1, 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9465-N	DOT-E 9465	Union Carbide Corporation, Danbury, CT	49 CFR 173.365(a)(2)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)
9466-N	DOT-E 9466	Union Carbide Agricultural Products, Company, Inc., Research Triangle Park, NC.	49 CFR 173.365(a)(2)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)
9476-N	DOT-E 9476	Systron Donner, Concord, CA	49 CFR 173.304, 175.3, 178.46	To authorize manufacture, marking and sell of non-DOT specification cylinders conforming with DOT Specification 3AL for shape and certain tests for shipment of nonflammable gases. (Modes 1, 2, 4.)
9501-N	DOT-E 9501	Hughes Aircraft Company, Los Angeles, CA	49 CFR 173.302, 175.3	To authorize transport of a potassium hydroxide solution and hydrogen gas under pressure to be shipped in a non-DOT specification compressed gas cylinder constructed of Inconel. (Modes 1, 3, 4.)
9503-N	DOT-E 9503	Rotational Molding, Inc., Gardena, CA	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sell of non-DOT specification rotationally molded, polyethylene portable tank enclosed in a steel frame, for shipment of corrosive materials, flammable liquids, or an oxidizer. (Modes 1, 2.)
9511-N	DOT-E 9511	Tiear Chemical Company, Inc., Asheville, NC	49 CFR 173.24(a)	To authorize the one time shipment of steel drum, with pinholes, containing caustic soda (solid). (Mode 1.)
9552-N	DOT-E 9552	IRECO Incorporated, Salt Lake City, UT	49 CFR 178.210-11	To authorize testing of DOT Specification 23G cylindrical fiberboard box once a year instead of once every six months. (Mode 1.)
9555-N	DOT-E 9555	E.I. du Pont de Nemours Co., Inc., Wilmington, DE	49 CFR 173.346	To authorize use of DOT Specification MC-330 and MC-331 cargo tanks for shipment of a poison B liquid. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9562-N	DOT-E 9562	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.365	To authorize use of 55 gallon steel drums made in compliance with DOT Specification 37A with exceptions, for shipment of a poisonous solid. (Mode 1.)
EE 9565-N	DOT-E 9565	Embassy of the Arab Republic of Egypt, Washington, DC.	49 CFR 172.101 column 6(b), 173.92(b), 175.3.	To authorize transport of Class A and B explosives aboard cargo aircraft. (Mode 4.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9139-X	W.R. Grace & Co., Baltimore, MD	49 CFR 173.238	To authorize shipment of activated nickel catalyst, in DOT Specification 6D metal drum equipped with spring-loaded type vent. (Mode 1.)

Denials

9149-X: Request by Ethyl Corp., Baton Rouge, LA to authorize shipment motor fuel antiknock compound in non-DOT specification portable tanks in container-on-flat car rail service denied January 31, 1986.

9540-N: Request by Ethyl Corporation, Baton Rouge, LA to authorize shipment of antiknock compound, pyroforic liquids, n.o.s. or methyl bromide in DOT Specification 51 portable tanks in an ISO frame via rail in container-on-flat-car service denied January 31, 1986.

9546-N: Request by The Schawbel Corporation, Cambridge, MA to authorize transport of a hair curling device containing isobutane which permits a slow leakage of the flammable gas to the atmosphere denied January 16, 1986.

Issued in Washington, DC, on February 13, 1986.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-5311 Filed 3-11-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 3, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No. New
Form No. ATF Reporting Requirement 1500/1
Type of Review: New

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Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.
Clearance Officer: Roy J. Betsill, (202) 566-7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,
Departmental Reports Management Office.

[FR Doc. 86-5398 Filed 3-11-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 5, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB. 1545-0195
Form N. IRS Form 5213
Type of Review: Extension
Title: Election to Postpone Determination as to Whether the Presumption that an Activity is Engaged in for Profit
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,
Departmental Reports Management Office.

[FR Doc. 86-5397 Filed 3-11-86; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Guard Casualty & Surety Insurance Co.; Surety Companies Acceptable on Federal Bonds; Liquidation

Guard Casualty & Surety Insurance Company, an Indiana Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 49 FR 27254, July 2, 1984. The Company's authority was terminated by the Department of the Treasury effective May 10, 1985. Notice of the termination was published in the Federal Register of May 20, 1985, on page 20869.

On November 18, 1985, upon a petition by the Commissioner of Insurance of the State of Indiana, the Marion Circuit Court, for Marion County, issued an Order of Liquidation with respect to Guard Casualty. The Commissioner of Insurance was appointed as the Liquidator of Guard Casualty. All persons having claims against Guard Casualty must file their claims before March 13, 1986, or be barred from sharing in the distribution of assets.

Please note that all liabilities have been fixed as of December 18, 1985. All claims must be filed in writing on an appropriate Proof of Claim Form. It is recommended that claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to:

Guard Casualty & Surety Insurance Company in Liquidation, 1317 N. Pennsylvania Street, P.O. Box 449204, Indianapolis, IN 46244

For an appropriate Proof of Claim Form, the Liquidator may be contacted at (317) 638-1633. The Financial Management Service of The Department of the Treasury will be submitting a blanket Proof of Claim Form to cover claims by Federal Agencies who are unable to submit their claims by the March 13, 1986 deadline. However, we recommend that Agencies contact the Liquidator and file their claim as soon as possible.

Government agencies involved in Federal surety bonding operations where third parties such as subcontractors, materialmen, and suppliers who may have a claim against the company are requested to use their best efforts to notify such third parties of the liquidation, assist them in filing claims, inform them of their priority status based on section 3713 of Title 31 of the United States Code and provide them with copies of this Federal Register Notice. If priority status is not being granted, please notify the Department of Treasury at the address indicated below.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2319. This Notice will be distributed by this office to Federal agencies.

Dated: March 4, 1986.

W.E. Douglas,
Commissioner, Financial Management Service.

[FR Doc. 86-5307 Filed 3-11-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1985 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Covenant Mutual Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Covenant Mutual Insurance Company, of Hartford, Connecticut, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27112, July 1, 1985.

With respect to any bonds currently in force with Covenant Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2347.

Dated: February 28, 1986.

W.E. Douglas,
Commissioner, Financial Management Service.

[FR Doc. 86-5308 Filed 3-11-86; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meetings of Art Advisory Panel.

SUMMARY: Closed meetings of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meetings will be held April 8 and 28, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington D.C., 20224, Telephone No. (202) 566-9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that closed meetings of the Art Advisory Panel will be held on April 8, and 28, 1986 beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978. (43 FR 52122.)

Roscoe L. Egger, Jr.,
Commissioner.

[FR Doc. 86-5426 Filed 3-11-86; 8:45 am]

BILLING CODE 4830-01-M

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for reestablishment of the Art Advisory panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259 (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the reestablishment of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1954.

Providing this assistance requires Panel records and discussions to include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c) (3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of Title 26 of the U.S. Code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the Office of Management and Budget, and the General Services Administration, has also approved continuation of the Panel. The membership of the Panel is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the charter is approved by the Assistant Secretary of the Treasury for Administration and filed with the appropriate congressional committees unless, prior to the expiration of its charter, the Panel is renewed.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978. (43 FR 52122).

Roscoe L. Egger, Jr.,
Commissioner.

[FR Doc. 86-5427 Filed 3-11-86; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Charter Renewals

Correction

In FR Doc. 86-3555 appearing on page 6062 in the issue of Wednesday, February 19, 1986, make the following correction: In the third column, first paragraph, last line, "1986" should read "1988".

BILLING CODE 1505-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 48
Wednesday, March 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 17, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of office space needs of the Federal Reserve Board.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 7, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-5112 Filed 3-7-86; 4:34 pm]

BILLING CODE 6210-01-M

2

NATIONAL SCIENCE BOARD

DATE AND TIME:

March 21, 1986
8:00-9:00 a.m.—Closed Session
9:00-11:00 a.m.—Open Session

PLACE: National Science Foundation Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MARCH 21:

Closed Session (8:00-9:00 a.m.)

1. Minutes—January 1986 Meeting
2. Vannevar Bush Award
3. Alan T. Waterman Award
4. Report of the Nominating Committee for Board Officers
5. Grants, Contracts, and Programs—Action Items

Open Session (9:00-11:00 a.m.)

6. Chairman's Report
7. Minutes—January 1986 Meeting
8. Director's Report
9. Proposed NSB Issues
10. Planning Environment Statement
11. Report of the Committee on Leveraging
12. Discussion of Draft Report of the Committee on Undergraduate Science and Engineering Education
13. Other business

Thomas Ubois,
Executive Officer.

[FR Doc. 86-5467 Filed 3-10-86; 1:07 pm]

BILLING CODE 7555-01-M

3

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 17, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Canadian Service

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Com. No. 312-751-4920, FTS No. 387-4920.

Dated: March 6, 1986.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 86-5417 Filed 3-7-86; 4:20 pm]

BILLING CODE 7905-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 10, 1986.

A closed meeting will be held on Tuesday, March 11, 1986, at 2:30 p.m. An open meeting will be held on Wednesday, March 12, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, March 5, 1986, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, March 12, 1986, at 10:00 a.m., will be:

1. Consideration of whether to adopt amendments to Rules 2a-7 and 12d3-1 and to adopt Rule 2a41-1 under the Investment Company Act of 1940, which would address the acquisition and valuation of certain put options by registered investment companies. For further information, please contact Jack Murphy at (202) 272-3042.

2. Consideration of whether to propose for public comment amendments to Rules 134, 430, and 482 under the Securities Act of 1933. The rule amendments would facilitate the use of security ratings assigned by nationally recognized statistical rating organizations in the statutory and omitting prospectuses and tombstone advertisements of money market funds. For further information, please contact Jay Gould at (202) 272-2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ida Wurczinger at (202) 272-2014.

Dated: March 7, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-5421 Filed 3-7-86; 4:21 pm]

BILLING CODE 8010-01-M

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federal register

Wednesday
March 12, 1986

Part II

Department of Energy

Bonneville Power Administration

Proposed Policy for Public Involvement; Request for Comment; Notice

VOL 51
ISS 48
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DEPARTMENT OF ENERGY

Bonneville Power Administration

Policy for Public Involvement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent and Proposed Policy with Request for Comment. *BPA File No.: PI–1.* BPA requests that all comments submitted in response to this notice contain the file number designation PI–1.

SUMMARY: BPA plans to adopt a Policy for Public Involvement and requests comments on a proposed policy. BPA is taking this action to affirm public involvement practices in which it is currently engaged. Since the existing Procedure for Public Participation was adopted over 4 years ago, BPA has greatly expanded both the number and kinds of opportunities available for the public to participate in its actions. BPA has also identified several ways in which the current procedure can be strengthened. A new Policy for Public Involvement which reflects the full scope of BPA's actual public involvement practices and makes certain procedural improvements will help the public to anticipate and participate in BPA's decisionmaking process and will assist BPA in consistently providing appropriate opportunities for interaction with the public.

Responsible Official: Donna L. Geiger, Public Involvement Manager, is the official responsible for developing the policy.

DATES: Written comments should be received by 5 p.m., April 16, 1986.

Public Information and Comment Forums, at which BPA will discuss this proposed policy and receive oral comments, will be held in the following locations:

March 24, 1986, 7 p.m. Quality Inn, Greenough Room, Missoula, Montana;

March 25, 1986, 7 p.m., Ridpath Motor Inn, Legend Room A, West 515 Sprague, Spokane, Washington;

March 26, 1986, 7 p.m., Center House Conference Center, Room B, Seattle Center, Seattle, Washington;

March 27, 1986, 7 p.m., Ramada Inn Coliseum; 10 North Weidler Street, Portland, Oregon.

Additional informal meetings will also be held upon request.

ADDRESSES: Comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Teresa M. Cunningham, Public Involvement staff, at the above address or the following telephone numbers (voice/TTY): 503–230–3478 from Portland; 800–452–8429 from Oregon outside of Portland; or 800–547–6868 from California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming. Information may also be obtained from:

- Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.
- Mr. Ladd Sutton, Eugene District Manager, U.S. Federal Building, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6959.
- Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.
- Mr. Wayne R. Lee, Upper Columbia Area Manager, U.S. Courthouse, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.
- Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
- Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington, 98801, 509–662–4377.
- Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6225.
- Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.
- Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376, Boise, Idaho, 83724, 208–334–9137.

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I. Background

The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Pacific Northwest Power Act) directs BPA to conduct a thorough program to inform and involve the public of the Pacific Northwest in those electric power and conservation issues which concern it. In addition, the National Environmental Policy Act of 1969, as amended, requires that BPA seek and consider public views on environmental impacts of its actions. BPA has moved to meet these mandates through a wide range of activities designed to explain BPA activities and elicit public recommendations. Some of these activities have fallen under the scope of the existing Procedure for Public Participation in Major Regional Power Policies (46 FR 26366, May 12, 1981), while many others have exceeded the requirements of this procedure.

It is BPA's intent to continue to provide appropriate opportunities for the public to participate in BPA's decisionmaking processes.

This commitment to public involvement responds to the fundamental right of all citizens to participate in the decisions of their government. BPA has found that the best interests of both public policy and prudent business practice have been served by directly involving BPA's constituencies in its decisionmaking process.

A. Current BPA Public Involvement Activities

BPA's public involvement activities span a wide range of issues, publics, and processes. In each, the goal is to offer vehicles for public participation that are appropriate to the resources of the interested public, the complexity of the subject, and the impacts of the action involved.

A number of BPA's public involvement programs have been designed to assist BPA in the development of Major Regional Power Policies. The current procedural requirements for these policies are described below. Some policies which have been developed using these procedures are BPA's Billing Credits Policy, Customer Service Policy, Transmission Policy, and the Fish and Wildlife Consultation Procedures.

BPA has also involved the public in many other important issues. These actions include: determinations on significant regional issues; annual planning activities; development of generic contracts; program development; research and development projects; and

the planning, construction, and maintenance of transmission facilities. Some specific examples of these activities are BPA's Direct Service Industries Options Study, Resource Strategy, Load Forecast, Long-Term Conservation Contracts, Model Conservation Standards Implementation Program, and Fall River-Lower Valley Reinforcement Project. Many different public involvement techniques have been used in these actions. Some involved symposiums or town hall meetings. Others used roundtable discussions, workshops, and technical work groups to reach specific publics. In some situations, a more informal approach was appropriate and techniques such as open houses and contacts with landowners were used.

In addition to these public involvement activities, BPA conducts regular consultations with its customers; State, local, and tribal governments; public utility commissions; interest groups; and others. These discussions are informal and may include issues which are in some stage of public involvement at the time of the consultation. As such, these exchanges may be an important part of the public involvement efforts on specific issues.

B. Existing Procedure for Public Participation in Major Regional Power Policies.

The 1981 Procedure for Public Participation in Major Regional Power Policy Formulation focuses on activities related to the development of major regional power policies. According to the existing procedure, a major regional power policy is "an agency statement of future effect and general applicability designed to implement or prescribe policy which the Administrator identifies as involving major regional power issues."

For the development of major regional power policies, the existing procedure requires certain activities. The first of these is public notice, through the **Federal Register** or other appropriate medium, that BPA plans to develop a policy. In this notice, recommendations are solicited for consideration in preparing a proposed policy.

Once the proposed policy has been prepared, it is announced and comments are requested. The notice usually includes the dates and times of Public Information Forums and Public Comment Forums as well. Public Information Forums are meetings in which BPA presents information to the public about the proposed action. These formus may be directed toward technical or general audiences. Public Information Forums are optional. Public Comment Forums are meetings in which the public presents its views to BPA. At least one Public Comment Forum must be held on the proposed policy to enable members of the public to present their views in person. In addition to Public Comment Forums, BPA also accepts written comments on proposed policies.

After all comments have been received, BPA develops the final policy. The first step is preparation of an Evaluation of the Official Record. This document describes the information which has been gathered in the policy development process, evaluates the effects of different policy options, and presents recommendations to the Administrator for the final policy. On the basis of this evaluation, the Administrator makes decisions on the final policy and explains the reasons for these decisions in a Record of Decision. A final policy is then announced. All documents which pertain to the devlopment of the policy are kept in an Official Record, which is available to the public.

For policies which are not major regional power policies, the existing procedure provides for public notice of meetings held to obtain the views of interested persons.

The existing procedure also provides for the implementation of policies in emergency situations. In such cases, BPA may waive the normal public involvement procedures and adopt an interim policy. All procedural requirements must, however, be satisfied within a reasonable period of time after the interim procedure is adopted.

Finally, the existing procedure encourages coordination of public participation activities with those required for preparation of environmental impact statements.

C. Other Procedures for Special Activities

The Pacific Northwest Power Act requires very specific public involvement procedures for the acquisition of major power resources [section 6(c)] and the establishment of rates [section 7(i)]. It also requires consultation with certain publics concerned with fish and wildlife issues [section 4(h)(11)(B)]. No administrative procedures have been established yet for the acquisition of major power resources. BPA has further defined the procedures for establishing rates in its Procedures Governing Bonneville Power Administration Rate Adjustments (47 FR 6240, February 10, 1982) as amended on an interim basis (49 FR 10980, March 23, 1984) and has used these procedures in subsequent rate cases. BPA has published procedures (50 FR 23173, May 31, 1985) for consulting with fish and wildlife agencies, Indian tribes, and hydroelectric project operators on fish and wildlife issues in the management and operation of Federal hydroelectric facilities. All of these procedures are referenced in the proposed Policy for Public Involvement.

II. Proposed Changes to Existing Procedure

The proposed policy contains nearly all of the procedural requirements contained in the existing Procedure for Public Participation in Major Regional Power Policies, with some modifications. In addition, the proposal describes the types of other BPA actions for which the Administrator may conduct public involvement and the factors for determining the appropriate level and type of public involvement.

Only the major changes which are proposed to the current procedures and the reasons for those changes are described below. References to sections and parts correspond to the proposed policy. BPA is interested in receiving comments on these changes and on any other aspects of the policy. Comments are especially requested on the sections of the proposed policy which deal with: scope, notice of policy alternatives, time allowed for public recommendations or comment and for notice of public comment forums and meetings, decision document, procedures for expedited decisionmaking, and public involvement for other BPA actions.

Section I. Purpose

The statement of purpose has been revised to reflect the revised scope of the proposal and to describe the benefits of the policy to both the public and BPA.

Section II. Objectives

This is a new section which outlines how and why BPA intends to involve the public. The extent of and reasons for the flexibility retained by the Administrator are also described.

Section III. Scope

The scope of the proposal is revised to cover other actions in addition to major regional power policies. Alternative or joint coverage of actions by other procedures for public involvement is explained.

Section IV. Definitions

Several definitions have been changed or added. The major changes are noted below.

A. [No change.]

B. [No change.]

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C. *Decision Document.* This document combines and replaces the functions of the evaluation of the record and record of decision which are required by the existing procedure. The purpose of this new document is to streamline the presentation of this information by reducing redundancy between the evaluation of the record and the record of decision.

D. [No change.]

E. *Major Regional Power Policy.* This definition has been expanded to cover generic agreements, contracts, or other instruments between BPA and its customer's which, while not policies, nevertheless establish major regional power policy.

F. *Public.* This definition has been added to explain a basic term that is used throughout the proposed policy.

G. *Public Comment Forum.* This is a definition which describes this type of meeting. It also explains when a detailed summary of a public comment forum may be prepared instead of a verbatim transcript.

H. *Public Information Program.* This definition has been added to differentiate a public information program from a public involvement program. In a public information program, the goal is to make information available to the public.

I. *Public Involvement.* This definition has been added to explain a term which is basic to the proposed policy.

J. *Public Involvement Program.* This definition has been added since it is a basic term used in the proposed policy. In a public involvement program, information is provided to the public and opportunities are provided for the public to express its views and recommendations.

K. *Public Meeting.* This term has been added to describe a type of activity which BPA frequently uses in addition to public comment forums.

L. *Public Record.* The name of this record is proposed to be changed from "official record" to "public record" to avoid confusion with official records which are prepared for judicial review. Minor changes have been made to this definition. One change clarifies that a public record is only required for major regional power policies. A second change removes the reference to the public involvement coordinator's responsibility for establishing public records. Finally, the contents of the public record are modified to reflect that summaries of public meetings or workshops may be included and that the proposed decision document will be included in place of the evaluation of the official record and the record of decision.

Current definitions which have been deleted. Several definitions which are included in the current procedure have been deleted in the proposed policy because definition of these terms seemed unnecessary. These definitions are: Area Managers/District Manager, Bonneville Power Administration, Notice, Proposed Policy, Public Involvement Coordinator, and Responsible Official.

Section V. Public Involvement Requirements for Major Regional Power Policies

A. *Decision to Formulate a Policy and Notice of Intent.* The wording of this part has been adjusted to indicate that the decision and notice requirements apply only to major regional power policies. The description of alternate ways that notice may be given has been moved into Part F, Public Notification and Contact.

B. *Notice of Policy Alternatives.* In the development of certain major regional power policies, it may be appropriate for BPA to obtain helpful advice for the preparation of proposed policies by first soliciting comments on alternatives for framing the policy. All policy development processes may not lend themselves to this step.

C. *Notice of Proposed Policy.* This part has been revised slightly to substitute "public meetings or comment forums" for "Public Information Forums of Public Comment Forums" and to delete reference to the Responsible Official.

D. *Combination of Notices.* To reflect the proposed additional stage of notice of policy alternatives, this part notes that the notice of intent may be combined with either the notice of policy alternatives or the notice of proposed policy.

E. *Public Comment Forum.* This part contains essentially the same requirements as are contained in the existing procedure. Suggestions for making notices available by other means have been moved to Part G, Additional Methods of Public Notification and Contact. The requirement that the responsible official must act as or appoint a chairperson for the forum has been deleted. The recommendation that persons wishing to speak at the public comment forum notify the local BPA office at least 3 days before the forum has been changed to request notification some time before the forum. In BPA's experience, a 3-day notification period has not been necessary.

F. *Public Meetings.* This part describes alternative ways that BPA can interact with the public in addition to public comment forums. The existing procedure referred to these types of opportunities under Public Meeting Procedures.

G. *Additional Methods of Public Notification and Contact.* Suggested means for alerting the public to notices by way of written material and personal contact are described in this section. Previously, these suggestions were contained within the parts of each type of notice.

H. *Time Allowed for Public Recommendations or Comments and for Notice of Hearings and Meetings.* This part describes the length of time which BPA will ordinarily allow for written comments and for notice of hearings and meetings. No time limit for written comments is contained in the existing procedure. The 15-day time period for notice of meetings is part of the existing procedure on the Public Information Forum.

I. *Decision Document.* A new document is being proposed to reduce the duplication which currently exists between the evaluation of the official record and the record of decision. As currently used by BPA, both of these documents contain a description of the proposed policy, the comments received on the proposal, and the evaluation of the public comments. Though not required by the proposed policy, BPA may circulate all or parts of the decision document in draft form for public comment. BPA has found that this practice can help to ensure that BPA has fully understood and adequately evaluated comments which have been submitted.

J. *Issuance of Final Policy.* Minor changes have been made to this part which is labeled Promulgation of the Policy in the existing procedure.

K. *Procedures for Expedited Decisionmaking.* Under the existing procedure, BPA can only waive the requirements for major regional power policies when an emergency situation exists. These situations are rare. However, BPA does occasionally encounter opportunities in which decisions must be made quickly in order to capture a unique benefit for the region. In such situations there may not be time to carry out all normal public involvement activities. Under both emergency and other special conditions, the proposed policy would permit the Administrator to issue either an interim or final policy without fulfilling all procedural requirements for major regional power policies. The proposed language would require the Administrator to explain the reasons for such an action and to provide all practical opportunities for public involvement.

Section VI. Public Involvement for Other Actions

This section has been included in the proposal to reflect the full range of public involvement activities which BPA currently undertakes and which it intends to continue. BPA's practice has been to inform and involve the public on many issues which are not defined as major regional power policies. The section describes the types of actions for which the Administrator may conduct public involvement and the factors for determining the appropriate level and type of public involvement activities which may be most appropriate and effective.

A. *Other BPA Actions for Which the Administrator May Conduct Public Involvement.* The Administrator may also determine that it is appropriate to conduct public involvement on actions other than major regional power policies. Such other actions may include:

1. *Formulation of policies which are not major regional power policies.* Certain policies may affect future BPA actions but may not be identified as major regional power policies. The development of BPA's Conservation Cost-Sharing Principles is an example of how BPA can involve the public in discussion of a policy which is not a major regional power policy.

2. *Planning activities and the development of plans related to areas such as energy conservation, renewable and other generating resources, fish and wildlife resources, and the transmission system.* BPA develops regular plans to guide its decisions. These plans include projections for the power demands which BPA anticipates, the resources which must be acquired to meet these demands, changes or additions which are required to the transmission system, and other activities which occur on a cyclical basis. Information provided by the public may assist BPA in the preparation of these plans.

3. *Development and implementation of programs related to areas such as energy conservation, renewable and other generating resources, fish and wildlife resources, and the transmission system.* Once basic policies and action plans are in place, BPA develops and carries out specific programs. These programs include research and development activities, the acquisition of energy conservation and other energy resources, and construction and maintenance of transmission facilities. These programs affect specific publics and may be improved by information provided by the public.

4. *Other BPA actions related to major regional power issues.* These actions typically involve one-time decisions which have a major impact upon BPA or the region. They are not, however, expressed in a formal policy document which is adopted to guide future actions. Decisions to pursue new marketing opportunities, to explore the feasibility of special programs, and to reach agreements having significant economic impacts are examples of these types of actions.

B. *Factors for Determining the Appropriate Level of Public Involvement.* Once a decision has been made that the public should be involved in a particular issue or action, the specific ways in which the public will be informed and encouraged to participate must be determined. To be most effective, these methods should relate closely to the type of activity concerned and the process which will be followed to reach a final decision. The wide range of actions which are covered in the category of Other BPA Actions precludes definition of a single public involvement process which will suit all situations. For this reason, certain factors which may bear on the selection of appropriate public involvement techniques have been identified.

III. Text of Proposed Policy for Public Involvement

Section I. Purpose

The purpose of this policy is to affirm the Bonneville Power Administration's commitment to insure widespread public involvement in the formulation of regional power policies. The procedures described in the policy will clarify for the public how they can expect to be informed of actions under consideration by BPA and to take part in the deliberations leading to BPA's decisions. The procedures will also guide BPA in consistently providing appropriate opportunities for interaction with the public on such matters.

Section II. Objectives

Through this policy, BPA intends to provide the public with the fullest information practical on BPA policy and program development, to provide early and effective opportunities for the public to express its opinions and concerns, and to consider the views and information presented by the public prior to reaching decisions.

The procedures contained in this policy necessarily reflect the flexibility reserved for the Administrator by law. By preserving this flexibility, it is not the intent of the policy to limit unnecessarily the extent of public involvement, but rather to preserve the Administrator's discretion to act quickly when necessary and to conduct routine business without cumbersome procedural requirements.

Section III. Scope

This policy applies to major regional power policies as described in Section V and to other BPA actions as described in Section VI.

A. The policy does not apply to:

1. Interpretive rulemaking;

2. Rules of internal agency organization, procedure, or practice;

3. Policies for which another exclusive procedure is required by law, or for which the Administrator has established alternative procedures that supersede this policy.

a. BPA ratemaking, Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, section 7(i). This exclusive procedure is set forth in the Procedures Governing Bonneville Power Adminstration Rate Adjustments (47 FR 6240, February 10, 1982; as amended 49 FR 10980, March 23, 1984).

b. Acquisition of a major resource, Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, section 6(c). This statute describes a process that includes public notice and comment, development of a record, and review by the Northwest Power Planning council and appropriate committees of Congress. BPA has not yet developed specific procedures to implement this provision.

B. This policy may apply in addition to the procedures that have been established for special activities, such as the Fish and Wildlife Consultation Procedures (50 FR 23173, May 13, 1985). These procedures describe how BPA will consult with Columbia River Basin fish and wildlife agencies, Indian tribes, and hydroelectric project operators as it fulfills its responsibilities in the management and operation of the Federal Columbia River Power System hydroelectric facilities. The consultation procedures provide for combining and coordinating the Fish and Wildlife Consultation Procedures and the public involvement procedures for developing major regional power policies.

Section IV. Definitions

A. *Administrator.* The Bonneville Power Administrator.

B. *Customer.* A person or entity having a direct relationship with BPA as the result of contractual arrangements for the purchase, transfer, assignment, or sale of electric power and energy.

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related services, or transmission capability to, with, or from BPA.

C. *Decision Document.* A document which includes:

1. A description of the proposed action;
2. A summary of the comments received on the proposed action;
3. An evaluation of the proposed action and of other alternatives which have been recommended or identified by the public or BPA;
4. The Administrator's decision and
5. A concise summary of the reasons for the decision.

D. *Interested Person.* Any person, group, or entity with an interest in the proposed action or decision.

E. *Major Regional Power Policy.* An agency statement of future effect and general applicability designed to implement, limit, or prescribe policy which the Administrator identifies as involving major regional power issues. The term major regional power policy does not include the development and execution of particular agreements, contracts, or other instruments between BPA and its customers, except for those generic agreements, contracts, or other instruments which the Administrator identifies as establishing major regional power policy.

F. *Public.* Affected or interested persons, organizations, or groups, including but not limited to BPA customers, officials of local, State, and Indian tribal governments, and officials of other Federal agencies.

G. *Public Comment Forum.* A meeting for which public notice is given and during which oral comments are presented to BPA. A verbatim transcript of these comments is ordinarily prepared and included in the record of the hearing. When a transcript is not prepared, a detailed summary of the hearing is made instead. The record of the public coment forum also includes written comments, documents, and exhibits submitted.

H. *Public Information Program.* A program using a variety of techniques, designed to inform the public of BPA actions, policies, or decisions.

I. *Public Involvement.* Informal as well as systematic opportunities for members of the public to know about and express their opinions on possible BPA decisions or actions. The term "public involvement" is considered to be synonymous with "public participation," and is the term normally used within BPA.

J. *Public Involvement Program.* A program of activities, using a variety of techniques, to inform the public of proposed BPA actions or decisions and to provide opportunities for the public to express opinions and make recommendations which BPA considers before taking actions or making a decision.

K. *Public Meeting.* Opportunities for BPA to exchange information and views with the public in person. These meetings may involve a few or many persons and take such forms as briefings, workshops, symposiums, or roundtable discussions.

L. *Public Record.* Except as otherwise expressly provided by law, the compiled and indexed records which document the development of a major regional power policy.

The public record shall include the following:

1. All Federal Register or other notices provided for by these procedures;
2. Any transcript or summary of oral comments taken at public comment forums;
3. Any summaries prepared or oral comment taken at public meetings;
4. Written comments, data, and questions of public record and BPA's replies;
5. The decision document; and
6. Any other information that is determined by the Administrator to be relevant.

The public record shall be available for inspection or copying.

Section V. Public Involvement Procedures for Major Regional Power Policies

A. *Decision to Formulate a Policy and Notice of Intent.* When the Administrator decides to formulate a major regional power policy, the Administrator shall publish in the Federal Register, or elsewhere if so decided by the Administrator, a notice of intent to formulate the policy. The purpose of the notice of intent is to offer to interested persons the opportunity to make recommendations on the policy to be developed. Notice shall include the following:

1. The subject of the proposed policy;
2. An explanation of the need for and the probable effect of the policy;
3. The legal authority under which the policy is being developed;
4. An indication of the extent to which other existing policies might be affected by the development of the new policy;
5. A request for written recommendations for BPA's use in formulating or revising the policy;
6. The time limit for the receipt of such recommendations; and
7. The name, address, and telephone number of the BPA official who will receive them.

B. *Notice of Policy Alternatives.* Where determined appropriate, the Administrator may issue in the Federal Register or elsewhere a notice describing and requesting comment on possible alternatives for a proposed policy. Information obtained in response to the notice of intent and other information available to BPA may be used to identify these alternatives. Public comment on the alternatives will assist BPA in preparing a proposed policy.

C. *Notice of Proposed Policy.* After the period for receipt of recommendations stated in the notice of intent or for comments on the notice of policy alternatives, the Administrator shall publish in the Federal Register, or elsewhere if so decided by the Administrator, a notice of the proposed policy. The notice shall include:

1. The text of the proposed policy;
2. An indication of the probable extent to which other existing policies may be affected by the proposed policy;
3. The dates, times, and locations of scheduled public comment forums and/or public meetings;
4. Information on procedures by which interested persons may participate in public comment forums or meetings;
5. A request for written comments on the Policy;
6. Any time limits for receipt of such comments;
7. The name, address, and telephone number of the BPA official(s) to contact for further information; and
8. Any other information considered necessary.

D. *Combination of Notices.* The Administrator may combine the notice of intent with either the notice of policy alternatives or the notice of proposed policy.

E. *Public Comment Forums.* One or more public comment forums shall be scheduled on the proposed policy so that interested persons may present their views on the proposed policy in person.

The Administrator shall determine the number, dates, locations, and time of day of such forums. Notice of the forums shall be published in the Federal Register, or elsewhere if so decided by the Administrator, either as part of the notice of proposed policy or in a separate notice. The notice shall include the name, subject, and purpose of the policy; the date(s), and place(s) for the forums; and information on any available material which discusses the need for the policy and effects which the policy may have. The notice shall also indicate any time period for receipt of comments; and the names, addresses, and telephone numbers of BPA officials from whom additional information can be obtained. The notice may contain other material which is considered necessary.

BPA shall offer interested persons the opportunity for oral presentation of views, data, and arguments. Persons who wish to speak at public comment forums should, before the forum, notify the BPA Public Involvement Manager or the Area or District Manager of the locality in which the forum will be held. This will permit preparation of a tentative schedule of participants. Time limitations may be established for oral presentations to assure that all interested persons who desire to speak will have an opportunity to do so. Interested persons with similar views, data, and arguments may be required to consolidate their presentations.

Transcripts or summaries of public comment forums shall be available for review at the Area or District office in the locality where the forum is held. Copies of the transcripts or summaries of forums shall also be available for review in BPA's Public Involvement office. The transcript or summary of the forum, as well as any written comments, documents, or exhibits submitted at the forum, shall be placed in the Public Record.

F. *Public Meetings.* The Administrator may determine the need for public meetings in addition to the public forum(s) specified above. Such meetings are at the discretion of the Administrator.

Meeting dates, times, and locations shall be announced, whenever practicable, in the Federal Register, or elsewhere if so decided by the Administrator. Meeting notices shall include a statement of the subject and purpose, dates, times, and places for the meetings. Meeting notices may also describe the format of the meeting, and the nature of the participation opportunities which may be offered.

These meetings may serve a number of purposes, including:

1. Providing information regarding the proposed policy or alternatives;
2. Permitting a detailed public review of technical data or methodology;
3. Providing an opportunity for public comment at interim stages in the decisionmaking process; and
4. Other purposes determined by the Administrator to be consistent with this Policy for Public Involvement.

A transcript is ordinarily not prepared for these meetings. A summary may be prepared, and may be mailed to meeting participants with an invitation to comment upon the summary or submit additional comments, documents, or exhibits. The meeting summary, if prepared, and any subsequent comments, documents, and exhibits shall be placed in the Public Record.

G. *Additional Methods of Public Notification and Contact.* In addition to publication of notices in the Federal Register or elsewhere, the Administrator may send a written announcement to persons who have previously expressed an interest in the development of a major regional power policy, or to persons who, in the opinion of the Administrator, could reasonably be expected to have such an interest. The Administrator may also direct that an announcement be made in one or more general circulation newspapers in the BPA marketing area or through other effective means of publicity, as necessary or desirable.

In addition to written notice, the Administrator may initiate contact in person or by telephone with interested persons to inform them of opportunities to submit recommendations or comments.

H. *Time Allowed for Public Recommendations or Comment and for Notice of Public Comment Forums and Meetings.* Whenever practicable, the Administrator shall allow at least 30 days for the public to submit written recommendations in response to a notice of intent and to offer comments on a notice of policy alternatives and notice of proposed policy.

Whenever practicable, the Administrator shall allow at least 15 days advance notice of public comment forums and public meetings.

I. *Decision Document.* Following the comment period on a notice of proposed policy, a decision document shall be completed. The decision document shall be signed by the Administrator and made a part of the Public Record.

J. *Issuance of Final Policy.* BPA shall publish in the Federal Register, or elsewhere if so decided by the Administrator, a notice of any final policy. The policy shall become effective on the date of the publication of the notice unless otherwise specified.

K. *Procedures for Expedited Decisionmaking.* 1. Any or all procedures provided for in Section V do not apply when the Administrator finds that for good cause shown such notice and public involvements are impractical, unnecessary, or contrary to the public interest. The Administrator shall incorporate such a finding and a brief statement of the reasons for this finding in any policy that is issued.

2. When such a finding is made, the Administrator may choose to adopt an interim policy specifying the period of time for which it will remain in effect.

3. In adopting an interim policy, BPA shall be guided by the following principles:

a. Those procedures which the Administrator determines are practical shall be completed.

b. Wherever possible, alternative means of providing notice, informing the public, and providing opportunities for comment shall be used.

c. If an interim policy is adopted, the applicable procedures shall be followed in adopting the final policy.

Section VI. Public Involvement for Other BPA Actions

A. *Other BPA Actions for Which the Administrator May Conduct Public Involvement.* The Administrator may determine that it is appropriate to conduct public involvement on other selected BPA actions. Such other actions may include:

1. Formulation of policies which are not major regional power policies;
2. Planning activities and the development of plans related to areas such as energy conservation, renewable resources and other generating resources, fish and wildlife resources, and the transmission system;
3. Development and implementation of programs related to areas such as energy conservation, renewable and other generating resources, fish and wildlife resources, and the transmission system; and
4. Other BPA actions related to major regional power issues.

B. *Factors for Determining the Appropriate Level of Public Involvement.* In determining the appropriate level of public involvement as well as the provision of notice and comment for other BPA actions, the Administrator may take into account pertinent factors such as:

1. The precedential nature of the action;
2. Whether and when public support is required for effective implementation of the comtemplated action;
3. The effect on BPA and its customers;
4. The impact of the proposed action on the public;
5. The particular segment(s) of the public which can be expected to be interested in the action;
6. The level of public interest;
7. The time available for public involvement; and
8. The existence of previous or concurrent public involvement activities on similar actions;

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Section VII. Relationship to National Environmental Policy Act (NEPA)

To the maximum extent practicable, BPA shall implement the public involvement procedures described in this policy and the procedures required by the National Environmental Policy Act concurrently and in a complementary fashion. In order to minimize the impact on the public's resources, joint notices shall be issued and combined meetings shall be held whenever possible.

Issued in Portland, Oregon, on February 25, 1986.

Peter T. Johnson,
Administrator.
[FR Doc. 86-5232 Filed 3-11-86; 8:45 am]
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federal register

Wednesday
March 12, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

High Density Traffic Airports; Special Slot Withdrawal and Reallocation Procedures; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24105, SFAR No. 48]

Special Slot Withdrawal and Reallocation Procedures

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) establishes a special procedure for a one-time withdrawal of slots used by air carriers at three of the high density airports—LaGuardia, O'Hare, and Washington National Airports. Those slots and any other slots available will be reallocated through a special lottery to new entrants and incumbent carriers with few slots at those airports. This SFAR alleviates an advantage that incumbent carriers have gained under past slot allocation procedures.

DATES: This SFAR becomes effective March 17, 1986 and terminates on January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426–3773.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1985, the Department of Transportation (Department) published a final rule (50 FR 52180) adopting a new Subpart S to Part 93 of the Federal Aviation Regulations (FAR). That subpart prescribes rules applicable to the allocation and withdrawal of IFR operational authority, i.e., takeoff and landing authority (commonly referred to as "slots"), to individual air carriers and commuter operators at the high density airports—LaGuardia and Kennedy Airports in New York, O'Hare Airport in Chicago, and National Airport in Washington. That subpart also prescribes rules governing the transfer of slots and the use of slots once allocated.

Section 93.215 of Subpart S prescribes, in general, that each air carrier and commuter operator holding slots as of the issuance date of the rule shall be allocated those slots subject to withdrawal by the FAA. Under Subpart S, those slots not being used and those slots for which the FAA cannot determine the holder will be made available to other operators in accordance with the provisions of the subpart, which include lotteries of available slots to carriers that desire them. In those lotteries, new entrant carriers will be given preference. The preference consists of giving new entrants the opportunity to select four instead of two slots and guaranteeing new entrants 15 percent of the available slots in the first selection sequence in each lottery.

A number of the commenters to the notices of proposed rulemaking which led to Subpart S (Notice Nos. 84–6 and 84–7, 49 FR 23788 and 49 FR 23806), while not opposed to the buying and selling of slots once allocated, were opposed to allocating all slots initially to incumbent carriers. Several suggested auctioning off all or a portion of the slots and applying the proceeds to improving the aviation system. These suggestions were rejected for a number of reasons, including costs to the industry, the potential for major disruption in air service in the case of auctioning off all, or a substantial portion of all, slots, and a lack of statutory authority.

As a result of the comments received on Notice Nos. 84–6 and 84–7, the Department published a new notice of proposed rulemaking (NPRM) (Notice No. 85–25) contemporaneously with the adoption of Subpart S of Part 93 (50 FR 52195; December 20, 1985) that proposed a special procedure for a one-time withdrawal and reallocation of up to 5 percent of the air carrier and commuter slots at the high density airports. The purpose of the procedure was to diminish the advantage some carriers have gained under past slot allocation procedures. Except as discussed herein, this final rule is based on Notice No. 85–25 and the comments received thereon. Due consideration has been given to all comments received.

Related Rulemaking

In the preamble to the final rule adopting Subpart S, the Department requested interested parties to comment on that subpart.

The Department is currently reviewing all the comments submitted in response to the December 16 rulemaking. Any adjustments to that rule, based upon those comments, will be made in a separate regulatory document, as soon as possible.

Summary of the Rule Being Adopted

The rule applies only to air carrier slots at Chicago's O'Hare, New York's LaGuardia, and Washington National Airports.

Five percent of the air carrier slots will be allocated by lottery to new entrants and limited incumbents (carriers with less than eight slots at the airport).

The 5-percent total will include unallocated slots, slots returned to the FAA, and slots lost by carriers through the use-or-lose provisions of the Buy/Sell Rule. However, FAA expects that the number of these slots may be relatively few. Therefore, to the extent that an insufficient number of slots are available from those sources, slots will be withdrawn from incumbent carriers.

New entrants must have economic and FAA authority to obtain slots in the lottery.

Slots will not be withdrawn from incumbent carriers holding eight or fewer non-international air carrier slots at an airport. No incumbent will lose more than 10 percent of its slots at any airport.

Incumbents will be permitted to designate the slots to be withdrawn provided that they are in appropriate time periods.

Carriers obtaining slots must:

—Begin to use them between 90 and 180 days after the lottery
—Give the incumbent carrier 90 days notice of intent to use them
—Use them only with 56 or more seat airplanes for 90 days
—Use them only in scheduled domestic passenger operations
—Comply with the 65 percent use requirements of the Buy/Sell Rule once slot use begins.

If a carrier obtaining a slot does not use it, it will be returned temporarily to the carrier that gave it up. However, a second lottery will be held before December 15, 1986, to allocate those slots to new entrants and limited incumbents.

Discussion of Comments

In general, the commenters on the NPRM were split between those who believed that a one-time, 5-percent withdrawal and reallocation was inadequate and those who felt that withdrawal was not warranted because there were no past inequities needing correction. Those in the first group argued that a 5-percent withdrawal would not provide a sufficient number of slots for all interested new entrant carriers to begin viable operations at the high density airports. In part, this complaint was aimed at the adequacy of the reallocation procedures' new entrant preference, which would have provided a guaranteed pool of 15 percent of the available slots for new entrant carriers.

Some of these commenters also argued that withdrawals and reallocations should be conducted on a periodic basis, and not just once, as proposed. Otherwise, they contended, future new entrants will be unable to obtain slots at the high density airports except through purchases from other carriers. Several other commenters suggested that a larger number of slots than proposed, perhaps 10 percent, be withdrawn and redistributed by lottery.

These major concerns are addressed below. First, however, several important changes from the proposal should be highlighted.

In the NPRM, the Department invited comments on whether the proposal should not apply to one or more of the air carrier or commuter operator slot pools because of actions taken by some scheduling committees that permitted new entry at the particular airport in the past. The procedures of the commuter scheduling committees for allocating slots to new entrant commuter operators in the past were cited by the commenters as a reason for not initially withdrawing and reallocating commuter slots. The Regional Airline Association (RAA), in its comments, stated, "The regional scheduling committees at the High Density Rule airports have, to a very large degree, accommodated new entrants . . . ." In support of its position, RAA cited the following:

—Since June 1983, at Washington National Airport (DCA), 20 new entrant airlines have been allocated 74 slots out of a total pool of 194. Four continue to serve the airport.
—At LaGuardia Airport (LGA), all new entrants (three) have been accommodated since June 1984.
—At O'Hare Airport, all new entrants that participated in the scheduling committee meetings (five) have been accommodated since July 1984 with 63 slots having been available to accommodate new entrants.
—At JFK, slots continue to be available.

Clearly, the commuters had devised a mechanism to accommodate new entrants, generally at the expense of incumbents. This mechanism had been negotiated by new entrants and incumbent carriers and approved by the government in 1983. It worked successfully for several years, as evidenced by the RAA comments above. However, at DCA the mechanism had reached the end of its usefulness because each large incumbent carrier had surrendered the maximum percentage of slots that had been determined to be the fair and equitable proportion of loss to be borne by incumbents. In addition, no commuter or other commenter filed comments suggesting that the rule should apply to the commuters or, in any way, suggesting that RAA was incorrect in its statements.

It must also be noted that there are slots available for allocation to commuter operators at all four airports. The Regional Scheduling Committee estimates that approximately 5 percent of slots will be available at each of the airports except at DCA where approximately 4 slots remain available.

As a result, this SFAR does not apply to commuter slots. Since new entrant commuters have been given ample opportunity to obtain slots at all the high density airports in the past, there is no reason to hold a special allocation of available commuter slots. Therefore, new entrants and limited incumbents can obtain slots in accordance with 14 CFR 93.225, or by purchasing or leasing slots.

The NPRM also asked whether the proposal should not apply to certain air carrier slot pools. Some commenters pointed out that the Kennedy Airport Air Carrier Scheduling Committee has historically agreed to allocate slots to interested new entrants. In fact, there have been several new entrants at Kennedy within the past 2 years. Further, the Kennedy Air Carrier Scheduling Committee had functioned up until the date of the issuance of the Buy/Sell Rule on December 16.

After reviewing this issue, the Department does not believe that it is appropriate to withdraw and reallocate slots at Kennedy International Airport. This decision is also based, in part, upon the high number of international operations at the airport (in some summer hours the number of international slots is approximately 50 percent of all available slots) which would be exempt from the withdrawal and reallocation provision. For these reasons, Kennedy Airport will not be included in this rule. Instead, vacant air carrier slots at Kennedy will be allocated in accordance with the procedures contained in Subpart S.

As mentioned earlier, some commenters questioned whether any airports had to be included in this rule. Some commenters argued that new entrant carriers have been able to obtain slots, in the past, at each of the high density airports. The success of People Express and New York Air in obtaining slots was cited. In this connection, Eastern Airlines pointed out that 19 percent of LaGuardia slots and 22 percent of Washington National slots currently are allocated to carriers other than certificated air carriers serving those airports prior to enactment of the Airline Deregulation Act. Eastern asserted that this reduction in slots has forced Eastern to discontinue flights between a number of cities.

The Department recognizes that there has been some new entry at each of the airports. However, there has been very little opportunity for new entry by air carriers during the past 2 years at O'Hare, Washington National, or LaGuardia. There have been a number of carriers which have tried to utilize the scheduling committees process during that period of time but have not been able to obtain entry at these airports. Western Airlines, for example, has tried unsuccessfully to obtain four slots at LaGuardia for the past 12 months. The Department also notes that People Express' success at gaining entry at Washington National Airport is attributable to the purchase of slots in 1982, rather than accommodation by the scheduling committee.

The Department has concluded that carriers that have been blocked from obtaining entry at the high density airports because of longstanding deadlocks in the scheduling committee process must be given some opportunity to obtain slots prior to the institution of a mechanism which allows the purchase and sale of slots.

The purpose of the proposal was to give new entrants an opportunity to gain some minimum level of access as the new buy/sell allocation approach becomes effective. In some cases, new entry has been very limited during the past several years. DOT believes that once carriers begin utilizing this market approach, new entrants will have ample opportunity to obtain access. The Department recognizes, however, that some initial, immediate opportunity should be given to these carriers to obtain access at this time. In this connection, we note that Chairman Norman Y. Mineta and Ranking Minority Member John Paul Hammerschmidt of the Committee on Public Works and Transportation, Subcommittee on Aviation, U.S. House of Representatives, in a January 22 letter to the Department, stated, "If more slots were available to new competitors without charge, the new competitors would be able to compete on a more equal footing with incumbents."

With respect to those commenters who argued that a large percentage of slots should be withdrawn from incumbent carriers for reallocation, consideration has to be given to the disruption of service which would result from withdrawal of large numbers of slots. Service to small and mid-sized cities would probably be most affected

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by such disruption. Some recognition must also be given to the comments of Eastern Airlines and others that over a long period of time these incumbent carriers have given up large numbers of slots, which has allowed some new entry at each airport. Further, many of these carriers have created markets and service patterns at these airports which could be eliminated if they are to lose large numbers of slots. It is for the above-mentioned reasons that the Department has decided to ensure that the percentage of the air carrier slots at each of the high density airports, except for Kennedy, to be withdrawn and reallocated not exceed 5 percent as proposed.

The primary concern of those in favor of the basic NPRM approach was that the percentage as proposed in the NPRM was too small a number to allow effective new entry. Under the NPRM, although 5 percent of the slots were to be withdrawn, only 15 percent of the 5 percent were guaranteed for new entrants. The Department now recognizes that the resultant figure is too low. As explained later, changes to the proposal have been made and the number of slots available for new entrants will be much larger than that originally proposed, although the 5 percent figure remains the same. To further improve the preference for new entrants, requirements are being adopted to ensure that many of the slots to be provided to new entrants are in prime hours.

As a result, 5 percent of the air carrier slots at LaGuardia, O'Hare and Washington National Airports will be made available to new entrants and limited incumbents (incumbents holding less than eight slots). This will enable several new entrant and limited incumbent carriers at each one of these airports to obtain an initial base of slots from which they can grow through the buy/sell mechanism or to run smaller, competitive operations.

DOT does not agree that the 5-percent allocation is inadequate or that withdrawal and reallocation should be conducted periodically. As can be seen from the rule being adopted, a significant number of slots will be withdrawn for reallocation at each of the high density airports covered by the rule. These numbers represent 5 percent of the air carrier slots at these airports less those slots that have been returned, lost through the use-or-lose provisions of Subpart S, or are currently unused. At O'Hare, for example, there will be 84 slots available for allocation. That should enable a number of new entrants to obtain immediate, effective access at the airport. It should also enable limited incumbent carriers to grow. It will put a number of operators in a viable, competitive position as the market allocation process is instituted. As mentioned above, slot withdrawals greater than that required by this SFAR would be highly disruptive of existing airline service, with the strong possibility that the service dropped will be that used to serve small and mid-sized communities.

The DOT also disagrees, in general, with the need to hold periodic withdrawals and reallocations. Future new entrant carriers have certainly not been disadvantaged by previous slot allocation practices. Under Subpart S the primary method for obtaining slots in the future is to buy or lease them, and future new entrant carriers can utilize that method along with other operators. Also, Subpart S provides for periodic lotteries of available slots with new entrants receiving a preference and future new entrants can obtain slots in those lotteries. As discussed below, however, a second lottery will be held under this SFAR later this year to ensure that the 5 percent of the slots are fully reallocated.

A number of commenters questioned the need to withdraw slots and redistribute them in a process accessible to all incumbents. United Airlines, in its comments, noted that "the disruption to existing service patterns and inconvenience to the public caused by chance redistribution of slots among *all* carriers would serve no purpose and be contrary to the public interest." [emphasis added] The Department agrees. For example, there would be little purpose in taking a slot from a carrier with 300 slots to give it to a carrier with 84 slots or vice versa. Therefore, the only incubments allowed to participate in the lottery are limited incumbents, i.e., those with fewer than eight slots. This also ensures that a large number of slots will be available for new entrants and limited incumbents. Instead of providing only 15 percent of 5 percent of air carrier slots for those carriers, 100 percent of the 5-percent pool will be available. This is an increase of over 500 percent in these slots guaranteed to new entrants and limited incumbents over that proposed. For example, at LaGuardia under the NPRM proposal, new entrants would have been guaranteed only 5 slots. Under the rule, as adopted, new entrants and limited incumbents will get all 36 slots to be reallocated. This should clearly improve the opportunity for increased competition at these three high density airports.

DOT further believes that limited incumbents should be given the same opportunity as new entrants to obtain access at this time. Like new entrants, limited incumbents have had a difficult time in increasing slot holdings at the three high density airports. In fact, at some airports, they have had a more difficult time. Allowing them to obtain some additional slots would also put them in a better competitive position as the new allocation system becomes effective. Thus, this SFAR puts new entrants and limited incumbents in a position to obtain slots in a lottery.

Another important question asked in the NPRM was whether carriers with eight or fewer slots at any airport should be excluded from the withdrawal process. The Air Transport Association of America suggested that carriers with eight or fewer slots should not lose slots. The Department agrees with this position. The number of incumbent carriers with eight or fewer slots at the three airports is very small. For example, at LaGuardia there are very few such carriers. Excluding these carriers from the withdrawal process would have a negligible effect on the risk to the remaining incumbents. In addition, withdrawing slots from carriers of this size could have devastating effect on their ability to serve the particular airport. For these reasons, these carries will be exempted from the withdrawal process. In computing a carrier's slot holdings for this purpose, commuter slots, slots operated in international air service (as defined in 93.217), and slots of less than 5 days a week will not be counted.

Section-by-Section Discussion of the Rule

The following discussion explains the most important provisions of the SFAR and presents a schedule for its implementation. The discussion also touches on some of the other comments raised in the rulemaking.

Section 1. Purpose.

This section explains the purpose of the SFAR.

Section 2. Definitions and Relationship to 14 CFR Part 93, Subparts K and S.

This section makes it clear that the definitions in Subparts K and S apply to the SFAR. It also makes it clear that consistent provisions must be considered in applying this SFAR and that inconsistent provisions in Subparts K and S are superseded by the SFAR. For example, the SFAR contains special reallocation lottery procedures that in some ways differ from the similar

Subpart S procedures. The SFAR provisions prevail in those circumstances. On the other hand, § 93.213(c) contains a common ownership provision that is applicable to the SFAR.

Section 3. Lottery Process—General.

This section explains the basis on which slots will be withdrawn from incumbent carriers and reallocated to new entrants and limited incumbents. Paragraph (a) indicates that the random withdrawal lottery will be conducted within 30 days after the issuance date of the SFAR. The date selected for that lottery is March 26, 1986. The lottery will be held in the FAA Auditorium, 800 Independence Avenue, SW., 3rd Floor, Washington, D.C. It will begin at 9:00 a.m. Paragraph (b) indicates that separate lotteries will be held for air carrier slots at LaGuardia, O'Hare, and Washington National Airports. Paragraph (c) points out that sections 4 (c) and (e) describe the slots to be withdrawn and reallocated.

Paragraph (d) requires that notice of the date and any special mechanical procedures for the lottery shall be published in the **Federal Register** within 15 days after the issuance of this SFAR. That notice is contained in this document. Any changes or special procedures will be announced within the 15-day period.

Certain slots will not be withdrawn. Under section 3(e), slots necessary to provide essential air service (EAS) will not be withdrawn because service to EAS communities should be preserved. The determination of whether slots are necessary to provide EAS operations will be made by the Department on a case-by-case basis. Paragraph (e) also indicates that slots used for international operations, as specified in § 93.217(a)(1), will not be withdrawn because of international policy concerns.

Under paragraph (f), slots of operators holding a total of eight or fewer 5-day-a-week slots (excluding slots used for international air service) will also not be withdrawn because of the disproportionate, adverse impact this would impose on those operators. The number of slots held only applies to air carrier slots. An operator with six commuter slots and four air carrier slots is not considered to have more than eight slots for the purposes of this section. It must also be noted that operators defined in accordance with § 93.213(c) as having common ownership will have their air carrier slot holdings added together to determine eligibility under this section.

Paragraphs (g) and (h) set forth the carriers eligible to participate in the reallocation lottery. The first group of carriers eligible to participate in the lottery are air carriers with fewer than eight slots at the particular airport. Their eligibility is set out in paragraph (g). All commuter, air carrier EAS, and international slots held be the operator at the airport are included in the total. In addition, slots held be jointly held carriers, as described in Section 93.213(c), are included in the totals. Eligibility at each airport is determined separately.

The second type of carrier eligible to participate in the lottery is new entrant carriers not operating at the airport. Their eligibility is set out in paragraph (h). To be included in this category the carrier must have appropriate economic authority under Title IV of the Federal Aviation Act (FAAct) and a Part 121 operating certificate issued by the FAA.

This is a different eligibility requirement then that contained in Subpart S. Under § 93.225(g), carriers which have not obtained their Part 121 certificate but have made substantial progress towards obtaining the certificate may take part in that lottery. That lottery involves unutilized slots, while the lottery under this SFAR involves taking slots away from incumbent carriers. If a slot is taken from an incumbent, the slot should be utilized within a short of time. It should not be taken and not used or be denied to a different new entrant or limited incumbent which is capable and anxious to utilize it. Further, there is an ample number of certificated carriers which would qualify under section 3 for slots and would be prepared to utilize those slots within a reasonable period. Scheduling committee records over the past several years show that most, if not all, of the uncertificated new entrants which obtained slots at scheduling committee sessions never utilized them. It is highly unlikely that a carrier not having a Part 121 certificate at the time of the lottery would be able to operate within the timeframe established by this SFAR.

The primary purpose of this SFAR is to enable carriers which have attempted to obtain entry at high density airports and limited incumbents to achieve immediate access at those airports as the new market allocation approach becomes effective. Braniff Airlines, in its comments, stated that the final rule eliminated the ability of an emerging carrier to grow in a high density market. They added that an emerging carrier needs to develop and maintain market presence. Presidential Airways stated that it may commence service to one, if not all, of the high density airports. They added that new entrants should have some opportunity to develop business at the four high density airports without having to buy slots. Western Airlines, another carrier which has attempted to grow at some high density airports while gaining initial entry at others, supported the NPRM and stated that 5 percent is the minimum concession the FAA can make to the pro-competitive principles of deregulation.

Providing a solid opportunity for carriers such as Western, Presidential, and Braniff to gain immediate access at the high density airports is the primary purpose of this SFAR and would serve the pro-competitive principles of the Airline Deregulation Act.

Enabling some or all of these carriers and other similar ones to establish an immediate base at the three airports covered by this SFAR while, at the same time, providing them and others a market opportunity to improve their position, is the most effective approach to increase competition by existing air carriers and strengthen the competitiveness of small air carriers. This is particulary so when the highly competitive effects of nearby airports are fully considered. For example, the systems developed by New York Air and Presidential at Dulles have certainly had a significant impact on competition in the entire Washington area. When all of these factors, including reallocation of 5 percent of the slots to new entrants, are considered, it is clear that a large number of slots need not be reallocated and a broader definition of new entrant carrier is not required to achieve competition goals.

New entrant carriers which obtain a Part 121 certificate over the next 6 months, may be able to obtain slots in a second set of lotteries under section 7. Morever, carriers which are not eligible for slots under this SFAR because they do not have a Part 121 certificate can still obtain slots under § 93.225 or buy them. It is for the above reasons that carriers without Part 121 certificates will not be eligible to participate in the March 26 lotteries.

To be included in the lottery, an eligible carrier (both limited incumbent and new entrant) must provide the Office of the Chief Counsel a certified statement signed by an officer of the operator indicating that the operator has sufficient aircraft having a certificated maximum passenger seating capacity of 56 or more or has contracted for such aircraft, to be used in operating the slots it will select and that the operator has bona fide plans to use the requested

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slots within the timeframe described in section 6. This notification of desire to participate in the lottery must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on March 24, 1986, to the address identified in section 3(g). The FAA may ask for documentation to support any submission under this section. All parties are reminded that any lack of good faith on the part of those requesting inclusion in the lottery could result in criminal enforcement action under Title 18 of the U.S. Code for false certification to the Federal Government (18 U.S.C. 1001).

Section 4. Withdrawal lotteries.

Section 4 contains the procedures for the lotteries to withdraw slots at the three identified high density airports. A separate lottery will be held for each airport.

Under paragraph (a), the name of each air carrier with more than eight non-international air carrier slots (5 days a week or more) at the airport (LaGuardia, O'Hare, or Washington National) will be placed in individual capsules for inclusion in the lottery. For example, a carrier with six domestic air carrier slots and six international air carrier slots does not have more than eight non-international air carrier slots at the airport and, thus, would not be in the lottery. At the same time, a carrier with 12 commuter slots and 6 air carrier slots does not have more than 8 air carrier slots at the airport and, thus, would not be placed into the lottery. It should be noted that the method for determining eligibility for the section 4 withdrawal lottery is different than for the section 5 reallocation lottery. In the section 4 lottery, only domestic air carrier slots are considered, while in the section 5 lottery, all commuter and air carrier, domestic or international, slots are considered.

A carrier's name will be placed in the lottery drawing a number of times equal to 10 percent of the total number of 5 day/week non-international air carrier slots held at the airport round to the next lowest number, but not less than one.

The following shows how the provision will work. The total number of slots is based on the official FAA March 20 slot base for that airport.

Carrier	Total slots	Capsules
A	84	8.
B	16 air carrier, 42 commuter.	1 (only air carrier slots are considered).
C	16	1.

After all of the capsules are placed in a drum, they will be withdrawn randomly to determine the order of slot withdrawal. Once the order of withdrawal has been determined, carriers will be called upon to designate slots for withdrawal and reallocation. Carrier representatives will be given some time to make decisions prior to being called upon to designate slots.

In accordance with paragraph (c), the first slots designated will be unallocated slots and slots returned to the agency under § 93.227 or lost through the use-or-lose provision in § 93.224. These slots, if they fall in the required hours, will count toward the minimum slot requirements for these hours. After those slots are designated, the remainder of the required slots will be designated by the carriers in the order determined under paragraph (b).

Under paragraph (d), each time a carrier's name is called it will designate two slots to be withdrawn (unless only one is required). This paragraph further requires that the slot be in the carrier's March 20 base. This will ensure that all slots transferred under this SFAR are from a common base. A carrier will have 5 minutes to designate the slots. If the carrier does not respond within the required time, the FAA representative will select the slots to be included in the pool.

In the NPRM, it was proposed to withdraw slots for the lottery within normally scheduled hours of the day but not by hour. Although slots randomly withdrawn might have produced a sufficient number throughout the day to enable carriers to develop reasonable schedules, it would be possible for the slots made available to be in one or a few hours or all in non-prime hours. Such a result might negate the ability of carriers to establish viable schedules at the airport. Therefore, paragraph (e) requires that some slots be available in each controlled hour (see Column C of section 4(e)). The remainder of the slots to be withdrawn can be provided in any of the hourly periods listed in paragraph (e) (see Column B). This paragraph requires that slots be available in hourly (60-minute) periods without distinction to the 30-minute allocation periods set forth in Subpart K. Further, no distinctions are made in the SFAR as to any arrival or departure limitations which may pertain to such slots. At LaGuardia, slots provided will initially retain their current departure and arrival limitations. The agency will consider allowing carriers obtaining the slots to change their arrival/departure designation if not detrimental to air traffic control operations.

Section 4(e) indicates the total number of slots to be reallocated in each lottery. That number equals 5 percent of the total number of slots in existence.

Some commenters suggested that the pool of slots used to establish the 5 percent for withdrawal be reduced by the number of international slots at each airport. Since Kennedy Airport is not covered by this SFAR and there are no international designated slots at Washington National Airport, only LaGuardia and O'Hare are of concern in this regard. In both cases, the number of international slots is minimal. Of those international slots, the vast majority are held by U.S. operators. For these reasons, the Department does not believe that it is appropriate to decrease the size of the slot pool by the number of international operations at the airport.

Paragraph (e) also indicates the hours of the day in which slots will be withdrawn. At LaGuardia and Washington National Airports, the hours in which slots will be withdrawn are limited to the 7:00 a.m. to 9:59 p.m. period since the 6:00 a.m., 10:00 p.m., and 11:00 p.m. hours are generally considered to be undesirable and slots have routinely been available in those hours.

The slots designated by the carriers must be consistent with the timeframes set forth in section 4(e). At Washington National and LaGuardia, that will require a minimum of two slots each hour with the remainder, if any, in any hour, while at O'Hare there shall be a minimum of four in each hour with the remainder in any hour. In one case (Washington National Airport) the total specified (28) is exceeded by the minimum slot/hour requirement (2 x 15 hours). In this instance, slot withdrawal will cease after 28 slots have been specified.

This mechanism will ensure that slots are available throughout the day for selection by new entrants. Allowing carriers to designate slots to be withdrawn as opposed to using a pure mechanical selection of the specific slots to be withdrawn will minimize the disruption to the particular carrier's operations. For example, it will enable a carrier to decide which matching slots or portions of its schedule it will have to adjust to enable it to comply with the rule. This will be much less disruptive than a random selection of slots from throughout the entire day.

One of the primary concerns of many of the commenters was the risk of slot loss faced by incumbent carriers under this withdrawal process. The Air Transportation Association, in its comments, stated that "[O]ur membership is in agreement that, in the event such a withdrawal of slots

becomes necessary, a mechanism should be in place to assure that no single carrier be unduly burdened by FAA's slot withdrawal mechanism. Reliance upon mere chance to provide such protection is both unwise and unwarranted.". The Department agrees that there should be some limitation on the number of slots which any one carrier could lose under this mechanism. Although statistically unlikely, it is conceivable that one carrier could lose all of the slots to be redistributed at an airport.

Therefore, paragraph (f) limits a carrier's liability for loss to no more than 10 percent of its total number of non-international air carrier slots (5 days/week) to be in the withdrawal pool at that airport. For example, at O'Hare a carrier with 282 such slots would not lose more than 28 slots. Thus, once that carrier had contributed 28 slots to the pool at O'Hare, it would no longer have to contribute slots to the lottery at O'Hare.

Paragraph (g) indicates that the slot designations of withdrawn slots will remain the same after the slots are reallocated except for a change in the slot holder's name. It is important to note that the § 93.219 slot withdrawal priorities will remain the same after reallocation under this SFAR. However, for 2 years slots reallocated under this SFAR will not be withdrawn for international or EAS operations from the carrier selecting the slot under this SFAR.

Section 5. Reallocation Lotteries.

A random drawing will be held for each airport to establish the order of slot selection. The lotteries will be held within 48 hours after the withdrawal lottery required by section 4. The tentative date for these lotteries is March 27.

Under section 5(c), each carrier will be permitted to select two slots each time it is its turn, but new entrant carriers can select four slots in the first selection sequence. If slots remain after completion of the first selection sequence, the selections will be continued in the same order. Section 5(d) specifies the details of the lottery procedures. Each carrier will be given 5 minutes to select slots when it is its turn to select or it will lose its turn.

Some of the commenters suggested that the number of slots that any carrier could select under this SFAR be limited. The purpose of this SFAR is to allow new entrant and limited incumbent carriers to establish a base of operations at a high density airport as the buy/sell mechanism becomes effective. The Department believes that eight slots is a sufficient slot base to establish a viable schedule of operations upon which to grow. Therefore, carriers will be allowed to obtain up to eight slots under this SFAR. Under paragraph (e), a new entrant carrier could select eight slots while an incumbent carrier could select slots until its total slot holdings at the airport reaches a total of eight slots. For example, and incumbent carrier at Washington National Airport with four air carrier slots or two air carrier slots and two commuter slots could select four more slots for a total of eight slots at the airport.

This limitation will ensure that a number of carriers obtain access at each airport. This should help foster competition.

Under paragraph (f), the reallocation lottery for an airport will end if no eligible carrier decides to select additional slots, if each carrier selects the maximum number of slots it is entitled to select, or if all slots in the slot pool are selected. Any slots remaining after the lottery will be returned temporarily to the carrier placing the slot into the lottery; an unallocated or lost slot will remain available for allocation. These returned slots will subsequently be reallocated under section 7.

Section 6. Slot Use.

This section contains the requirements for use of slots obtained under section 5 and dates to begin use of slots reallocated under the SFAR. Paragraph (a) requires that the use of any slot obtained under section 5 must begin between 90 and 180 days after the date of the section 5 lottery.

Some commenters stated that 30 days would not be enough time for an incumbent carrier to release a slot and adjust schedules. The Department recognizes that it might be difficult for an incumbent carrier to make all of the adjustments necessary to compensate for a number of withdrawn slots. (A carrier at O'Hare, for example, might have to make significant adjustments for the loss of a large number of slots.) Persons with reservations on any cancelled flights would also have to be advised in sufficient time to obtain alternate reservations. Therefore, incumbent carriers will not have to release slots lost under the section 5 lottery for 90 days after the date of that lottery. Of course, incumbent carriers may decide to release slots earlier if they desire.

Service with the withdrawn slot must begin no later than 180 days after the date of the lottery. (Since the lottery will be held in late March, the carrier obtaining the slot would have to commence service before the end of the summer season.) This timetable will give the "new" carrier an entire scheduling season to initiate service with the obtained slot.

Carriers which are not in the position to operate within that timeframe should not participate in this lottery and instead should utilize Subpart S or section 7 to obtain slots. These carriers would not have been able to utilize the scheduling committee process in any event.

A number of commenters stated that an incumbent carrier should not be required to lose a slot until the new entrant is prepared to utilize the slot. The Department agrees with that comment. No purpose is served by having an incumbent carrier release a slot prior to the start of new service with it. Therefore, paragraph (b) requires the carrier obtaining the slot under section 5 to give the carrier losing the slot under section 4 at least 90-days written notice prior to initiation of service. Also the carrier obtaining the slot must commence operations within 2 weeks of the date specified or it loses the slot. A copy of the notice sent to the carrier losing the slot must also be forwarded to the FAA.

The slots withdrawn under this lottery are all slots utilized for domestic scheduled passenger service. To avoid an inadvertant and unwarranted reallocation of slots from domestic scheduled passenger service to international service or cargo service or charter service, the slots reallocated in this process must be used in domestic scheduled passenger operations (paragraph (e)). The same type of operation (domestic passenger operation) being affected by slot withdrawals is the type of operation which should be continued after reallocation. Furthermore, utilization is limited to passenger service because the prime scheduling hours of the day are not critical to the inauguration of new cargo service. As to international operations, they can be accommodated through Subpart S. Finally, charter operations do not require regular daily slots (5 days/week or more frequently) and as such it would be a less efficient allocation of such slots to assign them for charters. Other mechanisms are being developed to allow charter operators to reserve unused slot times during the week. Finally, slots are available for charter operations at the cities affected by the High Density Rule during non-controlled hours at the high density airports and at other airports serving those cities. Charter operations do not greatly depend on the time of day

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of the operation or which city airport is utilized. These same considerations were applied in adopting Subpart S.

Under paragraph (d), a slot withdrawn from an incumbent carrier under section 4 will be temporarily returned to the incumbent carrier if the carrier obtaining the slot under section 5:

1. Fails to give the 90-day notice required by that Section; or

2. Fails to utilize the slot within 2 weeks of the date which it states it will begin to utilize the slot; or

3. Fails to utilize the slot by the 180th day after the lottery; or

4. Loses the slot under the use or lose provisions of § 93.227(a) within 180 days after it initiates service.

Slots will be returned to incumbents under the above conditions on a temporary basis, because they will be made available to new entrants and limited incumbents in a second allocation lottery, under section 7. This provision is consistent with the comments received from a number of parties to the extent that a carrier required to give up a slot should only do so if the slot is fully utilized by the new entrant or limited incumbent. The Department agrees with these comments. A carrier should not have to give up an operation or deprive a community of service for service which either never begins or fails the use-or-lose standard.

The use-or-lose provision of § 93.227(a) (which requires utilization 65 precent of the time over a fixed period or the slot will be recalled by the FAA) applies to slots obtained under section 5. The time period to which the percentage applies begins on the date which the carrier obtaining the slot under section 5 actually initiates service. Paragraph (e) further makes clear that the provisions of § 93.227(b) (which waives the use-or-lose period in certain instances) do not apply to slots allocated under this SFAR.

The following timetable explains this section:

Withdrawal Lotteries	March 26
Reallocation Lotteries	March 27
First date to begin use of reallocated slots	June 27 (90 days after lottery)
Last date slot is available for new carrier to initiate service	September 27 (180 days after lottery.)

Carrier B obtains slot in section 5 lottery.

Carrier A is incumbent carrier with slot.

Carrier B wants to start service on September 1.

In accordance with paragraph (b), Carrier B must notify Carrier A by June 1 that it will initiate service by September 1. Thus, pursuant to paragraph (e) Carrier B's use-or-lose timetable for this slot would start on September 1.

Paragraph (f) limits the transferability of slots allocated under section 5. Such slots may only be traded on a one-for-one basis at the same airport or to obtain more slots for 90 days after the carrier initiates use of that slot. Carriers which obtain slots in this lottery should be required to use them before profiting from their sale.

Finally, paragraph (g) requires that, for at least 90 days after initiating service with any slot obtained under section 5, the carrier utilizing the slot must do so only with aircraft having a certificated passenger seating capacity of 56 or more. This is not totally consistent with Subpart S which allows air carrier slots to be utilized with any size aircraft. The purpose of this SFAR is to allow some new air carriers to obtain entry at the high density airports and limited incumbents to grow. The slots are being withdrawn from air carriers. It would be inconsistent with the provisions of the SFAR to allow a carrier to obtain one of these withdrawn slots and immediately utilize small aircraft (with just a few seats) to hold on to the slots. Such a result would not further competition or meet any of the aforementioned policy objectives. Once a carrier has utilized the slot for a given period of time (90 days), however, the carrier should be able to utilize the slot pursuant to Subpart S. After 90 days, §93.221(c), which allows air carrier slots to be utilized with aircraft of any size, applies to slots obtained under this SFAR.

SFAR's Implementation Schedule

The following schedule shows the time for the SFAR's implementation:

Day 1—Publication date of SFAR.
March 24, 1986—Final date for carriers to notify FAA of desire to participate in reallocation lotteries.
March 26, 1986—Withdrawal Lotteries Held.
March 27, 1986—Allocation Lotteries Held.
June 27, 1986—First Date to Begin Use of Reallocated Slots.
September 27, 1986—Last Date to Begin to Use Reallocated Slots.

Section 7—Secondary Lotteries.

Recognizing that some of the carriers obtaining slots under section 5 may not be able to ever use them or will give them up, thereby returning them to the carrier from which they were withdrawn, a second set of lotteries will be held before December 15, 1986, to reallocate the slots again. Carriers obtaining their Title IV and Part 121 authority by then can participate in those lotteries.

Slots that are available in the second lotteries will be those designated under section 4(e) that are not reallocated under section 5 and any slots that are reallocated under section 5 that were returned under section 6 to the FAA or the carriers from which they were withdrawn. The second set of lotteries will be subject to the provisions in section 1 through 6 of SFAR; however, no new slots will be withdrawn. A notice will be published announcing the time and place of the second set of lotteries and any special procedures that will apply. Carriers which obtain slots under section 5 and fail to use them in accordance with section 6 or who sold them, will not be permitted to participate in the second lotteries, but slots not obtained under this SFAR that are bought and sold under Subpart S will not adversely or positively affect a carrier's eligibility to participate in the lotteries.

Regulatory Evaluation

The Department has determined that this SFAR (1) does not involve a major rule under Executive Order 12291; and (2) is significant under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). I certify that under the criteria of the Regulatory Flexibility Act, this SFAR will not have a significant economic impact on a substantial number of small entities. No small carrier should be affected adversely by this rule since carriers with few slots will not lose any. Some may obtain slots under the SFAR but the benefits they gain should not be great in the context of the overall assets and expenditures necessary to conduct air carrier operations.

The effect on small communities is incalculable. Some gaining service may economically benefit while those that might lose service could be adversely affected. There is no way for this Department to establish beforehand which communities are likely to gain or lose service and even if it could quantification of the economic impacts would be impossible. Common sense would dictate that the overall benefits and losses would balance out.

Similarly, the economic impact on larger communities by this rule should balance out. Some larger communities may lose service and others may gain, with conjectural economic results. Since the number of slots being withdrawn and reallocated under this SFAR are relatively small, the degree of disruption should be minimal, as should the economic impacts on larger communities.

Larger air carriers that lose slots will be losing assets that have been valued between $20,000 and $1,000,000 depending on the airport and time of day of the slot. The Department guesses that the average value of the slots withdrawn will be between $100,000 and $200,000. The number of slots to be withdrawn from any single carrier at any covered airport is also limited thereby reducing the potential impact on any single carrier. The total value of the assets that might be transferred should not exceed $20 to $30 million. For each carrier losing assets, another will gain.

The economic impact on the Department to administer this SFAR should be minimal.

The information collection requirements of this SFAR have been approved by the Office of the Management and Budget under OMB Approval Number 2120-0524.

Effective Date of SFAR 48

Under Part 93, Subpart S, persons will be free to buy, sell, lease, and otherwise transfer high density airport slots beginning April 1, 1986. The SFAR being adopted herein will result in the withdrawal and reallocation of a portion of those slots and doing so after April 1 could result in substantial confusion and uncertainty regarding the value of slots being transferred. Therefore, good cause exists for making this SFAR effective 5 days after its publication date so that the reallocation and withdrawal lotteries can be conducted before April 1.

List of Subjects in 14 CFR Part 93

Aviation safety, Airspace, Air traffic control.

Adoption of the Special Federal Aviation Regulation

PART 93—[AMENDED]

For the reasons set out above, 14 CFR Chapter 1 is amended by adopting a new Special Federal Aviation Regulation to read as follows:

Special Federal Aviation Regulation No. 48
Special Slot Withdrawal and Reallocation Procedures

Section 1. Purpose.

The purpose of this Special Federal Aviation Regulation (SFAR) is to accomplish a special one-time withdrawal of slots that were allocated under Subpart S of Part 93 to incumbent carriers and a reallocation by lottery of those slots and slots otherwise available to new entrant carriers and limited incumbent carriers desiring additional slots at O'Hare, LaGuardia, and Washington National Airports.

Section 2. Definitions and Relationship to 14 CFR Part 93, Subparts S and K.

Terms used in this SFAR have the same meanings as used in Subparts K and S of Part 93. The provisions of those subparts shall be considered when applying this SFAR. However, this SFAR supersedes inconsistent provisions in both subparts.

Section 3. Lottery Process—General.

(a) Utilizing the air carrier slot pools established by the FAA under § 93.223(a)(3), the FAA shall hold lotteries to determine those slots to be withdrawn from incumbent carriers at O'Hare, LaGuardia, and Washington National Airports. The drawings shall be conducted within 30 days after issuance of this SFAR.

(b) Separate drawings shall be conducted for air carrier slots for each of the high density airports identified in paragraph (a).

(c) The slots selected in each drawing shall be determined in accordance with sections 4(c) and (e).

(d) The FAA may issue special procedures to be in effect for the lotteries

(e) None of the slots withdrawn shall be slots used for international operations, as specified in § 93.217(a)(1), or necessary for essential air service.

(f) None of the slots withdrawn shall be from carriers holding eight or fewer non-international air carrier slots at the particular airport.

(g) Each U.S. air carrier operating at the airport with fewer than eight total slots (including all international or domestic, commuter or air carrier slots) shall be included in the lotteries to obtain slots under this SFAR if the carrier notifies the Office of the Chief Counsel, Docket Section, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591, that it desires to participate in the reallocation lottery. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on March 24, 1986. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a maximum seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in section 6.

(h) Any U.S. new entrant air carrier wishing to initiate scheduled service at the airport, shall be included in the lottery if it: (1) Has appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended; (2) has FAA operating authority under Part 121; and (3) notifies the Office of the Chief Counsel, Docket Section, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591, that it desires to participate in the lottery. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on March 24, 1986. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a maximum certificated passenger seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in section 6.

Section 4. Withdrawal Process.

(a) The name of each air carrier with more than eight non-international air carrier slots (5 days a week or more) at the airport shall be placed in individual capsules for inclusion in a drawing. The name of each such carrier shall be placed in a number of capsules equal to 10 percent of the total number of air carrier slots held by that carrier (5 days a week or more) at that airport in accordance with Part 93, Subpart S, rounded to the next lowest number, but not less than one. The date used to determine slot holdings under this paragraph shall be March 20, 1986.

(b) After each capsule is placed in a drum, a random drawing shall be held to determine the order for the selection of slots to be withdrawn.

(c) Before any carrier is required to designate slots for withrawal, unallocated slots and slots available in accordance with 14 CFR § 93.224 and 93.227 shall be designated for reallocation under section 5 of this SFAR. Those slots shall be used to satisfy the provisions of paragraph (e) of this section.

(d) Each time a carrier's name is called, it shall designate two slots (or one if that is all that is required) to be withdrawn and reallocated from the most current base available to the FAA. A carrier shall have 5 minutes to designate its slots to be withdrawn or the FAA representative will. Any slot designated must be in the carrier's base at least 5 days a week.

(e) Each slot designated must be within hours in which slots are needed consistent with the hourly minimum slot column (Column C) for that airport, as specified below:

Airport	Category	(A) Total number of slots	(B) Hours of the day	(C) Minimum slots in each hour
LaGuardia	Air Carrier	36	0700-2159	2
Washington National	do	28	0700-2159	2
O'Hare	do	64	0645-2114	4

If the required minimum number of slots has been designated in each of the hours of the day (Column B), a carrier required to designate additional slots may do so in any of those hours. If a carrier does not have a slot in a required hour, it may name a slot in any hour listed in Column B. The total number of slots available under paragraph (c) during the hours specified in Column B plus the slots designated by carriers for withrawal pursuant to paragraph (d) shall not exceed the total number of slots specified in Column A for each airport.

(f) No carrier shall be required to designate more than 10 percent of its total of non-international air carrier slots (5 days a week or more) at the particular airport.

(g) Slots designated for withdrawal under this section shall retain the same withdrawal priority numbers as established under

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Subpart S of Part 93 when reallocated pursuant to section 5 of this SFAR. However, slots reallocated under section 5 shall not be withdrawn under Subpart S, for EAS or international operations, from the carrier selecting the slot for a period of 2 years after the effective date of this SFAR.

Section 5. Reallocation Lotteries.

(a) Within 48 hours following the withdrawal lottery, a lottery to allocate the slots withdrawn pursuant to section 4 and those otherwise available shall be held on an airport-by-airport basis.

(b) Random drawings shall be held to determine the order of slot selection by the carriers eligible under section 3.

(c) An operator may select up to two slots available at the airport during each selection sequence, except that new entrant carriers may select up to four slots, if available, in the first sequence.

(d) At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

(e) No carrier may select more than eight slots under this SFAR or select any slots that would result in it having a total of more than eight slots at any one airport, less any slots lost under § 93.227(a).

(f) If all eligible carriers decide not to select additional slots or have selected their maximum number of slots, the lottery at that airport will end and the remaining slots will be returned (subject to section 7) to the carriers designating them, if any, in accordance with section 4.

Section 6. Slot Use.

(a) The initiation of operations with slots reallocated pursuant to this SFAR shall be accomplished no earlier than 90 days and no later than 180 days after the lottery is held pursuant to section 5.

(b) Each carrier obtaining a slot under section 5 shall give the carrier losing the slot under section 4, if any, and the FAA, at least 90 days written notice prior to initiation of service. The notice to the FAA must be mailed to the address set forth in section 3(g).

(c) Slots obtained under section 5 shall only be used by the carrier obtaining them for scheduled non-international passenger service.

(d) Slots allocated under section 5 which were withdrawn from an incumbent carrier under section 4 will be temporarily returned to the incumbent carrier and all other slots allocated under section 5 will be returned to the FAA if:

(1) The carrier obtaining the slot under section 5 fails to give the notice required by section 5 or does not utilize the slot within 14 days after the date which it states it will begin to utilize the slot; or

(2) The carrier obtaining the slot loses it under 14 CFR 93.227(a) within 180 days after it initiates service.

(e) The slot "use-or-lose" provisions of § 93.227(a) of the Federal Aviation Regulations shall apply to those slots allocated under this SFAR as of the date the carrier obtaining the slot actually initiates service. The provisions of § 93.227(b) do not apply to the slots allocated under this SFAR.

(f) A slot obtained under section 5 may only be traded on a one-for-one basis or for an increased number of slots at the same airport for 90 days after the carrier obtaining it under section 5 initiates use of that slot. The restrictions of this SFAR apply to any slots obtained in such a trade.

(g) For 90 days after initiation of service with any slot obtained under this section, it must be utilized with aircraft having a certificated maximum passenger seating capacity of 56 or more. After 90 days, the provisions of 14 CFR Subpart S apply as to the kind of aircraft eligible to be utilized with the slot.

Section 7. Secondary Lotteries.

(a) By December 15, 1986, a second set of lotteries to allocate slots under this SFAR shall be held to allocate only:

(1) Those slots designated under section 4(c) for reallocation that were not reallocated under section 5; and

(2) Those slots that were reallocated under section 5 that were returned, under section 6, to the FAA or the carrier from which they were withdrawn.

(b) The second set of lotteries shall be subject to the rules set forth in sections 1 through 6 of this SFAR except: (1) The slots to be allocated are only those specified in paragraph (a) of this section; and (2) carriers which obtained slots under section 5 and failed to use them in accordance with section 6 or sold them shall not be eligible to participate in this lottery. Sales under Subpart S of slots not obtained under this SFAR shall not be deemed to affect a carrier's eligibility to participate in this lottery.

(c) A notice shall be published before the second set of lotteries announcing the time and place of the lotteries and any special procedures that will apply.

Section 8. Effective and Termination Dates.

This SFAR is effective 5 days after its publication in the **Federal Register** and terminates on January 1, 1988.

(49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a); 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983))

Issued in Washington, D.C., on March 7, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-5420 Filed 3-10-86; 8:45 am]

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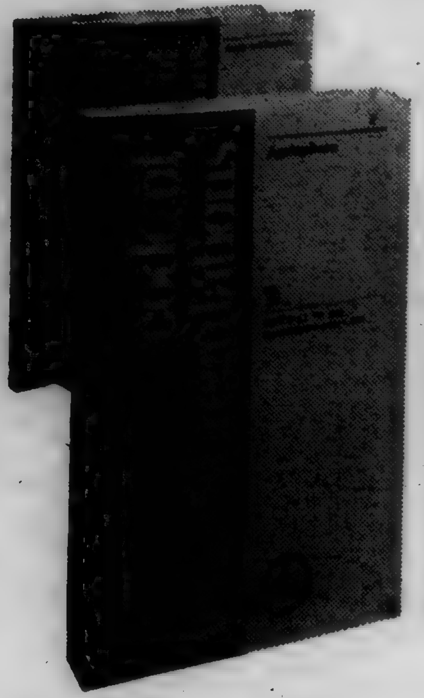

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9 am and 1 pm.
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WHERE: Office of the
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Conference Room,
1100 L Street NW,
Washington, DC
RESERVATIONS: Ruth Reedy,
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WHERE: Room 230,
Federal Building,
1961 Stout Street,
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RESERVATIONS: Elizabeth Stout
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WHEN: April 23; at 1:30 pm.
WHERE: Room 7A23,
Earl Cabell Federal
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RESERVATIONS: local numbers:
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Rules and Regulations

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pool status under the Great Basin Federal milk order. The suspension was requested by cooperative associations representing most of the producers supplying the market to assure that the milk of all producers historically associated with the market will continue to be pooled. The provision is suspended for the months of February through July 1986.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 11, 1986; published February 13, 1986 (51 FR 5367).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Great Basin marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 13, 1986 (51 FR 5367) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of February through July 1986, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13."

Statement of Consideration

This action removes, for the months of February through July 1986, the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pooling under the Great Basin milk order. The order now provides that a certain percentage of a distributing plant's receipts in each month be disposed of as route disposition if the plant is to be qualified for pooling. In addition to fluid milk products physically received at the plant, diversions of producer milk to nonpool plants are included as part of the receipts of which a particular percentage must be disposed of on routes.

The suspension was requested by Western General Dairies, Inc., and Lake Mead Cooperative Association, cooperative associations that supply most of the market's fluid milk needs and handle most of the market's reserve milk supplies. The cooperatives stated that due to an increased amount of milk production surplus to the fluid needs of the market, approximately 15,000,000 pounds of their members' milk failed to qualify for pooling during each of the months of November and December 1985. According to the cooperatives, suspension of the requested provisions will assure that all of their members' milk would qualify for inclusion in the marketwide pool.

The suspension is necessary because of the increased amount of milk surplus to the fluid needs of the market which must be handled by the cooperatives. For the foreseeable future, the cooperatives' reserve milk supplies are expected to exceed the quantity of producer milk that may be pooled on the basis of producer milk deliveries to pool distributing plants.

A public hearing on the cooperatives' proposal to merge the Great Basin and Lake Mead orders has been scheduled to begin March 18, 1986. The cooperatives expect that the pool plant qualification standards contained in the proposed merged order will offer a long-term solution to the problems of qualifying all of the cooperatives' member milk for pooling. Continuation of the suspension beyond July, if necessary, would be based on the record of the public hearing.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action. In addition, a hearing to consider this issue has been requested and is scheduled to begin March 18, 1986, at Salt Lake City, Utah.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1136.7(a) of the Great Basin order are hereby suspended

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for the months of January through July 1986, as follows:

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR PART 1136 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; U.S.C. 601–674.

§ 1136.7 [Amended]

2. In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13." is suspended for the months January through July 1986.

Signed at Washington, DC, on: March 6, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–5447 Filed 3–12–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1139

Milk in the Lake Mead Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain diversion provisions of the Lake Mead Federal milk order. The suspended provisions relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended is the "touch-base" requirement that at least one day's production of each producer's milk be received each month at a pool plant. The suspension is for the months of February through July 1986. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 11, 1986; published February 13, 1986 (51 FR 5368).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Lake Mead marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 13, 1986 (51 FR 5368) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of February through July 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1139.13(d)(2), all of the language following the parenthetical phrase.

Statement of Consideration

This action removes for the months of February through July 1986, the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and removes the requirement that at least one day's production of each producer's milk be received at a pool plant each month. The suspension was requested by Lake Mead Cooperative Association, which supplies some of the market's fluid milk needs and handles most of the market's reserve supplies.

The order now provides that a cooperative may divert a quantity of milk not in excess of 50 percent in the months of March through July, and 40 percent in other months, of the producer milk delivered to or diverted from pool plants during the month. Suspension of the requested language will allow unlimited amounts of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Lake Mead Cooperative Association stated that suspension of the order's diversion limits is necessary to assure that all of the member milk of the cooperative is eligible to participate in marketwide pooling and pricing under the Lake Mead Federal order. The cooperative claimed that all of the production of a large nonmember producer is shipped to a distributing plant for fluid use, displacing the milk of cooperative members and causing it to be hauled long distances to manufacturing facilities. Recently, increased production by this nonmember source of milk has caused greater displacement of the cooperative's member milk supply, which has also been increasing. As a result, the cooperative is unable to pool all of its members' milk within the diversion limits of the order.

A public hearing on the cooperative's proposal to merge the Great Basin and Lake Mead orders has been scheduled to begin March 18, 1986. The cooperative expects that the diversion provisions contained in the proposed merged order will offer a long-term solution to the problems of operating within the order's present diversion limits.

In view of these circumstances, it is concluded that the aforesaid provisions should be suspended to assure that all of the member milk of the cooperative association will continue to be eligible for pricing and pooling under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action. In addition, a hearing at which this issue will be considered has been requested and is scheduled to begin March 18, 1986, at Salt Lake City, Utah.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.13(d)(2) of the Lake Mead milk order are hereby suspended for the months of February through July 1986, as follows:

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1139.13 [Amended]

2. In § 1139.13(d)(2), all of the language following the parenthetical phrase is suspended for the months of February through July 1986.

Signed at Washington, DC, on: March 6, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–5446 Filed 3–12–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Clipper Navigation, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Clipper Navigation, Inc.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Clipper Navigation, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 is revised to read as follows and the authority citations following each section in Part 238 are removed:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Clipper Navigation, Inc. under "Victoria".

Dated: March 3, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86–5479 Filed 3–12–86; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Board of Directors Designating the Presiding Officers of Hearings

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending § 308.81 of its regulations (12 CFR 308.81) to delete the requirement that the Board of Directors designate the presiding officers of hearings under § 308.79 of its regulations (12 CFR 308.79).

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret M. Olsen, Deputy Executive Secretary, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–3812.

SUPPLEMENTARY INFORMATION: Section 308.79 of FDIC's regulations provides that a person subject to a notice of assessment of civil money penalties for willful violation of the Change in Bank Control Act (12 U.S.C. 1817(j)) may request a hearing. Under § 308.81 of FDIC's regulations, the Board of Directors designates the presiding officer for any such hearing. For reasons of administrative ease and efficiency, the Board is deleting the requirement that it designate the presiding officer. The effect of this deletion is to have the presiding officer be an administrative law judge appointed by the United States Office of Personnel Management. These hearings are governed by the Administrative Procedure Act and, consequently, appointment of an administrative law judge as presiding officer is logical.

This amendment relates solely to internal agency practices and procedures and, therefore, the notice, public comment and delayed effective date requirements of 5 U.S.C. 553 are not applicable. The amendment also would not have a significant economic impact on a substantial number of small entities and would not impose any recordkeeping or reporting requirements on any person. Thus, under FDIC's policy statement on drafting regulations entitled, "Development and Review of FDIC Rules and Regulations," a cost-benefit analysis is not required.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure; Claims; Courts; Equal access to justice; Lawyers; Penalties.

Accordingly, the Board of Directors amends Part 308 as set forth below.

PART 308—[AMENDED]

1. The authority citation for Part 308 continues to read as follows:

Authority: Sec. 2(9), Pub. L. 797, 64 Stat. 881 (12 U.S.C. 1819); sec. 10, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

2. Section 308.81 is revised to read as follows:

§ 308.81 Hearing.

The Executive Secretary shall order a hearing to commence within 30 days after receipt of a request for hearing pursuant to § 308.79(b), in Washington, DC, or another place designated by the Executive Secretary. The provisions of the Administrative Procedure Act (5 U.S.C. 554–57) and Subpart B shall apply to the hearing.

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By order of the Board of Directors this 7th day of March 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5452 Filed 3-12-86; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 602, 620, 621

Disclosure of Information on Reports to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Acting Chairman of the Farm Credit Administration Board (Board), adopts new regulations under Part 620 that require (1) banks and associations of the Farm Credit System (System) chartered under the Farm Credit Act of 1971, as amended (Act), to issue annual reports to shareholders; (2) Federal land bank associations (FLBAs) and production credit associations (PCAs) to issue an annual information statement to their shareholders prior to meetings at which directors are elected; and (3) all institutions chartered under the Act to file reports of condition and performance in accordance with specified accounting requirements. The FCA also adopts an amendment to 12 CFR 602.250, relating to disclosure under the Freedom of Information Act, that (1) designates as public information, available for a reasonable fee upon request, reports to shareholders filed under the new regulations and items in reports of condition and performance that are of essentially the same character as items disclosed in reports to shareholders; and (2) makes conforming technical changes made necessary by Pub. L. 99–205. The FCA also intends to propose for comment an amendment to the new regulations that would: (1) Require disclosure of the aggregate compensation of senior officers; (2) require System banks and production credit associations to issue quarterly statements to shareholders at the end of each quarter except the one that coincides with the end of the fiscal year; and (3) require financial statements of each Federal intermediate credit bank (FICB) to accompany the annual reports to shareholders of the PCAs who are shareholders of the FICB.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Holland, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4452

or

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SUPPLEMENTARY INFORMATION: On August 27, 1985, the Federal Farm Credit Board (Federal Board) published for comment proposed new regulations that would require (1) banks and associations of the System to issue to shareholders annual reports after the end of each fiscal year; (2) associations to issue annual meeting information statements prior to meetings at which directors are elected; and (3) all institutions chartered under the Act to file reports of condition and performance in accordance with prescribed accounting rules and instructions. At the same time the Federal Board proposed for comment an amendment to its Freedom of Information Act regulations (12 CFR 602.250) that would designate the reports to shareholders required by the new regulation and corresponding items in the reports of condition and performance as public information. The comment period closed on October 23, 1985.

On December 23, 1985, Congress enacted and the President signed into law Pub. L. 99–205, which amended the Farm Credit Act of 1971 (hereinafter 1985 Amendments). This legislation replaced the 13-member part-time Federal Farm Credit Board with a three-member, full-time Farm Credit Administration Board (Board) and replaced the Governor of the Farm Credit Administration with a Chairman of the Board as executive head of the FCA. Congress designated the former Governor of the Farm Credit Administration as Acting Chairman of the Board until a Chairman is appointed by the President and confirmed by the Senate and authorized him to exercise the powers of the Board.

Comments were received from almost every System bank, the Farm Credit System Accounting Standards Committee (ASC), the Farm Credit Corporation of America, and an accounting firm used by some System institutions. The American Institute of Certified Public Accountants (AICPA) requested a 30-day extension of the comment period. The FCA declined to extend the period but agreed to consider any comments submitted by the AICP during that period. No comments were submitted. The comments of the ASC, which is comprised of representatives of System banks, were incorporated by reference, in whole or in part, by almost every bank that commented. The FCA considered every comment that was submitted. A summary of the comments and FCA responses by part and paragraph follows.

A. Part 620—Subpart A—Annual Reports to Shareholders

1. General

Most of the commentators supported the concept of adequate disclosure to shareholders but differed widely with the FCA and each other on what constitutes adequate disclosure and the degree of regulation required to attain it. One commentator suggested that disclosure to shareholders should be a matter of self-regulation by the System. The FCA disagrees vigorously with this position and, in any case, the 1985 Amendments require the FCA to regulate in this area. Also, one commentator noted that the disclosure required should be limited to the requirements of generally accepted accounting principles (GAAP). The FCA rejected this suggestion because GAAP is limited primarily to accounting disclosures and does not address all disclosures that are material to shareholders' decisions. In addition, the FCA believes that System institution shareholders should have access to at least the level of disclosure made to shareholders of other financial institutions in order to enhance the borrower ownership and control mandated by the Act.

Several commentators commented that the annual report to shareholders required by the proposed regulation contained information that public companies are required to file with the Securities and Exchange Commission (SEC) on Form 10–K, which, while publicly available, is not routinely sent to shareholders. Some of the commentators, including the ASC, recommended that the FCA require a report similar to the 10–K to be filed with the FCA that would be publicly available and required to be sent to shareholders upon request, and a separate, more abbreviated annual report to shareholders focusing on the financial condition of the institution's operations during the preceding fiscal year.

The FCA published the proposed rule with full awareness of its differences from the SEC regulatory format, in the belief that the single annual report filed

with the FCA simultaneously with its dissemination to shareholders would impose the least administrative and cost burden upon reporting institutions. The FCA seriously considered the commentators' suggestion, but since the FCA believes that shareholders are entitled to receive all of the information required by the proposed regulation, it concluded that the single multipurpose annual report would be the simplest, least burdensome method of assuring adequate disclosures to shareholders. Institutions would have to print enough copies of annual reports to FCA to make them available upon request to shareholders anyway, and any savings on printing and mailing would appear to be more than offset by the cost of preparing and printing an additional report. In addition, the FCA is considering proposing for comment a regulation that would require certain disclosures to be made to prospective borrowers. One of the options under consideration is a requirement that the most recent shareholder reports be given to prospective borrowers prior to the issuance of stock. Consequently, the FCA declined to accept the suggestion that the regulation require an annual report to be filed with the FCA and a separate, more focused annual report be sent to shareholders.

Several commentators were of the opinion that the disclosure requirements are excessively burdensome and costly. The FCA recognizes that preparation of reports to shareholders is costly but believes that shareholders who assume the risk of ownership of an institution are entitled to receive materially relevant information about the institution's financial condition and results of operations, the directors and officers who manage it, and nominees for directors in order to have a basis for evaluating the stewardship of the directors they have elected and the ability and integrity of the persons from whom they select directors. A few commentators commented that the proposed regulations goes beyond SEC regulations. The disclosure requirements are generally less extensive than those of the SEC and other financial regulators for financial institutions that are public companies. These commentators appeared to overlook the fact that some of the information that is required to be disclosed in the annual report in the FCA proposal but not in the 10–K is required under SEC rules to be sent to shareholders in proxy statements and information statements prior to shareholder meetings. When considered in their entirety, without regard to which shareholder communication the requirement relates to, the FCA requirements are generally less extensive than those of the SEC. Also, while the FCA has drawn upon the experience of other regulators, it is guided in its rulemaking primarily by what it considers appropriate and necessary for System institutions in light of its regulatory experience.

While not all System institutions would meet the test for public companies, many of them have in excess of 500 shareholders and, as the trend toward merger and consolidation continues, the number of associations with less than 500 shareholders continues to decline. In districts in which districtwide mergers or consolidations have occurred, shareholders number in the thousands and the association serves several States. More importantly, the regulations will promote democratic borrower ownership and control, for which Congress has demonstrated such strong concern in the 1985 Amendments, by giving shareholders complete and reliable information on which to base their decisionmaking.

2. Section 620.1 Definitions

Several commentators noted that the definition of "affiliated organization" would cause the disclosure of participations between System institutions. One commentator noted that the definition of "related organization" would, in the case of the Central Bank for Cooperatives, require a description of the business of all of the institutions with which it participates.

The definition of "affiliated organization" has been amended in the final rule to exclude other System institutions, as the FCA did not intend to require disclosure of routine transactions between System institutions in the context of disclosure of transactions of officers, directors, and nominees with the institution they serve. However, the FCA believes that disclosure of the institution's relationships with other System institutions is a material disclosure and does not believe that the requirement to describe the business of related organizations is excessively burdensome. In the case of the Central Bank, the business of the banks for cooperatives with which it participates may be briefly and generically described.

Several commentators requested a definition of the term "executive officer." The final rule substitutes the term "senior officer" for "executive officer" to avoid any confusion the term "executive" may cause, and defines "senior officer" as a person designated by the board of directors as responsible for a major management function.

Several commentators requested a definition of "materiality." The final rule adds a definition of material that makes it clear that material information is information to which there is a substantial likelihood that a reasonable person would attach importance in making a shareholder decision or determining the financial condition of the institution.

Several commentators requested a definition of the term "normal risk of collectibility" as it relates to the requirement to disclose loans to senior officers and directors. A definition of "normal risk of collectibility" has been added to the rule that makes it clear that the reference is to the performance status of the loan as determined in accordance with Part 621. Any loan that falls within any category of "nonperforming loans," as defined in Part 621, is deemed to involve more than a "normal risk of collectibility."

The FCA has reconsidered the proposed definition of "immediate family" and concluded it to be too all encompassing, requiring disclosure of transactions too remote to constitute a substantial risk of a conflict of interest. The final rule has been changed and now restricts "immediate family" to parents, children, and siblings.

The final rule adds a definition of "loan" that is the same as the definition in Part 621 and includes extensions of credit of all types and leases. The final rule also adds a definition of "shareholder" that includes all holders of an equity interest, whether or not they are entitled to vote.

3. Section 620.2 Preparing, Distributing, and Filing the Report

Several commentators stated that 90 days is an unreasonably short period within which to prepare and disseminate an annual report to shareholders. One suggested that the 90-day requirement is appropriate for a 10–K type filing but not an annual report to shareholders. The FCA does not agree that the 90-day requirement is unreasonable and notes that it is consistent with the requirements of the SEC and other Federal financial institution regulators.

One commentator suggested that the signing requirement is appropriate for a 10–K type filing but not an annual report to shareholders. Several noted that the SEC requires only a majority of the board rather than the entire board to sign. Also, one commentater expressed concern that the signing requirement may present logistical problems

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requiring the scheduling of a special board meeting for that purpose. The FCA recognizes that its signing requirements are more stringent than those of the SEC, but believes it necessary to assure director accountability to require each director to sign or require the institution to disclose the reason for not signing. Also, the FCA believes that directors should be willing to make the same certification to shareholders that they make to FCA. However, to partially alleviate any logistical problems that may result from the requirement, the final rule requires that only the reports to be sent to the FCA be signed by each member of the board of directors and permits the annual reports to be sent to shareholders to be signed by its chief executive officer and the chairman of the board, on behalf of the institution and its board. This change would obviate the need to coordinate the board meeting and the schedule for printing the reports to be mailed to shareholders. However, if any member of the board has not signed the copy of the annual report filed with FCA, the name of the persons who have not signed and the reasons therefor must be disclosed in the annual report to shareholders as well as in the copy sent to the FCA. Also, the final rule has been revised to require the officer who certifies the reports of condition and performance required under Part 621 to also certify the annual report to be sent to FCA.

In the final rule the certification statement that the chief executive officer, the board, and the designated certifying officer are required to sign has been expanded to include a representation that the report has been prepared in accordance with applicable statutory and regulatory requirements.

A new paragraph (h) has been added to this section to clarify that disclosure items required by Part 620 that are of essentially the same character as items required in reports of condition and performance under Part 621 must be prepared in accordance with the rules in Part 621. The purpose of the addition is to assure that financial reporting to shareholders is consistent with disclosure to the FCA in reports of condition and performance. This does not mean that the same format must be used but does mean that the rules and definitions in Part 621 must be consulted in the preparation of the annual report.

Several commentators do not believe it is necessary for the Federal land bank's (FLB) financial statements to accompany the FLBA's annual report. One commentator suggested that such a requirement may make it difficult for the association to fulfill the timing requirements of the regulation. The FCA included this requirement in the proposed rule because all of the loans generated and serviced by the association are carried as assets on the FLB's books and do not appear on the books of the association, since the FLB and not the association is the creditor. When the borrower purchases equity in the FLBA, the FLBA is required to purchase a like amount of equity in the FLB, which equity is specifically identified to the particular borrower's loan. For these reasons, and because of the manner in which capital preservation agreements between the FLB and the FLBA operate, it is the health of the FLB that determines the safety of the borrower's investment. Also, it is the FLB that sets the interest rate on the borrower's loans. For these reasons the requirement is retained in the final rule. The FCA does not believe there is a significant timing problem because preparation of the statements can proceed simultaneously.

Several commentators expressed concern that the disclosures required by § 620.3 (j) and (k) would violate FCA regulation 12 CFR 618.8320, which prohibits the release of borrower data except in certain circumstances. While the FCA intends to make conforming amendments to its regulations concerning release of borrower data in the context of a more comprehensive overhaul of those regulations, the final rule responds to these concerns by adding a new paragraph to § 620.2 to make it clear that disclosure required by this regulation does not violate any other FCA regulation.

A new paragraph has also been added to the final rule requiring the reporting institution to make the annual report to shareholders publicly available at the institution.

4. Section 620.3 Contents of the Annual Report to Shareholders

(a) Description of Business

Several commentators commented that the requirement to discuss the significant developments for the last 5 years is excessive. One believes that merger is not an important event and one suggested that the seasonal nature of the business is already known by the shareholders. The FCA believes that merger activity is a significant event of the type that should be reported since it is usually designed to effect economies of scale and often results in significant changes in management and operations. The FCA continues to believe that the seasonal nature of the business should be disclosed because it is relevant to an evaluation of earnings performance during the year and it enhances the potential for using shareholder reports as a prospectus for prospective borrowers.

One commentator suggested that Farm Credit service corporations provide banks and associations descriptive information about their businesses for inclusion in their reports. The FCA has no objection to this suggestion but does not believe it appropriate to require it in the regulation.

One commentator suggested that "significant developments" be more specifically defined. The FCA believes it is not in a position to define all events that may be significant to a particular institution's operation and that the types of examples included are sufficient guidance to allow institutions to make a judgment.

It was suggested that the FCA use a percentage of interest revenues test to determine concentrations rather than a percentage of assets test. The FCA declined to accept this suggestion. The suggested disclosures, which are required by GAAP to be disclosed in the footnotes to the financial statements, serve a different purpose. The purpose of requiring disclosure of concentrations in the narrative portion is to enable the reader to evaluate existing risk from concentrations outstanding in the portfolio. For this purpose it is better to use a percentage of assets of the last day of the fiscal year as the test rather than a percentage of revenues earned over the last fiscal year.

Several commentators stated that the information required by paragraph (8) on the dependence on a single customer would violate the FCA release of information regulations, which prohibit the release of borrower data except in limited circumstances. The FCA does not believe that the disclosure required by this paragraph would violate FCA regulations since the regulation does not require any disclosure about a borrower other than the fact of the institution's dependence on the borrower. However, the FCA intends to make this abundantly clear in the comprehensive overhaul of 12 CFR 618.8320 that is planned. Also, the final regulation adds a new paragraph that clarifies that disclosure required by this regulation does not violate any other FCA regulation.

Several commentators believe that the word "few" in the requirement to disclose dependence on a single customer or a few customers is unworkably vague and suggest that it be defined or that the requirement be

restricted to a single customer. The FCA rejected this recommendation, believing that "few" cannot be more specifically defined in absolute terms and still elicit meaningful information about asset concentrations. The intent of this item is to require disclosure of dependence on a few large customers, the loss of whose business would have a material impact on the institution's financial condition. The requirement is consistent with the requirements of the SEC and other bank regulators.

(b) Description of Property

One commentator noted that this requirement is excessive and another commentator noted that it should be a part of the report to FCA and not the annual report to shareholders. Another commentator requested that the regulation be clarified to indicate that it does not apply to acquired property. The FCA disagrees that the requirement is excessive, since for most institutions the disclosure will require only a brief description of the institution's offices. The FCA recognizes that this disclosure does not ordinarily appear in annual reports to shareholders, but the multipurpose statement approach elected by the FCA requires inclusion of this item. The FCA has clarified the inapplicability of the requirement to acquired property in the final rule.

(c) Legal Proceedings

One commentator suggested that the required description of legal proceedings required should be "brief" rather than "full," especially since the items to be disclosed are enumerated, noting that a full description would require an unnecessary amount of detailed information to be included. In the final rule the word "briefly" is substituted for the word "fully," since the FCA concurs that disclosure of the enumerated items is sufficient.

Several commentators noted that the requirement that management render an opinion on the impact of the proceedings on the institution's financial condition would involve management in making a legal judgment that should only be made by the institution's legal counsel. The final rule deletes this requirement because it is unnecessary, since the judgment as to its materiality has already been made before the matter is disclosed. Presumably, however, judgment as to materiality must necessarily be based upon consultations with legal counsel.

The proposed regulation also required disclosure of proceedings to which the institution's officers and directors are parties. Several commentators suggested limiting the proceedings required to be disclosed to those to which officers and directors are parties in their official capacity in order to avoid disclosures of irrelevant personal actions. Another commentator suggested that this disclosure be eliminated except in the context of the footnote disclosure for the financial statements.

The final rule deletes any reference to proceedings to which officers and directors are parties and substitutes a requirement to disclose any proceeding involving claims that the institution may be required, by contract or operation of law, to satisfy. This substitution would reach suits to which officers and directors are parties whose claims the institution would be required to satisfy by virtue of the indemnification provision in the institution's bylaws or under the doctrine of respondeat superior. Certain enumerated proceedings reflecting on the ability or integrity of an officer or director are required to be disclosed under paragraph (k).

The FCA declined to accept the suggestion that the disclosure of material legal proceedings be deleted altogether. Footnote disclosure of legal proceedings as contingent liabilities governed by GAAP is designed to assure that financial statements are not misleading. The standard for disclosure in the narrative portion goes beyond that required by GAAP and requires disclosure of items of importance to shareholder decisions as well as a determination of financial condition. The requirement to disclose such matters in the narrative portion of the statement is consistent with the requirements of other regulators.

During the period in which the FCA was considering the comments, legislation was enacted that gives the FCA new enforcement powers similar to those of other Federal financial institution regulators. The FCA considered whether to add to the regulation a requirement to make similar disclosure with respect to administrative proceedings. This issue is also currently under consideration by other Federal financial institution regulators. The FCA decided not to add such a requirement at this time, but will continue to consider it and will watch closely the experience of other regulators.

(d) Description of Capital Structure and

(e) Description of Securities

In the proposed regulation these paragraphs were both subsumed under a paragraph entitled "Description of securities." A commentator suggested changing the title of this section to avoid the implication that System stock is a security for the purpose of the Federal securities laws. The same commentator suggested that the only meaningful description is a description of voting stock. Several commentators stated that the number of shares of stock is not a meaningful disclosure in a cooperative institution since each shareholder gets only one vote regardless of the number of shares outstanding.

The FCA believes that, while stock in System institutions is an "at-risk" ownership interest, it lacks some of the attributes needed to make it a security for the purposes of the Federal securities law. Therefore, in the final rule the title of paragraph (d) has been changed to "Description of capital structure" and paragraphs (d) (2) and (3) have been set forth separately as paragraph (e), entitled "Description of liabilities." All subsequent paragraphs have been renumbered accordingly.

The FCA does not agree that the only meaningful description of an institution's capital structure is a description of voting stock and that the number of shares is not a meaningful disclosure. The FCA concurs that such a disclosure is not particularly helpful in the context of an election of directors, but notes that it is materially relevant when preferred shares are proposed to be issued, since a majority of the shares of each class of stock, whether voting or nonvoting, must approve the issuance. Also, a description of the institution's capital structure would be incomplete without a full description of each class of stock and participation certificates, including the number of shares outstanding. Such a description is useful to present to prospective shareholders in evaluating the capital strength of the institution and the relative priority of the shareholders' interest among the institution's equity holders.

(f) Selected Financial Data

One commentator noted that the items selected were random and not oriented toward balances and yields and suggested that "income from continuing operations" be defined. The same commentator believes that the analysis of loan losses properly belongs in the footnotes to the financial statements. The ASC recommended that the format be tailored to the particular operating environment of each type of System institution and suggested such a format. Another commentator noted that the time periods for selected financial data are inconsistent with the time periods for the "Management's discussion and analysis of financial condition and results of operations" (MD&A) and the financial statements.

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The FCA adopted the format suggested by ASC because it appeared to be more descriptive and meaningful for System institutions than that of the proposed regulation. This change should respond to the concern of the first commentator about the meaningfulness of the required disclosures. The FCA disagrees with the statement that the analysis of loan losses belongs only in the footnotes to the financial statements and notes that the SEC and other financial regulators require such an analysis in the narrative portion. However, the analysis of loan losses has been relocated to the MD&A.

The difference in the time period between that called for in "Selected financial data" and the MD&A is intentional. The two sections serve different purposes. The MD&A is a narrative explanation of the changes in the institution's financial condition and results of operations for the last 2 fiscal years and will facilitate the comparison of the last fiscal year with the prior year. The purpose of the 5-year period for the selected data is to permit the shareholder to spot trends that might not be evident from the discussion presented in the MD&A.

(g) Management Discussion and Analysis of Financial Condition and Results of Operation

One commentator stated that the requirements of the paragraph are excessive. The ASC, however, suggested an outline for this section that is more detailed than the proposed regulation and more tailored to the operating environment of System institutions. This outline gives more specific and meaningful guidance regarding the type of information that should be presented. The FCA has incorporated substantially all of the suggestions of the ASC for the content of this item. Since the incorporated ASC format calls for, among other things, a discussion of the loan portfolio, the analysis of loan losses has been relocated to this paragraph.

Another commentator noted the lack of a specific requirement for disclosure of nonperforming loan information in the annual report to shareholders and recommended its addition. This requirement has been added under the discussion of the loan portfolio. Also added to the discussion of the loan portfolio is a requirement to discuss recent PCA loss experience in the aggregate. This information is materially relevant to the other PCAs and other financial institutions (OFIs) who are the FICB shareholders because of the impact these losses may have on the financial condition of the FICB.

(h) Directors and Senior Officers

One commentator commented that there is no need to disclose 5 years of business experience or the names of business entities of which the person is a director. Several commentators noted that the requirement to disclose events reflecting on the ability or integrity of directors provides potential for management influence of elections and that the standard for disclosure is too vague and broad.

The FCA disagrees that the 5-year period for describing a director or senior officer's business experience is an inappropriate disclosure. A shareholder or prospective shareholder is entitled to know the qualifications of the individuals who direct and manage the institution's operations. The FCA believes that the disclosure of other business entities in which the officers and directors are directors is useful to shareholders in evaluating actual or potential conflicts of interest. The final rule has been revised to clarify that directors need only disclose business entities on whose boards they also serve as directors.

Several commentators noted that detailed disclosure about officers and directors is inappropriate in the annual report to shareholders but is appropriate for a 10–K form.

Since the final rule retains the multipurpose statement approach, the information required by this section is essentially unchanged, except that the requirement to disclose events that reflect on the ability or integrity of directors and senior officers has been relocated to paragraph (k). The types of events that are required to be disclosed have been specified in response to the concern that management is given too much discretion in determining what should be disclosed and hence given an opportunity to influence elections.

(i) Director Compensation

Several commentators suggested that information about director compensation is inappropriate in an annual report to shareholders but would be appropriate in a report to the FCA that would be available to shareholders upon request. One commentator suggested shareholders do not need this information. Two commentators suggested that the number of days served is of doubtful use. Another commentator believes that the disclosure compensation formula is not appropriate and could be misused, and one believes that it is inappropriate in the annual report to shareholders.

The FCA disagrees with all of these comments. The FCA believes that shareholders are entitled to know the manner in which directors whom they elect are compensated and the amount of that compensation. Disclosure of the compensation formula and number of days used in the compensation formula permits the shareholder to evaluate the amount of time a director is devoting to his or her duties and to ascertain the total compensation paid to each director. Accordingly, these requirements have not been changed. However, a requirement to disclose total compensation paid to each director during the year has been added. This requirement makes it unnecessary for the reader to perform the calculation to determine how much a particular director was paid during the last fiscal year. Such a requirement parallels the requirements of the SEC and other regulators. Also, the regulation has been revised to allow noncash compensation that does not exceed the lesser of 10 percent of cash compensation or $25,000 to be excluded from the disclosure.

In the course of considering these comments, the FCA concluded that shareholders are also entitled to disclosure of management compensation as well as director compensation and that its failure to include such a requirement in the proposed regulation was a significant omission. Therefore, the FCA intends to propose an amendment to this regulation that would require disclosure of compensation to senior officers in the aggregate.

(j) Transactions With Senior Officers and Directors

Several commentators noted that the captions in this paragraph in the proposed regulation were not properly descriptive. Accordingly, the caption of this paragraph has been changed from "Certain relationships and related transactions" to "Transactions with senior officers and directors." Paragraph (j)(2) continues to be captioned "Transactions other than loans," but paragraph (j)(3) in the final rule is captioned "Loans to senior officers and directors" rather than "Loans to management" as it was captioned in the proposed rule. In the course of reviewing the proposed regulations, FCA discovered an inadvertent omission in paragraph (j)(3) that made its requirements inconsistent with the requirements of paragraph (j)(2). Consequently, paragraph (j)(3) in the final rule has been expanded to require disclosure of loans to members of the officer's or director's immediate family and any organization with which such person is or has been affiliated within the last fiscal year if the loans meet the criteria of paragraph (j)(3). However, the definition of "immediate family" has been restricted to parents, children, and siblings in the final regulation. These additions make paragraph (j)(3) consistent with paragraph (j)(2) and with the requirements of other financial regulators. Also in the final rule, "unfavorable features" has been deleted as a criterion for disclosure from paragraph (j)(3)(I) in response to numerous comments that the term was too broad and unworkably vague. A definition of "normal risk of collectibility" has been added to § 620.2(a).

Several commentators noted that the disclosures of the type required by this part are not usually made in annual reports to shareholders but are usually made in annual meeting information statements.

The FCA agrees that the information required by this paragraph is more appropriate in an annual meeting information statement. However, since district directors are not elected at annual meetings but according to a statutorily prescribed scheme, some mechanism for disseminating such disclosure on district directors to shareholders was needed. The most workable solution appeared to be require such disclosure on officers and incumbent directors in the annual report to shareholders and disclosure with respect to nominees in the context of the FCA-conducted district director elections. The FCA intends to propose for comment in the near future an amendment to its district director election regulations that would impose similar disclosure requirements on nominees for district director. Therefore, in the final rule the requirement to disclose certain transactions between the institution and senior officers and directors is retained in the annual report to shareholders, with an updating requirement and a similar requirement for association director nominees in the association's annual meeting statement required by Subpart C.

(k) Involvement in Certain Legal Proceedings

The final rule adds a new paragraph entitled "Involvement in certain legal proceedings" that contains the requirement to disclose events reflecting on the ability and integrity of senior officers and directors that was contained in the paragraph entitled "Directors and executive officers" in the proposed regulation. Events that must be disclosed have been enumerated, in response to the concern of several commentators that the proposed regulation lodged too much discretion in management to determine what events must be disclosed, giving management an opportunity to manipulate elections. These events are bankruptcy or insolvency proceedings, criminal proceedings, and proceedings resulting in a prohibition to engage in a particular type of business activity. Criminal proceedings are deemed to begin at indictment by a grand jury or the filing of a bill of information or similar action by a public prosecutor that formally charges the defendant with a crime. Criminal investigations are not deemed to be "criminal proceedings" as that term is used in these regulations.

(l) Relationship With Independent Public Accountants

In the proposed regulation, Part 621 contained a requirement that changes in accountants and disputes with accountants be disclosed in the annual report to shareholders. This requirement has been restated in the final rule as paragraph: (1) In response to a comment that the requirement to disclose disputes with and changes in accountants should be stated in the annual report to shareholders rather than the annual information statement. However, updated disclosure is also required in the annual information statement under Subpart C.

(m) Financial Statements

The proposed regulation required financial statements for the last 3 fiscal years. One commentator suggested that 2 years of comparative statements with 5 years of financial highlights are enough. Another noted that 2 years of comparative statements is standard industry practice.

The regulation is designed to provide the financial statements necessary to do a comparative study of the institution's performance during the last 2 fiscal years, which is standard industry practice and required by the SEC. In Form 10–K the SEC requires income statements for the last 3 fiscal years and balance sheets for 2 years. The FCA regulation requires an additional balance sheet, but the FCA does not believe that such a requirement is excessively burdensome and believes it may contain useful comparative information. The final regulation continues to require that the MD&A discuss the results of operations for 2 years on a comparative basis. The FCA believes this is necessary in order to obtain a proper perspective on the fiscal year just ended.

Recent statutory amendments require the independent audit of all System institutions effective for yearend 1986 reports. This change required the deletion of the exception for FLBAs from the audit requirement and the deletion of provisions phasing the audit requirement in over the next 2 years and made comments relative to these provisions moot.

The final regulation adds a requirement that the financial statements be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that in their opinion the financial statements fairly present the financial condition of the institution.

B. Part 620—Subpart C—Association Annual Meeting Information Statement

1. General

Several commentators suggested that the applicability of Subpart B in the proposed regulation, entitled "Annual Meeting Information Statement," be clarified since the subpart directed each System "institution" to disseminate an annual information statement to shareholders prior to any meeting at which directors are elected. "Institution" was defined to include banks as well as associations, but bank directors (who are also district directors) are not elected at meetings but according to a statutory scheme that provides that district directors serve as ex officio directors of the Federal land bank, the Federal intermediate credit bank, and the bank for cooperatives in the district.

The final regulation clarifies that the annual meeting information statement is applicable only to associations by inserting "Association" in the subpart caption and substituting the word "association" for the word "institution" throughout the regulation. In the final regulation Subpart B—Association Annual Information Statement has been relettered as Subpart C. Subpart B has been reserved and the FCA intends to publish a new Subpart B for comment in the near future that would require quarterly reporting and prescribe a framework for such interim reporting.

2. Section 620.20 Preparing, Distributing, and Filing the Information Statement

A number of comments were received regarding a timing problem created by the interplay of the requirement to include the latest quarterly statements if the annual meeting is held more than 120 days after the end of the fiscal year and the requirement to distribute to shareholders 15 days before the meeting and file with the FCA 30 days prior to dissemination to shareholders.

The final regulation includes a number of changes that are designed to alleviate this problem. First, the final regulation requires the quarterly statement only if the annual meeting is held more than 134 days after the end of the fiscal year. Second, the requirement to distribute to shareholders 15 days prior to the meeting has been changed to 10 days prior to the meeting. Third, the requirement to file with the FCA 30 days prior to dissemination to shareholders has been changed to a requirement that the statement be filed with the FCA (received at FCA offices) on or before the date of its dissemination to shareholders.

A few commentators supported routine quarterly reporting but questioned the wisdom of requiring interim reporting without setting up a framework for such reporting designed to assure that it is not more misleading than helpful. The FCA concluded that the comment had merit and has drafted a regulation that it will propose for comment in the near future that will require a quarterly report to be sent to shareholders for each quarter of the year except the one that coincides with the end of the fiscal year and prescribes rules for presenting the information similar to those of the SEC. Subpart B has been reserved for this regulation. If this regulation were to be adopted, it would eliminate the need to send financial statements with the annual information statement and Subpart C would be amended accordingly.

The signing requirements in the proposed regulation for the annual information statement were subject to the same criticism as those of the annual report and the final regulation reflects the same changes as those made in Subpart A. The final regulation continues to require every member of the board to sign the statement filed with the FCA and the association to disclose in the statement the reason for any director's failure to sign, but permits the chief executive officer and the chairman of the board to sign, on behalf of the board, the statement sent to shareholders.

In addition, the final regulation requires one copy of the statement to be filed with the FCA to be manually signed, to achieve consistency with the signing requirements of Subpart A.

3. Section 620.21 Contents of Association Annual Meeting Information Statement

(a) Section 620.21(b) Voting Shareholders

One commentator suggested that the requirement to disclose the number of voting shareholders be deleted. The FCA rejected this suggestion because it gives the shareholder the only information available about the potential vote required, even though the actual vote required cannot be determined until the meeting, since the Act requires only a majority of stockholders present and voting for all shareholder decisions except the authorization of preferred stock. It imposes little burden on the association to disclose the number of voting shareholders since a voting list must be compiled for the election. In addition, to provide information about the vote required for the authorization of preferred stock, which requires approval of a majority of the outstanding shares of each class of stock, whether voting or nonvoting, the FCA final regulation adds a requirement that the number of voting shares of each class of stock be disclosed when a vote to authorize preferred stock is to be taken.

(b) Section 620.21(c) Directors

The proposed regulation required the reporting institution to disclose policy disagreements when requested by a director who has resigned because of such a dispute. One commentator opined that providing a forum for the airing of policy disagreements between directors is not a good idea. The same commentator noted that information on attendance and compensation policy might be misinterpreted.

The FCA believes that the shareholders who own a business are entitled to know when a director they have elected resigns because of a major policy dispute and the requirement is retained in the final rule. This provision does not require policy disputes to be routinely aired. It only requires disclosure when a director who has resigned because of a policy disagreement requests it. It is unlikely that a director will resign because of a trivial policy dispute and even more unlikely that he or she will attempt to bring it to shareholders unless it is of some importance to the institution. This requirement is consistent with SEC requirements and those of other regulators.

The information required by the proposed regulation on director compensation and other directorships has been deleted, as the same disclosure is required in the annual report to shareholders, which is incorporated by reference.

It was suggested that the information required by this item be given to the nominating committee. The regulation does not address what information, if any, should be given to the nominating committee. Its purpose is to require adequate information be provided to shareholders.

(c) Section 620.21(d) Nominees

Two commentators noted that the disclosure requirements for floor nominees are impractical and difficult to implement. One of them believes that 5 years of business experience is excessive and made the same comment on the disclosure of events reflecting on the ability or integrity of nominees as those made on directors.

FCA recognizes that the floor nominee disclosures present an administrative problem but believes that it would be unfair not to require the same disclosures of floor nominees as are required of ballot nominees. The final rule requires that the notice of meeting state that floor nominees must provide such disclosure in writing at the meeting(s) at which the nomination is to be considered. It is incumbent upon the floor nominee to contact the association to ascertain whether his loan requires disclosure, and the notice should so state. In the final rule the paragraph requiring nominee disclosures states that no person may be a nominee for director who has not made the disclosures required by this regulation.

One commentator stated that the requirement to disclose transactions between the institution and the nominees is redundant, since it also appears in the annual report to shareholders. However, the commentator overlooked the fact that the requirement in the annual report to shareholders related only to incumbent directors and senior officers. The final regulation retains the requirement for nominees, but rather than repeating the substance of the requirement, imposes the requirement by cross referency the requirement in Subpart A. In addition, a paragraph has been added that would require updating of information on incumbent directors and senior officers disclosed in the annual report to shareholders.

The final regulation adds a paragraph requiring nominees to disclose the names of business entities on whose boards of directors they serve, to achieve consistency with disclosure required on incumbent directors and to permit shareholders to evaluate actual or potential conflicts of interest. To respond to the concern that the regulation would cause the association to violate FCA regulations on release of borrower data, a statement has been added to § 620.20 of the final rule to clarify that none of the disclosure required by this subpart shall be

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deemed to violate any regulations of the FCA.

(d) Section 620.21(f) Legal Proceedings.

The same comments were made on the legal proceedings paragraph in this subpart as were made about the legal proceedings paragraph in the annual report to shareholders. In addition, one commentator noted that the requirement is redundant, since the annual report is incorporated by reference. The final regulation deletes this paragraph.

4. Section 620.22 Prohibition Against Incomplete, Inaccurate, or Misleading Disclosure.

A new paragraph has been added to the regulation to clarify that any disclosure made in connection with an election, whether pursuant to the subpart or not, which is incomplete, inaccurate, or misleading, is a violation of the regulation and that when such a violtion occurs the FCA may require corrective disclosure.

FCA will use its ongoing examination and regulatory mechanisms to enforce compliance with Part 620 and, where appropriate, require corrective action, including restatement of any misleading or erroneous data.

C. Part 621—Accounting and Reporting Requirements

1. General

A large number of comments were received on this part, the most significant and substantive of which related to the definitions of the categories of nonperforming assets. These comments are discussed below according to the topics and definitions to which they relate. One commentator stated that reporting requirements and media specifications should be limited to those that are reasonable and necessary. Another requested that the regulation include a requirement that the FCA give System institutions 90 days' notice before implementing changes in accounting instructions or reporting formats.

The FCA agrees that reporting requirements and media specifications should be reasonable and limited to those that are necessary to fulfill the Agency's responsibility as an examiner and regulator. It is the current practice of the FCA to give 90 days' advance notice of a change in accounting instructions or reporting format when practicable. The FCA intends to continue that practice. However, the FCA declines to add such a requirement to the regulation because of the occasional instance when the information is needed and the 90 days' notice period is not practicable or necessary.

2. Section 621.1 Purpose and Applicability

The final rule has been revised to clarify that the Farm Credit System Capital Corporation established by the 1985 Amendments is subject to the accounting and reporting requirements of this part. A Farm Credit System Capital Corporation was in existence prior to the 1985 Amendments, which had been chartered as a service organization under section 4.25 of the Act. The 1985 Amendments required that this organization be dissolved and a new Farm Credit System Capital Corporation be chartered under section 4.28(A) of the Act. The clarification in the regulation is needed to assure that "service organization" is not read narrowly to include only those organizations chartered under section 4.25 of the Act.

The proposed regulation contains two statements that articulated the FCA's motivation for adopting the regulations that have been deleted. These considerations continue to be the key considerations in adopting the regulation but are more appropriately stated in the preamble. The FCA believes these regulations are necessary because accurate and reliable financial information, prepared in accordance with appropriate accounting requirements, is essential to ensuring the accountability of management and directors to stockholders. The accounting requirements are needed to provide a uniform foundation for generating, presenting, and disclosing accurate and reliable information of a material nature to all persons having or contemplating business transactions with System institutions, including investors in consolidated Systemwide bonds.

3. Section 621.2 Definitions

This section has been expanded to include all of the definitions applicable to this part, which in the proposed regulation were scattered throughout the part in the sections to which they relate. In addition, certain definitions have been added that respond to comments received or that were made necessary by the FCA response to comments.

The term "nonperforming loans" received by far the most comments and raised the most concern. Eight commentators believed the term as used was misleading because, in their views, not all descriptive categories included in the term "nonperforming" are really nonperforming, and hence the information that would be reported about System institutions is misleading and inaccurate. A majority of the commentators suggested that the FCA requirements parallel those prescribed in SEC Industry Guide 3, "Statistical Disclosure by Bank Holding Companies," so as to provide comparability between System institutions and commercial banks.[1] One commentator stated that "the financial community" uses "nonperforming" assets to refer to nonaccrual loans, restructured loans, and other real estate owned, and suggested disclosing "other high risk" loans separately from the nonperforming category. One commentater suggested that the term "nonperforming" include only nonaccural loans, and that "performing" should be defined as accruing.

The FCA used the term "nonperforming loans" in the proposed rule to serve two purposes. The first purpose was to establish and communicate to readers of the annual report to shareholders that there is risk associated with loans that do not perform in accordance with contractual terms and conditions set forth in loan agreements, and that this risk may reduce the current or prospective value of these loans. The various categories of nonperforming loans differentiate the degree of severity of their "nonperformance," ranging from "nonaccrual loans" at one end of the continuum (in which the threat of reduced value is realized), to "other high risk loans" at the other end (representing the least severe risk), with restructured loans in the middle range. The second purpose to be served by the term "nonperforming loans" was to establish objective standards and ensure consistent application by System

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[1] The SEC formerly used the term "nonperforming" to mean nonaccrual loans; loans that are contractually past due 90 days or more as to interest or principal, but not in nonaccrual status; renegotiated loans that provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower; and loans that are current but there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. Recently, the SEC abandoned the "nonperforming" terminology and adopted a requirement that "risk elements" be disclosed. The reason for the change was to expand the scope of the required disclosure of risk elements to include all assets displaying unusual risks or uncertainties, whether or not they met the formal definition of "nonperforming loans." In addition, the revision further required disclosure of risk elements in cross border outstandings whether or not, at the time, they were in a nonperforming status. As defined in Guide 3, "risk elements" include substantially all assets that previously would have been referred to as "nonperforming" assets plus other types of identified risk, such as concentrations of risk.

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institutions, to enable the FCA to monitor the financial condition and performance of System banks and associations and to ensure that accurate and meaningful aggregate data about the System as a whole can be compiled. Also, the concepts and terminology were intended to provide information to be used by shareholders in holding management and directors accountable for the institution's performance and by the FCA in carrying out its examination and regulatory responsibilities. Eliminating the general concept of "nonperforming loans" would eliminat one of the most valuable tools that the proposed regulation established for use in holding management and directors accountable for the institution's condition and performance.

The FCA does not agree that the term "nonperforming" is not routinely used by the financial community or that the FCA use is inconsistent with established usage. The FCA investigated the use of the term "nonperforming loans" by Federal financial institution regulators and, to the extent practicable, the financial press. The FCA concluded that, while not always defined in the regulations, the major Federal bank regulators use the term "nonperforming loans" to refer collectively to loans that have not performed in accordance with contractual terms and conditions specified in loan agreements. Federal bank regulators use the term in their individual monitoring programs and collectively through the Federal Financial Institutions Examination Council. Federal bank regulators use the term "nonperforming loans" for internal examination and regulatory purposes and in standard external communications, such as the Uniform Bank Performance Report.

The FCA definition of the term "nonperforming loans" is substantially the same as the definition used by major Federal bank regulators. The Federal Financial Institutions Examination Council uses the term "nonperforming loans" to refer to the aggregate of: (1) Nonaccrual loans; (2) Loans past due 90 days or more and still accruing; and (3) Renegotiated troubled debt. The three components of "nonperforming loans" used by the Federal Financial Institutions Examination Council correspond to the items failing within the scope of FCA's definition of the term, with two minor exceptions. First, FCA divides "renegotiated troubled debt" into two categories, formally restructured, and other restructured and reduced rate loans. Second, FCA includes loans past due 90 days or more and still accruing in the "other high risk" category rather than as a separate category, and also includes in "other high risk loans" those loans that are current but otherwise in severe default, and loans in bankruptcy or foreclosure.

The FCA believes its extension of the term "nonperforming loans" to include loans that are current but otherwise in severe default and loans in bankruptcy and foreclosure is appropriate because of the risk implied by those conditions. FCA does not believe, however, that by expanding its definitions to specify those items as nonperforming makes FCA's definition of the term "nonperforming loans" materially inconsistent with the definition used by other Federal bank regulators because loans in severe default and loans in bankruptcy and foreclosure that are not already included in another nonperforming category are relatively few in number. However, since these loans exhibit characteristics that could place doubt on their collection in full, the FCA believes they should be classfied as nonperforming loans.

In addition, FCA review concluded that the term "nonperforming" is standard terminology used not only by many commercial financial institutions in disclosures contained in their annual reports to shareholders, but also by financial analysts when analyzing a commercial bank's loan portfolio. Generally the terms "nonperforming loans" or "nonperforming assets" are used. There is, however some confusion and no consistency in the components that make up the "nonperforming loans" and "nonperforming assets." The financial industry generally uses the term "nonperforming loans" to mean nonaccural and restructured or renegotiated loans, and, in some cases, past due but accruing loans (loans delinquent 90 days or more but adequately secured and in the process of collection). The financial industry generally uses "nonperforming assets" to refer to nonperforming loans and acquired property.

After careful consideration of the comments and possible alternatives to the use of the term "nonperforming," the FCA concluded that no other term is as descriptive of the condition common to all individual categories falling within the scope of the term to identify loans that have not performed in accordance with contractual terms and conditions. The FCA acknowledges that the term "nonperforming" is used inconsistently and imprecisely in the financial press. However, the FCA believes it should concern itself primarily with its own regulatory objectives and seek, to the extent possible, consistency with other Federal financial institutions regulators. Therefore the term "nonperforming loans" is retained in the final rule and is defined to include nonaccrual loans, formally restructured loans, other restructured or reduced rate loans, and other high risk loans.

The final rule, however, reflects some changes made for clarity and greater compatibility with other Federal financial institution regulators. The definition of "nonaccrual loan" in the proposed regulation permitted a loan past due 90 days or more (severely past due) to continue to accrue interest if adequately secured. In the final rule, loans that are 90 days or more past due must be adequately secured *and* in the process of collection in order to remain in an accrual status. A definition of "in the process of collection" is added which states that "a debt is in process of collection if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action that are reasonably expected to result in repayment of the debt or in its restoration to a current status." In addition, the final rule requires any loan that is delinquent for 180 days or more to be classified a nonaccrual loan without regard to whether it is adequately secured and in process of collection.

The final rule also adds a definition of "nonperforming assets" that includes "acquired property" and "nonperforming loans." Acquired property is defined in the final rule as any personal or real property, other than an interest-earning asset, that has been acquired as a result of liquidation of a loan, either full or partial.

While the final rule does not adopt the reporting requirements as exactly provided in SEC Industry Guide 3, as suggested, the types of information required to be disclosed are similar, except that the final rule retains the "nonperforming" nomenclature.

One commentator noted that under the proposed definition of "adequately secured," no loan could ever be adequately secured. Moreover, the commentator noted loan obligations should be paid out of cash flow from the borrower's operations or source of income rather than liquidation of collateral. While the commentator did not adequately explain the basis for the first criticism, FCA concluded that the comment was in response to the requirement that the net realizable value of the collateral or the guarantee of a responsible party, if any, be sufficient to

cover the "principal, interest, and collection expenses as may be outstanding, accrued or incurred to the time the debt is discharged in full. . ." and was related to the fact that actual collection expenses may not be known at the time the performance status is determined. In the final rule the requirement has been revised to state that the net realizable value of the collateral must be sufficient to discharge the debt in full, that is, on the principal and interest that will accrue under the contract. Estimated collection expenses would be deducted from the value of the collateral in making the determination of net realizable value.

In response to the second comment, it should be noted that the term "adequately secured" is used in the proposed regulation in the context of deciding whether interest should be accrued on a loan that is not performing in accordance with the contractual terms and conditions. The FCA agrees wholeheartedly that loans should be repaid from the cash flow from the borrower's operations rather than the liquidation of collateral. However, when cash flow from operations does not materialize in amounts sufficient to meet debt obligations, or when borrowers are otherwise unable or unwilling to repay debts, lenders must look to liquidation of collateral or to the guaranteeing party to collect the indebtedness.

Another commentator objected that the definition includes considerations of the guarantor and borrower creditworthiness in the definition of "adequate security" and noted that "adequate security" is commonly understood to refer to loan security itself and not the creditworthiness of the borrower or his or her surety.

In the context of this regulation, the adequacy of security on a nonperforming loan is critical to the determination of whether the loan belongs in nonaccrual status by virtue of its uncollectibility. One of the key tests for determining collectibility is whether the lender can, through legal devices related to the loan, obtain sufficient cash to discharge the debt in full. In this sense, the term "security" must include all potential sources of repayment. If "adequately secured" and "in process of collection," as the terms are used in this regulation, a loan is properly retained in accrual status. If, however, a combination of collateral and guarantors cannot be reasonably expected to yield enough cash to repay a loan in full, then the loan must be identified and reported as nonaccrual.

The proposed regulation defined "bankruptcy" for purposes of identifying and reporting nonperforming loans. Several commentators noted that the portion of the definition governing how long the loan must be reported in that category was confusing and redundant. One commentator opined that once a debt adjustment plan is approved by the court, the loan should no longer be considered "in bankruptcy."

The FCA has substantially revised this section in response to the comments to provide that a loan must continue to be reported as "in bankruptcy" until the court's jurisdiction is terminated unless relief from the automatic stay has been granted that allows the institution to proceed fully with collection or unless the loan has been restructured under a debt adjustment plan. When the court's jurisdiction is terminated or relief from the stay granted, the reporting institution must redetermine the performance status after an analysis of all pertinent factors and documents its determination in the loan file. If the institution proceeds with foreclosure, the loan would remain in "other high risk loans" unless it meets the criteria for nonaccrual. However, if a debt adjustment plan that requires concessions from the lender has been confirmed by the court, the loan must be reported as "formally restructured." Of course, whenever the loan meets the criteria for nonaccrual, it must be placed in nonaccrual without regard to whether any of the events described above have occurred.

One commentator thought that the definition of "contractually past due" in the proposed regulation was too broad in that loans that are only technically past due or past due in small amounts must be reported as nonperforming. Section 621.3(b) of the proposed regulation established acceptable tolerances that should be recognized in the application of definitions. These tolerances were included in the proposed rule to avoid requiring past due loans be reported as nonperforming when their past due status results from insignificant technicalities or involves insignificant amounts. The final rule retains this tolerance but relocates it to § 621.2(b)(1).

The proposed regulation required loans in foreclosure to be reported as "other high risk" loans. Foreclosure was defined to include foreclosure actions initiated by third parties against property in which the reporting institutions have a security interest. One commentator noted that such actions may not affect System institutions and should not be a criterion for identifying loans as "other high risk", especially when foreclosure is brought by a lienholder junior to a lien held by a System lender.

The FCA believes that the risk inherent in one lender's loan increases substantially when the borrower fails to perform on a loan from another lender. Third party foreclosures suggest strongly that either the borrower's ability to pay obligations to all lenders without liquidating collateral is questionable or that the borrower is otherwise unwilling to fullfill contractual obligations. The adequacy of the loan security enhances ultimate collectibility but does not ensure performance. The FCA recognizes, however, that circumstances may arise in which third party foreclosures may not signal abnormal risk on a loan. Therefore, the final rule has been revised to require prompt review of loans in which the security is subject to third party foreclosures to detemine the level of risk inherent in the loan and the proper performance status. Such reviews must consider all information pertinent to the borrower's willingness and ability to perform on the loan and conclusions must be well documented in the loan file. If such a review indicates the presence of abnormal risk on a loan, it must be identified and reported in the proper nonperforming category so long as the abnormal risk is present.

The proposed regulation defined "formally restructured loans" to mean those loans on which the contractual terms have been amended or otherwise revised to incorporate concessions made to the borrower that would not otherwise be made by the lender for economic or legal reasons. One commentator suggested that the regulation be revised to include compromise settlements as a legal reason. Another commentator recommended a revision to the definition of concession to clarify whether routine extensions of an installment should be considered a restructured loan. Another commentator does not believe the definition of "formally restructured loans" in § 621.3(a)(5) of the proposed regulation should include renewals or reamortizations provided the financial condition of the borrower supported the renewal and the terms are similar to those made to other borrowers.

The FCA responded to these concerns by defining "formally restructured loans" as those loans described in the statement of Financial Accounting Standards Bulletin (FASB) No. 15 rather than stating the substance of the bulletin. The proposed rule specified, in § 621.3(b)(2), that renewals or amortizations are not considered restructurings as long as the financial condition and performance of the

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borrower supported the renewal and the renewal or amortization is made under the same terms and conditions as are used to make similar loans to other borrowers whose financial condition and performance are sound. The final rule retains this provision but relocates it to the definition of "formally restructured loans" in § 621.2(a)(8).

One commentator believes that a loan should be divisible for the purpose of classification when determining its performance status. That is, a portion of a loan could be classified nonaccrual and a portion could continue to accrue interest. There is no basis for such a split classification nor is it practical to split a loan for the purpose of determining its accrual or nonaccrual status. Once a loan is estimated to be uncollectible, including principal and interest, acceptable accounting principles would require the entire loan is required to be placed in a nonaccrual status. From a financial reporting perspective, there is no reason to have part of a loan reported as accruing and earning interest and another part reported as nonaccruing.

Performance classifications should be distinguished from loan classifications that are governed by 12 CFR 614.4050. Loan classifications are subjective ratings given to loans during examinations. The final rule does not require disclosure of loan classifications, as they are a part of the confidential FCA examination report. However, it does require the inclusion of loans classified as vulnerable and loss in certain nonperforming categories.

One commentator objected to the inclusion of all loss loans in the definition of a "nonaccrual loan." The commentator believes it may be appropriate to continue accruing interest on a loan classified as loss, since loans are classified as loss as a result of the estimated ultimate uncollectability and loans that may not ultimately be collectible may still be performing at the time of classification and may continue to perform for some time. The commentator further believes that such loans should be adequately reserved for but not automatically placed in a nonaccrual status.

The FCA disagrees with this comment. If an analysis of a loan identifies it as a loss loan, there is no justifiable reason to continue the accrual of interest on such a loan only to have it charged off at a later date. The proposed regulation is consistent with GAAP, which requires loans to be placed in a nonaccrual status if there is doubt as to collectability of principal or interest.

The need to identify past due but well-secured loans as "high risk" and thus "nonperforming loans" was questioned by some commentators.

Performance classifications are designed to measure borrower performance. The FCA believes that the adequacy of the security on a loan does not assure the borrower's performance in fulfilling obligations set forth in the loan agreement. The adequacy of the security is relevant to the collectibility of the loan, which may determine the particular category of nonperforming loans to which it is assigned, but it does not make a nonperforming loan performing. The final regulation retains the requirement that certain past due loans be identified and reported as "other high risk" even though adequately secured.

One commentator questioned whether, when a borrower is 90 days or more past due on one of three notes, the amount outstanding on the other two notes should also be reported as nonperforming. Another commentator believed there was a need to define "loan" and suggested that "loan" should apply to each individual loan of a borrower and not the aggregate credit.

The FCA believes that loan performance is determined primarily by the borrower's willingness and ability to fulfill debt obligations. The structure of indebtedness, whether a single note covering all amounts owed or a series of notes covering the same debt, does not alter the risk underlying the indebtedness. All indebtedness of a borrower should be identified and reported in the appropriate category of nonperforming loans when any portion of the indebtedness meets any of the criteria established for the identification and reporting of nonperforming loans when the underlying risk is the same. Accordingly, the final regulation adds a rule of aggregation that clarifies this point in § 621.2(b)(2). This rule of aggregation is designed to require the institution to consider all loans on which a particular borrower is primarily obligated, including joint loans with other borrowers and partnership or corporate loans, as one loan unless the institution can establish that a particular loan constitutes an independent risk. Minor editiorial revisions have been made to the definition of "loan," but the term continues to include all extensions of credit and leases.

One commentator noted that § 621.3(a)(9)(iv) of the proposed rule permitted an implication that all loans classified problem under 12 CFR 614.4050 are to be classified as "other high risk." The FCA agrees that this was a permissible interference, which was unintended. Therefore, the final regulation has been modified to eliminate any such inference by substituting a requirement that institutions report as "other high risk," any loan where information is known to management that causes serious doubts about the ability of the borrower(s) to comply with the loan repayment terms. This modification clarifies that not all problem loans are to be included in high risk but will capture those loans that could result in serious credit problems and loan losses.

One commentator questioned the logic of § 621.3(a) of the proposed rule relating to the definition of "other restructured and reduced rate loans." The commentator could not conceive of concessions that might be offered that would not be incorporated into some formal contractual agreement.

While the FCA believes that it is possible for some loans to be placed in a reduced rate status or restructured internally by the institution without a formal agreement between the borrower and the institution, it agrees with the commentator that, in most cases, a formal agreement would be entered into. However, the fact that the institution has internally modified the accrual and the application of payments to accelerate the repayment of principal does not, unless the loan is formally restructured, relieve the borrower from making full payment in accordance with the original contract terms. This classification is used for financial reporting purposes to preclude the recording of interest in full if collection of the entire principal or interest is doubtful.

One commentator noted that the cash application sequence specified in § 621.3(b)(1)(iii) of the proposed regulation is not consistent with that used by some System banks and associations.

Because of the need to maintain some uniformity by System institution when they prepare financial statements, all System institutions will be expected to apply cash in accordance with the final regulation from its effective date forward.

4. Section 621.3 Generally Accepted Accounting Principles

Five commentators stated that the regulation should simply state the institutions should follow GAAP and not duplicate the specific provisions of GAAP in the regulations, noting that restating the specific provisions of GAAP in a regulation would require the regulation to be changed if the specific provisions of GAAP changed. Another suggested that FCA's interpretations of GAAP should not be in the regulations

but in guidelines, as has been the practice in the past. Another suggested that the regulations should only define those System accounting practices that are different from GAAP.

The FCA does not intend to restate the requirements of GAAP but to require the System institutions to conform to the applicable provisions of GAAP, unless otherwise modified by statutory or regulatory requirements. FCA is fully supportive of having the System institutions comply with GAAP, but recognizes that there are differences. Currently, there are two such statutory or regulatory requirements that differ from GAAP. These are the requirements for both the FLBs and PCAs to maintain an allowance in accordance with GAAP, subject to minimum specified requirements. GAAP does not specify minimums. Because of the difficulty involved in estimating an adequate allowance for loan losses, the FCA believes it appropriate to maintain these minimum requirements to provide some assurance that the allowance is adequate to cover the potential risk that may be present in the loan portfolio.

In addition, in many situations GAAP provides an option for recording a transaction and the application of any one of the options would result in the transaction's being recorded in accordance with GAAP. Since the FCA prepares combined financial statements for the various bank and association groups and the System prepares a combined Report to Investors, there is a need for consistent application. In those cases, the regulations specify which option to be used, to ensure consistent application by all System institutions.

Notwithstanding the fact that FCA endorses the concepts of GAAP, it may find it necessary from time to time to issue releases on accounting principles and practices with respect to specific accounting areas.

The final regulation has been modified to eliminate any requirement that may be an unnecessary duplication of GAAP and not needed to ensure consistent application among System institutions. For instance, under § 621.3(a)(5) of the proposed regulations the definition of formally restructured loans has been replaced with a reference to the GAAP provisions of FASB No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings."

Minor editorial and clarifying changes have been made to § 621.2 of the proposed regulations (§ 621.3 of the final regulations) to state the requirements more clearly. Section 621.2(c) in the proposed regulation, "Accrual basis of accounting," has been set out as a separate section in the new regulation (§ 621.4) and succeeding sections renumbered.

5. Section 621.5 Nonperforming Assets

One commentator stated that § 621.3(c)(1) of the proposed regulations implies that GAAP covers nonperforming loans and the implication should be removed because GAAP does not specifically address nonperforming loans. The FCA agrees that GAAP does not specifically prescribe requirements for nonperforming loans and similar assets. The regulation has been adjusted accordingly.

This section has been further amended to state its requirements more clearly and succinctly by combining paragraphs (a) and (b); stating more directly the requirement to determine the performance status of loans on a quarterly basis, and adding a paragraph to clarify that measures taken to enhance the collectibility of a loan, such as guarantees, do not relieve the institution of the obligation to determine the loan's performance status.

6. Section 621.6 Uncollectible Interest on Loans and Similar Assets

One commentator stated that the use of term "chargeoffs" in § 621.4(a) of the proposed regulation (§ 621.6(a) of the final regulation) is not technically correct when referring to earned but uncollected interest. The commentator stated that proper accounting requires interest to be backed out or reversed and suggested the paragraph be changed to read "appropriately account for earned but uncollected interest."

The final regulation has been adjusted to clarify its requirements. The substance of the change requires: (1) Earned but uncollected interest income that was accured in the current fiscal year and determined to be uncollectible to be reversed from interest income in the current period; and (2) Earned but uncollected interest income that was accrued in prior fiscal years and determined to be uncollectible to be charged off against the allowance for loan losses. In addition, because the requirements mandated by this section are not the only acceptable options under GAAP for the charging off or reversing of accured but uncollectible interest, the specific reference to GAAP in this section of the proposed regulation has been deleted.

7. Section 621.7 Chargeoffs on Losses on Loans

Several comments were received relating to § 621.5(c) of the proposed regulation (§ 621.7 of the final regulations) requiring the maintenance of an allowance for losses that, when considered in combination with the ability to make additional provisions for loss, is adequate to absorb loss in the loan portfolio. The commentators noted that this section permits an inference that earnings are needed before additions can be made, which is inconsistent with GAAP. Another commentator suggested that this paragraph be deleted in its entirety.

The FCA agrees that GAAP requires the maintenance of an adequate allowance without regard to the effect on earnings and the final regulation has been adjusted accordingly. The final regulation has also been modified to incorporate the requirement to maintain an allowance for loan losses that is in accordance with minimum statutory and regulatory standards.

One commentator noted that paragraph (d) of this section is open ended, with room for abuse by the FCA, and suggested it be eliminated. Because there is a critical need for each institution to adopt policies and to apply such policies, the FCA believes that paragraph (d) is necessary and it is retained in the final rule. In addition, since the FCA issues releases on accounting principles from time to time, the phrase "such other requirements as may be specified by the Farm Credit Administration" is needed.

8. Section 621.8 Adjustments to Book Value of Assests

Section 621.6 of the proposed regulations gave institutions differing with the FCA over the amount that should be charged off the option of charging off the amount specified by the FCA or disclosing the dispute with the FCA over the amount to be charged off in the annual report to shareholders. Section 621.8 of the final regulations requires that the institution charge off the amount directed by the FCA to be charged off. This change requires more directly what the FCA believed would be the usual result of an institution's exercise of the option presented in the proposed regulation.

9. Section 621.9 Audit by Qualified Public Accountant

The comments received regarding this section (§ 621.7 of the proposed regulations) were generally supportive of the need for audited financial statements. The commentators recommended the requirement to report FCA changes of accountants and disagreements with accountants be accelerated. One suggested that the institution be required to report to FCA within 15 days of the monthend in which the change takes place and that the

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certified public accountant (CPA) be required to provide a letter stating whether the CPA concurs with management's response. If the CPA does not concur, the regulation should require the reasons to be stated. Another commentator recommended that § 621.7(c), "Disagreements with accountants," be deleted if the suggested modifications are made to § 621.7(d).

The FCA agrees that any disagreements with the accountant's opinion or changes in accountants should be reported to FCA immediately, in addition to being included in reports to shareholders, and such a requirement has been added to § 621.9 (c) and (d) of the final rule. The requirement that the CPAs be required to provide a letter stating whether they concur with management's response was thought to be implicit in the requirements of § 621.7(c)(3) of the proposed regulations. However, this paragraph (§ 621.9(c)(3) in the final regulation) has been clarified to make the requirement more explicit. The final regulation also requires that all correspondence required by § 621.9(c) be submitted to the FCA simultaneously with its submission by management to the accountant or submission by the accountant to management.

The requirement of § 621.7(c) has not been deleted even though the suggested changes have been made to § 621.7(d) because the FCA believes two separate sections are needed. Section 621.7(d) has, however, been modified to require notification to FCA within 15 days of the monthend when an institution changes its accountant and the reasons therefor.

The comments suggested that each institution be required to establish an audit committee made up of board members, and that the audit committee's activities be a required disclosure in the Annual Meeting Information Statement. One commentator suggested that all System institutions, including service corporations chartered by the FCA in which no equity is owned by any entity not chartered by the FCA, be required to have their financial statements audited by a qualified public accountant.

The FCA supports the use of audit committees but does not believe it appropriate to require them by regulation. The decision to have an audit committee is an internal management decision. The FCA does not think it appropriate to regulate the types of committees each institution should have. The FCA concurs that all institutions chartered by the FCA should have their financial statements audited by a qualified public accountant and the 1985 Amendments require it. The requirement has been restated in the final regulations.

FCA has also eliminated the requirement of § 621.7(b)(3) of the proposed regulation (§ 621.9 of the final regulations) that a copy of the public accountant's opinion of each institution's financial statements be sent to the FCA chief accountant upon receipt, since the annual report to shareholders filed with the FCA will contain the opinion.

D. Part 602.—Disclosure Under the Freedom of Information Act

The proposed amendment to 12 CFR 602.250(a)(8) stated that reports to shareholders required by FCA regulations and certain portions of the reports of condition and performance filed under Part 621 would be publicly available for a reasonable fee upon request. The preamble to the proposal explained that items in the reports of condition that correspond to items in the shareholders reports would be publicly available. One commentator suggested that the regulation specify those portions of the reports of condition and performance that would be made publicly available.

The final amendment states that those items in the reports of condition and performance that are of essentially the same character as items required to be disclosed to shareholders will be publicly available. In addition, technical adjustments made necessary by the 1985 Amendments were made in 12 CFR 602.250(a)(5).

List of Subjects in 12 CFR Parts 602, 620, and 621

Archives and records, Freedom of information, Information, Records, Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statement, Accounting and reporting requirements, Report of condition and performance.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended by amending Part 602 and by adding Parts 620 and 621 as follows:

PART 602—RELEASING INFORMATION

1. The authority citation for Part 602 is revised to read as follows:

Authority: Secs. 5.9 and 5.17, Pub. L. 99–205, 99 Stat. 1678.

2. Section 602.250 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(5) and (8) to read as follows:

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.250 Official records of the Farm Credit Administration.

(a) The Farm Credit Administration shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

* * * * *

(5) Inter-Agency or intra-Agency memorandums or letters which would not be available by law to a private party in litigation in which the United States, as real party interest on behalf of the Farm Credit Administration, is a party, or from any Farm Credit System institution, including banks, associations, service organizations, or the Capital Corporation, to a private party in litigation with such institution if such memorandums or letters are records of such institution;

* * * * *

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit institutions that are regulated and examined by the Farm Credit Administration that are prepared by, on behalf of, or for its use; except that reports to shareholders filed with the Farm Credit Administration pursuant to Part 620 of this chapter and those items in reports of condition and performance filed with the Farm Credit Administration pursuant to Part 621 of this chapter that are of essentially the same character as items disclosed in reports to shareholders filed with the Farm Credit Administration pursuant to Part 620 of this chapter, shall be available to the public on request for a reasonable fee.

* * * * *

3. A new Part 620 is added to read as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

Subpart A—Annual Reports to Shareholders

Sec.
620.1 Definitions.
620.2 Preparing, distributing, and filing the report.
620.3 Contents of the annual report to shareholders.

Subpart B—[Reserved]

Subpart C—Association Annual Meeting Information Statement

620.20 Preparing, distributing, and filing the information statement.
620.21 Contents of the association annual meeting information statement.
620.22 Prohibition against incomplete, inaccurate, or misleading disclosure.

Authority: Sec. 5.17(9) and (10), Pub. L. 99-205.

Subpart A—Annual Reports to Shareholders

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer, or nominee for director of the reporting institution is a director officer, or majority shareholder.

(b) "Senior officer" means any person designated by the board of directors as responsible for a major management function.

(c) "Immediate family" shall mean parents, childern, and siblings.

(d) "Institution" means any bank or association chartered by the Act.

(e) "Loan" shall have the same meaning as in Part 621 of this chapter.

(f) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(g) "Normal risk of collectibility" means the ordinary risk inherent in the lending operation. Any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter shall be deemed to have more than a normal risk of collectibility.

(h) "Related organization" means any Farm Credit institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(i) "Risk funds" means the allowance for loan losses and all capital accounts exclusive of capital stock, participation certificates, and allocated equities.

(j) "Shareholder" means a holder of any equity interest in an institution.

§ 620.2 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System shall prepare and distribute to its shareholders an annual report within 90 days of the end of its fiscal year.

(b) For the purposes of § 620.3(m), a Federal land bank association shall include the financial statements of the Federal land bank in the district in addition to its own. Federal land bank associations shall comply with all other sections of this part except as expressly stated otherwise herein.

(c) The report shall contain, at a minimum, the information required by § 620.3 and, in addition, such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Three complete copies of the report, including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report, shall be filed with the Chief Examiner, Farm Credit Administration, simultaneously with its disssemination to shareholders and shall be available for public inspection at the Farm Credit Administration.

(e) At least one of the reports filed with the Farm Credit Administration shall be dated and manually signed on behalf of the institution by:

(1) the person designated by the board of directors to certify the reports of condition and performance in accordance with § 621.12 of this chapter;

(2) The chief executive officer; and

(3) Each member of the board.

The name and position title of each person signing the report shall be typed or printed beneath his or her signature. The statement to which the signers of the report shall attest shall read as follows:

> The undersigned certify that this report has been prepared in accordance with all applicable statutory or regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge.

If any officer or any member of the board is unable to or refuses to sign the report, the institution shall disclose the individual's name and position title and the reasons such individual is unable or refuses to sign the report.

(f) The report sent to shareholders shall be signed and dated by and on behalf of the institution and its board of directors by its chief executive officer and the chairman of the board of directors. If any peson required to sign the report submitted to the Farm Credit Administration pursuant to paragraph (e) of this section has not signed the report, the name and position title of the individual and the reasons such individual is unable or refuses to sign shall be disclosed in the report sent to shareholders.

(g) Information in any part of this report may be incorporated by reference in answer or partial answer to any other item of the report.

(h) All items of essentially the same character as items required to be reported in the reports of condition and performance pursuant to Part 621 of this chapter shall be prepared in accordance with the rules set forth in Part 621.

(i) No disclosure required by this subpart shall be deemed to violate any regulation of the Farm Credit Administration.

(j) A copy of the most recent annual report to shareholders shall be publicly available at the institution.

§ 620.3 Contents of the annual report to shareholders.

The report shall contain the following items in substantially the same order:

(a) Description of Business

The description shall include a brief discussion of the following items:

(1) The territory served;

(2) The persons eligible to borrow;

(3) The types of lending activities engaged in and financial services offered. (Banks shall also briefly describe the lending and financial services offered by the associations that are its shareholders as well as financial services offered to district borrowers by any service organization in which it has an ownership interest.);

(4) Any significant developments within the last 5 years that had or could have a material impact on earnings or interest rates to borrowers, including, but not limited to, mergers or consolidations and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or from any other source;

(5) Any acquisition or disposition of material assets during the last fiscal year, other than in the ordinary course of business;

(6) Any material change during the last fiscal year in the manner of conducting the business;

(7) Any seasonal characteristics of the institution's business;

(8) Any concentrations of more than 10 percent of its assets in particular commodities or particular types of agricultural activity or business, and the institution's dependence, if any, upon a single customer, or a few customers, including other financial institutions (OFIs), as defined in § 614.4540(e) of this chapter, the loss of any one of which would have a material effect on the institution; and

(9) A brief description of the business of any related Farm Credit organization and the nature of the institution's relationship to such organization.

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(b) Description of Property

State the location of and briefly describe the principal offices and other materially important physical properties (other than property acquired in the course of collecting a loan) of the institution. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly the terms and conditions of the agreement under which the property is used or occupied.

(c) Legal Proceedings

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involves claims that the institution may be required, by contract or operation of law, to satisfy. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(d) Description of Capital Structure

Describe each class of stock and participation certificates the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(1) The number of shares of each class outstanding;

(2) The par or face value;

(3) The voting and dividend rights;

(4) The order of priority upon impairment or liquidation;

(5) The institution's retirement policies and restrictions on transfer;

(6) The statutory requirement that a borrower purchase stock as a condition to obtaining a loan;

(7) The manner in which the stock is purchased (i.e., promissory note to the issuer or cash not advanced by issuing institution); and

(8) The statutory authority of the institution to require additional capital contributions, if any.

(e) Description of Liabilities

(1) Describe the institution's debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal year just ended. Describe applicable statutory and regulatory restrictions on the institution's ability to incur debt.

(2) Describe fully the institution's rights and obligations under any agreement, formal or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other financial assistance agreement.

(3) Describe any statutory authorities or obligations to contribute to or on behalf of another institution of the Farm Credit System.

(f) Selected Financial Data.

Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) For banks and production credit associations:

(i) Balance sheet

- Total assets
  - Investments
  - Loans
  - Allowance for losses
  - Net loans
  - Acquired property
- Total liabilities
  - Obligations with maturities longer than 1 year
  - Obligations with maturities less than 1 year
- Total capital
  - Stock and participation certificates
  - Surplus
  - Allocated equities

(ii) Statement of income

- Net interest income
- Provision for loan losses
- Net income

(iii) Key financial ratios

- Return on average assets
- Return on average capital
- Net interest margin as a percentage of average earning assets
- Capital-to-asset
- Debt-to-capital
- Net chargeoffs-to-average loans
- Allowance for loan losses-to-average loans

(iv) Net income distributed

- Cash
  - Dividends
  - Patronage refunds
- Stock
- Allocated equities

(2) For Federal land bank associations:

(i) Balance sheet

- Total assets
- Accrued obligation under loss-sharing agreement, if any
- Total capital

(ii) Statement of income

- Compensation from the Federal land bank
- Total operating expense
- Provision for obligation under capital preservation or loss-sharing agreements, if any
- Net income

(iii) Other

- Loans serviced for the Federal land bank
- Dividends paid
- Patronage refunds paid
  - Cash
  - Allocated equities
- Payments to the Federal land bank under loss-sharing agreement

(g) Management's Discussion and Analysis of Financial Condition and Results of Operations

Fully discuss the institution's financial condition, changes in financial condition, and results of operations during the last 2 fiscal years, identifying favorable and unfavorable trends and significant events or uncertainties. In addition to the items enumerated below, the discussion shall provide such other information as the institution believes is necessary to an understanding of its financial condition, changes in financial condition, and results of operations.

(1) Loan portfolio.

(i) Describe the types of loans in the portfolio by major category (e.g., agricultural real estate mortgage loans; rural home loans; agriculture production loans by major subcategory; processing and marketing; farm business; and international), indicating the approximate percentage of the total dollar portfolio represented by each major category. For each category, discuss any special features of the loans that may be material to the evaluation of risk and any economic or business conditions that have had or are likely to have a material impact on their collectibility. For Federal intermediate credit banks, disclose separately the aggregate amount of loans outstanding to production credit associations and OFIs.

(ii) Describe the geographic distribution of the loan portfolio by State or other significant geographic division, if any.

(iii) Recent loss experience. For the periods covered by the financial statements provide:

(A) An analysis of nonperforming assets in accordance with the categories delineated in § 621.2 of this chapter;

(B) An analysis of the allowance for loan losses that includes the ratios of the allowance to average loans and net chargeoffs to average loans, and a discussion of the adequacy of the allowance for losses to absorb the risk inherent in the institution's loan portfolio;

(C) Financial assistance given or received under districtwide or Systemwide loss-sharing or capital preservation agreements or otherwise;

(D) For Federal intermediate credit banks, a description in the aggregate of the recent loss experience of the PCAs that are its shareholders, including the items enumerated in paragraphs (g)(1)(iii)(A), (B), and (C) of this section.

(2) Results of operations.

(i) Describe, on a comparative basis, changes in the major components of net income during the last 2 fiscal years, describing significant factors that contributed to the changes and quantifying the amount of the changes due to an increase in volume or the introduction of new services and the amount due to changes in interest rates earned and paid, based on averages for each period.

(ii) Describe any unusual or infrequent events or transactions or any significant economic changes, including, but not limited to, financial assistance from or paid to other Farm Credit institutions, that materially affected reported income. In each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying the changes, if any, in the return on average assets and the return on average capital.

(iv) Describe, on a comparative basis, the major components of operating expense, indicating the reasons for significant increases or decreases.

(v) Describe any other significant components of income or expense, including, but not limited to, income from investments, that in the institution's judgment should be described in order to understand the institution's results of operations.

(vi) Describe any known trends or uncertainties that have had, or that the institution reasonably expects will have, a material impact on net interest income or net income. Disclose any events known to management that will cause a material change in the relationship between costs and revenues.

(3) Liquidity and funding sources.

(i) Funding sources.

(A) Describe the average and yearend amounts, maturities, and interest rates on outstanding consolidated Systemwide debt obligations or other bond obligations used to fund the institution's lending operations.

(B) Describe existing lines of credit and their terms.

(C) Describe the institution's capital accounts and other sources of lendable funds.

(ii) Liquidity.

(A) Discuss the institution's liquidity policy and the components of asset liquidity, including, but not limited to, cash, investment securities, and maturing loan repayments. Assess the ability of the institution to generate adequate amounts of cash to fund its operations and meet its obligations.

(B) Discuss any known trends that are likely to result in a liquidity deficiency and the course of action management intends to take to resolve it. Discuss any material increase or decrease in liquidity that is likely to occur.

(iii) Funds management.

(A) Discuss the institution's interest rate programs and the institution's ability to control interest rate margins.

(B) Discuss changes in net interest margin (net interest income as a percentage of average earning assets), explaining the reasons therefor.

(4) Capital resources.

(i) Describe any material commitments to purchase capital assets and the anticipated sources of funding.

(ii) Discuss any material trends or changes in the mix and cost of debt and capital resources.

(iii) Describe any favorable or unfavorable trends in the institution's capital resources.

(iv) Discuss and explain any material changes in capital ratios, noting any material adverse variances from regulatory guidelines.

(v) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the adequacy of available risk funds.

(h) Directors and Senior Officers

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director, list any other business entity on whose board the director serves and state the principal business in which it is engaged.

(i) Compensation of Directors

Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation or $25,000 whichever is less) and state the total cash compensation paid to directors as a group during the last fiscal year. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities; and

(3) The total compensation paid to each director during the last fiscal year.

(j) Transactions With Senior Officers and Directors

(1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year for which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of his or her immediate family, or any organization with which the person or director is affiliated. State the name of the person, his or her relationship to the institution, the nature of his or her interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) Loans to senior officers and directors.

(i) If true, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors that:

(A) Were made in the ordinary course of business;

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) Did not involve more than the normal risk of collectibility.

(ii) If the conditions stated in paragraph (j)(3)(i) of this section do not apply to the loan(s) of any person who served as a senior officer or director on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended, or any member of such person's immediate family or any organization with which such person is or has been affiliated within the last fiscal year, state:

(A) The person's name;

(B) The largest aggregate amount of indebtedness outstanding at any time during the last fiscal year;

(C) The nature of the loan(s);

(D) The amount outstanding as of the end of the last fiscal year;

(E) The rate of interest payable on the loan;

(F) The repayment terms for the loan;

(G) The amount past due, if any;

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(H) The performance status of the loan as determined by the institution in accordance with Part 621 of this chapter; and

(I) If applicable, the reason the loan is deemed to involve more than the normal risk of collectibility.

(k) Involvement in Certain Legal Proceedings.

Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

(l) Relationship With Independent Public Accountant

If a change or changes in accountants have taken place since the last annual report to shareholders or if a disagreement with an accountant has occurred that the institution would be required to report to the Farm Credit Administration under Part 621 of this chapter, the information required by § 621.9 (c) and (d) of this chapter shall be disclosed.

(m) Financial Statements

(1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and instructions and other requirements of the Farm Credit Administration and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.2(a)(21) of this chapter, and an opinion expressed thereon. The statements shall include the following statements and related footnotes for the last 3 fiscal years: balance sheet, statement of income, statement of changes in capital, and statement of changes in financial position.

(2) The audit requirements of paragraph (m)(1) of this section shall be effective for financial statements issued for the 1986 fiscal yearend.

(3) The financial statements shall be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that the financial statements, in the opinion of management, fairly present the financial condition of the institution, except as otherwise noted.

Subpart B—[Reserved]

Subpart C—Association Annual Meeting Information Statement

§ 620.20 Preparing, distributing, and filing the information statement.

(a) Each association of the Farm Credit System shall prepare and distribute to its shareholders at least 10 days prior to any meeting at which directors are to be elected an information statement ("statement").

(b) The statement shall contain, at a minimum, the information specified in § 621.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds a shareholder meeting at which directors are elected more than 134 days after the end of its fiscal year, the statement shall be accompanied by the most recent quarterly statements and statements for the comparable period in the prior fiscal year.

(d) Three complete copies of the statement, including financial statements and all other paper and documents that are part of the statement, shall be filed with the Chief Examiner, Farm Credit Administration (received at Farm Credit Administration offices), on or before the date of its dissemination to shareholders.

(e) At least one of the statements filed with the Chief Examiner, Farm Credit Administration, including any interim financial statements that may be required under paragraph (c) of this section, shall be dated and manually signed on behalf of the institution by:

(1) The person designated by the board to certify reports of condition and performance in accordance with § 621.12 of this chapter;

(2) The chief executive officer; and

(3) Each member of its board of directors.

The name and position title of each person signing the statement shall be typed or printed beneath the signature. The certification to which the signers of the statement shall attest shall read as follows:

> The undersigned certify that this statement has been prepared in accordance with all applicable statutory and regulatory requirements and that the information contained herein is true, correct, accurate, and complete to the best of his or her knowledge.

(f) The statement sent to shareholders shall be signed on behalf of the institution and its board of directors by its chief executive officer and the chairman of the board of directors. If any person required to sign the statement submitted to the Farm Credit Administration pursuant to paragraph (e) of this section has not signed it, the name and position title of the individual and the reason such individual is unable or refuses to sign shall be disclosed in the statement sent to shareholders.

(g) Information in any part of the statement may be incorporated by reference in answer, or partial answer, to any other item of the statement.

(h) No disclosure required by this subpart shall be deemed to violate any regulation of the Farm Credit Administration.

§ 620.21 Contents of the association annual meeting information statement.

The statement shall address the following items:

(a) Date, Time, and Place of the Meeting(s)

(b) Voting Shareholders

For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote, and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon.

(c) Directors

(1) State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which such persons have served. No information need be given with respect to any director whose term of office as a director will not continue after the meeting to which the statement relates.

(2) State the name of any incumbent director who attended fewer than 75 percent of the total of board meetings and any board committee meeting of committees on which he or she served during the last fiscal year.

(3) If any director resigned or declined to stand for reelection during the last year fiscal year to date because of a policy disagreement with the board, and if the director has furnished a letter requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement contained in the letter. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(4) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.3(j), or any of the events required to be disclosed in the annual report to shareholders under § 620.3(k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.3(j) and (k) shall be made with respect to such transactions or events in the annual information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.3(j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the annual information statement.

(d) Nominees

(1) If directors are nominated by region, describe the regions and state the number of voting shareholders entitled to vote in each region. If nominations from the floor are restricted by the bylaws to persons from a particular region, so state.

(2) If fewer than two nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(3) If the annual meeting is held in consecutive sectional meetings, the statement shall contain a notice that nominations from the floor must be made at the first sectional meeting.

(4) For each nominee, state the nominee's name, age, and business experience during the last 5 years, including each person's principal occupation and employment during the past 5 years. List any business entities on whose board of directors the director serves and state the principal business in which the entity is engaged.

(5) For each nominee who is not an incumbent director, except nominees from the floor, the disclosures required of senior officers or directors by § 620.3 (j) and (k) shall be made in the annual information statement. Floor nominees must provide the disclosures required by § 620.3 (j) and (k) in writing at the meeting(s) at which the nomination is considered. No person may be a nominee for director who does not make the disclosures required by this subpart.

(6) The statement shall contain a notice that each person nominated from the floor must provide in writing all of the disclosures required by this subpart at the meeting(s) at which the nomination is considered.

(e) Other Shareholder Action

(1) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition.

(2) The statement shall describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

(f) Relationship With Independent Public Accountant

If an institution of the Farm Credit System has had a change or changes in accountants since the last annual report to shareholders, or if a disagreement with an accountant has occurred, the institution shall disclose the information required by § 621.9 (c) and (d) of this chapter.

§ 620.22 Prohibition against incomplete, inaccurate, or misleading disclosure.

No employee or director or nominee for director of the institution shall make any disclosure to shareholders with respect to an election that is incomplete, inaccurate, or misleading. When any such person makes disclosure, that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made pursuant to this subpart, such institution or person shall, at the direction of the Farm Credit Administration, make such additional or corrective disclosure as is necessary to provide shareholders with full and fair disclosure.

4. A new Part 621 is added to read as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Accounting Requirements

Sec.
621.1 Purpose and applicability.
621.2 Definitions.
621.3 Generally accepted accounting principles.
621.4 Accrual basis of accounting.
621.5 Nonperforming assets.
621.6 Uncollectible interest on loans and similar assets—general rules.
621.7 Chargeoff of losses on loans.
621.8 Adjustments to book value of assets.
621.9 Audit by qualified public accountants.

Subpart B—Report of Condition and Performance

621.10 Applicability and purpose.
621.11 Content and standards—general rules.
621.12 Certification of correctness.

Authority: Sec. 5.17 (9) and (10), Pub. L. 99-205.

Subpart A—Accounting Requirements

§ 621.1 Purpose and applicability.

This part sets forth accounting requirements to be followed by all banks, associations, and service organizations chartered under the Act, including the Farm Credit System Capital Corporation and its successors. The requirements set forth in this part include both requirements of general application and specific requirements focusing on particular areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information on lending operations.

§ 621.2 Definitions.

(a) For the purposes of this part, the following definitions shall apply, subject to the rules of application in paragraph (b) of this section:

(1) "Accrual basis of accounting" means that accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

(2) "Acquired property" means any real or personal property, other than an interest-earning asset, that has been acquired as a result of liquidation of a loan, either full or partial.

(3) "Adequately secured." A nonperforming loan shall be considered adequately secured only if:

(i) Collateralized by liens having a net realizable value sufficient to discharge the debt in full.

(ii) Guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

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(4) "Bankruptcy." A loan shall be considered in bankruptcy if the reporting institution has received notice that a petition has been filed with a court of competent jurisdiction by or against the borrower under any chapter of the Federal Bankruptcy Act or similar State statute. A loan shall remain "in bankruptcy" for the purposes of this part until the court's jurisdiction is terminated or relief from the automatic stay is granted that permits collection to proceed fully, and a detailed analysis of the loan supports a reclassification other than a nonperforming status. Such analysis shall consider all pertinent factors and shall be well documented. If a debt adjustment plan has been confirmed by the court, the loan shall be classified as "formally restructured" unless no concessions are granted by the creditor under the plan.

(5) "Borrowing entity" means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, which is primarily obligated on the loan agreement.

(6) "Contractually past due." A loan shall be considered contractually past due if any principal repayment or interest payment required by the lending agreement is not received on or before the agreed date. A loan shall remain contractually past due until it is formally restructured, or until the entire amount past due, including principal, accrued interest, and penalty interest incurred by virtue of past due status, is collected or otherwise discharged in full.

(7) "Foreclosure." A loan shall be considered in foreclosure if the lender has authorized initiation of proceedings under State law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest. If the lender has received notice that a third party has initiated proceedings under State law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest, the lender shall promptly review the potential impact of the third party actions and classify the loan accordingly. The review shall consider all pertinent factors and the classification shall be well documented in the loan file.

(8) "Formally restructured loans" means loans that are "troubled debt restructurings," as defined in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the Financial Accounting Standards Board. After a loan is classified as "formally restructured," it shall continue to be reported as formally restructured until it is fully paid off or otherwise discharged. A renewal or reamortization of the loan at maturity shall not be considered a restructuring, provided:

(i) The financial condition and loan performance of the borrower support renewal; and

(ii) The renewed or reamortized loan is made under the same terms and conditions as are used to make similar loans to other borrowers whose financial condition and performance are sound and not deteriorating.

(9) "Generally accepted accounting principles" shall mean that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(10) "Generally accepted auditing standards" shall mean the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants to govern the overall quality of audit performance.

(11) "In process of collection." A debt is in process of collection if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action that are reasonably expected to result in repayment of the debt or in its restoration to current status.

(12) "Institution" means any bank, association, or service organization chartered under the Farm Credit Act of 1971, as amended, including the Farm Credit System Capital Corporation and its successors.

(13) "Loan" means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of a reporting institution. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interests in loans purchased from another lender.

(14) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(15) "Nonaccrual loans." A loan shall be considered nonaccrual if and so long as:

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or

(ii) It has been classified "loss" as a result of a periodic credit evaluation; or

(iii) It is severely past due and not adequately secured, in process of collection, and fully collectible with respect to all principal and interest; or

(iv) It is past due for 180 days or more, without regard to whether it is adequately secured or in process of collection.

(16) "Nonperforming assets" means nonperforming loans and acquired property as defined in this part.

(17) "Nonperforming loans" means nonaccrual, formally restructured, other restructured and reduced rate and other high risk loans, as defined in this part.

(18) "Other high risk loans" means all loans that:

(i) Have been classified "vulnerable" as a result of a periodic credit evaluation; or

(ii) Are past due 90 days or more but less than 180 days, but adequately secured and in process of collection; or

(iii) Are in process of collection, bankruptcy, or foreclosure; or

(iv) Are in severe default; or

(v) Do not meet the other criteria of this paragraph for classification as other high risk loans, but management has information that causes serious doubt as to the borrower's willingness or ability to perform in accordance with the terms and conditions of the loan agreement.

(19) "Other restructured and reduced rate loans" shall have the same meaning as formally restructured loans except that the concessions granted to the borrower have not been incorporated into the contractual terms and conditions of the loan by amendment or other revision. A loan shall continue to be classified as other restructured or reduced rate until the reporting institution, after a well-documented analysis of all pertinent factors, determines that it should be reclassified.

(20) "Performing loans" means all loans not identified as nonperforming under the definitions and standards established in this part.

(21) "Qualified public accountant" shall mean a person who:

(i) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant; and

(ii) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States; and

(iii) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited; and

(iv) Is not suspended or otherwise barred from practice as an accountant or public accountant before the U.S. Securities and Exchange Commission or any other appropriate Federal or State regulatory authority; and

(v) Is independent of the institution that is to be audited. For the purposes of this definition the term "independent" shall have the same meaning as under the rules and interpretations of the American Institute of Certified Public Accountants.

(22) "Severe default." A loan shall be considered in severe default if:

(i) The borrower does not perform in accordance with any term(s) or condition(s) or other obligation(s) set forth or incorporated by reference into the loan agreement; and

(ii) The borrower's failure to perform in accordance with the loan agreement increases the lender's risk exposure on the loan to a level that reduces or threatens to reduce the current or prospective value of the loan as a financial asset.

(23) "Severely past due loans." A loan shall be considered severely past due if any portion thereof is contractually due and uncollected for a period of 90 days or more with respect to principal, interest, or both.

(24) "Vulnerable" shall have the same meaning as under § 614.4051(a)(4(iii) of this chapter.

(b) Rules for applying definitions.

(1) Acceptable tolerances in determining amounts contractually past due. For purposes of this part, earned and contractually due but uncollected amounts may be considered paid in full if:

(i) At least 90 percent of all contractually due principal and interest has been collected; and

(ii) No more than a combined total of $100 of contractually due principal and interest remains uncollected.

However, amounts collected in successive partial payments or other credits shall be applied to the oldest contractually past due amount until it is paid in full, then to the next oldest past due amount until it is paid in full, and so on until the total amount of the partial collection(s) is exhausted.

(2) Rule of aggregation. For the purposes of determining performance status under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

§ 621.3 Generally accepted accounting principles.

Each institution of the Farm Credit System shall:

(a) Prepare and maintain accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements or otherwise required by the Farm Credit Administration; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

§ 621.4 Accural basis of accounting.

Each institution of the Farm Credit System shall use the accrual basis of accounting in the preparation and maintenance of its accounting records, and in the preparation of its financial statements, including interim statements that are;

(a) Used for internal management purposes;

(b) Used by the board of directors;

(c) Prepared to meet Farm Credit Administration reporting requirements; and

(d) Prepared for shareholders and investors.

§ 621.5 Nonperforming assets.

(a) Each institution of the Farm Credit System shall:

(1) Account for, report, and disclose to shareholders, investors, board of directors, and the Farm Credit Administration all material items with respect to nonperforming assets, in accordance with the rules and definitions set forth in this part and such other requirements as may be prescribed by the Farm Credit Administration;

(2) Develop, adopt, and apply policies governing nonperforming assets, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(3) Review at least quarterly all loans to:

(i) Determine their performance status in accordance with the definitions in this part; and

(ii) Determine the collectibility of accrued but uncollected income, if any.

(4) Recognize interest income from informally restructured loans and similar assets on its books and records and on its financial statements when received in cash or cash equivalents, or at a rate of accrual lower than the contractual rate and consistent with amounts that the institution may reasonably expect to collect given the material facts of the borrower's situtation.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

§ 621.6 Uncollectible interest on loans and similar assets—general rules.

(a) Each institution of the Farm Credit System shall employ the following practices with respect to charging off earned but uncollected interest income on loans, leases, contracts, and similar assets:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income.

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

(b) Notwithstanding the above, the following types of income shall, at a minimum, be classified as uncollectible:

(1) Earned but uncollected interest on any loan, if any portion thereof is severely past due and the loan is not adequately secured;

(2) Earned but uncollected interest on any loan, lease, or similar investment

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that is not adequately secured and on which the institution has commenced legal action to acquire title to, secure possession of, or force liquidation of the underlying collateral security, or to otherwise enforce performance on the loan by the borrower;

(3) Earned but uncollected interest on any loan that is not adequately secured on which the institution has received notice that the borrower's bankruptcy petition, or similar pleading, has been filed with a court of competent jurisdiction; and

(4) Earned but uncollected interest on loans that are being or have been restructured, but such interest is not explicitly included in the principal amount of the restructured loan.

§ 621.7 Chargeoff of losses on loans.

Each institution of the Farm Credit System shall:

(a) Charge off loans, wholly or partially as appropriate, at the time they are determined to be uncollectible; and

(b) Apply generally accepted accounting principles, or regulatory requirements where appropriate, consistently in all material aspects of recognizing, estimating, and recording chargeoffs; and

(c) Maintain at all times an allowance for loan losses that is in accordance with statutory and regulatory requirements and, at a minimum, is adequate to absorb all loses that may be reasonably expected to exist in the loan portfolio; and

(d) Develop, adopt, and apply policies governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules and definitions, and standards set forth in this part and such other requirements as may be prescribed by the Farm Credit Administration.

§ 621.8 Ajustments to book value of assets.

When an institution, or the district bank in which it is a shareholder, if any, or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can be reasonably expected to be collectible, or that the documentation supporting the recorded asset value is inadequate:

(a) The institution shall immediately charge off the asset in the amount determined to be uncollectible.

(b) If the amount determined to be uncollectible by the institution or its district bank in which it is a shareholder, if any, is different from the amount determined to be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

§ 621.9 Audit by qualified public accountant.

(a) Each institution of the Farm Credit System shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report to shareholders.

(c) Disagreements with accountant's opinion. If an institution of the Farm Credit System disagrees with the opinion of a qualified public accountant provided under the requirements of paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted acounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report to shareholders directly following the accountant's opinion of the institution's financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration the written documentation required by paragraphs (c)(1) through (4) of this section.

(d) Changes in qualified public accountants. If an institution of the Farm Credit System selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution's annual meeting information statement and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

Subpart B—Reports of Condition and Performance

§ 621.10 Applicability and purpose.

(a) Each institution of the Farm Credit System shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Administration, Management Information Division, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

§ 621.11 Content and standards—general rules.

Each institution of the Farm Credit System shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

§ 621.12 Certification of correctness.

Each report of financial condition and performance filed with the Farm Credit Adminstration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

Marvin Duncan,

Acting Chairman.

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12 CFR Part 611

Farm Credit System Capital Corporation; Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Farm Credit Administration ("FCA") has promulgated final regulations §§ 611.1140–611.1142 applicable to the Farm Credit System Capital Corporation ("Capital Corporation" or "Corporation") established under the Farm Credit Amendments Act of 1985 ("1985 Amendments") chartered by the FCA on February 24, 1986, pursuant to § 4.28A of the Farm Credit Act of 1971, as amended ("1971 Act"). The Corporation supersedes and succeeds to the assets and liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation") chartered by the FCA on June 6, 1985 and dissolved by the FCA following the chartering of the Corporation.

DATES: Effective March 10, 1986. Written comments must be received on or before April 9, 1986.

ADDRESSES: Submit comments in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4024.

SUPPLEMENTARY INFORMATION: Under the 1985 Amendments enacted on December 23, 1985, Congress authorized and directed the FCA to charter the Capital Corporation within 60 days for the purpose of carrying out a program of financial and technical assistance to Farm Credit System ("System") banks and associations (hereinafter referred to as "institutions") and their borrowers. the Corporation is designed to acquire, hold, restructure, collect and otherwise administer nonperforming assets (including loans and acquired property) from System institutions, and to provide financial and technical assistance and services to System institutions. Congress intended that the Corporation serve as a vehicle through which the System will assist itself by transferring its substantial surplus to those districts in greatest need of capital.

Congress directed that the FCA promulgate regulations to address a number of areas relating to the Capital Corporation, including the nomination and election of System representatives on the board of directors, financial assistance, corporate powers, and the capitalization of the Corporation. Section 611.1140 concerns the chartering and organization of the Corporation. It establishes a Nominating Committee ("Committee"), comprised of the Chairman or Vice Chairman of each System bank board of directors, to nominate candidates to be elected by Systems banks to the three director seats on the board of directors of the Corporation. The Committee is to hold its initial meeting as soon as possible to nominate at least two candidates for each of those board positions. The FCA election officer will conduct the initial director election within 15 days after receiving the slate of candidates from the Committee. This election procedure is designed to expedite selection of System representatives on the board in an equitable manner, enabling the Corporation to become operational as soon as possible. Subsequent elections of System board members will take place as provided in the Corporation's bylaws.

The regulation prohibits interlocking affiliations between the Capital Corporation and the Farm Credit Corporation of America ("FCCA"). The FCA endorses the purposes and mission of the FCCA, including the establishment of Systemwide policies and standards, and encourages the FCCA to press forward with its important work. However, functions and operations of the Capital Corporation must be separated from the FCCA. The legislative history of the 1985 Amendments indicates that Congress did not intend that the Corporation become a bank or bank holding company, or a vehicle for consolidating System structure or authority. Accordingly, the Capital Corporation regulations prohibit any person who serves, or has served within 3 years prior to the election, as a director, officer or an employee of the FCCA from serving on the board of the Corporation.

The regulations set director compensation for all members of the Capital Corporation board of directors. Neither System institution officers or employees who serve as directors nor any full time employee of the United States who may be appointed to the board by the Secretary of Agriculture will receive compensation in addition to their current salaries. Compensation for other directors is set at $25,000 per annum, less any compensation received from any other System institution or System service organization board activities.

This amount was determined as the minimum necessary to attract qualified persons to serve on the Corporation board to perform the very serious and complex work associated with marshaling System resources to provide financial assistance where necessary.

Section 611.1141 sets forth the rules regarding the capitalization of the Capital Corporation. The initial capitalization of the Corporation will be established by the FCA in consultation with System institutions as soon as possible. The regulation establishes the classes of stock the Corporation may issue and specifies the voting and other rights, qualifications, preferences, and restrictions that the stock may carry.

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The regulations are designed to provide ample flexibility in capitalizing the Corporation in a way that will optimize its effectiveness. Special classes of stock have been established to facilitate an exchange of stock for stock of the Predecessor Corporation, and for purchase by the Secretary of the Treasury or the FCA in the event Government funds are made available to the System.

Section 611.1142 addresses the powers of the Corporation. In order to assure policy and operational autonomy from System banks and associations that will be contributors or recipients of resources to the Corporation, joint employees between the Corporation and System institutions or System service organizations have been prohibited. Similarly, contracts for services with System institutions and service organizations have been limited to administrative, financial, and operational services not to include policy or management functions, assessment or financial assistance determinations, legal services, or funds management. The regulation severs any connections between the Predecessor Corporation and System institutions. The regulation also affirms that although the Capital Corporation is a Federal instrumentality, it is not a Federal agency and is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. Commercial borrowings of the Corporation are permitted without further FCA approval where the Corporation is able to obtain terms better than those available from System institutions or through the issuance of Systemwide obligations, and the Corporation may join with the System in the issuance of Systemwide obligations so long as the collateral requirements of 12 CFR 615.5050 are satisfied by the Corporation or another System bank. All borrowings by the Corporation must be pursuant to a debt management policy.

Paragraph (h) of § 611.1142 is reserved for rules regarding the assessment by the Capital Corporation of System institutions. The FCA expects that those regulations will be published within several weeks, together with capital adequacy regulations otherwise required by the Act.

Paragraph (i) sets forth standards under which System institutions may be eligible for financial assistance and establishes a related application process. Financial assistance can be provided by the Corporation in the form of direct financial assistance to the requesting institution through stock purchases, loans, cash contribution, or other financing, as well as the purchase of nonaccrual loans and acquired property held by the institution. The regulations provide that any System institution may request that the Corporation purchase nonaccrual loans or acquired property, and that any institution whose stock is or will, within 90 days, be impaired shall be eligible to apply for direct financial assistance from the Corporation.

The regulation specifies the information that must be included in an application for assistance. The Capital Corporation must analyze each application taking into consideration the financial and economic condition of the institution, the System, and the available resources to the Corporation. In recognition that the Capital Corporation has limited resources, the regulation directs that the Corporation make optimum use of its resources and gives the Corporation flexibility to determine the type and amount of financial assistance. Consistent with the requirement of the Act that financial assistance by the Corporation be administered in accordance with sound business practices, the regulation provides that the Corporation shall require, as a condition precedent to providing any direct financial assistance, that a recipient institution make such changes in its operations as may be necessary to enable the institution to make a sound financial recovery. The FCA may intervene in any Corporation decision regarding direct financial assistance.

The regulation affirms that any purchase by the Corporation of nonaccrual loans or acquired property must be at fair market value. Fair market value is defined in accordance with usage of the term under generally accepted accounting principles recognizing that the Corporation will negotiate the purchase price based on the costs associated with restructuring, reamortizing, guaranteeing, administering, and liquidating a particular asset on a case by case basis. Finally, the regulation subjects the Capital Corporation to the same accounting and financial reporting requirements applicable to other System institutions.

In adopting the regulations as final regulations, the FCA noted that the Act requires that regulations be in effect before the Capital Corporation can organize and exercise all of the powers which Congress conferred under the Act. The agency has determined that in light of the congressional directive in the Amendments that the Corporation be chartered within 60 days of enactment of the 1985 Amendments and be operational as soon as possible thereafter, public notice and publication for comment are impracticable, unnecessary and contrary to the public interest. For the same reasons, the FCA has waived the 30-day period otherwise applicable under subparagraph (b)(1) of § 5.17 of the Act. In accordance with 12 U.S.C. 2252(b)(2), the regulation is effective immediately. Although the regulations will be effective immediately, the public has been afforded a period of 30 days from the date of publication to submit written comments to the FCA.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

These regulations are hereby adopted by the Farm Credit Administration the 10th day of March 1986.

Donald E. Wilkinson,

Acting Chairman.

PART 611—ORGANIZATION

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is being amended as follows:

§ 611.1145 [Redesignated as § 611.1130]

1. In Subpart H, § 611.1145 is redesignated as § 611.1130.

§§ 611.1150 and 611.1151 [Redesignated as §§ 611.1135 and 611.1136]

2. Subpart I is amended by redesignating §§ 611.1150 and 611.1151 as §§ 611.1135 and 611.1136 respectively.

3. Subpart J is amended by redesignating it as Subpart L and adding a new Subpart J, consisting of §§ 611.1140–611.1142 to read as follows:

Subpart J—Farm Credit System Capital Corporation

Sec.
611.1140 Charter and organization of the Farm Credit System Capital Corporation.
611.1141 Corporation capitalization; classes of stock; dividends; transfers, exchanges, and retirements.
611.1142 General corporate powers.

Authority: Secs. 4.28A–4.28L, 5.17, Pub. L. 99–205, 99 Stat. 1678.

Subpart J—Farm Credit System Capital Corporation

§ 611.1140 Charter and organization of the Farm Credit System Capital Corporation.

(a) *Corporation charter.* The regulations set forth in this Subpart shall be applicable to the Farm Credit System Capital Corporation (hereinafter referred to as the "Corporation")

chartered by the FCA pursuant to section 4.28A of the Act. The charter of the Corporation may be amended from time to time as directed by the FCA.

(b) *Board of directors.* The Board of Directors of the Capital Corporation shall consist of five members, with three members to be elected by the System banks owning the voting stock in the Corporation and two members to be appointed by the Chairman of the Farm Credit Administration Board ("FCA Board"). The Board shall be expanded by operation of law to include two additional members in the event public funds are made available to the System, with the sixth board member to be appointed by the Secretary of Agriculture and the seventh member to be selected by the other six directors.

(1) *FCA appointments to the Corporation Board.* Members of the board of directors of the Corporation appointed by the Chairman of the FCA Board, shall serve at the pleasure of the Chairman.

(i) *Qualifications.* Each appointed director must be a citizen of the United States and experienced in financial services and credit. No person who is a borrower from, a shareholder in, or a director, officer, employee, or agent of any System institution may serve as an appointed director. No person shall be eligible for appointment if within 5 years preceding the commencement of the term he or she has been a director, salaried officer or employee, or agent of the FCA or a salaried officer or employee of any System institution. No appointed director shall, within 2 years after the date he or she ceases to be a member of the board of the Corporation, be elected, appointed, or designated to serve as an officer, employee or agent of any other System institution or System service organization, or of the FCA.

(ii) *Terms.* Each appointed director shall serve a 2 calendar year term, except that the director first appointed by the Chairman shall serve a term ending December 31, 1986. Appointed directors shall serve until their successors have been duly seated and may serve successive terms. Vacancies to terms shall be filled by appointment.

(2) *Farm Credit System Bank nominations and elections to the board.*

(i) *Nominating committee.* Nominations for election to the board of directors of the Corporation by Farm Credit System banks shall be made by a Nominating Committee ("Committee") of the Corporation comprised of the Chairman or the Vice Chairman of each System bank board of directors. The Committee shall meet prior to each election at an annual or special meeting of the stockholders of the Corporation held to fill a vacancy or expiring term on the board. A meeting of the Committee may be facilitated by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. A majority of the Committee shall constitute a quorum for transacting business of the Committee. The Committee shall keep written minutes of its proceedings which shall be maintained with the corporate records of the Corporation.

(ii) *Nominee qualifications and eligibility.* The Committee shall select candidates for election as directors to respective terms in the following three categories:

(A) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net contributor to the Corporation during the year of the election;

(B) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net recipient from the Corporation during the year of the election; and

(C) One member without regard to the restrictions for each position in paragraph (b)(2)(ii) (A) and (B) of this section.

In selecting nominees, the Committee shall endeavor to select candidates in a manner that assures equitable and adequate representation on the board of directors of the net contributors and net recipients as defined in 12 CFR 611.1142(1), all types of System institutions, System borrowers, and the public interest. No person may be elected to serve on the board of directors of the Corporation who serves, or has served within 3 years prior to the election, on the board of directors or as an officer or employee of the Farm Credit Corporation of America or any subsidiary thereof.

(iii) *FCA determination of net contributors and recipients.* Prior to each meeting of the stockholders of the Corporation held to fill a vacancy on the board of directors, the FCA Board shall provide the Committee with a list of System institutions and Farm Credit districts that are projected to be net contributors of capital to, or net recipients of capital from, the Corporation for the calendar year as defined in 12 CFR 611.1142(1). If a System institution's status as a net contributor or net recipient changes before the FCA Board makes its next annual projection, then its status as changed shall determine the eligibility of persons from that institution for nominations for any elected director vacancies occurring after the change.

(iv) *Elections generally.* The initial election of directors shall be conducted in accordance with the procedures set forth in paragraph (b)(3) of this section. Subsequent elections shall be conducted in the manner as provided in the bylaws of the Corporation.

(v) *Terms.* Each elected director shall serve for a term of 2 calendar years except that the initial term of the director elected to the position in paragraph (b)(2)(ii)(C) of this section shall end on December 31, 1986. Elected directors, shall serve until their successors are duly seated, may be removed for cause as provided in the Articles of Incorporation of the Corporation, and may serve for successive terms. Vacancies shall be filled by election in accordance with this section.

(vi) *Elected director vacancies.* The office of any elected director shall become vacant in the event such director:

(A) Files a petition for relief in voluntary bankruptcy, or otherwise voluntarily institutes suit under the applicable Federal bankruptcy, or Federal or State insolvency, receivership, or conservatorship laws; or

(B) Is adjudged a debtor in an involuntary Federal bankruptcy proceeding or placed in receivership or conservatorship in a Federal or State proceeding; or

(C) Seeks reorganization under the Federal bankruptcy laws for personal business interests or that of a corporation in which the director owns the plurality interest; or

(D) Is a party to a foreclosure proceeding (judicial, deed in lieu of foreclosure, or otherwise) brought by any System institution, service organization or other financial institution and involving property in which the director has an interest; or

(E) Is convicted of any felony while holding office; or

(F) Has a loan in his or her name, or in the name of a corporation in which the director owns a plurality interest, or in the name of a partnership in which he or she is a general or limited partner, from a System institution or other financial institution, which loan is placed by the institution in nonaccrual status; or

(G) Is declared legally incompetent or becomes physically or mentally incapacitated as is determined by the remaining directors of the board; or

(H) Resigns or is removed for cause by the remaining directors of the board.

All vacancies shall be filled under the general nomination and election procedures set forth in this paragraph.

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(3) *Initial nomination and election.* The initial nomination and election of the board of directors of the Corporation shall be in accordance with the procedures set forth in paragraph (b)(2) of this section, except as provided herein.

(i) *Initial meeting of the Nominating Committee.* The Committee shall hold its initial meeting on call of the FCA election officer at a mutually convenient time and place not later then 15 days after the issuance of the charter of the Corporation. At the initial meeting, the Committee shall select at least two candidates from each of the categories specified in paragraph (b)(2)(ii) of this section, and shall ascertain that all candidates are willing to stand for election and serve as directors of the Corporation.

(ii) *Initial election.* At the conclusion of its initial meeting, the Committee shall present a slate of candidates to the FCA election officer, who shall confirm that each candidate meets the qualifications for the vacancy for which he or she is nominated. The FCA election officer shall thereafter send ballots and election instructions to the Chairman of each System bank board. Each System bank shall be entitled to cast one vote for each vacancy to be filled through the election. The Chairman of the respective boards shall forward certified voting results to the FCA election officer, who, upon determining the validity of the results, shall certify the election results, inform the directors of their election and arrange a meeting of the initial board as soon as practicable.

(4) *Expanded board membership.* In the event that the Secretary of the Treasury purchases any obligation of the Corporation, including stock, the board of directors of the Corporation shall be expanded to include two members as follows:

(i) One member shall be appointed by the Secretary of Agriculture; and

(ii) One member shall be selected by the Corporation board of directors, including the appointee of the Secretary of Agriculture, which member shall not be a stockholder in, or a borrower from, or an employee or agent of any System institution, nor a Government employee; and

(iii) These directors shall serve as long as any obligations of the Corporation purchased by the Secretary of the Treasury remain outstanding. The director appointed under paragraph (b)(4)(i) of this section shall serve at the pleasure of the Secretary of Agriculture, and the director selected under paragraph (b)(4)(ii) of this section shall be removable for cause by the unanimous vote of the remaining directors.

(5) *Compensation of directors.* Elected directors of the Corporation who also serve as officers or employees of any System institution or System service organization shall receive no additional compensation for service on the board of the Corporation, but shall be entitled to receive reimbursement from the Corporation for reasonable travel and other expenses incurred in connection therewith. A full-time employee or officer of the United States appointed as a director of the Corporation by the Secretary of Agriculture shall receive no additional compensation for service on the board of the Corporation and shall obtain reimbursement for travel and related expenses from his or her employer. All other directors of the Corporation shall be compensated for service on the board at the rate of $25,000 per annum (less any compensation received by the person for serving on the board of directors of any System institution or System service organization), and shall be entitled to reimbursement by the Corporation for reasonable travel and related expenses incurred in connection therewith.

(c) *Chief Executive Officer.* The chief executive officer or any acting chief executive officer of the Corporation shall be selected by the board, and approved by the FCA under procedures as it shall establish. The chief executive officer shall have such duties and responsibilities as set forth in the bylaws of the Corporation.

§ 611.1141 Corporation capitalization; classes of stock; dividends; transfers, exchanges, and retirements.

(a) *Capitalization.* The FCA shall determine the amount of the initial capitalization of the Corporation pursuant to section 4.28K of the Act and prescribe assessments therefor in accordance with 12 CFR 611.1142. Thereafter, the Corporation shall maintain minimum capital levels established under section 4.3 of the Act and 12 CFR Part 615. If the Corporation fails to meet the capital level, the FCA may require System institutions to contribute additional capital to the Corporation in accordance with section 4.28G of the Act.

(b) *Classes of Stock.* The Corporation may issue the following classes of stock in such amounts, at such times, and in such manner as will enable the Corporation to carry but its purposes as provided in section 4.28B of the Act. The Corporation shall not be required to issue any class of stock other than Class A voting stock to all System banks, Class D nonvoting preferred stock to holders of stock in the predecessor Farm Credit System Capital Corporation ("Predecessor Corporation") to which the Corporation succeeded pursuant to section 4.28H of the Act, and Class E stock to the Secretary of the Treasury or the FCA as provided herein.

(1) *Class A Voting Common Stock:* One share of Class A stock shall be issued to each System bank upon the chartering of the Corporation regardless of whether the bank is a net contributor to, or net recipient from, the Corporation. No other shares of Class A stock shall be issued. No dividend shall be declared or paid on Class A stock.

(2) *Class B Nonvoting Common Stock:* Class B nonvoting common stock may only be issued to, and held by, System banks and associations contributing to the capital of the Corporation pursuant to sections 4.1 and 4.28G of the Act in such amounts as necessary to provide adequate capital to the Corporation. Stock may be held by the supervising bank in the name of, or on behalf of, any association purchasing stock. Class B stock may bear dividends as provided in the Corporation bylaws.

(3) *Class C Nonvoting Preferred Stock:* Class C nonvoting preferred stock may only be issued to, and held by, System institutions contributing to the capital of the Corporation in such amounts as necessary for the Corporation to purchase loans and other assets from any System institution as authorized under 4.28G of the Act. Class C stock may bear dividends as provided in the Corporation bylaws.

(4) *Class D Nonvoting Preferred Stock:* Class D nonvoting preferred stock shall only be issued to, and held by, stockholders of the Predecessor Corporation in exchange, in equal value for all of the stock held by the holders in the Predecessor Corporation in accordance with section 4.28H of the Act, this Subpart J, and the charter of the Corporation. Class D stock may bear dividends as provided in the Corporation bylaws.

(5) *Class E Nonvoting Preferred Stock:* Class E nonvoting preferred stock may only be issued to, and held by, the Secretary of the Treasury or the FCA under such terms and conditions, including retirement thereof, as may be determined by the Secretary or the FCA.

(6) Any additional class of stock for other special purposes, may be issued having such preferences, rights, and qualifications as established by the Corporation board, set forth in the bylaws, and approved by the FCA.

(7) Classes of stock may be issued in one or more series within class, having such par value, voting or nonvoting

powers, designations, preferences, rights, qualifications, limitations, or restrictions as shall be expressly stated in these regulations, the Articles of Incorporation, or the bylaws. All stock shall be issued in book-entry form unless otherwise provided by the board of directors of the Corporation. The holders of nonvoting common and preferred stock may receive dividends at such rates, on such conditions, and at such times as stated in the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act and 12 CFR Part 615.

(c) *Transfer, exchanges and retirements.*

(1) Class A stock may not be transferred, exchanged, pledged, or hypothecated.

(2) All other classes of stock of the Corporation shall be transferred, exchanged, pledged, or hypothecated as provided in the bylaws, except that stock may only be transferred to eligible holders of such stock.

(3) Stock of the Corporation may be retired consistent with applicable provisions of the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act, and FCA regulations and directives. Class E stock shall be retired as determined by the Secretary of the Treasury or the FCA, as the case may be.

(i) Class A stock may be retired only upon the liquidation of the Corporation, at book value and after all other classes of Corporation stock have been retired.

(ii) Class B stock may be retired at book value.

(iii) Class C stock may be retired at book value as assets that were purchased from the proceeds of the stock issuance are sold. Class C stock shall be retired pro rata of all holders at book value, not to exceed par, except upon the liquidation of the Corporation.

(iv) Class D stock may be retired at book value from the income and proceeds of the sale of the assets of the Predecessor Corporation.

§ 611.1142 General corporate powers.

The Corporation shall have the corporate powers set forth in the Act and the Articles of Incorporation.

(a) *Bylaws.* The Corporation shall operate under the direction of the board of directors pursuant to bylaws adopted by the board and approved by the Farm Credit Administration.

(b) *Litigation.* As is provided in 28 U.S.C. 2680(n) with respect to Federal land banks, Federal intermediate credit banks, and banks for cooperatives; the United States is not liable for any activities of the Corporation; and the Corporation is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. The Corporation shall complain and defend itself in courts of competent jurisdiction in the same manner as any other System institution. The Corporation shall obtain necessary insurance as permitted in § 4.28G(a)(10) of the Act to protect against such claims.

(c) *Operations.* The Corporation shall be operated on a sound business basis, and its directors, officers, employees, and agents shall be subject to the standards of conduct provisions set forth in 12 CFR Part 612, Subpart B. The board of directors shall have its meetings and conduct business at the principal offices of the Corporation unless telephonic or other communications equipment is employed. In addition, in order to ensure that transactions between the Corporation and System institutions are conducted impartially and on a sound business basis, no director, officer, employee, or agent of any System institution or System service organization may be affiliated with or employed by the Corporation in a joint capacity, except as an elected director of the Corporation where otherwise eligible. Any joint officer or employee of any System institution and the Predecessor Corporation must resign from the System institution to remain an employee of the Corporation.

(d) *Contracts.* The Corporation may contract with System institutions and System service organizations for financial, administrative, or operational services, provided that no System institution or System service organization, or their agents shall be engaged to provide services to the Corporation related to assessment or financial assistance determinations, legal services, funds management, or any policy or management functions, and no System institution or service organization shall be engaged to provide loan or acquired property valuation services. The Corporation may contract with any party to service performing or nonaccrual loans or manage acquired property purchased from any System institution in accordance with policies and procedures established by the Corporation. If the Corporation cannot engage any association or other party to service such loans on terms acceptable to the Corporation, the Corporation may service the loans directly.

(e) *Commercial borrowing.* The Corporation may borrow from any commercial bank on its own responsibility on such terms and conditions as it may determine without any additional FCA approval where it can obtain such funds at terms, conditions, and rates not otherwise available through loans from other System institutions or through the issuance with System banks of Systemwide obligations under § 4.2(d) of the Act.

(f) *Systemwide obligations.* The Corporation shall not join with the other System banks as a primary obligor, within the meaning of § 4.4(a) of the Act, on an issue of Systemwide obligations unless the Corporation meets the collateral requirements established for System banks under § 4.3(c) of the Act and 12 CFR 615.5050, or one or more System banks provide the Corporation with collateral in excess of its own collateral obligations to support the Corporation's primary liability on the Systemwide issuance. On an issuance of Systemwide obligations in which the Corporation joins but is not primarily liable, the Corporation shall be jointly and severally liable on such obligations to the same extent as each System bank under § 4.4(a) of the Act.

(g) *Debt policy.* The Corporation may issue consolidated or Systemwide obligations or borrow funds from other System institutions or commercial banks only in accordance with a debt management policy adopted by the Corporation's board of directors and approved by the FCA.

(h) [Reserved].

(i) *Financial assistance.* As soon as practicable after the appointment of a chief executive officer, the Corporation shall establish procedures consistent with this section by which System institutions may apply to the Corporation for financial assistance, and shall make those procedures available to all System institutions. The Corporation may purchase nonaccrual loans and acquired property from System institutions in accordance with paragraph (j) of this section. The Corporation may also provide direct financial assistance to System institutions through stock or other equity purchases, loans, participations, cash contributions, the assumption of some portion of receiving institution's outstanding debt obligations, or any combination of the foregoing. Any request for direct financial assistance shall be subject to the review and direction of the FCA. The Corporation shall administer direct financial assistance to System institutions according to the standards and criteria set forth below:

(1) *Eligibility and application.* A System institution whose stock is impaired or will be impaired within 90 days based on information acceptable to

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the Corporation may apply to the Corporation for financial assistance by submitting an application containing the following:

(i) A statement of the efforts taken by the institution and its Farm Credit district to improve its financial position; and

(ii) A statement of the efforts taken by the institution to limit financial deterioration through merger, consolidation, or other form of corporate reorganization; and

(iii) A statement of the current activity and ability of other System institutions to service the borrowers in the requesting institution's territory; and

(iv) A business plan for correcting the institution's operational problems, including changes in management and the board of directors, credit administration, loan approval practices, and loan collection activities, and any requirements or conditions directed by the FCA pursuant to § 4.3 of the Act; and

(v) The institution's most recent quarterly financial statements along with comparative statements for the previous year; and

(vi) The institution's most recent FCA report of examination, or bank credit review adopted by the FCA; and

(vii) The institution's most recent report of financial condition certified by independent public accountants or in such form approved by the Corporation; and

(viii) The financial and interest rate projections of the institution as specified by the Corporation; and

(ix) A proposed budget of the institution for the current and next fiscal year; and

(x) Such other financial or other information as the Corporation may request.

(2) The Corporation shall analyze each application for financial assistance taking into consideration the financial needs of the institution, the financial and economic condition of the Farm Credit district in which the institution operates, the financial condition of the System generally, and whether the institution meets the following criteria:

(i) The financial condition of the institution has deteriorated to insolvency as provided in section 4.12(b)(1) of the Act; and

(ii) The institution can no longer provide a continuing source of agricultural credit in its territory and no other System institution operating under the same title of the Act is able to provide adequate services in the territory served by the institution; and

(iii) The FCA has not charged that the institution is engaging in any unsafe and unsound practice that management has not agreed to correct by means acceptable to the FCA; and

(iv) The institution has agreed with the Corporation to a business plan, including any requirement by the FCA pursuant to section 4.3 of the Act, designated to correct stock impairment of the institution.

(3) A determination of the type and amount of direct financial assistance for any System institution meeting the eligibility requirements of paragraph (i)(1) of this section shall be in the discretion of the Corporation taking into consideration the financial condition of the requesting institution, the credit needs of creditworthy borrowers served by the institution, the minimum capital requirements of the institution established under section 4.3 of the Act and 12 CFR Part 615, and the financial and economic condition of the individual Farm Credit district involved and the entire System generally. The Corporation shall structure the financial assistance package in the most cost effective manner giving the recipient institution the greatest benefit from the assistance and ensuring that the recipient institution will use the resources optimally. In no event shall the amount of direct financial assistance to any System institution exceed that necessary to correct any impairment of voting stock or participation certificates of the institution held by its borrowers, unless approved by the FCA. No institution shall receive both direct financial assistance from the Corporation and loss sharing assistance to which it may be entitled under either district or Systemwide loss sharing or capital preservation agreements. The Corporation shall reject any request for financial assistance if it concludes that the Farm Credit district involved has adequate resources to correct any stock impairment of the requesting institution.

(4) The Corporation shall require in each instance, as a condition precedent to its extension of direct financial assistance, that the eligible institution make such modifications in its operations as are or may be necessary to enable the institution to make a sound financial recovery. Such modifications shall include, but not limited to, changes in the institution's directors, officers, employees and agents; credit approval and administration policies, procedures, and practices; and such other actions as a reasonable and prudent creditor would require in similar circumstances. The Corporation may also require the receiving institution to sell to the Corporation loans and related assets described in paragraph (j) of this section. All conditions for assistance shall be set forth in the financial assistance agreement between the Corporation and the receiving institution, and must be consistent with any business plan approved by the FCA under section 4.3 of the Act and any consent agreement or order between the System institution and the FCA. The Corporation shall keep an accounting of all direct financial assistance received by any System institution for repayment purposes. The Corporation shall monitor compliance with such condition precedents and may subsequently impose any additional operational requirements of the institution as it may deem necessary to effectively apply the financial assistance. The Corporation may terminate or withdraw any financial assistance where the receiving institution fails to comply with conditions or requirements so imposed.

(5) Prior to providing direct financial assistance to any institution, the Corporation may redeem any nonvoting stock, participation certificates, or other equities of the Corporation held by the institution receiving financial assistance.

(j) *Purchase of assets.* At the request of any System institution, the Corporation may purchase loans or interests in loans that the institution has placed in nonaccrual status, or any acquired property held by the institution. The Corporation may also purchase from any production credit association in liquidation any performing loan that has not been purchased in a final sale by another party. In both cases, assets shall be purchased at fair market value as the term is defined under paragraph (l) of this section.

(k) *Reporting requirements.* The Corporation shall meet the financial disclosure, accounting, and financial reporting requirements of 12 CFR Parts 620 and 621 for System institutions.

(l) *Definitions.* For purposes of this Subpart—

(1) A "net contributing institution" or "net contributing district" means any System institution or district projected by the FCA Board, or as provided in section 402 of the Farm Credit Amendments Act of 1985, for the calendar year to be required to provide the Corporation with more stock, loans, cash contributions, or other form of financing through assessments by the Corporation than it receives in direct financial assistance from the Corporation. A net recipient institution or district means any System institution or district projected by the FCA Board for the calendar year to receive more direct financial assistance from the Corporation than it contributes to the Corporation through assessments of stock, loans, cash contributions or other form of financing.

(2) "Performing loan" means a loan so defined in 12 CFR 621.2(a)(20).

(3) "Nonaccural loan" means a loan defined as a nonperforming loan in 12 CFR 621.2(a)(17).

(4) "Fair market value" shall have the same meaning as the term is defined under generally accepted accounting principles, where value is determined on the basis of facts that would be relevant to a willing purchaser and a willing seller, both of whom are knowledgeable that the assets conveyed will be converted to cash over some period of time, during which the holder will incur the usual expenses associated with administration, maintenance, disposition, and sale on liquidation.

(5) "System institution" means any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, or bank for cooperatives, including the Central Bank for Cooperatives, but excludes System service organizations.

(6) "System bank" means any Federal land bank, Federal intermediate credit bank, or bank for cooperatives, including the Central Bank for Cooperatives.

(7) "System association" means any Federal land bank association of production credit association.

(8) "System service organization" means any Farm Credit System unincorporated organization or incorporated organization under Title IV, Part D, sections 4.25 to 4.27 of the Act.

Subpart K [Redesignated as Subpart M and Reserved]

4. Subpart K is amended by redesignating it as Subpart M and Subpart K is reserved.

[FR Doc. 86-5533 Filed 3-11-86; 10:09 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8068]

Income Taxes; Stock Acquisitions; Temporary Regulations Under Section 338(h)(10) of the Internal Revenue Code of 1954 and Extension of Time To Make Certain Elections

Correction

In FR Doc. 86-60 beginning on page 741 in the issue of Wednesday, January 8, 1986, make the following corrections:

1. On page 741, in the second column, in the eighth line from the bottom, insert "1.338(h)(10)–1T and 1.1502–75T and by amending §" after "§§".

2. In § 1.338(h)(10)–1T:

a. On page 743, in the third column, in the third line of paragraph (d)(3), "§ 1.388–" should read "1.338–".

b. On page 745, in the first column, in the fourth line of paragraph (e)(5), insert "(b)" before "(6)".

c. On page 747, in the middle column, in the third line of paragraph (iv)(B) of example 5 of paragraph (g), "$ 9,600" should read "$ 19,600".

5. On the same page, in the third column, in the second line of pargraph (j)(2)(iii), "in" should read "to".

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 807

Issuing Air Force Publications and Forms Outside the Air Force

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 807, Issuing Air Force Publications and Forms Outside the Air Force. The source document, Air Force Regulation (AFR) 7–1, has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, AF/DASJR(S), Pentagon, Washington, D.C. 20330-5025, telephone: (202) 697-1861.

Authority: Sec. 8012, 70A Stat. 488, 10 U.S.C. 8012.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 807

Government contracts, Government procurement.

PART 807—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 807.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 86-5440 Filed 3-12-86; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

Preservation and Protection of and Access to Historical Materials of the Nixon Administration; Repromulgation of Public Access Regulations

Correction

In FR Doc. 86-4358, beginning on page 7228 in the issue of Friday, February 28, 1986, make the following corrections:

1. On page 7233, in the first column, in the third line of § 1275.44(b), "§ 127.42(b)" should read "§ 1275.42(b)";

2. On the same page, the last line of § 1275.44(b) appearing in the first column should read "public access to the pertinent materials. If that decision is adverse to the petitioner, the"; and

3. On page 7235, in the first column, the heading for § 1275.54 should read "Periodic review of restrictions".

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VETERANS ADMINISTRATION

38 CFR Part 17

Medical Services and Breaking Appointments

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration is amending its medical regulations, (38 CFR Part 17) to more clearly reflect the specific action that the Department of Medicine and Surgery will take when a patient breaks a medical appointment, and to more accurately define the eligibility requirements for claims filed for VA payment of unauthorized medical services. The costs allowed for unauthorized repairs to certain prosthetic items are increased also. The

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amendments will more clearly define the prerequisite for the benefits.

EFFECTIVE DATE: This regulation is effective April 28, 1986.

FOR FURTHER INFORMATION CONTACT:
Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, 810 Vermont Avenue, NW., Washington, DC 20420, 202-389-2143.

SUPPLEMENTARY INFORMATION: On pages 29990, 29991 and 29992 of the Federal Register of July 23, 1985, the proposed regulation was published for 38 CFR Part 17. Interested persons were given *30* days to submit comments, suggestions or recommendations. *One* comment was received. It expressed concern that veterans who miss one scheduled appointment and who break a second appointment will be classified as a permanent refusal and denied further treatment, of any kind, by the VA. That is not the intent of the regulation. No veteran will be denied treatment for breaking an appointment if circumstances were such that notice could not be given and the veteran notifies the VA facility within 24 hours, of the circumstances that prevented them from keeping the appointment. It is the intent of this regulation to provide guidelines for VA medical facilities to manage outpatient workloads. Service-connected as well as nonservice-connected veterans who consistently fail to show up for scheduled appointments, with no excuse or followup explanation, deprive other veterans of needed medical care by reserving available clinic time. In such cases, the treating physician will review the individual veteran treatment file and sign a statement to this effect in the record. The veteran will be advised of the decision and informed "no further treatment will be furnished, except for emergency conditions, until the veteran has agreed to cooperate by keeping appointments."

In addition, this amendment to VA regulations more accurately defines the eligibility requirements for claims filed for VA payment of unauthorized medical services, and eliminates any confusion relating to the costs allowed for unauthorized repairs to certain prosthetic items.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291 on Federal Regulation. It will not have an annual effect of $100 million or more on the economy, will not cause a major increase in costs or prices, and will not have any significant adverse economic effects.

The Administrator certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603–604. The reason for this certification is that this change will regulate only the eligibility of individuals to these benefits.

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.011, and 64.013.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 26, 1986.

Everett Alvarez, Jr.,
Acting Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. Section 17.61 and the title of the section are revised to read as follows:

Breaking Appointments

§ 17.61 Refusal of treatment by unnecessarily breaking appointments.

A patient under medical treatment who breaks an appointment without a reasonable excuse will be informed that breaking an additional appointment will be deemed to be a refusal to accept VA treatment. If such a patient fails to keep a second appointment, without at least 24 hours notice, such action will be deemed as a refusal to accept VA treatment. Thereafter, no further treatment will be furnished until a new application is filed, and the veteran has agreed to cooperate by keeping appointments. Treatment will not be discontinued until the treating physician has reviewed the treatment files, concurred in the action and signed a statement to this effect in the record. Consideration will be given to the veteran's ability to make a rational decision concerning the need for medical care and/or examination. The veteran will be advised of the final decision. Nothing in this section will be construed to prevent treatment for an emergent condition that may arise during or subsequent to this action. Where an appointment is broken without notice and satisfactory reasons are advanced for breaking the appointment and circumstances were such that notice could not be given, the patient will not be deemed to have refused treatment. (38 U.S.C. 4115)

2. In § 17.80, paragraphs (a) and (c) are revised to read as follows:

§ 17.80 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

* * * * *

(a) *For veterans with service connected disabilities.* Care or services not previously authorized were rendered to a veteran in need of such care or services: (1) For an adjudicated service-connected disability; (2) for nonservice-connected disabilities associated with and held to be aggravating an adjudicated service-connected disability; (3) for *any disability* of a veteran who has a total disability permanent in nature resulting from a service-connected disability (does not apply outside of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico); (4) for any illness, injury or dental condition in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. Ch. 31 and who is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 624, 628); and

* * * * *

(c) *When Federal facilities are unavailable.* VA or other Federal facilities were not feasibly available, and an attempt to use them beforehand or obtain prior VA authorization for the services required would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused. (38 U.S.C. 624, 628, 4115)

3. In § 17.81, the introductory paragraph and paragraph (b) are revised to read as follows:

§ 17.81 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of an adjudicated service-connected disability (or, in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. Ch. 31 and who is determined to be in need of the repairs for any of the reasons enumerated in § 17.48(g)) may be paid or reimbursed on the basis of a timely filed claim, if (38 U.S.C. 628)

* * * * *

(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed $125. (38 U.S.C. 628, 4115)

4. In § 17.48, paragraphs (a) and (d) are revised to read as follows:

§ 17.84 Where to file claims.

* * * * *

(a) *For services rendered in the U.S.* Claims for the expenses of care or services rendered in the United States, including the Territories or possessions of the United States, should be filed with the Chief, Outpatient Service or Clinic Director of the VA facility designated as a clinic or jurisdiction which serves the region in which the care or services were rendered, and (38 U.S.C. 4115)

* * * * *

(d) *For services rendered in other foreign countries.* Claims for the expenses of care or services rendered in other foreign countries may be filed with the American Embassy or consulate in the country where services were provided. Claims will be developed and forwarded to the VA Medical Center, Washington, D.C., for final action. Claims may be submitted directly to the VA Medical Center, Washington, D.C., if the veteran has returned to the United States before having had a chance to contact the appropriate Embassy or Consulate. (38 U.S.C. 4115)

* * * * *

5. In § 17.85, paragraph (c) is removed and paragraph (b) is revised to read as follows:

§ 17.85 Timely filing.

* * * * *

(b) In the case of case or services rendered prior to a VA adjudication allowing service-connection:

(1) The claim must be filed within 2 years of the date the veteran was notified by the VA of the allowance of the award of service-connection.

(2) VA payment may be made for care related to the service-connected disability received only within a 2-year period prior to the date the veteran filed the original or reopened claim which resulted in the award of service-connection but never prior to the effective date of the award of service-connection within that 2-year period.

(3) VA payment will never be made for any care received beyond this 2-year period whether service connected or not.

(38 U.S.C. 4115)

[FR Doc. 86-5440 Filed 3-12-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-7-FRL-2962-3]

Standards for Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Source (NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61. The action which involved EPA and the State of Iowa added five (5) NSPS and two (2) NESHAPS categories to the delegations of authority. Except for grain elevators, the NSPS delegation now includes all categories for which federal standards have been promulgated by the agency through May 1, 1985.

EFFECTIVE DATE: March 13, 1986.

ADDRESSES: All requests, reports, applications, submittals and such other communications which are required to be submitted under 40 CFR Part 60 or Part 61 (including the notifications required to be submitted under Subpart A of the regulations) for affected facilities or activities in Iowa should be sent to the Iowa Department of Water, Air and Waste Management (IDWAWM), Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all Subpart A related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT:
Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236-2896 or FTS: 757-2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act, respectively, allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and 40 CFR Part 61. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards from the agency to the state government.

On August 20, 1984, the agency and the State of Iowa entered into a delegation of authority agreement whereby Iowa will automatically receive authority to implement and enforce federal NSPS and NESHAPS standards upon the adoption of the standards by the state government (see 50 FR 933).

Prior to August 20, 1984, Iowa was delegated authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. These previous delegation and extension of authority actions were not affected by the action described below.

Iowa has revised its rules to reflect an adoption, by reference, of the standards for five (5) additional NSPS and two (2) additional NESHAPS regulations promulgated by the agency. The effective date of the adoption action was delayed until January 22, 1986. The IDWAWM informed the agency of the adoption action in a letter dated December 20, 1985.

The agency subsequently acknowledged the adoption and the corresponding delegation of authority actions in a letter to IDWAWM on January 29, 1986. The delegation occurred under the terms of the above mentioned August 20, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of January 22, 1986, the State of Iowa has EPA's authorization to implement and enforce the federally-established standards for the following additional categories:

NSPS:
- Subpart AAa—Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;
- Subpart FFF—Flexibile Vinyl and Urethane Coating and Printing;
- Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries;
- Subpart JJJ—Petroleum Dry Cleaners; and,
- Subpart PPP—Wool Fiberglass Insulation Manufacturing Plants.

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NESHAPS:
Subpart J—Equipment Leaks (Fugitive Emission Sources) of Benzene; and.
Subpart V—Equipment Leaks (Fugitive Emission Sources).

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAPS regulation for facilities or activities in Iowa affected by the amended delegations of authority should be sent to the Iowa Department of Water, Air and Waste Management at the above address rather than to the EPA Region VII office, *except* as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or Part 61, must *also* be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: February 28, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 86-5490 Filed 3-12-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 62

[A-4 FRL 2990-3]

Air Programs; South Carolina; Plan for Total Reduced Sulfur Emissions Control; Change in Construction Permit for Stone Container Corp.

AGENCY: Environmental Protection Agency.

ACTION: Change in construction permit.

SUMMARY: On August 16, 1985 (50 FR 33036), EPA approved a source-specific revision to South Carolina's 111(d) plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan revision included an extended compliance schedule for the evaporator system at Stone Container Corporation's Florence mill. Final compliance of the evaporators is required 49 weeks after publication of EPA's approval in the **Federal Register** (on or before July 25, 1986). Since EPA's approval of the plan revision, the company has changed its construction plans and will now be incinerating TRS emissions from the evaporators in the No. 1 lime kiln instead of the No. 3 power boiler.

The 49-week schedule will not be affected, however, and final compliance will still be achieved by July 25, 1986. No EPA action is necessary; this notice is for informational purposes only.

DATES: The modified construction permit for Stone Container Corporation was issued by the State of South Carolina on January 14, 1986.

ADDRESSES: Copies of the initial 111(d) plan revision and modified construction permit are available for public inspection upon request at the following locations:

EPA, Region IV, Air Programs Branch, Air, Pesticides, and Toxics Management Division, 345 Courtland Street NE, Atlanta, Georgia 30365
Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch, at the Atlanta address above and telephone (404) 347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On August 16, 1985, EPA approved a source-specific revision to the Total Reduced Sulfur 111(d) plan for the State of South Carolina. That revision included an extended compliance schedule for the evaporator hot-well vents at Stone Container Corporation's kraft pulp mill in Florence, South Carolina. The company was allowed 49 weeks to construct a system to route total reduced sulfur (TRS) emissions from the evaporators to an existing power boiler (No. 3) for incineration. The completion of this system would allow the evaporators to comply with South Carolina regulation No. 62.5, Standard No. 4, Section VIII and the applicable TRS emission limit of 5 ppm. Construction is to be completed 49 weeks after final EPA approval of South Carolina's 111(d) plan revision. Thus, final compliance is required on or before July 25, 1986, (49 weeks from August 16, 1985). The compliance schedule and TRS emission limit for the evaporators at Stone Container Corporation were contained in a construction permit (No. 1040-0003-CA) which was issued by South Carolina on July 19, 1985. The permit gave Stone Container permission to construct a system to collect the TRS gases from the evaporators and burn them in the No. 3 power boiler.

In November 1985, Stone Container Corporation requested a modification of their construction permit due to an unforeseeable change in construction plans. The company requested that South Carolina allow them to destruct TRS gases from the evaporators in the No. 1 lime kiln instead of the No. 3 power boiler. Because Stone Container plans to construct a new large power boiler, the older No. 3 power boiler will be shut down most of the time. Since it would be impossible to consistently incinerate TRS gases in the No. 3 power boiler, the company determined that it would be more economical to route the gases to the lime kiln.

Stone Container has certified to EPA, as well as to the State, that the 49-week compliance schedule will not be delayed, even with the change in system design. Construction changes have already begun and final compliance of the evaporators will be achieved by July 25, 1986. The company has also certified that the lime kiln will continue to meet the applicable TRS emission limit of 20 ppm, even with the addition of TRS gases from the evaporators.

On January 14, 1986, the State of South Carolina issued a modified construction permit (No. 1040-0003-CA) to Stone Container Corporation. This permit allowed TRS emissions from the evaporators to be destructed in the No. 1 lime kiln instead of the No. 3 power boiler.

This change in construction plans does not require additional EPA action. The plan revision which was published on August 16, 1985, (50 FR 33037) merely approved an extended compliance schedule for the evaporators. Since the 49-week schedule will not change, no additional action is necessary. This notice is for informational purposes only.

(Sec. 111(d) of the Clean Air Act (42 U.S.C. 7401-7642))

Dated: February 24, 1986.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 86-5010 Filed 3-12-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-43

[FPMR Amendment H-158]

Property Management; Revision of Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation illustrates the latest edition of Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property, used by Federal agencies to report to GSA those excess and surplus utilization and disposal transactions for which GSA has no accurate means of gathering necessary statistics.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Utilization Division (703-557-0807).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-43

Government property management, Reporting requirements, Surplus government property.

Accordingly, 41 CFR 101-43 is amended as follows:

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

1. The authority citation for Part 101-43 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101-43.1—General Provisions

2. Section 101-43.102 is revised to read as follows:

§ 101-43.102 Reassignment of property within executive agencies.

Each executive agency shall, to the maximum extent feasible, reassign property within activities of the agency, including its cost reimbursement contractors, as described in Subpart 16.3 of title 48, chapter 1, when such property is determined to be no longer required for the purpose of the appropriation from which it was purchased or the use to which it has been applied, and shall immediately discontinue procurement of items for which such property can be substituted or adapted.

Subpart 101-43.49—Illustration of Forms

3. Section 101-43.4901-121 and 101-43.4901-121-1 are revised to read as follows:

§ 101-43.4901-121 Annual Report of Utilization and Disposal of Excess and Surplus Personal Property.

Note.—The form illustrated in this § 101-43.4901-121 is filed as part of the original document and does not appear in the Federal Register.

§ 101-43.4901-121-1 Instructions for preparing Standard Form 121.

Note.—The instructions in this § 101-43.4901-121-1 are filed with the original document and do not appear in the Federal Register.

Dated: January 27, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-5461 Filed 3-12-86; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-136; RM-4918; RM-5019]

FM Broadcast Station in Warren and Niles, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates FM Channel 291A to Niles, Ohio, as that community's first fulltime local service, at the request of Gary R. Zocolo, and denies the request of CKP, Inc. to allocate Channel 291A to Warren, Ohio, as that community's first local FM service.

EFFECTIVE DATE: April 7, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Warren and Niles,[1] Ohio); MM Docket No. 85-136, RM-4918, RM-5019.

Adopted: January 31, 1986.
Released: February 28, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 21631, published May 28, 1985, proposing the allocation of Channel 291A to Warren, Ohio, as that community's first local FM service, at the request of CKP, Inc. ("CKP"). Also before us is the conflicting proposal filed by Gary R. Zocolo ("Zocolo") requesting the allocation of Channel 291A to Niles, Ohio, as that community's first local FM service.[2] CKP and Zocolo each filed comments and reply comments. Additional, Johnny Appleseed Broadcasting Co. ("Appleseed"), licensee of Station WVNO-FM, Mansfield, Ohio, filed reply comments.

2. Warren (population 56,629),[3] seat of Trumbull County (population 241,863), is located approximately 15 miles northwest of Youngstown, Ohio. It currently receives local service from fulltime AM Station WRRO and daytime-only AM Station WOKG, licensed to Geri Taczak, Inc., the principal of CKP. Niles (population 23,088), also in Trumbull County, is located approximately 10 miles northwest of Youngstown, Ohio, and receives local service only from daytime-only AM Station WNIO. Co-channel Class A frequencies must be separated by 105 kilometers (65 miles). Here, however, the two communities are only five miles apart. Our engineering study failed to show that any other channels were available for allocation to either community.

3. CKP urges the allocation of Channel 291A to Warren in order to provide the city with its first local FM service. It claims that Warren is an important city due to its status as both the county seat and as an industrial center. CKP provides demographic data showing the area's economic base, its social and cultural organizations, etc. It states that there are compelling public interest reasons for allocating the channel to Warren in that it "would bring the first minority ownership and first fulltime

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[1] This community has been added to the caption.

[2] Public Notice of the Niles petition was given on June 10, 1985, Report No. 1518.

[3] Population figures are taken from the 1980 U.S. Census.

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local commercial FM station" to the community. It claims that Warren is one of the largest communities in the country without local FM service and that this fact alone clearly demonstrates the need for an FM allocation.

4. CKP opposes the Zocolo counterproposal seeking the allocation at Niles. It states that the counterproposal must be denied based on both procedural and legal grounds. Procedurally, CKP claims that although Zocolo's petition was filed as a counterproposal herein, it was not served on the petitioner or her counsel, as required. As to its legal deficiencies, CKP states that Zocolo failed to provide a showing of need for the allocation, that is, the petition does not show "by description or demographics that Niles needs this FM channel." CKP also claims that the counterproposal violates section 307(b) of the Communications Act of 1934, as amended, since it failed to provide any population data for Niles or any comparative population figures for the two communities. In comparing the needs of the two communities, CKP states that Niles is almost contiguous to Warren, that it is a part of the Warren metropolitan area and that it is served by all the Warren stations. Furthermore, Warren has a population more than twice that of Niles, according to CKP. Therefore, it concludes that section 307(b) mandates the allocation of Channel 291A to Warren.

5. Zocolo contends that Channel 291A could provide Niles as well as associated unincorporated areas with a first fulltime local radio service in addition to a first local FM service. He further asserts that the allotment at Niles would provide in excess of 25,000 persons with a fulltime local service while the use of the channel at Warren would not provide such service to anyone. He rebuts CKP's arguments that his counterproposal is procedurally defective, stating that the petition was filed without any knowledge of the Warren proposal in an effort to improve the radio service to Niles residents. Rather, it was the Commission which reduced his petition to that of a counterproposal. Zocolo argues that Niles has a greater need for the FM channel than does Warren. He states that Niles is a separate community, with its own schools, government and public services. Further, he contends that Niles is also a center of commerce, industry, retailing and housing. He also refutes CKP's statement that Niles is already well served by the Warren stations, contending that the residents of Niles "have endured many years of second citizen treatment by radio services licensed to other communities." As an example, he states that in May of 1985, a severe tornado struck Trumbull County and Niles in particular. Due to the extensive physical and property damage caused by the tornado, and the resultant disruption of communications, electricity and other vital services, a state of emergency was declared. According to Zocolo, Niles daytime-only AM Station WNIO, operating as a local Emergency Broadcast Station, broadcast emergency information to the residents by operating throughout the nighttime hours pursuant to § 73.1250 of the Commission's Rules. However, he says that during this same period Warren Station WOKG was not on the air due to its lack of emergency back-up power and fulltime Warren Station WRRO continued to broadcast its regular entertainment and news programming.

6. Zocolo also contends that it is likely that Warren's daytime-only AM Station WOKG will be able to expand its service in the near future to include nighttime operations. The United States and Mexico are currently negotiating a new treaty which could permit U.S. stations such as WOKG, which operates on a Mexican clear channel, to operate at night. However, according to Zocolo, WNIO will not have the same opportunity to expand its service since the station's coverage area falls within the protected contour of U.S. Clear Channel Station KXEL, Waterloo, Iowa. Thus, should Channel 291A be allocated to Warren, that community could receive three fulltime local signals while Niles would be precluded from ever receiving its first.

7. In its reply comments, CKP reiterates the arguments concerning Warren's larger population and its status as the county seat. In futherance of its argument that Warren should recieve the allocation, CKP states that this is a "classic case of the [Commission's] 'wide area' doctrine. It cites *Huntington Broadcasting Co.* v. *FCC*, 192 F. 2d 33 (D.C. Cir. 1951), where the court held that no Section 307(b) choice need be made or preference given in cases where the applications are for the same urbanized area and propose "wide area" coverage. It contends that this decision and subsequent case law are appropriate here where both parties propose wide area coverage of Warren and Trumbull County. It also cites numerous other cases in support of its contention that the channel should be allocated to the larger, central city, where each propose to serve the same urbanized area, even though the channel could be licensed to one of the adjacent communities as a first local FM service.

8. Zocolo disagrees with CKP's assertion that the Commission's policy concerning the allocation of "wide area" radio frequencies in metropolitan areas is applicable in this instance. He maintains that Channel 291A is not a "regional" channel, as argued by CKP, but, rather, is "an 80–90 local channel", designed to provide local service to smaller communities. Thus, he maintains that the *Huntington Beach* decision, *supra*, as well as the other cases cited by CKP are inapplicable here. He contends that the criteria set forth in *Revision of FM Assignment Policies and Procedures* [4] govern the decision herein and that these criteria mandate that the allocation be made to Niles as its first fulltime local service.

9. Appleseed does not oppose either allocation. It notes that the Commission stated that a site restriction would be imposed if the channel were allocated to Warren and that CKP failed to state its intention to comply with the site restriction should the channel be allocated there. Therefore, it requests that the Commission ensure that any application filed for Channel 291A at Warren specify a site which protects its Mansfield, Ohio, Station WVNO–FM operation.

Discussion

10. Before a decision can be made as to which community should receive the allocation, the acceptability of Zocolo's counterproposal needs to be resolved. We agree with CKP that any petition filed as a counterproposal to an outstanding Notice of Proposed Rule Making must be served on the petitioner, as stipulated in § 1.420(d) of the Rules. These counterproposals are filed in response to the Notice and responses thereto can only be filed as reply comments since the counterproposal is filed during the initial comment period. Here, however, Zocolo filed his petition prior to the *Notice's* publication in the Federal Register, thus before the public was informed of CKP's Warren request. The Commission, on its own motion, accepted his petition as a counterproposal herein. Further, the Commission, in announcing the inclusion of Zocolo's petition in this proceedings, sent a copy of the June 10, 1985, Public Notice to CKP's counsel, thus insuring that he was aware of the counterproposal well before both comments and replay comments were due on July 5 and July 22, 1985, respectively. We believe that no party has been prejudiced by our consideration of Zocolo's request in this proceeding, especially in light of the fact that CKP filed both comments and reply comments addressing the Niles allocation indicating that it had actual knowledge of the Niles proposal. Therefore, we find that Zocolo's petition is acceptable.

11. There also appears to be some confusion as to the Commission's allocation policies and priorities. CKP argues that the channel must be allocated to Warren based on the Commission's "wide area coverage" policy embodied in *Huntington Broadcasting Co., supra*. Warren and Niles are part of the Youngstown-Warren Urbanized Area. However, this policy has never been applied in the FM context because channels are allocated on a community basis and are available for application only at the listed community. See § 73.203 of the Commission's Rules. Further, Class A channels, with their lower power, are designed to provide local rather than such regional, wide-area, service. With an effective service area of approximately 15 miles, compared to service radii for Class B and C channels of 40 and 57 miles, respectively, Class A Channel 291 could only provide service to either Warrent or Niles but could not provide service to the entire Youngstown-Warren Urbanized Area nor any regional, county-wide service, as proposed by CKP.

12. *In the Revision of FM Assignment Policies and Procedures, supra*, the Commission adopted the following priorities for allocating new FM channels:

(1) First aural service.
(2) Second fulltime aural service.
(3) First local service.
(4) Other public interest matters.

[Co-equal weight given to priorities (2) and (3).] Zocolo is incorrect in his belief that the Docket 84–231 priorities supplanted those listed above.[5] Therefore, the determination as to which community will receive the channel allotment will be made using these priorities.

13. In examining the conflicting proposals for Warren and Niles, we find that no first or second fulltime aural service would be provided and that each community has some local radio service. Therefore, the determination must rest on a comparison of factors such as the amount of reception services, local services, community population and location. In comparing the two communities, we find that the most important factor of availability of local service provides us with a clear choice. See *Washington and Wilmington, North Carolina*, 47 FR 30992, published July 16, 1982. Warren is served by two radio stations which provide the community with local fulltime service as well as a diversity of viewpoints. Niles, on the other hand, has no nighttime local service nor does it have a competitive outlet which could provide the community with a diversity of views. CKP argues that its larger population and status as a county seat mandate the allocation of Channel 291A to Warren. While we agree that Warren is a substantial and important community in Trumbull County, we do not believe that its larger population or status outweights the benefits accruing from the provision of a first local fulltime service. In this regard, we note that Warren's 1980 population reflects a 12% decrease from 1970 while Niles shows a continuing increase in population for the last two decades, including a 7% gain since 1970. Likewise, the status of Warren as a county seat, while important, does not negate the fact that Niles is a separate and independent community with its own schools, government, public services and industry and therefore its own community needs. We cannot find a comparatively greater need for a third service at Warren over a second service at Niles. We believe this determination is consistent with the mandate of section 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio services among the various communities. We also find that the decision is consistent with the allocation priorities enunciated above the CKP has not provided us with any past Commission determinations which dispute this finding.

14. Channel 291A can be allocated to Niles in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 5.8 kilometers (3.6 miles) north to avoid short-spacings to Station WAMO, Pittsburgh, Pennsylvania, and to Station WWKS, Beaver Falls, Pennsylvania.

15. Canadian concurrence in this allocation has been received as the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

16. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 7, 1986, the FM Table of Allotments, § 73.202(b) of the Rules is amended with respect to the community listed below, to read as follows:

City	Channel No.
Niles, Ohio	291A

17. The window period for filing applications for this channel will open on April 8, 1986, and close on May 8, 1986.

18. It is further ordered, That this proceeding is terminated.

19. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–5487 Filed 3–12–86; 8:45 am]

BILLING CODE 6712-01-M

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[4] *Second Report and Order*, 90 F.C.C. 2d 88 (1982).

[5] Because of the large number of allocations being contemplated in the omnius proceeding, it was found to be necessary to reword the priorities in order to enable the Commission to utilize a computer program to assist in making the selections. The priorities were thus listed in Docket 84–231 as (1) first aural service; (2) second aural service; (3) first local service; (4) first fulltime local service; and (5) minority or public radio service.

GENERAL SERVICES ADMINISTRATION

48 CFR Part 508

[GSAR AC-86-3]

Acquisition Regulations; Obtaining Consideration for Accepting Delinquent Deliveries From Workshops for the Blind or Other Severely Handicapped

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends section 508.705–73 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5 to eliminate the prohibition against requesting a price reduction when negotiating adjustments to delivery schedules for delinquent orders under contracts with workshops for the blind or other severely handicapped. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

DATES:

Effective March 1, 1986.

Expiration date: August 13, 1986, unless canceled earlier.

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Comment date: Comments must be submitted on or before May 12, 1986.

ADDRESS: Comments must be submitted to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405, (202) 535-7791.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to revise the regulation to implement the Committee's revised position on the need for approval of price reductions for delinquent deliveries is an urgent and compelling circumstance that makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations for Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule provides for nonprofit workshops for the blind and other severely handicapped to be dealt with in a manner consistent with all other GSA contractors when negotiating adjustments in delivery schedules. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 508

Government procurement.

1. The authority citation for 48 CFR Part 508 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 508 is amended by the following Acquisition Circular:

February 28, 1986.

General Services Administration Acquisition Regulation; Acquisition Circular AC-86-3

To: All GSA contracting activities.
Subject: Obtaining consideration for accepting delinquent deliveries from workshops for the blind or other severely handicapped.

1. *Purpose.* This Acquisition Circular (AC) temporarily amends section 508.705-73 of the General Services Administration Acquisition Regulations (GSAR), Chapter 5 (APD 2800.12) to eliminate the prohibition against requesting a price reduction when negotiating adjustments to delivery schedules for delinquent orders under contracts with workshops for the blind or other severely handicapped.

2. *Background.* Subpart 508.7 of the GSAR, which deals with acquisitions from the blind and other severely handicapped, currently provides with respect to delinquent delivery orders that contracting officers' efforts to negotiate adjustments to delivery schedules shall not include a request for a price adjustment. This instruction was based upon the fact that only the Committee for Purchase from the Blind and other Severely Handicapped (Committee) had the statutory authority to determine the fair market price of an item or service. In the past, the Committee considered a reduction in contract price to reflect delinquent deliveries to be a price change which would be within its exclusive jurisdiction. The Committee recently reviewed its position on this matter and decided that a reduction in price based upon late delivery did not require Committee approval. Since the fair market price initially established by the Committee under its pricing policies addresses all factors including compliance with delivery and specification requirements, contract price adjustments that result from amending delivery schedules or for approving material waivers or deviations are outside this fair market price determination, and therefore, the Committee is not required to approve these types of contract price changes.

3. *Effective date.* March 1, 1986.

4. *Reference to regulation.* Section 508.705-73 of the General Services Administration Aquisition Regulation (GSAR).

5. *Explanation of change.* Section 508.705-73 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

508.705-73 Delinquent delivery orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. Contracting officers shall follow the procedures outlined in FAR 8.705 and the regulations of the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51-5.2 and 51-5.7).

(1) In cases of excusable delays, contract delivery schedules should be extended without obtaining consideration. However, when the delay is inexcusable, normal procedures should be followed in reviewing and adjusting contract prices if appropriate.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-5454 Filed 3-12-86; 8:45 am]

BILLING CODE 6820-61-M

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48 CFR Parts 546, 552, and 553

[APD 2800.12 CHGE 24]

General Services Administration Acquisition Regulation; Contractor Inspection Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 is amended to add section 546.301 to prescribe a Contractor Inspection Requirements clause for use by contracting officers within the Federal Supply Service of GSA, to add section 552.246-77 to provide the text of the Contractor Inspection Requirements clause which replaced the Quality Approved Manufacturer Agreement (QAMA) clause, to revise section 552.246-75 to amend the Guarantees clause to clarify when the guarantee period begins, and to add section 553.173(c) to provide for the use of the GSA Form 3538, Quality Deficiency Notice. In addition, miscellaneous editorial changes are made in Parts 546 and 552. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides for the Government to rely on the contractor quality control system to assure the quality of supplies provided under the contract rather than relying on Government inspection of the supplies at the source. This rule does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 546, 552, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 546, 552, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The Table of Contents for Part 546 is amended to add a new entry for section 546.301 as set forth below:

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.301 Contractor inspection requirements.

* * * * *

3. Section 546.301 is added to read as follows:

546.301 Contractor inspection requirements.

Contracting officers in the Federal Supply Service shall insert the clause at GSAR 552.246-77, Contractor Inspection Requirements, in solicitations and contracts that provide for source inspection, except multiple award schedule contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division, General Products Commodity Center, unless warranted by particular conditions of a contract.

4. Section 546.302 is amended to revise the first sentence of the section to read as follows:

546.302 Fixed-price supply contracts.

In addition to the clause at FAR 52.246-2, the clauses prescribed in GSAR 546.302 relating to inspection must be included in solicitations and contracts under the circumstances indicated in the respective subsections.

* * * * *

5. Sections 546.302-70, 546.302-71, and 546.302-72 are revised to read as follows:

546.302-70 Inspection facilities.

(a) The contracting officer shall insert the clause at GSAR 552.246-70, Inspection Facilities, in solicitations and contracts for supplies to reserve the right of the Government to evaluate the acceptability and effectiveness of the contractor's inspection system. Under paragraph (b) of the clause, space must be provided in the solicitation for offerors to provide the required information.

(b) Paragraph (c) of the clause in GSAR 552.246-70 concerns the inspection of supplies of foreign origin. The requirements of this paragraph (c) of the clause may be waived: (1) When inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area, (2) when an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (3) when procurements to be made for AID specify the area or source, or (4) when other considerations will ensure more economical and effective inspection consistent with the best interests of the Government. When this portion of the clause is to be waived, a statement to that effect must be made in the schedule. Any such decisions should be fully coordinated with the appropriate quality assurance specialist.

546.302-71 Source inspection.

The contracting officer shall insert the clause at GSAR 552.246-73, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source.

546.302-72 Charges for inspection and testing.

The contracting officer shall insert the clause at GSAR 552.246-74, Charges for Inspection and Testing, in solicitations and contracts that include the clause at GSAR 552.246-73.

6. The Table of Contents for Part 552 is amended to add a new entry for Section 552.246-77 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 552.2—Text of Provisions and Clauses

* * * * *

552.246-77 Contractor Inspection Requirements.

* * * * *

7. Section 552.246-70 is amended to revise the introductory paragraph to read as follows:

552.246-70 Inspection Facilities.

As prescribed in 546.302-70, insert the following clause:

* * * * *

8. Section 552.246-71 is amended to revise the introductory paragraph to read as follows:

552.246-71 Final Inspection and Tests.

As prescribed in GSAR 546.312, insert the following clause:

* * * * *

9. Section 552.246-72 is amended to revise the introductory paragraph to read as follows:

552.246-72 Responsibility for Supplies (Rejected Supplies).

As prescribed in GSAR 546.316-70, insert the following clause:

* * * * *

10. Section 552.246-73 is amended to revise the introductory paragraph, the date in the clause title, and paragraphs (a)(1), (a)(2), and (d) of the clause to read as follows:

552.246-73 Source Inspection.

As prescribed in GSAR 546.302-71, insert the following clause:

Source Inspection (February 1986)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or a designated representative or (b) the Contractor or its subcontractor is authorized by inclusion of the Contractor Inspection Requirements clause in this contract to ship supplies. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Inspection responsibility will be assigned, by written notice, to the Contract Management Division of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontract to notify, that office at least 10 calendar days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Contract Management Division unless release is otherwise authorized by inclusion of the Contractor Inspection Requirements clause in this contract.

* * * * *

(d) *Additional cost of inspection and testing.* The Contractor will be charged for any additional cost of inspecting/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of clause 52.246-2, Inspection of Supplies—Fixed-Price.

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If supplies purchased on an f.o.b. destination basis were source-inspected by Government personnel, but the supplies are not delivered or are delivered in a condition requiring Government reinspection of the same or replacement material, the Contractor will be charged for the cost of such reinspection. Charges for inspection or testing are specified elsewhere in the contract.

11. Section 552.246-74 is amended to revise the introductory paragraph and the asterisk at the end of the clause to read as follows:

552.246-74 Charges for Inspection and Testing.

As prescribed in GSAR 546.302-72, insert the following clause:

* * * * *

* The rates to be inserted in the clause are determined and published by the Commissioner, Federal Supply Service, or a designee.

12. Section 552.246-75 is amended to revise the introductory paragraph, the date in the clause title, and paragraphs (a), (b), (b)(1), and (c) of the clause to read as follows:

552.246-75 Guarantees.

As prescribed in GSAR 546.710(b), insert the following clause:

Guarantees (February 1986)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b) If, within any guarantee period, the Contracting Officer finds that guaranteed work needs to be repaired or changed because of the use of materials, equipment, or workmanship is inferior, defective, or not in accordance with the terms of the contract, the Contracting Officer shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Government:

(1) Place in a satisfactory condition all guaranteed work;

* * * * *

(c) Any special guarantees that may be required under the contract will be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.

* * * * *

13. Section 552.246-76 is revised to read as follows:

552.246-76 Warranty of pesticides.

As prescribed in GSAR 546.710(a), insert the following clause:

Warranty of Pesticides (February 1986)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for the period of 1 year after the date of shipment, all pesticides furnished under this contract shall meet the regulatory requirements of Pub. L. 92-516, as amended, and shall be registered with the Administrator, Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) Contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

[End of Clause]

14. Section 552.246-77 is added to read as follows:

552.246-77 Contractor Inspection Requirements.

As prescribed in GSAR 546.301, insert the following clause:

Contractor Inspection Requirements (Feburary 1986)

(a) The Contractor shall provide and maintain a quality control system that complies with all requirements of the Federal Standard 368 edition in effect on the date the solicitation was issued and shall ship supplies found by the Contractor to meet contract requirements. The Contractor shall prepare a written description of the quality control system. This description must be made available to the Government prior to award and must be kept current and available to the Government during contract performance and for as long afterwards as the contract requires. Any changes to the system during contract performance must be reported to the cognizant quality assurance office.

(b) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies. Although the Government will normally rely upon the Contractor's quality control system to ensure the quality of items shipped, it reserves the right to inspect before acceptance at all times and places including the point of manufacture. When the Government advises the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify, or arrange for its subcontractor to notify, the cognizant quality assurance office at least 10 calendar days before the date the supplies will be ready for inspection. The material will not be shipped until the Government has inspected it.

(c) During the contract period, a Government representative will periodically select samples of material produced under the contract for Government verification, inspection, and testing.

(d) The Government may reject defective supplies or services, in writing, within * days after delivery, notwithstanding the provisions of any other clause concerning conclusiveness of acceptance. The Contractor shall in such event replace, correct, or repair the rejected supplies or services, at the Contractor's expense, within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct.

(e) If material in process, shipped, or awaiting shipment to fill Government orders is defective or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receiving such a notice, the Contractor shall take immediate corrective action and suspend shipment of items covered by the QDN until the defects or deficiencies are corrected. Within 5 workdays of receiving the QDN, the Contractor shall notify the cognizant quality assurance office of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming materials will be returned at the Contractor's expense and may be cause for termination of the contract for default. Delays due to the need for corrective action pursuant to this clause will not constitute excusable delays under the Default clauses. Failure to complete corrective action in a timely manner may result in termination of this contract.

(f) This contract may be terminated for default if subsequent Government inspection discloses that plant quality and progress controls are not being maintained, subspecification material is being shipped, or for failure to comply with any of the provisions contained in this clause.

[End of Clause]

* Contracting officers shall normally insert 365 days as the period for replacing defective material. However, when the material being bought has a shelf life of less than 1 year, the shelf life period should be used, or in instances where a longer period may reasonably be expected to be available, the longer warranty period should be used.

15. The Table of Contents for Part 553 is amended to add a new entry for Section 553.370-3539 as set forth below:

PART 553—FORMS

Subpart 553.3—Illustration of Forms

Sec.

* * * * *

553.370-3539 GSA Form 3539, Quality Deficiency Notice

* * * * *

Editorial Note: The forms listed above are illustrated in and made a part of the regulation. However, the forms are not illustrated in the Federal Register or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

16. Section 553.173 is amended by adding GSA Form 3539 to the table in paragraph (c) to read as follows:

553.173 Responsibility for the maintenance of forms.

(c) * * *

GSA form number	Responsible office
* * * * *	
3539	F.
* * * * *	

Dated: March 3, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-5455 Filed 3-12-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Hymenoxys Texana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Hymenoxys texana,* to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. This plant occurs on private land in Harris County, Texas. The one remaining population is currently threatened by destruction of habitat due to residential development. This action implements the protection provided by the Act.

EFFECTIVE DATE: The effective date of this rule is April 14, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Botanist, Region 2, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys texana was collected by F.W. Thurow in 1889 and 1890 in the vicinity of Hockley, Texas. Coulter and Rose (1891) described it as *Actinella texana.* The species was transferred to the genus *Picradenia* by Greene (1898) and was later transferred to the genus *Hymenoxys* by Cockerell (1904). A then-unidentified specimen was collected by Palmer around 1879-1880 from southwest Texas, between the Nueces and Frio Rivers on the Old San Antonio Road. However, recent field research has been unsuccessful in relocating this population (Mahler, pers. comm., 1984). The only currently known population of *Hymenoxys texana* is located near Houston in Harris County, Texas (Mahler, 1982). The population occurs on private land, and is located in an area of active residential development.

Hymenoxys texana is a member of the aster family (Asteraceae). It is a small, single-stemmed or branching annual reaching up to 10 centimeters (3.9 inches) tall. The basal leaves are 4 to 5 millimeters (0.16-0.20 inches) broad with entire to toothed margins; the upper stem leaves are linear with entire margins. The flower heads are 4 to 6 millimeters (0.16-0.24 inches) tall, yellowish, with phyllaries partially indurate and keeled, in two series which are basally united. Flowering usually occurs in late March to early April. The one population of *Hymenoxys texana* occurs in the northern part of the Gulf Coastal Prairie. It is found in poorly drained swales or depressions in open grasslands with few other plants. The surrounding prairie vegetation is composed of plants measuring about 10 centimeters (3.9 inches), with none over 15 centimeters (5.9 inches). These largely barren areas are sparsely vegetated with scattered individuals of a member of the carrot family *(Limnosciadium pumilum)* and the soil is covered with a blue-green alga (*Nostoc* sp.). The population biology and ecology of *Hymenoxys texana* are unknown and additional studies are needed.

Federal action involving this species began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of Section 4(c)(2), now Section 4(b)(3)(A) of the Act, and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. *Hymenoxys texana* was included in the Smithsonian petition and the 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, Federal Register (44 FR 70796), the Service published a notice of the withdrawal of that portion of the June 16, 1976, proposal that had expired, along with four other proposals that had expired. A revised list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, Federal Register (45 FR 82480), and it included *Hymenoxys texana* as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the appropriateness of their being listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hymenoxys texana,* was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Hymenoxys texana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published March 6, 1985 (50 FR 9095), constituted the next required finding that the petitioned action was warranted in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9095) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted

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and requested to comment. A newspaper notice was published in the *Houston Chronicle* on Wednesday, March 27, 1985, which invited general public comment. Seven comments were received and are discussed below. No public hearing was requested or held.

The International Union for Conservation of Nature and Natural Resources (IUCN) supported the proposal. The Texas Parks and Wildlife Department stated that, after a review of the proposal, listing appears to be appropriate. The National Park Service stated that the species does not occur on Big Thicket National Preserve and hopes that listing the plant will guarantee its survival. Mr. Harold E. Beaty, leader of the Texas Plant Recovery Team, commented that it is the team's feeling that the species should be listed as endangered and that additional attention and study should be given to the plant. Two professional botanists responded with no additional substantive information, but one of them made a statement supporting the proposed listing based on his knowledge of Dr. Mahler's previous work. James W. Kessler, who has monitored the status of the plant for the past four years, reported that two populations have been destroyed by bulldozing activities associated with residential development. This information has been incorporated into the final rule. Mr. Kessler also indicated there is local interest in relocating some plants to Mercer Arboretum, a County-owned plant and wildlife sanctuary in northern Harris County. The Service responds that this interest is appreciated and will be helpful in recovery planning.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hymenoxys texana* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys texana* (Coulter and Rose) Cockerell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to *Hymenoxys texana* is habitat destruction. The plants occur in an area of rapid development at the northern edge of metropolitan Houston. At the time of the proposal to list the species as endangered, three populations were known. Since then two of these have been destroyed by residential housing development and the remaining population is located on private land adjacent to a residential development. If current development continues, as is anticipated, the one remaining population could be destroyed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist, but potential exists for uncontrolled collecting and vandalism. The population on private land will not be protected from taking by the Endangered Species Act, and it is easily accessible.

C. *Disease or predation.* There is no known threat to this plant from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hymenoxys texana* is not protected by either Federal or State laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* The presence of only one population makes the existence of this species particularly precarious. Because of the low number of plants, there is a small gene pool, possibly reducing the ability of the species to tolerate stress or change.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hymenoxys texana* as endangered without critical habitat.

Endangered status seems appropriate because only one known population remains and is subject to the possibility of destruction by residential development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to its low numbers and restriction to one population. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem, as the habitat of *Hymenoxys texana* is located on private land along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of critical habitat descriptions for this species would make it more vulnerable to taking or vandalism. Therefore, it would not be prudent to determine critical habitat for *Hymenoxys texana* at this time. The location of publications of this plant will be brought to the attention of appropriate agencies and other involved parties through regular communications. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hymenoxys texana* is not known to occur on Federal lands, and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species.

With respect to *Hymenoxys texana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Hymenoxys texana*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681; to be codified at 50 CFR 17.62). At present, no populations of *Hymenoxys texana* are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Cockerell, T.D.A. 1904. The North American species of *Hymenoxys*. Bulletin of Torrey Botanical Club 31(9):461-509.

Coulter, J.M., and J.N. Rose. 1891. *Actinella (Hymenoxys) texana*, n. sp. Botanical Gazette 16:27-28.

Greene, E.L. 1898. Studies in the Compositae VII. Pittonia 3:284-298.

Mahler, W.F. 1982. Status report on *Hymenoxys texana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The primary author of this final rule is Heather A. Stout, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor was E. LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	* *	* *	*			
Hymenoxys texana	None	U.S.A. (TX)	E	218	NA	NA
*	* *	* *	*			

Dated: February 28, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-5531 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 51198-6219]

Pacific Coast Groundfish Fishery

AGENCY: NOAA, Commerce.

ACTION: Preliminary inseason adjustment and request for comments.

SUMMARY: NMFS announces and requests comments on a preliminary inseason adjustment to the 1986 annual specifications for two species of Pacific coast groundfish off the coasts of Washington, Oregon, and California. This adjustment would increase the acceptable biological catch (ABC) and optimum yield (OY) for Pacific whiting to 295,800 metric tons (mt), and the acceptable biological catch for yellowtail rockfish to 4,000 mt. This action makes use of the best available scientific information for estimating the 1986 specifications. The intended effect of this action is to promote full utilization of the groundfish resource without biological stress to these or any other species.

DATE: Comments on this preliminary inseason adjustment will be accepted through March 28, 1986.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NW., BIN C15700, Seattle, WA 98115; or E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. The aggregate data upon which these proposed inseason increases are based are available for public inspection at the Northwest Regional Office during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten, 206-526-6150, or E. C. Fullerton, 213-548-2575.

SUPPLEMENTARY INFORMATION: Implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at § 663.24 state that the

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annual specifications of ABC and numerical OY for groundfish will not exceed by more than 30 percent the ABC and numerical OY specified at the beginning of the previous fishing year. The FMP also provides for inseason increases that cumulatively do not exceed by more than 30 percent the ABC or numerical OY set at the beginning of the fishing year.

An ABC is an estimate of the annual catch that could be taken without jeopardizing a resource's biological productivity. A numerical OY sets the maximum amount of fish (in round weight) that may be taken and retained, or landed each year from the fishery conservation zone (3–200 nautical miles) and the territorial sea (0–3 nautical miles) off the coasts of Washington, Oregon, and California. An OY is based on socioeconomic as well as biological factors and thus is not necessarily equal to an ABC.

The ABC and OY specifications for 1986 were developed in public meetings of the Pacific Fishery Management Council (Council) in September, October, and November 1985. The recommendations by the Council were published in a notice (50 FR 49590, December 3, 1985, and corrected at 50 FR 51436, December 17, 1985), which stated that the 1986 annual specifications, particularly the Pacific whiting ABC/OY and the yellowtail rockfish ABC, could not exceed the 1985 specifications by more than 30 percent despite the best available scientific information supporting larger increases. (Yellowtail rockfish is in the multispecies *Sebastes* complex of rockfish and does not have a numerical OY.) Thus, when the final specifications for 1986 were announced (51 FR 1255, January 10, 1986), the Pacific whiting ABC/OY was set at 227,500 metric tons (mt) and yellowtail rockfish ABC was set at 3,900 mt, both 30 percent higher than in 1985 but below the levels supported by the best available scientific data. Accordingly, the Council recommended the following inseason increases (Tables 1 and 2) to the Pacific whiting ABC/OY and the yellowtail rockfish ABC based on the Groundfish Management Team's analyses which are considered to be the best available scientific information, in concurrence with the Groundfish Advisory Subpanel and the Scientific and Statistical Committee.

TABLE 1.—FINAL ESTIMATES OF ABC FOR 1986 IN METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA BY INPFC AREAS

[Preliminary revision to table 1 at 51 FR 1255]

Species	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
* * *						
Pacific whiting						295,800
* * *						
Other Rockfish:						
* * *						
Yellowtail	1,100	[a] 2,600	300			4,000
* * *						

NOTE.—Only those portions of Table 1 and its footnotes at 51 FR 1255 pertaining to Pacific whiting and yellowtail rockfish are revised and printed here. All other portions of that table remain unchanged.

* * * * * * *

[a] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°22′ N. latitude), and ABCs for the Columbia area are prorated as follows:

	Columbia area (total)	Columbia area north of Coos Bay	Columbia area south of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining rockfish	3,700	3,300	400

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1986 IN THOUSANDS OF METRIC TONS FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA

[Preliminary revision to table 2 at 51 FR 1255]

Species	Total OY	DAP	JVP	DAH	Reserve	TALFF
* * *						
Pacific whiting	295.8	15.0	120.0	135.0	59.2	101.6
* * *						

NOTE.—Only those portions of Table 2 at 51 FR 1255 pertaining to Pacific whiting are revised and printed here. All other portions of that table, including footnotes, remain unchanged.

Pacific whiting. The Council recommended a 30 percent increase for Pacific whiting, which would raise the ABC/OY from 227,500 mt to 295,800 mt, the maximum amount allowable under current regulations. The regulations at § 663.22(b) requires that the following factors be considered in a determination to increase a numerical OY during the fishing year.

- The exploitable biomass for Pacific whiting is estimated to be about 300,000 mt annually for the next few years which well exceeds the levels needed to support the maximum sustainable yield (MSY) of about 175,000 mt. (MSY is the largest average catch which can be taken continuously from a stock over a period of years.)
- The Pacific whiting fishery is dominated by a relatively small number of large year classes. At this time a strong 1977 year class is present in the fishery, and a strong 1980 year class is entering the fishery such that incoming recruitment will be unusually high. The Council's intent is to encourage full utilization of this variable resource by increasing the allowable catch of fish which otherwise would die of natural causes, with the knowledge that the resource could not indefinitely sustain catches near 300,000 mt.
- Because landings of Pacific whiting have averaged about 50 percent of OY since implementation of the FMP in 1982, landings in 1986 will not likely reach the proposed increased OY although they may be higher than in 1984 and 1985.
- Pacific whiting are caught fairly selectively; therefore, the proposed increase in OY should have little or no impact on other species.

Because domestic shore-based processing and joint venture needs for Pacific whiting already were accommodated when the initial 1986 OY of 227,500 mt was announced (50 FR 49590, December 3, 1985), the entire proposed increase to the Pacific whiting OY would be split between the reserve which provides for unforeseen increases in U.S. demand and the total allowable level of foreign fishing (TALFF). Accordingly, the reserve (20 percent of OY) would become 59,200 mt, increased from 45,500 mt, and the TALFF would become 101,600 mt, increased from 47,000.

Yellowtail rockfish. The Council recommended increasing the 1986 ABC for yellowtail rockfish from 3,900 mt to 4,000 mt. This proposed 100 mt increase would apply to the Columbia area because the best available data indicate the ABC for yellowtail rockfish in this area should be 2,600 mt, rather than the 2,500 mt set at the beginning of the year. The Columbia area ABC is divided into northern and southern parts at Coos Bay, Oregon (43°22′ N. latitude). The northern part contains most of the yellowtail rockfish population and supports the bulk of the harvest; therefore this proposed 100 mt increase would be assigned entirely to the Columbia area north of Coos Bay. This would increase the ABC for that area from 2,400 mt to 2,500 mt. As a result, the harvest guideline for the *Sebastes* complex (which includes yellowtail rockfish) in the Columbia area north of Coos Bay would increase from 2,400 mt to 2,500 mt. This will increase the total harvest guideline north of Coos Bay, including the Vancouver Area, from 10,100 mt to 10,200 mt, the sum of the ABCs of the species in the complex (see 51 FR 1255, January 10, 1985, Table 1). This proposed increase would be too small to necessitate changes to the trip limits for this complex.

Classification

This preliminary inseason adjustment is made under the authority of §§ 663.22 and 663.23 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing.

(16 U.S.C. 1801 et seq.)

Dated: March 7, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–5481 Filed 3–12–86; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowance and Post Differential; Nonforeign Areas

Correction

In FR Doc. 86–4831 appearing on page 7799 in the issue of Thursday, March 6, 1986, make the following correction: In the first column, in the "**DATES**" paragraph, second line, "March 3, 1986" should read "March 31, 1986".

BILLING CODE 1995-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Public Hearing Concerning Hazards Associated With All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Anchorage, Alaska, on March 25, 1986, to obtain safety-related information on All Terrain Vehicles (ATVs). This will be the sixth hearing the Commission has held on the hazards associated with ATVs. Hearings were also held in Jackson, Mississippi, on May 30, 1985; in Dallas, Texas on June 17, 1985; Concord, New Hampshire on July 25, 1985; Milwaukee, Wisconsin on September 3, 1985; and in Los Angeles, California on October 17, 1985.

The Commission is aware of at least 324 deaths associated with ATVs occurring between 1982 and September, 1985. Estimates on the number of hospital emergency room-treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 78,000 ATV related injuries were treated in hospital emergency rooms in the first nine months of 1985. This nine month estimate is approximately 44 percent higher than the estimated injuries treated during the same time period in 1984.

The Alaska hearing will be conducted by the Acting Chairman of the Consumer Product Safety Commission. The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in obtaining information on the uses of ATVs in Alaska for recreation, utility and transportation purposes, ATV training, information and educational efforts and state and local legislation or ordinances regulating the use of ATVs. Participation in the hearing is requested from owners and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involved with ATV safety, training or state or local legislation; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

DATES: The hearing will be held on Tuesday, March 25, 1986, beginning at 9:00 a.m. Requests from persons who wish to make presentations must be received by the Consumer Product Safety Commission, at the address below, no later than March 19, 1986. Persons who wish to testify must submit a written copy or summary of their testimony to the Consumer Product Safety Commission no later than March 21, 1986. Presentations at the hearing should be limited to approximately 5 minutes.

ADDRESSES: The hearing will be held at 9:00 a.m. at the Sheraton Hotel, Kuskokwim Room West, 401 East 6th Street, Anchorage, Alaska. For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Joan Bergy at the address listed under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Joan Bergy, Consumer Product Safety Commission, 6046 Federal Office Building, 909 First Avenue, Seattle, Washington 98174, or call her at 206–442–5276.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has held a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Commission issued an advance notice of proposed rulemaking (ANPR), which formally commenced a rulemaking proceeding. 50 FR 23139 (May 31, 1985). In the ANPR, the Commission discussed methods by which any unreasonable risks of injury which may be associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, and administrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA and/or the dissemination of safety-related information.

The Commission staff recently prepared a preliminary report of a survey of all-terrain vehicle-related injuries treated in hospital emergency rooms. The information presented in the report is preliminary and is subject to revision following the evaluation of additional data from later phases of the survey. The results of the survey included the following information:

18 percent of the persons treated at emergency rooms were hospitalized; one passenger was dead on arrival at the emergency room. The hospitalization rate was extremely high for certain hazard patterns: 24 percent for collisions with stationary objects and 36 percent for ATVs which flipped forward,
19 percent of the injured persons were under 12 years of age; 46 percent were under 16 years of age,
20 percent of the injured persons were passengers,
53 percent of the accidents occurred at speeds estimated to be under 16 miles per hour,
68 percent of the ATVs hit a terrain irregularity or larger obstacle during the sequence of events leading to the injury,
35 percent of the accidents were classified as collision,
41 percent of the accidents were classified as overturned: 24 percent rolled sideways, 10 percent flipped backwards, 7 percent flipped forward. Another 7 percent were classified as tipped (did not overturn),
31 percent of the drivers had passengers on the ATV,
29 percent of the drivers were under 14 years old; 17 percent were under 12 years old,
56 percent of the drivers wore no protective equipment,
44 percent wore some safety equipment: helments (37 percent), gloves (13 percent), heavy boots (10 percent), goggles (8 percent),
26 percent of the drivers had less than one month's experience (13 percent were first time users); 54 percent of the drivers had at least one year's experience.

About 35 percent of the accidents involved practices that the ATV manufacturers warned against: carrying passengers and driving on paved roads. The characteristics of this group were similar to the remaining accidents with respect to frequent collisions and overturning, hitting objects, turning and driving at speeds estimated as low.

B. Request for Public Participation at Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards which may be associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about any unique characteristics of ATV handling and use in Alaska.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received by March 25, 1986.

Dated: March 7, 1986.

Sadye E. Dunn,
Secretary, Office of the Secretary.

[FR Doc. 86–5332 Filed 3–12–86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD11–85–06]

Anchorage Regulations; San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard establishes anchorage grounds on the navigable waters of the United States for purposes of navigation safety. The San Diego Unified Port District (SDUPD) has requested that Coast Guard change the federal anchorage regulations for San Diego Bay. The proposed change would revise paragraph 33 CFR 110.210(a), deleting the establishment of all of San Diego Harbor as an anchorage ground, but maintain those anchorage areas described elsewhere in § 110.210(a). In addition, the proposed rule would designate the Laurel Street Roadstead, a small craft anchoring area developed by SDUPD, as a special anchorage area, and delete an unnecessary non-anchorage area presently established in the regulations. References to Commandant, Eleventh Naval District, which no longer exists, would be changed to Commander, Naval Base San Diego. The intended effect of these rules is to provide safe moorage for the large number of nonrecreational vessels, to conform the regulations to current practice and to establish federal regulations consistent with planned port development and anchorages to be established by the San Diego Unified Port District.

DATES: Comments must be received on or before 8 May 1986. The public hearing will be at 9:00 a.m. on 3 April 1986.

ADDRESS: Comments should be mailed to Commander (mps), Eleventh Coast Guard District, Suite 709, Union Bank Building, 400 Oceangate, Long Beach, CA 90822. Telephone: (213) 590–2301. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address. The public hearing will be held in Room 4S13 of the San Diego Federal Building at 880 Front Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Francis McClain, (213) 590–2301.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (11–85–06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period and at the public hearing will be considered before final action is taken on this proposal. Persons wishing to present oral statements at the hearing must notify: Lieutenant Francis McClain at Commander (mps), Eleventh Coast Guard District, Suite 709, Union Bank Building, 400 Oceangate, Long Beach, CA 90822, telephone (213) 590–2301; or Lieutenant Mike McCoy at the USCG Marine Safety Office, 2710 North Harbor Drive, San Diego, CA 92101, telephone (619) 293–5860. Such notification should include the approximate time required to make the presentation.

Drafting Information

The drafters of these regulations are Commander K. B. Allen and Ensign J. D. Czamanske, project officers, Eleventh Coast Guard District Marine Safety Division, and Lieutenant J. R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Eleventh Coast Guard District Office received a formal request for federal rulemaking concerning small craft anchorages in San Diego Harbor from the San Diego Unifed Port District (SDUPD) on 24 July 1985. The request was made as part of their Baywide Small Craft Mooring and Anchorage Plan. The Coast Guard has received many comments from San Diego area residents concerning this plan. The plan envisions the establishment of four new anchorage grounds (A–4, A–6, A–7, & A–8), the designation of the Laurel Street Roadstead as a special anchorage area (A–3), and a prohibition of anchoring outside designated anchorages without the permission of the SDUPD.

Federal anchorages are established under 33 U.S.C. 471. This statute authorizes the Secretary of Transportation to define and establish anchorage grounds in all harbors of the United States whenever necessary for safe navigation. The Secretary may adopt suitable rules and regulations relating to these anchorages. This power has, in general, been delegated to each Coast Guard District Commander (33 CFR 1.05–1(1)). Any anchorage, federal or non-federal, may be designated as a special anchorage area by the Coast Guard under the Inland Navigation Rules (33 U.S.C. 2030(g)). Such designation merely means that vessels less than 20 meters in length, while anchored there, need not display anchor

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lights and day shapes nor are they required to sound fog signals which would otherwise be required by the applicable navigation rules. (Note: Any vessels navigating on the navigable waters of the United States must abide by the applicable navigation rules.)

State and local authorities may adopt regulations concerning anchoring that are not inconsistent with the federal statutory and regulatory scheme. Thus, this proposed rule, by deleting the section establishing all of the Bay as an anchorage, would make room for local regulations addressing the land use and aesthetic concerns of the Post of San Diego, providing they are consistent with the federal scheme. In any event, the Coast Guard retains the authority to establish temporary safety and security zones (33 CFR Part 165, Subparts C and D, respectively) and to control vessel movement (33 CFR Part 6 and 33 CFR 160.111) throughout San Diego Harbor, paramount to any state designated use areas, in the interest of navigation, port and environmental safety. Future preemption of state deisgnated use areas through establishment of permanent federal anchorages, regulated navigation areas, restricted areas, danger zones, safety zones, or security zones must be addressed by the agency establishing those areas during the rulemaking process.

In light of the above and after review of the SDUPD request, the Baywide Small Craft Mooring and Anchorage Plan and supporting documents, and the public comments received, it is the position of the Coast Guard that:

(1) It is in the best interest of navigation that the SDUPD's Laurel Street Roadstead anchorage be designated a Special Anchorage Area. This would be accomplished by the proposed paragraph (c) in 33 CFR 110.90.

(2) The justification for some of the proposed anchorages contained in DSUPD's plan (A–4, A–6, A–7, & A–8) is primarily based on important state and local land use and aesthetic concerns. These factors go beyound the Coast Guard's statatoy authority for regulating navigation and it is inappropriate at this time that they be established as federal anchorages.

(3) All of San Diego Harbor was established as an anchorage ground early in the twentieth century to meet the needs of navigation and marine commerce at that time. In the ensuing years, the needs of navigation, commerce and national security have changed, making the designation of the entire Bay inconsistent with traditional usage and other federal regulations. Presently there is a large amount of navigation, including naval traffic, commercial traffic, fishing vessels and pleasure craft. All of these vessels require paths of unobstruced navigation as well as safe areas to anchor. The revision of 33 CFR 110.210(a) deleting all of San Diego Harbor as an anchorage ground from the anchorage regulations, while maintaining the existing designated anchorage grounds and designated special anchorage areas, and designating an additional special anchorage area in this proposal, would meet these needs. The Coast Guard thus proposes to revise paragraph 33 CFR 110.210(a) to delete wording designating all of San Diego Harbor an anchorage ground.

Because 33 CFR 110.210 is being restructured in addition to being amended, the oppotrunity to make the following editorial change will be taken. Commandant, Eleventh Naval District is a position which no longer exists. When the position did exist, the authority granted to him by the current regulation was redelegated to Commander, Naval Base, San Diego, CA. This proposed regulation grants the authority directly to Commander, Naval Base, San Diego, CA.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Laurel Street Roadstead is presently used as an anchorage area with SDUPD having provided some order through the placement of mooring buoys. Designation as a special anchorage area will relieve users from certain regulatory requirements. The revision of § 110.210 will have minimal impact on maritime commerce and navigation because even though it changes the existing status of San Diego Harbor as an anchorage ground, it does not impose any additional restrictions on anchorage in the harbor. One possible result of this regulation could be restrictions on anchorage in certain areas of San Diego Harbor by the San Diego Unified Port District. It would be inappropriate to speculate on the economic impact of any regulations which may be adopted by the San Diego Unified Port District. The only other change embodied in this proposed regulation is simply editorial in nature.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33 of the Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(e) and 33 CFR 1.05–1(g).

2. Section 110.90 is revised to read as follows:

§ 110.90 San Diego Harbor, California.

(a) Area A–1. In the Municipal Yacht Harbor, the water area enclosed by a line beginning at latitude 32°42′56.5″ N., longitude 117°13′44″ W.; thence southwest to latitude 32°42′53.4″ N., longitude 117°13′46.2″ W.; thence northwest to latitude 32°43′01.1″ N., longitude 117°13′56″ W.; thence northeast to latitude 32°43′02.4″ N., longitude 117°13′52.4″ W.; thence southeast to latitude 32°42′59.6″ N., longitude 117°13′47.3″ W.; thence to the point of beginning.

(b) Area A–2. In the Commercial Basin, the water area enclosed by a line beginning at latitude 32°43′13.9″ N.; longitude 117°13′21.0″ W.; thence northeast to latitude 32°43′16.2″ N., longitude 117°13′13.2″ W.; thence northwest to latitude 32°43′22.1″ N., longitude 117°13′23.7″ W., thence west to latitude 32°43′22.0″ N., longitude 117°13′26.8″ W.; thence southwest to latitude 32°43′19.0″ N., longitude 117°13′29.2″ W.; thence southwest to the point of beginning.

(c) Area A–3. In North San Diego Bay, north of the "B" Street Merchant Vessel Anchorage, the water area enclosed by a line beginning at latitude 32°43′30.4″ N., longitude 117°10′24.4″ W., thence southwest to latitude 32°43′29.7″ N., longitude 117°10′29.7″ W., thence southwest to latitude 32°43′25.6″ N., longitude 117°10′33.0″ W., thence northwest to latitude 32°43′29.6″ N., longitude 117°10′44.9″ W., thence northeast to latitude 32°43′36.0″ N., longitude 117°10′41.6″ W., thence southeast along a line parallel to, and 200 feet bayward of, the shoreline of San Diego Bay adjoining Harbor Drive to the point of beginning.

(d) Area A–5. In Glorietta Bay, the water area enclosed by a line beginning at latitude 32°40′42.0″ N., longitude

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117°10′00.0″ W.; thence southwest to latitude 32°40′41.0″ N., longitude 117°10′03.5″ W.; thence northwest to latitude 32°40′46.0″ N., longitude 117°10′12.5″ W.; thence northeast to latitude 32°40′46.5″ N., longitude 117°10′11.0″ W.; thence southeast to the point of beginning.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

3. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, California.

(a) *The anchorage grounds.* (1) Special anchorage for U.S. Government vessels. Shoreward of a line extending from Ballast Point Light approximately 351°30′ to the shore end of the Quarantine Dock.

(2) "B" Street Merchant Vessel Anchorage. Due west from the southwest corner of the "B" Street pierhead to latitude 32°43′00″, longitude 117°11′00″; thence northeasterly to latitude 32°43′20″, longitude 117°10′51″; thence due east to the shoreline; thence following the shoreline and pier to the point of beginning.

(b) *The regulations.* (1) The special anchorage described in paragraph (a)(1) of this section is reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in this area except by special permission obtained in advance from the Commander, Naval Base, San Diego, California.

(2) The area described in paragraph (a)(2) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while awaiting a berth.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not unreasonably obstruct the approaches to the wharves in the harbor.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

Dated: March 4, 1986.

A.B. Beran,

Rear Admiral (lower half), U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 86–5589 Filed 3–12–86; 8:45 am]

BILLING CODE 4910–14–M

VOL 51 ISS 49 MR 13 1986 UMI

Notices

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Wolf-Loosahatchie River Basins Land Treatment Plan and Water Management Plan, Tennessee and Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of Records of Decision.

SUMMARY: Donald C. Bivens, responsible Federal official for projects administered under the provisions of Pub. L. 87-639, 76 Statute 436 (16 U.S.C. 1009) in the State of Tennessee, is hereby providing notification that records of decision to proceed with the installation of the Wolf-Loosahatchie River Basins Land Treatment Plan and Water Management Plan are available. Single copies of these records of decision may be obtained from Donald C. Bivens at the address shown below.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 736-5471.

Dated: March 6, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86-5480 Filed 3-12-86; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Massachusetts Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on April 3, 1986, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to continue planning the Committee's proposed study of housing discrimination in the Boston area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-5432 Filed 3-12-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Medal of Technology Nomination Evaluation Committee; Meeting

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee charter was renewed on February 10, 1986. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters dealing with the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

Time and place: The meeting will begin at 9:30 a.m. and end at 5:00 p.m. on March 27, 1986. The meeting will be held in Room 250 of the National Academy of Sciences Building, 21st Street and Constitution Avenue, NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Goodman, Executive Director, National Medal of Technology Nomination Evaluation Committee, Room 4829, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230, (202) 377-0825.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, (202 377-4217).

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 86-5508 Filed 3-12-86; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of

Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-274R. Applicant: National Oceanic and Atmospheric Administration, Atlantic Oceanographic and Meteorological Laboratory, 4301 Rickenbacker Causeway, Miami, FL 33149. Instrument: Mass Spectrometer System, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended use: Original notice of this resubmitted application was published in the Federal Register of September 5, 1985.

Docket Number: 85-311R. Applicant: Lahey Clinic Hospital, Incorporated, 41 Mall Road, Box 541, Burlington, MA 01805. Instrument: Kidney Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended use: The instrument is intended to be used for the following research projects.

1. Collection of data on lithotripsy cases which will be used to perform epidemiological research relating to the incidence, location, type and composition of kidney stones.

2. A study involving a comparison of rapid jet ventilation versus epidural anesthesia for patients undergoing lithotripsy treatment and

3. Development of a technique for dissolving gall stones located in the common duct.

Original of this resubmitted application received by Commissioner of Customs: October 1, 1985.

Docket Number: 86-123. Applicant: Geisinger Medical Center, North Academy Avenue, Danville, PA 17822. Instrument: Extracorporeal Shockwave Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: This instrument is intended to be used for studies of renal structure and function both pre- and post-lithotripsy procedure, kidney stones, the effect of shockwave lithotripsy on orthopedic prosthetic replacement and the potential of lithotripsy in the shockwave destruction of gall stones. In addition, the instrument will be used for the training of physicians and medical students. Application received by Commissioner of Customs: February 10, 1986.

Docket Number: 86-125. Applicant: Rush-Presbyterian-St. Luke's Medical Center, 1753 W. Congress Parkway, Chicago, IL 60612. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used for studies of the ultrastructure of tumor cells, red blood cells and ocular and endocrine tissues from experimental animals and from patients with pathological disorders. In addition, the instrument will be used for training of medical and graduate students, residents and fellows. Application received by Commissioner of Customs: February 12, 1986.

Docket Number: 86-126. Applicant: University of Illinois Urbana-Champaign, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801. Instrument: Combined Sputtered Neutral Mass Spectrometry and Secondary Ion Mass Spectrometry Analysis System, Model INA-3. Manufacturer: Leybold-Heraeus, West Germany. Intended use: The instrument is intended to be used for quantitative in-depth analysis of a wide range of materials such as metals, semiconductors and ceramics. The object of such analysis is to measure dopants and their depth distributions, to quantitatively determine thin film composition and to measure interfacial compositions with very high depth resolution. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86-127. Applicant: UMDNJ-Rutgers Medical School, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM-100CX with X-Ray Analyzer. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument is intended to be used for the following research purposes:

1. Characterization of plasma membrane receptor for protein secretion in a bacterial cell model.

2. Studies on the secretory organelles in a hyper-secretor mutant of cellulase producing fungus *Trichoderma reesei.*

3. Immunoelectron microscopic determination of intracellular movement of cellulase from the site of synthesis to secretion in *Trichoderma reesei.*

4. Study of toxin secretion from *Shigella dysenteriae.*

5. Detection of mycoplasma in diseased plants.

6. Developing a new method for quantitative analysis of asbestos fibers in water before and after processing for drinking. The instrument will also be used for teaching electron microscopy to postdoctoral students and scientists. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86-128. Applicant: Washington University School of Medicine, 660 South Euclid Avenue, St. Louis, MO 63110. Instrument: Microtome Cryostat with Accessories. Manufacturer: Hacker/Bright, United Kingdom. Intended use: The instrument is intended to be used for studies of vertebrate and invertebrate tissues in order to better understand the importance of the macromolecules under investigation in the development and maintenance of cellular and tissue structure and function. Some experiments will involve quantitative study of the three dimensional distribution of tissue macromolecules. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86-129. Applicant: Purdue University, FREH Building, West Lafayette, IN 47907. Instrument: Kinetics Sample Handling Unit, Model SF-3L/SFL-43. Manufacturer: Hi-tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for the study of metal peptide complexes in solution. Ratio and sequential mixing of chemical species with stopped-flow observation over wide temperature ranges will be carried out to determine chemical reactivities, reaction rates and intermediates formed in the reactions of metal-peptide complexes. In addition the instrument will be used to instruct students in the use of its capabilities and application to research problems. Application received by Commissioner of Customs: February 13, 1986.

Docket Number 86-130. Applicant: Georgetown University Hospital, Department of Neurology, 3800 Reservoir Road, N.W., Washington, DC 20007. Instrument: Cerebral Blood Flow Unit with Accessories. Manufacturer: Scan-Detectronic A/S, Denmark. Intended use: The instrument will be used to measure the cerebral blood flow in patients who have had cardiac arrest, patients who are chronically hypotensive and those in coma to try to determine what has happened to a brain which has been deprived of oxygen. The instrument will also be used for physician and resident training. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86-131. Applicant: State University of New York at Stony Brook, Department of Anatomical Sciences, Health Sciences Center, Stony Brook, NY 11794. Instrument: Reflected Light Microscope with Accessories. Manufacturer: Sluzba Vyzkumu, Czechoslovakia. Intended use: Studies of the teeth of extant and extinct mammals and reptiles in which the instrument is used to observe dental tissues that lie deep to the superficial, and relatively structureless, layer of enamel. Application received by Commissioner of Customs: February 14, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-[illegible] Filed 3-12-86; 8:45 am]

BILLING CODE [illegible]

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Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held Wednesday, April 2, 8:30 am–5:00 pm, the Herbert Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202/377–4217. For further information, contact Liga L. Hagenah, 202/377–4959.

Dated: March 10, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–5502 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–25–M

The Electronic Instrumentation Technical Advisory Committee and the Computer Systems and Technical Advisory Committee; Joint Closed Meeting

A joint meeting of the Electronic Instrumentation Technical Advisory Committee and the Computer Systems Technical Advisory Committee will be held on April 3, 1986, 8:30 am–5:00 pm, Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW, Washington, DC.

The Committees will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

Copies of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4217. For further information or copies of the minutes contact Liga L. Hagenah, 202/377–4959.

Dated: March 10, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–5501 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–25–M

Minority Business Development Agency

Financial Assistance Application Announcement; District of Columbia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $764,706 for the project performance of July 1, 1986 to June 30, 1987. The MBDC will operate in the Washington, DC, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $650,000 in Federal Funds and a minimum of $114,706 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 14, 1986. Applications must be postmarked on or before April 14, 1986.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377–8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 6, 1986.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 86–5470 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–21–M

San Juan, Puerto Rico; Financial Assistance Application Announcements

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve months is estimated at $590,000 for the project performance of August 1, 1986 to July 31, 1987. The MBDC will operate in the San Juan, Puerto Rico Metropolitan Statistical Area (MSA). The first cost for the MBDC will consist of $590,000 in Federal funds and a minimum of $104,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). This announcement was previously advertised in the November 7, 1985 issue of the **Federal Register**. This previous announcement has been cancelled.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 21, 1986. Applications must be postmarked on or before April 21, 1986.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 7, 1986.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 86–5466 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting and Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, March 31–April 4, 1986, in Wrightsville Beach, NC, to discuss large pelagics, data collection, spiny lobster and king and Spanish mackerel. The Council also will convene a public hearing, April 1, 1986, at 7:30 p.m. to present the mackerel stock assessment report and to receive public comment on any fishery conservation zone fisheries. A detailed agenda will be available for the public on March 17, 1986. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone (803) 571–4366.

Date: March 10 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–5482 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

Correction

In the issue of Thursday, March 6, 1986, on page 7846, in the first column, a correction to FR Doc. 86–2725 appeared. The last sentence was inaccurate and should have appeared as follows:

In the first column of the table, third line from the bottom, "569" should read "659"

BILLING CODE 1505–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has provided the following information collection requirements to OMB to facilitate further consideration of amended Regulation 1.35 (51 FR 2684 (January 21, 1986)) by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments must be submitted no later than April 14, 1986.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231. For further information contact Thomas M. McGivern, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, (202) 254–8955

Title: Trade Timing Standards and Exchange Audit Trail Systems.

Form No.: SF–63.

Action: Extension of the expiration date of an approved collection currently authorized under OMB Control Number 3038–0022.

Respondents: Business (excluding small businesses).

Estimated Annual Burden: Not determinable at this time; there may be no change or there may be a decrease or an increase, depending upon the system selected by each exchange for compliance.

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Estimated Number of Respondents: 213 under Control Number 3038-0022.

Issued in Washington, DC, on March 10, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-5597 Filed 3-11-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review; Department of the Army

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

DOD Standard Tender of Freight Services

Tenders are used by DOD to select carriers for 700,000 freight shipments annually. Tenders are currently submitted via the OF 280 which is undisciplined and requires excessive manual processing time. The proposed form will support MTMC automation initiatives and DOD objectives to reduce paper burden or manual operations.

Business
Responses: 9,350
Burden Hours: 10,519.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM-ADI, Room 1C638, The Pentagon, Washington, DC 20310-0700, telephone (202) 695-1671.

Patricia H. Means,

OSD, Federal Register Liaison Officer, Department of Defense.

March 7, 1986.

[FR Doc. 86-5443 Filed 3-12-86; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 1, 1986; Tuesday, April 8, 1986; Tuesday, April 15, 1986; Tuesday, April 22, 1986; and Tuesday, April 29, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)):

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 7, 1986.

[FR Doc. 86-5446 Filed 3-12-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 4, 1986.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet April 3, 1986 from 8:00 a.m. to 5:00 p.m. and April 4, 1986 from 8:00 a.m. to 3:00 p.m. at AF Armament Division Headquarters, Eglin AFB FL, Building 1, Room 118.

The purpose of this meeting is to review and discuss selected programs and projects relating to the mission of the Armament Division and to advise the Commander on these programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86-5465 Filed 3-12-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Pacific Basin Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet April 7, 1986, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues

related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: March 7, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-5500 Filed 3-12-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-85-032; OFP Case No. 55192-9292-20-24]

Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978; Kelco Division of Merck and Co., Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Kelco Division of Merck and Company, Inc., exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Kelco Division of Merck and Company, Inc. The permanent cogeneration exemption permits the use of gas as the primary energy source for the optimization of its cogeneration facility located in San Diego, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on May 12, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4708
Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749

SUPPLEMENTARY INFORMATION: On September 17, 1985, Kelco Division of Merck and Company, Inc., filed a petition requesting a permanent cogeneration exemption from the prohibitions of FUA. Kelco proposes to optimize the engine efficiency of its natural gas/liquid fuel-fired 27 megawatt cogeneration facility at its manufacturing location in San Diego, California. The electricity produced by this facility in excess of its needs is to be sold to San Diego Gas and Electric. The project also provides Kelco's manufacturing facility with steam for its process needs (designed at 180,000 lbs/hr—maximum with supplemental firing). The major components of the cogeneration facility are three gas turbine generators, three waste heat recovery boilers, and associated support equipment.

The modification will permit more efficient operation by increasing the fuel input to 120 million Btu/hr on a single unit (360 million Btu/hr for all three units together). Kelco estimates that the facility will save 10.5×10^{12} Btu of oil and gas equivalent per yer. The incremental savings resulting from this increased fuel input amounts to 270.5×10^{9} Btu/yr of oil and gas equivalent. The facility is currently operating and will commence operation at the higher fuel input if ERA provides its approval.

Basis for Permanent Exemption Order: The permanent exemption order is based upon evidence in the record including Kelco Division of Merck and Company, Inc., certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements: In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 1, 1985 (50 FR 39755), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 15, 1985; no comments were received and no hearing was requested.

NEPA Compliance: After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Kelco Division of Merck and Company, Inc., satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Kelco Division, to permit the use of gas as the primary energy source for its upgraded cogeneration facility.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

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Issued in Washington, DC, on March 6, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-5551 Filed 3-12-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-13-NG]

Koch Hydrocarbon Co.; Application To Import National Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 24, 1986, of an application filed by Koch Hydrocarbon Company (Koch), an operating division of Koch Industries, Inc., for blanket authorization to import from Canada up to 100,000 Mcf of natural gas per day, or a total of 182.5 Bcf over a five-year period beginning on approval of its application. The gas would be supplied by a Koch affiliate and other Canadian suppliers and sold by Koch to a wide range of U.S. customers. Koch proposes to file quarterly reports with the ERA within 45 days of each quarter on a confidential basis showing the suppliers, price and volumes.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 14, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-9622.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice of parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Koch's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m, Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 7, 1986.

Paula A. Daigneault,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 86-5552 Filed 3-12-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-2598-000 et al.]

Natural Gas Companies; Tenneco Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

March 10, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf 1,000 ft³	Pressure base
G-2598-000, D, Feb. 20, 1986	Tenneco Oil Company P.O. Box 2511 Houston, Texas 77001.	Trunkline Gas Company, McAllen Field, Hidalgo County, Texas.	[1]	
G-3968-001, D, Mar. 3, 1986	Sun Exploration & Production Co., P.O. Box 2880 Dallas, Texas 75221-2880.	Texas Gas Pipeline Corporation, Nome Field, Jefferson County, Texas.	[2]	
G-5181-000, D, Feb. 18, 1986	do	Northern Natural Gas Company, Guyman-Hugoton Field, Texas County, Oklahoma.	[3]	
G-6342-008, D, Feb. 26, 1986	Conco Inc., P.O. Box 2197, Houston, Texas 77252	El Paso Natural Gas Company, Lockhart A-27 No. 5 (Drinkard) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-009, D, Mar. 3, 1986	do	El Paso Natural Gas Company, Lockhart B-14A No. 1 (Blinebry) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-010, D, Mar. 3, 1986	do	El Paso Natural Gas Company, Hawk B-3 No. 22 (Blinebry) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-011, D, Mar. 3, 1986	do	El Paso Natural Gas Company, Lockhart A-36 No. 3 (Tubb) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6670-000, D, Mar. 3, 1986	Sun Exploration & Production Co.	Transcontinental Gas Pipe Line Corporation, North Bay City and North Markham Fields, Matagorda County, Texas.	[5]	
G-7193-008, D, Feb. 18, 1986	Union Oil Company of California, et al., P.O. Box 7600 Los Angles, Calif. 90051.	Williston Basin Interstate Pipeline Company, Worland Field, Bighorn and Washakie Counties, Wyoming.	[6]	
G-10122-005, D, Feb. 27, 1986	Conoco Inc	Tennessee Gas Pipeline Company, West Delta Block 52, Offshore Louisiana.	[7]	
G-1263-000, D, Feb. 10, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Texas Eastern Transmission Corporation, Yoward Field, Bee Country, Texas.	[8]	
CI61-737-004, D, Feb. 18, 1986	Shell Western E&P Inc., P.O. Box 4684 Houston, Texas 77210.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	[9]	
CI64-26-016, Feb. 26, 1986	Chevron U.S.A. Inc., 935 Gravier Street, New Orleans, La. 70112.	Texas Eastern Transmission Corporation, False River Area, Pointe Coupee Parish, Louisiana.	[10]	
CI66-988-001, D, Mar. 3, 1986	Shell Western E&P Inc	Panhandle Eastern Pipe Line Company, South Feldman Field, Hemphill County, Texas & South Bishop Field, Ellis County, Oklahoma.	[11]	
CI66-1283-002, D, Feb. 27, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northwest Central Pipeline Corporation, South Bishop Field, Ellis County, Oklahoma.	([12])	
CI67-13-000, D, Mar. 3, 1986	do	Northwest Central Pipeline Corporation, South Bishop Field, Roger Mills County, Oklahoma.	([12])	
CI69-1271-001, D, Feb. 27, 1986	do	Panhandle Eastern Pipe Line Company, South Bishop Field, Roger Mills County, Oklahoma.	([12])	
CI72-556-002, D, Feb. 18, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	K N Energy, Inc., Reydon Field, Roger Mills County, Oklahoma.	([13])	
CI76-221-001, D, Feb. 18, 1986	do	El Paso Natural Gas Company, Phantom Draw Field, Eddy County, New Mexico.	([14])	
CI76-287-001, D, Feb. 18, 1986	do	Transwestern Pipeline Company, Kennedy Farms Field, Eddy County, New Mexico.	([15])	
CI76-677-001, D, Feb. 18, 1986	do	El Paso Natural Gas Company, Drinkard Field, Lea County, New Mexico.	([16])	
CI78-209-001, D, Feb. 14, 1986	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Texas 79189.	Northern Natural Gas Company, Vici Field, Woodward County, Oklahoma.	([17])	
CI86-204-000, A, Feb. 13, 1986	Diamond Shamrock Exploration Co., LTV Center—Suite 1500, 2001 Ross Avenue, Dallas, Texas.	Pacific Transmission Company, Green River Basin, Lincoln County, Wyoming.	([18])	
CI86-205-000, B, Feb. 14, 1986	Shell Western E&P Inc	Florida Gas Transmission Company, SW Helen Gohlke Field, Victoria County, Texas.	([19])	
CI86-206-000 (G-4898) (G-4899) (G-13255) (CI69-1143), B, Feb. 14, 1986.	do	Texas Eastern Transmission Corporation, Helen Gohlke Field, De Witt and Victoria Counties, Texas.	([19])	
CI86-207-000, B, Feb. 18, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Shell Oil Company and Exxon Company U.S.A. (Succ. in Interest to The Carter Oil Co.), Bayou Field, Carter County, Oklahoma.	([20])	
CI86-208-000 (CI73-65), B, Feb. 18, 1986.	Sun Exploration & Production Co.	Tennessee Gas Pipeline Company, Glenmora Field, Rapides Parish, Louisiana.	([21])	
CI86-209-000, B, Feb.20, 1986	Houston Oil & Mineral Corp	Tennessee Gas Pipeline Company, North Magnolia City field, Jim Wells County, Texas.	[22]	
CI86-212-000 (CI63-79-000), B, Feb. 20, 1986.	Mesa Petroleum Co, P.O. Box 2009, Amarillo, Texas 79189.	Northern Natural Gas Company, Henderson #1-64 well, East Gem Prospect, Hemphill County, Texas.	[17]	
CI86-213-000, A, Feb. 24, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	[23]	
CI86-215-000, F, Feb. 25, 1986	Union Oil Company of California (Succ. in Interest to Sun Exploration & Production Co.), P.O. Box 7600, Los Angeles, Calif. 90051.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	[24]	
CI86-217-000, F, Feb. 25, 1986	TXO Production Corp. (Succ. in Interest to Amoco Production Company), First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Arkansas Louisiana Gas Company, Colquitt Field, Claiborne Parish, Louisiana.	[25]	
CI86-220-000, B, Feb. 21, 1986	C F Braun & Co., 3131 Turtle Creek Blvd., Suite 100, Dallas, Texas 75219-5476.	Trunkline Gas Company, Southwest Splendora Field, Montgomery County, Texas.	[26]	
CI86-221-000, B, Feb. 21, 1986	George R. Brown, 1450 One Allen Center, 500 Dallas Street, Houston Texas 77002.	Texas Eastern Transmission Corporation, N. Panther Reef Field, Calhoun County, Texas.	[27]	
CI86-222-000, B, Feb. 21, 1986	Petro-Lewis Funds, Inc., P.O. Box 2250, Denver, Colorado 80201.	Arkansas Louisiana Gas Company, Colquitt Field, Claiborne Parish, Louisiana.	[28]	
CI86-227-000 (G-15380), B, Feb. 25, 1986.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	West Lake Natural Gasoline Company, Lake Trammel Field, Nolan County, Texas.	[29]	
CI86-228-000, F, Feb. 27, 1986	Union Oil Company of California (Succ. in Interest of Sun Exploration and Product Co.).	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	[24]	

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf 1,000 ft³	Pressure base
CI86-231-000 (CI78-1080-000), D, Feb. 27, 1986.	TXP Operating Company, P.O. Box 1396, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, East Cameron Block 283, Offshore Louisiana.	[30]	
CI86-232-000 (CI81-422-000), B, Feb. 27, 1986.	Southern Union Exploration Company	ANR Pipeline Company, Woodward Area, Major County, Oklahoma.	[31]	
CI86-233-000 (CI80-469), B, Feb. 27, 1986.	Phillips Petroleum Company (Succ. in Interest to Phillips Oil Company) (Formerly: Aminoil, Inc.) 336 Home Savings & Loan Bldg., Bartlesville, Okla. 74004.	Tennessee Gas Pipeline Company, South Timbalier Block 36 Field, Offshore Louisiana.	([32])	
CI86-235-000 (G-13973), B, Feb. 28, 1986.	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Transcontinental Gas Pipe Line Corporation, Rousseau Field, LaFourche Parish, Louisiana.	([33])	
CI86-236-000, B, Feb. 25, 1986	Revere Corporation, P.O. BOX 1795, Fort Smith, Arkansas 72902.	Arkansas Louisiana Gas Company, Bonanza Field, Sebastian County, Arkansas.	([34])	
CI86-238-000, B, Feb. 26, 1986	Pintail Minerals Corporation, P.O. Box 8, Shreveport, La. 71161-0010.	United Gas Pipe Line Company, Caminanda Lake Field, DeSoto Parish, Louisiana.	([35])	
G-8686-000, F, Mar. 3, 1986	Union Texas Petroleum (Succ. in Interest to Sun Exploration and Production Company), P.O. Box 2120, Houston, Texas 77252-2120.	El Paso Natural Gas Company, Certain acreage in Lea County, New Mexico.	([36])	
CI82-1487-000, D, Mar. 3, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Panhandle Eastern Pipe Line Company, Mocane-Laverne Area, Beaver County, Oklahoma.	([37])	
CI86-223-000, B, Feb. 24, 1986	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Texas Gas Transmission Corporation, North Maurice Field, Lafayette Parish, Louisiana.	([38])	
CI86-1276-001, D, Mar. 3, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northern Natural Gas Company, Elwood Field, Ellis County, Oklahoma.	([39])	
CI77-736-002, Feb. 5, 1986	Odeco Oil & Gas Company, P.O. Box 61780, New Orleans, La. 70161.	Trunkline Gas Company, South Timbalier 60, Federal Domain, Offshore Louisiana.	([40])	

[1] Assignment of certain dedicated leases.

[2] Property sold to King Sherwood Oil Company.

[3] Property sold to Cities Service Oil & Gas Corporation.

[4] Well was reclassified by the New Mexico Oil Conservation Division from a gas well to an oil well.

[5] Property sold to Marathon Oil Company.

[6] To produce the Phosphoria formation which has been shut-in since 1967. Two wells are to be production tested and will produce associated sour gas. Williston Basin is unable to receive, or treat, the 30% H2S content gas. Abandonment is requested in order that the gas can be delivered and sold to the Spectrum Energy, Inc. gas plant where it will be processed and sweetened for resale in intrastate markets.

[7] Partial assignment of acreage to Deepot Exploration, Inc. on 3-27-74.

[8] Effective 9-1-85, property was sold to B & T Oil Company.

[9] A portion of the Catesby Field was assigned to Maynard Oil Company effective 12-1-85.

[10] Applicant is filing for an additional delivery point.

[11] All acreage, in the South Feldman Field and all acreage, except for the rights below the base of the Tonkawa formation in the South Bishop Field, have been assigned to Maynard Oil Company effective 12-1-85.

[12] All acreage, except for the rights below the base of the Tonkawa formation, has been assigned to Maynard Oil Company, effective 12-1-85.

[13] Property sold to Kenneth W. Cory.

[14] Property sold to Craig, Ltd.

[15] Property sold to CDC, Inc.

[16] Property sold to Brady W. Production, Inc.

[17] Production ceased and depletion of reserves.

[18] Applicant is filing under contract dated 4-24-79.

[19] All acreage has been assigned to Rosewood Resources, Inc.

[20] Normal depletion and contract passed its primary term.

[21] Last producing property under contract sold to Seleco Resources Ltd.

[22] Sale of all dedicated leases. Houston Oil & Minerals Corporation no longer has an interest in any of the acreage dedicated under contract.

[23] Applicant is filing under Gas Purchase Agreement dated 2-17-81.

[24] By a Partial Assignment and Bill of Sale document executed 8-2-85, Sun Exploration and Production Company assigned all of its right, title and interest in certain acreage in Harper County, Oklahoma effective 7-1-85.

[25] By an Assignment effective 8-1-85, Applicant acquired from Amoco certain property.

[26] The well from which gas was sold under the Gas Contract dated 5-19-76, The Friendswood Development Co. No. 1, was plugged and abandoned 10-31-77. The Contract terminated according to its provisions when the committed reserves were depleted.

[27] The only well on the dedicated acreage ceased producing and was plugged and abandoned on 10-28-80, continuation of service is no longer warranted following depletion, dedicated lease has expired for lack of production and gas purchase contract has been terminated.

[28] Well ceased to produce prior to October 1981 and lost lease in October 1981.

[29] Original contract dated 3-6-56 was a percent of proceeds contract with a minimum price. Rollover contract dated 1-1-82 is a percent of proceeds contract without a minimum price.

[30] The lease dedicated under Gas Purchase Contract has expired; reserves are depleted and all wells will be plugged and abandoned.

[31] Contract terminated by its own terms on 3-1-86. The only well dedicated to the contract was plugged and abandoned in accordance with State Agency Regulations on 2-8-84. The well was depleted.

[32] The South Timbalier Block 31 Well No. 2 was the only well covered by the rate schedule. Production ceased and the well was plugged and abandoned on 4-22-85. The lease expired by its own terms on 2-26-85.

[33] The gas reserves attributable to this field have been depleted. There are no plans for further development.

[34] Uneconomical.

[35] Basic contract expired on 1-1-85 and Purchaser has informed Seller that Purchaser is unable to take delivery of gas produced from the wells which were covered by the expired contract and which gas is dedicated to interstate commerce.

[36] Certain acreage was assigned to Union Texas Petroleum on 9-1-84.

[37] ARCO no longer owns an interest in subject acreage.

[38] All interest assigned to a small producer. To Amoco's knowledge service continues under a small producer certificate.

[39] A portion of the Elwood Field was assigned to Amoco Production Company effective 12-1-85.

[40] Applicant is filing to change delivery point.

Filing Code: A–Initial Service; B–Abandonment; C–Amendment to add acreage; D–Amendment to delete acreage; E–Total Succession; F–Partial Succession.

[FR Doc. 86-5515 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

March 7, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No: 2543-004.

c. Date Filed: September 26, 1985.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County near Milltown, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert J. Labrie, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, 406-723-5421.

i. Comment Date: March 3, 1986.

j. Description of Project: The existing project consists of: (1) A dam in four sections: A 244-foot concrete abutment wall, a 152-foot concrete gravity section (maximum height about 45 feet), integral with the powerhouse, a 52-foot long concrete sluice gate section containing four steel gates 9 feet by 14 feet and a 210-foot long rock crib spillway beyond the concrete sluice; (2) a reservoir with a capacity of approximately 300 acre-feet

at maximum pond elevation of about 3,260 feet; (3) a brick powerhouse containing five units with a total installed capacity of 3,040 kilowatts; and (4) a 2.3 kv bus at the plant.

Licensee proposes a rehabilitation of the project components consisting of modification of the spillway section of the dam, replacement of the sluice gate section of the dam, improvement of other water retaining sections of the dam and replacement of the turbine/generation equipment.

The existing generating units would be replaced by four new vertical tube units producing a total of 4,300-kW at a flow of 2,000 cfs and at a net operating head of 29 feet. The rehabilitated project would be operated run-of-river maintaining the reservoir elevation at about 3,259.7 feet MPC datum.

Licensee estimates that the average annual energy generation of the rehabilitated project would be 30,547,000—kWh and that the 1988 direct construction costs would be $14,688,000.

k. Purpose of Amendment: Licensee's proposal would correct deficiencies in the project components and would provide for more efficient use of the water resource at the site. In order to preclude further damages to the facility prior to repair, the application for rehabilitation is receiving expeditous processing.

l. This notice also consists of the following standard paragraphs: B, C.

B. *Comments, Protest, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5514 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8399-003]

City of Ellensburg, WA; Surrender of Preliminary Permit

March 4, 1986.

Take notice that the City of Ellensburg, Washington, Permittee for the Swauk-Teanaway Project No. 8399, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8399 was issued on May 21, 1985, and would have expired on April 30, 1987. The project would have been located on Swauk Creek and Teanaway River in Kittitas County, Washington.

The Permittee filed the request on January 27, 1986, and the preliminary permit for Project No. 8399 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5516 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-32-000, 001]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

March 7, 1986.

Take notice that Colorado Interstate Gas Company (CIG), on March 6, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1986.

The proposed tariff changes reflect a decrease in the rates charged to its jurisdictional customers of 14 cents per Mcf. This decrease consists of a reduction related to a rate change by Northwest Pipeline Corporation proposed to become effective April 1, 1986, of approximately $.7 million and an expected decrease in CIG's annual gas purchased costs of approximately $19.4 million which CIG believes it can accomplish through continued successes in gas purchase contract negotiations with various producers.

CIG also requests waivers of the Natural Gas Act, the Commission's regulations thereunder, and its tariff provisions in order to make this special rate reduction filing and for it to be effective April 1, 1986. CIG states that good cause exists for such waiver since it and its customers are encountering difficulties in marketing gas at present price levels.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5517 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-229-000]

Diamond Shamrock Exploration Co. and Diamond Shamrock Offshore Partners Limited Partnership; Application

Issued: March 10, 1986.

Take Notice that on February 27, 1986, Diamond Shamrock Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership (jointly referred to as "Diamond Shamrock") filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-term

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abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pregranted abandonment to cover transportation of gas sold under authorization therein.

These authorizations are being requested, effective April 1, 1986, to permit continuation of sales and deliveries of gas previously initiated under Diamond Shamrock's marketing programs and to permit Diamond Shamrock to maximize its efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas with a ceiling price in excess of the maximum lawful price under NGPA Section 109.

Any person desiring to be heard or to make protest with reference to said application should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Diamond Shamrock is otherwise advised, it will be unnecessary for Diamond Shamrock to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5518 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-45-001]

El Paso Natural Gas Co.; Compliance Filing

March 7, 1986.

Take notice that on March 5, 1986, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, First Revised Sheet Nos. 229 through 231 and First Revised Sheet Nos. 234 through 236 to Original Volume No. 1-A of its FERC Gas Tariff. El Paso states that the tendered tariff sheets, submitted in compliance with the Commission's order issued February 28, 1986 in this proceeding, reflect the elimination of paragraphs 19.9 and 20.8 regarding non-payment of bills from the operating provisions governing interruptible and firm transportation service approved for inclusion as part of El Paso's Original Volume No. 1-A Tariff by the Commission's February 28, 1986 order.

El Paso requests waiver of the Commission's Regulations as may be necessary to permit the tendered tariff sheets to become effective upon receipt of a final Commission order in this proceeding.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP86-45-000, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5519 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-55-000]

El Paso Natural Gas Co.; Tariff Filing

March 7, 1986.

Take notice that on February 28, 1986, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) regulations under the Natural Gas Act, Second Revised Sheet No. 466 to special Rate Schedule X-31 contained in its FERC Gas Tariff, Third Revised Volume No. 2. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 5, 1986.

Special Rate Schedule X-31 is comprised of the San Juan Gathering Agreement dated January 31, 1974, as amended ("Agreement"), between El Paso and Northwest Pipeline Corporation ("Northwest") which provides for the gathering and exchange of natural gas produced in the San Juan Basin area of northwest New Mexico and southwest Colorado and was authorized by Federal Power Commission order issued January 22, 1974 at Docket No. CP73-331, *et al.* By Letter Agreement dated December 27, 1985, El Paso and Northwest agreed to allow each other to schedule production from wells in which they own a majority interest into the other party's gathering system in accordance with their respective market requirements. The parties further agreed to waive (not charge or collect) the gathering charge set forth in the Agreement during the effectiveness of the December 27, 1985 Letter Agreement which, by its terms, will commence on the first day of the month following the month in which the Letter Agreement may be implemented pursuant to Commission Regulations and continue for a period of twelve (12) calendar months and month-to-month thereafter until terminated by either party. El Paso states that tendered Second Revised Sheet No. 466, when accepted by the Commission and permitted to become effective, will reflect the parties, agreement to so waive the gathering charge.

El Paso requests that the tendered tariff sheet be accepted by the Commission and permitted to become effective thirty (30) days after the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5520 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-35-002]

Great Lakes Gas Transmission Compliance Filing

March 7, 1986.

Take notice that on February 28, 1986, Great Lakes Gas Transmission Company (Great Lakes) tendered for filing the following tariff sheets in compliance with Ordering Paragraph (B) of the Commission's January 30, 1986, Order:

First Revised Volume No. 1
- Alternate Fifteenth Revised Sheet No. 4
- Alternate Original Sheet No. 57 (i)
- Alternate Original Sheet No. 57 (ii)

Original Volume No. 2
- Alternate Twentieth Revised Sheet No. 53
- Alternate Eleventh Revised Sheet No. 77
- Alternate Tenth Revised Sheet No. 151
- Alternate Fifth Revised Sheet No. 152
- Alternate Fifth Revised Sheet No. 223
- Alternate Fifth Revised Sheet No. 245
- Alternate First Revised Sheet No. 269
- Alternate First Revised Sheet No. 270
- Alternate Third Revised Sheet No. 294

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 4, 1986.

The rates included in the above filed tariff sheets were computed utilizing the overall cost of service filed by Great Lakes in this proceeding on December 31, 1985 and reflect the fully allocated, rolled-in rate design methodology ordered by the Commission in its Order on Remand in Docket No. RP79-10-018, *et al,* issued on January 7, 1986. This rate design methodology has been utilized for Rate Schedules T-6, T-8, T-9 and T-10.

TransCanada PipeLines Limited filed on February 6, 1986 a Request for Rehearing of the Commission's Order on Remand of January 7, 1986. If after rehearing the fully allocated, rolled-in rate design methodology is required to be implemented, Great Lakes believes Rate Schedules T-6, T-8, T-9 and T-10 should be included among the rate schedules subject to Great Lakes' Purchased Gas Adjustment ("PGA") tariff provisions consistent with all other rate schedules included in Great Lakes' FERC Gas Tariff. Additionally, Great Lakes believes that Rate Schedule T-11 should also be included among the rate schedules subject to Great Lakes' PGA tariff provisions. Accordingly, if such rate design methodology for the Great Lakes' system is placed into effect, Great Lakes will file to be effective concurrently the appropriate tariff changes for Rate Schedules T-6, T-8, T9, T10 and T-11 so as to make those rate schedules subject to Great Lakes' PGA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)) All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5521 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-5-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

March 7, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on March 5, 1986, tendered for filing Fifty-Seventh Revised Sheet No. 57 and Sixth Revised Sheet No. 52 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provided for a new pricing arrangement related to gas purchased from Great Lakes by Inter-City Gas Corporation, Peoples Natural Gas Company, and Michigan Power Company ("Smaller Customers"). Under the new pricing provisions for Inter-City Gas Corporation, the gas cost component of the monthly demand charge will be reduced form the current rate of $15.21 pr Mcf of contract demand each month to $12.35 per Mcf of contract demand per month, with no change in the existing commodity component. Under the new pricing provisions for Michigan Power Company ("Michigan Power") and Peoples Natural Gas Company ("Peoples") the charge for the gas cost component will be reduced from a rate of $3.73 pr MMBtu to $3.44 per MMBtu. The estimated annual savings based on deliveries during the twelve month period ended November 30, 1985 would result in savings to the Smaller Customers of approximately $555,000 annually and a reduction in the cost of company use gas of approximately $9,000,000 annually. All of the above noted pricing arrangements are subject to periodic adjustments by the application of monthly indexes designed to maintain market oriented prices for these customers in their respective market areas.

At the present time Michigan Power and Peoples are in the same Gas Purchase Contract Group (Group 5) because the gas cost component of the commodity rate for each company is the same. The gas price indexing for Michigan Power and Peoples, referred to above, established a different index for each company based on their respective geographic markets. Accordingly, Great Lakes filed Sixth Revised Sheet No. 52 to implement a separate Gas Purchase Contract Group for Michigan Power (Group 5A) and Peoples (Group 5B).

Great Lakes is requesting an effective date of February 21, 1986, for Fifty-Seventh Revised Sheet No. 57 and Sixth Revised Sheet No. 52. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5522 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-52-000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1986.

Take notice that on February 28, 1986, Kentucky West Virginia Gas Company ("Kentucky West") tendered for filing proposed changes to the following tariff sheets of its FERC Gas Tariff:

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FERC Gas Tariff, First Revised Volume No. 1

Third Revised Sheet No. 5
  Superseding Second Revised Sheet No. 5
First Revised Sheet No. 6
  Superseding Original Sheet No. 6
First Revised Sheet No. 7
  Superseding Original Sheet No. 7
Ninth Revised Sheet No. 8
  Superseding Eighth Revised Sheet No. 8
Fifth Revised Sheet No. 13
  Superseding Fourth Revised Sheet No. 13
Fourth Revised Sheet No. 24
  Superseding Third Revised Sheet No. 24
Thirty-Fifth Revised Sheet No. 27
  Superseding Thirty-Fourth Revised Sheet No. 27
Eighteenth Revised Sheet No. 27A
  Superseding Seventeenth Revised Sheet No. 27A
Third Revised Sheet No. 45
  Superseding Second Revised Sheet No. 45

The proposed changes are filed pursuant to §154.38(d)(4)(vi) of the Commission's Regulations and the increased rates provided for therein are based upon actual costs for the base period ended November 30, 1985, adjusted only for changes occurring in that period. The annual volumes experienced for the base period have been adjusted upward to a representative level of 39,000,000 dth for sales, shrinkage and transportation.

Kentucky West states that the new base tariff rates reflected on the proposed tariff sheets do not fully recover Kentucky West's cost of service and that, for competitive reasons, Kentucky West has limited the increase in its base tariff rates to a level below that which is supported by its cost of service, resulting in a deficiency amounting to $2,072,958.

The new base tariff rates filed by Kentucky West for Rate Schedule PLS–1 reflect a demand commodity rate structure base upon the modified fixed variable rate design methodology. In addition, the proposed new rates relating to Rate Schedule PLS–1 provide for a Market Incentive Purchased Gas Cost Charge for volumes taken in excess of two-thirds of the contract quantity. The Market Incentive Purchase Gas Cost Charge is available only to the extent that Kentucky West can arrange with its suppliers to purchase and sell said excess volumes at a price that will permit Kentucky West to recover its Company Used Gas Charge and Delivery Charge as set out on its currently effective Sheet 27A.

The new base tariff rates are to be effective March 1, 1986 subject to refund pursuant to the requirements of § 154.38(d)(4)(vi) of the Commission's regulations.

Kentucky West further states that copies of its filing have been served upon each of its customers and the Public Service Commissions of Kentucky, Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–5523 Filed 3–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–237–000]

The Louisiana Land and Exploration Company and LLOXY Holdings, Inc.; Application

Issued: March 10, 1986.

Take Notice that on February 28, 1986, The Louisiana Land and Exploration Company and LLOXY Holdings, Inc. (jointly referred to as "Applicants") filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-term abandonment of sales of gas released by purchasing pipelines and the resale of that gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pre-granted abandonment to cover transportation of gas sold under authorization therein.

These authorizations are being requested, effective April 1, 1986, to permit continuation of sales and deliveries of gas previously initiated under Applicants' marketing programs and to permit Applicants to maximize their efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas with a ceiling price in excess of the maximum lawful price under NGPA section 109.

Any person desiring to be heard or to make protest with reference to said application should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicants are otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–5224 Filed 5–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–224–000 et al.]

Loyd B. Sands et al.; Applications for Partial Limited-Term Abandonment Authorization

March 10, 1986.

Take notice that each of the Applicants listed herein has filed an application for an expedited partial limited-term abandonment of the sale of gas to Natural Gas Pipeline Company of America (NGPL) from Applicant's interest under a September 1, 1967, contract covered by Applicants' small producer certificates. Applicants propose to abandon for a limited term sales of gas from their interests in the Arco-operated Tubb Estate #1–25 Well. Applicants state that the Tubb Estate #1–25 is an NGPA section 104 recompletion well and has an expected optimal flow rate of 18 to 24 MMcf/d. This well has been completed for quite some time according to Applicants and NGPL has not connected. Applicants further state that the gas is sour and NGPL's application for a permit to operate a 1.5 MMcf/d sweetening facility has been delayed by protests from a local land owner, and it is not known when, if ever, this permit will be granted. Applicants further state that these filings are being made with NGPL's knowledge and consent and are pursuant to the seller's reservations section of the referenced contract which reads in part:

> Seller shall have the right to take gas from the gas reserves for the sale of gas to others on an interim basis, provided that any arrangement entered into by Seller pursuant thereto shall be intrastate in nature, and shall, by its terms, be expressly terminable by Seller and shall be terminated by Seller on or before the date Pipeline completes the construction of facilities adequate to enable the receipt of the applicable quantity hereunder.

Applicants also state that the Urantia Corporation has a transportation line within 25 to 50 feet of the Tubb Estate #1–25 to which the well can be connected in approximately eight hours; interim gas purchasers will be Lone Star Gas Company and Enserch Gas Company, both of which are intrastate. Applicant states that the agreements with both provide that they are terminable by Applicants as required in the above-quoted section of the contract. Applicants state that it is in the public interest that the expedited partial release be granted on an interim basis so that this gas can flow to market.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in the proceedings herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86–224–000, B, Feb. 24, 1986	Loyd B. Sands, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1–25 Well, Winkler County, Texas.	[1] [2]	
CI86–225–000, B, Feb. 24, 1986	Caroline Hunt Trust Estate, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1–25 Well, Winkler County, Texas.	[1] [3]	
CI86–226–000, B, Feb. 24, 1986	Caroline Hunt Schoellkopf, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1–25 Well, Winkler County, Texas.	[1] [4]	

[1] This well produces sour gas and has not been connected to Natural pending receipt by Natural of an EPA permit for operation of a sweetening plant. Applicant proposes to sell to intrastate purchasers, as contemplated by the reservation section of the subject contract with Natural, until such time as Natural connects the well.

[2] Operates under small producer certificate in Docket No. CS76–969.

[3] Operates under small producer certificate in Docket No. CS84–76.

[4] Operates under small producer certificate in Docket No. CS84–77.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86–5525 Filed 3–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–3–41–000, 001]

Southwest Gas Corporation; Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 7, 1986.

Take notice that Southwest Gas Corporation (Southwest) on March 5, 1986, tendered for filing Thirtieth Revised Sheet No. 10, Eleventh Revised Sheet No. 10A and Sixth Revised Sheet No. 31 pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect a decrease in rates occasioned by a decrease in rates from Northwest Pipeline Corporation, Southwest's sole supplier of gas in northern Nevada, effective April 1, 1986. Southwest also proposes to change the methodology of calculating the surcharge adjustment contained in its PGAC Provision. The proposed effective date for Southwest's filing is April 1, 1986.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–5526 Filed 3–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID–1691–003]

Paul J. Sullivan; Filing

March 10, 1986.

Take notice that on March 3, 1986, Paul J. Sullivan tendered for filing notice that as of April 1, 1986 all his officerships and directorates with Public Utilities will have been terminated.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–5527 Filed 3–12–86; 8:45 am]

BILLING CODE 6717-01-M

Docket No. GP86–17–000

Texaco Inc.; Petition for Declaratory Order

March 7, 1986.

Take notice that on February 7, 1986, Texaco Inc. (Texaco) filed with the Commission a petition for a declaratory order under Rule 207 of the Commission's rules of practice and procedure. Texaco seeks a ruling that the Natural Gas Policy Act of 1978 (NGPA) permits it to waive its contractual right to extract ethane from only certain gas streams, depending on

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the price Texaco is entitled to receive for the gas stream, and that the NGPA permits it to adopt a certain accounting method to relect the new ethane extraction procedure it seeks to follow.

Texaco states that it provides and sells to Florida Gas Transmission Company (Florida Gas) residue natural gas which is processed at Texaco's Alligator Bayou plant, located in St. Martin's Parish, Louisiana. Different prices apply to the different gas streams sold to Florida Gas. For some gas streams, a maximum lawful price under the NGPA is the applicable price, while for other gas streams, the price is a certain percentage of the equivalent MMBtu price of No. 6 fuel oil.

Texaco states that at present, it is exercising contract rights to recover ethane, propane, and other heavier hydrocarbons from all the different-priced gas streams at its Alligator Bayou plant. Texaco also states that because of the relative values of ethane and residue gas, it is economically disadvantageous to recover ethane from some of the gas streams processed at that plant. Texaco intends to waive its right to recover ethane from some gas streams, but not from others, depending upon the price applicable to the particular gas stream. Texaco will continue to recover propane and heavier hydrocarbons from all gas streams. Texaco also states that it intends to change the plant accounting method at the Alligator Bayou plants to a Btu basis to make a proper allocation of the ethane Btu reduction. Texaco requests that the Commission issue an order declaring that the proposed ethane extraction and accounting procedures are consistent with the NGPA.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of Rules 214 or 211 of the Commission's rules of practice and procedure. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,
Secretary.
[FR Doc. 86-5528 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-3-18-002]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

March 7, 1986.

Take notice that on March 4, 1986 Texas Gas Transmission Corporation (Texas Gas) tendered for filing Second Substitute Third Revised Sheet No. 10 and Substitute Third Revised Sheet No. 10A to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed to reflect rate revisions from Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Co. pursuant to Ordering Paragraph (C) of the Commission's Order issued January 31, 1986, in Docket No. TA86-3-18-000 and TA86-3-18-001.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.
[FR Doc. 86-5529 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-2-30-002]

Trunkline Gas Co.; Change in Tariff

March 7, 1986.

Take notice that on March 5, 1986 Trunkline Gas Company (Trunkline) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Tenth Revised Sheet No. 21-F
Second Revised Sheet No. 21-F.1

An effective date of March 1, 1986 is proposed.

Trunkline states by the Order dated February 28, 1986, the Federal Energy Regulatory Commission (Commission) accepted for filing and suspended, subject to refund and conditions, tariff sheets filed by Trunkline in the above-referenced proceeding.

Ordering Paragraph (D) of the Commission's Order dated February 28, 1986 directed Trunkline to file revisions to its tariff language within 30 days of the date of the Commission's Order to the extent necessary to implement the new methodology for treatment of exchange gas imbalances.

Trunkline states that these revised tariff sheets reflect compliance with Ordering Paragraph (D) of the Commission's Order dated February 28, 1986.

The filing of these revised tariff sheets by Trunkline in compliance with the Commission's February 28, 1986 order in this proceeding is without prejudice to Trunkline's rights to seek rehearing of the conditions in the February 28, 1986 order.

Copies of this letter and enclosure are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.
[FR Doc. 86-5530 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59210A; FRL-2963-2]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-10. The test marketing conditions are described below.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-609, 401 M Street SW., Washington, DC 20460 (202-382-3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-86-10

Date of Receipt: January 21, 1986.

Notice of Receipt: January 31, 1986 (51 FR 4029).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: Publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six months.

Commencing on: March 5, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 5, 1986.

Don R. Clay,
Director, Office of Toxic Substances.
[FR Doc. 86-5497 Filed 3-12-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris Benz, FCC, (202) 632-7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395-7231.

OMB No.: 3060-0135
Form No.: FCC 6024B
Title: Supplemental Return Notice for the General Mobile Radio Service
Action: Extension
Estimated Annual Burden: 60 Responses; 15 Hours.

OMB No.: 3060-0040
Form No.: FCC 404/404A
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority
Action: Revision
Estimated Annual Burden: 28,514 Responses; 4,762 Hours.

OMB No.: 3060-0136
Form No.: FCC 574T
Title: Temporary Permit to Operate a General Mobile Radio Service System
Action: Extension
Estimated Annual Burden: 1,500 Recordkeepers; 150 Hours.

Federal Communications Commission.

William J. Tricarico,
Secretary.
[FR Doc. 86-5489 Filed 3-12-86; 8:45 am]
BILLING CODE 6712-01-M

[FCC 86-93]

Designation of Defense Commissioner

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This Order designates Chairman Mark S. Fowler as Defense Commissioner, replacing Commissioner Mimi Weyforth Dawson.

EFFECTIVE DATE: February 27, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Office of Managing Director, (202) 632-3906.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Designation of Defense Commissioner.

Adopted: February 26, 1986.
Released: February 27, 1986.
By the Commission.

1. This order designates Chairman Mark S. Fowler as the Defense Commissioner for the Federal Communications Commission. The position of Defense Commissioner had been previously held by Commissioner Mimi Weyforth Dawson. This action is in accordance with § 0.181 of the FCC Rules and Regulations, 47 CFR 0.181, which specifies that a Defense Commissioner be designated by the Commission.

2. The Defense Commissioner directs the overall national security and emergency preparedness activities of the Commission. As part of this responsibility, the Defense Commissioner keeps the Commission informed of the significant developments in the field of emergency preparedness, defense mobilization and

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any defense activities that involve formulation and revision of Commission policy in any area of Commission responsibility.

3. Authority for this action is contained in sections 1, 4(i), 4(j), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155(c)(1) and 303(r).

4. Accordingly, it is ordered that, effective immediately, Mark S. Fowler is designated as Defense Commissioner for the Federal Communications Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5484 Filed 3-12-86; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 84-467; FCC 86-98]

Preparations for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band.

AGENCY: Federal Communications Commission.

ACTION: Second report.

SUMMARY: The FCC recommended to the State Department that the United States propose to the Conference: (1) The use of an Allotment Plan rather than an Assignment Plan to govern the use of the frequencies being added to the existing AM band, and (2) a general station power maximum of 10 kW.

FCC customarily recommends to the Department of State proposals that are made on behalf of the United States to international conferences concerning use of the radio spectrum.

Allotment planning, which designates frequencies that signatory countries may use anywhere in wide areas, is more flexible than assignment planning, which necessitates the advance specification of the exact location, power and station characteristics of stations on designated frequencies. It is therefore more convenient for use as an internationally agreed basis for developing the use of a bank newly allocated to radio broadcasting. A 10 kW ceiling on station power appropriately balances the need for service areas with adequate signals against the need for multiple stations on each frequency.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, FCC, (202) 632–7792.

Second Report

In the matter of: Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band; Gen. Docket No. 84-467.

Adopted: March 5, 1986.

Released: March 6, 1986.

By the Commission.

Introduction

1. Our *First Report* in this proceeding was adopted on July 29, 1985. In that decision we announced FCC recommendations for United States proposals to the Region 2 Administrative Radio Conference to establish a Plan for the broadcasting service in the band 1605–1705 kHz. The *First Report* has been forwarded to the International Telecommunication Union and distributed to the administrations of the Region for their consideration in the upcoming Conference. We noted that the *First Report* would be supplemented later by additional proposals relating to the form of plan and maximum power, which required further study. Our recommendations on these subjects and observations on the question of spectrum sharing with other, non-broadcast services are set out in the Appendix hereto.

Form of Plan

2. The choice we are faced with in planning the use of a spectrum band lies between an assignment plan and an allotment plan. Under the former, an assignment for each station is entered into the plan with a specific location, power and other pertinent characteristics. This limits the use that can be made of a planned assignment unless and until the administration desiring to use other locations or station characteristics completes the process of obtaining a modification of the plan, after obtaining the consent of all affected administrations. An allotment plan offers more flexibility. It makes designated frequencies available for use anywhere within a specified area. Also, while an allotment plan, like an assignment plan, limits the radiation that an assignment may direct toward neighboring countries, it does so in a manner that permits more range of choice of station power and other operating characteristics.

3. Because of the greater freedom it affords for the development of a radio broadcasting service, allotment planning is the preferred method for planning the use of a band newly allocated for that use. For this and other reasons set out more fully in the Appendix, the Commission recommends that the United States propose to the Conference that allotment planning be used for the new medium frequency broadcast band 1605 to 1705 kHz.

Maximum Power

4. The question of power arises twice in allotment planning. First is the determination of the power and antenna presumed for the purpose of developing the plan and determining the agreed levels of interference. For the reasons noted in the Appendix, we suggest a 1 kW station power and a ¼ wavelength non-directional antenna.

5. The power used for planning purposes need not limit the permissible power for individual stations. Therefore, at the assignment stage, actual power may vary so long as the agreed protection arrived at through the use of the power presumed in the plan is provided. Higher power makes possible service to larger areas with stronger signals, while lower power increases the potential number of assignable stations, and reduces the amount of cumulative interfernce. We believe that a generally applicable maximum of 10 kW would achieve a desirable balance. It takes into account the fact that usable signal range is lower at the upper end of the medium frequency broadcasting band than at lower frequencies, while at the same time avoiding the severe limits on potential numbers of stations, and the greater interference levels that are inescapable when still higher power is used. Additionally, limiting transmitter power to 10 kW mimimizes the potential for inter-regional interference. This recognizes that other regions of the world (Europe, Africa, and Asia) use this new band, 1605–1705 kHz, for non-broadcast services. The Commission therefore recommends that the United States propose that the Region 2 plan be prepared using power levels of 1 kW, but that stations be permitted to use power of up to 10 kW, provided that neighboring countries are protected from interference as specified in the plan.

6. For the reasons stated in the final portion of the Appendix it is not considered to be necessary or appropriate that the Conference establish criteria relating to intra-regional sharing of the 1605–1705 kHz band with other services.

7. Therefore, pursuant to sections 4(i), 303 and 405 of the Communications Act of 1934, as amended, it is ordered, that the appended Recommended Proposals are adopted for submission to the Department of State.

8. Further information may be obtained from Wilson A. LaFollette (202) 632–5414, or Jonathan David at (202) 632–7792.

Federal Communication Commission.

William Tricarico,

Secretary.

Note: The Appendix of this document, Additional Proposals Recommended by the FCC...", will not be printed herein due to the continuing effort to minimize publishing costs. Copies of the complete text of this document may be obtained from the International Transcription Service, 1919 M St. NW., Washington, DC 20554, (202) 857–3800.

[FR Doc. 86-5288 Filed 3-12-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

Amendment to a Major-Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–758–DR), dated February 21, 1986, and related determinations.

DATED: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Alameda, Contra Costa, Fresno, and San Mateo Counties for Individual Assistance.
Madera County as an adjacent area for Individual Assistance.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 86-5439 Filed 3-12-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Waterfront Shipping Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2718
Name: Waterfront Shipping Company, Inc.
Address: 3433 Tremley Point Road, Linden, NJ 07936
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1578
Name: BBC International
Address: 426 W. Florence Avenue, Inglewood, CA 90504
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2119
Name: AMJ International Shipping, Inc.
Address: 516 Fifth Avenue, New York, NY 10036
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2349
Name: Harold Lloyd Burke dba Burke International
Address: 1050 Dominquez Street, Carson CA 97046
Date Revoked: February 26, 1986
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-5537 Filed 3-12-86; 8:45 am]

BILLING CODE 6730-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts meeting scheduled for March 13, 1986 is cancelled. Our next scheduled meeting is Thursday, April 17, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC March 6, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 86-5469 Filed 3-12-86; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Reports; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1985 annual reports for the following Federal advisory committees utilized by the Centers for Disease Control have been filed with the Library of Congress:

Board of Scientific Counselors, National Institute for Occupational Safety and Health
Immunization Practices Advisory Committee
Mine Health Research Advisory Committee
Safety and Occupational Health Study Section

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC (telephone 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, NHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC.

Dated: March 7, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-5471 Filed 3-12-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84P-0279]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

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SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to Rogers Walla Walla, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catherine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Rogers Walla Walla, Inc., P.O. Box 998, Walla Walla, WA 99362, and Continental Can Co., Inc., 51 Harbor Place, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Rogers Walla Walla, Inc., and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36925).

Rogers Walla Walla, Inc., and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to Rogers Walla Walla, Inc., and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5435 Filed 3–12–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P–0278]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to the Lakeside Packing Co. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identiy for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Lakeside Packing Co., P.O. Box 1127, Manitowoc, WI 54220, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Lakeside Packing Co. and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36924).

The Lakeside Packing Co. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to the

Lakeside Packing Co. and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, exept that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5436 Filed 3–12–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P–0277]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to Truitt Brothers, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petiton to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Truitt Brothers, Inc., P.O. Box 309, Salem OR 97308, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Truitt Brothers, Inc., and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36924).

Truitt Brothers, Inc., and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of indentity for canned green beans proceeds. The permit holders also requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to Truitt Brothers, Inc., and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5437 Filed 3–12–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P–0281]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY; The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to the Friday Canning Corp. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFOMRATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Friday Canning Corp., 150 West First St., P.O. Box 129, New Richmond, WI 54017, and

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Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Friday Canning Corp. and Continental Can Co., Inc., was published in the Federal Register of September 28, 1984 (49 FR 38925).

The Friday Canning Corp. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to the Friday Canning Corp. and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested persons who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5438 Filed 3–12–86; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Refugee Resettlement Program; Proposed Formula for Allocations to States of Fiscal Year 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

Correction

In FR Doc. 86–4270 beginning on page 6943 in the issue of Thursday, February 27, 1986, make the following correction: On page 6944, in the third column, first line, insert the following before "U.S.": "State is below the national average for all time-eligible refugees/entrants in the".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the previous publication of the material in the Federal Register on July 5, 1985 (50 FR 27694). The notice being revised, which is published in its entirety below, is titled "Contract Files—Interior, GS–5".

The existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Two new compatible routine disclosures to the General Services Administration and the Department of Commerce are also added. The retention and disposal statement is amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before April 14, 1986, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: February 28, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/USGS–5

SYSTEM NAME:

Contract Files-Interior, GS–5.

SYSTEM LOCATION:

The primary location of this system of records is in the Branch of Procurement and Contracts, Geological Survey, National Center, Reston, VA 22092. These records are also maintained in several Survey administrative field offices. A listing of these locations may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contracts with the Geological Survey. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of contract information, from inception of requirement, through contract award, contract administration and completion of the contract. Copies of contractor technical and cost proposals, documentation pertaining to the award, contract, miscellaneous correspondence, and information on debts owed by a contractor as a result of overpayment, default, disallowed costs or other contractual obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in awarding and administering contracts through their completion. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee; or the issuance of a security clearance, license, contract, grant or other benefit; (6) to the General Services Administration for entry into the Federal Procurement Data System; (7) to the Department of Commerce for publication in the Commerce Business Daily.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, and in automated form through the Procurement Management Information System.

RETRIEVABILITY:

By name of individual contactor and by contract number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 802–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Procurement Policy Section, Branch of Procurement and Contracts, Geological Survey, Department of the Interior, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURES:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her must be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager, signed by the requester and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual contractor.

[FR Doc. 86–5456 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[NM 58299]

New Mexico; Realty Action; Direct Sale of Public Land in Sierra County

The following described parcel of public land has been examined and found suitale for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value of $200/acre. The land will not be offered for sale until 60 days after the date of this notice.

New Mexico Principal Meridian

T. 12 S., R. 4 W.,
Sec. 19, lot 3, a portion thereof.
Containing approximately 9.85 acres.

The lands are proposed to be offered to the Sierra County Commissioners, who plan to use the land to operate a sanitary landfill. The sale is not in conflict with the Bureau's planning system; the lands are not critical to any resource program and have been found suitable for use as a sanitary landfill. It has been determined that sale of this parcel of land to the Sierra County Commission will serve important public objectives.

The patent, when issued, will be subject to all valid and existing rights and will contain the following reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 stat. 391; 43 U.S.C. 945).
2. All mineral deposits in the land so patented. Such minerals shall be subject to the rights to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).
3. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005. Objections will be reviewed by the BLM State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

March 6, 1986.

Richard T. Watts,

Acting District Manager.

[FR Doc. 86–5476 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-FB-M

[NM 64122]

Realty Action—Recreation and Public Purposes; Lease and Sale of Lands in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

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ACTION: Notice of realty action on a recreation and public purpose lease/patent with Aztec Municipal School District #2.

SUMMARY: Pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et. seq.), the following described lands have been determined to be suitable for disposal by R&PP:

New Mexico Principal Meridian

T. 30 N., R. 11 W.,
  Sec. 7, SW¼NE¼NE¼, S½SE¼NE¼NE¼, NE¼NW¼NE¼, N½SE¼NW¼NE¼, SW¼SE¼NW¼NE¼.
 The areas described total 32.50 acres.

The public lands indentified for disposal are located in the City of Aztec and are adjacent to a residential development. An elementary school is planned for construction on the site. The identified lands are surrounded on three sides by private land, which has a high potential for further residential development.

This R&PP proposal is consistent with recommendation L-1.4 in the Management Framwork Plan (MFP). The land is not within a grazing allotment.

The public lands would be leased for five years. At the end of five years or when the project is completed the lands would be sold for $2.50 per acre and a patent would be issued.

Lands included in this R&PP will be subject to the following conditions:

When the patent is issued it will be subject to all existing valid rights.

The United States will reserve all the coal, oil, gas and geothermal mineral desposits in the land.

During the five year lease the Aztec Municipal Schools will pay a $50.00 rental fee. The land will be patented once development has occurred.

This notice segregates these lands from operation of the public land laws, including the mining laws, but not from the mineral leasing laws.

Detailed information including the evnironmental assessment and land report is available for review at the BLM, Farmington Resource Area Office, 900 La Plata Highway, Farmington, New Mexico.

For a period of 45 days after publication of this notice, interested parties may submit comments to the Albuquerque District Manager, PO Box 6770, Albuquerque, New Mexico 87197-6770.

Dated: February 25, 1986.

L. Paul Applegate,

District Manager.

[FR Doc. 86-5477 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-FB-M

Environmental Statements; Colorado; Pacific Shale Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of record of decision.

SUMMARY: The purpose of this notice is to announce the availability of the Record of Decision (ROD) for the Pacific Shale Project. The decision is to implement the Agency's Preferred Alternative as designated in the Final EIS.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has decided to approve the Agency's Preferred Alternative as designated in the FEIS dated December 7, 1984. The ROD summarizes the EIS scoping process, alternatives considered, components of the preferred alternative, decision rationale, mitigation, and monitoring.

Availability: Single copies of the ROD may be obtained from: EIS Team Leader, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81506, (303) 243-6552, FTS 323-0011.

Dick Freel,

District Manager, Grand Junction District.

[FR Doc. 86-5472 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-JB-M

[A-20340-J]

Realty Action; Exchange of Public Lands, Maricopa and Yavapai Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 6 N., R. 3 E.,
  Sec. 35, E½NW¼SE¼NW¼;
  Sec. 36, Lots 14, 21.
T. 5 N., R. 4 E.,
  Sec. 6, Lot 6-7, E½SW¼;
  Sec. 7, Lot 1.
T. 6 N., R. 4 E.,
  Sec. 4, Lot 11;
  Sec. 7, S½NE¼, N½SE¼;
  Sec. 8, NE¼SE¼;
  Sec. 9, Lot 1, SE¼NE¼, NE¼SE¼, S½SE¼.

Yavapai County

T. 12 N., R. 1 E.,
  Sec. 21, NW¼.
T. 13 N., R. 1 E.,
  Sec. 4, Unpatented portion;
  Sec. 8, Unpatented land in NW¼NW¼ surrounded by Lot 2;
  Sec. 24, E½E½, SW¼SW¼, E½SW¼, W½SE¼;
  Sec. 25, Lots 1-4, N½, S½S½.
T. 13 N., R. 1½ E.,
  Sec. 1, Lot 4;
  Sec. 11, Lots 1-4;
  Sec. 12, NW¼NW¼, S½SW¼—less mining patent, SW¼SE¼ less mining patent;
  Sec. 13, All except E½NE¼ and M.S. 2917;
  Sec. 14, Lots 1-4;
  Sec. 24, W½;
  Sec. 25, NW¼, N½SW¼, SW¼SW¼.
T. 15 N., R. 2 W.,
  Sec. 12, SW¼SW¼.
 Containing approximately 3,536 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 4, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-5473 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-32-M

[OR-23590]

Exchange of Public and Private Lands in Baker County, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 7 S., R. 41 E.,
  Sec. 11: SW¼SE¼;
  Sec. 14: NW¼NE¼.
 Comprising 80.00 acres of public lands.

In exchange for these lands, the United States Government will acquire the following described lands from The Nature Conservancy:

Willamette Meridian

T. 7 S., R. 48 E.,
  Sec. 18: N½NW¼.
 Comprising 80.00 acres of private lands.

The purpose of the exchange is to dispose of scattered tracts with no legal public access, while obtaining land with wildlife and recreational values. The public interest will be served by completing the exchange. This proposal is consistent with Bureau planning for the lands involved and has been discussed with state and local officials.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by The Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of right-of-way ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.
2. All valid existing rights (e.g., rights-of-way, easements, and leases of record).
3. The exchange must meet the requirements of 43 CFR 4110.4-2(b).
4. The mineral estates tied to the public land and The Nature Conservancy properties also will be exchanged.

The publication of this notice segregates the public lands described above from the operation of the pubic land laws including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication.

Information related to this exchange, including the environmental assessment and land report is available for review at the Baker Resource Area Office, P.O. Box 987, Baker, Oregon 97814.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Vale District Manager, Bureau of Land Management, P.O. Box 700, Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: March 3, 1986.

David Ledzinski,

Action District Manager.

[FR Doc. 86-5474 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-33-M

[M-66958]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action M-66958—Exchange of public and private lands, in Blaine County, Montana.

SUMMARY: This exchange will be between the United States of America and Brad Tilleman. The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:.

Principal Meridan Montana

T. 34 N., R. 21 E.,
  Sec. 1, SW¼;
  Sec. 2, E½SE¼;
  Sec. 11, NE¼NE¼.
 Aggregating 280 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridan Montana

T. 34 N., R. 21 E.,
  Sec. 2, SW¼, W½SE¼;
  Sec. 3, NE¼SE¼;
  Sec. 11, NW¼NE¼.
 Aggregating 320 acres.

DATES: For a period of 45 days from the date of this notice, interested parties submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final detemination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A detailed description of this reservation, which will be incorporated in the patient document, is available for review at this BLM office.
3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).
4. Value equalization by cash payment of $3,500.00 will be paid by Brad Tilleman.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and plannings and has been discussed with local officials. The public interest will be served by completion of this exchange as it will provide more effective management of the rangeland.

Dated: March 7, 1986.

David E. Little,

Acting Director Manager.

[FR Doc. 86-5475 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-DN-M

Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Survey plat filings.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 30, 1986.

Willamette Meridian

OR T. 27 S., R. 9 W.,
OR T. 15 S., R. 10 W.,
WA T. 8 N., R. 14 E.

All of the above listed plats represent dependent resurveys, a corrective dependent resurvey, and subdivisional lines.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

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Dated: March 5, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-5460 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-33-M

Safford District, AZ; Closure of San Pedro River to Public Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands along the Upper San Pedro River to public use.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8364.1, that the Safford District, Bureau of Land Management (BLM) is closing the recently acquired public land along the upper San Pedro River to public use (see map). To prevent conflicts with existing lessees and damage to fragile resource values, the land will be closed to all public uses until the existing leases expire and a land use management plan is prepared. The closure is effective with this notice and is expected to last until approximately May 31, 1988. The land will be open for the administrative and land use planning needs of BLM and any other use authorized by the Area Manager in conjunction with management and planning for the land.

FOR FURTHER INFORMATION CONTACT: Lyle K. Rolston, Area Manager, Safford District, 425 E. 4th Street, Safford, AZ 85546, Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: On March 7, 1986, BLM acquired, through exchange, 43,371 acres of private land along the upper San Pedro River in western Cochise County, Arizona (see map). The land is comprised of two Spanish land grants, the San Juan de las Boquillas y Nogales and the San Rafael del Valle, as well as other land adjoining the land grants. The purpose of the exchange was to place in public ownership high-value natural resources. Specifically, the land includes about 30 miles of some of the finest riparian habitat in Arizona. In addition, the land also includes significant cultural and paleontological resources, diverse and extensive wildlife populations, and varied recreation opportunities.

The land is currently under lease to a local rancher and two sand and gravel operators. As a condition of the exchange, BLM will honor the existing leases through their expiration.

To prevent disruption of the existing lessee's operations and to prevent damage to the fragile riparian ecosystem, certain wildlife species, and cultural and paleontological resources, all of the land is closed to all public use for the remainder of the lease periods and until BLM completes a land use management plan. The closure is effective with this notice and is expected to remain in effect until approximately May 31, 1988. Another notice will be placed in the **Federal Register** upon opening of the land to public use. A legal description of the land is available for inspection in the Safford District Office at the above address.

This closure will not apply to BLM personnel involved in administration and management of the land. Nor will the closure apply to those persons or groups BLM specifically authorizes to go onto the land to assist them in the development of a management plan or in the administration and management of the land. Requests for authorization to access the land may be made to the Area Manager at the above address or phone number.

Any person who fails to comply with the closure may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: March 7, 1986.

Lester K. Rosenkrance,

District Manager.

BILLING CODE 4310-84-M

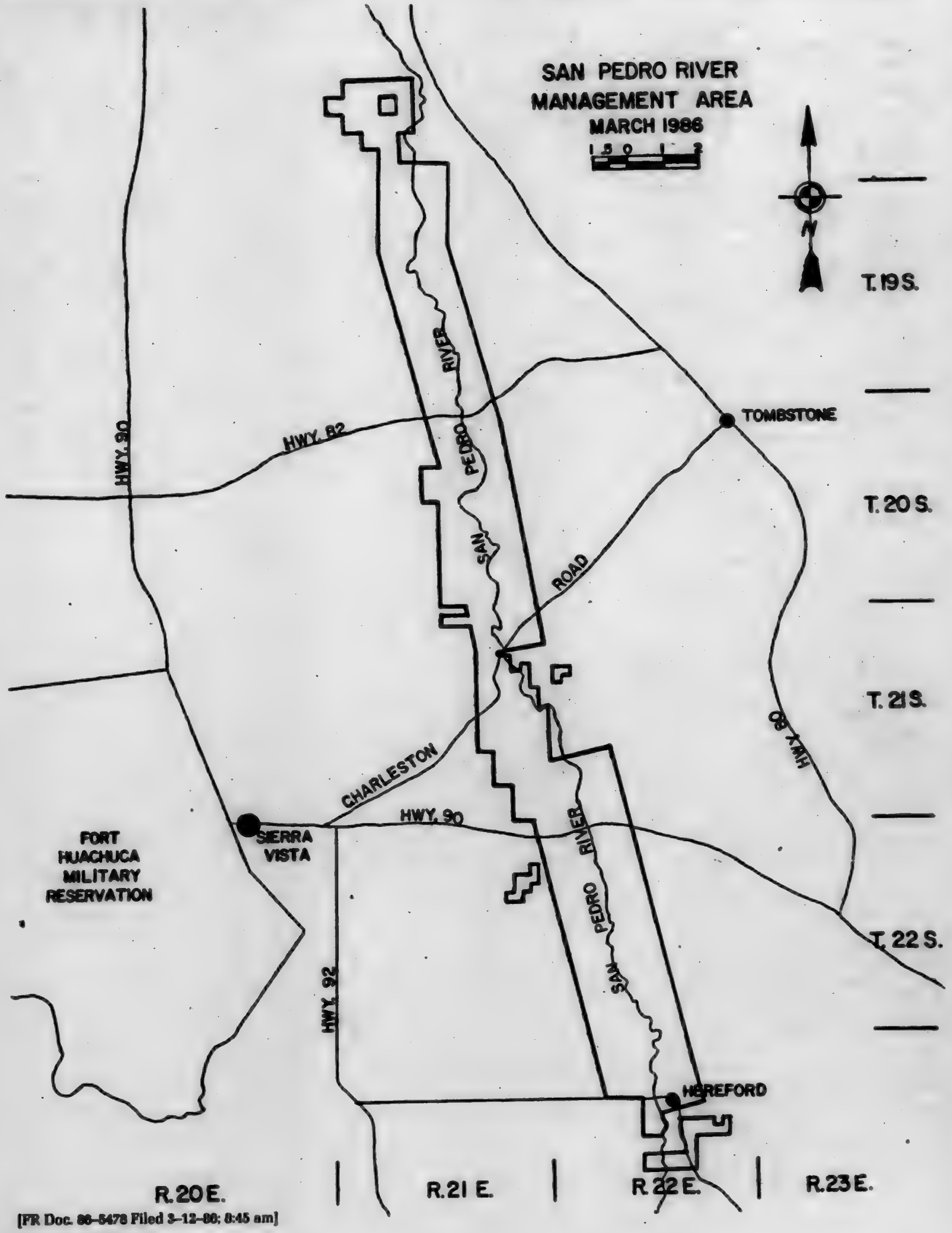

[FR Doc. 86-5478 Filed 3-12-86; 8:45 am]

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[Serial Number CA 17469]

Realty Action; Proposed Classification Under the Recreation and Public Purposes Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed classification of public land as suitable for lease or sale under the Recreation and Public Purposes Act.

SUMMARY: The following described land has been determined to be suitable for lease or sale under the Recreation and Public Purposes Act of June 15, 1926, as amended (43 U.S.C. 869 et seq.): the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.):

Mount Diablo Meridian

T. 5S., R. 31E.,
  Sec. 30, SE¼SW¼SE¼NE¼, SW¼SE¼SE¼NE¼.
  Containing 5 acres.

Classification of the land will segregate it from all forms of appropriation, including the mining laws, with the exception of applications received under the mineral leasing laws and the Recreation and Public Purposes Act.

SUPPLEMENTARY INFORMATION: The land is affected by an Act of Congress, March 4, 1931, which prevents disposal at this time. Consequently, applications received will be considered for lease only.

The County of Mono has expressed an interest in the land for a fire station/community center and local park site.

This notice relates only to land classification. Action taken at a later date will determine the merits of all applications received.

DATES: Comments will be accepted for a period of 45 days from the date of this notice.

ADDRESS: Interested persons may submit written comments to the California State Director in care of the District Manager, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301. Comments will be evaluated by the State Director who may vacate or modify this classification. In the absence of any action by the State Director, this realty action will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, Bureau of Land Management, Bishop Resource Area, 873 N. Main Street, Bishop, California 93514; (619) 872-4881. The official land report examining the facts upon which the proposed classification is based, may be reviewed at the Bishop Resource Area Office or the Bakersfield District Office.

Dated: March 7, 1986.

Rory E. Raschen,

Associate District Manager.

[FR Doc. 86-5535 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

[CA 16414]

Exchange of Public and Private Lands in Humboldt County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of the exchange was to acquire non-Federal land within the King Range National Conservation Area, and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. The public interest was well served through completion of the exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978-4815..

The United States issued an exchange conveyance document to Kermit C. Miller on February 6, 1986, under the Act of October 21, 1970 (84 Stat. 1067; 16 U.S.C. 460y), for the following described land:

Humboldt Meridian, California

T. 3 S., R. 2 E.,
  Sec. 35, Lots 1 and 2.
T. 1 N., R. 4 E.,
  Sec. 1, SE¼SE¼;
  Sec. 12, NE¼NW¼,
T. 2 N., R. 4 E.,
  Sec. 25, W½NE¼, SE¼NE¼, and SE¼.
  Containing 429.54 acres of public land.

In exchange for these lands, the United States acquired the following described lands from Mr. Miller:

Humboldt Meridian, California

T. 3 S., R. 1 E.,
  Sec. 19, Lots 3 and 4, and E½SW¼.
  Containing 161.26 acres of non-Federal land.

The values of the public land and non-Federal land in the exchange were equalized by a cash payment to the United States in the amount of $875.

Dated: March 5, 1986.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86-5534 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

Temporary Closure of the Buttercup Valley/ Grays Well Road Construction Site, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to public entry of the Buttercup Valley/Grays Well Road construction site.

SUMMARY: This closure notice affects the construction site of a new access road in the Buttercup Valley/Grays Well portion of the Imperial Sand Dunes Recreation Area, Imperial County, California, under the administrative responsibility of the El Centro Resource Area, California Desert District. The closed area is located in Sections 27 and 28, T. 16 S., R. 20 E., SBM, and encompasses approximately 200 acres. The site is closed to all public entry and use under the authority of 43 CFR 8364.1(a) in order to protect public safety and prevent damage of disturbance to the construction site and equipment.

This closure order shall become effective on February 25, 1986, and shall remain in effect until construction is complete and the road is opened for public use. Construction is expected to take approximately 60 days. Access to the closed area will be permitted only to road contractors and their employees, emergency or law enforcement officers, government employees on official business, and other specifically authorized persons. A map showing the locations of the closed area is available from the Bureau of Land Management, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both, under authority of 43 CFR 8364.1(d).

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351-6386.

Dated: March 3, 1986.

Richard M. Barber,

Acting District Manager, California Desert District.

[FR Doc. 86-5451 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., February 27, 1986.

Sixth Principal Meridian

T. 51 N., R. 72 W.

The plat showing a subdivision of certain sections, T. 51 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted February 20, 1986.

This supplemental plat was prepared to meet certain administrative needs of the Bureau.

T. 45 N., R. 115 W.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, T. 45 N., R. 115 W., Sixth Principal Meridian, Wyoming, Group No. 477, was accepted February 20, 1986.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: February 28, 1986.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 86-5536 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-22-M

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a) will be issued to Evansville, Inc. The lands involved are in the vicinity of Evansville, Alaska.

Serial No.	Land description	Approximate acreage
F-19328-A	A tract of land within T. 24 N., R. 18 W., Fairbanks Meridian.	121.47
F-19328-A, F-19328-B.	A tract of land within T. 24 N., Rs. 18 and 19 W., Fairbanks Meridian.	167.30

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until April 14, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-5512 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-JA-M

Realty Action; Classification of Public Lands for Recreation and Public Purposes, Serial Number CA-18108, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease/Conveyance of Lands for Recreation and Public Purposes.

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, et seq.), and the regulations thereunder (43 CFR 2740 and 2912):

San Bernardino Meridian, California

T. 6N., R. 3W.,
  Section 32, SE¼SW¼SW¼.
  Containing 10 acres.

The Apple Valley County Water District has filed an application to purchase the above described land under the said Act of June 14, 1926, for use as an administrative, maintenance, and equipment storage facility. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR 2410 and 2430. The tract is situated near significant populations centers and convenient access is provided by paved county roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926 are as follows:

1. The United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).
2. The United States will reserve all mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable laws.

Publication of this notice in the **Federal Register** shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. The segregative effect will end upon issuance of a patent, or 18-months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit coments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 28, 1986.

Richard M. Barbar,

Acting District Manager.

[FR Doc. 86-4911 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-18111]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease/conveyance of lands for recreation and public purposes.

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, et seq.), and the regulations thereunder (43 CFR 2740 and 2912):

San Bernardino Meridian, California

T. 11 N., R. 9 W.,

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Sec. 34 NW¼NE¼NW¼NW¼,
NE¼NW¼NW¼NW¼.

containing 5.14 acres.

The County of Kern has filed an application to acquire patent to the above described land under the said Act of June 14, 1926, for use as the North Edwards Park. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR 2410 and 2430. The tract is situated near several communities and convenient access is provided by existing roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926 are as follows:

1. The United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable laws.

Publication of this notice in the **Federal Register**, shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. The segregative effect will end upon issuance of a patent, or 18 months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 3, 1986.

Richard M. Barber,

Acting, District Manager.

[FR Doc. 86-5459 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

[N-42424]

Realty Action; Lease for Recreation and Public Purposes; Elko County, NV

The following described lands have been examined and found suitable for classification and lease under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, and amended (43 U.S.C. 869 et. seq.). The lands will not be offered for lease until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 29 N., R. 58 E. (unsurveyed),
Sec. 30, N½NE¼SE¼.

This land contains approximately 20 acres.

These lands are hereby classified for public purposes use as a sanitary landfill. Elko County has made application for and intends to use these public lands in west central Ruby Valley, Nevada to establish a sanitary landfill.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

All mineral deposits in the lands so leased, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may describe.

The land is not required for any Federal purpose. The lease is consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from appropriation under any other public land law, including locations under the mining laws. If after 18 months following the publication of this Notice in the **Federal Register**, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in this Notice shall return to their former status without further action by the Authorized Officer.

Detailed information concerning this action, is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to District Manager, Elko District Office of the Bureau of Land Management, 3900 E. Idaho St., Elko, Nevada 89801. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, on the 60th day from the date of this publication in the **Federal Register**, this realty action will become the final determination of the Department of the Interior.

Dated: February 28, 1986.

Rodney Harris,

District Manager.

[FR Doc. 86-5553 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Cliffs Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Cliffs Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6116, Block 465, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore based located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on March 3, 1986.

ADDRESS: A copy of the Subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to

affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 5, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5463 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0757, Block 118, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section: Exploration/Development Plans Unit, Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section-Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 5, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5464 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Locations and Dates of Public Hearings Regarding the Draft Environmental Impact Statement for the 5-Year Outer Continental Shelf Oil and Gas Leasing Program for January 1987–December 1991

On February 19, 1986, a **Federal Register** notice (51 FR 6043) announced the availability of the draft environmental impact statement (DEIS) for the 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for January 1987–December 1991 indicating that the exact dates, times and locations of public hearings on the DEIS would be announced at a later date.

The public hearings are schedule on the following dates and times at the following locations:

April 7, 1986

Anchorage, Alaska, William A. Egan Civic Convention Center, 555 West 5th Avenue, 12:00 p.m. to 5:00 p.m., Contact: Jim Seidl, (907) 261-4633

April 8, 1986

Tallahassee, Florida, Haydon-Burns Building—Auditorium, 605 Suwannee Street, 9:00 a.m. to 12:00 p.m., Contact: Jake Lehman, (504) 838-0792

Los Angeles, California, Los Angeles Convention Center—Room 212, 1201 S. Figueroa Street, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

San Francisco, California, Cathedral Hill Hotel, 1101 Van Ness Avenue, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

April 9, 1986

Washington, DC, Department of the Interior Building—Auditorium, 18th and C Streets NW., 10:00 a.m. to 5:00 p.m., Contact: George Valiulis, (202) 343-6264

April 10, 1986

Portland, Oregon, Bonneville Power Building—Auditorium, 1002 NE. Holladay, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

April 11, 1986

Metairie, Louisiana (New Orleans area), Imperial Office Building—Room 437, 3301 North Causeway Boulevard, 9:00 a.m. to 12:00 p.m., Contact: Jake Lehman, (504) 838-0792

April 15, 1986

Somerville, Massachusetts (Boston area), Holiday Inn of Boston-Somerville, 30 Washington St., 10:00 a.m. to 5:00 p.m., Contact: Heino Beckert, (703) 285-2303

April 17, 1986

Savannah, Georgia, De Soto Hilton, 15 East Liberty St., 10:00 a.m. to 5:00 p.m., Contact: Heino Beckert, (703) 285-2303

Hearings may be held beyond the listed closing time depending on the number of witnesses present. Also, hearings may be concluded earlier if all scheduled witnesses have testified.

The hearings will provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential environmental effects of adopting the proposed program. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular area at least five (5) days prior to the hearing. Time limitations make it necessary to limit the length of each oral presentation to ten (10) minutes. An oral statement may be

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supplemented, however, by a more complete written statement which should be submitted to the hearing officer at the time of oral presentation. Written statements presented in person at the hearings will be considered as part of the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, others will be given an opportunity to be heard.

Written comments on the DEIS from those unable to attend the hearings will be accepted until May 6, 1986. All comments should be mailed to the Deputy Associate Director, Offshore Leasing (MS 644), Minerals Management Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Specifiy on the envelope 5–Year OCS Program draft EIS.

After the public hearing testimony and written comments on the DEIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: March 7, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86–5433 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-208X)]

Burlington Northern Railroad Co., Exemption; Abandonment in Snohomish County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903 *et seq.* to abandon its 8.11-mile line of railroad between Snohomish and Hartford, in Snohomish County, WA, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 14, 1986. Petitions to stay must be filed by March 24, 1986. Petitions for reconsideration must be filed by April 2, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 208X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Louis E. Gitmor, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20432, or call 289–4357 (DC Metropolitan area), or toll-free 800-424–5403.

Decided: March 3, 1986.

By the Comission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–5504 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-No. 171X)]

Seaboard System Railroad, Inc.; Abandonment Exemption; in Giles County, TN and Limestone County, AL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exemption Abandonments* to abandon 24.3 miles of railroad between milepost 265.9, at Pulaski, TN and milepost 290.2, near Athens, AL, in Giles County, TN and Limestone County, AL.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective April 12, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 24, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 2, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–5505 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–12 (Sub–No. 97)]

Southern Pacific Transportation Co.; Abandonment in Los Angeles County, CA; Findings

This Commission has issued a certificate finding that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 5.243-mile line of railroad between Culver City (milepost 494.650) and Santa Monica, CA (milepost 499.893) in Los Angeles, County, CA.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5506 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Petroleum Helicopters, Inc.

In accordance with the Departmental policy, 28 CFR 50.7, notice is hereby given that on February 7, 1986 a proposed consent decree in *United States* v. *Petroleum Helicopters, Inc.,* Civil Action No. 84–2333 was lodged with the United States District Court for the Western District of Louisiana. The proposed consent decree concerns the abatement of unpermitted discharges into the Vermillion River in violation of the Clean Water Act. The proposed consent decree requires the defendant to bring its discharges within specified parameters, and to operate in the future in conformity with the Clean Water Act. The defendant is also required to pay civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Petroleum Helicopters, Inc.,* D.J. Ref. 90–5–1–1–2201.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, 3312 Federal Building, 500 Farrin Street, Shreveport, Louisiana, and at the Region V Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–5532 Filed 3–12–86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances; Mallinckrodt, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General, shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacturer of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 10, 1986, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II
Opium Plant Form (9650)	II
Concentrate of Poppy Straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 14, 1986.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 5, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–5509 Filed 3–12–86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–19]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting changes.

SUMMARY: The scheduled meeting on March 13–14, 1986, of the National Commission on Space, published in the Federal Register March 7, 1986 (51 FR 8052), NASA Notice 86–16, has been changed as follows:

Date and Time: March 20, 1986, 10 a.m. to 3 p.m.

ADDRESS: Griffin's, 20–24 Market Street, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Ted Simpson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW., Washington, DC 20024 (202/453-8685).

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 7, 1986.

[FR Doc. 86–5483 Filed 3–12–86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel Systematic Anthropological Collections; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Anthropological Collections.
Date and Time: April 3, 1986.
Place: National Science Foundation, 1800 G Street NW., Room 543, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Mary W. Greene, Associate Program Director, Anthropology Program, Room 320, National Science

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Foundation, Washington, DC 20550; (202) 357–7804.

Purpose of Meeting: To provide advice and recommendations concerning support for systematic anthropological collections.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 10, 1986.

[FR Doc. 86–5511 Filed 3–12–86; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date and Time: April 2, 3 and 4, 1986; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–7958.

Purpose of Committee: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 10, 1986.

[FR Doc. 86–5510 Filed 3–12–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corp., Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of 10 CFR 50.48, Fire Protection, to Wisconsin Public Service Corporation (the licensee) for the Kewaunee Nuclear Power Plant, located at the licensee's site in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The Exemption would permit the licensee to operate shutdown-related systems in a non-inerted (PWR) containment not separated by more than 20 feet and free of intervening combustibles and fire hazards.

Need for Proposed Action

The proposed Exemption is needed in order to permit the licensee to use an alternate fire protection configuration that achieves an equivalent level of safety compared to that attained by compliance with Section III.G.2.d of 10 CFR 50.48. In addition, compliance with the rule would accrue unreasonable costs to the licensee without an increase in safety.

Accordingly, the NRC staff agrees that this exemption from a portion of 10 CFR 50.48 is appropriate.

Environmental Impact of the Proposed Action

The proposed Exemption would not affect the environmental impact of the facility. As the Exemption would not degrade the level of safety attained by compliance with the rule, there would be no change in accident doses to the environment.

The Exemption does not otherwise affect radiological plant effluents. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with this Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Exemption.

Since we have conlcuded that there are no measurable negative environmental impacts associated with this Exemption, any alternatives would not provide any significant additional protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and applicable documents referenced therein that support this Exemption for Kewaunee. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

Based upon this environmental assessment, we conlcude that this action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this action.

For details with respect to this action, see the licensee's request for exemption dated May 15, 1985. This document, utilized in the NRC staff's technical evaluation of the exemption request, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301. The staff's technical evaluation of the exemption request will be published with the exemption and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 7th day of March 1986.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate No. 1, Division of PWR Licensing-A.

FR Doc. 86–5540 filed 3–12–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–436), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, April 3, 1986
Thursday, April 10, 1986
Thursday, April 17, 1986
Thursday, April 24, 1986

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632–9710.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

March 6, 1986.

[FR Doc. 86–5568 Filed 3–17–86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Mainstem Passage Amendments; Correction

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments; correction.

SUMMARY: In FR Doc. 86–4730 beginning on page 7647 in the issue of Wednesday, March 5, 1986, a line was inadvertently omitted. This document corrects that omission. On page 7649 in Action 32.2 under "All projects," add the following after the first sentence in the first paragraph. "Submit the plan to the Council by February 15 and implement it by April 1 of each year. [section 404(b)(1)–(9), (16)–(17).]"

FOR FURTHER INFORMATION CONTACT: John M. Volkman, Associate Counsel, Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or (503) 222–5161, or (toll-free) 1–800–222–3355 (in Montana, Idaho or Washington) or 1–800–452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 86–5466 Filed 3–12–86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. A86–14]

Croydon, Utah 84018, Ted London, et al., Petitioners; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued March 6, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher, Bonnie Guiton; Patti Birge Tyson.

Docket number: A86–14
Name of affected post office: Croydon, Utah 84018
Name(s) of petitioner(s): Ted London and others
Type of determination: Closing
Date of filing of initial appeal papers: February 25, 1986
Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

February 25, 1986—Filing of Petition.
March 6, 1986—Notice and Order of Filing of Appeal.
March 24, 1986—Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)].
April 4, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115(a) and (b)].
April 24, 1986—Postal Service Answering Brief [*see* 39 C.F.R. 3001.115(c)].
May 9, 1986—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
May 16, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

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June 25, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-5450 Filed 3-12-86; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974: Matching Program—Postal Service/Government of the District of Columbia, Department of Human Services (DC-DHS)

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/Government of the District of Columbia, Department of Human Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to conduct a computer matching program through a comparison of its Payroll System File (USPS 050.020, Finance Records-Payroll System) with the Government of the District of Columbia, Department of Human Services (DC–DHS) file of welfare benefit recipients.

DATE: It is anticipated that the match will begin on or about March 27, 1986.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, D.C. 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Record Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: At the request of the DC–DHS, the USPS has agreed to match data in USPS payroll system files with the DC–DHS's file of welfare benefit recipients in order to identify postal employees in the District of Columbia and in the States of Maryland and Virginia who are receiving benefits to which they are not entitled. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and Government of the District of Columbia, Department of Human Services (DC–DHS)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the DC–DHS will provide to the USPS a computer tape of its Aid to Families with Dependent Children, General Public Assistance, Food Stamp, and Medicaid program files which the Postal Service will match, using name and Social Security account number (SSAN), against its Payroll System file of employees who work in the District of Columbia and in the States of Maryland and Virginia. The purpose of this match is to identify postal employees under those programs who are receiving benefits to which they are not entitled. In instances where employee SSANs match, i.e., "hits," the USPS will disclose to the DC–DHS the following information from its payroll file: Name, SSAN, facility where employed, home address, and annual gross wage information.

The validity of "matched" employee/benefit recipient information will be verified by an investigator of the DC–DHS's Office of Management Systems. An investigation will be conducted and, if appropriate, the amount of the grant may be adjusted, the case may be terminated, or the case may be referred for fraud prosecution. If suspected fraud is uncovered, the information in such cases will be provided by the DC–DHS's Office of Management Systems to the DC–DHS's Office of Inspection and Compliance and to the District of Columbia's Corporation Counsel. Further, the USPS Inspection Service may participate in the investigation of "hits" as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 50 FR 28862 of July 16, 1985.

c. *Period of the Match:* The matching program will be on a one-time basis and is to begin in March 1986 and end no later than September 1987.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the DC–DHS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to DC–DHS will be used by authorized DC–DHS personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by the DC–DHS and will return it to the DC–DHS within six months from the date of its receipt. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that it relates to a legitimate, nonfraud situation.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-5442 Filed 3-12-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14786]

Application and Opportunity For Hearing; Citicorp

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of January 1, 1986 under which certificates evidencing interests in a pool of mortgatge loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to

have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance or various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59398 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On January 16, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of January 1, 1986 (the "1985-M Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc, under which there were issued on January 16, 1985 Mortgage Pass-Through Certificates, Series 1985-M 10.50% Pass-Through Rate (the "Series 1985-M Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-M Mortgage Pool') originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $76,841,670.62 at the close of business on January 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-M Certificates. On January 16, 1986, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-M Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-M Certificates, to be liable for 5.5% of the initial aggregate principal balance of the 1985-M Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-M Guaranty. The 1985-M Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-M Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-M Certificates were registerd under the Securities Act of 1933 (Registration Statement on Forms S-11 and S-3, File No. 33-780) as part of a delayed or continuous offering of $1,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-M Certificates were offered by a Prospectus Supplement dated December 11, 1985, supplemental to a Prospectus dated October 9, 1985. The 1985-M Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985-M Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-M Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-M Agreement.

(5) The Applicant Company has waived notice of hearing, waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14786, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC

Notice is Further Given that any interested person may, not later than March 31, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5544 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14973; 812-6298]

Continental U.S. Government Plus Fund Trust et al.; Application To Permit a Contingent Deferred Sales Load and Certain Offers of Exchange

March 7, 1986.

Notice is hereby given that Continental U.S. Government Plus Fund Trust, Continental Capital Appreciation Plus Fund Trust, Continental Option Income Plus Fund II Trust, Continental Money Market Fund Trust and Continental Tax-Exempt Money Market Fund Trust (the "Trusts or "Applicants"), each at 180 Maiden Lane, New York, NY 10038, filed an application on February 4, and amendments thereto on February 20, 1986, and March 4, 1986, for an order (1) pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Trusts from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to permit the assessment, waiver and variation of a contingent deferred sales load on certain redemptions of shares of the Trusts' initial and future series, and (2) pursuant to section 11(a) of the Act to permit the exchange of shares of the Trusts' initial and future series for shares of the Trusts' other series on the basis of relative net asset values per share at the time of exchange, subject to a $25.00 service charge for any exchange in excess of four exchanges per individual shareholder per year. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

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According to the application, the Trusts are registered under the Act as diversified, open-end, management investment companies, and are organized as Massachusetts business trusts. Applicants state that each Trust filed a registration statement under the Act and the Securities Act of 1933 on January 21, 1986. Applicants further state that none of the Trusts have, as of the date of the application, issued any shares. Applicants represent that the Trustees of each Trust have the power under each Trusts' respective Declarations of Trust to create additional series. Therefore, Applicants request that the order requested herein extend prospectively to any additional series sold on substantially the same basis as shares of the Trusts' existing series and in connection therewith, Applicants undertake that such prospective relief shall be availed of only on the terms and conditions described in the application.

According to the application, the Trusts are managed by Continental Equities Corporation of America ("Continental Equities"), which also acts as principal distributor of shares of each Trust. CIC Asset Management Corporation (the "Adviser"), will act as investment adviser for the Trusts. Both Continental Equities and the Adviser are wholly-owned subsidiaries of The Continental Corporation. Greenwich Investment Associates, Inc. will act as a sub-investment adviser to share responsibility with the Adviser for certain investment decisions relating to the Continental Option Income Plus Fund II Trust.

Applicants state that shares of each Trust will be sold subject to an initial sales load of 2.5% of the public offering price. The Trusts propose to finance distribution expenses in excess of the initial sales load by (1) instituting plans of distribution (the "Plans") in accordance with Rule 12b–1 under the Act and (2) offering shares of each Trust subject to a contingent deferred sales load ("CDSL"). The proceeds of the Plans and the CDSL will be payable to Continental Equities, as distributor, and will be used by Continental Equities to defray in whole or in part costs incurred in connection with the sale and distribution of the Trusts' shares. Applicants represent that no combination of the initial sales load and the CDSL will exceed applicable limitations imposed by the National Association of Securities Dealers, Inc.

Applicants represent that the CDSL will be imposed only if a shareholder's redemption causes the current value of that shareholder's holdings in the Trusts to fall below the total dollar amount of such shareholder's purchases of the Trusts' shares within the preceding six years. No CDSL will be imposed for redemptions of amounts representing (1) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (2) increases in the value of a shareholder's holdings representing reinvestment of dividend or capital gain distributions ("Reinvestment Value") or (3) purchase payments made more than six years prior to the redemption date ("Old Capital").

To calculate the CDSL due, if any, upon a redemption, the Trusts will first deduct from the dollar amount of the redemption request those amounts representing New Appreciation Value, Reinvestment Value and Old Capital. The balance, if any, will be subject to the CDSL, which will be calculated by determining the number of years that have elapsed since the shareholder made the purchase from which an amount is being redeemed and then discounting that amount in accordance with the following schedule:

Years since purchase payment was made	Contingent deferred sales charge (percent)
1	6
2	5
3	4
4	3
5	2
6	1
7, or more	0

According to the application, in performing this calculation it will be assumed that the purchase payments, if any, being redeemed, are from the earliest possible purchase payments made by the redeeming shareholder. In addition, the Trusts represent that the CDSL will be applied based on the redeeming shareholder's aggregate investment in all of the Trusts without reference to which Trust the purchase payments were applied or from which Trust the shares are being redeemed.

Moreover, the Trusts propose to waive the CDSL under circumstances delineated in the application. The Trusts also propose to institute a reinstatement privilege whereby a shareholder who redeems shares of a series of a Trust and reinvests the proceeds of that redemption in the same series within thirty days will receive a credit against the CDSL, if any, paid upon the redemption. The percentage of the CDSL credited to the shareholder would be the same as the percentage of the redemption proceeds reinvested.

The Trusts also propose an exchange privilege whereby a shareholder may exchange shares of a series of a Trust for shares of any other series of the Trusts on the basis of their relative per share net asset values. The Trusts will perform such transactions at no charge for up to four such transactions per individual shareholder per year. Beyond that, however, a flat $25.00 service fee per exchange will be charged.

Applicants submit that all the elements of their proposals are in the interest of the Trusts' shareholders and are consistent with the policies underlying the Act. Applicants believe that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate Continental Equities for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicants assert that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicants represent that they will comply with Rule 22d–1 of the Act in connection with any variations in, or eliminations of, the CDSL.

With respect to the exchange privilege, Applicants represent that because the Trusts' series pursue a variety of investment objectives and policies, the exchange privilege gives shareholders an inexpensive and convenient means of responding to changes in investment needs or market conditions. Applicants represent that the imposition of a $25.00 service fee for exchanges in excess of four per shareholder per year for this service is fair and consistent with the protection shareholders and with the policies underlying the Act in that the fee (1) is used only to defray administrative expenses, which would otherwise be borne by the shareholders as a whole, most of whom will not use the exchange privilege as frequently as those being subjected to the fee, and (2) is only imposed in situations where the frequency of exchanges suggests that the service is not being used to serve the ends for which it was designed.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 31, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5545 Filed 3–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14975; 812–6259]

Heritage Capital Appreciation Trust et al.; Application Requesting Approval Under Section 11(a) of the Act of Certain Offers of Exchange

March 7, 1986.

Notice is hereby given that Heritage Capital Appreciation Trust ("Capital Appreciation"), and Heritage Cash Trust ("Cash Trust") (together, "Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management companies, and Raymond, James & Associates, Inc. ("Raymond, James" and together with Funds, "Applicants"), the principal underwriter of the Funds, 1400 66th Street North, St. Petersburg, Florida 33710, filed an application on December 11, 1985, requesting an order of the Commission approving certain offers of exchange to be made by the Funds, or by other investment companies which may be served in the future by Raymond, James as principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Each Fund has registered its shares for sale to the public pursuant to the securities Act of 1933. Raymond, James, a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, intends to maintain a continuous offering of Cash Trust shares at their net asset value without a sales charge, and of Capital Appreciation shares at their net asset value without a sales charge, and of Capital Appreciation shares at their net asset value plus a maximum sales load of 3.0% of the offering price (3.09% of the net amount invested). The sales load that is applicable to purchases of Capital Appreciation shares is reduced for larger share purchases and certain other factors, such as rights of accumulation and statements of intention as described in the prospectus. Applicants state that Raymond, James also may serve as principal distributor to additional investment companies not yet in existence, each of the shares of which may be issued either with or without a sales charge. The offerings of shares of any such new investment companies will conform in general characteristics to the offering of the Funds.

Applicants propose to permit a shareholder of Capital Appreciation to exchange all or a portion of his shares which have been held for at least 30 days (including shares acquired through reinvestment of dividends and capital gains distributions) for shares of Cash Trust based upon the relative net asset values of the Funds at the time of the exchange without any sales charge. Shareholders could thereafter re-exchange some or all of those Cash Trust shares (and shares acquired with dividends paid on such shares) for shares of Capital Appreciation without paying an additional sales charge. When a shareholder exercises this proposed re-exchange privilege, those shares which could be exchanged at net asset value without a sales charge will be exchanged first. A $5.00 administrative will be charged for each such exchange, or re-exchange.

Applicants further propose to permit investors to exchange shares of Cash Trust at any time for shares of Capital Appreciation based upon the relative net asset values of the Funds at the time of the exchange, plus the payment of the sales charge which would be payable if the Capital Appreciation shares were acquired directly. A $5.00 administrative charge would also be charged for each such exchange.

It is stated that each initial exchange between the Funds will be required to involve shares with a minimum value of $1,000, and that subsequent exchange transactions involve a minimum value of $500. Shareholders of the Funds will be notified of the proposed exchange privileges by means of the Funds' prospectuses, and sales literature. Applicants represent that no other specific communications are to be made to shareholders, and that salesmen for shares of the Funds will not specifically solicit the exercise of these privileges by investors. It is also stated that under no circumstances will any sales person be able to realize any additional compensation by virtue of a shareholder's exercise of the proposed exchange offers.

Applicants represent that terms of any exchange privilege offered by any future investment company distributed by Raymond, James would conform in all material respects to the terms of the exchange offers proposed to be made by the Funds, as described above. Accordingly, Applicants also request Commission approval of such exchange offers as may be extended to investors on substantially the same terms as herein proposed by Raymond, James-distributed investment companies that may be organized in the future.

Applicants represent that the purpose of the proposed exchange offers is to permit a shareholder to convert his investment by means of a simple transaction, made on an equitable basis, to accommodate a change in investment objectives. Many of the proposed exchanges may comply with section 11(a) because they will be made on the basis of the Funds' relative net asset values per share without any sales charge. However, it is stated, a shareholder of Cash Trust, for example, who changes his or her investment objective typically could exchange to Capital Appreciation only by paying the applicable sales charge. If these exchanges were to be made at their relative net asset values, it is asserted, the distribtuion system of Capital Appreciation could be disrupted because an investor could easily avoid the sales charge by first purchasing Cash Trust shares and immediately exhanging them for Capital Appreciation shares. The basis for these exchanges proposed by Applicants would avoid this problem, would be equitable to all shareholders and would benefit exchange shareholders by crediting them for sales charges previously paid, Applicants contend.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5546 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24045; 70-7226]

Louisiana Power & Light Co.; Proposal To Issue and Sell up to $200 Million of Secured Notes; Exception From Competitive Bidding

March 7, 1986.

Louisiana Power & Light Company ("Company"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The Company proposes to issue and sell, pursuant to a negotiated private placement with an institutional investor(s), not to exceed $200 million aggregate principal amount of intermediate-term secured notes ("Notes").

The Notes would be sold at the price of 100% of the principal amount, would have a maturity of approximately seven years, would bear interest at a fixed rate per annum estimated not to exceed 10.50%, and would possibly be redeemable, at the option of the Company, subject to certain restrictions on redemption.

It is contemplated that the Notes would be secured initially by a second lien on certain of the Company's assets (subordinate to the lien of the Company's Mortgage), and that as soon as practicable after the Company's earnings were sufficient to support the issuance of first mortgage bonds in the principal amount equal to, or slightly in excess of, the outstanding principal amount of the Notes, the Company would issue and pledge such bonds ("Collateral Bonds") as security for the Notes and the subordinate lien theretofore granted to secure the Notes would be released. In connection with the Company's obligation subsequently to issue Collateral Bonds as security for the Notes, the Company would covenant that during the period through December 31, 1986 but only until the Notes were secured by the Collateral Bonds, the Company would not issue additional first mortgage bonds for any other purpose, except for the purpose of refunding and paying maturing first mortgage bonds. Further, in the event that by December 31, 1986, the Notes were not secured by the Collateral Bonds, the fixed interest rate on the Notes would therafter be increased by up to .50% and the Notes would remain secured solely by the second lien until maturity. The Notes would not be subject to any mandatory redemption or sinking fund or other analogous requirement.

Due to the Company's current earnings coverage problems, the lack of an existing market for secured notes issued by the Company and investors' recent concern over the Company's regulatory environment and financial condition, (a discussion of the Company's and MSU's financial position is set forth in more detail in the declaration) the Company believes that the Notes would be extremely difficult to maket to the public. Consequently, the interests of the Company, its investors and consumers require that the Company have the flexibility to sell the Notes by means of a negotiated private placement with institutional investors in order to effect a successful sale of the Notes on the best available terms. Further, the Company states that it does not believe application of the competitive bidding requirements of Rule 50 would be appropriate with respect to the proposed issuance and pledge of the Collateral Bonds as security for the Notes. The Company, therefore, reqests, pursuant to Rule 50(a)(5) under the Act, that the proposed issuance and sale of the Notes, and the related issuance and pledge of the Collateral Bonds, be excepted from the competitive bidding requirements of Rule 50, and that the Company be authorized to proceed to select an investment banking firm or firms to act as agent on behalf of the Company to assist the Company in effecting a private placement of the Notes with an institutional investor or investors. The exceptions requested by the Company are hereby granted.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration, as filed or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5547 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24047; 70-6867]

Middle South Energy, Inc.; Proposal To Amend Credit Agreement and Nuclear Fuel Lease

March 7, 1986.

Middle South Energy, ("MSE") 225 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a post-effective amendment to its application and amendments thereto with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

On October 17, 1979, MSE entered into a lease ("Lease") with Port Gibson Energy, Inc. ("Port Gibson"). Under the Lease, MSE leases from Port Gibson the nuclear fuel, including facilities incident to its use, to be used in Unit No. 1 at MSE's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"). Under the terms of the Lease, Port Gibson makes payments (or MSE makes payments and is reimbursed by Port Gibson) to suppliers, processors and manufacturers necessary to carry out the terms of MSE's contracts for nuclear fuel used for Grand Gulf 1.

Port Gibson finances these obligations under the Credit Agreement, as amended, between Port Gibson and a group of banks (the "Banks") with Union Bank of Switzerland ("UBS") acting as agent for such Banks. Under the Credit Agreement, Port Gibson may issue its commercial paper, supported by an irrevocable letter of credit ("Letter of Credit") issued by UBS and Norwest Bank Minneapolis, N.A. ("Norwest") and can obtain revolving credit loans evidenced by promissory notes.

Port Gibson proposes to enter into a Fifth Amendment to the Credit Agreement to eliminate references to Libor Rate Loans, to change the interest rate payable on any future revolving credit loans from 110% to 125% of the Base Rate, to change the penalty interest

rate on future drawings under the Letter of Credit or under the revolving credit loans from 125% to 135% of the Base Rate, and to amend the definition of the "Termination Date" in the Credit Agreement. The proposed Termination Date will be June 1, 1987 rather than October 15, 1987 (unless extended by agreement of the parties), or, in certain limited circumstances, the Termination Date shall be the "Termination Settlement Date" as defined in the Lease. Concurrently, MSE and Port Gibson will amend the Lease to provide that the Lease will also terminate on June 1, 1987 (unless extended by agreement of the parties) or on the "Termination Settlement Date".

The amended application and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application, as filed or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 86-5548 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14972; 812-6292]

Paribas Trust for Institutions; Application for Exemptive Order Permitting a Contingent Deferred Sales Load

March 7, 1986.

Notice is hereby given that Paribas Trust for Institutions ("Applicant"), 30 Rockefeller Plaza, New York, NY 10020, filed an application on January 29, 1986, and amendments thereto on February 25, and 28, 1986, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to permit a contingent deferred sales load ("CDSL") on certain redemptions of shares of its existing and future portfolios (the "Portfolios"). With respective to the prospective relief requested on behalf of any future Portfolios Applicant undertakes to avail itself of such relief under the terms and conditions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant represents that it is registered under the Act as an open-end management investment company and that it is organized as a Massachusetts business trust. Applicant states that it is presently comprised of two Portfolios and that it has filed a registration statement pursuant to which it seeks to register shares of said Portfolios. According to the application, Paribus Asset Management, Inc. is Applicant's investment adviser and Paribus Corporation (the "Distributor") acts as Applicant's underwriter.

Applicant proposes to offer shares of the Portfolios without a front-end sales load but the Distributor's expenses will be defrayed in whole or in part under a Plan of Distribution adopted by Applicant pursuant to Rule 12b-1 of the Act. Additionally, Applicant proposes to pay to the Distributor the proceeds of the CDSL upon certain redemptions of the Portfolios' shares. Applicant states that the combination of the CDSL and the Plan of Distribution facilitates its ability to sell shares without a sales load being deducted at the time of purchase.

Applicant represents that the CDSL will be determined on the basis of the table set forth below. Applicant further represents that the CDSL will not be imposed upon redemptions of shares of the Portfolios derived from reinvestment of distributions, nor upon amounts representing capital appreciation of the particular shares being redeemed. Applicant states that for purposes of determining whether a CDSL will be imposed it will be assumed that a redemption is made, first, of shares derived from reinvestment of distributions, second, of shares for which no CDSL is payable in accordance with the table and/or shares representing capital appreciation, and third, of shares for which a CDSL is payable in accordance with the table. When imposing the CDSL, the amount of the charge will depend upon the number of years elapsed since the shareholder made the purchase payment from which an amount is assumed to be redeemed from, and upon the aggregate amount invested in all Portfolios, according to the following table:

Amount invested	Amount of CDSL as a percentage of the amount redeemed if redemption occurs within the following number of years of the date of purchase year—				
	1	2	3	4	5
Up to $250,000	4.0	3.0	2.0	1.0	0.0
Over $250,000 to $1,000,000	2.5	1.5	1.0	0.0	0.0
Over $1,000,000 to $4,000,000	1.0	0.0	0.0	0.0	0.0
Over $4,000,000 to $10,000,000	0.5	0.0	0.0	0.0	0.0
Over $10,000,000	0.0	0.0	0.0	0.0	0.0

Applicant states that in determining the rate of any applicable CDSL, it will be assumed that a redemption is made of shares of the Portfolios on which the lowest charge is imposed. In addition, where shares are purchased on more than one occasion, the "Amount Invested" in the table for any particular share being redeemed will equal the total purchase price of all shares in the Portfolios purchased by that shareholder immediately after the purchase of that share. For example, if a shareholder initially purchased $600,000 of shares of a Portfolio and two months later purchased an additional $600,000 of shares of the same or any other Portfolio (so that at the time of the second purchase the investor's total purchases amounted to $1,200,000) and then two years after the second purchase (and assuming for ease of illustration that there has been no change in net asset value of the shares) redeems $700,000 worth of shares, the shareholder will be deemed to be redeeming all $600,000 worth of shares purchased in the second purchase (for which after two years after the purchase there is no contingent deferred sales charge) and $100,000 worth of the shares purchased in the first purchase (for which at that time there is a 1% contingent deferred sales charge). If such shareholder redeemed only $400,000 worth of shares (rather than $700,000) and two days later redeemed an additional $200,000 worth of shares, both the initial $400,000 redemption and subsequent $200,000 redemption will be deemed to have been made out of the $600,000 worth of shares purchased in the second purchase (for which two years after the purchase there is no contingent deferred sales charge). Alternatively, if a shareholder initially purchased $200,000 of shares of

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a Portfolio and 25 months later purchased another $200,000 worth of shares of the same or any other Portfolio and then one year after the second purchase redeemed $250,000 worth of shares (assuming again no dividends or distributions are paid on the shares and that there has been no change in the net asset value of the shares) the shareholder will be deemed to be redeeming all $200,000 worth of the shares initially purchased (for which a 1% contingent deferred sales charge will be imposed) and $50,000 of the shares purchased in the second purchase (for which a 1.5% contingent deferred sales charge will be imposed).

Applicant contends that the proposed CDSL is consistent with all provisions of the Act and that it is fair and in the best interest of its shareholders. Applicant believes that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate the Distributor for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicant asserts that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicant represents that the implementation and assessment of the CDSL will be fully disclosed in the applicable prospectus and that it will comply with Rule 22d–1 of the Act in all respects.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 31, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5549 Filed 3–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14974; File No. 812–6238]

Western Reserve Life Assurance Co.; Application and Opportunity for Hearing

March 7, 1986.

Notice is hereby given that Western Reserve Life Assurance Co. of Ohio (the "Company"), WRL Series Life Account (the "Series Account"), and Pioneer Western Distributors, Inc. ("PW Distributors"), referred to collectively herein as "Applicants", 201 Highland Avenue, Largo, Florida 33540, filed an application on October 30, 1985, for an order for the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting certain proposed transactions from the provisions of 6e–3(T)(c)(2) under the Act.[1] Applicants assert that, for the reasons set forth in the Application, the requested exemption involves technical and unforeseen matters under Rule 6e–3(T), the exemptive rule under the Act for separate accounts offering flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

Applicants state that the Company is a stock life insurance company organized under the laws of the State of Ohio and is admitted to do business in 48 states, the District of Columbia and in Europe under the Department of Defense authority. Applicants state the Company is the sponsor-depositor for the Series Account. Applicants state that the Series Account, a segregated investment account of the Company, has registered under the Act as a unit investment trust. Applicants state that the Series Account meets all conditions set forth in section (a) of Rule 6e–3(T) under the Act and was established for the purpose of funding individual flexible premium variable life insurance contracts ("the Contracts"), as defined in paragraph (c)(1) of Rule 6e–3(T).

The application states that PW Distributors, a registered broker-dealer, is the principal underwriter of the Contracts. The application states that each Sub-Account of the Series Account invests exclusively in shares of a particular Portfolio of the WRL Series Fund, Inc. (the "Series Fund"). Applicants state that the Series Fund has registered under the Act as an open-end, diversified management investment company. Applicants state that the Series Fund is presently segmented into three portfolios. Applicants state that the Company is the investment adviser to the Series Fund, although it has entered into a sub-advisory agreement with Janus Capital Corporation.

According to the registration statement (File No. 33–506) that is incorporated by reference into the application, the Contracts are designed to give the contractowner ("Owner") maximum flexibility by permitting the Owner to vary the frequency and amount of purchase payments. Applicants state that a Contract's death benefit may, and its cash value will, increase or decrease based on the investment performance of the Sub-Accounts of the Series Account. Applicants state that the Contracts also allow the Owner to increase or decrease the Specified Amount under the Contracts, which allows the Owner to provide for changing insurance needs. The Applicants state that optional incidental insurance benefits are available by riders to a Contract.

Applicants request an exemption from paragraph (c)(2) of Rule 6e–3(T) to the extent that the Contract's Disability Waiver Rider (the "Rider") may not be deemed to meet the definition of "incidental insurance benefits" in that paragraph. Applicants state that the Rider provides that, in the event of disability of the insured, as defined therein, the Company will waive the monthly cost of insurance charge and any rider charges during the period of disability. Applicants state that the monthly cost of insurance charge can vary with the investment experience of the Series Account in certain respects. However, Applicants argue that the benefits, *i.e.*, the waiver of the monthly cost of insurance and rider charges, is predominantly a fixed benefit. Applicants represent that these charges are waived regardless of how much the cash value and the net amount at risk vary. Thus, Applicants submit that the Rider should be treated as "fixed" for purposes of Rule 6e–3(T). Applicants, therefore, request relief from Rule 6e–3(T)(c)(2), to the extent necessary, to permit the payment for the Rider to be deemed payment for an incidental insurance benefit.

Applicants represent that if and to the extent that Rule 6e–3(T) is amended to provide relief in terms different from any relief granted to them by order, they shall take all necessary steps to comply with the final Rule 6e–3, to the extent Rule 6e–3 is applicable.

For the reasons stated above, Applicants submit that the requested relief involves "technical and unforeseen matters," and is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5550 Filed 3–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22981; File No. S7–433]

Joint Industry Plan; Order Approving Amendment to the Consolidated Tape Association Plan Relating to Regulatory Halt Periods

I. Background and Description of Amendments

The participants in the Consolidated Tape Association ("CTA") on January 20, 1986 submitted to the Commission, pursuant to Rules 11Aa3–1 and 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 under the Securities Exchange Act of 1934" ("CTA Plan").[1] The amendment alters the regulatory halt provisions of the CTA Plan, enabling the CTA Plan Processor to disseminate indications of interest immediately after the primary market terminates the regulatory halt and last sale information 15 minutes thereafter. The Commission has solicited public comment on this amendment.[2]

II. Approval of Amendment

The Commission received no response to its solicitation of comment. The Commission believes that the amendment will provide the investing public with faster access to market information, thereby contributing to the national market system objectives regarding dissemination of last sale information under sections 11A(a)(1)(C) and D) and 11A(a)3)B) of the Act. Accordingly, the Commission finds that approval of this amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

It is ordered, pursuant to section 11A to the Act, and Rules 11Aa3–1 and 11Aa3–2 thereunder, that the amendment to the CTA Plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(29).

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–5542 Filed 3–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22983; File No. SR–NYSE–86–9]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Extension of the Pilot Program for Procedures for Pricing Standard Odd-Lot Market Orders of the American Telephone and Telegraph Divestiture Issues

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension of a pilot program relating to procedures regarding the pricing of standard odd-lot market orders in the following issues: American Telephone and Telegraph Co., American Information Technologies Corporation, Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, and U.S. West, Inc. (hereafter referred to collectively as the "AT&T divestiture issues"). The pilot program was originally approved for a period of nine months, was subsequently extended another six months to February 21, 1985, and was subsequently extended for one year to February 21, 1986. At this time the Exchange is requesting an additional eighteen month extension of the pilot to August 21, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As explained in SR–NYSE–83–49, the purpose of the original nine-month pilot program was to provide a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in the AT&T divestiture issues. The Exchange observed in that filing that it believed the pilot program's odd-lot pricing procedures would be necessary to ensure maximum capacity for odd-lot order processing in the AT&T divestiture issues. The procedures specified in SR–NYSE–83–49 would remain in effect, without change, for the duration of the extended pilot program.

In SR–NYSE–84–30, the Exchange noted that "Prior to the expiration of the nine-month period, the Exchange expects either to submit a formal codification of the procedures, revised as appropriate based on the Exchange's experience with the pilot, or to request

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[1] Applicants also requested an exemption from section 27(d) of the Act and subsection (b)(13)(v)(A) of Rule 6e–3(T). This request, however, will be withdrawn by an amendment to the application.

[1] *See* Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

[2] *See* Securities Exchange Act Release No. 22850 (January 31, 1986), 51 FR 5136.

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an extension of the time period for the pilot pending further study and evaluation." In SR-NYSE-84-30, the Exchange requested a six-month extension of the pilot program pending further study and evaluation. In that filing, the Exchange noted that its member organizations were satisfied with the quality and timeliness of odd-lot executions, and with the timeliness of reports, in the AT&T divestiture issues. As of the date of this filing, member organizations continue to express satisfaction with the handling, processing, and execution of odd-lot orders in the AT&T divestiture issues.

At this time, the Exchange requests an additional eighteen month extension of the pilot program to continue to study the effectiveness and economy of this odd-lot procedure as it may be applicable to overall trading on the Exchange. In addition, the Exchange is currently evaluating the appropriateness of certain systems enhancements to provide for more efficient handling and processing of all odd-lot orders, and expects to complete this study during the extension.

During the eighteen month period, the Exchange will evaluate the appropriateness of making systems enhancements to the odd-lot execution process and expects to advise the Commission, at the conclusion of the pilot, whether formal changes to its odd-lot procedures will be proposed.

As noted above, the procedures specified in SR-NYSE-83-49 regarding odd-lot order processing for the AT&T divestiture issues would remain in effect unchanged for the duration of the extended pilot program.

(2) Statutory Basis

The proposed rule change provides for efficient execution, reporting, clearance, and settlement of odd-lot orders, and is consistent with those provisions of the Securities Exchange Act of 1934 (the "Act") which encourage the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See sections 11A(a)(1) and 17A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not justified in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing therof, in that the pilot program was scheduled to expire on February 21, 1986, and further extension of the pilot will permit the NYSE to evaluate the need for specific systems enhancements to the odd-lot execution process in connection with any future proposals to the Commission for changes to the NYSE's odd-lot procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 3, 1986.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5555 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22968; File No. SR-PSE-85-37]

Self-Regulatory Organizations; the Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change

On January 9, 1986, the Pacific Stock Exchange, Incorporated ("PES" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's trade comparison and reconciliation process.

The proposed rule change was noticed in Securities Exchange Act Release No. 22818 (January 21, 1986), 51 FR 3540 (January 28, 1986). No comments were received on the proposed rule change.

The proposed rule change provides, among other things, that PSE member organizations that are clearing members of the Options Clearing Croporation ("OCC") may delegate trade checking authority to other member organizations and may make electronic display terminals available to floor members to facilitate such process. The proposal also rescinds a PSE requirement that member organizations who are clearing members of the OCC must maintain Exchange-approved offices. In addition, the proposed rule change revises the method of calculation for determining the amount of loss resulting from uncompared trades.

In its filing, the PSE states that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is intended to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] 15 U.S.C. 78f (1982).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: March 5, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5556 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

March 6, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Chyron Corporation
  Common Stock, $0.01 Par Value (File No. 7-8857)
The Coleman Company, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8858)
Dean Foods Company
  Common Stock, $100 Par Value (File No. 7-8859)
International Technology Corporation
  Common Stock, $1.00 Par Value (File No. 7-8860)
Kaneb Energy Partners Ltd.
  Depository Units (File No. 7-8861)
Legg Mason, Inc.
  Common Stock, $0.10 Par Value (File No. 7-8862)
Showboat, Inc.
  Common Stock, $1.00 Par Value (File No. 7-8863)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5557 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 6, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Texas Air Corporation
  Common Stock, $0.01 Par Value (File No. 7-8855)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5558 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6182]

Issuer Delisting; Application To Withdraw From Listing and Registration; the New York Stock Exchange; Ticor; 9½ percent Sinking Fund Debentures Due 2006

March 6, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Ticor determined that because the securities are held of record by such a small number of holders (92 as reflected in the Form 15), the majority of the securities outstanding are held in institutional investors, and trading in the securities is minimal, continued listing of the Securities of the New York Stock Exchange is not warranted.

Any interested person may, on or before March 27, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Committee, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5554 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Jefferson County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, in cooperation with the Kentucky Transportation

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[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

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Cabinet, intends to prepare an EIS for a proposed highway project located in eastern Jefferson County. The proposed action involves the construction of a new interchange with Interstate 64 to provide access to and from an industrial area. This 4-lane project begins south of I-64 in Jeffersontown, at the intersection of Watterson Trail (KY 1819) and Electron Drive and extends 4.2 miles northeast to its terminus at the intersection of Shelbyville Road (US 60) and Main Street in Middletown.

Possible alternates under consideration include (1) the do-nothing alternative, (2) alternate travel modes, (3) project postponement, and (4) seven design alternates on new alignment. These alternates involve different combinations of the various alignments.

Proposed Scoping Process: Public meetings and an Interdisciplinary Team Meeting have been held. The input received at the meetings was useful in determining what alternatives would be considered as viable for study in the draft environmental impact statement. No formal scoping meeting is scheduled. A design public hearing will be held.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, Federal Highway Administration, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602-0536, Phone (502) 227–7321, FTS 352-5468. To ensure that a full range of issues related to this proposed action are addressed and all significant impacts are identified, suggestions are invited from all interested parties. Comments or questions should be directed to the above person.

The Draft EIS is estimated to be ready for public review and comment in May 1986.

Issued on: March 7, 1986.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 86–5457 Filed 3–12–86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Casper, WY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed improvement to a city street in Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Dean F. Berwick, Field Operations Engineer, P.O. Box 1127, Cheyenne, WY 82003, Telephone (307) 772–2005.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wyoming State Highway Department and the City of Casper, will prepare an environmental impact statement (EIS) on a proposal to improve one half mile of Beverly Street (Urban Route 4127) in Casper, Wyoming. The proposed improvement will reconstruct and widen six blocks of Beverly Street between the Chicago and Northwestern Railroad track and 4th Street to alleviate present congestion and accommodate forecasted traffic demands.

Alternatives under consideration are: (1) No action; (2) A one-way couplet composed of Beverly Street and Lennox Street; (3) Widening to four lanes with options to widen to the east side, the west side or both sides; and (4) A four lane divided street.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. A series of public meetings were held during the alternative formulation phase; therefore, no formal scoping meetings are planned at this time. A public hearing will be held after the draft EIS has been made available for public and agency review. Public notice will be given of the time and place.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: March 7, 1986.

Frederick L. Cooney, P.E.,

Division Administrator, Cheyenne, Wyoming.

[FR Doc. 86–5453 Filed 3–12–86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Counties of Fairfax and Loudoun, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Counties of Fairfax and Loudoun, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone (804) 771–2360.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to provide for the widening of existing Route 28 to an eight-lane divided facility from the intersection of existing Interstate 66 and Braddock Road to Route 7.

The proposed project will allow for an increased traffic capacity to access the rapidly developing Route 28 corridor.

There are also three alternatives to the proposed project under consideration:

1. Null or No-Build Condition—which includes all elements of the Regional Transportation Plan with the exception of the proposed project.

2. Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

3. Traffic System Management—to evaluate the ability of non-major construction activities on the existing roadway network to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The DEIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: March 7, 1986.

George K. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 86–5458 Filed 3–12–86; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of an information collection using a form IAP-94, Travelers Funded by USIA, which has been approved previously by OMB clearance number 3116–0183, expiration 5/31/86.

DATE: Comments must be recieved by April 30, 1986.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–8676. And OMB review: Mr. Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: *Title:* Travelers Funded by USIA. Abstract: A report is required for submission to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee listing all individuals, with their organizations, who in the preceding five years made two or more trips involving foreign travel financed in whole or in substantial part by grants from USIA's Office of Private Sector Programs. The information must be obtained from grantees, which necessitates the information collection.

Dated: March 7, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–5564 Filed 3–12–86; 8:45 am]

BILLING CODE 8230-01-M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval for the renewal of form IAP–87, Update of Information on Exchange Visitor Program Sponsor, which was cleared previously by OMB and assigned clearance number 3116–0011, expiration 4/30/86.

DATE: Comments must be received by April 11, 1986.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–8676. And OMB revew: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: Information on Exchange Visitor Program Sponsor. The USIA form IAP–87 is used by Exchange Visitor sponsors when they wish to change the name of their organization or change the names of the personnel involved or their telephone numbers. The form is also used as a quick means to order other forms or code books.

Dated: March 7, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–5565 Filed 3–12–86; 8:45 am]

BILLING CODE 8230-01-M

[Delegation Order No. 86–2]

Authority Delegations; Inspector General

Pursuant to the authority vested in me as Director of the United States Information Agency (hereinafter "the Agency") by Reorganization Plan No. 2 of 1977, the Accounting and Auditing Act of 1950 (Pub. L. 81–784 as amended), by Executive Order No. 12301 of March 26, 1981, by the Federal Managers Financial Integrity Act (Pub. L. 97–255), be Executive Order 12046 of March 27, 1978, and by Executive Order No. 12388 of October 14, 1982, I hereby delegate to the Inspector General the authority:

1. To conduct and supervise audits, inspections, and investigations relating to programs and operations of the Agency;

2. To provide leadership and coordination, and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, Agency programs and operations;

3. To keep the Director fully and currently informed about how well the Agency's programs and operations are being administered, problems and deficiencies existing in such programs and operations, and the necessity for and progress of corrective actions;

4. To recommend a candidate or candidates for the position of Assistant Inspector General for Audits who shall have the responsibility for supervising the performance of auditing activities relating to such programs and operations;

5. To recommend a candidate or candidates for the position of Assistant Inspector General for Inspections who shall have the responsibility for supervising the performance of auditing activities relating to such programs and operations;

6. To recommend a candidate or candidates for the position of Assistant Inspector General for Investigations and Management who shall have the responsibility for: (a) Supervising the performance of investigating activities relating to such programs and operations, and (b) providing overall direction, control, and coordination of the planning, policy and procedures, and administrative functions of the Office of the Inspector General;

7. To select in accordance with Agency regulations all other subordinate officers and supporting staff personnel to assist the Inspector General in the discharge of functions delegated hereunder;

8. To provide policy direction for and conduct, supervise, and coordinate audits, inspections, and investigations relating to the programs and operations of the Agency which are necessary and desirable, in the judgment of the Inspector General, and with particular regard to the activities of the

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Comptroller General of the United States, in order to avoid duplication and ensure effective coordination and cooperation;

9. To recommend policies for, and conduct, supervise, or coordinate activities carried out or financed by the Agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting waste, fraud and abuse in, its programs and operations;

10. To recommend policies for, and conduct, supervise, or coordinate relationships between the Agency and other Federal agencies, State and local governmental agencies, and nongovernmental agencies with respect to all matters relating to (a) the promotion of economy and efficiency in the administration of, or the prevention and detecting of fraud and abuse in, its programs and operations administered or financed by the Agency, or (b) the identification of participants in such fraud or abuse;

11. To conform to standards established by the Comptroller General of the United States as they relate to the audit of Agency programs, activities, and functions;

12. To establish guidelines for determining when it shall be appropriate to use non-Federal auditors, and take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General of the United States;

13. To request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Order from any Federal, State, or local governmental agency or unit thereof;

14. To receive and investigate complaints or information from employees of the Agency or others concerning the possible existence of activities constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety;

15. To refer to the Federal Bureau of Investigation matters in need of further investigation as possible violations of Federal criminal or civil laws, and, in exceptional cases following consultation with the General Counsel, to refer matters for prosecutive review to the Attorney General;

16. To prepare and transmit, as requested, reports to Congress summarizing the activities of the Office;

17. To have prompt and unrestricted access to all records, reports, documents, papers, or other material existing within the Agency or available to the Agency which relate to programs and operations with respect to which the Inspector General has responsibilities under this Order, and report the circumstances to the Director whenever information or assistance requested is unreasonably refused or not provided in the judgment of the Inspector General;

18. To have direct access to the Director or the Deputy Director when necessary for any purpose pertaining to the performance of functions and responsibilities under this Order;

19. To represent the Agency on the Coordinating Conference of the President's Council on Integrity and Efficiency and evaluate the Agency's follow-up system on General Accounting Office recommendations that are accepted by the Agency;

20. To provide technical assistance in the Agency's effort to evaluate and improve internal controls and advise the Director whether the Agency's internal control evaluation process has been conducted in accordance with Guidelines for the Evaluation and Improvement of and Reporting for Internal Control Systems in the Federal Government issued by OMB in December 1982;

21. To prepare for and participate in international conferences and negotiations with respect to the functions delegated hereunder, in association with other elements of the Agency as may be appropriate, and with the assistance and participation of the General Counsel in all negotiations of consequence;

22. To exercise any authority or discharge any responsibility arising out of any existing interagency agreement between the United States Information Agency and the Department of State, or between either of the foregoing and any other agency or department, or component thereof, which agreement was concluded under functions delegated or transferred to the Director or to the Agency and is related to the authorities granted herein;

23. To enter into interagency agreements to further the discharge of responsibilities set forth herein;

24. To issue requisitions for personal property and services to be acquired by the Agency Procurement Executive, but not to make grants or acquisition contracts; and

25. To redelegate any authority granted herein together with the power of further redelegation.

Except as otherwise expressly provided, all delegations of authority to other officers of the Agency in force on the date of this Order and related to the exercise of functions and responsibilities herein granted to the Inspector General shall remain in force.

Notwithstanding any other provision of this Order, the Director may at any time exercise any function or authority delegated herein.

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to an in effect on the Date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or suspended.

This Order supersedes Delegation Order No. 83-18 of December 1, 1983 and takes effect immediately.

Dated: March 5, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86-5582 Filed 3-12-86; 8:45 am]

BILLING CODE 8230-01-M

English-as-a-Foreign Language, English-as-a-Second Language Institute, South Africa

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) plans to sponsor an English-as-a-Foreign Language (EFL)/ English-as-a-Second Language (ESL) Summer Institute for twenty-five South African secondary school teachers and teacher trainers. Participants will be individuals involved with English teaching in black education and will be drawn from schools, teacher training institutions, and the non-formal sector. Minimum qualification will be a two-year teacher training diploma beyond secondary school. Very few (if any) participants will have studied in or have visited the United States. USIA is asking for detailed proposals from U.S. institutions of higher education which have an acknowledge reputation in the field of EFL/ESL and special expertise in administering cross-cultural programs.

The general objective of the Institute is to support and encourage the upgrading of secondary education for blacks in the field of teaching English. The program should be designed for secondary-level classroom teachers with responsibilities in curriculum planning and course material development, and teacher trainers with responsibilities in supervision and staff training.

Time Frame and General Description

The Institute should be programmed to last four and one half weeks, beginning on or about July 8 and ending on or about August 11, 1986. Following

the program at the University, participants will have a two-week professional/cultural tour of the U.S. which will be handled by a separate contract agency.

The applicant is asked to design a program with the emphasis on methodology, supervision and teaching techniques in EFL/ESL which will meet the special needs of secondary school teachers/teacher trainers, as well country specific needs. It should start with an orientation to the United States and the university community. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practicums. Lengthy lectures should not be the usual format. The academic program should be complemented by ample time for interaction with American students, faculty, and administrators, and the local community, to improve the participants' understaning of the United States.

In this regard, the Institute should incorporate cultural features such as community/cultural activities, educational tours, home visits, sports, civic events, or other opportunities for interacting with Americans.

Program Objectives

Some specific areas to address in the Institute are:

1. English-as-a-Foreign Language/English-as-a-Second Language training in theory and practice, methodology, and supervision; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English.

2. Language enhancement in communication, pronunciation, syntax, writing, and reading.

3. Enhancement of pedagogical skills, curriculum development, development of teacher-made materials; development of curriculum materials (during the Institute) which can be used in home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers; training teachers to handle individual and small group needs in classes with fifty or more students.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training service programs for teachers; designing and conducting workshops to train EFL/ESL teachers.

6. Visits to on-going EFL-ESL classes in local educational or community centers, providing participants with opportunities to practice EFL/ESL skills.

7. Involving participants in American culture through community/clutural activities. This must include interaction with a variety of ethnic groups.

8. Evaluation of various components of the Institute as well as the entire Institute.

A two-week professional/cultural tour of selected sites in the United States (beginning in Washington) will follow the Institute. A separate contract agency will be responsible for the post-Institute tour, and will handle all programming and logistics, management, and expenses of the tour. USIA will inform the Institute grantee of these arrangements at the time of the grant award.

The university hosting the Institute will be expected to provide consultation and advice to the organization responsible for programming the post-Institute tour. (During the post-Institute tour participants will have diverse opportunities to interact with Americans; visit various EFL/ESL programs to supplement those of the Institute; discuss civic and local affairs with state and local officials; and tour state or national cultural and historical sites. The final two to three days will culminate with debriefing sessions at the port of departure.)

Requirements

All Institute programming and domestic travel logistics and on-site university arrangements will be the responsibility of the university, including enrolling participants in Teachers of English to Speakers of Other Languages (TESOL). USIA will be responsible for all communication to and from the U.S. Embassy in South Africa, and will provide the university with participants' biodata and itineraries, and offer any advice or guidance the university might find useful. USIA will also handle travel arrangements from South Africa to host institution. When participants arrive at the host institution they should be met by the university program staff.

If your university decides to sumit a proposal, it should provide the following:

1. A detailed plan in response to the needs and priorities outlined above. The detailed narrative should outline the structure and organization of the Institute, including a day-by-day agenda. It should also include a proposed list of appropriate books, readings or preparatory materials which would be sent to participants before their departure for the U.S., providing them with the topics to be discussed, as well as practical suggestions for preparing for their stay at the university.

2. Current *curricula vitae* of proposed faculty and consultants.

3. A *specific* and *detailed line item budget* for both *administrative* and *program* costs. The budget should elaborate and include each of the following:

a. Tuition, salaries, and benefits or services (including support staff) for the EFL/ESL program plus overhead costs;

b. Housing and board at the university, for example, faculty residences, graduate dormitories, home stays, or other if necessary.

c. Transportation costs for *all* travel during the course of the on-site University Institute (International travel arrangements will be made by USIA and U.S. Embassy in South Africa, and other domestic travel will be handled by the agency programming the post-Institute tour);

d. Miscellaneous costs such as daily maintenance allowance ($10.00 per participant), honorria, film rental, certificates, cultural activities, support material, supplemental book allowance ($150 per participant), and TESOL membership fees.

e. University contributions or cost sharing and/or private sector contributions; and

f. Indirect costs which should be held to a *minimum*.

For your guidance, our experiences with similar Institutes would indicate that the cost to the U.S. Government for this Institute should probably not exceed $90,000. Based on the final number of participants, some modifications may be necessary following the grant award.

All applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for the academic and cross-cultural components of the Institute. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans.

A panel of senior USIA officers experienced in EFL/ESL, the exchange of international educators, and African affairs will use the following criteria in evaluating proposals:

1. Quality, creative, imaginative design of the EFL/ESL Institute.

2. Clear evidence of the ability to deliver a substantive academic and pedagogical EFL/ESL program.

3. Demonstrated high quality EFL/ESL programs—experience with South Africa is desirable.

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4. Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

5. The experience of professionals and staff assigned to the Institute.

6. The ability to tap local and state resources for the orientation and Institute.

7. Access to EFL/ESL professionals and programs from various universities and organizations.

9. A quality evaluation at the conclusion of the Institute.

10. *Cost-effectiveness.*

Applicants should submit 10 copies each of a 500 word summary, a proposal not to exceed 15 typed double-spaced pages, the detailed budget, and a completed and signed application cover sheet (enclosed). Final proposals must be received by close of business April 28, 1986. The proposal package should be submitted to: Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, Attn: E/AEA, U.S. Information Agency, 301–4th Street, SW., Room 849, Washington DC 20547.

We will provide the grantee with any other participant related information prior to the beginning of the program so adjustments can be made to suit participant needs. If you have any questions, please contact Dr. Winnie D. Emoungu, E/AEA, Bureau of Educational and Cultural Affairs, USIA, 301 4th Street, Washington, DC 20547; or you may call her at (202) 485–7355.

Dated: March 5, 1986.

Curtis Huff,

Chief, Academic Exchanges, African Branch.

[FR Doc. 86–5563 Filed 3–12–86; 8:45 am]

BILLING CODE 8230-01-M

English as a Foreign Language Institute for Togo

The Bureau of Educational and Cultural Affairs of the United States Information Agency plans to sponsor an *English as a Foreign Language (EFL) Summer Program* for *fifteen* English teachers, inspectors, curriculum specialists, and supervisors from Togo. The six and one-half week program will be conducted in July and August 1986, beginning either the week of July 7th or 14th. The final date will depend upon consultations between the United States Information Agency (USIA) office in Lome, Togo and the schedules of the institution which receives the grant.

The summer program will be a component of the Agency's Teacher-Text-Technology (TTT) Initiative which is designed to support the efforts of African countries to upgrade secondary education and related teacher training in the fields of English, math, and science. During the summers of 1984 and 1985, specialists from Togo participated in five and six week EFL programs. Based upon these successful summer programs, the Bureau of Educational and Cultural Affairs will sponsor a program with the following major components.

The summer program will have three distinct components. One component will be a university EFL Institute which will provide an intensive *four* week period of plenaries, presentations, workshops, and practicums designed to meet the special needs of fifteen English teachers, supervisors, curriculum specialists, and inspectors. During the Institute, the host university will incorporate cultural features as well as academic sessions and practicums.

A second component will be a *two* week study tour and practicum at the Northwest Regional Educational Laboratory (NWREL) in Portland, Oregon. The program at NWREL should supplement the activities of the university Institute.

The third component will be a *three* to *four* day educational and cultural visit to New York City. During this period final debriefings will be held with USIA officers. If the EFL program is located in New York, the university must arrange a three or four day visit to another east coast city.

The grantee will be expected to handle *all* international and domestic travel and logistics, on-site university arrangements, coordination of activities at the NWREL, and the educational and cultural tour. The four week EFL Institute will orient the Togolese participants to university resources and those in the surrounding community. While the overall university Institute should address general EFL issues for all fifteen participants, it must also design particular workshops and academic lectures to address needs of various types of participants. The USIA is especially concerned that a relative balance be maintained among lectures, workshops, and practicums. Extensive lectures should not be the usual format.

Information from Togo indicates that the fifteen participants will likely be English "junior secondary and senior secondary" teachers, inspectors, and teacher trainers or supervisors. The participants have a B.A. or a diploma in TEFL; some have received training from non-Togolese sources in Togo such as the local USIA branch or the British Council Technical Assistance Program. Regular classes may have forty or more pupils; and over 100 teachers may be involved in one EFL training workshop. Upon their return to Togo, some inspectors and teacher trainers will help design an intensive program for teacher training to cover the entire country. The inspectors and supervisors spend approximately one-half the time with school inspection and training; upon their return, about one-quarter of their time will be devoted to administration and the remaining portion with teacher training. Inspections for individual teachers occur once every two to five years with the schools receiving the results two to four weeks later.

For participants, appropriate plenary and joint academic seminars and workshops should be undertaken on topics such as communication, psycholinguistic understanding, microteaching, and traditional and contemporary audiovisual equipment and material for EFL. Language enhancement and practical classroom training are also particular needs, in some cases. Administration and supervision, evaluation, and teacher training are special needs for the Togolese. The substantive content and pedagogical methods should be blended with ample time for interaction with American students, faculty, administrators, and the local community to develop and enhance linguistic skills and experience English as a living language. In this context, the host university should discuss plans for continually incorporating cultural components in the EFL Institute—educational tours, home visits, sports, civic events, and sightseeing.

Throughout the entire EFL program African participants should have diverse opportunities to develop their linguistic skills; have extensive opportunities to interact with various American minority groups in their local milieux; discuss civic affairs with state and local officials; and tour state and national historical and cultural sites.

If your institution decides to submit a proposal, it should provide a detailed plan in response to the above needs. Insofar as possible, outstanding professionals from other universities, including those representing minority groups, should be involved. The professionals may be in either linguistics applied to EFL or aspects of American culture.

The proposal must clearly demonstrate quality management capabilities for the orientation, university EFL Institute, the NWREL, and the educaional and cultural tour. The EFL specialists may wish to work with their university Office of International Programs on some administrative components. At least one escort should be at NWREL; and two escorts (which may include the director of the overall EFL program) should assist the group in New York. The overall quality and effectiveness of the program hinges upon good administrative and managerial capabilities to enhance positive interactions between African educators and Americans.

The program should include a two to three day orientation to the USA and the university community. Some specific areas to address in the overall EFL program are:

(1) Developing and evaluating standard and flexible curriculum materials and texts;

(2) Providing creative instruction to enhance a set curriculum designed to prepare students for standard examinations;

(3) Designing pedagogical training to develop skills in classroom teaching and management—including current TEFL methodology;

(4) Designing, administering, and evaluating diagnostic tests;

(5) Arranging teacher training and supervisory sessions to handle individual student and small group needs in classes with forty or more students;

(6) Presenting language enhancement sessions to improve the participants' language skills: pronunciation, syntax, and reading;

(7) Visiting on-going EFL or ESL classes in local education or community centers which present African participants the opportunity to practice EFL skills;

(8) Developing curriculum material at the university Institute and the regional EFL laboratory and centers; and

(9) Designing and conducting workshops to train EFL teachers;

(10) Conducting observation and evaluation sessions for classroom teachers;

(11) Organizing and conducting training sessions for supervisors, particularly through workshops and other practicums; and

(12) Observing foreign language classes in American public or private schools.

A panel of senior USIA officers experienced in EFL, the exchange of international educators, and African affairs will evaluate the proposals based on the above general considerations and the following specific criteria:

(1) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL program;

(2) Demonstrated high quality EFL programs—experience with Francophone Africa is desirable;

(3) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(4) A quality evaluation at the conclusion of the university EFL Institute and after the overall program;

(5) The experience of professionals and staff assigned to the institute;

(6) The ability to tap local and state resources for the university Institute, including the orientation and cultural component;

(7) Access to EFL professionals and programs from various universities;

(8) The ability to arrange a one week program at regional or metropolitan laboratories and centers in another geographical area;

(9) The design and plans for implementing the educational and cultural tour in New York; and

(10) *Cost effectiveness.*

The proposal should provide a *specific* and *detailed line item budget* for *both administrative* and *program costs*. The budget should elaborate and include each of the following:

(1) Tuition, salaries, benefits, or services (including support staff and escorts—escorts at same per diem rates as participants) for the entire EFL program plus overhead costs;

(2) Housing and board at the university, NWREL, and in New York, (for example, faculty residences, graduate dormitories, home stays, and hotels);

(3) Transportation costs for *all* travel during the course of the overall EFL program (this includes international travel from Lome, Togo and domestic travel);

(4) Miscellaneous costs such as daily maintenance allowance ($20 per participant), honoraria, film rental, certificates, cultural activities, support material, and supplemental book allowance ($200 per participant);

(5) University contributions or cost sharing and/or private sector contributions; and

(6) *Indirect costs, which should be held to a minimum.*

Our experiences with similar institutes indicate that the cost for this Institute *must not exceed* $140,000. Based upon the final number of participants, some budget modifications may be necessary following the award.

Applicants should submit *10* copies each of a 500 word summary, a proposal not to exceed 20 typed double-space pages including all attachments such as resumes, and the detailed budget. The budget must be signed by the appropriate university budget and/or contract office.

Final proposals must be *received* by close of business on April 7, 1986 for funding in May 1986. Proposals should be submitted to: Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th St., SW., Washington, DC 20547.

We will provide the grantee with biographical and related information on participants prior to the beginning of the program so adjustments can be made to suit participants' needs. The program will likely begin July 7 or 14, 1986. If you have questions, please contact Dr. Beverly Lindsay, TTT Coordinator, Bureau of Educational and Cultural Affairs, USIA, 301 4th St., SW., Washington, DC 20547; or you may call her at 202–485–7335.

Dated: March 10, 1986.

Curtis Huff,

Chief, Academic Exchanges, African Branch.

[FR Doc. 86–5566 Filed 3–12–86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Career Development Committee: Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101 will be held in the Crystal 5 Room of the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202, April 2 through 4, 1986 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–389–2317) prior to March 28, 1986.

The meeting will be closed from 9 a.m. to 5 p.m. on April 2 through 4 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of

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personal privacy. Accordingly, closure of the portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202-389-2317).

Dated: March 5, 1986.

By direction of the Administrator.

Rosa Maria Fontanes,

Committee Management Officer.

[FR Doc. 86-5441 Filed 3-12-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Affiliation of MidAmerica Commodity Exchange with the Chicago Board of Trade.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-5597 Filed 3-11-86; 10:51 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-5598 Filed 3-11-86; 10:52 am]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Friday, March 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters.

Application of First Financial Mutual Savings Bank, an operating noninsured savings association located in Flourtown, Pennsylvania, for Federal deposit insurance.

Memorandum regarding the Corporation's assistance agreements with insured banks.

Resolution re: Amendments to the delegations of authority relating to the approval of incentive awards.

Resolution re: Amendments to the delegations of authority relating to administrative expenses and to liquidation and receivership activities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: March 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5603 Filed 3-11-86; 11:17 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:07 p.m. on Thursday, March 6, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Tekamah, Tekamah, Nebraska, which was closed by the Senior Deposit Deputy Comptroller for Bank Supervision , Office of the Comptroller of the Currency, on Thursday, March 6, 1986; (2) accept the bid for the transaction submitted by Nebraska National Bank, Omaha, Nebraska; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The City National Bank of Plainview, Plainview, Texas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, March 6, 1986; (2) accept the bid for the transaction submitted by First National Bank of Plainview, Plainview, Texas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5604 Filed 3-11-86; 11:18 am]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86-5039.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 13, 1986, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Revised Draft AO 1986-

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6—Jan W. Baran, Fund for America's Future, Inc.

* * * * *

DATE AND TIME: Tuesday, March 18, 1986, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

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DATE AND TIME: Thursday, March 20, 1986, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–5654 Filed 3–11–86; 3:34 pm]

BILLING CODE 6715-01-M

6

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, March 20, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED:

Docket No. 36180—
San Antonio, Texas, Acting By and Through Its City Public Service Board
Finance Docket No. 30186—
Tongue River Railroad Company—Rail Construction and Operation—In Custer, Powder River, and Rosebud Counties, MT.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275–7252.

James H. Bayne,

Secretary.

[FR Doc. 86–5503 Filed 3–10–86; 2:22 pm]

BILLING CODE 7035-01-M

7

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 2:30 p.m., Monday, March 17, 1986 (Rescheduled from February 18, 1986).

PLACE: 1325 G Street NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376–2623.

AGENDA:

I. Appointment of Temporary Chairman
II. Election of:
  Chairman
  Vice Chairman
III. Approval of Minutes, January 8, 1986
IV. Executive Director's Activity Report
V. Audit Committee Report
VI. Treasurer's Report

Winnie D. Morton,

Assistant Secretary.

[FR Doc. 86–5543 Filed 3–10–86; 4:23 pm]

BILLING CODE 7510-01-M

8

POSTAL SERVICE BOARD OF GOVERNORS

By telephone vote on March 7, 1986, a majority of the members contacted and voting, the Board voted to add to the agenda for the closed session on Monday, April 7, 1986, the following item:

Consideration of a proposed capital investment for long-life vehicles.

The Board determined that pursuant to section 552(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirement of the government in the Sunshine Act because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–5644 Filed 3–11–86 2:22 pm]

BILLING CODE 7710-12-M

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federal register

Thursday
March 13, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 262, 263 and 271

Hazardous Waste Management System: Exports of Hazardous Waste; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 263, 271

[FR 2930–7]

Hazardous Waste Management System; Exports of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Soild Waste Amendments of 1984 (HSWA). These amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) require EPA to promulgate rules to implement new section 3017 regarding exports of hazardous waste. Accordingly, to implement section 3017 and improve upon its existing program, EPA is today proposing and requesting public comment on revisions to its current regulations governing exports of hazardous waste. Consistent with HSWA, the regulations proposed today would prohibit the export of hazardous waste unless certain requirements are met. These requirements include advance written notification to EPA of the plan to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the receiving country's written consent to the manifest accompanying each waste shipment, and conformance of the shipment to such consent. These requirements would apply except to the extent EPA promulgates any different requirements set forth in any international agreement the United States may enter into with a receiving country which establishes different notice, export and enforcement procedures for the transportation, storage and disposal of such waste. In addition to provisions concerning the preceding requirements, today's proposal includes provisions governing special manifest requirements, exception reporting, annual reporting, recordkeeping, transporter responsibilities, confidentiality, and State authorization.

DATE: Comment on this proposal will be accepted until April 28, 1986. The proposed Parts 260, 262, 263 and 271 standards applicable to exports of hazardous waste will be effective 30 days after the date of publication in the **Federal Register** of the final rules.

ADDRESSES: Comments on this proposal should be submitted to Carolyn K. Barley at the address cited below. The official record for this rulemaking is located in Room S–212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for review from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202) 382–2217, Office of Solid Waste, Room S–257 (WH–563), 401 M Street SW., Washington, D.C. 20460 or the toll-free RCRA Hotline: 800/424–9346 (in Washington, D.C., call 202/382–3000).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3002, 3003, 3006, 3007, 3008 and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6922, 6923, 6926, 6927, and 6937.

II. Background

A. Existing Export Regulations

On February 26, 1980 EPA promulgated regulations under the Resource Conservation and Recovery Act of 1976 (RCRA) governing exports of hazardous waste. 45 FR 12732, 12743–12744 (codified at 40 CFR Parts 262 and 263). These regulations place certain requirements on generators and transporters regarding exports of hazardous waste in light of the special circumstances involved in international shipments. Since RCRA did not expressly address exports of hazardous waste, these provisions were promulgated primarily under sections 3002 (Standards Applicable to Generators of Hazardous Waste) and 3003 (Standards Applicable to Transporters of Hazardous Waste) of RCRA and are limited in scope.

Essentially, current Subpart E of Part 262 requires any person exporting hazardous waste to comply with the requirements generally applicable to generators such as initiating the manifest, using proper labels and containers, offering placards, and complying with the recordkeeping and reporting requirements of RCRA. A generator must also notify EPA before the initial shipment of hazardous waste to each foreign country in a calendar year. This notification requirement was established to allow EPA to inform a foreign country or an intended export and to assist EPA in tracking exports of hazardous waste. The content of this notification, however, is minimal: A generator must only identify the waste and consignee. Notification of the quantities of waste, frequency of shipment, or the manner in which such waste will be transported to, treated, stored or disposed in the receiving country is not required. Current regulations also do not require prior written consent of the receiving country prior to shipment. Accordingly, under current regulations, EPA has no authority to prohibit the export of hazardous waste if the foreign country objects to its receipt; any action to stop the shipment must be taken by the receiving country. As a further means of tracking the waste, Subpart E regulations also require that the generator require the consignee to confirm delivery of the waste. Special manifest and exception reporting requirements are also included in Subpart E.

In addition to the export provisions set forth in Subpart E and elsewhere in Part 262 (Standards Applicable to Generators), certain requirements regarding exports of hazardous waste are also included in Part 263 (Standards Applicable to Transporters of Hazardous Waste). These include a requirement that the transporter note on the manifest the date the waste left the United States, sign and retain one copy

of the manifest, and return a signed copy to the generator. Transporters must also deliver the entire quantity of waste to the place outside the United States designated by the generator unless the generator directs otherwise and the manifest is revised. These requirements were established to further enable EPA to track exports of hazardous waste.

B. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program. Among other things, they add a new section 3017 to RCRA specifically addressing hazardous waste exports. In enacting this provision, Congress was concerned that EPA's existing notification system was inadequate to address the present and potential environmental, health, and foreign policy problems which occur when wastes are exported to nations which do not wish to receive them or lack sufficient information to manage them properly. *See, e.g.*, S. Rep. No. 98–284, 98th Cong., 1st Sess. 47 (1983). Congress also expressed concern that the failure to effectively regulate exports may be creating a major loophole for circumvention of U.S. hazardous waste laws. 129 Cong. Rec. H8163–H8164 (daily ed. Oct. 6, 1983) (Statements of Rep. Mikulski and Rep. Florio). Thus, Section 3017 expands current notification requirements and requires prior written consent by the receiving country before the shipment can take place.

Generally, subsection (a) of section 3017 provides that, beginning 24 months after enactment of HSWA, the export of hazardous waste is prohibited unless the person exporting such waste: (1) Provides notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies each waste shipment; and, (4) the shipment conforms to the terms of such consent. In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an international agreement establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste and the shipment conforms to the terms of the agreement.

Subsection (c) of section 3017 sets forth the requirement to notify the Administrator before the shipment leaves the United States and specifies the information to be included in such notification. Subsections (d) and (e) establish procedures for obtaining the receiving country's consent to accept the waste. Subsection (f) addresses the effect of an international agreement on the requirements of section 3017. Subsection (b) requires the Administrator to promulgate regulations necessary to implement section 3017. Subsection (h) authorizes the Administrator to establish other standards for the export of hazardous waste under sections 3002 and 3003 of RCRA. Finally, Congress also amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of HSWA contains one additional requirement with which exporters must comply immediately: Subsection (g) requires any person exporting hazardous waste to file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year. EPA recently codified this statutory requirement in its export regulations. 50 FR 28702, 28746 (July 15, 1985).

C. Proposed Regulations

Today EPA is proposing amendments to its hazardous waste export regulations to implement section 3017 and improve upon its current program governing exports. New Subpart E of 40 CFR Part 262 would address only exports of hazardous waste and replace existing regulations governing such exports now contained in that Subpart. Since Subpart E currently also includes special requirements governing imports of hazardous waste and the disposition of waste pesticides by farmers, these provisions would be moved to new Subparts F and G respectively with no substantive changes. Amendments are also proposed to 40 CFR Parts 260 regarding confidentiality, 263 pertaining to transporters of hazardous waste, and 271 with respect to State authorization.

III. Detailed Discussion of Proposed Regulation

The following is a detailed section-by-section discussion of the proposed changes to the export regulations.

A. Applicability [§ 262.50]

This section describes the applicability of Subpart E. Subpart E requirements would be applicable to exports of hazardous waste. As discussed more fully below, the term "exporter" is proposed to be defined as the person required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. As such, exporters would be required to comply not only with the special requirements of Subpart E but also with Part 262 requirements applicable to generators (except to the extent Subpart E specifically provides otherwise).

This section also provides that the requirements of Subpart E apply to all exports of hazardous waste unless an international agreement is entered into between the United States and a receiving country which provides for different requirements. As the U.S. government has yet to enter into any such agreements, § 262.58 is proposed to be reserved to set forth any requirements placed on private parties by international agreements which are different from those required by the proposed regulations.

B. Definitions [§ 262.51]

Current regulations do not include a definitional section. This section has been added to provide definitions of new terms used in implementing section 3017 and for purposes of clarity.

1. "Receiving Country"

Congress did not define the term "receiving" country in enacting section 3017. Accordingly, EPA has the discretion to define that term to best effectuate Congressional intent. EPA's interpretation of this term is important because section 3017 requires prior consent of the "receiving country" to accept a hazardous waste; otherwise the export cannot take place. This prior consent requirement is the key element of new section 3017.

EPA believes that under most circumstances there will be only one foreign country involved in an export transaction: The country actually accepting the waste for purposes of its ultimate disposition in that country. However, circumstances may arise where a hazardous waste is transported through or temporarily stored for a short period (for example, at a loading dock or transfer facility) in another country en route to its final destination. Under the

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latter circumstances, the question arises as to what constitutes the "receiving country" for purposes of obtaining consent to accept the shipment.

The term "receiving country" could be limited to the first country through which the waste travels or in which a waste may be temporarily held in the course of transportation even if ultimately destined for another country. Under this theory, once the waste enters the initial foreign country, it would then be the responsibility of that country to regulate any further export of such waste. Thus, consent would only be required from the initial country the waste enters. On the other hand, the term "receiving country" could include both transit countries and the country ultimately receiving the waste thus requiring consent from all countries involved. Finally, the term "receiving country" could be limited to the country of ultimate destination of the waste.

After considering the preceding alternatives, EPA proposes to define the term "receiving country" to mean only the foreign country of ultimate destination of the waste. Thus, consent must be obtained from the country in which the hazardous waste ultimately will be treated, stored or disposed. Consent would not be required from countries through which a shipment is transported or in which a shipment is temporarily held in the course of transportation to its ultimate destination. EPA realizes, however, that there may be limits to an exporter's knowledge of the ultimate destination of the waste. Accordingly, if the exporter does not know and cannot reasonably ascertain the country of ultimate destination, the receiving country would be the last country to which the waste will be sent that is known to the exporter.

EPA believes this proposed definition best reflects Congressional intent. It does not appear as though Congress contemplated that consent be obtained from both transit countries and the country ultimately handling the waste. The statutory language itself refers to "receiving country" not "receiving countries." Furthermore, section 3017 specifically requires exporters to notify EPA of the name and address of the "ultimate" treatment, storage or disposal facility. This requirement is indicative of Congressional concern with the "ultimate" destination of the waste. Moreover, Congressional discussions leading up to the enactment of section 3017 focus on the "dumping" or "disposal" of hazardous waste in unsuspecting foreign countries as the activity of primary concern, not the transportation through or temporary storage in a foreign country en route to its final destination.[1] *See, e. q.,* 129 Cong. Rec. H8163–8164 (daily ed. October 6, 1983) (Remarks of Rep. Mikulski and Rep. Florio). EPA believes that requiring consent only from the country actually accepting the waste for purposes of its ultimate disposition also best serves Congressional intent to impose a minimum of additional regulatory burdens on U.S. generators and administrative burdens on EPA while establishing a more comprehensive and responsible export policy. *See* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Sen. Mitchell).

EPA also rejected the alternative of limiting the meaning of the term "receiving country" to the first foreign country the waste may enter or in which it may be temporarily held in the course of transportation to its final destination. Again, Congress specifically requires notification of the "ultimate" treatment, storage or disposal facility thereby indicating an intent to ensure consent by the country handling the "ultimate" disposition of the waste. And, as noted above, Congressional discussions leading up to HSWA also focused on the actual "disposal" of the waste. Moreover, EPA does not believe it appropriate to relinquish authority over the export of such waste at the point it simply enters another country in the course of transportation where it is known that such waste will ultimately be disposed of elsewhere. Were "receiving country" defined in such a limited manner, exporters could avoid consent requirements of countries to which the waste is ultimately being sent simply by rerouting the waste through another country. EPA especially requests comments on its definition of the term "receiving country."

2. "Consignee"

EPA has chosen to use the term "consignee" to refer to the "ultimate" treatment, storage or disposal facility to which the hazardous waste will be sent in the receiving country. The place of ultimate destination of the waste is to be distinguished from a facility at which any short term storage of the waste might occur incidental to transportation (e.g., at transfer facilities, loading docks). Thus, for example, if a waste is being exported to London via Portsmouth and the waste may be held temporarily in Portsmouth awaiting transportation to London, the consignee would be the facility to which the waste is being sent in London. The type of storage incidental to transportation which EPA tends to distinguish from the "ultimate" destination of the waste is similar to that type of storage discussed in the preamble to the rule clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. *See* 45 FR 86966 (Dec. 31, 1980). However, for purposes of determining who is the consignee, as between a temporary storage facility at which the waste may be stored incidential to transportation and the ultimate destination of the waste, no time limit on the length of such storage is being proposed as is the case in the rule referenced above. EPA believes it would be extremely difficult, if not impossible, due to unforeseen events occurring in transit abroad, for an exporter to know prospectively whether a shipment might be stored, for example, for more than ten days at a storage facility in the course of transportation and would thus become the "consignee." Accordingly, the consignee is the facility of ultimate destination of the waste and is not a temporary storage facility where a waste may be stored for a short period of time incidental to transportation.

3. "Transit country"

A definition of transit country is included in light of EPA's proposal, discussed in detail below, to provide notification to transit countries. A transit country is any foreign country through which a hazardous waste passes en route to a receiving country.

4. "EPA Acknowledgment of Consent"

The "EPA Acknowledgment of Consent" is defined as the cable prepared by the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent. This cable will be transmitted to EPA via the Department of State in Washington and hence to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. As explained more fully below, EPA proposes to use this document to constitute the "consent" of the receiving country for purposes of section 3017, as opposed to a reproduction of the actual communication from the receiving country, for purposes of uniformity, to provide an English translation to the exporter of the terms and conditions of consent, and to allow expeditious transmission of consent telegraphically to expedite communication and meet the statutory time frames for transmitting consent to the exporter.

5. "Exporter"

Section 3017 requires "any person" who exports hazardous waste to comply with the notification, consent, and reporting requirements of that section. EPA believes that several persons could be involved in a single export transaction (e.g., a generator, transporter, and a broker). The statutory language, however, does not specify which of such parties should, for example, provide the notification information to EPA, receive the EPA Acknowledgment of Consent, and attach a copy of such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. In order to avoid confusion as to which party is responsible for specific export requirements and avoid duplicative notification, EPA proposes to place the primary statutory responsibilities for exports on a single party in each transaction.

EPA thus proposes to define the term "exporter" to be the person who is required to prepare the manifest in accordance with 40 CFR Part 262, Subpart B for a shipment of hazardous waste which specifies a treatment, storage, or disposal facility in the receiving country as the facility to which the waste will be sent. EPA believes that the person preparing the manifest for such shipments is in the best position to provide EPA with the notification information, receive the EPA Acknowledgment of Consent, attach such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)), and ensure that the shipment initially conforms with the terms and conditions of the receiving country's consent. Such party is often in the best position to know the types and quantities of the waste to be exported. Generally, such party will have contracted with the consignee for receipt of the waste and will know the name of the consignee and be most able to obtain information on the manner in which the waste will be handled. Because such party will be preparing the manifest (or shipping paper for exports by rail or water (bulk shipment)), he should also know the details of transportation to the receiving country. And, because he will be initiating the shipment, he should also be in the best position to receive and attach the EPA Acknowledgment of Consent to the manifest accompanying the waste shipment, and ensure initial compliance with the terms of the EPA Acknowledgment of Consent.

Under the proposed definition, an "exporter" could be a generator as defined in 40 CFR 260.10 or other person required to assume generator responsibilities, i.e., a transporter who mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container pursuant to 40 CFR 263.10(c) or the owner or operator of a treatment, storage or disposal facility who initiates a shipment of hazardous waste pursuant to 40 CFR 264.71(c) or 265.71(c). Current regulations for exports place notification requirements on generators. The proposed regulations simply clarifies that an exporter is a generator or other person required to assume generator responsibilities such as provided in 40 CFR 263.10(c), 264.71(c), and 265.71(c).

EPA considered the alternative of defining "exporter" to be "any person" who intends to export a hazardous waste. Under such a definition, all parties involved in the export, the generator (or person assuming generator responsibilities), transporter, and any export broker would be required to comply with the exporter requirements and could be held liable for failure to comply with such requirements. Similar treatment has been afforded generators where several parties meet the definition of generator. *See* 45 FR 72024, 72026 (Oct. 30, 1980). Under such a definition, EPA would expect one party, however, to assume and perform particular duties on behalf of all the parties. Guidance on who the agency would prefer to assume such responsibilities would be provided in the preamble. Enforcement actions, could, however, be taken against all parties for any violation where equitable and in the public interest.

This option was rejected because EPA believes that it would be difficult to define the point at which the "intent to export" would occur. The most tangible evidence of such "intent" is the point at which a manifest is prepared specifying a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Only at that point does it become clear that an export will occur. Moreover, EPA believes that unlike in the situation governed by the rule noted above, a particular party, the generator (or person required to assume generator responsibilities) stands out as the predominant party in all cases. In addition, in the case of exports, EPA believes its proposed definition would cause less confusion and delay and that certain parties, such as transporters, shoud not be ostensibly subject to liability for responsibilities more appropriately placed on generators or persons required to assume generator responsibilities. Transporter responsibilities should include such matters as refusing to accept waste for export unless an EPA Acknowledgment of Consent is attached to the manifest, ensuring that the EPA Acknowledgment of Consent accompanies each waste shipment in transit, and that the shipment is not altered in transit contrary to the terms of the receiving country's consent. Generators (or persons required to assume generator responsibilities) are, on the other hand, in a better position to supply the notification and ensure initial compliance of the shipment with the receiving country's consent. Thus, the liability of such parties should relate to those duties for which such parties are in the best position to assume. As far as export brokers are concerned, such parties woud be acting on behalf of a generator (or person assuming generator responsibilities) as an agent. Under the definition of exporter as proposed, the generator (or person required to assume generator responsibilities) would remain liable for any violations of the duties imposed upon him when performed by a broker on his behalf. Of course, if a broker engages in activities which make him a generator or other person required to assume generator responsibilities under EPA regulations, the exporter requirements would apply to such party under the definition as proposed.

EPA particularly requests information on the nature of the export industry and comments on the appropriate liabilities and responsibilities which should be placed on brokers, transporters, and generators.

Under EPA's proposed definition of "exporter," Subpart E requirements would not be applicable to exports of hazardous waste initiated by persons not required to prepare a manifest under 40 CFR Part 262 Subpart B or an equivalent provision in an authorized State program. Thus, exports of hazardous wastes that are exempt from the manifest requirements of 262 Subpart B would not be subject to Subpart E requirements (see discussion later in this Preamble). EPA recognizes that section 3017 requires notification and consent for exports of "any hazardous waste identified or listed under this subtitle." However, it is not clear whether in using this language Congress intended to regulate wastes

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[1] As discussed in detail below, however, EPA is proposing that the United States notify transit countries pursuant to the authority of section 3017(h), although consent will not be required. EPA believes that such notification is important from a foreign policy perspective and that, in light of the nature of the activity occurring th transit countries, notification alone is appropriate and sufficient.

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exported more stringently than domestic wastes or to expand existing export requirements to cover exports not currently covered (e.g., some recycled wastes). EPA requests comments on the proposed continuation of an exemption of such exports from regulations especially whether there are any strong policy reasons to extend coverage of Subpart E to such exports.

C. General Requirements [§ 262.52]

This section sets forth the general requirements applicable to exports of hazardous waste. It provides that exports of hazardous waste are prohibited except in compliance with the applicable requirements of Subpart E and summarizes the general statutory prohibitions on exports set forth in section 3017(a) as implemented by proposed Subpart E.

D. Notification of Intent to Export [§ 262.53]

Subsection (c) of Section 3017 requires that any person who intends to export a hazardous waste shall, before such waste is scheduled to leave the United States, provide notification to the Administrator. This subsection also sets forth the minimum information which must be included in such notification. The primary purpose of this notification requirement is to provide sufficient information to a receiving country to allow it to make an informed decision on whether to accept the waste and, if so, to manage it in an environmentally sound manner. S. Rept. No. 98–284, 98th Cong., 1st Sess. 47 (1983). Coupled with the prohibition on exports in the absence of the consent of the receiving country, this provision is also intended to ensure that environmental, public health, and U.S. foreign policy interests are safeguarded. *Id.; see also* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Senator Mitchell). This notification requirement is further intended to assist EPA in determining the amounts and ultimate destination of exports of U.S. generated hazardous waste so as to enable EPA and Congress to gauge whether the right to export is being abused. 130 Cong. Rec. S9152, *supra.*

The notification requirements proposed today are intended to implement the broad statutory requirements for notification set forth in section 3017(c) and ensure that sufficient information is obtained to satisfy Congressional intent. Accordingly, proposed § 262.53(a) requires an exporter to notify EPA of an intended export before the waste leaves the United States. Such notifications should be submitted sixty days prior to the intended date of the initial shipment. This sixty-day advance time is included in order to allow a reasonable amount of time for transmission of the notification to the receiving country, receipt of the receiving country's consent or objection to the export, and transmission of an EPA Acknowledgment of Consent to the exporter. In this respect, it should be noted that the statute itself sets forth the time frame (30 days) within which a complete notification must be transmitted to the receiving country after receipt by EPA and the time frame (30 days) within which the consent or objection must be transmitted to the exporter after receipt by the Secretary of State. Since EPA believes the information can be transmitted in less time than statutorily required (see discussion in Part III E), this 60-day advance time allows approximately thirty days for the receiving country to provide its consent or objection to the Department of State. Of course, EPA cannot require a receiving country to respond within a specific number of days. And, since an export is prohibited in the absence of consent, the shipment cannot take place until such consent has been obtained even though the notification may have been submitted sixty days prior to shipment. Thus, exporters are encouraged to submit notifications at the earliest possible date.

The regulation would also require such notification to be in writing and signed by the exporter. This requirement is intended to ensure the accurate transmission of the required information to EPA and the usefulness of the document in enforcement actions. A single notification may cover more than one shipment; a separate piece of paper providing notification for each shipment is not necessary. This appears consistent with legislative intent since the statute itself specifies that a notification include information on the "frequency of shipment." Comments are specifically requested, however, on whether a separate notification should be required for each shipment. The proposal limits a notification to shipments occurring over a maximum period of twenty-four months. The agency considered allowing a notification to cover a twelve month period but rejected this option in favor of the 24-month period as a better balance between concerns for currency and accuracy of information and imposition of administrative burdens on exporters. However, EPA specifically requests comments on whether it would be appropriate to restrict this period of time to twelve months.

Regarding the content of a notification, the statute itself requires that a notification include the following information:

(1) The name and address of the exporter;

(2) The types and estimated quantities of hazardous waste to be exported;

(3) The estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) The ports of entry;

(5) A description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) The name and address of the ultimate treatment, storage or disposal facility.

To implement these broad informational requirements, the proposed regulation identifies certain specific information which would be required. Accordingly, notification would be required to contain the following:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subpart C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171–177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(v) A description of the manner in which the waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling); and

(vii) The name and site address of the consignee and any alternate consignee.

As discussed in detail below, the United States intends to provide notification to transit countries as well as receiving countries. Conset from transit countries, however, would not be required. Accordingly, the proposal also requires, pursuant to the authority of section 3017(h), designation of any transit countries through which the waste will pass and information on its handling while there.

Paragraph (b) of proposed § 262.53 specifies the place to which notification must be sent. Paragraph (c) requires renotification, consent from the receiving country, and EPA Acknowledgement of Consent for changes in the conditions specified in the original notification. This would include changes in the amount of waste to be exported in excess of the estimate originally provided since EPA believes a foreign country would not consent to receiving more waste than contemplated when consent was given. EPA believes this section is necessary since "consent" arguably has not been received for any shipment differing from the shipment of which the receiving country was notified. Since this provision is likely to be used when unforeseen circumstances arise necessitating a change in the export close to the date of the intended initial shipment, EPA will act expeditiously to obtain consent to such changes. However, exporters should keep in mind that an export deviating from the description in the original notification has not been consented to and, therefore, cannot take place until consent to the changes has been obtained and a new EPA Acknowledgement of Consent has been received.

Paragraph (d) would allow EPA to obtain any additional information from an exporter in the event the receiving country requests further information in order to respond to a notification of intent to export.

Paragraph (e) provides that EPA will forward a complete notification to the receiving country and any transit countries. A notification would be complete when EPA receives all information EPA determines is necessary to satisfy the requirements of § 262.53(a). This paragraph also provides that, if a claim of confidentiality is asserted with respect to any of the required notification information, EPA may find a notification not "complete" until any such claims are resolved in accordance with § 260.2. For a discussion of the basis for and purpose of this provision, see the section below on confidentiality.

Paragraph (f) provides that exporters will be notified of any responses by receiving and transit countries. Where the receiving country consents to the shipment, an EPA Acknowledgement of Consent will be provided the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment.

EPA specifically requests comments on the proposed notification requirements especially regarding whether any additional information would be appropriate to satisfy Congressional intent.

E. Procedures for the Transmission of Notification, Consent and Objection

Subsections (d) and (e) of section 3017 set forth the procedures involving EPA and the Department of State for notifying the receiving country on an intended export, obtaining the receiving country's response to the notification, and notifying the exporter of such response. These statutory provisions require the Department of State to transmit notification of the intended export to the government of the receiving country within thirty days of receipt by EPA of a complete notification from the exporter. EPA must then notify the exporter of the receiving country's consent or objection to the intended export within thirty days of receipt by the Department of State of the receiving country's response.

EPA is not proposing any specific regulations regarding procedures for the exchange of information among EPA, the Department of State, receiving countries and transit countries because these actions are administrative in nature and impose no requirements on the public. For informational purposes, however, a discussion of such procedures follows.

In order both to meet the statutory time frames noted above and expedite transmission of information, EPA anticipates notifying the Department of State within five days of receipt of the exporter notification. The Department of State anticipates notifying the receiving country within ten days of receipt of the information from EPA. The Department of State anticipates notifying EPA of the receiving country's response within ten days of receipt of such response, and EPA anticipates notifying the exporter of such response within five days of receipt of the response from the Department of State. This amounts to a total of thirty days transmission time for notification and consent. Thus, as, previously discussed, EPA has proposed that exporters notify EPA at least sixty days prior to the intended first shipment to allow time for the receiving country to respond. Thirty days remain for the receiving country to provide its consent to the export. Exporters are reminded, however, that an export cannot take place without consent of the receiving country and, therefore, the shipment could be delayed if the receiving country does not respond within that time period.

The Department of State will use its telegraphic system to notify the receiving country of an intended export and to transmit the response back from the U.S. Embassy in the receiving country to the Department of State in Washington. Thus, EPA will draft a cable incorporating the details of the exporter notification which the Department of State will transmit to the U.S. Embassy in the receiving country. The U.S. Embassy will then pass the information on to the appropriate authorities in the receiving country with a request to respond expeditiously to the notification by providing the U.S. Embassy with a written consent or objection to the intended export. Upon receipt of the written response of the receiving country, the Embassy will then translate this response into English, if necessary, and cable it to the Department of State in Washington. This cable would then be forwarded to EPA. Where the receiving country fully consents to the shipment or consents with specified modifications, this cable will constitute the EPA Acknowledgment of Consent and would then be forwarded to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment. Where the foreign country rejects the shipment, EPA will so notify the exporter in writing. Meanwhile, the original written communication from the receiving country would be sent to the Department of State in the diplomatic pouch used by the Department of State to transmit documents from foreign posts to the Department of State. This document would then be forwarded to EPA for retention. A copy will also be forwarded to the exporter. EPA will work closely with the State Department to establish procedures to ensure that cables prepared by the U.S. Embassy in the receiving country include all of the relevant information contained in the exporter's original notification, as well as an exact reiteration or translation of the receiving country's written consent to the notification. This will provide U.S. Customs officials with the information necessary to check the shipment against the receiving country's consent to the notification.

Telegraphic transmission of information between the United States and receiving countries is necessary to expeditiously transmit notification and consent information. Mailing actual reproductions of such documents would

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take considerably longer, making it difficult to meet the statutory deadlines for transmission of such information and necessitating earlier notification by the exporter than that proposed. In light of the use of cables, a copy of the exporter's actual notification letter will not be transmitted to receiving countries. Similarly, a copy of the receiving country's actual consent document does not need to be attached to the manifest (or shipping paper for exports by rail or water (bulk shipments)). As stated earlier, the cable received from the U.S. Embassy in the receiving country will constitute the EPA Acknowledgment of Consent document and will be used to transmit the receiving country's consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)). Use of such a document not only allows the exporter to be notified expeditiously of the cabled response of the receiving country but also makes possible the inclusion of an English translation of the terms and conditions of the receiving country's response where such response is in a foreign language. Without such a translation, it would be difficult for the exporter to ensure conformance with such consent.

Thus, EPA interprets the statutory language of subsection (d) of section 3017 which requires that "a copy of the notification" be forwarded to the receiving country to mean forwarding the information contained in the notification from the exporter to the receiving country. And, EPA interprets the statutory language of subsection (a) requiring attachment of a "copy of the receiving country's written consent" to the manifest accompanying each waste shipment to mean attachment of the EPA Acknowledgment of Consent incorporating the terms and conditions of such consent. Similarly, EPA interprets the statutory language of subsection (e) which references the written consent, objection, or other communication from the receiving country and provides that "such a consent, objection or other communication" be forwarded to the exporter to mean forwarding the information contained in the foreign country's response to the notification. EPA believes the means it proposes to transmit information is consistent with Congressional intent to ensure notification, consent, attachment of such consent to the manifest, and conformance of the shipment to the consent while ensuring that the statutory time frames for transmission are met.

EPA considered developing a standard form to incorporate all of the relevant information contained in the exporter's notification. This form would provide a concise transmission (in consistent format) of the information relevant to the export. In preparing this form, EPA would include only that information needed by U.S. Customs to determine whether the shipment was in conformance with the receiving country's consent. Copies of the receiving country's consent or an exact translation of that consent would be sent directly to the exporter in order to inform the company of all of the receiving country's conditions of acceptance. However, EPA rejected this option in favor of the proposed one for the following reasons: (1) The amount of time required to prepare the form would add a few days to the process of notification; and (2) by working closely with the U.S. Department of State to ensure that the cable prepared by the U.S. Embassy in the receiving country includes all of the relevant information, the cable will provide Customs officials with the information necessary to monitor shipments at the border. EPA requests comments on whether a form rather than a copy of the cable which includes a reiteration of all of the receiving country's conditions of acceptance should be prepared.

As required by section 3017, in notifying receiving countries of intended shipments, the government of the receiving country will be advised that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the waste. The notification will include a request to provide the Department of State with a response to the notification which either consents to the full terms of the notification, consents to the notification with specified modifications, or rejects receipt of the hazardous waste. Also, in accordance with statutory requirements, a description of the Federal regulations which would apply to the treatment, storage and disposal of hazardous waste in the United States will be provided the receiving country.

F. Notification of Transit Countries

EPA has been a full and regular partner in extensive international consultations concerning the international shipment of hazardous waste under the auspices of the Organization for Economic Cooperation and Development (OECD). U.S. experts along with those of other OECD member countries have worked to develop agreed-upon principles governing international shipments of hazardous waste. In February of 1984, the United States, along with other OECD member countries, voted to adopt a formal decision and recommendations for implementing such decision regarding the control of international shipments of hazardous waste. The OECD decision provides:

> . . . Member countries shall control the transfrontier movements of hazardous waste and, for this purpose, shall ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements.

The term "countries concerned" is defined to include exporting, importing and transit countries. To implement this decision, the OECD Council recommended that countries apply certain principles concerning transfrontier movements including the following:

> . . . [C]ountries should take the measures necessary to ensure that the entities within their jurisdiction provide, directly or indirectly, the authorities of the exporting, importing and transit countries with adequate and timely information.

Accordingly, EPA has exercised its authority pursuant to section 3017(h) to require exporters to notify EPA of any countries through which a hazardous waste will pass en route to the receiving country. The requirement to provide information regarding the approximate length of time the waste will remain in a transit country and the nature of its handling while there is proposed in order to provide sufficient information to a transit country regarding the nature of the transit of the waste through such country. EPA, in conjunction with the Department of State, plans to provide such countries with the information contained in the exporter's notification and will inform the exporter of any response by such countries.

EPA, however, does not propose to require consent from transit countries. Section 3017 requires consent only of receiving countries and EPA's proposed regulation defines "receiving country" to mean the country in which the waste will be ultimately treated, stored or disposed. Exporters should keep in mind, however, that the transit country may take action to prohibit entry of the waste into that country. Accordingly, EPA recommends that exporters make every effort to reroute the waste should a transit country object to the entry of such waste into that country.

EPA's plan to notify transit countries is intended to implement the OECD Decision and Recommendations and is also intended to respond to the legitimate interests of transit countries in light of the nature of the activity which would occur in such countries, i.e., transit through or temporary storage in such countries. In EPA's view, it is important for protection of human health and the environment as well as foreign relations to provide notification to transit countries. This will enable transit countries to stop shipments which are unwelcome, to ensure safe handling during transit and be prepared to deal with any incidents (such as spills) which may occur during transit. EPA specifically requests comments on its proposed treatment of transit countries. Related to this issue is the alternative considered by EPA (and discussed above) to define "receiving country" to include both the ultimate country receiving the waste and transit countries. Were this alternative adopted, consent from transit countries would also be required before the shipment could take place.

G. Special Manifest Requirements [§ 262.54]

This section sets forth special manifest requirements pertaining to exports of hazardous waste in light of the special circumstances relative to such shipments. Accordingly, as specified in the proposed rule, some of the proposed requirements are in lieu of the provisions applicable to generators in Part 262 while others are in addition to such Part 262 requirements.

Paragraph (a) of proposed § 262.54 retains the current requirement that an exporter enter on the manifest the name and address of the consignee in place of the designated permitted facility. Paragraph (b) is added to make clear that the exporter may enter the name of any alternate consignee for which consent has been obtained in lieu of a permitted alternate facility in the United States.

Paragraph (c) retains the current requirement of § 262.50(b)(3)(ii) to identify the point of departure of the waste from the United States. This requirement was originally included in the regulations in order to provide additional information on the movement of an international waste shipment. Paragraph (d) requires an exporter to add to the certification on the manifest in Item 16 that the shipment conforms to the EPA Acknowledgment of Consent. This certification is included for purposes of enforcement. Paragraph (e) retains the current § 262.50(b)(4) requirement which specifies where the exporter should obtain the manifest form. This requirement deviates slightly from the requirement set forth in § 262.21 pertaining to domestic shipments since the waste is being sent outside the United States. Paragraph (f) essentially retains current § 262.50(b)(2) that requires the exporter to require the consignee to confirm delivery as a condition of their business agreement. A copy of the manifest signed by the foreign consignee may be used for this purpose. EPA proposes to add the requirement that the exporter require the consignee to describe any significant discrepancies as defined in 40 CFR 264.72(a) between the manifest and the shipment. This requirement is for enforcement purposes and is similar to current manifest discrepancy requirements for domestic shipments.

Paragraph (g) applies in lieu of § 262.20(d). This section is intended to place the responsibility on the exporter for hazardous waste that cannot be delivered to a facility to which the foreign country has consented pursuant to the original notification. Thus, an exporter has three choices in such a situation: (a) He can obtain new consent; (b) he can have the waste returned to himself; or (c) he can designate another facility in the United States. EPA realizes that new consent may be difficult to obtain expeditiously which could result in practical problems regarding what should be done with the waste in the meantime. However, it is provided as an option even though EPA believes that the other options noted above are preferable. The proposed regulation also requires the exporter to instruct the transporter to revise the manifest in accordance with the exporter's instructions regarding where the waste should be taken. This ensures that an accurate record of the hazardous waste will be maintained.

Paragraph (h) is proposed to ensure attachment of the EPA Acknowledgment of Consent to the manifest (or shipping paper for exports by rail or water (bulk shipments)) as required by RCRA section 3017. EPA regulations allow a shipping paper to accompany shipments by rail and water (bulk shipments) in lieu of a manifest (*see* 40 CFR 263.20). Accordingly, the EPA Acknowledgment of Consent would accompany the shipping paper under such circumstances. In EPA's view, Congress provided that consent be attached to the manifest to ensure that consent traveled with the document identifying the waste. Accordingly, attachment of the EPA Acknowledgment of Consent to the shipping paper under these circumstances would satisfy this intent.

EPA considered requiring an additional copy of the manifest which the transporter would give to a U.S. Customs official at the border. Customs officials would periodically forward the copies it collected to EPA. Upon receipt EPA would compare these copies with the agreed-upon terms of export to determine compliance. The Agency decided not to propose this requirement, however, because there is no evidence that exporters are violating current notification requirements under § 262.50. Further, the receiving country could request such a review if there was concern about violations of exporter notifications. EPA specifically requests comment on whether such a monitoring system is necessary.

H. Exception Reports

Proposed pragraphs (a) and (b) retain current requirements for exception reporting which deviate somewhat from exception reporting for domestic shipments in light of the special circumstances involved in international shipments. For domestic shipments, exception reports are required where a copy of the manifest is not returned to the generator by the designated facility. Since EPA has no jurisdiction over a foreign facility to require it to return a copy of the manifest, EPA regulations require the exporter to require the consignee to confirm delivery of the waste. As a back-up to tracking the waste in light of EPA's lack of jurisdiction over foreign facilities, EPA regulations also require the transporter to sign a copy of the manifest, enter the date the waste left the United States and return a copy to the generator (40 CFR 263.20(g)). Thus, the proposed exception reporting requirements hinge upon the lack of receipt of the transporter's copy of the manifest and the failure to receive confirmation from the consignee that the waste was received.

Exception reporting is an important tracking and enforcement tool for exports of hazardous waste. It allows notification to EPA that a waste has not left the United States or has left the United States but has not been received by the consignee. Thus, EPA can determine whether the waste remains in the United States or has reached the foreign country but not reached the consignee. The proposed regulation also requires submission of an Exception Report where the waste is returned to the United States. This requirement is proposed to be added because EPA believes that it is in the interest of U.S. foreign policy to know that a hazardous waste shipment was rejected when consent by the foreign country was provided.

I. Annual Reports [§ 262.56]

As discussed above, section 3017(g) of RCRA imposes a new annual reporting

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requirement for exports of hazardous waste.

On July 15, 1985 (50 FR 28702), EPA codified the language of section 3017(g) due to the immediate effectiveness of this requirement. Today's proposal would amend this annual reporting requirement to require specific reporting information to implement the broad statutory reporting requirements to summarize the types, quantities, frequency, and ultimate destination of all exported waste. Thus, EPA proposes to require annual reporting of: (1) The EPA ID number, name, and mailing and site address of the exporter; (2) the calendar year covered by the report; (3) the name and site address of each consignee; (4) a description of each waste exported including the EPA hazardous waste number and DOT hazard class; (5) the name and U.S. EPA ID number (where applicable) for each transporter used; (6) the total amount of waste shipped pursuant to each notification; and (7) the number of shipments pursuant to each notification. Items (4) through (7) would be provided by consignee for each hazardous waste exported. As with the biennial reporting requirements for domestic shipments, a certification requirement is included. The address of the place reports would be sent is also specified. These reporting requirements would assist EPA in using the annual report as an enforcement tool and aid Congress and EPA in determining whether the export right is being abused and additional controls are necessary or desirable.

Because the annual report provides the agency with information on exports of hazardous waste, today's proposal would eliminate the requirement of § 262.41 which requires generators to include in the biennial report information relative to exports.

EPA plans to change the instructions to the form in future printings of the biennial report form to clarify this reporting requirement. Exporters should note, however, that authorized States may continue to require generators to include information on exports in the biennial report and may also require exporters to send a copy of the annual report to the States.

The agency considered retaining the requirement for generators to include in the biennial report information on exports and eliminating the requirement to file an annual report during those years in which a biennial report was required. This option was not selected, however, because the agency believes eliminating export information from the biennial report would not place a greater workload on generators since most generator retain separate records on domestic and exported shipments and, thus, are in a position to file separate reports on those activities. Further, copies of the reports must be submitted to different addresses, i.e., the annual report must be submitted to EPA Headquarters and the biennial report to EPA Regional Administrators. In addition, it is administratively less burdensome for the agency to receive two separate reports, because EPA will not then have to pull out information on exports from the biennial report to keep Congress informed on the issue of exports. Furthermore, it appears that Congress intended that reporting of exports be seperated out from information on other shipments by enacting section 3017(g). The agency requests comments on this requirement.

J. Recordkeeping [§ 262.57]

The recordkeeping provisions proposed today are consistent with current recordkeeping requirements of § 262.40 which require generators to retain for a period of three years copies of manifest and biennial and exception reports. For enforcement purposes, the proposed regulation includes requirements to retain for a period of three years those special documents relative to exports: (a) The notification of intent to export; (b) the EPA Acknowledgment of Consent; (c) the confirmation of delivery (if not the manifest); and (d) the annual report. Also consistent with § 262.40, the proposal includes a requirement that the specified periods of retention are extended automatically during the course of any unresolved enforcement action or as requested by the Administrator.

There are several reasons for requiring the exporter to retain copies of notifications, Acknowledgments of Consent, and annual reports. Primary among these is that EPA considers the burden of proof, in general, to be on the generator/exporter. Generators, on the whole, are required to keep copies of biennial reports and manifests (40 CFR 262.40, 262.40(b)). Copies of notifications of intent to export and Acknowledgments of Consent are similarly necessary for the exporter to show compliance with the export standards. In addition, unique to exports, notifications, Acknowledgments of Consent, and annual reports pass between the exporter and EPA Headquarters. The Regions and State Directors are not directly part of the paperwork flow or approval process. They are, however, in the direct line of enforcement. For this reason, Regional and State enforcement personnel should have access to those documents when they visit or inspect an exporter's site which is best accomplished if these records are required to be retained by the exporter.

K. International Agreements [§ 262.58]

This section has been reserved for future regulatory provisions which would set forth different requirements established in any international agreements the United States may enter into with a foreign country regarding exports of hazardous waste. In this respect, section 3017 of HSWA provides that where such an agreement exists, only the requirements of subsections (a)(2) and (g) apply. Subsection (a)(2) provides that no person shall export a hazardous waste from the United States to a receiving country where an international agreement pursuant to subsection (f) has been entered into unless the shipment conforms with the terms of such agreement. Subsection (g) requires annual reporting. Section 3008(d)(6) of HSWA provides for criminal enforcement action for exports not in conformance with such agreements.

L. Transporter Responsibilities [§ 263.20]

To implement section 3017(a)(1)(c) and for purposes of enforcement, EPA proposes to amend § 263.20 to prohibit a transporter from accepting waste from an exporter unless, in addition to a manifest, an EPA Acknowledgment of Consent is attached to the manifest. This section would also be amended to require transporters to ensure that an EPA Acknowledgment of Consent accompanies the hazardous waste en route. Current § 263.20(g) also requires the transporter to send a copy back to the generator. This provision would not be changed.

M. Small Quantity Generators

EPA proposes to define an exporter as the person required to prepare a manifest pursuant to 40 CFR Part 262, Subpart *B*, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a foreign country as the facility to which the waste will be sent.

Under the existing rules, generators of less than 1,000 kg of non-acutely hazardous waste in a calendar month (i.e., small quantity generators) are not subject to Subpart B of Part 262 (or any other Part 262–266 or 270 regulations), provided the small quantity generator complies with § 262.11 (hazardous waste determination) and ensures delivery of his waste to an on-site facility or off-site facility which is:

1. Permitted under Part 270;
2. In interim status under Part 270 and 265;
3. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271;
4. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or
5. A facility which beneficially uses, reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial use, reuse, or legitimate recycling or reclamation.

A small quantity generator who exports his waste would be unable to comply with any of the above requirements since (1) through (4) require approval by a government entity while item 5 would require that the generator somehow "assure" that his waste is "legitimately" recycled by a foreign facility, a difficult requirement with which to comply when a foreign facility is involved. Consequently, the existing § 261.5 rules require that all small quantity generators comply with the manifesting provisions of Part 262. These generators would, therefore, qualify as exporters under today's proposal. The effect of this situation is to subject small quantity generators who export their wastes to full Part 262 requirements including the proposed export requirements while the small quantity generators who ship to any of the five kinds of domestic facilities identified above are currently excluded from the Part 262 requirements.[3]

Based upon the notifications which EPA has been receiving since 1980, the agency is not aware of any exports by small quantity generators. Accordingly, EPA does not propose to change the existing applicability of Part 262 (which would also require compliance with the proposed export requirements if finally promulgated) to all such small quantity generators.

However, EPA requests comments from generators of less than 1,000 kg/month on whether they intend to export hazardous wastes. In addition, EPA requests comments (with supportive explanation) from generators intending to export such wastes on whether they should be subject to full Part 262 requirements in addition to the export requirements, some of Part 262 requirements in addition to the export requirements, only the export requirements or none of Part 262 requirements and none of the export requirements. The agency will consider these alternatives in issuing any final rule.

On the one hand, it is arguable that generators of 100 kg/mo or less exporting hazardous waste should be exempt from Part 262 requirements and the export requirements on the grounds that EPA should not be more concerned about exports from such generators than domestic shipments by such generators. By the same token, however, foreign policy concerns (including human health and the environment concerns) may indicate that such generators at least comply with the export requirements[5] especially since the regulations exempting such generators from Part 262 requirements require shipment to appropriate facilities in order to obtain the benefit of the exemption. This evidences some concern for such waste handled domestically which may indicate that foreign countries would have some concern and therefore should be accorded notification, etc.

Nevertheless, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

For generators generating between 100–1,000 kg/mo of hazardous waste, current regulations subject such generators to certain manifest requirements which are imposed pursuant to 40 CFR 261.5 but which are similar to some Part 262 requirements. Accordingly, again, these generators arguably also should not be regulated more stringently for exports than for domestic shipments and therefore should not be subject to full Part 262 requirements. It may be better to require these generators to comply with partial Part 262 requirements such as those currently imposed pursuant to 40 CFR 261.5. In other words, apply general Part 262 requirements only to the extent they are required for domestic off-site shipment for such generators. Foreign policy concerns for requiring such generators to at least comply with the export requirements are stronger than for generators of 100 kg/mo or less since generators of between 100 and 1,000 kg/mo are regulated more stringently domestically than generators of 100 kg/mo or less. This evidences more domestic concern with such waste which indicates that a foreign country would have increased concerns and therefore should be notified, etc. Again, on the other hand, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

Thus, EPA will consider these options for handling small quantity generators in light of any comments received. In addition, EPA points out that it recently proposed new requirements generally for small quantity generators on August 1, 1985 at 50 FR 31278. Any decision EPA makes in its final rulemaking regarding exports will take into consideration any decisions EPA makes in issuing a final rule regarding that proposal.[4]

N. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States

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[3] Generators of between 100 and 1,000 kg of hazardous waste in a calendar month are currently subject to certain manifest provisions mandated by section 3001(d) of the HSWA. However these manifest requirements are not imposed pursuant to Part 262, Subpart B and thus do not subject these generators to the exporter definition.

[5] If this option were selected, since such generators are not required to prepare a manifest, the EPA Acknowledgment of Consent would only be required to travel with any other shipping document accompanying the shipment as opposed to the requirement that the EPA Acknowledgment of Consent be attached to the manifest.

[4] It should be noted that the proposed amendments to the small quantity generator rules would remove generators of between 100 kg and 1,000 kg of hazardous waste in a calendar month from the conditional exclusion provisions of § 261.5 and subject them instead to regulation under Part 262. As a result, if the August 1, 1985, amendments are finalized, generators of 100–1,000 kg/mo would fall within the definition of exporter and would be subject to the export requirements and portions of Part 262.

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until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's announcement proposes standards that would be effective in all States since the requirements are imposed pursuant to section 3017 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6937. The rule setting forth these standards would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect simultaneously in all States regardless of their authorization status.

2. Effect on State Authorizations

Under current regulations (40 CFR 271.10(e)), States are required to include provisions respecting international shipments which are equivalent to those at 40 CFR 262.50, except that advance notification of international shipments, as required by 40 CFR 262.50(b)(1) must be filed with the Admininstrator of EPA. Upon receipt of the notification, EPA then forwards the information, in conjunction with the Department of State, to the receiving country. Thus, unlike other provisions of Part 262, States were not authorized to carry out § 262.50 in its entirety.

Consistent with existing procedures, EPA does not propose to allow States to assume the authority to receive notifications of intent to export. In addition, States would not be authorized to transmit such information to foreign countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. In EPA's view, foreign policy interests and exporters' interests in expeditious processing are better served by EPA's retaining these functions. This will provide the Department of State with a single point of contact in administering the export program which will better allow for uniformity and expeditious transmission of information between the United States and foreign countries. Accordingly, States would be required to include requirements equivalent to those proposed today with the exceptions noted above. EPA requests comments on the alternative of allowing States to assume the functions covered by the exceptions. The rule proposed today also would require that annual reports and exception reports be provided the Administrator. Of course, States can also require that such documents be submitted to State Directors. This requirement is necessary in light of EPA's participation in the export scheme and in light of foreign policy interests.

EPA also proposes to amend § 271.11 to require State programs to include the requirements that transporters also carry a copy of the EPA Acknowledgment of Consent.

3. Schedule for Receiving Authorization

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to 40 CFR 271.10(e). The procedures and schedule for State program modifications under Section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for Section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without satisfying § 271.10(e) as amended. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to those in § 271.10(e) within the time periods discussed above.

4. "Hazardous Waste" in Authorized States

EPA intends that where a State obtains authorization, "hazardous waste" for purposes of export requirements would be those hazardous wastes identified or listed by the State as part of its authorized program plus any hazardous wastes which EPA identifies or lists pursuant to HSWA. This is consistent with EPA's usual interpretation of "identified or listed under this subtitle" as referring to an authorized State's universe of hazardous waste plus HSWA wastes. This approach allows an exporter to function on the basis of the State universe of hazardous waste, with which he is already familiar, expanded by those wastes EPA adds pursuant to the HSWA. One drawback to this approach is that notification would be required for waste "A" exported from a State which considers it to be hazardous but would not be required in another State where waste "A" is not considered hazardous. This might be confusing to foreign countries.

Alternatively, EPA could base implementation on only the Federal universe of hazardous wastes. While this approach would be easier for foreign countries to understand and perhaps better from a foreign policy perspective, it would require that exporters become familiar with the entire Federal universe in addition to the State universe under which the exporters otherwise function. EPA requests comments on which universe of hazardous wastes should apply in authorized States.

O. Confidentiality [§§ 260.2, 262.53(e)]

Title 40 CFR 260.2 provides that information submitted to EPA under Parts 260 through 265[5] of 40 CFR will be made available to the public to the extent authorized by, among other statutory provisions, Section 3007(b) of RCRA as implemented by the regulations of Part 2, Subpart B of 40 CFR. Section 260.2 also provides that a person submitting such information to EPA may submit a claim of confidentiality covering all or part of such information by following the procedures set forth in 40 CFR 2.203(b). Under such circumstances EPA will disclose such information only in accordance with Part 2, Subpart B, of 40 CFR. Part 2, Subpart B, sets forth the standards for determining the validity of a claim of confidentiality and the procedures for processing such claims and disclosing such information determined not to be entitled to confidential treatment.

EPA proposes to amend § 260.2 to provide that information for which a claim of confidentiality is made will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B, except that information contained in a notification of intent to export a hazardous waste pursuant to proposed § 262.53(a) will be provided to appropriate authorities in receiving countries and the Department of State regardless of such a claim. Information will otherwise be disclosed to the public and transit countries in accordance with 40 CFR Part 2.

This approach to the confidentiality of Section 3017 notices is based upon EPA's interpretation of RCRA. There is an apparent conflict on the face of the statute between section 3007(b) and section 3017. Section 3007(b) could be read as prohibiting *all* disclosure of any

confidential business information contained in a notice of intent to export. However, this reading would contradict section 3017. Because the statute must be interpreted to give the fullest possible effect to both section 3007(b) and section 3017, EPA interprets section 3017 to require provision of the notification information to a receiving country through the Department of State even if the information in the notice is confidential but to prohibit disclosure by EPA of such confidential business information to other persons. The purpose of the notification is to allow receiving countries to make an informed decision as to whether to accept the waste and, if so, how to deal with that waste. Moreover, section 3017 prohibits the export of hazardous waste in the absence of consent by the receiving country. Thus, unless such information can be divulged to the Department of State and receiving countries, informed consent could not be obtained and the export would be prohibited.

There is no statutory purpose for EPA to receive notices under section 3017 unless EPA can give such notices to the receiving country. Nor could EPA implement the requirement to obtain the consent of such governments unless such notice can be provided. Accordingly, EPA must divulge such information to the Department of State and receiving countries to implement section 3017.

The disclosure of additional information to the Department of State and receiving countries pursuant to a request from a receiving country for further information beyond that required by § 262.53 will be governed by section 3007(b) and implementing regulations at 40 CFR Part 2. In EPA's view, Congress specifically delineated in section 3017(c) the information minimally necessary to allow a foreign country to take appropriate action in response to a notification of intent to export and authorized EPA to impose any additional requirements if deemed necessary. The proposed notification provision accomplishes this and any further information which a receiving country may request should be treated in the same manner as other Subtitle C information. However, exporters should keep in mind that if such information is not disclosed to a receiving country, consent may not be forthcoming and the export could not take place.

As previously discussed, EPA also plans to notify transit countries. Since EPA proposed to define "receiving countries" not to include transit countries, section 3007(b) would govern provision of notification information to transit countries. Accordingly, any claims of confidentiality will be processed in accordance with 40 CFR Part 2 with respect to transit countries. However, as provided in proposed § 262.53(e), a notification may be deemed not to be complete until any claims of confidentiality made with respect to the information required by § 262.53(a) are resolved.

Under this proposal, EPA would have the discretion to determine whether the information claimed confidential in a notification is information which must be provided a transit country unless determined by EPA to be entitled to confidential treatment. Thus, the time frame set forth in section 3017(d) for submission of a "complete" notification to a receiving country will not begin to run until a determination by EPA of the validity of any such claims has been made. Only upon EPA's completion of such processing of confidentiality claims will the notification information be provided to receiving countries and any nonconfidential information provided to transit countries. Since an export cannot take place in the absence of the consent of the receiving country, exporters should be aware that claims of confidentiality could therefore significantly delay shipment.

If an exporter claims only portions of the notification information confidential and EPA determines that the information not claimed confidential is sufficient to provide necessary infromation to a transit country, EPA may find the notification complete and proceed to notify the receiving country of all notification information and transit countries of that information not claimed confidential, thereby avoiding delay. For example, if an exporter claims only the name of the consignee confidential, EPA could reasonably conclude that this information is not significant with respect to transit countries and that the remaining information is sufficient to provide necessary information to the transit country. Thus, EPA may find the notification complete, and proceed with notification.

EPA believes that notification of transit countries is important to protect human health and the environment as well as important from a foreign policy standpoint. Therefore, EPA wishes to inform transit countries of as much information as possible. This policy, however, is constrained by the need to maintain the confidentiality of validity confidential business information. In order to satisfy both these policies, EPA's proposal would allow EPA to delay transmission of notification information until such confidentiality claims are resolved where it determines such action to be necessary. Once resolved, EPA will proceed with providing receiving countries with all notification information and transit countries with all information determined not to be entitled to confidential treatment in accordance with 40 CFR Part 2, Subpart B. This provision is proposed under the authority of section 3017(h).

EPA puts exporters on notice, however, that EPA does not believe that notification information generally is entitled to treatment as confidential business information. This belief is supported by EPA's experience that existing notifications, which consist of identification of the exporter, waste and consignee, have not been claimed by exporters to be confidential. Furthermore, EPA believes that exporters will not be able to demonstrate that the availability of such information is likely to cause substantial harm to the business's competitive position or that this information is not otherwise obtainable without the business's consent. For example, much of this information is required on manifests which may be available from State authorities. Moreover, if a situation arises where confidentiality may be a valid concern, EPA believes that it would generally be sufficient to assert a claim as to only a single piece of information, such as the consignee, to ensure protection. EPA requests comments on its proposed treatment of confidentiality claims.

IV. Enforcement

A. EPA

Noncompliance with RCRA section 3017 or regulations promulgated thereunder is subject to enforcement actions under section 3008. As the legislative history of section 3017 states:

> The requirements of this section should be vigorously enforced using all the tools of section 3008. To accomplish this, the Agency should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of the section. Violations should then be vigorously pursued. S. Rep. No. 98–284, 98th Cong., 1st sess. 46.

Most importantly, the HSWA amendments include an amendment to section 3008(d) of RCRA authorizing criminal penalties for knowingly exporting a hazardous waste without the consent of the receiving country or in nonconformance with an international agreement between the U.S. and a receiving country. Section 3008

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[5] This reference to Part 265 has been changed in the proposed regulation to Part 266 so as to include new Part 266 (50 FR 666, January 4, 1985) consistent with the intent of 40 CFR 260.2 to cover all the hazardous waste regulations.

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establishes a penalty of $50,000 per day for knowingly exporting a hazardous waste without a consent or in violation of a bilateral agreement. Prison terms may be up to two years. Penalties and prison terms may be doubled for second offenses. EPA intends to prosecute violators of the export rule to the fullest extent.

B. Customs

The new HSWA provision on the export of hazardous waste raises issues concerning cooperation between EPA and the U.S. Customs Service on enforcement matters. As noted above, Congress intended that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of [Section 3017]." To further this legislative intent, EPA is presently consulting with the U.S. Customs Service in order to develop an effective program to monitor and spotcheck hazardous waste exports.

The United States Customs Service has independent authority to stop, inspect, search, seize, and detain suspected illegal exports of hazardous wastes under the Export Administration Act, 50 U.S.C. App. 2411, as amended by the Export Administration Amendments Act of 1985, Pub. L. No. 99–64, 99 Stat. 120 (1985), case law, and U.S. Customs Service regulations (e.g., 19 CFR Part 162). Exporters who violate the Export Administration Act or U.S. Customs Service regulations may also be subject to enforcement actions under those authorities.

C. Other Agencies

Exporters of hazardous waste also may be required to comply with pertinent export control laws and regulations issued by other agencies. For example, regulations promgulated by the Bureau of the Census, Department of Commerce, require exporters to file Shipper's Export Declarations for shipments valued over $1,000. 15 CFR Part 30. It may very well be possible that hazardous waste exported for purposes of recycling would have a value over $1,000. The "Schedule B—Statistical Classification of Domestic and Foreign Commodities exported from the United States" contains a statistical reporting number for certain waste and scrap. This number (793.0000) must be used in preparing Shipper's Export Declarations, as required by 13 U.S.C. 301 and 15 CFR Part 301. EPA is consulting with the Bureau of the Census about the advisability of adding a reporting number for hazardous waste to "Schedule B."

Failure to file a Shipper's Export Declaration is subject to civil penalties as authorized by 13 U.S.C. 305. It is also unlawful to knowingly make false or misleading representations in such documents. This constitutes a violation of the Export Administration Act. To knowingly make false or misleading statements relating to information on the Shipper's Export Declaration is a criminal offense subject to penalties as provided for in 18 U.S.C. 1001.

V. Effective Date of Final Regulations

EPA proposes that any final regulatory provisions issued pursuant to section 3017(c) setting forth export notification requirements shall become effective 30 days after promulgation.

Section 3010(b) provides that regulations promulgated under Subtitle C shall have an effective date six months after the date of promulgation. That section also allows the Administrator to provide for a shorter period prior to the effective date under specified conditions. Section 3017(b) also sets forth the requirement that regulations be effective six months (180 days) after promulgation. It does not mention specifically, however, the Administrator's discretion to allow a shorter time. Thus, the question arises as to whether section 3010(b) or section 3017(b) is controlling. It is EPA's view that section 3010(b) is controlling. Where Congress intended that the Administrator have no discretion to shorten the period prior to the effective date, Congress used specific language to that effect. Thus, section 3001(d)(9) provides that "the last sentence of § 3010(b) shall not apply to regulations promulgated under this Section." Accordingly, since Congress did not specifically provide otherwise under section 3017, the Administrator retains the authority to shorten this period.

EPA believes a shorter effective date is appropriate with respect to the export rules since the regulated community does not need six months to come into compliance with these rules. These rules are not complex and simply involve the exchange of general information. In addition, at this point in time, it is unlikely that these regulation can be effectuated by November 8, 1986,[*] and still allow for a 180 day period prior to the effective date. Yet, EPA believes it important to have rules in effect to properly implement section 3017 by that date.

Assuming, however, that section 3010(b) is not controlling, EPA believes that its scheme for effectuation of these rules is also authorized by section 3017 itself. This scheme comports with Congressional intend that this section go into effect by November 8, 1986, and that regulations be in place by that time. Although section 3017 also provides that regulations promulgated under that section take effect 180 days after promulgation, it is unlikely that, at this point in time, final regulations will be promulgated sufficiently in advance of November 8, 1986, to allow for effectuation by that date as well as a 180-day period between promulgation and effectuation. Under such circumstances, and because regulatory provisions interpreting section 3017 are important to the proper implementation of that section, it is EPA's view that the November 8, 1986 date must control for purposes of the effective date of the export regulations. Where EPA is unable to satisfy both of these statutory time frames, surely the November 8, 1986 deadline for implementing section 3017 is more important than the number of days between promulgation and effectuation.

VI. Economic, Environmental and Regulatory Impacts

A. Impact on Small Quantity Generators

Because of the small number of Small Quantity Generators EPA expects will export hazardous waste, the impact on Small Quantity Generators should be minimal.

B. Executive Order 12291—Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

This proposed regulation is not major because it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, under Executive Order 12291, today's action is not "major." This proposed regulation has been submitted to the Office of Management and Budget (OMB) for review.

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[*] Section 3017(a) provides compliance with that section 24 months after enactment of HSWA (November 8, 1986).

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from: Nanette Liepman: Information Management Branch; EPA; 401 M. Street, SW. (PM–223); Washington, D.C. 20460 or by calling 202–382–2742. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for EPA, 726 Jackson Place NW., Washington, D.C. 20503. The final rule will respond to OMB or public comments on the information collection requirements.

D. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, a regulatory flexibility analysis must be performed if the regulatory requirements have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Since 1980, generators exporting hazardous waste have been required by EPA to notify the Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year. Based upon an analysis of those notifications received, the Agency has determined that no small entities have filed notifications of intent to export. EPA does not anticipate that the universe of generators exporting hazardous waste will significantly change in the future. Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a regulatory flexibility analysis. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous Waste, Liquids in Landfills.

40 CFR Part 262

Hazardous material transportation, Hazardous waste, Imports, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 263

Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Lee M. Thomas,
Administrator.
March 4, 1986.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is proposed to be amended by revising paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by §262.53(a) which is submitted in a notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

3. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6922, 6923, 6924, 6925, and 6937).

4. Section 262.41 is proposed to be amended by revising the introductory text of paragraph (a) and paragraphs (a)(3), (a)(4) and (a)(5) and adding two sentences to the end of paragraph (b) to read as follows:

§ 262.41 Biennial Report.

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700–13A, must cover generator activities during the previous year, and must include the following information:

* * * * *

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped.

* * * * *

(b) * * *

Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

5. Subpart E consisting of §§ 262.50–262.58 of 40 CFR Part 262 is proposed to be by revised to read as follows:

Subpart E—Exports of Hazardous Waste

Sec.
262.50 Applicability.
262.51 Definitions.
262.52 General requirements.

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Sec.
262.53 Notification of intent to export.
262.54 Special manifest requirements.
262.55 Exception reports.
262.56 Annual reports.
262.57 Recordkeeping.
262.58 International agreements [Reserved].

Subpart E—Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. An exporter of hazardous waste must comply with the special requirements of this subpart except to the extent § 262.58 provides otherwise. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

"Consignee" means the ultimate treatment, storage or disposal facility in the receiving country to which the hazardous waste will be sent.

"EPA Acknowledgment of Consent" means the cable sent to EPA from the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Exporter" is the person who is required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in the receiving country as the facility to which the hazardous waste will be sent.

"Receiving country" means the foreign country of ultimate destination of the hazardous waste.

"Transit country" means any foreign country through which a hazardous waste passes en route to a receiving country.

§ 262.52 General Requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart. No person shall export any hazardous waste unless:

(a) Notification in accordance with § 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment is attached to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each hazardous waste shipment; and

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

§ 262.53 Notification of intent to export.

(a) An exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twenty-four (24) month or lesser period. The notification must be in writing, signed by the exporter and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171–177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of International Activities (A–106), EPA, 401 M Street SW., Washington, D.C. 20460.

(c) When the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes has been obtained and the exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, an exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

§ 262.54 Special manifest requirements.

An exporter must comply with the manifest requirements of 40 CFR 262.20–262.23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of § 262.21, the exporter must obtain the manifest form from the exporter's State if that State supplies the manifest form and requires its use. If the exporter's State does not supply the manifest form, the exporter may obtain a manifest form from any source.

(f) The exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the exporter's instructions.

(h) The exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) which must accompany the hazardous waste shipment.

§ 262.55 Exception Reports.

In lieu of the requirements of § 262.42, an exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

§ 262.56 Annual Reports.

(a) Exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such harardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification; and

(5) A certification signed by the exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(b) Reports shall be sent to the following address: Office of International Activities (A–106), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

§ 262.57 Recordkeeping.

(a) For all exports an exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter;

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.58 International Agreements [Reserved].

6. Title 40 CFR Part 262 is proposed to be amended by adding new Subpart F consisting of § 262.60 to read as follows:

Subpart F—Imports of Hazardous Waste

§ 262.60 Imports of Hazardous Waste.

(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:

(1) In place of the generator's name, and address and EPA identification number, the name address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. Importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if that State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.

7. Title 40 CFR Part 262 is proposed to be amended by adding a new Subpart G consisting of § 262.70 to read as follows:

Subpart G—Farmers

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a

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manner consistent with the disposal instructions on the pesticide label.

Appendix—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

8. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

* * * * *

Exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the attached Acknowledgment of Consent."

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

9. The authority citation for Part 263 is proposed to be revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925, and 6937).

10. Section 263.20 is proposed to be amended by revising paragraphs (a), (c), (e)(2), and (f)(2) to read as follows:

§ 263.20 The Manifest System.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from an exporter or other person unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent attached to the manifest.

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies hazardous waste for export.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

11. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

12. Section 271.1(j) is proposed to be amended by adding the following entry to Table 1 in chronological order:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* *	* *
March 13, 1986	Exports of Hazardous Waste.

13. Section 271.10 is proposed to be amended by revising paragraphs (e) introductory text and (e)(1) and (e)(2) to read as follows. The note remains unchanged.

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director); and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and exporters of foreign countries' responses in accordance with 40 CFR 262.53.

14. Section 271.11 is proposed to be amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to also carry a copy of the EPA Acknowledgment of Consent to the shipment.

* * * * *

[FR Doc. 86-5491 Filed 3-12-86; 8:45 am]

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federal register

Thursday
March 13, 1986

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Changes to the Diagnosis-Related Group (DRG) Classification System; Proposed Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-357-PN]

Medicare Program; Changes to the DRG Classification System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In the final rule published September 3, 1985 on the prospective payment system for inpatient hospital services (50 FR 35646), we stated that we would publish a later notice addressing issues related to the Diagnosis-Related Group (DRG) classification system. This is that notice. In this proposed notice, we respond to comments received on the DRG classification system, discuss Medicare coverage changes affecting the DRG system, list procedures for which new identifying codes (in the coding system of the International Classification of Diseases on which DRG assignments are based) have been proposed, and propose certain changes in the DRG classification system to resolve some of the problems identified by comments and analysis to date.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 14, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-357-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC; or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-357-PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Linda Magno (301) 594-0343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prospective Payment System—General

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment for inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. The list of DRGs currently contains 471 specific categories. All but 3 DRGs are categorized into 23 major diagnostic categories (MCDs).

The formula used to calculate payment for a specific case takes a hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

B. Basic DRG Classification System

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician enters into a patient's medical record the principal diagnosis, any additional diagnoses, and any procedures performed during the stay. This information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). The principal diagnosis, as many as four additional diagnoses, the principal procedure, and as many as two additional procedures are reported, along with a patient's age, sex, and discharge status, to the hospital's fiscal intermediary on the hospital request for payment.

The intermediary then enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished. During this process, cases such as the following are selected for further development:

- Cases that are obviously improperly coded (for example, diagnoses are shown that are inappropriate given the sex of the patient).
- Cases that include surgical procedures not covered under Medicare (for example, electromagnetic hearing aid implants).
- Cases that require more information (for example, certain biopsies are identified so that the intermediary can determine through development whether the case actually involved an open biopsy (a procedure warranting assignment to a surgical DRG) or a closed biopsy (a procedure warranting assignment to a nonsurgical DRG)).
- Cases with principal diagnoses that do not usually justify admission to the hospital (for example, benign hypertension).

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by the GROUPER computer program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights, and to classify current cases for purposes of determining payment.

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders procedures by resource intensity) and medical DRGs. Medical DRGs are differentiated on the basis of diagnosis only. Generally, GROUPER does not look at other procedures; that is, those not surgical or those minor surgical procedures generally not done in an operating room and therefore not recognized as surgical by GROUPER.

C. Changes to the DRG Classifications and Weighting Factors

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify diagnoses and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption,

treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

D. Implementation of the DRG System

1. General

During the initial operating period of the prospective payment system, we learned that the DRG method of classification is dynamic rather than static and that the need to maintain and improve it posed some operational challenges that we needed to address further. Operational experience and technological advances have led us to identify situations that require positive actions to resolve. These cases include the following:

- Cases that can be classified more accurately with revisions to GROUPER.
- Cases in which we discover that there are unintended omissions or inequities in the classification system (for example, mechanical or conceptual flaws).
- Cases in which an addition to Medicare coverage requires assignment of a new item, service, or procedure to an existing or new DRG.

2. Publication of Proposed and Final Rules—1985

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (50 FR 24366) to update the prospective payment system in general. As part of that NPRM, and as required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986. The classification changes were described in Table 6 of the addendum to the NPRM. We proposed to use these new groupings in a revised GROUPER program that was used to classify cases prior to recalibrating the DRG weights published in Table 5 of the addendum to the NPRM.

On September 3, 1985, we published a final rule in the **Federal Register** (50 FR 35646) concerning the prospective payment system. We included in that rule the classification changes proposed in the June 10 proposed rule as we had modified them in response to comments and suggestions we received on the NPRM. We also included some additional changes that followed the principles discussed in the proposed rule or that were similar to them. (As a result of the Emergency Extension Act of 1985 (Pub. L. 99-107) and subsequent extensions of that Act (Pub. L. 99-181, 99-189, and 99-201), the classifications and weights established by the September 3, 1985 final rule will not go into effect until March 15, 1986.)

We indicated in the final rule that we could not address certain classification issues that were raised in the NPRM comment period for various reasons; we also noted that those comments would be analyzed and reviewed during the several months after publication of the final rule and that actions on them would be published in a notice early in 1986. Also, in keeping with our commitment to review classification changes on an ongoing basis, we solicited comments on any other proposed classification changes, and provided an address for such comments.

II. Public Comments

In keeping with our commitment to publish proposed reclassification changes prior to the annual notice of proposed changes to the prospective payment rates, we have prepared this document. We have included in this proposed notice responses to comments that were raised in the NPRM comment period which, as just mentioned, we were unable to respond to in the September 3 final rule, and others that we have received on the DRG weights and the classification process since publication of the September 3 final rule. We expect these proposed changes to represent the major portion of reclassifications for Federal fiscal year 1987. However, we are continuing to study several issues, such as thoracoabdominal aortic aneurysm repairs, major head and neck procedures, hand and upper extremity procedures, and burn cases. Therefore, it is possible that a few additional classification changes may be proposed in the June notice of proposed prospective payment system changes. These comments and our reponses follow and are generally set forth in MDC order.

A. Comments on MDC 1: Diseases and Disorders of the Nervous System

Comment: One commenter believes that it is inappropriate to classify cases of myasthenia gravis (ICD-9-CM codes 3580 and 3581) that involve plasmapheresis into DRG 34 (Other Disorders of the Nervous System, Age over 69 and/or complications or comorbidities [1]).

Response: Myasthenia gravis is not classified in DRG 34. The GROUPER classifies all cases with a principal diagnosis of myasthenia gravis into DRG 12 (Degenerative Nervous System Disorders), regardless of whether plasmapheresis is or is not used as a treatment. While we recognize that plasmapheresis is a costly procedure, it is not a surgical procedure. Accordingly, cases involving plasmapheresis are necessarily assigned to medical DRGs, which are differentiated by principal diagnosis, not by treatment procedures. To the extent that plasmapheresis is used to treat myasthenia gravis, the resources associated with such treatments would be reflected in the weight for DRG 12.

In addition, we note for general reference that since DRG 34 is specific to patients over age 69 or those with complications or comorbidities, a given diagnosis would never be assigned exclusively to that DRG, but would also be assigned to DRG 35 (Other Disorders of Nervous Systems, Age Under 70 without C.C.). Whenever a DRG is split on age and/or complications or comorbidities, it is identical to one or two other DRGs except for the age range of patients assigned to it and the presence or absence of complications/comorbidities. That is, all diagnoses and/or procedures assigned to one DRG specific to a particular age group are assigned to the DRG(s) specific to all other age groups.

B. Comments on MDC 2: Diseases and Disorders of the Eye

Comment: One commenter disagrees with HCFA's decision to classify lens extractions involving anterior chamber injections (procedure code 1292) into DRG 39 (Lens Procedures With or Without Vitrectomy), as was set forth in the September 3, 1985 **Federal Register** publication. Rather, the commenter believes such cases should be classified into DRG 42 (Intraocular Procedures Except Retina, Iris, and Lens).

Response: While the average standardized charges for lens procedures with anterior chamber injections are slightly higher (less than 5 percent) than for lens procedures without such injections, we believe that this differential is minimal. Moreover, we note that anterior chamber injections occurred in less than one percent of the more than 400,000 cases in DRG 39. We believe this confirms our position that anterior chamber injections are incidental to lens procedures classified in DRG 39.

Comment: One commenter was concerned that DRG 42 (Intraocular

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[1] Complications or comorbidities is henceforth, where appropriate, abbreviated C.C.

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Procedures Except Retina, Iris, and Lens), with an average length of stay of 3.7 days, did not reflect lengths of stay or adequately pay for costs associated with mechanical vitrectomy (procedure code 1474) for cases of acute endophthalmitis (diagnosis codes 36001 through 36019).

Response: We have reviewed these concerns and examined the charges associated with endophthalmitis in DRG 42, with and without mechanical vitrectomy. Our review of the cases within this DRG in fact indicates that average standardized charges for endophthalmitis cases involving procedure code 1474 are slightly lower than the average standardized charges for endophthalmitis cases not involving the procedure. Therefore, we have not accepted this comment. We would also note, however, that the length of stay data in the tables of weights published in the September 3, 1985 final rule, as well as in previous Federal Register documents pertaining to the prospective payment system, are for illustrative purposes only. They are not intended to be prescriptive treatment goals. Rather, each entry merely reflects the averages (arithmetic and geometric) of all cases assigned to that DRG. Moreover, unless all cases assigned to a given DRG had an identical length of stay, there will always be both cases with shorter lengths of stay and cases with longer lengths of stay than the average.

Comment: One commenter expressed concern that the average length of stay and weight for DRG 36 (Retinal Procedures) do not adequately compensate for cases involving insertion of a radioactive plaque (procedure code 1427) to treat malignant tumors of the choroid (diagnosis code 1906). The commenter also believes it is inappropriate to group such cases to DRG 36, since they are not retinal procedures, but instead involve the choroid.

Response: That this DRG encompasses both choroid and retinal procedures is not surprising, given that a number of procedures, including procedure code 1427, are specifically defined as chorioretinal procedures by ICD-9-CM. Our data indicate that while the average standardized charges for DRG 36 cases involving procedure code 1427 are somewhat higher than for the DRG as a whole, implantation of a radioactive plaque is a relatively rare procedure (65 Medicare cases out of more than 19,000 in this DRG during FY 1984). Moreover, such a distribution of cases around the mean is common to all DRGs; we find that neither the disparity in average standardized charges nor the volume of cases is sufficient to warrant a classification change. In that regard, we note that the comment included no specific recommendation as to a more appropriate classification of these cases.

C. Comments on MDC 4: Diseases and Disorders of the Respiratory System

Comment: A comment was received stating that several bacterial-specific pneumonias are included within DRGs 79, 80 and 81 (Respiratory Infections and Inflammations; Age over 69 and/or C.C., Age 18–69 without C.C., and Age 0–17, respectively), while others are included in DRGs 89, 90 and 91 (Simple Pneumonia and Pleurisy; Age over 69 and/or C.C., Age 18–69 without C.C., and Age 0–17, respectively). In the September 3 final rule, DRGs 79, 80 and 81 are assigned relative weights of 1.9546, 1.4403, and .8652, respectively, while the weights for DRGs 89, 90 and 91 are relatively lower at 1.1768, .8900, and .8216 respectively. It has been recommended that all gram-negative pneumonias contained within DRGs 89, 90, and 91, with the exception of Hemophilus influenzae (diagnosis code 8422), be classified into DRGs 79, 80, and 81, since these gram-negative pneumonias tend to be as serious and resource-intensive as those pneumonias currently found in the higher-weighted DRGs 79, 80, and 81.

Response: We have conducted an analysis reviewing all of the bacterial-specific pneumonias contained within DRGs 79, 80, 89 and 90 with respect to the number of stays, the average length of stay, and the average standardized charge for each principal diagnosis in FY 1984. We did not review data for DRGs 81 and 91 since one of these (DRG 81) is a low-volume DRG with a weight based on data from Maryland and Michigan. Based on the data that we used in our review, principal diagnosis 4828 (Bacterial pneumonia NEC), which includes E. Coli and Proteus pneumonias, is the only diagnosis code contained within DRGs 89 and 90 that warrants placement into DRGs 79 and 80, which have higher relative weights. Our analysis indicates there is a significant difference between the average length of stay and average standardized charge for this principal diagnosis (4828) as compared to the remaining simple pneumonias contained within DRGs 89 and 90. Both the average length of stay and average standardized charges of cases with principal diagnosis 4828 are more comparable to those found for the bacterial-specific pneumonias already contained within DRGs 79 and 80.

Therefore, based on this analysis, we propose removing diagnosis code 4828 (Bacterial pneumonia NEC) from DRGs 89, 90, and 91 and placing this code into DRGs 79, 80, and 81. Due to the low volume of cases having this principal diagnosis, as compared to the total volume of cases in DRGs 79, 80, 89, and 90, the total impact of this proposed change on the relative weights of the affected DRGs is expected to be minimal. Although our analysis was limited to DRGs 79, 80, 89 and 90, we believe it is appropriate to propose to remove code 4828 from DRG 91 and to place it into DRG 81, to maintain the existing parallels among the respiratory infection DRGs (79, 80, and 81) and the pneumonia DRGs (89, 90, and 91), since they are identical except for age and complications/comorbidities.

D. Comments on MDC 5: Diseases and Disorders of the Circulatory System

Comment: We received several comments concerning Percutaneous Transluminal Coronary Angioplasty (PTCA). The commenters were concerned with our move in the September 3 final rule, of procedure code 360 (Removal of Coronary Artery Obstruction), which includes PTCA as well as other angioplasty procedures, from DRG 108 (Other Cardiovascular or Thoracic Procedures, with Pump) to DRG 112 (Vascular Procedures Except Major Reconstruction, without Pump). The commenters, including the Prospective Payment Assessment Commission (ProPAC), recommended that PTCA be assigned a separate procedure code, that data on cost and price should be collected, and that the final decision as to DRG assignment (either to an existing DRG or the creation of a new DRG) be based on the data collected. (However, in the interim, ProPAC recommended that PTCA be assigned to DRG 112.) It was also pointed out that by not having a separate procedure code for PTCA, any changes made to the DRG assignment of the procedure code affects a number of other procedures that fall within that procedure code.

Response: These comments suggest that this classification change was made in the absence of data. We would note that we based our decision on the change in the classification of cases involving code 360 on an analysis of all claims with this procedure code for discharges in FY 1984. Although there is not currently a separate code for PTCA, we can infer that the vast majority of the cases with procedure code 360 represent PTCA because our medical consultants advise us that it is relatively rare to remove a coronary artery obstruction using an open thoracic procedure

without use of a pump (code 3961). Moreover, while the nearly 7600 discharges with code 360 without pump may include a few of the more complex angioplasty procedures, it is significant to note that the average standardized charges for all discharges with code 360 without pump are somewhat less than the average standardized charges for all other cases in DRG 112. Since the recalibrated weights are based on charges, the large number of cases coded 360 without pump now in DRG 112, with relatively low charges, would have dominated the relatively high charges for the 900 cases now in DRG 108 and thus reduced the recalibrated weight of DRG 108 by more than 50 percent—from about 4.8 to about 2.3—if PTCA had been left in DRG 108, while leaving the weight of DRG 112 virtually unchanged. This would have resulted in significant under-reimbursement of virtually all cases in DRG 108 except angioplasty.

We have, however, taken steps to obtain, through the Federal inter-agency committee mentioned later in section III.C. of this notice, a discrete code for PTCA to allow us to distinguish this procedure from other procedures coded 360 without pump. If approval for a discrete code is obtained, the coding system would permit such differentiation, and it would then be possible to evaluate resource use for removal of coronary artery obstructions via open thoracic procedures versus PTCA, and to modify the classification further should the resource use warrant such a change.

Comment: We received two comments concerning reimbursement for DRG 117 (Cardiac Pacemaker Replacement and Revision Except Pulse Generator Replacement Only). Both commenters expressed concern with an apparent lack of homogeneity and believed that the DRG encompassed too wide a spectrum of pacemaker procedures, ranging from the replacement of the whole pacemaker system (pulse generator plus leads) to procedures requiring no pacemaker hardware. Both commenters suggested the procedures involving replacement of both leads and pulse generators be moved to DRG 116 (Permanent Cardiac Pacemaker Implant, without AMI, Heart Failure or Shock). It was suggested that this revision would result in reimbursement more closely related to the resource intensity of the procedure.

Response: It appears that the difficulty experienced by the commenters is a result of inconsistencies in the use of ICD-9-CM codes rather than problems with the DRG classification system. The operating room procedures for DRG 117 include replacement or removal of electrodes or revisions to the system (i.e., repositioning of an electrode). When a new (replacement) total pacemaker system is implanted, other procedure coding is required. None of the procedure codes for DRG 117 is appropriate.

The use of any code for insertion of a permanent pacemaker is appropriate whenever a total pacemaker system is inserted and would result in such cases being grouped to DRG 115 (Permanent Cardiac Pacemaker Implant, with AMI, Heart Failure or Shock) or DRG 116. We believe that careful coding will alleviate some of the difficulties the two commenters encountered.

Comment: A number of comments were received regarding the level and/or the "logic" of the recalibrated DRG weights which were contained in our September 3 final rule. One commenter specifically noted the reduction in the weights for DRGs 124 and 125 (Circulatory Disorders Except AMI with Cardiac Catheterization; with and without Complex Diagnosis, respectively); while another commenter observed that the weight differential between DRGs 132 (Atherosclerosis Age over 69 and/or C.C.) and 140 (Angina Pectoris) was not logical; neither accounting for considerable variation in complexity among these cases nor the commenter's belief that atherosclerosis was a chronic condition that, by itself, would not require hospitalization. Another commenter expressed concern about payment for DRG 128 (Deep Vein Thrombophlebitis), noting that such cases were more complex than cases in DRG 130 (Peripheral Vascular Disorders Age over 69 and/or C.C.) to a degree not reflected by the slight difference in their weights.

Response: The weights for the DRGs of concern were based on the following numbers of Medicare discharges from FY 1984 (before elimination of statistical outliers):

	Number of cases
DRG 124	34,086
DRG 125	55,237
DRG 128	42,184
DRG 130	98,190
DRG 132	124,184
DRG 140	312,986

Since none of these commenters identified specific problems with the types of cases being classified into each of these DRGs, we can only express our confidence that the recalibrated weights for these as for all the DRGs reflect the relative resource intensity of all cases assigned to them.

E. Comments on MDC 6: Diseases and Disorders of the Digestive System

Comment: One commenter noted that the GROUPER program does not recognize a partial pancreatectomy as an O.R. procedure in MDC 6, the MDC to which a principal diagnosis of suppurative peritonitis is assigned.

Response: Partial pancreatectomies are not recognized in MDC 6, which includes the diagnosis code for suppurative peritonitis; hence, cases of suppurative peritonitis with this procedure cannot be classified according to the surgical hierarchy that applies within MDC 6. Diseases involving the pancreas fall into MDC 7 (Diseases and Disorders of the Hepatobiliary System). Therefore, when the principal diagnosis is suppurative peritonitis and partial pancreatectomy is the only procedure performed, the GROUPER must assign the case to DRG 468 (Unrelated Operating Room (O.R.) Procedures). We note that such procedures are rare. Also, if the suppurative peritonitis is due to a pancreatic disorder, the pancreatic disorder should be coded as the principal diagnosis, and the case would group to MSC 7.

Comment: One commenter believes that procedure code 5499 (Other Operations of Abdominal Region) should be recognized as an O.R. procedure because it includes the removal and subsequent modification of a peritoneal-vascular shunt.

Response: Our medical consultants do not agree that procedure code 5499 should be classified as an O.R. procedure. The code is very broad in scope, covering a number of procedures. Some require the use of an operating room while others may be done in a less resource-intensive setting.

F. Comments on MDC 7: Diseases and Disorders of the Hepatobiliary System

Comment: Two commenters expressed concern about the accuracy of the relative weights for DRG 199 (Hepatobiliary Diagnostic Procedure for Malignancy) and DRG 200 (Hepatobiliary Diagnostic Procedure for Non-Malignancy).

Response: In examining these commenters' concerns, we compared the relative weights for DRGs 199 and 200 that were published in the September 1, 1983 Federal Register (2.8378 and 2.6286, respectively) with the relative weights for DRGs 199 and 200 that were published in the September 3, 1985

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Federal Register (2.4574 and 2.5818, respectively). For both sets of relative weights, DRG 199 has a lower relative weight than DRG 200, even though DRG 199 includes what is often perceived as the more severe cases (that is, the malignancies). Based on the data we have available, we believe the relative weights for DRG 199 and DRG 200 are correct as published in the September 3, 1985 final rule.

Our medical consultants note that clinical practice and experience would suggest no inconsistency in the weights for these two DRGs. First, in order to make a final diagnosis of other than a malignancy, resource consumption could be greater in that a physician frequently requires more time, orders more tests, and uses additional medical resources. In addition, certain non-malignant diseases, such as cirrhosis, abscess, and pancreatitis, are often more difficult to treat than malignancies. Finally, when a patient has a malignancy that may be responsive to treatment, an additional procedure may be performed during the same stay. When this occurs and the procedure is higher in the surgical hierarchy, the discharge is assigned to an entirely different DRG.

G. Comments on MDC 8: Diseases and Disorders of the Musculoskeletal System and Connective Tissue

1. Major Joint Procedures—DRG 471

Twelve comments were received concerning DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity), which was established in our September 3, 1985 final rule. This DRG was established to distinguish multiple joint procedures that were included in DRG 209 (Major Joint and Limb Reattachment Procedures) from single joint procedures that were also contained in DRG 209. Three commenters expressed unconditional support for the new DRG. One commenter expressed concern over the precedent set by this decision. We addressed this comment in the September 3 final rule (50 FR 35652). The remaining 8 comments are discussed below.

Comment: One commenter expressed concern that the parameters for DRG 471 do not adequately reflect the services required by patients undergoing multiple joint replacements. It was suggested that the new DRG 471 not be implemented until further study of the issue is completed.

Response: In establishing the relative weighting factor for DRG 471, we utilized actual billing information from our FY 1984 Part A Tape Bill (PATBILL) file for the Medicare patients who underwent multiple major joint replacements of the lower extremity during that year. We did not, as was suggested by the commenter, increase the weight of the DRG by the cost of an additional prosthesis to distinguish a multiple joint procedure from a single joint procedure. Rather, the charges for all services provided, including additional inpatient days, the prosthesis, and other ancillary services, were considered. The methodology employed in computing a weighting factor for the new DRG 471 was identical to the one that is generally used, and is thus identical to the methodology used to weight DRG 209 as it existed before DRG 471 was created.

The universe of cases used to establish the weighting factor for DRG 471 may not have included every multiple major joint procedure performed during FY 1984, due to the inability to identify every multiple joint procedure case as such from the billed information for cases included in DRG 209. However, the number of cases identified and used to establish the weight is large enough to produce an accurate measure of relative resource use. In fact, we believe only a very small percentage of the universe of the major multiple joint procedures furnished to Medicare beneficiaries was omitted. We believe postponing implementation of this new DRG 471 while we gather more refined data would only compound the potential problem of inadequate payment for the procedure during this time of continued data analysis.

As we expressed in the September 3 final rule, we intend to monitor payments in this area. However, the Emergency Extension Act, and its extensions, have so far delayed implementation of this DRG, along with all the other DRG classification changes made in the September 3 final rule, thus delaying our effort to gather more refined data and performing further data analysis. If we find further adjustments are necessary, they will be made during the future recalibrations.

Comment: One commenter expressed the desire that more multiple major diagnoses/procedure DRGs be developed, without citing what those specific conditions might be.

Response: We developed DRG 471 out of a recognition that the clinical and resource use issues associated with multiple major joint procedures of the lower extremity warranted a distinction from single joint procedures. We believe that the situation presented in multiple major joint procedures of the lower extremity was unique from a clinical perspective, insofar as performing multiple major joint procedures during a single admission is the approach preferred by some physicians, while performing multiple procedures over two admissions is the course preferred by other physicians. We did not want the payment system to affect the exercise of clinical judgment. This situation is unlike those cases in which a patient has multiple diagnoses or requires more than one surgical procedure which, for clinical, social and/or emotional reasons, are better done in a single admission than in multiple admissions. While the DRG classification system does not always differentiate these cases, we believe that when such a case is substantially more resource intensive than the average case assigned to the DRG, it is likely to become an outlier. Additional payment under the prospective payment system may be made for these situations.

If we discover other specific situations in which specific multiple procedures generally result in inadequate payment, we will consider further changes in the classification methodology. However, such changes will be considered only to the extent that they comport with the basic goals of the DRG system.

Comment: Three commenters expressed concern that the development of DRG 471, which was created to distinguish multiple joint procedures from single, may lead to pressure to perform multiple major joint replacements in one admission when separate admissions may be more medically appropriate for the patient.

Response: Our intent in developing DRG 471 was specifically to establish a mechanism for adequate Medicare payment when performance of multiple major joint procedures during a single inpatient stay is medically appropriate. DRG 209 continues to exist and reflects the relative resource use associated with single major joint replacements. Physicians may freely choose the most appropriate course of treatment for these cases. Therefore, we do not anticipate that problems will arise when physicians determine that a subsequent admission for a second major joint procedure is medically necessary. However, we will monitor actions by the Utilization and Quality Control Peer Review Organizations (PROs) in this regard and will issue clarifying instructions if necessary.

Comment: Three commenters believe that there is a problem with acceptance of duplicate procedure codes by the Medicare Code Editor (MCE). These commenters believe bilateral major joint procedures would continue to group to DRG 209 rather than DRG 471. One commenter pointed out that even if this problem were corrected, the weighting factor for DRG 209 would remain inappropriately high due to inclusion of such bilateral procedures in the data used to calculate the weight for DRG 209.

Response: While the MCE does prohibit the inclusion of duplicate diagnosis codes, it does not edit for duplicate major joint procedure codes. Thus, when bilateral procedures are appropriately coded by listing the procedure twice, the case will not be edited out by the MCE but will be classified by GROUPER into DRG 471.

We acknowledge that there are no explicit instructions or guidelines on coding bilateral procedures where a single code has not been established to identify bilateral procedures. However, we have found that most hospitals have reported such cases by duplicating the single procedure code on the bills. In this regard, we note that approximately 600 of the nearly 1,700 cases used in computing the weighting factor for DRG 471 were classified to that DRG due to the presence of duplicate major joint procedure codes.

With respect to the concern that the weighting factor for DRG 209 continues to reflect bilateral procedures, we recognize that some bilateral procedures may not have been duplicatively coded and, therefore, were included in the computation of the DRG 209 weighting factor. However, due to the inability to specifically identify such cases as multiple joint procedures, we had no reasonable alternative but to include the charges for such cases in the DRG 209 data base. We believe that the additional payment available in DRG 471 will provide sufficient incentive to ensure that all future bilateral joint procedures of the same site are accurately coded to reflect the multiple procedures. Thus, any resulting current upward distortion in the weighting factor for DRG 209 should be corrected in future recalibrations. Again, as we expressed in the September 3 final rule, we intend to monitor payment in this area.

2. Surgical Hierarchy

Comment: One commenter suggested that wound debridement (procedure code 8622) assigned to DRG 217 (Wound Debridement and Skin Graft Except Hand, for Musculoskeletal and Connective Tissue Disorders) be placed above amputations assigned to DRG 213 (Amputations for Musculoskeletal and Connective Tissue Disorders) in the MDC 8 surgical hierarchy. This change was made in the September 3 final rule (50 FR 35742). Another commenter believes that wound debridement often is not done in the operating room. Thus, its place in the MDC 8 hierarchy obscures other procedures done during the same admission.

Response: It is true that there is some variability in the resources associated with procedure code 8622 (wound debridement). Sometimes the procedure may not require the use of an operating room. However, we have found the vast majority of such cases are very resource intensive, as is evidenced by the weighting factor assigned to DRG 217. The relative weight for this DRG is the third highest in the MDC. We also note that the arithmetic average length of stay for cases in this DRG is the second highest in MDC 8. We believe these facts substantiate that our decision as to the placement of wound debridement in the hierarchy of surgical procedures for MDC 8 is appropriate, despite the fact that on occasion wound debridement may not be very resource intensive.

3. Movement of Specific Codes between MDCs

Four commenters suggested reclassification of specific codes currently assigned to MDC 8. One of the comments, recommending reclassification of code 7248 (Other Back Symptoms) to DRG 243 (Medical Back Problems) was accepted and included in the September 3 final rule (50 FR 35740). The remaining comments are as follows:

Comment: One commenter believes diagnosis codes 99691 through 99699, which relate exclusively to complications of a reattached extremity or body part, should be reassigned from DRG 249 (Aftercare Musculoskeletal System and Connective Tissue) to DRG 468 (Unrelated O.R. Procedure). The commenter noted that these diagnosis codes indicate complications of transplant organs.

Response: We are not able to accept this commenter's suggestions for a number of reasons. First, DRG 468 is a classification reserved for cases where none of the surgical procedures performed is related to the principal diagnosis. There are no specific diagnoses or procedure codes assigned to this DRG.

Second, DRG 468 is a surgical DRG ; that is, all cases assigned to this DRG involve surgical procedures. DRG 249 is a medical DRG and cases assigned to this DRG do not involve surgical procedures. Therefore, it would be inappropriate to combine such non-surgical cases with the cases in DRG 468, all of which involve operating room procedures.

Finally, diagnosis codes 99691 through 99696 are specific to a particular organ system, the musculoskeletal system and connective tissues. That is, such codes relate exclusively to complications of a reattached extremity or body part. Unlike the codes for complications of transplanted organ, such as 9968, which can be used for numerous organ systems, codes 99691 through 99696 and 99699 may be used only for diseases and disorders of the musculoskeletal system and connective tissue. If cases with these principal diagnoses are treated non-surgically, they are appropriately classified into DRG 249. If treated surgically, (i.e., if a reattached limb must again be reattached), they are assigned to DRG 209 (Major Joint and Limb Reattachment). In this regard, we note that there are procedure codes distinct from these diagnosis codes identifying the limb and extremity reattachment procedures. Finally, if surgery is performed and all the surgical procedures are unrelated to these principal diagnoses, the case would then group to DRG 468.

Comment: One commenter stated that replacing or repairing a major joint prosthesis was as resource intensive as the initial major joint procedure and, therefore, should be assigned to DRG 209 (Major Joint and Limb Reattachment) in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) rather than DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) in (Injuries, Poisonings and Toxic Effects of Drugs).

Response: This commenter's concern goes beyond the simple reclassification of a single procedure. Indeed, a similar argument could be made about any number of such revisions. The root of this problem lies in the fact that the ICD-9-CM coding system does not generally differentiate infections and complications of procedures by major organ system. Thus, under the current coding system, a large proportion of such infections and complications, when cited as the principal diagnosis, group to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs). Because the principal diagnosis dictates the MDC to which a case is assigned, principal diagnoses that are non-specific as to organ system must necessarily be assigned to an MDC that is similarly not specific to a single organ system. They cannot appear in all the MDCs for which they might be appropriate. Unlike procedures, which can appear in several MDCs, diagnoses are confined to a single MDC.

We recognize that it would be advantageous to further refine the ICD-9-CM coding system for such indications. However, it would be

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inappropriate for HCFA to unilaterally and independently implement revisions in the ICD-9-CM coding system without cooperation and consultation with other programs and consideration of the effects on the users of ICD-9-CM data. In addition, ICD-9-CM coding system is structured to coincide with the ICD codes developed by the World Health Organization for international use. We will, however, keep this comment in mind as we continue to evaluate improvements in the ICD-9-CM codes.

Finally, we would point out that revision of a major joint procedure to correct a malfunction of a prosthesis is currently classified into DRG 209 (Major Joint and Limb Reattachment Procedures). Thus, should future modification of the International Classification of Diseases allow for precise organ system identification of other complications and/or infections, it is reasonable to assume that such new diagnosis codes would be assigned to the same MDC and DRG as the diagnoses necessitating the original procedure.

Comment: One commenter objected to the addition of procedure code 031 (Division Intraspinal Nerve Root) to DRGs 214 and 215 (Back and Neck Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) contained in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue). The commenter noted that the procedure was already included in MDC 1 (Diseases and Disorders of the Nervous System). Noting that resources associated with the procedure would be similar regardless of the diagnosis, the commenter recommended that code 031 be retained in MDC 1.

Response: We do not believe the addition of procedure code 031 to DRGs 214 and 215 in MDC 8 is inappropriate. This procedure is commonly performed on patients with diseases and disorders of the musculoskeletal system as well as those with diseases and disorders of nervous system. In fact, we found the procedure occurring more than twice as frequently in musculoskeletal diagnoses (379 cases) as in nervous system diagnoses (181 cases).

The current DRG classification system is based on diagnosis rather than procedures. There are a number of procedures that are classified into two or more major diagnostic categories, depending upon the principal diagnosis of the patient. We believe it is appropriate, therefore, to classify a given procedure code in as many MDCs as medically appropriate in order to prevent a large number of cases from grouping inappropriately to DRG 468 (Unrelated O.R. Procedures). In this regard, we would point out that procedure code 031 has been included not only in MDC 1 but also in MDC 17 (DRGs 400 (Lymphoma or Leukemia with Major O.R. Procedure), 406 (Myeloproliferative Disorder or Poorly Differentiated Neoplasms with Major O.R. Procedures and C.C.), and 407 (Myeloproliferative Disorder or Poorly Differentiated Neoplasms with Major O.R. Procedures without C.C.), and MDC 21 (DRGs 442 and 443—Other O.R. Procedures for Injuries; Age over 69 and /or C.C., and Age under 70 without C.C., respectively), since the initial implementation of the DRG classification system.

Finally, we note that the weighting factors assigned to DRGs 214 and 215 reasonably approximate the cost of treating cases in which division of intraspinal nerve root (procedure code 031) was reported. The average standardized charges for all 25,000 cases in DRG 214 were about 17 percent higher than the average standardized charges for the 195 cases within the DRG showing procedure code 031. Similarly, the average standardized charges for the nearly 16,000 cases in DRG 215 are about 32 percent higher than those for the 184 cases showing procedure code 031 in DRG 215. Thus, we find no reason to reconsider the appropriateness of our addition in the September final rule of this code to MDC 8. Finally, adding this procedure to MDC 8 does not mean it was moved out of any of the other MDCs to which it is assigned.

H. Comments on MDC 9: Diseases and Disorders of the Skin, Subcutaneous Tissue, and Breast

Comment: One commenter objected to our addition of 10 procedure codes to DRGs 269 and 270 (Other Skin, Subcutaneous Tissue and Breast O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in the September 3 final rule (50 FR 35745), citing that this change reduced the clinical homogeneity of the DRGs.

Response: We addressed this comment in our September 3 final rule (50 FR 35649), where we indicated that most of the procedures added were relatively minor and were omitted from the original DRG system through oversight. We continue to believe that the 10 procedure codes are clinically suited to the DRG, in which they are now grouped.

Comment: Another commenter recommended that the surgical hierarchy of MDC 9 be modified to place skin grafts above breast procedures.

Response: Although not specifically addressed in the preamble to the September 3 final rule, this recommended change was accepted and appeared in Table 6, Item D.3, page 35742 of the September 3 rule.

Comment: The GROUPER logic was modified in our September 3 final rule to search out any diagnosis of breast malignancy rather than only a principal diagnosis of malignancy. One commenter believes the initial search on open breast biopsy cases should be limited to breast malignancy rather than any malignancy.

Response: Although the description of the DRG logic change uses the term "any malignancy," GROUPER does recognize only breast malignancies in this search. We believe the explanation of this change in table 6, Item A.2, (page 35736 of the September 3, 1985 **Federal Register**) makes this point clear.

Comment: One commenter expressed concern that a patient initially admitted to a hospital with a skin disorder included in MDC 9, who ultimately undergoes a mastectomy due to carcinoma, would be classified into DRG 261 (Breast Procedure for Non-Malignancy Except Biopsy and Local Excision). The commenter believes such cases should be classified in DRG 468 (Unrelated O.R. Procedures).

Response: We note that MDC 9 recognizes breast malignancy diagnoses as either the principal or secondary diagnosis and mastectomy as an operating room procedure. Such cases are grouped into one of DRGs 257 and 258 (Total Mastectomy for Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) or DRGs 259 and 260 (Subtotal Mastectomy for Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively). As long as the claim identified breast malignancy as one of the diagnoses, the GROUPER would classify such cases into one of DRGs 257 through 260. Generally, cases only group to DRG 468 when all of the surgical procedures are not related to the principal diagnosis. In most MDCs, the GROUPER logic is such that a coupling of any of the principal diagnoses within an MDC and an operating room procedure associated with that MDC will result in classification to a specific surgical DRG within that MDC. While admittedly in some cases the surgical procedure may not be directly related to the principal diagnosis but to a secondary diagnosis in the same MDC, we believe payment in the specific surgical DRG is more appropriate than the result that would obtain if we structured the DRG logic to "force" cases into DRG 468.

I. Comments on MDC 11: Diseases and Disorders of the Kidney and Urinary Tract

Comment: One comment concerned the DRG classification and reimbursement for implantation of the artificial urinary sphincter (AUS). This procedure is currently being coded under 5799 (other bladder procedures) and is grouped to DRGs 308 and 309 (Minor Bladder Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), which have relative weights of 1.1490 and .8665, respectively. The commenter suggested that reimbursement was inadequate and that this procedure should be grouped to DRGs 304 or 305 (Kidney, Ureter and Major Bladder Procedures for Non-Neoplasm; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), which have relative weights of 2.0323 and 1.4894, respectively.

Response: Procedure code 5799 is used for a range of bladder procedures not elsewhere classified, some of which may be very simple and others relatively complex. There currently is not a unique ICD-9-CM code to identify AUS as distinct from the other procedures. (See section III.C.6. for proposed changes.) Therefore, we are unable to analyze data specific to AUS cases to determine whether classification in DRGs 304 and 305 is appropriate, and we cannot effect a GROUPER change that moves only the AUS cases and no other cases coded 5799. Moreover, we note that, on average, cases involving procedure code 5799 are not the most resource intensive in DRGs 308 and 309.

Recognizing the inadequacy of the coding system to permit specific identification of AUS cases, we nevertheless reviewed Medicare discharge data for all cases in DRGs 308 and 309 for which procedure code 5799 was present.

In DRG 308, the average standardized charge for cases with procedure 5799 was 96 percent of the average standardized charge for all other cases in the DRG, and those cases represented less than 2 percent of the 14,000 cases assigned to DRG 308. In DRG 309, while the average standardized charges for cases involving procedure 5799 were somewhat higher than the average standardized charges of all other cases in the DRG, there were only 63 cases, or just over 2 percent of the total in DRG 309. Moreover, the average standardized charges for DRGs 304 and 305 are 81 percent and 35 percent higher, respectively, than the average standardized charges for cases involving procedure 5799 in DRGs 308 and 309, respectively.

In light of these disparities in average standardized charges, we do not believe the commenter's concern is fully borne out by the Medicare discharge data. Since we cannot at this time effect a classification change that moves only AUS cases coded 5799, we have not proposed to adopt this commenters recommendation.

Comment: We received a number of comments on reimbursement for extracorporeal shock wave lithotripsy (ESWL). All commenters expressed concern that this procedure was not appropriately grouped and that reimbursement was inadequate.

Response: As we indicated in the September 3, 1985 **Federal Register**, we will monitor the classification of ESWL to assess its appropriateness. However, since this procedure was only recently covered under Medicare, very little Medicare data are available for analysis at this time. (We have also proposed a new ICD-9-CM code for ESWL (see section III.C.5. of this notice)). As these data become available, we will evaluate the relative resource intensity of this procedure to determine what, if any, changes should be made.

J. Comments on MDC 12: Diseases and Disorders of the Male Reproductive System

Four comments were received regarding MDC 12 issues. After publication of the June 10, 1985, proposed rule (50 FR 24366), containing proposed DRG classifications and weighting factors, one commenter recommended that the surgical hierarchy of MDC 12 be revised to order penis procedures above transurethral prostatic resections. This change was made and included in the September 3, 1985 **Federal Register** (50 FR 35742). Even though the average length of stay is greater in transurethral resection cases, the charge data indicate that penis procedures are more resource intensive than transurethral prostatic resections.

Comment: After final publication of the change just discussed, we received a comment objecting to the above-mentioned revision. This commenter stated that many patients diagnosed for benign prostatic hypertrophy undergo both transurethral prostatectomy and internal urethrotomy (a penis procedure). The revised surgical hierarchy assigns such cases based on urethrotomy; therefore, such cases are assigned to DRG 341 (Penis Procedures) rather than to DRGs 336 or 337 (Transurethral Prostatectomy; Age over 69 and/or C.C., or Age under 70 without C.C., respectively). The commenter further noted that physicians practicing at this hospital were objecting to the new DRG assignment.

Response: The commenter seems to believe mistakenly that this results in lower payment levels. In fact, the weighting factor for DRG 341 is slightly higher (.9974) than that for DRG 336 (.9871) or that for DRG 337 (.7766). We find no reason to believe the surgical hierarchy of MDC 12 needs further revision. Patients undergoing both penis procedures and prostate procedures should be assigned to the more resource intensive DRG. While admittedly an internal urethrotomy itself may not be as resource intensive as a transurethral prostatectomy, we continue to believe that penis procedures in general tend to be more resource intensive than prostate procedures.

If, as the commuter further alleged, physicians are complaining about this assignment, we can merely speculate that such complaints are prompted by the trend in many hospitals to place inappropriate emphasis on the average length of stay of DRGs. Since the average length of stay for DRG 341 is less than that of DRG 336, it would be quite reasonable for a physician to complain if he or she were being pressured to discharge prostectomy patients in order to meet the average length of stay of patients classified into DRG 341. As we have noted in the prospective payment update notices, the mean lengths of stay in the DRG tables are furnished only for purposes of illustration, for establishing the day outlier thresholds, and for computing payments to transferring hospitals. Although they are based on the actual length of stay distribution of cases within each DRG, they are not intended to reflect treatment norms. We believe that the physician is the appropriate individual to decide the proper length-of-stay for a particular patient.

Comment. Two commenters expressed concern that the payment for insertion of penile prostheses under DRG 341 is inadequate. One of these commenters particularly noted that there are two distinct types of prostheses commony utilized—inflatable and semi-rigid—with significant cost difference. This commenter recommended the creation of a new DRG to correct this problem.

Response: In analyzing the cases assigned to DRG 341 (Penis Procedures), we find little reason to believe reclassification is necessary. We cannot, at present, differentiate inflatable penile prosthesis from semi-rigid prosthesis

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under the procedure codes presently in use; therefore, we cannot fully analyze the merits of adopting the commenters' suggestion of establishing a separate DRG for more costly penile procedures.

The adoption of a unique procedure code for this prosthesis, if finalized by the ICD–9–CM Coordination and Maintenance Committee (see Section III.C.7 of this notice), should significantly increase the quality of data in this regard. We will continue to monitor payments in this area and may consider changes in the future if analyses and data indicate they are necessary.

K. Comments on MDC 13: Diseases and Disorders of the Female Reproduction System

Comment: Several commenters wrote in identifying surgical hierarchy and logic problems in MDC 13. Specifically, two commenters noted that ovarian cancers, among the most common gynecological malignancies, involve extensive treatment of patients who are frequently malnourished and acquire a wide range of resources. In this regard, the commenters expressed concern that an ovarian malignancy, treated surgically with the uterine and adenexa procedures, was classified appropriately in DRG 357 (Uterus and Adenexa Procedures, for Malignancy) with a weight of 2.1101, but that when a hysterectomy was also performed, the case would group to DRGs 354 or 355 (Non-Radical Hysterectomy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) with weights of 1.2335 and .9767, respectively. A similar comment was made with respect to procedures further down in the hierarchy of MDC 13, where a uterine or adenexa procedure for non-malignancies is classified into DRG 358 (Uterus and Adenexa Procedures, for Non-Malignancy Except Tubal Interruption), with a weight of 1.1185. If an incisional tubal interruption is performed during the same admission, the GROUPER classifies the case into DRG 359 (Incisional Tubal Interruption for Non-Malignancy), with a weight of .5044.

Response: We began our analysis by comparing three groups of cases assigned to each of DRGs 354 and 355: those with a principal diagnosis of malignancy, where both a hysterectomy and uterine/adenexa procedures were performed; cases of malignancy where a hysterectomy was performed without uterine/adenexa procedures; and cases of hysterectomy for principal diagnoses other than malignancy. We compared the average standardized charges across the groups, and found a significant difference among the hysterectomy cases in both DRGs 354 and 355, depending on whether the principal diagnosis was malignancy or not. In DRG 354, the average standardized charge for malignancy cases was 38 percent higher than that for non-malignancies. In DRG 355, the malignancies had an average standardized charge 15 percent higher than that of the non-malignancies.

In addition to the differences between average standardized charges, the relative frequencies of cases—11,000 malignancies versus 19,000 non-malignancies in DRG 354, 4,000 malignancies versus nearly 12,000 non-malignancies in DRG 355—were such that the less expensive non-malignancies were dominating the data used to construct the weights for DRGs 354 and 355.

While these findings suggested that malignancies and non-malignancies should be classified in different DRGs, there were even greater differences between these malignancies and those that grouped to DRG 357 (that is, those without hysterectomy). The average standardized charge for DRG 357 is 35 percent and 91 percent higher than those for DRGs 354 and 355, respectively.

Upon further review, we found that ovarian and adenexa cancers make up more than 70 percent of the cases in DRG 357 and are the most resource intensive of the malignancies in this DRG. In addition, when we examined the ovarian and adenexa malignancies in DRGs 354 and 355 (with hysterectomy), we found that the average standardized charges for ovarian and adenexa cancers are fairly comparable regardless of what procedures are performed. Hence, among the cases examined in these three DRGs, diagnosis had consistently greater explanatory power with respect to resource intensity than did the procedure performed.

With respect to the comment that incisional tubal interruptions changed the assignment of non-malignancies with uterine/adenexa procedures from DRG 358 to DRG 359, we conducted a similar analysis and found that incisional tubal interruptions were more comparable in resource use to DRG 361 (Laparoscopy and Endoscopy (Female) Except Tubal Interruption) than to the uterine/adenexa procedure with which it is currently combined in the surgical hierarchy.

In light of all these findings, we are proposing to restructure DRGs 354, 355, 357, 358, and 359 (except for incisional tubal interruption) as follows:

1. Uterus and adenexa procedures (except for incisional tubal interruption: procedure codes 6631, 6632, 6639 and 6663) will be moved into the same section of the surgical hierarchy for MDC 13 as non-radical hysterectomies are currently in, above reconstructive procedures.

2. Cases involving all these surgical procedures (that is, non-radical hysterectomies, uterus and adenexa procedures) will be divided into those with a principal diagnosis of malignancy and those without.

3. Cases with a principal diagnosis of malignancy will be further subdivided.

a. Those with ovarian and adenexal malignancies (diagnosis codes 1830, 1832, 1833, 1834, 1835, 1838, 1839, 1986 and 2362) will become the proposed new DRG 357 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures, for Ovarian and Adenexal Malignancy).

b. Those cases with a principal diagnosis of malignancy except ovarian and adenexal malignancy will be split on age and complications/comorbidities, and will become the proposed new DRGs 354 and 355 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures for Malignancy Except Ovarian/Adenexal Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

4. Cases with a principal diagnosis of other than malignancy will also be divided on age and complications/comorbidities. They will comprise the proposed new DRGs 358 and 359 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures for Non-Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C, respectively).

We also propose to modify DRGs 361 and 362 as follows:

1. The procedure codes for incisional tubal interruption (6631, 6632, 6639 and 6663) will be moved from DRG 359 and the uterine and adenexa part of the hierarchy to the laparoscopy and endoscopy section of the hierarchy.

2. Cases involving these surgical procedures (that is, laparoscopy, endoscopy, and incisional tubal interruption) will be divided into two groups.

a. If an endoscopic tubal interruption (procedure codes 6621, 6622, and 6629) is the only procedure performed from this section of the hierarchy, the case will be classified into proposed new DRG 362 (Endoscopic Tubal Interruption Only).

b. If, in addition to or instead of endoscopic tubal interruption, another procedure is performed, the case will be classified into proposed new DRG 361

(Laparoscopy, Incisional Tubal Interruption).

Comment: We received one comment concerning the relative weight of DRG 353 (Pelvic Evisceration, Radical Hysterectomy and Vulvectomy). The commenter believed that the relative weight did not reflect the resource intensity of the extensive surgery and post-operative care of the extremely ill patients for whom these radical procedures are indicated. Noting that pelvic evisceration frequently entails bladder and rectal resection, the commenter compared the weight of DRG 353 (1.8818) to that of DRG 147 (Rectal Resection) (2.2737).

Response: Because the weight for DRG 353 was, despite its place in the hierarchy, lower than that for DRG 357, we analyzed the average standardized charges for each procedure in DRG 353. We discovered that there was a bimodal distribution of cases by average standardized charge of procedure.

Moreover, the two lowest-priced procedures—Unilateral vulvectomy (code 7161) and Bilateral vulvectomy (code 7162)—are the only non-radical procedures in this DRG but rank third and fourth by frequency of procedure. The weighted average charges for these two procedures is barely 40 percent of the average standardized charge for all other procedures in DRG 353, but is comparable to the average standardized charge for DRG 360 (Vagina, Cervix and Vulva Procedures). In addition, non-radical vulvectomies are clinically more similar to the other procedures in DRG 360 than to the radical procedures in DRG 353. Accordingly, we are proposing to remove procedure codes 7161 and 7162 from DRG 353 and to place them into DRG 360.

L. Comments on MDC 14: Pregnancy, Childbirth, and the Puerperium

Comment: One commenter believes there is a problem with DRGs 378 (Ectopic Pregnancy), 379 (Threatened Abortion), 380 (Abortion Without D&C), 381 (Abortion With D&C, Aspiration, Currettage, or Hysterotomy), 382 (False Labor), 383 (Other Antepartum Diagnoses Without Medical Complications), and 384 (Other Antepartum Diagnoses With Medical Complications) because the GROUPER program will not assign a discharge to DRG 468 (Unrelated O.R. Procedures) when an operating room procedure is performed.

Response: The development of MDC 14, in which DRGs 378 to 384 are located, was somewhat different from the other MDCs. The basic consideration behind the development of the DRGs in MDC 14 was whether the patient delivered or did not deliver a baby. For DRGs 379, 380, 382, 383, and 384, it was so rare to have an operating room procedure associated with the principal diagnoses that group to these DRGs that the decision was made to define the DRG classification based exclusively on principal diagnosis without regard to surgical procedures. Elective surgery is rarely performed on pregnant women, and when a medical emergency necessitates such surgery, it would most likely be for a principal diagnosis other than the pregnancy, such that the case would not be classified in MDC 14. In certain diagnoses a surgical procedure must virtually always be performed as part of the treatment, so the DRG again was defined only in terms of principal diagnosis. For example, in DRG 378 (Ectopic Pregnancy), there are no procedures listed, only principal diagnoses, since the ectopic pregnancy will have to be treated surgically. Similarly, a surgical procedure must be performed in order for a case to be classified into DRG 381.

The commenters gave no specific example of the type of coding problems that had been encountered, so it is impossible to determine if a problem exists in assigning cases to the DRGs in MDC 14. Since we have neither evidence of specific problems with cases assigned to this MDC, not examples of unrelated surgery performed when the principal diagnosis is pregnancy, we do not see a necessity to redefine these DRGs.

M. Comments on MDC 15: Newborns and Other Neonates With Conditions Originating in the Perinatal Period

Comment: Several commenters objected to including diagnosis code 7746 (fetal/neonatal jaundice, NOS) in DRG 391 (Normal Newborns), believing this represented a change to DRG 391.

Response: The commenters are incorrect in stating that this is a change to DRG 391. DRG 391 has always included 7746 as a diagnosis code. A discharge with a principal diagnosis of 7746 would be assigned to DRG 391. A discharge could also be assigned to DRG 391 if the only secondary diagnosis was 7746, and the principal diagnosis was any one of the other principal diagnoses listed under DRG 391.

The change that we made in our September 3 final rule (50 FR 35737) was to remove 7746 from the list of complications and comorbidities. We believe the diagnosis code 7746 reflects a transient physiologic condition and as such belongs only in DRG 391.

Comment: We received a comment that disagreed with our transferring, in the September 3, 1985 final rule ICD–9–CM codes 7584 (Balanced Autosomal Translocation in Normal Individuals) and 7585 (Other Conditions Due to Autosomal Anomalies) from DRG 390 (Neonates with other Significant Problems) to DRG 467 (Other Factors Influencing Health Status); code 7583 (Autosomal Deletion Syndrome) from DRG 390 to DRG 429 (Organic Disturbances and Mental Retardation); and code 7586 (Gonadal Dysgenesis) from DRG 390 to DRG 352 (Other Male Reproductive System Diagnoses) and to DRG 369 (Menstrual and Other Female Reproductive System Disorders). Although the changes appeared to be logically correct, because of the large differences in relative weights between DRG 390 and the other DRGs (.3486 for DRG 390 versus .7223 for DRG 467, .8424 for DRG 429, .5368 for DRG 352, and .5498 for DRG 369), the commenter does not believe the transfers should be implemented.

Response: Our rationale for the transfer of these four ICD–9–CM codes was presented on page 35736 of our September 3 final rule. The commenter has not presented any evidence to support the belief that the transfer of these codes is inappropriate, and we continue to believe that our rationale is valid. In addition, we would note that this classification change entailed the movement of fewer than 20 cases involving a principal diagnosis of either ICD–9–CM code 7583, 7584, 7585 or 7586 from a DRG in which Medicare cases would rarely be classified (that is, DRG 390, which has been deemed a low-volume DRG) to DRGs 429 (with more than 50,000 Medicare discharges), 467 (with more than 17,000 Medicare cases), 352 (with more than 2,500 Medicare cases), and 369 (with more than 8,000 Medicare cases). Moreover, the average standardized charges for the cases involving a principal diagnosis of 7583, 7584, 7585 or 7586 are similar to or somewhat higher than the average standardized charges for each of the DRGs to which these cases were transferred. Because of the volume of total Medicare cases in the receiving DRGs, we are confident in the weights established for them.

N. Comments on MDC 17: Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms

Comment: One commenter objected to the change, made in the September 3 Federal Register, whereby cases in MDC 17 involving other than major surgical procedures group to DRGs 401 (Lymphoma or Leukemia with Other O.R. procedures, Age over 69 and/or C.C.), 402 (Lymphoma or Leukemia with

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O.R. procedure, Age less than 70 without C.C.) and 408 (Myeloproliferative Disorder or Poorly Differentiated Neoplasm with Other O.R. procedure). Formerly, if the O.R. procedure was not a major procedure (which groups to DRGs 400 (Lymphoma or Leukemia with Major O.R. Procedure), 406 and 407 (Myeloproliferative Disorder or Poorly Differentiated Neoplasm with Major O.R. procedures, with C.C. and without C.C., respectively), such cases were classified as medical rather than surgical. The commenter believes it would be more appropriate to permit these cases to group to DRG 468 where the O.R. procedure is unrelated.

Response: The nature of the diagnosis in DRGs 401, 402 and 408 either involve multiple organ systems or are non-specific as to organ system. Consequently, it is possible that almost any surgical procedure may be performed in relation to the principal diagnosis.

Accordingly, we believe it is more appropriate to recognize that such cases are surgical, not medical, rather than to classify all cases involving procedures other than the major surgical procedures associated with DRGs 400, 406 and 407 into DRG 468, since the nature of the principal diagnoses lends itself to treatment by a vast range of surgical procedures.

O. Comments on MDC 20: Substance Use and Substance Induced Organic Mental Disorders

Comment: A comment was received concerning the use of the term "substance abuse" for DRGs 434 (Substance Abuse, Intoxification, Induced Mental Syndrome Except Dependency and/or Other Symptomatic Treatments), 435 (Substance Dependence, Detoxification, and/or Other Symptomatic Treatment), 436 (Substance Dependence with Rehabilitation Therapy), and 437 (Substance Dependence, Combined Rehabilitation and Detoxification Therapy), as reconfigured in our September 3 final rule. Previously, the titles of these DRGs had signified drug dependence or alcohol use or dependence. The commenter felt that the new titles could diminish the recognition of alcohol and drug abuse and dependence as specific disease entities and could adversely impact public education efforts regarding treatment and prevention.

Response: Based on the concerns raised, we are changing the titles of DRGs 434 through 437. The term "alcohol/drug" will be substituted for the term "substance." For consistency, we are also making this change in the title of DRG 433 (Substance Use and Induced Organic Mental Disorders, Left Against Medical Advice (AMA)).

P. Comments on MDC 21: Injuries, Poisonings and Toxic Effect of Drugs

Comment: Two commenters were concerned with the weighting factors for DRGs 409 (Radiotherapy) and 410 (Chemotherapy). The commenters noted that, depending on the specific types of carcinoma and the patient's condition, the appropriate course of treatment may result in expensive services and require long lengths of stay. The commenters contend that some hospitals are reporting considerable losses on these cases and recommended reexamination of the weights.

Response: The weighting factors for DRGs 409 and 410 have been calculated, as those for all other DRGs, from the charge information submitted on Medicare inpatient bills for cases within those DRGs. We note that the weighting factors for both of these DRGs procedures have increased by about 20 percent since the weighting factors were initially determined. That is, the weighting factors for DRGs 409 and 410 in the September 1, 1983 **Federal Register** were .8134 and .3527, respectively, while the weights published in the September 3, 1985 **Federal Register** were .9856 and .4285, respectively. Since the weight differential between the two DRGs has remained consistent throughout the updating and recalibration, we find no reason to believe these DRGs are inappropriately weighted.

Comment: Two commenters noted what appears to them to be an illogical differential in the weighting factor of two companion DRGs. The commenters believed that, since DRG 412 (History of Malignancy with Endoscopy) requires a procedure not present in its companion, DRG 411 (History of Malignancy without Endoscopy), the weighting factor for the former should be higher.

Response: We do not believe the presence endoscopy necessarily would indicate a more costly hospital admission. In this regard, we note that a single endoscopy may perform essentially the same diagnostic function as numerous x-rays, scans, and laboratory tests. Thus, total resources expended using endoscopy could reasonably be substantially less than total resources for cases without endoscopy. In addition, we note that our bill data indicate that Medicare patients with a history of malignancy receiving an endoscopy, on average, spent considerably less time hospitalized than those who did not receive the procedure. Given the additional room and board charges for added inpatient days, it is not surprising that the weighting factor for DRG 411 is higher than DRG 412.

Q. Comments on MDC 23: Factors Influencing Health Status and Other Contacts With Health Services

Comment: One commenter stated that the relative weight for DRG 465 (Aftercare with a History of Malignancy as a Secondary Diagnosis) should logically be higher than the relative weight for DRG 466 (Aftercare without a History of Malignancy as a Secondary Diagnosis). The commenter states that patients with a history of cancer appear to require more resources than a patient without such a history.

Response: We do not agree with the commenter's rationale. There are many other medical conditions which, as secondary diagnoses, may be more resource intensive than cancer. In addition, DRG 465 deals with only a limited population of patients—only those with a history of malignancy as a secondary diagnosis, whereas DRG 466 encompasses all other patients. We believe our data and relative weights are accurate for DRGs 465 and 466. The commenter did not present any concrete data to support an opposite position.

R. Comments on DRG 468: Unrelated O.R. Procedures

During the public comment period on the June 10 NPRM, 14 commenters raised questions concerning DRG 468 (Unrelated O.R. Procedure).

Comment: One commenter noted the need for a mechanism within the DRG system to take into account implementation of new technology and new treatment regimens. The commenter recommended the development of a new DRG similar to 468 for assignment of cases involving new technology regardless of the patient's diagnosis. It was suggested that cases would be temporarily assigned to the new technology DRG until sufficient information becomes available to classify the procedure to an appropriate DRG.

Response: We do not believe the creation of a new technology DRG is appropriate or necessary. As we stated in the September 3, 1985 final rule, when Medicare covers a new technology, we believe it is most appropriate to make a decision as to the "best fit" DRG that is within the existing classification system. Should subsequent data indicate the initial classification is inappropriate, a reclassification to a more appropriate DRG would be made.

Also, the commenter's suggestion that a new general type of DRG such as DRG

468 be established indicates a basic misunderstanding of the classification system. The basic framework of the DRG system has been built around 23 MDCs. Cases are assigned to a DRG within the MDC indicated by the patient's principal diagnosis. The creation of a new technology DRG would violate the basic principle of the DRG system in that the classification would no longer be based on diagnosis. Rather, such a system would rely chiefly on procedures for classification.

It is our view that DRG 468 does not present such a violation. Instead, this DRG is reserved specifically for those cases where none of the surgical procedures furnished to a patient is related to the principal diagnosis. Thus, DRG 468 is intended to established a classification cell for those cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication.

We emphasize that this DRG is not a catch-all for cases that do not fit elsewhere, nor does it violate the basic principle of diagnosis-related classifications. Therefore, we do not find the commenter's suggestion concerning a new technology DRG analogous to the basis for establishing DRG 468.

Comment: Two commenters noted the excessive payment made for many cases involving fairly simple surgical procedures assigned to DRG 468. One commenter recommended payment for DRG 468 on a per diem basis. The other commenter recommended PRO denial of surgical procedures that could be done on an outpatient basis.

Response: We, too, are somewhat concerned with the possibility of excessive payments for cases involving simple surgical procedures assigned to DRG 468. In fact, that is the reason we continue to review the procedures on the O.R. list and have added some procedures to MDCs for which they are appropriate, thus precluding assignment of cases involving such procedures to DRG 468. However, as discussed in our September 3 final rule (50 FR 35658), we are not adopting either of the changes recommended by the above two commenters. We do not believe it is appropriate to implement a special payment mechanism for a specific DRG. In addition, payment on a per diem basis for discharges assigned to DRG 468 would present administrative complexities in reconciling interim payments.

It has also been suggested that a significant number of cases assigned to DRG 468 are the result of patients undergoing elective surgical procedures that could have been done on an outpatient basis, while hospitalized for some reason unrelated to the cause of the surgery. It was suggested that such elective procedure be denied upon review by the PRO.

We do not believe there is authority under the current statute to instruct PROs to deny such medically necessary procedures when performed during an unrelated medically necessary hospital stay. We are satisfied, for the present, that the current PRO review procedure of DRG 468 cases is adequate and supported by the law and regulations. We will, however, continue to monitor DRG 468 cases. If the data indicate any further action is necessary, we may modify review procedures in the future.

Comment: One commenter recommended that procedure code 4029 (Excision of the Lymphatic Structures) be included in MDC 5 (Diseases and Disorders of the Circulatory System) to match with diagnosis code 2281 (Lymphangioma) to avoid DRG 468 assignment.

Response: We had already noted that diagnosis code 2281 and procedure code 4029, which often occur in the same admission, had not been classified in the same MDCs, and made a change to resolve this problem in the September 3, 1985 final rule (50 FR 35740, Table 6, Item A.22). However, we determined the more appropriate classification to be to MDC 16 (Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders), rather than to MDC 5 (Diseases and Disorders of the Circulatory System). Therefore, rather than moving the procedure code, we moved diagnosis code 2281 from MDC 5 to DRGs within MDC 16. When treated by excision of the lymphatic structures, the case is grouped to DRG 394 (Other O.R. Procedures of the Blood and Blood Forming Organs); where no surgery is performed, the cases fall into DRGs 398 and 399 (Reticuloendothelial and Immunity Disorders; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

Comment: One commenter recommended that an exception to the GROUPER be made for patients receiving a cardiac pacemaker. Since pacemakers are relatively expensive, the commenter believes all cases involving pacemakers furnished to patients with a principal diagnosis that is not classified into MDC 5 (Diseases and Disorders of the Circulatory System) should be assigned to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock) and DRG 116 (Permanent Cardiac Pacemaker Implant without AMI, Heart Failure or Shock) rather than DRG 468.

Response: In order to operate a classification system successfully, we must maintain some working guidelines for categorizing cases. The most basic working guideline of the DRG system is that classification is based on principal diagnosis. In evaluating requests for changes in the classification system, we made it clear that we would only consider such requests that would not violate the basic principles of the DRG system.

What the commenter is suggesting is for us to make an exception to the basic principle of classification based on principal diagnosis. We continue to believe that classification of cases based on principal diagnoses, age, sex, complications and surgical procedures, is appropriate. To classify all pacemaker cases to DRGs 115 and 116 when the principal diagnosis is not related to diseases and disorders of the circulatory system would in effect result in classification based on primary diagnosis or procedure, rather than principal diagnosis.

We have already responded to the issue of classification based on primary diagnosis in the January 3, 1984 final rule (49 FR 248). The problems associated with classification based on primary diagnosis that are set forth in that response would be further complicated were we to consider such classification only for one specific type of procedure. Such inconsistencies in the classification mechanism would significantly disrupt the GROUPER system.

In addition, the DRG-based prospective payment system is designed to recognize hospital differences related to patient characteristics in preference to hospital differences related to characteristics over which the hospital has control. We believe that classification based on principal diagnosis is more consistent with this goal than classification based on procedure, which establishes incentives to perform more resource-intensive procedures than might be medically appropriate. Further, we believe that the resultant categories, based on principal diagnoses and surgical versus non-surgical treatment, are reasonably homogeneous and promote the goal of encouraging efficiency and prudent hospital management.

Comment: In the September 3 final rule (Item A.10 of Table 6, page 35738), we removed procedure codes 5051 (Ancillary Liver Transplant) and 5059 (Liver Transplant) from DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) so that

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cases involving retransplants due to complications would group to DRG 468. One commenter believes this is inappropriate. The commenter recommends such cases be assigned to DRG 191 (Major Pancreas, Liver and Shunt Procedures).

Response: Like the immediately preceding comment, this suggestion violates the basic principle of the DRG system, that is, that classification be based on principal diagnosis. DRG 191 may only be assigned when a patient's principal diagnosis is for diseases and disorders of the hepatobiliary system and pancreas. Most complication and infection diagnosis codes, such as 996.8, which is used for liver transplant rejection, are not organ-specific. Consequently, they cannot be assigned to an organ-system-specific MDC. Rather, they are assigned to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs.)

We noted that other organ transplant procedures codes, such as kidney and cornea transplants, were not included in MDC 21. Therefore, in order to promote consistency in the treatment of such transplants, we removed procedure codes 5051 and 5059 from these DRGs, causing the cases to group to the higher weighted DRG 468. (Alternatively, we could have included the procedure codes for cornea and kidney transplants in DRGs 442 and 443 but, given the constraints of the current coding system, we decided to follow the direction taken in setting up the DRGs and eliminate the liver transplant procedure codes from MDC 21.)

We should point out that we are evaluating the impact on the DRG system of the current coding systems for complications. However, as mentioned elsewhere, coding revisions cut across many aspects of the health care industry; therefore, we must proceed cautiously. If coding revisions in the future permit identification of specific organ system involvement in complications, the DRG classification system may be modified accordingly to reflect such specificity.

Comment: One commenter stated that in DRGs 256 (Other Musculoskeletal System and Connective Tissue Diagnoses) in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), 280 and 281 (Trauma to the Skin, Subcutaneous Tissue and Breast; Age Over 69 and/or C.C., and Age 18–69 without C.C., respectively) in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), 445 and 446 (Multiple Trauma; Age 18–69 without C.C., and Age 0–17, respectively), in MDC 21 (Injury, Poisoning and Toxic Effects of Drugs), cases showing procedure code 8010 through 8019 (arthrotomy for removal of foreign body) occurring in conjuction with diagnosis codes with the first three digits 890 through 897 and 880 through 887 are assigned to DRG 468. The commenter believes all such procedures should be assigned to MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).

Response: It is difficult to respond to this comment because it appears to stem from some basic misconceptions of DRG classifications. All of the specific DRGs cited in either MDC 8 or MDC 21 are medical DRGs to which cases involving a surgical procedure could not be assigned. If the principal diagnosis is an acceptable diagnosis for either of these MDCs (and numerous diagnostic codes within the ranges specified by the commenter are in these MDCs), the case would be assigned to a surgical DRG within those MDCs, rather than to DRGs 256, 445, 446 or 468.

With regard to DRGs 280 and 281 within MDC 9, the arthrotomy procedure code is not considered in DRG assignment. Should arthrotomy be necessary in such cases, the claim would be appropriately assigned to DRG 468 because the surgical procedure is not related to the principal diagnosis.

Comment: One commenter believes that the scattering of injury codes among the various DRGs has resulted in inappropriate assignment to DRG 468. The commenter recommended further study be given to this issue.

Response: The handling of injury codes by the program is a complicated issue. We agree that further study in this area would be valuable. We will be looking into this issue in the future.

Comment: One commenter noted that extra-intracranial vascular bypass procedures involving the anastomosis of the temporal artery to an intracerebral artery, or the subclavian to an intracerebral artery, to bypass the obstructed carotic arteries is coded with two procedure codes (0124 for burr hole and 3929 for vascular shunt procedures). The commenter believes this results in assignment to DRG 468 rather than to DRG 1 (Craniotomy Age over 17 Except for Trauma), as appropriate.

Response: We do not agree with the commenter as to the appropriate codes for the extra-intracranial vascular bypass procedure. The burr hole in this case is an approach to enter the cranium. ICD–9–CM coding rules specifically exclude use of this code as an operative approach. Thus, the appropriate procedure code for the procedure is 3929 only.

Prior to last year's reclassification of the DRGs, procedure code 3929 was not included in the DRGs under MDC 1 (Diseases and Disorders of the Nervous System). Thus, appropriate coding of the procedure using only 3929 with an MDC 1 diagnosis code would have resulted in DRG 468 assignment. However, the addition of procedure code 3929 to MDC 1, DRG 5 (Extracranial Vascular Procedures) was proposed and adopted during the FY 1986 reclassification. Thus, an appropriately coded extra-intracranial vascular bypass would now be assigned to DRG 5. We recognize that the payment for DRG 5 may understate the cost of such procedures in some cases, but the weighting factor reflects the average resource use of all cases grouped in DRG 5, including that associated with procedure 3929. In addition, we do not believe it is appropriate to violate coding guidelines in allowing an approach to be coded in this instance in order to increase Medicare payment. We will continue to evaluate claims data in this area and will consider further reclassification in the future if the data indicate significant problems exist.

Comment: One commenter suggested that procedure codes 0681 (total parathyroidectomy) and 5299 (urinary implants) be assigned to MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract) to avoid inappropriate DRG 468 assignment.

Response: Procedure code 5299 is not appropriate for urinary implants, but is for other operations on the pancreas. Both procedure codes 0681 and 5799 (the correct code for urinary implants) are presently included in MDC 11, with 0681 assigned to DRG 315 (Other Kidney and Urinary Tract O.R. Procedures) and 5799 grouping to DRGs 308 and 309 (Minor Bladder Procedures, Age over 69 and/or C.C., and Age under 70 without C.C., respectively). We find no reason to believe such cases group to DRG 468.

Comment: One commenter recommended procedure code 5733 (transurethral biopsy of bladder) be considered a valid code for MDC 12 (Diseases and Disorders of the Male Reproductive System) to prevent inappropriate classification to DRG 468.

Response: Procedure code 5733 is currently included in MDC 12, DRGs 344 and 345 (Other Male Reproductive System O.R. Procedures: for Malignancy, and Except for Malignancy, respectively).

Comment: One commenter suggested that procedure codes 8609 (other incision of skin and subcutaneous tissue) and 8699 (other operations on skin and subcutaneous tissue) be added to the list of acceptable operating room procedures. The commenter believes that code 8699 should be recognized for unspecified surgical DRGs. The commenter also believes code 8699 should be an acceptable operating room procedure for DRG 217 (Wound Debridement and Skin Graft for Musculoskeletal and Connective Tissue Disorders), DRGs 263–265 (Skin Graft and/or Debridement), and DRGs 452 and 453 (Complications of Treatment; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

Response: Procedure code 8699 is an acceptable operating room procedure under the DRG classification system. It is included in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) under DRGs 269 and 270 (Other Skin, Subcutaneous Tissue, and Breast O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) under DRG 292 and 293 (Other Endocrine, Nutritional and Metabolic O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in MDC 16 (Blood, Blood Forming Organs and Immunological Diseases and Disorders) under DRG 394 (Other O.R. Procedures of the Blood and Blood Forming Organs), and MCD 21 (Injury, Poisoning and Toxic Effects of Drugs) under DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively). However, without additional specific information on the additional DRGs in which it is recommended that this procedure be considered, we cannot respond to the commenter's concerns.

Our medical consultants have noted that, due to the general nature of procedure code 8699, there can be a good deal of variability in procedures coded under this item. Some of the procedures identified by this code (such as insertion of skin expander in treatment of postburn cases and release of pedicle or flap graft) may require the use of a dedicated operating room. However, other procedures identified by this code, such as removal of sutures from a limb, may be done in less intensive settings, including at the patient's bedside, without use of anesthesia or other operating room resources. We do not have data available indicating the frequency of such procedures by setting to analyze the merits of the recommendation. We do note, however, that DRGs 452 and 453 are medical DRGs. Thus, even if code 8699 were recognized as an O.R. procedure, cases involving this procedure could not be assigned to these DRGs but would be classified in one or a pair of surgical DRGs.

Comment: Three commenters expressed general concern over the list of procedures assigned in our final rule (pages 35743ff) to the different MDCs to reduce DRG 468 assignment. The commenters believe the added procedures may reduce the clinical homogeneity of the DRGs and reduce payment levels to hospitals.

Response: We do not agree with the commenters that the addition of procedure codes to specific DRGs significantly disrupts the clinical homogeneity of the DRGs. All such additions were made only after careful clinical review and concurrence by physicians. In fact, our reassignment of procedures previously found in DRG 468 was specifically supported by a comment from one of the physicians who was involved in the physician panel that established the original Yale DRGs.

With regard to the allegation that the number of DRG 468 cases will decrease and be spread to DRGs with lower weights, we do not believe this to be an obstacle to more appropriate reclassifications. DRG 468 is intended to reflect only those cases in which none of the surgical procedures is related to the principal diagnosis. When data indicate that a specific procedure is commonly associated with a particular diagnosis, we would be remiss in our statutory duty were we not to reclassify the procedures. This decision must be made independent of payment levels.

We should point out, however, that reclassification changes were made prior to recalibration. That is, all the claims from FY 1984 were regrouped using the revised GROUPER before we recalibrated the DRG weights. Thus, the new weighting factors adequately reflect the charges for the cases assigned to each DRG. To the extent we moved expensive cases out of DRG 468 and into a lower weighted DRG, the reclassified cases would increase the weighting factor for the newly assigned DRG.

S. Other Issues

Comment: One commenter believes that procedure code 8623 (Removal of fingernail, toenail, or nail-fold) should be included on the list of O.R. procedures when there is a secondary diagnosis of insulin-dependent diabetes.

Response: Our medical consultants do not agree that procedure code 8623 should be classified as an O.R. procedure. In the great majority of cases, the procedure is handled in a non-O.R. setting. Moreover, to recognize a specific procedure in conjunction with secondary diagnoses would create unwarranted logic and hierarchy problems confounding the classification of cases into the DRGs.

III. Provisions of This Notice

A. Changes Resulting From Comment Process

Based on the comments, and our responses, just presented in section II of this notice, we are proposing the following changes:

1. MDC 4: Diseases and Disorders of the Respiratory System

We would remove diagnosis code 4828 (Bacterial pneumonia not elsewhere classified) from DRGs 89 (Simple Pneumonia and Pleurisy, Age over 69 and/or CC), 90 (Simple Pneumonia and Pleurisy: Age 18–69 without CC) and 91 (Simple Pneumonia and Pleurisy: Age 0–17). We would place this code into DRGs 79 (Respiratory Infections and Inflammations Age over 69 and/or CC), 80 (Respiratory Infections and Inflammations, Age 18–69 without C.C.), and 81 (Respiratory Infections and Inflammations, Age 0–17).

2. MDC 13: Diseases and Disorders of the Female Reproductive System

We would reconfigure DRGs 353, 354, 355, 357, 358, 359, 360, 361, and 362 to increase homogeneity and thus more accurately reflect resource intensity of cases assigned to these DRGs. (See section II.K of this notice for a thorough discussion of each modification.)

3. MDC 20: Substance Use and Substance Induced Organic Mental Disorders

We would change the titles of DRGs 433 through 437 in MDC 20. Wherever the term "substance" appears in these DRGs we would substitute the term "alcohol/drug".

We recognize that we have not adopted changes in response to most of the comments received. In this regard we should point out that a very large proportion of the comments concerned either appropriateness of weighting factors (which is not generally a DRG classification issue) or were too broad or non-specific to indicate exactly where a classification problem arose. In addition, in several other areas of concern, there are coding problems that must be resolved before we can identify the cases at issue and gather the necessary data to evaluate proposed changes. Finally, we received a few comments that required so much evaluation that we are continuing our analysis. The areas of our ongoing review include major head and neck

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procedures, hand and upper extremity procedures, complex aortic aneurysms, injuries, and the burn DRGs. We will continue to evaluate these issues and report our additional findings at least annually.

B. New Coverage Decisions

Under § 412.10(c) of the regulations, we may make interim changes in the DRG classifications to reflect new additions to coverage made by the Medicare program. Such classification changes are to be included in the next annual notice of DRG classification changes and be subject to public comment.

Effective for procedures performed on or after January 24, 1986, Medicare coverage has been extended to implantation of cardiac defibrillators under certain circumstances. The data on the cost of this procedure available at this time is very limited. We have evaluated these data and the clinical similarity of this procedure to others in MDC 5 (Diseases and Disorders of the Circulatory System).

Initially, we decided it would be appropriate, on an interim basis, to pay for this procedure at the relative weight for DRG 104 (Cardiac Valve Procedure with Pump and with Cardiac Catheter). However, this is the highest weighted DRG and available data are not sufficient to assure us that such classification would not result in excessive payments. It may be more reasonable, clinically, to include this procedure in one of several other DRGs in MDC 5. Therefore, although we will pay for this procedure using the weight for DRG 104 for the time being, this may not be our final decision, and we are soliciting comments as to whether it may be more appropriate to use another DRG, such as DRG 109 (Cardiothoracic Procedures without Pump) or DRGs 115 and 116 (Permanent Cardiac Pacemaker Implant; with AMI, Heart Failure or Shock, and Without AMI, Heart Failure or Shock, respectively).

Discrete ICD–9–CM procedure codes for this new technology have not yet been adopted. Consequently , for the present, payment may be made for such claims only on a manual basis when accomplished by appropriate documentation. The ICD–9–CM Coordination and Maintenance Committee is proposing new ICD–9–CM procedure codes for the implantation of cardiac defibrillators. (See section III.C. of this notice.) If these proposed new codes are adopted, we are proposing to add the new procedure codes to the appropriate DRG.

C. New Coding Changes

A Federal inter-agency committee has been formed to evaluate the International Classification of Diseases (ICD) and its modification, updating and use for Federal programs. This group, called the ICD–9–CM Coordination and Maintenance Committee, holds public meetings quarterly for discussion on educational issues and proposed coding changes. The Committee then formulates recommendations, which must be approved by the co-chair agency heads, (that is, the Administrator of HCFA and the Director of the National Center for Health Statistics) before adoption for general use.

Many of the proposed coding changes will result in one or more specific codes to identify discretely those diagnoses or procedures that are currently being coded under a more general diagnosis or procedure.

In order to prevent the unwarranted delay of recognition of new codes by the Medicare program, we are proposing to modify the GROUPER program, to the extent feasible, to recognize any new ICD–9–CM codes adopted in the future by the ICD–9–CM Coordination and Maintenance Committee and, in most cases, to classify discharges with such codes initially in the same DRG as the previous coding assignment. That is, any coding changes adopted prior to July 1, 1986 will be included in the GROUPER program for Federal fiscal year 1987, (October 1986 through September 1987), but will not necessarily result in changes to the classification of cases using these new codes. In addition, we will consider interim revisions of the GROUPER to recognize new ICD–9–CM codes, should the volume of cases indicate it is appropriate. Because the use of most new ICD–9–CM codes will not result in DRG classification changes initially, the new codes will not be published for public comment. Of course, should reclassification become necessary, we will follow the procedures set forth at § 412.10 of the regulations.

New ICD–9–CM codes have been proposed to identify the following:

1. Cochlear Prosthetic Device Implant

2. Percutaneous Transluminal Coronary Angioplasty

3. Cardioverter/Defibrillator

As discussed in section III.B. of this notice, Medicare coverage has been extended to the implantation of cardioverter/defibrillators under certain circumstances effective for procedures performed on or after January 24, 1986. Mid-year DRG assignment for the implant has been DRG 104. We are proposing to modify GROUPER to assign proposed procedure codes to DRG 104.

4. Thoracoabdominal Aortic Aneurysm Repair

Major new advancements have been made in aortic aneurysm repair. The proposed codes have been refined to reflect these advancements. We are still evaluting alternatives for appropriate classification of thoracoabdominal aortic aneurysm repair. We are attempting to acquire data that would allow us to propose a classification change in the procedure as part of the proposed prospective payment system regulation to be published by June 1, 1986.

5. Lithotripsy

Unique codes have been proposed to identify the use of fragmentation of kidney stones (lithotripsy). New codes have also been proposed with respect to percutaneous nephrostomy and extracorporeal shockwave lithotripsy (ESWL).

6. Artificial Urinary Sphincter Implant (AUS)

Increased utilization of artificial urinary sphincters has prompted the proposed creation of a unique ICD–9–CM code for the procedure.

7. Penile Prosthesis—Inflatable and Non-Inflatable

A new code has been proposed to distinguish the types of penile prostheses.

8. Chemonucleolysis

9. Magnetic Resonance Imaging (MRI) and Intraoperative Ventricular Mapping

D. Effective Dates

The changes in DRG classification and adoption of new ICD–9–CM codes proposed in this notice would become effective for discharges occurring on or after October 1, 1986. The impact of these proposed changes on the DRG weighting factors will be discussed in the June notice of proposed changes to the prospective payment rates.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for proposed notices such as this if the implementation of the notice would meet the criteria of a "major rule". A notice would be considered a major rule if its implementation would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the DRG classification system and GROUPER program that we are proposing to make would not meet any of these criteria. Therefore, an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for proposed notices such as this unless the Secretary certifies that implementation of the notice would not have a significant economic impact on a substantial number of small entities. We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this notice clearly would affect a substantial number of small entities. However, it is our practice not to consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least 3 percent. The changes we are proposing to the DRG classification system and the GROUPER program would not have results meeting this threshold. Therefore, we have determined and the Secretary certifies that a regulatory flexibility analysis is unnecessary. Accordingly, we have not prepared an initial regulatory flexibility analysis.

V. Information Collection Requirements

This proposed rule contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in that notice.

(Secs. 1102, 1871, and 1886(d)(4) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(d)(4)); 42 CFR 412.10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 20, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 4, 1986.

Otis R. Bowen, M.D.,

Secretary.

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Agricultural Stabilization and Conservation Service

7 CFR Part 704
Conservation Reserve Program; Interim Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Conservation Reserve Program (CRP)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to set forth the terms and conditions of the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99–198). Under the CRP, the Secretary of Agriculture is authorized to enter into long-term contracts with owners and operators of highly erodible cropland to assist such owners and operators in conserving and improving the Nation's soil and water resources. By entering into a contract, the owner or operator agrees to implement a conservation plan approved by the local Conservation District for converting highly erodible cropland normally devoted to the production of an agricultural commodity to a less intensive use. The Secretary will provide technical assistance, share some of the costs of establishing the conservation practices required by the conservation plan, and make an annual land rental payment to compensate the owner or operator for taking the cropland out of production.

DATE: This interim rule shall become effective on March 3, 1986. Comments must be received on or before May 12, 1986 in order to be assured of consideration.

ADDRESS: Comments may be mailed to the Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Mr. Gordell A. Brown, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more. However, no major increase in costs or prices for consumers, individual industries, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will result upon implementation of these provisions. A preliminary regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impacts on the quality of the human environment.

Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The information collection requirements contained in this rule will not become effective until they have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in this rule may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, telephone number (202) 395–7340.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Conservation Reserve Program; Number 10.069, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Section 1231 of Title XII of the Food Security Act of 1985 (the "Act") directs the Secretary to formulate and carry out a conservation reserve program during the 1986 through 1990 crop years. The Secretary is authorized to enter into contracts with eligible owners and operators of highly erodible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover. The Secretary is authorized to place in the CRP up to 45 million acres of highly erodible cropland during the 1986 through 1990 crop years.

This interim rule implements the Conservation Reserve Program (CRP) established by the Act.

In order to enter into the CRP, a person who owns or operates highly erodible land must meet the eligibility requirements as set forth in these interim regulations at 7 CFR 704.6 and 704.7. First, a person must have owned the highly erodible land for not less than 3 years prior to the close of the applicable signup period for the program or before January 1, 1985, unless the land was acquired by will or succession or the Commodity Credit Corporation (CCC) determines that ownership was not acquired for the purpose of placing the land in the conservation reserve, or a person must have been an operator of the cropland for the period beginning 3 years prior to the close of the applicable signup period, or January 1, 1985, whichever is later.

Second, the highly erodible land must be cropland, i.e., such land must have been planted or considered planted to produce an agricultural commodity (as defined in the Act) in 2 of the 5 crop years, 1981 through 1985, and it must be physically possible for the land to be planted to an agricultural commodity other than orchards, vineyards, or ornamental plantings.

Third, the highly erodible land must be in a field which has been determined to predominantly consist of land classified by the Soil Conservation Service (SCS) as being Class II, III, IV, and V with an average annual erosion rate of 2 times the soil loss tolerance ("T") or greater as announced by the Secretary, or land classified by the SCS as being Class I VI, VII, or VIII. In order to ensure that program participants place under CRP Contracts the most excessively eroding cropland and cropland subject to the most serious deterioration of productivity, the Secretary has determined that only land which is so classified or has such average annual erosion rates is eligible for the CRP.

Section 1234 of the Act provides that the Secretary may, in accepting contract bid offers, take into consideration the extent of erosion and the productivity of the acreage to be diverted. To provide greater assurance that program participants will first place the most excessively eroding cropland under CRP Contact, the Secretary has announced the average annual rate of erosion must be greater than 3T for land classes II through V offered for contract during the 1986 crop year signup.

The Secretary will, in determining which bid offers to accept for the 1987 through 1990 crop year CRP signup periods, apply a formula which considers the extent of erosion and production on the cropland for which a bid has been offered. This formula is intended to optimize erosion reduction and production adjustment at various bid rates.

Land is considered to have been planted if the cropland base or allotment history has been preserved for land because the land was set-aside or diverted from the production of a commodity in the crop years 1981 through 1985 in order to meet the requirements of production adjustment programs or if the producer was prevented from planting such land to a commodity as a result of a natural disaster. The term "agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted and produced in a state. This definition is more inclusive of the various commodities produced on farms and ranches than has been traditionally included in Federal commodity production adjustment programs, because the CRP is not limited to those commodities for which acreage bases, allotments, and quotas have been established.

Section 704.11 of the interim rule describes the obligations of participants under the CRP. All participants in the CRP must: (1) Enter into and carry out the terms and conditions of the CRP Contract; (2) implement the conservation plan developed for the eligible cropland as approved by the local conservation district; (3) reduce the aggregate total of acreage bases, allotments, and quotas for the contract period as designated by the participant for each farm which contains land which is subject to a CRP Contract by an amount based upon the ratio between the total cropland acreage on such farm and the total acreage on such farm subject to the CRP Contract; (4) not produce any agricultural commodity on highly erodible land or converted wetland as defined in Section 1201 of the Act and regulations implementing the Act (unless such land is exempted under Sections 1212 and 1222 of the Act); (5) not allow grazing, harvesting, or other commercial use of any crop grown on the land subject to the CRP Contract; (6) maintain the vegetative cover and other conservation practices specified in the conservation plan for the contract period and take other action that may be required by CCC to achieve the reduction in soil erosion necessary to maintain the production capability of the land throughout the CRP Contract period; (7) comply with the noxious weed laws of the applicable State on land subject to the CRP Contract; and (8) not undertake any action which would tend to defeat the purposes of the CRP.

The conservation plan developed for the eligible cropland will specify the conservation practices which must be established on the eligible cropland in order for adequate erosion control to be achieved and will include a time schedule for establishment of the necessary conservation practices.

In exchange for participation in the CRP, CCC shall: (1) Make an annual rental payment to the program participant; (2) share the cost of establishing the required conservation practices; and (3) provide needed technical assistance to the participant. The annual rental payment shall be determined by the submission of a bid by the owner or operator and is designed to compensate the participant for taking the land out of crop production and devoting it to a less intensive use. The maximum amount of annual rental payments which a person may receive for each year may not exceed $50,000. The annual rental payments received by a person shall be in addition to, and not affected by, the total amount of payments that a person may receive under other provisions of the Act or the Agricultural Act of 1949, as amended.

The cost-share assistance which shall be paid to a participant will not exceed 50 percent of the actual or average cost of establishing the required conservation practices as determined by the CCC. Cost-share payments shall be made available upon a determination that the conservation practice has been correctly established.

An owner or operator of eligible cropland desiring to place such cropland under a CRP Contract with CCC must submit an offer on Form CRP–1 to the local Agricultural Stabilization and Conservation Service (ASCS) office that serves the area in which the farm or ranch is located during the announced sign-up period.

The offer shall be irrevocable for a period of 30 days subsequent to the close of the sign-up period. Once the offer has been received by CCC, it is reviewed and evaluated. The revocation of offers during the 30-day review and evaluation period would require a re-evaluation of bids received and would result in additional administrative expenditures by CCC, as well as increased annual rental payments. It is impossible to compute in advance the actual damages CCC may suffer. Therefore, the applicant shall be assessed liquidated damages if the applicant withdraws the offer during such 30-day period.

CCC will notify persons whose offers are accepted as soon as is practicable after the close of the signup period. CCC will consult with persons whose offer must be modified before CCC will enter into a CRP Contract. CCC will enter into a CRP Contract with such persons if there is an agreement as to the revised terms and conditions of the contract.

It is intended in subsequent years that a conservation plan for the land to be placed into the CRP be completed prior to the submission of an offer. However, due to the need to implement the CRP as quickly as possible and due to staffing constraints, it is probable that conservation plans will not be completed prior to the submission of offers to place land in the CRP during the signup period for the 1986 crop year.

Section 704.19 of the interim rule provides that the CRP Contract may be modified by mutual agreement between CCC and the participant. The interim rule allows CRP Contracts to be modified to: (1) Decrease the acreage under the CRP Contract where the participant desires to devote the land to uses other than agricultural production; (2) permit the production of an agricultural commodity during a crop year to grant relief to a participant in cases of hardship or when the Secretary determines that such production is necessary to meet domestic and foreign needs; and (3) facilitate the practical administration of the CRP.

Contracts may also be modified to add, delete, or substitute conservation practices in the conservation plan if practices fail, through no fault of the participant, to achieve adequate erosion control or it is determined that another conservation practice will achieve adequate erosion control.

Section 704.20 of this interim rule provides that if the right and interest in or the right to occupancy of the land which is the subject of a CRP Contract is transferred to another party, and the new owner or operator does not become a party to the CRP Contract, the participant shall forfeit all rights to future payments with respect to the transferred land and may be forced to refund any payments received in accordance with the CRP Contract.

Section 704.21 of this interim rule sets forth the penalities for violations of the terms and conditions of the CRP Contract. Upon a violation of the terms and conditions of a CRP Contract, CCC

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may: (1) Terminate the contract and the participant must forfeit all rights to future payment under the CRP Contract and must either refund all payments received under the CRP Contract together with interest as determined by CCC, or pay liquidated damages if no payments have been received, or (2) require a refund of payments received and make such payment adjustments as are determined to be appropriate.

Section 704.24 of this interim rule provides that representatives of the Department shall have the right of access to land which is the subject of an offer to enter into a CRP Contract or land under a CRP contract and shall have the right to examine any other cropland under the participant or applicant's control to ascertain erosion and cropland classification determinations and program compliance.

Section 704.26 of the interim rule sets forth the administrative appeal procedures which are available to program participants for review of any decision rendered by the Department. All requests for reconsideration or appeal of an administrative determination rendered by the county committee or other ASCS officials shall be conducted in accordance with the administrative appeal regulations found at 7 CFR Part 780. Determinations of land classification or erosion rates may be reviewed in accordance with procedures established by the SCS.

Other Program Provisions

The following regulations are incorporated by reference as a part of the CRP:

(a) 7 CFR Part 713, Feed Grain, Rice, Upland and Extra Long Staple Cotton, and Wheat, specifically §§ 713.109 and 713.150 concerning the fair and equitable division of payments among participants of the CRP Contract and the rights of tenants and sharecroppers;

(b) 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violation, concerns the withholding of payments where the participant harvested or allowed harvesting of drug producing plants or is convicted of planting, growing, or harvesting of any controlled substance during any crop year; and

(c) 7 CFR Part 707, Payments Due Persons Who Have Died, Disappeared, or Have Been Determined Imcompetent, concerning the payment procedures to be followed in case of death, or competency, or disappearance of any participant.

Section 1231(b)(1) of the Act provides that the Secretary shall enter into CRP Contracts covering not less than 5 million acres during the 1986 crop year. Since owners and operators are already making crop planting decisions for the 1986 crop year, it has been determined that this interim rule shall become effective on March 3, 1986, in order to achieve the goal of placing 5 million acres of cropland in the reserve during the 1986 crop year. However, comments from interested persons are requested. Specifically requested are comments and recommendations on how the CRP could be best used to meet environmental concerns while continuing to satisfy all basic program requirements. In addition to the erosion control benefits of the CRP, it should provide significant contributions to reducing off-farm environmental impacts particularly related to water quality problems. Comments must be received by (60 days after the date of publication in the **Federal Register**) in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any changes to these regulations which are determined to be necessary.

Accordingly, the provisions of this interim rule amend Chapter VII of the Code of Federal Regulations to implement the CRP as authorized by Title XII of the Food Security Act of 1985.

Lists of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Interim Rule

Accordingly, Chapter VII of the Code of Federal Regulations is amended by adding the following new Part 704—Conservation Reserve Program:

PART 704—CONSERVATION RESERVE PROGRAM

Sec.
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Authority: Secs. 1201, 1231–1244, Public Law 99–198, 99 Stat. 1354.

§ 704.1 General description of the program.

(a) The regulations in this part set forth the terms and conditions for the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99–198). The Secretary of Agriculture is authorized to enter into contracts and make payments to eligible owners and operators of eligible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover in accordance with an approved conservation plan. A conservation plan for specified highly erodible croplands shall be developed in cooperation with the Conservation District (CD) in which the lands are located.

(b) The objectives of the CRP are to: (1) Reduce water and wind erosion, (2) protect our long-term capability to produce food and fiber, (3) reduce sedimentation, (4) improve water quality, (5) create better habitat for fish and wildlife through improved food and cover, (6) curb production of surplus commodities, and (7) provide needed income support for farmers.

§ 704.2 Definitions.

(a) The following definitions shall be applicable for the purposes of this part:

(1) "Agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State;

(2) "Annual rental payment" means the annual payment specified in the CRP Contract which is made to a participant to compensate such participant for placing eligible cropland in the CRP;

(3) "Applicant" means a person who submits an offer to CCC to enter into a CRP Contract;

(4) "Bid" means the per acre rental payment requested by the owner or operator in such owner or operator's offer to participate in the CRP.

(5) "Conservation District (CD)" means a subdivision of a State organized pursuant to the applicable State Soil Conservation District Law or, in instances where a conservation district does not exist, this term shall mean the State Conservationist of the Soil Conservation Service;

(6) "Conservation plan" means the plan describing the conservation practices which must be established on eligible cropland placed in the CRP in order for erosion on such land to be adequately controlled. The conservation plan shall include the approved vegetative cover and other required conservation practices necessary for the establishment and maintenance of vegetative cover;

(7) "Commodity Credit Corporation (CCC)" means a wholly-owned government corporation within the U.S. Department of Agriculture;

(8) "CRP Contract" means the approved agreement, including the conservation plan, entered into in writing between CCC and the participant which sets forth the terms and conditions for participation in the CRP established under this part;

(9) "Cost-share payment" means the payment made by CCC to assist program participants in establishing the conservation practices eligible for cost-share assistance and required in the CRP Contract;

(10) "Department" means the United States Department of Agriculture and includes CCC;

(11) "Eligible cropland" means highly erodible land which meets the requirements of § 704.7;

(12) "Field" means a part of a farm which separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, or cropline in cases where the predominantly eligible cropland and farming practices make it a manageable, unit and probable that such cropline is not subject to change during the duration of the contract, or other similar features;

(13) "Field windbreak" means a vegetative barrier with a linear configuration composed of trees or shrubs planted for the purpose of wind erosion control;

(14) "Local ASCS office" means the county office of the Agricultural Stabilization and Conservation Service serving the county or a combination of counties in the area in which the landowner's farm or ranch is located;

(15) "Manageable unit" means a part of a field that can be farmed in a normal manner;

(16) "Operator" means a person who is in general control of the farming operations on the farm;

(17) "Owner" means a person who has legal ownership of farmland including a person who is buying farmland under a purchase agreement;

(18) "Participant" means an owner or operator who has entered into a CRP Contract;

(19) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof;

(20) "Secretary" means the Secretary of the U. S. Department of Agriculture;

(21) "Soil Loss Tolerance (T)" means the maximum average annual soil loss specified for a soil in the Soil Conservation Service (SCS) technical guide available in local SCS offices and is basically the level of soil loss that may occur and still permit a high level of crop productivity to be obtained economically and indefinitely;

(22) "Technical assistance" means the assistance provided to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, inspecting eligibility of a designated area, and implementing and certifying conservation practices;

(23) "Tree planting plan" means the plan that sets forth the silvicultural treatment necessary for planting trees, in order to obtain adequate erosion control on eligible cropland. The plan shall include site location, number of acres, requirements for site preparation, tree species and specifications, planting dates, pre- and post-care of nursery stock, and maintenance to ensure survival; and

(24) "Vegetative cover" means perennial or permanent grasses, legumes, forbs, and shrubs with a life span of 5 or more years, or trees.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitutions of farms, allotments and bases, 7 CFR Part 719.

§ 704.3 Administration.

(a) The program will be administered on behalf of CCC under the general supervision of the Administrator of the Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State ASC Committees (STC) and County ASC Committees (COC).

(b)(1) The land capability class, rate of erosion, suitability of land for permanent vegetative cover, and the adequacy of the planned conservation practice to achieve the necessary erosion control shall be determined by the Soil Conservation Service (SCS).

(2) The SCS will provide such other technical assistance in the implementation of the CRP as is determined to be necessary.

(c) The Forest Service (FS) or the State Forestry Agency shall provide such assistance as is determined to be necessary for developing and implementing conservation plans which include tree planting as the appropriate conservation practice.

(d) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the CRP.

(e) Except as provided in paragraph (b) of this section, the Deputy Administrator, State and County Operations, ASCS (Deputy Administrator), may determine any question arising under the CRP, may reverse or modify any determination made by an STC or COC in connection with the CRP, and may administer any or all phases of the CRP delegated to the COC, STC, or any employee(s) where the COC, STC, or any employee fails to perform a function required in these regulations. In exercising this authority the Deputy Administrator may authorize a person or persons to carry out the CRP or other function(s) for such period of time as is deemed necessary by the Deputy Administrator.

§ 704.4 Applicability.

(a) The CRP is applicable in the 50 States, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States.

(b) The CRP is applicable to private croplands, Indian tribal croplands, and State or local government croplands that otherwise meet the requirements of eligibility set forth in § 704.7.

§ 704.5 Maximum county acreage.

The maximum acreage which may be placed in the CRP may not exceed 25 percent of the total cropland in the county unless CCC determines that such action would not adversely affect the local economy of the county.

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§ 704.6 Eligible person.

In order to be eligible to enter into a CRP Contract in accordance with this part, a person must be an owner or operator of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for the period beginning not less than 3 years prior to the close of the applicable signup period or January 1, 1985, whichever is later, and must provide satisfactory evidence that such person will be the operator of such cropland for the CRP Contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for not less than 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The new owner acquired such cropland prior to January 1, 1985; or

(3) It is determined that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP.

§ 704.7 Eligible cropland.

(a) In order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings in 2 of the 5 crop years, 1981 through 1985;

(2) Be physically possible to be planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings; and

(3) Be either:

(i) In a field which is classified by SCS as being predominantly Land Capability Classes II, III, IV, and V with an average annual erosion rate 2T or greater, as announced by the Secretary; or

(ii) In a field which is classified by SCS as being predominantly Land Capability Classes VI, VII, or VIII; and

(4) If a redefined field, be a manageable unit which meets the minimum acreage requirements as established by CCC for the county.

(b) Land subject to a contract under the Great Plains Conservation Program, Agricultural Conservation Program, Forestry Incentives Program, Rural Clean Water Program, or similar program contract or land currently under an annual program with maintenance or lifespan requirements may be eligible to be placed in the CRP if the eligible cropland meets the requirements of paragraph (a) of this section and the conservation practices required unde the CRP are consistent with the requirements of the existing contracts.

(c) A field shall be considered to be predominantly highly erodible if 66% percent of the land in such field meets the requirements of paragraph (a)(3).

§ 704.8 Conservation plan.

(a) The applicant, in consultation with the SCS, shall develop the conservation plan.

(b) The SCS ensure that the conservation practices included in the conservation plan and agreed to by the applicant will achieve the reduction in erosion necessary to maintain the production capability of the soil.

(c) If applicable, a tree planting plan shall be developed by the State Forester and shall be included with the conservation plan.

(d) The CD shall approve all conservation plans.

§ 704.9 Eligible conservation practices.

(a) Eligible conservation practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife that will provide adequate erosion control for the contract period.

(b) Other conservation practices may be determined to be eligible if such practices are required in the conservation plan to assure establishment of permanent vegetative cover.

§ 704.10 CRP Contract.

(a) In order to enter into the CRP, the owner or operator must enter into a CRP Contract with CCC.

(b) The CRP Contract will be comprised of: (1) The terms and conditions for participation in the CRP, (2) the offer to the applicant, and (3) the conservation plan.

(c) In order to enter into a CRP Contract, the applicant must submit an offer to participate on a Form CRP–1 at the local county ASCS office during the announced signup period for the applicable crop year.

(1) The offer shall be irrevocable for a period of 30 days subsequent to the close of the applicable signup period.

(2) The applicant shall be assessed liquidated damages in an amount provided in the CRP Contract if the applicant revokes an offer prior to 30 days after the close of the applicable signup period. Once an offer has been received by CCC, it shall be reviewed and evaluated. The revocation of offers during this 30-day review and evaluation period would require a re-evaluation of bids reviewed and would result in additional administrative expenditures by CCC as well as increased annual rental payments; however, it would be impossible to compute the actual damages suffered by CCC.

(3) CCC may waive payment of liquidated damages if CCC determines that the assessment of such damages in a particular case is not in the best interest of the CRP.

(d) The CRP Contract must be signed within the dates established by the COC by: (1) The applicant, and (2) the owners of the cropland to be placed in the CRP.

(e) The COC or its designee is authorized to approve CRP Contracts on behalf of CCC in accordance with instructions issued by the Deputy Administrator.

§ 704.11 Obligations of the participant.

(a) All participants in the CRP must:

(1) Carry out the terms and conditions of the CRP Contract for a period of 10 crop years from the date the CRP Contract is entered into by the participant and CCC;

(2) Implement the conservation plan:

(i) The participant shall implement the conservation plan in accordance with the schedule of completion dates included in such plan unless an extension of time is granted by the COC for the participant to implement the plan. Such an extension shall be granted only if the participant cannot fully implement the plan for reasons beyond the participant's control; and

(ii) The participant shall establish temporary vegetative cover when required by the conservation plan or the COC to control soil erosion until permanent vegetative cover can be adequately established;

(3) Reduce the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land which is the subject of the CRP Contract by an amount based upon the ratio between the total cropland acreage on such farm and the total acreage on such farm subject to the CRP Contract;

(4) Not undertake any action on other land under the participant's control during the contract period that tends to defeat the purpose of the CRP, including the production of any agricultural commodity on land subject to subtitles B and C of Title XII the Food Security Act of 1985, Pub. L. 99–198;

(5) Not knowingly or willingly allow grazing, harvesting, or other commercial use of any crop from the cropland

subject to the CRP Contract except for those periods of time in accordance with instructions issued by the Secretary in response to drought or similar emergency;

(6) Maintain the vegetative cover and the required conservation practices on the land subject to the CRP Contract and take other actions that may be required by CCC to achieve the reduction in soil erosion necessary to maintain the production capability of the soil throughout the CRP Contract period; and

(7) Comply with the noxious weed laws of the applicable State on land subject to the CRP Contract.

(b) The participant and each other person signing the CRP Contract shall be jointly and severally responsible for compliance with the CRP Contract and the provisions of this part and for any refunds or payment adjustments which may be required for violation of any of the terms and conditions of the CRP Contract and the provisions of this part.

§ 704.12 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible conservation practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of § 704.14;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP Contract; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP Contract.

§ 704.13 Availability of cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that the eligible conservation practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Cost-share payments may be made under the CRP only for the establishment or installation of an eligible conservation practice.

(c) Except as provided in paragraph (d) of this section; cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible conservation practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department.

(d) Cost-share payments may be authorized for the replacement or restoration of conservation practices for which cost-share assistance has been previously allowed under the CRP only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control; and

(2) The failure of the original practice was not due to the lack of proper maintenance by the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the conservation practice.

§ 704.14 Levels and rates for cost-share payments.

(a) CCC will share not more than 50 percent of the actual or average cost of establishing the eligible conservation practices specified in the conservation plan.

(b) The average cost of performing a conservation practice shall be determined by the STC or COC, based upon the recommendation of the State and county Conservation Review Groups as identified in 7 CFR 701.2 (a) and (f), and may be the average cost in a State, a county, or a part of a county or counties.

§ 704.15 Annual rental payments.

(a) Annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP Contract.

(b) The annual rental payment shall be divided among the participants in the manner agreed upon in the CRP Contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at 7 CFR Part 795 shall be applicable in determining whether certain persons as individuals or other entities are to be considered as a separate person for payment limitation purposes.

§ 704.16 Method of payment.

Payments made by the Department under this part may be made in cash, in-kind, or in commodity certificates or in any combination of such methods of payments in accordance with 7 CFR Part 770.

§ 704.17 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payment, in whole or in part, as provided in the regulations at 7 CFR Part 709, Assignment of Payment.

§ 704.18 Payments not subject to claims.

Subject to the regulations found at 7 CFR Part 13, any cost-share or annual payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 704.19 Contract modifications.

(a) CCC, by mutual agreement with the participant, may modify the CRP Contract in order to:

(1) Decrease acreage placed in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP Contract; and

(3) Facilitate the practical administration of the CRP.

(b) The concurrence of the SCS and the CD are necessary when modifications to a CRP Contract involve a technical aspect of the participant's conservation plan.

(c) CCC may modify CRP Contracts to add, delete, or substitute conservation practices when:

(1) The installed conservation practice failed to adequately control erosion through no fault of the participant;

(2) The installed measure deteriorated because of conditions beyond the control of the participant; or

(3) Another conservation practice will achieve at least the same level of erosion control.

§ 704.20 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to CRP Contract, such new owner or operator, upon the approval of the COC, may become a participant to the existing contract with the same terms and conditions or may offer to enter into a new CRP Contract with CCC covering such transferred land.

(2) If the new owner or operator becomes a participant to the existing CRP Contract, the new owner or operator shall assume all obligations under the CRP Contract of the previous participant with respect to the transferred land.

(3) The following provisions shall be applicable if the new owner or operator becomes a participant to the existing CRP Contract or enters into a new CRP Contract with CCC:

(i) Cost-share payments shall be made to the participant who established the

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conservation practice as specified in the contract; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided: (A) Between the new participant and the previous participant based upon the period of time during the fiscal year during which such participants had control of the land or (B) as agreed upon the participants and approved by the COC.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, the land subject to CRP Contract and the new owner or operator does not become a participant to the existing CRP Contract or a new CRP Contract in accordance with the provisions of this section, the CRP Contract shall be terminated on the affected portion of the land subject to the CRP Contract, and the participant:

(1) Must forfeit all rights to any future annual rental or cost-share payments with respect to the transferred acreage; and

(2) Must refund all or part of the payments plus interest thereon, as determined by CCC, that have been made on the transferred land, except a portion of the payments may be retained to the extent CCC determines, after consultation with the technical agency and the CD, that the established conservation practices have achieved desired conservation benefits for an acceptable period.

§ 704.21 Violations.

(a) (1) If the participants fails to carry out the terms and conditions of the CRP Contract, CCC may, after considering the recommendations of the CD and SCS, terminate the CRP Contract.

(2) If the CRP Contract is terminated by CCC in accordance with this subsection, the participant shall:

(i) Forfeit all rights to further payments under the CRP Contract and refund all payments received together with interest thereon as determined by CCC; or

(ii) Forfeit all rights to payments under the CRP Contract and pay liquidated damages to CCC in an amount specified in the CRP Contract if no payments have been received by the participant under the CRP Contract.

(3) The purpose of the CRP is to control erosion on highly erodible lands thereby protecting the Nation's soil and water resources for succeeding generations. Once a CRP Contract has been entered into between CCC and the owner or operator, CCC and other segments of the agricultural community will act based on the assumption that the CRP Contract will be fulfilled and the reduction in erosion and production will be obtained. CCC's action includes budgeting and planning for the CRP in subsequent crop years. A participant's failure to carry out the terms and conditions of the CRP Contract undermines the basis for these actions, damages the credibility of CCC's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years in order for the required levels of acreage to be placed in the CRP and in order for an adequate reduction in erosion to be obtained. While the adverse effects on CCC of the participant's failure to comply with the CRP Contract is obvious, it would be impossible to compute the actual damage suffered by CCC. Therefore, participants shall be required to refund all payments received, plus interest, upon the termination of the CRP Contract in accordance with this subsection, or to pay liquidated damages in an amount specified in the CRP Contract if no payments under CRP have been received prior to termination.

(b) CCC may terminate a CRP Contract if the participant agrees to such termination and CCC determines that termination would be in the public interest.

(c) If the participant fails to carry out the terms and conditions of the CRP Contract but CCC determines that such failure does not warrant termination of the CRP Contract, CCC may require such participant to refund payments received under the CRP Contract or to accept such adjustments in the payment as are determined to be appropriate by CCC.

§ 704.22 CRP Contracts not in conformity with regulations.

If, after a CRP Contract is approved by the COC on behalf of CCC, it is discovered that such CRP Contract is not in conformity with the provisions of this part as the result of a misunderstanding of the program procedures by a signatory to the contract, a modification of the contract may be made by mutual agreement. If the parties to the CRP Contract cannot reach agreement with respect to such modification, the CRP Contract shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC in accordance with the provisions of § 704.23.

§ 704.23 Performance based upon advice or action of Department.

The provisions of Part 790 of this chapter, as amended, relating to performance based upon the action or advice of a COC or STC shall be applicable to the CRP.

§ 704.24 Access to land.

Any representative of the Department, or designate thereof, shall have the right of access to land which is the subject of an application for a CRP Contract, or land which is the subject of a CRP Contract and shall have the right to examine any other cropland under the applicant's or participant's control for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP.

§ 704.25 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under a CRP Contract shall be divided fairly and equitably among all participants to the contract and producers who would have shared in the risk of producing crops on the land to be placed in the CRP shall receive equitable treatment in accordance with the regulations set forth in 7 CFR 713.109 and 713.150 which relate to division of payments and the rights of tenants and sharecroppers.

§ 704.26 Appeals.

(a) Except as provided in paragraph (b) of this section, the participant may obtain a review in accordance with the administrative appeal regulations (7 CFR Part 780) of any administrative determination rendered under this program.

(b) Determinations concerning land classification or erosion rates may be reviewed in accordance with procedures established by SCS.

§ 704.27 Depriving others of payments.

If it is determined by CCC that any participant has employed any scheme or device to deprive any other person of cost-share assistance or land rental payments, any part of any program payment otherwise due or paid such participant during the CRP Contract period may be withheld or required to be refunded with interest thereon as determined by CCC. A scheme or device includes, but is not limited to, coercion, fraud, or misrepresentation.

§ 704.28 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under the CRP with respect to the crop year in which the false information or claim was filed.

False information or false claims include a claim for payment for a conservation practice which is not carried out or a claim for payment for conservation practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The withholding or refunding of such payments will be in addition to any other penalty or liability otherwise imposed by law.

§ 704.29 Miscellaneous.

(a) In accordance with the regulations set forth at 7 CFR Part 796:

(1) No payment shall be made to any participant who harvests or knowingly permits to be harvested for illegal use, marihuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by such participant; and

(2) Any participant who is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payments under this part during that crop year and the four (4) succeeding crop years.

(b) In case of death, incompetency, or disappearance of any participant, any payment due shall be paid to the participant's successor in accordance with the provisions of 7 CFR Part 707.

Signed at Washington, DC, on March 6, 1986.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc 86-5658 Filed 3-12-86; 8:45 am]

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H.J. Res. 409/Pub. L. 99-256

To direct the President to issue a proclamation designating February 16, 1986, as "Lithuanian Independence Day." (Mar. 10, 1986; 100 Stat. 40; 1 page) Price: $1.00

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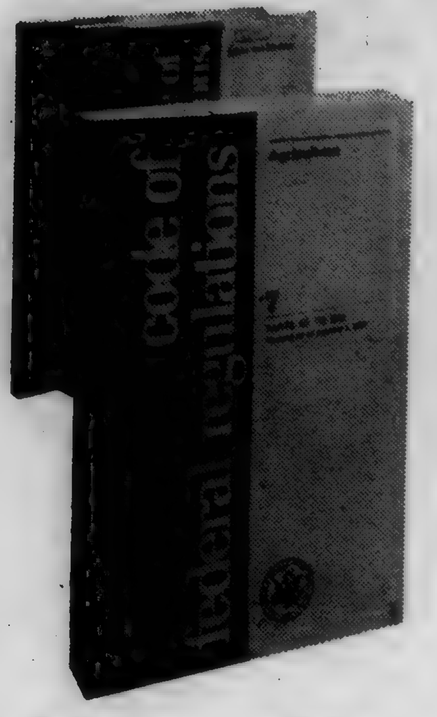

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March 14, 1936—March 14, 1986

Today marks the 50th anniversary of the first edition of the **Federal Register.**

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Elizabeth Stout,
Denver Federal Information Center.
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23, at 1:30 pm.

WHERE:
Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471
for reservations

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Reader Aids

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Doc. No. 3238S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for potato crop insurance in Delaware, Maryland, and New Jersey, effective for the 1986 crop year only. This action is necessary because actuarial material for potatoes has just been received by agents. Additional time is hereby accorded agents to market new and existing potato contracts in those states. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the potato crop insurance program with respect to the Manager's authority to extend sales closing dates. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in 7 CFR 422.7, the sales closing date for accepting applications for potato crop insurance in Delaware, Maryland, and New Jersey is March 15. Because actuarial material was delayed in reaching the agents responsible for marketing new and existing contracts, FCIC is extending the sales closing date in these states.

Under the provisions of 7 CFR 422.7, the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

Accordingly, pursuant to the authority contained in 7 CFR 422.7, the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for potato insurance in Delaware, Maryland, and New Jersey, is hereby extended through the close of business on April 15, 1986, effective for the 1986 crop year only.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on March 10, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–5569 Filed 3–13–86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 905, 907, 908, 912, 913, 916, 917, 928, and 932

Expenses and Rates of Assessments for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes assessment rates under Marketing Orders 905, 907, 908, 912, 913, 928, and 932. In addition, this regulation increases the 1985–86 budget under M.O.'s 916 (California nectarines) and 917 (applicable to California pears). Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1985–February 28, 1986 (§§ 916.224 and 917.243); August 1, 1985–July 31, 1986 (§§ 905.215, 912.225, and 913.221); January 1, 1986–December 31, 1986 (§§ 928.215 and 932.220); November 1, 1985–October 31, 1986 (§§ 907.223 and 908.225).

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA Washington, DC 20250, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses and rates of assessment is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective dates.

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List of Subjects in 7 CFR Parts 905, 907, 908, 912, 913, 916, 917, 928, and 932

Marketing agreements and orders Oranges, Grapefruit, Tangerines, and Tangelos, Arizona, California, Florida, Grapefruit, Indian River District and Interior District, Florida, Nectarines, California, Pears, California, Papayas, Hawaii, Olives, California.

1. The authority citation for 7 CFR Parts 905, 907, 908, 912, 913, 916, 917, 928, and 932 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended 7 U.S.C. 601–674.

2. Therefore, new §§ 905.224, 907.223, 908.225, 912.225, 913.221, 928.215, and 932.220 are added: § 916.224 (50 FR 28337) and § 917.243 (50 FR 31342) are amended to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.224 Expenses and assessment rate.

Expenses of $227,270 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.004 per ⅘ bushel carton of fruit is established for the fiscal period ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.223 Expenses and assessment rate.

Expenses of $1,185,140 by the Navel Orange Administrative Committee are authorized and an assessment rate of $0.022 per 37½ pound standard carton of Navel oranges or the equivalent in any other size carton is established for the fiscal year ending October 31, 1986.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.225 Expenses and assessment rate.

Expenses of $632,410 by the Valencia Orange Administrative Committee are authorized and an assessment rate of $0.027 per 37½ pound standard carton of Valencia oranges or the equivalent in any other size carton is established for the fiscal year ending October 31, 1986.

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

§ 912.225 Expenses.

Expenses of $3,320 by the Indian River Grapefruit Committee are authorized for the fiscal period ending July 31, 1986. Funds to pay the expenses will be obtained from excess assessment income from previous seasons.

PART 913—GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

§ 913.221 Expenses and assessment rate.

Expenses of $4,100 by the Interior Grapefruit Marketing Committee are authorized and an assessment rate of $0.0005 per carton (⅘ bushel) of grapefruit is established for the fiscal year ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.24 [Amended]

Section 916.224 is amended by changing $2,687,576 to $2,701,668.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.243 [Amended]

Section 917.243 is amended by changing $669,504 to $672,504.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.215 Expenses and assessment rate.

Expenses of $447,240 by the Papaya Administrative Committee are authorized and an assessment rate of $0.006 per pound of papayas is established for the fiscal year ending December 31, 1986. Unexpended funds may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.220 Expenses and assessment rate.

Expenses of $2,309,350 by the California Olive Committee are authorized for the fiscal year January 1, 1986 through December 31, 1986. The rate of assessment for that period shall be established at $27.83 per ton, less any amount credited pursuant to § 932.45 but not to exceed $6.92 per ton. Unexpended funds may be carried over as a reserve.

Dated: March 7, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–5605 Filed 3–13–86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 500 and 512

Organization, Practice and Procedure; Office of Enforcement

Dated: February 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") has revised its regulations governing the organization of the Bank Board and the channeling of its functions to reflect its recent creation of an Office of Enforcement. In addition, the Bank Board has amended the regulation governing the release of resolutions authorizing formal examinations and investigations to authorize the Office of Enforcement to approve or deny requests for such resolutions.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Marianne E. Roche (202–377–7000), Deputy Director for Operations and Administration, or Rosemary Stewart (202–377–6437), Director, Office of Enforcement, Federal Home Loan Bank Board, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: On November 14, 1985, the Chairman of the Bank Board created an Office of Enforcement that reports directly to and is subject to the supervision of the Bank Board. The former Enforcement Division of the Office of General Counsel was redesignated as the new Office of Enforcement.

The Bank Board is required by 5 U.S.C. 552(a) to make available to the public descriptions of its organization and to the channeling of its functions. Therefore, the Bank Board has adopted these amendments to reflect the creation of the Office of Enforcement and to make the resulting deletions in the functions of the Office of General Counsel that previously were handled by its Enforcement Division. In addition, the amendments delete the outdated description of the organization of the Office of General Counsel so that future reorganizations of that office will not necessitate a regulatory amendment.

New § 500.15 describes the functions of the Director of the Office of Enforcement. Generally, the Director is responsible for the supervision and conduct of all formal enforcement activities of the Bank Board's staff and agents. In particular, the Director of the Office of Enforcement will be responsible for handling all referrals for enforcement action received from other offices of the Board or any Federal Home Loan Bank and for recommending the initiation of formal enforcement actions by the Bank Board and "prosecuting" such actions in appropriate legal proceedings.

Section 500.17, which describes the functions of the General Counsel, is being amended to relect the transfer of certain functions of that office to the new Office of Enforcement and to delete the outdated description of the organization of the Office of General Counsel.

The Board also is amending § 512.5 of the General Regulations to indicate that the Director or any Deputy Director of the Office of Enforcement, rather than the Director or Deputy Director of the Office of Examinations and Supervision and General Counsel or any Deputy or Associate General Counsel, is authorized to approve requests under that section for Board resolutions authorizing proceedings under section 407(m)(2) and 408(h)(2) of the National Housing Act, 12 U.S.C. 1730(m)(2) and 1730a(h)(2). These decisions traditionally have been made by the Director of the Enforcement Division, who is now Director of the Office of Enforcement, so this change is viewed as a technical correction to the regulation.

The Bank Board finds that observance of the public notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 are unnecessary because these amendments relate to Bank Board organization, procedure or practice and the delegation of Bank Board functions to the various offices in the agency.

List of Subjects in 12 CFR Parts 500 and 512

Administrative practice and procedure, Investigations, Organization and channelling of functions.

Accordingly, the Bank Board hereby amends Parts 500 and 512, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Add a new § 500.15 to read as follows:

§ 500.15 Director of the Office of Enforcement.

The Director of the Office of Enforcement is responsible for the supervision and conduct of all formal enforcement activities, including formal examination proceedings and investigations by the staff and agents of the Board and the Federal Savings and Loan Insurance Corporation under each of the Acts administered by the Board. The Director is responsible for reviewing and handling referrals for enforcement action from the agents of the Board at the Federal Home Loan Banks, the Office of Examinations and Supervision, the Office of General Counsel and other Offices of the Board, as appropriate, and for determining whether the available evidence supports the allegations in such referrals. In addition, the Director is responsible for recommending the institution of administrative, injunctive or other appropriate legal actions arising out of such enforcement activities and for representing the Board and the Corporation in the litigation of such enforcement actions in administrative and judicial proceedings. The Director also is responsible, in collaboration with the Director of the Office of Examinations and Supervision, for directing and counseling the staff and agents of the Board with regard to referring matters to appropriate criminal and civil law enforcement authorities and for cooperating with such authorities.

3. Revise § 500.17 to read as follows:

§ 500.17 The General Counsel.

The General Counsel is the chief legal officer of the Board and has, among other functions, those set forth below. The General Counsel is responsible for the representation of the Board and the Federal Savings and Loan Insurance Corporation in judicial proceedings in which the Board or the Corporation is involved as a party or as amicus curiae, except for those enforcement actions in which the agency is represented by the Office of Enforcement. He also is responsible for defending all appeals of final Bank Board orders in the federal Courts of Appeal. The General Counsel is responsible for advising the Board with respect to interpretations involving questions of law, for the preparation of legislation submitted by the Board to Congress, for the preparation of Board comments to Congress upon pending legislation, and for the preparation and interpretation of regulations. In addition, the General Counsel also is responsible for dealing with general problems arising under the Administrative Procedure Act and for dealing with legal problems arising under applications to the Board and the Federal Savings and Loan Insurance Corporation.

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

4. The authority citation for Part 512 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 407, 48 Stat. 1256, 1260, as amended, sec. 408, 48 Stat. 1261, as added by 73 Stat. 691, as amended (12 U.S.C. 1725, 1730, 1730a); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 781); Reorg. Plan No. 3 of 1947; 3 CFR 1943–1948 Comp.

5. Amend § 512.5 by revising the last sentence of paragraph (a) to read as follows:

§ 512.5 Rights of Witnesses.

(a) * * * Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Director or any Deputy Director of the Office of Enforcement.

* * * * *

6. Amend § 512.5 by removing the authority citation located at the end of the section.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–5592 Filed 3–13–86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–21–AD; Amdt. 39–5258]

Airworthiness Directives; SAAB-Fairchild Model SF–340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain SAAB-Fairchild Model SF–340A series airplanes which requires the installation of a positive stop to limit the maximum flap setting to 20 degrees. This action is prompted by reports of uncommanded pitch excursions at a flap setting of 35 degrees when tailplane icing is present. Failure to limit the flap

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extension to 20 degrees could result in temporary loss of control of the airplane.

EFFECTIVE DATE: April 1, 1986.

ADDRESS: The service bulletin specified in this AD may be obtained upon request to SAAB-Fairchild Corporation, Product Support, S. 58188, Linkoping, Sweden. It may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain Model SF–340A airplanes. When ice is present on the tailplane, it is possible for uncommanded pitch excursions to occur with a flap setting of 35 degrees during the approach phase of flight. In order to prevent this from occurring, the BCA has issued Swedish AD 1–015, dated February 13, 1986, which requires a flight manual change restricting the maximum flap setting to 20 degrees, which is the next highest available setting, and requires installation of a positive stop on the flap quadrant to physically limit the maximum flap setting to 20 degrees, in accordance with SAAB–Fairchild Service Bulletin SF 340–27–036, dated February 13, 1986.

Since this condition may exist on airplanes of the same type design registered in the United States, this AD requires an amendment to the FAA-approved airplane flight manual and an installation of a positive stop on the flap quadrant, as previously described.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and a good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FDR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF–340A series airplanes, serial numbers 003 through 048, inclusive, certificated in any category. Compliance is required as indicated below, unless previously accomplished:

1. Within the next seven days after the effective date of this AD, incorporate the following into the limitations section of the airplane flight manual: "More than 20° flap is NOT authorized at any time." This may be accomplished by including a copy of this AD in the airplane flight manual.
2. Within the next 21 days after the effective date of this AD, install a mechanical stop on the flap handle to limit the flap extension to a maximum setting of 20° in accordance with SAAB-Fairchild Service Bulletin SF 340–27–036, dated February 13, 1986.
3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.
4. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 1, 1986.

Issued in Seattle, Washington, on March 7, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86–5571 Filed 3–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–14–AD; Amdt. 39–5257]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to all Boeing Model 767 airplanes, which requires the inspection of the pneumatic system 8th stage check valve, and repair or replacement of the valve, as necessary. This action is prompted by reports of fragments of failed values becoming lodged in other pneumatic system components, by reports of engine damage caused by ingested valve fragments, and by reports of cracked valves which have been removed from service. This condition, if not corrected, could cause engine shutdown, engine damage, or damage to the pneumatic system.

DATES: Effective April 1, 1986.

Comments must be received by April 1, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems and Equipment Branch, ANM–130S; telephone (206) 431–2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On January 25, 1986, a Boeing Model 767 operator experienced an engine malfunction, which was determined to be caused by fragments from the pneumatic system 8th stage check valve being ingested by the engine. There have also been reports of valve fragments causing damage to the pneumatic systems on the Model 767, in addition to

numerous reports of cracked valves that have not yet failed.

Two major failure modes of this valve have been identified. One involves improper assembly of the valve by the manufacturer, whereby insufficient torque is applied to the nut which holds the valve poppet assembly together. The other failure mode involves fatigue cracks of the poppet itself. Since the first failure mode may exist in brand-new valves, an initial inspection is required to check for loose bolts and nuts. The fatigue cracks develop and progress with time, and this failure mode is thus addressed by a repetitive inspection requirement. The same inspection procedure is called out in the AD for both the initial and repetitive inspections, since it is possible that fatigue cracks could be discovered on the initial inspection, and an improperly torqued nut could be found to be loose on a later inspection. The inspection procedure allows for both possibilities.

The direction that valve fragments would travel through the pneumatic duct in the event of valve failure changes several times during a given flight, and is determined by the automatic switchover of bleed air sources by the pneumatic system. At high engine power settings, such as during takeoff and climb, the airplane is being supplied bleed air from the low-pressure bleed source, and any fragments from a failed check valve would be carried away from the engine, and into the pneumatic system. At low engine power settings, such as at some cruise conditions and descent, there is insufficient bleed air available from the low-pressure source, and a high-pressure bleed valve automatically opens. The check valve discussed herein is designed to prevent this high pressure air from re-entering the engine through the low-pressure port. If the check valve should fail in this situation, valve fragments would be swept into the engine, or, if the valve had failed earlier in the flight, high-pressure bleed air would not be prevented from re-entering the engine. This could result in a compressor stall or other engine abnormalities.

On January 17, 1986, The Boeing Company issued Service Bulletin 767–36–0017, which describes inspection and repair procedures applicable to the subject valve.

Terminating action for this AD, which will require a design change to the valve, has not been identified at this time.

Since this condition is likely to exist or develop on other airplanes of this model, the FAA has determined that an AD is necessary which requires inspection, and, as necessary, repair or replacement of all pneumatic system 8th stage check valves in accordance with the service bulletin previously mentioned.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directives Rules Docket No. 86–NM–14–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. All communications received before the closing date will be considered by the Administrator, and the AD may be changed in light of the comments received.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 airplanes, certificated in any category. Compliance is required as stated below. To preclude engine or pneumatic system damage caused by the failure of the pneumatic system 8th stage check valve, Hamilton Standard Part Number 773856–3, accomplish the following, unless already accomplished:

A. Within 500 hours time in service after the effective date of this AD, inspect the pneumatic system 8th stage check valve, Hamilton Standard Part Number 773856–3, in accordance with Boeing Service Bulletin 767–36–0017, dated January 17, 1986, or later FAA-approved revisions. If the valve contains any visible cracks, or exceeds the allowable wear limits specified in the reference service bulletin, repair the valve in accordance with the referenced service bulletin, or replace the valve with a servicable valve before further flight. Valves not installed on an airplane must be inspected prior to their installation.

B. Repeat the inspection procedures in paragraph A., above, at intervals not to exceed 2,000 hours time in service.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this AD who have not already received copies of the Service Bulletin cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 1, 1986.

Issued in Seattle, Washington, on March 7, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86–5570 Filed 3–13–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 24935; Amdt. No. 1316]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase:

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription:

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number. This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Aviation safety, Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on March 7, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 8 May 1986

Camden, AR—Harrell Field, VOR/DME RWY 18, Amdt. 3, Cancelled
Hot Springs—AR, Memorial Field, VOR-1 RWY 5, Amdt. 14
Hot Springs—AR, Memorial Field, VOR-2 RWY 5, Amdt. 2
Hot Springs—AR, Memorial Field, ILS RWY 5, Amdt. 11
Kahului, HI—Kahului, VOR/DME or TACAN RWY 20, Amdt. 5
Kahului, HI—Kahului, VOR/DME or TACAN-A, Amdt. 5
Kahului, HI—Kahului, LOC/DME (BC) RWY 20, Amdt. 9
Connersville, IN—Mettel Field, VOR/DME-A, Amdt. 5
Connersville, IN—Mettel Field, NDB RWY 18, Amdt. 9
Connersville, IN—Mettel Field, RNAV RWY 18, Amdt. 5
New Castle, IN—New Castle-Henry County Muni., NDB RWY 9, Amdt. 4
New Castle, IN—New Castle-Henry County Muni., NDB RWY 27, Amdt. 4
Richmond, IN—Richmond Muni, VOR RWY 6, Amdt. 9
Richmond, IN—Richmond Muni, VOR RWY 24, Amdt. 9
Winchester, IN—Randolph County, VOR-A, Amdt. 7
Winchester, IN—Randolph County, NDB RWY 25, Amdt. 3
Davenport, IA—Davenport Muni, NDB RWY 3, Amdt. 13, Cancelled
Hastings, MI—Hastings, VOR RWY 12, Amdt. 7
Houghton Lake, MI—Roscommon County, VOR RWY 27, Orig.
Sidney, MT—Sidney-Richland Muni, NDB RWY 1, Amdt. 1
Sidney, MT—Sidney-Richland Muni, NDB RWY 19, Amdt. 2
Farmington, NM—Four Corners Regional, VOR/DME RWY 7, Amdt. 2
Reno, NV—Reno Cannon Intl, VOR/DME RWY 34L, Orig.
Dayton, OH—Dayton General Arpt South, VOR RWY 20, Amdt. 7
Dayton, OH—Dayton General Arpt South, VOR A, Amdt. 11
Dayton, OH—Dayton General Arpt South, NDB RWY 9, Amdt. 5
Dayton, OH—James Cox Dayton Intl, NDB RWY 6R, Amdt. 5
Dayton, OH—James Cox Dayton Intl, RNAV RWY 6R, Amdt. 6
Harrison, OH—Harrison, VOR RWY 18, Amdt. 1
Lebanon, OH—Lebanon-Warren County, NDB-A, Amdt. 3
Brookings, SD—Brookings Muni, VOR RWY 12, Amdt. 7
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 5
Houston, TX—Houston-Hull Field, LOC RWY 35, Amdt. 1, Cancelled
Houston, TX—Houston-Hull Field, ILS RWY 35, Orig
Killeen, TX—Killeen Muni, VOR-A, Amdt. 1
Appleton, WI—Outagamie County, VOR/DME RWY 3, Amdt. 3
Appleton, WI—Outagamie County, LOC BC RWY 21, Amdt. 4
Appleton, WI—Outagamie County, NDB RWY 3, Amdt. 10
Appleton, WI—Outagamie County, NDB RWY 11, Amdt. 3
Appleton, WI—Outagamie County, NDB RWY 29, Amdt. 3
Appleton, WI—Outagamie County, ILS RWY 3, Amdt. 12
Appleton, WI—Outagamie County, RNAV RWY 29, Amdt. 3
Delavan, WI—Lake Lawn, NDB RWY 18, Amdt. 2
Manitowoc, WI—Manitowoc County, VOR RWY 35, Amdt. 10
Oconto, WI—Oconto Muni, NDB RWY 11, Amdt. 4

. . . Effective 10 April 1986

Butler, AL—Butler-Choctaw County, NDB RWY 11, Amdt. 1
Key West, FL—Key West Intl, RADAR-1, Amdt. 2
Miami, FL—Miami Intl, RADAR-1, Amdt. 21, Cancelled
Monroe, GA—Monroe-Walton County, NDB RWY 3, Amdt. 1
Thomasville, GA—Thomasville Muni, VOR/RWY 22, Amdt. 10
Thomasville, GA—Thomasville Muni, VOR/DME RWY 22, Amdt. 4
Thomasville, GA—Thomasville Muni, LOC RWY 22, Amdt. 2
Thomasville, GA—Thomasville Muni, NDB RWY 22, Amdt. 2
Thomasville, GA—Thomasville Muni, RNAV RWY 32, Amdt. 3
Winder, GA—Winder, LOC RWY 31, Amdt. 7
Winder, GA—Winder, NDB RWY, Amdt. 7
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR RWY 7, Amdt. 2, Cancelled
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR/DME RWY 7, Amdt. 32, Cancelled
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR A, Orig
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR/DME-B, Orig
Baton Rouge, LA—Baton Rouge Metropolitan, Ryan Field, LOC BC RWY 4, Orig.
Houlton, ME—Houlton Intl, VOR RWY 5, Amdt. 8
Baltimore, MD—Baltimore-Washington Intl, RNAV RWY 22, Amdt. 6
Oakland, MD—Garrett County, VOR RWY 26, Amdt. 3
Fayetteville, NC—Fayetteville Muni (Grannis Fld), VOR RWY 4, Amdt. 15
Fayetteville, NC—Fayetteville Muni (Grannis Fld), VOR RWY 22, Amdt. 4
Fayetteville, NC—Fayetteville Muni (Grannis Fld), VOR RWY 28, Amdt. 6
Fayetteville, NC—Fayetteville Muni (Grannis Fld), LOC BC RWY 22, Amdt. 5
Fayetteville, NC—Fayetteville Muni (Grannis Fld), NDB RWY 4, Amdt. 14
Fayetteville, NC—Fayetteville Muni (Grannis Fld), ILS RWY 4, Amdt. 14
Fayetteville, NC—Fayetteville Muni (Grannis Fld), RADAR-1, Amdt. 4
Sanford, NC—Sanford-Lee County Brick Field, NDB RWY 3, Orig.
West Jefferson, NC—Ashe County, NDB RWY 27, Admt. 1
Mandan, ND—Mandan Muni, RADAR-1, Amdt. 1
Beaufort, SC—Beaufort County, RADAR-1, Amdt. 1
Laredo, TX—Laredo Intl, LOC BC RWY 35L, Orig., Cancelled

. . . Effective 20 February 1986

Russellville, AR—Russellville Muni, NDB-A, Amdt. 3

[FR Doc. 86-5572 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22979; File No. S7-36-84]

Exemption of Certain Direct Participation Program Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 3a12-9 under the Securities Exchange Act of 1934 ("Exchange Act"). The Rule exempts the securities of certain direct participation programs from the "arranging" provisions of sections 7(c) and 11(d)(1) of the Exchange Act. The Rule will thus allow broker-dealers to participate in public offerings of the securities of direct participation programs with mandatory deferred payments, provided that certain conditions are met. The Commission does not believe that public offerings which meet the requirements of the Rule present the potential for abuse which sections 7(c) and 11(d)(1) were designed to prevent.

EFFECTIVE DATE: April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Esq., (202) 272-2848; Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of Rule 3a12-9 (17 CFR 240.3a12-9) under the Exchange Act.[1] The Rule was published for comment in November, 1984.[2] Pursuant to section 3(a)(12) of the Exchange Act, the Rule provides that interests in certain direct participation programs[3] are exempted securities for purposes of the arranging for credit provisions of sections 7(c) and 11(d)(1) of the Exchange Act.[4] The Rule

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[1] 15 U.S.C. 78a *et. seq.*

[2] Securities Exchange Act Release No. 21495 (November 16, 1984), 49 FR 46556 (November 27, 1984).

[3] As defined more fully in the Rule, direct participation programs are programs which provide for flow-through tax consequences to their investors such as limited partnerships or some investment contract securities. It is anticipated that such programs may include oil and gas, real estate, agricultural, cattle breeding, and equipment leasing programs.

[4] The Rule does not provide an exemption from the prohibition against the direct extension of credit by the broker-dealer, nor does it permit the broker-dealer to arrange for the extension of credit beyond the deferred payment itself.

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will thus permit broker-dealers to participate in public offerings of securities of direct participation programs that provide for mandatory payments on a deferred basis,[5] provided that certain conditions are met. Specifically: (1) The securities must be registered under the Securities Act of 1933 ("1933 Act") or be offered exclusively on an intrastate basis in accordance with section 3(a)(11) of that Act, (2) the mandatory deferred payments must bear a reasonable relationship to the capital needs and program objectives describes in a business development plan, (3) a minimum of 50 percent of the purchase price of the program securities must be paid by the investor at the time the securities are sold; and (4) the total purchase price of a program security must be paid within three years in the case of specified property programs and two years in the case of non-specified property programs.

II. Background

Since 1972, Regulation T,[6] promulgated by the Board of Governors of the Federal Reserve System ("Board") under section 7 of the Exchange Act, and section 11(d)(1) of the Exchange Act,[7] have been interpreted to prohibit broker-dealers from participating in public offerings of securities of direct participation programs with mandatory installment or deferred payment features.[8] Sales of program securities with deferred payment features have been permissible, however, in private placements.[9] An effect of these prohibitions has been to force issuers to either eliminate deferred payments altogether in public offerings, use private placements for sales of interests in direct participation programs with mandatory installment payment features, or to make public offerings with voluntary installment payments.[10]

In 1972, shortly after the Board's staff indicated that Regulation T was applicable to public offerings of direct participation programs with installment features, the Commission's Real Estate Advisory Committee, composed of members of the real estate syndication industry and Commission staff, issued a report based upon a comprehensive review of the disclosure procedures and policy objectives in the area of real estate securities ("REAC Report"). Among the recommendations contained in the REAC Report was that the Commission use its rulemaking authority to exempt from the requirements of Regulation T interests in real estate limited partnerships where deferred payments "are made on a schedule based on anticipated need as is set forth in the registration statement." [11] More recently, in 1983, the National Association of Securities Dealers, Inc. ("NASD") petitioned the staff of the Board to provide relief in this area.[12] The NASD argued in its request that relief was appropriate since, among other things, the concerns which led Congress to adopt section 7(c) are not present in the context of deferred sales of direct participation programs. In addition, the NASD noted that regulatory oversight of the programs by the states, the NASD, and the federal government has increased substantially over the past decade.

The NASD suggested that sales of direct participation program interests on a deferred payment basis should be entirely exempt from the credit restrictions. Alternatively, the NASD suggested several conditions that could apply to such sales. After extensive consultation between the staff of the Board and the Commission's staff, it appeared that the most efficient way to expose the issue for public comment was for the Commission to propose a rule pursuant to its authority under section 3(a)(12) of the Exchange Act, which allows the Commission to define exempted securities.[13]

III. Determination To Adopt Rule 3a12–9

In response to the release proposing Rule 3a12–9, the Commission received letters from 125 commentators. The comment letters reflected a broad range of interests within the securities industry and were evenly divided in support of and opposition to adoption of the proposed Rule.[14] After evaluating the comment letters, the Commission has determined to adopt Rule 3a12–9, incorporating a number of changes in the Rule as a result of suggestions made in the comment letters. The Commission believes that permitting program interests to be sold on a deferred payment basis, so that payments by investors to a program can be coordinated to match the program's capital needs, will produce economic benefits to investors and program sponsors which justify adoption of the Rule. Nevertheless, the Commission also believes that the imposition of specific conditions in connection with sales of program interests with deferred payments is necessary to preserve investor protection.

Commentators noted that under the previous credit restrictions applied to public offerings of direct participation programs, investors were forced to make cash contributions at the outset of the program, even though a considerable portion of the funds might remain idle until used by the program, perhaps a significant period of time following termination of the offering. For example, where projects are completed over a

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[5] For some purposes a distinction may be drawn by state regulators between the terms "installment payments" and "deferred payments." The latter, which are intended to be encompassed by Rule 3a12–9, must bear a reasonable relationship to the program's cash needs and business objectives, and are not merely an optional method of financing the purchase of program interests over a period of time. Nevertheless, these two terms, along with the term "staged payments," may in some instances be used interchangeably for purposes of this release.

[6] 12 CFR Part 220.

[7] Section 11(d)(1) of the Exchange Act generally prohibits a broker-dealer who participates in a distribution of securities from extending or arranging for credit during the first 30 days following termination of the distribution.

[8] In March of 1972, the Board concluded that the sale by a broker-dealer of a publicly offered tax shelter program with installment features constitutes an "arranging" for the extension of credit in violation of Regulation T (12 CFR 220.124). Subsequently, the Board adopted an "economic penalty" test in determining whether the likelihood of an exercise of a warrant was so great as to make it equivalent to an installment purchase. Securities Credit Transactions Handbook section 5–560.31 (Board Ruling of October 30, 1973). *See also, Id. at* section 5–605.31 (Staff Op. September 30, 1983).

[9] In July of 1972, the Board's staff indicated that the prohibition against the use of installment payments under Regulation T set forth in its March interpretation related only to publicly offered programs which were not exempt from registration with the Commission. Securities Credit Transaction Handbook, section 5–551. In 1975, the Board amended Regulation T to except from the arranging prohibition those private offerings exempt from registration with the Commission pursuant to section 4(2) of the 1933 Act. *See*, 12 CFR 220.7(a). Because the prohibitions of section 11(d)(1) of the Exchange Act would have rendered an exemption for intrastate offerings ineffective, the staffs of the Board and the Commission concluded that an express exemption from Regulation T for intrastate offerings was inappropriate.

[10] Public offerings with deferred payment features have been conducted using so-called "toothless notes" which do not involve an economic penalty to the investors for failure to pay subsequent installations and therefore are permissible under Regulation T.

[11] *Report of the Real Estate Advisory Committee to the Securities and Exchange Commission*, at 66 (October 12, 1972.

[12] *See*, Letter dated April 26, 1983 to Robert S. Plotkin, Assistant Director of the Board, from Frank J. Wilson, Executive Vice President, NASD (publicly available in File No. S7–36–84).

[13] Section 3(a)(12) defines "exempted securities' to include such securities: "as the Commission may, by such rules and regulations as its deems consistent with the public interest and the protection of investors, either unconditionally or upon [specified terms and conditions or for stated periods, exempt from the operation of any [one] or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

[14] A summary of the comments prepared by the Commission's staff is available for public inspection and copying in File No. S7–36–84.

period of time in identifiable stages, the program may not need investor funds to make payments until work has been completed on a particular industry stage. In such cases, all the investor's money is at risk, while the program may hold unneeded funds providing the investor with either no return, or a return at a far lower rate than he or she might have received if allowed to make alternative investments until the program had an actual need for funds.

Commentators also pointed out that the Rule will allow program sponsors to access new sources of capital. Because programs with staged payments have only been available in private offerings, many investors, for whom investments in such programs would otherwise be suitable, were denied the opportunity to participate. Commentators argued that by permitting public offerings of direct participation programs with deferred payment features, the Rule will provide investors with new investment alternatives and, at the same time, facilitate the formation of programs with broader capital bases. The Commission believes that the Rule will reduce the current constraints on the formation of capital and eliminate the misallocation of investor resources without compromising investor protection or contravening the intent of Congress in enacting sections 7(c) and 11(d)(1).

The rationale behind the adoption of section 7 of the Exchange Act was to limit the amount of credit which might be devoted to speculation in the securities markets, to maintain the availability of credit for financing local commerce and industry, to prevent undue market volatility by exerting a positive, stabilizing effect on the market and, to protect investors from purchasing on too thin a margin. Section 11(d)(1), in turn, was enacted by Congress to prevent potential conflicts of interest which might arise where underwriters, who are both brokers and dealers, extend credit on new issues of securities.[15]

In deciding whether to adopt Rule 3a12–9, the Commission gave extensive consideration to the impact of the Rule in light of the Congressional philosophy underlying the credit restrictions. Since interests in direct participation programs are generally not traded on exchanges or actively traded in the over-the-counter market, they are considered to be illiquid instruments and therefore afford less opportunities for speculation and related abuses which Congress sought to prevent by enacting the credit restrictions. Although the Commission is aware that an active secondary market has developed for a few direct participation programs, it is not expected that programs with deferred payment features will be active traded. Moreover, limitations have been established in the Rule which are designed to preclude those direct participation programs with deferred payment features which are actively traded from taken advantage of the Rule's exemptive provisions.

Some commentators suggested that allowing direct participation programs with deferred payments to be sold through public offerings might lead to instances of broker-dealer overreaching. Many of the same commentators also forecast the possibility of widespread defaults on deferred payments by investors in public offerings who lacked the financial capacity to fulfill their commitments. By permitting programs with staged payments to be publicly offered, the Commission believes that Rule 3a12–9 will enhance investor protection.

Public offerings of direct participation program securities are subject to many regulatory standards imposed by the states and the NASD which are not directly applicable to most private offerings. For example, Appendix F to the NASD's Rules of Fair Practice [16] imposes additional regulation on public offerings direct participation programs in areas such as investor suitability, due diligence by members, the accuracy and adequacy of disclosure and the amount and form of underwriting compensation. In addition, separate state regulatory guidelines for the offering of direct participation programs in real estate, oil and gas, and equipment leasing have been adopted by the North American Securities Administrators Association, Inc. ("NASAA"), a voluntary organization comprised of state securities regulatory agencies. The NASAA guidelines, which are followed by many states and apply primarily to public offerings, establish standards regulating program sponsors, impose investor suitability requirements, and require that substantive features designed to protect investors are included in the partnership agreement.

In the Commission's view the provisions of the Rule, coupled with state laws, NASD regulations, and the antifraud provisions under the federal securities laws, are sufficient to protect investors against abusive sales practices. In this regard, broker-dealers are remined that Rule 15c2–5 under the Exchange Act requires that they make a suitability determination when arranging for the extension of credit in transactions, such as those under Rule 3a12–9, which are not subject to Regulation T.[17]

The Commission also notes that it has not been presented with any evidence that significant numbers of defaults have occurred in the private offerings of direct participation programs with deferred payment features which are currently being made. Indeed, the Commission understands that the number of defaults by investors in these offerings has been minimal. While the Commission recognizes that most purchases of program interests in private offerings have been accredited investors, the Commission has no basis upon which to conclude that other creditworthy investors, for whom the transactions are otherwise suitable, are more likely to default on their payments. In addition, provisions have been added to the Rule which require a substantial down payment and limit the duration of the pay-in period. These provisions will increase the incentive of the investor to fulfill his obligation to make additional payments and, at the same time, reduce the likelihood that unforeseen events will alter the economic attractiveness of the program or effect the investor's ability to make payments.[18]

Commentators also raised concerns that adoption of Rule 3a12–9 might cause sponsors to offer increased numbers of programs emphasizing tax benefits at the expense of the underlying economics of the programs' operations

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[15] *See*, Securities Exchange Act Release No. 11220, 40 FR 6844 (February 13, 1975) (adopting Rule 3a12–5; 17 CFR 240.3a12–5). *See also, A Review and Evaluation of Federal Margin Regulations, A Study by the Staff of the Board of Governors of the Federal Reserve System* (December 1984).

[16] Appendix F to Art. III, Section 34, NASD Rules of Fair Practice.

[17] Rule 15c2–5 (17 CFR 240.15c2–5) states, among other things, that it shall constitute a "fraudulent, deceptive, or manipulative act or practice," as used in section 15(c)(2) of the Exchange Act, for a broker-dealer to arrange for credit in connection with the sale of any security unless, prior to the purchase, the broker-dealer obtains information concerning the financial situation and needs of the investor and reasonably determines that the entire transaction, including the loan arrangement, is suitable for the investor. Although this rule does not apply to transactions made in accordance with the provisions of Regulation T, it does not distinguish between public and private offerings. Accordingly, Rule 15c2–5's requirements are equally applicable to transactions which are not governed by Regulation T because they are either made pursuant to Rule 3a12–9 or because they are done in private offerings.

[18] Commentators indicated that it is currently the practice in many private offerings using installment payments to obtain insurance to protect the working capital of the program in the event of investor defaults. The Commission anticipates that similar practices will develop among publicly offered programs with staged payment features.

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or perhaps encourage the promotion of abusive tax shelters. Because of this, they estimated that the Rule would adversely affect federal tax revenues. While the admininstration of federal tax policy is not within its jurisdiction, the Commission notes that the Internal Revenue Service has substantial weapons with which to monitor and combat abusive tax shelters.

In sum, the Commission believes that Rule 3a12–9 will provide a useful alternative for capital formation to sponsors that wish to provide for mandatory deferred payments in public offerings of direct participation programs. In addition, investors who previously were denied the opportunity to invest in such offerings will now have access to these programs. Finally, in the Commission's view, the Rule will eliminate the current misallocation of economic resources in a manner consistent with the protection of investors.

IV. Scope of Rule 3a12–9

A. General

As noted earlier, Rule 3a12–9 is designed to permit broker-dealers to participate in public offerings of securities with deferred payment features where the securities satisfy the provisions of the Rule. The Rule does not, however, require that all offerings with deferred payment features be offered on a public basis or that private offerings comply with its provisions. Instead, the Rule is intended to provide both investors and promoters with previously unavailable alternatives.

As adopted, the Rule contains a number of amendments which were made as a result of suggestions received from commentators. Specifically, in response to concerns raised by state regulations, along with members of the syndication industry, the Rule now contains several limitations designed to minimize the possibility of investor defaults and make the extension of credit under the Rule compatible with current regulations applied to margin securities under Regulation T of the Exchange Act. At the same time, however, the Commission has deleted requirements in the proposed Rule which commentators believed would impose additional costs or uncertainty on the part of program sponsors without a corresponding increase in investor protection.

B. Definition of Director Participation Program

As proposed, the Rule applied to direct participation program securities, which were defined as securities created pursuant to a contractual agreement between and among investors, that were not margin securities, and that provided direct flow through tax consequences to investors. The proposed Rule also specifically excluded from the defintion of a direct participation program certain forms of business organizations which might otherwise have fallen within the definition.

The definition of direct participation program as adopted in paragraph (b)(1) of the Rule has been broadened by eliminating the requirement that the program be created through contractual agreements between and among investors, and that tax consequences flow directly to investors. These changes were made, in part, to reflect commentator's observations that certain financing vehicles which fall within the spirit of the Rule, such as some investment contract securities, might be precluded from relying on the Rule if the definition of a direct participation program were adopted as proposed.[19]

Finally, the Commission recognizes that some program securities may have active secondary markets. These securities raise price volatility and supeculation concerns that are central to the policy underlying the Exchange Act's margin regulations. To ensure that actively traded securities are treated in a manner consistent with all other potentially marginable securities, the Commission is modifying the definition of a direct participation program to exclude securities that are listed on exchanges or quoted on NASDAQ during the pay-in period. In addition, the Rule will also not be applicable to securities that will otherwise be actively traded during the pay-in period as a result of the direct or indirect efforts of the issuer, underwriter, or other participants in the initial distribution to facilitate a trading market in the securities. Should active trading markets develop for direct participation program securities, generally, the Commission may re-evaluate the continued appropriateness of the Rule.

C. Deferred Payments Required Pursuant to a Business Development Plan

The proposed Rule contained a requirement that mandatory installment payments bear a direct relationship to the capital needs and program objectives as described in a business development plan disclosed in a registration statement filed with the Commission under the 1933 Act. A business development plan was defined as a specific plan of the program's anticipated economic development and the amount of future capital contributions to be requried at specified times or upon the occurrence of certain events during the life of the program. The Commission received a number of comments concerning the necessity of requiring a business development plan. Several commentators argued that the provision was unnecessary in light of current disclosure requirements for registered securities. In addition, members of the oil and gas industry were divided over whether their programs would be able to provide sufficient information about upcoming capital expenditures to fulfill such a requirement. Along the same lines, commentators questioned whether non-specified property programs, in general, would be able to meet such a standard.

In the Commission's view, disclosure of a business development plan will be a useful supplement to existing disclosure requirements for registered offerings. Since the fundamental purpose of the Rule is to allow sponsors to coordinate payments by investors with the capital needs of the program, the Commission believes that development of such a plan is necessary to establish the business reasons for offering securities with deferred payments. Although the Commission requested comment on the merits of imposing specific disclosure requirements, it has determined not to dictate the content of such disclosure, aside from the general description in the definition of a business development plan.[20]

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[19] To the extent that other financing vehicles fall within the spirit of the Rule, but may not come directly within the definition of a direct participation program, the staff of the Commission's Division of Market Regulation will consider, on a case by case basis, requests for relief in the form of no-action or interpretive letters.

[20] One commentator suggested that the following information should be disclosed in the business development plan: (1) The investment and business objectives of the program; (2) the proposed investments and operations of the program; (3) the amount and timing of the financing for such investments and operations; (4) the relationship of such financing to the investment and business objectives of the program; (5) the relationship of installment payment provisions of the program, to the financing for the program, to the cash needs of the program, to the proposed investments and operations of the program; (6) any alternative or supplementary financing arranged by or available to the program to provide for future uncertainties (including possible inaccuracies in forecasts of financial needs and possible investor defaults); (7) the financial, contractual and tax consequences to the investor and to the program of defaults by investors in making mandatory installment payments. The Commission believes that this type of disclosure may be appropriate in connection with offerings of programs with staged payments.

The Commission has also decided to permit non-specified property programs to take advantage of the Rule's exemptive provisions.[21] Although such programs may not have determined specific property to be purchased with investor funds, it may be possible to reasonably fix the type, timing and necessity of future cash needs. Accordingly, the Commission believes that uniformly excluding non-specified programs from the Rule would not be appropriate.

As proposed, the Rule required that mandatory deferred payments bear a "direct" relationship to the capital needs of the program. Many commentators expressed concern that this requirement may prove difficult to apply. In light of these concerns, the Commission is modifying the requirement to state that installment payments from investors need only be "reasonably" related to the capital needs and business objectives of the program. Nevertheless, the Commission wishes to make clear that programs relying on the Rule must coordinate payments so that they bear a reasonable relationship to substantive program events or capital needs. Programs which intend at the outset of the offering to factor or otherwise assign investor notes in order to raise capital to purchase property or meet program objectives prior to receipt of the deferred payments, will not meet this test and cannot rely on the Rule. The Commission recognizes, however, that investor notes are program assets and it does not intend to unreasonably encumber their use by programs relying on this Rule. Accordingly, investor notes may be used as collateral to secure program debt.

D. Registration of Securities

The proposed Rule would have required that program securities be registered pursuant to the 1933 Act and that the securities remain registered under section 12(g) of the Exchange Act until the total purchase price of the security was paid. Since public intrastate offerings of securities need not be registered with the Commission by virtue of section 3(a)(11) of the 1933 Act,[22] the Commission requested comment on the merits of exempting intrastate offerings from these requirements. As adopted, the Rule continues to require registration under the 1933 Act, with the exception of programs making unregistered public offerings in reliance upon section 3(a)(11) of the 1933 Act. Those programs offered in reliance on section 3(a)(11) will also be able to utilize the Rule provided they meet its other requirements and disclosure of the business development plan is made in the relevant state filing and provided to investors. In deciding to extend the Rule to public intrastate offerings, the Commission weighed heavily the fact that many states' securities regulations require substantially the same disclosure as required on Form S–1 under the 1933 Act and that public intrastate offerings would remain subject to NASD and state guidelines as well as relevant provisions of the federal securities laws.[23]

As a result of comments received, the Commission is eliminating the requirement that all programs utilizing the exemption remain subject to the reporting requirements of section 12(g) of the Exchange Act until the total purchase price of the securities is paid. Commentators suggested that compelling issuers to register under section 12(g), who might not otherwise be required to do so, would increase expenses on the part of some smaller programs and be of little or no additional benefit to investors. They also noted that those offerings registered with the Commission would generally be subject to the annual reporting requirements under section 15(d) of the Exchange Act during the first year of operation. In light of these arguments, as well as the imposition of maximum pay-in periods, and the understanding that annual or periodic disclosure is currently required of publicly offered programs under many states' securities laws, the Commission has decided to remove the provision that programs remain subject to the reporting requirements under Section 12(g) as a prerequisite for qualification under the Rule. Nevertheless, issuers relying on the Rules should be aware that they are not relieved of the responsibility for complying with reporting obligations that may otherwise exist.

E. Maximum Pay-In Period; Required Down Payment

In the proposing release, the Commission requested comment on whether the Rule should specify an outside time limit by which installation payments must be made. In addition, the Commission inquired whether different maximum pay-in periods should be imposed on specified and non-specified property programs. The proposing release noted that the NASD had previously suggested that the total purchase price of a program interest might be required to be discharged in a period of three years from the date the investor is admitted as a limited partner in a non-specified property program or five years in a specified property program.

The Commission believes that investor protection will be increased, while continuing to provide issuers and investors with substantial flexibility, by limiting the amount of time over which the deferred payments must be made. As adopted, the Rule provides that the maximum period over which deferred payments may be made is two years for non-specified property programs and three years for specified property programs. Although commentators suggested a variety of maximum pay-in periods, the Commission anticipates that the time periods incorporated in the Rule should satisfy the business needs of most programs and at the same time reduce the possibility that either the investor or program will experience financial adversities during the pay-in period. A distinction has also been drawn between specified and non-specified programs, in part, to reflect the greater economic risks inherent in non-specified programs. Further, time periods will be measured from the earlier of the completion of the offering or one year from the effective date of the offering, rather than the date the investor is included in the program as suggested in the proposing release.[24] This latter modification was made to avoid administrative problems associated with multiple admission dates for investors which might have

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[21] For purposes of the Rule, a specified property program is defined as a program in which at the time of securities registration, 75 percent of the amount of money available for investment is committed to specific program expenditures. A non-specified property program would be one in which less than 75 percent of the money available for investment has been so committed. Examples of specifically identifiable program expenditures would include the purchase of a particular parcel of real property or type of computer equipment. Specifically identifiable program expenditures would not include expenditures committed to a broad category of equipment such as "transportation equipment," or to other than specific parcels of real property.

[22] Rule 147 under the 1933 Act (17 CFR 230.147) provides a non-exclusive "safe harbor" from securities registration for intrastate offerings that meet its requirements.

[23] Outside of the context of the Rule, the Commission continues to believe that section 11(d)(1) prohibits a person who is both a broker and a dealer from extending or arranging for the extension of credit in the distribution of a new issue of securities offered on an intrastate basis.

[24] The effective date of the offering for purposes of the Rule will generally be the date the registration statement is declared effective by the Commission. Where offerings are conducted in reliance upon the intrastate exemption under section 3(a)(11) of the 1933 Act, the effective date will be the date upon which the offering is approved by state securities administrators.

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existed under the proposed method for calculating time periods.

In addition to imposing maximum time periods over which installment payments must be made, the Rule requires a minimum down payment of 50 percent of the purchase price of the program security. By requiring a substantial down payment, the Commission expects to alleviate many of the concerns raised by commentators that excessive leveraging of program securities might result in customer sales practice abuses and substantial defaults.[25] It should be noted, however, that the Rule now requires payment of the initial portion of the purchase price to be made at the time of sale, rather than over the course of twelve months as suggested by the NASD.

The Commission recognizes that the availability of staged payments for public offerings of direct participation programs may have a substantial impact on the structure and investor population of those markets. Therefore, the Commission believes that initially a cautious approach including limited pay-in periods and minimum down payments is advisable. After the Commission has had an opportunity to monitor the effects of the Rule, it anticipates reevaluating, in conjunction with state securities regulators, the limitations presently contained in the Rule.

V. Contingency Offerings

Since securities of direct participation programs are frequently offered on an "all or none" or "part or none" basis, the Commission solicited comments on the application of Rules 10b–9 and 15c2–4 of the Exchange Act [26] to public offerings made in reliance on rule 3a12–9. Rule 10b–9 requires specificity in the terms of contingency offerings. In other words, a specified amount of securities ("specified sales level") must be sold at a specified price within a specified time, and the total amount due to the seller (*i.e.*, the issuer) must be received by it by a specified date. Moreover, Rule 10b–9 also requires that, if the contingencies are not satisfied fully by the specified date, "all or a specified amount" of the consideration paid must be promptly refunded to the purchaser. Rule 15c2–4 addresses the handling of investor funds by broker-dealers in contingency offerings and provides that, prior to the satisfaction of all contingencies, any consideration received by broker-dealers from investors must either be promptly deposited by the broker-dealer in a separate bank account as agent or trustee for the persons who have the beneficial interests therein, or promptly transmitted to a bank which has agreed in writing to hold all such consideration in escrow for the persons who have the beneficial interests therein.

After considering the views of the commentators, the Commission believes that a security offered on an "all or none" or "part or none" basis pursuant to Rule 3a12–9 is "sold" for purposes of Rule 10b–9 when the issure or a broker-dealer participating in the offering receives the consideration specified by the terms of the offering. The specified consideration would consist of the 50 percent down payment and the documentation reflecting the contractual obligation of the investor to make mandatory installment payments. Rule 10b–9 would be satisfied, and the consideration may be released to the issuer, only where: (1) The specified sales level is achieved; (2) with respect to the sale of each security counted towards the specified sales level, the 50 percent down payment is fully paid;[27] and (3) the required documentation reflecting the installment payment obligation comports with the requirements of the offering material. Any consideration received by a broker-dealer in a Rule 3a12–9 offering prior to satisfaction of the contingencies must be deposited or transmitted in compliance with Rule 15c2–4.

VI. Coordination With State Securities Regulators

As noted earlier, the Commission's decision to adopt Rule 3a12–9 at this time is based, in part, upon the increased quality of state securities regulations which will be applicable to many of the offerings able to utilize the Rule. In drafting the final version of the Rule, the Commission has sought to minimize some of the conflicts between the Rule and the NASAA guidelines for certain direct participation programs which are applied by many states. However, the Commission recognizes that conflicts do exist.

The Commission wishes to emphasize that Rule 3a12–9 is an exemptive rule under the federal securities laws only and is not intended to pre-empt state securities laws. Accordingly, those securities which qualify under the Rule to be deemed exempted securities for purposes of the arranging for credit provisions of sections 7(c) and 11(d)(1) of the Exchange Act must also comply with applicable state securities laws. The Commission is hopeful that the additional investor safeguards which have been incorporated in the Rule will facilitate complementary amendments to present state securities regulations. Staff of the Commission's Division of Market Regulation will be working with members of NASAA in an effort to resolve conflicts.

VII. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Exchange Act [28] requires the Commission, in adopting rules under that Act, to consider the anticompetitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered proposed Rule 3a12–9 in light of the standards cited in section 23(a)(2) and believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the Act. Indeed, the Commission believes that the Rule will enhance competition by increasing issuers' flexibility in constructing and offering direct participation programs to suitable investors.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) interested persons were given an opportunity to submit written views on proposed Rule 3a12–9. After consideration of the relevant matters, the Rule is being adopted substantially as proposed, but with certain changes made in response to suggestions of commentators. In response to comments received, the requirement in the proposed Rule that all securities issued in reliance on the Rule remain subject to the reporting requirements of section 12(g) of the Exchange Act has been eliminated. In addition, the Rule's coverage has been expanded to include securities offered on an intrastate basis which are registered with state securities administrators. Provisions have also been added to the Rule requiring a minimum down payment and limiting the amount of time over which deferred payments may be made.

Since Rule 3a12–9 is exemptive in nature, pursuant to section 553(d) of the Administrative Procedure Act, [5 U.S.C. 553(d)] it may become effective immediately upon publication in the **Federal Register**. However, in recognition of the fact that state securities administrators may wish some time to study the Rule, the Commission decided to delay its effectiveness for 30 days following publication in the **Federal Register**.

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[25] This portion of the Rule is intended to be in parity with the margin requirements under Regulation T. If those requirements change, the Commission may wish to reexamine the minimum down payment requirement of the Rule in light of those changes.

[26] 17 CFR 240.10b–9 and 240.15c2–4.

[27] It should be noted that the down payment would be considered to be fully paid only upon the receipt of cleared funds.

[28] 15 U.S.C. 78w(a)(2).

VIII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis for Rule 3a12–9 in accordance with 5 U.S.C. 603. The Analysis notes that Rule 3a12–9 is designed to allow programs, which do not need all investors funds at the outset, to match investor payments for program securities sold in public offerings with the actual capital needs of the program. Programs with staged payment features are currently permitted only in private offerings. The Analysis indicates that Rule 3a12–9 will provide promoters with alternative means of raising capital and will give investors new investment choices, without compromising investor protection. No commentators specifically referred to the Initial Regulatory Flexibility Analysis. However, the Analysis notes the Commission has deleted certain requirements in the proposed Rule which commentators believed would impose additional costs or uncertainty on the part of program sponsors without a corresponding increase in investor protection.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Edward L. Pittman, Esq., Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 (202) 272–2848.

IX. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Exchange Act, 15 U.S.C. 78a *et. seq.*, and particularly sections 3(a)(12), 7(c), 11(d)(1) and 23 [15 U.S.C. 78c(a)(12), 78g, 78k and 78w], hereby amends Chapter II, Title 17 of the Code of Federal Regulations by adding § 240.3a12–9 thereto.

List of Subjects in 17 CFR Part 240

Brokers, Credit, Securities.

Text of Rule 3a12–9

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation: (Citation before * * * indicates general rulemaking authority)

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w). * * * § 240.3a12–9 also issued under secs. 3(a)(12), 7(c), 11(d)(1), 15 U.S.C. 78c(a)(12), 78g(c), 78k(d)(1)).

2. Section 240.3a12–9 is added to read as follows:

§ 240.3a12–9 Exemption of certain direct participation program securities from the arranging provisions of sections 7(c) and 11(d)(1).

(a) Direct participation program securities sold on a basis whereby the purchase price is paid to the issuer in one or more mandatory deferred payments shall be deemed to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act, provided that:

(1) The securities are registered under the Securities Act of 1933 or are sold or offered exclusively on an intrastate basis in reliance upon section 3(a)(11) of that Act;

(2) The mandatory deferred payments bear a reasonable relationship to the capital needs and program objectives described in a business development plan disclosed to investors in a registration statement filed with the Commission under the Securities Act of 1933 or, where no registration statement is required to be filed with the Commission, as part of a statement filed with the relevant state securities administrator;

(3) Not less than 50 percent of the purchase price of the direct participation program security is paid by the investor at the time of sale;

(4) The total purchase price of the direct participation program security is due within three years in specified property programs or two years in non-specified property programs. Such pay-in periods are to be measured from the earlier of the completion of the offering or one year following the effective date of the offering.

(b) For purposes of this Rule:

(1) "Direct participation program" shall mean a program financed through the sale of securities, other than securities that are listed on an exchange, quoted on NASDAQ, or will otherwise be actively traded during the pay-in period as a result of efforts by the issuer, underwriter, or other participants in the initial distribution of such securities, that provides for flow-through tax consequences to its investors; *Provided, however,* that the term "direct participation program" does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code ("Code"), tax shelter annuities under section 403(b) of the Code, individual retirement plans under section 408 of the Code, and any issuer, including a separate account, that is registered under the Investment Company Act of 1940.

(2) "Business development plan" shall mean a specific plan describing the program's anticipated economic development and the amounts of future capital contributions, in the form of mandatory deferred payments, to be required at specified times or upon the occurrence of certain events.

(3) "Specified property program" shall mean a direct participation program in which, at the date of effectiveness, more than 75 percent of the net proceeds from the sale of program securities are committed to specific purchases or expenditures. "Non-specified property program" shall mean any other direct participation program.

By the Commission.

Dated: March 7, 1986.

John Wheeler,
Secretary.

[FR Doc. 86–5623 Filed 3–13–86; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34–22975; File No. S7–40–85]

Short Sales of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rule amendments.

SUMMARY: In connection with extending unlisted trading privileges to certain over-the-counter stocks and permitting certain listed securities to be concurrently designated National Market System Securities, the Commission is adopting amendments to its short sale rule that exclude from application of the rule transactions in National Market System Designated Securities that are traded on an exchange on a listed or unlisted trading privileges basis.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272–2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Rule 10a–1 ("short sale rule" or "Rule")[1] under the Securities Exchange

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[1] 17 CFR 240.10a–1.

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Act of 1934 ("Act")[2] prohibits execution of short sales under certain conditions. The Rule applies, among other things, to securities registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange for which last sale information is reported pursuant to an "effective transaction reporting plan."[3] As such, Rule 10a-1 applies to listed securities traded on an exchange or in the third market[4] and reported through the consolidated transaction reporting system, but not to purely over-the-counter ("OTC") securities.

On September 16, 1985, the Commission issued two releases that, without further action, would subject transactions in two groups of OTC securities designated as National Market System Securities ("NMS Securities" or "NMS Designated Securities")[5] to the Rule for the first time. First, the Commission announced the terms and conditions for exchanges to commence trading NMS Securities on a UTP basis.[6] Second, the Commission adopted amendments to the NMS Designated Securities Rule to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities.[7] Because last sale information on NMS Securities is reported pursuant to an "effective transaction reporting plan," transactions in NMS Designated Securities that are traded on an exchange on the basis of either UTP or a concurrent listing automatically would be subject to short sale regulation, whether those transactions occur on an exchange or OTC.

The Commission, however, has not made a determination on the extent to which Rule 10a-1 should apply to NMS Designated Securities. On September 16, 1985, therefore, the Commission proposed amendments to Rule 10a-1 to exclude transactions in NMS Designated Securities from the Rule until the question of OTC short sale regulation is resolved.[8] The Commission today adopts the amendments to the short sale rule as proposed.

II. Background

Section 10(a) of the Act grants the Commission authority to regulate short sales in securities.[9] Consistent with that authority, the Commission in 1938 adopted Rule 10a-1 under the Act,[10] which is generally designed to prohibit short selling from accelerating a declining market.[11] It applies, among other things, to securities registered on or admitted to UTP on a national securities exchange for which last sale information is reported pursuant to an "effective transaction reporting plant."[12] The short sale rule uses a tick test that compares the price of a proposed short sale to immediately preceding transactions to determine its permissibility: short sales may be effected only on a plus tick (*i.e.*, at a price above the price at which the immediately preceding last sale was effected) or a zero-plus tick (*i.e.*, at a price equal to the last sale if the last preceding transaction at a different price was at a lower price). The base price is determined by reference to the last sale either in the consolidated transaction reporting system or in a particular marketplace.[13]

Prior to 1975, Rule 10a-1 covered short sales in reported listed securities effected only on exchanges. OTC trading in reported securities was not subject to any short selling restrictions, in part because last sale reports were not available for OTC transactions.[14] In connection with the implementation of the CTA Plan in 1974, the Commission extended Rule 10a-1 to third market transactions in listed securities included in the consolidated system.[15]

In adopting the NMS Securities Rule and thereby extending last sale reporting to those solely OTC-traded securities designated as NMS Securities, the Commission specifically sought comment on whether short sale limitations should be extended to NMS Designated Securities.[16] Recognizing that last sale reporting has become an established part of the OTC market, the Commission in a recent release[17] again solicited comment on whether and how short sales in OTC Securities designated as NMS Securities should be regulated.[18]

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[2] 15 U.S.C. 78a *et seq.*

[3] The Commission's transaction reporting rule, Rule 11Aa3-1 under the Act, defines an "effective transaction reporting plan" as a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. 17 CFR 240.11Aa3-1(a)(3). *See also* 17 CFR 240.11Aa3-1(a)(4)-(6). Transaction reports for listed securities from all markets are collected and disseminated in the "consolidated transaction reporting system" pursuant to such a plan administered by the Consolidated Tape Association ("CTA"). The CTA members are the New York ("NYSE"), American ("Amex"), Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers ("NASD"). Transactions in securities either listed on the NYSE and Amex, or listed on a regional stock exchange that substantially meet the NYSE or Amex listing standards, are reported to the CTA.

[4] The third market is a term used to describe over-the-counter transactions in listed securities.

[5] Rule 11Aa2-1 under the Act ("NMS Securities Rule") sets forth the criteria and procedures by which certain OTC securities are designated as NMS Securities. 17 CFR 240.11Aa2-1. *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 ("NMS Amendments Release"); Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("NMS Adoption Release"). The primary effect of designation as an NMS Security is that the security is subject to last sale reporting requirements similar to those applicable to exchange traded securities. Transaction reports are collected and disseminated through the NASD's NASDAQ system pursuant to a transaction reporting plan administered by the NASD. These securities and listed securities included in the consolidated transaction reporting system are "reported securities". *See* 17 CFR 240.11Aa3-1(a)(4).

[6] Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 ("OTC/UTP Release").

[7] Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38615 ("OTC/Listed NMS Securities Release").

[8] *See* Securities Exchange Act Release No. 22414 (September 16, 1985) 50 FR 38671 ("Rule 10a-1 Exclusion Proposal Release"). The Commission has published a release soliciting comment on whether to extend short sale regulation to NMS Securities. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 ("NMS Concept Release"). *See also* Securities Exchange Act Release No. 22507 (October 4, 1985), 50 FR 41907.

[9] 15 U.S.C. 78j.

[10] *See* Securities Exchange Act Release No. 1548 (January 24, 1938) ("Rule 10a-1 Adoption Release"). In addition to Rule 10a-1, the Commission adopted Rule 3b-3 under the Act, which defines the term "short sale" as any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. *See id.*

[11] The objectives of Rule 10a-1 were discussed in the *Special Study of Securities Markets*, which stated that short sale regulation should:

(1) Allow relatively unrestricted short selling in an advancing market;

(2) Prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down;

(3) Prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.

Report of Special Study of Securities Markets of the Securities and Exchange Commission (1963), *reprinted in* H.R. Doc. No. 95, 88th Cong., 1st Sess. 251.

[12] *See supra* note 3.

[13] 17 CFR 240.10a-1(a)(1). The "equalizing exemption" to the Rule, however, allows a market maker (*i.e.*, an exchange specialist, registered exchange market maker, or third market maker) to effect short sales for his own account at a price equal to the last sale price reported in the consolidated system, or to the market makers' most recent published offer, if that offer when published equaled the last sale previously reported. Nonetheless, any exchange by rule may prohibit its registered specialists and registered exchange market makers from availing themselves of this exemption. *See* 17 CFR 240.10a-1(e)(5). NYSE rules, for example, prohibit NYSE specialists from selling short specialty stocks in reliance upon the equalizing exemption. *See* NYSE Rule 440B.

[14] *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442, 25443 ("1975 Rule 10a-1 Amendments Release"). In the absence of publicity concerning OTC short sales (such as that afforded by the consolidated transaction reporting system), there appeared to be little reasons to fear that such sales would have a manipulative or destabilizing impact on the markets. *Id.* at 25443.

[15] The Commission concluded that the publicity provided by the consolidated system for OTC transactions in reported listed securities justified the application of Rule 10a-1. *See* 1975 Rule 10a-1 Amendments Release, *supra* note 14, at 25443.

While that request for comment was still outstanding, the Commission announced the terms and conditions for exchanges to commence trading NMS Designated Securities on a UTP basis[19] and, at the same time, adopted amendments to the NMS Securities Rule to allow non-reported listed securities to be designated as NMS Securities.[20] Recognizing that exchange listing of or UTP in NMS Designated Securities could bring those NMS Designated Securities within the short sale rule for the first time, the Commission solicited comment on whether, in view of its ongoing consideration of NMS Designated Securities short sale regulation, it should suspend the application of Rule 10a-1 to the limited group of NMS Designated Securities subject to concurrent exchange trading.[21]

III. Comments

The Commission received three comments on the proposed amendments, two in favor and one opposed. The National Association of Securities Dealers, Inc. ("NASD") and PaineWebber Group Inc. ("PaineWebber") supported the proposed amendments to the Rule.[22] PaineWebber stated that the Commission should address short sale regulation of NMS Designated Securities on an omnibus basis and, together with the NASD, asserted that subjecting certain NMS Designated Securities to short sale regulation because an exchange sought UTP in those securities would be both inappropriate and create confusion in the market. The NASD also contended that NMS Designated Securities traded on an exchange on a listed or UTP basis apparently did not need short sale regulation because competition between multiple market makers and exchange specialists would insure deep and liquid markets that were not readily susceptible to manipulation. The NASD finally noted that trading in these securities without the application of the Rule would provide valuable empirical data on how the markets operate in a UTP environment without short sale constraints.

The Philadelphia Stock Exchange ("Phlx") opposed the proposed amendments to Rule 10a-1.[23] The Phlx said that the short sale rule should apply to all transactions in exchange-traded NMS Designated Securities whether such transactions occur on an exchange or in the OTC market.[24] The Phlx asserted that Rule 10a-1 has prevented manipulation in listed markets, and would be particularly valuable in an OTC/UTP context because of the lack of intermarket linkages. However, the Phlx stated that, if the Commission decided to adopt the amendments to Rule 10a-1 as proposed, both OTC market makers and exchange specialists in NMS Designated Securities traded on an exchange on a listed or a UTP basis should be exempted from short sale regulation.

IV. Discussion

The Commission has sought public comment on the appropriateness of extending Rule 10a-1 generally to NMS Designated Securities. The Commission has separately proposed these narrow amendments to the short sale rule in recognition that, unless Rule 10a-1 was amended, concurrent exchange trading and NMS designation would result in certain NMS Designated Securities falling under the Rule for the first time. Specifically, once trading in these securities begins in multiple markets pursuant to an "effective transaction reporting plan," persons engaging in transactions in such NMS Designated Securities either on an exchange or OTC would have to comply with short selling regulations.

After considering the comments, the Commission is adopting the amendments to Rule 10a-1 as proposed. The Commission believes that short sale regulation with respect to NMS Designated Securities should be addressed on a generalized basis and not through the automatic application of the Rule as a result of allowing exchanges to trade certain NMS Designated Securities. As discussed previously, the Commission is still studying the broader question whether short sale regulation should apply to some or all NMS Designated Securities. Applying the short sale rule to NMS Designated Securities traded by exchanges would potentially be confusing because, at least initially, only a small number of NMS Designated Securities would be subject to these restrictions.[25] Moreover, these securities would be subject to the Rule even if there was little or no actual exchange trading in these securities.[26]

The amendments to Rule 10a-1 are narrow in scope, and apply only to transactions by OTC market makers and exchange specialists in those NMS Designated Securities that are subject to either UTP or a concurrent exchange listing. The amendments apply to both the exchange and OTC markets so that the existing regulatory treatment of short sales in competing markets will be maintained.

V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act[27] requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has examined the

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[16] NMS Adoption Release, *supra* note 5, at 14001-02. In response to that solicitation, the NASD stated that "short selling regulations prior to and during a distribution of NMS Securities would be appropriate but that it is not necessary, at this time, to impose across-the-board short sale regulations on transactions in NMS Securities." Letter from S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC (July 31, 1981).

[17] *See* NMS Concept Release, supra note 8, at 26587. There were over 1900 NMS Securities as of June 1985, and 2182 as of December 31, 1985.

[18] The extended comment period on this release expired on December 30, 1985. *See* Securities Exchange Act Release No. 22507 (October 4, 1985), 50 FR 41907. The Commission is analyzing the views of commentators.

[19] *See* OTC/UTP Release, *supra* note 6.

[20] *See* OTC/Listed NMS Securities Release, *supra* note 7.

[21] *See* Rule 10a-1 Exclusion Proposal Release, *supra* note 8, at 38672-73.

[22] *See* Letter from Sam Scott Miller, Vice President, General Counsel, and Secretary, PaineWebber, to John Wheeler, Secretary, SEC (January 9, 1986); *See* Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to John Wheeler, Secretary, SEC (October 31, 1985).

[23] *See* Letter from Michael A. Finnegan, Senior Vice President, Phlx, to John Wheeler, Secretary, SEC (November 8, 1985).

[24] The Phlx contended that OTC market makers in NMS Securities subject to UTP, like exchange specialists, should be permitted to avail themselves of the equalizing exemption of Rule 10a-1. For a discussion of the equalizing exemption, see *supra* note 13.

[25] Under the UTP pilot program that will last for one year following the commencement of OTC/UTP trading, each exchange will be able to trade up to 25 NMS Securities on a UTP basis. *See* OTC/UTP Release *supra* note 6, at 38646.

[26] The Commission notes that there are a small number of NMS Securities that currently are traded on an exchange on a listed or UTP basis. The vast preponderance of trading in these issues has occurred in the OTC market rather than on the exchanges. *See Id.*

[27] 15 U.S.C. 78w(a)(2).

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proposed amendments to Rule 10a–1 in light of the standards set forth in section 23(a) and concludes that adoption of these amendments would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission notes that the proposed amendments would exempt both exchange and OTC market participants form the short sale prohibitions that would otherwise govern transactions in NMS Designated Securities that are traded on an exchange on a listed or UTP basis. The amendments would continue in effect the differing treatment of short sales currently in place for securities that are primarily exchange traded and those that are not listed on an exchange. The Commission does not believe, however, that the narrow amendments adopted here would impose any new or different burdens on competition on competing markets or market participants. The Commission, therefore, believes that the proposed amendments would not impose any significant competitive burdens, and that the amendments are consistent with the objectives of section 11A of the Act.[28]

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[29] regarding the amendments to Rule 10a–1. The FRFA indicates that the amendments would exempt from Rule 10a–1 persons engaging in transactions in NMS Designated Securities subject to UTP or to a concurrent exchange listing. The FRFA notes that the principal effect of this exemption would be to relieve exchange specialists, OTC market makers, and other market participants from obligations governing short selling to which they otherwise would be subject. The FRFA states that, because the amendments would exempt persons from regulation, the proposal would not appear to impose significant costs upon those persons affected. The FRFA notes that no commentators specifically referred to the Initial Regulatory Flexibility Analysis in commenting on the amendments or indicated that the amendments might impose any other costs.

A copy of the FRFA may be obtained by contacting Andrew E. Feldman, Esq., (202) 272–2414, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly sections 10(a) and 23(a) thereof, 15 U.S.C. 78j and 78w(a), the Commission is amending § 240.10a–1 in Chapter II to Title 17 of the Code of Federal Regulations.

Text of Amendments to Rule 10a–1

Chapter II, Title 17 of the Code of Federal Regulations is Amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 73–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78o–3); sec. 11A as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1); 15 U.S.C. 78a *et seq.*, and particularly secs. 2, 3, 10(a), 10(b), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), and 78w(a).

2. Section 240.10a–1 is amended by redesignating (a)(1) as (a)(1)(i) and change the existing internal designations to (A) and (B), and adding new (a)(1)(ii) as follows:

§ 240.10a–1 Short sales.

(a) * * *

(1) * * *

(ii) The provisions of paragraph (a)(1)(i) hereof shall not apply to transactions by any person in National Market System Securities as defined in § 240.11Aa2–1 (Rule 11Aa2–1 under the Act).

By the Commission.

John Wheeler,
Secretary.
March 6, 1986.

[FR Doc. 86–5676 Filed 3–13–86; 8:45 am]
BILLING CODE 8010-01-M

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[28] *See, e.g.*, Sections 11A(1)(c)(ii) and 11A(c)(1)(F).

[29] 5 U.S.C. 601 et seq.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM86–6–000]

Construction Work in Progress; Anticompetitive Implications

Issued March 10, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control number.

SUMMARY: On February 27, 1986, the Federal Energy Regulatory Commission issued an interim rule in Docket No. RM86–6–000, 51 FR 7774 (March 6, 1986) establishing interim procedures to be followed concerning requests for construction work in progress in rate base. This notice states the OMB control number for § 35.26 promulgated in this docket.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ellen Brown, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8272.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and the Office of Management and Budget's (OMB) Regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On March 5, 1986, OMB approved the information collection requirements of § 35.26 which were adopted pursuant to Order No. 448, 51 FR 7774 (March 6, 1986) and issued Control Number 19020096 for that section.

Accordingly, Part 389, Chapter I, Title 18, *Code of Federal Regulations*, is amended as set forth below.

PART 389—[AMENDED]

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "35.26" in numerical order in the section column and "0096" in the corresponding position in the OMB Control Number column.

Kenneth F. Plumb,
Secretary.
[FR Doc. 86–5600 Filed 3–13–86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Social Security Benefits and Supplemental Security Income; Payment of Travel Expenses

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations reflect sections 201(j), 1631(h) and 1817(i) of the Social Security Act (the Act) as added by section 310 of Pub. L. 96–265 which became effective June 9, 1980. That law provides permanent authority for the payment by the Secretary of certain travel expenses to (1) individuals who attend medical examinations requested by a State disability determination agency or by the Social Security Administration (SSA) in connection with disability determinations, (2) parties, their representatives, and all reasonably necessary witnesses who attend certain reconsideration interviews in connection with disability claims, and (3) parties, their representatives, and all reasonably necessary witnesses who attend hearings held before an administrative law judge (ALJ).

These regulations also reflect the series of appropriation acts for the Department of Health and Human Services (HHS) which cover the period after September 30, 1981. These laws limit payment of travel expenses in title XVI to cases where travel is more than 75 miles.

EFFECTIVE DATE: These final regulations are effective March 14, 1986, except §§ 404.999(d) and 416.1499 of these regulations which contain information collection requirements that are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have submitted these requirements to OMB for approval and we will place a notice in the **Federal Register** informing the public of OMB's action. In the interim, these requirements are not effective.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Office of Regulations, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7519.

SUPPLEMENTARY INFORMATION: We published these regulations as a Notice of Proposed Rulemaking (NPRM) on January 7, 1986 (51 FR 614), with a 30-day period for public comment. Comments received are discussed below.

The regulations describe the policies and procedures applicable to payment by SSA or the State disability determination agency of travel expenses to claimants, their representatives and reasonably necessary witnesses in certain proceedings. The regulations specify what we mean by "the most economical and expeditious means of transportation appropriate to such person's health condition" and "travel expenses, either on an actual cost or commuted basis." In addition, the regulations specify that travel expenses are payable for travel to undergo medical examinations requested by a State disability determination agency or SSA in connection with disability claims under title II or XVI of the Act, for attendance at title II or XVI disability hearings to reconsider determinations of cessation of disability based on medical factors, and for attendance at title II or XVI hearings on any subject held before an ALJ. Reimbursement for travel to hearings is limited to expenses for travel within the United States (U.S.).

The regulations provide that travel expenses payments made by SSA will be determined by the same rates and conditions that govern travel expenses for Federal employees as authorized by 41 CFR 101–7. The regulations also provide that travel payments made by a State agency will be determined according to the applicable State reimbursement rates and procedures. This follows our established policy under which the States determine rates of payment for medical and other services necessary to make determinations of disability, as well as travel expenses.

Who May Be Reimbursed

In §§ 404.999b and 416.1496 we specify who may be eligible for reimbursement:

(1) We explain that individuals may be reimbursed for travel expenses incurred when we or the State agency request a medical examination (consultative examination, see §§ 404.1517 and 416.917) in connection with a claim for disability benefits.

(2) Section 310 of Pub. L. 96–265 provides for payment of travel expenses for "reconsideration interviews." We interpret the statements of congressional intent in the House of Representatives Conference Report on Pub. L. 96–265 as meaning that these payments are for travel expenses for face-to-face reconsideration interviews before a decisionmaker on medical issues, in the event such a reconsideration procedure should be adopted. H.R. Rep. 944, 96th Cong., 2d Sess., 60 (1980).

Subsequently, sections 4 and 5 of Pub. L. 97–455, enacted on January 12, 1983, established a face-to-face hearing before a decisionmaker at the reconsideration level in title II cases in which the issue is cessation of the disability based on medical factors. Accordingly, we indicated in our regulations on these hearings (which we call disability hearings) that disability beneficiaries, their representatives and all reasonably necessary unsubpoenaed witnesses will be reimbursed for travel to disability hearings. Those regulations were published on January 3, 1986 (51 FR 286). These final regulations remove the provision on travel expenses from the disability hearing regulations, since it is in these regulations and would be merely repetitive.

(3) Claimants, their representatives, and all reasonably necessary unsubpoenaed witnesses may be reimbursed for travel expenses to attend hearings on any title II or XVI issue before an ALJ.

These regulations do not apply to subpoenaed witnesses in either kind of hearing. They are paid the same fees and allowances they would receive if they had been subpoenaed by a Federal district court (§§ 404.916(b)(1), 404.950(d), 416.1416(b)(1), and 416.1450(d)).

Travel Distance

Prior to the enactment of section 310 of Pub. L. 96–265, we limited payment of the claimant's, representative's, or unsubpoenaed witness's travel expenses for title II and title XVI hearings to cases where the distance from the person's residence or office (whichever he or she travels from) to the hearing site was more than 75 miles. This remains our policy for travel expenses for both disability hearings and ALJ hearings. (There is no 75-mile requirement for reimbursement for travel for medical examinations.)

The intent of this policy is to reconcile, as best as possible, the conflicting goals of preventing more than minimal financial hardship to claimants in exercising their appeal rights and of conserving available funds. It is also to avoid handling reimbursement claims that are small in

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comparison to the cost to us of handling them.

The original authority for reimbursing travel expenses was provided each year in the appropriation act for HHS. Upon enactment of section 310 of Pub. L. 96–265 which added sections 201(j), 1631(h), and 1817(i) to the Act, we received permanent authority for payment of these travel expenses.

This law, by itself, provides that in title XVI cases, the Secretary shall pay for travel expenses regardless of the distance traveled. However, the law still gives the Secretary discretionary authority with respect to payment of title II travel costs.

From June 9, 1980 (the effective date of Pub. L. 96–265) to September 30, 1981, our policy was to pay title XVI travel expenses without a distance limitation as directed by this permanent authority. Then, however, Congress limited the requirement in Pub. L. 96–265 by specifying, in a series of appropriation acts effective after September 30, 1981, that travel in title XVI cases must be more than 75 miles before reimbursement can be made.

Our policy, therefore, has been to apply the 75-mile limit in title XVI cases or the time periods specified in these appropriation acts.

The Committee on Ways and Means f the House of Representatives has urged SSA to "re-examine the current requirement that a beneficiary must travel at least 75 miles in order to qualify for travel reimbursement as this standard may be inappropriate in many locations in this country." H.R. Rep. 618, 98th Cong. 2d Sess. 19 (1984). We have examined the policy and continue to believe the requirement is appropriate. Moreover, we are required by the current appropriation act for HHS to continue to apply it in title XVI cases.

In title II cases, on the other hand, since section 201(j) authorizes but does not mandate payment of travel expenses, such payment and any limitation on it is a matter of policy. We think it would be clearly inappropriate to apply a more liberal reimbursement rule in title II cases, in which there is less reason to presume the financial need that can be presumed in title XVI cases.

What Travel Expenses Are Reimbursable

Reimbursement may be made for ordinary as well as unusual costs of travel. In §§ 404.999c and 416.1498, we explain what constitutes ordinary travel expenses and what constitutes unusual travel expenses. We also list the order in which the available modes of transportation will be considered in determining the most economical and expeditious means appropriate to the person's condition of health. These sections also explain (1) when first-class air travel is permitted, (2) that reimbursement rates may vary not only for different modes of transportation, but also depending upon whether we or the State agency makes reimbursement, and (3) what is meant by the individual's condition of health.

If a change in the location of a disability or ALJ hearing is made at the claimant's request from the location SSA or the State agency selected to one farther from the claimant's residence, any additional travel expenses will not be reimbursed. This is because the claimant has had the opportunity to incur lower travel expenses and has chosen the different site presumably for his or her own convenience.

The regulations (§§ 404.903 and 416.1403) also explain that determinations of payment (and amount) or nonpayment of travel expenses incurred are not initial determinations. Therefore, these determinations are not subject to the administrative review process and they are not subject to judicial review.

When and How To Claim Reimbursement

Usually reimbursement is made, upon the traveler's request, by the State agency or by us after the trip. Sections 404.999d and 416.1499 explain the circumstances under which advance payments may be made.

Public Comments

We received 10 letters of comments on the NPRM. The letters generally contained very similar comments, and in summarizing the comments below we combine closely related comments and then give our response.

Comment: Do these regulations apply to travel to ALJ hearings by ALJs, medical advisors, and vocational experts?

Response: No. ALJs are HHS employees, and medical advisors and vocational experts are professionals under contract with SSA to provide expert testimony. They are reimbursed for their travel to hearings under separate existing rules.

Comment: The regulations should provide for notice to claimants (either not later than a month before their travel or when they receive notice of their hearing) of the right to travel reimbursement, the right to advance payment and how to request it, the rules on means of travel and unusual travel costs, and the need to submit receipts. The rules on unusual travel costs should be spelled out so claimants can tell when they would be reimbursable and how much, in the case of meal and lodging costs.

Response: We or the State agency will give every claimant scheduled for a consultative examination, disability hearing, or ALJ hearing information about the right to travel reimbursement, the right to advance payment and how to request it, the rules on means of travel and unusual travel costs, and the need to submit receipts. We have revised the regulations to say so. Claimants will receive the information no later than when they are notified of the examination or hearing.

We will also tell the claimant in the notice we send to call us or the State agency right away if the claimant needs advance payment or more information about what is reimbursable. This gives us or the State agency the opportunity to give each claimant exactly the information he or she needs.

Comment: The regulations should state how long before the trip we will notify the claimant about the availability of advance payment for travel, how long before the trip the claimant must request advance payment in order to get it, and how long we may take after the request to make the advance payment. If a claimant who needs an advance payment in order to travel does not learn of its availability early enough or does not know how early he or she needs to request it, the examination or hearing may have to be postponed until the advance can be paid.

Response: We agree it is important for the claimant to have sufficient notice of the availability of advance payment and to know how early he or she needs to request it, but we do not agree that the three suggested time periods should be stated in the regulation, since conditions and circumstances may change over time. Thus, we think the best way to make sure the claimant and we or the State agency both have enough time is to provide administrative flexibility, so that we or the State agency has sufficient time to process the request with due regard for the time the claimant needs in order to ensure attendance at the examination or hearing.

As mentioned above, the notice sent to the claimant will tell the claimant to call us or the State agency right away if an advance payment is needed. If warranted, of course, rescheduling the examination or hearing is permitted under existing regulations if the claimant needs advance payment and it cannot be provided before the examination or hearing.

Comment: The regulations and the information we give claimants discourage requests for advance payment; they should not, because many claimants cannot afford to make the trip without advance payment.

Response: We have reviewed and revised the regulations to make sure they do not discourage requests for advance payment, and will do the same to our notices to claimants.

Comment: The regulations make it appear that travel by privately owned vehicle (POV) (instead of common carrier) without prior approval could result in denial of any reimbursement at all, and that approval of use of a POV is unlikely. The regulations should be much more liberal or flexible about travel by POV, and should not require prior approval for it, particularly since the regulations say reimbursement for POV travel is limited, in any case, to the cost of the most economical public transportation for the same trip. Specifically, we should make common carriers and POV's equal in the priority listing.

The commenters describe several circumstances in which they believe use of a POV is appropriate. The claimant's physical condition may make use of a common carrier difficult or painful. Common carrier transportation for the trip required may simply be unavailable, may be very roundabout in route, or may be scheduled so infrequently as to compel an overnight stay before the traveler's round trip is completed. Travel by two or more persons (such as claimant, representative, and/or witness) in one POV may well cost less than common carrier.

Response: We have revised the regulations to clarify that—

(a) All of the circumstances identified by the commenters are taken into consideration when we or the State agency determines whether travel by POV is appropriate;

(b) For POV versus common carrier, the listing means only that we or the State agency assumes that common carrier transportation is appropriate until there is some indication otherwise;

(c) When use of a POV is appropriate, advance approval is not required;

(d) When use of a POV is appropriate, reimbursement is not limited to the cost of public transportation; and

(e) When use of a POV is not appropriate, reimbursement is limited to the cost of public transportation; the limit is the total cost of public transportation for however many authorized travelers traveled in the same POV.

Comment: The regulations should provide for reimbursement for use of a taxicab in some circumstances even though the use was neither authorized in advance nor unexpected. For example, a local bus to or from a bus or train depot may be unavailable.

Response: We have revised the regulations to provide for reimbursement of taxicab use (and other unusual travel costs not authorized in advance) if the cost is "unexpected or unavoidable." For a taxicab, what we mean by "unavoidable" would generally be limited to a short ride within a city or town, such as the example in the comment.

Comment: The regulations should provide for reimbursement (as an unusual travel cost, meaning normally subject to prior approval) of a fee the traveler may have to pay someone to drive the traveler to the examination or hearing. For example, common carrier transportation may be unavailable, but the traveler may not own a car or may be unable to drive it, and there may be no family member or friend available to drive the traveler. Paying a driver would cost less than a taxicab or ambulance.

Response: When warranted, reimbursement for a driver's fee would be permissible under the provision for the services of an attendant as an unusual travel cost.

Comment: The requirement to submit receipts for the travel costs for which reimbursement is sought should be waived liberally, because carriers often do not provide receipts. For example, we or the State agency could reimburse at the common carrier rate if the traveler provides no receipt for the more expensive means of travel that was used.

Response: We have not changed the regulations in this regard, because it is important to be able to insist on evidence whenever it seems warranted. However, we or the State agency will enforce the receipt requirement with some flexibility in light of such things as the reasonableness of the amounts claimed and the difficulty of getting receipts.

Comment: The 20 days we allow the traveler (to whom we made an advance payment) for giving us receipts and a list of itemized costs and then for repaying any excess over the approved actual expenses, should be a minimum; that is, the regulations should require State agencies to allow at least 20 days. Otherwise, State agencies may impose unreasonably short time limits.

Response: We believe administrative efficiency for State agencies warrants allowing them, as far as is reasonably practicable, to use the same administrative practices in functions they carry out for us as they use in their other functions. We do not believe that States will impose unreasonably short time limits on their citizens.

Comment: We should reconsider the rule that travel to a hearing is reimbursable only if the one-way distance exceeds 75 miles. The rule imposes hardships on many claimants. We should conduct a study of the cost of modifying the rule. We should ask Congress to omit the distance requirement from our future appropriations acts or to shorten the distance required; if Congress does so, we should change our policy accordingly.

We should interpret the requirement of "travel of more than seventy-five miles" in our current appropriations act as meaning a round trip of 75 miles, or 37½ miles one-way.

Response: The discussion headed "Travel Distance" in the NPRM and repeated earlier in this preamble gives our reasons for believing the 75-mile minimum is appropriate. We estimate the annual cost of eliminating the requirement as approximately $9 million.

The 75-mile minimum as 75 miles one-way has been our policy in title II cases since 1966. When Congress mandated the 75-mile minimum in title XVI cases in each of our appropriations acts effective after September 30, 1981, we believe Congress endorsed the policy as we had been applying it in title II cases for the previous 15 years.

Comment: The regulations should require State agencies to reimburse travel costs at the same rates we use, because there is no assurance that the State rates will be adequate and equitable and because we reimburse the State agencies for what they spend on our behalf.

Response: It has been our consistent policy for many years, reflected in regulations §§ 404.1624 and 416.1024, that "The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability." This policy helps to avoid discrepancies in State payment practices which might cause disruptions in other State operations. We do not believe it is necessary to make an exception for travel reimbursement.

Comment: The regulations should provide some mechanism for appeal of a denial of advance payment, a denial of reimbursement, or the amount of reimbursement. These decisions are important to claimants. An appeals

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mechanism would assure some consistency in the decisions.

Response: We agree that these decisions are important to claimants, but we do not believe an appeals mechanism is warranted. The cases are too few and usually too small to warrant the administrative expense.

Other Changes

The only changes we have made from the NPRM that are not mentioned above are a few minor clarifications.

Effect on Medicare

These rules on travel reimbursement, like Subpart J of Part 404 generally, also apply to persons claiming certain benefits under title XVIII of the Act (Medicare), as provided by 42 CFR 405.701(c). We are adding a reminder of that fact to § 404.900(a). This regulation does not apply to provider reimbursement determinations and appeals procedures.

Executive Order 12291

These regulations do not meet any of the criteria for a major regulation as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

Sections 404.999(d) and 416.1499 of these regulations contain information collection requirements that are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have submitted these requirements to OMB for approval and we will place a notice in the **Federal Register** informing the public of OMB's action. In the interim, these requirements are not effective.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations apply directly only to individuals. Any indirect impact on small entities that provide transportation services will be too small and diffuse to be significant. Therefore, a regulatory flexibility analysis as required in Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not necessary.

(Catalog of Federal Domestic Assistance Program Nos. 13.802—Social Security Disability Insurance; 13.803—Social Security Retirement Insurance; 13.805—Social Security Survivors' Insurance; 13.807—Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 27, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 6, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart J is revised to read as follows:

Authority: Secs. 201, 205, and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 401, 405, and 1302), unless otherwise noted.

2. Section 404.900 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 404.900 Introduction.

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your rights under title II of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. These procedures apply also to persons claiming certain benefits under title XVIII of the Act (Medicare); see 42 CFR 405.701(c). The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

* * * * *

3. Section 404.903 is amended by adding a new paragraph (n) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(n) Determining whether (and the amount of) travel expenses incurred are reimbursable in connection with proceedings before us.

§ 404.914 [Amended]

4. Section 404.914(c)(1) is amended by removing the last three sentences and adding in their place a new sentence to read as follows: "(See §§ 404.999a–404.999d regarding reimbursement for travel expenses.)"

5. An undesignated center heading and new §§ 404.999a through 404.999d are added to Subpart J of Part 404 to read as follows:

Payment of Certain Travel Expenses

§ 404.999a Payment of certain travel expenses—general.

When you file a claim for Social Security benefits, you may incur certain travel expenses in pursuing your claim. Sections 404.999b–404.999d explain who may be reimbursed for travel expenses, the types of travel expenses that are reimbursable, and when and how to claim reimbursement. Generally, the agency that requests you to travel will be the agency that reimburses you. No later than when it notifies you of the examination or hearing described in § 404.999b(a), that agency will give you information about the right to travel reimbursement, the right to advance payment and how to request it, the rules on means of travel and unusual travel costs, and the need to submit receipts.

§ 404.999b Who may be reimbursed.

(a) The following individuals may be reimbursed for certain travel expenses—

(1) You, when you attend medical examinations upon request in connection with disability determinations; these are medical examinations requested by the State agency or by us when additional medical evidence is necessary to make a disability determination (also referred to as consultative examinations, see § 404.1517);

(2) You, your representative (see § 404.1705 (a) and (b)), and all unsubpoenaed witnesses we or the State agency determines to be reasonably necessary who attend disability hearings; and

(3) You, your representative, and all unsubpoenaed witnesses we determine to be reasonably necessary who attend hearings on any claim for benefits before an administrative law judge.

(b) Sections 404.999a–404.999d do not apply to subpoenaed witnesses. They are reimbursed under §§ 404.950(d) and 404.916(b)(1).

§ 404.999c What travel expenses are reimbursable.

Reimbursable travel expenses include the ordinary expenses of public or private transportation as well as unusual costs due to special circumstances.

(a) Reimbursement for ordinary travel expenses is limited—

(1) To the cost of travel by the most economical and expeditious means of transportation available and appropriate to the individual's condition of health as determined by the State agency or by us, considering the available means in the following order—

(i) Common carrier (air, rail, or bus);

(ii) Privately owned vehicles;

(iii) Commercially rented vehicles and other special conveyances;

(2) If air travel is necessary, to the coach fare for air travel between the specified travel points involved unless first-class air travel is authorized in advance by the State agency or by the Secretary in instances when—

(i) Space is not available in less-than-first-class accommodations on any scheduled flights in time to accomplish the purpose of the travel;

(ii) First-class accommodations are necessary because you, your representative, or reasonably necessary witness is so handicapped or otherwise impaired that other accommodations are not practical and the impairment is substantiated by competent medical authority;

(iii) Less-than-first-class accommodations on foreign carriers do not provide adequate sanitation or health standards; or

(iv) The use of first-class accommodations would result in an overall savings to the government based on economic considerations, such as the avoidance of additional subsistence costs that would be incurred while awaiting availability of less-than-first-class accommodations.

(b) Unusual travel costs may be reimbursed but must be authorized in advance and in writing by us or the appropriate State official, as applicable, unless they are unexpected or unavoidable; we or the State agency must determine their reasonableness and necessity and must approve them before payment can be made. Unusual expenses that may be covered in connection with travel include, but are not limited to—

(1) Ambulance services;

(2) Attendant services;

(3) Meals;

(4) Lodging; and

(5) Taxicabs.

(c) If we reimburse you for travel, we apply the rules in §§ 404.999b through 404.999d and the same rates and conditions of payment that govern travel expenses for Federal employees as authorized under 41 CFR 101–7. If a State agency reimburses you, the reimbursement rates shall be determined by the rules in §§ 404.999b through 404.999d and that agency's rules and regulations may differ from one agency to another and also may differ from the Federal reimbursement rates.

(1) When public transportation is used, reimbursement will be made for the actual costs incurred, subject to the restrictions in paragraph (a)(2) of this section on reimbursement for first-class air travel.

(2) When travel is by a privately owned vehicle, reimbursement will be made at the current Federal or State mileage rate specified for that geographic location plus the actual costs of tolls and parking, if travel by a privately owned vehicle is determined appropriate under paragraph (a)(1) of this section. Otherwise, the amount of reimbursement for travel by privately owned vehicle cannot exceed the total cost of the most economical public transportation available for travel between the same two points. "Total cost" includes the cost for all the authorized travelers who travel in the same privately owned vehicle. Advance approval of travel by privately owned vehicle is not required (but could give you assurance of its approval).

(3) Sometimes your health condition dictates a mode of transportation different from the most economical and expeditious. In order for your health to require a mode of transportation other than common carrier or passenger car, you must be so handicapped or otherwise impaired as to require special transportation arrangements and the conditions must be substantiated by competent medical authority.

(d) For travel to a hearing—

(1) Reimbursement is limited to travel within the U.S. For this purpose, the U.S. includes the U.S. as defined in § 404.2(c)(6) and the Northern Mariana Islands.

(2) We or the State agency will reimburse you, your representative, or an unsubpoenaed witness only if the distance from the person's residence or office (whichever he or she travels from) to the hearing site exceeds 75 miles.

(3) If a change in the location of the hearing is made at your request from the location we or the State agency selected to one farther from your residence or office, neither your additional travel expenses nor the additional travel expenses of your representative and witnesses will be reimbursed.

§ 404.999d When and how to claim reimbursement.

(a)(1) Generally, you will be reimbursed for your expenses after your trip. However, travel advances may be authorized if you request prepayment and show that the requested advance is reasonable and necessary.

(2) You must submit to us or the State agency, as appropriate, an itemized list of what you spent and supporting receipts to be reimbursed.

(3) Arrangements for special means of transportation and related unusual costs may be made only if we or the State agency authorizes the costs in writing in advance of travel, unless the costs are unexpected or unavoidable. If they are unexpected or unavoidable we or the State agency must determine their reasonableness and necessity and must approve them before payment may be made.

(4) If you receive prepayment, you must, within 20 days after your trip, provide to us or the State agency, as appropriate, an itemized list of your actual travel costs and submit supporting receipts. We or the State agency will require you to pay back any balance of the advanced amount that exceeds any approved travel expenses within 20 days after you are notified of the amount of that balance. (State agencies may have their own time limits in place of the 20-day periods in the preceding two sentences.)

(b) You may claim reimbursable travel expenses incurred by your representative for which you have been billed by your representative, except that if your representative makes a claim for them to us or the State, he or she will be reimbursed directly.

(Information collection requirements in paragraph (b) approved by OMB under control number 0960——

PART 416—[AMENDED]

6. The authority citation for Part 416, Subpart N is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475, 86 Stat. 1478 (42 U.S.C. 1302, 1383, and 1383b).

7. Section 416.1403 is amended by adding a new paragraph (a)(9) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(9) Determining whether (and the amount of) travel expenses incurred are reimbursable in connection with proceedings before us.

* * * * *

§ 416.1414 [Amended]

8. Section 416.1414 (c)(1) is amehded by removing the last three sentences and adding in their place a new sentence to read as follows: "(See

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§§ 416.1495–416.1499 regarding reimbursement for travel expenses.)"

9. An undesignated center heading and new §§ 416.1495 through 416.1499 are added to subpart N of Part 416 to read as follows:

Payment of Certain Travel Expenses

§ 416.1495 Payment of certain travel expenses—general.

When you file a claim for supplemental security income (SSI) benefits, you may incur certain travel expenses in pursuing your claim. Sections 416.1496 through 416.1499 explain who may be reimbursed for travel expenses, the types of travel expenses that are reimbursable, and when and how to claim reimbursement. Generally, the agency that requests you to travel will be the agency that reimburses you. No later than when it notifies you of the examination or hearing described in § 416.1496(a), that agency will give you information about the right to travel reimbursement, the right to advance payment and how to request it, the rules on means of travel and unusual travel costs, and the need to submit receipts.

§ 416.1496 Who may be reimbursed.

(a) The following individuals may be reimbursed for certain travel expenses—

(1) You, when you attend medical examinations upon request in connection with disability determinations; these are medical examinations requested by the State agency or by us when additional medical evidence is necessary to make a disability determination (also referred to as consultative examinations, see § 416.917);

(2) You, your representative (see § 416.1505 (a) and (b)), and all unsubpoenaed witnesses we or the State agency determines to be reasonably necessary who attend disability hearings; and

(3) You, your representative, and all unsubpoenaed witnesses we determine to be reasonably necessary who attend hearings on any claim for SSI benefits before an administrative law judge.

(b) Sections 416.1495 through 416.1499 do not apply to subpoenaed witnesses. They are reimbursed under §§ 416.1450(d) and 416.1416(b)(1).

§ 416.1498 What travel expenses are reimbursable.

Reimbursable travel expenses include the ordinary expenses of public or private transportation as well as unusual costs due to special circumstances.

(a) Reimbursement for ordinary travel expenses is limited—

(1) To the cost of travel by the most economical and expeditious means of transportation available and appropriate to the individual's condition of health as determined by the State agency or by us, considering the available means in the following order—

(i) Common carrier (air, rail, or bus);

(ii) Privately owned vehicles;

(iii) Commercially rented vehicles and other special conveyances;

(2) If air travel is necessary, to the coach fare for air travel between the specified travel points involved unless first-class air travel is authorized in advance by the State agency or by the Secretary in instances when—

(i) Space is not available in less-than-first-class accommodations on any scheduled flights in time to accomplish the purpose of the travel;

(ii) First-class accommodations are necessary because you, your representative, or reasonably necessary witness is so handicapped or otherwise impaired that other accommodations are not practical and the impairment is substantiated by competent medical authority;

(iii) Less-than-first-class accommodations on foreign carriers do not provide adequate sanitation or health standards; or

(vi) The use of first-class accommodations would result in an overall savings to the government based on economic considerations, such as the avoidance of additional subsistence costs that would be incurred while awaiting availability of less-than-first-class accommodations.

(b) Unusual travel costs may be reimbursed but must be authorized in advance and in writing by us or the appropriate State official, as applicable, unless they are unexpected or unavoidable; we or the State agency must determine their reasonableness and necessity and must approve them before payment can be made. Unusual expenses that may be covered in connection with travel include, but are not limited to—

(1) Ambulance services;

(2) Attendant services;

(3) Meals;

(4) Lodging; and

(5) Taxicabs.

(c) If we reimburse you for travel, we apply the rules in §§ 416.1496 through 416.1499 and the same rates and conditions of payment that govern travel expenses for Federal employees as authorized under 41 CFR 101–7. If a State agency reimburses you, the reimbursement rates shall be determined by the rules in §§ 416.1496 through 416.1499 and that agency's rules and regulations and may differ from one agency to another and also may differ from the Federal reimbursement rates.

(1) When public transportation is used, reimbursement will be made for the actual costs incurred, subject to the restrictions in paragraph (a)(2) of this section on reimbursement for first-class air travel.

(2) When travel is by a privately owned vehicle, reimbursement will be made at the current Federal or State mileage rate specified for that geographic location plus the actual costs of tolls and parking, if travel by a privately owned vehicle is determined appropriate under paragraph (a)(1) of this section. Otherwise, the amount of reimbursement for travel by privately owned vehicle cannot exceed the total cost of the most economical public transportation for travel between the same two points. "Total cost" includes the cost for all the authorized travelers who travel in the same privately owned vehicle. Advance approval of travel by privately owned vehicle is not required (but could give you assurance of its approval).

(3) Sometimes your health condition dictates a mode of transportation different from most economical and expeditious. In order for your health to require a mode of transportation other than common carrier or passenger car, you must be so handicapped or otherwise impaired as to require special transportation arrangements and the condition must be substantiated by competent medical authority.

(d) For travel to a hearing—

(1) Reimbursement is limited to travel within the U.S. For this purpose, the U.S. includes the U.S. as defined in § 416.120(c)(10).

(2) When the travel is performed after September 30, 1981, we or the State agency will reimburse you, your representative, or an unsubpoenaed witness only if the distance from the person's residence or office (whichever he or she travels from) to the hearing site exceeds 75 miles.

(3) If a change in the location of the hearing is made at your request from the location we or the State agency selected to one farther from your residence or office, neither your additional travel expenses nor the additional travel expenses of your representative and witnesses will be reimbursed.

§ 416.1499 When and how to claim reimbursement.

(a)(1) Generally, you will be reimbursed for your expenses after your trip. However, travel advances may be authorized if you request prepayment and show that the requested advance is reasonable and necessary.

(2) You must submit to us or the State agency, as appropriate, an itemized list of what you spent and supporting receipts to be reimbursed.

(3) Arrangements for special means of transportation and related unusual costs may be made only if we or the State agency authorizes the costs in writing in advance of travel, unless the costs are unexpected or unavoidable. If they are unexpected or unavoidable we or the State agency must determine their reasonableness and necessity and must approve them before payment may be made.

(4) If you receive prepayment, you must, within 20 days after your trip, provide to us or the State agency, as appropriate, an itemized list of your actual travel costs and submit supporting receipts. We or the State agency will require you to pay back any balance of the advanced amount that exceeds any approved travel expenses within 20 days after you are notified of the amount of that balance. (State agencies may have their own time limits in place of the 20-day periods in the preceding two sentences.)

(b) You may claim reimbursable travel expenses incurred by your representative for which you have been billed by your representative, except that if your representative makes a claim for them to us or the State, he or she will be reimbursed directly.

(Information collection requirements in paragraph (b) approved by OMB under control number 0960————)

[FR Doc. 86–5657 Filed 3–13–86; 8:45 am]

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Food and Drug Administration

21 CFR Part 558

Antibiotic, Nitrofuran, and Sulfonamide Drugs in the Feed of Animals; Republication of Regulation

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the animal drug regulation concerning antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals (21 CFR 558.15) to correct typographical errors, update certain information contained in the regulation, and provide a more readable format. The changes are nonsubstantive.

EFFECTIVE DATE: April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Robert S. Brigham, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: FDA established 21 CFR 558.15 by publication in the **Federal Register** of February 25, 1976 (41 FR 8282). To clarify the tables in paragraph (g), FDA republished that portion in the **Federal Register** of March 11, 1977 (42 FR 13549). In this document, FDA is revising 21 CFR 558.15 to correct certain erroneous entries, to reflect the current names of several drug sponsors, to reflect changes in sponsorship, to update certain FDA office designations, and to further clarify the tables. The specific changes are as follows:

1. "Bureau of Veterinary Medicine" is replaced by "Center for Veterinary Medicine" and the proper designation of the office to which reports were required to be sent is inserted.

2. The correct names for several new animal drug application (NADA) sponsors are inserted. The regulation substitutes "Solvay Veterinary Inc." for "E. R. Squibb & Sons, Inc.," "Purina Mills, Inc." for "Ralston Purina," "CEVA Laboratories, Inc." for "Abbott Laboratories," "Hoechst-Roussel Agri-Vet Co." for "American Hoechst Corp," and "VPO, Inc.," for "Vitamin Premixers of Omaha."

3. "Pfizer, Inc., oxytetracycline, sheep * * *" replaces "Pfizer, Inc., penicillin, sheep * * *" to correct an error in paragraph (g)(1).

4. For Pfizer's oxytetracycline/neomycin milk replacer for calves at the higher dose of 40 to 200 and 200 to 400 milligrams per gallon, the indications for use should read "an aid in the treatment of bacterial diarrhea (scours)." This corrects the error in paragraph (g)(2) indicating the "prevention" claim for both lower and higher dose levels.

5. The format in paragraph (g)(2) has been simplified.

6. Several typographical errors have been eliminated in the tables.

The changes are editorial in nature and do not provide substantive revisions to the section. The changes do not in any way alter the status of any of the listed drugs.

Because this revision of 21 CFR 558.15 does not result in any substantive changes in the regulation, the Commissioner of Food and Drugs finds good cause that notice and public comment under the provisions of 5 U.S.C. 553 are unnecessary. The effective date of the revised regulation will be 30 days after the date of publication.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.15 is revised to read as follows:

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

(a) The Commissioner of Food and Drugs will propose to revoke currently approved subtherapeutic (increased rate of gain, disease prevention, etc.) uses in animal feed of antibiotic and sulfonamide drugs whether granted by approval of new animal drug applications, master files and/or antibiotic or food additive regulations, by no later than April 20, 1975, or the nitrofuran drugs by no later than September 5, 1975, unless data are submitted which resolve conclusively the issues concerning their safety to man and animals and their effectiveness under specific criteria established by the Food and Drug Administration based on the guidelines included in the report of the FDA task force on the use of antibiotics in animal feeds. All persons or firms previously marketing identical, related, or similar products except the nitrofuran drugs not the subject of an approved new animal drug application must submit a new animal drug application by July 19, 1973, or by December 4, 1973, in the case of nitrofuran drugs, if marketing is to continue during the interim. New animal drug entities with antibacterial activity not previously marketed, now pending approval or submitted for approval prior to, on, or following the effective date of this publication, shall satisfy such criteria prior to approval.

(b) Any person interested in developing data which will support retaining approval for such uses of such antibiotic, nitrofuran, and sulfonamide drugs pursuant to section 512(l) of the Federal Food, Drug, and Cosmetic Act shall submit to the Commissioner the following:

(1) By July 19, 1973, records and reports of completed, ongoing, or planned studies, including protocols, on the tetracyclines, streptomycin, dihydrostreptomycin, penicillin, and the sulfonamides; for all other antibiotics by

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October 17, 1973; and for the nitrofuran drugs by March 4, 1974. The Food and Drug Administration encourages sponsors to consult with the Center for Veterinary Medicine on protocol design and plans for future studies.

(2) By April 20, 1974, data from completed studies on the tetracyclines, streptomycin, dihydrostreptomycin, the sulfonamides, and penicillin assessing the effect of the subtherapeutic use of the drug in feed on the salmonella reservoir in the target animal as compared to that in nonmedicated controls. Failure to complete the salmonella studies for any of these drugs by that time will be grounds for proceeding to immediately withdraw approval.

(3) By April 20, 1975, data satisfying all other specified criteria for safety and effectiveness, including the effect on the salmonella reservoir for any antibiotic or sulfonamide drugs and by September 5, 1975, for the nitrofuran drugs, approved for subtherapeutic use in animal feeds. Drug efficacy data shall be submitted for any feed-use combination product containing such drug and any feed-use single ingredient antibiotic, nitrofuran, or sulfonamide not reviewed by the National Academy of Sciences—National Research Council, Drug Efficacy Study covering drugs marketed between 1938 and 1962.

(4) Progress reports on studies underway every January 1 and July 1 until completion.

(c) Failure on the part of any sponsor to comply with any of the provisions of paragraph (b) of this section for any of the antibacterial drugs included in paragraph (b)(1) of this section, or interim results indicating a health hazard, will be considered as grounds for immediately proceeding to withdraw approval of that drug for use in animal feeds under section 512(l) of the act in the case of failure to submit required records and reports and under section 512(e) where new information shows that such drug is not shown to be safe.

(d) Criteria based upon the guidelines laid down by the task force may be obtained from the Food and Drug Administration, Center for Veterinary Medicine, 5600 Fishers Lane, Rockville, MD 20857.

(e) Reports as specified in this section shall be submitted to: Food and Drug Administration, Center for Veterinary Medicine, Office of New Animal Drug Evaluation (HFV–100), 5600 Fishers Lane, Rockville, MD 20857.

(f) Following the completion of the requirements of paragraphs (a) and (b) of this section and the studies provided for therein:

(1) Those antibiotic, nitrofuran, and sulfonamide drugs which fail to meet the prescribed criteria for subtherapeutic uses but which are found to be effective for the therapeutic purposes will be permitted in feed only for high-level, short-term therapeutic use and only by or on the order of a licensed veterinarian.

(2) Animal feeds containing antibacterial drugs permitted to remain in use for subtherapeutic purposes shall be labeled to include a statement of the quantity of such drugs.

(g) The submission of applications and data required by paragraphs (a) and (b) of this section is not required for the continued manufacture of any Type B feed which is produced solely from a Type A article that is in compliance with the requirements of this section: *Provided*, That the Type B feed contains no drug ingredient whose use in or on animal feed requires an approved application pursuant to section 512(m) of the act and/or where the Type A article is approved by regulation in this part.

(1) The following antibacterial Type A articles manufactured by the designated sponsors are eligible for interim marketing based on their compliance with the requirements of this section:

Drug sponsor	Type A article	Species	Use levels	Indications for use
International Minerals & Chemicals Corp	Bacitracin zinc	Chickens, turkeys, swine, pheasants, quail, and cattle.	Sec. 558.78	Sec. 558.78.
A. L. Laboratories Inc	do	Chickens, turkeys, pheasants, and quail.	do	Do.
A.L. Laboratories, Inc., SDS Biotech Corp	Bacitracin methylene disalicylate.	Chicken turkeys, swine, and cattle.	Sec. 558.76	Sec. 558.76.
Elanco Products Co	Hygromycin B	Chickens and swine	Sec. 558.274	Sec. 558.274.
Do	Tylosin	Chickens, swine, and beef cattle.	Sec. 558.625	Sec. 558.625.
CEVA Laboratories, Inc	Erythromycin	Chickens, turkeys, and swine.	Sec. 558.248	Sec. 558.248.
The Upjohn Co	Lincomycin	Chickens	Sec. 558.325	Sec. 558.325.
Pfizer, Inc	Oleandomycin	Chickens, turkeys, and swine.	Sec. 558.435	Sec. 558.435.
Hoechst-Roussel Agri-Vet, Inc	Bambermycins	Chickens	Sec. 558.95	Sec. 558.95.
Elanco Products Co	Tylosin and sulfamethazine.	Swine	Sec. 558.630	Sec. 558.630.
American Cyanamid Co., SDS Biotech Corp., Hess & Clark, Pfizer, Inc., and VPO, Inc.	Chlortetracycline	Chickens, turkeys, swine, and cattle.	Sec. 558.128	Sec. 558.128.
Merck Sharp & Dohme Research Labs., and Solvay Veterinary, Inc.	Procaine Penicillin	Chickens, turkeys, swine, pheasants, and quail.	Sec. 558.460	Sec. 558.460.
Pfizer, Inc., VPO, Inc., and Purina Mills, Inc.	Oxytetracycline	Chickens and turkeys	Sec. 558.450	Sec. 558.450.
Do	do	Swine (10 to 30 lb)	25 to 50 g/ton	To increase rate of gain and improve feed efficiency.
Do	do	Swine (30 to 200 lb)	7½ to 10 g/ton	Do.
Do	do	Swine	50 g/ton	As an aid in the prevention of bacterial enteritis, also known as scours, baby pig diarrhea, vibrio dysentery, bloody dysentery, and salmonellosis (necro or necrotic enteritis).
Do	do	do	100 g/ton	As an aid in the treatment of bacterial enteritis, also known as scours, baby pig diarrhea, vibrio dysentery, bloody dysentery, and salmonellosis (necro or necrotic enteritis).
Do	do	do	50 to 150 g/ton	As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis.
Do	do	do	500 g/ton	In presence of porcine leptospirosis reduces instances of abortion, gives higher survival rate, heavier and healthier new born pigs, reduces urinary shedding of leptospires and aids in maintenance of normal weight gains and feed consumption. Feed 7 to 14 days, approximately 1 month before farrowing.
Do	do	Calves	0.05 to 0.1 mg/lb of body weight daily or 25 to 75 mg per head daily.	To increase rate of gain and improve feed efficiency.
Do	do	do	0.5 mg/lb of body weight daily or in complete feed at 50 g/ton.	As an aid in the prevention of bacterial diarrhea.
Do	do	do	0.5 to 5.0 mg/lb of body weight daily or complete feed at 50 g/ton.	As an aid in the treatment of bacterial diarrhea.
Do	do	Cattle	75 to 80 mg per head daily..	As an aid in reducing incidence and severity of bloat. As an aid in reducing incidence and severity of liver abscesses (for cattle weighing over 400 lb). To increase rate of gain and improve feed efficiency. As an aid in increasing milk production in lactating dairy cows.
Do	do	do	0.1 to 0.5 mg/lb of body weight daily.	As an aid in the prevention of bacterial diarrhea.
Do	do	do	0.5 to 5.0 mg/lb of body weight daily.	As an aid in the treatment of bacterial diarrhea, also known as scours.
Do	do	do	0.5 to 2.0 g per head daily.	For the prevention and treatment of the early stages of shipping fever complex. Oxytetracycline is effective prophylaxis when fed 3 to 5 days preceding shipment and/or 3 to 5 days following arrival in feed-lots. For treatment of shipping fever, these levels should be fed at onset of the disease symptoms until symptoms disappear.
Do	Oxytetracycline	Sheep	10 to 20 g/ton	To increase rate of gain and improve feed efficiency during finishing period.
Do	do	do	50 g/ton	As an aid in the prevention of bacterial diarrhea, also known as scours, lamb dysentery, and white scours of lambs.
Do	do	do	100 g/ton	As an aid in the treatment of bacterial diarrhea, also known as scours, lamb dysentery, and white scours of lambs.
Do	do	do	25 mg per head daily	As an aid in reduction of losses due to enterotoxemia, also known as overeating disease.
Do	Penicillin and streptomycin.	Chickens, turkeys, and swine.	Secs. 510.515 and 558.460.	Secs. 510.515 and 558.460.
American Cyanamid Co	Chlortetracycline and sulfamethazine.	Cattle	Sec. 558.128	Sec. 558.128.
Merck Sharp & Dohme Research Labs	Procaine penicillin and streptomycin sulfate.	Sec. 558.460	Sec. 558.460	Sec. 558.460.
CEVA Laboratories, Inc	Erythromycin	Cattle	37 mg per head per day	Sec. 558.248.
Hoffman-La Roche, Inc	Sulfadimethoxine and ormetoprim.	Chickens and turkeys	Sec. 558.575	Sec. 558.575.
Pfizer, Inc	Oxytetracycline	Chickens	10 to 50 g/ton	As an aid in increasing egg production.
Pfizer, Inc.	do	do	50 to 100 g/ton	To extend period of high egg production, to improve feed efficiency, to improve fertility, and to improve egg production and feed efficiency in presence of disease and at time of stress; as an aid in maintaining and improving hatchability where birds are suffering stress from moving, vaccination, culling, extreme temperature change, and worming; to improve livability of progeny when losses are due to oxytetracycline-susceptible organisms; to improve egg shell quality.
Do	Oxytetracycline and neomycin.	Chickens, turkeys, swine, and calves.	As provided in paragraph (g)(2) of this section.	As provided in paragraph (g)(2) of this section.
American Cyanamid Co. and Pfizer, Inc	Chlortetracycline, sulfamethazine, and penicillin.	Swine	do	Do.
SDS Biotech Corp	Chlortetracycline, sulfathiazole, and penicillin.	do	do	Do.
Hess & Clark and SmithKline Animal Health Products.	Furazolidone	Chickens and turkeys	0.00083 to 0.0011 percent (7½ to 10 g/ton).	To stimulate growth and improve feed efficiency of chickens and turkeys when fed continuously.
Do	do	do	0.0055 percent (50 g/ton)	For prevention of fowl typhoid, paratyphoid, and pullorum in chickens and turkeys when fed continuously in birds older than 2 weeks of age. For aid in prevention of coccidiosis in chickens caused by *E. tenella*, *E. necatrix*, or *E. acervulina* when fed continuously.
Do	do	do	0.0055–0.011 percent (50–100 g/ton).	Aid in maintenance of feed consumption and growth and reduction of morbidity and mortality due to stress and the following nonspecific conditions. Chronic respiratory disease (air-sac), infectious sinusitis, synovitis (arthritis due to a filterable agent), nonspecific enteritis (bluecomb, mud fever) and quail disease (ulcerative enteritis) when fed continuously prior to or throughout the danger period and during times of stress.
Do	do	do	0.011 percent (100 g/ton)	For prevention of fowl typhoid, paratyphoid and pullorum in chickens and turkeys when fed for the first 2 weeks of the birds' life and followed continuously thereafter by ½ this level (i.e., 0.0055 percent). For treatment of fowl typhoid, paratyphoid, and pullorum in chickens and turkeys when fed for at least 2 weeks except when paratyphoid is due to *S. typhimurium*.
Hess & Clark and SmithKline Animal Health Product.	do	do	do	For reduction of condemnations due to chronic respiratory disease air-sac complex associated with vaccination stress, feed continuously beginning at least 1 week before vaccination. For prevention of infectious hepatitis when fed continuously during the danger period. For control of coccidiosis in chickens caused by *E. tenella*, *E. necatrix* or *E. acervulina* when fed for 5 to 7 days or longer and followed by ½ this level (i.e., 0.0055 percent) for 2 weeks to aid in preventing recurrence.

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Drug sponsor	Type A article	Species	Use levels	Indications for use
Do	do	do	do	For prevention of blackhead (histomoniasis, enterohepatitis) in chickens and turkeys when fed continuously. For prevention of paracolon in chickens and turkeys and hexamitiasis in turkeys when fed throughout the danger period. For control of chronic respiratory disease (air-sac), infectious sinusitis, synovitis (arthritis due to a filterable agent), nonspecific enteritis (bluecomb, mud fever) and quail disease (ulcerative enteritis) when fed for 5 to 10 days and followed with ½ this level (i.e., 0.0055 percent) to aid in preventing recurrence. (NOTE.—Severe outbreaks may require twice the level specified; i.e., 0.022 percent).
Do	do	do	0.011 to 0.022 percent (100 to 200 g/ton).	Aid in maintenance of feed consumption and growth, and reduction of mortality and morbidity due to stress; for the control of the following nonspecific conditions: Chronic respiratory disease (air-sac), infectious sinusitis, synovitis (arthritis due to a filterable agent), nonspecific enteritis (bluecomb, mud fever), and quail disease (ulcerative enteritis) when fed 5 to 10 days. Follow with preventive level to prevent recurrence.
Hess & Clark and SmithKline Animal Health Products.	do	do	0.022 percent (200 g/ton)	For treatment of paratyphoid due to *S. typhimurium* when fed for 2 weeks. For treatment of blackhead (histomoniasis enterohepatitis) in chickens and turkeys when fed for 2 to 3 weeks (following diagnosis). For treatment of paracolon in chickens and turkeys and hexamitiasis in turkeys when fed for 2 weeks or longer (following diagnosis). For control of chronic respiratory disease (air-sac), infectious sinusitis, synovitis (arthritis due to a filterable agent), nonspecific enteritis (bluecomb, mud fever), and quail disease (ulcerative enteritis) when fed for 5 to 10 days and followed with ½ this level (i.e., 0.0055 percent) to aid in preventing recurrences. For treatment of infectious hepatitis in chickens when fed for 14 days and repeated as necessary.
Do	do	Swine	Sec. 558.262	Sec. 558.262.
Do	Nitrofurazone	Chickens	0.0056 percent (50 g/ton)	Aid in prevention of coccidiosis when fed continuously.
Do	do	Turkeys	do	As an aid in controlling losses due to secondary bacterial invasions concurrent with coccidiosis outbreaks when fed continuously throughout the danger period.
Do	do	Swine	0.055 percent (500 g/ton)	Treatment of necrotic enteritis caused by *S. choleraesuis*.

(2) The following is a list of drug combinations permitted when prepared from antibacterial type A articles listed in paragraph (g)(1) of this section. Drug combinations listed in Subpart B of this part name their sponsors and are incorporated herein by reference since they are safe and effective by contemporary standards, or such sponsors have been notified of any additional safety or efficacy data required on an individual basis:

Drug sponsor	Type A article	Species	Use levels	Indications for use
SDS Biotech Corp	Chlortetracycline and arsanilic acid.	Swine	10 to 50 g/ton and 0.005 to 0.01 percent.	Enhancement of growth and feed efficiency.
American Cyanamid Co.	Chlortetracycline and sulfamethazine.	Cattle	Sec. 558.128	Sec. 558.128.
Pfizer, Inc., and VPO, Inc.	Oxytetracycline and neomycin base.	Chickens	50 g/ton and 35 to 140 g/ton.	Prevention of diseases from oxytetracycline susceptible organisms during periods of stress. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Pfizer, Inc., and VPO, Inc.	do	Chickens (first 2 weeks)	50 to 100 g/ton and 35 to 140 g/ton.	Prevention of early chick mortality due to oxytetracycline-susceptible organisms. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	Chickens	do	To extend period of high egg production, to improve feed efficiency, to improve egg production and feed efficiency in presence of disease and at time of stress. As an aid in maintaining and improving hatchability where birds are suffering stress from moving, vaccinations, culling, extreme temperature changes, and worming; to improve livability of progeny when losses are due to oxytetracycline-susceptible organisms, to improve egg shell quality, prevention of bluecomb (mud fever or nonspecific enteritis). As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	do	100 to 200 g/ton and 35 to 140 g/ton.	Prevention of complicated chronic respiratory disease (air-sac infection) and control of complicated chronic respiratory disease by lowering mortality and severity during outbreaks. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Pfizer, Inc	do	Turkeys	50 g/ton and 35 to 140 g/ton.	As an aid in the prevention of disease from oxytetracycline susceptible organisms during periods of stress. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Pfizer, Inc.	do	do	50 to 100 g/ton and 35 to 140 g/ton.	To extend periord of high egg production, to improve egg production, to improve feed efficiency, to improve fertility, to improve egg production and feed efficiency in presence of disease and time of stress; as an aid in maintaining and improving hatchability where birds are suffering from stress, exposure, moving, vaccination, culling, extreme losses due to oxytetracycline-susceptible organisms, and to improve egg shell quality prevention of hexamitiasis. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	Turkeys (first 4 weeks)	do	As an aid in the prevention of early poult mortality due to oxytetracycline-susceptible organisms. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	do	100 to 150 g/ton and 35 to 100 g/ton.	As an aid in reducing mortality in birds which have suffered an attack of air-sacculitis (it is recommended, wherever possible, to feed from time of attack to marketing).
Do	do	Turkeys	do	As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	do	100 to 200 g/ton and 35 to 140 g/ton.	Control of bluecomb (mud fever or nonspecific enteritis), infectious sinusitis and hexamitiasis, prevention of infectious synovitis. As an aid in the prevention of bacterial enteritis and in the control of neomycin-sensitive organisms associated with bluecomb (mud fever or nonspecific enteritis).
Do	do	do	200 g/ton and 70 to 140 g/ton.	Control of infectious synovitis. For the treatment of bacterial enteritis and bluecomb (mud fever or nonspecific enteritis).
Pfizer, Inc., and VPO, Inc.	do	Swine	50 g/ton and 35 to 140 g/ton.	As an aid in the prevention of bacterial enteritis (scours), baby pig diarrhea (in baby pigs only), vibrionic dysentery, bloody dysentery, and salmonellosis (necro or necrotic enteritis).
Do	do	do	50 to 150 g/ton and 70 to 140 g/ton.	As an aid in the maintenance of weight gains and feed consumption in the presence of atrophic rhinitis. As an aid in the treatment of bacterial enteritis.
Pfizer, Inc.	do	Calves	50 g/ton and 35 to 140 g/ton.	As an aid in the prevention of bacterial enteritis (scours).
Pfizer, Inc.	do	do	100 g/ton and 70 to 140 g/ton.	As an aid in the treatment of bacterial enteritis (scours).
Do	do	do	8 to 100 mg/gal and 100 to 200 mg/gal reconstituted milk replacer.	As an aid in the prevention of bacterial diarrhea (scours).
Do	do	do	40 to 200 mg/gal and 200 to 400 mg/gal reconstituted milk replacer.	As an aid in the treatment of bacterial diarrhea (scours).
The Upjohn Co.	Lincomycin, amprolium, and ethopabate.	Chickens	Secs. 558.58 and 558.325.	Secs. 558.58 and 558.325.
Do	Lincomycin and zoalene	do	Secs. 558.325 and 558.680.	Secs. 558.325 and 558.680.
Do	Lincomycin, amprolium, ethopabate, and roxarsone.	do	Secs. 558.58, 558.325, and 558.530.	Secs. 558.58, 558.325, and 558.530.
Do	Lincomycin, monensin, and roxarsone.	do	Secs. 558.325, 558.355, and 558.530.	Secs. 558.325, 558.355, and 558.530.
Merck Sharp & Dohme Research Labs, and Pfizer, Inc.	Procaine penicillin and streptomycin.	Chickens and turkeys	2.4 to 7.5 g/ton and 12.0 to 37.5 g/ton.	Sec. 558.460.
Merck Sharp & Dohme Research Labs, and Pfizer, Inc.	do	do	3.75 to 7.5 g/ton and 18.75 to 37.5 g/ton.	Do
Do	do	Chickens	3.75 to 30 g/ton and 18.75 to 150 g/ton..	Do.
Do	do	Turkeys	15 to 30 g/ton and 75 to 150 g/ton.	Do.
Do	do	Chickens	2.4 to 25 g/ton and 15 to 75 g/ton.	Sec. 510.515.
Do	do	Swine	1.5 to 7.5 g/ton and 7.5 to 37.5 g/ton.	Sec. 558.460.
Merck Sharp & Dohme Research Labs., and Pfizer, Inc.	do	do	7.5 to 45 g/ton and 37.5 to 225 g/ton.	Do.
Do	do	do	5 to 25 g/ton and 15 to 75 g/ton.	Sec. 510.515.
Merck Sharp & Dohme Research Labs	Procaine penicillin, streptomycin, and arsanilic acid.	do	1.5 to 7.5 g/ton, 7.5 to 37.5 g/ton, and 45 to 90 g/ton.	Do.
Do	Nicarbazin and procaine penicillin.	Chickens	0.01 to 0.02 percent and 2.4 to 50 g/ton.	Do.
Do	Nicarbazin and bacitracin methylene disalicylate.	do	0.01 to 0.02 percent and 4 to 50 g/ton.	Do.
Do	Nicarbazin, bacitracin methylene disalicylate, and roxarsone.	do	0.01 to 0.02 percent, 4 to 50 g/ton, and 0.0025 to 0.005 percent.	Do.
Do	Nicarbazin, procaine penicillin, and roxarsone.	do	0.01 to 0.02 percent, 2.4 to 50 g/ton, and 0.0025 to 0.025 percent.	Do.
Do	Amprolium and bacitracin methylene disalicylate.	Chickens and turkeys	0.0125 to 0.025 percent and 4 to 50 g/ton.	Secs. 558.55 and 558.76.
Do	Amprolium, ethopabate, and bacitracin methylene disalicylate.	Chickens	0.0125 to 0.025 percent, 0.0004 percent, and 4 to 50 g/ton.	Secs. 558.58 and 558.76.

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Drug sponsor	Type A article	Species	Use levels	Indications for use
Do	Amprolium, ethopabate, bacitracin methylene disalicylate, and roxarsone.	do	0.0125 to 0.025 percent, 0.0004 percent, 4 to 50 g/ton, and 0.0025 to 0.005 percent.	Secs. 558.58, 558.78, and 558.530.
Do	Amprolium and procaine penicillin.	Chickens and turkeys	0.004 to 0.025 percent and 2.4 to 50 g/ton.	Secs. 558.55 and 558.460.
Do	Amprolium, procaine penicillin, and roxarsone.	Chickens	0.004 to 0.025 percent, 2.4 to 50 g/ton, and 0.0025 to 0.005 percent.	Secs. 558.55, 558.460, and 558.530.
Do	Amprolium, ethopabate, procaine penicillin, and erythromycin.	do	0.0125 to 0.025 percent, 0.0004 percent, 2.4 to 50 g/ton, and 4.6 to 18.5 g/ton.	Secs. 558.58 and 558.460.
Do	Amprolium and erythromycin.	do	0.0125 to 0.025 percent and 4.6 to 18.5 g/ton.	Sec. 558.58.
Do	Amprolium and ethopabate.	do	0.0125 to 0.025 percent and 0.0004 percent.	Sec. 558-58.
Do	Amprolium, arsanilic acid, and erythromycin.	do	0.0125 to 0.025 percent 0.01 percent, and 4.6 to 18.5 g/ton.	Sec. 558.55.
Do	Amprolium, arsanilic acid, and ethopabate.	do	0.0125 to 0.025 percent, 0.01 percent, and 0.0004 percent.	Sec. 558.58.
Do	Amprolium, ethopabate, and bacitracin methylene disalicylate.	do	0.0125 percent, 0.004 percent, and 4 to 50 g/ton.	Do.
Do	Amprolium, ethopabate, bacitracin methylene disalicylate, and roxarsone.	do	0.0125 percent, 0.004 percent, 5 to 35 g/ton, and 0.00375 percent.	Do.
International Minerals & Chemicals Corp	Bacitracin zinc, amprolium, and ethopabate.	do	4 to 50 g/ton, 0.0125 to 0.025 percent, and 0.0004 percent.	Prevention of coccidiosis. Growth promotion and feed efficiency. Sec.558.78.
Do	Bacitracin zinc, amprolium, ethopabate, and roxarsone.	do	4 to 50 g/ton, 0.0125 to 0.025 percent, 0.0004 percent, and 0.0025 to 0.005 percent.	Prevention of coccidiosis. Growth promotion and feed efficiency. Improving pigmentation. Sec. 558.78.
International Minerals & Chemicals Corp	Bacitracin zinc and arsanilic acid.	Swine	10 to 50 g/ton and 0.005 to 0.01 percent.	Increased rate of weight gain and improved feed efficiency.
Merck Sharp & Dohme Research Labs	Amprolium, ethopabate, procaine penicillin, and roxarsone.	Chickens	0.125 to 0.025 percent, 0.0004 percent, 2.4 to 50 g/ton, and 0.0025 to 0.005 percent.	Secs. 558.58, 558.460 and 558.530.
Pfizer, Inc.	Penicillin and streptomycin.	Chickens and turkeys	2.4 to 25 g/ton and 15 to 75 g/ton.	Sec. 510.515.
Do	Penicillin and streptomycin.	Swine	5 to 25 g/ton and 15 to 75 g/ton.	Do.
Dow Chemical Co	Zoalene and bacitracin methylene disalicylate.	Chickens	0.0125 percent and 4 to 50 g/ton.	Sec. 558.680.
Do	Zoalene, roxarsone, and bacitracin methylene disalicylate.	do	0.0125 percent, 0.005 percent, and 4 to 50 g/ton.	Do.
Do	Zoalene and bacitracin zinc.	do	0.0125 percent and 4 to 50 g/ton.	Do.
Do	Zoalene, roxarsone, and bacitracin zinc.	do	0.0125 percent, 0.0025 to 0.005 percent, and 4 to 50 g/ton.	
Do	Zoalene and penicillin	do	0.0125 percent and 2.4 to 50 g/ton.	Do.
Do	Zoalene, roxarsone, and penicillin.	do	0.0125 percent, 0.0025 to 0.005 percent, and 2.4 to 50 g/ton.	Do.
Do	Zoalene, arsanilic acid, and bacitracin methylene disalicylate or bacitracin zinc.	do	0.0125 percent, 0.01 percent, and 4 to 50 g/ton.	
Dow Chemical Co.	Zoalene, arsanilic acid, and penicillin.	do	0.0125 percent, 0.01 percent, and 2.4 to 50 g/ton.	Do.
Do	Zoalene, and bacitracin methylene disalicylate.	do	0.004 to 0.0125 percent and 4 to 50 g/ton.	Do.
Do	Zoalene, roxarsone, and bacitracin methylene disalicylate.	do	0.004 to 0.0125 percent, 0.0025 to 0.005 percent, and 4 to 50 g/ton.	Do.
Hess & Clark and SmithKline Animal Health Products.	Furazolidone and oxytetracycline.	Swine	0.022 percent (200 g/ton) and 50 to 150 g/ton.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication when fed in prestarters, starters, and growing rations to baby pigs and growing swine for 2 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis.
Do	Furazolidone, oxytetracycline, and arsanilic acid.	do	0.011 percent (100 g/ton), 50 to 100 g/ton, and 0.005 to 0.01 percent.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication and when fed in prestarters, starters, and growing rations to baby pigs and growing swine for 5 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis. Growth promotion and feed efficiency.
Hess & Clark and SmithKline Animal Health Products.	Furazolidone and bacitracin methylene disalicylate, bacitracin zinc, or procaine penicillin.	Chickens and turkeys	0.011 to 0.022 percent (100 to 200 g/ton) and 4 to 50 g/ton, 4 to 50 g/ton, or 2.4 to 50 g/ton.	Sec. 510.515.

Drug sponsor	Type A article	Species	Use levels	Indications for use
Do	Furazolidone and oxytetracycline.	Swine	0.011 percent (100 g/ton) and 50 to 150 g/ton.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication and when fed in prestarters, starters, and growing swine for 5 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis.
Do	do	do	0.0165 percent (150 g/ton) and 50 to 150 g/ton.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication and when fed in prestarters, starters, and growing swine for 3 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis.
Do	Furazolidone, oxytetracycline, and arsanilic acid.	do	0.0165 percent (150 g/ton), 50 to 100 g/ton, and 0.005 to 0.01 percent.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication when fed in prestarters, starters, and growing rations to baby pigs and growing swine for 3 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis. Growth promotion and feed efficiency.
Do	do	do	0.022 percent, 50 to 100 g/ton, and 0.005 to 0.01 percent.	Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication when fed in prestarters, starters, and growing rations to baby pigs and growing swine for 2 weeks. As an aid in the maintenance of weight gains and feed consumption in presence of atrophic rhinitis. Growth promotion and feed efficiency.
Whitmoyer Labs, Inc.	Carbarsone and bacitracin	Turkeys	Sec. 558.120	Sec. 558.120.
Elanco Products Co.	Hygromycin B and tylosin	Chickens	8 to 12 g/ton and 4 to 50 g/ton.	Sec. 558.274.
Do	do	Swine	12 g/ton and 10 to 100 g/ton.	Do.
Salsbury Laboratories	Nitarsone and bacitracin zinc.	Turkeys	0.01875 percent, 4 to 50 g/ton.	As an aid in the prevention of blackhead. To increase rate of weight gain and improve feed efficiency.

Dated: March 7, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-5434 Filed 3-13-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

28 CFR Parts 3, 8, and 9a

[Order No. 1126-86]

Seizure for Forfeiture; Assignment of Functions to the Director, Federal Bureau of Investigation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order reassigns the delegated responsibilities contained in Parts 3, 8 and 9a from the U.S. Marshals Service to the Federal Bureau of Investigation and revised Part 8 to include delegated authorities to the Federal Bureau of Investigation under the following statutes: Copyrights Act, Motor Vehicle Theft Law Enforcement Act of 1984, Child Protection Act of 1984, Child Protection Act of 1984, and statutes governing Transportation of Gambling Devices, Racketeering (Prohibition of Illegal Gambling Businesses), Prison-Made Goods, Wire Interception and Interception of Oral Communications and Foreign Wars, War Materials, and Neutrality (Illegal Exportation of War Materials). Functions include seizure, appraisement, providing notice of intent to forfeit and declaring that property forfeited.

EFFECTIVE DATE: February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Department of Justice, P.O. Box 521, Benjamin Franklin Station, Washington, DC 20044, (202) 272-6420.

SUPPLEMENTARY INFORMATION: The existing provisions of Parts 3, 8 and 9a of 28 CFR provide for the FBI to seize property for forfeiture pursuant to Transportation of Gambling Devices, Wire Interception and Interception of Oral Communications and Prohibition of Illegal Gambling Businesses violations but do not provide for the FBI to handle the administrative forfeiture provisions. There are no provisions for the FBI to handle administrative forfeitures pursuant to Prison-Made Goods and Illegal Exportation of War Materials violations and the Copyrights Act, the Motor Vehicle Theft Law Enforcement Act of 1984 and the Child Protection Act of 1984.

This final rule amends the applicable regulations to create one Part, Part 8, which permits the FBI to handle administrative forfeitures regarding all eight identified statutes.

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, we hereby certify that this matter will have no impact upon small entities with the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

By virtue of the authority vested in me by 28 United States Code 509, 510 and 5 United States Code 301, Chapter I of Title 28, Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3 continues to read as follows:

Authority: 89 Stat. 379; 5 U.S.C., Sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR 1949–1953, unless otherwise noted.

1. Section 3.5 is revised to read as follows:

§ 3.5 Forfeiture of gambling devices.

For purposes of seizure and forfeiture of gambling devices see section 8 of this Chapter.

§ 3.6 [Removed]

2. Section 3.6 is removed in its entirety.

3. The table of contents entry for § 3.5 is revised to read as follows:

Sec.

* * * * *

3.5 Forfeiture of gambling devices

* * * * *

PART 9a—[REMOVED]

4. Part 9a is removed in its entirety.

5. Part 8 is revised to read as follows:

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PART 8—FBI FORFEITURE AUTHORITY FOR CERTAIN STATUTES

Sec.
8.1 Definition.
8.2 Designation of officials having seizure authority.
8.3 Designation of the investigative bureau having administrative forfeiture authority, claims for awards, offers in compromise and matter relating to bonds.
8.4 Custody of seized property, inventory and receipt.
8.5 Appraisement of property subject to forfeiture.
8.6 Quick-release authority.
8.7 Judicial forfeiture.
8.8 Notice of seizure when value does not exceed $100,000; advertisement; Declaration of Forfeiture.
8.9 Disposition of Forfeited Property.
8.10 Remission or mitigation of forfeiture.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.

§ 8.1 Definition.

For the purpose of this part, the term "statutes" shall include the following statutes unless otherwise noted in this part: Interstate and Foreign Commerce—Gambling Devices—Transportation Prohibited, Jan. 2, 1951, ch. 1194 section 7, 64 Stat. 1135 (codified at 15 U.S.C. 1177, commonly referred to as Transportation of Gambling Devices); Organized Crime Control Act of 1970, Pub. L. 91–452, Title VIII, Part C, section 803(a), 84 Stat. 937 (1970) (codified at 18 U.S.C. 1955, commonly referred to as Illegal Gambling Businesses); Copyrights Act, Pub. L. 94–553, Title I, section 101, 90 Stat. 2768 (1976) (codified at 17 U.S.C. 509); Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98–547, Title II, section 201, 98 Stat. 2754 (1984) (codified at 18 U.S.C. 512); Crimes and Criminal Procedure, June 25, 1948, ch. 645, section 1, 62 Stat. 786 (codified at 18 U.S.C. 1762, commonly referred to as Prison-Made Goods); Child Protection Act of 1984, Pub. L. 98–292, section 6, 98 Stat. 205 (1984) (codified at 18 U.S.C. 2254); Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, Title III, section 802, 82 Stat. 215 (1968) (codified at 18 U.S.C. 2513, commonly referred to as Wire Interception and Interception of Oral Communications); Seizure of Arms and Other Articles Intended for Export, June 15, 1917, ch. 30, Title VI section 1, 40 Stat. 223; June 17, 1930, ch. 497, Title IV, 523, 46 Stat. 740; Aug. 13, 1953, ch. 434, section 1, 67 Stat. 577 (codified at 22 U.S.C. 401, commonly referred to as Illegal Exportation of War Materials).

§ 8.2 Designation of officials having seizure authority.

The Director, Associate Director, Assistants to the Director, Assistant Directors, inspectors, and Agents of the Federal Bureau of Investigation are authorized to seize such property as may be subject to seizure pursuant to statutes identified in § 8.1.

§ 8.3 Designation of the investigative bureau having administrative forfeiture authority; claims for awards, offers in compromise and matters relating to bonds.

The Federal Bureau of Investigation is, in accordance with the statutes identified in § 8.1, authorized and designated as the investigative bureau to perform various duties with respect to forfeiture which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs' laws. The Director of the Federal Bureau of Investigation or his designee is designated as the officer authorized to take final action under these statutes on claims for award of compensation to informers, offers in compromise, and matters relating to bonds or other security.

§ 8.4 Custody of seized property, inventory, and receipt.

All property seized pursuant to the statutes identified in § 8.1 shall be turned over to the United States Marshals Service when not held as evidence or to be placed into official use following forfeiture. An inventory shall be prepared by the Federal Bureau of Investigation of the seized property and a receipt given for it to the person from whom it was seized at the time of seizure or as soon thereafter as practical.

§ 8.5 Appraisement of property subject to forfeiture.

Seized property shall be appraised. The appraisement shall be the function of the Special Agent in Charge, Federal Bureau of Investigation or his designee having custody of the property. The value of an article seized shall be the price at which it or a similar article is fairly offered for sale at the time and place of appraisement.

§ 8.6 Quick-release authority.

Where the forfeiture proceedings are administrative, the Special Agent in Charge, prior to forfeiture, is authorized to release property seized for forfeiture. The property can be quick-released when the Special Agent in Charge deems that there is an innocent owner having an immediate right to possession of the property or when the release would be in the best interest of justice and the Government.

§ 8.7 Judicial forfeiture.

If the appraised value is greater than $100,000 or a claim and satisfactory bond have been received for property appraised at $100,000 or less, the Special Agent in Charge of the FBI field office that seized the property shall transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made for the purpose of instituting judicial forfeiture proceedings. Also transmitted with the claim and bond will be description of the property and a complete statement of the facts and circumstances leading to the seizure of the property.

§ 8.8 Notice of seizure when value does not exceed $100,000; advertisement; Declaration of Forfeiture.

(a) The notice required by customs laws, section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intention to forfeit and sell or otherwise dispose of property not exceeding $100,000 in value seized pursuant to the statutes identified in 8.1, shall describe the property seized, state the date seized, cause, and place of seizure; and state that any person desiring to claim the property must file with the Special Agent in Charge, Federal Bureau of Investigation (FBI) within 20 days from the date of the first publication of the notice a claim to such property and a bond.

(b) The bond amount shall be $2,500 or ten percent of the value of the claimed property whichever is lower, but not less than $250. The bond posted to cover costs may be in cash, certified check, or satisfactory sureties. When the claim and bond are received by the Special Agent in Charge, he shall, after finding the documents in proper form and the sureties satisfactory, transmit the documents, together with a description of the property and a complete statement of the facts and circumstrances surrounding the seizure, to the United States Attorney for the judicial district in which the seizure was made for purpose of proceeding to forfeiture of the property in a manner prescribed by law. If the documents are not in satisfactory condition when first received, a reasonable time for correction may be allowed. If correction is not made within a reasonable time, the documents may be treated as nugatory, and the administrative forfeiture shall proceed as though they had not been tendered. The filing of the claim and the posting of the bond does not entitle the claimant to possession of the property, however, it does stop the administrative forfeiture proceeding.

(c) The notice for administrative forfeiture proceedings shall be published once each week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. If a claim is not made within the time period, the FBI Property Management Officer shall declare the property forfeited.

§ 8.9 Disposition of Forfeited Property.

(a) If the laws of a state in which an article of forfeited property is located prohibit the sale of such property or if the United States Marshals Service is of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district as the United States Marshals Service may direct.

(b) If, after the administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, the United States Marshals Service may order the destruction of the property. Similarly, property forfeited under a decree of a court may be destroyed in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611). Also, if the sale or use of any article is prohibited under any law of the United States or the state where it is stored, the United States Marshals Service may order it destroyed or cause alteration of the property into an article that is not prohibited.

(c) If arms and munitions are forfeited pursuant to 22 U.S.C. 401(c), the Secretary of Defense should be contacted to determine if he desires this property.

§ 8.10 Remission or mitigation of forfeiture

(a) Any person claiming a legal or equitable interest in any property which has been forfeited pursuant to statutes identified in 8.1, may file, in accordance with the provisions of 28 Code of Federal Regulations (CFR) Part 9, a petition for remission or mitigation of the forfeiture or a petition for restoration of the proceeds of sale or for value of the property placed in official use. If the foreiture proceedings are administrative, the petition shall be addressed to the Director of the FBI and shall be filed in triplicate with the Special Agent in Charge of the FBI field office that seized the property. It must be executed and sworn to by the person alleging interest in the property. If the forfeiture proceedings are judicial, the petition shall be addressed to the Attorney General of the United States and filed in triplicate with the Special Agent in Charge of the FBI field office that seized the property. The petition for a judicial forfeiture shall be sworn to by the petitioner, or by his or her counsel upon information and belief.

(b) The petition shall include the following: (1) A complete description of the property, including model and serial numbers, if any, and the date and place of seizure; (2) the petitioner's interest in the property, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and, (3) the facts and circumstances, established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation of the forfeiture. For further information regarding the content of a petition, see 28 CFR 9.5.

(c) Where the petition is for restoration of the proceeds of sale, or for value of the property placed in official use, it must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration of forfeiture and was in such circumstances as prevented petitioner from knowing of the same.

(d) A petition for remission or mitigation of forfeiture should be filed within 30 days of the receipt of the notice of seizure. Once forfeited property is disposed of, a petition for remission or mitigation of forfeiture will no longer be accepted. A petition for restoration of proceeds of sale or for value of the property placed in official use must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

(e) Upon receipt of a petition, an appropriate investigation shall be conducted by the FBI. No hearing shall be held. For administrative forfeitures, the petition and the results of the petition investigation shall be forwarded to the Legal Counsel Division, FBI. Final decisions on petitions for property forfeited administratively shall be made by the Assistant Director, Legal Counsel, FBI or his designee within the Legal Counsel Division, FBI. For judicial forfeitures, the petition and the results of the petition investigation shall be forwarded to the United States Attorney who prosecuted the property. The United States Attorney shall forward the petition and the results of the investigation together with a recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division. The matter shall be assigned to the Asset Forfeiture Office who shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(f) A request for reconsideration of the denial of the petition for an administrative forfeiture must be submitted within 10 days from receipt of the letter denying the petition. Such request shall be addressed to the Director of the FBI for referral to the FBI Legal Counsel Division and shall be based on evidence recently developed or not previously considered. Only one request for reconsideration of a denial of a petition shall be considered. For further information regarding petitions see 28 CFR Part 9.

Dated: February 27, 1986.

Edwin Meese III,
Attorney General.

[FR Doc. 86–5462 Filed 3–13–86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

South Carolina State Plan; Approval of Revised Compliance Staffing Benchmarks; Corrections

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of revised compliance staffing benchmarks.

SUMMARY: In FR Doc. 86–867 published January 17, 1986, OSHA amended Subpart C of 29 CFR Part 1952 to reflect the Assistant Secretary's approval of revised compliance staffing requirements for the South Carolina State plan and to make related revisions. In redesignating §§ 1952.102, "Level of Federal Enforcement," and 1952.101, "Where the plan may be inspected," as §§ 1952.105 and 1952.106, respectively, the redesignated sections inadvertently duplicated sections already codified under Subpart D of 29 CFR Part 1952 related to the Oregon State plan. This notice will correct that error by redesignating §§ 1952.100, 1952.101, 1952.102, 1952.103, 1952.104, 1952.105 and 1952.106 under Subpart C as §§ 1952.90, 1952.91, 1952.92, 1952.93, 1952.94, 1952.95 and 1952.96, and by making minor editorial modifications to reflect these redesignations. For the purposes of clarity, the full text of "Subpart C—South Carolina" is contained in this notice.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of

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Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, DC this 10th day of March 1986

Patrick R. Tyson,
Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 90-83 (48 FR 35736).

2. The table of contents for Part 1952 Subpart C is revised to read as follows:

Subpart C—South Carolina

Sec
1952.90 Description of the plan as initially approved.
1952.91 Developmental schedule.
1952.92 Completion of developmental steps and certification.
1952.93 Compliance staffing benchmarks.
1952.94 [Reserved]
1952.95 Level of Federal enforcement.
1952.96 Where the plan may be inspected.

3. Section 1952.100 is revised and redesignated as new § 1952.90 to read as follows:

§ 1952.90 Description of the plan as initially approved.

(a) The plan identifies the South Carolina Department of Labor as the State agency designated to administer the plan. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan states that the Department of Labor has been promulgating safety and health standards. The South Carolina Commissioner of Labor is promulgating all standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in §§ 1910.13; 1910.14; 1910.15; and 1910.16 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring). The plan describes procedures for the development and promulgation of additional standards, enforcement of such standards, and the prompt restraint or elimination of imminent danger situations. The South Carolina Legislature passed enabling legislation in 1971, a copy of which was submitted with the original plan. Section 40-261 through 40-274 South Carolina Code of Laws, 1962. The amendments to the plan include proposed amendments to this legislation to more fully bring the plan into conformity with the requirements of Part 1902. Under the amended legislation, the South Carolina Department of Labor will have full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

(b) The plan includes a statement of the Governor's support for the legislative amendments and a legal opinion that the amended act will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of South Carolina. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislative amendments.

4. Section 1952.101 is revised and redesignated as new § 1952.91 to read as follows:

§ 1952.91 Developmental schedule.

The South Carolina plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of the above-mentioned legislative amendments in the legislative session following approval of the plan.

(b) Public hearings and adoption of Federal standards to be completed by December 1972.

(c) A management information system to be completed by no later than June 30, 1974.

(d) A voluntary compliance program to be completed by no later than June 30, 1974.

(e) An occupational safety and health program for public employees to be completed by no later than June 30, 1974.

(f) A program for the coverage of agriculture workers to be completed no later than June 30, 1973.

(g) An approved merit system covering employees implementing the plan to be effective 90 days following approval of the plan.

(h) A revised compliance manual to be completed within 6 months following approval of the plan.

5. Section 1952.102 is revised and redesignated as new § 1952.92 to read as follows:

§ 1952.92 Completion of developmental steps and certification.

(a) In accordance with § 1952.91(a) legislative amendments were introduced into the 1973 South Carolina General Assembly and were enacted effective June 12, 1973. The amendments have been supplemented by State commitments to: (1) Take action on all employee discrimination complaints within 90 days, and (2) limit the duration of temporary variances to a maximum of two years, inclusive of any renewals.

(b) In accordance with § 1952.91(b) the South Carolina occupational safety and health standards, identical to Federal standards (through December 3, 1974), have been promulgated and were approved by the Assistant Regional Director for Occupational Safety and Health effective April 10, 1975 (40 FR 16257).

(c) In accordance with § 1952.91(d) a voluntary compliance program, to be known as the Taxpayers' Assistant Program, has been developed.

(d) In accordance with § 1952.91(f) coverage of agricultural workers began on July 1, 1973, and was initiated directly by the South Carolina Department of Labor. (The State plan has been amended to delete the proposal to delegate such responsibility to the State Department of Agriculture.)

(e) In accordance with § 1952.91(g) the State plan has been amended to show extensions of merit system coverage to the South Carolina Department of Labor, Division of Occupational Safety and Health. Agreement with the Department of Health and Environmental Control requires that all health personnel cooperating in the State occupational safety and health program be likewise covered by the State merit system.

(f) In accordance with the requirements of § 1952.10 the South Carolina Safety and Health Poster for private and public employees was approved by the Assistant Secretary on February 19, 1976.

(g) In accordance with § 1952.91(c) development of a management information system designed to provide the data required by the Assistant Secretary and information necessary for internal management of resources and evaluation of State program performance has been completed.

(h) The State plan has been amended to include the details of a public employee program. State and local government employees will be afforded protection identical to that of employees in the private sector.

(i) The South Carolina plan has been amended to include an expanded radiation health effort. The Division of Radiological Health, South Carolina Department of Health and Environmental Control, under contract to the South Carolina Department of Labor will make inspections to provide coverage of radiation hazards not subject to regulation under the Atomic Energy Act of 1954.

(j) In accordance with plan commitments, South Carolina regulations for enforcement of standards and review of contested cases, Article IV, were revised and repromulgated on June 5, 1975. Further amendment to section 4.00K (September 28, 1975) and a January 15, 1976, letter of supplemental assurances from Commissioner Edgar L. McGowan are considered integral parts of the approved South Carolina review procedures. On March 11, 1976, the State of South Carolina promulgated the necessary changes to Article IV to fulfill the commitments contained in their January 15, 1976, letter of supplemental assurances.

(k) The State plan has been amended to include an Affirmative Action Plan in which the State outlines its policy of equal employment opportunity.

(l) In accordance with § 1952.91(h) the State has developed and amended a Compliance Manual which defines the procedures and guidelines to be used by the South Carolina compliance and consultation staff in carrying out the goals of the program.

(m) In accordance with § 1902.34 of this chapter, the South Carolina occupational safety and health plan was certified, effective August 3, 1976, as having completed all developmental steps specified in the plan as approved on November 30, 1972, on or before December 31, 1975.

6. Section 1952.103 is revised and redesignated as new § 1952.93 to read as follows:

§ 1952.93 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 South Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

7. Section 1952.104 which is presently reserved, is removed, and new § 1952.94 is added and reserved.

8. Section 1952.105 is revised and redesignated as new § 1952.95 to read as follows:

§ 1952.95 Level of Federal enforcement.

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with South Carolina, effective May 9, 1975, which agreement was subsequently amended effective April 26, 1979, and May 23, 1984, and based on a determination that South Carolina is operational in issues covered by the South Carolina Occupational Safety and Health Plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c)); enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations where the State is temporarily unable to exercise its enforcement authority fully or effectively; enforcement on all active military reservations; enforcement over maritime and longshoring activities, which include the entire premises of any private sector establishment at least part of which is located upon navigable waters (such enforcement authority over maritime activities includes the enforcement of any applicable provision, standard, rule or order under the Act, including 29 CFR Parts 1910, 1915, 1917, 1918, 1919, and 1926); and investigations and inspections for the purpose of evaluation of the South Carolina Plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The State shall retain inspection and enforcement authority over any establishment which is engaged in the construction of vessels and which is not located upon the navigable waters. Such enforcement authority shall include the enforcement of the State's general industry standards (comparable to 29 CFR Part 1910) and the State's "general duty clause" (comparable to section 5(a)(1) of the Act). The State shall exercise enforcement authority over all on-shore maritime construction activities, except where they are regulated by the Coast Guard or Army Corps of Engineers. The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in South Carolina. (Secs. 8(g), 18, Pub. L. 91–596, 84 Stat 1600, 1608; (29 U.S.C. 657(a), 667]); Secretary of Labor's Order No. 9-83 (48 FR 35736); 29 CFR 1953) [49 FR 30173, July 27, 1984].

9. Section 1952.106 is revised and redesignated as new § 1952.96 and to read as follows:

§ 1952.96 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3476, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street NE., Suite 587, Atlanta, Georgia 30309; and Office of the Commissioner, South Carolina Department of Labor, 3600 Forest Drive, P.O. Box 11329, Columbia, South Carolina 29211.

[FR Doc. 86-5687 Filed 3-13-86; 8:45 am]
BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefit in Single-Employer Plans; Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning April 1, 1986. The interest rates and factors are to be used to value benefits provided under terminating single-employer pension plans covered

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by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after April 1, 1986, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulations is again amended.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-956-5050 (202-956-5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on the valuation of plan benefits in single-employer plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1985), sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1982), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1985 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through at least July 31, 1985. The July 1985 rates and factors continued in effect until the PBGC published new rates and factors for plans terminating during the months of October 1985 through December 1985 (50 FR 37354), January 1986 (50 FR 50699), and February 1986 (51 FR 1788).

Changes in the financial and annuity markets now require a decrease in the rates used for valuing benefits. Although the PBGC usually changes its rates by an interval of ¼ percent, rapid changes in financial markets have indicated that a decrease of ½ percent is warranted at this time. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1986, which set reflects a decrease of ½ percent in the interest rate to 8 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after April 1, 1986, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 61 of Appendix B is revised and Rate Set 62 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate(%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*
61	2-1-86	4-1-86	8.50	1.0775	1.0650	1.0400	7	8
62	4-1-86		8.00	1.0725	1.0600	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-5633 Filed 3-13-86; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 10, 1985, Indiana submitted amendments to its program requirements regarding conduct of administrative adjudication act hearings. Indiana also submitted, on December 16, 1985, a non-substantive amendment to 310 IAC 12-5-148 regarding soil replacement standards for prime farmlands.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving these amendments. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108). Subsequent actions concerning the Indiana program are identified in 30 CFR 914.15 and 30 CFR 914.16.

II. Discussion of Proposed Amendment

On December 10, 1985, and December 16, 1985, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, proposed State program amendments for approval (Administrative Record No. IND 447).

The amendments of December 10, 1985, modify requirements in Indiana's procedural rule for the conduct of administrative adjudication act hearings at 310 IAC 0.5 Rule 1. These amendments were submitted to satisfy requirements set forth under 30 CFR 914.16 (c)(2) and (c)(3) and also contain further revisions to the rule.

The amendment submitted on December 16, 1985, was inadvertently omitted from the State's December 7, 1984 amendment package that was approved by the Director on May 15, 1985 (50 FR 20206). This amendment contains non-substantive changes to 310 IAC 12-5-148, to delete part of the rule's title and to change cross-references in the rule to reflect other amendments.

OSMRE published a notice in the **Federal Register** on January 9, 1986, announcing receipt of the proposed program amendments submitted on December 10, 1985, and December 16, 1985, and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendments (51 FR 989). The public comment period ended February 10, 1986. There was no request for a public hearing and the hearing scheduled for February 3, 1986, was not held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Indiana on December 10, 1985, and December 16, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. Only those areas of particular interest are discussed below in the specific findings. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed.

1. Indiana has deleted the definition of the term "hearing officer" from 310 IAC 0.5-1-1, consistent with its changes to other sections of 310 IAC 0.5-1 which delete the term "hearing officer" and replace it with "administrative law judge." The Director finds the deletion to be consistent with Indiana's deletion of the term "hearing officer" throughout 310 IAC 0.5 Rule 1.

2. Indiana has deleted the term "hearing officer" and substituted the term "administrative law judge" throughout 310 IAC 0.5 Rule 1. The Director finds the substitution to be consistent with the requirements in 43 CFR Part 4 corresponding to the Indiana rules.

3. Indiana has amended 310 IAC 0.5-1-9 to clarify that the provisions of 310 IAC 0.5-1-8(a) control the filing of a response to an amended claim.

The amendment clarifies the language of the rule to agree with the State's interpretation of the rule, as it was approved by the Director on May 16, 1985 (50 FR 20413).

4. Indiana has amended 310 IAC 0.5-1-16 to clarify requirements for awards for expenses and attorney fees and to add the requirement to pay the cost of a court reporter if the person requesting a hearing fails to appear at the hearing. Paragraph (a)(2) is amended to delete the phrase which allows consideration of whether the result would not have been obtained without participation of the person seeking the award, in determining whether to make an award for costs and expenses. The Director finds that the change to paragraph (a)(2) satisfies the required amendment at 30 CFR 914.16(c)(3). The other changes are consistent with the Federal requirements at 43 CFR Part 4.

5. Indiana has added 310 IAC 0.5-1-17 to establish requirements for employing a court reporter and for obtaining transcripts. The Director finds that these changes are not in conflict with Federal requirements and are consistent with the requirements of 43 CFR Part 4 for transcripts of hearings and for copies of transcripts.

6. Indiana has added 310 IAC 0.5-1-18 to provide that the administrative law judge shall govern the conduct of a hearing and shall provide for a separation of the witnesses upon a motion by a party before commencement of testimony. The Director finds the amendment consistent with the Federal requirements in 43 CFR Part 4.

7. Indiana has added 310 IAC 0.5-1-19 to provide that, upon a motion by a party, the administrative law judge may join a person as a claimant or respondent who was not previously a party, if the joinder is appropriate to a

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full and fair determination. The Director finds the provision consistent with Federal requirements at 43 CFR Part 4.

8. Indiana has submitted an advisory letter from the Office of the Attorney General, dated April 23, 1985, which advises that IC 13-4.1-11-9 and 310 IAC 0.5-1-16 waive the government's immunity regarding an award of costs and expenses against the Indiana Department of Natural Resources arising pursuant to IC 13-4.1. The Director finds that this letter satisfies the requirements of 30 CFR 914.16(c)(2) that Indiana either submit an Attorney General opinion or amend its rule, to provide that awards may be made against the State.

9. Indiana has amended 310 IAC 12-5-148 to delete the title words "Prime Farmland, Soil Replacement" from the introductory paragraph of the rule and to change the rule sections cross-referenced in paragraph (b) to read "310 IAC 12-5-54.1 through 310 IAC 12-5-58 or 310 IAC 12-5-119.1 through 310 IAC 12-5-122" to reflect amended section numbers. The Director finds that the amendments simplify and clarify the rule and do not alter its effectiveness.

IV. Public Comments

No public comments were received on the amendments.

V. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on December 10, 1985 and December 16, 1985, including the letter from the Attorney General's Office dated April 23, 1985, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

2. 30 CFR 914.15 is amended by adding new paragraphs (k) and (l) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on December 10, 1985, are approved effective March 14, 1986: amendments to the Indiana regulations at 310 IAC 0.5-1-1, 310 IAC 0.5-1-2, 310 IAC 0.5-1-3, 310 IAC 0.5-1-4, 310 IAC 0.5-1-5, 310 IAC 0.5-1-8, 310 IAC 0.5-1-9, 310 IAC 0.5-1-10, 310 IAC 0.5-1-11, 310 IAC 0.5-1-12, 310 IAC 0.5-1-13, 310 IAC 0.5-1-15, 310 IAC 0.5-1-16, 310 IAC 0.5-1-17, 310 IAC 0.5-1-18, 310 IAC 0.5-1-19; and the advisory letter from the Indiana State Office of the Attorney General dated April 23, 1985.

(l) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on December 16, 1985, are approved effective March 14, 1986: amendments to the Indiana regulations at 310 IAC 12-5-148.

§ 914.16 [Amended]

3. 30 CFR 914.16 is amended by removing paragraphs (c)(2) and (c)(3) and reserving paragraph (c)(2) as follows:

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

[FR Doc. 86-5444 Filed 3-13-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 513

[Army Regulation 600-15]

Indebtedness of Military Personnel; Claim Processing Policies

Correction

In FR Doc. 86-4290 beginning on page 7268 in the issue of Monday, March 3, 1986, make the following corrections:

1. On page 7269, in the first column, in § 513.1(d)(2)(iii), in the first line, "of the" should read "of this".

2. On page 7270, in the second column, in § 513.2(a)(3)(iii), in the third line, "the requirements" should read "these requirements"; and in the fifth line, "USACFC" should read "USACFSC".

3. On page 7273, in the third column, in § 513.5(c), in the fourth line, "discussed" should read "disclosed".

4. On page 7275, in the first column, in the third paragraph, headed "Debt" in the second line, "where" should read "which".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 265

Disclosure of Change of Address and Post Office Boxholder Information; Conforming Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to conform Postal Service regulations on the disclosure of change of address and post office boxholder information appearing in the Code of Federal Regulations with the disclosure policy reflected by recently changed Postal Service records systems containing change of address and boxholder information. This rule also modifies these regulations to eliminate reference to the $1.00 fee that was to be charged to Federal, State or local Government agency requesters as of January 1, 1985. The effective date for payment of this fee has been indefinitely postponed. The changes published here reflect no change in postal policy; they merely make one set of regulations consistent with changes previously made to another set.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268-5158.

SUPPLEMENTARY INFORMATION: On November 15, 1985, the Postal Service published in the **Federal Register** (50 FR 47311) final notice of changes to record systems USPS 010.010—Collection and Delivery Records—Address Change and Mail Forwarding Records, and USPS 010.020—Collection and Delivery Records—Boxholder Records. The background and rationale for these changes was published in the **Federal Register** on July 16, 1985 (50 FR 28862), and comments were requested from the public. No comments were received. Accordingly, the Postal Service published its final rule on November 15, 1985, as stated above. The changes being made here merely conform the following Postal Service regulations on the release of information published in the Code of Federal Regulations (in 39 CFR 265.6(d) and §§ 265.8 (d)(3) and (e)(8)) with the above described recently changed Postal Service record systems.

Further, on November 29, 1984, the Postal Service published in the **Federal Register** (49 FR 46895) notice of indefinite postponement of its intent to begin charging a $1.00 fee for providing information about a postal customer's address to Federal, State, or local Government agency requesters as of January 1, 1985. Sections 265.6(d)(8) and 265.8(e)(8) have been changed and § 265.8(d)(4) deleted to eliminate reference to this fee.

Accordingly, Part 265 of 39 CFR is amended as follows:

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 is revised to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. Section 265.6(d) is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) *Disclosure of Names and Addresses of Customers.* Upon request, the addresses of specifically identified postal customers will be made available only as follows:

(1) *Permanent change of address.* The new address of any specific customer who has filed a permanent Change of Address Order (PS Form 3575) will be furnished to any person upon payment of the prescribed fee. See paragraphs (d)(3) and (e)(8) of § 265.8. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (*i.e.*, not other individuals or family members whose names may also appear on the change of address order). Other information on Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section. The fee is waived for providing information under these latter circumstances. See paragraph (e)(8) of § 265.8.

(2) *Temporary change of address.* Information from temporary change of address orders will be furnished only in those circumstances stated at paragraphs (d)(6)(i) through (d)((6)(iv) of this section. Copies of the change of address order form will be furnished only in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section. The fee is waived for providing information under these latter circumstances. See paragraph (e)(8) of § 265.8.

(3) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit, or postage meter permit, and the name of any person applying for a permit in behalf of a holder, will be furnished to any person upon the payment of any fees authorized by paragraph (d)(2) of § 265.8. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(4) *Post office box address.* The recorded post office box address of a customer whose mail is redirected to a post office box will be furnished in accordance with paragraph (d)(1) of this section upon payment of the prescribed fee.

(5) *Fee office boxholder information.* Information *from* Form 1093, *Application for Post Office Box or Caller Number,* will be provided only as follows:

(i) *Business use*—The recorded name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public, and any person applying for a box in behalf of a holder, will be furnished to any person without charge. The postmaster may furnish this information from Form 1093 when he is satisfied from the entries appearing on it, or from evidence furnished by the requester (such as an advertising circular), that the box is being used for such a business purpose. When the postmaster is unable to determine whether a business use is involved, he shall refer the request to Regional Counsel for advice.

(ii) *Non-business use*—Information from Form 1093 about the holder of a post office box which is not being used for the purpose of doing or soliciting business with the public will not be furnished except in those circumstances stated at paragraphs (d)(6)(i) through (d)(6)(iv) of this section.

(iii) *Copies of Form 1093*—Copies of Form 1093 will not be furnished except in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section.

(6) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of postal customers will be furnished only as follows:

(i) To a federal, state or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se,* upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation which empowers the requester to serve process, if pertinent; (C) the names of all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; (F) the capacity in which the boxholder is to be served, *e.g.*, defendant or witness; and (G) a brief description of the nature of the litigation, *e.g.*, domestic relations, personal injury, property damage, indebtedness. By submitting such information, the requester certifies that it is true.

Note.—The term *pro se* means that a party is not represented by an attorney, but is representing himself.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(6)(i) of this section.)

(7) *Jury service.* The mailing address of any customer sought in connection

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with jury service, if known, will be furnished without charge upon prior written request to a court official, such as a judge, court clerk or jury commissioner.

(8) *Address verification.* The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. "Verification" means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The Postal Service requires government agencies to use the following format when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, or if the request has been sent to the wrong post office, the postmaster will return the request to the agency, specifying the deficiency in the space marked "OTHER".

(AGENCY LETTERHEAD)

To: Postmaster

____

Agency Control No. __________

Date: ______________________

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

Name: ______________________________

Last Known
Address: ___________________________

I certify that the address information for this individual is required for the performance of this agency's official duties.

____
(Signature of Agency Official)

____
(Title)

FOR POST OFFICE USE ONLY

☐ MAIL IS DELIVERED TO ADDRESS GIVEN

☐ NOT KNOWN AT ADDRESS GIVEN

☐ MOVED, LEFT NO FORWARDING ADDRESS

☐ NO SUCH ADDRESS

☐ OTHER (SPECIFY): __________

NEW ADDRESS

____

____

BOXHOLDER'S STREET ADDRESS

____

____

Agency return address

Postmark/Date Stamp

(9) *Business/Residence location.* If the location of a residence or a place of business is known to a Postal Service employee, whether as a result of official duties or otherwise, the employee may, but need not, disclose the location or give directions to it. No fee is charged for such information.

(10) *Form 1583, Application for Delivery of Mail Through Agent.* Information contained in Form 1583 will not be made available to the public.

3. In § 265.8, paragraph (d)(4) is deleted and paragraphs (d)(3) and (e)(8) are revised to read as follows:

§ 265.8 Schedule of fees.

* * * * *

(d) *Other costs* * * *

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $1.00. This fee is charged regardless of whether a permanent change of address is found on file. (See paragraph (e)(8) of this section.)

(e) *Payment and waiver of fees.* * * *

(8) *Waiver of fee for changes of address.*

The fee prescribed by paragraph (d)(3) of this section is waived when change of address information is provided:

(i) To a Federal, state or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To persons requesting the information for the purpose of serving legal process in accordance with paragraph (d)(6)(ii) of § 265.6.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service in accordance with paragraph (d)(6)(iv) of § 265.6.

(v) To postage meter manufacturers when they are attempting to locate a missing meter.

This waiver does not apply to fees for services performed in accordance with

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section 122.5 of the *Domestic Mail Manual.*

* * * * *

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-5642 Filed 3-13-86; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. C85-1; Order No. 677]

Amendment to Domestic Mail Classification Schedule; Complaint of Advo-System, Inc.

Issued: March 7, 1986.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with March 3, 1986, adoption of the Postal Rate Commission's recommended Docket No. C85-1 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.67). This change concerns the eligibility requirements for entry into second-class mail.

EFFECTIVE DATE: June 8, 1986.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On December 27, 1984, Advo-Systems, Inc., pursuant to 39 U.S.C. 3662, filed a complaint concerning the use of second-class mail for "Plus" or "total market coverage" editions published by newspapers. The Commission invited interested persons to comment and participate in the proceeding. 50 FR 5703 (February 11, 1985) and 50 FR 11035 (March 19, 1985). The parties agreed upon factual components for the evidentiary record. Additionally, parties in the proceeding submitted a nonunanimous settlement agreement. The Commission gave the parties the opportunity to file briefs and reply briefs and to participate in oral argument. On January 24, 1986, the Commission issued a decision recommending the addition of § 200.0123 to the DMCS. The Board of Governors approved the recommended decision on March 3, 1986, and set June 8, 1986, as the effective date for the change. The addition to the DMCS which is published in this order reflects the Governors' decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable To Requests for Establishing or Changing the Mail Classification Schedule

List of Changes

1. The authority citation for Part 3001 is revised to read as follows and the authority citations following all sections in Part 3001 are removed:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. The following change in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.67) of the Commission's rules of practice and procedure is adopted:

Add new 200.0123 to read as follows:

200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if:

a. It is published at a regular frequency on the same day as another regular issue of the same publication, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, whichever is greater.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86-5431 Filed 3-13-86; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA Action MO 1730; FRL-2976-3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants of Missouri

AGENCY: Environmetal Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice advises the public that EPA today takes final action to approve the State of Missouri's section 111(d) plans. These plans are for the control of fluoride emissions from phosphate fertilizer plants and from primary aluminum reduction plants, and also a plan for the control of sulfuric acid mist from sulfuric acid production plants as required under section 111(d) of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 14, 1986.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht at (913) 236-2893, or FTS 757-2893.

SUPPLEMENTARY INFORMATION: On January 3, 1985, the State of Missouri submitted Section 111(d) plans for the control of: (1) Fluoride emissions from phosphate fertilizer plants; (2) fluoride emissions from primary aluminum reduction plants; and (3) sulfuric acid mist emissions from sulfuric acid production plants.

Section 111(d) of the Clean Air Act and 40 CFR Part 60, Subpart B, require that each state adopt and submit a plan for the control of designated pollutants from existing facilities. Designated pollutants do not include those for which air quality criteria have been established or which are already listed under section 108(a), relating to development of air quality criteria for certain pollutants, or section 112(b)(1)(A), Hazardous Air Pollutants.

On July 31, 1985, EPA published a notice in the **Federal Register** (50 FR 30961), proposing to approve the State's 111(d) plans. The proposal contains EPA's review of the State 111(d) plans, therefore, it will not be reiterated herein.

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No public comments were received on the proposal. EPA takes this final action for the reasons set forth in the proposal.

Final Action

In today's notice, EPA takes final action to approve the State of Missouri's section 111(d) plan for the control of: (1) Fluoride emissions from phosphate fertilizer plants; (2) fluoride emissions from primary aluminum reduction plants; and (3) sulfuric acid mist emissions for sulfuric acid production plants.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Administrative practice and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Feterilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plants.

Dated: February 21, 1986.

Lee M. Thomas,
Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Subpart AA is revised to read as follows:

Subpart AA—Missouri

Plan for the Control of Designated Pollutants From Existing Facilities [Section 111(d) Plan]

Sec.
62.6350 Identification of plan.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

62.6351 Identification of sources.

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

62.6352 Identification of sources.

Sulfuric Acid Mist From Existing Sulfuric Acid Production Plants

62.6353 Identification of sources.

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

62.6354 Identification of plan—negative declaration.

Subpart AA—Missouri

Plan for the Control of Designated Pollutants From Existing Facilities [Section 111(d) Plan]

§ 62.6350 Identification of plan.

(a) Identification of plan: Missouri Plan for Control of Designated Pollutants from Existing Facilities [Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of fluoride emissions from existing facilities at phosphate fertilizer plants, and fluoride emissions from existing facilities at primary aluminum reduction plants, submitted on September 22, 1981, having been adopted by the State on June 17 and June 21, 1981. A letter conveying additional information regarding this plan was submitted on January 3, 1985.

(2) Control of sulfuric acid mist from existing facilities at sulfuric acid production plants, submitted on March 12, 1979, having been adopted by the State in 1967 and 1971. A letter providing additional information regarding this plan was submitted on January 3, 1985.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Phosphate fertilizer plants.

(2) Primary aluminum reduction plants.

(3) Sulfuric acid production plants.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.6351 Identification of sources.

The plan applies to existing facilities at the following phosphate fertilizer plant:

Farmers Chemical Company, Joplin, Missouri

Flouride Emissions From Existing Primary Aluminum Reduction Plants

§ 62.6352 Identification of sources.

The plan applies to existing facilities at the following primary aluminum reduction plant:

Noranda Aluminum, Inc., New Madrid, Missouri

Sulfuric Acid Mist From Existing Sulfuric Acid Production Plants

§ 62.6353 Identification of sources.

The plan applies to existing facilities at the following sulfuric acid production plant:

W.R. Grace and Company, Joplin, Missouri

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.6354 Identification of plan—negative declaration.

Letter from the Director of the Missouri Department of Natural Resources submitted on May 14, 1982, certifying that there are no kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

[FR Doc. 86–4475 Filed 3–13–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[GA–009; A–4–FRL–2983–7]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Ozone Nonattainment Areas in Alabama and Georgia

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today granting requests by Alabama and Georgia that EPA redesignate two counties in the Columbus-Phenix City Interstate Air Quality Control Region (AQCR) attainment for ozone. The two counties involved are Russell County, Alabama and Muscogee County, Georgia. The redesignation of the Columbus-Phenix City area to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 and implementation of an EPA-approved control strategy.

EFFECTIVE DATE: This action is effective April 14, 1986 for all items.

ADDRESSES: Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Jill Thomas, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–4253 or FTS 257–4253.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 FR 8962), EPA designated Russell County, Alabama (Phenix City) and Muscogee County, Georgia (Columbus) nonattainment for ozone. Alabama and Georgia were therefore required to revise their respective state implementation plans (SIP) for ozone. Both States drafted and adopted control strategies based on reduction of volatile organic compound (VOC) emissions from mobile and stationary sources. They showed that the area would achieve the ozone standard by early 1981 through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC Reasonably Available Control Technology (RACT) regulations. EPA approved Alabama's SIP on November 26, 1979, and Georgia's SIP on September 18, 1979.

Alabama and Georgia have requested that EPA change the attainment status of Russell County and Muscogee County, respectively, from nonattainment for ozone to attainment. In order to redesignate a nonattainment area, EPA policy requires that three years of ozone data show an expected exceedance calculation of less than or equal to 1.0. The most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy. Georgia has submitted ambient air quality data collected at three monitoring sites in Columbus. The most recent three years of air quality data (1982, 1983, and 1984) show the number of expected exceedances to be less than or equal to 1.0.

For a more detailed discussion, please refer to the November 6, 1985, **Federal Register** (50 FR 46069) and to the Technical Support Document. Both documents are available for inspection at the EPA Region IV office.

On November 6, 1985, EPA proposed to approve the requests to redesignate the Columbus-Phenix City area to attainment for ozone. At that time the public was invited to submit written comments on the proposed action. However, no comments were received. Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA is approving the redesignation of the two counties in the Columbus-Phenix City Interstate AQCR from ozone nonattainment to attainment.

Final Action

EPA is today granting the redesignation of the Russell County and Muscogee County ozone nonattainment areas on the basis of three years of air quality data and an EPA-approved control strategy.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 13, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: March 10, 1986.

Lee M. Thomas,
Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart C—Section 107 Attainment Status Designations

§ 81.301 [Amended]

2. Section 81.301 is amended by removing from the "Alabama—O_3" table the entry for Russell County and the first footnote and redesignating footnote 2 as footnote 1.

§ 81.311 [Amended]

3. Section 81.311 is amended by removing from the "Georgia—Ozone (O_3)" table the entry for Muscogee County and the first footnote and redesignating footnote 2 as 1.

[FR Doc. 86–5613 Filed 3–13–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1414, 1433, and 1452

Bid Protest Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule implements revised procedures for filing protests with the General Accounting Office (GAO) and new procedures for filing automatic data processing protests with the General Services Administration Board of Contract Appeals (GSBCA) as required by the Competition in Contracting Act of 1984. This rule is based on revisions made to the Federal Acquisition Regulation (FAR) to implement the new protest procedures under Federal Acquisition Circular (FAC) 84–6 dated January 15, 1985. An interim rule and request for comments was published on September 24, 1985 (50 FR 38657–38659).

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Chief, Branch of Policy and Regulations, Office of Acquisition and Property Management, Department of the Interior, Washington, DC 20240, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION: The Department has determined that the regulations under this rule concern agency procedures required to implement the new protest procedures established by Pub. L. 98–369. In view of the need to implement these final rules in as timely a manner as possible, the Department has found good cause to make these regulations effective upon publication under 5 U.S.C. 553(d)(3).

Public Comment

Comments were requested by October 24, 1985. No comments were received. However, the final rule does contain an administrative change in section 1433.103 to require the contracting office to initially contact the local Office of the Solicitor before making the determination under FAR 33.103(a). The Assistant Solicitor for Procurement and Patents must also be notified before the determination is made. Minor editorial changes have also been made in the final rule.

Primary Author

The primary author of this rule is Mr. William Opdyke, Office of Acquisition and Property Management, telephone (202) 343–3433.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities. The only additional requirement imposed by this rule is the procedure for transmitting a copy of the protest to the Office of the Solicitor when the protest is served on the contracting officer. The information collection requirements referred to in this rule are prescribed by FAR 33.106(a) and are the responsibility of the FAR Secretariat, General Services

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Administration. This rule does not contain any new information collection requirements.

List of Subjects in 48 CFR Parts 1414, 1433 and 1452

Government procurement.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Dated: March 10, 1986.

Joseph E. Doddridge,

Deputy, Assistant Secretary of the Interior.

1. The authority citation for 48 CFR Parts 1414, 1433, and 1452 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1414—FORMAL ADVERTISING

Subpart 1414.4—Opening of Bids and Award of Contract

§ 1414.407–8 [Amended]

2. Section 1414.407–8 is amended by removing paragraphs (a) through (d) and inserting in their place the statement "See Subpart 1433.1—Protests."

3. Part 1433 is amended by revising the title of the part; redesignating sections 1433.003 through 1433.014 as sections 1433.203 through 1433.214, respectively, in a new Subpart 1433.2; adding a new Subpart 1433.1; removing the citation "33.003(b)" in newly redesignated section 1433.203(a) and inserting in its place "33.203(b)"; removing the citations "33.011(a)(4)" and "33.011(a)(54)(v)" in the first sentence of newly redesignated section 1433.211 and inserting in their place "33.211(a)(4)" and "33.211(a)(4)(v)", respectively. The table of contents for the part and the text of the new Subpart 1433.1 are set forth below.

PART 1433—PROTESTS, DISPUTES, AND APPEALS

Subpart 1433.1—Protests

1433.102 General.
1433.103 Protests to the agency.
1433.104 Protests to GAO.
1433.105 Protests to GSBCA.
1433.106 Solicitation provision.

Subpart 1433.2—Disputes and Appeals

1433.203 Applicability.
1433.203–70 Interior Board of Contract Appeals.
1433.211 Contracting officer's decision.
1433.212 Contracting officer's duties upon appeal.
1433.214 Contract clause.

Subpart 1433.1—Protests

1433.102 General.

The Office of the Solicitor shall be responsible for handling bid protests filed with the General Accounting Office (GAO) or for bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Assistant Solicitor for Procurement and Patents.

1433.103 Protests to the agency.

For protests filed with a bureau or office and received before award, the contracting office shall obtain the advice of the appropriate Regional or Field Solicitor and notify the Assistant Solicitor for Procurement and Patents before making the determination under FAR 33.103(a).

1433.104 Protests to the GAO.

(a) *General.* A protestor shall furnish a copy of its complete protest simultaneously to the officials designated in the provision at 1452.233–2, Service of Protest, as prescribed in 1433.106.

(b) *Notice of protest.* Upon being telephonically advised by the GAO of the receipt of a protest before or after award, the Office of the Solicitor shall inform the appropriate contracting activity which shall immediately notify the contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For protests concerning ADP acquisitions, the Office of the Solicitor shall also inform the Director, Office of Information Resources Management, who, in turn, shall notify the appropriate bureau Information Resources Management (IRM) contact and GSA official. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Solicitor will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the Assistant Solicitor for Procurement and Patents. Cover letters shall contain a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Assistant Solicitor for Procurement and Patents. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(c) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of the Solicitor of the GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to the GAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the contracting activity shall immediately notify the Office of the Solicitor which shall request, in writing, an extension of the period in accordance with 4 CFR 21.3(d). The contracting activity shall have no more than 15 work days from the date of telephonic notification by the Office of the Solicitor to deliver the protest report to the Assistant Solicitor for Procurement and Patents. For reports involving use of the 10 work day express option, the Office of the Solicitor shall establish the report delivery date after consultation with the contracting activity.

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or representative. Reports shall be prepared with the assistance of the local attorney-advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and two complete copies of the contracting officer's report to the Assistant Solicitor for Procurement and Patents plus one complete copy for each interested party who responded to GAO and the contracting officer and Assistant Solicitor for Procurement and Patents in response to the notification under paragraph (b) above. The Assistant Solicitor for Procurement and Patents shall be responsible for submitting the report to GAO and sending copies of the report to each interested party.

(d) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances in FAR 33.104(b)(1), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for approval by the head of the contracting activity. The contracting officer shall notify GAO prior to award as required by FAR 33.104(b)(2). The written determination shall be included in the file and the contracting officer shall give notice of the decision as required by FAR 33.104(d).

(e) *Protests after award.* If notice of a protest has been received from GAO within 10 calendar days after award and the contracting officer determines in writing that contract performance should continue under the circumstances in FAR 33.104(c)(2), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for immediate approval by the head of the contracting activity. Pending approval of the determination, suspension of performance or termination of the contract shall not be initiated. The contracting officer shall notify GAO as required by FAR 33.104(c)(3). The written determination shall be included in the file and the contracting officer shall give notice of the decision as required by FAR 33.104(d).

(f) *Notice to GAO.* The head of the contracting activity is authorized to submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Assistant Solicitor for Procurement and Patents and the Director, Office of Acquisition and Property Management. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Office of Information Resources Management.

1433.105 Protests to GSBCA.

(a) *General.* A protester filing a protest with GSBCA on a solicitation or contract for ADP shall comply with the requirements of the provision at 1452.233–2, Service of Protest, as prescribed in 1433.106 on the same day the protest is filed with the GSBCA.

(b) *Notice of protest.* Immediately upon receipt of a copy of a protest to GSBCA, the Office of the Solicitor shall inform the Office of Information Resources Management and the contracting activity which shall immediately inform the contracting officer. The Office of Information Resources Management shall immediately notify its bureau IRM contact and the appropriate GSA official responsible for the delegation of procurement authority. The contracting officer shall within 1 work day after receipt of a copy of the protest provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of the Solicitor simultaneously with submission to the GSBCA.

(c) *Submission of protest file.* An original and two copies of a protest file (See FAR 33.105(b)) plus one copy for each interested party which has filed a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of the GSBCA Rules of Procedure (48 CFR Part 61) shall be submitted by the contracting officer to the Office of the Solicitor within 8 work days after the filing of a protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure. The Office of the Solicitor shall then submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to each interested party.

(d) *Hearings.* The Office of the Solicitor shall be responsible for representing the contracting officer at any hearing on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)) or at any hearing on the merits of the protest (see FAR 33.105(e)). The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Office of Information Resources Management of the results of the hearing.

1433.106 Solicitation provision.

The provision at FAR 52.233–2, Service of Protest, as prescribed in FAR 33.106, shall be modified in accordance with the instructions in 1452.233–2.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1452.2—Texts of Provisions and Clauses

4. Subpart 1452.2 is amended by adding new section 1452.233–2 to read as follows:

1452.233–2 Service of Protest.

(a) As prescribed in 1433.106, the provision at FAR 52.233–2, Service of Protest, shall be modified before insertion into solicitations by—

(1) Changing the title of the provision to read "SERVICE OF PROTEST (JAN 1985) (DEVIATION)"; and

(2) Adding the following sentence to the end of the provision:

> A copy of the protest served on the contracting officer shall be simultaneously furnished by the protester to the Assistant Solicitor for Procurement and Patents, Office of the Solicitor, Room 6511, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252–6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

[FR Doc. 86–5810 Filed 3–13–86; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 9]

Vehicle Theft Prevention Standard and Selection of Covered Major Parts; Response to Petitions for Reconsideration

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Response to petitions for reconsideration.

SUMMARY: This denies eight petitions asking the agency to reconsider its final rule establishing a Federal motor vehicle theft prevention standard which requires the placing of an identifying number or symbol on selected major parts. The agency was asked to reconsider three major aspects of this

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rule. Specifically, the petitions asked that the rule be amended to:

(1) Require manufacturers to stamp the identification number into certain parts in lieu of other means of compliance such as labeling. This request was denied because the theft prevention standard is required by law to be a performance standard, which is broadly drafted to allow vehicle manufacturers to choose the means they will use to comply with those performance requirements. At this time, the agency believes that affixed markings will effectively serve the needs of law enforcement organizations. Neither the law enforcement groups nor this agency have any empirical evidence indicating that markings affixed in compliance with this standard do not serve the needs of law enforcement. Hence, the agency concluded that it would be premature to consider imposing additional regulatory requirements on manufacturers, absent some evidence showing that the current requirements are inadequate to achieve their intended purpose.

(2) Allow manufacturers that currently stamp engines and transmissions with random numbers to use those random numbers as the identification required by the theft prevention standard. This request was denied because the random numbers do not meet the statutory requirement that they substantially comply with the standard's requirement that original equipment parts be identified with the full 17-character vehicle identification number.

(3) Rescind the provisions allowing direct importers to comply with the theft prevention standard. This request was denied because NHTSA believes that the specified procedures are consistent with the underlying law and needs of law enforcement officers, while imposing the least burden on direct importers and purchasers of cars from direct importers.

EFFECTIVE DATE: The vehicle theft prevention standard (49 CFR Part 541) becomes effective on April 24, 1986, as specified in the final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–426–1740).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act, Pub. L. 98–547) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act, 15 U.S.C. 2021 *et seq.*). Among other things, Title VI requires NHTSA, by delegation from the Secretary of Transportation, to issue a motor vehicle theft prevention standard setting forth the performance criteria for affixing or inscribing covered major parts of passenger motor vehicles with identifying numbers or symbols (15 U.S.C. 2022). In response to this mandate, a final rule establishing a new vehicle theft prevention standard at 49 CFR Part 541 was published on October 24, 1985 (50 FR 43166).

Summary of Theft Prevention Standard

The most noteworthy feature of the theft prevention standard is its requirement that certain major parts of passenger cars be marked with a specified identification. The standard sets forth separate performance requirements for identification markings that are inscribed into a part and for markings that are affixed to a part. Manufacturers are free to choose either of these means for marking the parts. The final rule lists 14 major parts that are required to have identification markings if the parts are either original equipment parts or replacement parts for vehicles in lines selected as "high theft lines".

In the case of original equipment on new cars in high theft lines, the manufacturer is required to inscribe or affix the car's vehicle identification number (VIN) to each of the covered major parts present on the car. The only exception to this requirement is that manufacturers that were marking engines and transmissions with a VIN derivative consisting of at least the last eight characters of the VIN as of October 24, 1984, may continue to mark engines and/or transmissions with such a VIN derivative. This exception is permitted in response to the language of 15 U.S.C. 2024(b). The original manufacturer of the high theft line is required to designate a target area for the required markings for each of the 14 parts in that line, and that target area cannot exceed 50 percent of the surface area on the surface of the part on which the target area is located. The required markings must be located entirely within such target area. Vehicle manufacturers must certify compliance with the theft prevention standard by adding language to the certification label already required by 49 CFR Part 567.

In the case of replacement parts for any of the 14 parts on a high theft line, the part's manufacturer is required to inscribe or affix to the part the letter "R" and the manufacturer's trademark or some other unique identifier of the manufacturer. The original producer or assembler of the high theft line vehicles on which the part will be used is required to designate a target area for the replacement part marking (i.e., the "R", manfacturer's trademark or other identifier and the "DOT" certification symbol discussed below) that does not exceed 25 percent of the surface area of the surface on which the replacement part marking will appear. Additionally, the target area for replacement part marking must be at least 10 centimeters at all points from the target area for the original equipment part marking. The replacement part's marking must be entirely within the designated target area. The replacement part manufacturer certifies compliance by marking the symbol "DOT" within 5 centimeters of the "R" and manufacturer's identifier and entirely within the designated target area.

The final rule also specifies additional requirements for direct importers of vehicles and parts. These direct importers are individuals and commercial enterprises that obtain foreign cars not originally manufactured for sale in the United States, bring them into this country, and modify the vehicles so that they can be certified as complying with the applicable U.S. motor vehicle standards. This activity is commonly referred to as the automotive "grey market". Because of law enforcement concerns, the final rule imposed three specific limitations on grey market vehicles. Such vehicles must:

(1) Be marked with the original Euro-VIN, and not a homemade U.S. VIN;

(2) Have the required markings *inscribed* on their major parts instead of using other means of compliance such as labels affixed to those parts.

(3) Be marked before the vehicle is imported into the U.S.

Eight petitions for reconsideration of this final rule were submitted to NHTSA. These petitions raised a number of issues, which are discussed in detail below. For the sake of the readers' convenience, this discussion of the issues raised in the petitions for reconsideration follows the same organizational format as that used in the preamble to the final rule.

A. Original Equipment Parts

1. The full vehicle identification number (VIN) must be inscribed or affixed to all covered major original equipment parts, except the engine and transmission (50 FR 43167–43170).

The agency determined that the full 17-character should be marked on covered original equipment parts. The only exception to this requirement is one adopted in response to section 604(b) of the Cost Savings Act (15 U.S.C. 2024(b)), which specifies that "any manufacturer

engaged in identifying engines or transmissions in a manner which substantially complies with the requirements of the theft prevention standard" as of October 24, 1984, shall not be required to conform to any identification system which imposes greater costs on the manufacturer than those being incurred as of October 24, 1984.

Accordingly, NHTSA had to determine which methods of identification substantially comply with the requirement that original equipment covered major parts be marked with the full 17-character VIN; § 541.5(b)(1). NHTSA concluded that numbers which were random and did not consist of parts of the VIN do not substantially comply with the theft prevention standard, and that manufacturers could not use such non-VIN derived numbers to identify their engines and transmissions. Hence, such manufacturers are required to identify their engines and transmissions with a full 17-character VIN.

On the other hand, the agency concluded that manufacturers identifying their engines and transmissions with a shortened VIN, consisting of at least the last eight characters of the VIN were substantially complying with the theft prevention standard. This conclusion meant that those manufacturers could continue to identify their engines and transmissions by means of these shortened VIN's.

Both Toyota and BMW asked the agency to reconsider its determination that the random number markings on engines and transmissions do not substantially comply with the requirements of the theft prevention standard. Toyota asked that the standard be amended to allow the use of random numbers as the identification of those components for the theft prevention standard, provided that the random number system allows law enforcement groups to easily determine the VIN of the vehicle in which the engine or transmission was installed and provided that the means for making such a determination were provided to the National Crime Information Center (NCIC) by the manufacturer. Toyota stated its belief that it would not take longer for law enforcement officials to determine the VIN of an engine or transmission by means of these random numbers than it would to recreate the VIN from an 8-character VIN derivative.

BMW stated that NHTSA had misinterpreted the language of section 604(b) of the Cost Savings Act. Section 604(b) states that manufacturers using a marking system for engines and transmissions that "substantially complies with the requirements of the theft prevention standard promulgated under section 602" cannot be required to comply with a more costly identification system. BMW stated that section 602 does not mandate the use of the full 17-character VIN. BMW concluded that the random numbers on engines and transmissions substantially comply with requirements of the theft prevention standard because those random numbers fulfill the purposes of the theft prevention standard. That is, the random numbers were said by BMW to reduce the "incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles."

In response to these petitions, NHTSA has reconsidered its conclusion that random numbers do not substantially comply with the requirement of the theft prevention standard that covered major parts be marked with the full VIN. Several legal and policy considerations lead the agency to reaffirm its previous conclusion.

First, NHTSA believes that both Toyota and BMW have misinterpreted the language in section 604(b) of the Cost Savings Act. Contrary to the assertions of these manufacturers, that section does not permit the agency to consider whether a manufacturer's identification system for engines and transmissions "allows law enforcement officials to trace the VIN of the vehicle in which the part was installed" or whether the system "fulfills the purposes of the theft prevention standard." Instead, the Theft Act permits manufacturers to continue using their identification system for engines and transmissions only if that system "*substantially complies with the requirements of the theft prevention standard.*" The theft prevention standard requires new vehicle covered major parts to be marked with the full 17-character VIN; § 541.5(b)(1). NHTSA cannot conclude that random numbers substantially comply with this requirement.

Second, the agency agrees with the petitioners' statements that random numbers can be used to determine the VIN of the vehicle in which the part was originally installed. However, law enforcement officials have noted that this process can take several days to complete when the markings are made with random numbers, as opposed to several hours when the markings are made with VIN derivatives. Such significant added delays for law enforcement officers would not serve the purposes of the Theft Act or this theft prevention standard.

Third, a random numbering system is useful for theft prevention only if every manufacturer takes steps to ensure that the random numbers assigned to the various parts remain unique for a substantial period of time. For instance, if a manufacturer were to assign the same random number to engines installed in consecutive model year vehicles, those random numbers would not allow law enforcement officials to determine in which vehicle the numbered engine was originally installed. VIN derivatives avoid this problem by having one digit representing the model year of the vehicle. This digit indicating the model year remains unique for 30 years. Additionally, nothing prevents two different manufacturers from assigning the same random number to an engine made by each of them.

Fourth, allowing the use of random numbers would impose a significant administrative and financial burden on the NCIC. Its computers would have to be reprogrammed to allow them to store and process random numbers entered for engines and transmissions, but to continue to reject such entries for other covered parts and vehicles. Further, NCIC would have to retrain its own personnel and the entry clerks from police departments around the country in the proper data entry techniques for this new program. Even if this retraining were feasible and economically practicable, NCIC believes that allowing the entry of random numbers would increase the number of erroneous entries into its system.

Random numbers are not derived from the VIN, the marking required by the theft prevention standard. Allowing random numbers to be used for compliance with the theft prevention standard would add potential uncertainty in positively identifying parts as stolen, potential erroneous reports of parts as stolen, and time and training burdens for law enforcement personnel. Accordingly, NHTSA again concludes that random numbers do not substantially comply with the requirements of the theft prevention standard.

BMW complained that the agency's reasoning "tends to bend over backwards for the domestic manufacturers." BMW stated that NHTSA prohibited the use of random numbers by foreign manufacturers to identify their engines and transmissions, but permitted the use of the VIN derivatives by domestic manufacturers, even though NHTSA admitted in the preamble to the final rule that those derivatives are not unique.

This result did not arise from NHTSA's desire to "bend over

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backwards" for the domestic manufacturers. It is beyond dispute that VIN derivatives do not *comply* with the requirements of the theft prevention standard. However, section 604(b) of the Cost Savings Act does not require that pre-existing engine and transmission identification systems *comply* with the theft prevention standard in order to continue being used—instead it requires that such identification systems "substantially comply" with the theft prevention standard. The VIN derivatives consisting of at least the last 8 characters of the VIN substantially comply with the requirements of the theft prevention standard, because such a VIN derivative is derived from the VIN and, in most cases, the reconstruction of the full VIN can be made reasonably quickly from such a VIN derivative. As noted above, these reconstructions can be made in several hours with VIN derivatives, while such reconstructions can take several days with random numbers. It was the application of both the plain language and the intent of section 604(b), that led the agency to conclude that certain VIN derivatives could be said to substantially comply with the requirements of the theft prevention standard.

The Automobile Importers of America (AIA) asked that manufacturers that mark their engines and transmissions with random numbers be allowed to continue doing so, provided that they also mark the full VIN on those engines and transmissions. AIA acknowledged that the preamble to the final rule had explicitly stated that the theft prevention standard does not require manufacturers to obliterate random numbers from engines and transmissions, if those numbers were put on by a different manufacturer. However, AIA stated that it was not clear if manufacturers could put random numbers on themselves, and also mark the full VIN on the engines and transmissions. The theft prevention standard requires that the vehicle manufacturer mark the full VIN on engines and transmissions, unless the manufacturer was marking its engines and transmissions with an 8-character VIN derivative as of October 24, 1984. The theft prevention standard does not prohibit manufacturers from putting other numbers on those components for their internal purposes. Hence, there is no provision in the theft prevention standard that prohibits vehicle manufacturers from marking both random numbers and the VIN on its engines and transmissions.

2. The theft prevention standard must be a performance standard, which is practicable and which employs relevant objective criteria. (50 FR 43170).

The preamble to the final rule establishing the theft prevention standard stated that the legislative history on this point is very clear. It quoted the following language from the House Committee Report:

"The DOT will establish the tests or general criteria which the identification must meet, but not how it is to be inscribed or affixed. That is the choice of each manufacturer. For example, we understand that a tamper-resistant label exists. If it can meet the performance tests or general criteria prescribed by the standard, the manufacturer may choose to use it to comply with the standard." H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 10 (1984) (hereinafter cited as "H. Rept.").

Because of this clearly expressed Congressional intent, the final rule did not adopt the suggestions in some of the comments on the proposal that the agency should mandate the use of a particular marking system, such as stamping. However, three law enforcement groups objected in their petitions for reconsideration to the absence of a requirement that some of the required markings be stamped into a part. The Federal Bureau of Investigation (FBI) asked the agency to amend its rule to require that the full VIN, or a derivative thereof, be stamped into a permanent metal part of each vehicle. The International Association of Auto Theft Investigators (IAATI) stated that the VIN stamped into the frame or its equivalent has been used repeatedly by law enforcement officials to identify and recover illegally altered stolen vehicles, stripped vehicles, and burned-out vehicles. Further, IAATI stated that it is possible, through chemical means, to restore an altered or obliterated number, if that number has been stamped into the part. Accordingly, IAATI asked the agency to amend the final rule to require that the markings be stamped into the frame, engine, and transmission. For the same reasons, the Criminal Division of the U.S. Department of Justice (DOJ) asked that the necessary markings be required to be stamped into the frame, engine, and transmission.

With respect to the request that the markings be required to be stamped into some covered major parts, NHTSA again concludes that the clearly-expressed Congressional intent would not allow the agency to require explicitly that markings be stamped into the parts. However, NHTSA acknowledges that it could indirectly require markings to be inscribed into some parts by setting higher performance standards for those parts. For instance, NHTSA could add a performance standard for some parts that the marking must be capable of being restored to its original form by chemical means, if the marking is altered for obliterated. Such a requirement would force manufacturers to inscribe the markings into those parts, by etching, sandblasting, stamping, and the like. However, NHTSA has concluded that it would be premature to impose such a requirement.

The House Committee Report accompanying the Theft Act identified the following three essential purposes for the legislation:

(1) To prevent thefts and reduce the ease with which certain stolen vehicles and their major parts can be fenced;

(2) To try to minimize regulation of the domestic and foreign motor vehicle manufacturing industry; and

(3) To give law enforcement officers at all levels of government the much-needed prosecutory tools to crack criminal theft rings and related racketeering activities. H. Rept. at 2.

NHTSA believes that the current requirements of the theft prevention standard will serve all of these purposes. Any markings affixed to a part must be permanent (§ 541.5(d)(1)(i)) and removal of the markings must discernibly alter the appearance of that area of the part where the label was affixed (§ 541.5(d)(1)(v)(B)). Additionally, the Theft Act makes it a crime to possess a part from which the identification number has been removed (18 U.S.C. 2320) and the part is subject to seizure and forfeiture (18 U.S.C. 512). These requirements should help to deter thefts and reduce the ease with which stolen vehicles and their parts can be fenced. Further, by allowing manufacturers to choose how they will meet the performance requirements, the standard minimizes regulation of the motor vehicle manufacturing industry. Finally, NHTSA believes that the evidence left by the removal of affixed markings gives law enforcement officials prosecutory tools to crack theft rings.

The concerns expressed by the law enforcement groups all assume that the affixed markings will not adequately serve the needs of law enforcement. The basis for this assumption, however, is not clear. Since the theft prevention standard has not yet become effective, there has not been any experience with a requirement that covered major parts of vehicles in high theft lines be marked. Hence, neither the law enforcement groups nor this agency have any

empirical evidence indicating that affixed markings which comply with the applicable performance standards do not satisfy the needs of law enforcement. On the other hand, there is clear direction in the Theft Act and its legislative history that the agency must issue a performance standard and consider allowing the use of labels as a means of compliance. NHTSA carefully structured this theft prevention standard so that it would serve the needs of law enforcement, while minimizing regulation of the motor vehicle manufacturing industry, as directed by the Theft Act and its legislative history. NHTSA believes that the performance requirements for affixed markings will satisfy both these needs. If it becomes clear that affixed markings are, in fact, not serving the legitimate needs of law enforcement, NHTSA will consider amending the performance requirements of this theft prevention standard. At present, however, NHTSA has no reason to believe such as amendment is necessary. Accordingly, the requests by the law enforcement groups to require stamping of some parts are denied.

c. Locations selected for labels must provide protection from damage as a result of normal maintenance and exposure. (50 FR 43171–43172).

The theft prevention standard requires that identification labels be placed in a location where it "will not be damaged or obscured during normal dealer preparation operation operations (including rustproofing and undercoating)"; § 541.5(d)(1)(ii)(C). In the preamble to the final rule, NHTSA discussed a comment by a manufacturer thusly:

"VW commented that the agency should allow the use of an integral paint mask, so that the labels can be put on the parts before the vehicle is painted or rustproofed. Such a procedure is permissible under this standard, provided that the paint mask is removed from the label. If the mask were not removed, the identification would not satisfy the requirement that it be visible without further disassembly once the vehicle part has been removed from the vehicle." 50 FR 43172.

In response to this language, AIA asked that the application of the undercoating and rustproofing *and the subsequent removal of the paint mask* be considered normal dealer preparation. AIA asked that the theft prevention standard be amended to ensure that manufacturers can use integral paint masks without risk of non-compliance or an improper certification of compliance with the theft prevention standard.

No such amendment has been made. Section 607(a)(1) of the Cost Savings Act prohibits any person from selling, offering for sale, or introducing or delivering for introduction into interstate commerce any vehicle or major replacement part subject to this standard, unless the vehicle or part complies with this standard. This standard requires that the identification on parts be visible without further disassembly once the part is removed from a vehicle; § 541.5(d)(1)(iii). If a manufacturer were to deliver a vehicle or a part to a dealer with a non-transparent paint mask covering the required marking, the manufacturer would violate section 607(a)(1) of the Cost Savings Act by introducing into interstate commerce a vehicle or replacement part that did not comply with this standard. The dealer's removal or non-removal of a non-transparent integral paint mask would be irrelevant in the case of such a violation, since the violation would have occurred before the car reached the dealer.

The manufacturer could avoid this situation by using transparent paint masks, assuming that the label is clearly visible through this paint mask. This would arise most frequently in the case of replacement parts, which are ordinarily delivered to the dealer unpainted. The dealer then paints the replacement part the proper color and installs it on a damaged vehicle. However, this painting by the dealer would presumably obscure the label, or there would be no reason to put a paint mask over the label. An obscured label would violate §541.5(d)(iii) of this standard, since it would not be visible without further disassembly.

A manufacturer is free under this standard and the Theft Act to use a transparent paint mask and to specify in its contracts with its dealers that the dealer must remove the mask before selling vehicles or parts. However, if the dealer does not remove the mask, both the manufacturer and the dealer could be liable for violating section 607(a) of the Cost Savings Act. The manufacturer and dealer might both be liable for selling a vehicle not in compliance with the theft prevention standard (prohibited by section 607(a)(1)) and the manufacturer might be liable for falsely certifying that the vehicle complies with the theft prevention standard (prohibited by section 607(a)(4)(B)). The manufacturer must assume its portion of this risk if it wishes to use a transparent integral paint mask that must be removed by its dealers.

Target areas. (50 FR 43172–43173).

The final rule requires original vehicle manufacturers to designate target areas within which the parts will be marked. In response to a comment on the NPRM, the preamble to the final rule stated that the engine and transmission each needed to be marked on only one of its subassemblies. The preamble went on to state that "the engine should be marked on the block and the transmission should be marked on the housing." 50 FR 43169. Both Toyota and AIA claimed that this statement is inconsistent with the target area requirement, in that it limits the target area that can be designated for the engine and transmission. Additionally, both these petitioners stated that other components of the engine, such as the cylinder head, may be as expensive as the block and as desirable to thieves.

Mazda raised a related concern in its petition for reconsideration. Mazda stated that an engine consists of at least nine subassemblies, a front door consists of at least six subassemblies, and the front bumper consists of at least five subassemblies. Mazda asked NHTSA to amend the theft prevention standard to specifically identify which subassembly should be marked on each covered major part.

NHTSA has reconsidered this portion of the preamble, and its relationship to the theft prevention standard. NHTSA explained that its intent in establishing the target area concept was to provide manufacturers with "maximum flexibility to avoid unnecessary production burdens and/or costs." 50 FR 43173. Moreover, no language in the theft prevention standard limits a manufacturer's flexibility to choose where it will place the necessary markings on major parts. NHTSA assumed that the absence of a regulatory prohibition on marking engines anywhere besides the block would make clear that manufacturers were, in fact, free to do so.

When NHTSA said in the preamble to the final rule that engines should be marked on the block and transmissions should be marked on the housing, it was indicating its preference for markings on the permanent subassemblies for those particular parts. However, that indication of agency preference was not intended to convey the impression that a manufacturer would violate the theft prevention standard unless it marked all its engines on the blocks and all its transmissions on the housing. Markings on any engine or transmission subassembly that is designed to remain attached to the engine or transmission over its useful life would satisfy the requirement that engines and

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transmission be marked. Markings on engine parts that are intended to be replaced during the lifetime of the engine, such as filters or belts, would not satisfy this requirement. However, markings on subassemblies such as the cylinder head of the engine are fully consistent with this theft prevention standard. If some evidence develops to show that some further limitation of the target area concept is necessary, NHTSA will consider amending the theft prevention standard.

In a related comment, Mazda asked NHTSA to modify the final rule because of its concern that all replacement subassemblies for covered major parts would be required to be marked. NHTSA does not agree that such an amendment is necessary. This standard does *not* require all replacement subassemblies for covered majored parts to be marked. In fact, section 602(d) of the Cost Savings Act explicitly specifies that a major part cannot be required to have more than a single identification. In the case of major replacement parts that consist of more than one subassembly, the theft prevention standard requires only that the replacement marking appear on one of the replacement subassemblies that is designed to remain attached to the subject part over its entire useful life. Under the target area concept used in this standard, the manufacturer may choose to specify the subassembly on which the original equipment marking appears as the one on which the replacement part marking will appear, or may choose a different permanent subassembly as the one of which the replacement part marking will appear. Whichever subassembly is chosen for replacement part marking, the manufacturer must mark all of those replacement subassemblies in accordance with § 541.6 of this standard.

d. Removal of the identification number must cause that identification to self-destruct and alter the appearance of the vehicle part. (50 FR 43173–43174.)

Mercedes-Benz and BMW asked the agency to amend the standard's requirement that removal of an affixed identification marking must "discernibly alter the appearance of that area of the part where the label was affixed"; § 541.5(d)(1)(v)(B). These requests were based on the manufacturers' understanding that a representative of 3M, one of the largest manufacturers of identification labels, had said that current label technology was not capable of discernibly altering the appearance of the area of the part where it was affixed, if it were affixed on the paint applied to European and some other foreign vehicles.

In response to these concerns, NHTSA contacted the persons at 3M responsible for the adhesive label program. Those persons assured this agency that there had been a misunderstanding. 3M repeated its statement in its November 13, 1985 letter to this agency that its labels meet all the performance requirements incorporated in the final rule for Part 541. Further, the director of 3M's technical laboratory stated that 3M labels would meet those performance requirements over any paint used anywhere in the world. Based on these statements, NHTSA concludes that 3M believes its product will comply with the requirements of this standard when used on Mercedes-Benz, BMW, or any other manufacturer's vehicles.

Furthermore, as was explained above in response to the petitions for reconsideration filed by the law enforcement groups, the theft prevention standard is a performance standard. It sets forth performance criteria that identification markings must meet, and allows the manufacturers to choose the technology they will use to satisfy those performance criteria. The Theft Act does not require the theft prevention standard to guarantee every manufacturer that each marking technology will be available to use in marking every covered major part, nor does it require that a manufacturer be able to use the same marking technology on every covered major part on a vehicle. If a particular technology cannot be used for marking some parts, manufacturers will have to use a different technology for those parts. Hence, no change has been made to this requirement in response to the Mercedes-Benz and BMW petitions.

3. Parts To Be Covered by This Standard (50 FR 43175–43176)

Section 541.5(a)(1) through (14), inclusive, sets forth the 14 major parts which must be marked in compliance with the theft prevention standard if they are original equipment parts on a high theft line or if they are replacement parts for the original equipment parts on a high theft line. AIA raised the issue of parts that are imported into this country for use as original equipment parts on vehicles assembled in the United States. AIA stated that section 607(a) of the Cost Savings Act prohibits the importation into the United States of "any motor vehicle subject to the standard . . . or any major replacement part subject to such standard" which is not marked in accordance with the theft prevention standard. According to AIA, this prohibition would not require the marking of original equipment parts at the time they were imported, if the original equipment parts were not yet assembled into a vehicle. AIA stated that this was a proper result, because it is impossible for the manufacturer to mark the original equipment part with the VIN before the manufacturer knows which vehicle the part will ultimately be used on. Accordingly, AIA asked that the theft prevention standard be amended to make clear that these parts do not have to be marked at the time they are imported into the United States.

The theft prevention standard, as set forth in the final rule, already tracks the requirements of the Theft Act. It applies only to passenger cars (§ 541.5) and replacement parts (§ 541.6). The theft prevention standard does *not* require original equipment parts to be marked until they are assembled into a new vehicle. Unmarked parts to be used as original equipment parts can be shipped from one plant to another or imported into the United States without violating any provisions of the Theft Act or the theft prevention standard. There is, therefore, no need to amend the theft prevention standard in response to this petition for reconsideration.

As noted above, the law enforcement groups that filed petitions for reconsideration of this standard all asked the agency to amend the standard to delete one of the 14 parts now required to be marked. In the place of the deleted part, these petitions asked that the standard require the marking of the vehicle frame or its equivalent. The theft prevention standard did not specify the frame as one of the covered major parts required to be marked. As explained in the preamble to the final rule:

"The frame itself is almost never stolen or replaced on a vehicle. The only reason for making such a selection would be to ensure that the remains of a stripped vehicle can be identified. As noted by Ford, there will be few, if any, new passenger cars produced in the future using frame construction. In the case of cars using unitized body construction, the objective of ensuring that an identifiable part of the vehicle remains after the vehicle has been stripped can be achieved by requiring the marking of both rear quarter panels . . . . Accordingly, the agency does not believe there is any reason to select the frame as one of the covered major parts." 50 FR 43175.

NHTSA agrees with the law enforcement groups that it is important to be able to identify the remains of a stripped vehicle. However, the final rule recognized and addressed this need by requiring the marking of both rear quarter panels. Accordingly, NHTSA concludes that there is no reason to amend the rule to require the marking of the vehicle's frame or its equivalent.

B. Performance Standards for Replacement Parts (50 FR 43177–43181)

The preamble to the final rule establishing the theft prevention standard explained that once a line is selected as a high theft line, each covered major replacement part designed for use on that line must be identified as a replacement part, in accordance with § 541.6. 50 FR 43179. Toyota asked the agency to modify this requirement so that replacement parts would only have to be marked for 10 years after the manufacturer has ceased production of the high theft line vehicles. Such a modification is not permitted by the Theft Act, as explained below.

Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that NHTSA may not render the standard inapplicable to any line *which at any time has been subject to the standard,* except for granting an exemption from the marking requirements to the line if it has an original equipment anti-theft device. Section 602(a)(2) of the Cost Savings Act (15 U.S.C. 2022(a)(2)) requires that, if the theft prevention standard applies to a line, it *must* apply not only to the major original equipment parts for that line, but also to its major replacement parts. These provisions together make clear that the manufacturer's halting production of a high theft line does not affect its statutory obligation to mark the replacement parts for that line. Thus, NHTSA has not adopted Toyota's suggestion, since the Theft Act itself expressly prohibits the agency from including such a provision in the theft prevention standard.

Certification of Compliance With the Theft Prevention Standard (50 FR 43181–'43185).

The final rule specified that direct importers could certify compliance of their vehicles, subject to three specific provisions. Such vehicles must:

(1) Be marked with the original Euro-VIN, and not a "homemade" U.S. VIN;

(2) Be marked by inscribing the required markings, and may not affix labels to the parts to satisfy the requirements of the standard; and

(3) Be marked before the vehicle is imported into the United States.

BMW petitioned the agency to either rescind these requirements for direct importers or rescind the entire theft prevention standard and repropose it with these requirements included. NHTSA believes there is no merit in this petition.

First, BMW contended that including these provisions in the final rule without first giving the public an opportunity to comment on the provisions was a violation of the informal rulemaking provisions of the Administrative Procedure Act. NHTSA strongly disagrees with the BMW assertion that its rulemaking procedures in connection with this theft prevention standard violated the requirements of 5 U.S.C. 553. That section of the law requires notices of proposed rulemaking to include either "the terms or substance of the proposed rule or a description of the subjects and issues involved". The courts have interpreted this language to mean that the notice must be sufficiently descriptive of the subjects and issues involved so that interested parties may offer informed criticism and comments. *See, e.g., Portland Cement Ass'n v. Ruckelshaus,* 486 F.2d 375, 392–394 (D.C. Cir. 1973), *cert. den.,* 417 U.S. 921 (1974). However, the publication of a proposed rule for comment does not of necessity bind an agency to undertake a new round of notice and comment before it adopts a rule which is different—even substantially different—from the proposed rule. *American Iron & Steel Institute v. Environmental Protection Agency,* 568 F.2d 284, 293 (3d Cir. 1977); *International Harvester Co. v. Ruckelshaus,* 478 F.2d 615, 632 n.51 (D.C. Cir. 1973). The adequacy of the notice is tested by determining whether it fairly apprised interested persons of the "subjects and issues" before the agency. *Trans-Pacific Freight v. Federal Maritime Commission,* 650 F.2d 1235, 1248–1249 (D.C. Cir. 1980); *Ethyl Corp. v. Environmental Protection Agency,* 541 F.2d 1, 48 (D.C. Cir.), *cert. den.,* 426 U.S. 941 (1976).

Judged by these criteria, NHTSA concludes that the NPRM was sufficient to apprise all interested persons of the issues involved in direct importers' certification of compliance with the theft prevention standard. In the section of the NPRM entitled "Who May Certify", the agency offered an extensive discussion of the legal and policy arguments for and against allowing direct importers to certify compliance with the theft prevention standards. 50 FR 19738–19740. In discussing the arguments favoring such certification, NHTSA noted that proponents had "argued that NHTSA could devise a workable system to achieve Congress' anti-theft goals without imposing harsh economic consequences on direct importers." Although the agency tentatively decided to limit certification to original manufacturers, the notice requested comments on "whether it would be consistent with the Theft Act to construe the term 'manufacturer' so as to permit entities other than the original manufacturer to certify compliance with the standard." The agency then went beyond the question of the legal permissibility of certification by direct importers to raise the issues of the means by which such certification could be accomplished and of the practical effects of those means. The notice of proposed rulemaking read as follows:

"Commenters should discuss whether any alternative scheme is consistent with the agency's authority under the Theft Act and the Congressional intent underlying that Act. Commenters are also invited to address the effects of both the agency's proposal and any alternative certification scheme on international trade and on U.S. purchasers of foreign-manufactured motor vehicles. In particular, the agency seeks comments and data on the costs and benefits of different certification proposals, as well as on the effects of the various proposals on the avenues through which foreign-manufactured automobiles may be sold in the United States. Are there other alternatives possible within the constraints of the Theft Act that would not adversely affect the gray market?

Commenters should also provide details as to how any proposed alternative certification schemes would be structured. In particular, *the agency seeks comments on whether separate certifications should be permitted for compliance with vehicle safety and theft standards,* and whether such certifications could be made by different entities. . . . The agency is particularly interested in receiving comments on the effects of any alternative certification scheme on law enforcement agencies, *including the use of Euro-VINs rather than U.S. VINs in theft markings,* the ability to trace persons other than original equipment manufacturers, and *whether inexpensive marking systems such as paper labeling could continue to be used for marking purposes.* The agency also seeks comments as to whether parties other than original manufacturers could comply with the standard for less than the $15 cost cap established by the Act, and whether an alternative certification scheme would require modifications to the performance standard for theft markings that would increase compliance costs for original manufacturers." 50 FR 19728, 19740 (Emphasis added).

In a further effort to explore ways in which direct importers could still be permitted to import vehicles, the notice invited comments on whether foreign

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original manufacturers should be permitted to comply with the theft prevention standard "via use of the Euro-VIN initially assigned to their vehicles, and then to certify compliance through affixation of a certification plate or label comparable to the U.S. certification plate (as explained further below) but limited to certification of compliance with the theft prevention standard alone, rather than in conjunction with the safety and bumper standard compliance certification statements. Such a system would ensure that a vehicle retains its "signature" VIN, which all interested parties appear to consider essential for law enforcement purposes." 50 FR 19740.

NHTSA believes that these statements in the preamble to the notice clearly alerted interested persons both that the agency was seeking alternatives to its proposed certification scheme and to the terms under which such alternative certification might be permitted. The notice specifically raised the issue of certification by means of the Euro-VIN in place of a U.S. VIN, certification by some means other than labels, and separate certification for the vehicle safety and theft standards. By giving the public notice of the subjects and issues being considered, the agency concludes that it fully satisfied the requirements of the Admininstrative Procedure Act.

Second, BMW contended that it was impossible for direct importers to certify compliance with the theft prevention standard, because it was impossible for the direct importers to determine the model year. A determination of the model year is needed because only 1987 or subsequent model year vehicles in lines selected as high theft lines are subject to the marking requirements of this prevention standard. This BMW assertion is difficult to understand. No direct importer or law enforcement group has asserted to the agency that it will be unable to determine the model year of a vehicle. Absent some indication besides BMW's unsubstantiated contention that this requirement poses some problem for direct importers or the groups enforcing the theft prevention standard, NHTSA has no basis for amending this requirement.

BMW went on to request reconsideration of the requirement that direct importers mark their vehicles with the Euro-VIN. BMW's petition recites the many differnces between Euro-VIN's and U.S. VIN's and asserts that these differences make it inappropriate to use the Euro-VIN for the purposes of the theft prevention standard. NHTSA agrees that there are substantial differences between the U.S. and Euro-VIN. However, those differences are not relevant to the purposes for which the Euro-VIN's would be used under the theft prevention standard. As noted in the preamble to the final rule (50 FR 43163), the purpose of requiring direct imports to be marked with the Euro-VIN is to enable law enforcement officials to trace a vehicle to its original manufacturer, and verify its production. While this does entail additional effort and time delays for law enforcement, it allows them to conclusively establish if the vehicle is properly marked and if it has been stolen. Requiring direct importers to assign "homemade" U.S. VIN's would not allow law enforcement officials to trace a vehicle to its original manufacturer and verify its production. Finally, law enforcement groups have consistently expressed their preference that direct importers use Euro-VIN's to identify their vehicles, rather than use "homemade" U.S. VIN's. Hence, NHTSA denies BMW's request for reconsideration of this requirement.

DOJ also petitioned for reconsideration of the use of Euro-VIN's by direct importers. DOJ stated that they basically concurred in the idea of requiring direct importers to inscribe the Euro-VIN on the covered major parts of their high theft lines. However, DOJ stated that the direct importer should also be required to certify that the Euro-VIN being used is the VIN assigned by the original manufacturer, and that the Euro-VIN has not been altered, replaced, or so forth.

NHTSA has not adopted this DOJ suggestion. It would require direct importers to conduct a title search back to the original manufacturer for every vehicle the direct importer purchases. Such a title search would be necessary if the direct importer were required to certify that the Euro-VIN was that assigned by the original manufacturer, because the direct importer would not be required simply to state that he or she had not altered or replaced the Euro-VIN. The direct importer would also be required to state that no previous purchaser of the vehicle had altered or replaced the Euro-VIN. This tracing of the chain of title for a vehicle is a burdensome task, which is performed by law enforcement officials when they are suspicious of the validity of the current title, not by each purchaser buying a vehicle. NHTSA believes that a direct importer, and any other purchaser, that acts in good faith ought to be entitled to rely on the accuracy and validity of the title and other documents presented at the time of purchase. While there may be some instances in which a direct importer does not act in good faith when purchasing vehicles, the agency has no reason to believe that the overwhelming majority of purchases are not normal, good faith business transactions. In these circumstances, NHTSA concludes it would be inappropriate to impose a strict investigative burden on all direct importers' purchases of vehicles to address the possibility of knowing purchases of stolen vehicles by a direct importer.

The final request by BMW relating to direct imports was that the agency specify in the language of the theft prevention standard that direct importers cannot import vehicles in high theft lines until the original manufacturer of the vehicle reports the designated target areas to the agency. BMW stated that such language was necessary to ensure unique target areas for each covered major part.

No change to the theft prevention standard has been made in response to this comment. Section 541.5(e)(2) requires each manufacturer that is the original producer of any high theft line to inform NHTSA of the target areas or the covered major original equipment parts 30 days before the line is introduced into commerce. Since 541.6(e)(3) sets forth a similar requirement for the target areas for replacement parts. All parts are required to be marked in those target areas; see § 541.5(d)(2)(iii) and § 541.6(d). Since direct importers must mark covered major parts of high theft line vehicles before importing them and since they cannot be certain about the correct location for placing those markings until the original manufacturer designates the target area for the markings, the agency does not believe that there is any need to amend the standard in the way requested by BMW.

B. *Manner of Certification.* (50 FR 43185–43188)

Section 606(c)(1) of the Cost Savings Act requires vehicle manufacturers to certify that the vehicle complies with the theft prevention standard "at the time of delivery of such vehicle". The preamble to the final rule discusses the agency's conclusion that "delivery" refers to the delivery to a dealer or distributor, and that the delivery occurs when the goods are delivered by the seller to a carrier.

Several petitioners asked the agency to reconsider these conclusions. BMW stated that, under the requirements of the theft prevention standard, it would be legally impossible for a manufacturer of imported automobiles to replace a

damaged part subject to the standard. AIA stated that, if the language in the preamble were interpreted as requiring manufacturers to replace damaged parts before delivering vehicles to dealers, U.S. importers would be subjected to unnecessary time and expense to set aside such vehicles to wait for the arrival of a numbered part before shipping the vehicles to dealers. Both these commenters asked NHTSA to amend the theft prevention standard to allow manufacturers to replace damaged major parts with properly marked replacement parts before delivering vehicles to dealers or distributors. Both requests appear to reflect a misunderstanding of the Theft Act and the theft prevention standard.

Nothing in the Theft Act requires manufacturers to deliver a vehicle to dealers with all covered major parts undamaged. Similarly, the theft prevention standard does not include any provision requiring vehicles to be delivered to dealers without damage to any covered major parts. Hence, the AIA concern that manufacturers are required to deliver vehicles with all major parts undamaged is not based on any provisions contained in either the Theft Act or this theft prevention standard. However, section 606(c)(1) of the Cost Savings Act does require manufacturers to deliver to their dealers a vehicle certified as meeting the requirements applicable to high theft line vehicles, that is, with each of the covered major parts marked with the appropriate VIN. As explained in the final rule preamble, the dealer may replace damaged original equipment parts with replacement parts before selling the vehicle to a purchaser, without violating any requirements.

The requests by AIA and BMW that manufacturers be allowed to substitute a properly marked replacement part for a properly marked original equipment part *before delivering the vehicle to a dealer or distributor* are inconsistent with the requirement of section 606(c)(1). The Theft Act itself requires manufacturers to deliver to their dealers a vehicle with all parts marked in accordance with the theft prevention standard's requirements for vehicles, and to so certify. The agency is not free to alter or ignore a statutory requirement. Accordingly, NHTSA repeats that manufacturers must certify that all vehicles in high theft lines have all covered major parts marked with the VIN when the vehicle is delivered to a dealer or distributor.

BMW incorrectly stated that a U.S. importer for foreign-manufactured high theft lines could not legally import an original equipment part marked with a VIN and install that on the vehicle in place of a damaged part before delivering the vehicle to a dealer or distributor. While this would entail additional time and expense for the importer, as noted in the AIA comment, nothing in the Theft Act or theft prevention standard prevents an importer (considered a manufacturer for the purposes of the Theft Act) from importing a part marked with a VIN. Although this part would not be a properly marked replacement part, the prohibitions in section 607 of the Cost Savings Act apply only to vehicles and replacement parts, as explained above. Since the part in question is an original equipment part to be installed on a vehicle before delivery to a dealer or distributor (as evidenced by its VIN marking), it would not be subject to those prohibitions. Hence, an importer that wishes to follow this course of action may do so.

Effective Date of the Theft Prevention Standard (50 FR 43188–43189).

Toyota correctly stated that the final rule specified that the theft prevention standard applies to replacement parts manufactured on or after April 24, 1986, *and for use on 1987 or subsequent model year* vehicles subject to the theft prevention standard. Toyota asked the agency to reconsider this effective date, because of excessive administrative and recordkeeping burdens.

Toyota stated that this effective date meant that 1986 original equipment parts manufactured after that date and installed on 1986 vehicles would not be marked, but that replacement parts would have to be marked. This statement is correct, if Toyota was referring to 1986 major replacement parts that are interchangeable with 1987 major replacement parts in lines selected as high theft lines. Toyota further stated that replacement parts for 1986 vehicles that are not interchangeable with 1987 high theft line vehicles would not have to be marked, while those that are interchangeable would have to be marked. This is correct, but NHTSA does not see how it results in any significant administrative or recordkeeping burdens for the manufacturers.

Toyota did not allege, and NHTSA has no reason to believe, that manufacturers do not know well in advance of beginning production for a new model year which parts of vehicles will be carried forward unchanged from the preceding model year, and which parts will be changed so that the preceding model year's parts will not be interchangeable with them. Further, Toyota did not allege, and NHTSA has no reason to believe, that six months' leadtime is insufficient for manufacturers to implement the necessary procedures to affix or inscribe the replacement parts marking on parts. Section 602(b)(5) of the Cost Savings Act specifies that the theft prevention standard may apply only with respect to major replacement parts manufactured after such standard takes effect. The agency is simply implementing this statutory provision, and concludes that any burdens associated with it are well within the burdens foreseen by Congress when it passed the Theft Act. Accordingly, no change has been made to the effective date in response to Toyota's petition.

AIA stated its opinion that the language in the preamble on the effective date of the theft prevention standard for replacement parts meant that dealers could use unmarked replacement parts for repairs on 1986 model year cars, but not on 1987 or subsequent model year cars.

This is an incorrect reading of the preamble. If a dealer has some covered major parts that were not required to be marked, for whatever reason, in its inventory, the dealer may use such parts to repair any vehicle on which the parts will fit, without violating any requirements of the Theft Act or this standard.

Regulatory Impacts

Since this response to the petitions for reconsideration of the final rule establishing the theft prevention standard makes no changes to that standard, this notice does not affect the agency's assessment of the regulatory impacts associated with the theft prevention standard. A full regulatory evaluation was prepared in connection with that standard, and placed in Docket No. T84–01, Notice 7. Interested persons may obtain a copy of that regulatory evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 426–2768.

A summary of that regulatory evaluation, together with the bases for the agency's conclusion that the theft prevention standard would not have a significant economic impact on a substantial number of small entities and would not significantly affect the human environment, was published at 50 FR 43189, October 24, 1985. Those conclusions are equally applicable to this denial of the petitions for reconsideration.

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Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

Issued on March 11, 1986.

Diane K. Steed,
Administrator.

[FR Doc. 86-5607 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 60227-6027]

Fishermen's Protective Act Procedures; Fee Adjustment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fees for the agreement year from October 1, 1985, through September 30, 1986.

SUMMARY: Section 7 of the Fishermen's Protective Act of 1967 requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees fund a program which compensates fishing vessel owners for certain losses they have incurred when vessels have been seized by foreign nations asserting jurisdictional claims not recognized by the United States. This notice establishes the fee for the present agreement year (October 1, 1985, through September 30, 1986) at $30 per gross vessel ton.

EFFECTIVE DATE: October 1, 1985–September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, DC 20235, telephone number (202) 634–7496.

SUPPLEMENTARY INFORMATION: The Fishermen's Guaranty Fund under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971–1980) compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on oceanic rights not recognized by the United States. Preexisting agreements are required. Although section 7 requires that fees pay the program's administrative costs and at least 25 percent of claims, Administration policy requires that fees pay 100 percent of all costs and claims. The fee of $30 per gross vessel ton established for the present agreement year (October 1, 1985, through September 30, 1986) is predicated on paying from fee revenues 100 percent of all administrative costs and all claims on hand. Annual fees and adjustments are established by publication of notices in the **Federal Register.**

Program fees for the present agreement year (October 1, 1985, through September 30, 1986) are hereby established at $30 per gross vessel ton. The fee is due on the date this amendment is published in the **Federal Register**, but is optionally payable in two deferred installments. The first installment is payable not later than March 31, 1986. The second installment is payable not later than June 2, 1986.

For those who did not previously pay the fee originally estimated for this agreement year ($16 per gross vessel ton), each installment of the two-installment option for the $30 fee must be in an amount equal to $15 per gross vessel ton. If the first installment is postmarked not later than March 31, 1986, program coverage will commence one day after the postmark date, and continue through June 2, 1986. No seizure whose first proximate event occurred on or before the postmark date will be eligible for payment. If the second installment is postmarked not later than June 2, 1986, program coverage will continue uninterrupted through the close of this agreement year. If the second installment is postmarked after June 2, 1986, program coverage will cease on June 2, 1986, and recommence one day after the postmark date of the second installment. In the latter event, no seizure whose first proximate event occurred after June 2, 1986, but before one day after the postmark date of the second installment, will be eligible for payment. For those in this category who do not wish to pursue the two-installment option, the full fee of $30 per gross vessel ton may be paid at any time during this agreement year. In the latter event, coverage will commence one day after the postmark date and continue uninterrupted through the balance of this agreement year. No seizure whose first proximate event occurred on or before the postmark date will be eligible for payment.

For those who did previously pay the fee originally estimated for this agreement year ($16 per gross vessel ton), each installment of the two-installment option for the $30 fee must be in an amount equal to $7 per gross vessel ton. If the first installment is postmarked not later than March 31, 1986, program coverage will continue uninterrupted through June 2, 1986. If the second installment is postmarked not later than June 2, 1986, program coverage will continue uninterrupted through the close of this agreement year. If the second installment is postmarked after June 2, 1986, program coverage will cease on June 2, 1986, and recommence one day after the postmark date of the second installment. In the latter event, no seizure whose first proximate event occurred after June 2, 1986, but before one day after the postmark date of the second installment will be eligible for payment. For those in this category who do not wish to pursue the two-installment option, the full $14 per gross vessel ton may be postmarked not later than March 31, 1986, to continue coverage uninterrupted through the close of this agreement year. For those in this category who are willing to have their coverage cease on March 31, 1986, the full additional fee of $14 per gross vessel ton may be postmarked at any time during this agreement year after March 31, 1986. In the latter event, coverage will cease on March 31, 1986, recommence one day after the postmark date, and continue through the close of this agreement year. No seizure whose first proximate event occurred before the postmark date will be eligible for payment.

For those who previously paid the fee originally estimated for this agreement year ($16 per gross vessel ton), but do not wish to continue program coverage after March 31, 1986, a refund of $8 per gross vessel ton is available. If a refund request is postmarked before March 31, 1986, the refund will be paid promptly.

Otherwise, refunds will be delayed pending adequate program resources to make such refunds after all claims on hand have first been paid.

For the purpose of this notice, postmark means the date and time at which the U.S. Postal Service cancels postage. Postage meters are not acceptable; certified mail is encouraged. If fees are delivered to us by any means other than the U.S. mail, the actual date and time of receipt by us will be substituted for what otherwise would have been the postmark date.

Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency * * * contracts," this rule is exempt from the notice, comment and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

List of Subjects in 50 CFR Part 258

Claims, Fisheries, Fishing vessels, Indemnity payments, Insurance, Loan programs-business, Business.

Dated: March 11, 1986.

James E. Douglas, Jr.,
Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 86-5641 Filed 3-13-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 50
Friday, March 14, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 70, and 150

Exemption of Technetium-99 and Low-Enriched Uranium as Residual Contamination in Smelted Alloys; Withdrawal of Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a proposed rule, published in the **Federal Register** on October 27, 1980 (45 FR 70874), which would have established an exemption from licensing and other requirements for smelted alloys containing residual contamination in the form of low-enriched uranium and/or technetium-99. The proposed rule is being withdrawn in favor of developing an integrated federal policy which would establish consistent guidelines for dealing with the more general issues of decontamination and decommissioning of nuclear facilities as well as the recycling and reuse of decontaminated lands, facilities, materials, and equipment. The NRC is also denying, without prejudice, a Department of Energy request for an exemption from NRC regulations which would have allowed the Department to recycle contaminated smelted alloys salvaged from its uranium enrichment facilities.

DATE: Withdrawal effective March 14, 1986.

FOR FURTHER INFORMATION CONTACT: D.R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 443-7878.

SUPPLEMENTARY INFORMATION: On October 27, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 70874) proposed amendments to 10 CFR Parts 30, 32, 70, and 150 of its regulations. Proposed new § 30.21 and § 70.15 would exempt any person to the extent that person received, possessed, used or transferred smelted alloys containing less than 5 parts per million (ppm) of technetium-99 and/or 17.5 ppm of low-enriched uranium from the requirements for a license set forth in section 81 of the Atomic Energy Act, as amended, and in 10 CFR Parts 30–35 and 70. Proposed new §§ 32.30 and 70.38 would establish requirements for a specific license for persons desiring to smelt scrap metals or to initially transfer for distribution or sale smelted alloys containing low-enriched uranium and/or technetium-99 to exempt persons. Proposed new § 150.15 would continue the Commission's licensing and regulatory requirements for those activities in Agreement States.

The NRC received an unusually large number of comments (more than 3700) in response to the proposed rule. Most comments opposed the changes because of their potential for allowing the introduction of radioactive material into consumer products. The NRC also received a number of comments concerning the Draft Environmental Statement (DES) made available with the proposed rule. These comments included a letter from the Environmental Protection Agency (EPA), stating that (1) calculated individual doses are below regulatory limits but are not justified in the DES on an as-low-as-reasonably-achievable basis; and (2) the analysis does not adequately consider potential impacts on industries, such as photographic products and radiation detection industries, whose processes, products or services could be adversely impacted by metals contaminated by radioactive materials.

The proposed rule is being withdrawn in favor of working with the Environmental Protection Agency in developing an integrated federal policy which would establish consistent guidelines or dealing with the more general issues of decontamination and decommissioning of nuclear facilities as well as the recycling and reuse of decontaminated lands, facilities, materials, and equipment. The development of these guidelines, for subsequent signature of the President, is within the mission of EPA. The NRC has suggested that, in view of the broad range of facilities and agencies involved and the need for a careful, deliberative development process, EPA should proceed with the development of this guidance.

The proposed rule published in 1980 was the result of a request from the Department of Energy (DOE) for rulemaking to allow it to recycle large quantities of waste metals generated from an upgrading of its uranium enrichment facilities. Associated with this action to withdraw the proposed rulemaking, NRC is denying the DOE request without prejudice to its resubmittal once Federal guidance has been issued. After the requested guidelines have been issued, the NRC will reconsider rulemaking to exempt low-radiation-level smelted alloys and other materials from licensing and other NRC requirements.

Dated at Washington, DC this 11th day of March, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-5682 Filed 3-13-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-128-AD]

Airworthiness Directives; SAAB-Fairchild Corporation Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to SAAB-Fairchild airplanes, that would require replacement of the pitch trim synchronizer with an elevator synchronizer in which loading resistors have been added. This action is necessary to prevent uncommanded motion of the right-hand actuator to its end-limit position. Such uncommanded action could result in sudden nose up attitude without warning.

DATES: Comments must be received on or before May 6, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional

Counsel, Attention: Airworthiness Rules Docket No. 85-NM-128-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Fairchild, Product Support, S.58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-128-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist in the elevator trim system on certain Model SF-340A airplanes. At total disconnect between the left-hand actuator and the trim control systems, the right-hand actuator could to to the end-limit position, resulting in aircraft nose up without warning. To prevent this from occurring, the BCA issued Swedish Airworthiness Directive (SAD) 1-008, dated August 15, 1985, which requires a modification to the elevator pitch trim synchronizer in accordance with SAAB-Fairchild Service Bulletin SF340-27-028, Revision 1, dated August 14, 1985.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the pitch trim synchronizer is accordance with the previously mentioned service bulletin.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $600.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a signficant economic impact because of the minimal cost of compliance per airplane ($40.). A copy of a draft regulatory evaluation prepared for this action is contained in tthe regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF-340A airplanes listed in Service Bulletin SF340-27-028, Revision 1, dated August 14, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent uncommanded pitch trim inputs, accomplish the following:

1. Modify the elevator pitch trim synchronizer in accordance with SAAB-Fairchild Service Bulletin SF340-27-028, Revision 1, dated August 14, 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB-Fairchild, Product Support, S. 58188 Linkoping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 7, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-5573 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 83N-0193]

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor)

Correction

In FR Doc. 86-4082 beginning on page 6886 in the issue of Wednesday, February 26, 1986, make the following corrections:

1. On page 6888, in the third column, in the third complete paragraph, in the second line, "the FDA, to" should read "to FDA, the".

2. On page 6890, in the second column, in paragraph 1, the last three lines should read "are participating in its development, to the extent that such

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information is available or reasonably obtainable;".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1915

[Docket No. S–020]

Health and Safety Standards; Recordkeeping Requirements for Tests, Inspections and Maintenance Checks

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing concerning the proposed revision of certain recordkeeping requirements in 29 CFR Parts 1910 and 1915 for tests, inspections, and maintenance checks. Under the proposal, compliance with the substantive requirements would be certified by the employer instead of being documented with written records (51 FR 312, January 3, 1986).

DATES: Notices of intention to appear at the informal public hearing much be postmarked by April 1, 1986. Testimony and all evidence which will be offered into the hearing record must be received by April 8, 1986. The hearing will begin at 9:30 a.m. on April 15, 1986, in Washington, DC, and may continue beyond that day as necessary.

ADDRESSES: Four copies of the notice of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8615

The informal public hearing wil be held in Room N3437C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington DC 20210, (202) 523–8615.

Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION: On January 3, 1986, OSHA published a Notice of Proposed Rulemaking on Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks [51 FR 312] which proposed to revise certain recordkeeping requirements found in 29 CFR Parts 1910, 1915, and 1926 of OSHA's safety and health regulations. The proposal provided that employers would certify compliance with certain requirement for tests, inspections, and maintenance checks instead of documenting compliance through the preparation and maintenance of detailed written records. OSHA determined that, regarding the 22 provisions whose revision was proposed, requiring employers to certify compliance would ease employers' regulatory burden without reducing the protection of employee safety and health. OSHA believes that its proposal is consistent with the purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), as implemented by 5 CFR Part 1320 and with section 8(d) of the OSHA Act (29 U.S.C. 657).

Two of the 22 provisions covered by this proposal were proposed for deletion. OSHA proposed to remove the recordkeeping requirements at 29 CFR 1910.106(g)(1)(i)(g), which requires service stations to maintain inventory records so they could be used to determine leakage of flammable and combustible liquids, because OSHA found that the interests served by that requirement were outside OSHA's jurisdiction. Also, OSHA proposed to delete 29 CFR 1910.440(a)(1), which referred employers of commercial divers to the injury and fatality recordkeeping requirements of 29 CFR Part 1904, because the cross reference was considered redundant. OSHA notes that the Agency is not proceeding with consideration of the proposed revisions to §§ 1926.550(b)(2), Cranes and derricks; 1926.552(c)(15), Material hoists, personnel hoists, and elevators; and 1926.903, Underground transportation of explosives, because OSHA did not formally consult with the Advisory Committee on Construction Safety and Health regarding those provisions. Therefore, OSHA is not seeking any testimony or other input regarding those recordkeeping requirements at this time. Written comments, objections, and requests for a hearing were to be postmarked by March 4, 1986.

The comments and objections focused on several concerns raised by the proposed revisions. In addition, OSHA has received four written requests for a public hearing. Accordingly, pursuant to Section 6(b)(3) of the OSH Act, OSHA has scheduled an informal public hearing to receive testimony and other information regarding the specific issues raised in the comments and other relevant issues.

OSHA seeks additional information and specifically invites comments and testimony on the issues presented below.

Hearing Issues

Issue 1. Several commenters have questioned the proposal's statement that the proposed changes from recordkeeping to certification would not lead to a reduction in employers' compliance efforts. They assert that the recordkeeping requirements in question enable employees to assure themselves that the necessary tests, inspections, and maintenance checks have been performed by providing them a written record to examine. The commenters express concern that employers will relax their compliance efforts if they do not have to document them. In addition, several commenters noted the likelihood that dishonest or irresponsible employers would take advantage of the certification requirement to short cut or avoid the required tests or inspections, confident that OSHA would not discover their false certifications.

OSHA is very concerned about the possibility that the proposed revisions will reduce the protection of employee safety and health. Therefore, OSHA strongly encourages interested parties to present testimony as to whether the recordkeeping requirements in question contribute substantively to worker protection. OSHA is particularly interested in receiving data and other information which substantiate the viewpoints expressed. For example, are there any cases where an employee's examination of a test, inspection, or maintenance record covered by this rulemaking led an employee to point out problems for the employer to correct, or triggered a state or Federal OSHA workplace inspection? Also, please submit reports of any experience with analogous recordkeeping or certification requirements imposed by other regulatory agencies. One commenter expressed doubts about the level of compliance with the existing OSHA requirements and suggested that if OSHA promulgates the proposed changes, OSHA should require employers to "specify the particular pieces of equipment they have and be required to comment as to its compliance with OSHA 29 CFR 1910."

That commenter also suggested that OSHA impose fines on an employer found to have falsified a certification. OSHA solicits comments and testimony, supported by documentary evidence if possible, regarding these suggestions.

Issue 2. Several commenters asserted that the deletion of 29 CFR 1910.106(g)(1)(i)(g) was unjustified because OSHA had not provided evidence to support a change from its earlier position that the records helped protect service station workers from fires and explosions. OSHA solicits testimony, with supporting documentation, regarding the need for this recordkeeping requirement and the appropriateness of OSHA's continuing to regulate in this area. Please submit information regarding any service station fires or explosions which have been related to this recordkeeping requirement.

Issue 3. Several commenters disputed OSHA's determination that the reference in 29 CFR 1910.440(a)(1) to 29 CFR Part 1904 is redundant, adding that the existing provision facilitates compliance efforts and that deletion would reduce compliance with 29 CFR Part 1904. They refer to OSHA's Final Rule promulgating regulations for Commercial Diving Operations [42 FR 37667, July 22, 1977] where OSHA states that the "Reference to 29 CFR Part 1904 is included in the final standard, as in the proposal, to remove any uncertainty as to its applicability." Further, the commenter asserts that the § 1910.440(a)(1) reference to 29 CFR Part 1904 overrides § 1904.16, insofar as the latter provision limits recordkeeping burdens, and that OSHA should disregard § 1904.16 when applying the requirements of Part 1904 to commercial diving operations. OSHA solicits testimony regarding the need for this recordkeeping requirement.

Issue 4. Several commenters have questioned OSHA's estimates of the cost and time savings that would be realized if these proposed changes from recordkeeping to certification were made. For example, they assert that most employers would continue to maintain records in order to document their certifications and to protect themselves from liability in the event of a workplace accident. In addition, they assert that 85 percent or more of the time ostensibly saved by these changes are attributable to the performance of the required tests, inspections or maintenance checks themselves, leaving only, perhaps 15 percent for the actual recordkeeping. OSHA solicits testimony regarding the extent to which the regulatory burden on employers would be reduced, increased or left the same by the proposed deletions and changes from recordkeeping to certification.

Issue 5. Several commenters have expressed concern that requiring employees to certify compliance "upon request" would unreasonably burden the memory of the person called upon to provide the certification. Indeed, some commenters noted that a number of years could elapse between inspections, for example. It was suggested that this difficulty could be overcome if OSHA required that the certification in question be made at the time that the particular test, inspection, or maintenance check was performed, by the person who had done the work. The commenter asserted that the contemporaneous certification by someone with first-hand knowledge of what had been done would provide the best assurance of compliance without the need to keep detailed, written reports or records of the inspection. OSHA is considering this suggestion and invites testimony, supported by documentary evidence, regarding the anticipated impact if OSHA decided to require contemporaneous certification.

Public Participation in Hearing

Notice of Intention to Appear: Persons desiring to participate at the hearing must submit a notice of intention to appear, postmarked by April 1, 1986. The notice of intention to appear must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523–8615, and must be received by OSHA no later than April 8, 1986.

Each submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the hearing.

Any party who has not substantially complied with the above requirement may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of Intention to Appear, testimony and evidence will be available for inspection and copying at the Docket Office, Docket No. S–020, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523–7894.

The hearing will commence at 9:30 a.m. on April 15, 1986, in Room N3437C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will begin with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power,

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The

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notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed recordkeeping requirements will be modified or a determination will be made not to modify the recordkeeping requirements based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(Sec. 6, 29 U.S.C. 655; 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736)

Signed at Washington, DC, this 11th day of March, 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 86–5712 Filed 3–13–86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of the Public Debt plans to issue Treasury bonds and Treasury notes only in book-entry form, beginning on or after July 1, 1986. This action will complete the Department's plan, initiated in 1976 with Treasury bills, to offer marketable Treasury securities only in the form of book entries.

The proposed rule, a portion of which is being published below, will, upon final adoption, govern dual book-entry systems covering generally all marketable Treasury securities. Nonmarketable Treasury securities, such as savings bonds, are governed by other regulations found in Subtitle B, Chapter II, Subchapter B of Title 31 of the Code of Federal Regulations.

The part of the rule set out here for comment applies only to securities to be held in the commercial book-entry system, referred to herein as the Treasury/Reserve Automated Debt Entry System ("TRADES"). A separate book-entry system, to be known as the TREASURY DIRECT Book-Entry Securities System ("TREASURY DIRECT"), will be implemented in mid-1986. The proposed rulemaking for TREASURY DIRECT (formerly referred to as T-DAB) was published separately for public comment on December 2, 1985, at 50 FR 49412.

DATE: Comments must be received on or before May 13, 1986.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, E Street Building, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT: Virginia Rutledge, Attorney-Advisor, (202–535–4890) or Cynthia Reese, Attorney-Advisor, (202–376–4320).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments and suggestions. Those received before the expiration of the comment period will be considered in the preparation of the final rule. No pubic hearing is contemplated, but if written requests for a hearing are received, and if it is determined that the rulemaking process will be clearly enhanced by oral presentation, a hearing will be scheduled.

Discussion of Proposed Rules

Background

Under the authority of Chapter 31 of Title 31 of the United States Code, the Department of the Treasury (the "Department") issues marketable debt obligations of the United States in the form of bills, notes, and bonds ("Treasury securities" or "securities"). In 1967, the Department initiated a system for issuing and maintaining Treasury securities solely by means of entries on the records of a Federal Reserve Bank. The Department also provided that such book-entry securities could be converted into definitive form.[1] Initially, the book-entry system was limited to securities owned by institutions that maintained securities accounts directly on the books of a Federal Reserve Bank. In the early 1970s, the book-entry system was expanded to permit institutions dealing directly with the Federal Reserve to establish aggregate accounts for their customers' securities as well. In this expanded system, ownership of, or security interests in, Treasury book-entry securities could be reflected on the books of entities other than the Federal Reserve Banks; however, issuance and maintenance of the securities at the aggregate level still was handled through the Federal Reserve Banks in their capacity as fiscal agents of the United States.

As a result of the expansion of the book-entry system, Treasury book-entry securities now are held by investors of all types through a vast network of entities that maintain book-entry records of such securities (hereinafter referred to as "book-entry custodians"). Between each ultimate owner of a book-entry security and the Federal Reserve Bank that initially issued such security or currently maintains a record of such security, there may be several intervening book-entry custodians, beginning with a depository institution for whose account the securities are recorded on the books of the Federal Reserve Bank and ending with the book-entry custodian on whose books the interest of the beneficial owner is recorded.

An example will illustrate the tiered nature of the Treasury book-entry system. Assume that an individual ("Individual Investor") has invested in a Treasury 5-year note through a local government securities dealer ("Local Dealer"). Local Dealer will be maintaining one or more Treasury 5-year notes of the same issue through another book-entry custodian such as a larger government securities dealer ("National Dealer"). National Dealer would, most likely, be maintaining the 5-year notes through a bank ("Clearing Bank"). Clearing Bank would be maintaining the 5-year notes directly in an account at a Federal Reserve Bank, assuming that Clearing Bank is an entity that is otherwise authorized to maintain a securities account on the books of the Federal Reserve Bank. Each of the book-entry custodians will record on its books securities maintained for the account of the book-entry custodian below it in the chain, and local dealer will record on its books the interest of Individual Investor.

Because of the speed and efficiency with which transaction involving Treasury book-entry securities can be accomplished, the book-entry system has proven immensely successful. As of December 31, 1985, 97% of all outstanding marketable Treasury securities were held in book-entry form. Since 1978 Treasury bills have been issued in book-entry form only. Beginning in mid-1986, the Department will issue all marketable Treasury securities in book-entry form only. However, bonds and notes issued prior to that date will continue to be convertible to definitive form.

The book-entry system currently is used for a wide variety of transactions in book-entry securities, from holding Treasury securities solely as a fixed-income investment to the intensive daily trading of Treasury securities in the interdealer market. The Department recognizes that some investors, such as those who purchase Treasury securities for the income stream and who do not intend to trade in the interdealer market, may desire to have a direct relationship with the Department as issuer of the security. As a result, in conjunction with the planned shift to a pure book-entry system, the Department has designed the new book-entry system known as TREASURY DIRECT that will permit investors to hold their securities directly on records of the Bureau of the Public Debt. The existing commercial book-entry system, which can accommodate the intensive daily trading in Treasury book-entry securites of the secondary market, will be retained essentially in its present form.

In anticipation of the change to a pure book-entry system, Treasury has reviewed its existing regulations for book-entry securities (Subpart O of 31 CFR Part 306), which were initially adopted in 1967, and were last amended on June 17, 1974. See 32 FR 15672 (1967); 39 FR 20965 (1974). Particular attention has been given to the rules describing the methods for effectively transferring, and perfecting security interests in, Treasury book-entry securities. Over the past several years, a number of interpretative questions concerning the existing rules have been identified. Treasury believes that it is important that these questions be resolved to help ensure the continued efficiency of the market for government securities and to provide the commercial certainty required by market participants.

Although the current regulations provide a legally sufficient mechanism for transferring and pledging Treasury securities, they are based on a concept, as explanied below, that does not conform to the fact that most transactions involving Treasury securities take place solely by means of computerized book entries. The Department believes that revising its rule to reflect more nearly how transactions take place in the market will simplify transactions in Treasury securities. In addition, these proposed rules should give investors clearer guidelines on how to structure their transactions for maximum safety.

At the time of the adoption of the initial book-entry regulations, virtually every state's commercial law dealing with investment securities anticipated that securities would exist only in definitive form. That law was based upon Articles 8 and 9 of the Uniform Commercial Code. When the Department expanded the book-entry system to permit maintaining book-entry securities on the books of entities other than the Federal Reserve Banks, it concluded that state law should continue to govern, with only slight variations, transactions recorded at levels below the books of the Federal Reserve Banks. As a means of applying those rules, the book-entry regulations currently provide that Treasury book-entry securities be deemed to be maintained in bearer definitive form.

After careful consideration, the Department has concluded that continued use of the bearer definitive fiction in the book-entry regulations is not advisable. The methods of accomplishing transactions involving book-entry and definitive securities are operationally different. Rules for transferring ownership of definitive securities or for perfecting security interests therein are built around the concepts of possession and delivery. Possession is significant in that it is exclusive: only one entity or individual may be in actual possession of a definitive security at any given moment. As a general matter, delivery constitutes the transfer of possession. In contrast, ownership of a book-entry security, or a security interest in such a security, generally depends upon the records of at least one entity other than the beneficial owner. In the example described above, the Individual Investor's record of ownership depends upon entries on the books of the Federal Reserve Bank, the Clearing Bank, the National Dealer, and the Local Dealer.

Given all of the foregoing, the Department believes that the bearer definitive fiction may in some cases cloud the intended relationships between parties to a transaction involving book-entry securities, especially in a secured transaction where book-entry securities are the collateral. Under general legal principles, rights and duties of the secured party and the grantor of the security interest may depend to some extent on who is in possessionof the collateral. Because the concept of possession is not applicable to book-entry securities in quite the same sense as it is with definitive securities, what rights and duties are relevant may be unclear. In part because of these ambiguities, the Department proposes to eliminate use of the bearer definitive fiction. However, to do away with the fiction and leave book-entry securities subject to state law would result in a lack of uniformity in the rules that would govern transactions is such securities.

Since the initial adoption of the Treasury book-entry regulations, Article 8 of the Uniform Commercial Code has been amended to include rules for both certificated and uncertificated, *i.e.*, book-entry, securities. As of January 21, 1986, nineteen states had adopted some variation of the revised Article 8. Given this current state of flux in state commercial law governing uncertificated investment securities, reliance on state law would create a lack of uniformity that would be undesirable given the national scope of the government securities market. Recognizing the need for uniform rules at all levels of the book-entry system, the Department concluded that its own regultions should include all of the basic mechanical rules needed for effectively transferring Treasury book-entry securities and for perfecting security interests therein. In drafting the proposed rule set forth below, a major goal was to generate rules that provide needed clarity and uniformity, but that, to the extent possible, conform to current practice in recording transactions involving book-entry securities, so that the rules would not unnecessarily require operational changes for participants in the government securities market.

Section-by-Section Analysis

Section 357.0. This section establishes that, beginning with the earliest effective date to be specified in § 357.1(b), the Department will maintain two separate book-entry systems for holding securities. TRADES is in essence the same system that exists today (also referred to as the commercial book-entry system). That system is made up of a network of entities, including the Federal Reserve Banks, a variety of financial institutions, and dealers and brokers in government securities, through which investors may maintain or carry out transactions in securities. If a security is maintained in TRADES, as described in § 357.0(a), then there may be one or more tiers of book-entry custodians between a given Federal Reserve Bank and the ultimate owner, in addition to the depository institution in whose account the security is reflected on that Federal Reserve Bank's records. TREASURY DIRECT is a new system that will permit investors to hold securities directly on records of the Bureau of the Public Debt. Proposed rules governing TREASURY DIRECT (formerly referred to as T–DAB) were

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[1] If a security is converted to definitive form, the holder receives an engraved or printed certificate evidencing the debt obligation of the United States.

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published for public comment on December 2, 1985, at 50 FR 49412.

Section 357.1. Section 357.1(a) describes the applicability of the proposed rule both to new issues of securities and to securities already issued and outstanding. With two qualifications, the proposed rules will apply to all transactions in bonds, notes, and bills occurring on or after a specified date. Transactions occurring prior to the specified date will be governed by the existing regulations. The first qualification to the general rule of applicability is that securities will not be eligible to be transferred to or maintained in the new TREASURY DIRECT system unless the offering circular for such security specifies that it is eligible for TREASURY DIRECT or until such time as the Department subsequently may announce its eligibility. The Department plans to phase in applicability of the TREASURY DIRECT system to outstanding issues of bonds and notes at some time after the system has been implemented. Bills issued prior to the specified date for bills will not become eligible for TREASURY DIRECT, but may continue to be maintained either through TRADES or through the existing book-entry system maintained by the Department exclusively for bills. The Department intends to phase out the latter system as bills mature and the new bills that are offered are made eligible for TREASURY DIRECT.

The second qualification to the general applicability rule is that the new rules of Part 357 may not limit or restrict obligations of the United States with respect to any security issued and outstanding prior to the date such security becomes eligible for TREASURY DIRECT. In addition, rights in securities that were acquired under applicable law as in effect before the date specified herein [which is 60 days after the date of publication of this Part in final form] shall not be affected. Under this provision, for example, holders of outstanding securities that contained an option to convert to definitive form will continue to have this option. However, consistent with the Department's goal of shifting to a pure book-entry system, securities offered and issued after dates to be announced by the Secretary will not include such an option.

Section 357.2. This section describes the law which governs the rights and obligations arising out of interests in securities. The rights and obligations of the United States, the Department, and the Federal Reserve Banks in their capacity as fiscal agents of the United States, are governed solely by Federal law. Therefore, obligations of issuers of securities under state law, such as those set forth in Article 8 of the Uniform Commercial Code, will not apply.

The rights and obligations of others with respect to interests in securities shall also be governed by Federal law and any state or local law not inconsistent with such Federal law. For example, state law, such as laws on succession or inheritance, may still be applied, where relevent, in determining rights to specific securities so long as such law is not inconsistent with these regulations and other applicable Federal law. The operation of state law in a case of intestate succession would not be inconsistent with these regulations so long as the application of such law was based initially upon a recognition of ownership by the deceased as reflected on TREASURY DIRECT. Other examples of potentially applicable state law are given in the text of § 357.2.

The section on governing law does not explicity deal with the impact of the rules contained in this Part on transactions in book-entry securities that occur outside the United States. The Department intends these rules to be the exclusive means for voluntary transfers of interests in securities, but recognizes that the rules governing conflicts or choice of laws in other countries may dictate that such other country's own commercial law govern such transactions, especially if the parties to the transaction do not contractually select U.S. Federal law as the governing law. The Department specifically invites comments on the potential for conflict of the proposed rules and foreign law. To the extent that such comments recommend dealing with the issue explicity in § 357.2, the Department invites suggestions as to how such a provisions should be formulated.

Section 357.3. This section contains certain defined terms that are relevant to Subpart B. Additional defined terms were published in § 357.4 in connection with proposed rules relating to TREASURY DIRECT. In the final rule, § 357.4 as originally proposed will be renumbered as § 357.3 and will contain all of the definitions relevant to both Subpart B and Subpart C.

Note that the proposed definitions of "security", "security interest" and "pledge" contained in this proposed rulemaking supplement the proposed definitions initially published in § 357.4 as described above. All other proposed definitions are published for the first time in this proposed rulemaking or simply restate definitions previously proposed.

The only definition that requires some explanation is the definition of "book-entry custodian". As defined, the term includes ony persons that maintain securities accounts for others as part of their ordinary course of business. The rational is to permit only persons with a regularized system of records showing interests of customers in securities to act as book-entry custodians for purposes of these rules. It should be noted that a transaction involving securities will not be effective unless the transaction is reflected in accordance with these rules on the books of a book-entry custodian, as defined in § 357.3, or on the books of a Federal Reserve Bank, whichever is appropriate.

Section 357.10. This section specifies how payments of interest and principal on securities in TRADES will be made. The rule specifies that the payment obligation of the United States is discharged at the time a payment is credited to an account at a Federal Reserve Bank in accordance with the instructions of the holder of the securities. The rule further requires that book-entry custodians make payments received with respect to securities available for use by their customers by the close of business on the day on which the book-entry custodian receives such payment. Similar provisions exist with respect to securities held in TREASURY DIRECT. See 31 CFR 357.26.

Sections 357.11. The proposed rules on rights acquired by a transferee follow similar rules in Article 8 of the Uniform Commercial Code. In connection with this rule, the department has given careful consideration to whether it is feasible or appropriate to include a rule for setting competing claims to the same security where both claimants acquired their interest in the security in good faith and without knowledge of the conflicting claim. As is described in detail below, the inclusion of such a rule raises a number of issues all of which are significant and some of which are particularly important to the continued high level of efficiency of the government securities market.

Because of the complexity created by the various issues raised, the Department has chosen not to include a specific rule for competing claims this time but to leave settlement of such claims to state law. The Department specifically invites comments as to all of the issues raised and the various alternative approaches to competing claims that are discussed below. Furthermore, the Department welcomes suggestions of a specific rule for settlement of competing claims that might be adopted in these regulations in

place of applicable state law. Any such suggestions should, if possible, include both implementing language and detailed consideration of the effect of the suggested approach on all aspects of the government securities market.

The Department has considered three different approaches to the question of competing claims. Before discussing these approaches, it may be helpful to illustrate how conflicting claims to securities may arise in a tiered book-entry system. Essentially, competing claims may be categorized as either vertical or horizontal.

Vertical conflicting interests in securities are claims between two or more of the entities in a chain of accounts.[2] For example, a conflict could arise between a dealer's clearing bank and the dealer's customer when the clearing bank has extended credit to the dealer to finance the dealer's positions in securities and has taken a security interest in securities in the dealer's clearing account as collateral for the loan. Conflicts also can arise between entities further separated in the chain of accounts.

Under current practice, customer securities frequently are segregated [3] from dealer securities that may become subject to the clearing bank lein. If such segregation has not occurred, then the clearing bank's lien may conflict with the claims of the dealer's fully-paid customers.

A different set of competing claims are those that may be viewed as horizontal competing claims. These claims arise not from the interrelationships of entities in a chain of accounts but from some undisclosed defect in the right of a transferor to transfer a security. For example, a transferor ostensibly transferring full ownership of a security might have granted a security interest to a third party. Claims against the security between the secured party and the transferee would, in a sense, be linked horizontally through the transferor that transferred the security in violation of the security interest.

Although there are numerous hypothetical examples that might give rise to competing claims, the circumstances in which competing claims will require resolution probably are limited. Conflicts between vertical claims for the most part will arise only in the event of the insolvency of a book-entry custodian and even then only to the extent that customer securities have not been segregated from securities as to which another entity in the chain has a lien.

Conflicts between horizontal claims also appear to be limited. The probability of horizontal claims of the type described in the example above should be diminished once a security interest is perfected by a transfer of the security interest, as described in § 357.14(b).

In spite of the foregoing, it is clear that some cases will arise that require resolution of competing claims. The Department has considered three different approaches to the problem.

1. The first approach would be to provide a specific rule in these regulations that incorporates the theory of the traditional bona fide purchaser ("BFP") rule into the book-entry system. Under the traditional rule, as between two good faith purchasers of property that are without notice of the other's claim, the last in time to purchase wins by cutting off any prior adverse claim.

There are several problems with incorporating a traditional BFP rule. First, the theory of the BFP rule developed at a time when all securities were issued in physical form and purchasers took delivery of the certificates. As a result, the concept does not translate easily into a system where transfers of securities occur by book-entry. This is the case whether the system is a pure book-entry system, such as TRADES, or a system based on securities issued in physical form that are immobilized at some level in aggregate accounts so that transfers of smaller denominations occur by book-entry. As noted below, the drafters of revised Article 8 declined to adopt a broad BFP rule, and the Department is reluctant to proceed with such a significant deviation from Article 8 without the benefit of comments from market participants.

Second, a BFP rule may give investors at all levels an unwarranted sense of security. The utility of the BFP rule in a book-entry system may be limited by the fact that vertical competing claims of upper-tier book-entry custodians theoretically may attach after the interest of an entity further down the chain of ownership. Since BFP status protects only against prior adverse claims, this raises the question of what, if any, practical value follows from adoption from a BFP provision.

Third adoption of a BFP provision could advesely affect the liquidity of the government securities market. Clearing banks provide daily credit to dealers to assist them in financing their transactions. Such credit extensions are possible only if the regulators of the banks supplying credit are satisfied that such loans are consistent with safety and soundness concerns which in general requires that they be fully collateralized.

It is possible that alterations to the traditional BFP rule could addres some of these concerns. For example, a BFP rule could be fashioned to confer BFP status only with respect to horizontal claimants or vertical claimants.[4]

Although the Department has considered such alternatives, designing rules that conform to the current operational structure of the government securities market would appear to create unworkable levels of complexity. Commentors who favor either a BFP or modified BFP rule are requested to provide specific suggestions on how such a rule would operate.

2. A second alternative would be to establish a rule that favored a particular class of participants in the government securities market without regard for the order in time of the claims in question. Such a rule could be fashioned always to favor lower-tier claims over upper-tier claims or vice versa. Although such a rule would greatly simplify the resolution of competing claims, it appears to be unjustifiably arbitrary. Furthermore, a rule favoring the lower-tier claims could present safety and soundness problems for clearing banks and other upper-tier entities, and thus liquidity problems for dealers, to an even greater extent than was suggested

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[2] The term "chain of accounts" includes the Federal Reserve Bank on whose books a security is maintained, the ultimate owner of the security, and the intermediate book-entry custodian or custodians between that Federal Reserve Bank and the ultimate owner. For instance, in the example used to illustrate the tiered nature of the book-entry system near the beginning of the background discussion above, the chain of accounts includes the appropriate Federal Reserve Bank, Clearing Bank, National Dealer, Local Dealer, and Individual Investor. A chain of accounts may include fewer tiers than the example or, in some cases, a greater number of tiers. In addition, a chain of accounts will not necessarily include clearing banks or dealers. It may be made up of financial institutions with other types of interrelationships, such as banks and their correspondent banks.

[3] Segregation, as used in this document, refers to the process of separating on the clearing bank's books securities that have been fully paid for by customers of the dealer from all other securities held by the dealer through the clearing bank. The segregation occurs when, upon instructions from the dealer, securities are moved by the clearing bank from the dealer's general clearing account to a separate account as to which the clearing bank disclaims any liens.

[4] Such a rule could further provide that a purchaser of a government security obtain BFP status after a specified period of time (e.g. 24 hours). Such an approach would be predicated on the assumption that after that period of time the securities could be segregated in a customer account as described in footnote 3. While the Department has considered such as alternative, it does not appear to deal satisfactorily with problems associated with the failure to segregate customer securities at all levels in the chain of accounts.

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above because the lower tier claims would defeat all claims, not just claims that arose prior in time.

3. The third approach, and the one chosen by the Department, is to permit competing claims to be resolved under state law. The Department recognizes that, like the two alternatives already discussed, this approach has some disadvantages. As already mentioned in the background discussion, current state law on uncertificated securities is in a state of flux. Nineteen states have adopted the 1978 revisions to Article 8 of the Uniform Commercial Code. Because of the limited applicability of the Article 8 BFP rule to uncertificated securities generally, it appears that, where the law of any of these nineteen states is applicable, any vertical or horizontal claim to a security, as described above, always will be subject to prior adverse claims. The only thing that might cut off prior claims would be the purely practical problem, referred to above, that a prior claimant may not be able to trace the security against which it has a claim to a subsequent purchaser. In those states that have not adopted the revised Article 8, it is possible that the traditional BFP rule might be applied to resolve competing claims. As a result, the third approach initially may not achieve an optimum degree of either certainty or uniformity as to the outcome of cases involving competing claims.

Nevertheless, the Department believes that this third approach is the most feasible at this time. Several factors contributed to this decision. Some of the difficulties with attempts to fashion a bona fide purchaser rule that could be applied to a tiered book-entry system have already been described. Furthermore, the Department notes that the drafters or revised Article 8 themselves severely limited applicability of the Article 8 BFP rule to uncertificated securities, no doubit in recognition of theoretical and practical difficulties such as those noted here.

From the foregoing discussion concerning competing claims to book-entry securities, it should be apparent that the interests of investors who have fully paid for their securities would be best protected by an enforceable segregation requirement that will assure that such securities will be free of any liens—at least after the close of business on the purchase date. Such a rule would be beyond the scope of the Department's current statutory authority for promulgating regulations governing book-entry securities. The Department has submitted a bill to Congress providing for the regulation of government securities dealers and containing specific rulemaking authority for promulgating a segregation requirement and enforcement it through inspection of books and records. The Department believes that this bill is a necessary step to providing optimal security for the government securities market. Absent adoption of this bill or similar legislation, it appears that no regulatory action can resolve, to the maximum extent possible, the complex questions that arise from either vertical or horizontal competing claims.

Section 357.12. This proposed rule contains two parallel rules for effecting transfers of book-entry securities. Section 357.12(a) provides the rule for effecting transfers on the books of the Federal Reserve Banks. The proposed rule is intended to apply only to transactions among Federal Reserve Banks and entities that otherwise are permitted to maintain a book-entry securities account at a Federal Reserve Bank. The rule applies to all transactions of the books of a Federal Reserve Bank involving one or more such entities including the initial issuance of securities, whether the entity acquired the securities for its own account or for the account of a customer. If the entity acquired the securities for the account of a customer, then § 357.12(b) would apply to entries made on the books of the entity to show the customer's interest. Because subsections (a) and (b) each apply to transfers at different levels in the book-entry system, they are not alternative transfer rules to be applicable depending upon the choice of the parties to a given transaction.

Under §357.12, a transfer of a security is accomplished at the time an entry is made on the books of either a Federal Reserve Bank or a book-entry custodian crediting the security to the securities account maintained for the transferee at such Federal Reserve Bank or book-entry custodian. Making an entry on an entity's books crediting securities to a transferee's account is intended to describe the same action more commonly referred to as "marking the books." The rule is intended to describe an act that is a part of a standardized system of bookkeeping through which a book-entry custodian keeps a record of securities held for specific customers. In keeping with the foregoing, the term "books" as used throughout the proposed rule and the section-by-section analysis, was chosen because it connotes such a system of records. However, it should be clear that the term "books" does not require the presence of tangible objects such as journals and ledgers in order to have an effective transfer since the entire book-entry system is predicated upon the use of computer entries as the means of effecting transactions and storing information. Although the Department does not believe it is feasible to define the relevant act more precisely because of operational differences that may exist in the bookkeeping methods of various book-entry custodians, the Department specifically invites comments on this point and suggestions as to any potential refinements of the relevant phrase.

This type of tranfer can be used for both transfers of ownership and transfers of security interests comparable to pledges of definitive securities. Both types of transactions would be recorded simply as transfers on the relevant entity's books and the entity will view the transferee as the owner. For those transactions in which the transferee is merely a secured party, the nature of the interest being transferred and the relationship between the transferor and the transferee will be set forth in the security agreement that is required under §357.14 below for attachment and perfection of the security interest.

Unlike the similar rule of section 8-313(1)(d) of Article 8, the sending of a confirmation to the transferee under § 357.12 is not a prerequisite to an effective transfer. However, sending confirmation is required as an independent duty of a book-entry custodian under § 357.15(a) below.

There were several considerations that led the Department to structure the rule in this way. It seemed inadvisable to require both book-marking and the sending of confirmation, as in Article 8, because such an approach made the effectiveness of a transfer to a transferee depend upon two separate actions that must be taken by a book-entry custodian, and might therefore increase the risk that an effective transfer would not be accomplished. For example, even if a book-entry custodian's books had been marked to show the transferee's interest, if insolvency of the book-entry custodian intervened so that confirmations were never sent, then there would have been no effective transfer to the transferee. Failure to effect the transfer might have a detrimental effect on the transferee's rights in a liquidation of the book-entry custodian. To allow a transferee's rights to be affected by a fortuity such as whether or not the ministerial act of sending confirmation had been accomplished seems and unreasonable result.

Because book-entry custodians frequently mark their books prior to sending out a confirmation, it seemed appropriate to have a transfer completed at the earliest parcticable time in order to protect the rights of the investor. For these reasons, book-marking was selected as the single event necessary to accomplish an effective transfer. To diminish the risk that a book-entry custodian would not mark its books as required, §357.15(f) provides that the confirmation constitutes a warranty that the book-entry custodian has in fact marked its books.

An alternative solution would have been to require both book-marking and confirmation but to have the time of effectiveness relate to the time of book-marking. If book marking were the earlier of the two events, then once the confirmation had been sent the transfer would be deemed effective as of the earlier date. Such a rule would temporarily suspend a transferee's rights but would not ultimately delay the time of effectiveness if a confirmation ultimately was sent. Such a rule, however, like the first alternative, makes the transferee's rights depend upon two actions of the book-entry custodian rather than one, and thereby increases the risk that an effective transfer would not be accomplished. For that reason, this alternative was rejected.

A third alternative would have been to have only the confirmation be the prerequisite to an effective transfer. This alternative was rejected both because it might delay the effectiveness of a transfer, as described above, and because it might discourage appropriate record-keeping. In the event of insolvency of a book-entry custodian, the most fundamental evidence of customers' interests in book-entry securities will be that book-entry custodian's own books. As a result, it is the marking of the book-entry custodian's own books. As a result, it is the marking of the book-entry custodian's books that should be the minimum requirement for effecting a transfer.

Based upon all of the foregoing, it was concluded that the best approach would be to make an effective transfer depend solely upon the act of marking the books. At the same time, the Department agrees with the conclusion of the drafters of Article 8 that it is advisable for transferees to receive confirmations so that there is some evidence outside the book-entry custodian's books of the transferee's interest in the security. As a result, issuance of confirmations is set out as an independent requirement for book-entry custodians. Because the use of confirmations appears to be already widely used, the requirment should not add a new burden to commercial practice. In any case, the Department believes that regardless of any legal requirements to issue them, confirmations will be demanded by transferees as a matter of prudent business practice.

As a final matter, consideration has been given to the scope of the transfer rules just discussed. The Department has concluded that the rules should represent the exclusive means for transferring ownership of Treasury book-entry securities. The proposed rule is not, however, intended to supplant creation of equitable interests in securities under established principles, nor would it preclude the creation of interests in book-entry securities by private agreement. However, to have title that is good against third parties, it would be necessary to have an effective transfer under the proposed rules.

Section 357.13. Section 357.13 provides specific methods for transferring a security interest in addition to the pledge-type transfer described above under § 357.12. Note that effecting a transfer under any of the provisions of this section may be only one of the requirements for perfection of the security interest. See § 357.14 below.

It is anticipated that, under §§357.13 (a) and (b), the books of the Federal Reserve Bank or the book-entry custodian will continue to reflect the ownership of the security by the transferor of the security interest, but an added notation would also reflect the identity and interest of the secured party. For example, the securities could be placed in a collateral account that reflects the identity of both the owner and the secured party.

Note that, as specified in § 357.17(a) below, the class of entities that may acquire security interests under § 357.13(a) is limited to Federal Reserve Banks, the United States, entities entitled to recordation of a security interest on the books of a Federal Reserve Bank solely by virtue of an express requirement of Federal law or the order of a Federal court, and entities that have a special agreement with a Federal Reserve Bank for recording security interests. The inclusion of entities that have special arrangements with a Federal Reserve Bank for recording security interests does not create a new method for perfecting security interests in securities nor does it expand the class of entities for which recordation of security interests on the books of a Federal Reserve Bank is available. The proposed rule merely describes current practice under which, in very limited circumstances, individual Federal Reserve Banks will agree to record security interests on such terms and conditions as they deem appropriate, for certain entities, primarily governmental units, that are not otherwise eligible to maintain any accounts with the Federal Reserve Bank.

Sections 357.13 (b) and (c) provide two methods for transferring security interests at levels of the book-entry system below the Federal Reserve Banks. Note that under §§ 357.15 (b) and (c) below a book-entry custodian is required to send and acknowledgment of the transfer to the transferor of the security interest and, under § 357.16(b), to the secured party. Note also that neither § 357.13(b) nor 357.13(c) is applicable if the transferor's book-entry custodian is also the secured party. A special rule is provided in § 357.13(d), as discussed below, for transfers of security interests to a book-entry custodian from its own customer.

The transfer method provided in § 357.13(b) essentially is parallel to the method described in § 357.13(a); the primary difference is the entity on whose books the security interest is recorded. Section 357.13(c) provides an additional method for transferring a security interest that is essentially parallel to the method described in Section 8-313(1)(h)(i) of Article 8 of the Uniform Commercial Code. Unlike the § 357.13(b) method, under § 357.13(c) the parties to a secured transaction can transfer a security interest without depending upon the actions of the book-entry custodian who may be a third party with no direct interest in the transaction. The Department recognizes that permitting the transfer of a security interest solely by means of sending notice to the book-entry custodian on whose books the transferor appears raises several questions. For example, should it be necessary to establish in court that a security interest had been transferred in accordance with § 357.13(c), it would be necessary for the secured party to establish that appropriate notice was actually received by the book-entry custodian. Without cooperation by the book-entry custodian this could prove difficult unless the notification had been hand delivered or delivered by registered mail. Such a proof problem would appear to limit severely the usefulness of such a rule.

An added difficulty is presented by the fact that there is some case law suggesting that a book-entry custodian

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has the right to refuse notice under Section 8–313(1)(h)(i). If applied to the similar provision in the Department's regulations, such case law would also appear to limit the utility of the security interest transfer method of § 357.13(c).

Still another set of difficulties arises when the rule is considered from the point of view of a book-entry custodian that might receive notification of a security interest under § 357.13(c). For example, one might ask whether notice to a single branch of a large bank is notice received by a book-entry custodian for purposes of the rule. If so, then the rule would create operational problems for a book-entry custodian since it would be possible to receive notice of a security interest at one office and subsequently receive fraudulent instructions to sell the security at another office. If the book-entry custodian sells the security based on the owner's instructions, should it then be viewed as having violated a duty owed to the secured party? May such a duty be imposed when the book-entry custodian has taken no affirmative action recognizing either the security interest or the secured party?

Clearly, the § 357.13(c) method of transferring a security interest has many questions that were left open by the drafters of Article 8 and have not been resolved by case law. The Department nevertheless has chosen to include the method because it may provide a desirable alternative in some cases that permits transfer, and therefore perfection, of a security interest without the direct involvement of a book-entry custodian. Although such a method of perfection leaves open the risk that a book-entry custodian might transfer inadvertently a security in which a § 357.13(c) security interest has been granted, the Department notes that the same risk is already present under the provisions of § 357.14, which permits automatic perfection of security interests in certain circumstances for a limited period of time without requiring a transfer on the book-entry custodian in accordance with either § 357.12 or 357.13.

Based on the foregoing discussion, comments are specifically requested on the utility and the advisability of including a method of transferring security interests like the one in proposed § 357.13(c).

Section 357.13(d) provides the only method by which a security interest may be transferred to a book-entry custodian from that book-entry custodian's own customer. The Department concluded that a separate rule was appropriate to emphasize that, except for the limited class of transactions covered by § 357.13(d), an effective transfer of a security interest requires the involvement of a third party having no interest in the transaction giving rise to the security interest. In other words, the book-entry custodian marking its books to reflect a security interest under § 357.13(b), or receiving notice of a security interest under § 357.13(c), should be acting solely in its capacity as a custodian and not for its own account.

An added reason for a separate rule is that the transfer methods described in § 357.13(b) and (c) do not necessarily describe any step that operationally would be taken by a book-entry custodian in taking a security interest from its own customer. Since it is clear, however, that a book-entry custodian must be able to take such a security interest, the Department concluded that a separate rule such as § 357.13(d) would avoid any temptation to interpret § 357.13(b) loosely in order to cover a book-entry custodian's security interest. Such a broad interpretation of the concept of book-marking could dilute the idea, emphasized in the discussion of both § 375.3 and 357.12, that book-marking constitutes an act that is part of a standardized system of bookkeeping.

For the foregoing reasons, the Department drafted § 357.13(d) to provide that, for a book-entry custodian taking a security interest in customer securities, the transfer of the security interest occurs at the later of: (1) The time that the security itself is transferred to the customer under § 357.12(b) or (2) the time that a written security agreement is executed by the customer granting the security interest to its book-entry custodian. Note that, as with all secured transactions under these rules, a transfer is only one of the steps relevant to achieving an enforceable long-term security interest.

Section 357.14. Article 8 contains provisions on the creation and perfection of security interests that were formerly included in Article 9. Under Article 8, the concept of attachment of a security interest has been eliminated, *i.e.*, it is not possible to create an unperfected security interest in a security. The proposed rules, however, maintain the distinction between attachment, which is enforceable as between the parties to a security agreement, and perfection, which is good against third parties. This was considered desirable because in certain situations, in order to obtain a perfected security interest, the secured party might be forced to rely on the actions of a book-entry custodian that has an interest in the security adverse to that of the secured party. If a security interest has attached but is unperfected, the secured party will have some avenue of recovery that would not be available if attachment were eliminated as a distinct event. If a security interest is perfected, it shall be perfected for purposes of any relevant state law on priority of security interests, including those rules found in Article 9 of the Uniform Commercial Code.

Article 8 has been criticized for not providing a method of perfection that gives adequate notice of security interests to third parties. However, for a book-entry system, the only method of perfection that would provide adequate notice to the public would appear to be centralized public filing. That method was considered to be unacceptably burdensome in light of the current volume of government securities transactions. Therefore, the proposed rule adopts a rule similar to Article 8 which provides a rule that generally a transfer is a necessary incident to a perfected security interest. However, § 357.14(b) provides for "automatic" perfection for a limited period of time without requiring a transfer.

The automatic perfection described in § 357.14(b) parallels a provision for certificated securities contained in Article 9. It is available to all secured parties and is intended to provide a grace period until the usual steps for perfection take place. However, the 21-day period provided in the Uniform Commercial Code has been shortened to seven days because a shorter period of time should be sufficient, given the rapidity of transactions in government securities. Comments specifically are solicited on the appropriateness of this time period.

It should be noted that the relevant time period is measured in calendar days rather than business days. This approach was chosen because a workable definition of business days did not appear feasible. The seven-day period was chosen with the recognition that it would normally include two nonbusiness days and that for some transactions the seven-day period would end on a nonbusiness day so that the transfer required for continued perfection would have to be accomplished before the end of the period.

Long-term perfection can only be achieved by meeting two additional requirements. First, either a transfer of the security to the secured party in accordance with § 357.12(b) must have occurred or a transfer of the security interest in accordance with § 357.13 must have been accomplished. Second, the security agreement must be written. To meet this requirement, either the

security agreement may have been in writing at the time of attachment or the security agreement may be reduced to writing after attachment. The Department intends that the collateral described in the security agreement may be either a specified security or it may be the securities account itself so that the security interest attaches to any securities in the specified account at the time of attachment. Comments are requested as to the appropriateness of requiring written security agreements as part of the process of perfection, particularly with regard to transactions in which the security that constitutes the collateral is transferred to the secured party under § 357.12(b).

Section 357.15. The proposed rule sets forth several duties of book-entry custodians. Section 357.15(a) provides that a book-entry custodian shall provide a transferee with confirmation of a transfer pursuant to § 357.12(b). The reasons for requiring confirmation have already been discussed in the analysis of § 357.12(b) itself.

The rule further provides in § 357.15(f) that by sending the confirmation, the book-entry custodian: (1) Warrants that either an entry has been made in the book-entry custodian's records, or that such an entry will be made before the book-entry custodian next opens for business, crediting such security to a securities account maintained for the transferee and (2) warrants its own good faith and authority with respect to the transfer. As specified in § 357.15(f), the warranty of good faith and authority includes, but is not limited to, certain warranties that the security described in the confirmation is free of claims of third parties. The warranty concerning claims of or created by the book-entry custodian is expressed in absolute terms since it is intended to cover security interests that the warranting book-entry custodian itself may have granted. The warranty concerning claims of other customers of the book-entry custodian covers claims not created by the book-entry custodian and therefore is limited to claims of which the book-entry custodian has knowledge. For example, security interests that have been transferred pursuant to § 357.13(b) or (c) would be covered by the warranty. The warranty, as expressed in the proposed rule, is based on recognition that where a book-entry custodian transfers a security from Customer A to Customer B, the book-entry custodian is acting only as agent for the two customers and, therefore, appropriately can only warrant as to adverse claims of which it has knowledge.

The imposition of such warranties on book-entry custodians cannot guarantee that the facts so warranted will prove to be the case, nor will they likely improve a transferee's position vis-a-vis the book-entry custodian or its receiver or other legal representative in the event of its insolvency. However, expressly stating the warranties in these regulations should have two beneficial effects. First, it will encourage investors to demand confirmations, even though they are not required for effective transfers. Second, it may instill a greater sense of caution in book-entry custodians that might otherwise fail to keep accurate records of customers' positions as well as their own positions, whether through negligence or wilful action.

Section 357.15(b) requires a book-entry custodian to send acknowledgement of the transfer of a security interest under § 357.13(b) to both the transferor of the security interest and the secured party. Requiring acknowledgment to both parties to the secured transaction is based upon the assumption that if a book-entry custodian formally records a security interest on its records, the secured party, as well as the transferor of the security interest, will have established a customer relationship with the book-entry custodian, whether solely as a result of the secured transaction or as a result of other transactions with or through the book-entry custodian.

Section 357.13(c) requires a book-entry custodian to send acknowledgment of the receipt of notice of the transfer of a security interest in accordance with § 357.13(c). In this case, sending acknowledgment to the secured party is not required since it may be a third party with whom the book-entry custodian has no formal customer relationship and receipt of notice of a security interest under § 357.13(c), standing alone, is not a sufficient basis for imposing that relationship.

Section 357.15(d) requires a book-entry custodian to provide to a customer, or a third person designated by the customer, upon written request, information as to all interests of any customers of the book-entry custodian in a security in which the requesting customer has an interest as shown on the books of that book-entry custodian. For purposes of this section, a customer may be either the owner of a security or a person having a security interest in such security that is reflected in the book-entry custodian's books in accordance with § 357.13(b). The book-entry custodian must also identify security interests for which it has received notice in accordance with Section 357.13(c), and any security interest in favor of or granted by the book-entry custodian. Furthermore, § 357.15(g) provides that by providing information described in § 357.14(d), a book-entry custodian warrants the accuracy of all the information provided. This provision and the accompanying warranty provide a mechanism for investors or third parties designated by an investor to verify the investor's interest in a security and the existence of any other interests in a security of which the book-entry custodian has knowledge.

Section 357.15(e) provides that any confirmation or acknowledgment issued pursuant to § 357.15 must be in writing or in a form reducible to writing at the option of the recipient. Such a formulation is intended to permit electronic confirmation messages which may be printed in hard copy if the recipient so chooses. The rule is not intended to cover voice transmissions that are recorded.

Section 357.16. The proposed rule would provide that certain security interests in book-entry securities granted to the Department or to the United States shall have priority over any other security interest in such securities regardless of when such other security interest was created or perfected. The proposed rule restates, in a somewhat more limited fashion, the priority rule that currently is stated in § 306.118(a) of the existing regulations. Many security interests granted to the United States protect the public because they secure deposits that represent tax and other monies owed to the United States. Super-priority for such security interests is considered appropriate because the security interests run to the benefit of the general public rather than to a private entity or even to a single governmental entity. For similar reasons, the proposed rule also provides that securities transferred to the United States or the Department, acting in a governmental capacity, shall be free of all adverse claims.

Section 357.17. Section 357.17(a) makes clear, as described above in the analysis of § 357.13, that the recordation of security interests on the books of the Federal Reserve Banks is available only in limited circumstances. The rule is intended to cover the current practice of placing securities in an account designated as a collateral account in which the interests of both the owner of the security and the secured party are noted and the security may be moved out of the account only upon receipt of instructions from both parties.

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Section 357.17(b) replaces a more broadly worded provision in the existing regulations that states, in effect, that transfers or pledges of book-entry securities on the books of the Federal Reserve Banks have priority over any transfer or pledge effected or perfected on the book of a book-entry custodian other than a Federal Reserve Bank. Although the intended effect of both the existing regulation and the proposed rule are similar, the existing rule is over-broad and confusing.

The first sentence of § 375.17(b) is similar to the rule found in Section 8-207(1) of Article 8 that provides that the issuer is entitled to treat the person shown on its books as the person exclusively entitled to exercise the rights and powers of ownership. Under the proposed rule, the Department and the Federal Reserve Banks are entitled to rely exclusively on the books of the Federal Reserve Banks and treat the entity appearing as the holder of a given security on a Federal Reserve Bank's books as the person entitled to transfer the securities or security interests therein or to receive payments of principal and interest. The rule is only intended to address the rights of the United States, the Department, and the Federal Reserve Banks and not to express any determination of the rights of an entity to book-entry securities as against any other third party.

Sections 357.40–375.45. Except as described below, these sections are restatements of proposed rules already published in connection with the proposed rules relating to TREASURY DIRECT. Section 357.42, as originally published, has been deleted because the preservation of existing rights is now dealt with in § 357.1(a), as proposed herein. Section 357.43 as originally published has been renumbered as § 357.42 and is supplemented by a separation into paragraphs (a) and (b) and by the addition of the second sentence in paragraph (b). Sections 357.44 as originally published has been renumbered as § 357.43.

Section 357.44 as set forth below is new. It simply provides that notices arising from judicial proceedings concerning disposition of securities should be directed to the Federal Reserve Bank or the book-entry custodian on whose books appears the interest in such security of the person that the judicial proceedings are directed against. The Department believes that the proposed rule describes what would be the appropriate step in any case since the specified entity is the only entity on whose books a transfer of the security may occur.

Procedural Requirements

The proposed rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 357

Electronic funds transfer, Federal Reserve System, Government securities.

Dated: March 7, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

A new Part 357 is proposed to be added to subchapter B of Title 31, Code of Federal Regulations, Chapter II, and issued as Department of the Treasury Circular, Public Debt Series No. 2–86, to read as follows:

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2–86)

Subpart A—General Information

Sec.

357.0 Dual book-entry systems.
357.1 Applicability.
357.2 Governing law.
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Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

357.10 Payment of interest; payment at maturity or upon call.
357.11 Rights acquired upon transfer, attachment and perfection.
357.12 Transfers of securities.
357.13 Transfers of security interests.
357.14 Enforceability, attachment, perfection and termination of a security interest.
357.15 Duties and warranties of book-entry custodians.
357.16 Priority of interests of the United States.
357.17 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

Subpart D—Additional Provisions

357.40 Additional requirements.
357.41 Waiver of regulations.
357.42 Liability of Department and Federal Reserve Banks.
357.43 Liability of transfers to and from TREASURY DIRECT.
357.44 Notices of attachment for securities in TRADES.
357.45 Supplements, amendments or revisions.

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391

Subpart A—General Information

§ 357.0 Dual book-entry systems.

Securities to which this Part applies, as set forth in § 357.1, shall be maintained in either of the following two book-entry systems, and may be transferred from one system to the other in accordance with this Part:

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* A security is maintained in TRADES if it is credited to a securities account maintained at a Federal Reserve Bank. *See* Subpart B for rules pertaining to TRADES.

(b) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A security is maintained in TREASURY DIRECT if it credited to a TREASURY DIRECT account as described in § 357.20.[1] (See Subpart C for rules pertaining to TREASURY DIRECT.)

§ 357.1 Applicability.

(a) This Part applies to all transactions in securities in book-entry form that occur on or after [the date which is 60 calendar days after the date of publication of this Part in final form], except that:

(1) A security may not be transferred to or maintained in TREASURY DIRECT unless the offering circular applicable to such security specifies that it is eligible to be maintained in TREASURY DIRECT or until such time as the Secretary announces that such security has become eligible to be maintained in TREASURY DIRECT; and

(2) Nothing contained in the rules set forth in this Part shall limit or restrict existing obligations of the United States with respect to any security issued and outstanding prior to the date such security becomes eligible to the maintained in TREASURY DIRECT. In addition, these rules shall not affect the rights the parties have acquired in a transaction in such outstanding securities that occurred prior to [the date which is 60 calendar days after the date of publication of this part in final form] and that was rightful and effective

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[1] TREASURY DIRECT accounts will be maintained through a system administered by the Federal Reserve Bank of Philadelphia, acting as fiscal agent of the United States. Such accounts may be accessed by investors in accordance with Subpart C through any Federal Reserve Bank or the Bureau of Public Debt.

under the regulations and law then applicable to such outstanding security.

(b) A transaction involving a transfer of a security or a security interest will be deemed to have occurred for purposes of this section on the date on which occurs the act that constitutes a transfer of a security or of a security interest as described in this Part.

(c) This part supplements, amends, and modifies the regulations contained in Department Circular No. 30, current revision (31 CFR Part 306) and Department Circular, Public Debt Series No. 26–76 (31 CFR Part 350), and to the extent that the rules contained in this Part are inconsistent with the regulations contained in Circular Nos. 300 and 26–76, the rules of this Part shall control, subject only to the limitation set forth in paragraph (a)(2) of this section.

§ 357.2 Governing law.

The rights and obligations of the United States and the Department with respect to securities to which this Part applies are governed solely by applicable Treasury regulations, including the regulations of this Part, the offering circular, the announcement and/or notice of the offering, and other applicable Federal law (hereinafter collectively referred to as "applicable Federal law"). The rights and obligations arising out of interests in securities, other than rights and obligations of the United States, are governed by applicable Federal law, and, to the extent not inconsistent with such applicable Federal law, by state and local law. For example, determinations as to what constitutes a valid security agreement or what rights a secured party shall have upon default should be determined in accordance with state or local law.

§ 357.3 Definitions.

In this Part, unless the context indicates otherwise:

"Bill" means an obligation of the United States, with a term of not more than one year, issued at a discount, under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Bond" means an obligation of the United States, with a term of more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Book-entry custodian" is a person other than the Department or a Federal Reserve Bank, that in the ordinary course of its business maintains book-entry securities accounts for other persons. A book-entry custodian may have a security interest in securities held for another person and also may hold securities for its own account.

"Department" means the United States Department of the Treasury and, where appropriate, the Federal Reserve Banks acting as fiscal agents of the United States.

"Entity" means any person except an individual.

"Federal Reserve Bank" or "Reserve Bank" means a Federal Reserve Bank or Branch.

"Note" means an obligation of the United States, with a term of at least one year, but of not more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Person" means and includes an individual, corporation, company, association, firm, partnership, trust, estate, and any other similar organization.

"Secured party" is a person in whose favor there is security interest.

"Security" means a bond, note, or bill, each as defined above in this section, and any other obligation issued by the Department that, by the terms of the applicable offering circular, are made subject to this Part. Solely for purposes of this Part, it also means the interest and principal components of a security eligible for Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), if such security has been divided into such components by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of a Federal Reserve Bank.

"Security agreement" means an agreement that creates or provides for a security interest.

"Security interest" and "pledge" mean an interest in a security, which interest is acquired by a secured party to secure payment or performance of an obligation and is created by a security agreement between the person having such obligation and the secured party.

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

§ 357.10 Payment of interest; payment at maturity or upon call.

(a) Interest on securities maintained in TRADES shall be credited through a Federal Reserve Bank to such reserve or other account at a Federal Reserve Bank as is designated by the entity to whose securities account such securities have been credited. See § 357.26 for the rules governing payments with respect to securities held in TREASURY DIRECT.

(b) Securities maintained in TRADES shall be redeemed at maturity or upon call by charging the securities account in which they are maintained and by crediting the amount of the redemption proceeds, including both principal and interest, where applicable, through a Federal Reserve Bank to such reserve or other account at a Federal Reserve Bank as is designated by the entity to whose securities account such securities have been credited. See § 357.26 for the rules governing payments with respect to securities held in TREASURY DIRECT.

(c) The obligation of the Department and the United States to make payments of interest and principal on securities held in TRADES shall be discharged at the time payment in the appropriate amount is credited to an account at a Federal Reserve Bank as described in paragraph (a) and (b) of this section in accordance with the instructions of the entity to whose securities account such securities have been credited. See also § 357.26(b)(1)(iii).

(d) A book-entry custodian that is maintaining securities on behalf of another person shall, upon receipt of any payment in accordance with § 357.10 (a) or (b) relating to such securities, make such payment available for withdrawal or use by such other person at the earliest possible time on such date of receipt and in any event not later than the close of business on such date of receipt.

§ 357.11 Rights acquired upon transfer, attachment and perfection.

(a) Upon transfer of a security in accordance with § 357.12, the transferee acquires the rights in the security that the transferor had or had actual authority to convey.

(b) Upon the attachment or perfection of a security interest in accordance with § 357.14, the secured party acquires rights only to the extent of the interest transferred and to the extent described in § 357.14. The creation or termination of a security interest constitutes a transfer of a security interest.

§ 357.12 Transfers of securities.

Transfer of a security to a transferee occurs only:

(a) At the time an entry is made on Federal Reserve Bank books that credits such security to a securities account maintained for the transferee; or

(b) At the time an entry is made on the books of a book-entry custodian that credits such security to a securities account maintained for the transferee.

§ 357.13 Transfers of security interests.

Transfer of a security interest to a secured party occurs only:

(a) At the time an entry is made on the books of the Federal Reserve Bank on

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whose books the interest of the transferor appears identifying such security interest in favor of the secured party; or

(b) At the time an entry is made on the books of the book-entry custodian on whose books the interest of the transferor appears identifying such security interest in favor of the secured party, which cannot be the book-entry custodian making the entry; or

(c) At the time written notification of the security interest is received by the book-entry custodian on whose books the interest of the transferor appears, which book-entry custodian cannot be the secured party. Such notification must be signed by the transferor of the security interest, which in the case of a termination of a security interest in accordance with § 357.14(d), or in the case of an assignment of a security interest, is the secured party; or

(d) If the secured party is to be the book-entry custodian on whose books the interest of the transferor of the security interest appears, at the later of (1) the time the security is transferred to the transferer of the security interest in accordance with § 357.12(b), or (2) the time the transferor has executed a written security agreement with the book-entry custodian granting the book-entry custodian such security interest.

§ 357.14 Enforceability, attachment, perfection and termination of a security interest.

(a) A security interest attaches to a security, and is enforceable between the grantor of the security interest and the secured party, only if—

(1) The security interest has been granted pursuant to a security agreement between the grantor of the security interest and the secured party,

(2) The grantor of the security interest has rights in the security, and

(3) The secured party has given value.

The time at which a security interest attaches shall be the time at which the last of the above conditions for attachment has occurred.

(b) A security interest becomes perfected and enforceable against third parties for a period of seven (7) calendar days from the date on which it has attached under paragraph (a) of this section. Thereafter, a security interest will continue to be perfected only if, no later than the seventh day of the period described above, (1) the security interest has been transferred to the secured party pursuant to § 357.13 or the security has been transferred to the secured party pursuant to § 357.12 and (2) the security agreement referred to in paragraph (a)(1) of this section has been reduced to written form signed by the grantor of the security interest and containing a description of the collateral. In the event that the requirements described in paragraphs (b) (1) and (2) of this section have not been met within the seven-day period, the security interest will become unperfected and unenforceable against third parties until the time at which both requirements have been complied with, and the security interest will be deemed to be perfected only as of such time.

(c) A security interest that is perfected in accordance with this section shall be perfected for all purposes, including but not limited to the applicability of any state or local law concerning priority of perfected security interests.

(d) A security interest in a security is terminated by (1) transfer of the security to the grantor of the security interest, a designee of the grantor, or any successor in interest of the grantor, or (2) written release of the security interest signed by the secured party.

§ 357.15 Duties and warranties of book-entry custodians.

(a) A book-entry custodian shall send confirmation of a transfer of a security under § 357.12(b) to the transferee no later than the close of business on its next business day after the day on which the entry is made on the books of the book-entry custodian that credits such security to a securities account maintained for the transferee.

(b) A book-entry custodian shall send an acknowledgement of the transfer of a security interest in accordance with § 357.13(b) above both to the transferor and to the secured party by the close of business on its next business day after the day on which an entry is made on the books of the book-entry custodian identifying such security interest in favor of such secured party.

(c) A book-entry custodian shall send an acknowledgement of receipt of notice of the transfer of a security interest in accordance with § 357.13(c) to the transferor of the security interest by the close of business on its next business day after the day on which the book-entry custodian receives such notice.

(d) A book-entry custodian, upon the written request of a customer (as defined below), shall confirm to such customer or a designee of such customer (1) the interest in such security of such customer and any other customer in such security as such interests appear on the books of the book-entry custodian; (2) any security interest for which the book-entry custodian has received a notice in accordance with § 357.13(c); and (3) any security interest in favor of the book-entry custodian, or granted by the book-entry custodian to a third party. For purposes of this paragraph, a customer of a book/entry custodian is any person whose interest in a security, including a security interest, is recorded on the books of the book-entry custodian.

(e) Any confirmation or acknowledgement issued pursuant to this section must be delivered in writing or in other form reducible to writing at the option of the recipient of such confirmation or acknowledgment.

(f) By sending a confirmation in accordance with paragraph (a) of this section, a book-entry custodian (1) warrants to its transferee and any subsequent transferee that the book-entry custodian has made an entry in its books crediting the security described in the confirmation to a securities account maintained for its transferee, or that such an entry will be made before the book-entry custodian next opens for business; and (2) warrants the book-entry custodian's good faith and authority; such warranty of good faith and authority shall include in particular, but shall not be limited to, (i) a warranty that the security described in the confirmation is free of any and all claims of, or claims created by, the book-entry custodian except as specifically noted on the confirmation; and (ii) a warranty that, to the knowledge of the book-entry custodian, the security described in the confirmation is free of claims, except as specifically noted on the confirmation;

(g) By sending a confirmation in accordance with paragraph (d) of this section, a book-entry custodian warrants to its customer that the information provided therein is accurate.

§ 357.16 Priority of interests of the United States.

A security interest in securities transferred to the United States or the Department to secure deposits of public money, deposits to Treasury tax and loan accounts, or any other security interest in favor of the United States that is required by Federal statute or regulation and is transferred to the United Sates or the Department, shall be superior to any other interest created in such securities, whenever created. A security transferred to the United States or the Department shall be free of any adverse claims, whenever created, unless the security was acquired in a transaction in which the United States or the Department was acting in a proprietary rather than governmental capacity.

§ 357.17 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

(a) A transfer of a security interest on the books of a Federal Reserve Bank under § 357.13(a) may be made to a person or entity other than a Federal Reserve Bank or the United States only pursuant to an order of a Federal court or a specific requirement of Federal law or by special agreement with the Federal Reserve Bank on whose books the transfer is to be recorded. In the event that a security interest is transferred on the books of a Federal Reserve Bank pursuant to § 357.13(a), that Federal Reserve Bank shall recognize the interest of the secured party only to extent expressly set forth in the applicable Federal statute or regulations, that Federal Reserve Bank's operating circulars and letters or by specific agreement with the secured party.

(b) Except as otherwise provided in paragraph (a) of this section, and notwithstanding any information or notice to the contrary, the United States and the Federal Reserve Banks shall be entitled to treat the entity in whose account a security is credited as the entity exclusively entitled to effect transfers of such security, to receive interest and other payments with respect to such security and otherwise to exercise control over the security. Subject only to any requirements to recognize the interest of a secured party as described in paragraph (a) of this section, a Federal Reserve Bank that has transferred a security or a security interest according to the instruction of the entity in whose account the security is maintained, shall not be liable for conversion or participation in breach of fiduciary duty even though the instructing entity had no right to issue the instruction. The Federal Reserve Bank shall be fully discharged by completing the order of the entity in whose account the security is maintained.

Subpart D—Additional Provisions

§ 357.40 Additional requirements.

In any case or any class of cases arising under these regulations, the Secretary of the Treasury ("Secretary") may require such additional evidence and a bond of indemnity, with or without surely, as may in the judgment of the Secretary be necessary for the protection of the interests of the United States.

§ 357.41 Waiver of regulations.

The Secretary reserves the rights, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.

(a) The Department and the Federal Reserve Banks may rely on the information provided in a tender or transaction request form and are not required to verify the information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender or transaction request form or evidence submitted in support thereof.

(b) In the event that the United States or the Department is unable to make a payment when due, the liability of the United States and the Department is limited to the amount of the payment. In the event that the United States or the Department is unable to take any other action with respect to securities to which this Part applies, neither the United States nor the Department shall be liable for failure to take such action if such failure to take action is due to an event which is beyond the reasonable control of the United States or the Department. An event which is beyond reasonable control includes but is not limited to natural disasters, acts of God, war or other civil comotion, accident, computer or other equipment failure, or the failure or interruption of electrical power or of communications lines.

§ 357.43 Liability for transfers to and from TREASURY DIRECT.

A depository or sending institution that transfers to, or receives, a security from TREASURY DIRECT is deemed to be acting as agent for its customer and agrees thereby to indemnify the United States and the Federal Reserve Banks from any claim, liability, or loss resulting from the transaction.

§ 357.44 Notices of attachment for securities in TRADES.

In the event of judicial proceedings in which a person seeks to attach a security maintained by a Federal Reserve Bank for an entity's account or to obtain an order concerning disposition of such securities, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the Federal Reserve Bank on whose books such security is maintained. In all other cases in which a person seeks to attach a security maintained in TRADES or to obtain an order concerning disposition of such security, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the book-entry custodian on whose books appears the interest of the person against whom the attachment or other disposition is sought.

§ 357.45 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulation with respect to securities.

[FR Doc. 86-5513 Filed 3-13-86; 8:45 am]

BILLING CODE 4810-10-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Second-Class In-County Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to require mailers who claim the Congressionally subsidized in-county postage rates for copies of their second-class publications to file additional information including a certification for each mailed issue. This change in procedures is needed to verify that the additional restrictions placed on the copies that can be mailed at the in-county rates are met. This change will help the Postal Service determine at the time of mailing whether copies of an issue qualify for mailing at the second-class in-county rates. This should help to avoid postage deficiencies which can result if the mailer claims the in-county rates incorrectly at the time of mailing.

DATE: Comment must be received on or before April 14, 1986.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268-5171.

SUPPLEMENTARY INFORMATION: Public Law 99-190 established new requirements for in-county second-class

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rates of postage. Copies of an issue of a second-class publication may qualify for these rates if the total paid circulation of such issue is less than 10,000 copies, or if the number of paid copies of such issue distributed within the county of publication is at least two more than one-half of the total paid circulation of such issue. These requirements are reflected in § 411.32, Domestic Mail Manual, as published in the Postal Bulletin of February 13, 1986.

In order to determine at the time of mailing whether copies of an issue of a second-class publication can qualify for in-county rates given these new restrictions, the Postal Service needs to have more information about the paid circulation and distribution of the issue than is currently required by the mailing statement. When a mailer distributes copies of a second-class publication at postage rates other than second-class rates, or by means outside the mailstream such as newspaper carriers, newstands, news agents, etc., the Postal Service has no way of determining at the time of mailing how many copies are distributed outside the mailstream, how many copies are nonsubscribers' copies and where the copies are distributed, whether within or outside the county of publication. By completing a statement for each issue, the mailer will be required to keep track of pertinent information needed to claim the correct rates. This requirement should not only prevent the mailer from incurring postage deficiencies for mailing copies at in-county rates for which they were not eligible, but it will also enable the Postal Service to better administer the provisions of Pub. L. 99-190. A copy of proposed Form 3541-B follows.

Under this proposal the mailer would be required to submit a mailing statement containing the following information on each issue for which in-county rates are claimed:

1. Total paid circulation for issue to destinations within county of publication.

2. Total number of nonsubscribers' copies to destinations within county of publication.

3. Total paid circulation for issue.

4. Total circulation for issue by any means.

5. Weight of nonsubscribers' copies this issue mailed to destinations within county of publication at in-county rates.

6. Year-to-date weight of nonsubscribers' copies mailed to destinations within county of publication at in-county rates.

7. Weight of subscribers' copies this issue mailed to destinations within county of publication at in-county rates.

8. Year-to-date weight of subscribers' copies mailed to destinations within county of publication at in-county rates.

9. Total weight of mailed subscribers' copies this issue.

10. Year-to-date weight of mailed subscribers' copies.

11. Total weight of mailed nonsubscribers' copies this issue.

12. Year-to-date total weight of mailed nonsubscribers copies.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3621; 42 U.S.C. 1973cc-13, 1973cc-14.

Chapter 4—Second-Class Mail

* * * * *

PART 480—PAYMENT OF POSTAGE

In 482, revise 482.1 to read as follows:

482 Mailing Statement (See Exhibit 482)

482.1 Computing Postage.

.11 Mailing Statement. Second-class postage is computed on Form 3541, Statement of Mailing-Second-Class Publications and/or Form 3541-A, Statement of Mailing-Second-Class (Requester) Publications. These mailing statements must be submitted by the publisher with the first mailing of each issue, except that postmasters will, upon request, authorize publishers of publications which are regularly printed on sheets of uniform weight to submit one mailing statement at the end of each calendar month for mailings made during that month. If the mailer claims in-county rates and some issues for the month did not qualify for in-county rates, a separate Form 3541 must be filed for the issues that did not qualify for in-county rates.

.12 In-County Certification. A Form 3541-B, Second-Class In-County Certification, must be completed for each issue when second-class in-county rates are claimed. If the the mailer is authorized to submit one mailing statement at the end of each calendar month for mailings made during that month, one Form 3541-B may be submitted for all issues distributed during the calendar month if all issues qualified for in-county rates. If some issues did not qualify for in-county rates, a separate Form 3541 must be filed for those issues that did not qualify. In such instances the information included on Form 3541-B should pertain only to issues which did qualify for in-county rates.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published when the final rule is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

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U.S. POSTAL SERVICE

SECOND-CLASS IN-COUNTY CERTIFICATION

INSTRUCTIONS

1. Complete this form and attach it to Form 3541, *Statement of Mailing-2nd Class Pubs Except Requester Publications*, if second-class in-county rates in section 411.32, Domestic Mail Manual, are claimed for copies of an issue of a second-class publication.
2. Information in items below must include all editions of the issue identified in item 3.

NOTE: If total paid circulation of issue is at least 10,000 copies and item 6 is less than two (2) more than half of item 8, issue does not qualify for in-county rates.

1. Title of Publication	2. Date of issue	3. Issue number
4. County of Publication	5. Post Office and State of mailing	

6. Total paid circulation for issue to destinations within county of publication. (see 411.321, DMM)	Total Paid	7. Total number of nonsubscribers' copies to destinations within county of publication.	Total Copies
8. Total paid circulation for issue. (see 411.321, DMM)	Total Paid	9. Total circulation for issue by any means.	Total Copies
10. Weight of nonsubscribers' copies this issue mailed to destinations within county of publication at in-county rates.	Pounds	11. Year-to-date weight of nonsubscribers' copies mailed to destinations within county of publication at in-county rates.	Pounds
12. Weight of subscribers' copies this issue mailed to destinations within county of publication at in-county rates.	Pounds	13. Year-to-date weight of subscribers' copies mailed to destinations within county of publication at in-county rates.	Pounds
14. Total weight of mailed subscribers' copies this issue.	Pounds	15. Year-to-date weight of mailed subscribers' copies.	Pounds
16. Total weight of mailed nonsubscribers' copies this issue.	Pounds	17. Year-to-date total weight of mailed nonsubscribers' copies.	Pounds
I certify that the information furnished on this form is correct.		18. Signature of publisher	

Willful entry of false, fictitious or fradulent statements or representations hereon is punishable by fine up to $10,000 or imprisonment up to 5 years, or both (18 USC 1001).

PS Form 3541-B, Mar. 1986

[FR Doc. 86-5643 Filed 3-13-86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 60336-6036]

American Lobster Fishery

Correction

In FR Doc. 86-5025, beginning on page 8220 in the issue of Monday, March 10, 1986, make the following corrections:

1. On page 8220, in the sixth line from the bottom of the second column in the **SUPPLEMENTARY INFORMATION**, "until" should read "unit";

2. On page 8221, in the seventh line of the second column, insert the word "not" between "will" and "have"; and

3. On page 8222, in the first column, in the second line of § 649.21(b)(4)(iv), "70°" should read "71°".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 51, No. 50
Friday, March 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Grazing Fees for Domestic Livestock for Certain National Forest System Lands in the 16 Contiguous Western States

AGENCY: Office of the Secretary, Agriculture.

ACTION: Notice of Grazing Fee formula for National Forests and Land Utilization Projects in the 16 contiguous Western States and the Curlew and Crooked River National Grasslands.

SUMMARY: The Secretary of Agriculture announces the grazing fee formula to be used to determine grazing fees for domestic livestock for certain specified National Forest System lands in the 16 contiguous Western States administered by the U.S. Department of Agriculture, Forest Service.

EFFECTIVE DATE: March 1, 1986.

ADDRESS: Address any inquiries about this policy to: R. Max Peterson, Chief (2230), ISDA—Forest Service, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, Range Management Staff, (703) 235-8139.

SUPPLEMENTARY INFORMATION: Executive order 12548 issued February 14, 1986, directed the Secretary of Agriculture to establish fees for domestic livestock grazing on the public rangelands. Accordingly, the Secretary of Agriculture, acting under the authority of the Organic Act of June 4, 1897 (16 U.S.C. 473-475, 477-482, 551) and the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010-1012), has established the following formula effective March 1, 1986, to determine grazing fees on the National Forests and Land Utilization Projects in the 16 contiguous Western States and the Curlew and Crooked River National Grasslands:

The annual fee equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Statistical Reporting Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per animal unit month (animal month).

Direction implementing the grazing fee formula is contained in a recent interim directive in the Forest Service Manual, Chapter 2230, Grazing and Livestock Use Permit System.

Establishing a grazing fee formula has no effect on the physical and biological environment. Provisions of grazing permits issued on the National Forests control the environmental aspects of livestock grazing use, including the amount of grazing allotted to individual users, the kind and number of livestock that may be on National Forest System rangelands, and specifications as to their movement, entry, and exit. Stocking rates for livestock are determined by the Forest Service independent of fee levels.

It is hereby determined that the establishment of this grazing fee formula does not constitute a major Federal action significantly affecting the quality of the environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Dated: March 6, 1986.

Peter C. Myers,
Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86-5619 Filed 3-13-86; 8:45 am]

BILLING CODE 3410-11-M

Statistical Reporting Service

Modification of Program Reports

Final notice is hereby given that the Statistical Reporting Service (SRS) of USDA will make immediate modifications in portions of its crop, dairy, poultry, and prices paid estimating program. These actions are in response to the funding level provided to the Agency for fiscal year 1986. Available resources will be directed to maintaining high quality statistics for the more than 300 reports that will continue to be published by SRS.

Full consideration has been given to the oral and written comments received in response to the proposed modifications announced in the Friday, February 7, 1986, Federal Register in developing the final program modifications outlined in this notice. SRS will work with commodity organizations and State agencies to reestablish programs being curtailed if funds for data collection, summarization, and publication can be provided by those organizations.

A. The following crop estimate program modifications will be made:

1. Discontinue pasture and range condition table and map and crop prospects map in the April *Crop Production* report. For later months (May-November) the pasture and range condition table will be retained but the pasture and range conditions map and the crops prospects map will be discontinued. The maps will be replaced by two crop moisture maps (short-term and long-term) prepared by the NOAA/USDA Joint Agricultural Weather Facility.

2. Grain stocks program:

a. Discontinue quarterly on- and off-farm stock estimates for barley, oats, sorghum, and sunflowers. Continue these commodity estimates at end-of-marketing year only (barley and oats, June 1; sunflowers, September 1), except that sorghum will be estimated both June 1 and September 1.

b. Discontinue separate State on-farm stock estimates for other grains and oil seeds in minor producing States. Individual State estimates published will account for 90 percent or more of the total U.S. production for each crop. Minor States will be published as an "unallocated" total. United States estimates will be continued.

c. Rye stocks will be continued June 1 in the States of Georgia, Minnesota, North Dakota, and South Dakota.

3. Field crop production program:

a. Discontinue winter wheat production forecasts in September.

b. Discontinue spring wheat production forecasts in October.

c. Discontinue all rye and flaxseed production forecasts. Retain acreage estimates and the end-of-year acres, yield, and production report.

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d. Discontinue barley and oats production forecasts in July. Retain acreage estimates, August forecasts, and the end-of-year acres, yield, and production report plus a September 1986 production forecast.

e. Discontinue end-of-year forage estimates for corn and sorghum.

f. Discontinue sweetpotato production forecasts and disposition estimates. Retain acreage estimates and end-of-year acres, yield, and production report.

g. Publish a preliminary end-of-year acres and yield and production for small grains in the October *Crop Production* report. For 1986, this release will be on October 10 with estimates based on a survey about September 1 in 27 States in conjunction with the September *Grain Stocks* report.

4. Discontinue all fertilizer production and consumption statistics collected and published by SRS, including the annual *Commerical Fertilizers* report.

5. Hop production and stocks estimates will continue to be made, at least while the Federal Marketing Order remains in place.

B. The following reductions in State estimates for dairy and poultry reports are planned:

1. *Milk Production*—Coverage of estimates in the monthly reports will be reduced from 33 States and the U.S. to 21 States with about 85 percent of the U.S. production. Reports issued in January, April, July, and October will continue to include quarterly estimates for 50 States and the U.S. Reports in the nonquarterly months will include and indication of U.S. totals based on the relationship for the most recent quarterly month. Estimates by month will be eliminated for Alabama, Arkansas, Colorado, Georgia, Kansas, Louisiana, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon and Utah beginning with the May 14, 1986, release of April production.

2. *Eggs, Chicken & Turkeys*—Coverage of layers and egg production estiamtes in the monthly reports will be reduced in coverage from 33 States and the U.S. to 20 States with about 84 percent of the U.S. production. Reports issued in March, June, September, and December will continue to include quarterly egg production estimates for 50 States and the U.S. Reports in the nonquarterly months will include and indication of U.S. totals based on the relationship for the most recent quarterly month. Estimates by month will be eliminated for Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, Oklahoma, Oregon, Tennessee, Virgina and Wisconsin beginning with the April 23, 1986, release of March production.

3. *Weekly Broiler Hatchery*—Coverage of weekly estimates of broiler eggs set and chicks placed will be reduced from 19 States to 12 States with about 92 percent of the U.S. production. Monthly estimates of brolier chicks hatched in the U.S. will continue as currently published in *Eggs, Chicken & Turkeys*. States to be eliminated from the weekly coverage are Louisiana, Missouri, Oregon, South Carolina, Tennessee, Washington, and West Virginia beginning with data for week ending March 8 available for release March 12, 1986.

C. The following changes in the program of prices paid reports are planned:

1. The annual Telephone and Electric Survey will be discontinued.

2. Feed, fuels and motor supplies will be surveyed and published quarterly rather than monthly. Only regional and U.S. level prices will be estimated in this new quarterly survey, which will begin in April, due to reduced sample sizes. The last monthly survey for these items will be February 1986.

3. Fertilizer prices will be surveyed and published on a regional and U.S. basis in April and October of each year, instead of the current 4 surveys.

4. Seed prices will be surveyed annually in April of each year with U.S. level prices published rather than semiannually by States.

5. Replacement livestock prices will be published on a U.S. level basis each quarter instead of monthly by States.

6. Building Materials will be surveyed in April, July, and October with prices published at the U.S. level compared with current bimonthly State data.

7. Farm Machinery, Farm Supplies, and Marketing Containers will be surveyed semiannually in April and October (rather than quarterly) with prices published at the U.S. level.

8. Autos and trucks annually in April instead of semiannually with prices published at the U.S. level.

D. Modification in survey dates for quarterly stocks report:

In addition to these program modifications, on-farm and off-farm grain stocks surveys scheduled for October 1, 1986, will be moved to September 1 and the dates of other quarterly reports shifted to a uniform quarterly time schedule. This is to reduce costs and responds to new legislation changing the official marketing year for corn from October 1-September 30 to September 1-August 31. The first new stocks report will be issued on September 29, 1986. The stocks survey scheduled for Janaury 1, 1987, including stocks of rice and hay, will be changed to December 1, 1986, and the report will be issued in January 1987. The grain stocks survey scheduled for April 1, 1987, including rice, and the February 1 propsective planting survey will be changed to March 1 with a report to be issued in late March 1987. A historical 10-year data series of U.S. totals will be published for each of the new stock report dates to assist data users in shifting data bases to the new report schedule.

Done at Washington, DC, this 11th day of March 1986.

W.E. Kibler,

Administrator.

[FR Doc. 86-5808 Filed 3-13-86; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Duty; Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews, Office of Compliance, International Trade Administration, U.S. Department of Commerce, 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with § 353.53a(a)(5) of the Commerce Regulations, for administrative reviews of various antidumping duty orders and findings.

Initiation of Reviews

In accordance with § 353.53a(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of

these reviews not later than March 31, 1987.

Antidumping duty proceeding and firms	Periods to be reviewed
Birch 3-Ply Doorskins from Japan:	
Matsumoko/C. Itoh	02/82-07/83
Nitta Veneer/C. Itoh	02/82-11/82
Senmoku/C. Itoh	12/82-01/85
Sattauru Veneer/C. Itoh	12/82-07/83
Ferrite Cores (of the Type Used in Consumer Electronic Products) from Japan:	
Fuji Electrochemical	03/83-10/84
Matsushita	03/83-02/85
TDK	03/83-02/85
TDK/Sony	03/83-8/6/84
Tohoku	03/83-8/6/84
Fishnetting of Manmade Fibers from Japan:	
Hirata Spinning	[1] 10/83-05/85
Inagaki/Nichimen	06/82-09/83
Maruhei	06/82-05/85
Puratic Supplies (Canada)	06/82-05/85
Sanyo Enterprises	04/81-06/82
Spun Acrylic Yarn from Japan:	
Asahi Chemical	04/83-05/85
Diafibers	04/83-05/85
Japan Exlan	04/83-05/85
Mitsubishi Corp	04/83-05/85
Nichimen	04/83-05/85
Nissho-Iwai	04/83-05/85
Teijin Shoji	04/83-05/85
Circular Welded Pipes and Tubes from Taiwan: Far East Machinery	05/84-04/85

[1] Corrected period.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.53a(c) of the Commerce Regulations (19 CFR 353.53a(c); 50 FR 32556, August 13, 1985).

Dated: March 5, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-5634 Filed 3-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received timely requests to conduct administrative reviews of an antidumping finding and a countervailing duty suspended investigation with February anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION: On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews during the anniversary month of a proceeding. The Department has received timely requests, in accordance with §§ 353.53a(a)(3) and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of an antidumping finding and a countervailing duty suspended investigation with February anniversary dates.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping finding and countervailing duty suspended investigation. We intend to issue the final results of these reviews not later than March 31, 1987.

Antidumping proceeding and firms	Periods to be reviewed
Birch 3/Ply Doorskins from Japan:	
Matsumoko/C. Itoh	02/85-01/86
Nitta Veneer/C. Itoh	02/85-01/86
Senmoku/C. Itoh	02/85-01/86
Sattauru Veneer/C. Itoh	02/85-01/86
Countervailing Duty Proceeding	
Unprocessed Float Glass from Mexico	01/85-12/85
Certain Stainless Steel Products from Brazil	01/85-12/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: March 5, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-5637 Filed 3-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-502]

Antidumping; Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice.

SUMMARY: We have determined that certain welded carbon steel pipe and tube products from Yugoslavia are being sold in the United States at less that fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation and in accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), we have reached a final determination that certain welded carbon steel pipe and tube products from Yugoslavia are being sold in the Untied States at less than fair value within the meaning of section 731 of the Act. The weighted-average margin is indicated in the "Suspension of Liquidation" section of this notice.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee and the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI) on behalf of the U.S. industry producing standard pipe and tube and line pipe. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring a United States industry.

After reviewing the petition, we determined that is contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 5, 1985 (50 FR 32246). On August 30, 1985, the ITC determined that there is reasonable indication that imports of standard pipe and tube from Yugoslavia are materially injuring a United States industry. On August 30, 1985, the ITC also determined pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)) that there is no reasonable indication that an industry in the United States is materially injured, or threatened with

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material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Yugoslavia of welded carbon steel line pipes and tubes (50 FR 37068).

On September 24, 1985, we received an amendment to the petition alleging critical circumstances.

On September 11, 1985, questionnaires were sent via certified mail to two Yugoslavian companies, FZC 11 Oktomvri Oktomvri and Zeljezara Sisak. We received a response from Zeljezara Sisak on November 13, 1985. In a letter dated November 27, 1985, the Department requested supplemental information from Zeljezara Sisak that was received on December 12, 1985. Information contained in the November 12, 1985 response of Oktomvri established that this company did not have any sales to the United States during the period of investigation. Therefore, for purposes of this investigation, Zeljezara Sisak is the only Yugoslavian respondent.

Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. We did not hold a public hearing because none of the interested parties requested a hearing.

On February 10–12, 1986, we verified the response of Zeljezara Sisak.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube products with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A–120, A–53, or A–135.

We investigated sales of the subject merchandise during the period February 1, 1985 to July 31, 1985. Since Zeljezara Sisak accounts for virtually all exports of the merchandise from Yugoslavia, we limited our investigation to them.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value.

U.S. Price

As provided in section 772 of the Act, we used the purchase price of standard pipe and tube to represent the United States price for sales by the respondent because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the packed, f.o.b., Yugoslavian port price to unrelated purchasers in the United States. We made deductions for foreign inland freight.

Foreign Market Value

In accordance with section 773 of the Act, we used home market prices as the basis for foreign market value. We calculated the home market price on the basis of the ex-factory, packed price to unrelated purchasers. In accordance with section 353.15 of the Commerce Regulations, we made adjustments for differences in circumstances of sale between the two markets. These adjustments were for credit costs. Since home market packing costs were negligible, we simply added U.S. packing costs to the home market sales price. In accordance with § 353.16, we made adjustments for the differences in zinc costs in the two markets.

In calculating foreign market value we made currency conversions to United States dollars in accordance with § 353.56(a)(1) of the regulations.

Final Negative Determination of Critical Circumstances

Petitioners alleged that imports of standard pipe and tube from Yugoslavia present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we find that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there were massive imports we generally consider the following: (1) The volume and value of imports, (2) seasonal trends, and (3) the share of domestic consumption accounted for by the imports.

In considering this question, we analyzed recent trade statistics on import levels for standard pipe and tube from Yugoslavia for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we have found that imports of standard pipe and tube from Yugoslavia during the period subsequent to the receipt of the petition have not been massive when compared to recent import levels. Accordingly, we did not have to reach a determination with respect to a history of dumping or whether the importers knew or should have known that the exporters were selling the merchandise under investigation at less than fair value.

Therefore, we have determined that critical circumstances do not exist with respect to imports of standard pipe and tube from Yugoslavia.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the company involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Comments

The Department has received no oral or written comments relative to this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of certain welded carbon steel pipes and tubes from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after December 31, 1985. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average-amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on certain welded carbon steel pipes and tubes from Yugoslavia, we found export subsidies (50 FR 53360). Since dumping duties cannot be ultimately assessed on the portion of the margin attributable to

export subsidies, there is no reason to require a duplicated cash deposit or bond for the amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

Company	Weighted-average margin
Zeljezara Sisak	33.26
All others	33.26

ITC Notification

In accordance with section 735(d), we will notify the ITC of our determinations. In addition we are making available to it all non-privileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on carbon steel pipe and tube products from Yugoslavia entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 10, 1986

[FR Doc. 86–5636 Filed 3–13–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–502]

Welded Carbon Steel API Line Pipe From Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that welded carbon steel API line pipe (line pipe) from Taiwan is being, or is likely to be, sold in the United States at less than fair value and that critical circumstances exist, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of line pipe from Tawian that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before December 30, 1985, the date of publication of the notice of the preliminary determination, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that line pipe from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). The estimated margins were based on the best information available as explained below in the section of this notice which describes our fair value comparisons. We also found that critical circumstances exist. The margins found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On July 16, 1985, we received a petition filed in proper form from the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports and by each of the member companies who produce line pipe on behalf of the U.S. industry producing line pipe. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on August 5, 1986 (50 FR 32245), and notified the ITC of our action.

On August 16, 1985, questionnaires were presented to counsel for the respondents. On August 30, 1985, the ITC found that there is a reasonable indication that imports of line pipe from Taiwan are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1742, August 1985).

On October 31, 1985, counsel for the respondents notified us that they would not be responding to our questionnaire.

On December 23, 1985, we made our preliminary determination, which was based on the best information available.

Scope of Investigation

The Product covered under this investigation is welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thichness of not less than .065 inch, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3208 and 610.3209. This product is produced to various API specifications for line pipe, most notably API–5L or API–5LX. The period of investigation is February 1—July 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because the respondents did not submit responses.

United States Price

We calculated the purchase price of welded carbon steel API line pipe, as provided in section 772 of the Act, on the basis of the average f.o.b. packed values for the six month period of investigation as provided in the IM146 statistics compiled by the Bureau of the Census. We used these data as the best information available instead of the average FAS values for a 17 month period which are provided in the petition.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value using the best information available in the absence of a response to our questionnaire. The best information

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available for calculating foreign market value was statistics provided in the petition. These statistics were published by the Taiwan Department of Statistics for the fourth quarter of 1984. These statistics encompass all pipe and tube production in Taiwan.

Affirmative Determination of Critical Circumstances

The petitioners alleged that imports of line pipe from Taiwan present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we find that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise over a relatively short period.

In determining whether the importer knew, or should have known, that the exporter was dumping the merchandise, we normally consider margins of 25 percent or more to constitute knowledge of dumping. Since the margins in this case exceed this level, we find that knowledge of dumping can be imputed to the importers. Because we believe that the importers knew or should have known that the exporter was dumping the merchandise, we do not have to determine whether there is a history of dumping.

We generally consider the following concerning massive imports: (1) Volume and value of imports (2) seasonal trends, and (3) the share of domestic consumption accounted for by the imports. In considering this question, we analyzed the factors listed above for line pipe from Taiwan for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that imports of the subject merchandise from Taiwan during the period subsequent to receipt of the petition have been massive.

Therefore, for the reasons described above, we determine that "critical circumstances" exist with respect to line pipe from Taiwan.

Verification

Since no responses were submitted, there were no verifications.

Comments

The Department received no oral or written comments relative to this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of line pipe from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before December 30, 1985, the date of publication of the preliminary determination notice in the **Federal Register**. The United States Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on line pipe from Taiwan, we found that the export subsidies were *de minimis*. Therefore, the bonding rate will not be reduced by the amount of any export subsidies.

Manufacturer/producer/exporter	Weighted-average margin percentage
Far East Machinery Company, Ltd	27.98
Kao Hsing Chang Iron & Steel Corp	27.98
All others	27.98

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on line pipe from Taiwan entered, or withdrawn from warehouses, for consumption equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,
Assistant Secretary for Trade Administration.
March 10, 1986.
[FR Doc. 86-5636 Filed 3-13-86; 8:45 am]
BILLING CODE 3510-DS-M

[C-433-402]

Carbon Steel Products From Austria; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on certain carbon steel products from Austria. The review covers the period from March 20, 1985. The petitioner and other domestic interested parties have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the domestic interested parties' notifications, the revocation will apply to all cold-rolled carbon steel flat-rolled products from Austria entered, or withdrawn from warehouse, for consumption on or after March 20, 1985.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 41546) a countervailing duty order on certain carbon steel products from Austria.

The petitioner, United States Steel Corporation, and Bethlehem Steel Corporation, LTV Steel Company, Inland Steel Company and Armco Inc., domestic interested parties, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of Austrian cold-rolled carbon steel flat-rolled products. For a further description of these products, see Appendix A of this notice. The review covers the period from March 20, 1985.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioner's and domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on certain carbon steel products from Austria provide a reasonable basis for revocation of the order. In light of the March 20, 1985, effective date for revocation requested by the domestic parties, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on certain carbon steel products from Austria effective March 20, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 20, 1985, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Appendix

The term "*cold-rolled carbon steel flat-rolled products*" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, nor pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the Tariff Schedules of the United States Annotated ("TSUSA"); or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils as currently provided for in items 607.8350, 607.8355, or 607.8360 of the TSUSA.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 55 days from the date of publication, or the last workday preceding. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: March 7, 1986.

Gilbert B. Kaplan,
Deputy Assistant Secretary, Import Administration.
[FR Doc. 86-5638 Filed 3-13-86; 8:45 am]
BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held April 9, 1986, 8:30 a.m. to 3 p.m., Department of Defense, 1201 Fern Street, Arlington, Virginia.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session: 8:30 a.m.–3 p.m. Discussion of matters properly classified under Executive Order 12356 dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the subcommittee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inpection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information contact Debra Waggoner, (202) 377-5622.

Dated: March 10, 1986.

Willard A. Workman,
Director, Strategic Policy and Planning Division, Export Administration.
[FR Doc. 86-5639 Filed 3-13-86 8:45 am]
BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 355]

Marine Mammals; Permit Modification; Department of Vertebrate Zoology, National Museum of Natural History

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species (50 CFR Part 222), Scientific Research Permit No. 355 issued to the Department of Vertebrate Zoology, National Museum of Natural History, Smithsonian Institution Washington, DC 20560 on October 20, 1981, is modified as follows:

> This Permit is valid with respect to taking authorized herein until December 31, 1989.

This modification became effective on January 1, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modifications (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National

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Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC 20235; and
Director, Northeast Region National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: March 4, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-5617 Filed 3-13-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Douglas Wartzok (P375)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Dr. Douglas Wartzok, Professor and Chairman

b. Address: Department of Biological Services, Purdue University, Fort Wayne, Indiana 46805.

2. Type of Permit: Scientific Research.

3. Name of Marine Mammals: Bowhead whale (Balaena mysticetus).

4. Type of Take and Number: Forty (40) animals per year may be radio-tagged to identify and track individual whales and to repeatedly present certain whales with playback sounds of drilling and icebreaking. The behaviors of tagged and other whales will be observed as they pass operating drill sites. An unspecified number of animals will be harassed during aerial and ship operations associated with the tagging and observational activities.

5. Location of Activity: Alaskan Beaufort Sea.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

March 11, 1986.

[FR Doc. 86-5675 Filed 3-13-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancelling Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

March 11, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 17, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1985 a notice was published in the Federal Register (50 FR 53162), which among other things, established staged entry periods for imports of cotton textile products in Categories 331 (cotton gloves) and 340 (men's and boys' woven cotton shirts), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175); May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607); December 30, 1983 (48 FR 57584); April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622); July 16, 1984 (49 FR 28754); November 9, 1984 (49 FR 44782); and in Statistical Headnote 5, Schedule 3 of Tariff Schedules of the United States Annotated (1986).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 11, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on March 17, 1986, you cancel the staged entry periods established in the directive of December 24, 1985 for cotton textile products in Categories 331 and 340, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5640 Filed 3-13-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1986 commodities and a military resale commodity to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 14, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Cystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 12, September 13, October 22, and December 13, 1985 and January 10, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 14411, 50 FR 37396, 50 FR 42751, 50 FR 50936 and 51 FR 1274) of proposed additions to and deletions from Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and military resale commodity listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodity procured by the Government.

Accordingly, the following commodities and military resale commodity are hereby added to Procurment List 1986:

Commodities

Strap, Webbing, Litter Securing: 6530-00-784-4335
Boxspring: 7210-00-NIB-0043, 38 x 75" Twin; 7210-00-NIB-0044, 53 x 75" Double; 7210-00-NIB-0045, 60 x 80" Queen; 7210-00-NIB-0052, 76 x 80" King.
Mattress (innerspring): 7210-00-NIB-0040, 38 x 75" Twin; 7210-00-NIB-0041, 53 x 75" Double; 7210-00-NIB-0042, 60 x 80" Queen; 7210-00-NIB-0050, 76 x 80" King.
(Requirements for non-appropriated fund activities of the Armed Forces only).
Table, Coffee: 7105-00-139-7573; 7105-00-139-7573.
Table, End: 7105-00-139-7596.
Table, Lamp: 7105-00-139-7600.
(Requirements for Zones 2 and 3 only).

Military Resale Item No. and Name

No. 204 Cleaner, Tobacco, Pipe.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1986: Mop, Wet, Cellulose: 7920-00-728-1167.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-5651 Filed 3-13-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 a commodity and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before April 16, 1986.

ADDRESS: Committe for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

The notice of proposed addition to the Procurement List of Kit, First Aid, Eye Dressing is being reissued to confirm the continued interest by a workshop in the addition of this item to the Procurement List.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodity

Kit, First Aid, Eye Dressing, 6545-00-053-6309.

Services

Grounds Maintenance, USAR Facility, Building 4306, Grant County Airport, Moses Lake, Washington
Operation of Postal Service Center, Minot Air Force Base, North Dakota.

Deletions

It is proposed to delete the following services from Procurement List 1986, October 15, 1985 (50 FR 41809):

Commissary Shelf Stocking and Custodial, Fort Sheridan, Illinois
Janitorial Service, GSA Depot Building 58, Hingham Industrial Park, 349 Lincoln Street, Hingham, Massachusetts.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-5652 Filed 3-13-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Correction

In FR Doc. 86-4503 appearing on page 7315 in the issue of Monday, March 3, 1986, make the following corrections:

On page 7315, in the third column, the Summary should read:

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by workshops for the blind or other severely handicapped.

On page 7316, in the first column under Supplementary Information, the first sentence in the second paragraph should read: The workshop's capability to produce the poncho liner was verified by a Government on-site inspection.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-5650 Filed 3-13-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATES: 3 April, 21 May and 17 June 1986, 9:00 a.m. to 5:00 p.m. each day.

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ADDRESS: Foreign Technology Division, Wright-Patterson Air Force Base, Ohio for the 3 April meeting and the DIAC, Bolling AFB, Washington, DC for the 21 May and 17 June meetings.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 10, 1986.

[FR Doc. 86–5618 Filed 3–13–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Multi-National FOFA; Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Multi-National FOFA will meet in closed session on 7-11 April 1986, London, Engand; Paris, France; Bonn, Germany; and 27–29 May 1986, The Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO with a view towards future U.S. and NATO requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: March 10, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–5621 Filed 3–13–86; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session, in Washington, DC on April 9 and 10, 1986.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on April 9 and 10, the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: March 10, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–5620 Filed 3–13–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 10, 1986.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel/Ad Hoc Committee on Enhancement of Special Operations Forces will meet at Wright-Patterson AFB, OH on 17 April, 1986, from 2:00 pm to 5:00 pm, and at Oswego, NY on April 18, 1986 from 9:00 am to 2:30 pm.

The purpose of the meeting will be to review Combat Talon II Avionics programs, specifically defensive avionics integration, simulator development, and human factors integration.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–5614 Filed 3–13–86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 10, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology Efforts to Complement the Strategic Defense Initiative Program will meet at Los Angeles AFS, CA on 10–11 April 1986 from 8:30 am to 5:00 pm both days.

The purpose of the meeting will be for the Sensors/KEW panel to review Air Force space surveillance and KEW programs for completeness and ability to satisfy AF space requirements.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–5615 Filed 3–13–86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 10, 1986.

The USAF Scientific Advisory Board will conduct its Spring General meeting at Wright-Patterson AFB, OH on 21 April, 1986, from 2:00 pm to 5:00 pm, and on April 22–23, 1986 from 8:00 am to 5:00 pm.

The purpose of the meeting will be to review and provide SAB members information on Air Force programs in artificial intelligence on Project Forecast II.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–5616 Filed 3–13–86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

Department of the Army

ENVIRONMENTAL PROTECTION AGENCY

Water Pollution Control; Memorandum of Agreement on Solid Waste

February 28, 1986.

AGENCY: Department of the Army, DoD and Environmental Protection Agency.

ACTION: Notice of agreement.

SUMMARY: The Department of the Army and the Environmental Protection Agency (EPA) have entered into an agreement to promote effective control under the Clean Water Act (CWA) of discharges of solid and semi-solid waste materials discharged into the waters of the United States for the purpose of disposal of waste.

DATE: The Memorandum of Agreement (MOA) was executed on January 23, 1986, and shall take effect on April 23, 1986. Written comments received on or before June 23, 1986, will be considered in any future revision undertaken to the Agreement. Written comments received after June 23, 1986, will be considered if the timing of any future revision allows for such consideration.

ADDRESS: Office of the Assistant Secretary of the Army (Civil Works), U.S. Department of the Army, Room 2E570, Washington, DC, 20310–0103; or Office of Federal Activities (A–104), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT:

Morgan Rees, Assistant for Regulatory Affairs, Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Pentagon, Room 2E569, Washington, DC, 20310, (202) 695–1370.

John Meagher, Director, Aquatic Resource Division, Office of Federal Activities (A–104), Environmental Protection Agency, Washington, DC, 20460, (202) 382–5043.

SUPPLEMENTARY INFORMATION: Under section 404 of the CWA, the Army Corps of Engineers (and States approved by EPA) issue permits for discharges of dredged and fill material into waters of the United States which comply with the Act and applicable regulations. Under section 402 of the CWA (the National Pollutant Discharge Elimination System or NPDES Program), EPA (and States approved by EPA) issue permits for discharges of all other pollutants into waters of the United States, which comply with the Act and applicable regulations.

The MOA was entered into to resolve a difference (since 1980) between Army and EPA over the appropriate CWA program for regulating certain discharges of solid wastes into waters of the United States. The Army Corps of Engineers' definition of "fill material" provides that only those materials discharged for the primary purpose of replacing an aquatic area or of changing the bottom elevation of a waterbody are regulated under the Corps section 404 permit program. These discharges include discharges of pollutants intended to fill a regulated wetland to create fast land for development. The Corps definition excludes pollutants discharged with the primary purpose to dispose of waste which, under the Corps definition, would be regulated under section 402. Under EPA's definition of "fill material," all such solid waste discharges would be regulated under section 404, regardless of the primary purpose of the discharger. This difference has complicated the regulatory program for solid wastes discharged into waters of the United States.

A February 1984 Settlement Agreement in *NWF* v. *Marsh*, a case brought by 16 environmental groups against Army and EPA on a number of section 404 matters required resolution of the definition of fill issue by September 1984. Army and EPA have been working toward a resolution since settlement. In Section 404 oversight hearings conducted by the Senate Environment and Public Works Committee in 1985, EPA and Army agreed to make every effort to resolve the matter by the end of 1985.

The agreement published today provides an interim arrangement between the agencies for controlling discharges. In the longer term, EPA and Army agree that consideration given to the control of discharges of solid waste both in waters of the United States and upland should take into account the results of studies being implemented under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), signed into law on November 8, 1984.

The amendments to RCRA require EPA, by November 8, 1987, to submit a report to Congress determining whether the RCRA Subtitle D Criteria (40 CFR Part 257) are adequate to protect human health and the environment from groundwater contamination, and recommending whether additional authorities are needed to enforce the Criteria. In addition, EPA must revise the Criteria by March 31, 1988, for solid waste disposal facilities that may receive hazardous household waste or small quantity generator hazardous waste. At a minimum, these revisions should require not only groundwater monitoring as necessary to detect contamination, but should also establish criteria for the acceptable location of new or existing facilities, and provide for corrective action, as appropriate.

The main focus of the interim arrangement is to ensure an effective enforcement program under section 309 of the CWA for controlling discharges of solid and semi-solid wastes into waters of the United States for the purpose of disposal of waste. When warranted, EPA will normally initiate section 309 action to control such discharges. If it becomes necessary to determine whether section 402 or 404 applies to an ongoing or proposed discharge, the determination will be based upon criteria in the agreement, which provide, *inter alia*, for certain homogeneous wastes to be regulated under the section 402 (NPDES) Program and certain heterogeneous wastes to be regulated under the section 404 Program.

To promote regulatory consistency for those seeking to apply for authorization to discharge these wastes into waters of the United States, the agreement encourages the use of the criteria in the MOA by prospective dischargers. It also provides a procedure for the agencies' consideration of any permit applications received, and calls upon the agencies to advise prospective dischargers regarding the probable unsuitability of certain kinds of wastes for discharge into waters of the United States.

This agreement does not affect the regulatory requirements for materials discharged into waters of the United States for the primary purpose of replacing an aquatic area or of changing the bottom elevation of a water body. Discharges listed in the Corps definition of "discharge of fill material," 33 CFR 323.2(1) remain subject to section 404 even if they occur in association with discharges of wastes meeting the criteria in the agreement for section 402 discharges.

Unless extended by mutual agreement, the agreement will expire at such time as EPA has accomplished specified steps in its implementation of RCRA, at which time the results of the study of the adequacy of the existing Subtitle D criteria and proposed revisions to the Subtitle D criteria for solid waste disposal facilities, including those that may receive hazardous household wastes and small quantity generator waste, will be known. In addition, data resulting from actions

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under the interim agreement can be considered at that time.

The Department of Army and EPA will ensure that decisions made pursuant to this agreement meet the requirements of the CWA and are consistent with the Act's objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. EPA and Army will also take steps to ensure that discharges of solid and semi-solid wastes into waters of the United States are evaluated consistently under the section 402 and 404 programs, and that this agreement will be implemented in a manner that imposes no unnecessary burden on the regulated sector.

Text

January 17, 1986.

Memorandum of Agreement Between the Assistant Administrators for External Affairs and Water, U.S. Environmental Protection Agency, and the Assistant Secretary of the Army for Civil Works Concerning Regulation of Discharge of Solid Waste Under the Clean Water Act

A. Basis of Agreement

1. Whereas the Clean Water Act has as its principal objective the requirement "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters; and,

2. Whereas section 301 of the Clean Water Act prohibits the discharge of any pollutant into waters of the United States except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act; and

3. Whereas EPA, and States approved by EPA, have been vested with authority to permit discharges of pollutants, other than dredged or fill material, into waters of the United States pursuant to section 402 of the Clean Water Act that satisfy the requirements of the Act and regulations developed to administer this program promulgated in 40 CFR 122–125; and

4. Whereas the Army, and States approved by EPA, have been vested with authority to permit discharges of dredged or fill material into waters of the United States that satisfy the requirements of the Act and regulations developed to administer this program promulgated in 33 CFR Part 320 *et seq.* and 40 CFR Part 230 *et seq.*; and

5. Whereas the definitions of the term "fill material" contained in the aforementioned regulations have created uncertainty as to whether section 402 of the Act or section 404 is intended to regulate discharges of solid waste materials into waters of the United States for the purpose of disposal of waste; and

6. Whereas the Resource Conservation and Recovery Act Amendments of 1984 (RCRA) require that certain steps be taken to improve the control of solid waste; and

7. Whereas interim control of such discharges is necessary to ensure sound management of the Nation's waters and to avoid complications in enforcement actions taken against persons discharging pollutants into waters of the United States without a permit;

8. The undersigned agencies do hereby agree to use their respective abilities cooperatively in an interim program to control the discharges of solid waste material into waters of the United States.

B. Procedures

1. When either agency is aware of a proposed or an unpermitted discharge of solid waste into waters of the United States, the agency will notify the discharger of the prohibition against such discharges as provided in section 301 of the Clean Water Act. Such notice is not a prerequisite for an enforcement action by either agency.

2. Normally, if an activity in B.1 above warrants action, EPA will issue an administrative order or file a complaint under section 309 to control the discharge.

3. In issuing a notice of violation or administrative order or in filing a complaint, it is not necessary in order to demonstrate a violation of section 301(a) of the Clean Water Act to identify which permit a permitless discharge should have had. However, after an enforcement action has commenced, a question may be raised by the court, discharger, or other party as to whether a particular discharge having the effect of replacing an aquatic area with dry land or of changing the bottom elevation of a water body meets the primary purpose test for "fill material" in the Corps definition (33 CFR 323.2(k)). For example, such question may be raised in connection with a defense, or it may be relevant to the relief to be granted or the terms of a settlement.

4. To avoid any impediment to prompt resolution of the enforcement action, if such a question arises, a discharge will normally be considered to meet the definition of "fill material" in 33 CFR 323.2(k) for each specific case by consideration of the following factors:

a. The discharge has as its primary purpose or has as one principle purpose of multi-purposes to replace a portion of the waters of the United States with dry land or to raise the bottom elevation.

b. The discharge results from activities such as road construction or other activities where the material to be discharged is generally identified with construction-type activities.

c. A principal effect of the discharge is physical loss or physical modification of waters of the United States, including smothering of aquatic life or habitat.

d. The discharge is heterogeneous in nature and of the type normally associated with sanitary landfill discharges.

5. On the other hand, in the situation in paragraph B.3., a pollutant (other than dredged material) will normally be considered by EPA and the Corps to be subject to section 402 if it is a discharge in liquid, semi-liquid, or suspended form or if it is a discharge of solid material of a homogeneous nature normally associated with single industry wastes, and from a fixed conveyance, or if trucked, from a single site and set of known processes. These materials include placer mining wastes, phosphate mining wastes, titanium mining wastes, sand and gravel wastes, fly ash, and drilling muds. As appropriate, EPA and the Corps will identify additional such materials.

6. While this document addresses enforcement cases, prospective dischargers who apply for a permit will be encouraged to use the above criteria for purposes of project planning. If a prospective discharger applies for a section 404 permit based on the considerations in paragraph B.4., or for a Section 402 permit based on the considerations in paragraph B.5., the application will normally be accepted for processing. If a prospective discharger applies for a 404 permit for discharge of materials that might be hazardous, he shall be advised that dischargers of wastes to waters of the United States that are hazardous under RCRA are unlikely to comply with the section 404(b)(1) Guidelines. To facilitate processing of applications for permits under sections 402 or 404 for discharges covered by this agreement, an application for such discharge shall not be accepted for processing until the applicant has provided a determination signed by the State or appropriate interstate agency that the proposed discharge will comply with applicable provisions of State law including applicable water quality standards, or evidence of waiver by the State or interstate agency. As mandated under the Clean Water Act, neither a 402 nor a 404 permit will be issued for a discharge of toxic pollutants in toxic amounts. Prospective applicants for section 402 permits shall be advised that the proposed discharge will be evaluated for compliance with the Act, in particular with sections 101(a), 301, 303, 304, 307, 402, and 405 of the Act.

C. Determination of Permit

1. In enforcement cases, where a question arises under paragraph B.3 as to which permit would be required for a permitless discharge, the enforcing agency will determine whether the criteria in paragraph B.4 or B.5, if either, have been satisfied, with concurrence from the other agency. If the enforcing agency concludes that neither set of the criteria has been met and additional analysis is required to determine which Section applies, or if the necessary concurrence is not forthcoming promptly, the Division Engineer and the Regional Administrator (or designees) will consult and determine which permit program is applicable.

2. In non-enforcement situations, the agency receiving an application shall determine whether it meets the criteria in paragraphs 4 or 5, as the case may be. If the agency determines that the criteria applicable to its permit program have not been met, it will ask the other agency to determine whether the criteria for the latter's permit program have been met.

If neither agency determines that the criteria for its permit program have been met, the Division Engineer and the RA (or their designees) shall consult and determine which agency shall process the application in question.

D. Publication in the "Federal Register"

Since this Memorandum of Agreement clarifies the definition of fill material with respect to discharges of solid waste into waters of the United States, the parties in this agreement shall jointly publish it in the **Federal Register** within 45 days after it has been signed.

E. Effective Dates

1. This agreement shall take effect 90 days after the date of the last signature below and will continue in effect until modified or revoked by agreement of both parties, or revoked by either party alone upon six months written notice.

2. This agreement automatically expires at such time as EPA has submitted its Report to Congress on the Results of Study of the Adequacy of the Existing Subtitle D Criteria and has published a Notice of Proposed Revisions to the Subtitle D Criteria in the **Federal Register**, unless the agencies mutually agree that extension of this agreement is needed.

Dated: January 22, 1986.

Jennifer J. Manson,

Assistant Administrator for External Affairs, U.S. Environmental Protection Agency.

Dated: January 23, 1986.

Larry Jensen,

Assistant Administrator for Water, U.S. Environmental Protection Agency.

Dated: January 17, 1986.

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

Dated: March 11, 1986.

Jennifer J. Manson,

Assistant Administrator for External Affairs, U.S. Environmental Protection Agency.

Lawrence J. Jensen,

Assistant Administrator for Water, U.S. Environmental Protection Agency.

Robert K. Dawson,

Assistant Secretary of the Army for Civil Works, Department of the Army.

[FR Doc. 86–5611 Filed 3–13–86; 8:45 am]

BILLING CODE 3710-08-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the East-bank Barrier Levee Feature of the New Orleans to Venice, Louisiana, Hurricane Protection Project

AGENCY: New Orleans District, Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft SEIS.

SUMMARY:

1. Proposed Action

In 1962, Pub. L. 874, 87th Congress, authorized the project "Mississippi River Delta at and below New Orleans to Venice, Louisiana." The project would prevent tidal damages along the Mississippi River in lower Plaquemines Parish, Louisiana, by increasing the height of the existing back levees, altering the existing drainage facilities, and modifying the main river levee as necessary. Construction of a back levee on the east bank from Phoenix to Bohemia, Louisiana, began in 1966, and construction of a back levee on the west bank from Tropical Bend to Venice, Louisiana, began in 1968. Construction of the remaining back levee on the west bank from City Price to Tropical Bend has not begun. The East-bank Barrier Levee feature would protect the west bank between City Price and Venice from storms to the east.

2. Alternatives

a. *East-bank Plan.* This alternative consists of a barrier levee along the east bank of the Mississippi River from opposite City Price near Bohemia, Louisiana, to an area opposite Venice, Louisiana. In addition, this alternative includes an enlarged Mississippi River and Tributaries (MR&T) levee on the west bank of the Mississippi River from Fort Jackson to Venice, Louisiana.

b. *West-bank Plan.* This alternative involves an enlargement of the existing MR&T levee to hurricane grade from City Price, Louisiana, to Venice, Louisiana. In reaches where stability conditions do not permit an enlarged levee, a levee setback or floodwall is proposed.

c. *No Action Plan.* The no action alternative would result in no additional hurricane protection, and is the basis of comparison for the action alternative plans evaluated.

3. Scoping Process

a. A public meeting was held on March 13, 1956 in New Orleans, Louisiana, to discuss the views of the local interests concerning hurricane flooding and protection. On November 30, 1984 and January 10, 1985, public meetings were conducted by the Plaquemines Parish Commission Council to receive public input on the project, particularly the levee segment from City Price to Tropical Bend on the west bank of the Mississippi River. The public involvement program will include scoping meetings to obtain the public's input as to alternatives under consideration and significant resources to be evaluated in the SEIS. The participation of affected Federal, state, and local agencies, and other interested private organizations and parties will be invited.

b. Significant issues to be analyzed in the SEIS include impacts of the proposed changes on biological, cultural, historical, social, economic, water quality, and human resources, and project costs.

c. The U.S. Fish and Wildlife Service will provide Planning Aid information and a Coordination Act Report for the draft SEIS.

d. The draft SEIS will be coordinated with all required Federal, state, and local agencies, environmental groups, landowner groups, and interested individuals. All review comments received will be considered and responses will be made.

4. Public Meeting(s)

An intra-agency scoping meeting of concerned Federal and state natural resource agencies was conducted on January 29, 1986, and an additional meeting with these agencies will follow as the project planning progresses. A public scoping meeting is tentatively scheduled on March 18, 1986 to obtain the public's input.

5. Availability

The draft SEIS is scheduled to be available to the public in May 1987.

ADDRESS: Questions concerning the proposed action and draft SEIS may be directed to Mr. E. Scott Clark, U.S. Army Corps of Engineers, Environmental Quality Section (LMNPD–RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862–2321.

Dated: March 5, 1986.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–5582 Filed 3–13–86; 8:45 am]

BILLING CODE 3710-84-M

DEPARTMENT OF DEFENSE

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Thursday & Friday, 3–4 April 1986

Times of Meeting: 0800–1700 (Thursday), 0800–1530 (Friday)

Places: Pentagon, Room 2E715B, Washington, DC 20310

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense will meet for briefings on deployment options, lasers and instrumentation reviews. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed

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are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–5575 Filed 3–13–86; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Thursday, 10 April 1986

Times of Meeting: 0900–1500 hours

Places: Vint Hill Farms Station, Warrenton, Virginia 22186

Agenda: The Army Science Board 1986 Summer Study Panel on C³I Requirements for AirLand Battle will meet to receive briefings on selected systems and technology being developed by the Signals Warfare Center. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–5576 Filed 3–13–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–85–020; OFP Case No. 65030–9298–20–24]

Powerplant and Industrial Fuel Use; Northern Cogeneration One Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Northern Cogeneration One Company Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "the Act"), to Northern Cogeneration One Company (Northern or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the energy source, for a 424 MW net generating topping cycle cogeneration plant designed to produce steam for sale to the Union Carbide Corporation (Union Carbide) and electricity to Union Carbide and to Texas Utilities Electric Company (TUEC). The electric power purchased by TUEC will be interconnected with the Electric Reliability Council of Texas (ERCOT) regional grid. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on May 13, 1986. The public file containing a copy of this order as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On August 2, 1985, Northern petitioned ERA under 10 CFR 503.37 for a permanent cogeneration exemption. The proposed powerplant for which the petition was filed is to consist of three combustion turbine generators, three heat recovery steam generators and one auto extraction condensing steam turbine. The power production capacity of the facility will be 431 MW (108 MW per combustion turbine generator and 107 MW for the steam turbine generator [140 MW under maximum generating conditions]). Under normal operating conditions the net plant output will be 424 MW of power (7 MW of the electricity produced will be consumed by the facility for auxiliary power).

It is expected that more than 50 percent of the net annual electric power generation of the facility will be sold to TUEC, making the cogeneration facility an electric powerplant under FUA.

Basis for Permanent Exemption Order

The permanent exemption is based upon evidence in the record including Northern's certification to ERA, in accordance with 10 CFR 503.37(a) that:

1. The natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility pursuant to the methodology for calculating such savings; and

2. The mixture of natural gas and/or petroleum and coal would not be technically feasible for the proposed facility.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 30, 1985 (50 FR 39757), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency (EPA) for comments as required by section 701(f) of the Act.

During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 14, 1985; no comments were received and no hearing requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Northern has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Northern to permit the use of natural gas as the energy source for its proposed Texas City Cogeneration Facility to be located in Texas City, Galveston County, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on March 6, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–5596 Filed 3–13–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER79–97–006]

Alamito Co.; Complaint

March 11, 1986.

Take notice that on February 28, 1986, San Diego Gas & Electric Company (SDG&E) submit for filing a complaint, motion for expansion of refund authority, and an alternative request for rehearing of the Commission's orders in *Alamito Co.*, Docket Nos. ER79–97–001 and ER85–408–000. SDG&E requests that the Commission expand the refund authority of Ordering Paragraph (D) of its order issued on July 5, 1985 in the capitioned proceeding, 32 FERC ¶ 61,022, and require refunds of excess collections by Alamito Company ("Alamito") under its Rates Schedule No. 1. SDG&E alleges that because Alamito's rates for its sale of 251 Mw of Springerville Unit No. 1 to SDG&E have reflected substantially more equity in capitalization than was actually employed, it has collected rates that are not just and reasonable as required by the Act.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection. SDG&E states that a copy of the filing has been served on Alamito. Alamito's answer shall be due on or before April 10, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5648 Filed 3–13–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL86–26–000]

San Diego Gas & Electric Co. v. Alamito Co.; Complaint

March 11, 1986.

Take notice that on February 28, 1986 San Diego Gas & Electric Company (SDG&E) submitted for filing a complaint and motion for summary judgment pursuant to sections 206 and 306 of the Federal Power Act and Rules 206, 212 and 217 of the Commission's Rules of Practice and Procedure. SDG&E requests that the Commission institute an investigation pursuant ot section 206 of the Act and order that Amendment No. 4 to Rate Schedule No. 1 of Alamito Company ("Alamito") be changed immediately so that it reflects the actual capitalization to be employed by Alamito to finance its assets used to make wholesale sales of electrical power upon the consummation of a leveraged buy-out that senior management has requested Alamito's public shareholders to approve. SDG&E asserts that change is required so that Alamito's wholesale rates are just and reasonable as required by the Act. If immediate rate reductions are not ordered, SDG&E will be required to pay excessive revenues until relief can be obtained.

SDG&E requests that the rate schedule be modified prospectively based upon this complaint and Alamito's answer. SDG&E asserts that there are no genuine issues of fact that require that this complaint be set for hearing. In a companion filing made today in Docket No. ER79–79–006, SDG&E requests refunds under Rate Schedule No. 1, retroactive to June 1, 1985, at which time a revision to the capital structure contained in the rate of return formula under that rate schedule became effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86–5649 Filed 3–13–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER86–336–000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86–336–000]

March 7, 1986.

Take notice that Arizona Public Service Company ("APS"), on March 3, 1986, tendered for filing the McNeal Mutual Standby Transmission Service Agreement (Agreement) among Sulphur Spring Valley Electric Cooperative (SSVEC), Arizona Electric Power Cooperative (AEPCO) and APS. This Agreement, executed December 31, 1985, provides for mutual standby transmission service between APS and SSVEC.

APS, with the concurrence of AEPCO and SSVEC, requests waiver of § 35.3 pursuant to § 35.11 so that the Agreement be made effective on February 20, 1985, the date on which a similar agreement (APS—FPC Rate Schedule No. 37) between APS and SSVEC had terminated. It is the intent of the parties that this Agreement supercede the previous agreement designated FPC Rate Schedule No. 37.

Copies of this filing have been served upon AEPCO, SSVEC and the Arizona Corporation Commission.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Dayton Power and Light Company

[Docket No. ER86–330–000]

March 7, 1986.

Take notice that on March 3, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Yellow Springs (Yellow Springs), Ohio.

The proposed Agreement allows Yellow Springs to purchase energy requirements from third parties who will

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use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Yellow Springs.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power and Light Company

[Docket No. ER86-331-000]

March 7, 1986.

Take notice that on March 3, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Tipp City (Tipp City), Ohio.

The proposed Agreement allows Tipp City to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Tipp City.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Dayton Power and Light Company

[Docket No. ER86-337-000]

March 7, 1986.

Take notice that on March 4, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Lakeview (Lakeview), Ohio.

The proposed Agreement allows Lakeview to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Lakeview.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this doucment.

5. Iowa Power and Light Company

[Docket No. ER86-329-000]

March 7, 1986.

Take notice that Iowa Power and Light Company ("Iowa Power") on March 3, 1986, tendered for filing Transmission Service Schedule Nos. 2, 3 and 4 ("Schedules") to Schedule D of an Interchange Agreement dated June 13, 1983 between Iowa Power and Iowa-Illinois Gas and Electric Company ("Iowa-Illinois"). The proposed changes would increase revenues from jurisdictional sales and service by $102,529.66 based on the twelve month period ending December 31, 1985.

The Schedules provide for Iowa-Illinois' continued use of certain portions of Iowa Power's electric transmission system for further delivery of power to Iowa-Illinois at a proposed increased rate to recover increased costs incurred by Iowa Power in its fixed costs, at the Hills substation terminal, and as a result of storm damage incurred on its Montezuma to Hills 345 kV transmission line.

Copies of the filing were served upon Iowa-Illinois, the Iowa State Commerce Commission and the Illinois Commerce Commission.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER86-332-000]

March 7, 1986.

Take notice that on March 3, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for transmission service as embodied in Edison's agreements with the following entities:

	Rate schedules FERC No.
Contract Rate TN	FPC Electric Tariff Original Volume No. 1.
City of Riverside	165
City of Anaheim	164

Edison requests waiver of the Commission's prior notice requirements and an effective date of January 1, 1986.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER86-334-000]

March 7, 1986.

Take notice that on March 3, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for interruptible transmission service as embodied in Edison's agreements with the following entities:

	Rate schedules FERC No.
City of Anaheim	130
City of Azusa	160
City of Banning	159
City of Colton	162
City of Riverside	129
City of Vernon	149, 172

Edison requests waiver of the Commission's prior notice requirement and an effective date of January 1, 1986, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Arkansas Power & Light Company

[Docket No. ER83-297-000]

March 10, 1986.

Take notice that on March 4, 1986 Arkansas Power & Light Company tendered for filing redetermined formula rates, revenue comparisons and supporting workpapers for the Cities of Campbell and Thayer, Missouri in accordance with the Power Coordination, Interchange and Transmission Service Agreements (Agreements) in the above-referenced docket.

AP&L requests that the updated rates supersede those effective on March 1, 1985 and that they become effective for service on and after March 1, 1986, subject to refund, in accordance with the provisions of the Agreements.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER86-333-000]

March 10, 1986.

Take notice that on March 3, 1986 Southern California Edison tendered for filing a notice of cancellation of the following rate schedules:

Agreement	Rate schedule No.
Edison-Burbank, Palo Verde Firm Transmission Service Agreement	135
Edison-Glendale, Palo Verde Firm Transmission Service Agreement	136
Edison-Pasadena, Palo Verde Firm Transmission Service Agreement	137
Edison-IID, Palo Verde Firm Transmission Service Agreement	138

The aforementioned rate schedules reflect contractual agreements between Edison and City of Burbank, City of Glendale, City of Pasadena, and the Imperial Irrigation District. These agreements provide that Edison will make available firm transmission service from Palo Verde Nuclear Generating Station 500 kV Switchyard to the respective parties' receiving points.

Pursuant to section 5.3 of this agreement, Edison respectfully requests that the Commission authorize Edison to terminate the aforementioned rate schedules effective midnight on April 30, 1986.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Tapoco, Inc.

[Docket No. ER86-257-000]

March 10, 1986.

Take notice that on February 28, 1986, the Town of Highlands, North Carolina, Haywood Electrical Membership Corporation, North Carolina Electrical Membership Corporation and Lacy H. Thornburg, Attorney General of the State of North Carolina tendered for filing a protest of Tapoco Inc. (Tapoco) February 11, 1986 filing and a motion for intervention pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

The filing parties request that Tapoco's proposed amendment to its exchange agreement with the Tennessee Valley Authority extending Tapoco's exercise of its termination rights to December 22, 1982 be rejected or, alternatively, that Tapoco's request for waiver of the Commission filings be denied. If the proposed amendment is not rejected, they request that it be suspended for one day, and that the Commission declare that any approval of the proposed amendment in no way constitutes approval of a Tapoco termination in 1988, and also modify the proposed amendment to require Commission intervention prior to Tapoco's submission of a notice of termination to TVA. Alternatively, they request a hearing, and request that the Commission consolidate this proceeding with the pending consolidated proceeding in Docket Nos. ER82-774-000 *et al.* and defer further action with regard to Tapoco's proposed amendment pending a final determination in the consolidated proceedings.

Comment date: March 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5601 Filed 3-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-523-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Cogent Energy Co. et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Cogent Energy Co.

[Docket No. QF86-523-000]

March 6, 1986.

On February 7, 1986, Cogent Energy Co. (Applicant), of Four Gateway Center, Pittsburgh, Pennsylvania 15222, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at or adjacent to the Ciba-Geigy Plant near Toms River, New Jersey. The facility will consist of four natural gas fired combustion turbine generators and four waste heat recovery boilers. The thermal energy recovered in the form of steam will be used for industrial processes within the plant. The net electric power production capacity of the facility will be 200 MW.

2. HDI Associates IV (Dry Creek Hydropower Facility)

[Docket No. QF86-535-000]

March 10, 1986.

On February 20, 1986, HDI Associates IV (Applicant), of Suite 108, 10394 West Chatfield Avenue, Littleton, Colorado 80127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6 megawatt hydroelectric facility (FERC P. 9134) will be located on the Dry Creek Basin, in Butte County, Idaho.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. HDI Associates III (Ashuelot Paper Power Project)

[Docket No. QF86-536-000]

March 10, 1986.

On February 20, 1986, HDI Associates III (Applicant), of Suite 108, 10394 West Chatfield Avenue, Littleton, Colorado 80127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 850 kilowatt hydroelectric facility (FERC P. 7791) will be located on the Ashuelot River in Cheshire County, New Hampshire.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. HDI Associates III (Lower Robertson Dam)

[Docket No. QF86-537-000]

March 10, 1986.

On February 20, 1986, HDI Associates III (Applicant), of Suite 108, 10394 West Chatfield Avenue, Littleton, Colorado 80127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 850 kilowatt hydroelectric facility (FERC P. 8235) will be located on the Ashuelot River in Cheshire County, New Hampshire.

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A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

HDI Associates II (Talcville Water Power Project)

[Docket No. QF86-538-000]

March 10, 1986.

On February 20, 1986, HDI Associates II (Applicant), of Suite 108, 10394 West Chatfield Avenue, Littleton, Colorado 80127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The one megawatt hydroelectric facility (FERC P. 4402) will be located on the Oswegatchie River in St. Lawrence County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Hydroelectric Development, Inc. (Upper Robertson Dam)

[Docket No. QF86-539-000]

March 10, 1986.

On February 20, 1986, Hydroelectric Development, Inc. (Applicant) of Suite 108, 10394 West Chatfield Avenue, Littleton, Colorado 80127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 810 kilowatt hydroelectric facility (FERC P. 8915) will be located on the Ashuelot River in Cheshire County New Hampshire.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5802 Filed 3-13-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2983-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed March 3, 1986 Through March 7, 1986, Pursuant to 40 CFR 1506.9.

EIS No. 860081, Draft, SCS, LA, Acadia Parish Fifth Ward Flood Prevention and Agricultural Water Management Plan, Acadia Parish, Due: April 28, 1986, Contact: Horace Austin (318) 473-7751.

EIS No. 860082, Draft, AFS, AZ, Canyon Uranium Mining Development, Kaibab National Forest, Approval, Coconino County, Due: May 1, 1986, Contact: Dennis Lund (602) 635-2681.

EIS No. 860083, Draft, BLM, UT, House Range Resource Area, Resource Management Plan, Juab and Millard Cos., Due: June 13, 1986, Contact: Alan Partridge (801) 896-8221.

EIS No. 860084, DSuppl, IBR, ND, Garrison Diversion Unit, New Irrigation Areas and New Project Features, Operation and Maintenance, Pick-Sloan Missouri Basin Program, James River, Due: May 6, 1986, Contact: Timothy Keller (701) 255-4011.

EIS No. 860085, DSuppl, FHW, FL, Port Everglades Expressway/I-595 Construction, I-95/FL-736/Davie Blvd. Improvements, South Fork New River to Broward Blvd., Broward County, Due: April 30, 1986, Contact: P.E. Carpenter (904) 681-7223.

EIS No. 860086, Final, FHW, NM, San Mateo Blvd. Improvements, Gibson Blvd. to Zuni Rd., Bernalillo County, Due: April 14, 1986, Contact: Anthony Alonzo (505) 988-6150.

EIS No. 860087, Draft FHW, CT, CT-11 Improvements, CT-82 in Salem to I-95 in Waterford, New London County, Due: May 19, 1986, Contact: James Barakos (722) 244-2420.

EIS No. 860088, FSuppl, DOE, CO, Blue River-Gore Pass Substation, Portion of Hayden-Blue River 345kV Transmission Line, C/O/M, Grand and Summit Cos., Due: April 14, 1986, Contact: Bill Melander (303) 224-7231.

EIS No. 860089, Final, OSM, MT, CX Ranch Mine, Construction and Operation, Big Horn County, Due: April 14, 1986, Contact: Floyd McMullen (303) 844-2451.

EIS No. 860090, Final, AFS, WY, Shoshone National Forest, Land and Resource Management Plan, Due: April 14, 1986, Contact: Steven Mealey (307) 527-6241.

Amended notices

EIS No. 860062, Draft, BOP, OR, Sheridan Federal Correctional Institution Complex, Construction and Operation, Yamhill County, Due: April 21, 1986, Published FR 2-20-86—Review period reestablished.

EIS No. 860032, Final, EPA, OR, Coos Bay Ocean Disposal Sites, Dredged Material Disposal Site, Coos County, Due: March 10, 1986, Published FR 2-7-86—Incorrect status.

EIS No. 860071, Draft, COE, NY, Cazenova Creek Flood Damage Reduction Plan, Due: April 28, 1986, Published FR 3-7-86—Review period reestablished.

Dated: March 11, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-5860 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2983-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 24, 1986 through February 28, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DR-AFS-G65035-NM, Rating LO, Santa Fe Nat'l Forest, Land and Resource Mgmt. Plan, NM. **SUMMARY:** EPA expressed no objections to the proposed action as described.

ERP No. DS-FHW-K40074-CA, Rating LO, I-8 and CA-125 Interchange Improvement, Fletcher Parkway to Amaya Dr., Revision Change, Right-of-Way Acquisition, CA. **SUMMARY:** EPA has no objections to the project as proposed in the draft supplemental EIS.

ERP No. D-JUS-D81014-PA, Rating EC2, Bradford Federal Correctional Institution Complex, Construction and Operation, PA. **SUMMARY:** EPA expressed concerns about the level of discussion of controls and potential impacts from surface and groundwater flows in the project area, and water and wastewater treatment alternatives. Additional studies and documentation of impacts were requested.

Final EISs

ERP No. F-AFS-J65111-MT, Flathead Nat'l Forest, Land and Resource Mgmt. Plan, MT. **SUMMARY:** EPA's concerns were responded to in the final EIS.

Dated: March 11, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-5859 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53076; FRL-2961-2]

Premanufacture Notices Monthly Status Report for July 1985

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for July 1985.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53076]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during July; (b) PMNs received previously and still under review at the end of July; (c) PMNs for which the notice review period has ended during July; (d) chemical substances for which EPA has received a notice of commencement to manufacture during July and (e) PMNs for which the review period has been suspended. Therefore, the July 1985 PMN Status Report is being published.

Dated: January 15, 1986.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, July 1985

I. 170 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-1141	4-(Acetylamino)-5-hydroxy-2,7-naphthalene-disulfonic acid, dipyridinium salt	50 FR 28464(28465) (7-12-85)	Sept. 28, 1985.
P 85-1142	4-amino-5-hydroxy-2,7-naphthalene-disulfonic acid, monopyridinium salt	50 FR 28464(28465) (7-12-85)	Do.
P 85-1143	Generic name: Polymer of bisanhydride of Bisphenol-A, amino-substituted polysiloxane and an aromatic diamine.	50 FR 28464(28465) (7-12-85)	Do.
P 85-1144	Generic name: Thiotriazine	50 FR 28464(28465) (7-12-85)	Do.
P 85-1145	Generic name: Alkoxylated alkyl amine	50 FR 28464(28465) (7-12-85)	Do.
P 85-1146	Generic name: Aliphatic aromatic copolyester	50 FR 28464(28465) (7-12-85)	Sept. 29, 1985.
P 85-1147	Generic name: Polymer of modified polyolefin and modified elastomers	50 FR 28464(28465) (7-12-85)	Do.
P 85-1148	Generic name: Phenolic modified epoxy	50 FR 28464(28465) (7-12-85)	Do.
P 85-1149	Generic name: Hydroxylated aromatic epoxy acrylate ester	50 FR 28464(28465) (7-12-85)	Do.
P 85-1150	Generic name: Benzothiazolylidenealkenyl-benzothiazolium salt	50 FR 28464(28465) (7-12-85)	Do.
P 85-1151	Generic name: Benzothiazolylidenealkenyl-benzothiazolium salt	50 FR 28464(28465) (7-12-85)	Do.
P 85-1152	Benzene, methyl-, mono-C_{14-20}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1153	Benzene, methyl-, mono-C_{14-16}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1154	Benzene, methyl-, mono-C_{16-18}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1155	Benzene, methyl-, mono-C_{18}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1156	Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1157	Benzenesulfonic acid, methyl-, mono-C_{14-16}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1158	Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1159	Benzenesulfonic acid, methyl-, mono-C_{18}-alkyl derivatives	50 FR 28464(28465) (7-12-85)	Do.
P 85-1160	Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives, sodium salts	50 FR 28464(28465) (7-12-85)	Do.
P 85-1161	Benzenesulfonic acid, methyl-, mono-C_{14-16}-alkyl derivatives, sodium salts	50 FR 28464(28465) (7-12-85)	Do.
P 85-1162	Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivatives, sodium salts	50 FR 28464(28465) (7-12-85)	Do.
P 85-1163	Benzenesulfonic acid, methyl-, mono-C_{18}-alkyl derivatives, sodium salts	50 FR 28464(28465) (7-12-85)	Do.
P 85-1164	Generic name: Unsaturated polyester	50 FR 28464(28465) (7-12-85)	Sept. 30, 1985.
P 85-1165	Generic name: Fatty acrylate polymer	50 FR 28464(28465) (7-12-85)	Do.
P 85-1166	Generic name: Acrylic resin	50 FR 28464(28465) (7-12-85)	Do.
P 85-1167	Generic name: Dichloropropene	50 FR 28464(28465) (7-12-85)	Do.
P 85-1168	Generic name: Epoxy acrylate	50 FR 28464(28465) (7-12-85)	Do.
P 85-1169	Generic name: Acid modified acrylated epoxide	50 FR 28464(28465) (7-12-85)	Do.

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I. 170 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-1170	Generic name: Acid modified acrylated epoxide	50 FR 29464(29467) (7-12-85)	Do.
P 85-1171	Generic name: Polymer modified acrylated epoxide	50 FR 29464(29467) (7-12-85)	Do.
P 85-1172	Generic name: Phosphorotrithioic acid aliphatic ester	50 FR 29476(7-19-85)	Oct. 2, 1985.
P 85-1173	Generic name: Silica supported transitional metal complex	50 FR 29476(7-19-85)	Do.
P 85-1174	Generic name: Modified alkyl polymer from an anhydride with unsaturated oils, alkanediols, a carbomonocyclic acid and alkanoic ester.	50 FR 29476(7-19-85)	Oct. 5, 1985.
P 85-1175	Generic name: Amide of naturally occurring organic acids and fatty amines	50 FR 29476(29477) (7-19-85)	Oct. 6, 1985.
P 85-1176	Polymer of trimethylol propane triacrylate, Jeffamine M600, (polyoxypropylene mono primary amine), maleic anhydride.	50 FR 29476(29477) (7-19-85)	Do.
P 85-1177	Generic name: Cyclooctaamylose	50 FR 29476(29477) (7-19-85)	Do.
P 85-1178	Generic name: Enzymatically derived starch based syrup	50 FR 29476(29477) (7-19-85)	Do.
P 85-1179	Generic name: Polyacrylate	50 FR 29476(29477) (7-19-85)	Do.
P 85-1180	Generic name: Tert-amyl peroxy alkylene ester	50 FR 29476(29477) (7-19-85)	Do.
P 85-1181	Dinitroethylbenzene	50 FR 29476(29477) (7-19-85)	Do.
P 85-1182	Diaminoethylbenzene	50 FR 29476(29477) (7-19-85)	Do.
P 85-1183	Generic name: N,N-bis(substituted imidazolinium chloride) alkyl stearamide	50 FR 29476(29477) (7-19-85)	Oct. 7, 1985.
P 85-1184	Generic name: Substituted pyridine	50 FR 29476(29477) (7-19-85)	Oct. 8, 1985.
P 85-1185	1-Naphthalenol, 5,6,7,8 tetrahydro-	50 FR 29476(29477) (7-19-85)	Do.
P 85-1186	Generic name: Monosubstituted carbamic acid, methyl ester, salt	50 FR 29476(29477) (7-19-85)	Do.
P 85-1187	Polymer of dipropylene glycol, 1,3-butylene glycol, tetrahydrophthalic anhydride, dibutyl tin oxide.	50 FR 30513(30514) (7-26-85)	Oct. 9, 1985.
P 85-1188	Generic name: Substituted bis phenyl isobenzofuranone	50 FR 30513(30514) (7-26-85)	Do.
P 85-1189	2-Butanone, 0,0'-(ethenyl methyl silylene) dioxime, (E-Z)	50 FR 30513(30514) (7-26-85)	Oct. 9, 1985.
P 85-1190	Generic name: Reaction of products of polycarbonate and poly(butadiene styrene)	50 FR 30513(30514) (7-26-85)	Oct. 12, 1985.
P 85-1191	Generic name: Epoxy amine polymer	50 FR 30513(30514) (7-26-85)	Do.
P 85-1192	Generic name: Amine epoxy polymer	50 FR 30513(30514) (7-26-85)	Do.
P 85-1193	Generic name: Epoxy amine polymer	50 FR 30513(30514) (7-26-85)	Do.
P 85-1194	Generic name: Silylated isocyanate functional aliphatic polyurea lacquer	50 FR 30513(30514) (7-26-85)	Oct. 13, 1985.
P 85-1195	Generic name: Partially silylated aliphatic isocyanate oligomer	50 FR 30513(30514) (7-26-85)	Do.
P 85-1196	Generic name: Amino functional polysilane adduct	50 FR 30513(30514) (7-26-85)	Do.
P 85-1197	Generic name: Hydroxyl terminated silylated isocyanate functional aliphatic polyurea lacquer.	50 FR 30513(30514) (7-26-85)	Do.
P 85-1198	Generic name: Amine functional acrylic terpolymer	50 FR 30513(30514) (7-26-85)	Do.
P 85-1199	Generic name: Polyurethane prepolymer resin	50 FR 30513(30515) (7-26-85)	Do.
P 85-1200	1,3 bis-(dimethyl stearyl ammonium chloride)-2-propanol	50 FR 30513(30515) (7-26-85)	Do.
P 85-1201	Generic name: Cationic latex	50 FR 30513(30515) (7-26-85)	Do.
P 85-1202	2-Naphthalenecarboxaldehyde, 5,6,7,8-tetrahydro-1-methoxy-3,5,5,8,8-pentamethyl-	50 FR 30513(30515) (7-26-85)	Do.
P 85-1203	1-Cyclopentene-1-propanol; beta, beta, 2-trimethyl-5-(1-methylethenyl)-, propanoate	50 FR 30513(30515) (7-26-85)	Do.
P 85-1204	Generic name: Polyester resin	50 FR 30513(30515) (7-26-85)	Do.
P 85-1205	Generic name: Polyester resin	50 FR 30513(30515) (7-26-85)	Do.
P 85-1206	Generic name: Blocked isocyanate homopolymer	50 FR 30513(30515) (7-26-85)	Do.
P 85-1207	Generic name: [Bis(alkylphenylamino)-(xanthenyl)-isobenzofuranone][(alkyl-imidazolyl)methylene]deriv., (mixed salts).	50 FR 30513(30515) (7-26-85)	Do.
P 85-1208	Generic name: Cobalt acylate complex	50 FR 30513(30515) (7-26-85)	Do.
P 85-1209	Generic name: Cobalt acylate complex	50 FR 30513(30515) (7-26-85)	Do.
P 85-1210	Benzoic acid, 2-[(3a,4,5,6,7,7a-hexahydro-5(or 6) methoxy-4,7-methanoindan)-methylidene] amino, methyl ester.	50 FR 30513(30515) (7-26-85)	Do.
P 85-1211	Benzoic acid, 2-(3-phenyl, butylidene) amino, methyl ester	50 FR 30513(30515) (7-26-85)	Do.
P 85-1212	Benzoic acid, 2-[3-(4-methyl, cyclohex-3-enyl)butylidene]amino, methyl ester	50 FR 30513(30516) (7-26-85)	Do.
P 85-1213	Generic name: Polyurethane dispersion	50 FR 30513(30516) (7-26-85)	Do.
P 85-1214	Generic name: Reaction product of functionalized alcohol, tall oil fatty acids, and hydroxy acryl ketone.	50 FR 30513(30516) (7-26-85)	Oct. 14, 1985.
P 85-1215	Generic name: Modified alkyd resin	50 FR 30513(30516) (7-26-85)	Do.
P 85-1216	Silicon monoxide	50 FR 30513(30516) (7-26-85)	Oct. 15, 1985.
P 85-1217	Generic name: Poly(phenoxyalkylene) phosphate	50 FR 32290(32291) (8-9-85)	Oct. 16, 1985.
P 85-1218	Generic name: Acrylate copolymer	50 FR 32290(32291) (8-9-85)	Do.
P 85-1219	Generic name: Substituted dithiocarbamate salt	50 FR 32290(32291) (8-9-85)	Do.
P 85-1220	Generic name: Chlorinated fatty acids, polyoxyalkylene esters	50 FR 32290(32291) (8-9-85)	Do.
P 85-1221	Generic name: Styrene acrylic polymer	50 FR 32290(32291) (8-9-85)	Do.
P 85-1222	Generic name: Polyether	50 FR 32290(32291) (8-9-85)	Oct. 19, 1985.
P 85-1223	Generic name: Aliphatic amine adduct with epoxy resin	50 FR 32290(32291) (8-9-85)	Do.
P 85-1224	Polymer of N(alpha, alpha-dimethyl metaisopropenylbenzyl), poly(oxy-1,2-ethanediyl), alpha-(nonyl phenyl), carbamate, methacrylic acid, ethyl acrylate.	50 FR 32290(32291) (8-9-85)	Do.
P 85-1225	Modified castor oil polymer	50 FR 32290(32291) (8-9-85)	Do.
P 85-1226	Generic name: Polyether polyurethane polymer	50 FR 32290(32292) (8-9-85)	Do.
P 85-1227	Generic name: Polyether polyurethane polymer	50 FR 32290(32292) (8-9-85)	Do.
P 85-1228	2-Naphthylazo 2'-uriedo, 4'-[3''-chloro 5''-(p-ethyl sulfonyl sulfuric ester potassium salt-phenylamino)-S-triazinylamino phenyl] 3,6,8-trisulfonic acid potassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1229	2-(3',5'-dichloro-S-triazinylamino)-4-amino 5-(p-ethyl sulfonyl sulfuric ester-potassium salt-benzeneazo)-benzene sulfonic acid-potassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1230	1-[3'-chloro 5'-(p-ethyl-sulfonyl-sulfuric acid ester-potassium salt-phenyl-amino)-S-triazinylamino]-5-[1''-ethyl-2''-hydroxy-3''azo-4'' methyl-5''-carbamido-6'' pyridonyl]-2,4-benzene-disulfonic acid-potassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1231	1(P-sulfo phenyl potassium salt)-3-carboxy acid potassium salt)-4-[3'(3''-chloro-5''-(P-ethyl sulfonyl sulfuric ester potassium salt-phenylamino)-S-triazinylamino)-6'-sulfonic acid potassium salt phenyl azo-]-5-pyrazolone.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1232	1-hydroxy-2-(4'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-8-[3'' (4'''-ethylsulfonyl sulfuric acid ester potassium salt phenylamino)-5'' chloro-S-triazinylamino]naphthalene-3-6-disulfonic acid dipotassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1233	1-hydroxy-2-(2'-sulfonic acid potassium salt phenylazo)-8-[5''-chloro-3''-(4'''-ethyl sulfonyl sulfuric acid ester potassium salt phenylamino)-S-triazinyl-amino)]naphthalene-3,6-disulfonic acid dipotassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1234	1-[3'-chloro-5'-(p-ethyl sulfonyl sulfuric ester sodium salt-phenylamino)-S-triazinylamino]-7-[2''-Naphthyl-azo-1''-sulfonic acid sodium salt]-8-naphthol-3, 6 disulfonic acid sodium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1235	1-hydroxy-2-[1', 5'-disulfonic acid dipotassium salt-2'-naphthyl-azo]-8-[3''-(4'''-ethyl sulfonyl sulfuric acid ester potassium salt phenylamino)-5''-chloro-S-triazinylamino] naphthalene-3,6-disulfonic acid potassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1236	[4-(1''-hydroxy-8''amino-7''-(4'''-ethyl sulfonyl sulfuric acid ester potassium salt benzeneazo)-3'', 6''-disulfonic acid dipotassium salt, 2''-naphthylazo)-4'-(4''''-hydroxy-benzeneazo)] stilbene 2,2' disulfonic acid-dipotassium salt.	50 FR 32290(32292) (8-9-85)	Do.

I. 170 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-1237	Copper complex of [Naphthalene-(1-hydroxy 2-(5'-ethylsulfonyl sulfuric acid ester potassium salt 2'-methoxy benzeneazo) 6-(1''-hydroxy 8''acetylamino-3'', 6''-disulfonic acid dipotassium salt-2''-naphthylazo)3-sulfonic acid potassium salt).	50 FR 32290(32292) (8-9-85)	Do.
P 85-1238	4-[1''-hydroxy-8''-amino-7''-(4'' ethyl sulfonyl sulfuric acid ester potassium salt benzeneazo) 3'', 6'' disulfonic acid dipotassium salt-2''-naphthylazo] 4'[1''''-hydroxy 8'''' (3'''', 5''''-dichloro-S-triazinylamino) 3'''', 6''''-disulfonic acid dipotassium salt 2''''-naphthylazo] stilbene, 2-2-disulfonic acid-dipotassium salt.	50 FR 32290(32292) (8-9-85)	Do.
P 85-1239	Generic name: Polyamine adduct	50 FR 32290(32293) (8-9-85)	Do.
P 85-1240	Genric name: Polyamine adduct	50 FR 32290(32293) (8-9-85)	Do.
P 85-1241	Generic name: Vinyl ether/anhydride copolymer	50 FR 32290(32293) (8-9-85)	Oct. 20, 1985.
P 85-1242	Generic name: Ether higher alkyl ester copolymer	50 FR 32290(32293) (8-9-85)	Do.
P 85-1243	1-propanaminium, 2-hydroxy-N, N-dimethyl-N-octyl-3-sulfo-, hydroxide, inner salt	50 FR 32290(32293) (8-9-85)	Do.
P 85-1244	Generic name: Functional aromatic aliphatic polyether polyol	50 FR 32290(32293) (8-9-85)	Do.
P 85-1245	para-Hydroxy benzene sulfonic acid, copper (II) salt	50 FR 32290(32293) (8-9-85)	Do.
P 85-1246	Generic name: Methacrylated liquid rubber	50 FR 32290(32293) (8-9-85)	Do.
P 85-1247	Generic name: Ethylene, vinyl acetate, methacrylic acid, hydroxy substituted hydrocarbon copolymer.	50 FR 32290(32293) (8-9-85)	Oct. 21, 1985.
P 85-1248	Generic name: Aryloxycyclophosphazene	50 FR 32290(32293) (8-9-85)	Do.

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I. 170 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-1249	Generic name: Tetrafunctional silane	50 FR 32290(32293) (8-9-85)	Oct. 22, 1985.
P 85-1250	Generic name: Organo tin	50 FR 32290(32293) (8-9-85)	Do.
P 85-1251	Generic name: Substituted aromatic polymer	50 FR 32290(32293) (8-9-85)	Do.
P 85-1252	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Oct. 23, 1985.
P 85-1253	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1254	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1255	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1256	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1257	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1258	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1259	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1260	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1261	Generic name: Aliphatic polyisocyanate modified acrylic resin	50 FR 32302(32306) (8-9-85)	Do.
P 85-1262	Generic name: Modified copolymer of maleic anhydride and 1-substituted alkene	50 FR 32302(32306) (8-9-85)	Oct. 26, 1985.
P 85-1263	Generic name: Alkenyl nitrile	50 FR 32302(32306) (8-9-85)	Do.
P 85-1264	1-(4'-sulfophenyl sodium salt)-3-methyl-4-(2''-methoxy-5''-methyl-4''-ethylsulfonyl sulfonic acid ester sodium salt phenyl azo)-5-pyrazolone.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1265	2-Acetylamino-7-(4'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-8-hydroxy naphthalene-6-sulfonic acid potassium salt.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1266	1-Acetylamino-8-hydroxy-7-(3'-ethyl sulfonyl sulfuric acid ester potassium salt-6'-methoxy phenylazo)naphthalene 3,6-disulfonic acid dipotassium salt.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1267	Copper complex of 1-acetylamino-8-hydroxy-7-(4'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)naphthalene 3,6-disulfonic acid dipotassium salt.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1268	1-(4'-sulfo phenyl sodium salt)-3-carboxylic acid sodium salt)-4-(4''-ethyl sulfonyl sulfonic acid ester sodium salt phenylazo)-5-pyrazolone.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1269	Copper complex of 1-(4'-sulfophenyl potassium salt)-3-methyl-4-(2''-methoxy-5''-ethyl sulfonyl sulfonic acid ester potassium salt phenylazo)-5-pyrazolone.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1270	1-(4'-Sulfophenyl potassium salt)-3-methyl-4-(2'',5''-dimethoxy-4''-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-5-pyrazolone.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1271	1-Hydroxy-2-(4'-ethyl sulfonyl sulfuric acid ester sodium salt phenyl azo)-8-[5''-chloro-3''-(4''-ethyl sulfonyl sulfuric acid ester sodium salt phenyl amino)-S-triazinyl]amino naphthalene-3,6-disulfonic acid disodium salt.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1272	Copper complex of naphthalene 1-hydroxy 2-(5'-ethyl sulfonyl sulfuric acid ester potassium salt 2'-methoxy benzeneazo) 6-(1''-hydroxy 8''-acetylamino 3'',6''-disulfonic acid dipotassium salt 2''-naphthylazo)-3-sulfonic acid potassium salt.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1273	Copper complex of 1-acetylamino-8-hydroxy-7-(2',5'-dimethoxy-4'-ethyl sulfo phenyl sulfuric acid ester potassium salt phenylazo)-3,6-disulfonic acid dipotassium salt.	50 FR 32302(32306) 8-9-85)	Do.
P 85-1274	Copper complex of 2-(2'-methoxy-5'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-6-(4''8''-disulfonic acid potassium salt naphthylazo) 1,3-dihydroxy benzene.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1275	Generic name: Cellulose derivative	50 FR 32302(32306) (8-9-85)	Do.
P 85-1276	Generic name: Lake dye	50 FR 32302(32306) (8-9-85)	Do.
P 85-1277	Generic name: Lake dye	50 FR 32302(32306) (8-9-85)	Do.
P 85-1278	Generic name: Lake dye	50 FR 32302(32306) (8-9-85)	Do.
P 85-1279	Generic name: Benzene sulfonic acid, copper (II) salt	50 FR 32302(32306) (8-9-85)	Do.
P 85-1280	Generic name: Poly[1,4(dilinoleic, phthalic) polymethylene diamide]	50 FR 32302(32306) (8-9-85)	Do.
P 85-1281	Generic name: Alkyl(halosubstituted phenyl) oxoheterocyclic substituted sulfonanilide	50 FR 32302(32306) (8-9-85)	Oct. 27, 1985.
P 85-1282	Generic name: Urethane modified copolyester	50 FR 32302(32306) (8-9-85)	Do.
P 85-1283	Generic name: Polymer of an acrylate ester and mixed methacrylate esters	50 FR 32302(32306) (8-9-85)	Do.
P 85-1284	Generic name: Alkanoic ester derivative of an alkanol and a carbomonocyclic anhydride	50 FR 32302(32306) (8-9-85)	Do.
P 85-1285	Generic name: Molybdenum complex of organic nitrogen compound	50 FR 32302(32306) (8-9-85)	Do.
P 85-1286	Generic name: Mixed fatty and alkyl esters	50 FR 32302(32306) (8-9-85)	Do.
P 85-1287	Generic name: Alkyl esters	50 FR 32302(32306) (8-9-85)	Do.
P 85-1288	4,4'-isopropylidenediphenol, reaction product with epichlorohydrin and 4-glycidoxy-N,N-diglycidyl aniline.	50 FR 32302(32306) (8-9-85)	Do.
P 85-1289	Generic name: Bis-(alkylureido)-alkane	50 FR 32302(32306) (8-9-85)	Do.
P 85-1290	Generic name: Aliphatic polycarbonate urethane	50 FR 32302(32306) (8-9-85)	Do.
P 85-1291	Generic name: Aliphatic polycarbonate urethane	50 FR 32302(32306) (8-9-85)	Do.
P 85-1292	Generic name: Aromatic polyether urethane	50 FR 32302(32306) (8-9-85)	Do.
P 85-1293	1,2-Dibromooctadecane	50 FR 32302(32306) (8-9-85)	Do.
P 85-1294	Generic name: Phosphonium salt	50 FR 32302(32306) (8-9-85)	Do.

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I. 170 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-1296	Generic name: Quaternary salt of fatty acid amide esters	50 FR 32302(32303) (8-9-85)	Oct. 28, 1985.
Y 85-101	Acid terminated prepolymer polyester	50 FR 28467(28468) (7-12-85)	July 22, 1985.
Y 85-102	Ethylene-propylene styrene copolymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-103	Ethylene styrene copolymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-104	Propylene-styrene copolymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-105	Generic name: Polyether polyurethane polymer	50 FR 28467(28468) (7-12-85)	July 23, 1985.
Y 85-106	Generic name: Polyether polyurethane polymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-107	Generic name: Ethylene, vinyl acetate methacrylic acid, hydroxy substituted hydrocarbon copolymer.	50 FR 29476 (7-19-85)	July 28, 1985.
Y 85-108	Generic name: Polysiloxane block copolymer	50 FR 29476 (7-19-85)	Do.
Y 85-109	Polymer of isophthalic acid, terephthalic acid, adipic acid, ethylene glycol, neopentyl glycol, 1,6 hexanediol and dibutyl tin oxide.	50 FR 30516 (7-26-85)	Aug. 1, 1985.
Y 85-110	Generic name: Polyurethane resin	50 FR 30516 (7-26-85)	Aug. 4, 1985.
Y 85-111	Generic name: Unsaturated polyester resin from dibasic acids and polyol	50 FR 30516 (7-26-85)	Do.
Y 85-112	Generic name: Ethylene olefin terpolymer	50 FR 30516 (7-26-85)	Aug. 5, 1985.
Y 85-113	Generic name: Chain-stopped alkyd resin	50 FR 31656(31657) (8-5-85)	Aug. 12, 1985.
Y 85-114	Generic name: Substituted (1-oxo-2-propenyl) amino polymer with 2 propenoic acid, sodium salt.	50 FR 32302 (8-9-85)	Aug. 19, 1985.

II. 119 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	Identity/generic name	FR Citation	Expiration date
P 85-1022	Generic name: Heavy metal salt of a sulfonated azo dye	50 FR 24938(24939) (6-14-85)	Aug. 31, 1985.
P 85-1023	Generic name: Polyfluoroalkyl thiocyanate	50 FR 24938(24939) (6-14-85)	Do.
P 85-1024	Polyfluoroalkyl sulfonamido propylamine	50 FR 24938(24939) (6-14-85)	Do.
P 85-1025	Polyfluoroalkyl betaine	50 FR 24938(24939) (6-14-85)	Do.
P 85-1026	Generic name: Mercaptoalkylsiloxane	50 FR 24938(24939) (6-14-85)	Do.
P 85-1027	Generic name: Polydimethylsiloxy, methylmercaptoalkyl siloxane copolymer	50 FR 24938(24939) (6-14-85)	Do.
P 85-1028	Generic name: Polymethyl mercaptoalkyl siloxane polymer	50 FR 24938(24939) (6-14-85)	Do.
P 85-1029	Generic name: Polymer of alkane polyols, aromatic carboxylic acid, benzene dicarboxylic acids, polyamide resin, vegetable oil, and vegetable oil acids.	50 FR 24938(24939) (6-14-85)	Sept. 1, 1985.
P 85-1030	Generic name: Polyurethane polymer	50 FR 24938(24939) (6-14-85)	Do.
P 85-1031	Generic name: Acylic polymer with pendant amide acid, and sulfonate groups	50 FR 24938(24939) (6-14-85)	Do.
P 85-1032	Generic name: Reaction product of substituted alkyl, substituted methacrylate homopolymer, and fatty acid modified phenoxy resin.	50 FR 24938(24939) (6-14-85)	Do.
P 85-1033	Generic name: Epoxy modified polyol	50 FR 24938(24939) (6-14-85)	Do.
P 85-1034	Generic name: Nickel acylate complex	50 FR 24938(24939) (6-14-85)	Do.
P 85-1035	Humic acids, zinc salts	50 FR 24938(24940) (6-14-85)	Aug. 25, 1985.
P 85-1036	Humic acids, zinc salts	50 FR 24938(24940) (6-14-85)	Do.
P 85-1037	Humic acids, iron salts	50 FR 24938(24940) (6-14-85)	Do.
P 85-1038	Humic acids, iron salts	50 FR 24938(24940) (6-14-85)	Do.
P 85-1039	Humic acids, iron salts	50 FR 24938(24940) (6-14-85)	Do.
P 85-1040	Humic acids, iron salts	50 FR 24938(24940) (6-14-85)	Do.
P 85-1041	Generic name: Polyurethane polymers with pendant acrylate esters	50 FR 24938(24940) (6-14-85)	Sept. 2, 1985.
P 85-1042	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1043	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1044	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1045	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1046	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1047	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1048	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1049	Generic name: Amine salts of sulfonated, alkylated diphenyl oxide	50 FR 24938(24940) (6-14-85)	Do.
P 85-1050	Generic name: Modified tall oil fatty acids amidoamine	50 FR 24938(24941) (6-14-85)	Sept. 3, 1985.
P 85-1051	Starch, 2-hydroxy-3-(trimethylammonio) propyl ether, chloride, phosphate	50 FR 24938(24941) (6-14-85)	Do.
P 85-1052	Generic name: Perfluoroalkyl, alkyl, carboxysilane	50 FR 24938(24941) (6-14-85)	Do.
P 85-1053	Generic name: Perfluoroalkyl methacrylate copolymer	50 FR 25778 (6-21-85)	Sept. 4, 1985.
P 85-1054	Generic name: Perfluoroalkyl methacrylate copolymer	50 FR 25778 (6-21-85)	Do.
P 85-1055	Generic name: Polyester polymer	50 FR 25778 (6-21-85)	Sept. 7, 1985.
P 85-1056	Generic name: Polyester polymer	50 FR 25778 (6-21-85)	Do.
P 85-1057	Generic name: Alkatriene	50 FR 25778 (6-21-85)	Do.
P 85-1058	Generic name: Alkyl ketone dimer	50 FR 25778 (6-21-85)	Do.
P 85-1059	Generic name: Alkylene bis-anthranilate ester	50 FR 25778(25779) (6-21-85)	Do.
P 85-1060	Generic name: 1-oxaspiro (4.5) deca-3,6-diene, 2,7-dimethyl-10-(1-methyl ethyl)	50 FR 25778(25779) (6-21-85)	Do.
P 85-1061	Generic name: Salt of N,N-diethyl-phenylene diamine with an organic acid	50 FR 25778(25779) (6-21-85)	Sept. 8, 1985.
P 85-1062	Generic name: Acrylic modified alkyd, resin	50 FR 25778(25779) (6-21-85)	Do.
P 85-1063	Generic name: Acrylate modified hetero-cyclic urethane	50 FR 25778(25779) (6-21-85)	Do.
P 85-1064	Generic name: Biphenolphosphite	50 FR 25778(25779) (6-21-85)	Do.
P 85-1065	Generic name: Biphenol	50 FR 25778(25779) (6-21-85)	Do.
P 85-1066	Generic name: Substituted phenol	50 FR 25778(25779) (6-21-85)	Do.
P 85-1067	N-(5-fluorosulfonyl-2-methoxyphenyl) ethanamide	50 FR 25778(25779) (6-21-85)	Do.
P 85-1068	Generic name: Polyester polyurethane	50 FR 25778(25779) (6-21-85)	Sept. 9, 1985.
P 85-1069	Generic name: Copper phthalocyanato-poly[[alkyl-mono hydroxyethylimidazo-lium]methylene] derivative, compound with alkanoate.	50 FR 25778(25779) (6-21-85)	Do.
P 85-1070	Generic name: Copper phthalocyanato-, poly [[alkylbishydroxyethylimidazolium] methylene] deriv., compound with alkanoate.	50 FR 25778(25779) (6-21-85)	Sept. 9, 1985.
P 85-1071	Generic name: Cationically modified acrylic copolymer	50 FR 25778(25780) (6-14-85)	Sept. 10, 1985.
P 85-1072	Tetra isobutyl titanate	50 FR 25778(25780) (6-14-85)	Do.
P 85-1073	Generic name: Substituted xanthene	50 FR 25778(25780) (6-14-85)	Do.
P 85-1074	Generic name: Substituted xanthene	50 FR 25778(25780) (6-14-85)	Do.
P 85-1075	Generic name: Substituted phenylcarbonyl benzoic acid	50 FR 26837(6-28-85)	Sept. 11, 1985.
P 85-1076	Generic name: Substituted phenyl isobenzofuranone	50 FR 26837(6-28-85)	Do.
P 85-1077	Generic name: Substituted bis phenyl isobenzofuranone	50 FR 26837(6-28-85)	Do.
P 85-1078	N(alpha, alpha-dimethyl, meta-isopropenyl benzyl), poly(oxy-1,2-ethanediyl), alpha-(nonyl phenyl) carbamate.	50 FR 26837(6-28-85)	Sept. 14, 1985.
P 85-1079	Generic name: Substituted naphthalene, [1,2-ethenediyl bis-[(sulfo-4,1-phenylene) imino(chloro-1,3,5-triazinediyl) imino (hydroxy-substituted-naphthalene-diyl) azo]] bis-, alkali metal salt.	50 FR 26837(26838) (6-28-85)	Do.
P 85-1080	Generic name: Polyamide of C_{18}-fatty acids dimer with alkylenediamines and polyether diamine.	50 FR 26837(26838) (6-28-85)	Do.
P 85-1081	Generic name: (Triacylfattyalkyl) ester of an alkanoic acid	50 FR 26837(26838) (6-28-85)	Sept. 16, 1985.
P 85-1082	Humic acids, cupric salts	50 FR 26837(26838) (6-28-85)	Do.
P 85-1083	Humic acids cupric nitrate complex	50 FR 26837(26838) (6-28-85)	Do.
P 85-1084	Humic acids cupric sulfate complex	50 FR 26837(26838) (6-28-85)	Do.
P 85-1085	Generic name: Alkoxy terpenylsilane	50 FR 26837(26838) (6-28-85)	Do.
P 85-1086	Generic name: Urethane of polymethylene polyphenyl isocyanate and saturated alcohol	50 FR 26837(26838) (6-28-85)	Do.
P 85-1087	Generic name: Alkyl amine, compound with (chloromethyl) oxirane, alkenyl ether	50 FR 26837(26838) (6-28-85)	Do.
P 85-1088	Generic name: Spent sulfite liquor, reaction product with an aromatic monomer	50 FR 26837(26838) (6-28-85)	Do.
P 85-1089	Generic name: Spent sulfite liquor, reaction product with an aromatic monomer	50 FR 26837(26838) (6-28-85)	Do.
P 85-1090	Generic name: Spent sulfite liquor, reaction product with an aromatic monomer	50 FR 26837(26838) (6-28-85)	Do.
P 85-1091	Generic name: Polystyrylpyridine resin	50 FR 26837(26838) (6-28-85)	Do.
P 85-1092	Invalid		
P 85-1093	Generic name: Trisubstituted methanaminium salt	50 FR 26837(26839) (6-28-85)	Do.
P 85-1094	Generic name: Disubstituted-1,1'-biphenyl, bis[1-[[(alkylphenyl)amino] carbonyl]-2-oxoalkyl]azo-	50 FR 26837(26839) (6-28-85)	Do.
P 85-1095	Generic name: Alkylamide, [dihalo-[[(substituted-phenyl)amino]carbonyl]-(2-oxoalkyl)azo] [1,1'-biphenyl]azo]-N-(substituted-phenyl)-3-oxo-.	50 FR 26837(26839) (6-28-85)	Do.
P 85-1096	Generic name: Copper phthalocyanine polysulfonic acid salt with alkylated amine	50 FR 26837(26839) (6-28-85)	Do.
P 85-1097	Generic name: Metal salt of hydroxy-naphthalene sulfonic acid [(substituted-naphthyl)azo]	50 FR 26837(26839) (6-28-85)	Do.
P 85-1098	Generic name: Metal salt of hydroxy naphthalene sulfonic acid [substituted-phenyl)azo]	50 FR 26837(26839) (6-28-85)	Do.
P 85-1099	Generic name: Alkoxy borated polybutylsuccinamide	50 FR 26837(26839) (6-28-85)	Sept. 16, 1985.
P 85-1100	Polymer of 2-ethanol, 1,1'-thiobis; ethanol, 2-mercapto, reaction product with propylene oxide; ethanol, 2-mercapto, reaction product with oxirane, [2-propenyl (oxy) methyl]; 3-thiahept-5-ene-1-o1; 4,4'-thiodiphenol.	50 FR 26837(26839) (6-28-85)	Do.
P 85-1101	Triethylgallium	50 FR 26837(26839) (6-28-85)	Do.
P 85-1102	Substituted ketone	50 FR 26837(26839) (6-28-85)	Do.
P 85-1103	Generic name: Amine salt of an alkyl dithiocarbamate	50 FR 26837(26839) (6-28-85)	Sept. 17, 1985.
P 85-1104	Generic name: Ammonium polyacrylate/methacrylate acid esters	50 FR 27845 (7-8-85)	Sept. 18, 1985.
P 85-1105	Generic name: Substituted ammonium polyacrylate/methacrylate acid esters	50 FR 27845 (7-8-85)	Do.
P 85-1106	Generic name: Alkenyl acetate	50 FR 27845 (7-8-85)	Do.
P 85-1107	Generic name: Alkenoate-terminated poly (dimethyl-siloxane)	50 FR 27845 (7-8-85)	Do.
P 85-1108	Generic name: Polystyrylpyridine resin	50 FR 27845 (7-8-85)	Do.
P 85-1109	Generic name: Polystyrylpyridine resin	50 FR 27845 (7-8-85)	Do.
P 85-1110	Generic name: (N-substituted-amino-carbonyl)alkyl substituted aromaticheterocycle, halide salt	50 FR 27845(27846) (7-8-85)	Sept. 21, 1985.
P 85-1111	Phenyl tribromomethyl sulfone	50 FR 27845(27846) (7-8-85)	Do.
P 85-1112	Generic name: Alkoxylated modified polyacrylate	50 FR 27845(27846) (7-8-85)	Sept. 22, 1985.
P 85-1113	Generic name: Acrylic resin	50 FR 27845(27846) (7-8-85)	Do.
P 85-1114	Generic name: Acrylic resin	50 FR 27845(27846) (7-8-85)	Do.
P 85-1115	Generic name: Acrylic resin	50 FR 27845(27846) (7-8-85)	Do.
P 85-1116	Generic name: Acrylic resin	50 FR 27845(27846) (7-8-85)	Do.
P 85-1117	Generic name: Alkyd resin	50 FR 27845(27846) (7-8-85)	Do.
P 85-1118	Generic name: Epoxy polyester	50 FR 27845(27846) (7-8-85)	Do.
P 85-1119	Generic name: High molecular weight linear saturated polyester	50 FR 27845(27846) (7-8-85)	Do.
P 85-1120	Generic name: High molecular weight linear saturated polyester	50 FR 27845(27846) (7-8-85)	Do.
P 85-1121	Generic name: High molecular weight linear saturated polyester	50 FR 27845(27846) (7-8-85)	Do.
P 85-1122	Polymer of ethanol, 2,2'-thiobis, ethanol, 2-mercapto, oxirane, methyl and phenol, 4,4'-thiobis	50 FR 27845(27846) (7-8-85)	Do.
P 85-1123	Humic acids, magnesium salts	50 FR 27845(27846) (7-8-85)	Do.
P 85-1124	Humic acids, magnesium chloride complex	50 FR 27845(27846) (7-8-85)	Do.
P 85-1125	Humic acids, magnesium sulfate complex	50 FR 27845(27846) (7-8-85)	Do.
P 85-1126	Humic acids, manganese salts	50 FR 27845(27847) (7-8-85)	Do.
P 85-1127	Humic acids, manganese chloride complex	50 FR 27845(27847) (7-8-85)	Do.
P 85-1128	Humic acids, manganese sulfate complex	50 FR 27845(27847) (7-8-85)	Do.
P 85-1129	Generic name: Polyether polyol with pendant isocyanate groups	50 FR 27845(27847) (7-8-85)	Do.
P 85-1130	Generic name: Acrylate-substituted phenoxy resin	50 FR 27845(27847) (7-8-85)	Do.
P 85-1131	Generic name: Acrylate-substituted vinyl chloride copolymer resin	50 FR 27845(27847) (7-8-85)	Do.
P 85-1132	Generic name: Acrylic modified epoxy ester resin	50 FR 27845(27847) (7-8-85)	Sept. 23, 1985.
P 85-1133	Polymer of propylene glycol, isophthalic acid, adipic acid, and 12-hydroxystearic acid	50 FR 27845(27847) (7-8-85)	Do.
P 85-1134	Generic name: Terpolymer containing vinyl acrylate	50 FR 27845(27847) (7-8-85)	Do.
P 85-1135	Generic name: Alkyl phenol blocked isocyanate prepolymer	50 FR 27845(27847) (7-8-85)	Do.
P 85-1136	Generic name: Ketoxime blocked urethane polymer of an aromatic diisocyanate, alkane polyols, alkanedioic acid.	50 FR 27845(27847) (7-8-85)	Do.
P 85-1137	Generic name: Hydroxy-terminated polyurethane	50 FR 28464 (7-12-85)	Sept. 25, 1985.
P 85-1138	Generic name: Medium-oil alkyd based on linseed oil	50 FR 28464 (7-12-85)	Do.
P 85-1139	Generic name: Isocyanate-modified alkyd resin	50 FR 28464 (7-12-85)	Do.
P 85-1140	Generic name: Alkyd resin additive	50 FR 28464(28465) (7-12-85)	Do.

III. 191 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY.)

PMN No.	Identity/generic name	FR citation	Expiration date
P 84-814	Generic name: Polysubstituted polyol	49 FR 24782(24784) (6-15-84)	July 1, 1985.
P 84-895	Generic name: Substituted-substituted benzenesulfonic acid coupled with substituted-substituted benzenes and substituted substituted naphthalenedi-sulfonic acid, sodium salt.	49 FR 28614(28616) (7-13-84)	July 16, 1985
P 84-938	Polymer of hydroxy ethyl acrylate and polyisocyanate T 1890/100	49 FR 29451(29453) (7-20-84)	July 23, 1985
P 84-1114	Generic name: Sodium salt of sulfonated, alkylated diphenyl oxide	49 FR 35414(35416) (9-7-84)	July 15, 1985
P 84-1166	Generic name: Modified acrylamide polymer	49 FR 38356(38357) (9-28-84)	July 11, 1985.
P 85-344	Benzoic acid, 2-(3-(1,3-benzodioxole-5-yl)-2 methyl propylidene)amino, methyl ester	50 FR 543(544) (1-4-85)	July 12, 1985.
P 85-415	Generic name: Acrylic ester	50 FR 4696(4697) (2-4-85)	Do.
P 85-460	Generic name: Substituted succinic anhydride, reaction product with heterocyclic amine	50 FR 6383(6384) (2-15-85)	July 3, 1985.
P 85-497	2-hydroxy-3 epsilon lysino propyl trimethyl ammonium chloride derivatized hydrolyzed soy protein isolate.	50 FR 7640(7642) (2-25-85)	July 8, 1985.
P 85-498	2-hydroxy-3 epsilon lysino propyl trimethyl ammonium chloride derivatized hydrolyzed soy protein isolate.	50 FR 7640(7642) (2-25-85)	Do.
P 85-523	Generic name: Functionally modified urethane	50 FR 8301 (3-1-85)	July 16, 1985.
P 85-564	Polymer of: hydroxyethyl acrylate, 4,4'-diphenylmethyane diisocyanate and polymethylene polyphenyl isocyanate.	50 FR 9504(9505) (3-8-85)	July 6, 1985.
P 85-606	Generic name: Trisubstituted phenol	50 FR 9504(9508) (3-8-85)	July 26, 1985
P 85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504(9508) (3-8-85)	Sept. 5, 1985
P 85-681	1,2,7,8-diepoxyoctane	50 FR 12623(12624) (3-28-85)	July 30, 1985
P 85-742	Generic name: Alkyl polyoxyalkylene phosphate esters	50 FR 14439(14441) (4-12-85)	July 1, 1985.

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III. 191 Premanufacture Notices for Which the Notice Review Period has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical had Been Added to the Inventory.)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-743	Generic name: Isocyanate oxazolidonyl isocyanurate	50 FR 14439(14441) (4-12-85)	Aug. 7, 1985.
P 85-743	Generic name: Isocyanate oxazolidonyl isocyanurate	50 FR 14439(14441) (4-12-85)	Apr. 19, 1985.
P 85-744	4-N-tetradecyl 4'-(2-methylbutyl)phenylbenzoate	50 FR 14439(14441) (4-12-85)	July 1, 1985.
P 85-745	4-n-Hexyloxyphenyl 4-(2-methylbutyl)biphenyl 4'-carboxylate	50 FR 14439(14441) (4-12-85)	Do.
P 85-746	4-(2-methylbutyl)phenyl-4-(2-methyl butyl) biphenyl 4'-carboxylate	50 FR 14439(14441) (4-12-85)	Do.
P 85-747	4-Cyanophenyl-4-(2'-methylbutyl) biphenyl 4'-carboxylate	50 FR 14439(14441) (4-12-85)	Do.
P 85-748	4-n-octyloxy 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 14439(14441) (4-12-85)	Do.
P 85-749	4-n-Hexyloxy 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 14439(14441) (4-12-85)	Do.
P 85-750	4-n-decyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439(14441) (4-12-85)	Do.
P 85-751	4-n-dodecyloxy 4'-(2-methylbutyl)-phenyl benzoate	50 FR 14439(14441) (4-12-85)	Do.
P 85-752	4-(2-methylbutyl)phenyl 4'-n-octylbiphenyl carboxylate	50 FR 14439(14441) (4-12-85)	Do.
P 85-753	4-n-propyl 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 14439(11442) (4-12-85)	Do.
P 85-754	4-n-Pentyl 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 14439(14442) (4-12-85)	Do.
P 85-755	4-(2-methylbutyl)phenyl 4'-n-heptylbiphenyl carboxylate	50 FR 14439(14442) (4-12-85)	Do.
P 85-756	4-n-heptyl 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 14439(14442) (4-12-85)	Do.
P 85-757	4-N-nonyl 4'-(2-methylbutyl) phenyl-benzoate	50 FR 14439(14442) (4-12-85)	Do.
P 85-758	4-(2-methylbutyl) 4'-pentylbiphenyl carboxylate	50 FR 14439(14442) (4-12-85)	Do.
P 85-759	Generic name: Reaction product of triglycidyl ether of substituted tri-(hydroxyphenyl) methane and substituted phenol.	50 FR 14439(14442) (4-12-85)	July 2, 1985.
P 85-760	Generic name: Acrylate, methacrylate, styrene polymer	50 FR 14439(14442) (4-12-85)	Do.
P 85-761	Generic name: Diphenylmethane di-isocyanate-terminated polyol polyurethane prepolymer	50 FR 14439(14442) (4-12-85)	Do.
P 85-762	Generic name: Bis(disubstituted anthraquinone) heterocycle	50 FR 15629(4-19-85)	July 3, 1985.
P 85-763	Generic name: Polycarboxylic and polyheterocyclic compound with anthraquinone and carbazole substructures.	50 FR 15629(4-19-85)	Do.
P 85-764	Generic name: 4-(Trans-4-n-alkylcyclohexyl)-n-alkylbenzene	50 FR 15629(15630) (4-19-85)	Do.
P 85-765	Generic name: 4-N-alkoxyphenyl-4-trans-n-pentyl cyclohexyl carboxylate	50 FR 15629(15630) (4-19-85)	Do.
P 85-766	Generic name: 4-(Trans-4-n-alkylcyclohexyl)-4'-Trans-4-n-alkyl' cyclohexyl biphenyl	50 FR 15629(15630) (4-19-85)	Do.
P 85-767	Generic name: 4-n-alkoxyphenyl-trans-4-n-alkylcyclohexyl carboxylate	50 FR 15629(15630) (4-19-85)	Do.
P 85-768	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3-dioxane	50 FR 15629(15630) (4-19-85)	Do.
P 85-769	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3-dioxane	50 FR 15629(15630) (4-19-85)	Do.
P 85-770	Generic name: 4-n-alkoxyphenyl-trans-4-n-alkylcyclohexyl carboxylate	50 FR 15629(15630) (4-19-85)	Do.
P 85-771	Generic name: 4-n-alkoxyphenyl-4-trans-n-alkyl cyclohexyl carboxylate	50 FR 15629(15630) (4-19-85)	Do.
P 85-772	Generic name: 4-n-alkyl-4'(4-trans-n-alkyl') cyclohexyl biphenyl	50 FR 15629(15630) (4-19-85)	Do.
P 85-773	Generic name: 4-(Trans-4-n-alkylcyclo-hexyl)-n-alkoxybenzene	50 FR 15629(15630) (4-19-85)	Do.
P 85-774	Generic name: 4-(Trans-4-N-alkylcyclo-hexyl)-o-alkyl' benzene	50 FR 15629(15630) (4-19-85)	Do.
P 85-775	Generic name: 5-n-alkyl-2-[4-n-alkoxy-phenyl]-1,3-pyrimidine	50 FR 15629(15630) (4-19-85)	Do.
P 85-776	Generic name: 5-n-alkyl-2-[4-n-alkoxy-phenyl]-1,3-pyrimidine	50 FR 15629(15631) (4-19-85)	Do.
P 85-777	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3,-dioxine	50 FR 15629(15631) (4-19-85)	Do.
P 85-778	Generic name: 5-n-alkyl-2-[4-n-alkoxy-phenyl]-1,3-pyrimidine	50 FR 15629(15631) (4-19-85)	Do.
P 85-779	Generic name: 5-n-alkyl-2-[4-n-alkoxy phenyl]-1,3-pyrimidine	50 FR 15629(15631) (4-19-85)	Do.
P 85-780	Generic name: Condensed aminomethylated tannins	50 FR 15629(15631) (4-19-85)	July 7, 1985.
P 85-781	Generic name: Substituted polyglycol	50 FR 15629(15631) (4-19-85)	Do.
P 85-782	Generic name: Substituted polyglycol	50 FR 15629(15631) (4-19-85)	Do.
P 85-784	Generic name: Substituted polyglycol	50 FR 15629(15631) (4-19-85)	Do.
P 85-785	Generic name: Copolyacrylate	50 FR 15629(15631) (4-19-85)	Do.
P 85-786	Generic name: Fatty dibasic acids, amides from polyoxyalkylene amines	50 FR 15629(15631) (4-19-85)	July 8, 1985.
P 85-787	Generic name: Urea derivative	50 FR 15629(15631) (4-19-85)	Do.
P 85-788	Generic name: Substituted benzoate ester of polyphenylene oxide	50 FR 15629(15632) (4-19-85)	Do.
P 85-789	Generic name: Polyester polydicyclures resin	50 FR 15629(15632) (4-19-85)	Do.
P 85-790	Generic name: Polyester polydicyclures resin	50 FR 15629(15632) (4-19-85)	Do.
P 85-791	Generic name: Haloborane—aromatic phosphate complex	50 FR 15629(15632) (4-19-85)	Do.
P 85-792	Generic name: Substituted indole	50 FR 15629(15632) (4-19-85)	Do.
P 85-793	Generic name: Carboxyphenylcarbamylindole	50 FR 15629(15632) (4-19-85)	Do.
P 85-794	Generic name: Carboxyphenylcarbamylindole	50 FR 15629(15632) (4-19-85)	Do.
P 85-795	Generic name: Isobenzofuranone	50 FR 15629(15632) (4-19-85)	Do.
P 85-796	Generic name: Isobenzofuranone	50 FR 15629(15632) (4-19-85)	Do.
P 85-797	Generic name: Diamino-polydimethyl-siloxane	50 FR 15629(15632) (4-19-85)	July 9, 1985.
P 85-798	Generic name: Polyimide siloxane	50 FR 15629(15632) (4-10-85)	Do.
P 85-799	Generic name: Modified polyacrylate polymer	50 FR 15629(15632) (4-10-85)	Do.
P 85-801	Generic name: Adduct of polymeric 4,4'-phenylmethane diisocyanate and hydroxy-ester of terephthalic acid.	50 FR 16541(4-26-85)	July 10, 1985.
P 85-802	Generic name: Functionalized styrene methacrylic polymer	50 FR 16541(4-26-85)	July 13, 1985.
P 85-803	Generic name: 4,4'-phenylmethane diisocyanate adduct of polyether polyol	50 FR 16541(4-26-85)	Do.
P 85-804	2-methyl-6-quinolinamine hydrochloride	50 FR 16541(4-26-85)	July 14, 1985.
P 85-805	2-methyl-6-quinolinamine	50 FR 16541(4-26-85)	Do.
P 85-806	2-methyl-6-nitroquinoline	50 FR 16541(4-26-85)	Do.
P 85-807	Generic name: Polyperester of keto polycyclic polyacid	50 FR 16541(4-26-85)	Do.
P 85-808	Generic name: Polyester resin	50 FR 16541(4-26-85)	Do.
P 85-809	Generic name: Terpolymer with styrene and methyl methacrylate	50 FR 16541(16542) (4-26-85)	Do.
P 85-810	(Z)-1-bromo-3-hexene	50 FR 16541(16542) (4-26-85)	Do.
P 85-811	Generic name: Polyurethane polyol	50 FR 16541(16542) (4-26-85)	July 15, 1985.
P 85-812	Generic name: 2-[3',5'-disubstituted-2'-hydroxyphenyl]benzotriazole	50 FR 16541(17542) (4-26-85)	Do.
P 85-818	Generic name: Benzenesulfonic acid, 4-[[(-substituted)]-3-methyl-5-oxo-2-pyrazolin-1-yl]-, salt	50 FR 16541(16542) (4-26-85)	July 16, 1985.
P 85-819	Generic name: Tall oil fractions, unsaturated hydrocarbon resin dienophile modified polymer with pentaerythritol.	50 FR 16541(16542) (4-26-85)	Do.
P 85-820	Generic name: Carboxylic modified resin	50 FR 16541(16542) (4-26-85)	Do.
P 85-821	Generic name: Alkyd resin	50 FR 18916 (5-3-85)	July 17, 1985.
P 85-823	Generic name: Alkene-methacrylate copolymer	50 FR 18916 (5-3-85)	Do.
P 85-824	Generic name: Acrylic modified alkyd resin	50 FR 18916 (5-3-85)	July 20 1985.
P 85-825	Generic name: 1-H-pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo],-mixed salt.	50 FR 18916 (5-3-85)	Do.
P 85-826	Generic name: Polyfluoro substituted alkyl, N-substituted amino alcohol.	50 FR 18916 (5-3-85)	July 21, 1985.
P 85-828	Generic name: Cycloalkenylpentenol	50 FR 18916 (5-3-85)	Do.
P 85-829	Generic name: Isothiocyanate of substituted polycyclic compound	50 FR 18916 (5-3-85)	Do.
P 85-830	Generic name: Thiocarbamate of substituted polycyclic compound	50 FR 18916 (5-3-85)	Do.
P 85-831	Generic name: Isothiocyanate of substituted polycyclic compound	50 FR 18916(18917) (5-3-85)	Do.
P 85-832	Generic name: Polyester resin	50 FR 18916(18917) (5-3-85)	Do.
P 85-833	Generic name: Urethane with blocked multifunctional isocyanates	50 FR 18916(18917) (5-3-85)	Do.
P 85-834	Generic name: Vinyl-substituted organosilicone copolymer	50 FR 18916(18917) (5-3-85)	Do.
P 85-835	Generic name: Organosilicone copolymer	50 FR 18916(18917) (5-3-85)	Do.

III. 191 Premanufacture Notices for Which the Notice Review Period has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical had Been Added to the Inventory.)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-836	(+) 4-n-tetradecyl 4'-(2-methylbutyl) phenylbenzoate	50 FR 18916(18917) (5-3-85)	July 1, 1985.
P 85-837	(+) 4-n-hexyloxyphenyl 4-(2-methylbutyl) biphenyl 4' carboxylate	50 FR 18916(18917) (5-3-85)	Do.
P 85-838	(+) 4-(2-methylbutyl) phenyl 4-(2-methylbutyl) biphenyl 4'-carboxylate	50 FR 18916(18917) (5-3-85)	Do.
P 85-839	(+) 4-cyanophenyl-4-(2'-methylbutyl) biphenyl 4'-carboxylate	50 FR 18916(18917) (5-3-85)	Do.
P 85-840	(+) 4-n-octyloxy 4'-(2-methylbutyl)phenylbenzoate	50 FR 18916(18917) (5-3-85)	Do.
P 85-841	(+) 4-n-hexyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18917) (5-3-85)	Do.
P 85-842	(+) 4-n-decyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18917) (5-3-85)	Do.
P 85-843	(+) 4-n-dodecyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18917) (5-3-85)	Do.
P 85-844	(+) 4(2-methylbutyl)phenyl 4'-octylbiphenyl carboxylate	50 FR 18916(18918) (5-3-85)	Do.
P 85-845	(+) 4-n-propyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18918) (5-3-85)	Do.
P 85-846	(+) 4-n-pentyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18918) (5-3-85)	Do.
P 85-847	(+) 4(2-methylbutyl)phenyl 4'-n-heptylbiphenyl carboxylate	50 FR 18916(18918) (5-3-85)	Do.
P 85-848	(+) -n-heptyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 18916(18918) (5-3-85)	Do.
P 85-849	(+) 4-n-nonyl 4'-(2-methylbutyl)phenylbenzoate	50 FR 18916(18918) (5-3-85)	Do.
P 85-850	(+) 4-(2-methylbutyl) 4'-pentylbiphenyl carboxylate	50 FR 18916(18918) (5-3-85)	Do.
P 85-851	Generic name: Copolymer of vinyl acetate and olefins	50 FR 18916(18918) (5-3-85)	July 22, 1985.
P 85-852	Generic name: Alkyl ester of phosphorous acid	50 FR 18916(18918) (5-3-85)	July 29, 1985.
P 85-853	Generic name: Cycloaliphatic and cycloaromatic composite polyester	50 FR 18916(18918) (5-3-85)	July 22, 1985.
P 85-854	Generic name: Triglycidyl ether of substituted tri(hydroxyphenyl)methane	50 FR 18916(18918) (5-3-85)	Do.
P 85-855	Generic name: Triglycidyl ether of substituted tri(hydroxyphenyl)methane	50 FR 18916(18918) (5-3-85)	Do.
P 85-856	Generic name: Oxime based polyurethane	50 FR 18916(18918) (5-3-85)	July 23, 1985.
P 85-857	Generic name: Alkylaluminum halide	50 FR 18916(18918) (5-3-85)	Do.
P 85-858	Generic name: Polyester	50 FR 18916(18918) (5-3-85)	Do.
P 85-859	Generic name: Acrylic resin	50 FR 19798 (5-10-85)	July 24, 1985.
P 85-860	Generic name: Functionally modified acrylate type polymer	50 FR 19798 (5-10-85)	Do.
P 85-861	Generic name: Ammonium salt	50 FR 19798 (5-10-85)	Do.
P 85-862	Generic name: Blocked aliphatic polyisocyanate	50 FR 19798 (5-10-85)	Do.
P 85-863	Polymer of ethylene, ethyl acrylate, and maleic anhydride	50 FR 19798(19799) (5-10-85)	Do.
P 85-864	Generic name: Dimethylhydrogen terminated polysiloxane	50 FR 19798(19799) (5-10-85)	July 27, 1985.
P 85-865	Generic name: Substituted phenyl acetonitrile	50 FR 19798(19799) (5-10-85)	Do.
P 85-866	Generic name: Substituted phenyl acetonitrile	50 FR 19798(19799) (5-10-85)	Do.
P 85-867	Generic name: Ketopolycyclic polyacid	50 FR 19798(19799) (5-10-85)	July 28, 1985.
P 85-868	Generic name: Diacetyl polycyclic [illegible]	50 FR 19798(19799) (5-10-85)	Do.
P 85-869	Generic name: Ketopolycyclic polyacidchloride	50 FR 19798(19799) (5-10-85)	Do.
P 85-870	Generic name: Isocyanate-terminated polyurethane	50 FR 19798(19799) (5-10-85)	Do.
P 85-871	Generic name: Hydroxy-terminated polyurethane	50 FR 19798(19799) (5-10-85)	Do
P 85-872	Generic name: Fatty acid, resinous amidoamine	50 FR 19798(19799) (5-10-85)	Do.
P 85-873	Generic name: Resinous amidoamine	50 FR 19798(19799) (5-10-85)	Do
P 85-874	3-thiahept-5-ene-1-ol	50 FR 19798(19799) (5-10-85)	Do.
P 85-875	Generic name: Alkylamidopropyl betaine	50 FR 19798(19799) (5-10-85)	Do
P 85-876	Generic name: Alkylamidopropyl betaine	50 FR 19798(19800) (5-10-85)	Do.
P 85-877	Generic name: Alkylaminopropyl betaine	50 FR 19798(19800) (5-10-85)	Do
P 85-878	Generic name: Alkylaminopropyl betaine	50 FR 19798(19800) (5-10-85)	Do
P 85-879	Generic name: Alkylaminopropyl betaine	50 FR 19798(19800) (5-10-85)	Do
P 85-880	Generic name: Sodium bisulfite reaction product with an epoxidized natural oil	50 FR 19798(19800) (5-10-85)	Do
P 85-881	Generic name: 2,2,6,6-tetramethyl-4 N-(substituted)aminopiperidine	50 FR 19798(19800) (5-10-85)	Do
P 85-883	Generic name: Polyurethane	50 FR 19798(19800) (5-10-85)	Do.
P 85-884	Generic name: Blocked-isocyanate polyurethane polyether	50 FR 19798(19800) (5-10-85)	Do
P 85-885	Generic name: Unsaturated polyester resin	50 FR 19798(19800) (5-10-85)	Do
P 85-886	Generic name: Brominated unsaturated polyester resin	50 FR 19798(19800) (5-10-85)	Do.
P 85-887	Indium orthoborate	50 FR 19798(19800) (5-10-85)	July 29, 1985
P 85-888	Generic name: Modified polyglycol polymer	50 FR 19798(19800) (5-10-85)	Do
P 85-889	Generic name: Copolymer of acrylic acid esters, vinyl acetate, acrylic acid amide, crotonic acid, and fumaric acid ester.	50 FR 19798(19801) (5-10-85)	Do
P 85-890	Generic name: Polypropylene glycol alkyl ether	50 FR 19798(19801) (5-10-85)	Do
P 85-891	Generic name: Polypropylene glycol alkyl ether	50 FR 19798(19801) (5-10-85)	Do
P 85-892	Generic name: Polypropylene glycol alkyl ether	50 FR 19798(19801) (5-10-85)	Do
P 85-893	Generic name: Polyfluoro substituted alkyl-N-substituted amine alcohol acetate	50 FR 19798(19801)(5-10-85)	July 30, 1985
P 85-894	Generic name: Epoxidized natural oil	50 FR 19798(19801) (5-10-85)	Do
P 85-895	Generic name: Alkoxylated polyol, dimer adduct	50 FR 19798(19801) (5-10-85)	Do
P 85-896	Cuprate(3-)-[2-[[[[3-[[4,6-dichloro-1,3,5-triazin-2-yl]amino]-2-hydroxy-5-sulfophenyl]azo]phenylmethyl]azo]-4-sulfobenzoato(5-)]-, disodium hydrogen, (SP-4-3)-.	50 FR 19798(19801) (5-10-85)	Do
P 85-898	Generic name: Phosphoric acid, alkyl esters	50 FR 19798(19801) (5-10-85)	Do
P 85-899	Generic name: Ethoxylated polyester	50 FR 19798(19801) (5-10-85)	Do
P 85-900	Generic name: Polyamino-polyamide	50 FR 20596 (5-17-85)	July 31 1985
P 85-902	Generic name: N-substituted lauroylamide	50 FR 20596(20597) (5-17-85)	Do
P 85-903	Generic name: Tetrasubstituted amine	50 FR 20596(20597) (5-17-85)	Do
P 85-904	Generic name: Alkoxylated alcohol	50 FR 20596(20597) (5-17-85)	Do
P 85-905	Sodium aluminum tetrahydride	50 FR 20596(20597) (5-17-85)	Do
P 85-906	Generic name: Polymer reacted by a poly (aliphatic) isocyanate	50 FR 20596(20597) (5-17-85)	Do
P 85-907	Generic name: Polymer reacted by a poly (aliphatic) isocyanate	50 FR 20596(20597) (5-17-85)	Do
P 85-908	Generic name: Short oil alkyd resin	50 FR 20596(20597) (5-17-85)	Do
P 85-909	Generic name: Aliphatic, cycloaliphatic polyester	50 FR 20596(20597) (5-17-85)	Do
P 85-910	Generic name: Aliphatic, aromatic copolyester	50 FR 20596(20597) (5-17-85)	Do
Y 85-87	Generic name: Polyester polymer	50 FR 24941(24941) (6-5-85)	June 25 1985
Y 85-89	Generic name: Polyester	50 FR 24941(24941) (6-5-85)	Do
Y 85-90	Generic name: Hydroxy terminated polymer of an aromatic diisocyanate, alkane polyols, alkanolamine, alkanedioic acid.	50 FR 25777 (6-21-85)	June 30 1985
Y 85-91	Generic name: Ketoxime blocked urethane polymer of an aromatic diisocyanate, alkane polyols, alkanedioic acid.	50 FR 25777 (6-21-85)	Do
Y 85-92	Generic name: Acrylic polymer	50 FR 25777 (6-21-85)	Do
Y 85-93	Generic name: Styrene, acrylic polymer	50 FR 25777(25778) (6-21-85)	July 2 1985
Y 85-94	Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2'-oxybis (ethanol), 2-ethyl hexanol, triphenyl-phosphite and Fascat 4100.	50 FR 25777(25778) (6-21-85)	July 9 1985
Y 85-98	Generic name: Modified methyl methacrylate polymer	50 FR 26840 (6-27-85)	Do
Y 85-99	Generic name: Dimethyl terephthalate, alkane diols and trimellitic anhydride polymer	50 FR 27640 (7-8-85)	Do
Y 85-100	Generic name: Polymer of an aromatic diisocyanate, alkane polyols, alkanol-amine, alkanedioic acid, alkane alcohol.	50 FR 28467(28468) (7-12-85)	July 18 1985
Y 85-101	Acid terminated-prepolymer polyester	50 FR 28467(28468) (7-12-85)	June 22 1985
Y 85-102	Ethylene-propylene styrene copolymer	50 FR 28467(28468) (7-12-85)	Do

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III. 191 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY.)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
Y 85-103	Ethylene styrene copolymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-104	Propylene-styrene copolymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-105	Generic name: Polyether polyurethane polymer	50 FR 28467(28468) (7-12-85)	July 23, 1985.
Y 85-106	Generic name: Polyether polyurethane polymer	50 FR 28467(28468) (7-12-85)	Do.
Y 85-107	Generic name: Ethylene, vinyl acetate methacrylic acid, hydroxy substituted hydrocarbon copolymer.	50 FR 29476 (7-19-85)	July 26, 1985.
Y 85-108	Generic name: Polysiloxane block copolymer	50 FR 29476 (7-19-85)	Do.

IV. 69 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Chemical identification	FR citation	Date of commencement.
P 80-66	Generic name: Monosubstituted alkanimide acid, alkyl ester	45 FR 34999(35001) (5-23-80)	June 28, 1985.
P 81-372	Generic name: C.I. Direct Black 173	46 FR 40323(40325) (8-7-81)	June 4, 1985.
P 82-470	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7-12-82)	July 18, 1985.
P 83-782	Generic name: Octenal	48 FR 24967(24968) (6-3-83)	Jan. 1, 1986.
P 83-1049	Generic name: Alkoxy polyalkyleneoxy alkyl trialkoxy silane	48 FR 38889(38890) (8-26-83)	June 18, 1985.
P 83-1056	Generic name: Trisubstituted heteromonocycle	48 FR 38889(38890) (8-26-83)	July 16, 1985.
P 83-1218	Generic name: Monosubstitutedbenzene-sulfonylisocyanate	48 FR 43397(43398) (9-23-83)	June 13, 1985.
P 84-482	Urea, condensate with poly(oxy(methyl-1,2-ethanediyl)), alpha-(2-aminomethyl ethyl)-omega-(2-aminomethylethoxy).	49 FR 9954(9955) (3-16-84)	June 4, 1985.
P 84-492	Generic name: Substituted hydroxylamine	49 FR 11008(11010) (3-23-85)	June 17, 1985.
P 84-637	Generic name: Modified acrylic resin	49 FR 19110(19112) (5-4-84)	Do.
P 84-667	Generic name: Polyester from carbomono-cyclic acid and alkylene glycol	49 FR 19110(19114) (5-4-84)	July 17, 1985.
P 84-819	Generic name: Metallic alkyl alkoxide complex	49 FR 24782(24784) (6-15-84)	June 22, 1985.
P 84-827	Generic name: Carbopolycyclic alkenyl ether	49 FR 29451(29452) (7-20-84)	May 17, 1985.
P 84-868	Generic name: Alkyl ester	49 FR 30238(30240) (7-27-84)	June 19, 1985.
P 84-888	4-amino-3,6-bis[5-[4-(3-carboxypyridinio)-6-(4-chloro-3-sulfonatoanilino)-1,3,5-triazin-2-ylamino]-2-sulfonatophenyl-azo]-5-hydroxy-2, 7-naphthalene-disulfonate-hydroxid, hexasodium.	49 FR 31136(31137) (8-3-84)	July 1, 1985.
P 84-891	Cellulose, acetate propanoate, [(1-oxo-2-propenyl)amino] methyl ether	49 FR 31136(31137) (8-3-84)	Do.
P 84-1028	1,4-Dimethylol cyclohexane ethoxylate propoxylate	49 FR 32110(32112) (8-10-85)	May 10, 1985.
P 84-1117	Adipic acid, azelaic acid, phthalic anhydride, polymers with ethylene glycol, neopentyl glycol and 2-ethyl hexanol.	49 FR 35414(35416) (9-7-84)	May 25, 1985.
P 84-1132	Generic name: Heterocyclic substituted copper phthalocyanine	49 FR 36151(36152) (9-14-85)	May 30, 1985.
P 84-1192	Generic name: Functional aromatic polymer	49 FR 38356(38358) (9-28-85)	June 13, 1985.
P 85-8	Generic name: Polyether polyester urethane	49 FR 41100(41101) (10-19-84)	June 19, 1985.
P 85-25	Generic name: Methyl (aryl) indolylazo thiazolium, salt	49 FR 41102(41103) (10-19-85)	May 16 , 1985.
P 85-32	Generic name: Alkyl mercaptothiadiazole	49 FR 43105(43106) (10-26-84)	June 26, 1985.
P 85-80	Polymer of dimethyl terephthalate, ethylene glycol, dimethyl 5-sulfoiso-phthalate, sodium salt, and polyethylene glycol.	49 FR 44676(44677) (11-8-84)	June 17, 1985.
P 85-163	Generic name: Cyanoacetate ester	49 FR 47108(47109) (11-30-84)	July 15, 1985.
P 85-200	Generic name: Cyanoacrylate ester	49 FR 47921(47922) (12-7-84)	Aug. 1, 1985.
P 85-278	Generic name: Functionalized polyacrylic acid derivative	49 FR 49895(49897) (12-24-84)	June 3, 1985.
P 85-295	Generic name: Modified acrylic polymer	49 FR 49895(49898) (12-24-84)	March 11, 1985.
P 85-385	Generic name: Acrylic rubber dispersion in epoxy resin	50 FR 2712(2713) (1-18-85)	June 24, 1985.
P 85-386	Generic name: Acrylate functional epoxy resin urethane	50 FR 2712(2713) (1-18-85)	Do.
P 85-397	Generic name: Acrylated cellulosic	50 FR 3592 (1-25-85)	July 8, 1985.
P 85-479	2,5-Furandimethanol	50 FR 7640 (2-25-85)	July 10, 1985.
P 85-487	Generic name: Alkylalcohol ethoxylate, phosphate ester, sodium salt	50 FR 7640(7641) (2-25-85)	July 11, 1985.
P 85-503	Generic name: Substituted imidic acid, methyl ester, hydrochloride	50 FR 7640(7642) (2-25-85)	June 28, 1985.
P 85-526	Generic name: Modified acrylate terpolymer	50 FR 8390(8391) (3-1-85)	June 27, 1985.
P 85-529	Generic name: Trisubstituted naphthalene carboxamide	50 FR 8390(8391) (3-1-85)	June 4, 1985.
P 85-530	Generic name: Trisubstituted naphthalene carboxamide	50 FR 8390(8391) (3-1-85)	June 17, 1985.
P 85-551	3-Carbomethoxypropionyl chloride	50 FR 8390(8393) (3-1-85)	July 15, 1985.
P 85-596	Generic name: 1-Substituted-3-alkylhetero-monocyclic-4-hydroxybenzene	50 FR 9504(9507) (3-8-85)	June 20, 1985.
P 85-597	Generic name: 3-Alkylheteromonocyclic-4-hydroxy-1-substitutedbenzene	50 FR 9504(9507) (3-8-85)	June 13, 1985.
P 85-601	Generic name: Disubstituted phenol	50 FR 9504(9508) (3-8-85)	July 8, 1985.
P 85-602	Generic name: 2,4-Diheteromonocyclic phenol	50 FR 9504(9508) (3-8-85)	June 25, 1985.
P 85-606	Generic name:(3-Alkylheteromonocyclic-4-hydroxyphenyl-substituted)(3'-substituted-4'-hydroxyphenylsubstituted)alkyl.	50 FR 9504(9509) (3-8-85)	July 12, 1985.
P 85-607	Generic name: 2-Alkylheteromonocyclic-4-substitutedphenol	50 FR 9504(9508) (3-8-85)	July 8, 1985.
P 85-616	Generic name: Brominated propanoic acid derivative	50 FR 10536(10537) (3-15-85)	June 4, 1985.
P 85-636	Generic name: Substituted epoxy resin	50 FR 10536(10539) (3-15-85)	June 20, 1985.
P 85-637	Generic name: Modified acrylic resin	50 FR 10536(10539) (3-22-85)	June 17, 1985.
P 85-647	Generic name: Trisubstituted naphthalene-carboxamide	50 FR 11557(11558) (3-22-85)	Do.
P 85-654	Generic name: Halogenated organometal complex	50 FR 11557(11558) (3-22-85)	Do.
P 85-661	Generic name: Alkylthiophenol	50 FR 11557(11559) (3-22-85)	July 15, 1985.
P 85-686	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	June 26, 1985.
P 85-687	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
P 85-688	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
P 85-689	Generic name: Acrylate copolymer	50 FR 12623(12625) (3-29-85)	Do.
P 85-726	Generic name: Alicyclic carboxylic acid	50 FR 14439 (4-12-85)	July 4, 1985.
P 85-741	Generic name: Acrylic acid-acrylamidosulfonic acid copolymer including phosphino groups	50 FR 14439(14441) (4-12-85)	July 2, 1985.
P 85-742	Generic name: Alkyl polyoxyalkylene phosphate esters	50 FR 14439(14441) (4-12-85)	July 18, 1985.
P 85-788	Generic name: Fatty dibasic acids, amides from polyoxyalkylene amines	50 FR 15629(15631) (4-19-85)	July 10, 1985.
P 85-791	Generic name: Haloborane-aromatic phosphate ester complex	50 FR 15629(15632) (4-19-85)	Do.
P 85-834	Generic name: Vinyl substituted organo silicone copolymer	50 FR 18915(18917) (5-3-85)	April 17, 1985.
P 85-835	Generic name: Organosilicone copolymer	50 FR 18915(18917) (5-3-85)	Do.
P 85-857	Generic name: Alkylaluminum halide	50 FR 18915(18919) (5-3-85)	Apr. 19, 1985.
P 85-859	Generic name: Acrylic resin	50 FR 19798 (5-10-85)	July 29, 1985.
Y 85-18	Polymer of acrylamide and maleic anhydride	50 FR 8390 (3-1-85)	July 5, 1985.
Y 85-20	Generic name: Vinyl modified alkyd resin	50 FR 8390 (3-1-85)	July 18, 1985.
Y 85-72	Generic name: Methacrylic tetrapolymer	50 FR 23187 (5-31-85)	June 18, 1985.
Y 85-89	Generic name: Polyester	50 FR 24941 (6-14-85)	June 27, 1985.
Y 85-95	Generic name: Hydroxy functional acrylic copolymer	50 FR 26840 (6-28-85)	Aug. 8, 1985.
Y 85-96	Generic name: Polyester resin	50 FR 26840 (6-28-85)	July 9, 1985.

V. 130 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED

PMN No.	Identity/generic name	FR citation	Date suspended
P 83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10-18-82)	Oct. 22, 1982.
P 83-333	Generic name: Reaction product of polycyclicdisulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 72(73) (1-3-83)	Mar. 14, 1983.
P 83-410	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthaleneazo.	48 FR 5304(5306) (2-4-83)	Feb. 10, 1983.
P 83-461	Generic name: Substituted alkoxy silane	48 FR 7299(7300) (2-18-83)	July 1, 1983.
P 83-634	Generic name: Substituted mono azo aromatic	48 FR 17385 (4-22-83)	July 5, 1983.
P 83-669	Generic name: Chromium complex of substituted phenolazosulfonaphthol with naphtholazosulfonaphthol.	48 FR 20430 (5-6-83)	Aug. 5, 1983.
P 83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazosulfophenylpyrazolone.	48 FR 20430(20431) (5-6-83)	Do.
P 83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24957(24958) (6-3-83)	Aug. 15, 1983.
P 83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazo-sulfonaphthol.	48 FR 24957(24958) (6-3-83)	Do.
P 83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30434(30435) (7-1-83)	Sept. 21, 1983.
P 83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	48 FR 31460(31462) (7-8-83)	May 24, 1983.
P 83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31460(31462) (7-8-83)	Do.
P 83-913	Generic name: Copper sulfonylphenazo-polyhydroxy phenazobenzoate	48 FR 32381(32383) (7-15-83)	Oct. 1, 1983.
P 83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)-phenyl]derivative.	48 FR 36647(36649) (8-12-83)	Oct. 24, 1983.
P 84-15	Generic name: Substituted heteocyclic metal complex	48 FR 48863(48864) (10-21-83)	Feb. 8, 1985.
P 84-17	Generic name: Substituted heteocyclic metal complex	48 FR 48863(48864) (10-21-83)	Do.
P 84-18	1(1,1-dimethylethoxy)-propan-2-ol.	48 FR 48863(48864) (10-21-83)	Feb. 28, 1985.
P 84-36	Generic name: Substituted heterocyclic metal complex	48 FR 48863(48866) (10-21-83)	Feb. 8, 1985.
P 84-50	Generic name: Substituted heterocyclic metal complex	48 FR 50951(50952) (11-4-83)	Do.
P 84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50944(50946) (11-4-83)	Do.
P 84-375	Generic name: Sodium salt of alkyl dithiocarbamates	49 FR 4980(4981) (2-9-84)	Jan. 10, 1985.
P 84-378	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4980(4981) (2-9-84)	Do.
P 84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)-phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amino)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene disulfonato(7)], pentasodium.	49 FR 6160(6162) (2-17-84)	Apr. 27, 1984.
P 84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6160(6162) (2-17-84)	Do.
P 84-485	Generic name: Poly(oxy-1,2-ethanediyl) alpha-acyl-w-alkyl	49 FR 11008(11010) (3-23-84)	June 4, 1984.
P 84-501	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16833(16835) (4-20-84)	Aug. 21, 1984.
P 84-649	Generic name: Chromate, bis(substituted substituted phenolato) inorganic salts	49 FR 19110(19113) (5-4-84)	July 20, 1984.
P 84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19110(19113) (5-4-84)	Do.
P 84-651	Generic name: Chromate, bis(substituted substituted naphthalenolato) sodium	49 FR 19110(19113) (5-4-84)	Do.
P 84-664	Generic name: Chromate, (substituted substituted phenolato) (substituted substituted substituted substituted phenolato) sodium.	49 FR 20080(20084) (5-11-84)	Do.
P 84-665	Generic name: Chromate, bis(substituted substituted substituted phenolato), sodium	49 FR 20080(20084) (5-11-84)	Do.
P 84-668	Oleic, linoleic, palmitic acid ester of ethoxylated C_{16}-C_{18} alcohols	49 FR 20080(20084) (5-11-84)	May 17, 1985.
P 84-673	Generic name: Chromate (substituted naphthalenolato) (substituted substituted naphthalenolato)- inorganic salts.	49 FR 20080(20084) (5-11-84)	July 20, 1984.
P 84-700	Oxo-octyl acetate	49 FR 22128(22130) (5-25-84)	Oct. 29, 1984.
P 84-737	Generic name: Glycol ether	49 FR 22865(22866) (6-1-84)	Mar. 21, 1985.
P 84-738	Generic name: Glycol ether	49 FR 22865(22866) (6-1-84)	Do.
P 84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR 22865(22866) (6-1-84)	Aug. 22, 1984.
P 84-861	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28614(28615) (7-13-84)	May 15, 1985.
P 84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris(2,3-dibromopropyl)-	49 FR 28616(28617) (7-13-84)	Mar. 26, 1985.
P 84-954	Generic name: Substituted aromatic	49 FR 30238(30239) (7-27-84)	Apr. 29, 1985.
P 84-1005	Generic name: Alkyl amine derivative	49 FR 32110 (8-10-84)	Oct. 24, 1984.
P 84-1053	Generic name: Ethoxylated vegetable fatty acids, end-capped	49 FR 33718(33720) (8-24-84)	Oct. 26, 1984.
P 84-1128	Generic name: Isoalkyleneoxy alkanol	49 FR 35414(35417) (9-7-84)	Nov. 26, 1984.
P 84-1129	Acetic acid, ester with C_9-C_{11} iso alcohols, C_{10}—rich	49 FR 35414(35417) (9-7-84)	Jan. 10, 1985.
P 84-1130	Acetic acid, ester with C_7-C_9 alcohols, C_8—rich	49 FR 35414(35417) (9-7-84)	Do.
P 84-1131	Acetic acid, ester with C_{11}-C_{14} iso alcohols, C_{13}—rich	49 FR 35414(35417) (9-7-84)	Do.
P 84-1136	Generic name: Substituted aromatic amide	49 FR 36151(36152) (9-14-84)	Feb. 4, 1985.
P 84-1137	Generic name: Cycloaliphatic epoxide	49 FR 36151(36152) (9-14-84)	Do.
P 84-1144	Generic name: Isoalkyleneoxy alkanoate	49 FR 36151(36152) (9-14-84)	Feb. 11, 1985.
P 84-1182	Generic name: Aminopolyamide-epichloro-hydrin resin	49 FR 38356(38357) (9-28-84)	Jan. 11, 1985.
P 84-1183	Generic name: Aminopolyamide-epichloro-hydrin polymer	49 FR 38356(38357) (9-28-84)	Do.
P 84-1219	Generic name: Substituted pyridine	49 FR 39379(39380) (10-5-84)	Feb. 5, 1985.
P 84-1228	Generic name: Polyisoalkoxyalkanol	49 FR 39379(39381) (10-5-84)	Jan. 8, 1985.
P 84-1229	Generic name: Polyisoalkoxyalkanol	49 FR 39379(39381) (10-5-84)	Do.
P 85-19	Generic name: Substituted amino anthraquinone	49 FR 41102(41103) (10-19-84)	May 29, 1985.
P 85-36	Generic name: Substituted pyridine	49 FR 43105(43106) (10-26-84)	Feb. 5, 1985.
P 85-67	2,2'-diallyl-4,4'-sulfonyl diphenol	49 FR 44139(44140) (11-2-84)	Jan. 23, 1985.
P 85-109	Generic name: Arylthiodialkanoylhydrazide	49 FR 45657 (11-19-84)	Apr. 17, 1985.
P 85-141	Generic name: Polyester acrylate	49 FR 46852(46853) (11-28-84)	Feb. 12, 1985.
P 85-142	Generic name: Aromatic epoxy ester	49 FR 46852(46853) (11-28-84)	Do.
P 85-159	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108(47109) (11-30-84)	Feb. 11, 1985.
P 85-160	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108(47109) (11-30-84)	Do.
P 85-161	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108(47109) (11-30-84)	Do.
P 85-162	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108(47109) (11-30-84)	Do.
P 85-194	Generic name: Acid amide salt	49 FR 47921 (12-7-84)	Feb. 20, 1985.
P 85-198	Generic name: Alkylated aromatic diamine	49 FR 47921(47922) (12-7-84)	Mar. 8, 1985.
P 85-216	Generic name: Substituted pyridine	49 FR 47921(47922) (12-7-84)	Feb. 19, 1985.
P 85-234	Generic name: Disubstituted sulfide	49 FR 47921(47924) (12-7-84)	Apr. 25, 1985.
P 85-236	Generic name: Substituted pyridine	49 FR 48801(48802) (12-14-84)	Apr. 18, 1985.
P 85-265	Amines, tri (C_{11-14}-iso-C_{13} rich)	49 FR 49895(49896) (12-24-84)	Mar. 5, 1985.
P 85-296	Generic name: Silicone ester polyacrylate	49 FR 49895(49898) (12-24-84)	Mar. 13, 1985.
P 85-298	Generic name: Amino acrylate monomer	49 FR 49895(49899) (12-24-84)	Do.
P 85-347	Phosphine oxide, diphenyl (2,4,6-tri-methyl-benzoyl)-	49 FR 50444(50445) (12-28-84)	Mar. 14, 1985.
P 85-360	Generic name: Partial metal complex of aminomethylene phosphonic acid	50 FR 1630(1631) (1-4-85)	Mar. 22, 1985.
P 85-367	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Mar. 25, 1985.
P 85-368	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-369	Generic name: Haloalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-383	Phenol, 2,4-bis[(dimethylamino)methyl]-6-methyl	50 FR 2719 (1-18-85)	Apr. 5, 1985.
P 85-395	Generic name: Substituted polyester resin	50 FR 2719(2720) (1-18-85)	Apr. 1, 1985.
P 85-428	Generic name: Ester modified phenolic resin	50 FR 4896(4898) (2-4-85)	Apr. 17, 1985.
P 85-433	1-Propanol, 3-mercapto-	50 FR 4896(4898) (2-4-85)	Apr. 22, 1985.

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V. 130 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
P 85-444	Generic name: Aromatic amidoamine	50 FR 5416 (2-8-85)	Apr. 19, 1985.
P 85-458	Generic name: Alkyl ester of a trialkoxy silane	50 FR 6363(6364) (2-15-85)	Apr. 29, 1985.
P 85-463	Generic name: Silane	50 FR 6363(6364) (2-15-85)	Apr. 25, 1985.
P 85-489	Generic name: Polycyclic sulfonic acid salt	50 FR 6363(6364) (2-15-85)	May 21, 1985.
P 85-527	Generic name: Vinyl-epoxy ester	50 FR 8390(8391) (3-1-85)	June 4, 1985.
P 85-528	Generic name: Anthranilate schiff base	50 FR 8390(8391) (3-1-85)	May 20, 1985.
P 85-535	Generic name: Substituted pyridine	50 FR 8390(8392) (3-1-85)	May 17, 1985.
P 85-536	Generic name: Substituted pyridine	50 FR 8390(8392) (3-1-85)	Do.
P 85-543	2-Butenedioic acid (Z)-, mono [2-[(1-oxo-2-propenyl)oxy]ethyl]-ester	50 FR 8390(8392) (3-1-85)	July 9, 1985.
P 85-544	2-Butenedioic acid (Z)-, mono [2-[(1-oxo-2-propenyl)oxy]ethyl]-ester	50 FR 10536(10537) (3-15-85)	Do.
P 85-545	2-Propenoic acid-3-(dimethylamino)-2,2-dimethyl-propylester	50 FR 10536(10537) (3-15-85)	Do.
P 85-546	2-Propenoic acid, 2-methyl-, 3,3,5-trimethyl-cyclo hexylester	50 FR 8390(8393) (3-1-85)	Do.
P 85-547	2-Propenoic acid, 3,3,5-trimethylcyclo hexylester	50 FR 8390(8393) (3-1-85)	Do.
P 85-562	Generic name: Alkanolalkane triacrylate octylamine adduct	50 FR 9504(9505) (3-8-85)	May 14, 1985.
P 85-567	Generic name: Silyl ketene acetal	50 FR 9504(9505) (3-8-85)	May 15, 1985.
P 85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504(9508) (3-8-85)	July 26, 1985.
P 85-619	Generic name: Tetra substituted amino-carboxylic acid	50 FR 10536(10537) (3-15-85)	June 12, 1985.
P 85-627	Generic name: Alkenyloxysilane	50 FR 10536(10538) (3-15-85)	May 17, 1985.
P 85-630	Ammonium, 1-n-Tetradecyl sulfonate	50 FR 10536(10538) (3-15-85)	June 20, 1985.
P 85-631	Sodium, 1-n-Tetradecyl sulfonate	50 FR 10536(10538) (3-15-85)	Do.
P 85-632	Ammonium, 1-n-Hexadecyl sulfonate	50 FR 10536(10538) (3-15-85)	Do.
P 85-633	Generic name: Aminoalkanoic acid	50 FR 10536(10538) (3-15-85)	July 2, 1985.
P 85-637	Generic name: Substituted polyglycol	50 FR 10536(10539) (3-15-85)	June 17, 1985.
P 85-648	Generic name: Isopropylidene-bis-(1,1-dimethylpropyl)derivative	50 FR 11557(11558) (3-22-85)	June 5, 1985.
P 85-660	Generic name: Fatty acids, esters with alkanolamine, alkoxylated	50 FR 11557(11558) (3-22-85)	June 21, 1985.
P 85-676	Generic name: Functional polyester	50 FR 12623(12624) (3-29-85)	June 16, 1985.
P 85-680	Generic name: 1,1-Dimethylpropyl peroxyester	50 FR 12623(12624) (3-29-85)	Do.
P 85-693	Generic name: Acrylated urethane resin	50 FR 12623(12625) (3-29-85)	July 30, 1985.
P 85-703	Polymer of hydroxy ethyl acrylate, isophorone diisocyanate and Melpol 125	50 FR 13651(13652) (4-5-85)	June 17, 1985.
P 85-706	Generic name: Substituted pyridine	50 FR 13651(13652) (4-5-85)	July 3, 1985.
P 85-710	Generic name: Poly acrylate/methacrylate ester	50 FR 13651(13653) (4-5-85)	June 22, 1985.
P 85-718	Generic name: Polyol polyacrylate	50 FR 13651(13653) (4-5-85)	June 19, 1985.
P 85-719	Generic name: Polymer of styrene and methacrylates	50 FR 13651(13653) (4-5-85)	June 25, 1985.
P 85-720	Generic name: Polyacrylate	50 FR 13651(13653) (4-5-85)	July 9, 1985.
P 85-732	Generic name: Halogenated aromatic substituted alkane	50 FR 14439(14440) (4-12-85)	July 29, 1985.
P 85-733	Generic name: Halogenated aromatic polymer	50 FR 14439(14440) (4-12-85)	Do.
P 85-734	Generic name: Halogenated aromatic alkene	50 FR 14439(14440) (4-12-85)	Do.
P 85-736	Generic name: Substituted pyridine diazo dye	50 FR 14439(14440) (4-12-85)	June 30, 1985.
P 85-783	Generic name: Adduct of chlorinated olefin/polydiene	50 FR 15629(15631) (4-19-85)	July 1, 1985.
P 85-800	Generic name: Sodium salt of polycarboxylic acid	50 FR 16541 (4-26-85)	July 16, 1985.
P 85-813	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541(16542) (4-26-85)	July 10, 1985.
P 85-814	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541(16542) (4-26-85)	Do.
P 85-815	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541(16542) (4-26-85)	Do.
P 85-816	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541(16542) (4-26-85)	Do.
P 85-817	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541(16542) (4-26-85)	Do.
P 85-822	Generic name: Substituted alkyl alkanol	50 FR 18916 (5-3-85)	July 3, 1985.
P 85-827	Generic name: Phenoxazinium, bis (substituted amino), salt	50 FR 18916 (5-3-85)	July 11, 1985.
P 85-862	Octadecanamide, N-[2-[(2-hydroxyethyl) amino]ethyl]-, monohydrochloride (salt)	50 FR 19799(19800) (5-10-85)	July 19, 1985.
P 85-901	Generic name: Polyamino-polyamide-epichlorohydrin polymer	50 FR 20596(20597) (5-17-85)	July 29, 1985.

[FR Doc. 86-1816 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59756, (FRL-2963-1)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of ten such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-86, 86-87, 86-88, 86-89—March 23, 1986.

Y 86-90 and 86-91—March 24, 1986.

Y 86-92, 86-93, 86-94, 86-95—March 25, 1986.

FOR FURTHER INFORMATION CONTACT:
Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-86

Importer. Confidential.

Chemical. (G) Polyurethane.

Use/Import. (S) Industrial breathable coating for textile fabrics. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Nil to air. Disposal by vapor extraction.

Y 86-87

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

USE/Production. (G) Fiberglass mat binder. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-88

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (G) Plastics. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-89

Importer. Confidential.

Chemical. (S) Castor oil, ethylene glycol, pentaerythritol, phthalic anhydride, benzoic acid, dehydrated castor oil.

Use/Import. (S) Industrial polymer for industrial coastings. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 6 workers, up to 1 hr/da, up to 110 da/yr.

Environmental Release/Disposal. No release.

Y 86-90

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Resin converted to paint. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-91

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Resin converted to paint. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-92

Manufacturer. Confidential.

Chemical. (G) Tall oil fatty acid modified alkyd resin.

Use/Production. (G) Industrial protective coatings. Prod. range: 28,000-56,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 3 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 22 kg/batch released to land. Disposal by landfill and sawdust.

Y 86-93

Importer. Confidential.

Chemical. (G) Styrene-N-butylacrylate-dimethylaminoethylacrylate copolymer.

Use/Import. (S) Commercial and consumer binder resin of toner for electrophotographic coplier. Import range: Confidential.

Toxicity Data. Ames test; Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-94

Importer. Confidential.

Chemical. (G) 2-propenioc acid, -2-methyl-2-(dimethylamino) ethyl ester polymer with ethenyl benzene.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-95

Importer. Confidential.

Chemical. (G) Bisphenol A type polyester resin.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted on the PMN substance.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: March 10, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-5498 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51614, (FRL-2962-9)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-592, 86-593 and 86-594—May 28, 1986.

P 86-595, 86-596, 86-597, 86-598, P 86-599, 86-600 and 86-601—May 31, 1986.

P 86-602, 86-603, 86-604, 86-605, 86-606, 86-607, 86-608, 86-609, 86-610, 86-611, 86-612, 86-613, 86-614, 86-615, 86-616, 86-617, 86-618, 86-619, 86-620, 86-621 and 86-622—June 1, 1986.

P 86-623, 86-624, 86-625, 86-626, 86-627, 86-628, 86-629, 86-630 and 86-631—June 2, 1986.

P 86-632 and 86-633—June 3, 1986.

Written comments by:

P 86-592, 86-593 and 86-594—April 28, 1986.

P 86-595, 86-596, 86-597, 86-598, 86-599, 86-600 and 86-601—May 1, 1986.

P 86-602, 86-603, 86-604, 86-605, 86-606, 86-607, 86-608, 86-609, 86-610, 86-611, 86-612, 86-613, 86-614, 86-615, 86-616, 86-617, 86-618, 86-619, 86-620, 86-621 and 86-622—May 2, 1986.

P 86-623, 86-624, 86-625, 86-626, 86-627, 86-628, 86-629, 86-630 and 86-631—May 3, 1986.

P 86-632 and 86-633—May 4, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51514]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT:
Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer of the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-592

Importer. Confidential.

Chemical. (G) 1,3,5-naphthalenetrisulfonic acid-7[[4-[[4-[(4-substituted-6-halo-,1,3,5-triazin-2-yl)amino]phenyl]azo] substituted phenyl]azo]-, mixed sodium and potassium salts.

Use/Import. (S) Industrial and consumer fiber reactive dye for cellulosic fibers. Import range: Confidential.

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Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

Exposure. Use: dermal, a total of 3 persons/shift.

Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW) and municipal landfill.

P 86–593

Importer. American Hoechst Corporation.

Chemical. (G) Modified formal polymer.

Use/Import. (S) Industrial injection, extrusion, compression and flow molding. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–594

Importer. American Hoechst Corporation.

Chemical. (G) Modified formal polymer.

Use/Import. (S) Industrial injection, extrusion, compression and flow molding. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–595

Importer. Kay-Fries, Inc.

Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.

Use/Import. (S) Industrial coatings for building products, food application and decorative coating for metal. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Import: a total of 5–10 workers.

Environmental Release/Disposal. No release expected.

P 86–596

Manufacturer. Confidential.

Chemical. (G) Alkenoate-terminated poly(dimethylsiloxane).

Use/Production. (G) A component of formulations for open, non-dispersive use. Prod. range: 3,000–10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 16 workers.

Environmental Release/Disposal. 0.04 to 2 kg released to land. Disposal by landfill.

P 86–597

Manufacturer. Confidential.

Chemical. (S) Isooctadecanoic acid, compound with 1-amino-2-propanol (1:1).

Use/Production. (G) Additive. Prod. range: 8,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. 0.2 to 50 kg/batch released to air and land. Disposal by secondary fuel blenders who use it in industrial fuels.

P 86–598

Manufacturer. Confidential.

Chemical. (S) Isooctadeconic acid, compound with 1,1′-iminobis-2-propanol (1:1).

Use/Production. (G) Additive. Prob. range: 8,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer: dermal, a total of 6 workers, up to 4 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. 0.2 to 50 kg/batch release to air and land. Disposal by secondary fuel blenders who use it in industrial fuels.

P 86–599

Manufacturer. Confidential.

Chemical. (S) Isooctadecanoic acid, compound with 1,1′,1″-nitrilotris-2-propanol (1:1).

Use/Production. (G) Additive. Prod. range: 1,900 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. 0.2 to 50 kg/batch released to air and land. Disposal by secondary fuel blenders who use it in industrial fuels.

P 86–600

Manufacturer. Confidential.

Chemical. (G) Isocyanate-capped polyols.

Use/Production. (S) Industrial coatings, architectural sealants, adhesives and asphalt modifiers. Prod. range: 350,000–1,500,000 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Severe, Eye—Minimal; Skin sensitization: Positive.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 1 kg/batch released. Disposal by incineration.

P 86–601

Manufacturer. Confidential.

Chemical. (G) Dialkyl ether.

Use/Production. (G) Isolated intermediate, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Disposal by chemical sewer.

P 86–602

Importer. Confidential.

Chemical. (G) Monoalkylfluorane.

Use/Import. (G) Dye for paper coating. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Not mutagenic; Skin sensitization: Non-sensitizer; LC$_{50}$ 96 hr: 90 mg/l; Biodegradability test: Not biodegradable.

Exposure. Import: inhalation, a total of 3 workers, up to 1 hr/da, up to 15 da/yr.

Environmental Release/Disposal. No release.

P 86–603

Manufacturer. The C.P. Hall Company.

Chemical. (G) (Polyethylene) glycol ether ester.

Use/Production. (S) Industrial plasticizer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by wastewater treatment facility.

P 86–604

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

P 86–605

Importer. P–S Chemicals, Inc.

Chemical. (G) Aryl phenol ethoxylated, phosphated.

Use/Import. (S) Industrial additive for printing inks and color concentrates for paints. Prod. range: 5,000–10,000 kg/yr.

Toxicity Data. Acute oral: 7,150 mg/kg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–606

Manufacturer. Confidential.

Chemical. (G) Poly(siloxyurea).

Use/Production. (G) Intermediate to manufacture organofunctional siloxane. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–607

Manufacturer. Confidential.

Chemical. (G) Poly(silyurethanesiloxyurea).

Use/Production. (G) Organofunctionalsiloxane intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–608

Manufacturer. Confidential.

Chemical. (G) Alkylsilyurethane.

Use/Production. (S) Organosilane monomer intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential

P 86–609

Importer. American Hoechst Corporation.

Chemical. (S) Benzenediazonium, 4,4′-bis(3-chloro)-, coupling product with N-(2,4-dimethylphenyl)-3 -oxobutanamide and N-(4-chloro-2,5-dimethoxyphenyl)-3-oxobutanamide.

Use/Import. (S) Pigment for printing inks. Import range: Confidential.

Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Non-irritant, Mocous membrane compatibility test: Slight; Ames test: Non-mutagenic.

Exposure. Import: dermal and inhalation, 1 manhour/yr, 250 lbs.

Environmental Release/Disposal. No data submitted.

P 86–610

Manufacturer. Polymer Applications Inc.

Chemical. (G) Aromatic urethane polymer.

Use/Production. (S) Industrial polymer-rubberr adhesion promoter. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 25 kg/batch released to land. Disposal by landfill.

P 86–611

Importer. Albright and Wilson Limited.

Chemical. (G) Fatty acid amines condensate.

Use/Import. (S) Industrial formulating emulsifiers for emulsifying water in oil. Prod. range: Confidential.

Toxicity Data: No data submitted.

Exposure. Import: dermal, a total of 2–3 workers, up to 2–8 hrs/da.

Environmental Release/Disposal. Disposal by sawdust absorption at an authorized site.

P 86–612

Importer. Marubeni America Corporation.

Chemical. (G) Molecular weight branched saturated polyester.

Use/Import. (S) Coating for metal sheet. Import range: 30,000–100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–613

Importer. Austin Chemical Company, Inc.

Chemical. (S) Acetamide, N-(1,2-dihydro-2-oxo-4-pyrimidinyl)-.

Use/Production. (S) Industrial pharmaceutical intermediate. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–614

Importer. Dow Corning Corporation.

Chemical. (S) Siloxanes and silicones, me hydrogen, reaction products with vinyl terminated di-me siloxanes and allyl glycidyl ether.

Use/Import. (G) Plastic additive. Import range: 1,500–5,000 kg/yr.

Toxicity Data. Acute oral: 5,000 kg/yr; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–615

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data: No data submitted.

Exposure. Import: dermal, a total of 2 workers, up o 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidfy in light and harden and by rain drainage.

P 86–616

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,00,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86–617

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Exposare. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86–618

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86–619

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

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P 86-620

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resind spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86-621

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resin spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86-622

Importer. Sunrez Corporation.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions, rapid small FRP part manufacture and coating for thin shell molds. Import range: 160,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200/yr resind spillage released to air and land with 300/yr user styrene loss to air. Disposal material will solidify in light and harden and by rain drainage.

P 86-623

Importer. Confidential.

Chemical. (G) Dibutyltin borate.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 1,037 mg/kg; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-624

Manufacturer. Andrews Paper and Chemical Company, Inc.

Chemical. (S) 4-(N-ethyl, N-hydroxyethyl) aminobenzene diazonium, 5-sulfoisophthalate.

Use/Production. (S) Industrial and commerical dizao reproduction paper and film. Prod. range: 500–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. 2.5 kg released to air and water. Disposal by POTW and Passaic Valley water authority.

P 86-625

Manufacturer. Kay-Fries Inc.

Chemical. (S) Methacrylic acid, 3-(cholorodimethylsily) propyl ester.

Use/Production. (S) Coupling agent. Prod. range: 1,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 1 hr/da, up to 42 da/yr.

Environmental Release/Disposal. 45 kg/batch released to land. Disposal by Resource Conservation and Recovery Act (RCRA).

P 86-626

Manufacturer. American Hoechst Corporation.

Chemical. (G) Ethanol, 2,2′-[[3-chloro-4-[[4-(functionalize alkenyl]phenyl]azo]phenyl]imino]bis-, bis(hydrogen sufiate) ester, sodium salt.

Use/Production. (S) Indsustrial reactive dye for textitle fibers. Prod. range: Confidential.

Toxicity Data. Ames test: Negative.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.

Environmental Release/Disposal. Traces.

P 86-627

Manufacturer. American Hoechst Corporation.

Chemical. (S) Poly(oxy-1,2-ethanediyl), alpha-1-oxo-isononyl-omega hydroxy.

Use/Production. (S) Industrial cohesive agent for fiber lubricant and textile overspray. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 3 hrs/da.

Environmental Release/Disposal. 10 to 20 pounds released to water. Disposal by NPDES wastewater facility.

P 86-628

Importer. Confidential.

Chemical. (G) Unsaturated dimer acids, polyester, expoxidized.

Use/Import. (G) Automotvie adhesive. Import range: Confidential.

Toxicity Data. Acute oral: 10,000 mg/kg; Acute dermal: 3,100 mg/kg; Irritation; Skin—Moderate, Eye—Slight.

Exposure. Processing: dermal.

Environmental Release/Disposal. Release to air and land. Disposal by incineration.

P 86-629

Importer. Confidential.

Chemical. (G) Aminocarboxylic acid, alkaline salt.

Use/Import. (G) Scale dissolver. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 86-630

Manufacturer. Petroferm USA.

Chemical. (G) Dodecenyl succinamide.

Use/Production. (S) Industrial, commerical and consumer cream, emulsion stabilizer for oil/water mixtures. Prod. range: 1,000–4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-631

Manufacturer. Petroferm USA.

Chemical. (G) Protein associated dodecenyl succinamide.

Use/Production. (S) Industrial, commercial and consumer cream, emulsion stabilizer for oil/water mixtures. Prod. range: 5,800–19,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-632

Manufacturer. Confidential.

Chemical. (G) Urethane oligomer.

Use/Production. (S) Site-limited and industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 86-633

Importer. DeVoe-Holbein Inc.

Chemical. (G) Trialkoxypropyl metallic oxide.

Use/Import. (G) Component in wastewater treatment systems, contain use. import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

Dated: March 10, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-5499 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180691; FRL-2985-3]

Pesticide Programs; Illinois and Kentucky Departments of Agriculture; Receipt of Applications for Specific Exemptions To Use A Pesticide for an Unregistered Use; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Illinois and Kentucky Departments, of Agriculture (hereafter referred to individually by state or collectively as "Applicants") for use of the unregistered product Harmony to control wild garlic in wheat. Harmony, manufactured by E.I. duPont deNemours and Company, contains the unregistered active ingredient methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 24, 1986.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180691," should be submitted—

By mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of the information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Jack E. Housenger, Registration Division (TS-767C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered product, Harmony, to control wild garlic in wheat. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

The Applicants have requested a maximum of one postemergence application of Harmony. Applications will be made between the 2-leaf and boot stage of wheat. A maximum of 0.67 pound of product is proposed to be applied per acre. A maximum of 96,000 acres of wheat is proposed to be treated in 46 counties in southern and southwestern Illinois and a maximum of 100,000 acres throughout Kentucky. If all of the acreage were treated, a maximum of 3,060 pounds of product would be needed in Illinois and a maximum of 3,125 pounds of product would be needed in Kentucky.

Applications are proposed to be made using either aerial or ground equipment. All applications are proposed to be made by or under the direct supervision of certified applicators. The Applicants have requested authorization to make treatments from March 1, 1986, to May 1, 1986.

The Applicants claim that emergency conditions exist due to new regulations under the U.S. Grain Standards Act which lower by two-thirds the amounts of wild garlic allowable in marketed wheat. If these new standards cannot be met, prices will be docked severely or the grain may be refused altogether. In any event, the economic consequences could be substantial if growers are unable to control wild garlic in wheat to meet this new standard.

The Applicants claim that the registered alternatives currently available do not provide the level of control of wild garlic sufficient to meet the more stringent grading standards. The Applicants claim that wheat growers have traditionally used 2,4-D and dicamba to control this weed. Specifically, Kentucky states that 2,4-D and dicamba provide only 60 to 70 percent control of wild garlic and Illinois claims that due to the cool, spring weather in that state, these chemicals provide only 25 to 40 percent control of wild garlic.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 24, 1986 and should bear the identifying notation "OPP-180691." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Illinois and Kentucky Departments of Agriculture.

Dated: February 26, 1986.

James W. Akerman,

Acting Director, Registration Division.

[FR Doc. 86-5746 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/47A; FRL-2985-2]

Pesticide Programs; Special Review of Certain Pesticide Products Containing Diazinon; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the period for submittal of comments concerning the Notice announcing that EPA is

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initiating a Special Review for all pesticide products that contain the active ingredient diazinon and that may be used on golf courses and sod farms. The Notice also announced the preliminary determination to cancel registrations and to deny application for diazinon products that may be used on golf courses and sod farms. These actions are based on the risks posed to avian species by the use of diazinon on these two sites.

DATE: The comment period will now close on March 28, 1986.

ADDRESS: Written comments identified as "OPP-30000/47A" should be sent—

By mail to: Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Ingrid M. Sunzenauer, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm: 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7416).

SUPPLEMENTARY INFORMATION: EPA issued a Notice initiating the Special Review of all pesticide products that contain the active ingredient diazinon and that may be used on golf courses and sod farms, which was published in the **Federal Register** on January 15, 1986 (51 FR 1842). The Notice also presented the basis for the issuance of the Preliminary Determination proposing to cancel registrations and deny applications for diazinon products that may be used on golf courses and sod farms. The Notice also informed the public of the availability of the Support Document, which discussed the Agency's analysis of the risks and benefits associated with diazinon use on golf courses and sod farms. The deadline for submitting comments on the Notice was March 3, 1986.

EPA has received numerous requests for additional time to submit comments from environmental groups, State personnel, and other agenices, who did not receive the Notice and the accompanying Support Document in time to comment.

The Agency concludes that the additional time would be beneficial to ensure the submission of complete responses to the Notice. Therefore, all registrants, applicant for registration, and other interested persons shalll have until March 28, 1986 to submit comments. These submissions should be sent to the Document Control Officer at the address given above. All comments should bear the identifying notation "OPP-30000/47A." Comments received on or before March 28, 1986, will be considered. Comments received after March 28, 1986, will be considered to the extent possible. All written comments filed will be available for public inspection in the office of the Document Control Officer at the above address from 8 to 4 p.m. Monday through Friday, excluding legal holidays. See the January 15, 1986 Notice for additional guidance on submitting comments, including instructions on submitting confidential business information.

Dated: March 7, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-5745 Filed 3-13-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-471]

Los Angeles Federal Savings Bank, Los Angeles, CA and Great American First Savings Bank, San Diego, CA; Final Action; Approval of Conversion Application

Dated: March 10, 1986.

Notice is hereby given that on February 12, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Los Angeles Federal Savings Bank, Los Angeles, California ("Los Angeles Federal") and Great American First Savings Bank, San Diego, California, for permission to convert Los Angeles Federal to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, California 94108.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-5594 Filed 3-13-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-472]

Western Savings & Loan Association, Phoenix, AZ; Approval of Application To Withdraw Securities From Listing and Registration on the American Stock Exchange

Dated: March 10, 1986.

Notice is hereby given that on February 28, 1986, the General Counsel approved pursuant to delegated authority, the application filed on December 16, 1985, by Western Savings and Loan Association (the "Association") pursuant to Securities Exchange Act ("Exchange Act") section 12(d) and Exchange Act Rule 12d2-2(d), to withdraw from listing and registration on the American Stock Exchange (the "Exchange") its Permanent Reserve Guarantee Stock. Notice of this application was published in the **Federal Register** on February 6, 1986 and open for comment from the public until February 20, 1986. As noted in the earlier notice, the common stock of the Association will continue to be registered under the Exchange Act and is also listed and registered on the New York Stock Exchange. Copies of the application are available for inspection at the Public Information Services Section Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-5595 Filed 3-13-86; 8:45 am]

BILLING CODE 6720-01-M

[86-213]

FSLIC Insurance Premium

Dated: March 6, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one-thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1985.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 377-6620; or Terrill Rupp, Attorney, Office of General Counsel (202) 377-6773, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Assessment of Additional Insurance Premium

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, and by Resolution No. 85-1142, dated December 9, 1985, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, and as of September 30, 1985 for the fourth; and

Whereas, The Bank Board, as operating head of the Corporation, Resolution No. 85-142, expressed its intention to consider the assessment of further additional premiums in amounts equal to one-thirty-second of one per centum on a quarterly basis during 1986, not to exceed an aggregate of one-eighth of one per centum of the total amount of the accounts of the insured members of each insured institution; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, and Resolution No. 85-1142, dated December 9, 1985, upon the Corporation's insurance reserves:

Now, Therefore, It is Resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1985; and

Resolved, Further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, and No. 85-1142, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It appears that the Corporation will incur further substantial losses and expenses in calendar year 1986;

3. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to 404(a)(2) of the NHA, by order of the Corporation; and

Resolved Further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the first quarter of 1986, in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1985; and

Resolved Further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about March 31, 1986; and

Resolved Further, That the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on March 31, 1986, by each insured institution and shall notify each insured institution of such amount at least twenty (20) days prior to the date such amount is due; and

Resolved Further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved Further, That the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-5596 Filed 3-13-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

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hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to merge with Money Management Corporation, Merrillville, Indiana, thereby indirectly acquiring Bank of Indiana, N.A., Gary, Indiana.

Applicant has also applied to acquire British Swiss Trust Company of Charlottetown, Prince Edward Island, Canada, and thereby engage in administration of Canadian Pension Trusts, pursuant to section 4(c)(13) of the Bank Holding Company Act and § 211.5 of Regulation K. These activities would be conducted in Canada.

Board of Governors of the Federal Reserve System, March 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5577 Filed 3-13-86; 8:45 am]

BILLING CODE 6210-01-M

Citizens and Southern Georgia Holding Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 USC § 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR § 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securites or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Holding Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens and Southern National Bank, Atlanta, Georgia.

Applicant also proposes to acquire each of the following bank holding companies and engage in the listed activities: Citizens and Southern Mortgage Company, Atlanta, Georgia (real estate mortgate lending; loan sales and servicing); The Citizens and Southern Agency, Inc., Atlanta, Georgia (general insurance agency activities; pursuant to section 4(c)(8)(D) of the Bank Holding Company and § 225.25(b)(8) of Regulation Y); Citizens and Southern Data Processing, Inc., Atlanta, Georgia (data processing); Family Credit Services, Inc., Atlanta, Georgia (and its three wholly-owned subsidiaries, Family Credit Services, Inc., (Ala.), Family Credit Services, Inc., (Fla.), and Family Mortgage Services, Inc., (Ga.) (consumer finance; mortgage lending and related activities); The Citizens and Southern Life Insurance Company, Atlanta, Georgia (underwriting credit life and credit disability insurance; reinsuring similar risks; pursuant to § 225.25(b)(9) of Regulation Y); Citizens and Southern Securities, Inc., Atlanta, Georgia (discount brokerage); Citizens and Southern Investment Advisors, Inc., Atlanta, Georgia (portfolio investment advice).

Board of Governors of the Federal Reserve System, March 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5580 Filed 3-13-86; 8:45 am]

BILLING CODE 6210-01-M

CNB Corp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 5, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CNB Corp, Inc.*, Windber, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank in Windber, Windber Pennsylvania. Comments on this application must be received not later than April 6, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Bankshares of Reedsburg, Inc.*, Reedsburg, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers and Merchants Bank, Reedsburg, Wisconsin.

Board of Governors of the Federal Reserve System, March 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5579 Filed 3-13-86; 8:45 am]

BILLING CODE 6210-01-M

N.B.W.P., Inc., et al.;

Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage in *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *N.B.W.P., Inc.*, Berlin, Pennsylvania; to engage *de novo* through its subsidiary, Laurel Highland Life Insurance Company, Phoenix, Arizona, in acting as a reinsurer of credit life, accident and health insurance issued by Security of America Life Insurance Company in connection with extensions of credit made by the Applicant's subsidiary bank. These activities would be conducted as pursuant to § 225.25(b)(9) of Regulation Y. The extensions of credit will be conducted from the office of National Bank of Western Pennsylvania, located in Somerset and Fayette Counties of southwestern Pennsylvania.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Banchares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Capital Markets, Inc., Houston, Texas, in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.25(b)(16) of Regulation Y. This would include, for securities that member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335, the buying and selling of such instruments for the account of and as agent for customers; trading for its own account; and underwriting such bank-eligible securities and money market instruments, under the same limitations as would be applicable to member banks. Texas Commerce Capital Markets will offer also portfolio investment advice to any person and financial advice to state and local governments, pursuant to §§ 225.25(b)(4)(iii), (iv), and (v) of Regulation Y with respect to the securities to be underwritten or brokered under § 225.25(b)(16).

Board of Governors of the Federal Reserve System, March 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5578 Filed 3-13-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 7, 1986.

Social Security Administration

(Call 301-594-5706 for copies of packages)

Subject: Disability Hearing Officer's Decision—Existing Collection
Respondents: Individual or households

Subject: Disability Hearing Officer's Report of Disability Hearing—Existing Collection
Respondents: State or local governments

Subject: Annual Survey of Refugees—Revision—(0960-0308)
Respondents: Individuals or households

Subject: Final Regulation Payment of Certain Travel Expenses—New
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh.

Office of Human Development Services

(Call 202-472-4415 for copies of packages)

Subject: Standard Setting Requirements for Medical and Non-Medical Facilities Where SSI Recipients Reside—Extension—(0980-0154)
Respondents: State or local governments
OMB Desk Officer: Judy A. McIntosh

Subject: Information Collection Requirements in **Federal Register** Notice on Family Violence Prevention and Services—NEW
Respondents: States, Indian Tribes
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

(Call 301-594-8650 for copies of packages)

Subject: Requests for Medicare Payment by Municipal Health Services Program Clinics—Extension—(0938-0091)
Respondents: State or local governments; Non-profit institutions
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

(Call 202-245-6511 for copies of packages)

Subject: Survey of Influences on the Supply of Long Term Care Services—New
Respondents: State or local governments
OMB Desk Officer: Judy A. McIntosh

Public Health Service

(Call 202-245-2100 for copies of packages)

Centers for Disease Control

Subject: Center for Disease Control-Reproductive Outcome Surveillance—New
Respondents: Individuals or households

Food and Drug Administration

Subject: Follow Up of Growth Hormone Recipients—Extension—(0910-0221)
Respondents: Business or other for-profit; Non-profit institutions
OMB Desk Officer: Bruce Artim.

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Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the numbers shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: March 10, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-5655 Filed 3-13-86; 8:45 am]

BILLING CODE 4150-04-M

Private/Public Sector Advisory Committee on Catastrophic Illness; Notice of Establishment

Pursuant to Pub. L. 92-463, the Federal Advisory Committee Act, the Office of the Secretary, DHHS, announces the establishment by the Secretary of the Private/Public Sector Advisory Committee on Catastrophic Illness.

The Committee shall serve as a forum for the presentation of the views of the interested parties among the health care industry, the insurance industry, consumers, and others regarding the issues of catastrophic health care. Members will be called upon to analyze, evaluate and synthesize those views.

The Committee shall terminate on March 11, 1987, unless the Secretary, DHHS, formally determines that continuance is in the public interest.

Dated: March 12, 1986.

Thomas R. Burke,

Chief of Staff.

[FR Doc. 86-5737 Filed 3-13-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86N-0039]

Color Additives: D&C Red No. 8, 9, 19, and 37; D&C Orange No. 17; and FD&C Red No. 3; Report Availability

Correction

In FR Doc. 86-4956, beginning on page 7856 in the issue of Thursday, March 6, 1986, make the following correction:

On page 7857, in the first column, the name appearing after "FOR FURTHER INFORMATION CONTACT:" should read "Paul D. Lepore".

BILLING CODE 1505-01-M

[Docket No. 86F-0376]

Allied Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Allied Corp. has filed a petition proposing to amend the food additive regulations to provide for the safe use of Nylon 6/66 copolymer resins as the non-food-contact layer in film constructions in which ionomeric resins are the food-contact surface. The multi-layer film construction is intended for cooking and holding food.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3913) has been filed by Allied Corp., Morristown, NJ 07960, proposing that the food additive regulations be amended to provide for the safe use of Nylon 6/66 copolymer resins as the non-food-contact layer in multilayer film constructions in which ionomeric resins complying with 21 CFR 177.1330 of the food additive regulations are the food-contact surface. The multilayer film construction is intended for cooking and holding food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: March 3, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-5586 Filed 3-13-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0069]

Velsicol Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Velsicol Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dipropylene glycol dibenzoate in articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3893) has been filed by Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dipropylene glycol dibenzoate in polyvinyl acetate coating intended to contact food. The petition also requests the correction of the Chemical Abstracts Registry Number currently affixed to the listing of dipropylene glycol dibenzoate in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to read "CAS Reg. No. 27138-31-4."

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Dated: March 3, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-5587 Filed 3-13-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0513]

Akorn, Inc.; Premarket Approval of the AK-Salt Tablet System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Akorn, Inc., Metairie, LA, for premarket approval, under the Medical Device Amendments of 1976, of the AK-Salt Tablet System (250-milligram salt tablets) for use with soft (hydrophilic) contact lenses. The AK-Salt Tablet System is intended for use in the preparation of 27.7 milliliters of normal saline (0.9 percent) solution to be used in heat disinfection of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 14, 1986..

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration Rm,. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On June 4, 1985, Akron, Inc., Metairie, LA 70002, submitted to CDRH an application for premarket approval of the AK-Salt Tablet System (250-milligram salt tablets). The device is indicated for use in the rinsing and heat disinfection of soft (hydrophilic) contact lenses.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 19, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectivness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the AK-Salt Tablet System states that the solution prepared from the salt tablets is intended for use in heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant. Such labeling informs new users of soft contact lenses that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under §10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 14, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 6, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-5588 Filed 3-13-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0052]

CTL., Inc.; Premarket Approval of CustomEyes™-38 S (Polymacon) Tinted Hydrophilic Bifocal Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CTL, Inc., Raleigh, NC, for the premarket approval, under the Medical Device Amendments of 1976, of the CustomEyes™-38 S (polymacon) Tinted Hydrophilic Bifocal Contact Lens. The lens are to be tinted under an agreement with Bausch & Lomb, Inc., Rochester, NY, which has authorized CTL, Inc., to incorporate by reference information contained in its approved premarket approval application supplements for the Soflens® (polymacon) Bifocal Contact Lens P.A.1™ Lens Series. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by April 14, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460),

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Food and Drug Administration, 5757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On August 12, 1985, CTL, Inc., Raleigh, NC 27612, submitted to CDRH a supplemental application for premarket approval of the CustomEyes™-38 S (polymacon) Tinted Hydrophilic Bifocal Contact Lens. The lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic presbyopes requiring up to 1.50 diopters (D) of nominal functional add or 2.00 D of refractive add. The lens ranges in powers from −6.00 D to +6.00 D. It is to be disinfected using either a heat or chemical lens care system. The supplemental application provides for Bausch & Lomb, Inc., Rochester, NY, to supply the clear (untinted) finished lens to CTL, Inc. CTL, Inc., will tint the lens blue, green, aqua, brown, or yellow with one or more of the four color additives listed in 21 CFR 73.3117, 73.3118, 73.3119, or 73.3120 for use as a color additive in contact lenses. The application includes authorization from Bausch & Lomb, Inc., Rochester, NY, to incorporate by reference the information contained in its approved premarket approval application supplements for the Soflens® (polymacon) Bifocal Contact Lens P.A.1™ Lens Series (Docket No. 82M–0366). On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed the supplemental application and recommended approval of it. On January 27, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the CustomEyes™–38 S (polymacon) Tinted Hydrophilic Bifocal Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 14, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 6, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–5589 Filed 3–13–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Tuesday, April 1, 1986, from 9:00 a.m. until 12:00 noon, or until business is concluded. The meeting will convene at the Department of the Interior, 18th and C Streets, NW, Washington, DC in Rooms 7000 A&B.

It will be open to the public.

The proposed agenda is:

9:00–9:30 Welcome and introductory remarks by the Chairman.
9:30–10:30 Subcommittee reports; recommendations for consideration by the Committee.
10:30–11:30 Assessment Report Task Force. Discussion and consideration of the Report to the Secretary.
11:30–Conclusion New business; discussion of future agenda.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Committee Executive Director (see below) of their intention to appear.

For further information contact: Gully Walter, Department of the Interior, Washington, DC, Room 6650, (202) 343–2136.

Dated: March 6, 1986.

Gully Walter,

Executive Director.

[FR Doc. 86–5590 Filed 3–13–86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT FES 86–4]

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Legislative Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior. Forest Service, Agriculture.

ACTION: Notice of availability of a legislative environmental impact statement (LEIS) for the proposed Bureau of Land Management-Forest Service Interchange.

SUMMARY: This LEIS assesses probable environmental consequences of a legislative action to transfer jurisdiction over certain Federal lands and minerals between the Department of the Interior, Bureau of Land Management and the Department of Agriculture, Forest Service.

The Interchange proposals (Proposed Action and alternatives) are expected to enhance public service, improve efficiency of the management of natural resources, and reduce agency costs. The following alternatives are analyzed:

Proposed Action (preferred alternative for which legislation is being submitted to Congress)
June 7 Alternative (original proposal released on June 7, 1985)
Intermingled Lands Alternative
Individual State Legislation Alternative
No-Action Alternative (continuation of present management).

Legislation would be needed to implement the Proposed Action or other alternatives except No Action.

FOR FURTHER INFORMATION CONTACT:

R. Max Peterson, Chief, USDA, Forest Service, P.O. Box 2417, Room 3006, South Building, Washington, DC 20013.

Robert F. Burford, Director, USDI, Bureau of Land Management 18th and C Streets, NW., Main Interior, Room 5660, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the LEIS may be obtained from the above offices, from State Offices of the Bureau of Land Management or Regional Offices of the Forest Service. Copies are also available for inspection at all field offices of the Forest Service and Bureau of Land Managment.

Dated: March 11, 1986.

Bruce Blanchard,

Director, Environmental Project Review, Department of the Interior.

Robert H. Tracy,

Assistant to the Chief, Forest Service, Department of Agriculture.

[FR Doc. 86–5653 Filed 3–13–86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C–18–85]

California; Filing of Plat of Survey

March 5, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 3 S., R. 27 E.

2. This supplemental plat of the *SW ¼* section 36, Township 3 South, Range 27 East, Mount Diablo Meridian, California was accepted December 12, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management and the United States Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–5584 Filed 3–13–86; 8:45 am]

BILLING CODE 4310-40-M

[C–1–86]

California; Filing of Plat of Survey

March 5, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 4S., R. 28 E.

2. This supplemental plat of section 2, Township 4 South, Range 28 East, Mount Diablo Meridian, California was accepted January 22, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management and the United States Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–5588 Filed 3–13–86; 8:45 am]

BILLING CODE 4310-40-M

[Group 850]

California; Filing of Plat of Survey

March 5, 1986.

1. The plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 4 S., R. 7 W.

2. This plat, representing the dependent resurvey of a portion of the boundaries of Rancho La Sierra, Lot 37, a portion of the north boundary, and a portion of the subdivisional lines in Township 4 South, Range 7 West, San Bernardino Meridian, Califorinn, under Group No. 850, California, was accepted February 20, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the United States Forest Service.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86–5585 Filed 3–13–86; 8:45 am]

BILLING CODE 4310-40-M

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Bureau of Reclamation

Garrison Diversion Unit, ND; Public Hearing on Draft Supplemental Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior hs prepared a draft supplemental environmental statement. This statement (INT–DES 86–9, dated March 6, 1986) was made available to the public on March 11, 1986.

This statement discusses impacts associated with modifications as proposed in the Garrison Diversion Unit Commission *Final Report* of December 20, 1986. Major modifications addressed in this draft supplemental environmental statement are (1) constructing and operating a 113,360-acre irrigation project; (2) developing lands for wildlife mitigation and enhancement; (3) restricting irrigation to lands that drain or can be drained into the Missouri River Basin; (4) deferring construction of Lonetree Reservoir and building Sykeston Canal; (5) constructing Glover Reservoir while preserving Kraft Slough; (6) providing water level control features for national wildlife refuges; and (7) providing for new and improved recreation areas. A public hearing will be held at 9:30 a.m., CST, April 15, 1986, at the Doublewood Ramada Inn, Bismarck, North Dakota.

Oral statements at the hearings will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comments have been heard.

Organizations or individuals desiring to present a statement at the hearing should contact the Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, Montana 59107–6900, telephone (406) 657–6605, or Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, North Dakota 58502, telephone (701) 255–4011, ext. 541, and announce their intention to participate prior to April 19, 1986.

Speakers will be scheduled according to the time preference mentioned in their letter to telephone request whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. The final date for receipt of material submitted for the record will be 60 days after filing.

Comments will be received from other parties present following the presentation of scheduled testimony if time permits.

If further information is needed, phone (701) 255–4011, ext. 541.

Dated: March 6, 1986.

Bruce Blanchard,
Director, Office of Environmental Project Review.

[FR Doc. 86–5591 Filed 3–13–86; 8:45 am]
BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30766]

Ashland Railway, Inc., Exemption From 49 U.S.C. 10901, 11301 and 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission under 49 U.S.C. 10505 exempts from the requirement of prior approval, under 49 U.S.C. 10901, 11301, and 11343, the lease, operation, and future purchase by Ashland Railway, Inc. (AR) of 37.1 miles of track from Community Improvement Corporation of Ashland, Ohio, an Ohio non-profit corporation, the issuance by AR of securities and the holding of common control by G. David Crane of AR and Pocono Northeast Railway, Inc., subject to standard employee protective conditions, respectively. A petition for exemption from 49 U.S.C. 11322 to hold interlocking directorships was dismissed as moot.

DATES: This decision is effective on March 13, 1986. Petitions to reopen must be filed April 2, 1986.

ADDRESSES: Send petitions referring to Finance Docket No. 30766 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Ellen M. Burger, 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

James H. Bayne,
Secretary.

[FR Doc. 86–5645 Filed 3–13–86; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket 30794]

Evansville Connecting Railroad Co.; Merger Exemption; Seaboard System Railroad, Inc.

The Evansville Connecting Railroad Company (ECR) and Seaboard System Railroad, Inc. (SBD), jointly filed a notice of exemption for ECR to merge into SBD.

ECR is a wholly-owned subsidiary of SBD and is currently operated and managed by SBD as an integral part of the SBD system. Consummation of the merger will promote corporate simplification and eliminate the expenses and burdens associated with maintaining ECR's separate corporate entity. ECR will be dissolved as a separate corporate entity, and all of its assets and liabilities will be visited in SBD. No reduction in transportation facilities are contemplated.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the merger will be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District,* 360 I.C.C. 60 (1979).

Decided: February 26, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 86–5646 Filed 3–13–86; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30790]

Indiana Harbor Belt Railroad Co.; Trackage Rights; Baltimore and Ohio Railroad Co.

The Baltimore and Ohio Railroad Company will agree to grant local trackage rights to The Indiana Harbor Belt Railroad Company between Hick

and Whiting, IN, a distance of approximately 2.6 miles. The trackage rights will be effective upon the commencement date specified in their trackage rights agreement.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at anytime. A filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 3, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 86–5647 Filed 3–13–86; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB–52 (Sub-No. 46)]

The Atchison, Topeka and Santa Fe Railway Company—Abandonment in Beauregard, Vernon, and Allen Parishes, LA; Findings

The Commission has issued a certificate authorizing the Atchison, Topeka and Santa Fe Railway Company to abandon its 42.06-mile rail line between DeRidder (milepost 39.36) and Oakdale (milepost 81.42), in Beauregard, Vernon, and Allen Parishes, LA. The abandonment certificate will beome effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Rail-Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 86–5835 Filed 3–13–86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to PERF and (2) the nature and objectives of PERF. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to PERF, and its general areas of planned activity, are given below.

PERF is an unincorporated association not organized for profit formed by and comprised of the following entities:

Amoco Oil Company, P.O. Box 400, Mail Station H–9, Naperville, Illinois 60566;
Atlantic Richfield Company, 515 South Flower St., AP 3325, Los Angeles, California 90071;
Champlin Petroleum Company, P.O. Box 7 (MS 2868), Fort Worth, Texas 76102;
Chevron Research Co., P.O. Box 1627, Richmond, California 94802–0627;
Conoco Inc., Petroleum R&D, P.O. Box 1267, Ponca City, Oklahoma 74603;
Exxon Research and Engineering Co., Route 22 East, Clinton Township, Annandale, New Jersey 08801;
Koch Refining Company, P.O. 64596, St. Paul, Minnesota 55164;
Mobil Research & Development Corp., Paulsboro Research Laboratory, Billingsport Road, Paulsboro, New Jersey 08066;
Murphy Oil USA, Inc., 200 Peach St., El Dorado, Arkansas 71730;
Occidental Petroleum Corporation, 10889 Wilshire Blvd., Suite 1500, Los Angeles, California 90024;
Pennzoil Company, Pennzoil Place, P.O. Box 2967, Houston, Texas 77252–2967;
Shell Development Company, P.O. Box 1380, Houston, Texas 77251–1380;
Standard Oil Company of Ohio, 4440 Warrensville Center Rd., Cleveland, Ohio 44128;
Sun Company, Inc., Sun Refining and Marketing Co., P.O. Box 1135, Marcus Hook, Pennsylvania 19061–0835;
Tenneco Inc., P.O. Box 2511, Houston, Texas 77001;
Texaco Refining & Marketing Inc., Port Arthur Research Laboratories, P.O. Box 1608, Port Arthur, Texas 77641;
Union Oil Company of California, 376 South Valencia Ave., P.O. Box 76, Brea, California 92621.

The objectives of PERF and its members and the area of planned activity in this project are to provide a forum for the collection, exchange, and analysis of research information relating to the development of technology for environmental pollution control and waste treatment for the U.S. Petroleum Industry, to disseminate such information, and to stimulate cooperative research and development in this field. PERF will continue in existence for an indefinite period of time. Any individual, firm, partnership, association or corporation that is engaged in the petroleum industry may apply for membership in PERF.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 86–5622 Filed 3–13–86; 8:45 am]
BILLING CODE 4410-01-M

Parole Commission

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Notice.

SUMMARY: The U.S. Parole Commission is implementing an experimental program to provide a substitute for Community Treatment Center residence for the 60 day period preceding the otherwise scheduled parole release date. This program, a joint effort of the U.S. Bureau of Prisons, the Probation Service of the U.S. Courts and the Parole Commission, is designed for prisoners who would otherwise qualify for Community Treatment Center residence but who have acceptable release plans and who do not require the support services provided by the Community Treatment Center. Pursuant to this program, a qualified and approved prisoner will have his parole release date advanced for up to 60 days on the condition that he remain at his place of residence during a specified period of time each night. This Special Curfew Parole Program will provide a significant resource savings to the Bureau of Prisons currently necessitated by budgetary constraints and deficit reduction legislation.

DATE: This program was put into effect on March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission is implementing an

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experimental program for advancing the parole release dates for certain prisoners on the condition that, once released, they remain in their places of residence during a specified period of time each night. This Special Curfew Parole Program is intended to serve as a substitute for Community Treatment Center residence for a period of up to 60 days for those prisoners who qualify for and are accepted into the program. The program represents the joint efforts of the Parole Commission, the Bureau of Prisons and the U.S. Probation Service.

To be considered for the program, a prisoner (A) must apply on a form provided by the Bureau, (B) must have an effective parole release date and an acceptable release plan, and (C) be deemed by the Bureau as qualified for Community Treatment Center residence but not requiring further Community Treatment Center support services. Prisoners who meet these criteria will be referred by the Bureau to the Commission for placement in the program.

The Parole Commission has provided the Regional Commissioners with the authority, pursuant to 28 CFR 2.28(e), to approve placement in the program. Upon approval of the Bureau's referral, the Commission will advance the parole release date by up to 60 days and process the case in an expedited manner.

The Parole Certificate issued in these cases will contain the special condition that, during the first up to 60 days of parole the parolee will remain at his place of residence between the hours of 9:00 p.m. and 6:00 a.m. each night unless he is given permission in advance by his Probation Officer to be elsewhere. Further, he will maintain a telephone without a call forwarding device at his place of residence for the above period.

The Probation Service will provide high activity supervision of the parolee during the Special Curfew Parple period, including at least weekly contact with the parolee as well as monitoring this special condition by random, periodic telephonic contacts. The U.S. Probation Officer supervising the case is to promptly report to the Commission violations of this special condition. Failure to comply with this special condition may result in imposition of Community Treatment Center residence as a condition of parole, or revocation of parole and return to prison, as the circumstances warrant.

The U.S. Probation Officer supervising the case will be authorized to grant exceptions to the special condition for good cause (e.g., to permit overtime work, or an evening for shopping) consistent with the response of the parolee to supervision.

The Parole Commission is implementing this program as a cost reduction procedure through which the Bureau of Prisons is provided the opportunity to reduce the number and expense of inmates confined in Community Treatment Centers. This scaling down of Community Treatment Centers is necessitated by current budgetary constraints imposed by deficit reduction legislation. The Special Curfew Parole Program will provide considerable savings to the Bureau without reducing the control and supervision over these prisonert. Combining the screening process for identifying participants with the high activity supervision to be provided to those accepted will result in no diminishment to the protection of the public. Currently, prisoners residing in Community Treatment Centers, who do not require the support services there provided, leave the facilities each morning and do not have to return until, in some instances, as late as 11:00 p.m. Further, residents may be eligible for unsupervised weekend passes. Thus, those accepted into the Special Curfew Parole Program will be receiving at least as much scrutiny as they would if they resided in the Community Treatment Centers.

Dated: March 3, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86-5486 Filed 3-13-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Allen Steel Co. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretay of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later then March 24, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 24, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Aministration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner/union workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Allen Steel Co. (union)	Salt Lake, UT	1-29-86	1-21-86	TA-W-17,241	Structural steel fabrication.
ASARCO, Inc. New Market Mine (union)	New Marker, TN	2-21-86	2-19-86	TA-W-17,242	Zinc mining.
Carol Company, Div. of Shaer Shoe Corp. (workers)	Lowell, MA	2-27-86	2-21-86	TA-W-17,243	Women dress shoes.
Dull Duds (workers)	Huddleston, VA	2-24-86	2-20-86	TA-W-17,244	Ladies suits, dresses and maternity tops.
Fieldcrest-Cannon, Inc. (workers)	Concord, NC	2-24-86	2-19-86	TA-W-17,245	Bedspreads, drapery material.
International Coal Processing Corp. (workers)	Slickville, PA	1-17-86	1-13-86	TA-W-17,246	Washes coal.
Jack Rogers, Inc. (workers)	Miami, FL	1-7-86	12-29-85	TA-W-17,247	Shoes-womens.
John L. Renninger (union)	Quakertown, PA	2-24-86	2-21-86	TA-W-17,248	Ladies slacks and shirts.
Lake Region Lumber Co. (workers)	Casco, ME	2-21-86	2-10-86	TA-W-17,249	Lumber products.
On Site Machine Service, Inc. (company)	Farmington, NM	2-24-86	2-1-86	TA-W-17,250	Uranium mining.

APPENDIX—Continued

Petitioner/union workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ramco Enterprises (workers)	Puyallup, WA	2-26-86	2-21-86	TA-W-17,251	Telephones, switches, jacks, etc.
Ree Bee Sportswear Inc. (workers)	New York, NY	2-20-86	2-13-86	TA-W-17,252	Swim suits.
Silver King Mines Inc. North and South Morton Ranch Uranium Project (workers).	Casper, WY	2-25-86	2-13-86	TA-W-17,253	Uranium mine and milling.
UNC, Mining and Milling (workers)	Gallup, NM	2-24-86	2-21-86	TA-W-17,254	Uranium mining and milling.
Wiener Clothing Co. (union)	Silverdale, PA		2-21-86	TA-W-17,255	Ladies slacks and shirts.

[FR Doc. 86-5666 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16, 568]

Amtex, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 21, 1985 in response to a worker petition received on October 15, 1985 which was filed on behalf of workers at Amtex, Incorporated, Cleveland, Tennessee.

A negative determination applicable to the petitioning group of workers was issued on September 18, 1985 (TA-W-15, 857). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-5669 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16, 512]

AT&T Technologies, Inc.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 7, 1985, in response to a worker petition which was filed by the Communications Workers of America on behalf of workers at AT&T Technologies, Inc., Berkeley Heights, New Jersey.

The Berkeley Heights, New Jersey location is the corporate headquarters for AT&T Technologies, Inc.

In the course of the investigations, it was ascertained that it was not the union's, and petitioner's intent to file a trade adjustment assistance petition on behalf of the headquarters staff of AT&T Technologies, Inc. The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-5667 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,233]

Martin Marietta Energy Systems, Inc.; Negative Determination Regarding Application for Reconsideration

By an application dated January 22, 1986 the Oil, Chemical & Atomic Workers (OCAW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at Martin Marietta Energy Systems, Incorporated, Oak Ridge, Tennessee. The notice of negative determination was published in the **Federal Register** on January 7, 1986 (51 FR 694).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the subject uranium enrichment plant is being phased out because of its inability to compete with enriched uranium prices of foreign countries and production is being curtailed. The union also claims that two domestic customers will be purchasing enriched uranium from Europe in January, 1986.

The findings in the Department's investigation for adjustment assistance did not substantiate that increased imports contributed importantly to worker separations. U.S. imports of enriched uranium were negligible in 1983, 1984 and 1985. The Department of Energy (DOE) controls the uranium enrichment production in the U.S. through contracts with private companies like Martin Marietta Energy Systems. A substantial amount of DOE's uranium enrichment sales was lost to the European market in recent years. Loss of sales to the export market would not be a basis for certification.

The findings also show that purchases by the two domestic customers who have allegedly contracted with foreign countries for enriched uranium were insignificant in relation to domestic production.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of March 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-5668 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16, 298]

Oneida, Ltd.; Affirmative Determination Regarding Application for Reconsideration

By an application dated February 12, 1986, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at the Executive Offices of Oneida Ltd., Oneida, New York. The determination was published in the **Federal Register** on January 28, 1986 (51 FR 3523).

The application claims that the Department did not take into consideration all the employment at the

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Executive Offices of Oneida Ltd., Oneida, New York.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore granted.

Signed at Washington, DC, this 5th day of March 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-5670 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications, Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on March 1, 1986.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, 601 D Street, NW., Attention: TEESS, Washington, DC 20213. Telephone: 202-376-6191.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce susbstantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 CFR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 11, 1985 (50 FR 41606).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor suprlus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the annual list of labor surplus areas, effective March 1, 1986.

The following additions to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on March 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas (March 1, 1986).

Labor surplus area	Civil jurisdiction included
Arkansas: Calhoun County.	Calhoun County.
Florida: Franklin County	Franklin County.

[FR Doc. 86-5665 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

State Employment Security Agency System Administrative Financing; Roundtable Workgroup Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and purpose for a meeting of the Roundtable workgroup on the administrative financing mechanism for the State Employment Security Agency programs.

DATE: March 25, 1986, 9:00 a.m. to 4:00 p.m..

ADDRESS: Frances Perkins Building, Room S2217, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213 (202/376-6636).

SUPPLEMENTARY INFORMATION: The Department of Labor has initiated a thorough policy review of the current administrative financing of State Employment Security Agency programs. As part of this review, four public meetings were held in January and written comments were solicited by notice published in the **Federal Register** on December 20, 1985 (50 FR 51955). As part of the comment process, a Roundtable workgroup has also been established, composed of thirteen members: Four public sector members and three members each from the business, labor and State government sectors. The purpose of this first meeting of the Roundtable workgroup is to review the results of the public consultation process and to formulate recommendations to the Department on principles and options for responding to problems raised by the comments received.

Signed at Washington, DC, on March 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-5661 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

Summary of Public Comments on State Employment Security, Agency System Administrative Financing

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of summary of public comments.

SUMMARY: This notice announces the summary of public comments received in response to notices published in the **Federal Register** on December 20, 1985, (50 FR 51955) concerning State Employment Security Agency administrative financing issues.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213 (202/376-6636).

SUPPLEMENTARY INFORMATION: Public meetings were held by the Department of Labor in Dallas, Texas, Chicago, Illinois, Washington, DC, and San Francisco, California, in January 1986. There were 198 registered attendees at the meetings, of whom forty-nine provided oral comments. Additionally, written comments from eighty-four respondents were received by the Department. Comments were received from a wide variety of parties interested in administrative financing of the State Employment Security Agency system, including State agencies, State governors, business and labor groups, and other parties. Respondents identified problems in the administrative financing process and made recommendations for short-term and long-term solutions

The following tables provide a summary of these comments, indicating the type of group responding. The Department of Labor will review these comments in consultation with a Roundtable workgroup established for this purpose.

Notice of the Department's decisions will be published in the **Federal Register.**

Signed at Washington, DC, on March 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

State Employment Security Agency, Administrative Financing Initiative Summary Analysis of Comments

	Total	SESAs	Governors	Business	Labor	Other
Table A: Problem Identification						
Disincentives for productivity	48	32	11	1	1	3
Insufficient funding for program/projects	39	23	7	2	3	4
Quarterly recapture of unused funds	34	22	10		2	
Cost Model MPU reductions	31	21	7		1	2
No fixed cost recognition for NPS, AS&T, support	31	21	7		2	1
Not responsive to actual SESA needs	23	10	5	3	1	4
Too much federal intervention/monitoring	18	9	8			1
Use of "Low Quarter" workload in budget formulation/allocation	16	11	5			
Too much detail and complexity in budget process	16	10	5	1		
Questionable accuracy of federal workload forecasts	13	7	5		1	
Wide variation in Cost Model MPUs	12	9	3			
Not enough SESA participation	10	8	1			1
ESAA reserves too high	9	2	3	1		3
Trust Funds part of the unified budget	8	3	2		1	2
No recognition of FUTA contributions in allocation formula	8	1	2	4		1
Lack of flexibility for SESAs	7	1	2	3		1
Lower funding rate of contingency resources	7	5	2			
Inadequate/fluctuating funds for Benefit Payment Control	7	5	2			
Slow response on supplemental budget requests	7	6	1			
Contingency funding on lesser of earned/used resources	6	4			2	
Different fiscal years among programs	5	4	1			
No recognition of administrative funding impact on Trust Fund	5	3				2
Taxable wage base too low	2	2				
Compartmentalization of UI/JS	1					1
Instability of resources from year to year	1			1		
Table B: Short-Term Solutions						
No recapture/annual carry-over of unused funds	59	38	15	2	2	2
Give SESAs more flexibility; bottom-line authority	45	22	13	3	2	5
Recognize fixed costs in NPS, AS&T, support, etc	37	23	11		1	2
Use more realistic workload forecasts	29	16	10	2		1
Higher funding of contingency resources	28	19	8			1
Fully fund MPUs	28	17	9	1	1	
Adequate funding for administrative financing as whole	23	16	3	1	2	1
Incentives for productivity	17	12	4			1
Pay for above-base resources earned but not used	17	10	7			
Minimum level of funding	13	6	4	2	1	
Less federal monitoring	10	8	1			1
SESA participation in allocation/execution of budget	8	4	3			1
Reflect realistic SESA variations in allocation	8	7				1
Improve Cost Model Management System	7	5	2			
Simplification of program provisions	5	4				1
Fund new cost accounting system	5	4	1			
Training and technical assistance for SESAs	3	1			1	1
Consistency between formulation and allocation methods	3	1	2			
Better timeliness on SBR's	3	2				1
Exempt UI from OMB ruling on paying interest on leases	3	3				
ETA play advocate role with Congress	1	1				
Reduce number of contingency categories	1	1				
Determine adequate cost-effective measures for JS	1		1			
Table C: Long-Term Solutions						
Oppose devolution	33	17	8	2	4	2
Exempt Trust Funds/FUTA from unified budget	27	14	7	2	1	3
Block-grant allocation	19	14	4	1		
SESA participation in budget formulation	19	8	6	1	1	3
Provide separate sinking/loan fund for automation	18	13	5			
Fiscal Year July 1 to June 30; fund UI on 2-year cycle	11	8	3			
Devolution	10	6	2	2		
Lower ESAA reserves held	9	5	2		1	1
Continue discussion on devolution	8	5	3			
Relate FUTA contributions to SESA funding	6	2	2	2		
Give FUTA credits in SESAs exceeding performance standards	5	1	4			
Reduce performance standards; let SESAs set standards	5	4				1
Fund TAA from general revenues	4	4				
Reimbursable employers to contribute administrative costs	3	3				
Recognize integration of JS and UI	3		1		1	1
Form national commission to study UI reform	3	1	1	1		
Increase taxable wage base	2	2				
Federal/SESA matching grants for UI administration	2	1				1
Develop national plan/network for automation	2					2
Use Penalty & Interest funds for additional resources	1	1				

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	Total	SESAs	Governors	Business	Labor	Other
Increase general revenue share of JS, VES, LMI	1	1				
Cap ESAA with excess funds to JS or employers	1					1
Devolution with modifications	1	1				
Alternative funding sources: payroll/employee tax, state source	1					1
Reduction of employer taxes if SESA administrative funds cut	1	1				

Footnote: Definition of Acronyms Used: AS&T Administrative Staff and Technical Services, ESAA Employment Security Administration Account, ETA Employment and Training Administration, FUTA Federal Unemployment Tax Act, JS Job Service, LMI Labor Market Information, MPU Minutes Per Unit, NPS Nonpersonal Services, OMB Office of Management and Budget, SBR Supplemental Budget Request, SESA State Employment Security Agency, TAA Trade Adjustment Assistance, UI Unemployment Insurance, VES Veteran Employment Service.

[FR Doc. 86-5662 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GOP) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II:		
Ohio	OH86-30	pp. 795a–795b.
Ohio	OH86-31	pp. 795c–795d.
Volume III:		
North Dakota	ND86-3	pp. 212a–212b.
North Dakota	ND86-4	pp. 212c–212f.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:		
New York	NY86-1 (Jan. 3, 1986).	p. 642.
New York	NY86-10 (Jan. 3, 1986).	pp. 725–728.
New York	NY86-12 (Jan. 3, 1986).	pp. 743–745.
New York	NY86-17 (Jan. 3, 1986).	pp. 776–779.
West Virginia	WV86-2 (Jan. 3, 1986).	pp. 1116–1137.
West Virginia	WV86-3 (Jan. 3, 1986).	pp. 1139–1150.
Volume II:		
Iowa	IA86-6 (Jan. 3, 1986).	p. 52.
Indiana	IN86-1 (Jan. 3, 1986).	pp. 220, 222.
Indiana	IN86-2 (Jan. 3, 1986).	pp. 226–227. pp. 234–235. p. 237. pp. 243–244.
Indiana	IN86-3 (Jan. 3, 1986).	pp. 251–253. pp. 256–257.
Indiana	IN86-4 (Jan. 3, 1986).	pp. 263–264.
Indiana	IN86-5 (Jan. 3, 1986).	pp. 274–276.
Indiana	IN86-6 (Jan. 3, 1986).	pp. 279–280. p. 284, pp. 286–287, p. 292.
Ohio	OH86-3 (Jan. 3, 1986).	p. 698.
Ohio	OH86-12 (Jan. 3, 1986).	p. 719.
Ohio	OH86-16 (Jan. 3, 1986).	p. 731.
Ohio	OH86-20 (Jan. 3, 1986).	p. 735.
Ohio	OH86-23 (Jan. 3, 1986).	p. 741.
Texas	TX86-14 (Jan. 3, 1986).	p. 852.
Listing by decision (index).		p. liv.
Listing by location (index).		p. xxxi. pp. xxxvi–xxxix,
Volume III:		
Alaska	AK86-1 (Jan. 3, 1986).	pp. 2–5, p. 8.
California	CA86-2 (Jan. 3, 1986).	pp. 44–47. pp. 50–52.
Hawaii	HI86-1 (Jan. 3, 1986).	pp. 120–123.
Washington	WA86-3 (Jan. 3, 1986).	p. 340.
Washington	WA86-7 (Jan. 3, 1986).	p. 362.
Listing by decision (index).		p. xxvii.
Listing by location (index).		p. xxii, pp. xxiv–xxvi.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of March 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-5367 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated August 23, 1985, from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State Standards Amendment comparable to Table Z-1 (Ethylene Oxide), 29 CFR 1910.1000, as published in the **Federal Register** (49 FR 25796) dated June 22, 1984. These State standards, which are contained in AAC 04.010(a), Table 1-1, were amended after publication on April 15, 1985, in Statewide media. The public comment period was open for thirty days by Jim Robison, Commissioner, under authority vested by AS 19.60.020. No requests for public hearings were received.

2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard and OSHA has determined that the State standard is identical. OSHA therefore approves this standard amendment.

3. Location of supplement for inspection and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.
2. The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be unnecessary.

This decision is effective March 14, 1986.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 20th day of February 1986.

James W. Lake,

Regional Administrator.

[FR Doc. 86-5871 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-26-M

Arizona State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator-OSHA) under a delegation of authority from the Assistant Secretary of Labor for

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Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and adoption of Subpart CC to Part 1952 containing the decision.

The Arizona plan provides for the adoption of Federal standards as State Standards after public hearing. In response to Federal Standard changes, the State has submitted its changes by letter, with attachments, dated October 1, 1985, from Larry Etchechury, Director, to Russell B. Swanson, Regional Administrator, and incorporated as part of the plan. The State standards reflect Federal standard changes to 29 CFR 1910.1047, Ethylene Oxide (June 22, 1984, 50 FR 25796 and March 12, 1985, 50 FR 9800) and 29 CFR 1910.241, definitions (February 1, 1985, 50 FR 4648). These standards are contained in the Arizona Occupational Safety and Health Standards, which were adopted after public hearings and the resolution adopted by the Industrial Commission of Arizona, Division of Occupational Safety and Health Act of 1972.

2. Decision

Having reviewed the State submission in comparison with Federal standards, it has been determined that the State Standards are identical to the comparable Federal standards and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, AZ 85007; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Arizona plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reasons:

The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

The standards were adopted in accordance with the procedural requirements of State law which include public comment and further public participation would be repetitious.

The decision is effective March 14, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at San Francisco, California, this 17th Day of October, 1985.

Hamilton H. Fairburn,

Acting Regional Administrator.

[FR Doc. 86–5672 Filed 3–13–86; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Admininstrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the "at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letters dated January 9, 1985, January 10, 1985, and June 11, 1985, from William J. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, amendments to State standards comparable to: Occupational Exposure to Ethylene Oxide, 29 CFR 1910.1047 as published in the **Federal Register** (49 FR 25734) on June 22, 1984; Table Z–1 (Ethylene Oxide), 29 CFR 1910.1000 as published in the **Federal Register** (49 FR 25734) on June 22, 1984; Special Provisions for Air Contaminants (Ethylene Oxide), 29 CFR 1910.19 as published in the **Federal Register** (49 25734) on June 22, 1984; Change in Effective Date and Approval of Information Collection Requirements (Ethylene Oxide), 29 CFR 1910.1047 as published in the **Federal Register** (50 FR 9800) March 12, 1985.

On November 1, 1984, November 20, 1984, and April 16, 1985, Notices of Proposed Amendment of Rules were mailed to those persons on the State's mailing list established pursuant to OAR 436–90–505. The Notices were published in the State Administrative Rules Bulletin on November 1, 1984; November 15, 1984, and April 15, 1985. These actions failed to elicit requests for public hearings. The State's rules pertaining to Occupational Exposure to Ethylene Oxide and Special Provisions for Air Contaminants (Ethylene Oxide), contained in OAR Chapter 437, Division 156, were adopted on December 20, 1984, and become effective December 21, 1984. The State's rule pertaining to Table Z–1 (Ethylene Oxide), contained in OAR Chapter 437, Division 114, was adopted on December 20, 1984, and became effective January 1, 1985. The State's rule pertaining to a change in the Effective Date and Approval of Information Collection Requirements (Ethylene Oxide), contained in OAR Chapter 437, Division 156, was adopted and became effective May 21, 1985.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards amendments are substantially identical to the comparable Federal standards amendments. The State has included Special Provisions for Air contaminants (Ethylene Oxide), comparable to 29 CFR 1910.19(h), within the scope of Occupational Exposure to Ethylene Oxide, OAR Chapter 437, Division 156. Other differences are the incorporation of the State's rule numbering system, references to other State rules, and editorial changes. The above State standards have been reviewed and

compared with the relevant Federal standards and OSHA has determined that the State standards are at least as effective as the comparable Federal standards as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expdite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 14, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 11th day of February 1986.

James W. Lake,

Regional Administrator.

[FR Doc. 86–5673 Filed 3–13–86; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. 5764 et al.]

Proposed Exemptions; North Dakota Automobile and Implement Dealers Insurance Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

North Dakota Automobile and Implement Dealers Insurance Trust (the Trust) Located in Fargo, North Dakota

[Application No. L–5764]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b) (1), and (b) (2) of the Act shall not apply to the proposed sale of certain tangible personal property (the Property) by the Trust to Association Services Inc. (ASI), a wholly-owned subsidiary of the Automobile Dealers Association of North Dakota (ADAND) and the North Dakota Implement Dealers Association (NDIDA, collectively, the Associations), provided that the sales price is not less than fair market value of the Property at the time of the sale.

Summary of Facts and Representations

1. The Trust was created in 1949 by ADAND and by NDIDA for the purpose of providing health and welfare benefits. Some of the members of ADAND and NDIDA are automobile and implement dealerships (the Dealerships) who are employers who maintain separate plans (the Separate Plans) the assets of which are held in the Trust.[1] There are

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[1] See Advisory Opinion 85–42A dated December 16, 1985, which held that the Trust was not a plan itself but that each employer member of ADAND and NDIDA which has elected to provide benefits for its employees through a subscription agreement with the trustees of the Trust would be maintaining its own separate employee welfare benefit plan for pusposes of Title I of the Act.

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currently 2,300 participants in the Separate Plans. Individual owners of the Dealerships may be participants under the Separate Plans. As of September 30, 1984, the Trust held plan assets totalling $1,830,904.

2. Nine individuals serve as trustees of the Trust (the Trustees). Four Trustees are appointed by the board of directors of ADAND, four are appointed by the board of directors of NDIDA, and one additional Trustee is elected by the other eight Trustees. Four of the nine Trustees, as of November 16, 1984, are officers and/or directors of ADAND; two others are either an officer or a member of the executive committee of NDIDA; and the three remaining Trustees are not currently officers or directors of either of the Associations. All of the Trustees are owners and/or officers of the Dealerships:

3. Prior to October 1, 1982, the Trust oprated on an uninsured or only partially insured basis and developed claim reserves (the Reserves). After October 1, 1982, the Trust became fully insured. Because it is represented that there is no need for the Reserves and that the Reserves should not be allowed to further accumulate, the Trustees have determined to liquidate the Trust. To accomplish liquidation, the Trust must dispose of the Property, which consists of office furniture (the Furniture), an IBM System 34 office computer (the Computer), and certain software (the Software). The Software is currently used with the Computer to process the billing of premiums to participants and their employers, to keep the records of claims received and paid, and to prepare financial reports on the operations of the Trust. The transaction for which an exemption is requested is the cash sale by the Trust of the Property to ASI, which will be created as a wholly-owned subsidiary of the Associations.[3] The proposed purchase price for the Property totals $60,421, which represents approximately 3.3% of the Trust's assets.

4. The Furniture was inventoried and appraised on November 26, 1984, by Mr. Jerry Olmstead, Vice President of the Pierce Company, a dealer in office equipment and supplies in Fargo, North Dakota, at a retail fair market value which totals $31,720. It is represented that ASI will pay the Trust the retail price, even though the Furniture is used, because the convenience of purchasing the existing Furniture will save ASI the time and money which would otherwise be expended in searching for new furnishings. It is represented that neither of the Associations, ASI, nor any one of the Dealerships have any ownership interest in the Pierce Company, nor is the Pierce Company a member of the Associations.

5. Mr. Bruce Duncomb, representative for Midland Financial in Minneapolis, Minnesota, Mr. Jack DeRosa, account executive of Source Data Products, Inc. in Santa Cruz, California, and Mr. Terrence P. Lyne, purchasing representative of the Datacomp Group in Hinsdale, Illinois, each offered written estimates of the fair market value of the Computer at $4,050, $3,000, and between $2,100 to $2,500, respectively. It is represented that ASI will pay the Trust $3,525 for the Computer which is the average of the two highest estimates. The Associations, the member Dealerships in the Associations, the individual owners of Dealerships which are members in the Associations, and the Trustees do not own directly or indirectly any interest in any of the three companies which offered estimates, of the value of the Computer, nor are they responsible for more than 1% of the annual business revenues of any of the three companies.

6. The Software was appraised on November 21, 1984, by Mr. Dennis Lowther (Mr. Lowther) of the Lowther Corporation Computer Services (the Lowther Corp.), located in Fargo, North Dakota, at a total value of $25,176. This amount includes the original developmental cost to the Trust for system design, programming, and operator training. It is represented that the Software has no resale value to a third party other than ASI. ASI would have to pay replacement costs in order to duplicate the existing Software. According to Mr. Lowther, the investment required to replace the Software would be considerably less than $25,176, because the operators are already trained, and the system has been designed. Therefore, to the extent that the Trust is reimbursed the original developmental cost of the Software, the Trust will realize an amount in excess of the replacement value of the Software. It is represented that neither of the Associations, ASI, nor the Dealerships have any ownership interest in the Lowther Corp., nor is the Lowther Corp. a member of the Associations.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (1) it is a one time cash sale that will require no on-going supervision; (2) it is necessary to facilitate the liquidation of the Trust; (3) the sale to ASI will save the Trust the costs and delays associated with locating other pruchasers; and (4) the price to be paid by the Trust for the Property represents the total of the retail value of the Furniture, the fair market value of the Computer, and the developmental value of the Software.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Johnson & Swanson Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D-6351]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed purchases, from time to time during a five-year period, for participant-directed accounts (the Directed Accounts) under the Plan from such participants (the Requesting Individuals) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Requesting Individuals to Johnson & Swanson (the Employer), in which the Requesting Individuals are either general partners or officers and employees, provided the purchase price is not more than the fair market value of the Notes on the date of each purchase; and (2) the continued holding for the Directed Accounts of such Notes until they are fully paid, provided the terms of such transactions are at least as favorable to the Directed Accounts as the terms the Directed Accounts could obtain in similar transactions with an unrelated party.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to the purchase of any Note. Subsequent to the expiration of this exemption, Notes purchased during this five-year period may be held for the Directed Accounts until the Notes are fully paid. Should the applicants wish to continue the proposed purchase transactions beyond the five-year period, they may submit another application for exemption.

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[3] The Department currently has under consideration an advisory opinion request from the applicants herein concerning, among other things, the distribution of the assets of the Trust upon liquidation. This exemption, however, extends relief solely for the sale of the Property by the Trust to ASI.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan providing benefits to self-employed individuals, as well as common-law employees. As of September 30, 1984, the Plan covered 249 participants. The amount of the aggregate vested account balances under the Plan of all Requesting Individuals was $2,792,052.46 as of September 30, 1985. RepublicBank Dallas, N.A. (the Trustee) is the trustee of the Plan, but an investment committee (the Investment Committee), appointed by the Employer, directs Plan investments. However, the Plan expressly provides, in pertinent part, for individual accounts and that each participant whose aggregate vested account balances under the Plan equal at least $5,000 may direct the Investment Committee to transfer all or part of the vested amounts credited to his accounts under the Plan to a Directed Account, to be invested by the Trustee in accordance with such participant's direction, provided such transfers exceed specified amounts. The Plan further requires the Investment Committee to allocate and credit solely to a participant's Directed Account the income, losses, appreciation, and depreciation attributable to such account and to charge all expenses associated with a transaction directed by a participant regarding his Directed Account to such participant.

2. The Requesting Individuals are: Mr. Jay E. Markley, Manager of Planning of the Employer; Mr. Gary W. Eden, Business & Finance Manager of the Employer; and 56 of the general partners of the Employer (named in an attachment to the exemption application). As of May 31, 1985, the Employer had 69 active partners. All of the Requesting Individuals participate in the Plan and none of them are owner-employees within the meaning of section 401(c)(3) of the Code. As general partners and officers of the Employer, they are fully informed of the economics and financial outlook for the Employer, according to the applicants.

3. Information submitted by the applicants shows that the Trustee is not related in any way to most of the Requesting Individuals and has only *de minimus* relationships with the remaining Requesting Individuals and the Employer. For example, seven Requesting Individuals have loans from the Trustee aggregating less than 0.0035% of the Trustee's total outstanding loans as of September 30, 1985; four Requesting Individuals and the Employer maintain checking or other accounts with the Trustee, aggregating less than 0.0001% of the Trustee's total deposits as of September 30, 1985; one Requesting Individual owns less than 0.003% of the shares outstanding of RepublicBank Corporation, the parent corporation of the Trustee. During its fiscal year ended September 30, 1985, the Employer performed legal services for the Trustee in the amount of $63,000 and also performs legal services for various business entities invloving an outside director of RepublicBank Corp., Mr. David Florence. The other *de minimums* relationships described by the applicant are even less substantial.

4. In July 1983, renovation construction began on a Dallas historical land market at 900 Jackson Street, in which the Employer intended to lease space to house its main business offices. The Employer, as principal lessee, undertook to furnish on its own the leasehold improvements for its new offices. To raise cash to fund the leasehold improvements for its new offices, the Employer borrowed certain amounts from InterFirst Bank Dallas, N.A. (InterFirst) and additional amounts from the Requesting Individuals. Each of the partners of the Employer, Mr. Gary W. Eden, and Mr. Jay E. Markley made funds available to the Employer and received in return four Notes. The Notes are unsecured, bear interest on their original stated principal amounts at the rate of 14% per annum, and are amortized over 10 years in equal quarterly installments of principal and interest, begining September 13, 1984 and ending August 31, 1995, when all Notes must be fully paid. The Notes range in original principal amount from $2453 to $17,709 and the aggregate principal under the Notes equals $1,993,613.

5. Because of the high yield on the Notes and the Requesting Individuals' confidence in the credit of the Employer as payer of the Notes, the Requesting Individuals wish to sell, from time to time, some of all or their Notes to the Trustee for allocation to their Directed Accounts. Such sales would be limited so that at no time would more than 25% of a Requesting Individual's Plan accounts be invested, immediately after such a sale, in the Notes. If the proposed exemption is granted, sale of all Notes will occur on the same date, no more freqently than quarterly, as determined by the Plan's Investment Committee; all such sales will occur during the five-year period following the date the exemption is granted. No partner or employee of the Employer who holds Note will in any sense be required to sell any such Notes to the Plan. All such sales will be entirely voluntary. All sales will be made on the basis of the fair market value of the Notes on the date of each purchase. The purchase price of a Notes will be paid in cash in a single sum on the date of the purchase. Pursuant to section 14.05 of the Plan, the expenses associated with the making of this directed investment will be charged to the Requesting Individuals.

6. The Trustee will determine the fair market value of the Notes on the dates of purchase for the Directed Accounts. InterFirst, which has detailed current and historical records of the financial status of the Employer, the maker of the Notes, will be permitted, but not required, to perform an initial valuation of the Notes, as would the Plan's investment manager, Brown Brothers Harriman & Co. Either such initial valuation would be subject to final approval of the Trustee, who will have final responsibility for the valuation of the Notes. The applicants expect this arrangement to reduce valuation costs somewhat.

7. InterFirst, an independent lender, has been willing to lend to the Employer to fund its capital expenditures for furnishing its new offices on terms substantially identical to those contained in the Notes. InterFirst has represented that it continues to rate the Employer's credit worthiness as excellent. The Trustee will be responsible for monitoring the Notes that are purchased for the Directed Accounts and for enforcing collection thereon.

8. In order to secure adequately any Notes purchased for the Directed Accounts, as described above, the following procedures will apply;

(a) With respect to the initial purchase of Notes for the Directed Accounts, the Employer and/or the Requesting Individuals shall secure a single letter of credit from InterFirst in an amount equal to the sum (the Secured Sum) of (i) 100% of the principal of the Notes actually to be purchased for the Directed Accounts, plus (ii) the amount of interest accruable for two months on such Notes.

(b) If additional Notes are purchased at any time for the Directed Accounts, either the existing letter of credit described in (a), above, shall be increased or additional letters of credit shall be obtained, if necessary, so that immediately after each purchase of additional Notes, the letter(s) of credit securing all Notes held for the Directed Accounts shall equal the Secured Sum computed by reference to all such Notes. If possible, additional Notes purchased for the Directed Accounts shall also be secured by the same letter of credit

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described in (a), above, through an increase in the coverage thereof or through a renewal and increase thereof. If such additional Notes cannot be secured by said letter of credit, the Employer and the affected Requesting Individuals shall secure additional letter(s) of credit securing such additional Notes as described above. Such additional letter(s) of credit may have terms of less than one year so that (i) their expirations may conincide with the expiration(s) of previously issued letter(s) of credit, and (ii) all letters of credit expiring on the same date can be renewed in the form of a single letter of credit. Any additional letters of credit may be obtained from banking institutions other than InterFirst which are insured by the Federal Deposit Insurance Corporation (FDIC). (InterFirst is insured by the FDIC.)

(c) In all events, the letter(s) of credit shall provide that upon the occurrence of a default in the payment of principal or interest on any Note secured thereby, and upon the failure of the Employer to cure such default within 21 days, the issuer of the letter of credit shall, upon notice from the Trustee, immediately pay the Trustee the amount then due upon such Notes, including any and all principal accelerated in consequence of the default. Each letter of credit shall adequately identify the Notes secured thereby.

(d) Except in the case of a letter of credit with an initial term of less than one year, as described in (b), above, the letter(s) of credit shall be renewed annually. Letters of credit with an initial term of less than one year shall be renewed upon expiration. Renewal letters of credit may be obtained from banking institutions other than InterFirst which are insured by the FDIC. If as a result of purchases of Notes for the Directed Accounts during a year more than one letter of credit is outstanding with any single banking institution, the Requesting Individuals and the Employer may, if permitted by such banking institution, and as described in (b), above, combine the letters of credit into a single letter of credit.

(e) Each Requesting Individual shall individually be charged his pro rata part of the cost of obtaining the letter(s) of credit, and no part of the assets of the Plan shall be used to cover any part of such cost.

9. In summary, the applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the purchase price will equal the fair market value of the Notes on the purchase dates as determined by the Trustee, an independent bank; (b) InterFirst, an otherwise substantially unrelated commercial bank, has been willing to lend to the Employer on terms substantially identical to those provided in the Notes; (c) no commissions or other selling expenses will be charged to the Plan; (d) no more than 25% of a Requesting Individual's aggregate account balances under the Plan immediately after a purchase of Notes will be invested in Notes; (e) the Trustee will be responsible for monitoring the Notes that are purchased for the Directed Accounts and for enforcing collection thereon; and (f) all Notes that will be purchased for the Directed Accounts will be secured by letter(s) of credit, issued by InterFirst and/or other banking institution(s) insured by the FDIC, in an aggregate amount equal to the sum of the principal amounts of such Notes plus interest accruable thereon for two months; and (g) the only Plan participants affected by the proposed transaction will be the Requesting Individuals and they desire the proposed transaction to be effected.

Notice to Interested Persons

Since the only Plan assets involved in the proposed transaction are those in the Requesting Individuals' accounts under the Plan and they are the only Plan participants affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **Federal Register**.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

John R. Johnson, P.C. Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D-6361]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed purchases, from time to time during a five-year period, by the Plan from John R. Johnson, P.C. (the Employer) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Employer to Johnson & Swanson (the Partnership), in which the Employer is a general partner, provided the purchase price is not more than the fair market value of the Notes on the date of each purcahse; and (2) the continued holding by the Plan of such Notes until they are fully paid, provided the terms of such transactions are at least as favorable to the Plan as the terms it could obtain in similar transactions with an unrelated party.

Because Mr. Johnson R. Johnson (Mr. Johnson) is the sole owner of the Employer and the sole participant in the Plan, the Plan is subject to Title II of the Act only, and is not subject to Title I (see 29 CFR 2510.3-3(b) and (c)).

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to the purchase of any Note. Subsequent to the expiration of this exemption, Notes purchased during this five-year period may be held by the Plan until the Notes are fully paid. Should the applicant wish to continue the proposed purchase transactions beyond the five-year period, he may submit another application for examption.

Summary of Facts and Representations

1. The Plan is an individual account plan in which only Mr. Johnson participants and which had assets totalling approximately $275,923 as of December 6, 1985. Mr. Johnson is the sole owner and sole employee of the Employer and the trustee of the Plan. The Employer receives services from certain employees of the Partnership who are eligible to participant in the Partnership's Cash or Deferred Profit Sharing Plan (the Partnership Plan). The Employer is a general partner in the Partnership, which is a Texas general partnership engaged in the practice of law and which had 69 active partners as of May 31, 1985. As the sole owner and sole employee of the Employer, a general partner of the Partnership, Mr. Johnson is fully informed of the economics and financial outlook of the Partnership, according to the applicant.

2. In July 1983, renovation construction began on a Dallas historical landmark at 900 Jackson Street, in which the Partnership intended to lease space to house its main business offices. The Partnership, as principal lessee, undertook to furnish on its own the leasehold improvements for its new offices. To raise cash to fund the leasehold improvements for its new offices, the Partnership borrowed certain amounts from InterFirst Bank

Dallas, N.A. (InterFirst) and additional amounts from the partners and managerial employees of the Partnership, including the Employer. Each of the partners and such managerial employees of the Partnership made funds available to the Partnership and received in return four Notes. The Notes are unsecured, bear interest on their original stated principal amounts at the rate of 14% per annum, and are amortized over 10 years in equal quarterly installments of principal and interest, beginning September 13, 1984 and ending August 31, 1995, when all Notes must be fully paid. The Notes range in original principal amount from $2,454 to $17,709.

3. Because of the high yield on the Notes and Mr. Johnson's confidence in the credit of the Partnership as payer of the Notes, Mr. Johnson wishes the Employer to sell, from time to time, some or all of its Notes to the Plan. Such sales would be limited so that at no time would more than 25% of the Plan's assets be invested, immediately after a sale, in the Notes. The purchase price of each Note will be paid in cash in a single sum on the date of the purchase. InterFirst, an independent lender, has been willing to lend to the Partnership to fund its capital expenditures for leasehold improvements for its new offices on terms substantially identical to those contained in the Notes. InterFirst represents that it continues to rate the Partnership's credit worthiness as excellent.

4. All sales to the Plan will be made on the basis of the fair market value of the Notes on the date of each sale. Such fair market value will be determined by either (a) InterFirst or Brown Brothers Harriman & Company (Brown), subject, in either case, to the approval of RepublicBank Dallas, N.A. (RepublicBank), or (b) RepublicBank, which is not related to the Employer, Mr. Johnson, or the Partnership.

The Partnership, the maker of the Notes, has long maintained its primary commercial banking relationship with InterFirst and performs substantial legal services for InterFirst. Brown is the investment manager of the Partnership Plan, which will purchase notes (the Other Notes) identical to the Notes in this case (except that the payees are different). Mr. Johnson has loans outstanding from and a money market account and certificate of deposit with InterFirst, representing, respectively, less than 0.012% of InterFirst's total outstanding loans and less than 0.02% of InterFirst's total deposits as of September 30, 1985. The Plan has a $3,000 checking account with InterFirst, representing less than 0.00005% of InterFirst's total deposits as of that date. Neither Mr. Johnson nor the Employer has any other commercial or familial relationship with InterFirst, RepublicBank, or Brown.

InterFirst or Brown may perform an initial valuation subject to approval by RepublicBank, the trustee of the Partnership Plan, of the Other Notes to be purchased by the Partnership Plan. If InterFirst or Brown performs such a valuation on behalf of the Partnership Plan and such valuation is approved by RepublicBank, InterFirst or Brown will value the Notes for the Plan, using the identical criteria it used in valuing the Other Notes for the Partnership Plan. However, if RepublicBank alone values the Other Notes to be purchased by the Partnership Plan, RepublicBank alone will also value the Notes to be purchased by the Plan. No Note will be purchased by the Plan unless the purchase of Other Notes by the Partnership Plan and the valuation of such Other Notes is approved by RepublicBank, which will have the final responsibility for valuing both the Other Notes to be purchased by the Partnership Plan and the Notes to be purchased by the Plan. If the proposed exemption is granted, the Notes will be purchased by the Plan only on the date(s) that the Other Notes are purchased by the Partnership Plan (see notice of proposed exemption re. application no. D-6351, in this issue); all such purchases will occur during the five-year period following the date the exemption is granted.

5. In order to secure adequately any Notes purchased by the Plan, as described above, the following procedures will apply:

(a) With respect to the initial purchase of Notes by the Plan, the Employer or Mr. Johnson shall secure a single letter of credit from InterFirst in an amount equal to the sum (the Secured Sum) of (i) 100% of the principal of the Notes actually to be purchased by the Plan, Plus (ii) the amount of interest accruable for two months on such Notes.

(b) If additional Notes are purchased at any time by the Plan, either the existing letter of credit described in (a), above, shall be increased or additional letters of credit shall be obtained, if necessary, so that immediately after each purchase of additional Notes, the letter(s) of credit securing all Notes held by the Plan shall equal the Secured Sum computed by reference to all such Notes. If possible, additional Notes purchased by the Plan shall also be secured by the same letter of credit described in (a), above, through an increase in the coverage thereof or through a renewal and increase thereof. If such additional Notes cannot be secured by said letter of credit, the Employer or Mr. Johnson shall secure additional letter(s) of credit securing such additional Notes as described above. Such additional letter(s) of credit may have terms of less than one year so that (i) their expirations may coincide with the expiration(s) of previously issued letter(s) of credit, and (ii) all letters of credit expiring on the same date can be renewed in the form of a single letter of credit. Any additional letters of credit may be obtained from banking institutions other than InterFirst which are insured by the Federal Deposit Insurance Corporation (FDIC). (InterFirst is insured by the FDIC.)

(c) In all events, the letter(s) of credit shall provide that upon the occurrence of a default in the payment of prinicpal or interest on any Note secured thereby, and upon the failure of the Partnership to cure such default within 21 days, the issuer of the letter of credit shall, upon notice from the trustee of the Plan, immediately pay said trustee the amount then due upon such Note, including any and all principal accelerated in consequence of the default. Each letter of credit shall adequately identify the Notes secured thereby.

(d) Except in the case of a letter of credit with an initial term of less than one year, as described in (b), above, the letter(s) of credit shall be renewed annually. Letters of credit with an initial term of less than one year shall be renewed upon expiration. Renewal letters of credit may be obtained from banking institutions other than InterFirst which are insured by the FDIC. If as a result of purchases of Notes by the Plan during a year more than one letter of credit is outstanding with any single banking institution, the Employer and Mr. Johnson may, if permitted by such banking institution and as described in (b), above, combine the letters of credit into a single letter of credit.

(e) The Employer of Mr. Johnson shall individually pay the cost of obtaining the letter(s) of credit, and no part of the assets of the Plan shall be used to cover any part of such cost.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the purchase price of each Note will equal its fair market value on the purchase date as determined by a qualified appraiser who is not related to the Employer, Mr. Johnson, or the Partnership; (b) an otherwise substantially unrelated commercial bank, InterFirst, has been

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willing to lend to the Partnership, the maker of the Notes, on terms substantially identical to those provided in the Notes and continues to rate the Partnership's credit worthiness as excellent; (c) no commissions or other selling expenses will be charged to the Plan; (d) no more than 25% of the Plan's assets will be invested in the Notes after each purchase; (e) all Notes that will be purchased by the Plan will be secured by letter(s) of credit, issued by InterFirst and/or other banking institution(s) insured by the FDIC, in an aggregate amount equal to the sum of the principal amounts of such Notes plus interest accruable thereon for two months; and (f) the only Plan participant is Mr. Johnson, and he desires the proposed transaction to be effected.

Notice to Interested Persons: Because Mr. Johnson is the only participant in the Plan and the sole shareholder of the Employer, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **Federal Register**.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Ernest E. Figari, Jr., P.C. Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D-6362]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed purchases, from time to time during a five-year period, by the Plan from Ernest E. Figari, Jr., P.C. (the Employer) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Employer to Johnson & Swanson (the Partnership), in which the Employer is a general partner, provided the purchase price is not more than the fair market value of the Notes on the date of each purchase; and (2) the continued holding by the Plan of such Notes until they are fully paid, provided the terms of such transactions are at least as favorable to the Plan as the terms it could obtain in similar transactions with an unrelated party.

Because Mr. Ernest E. Figari, Jr. (Mr. Figari) is the sole owner of the Employer and the sole participant in the Plan, the Plan is subject to Title II of the Act only, and is not subject to Title I (see 29 CFR 2510.3-3 (b) and (c)).

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to the purchase of any Note. Subsequent to the expiration of this exemption, Notes purchased during this five-year period may be held by the Plan until the Notes are fully paid. Should the applicant wish to continue the proposed purchase transactions beyond the five-year period, he may submit another application for exemption.

Summary of Facts and Representations

1. The Plan is an individual account plan in which only Mr. Figari participates and which has assets totalling $286,302.76 as of December 31, 1984. Mr. Figari is the sole owner and sole employee of the Employer and the trustee of the Plan. The Employer receives services from certain employees of the Partnership who are eligible to participate in the Partnership's Cash or Deferred Profit Sharing Plan (the Partnership Plan). The Employer is a general partner in the Partnership, which is a Texas general partnership engaged in the practice of law and which had 69 active partners as of May 31, 1985. As the sole owner and sole employee of the Employer, a general partner of the Partnership, Mr. Figari is fully informed of the economics and financial outlook of the Partnership, according to the applicant.

2. In July 1983, renovation construction began on a Dallas historical landmark at 900 Jackson Street, in which the Partnership intended to lease space to house its main business offices. The Partnership, as principal lessee, undertook to furnish on its own the leasehold improvements for its new offices. To raise cash to fund the leasehold improvements for its new offices, the Partnership borrowed certain amounts from InterFirst Bank Dallas, N.A. (InterFirst) and additional amounts from the partners and managerial employees of the Partnership, including the Employer. Each of the partners and such managerial employees of the Partnership made funds available to the Partnership and received in return four Notes. The Notes are unsecured, bear interest on their original stated principal amounts at the rate of 14% per annum, and are amoritized over 10 years in equal quarterly installments of principal and interest, beginning September 13, 1984 and ending August 31, 1995, when all Notes must be fully paid. The Notes range in original principal amount from $2,454 to $17,709.

3. Because of the high yield on the Notes and Mr. Figari's confidence in the credit of the Partnership as payer of the Notes, Mr. Figari wishes the Employer to sell, from time to time, some or all of its Notes to the Plan. Such sales would be limited so that at no time would more than 25% of the Plan's assets be invested, immediately after a sale, in the Notes. The purchase price of each Note will be paid in cash in a single sum on the date of the purchase. InterFirst, an independent lender, has been willing to lend to the Partnership to fund its capital expenditures for leasehold improvements for its new offices on terms substantially identical to those contained in the Notes. InterFirst represents that it continues to rate the Partnership's credit worthiness as excellent.

4. All sales to the Plan will be made on the basis of the fair market value of the Notes on the date of each sale. Such fair market value will be determined by either (a) InterFirst or Brown Brothers Harriman & Company (Brown), subject, in either case, to the approval of RepublicBank Dallas, N.A. (RepublicBank), or (b) RepublicBank, which is not related to the Employer, Mr. Figari or the Partnership.

The Partnership, the maker of the Notes, has long maintained its primary commercial banking relationship with InterFirst and performs substantial legal services for InterFirst. Brown is the investment manager of the Partnership Plan, which will purchase notes (the Other Notes) identical to the Notes in this case (except that the payees are different). Mr. Figari has loans outstanding from and a checking account and certificate of deposit with InterFirst representing, respectively, less than 0.0084% of InterFirst's total outstanding loans and less than 0.00045% of InterFirst's total deposits as of September 30, 1985. The Plan holds shares in InterFirst Corporation, the parent of InterFirst, representing less than 0.0075% of the total of such shares outstanding. Neither Mr. Figari not the Employer has any other commercial or familial relationship with InterFirst, RepublicBank, or Brown.

InterFirst or Brown may perform an initial valuation subject to approval by RepublicBank, the trustee of the Partnership Plan, of the Other Notes to be purchased by the Partnership Plan. If InterFirst or Brown performs such a valuation on behalf of the Partnership Plan and such valuation is approved by RepublicBank, InterFirst or Brown will value the Notes for the Plan, using the identical criteria it used in valuing the Other Notes for the Partnership Plan. However, if RepublicBank alone values the Other Notes to be purchased by the Partnership Plan, RepublicBank alone will also value the Notes to be purchased by the Plan. No Note will be purchased by the Plan unless the purchase of Other Notes by the Partnership Plan and the valuation of such Other Notes is approved by RepublicBank, which will have the final responsibility for valuing both the Other Notes to be purchased by the Partnership Plan and the Notes to be purchased by the Plan. If the proposed exemption is granted, the Notes will be purchased by the Plan only on the date(s) that the Other Notes are purchased by the Partnership Plan (see notice of proposed exemption re. application no. D-6351, in this issue); all such purchases wil occur during the five-year period following the date the exemption is granted.

5. In order to secure adequately any Notes purchased by the Plan, as described above, the following procedures will apply:

1(a) With respect to the initial purchase of Notes by the Plan, the Employer or Mr. Figari shall secure a single letter of credit from InterFirst in an amount equal to the sum (the Secured sum) of (i) 100% of the principal of the Notes actually to be purchased by the Plan, plus (ii) the amount of interest accruable for two months on such Notes.

(b) If additional Notes are purchased at any time by the Plan, either the existing letter of credit described in (a), above, shall be increased or additional letters of credit shall be obtained, if necessary, so that immediately after each purchase of additional Notes, the letter(s) of credit securing all Notes held by the Plan shall equal the Secured Sum computed by reference to all such Notes. If possible, additional Notes purchased by the Plan shall also be secured by the same letter of credit described in (a), above, through an increase in the coverage thereof or through a renewal and increase thereof. If such additional Notes cannot be secured by said letter or credit, the Employer or Mr. Figari shall secure additional letter(s) of credit securing such additional Notes as described above. Such additional letter(s) of credit may have terms of less than one year so that (i) their expirations may coincide with the expiration(s) of previously issued letter(s) of credit, and (ii) all letters of credit expiring on the same date can be renewed in the form of a single letter of credit. Any additional letters of credit may be obtained from banking institutions other than InterFirst which are insured by the Federal Deposit Insurance Corporation (FDIC). (InterFirst is insured by the FDIC.)

(c) In all events, the letter(s) of credit shall provide that upon the occurrence of a default in the payment of principal or interest on any Note secured thereby, and upon the failure of the Partnership to cure such default within 21 days, the issuer of the letter of credit shall, upon notice from the trustee of the Plan, immediately pay said trustee the amount then due upon such Note, including any and all principal accelerated in consequence of the default. Each letter of credit shall adequately identify the Notes secured thereby.

(d) Except in the case of a letter of credit with an initial term of less than one year, as described in (b), above, the letter(s) of credit shall be renewed annually. Letters of credit with an initial term of less than one year shall be renewed upon expiration. Renewal letters of credit may be obtained from banking institutions other than InterFirst which are insured by the FDIC. If as a result of purchases of Notes by the Plan during a year more than one letter of credit is outstanding with any single banking institution, the Employer and Mr. Figari may, if permitted by such banking institution and as described in (b), above, combine the letters of credit into a single letter of credit.

(e) The Employer of Mr. Figari shall individually pay the cost of obtaining the letter(s) of credit, and no part of the assets of the Plan shall be used to cover any part of such cost.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the purchase price of each Note will equal its fair market value on the purchase date as determined by a qualified appraiser who is not related to the Employer, Mr. Figari, or the Partnership; (b) an otherwise substantially unrelated commercial bank, InterFirst, has been willing to lend to the Partnership, the maker of the Notes, on terms substantially identical to those provided in the Notes and continues to rate the Partnership's credit worthiness as excellent; (c) no commissions or other selling expenses will be charged to the Plan; (d) no more than 25% of the Plan's assets will be invested in the Notes after each purchase; (e) all Notes that will be purchased by the Plan will be secured by letter(s) of credit, issued by InterFirst and/or other banking institution(s) insured by the FDIC, in an aggregate amount equal to the sum of the principal amounts of such Notes plus interest accruable thereon for two months; and (f) the only Plan participant is Mr. Figari and he desires the proposed transaction to be effected.

Notice to Interested Persons

Because Mr. Figari is the only participant in the Plan and the sole shareholder of the Employer, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **Federal Register**.

For Further Information Contact: Ms. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Forwarders List Money Purchase Pension Plan (the Money Purchase Plan) and Forwarders List Defined Benefit Pension Plan (the Pension Plan, collectively, the Plans Located in Baltimore, MD

[Application Nos. D-6428 and D-6429]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to loans (the Loans) of the lesser of $64,000 by the Money Purchase Plan and $64,000 by the Pension Plan, or 25 percent of each of the Plans' assets, to the Ten Church Lane Partnership (the Partnership), a party in interest with respect to the Plans, provided the terms and conditions of the Loans are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans consist of a money purchase pension plan and a defined benefit pension plan. As of July 8, 1985, the Money Purchase Plan and the Pension Plan has total assets having a fair market value of $408,786 and $394,851, respectively. On July 1, 1985, each of the Plans had seven

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participants. Stephen and Leah Baer (Mr. and Mrs. Baer) are trustees of and participants in the Plans. Eli Baer, the father of Mr. Baer, also serves as the trustee of the Money Purchase Plan.

2. The Forwarders List of Attorneys is the sponsor of the Plans (the Employer). The Employer maintains offices in Baltimore, Maryland, Chicago, Illinois, and New York, New York and is engaged in the publication of legal directories in the commercial collection field. Mr. Baer is the president and sole shareholder of the Employer.

3. Mr. and Mrs. Baer are the only general partners of the Partnership, a Maryland general partnership, which was formed for the purpose of owning, developing, operating, and leasing real property. The Partnership has no limited partners. On August 19, 1985, the Partnership acquired a parcel of real property (the Property) located at 10 Church Lane, Pikesville, Baltimore County, Maryland, from an urelated third party. The Property is improved with an office building that is presently leased to unrelated third parties. Mr. and Mrs. Baer, as the general partners of the Partnership, are personally liable for a first mortgage (the First Mortgage) on the Property which, as of August 19, 1985, had an outstanding principal balance of $362,000. Union Trust Co. of Maryland, an unrelated party, is the mortgagor on the First Mortgage.

4. The Loans to the Partnership will be in the amounts of the lesser of $64,000 by the Money Purchase Plan and $64,000 by the Pension Plan or 25 percent of the assets of each of the Plans. The applicants represents that the proceeds from the Loans will be transferred by the Partnership to the general partners, Mr. and Mrs. Baer, as a partial return of their capital contributions to the Partnership.[3] The Loans will be evidenced by promissory notes and will provide for interest only payments at a rate of 12% per annum on the Loans in the amount of $1,920 payable quarterly. Total annual interest payments to both Plans will be $15,360. The principal of $64,000 on each of the Loans will be payable no later than the end of the ten year term of the Loans. In addition, it is represented that Mr. and Mrs. Baer have outstanding loans from the Plans (the Participant Loans), pursuant to section 408(b)(1) of the Act. Mr. Baer has an outstanding loan in the amount of $50,000 from the Money Purchase Plan, and Mrs. Baer has a loan in the amount of $50,000 from the Pension Plan.[4]

5. The Loans will be secured by a second mortgage (the Second Mortgage) on the Property which the applicants represent will be recorded. At no expense to the Plans, the Partnership will insure the Property against fire and other loss in an amount not less than the outstanding balance on the First Mortgage plus the amount of the Loans and will name the Plans as loss payees of such insurance policy. In addition, Mr. and Mrs. Baer, as general partners of the Partnership, will guarantee full amount of the Loans. Currently, Mr. and Mrs. Baer own assets which are valued at approximately $642,935 and are liable for no indebtedness other than the First Mortgage on the Property and a mortgage on their residence located at 2 Mandel Court, Baltimore, Maryland, amounting to approximately $100,000.

6. On September 24, 1985, Jerome J. Wilen, A.S.A. (Mr. Wilen), an attorney and partner since 1966 in Philip E. Klein & Associates, real estate appraisers and consultants, located at 6229 Charles Street, Baltimore, Maryland, appraised the fair market value of the Property to be approximately $735,000. Mr. Wilen's qualifications as an appraiser include his membership in the American Society of Appraisers, his experience in buying, selling, managing, and appraising real property in the city of Baltimore, Maryland, and his attendance at special courses and seminars in appraising sponsored by the University of Maryland and various professional societies. Mr. Wilen further asserts that he is independent as he has no present or contemplated future interest in the Property.

7. Mr. William J. Marsico (Mr. Marsico), Executive Vice-President of Fairfax Savings Association (Fairfax) of Baltimore, Maryland, on October 18, 1985, acknowledged and agreed on behalf of Fairfax to act as the independent fiduciary with respect to the proposed transactions. It is represented that Fairfax has general investment and management expertise that qualifies it to serve as fiduciary for the Plans. Mr. Marsico represents that no director or officer of the Employer or the Partnership is involved in the management of Fairfax nor is any director or officer of Fairfax involved in the management or directorship of the Employer. While the Partnership maintains an account at Fairfax, Fairfax has no loan commitment nor has it issued letters of credit for the benefit of the Employer. It is represented that Fairfax's commercial involvement with the Employer and the Partnership represents less than 1% of its total deposits and is not sufficient to affect Fairfax's ability to act as independent fiduciary with respect to the subject transactions.

8. As independent fiduciary for the Plans, Fairfax has reviewed the terms of the Loans and has detemined the following:

(a) That the proposed transactions are appropriate and suitable investments for the Plans and that the transactions are in the interests of and protective of the Plans and their participants and beneficiaries;

(b) That the transactions will be reviewed and monitored by Fairfax until their completion, and Fairfax will take all steps necessary and proper to protect the interest of the Plans, their participants and beneficiaries.

In addition, Fairfax states that it would make loans to the Partnership under the same terms and conditions as the subject Loans. Fairfax represents that the terms of the transactions satisfy commercial standards, and are similar to and at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated third party; and are typical of loan transactions presently being entered into in Baltimore, Maryland.

9. Fairfax has reviewed the value of the Property based on the independent appraisal of Mr. Wilen and believes that such collateral is adequate to secure the Loans. It is represented that the amount of the Loans together with the outstanding balance on the First Mortgage has a loan to value ratio of 150%. Further, it is represented that Fairfax will insure that the Partnership will maintain security which is valued in an amount at least 150% of the balance on the Loans.

10. Fairfax has determined that the interest rate of the Loans is an appropriate interest rate and that the investments of the Plans' assets in the Loans presents an excellent opportunity for the Plans to acquire assets providing a rate of return which is substantially greater than the average rate of return of the current assets of the Plans.

11. Fairfax represents that the Loans will be proper in light of the Plans' cash flow and liquidity needs and states that both of the Plans' portfolios, even including the Loans, will be sufficiently liquid and diversified in view of the overall investment scheme of the Plans. Further, Fairfax has determined that the Loans fit well with the investment objectives of the Plans.

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[3] The Department herein makes no determination regarding the applicability of section 72(p) of the Code with respect to the Loans.

[4] The Department expresses no opinion as to whether these Participants Loans satisfy the conditions of section 408(b)(1).

12. Finally, Fairfax agrees that it will monitor prompt payment on the Loans to both Plans, and enforce the obligations of the Partnership under the Loans.

13. In summary, it is represented that the proposed Loans will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Loans will not represent more than 25 percent of the assets of each of the Plans;

(b) Fairfax, the independent fiduciary for the Plans, represents that the interest rate and the Property pledged as collateral for the Loans are appropriate for the subject transactions and typical of arm's-length loan transactions presently being entered into in Baltimore, Maryland; further, Fairfax represents that it would make the same loans on the same terms to the Partnership;

(c) The Loans will be secured by the Property which has a current fair market value as determined by a qualified independent appraiser that will be at least 150% percent of the total amount of the Loans and the balance of the First Mortgage on the Property;

(d) Fairfax has determined that the Loans are in the best interest of the Plans and their participants and beneficiaries; and

(e) Fairfax will monitor the repayment of the Loans by the Partnership.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of March 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-5552 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-29-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Admininstrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 552.9, as amended and 552.20 to 552.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Flushing Shirt Mfg. Co., Inc., Frostburg, MD; 10-24-85 to 10-23-86 10 learners for normal labor turnover purposes; and 10-24-85 to 4-23-86; 15 learners for plant expansion purposes. (Men's shirts.)

McCreary Mfg. Co., Stearns, KY; 12-8-85 to 12-7-86. (Men's and boy's shirts.)

Monticello Mfg. Co., Inc. Monticello, KY; 12-8-85 to 12-7-86. (Men's and boys' shirts.)

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended.)

Junior Form Lingerie Inc., Boswell, PA; 10-11-85 to 10-10-86. 5 percent of the total number of factory production workers for normal labor turnover purposes. (Ladies' underwear and sleepwear.)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learners' occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before March 31, 1986.

Signed at Washington, DC, this 11th day of March 1986.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 86-5674 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-27-M

Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veteran's Employment was established under section 308, Title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, April 8, 1986, at 10:00 a.m., in the

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Secretary's Conference Room, S-2508, FPB.

Items to be discussed are:

- Private Sector Involvement
- Public Sector Coordination

Homeless Veterans

The public is invited.

Signed at Washington, DC, this 7th day of March 1986.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 86-5664 Filed 3-13-86; 8:45 am]

BILLING CODE 4510-79-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Survey of Users of Devices Under General License.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One time.

5. Who will be required or asked to report: A sample of persons that use devices containing byproduct material under general license.

6. An estimate of the number of responses: 480.

7. An estimate of the total number of hours needed to complete the requirement or request: 280.

8. An indicationof whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Devices containing radioactive byproduct material are used in a number of industrial applications, under a general license established by the Commission, for producing light, performing analytical measurements, or elimination of static. NRC will conduct a survey of a sample of users to acquire data for a study of the effectiveness of the general license in protecting public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 10th day of March 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-5663 Filed 3-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346-ML; ASLBP No. 86-525-01-ML]

Toledo Edison Co., et al., (Davis-Besse Nuclear Power Station, Unit No. 1; Memorandum and Order; Informal Hearing and Opportunity To Become a Party

March 10, 1986.

I. Introduction

On February 20, 1986, the U.S. Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order the undersigned was appointed presiding officer for this matter on February 25, 1986 by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

The Commission instituted this proceeding in response to petitions for a hearing filed by Save Our State from Radioactive Waste (SOS), Toledo Coalition for Safe Energy (TCSE) and Susan A. Carter, the Western Reserve Alliance (WRA), the Consumers League of Ohio (CLO), Ohio Citizens for Responsible Energy (OCRE), and City of Mentor, Ohio. The hearing will concern the application of Toledo Edison Company (TEC) for authorization under 10 CFR 20.302(a) to dispose of by product material on the site of its Davis-Besse Nuclear Power Station, Unit 1. The materials in question are radioactively contaminated resins from the plant's secondary system denumeralizer.

II. How To Participate

The Commission's Order directed the presiding officer to request from SOS, TCSE, Susan A. Carter,[1] WRA, CLO, OCRE, and City of Mentor, Ohio filings detailing their standing to participate and their complaints concerning the license amendment. The Order also directed the presiding officer to provide a similar opportunity to petition to be heard of other interested persons. The Order authorized the presiding officer to request written submissions and documents; set schedules; entertain limited appearance statements on any issue in the proceeding from persons who do not desire to become parties or cannot fulfill the requirements for party status at times specified by the presiding officer; and to entertain oral presentations at the presiding officer's discretion.

The Commission directed that those who wish to become parties, (other than the NRC Staff and TEC), must set forth with particularity and in writing (1) the interest of that person in the proceeding; (2) how that interest may be affected by the results of the proceeding, including a delineation of the reasons why that person should be permitted to intervene that makes particular reference to (a) the nature of the person's right under the Atomic Energy Act to be made a party, (b) the nature of the extent of the person's property, financial, or other interest in the proceeding, and (c) the possible effect of any order that may be entered in the proceeding on the person's interest; (3) the *specific* aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated; and (4) relief sought with respect to each complaint. Each of the foregoing points shall be addressed in separate, concisely stated paragraphs.

In submitting the information called for in items 3 and 4 above, petitioners are to describe *specifically* any deficiences in the application, cite particular sections or portions of the application which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application is deficient. Petitioners must also submit all data and material in their possession which supports or illustrates each of the deficiences complained of. Data and material from generally available publications may be cited rather than furnished. Petitioners must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license or its amendment without stating why such extreme relief is appropriate will not satisfy the requirement to state the relief sought.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 CFR 2.714(d). See the Commission's Order and *Rockwell International Corp.* (Energy Systems Group Special Nuclear Materials License No. SNM-21), LBP-83-65, 18 NRC 774 (1983). The *Rockwell* case relied on *Nuclear Engineering* (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB-473, 7 NRC 737 (1978), and stated at page 3 that:

> * * * The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

(10) If the presiding officer finds that the hearing petitions or any intervention petition should be denied *in toto* for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of that decision.

On or before April 14, 1986, SOS, TCSE Susan A. Carter, WRA, CLO, OCRE, City of Mentor, Ohio, and anyone else, including governmental entities, who wishes to become a party shall file the information called for above. On or before April 28, 1986, the NRC Staff, if it wishes to participate as a party, shall so notify the petitioners, TEC, and the presiding officer in writing.

III. How and Where To File

A. Information Called for by This Notice and Order

The original and two copies of information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. Single copies of such filings shall also be served on TEC, Charles A. Barth—NRC Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by April 14, 1986.

B. Other Written Submissions

The original and two copies of all other written submissions made by a party shall also be filed with Docketing and Service Branch with single copies mailed or personally delivered to the presiding officer, TEC, Mr. Barth, and all other parties on or before the due date. Attorneys representing a party or petitioner must file the original and two copies of their notice of appearance with the Docketing and Service Branch, with service on all other parties, upon being retained.

C. Service List

In Memorandum and Order identifying the parties to this proceeding, the presiding officer will establish an official service list of parties who are to receive copies of written submissions in this proceeding.

IV. Duty of the Applicant

In order to permit petitioners to comply with the 30-day deadline to submit the information required, TEC must ensure that the application, the license sought to be amended, and all correspondence pertaining to its application, are immediately upon receipt of this Notice and Order: (1) Made available to petitioners for inspection and copying, and (2) forwarded to the Presiding Officer. This material shall be made available at a convenient location in the vicinity of the TEC facility and at such other locations as may be indicated by requests. The material shall be available for inpsection and copying during business hours and during reasonable periods in evenings and during weekends. This material, together with the material submitted by petitioners, and any other material called for by the presiding officer, will form the Hearing File on which the presiding officer will base her decision.

V. Presiding Officer's Initial Ruling

Upon receipt of petitioner's submissions, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioner's rights to become a party to this proceeding. The presiding officer will also review petitioners' complaints and supporting material. In making this review, the presiding officer may rule that the petitioners' complaints: (1) Are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on petitioners' initial submission.

VI. Informal Hearing

To the extent the presiding officer finds petitioners' complaints admissible, he either may order additional submissions from the parties, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the TEC facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however, suggest questions to the presiding officer to be posed by her. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

VII. Limited Appearances

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before April 14, 1986. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as a limited appearance statement. Limited appearance statements are not part of the Hearing File.

VIII. Schedule for Decision

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' submissions, with a goal of 120 days if additional submissions are required following receipt of initial petitions. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

Order

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 10th day of March 1986.

Ordered

1. That on or before April 14, 1986, SOS, TCSE, Susan A. Carter, WRA, CLO, OCRE and the City of Mentor, Ohio shall file a petition to participate as described in the foregoing memorandum;

2. That any other person wishing to participate shall file a similar petition by the same date;

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[1] The Petition of TCSE and Susan A. Carter dated November 6, 1985 properly detailed standing to participate. By this order, revisions of complaints to that Petition, if deemed to contribute to the record, may be filed.

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3. That on or before April 28, 1986, the NRC Staff shall notify the presiding officer if it wishes to participate as a party to this proceeding; and

4. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.

Bethesda, Maryland, March 10, 1986.

Helen F. Hoyt,

Administrative Judge.

[FR Doc. 86-5685 Filed 3-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

Duquesne Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of Construction Permit No. CPPR-105 to Duquesne Light Company, Cleveland Electric Illuminating Company, Ohio Edison Company and Toledo Edison Company (the Permittees), for the Beaver Valley Power Station, Unit No. 2 located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The extension would extend the expiration date of the Construction Permit CPPR-105 from December 31, 1984, to December 31, 1986.

The extension is responsive to Duquesne Light Company's application for extension dated November 8, 1984.

The Need for the Proposed Action

The proposed extension is needed because the completion date of Beaver Valley Unit 2 has been postponed for the following reasons:

(1) Reduced projected electric power need;

(2) Increased regulatory requirements;

(3) The permittees' financial problems;

(4) Additional time needed to fully test and evaluate portions of the project.

Environmental Impacts of the Proposed Action

The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action

As required by section 102(2)(E) of NEPA (42 U.S.C. 4332(20(E)), the staff has considered possible alternatives to the proposed action. The only possible alternative to the proposed action is not to renew the construction permit. This alternative would have led to a change in status and would result in a greater impact on Duquesne Light personnel and the environment (the project is currently more than 90% complete).

Therefore, there is no appropriate alternative to the proposed action.

Alternative Use of Resource

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Beaver Valley Power Station, Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the permittees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quaity of the human environment.

For further details with respect to this action, see the request for the extension dated November 8, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 6th day of March 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A.

[FR Doc. 86-5684 Filed 3-13-86; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Waste Policy Act; Availability of Draft Technical Position in Low-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a "Draft Branch Technical Position on Standard Format and Content of License Applications for Near Surface Disposal of Radioactive Waste."

DATE: The comment period expires May 13, 1986.

ADDRESSES: Send comments to R. John Starmer, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, DC 20555. Copies of this document may be obtained free of charge upon, written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, DC 20555, Telephone 1/800/368-5642, Ext. 74426 or 427-74426 for Washington area callers.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4793.

SUPPLEMENTARY INFORMATION: This announcement notices availability and solicits comments on the "Branch Technical Position on Standard Format and Content of License, Applications for Near Surface Disposal of Radioactive Waste."

The Branch Technical Position on Standard Format and Content of License Applications for Near Surface Disposal of Radioactive Waste represents a format for license applications that is acceptable to NRC staff. However, conformance with the Standard Format is not required. License applications with different formats will be accepted by the staff if they provide an adequate basis for the findings requisite to issuing a license.

The purpose of the Branch Technical Position on Standard Format and Content of License Applications for Near Surface Disposal of Radioactive Waste is to explain in more detail the information to be provided in the application for a license. Use of the standard format will (1) aid the applicant and NRC staff in ensuring that the information is complete, (2) help persons reading the application to locate information, and (3) contribute to shortening the time needed for the review process.

Dated at Silver Spring, Maryland, this 5th day of March, 1986.

For the Nuclear Regulatory Commission.

Leo B. Higginbotham,

Chief Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86-5686 Filed 3-13-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8063]

Issuer Delisting; Application To Withdraw From Listing and Registration; California Real Estate Investment Trust; Shares of Beneficial Interest, $1.00 Par Value

March 10, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer considered the direct and indirect costs, and expenses attendant on maintaining the dual listing of its shares on the New York Stock Exchange and the American Stock Exchange; therefore, the issuer does not see any particular advantage in the dual trading of its shares and believes that dual listing would fragment the market for its shares.

Any interested person may, on or before March 31, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5677 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14976; (812-6137)]

Municipal Investment Trust Fund, Thirty-Ninth Insured Series and Subsequent and Similar Series, et al.; Application

March 7, 1986.

Notice is hereby given that the Municipal Investment Trust Fund, Thirty-Ninth Insured Series and Subsequent and Similar Series, 165 Broadway, One Liberty Plaza, New York, New York 10080, a series of unit investment trusts registered or to be registered under the Investment Company Act of 1940 (the "Act") (sometimes hereinafter called the "Trust" and each series of which is sometimes hereinafter called a "Series"), their sponsors, Merrill Lynch, Pierce, Fenner & Smith Incorporated, 165 Broadway, One Liberty Plaza, New York, New York, 10080, Shearson Lehman Brothers Inc., Two World Trade Center, New York, New York 10048, Prudential-Bache Securities Inc., 100 Gold Street, New York, New York 10292, Dean Witter Reynolds Inc., 130 Liberty Street, New York, New York 10006, and Paine Webber Incorporated, 1221 Avenue of the Americas, New York, New York 10020, ("Sponsors") and Financial Guaranty Insurance Company, 175 Water Street, New York, New York 10038, ("Financial") (each Series of the Trust, the Sponsors and Financial collectively referred to as "Applicants") filed and application on June 19, 1985 for an order of the Commission pursuant to sections 6(c), 17(b) and 17(d) of the Act and Rule 17d-1 thereunder exempting Applicants from the provisions of sections 17(a), 17(d) and 26(a)(2)(c) of the Act and the provisions of Rule 17d-1 to the extent necessary to permit any Series of the Trust to purchase certain insurance described below from Financial guaranteeing the scheduled payments of principal and interest with respect to some or all of the securities deposited in such Series of the Trust. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

The application states that each Series will be governed by a trust indenture (the "Indenture") and a trust agreement (the "Agreement") under which the Sponsors will act as Depositors, a commercial bank, national banking association or trust company will act as Trustee and Standard & Poor's Corporation or other independent entity will act as Evaluator. The application further states that the Sponsors will initially deposit in a Series tax-exempt municipal bonds (or contracts for the purchase of such bonds together with a letter of credit in an amount sufficient to complete the purchase) with the Trustee in exchange for certificates representing ownership of all of the units of fractional undivided interest (the "Units") of such Series.

The application states that the investment ojectives of each Series are the provision of tax-exempt interest income, and, with respect to a Series in which every security is insured (an "Insured Series"), safety of principal, through investment in a fixed portfolio of debt obligations with fixed maturities, (the "Securities") issued by states, municipalities, public authorities and similar entities. Because of irrevocable insurance on the portfolio, units of an Insured Series are rated AAA by Standard & Poor's Corporation.

Financial is a wholly-owned subsidiary and the principal asset of FGIC Corporation, a holding company owned by the following investors or affiliates thereof: General Electric Credit Corporation, General Re Corporation, Lumbermens Mutual Casualty Company, Merrill Lynch & Co., Inc., Shearson Lehman Brothers Inc., J.P. Morgan & Co. Incorporated and Gerald L. Friedman. Merrill Lynch & Co., Inc owns 100% of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of the Sponsors. Because of the ownership interest of Merrill Lynch & Co., Inc. in Financial's parent company, Financial could be considered an affiliate of one of the Sponsors. In addition, because of the ownership interest of affiliates of Shearson Lehman Brothers Inc. in Financial's parent company, Financial could also be considered an affiliate of another of the Sponsors. Furthermore, certain affiliates of the Sponsors may act as reinsurers of the obligations of Financial under its policies of Portfolio Insurance and Permanent Insurance. Prudential Reinsurance Corporation ("PruRe"), an affiliate of Prudential-Bache Securities, one of the Sponsors, currently acts as such a reinsurer of a portion of such obligations. According to

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the application, Financial is an affiliated person of two of the Sponsors, and PruRe is an affiliated person of one of the Sponsors, in each case by virtue of section 2(a)(3)(C) of the Act. Therefore, within the meaning of section 2(a)(3)(F) of the Act, Financial and PruRe are each affiliated persons of an affiliated person of the Trust for purposes of sections 17(a) and 17(d) of the Act and Rule 17d-1 thereunder.

Insurance will be obtained from Financial by each Series, guaranteeing the scheduled payment of principal and interest on some or all Securities while in the portfolio of such Series (the "Portfolio Insurance"). Some or all Securities in each Series will be insured under the Portfolio Insurance policy obtained by such Series. As with present insurance obtained from affiliates of Sponsors, the Sponsors of each Series undertake not to direct the Trustee to settle any claim under Portfolio Insurance for less than full payment without obtaining an exemptive order from the Commission. According to the application, while Portfolio Insurance obtained by a Series applies only while insured Securities are retained in such Series, pursuant to an irrevocable commitment by Financial, the Trustee upon the sale of an insured Security from a Series will, in certain circumstances, insure the scheduled payment of principal and interest on such Security regardless of the identity of the holder thereof (i.e., for so long as such security is outstanding) (the "Permanent Insurance") upon the payment of a single predetermined insurance premium from the proceeds of the sale of such Security.

The application states that the premiums on any policy Portfolio Insurance obtained by a Series will be paid annually by such Series directly to Financial and, by virtue of Financial's reinsurance arrangements, indirectly to PruRe and to any other affiliates of the Sponsors. The application also states that the premiums on each policy of Permanent Insurance will be paid by a Series out proceeds of the sale of the Security for which such Permanent Insurance was obtained and, as premiums for Permanent Insurance will only be paid if it increases the net sale price, they will never reduce the assets of a Series. As with Portfolio Insurance, the premiums for Permanent Insurance are paid directly to Financial and indirectly to PruRe and any other affiliates of the Sponsors.

Applicants request an exemption from section 17(a) of the Act to the extent that the direct provision of Portfolio Insurance and Permanent Insurance to a Series of the Trust by Financial, and the indirect provision thereof by PruRe and any other affiliates of the Sponsors who may act as reinsurers of Financial's obligations under such policies, might be deemed the purchase of securities from a Series of the Trust. To the extent that provision of Portfolio Insurance or Permanent Insurance might be considered to involve a joint transaction prohibited by section 17(d) of the Act and Rule 17d-1 thereunder, Applicants also request an order pursuant to Rule 17d-1 to permit Financial to provide Portfolio Insurance and Permanent Insurance to a Series of the Trust. Applicants also request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of section 26(a)(2)(C) thereof to permit the premiums on any policy of Portfolio Insurance obtained by a Series of the Trust to be paid and charged as an expense of such Series.

The application states that the premium rates for both Portfolio Insurance and Permanent Insurance will be determined by Financial within a rate framework applicable to all unit investment trust sponsors and filed with applicable state insurance regulatory authorities, based upon its determinations of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue, and the demand of sponsors to apply for such insurance on behalf of their unit investment trusts. The premium rate for Portfolio Insurance and Permanent Insurance will be at least as favorable as the rates charged by Financial to unaffiliated entities and comparable to prevailing rates charged by nonaffiliated insurers of similar stature and creditworthiness. According to the application, Financial will deliver certificates as to such premium rate comparability on the date of deposit of each Series of the Trust. Applicants represent that the setting of Financial's Premiums will not be controlled by any Series of the Trust, any Sponsor, Merrill Lynch & Co., Inc. or PruRe. Applicants state that once bonds have been deposited in a Series of the Trust the Portfolio Insurance premium rates and, if applicable, the Permanent Insurance premium rates, for each issue of bonds so deposited and insured are irrevocably fixed by the terms of such insurance. Applicants further state that each Portfolio Insurance policy obtained by a Series of the Trust is non-cancellable and continues in force so long as the Trust is in existence, Financial is still in business, and the bonds insured thereby continue to be held by such Trust and that each Permanent Insurance policy in non-cancellable and continues in force so long as Financial is still in business and the bonds insured thereby remain outstanding.

Applicants represent that the proposed arrangement with Financial will be substantially identical to insurance currently being offered to other sponsors of insured municipal bond unit investment trusts. Applicants represent that Merrill Lynch & Co., Inc. will have only an indirect partial interest in the earnings of Financial while it maintains a 100% interest in Merrill Lynch, Pierce, Fenner & Smith Incorporated, whose success in the unit investment trust business is dependent upon the results of competition with other factors in the industry with respect to price and fund structure. Applicants also represent that Shearson Lehman Brothers Inc., similarly will have only an indirect partial interest in the earnings of Financial but will maintain a direct participation in the unit investment trust business where its success will also be largely dependent upon such competition. Finally, Applicants further represent that Prudential-Bache Securities, Inc., whose success in the unit investment trust business is also largely dependent upon such competition, benefits from the earnings of Financial only to the extend PruRe reinsures a portion of Financial's policy obligations.

Applicants state that the insurance features under the Financial policies will be consistent with the investment policies of each Series of the Trust. Applicants assert that the terms of the proposed transactions, including the consideration to be paid or received are reasonable and fair and do not involve overreaching on the part of any person concerned. The premiums to be charged with respect to Portfolio Insurance or Permanent Insurance and the amounts to be paid by the affiliated parties to any Series of the Trust are fixed in nature and easily ascertainable (because they involve the payment of either a predetermined amount of interest due on a Security or the principal amount thereof at the time of scheduled maturity).

According to the application, the Indenture and Agreement will require the Trustee for any Series to purchase Permanent Insurance upon any sale of a Security whenever the value of such Security covered by a Permanent Insurance option with such Permanent

Insurance, less the premium therefor, is greater than the value of such Security without such Permanent Insurance. Applicants assert that investors are sufficiently protected against potential conflicts of interest or self-dealing between affiliated parties by reason of the internal structures of the Trust. The potential for such conflicts cannot arise because the Trustee for a Series will only purchase Permanent Insurance whenever that insurance would increase the net proceeds from a Security covered by a Permanent Insurance option which is sold from such a Series. Financial would remain as the insurer of principal and interest payments on a Security so sold either under the Portfolio Insurance or the Permanent insurance unless the uninsured value of the security so sold is greater than its insured value less the Permanent Insurance premium (in which case the Series of the Trust would be better off having the Security sold as uninsured). Applicants assert that Financial, as insurer, is indifferent as to whether a particular security is sold from the Trust or retained therein because Financial equates the present value of the future stream of Portfolio Insurance premiums for a Security with the Permanent Insurance premium for such Security, assuming such Permanent Insurance to have been obtained contemporaneously with the Portfolio Insurance.

Notice is further given that any interested person may, not later than April 1, 1986, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law that are disputed. Any such request should be addressed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon each of the Applicants at the addresses states above. Proof of such service by affidavit (or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-5631 Filed 3-13-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-14977; (812-6223)]

Nationwide Tax-Free Fund; Application for Order Permitting Assessment (and Waiver) of a Contingent Deferred Sales Charge

March 7, 1986.

Notice is hereby given that Nationwide Tax-Free Fund ("Fund") and Nationwide Financial Services, Inc. ("NFS", and together with Fund, "Applicants"), c/0 Mark B. Koogler, Esq., McCutchan, Schmidt, Birkhimer & Druen, One Nationwide Plaza, Columbus, Ohio 43216, filed an application on October 15, 1985, and an amendment thereto on January 24, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 under the Act to the extent necessary to permit Applicants to assess a contingent deferred sales charge on certain redemptions of Fund shares, and to waive the contingent deferred sales charge in certain circumstances. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

According to the application, the Fund is a diversified, open-end investment company organized as a business trust under the laws of the Commonwealth of Massachusetts by a Declaration of Trust dated October 8, 1985. It invests primarily in intermediate and long-term obligations issued by or on behalf of states, territories and possessions of the United States and their political subdivisions, agencies and instrumentalities. All shares of the fund are distributed by NFS which also serves as the investment adviser to the Fund.

The application states that shares of the Fund would be offered and sold without the deduction of a sales load at the time of purchase. Applicants submit that certain redemptions of Fund shares, however, would be subject to a contingent deferred sales charge. According to the application, a contingent deferred sales charge will be imposed when an investor reduces the current value of his shares in the fund to an amount which is lower than the amount of all payments by the investor for the purchase of shares during the preceding five years. However, such a charge will be imposed only to the extent that the net asset value of the shares redeemed exceeds (a) the current net asset value of shares purchased more than five years prior to the redemption plus (b) the current net asset value of shares purchased through reinvestment of dividends or distributions, plus (c) increases in the net asset value of the investor's shares above the total amount of payments for the purchase of shares made during the preceding five years. The amount of any contingent deferred sales charge will be paid to and retained by the distributor.

Applicants state that in determining the applicability of a contingent deferred sales charge to each redemption, the amount which represents an increase in the net asset value of the investor's shares above the amount of the total payments for the purchase of shares within the last five years will be deemed to be redeemed first. In the event that the redemption amount exceeds such increase in value, the next portion of the amount redeemed will be deemed to be the amount which represents the net asset value of the investor's shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Any portion of the amount redeemed which exceeds an amount representing both such increases in value and the value of shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions will be subject to a contingent deferred sales charge.

Applicants state that the amount of the contingent deferred sales charge, if any, will vary depending on the number of years from the time of payment for the purchase of shares until the time of redemption of such shares. The contingent deferred sales charge is 5% in the first 12 months since a purchase payment was made and decreases by 1% each 12-month period until the 61st month and thereafter when no charge would be taken. In determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable five-year period. This will result in any such charge being imposed at the lowest possible rate.

The application states that the contingent deferred sales charge will be waived in the case of redemption following death or disability of a shareholder if the redemption is made within one year of death or initial determination of disability. The charge will also be waived on redemption effected by current and retired directors, employees and agents of the Nationwide Insurance Companies and its subsidiaries, affiliates, and advisory clients, trustees and officers of any investment company distributed by NFS, their spouses, children, or immediate relatives including father, mother, brothers, sisters, aunts and uncles. Applicants also propose to allow an investor to reinvest all, or part, of his redemption proceeds within 30 days of redemption and receive, through a one-time privilege, credit for any contingent deferred sales charge pro-rated according to the percentage of the reinvestment.

Applicants proposed to finance the Fund's distribution expenses under a plan adopted pursuant to Rule 12b–1 under the Act. Under the plan, the Fund will pay NFS compensation accrued daily and paid monthly at the annual rate of .35% of the average daily net assets of the Fund.

Applicants seek exemptions to the extent necessary or appropriate from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 under the Act. Applicants sumbit that the requested exemptions are appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants contend that the deferred sales charge is fair and in the best interests of investors because it will enable investors to have the advantage of greater investment dollars working for them from the time of their purchase of shares than would be the case if shares were sold subject to a front-end sales load. Moreover, because the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments, it does not apply to increases in the value of an investor's account through capital appreciation or reinvestment of dividends. Applicants further submit that the waiver of the contingent deferred sales charge under the above-described circumstances, and as fully disclosed in the Fund's prospectus, will not harm Applicants or the remaining Fund investors or purchasers.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personnally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86–5632 Filed 3–13–86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–14784]

Application and Opportunity for Hearing; R.J. Reynolds Industries, Inc.

March 11, 1986.

Notice is hereby given that R.J. Reynolds Industries, Inc. (the "Applicant"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Chemical Bank ("Chemical") under four existing indentures of the Applicant, which were qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical from acting as trustee under the Applicant's indentures.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of Subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. (a) Standard Brands Incorporated, formerly a Delaware corporation ("Standard Brands", now Nabisco, Inc., successor by merger), executed and delivered to Morgan Guaranty Trust Company of New York (the "Original Trustee") three indentures dated as of June 1, 1968, May 1, 1971, and December 15, 1974, which were heretofore qualified under the Act (each such indenture as supplemented to the date hereof being hereinafter respectively called the "1968 Indenture," the "May 1971 Indenture" and the "1974 Indenture" and being hereinafter collectively called the "Standard Brands Indentures"), providing respectively for the issuance thereunder of Standard Brands 6¾% Sinking Fund Debentures, due June 1, 1993 (the "6¾% Debentures"), of which $25,674,000 aggregate principal amount remains outstanding as of December 1, 1985, 7¾% Sinking Fund Debentures, due May 1, 2001 (the "7¾% Debentures"), of which $8,659,000 aggregate principal amount remains outstandings as of December 1, 1985, and the 9½% Sinking Fund Debentures, due December 15, 2004 (the "9½% Debentures"), of which $31,635,000 aggregate principal amount remains outstanding as of December 1, 1985 (the 6¾% Debentures, the 7¾% Debentures and the 9½% Debentures being hereinafter called the "Standard Brands Debentures").

(b) Standard Brands and Nabisco Brands, Inc., a Delaware corporation ("NBI"), executed and delivered to the Original Trustee First Supplemental Indentures to the Standard Brands Indentures dated as of July 1, 1981, pursuant to which NBI assumed certain obligations of Standard Brands under the Standard Brands Indentures.

(c) Simultaneously with the consummation of the merger of Standard Brands into Nabisco, Inc., a New Jersey Corporation and a wholly owned subsidiary of NBI ("Nabisco") pursuant to a Plan of Merger effective as of December 31, 1982, Standard Brands, NBI and Nabisco executed and delivered to the Original Trustee Second Supplemental Indentures to the Standard Brands Indentures dated as of December 31, 1982, pursuant to which Nabisco assumed the due and punctual performance and observance of all of the covenants and conditions of the Standard Brands Indentures to be performed by Standard Brands, including without limitation, the payment obligations of Standard Brands under the Standard Brands Indentures

and pursuant to which NBI assumed, jointly and severally with Nabisco, certain obligations of Standard Brands under the Standard Brands Indentures.

(d) Effective at the close of business on December 31, 1985, Chemical succeeded the Original Trustee as Trustee under the Standard Brands Indentures.

(e) The Applicant, NBI and Nabisco executed and delivered to Chemical Third Supplemental Indentures to the Standard Brands Indentures dated as of December 31, 1985, and effective after the close of business on said date (the "Third Supplemental Indentures") pursuant to which the Applicant assumed, jointly and severally with NBI and Nabisco (now indirect wholly owned subsidiaries of the Applicant) the obligations of Nabisco, as the successor to Standard Brands under the Standard Brands Indentures, to make the due and punctual payment of the principal of (and the premium, if any), the interest on, and the sinking fund payments provided for by the Standard Brands Indentures with respect to the Standard Brands Debentures.

2. (a) The Applicant had outstanding as of December 31, 1985, $80,000,000 of its 7⅝% Sinking Fund Debentures, Due February 1, 2001 (the "Reynolds Debentures"), issued under an indenture dated as of April 1, 1971 (the "April 1971 Indenture") between the Applicant and the original Trustee which was heretofore qualified under the Act.

(b) Effective at the opening of business on December 16, 1982, Chemical succeeded the Original Trustee as Trustee under the April 1971 Indenture.

3. Chemical's successor trusteeship with respect to the Standard Brands Indentures did not constitute a conflicting interest under any of such Indentures since each such Indenture is wholly unsecured and in accordance with section 7.08 of each such Indenture, each such Indenture is either specifically described in a later such Indenture or was qualified under the Act after an earlier such Indenture. The assumption by Applicant of Nabisco's obligations under the Standard Brands Debentures pursuant to the Third Supplemental Indentures, effective after the close of business on December 31, 1985, results in Chemical becoming a trustee under indentures (*i.e.* the Standard Brands Indentures) under which securities of the Applicant are outstanding within the meaning of section 7.08 of the Standard Brands Indentures and the April 1971 Indenture. Nevertheless, no conflicting interest exists under the 1968 Indenture with respect to the April 1971 Indenture because both indentures are wholly unsecured and the April 1971 Indenture was qualified after the date of the 1968 Indenture and no conflicting interest exists under the April 1971 Indenture with respect to the May 1971 Indenture and the 1974 Indenture because each such indenture is wholly unsecured and the May 1971 Indenture and the 1974 Indenture were qualified after the date of the April 1971 Indenture. However, a conflicting interest may be deemed to exist under the April 1971 Indenture with respect to the 1968 Indenture since section 7.08 of said Indenture does not exclude from its operation the 1968 Indenture, and a conflicting interest may be deemed to exist under the May 1971 Indenture and the 1974 Indenture with respect to April 1971 Indenture since sections 7.08 of said Indentures do not exclude from their operation the April 1971 Indenture.

4. The Applicant is not in default under either of the Standard Brands Indentures or the April 1971 Indenture.

5. The Applicant's obligations under the Standard Brands Indentures and the April 1971 Indenture and the debentures issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the Standard Brands Indentures and the April 1971 Indenture except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates, redemption prices and sinking fund provisions.

6. In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the debentures issued under such indentures to disqualify Chemical from acting as trustee under the Standard Brands Indentures and trustee under the April 1971 Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document, File No. 22–14784, on file in the offices of the Commission at the Public Reference Section, 450 5th Street, NW., Washington DC 20549.

Notice is further given that any interested person may, not later than March 31, 1986 request, in writing, that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

John Wheeler,
Secretary.

[FR Doc. 86–5681 Filed 3–13–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22966; File No. 4–208]

Joint Industry Plan; Filing and Temporary Summary Effectiveness of Amendment to the Intermarket Trading System Plan; Cincinnati Stock Exchange, Inc.

The Operating Committee of the Intermarket Trading System ("ITS") on March 7, 1986 submitted an amendment, pursuant to section 11A of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa3–2 ("Rule") thereunder, to the Plan for the Purpose of Creating and Operating an Intermarket Communication Linkage ("ITS Plan").[1]

I. Description of the Amendment

The purpose of the amendment is to amend the ITS Plan to provide for (1) an automated interface between ITS and the Cincinnati Stock Exchange, Inc's ("CSE") National Securities Trading System ("NSTS"), (2) principles to govern the automated generation of ITS commitments, and (3) operational parameters for the NSTS/ITS automated interface. The NSTS/ITS automated interface allows orders that are entered

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[1] The ITS Plan and subsequent amendments are contained in File No. 4–208. The Commission initially approved the ITS Plan on an interim basis on April 14, 1978. Subsequently, the Commission authorized the ITS participants to act jointly in operating the ITS for a period of indefinite duration. *See* Securities Exchange Act Release No. 19456 (January 23, 1983), 48 FR 4938. The ITS Operating Committee has indicated that although it refers to the instant amendment as the "Sixth Amendment," the amendment is actually the fifth amendment to the restated ITS Plan filed with the Commission. Another amendment concerning pre-opening reports, which has been circulated to, but not executed by, all the participants is labeled the "Third Amendment."

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into NSTS, processed in accordance with CSE rules, but not fully executed in NSTS, to be formatted automatically into an ITS commitment at the ITS best bid or offer. The CSE then routes these orders through ITS to the ITS participant market furnishing the ITS best bid or offer at that time. The NSTS/ITS interface also will accept automatically an ITS commitment routed to the NSTS from another market if the NSTS quotation is at the same price as the ITS commitment when that commitment is received.

The amendment specifies implementation obligations of the CSE with regard to the NSTS/ITS interface, including giving the other ITS participants a reasonable opportunity to comment on proposed changes to CSE rules governing CSE's internal execution procedures before these changes are filed with the Commission, and requiring the CSE to maintain the present obligations of Designated and Contributing Dealers.[2]

In addition, the amendment adds a statement that ITS is not designed to be an order delivery system in which a substantial portion of one market's orders are routed to another market for execution. The amendment also states that reasonable efforts must be taken to probe one's own market to achieve a satisfactory execution before an order is entered into ITS. To limit the possibility that the NSTS/ITS automated interface would be used as an order delivery system primarily routing orders into ITS,[3] the amendment includes a staged formula limiting the proportion of CSE agency orders that can be routed to another market using the interface. The amendment also establishes a periodic review procedure under which any ITS participant can suggest modifications of the ITS/NSTS interface in a number of specified areas, and an obligation for participants to attempt in good faith to agree on whether to make such modifications.

Furthermore, NSTS/ITS interface emulates the original ITS stations and does not relieve ITS system capacity. Therefore, the amendment provides that if ITS system capacity is "rendered inadequate" in the judgment of the ITS facilities manager as a result of a material increase in the number of NSTS/ITS messages, the CSE will relieve the capacity shortage by modifying the NSTS system or bearing the costs for another CPU for the ITS system.

Finally, the amendment provides for all CSE trading in ITS securities, whether conducted in NSTS or not, to be conducted subject to the ITS Plan.

II. Temporary Summary Effectiveness

The Commission has put the amendments into effect on a summary basis pursuant to Rule 11Aa3–2(c)(4), for a period of 120 days from the date of this release, in order to allow the ITS/NSTS interface to begin operation immediately while comments are being solicited. The amendments are a product of extended negotiations between the CSE and the other ITS participants; while these negotiations were underway, use of the interface was postponed. The Commission preliminarily believes that the amendments represent a positive enhancement to ITS and to NSTS that creates opportunities for efficient and effective market operations,[4] and, in particular, more efficient executions and enhanced intermarket competition. Accordingly, the Commission finds that temporary summary effectiveness is appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to and perfect mechanisms of, a national market system, and otherwise in furtherance of purposes of the Act.

III. Request for Comments

Interested persons are invited to submit written comments on the amendment. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordnce with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. 4–208 and should be submitted by April 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30–3(a)(29)).

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–5630 Filed 3–13–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22993; SR–BSE–84–4]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Boston Stock Exchange, Incorporated ("BSE") submitted on July 2, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Chapter XV of its rules to provide procedures relating to the evaluation of specialist performance. On September 4, 1985, the BSE submitted Amendment No. 1 to the proposed rule change supplementing and amending the procedures described in SR-BSE–84–4.

The proposed amended rule change would amend Chapter XV of the BSE rules as follows: (1) To implement on a twelve-month pilot basis a Specialist Performance Evaluation and Improvement Program ("pilot program"); and (2) to adopt sections .02 and .03 of ¶2155[1] ("Specialist Stock Reallocation") under Chapter XV of the BSE rules to authorize the Market Performance Committee ("MPC") to take one or more of the following actions if a specialist consistently has received evaluations which are below a minimum level of acceptable performance pursuant to the policies of the Exchange's pilot program: (a) Withdraw Exchange approval of a

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[2] In a separate letter, the National Association of Securities Dealers, Inc. said that, in its view, no plan amendment was necessary to authorize the NSTS/ITS except perhaps conforming descriptive language. It also said that its approval of the amendment was conditioned on its understanding that the ITS Plan conditions negotiated by the CSE were not intended to be and shall not be construed as precedent for system modifications proposed by other participants. Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Charles Forman, ITSOC Chairman (March 6, 1986).

[3] In a separate letter to the Commission, the New York Stock Exchange, Inc ("NYSE") has expressed its concern that the CSE, as presently constituted, is dominated by a single dealer firm, and derives most of its trading volume from the execution of orders received through ITS. The NYSE contends that ITS was designed to be an incident to the operation of separate, independent markets, yet the CSE currently has virtually no market function distinct from ITS. The NYSE notes the CSE's commitment to modifying its system to increase interaction of orders and to "strive to generate significant trading activity independent of ITS," and states that its "forbearance" in not blocking the ITS/NSTS interface or moving to end CSE's participation in ITS "will afford the [CSE] an opportunity to alter the CSE's present profile by restoring significant multi-member trading participation and independent, integrated trading." in turn, the NYSE requests that the Commission monitor the ITS/NSTS interface and revisit the appropriateness of CSE's participation in ITS in light of how well the CSE accomplishes its objectives. *See* Letter from Robert J. Birnbaum, President, NYSE, to John P. Wheeler, Secretary, SEC (March 6, 1986). The Commission requests comment on the issues raised by the NYSE letter.

[4] *See* section 11A(a)(1)(B) of the Act; *See also* Securities Exchange Act Release No. 17702 (April 9, 1981).

[1] Paragraph references are to the BSE Guide published by Commerce Clearing House, Inc. ("CCH").

members's registration as a specialist in one or more stocks, (b) reduce the percentage of stocks that may be protected by a specialist when new specialists' books are allocated stocks,[2] and (c) suspend the specialist's trading account.[3]

Notice of the proposed rule change and Amendment No. 1 thereto together with their terms of substance was given by the issuance of Commission releases (Securities Exchange Act Release Nos. 21453, November 2, 1984, 22624, November 14, 1985, respectively) and by publication in the **Federal Register** (49 FR 45091, November 14, 1984, and 50 FR 48512, November 25, 1985, respectively).[4] No comments were received regarding the proposal.

Specialist performance evaluations are to be conducted every four months. The pilot program consists of two areas of performance measurement weighted as follows: (1) The Specialist Performance Evaluation Questionnaire ("Questionnaire"), which accounts for 75% of the specialist's overall score, and (2) the quotation evaluation score, which accounts for 25% of the overall score. A specialist's overall grade will be used as a stock allocation criterion.[5]

The Questionnaire is composed of nine weighted questions and five background questions relating to various areas of specialist activity. It is completed by floor brokers, specialists who act in the capacity of floor brokers in their non-specialty stocks and certain qualifying clerks. Weighted questions are designed to measure the relative importance of the performance area measured by the question.[6] A specialist's scores on all individual questions will be reviewed regardless of the specialist's overall weighted score. Unsatisfactory performance on individual questions as determined by enumerated standards may subject a specialist to performance improvement action.

The second element of the program measures the quality of quotations disseminated through the Consolidated Quotation System. Specialists will be evaluated on the competitiveness of their quotations in their six most active Intermarket Trading System ("ITS") issues. The evaluation is limited to these most active stocks because the Exchange's quotation evaluation system is not yet computerized. It is anticipated that all ITS issues will be evaluated and only manual quotes[7] will be credited when new systems are introduced that will simplify quote dissemination and evaluation.

The quotation evaluation system utilizes a schedule whereby manually input quotations are credited if the bid or offer meets increasing size requirements at each one-eight point interval away from the primary market. For example, if the bid or offer is equal to or better than the primary market quotation, the minimum size required to receive full credit would be 100 shares. If the variation is one-eighth, the minimum size requirement would be 200 shares, and at a variation of one-quarter, 500 shares. The maximum acceptable variation away from the primary market quotation is three-eighths, and the minimum size required in such cases to receive full credit would be 1,000 shares. To meet Exchange requirements for satisfactory performance, a specialist must meet the aforementioned schedule 20% of the time.

As noted, the BSE plans to separately employ the Questionnaire, quotation performance and overall weighted grades to determine where performance improvement action is most needed. Unsatisfactory ratings on either the Questionnaire for the quotation evaluation will result in the following action:

(1) If a specialist receives an average grade below three on the Qustionnaire (on a one to five rating scale with five being highest), the specialist will be requested to attend an informal meeting with the Performance Improvement Action Subcommittee to discuss possible methods of improving performance. Such meetings will occur if the specialist receives a grade below three for one question for two out of three successive review periods, or if the specialist does not meet the quotation schedule 20% of the time. The specialist may elect not to attend this meeting.

(2) A specialist will be required to meet with the full MPC in the event he receives an average overall grade below three on the Questionnaire in two out of three successive review periods, or if he receives a grade of below three on one question in one out of two review periods subsequent to meeting the conditions for review by the Subcommittee. Those specialists failing to meet the schedule for acceptable quotes at least 20% of the time in two of three review periods also would be subject to review by the full MPC.

Any specialist that meets a condition requiring a meeting with the full MPC may be subject to one or more of the following performance improvement actions: (1) Withdrawal of registration in one or more stocks; (2) limitations on the percentage of stocks that can be protected by a specialist,[8] and and (3) withdrawal of a specialist's trading account.[9]

In the event the performance of a specialist is below acceptable performance levels, notice of such fact will be given to the specialist. Notice will be in writing and will contain the specific grounds to be considered as the basis for any sanction.[10] The specialist

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[2] Under the proposed rule, all specialists are obligated to reserve 10% of their specialty stocks for acquisition by new specialists developing a book. A specialist whose performance is below acceptable levels may be required by the MPC to further limit the number of stocks that can be protected.

[3] The BSE first proposed this third step in Amendment No. 1 to the filing. *See* Securities Exchange Act Release No. 22624, November 14, 1985, 50 FR 48512. The proposal does not, however, limit the MPC to specifically enumerated responses. Pursuant to changes submitted on January 6, 1986, in an addendum to Amendment No. 1, the MPC may take such other actions as it deems appropriate to address deficient specialist performance.

[4] On January 6, 1986, the BSE submitted a further amended filing which clarified Exchagne policy regarding Performance Improvement meetings, and proposed nominal revisions to Amendment No. 1. In that addendum, the exchange incorporated specific evaluation standards into its rules, and clarified that (1) the program is a twelve month pilot, (2) initial meetings between a specialist and the Performance Improvement Action Subcommittee will be voluntary and that meetings with the full MPC (upon satisfaction of conditions warranting such) will be mandatory, and (3) the Exchange may impose sanctions beyond those specifically enumerated in order to correct inadequate specialist performance.

[5] The BSE did not originally propose weighted questions but submitted them as part of Amendment No. 1 to the filing after evaluating the Questionnaire.

[6] As overall specialist performance improves, the MPC expects to raise the minimum standards for the Questionnaire and quotation performance as appropriate. Additional proposed rule changes, of course, would be required to effectuate such mofidications of the specialist performance standards.

[7] Automatic quotation systems utilize computerized tracking programs which monitor the primary market's quotations in a given stock and continuously update, to certain set parameters, that stock's quotes on a secondary exchange. Manual quotes must be continuously monitored, evaluated and updated by hand.

[8] See note 2 *supra* p. 1.

[9] The MPC, in addition to the foregoing actions, may take such other action as it deems appropriate to address deficient performance of a specialist. The BSE, of course, would not be precluded under the proposed procedures from taking disciplinary action against a specialist where appropriate.

[10] When the MPC considers withdrawal of approval of a specialist's registration in a particular stock, it will consider indications of weakness in particular stocks to the extent such indications are available. Such indications of weak performance may include, among other factors, references to particular stocks by those responding to initial or supplemental evaluation questionnaires, and references in such questionnnires to weaknesses in

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will have an opportunity to submit a written reply no later than ten days after the receipt of such notice.

Specialists also will have an opportunity to be heard upon the specific grounds to be considered before the MPC and a written record of any such hearing will be maintained. Following any such proceeding, the MPC will inform the specialist in writing of its decision and reasons. The MPC's decision is subject to review by the Board of Governors in accordance with the provisions of Article III, section 2 of the BSE Constitution.

The Commission believes it is appropriate to approve the BSE program on a one-year pilot basis. The program utilizes both a Questionnaire and a quotation evaluation system which should provide the Exchange with sufficient subjective and objective data to refine appropriate standards and procedures for specialist evaluation. The pilot will enable the BSE to effectively reallocate securities of specialists whose performance is substandard, and also give the MPC the flexibility to impose alternative sanctions to correct deficient performance. In addition, the Exchange anticipates that quote evaluation will be expanded beyond the presently proposed six most active ITS issues, as the Exchange enhances its computerized quotation systems.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 10, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5678 Filed 3-13-86; 8:45 am]

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performance of a type with relates to particular stocks or groups of stocks.

When the available measures of specialist performance indicate weak performance generally, and not precisely in any particular stock or stocks, the MPC may decide nonetheless to withdraw approval for a particular stock or stocks. In any case, the MPC will exercise its best judgment to select a stock or stocks as to which a reallocation is likely to result in improved specialist performance.

[Release No. 34-22994; File No. SR-CBOE-86-5]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

On February 14, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to delete language from sections 3.2 and 5.3 of the Exchange Constitution to reflect the fact that the Exchange's Appeals Committee is an appointed and not an elected committee.[3]

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item II below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to amend sections 3.2 and 5.3 of the CBOE Constitution to accurately reflect the results of a special membership vote that was held on January 8, 1979, which changed the Appeals Committee from an elected to an appointed body. These sections of the Exchange Constitution were inadvertently overlooked when the Constitution subsequently was amended to reflect the membership vote.[4] The following bracketed language is to be deleted from Article III and Article V:

Article III. Meeting of Members, Annual Election Meeting.

Section 3.2. An annual election meeting of members shall be held on the 2nd Monday in December of each year unless such day is a legal holiday, in which case on the next succeeding business day which is not a legal holiday, at such time as may be designated by the Board prior to the giving of notice of the meeting for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms and electing members of the Nominating Committee [and Appeals Committee] to fill expiring terms and any vacancies in unexpired terms:

Article V. Conduct of Annual Election, Counting of Ballots.

Section 5.3. When all of the ballots properly submitted at the election have been placed in the ballot box, the Election Committee shall open the ballot box and the sealed ballot envelope and shall count the ballots. A plurality of votes shall elect the Directors; provided, however, that where a plurality of votes cast do not elect at least 2 directors who shall be off-floor directors, as defined in section 6.1, of which at least 1 shall be a nonresident and at least 2 directors who shall be floor directors, as defined in section 6.1, then the appropriate number of candidates from each of the above categories who receive the highest votes among all those candidates in each such category shall be elected in lieu of those candidates with the lowest winning pluralities. A plurality of votes shall elect members of the Nominating Committee. [A plurality of votes shall elect the members of the Appeals Committee; provided, however, that where a plurality of votes do not elect at least 1 member of the Committee who shall be an off-floor individual as defined in section 7.3 and at least 1 member of the Committee who shall be a floor individual as defined in section 7.3 then the appropriate number of candidates from each of the above categories who receive the highest votes among all of those candidates in each category shall be elected in lieu of those candidates with the lowest winning pluralities.] the Election Committee shall cause election results to be posted on the bulletin board on the floor of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] The change of the Appeals Committee from an elected to an appointed committee was approved by the Commission in Securities Exchange Act Release No. 15618, March 6, 1979, 44 FR 14057.

[4] *See* note *supra.*

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherence of the purposes of the Act.

Publication of the submission is expected to be made in the **Federal Register** during the week of March 10, 1986. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-CBOE-86-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 10, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5679 Filed 3-13-86; 8:45 am]

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[Release No. 34-22965; SR-MSRB-86-5]

Self-Regulatory Organizations; Filing and Immeditate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") Suite 800, 1818 N Street NW., Washington, DC 20036-2491 on March 3, 1986 submitted copies of an interpretation of MSRB rules pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to clarify the application of its confirmation rules, rules G-12(c) and G-15(a), to municipal securities subject to call features.

This interpretation has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-MSRB-86-5.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing and any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority (17 CFR 200.30-3(a)(12)).

Dated: March 5, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5624 Filed 3-13-86; 8:45 am]

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[Release No. 34-22980; File No. SR-NSCC-86-04]

Self-Regulatory Organizations; National Securities Clearing Corp.; Proposed Rule Change Amending Procedures for Calculating Clearing Fund Deposits of Municipal Securities Brokers' Brokers Sponsored Account Members

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change described below. NSCC requested that the Commission approve this proposal on an accelerated basis under section 19(b)(2) of the Act. The Commission is publishing this notice to solicit comment.

The proposal would add to Part XIV of NSCC's Procedures an "Alternative Clearing Fund Formula" (the "Alternative Formula") that would be used by NSCC to determine the minimum required Clearing Fund contribution levels of Municipal Securities Brokers' Broker Members using NSCC's sponsored account service ("Municipal Brokers").[1] The proposal also amends NSCC's "Standards of Financial Responsibility and Operational Capability" (the "Standards") to set out eligibility standards for Alternative Formula use and additional guidelines for Municipal Brokers electing the new formula that are subject to closer than normal surveillance.

I. Description of the Proposal

The Alternative Formula would differ from NSCC's original formula [2] in several respect. Under the original formula, each member must contribute an amount equal to: (A) 2½% of the Member's average daily settlement debits and credits, other than those relating to envelope settlement systems ("ESS"), plus (B) the greater of (1) 2½% of the member's average daily ESS debits and credits or (2) 5% of ESS debits; adjusted by a multiplication factor.[3] Under the Alternative Formula,

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[1] The proposal amends NSCC Rule 1 to define "Municipal Securities Brokers' Broker" to mean "any municipal securities broker as defined in Rule 15c3-1(a)(8)(ii) of the Securities Exchange Act of 1934, as amended." Rule 15c3-1(a)(8)(ii) defines these brokers as brokers who act as agent for registered brokers, dealers or municipal securities dealers, have no public customers and maintain no municipal securities in proprietary or other accounts.

Municipal Brokers play an essential role in the municipal securities markets. Unlike equity securities, municipal securities are not traded on national securities exchanges and derived income generally is exempt from federal income taxation. Municipal Brokers provide the fundamental service of confidentially bringing together buyers and sellers of municipal securities. Thus, Municipal Broker activity can be characterized as a "matched book" business, *i.e.*, the Broker is interposed between each buyer and seller and thus the Broker's daily settlement obligations net to zero.

[2] *See* NSCC Procedures, Part XIV, Section A. All NSCC Members not qualifying to use the Alternative Formula generally must continue to contribute to NSCC's Clearing Fund under the Original Formula.

[3] The factor is calculated by dividing the Member's excess net capital into the Member's average daily ESS debits. The factor then is adjusted to provide a minimum of one and a maximum of three.

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clause (A) would exclude both ESS and "qualified securities depository" debits and credits.[4] Clauses (B)(1) and (B)(2) would be carried over unchanged except that a new clause would add back into the calculation 2% of the Member's average daily qualified securities depository debits and the multiplication factor would be eliminated. In sum, a Municipal Broker's Clearing Fund contribution under the Alternative Formula would equal the larger of the daily average of: 2½% of ESS debits and credits of 5% of ESS debits plus 2% of qualified securities depository debits. The Alternative Formula thus would reduce substantially the required Clearing Fund contributions of Municipal Brokers.[5]

The proposal would add new section B.3 to Part I of the Standards. That Section would specify three conditions that must be met by each Municipal Broker applicant for NSCC membership before it could qualify for Alternative Formula use. First, each applicant would have to be in compliance with Commission Rule 15c3–1(a)(8).[6] Second, each applicant would need to enter into an agreement with NSCC that it will not transfer, withdraw or deliver to a third party securities received on a business day through a qualified securities depository for no value, prior to paying for the securities or paying its net settlement obligation for that business day, whichever is less. Third, the applicant also would need to agree not to pledge any securities received on a business day through a qualified securities depository prior to the day's money settlement unless the pledgee agrees to pay NSCC directly the amount due for the securities received or the applicant's net settlement obligation for that business day, whichever is less.

Finally, the proposal would add to the Standards new Part IV, "Guidelines for Computing Clearing Fund Deposits for Sponsored Account Municipal Securities Brokers' Broker Members on Surveillance Who Elect the Alternative Clearing Fund Formula." This Part essentially mirrors already established guidelines for all other Members on surveillance status.[7] Indeed, under new Part IV, NSCC could demand from Municipal Broker Members on closer than normal surveillance Clearing Fund contributions calculated under NSCC's ordinary guidelines, *i.e.*, under Part III of the Standards. NSCC, however, would retain discretion to require Municipal Brokers on surveillance status to contribute lesser amounts of additional Clearing Fund collateral.

II. NSCC's Rationale for the Proposal

NSCC believes that the proposed rule change would facilitate Municipal Broker participation in the National Clearance and Settlement System (the "System"). NSCC stated in its filing that substantially reduced Clearing Fund requirements for Municipal Brokers are appropriate for several reasons. While Municipal Brokers account for a substantial portion of all inter-dealer transactions in both when-issued and secondary municipal securities markets, these Brokers, for the most part, have been unable to qualify for direct DTC membership. Moreover, NSCC represents that its original Clearing Fund formula seems to have deterred both their direct participation in NSCC and their indirect participation in DTC through NSCC's "sponsored account service."[8] Thus, Municipal Brokers, who are very active traders, experience substantially higher clearance and settlement costs because economic considerations have forced them to process transactions either outside National System facilities or through those facilities via correspondent arrangements with direct clearing agency members.[9]

NSCC states that the unique role of Municipal Brokers in the municipal securities markets presents significantly reduced financial exposure to NSCC and justifies reduced required Clearing Fund contributions.[10] Indeed, the Commission already has recognized their unique role by providing them with special reduced net capita requirements.[11] Thus, NSCC's proposal would adjust Clearing Fund levels for Municipal Brokers to reflect more accurately their unique role in the marketplace.

Finally, NSCC believes that the proposal should enable Municipal Brokers to join NSCC and to use NSCC's sponsored account serivce.[12] In NSCC's view, those Brokers, by joining NSCC, should experience substantially reduced clearance and settlement costs by becoming direct, active users of National System services. Indeed the National System, and its user community generally, would benefit because the proposal should facilitate the further depository immobilization of municipal securities.[13]

III. Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at NSCC's principal office. All comments should refer to the file number in the caption above and should be sumitted by April 4, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,
Secretary.

[FR Doc. 86–5825 Filed 3–13–86; 8:45 am]

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[4] A "qualified securities depository" is defined in NSCC Rule 1 as a depository that has entered into an agreement with NSCC to act for NSCC by effecting book-entry transfers of securities to and by NSCC. NSCC's only "qualifier securities depository" is The Depository Trust Company ("DTC").

[5] The proposal does not change the minimum required level of Member Clearing Fund cash contributions. *See* NSCC Procedures, Part XV, for a description of these required contribution levels. Both the original and proposed Clearing Fund formulas are used to calculate each Member's Clearing Fund contribution requirements above the minimum required cash contribution levels. These additional contributions can take the form of other assets, such as U.S. government securities and certain letters of credit and "valued" securities. *See* NSCC Rule 4, Section 1.

[6] 17 CFR 240.15c3–1(a)(8) (1985). Rule 15c3–1(a)(8) provides that Municipal Brokers (1) need only deduct 1% of outstanding fails-to-deliver aged 21 business days or more; (2) take no deduction for aged fails-to-receive; (3) may exclude from aggregate indebtedness overnight bank loans; and (4) must maintain minimum net capital of not less than $150,000.

[7] *See* Part III of the Standards.

[8] NSCC's "sponsored account service" enables NSCC Members that cannot, or choose not to, participate in DTC directly to access DTC services through an NSCC subaccount at DTC. Each sponsored Member is assigned a subaccount number and uses that account like a direct DTC participant. A sponsored account Member generally can use all depository services and facilities as if it were a direct participant. NSCC, however, remains liable to DTC on all activity in sponsored accounts, including the payment of fees to DTC. Because of its potential exposure, NSCC verifies all data for accuracy and reasonableness before submission to DTC and is authorized to reject any items that create liabilities inconsistent with the Member's normal level of business or financial capability.

[9] NSCC believes that the Alternative Formula would help to facilitate development of a meaningful Continuous Net Settlement ("CNS") environment for municipal securities.

[10] *See* note one, *supra*, regarding their unique role.

[11] *See* Rule 15c3–1(a)(8), 17 CFR 240.15c3–1(a)(8).

[12] In fact, NSCC requested that the Commission approve the proposal on an accelerated basis because several Municipal Brokers want to join NSCC and effect compliance with MSRB Rules G–12 and G–15. Those Rules require all municipal securities dealers, brokers and customers that participate in registered clearing agencies, either directly or indirectly, to use the facilities of clearing agencies for comparison and book-entry settlement of certain municipal securities transactions. *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983), corrected at 48 FR 54310 (December 1, 1983) (approving File No. SR–MSRB–83–18). Unless the Commission receives meaningful adverse comment (which is unlikely), the Commission plans to approve the proposal on an accelerated basis at the end of the twenty-one day comment period.

[13] NSCC believes that the Alternative Formula will bring most, if not all, Municipal Brokers directly into the National System.

[Release No. 34–22984; File No. SR–NYSE–86–11]

Self Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1986 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change would extend the effectiveness of R4 from March 7, 1986 to March 6, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the operation of R4 to March 6, 1987.

The R4 program was begun on pilot-basis in September 1982 with two member organizations participating. In its initial phase, the R4 program included 30 stocks, the majority of which were the Dow Jones Industrial stocks. Eligible order size was a maximum of 299 shares. The basic R4 procedures are described in detail in SR–NYSE–82–14 and Amendment No. 1 thereof.

In March 1983, the Exchange requested that the R4 program be extended for an additional year, and that the program be expanded to (1) include additional member organizations; (ii) add eligible stocks, in stages, up to approximately 200 stocks; and (iii) increase the size of eligible orders up to 599 shares. The Exchange's 1983 request for an extension and expansion of the R4 program is described in detail in SR–NYSE–83–8 and Amendment No. 1 thereof.

In the Commission's view, the Exchange's proposed expansion of the R4 program raised "important questions" as to market quality and structure, and thus the Commission instituted a review proceeding to consider whether or not to approve the Exchange's request. After evaluating the comments it received, the Commission determined, on November 4, 1983, to approve the extension and expansion of the R4 program. Since that time, the Exchange has obtained Commission approval for additional extensions of the pilot. The R4 program is currently scheduled to expire on March 7, 1986.

To date, the Exchange has not fully expanded the R4 program to the extent authorized by the Commission in November 1983. In June 1984, the R4 program was expanded to 68 stocks, but maximum order size remained at 299 shares. R4 trading, as measured by both number of executions and share volume, still remains very low as compared to overall trading volume on the Exchange. Consequently, the Exchange has not considered it feasible to expand R4 during the past year.

However, the Exchange is requesting that R4 be extended for one additional year to March 6, 1987 because the program continues to provide a service for member firms who choose to utilize it. Furthermore, as explained in a letter to the Commision relative to SuperDOT procedures, the Exchange is reviewing plans for several systems enhancements, among them the use of Floor-wide display technology. The Exchange believes that at the conclusion of that previously noted review period, it will be appropriate to consider as well the future plans for the R4 program.

(2) Statutory Basis

The extension of the R4 experiment as proposed herein has the same statutory basis as stated in SR–NYSE–82–14. Specifically, the R4 experiment is consistent with sections 11A(a)(1) and 17A(a)(1) of the Securities Exchange Act of 1934 (the "Act") which encourage the use of new data processing and communications techniques and more efficient market operations. It also advances the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Buden on Competition

The R4 experiment provides an opportunity for the Exchange to compete more effectively for small order flow with other exchanges which utilize automatic execution systems. Thus, the Exchange does not believe the R4 experiment imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds good casue for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register**, and, in any event, by March 7, 1986, the scheduled "sunset" date for the R4 experiment. The Commission believes that the Service benefits member organizations by providing rapid and cost-effective

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processing of transactions, and also benefits public investors, who may find the rapid execution made possible by the service more conducive to their needs than the execution of their orders on the Floor of the Exchange in the normal manner. Because member organizations and public investors are currently receiving the benefits of executions through the Service, the Commission believes that operation of the Service should not be suspended pending completion of the full notice period specified in section 19(b)(2). Accordingly, the Commission has accelerated the effectiveness of the proposed rule change to March 7, 1986.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5626 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22969; File No. SR-PSE-85-36]

Self-Regulatory Organizations; the Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On December 16, 1985, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the PSE's Options Floor Procedure Advice F-5 and permit increased usage of hand signals as a means of communication on the options floor.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 22834 (January 24, 1986), 51 FR 4060 (January 31, 1986). No comments were received on the proposed rule change.

Currently, Exchange rules permit communciation via hand signals only of quotes and sizes, changes of price limits of orders, or their reduction in size or cancellation. The proposed rule change will permit, in addition, the increase of an order's size and/or the activation of an order to market price by means of hand signals. The proposed rule change will not allow, however, the initiation of orders through the use of hand signals.

The PSE stated in its proposal that the rule change is intended to better facilitate the communication of order instructions across the trading floor. As a result of the PSE's relocation to a larger facility in September 1984, floor brokers and clerks are required to travel further distances from booth to trading crowd to effect changes to existing orders. The PSE believes that the proposed rule change will reduce the amount of time required to effect such changes, thereby benefiting the investing public. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5627 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 10, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

American Brands, Inc. (Delaware)
  Common Stock, No Par Value (File No. 7-8863)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting systems.

Interested persons are invited to submit on or before March 31, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5680 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Amendment No. 1 to the proposed rule change was filed on January 6, 1986.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[Release No. 34-22991; File No. SR-Phlx-86-3]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change; Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change which is described below, consists of procedures regarding the delivery and pricing of orders in Philadelphia Stock Exchange ("PHLX") traded securities which compose an index. Such procedures are proposed to be implemented on a one year pilot basis.

(a) Definitions:

(i) PRL means a combined round-lot and odd-lot order; and,

(ii) Eligible securities means those securities designated by the specialist.

(b) The PHLX proposes, on a trial basis, to utilize existing computer facilities to enable member organizations to electronically transmit, directly to the specialist post, market orders in eligible securities after the opening of trading in such securities. Such orders will be executed in accordance with the applicable rules of the PHLX as follows:

(A) Market orders (odd-lots, and round-lots and PRL's up to 599 shares) will be executed at the best bid/offer quote among the American, Boston, Cincinnati, Midwest, New York, Pacific, or Philadelphia Stock Exchanges or ITS/CASE.

(B) Market orders (round-lots and PRL's over 599 shares) will be executed in accordance with arrangements agreed upon by the specialist and the member organization transmitting the order.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to extend until December 31, 1986, the pilot program for the PHLX's Designated Underlying Index Transaction ("DUIT"). A nine (9) month pilot program was originally approved by the Securities and Exchange Commission on May 4, 1984, and subsequently extended for a period of one (1) year on February 4, 1985.

The Designated Underlying Index Transaction program, which is described more fully in SR-PHLX 83-26, as approved by the Securities and Exchange Commission on May 4, 1984 (see Order Approving Proposed Rule Change, Release No. 20928), is intended to provide member organizations with an easy, efficient method of order entry and execution with timely reports for transactions in equity securities which hedge index related transactions, e.g., in index options, index futures, and options on index futures.

The PHLX's existing computer facilities will enable PHLX member organizations to transmit such orders electronically, directly to the specialist. This will be accomplished by means of the PACE system, PHLX's order delivery and execution system.

Because of certain enhancements which are being made to the PACE system, as well as to the systems of prospective users, the Designated Underlying Index Transaction program has not been implemented. It is for this reason that the extension to December 31, 1986, is requested.

(b) Statutory Basis

Implementation of the proposed rule change will be consistent with those provisions of the Securities Exchange Act of 1934 ("Act") which encourages the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations. See sections 6(b)(5) and 11A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that any burdens will be placed on competition as a result of such change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Commission believes that approval of the proposed rule change on an accelerated basis is appropriate because the DUIT pilot program was scheduled to terminate on February 4, 1986, and a further extension of the pilot, which the Commission notes is not yet operational, is necessary to permit the Phlx to assess and further develop its procedures under the program.[1]

The Commission notes that orders entered into the DUIT system will be executed through Phlx's automated order delivery and execution system ("PACE"), and that such orders will receive no order exposure between the time the order is entered into PACE and the time it is automatically executed. The Commission recognizes that the pricing benefits that may adhere to the exposure of orders in individual securities are significantly reduced in the context of the simultaneous execution of a number of securities comprising an index, and that member firms may require especially quick execution of an index-based order.

The Commission will continue to examine, however, the appropriateness of eliminating any exposure time for such index-based executions.[2]

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[1] The Commission notes that the DUIT system is similar to the Midwest Stock Exchange's ("MSE") pilot program for using the MSE's Automatic Execution System ("MAX") to facilitate the routing and execution of transactions in a portfolio of equity securities ("portfolio executions"). The MSE pilot permits principal orders for portfolio executions to be sent over MAX and reduces the time frame between the time a market order is entered into MAX and the time it is automatically executed from 15 seconds to 0 seconds. *See* Securities Exchange Act Release No. 22880 (February 12, 1986), 51 FR 6190 (File No. SR-MSE-85-11).

[2] Both the MSE and the Pacific Stock Exchange ("PSE") have implemented pilot programs reducing the order exposure time for executions through the MAX and SCOREX systems, respectively, from 30

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six (6) copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1986.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and 11A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5628 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22982; File No. SR-Phlx-86-6]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("1934 Act"), notice is hereby given that on February 25, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") proposes to amend Exchange Rules 101 and 1101A to extend trading hours in Phlx's Value Line Index ("XVL") options until 4:15 p.m., and to amend Rule 1042A to similarly extend the cut-off time for exercising XVL options.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Under current Exchange rules, Value Line ("XVL") options, as well as all other index options, trade until 4:10 p.m. every day. In comparison, the XVL futures contract is traded on the Kansas City Board of Trade ("KCBT") until 4:15 p.m. every day. Market participants frequently assume positions in XVL futures contracts to hedge their positions in the XVL options, and conversely, hedge their options contracts with futures contracts.

To coordinate the daily close of trading in the PHLX's XVL options with the close of trading in the KCBT's XVL futures contract, the Exchange proposes that Exchange Rules 101 and 1101A be amended to extend trading hours in XVL options until 4:15 p.m. At present, market participants who assume positions in both XVL futures and options contracts are unable to adjust their positions in the XVL options in response to price movements in the XVL futures during the last five minutes of futures trading. Since there has been a surge in trading in contracts based on the Value Line index following the introduction of XVL options trading, synchronization of the close of trading in both XVL options and futures is likely to further enhance depth and liquidity in the options market.

The Exchange also proposes to amend the corresponding exercise requirements for index options. Exchange Rule 1042A currently requires members and member organizations to prepare and time-stamp all index option exercise instructions by 4:10 p.m. The Rule also requires that "exercise advices" be delivered to the Exchange trading floor by 4:10 p.m. when 25 or more index option contracts in the same series are to be exercised for an account. The 4:10 p.m. cut-off time was established to prevent option holders from having an unfair advantage of deciding whether to exercise their options based on news disseminated after the close of trading. Since it is proposed that XVL options trade until 4:15 p.m., a similar cut-off time needs to be established for persons who wish to exercise such options.

The proposed rule changes are consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to the Exchange by providing investors with additional trading opportunities in XMI options. Therefore, the proposed rule changes are consistent with section (6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act so it may implement the proposed rule change prior to March 21, 1986, the last day of trading for all outstanding series of XVL options. The Exchange wishes to implement the extended closing time in the next expiration month and states that its proposed extension of the close in XVL options is consistent with proposed rule changes filed by the Chicago Board Options Exchange, Incorporated ("CBOE"), the American ("Amex") and the New York Stock Exchanges, Inc. ("NYSE") which similarly sought to extend the closing and expiration cut-off times for indexes traded on those exchanges and which were recently approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change is substantially identical to the CBOE, Amex and NYSE proposals which were noticed and approved by the Commission.[1] No comments were received with respect to those proposals. The Commission believes that extending the trading hours of XVL index options to coordinate with the hours of trading of the similar XVL futures index will provide participants in XVL index options trading an additional opportunity to adjust their options positions to reflect price changes in the corresponding XVL futures index.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5629 Filed 3-13-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Aeronaves de Puerto Rico, Inc., Frontier Horizon, Inc. and Precision Valley Aviation, Inc. d/b/a Precision Airlines; Revocation

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 86-3-29), Docket 43861.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 401 and/or 418 certificates issued to Aeronaves de Puerto Rico, Inc., Frontier Horizon, Inc., and Precisión Valley Aviation, Inc. d/b/a Precision Airlines.

DATE: Persons wishing to file objection shuld do so no later than March 31, 1986.

ADDRESS: Responses should be filed in Docket 43861 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 755-3812.

Dated: March 10, 1986.

Matthew V. Scocozza,

Assistant Secretary, for Policy and International Affairs.

[FR Doc. 86-5608 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43687]

Denver-London Route Proceeding; Rescheduling of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to commence on April 2, 1986, has been rescheduled and will commence on April 21, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg.; 400 7th Street, SW., Washington, DC before the undersigned Chief Administrative Law Judge. Dated at Washington, DC, March 7, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-5609 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves; Correction

AGENCY: Federal Highway Administration (FHA), DOT.

ACTION: Correction to a notice.

SUMMARY: This document corrects the moving expense schedule for displaced persons in the State of California that appeared at page 1591 in the Federal Register on Tuesday, January 14, 1986, (51 FR 1591).

FOR FURTHER INFORMATION CONTACT: Gary Patchett, Relocation Division, Office of Right-of-Way (202-426-0117); or Reid Alsop, Office of the Chief Counsel (202-426-0800), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC, 20590. Office hours, Monday-Friday are from 7:45 a.m. to 4:15 p.m., ET.

In FR Doc. 86-805 appearing on page 1591 in the issue of January 14, 1986, the information for the State of California in Table 1-Personalty is corrected to read as follows:

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seconds to 15 seconds. *See* Securities Exchange Act Release Nos. 22357 (August 20, 1985), 50 FR 35890 (order approving MSE procedures); 21329 (September 17, 1984), 40 FR 57199 (order approving PSE's procedure on a one-year pilot basis); 22814 (January 21, 1986), 51 FR 3556 (order approving one-year extension of PSE pilot procedures).

[1] *See* Securities Exchange Act Release No. 22957, February 27, 1986.

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State	Occupant provides furniture—Number of rooms of furniture									Occupant does not provide furniture	
	1	2	3	4	5	6	7	8	9	First room	Each additional room
California	100	200	300							50	50

Issued on: March 3, 1986.

Anthony J. McMahon,

Chief Counsel, Federal Highway Administration.

[FR Doc. 86-5101 Filed 3-13-86; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

Cultural Property; State Party Request From Canada

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States is in receipt of a request under section 303(a)(3) from the Government of Canada, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The Canadian request is for U.S. import restrictions on certain endangered archaeological and ethnological material to assist Canada in protecting its cultural patrimony.

Dated: March 12, 1986.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 86-5940 Filed 3-13-86; 9:23 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 50
Friday, March 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Friday, March 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Report of the Director, Division of Accounting and Corporate Services:
  Memorandum re: Investment Management Report December 31, 1985
Memorandum and Resolution re: Rules for Disclosure of Change in Bank Control Notices

The Board further determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven day's notice to the public, of the following matters:

Application of Middleborough Savings Bank, an operating noninsured savings bank located at One South Main Street, Middleboro, Massachusetts, for Federal deposit insurance.

Application of Winchendon Savings Bank, an operating noninsured savings bank located at 112 Central Street, Winchendon, Massachusetts, for Federal deposit insurance.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,451-L
  Park Bank of Florida, St. Petersburg, Florida

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: March 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5738 Filed 3-12-86; 1:24 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:48 p.m. on Friday, March 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to adopt a resolution making funds available for the payment of insured deposits made in The Citizens Bank of Winigan Missouri, Winigan, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Friday, March 7, 1986.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Chairman's Office, Room 6023 of the FDIC Building located at 550 17th Street NW, Washington, DC.

Dated: March 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5739 Filed 3-12-86; 1:25 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:09 p.m. on Monday, March 10, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice of the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), ((c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: March 11, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5739 Filed 3-12-86; 1:26 pm]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Wednesday, March 19, 1986, 4:00 p.m.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 6C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789-5097.

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MATTERS TO BE CONSIDERED:

Closed—Minutes of December 9, 1985, Board of Directors' Meeting
Closed—President's Report
Closed—Financial Report

Date sent to Federal Register: March 12, 1986.

Maud Mater,
Secretary.

[FR Doc. 86-5888 Filed 3-12-86; 3:50 pm]

BILLING CODE 6720-02-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 19, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Petition for Issuance of Declaratory Order Filed by International Transportation Service, Inc. Regarding Assessment of Charges for Terminal Services at the Port of Long Beach.
2. Section 19 of the Merchant Marine Act, 1920, and the Use of High-Cube Containers on the Highways of Japan.

CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,
Secretary.

[FR Doc. 86-5817 Filed 3-12-86; 3:51 pm]

BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-5707 Filed 3-12-86; 11:15 am]

BILLING CODE 6210-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:30 p.m., Tuesday, March 18, 1986.

PLACE: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737-1234.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Outlook.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Delegations of Authority to Central Liquidity Facility President.
6. Final Rule: Part 701.27, Credit Union Service Organizations.
7. Charter Amendment Appeal from American First Federal Credit Union, Brea, CA, Field of Membership Overlap.

TIME AND DATE: 9:30 a.m., Tuesday, March 18, 1986.

PLACE: 1776 G Street NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action Under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 86-5888 Filed 3-11-86; 4:12 pm]

BILLING CODE 7535-01-M

8

RAILROAD RETIREMENT BOARD

Notice is hereby given that the meeting of the Railroad Retirement Board which was scheduled on March 17, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611, is hereby cancelled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Com No. 312-751-4920, FTS No. 387-4920.

Dated: March 11, 1986.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 86-5806 Filed 3-12-86; 3:09 pm]

BILLING CODE 7905-01-M

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federal register

Friday
March 14, 1986

Part II

Department of Education

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Verification of Application Information; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Verification of Application Information

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Student Assistance General Provisions regulations, 34 CFR Part 668, by adding a new Subpart E to implement for the 1986–87 award year an integrated system for the verification of student aid application information reported by applicants when they apply to have their expected family contribution calculated for the Pell Grant Program, the campus-based programs (National Direct Student Loan (NDSL), College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG)), and the Guaranteed Student Loan (GSL) Program. The Secretary is issuing these regulations to reduce high error rates in data reported by applicants and, thus, to assure, to the maximum extent possible, that eligible applicants receive the correct amount of student financial assistance.

The Secretary is also revoking §§ 690.14(b) and 690.77 of the Pell Grant Program regulations with regard to Pell Grant applications, beginning with applications submitted for the 1986–87 award year. These sections are being revoked because the provisions of Subpart E of Part 668 supersede them.

EFFECTIVE DATE: These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Sections 668.51, 668.52, 668.53, (other than §§ 668.53(a)(5)), 668.54, 668.55, 668.56, and 668.57 shall apply to applications for student financial assistance under the Pell Grant, campus-based, and GSL programs starting with applications for the 1986–87 award year. Similarly, §§ 690.14(b) and 690.77 are revoked with regard to applications for the Pell Grant Program starting with the 1986–87 award year. Sections 690.14(b) and 690.77 will continue to apply to Pell Grant Program applications submitted for the 1985–86 and previous award years.

Sections 668.58, 668.59, 668.60, and 668.61 shall apply to applications for and assistance awarded under the Pell Grant, campus-based, and GSL programs starting with the 1986–87 award year.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, U.S. Department of Education, Office of Student Financial Assistance, Regional Office Building 3, Room 4318, 400 Maryland Avenue SW., Washington, DC 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: The Secretary is issuing these regulations to reduce error in the information reported by applicants on their applications for assistance under the Pell Grant, campus-based, and GSL programs. This information is used to calculate an applicant's expected family contribution (EFC). The EFC is the amount that an applicant and his or her family can reasonably be expected to contribute toward his or her cost of attendance and is used to determine the applicant's financial need for assistance. The applicant's financial need is defined as the difference between the applicant's cost of attendance and the EFC. The applicant may receive assistance under these programs if he or she demonstrates financial need for such assistance.

Implementation of § 668.53(a)(5)

The procedures referred to in § 668.53(a)(5) must be incorporated into an institution's written policies and procedures, following the effective date of § 668.14(g) of the Student Assistance General Provisions regulations. It is anticipated that § 668.14(g) will be published shortly in final form, and will be effective for the 1987–88 award year.

Revisions to the Notice of Proposed Rulemaking

Only a few significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of July 26, 1985, 50 FR 30674–30685. Most of these changes relieve the burden that these regulations place on institutions. The following is a listing of those changes. A full discussion of the changes is contained in the Appendix of comments and responses.

Section 668.53 Policies and procedures.

The Secretary has deleted § 668.53(a)(1)(iii) of the NPRM which required an institution to specify in its written policies and procedures the approved need analysis system the institution uses to recalculate an EFC.

The final regulation, at § 668.53(a)(5) (§ 668.53(a)(1)(vi) of the NPRM), does not specify the procedures to follow in referring for investigation instances where an institution has reason to believe that an applicant has applied for assistance under false pretenses. Rather, the provision requires that institutions establish procedures for making referrals under § 668.14(g). Section 668.14(g) was published in proposed form as part of the Student Assistance General Provisions regulations and is now being considered in light of the public comment.

The Secretary has deleted § 668.53(a)(2) of the NPRM so that an institution does not have to include in its policies and procedures, for purposes of these regulations, the policies and procedures that it follows when it verifies applications over and above the requirements of these regulations.

Section 668.54 Selection of applicants for verification.

Under § 668.54(b), an applicant need not document spouse information or provide the spouse's signature if the applicant is unable to provide the required spousal documentation or signature.

Section 668.55 Updating information.

The Secretary has revised the regulations to provide that an applicant need not reverify his or her household size or number attending postsecondary educational institutions for an award year if the applicant has already verified this information on an earlier application for that award year and there has been no change in the information.

The Secretary has clarified that, unless the applicant would otherwise receive an overaward, an institution need not change any prior award or GSL recommended loan amount on a previously certified GSL loan application if an applicant's household size or number attending postsecondary educational institutions changes between the time an applicant originally updates this information and is subsequently required to update the information on another application.

The Secretary has clarified that an applicant may not update his or her application information if the change is a result of a change in marital status.

The Secretary has provided under § 668.55(b) that a Pell Grant applicant who is not selected for verification shall certify that his or her household size, number attending postsecondary educational institutions, and dependency status have been updated by signing the certification statement on the SAR or a comparable statement used by institutions.

Section 668.56 Items to be verified.

The Secretary has revised the regulations to provide that an applicant must verify the number of family members in his or her household only if the household size is greater than one in the case of an independent student and greater than two in the case of a dependent student.

The Secretary has revised the regulations to provide that an applicant must verify the number of family members attending postsecondary educational institutions only if that number is greater than one.

The Secretary has limited the required items to be verified under untaxed income and benefits to social security benefits, child support, and those other items that an institution may verify using the tax return.

The Secretary has provided that an institution shall require an applicant to verify social security benefits only if (1) the applicant has a comment to that effect on his or her SAR, or (2) the applicant does not submit a SAR to the institution and the institution has information showing the applicant received social security benefits or has reasons to believe the applicant received social security benefits.

The Secretary has provided that the institution shall require an applicant to verify child support only if the institution has information showing that the applicant received child support or the institution has reason to believe the applicant received child support.

The Secretary has clarified the language of § 668.56(b) to indicate that the GSL verification requirements apply only to applicants selected under § 668.54(a) (1) or (2), and not to all GSL applicants.

The Secretary has provided that a Pell Grant applicant who is a dependent student does not have to verify his or her adjusted gross income (AGI), U.S. income tax paid, and untaxed income and benefits for the calendar year preceding the first calendar year of the award year, *i.e.*, the base year.

Section 668.57 Acceptable documentation.

The Secretary has revised the regulations to require, when appropriate, the signature of the applicant's spouse on documents used to verify application information.

The Secretary has deleted the comparable State income tax return as a document to verify income and U.S. income taxes paid.

The Secretary has provided other documentation as an alternative to the U.S. income tax return for verifying AGI and U.S. income tax paid under certain circumstances.

The Secretary has removed the connection between the household size and the number of exemptions on the U.S. income tax return and is requiring that the household size of each selected applicant be verified by a signed statement.

The Secretary has clarified the documentation requirements for instances when the Secretary or an institution has conflicting documentation concerning an applicant's independent student status.

The Secretary has revised the requirements for independent student documentation for Pell Grant applicants under 23 years of age when the Secretary and the institution do not have conflicting documentation. The 1986–87 student aid application, unlike previous ones, provides a place for an applicant's parents to certify the information on the application with respect to the applicant's independent student status. Therefore, if the applicant's parents signed the application form with respect to the factors used to determine independent student status, the Secretary has eliminated the requirement that the parents sign a statement verifying this information.

The Secretary is no longer requiring that the worksheet for other untaxed income and benefits from the student aid application be used to verify untaxed income and benefits.

Section 668.58 Interim disbursements.

The Secretary has revised § 668.58(a)(1) to clarify that he is continuing the current Pell Grant policy of precluding an institution from disbursing Pell Grant funds when it has documentation that conflicts with the information or documentation provided by the applicant and is extending that prescription to the campus-based and GSL programs.

The Secretary has revised § 668.58(c) to provide that an institution may hold a GSL check for up to forty-five (45) days while an applicant is completing the verification process, as compared to the thirty-day limitation set forth in the NPRM.

Section 668.59 Consequences of a change in application information.

The Secretary has revised this section to provide that an applicant's EFC need not be recalculated if the absolute value of the change in dollar items on his or her application as a result of verification is less than $200 for the Pell Grant Program and less than $800 for the campus-based and GSL programs.

The Secretary has revised proposed §§ 668.59(d)(1), 668.59(b) in the final regulations, to provide that the institution may disburse the applicant's Pell Grant award based on the original EFC if the institution determines, after verification, that the applicant's EFC has decreased. The institution shall revise the applicant's Pell Grant award if the applicant subsequently submits a corrected SAR.

The Secretary has revised proposed §§ 668.59(d)(2), 668.59(c) in the final regulations, to provide that an institution shall adjust the applicant's financial aid package for campus-based and GSL aid to reflect a new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount for a GSL loan.

Section 668.60 Deadlines for Submitting documentation and the consequences of failing to provide documentation.

The Secretary has revised proposed §§ 668.60(c), 668.60(d) of the final regulations, to require that an institution shall not process any application for an applicant who does not provide requested information if directed by the Secretary.

Section 668.61 Recovery of Funds.

The Secretary has clarified that an institution shall make restitution from its own funds of an overpayment under § 668.58(a)(2)(ii) not later than the first of either (1) sixty days after the applicant's last day of enrollment or (2) the last day of the award year in which the institution disbursed the funds to the applicant.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet th[illegible]iteria for major regulations established in the Order.

Paperwork Reduction Act of 19[illegible]

The information collection requirements contained in these regulations in §§ 668.53, 668.54, 668.55, 668.56, and 668.57 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned an OMB control number. This control number appears as a citation following the appropriate sections.

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Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review as discussed in the Appendix of Comments and Responses, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to share this information or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance: No. 84.007, Supplemental Educational Opportunity Grants; No. 84.032, Higher Education Act Insured Loans (Guaranteed Student Loans); No. 84.003, College Work-Study Program; No. 84.038, National Direct Student Loans; and No. 84.063, Pell Grant Program)

Dated: March 7, 1986.

William J. Bennett,
Secretary of Education.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: Secs. 435, 481, 484, 485, 487, and 1201 of the Higher Education Act of 1965, is amended; 20 U.S.C. 1085, 1088, 1091, 1094, and 1141, unless otherwise noted.

2. The table of contents of Part 668 is amended by adding a new Subpart E to read as follows:

Subpart E—Verification of Student Aid Application Information

Sec.
668.51 General.
668.52 Definitions.
668.53 Policies and procedures.
Sec.
668.54 Selection of applicants for verification.
668.55 Updating information.
668.56 Items to be verified.
668.57 Acceptable documentation.
668.58 Interim disbursements.
668.59 Consequences of a change in application information.
668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.
668.61 Recovery of funds.

3. Part 668 is amended by adding a new Subpart E to read as follows:

Subpart E—Verification of Student Aid Application Information

§ 668.51 General

(a) *Scope and purpose.* (1) The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, the campus-based, and the Guaranteed Student Loan (GSL) programs.

(2) The regulations also cover the verification by institutions of information submitted under the GSL Program by applicants whose adjusted gross family income is $30,000 or less.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

(20 U.S.C. 1094)

§ 668.52 Definitions.

The following definitions apply to this subpart:

"Approved need analysis system" means a need analysis system which the Secretary has approved for an award year for determining an EFC under the campus-based programs.

"Base year" means the calendar year preceding the first calendar year of an award year.

"Edits" means a set of preestablished factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's costs of attendance.

"GSL Needs Test Tables" means the tables in Appendix B to 34 CFR Part 682 used to calculate a GSL applicant's EFC.

"Student aid application which a person submits to have his or her EFC determined under the Pell Grant, campus-based, or GSL programs.

(20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in an application to have an EFC calculated in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification;

(4) The procedures the institution requires an applicant to follow to correct application information; and

(5) The procedures for making referrals under § 668.14(g).

(b) The institution's procedures must provide that it furnish, in a timely manner, to each applicant selected for verification—

(1) A clear explanation of the documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.54 Selection of applicants for verification.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph. (1) If the edits specified by the Secretary select an applicant for verification, the institution shall require the applicant to verify all of the applicable items specified in § 668.56. The Secretary may enter into agreements with agencies or organizations with approved need analysis systems under which the Secretary provides the edits to the

agencies or organizations and the agencies and organizations indicate to institutions the applications that the edits select for verification.

(2) The institution shall require every applicant to verify the applicable items specified in § 668.56 if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or requests the instittution to certify his or her application for a GSL loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated by the applicant submitting an application to an agency or organization with an approved need analysis system that has an agreement with the Secretary described under paragraph (a)(1) of this section.

(3) If an institution believes that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it believes is inaccurate.

(4) If an applicant is selected to verify the information on his or her application under paragraph (a)(1) of this section for an award year, the institution shall require the applicant to verify the information on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for an award year.

(b) *Exclusions from verification.* (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has documentation that conflicts with information reported by an applicant or believes that the information reported by the applicant is incorrect, it does not have to verify applications of the following applicants:

(i) An applicant who is a legal resident of and, in the case of a dependent student, whose parents are also legal residents of the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in § 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, all pages of the applicant's SAR.

(3) An applicant need not document spouse information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.55 Updating information.

(a)(1) Unless the provisions of paragraphs (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If the number of family members in the applicant's household, the number of those household members attending postsecondary educational institutions, or the applicant's dependency status changes as a result of a change in the applicant's marital status, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or to the Secretary.

(c) If an applicant has received Pell Grant, campus-based, or GSL program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending post-secondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant or campus-based program assistance or certifying a GSL loan application; and

(2) Is not required to adjust the Pell Grant or campus-based program assistance previously awarded to the applicant for that award year, or any previously certified GSL loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC

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calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a GSL loan application for an applicant, the applicant shall not update his or her dependency status on the GSL loan application.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.56 Items to be verified.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year.

(2) U.S. income tax paid for the base year.

(3) (i) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant and in the household of the applicant's parents if that aggregate number is greater than two.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant and his or her spouse if that number is greater than one.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The factors relating to an applicant's independent student status.

(6) Untaxed income and benefits for the base year including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive an SAR and the institution has information showing, or has reason to believe, that those benefits were received;

(iii) Child support if the institution has information showing; or has reason to believe, that child support was received;

(iv) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account; and

(v) The following other untaxed income and benefits:

(A) Untaxed portions of unemployment compensation.

(B) Untaxed dividends.

(C) Untaxed capital gains.

(D) Foreign income exclusion if the institution has information showing, or has reason to believe, that the foreign income was excluded.

(E) Earned income credit.

(b) For a GSL applicant selected for verification under § 668.54(a)(1) or (2) of this section—

(1) If the GSL applicant's adjusted gross family income is $30,000 or less, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income; and

(ii) The factors relating to an applicant's independent student status;

(2) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution uses the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income;

(ii) (A) For an applicant who is a dependent student, the aggregate number of family members in the houshold of the applicant and in the household of the applicant's parents if that aggregate number is greater than two; or

(B) For an applicant who is an independent student, the number of family members in the household of the applicant and his or her spouse if that number is greater than one;

(iii) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one; and

(iv) The factors relating to an applicant's independent student status; or

(3) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution does not use the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies the applicable items set forth in paragraph (a) of this section.

(c) For the Pell Grant Program, if an applicant is a dependent student and the applicant's income for the base year is used to calculate the applicant's EFC (student aid index), an institution need not require the applicant to verify his or her base year adjusted gross income, U.S. income tax paid, and untaxed income and benefits.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.57 Acceptable documentation.

(a) *AGI and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify adjusted gross income and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W–2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W–2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who is required in paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of a U.S. income tax return or an IRS listing of tax account information of a relevant individual, the documentation set forth in paragraph (a)(4) of this section if the relevant individual for the base year—

(i) Has not filed a U.S. income tax return but has filed an income tax return with a central government outside the United States or with the Commonwealth of Puerto Rico;

(ii) Has not filed and will not filed a U.S. tax return;

(iii) Has been granted a filing extension by the IRS; or

(iv) Has requested the IRS to provide him or her with a copy of the tax return or a listing of tax account information and the IRS cannot locate the return or provide a listing of tax account information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a copy of the signed income tax return filed by that individual for the base year with the central government or with the Commonwealth of Puerto Rico;

(ii) For an individual described in paragraph (a)(3)(ii) of this section, a statement signed by that individual certifying that he or she has not filed nor will file a U.S. income tax return for the base year and providing for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(iii) For an individual described in paragraph (a)(3)(iii) of this seciton—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the I.R.S. for the base year, or a copy of I.R.S.'s approval of an extension beyond the automatic four-month extension if the individual requested the additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iv) For an individual described in paragraph (a)(3)(iv) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the base year; or

(B) For a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(iii) of this section to provide to it a copy of his or her completed U.S. income tax return when filed. When an institution receives the copy of the return, it may reverify the adjusted gross income and taxes paid of the applicant and his or her family.

(6) If an individual who is required to submit an IRS Form W–2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each household member in the family and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Unless the institution believes that the information included on the application regarding the number of household members in the applicant's family enrolled in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, which lists—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of each institution.

(2) If the institution believes that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(d) *Independent student status. (1) Unmarried applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require an unmarried applicant selected for verification to submit to it—

(i) A copy of the base year, Federal income tax return of the applicant's parent(s) signed by the filer, or by one of the filers if a joint return, or if the parent(s) did not file and will not file a tax return for that year, a statement to that effect signed by the parent(s); and

(ii) A statement signed by the applicant and the applicant's parent(s) certifying that—

(A) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(B) The parent(s) will not and did not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year or the base year; and

(C) The applicant did not and will not live with the parent(s) for more than forty-two days in either of those years.

(2) *Married applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require a married applicant selected for verification to submit to it a written statement signed by the applicant and the applicant's parent(s) certifying that—

(i) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(ii) The parent(s) did not and will not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year; and

(iii) The applicant did not and will not live with the parent(s) for more than forty-two days in that year.

(3) *Conflicting documentation.* (i) Except as provided in paragraph (d)(3)(ii) of this section, if the Secretary or an institution has conflicting documentation regarding any of the three factors used to determine independent student status, the institution shall require an applicant selected for verification to submit to it—

(A) The documentation specified in paragraph (d)(1) of this section if the applicant is unmarried; or

(B) The documentation specified in paragraph (d)(2) of this section if the applicant is married.

(ii) The institution may consider the applicant's independent student status verified even though it or the Secretary has conflicting documentation if the applicant's parent's—

(A) Are deceased;

(B) Are physically or mentally incapacitated; or

(C) Cannot be located because either their address is unknown or they are residing in a country outside the United States and cannot be contacted by normal means of communication.

(4) *No conflicting documentation—Pell Grant Program.* For purposes of the Pell Grant Program, if the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status—

(i) The institution shall consider the independent student status of an applicant to be verified without requiring documentation or statements from the applicant or his or her parents if the applicant will be at least 23 years old on May 31 of the second calendar year of the award year for which aid is requested;

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(ii) The institution shall consider the independent student status of a married applicant who is or will be under 23 year old on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant's parents have signed the applicant's original application; or

(B) The applicant's parents are unable or unwilling to provide the required statements; or

(iii) The institution shall consider the independent student status of an unmarried applicant who is under 23 years of age on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant had sufficient resources to support himself or herself and any dependents for the base year; and

(B) The applicant's parents are unable or unwilling to provide the tax return or statements required in paragraph (d)(1) of this section. For the purpose of this provision, the Secretary considers that the parent(s) have provided the statements required in paragraph (d)(1) of this section if the parent(s) signed the applicant's original application.

(5) *No conflicting documentation—campus-based and GSL programs.* For purposes of the campus-based and GSL programs—

(i) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are not unable to provide the requested information and documentation, the institution may either—

(A) Require an applicant to provide to it the documents specified in paragraph (d)(1) of this section if the applicant is unmarried, or specified in paragraph (d)(2) of this section if the applicant is married, regardless of the circumstances concerning the age of the applicant or the willingness of the applicant's parents to provide the required tax return and statement; or

(B) Follow the requirements contained in paragraph (d)(4) of this section; or

(ii) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are unable to provide the requested information and documentation, the institution must follow the requirements contained in paragraph (d)(4) of this section.

(e) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in § 668.56(a)(6)(i), (iv), and (v) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or will be filed, a statement signed by the relevant individuals certifying that no tax return was filed or will be filed and providing the sources and amount of untaxed income and benefits specified in § 668.56(a)(6)(v);

(2) Social security benefits by submitting to it—

(i) If the applicant's SAR requires that the applicant verify his or her social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant's parents, the applicant, and the parent's children in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR, the document in paragraph (e)(2)(i) of this section or, at the institution's option, a statement signed by the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution believes that the information provided is inaccurate—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(f) For the purpose of this section, an institution may accept in lieu of a copy of a Federal income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

§ 668.59 Interim disbursements.

(a)(1) If an institution has documentation that indicates that the information included on an application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the Secretary does not and the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(2) If an institution does not have documentation that indicates that the information included on an application is inaccurate, until the applicant is verified or corrects the information included on his or her application, the Secretary or the institution—

(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or SEOG funds for the applicant's first payment period; and

(B) May employ an eligible student under the CWS Program until sixty (60) days after the date the applicant enrolled in that award year; and

(iii) Shall not certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii) of this section, it shall be liable for any overpayment discovered as a result of the verification process.

(c) An institution may not hold any GSL check under paragraph (a)(2) of this section for more than forty-five (45) days. If the applicant does not complete the verification process within the forty-five (45) day period, the institution shall return the check to the lender.

(20 U.S.C. 1094).

§ 668.60 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant

to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (student aid index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported student aid index (SAI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's student aid index remains at zero on the basis of the verified information and the "Zero SAI Charts" that the Secretary publishes in the Federal Register.

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, need not recalculate his or her EFC, or need not adjust his or her Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a change in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a) (2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Calculate the applicant's Pell Grant award on the basis of the EFC included on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides it with the corrected SAR.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the corrected SAR.

(c) For the campus-based and GSL programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's expected family contribution; and

(ii) Adjust the applicant's financial aid package for the campus-based and GSL programs to reflect the new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) (A) No errors in dollar items or errors reflecting a change in dollar items of less than $800; or

(B) No errors in dollar items or errors reflecting a change in dollar items of less than $200 if the institution uses the Pell Grant Program's SAI as the applicant's EFC.

(d) If a GSL applicant reports an adjusted gross family income of less than $30,000 and verification shows that the adjusted gross family income is over $30,000, the institution shall calculate an EFC for the applicant and determine his or her financial need for a loan.

(e) If the institution selects an applicant for verification for an award year who previously received a loan under the GSL Program for that award year, and as a result of verification, the suggested loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in § 668.61(b).

(f) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

§ 668.61 Deadline for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in § 668.57.

(b) For purposes of the campus-based and GSL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution shall not—

(A) Disburse any additional NDSL or SEOG funds to the applicant;

(B) Continue to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Process a GSL check for the applicant;

(ii) The institution shall return to the lender any GSL check payable to the applicant; and

(iii) The applicant shall repay to the institution any NDSL or SEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the prescriptions listed in paragraph (b)(1)(i) of this section; and

(3) An institution may not hold any GSL check under paragraph (b)(1) of this section for more than forty-five (45) days. If the applicant does not complete verification within the forty-five (45) day period, the institution must return the check to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the appropriate deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication in the Federal Register. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in 34 CFR 690.61, payment must be based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is the same or higher than the student aid index on the original SAR; and

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

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(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, shall not process any subsequent application for campus-based and GSL program assistance of an applicant who has been requested to provide information until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies during that award year, or before the deadline date for completing the verification process if that date extends into the subsequent award year, without completing the verification process, the institution shall not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify the applicant's GSL loan application or process a GSL check for the applicant; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(20 U.S.C. 1094)

§ 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under § 668.58(a)(2)(ii) more than he or she was eligible to receive under the Pell Grant, NDSL, or SEOG programs, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) If the applicant does not return the overpayment, making restitution from its own funds by the earlier of the following dates:

(A) Sixty days after the applicant's last day of enrollment.

(B) The last day of the award year in which the institution disbursed Pell Grant, NDSL, or SEOG funds to the applicant.

(b) If the institution determines as a result of verification that a applicant received for an award year a GSL of $200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for such amounts.

(20 U.S.C. 1094)

PART 690—PELL GRANT PROGRAM

4. The authority citation for Part 680 continues to read as follows:

Authority: Sec. 411 of the Higher Education Act of 1965, as amended; 20 U.S.C. 1070a, unless otherwise noted.

§ 690.14 [Amended]

§ 690.77 [Removed]

5. The Secretary amends Part 690 by removing § 690.14(b) and § 690.77.

Appendix—Summary of Comments and Responses

[Editorial Note: This appendix will not appear in the Code of Federal Regulations.]

Section 668.51 General.

Comment: Several commenters expressed confusion over the treatment of the State Student Incentive Grant Program (SSIG) because the preamble to the NPRM states that the SSIG Program is not included under the proposed regulations, but institutions may be required to consider verified data in awarding the applicant's SSIG grant. Some commenters suggested that the SSIG Program should be completely excluded from the final regulations, or that the final regulations should specify that institutions which do not determine SSIG recipients or SSIG award levels are not required to verify the data which resulted in the SSIG award.

Response: No change has been made. The SSIG Program is not covered by these regulations. However, if an institution calculates an applicant's SSIG award and information it discovers by verifying that applicant's application under Subpart E of Part 668 is relevant to the amount of the SSIG award, the institution, under § 668.16(f), must take that discovered information into account in its calculation of the SSIG award.

Comment: Several commenters disagreed with the Secretary's proposal in § 668.51(c) to exempt foreign schools participating in the GSL Program from the verification requirements. These commenters argued that the requirements should be applied consistently to all participants.

Response: No change has been made. These institutions generally do not have the requisite knowledge of need analysis procedures and U.S. tax laws needed to carry out the verification procedures.

Comment: Two commenters suggested that the Secretary clarify the meaning of "State" as used in § 668.51(c) of the NPRM, so that it is clear that Puerto Rico, for example, is considered a "State" for purposes of this subpart.

Response: No change has been made. The definition of a State in the Higher Education Act includes the Commonwealth of Puerto Rico. Moreover, the definition of a "State" is included in § 668.2 of Subpart A of Part 668 that was published as a proposed regulation in the Federal Register of December 12, 1984, 49 FR 48494, 48502. When that regulation is republished as a final regulation, that section will apply to Subpart E of Part 668.

Section 668.52 Definitions.

Comment: One commenter suggested a change in the definition of "comparable State income tax return" to read ". . . requires the filer to provide the adjusted gross income and either the amount of U.S. income tax paid or the number of exemptions as reported on the U.S. income tax return," to broaden the number of State tax returns that may qualify. Two commenters recommended that the reference to and definition of a "comparable State income tax return" in these regulations be deleted and that only the U.S. tax return be used.

Response: A change has been made. The Secretary agrees with the commenters that only the U.S. income tax return be accepted as appropriate documentation since it is the only document that includes adjusted gross income and U.S. income tax paid.

Comment: One commenter suggested that the Secretary add a definition for "designated entity" which would mean an agency that administers the student loan program for that educational institution. The commenter believed that this change would allow an institution to choose a designated agency to assist it in the verification process.

Response: No change has been made. These regulations do not prevent an institution from using an outside agent or organization from assisting it in the verification process. However, the institution is responsible for the requirements of these regulations even if it uses an agent to meet its responsibilities.

Section 668.53 Policies and procedures.

Comment: One commenter opposed the requirements of § 668.53 which requires institutions to have written policies and procedures for verifying student aid application information. The commenters believed the Secretary does not have authority to specify institutional policies and procedures.

Response: No change has been made. The Secretary in this section is not specifying the substance of the policies and procedures that an institution must establish in the implementation of the verification regulations. The Secretary is merely requiring an institution to set forth in writing the policies and procedures it otherwise needs to develop to implement the verification regulations. This prescription is authorized by section 487(a)(3) of the Higher Education Act of 1965 as amended (HEA), which provides that an institution "shall establish and maintain such administrative procedures . . . as may be necessary to ensure proper and efficient administration of funds received from the Secretary . . .", and section 487(b)(1)(B) of the HEA, which authorizes the Secretary to prescribe such regulations as may be necessary to provide for the establishment of reasonable standards of institutional capability to administer the student aid programs.

Comment: One commenter objected to requiring institutions to develop written policies and procedures because the goal of the Secretary is the reduction of error and the Secretary's concern is the production of results and not the creation of procedures. Another commenter opposed the requirements of the section on the grounds that they are unnecessary since well-run institutions would already have such policies in place. A few other commenters suggested that the procedures set forth in this section should only apply to institutions found out of compliance with the provisions of this Subpart after an audit or program review.

Response: No change has been made. The Secretary believes that the development by an institution of written policies and procedures to carry out the verification process will assist that institution's implementation of that process. While the Secretary intends to disseminate a "Verification Handbook" to assist institutions in that task, the policies and procedures called for in § 668.53 will be needed to complement the Handbook since they cover areas involving institutional discretion and flexibility, such as the time frames for providing documents and the consequences of the failure to provide such documents in a timely manner.

While the goal of the Secretary is the reduction of error in the awarding of financial aid, the Secretary does not believe that the procedures used to reach that goal are of no consequence. The Secretary believes that the development of the policies and procedures called for in this section will assist in reaching that result. The Secretary believes, as does the commenter, that well-run institutions will probably develop on their own the procedures and policies called for in this section. There can be no better reason, therefore, for requiring all institutions to comply with those procedures. Clearly this requirement will impose no additional burden on well-run institutions.

Comment: A few commenters asked if the Secretary will provide additional guidance on acceptable policies and procedures. One commenter recommended that the Secretary provide a model to implement the requirements of this section. Two commenters requested that the Secretary provide forms to facilitate implementation of the requirements of this section.

Response: No change has been made. This section requires only that the institution include certain minimum procedures for verifying the data of applicants for Pell Grant, campus-based, and GSL assistance. An institution will develop and implement those policies and procedures that it determines best suit its needs. The Secretary, therefore, believes that additional guidance in this area is not necessary, nor is the development of a model policy and procedures manual.

Comment: Two commenters provided comments on proposed § 668.53(a)(1)(i) regarding the time period within which the applicant shall provide the documentation for verification. One commenter asked if the Secretary will agree to whatever time period is established by an institution. Another commenter indicated that to use a "reasonable" time period is of no use because not only is it difficult to define "reasonable" but also a student may submit documentation after the deadline.

Response: No change has been made. An institution has broad discretion in establishing the time frames under this regulation for the submission of documents. Accordingly, the Secretary neither approves nor disapproves of the institution's choices in that area. However, as in other areas in which institutions have discretion, the institution's time frames may not be unreasonable.

In establishing time frames for submitting documents, an institution establishes a fixed time period of a specific number of days within which an applicant would have to provide the required documents. Its period for response would therefore be, for example, 15 days' or 30 days, not "a reasonable period of time," since the latter would not be of any help to its students.

Comment: A few commenters questioned the requirement in § 668.53(a)(1)(iii) of the NPRM that an institution specify the approved need analysis system that it uses to recalculate an EFC. The commenters stated that an institution is not required to use only one system of need analysis and that there are a number of instances where more than one system may be appropriate.

Response: A change has been made. The Secretary agrees with the commenters and has deleted this provision from the regulations.

Comment: One commenter in responding to the inclusion of the method by which the institution notifies the applicant of the results of verification in § 668.53(a)(1)(iv) of the NPRM indicated that this is a burdensome requirement and that a student should only have to be notified if there is a change in award.

Response: No change has been made. For purposes of this section, an institution may consider that it has notified a student of the results of the verification process if there is no change in the student's award when it disburses that award to that student. The Secretary does not believe that this requirement is burdensome.

Comment: One commenter indicated that the inclusion of the procedures the institution requires an applicant to follow to correct application information in proposed § 668.53(a)(1)(v) is unnecessary because all corrections do not have to be reported.

Response: No change has been made. The Secretary recognizes that an applicant does not need to report all corrections. However, in those cases where an applicant must correct the information on his or her application, the institution shall have written procedures for the applicant to follow if further action is required by the applicant.

Comment: Numerous commenters raised questions and concerns about the provision in proposed § 668.53(a)(1)(vi), § 668.53(a)(5) in the final regulations, that an institution have written procedures for referring to State or local law enforcement agencies for investigation, as required under § 668.14(g), any instance where it has reason to believe that an applicant has applied for assistance under false pretenses. Many comments on § 668.53(a)(1)(vi) were also addressed to § 668.14(g).

Response: A change has been made. The Secretry is retaining, in § 668.53(a)(5), a requirement that an institution's verification procedures include procedures for referrals under § 668.14(g). Section 668.14(g), which is

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the subject of the comments, is a part of a proposed rule that was published for public comment in the **Federal Register** of December 12, 1984, 49 FR 48494, 48506. However, since § 668.14(g) has not been published in final form, the Secretary anticipates the procedures referred to in § 668.53(a)(5) will not be required until the 1987–88 award year application cycle, at the earliest.

The Secretary will consider the comments submitted in response to § 668.53 in considering § 668.14(g) prior to publishing that provision as a final rule.

Comment: Several commenters objected to the requirements set forth in § 668.53(a)(2) relating to institutions that impose verification requirements exceeding the requirements set forth in Subpart E. The major point of the objectors was that the requirements in proposed § 668.53(a)(2) are unnecessary since an institution that exceeds the verification requirements of Subpart E will have to establish, for its own purposes, the policies and procedures set forth in § 668.53(a)(2).

Response: A change has been made. The Secretary agrees with the commenters and has deleted this provision from the regulations.

Comment: One commenter questioned what the applicant's rights were with respect to verification referred to in § 668.,53(b). This commenter recommended that the Secretary provide a "statement of applicant's rights" to the institutions.

Response: A change has been made. The Secretary did not intend to establish any special rights for applicants under the verification process and has, therefore, deleted this reference in § 668.53(b)(2).

Section 668.54 Selection of applicants for verification.

Comment: Several commenters were concerned about the specificity of the procedures for selecting applicants for verification. Several commenters suggested that the Secretary should allow alternate methods of verification to be determined by each institution. One commenter suggested that the Secretary should not require an institution to verify more than one-third of Pell Grant applications. Another commenter suggested that an institution should be allowed to choose between verifying either an approved random sample or 100 percent of the applications. One commenter suggested that no more than 20 percent of applications be selected for verification during the first two years after the system is in place.

Several commenters remarked that the procedures for selecting applicants for verification are reasonable, but that the Secretary should regularly review, in concert with the community, the edits to keep them to a reasonable level by excluding those which are not producing error.

One commenter suggested that 100 percent verification for Pell Grant applications should be required. The commenter suggested that if 100 percent verification is deemed to be undesirable, the Secretary should select for verification all Pell Grant recipients whose applications list tax filing status as "estimated" and all self-supporting Pell Grant recipients whose incomes for the base year are under $6500.

Several commenters objected to an edit which would flag 50 percent of all Pell Grant applicants, arguing that the figure is excessive and unjustified.

Response: No change has been made. While the alternatives provided by the commenters for selecting applications for verification may have merit, the Secretary believes that the system proposed by the notice of proposed rulemaking best satisfies the Secretary's goals of eliminating applicant error while minimizing burden on institutions in reaching that goal. The selection of applicants to be verified based on the use of edits provides the most reliable means of selecting applications with errors. The percentage selected depends on the edits adopted. As the Secretary did for 1985–86, he will develop in cooperation with representatives of the financial aid community the mandatory edits for use in 1986–87 and repeat this process for each subsequent year.

Because the Secretary believes that the edits provide the most reliable means of selecting applications which may have errors, he is not adopting any of the alternatives that the commenters proposed. The edits select only a minimum number of applications which must be verified. An institution may select additional applicants under any system it determines to be effective.

Comment: Several commenters objected to what they perceived as the requirement that all applicants for GSL loans must use an approved need analysis system.

Response: No change has been made. Section 668.54 does not require all GSL applicants to use an approved need analysis system. In most cases, an applicant for a GSL will also be an applicant for Pell or campus-based program assistance. Therefore, as a result of applying for assistance under those programs, the applicant will submit to the institution an SAR or the institution will receive the output document generated by an approved need analysis system.

In the case of an applicant who applies only for a GSL, an institution has the option of verifying all those applicants who do not submit applications, that are subject to the edits, or it may require those students to submit a Federal application so that the students will receive an SAR and thus be subject to the edits.

Comment: Several comments were received with regard to the requirements of § 668.54(a)(2). Several commenters interpreted that provision as requiring institutions to verify all applications. Other commenters interpreted that section as requiring institutions to verify all GSL applications while other commenters interpreted the section as forcing all GSL applications to file an application with an approved need analysis system.

Response: No change has been made. Section 668.54(a)(2) does not require institutions to verify all applications. It also does not require institutions to verify the applications of all GSL applicants. Further, it does not force GSL applicants to file applications with approved need analysis systems.

Section 668.54(a)(2) requires institutions to verify all the applications that it receives that have not undergone the edit checks developed by the Secretary to catch errors in the application process. An application goes through the edit checks if the student receives an SAR as a result of his or her application, or if the applicant applies to an approved need analysis system that has entered into an edit agreement with the Secretary. In the overwhelming number of cases, an applicant who applies for title IV, HEA Program aid will be subject to the edit process.

Applicants who may not have their applications subject to the edit checks are applicants with an adjusted gross family income of under $30,000 who apply only for a GSL, applicants with an adjusted gross family income of over $30,000 who apply only for a GSL if an institution uses the "GSL Needs Test Tables" and those applicants who apply for campus-based assistance where the institution hand-calculates the applicant's expected family contribution. While § 668.54(a)(2) requires an instititíon to verify each of these applications, the institution may, at its option, avoid this requirement by requiring each of the above applicants to file an application that is subject to the edits. Since the Federal form is subject to the edits and an institution may require all applicants for title IV, HEA Program aid attending that

institution to file a Federal student aid form, § 668.54(a)(2) does not force all GSL applicants to file an application with an approved need analysis system.

Comment: One commenter pointed out that a person who applies to the Secretary or to a need analysis system to have his or her expected family contribution determined does not, by that application, apply to an institution for title IV, HEA Program aid. Therefore, an institution would not necessarily know whether an applicant meets the requirements of § 668.54(a)(2)(ii).

Response: A change has been made. The Secretary agrees with the commenter and has amended § 668.(a)(2)(ii). Section (a)(2)(ii) is intended to assure that an application that is not processed through the edits is verified. Therefore, the Secretary has amended this provision to require an applicant for campus-based or GSL assistance to verify his or her application information if the institution does not receive an SAR or the output document generated by the applicant submitting an application to an approved need analysis system using the edits.

Comment: Several commenters asked for clarification of the effect of the verification requirements on a financial aid administrator who computes applicants' expected family contributions (EFC) by a hand calculation or by programmed desk-top calculators or computers. Several commenters suggested that edits be widely disseminated to agencies and institutions to enable an institution to build the edits into its own application system.

Response: No change has been made. An institution must verify the application information of all applicants whose application information has not been processed through the edits. The Secretary is distributing the edits only to agencies with approved need analysis systems that enter into an agreement with him and that have the capability to implement the edits. If an institution uses a programmed desk-top calculator or computer with a program from an approved need analysis system that incorporates the edits, the institution need only verify those applicants that the system selects.

Comment: Several commenters urged that changes in selection edits and categories of excluded applicants be made as early as possible. One commenter suggested that no changes be made after September 1 of the year preceding the application year.

Response: No change has been made. The Secretary will implement the development of the edits in conjunction with representatives of the financial aid community as early as possible for each award year. In addition, no revisions to these regulations will be made without complying with the legal requirements for notice and an opportunity for public comment.

Comment: Several commenters opposed the inclusion of edits in the Pell Grant processing system in addition to the common edits. The commenters suggested that all applicants should be subject to the same edits.

Response: No change has been made. The Secretary will continue to include edits in the Pell Grant processing system that are in addition to the common edits, such as the Social Security tape match, because no other system currently has the same capability.

Comment: One commenter suggested that the Secretary require 100 percent verification of applicants in conjunction with a requirement that the applicants and their parents submit a copy of their Federal income tax return with the application form. The commenter suggested that the application processor should then be made responsible for verification of auditable information on the tax return.

Response: No change has been made. The Secretary is considering the option of requiring applicants to submit their tax return with their application to the application processor and is currently assessing the technical difficulties preventing implementation of this procedure.

Comment: Several commenters objected to the selection of a random sample of applicants to be verified. The commenters urged that attention be focused on those applications most in need of attention, not on random ones. Random samples, they added, should be limited to quality control studies or audits. One commenter expressed concern that random sampling might penalize early filers.

Response: No change has been made. The random sample is a small proportion of those applicants selected and is necessary to analyze the effectiveness of the edits. It is taken throughout the award year and, thus, does not penalize early filers.

Comment: Several commenters objected to requiring verification of all applications processed through an agency or organization which does not use the edits. The commenters suggested that it would be fairer to require verification of all applicants or to require verification of a certain percentage of applications not processed through the edits. Some commenters complained that large institutions especially would be deluged with work if the 100 percent verfication requirement in § 668.54(a)(2) of the NPRM is implemented. Several commenters suggested that it would be more cost-effective to verify a random sample of GSL applications, rather than 100 percent. They questioned whether studies are available indicating that errors in the GSL Program are more common than in any other.

Several commenters suggested limiting selection of applications for verification to only those applications submitted through a processor.

Several commenters stated that financial aid officers are already overburdened and further requirements to verify GSL applications would slow the process even more but would not produce significant savings for the government. One commenter suggested that the Secretary should instead require guarantee agencies to establish audit systems to verify information provided by borrowers.

One commenter suggested revising § 668.54(a)(2) of the NPRM to require institutions to verify information only if (1) the institution has conflicting information or believes the information to be incorrect, and (2) the applicant receives a campus-based award or a GSL and does not apply for a Pell Grant, submit an AFSA, or have need calculated through an approved system of need analysis using the edits.

Response: No change has been made. An application that has not been processed through the edits may contain error and, therefore, must be verified. An institution has the option, however, of requiring any applicant to submit an "Application for Federal Student Aid" (ED Form 255) to generate an SAR and, thus, to determine whether the applicant's information must be verified even though the institution does not use the SAR to determine the applicant's campus-based award or GSL recommended loan amount.

Comment: Several commenters asked if proposed § 668.54(a)(2) means that an aid package must be determined *before* requiring the application information to be verified or does it mean that if a student appears to be otherwise eligible the application information must be verified.

Response: No change has been made. The determination of an aid package is irrelevant to whether an institution must verify the application of an aid applicant under § 668.54(a)(2). Under that section, an institution must verify an applicant for campus-based assistance once it selects that applicant to receive an award under any of the campus-based programs or once the applicant requests

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the institution to certify his or her GSL loan application if the application information has not been processed through the edits.

Comment: A few commenters suggested that the requirement in § 668.54(a)(3) that an institution verify any application information that it believes is inaccurate is unnecessary and burdensome. They suggested that the Secretary should limit verification to those items listed in § 668.56 of the NPRM.

Response: No change has been made. If an institution believes the information provided is inaccurate, it cannot be burdensome or unnecessary to require the applicant to verify that information.

Comment: One commenter questioned whether the Secretary will continue the current Pell Grant policy of requiring an institution to verify subsequent applications submitted by an applicant for an award year if that applicant had a previous application selected for verification for that year. Several other commenters were concerned about the burden imposed upon the parents of applicants who must verify more than one application during an award year. Other commenters were concerned that if an applicant filed more than one application and included information on the second application that was different from the information included on the first application this different information would cause different edits to pick the application for verification.

Response: A change has been made. It is the Secretary's intention to continue the current Pell Grant policy of requiring an institution to verify subsequent applications submitted by an applicant for an award year if that applicant had a previous application selected for verification for that year. However, the applicant would only have to verify, by supporting documentation, information that was not previously verified. This will curtail the burden on applicants and their families.

With regard to an applicant who submits applications containing different information, the Secretary believes it is appropriate to require that applicant to verify the new information since the inclusion of that information may be an indication that the applicant made an error in completing that application.

Comment: One commenter objected to the exclusion in proposed § 668.54(b) of incarcerated applicants, immigrant applicants, and applicants whose parents are neither residents nor citizens of the U.S.

Response: No change has been made. The Secretary has determined that these individuals represent a limited number of applicants and that the difficulties they would face in obtaining documentation to verify their application information are such that they should not be required to provide documentation unless the institution has conflicting documentation or has reason to believe the information is inaccurate.

Comment: One commenter noted that the Secretary has not excluded two categories of applicants from verification: (1) An applicant whose data was verified at one institution but who later transferred to another institution; and (2) an applicant for whom estimated data is used. The commenter recommended these categories of students be excluded.

Response: A change has been made. The Secretary agrees that it is not necessary to verify the application of a transfer student for an award year if the institution the student transferred from has already verified that student's application for that award year. The Secretary has amended § 668.54(b) accordingly.

The Secretary does not agree that there should be a blanket exemption for applicants using projected data. The regulations do not require the verification of projected income since the income that must be verified is income earned in the calendar year preceding the first year of the award year. However, the Secretary believes that applicants should verify, at least once, information that they are required to update under § 668.55.

Comment: One commenter questioned whether the applications of deceased applicants must be verified. Another commenter questioned the provision that requires an institution to verify the application of a deceased applicant if it has reason to believe that that information contained in the application is inaccurate or if it has conflicting documentation with regard to that application.

Response: A change has been made. The Secretary has amended § 668.54(b) by clarifying that the exclusion for an applicant who dies during the award year for which he or she applied for aid applies regardless of whether the institution believes the information included in the application is inaccurate and regardless of whether the institution has documentation that conflicts with the information included in the application.

Comment: One commenter recommended that the exclusions in § 668.54(b) include dependent applicants whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

Response: A change has been made. The Secretary agrees that in these circumstances a dependent applicant cannot be expected to verify his or her application. Therefore, he has amended to § 668.54(b) to exclude these applicants from the verification requirements of this subpart.

Comment: One commenter noted that the Secretary considered an independent student's parents "unable" to provide documentation if they were outside the United States and inaccessible. The commenter questioned whether an applicant's parents who are citizens of and currently residing in a country other than the United States must also be inaccessible for the applicant to be excluded from verification under § 668.54(b)(4) of the NPRM.

Response: A change has been made. The Secretary believes that the applicant's parents should be relieved of the responsibility for verifying application information only if the parents are outside the United States and cannot be contacted by normal means of communication. The Secretary no longer believes that the provision in the NPRM referencing the parents' citizenship or residence is relevant. The Secretary has amended § 668.54(b) accordingly.

Comment: One commenter noted that the exclusion in proposed § 668.54(b)(7) of applicants who do not receive title IV aid is confusing because in most cases an institution must verify a selected applicant's data in order to determine if the applicant is eligible for assistance.

Response: A change has been made. The Secretary has clarified this provision to exclude applicants who do not receive assistance for reasons other than the accuracy of their application information.

Comment: To avoid placing an applicant in an untenable position, one commenter recommended that the Secretary under § 668.54(b) exclude the applicant from providing documentation from the applicant's spouse if the spouse is deceased or otherwise unable to provide that documentation.

Response: A change has been made. The Secretary agrees with the commenter and has amended the regulations accordingly. Therefore, an applicant is not required to provide the documentation for his or her spouse's income if the spouse is deceased, physically or mentally incapacitated, or residing in a country other than the United States and cannot be contacted by normal means of communication, or cannot be located because his or her address is unknown.

Section 668.55 Responsibilities of applicants for updating information.

Comment: A few commenters supported the updating requirements of this section. A number of commenters, however, objected to the concept of updating unless, for example, a financial aid administrator learned in the normal course of events that an applicant's circumstances had changed. The commenters believed that updating will not produce more accurate information because of the short period of time between the date an applicant files an application and the date he or she submits an SAR to the institution and because the updated information may still be a projection. The commenters believed that updating is difficult to enforce, is burdensome, is not cost effective, may increase program inequity and will not eliminate error. Several commenters noted that the updating concept is contrary to the historical "snapshot" view of capturing a family's circumstances at a given point of time. Some commenters recommended that a benchmark, e.g., 120 days, be established before which updating would not be required; and recommended that the updating provisions apply only when there is conflicting documentation.

One commenter proposed that no update of the information be required unless the institution had conflicting documentation. Some commenters believed that applicants will update only when it is to their benefit.

A few commenters noted that household size and number attending postsecondary educational institutions are based on projected data and believed that the Secretary should recognize that inherent in projections is a certain degree of error. One commenter recommended that instead of requiring institutions to update household size and number attending postsecondary institutions, the committees responsible for need analysis address the problems of estimated data.

Response: No change has been made. The Secretary believes that the amount of assistance received by an applicant should be based on the best available information. Therefore, the Secretary is requiring that applicants selected for verification update their projections relating to household size, number attending postsecondary institutions, and dependency status. The Secretary believes that updating this information, rather than merely verifying these projections as of the date of application, provides more accurate information in determining an applicant's need for assistance.

Comment: One commenter asked if updating applies to Special Condition filers and to data being processed through a system for correction.

Response: No change has been made. These applicants must update household size, number attending postsecondary institutions, and dependency status under the same circumstances as other applicants.

Comment: Several commenters were concerned that § 668.55(a) would require multiple updating and verification of an applicant's household size and number of household members attending postsecondary institutions if the applicant filed more than one application in an award year. Other commenters were concerned that an institution would have to recalculate aid packages awarded on the basis of one application if as a result of updating a second application, the applicant's family size or number in postsecondary institutions changed.

Response: Changes have been made. As a general rule, if an applicant files more than one application for an award year, the institution shall require the applicant to update the information on each application. However, § 668.55(a) was amended to provide that the applicant need not update and the institution need not verify information that remains unchanged from a previously verified application submitted for that award year.

Section 668.55 was further amended to provide that an institution need not adjust financial aid already awarded for an award year on the basis of a verified application if the applicant submits another application for that award year and the updated information on the second application is different from the information contained on the previous application. The institution must, of course, award any new assistance on the basis of the updated application.

Comment: A number of commenters objected to the requirement in § 668.55(b)(1) that Pell Grant applicants not selected for verification update household size, number attending postsecondary institutions, and independent student status. A few commenters objected to the inconsistency among the programs.

Other commenters objected to this provision on the basis of the short time between submitting an application and submitting an SAR which made the resignature requirement redundant and expensive. Some commenters believe that additional signatures are necessary only as a result of filing error or verification.

Response: No change has been made. The character of the Pell Grant Program requires that all Pell Grants be calculated on the same basis. Therefore, the requirement that an applicant selected for verification shall update his or her application information means that a Pell Grant applicant not selected for verification must also update that information.

The Secretary believes that the date a nonselected applicant first submits his or her SAR to the institution is the most appropriate time for this information to be updated since this date allows an applicant to change his or her information without placing an undue burden on the applicant or the institution.

Given the nature of the campus-based and GSL programs, an applicant for campus-based or GSL assistance, who is not selected for verification, is not required to update his or her household size or number attending postsecondary educational institutions. However, institutions continue to have the discretion to require these applicants to update this information throughout the award year.

Comment: One commenter noted that the number of family members in postsecondary education could change after the term in which the item was verified. The commenter proposed that the regulations specify that the number in postsecondary education is only valid for the semester or term being verified and is not assumed to be accurate for future terms of enrollment.

Response: No change has been made. As noted above, for the Pell Grant Program an applicant must update his or her SAR once. The Secretary is not requiring an applicant to update his or her information after that first update. For the campus-based and GSL programs the institution has an option to require applicants to update this information throughout the award year.

Comment: A number of commenters objected to the requirement in § 668.55(b)(2) that Pell Grant applicants not selected for verification sign the certification statement on the SAR to update household size and number attending postsecondary institutions. One commenter recommended that the institution be permitted to collect a certification statement elsewhere in order to accommodate institutions using electronic transmission of data. One commenter requested assurance that if the certification is false that the student, not the institution, will be held liable.

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Two commenters recommended that instead of updating, the student be required to sign a statement recognizing his or her responsibility for updating prior to submission. One commenter recommended that a random sample could be conducted by the institution after the beginning of the school year when this information becomes factual.

A number of commenters recommended that, at the very least, the certification instructions be strengthened. One commenter recommended the use of bold face print.

Response: A change has been made. In response to a commenter's suggestion, the Secretary will permit a Pell Grant applicant who is not selected for verification to certify that the information contained on his or her SAR is accurate as of the day he or she first submits the SAR to the institution on a separate form developed by the institution as an alternative to certifying the information on the SAR itself.

The Secretary notes that if the applicant falsely certifies this information, the student is liable for any funds improperly disbursed. However, an institution may also be liable if it disbursed funds to an applicant for whom it had documents with information that conflicted with the information contained on the applicant's application.

The Secretary believes that the suggestions regarding the signing of statements and the taking of random samples will not produce updated information as effectively as the procedures set forth in § 668.55(b).

Comment: One commenter asked if § 668.55(b)(2) of the NPRM means that the student signs and dates the statement on the SAR at the time of submission, including any changes, or does "updated" imply that the applicant has already submitted the SAR for changes and that this SAR is the revised SAR.

Response: No change has been made. Under § 668.55(b)(1), the applicant is required to update the information so that it is accurate as of the date the applicant submits his or her first SAR. Therefore, the applicant may not submit his or her first SAR to the institution until the applicant updates any change so that the information is accurate when the applicant submits his or her SAR.

Comment: One commenter asked if only "Pell-eligibles" who are not selected for verification are required to sign the certification statement.

Response: No change has been made. Only "Pell-eligibles" are required to sign the certification statement.

Comment: One commenter questioned the intent of the Secretary regarding updating of dependency status for applicants selected for verification. The commenter noted that although the Secretary indicated in the preamble to the proposed regulation that a selected applicant shall update this information at the time of verification, the regulations appear to require updating only household size and number attending postsecondary educational institutions at the time of verification.

Response: A change has been made. The Secretary clarified the regulation in § 668.55(d) to state explicity that an applicant shall update his or her dependency status as of the date of verification.

Comment: Several commenters objected to the requirement in proposed § 668.55(c), § 668.55(d) in the final regulations, that an applicant reapply if his or her dependency status changes. One commenter believed that dependency status does not change very often. A few commenters recommended that an institution be permitted to recalculate a Pell Grant if an applicant must file a new application. One commenter asked if an institution may recalculate a campus-based award based on a new application submitted directly to the institution.

Response: No change has been made. The Secretary is requiring an applicant to reapply fix is or her dependency status changes because most of the information on the original application is no longer valid. An institution may recalculate a campus-based award using a new application submitted directly to the institution, but the applicant must submit a correction application for a Pell Grant since the previous SAR is no longer a valid SAR. Note that if the applicant submits a new application for campus-based aid directly to the institution, the institution may verify the applicable information under § 668.54(a)(2) unless the same information is included on the correction application submitted to the Pell processing system and the new SAR is not selected for verification.

Comment: A few commenters requested clarification as to whether proposed § 668.55(d)(1) changes the current policy of prohibiting updating dependency status for a change in marital status. One commenter questioned whether the Secretary intends to change the current policy which prohibits a change in application information due to a change in marital status. One commenter questioned whether updating due to a change in marital status is a student's option. A few commenters supported a requirement to update for a change in marital status.

Response: A change has been made. The Secretary did not intend to change the current policy and has revised § 668.55 to clarify that an applicant is not permitted to update his or her application information to reflect any change that is the result of a change in marital status.

Comment: One commenter questioned whether § 668.55(d)(2) meant that an applicant was not permitted to update his or her dependency status on a GSL loan application. Several commenters objected to exempting previously certified GSL loan applications from the updating of dependency status. One commenter noted that this requirement would be rendered inappropriate by the pending legislative proposal to disburse these loans in multiple disbursements. One commenter suggested that institutions should encourage students to revise their dependency status if updating would make the students eligible for higher loan amounts. One commenter questioned whether the Secretary intends to change the current policy which prohibits a change in application information due to a change in marital status.

Response: A change has been made. To prevent additional administrative complexity in the GSL Program, the Secretary is retaining the requirement that an applicant may not change his or her dependency status as a result of a change in marital status. For the same reason, the Secretary has revised § 668.55(d) to clarify that an applicant is not permitted to update his or her application information on a previously certified GSL loan application.

Section 668.56 Items to be verified.

Comment: Some commenters recommended that the items to be verified should be applied consistently to all programs for ease of administration and students' understanding.

Response: No change has been made. The Secretary is requiring that institutions verify the prescribed items if they are used to calculate an applicant's EFC. It would not be appropriate to require an institution to verify an item that is not used in determining an applicant's award or GSL recommended loan amount.

Comment: One commenter stated that the proposed regulations did not explain adequately the verification requirements for a student who files a "Special Condition" application under the Pell Grant Program.

Response: No change has been made. The regulations require that the institution verify those items used to determine the applicant's EFC. In the case of an applicant who files a Special Condition application, the appropriate items are household size, number attending postsecondary educational institutions, and independent student status. Since the Special Condition application requests income information for the first year of an award year and § 668.56 requests verification of base year income information, the Special Condition filer is not required to verify income information.

Comment: Some commenters objected to the items to be verified required by this section. One commenter recommended that only adjusted gross income, household size, and taxes paid be required items and recommended that quality control studies look at number in college, independent student status, and untaxed income. One commenter recommended that the use of the tax return is sufficient as evidenced by the quality control studies showing that seven out of eight of the highest error items are verifiable against the tax return. One commenter stated that applicants should verify only those items that are the basis for the applicant's selection by the edits instead of being required to verify all of the specified items.

Response: No change has been made. The six required items are all major factors in determining an applicant's EFC, and all of them are items that the quality control studies of the Pell Grant Program have shown to have high error rates. Three of these items (household size, number attending postsecondary educational institutions, and independent student status) cannot be verified using only the tax return. In addition, if the edits indicate that one of these items may be in error, an applicant should also verify the other applicable items to assure that his or her application information is correct regarding these key items.

Comment: A few commenters suggested additions to the list of items to be verified. One commenter indicated support of the requirements of this section if the names of the household members and the names of those members in college were added to the list of items to be verified. Two commenters recommended that if an applicant is divorced or separated, that the applicant document that he or she is legally divorced or separated in order for the applicant to be eligible for title IV funds. One of the commenters recommended the applicant's divorce or separation status be an additional item to be verified with the legal divorce or separation agreement as documentation.

Response: No change has been made. With respect to the names of the household members, § 668.57 does require an applicant to document the names of the household members and the names of the household members attending postsecondary educational institutions as part of verifying the household size and number in postsecondary institutions. With respect to divorced or separated applicants, institutions have the option of determining whether this item should be verified. The Secretary does not believe it is necessary to require institutions to verify an applicant's marital status since the quality control studies of the Pell Grant Program indicate that this item was not among those with a high error rate.

Comment: One commenter recommended that the Secretary eliminate the verification of a dependent student's base year adjusted gross income (AGI), taxes paid, and untaxed income if that information is used to determine an applicant's Pell Grant because the information is not used to calculate a campus-based award under the Uniform Methodology.

Response: A change has been made. The Secretary has eliminated this requirement because verification of this information does not significantly affect Pell Grant awards.

Comment: One commenter recommended that an applicant need verify household size or number attending postsecondary educational institutions only if the applicant enters a number greater than one for number in postsecondary institutions, greater than two for dependent student's household size, or greater than one for an independent student's household size.

Response: A change has been made. The Secretary agrees with the commenter and has revised § 668.56 accordingly.

Comment: One commenter questioned whether an institution must verify the number of household members attending postsecondary educational institutions of an independent student whose award is calculated using a need analysis system other than the Student Aid Index of family contribution (FC) on the SAR. The commenter noted that the chart included in the preamble that describes the required verification items for an independent student indicates that these students need not verify this item.

Response: No change has been made. The chart should indicate that for every major need analysis system except the GSL Needs Test Tables and GSL applicants with an adjusted gross family income of $30,000 or less, an independent student shall verify the number attending postsecondary educational institutions.

Comment: A number of commenters objected to the verification of untaxed income because it is burdensome and creates major delay. One commenter noted that on the basis of experience in 1985–86 under the Pell Grant Program, verifying untaxed income produces no change in award for most students who have low or no incomes. One commenter suggested that this requirement is seriously jeopardizing the objectives of the title IV programs by creating unnecessary barriers to many low income and needy students, and if these barriers are not removed, the economic and social costs could be far greater in the future than the amounts that these regulations intend to save. Several commenters opposed verification of zero untaxed income when the applicant reports zero. Some commenters recommended that untaxed income be verified only when conflicting documentation exists.

Several commenters recommended that the Secretary verify only the untaxed income and benefits on the tax return. One commenter strongly recommended that child support be reported and verified separately. One commenter supported the verification of social security benefits. One commenter suggested that the collection of the worksheet for untaxed income on the Financial Aid Form of the College Scholarship Service is sufficient and should require no further verification.

A few commenters mistakenly included veterans educational benefits under the category of other untaxed income; these commenters noted the difficulty in verifying this item because the Veterans Administration provides only the monthly amount of benefits, but not the total number of months the benefits will be received within the award year.

Response: A change has been made. The Secretary concurs in the commenters' concern regarding burden and is revising the requirements to alleviate that burden. The Secretary is requiring that institutions verify only Social Security benefits, child support, and those items that an institution can verify using a U.S. income tax return.

An applicant who submits a SAR is required to verify social security benefits only if required by a comment on the applicant's SAR. If an applicant does not submit a SAR, social security benefits must be verified only if the institution has information showing that benefits were received or believes benefits were received.

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Child support must be verified only if the institution has information showing that child support was received or has reason to believe child support was received (e.g., the applicant is an independent student who is unmarried, separated, or divorced, and the household size is greater than one).

As the Secretary noted in the preamble of the NPRM, the Secretary, under this subpart, is not requiring institutions to verify veterans educational benefits.

Comment: One commenter questioned whether § 668.56(a)(6)(ii) of the NPRM indicates that social security is a required item for verification only if a comment appears on the applicant's SAR. The commenter noted that in proposed § 668.57(d)(2)(ii) that the Secretary specifies the documentation for applicants without an SAR.

Response: A change has been made. The Secretary did not intend to limit this item to only those applicants with an SAR. Therefore, the item has been changed to also require the verification of social security benefits of all applicants without an SAR if the institution has information showing, or has reason to believe, that such benefits were received. If an applicant has an SAR, the applicant need verify social security benefits only if the SAR has a comment requiring the verification of social security benefits because the comment indicates that the information on the application does not match the information in the Social Security Administration's records.

Comment: Although a few commenters supported what they interpreted to be the 100 percent verification requirements for GSL the Program in § 668.56(b), a number of commenters objected to such a requirement. The commenters' objections are based on a belief the requirements are costly, are burdensome, and may require multiple verifications depending upon when the applicant applies for a GSL. A few commenters recommended that an institution be permitted to verify only a sample of GSL applications but be required to notify each applicant of the concept of verification. Two commenters objected to verifying all GSL applicants whose adjusted gross family incomes are $30,000 and below when some of the applications of those applicants have already passed through edit checks at a processor without being selected.

Response: A change has been made. The Secretary only intended to specify the information that a GSL applicant would be required to verify if selected and did not intend to imply that all GSL loan applicants must verify the information. The Secretary, therefore, has clarified the regulations to indicate that the requirements of § 668.56(b) apply to those GSL applicants selected under § 668.54(a) (1) and (2).

Comment: A few commenters recommended that GSL verification requirements be limited to the use of the tax return items only.

Response: No change has been made. Household size, number attending post secondary educational institutions, and independent student status are too important in determining an applicant's recommended loan amount to delete them from the requirements when relevant.

Comment: One commenter recommended that all GSL applicants verify only adjusted gross family income and dependency status.

Response: No change has been made. To require GSL applicants' to verify only their adjusted gross family income and dependency status is insufficient if an applicant's recommended loan amount is determined using the GSL Needs Test Tables or an approved need analysis system.

Section 668.57 Acceptable documentation.

Comment: Two commenters noted that an individual who intentionally misreports information on the application would have the same opportunity to falsify data on a copy of the tax return or other forms. They, therefore, suggested that only official data from the Internal Revenue Service or Security Administration should be acceptable documentation.

Response: No change has been made. These regulations are intended to reduce applicant error, and the Secretary does not believe that it is necessary, as a general rule, to require applicants to submit documentation directly from the Internal Revenue Service or Social Security Administration to reduce the error rate. Furthermore, such a requirement would increase the burden on institutions and applicants and create additional delays in determining an applicant's award.

Comment: Three commenters recommended that more flexibility be given to aid adminstrators in collecting documentation to verify student and parent information. One commenter stated that this would allow aid administrators to concentrate on students who deliberately misrepresent information, without placing undue burden on the majority of students. Another commenter said that the types of acceptable documentation listed in the regulation should serve as a guideline rather than a prescriptive requirement for schools.

Response: No change has been made. The Secretary is requiring certain minimal requirements for documentation. He has sought to limit the number of items to only the most important ones and to provide institutions with as much flexibility as possible in documenting an applicant's information.

Comment: Two commenters felt that the different documentation requirements for different aid programs would cause increased errors in verification and recommended that the requirements be made uniform for all Title IV programs.

Response: No change has been made. The Secretary is not requiring institutions to use different documentation requirements for the same items for different aid programs. Only in the case of independent student status may an institution use different documentation requirements and the institution is not required to exercise that option.

Comment: Several commenters suggested that the processing systems be programmed to identify verification requirements based on the applicant's age and marital status and to print the requested documentation and statements as a part of the output documents sent to the applicant and the institution. One commenter cited the Institutional Verification Form (IVF), developed by the American College Testing Service, as an example of how such a service could be provided to the student and aid administrator. Other commenters felt the Student Aid Report should be expanded to include a general notification of verification requirements, in checklist fashion, and additional pages for student certifications.

Response: No change has been made. The Multiple Data Entry servicers and other approved need analysis systems may provide such additional assistance as they deem appropriate. The Secretary, however, does not believe that he should mandate that these servicers provide this assistance. The applicant's eligibility letter in Part 1 of the SAR will provide directions to the applicant to the extend possible, and, as noted below, the Secretary will provide a verification worksheet with the SAR of applicants selected by the edits at the Pell central processor.

Comment: Several commenters expressed concern over the volume of supplemental worksheets or forms that would be necessary to verify the required items. Many commenters suggested that in the interest of

efficiency and uniform procedure the Secretary develop and distribute standard forms to carry out verification. Several of these commenters referred to the validation form that was used in several years of Pell Grant (then Basic Grant) Program validation as an example. One commenter felt that separate form should be developed for non-tax filer status, self-supporting status, untaxed income, household size, and number in postsecondary institutions. However, most of the commenters described a single booklet that woud be mailed to the student by the Pell processor or need analysis service, and would contain a verification checklist, untaxed income worksheet, and certification statements for student signature. One commenter felt that training sessions for institutions should be provided by the Secretary in conjunction with the verification form.

Response: No change has been made. The Secretary is developing a verification worksheet for applicants to complete that will be included in the SAR of those applicants selected by the edits at the Pell Grant central processor for verification. The SAR will direct the applicant to the sections of the verification worksheet that he or she needs to complete. The Secretary will be providing institutions with copies of the worksheet that the institutions may reprint to use for verification of other applicants selected for verification. The Secretary expects to provide training to the institutions on the integrated verification requirements as early as possible in 1986.

Comment: One commenter questioned whether the Secretary intended to depart from the current requirement in the Pell Grant Program that the applicant's spouse sign the required verification documents.

Response: A change has been made. The Secretary believes that the applicant's spouse should sign the verification documents where appropriate since the spouse's signature is required on the application form. The Secretary did not intend to depart from the current Pell Grant Program requirements and, therefore, has amended the regulations to require the spouse's signature where appropriate.

Comment: Several commenters indicated that administrative burden would be reduced if an institution could accept a tax preparer's signature or stamp in lieu of the filer's signature on the tax return.

Response: A change has been made. The Secretary concurs with the commenters and has revised the regulations accordingly.

Comment: One commenter questioned whether the signature of only one of the applicant's parents should be acceptable on the parental tax return.

Response: No change has been made. The regulations require the signature of only one parent.

Comment: Four commenters expressed the opinion that the certifications required as a part of the verification of household size, number attending postsecondary educational institutions, and independent student status were duplicative of the certification statement on the application that all data is correct.

Response: No change has been made. The Secretary is seeking to reduce applicant error and believes that requiring an applicant to recertify the accuracy of his or her information provides the applicant with the opportunity to correct that information. Furthermore, because a selected applicant updates his or her household size, number in postsecondary educational institutions, and dependency status at the time of verification, the Secretary believes that requiring a statement recertifying this information is the least burdensome method of updating and verifying it. In addition, a statement signed by the applicant's parent to verify independent student status is the best available documentation other than the tax return for determining exemptions claimed.

Comment: Two commenters objected to the Secretary's decision that a tape match between applicant and Internal Revenue Service (IRS) records is not currently feasible. The commenters felt that an automated matching program would be less cumbersome and more accurate than verification performed at the institution.

Response: No change has been made. As was noted in the preamble of the NPRM, the Secretary is exploring this issue with the Treasury Department. To date, it is not possible, due to technical difficulties, to accomplish what the commenters suggest.

Comment: One commenter felt that no further documentation should be required from an applicant who provided a statement that no tax return was filed or would be filed, on the grounds that most applicants who do not file a tax return have financial need. The commenter felt that if a statement of income was required of an applicant, it should not be limited to income earned from work, but should include benefits from public assistance agencies.

Response: No change has been made. Although such an applicant probably qualifies for financial aid, the institution still needs to determine whether the other application information is accurate to assure that the applicant's EFC is correct. The Secretary is prescribing only minimum verification requirements in these regulations, and an institution, at its option, may develop a statement covering both income earned from work and untaxed income and benefits.

Comment: Several commenters proposed that application processors collect tax returns from applicants and match and correct information on the application based on the tax return. As an alternative, many commenters proposed that a tape match with Internal Revenue Service be conducted before the Student Aid Report is generated.

Response: No change has been made. The Secretary has previously explored these possibilities and determined that the technical difficulties make these options unavailable at this time.

Comment: A commenter suggested that tape matches could be conducted with other Federal agencies to verify veterans educational benefits and Aid to Families with Dependent Children (AFDC). The commenter also suggested that procedures be established for schools to verify non-tax filing status with the Internal Revenue Service.

Response: No change has been made. The Secretary is currently studying the feasibility of tape matches with other agencies providing income and benefits to applicants. Previously, the Secretary has had a tape match for veterans educational benefits. However, such a match is not effective since veterans educational benefits are reported as projected income for the award year. In addition, the Veterans Administration does not have information in its files at the time applications are processed for new veterans requesting assistance and does not have enrollment data for an award year until the fall of that year or later. The Secretary has been unable to implement a tape match for AFDC, which is not a required item, because there is no central file of recipients available to ED. In the case of non-tax filers, IRS does not maintain a central roster of these persons, and each regional service center can only certify that a person has not filed a tax return at that center.

Comment: Two other commenters felt that it would be simpler to require only the Federal tax returns for all applicants rather than providing that a comparable State tax return may be submitted in lieu of the Federal return.

Response: A change has been made. The Secretary agrees and has amended the regulations accordingly.

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Comment: One commenter suggested that institutions should be required to collect tax returns from all applicants.

Response: No change has been made. The Secretary is setting minimum verification requirements in these regulations. An institution always has the option of requiring all applicants to submit copies of the tax returns.

Comment: One commenter felt that the IRS transcript of tax account information should not be accepted as an alternative to a tax return because the transcript does not include information such as capital gains, interest and dividend income, and the untaxed portion of unemployment compensation.

Response: No change has been made. The Secretary recognizes that the IRS transcript does not always provide all the information found on the tax return. However, the IRS transcript often is available when the applicant is unable to obtain a copy of a tax return. The Secretary, therefore, has provided that an institution may accept the transcript in lieu of the tax return to meet the minumum documentation requirements. At its discretion, the institution may require the applicant to submit the tax return.

Comment: One commenter suggested that the Secretary provide additional, alternate forms of documentation to verify AGI and U.S. income tax paid if an applicant is unable to obtain the tax return. As an example, the commenter suggested that IRS Form W–2, Wage and Tax Statement, would be an acceptable alternate document under certain conditions.

Response: A change has been made. The Secretary has revised the requirements of § 668.57(a) to provide that an applicant may verify these items by using alternate forms of documentation under certain circumstances. If the relevant person filed an income tax return with a central government outside the United States or the Commonwealth of Puerto Rico, the applicant must submit a copy of that return. If the relevant person has not filed and will not file a U.S. tax return, the applicant must submit a statement signed by the relevant person listing the sources and amounts of income earned from work. If the relevant person has been granted a filing extension by the IRS, the applicant must submit a copy of each IRS Form W–2 of the relevant person or a statement signed by the relevant person certifying that person's adjusted gross income if the relevant person is self-employed. The applicant must provide the institution with a copy of the extension granted to the person by IRS and a copy of the completed U.S. income tax return when filed. If the relevent person has requested the IRS to provide a copy of the tax return or listing of tax account information and IRS is unable to locate the return or provide the listing, the applicant must submit each IRS Form W–2 of the relevant individual or a statement signed by the relevant person certifying his or her adjusted gross income if he or she is self-employed. If an individual is unable to obtain an IRS Form W–2 in a timely manner, an institution may obtain a signed statement from the individual certifying his or her amount and source of income and the reason the IRS Form W–2 is not available.

Comment: Several commenters expressed concern over the length of time needed to obtain copies of tax returns from the Internal Revenue Service.

Response: No change has been made. The Secretary has provided advance notice on the application forms that the applicants may be required to provide copies of their or their parent's income tax return.

Comment: One commenter noted that the tax returns used to conduct verification would not collect information on the "growing and significant share of personal income" that is not reported on tax returns. Another commenter expressed a similar concern that excessive reliance on tax return information would detract from a financial aid administrator's efforts to measure the true financial strength of an applicant's family.

Response: No change has been made. Use of the information from the tax return to establish an applicant's EFC has long been recognized as the most reliable and verifiable indicator of most applicant's ability to contribute to their cost of education.

Comment: One commenter felt that it was inconsistent for the Secretary to exempt foreign institutions in the GSL Program from verification procedures, but require U.S. institutions to collect and review foreign tax returns. The commenter recommended that institutions be required to collect only a statement that the applicant or the applicant's parents filed a tax return other than a U.S. tax return.

Response: No change has been made. The Secretary does not believe that the requirements are inconsistent since the circumstances under which domestic and foreign institutions operate are not the same.

Comment: One of the commenters noted that the criteria for household size on the financial aid application are not identical to the criteria for claiming exemptions on the Federal income tax return and recommended that the source of data used for verification correspond to the household size item. One commenter suggested that in the case of a discrepancy between household size and the number of exemptions, the institution should have the option to accept the lower figure.

Response: A change has been made. The Secretary recognizes that the number of exemptions claimed on the tax return and the appropriate household size on a student aid application may differ. The Secretary, therefore, has revised the documentation requirements for household size to require that the institution collect a signed statement listing the names of the household members and their relationship without reference to the number of exemptions on the tax return.

Comment: Several commenters noted that the documentation for household size and number in postsecondary education is collected by several need analysis documents (the application forms of the College Scholarship Service and the Graduate and Professional School Financial Aid Service (GAPSFAS) being the most frequently cited.) The commenters felt that the regulations should make it clear that the information collected on these forms would satisfy the documentation requirement for these items. However, two of the commenters noted that in most cases the institution would have no way of knowing if the information was still accurate as of the date of verification.

Response: No change has been made. The Secretary, as noted in the preamble to the NPRM, has provided that for number of family members attending postsecondary educational institutions, the institution need not obtain a separate signed statement to verify this item if the information required to verify this item is listed on the application and the information is still accurate at the time of verification. With the revision of the requirements for verifying household size, the Secretary will accept a listing on the application of the information required to verify this item if the information is still accurate. However, the institution must document that it has determined that the information is still accurate. For example, it may use a copy of the application signed at the time of verification.

Comment: Three commenters objected to the requirement that an institution verify the number of household members attending postsecondary educational institutions by collecting statements from the institutions. They felt that this requirement would create excessive admininstrative burden and pose a hardship to applicants and their families. One of the commenters felt that it should be sufficient for the applicant to provide a signed statement listing the names and the enrollment status of family members, and the names and addresses of the institutions they are attending. Another commenter proposed that the Secretary accept other kinds of documentation that would be readily available to the family, such as a copy of a letter of admission, offer of financial aid, or receipt for payment of tuition.

Response: No change has been made. The requirement in § 668.57(c)(2)(ii) is limited in scope and applies only if an institution believes that the number of family members attending postsecondary educational institutions is inaccurate. Furthermore, the Secretary believes that this documentation provides a useful tool for an instituion if it decides that the circumstances warrant collecting further documentation. If an institution invoked this requirement, the Secretary would consider a copy of an offer of admission, an offer of financial aid if it clearly indicated that the student has been accepted for admission, or a receipt of payment of tuition as fulfilling this requirement.

Comment: Two commenters asked for more specific language describing when an institution might have cause to believe that the reported number in postsecondary institutions is inaccurate. One of the commenters suggested that the distinction be based on whether the institution had conflicting information for this item.

Response: No change has been made. The Secretary is not restricting the basis upon which an institution may determine that an applicant misreported number attending postsecondary institutions. For example, an institution may determine that the signed statement is insufficient if it determines that an applicant has misreported other information on the application.

Comment: Many commenters felt that the different requirements for documenting independent student status in § 668.57(c) of the NPRM were confusing and would lead to increased error by aid administrators. The commenters objected to the different documentation requirements based on an applicant's age, marital status, and type of aid for which he or she applied.

Response: No change has been made. The Secretary acknowledges that the regulations governing the documentation required for independent student status are complex. While a part of the complexity, *e.g.*, the difference between a married and unmarried independent student, is due to the statutory definition of the term "independent student," a significant portion is due to the Secretary's desire to ease the burden on institutions and to provide them with greater flexibility in documenting this status.

The statutory definition of a married independent student limits the year in which the factors of tax exemption, residence and monetary support may be taken into account to the first year of an award year. In order to provide consistency in the definition of a married and unmarried independent student, the Secretary would have to amend the definition of an unmarried independent student to eliminate the base year in determining that status. The Secretary believes that the base year for determining independent student status for unmarried students is an important factor in making that determination and is unwilling to eliminate that year solely to simplify the documentation requirement of this provision.

The remaining differences in the documentation requirements for independent student status relate to the situation where the institution does not have conflicting documents relating to the three factors used in determining that status. (The documentation requirements are the same if the institution has conflicting documentation regarding those factors.) The differences relate to the title IV, HEA programs for which the applicant has applied and the use of age in the Pell Grant Program requirements.

With regard to the difference in treatment between the Pell Grant Program on the one hand, and the campus-based and GSL programs on the other, the Secretary has provided institutions with flexibility to document this status. The Pell Grant Program requires uniform treatment of applicants to the extent possible. Therefore, the Secretary has established procedures that all institutions must follow in documenting the independent students status of Pell Grant applicants.

The GSL and campus-based programs allow greater flexibility at the institutional level, and the Secretary believes that institutions should be given greater flexibility in documenting the independent student status of an applicant under those programs. Thus, the Secretary permits institutions to follow the Pell Grant requirements or to impose stricter requirements for verifying this status. If, in the interest of simplicity or consistency, an institution believes that its best course is to treat all applicants alike, it can choose that option by applying the Pell Grant Program procedures to all its campus-based and GSL program applicants as well. However, the institution is free to choose or reject this approach. Thus, the complexity in the regulation relates to giving an institution this choice rather than the procedures it must adopt to verify an applicant's independent student status.

With regard to the use of age in the Pell Grant Program requirements, the Secretary has introduced a difference in treatment to ease the burden on institutions. Thus, an institution is not required to verify an applicant's status if the applicant is 23 years of age or older and there is no conflicting documentation.

Comment: One commenter recommended that the Secretary clarify the documentation required for independent student status if the institution has documentation that conflicts with the information provided by the applicant.

Response: A change has been made. The Secretary has amended § 668.57(d) to specify the documentation required when an institution has documentation that conflicts with the information provided by the applicant.

Comment: Some commenters recommended that when verifying an applicant's independent student status the parental tax return be required of all applicants regardless of age or marital status.

Response: No change has been made. A parental tax return covering base year information is not relevant to a determination of whether a married applicant qualifies as an independent student. If there is no conflicting documentation regarding the applicant's independent student status, the Secretary believes that most applicants 23 years of age or older are truly independent so that it would be overly burdensome on the applicant and the institution to require the applicant's parents to provide a copy of their income tax return.

With regard to unmarried applicants under 23, an institution must request the parental tax return of every unmarried applicant selected for verification who claims to be an independent student. However, the Secretary believes that there are situations where it is unreasonable to collect that document, such as if the parents are out of the country and cannot be contacted by normal means of communication.

Comment: One commenter noted that a parental signature on an application

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form should suffice for verification of dependency status.

Response: A change has been made. The 1986–87 student aid application, unlike previous ones, provides a place for an applicant's parents to certify the information on the application form with respect to the applicant's independent student status. Therefore, for applicants under the Pell Grant Program, the Secretary has revised § 668.57(d)(4) to provide that if there is no conflicting documentation, the parental signature on the application will suffice as documentation of the applicant's independent student status for purposes of the required written statement. Since an unmarried applicant must also provide a copy of his or her parent's income tax return as well as a parental statement, the parental signature on the application does not alone satisfy the verification requirements for an unmarried applicant.

Comment: One commenter called for clarification of the documentation requirements for independent student status when the applicant's marital status at the time of verification is different than at the time of application.

Response: No change has been made. Under § 668.55(d)(2), an applicant may not update his or her dependency status if the change results from a change in marital status after the applicant submits his or her application. Therefore, the applicant must verify his or her dependency status as of the time of application and must provide the documents needed to verify that status.

Comment: Two commenters felt that the documentation of independent status would constitute an undue hardship for "nontraditional" students and proposed that an age limit be set at 23 or 26, beyond which no documentation would be required for an independent student. Another commenter recommended that the parental tax return and certifying statements not be required under any circumstances because of the prevalence of independent students from single head-of-household families who have no contact with the other parent.

Response: No change has been made. The regulations are already in accord with most of the recommendations of the commenters. With regard to the issue of age, the regulations do not require applicants 23 years of age or older to document their independent student status if there is no conflicting documentation with regard to meeting the requirements of that status. The Secretary believes that it would be irresponsible to ignore conflicting documentation concerning whether an applicant qualifies as an independent for applicants of any age.

With regard to the commenter's objection to obtaining parental tax returns and other statements, the applicant would not necessarily have to obtain the tax returns of both parents if the applicant's parents were divorced or separated. The applicant would only have to obtain the return and statement of the parent whose income would be reported if the applicant were a dependent student.

Comment: Many commenters questioned the choice of May 31 of the award year as the key date for determining if the student is 23 years of age or older for purposes of the documentation requirement. Two commenters proposed that this date be changed to June 30, the last day of the award year. Other commenters suggested that the January 1 date used for verification of Pell Grants in the 1985–86 award year be used for integrated verification in the 1986–87 award year, as well. Many commenters thought the regulations were using two different dates depending on program. One commenter felt that December 31 would be the most convenient date for checking which documentation requirement should be used for a student.

Response: No change has been made. The Secretary is changing the date from January 1 of the award year in § 690.77 of the Pell Grant Program regulations to May 31 of the second calendar year of the award year (e.g., May 31; 1987 for the 1986–87 award year) to coordinate this provision with the requirements of the Uniform Methodology. Elements of the Uniform Methodology are based on the independent student's age as of May 31 of the award year. The Uniform Methodology uses this date since it is the end of the academic year for many institutions and their students.

Comment: One commenter felt that the age criterion for documentation should be lowered from 23 years to 22 years to correspond to the average age of graduation from an undergraduate program.

Response: No change has been made. The rule is in accord with the commenter's suggestion since it requires almost all undergraduates to document their dependency status.

Comment: Several commenters asked that aid administrators be given more opportunity to use professional judgment, either in requiring documentation, or in waiving the requirement for documentation of dependency status. One commenter asked if an institution would be required to withhold an applicant's Pell Grant if it had conflicting documentation regarding an applicant's dependency status but the applicant's parents cannot provide the required documentaiion. One commenter stated that no further documentation of independent student status should be required when an aid administrator has determined under the regulations for the campus-based programs that the relationship between an applicant and parent makes it unreasonable to expect parental contribution. Another commenter stated that aid administrators should be allowed to use professional judgment in not requiring documentation from independent students whose parents are permanent residents of another country.

Response: A change has been made. The Secretary believes that the regulations provide an institution's financial aid officer numerous opportunities to exercise professional judgment regarding the documentation required for verifying a student's dependency status. For example, the financial aid officer must determine whether an applicant's parents are unwilling or unable to provide requested documentation and must determine whether an unmarried applicant had sufficient resources in the base year to support himself or herself.

With regard to whether a parent is unable to provide requested documents, the Secretary has added provisions in § 668.57(d)(3)(ii) similar to the ones added with regard to spouse information in § 668.54(b)(2). Included in that new provision is the requirement that if an applicant's parents are out of the country and cannot be contacted by normal means of communication, the institution shall treat the parents as being unable to respond to a request for documents.

The commenter who suggested that no documentation should be required where a financial aid officer determines, under the campus-based program regulations, that it is unreasonable to expect a parental contribution has misunderstood the provisions contained in those regulations. Under those regulations, a financial aid officer may treat a dependent student as an independent student if he or she determines that it is unreasonable to expect a parental contribution. However, the student does not satisfy the definition of an independent student.

Finally, if an institution has conflicting documentation regarding an applicant's dependency status and the applicant's parents do not provide the required documentation, the institution may not pay a Pell Grant to that student, disburse any campus-based aid, or certify the applicant's GSL loan application. Section 668.58 has been amended to clarify this requirement.

Comment: Many commenters felt that the parent's unwillingness to provide documentation of dependency status should not be grounds for waiving the requirement, because applicants who had deliberately misreported their dependency status would be able to evade verification. Several other commenters were in agreement with the proposed rule that documentation not be required of an independent student's parents if they are unwilling to provide it.

Response: No change has been made. If there is no conflicting documentation and an applicant's parents are either unwilling or unable to provide the requested documentation, the applicant cannot be held accountable for his or her parents' actions or circumstances.

Comment: Some commenters were concerned that the interpretation of the parents' inability or unwillingness to submit documentation would be too subjective and recommended that more specific language be added to the final regulation. Several commenters objected to the use of the parent's mental or physical status as a criterion in requiring a tax return. Another commenter pointed out that aid administrators would be reluctant to make a judgment not to require a parental tax return from an independent student unless a clear and reasonable standard for such judgments was established.

Response: No change has been made. The regulations describe the circumstances under which the Secretary considers an applicant's parents unable or unwilling to provide the required documentation. The Secretary is providing that it is within the institution's discretion to determine whether these circumstances are applicable. The Secretary recognizes that these decisions may involve some subjectivity but is relying on the professional judgment of financial aid adminstrators to make these determinations.

Comment: One commenter asked that the regulations specify the tpyes of documentation that would support a decision that the parents' physical and mental state prevents them from providing required documentation or that a parent is deceased or out of the country.

Response: No change has been made. The Secretary is not specifying the documentation necessary to support an institution's decision in order to provide the institution discrection in determining whether an applicant's parents are, in fact, unable or unwilling to provide the requested documentation.

Comment: One commenter objected to the requirement that an institution must contact the applicant's parents and request a copy of the tax return if the applicant did not provide a copy for them in order to determine whether the applicant's parents were unwilling or unable to provide the requested documentation.

Response: No change has been made. In the case of an applicant whose parents are unable to provide the requested documentation, the institution usually would not be able to contact the parents but instead would need to document through the applicant that the parents are unable to provide the documentation. For example, if the applicant stated that the parents were deceased, the institution might document this circumstance by the applicant's signed statement, or it might require the applicant to provide a copy of the death certficate if it felt that requiring such documentation was advisable. In the case of an applicant whose parents are unwilling to provide the requested documentation, the institution would need to contact the parents to document that they were unwilling to provide the requested documentation. The Secretary believes that an institution may only determine that an applicant's parents are unwilling to provide the documentation by directly contacting them.

Comment: One commenter objected to the use of certification statements for items that can only be confirmed by the parents and the student. The commenter felt that "self-verification" of the residency and support questions for dependency status constituted an unnecessary burden to the institution.

Response: No change has been made. To document an applicant's indpendent student status, it is necessary to document the answers to the residency and support questions. The Secretary believes that requiring applicants and their parents to provide signed statements concerning the support and residency questions provides the least burdensome method of verifying this information and with the parental signature does not constitute self-verification.

Comment: Three commenters suggested that it would only be necessary to collect a parental tax return once during an applicant's course of study to verify the dependency status of that applicant unless the institution had conflicting information.

Response: No change has been made. It is necessary to collect the relevant parental tax return for each award year that an unmarried applicant's independent student status is verified. For example, if the institution collected the parental tax return for calendar 1984 of an applicant in the 1985-86 award year, the institution would still need to collect a 1985 parental tax return for the 1986-87 award year since the only information that the institution would have for calendar 1985 would be the applicant's projected data for that year.

Comment: Another commenter suggested that only the first page of the parental tax return be required of an independent student, because many parents are reluctant to release their income information.

Response: No change has been made. The Secretary would consider a signed copy of only the first page of the parental tax return sufficient documentation even if the applicant's parents blocked out all the information on the page except the information identifying the filer, the number of exemptions claimed, and the list of dependents.

Comment: Two commenters suggested that the test of an applicant's ability to support himself or herself be expanded to include "sufficient resources" as well as "sufficient income" to take into account those applicants who use their savings or receive support from persons other then their parents. Two other commenters wanted specific guidelines for determining "sufficient income" which would give aid administrators the latitude to take into consideration different costs of living.

Response: A change has been made. The Secretary agrees that the test of an applicant's ability to support himself or herself should be expanded to include "sufficient resources" and, therefore, has revised the regulations accordingly.

The Secretary is leaving this determination to the discretion of the financial aid administrators.

Comment: Many commenters objected to the requirement that applicants submit a worksheet or comparable listing to verify untaxed income and benefits. Several commenters noted that this documentation duplicates information already collected on financial aid applications for some of the private need analysis services, and, in some cases, information available on the Federal income tax return. Most of the commenters felt that this documentation requirement is burdensome, is offensive to students, and, because the documentation represents self-verification by the student of previously reported information, rarely changes the applicant's EFC. One commenter was in

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favor of the requirement that a worksheet be required to verify untaxed income.

The commenters proposed several modifications to this requirement, including (1) collecting a signed statement or a signed Student Aid Report rather than the worksheet or (2) limiting collection of the worksheet to applicants who actually report untaxed income or to situations where there is conflicting information.

Response: A change has been made. As noted, in connection with § 668.54, the Secretary has revised the items to be verified under untaxed income and benefits to rely principally on the income tax return as the required document. The Secretary believes that relying principally on the tax return is the least burdensome method of verifying these items. The Secretary, therefore, has revised the regulations to delete the requirement that an applicant provide a signed copy of the worksheet for untaxed income and benefits from the student aid application. The tax return will satisfy the verification requirement, and if no tax return is filed or will be filed, the applicant must provide a signed statement concerning the sources and amounts of untaxed income and benefits received.

The Secretary is not eliminating the verification of untaxed income if the applicant reports a zero amount. An applicant may err by forgetting or failing to provide any information as well as entering an incorrect amount.

In addition, the Secretary believes that using the tax return as the principal verification document should reduce much of the burden associated with verifying a zero amount of untaxed income and benefits.

Comment: One commenter recommended that the regulations give guidelines specifying when the aid administrator might have occasion to doubt the information provided by the applicant for untaxed income and benefits, rather than leaving such judgments to the discretion of the aid administrator.

Response: No change has been made.

The Secretary is providing the institution with the discretion to determine whether any reason exists to question an applicant's information because the financial aid administrator is closer to the situation.

Comment: Several commenters felt that it would be more accurate and less burdensome to verify social security benefits through the current ongoing tape match conducted by the Federal processing center.

Response: No change has been made. The Secretary is continuing the tape match with the Social Security Administration for those applicants receiving a SAR. However, the tape match is not accurate enough to ascertain the correct amount that should have been reported on the application by some applicants. Therefore, to determine the correct amount of benefits that an applicant received, written confirmation of the amounts must be obtained from the Social Security Administration.

Section 668.58 Interim disbursements.

Comment: Several commenters objected to the provision in proposed § 668.58(a)(1)(ii)(B) limiting the time that an institution may employ a student under the College-Work-Study Program to sixty (60) days after enrollment while the student is verifying his or her information. These commenters considered the sixty (6) days to be an insufficient period of time to complete verification.

Response: No change has been made. The Secretary believes that sixty (60) days is sufficient time for most students to complete verification since the time period begins with the date the student enrolls, *i.e.*, completes registration and begins attending classes, and most students begin the verification process prior to enrollment.

Comment: Several commenters suggested that institutions should be required to verify GSL application information before disbursement, rather than before certification as required in § 668.58(a)(2). Other commenters suggested requiring only postdisbursement verification. Several commenters suggested that a better control mechanism would be a requirement that all GSL checks be sent to the schools. One commenter suggested requiring that there should be a multiple disbursement of GSL checks and verification should be required before release of the second disbursement. Several commenters suggested that there should be a multiple disbursement of all GSL checks to minimize problems associated with incorrect awards.

Response: No change has been made. Requiring that institutions complete verification prior to certifying GSL loan applications assures that applicants receive appropriate amounts of assistance under the GSL program. To allow certification of GSL loan applications before the completion of the verification process would increase the administrative burden on an institution by adding to the complexity of the GSL program. In addition, the GSL program would become unmanageable if checks must be returned to the lenders for those students who do not provide the required documentation or for whom verification changes the recommended loan amount of a previously certified GSL loan application. For those students, the lender would be required to cancel the loan in addition to refunding the origination fee and loan guarantee fee. The Secretary, therefore, would be billed for interest and special allowance benefits from the date of disbursement to the date of cancellation on a loan that should never have been disbursed. The Secretary currently does not have the statutory authority to require multiple disbursements of GSL checks.

Comment: One commenter suggested that proposed § 668.58(a)(2), § 668.58(b)(2)(iii) in the final regulations, be changed to prohibit the "disbursement" of a GSL loan check for a previously certified loan application until the verification process is completed.

Response: A change has been made. The Secretary agrees with the commenter and has amended § 668.58 accordingly. The proposed rule prohibited the "endorsement" of a GSL loan check for a previously certified loan application. The final rule prohibits the "processing" of a GSL loan check and, thus, encompasses both the endorsement and disbursement of a check.

Comment: Several commenters objected that the requirement in § 668.58(b) makes institutions liable for overpayments made in good faith and based on proper documentation. They recommended that an institution not be held liable for the first payment it makes to a student pending verification of information. Several commenters suggested that the student, not the institution, should be held liable for overpayments resulting from student error on the application form.

Several commentes stated that institutions will be effectively required to withhold assistance until verification is completed because institutions will be reluctant to risk incurring the possible liabilities. Exposure to those liabilities, commenters insisted, will not necessarily be minimal as the preamble to the NPRM contends.

Several commenters recommended that students who have received an overpayment in an interion disbursement in excess of $500 and refuse to repay it should be reported to the Secretary. One commenter suggested exempting the institution from liability if the disbursement is made without the institution having any conflicting documentation.

Response: No change has been made. The Secretary is not requiring institutions to make disbursements to an applicant before the applicant completes the verification process. In addition, institutions may exercise discretion in determining whether to provide interim disbursements to individual applicants.

Comment: One commenter was concerned that timing would be a problem in implementing proposed § 668.58(a)(2). The commenter cited the possibility that an institution might certify a GSL loan application based on an application from an approved need analysis system using the edits and subsequently receive a SAR selecting the applicant for verification.

Response: No change has been made. In the example cited, the institution would not be liable for certifying the GSL loan application since it was based on an application processed through the edits and the edits did not select the application for verification. If the institution received the SAR prior to the GSL check, it may not process the check until the applicant completes the verification process. If the institution has already processed the chech and determines that the recommended loan amount has decreased by $200 or more, the institution is required to notify the student and the lender of its determination within thirty (30) days of the institution's determination that the borrower is ineligible for the loan amount that the institution previously certified.

Comment: Several commenters observed that the time required to collect information needed for verification may be more than the thirty (30) days allowed in § 668.58(c) for GSL checks to be held. Some commenters suggested that forty-five (45), sixty (60), ninety (90), one hundred and twenty (120), or one hundred and eighty (180) days would be more appropriate. One commenter suggested that each institution be allowed to establish its own policy regarding timeframes for receipt of data, based upon prior experience.

One commenter recommended that the institution be allowed to determine on a student-by-student basis when the check is to be sent to the lender. One commenter suggested that there should be discretion for cases in which the delay is not within the student's control.

Several commenters recommended that the thirty-day period for GSL checks be extended when the delay is caused by a Federal or State agency.

Response: A change has been made. The Secretary agrees that thirty days may be an insufficient period of time and is increasing the number of days to forty-five (45). However, in general, institutions would not be holding GSL checks since they may not certify GSL loan applications for selected applicants until the applicants complete the verification process.

Section 668.59 Consequences of an inaccurate application.

Comment: One commenter suggested that the Secretary extend the concept of the Zero SAI Charts in § 668.56(a)(2) to an index for low cost institutions to use as another tolerance in the Pell Grant Program for awards which do not change due to the application of the requirement that an award may not be greater than a percentage of the cost of attendance.

Response: No change has been made. To use such an index, the institution must first recalculate the applicant's SAI. The regulations already provide that if the institution recalculates an applicant's SAI, the applicant must resubmit his or her SAR only if the award changes.

Comment: Several commenters stated that the use of a net tolerance in § 668.59(b) is cumbersome and burdensome and that the example of a net tolerance in the preamble incorrectly treated the married couple deduction.

Response: A change has been made. The Secretary concurs with the commenters and has revised the tolerances in § 668.59(b) to state the tolerances in absolute dollar amounts. Thus, to determine if changes in dollar amounts exceed the tolerances, an institution adds together all changes in dollar amounts, disregarding whether the items increased or decreased in value or their effect on the applicant's expected family contribution. For example, if verification shows that an applicant's AGI changed from $8,000 to $7,500 and the U.S. tax paid changes from $500 to $700, the institution adds the differences on each item, i.e., $500 and $200, to arrive at the absolute number of $700. The institution then uses the absolute value of $700 in determining whether the tolerances are applicable.

Comment: A number of commenters suggested that § 668.59(b) specify a single tolerance for determining when an institution must recalculate an applicant's EFC.

A number of commenters stated that the $100 tolerance for dollar items in the Pell Grant Program was too low and would lead to unnecessary delays in payments to applicants due to corrections. Some commenters stated that the tolerance in the Pell Grant Program required an accuracy in reporting that was not commensurate with the accuracy of the verification documents or the need analysis process. One commenter questioned how a tolerance of $100 in the Pell Grant Program could be appropriate when the payment schedule cells are currently in increments of $100. Several commenters suggested that the tolerance levels currently in place for the Pell Grant Program should be retained.

Several commenters stated that the tolerance for the campus-based and GSL programs was too low. Some commenters observed that a $600 tolerance for the campus-based and GSL Programs will result in few errors requiring correction.

Response: A change has been made. The Secretary continues to believe that the reasons stated in the preamble of the NPRM are valid for setting the tolerances to determine whether an institution must recalculate an applicant's EFC. In setting the Pell Grant Program tolerance, the Secretary must consider the effect of a change in the applicant's information in determining the applicant's Pell Grant. However, recognizing that the tolerances in the NPRM may place an undue burden on institutions and that the tolerances are being restated as absolute values, the Secretary has revised them to be $200 for the Pell Grant Program and $800 for the campus-based and GSL programs. The Secretary is not establishing a single tolerance because of differences in calculating a student's EFC under the Pell Grant Program on one hand and the campus-based and GSL programs on the other.

Comment: Some commenters questioned the Secretary's legal authority to set the tolerance level for the Pell Grant Program's SAI at $100 in § 668.59(b) of the NPRM.

Response: No change has been made. The Secretary believes that, in general, a change in dollar items of $200 or less on a SAR when combined with no additional change in nondollar items will not affect the applicant's EFC to the extent that it will change that applicant's Pell Grant award. Therefore, under the Pell Grant statute, the Secretary's actions are in keeping with the provisions of section 411(a) of the HEA.

Comment: One commenter suggested that an institution should not be required to recalculate an EFC if nonfinancial information is found to be erroneous.

Response: No change has been made. Any change in nonfinancial information such as independent student status, number in household, and number in postsecondary educational institutional

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has a major impact on an applicant's EFC. The Secretary, therefore, is requiring that an institution shall recalculate an applicant's EFC if there is any change in this information.

Comment: Several commenters suggested that the Secretary apply the tolerances to changes in awards or changes in EFC.

Several commenters suggested that for purposes of the campus-based and GSL programs, the decision to recalculate an applicant's EFC be left to the discretion of the institution, with the provision that a recalculation must occur if the revised information would result in a change in award of $200 or more.

One commenter suggested that the Secretary not require an applicant whose inaccurate application resulted in an underaward to resubmit a revised application.

Response: A change has been made. The purpose of the tolerances is to reduce the burden on institutions to recalculate an applicant's EFC and award. To state the tolerances in terms of changes in awards or EFC would place additional recalculation burdens on institutions.

An additional tolerance of a $200 change in award would result in unnecessary overawards. Therefore, the Secretary is not providing tolerances for changes in EFC or awards.

The Secretary has, however, revised the regulations to provide clarifications and to ease the burden on institutions with respect to adjusting an applicant's award due to changes in an EFC. For the Pell Grant Program, he has added § 668.59(b)(2)(ii) which provides that an institution may disburse an applicant's Pell Grant based upon the original SAR if the institution recalculates the applicant's SAI based on the verified information and determines that the applicant's award increases. If the applicant subsequently submits a corrected SAR, the institution must adjust the applicant's award to reflect the new SAI. For the campus-based and GSL programs, the Secretary has clarified proposed § 668.59(d)(2), § 668.59(c) of the final regulations, to provide that the institution shall adjust the applicant's financial aid package if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

Comment: Several commenters questioned whether an applicant must submit corrections to the need analysis system if changes in verified items exceeded the tolerances for campus-based or GSL programs. Commenters suggested that financial aid administrators should be granted authority to recalculate an applicant's EFC under those circumstances.

Response: No change has been made. The regulations do not require that an application for campus-based or GSL assistance be resubmitted with corrections to the need analysis system. The institution may recalculate the applicant's EFC.

Comment: Several commenters objected to the requirement in proposed § 668.59(f), § 668.59(e) in the final regulations, that an institution report to the borrower and lender a reduction in the recommended loan amount of a previously received GSL loan if as a result of verification the loan amount is reduced by $200 or more. One commenter questioned whether this reporting is necessary if adjustments to other aid will bring the applicant's total aid within his or her need.

Response: No change has been made. The Secretary believes that a borrower should receive only the amount of assistance for which he or she demonstrates need. The institution may adjust the applicant's other aid to bring his or her total aid within his or her need and, therefore, would no longer have an excess loan amount to report.

Comment: One commenter was concerned that § 668.59(e) would require an institution to cross-check each GSL recipient at each registration and require loan renegotiation if subsequent non-Title IV aid is received.

Response: No change has been made. This requirement would not apply to GSL applicants who received additional resources after their loan application was certified.

Comment: One commenter asked if the provisions of § 668.59(g) of the NPRM, § 668(f) of the final regulations, conflict with the provisions of § 668.14(g) of the NPRM published in the **Federal Register** on December 12, 1984.

Response: No change has been made. The provisions do not conflict with each other. The proposed provisions of § 668.14(g) are concerned with any applicants who may be falsifying information. Section 668.59(g) requires an institution to refer to the Secretary any situation where there is an unresolved dispute over the accuracy of information provided by the applicant if the applicant received funds on the basis of that information.

Section 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

Comment: Several commenters supported the provision in § 668.60(a)(1) in the NPRM that an institution establish what is a reasonable length of time for the applicant to provide documentation for the campus-based and GSL programs. Two commenters, however, felt the provision was inconsistent with § 668.60(a)(2) which allows an institution to waive its own time limit and § 668.60(a)(3) in the NPRM which restricts the time an institution may hold a GSL check for a prevously certified GSL. These sections have been renumbered as § 668.60(b)(1), § 668.60(b)(2), and § 668.60(b)(3) of the regulations.

Response: No change has been made. The Secretary believes that an institution should have the flexibility, whenever possible, to set the deadline for an applicant to submit documents for verification in the campus-based and GSL programs. The Secretary does not believe that § 668.60(b)(2) and (3) are inconsistent with § 668.60(b)(1). The Secretary has included § 668.60(b)(2) to provide additional flexibility to institutions and § 668.60(b)(3) to assure that an institution not hold a GSL check for an extended period of time.

Comment: One commenter recommended that the regulations be revised under § 668.60(a)(1)(i)(D) of the NPRM to read: (D) Endorse or disburse a GSL check to the applicant.

Response: A change has been made. The Secretary agrees that the language in the NPRM which prohibits only the "endorsement" of a GSL check is inadequate. He has revised the regulations to prohibit the "processing" of an applicant's GSL check which encompasses both endorsement and disbursement.

Comment: Regarding § 668.60(b) of the NPRM, § 668.60(c) in the final regulations, one commenter objected to a student receiving the lowest amount of a Pell Grant for which the student is eligible if the student submits a verified SAR after the deadline but before the time period established by the Secretary. The commenter believed the Secretary has no authority to deny students the funds for which they are eligible. One commenter recommended that the regulations permit an applicant the option of refiling with corrected data in those instances where his or her SAI woud be lower and the payment higher with the applicant having the right to accept less funds if he or she chooses not to refile.

Response: No change has been made. These provisions repeat those in § 690.77(f) of the Pell Grant Program regulations published on March 15, 1985 and similar provisions in previous regulations for the Pell Grant Program. As the Secretary noted in the comments and responses of the March 15 Pell Grant Program regulations, these regulations provide that a student who has misreported information and been given an extension to correct that information not receive the additional benefit of a higher award.

Comment: The Secretary received a number of comments concerning the provision of § 668.60(c) of the NPRM, § 668.60(d) of the final regulations, which precludes an applicant who did not provide documentation for a previous award year from receiving Title IV aid in the future unless the Secretary determines that the documentation is no longer needed. Some commenters believed this provision to be burdensome and that it will cause substantial delay in the aid process. Most commenters objected to precluding an applicant's receipt of aid in the future. The commenters believed that this approach is unreasonably punitive. Many of the commenters noted a variety of reasons why a student may not provide documentation, *e.g.*, "problems" of procuring documentation, uncooperative parents, and receipt of aid from other sources. A number of the commenters believed that an applicant should not be "automatically judged" as having provided false information. A few commenters noted that the concept of student eligibility requires that an applicant's eligibility be determined each award year. A number of commenters recommended that this provision be restricted to that award year. One commenter asked if the Secretary currently denies subsequent processing or payment of Pell Grant applications for those students who failed to complete verification during a given period. This commenter also asked how the information on Pell Grant verification is being transmitted from one institution to another for those students who transfer. A few commenters were unclear as to whether the requirement of this section applied to future years or within the same academic year. Some commenters asked how far into the future will these provisions apply; the suggestion was made to tie this provision to the existing record retention requirements. Some commenters asked how an institution will know there is no longer a need for documentation.

Response: A change has been made. If an applicant fails to provide the requested information, the Secretary will reserve the option to withhold any further Federal student assistance, including awards in future years. As in the current regulatory requirements for the Pell Grant Program (34 CFR 690.77(f)(4)), the Secretary has not limited this paragraph to receiving funds in the award year for which information was requested.

Comment: The Secretary received a number of comments concerning the proposal in the preamble to revise the requirements for the financial aid transcript in Subpart B of these regulations to include information regarding whether an applicant failed to provide documentation for verification of an application for a Pell Grant, campus-based aid, or a GSL loan if the applicant subsequently attends another institution and applies for Title IV aid.

Most commenters objected to revising the financial aid transcript to include information regarding whether an applicant failed to provide documentation for verification. Some commenters believed this revision to be too complex and burdensome for institutions. Many of the commenters' objections were based on a belief that there are a variety of reasons why an applicant did not provide documentation, *e.g.*, a student did not enroll, and that it is virtually impossible for an institution to determine if an applicant "failed" to provide documentation or if he or she refused to do so. A few commenters asserted that because the transcript already reflects refunds, there is no need to make this revision. One commenter recommended that the Secretary not allow interim disbursements; the commenter believed that then there would be no need for the transcript's revision. A few commenters requested clarification as to why the transcript should be revised if a student did not receive Title IV funds. Moreover, one commenter believed that this revision has no relevance to the second institutions because a new application will be required which will precipitate verification. One commenter recommended that instead of revising the financial aid transcript, the information should be collected on the student's financial aid application. Several recommended that if the transcript requirements are revised, the provision should be subject to the record retention requirements.

Some commenters supported revising the financial aid transcript to include information regarding whether an applicant failed to provide documentation for verification of an application for a Pell Grant, campus-based aid, or a GSL.

One commenter believed that this revision would discourage the intentional and persistent attempts by a few applicants to provide false information. Most support was contingent upon the condition that the transcript be changed only to reflect that documentation was not provided for those applicants who received title IV aid. These commenters believed that to withhold future aid because an applicant did not provide documentation is unreasonable for an applicant who did not benefit from title IV aid, that the transcript be revised only for applicants who transfer within the award year, that any revisions to the transcript be delayed until award year 1987–88 because institutions will be developing 1986–87 application materials before these regulations are published, or that this revision is valid only if applicants who were verified at the previous institution are excluded from verification at the subsequent institution. The commenters supported the collection of overpayments and noted that this was already possible via the transcript. The suggestion was made that the Secretary collect overpayments using the Pell Program as the precedent.

Response: A change has been made. The Secretary generally concurs with the commenters opposed to the proposal and, therefore, is not revising the financial aid transcript provision in Subpart B. The Secretary, however, is revising § 668.60(c) to require that an institution may not process campus-based aid or a GSL if directed by the Secretary. This change relieves the institution of the responsibility for knowing whether the applicant completed the verification process at another institution but does not restrict the institution from withholding campus-based aid or certifying a GSL loan application if directed by the Secretary.

Section 668.61 Recovery of funds.

Comment: One commenter questioned whether the requirements in § 668.61(a) apply to any overpayment or to those that are the result of the institution exercising its option to make an interim disbursement under proposed § 668.58(a)(1)(ii), § 668.58(a)(2)(ii) in the final regulations.

Response: A change has been made. The Secretary has clarified § 668.61 to clarify that these provisions apply only to those overpayments that are the result of disbursements under § 668.58(a)(2)(ii).

Comment: One commenter recommended that the Secretary clarify § 668.61(a)(2). The commenter assumed that the Secretary meant that an institution is required to reimburse a program account if it required an applicant to repay an overpayment but the applicant did not make the repayment. Another commenter questioned at what point in time an

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institution is required to reimburse program accounts from its own funds.

Response: A change has been made. The Secretary has clarified this provision to state that if the applicant does not return the overpayment, the institution must make restitution of an overpayment from its own funds within sixty (60) days after the applicant's last day of enrollment but not later than the end of the award year in which the funds were disbursed, whichever comes first.

Comment: Several commenters suggested that it is unnecessarily punitive to require a school to repay an NDSL Program loan overpayment when the entire balance of the loan, including the overpayment, will eventually be collected from the applicant.

Response: No change has been made. Under § 668.58(a), if an institution exercises its option to provide an interim disbursement of NDSL funds to an applicant, the institution assumes liability for the funds disbursed. Therefore, if the institution is unable to eliminate the overpayment by adjusting the applicant's subsequent financial aid payment in the award year or by requiring the applicant to repay the overpayment, the institution shall restore to its NDSL fund from its own funds an amount equal to the overpayment, and the applicant's NDSL balance is reduced by the amount of the overpayment reimbursed to the NDSL fund by the institution.

Comment: Several commenters asked for clarification of circumstances which would necessitate recovery of GSL Program loan funds under § 668.61(b) when verification is required before the application may be certified.

Response: No change has been made. Verification is not always required before a loan may be certified. For example, an institution may certify a GSL based on the output document of an approved need analysis system using the edits which shows that the applicant is not selected. If the institution subsequently received a SAR selecting the applicant for verification based on edits used only in the Pell Grant processing system, the institution may determine after verification that the information used in certifying the GSL was inaccurate and the applicant received a larger GSL than he or she was eligible to receive.

Comment: One commenter objected to any requirement that the school notify both the State guarantee agency and the lender when an overaward is discovered during verification because the school would not know who the lender and guarantee agency are.

Response: A change has been made. Under § 682.612(b)(2) of the GSL Program regulations, an institution is required to keep a record of the lender for each loan received by its students. The Secretary, therefore, has revised § 668.61(b) to require that an institution inform only the student and the lender.

Comment: Several commenters asked if institutions will continue to be held "faultless" when a student receives aid after the GSL application is certified by the school.

Response: No change has been made. Under § 668.61(b), the Secretary is requiring only that the institution follow procedures for making the lender aware of the need to adjust the applicant's loan amount. This paragraph does not establish any institutional liability.

General Comments and Responses

Comment: A number of commenters criticized the quality control studies of the Office of Student Financial Assistance conducted in 1979, 1981, and 1983 that documented large numbers of applicants and their parents misreporting information regarding their family and financial status in the Pell Grant Program. Several commenters argued that the Secretary could not infer that error in the campus-based and GSL programs was the same or similar to error in the Pell Grant Program because of differences between these programs and the Pell Grant Program. Several commenters stated that the definitions of error in the quality control studies were misleading and not useful.

Response: No change has been made. The Pell Grant quality control studies identified significant applicant error in reporting information on the application form used to calculate a Pell Grant. The information in this application is often identical to the information used to determine the amount of assistance received by an applicant under the campus-based and GSL programs and often is reported on the same application form used to determine his or her assistance under the Pell Grant, campus-based, and GSL programs. The Secretary, therefore, believes that the findings of the Pell Grant quality control studies with respect to applicant error on the application form are relevant to the campus-based and GSL programs.

The definitions of error used in the quality control studies were designed to identify areas where the program requirements permit the reporting of information that result in correct awards as well as those areas where incorrect awards result from not following the program requirements. The identification of these types of error have led to the modification of program requirements. The principal example in these regulations is the requirement that applicants update their household size, number attending postsecondary educational institutions, and dependency status at the time of verification. Previously, applicants were not allowed to update this information from the time of application. In the quality control studies it was considered an error not to use the best available information (i.e., updated information) even though the program requirements restricted institutions to using only the information that was correct as of the date of application.

Comment: Several commenters predicted that the increase in administrative burden as a result of the NPRM would increase the potential for administrative error. Other commenters feared that the administrative burden imposed by the verification requirements would force schools to drop internal practices which have been effective in reducing error. A number of commenters cited the use of the worksheet for untaxed income and benefits from the student aid application as a major source of burden that does not yield any significant improvement in the accuracy of the application information.

Several commenters stated that their institutions already perform 100 percent verification and claim that the NPRM's requirements only complicate the process by adding meaningless paperwork and time-consuming detail to an already complex process.

Two commenters stated that these regulations impose burdens that should result in them being classified as major regulations under Executive Order 12291.

Response: Changes have been made. It has always been the Secretary's intention that these regulations not impose an unwarranted burden on institutions. The Secretary has, therefore, made a number of changes designed to eliminate any unwarranted burden on institutions. Examples of these changes include the following:

- Revising the requirements for updating information under § 668.55.
- Limiting the required items to be verified under untaxed income and benefits in § 668.56 to social security benefits, child support, and those items that can be verified using the tax return and, thus, eliminating the use of the student aid application worksheet for untaxed income and benefits as a verification document.
- Eliminating the requirement that a Pell Grant applicant who is a dependent student must verify his or her base year income.

The Secretary has reviewed the regulations, including the changes he has made, and determined that they continue not to be classified as major under Executive Order 12291 because they do not meet the criteria for major regulations established in that Order.

Comment: Several commenters recommended that the Secretary delay the implementation of the verification requirements to provide additional time to disseminate information and to make adjustments at the institutions.

Response: No change has been made. The Secretary believes that these regulations must be implemented for the 1986–87 award year to reduce the error rates identified in quality control studies.

Comment: Several commenters requested that the Secretary increase the amount of the administrative cost allowance paid to institutions to offset the costs of verification in the Pell Grant and campus-based programs. Commenters also recommended that the Secretary make payments to cover the administrative costs of including the GSL Program in the integrated verification system.

Response: No change has been made. The amounts of administrative cost allowances are set by statute. In the case of GSL Program, the Secretary is not authorized to pay an administrative cost allowance.

Comment: A few commenters inferred that the underlying assumption of the verification requirements is that families or students are deliberately providing inaccurate information.

Response: No change has been made. The commenter's inference is incorrect. These regulations are intended to reduce applicant error. The Secretary is not imputing the motives for such error.

Comment: Several commenters recommended that the Secretary provide lengthy and detailed training sessions throughout the country to explain the verification requirements. Some commenters suggested the sessions should take place by January 1986 to be effective. Some commenters recommended that the Secretary publish a handbook to guide financial aid administrators.

Response: No change has been made. The Secretary expects to provide as much training as possible based on the available resources and will schedule the training as early as possible. Currently, the Secretary expects to begin training in March, 1986. The Secretary will be publishing a handbook on verification for 1986–87.

Comment: Several commenters were concerned that these regulations would discourage some applicants, especially low income students, from applying for financial aid, and they would drop out of school.

Response: No change has been made. The Secretary believes that these regulations do not impair the ability of the vast majority of students to complete the process of applying for financial assistance and, thus, should not be a factor in the students' decisions about their academic careers.

Comment: One commenter noted that the regulations do not explicitly provide that a financial aid administrator may use professional judgment and override the results of the verification process with regard to the campus-based and GSL programs. The commenter assumed that the financial aid administrator would continue to have this authority.

Response: No change has been made. The financial aid administrator does not have the authority to waive the requirements of these regulations.

Comment: A number of commenters questioned or disagreed with the Secretary's certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The commenters believed that the regulations will significantly increase the workload for student financial aid offices, requiring small institutions to employ additional staff or to upgrade data processing capabilities, and increasing printing, postage and other administrative costs. Some commenters pointed out that graduate and professional schools do not currently participate in the Pell Grant validation system. The regulations would impose new requirements on these institutions. Other commenters stressed processing delays that could disproportionately affect the neediest students.

Response: No change has been made. The small entities affected by these regulations are small institutions of higher education. In order to identify small institutions and to assess the impact of these regulations on those institutions, using actual current data, one must select an objective measure for determining institutional size. In lieu of a formal definition, it is useful to adopt the proposed definition of small institution of higher education published by the Secretary on January 16, 1981 (46 FR 3920), defining small institutions as those with a total student population of fewer than 550.

These regulations require all institutions participating in the Pell Grant, campus-based, and GSL programs to verify the application information of selected applicants. The Pell Grant Program already has similar requirements, and these regulations extend those requirements to the campus-based and GSL programs. Since the same or similar application information is used in all of these programs, and applicants usually apply for assistance under all of these programs, the results of verification in the Pell Grant Program would affect applications for assistance under the campus-based and GSL programs whether or not these regulations were issued. For this reason, the additional costs for small institutions are not expected to be significant.

With respect to graduate and professional schools, most of these schools are part of large institutions of higher education, and only a small number exist as separate institutions of higher education.

The Regulatory Flexibility Act is not applicable to students, just small entities.

For these reasons, the Secretary affirms his certification under the Regulatory Flexibility Act that the regulations will not have a significant economic impact on a substantial number of small entities.

Comment: In response to the request for comments on the information collection requirements in these regulations under the Paperwork Reduction Act of 1980, a number of commenters expressed their belief that these regulations will increase their information collection burden. One commenter suggested that the Secretary provide a validation worksheet to reduce the burden on institutions.

Response: Changes have been made. As noted above, it has always been the Secretary's intention that these regulations not impose an unwarranted burden on institutions, and the Secretary, therefore, has made changes in the regulations designed to reduce the burden on institutions. The most important of these changes was the elimination of the student aid application worksheet as a verification document for untaxed income and benefits. Another example of such a change is the elimination of the verification of a Pell Grant applicant's base year income if the applicant is a dependent student. The institution, therefore, is no longer required to collect the applicant's tax return in addition to the parents' return. In addition, the Secretary will be providing a verification worksheet to any applicant whose SAR is selected for verification and will provide copies of the worksheet to institutions.

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Comment: In response to the request for comments under the "Assessment of Educational Impact" in the preamble of the NPRM, a few commenters stated that the information requested in these regulations was available from other agencies of the United States. All of these commenters noted that the income tax return information is available from the Internal Revenue Service, and one commenter noted that other sources of information to be verified should be obtainable from the Social Security Administration, Veterans Administration, Immigration and Naturalization Service, and Department of Health and Human Services.

Response: No change has been made. With respect to income tax return information, the Secretary is exploring this issue with the Treasury Department, but it is not possible to accomplish what the commenters suggest at this time due to technical difficulties. With respect to the other sources cited by one of the commenters, the Secretary is exploring implementation of tape matches with some of these agencies or already has them in place if technically feasible. Previously, the Department has had a tape match for veterans educational benefits. However, such a match is not effective since veterans educational benefits are reported as projected income for the award year. In addition, the Veteran Administration does not have information in its files at the time applications are processed for new veterans requesting assistance and does not have enrollment data for an award year until the fall of that year or later.

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Friday
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Part III

Department of the Interior

National Park Service

36 CFR Parts 1 and 12
National Cemetery Regulations; Final Rule

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 12

National Cemetery Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking revises and deletes portions of existing regulations governing the administration, operation and maintenance of the national cemeteries under the jurisdiction of the National Park Service. Adopted revisions refer to and adopt Veterans Administration policy and standards pertaining to national cemetery operations and National Park Service standards for the protection of cultural resources. These revisions are necessary to comply with changes in Federal statutory law and to update and standardize procedures for the operation of national cemeteries. The regulations emphasize the dual mission of the National Park Service to operate national cemeteries as shrines to veterans and as significant cultural resources. They also provide park superintendents and the general public a clear set of standards and procedures that apply to the management of national cemeteries.

EFFECTIVE DATE: April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Edwin C. Bearss, Chief, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–8163.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) administers fourteen national cemeteries formerly under the jurisdiction of the War Department. These cemeteries are:

1. Andersonville, GA
2. Andrew Johnson, TN
3. Antietam, MD
4. Battleground, Washington, DC
5. Chalmette, LA
6. Custer Battlefield, MT
7. Fort Donelson, TN
8. Fredericksburg, VA
9. Gettysburg, PA
10. Poplar Grove, VA
11. Shiloh, TN
12. Stones River, TN
13. Vicksburg, MS
14. Yorktown, VA

Of these cemeteries, only five remain active and open for additional interments. Others, although inactive, may still have valid reservations to be honored for future interments.

In 1973, the National Cemetery Service was established within the Veterans Administration (VA) by Pub. L. 93–43 (38 U.S.C. 1000 *et seq.*), effectively eliminating the Department of the Army from the administration of most national cemeteries. The NPS and VA subsequently entered into a verbal agreement whereby the VA would continue to provide assistance to the NPS previously provided by the War Department and the Department of the Army. The VA administers more than 100 national cemeteries and provides several important support services to the NPS such as bulk headstone purchases, verification of the character of a veteran's discharge and records maintenance.

In 1937, the Secretary of the Interior's Advisory Board on National Parks, Historic Sites, Buildings and Monuments commented on and redefined the objectives of the national cemeteries administered by the NPS as follows:

> National cemeteries are those areas which have been set aside as resting places for members of the fighting forces of the United States.
>
> The function of national cemeteries is to serve as suitable and dignified burial-grounds for the men and women who have been interred in them.

Until recently, NPS superintendents with responsibilities for management of national cemeteries had no servicewide policy or guidelines to provide for consistent administration and protection of these 14 areas. Each cemetery was operated generally in compliance with NPS regulations codified in 36 CFR Part 12 and patterned after Army regulations, but a great many local variations in management practices occurred. In 1985, the NPS adopted NPS–61, *Guidelines for National Cemeteries*. This guideline is based on applicable Federal statutory law and follows very closely the VA policy contained in VA M40–2, *Manual of Operations of National Cemeteries* (1984). Most national cemeteries within the National Park System are administered as integral parts of larger historical parks, and represent a continuum of use dating back to periods before the establishment of those historical parks. Where NPS–61 differs from VA policy, it does so primarily in areas reflecting the significance attached to national cemeteries as important cultural resources. NPS–61 provides consistent policy direction and guidelines for national cemeteries administered by the NPS that can be applied uniformly by park superintendents. The role of the VA remains one of providing the support services logically supplied by the lead agency involved in national cemetery operations.

Serious inconsistencies exist between the current NPS regulations codified in 36 CFR Part 12, the provisions of Federal statutory law and NPS and VA policies that apply to the management of national cemeteries. This rulemaking corrects these deficiencies by eliminating references to the Department of the Army, basing eligibility requirements and other interment criteria on the provisions of existing Federal statutory law, applying statutory penalty provisions to violations of certain regulations and by providing clear guidance to park superintendents and the general public concerning standards and procedures that apply to the operation of national cemeteries within the National Park System. The regulations also emphasize the fact that, while the NPS adopts and complies with VA operational standards for national cemeteries, the protection, maintenance and public use of these cemeteries will be conducted in accordance with applicable NPS legislation and standards for the preservation of cultural resources.

Section-by-Section Analysis

As currently codified in Title 36 of the Code of Federal Regulations, Part 12 consists of eight regulations divided in two categories, Visitor Use Regulations and Informational Guidelines, which have been in effect since 1971. Since NPS General Regulations pertaining to Resource Protection, Public Use and Recreation codified in 36 CFR Part 2 are quite extensive and apply within national cemeteries, there is little need for additional regulations in Part 12 pertaining to the same concerns. Therefore, the revisions to the regulations in Part 12 remain primarily procedural and informational in nature; the few that pertain to visitor use are a result of the unique atmosphere and purposes of national cemeteries that are not adequately addressed by the provisions of NPS General Regulations.

This rulemaking revises 36 CFR as follows:

1. The statutory penalty provision in Part 1 is revised to apply to the few public use provisions of Part 12.

In Part 12:

2. The existing section describing applicability and scope has been updated and clarified.

3. A new section has been added describing the purpose of national cemeteries.

4. A new section has been added to define certain standard terms used throughout Part 12.

5. The section pertaining to services and ceremonies has been revised to prohibit special events and demonstrations except for committal services and a limited number of official commemorative events.

6. The existing section pertaining to interments and disinterments has been divided into two separate sections, each of which has been revised and expanded.

7. The sections pertaining to headstones and markers, monuments and private memorials have been reorganized and simplified for purposes of clarification.

8. The sections pertaining to cemetery maintenance and the use and display of the flag have been deleted.

9. A section has been added to provide guidance on the use of floral and commemorative tributes.

10. A section has been added that prohibits recreational activities within a national cemetery.

11. A section has been added to address requirements of the Office of Management and Budget pertaining to information collection.

The following provides specific information pertaining to each of the revised or new sections:

Section 1.3 Penalties.

Two paragraphs of this section are revised to correct an inadvertent omission in the July, 1983, revision of NPS General Regulations (48 FR 30291), when the penalty provision in Part 12 was deleted without a corresponding revision making the penalty provision in Part 1 applicable to the regulations in Part 12. These penalty provisions are taken from Federal statutory law and apply to violations of all NPS regulations pertaining to public use and resources protection. The provision in paragraph (a) applies to Andersonville and Andrew Johnson National Cemeteries; the provision in paragraph (b) applies to all other national cemeteries administered by the NPS.

Section 12.1 Applicability and Scope.

This section makes clear that the regulations in Part 12 supplement the General and Special Regulations found elsewhere in 36 CFR and are generally procedural in nature.

Section 12.2 Purpose of National Cemeteries.

This new section emphasizes the purpose of the national cemeteries administered by the NPS. The language reflects direction provided by Federal statutory law and provides park superintendents general guidance under which to exercise the discretionary authority provided by NPS General Regulations in 36 CFR Parts 1 and 2. A superintendent may not authorize activities that are in derogation of the values and purposes for which the national cemetery was established except as may be specifically provided for by Congress.

Section 12.3 Definitions.

This new section defines sixteen terms used in these regulations and supplements the more extensive list of definitions found in § 1.4 which also apply to Part 12. Listing definitions in one section provides clarity and consistency and eliminates the need for defining terms within individual regulations.

Section 12.4 Special events and demonstrations.

This section revises the existing § 12.2 to prohibit the conducting of special events and demonstrations, as these terms are defined in § 12.3, except for official commemorative events on Memorial Day, Veterans Day, and other dates designated by the superintendent as having special historic and commemorative significance for the particular national cemetery. Examples of such days include Lincoln Fellowship Day at Gettysburg National Cemetery and the anniversary of the Battle of the Little Bighorn at Custer Battlefield National Cemetery. A superintendent's designation of the limited number of such commemorative days that apply to a national cemetery would take place in accordance with the public notice requirements and procedures found in § 1.7 of the General Regulations. Many activities and events that are appropriate and even facilitated or supported by the NPS in other park areas or in other portions of a park area containing a national cemetery are totally inappropriate in a national cemetery because of its protected atmosphere of peace calm, tranquility and reverence. The restriction prohibiting special events and demonstrations within national cemeteries reflects the substantial government interest that exists in maintaining this protected atmosphere where individuals can quietly contemplate and reflect upon the significance of the contributions made to the nation by those interred. The NPS believes that official commemorative events conducted on a very limited number of occasions constitute the maximum extent that this protected atmosphere should be disturbed. Ample opportunities exist for persons desiring to conduct special events and demonstrations to do so in areas adjacent to or near the national cemeteries that are the subject of this regulation. The restriction does not apply to committal services which are integral to the purpose of national cemeteries.

Section 12.5 Interments.

This section is a revision of § 12.3 and sets forth the eligibility criteria for interments specified by Federal statutory law (38 U.S.C. 1002). Minor revisions have been made to the general policy and procedures for an interment and requirements for burial permits. This section now makes clear that the NPS has adopted the VA policy of one-gravesite-per-family-unit, and that no new requests for gravesite reservations will be accepted. The NPS will continue to honor existing reservations made in writing. Certain provisions of the paragraph pertaining to burial sections represent departures from VA policy. Provisions requiring an interment plan, requiring that gravesite dimensions conform to certain specifications and restricting burial section expansion are necessary to maintain the historic character of these cemeteries as significant cultural resources.

Section 12.6 Disinterments and exhumations.

The provisions in existing § 12.3 pertaining to disinterments and exhumations have been placed in a separate section, revised and expanded. The existing policy that a burial is considered permanent, with a disinterment allowed only pursuant to specific conditions, is reemphasized. A permit requirement is instituted and provisions made for the NPS to recover agency costs incurred pursuant to a disinterment through establishment of a fee. The Special Use Permit, a form already in use and approved by the Office of Management and Budget, will be the permit used for this purpose. Responsibilities of the next-of-kin are set forth in detail. Failure to obtain a permit, violation of a permit condition and failure to pay the required fee are prohibited by this section. Court-ordered exhumations are generally exempt from the provisions of this section.

Section 12.7 Headstones and markers.

This section combines and revises the provisions of existing §§ 12.4 and 12.5 and provides specific guidance, conditions and application procedures for the installation of private headstones and markers. These provisions are necessary in order to maintain consistency in the appearance of a national cemetery, to maintain its

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historic character and values and to facilitate cemetery maintenance operations.

Section 12.8 Memorial headstones and markers.

This section revises some of the provisions of existing § 12.6 and sets forth the eligibility criteria for memorialization in a national cemetery as provided by Federal statutory law (38 U.S.C. 1003). Application procedures are also specified.

Section 12.9 Commemorative monuments.

This section is also a revision of certain provisions of existing § 12.6 and details the application procedures to be followed and the approvals required before a monument may be installed. It also specifies that such monument, when approved by the Director, may be installed only under the conditions that there be no expense or liability incurred by the NPS and that title to the monument will vest in the NPS.

Section 12.10 Floral and commemorative tributes.

This new section restricts the types of items and materials that may be placed on a grave. Certain items are prohibited and others are allowed only in certain containers and at specific times designated by the superintendent pursuant to discretionary authority provided in § 1.5 of the General Regulations. These designations must be made in accordance with the public notice provisions of § 1.7 and be compiled in writing as required in paragraph (b) of that section. The restrictions contained in this section are necessary to maintain consistency in the types of floral containers and decorations used in a cemetery, to protect headstones, markers and monuments from unnecessary damage and in the interest of the safety of park visitors and that of cemetery employees involved in maintenance operations.

Section 12.11 Recreational activities.

This section prohibits engaging in a recreational activity, as defined in § 12.3, within a national cemetery. Although engaging in such activities is appropriate in many park areas, and may be within other portions of a park area containing a national cemetery, persons engaged in recreational activities within a national cemetery would conflict with the solemn commemorative character of the area by disrupting its protected atmosphere of peace and tranquility. This regulation again reflects the substantial government interest that exists in maintaining this atmosphere. These restrictions are not intended to inhibit walking, hiking, casual strolling or sitting by individuals while contemplating the significance of the national cemetery or the contributions of those persons interred there.

Section 12.12 Information collection.

This section addresses the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements (permits, applications, etc.) contained in §§ 12.6, 12.7, 12.8 and 12.9 have been submitted to the Office of Management and Budget and been approved.

Summary of Public Comments

The NPS published a proposed rule and requested public comments on this rulemaking on October 28, 1985 (50 FR 43581); no written public comments were received in response. One written comment was received from a NPS official questioning the need to prohibit jogging in national cemeteries. The NPS position remains as stated in the proposed rule and this document, that recreational activities are inappropriate in a national cemetery because of their disruptive influence on the atmosphere of peace and tranquility that the NPS is responsible to protect. The final rule is published unchanged.

The NPS also received several telephone inquiries from persons wishing to confirm the fact that the NPS would continue to be responsible for bearing the cost of the interment of an eligible person. The NPS continues to bear those costs.

Drafting Information

The primary authors of these regulations are David McCormack, Andrew Johnson National Historic Site; Andy Ringgold, Branch of Ranger Activities, Washington, D.C.; and John Tucker, Andersonville National Historic Site. Several other employees with expertise in the management of national cemeteries contributed significantly to the their development.

Paperwork Reduction Act

The information collection requirements contained in §§ 12.6, 12.7, 12.8 and 12.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are negligible. The regulations do not impose significant additional costs to the expenses involved in a national cemetery burial and the number of persons affected is minimal.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area of causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships of land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this final rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21436). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 12

Cemeteries, Military personnel, National parks, Veterans.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART I—GENERAL PROVISIONS

1. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460l–6a(e), 462(k).

2. By revising § 1.3 (a) and (b) to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in Parts 1 through 5, 7, 12 and 13 of this chapter, within a park area not covered in paragraphs (b) or (c) of this section, shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) A person who knowingly and willfully violates any provision of the regulations contained in Parts 1 through 5, 7 and 12 of this chapter, within any national military park, battlefield site, national monument, or miscellaneous memorial transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished upon conviction thereof by a fine of not more than $100, or by imprisonment for not more than 3 months, or by both.

Note.—These park areas are enumerated in a note under 5 U.S.C. 901.

* * * * *

3. By revising Part 12 to read as follows:

PART 12—NATIONAL CEMETERY REGULATIONS

Sec.
12.1 Applicability and scope.
12.2 Purpose of National Cemeteries.
12.3 Definitions.
12.4 Special events and demonstrations.
12.5 Interments.
12.6 Disinterments and exhumations.
12.7 Headstones and markers.
12.8 Memorial headstones and markers.
12.9 Commemorative monuments.
12.10 Floral and commemorative tributes.
12.11 Recreational activities.
12.12 Information collection.

Authority: 16 U.S.C. 1, 3, 9a, and 462(k); E.O. 6166, 6228 and 8428.

§ 12.1 Applicability and scope.

The regulations in this part apply to the national cemeteries administered by the National Park Service. These regulations supplement regulations found in Parts 1–5 and 7 of this chapter and provide procedural guidance for the administration, operation and maintenance of these cemeteries.

§ 12.2 Purpose of National Cemeteries.

National cemeteries are established as national shrines in tribute to the gallant dead who have served in the Armed Forces of the United States. Such areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources. As such, the authorization of activities that take place in national cemeteries is limited to those that are consistent with applicable legislation and that are compatible with maintaining the solemn commemorative and historic character of these areas.

§ 12.3 Definitions.

The following definitions apply only to the regulations in this part:

"Burial section" means a plot of land within a national cemetery specifically designated to receive casketed or cremated human remains.

"Close relative" means a surviving spouse, parent, adult brother or sister, or adult child.

"Commemorative monument" means a monument, tablet, structure, or other commemorative installation of permanent materials to honor more than one veteran.

"Demonstration" means a demonstration, picketing, speechmaking, marching, holding a vigil or religious service or any other like form of conduct that involves the communication or expression of views or grievances, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

"Eligible person" means an individual authorized by Federal statute and VA Policy to be interred or memorialized in a national cemetery.

"Government headstone" means a standard upright stone, provided by the Veterans Administration, of the same design currently in use in a national cemetery to identify the interred remains.

"Gravesite reservation" means a written agreement executed between a person and the National Park Service to secure a gravesite prior to the death of an eligible person.

"Headstone" means a permanent stone placed vertically on a grave to identify the interred remains.

"Historic enclosure" means a permanent fence, wall, hedge, or other structure that surrounds the burial sections and defines the unique historic boundary of a national cemetery.

"Marker" means a permanent device placed horizontally on a grave to identify the interred remains.

"Memorial headstone" means a private or government headstone placed in a memorial section of a national cemetery with the words "In Memory Of" inscribed to honor a deceased eligible person whose remains could not be interred in the national cemetery.

"NPS Policy" means the National Park Service's *Guidelines for National Cemeteries, NPS–61.*

"Private headstone" means an upright stone provided by a person at no expense to the government and in lieu of a government headstone.

"Recreational activity" means any form of athletics, sport or other leisure pursuit or event, whether organized or spontaneous, that is engaged in by one or more persons for the primary purpose of exercise, relaxation or enjoyment, including but not limited to the following: jogging, racing, skating, skateboarding, ball playing, kite flying, model airplane flying, throwing objects through the air, sunbathing, bicycling and picknicking. This term does not include walking, hiking or casual strolling.

"Special event" means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival or similar activity that is not a demonstration, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

"VA Policy" means the current editions of the Veterans Administration's Manuals that pertain to the administration of the National Cemetery System.

§ 12.4 Special events and demonstrations.

Conducting a special event or demonstration, whether spontaneous or organized, is prohibited except for official commemorative events conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery. Committal services are excluded from this restriction.

§ 12.5 Interments.

(a) *Who may be interred.* A person's eligibility for burial in a national cemetery is determined in accordance with the provisions of Federal statutory law. Interments are conducted in accordance with NPS policy and VA Policy.

(b) *Burial permit.* (1) A burial permit is required in accordance with the laws and regulations of the State and local municipality within whose boundaries the cemetery is located.

(2) The remains of a member of the Armed Forces who dies on active duty may be interred prior to receipt of a burial permit.

(3) The superintendent shall process a burial permit in accordance with VA Policy.

(c) *Gravesite assignment.* (1) Gravesite assignment and allotment are made according to VA Policy which specifies that only one gravesite is authorized for the burial of an eligible member of the Armed Forces and eligible immediate family members. Exceptions to this practice may be approved only by the Director.

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(2) The superintendent is responsible for the actual assignment of a gravesite.

(3) The superintendent may not accept a new gravesite reservation. A gravesite reservation granted in writing prior to the adoption of the one-gravesite-per-family-unit restriction shall be honored as long as the person remains eligible.

(d) *Burial sections.* (1) The superintendent of each national cemetery shall develop an interment plan for burial sections in keeping with the historic character of the national cemetery, to be approved by the Regional Director.

(2) The superintendent shall specify gravesite dimensions that conform to the historic design of the national cemetery.

(3) Expansion of a burial section is prohibited without the approval of the Regional Director.

(4) An interment is authorized only with a burial section; the superintendent may not authorize an interment within a memorial section.

(5) Cremated remains may be scattered in a national cemetery in conformance with the provisions of § 2.62 of this chapter and applicable State laws.

(6) Expansion of a national cemetery outside the confines of its historic enclosure is prohibited.

§ 12.6 Disinterments and exhumations.

(a) Interment of an eligible person's remains is considered permanent. Disinterment and removal of remains are allowed only for the most compelling of reasons and may be accomplished only under the supervision of the superintendent.

(b) Except for a directed exhumation conducted pursuant to paragraph (f) of this section, a disinterment is allowed only pursuant to the terms and conditions of a permit issued by the superintendent.

(c) A disinterment shall be accomplished at no cost to the National Park Service. The superintendent shall establish a fee designed to recover the costs associated with supervising and administering a disinterment, including the costs of opening and closing the grave and redressing any disturbed graves or headstones.

(d) The next-of-kin is responsible for making all arrangements and incurring all financial obligations related to a disinterment. These arrangements and obligations include, but are not limited to the following:

(1) Compliance with State and local health laws and regulations;

(2) Engaging a funeral director;

(3) Recasketing the remains;

(4) Rehabilitation of the gravesite according to conditions established by the superintendent;

(5) Providing the superintendent a notorized affidavit by each living close relative of the deceased and by the person who directed the initial interment, if living, and even though the legal relationship of such person to the decedent may have changed, granting permission for the disinterment; and

(6) Providing the superintendent a sworn statement, by a person having first hand knowledge thereof, that those who supplied such affidavits comprise all the living close relatives of the decedent, including the person who directed the initial interment.

(e) The following are prohibited:

(1) Failure to obtain a permit required pursuant to this section;

(2) Violation of a condition established by the superintendent or of a term or condition of a permit issued in accordance with this section; or

(3) Failure to pay a fee prescribed by the superintendent in accordance with this section.

(f) The directed exhumation of an eligible person's remains shall be accomplished upon receipt by the superintendent of an order issued by a State or Federal court of competent jurisdiction. The superintendent shall retain court orders and other pertinent documents in the national cemetery files as a permanent record of the action.

(g) To the extent practicable, a directed exhumation shall be accomplished without expense to the National Park Service and without direct participation by national cemetery employees.

(h) The superintendent shall coordinate a directed exhumation with the ordering court, assure compliance with all State and local laws and supervise disinterment activities on site.

(i) If reinterment of exhumed remains is to be elsewhere, the superintendent may reassign the gravesite for use in connection with another interment.

§ 12.7 Headstones and markers.

(a) Government headstones and markers authorized to be furnished at government expense are provided in accordance with NPS Policy and VA Policy.

(b) The erection of a marker or monument at private expense to mark a grave in lieu of a government headstone or marker is allowed only in certain national cemetery sections in which private headstones and markers were authorized as of January 1, 1947, and only with the prior approval of the Director. The name of the person(s) responsible for the purchase and erection of the private headstone or marker may not appear on the headstone or marker or be identified elsewhere in the cemetery as the donor(s) of the private headstone or marker.

(c) A person who requests authorization to erect a private headstone or marker shall provide the following information:

(1) A list of the names of each person to be inscribed upon the private headstone or marker;

(2) The written approval of the next-of-kin and the person who directed the burial of each person whose name is to be inscribed; and

(3) A scale plan depicting the details of design, materials, finish, carving, lettering and arrangement of the inscription and the foundation of the proposed private headstone or marker.

(d) The Director's approval of a request is conditioned upon the applicant's granting to the National Park Service the substantive right to remove and dispose of the private headstone or marker if, after it is installed, the applicant fails to maintain the private headstone or marker in a condition specified by the Director.

(e) When a private headstone or marker has been erected at a veteran's grave in a national cemetery, and the next-of-kin desires to inscribe thereon the name and appropriate data pertaining to an eligible family member of the deceased whose remains will not be interred, such inscription may be accomplished with the prior approval of the superintendent. Appropriate commemorative data may be inscribed when space permits. The words "In Memoriam" or "In Memory Of" are mandatory elements of such an inscription.

(f) Except as may be authorized by the Director or by Federal statutory law for making a group burial, the erection of a mausoleum, an overground vault or a headstone or marker determined by the superintendent not to be in keeping with the historic character of the national cemetery is prohibited. An underground vault may be placed at the time of interment at no expense to the National Park Service.

§ 12.8 Memorial headstones and markers.

(a) *Who may be memorialized.* (1) A person's eligibility for memorialization in a national cemetery is determined in accordance with the provisions of Federal statutory law.

(2) The superintendent may authorize the installation of a memorial headstone or marker of an eligible person provided that no more than one individual

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memorial headstone or marker is authorized for each eligible person. The erection of an individual memorial marker to a person is not allowed in the same national cemetery in which the decedent's name is inscribed on a group burial headstone or marker.

(b) *Application.* (1) The person eligible to submit an application requesting a memorial headstone or marker is the next-of-kin of the decedent to be memorialized. An application received from a close relative will be honored if it is submitted on behalf of the next-of-kin or if the next-of-kin is deceased.

(2) An applicant for a memorial headstone or marker shall submit such a request to the superintendent.

§ 12.9 Commemorative monuments.

(a) *Application.* (1) A person requesting authorization to erect a commemorative monument shall submit such a request to the Director. The Director's approval should be obtained prior to fabrication of the commemorative marker since approval for installation is conditioned upon compliance with other specifications found in this section and all applicable provisions of this Part.

(2) An applicant for authorization to erect a commemorative monument shall include the following information in the application:

(i) A list of the persons to be memorialized and the other data desired to be inscribed on the commemorative movement; and

(ii) A scale plan depicting the details of the design, materials, finish, carving, lettering and the arrangement of the inscription proposed for the commemorative monument.

(b) *Specifications.* (1) The Director may only authorize a commemorative monument that conforms to the type, size, materials, design, and specifications prescribed for the historic design of the individual cemetery section in which it is proposed for installation.

(2) The Director may not approve a commemorative monument that bears an inscription that includes the name of the person(s) responsible for its purchase or installation.

(c) *Expense.* A commemorative monument approved by the Director may be installed only under the conditions that there be no expense or liability incurred by the National Park Service in connection with its purchase, fabrication, transportation, delivery and erection.

(d) Title to a commemorative monument vests in the National Park Service upon its acceptance by an official representative of the Director.

§ 12.10 Floral and commemorative tributes.

The placement on a grave of fresh cut or artifical flowers in or on a metal or other non-breakable rod or container designated by the superintendent is allowed at times designated by the superintendent. The placement of a statue, vigil light, or other commemorative object on a grave, or the securing or attaching of any object to a headstone, marker or commemorative monument is prohibited.

§ 12.11 Recreational activities.

Engaging in a recreational activity is prohibited.

§ 12.12 Information collection.

The information collection requirements contained in §§ 12.6, 12.7, 12.8 and 12.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. The information is being collected to obtain information necessary to issue permits and will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

P. Daniel Smith,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–5574 Filed 3–13–86; 8:45 am]

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1260

Beef promotion and research; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Beef Promotion and Research Act of 1985 (Act), approved December 23, 1985 (7 U.S.C. 2901–2918), authorizes the establishment of a national, industry -funded and -operated beef promotion and research program. In response to an invitation to submit proposals published in the February 14, 1986, issue of the **Federal Register**, the Agricultural Marketing Service has received an industry proposal for a beef promotion and research order. That industry proposal on which comments are being requested is set forth below. All comments will be considered before issuing a final rule establishing a beef promotion and research order.

Additionally, notice is hereby given that a public meeting will be held during the comment period to facilitate a better understanding of the intent and application of the proposed order. The record of the meeting will also be considered in the development of a final rule. All interested persons are invited to attend.

DATES:

Date of public meeting: The meeting will convene at 9:00 a.m., eastern standard time, on Thursday, April 17, 1986.

Date for comments: Comments must be received by April 28, 1986.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, P.O. Box 23762, Washington, DC 20026–3762. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Bldg., 14th and Independence Avenue SW.; Washington, DC 20250.

Place of meeting: Jefferson Auditorium, 14th and Independence Avenue SW., South Bldg., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp (202–447–2650).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals—published February 14, 1986 (51 FR 5543). Proposed Rule—Certification and Nomination Procedures for Cattlemen's Beef Promotion and Research Board published February 21, 1986 (51 FR 6258).

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation number 1512–1 and is hereby classified as a nonmajor rule. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is published to effectuate the declared policy of the Act, that it is in the public interest to establish an orderly procedure for financing and carrying out a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

Comments and Public Meeting

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Livestock and Seed Division's Marketing Programs and Procurement Branch and must make reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours. Comments must be received by April 28, 1986.

Additionally, notice is given that a public meeting will be held beginning at 9:00 a.m., eastern standard time, on Thursday, April 17, 1986, at the Jefferson Auditorium, 14th and Independence Avenue SW., South Bldg., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning the proposed rule should do so through exhibits, written statements, or oral presentation. All those making oral presentations are encouraged to submit their presentations in writing. One original and three copies of written statements must be provided for the record. Persons attending the meeting will be allowed to ask questions directed at participants giving oral presentation. It is anticipated that the proponents of this proposal will attend the meeting to explain its various provisions and to answer questions.

Any interested person shall be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed Beef Promotion and Research Order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and, insofar as practicable, exclude views and data which are immaterial, irrelevant or unduly repetitious. Such action will be intended to limit the amount of corroborative or cumulative material presented and prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Hearing Clerk's office. However, the transcript will be available for public inspection during normal business hours. Anyone wishing to purchase a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms, reporting, and recordkeeping included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval. Background:

The Beef Promotion and Research Act (Title XVI Subtitle A, of the Food Security Act of 1985) approved December 23, 1985, authorizes the Secretary of Agriculture to establish a national beef promotion and research program. The program will be funded by a $1 per head assessment on all cattle marketed in the United States, and an equivalent assessment on imported cattle, beef, and beef products.

The Act provides for submission of proposals for a beef promotion and research order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a Cattlemen's Beef Promotion and Research Board. The Board would be comprised of cattle producers and importers nominated by State producers and farm organizations and importer organizations, respectively, for appointment by the Secretary to the Board.

The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the **Federal Register**. The Agency also issued for comment a proposed rule; "Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board;" in the February 21, 1986, issue of the **Federal Register**. The proposed rule was published so that State organizations, associations, and others who may select nominees for the Cattlemen's Beef Promotion and Research Board may begin planning for a nomination process as soon as possible. Since the nomination procedures may take considerable time to complete, early establishment of such procedures should prevent unnecessary delay in selecting nominees and appointing a Board.

In response to the invitation to submit proposals, one proposed order was received from the National Cattlemen's Association. As provided in the Act, the Agricultural Marketing Service is publishing this proposed order for comment. The Agricultural Marketing Service will consider all comments received before issuing a final rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

1. The Authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2918.

2. It is hereby proposed by the National Cattlemen's Association that Title 7 of the Code of Federal Regulations be amended by adding the following sections:

Part 1260—Beef Promotion and Research Order

Definitions

Section 1260.101 Department.

"Department" means the United States Department of Agriculture.

Section 1260.102 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

Section 1260.103 Board.

"Board" means the Cattlemen's Beef Promotion and Research Board established pursuant to § 1260.141.

Section 1260.104 Committee.

"Committee" means the Beef Promotion Operating Committee established pursuant to § 1260.161.

Section 1260.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

Section 1260.106 Collecting person.

"Collecting person" means any person responsible for collecting assessments pursuant to § 1260.172, including but not limited to, producers that market beef or beef products derived from cattle of their own production either directly to consumers, or through retail or wholesale markets, any packer, stockyard owner, market agency, order buyer, or dealer, who pays a producer for cattle purchased from such producer, brand inspectors responsible for collecting assessments pursuant to State beef promotion programs, and importers. When used in this subpart—

(a) The term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle or calves are received, held, or kept for sale or shipment in commerce.

(b) The term "packer" means any person engaged in the business (1) of buying livestock in commerce for purposes of slaughter, or (2) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (3) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

(c) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard.

(d) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard service;

(e) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his or her own account or as the employee or agent of the vendor or purchaser; and

(f) The term "order buyer" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

Section 1260.107 State.

"State" means each of the 50 States.

Section 1260.108 United States.

"United States" means the 50 States and the District of Columbia.

Section 1260.109 Unit.

"Unit" means each State, group of States or class designation which is represented on the Board pursuant to § 1260.141.

Section 1260.110 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers and importers voting.

Section 1260.111 Fiscal Year.

"Fiscal Year" means the calendar year or such other annual period as the Board may determine.

Section 1260.112 Federation.

"Federation" means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State Beef Councils.

Section 1260.113 Established National Non-profit Industry Governed Organizations.

"Established National Non-profit Industry Governed Organizations" means any organizations which:

(a) Are non-profit organizations pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code, 26 U.S.C. 501(c) (3), (5) and (6);

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis whose Board is composed of a majority of producers; and

(c) Was active and ongoing before the enactment of the Act.

Section 1260.114 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to §§ 1260.500 through 1260.631 of this Part.

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Section 1260.115 Qualified State Beef Council.

"Qualified State Beef Council" means a beef promotion entity that is authorized by State statute or that is organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; that is recognized by the Board as the beef promotion entity in such State.

Section 1260.116 Producer.

"Producer" means any person who owns or acquires ownership of cattle; except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee, including persons that acquire ownership of cattle to facilitate the transfer of ownership from the seller to a third party, and the person's only compensation for such transfer is a commission, handling fee or other service fee. The Board may, with the approval of the Secretary, make rules or regulations identifying certain transactions which the Board determines are transactions in the ordinary course of business designed to facilitate the transfer of ownership for a commission or a fee.

Section 1260.117 Importer.

"Importer" means any person who imports cattle, beef, or beef products from outside the United States.

Section 1260.118 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

Section 1260.119 Beef.

"Beef" means flesh of cattle.

Section 1260.120 Beef Products.

"Beef Products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

Section 1260.121 Imported Beef or Beef Products.

(a) "Imported Beef or Beef Products" means products which are imported into the United States which the Secretary determines contains a substantial amount of beef or beef products including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States:

Live Cattle	*Assessment*
100.0130	$1.00/hd
100.0140	$1.00/hd
100.0150	$1.00/hd
100.0160	$1.00/hd
100.4000	$1.00/hd
100.4300	$1.00/hd
100.4500	$1.00/hd
100.5000	$1.00/hd
100.5300	$1.00/hd
100.5500	$1.00/hd

Beef and Veal	*Assessment*
106.1020	$.21 cent/lb
106.1040	$.21 cent/lb
106.1060	$.29 cent/lb
106.1080	$.77 cent/lb
107.2000	$.27 cent/lb
107.2520	$.27 cent/lb
107.4000	$.38 cent/lb
107.4500	$.38 cent/lb
107.4820	$.38 cent/lb
107.4840	$.38 cent/lb
107.5220	$.40 cent/lb
107.5240	$.40 cent/lb
107.5500	$.29 cent/lb
107.6100	$.29 cent/lb
107.6200	$.29 cent/lb
107.6300	$.29 cent/lb

(b) The Secretary shall have the authority to add, modify, change or delete Tariff Schedule numbers identifying beef or beef products in the event that Tariff Schedule numbers included in the Tariff Schedule of the United States are added, modified, changed or deleted.

(c) The Secretary may, through promulgation of rules or regulations, increase or decrease the level of assessment for imported beef and beef products based upon live animal equivalencies.

Section 1260.122 Promotion.

"Promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

Section 1260.123 Research.

"Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

Section 1260.124 Consumer information.

"Consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

Section 1260.125 Industry information.

"Industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

Section 1260.126 Plans and Projects.

"Plans and Projects" means promotion, research, consumer information and industry information plans, studies or projects pursuant to §§ 1260.149, 1260.150, 1260.167, 1260.168 and 1260.191.

Section 1260.127 Marketing.

"Marketing" means the sale or other disposition in commerce of cattle, beef or beef products.

Section 1260.128 Act.

"Act" means Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99–198 and any amendments thereto.

Section 1260.129 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of the Treasury established pursuant to 19 U.S.C. 2071.

Cattlemen's Beef Promotion and Research Board

Section 1260.141 Establishment and Membership.

(a) There is hereby established a Cattlemen's Beef Promotion and Research Board of one hundred and twelve (112) members. For purposes of nominating producers to the initial Board, the United States shall be divided into 41 geographical units and one unit representing importers and the number of Board members from each unit shall be as follows:

Unit	January 1, 1986	
	Cattle and calves (1,000 head)	Directors
1. Alabama	1,780	2
2. Arizona	1,050	1
3. Arkansas	1,750	2
4. California	5,000	5
5. Colorado	2,850	3
6. Florida	2,120	2
7. Georgia	1,700	2
8. Idaho	1,750	2
9. Illinois	2,470	2
10. Indiana	1,570	2
11. Iowa	4,950	5
12. Kansas	5,800	6
13. Kentucky	2,460	2
14. Louisiana	1,240	1
15. Michigan	1,410	1
16. Minnesota	3,400	3
17. Mississippi	1,430	1
18. Missouri	4,800	5
19. Montana	2,450	2
20. Nebraska	5,800	6
21. Nevada	610	1
22. New Mexico	1,380	1
23. New York	1,970	2
24. North Carolina	1,100	1
25. North Dakota	2,000	2
26. Ohio	1,840	2
27. Oklahoma	5,200	5
28. Oregon	1,575	2
29. Pennsylvania	1,980	2
30. South Carolina	635	1
31. South Dakota	3,600	4
32. Tennessee	2,500	3
33. Texas	13,800	14
34. Utah	760	1
35. Virginia	1,640	2
36. West Virginia	520	1
37. Wisconsin	4,260	4
38. Wyoming	1,325	1
39. Northwest		2
Washington	1,460	
Alaska	9	
Hawaii	209	
Total	1,678	
40. Northeast		1
Massachusetts	100	
Maine	135	
Vermont	350	
New Hampshire	69	
Total	654	
41. Mid-Atlantic		1
Maryland	370	
Delaware	27	
Rhode Island	7	
Connecticut	100	
New Jersey	97	
D.C	0	
Total	601	
42. Importers	4,250	4

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to § 1260.143. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef and beef products and, if warranted, shall recommend reapportionment of units and/or the modification of the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members for each unit who shall serve on the Board:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products in to live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202, industry data and data published by the Department.

Section 1260.142 Term of Office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve, proportionately, for terms of one, two and three years. To the extent possible, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive three year terms in such capacity.

Section 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary shall solicit nominations for representation of that unit from individual producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by (1) organizations which represent importers of cattle, beef, or beef products, as determined by the Secretary, or (2) individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that such person submitting the nomination is an importer of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in § 1260.143 (a) or (b). In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate one qualified person for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary one nomination for each appointment to be made to represent that unit.

Section 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or any organization that has a contractual relationship with the Board.

Section 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143(a), the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Board of Directors of the Federation shall not be eligible for appointment to serve on the Board for a concurrent term.

Section 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers of the unit represented by the vacancy. If no eligible organization(s) represents producers in such unit, then the Secretary shall determine the manner in

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which nominations for the vacancy are submitted.

Section 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

Section 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

Section 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

Section 1260.150 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an executive committee of no more than 11 or no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The Vice-Chairperson of the Board shall serve as Chairperson of the Executive Committee and the Chairperson and the Treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the executive committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel and facilities of established national non-profit industry-governed organizations to and to contract for the services of such organizations as it may deem necessary and define the duties and determine the manner of compensation for such services of each;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements including the Committee's anticipated expenses, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) To establish an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying—(1) the total amount of funds received by the Board during the period prior to the referendum; by (2) the greater of—

(ii) The average percentage of assessment refunds paid to producers under State beef promotion, research and consumer information programs financed through producer assessments, as determined by the Board for the year of 1985; or

(iii) 15 percent;

(j) To pay refunds to producers requesting refunds in a manner consistent with the following conditions:

(1) If continuation of this subpart is approved pursuant to the referendum, the Board shall continue to place the amounts required under (i) above in the escrow account until all requests for refunds are paid; or

(2) If the continuation of the order is not approved pursuant to the referendum and the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid.

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and

expand domestic and foreign markets and uses for beef and beef products.

Beef Promotion Operating Committee

Section 1260.161 Establishment and Membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the Chairperson, Vice-Chairperson and Treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, Vice-Chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a Qualified State Beef Council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a Qualified State Beef Council on the Federation Board of Directors. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

Section 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

Section 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) above.

Section 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

Section 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, incurred by them in the performance of their duties under this subpart.

Section 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Chairperson of the Federation shall be Vice-Chairperson of the Committee.

(c) The Treasurer of the Board shall be Treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

Section 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the committee and pay the necessary and reasonable expenses and fees of the members of such committees;

Section 1260.168 Duties of the Committee.

The Committee shall have the following duties;

(a) To meet and to organize;

(b) To contract with established national non-profit industry-governed organizations to utilize existing industry facilities, personnel and resources;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary, to enter into contracts or agreements with Established National Non-profit Industry Governed Organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.191 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or projects;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and

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its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

Expenses

Section 1260.171 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. Such expenses shall be paid from assessments collected pursuant to §1260.172. Expenses for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to §1260.172 (a) and (b).

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to §1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) The Board shall establish an interest bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Board to be held in reserve for the payment of refunds pursuant to §1260.173.

Section 1260.172 Assessments.

(a) Each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar per head of cattle purchased and such collecting person shall remit the assessment to the Board or a Qualified State Beef Council pursuant to §1260.172(g).

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a Qualified State Beef Council or the Board an assessment on such cattle at the rate of one dollar per head of cattle or the equivalent thereof.

(c) The United States shall pay an assessment to the Board on all such cattle and beef or beef products in an amount determined by the Secretary, to be the equivalent of one dollar per head of cattle imported.

(d) In determining the assessment due from each producer pursuant to §1260.172 (a) and (b), a producer who is contributing to a Qualified State Beef Council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(e) In order for a producer described in § 1260.172 (a) and (b) to receive the credit authorized in § 1260.172(d), the Qualified State Beef Council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Beef Council.

(f) The collection of assessments pursuant to § 1260.172 (a), (b) and (c) shall begin with respect to cattle purchased or beef and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) and (b) shall remit the assessment to the Qualified State Beef Council in the State from which the cattle originated prior to sale, or if there is no Qualified State Beef Council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize Qualified State Beef Councils to propose modifications to the foregoing "state of origin" rule to ensure effective coordination of assessment collections between Qualified State Beef Councils. Qualified State Beef Councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, "rule of origin" means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the fifteenth day of the month following the month in which the cattle was purchased or marketed. The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products to the United States.

(h) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more than fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in § 1260.172 (a) and (b) above for use by a Qualified State Beef Council to fund activities similar to those described in § 1260.191, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then *any producer* subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(i) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the "Qualified State Beef Council" or "Cattlemen's Beef Promotion and Research Board." Remittances and reports specified in § 1260.201 shall be mailed to the location designated by the Board.

§ 1260.173 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this subpart shall have the right to demand and receive from the Board a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations

prescribed by the Board and approved by the Secretary.

Section 1260.174 Procedure for obtaining refund.

Each producer or importer who pays an assessment pursuant to the Act and this subpart during the period prior to the referendum may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(a) *Application form.* A producer or importer shall obtain a Board-approved refund application form from a Qualified State Beef Council or the Board. Such form may be obtained by written request to a Qualified State Beef Council or the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) *Submission of refund application to Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to a Qualified State Beef Council or the Board within 60 days from the date the assessments were due by such producer or importer. The refund application shall show (1) the producer's or importer's name and address; (2) collecting person's name and address; (3) number of head of cattle, or its equivalent on which a refund is requested; (4) total amount of refund requested; (5) date or inclusive dates on which assessments were paid; (6) certification that the producer or importer did not collect the assessment from another producer or importer; and (7) the producer's or importer's signature or properly witnessed mark.

(c) *Proof of payment of assessment.* The Account of Sale given to the producer or importer by the collecting person or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's or the importer's refund application.

(d) *Payment of refunds.* Board shall pay refund requests or a prorata share thereof within 90 days of the date the results of the referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1260.150(j).

Section 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considerd to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Qualified State Beef Council or Board, whichever is earlier.

Section 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172(g). Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

Section 1260.181 Qualified State Beef Councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(d) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State Beef Council to be certified by the Board as a Qualified State Beef Council, the Council must:

(1) Conduct activities as defined in § 1260.191 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such Council will collect assessments paid on cattle originating from the State or unit within which the Council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the Council, minus authorized credits issued to producers pursuant to § 1260.172(d), by the last day of the month in which the assessment was remitted to the Qualified State Beef Council;

(5) Councils which are authorized or required to pay refunds to producers must certify to the Board that any requests from producers for refunds from the Council for contributions to such Council by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to the Council pursuant to § 1260.172(d);

(6) Certify to the Board that the Council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such Council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use Council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

Section 1260.191 Promotion, Research, Consumer Information and Industry Information.

The Committee shall receive and evaluate or, on its own initiative develop, and submit to the Secretary for approval any plans for projects authorized in §§ 1260.149, 1260.150, 1260.167, 1260.168, and this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this

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section shall be periodically reviewed or evaluated by the Committee to insure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. In addition, no such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

Reports, Books and Records

Section 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers or exporting such cattle, beef or beef products, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall be required to report to the Board periodically such information as may be required by the regulations prescribed by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance if less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

Section 1260.202 Books and Records.

Each person who is subject to this subpart, and other persons subject to § 1260.201, shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

Section 1260.203 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed to them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit: (a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and (b) the publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

Section 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

Section 1260.213 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a Qualified State Beef Council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, of such member of employee, except for acts of dishonesty or willful misconduct.

Section 1260.214 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with (a) above.

Section 1260.215 Amendment.

Amendments to the subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to §§ 1260.250 through 1260.258 of this part, or by any interested person affected by the provisions of the Act, including the Secretary.

Section 1260.216 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Done at Washington, DC, March 11, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

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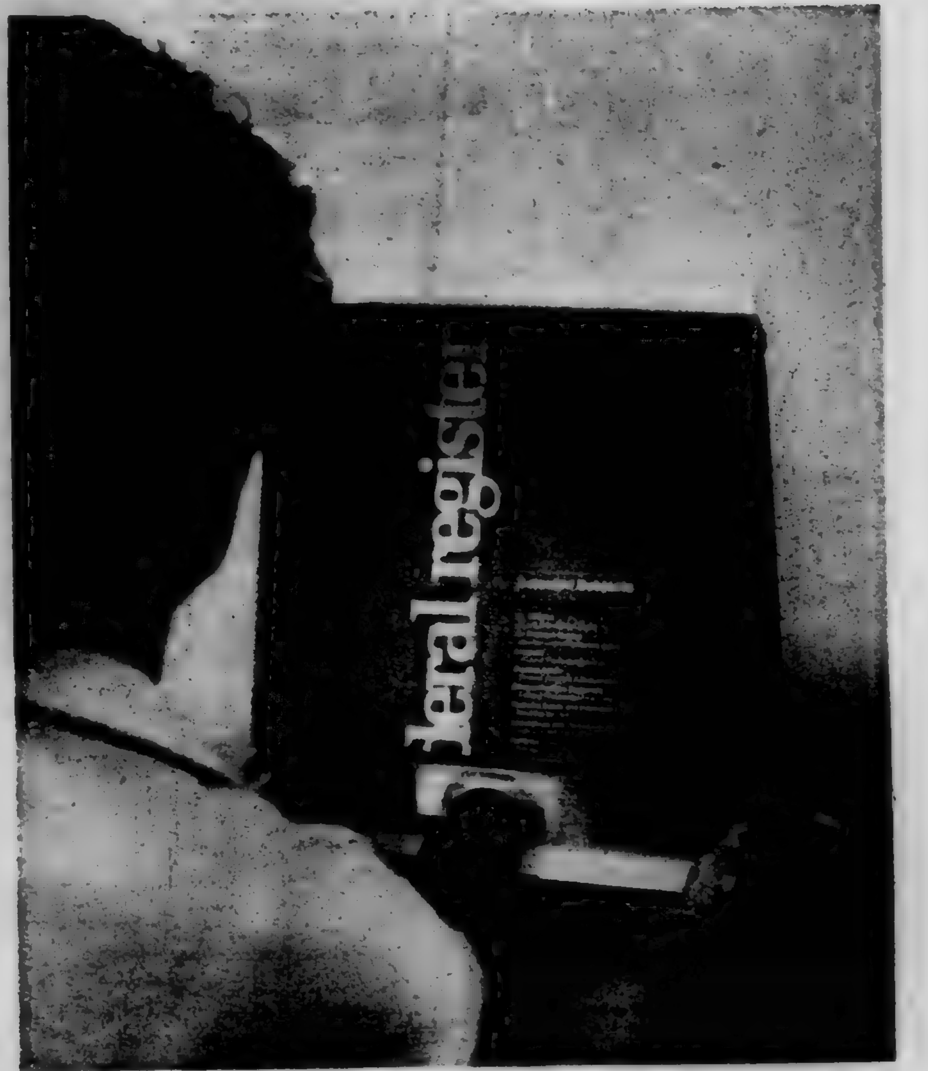

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Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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  Forest Service
Animal Drugs
  Food and Drug Administration
Aviation Safety
  Federal Aviation Administration
Bridges
  Coast Guard
Claims
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Coal Mining
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Environmental Protection Agency

Radio
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

Utilities
Securities and Exchange Commission

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
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RESERVATIONS: Elizabeth Stout,
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WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
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Rules and Regulations

Federal Register
Vol. 51, No. 51
Monday, March 17, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Collection; Federal Claims Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA) is publishing final regulations to implement the salary offset provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, enacted on October 25, 1982). Notice of proposed rulemaking was published in the Federal Register on September 25, 1985 (50 FR 38821).

Based upon the comments received on the proposed regulations, USDA is clarifying three examples contained in the definition of "Debt".

EFFECTIVE DATE: These regulations are effective April 16, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Padalino, Office of Personnel, U.S. Department of Agriculture, Room 307–W, Washington, DC 20250, (202) 447–6905.

SUPPLEMENTARY INFORMATION: On September 25, 1985, the USDA published proposed rules for offsetting the Federal pay of employees indebted to the U.S. Government. The supplementary information contained in the notice of proposed rulemaking set forth the basis and purpose of the proposed rule. The USDA is adopting the proposed rule as a final rule with only minor technical changes. A summary of the comments received follows:

Section 3.52(b)(2)—Comment:

Add the phrase, "resulting from his or her negligent, willful, or unauthorized acts," after the word "losses". This comment suggests that debt should be defined broadly. The suggested language has been included in the final regulation. However, the word "illegal" has been added to broaden the description of acts, and the phrase has been added after the word "liable" for clarity.

Section 3.52(b)(2)(iv)—Comment:

The definition should be expanded to include "using" in addition to "authorizing the use of" Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes. This comment appropriately notes an oversight in the proposed regulation. The suggested change has been adopted in the final regulation.

Section 3.52(b)(2)(v)—Comment:

The definition should be changed to, "Lost, stolen, damaged, or destroyed Government property." The existing example implies that employee debt resulting from damage to Government property is limited to damage to Government vehicles. This comment calls attention to the restrictive language in paragraph (v). To broaden the focus of this paragraph, the suggested change has been adopted in the final regulation.

In addition, one comment from a USDA agency addressed internal procedures as they apply to the conduct of a hearing. This will be dealt with in USDA's internal procedures.

Finally, one commentor suggested the proposed rule be adopted as written.

The proposed rule provided that it would not apply to any case where collection of a debt by salary offset is explicitly provided for by another statute. As the Comptroller General has noted in 64 Comp. Gen. 142 (1984), such statutes include 5 U.S.C. 5512(a) (setoff against accountable officers), 5 U.S.C. 5513 (setoff to recoup disallowed payments), 5 U.S.C. 5522(a)(1) (setoff to recoup advance payments for evacuations), 5 U.S.C. 5705 (1) and (2) (setoff to recoup travel advances), and 5 U.S.C. 5724(f) (setoff to recoup travel and transportation advances in connection with permanent changes of station). The final rule adopts this provision. Thus, the rule does not apply to setoffs occurring under these and other similar authorities.

Regulatory Impact

USDA has reviewed this final rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. The Secretary has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. It is anticipated that the final rule will enable USDA to increase collections by approximately $5 million, representing money that is already owed and overdue. It will have an impact on only a small percentage of Federal employees; those who are delinquent in repaying their debts to the Department of Agriculture.

Under the circumstances explained above, the Secretary has determined that this action will not have a significant impact on a substantial number of small entities. This rule sets procedures for salary offset and does not affect the environment.

List of Subjects in 7 CFR Part 3

Salary offset, Claims, Debt management.

Accordingly, USDA adds a new Subpart C to Part 3 of Title 7 of the Code of Federal Regulations to read as follows:

Subpart C—Salary Offset

Sec.
3.51 Scope.
3.52 Definitions.
3.53 Coordinating offset with another federal agency.
3.54 Determination of indebtedness.
3.55 Notice requirements before offset.
3.56 Request for a hearing.
3.57 Result if employee fails to meet deadlines.
3.58 Hearings.
3.59 Written decision following a hearing.
3.60 Review of Departmental records related to the debt.
3.61 Written agreement to repay debt as alternative to salary offset.
3.62 Procedures for salary offset: when deductions may begin.
3.63 Procedures for salary offset: types of collection.
3.64 Procedures for salary offset: methods of collection.
3.65 Procedures for salary offset: imposition of interest, penalties and administrative costs.

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Sec.
3.66 Non-waiver of rights.
3.67 Refunds.
3.68 Agency regulations.

Authority: 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

Subpart C—Salary Offset

§ 3.51 Scope.

(a) The provisions of this subpart set forth the Department's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

(1) Requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere.

§ 3.52 Definitions.

(a) "Agency" means:

(1) An Executive Agency as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission; and

(2) A Military Department as defined by section 102 of title 5, U.S.C.

(b) "Debt" means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.

(c) "Department" or "USDA" means the United States Department of Agriculture.

(d) "Disposable Pay" means any pay due an employee that remains after required deductions for Federal, State and Local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions required by law to be withheld.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) "Hearing official" means an administrative law judge of the Department or some other individual not under the control of the Secretary.

(g) "Salary Offset" means a deduction of a debt by deduction(s) from the disposable pay of an employee without his or her consent.

(h) "Secretary" means the Secretary of the U.S. Department of Agriculture or his or her designee.

(i) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.53 Coordinating offset with another federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

§ 3.54 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 4 CFR Parts 101 through 105 have been satisfied and that salary offset is appropriate, the Secretary will review the debt to make sure that it is valid and past due.

(b) If the Secretary determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until the Secretary is assured that the requirements have been met.

§ 3.55 Notice requirements before offset.

Except as provided in § 3.51(d), salary offset will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.34;

(e) The employee's right to inspect and copy Department records relating to the debt;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing conducted by a hearing official on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications should be directed.

§ 3.56 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 30 calendar days from the date of the Department's notice described in §3.55, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.57 Result if employee fails to meet deadlines.

An employee will not granted a hearing and will have his or her disposable pay offset in accordance with the Secretary's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in §3.56; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.58 Hearings

(a) If an employee timely files a petition for a hearing under § 3.56, the Secretary shall select the time, date, and location for the hearing.

(b) (1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.59 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alledged debt determined as a result of the hearing; and

(d) There payment schedule (including percentage of disposable pay), if applicable.

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter.

§ 3.60 Review of departmental record related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy Departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Departmental records related to the debt.

§ 3.61 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* The Secretary will notify the employee whether the employee's prosposed written agreement for repayment is acceptable. The Secretary may accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its

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existence or amount, the Secretary will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 3.62 Procedures for salary offset: when deduction may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with the Secretary before the expiration of the period provided for in § 3.56 then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see Subpart B of this part).

§ 3.63 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.64.

§ 3.64 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment under § 3.61.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.65 Procedures for salary offset: imposition of interest, penalties and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with 4 CFR 102.13.

§ 3.66 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.67 Refunds

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund deducted from the employee's current pay.

§ 3.68 Agency regulations.

The Head of each USDA agency is delegated the authority to act for the Secretary under these regulations and may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR Part 550, Subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Done this 24th day of February 1986, at Washington, DC.

Frank W. Naylor,

Acting Secretary of Agriculture.

[FR Doc. 86-5714 Filed 3-14-86; 8:45 am]

BILLING CODE 3410-96-M

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7 CFR Part 6

Section 22 Dairy Import Quota for Uruguay

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations (7 CFR 6.20–6.33) governing the importation under license of certain dairy products which are subject to quantitative limitations proclaimed under the authority of section 22 of the Agriculture Adjustment Act of 1933, as amended, in order to implement Presidential Proclamation No. 5425 of January 6, 1986, which modified such quantitative limitations to allow the importation of 551, 150 pounds of Italian-type cheese in original loaves from Uruguay. A special application period for the 1986 quota year is being established for importers who desire to receive import licenses for the importation of cheese from Uruguay.

EFFECTIVE DATE: March 17, 1986. Comments on this interim rule must be received on or before May 16, 1986, in order to be assured of consideration.

ADDRESS: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, DC 20250.

Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue SW.), Washington, DC during regular business hours (8:15–4:45 weekdays).

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Rm. 6616 South Building, Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since this interim rule will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this interim rule, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule will enhance the capability of both large and small firms to import certain cheese from Uruguay. The public is invited to comment on the impact of this interim rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

An evaluation of the impact of this rule on the environment was made and, based on this evaluation, it has been

determined that this action is not a major Federal action and will have no foreseeable adverse effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this interim rule.

Presidential Proclamation No. 4708 of December 11, 1979, and Presidential Proclamation No. 4811 of December 30, 1980, established quantitative limitations on imports of certain dairy articles in accordance with section 701 of the Trade Agreements Act of 1979 (Pub. L. 96–39) and section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Pursuant to those proclamations, the Department of Agriculture issued regulations providing that the dairy articles subject to such quantitative restrictions could be entered into the United States only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture and only in accordance with the terms of such license.

Presidential Proclamation No. 5425 of January 6, 1986, modified such quantitative limitations to permit imports of up to 551,150 pounds of Italian-type cheese in original loaves from Uruguay. The purpose of this interim rule is to amend the regulations governing the importation of dairy articles subject to quotas in order to implement Presidential Proclamation No. 5425. This interim rule will amend Appenix 2 "Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year" to 7 CFR Part 6, Subpart—Section 22 Import Quotas, by adding Uruguay to the list of countries from which Italian-type cheese in original loaves may be imported in the United States. The quantity which may be imported annually from Uruguay is 551,150 pounds.

The Department will issue supplementary import licenses authorizing the importation of such cheese from Uruguay to qualified importers. The application period for import licenses for the 1986 quota year was the period from August 1, 1985, through November 1, 1985. However, since there has been no opportunity for importers to apply for supplementary import licenses for cheese imported from Uruguay, it has been determined to provide for a special application period for such licenses.

Importers who desire to receive supplementary import licenses for the importation of Italian-type cheese in original loaves from Uruguay during the 1986 quota year must submit their application in writing to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616, South Building, U.S. Department of Agriculture, Washington, DC 20250 no later than March 31, 1986.

Eligibility to receive such licenses and the allocation of such licenses will be determined in accordance with established rules and procedures. Applications for the issuance of licenses to import such cheese from Uruguay during the 1987 quota year may be submitted beginning August 1, 1986.

Since the 1986 quota year has already begun, it is important that licenses to import the specified quantity of cheese from Uruguay be issued as quickly as possible so that importers will have sufficient time to import such cheese during the 1986 quota year. Accordingly, it has been determined that this interim rule shall become effective on [March 17, 1986]. However, comments from interested persons are requested. Comments must be received by [May 16, 1986] in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any changes which may be necessary in these regulations.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

Interim Rule

PART 6—[AMENDED]

Accordingly, 7 CFR Part 6, Subpart—Section 22 Import Quotas, is amended as follows:

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, is revised to read as follows and the authority citations following all the sections throughout the subpart are removed.

Authority: Section 3, Pub. L. 80–897, 62 Stat. 1248, as amended (7 U.S.C. 624); Secs. 701, 703, Pub. L. 96–39, 93 Stat. 268, 272 (19 U.S.C. 1202 note); Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82–137, 65 Stat. 290, as amended (31 U.S.C. 9701).

Appendix 2—Articles Subject to the Historical and Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Import Quotas for Each Quota Year [Amended]

2. Group IV(a) of Appendix 2—Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year is amended by adding the following new line immediately after the line beginning with "Argentina":

Uruguay	250,000	551,150

Signed this 5th of March 1986.

Thomas O. Kay,

Administrator, Foreign Agricultural Service.

[FR Doc. 86-5805 Filed 3-12-86; 3:24 pm]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 86–AWA–3]

Change of Using Agency for Restricted Areas R–2901A—R–2901I Avon Park, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The using agency for Restricted Areas R–2901A through R–2901I Avon Park, FL, is being changed at the request of the Department of the Air Force. The using agency will be the Commander, MacDill Air Force Base, FL.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–2901A through R–2901I from the "56th TFW, MacDill AFB, FL" to the "Commander, MacDill AFB, FL" at the request of the Department of the Air Force. Because this action is a minor amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.29 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established

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body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

2. Section 73.29 is amended as follows:

R–2901A Through R–2901I Avon Park, FL [Amended]

By removing the words "56th TFW, MacDill AFB, FL" and by substituting the words "Commander, MacDill AFB, FL"

Issued in Washington, DC, on March 7, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–5689 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85–AWA–51]

Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes three new Jet Routes in several southeastern states: South Carolina, North Carolina, Georgia and Virgina. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace between New England and Florida. This amendment is a portion of the Expanded East Coast Plan (EECP) to make optimum use of limited airspace along the east coast corridor. This action reduces enroute and terminal delays in the Boston, MA, New York, NY, Miami, FL, Chicago, IL, and Atlanta, GA, areas; saves fuel and reduces controller workload. The EECP is being implemented in segments until completed.

EFFECTIVE DATE: 0901 G.m.t., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On January 21, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Routes J–208, J–209 and J–210 located in South Carolina, North Carolina, Georgia and Virignia (51 FR 2721). Also, on February 28, 1986, a supplemental notice was published to correct mistakes noted in the Jet Route descriptions (51 FR 7083). This action alleviates congestion along the coastal corridors between New York and Florida. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and those proposed in the supplemental notice, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes three new Jet Routes in several states which include South Carolina, North Carolina, Georgia and Virginia. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace between New England and Florida.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–208 [New]

From Athens, GA, via Liberty, NC; to Hopewell, VA.

J–209 [New]

From Greenwood, SC, via Tar River, NC; to Norfork, VA.

J–210 [New]

From INT Savannah, GA, 206° and Vance, SC, 221° radials; Vance; to Wilmington, NC.

Issued in Washington DC, on March 10, 1986.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–5688 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–24044; File No. S7–22–85]

Public Utility Holding Companies; Exemption for Affiliated Persons of Investment Bankers and Commercial Banking Institutions To Serve as Officers or Directors, Competitive Bidding Rule

AGENCY: Securties and Exchange Commission.

ACTION: Adoption of rule revision and rule amendment.

SUMMARY: The Commission is adopting a rule revision that would allow a limited number of persons affiliated with investment bankers and commercial bankers to serve as officers or directors of public utility holding companies and their subsidiaries under certain conditions. This action is intended to simplify and expand the exemptions now available under the existing rule. The Commission is also adopting a rule amendment to minimize potential conflicts of interest that may arise after an affiliated person of an investment banker has served as a director of a holding company or its subsidiary.

EFFECTIVE DATE: April 16, 1986.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Norsworthy, Chief, Office of Regulatory Policy, (202–272–2048), or Denis R. Molleur, Esq., Office of Public Utility Regulation, (202–272–2073), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

After the effective date, questions should be directed to the Office of Public Utility Regulation, (202) 272–7676, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting a revision of rule 70 [17 CFR 250.70] under section 17(c) [15 U.S.C. 79q(c)] of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 *et seq.*] ("Act") to permit a limited number of persons affiliated with investment bankers or commercial banking institutions (hereinafter collectively referred to as "banking institutions") to serve as directors or officers of public utility holding companies and their subsidiaries (hereinafter collectively referred to as "system companies"). The purpose of the rule revision is to simplify the structure of the existing rule and to give system companies more flexibility in the selection of their officers and directors. The Commission is also adopting an amendment to rule 50 [17 CFR 250.50] under sections 6, 7(c), and 12(d) [15 U.S.C. 79(f), 79g(c), and 79*l*(d)] of the Act, the rule that governs competitive bidding procedures, to address potential conflicts of interest that may arise shortly after an affiliated person of an investment banker has served as a director of a system company.

The Commission initially proposed the rule 70 revision and rule 50 amendment in May of 1985.[1] Based upon comments received on that proposal, a revised version of the rule revision and rule amendments was published for public comments in November.[2] Since the proposing releases discussed the legislative history of section 17(c), the administrative history of rule 70 and the Commission's reasons for revising rule 70 and amending rule 50, this release focuses upon the commentators' reaction to the revised proposal and certain technical changes that have been made in that proposal.

Discussion

A. Rule 70

1. Limitations on Directors of System Companies Who Are Affiliated With Banking Institutions

a. Percentage limitations. The final rule allows a holding company to have up to 75% of its directors affiliated with commercial banking institutions and investment bankers. The entire 75% may be affiliated with commercial banking institutions that have their principal places of business located within the state or states served by the holding company system or up to 25% may be affiliated with investment bankers wherever located or with commercial banking institutions that have their principal places of business located outside the state or states served by the system. Under the final rule, a subsidiary company also may have up to 75% of its directors affiliated with commercial banking institutions and investment bankers. The entire 75% may be affiliated with commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary or up to 25% may be affiliated with investment bankers wherever located or with commercial banking institutions that have their principal places of business located outside the state or states served by the subsidiary.

If application of these percentage limitations results in a fractional number of .5 or more, that fraction may be rounded up to arrive at the number of affiliations that are allowed under the revised rule. For example, if 75% of a holding company's board of directors equals 13.5 persons and 25% equals 4.5 persons, up to 14 directors could be affiliated with banking institutions. All 14 directors could be afiliated with commercial banking institutions that have their principal places of business located within the state or states served by the holding company system. Alternatively, up to 5 of the 14 directors could be affiliated with commercial banking institutions that have their principal places of business located outside of the state or states served by the system or with investment bankers wherever located.

Under the reproposal, no more than 25% of a system company's directors could be affiliated with investment bankers or with commercial banking institutions that have their principal places of business located outside the state or states served by the system. However, up to 75% of the board could be affiliated with local commercial banking institutions, provided that the total number of director affiliated with investment bankers or commercial banking institutions did not exceed 75% of the board. The reproposal specified that in the case of a holding company, a commercial bank would be considered local if the bank's principal place of business is located within the state or states served by the system; in the case of a subsidiary company, a bank would be considered local if the bank's principal place of business is located within the state or states served by the subsidiary.

Two commentators pointed out that these provisions could be read to prevent subsidiary companies from having any directors affiliated with commercial banks that have their principal place of business located within the state or states served by the system but outside the state or states served by the subsidiary company. Since that was not the Commission's intent, the final version of the rule has been redrafted.

b. Limitations on system company directors serving as officers of banking institutions. The final rule allows the directors of subsidiary companies who are affiliated with commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary to serve as officers of those local banks as long as they are not also serving as

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[1] Holding Company Act Release No. 23693 (May 14, 1985) [50 FR 21080].

[2] Holding Company Act Release No. 23915 (November 21, 1985) [50 FR 49354].

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officers of the subsidiary company. However, any holding company directors who are affiliated with banking institutions may not serve as officers of those institutions. These provisions of the revised rule are adopted essentially as reproposed.

Several commentators urged the Commission to also allow the outside directors of holding companies to serve as officers of local commercial banking institutions. They argued that the potential for abuse is remote and, in many instances, an officer of a local bank could make a substantial contribution in serving as a holding company outside director. However, it is the holding company that is primarily responsible for system-wide financing decisions. To avoid domination of a holding company system by banking institutions, the purpose expressed by Congress in enacting section 17(c), the Commission continues to believe that rule 70 should permit the directors of holding companies to be affiliated with commercial banking institutions only as outside directors.

2. Limitations on Officers of System Companies Who Are Affiliated With Banking Institutions

As in the reproposal, the final rule allows an officer of a holding company or subsidiary company to serve as a director of a commercial banking institution provided that the system company officer does not also serve as an officer or employee of that commercial bank and provided that no more than one other officer of the system company serves as a director of that bank.

Although one commentator asked the Commission to permit at least three officers from the same system company to serve as outside directors of the same commercial banking institution, the Commission continues to believe that no more than two officers from the same system company should serve as outside directors of the same commercial bank, again to avoid any potential for the bank to unduly influence the operations of the system company.

3. Elimination of the Federal Energy Regulatory Commission ("FERC") Exemption

The final rule's exemptive provisions described above replace, *inter alia*, an exemptive paragraph of the existing rule that permits any person affiliated with a banking institution to serve as an officer or director of a system company if authorized by FERC. In the proposing release, the Commission requested specific comment on whether the FERC exemption should be retained in the final version of the rule.

A few commentators believed that the FERC exemption should be retained in the interest of comity and consistent Federal regulation, but cited no instances of need for such an exemptive provision. The Commission continues to believe that a separate FERC exemption is unnecessary given the generous percentage limitations described above.

4. Grandfather Clause

The final rule provides that a system company officer's or director's affiliation with a banking institution that exists on the day before the effective date of the revised rule will not disqualify that individual from continuing to serve as an officer or director or from serving successive terms in that capacity. At the request of commentators, the provision has been redrafted to make it clear that an individual's affiliation with a banking institution that exists on the day before the revised rule becomes effective will not disqualify that person from election or appointment to successive terms. The proposal has also been redrafted to make it clear that the only banking affiliations of a system company officer or director that are grandfathered are those affiliations that have been permitted under the existing rule; any other affiliations acquired after the revised rule's effective date will have to comply with the revised rule's provisions.

5. Definitions

a. *Director.* As in the reproposal, the final version of rule 70 defines a director as "any director of a corporation or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust or other company." An "advisory director" who is not entitled to vote on issued presented to the board for consideration would not be considered a director for purposes of applying the revised rule's provisions.

b. *Officer.* The final rule defines an officer as "a chairman of the board of directors, chief executive officer, president, vice president, treasurer, secretary, comptroller, and any individual who performs similar functions." At the suggestion of one commentator, the reproposal has been redrafted to exclude the chairman of a system company's finance committee or executive committee from the difinition so that outside directors who are selected to act as chairmen of those committees would not be treated as officers under the revised rule. The reproposed definition has also been redrafted so that a system company's chief executive officer would explicitly be included in the definition of officer under the final rule.

c. *Commercial banking institutions.* As recommended by two commentators, the final version of the definition of "commercial banking institution" excludes Federal Reserve banks, which were inadvertently included in the reproposal, because such banks are not primarily engaged in commercial banking activities. The definition has also been revised to explicitly exclude savings banks, as well as savings and loan associations. As pointed out by one commentator, in some areas of the country, savings institutions are organized and known as savings banks, not as savings and loan associations.

One commentator urged the Commission to treat a bank-holding company and each of its bank subsidiaries as separate commercial banking institutions for purposes of the rule. The Commission continues to believe, however, that a bank-holding company system should be treated as a single commercial banking institution to avoid the potential for domination of a public utility holding company system by any one bank holding company system.

Similarly, the Commission continues to believe that the revised rule should not retain the existing rule's exemption for system company officers and directors who are affiliated with small commercial banks. Two commentators suggested that commercial banks having combined capital and surplus not in excess of $10 million should be excluded from the definition of commercial banking institution. One commentator suggested excluding commercial banks that have combined capital and surplus not in excess of $25 million. However, the Commission believes that a separate exclusion for small banks is not needed, given the revised rule's generous percentage limitations.

B. Rule 50

As amended, the final version of rule 50 would incorporate the same conflict of interest provision that was proposed, that is, any proposal which is received from an investment banker within twelve months after an affiliated person of that investment banker has served as a director of the applicant or declarant or of any company within the same holding company system will not be considered an independent proposal. The amended rule, however, makes no other changes with regard to competitive bidding procedures as set forth in the rule and as modified by the

Commission's 1982 Statement of Policy[8] and subsequent administrative positions thereunder. As recommended by the commentators, the Commission believes that it is more appropriate to address all aspects of rule 50 in the context of a separate rule-making proceeding.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the revision of rule 70 and the amendment to rule 50 will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments concerning the Chairman's certification.

Statutory Basis

The final revision of rule 70 is adopted by the Commission pursuant to the authority granted the Commission in sections 17(c) and 20(a) [15 U.S.C. 79q(c) and 79t(a)] of the Act. The amendment to rule 50 is adopted pursuant to the authority granted the Commission in sections 6(c), 7, 12(d) and 20(a) [15 U.S.C. 79f(c), 79g, 79*l*(d) and 79t(a)] of the Act.

List of Subjects in 17 CFR Part 250

Confidential business information, Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities, Public utility holding companies, Officers and directors of registered holding companies and their subsidiaries, Competitive bidding requirement, Securities, Utilities.

Text of Rule Revision and Rule Amendment

Part 250 of Chapter II, Title 17 of the Code of Federal Regulations is amended as set forth below.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 is amended by adding the following citations:

Authority: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless otherwise noted. Section 250.50 also issued under Secs. 6, 7, 12, 49 Stat. 814, 815, 823; 15 U.S.C. 79f, 79g, 79l, 79t. Section 250.70 also issued under Sec. 17, 49 Stat. 830; 15 U.S.C. 79q.

2. By revising § 250.70 to read as follows:

§ 250.70 Exemptions from section 17(c) of the Act.

Notwithstanding the prohibitions contained in section 17(c) of the Act,

(a) A registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the holding company system, *Provided*, that:

(1) Those affiliated persons do not also serve as officers or employees of those local commercial banking institutions; and

(2) No more than one director or 25% of the members of the board of directors of the holding company, whichever is greater, is affiliated with the same local commercial banking institution.

(b) A registered holding company may have up to 25% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the holding company system or investment bankers wherever located, *Provided*, that:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(c) A subsidiary company of a registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary company, *Provided*, that:

(1) Those affiliated persons either do not serve as officers or employees of those local commercial banking institutions or, alternatively, do not serve as officers or employees of the subsidiary company; and

(2) No more than one director or 25% of the members of the board of directors of the subsidiary company, whichever is greater, is affiliated with the same local commercial banking institution.

(d) A subsidiary company of a registered holding company may have up to 25% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the subsidiary company or investment bankers wherever located, *Provided*, that:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(e) An officer of a holding company may serve as a director of a commercial banking institution, *Provided*, that:

(1) The officer of the holding company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the holding company serves as a director of that commercial banking institution.

(f) An officer of a subsidiary company may serve as a director of a commercial banking institution, *Provided*, that:

(1) The officer of the subsidiary company does not also serve as an officer or employee of that commercial banking institution; and

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[8] *See* Holding Company Act Release No. 22623 (Sept. 2, 1982) [47 FR 38768].

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(2) No more than one other officer of the subsidiary company serves as a director of that commercial banking institution.

(g) A person serving as an officer or director of a holding company or subsidiary company on April 15, 1986, shall not be disqualified from continuing to serve or from serving successive terms in that capacity solely because of an affiliation with a commercial banking institution or investment banker which existed on that date.

(h) As used in section 17(c) of the Act and in this rule:

(1) An "affiliated person" of a commercial banking institution or investment banker means an officer, director, partner, appointee or representative of that commercial banking institution or investment banker, as well as any person that directly or indirectly owns or holds with power to vote 5 percent or more of the outstanding voting securities of that commercial banking institution or investment banker.

(2) A "commercial banking institution" means any person:

(i) That engages directly or indirectly in the business of a bank, trust company, bank-holding company, banking association or firm; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors, or appointment as officer, of a registered holding company or subsidiary company thereof. The term also excludes any Federal Reserve Bank, savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor.

(3) An "investment banker" means any person:

(i) That engages directly or indirectly in the business of underwriting or dealing in securities that are not exempted from registration under the Securities Act of 1933 by section 3 of that Act; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors of a registered holding company unless those revenues were derived from acting as a managing underwriter for the distribution of securities issued by any company in such holding company system.

(4) A person's gross revenues from its own commercial and investment banking activities and from its ratable share of the commercial banking and investment banking activities of enterprises in which it owns 20 percent or more of the equity interest should be considered in determining the degree to which the person is engaged in such activities.

(5) A "director" means any director of a corporation or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust or other company.

(6) An "officer" means a chairman of the board of directors, chief executive officer, president, vice president, treasurer, secretary, and comptroller, or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust, or other company.

(7) A "managing underwriter" means an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer, organizes the selling efforts, receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting, or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

3. By redesignating paragraph (b) as paragraph (b)(1), adding paragraph (b)(2), and removing the authority cite from the end of §250.50 to read as follows:

§ 250.50 Requirement of public invitation of proposals for the purchase or underwriting of securities.

* * * * *

(b)(1) *Public invitation of proposals.* * * *

(2) Any proposal which is received from an investment banker as defined in rule 70(h)(3) [17 CFR 250.70(h)(3)] within twelve months after an affiliated person of that investment banker has served as a director of the applicant or declarant or of any company within the same holding company system will not be considered an independent proposal.

* * * * *

By the Commission.

Dated: March 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–5541 Filed 3–14–86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 556, and 558

Animal Drugs, Feeds, and Related Products; Morantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc., providing for a revised tolerance for residues of morantel tartrate in food derived from treated cattle and for use of the drug in dairy cattle of breeding age.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 92–444 providing for use of Rumatel® (morantel tartrate) Type A Article for making Type C cattle feed, and supplemental NADA 93–903 providing for use of Rumatel® and Nematel™ Boluses for treating cattle. The drugs are used for removal and control of mature gastrointestinal nematode infections. The supplements provide for a revised tolerance for residues of morantel tartrate in food derived from treated cattle and for use of the drug in dairy cattle of breeding age.

The supplements are approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) as published in the **Federal Register** of April 26, 1985 (50 FR 16636), and has determined that:

1. For the action providing for safe concentrations for total residues of morantel tartrate in the uncooked edible tissue of cattle and in milk, under 21 CFR 25.24(d)(1)(i), that the action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

2. For the action providing for use in dairy cattle of breeding age, that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment as provided in 21 CFR 25.31a(a), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 556, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1450a [Amended]

2. In § 520.1450a *Morantel tartrate bolus* in paragraph (d)(3) by removing "Not for use in dairy animals of breeding age."

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. By revising § 556.425 to read as follows:

§ 556.425 Morantel tartrate.

The marker residue selected to monitor for total residues of morantel tartrate in cattle is *N*-methyl-1,3-propanediamine (MAPA). The target tissue selected is liver. Residue concentrations are determined by measuring the morantel residues convertible to MAPA. A tolerance for MAPA is established in cattle of 0.70 part per million in liver. A marker residue concentration of 0.70 part per million in liver corresponds to a concentration for total residues of morantel tartrate of 2.40 parts per million in liver. The safe concentrations for total residues of morantel tartrate in the uncooked edible tissues of cattle are 1.20 parts per million in muscle, 2.40 parts per million in liver, 3.60 parts per million in kidney, and 4.80 parts per million in fat. A tolerance for the marker residue of morantel tartrate in milk is not needed. The safe concentration for total residues of morantel tartrate in milk is 0.40 part per million. "Tolerance" in this section refers to a concentration of a marker residue selected to monitor for total residues of the drug in the target animal. "Safe concentrations" refer to the concentrations of total residues considered safe in edible tissues and milk.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.360 [Amended]

6. In § 558.360 *Morantel tartrate* in paragraph (d)(3) by removing "Not for use in dairy cattle of breeding age."

Dated: March 11, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–5701 Filed 3–14–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

[Docket No. 77N–0078]

New Animal Drugs For Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications

Correction

In FR Doc. 86–4316 beginning on page 7382 in the issue of Monday, March 3, 1986, make the following corrections:

1. On page 7392, § 558.4(d), in the table, in the last column, the sixth line should read, "80–120/70–130". The eighth line should read, "80–115/70–130".

2. On page 7393 in the table, Category I, in the last line, the third column," 2.4%" should read "2.5%".

3. On page 7393, in the table, Category II, in the sixteenth line, transfer "0.00625%" to the third column from the fourth column. Likewise in the seventeenth line, transfer "0.025%" to the third column from the fourth.

In the eleventh line from the bottom of the page, transfer "0.01% (Combined)" to the third column from the fourth column. In the tenth line from the bottom, transfer "0.02% (Combined)" to the third column from the fourth column.

4. On page 7394, in the table, Category II, in the last line in the fourth column, "< 7% 90–110" should read "> 7% 90–110".

5. On page 7395, in amendatory instruction 29, in the fifth line, "redesignating" should read "redesignated". In the sixth line, "redesignated" should read "redesignating".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8074]

Income Taxes; Stock Acquisitions and Target Corporation Assets; Section 338 International Aspects

Correction

In FR Doc. 86–2951 beginning on page 5163 in the issue of Wednesday, February 12, 1986, make the following correction to § 1.338–5T(j)(7)(iii).

On page 5188, in the third column, paragraph (iii), fifth line, the date should read "February 12, 1986".

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 785

Requirements for Permits for Special Categories of Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending regulatory cross-references contained in the final regulations concerning requirements for permits for special categories of surface mining and reclamation operations subject to the provisions of the Surface Mining and Reclamation Act of 1977. In a May 24, 1983 **Federal Register** document, 30 CFR Part 826 was removed and the provisions thereof moved to new §§ 816.107 and 817.107. Paragraphs (b) and (c) of 30 CFR 785.15 continue to reference 30 CFR 826.12. The paragraphs are corrected in this rulemaking to cite the proper section references.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTRACT: Ralph Blumer, Regulatory Development and Issues Management, Office of the Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, (202) 343–5981.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Amendment
III. Procedural Matters

I. Background

OSMRE published final rules relating to backfilling and grading requirements for surface and underground mining activities on May 24, 1983 (48 FR 23356). Part 826 governing mining of steep slopes, was removed and those requirements were moved to Parts 816 and 817 as new §§ 816.107 and 817.107. Paragraphs (b) and (c) of 30 CFR 785.15 contains references to 30 CFR 826.12. This rulemaking will correct this reference. The correction is considered a technical amendment and no change in meaning or application is intended. The main purpose of this technical amendment is to assure that 30 CFR Chapter VII, due for update in July 1986 is accurate.

II. Discussion of Amendment

This amendment is to correct section references in 30 CFR 785.15(b) and (c) to correspond with the redesignation and/or removal of 30 CFR Part 826.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is procedural and has no economic effect on the public. The Department has also determined that this document will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act.

National Environmental Policy Act

This rulemaking is not a major Federal action, but a procedural rule covered under previous rulemakings. Therefore, an environmental assessment is not required for this rulemaking, which is covered under the environmental assessment and environmental impact statements prepared for the previous rulemakings.

Federal Paperwork Reduction Act

It has been determined that the information collection requirements do not change due to the corrections of this rulemaking, and therefore, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and does not require clearance by the Office of Management and Budget.

List of Subjects in 30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, the Office of Surface Mining Reclamation and Enforcement is amending 30 CFR Part 785 as set forth herein.

Dated: March 7, 1986.

James E. Cason,
Deputy Assistant Secretary for Land and Minerals Management.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. The authority citation for Part 785 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 517, 519, 527, 529, 701, and 711, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1269, 1277, 1279, 1291, 1301), unless otherwise noted.

§ 785.15 [Amended]

2. Paragraphs (b) and (c) of § 785.15 are amended by removing the words "30 CFR Part 826.12" and adding in their place the words "§§ 816.107 or 817.107 of this chapter."

[FR Doc. 86–5741 Filed 3–14–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On September 4, 1985, Indiana submitted amendments to its program to establish a program for the training, examination and certification of blasters.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving these amendments. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26,

1982 **Federal Register** (47 FR 32071–32108). Subsequent actions concerning the Indiana program are described in 30 CFR 914.15 and 30 CFR 914.16.

II. Discussion of Proposed Amendment

On September 4, 1985, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment establishes a program for the training, examination and certification of blasters.

On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after the publication date of OSMRE's rules at 30 CFR Part 850, whichever is later. In the case of Indiana's program, the applicable date was 12 months after publication of OSMRE's rules or March 4, 1984. However, Indiana requested and received a twelve-month extension to March 4, 1985, and an additional six-month extension to September 4, 1985. (May 14, 1984, 49 FR 20285 and April 5, 1985, 50 FR 13566).

OSMRE published a notice in the **Federal Register** on November 15, 1985, announcing receipt of the proposed program amendments submitted on September 4, 1985, and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendment (50 FR 47229). The public comment period ended December 16, 1985. There was no request for a public hearing and the hearing scheduled for December 10, 1985, was not held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendment establishing a blaster training, examination and certification program submitted by Indiana on September 4, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII. Although the blaster examination itself will be resubmitted at a later date to address identified deficiencies, the program on the whole is consistent with the Federal requirements. The examination is confidential and not subject to public comment; therefore, approval of the program will not be delayed pending resubmission of the examination. Only those areas of particular interest are discussed below in the specific findings. Discussion on only those provisions for which findings are made does not imply any deficiency in any provision not discussed.

1. The Indiana definition of "certified blaster" added to 310 IAC 12–1–3 means a person with at least 12 months blasting experience who has completed an approved training course and successfully passed the blaster certification exam and who holds a valid certificate issued by the State. The Director finds that this definition is more specific than the Federal definition of "blaster" at 30 CFR 850.5 but not less effective. The Federal rule defines "blaster" as a person directly responsible for the use of explosives who is certified under 30 CFR Part 850.

2. The amended Indiana rules 310 IAC 12–5–33 and 12–5–99 contain requirements found in the Federal counterpart rules at 30 CFR 816.61 and 817.61, general requirements for use of explosives for surface and underground mines, except for the requirement at 30 CFR 816.61(c)(2) and 817.61(c)(2) that certificates of blaster certification be carried by the blaster or be on file at the permit site. The Indiana counterpart for the Federal requirement is contained in 310 IAC 12–8–7(e) which is discussed below under Finding 9. Indiana rules 30 IAC 12–5–33 and 12–5–99 contain general requirements for use of explosives found in the Federal rules and also require that each person responsible for blasters shall possess a valid certification and that decisions concerning blast specifications shall be made by a certified blaster. The Director finds the Indiana rules no less effective than the Federal rules.

3. Indiana has added 310 IAC 12 Rule 8 to cover training, examination and certification of blasters. Indiana rule 310 IAC 12–8–1 establishes the scope of the rule, similar to 30 CFR 850.1 The Director finds this section no less effective than 30 CFR 850.1.

4. Indiana has added 310 IAC 12–8–2 to explain the objective of 310 IAC 12–8–1 through 12–8–9 to establish the blaster certification program. Although there is no Federal counterpart, the Director finds this explanatory rule consistent with the requirements in 30 CFR Part 850.

5. Indiana rule 310 IAC 12–8–3 establishes requirements for blaster training. It contains requirements similar to the Federal counterparts in 30 CFR 850.13, including a listing of topics to be included in the training courses. The Indiana rule also contains, in paragraph (d), requirements for training of persons who are assigned to a blasting crew or who assist in explosives use. Although there is no Federal counterpart rule, the Director finds these requirements to be consistent with the Federal requirements for blaster training. The Director, therefore, finds the Indiana rules no less effective than the Federal rules.

6. Indiana rule 310 IAC 12–8–4 establishes requirements for applications for a certification. Although there is no Federal counterpart, the rule establishes practical information for applying for certification and is consistent with Federal requirements. The Director finds the rule no less effective than the Federal rules.

7. Indiana rule 310 IAC 12–8–5 establishes requirements for written examinations and for practical experience that are similar to the Federal rules at 30 CFR 850.14. The Indiana rule contains additional practical information on examination notices, grades and other topics of interest to candidates. The Director, therefore, finds the rules no less effective than the Federal rules.

8. Indiana rule 310 IAC 12–8–6, comity registration, allows, under certain circumstances, persons holding a valid blaster certification in another state to be certified in Indiana without examination, if the other state has an approved blaster certfication program. In the preamble to the Federal rules on blaster certification, OSMRE endorsed the concept of State reciprocity saying that this "should be facilitated by the State program review and approval process, under which all States with approved programs must conform with the rules adopted today and the Act." (48 FR 9488, March 3, 1983). Therefore, the Director finds this section of the Indiana rules no less effective than the Federal rules.

9. Indiana rule 310 IAC 12–8–7 establishes requirements for certification. The rule sets the period of certification at 3 years and covers practical information for issuance of certification and replacement certificates. The rules contain requirements similar to those of 30 CFR 850.15 (a), (d) and (e) and also contains the requirement of 30 CFR 816.61(c)(2) and 817.61(c)(2) that blasters shall maintain their blaster certificates at the mine site. The Director, therefore, finds the rules no less effective than the Federal rules.

10. Indiana rule 310 IAC 12–8–8 contains requirements for renewal of blaster certificates provided for in 30

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CFR 850.15(c). The Indiana rule provides requirements for and practical information on renewing certificates every three years. Federal rule 30 CFR 850.15(c), although it does not establish specific requirements, provides for recertification of blasters. The Director, therefore, finds the Indiana rules no less effective than the Federal rules.

11. Indiana rule 310 IAC 12–8–9 establishes provisions for revocation of certification, for hearings on revocations and for reissue of revoked certifications. The rules are consistent with the Federal provisions for revocation at 30 CFR 850.15(b), and, therefore, the Director finds them no less effective.

12. OSMRE has completed a review of the course material proposed for use in Indiana's training courses and has reviewed copies of representative examinations to be used to satisfy the written examination requirement. OSMRE has found the course material to satisfactorily comply with State and Federal program requirements. However, the examination was found to be inadequate in that some of the questions were found to be too simple so that the examination did not adequately judge knowledge of the topics covered. Also, the mix of questions needs to be improved so that all topics are adequately covered. Indiana is currently working to address these deficiencies and will submit revised examination samples for OSMRE review in the near future. Upon completion of OSMRE's review, Indiana will be notified of the adequacy of the examination and, if appropriate, that Indiana can begin implementing its blaster certification program.

The Director finds that the Indiana regulatory provisions for training, examination and certification of blasters are no less effective than the requirements established in the Federal rules.

IV. Public Comments

No public comments were received on the amendments.

V. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on September 4, 1985, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (j) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on September 4, 1985, are approved effective March 17, 1986: Indiana's blaster training, examination and certification program as contained in the Indiana regulations at 310 IAC 12–1–3, 310 IAC 12–5–33, 310 IAC 12–5–90, 310 IAC 12–8–1, 310 IAC 12–8–2, 310 IAC 12–8–3, 310 IAC 12–8–4, 310 IAC 12–8–5, 310 IAC 12–8–6, 310 IAC 12–8–7, 310 IAC 12–8–8, 310 IAC 12–8–9 and in the blaster training program.

3. 30 CFR 914.16 is amended by removing and reserving paragraph (a) as follows:

§ 914.16 Required program amendments.

* * * * *

(*a*) [Reserved]

* * * * *

[FR Doc. 86–5682 Filed 3–14–86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on September 16, 1985 and modified on December 10, 1985. The amendments pertain to liability insurance requirements.

After providing for public comment and conducting a thorough review of the program amendments, the Direcor has determined that the amendments on liability insurance requirements meet the requirements of SMCRA and the Federal regulations and is approving these amendments. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendments process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register.** Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Program Amendments

On September 16, 1985, Kentucky submitted amendments to its regulations pertaining to general hydrology requirements and liability insurance requirements. On October 25, 1985, OSMRE published a notice in the **Federal Register** (50 FR 43413) announcing receipt of the amendments and inviting public comment on their adequacy. The public hearing scheduled for November 19, 1985, was not held because no one requested an opportunity to testify.

On December 10, 1985, Kentucky submitted modifications to the liability insurance amendments. On January 21, 1986, OSMRE reopened the comment period for these amendments for a period of fifteen days ending February 5, 1986 (51 FR 2731). On February 7, 1986, Kentucky submitted modifications to the amendments pertaining to general hydrology requirements. The comment period for those modifications will be reopened by a separate **Federal Register** notice. This final rule therefore, pertains only to the liability insurance amendments.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments pertaining to liability insurance requirements submitted on September 16, 1985, including modifications submitted on December 10, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. Only these provisions of particular interest are discussed below. Any provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules.

1. Kentucky is deleting the incorporation of Reclamation Advisory Memorandum (RAM) #64, "Certification of Liability Insurance Update, June 10, 1983," from its list of RAM's incorporated by reference at 405 KAR 7:015 Section 1. The RAM is deleted in accordance with changes to the liability insurance requirements in 405 KAR 10:030 which are discussed below under Finding 2. The Director finds this deletion consistent with the Federal rules.

2. Kentucky has amended paragraph (1) of 405 KAR 10:030 section 4 to require the applicant to submit, as part of the permit application at the time of bond submission, a certificate of liability insurance. Since 405 KAR 10:010 section 2(2) requires submission of bond after permit approval but before the permit is issued, the certificate of liability insurance would likewise be issued after permit approval but before permit issuance. The Federal rule at 30 CFR 800.60(a) requires submission of the certificate of liability insurance as part of the permit application.

Since Kentucky would still require that the applicant obtain and submit proof of the necessary liability insurance before any permit is issued and before initiation of any coal mining operation, and since this proof, when submitted, must be included in the permit application, the Director finds that the revised State rule provides protection that is no less stringent than that required by section 507(f) of SMCRA and that it is no less effective than the corresponding Federal regulations. The Director notes also that the Kentucky regulatory change does not affect the public's right to comment. The Kentucky rules require minimum liability coverage for bodily injury and property damage which the operator must meet to be in full compliance. The public's ability to comment on the adequacy of the minimum amounts established in the regulations is not hampered by the absence of the certificate in the permit application.

Kentucky has also amended section 4, paragraph (1) to require coverage for bodily injury and property damage of $300,000 for each occurrence and $500,000 aggregate. This is the same minimum coverage required by 30 CFR 800.60(a) and therefore the Director finds it no less effective than the Federal rule.

Other changes are made to paragraph 1 and to paragraph 2 of section 4 which clarify the rule or reflect language in 30 CFR 800.60. The Director finds the amended Kentucky rule no less effective than the Federal rule.

IV. Public Comments

OSMRE solicited comments from the Environmental Protection Agency (EPA) and received its concurrence on the amendments.

No comments were received in response to OSMRE's request for comments from the public.

V. Director's Decision

The Director, based on the above findings, is approving the Kentucky program amendments pertaining to liability insurance as submitted on September 16, 1985, including modifications submitted December 10, 1985. The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decisions.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

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Dated: March 10, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.15 is amended by adding a new paragraph (p) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendments submitted to OSMRE on September 16, 1985, including modifications submitted December 10, 1985, are approved effective March 17, 1986: revisions to the Kentucky Administrative Regulations in 405 KAR 7:015 and 405 KAR 10:030.

[FR Doc. 86–5803 Filed 3–14–86; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Administration; Appeal of Decisions Concerning the National Forest System; U.S. Postal Service Postmarks; Time of Filing Determinations

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This rule makes a technical change in the present Forest Service administrative appeal procedures to make explicit that legible United States Postal Service (USPS) postmarks take precedence in determining time of filing. The change is necessary to achieve consistent interpretation. Public comments are invited and will be considered in promulgating a final rule.

EFFECTIVE DATE: March 17, 1986.

ADDRESS: Send comments on this interim rule to Chief (1570), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Acting Staff Assistant, National Forest System (202) 382–9349.

SUPPLEMENTARY INFORMATION:

Background

Paragraph (c)(4) of 36 CFR 211.18 states that "Postmarks, other evidence of mailing, or, if not mailed, time of receipt will determine time of filing." Some Forest Service officials and appellants have been misinterpreting this provision to mean that other evidence of mailing could take precedence over legible USPS postmarks. The use of a USPS postmark as evidence of timeliness is a commonly used standard. This postmark provides tangible, unbiased evidence by an official Agency of the United States Government as to timeliness. Not to give precedence to this type of evidence ignores not only common practice but also the Agency's historical procedure of interpreting timeliness of appeals. Giving precedence to other evidence of mailing over a legible USPS postmark results in inconsistence and subjective practices.

This amendment to Forest Service appeal procedures makes clear that when officials determine timeliness under 36 CFR 211.18(c)(4), legible USPS postmarks shall take precedence over "other evidence of mailing." Only where the USPS postmark is illegible or missing will "other evidence of mailing" be used to determine timeliness.

In addition to this change, other minor word changes are made in paragraph (c)(4) to conform to principles of effective writing and to achieve precision of expression.

This action is basically a technical clarification of the rule and does not represent a change in Agency policy or intended procedures. Because of the need to achieve consistency in Agency interpretation, it is necessary to issue this amendment as an interim rule effective upon publication. All comments received on the rule will be considered in issuing a final rule.

Regulatory Impact

Because of its technical nature, it has been determined that this interim rule is exempt from review procedures required by E.O. 12291. The rule will have no effect on the Nation's economy, or substantial numbers of individuals or businesses, or on the quality of the human environment. The final rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, National Forests.

Therefore, for the reasons set forth above, Subpart B—Appeal of Decisions Concerning the National Forest System, of Part 211—Administration of Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION

Subpart B—Appeal of Decisions Concerning the National Forest System

1. Move the authority citation appearing at the end of Subpart B, to occur at the beginning of the Subpart. The authority citation continues to read as follows:

Authority: 30 Stat. 35, as amended, 50 Stat. 526 (16 U.S.C. 551, 7 U.S.C. 1011 (f), 5 U.S.C. 301)).

2. Revise paragraph (c)(4) of § 211.18 to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(c) * * *

(4) When determining time of filing, Reviewing Officers shall give precedence to United States Postal Service (USPS) postmarks over other evidence of timely filing. Filing is defined as either to mail or to deliver the appropriate documents. If documents are delivered by means other than the USPS, date of receipt determines time of filing. If the date of mailing cannot be determined from a legible USPS postmark, the Reviewing Officer may accept other evidence of timely filing. Weekends or Federal holidays are included in computing the time allowed for filing, but when the filing time would expire on a weekend or holiday, the filing time is extended to the end of the next business day.

* * * * *

Dated: March 5, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86–5715 Filed 3–14–86; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78–72; Phase I; FCC 86–69]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: The Commission's access charges rules require the National Exchange Carrier Association to bill and collect carrier common line charges. The Report and Order modifies those rules to require exchange carriers to bill and collect carrier common line charges. This action is taken to eliminate unnecessary rules and regulations.

EFFECTIVE DATE: April 7, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson (202) 632–6363.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 69

Access charges, Communications, Common carriers, Reporting and recordkeeping requirements, Telephone.

Report and Order

In the matter of MTS and WATS Market Structure; CC Docket No. 78–72, Phase I.

Adopted: February 24, 1986.
Released: February 28, 1986.

By the Commission.

1. On March 27, 1985, the National Exchange Carrier Association ("NECA") filed a petition for rulemaking to amend §§ 69.601(b) and 69.604 of the Commission's rules to permit exchange carriers to bill and collect carrier common line access charges. Section 69.604(a) of our rules presently requires that NECA bill and collect carrier common line charges.[1] In response to petitions filed by NECA, we waived this requirement for the first two "access years," [2] and pursuant to these waivers, exchange carriers, not NECA, have been billing and collecting carrier common line charges since May 1984, when the access charge tariffs first became effective. The NECA rulemaking petition sought, in effect, to make the billing and collection procedure authorized by these waivers a permanent part of the access charge rules. After receiving comments that overwhelmingly supported the NECA proposal, we issued a Notice of Proposed Rulemaking on October 17, 1985, that sought comments on amending those rules in accordance with the NECA request.[3]

2. Comments were filed by the Ameritech Operating Companies ("Ameritech"), BellSouth Corporation on behalf of South Central Bell Telephone Company and the Southern Bell Telephone Company (collectively, "BellSouth"), Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and the Pacific Northwest Bell Telephone Company (collectively, "US West"), NYNEX Telephone Companies ("NYNEX"), Pacific Bell Telephone Company and the Nevada Bell Telephone Company ("Pacific"), Southwestern Bell Telephone Company ("Southwestern"), and the United States Telephone Association ("USTA"). Reply comments were filed by the GTE Telephone Operating Companies ("GTE"). Without exception, the initial comments supported the NECA proposal. In general, the comments noted: (1) That resources would be wasted if NECA were to expend resources for billing and collection that replicated existing exchange carrier billing and collection functions; and (2) that the advent of optional alternative carrier common line tariffs could conceivably lead to the anomalous result that NECA would be billing and the collecting carrier common line charges for some exchange carriers but not for others.

3. In a reply that exceeded the scope of comments that had been filed by other parties,[4] GTE contended that we should retain our billing and collection rules [5] to accomodate concerns that GTE has concerning the continued "viability of the NTS pool" should we permit alternative plans for recovery of non-traffic-sensitive costs filed by number of exchange carriers to go into effect.[6] GTE, however, did not provide a convincing explanation as to how the "viability" of the NECA pooling process would be adversely affected by altering the rules concerning which entity (*i.e.*, NECA or the exchange carrier) bills and collects the carrier common line charge. The obligation of each exchange carrier to the NECA pool is not altered by the change in the rules proposed. Furthermore, GTE does not respond to the arguments uniformly made in the first-round comments that requiring NECA to bill and collect carrier common line charges would be extremely burdensome on NECA and carriers with little or no gain in the pooling process. Indeed, GTE appears to agree with these contentions at certain parts of its reply. For example, it states that, with a per minute NTS recovery mechanism, it is "impossible for NECA to serve as the central billing agent.[7] In brief, GTE's reply comments do not contain any probative evidence or argument that would support a conclusion that the present billing and collection rules should be retained. On balance, we conclude that the record more than adequately supports the need to eliminate the requirement that NECA bill and collect carrier common line charges.

4. Accordingly, it is ordered, pursuant to sections 1, 4(i)–(j), and 201–205 of the Communications Act of 1934, 47 U.S.C. 151, 154(i)–(j), 201–205 (1984), that the rules of the Federal Communications Commission are modified as set forth in Appendix A, effective April 7, 1986.

5. It is further ordered That the Secretary shall cause this Report and Order to be published in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules Amendments

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.601 is amended by revising paragraph (b) to read as follows:

§ 69.601 Exchange carrier association.

* * *

(b) All telephone companies that participate in the distribution of Carrier Common Line revenues shall be deemed to be members of such Association.

3. Section 69.604 is revised in its entirety to read as follows:

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[1] Section 69.604(a) of the Commission's rules, 47 CFR 69.604(a) (1984).

[2] In the Matter of MTS and WATS Market Structure (CC Docket No. 78–72, Phase I) Order Granting Waiver, FCC 84–189 (released May 2, 1984); In the Matter of MTS and WATS Market Structure (CC Docket No. 78–72, Phase I) Order Granting Waiver, CC 27–18 (released February 22, 1985). The first waiver expired on June 1, 1985, and the second waiver will expire on June 1, 1986.

[3] Notice of Proposed Rulemaking in CC Docket No. 78–72, Phase I ("Notice"), FCC 85–552 (released October 17, 1985). *See* Appendix A, *infra*, for the text of the proposed revisions to Part 69 of our rules.

[4] *See* § 1.415(c)–(d) of the Commission's rules, 47 CFR 1.415(c)–(d) (1984).

[5] GTE Reply Comments at 2.

[6] *Id.* at 5–6. *See* §§ 1.401, 1.411 of the Commission's rules, 47 CFR 1.401, 1.411 (1984).

[7] GTE Reply Comments at 3. GTE is apparently proposing in a different proceeding that we amend our rules to provide that the entire carrier common line revenue requirement be recovered from interexchange carriers on a flat-rate basis. If we were to adopt such amendments in a rulemaking proceeding, we could consider at that time whether the billing and collection arrangements suggested by GTE are appropriate.

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§ 69.604 Billing and collection of access charges.

(a) Telephone companies shall bill and collect all access charges.

(b) All access charges shall be billed monthly.

[FR Doc. 86–5485 Filed 3–14–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85–23]

Amendment of the Commission's Rules To Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979

AGENCY: Federal Communications Commission.

ACTION: Final rules; Order.

SUMMARY: The amateur rules were recently amended in the Report and Order in PR Docket No. 85–23 to complete implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. This document further amends those rules in order to incorporate other rule changes made in the interim in PR Docket No. 85–104, and to correct typographical errors.

EFFECTIVE DATE: These rule changes are effective 0002 UTC March 1, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies, Emissions, Radio.

Order

In the Matter of Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979; PR Docket No. 85–23.

Adopted: February 26, 1986.
Released: February 28, 1986.

1. In the *Report and Order* in this proceeding, 51 FR 2712, January 21, 1986, the Commission adopted rules to complete implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, in the Amateur Radio Service. Subsequently, by *Report and Order* in PR Docket No. 85–104, 51 FR 3785, January 30, 1986, the Commission amended the amateur rules to permit telephony operation in the 7075–7100 kHz frequency band in the Caribbean Insular Areas. The rules adopted in PR Docket No. 85–23 which completely revised the amateur frequency and emissions tables did not include the later rule changes adopted in PR Docket No. 85–104. However, the rule amendments in PR Docket No. 85–23 become effective March 1, 1986, after the rule amendments in PR Docket No. 85–104, which become effective February 28, 1986.

2. By this Order the rules adopted in the *Report and Order* in this proceeding are editorially amended to correctly set forth the status of amateur telephony communications in the 7075–7100 kHz band as modified by the later document in PR Docket. No. 85–104.

3. This item also corrects a typographical error in the Appendix to the *Report and Order* in PR Docket No. 85–23 in the table in new § 97.7(b).

4. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)) and § 0.231(d) of the Commission's rules (47 CFR 0.231(d)). Because these rule amendments which clarify our rules are non-substantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable.

5. Therefore, it is ordered That the rule amendments set forth in the attached Appendix are adopted effective 0002 UTC March 1, 1986.

6. For further information about this document contact John J. Borkowski, (202) 632–4964.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations, as amended by the *Report and Order* in PR Docket No. 85–23, 51 FR 2712, January 21, 1986, is further amended as follows:

1. The authority citation for Part 97 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154,303.

2. The 40 meter band entry in paragraph (b) of § 97.7 is revised to read:

§ 97.7 Frequency privileges.

* * * * *

(b) *Technician class:* * * *

Meter band	*Terrestrial location of the amateur radio station*			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
		Kilohertz		
*	*	*	*	*
40	7050–7075	7100–7150	7050–7075	1, 3, 32
*	*	*	*	*

3. The 7075–7100 kHz entry in paragraph (a) and paragraph (d)(2) of § 97.61 are revised to read:

§ 97.61 Authorized emissions.

(a) *Kilohertz.*

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
* * *	*	*
7075–7100	A1A, F1B	1, 2
* * *	*	*

(d) *Limitations:*

(1) * * *

(2) Amateur stations located in Regions 1 and 3, and amateur stations located within Region 2 which are west of 130 degrees West longitude or south of 20 degrees North latitude may also use A3E, F3E, G3E, H3E, J3E and R3E emissions.

[FR Doc. 86–5486 Filed 3–14–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60339-6039]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) issues this notice to close the commercial fishery for king mackerel from the Gulf of Mexico migratory group in the fishery conservation zone (FCZ). The Director, Southeast Region, NMFS (Regional Director), has determined that the commercial allocation of 1.66 million pounds has been exceeded. This action will ensure that the commercial allocation for king mackerel from the Gulf migratory group is not further exceeded during the current fishing year for this group.

EFFECTIVE DATE: Closure is effective at 2400 hours local time, March 12, 1986, through June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FPM) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations appearing at 50 CFR Part 642. Amendment 1 to the FMP went into effect on September 22, 1985 (50 FR 34840, August 28, 1985). An emergency rule amending these regulations became effective on March 6, 1986).

Amendment 1 established separate allocations for the Gulf and Atlantic migratory groups of king mackerel. The emergency rule implemented a total allowable catch of 5.20 million pounds for the Gulf migratory group of king mackerel to protect this fishery which has been depleted to the point nearing collapse. The emergency rule at § 642.21(f) further specified the commercial allocation for the Gulf migratory group of king mackerel for the current fishing year—through June 30, 1986—as 1.66 million pounds.

The Secretary is required under § 642.22 to close any segment of the king or Spanish mackerel fishery when its annual allocation or quota has been harvested, by publishing a notice in the **Federal Register**. The Regional Director has determined, based on the most recently reported catch figures, that the commercial allocation for the Gulf migratory group of king mackerel has been harvested. Hence, commercial fishing for king mackerel from the Gulf migratory group must cease at 2400 hours local time, March 12, 1986.

The closure will remain in effect until the end of the current fishing year for the Gulf migratory group of king mackerel (June 30, 1986), or until the emergency regulations lapse, whichever occurs first.

During the period of the closure, the purchase, barter, trade, and sale of Gulf migratory group king mackerel taken from the FCZ, including the sale of fish harvested by persons fishing under the bag limit, is prohibited. (This prohibition does not apply to trade in king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors.) In addition, vessels permitted under § 642.4 are prohibited from fishing under the recreational bag limit during the period of the closure. Finally, fishing with purse seines for Gulf migratory group king mackerel is prohibited during the period of the closure.

This action is required by 50 CFR 642.22, and complies with the procedures of Executive Order 12291.

Authority: 16 U.S.C. 1801 *et. seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: March 12, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–5836 Filed 3–12–86; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 51, No. 51
Monday, March 17, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1924, and 1944

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulation for planning and performing construction and other development work. The revision proposes a change in the basic structure of FmHA's Minimum Property Standards (MPS), revision of the use of insured warranties for new construction financed by FmHA under the Single Family Housing program, and the addition of classifications for Multi-Family residential rehabilitation work. Other editorial changes are also included.

The proposed "development standards" action implements the Agency's authority to determine and prescribe the standards for adequate housing under section 509 (a) of the Housing Act of 1949.

The circumstance requiring this action is enactment of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which mandates FmHA to revise its housing standards. The intended effect is to comply with Pub. L. 98–181 and provide safe, sanitary and decent housing for eligible families in rural areas.

The intended effect of the action to revise procedures pertaining to the use of insured 10-year warranties is to clarify criteria for the acceptability determination of warranty companies.

The addition of classifications for Multi-Family residential rehabilitation is to assure that buildings rehabilitated or repaired will meet appropriate levels of quality or performance comparable to those levels prescribed by the Secretary of HUD.

DATE: Comments must be received on or before May 16, 1986.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, Telephone: 202–382–1489.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that it does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Evinronmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this instruction are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

The Catalog of Federal Domestic Assistance titles and numbers affect are:

Emergency Loans—10.404;
Farm Labor Housing Loans and Grants—10.405;
Farm Ownership Loans—10.407;
Very Low and Low Income Housing Loans—10.410;
Rural Housing Site Loans—10,411;
Rural Rental Housing Loans—10.415;
Soil and Water Loans—10.416;
Very Low Income Housing Repair Loans and Grants—10.417; and
Rural Self-Help Housing Technical Assistance—10.420.

1. General

The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, amends section 509 (a) and section 515 of the Housing Act of 1949 and requires FmHA to revise its minimum property standards. The proposed regulation contains the requirements under which residential buildings shall be constructed in accordance with: (1) The minimum standards prescribed by the Secretary of Agriculture, or (2) the minimum standards prescribed by the Secretary of Housing and Urban Development (HUD), or (3) the minimum standards contained in any of the voluntary national model building codes, or (4) in the case of manufactured housing, the standards prescribed under Title VI of the Housing and Community Development Act of 1974.

The proposed regulation also contains the requirements under which, except for substantial rehabilitation, existing buildings shall be rehabiliated or repaired to meet appropriate levels of quality or performance comparable to those levels prescribed by the Secretary of HUD, but the rehabilitation or repair work, or the remainder of the property shall not be required to comply with new construction standards.

The thermal performance standards prescribed in Exhibit D of Subpart A of Part 1924 are consistent with the

standards pursuant to section 526 of the National Housing Act and, therefore, are not revised in this action.

2. Discussion

(i) The proposed minimum development standards prescribed by the Secretary of Agriculture are the standards contained in: (1) State adopted building codes which are based on or comparable to one of the voluntary model building codes, or (2) the voluntary model building code identified by FmHA as being the most prevalent and appropriate in the state. The minimum standards prescribed by the Secretary of HUD are the standards contained in (1) 24 CFR Part 200, Subpart S, §§ 200.926 and 200.926 a-e for One and Two-Family Dwellings, or (2) 24 CFR Part 200, Subpart S §§ 200.929(b)(2), 200.925a, 200.925b, 200.925c and Appendix A to Part 200 for Multi-Family Housing. The voluntary national model building codes are: (1) One and Two-Family Dwelling Code published by the Council of American Building Officials (CABO), (2) Basic Building Code published by the Building Officials and Code Administrators (BOCA), (3) Standard Building Code published by the Southern Standard Building Code Congress International (SBCCI), and (4) Uniform Buildings Code published by the International Conference of Building Officials (ICBO). The minimum standards for mobile/manufactured housing are contained in the HUD Manufactured Home Construction and Safety Standards (MHCSS) and the requirements contained in the proposed Exhibit J of Subpart A of Part 1924. Rural rental housing and related facilites being substantially rehabilitated are required to comply with the standards for new construction. Rural rental housing and related facilities being moderately rehabilitated are required to comply with applicable and existing laws, ordinances, codes, and regulations related to health, safety and welfare, and should conform to FmHA quality and performance criteria for moderate rehabilitation.

(ii) Section 1924.5(d)(1) describes the use of FmHA Manual of Acceptable Practices (MAP) Vol. 4930.1. FmHA believes the information contained in the manual is beneficial in clarifying construction techniques and practices.

(iii) Section 1924.5(d)(1)(i) describes the procedure and criteria used for selecting a set of standards for a proposed project. The project applicant or recipient of a Rural Housing conditional commitment, as defined in Subpart A of 1944, has the authority to make the selection. The regulation offers alternative minimum standards for development work as mandated by the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, which are identified as "development standards." The inclusion of the various standards and codes in the term "development standards" simplifies references made in other regulations.

(iv) Section 1924.5(d)(1)(i)(E)(1) describes the criteria for determining the standards to be prescribed by the Secretary of Agriculture. The minimum standards are requirements contained in a building code that is adopted by a state and is: (1) Directly based on one of the voluntary national model building codes, or (2) determined by the Administrator to be equivalent to one of the voluntary national model building codes, or, in areas where such a code does not exist, are the requirements contained in the voluntary national model building code that is determined by the FmHA State Director to be the most prevalent and appropriate for the area. FmHA believes this criteria eliminates the confusion and difficulties often encountered when a facility is required to comply with more than one set of minimum standards, and utilizes standards that are most appropriate for the area's building conditions and likely to be most familiar to the local designers and builders.

(v) Section 1924.5(d)(1)(ii) refers to Guide 2, "FmHA Design Guide," for planning development work. The information contained in the guide is beneficial in providing good planning ideas for liveability and marketability and other elements to consider when determining property value. This guide will be available in any FmHA office.

(vi) Section 1924.5(d)(1)(iii) requirs the construction of new residential properties for permanent occupancy to comply with § 1924.5(d)(1) and the development standards, as discussed in sections (iii) and (iv) above.

(vii) Section 1924.5(d)(1)(iv) redefines the minimum standards for the rehabilitation of existing buildings. Substantial rehabilitation is required to comply with § 1924.5(d)(1) and the development standards, as discussed in sections (iii) and (iv) above. Moderate rehabilitation is required to comply with § 1924.5(d)(1) and should meet the criteria contained in the referenced Guide 3, "Quality and Performance Criteria for Moderate Rehabilitation." The information contained in the guide is beneficial for planning and performing moderate rehabilitation work and will be available in any FmHA office. Exhibit K of Subpart A of Part 1924 is added to define the various classifications of rehabilitation work.

(viii) Section 1924.5(d)(1)(v) redefines the minimum standards, as discussed in sections (iii) and (iv) above, for housing repairs.

(ix) Section 1924.5(d)(1)(vi) redefines the minimum standards, as discussed in sections (iii) and (iv) above, for farm labor housing.

(x) Section 1924.5(d)(vii) relocates criteria for the design and location of farm buildings.

(xi) Section 1924.5(d)(2) requires the identification of the applicable development standards to be on the drawings and specifications for proposed development work that must comply with those standards prescribed in § 1924.5(d)(1). This requirement is necessary to eliminate confusion on which minimum standards to reference and enforce during the project review process.

(xii) Section 1924.5(f)(1)(iii) requires that the drawings and specifications for development work must comply with applicable development standards, as prescribed in § 1924.5(d)(1), be certified by a qualified individual as to their conformity to the standards identified on the documents as prescribed in § 1924.5(d)(2). The regulation includes general criteria necessary for an individual to be qualified to certify documents, and also identifies the minimum amount of information that must be included in the certification statement. This certification requirement is necessary for the Agency to be assured that the proposed development work will conform to the applicable development standards.

(xiii) The implementation of other development standards to replace FmHA's present Minimum Property Standards (MPS) will necessitate amendments to several Parts of Chapter XVIII, Title 7, Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations since development standards are relied on in several FmHA decision making processes. All FmHA regulations that refer to MPS will be amended to reference the applicable development standard. These changes will be addressed in the final rule publication, but are not included in this proposed rule since these changes are only administrative in nature.

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3. Alternatives and Expected Effects

(i) Minimum Standards Prescribed by the Secretary of Agriculture:

Alternative No. 1: Retain the Minimum Property Standards (MPS), Volumes 4900.1 and 4910.1 that were in effect on September 1, 1981.

The retention of the standards, which are most familiar to the Agency, would require a major effort for continued maintenance of the many items contained within the standards. The standards, by name and format, are very similar to those prescribed by the Secretary of HUD and, therefore, likely to cause confusion to the public. Portions of these standards are inconsistent with the policy to deregulate standards on liveability and marketability.

Alternative No. 2: Adopt the Minimum Property Standards (MPS) prescribed by the Secretary of HUD.

Adoption of these standards would require Agency field staff to become highly familiar with multiple standards that would include the local building codes which are approved by HUD and used in conjunction with HUD MPS. Also, the Agency would be dependent upon HUD for maintenance of the standards. Since most local building codes are based upon a voluntary national model building code, it is unlikely that an MPS/local building code combination would be used in lieu of a voluntary national model building code.

Alternative No. 3: Adopt one of the voluntary national model building codes for nationwide use.

The adoption of one building code would minimize the impact on the Agency's field staff. The Agency would depend on the publisher for maintenance of the code. None of the codes, however, have been determined to satisfactorily address the building conditions in every area of the Nation. Also, conflicts in the standards between this code and locally adopted codes could exist, or develop in the future.

Alternative No. 4: Adopt all local building codes.

The adoption of all local building codes would minimize the impact on developers and builders. However, it would require agency field staff to become highly familiar with the many local codes and would be extremely difficult to manage at the state and national level. The adequacy of the local building codes would not be known without a major effort to evaluate and compare each code with national standards and policies.

Alternative No. 5: Publish a new set of minimum property standards.

The publication of a new set of minimum property standards would require a major agency effort. The time and effort to familiarize the public and field staff with the standards and to maintain their application to current practice would be significant. Also a large percentage of any new standards developed would be duplication of standards currently in existence.

Alternative No. 6: Adopt state building codes that are based upon or comparable to one of the voluntary national model building codes.

The adoption of these codes, which are already being enforced by most jurisdictions, would minimize the impact on developers and builders. Also, field staff would need to become familiar with only one new code in each state.

Alternative No. 6 was selected for prescribing a set of Minimum Standards for adequate housing.

(ii) Minimum Standards for Moderate Rehabilitation

Alternative No. 1: Adopt the standards prescribed by the Secretary of HUD.

The adoption of HUD standards, which are basically in the form of guidelines for local jurisdictions to develop their own standards, would require Agency field staff to become highly familiar with the contents and implementation of those standards in addition to the local codes in existence. The effort necessary for local jurisdictions to develop prescriptive standards based upon these guidelines would be very time consuming and difficult for FmHA to monitor.

Alternative No. 2: Publish a new set of minimum prescriptive standards.

The publication of minimum standards for moderate rehabilitation would likely be a manor agency effort due primarily to the extreme difficulty in addressing the many conditions that could exist in such work. Complete and accurate prescriptive standards would likely be quite extensive. Conflicts are also likely to occur with existing local codes.

Alternative No. 3: Adopt the appropriate sections of State Building Codes that are based upon or equivalent to the Voluntary National Model Building Codes.

The adoption of the code sections which pertain to moderate rehabilitation would be infeasible because of the incompatibility of terminology with FmHA loan making procedures. Also, the information necessary to determine rehabilitation classification, as defined in the model codes, would not be available at the time of loan application processing.

Alternative No. 4: Publish a new set of optional performance standards.

The publication of a new set of optional performance standards for moderate rehabilitation would require minimal agency effort. The optional performance standards would be a guide for use by FmHA in evaluating rehabilitation proposals and used by design consultants in planning development work. The optional criteria would be less stringent than those for new construction. The standards would address performance rather than finite specifications to accommodate flexibility and avoid oversights.

Alternative No. 4 was selected for prescribing a set of Minimum Standards for moderate rehabilitation of residential properties.

(iii) Identification of Applicable Minimum Standards

Alternative No. 1: Maintain existing regulations which do not include requirements for identifying the minimum standards to be applied for a specific proposal or project.

Specific proposals and projects will be required to comply with any of several different sets of minimum standards. If the applicable standards are not identified, the Agency would not know which standards to reference and enforce during the review process. This would likely create delays and the potential for imposing inconsistent and inappropriate design requirements.

Alternative No. 2: Amend regulations to require the identification of the applicable minimum standards on the drawings and specifications for a specific proposal or project.

Compliance with this requirement would result in a clearer understanding for all parties involved throughout the application processing of which minimum standards are applicable. Also, the drawings and specifications could be prepared and reviewed in a more orderly and consistent process.

Alternative No. 2 was selected for the identification of applicable minimum standards.

(iv) Certification of Drawings and Specifications

Alternative No. 1: Maintain existing regulations which do not include requirements for certifying drawings and specifications for their compliance with applicable minimum standards.

Specific proposals and projects will be required to comply with any of several different sets of minimum standards. Agency field staff would need to become highly proficient in the various alternative standards to make comprehensive and accurate reviews of the drawings and specifications. Extensive training would be necessary to prepare the staff for the increased complexity of this task.

Alternative No. 2: Amend regulations to require the certification of drawings and specifications for compliance with applicable minimum standards.

Compliance with this requirement would result in a decreased burden on agency field staff to be highly proficient in the various alternative standards. The burden would be transferred to a qualified individual who is already highly skilled and knowledgeable of the standards being applied. The Agency's acceptance of the drawings and specifications would be based primarily on this certification.

Alternative No. 2 was selected for the certification of drawings and specifications.

4. Insured 10-years Warranty Revisions

Present regulations authorize FmHA field personnel to accept interim construction inspections accepted by a warranty company approved by the National Office. Shortly after that final rule was published, several warranty companies requested approval, resulting in our awarness of additional variations in the types of plans offered and in the types of companies issuing them. That action invalidated the conditions set forth by the existing regulation and, therefore, new conditions were needed to be able to accept those warranty plans.

The additional information needed was provided to the field by Administrative Notice, to be incorporated into the instruction in the next revision. In addition, it was detemined that State Directors should have the authority to review a warranty company's qualifications and determine its acceptability.

To accomplish these objectives FmHA proposes revisions to the present regulation which include: Adding Exhibit L, "Insured 10-year Home Warranty Plan Requirements," to Subpart A of Part 1924, to facilitate acceptability determinations of insured 10-year home warranty plans at the State Office level.

Exhibit L consolidates warranty plan information currently found in several different places in the existing regulation and incorporates information previously provided to the field by Administrative Notice. It provides the reasons a formal determination of acceptability is needed, the different types of warranty companies, warranty plan features required for a determination of acceptability and the procedures for requesting a determination.

It also outlines the review and acceptance authority for state plans and insured warranty companies by FmHA State Directors and for risk retention groups, because of their different structure and multi-state authority, by the National Office. Information is also provided clarifying field responsibilities in monitoring warranty performance.

The reason for this action is to improve procedure and to clarify guidelines for the acceptability determination of warranty companies. Also, as a result of this action a cost effective savings is anticipated in the more timely review of warranty plans at the State level.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1924

Agriculture, Claims, Construction complaints, Construction defects, Construction management, Construction and repair, Energy conservation, Housing, Loan Programs-Agriculture, Loan Programs-Housing and Community Development, Low- and Moderate-Income Housing.

7 CFR Part 1944

Home improvement loan program-Housing and Community development, Low- and moderate-income housing-Rental, Mortgages, Rural housing, Subsidies.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for Part 1901 is added to read as follows and all other authority citations throughout Part 1901 are removed.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart E Exhibit C is revised to read as follows:

Exhibit C—FmHA Financed Contract

To: Area Director, Office of Federal Contract Compliance Program, U.S. Department of Labor (DOL) (Insert address for your DOL area, from Exhibit E, FmHA Instruction 1901–E)

We submit the following information relative to a construction contract in excess of $10,000:

1. Contractor's name: ______
Address: ______
Telephone No.: ______
Employer's identification No.: ______

2. Contract for: $______
Starting Date: ______
Completion Date: ______
Contract No.: ______
City: ______
DOL Region: ______

3. The authority citation for Part 1924 is revised to read as follows and all authorities are removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

4. Subpart A is revised to read as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

Sec.
1924.1 Purpose.
1924.2 [Reserved]
1924.3 Authorities and responsibilities.
1924.4 Definitions.
1924.5 Planning development work.
1924.6 Performing development work.
1924.7 [Reserved]
1924.8 Development work for modular/panelized housing units.
1924.9 Inspection of development work.
1924.10 Making changes in the development plan.
1924.11 District Director's review of incomplete development.
1924.12 [Reserved]
1924.13 Supplemental requirements for more complex construction.
1924.14—1924.50 [Reserved]
Exhibit A—Breakdown of dwelling costs for estimating partial payments.
Exhibit B—Requirements for modular/panelized housing units.
Exhibit C—List of required drawings and specifications.
Exhibit D—Thermal performance construction standards.
Exhibit E—Preconstruction conference.
Exhibit F—Payment bond.
Exhibit G—Performance bond.
Exhibit H—Prohibition of lead-based paints.
Exhibit I—Guidelines for seasonal farm labor housing.
Exhibit J—[Reserved]
Exhibit K—Classifications for Multi-family Residential Rehabilitation work.
Exhibit L—Insured 10-Year Home Warranty Plan Requirements.

Subpart A—Planning and Performing Construction and Other Development

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration (FmHA), policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), single unit Labor Housing (LH), Recreation (RL), and Emergency (EM) loans for individuals. It also

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provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multiunit (LH) loans and grants, and Rural Housing Site (RHS) loans.

§ 1924.2 [Reserved]

§ 1924.3 Authorities and responsibilities.

The County Supervisor and District Director are authorized to redelegate, in writing, any authority delegated to them in this subpart to the Assistant County Supervisor and Assistant District Director, respectively, when determined to be qualified. FmHA Construction Inspectors, District Loan Assistants, and County Office Assistants are authorized to perform duties under this subpart as authorized in their job descriptions.

§ 1924.4 Definitions.

(a) *Construction.* Such work as erecting, repairing, remodeling, relocating, adding to or salvaging any building or structure, and the installation or repair of, or addition to, heating and electrical systems, water systems, sewage disposal systems, walks, steps, driveways, and landscaping.

(b) *Contract documents.* The borrower-contractor agreement, the conditions of the contract (general, supplementary, and other), the drawings, specifications, warranty information, all addenda issued before executing the contract, all approved modifications thereto, and any other items stipulated as being included in the contract documents.

(c) *Contractor.* The individual or organization with whom the borrower enters into a contract for construction or land development, or both.

(d) *County Supervisor and District Director.* In Alaska, for the purpose of this subpart, "County Supervisor" and "District Director" also mean "Assistant Area Loan Specialist" and "Area Loan Specialist," respectively. The terms also include other qualified staff who may be delegated responsibilities under this subpart in accordance with the provisions of Subpart F of Part 2006 (available in any FmHA office).

(e) *Date of commencement of work.* The date established in a "Notice to Proceed" or, in the absence of such notice, the date of the contract or other date as may be established in it or by the parties to it.

(f) *Date of substantial completion.* The date certified by the Project Architect/Engineer or County Supervisor when it is possible, in accordance with any contract documents and applicable State or local codes and ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and/or use of the buildings or other development.

(g) *Development.* Construction and land development.

(h) *Development standards.* Any of the following codes and standards:

(1) A standard adopted by FmHA for each state in accordance with §1924.5(d)(1)(i)(E) of this subpart.

(2) *Voluntary national model building codes (model codes).* Nationally recognized codes which address the health and safety aspects of buildings and related structures. They include:

(i) CABO One and Two family Dwelling Code, published by the Council of American Building Officials; supplemented by the Electrical Code for One and Two Family Dwellings, NFPA 70A, published by the National Fire Protection Association.

(ii) BOCA Basic/National Building Code, published by the Building Officials and Code Administrators International, Inc.

(iii) Standard Building Code, supplemented by the Standard Mechanical Code and Standard Plumbing Code, all published by the Southern Building Code Congress International, Inc., and supplemented by the National Electrical Code published by the National Fire Protection Association.

(iv) Uniform Building Code, supplemented by the Uniform Mechanical Code and Uniform Plumbing Code, all published by the International Conference of Building Officials; and supplemented by the National Electrical Code published by the National Fire Protection Association.

(3) *Minimum Property Standards (MPS).* The Department of Housing and Urban Development (HUD) Minimum Property Standards (MPS). They include:

(i) MPS for One and Two Family Dwellings, HUD Handbook 4900.1 [24 CFR Part 200, Subpart S, § 200.929(b)(1)]

(ii) MPS for Multi-family Housing, HUD Handbook 4910.1 [24 CFR Part 200, Subpart S, § 200.929(b)(2)].

(i) *Identity of interest.* Identity of interest will be construed as existing between the applicant (the party of the first part) and general contractors, architects, engineers, attorneys, subcontractors, material suppliers, or equipment lessons (parties of the second part) under any of the following conditions:

(1) When there is any financial interest of the party of the first part in the party of the second part. The providing of normal professional services by architects, engineers, attorneys or accountants with a client-professional relationship shall not constitute an identity of interest.

(2) When one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part.

(3) When any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part.

(4) When the party of the second part advances any funds to the party of the first part.

(5) When the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract.

(6) When the party of the second part takes stock or any interst in the party of the first part as part of the consideration to be paid them.

(7) When there exist or come into being any side deals, agreements, contracts or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents except as approved by FmHA.

(j) *Land development.* Includes items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, pollution abatement and control measures, and other items of land improvement which conserve or permanently enhance productivity. Also, land development for structures includes the applicable items above, and items such as rough and finish grading, retaining walls, water supply and waste disposal facilities, streets, curbs and gutters, sidewalks, entrancewalks, driveways, parking areas, landscaping and other related structures.

(k) *Mechanic's and materialmen's liens.* A lien on real property in favor of persons supplying labor and/or materials for the construction for the value of labor and/or materials supplied by them. In some jurisdictions, a mechanic's lien also exists for the value of professional services.

(l) *Mobile/manufactured housing.* Housing, constructed of one or more factory-built sections, which includes the plumbing, heating and electrical systems contained therein, which is built to comply with the Federal Mobile Home Construction and Safety Standards, and which is designed to be used with or without a permanent foundation.

(m) *Modular/panelized housing.* Housing, constructed of one or more factory-built sections, which, when completed, meets or exceeds the requirements of one or more of the recognized development standards for site-built housing, and which is designed to be permanently connected to a site-built foundation.

(n) *Project representative.* The architect's or owner's representative at the construction site who assists in the administration of the construction contract. When required by FmHA, a full-time project representative shall be employed.

(o) *Technical services.* Applicants are responsible for obtaining the services necessary to plan projects including analysis of project design requirements, creation and development of the project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contract.

(1) Architectural services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with State law to perform architectural services.

(2) Engineering services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with State law to perform engineering services.

(p) *Warranty.* A legally enforceable assurance provided by the builder (warrantor) to the owner and the FmHA indicating that the work done and materials supplied conform to those specified in the contract documents and applicable regulations. For the period of the warranty, the warrantor agrees to repair defective workmanship and repair or replace any defective materials at the expense of the warrantor.

§ 1924.5 Planning development work.

(a) *Extent of development.* For an FO loan, the plans for development will include the items necessary to put the farm in a livable and operable condition consistent with the planned farm and home operations. For other types of loans, the plans will include those items essential to achieve the objectives of the loan or grant as specified in the applicable regulation.

(b) *Funds for development work.* The total cash cost of all planned development will be shown on Form FmHA 1924–1, "Development Plan," except Form FmHA 1924–1 may be omitted when (1) all development is to be done by the contract method, (2) adequate cost estimates are included in the docket, and (3) the work, including all landscaping, repairs, and site development work, is completely described on the drawings, in the specifications, or in the contract documents. Sufficient funds to pay for the total cash cost of all planned development must be provided at or before loan closing. Funds to be provided may include loan proceeds, any cash to be funished by the borrower, proceeds from cost sharing programs such as Agricultural Stabilization and Conservation Service (ASCS) and Great Plains programs or proceeds from the sale of property in accordance with paragraph (g) of this section.

(c) *Scheduling of development work.* (1) All construction work included in the development plan for RH loans will be scheduled for completion as quickly as practicable and no later than 9 months from the date of loan closing, except for Mutual Self-Help housing where work may be scheduled for completion within a period of 15 months.

(2) Development for Farm Program loans will be scheduled for completion as quickly as practicable and no later than 15 months from the date of loan closing unless more time is needed to establish land development practices in the area.

(d) *Construction.* (1) All new buildings to be constructed and all alterations and repairs to buildings will be planned to conform with good construction practices. The FmHA Manual of Acceptable Practices (MAP) Vol. 4930.1 (available in any FmHA Office), provides suggestions and illustrative clarifications of design and construction methods which are generally satisfactory in most areas. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings, Thermal Performance Construction Standards contained in Exhibit D of this subpart and, when required, to certain other development standards described below.

(i) The development standard applicable to a proposal will be selected by the loan applicant or recipient of an RH Conditional Commitment in accordance with the following. The standard selected must:

(A) Relate to the type(s) of building proposed.

(B) Meet or exceed any applicable local or state laws, ordinances, codes and regulations.

(C) Include all referenced codes and standards.

(D) Exclude inapplicable administrative requirements.

(E) Be the current edition(s) of:

(*1*) The development standard adopted by FmHA for use in the state (identified in a State Supplement to this section) in which the development is proposed, in accordance with the following:

(*i*) The adopted development standard shall be the state code(s), if determined by the State Director to be based on one of the model codes defined in § 1924.4(h)(2) of this subpart, or

(*ii*) The adopted development standard shall be the state code(s), if determined by the Administrator to be acceptable, or

(*iii*) The adopted development standard in a state that does not have a code in compliance with paragraph (d)(1)(i)(E)(*1*) (*i*) or (*ii*) shall be the model code defined in § 1924.4(h)(2) that is determined by the State Director to be most prevalent and appropriate for the state, or

(*2*) One of the codes or standards defined in § 1924.4(h) (2) or (3) of this subpart.

(ii) Guide 2, "FmHA Design Guide" of this subpart (available in any FmHA office), includes guidelines for the evaluation of the design features which are not fully addressed in the development standards.

(iii) In new housing, all design, materials and construction will meet or exceed the applicable development standard as provided in paragraph (d)(1)(i) of this section.

(iv) For multifamily residential rehabilitation, as defined in Exhibit K of this Subpart, all substantial rehabilitation work of existing buildings will meet or exceed the applicable development standard. All moderate rehabilitation work should comply with Guide 3, "Quality and Performance Criteria for Moderate Rehabilitation," of this subpart (available in any FmHA office).

(v) The design and construction of housing repairs made with FmHA loan or grant funds will, as near as possible, comply with the applicable development standard.

(vi) Farm labor housing design and construction will comply with the following:

(A) Family projects, where the length of occupancy will be:

(*1*) Year-round, will meet or exceed the applicable development standard.

(*2*) Less than 12 months, but more than 6 months, will be in substantial conformance with the applicable development standard and constructed to facilitate conversion to year-round occupancy standards.

(*3*) Six months or less, may be less than the applicable development

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standard but should be constructed in accordance with Exhibit I of this subpart.

(B) Dormitory and other nonfamily type projects, where the length of occupancy will be:

(*1*) More than 6 months, will be in substantial conformance with the applicable development standard and will at least meet or exceed the requirements of the Department of Labor, Bureau of Employment Security (29 CFR 1910.140).

(*2*) Six months or less, will comply with § 1924.5(d)(vi)(A)(3).

(vii) Farm service buildings should be designed and constructed for adaptation to the local area. In designing and locating farm service buildings, consideration will be given to practices recommended by Agriculture Colleges, the Extension Service (ES), Soil Conservation Service (SCS), and other reliable sources.

(2) Adequate drawings, specifications, and estimates will be provided to fully describe the work. Technical data, tests, or engineering evaluations may be required to support the design of the development. The "List of Required Drawings and Specifications," Exhibit C of this subpart, describes the drawings and specifications that are required to be included in the application for building construction, and § 1804.74 of Subpart D of Part 1804 of this chapter (Exhibit A of FmHA Instruction 424.5) describes the drawings that should be included for development of building sites. The specific development standard being used, [if required under paragraph (d)(1) of this section] will be identified on all drawings and specifications.

(3) Whenever possible, the borrower will pay with personal funds any charges made for technical services in connection with the borrower's proposed development. However, most of technical services may be included in the loan as prescribed in the program loan making regulations.

(e) *Land development.* (1) In planning land development, consideration will be given to the practices, including energy conservation measures, recommended by Agricultural Colleges, ES, SCS, or other reliable sources. All land and water development will conform to applicable laws, ordinances, zoning and other applicable regulations including those related to soil and water conservation and pollution abatement. The County Supervisor or District Director also will encourage the applicant to use any cost-sharing and planning assistance that may be available through Agricultural Conservation Programs.

(2) Site and subdivision planning and development should also be guided by the requirements of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5).

(3) Adequate plans and descriptive material will be provided to fully describe the work.

(i) Plans for land leveling, irrigation, or drainage should include a map of the area to be improved showing the existing conditions with respect to soil, topography, elevations, depth of topsoil, kind of subsoil, and natural drainage, together with the proposed land development.

(ii) When land development consists of, or includes, the conservation and use of water for irrigation or domestic purposes, the information submitted to the County Supervisor will include a statement as to the source of the water supply, right to the use of the water, and the adequacy and quality of the supply.

(f) *Responsibilities for planning development.* Planning construction and land development and obtaining technical services in connection with drawings, specifications, and cost estimates are the sole responsibility of the applicant, with such assistance from the County Supervisor or District Director (whichever is the appropriate loan processing and servicing officer for the type of loan involved), as may be necessary to be sure that the development is properly planned in order to protect FmHA's security.

(1) *Responsibility of the applicant.* (i) The applicant will arrange for obtaining any required technical services from qualified technicians, tradespeople, and recognized plan services, and the applicant will furnish the FmHA sufficient information to describe fully the planned development and the manner in which it will be accomplished.

(ii) When items of construction or land development require drawings and specifications, they will be sufficiently complete to avoid any misunderstanding as to extent, kind, and quality of work to be performed. The applicant will provide the FmHA with one copy of the drawings and specifications. Approval will be indicated by the applicant and acceptance for the purposes of the loan indicated by the County Supervisor or District Director on all sheets of the drawings and at the end of the specifications, and both instruments will be a part of the loan docket. After the loan is closed, the borrower will retain a conformed copy of the approved drawings and specifications, and provide another conformed copy to the contractor. After the work is completed and materials and labor claims have been paid, the County or District Office approved copy may be returned to the borrower. Items not requiring drawings and specifications may be described in narrative form.

(iii) FmHA will accept drawings and specifications only after the documents have been certified in writing as being in conformance with the applicable development standard, if required under paragraph (d)(1) of this section, by a licensed architect, professional engineer authorized building official or other competent code authority. A building permit is not an acceptable certification document.

The following format is suggested for this certification and contains the minimum repesentation acceptable to FmHA:

> Being (*a licensed architect, professional engineer, etc.*) in the State of ——, we are qualified to evaluate the technical sufficiency of construction documents for residential properties."
>
> We have examined the drawings and specifications dated ——, prepared by (*name of firm or individual,* and related to the development of the (*project name and location*).
>
> Based upon this examination, to the best of our knowledge and belief, these documents conform to (*name of development standard*), designated as the development standard for this project.
>
> We further certify that we have no financial interest in or with the borrower or contractor other than in the practice of our profession.

FmHA reserves the right to determine whether or not the certified statement is satisfactory.

(2) *Responsibility of the County Supervisor or District Director.* In accordance with program regulations for loans and grants they are required to process, the County Supervisor or District Director for the sole benefit of FmHA will:

(i) Visit each farm or site on which the development is proposed. For an FO loan, the County Supervisor and the applicant will determine the items of development necessary to put the farm in a livable and operable condition at the outset. Prepare Form FmHA 1924–1, when applicable in accordance with the Forms Manual Insert (FMI) for the form, after a complete understanding has been reached between the applicant and the County Supervisor regarding the development to be accomplished, including the dates each item of

development will be started and completed.

(ii) Notify the loan or grant applicant in writing immediately if, after reviewing the preliminary proposal and inspecting the site, the proposal is not acceptable. If the proposal is acceptable, an understanding will be reached with the applicant concerning the starting date for each item of development.

(iii) Discuss with the applicant the FmHA requirements with respect to good construction and land development practices.

(iv) Advise the applicant regarding drawings, specifications, cost estimates, and other related material which the applicant must submit to the FmHA for review before the loan can be developed. Advise the applicant of the information necessity in the drawings, how the cost estimates should be prepared, the number of sets of drawings, specifications, and cost estimates required, and the necessary for furnishing such information promptly. Advise the applicant that FmHA will provide appropriate specification forms, Form FmHA 1924–2, "Description of Materials." And Form FmHA 1924–3, "Service Building Specifications." The applicant may, however, use other properly prepared specifications.

(v) Advise the applicant regarding publications, plans, planning aids, engineering data, and other technical advice and assistance available through local, State, and Federal agencies, and private individuals and organizations.

(vi) Review the information furnished by the applicant to determine the completeness of the plans, adequacy of the cost estimates, suitability and soundness of the proposed development.

(vii) When appropriate, offer suggestions as to how drawings and specifications might be altered to improve the facility and better serve the needs of the applicant. The County Supervisor or District Director may assist the applicant in making revisions to the drawings. When appropriate, the contract documents will be forwarded to the State architect/engineer for review. For revisions that require technical determinations which FmHA is not able to make, the applicant will be requested to obtain additional technical assistance.

(viii) Provide the applicant with a written list of changes required in the contract documents. The applicant will submit two complete revised (as requested) sets of contract documents, for approval. On one set, the County Supervisor or District Director will indicate acceptance on each sheet of the drawings, and on the cover of the specifications and all other contract documents. At least the date and the initials of the approval official must be shown. On projects where a consulting architect or engineer has been retained, this acceptance will be indicated only after the State Director has given written authorization. The marked set of documents shall be available at the job site at all times for review by FmHA. The second set will become part of the loan docket.

(ix) Review the proposed method of doing the work and determine whether the work can be performed satisfactorily under the proposed method.

(x) Instruct the applicant not to incur any debts prior to loan closing for materials or labor or make any expenditures for such purposes with the expectation of being reimbursed from loan funds.

(xi) Instruct the applicant not to commence any construction nor cause any supplies or materials to be delivered to the construction site prior to loan closing.

(xii) Under certain conditions prescribed in Exhibit H of this subpart, provide the applicant with a copy of the leaflet, "Lead-Based Paint Hazards, Symptoms, Treatment, and Techniques for Eliminating Hazards," which is available in FmHA County Offices, and the warning sheet, "Caution Note on Lead-Based Paint Hazard," which is Attachment 1 of Exhibit H.

(g) *Surplus structures and use or sale of timber, sand, or stone.* In planning the development, the applicant and the County Supervisor or District Director should, when practicable, plan to use salvage from old buildings, timber, sand, gravel, or stone from the property. The borrower may sell surplus buildings, timber, sand, gravel, or stone that is not to be used in performing planned development and use net proceeds to pay costs of performing planned development work. In such a case:

(1) An agreement will be recorded in the narrative of Form FmHA 1924–1 which as a minimum will:

(i) Identify the property to be sold, the estimated net proceeds to be received, and the approximate date by which the property will be sold.

(ii) Provide that the borrower will deposit the net proceeds in the supervised bank account and apply any funds remaining after the development is complete as an extra payment on the loan.

(2) The agreement will be considered by the Government as modifying the mortgage contract to the extent of authorizing and requiring the Government to release the identified property subject to the conditions stated in the agreement without payment or other consideration at the time of release, regardless of whether or not the mortgage specifically refers to Form 1924–1 or the agreement to release.

(3) If the FmHA loan will be secured by a junior lien, all prior lienholders must give written consent to the proposed sale and the use of the net proceeds before the loan is approved.

(4) Releases requested by the borrower or the buyer will processed in accordance with applicable release procedures in Subpart A or Subpart C of Part 1965 of this chapter, as appropriate.

(h) *Review prior to performing development work.* For the sole benefit of FmHA, prior to beginning development work, the County Supervisor or District Director will review planned development with the borrower. Adequacy of the drawings and specifications as well as the estimates will be checked to make sure the work can be completed within the time limits previously agreed upon and with available funds. Items and quantities of any materials the borrower has agreed to furnish will be checked and dates by which each item of development should be started will be checked in order that the work may be completed on schedule. If any changes in the plans and specifications are proposed, they should be within the general scope of the work as originally planned. Changes must be approved and processed in accordance with § 1924.10 of this subpart. The appropriate procedure for performing development should be explained to the borrower. Copies of FmHA forms that will be used during the period of construction should be given to the borrower. The borrower should be advised as of the purpose of each form and at what period during construction each form will be used.

(i) *Time of starting development work.* Development work will be started as soon as feasible after the loan is closed. Except in cases in which advance commitments are made in accordance with Subpart A of Part 1944 of this chapter or according § 1924.13(e)(1)(vi)(A) or § 1924.13(e)(2)(ix) (A) of this subpart, no commitments with respect to performing planned development will be made by the County Supervisor, District Director, or the applicant before the loan is closed. The applicant will be instructed that before the loan is closed, debts should not be incurred for labor or materials, or expenditures made for such purposes, with the expectation of being reimbursed from loan funds except as provided in Subpart A of Part 1943 of this chapter and Subparts A and

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E of Part 1944 of this chapter. However, with the prior approval of the National Office, a State Supplement may be issued authorizing County Supervisors to permit applicants to commence welldrilling operations prior to loan closing, provided (1) it is necessary in the area to provide the water supply prior to loan closing, (2) the applicant agrees in writing to pay with personal funds all costs incurred if a satisfactory water supply is not obtained, (3) any contractors and suppliers understand and agree that loan funds may not be available to make the payment, (4) such action will not result under applicable State law in the giving of priority to mechanics and materialmen's liens over the later recorded FmHA mortgage, and (5) FmHA does not guarantee that the cost will be paid.

§ 1924.6 Performing development work.

All construction work will performed by one, or a combination, of the following methods: Contract, borrower, mutual self-help, or owner-builder. All development work must be performed by a person, firm, or organization qualified to provide the service.

(a) *Contract method.* This method of development will be used for all major construction except in cases where it is clearly not possible to obtain a contract at a reasonable or competitive cost. Work under this method is performed in accordance with a written contract. (Conditional commitment construction is not covered under this paragraph).

(1) *Forms used.* Form FmHA 1924–6, "Construction Contract," should be used. However, other contract documents acceptable to the loan approval official and containing the requirements of Subpart E of Part 1901 of this chapter, may be used provided they are customarily used in the area and protect the interest of the borrower and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. If needed, the Office of the General Counsel (OGC) will be consulted. The United States (including FmHA) will not become a party to a construction contract or incur any liability under it. Form FmHA 1924–19, "Builder's Warranty," or an insured 10-year home warranty as described in Exhibit L of this subpart, and normal trade warranties on items of equipment will issued to the borrower by the contractor at the completion of:

(i) New Building construction,

(ii) Dwelling rehabilitation by the contract method,

(iii) All cases of newly completed and previously unoccupied dwellings, or

(iv) Construction under conditional commitments issued to builders and sellers.

(2) *Contract provisions.* Contracts will have a listing of attachments and the provisions of the contract will include:

(i) The contract sum.

(ii) The dates for starting and completing the work.

(iii) The amount of liquidated damages to be charged.

(iv) The amount, method, and frequency of payment.

(v) Whether or not surety bonds will be provided.

(vi) The requirement that changes or additions must have prior written approval of FmHA.

(3) *Surety requirements.* (i) Unless an exception is granted in accordance with paragraph (a)(3)(iii) of this section or when interim financing will be used, surety that guarantees both payment and performance in the amount of the contract will be furnished when one or more of the following conditions exist:

(A) The contract exceeds $100,000.

(B) The loan approval official determines that a surety bond appears advisable to protect the borrower against default of the contractor.

(C) The applicant requests a surety bond.

(D) The contract provides for partial payments in excess of the amount of 60 percent of the value of the work in place.

(E) The contract provides for partial payments for materials suitably stored on the site.

(ii) If surety bonds are required the construction contract must indicate that the contractor will furnish properly executed surety bonds prior to the start of any work. Exhibits F and G of this subpart as revised by OGC if necessary to comply with local or State Statutory requirements will be used as the forms of payment bond and performance bond to be provided. Unless noncorporate surety is provided, the surety bonds may only be obtained from a corporate bonding company listed on the current Department of the Treasury Circular 570 (published annually in the Federal Register), as holding a certificate of authority as an acceptable surety on Federal bonds and as legally doing business in the State where the land is located. Noncorporate sureties are not recommended and the State Director will be responsible for determining the acceptability of the individual or individuals proposed as sureties on the bonds. The State Director must determine that an individual or individuals proposed as sureties must have cash or other liquid assets easily convertible to cash in an amount at least equal to 25 percent more than the contract amount in order to be acceptable. The individual(s) will pledge such liquid assets in an amount equal to the contract amount. Fees charged for noncorporate sureties may not exceed fees charged by corporate sureties on bonds of equal amount, and in no case may surety be provided by the applicant or any person or organization with an identity of interest in the applicant's operation. The United States (including FmHA) will incur no liability related in any way to a performance or payment bond provided in connection with a construction contract. FmHA will be named as a co-obligee in the performance and payment bonds unless prohibited by State law.

(iii) When an experienced and reliable contractor cannot obtain payment and performance bonds meeting the surety requirements of paragraph (a)(3)(ii) of this section, the State Director may entertain a request from the applicant for an exception to the surety requirements. The applicant's request must specifically state why the proposed contractor is unable to obtain payment and performance bonds meeting the surety requirements, and why it is financially advantageous for the applicant to award the contract to the proposed contractor without the required bonds. If the applicant's request is reasonable and justified, and if the proposed contractor is reliable and experienced in the construction of projects of similar size, design, scope, and complexity, the State Director may grant an exception to the the surety requirements for loans or grants within the State Director's approval authority and accept one or a combination of the following:

(A) An unconditional and irrevocable letter of credit issued by a lending institution which has been reviewed and approved by OGC. In such cases, the construction contract must indicate that the contractor will furnish a properly executed letter of credit from a lending institution accepable to FmHA prior to the start of any work. The letter of credit must remain in effect until the date of final acceptance of work by the owner and FmHA. In addition, the letter of credit must stipulate that the lending institution, upon written notification by FmHA of the contractor's failure to perform under the terms of the contract, will advance funds up to the amount of the contract (including all FmHA approved contract change orders) to satisfy all prior debts incurred by the contractor in performing the contract

and all funds necessary to complete the work. *Payments may be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.*

(B) If a letter of credit satisfying the conditions of paragraph (a)(3)(iii)(A) cannot be obtained, the State Director may accept a deposit in the amount of the contract, into an interest or non-interest bearing supervised bank account. In such cases the construction contract must indicate that the contractor will furnish the required deposit prior to the start of any work and that the funds shall remain on deposit until final acceptance of work by the owner and FmHA. Payments may be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.

(C) When the provisions of paragraph (a)(3)(iii) (A) or (B) of this section can be met except that a surety bond, a letter of credit, and/or deposits are not obtainable in full amount of the contract, the State Director may accept an amount less then the full amount of the contract provided all of the following conditions are met:

(*1*) The contractor provides a surety bond, a letter of credit, or deposits in the greatest amount possible, and provides documentation indicating the reasons why amounts exceeding the proposed amount cannot be provided.

(*2*) The applicant agrees to the amount of the surety bond, letter of credit, or deposits proposed, and the State Director determines that the applicant has the financial capability to withstand any financial loss due to default of the contractor.

(*3*) In the opinion of the State Director, the proposed amount and the method of payment will provide adequate protection for the borrower and the Government against default of the contractor.

(*4*) The contract provides for partial payments not to exceed 90 percent of the value of the work in place for that portion of the total contract which is guaranteed by an acceptable surety bond, letter of credit, or deposits, and partial payments not to exceed 60 percent of the value of the work in place for that portion of the total contract which is not guaranteed by surety, letter of credit, or deposits.

Example:

Contractor has a surety bond which guarantees payment and performance in an amount of $150,000 which represents 75 percent of the total contract amount of $200,000. The contractor's first request for payment appears thus:

• value of work in place is $10,000 • payment for work guaranteed by surety=75 percent x $10,000 x 90 percent=	$6,750
• payment for work guaranteed by surety=25 percent x $10,000 x 60 percent=	$1,500
Authorized payment=	$8,250

(Each partial payment shall reflect values for work guaranteed by surety, letter of credit, or deposits, and work not so guaranteed.)

(iv) In cases where the contractor does not obtain payment and performance bonds in accordance with the surety requirements of paragraph (a)(3)(ii) of this section, or where an exception to the surety requirements is granted by the State Director, the following steps will be taken to protect the borrower and the government against latent obligations and/or defects in connection with the construction:

(A) The contractor will furnish a properly executed corporate latent defects bond or a maintenance bond in the amount of 10 percent of the construction contract; or

(B) An unconditional and irrevocable letter of credit in the amount of 10 percent of the construction contract issued by a lending institution which has been reviewed and approved by OGC; or

(C) A cash deposit into an interest or non-interest bearing supervised bank account in the amount of 10 percent of the construction contract;

(D) The period of protection against latent obligations and/or defects shall be one year from the date of final acceptance of work by the owner and FmHA;

(E) Final payment shall not be rendered to the contractor until the provisions of paragraphs (a)(3)(iv) (A), (B) or (C) of this section have been met;

(F) The contract will contain a clause indicating that the contractor agrees to provide surety or guarantee acceptable to the owner and FmHA against latent obligations and/or defects in connection with the construction.

(4) *Equal Opportunity.* Section 1901.205 of Subpart E of Part 1901 of this chapter applies to all loans or grants involving construction contracts and subcontracts in excess of $10,000.

(5) *Labor Provisions.* The provisions of Subpart D of Part 1901 of this chapter concerning wage and labor requirements will apply when the contract involves either LH grant assistance, or 9 or more units in a project being assisted under the HUD Section 8 housing assistance payment program for new construction.

(6) *Historical and archaeological preservation.* The provisions of Subpart F of Part 1901 of this chapter concerning the protection of historical and archaeological properties will apply to all construction financed in whole or in part by FmHA loans and grants. These provisions have special applicability to development in areas designated by SCS as Resource Conservation and Development (RC&D) areas. (See Part 1942, Subpart I of this chapter.)

(7) *Air and water acts.* Under executive Order 11738, all loans or grants involving construction contracts for more than $100,000 must meet all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Water Pollution Control Act (33 U.S.C. 1813). The contract should contain provisions obligating the contractor as a condition for the award of the contract as follows:

(i) To notify the owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

(ii) To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities as of the date of contract award.

(iii) To include or cause to be included the above criteria and requirements of paragraphs (a)(7) (i) and (ii) of this section in every nonexempt subcontract, and that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

(8) *Architectural barriers.* In accordance with the Architectural Barriers Act of 1968, (Pub. L. 90–480) as implemented by the General Services Administration regulations (41 CFR 101–19.6) and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR, Parts 15 and 15b, all facilities financed with FmHA loans and grants and which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this Act. Copies of the Act may be obtained from the Executive Director, Architectural and Transportation Barriers Compliance Board, Washington, DC 20201.

(9) *National Environmental Policy Act.* The provisions of Subpart G of Part 1940 of this chapter concerning environmental requirements will apply to all loans and grants including those being assisted under the HUD section 8

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housing assistance payment program for new construction.

(10) Obtaining bids and selecting a contractor.

(i) The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid. For complex construction projects, refer also to § 1924.13(e) of this subpart.

(ii) When a price has already been negotiated by an applicant and a contractor, the County Supervisor, District Director or other appropriate FmHA official will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the FmHA official determines the price is too high or otherwise unreasonable, the applicant will be requested to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be requested to obtain competitive bids.

(iii) When an applicant has a proposed development plan and no contractor in mind, competitive bidding will be encouraged. The applicant should obtain bids from as many qualified contractors, dealers or tradespeople as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form FmHA 1924–5, "Invitation for Bid (Construction Contract)," or another similar invitation bid form containing the requirements of Subpart E of Part 1901 of this chapter, may be used. All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms FmHA 1924–6 and FmHA 400–6, "Compliance Statement," also should be provided to the prospective bidders.

(11) *Awarding the contract.* The borrower, with the assistance of the County Supervisor or District Director, will consider the amount of the bids or proposals, and all conditions which were listed in the "Invitation for Bid." On the basis of these considerations, the borrower will select and notify the lowest responsible bidder.

(i) Before work commences, there will be a preconstruction conference between the borrower(s), contractor, architect/engineer (if applicable), and the County Supervisor, District Director, or other FmHA employee having a knowledge of contracts and construction practices. During this discussion, a mutual understanding will be reached on the items shown in Exhibit E of this subpart.

(ii) A brief summary of the items covered should be entered in the running case record.

(iii) The contract will then be prepared and executed and copies distributed in accordance with the FMI for Form FmHA 1924–6.

(iv) After a borrower/contractor's contract or subcontract in excess of $10,000 is received in the FmHA County or District Office, the responsible FmHA official will send within 10 calendar days of the date of the contract or subcontract, a report similar in form and content to Exhibit C of Subpart E of Part 1901 of this chapter to the Area Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, at the applicable address listed in Exhibit E, Subpart E of Part 1901 of this chapter. The report must contain, at least, the following information: contractor's name, address and telephone number; employer's identification number; amount, starting date and planned completion date of the contract; contract number; and city and DOL region of the contract site. The information for this report should be obtained from the contractor when the contract is awarded.

(12) *Payments for work done by the contract method.* (i) Payments will be made in accordance with one of the following methods unless prohibited by State statute, in which case the State Director shall issue a state supplement to this section:

(A) The "One Lump-Sum" payment method will be used when the payment will be made in one lump-sum for the whole contract.

(B) The "Partial payments not to exceed 60 percent of the value of the work in place" payment method will be used when the contractor does not provide surety bond, a letter of credit, or deposits.

(C) The "Partial payments in the amount of 90 percent of the value of the work in place and of the value of the materials suitably stored at the site" payment method will be used when the contractor provides a surety bond equal to the total contract amount.

(D) The "Partial payments which reflect the portions of the contract amount which is guaranteed" method will be used when the contractor provides surety bonds, a letter of credit, or deposits less than the total amount of the contract in accordance with the provisions of paragraph (a)(3)(iii)(C) of this section.

(ii) When Form FmHA 1924–6 is used, the appropriate payment clause will be checked and the other payment clauses not used will be effectively crossed out.

(iii) When a contract form other than Form FmHA 1924–6 is used, the payment clause must conform with paragraph (a)(12)(i) of this section and the appropriate clause as set forth in Form FmHA 1924–6.

(iv) The borrower and FmHA must take precautionary measures to see that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract. Prior to making any partial payment on any contract where a surety bond is not used, the contractor will be required to furnish the borrower and the FmHA with a statement showing the total amount owed to date for materials and labor procured under the contract. The contractor also may be required to submit evidence showing that previous partial payments were applied properly. When the borrower and the County Supervisor or District Director have reason to believe that partial payments may be applied properly, checks may be made jointly to the contractor and persons who furnished materials and labor in connection with the contract.

(v) When partial payments are requested by the contractor and approved by the owner, the amount of the partial payment will be determined by either of the following methods:

(A) Based upon the percentage completed as shown on a recently completed and properly executed Form FmHA 1924–12, "Inspection Report," or

(B) Based upon an application for payment containing an estimate of the value of work in place which has been prepared by the contractor and accepted by the borrower and FmHA. When the contract provides for partial payments for materials satisfactorily stored at the site, the application for payment may include these items. Prior to receiving the first partial payment, the contractor should be required to submit a list of major subcontractors and suppliers and a schedule of prices or values of the suppliers and a schedule of prices or values of the various phases of the work aggregating the total sum of the contract such as excavation, foundations, framing, roofing, siding, mill work, painting, plumbing, heating, electric wiring, etc., made out in such form as agreed upon by the borrower, FmHA, and the contractor. In applying for payments, the contractor should submit a statement based upon this schedule. See Exhibit A of this subpart for guidance in reviewing the contractor's schedule of prices, and also guidance in

computing the value of the work in place.

(vi) Final payment. (A) Final payment of the amount due on the contract or disbursal of the FmHA loan funds where an interim loan was used will be made only upon completion of the entire contract, final inspection by FmHA, acceptance of the work by FmHA and the borrower, issuance of any and all final permits and approvals for the use and occupancy of the structure by any applicable state and local governmental authorities, and compliance by the contractor with all terms and conditions of the contract. In the event the work of construction is delayed or interrupted by reason of fire, flood, unusually stormy weather, war, riot, strike, an order, requisition or regulation of any governmental body (excluding delays related to possible defects in the contractor's performance and excluding delays caused by the necessity of securing building permits or any required inspection procedures connected therewith) or other contingencies reasonably unforeseeable and beyond the reasonable control of the contractor, then with the written consent of FmHA, the date of completion of the work may be extended by the period of such delay, provided that the contractor shall give the owner and FmHA written notice within 72 hours of the occurrence of the event causing the delay or interruption.

(B) Prior to making final payment on the contract when a surety bond is not used or disbursing the FmHA loan funds when an interim loan was used, FmHA will be provided with a Form FmHA 1924–9, "Certificate of Contractor's Release," and Form 1924–10, "Release by Claimants," executed by all persons who furnished materials or labor in connection with the contract. The borrower should furnish the contractor with a copy of the "Release by Claimants" form at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(*1*) If such releases cannot be obtained, the funds may be disbursed provided all the following can be met:

(*i*) Release statements to the extent possible are obtained;

(*ii*) The interests of FmHA can be adequately protected and its security position is not impaired;

(*iii*) Adequate provisions are made for handling the unpaid account by witholding or escrowing sufficient funds to pay any such claims or obtaining a release bond;

(*2*) The State Director may issue a State Supplement which will:

(*i*) Not require the use of Form FmHA 1924–10, if, under existing State statutes, the furnishing of labor and materials gives no right to a lien against the property, or

(*ii*) Provide an alternative method to protect against mechanic's and materialmen's liens. In this case, the use of Form FmHA 1924–10 is optional.

(b) *Borrower method.* The borrower method means performance of work by or under the direction of the borrower, using one or more of the ways specified in this subsection. Development work may be performed by the borrower method only when it is not practicable to do the work by the contract method; the borrower possesses or arranges through an approved self-help plan for the necessary skill and managerial ability to complete the work satisfactorily; such work will not interfere seriously with the borrower's farming operation or work schedule, and the County Office caseload will permit a County Supervisor to properly advise the borrower and inspect the work.

(1) *Ways of performing the work.* The borrower will:

(i) Purchase the material and equipment and do the work.

(ii) Utilize lump-sum agreements for (A) minor items or minor portions of items of development, the total cost of which does not exceed $5,000 per agreement, such as labor, material, or labor and material for small service buildings, repair jobs, or land development; or (B) material and equipment which involve a single trade and will be installed by the seller, such as the purchase and installation of heating facilities, electric wiring, wells, painting, liming, or sodding. All agreements will be in writing, however, the County Supervisor may make an exception to this requirement when the agreement involves a relatively small amount.

(2) *Acceptance and storage of material on site.* The County Supervisor will advise the borrower that the acceptance of material as delivered to the site and the proper storage of material will be the borrower's responsibility.

(3) *Payment for work done by the borrower method.* (i) *Payments for labor.* Before the County Supervisor countersigns checks for labor, the borrower must submit a completed Form FmHA 1924–11, "Statement of Labor Performed," for each hired worker performing labor during the pay period. Ordinarily, checks for labor will be made payable to the workers involved. However, under justifiable circumstances, when the borrower has paid for labor with personal funds and has obtained signatures of the workers on Form FmHA 1924–11 as having received payment, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenditures. Under no circumstances will the County Supervisor permit loan funds or funds withdrawn from the supervised bank account to be used to pay the borrower for the borrower's own labor or labor performed by any member of the borrower's household.

(ii) *Payments for equipment, materials or lump-sum agreements.* (A) Before countersigning checks for equipment or materials, the County Supervisor must normally have an invoice from the seller convering the equipment or materials to be purchased. When an invoice is not available at the time the check is issued, and itemized statement of the equipment or materials to be purchased may be substituted until a paid invoice from the seller is submitted, at which time the itemized statement may be destroyed.

(B) When an invoice is available at the time the check is drawn the check will include a reference to the invoice number, the invoice date if unnumbered and, if necessary, the purpose of the expenditure.

(C) The check number and date of payment will be indicated on the appropriate Form FmHA 1924–11, invoice, itemized statement of equipment or materials and/or lump-sum agreement.

(D) Ordinarily, checks for equipment or materials will be made payable to the seller. Under justifiable circumstances, when the borrower has paid for equipment or materrials with personal funds and furnished a paid invoice, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenses.

(E) When an invoice includes equipment or materials for more than one item of development, the appropriate part of the cost to be charged against each item of development will be indicated on the invoice by the borrower, with the assistance of the County Supervisor.

(F) Payment made under lump-sum agreements will be made only when all items of equipment and materials have been furnished, labor has been performed as agreed upon, and the work has been accepted by the borrower and FmHA.

(G) Each paid Form FmHA 1924–11, invoice, itemized statement of equipment or material and/or lump-sum agreement will be given to the borrower as provided for in Exhibit A to FmHA

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Instruction 2083–A (available in any FmHA office).

(c) *Mutual self-help method.* The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in Exhibit E of Subpart A of Part 1944 of this chapter. The ways of doing the work, buying materials, and contracting for special services are like those used for the borrower method. Materials can be bought jointly by the group of families, but payments will be made individually by each family. In the case of RH loans to families being assisted by Self-Help Technical Assistance (TA) grants in accordance with Subpart I of Part 1933 of this chapter, the County Supervisor may countersign checks for materials and necessary contract work made payable directly to the TA grantee, provided the District Director determines that:

(1) The grantee acts in the same capacity as a construction manager in the group purchase of material and services.

(2) The grantee has an adequate bookkeeping system approved by the District Director to assure that funds in each RH account are properly distributed and maintained.

(3) The grantee receives no compensation in the way of profit or overhead for this service and all discounts and rebates received in connection with the purchase of materials or services are passed on to the participating families.

(4) The grantee has a record-keeping system which shows that the costs of the materials and services were prorated to each borrower's account in relation to the actual material and service used by each borrower.

(d) *Owner-builder method.* This method of construction applies only to RRH loans made under Subpart E of Part 1944 of this chapter. Regulations governing this method are found at § 1924.13(e)(2) of this subpart.

§ 1924.7 [Reserved]

§ 1924.8 Development work for modular/panelized housing units.

(a) Exhibit B of this subpart applies to all loans involving modular/panelized housing units.

(b) Complete drawings and specifications will be required as prescribed in Exhibit C of this subpart. Each set of drawings will contain the design of the foundation system required for the soil and slope conditions of the particular site on which the modular/panelized house is to be placed.

(c) The manufacturer will provide a certification (Exhibit B, Attachment 5 of this subpart), stating that the building has been built substantially in accordance with the drawings and specifications. The builder will also provide a certification that the onsite work complies with drawings, specifications, and the applicable development standard (Exhibit B, Attachment 5 of this subpart).

(d) Responsibility for field inspections will be in accordance with § 1924.9(a) of this subpart. Frequency and timing of inspections will be in accordance with § 1924.9(b) of this subpart, except that the Stage 2 inspection should be made during the time and in no case later than two working days after the crews commence work on the site and the house is being erected or placed on the foundation, to determine compliance with the accepted drawings and specifications.

(e) Periodic plant inspections may be performed by the FmHA employee responsible for such inspections in the area in which the manufacturing plant or material supply yard is located.

(1) Inspections will be made in the plants if the type construction method used could restrict adequate inspections on the building site.

(2) Plant inspections will be made as often as necessary. However, after initial inspection and acceptance of the building submitted, inspection should be made only when it appears advisable to ascertain the performance and continuing stability of accepted materials and construction.

(f) Only one contract will be accepted for the completed house on the site owned or to be bought by the borrower. The manufacturer of the house or the manufacturer's agent may be the prime contractor for delivery and erection of the house on the site or a builder may contract with the borrower for the complete house in place on the site. Such contracts should provide that payments will be made only for work in place on the borrower's site.

(g) Payments for modular/panelized units will be made in accordance with the terms of the contract and in compliance with § 1924.6(a)(12) of this subpart.

§ 1924.9 Inspection of development work.

The following policies will govern the inspection of all development work.

(a) *Responsibility for inspection.* The County Supervisor or District Director, accompanied by the borrower when practicable, will make final inspection of all development work and periodic inspections as appropriate to protect the security interest of the government. In this respect, inspections other than final inspections, may be conducted by other qualified persons as authorized in paragraph (b)(3) of this section and in § 1944.17(a)(2)(iv) of Subpart A of Part 1944 of this chapter, and as authorized under other agreements executed by, or authorized by, the National Office. The borrower will be responsible for making inspections necessary to protect the borrower's interest. FmHA's inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation to the particular borrower. FmHA inspections are for the dual purposes of determining that FmHA has adequate security for its loan and enabling FmHA to determine that FmHA is working toward achieving the statutory goal of providing adequate housing. If difficult technical problems are encountered, the County Supervisor or District Director should request the assistance of the State Office or a qualified technician from SCS or the State University Cooperative Extension Service.

(b)*Frequency of inspections.* The County Supervisor or District Director will inspect development work as frequently as necessary to assure that construction and land development conforms with the drawings and specifications. The final inspection will be made at the earliest possible date after completion of the planned development. When several major items of development are involved, final inspection will be made upon completion of each item.

(1) For new buildings and additions to existing buildings inspections will be made at the following stages of construction and at such other stages of construction as determined by the County Supervisor or District Director except as modified by paragraph (b)(3) of this section.

(i) *Stage 1.* Customarily, the initial inspection in construction cases is made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. However, when it is not practicable to make the initial inspection prior to or during the placement of concrete, the County Supervisor or District Director will make the initial inspection as soon as possible after the placement of concrete and before any backfill is in place.

(ii) *Stage 2.* The Stage 2 inspection will be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish which would include lath, wallboard and finish flooring.

(iii) *Stage 3.* The final inspection will be made when all on-site and off-site development has been completed and the structure is ready for occupancy or its intended use.

(2) For rehabilitation of existing buildings, inspections will be made in accordance with paragraphs (b)(1) (ii) and (iii) of this section, and at such other stages of construction to assure that construction is being performed in a professional manner and in accordance with the FmHA approved drawings and specifications.

(3) For new construction when the structure will be covered by an insured 10-year warranty plan as described in Exhibit L of this subpart, only the final inspection is required. For this exception to apply:

(i) The insurer's construction inspector must provide FmHA with any available copies of inspection reports showing percentage of completion immediately after the inspections are completed. To make partial payments when copies of inspection reports are not available, the responsible FmHA official will make the inspections or will be guided by the provisions of §1924.6(a)(12)(v)(B) of this subpart. If further assurance is deemed necessary to justify partial payments, the FmHA official may make onsite inspections or require additional information.

(ii) The insurer must provide an insured 10-year warranty policy (or a binder if the policy is not available) before final payment is made to the builder.

(4) Arrangements should be made to have the borrower join the County Supervisor or the District Director in making periodic inspections as often as necessary to provide a mutual understanding with regard to the progress and performance of the work.

(5) The borrower should make enough periodic visits to the site to be familiar with the progress and performance of the work, in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the contractor with a copy to the County Supervisor or District Director responsible for servicing the type of loan or grant involved.

(6) The borrower should, when practicable, join the County Supervisor or District Director in making all final inspections.

(7) When irrigation equipment and materials are to be purchased and installed, a performance test under actual operating conditions by the person or firm making the installation should be required before final acceptance is made. The test should be conducted in the presence of the borrower, a qualified technician, and, when practicable, the County Supervisor or District Director. If the FmHA official is not present at the performance test, he or she should request the technician to furnish a report as to whether or not the installation meets the requirements of the plans and specifications.

(8) For irrigation and drainage construction or any dwelling construction where part or all of the work will be buried or backfilled, interim inspections should be made at such stages of construction that compliance with plans and specifications can be determined.

(c) *Recording inspections and correction of deficiencies.* All periodic and final inspections made by the County Supervisor or District Director will be recorded on Form FmHA 1924–12 in accordance with the FMI. The County Supervisor or District Director will be responsible for following up on the correction of deficiencies reported on Form FmHA 1924–12. When an architect/engineer is providing services on a project, the District Director should notify the architect/engineer immediately of any fault or defect observed in the work or of any nonconformance with the contract document. If the borrower or the contractor refuses to correct the deficiencies, the District Director will report the facts to the State Director who will determine the action to be taken. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected.

(d) *Warranty period.* Form FmHA 1924–19 or an acceptable insurd 10 year warranty on RH loans for new construction will be provided by the contractor and/or warrantor. If the warranty is not an insured 10-year warranty, a completed Form FmHA 1924–19, with warranty protection for 1 year, must be provided by the builder upon final acceptance of the work by the owner and the FmHA. If an insured 10-year warranty is provided, the requirements of Exhibit L of this subpart apply, and a copy of the warranty policy or a binder must have been received by FmHA prior to disbursement of the final payment to the builder.

If, for some reason, the policy cannot be issued, the contractor wil be required to execute Form FmHA 1924–19 and the case will be forwarded to the State Director for consideration of debarment under the provisions of Subpart F of Part 1924 of this chapter. The County Supervisor will assist the borrower to the extent necessary under the provisions of the warranty and Subpart F of Part 1924 of this chapter and will take the following action prior to the expiration of the first year of the warranty period:

(1) As soon as the warranty has been executed, the follow-up date for sending Form FmHA 1924–21, "Notice of Expiration of First Year of Warranty," which will be used for the 1 year warranty or the first year of the insured 10-year warranty, will be posted to the "Servicing and Supervision" section of the Management System card.

(2) Form FmHA 1924–21 is provided for use in notifying the borrower of the expiration date of the first year of the warranty. This letter will be mailed to the borrower early in the second month preceding the expiration date of the first year of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied unless information to the contrary has been received.

(4) If the borrower notifies FmHA that any complaint has not been satisfied, an onsite inspection shall be made as early as possible, but not later than 1 month preceding the expiration date of the first year of the warranty. The results of the inspection visit wil be recorded on Form FmHA 1924–12. If the borrower has complaints the case should be handled in accordance with the provisions of Subpart F of Part 1924 of this chapter, or as otherwise provided in this subpart.

(e) *Acceptance by responsible public authority.* When local (city, county, State, or other public authority) codes and ordinances require inspections, final acceptance by the local authority having jurisdiction wil be required prior to final inspection or acceptance by FmHA.

(f) *Acceptance by project architect.* If architectural services pursuant to § 1924.13(a) of this subpart have been obtained. Final acceptance by the project architect pursuant to § 1924.13(a)(5)(v) of this subpart will be required prior to acceptance by FmHA.

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§ 1924.10 Making changes in the development plan.

Changes in the planned development may be made at the request of the borrower in accordance with this section.

(a) *Authority of the County Supervisor.* The County Supervisor is authorized to approve changes in the planned development involving loans and grants within the County Supervisor's approval authority provided:

(1) The change is for an authorized purpose and within the scope of the orginal proposal.

(2) Sufficient funds are deposited in the borrower's supervised bank account or with the interim lender, as appropriate, to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(3) The change will not adversely affect the soundness of the operation or FmHA's security. If uncertain as to the probable effect the change would have on the soundness of the operation or FmHA security, the County Supervisor will obtain advice from the District Director on whether to approve the change.

(4) If a surety bond has been provided on the full amount of the construction contract, the aggregate amount of all contract change orders on Form FmHA 1924–7, "Contract Change Order," or other acceptable form will not exceed 20 percent of the original contract amount. Change orders for contracts on which a surety bond has been provided which increases the original contract amount by more than 20 percent may only be approved if additional surety is provided in the full revised amount of the contract. For purposes of this paragraph, letters of credit and deposits are not considered surety.

(5) Change orders for contracts on which letters of credit or deposits have been provided on the full amount of the contract which will increase the original contract amount are approved only if additional letters of credit or deposits are provided in the full revised amount of the contract.

(b) *Authority of the District Director.* The District Director is authorized to approve changes in the development planned with RRH, RCH, and RHS loans and LH loans and grants within the District Director's approval authority, provided the conditions in § 1924.10(a) have been met. For such loans in excess of the District Director's approval authority, the borrower's request with the District Director's recommendation will be forwarded to the State Director for consideration.

(c) *Recording changes in the planned development.* (1) Changes should be accomplished only after FmHA written approval. Changes will not be included in payment requests until approved by the borrower; the contractor, if applicable; the architect/engineer, if applicable; and the FmHA loan approval official. Examples of changes requiring documentation are:

(i) Any changes in labor and materials and their respective costs.

(ii) Changes in facility design.

(iii) Any decrease or increase in unit-price on final measurements that are different from those shown in the bidding schedule.

(iv) Any increase or decrease in the time to complete the project.

(2) All changes shall be recorded in chronological order as follows:

(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA 1924–7 with necessary attachments.

(ii) Borrower method. An increase or decrease in the cash cost, extension of time, transfer of funds between items, or an addition or deletion of items of development, will be summarized on the front of Form FmHA 1924–1 by striking through the original figures on items and writing in the changes. Changes made in the "Development Plan," in the working drawings, or in the plans and specifications will be dated and initialed by all parties.

(iii) Mutual self-help method. [See paragraph (c)(2)(ii) of this section.]

(iv) Owner-builder method. [See paragraph (c)(2)(i) of this section.]

§ 1924.11 District Director's review of incomplete development.

During monthly District Office work organization meetings and during regular visits to the County Office, the District Director will review the progress that is being made in completing development financed with loans within the District Director's and County Supervisor's responsibility.

(a) Once each year the District Director will make a comprehensive review of all development work not completed within the time scheduled. For incomplete development financed with loan or grant funds within the responsibility of the District Director, the District Director will take the necessary actions to assure that the borrower or grantee completes the planned development. For incomplete development financed with loan or grant funds within the responsibility of the County Supervisor, the District Director will give the necessary direction to the County Supervisior to assure completion of the work. In connection with these responsibilities, the District Director will consider:

(1) The current farm and home operations with respect to the need for the development as originally planned.

(2) Revisions to the development plan.

(3) Funds remaining in the supervised bank account.

(4) Need for additional funds.

(5) Personal funds that could be furnished by the borrower.

(6) Estimated completion dates.

(7) The borrower's attitude with respect to completing the development.

(b) After a complete review of the status of development in both the District and County Offices has been made, the District Director will make a written report to the State Director which will include observations and recommendations regarding incomplete development. The report may be included in the District Director's regular report, and will include:

(1) The number of cases in which borrowers have not completed their development within 9, 15 or 24 months when authorized, and also the number of cases in which funds have been exhausted and the work is incomplete.

(2) The number of borrowers who have not completed their development within 3 years from the loan closing, and indicate the action that was taken in each such case.

(c) If the borrower has not completed development work within 3 years after the date of loan closing and the District Director has determined that the borrower cannot or will not complete the development, the District Director will so indicate on Form FmHA 1924–1 and request the State Director to withdrawn, for application on the loan, any unused development funds remaining in the borrower's supervised bank account, if the borrower will not sign a check for a refund to the loan account.

§ 1924.12 [Reserved]

§ 1924.13 Supplemental requirements for more complex construction.

This section includes additional provisions that apply to planning and conduct of construction work on all multiple family housing projects and other projects that are more extensive in scope and more complex in nature than individual housing units or farm buildings. This section will apply in addition to all other requirements contained elsewhere in this subpart.

(a) *Architectural services.* Complete architectural services, as defined in § 1924–4(o)(1) of this subpart are recommended on all projects. They are

required for projects involving an LH grant and for all loans for RRH, RCH, and LH projects consisting of more than 4 units unless prior consent to making an exception to the requirements for complete architectural services is obtained from the National Office. If the applicant or contractor is an architect or organization with architectural capability, the applicant must, nevertheless, hire an independent qualified architect or architectural firm to inspect the construction work and perform other needed services during the construction and warranty phases. See Guide 4, Attachment 1, "Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect" for further information (Guide 4 is available in any FmHA office). (Revised 2–5–86)

(1) *Exception.* Any request for National Office consent to an exception being made for complete architectural services should include the proposed drawings and specifications, method of providing specific services, the comments and recommendations of the FmHA State Architect, and any other pertinent information. The State Director must determine that any services for which an exception is requested can be performed by qualified State or District Office staff members.

(2) *Selecting the architect.* The applicant is responsible for selecting the architect. The District Director with the advice of the State architect/engineer should discuss with the applicant the selection of the architect for the job as early as possible to assist in the site selection and participate in early consultations regarding project scope and design.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved.

The fee should cover only the architectural services rendered by the architect. Fees for special services rendered by architects, such as the packaging of the loan application or additional non-architectural services, will not be authorized to be paid with loan funds.

(4) *Agreement between borrower and architect.* The borrower and the architect will execute a written agreement. The agreement must provide:

(i) The services listed in paragraph (a)(5) of this section.

(ii) The amount of the fee and how it will be determined and paid.

(iii) That the agreement and any amendments to the agreement shall not be in full force and effect until approved in writing by the State Director or the State Director's delegate, and it will contain the following provision:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby approves the form, content and the execution of this agreement.

Date ———,

———,
FmHA Approval Official.

———,
Title.

(5) *Specific services.* Architectural services will include six consecutive phases as follows:

(i) *Schematic design phase.* The architect will:

(A) Consult with the applicant to obtain available information pertinent to the project requirements.

(B) Consult with FmHA State architect/engineer about FmHA requirements and procedures.

(C) Assist in preparing the project design after analyzing engineering and survey data on the site selected by applicant.

(D) Prepare schematic design studies consisting of drawings and other documents illustrating the scale and relationship of project components for the applicant's approval.

(E) Submit estimates of current development costs based on current area, volume, or other unit costs.

(F) When the applicant and FmHA have accepted the schematic design studies and estimated development costs, the project architect may be authorized to proceed with the next phase.

(ii) *Design development phase.* The architect will:

(A) Prepare the design development exhibits from the accepted schematic design studies for approval by the applicant. These exhibits should consist of drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials, and other essentials as appropriate.

(B) Submit a further statement of probable construction cost.

(C) Obtain applicant and FmHA approval of drawings, specifications, and authorization to proceed with next phase.

(iii) *Construction documents phase.* The architect will:

(A) Prepare the working drawings and specifications from the approved design development drawings and set forth in detail the requirements for the construction of the entire project in accordance with applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between applicant/owner and contractor.

(B) Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.

(C) Obtain the acceptance of the applicant and FmHA for contract documents, including approval of the final drawings and specifications and authorization to proceed.

(D) Discuss with the applicant various items as they develop.

(iv) *Bidding or negotiation phase.* The architect will, as appropriate, for a bidded or negotiated contract:

(A) Assist in review and selection of bidders and submission of contract documents to selected bidders.

(B) Assist in the interpretation of drawings and specifications, and other contract documents.

(C) Receive and tabulate all bids.

(D) Review the bids and the negotiated proposals and assist in the award and preparation of construction contracts.

(v) *Contruction phase.* This phase includes the administration of the construction contract. It will commence with award of the construction contract and end when the borrower makes final payment to the contractor. The architect will:

(A) Advise and consult with the borrower (or the borrower's representative) and issue the borrower's instructions to the contractor.

(B) Prepare change orders.

(C) Keep construction accounts and work as the general administrator of the project during construction.

(D) Interpret the contract documents and have the authority to reject all work and materials which do not comply.

(E) Review and approve shop drawings, samples, and other submissions of the contractor for conformance with design concept and for compliance with the contract documents.

(F) Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount of work that is in place and materials suitably stored on site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural,

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mechanical and electrical representatives. Periodic inspections should be made as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained. The State Director may require a full-time project representative on projects with a total development cost of $750,000 or more, when in the opinion of the State Director there is a need for such representative, and the State Director states the reasons for such need to the borrower.

(G) Determine, based on the inspections, the dates of substantial completion and final completion; receive on the borrower's behalf all written guarantees and related documents assembed by the contractor; and issue a final certificate for payment.

(vi) *Warranty phase.* The architect will advise and consult with the borrower, as the borrower's representative, about items to be corrected within the warrantly period. The architect will accompying the FmHA representative during the inspection required one month prior to expiration of the warranty period.

(b) *Other professional services.* The State Director, on the recommendation of the State architect/engineer, may request that additional professional services be provided.

(1) Professional services would typically include soils engineering, structural engineering, civil engineering, surveying, land planning, or professional cost estimation or certifiction. Fees for these services may be paid directly by the borrower or by the architect as reimbursable expenses.

(2) When a project repersentatiave is utilized, unless otherwise agreed, the representative will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the project representative to the applicant and to FmHA for acceptance in writing. If the applicant provided the project representative, the applicant must submit a resume of the representative's qualifications to the project architect/engineer and FmHA for acceptance in writing, prior to the preconstruction conference. The project representative will attend the preconstruction conference where duties and responsibilities will be fully discussed. The project representative will work under the general surpervision of the architect/engineer. The project representative will maintain a daily diary in accordance with the following:

(i) The diary shall be maintained in a hard-bound book.

(ii) The diary shall have all numered and all entries in ink.

(iii) All entries shall be on daily basis, beginning with the date and weather conditions.

(iv) Daily entries shall include daily work performed, number of men and equipment used in the performance of the work, and all signficant happenings during the day.

(v) The diary shall be made available to FmHA personnel and will be reviewed during project inspections.

(vi) The project representative's diary will become the property of the owner after the project is accepted and final payments are made.

(c) *Drawings.* The type and kinds of drawings should be in accordance with Exhibit C of this subpart and Subpart D of Part 1944 of this chapter.

(1) The drawings must be clear, accurate, and with adequate dimensions and should be of sufficient scale for estimating purposes.

(2) Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be part of the general drawings. This is particularly important where the size of a project makes necessary the preparation of the general drawings at a scale of ⅛ inch equals 1 foot or less.

(3) Mechanical and electrical work should be shown on separate plans.

(4) Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.

(d) *Specifications.* Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings.

(e) *Methods of administering construction.* Projects involving a total development cost of less than $100,000 which do not include an LH grant may, with the approval of the State Director, follow the contract procedure in Section 1924.6(a) of this subpart without modification. Construction of all other projects, however, will be administered by the contract method or owner-builder method as set forth in this section.

(1) *Contract method.* This method of development will be used for all complex construction except in cases where owner-builder method is authorized. Development under this method is done in accordance with Section 1924.6(a) of this subpart except as modified by this paragraph. All construction work will be completed under one written construction contract. Guide I, "Contract Documents" of this subpart (available in any FmHA office) is provided to assist FmHA personnel and applicants in assembling and reviewing contract documents for more complex construction such as that administered under this section.

(i) *Competitive bidding methods.* (A) All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with paragraph (e)(1)(vii) of this section thereby permitting contract negotiation. The applicant's architect should prepare the bidding documents. Public notice must be given inviting all interested bidders to submit a bid. Prospective bidders may be contacted asking for their bids; however, public notice is necessary so that all local contractors have the opportunity to submit bids.

(B) A bid bond is required from each bidder in the amount of 5 percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute the required contract documents within the time specified.

(C) The construction contract will be awarded based on the contract cost, and all conditions listed in the "Invitation to Bid."

(D) If advertising does not provide a satisfactory bid in the opinion of the applicant and FmHA, the applicant shall reject all bids and will then be free to negotiate with bidders or anyone else to obtain a satisfactory contract. The following conditions must be met:

(*1*) The State Director determines that the original competitive bid process was handled in a satisfactory manner and that there is no advantage to advertising for competitive bid again.

(*2*) If appropriate, the applicant provides a copy of a duly authorized resolution by its governing body requesting FmHA to permit awarding the construciton contract without formal bidding.

(*3*) The applicant is permitted by State law, local law and/or organizational by-laws to negotiate a construction contract.

(*4*) The proposed contractor is experienced in construction of similar size, scope, and complexity, and is recognized as a reliable builder. The State Director must determine that there is no conflict of interest in the award of the contract to the proposed contractor.

(E) If there is no agreement by FmHA and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to

appeal in accordance with Subpart B of Part 1900 of this chapter.

(ii) *Contract documents.* Contract documents will conform with recognized professional practices as prescribed in this paragraph. Such contract documents will contain substantially the following:

Item I Invitation for Bids (Form FmHA 1924–5)
Item II Information for Bidders
Item III Bid
Item IV Bid Bond
Item V Agreement (Construction Contract)
Item IV Compliance Statement (Form FmHA 400–6)
Item VII General Conditions
Item VIII Supplemental General Conditions
Item IX Payment Bond (Exhibit F of this subpart)
Item X Performance Bond (Exhibit G of this subpart)
Item XI Notice of Award
Item XII Notice to Proceed
Item XIII Drawings and Specifications
Item XIV Addenda
Item XV Contract Change Order (Form FmHA 1924–7)
Item XVI Labor Standards Provisions (Exhibit A to Subpart D of Part 1901 of this chapter, where applicable)
Item XVII Monthly Employment Utilization Report (Form CC–257)
Item XVIII Partial Payment Estimate (Form FmHA 1924–18)
Item XIX Builder's Warranty (Form FmHA 1924–19)

(A) Substitution of term "architect" for "engineer" will be necessary on some of the forms. Other modifications may be necessary in some cases to conform with the nature and extent of the project. All such contract documents and related items will be approved by the State Director, with the assistance of OGC prior to the release of invitations to bid.

(B) Items listed as I through IV and item XI above may be omitted when an exception to the competitive bidding requirement is granted in accordance with paragraph (e)(1)(vii) of this section, thereby permitting a negotiated contract.

(C) All negotiated contracts shall include a provision to the effect that the borrower, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions.

(D) Liquidation damages *will* be included in all contracts. The liquidated damage amount must be reasonable and represent the best estimate possible of how much interest or other costs will accrue on the loan, and also represent any loss of rent or other income which would result from a delay in the completion of the project beyond the estimated completion date.

(E) All contracts shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act prohibits anyone from inducing any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

(F) All contracts will contain a certification by the applicant indicating that there is not now nor will there be an identity of interest between the applicant and any of the following: contractor, architect, engineer, attorney, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries unless specifically identified to FmHA in writing prior to the award of the contract. All contracts must also indicate that when any identity of interest exists or comes into being, the contractor agrees to provide certification as to the actual cost of the work performed under the construction contract and to have all construction records audited by an independent Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) (licensed prior to December 31, 1970) who will provide an unqualified opinion as to the actual cost of construction.

(G) All contracts on any form other than Form FmHA 1924–6, must contain the language of clause (D) of Form FmHA 1924–6, which is available in all FmHA offices. The language of clause (D) of Form FmHA 1924–6 sets forth the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity required by Executive Order 11246, the Equal Opportunity clause published at 41 CFR 60–1.4 (a) and (b), and the Standard Federal Equal Employment Opportunity Construction Contract Specifications required by Executive Order 11246. For contract forms other than Form FmHA 1924–6, Form AD 767, "Equal Employment Opportunity Contract Compliance Notices," which can be obtained from the Finance Office, should be attached and made a part of the contract.

(H) All contracts will contain a provision that they are not in full force and effect until they have been approved by the State Director or the State Director's delegate, in writing. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegate will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date ———.

———.

FmHA Approval Official.

———.

Title.

(I) The requirements of § 1924.6(a)(11)(iv) of this subpart apply to all contracts or subcontracts in excess of $10,000.

(iii) *Surety.* When multiple advances of loan or grant funds are utilized, surety that guarantees both payment and performance in the full amount of the contract will be provided in accordance with § 1924.6(a)(3)(ii) of this subpart. Exceptions to the surety requirements shall be governed by the following:

(A) In accordance with the guidance and recommendations of OMB Circulars A–102 and A–110, exceptions to the surety requirements of § 1924.6(a)(3)(ii) of this subpart will not be granted for nonprofit organization or public body applicants.

(B) For loans or grants to applicants other than non-profit organizations or public bodies that are within the State Director's approval authority, the State Director may, upon request of the borrower or grantee, grant exceptions to the surety requirements in accordance with the provisions of § 1924.6(a)(3)(iii) of this subpart. Before granting such an exception, however, the State Director should be provided the following information from the proposed contractor in order to fully evaluate the experience and capabilities of the contractor:

(*1*) A resume indicating the contractor's history, ability, and experience.

(*2*) A current, dated, and signed financial statement indicating the payment status of the contractor's accounts and any contingent liabilities that may exist.

(*3*) A credit report (obtained at no expense to FmHA) attesting to the contractor's credit standing.

(*4*) A listing of trade references that could be contacted to substantiate the contractor's experience and good standing.

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(*5*) Statements from owners for whom the contractor has done similar work, indicating the scope of the work and the owner's evaluation of the contractor's performance.

(C) For loans or grants to applicants other than nonprofit organization or public bodies that are in excess of the State Director's approval authority, the State Director may request National Office authorization to grant one of the exceptions to the surety requirements as indicated in § 1924.6(a)(3)(iii) of this subpart. The following information must be submitted with the request to the National Office:

(*1*) An explanation of why interim financing is not available.

(*2*) An explanation of why the proposed contractor cannot obtain surety bonds meeting the requirements of § 1924.6(a)(3)(ii) of this subpart.

(3) The information listed in paragraph (e)(1)(iii)(B) of this section.

(*4*) The drawings and specifications for the proposed project, together with the comments of the State architect/engineer.

(*5*) The applicant's written request for an exception.

(*6*) An explanation of why the requirements of § 1924.6(a)(3)(iii) (A) or (B) of this subpart cannot be met in those cases where the State Director requests authorization to grant an exception as indicated in § 1924.6(a)(3)(iii)(C) of this subpart. When such a request is made, the documentation required of the contractor under that provision must also be forwarded.

(*7*) The State Director's recommendation.

(D) Adequate steps will be taken to protect the interests of the borrower and the government in accordance with the payment provisions of § 1924.6(a)(12)(i) of this subpart and any alternative as outlined in § 1924.6(a)(3)(iii)(C) of this subpart.

(iv) *Contract cost breakdown.* In any case where the loan approval official feels its appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4(i) of this subpart, the contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (k) and (l) of Subpart E of Part 1944 of this chapter and § 1924.6(a)(3) of this subpart, or cost certification fee will be included in the proposed contract amount. Form FmHA 1924–13, "Estimate and Certificate of Actual Cost" which is available in all FmHA offices, may be used for this purpose.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(i) of this subpart, the borrower, contractor and any subcontractor, material supplier or equipment lessor having an identity of interest must each provide certification using Form FmHA 1924–13 as to the actual cost of the work performed in connection with the construction contract. All construction records must also be audited by an independent CPA, or by an LPA licensed on or before December 31, 1970, except for owner-builders not required to provide cost certification who must follow the instructions provided in § 1924.13(e)(2)(viii) of this subpart.

(A) Instructions specifically addressing the functions and responsibilities of the CPA or LPA are set forth in the FmHA handbook. "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees" (available in any FmHA District Office), which must be provided to the CPA or LPA. The objectives of the audit are to determine whether the project costs incurred are eligible under the terms of the contract and in accordance with FmHA policies, rules and regulations. It is not required that the CPA or LPA provide an opinion on any other financial statement such as a balance sheet or operating statement.

(B) In all cases, the CPA or LPA is expected to render an opinion. FmHA perfers an unqualified opinion concerning the cost certification. If other than an unqualified opinion is expressed, or if any deviations from generally accepted accounting principles are noted, the reasons must be fully explained in the audit report. Qualifying statements may render the certification unacceptable or may require evaluation before a decision can be made. The State Director will determine the acceptability of any qualifying opinions. If the State Director determines it necessary, guidance may be obtained from the National Office or from the OGC.

(C) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit the accounting system that the borrower, contractor, subcontractor, material supplier, or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, it must allow for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(1)(iv) of this section.

(D) The CPA or LPA will audit the books, accounts, and records of the borrower and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction contract to the extent necessary to assure that the amounts claimed as costs are necessary and reasonable, and present fairly the actual costs incurred. Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concering the actual cost. The CPA or LPA must also certify that the examination has been made in accordance with generally accepted auditing standards and accordingly, included such tests of the accounting records and such other auditing procedures as considered necessary, that to the best of the CPA or LPA's knowledge and belief the actual cost of construction performed under the contract is accuate and correct as represented, and that the CPA or LPA has no identity of interest with the borrower, contractor, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors. FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(E) If the auditor is able to express an unqualified opinion the following format is suggested for the certification:

We have examined the "Estimate and Certificate of Actual Cost," (Form FmHA 1924–13) related to the development of the *(project name and case number).*

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The certificate of actual cost has been prepared on the bais of accounting and reporting practices prescribed by the Farmers Home Administration and conforms with generally accepted accounting principles. Other financial statements such as a balance sheet or operating statement have not been prepared. This report is intended solely for filing with FmHA and is not intended for any other purpose.

In our opinion, the accompanying form FmHA 1924–13 referred to above, presents fairly the actual cost in the amount of $———, of the *project name.*

Amount paid and to be paid are shown as of the close of business ———, 19—.

We certify that we have no financial interest in or with the borrower, contractor, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

(F) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924–13 is the form of comparative breakdown that should be used, and contains the certifications required of the applicant and contractor prior to final payment. The amount for builder's general overhead and builder's profit shall not exceed the percentage represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier or equipment lessor having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to final payment to the contractor, if necessary, to assure that the fees shown in the certificate of actual cost do not exceed the percentages represented in the contract cost breakdown.

(vi) *Method of payments.* Partial payments may be requested in accordance with the terms of the FmHA approved construction contract on Form FmHA 1924–18, "Partial Payment Estimate," or other professionally recognized form that contains the architect's certification, approval of the owner, and conditional acceptance of FmHA as shown on the reverse of Form FmHA 1924–18.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit D of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates approved by the applicant and accepted by FmHA, the interim lender may advance construction fund in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

(B) When interim financing is not available, payments will be made in accordance with § 1924.6(a)(12) of this subpart.

(vii) *Exception to competitive bidding.* (A) *For profit applicants.* When State and local laws permit, an applicant other than a nonprofit organization or public body may negotiate a construction contract provided the State Director grants an exception and documentation shows that:

(*1*) The contract price is competitive with other projects similar in construction and design being built in the area under contracts whcih have been competitively bid.

(*2*) The proposed contractor is experienced in construction of similar size, scope, and complexity, and is recognized as a reliable builder.

(*3*) The proposed development work meets all requirements of this subpart.

(*4*) The requirements of paragraphs (e)(1) (ii), (iii), (iv), and (v) of this section are met.

(B) In considering an exception to competitive bidding for the applicants indicated above, the following additional steps will be taken in all cases.

(*1*) If after a full review of the case documents by the appropriate members of the State Office staff the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding will be granted.

(*2*) If after the full review by the State Office staff the State Director determines that the negotiated contract price is not competitive with other similar projects in construction and design being build in the area, then the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(*3*) If there is no agreement by FmHA and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with Subpart B of Part 1900 of this chapter.

(C) Any requests for exceptions to competitive bidding that are not covered in this section may be submitted to the National Office for consideration.

(viii) *Exception to contract mthod—public body.* With the approval of the National Office, the State Director may grant to a public body an exception to the requirement for using contract method construction under the following circumstances;

(A) The loan or grant is for repair or rehabilitation of existing facilities and it is not practicable to perform all work by the contract method.

(B) The applicant has the managerial ability and qualified employees necessary to complete the work successfully.

(C) The applicant submits a written request to the District Director indicating:

(*1*) The scope of work and construction timetable;

(*2*) What phases of work can be contracted and what cannot;

(*3*) Why is it not practicable to contract all phases;

(*4*) Management ability and employee qualifications for performing the work;

(*5*) Proposed method of fund control and frequency of payments;

(*6*) How changes in scope of work and construction timetable will be approved; and,

(*7*) Proposed method of certifying progress and requesting payments.

(D) The request, recommendations of the District Director, appropriate members of the State Office staff and the State Director and the application file will be sent to the National Office.

(2) *Owner-builder method.* This method of development is used only when requested by profit or limited profit RRH applicants when the applicant or any of its controlling principals (such as stockholders, members, partners other than limited partners, directors, or officers), are general contractors by profession, and will serve as the builder of the project without a written construction contract. The State Director may make an exception to the contract method of construction and authorize proceeding by the owner-builder method of construction in accordance with the provisions of this section if the amount of the loan(s) does not exceed the State Director's approval authority. For projects over the State Director's authority, prior written consent of the National Office is required. In such cases, the drawings, specifications, cost estimates, copy of the State Architect/Engineer's review and detailed information on the applicant's qualifications will be submitted to the National Office along with the State Director's recommendations.

(i) The applicant's request to construct a project by the owner-builder method of construction shall be in the form of a letter giving specific and detailed

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information concerning the owner-builder's proposal, and the qualifications and past experience of the owner-builder. The following information must be included with the request:

(A) A résumé indicating the owner-builder's history, ability, and experience.

(B) Dated and signed financial statements (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist.

(C) A written, dated, and signed statement agreeing to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(D) A credit report (obtained at no expense to FmHA) attesting to the owner-builder's credit standing.

(E) A listing of trade references that could be contacted to substantiate the owner-builder's experience and good standing.

(F) Statements from other persons for whom the owner-builder has done similar work, indicating the scope of the work and that person's evaluation of the owner-builder's performance.

(G) A current, dated and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost certification or cost estimation services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) An example of the ledger-type accounting system that the owner-builder and/or the owner-builder's CPA or LPA proposes to set up and use in maintaining a running record of the actual cost of the project. In order to be acceptable, it must allow for a trade item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(2)(i)(G) of this section.

(I) A written, dated, and signed statement agreeing to permit U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific Federal program for the purpose of making audit, examination, excerpts and transcriptions.

(ii) In order to grant an exception to the contract method of construction and proceed with the owner-builder method of construction, the State Director must determine that the following conditions exist:

(A) The applicant or at least one of its principals is a fully qualified and licensed (if necessary under applicable local law) builder by profession, has adequate experience in constructing the type of units proposed as well as projects of similar size, scope, and complexity and will be able to complete the work in accordance with the FmHA approved drawings and specifications.

(B) Based upon the information presented in the applicant's financial statements, the applicant is presently able and is likely to continue to be able to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. When the State Director determines it advisable, the State Director may require independent cost estimation by a professionally recognized cost estimation firm to help substantiate the total development cost of this project. The total development cost recognized by FmHA for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(D) The owner-builder has provided sufficient information on all contracts or subcontracts in excess of $10,000 to permit compliance with § 1924.6(a)(11)(iv) of this subpart.

(iii) In addition to the requirements for the State Director to authorize the owner/builder method of construction as indicated in § 1924.13(e)(2) (i) and (ii) of this subpart, the following additional steps will be taken by the State Director.

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding will be granted.

(B) If, after the full review by the State Office staff, the State Director determines that the construction cost is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(C) If there is no agreement by FmHA and the applicant as to contraction cost and the applicant is not agreeable to any of the aforementioned alternatives, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal, in accordance with Subpart B of Part 1900 of this chapter.

(iv) The development cost of the project may include a typical allowance for general overhead and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit or general overhead which exceed the percentage represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profit from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract methods of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate.

(vi) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(vii) When architectural services are required by § 1924.13(a) during the construction and warranty phases they must be provided by an architect who has no identity of interest with the applicant/owner-builder. The services to be rendered during the construction and warranty phases include, but are not limited to inspections, changes in the scope of project or work to be done, administration of construction accounts, rejection of work and materials not conforming to the FmHA approved drawings and specifications, and other appropriate service listed in § 1924.13(a)(5) (v) and (vi) of this subpart.

(viii) The applicant/owner-builder and any subcontractor, material supplier or equipment lessor sharing an identity

of interest as defined in § 1924.4 (i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project of Form FmHA 1924–18 prior to final payment. For all such projects involving a total development cost of more than $350,000, and any other project where the State Director determines it appropriate, the applicant/owner-builder must provide an audit of all construction records by an independent CPA (or by an LPA licensed on or before December 31, 1979).

(A) Instructions specifically addressing the functions and responsibilities of the CPA or LPA are set forth in the FmHA handbook, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," which must be provided to the CPA or LPA. The objectives of the audit are to determine whether the project costs incurred are eligible and in accordance with FmHA policies, rules and regulations. It is not required that the CPA or LPA provide an opinion on any other financial statement such as a balance sheet or operating statement.

(B) In all cases, the CPA or LPA is expected to render an opinion. FmHA prefers an unqualified opinion concerning the cost certification. If other than an unqualified opinion is expressed, or if any deviations from generally accepted accounting principles are noted, the reasons must be fully explained in the audit report. Qualifying statements may render the certifications unacceptable or may require evaluation before a decision can be made. The State Director will determine the acceptability of any qualifying opinions. If the State Director determines it necessary, guidance may be obtained from the National Office or from the OGC.

(C) The CPA or LPA will audit the books, accounts and records of the applicant/owner-builder (and any subcontractor, material supplier or equipment lessor sharing an identity or interest) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project to the extent necessary to assure that the amounts claimed as costs are necessary and reasonable, and present fairly the actual costs incurred. Upon completion of contraction and prior to final payment the CPA or LPA will provide an opinion concerning the actual cost. The CPA or LPA must also certify that examination has been made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as considered necessary, that to the best of the CPA or LPA's knowledge and belief the autual cost of construction performed under the contract is accurate and correct as represented, and that the CPA or LPA has no identity of interest with the applicant/owner-builder, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors. FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(D) If the auditor is able to express an unqualified opinion, the following format is suggested for the certification:

We have examined the "Estate and Certificate of Actual Cost," (Form FmHA 1924–13) related to the development of (*project name and case number*).

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The certificate of actual cost has been prepared on the basis of accounting and reporting practices prescribed by the Farmers Home Administration and conforms with generally accepted accounting principles. Other financial statements, such as a balance sheet or operating statement, have not been prepared. This report is intended solely for filing with FmHA and is not intended for any other purpose.

In our opinion, the accompanying Form FmHA 1924–13 referred to above, presents fairly the actual cost in the amount of $———, of the ——— project name———.

Amount paid and to be paid are shown as of the close of business———, 19—.

We certify that we have no financial interest in or with applicant/owner/builder, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

(E) Prior to final payment to anyone required to cost certify, FmHA must be provided with a certification and trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amount for builder's general overhead and builder's profit shall not exceed the percentage represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i) (G) of this section for the owner-builder or any contractor, subcontractor, material supplier or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment of the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the percentage represented on the cost breakdown.

(ix) Requests for payment for work performed by the owner-builder method, shall be submitted to the FmHA District Director for review and approval prior to each advance of funds in order to insure that funds are used for authorized purposes. Requests for payment shall be made on Form FmHA 1924–18 or other professionally recognized form containing the following certifications to FmHA:

I hereby certify to the Farmers Home Administration that I have carefully inspected the work and as a result of my inspection and to the best of my knowledge and belief, the quantities shown in this estimate are correct and have not been shown in previous estimates and the work has been performed in accordance with the contract documents.

———————,

(Name of Architect).

By: ———————,

(Title).

Approved by Owner's Representative:

By: ———————,

(Title).

Accepted by FmHA Representative:

By: ———————,

(Title).

The review and acceptance of partial payment estimates by FmHA does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the plans and specifications.

(A) If interim financing is available to reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit D of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for for work completed on the project, all inspections have been paid for work completed on the project, all

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inspections have been completed and all required approvals have been obtained from any governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, ceritified by the applicant's architect, and accepted by FmHA, the interim lender may advance construction funds in accordance with the provisions of this section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

(B) If interm financing is not available, partial payments not to exceed 90 percent of the value of work in place and materials suitably stored on site may be made to the owner-builder for that portion of the estimated cost of development guaranteed by a letter of credit or deposits meeting the requirements of § 1924.6(a)(3)(iii) (A), (B) or (C) of this subpart. Partial payments may not exceed 60 percent of the value of work in place will be based upon an application for payment containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the borrower's architect, and accepted by FmHA. Prior to receiving the first partial payment, the owner-builder must submit a schedule of prices or values of the various trades or phases of the work aggregating the total development cost of the project as required in § 1924.13(e)(2)(i) (G) and (H). Each application for payment must be based upon this schedule, and show the total amount owned and paid to date for materials and labor procured in connection with the project. With each application for payment, the owner-builder must also submit evidence showing how the requested the requested partial payment is to be applied, evidence showing that previous partial payments were properly applied, and a signed statement form the applicant's attorney, title insurance company, or local official in charge of recording documents certifying that the public records have been searched and that there are no liens of record. When the District Director has reason to believe that partial payments may not be applied properly, checks will be made payable to persons who furnish materials and labor for eligible purposes in connection with the project.

(x) Under no circumstances shall funds be released for final payment or to pay any items of the builder's profit until the project is 100 percent complete, ready for occupancy, and the owner-builder has completed and properly executed Form FmHA 1924-13 or complied with the cost certification procedures § 1924.13(e)(2)(viii) of this subpart.

§§ 1924.14—1924.50 [Reserved]

Exhibit A—Breakdown of Dwelling Costs for Estimating Partial Payments

	With slab on grade (percent)	With crawl space (percent)	With basement (percent)
1. Excavation	3	5	6
2. Footings, foundations, columns	8	8	11
3. Floor slab or framing	6	4	4
4. Subflooring	0	1	1
5. Wall framing, sheathing	7	7	6
6. Roof and ceiling framing, sheathing	6	6	5
7. Roofing	5	5	4
8. Siding, exterior trim, porches	7	7	6
9. Windows and exterior doors	9	9	8
10. Plumbing—roughed in	3	2	3
11. Sewage disposal	1	1	1
12. Heating—roughed in	1	1	1
13. Electrical—roughed in	2	2	2
14. Insulation	2	2	2
15. Dry wall or plaster	8	8	7
16. Basement or porch floor, steps	1	1	6
17. Heating—finished	3	3	3
18. Flooring	6	6	5
19. Interior carpentry, trim, doors	6	6	5
20. Cabinets and counter tops	1	1	1
21. Interior painting	4	4	3
22. Exterior painting	1	1	1
23. Plumbing—complete fixtures	4	4	3
24. Electrical—complete fixtures	1	1	1
25. Finish hardware	1	1	1
26. Gutters and downspouts	1	1	1
27. Grading, paving, landscaping	3	3	3
	100	100	100

Exhibit B—Requirements for Modular/Panelized Housing Units

For the benefit of FmHA this Exhibit prescribes evaluation, acceptance, inspection and certification procedures for modular/panelized housing units proposed for use in Farmers Home Administration (FmHA) Rural Housing programs. It applies to proposed development packages provided either under a contract between an FmHA borrower and a single contractor or under a conditional commitment. This Exhibit also describes the use of background information available through the Department of Housing and Urban Development (HUD) for analysis of manufactured products. This Exhibit also applies to the evaluation of manufactured farm service buildings in paragraph XI, below. For the purpose of this Exhibit, County Supervisor and County Office also mean the District Director and District Office, respectively.

I. Applicable Standards and Manuals

A. The HUD Handbook 4950.1, Technical Suitability of Products Program Technical and Processing Procedures, must be followed by housing manufacturers to obtain acceptance of their products. Acceptance documents issued by HUD include: Structural Engineering Bulletins (SEB) on a national basis, Area Letters of Acceptance (ALA) which when accepted by all Area HUD Offices in a HUD region will, in essence, become Regional Letters of Acceptance (RLA), Truss Connector Bulletins (TCB): and, Mechanical Engineering Bulletins (MEB). These documents as well as the Use of Material Bulletins (UM) and Materials Release Bulletins (MR) are addendums to the HUD Minimum Property Standards (MPS).

B. All State FmHA Offices should maintain a close working relationship with each HUD office in their jurisdiction to assure coordination. Any deviations in structure, materials or design from HUD acceptance documents must comply with one of the other applicable development standards.

II. Modular Housing Units That Require Factory Inspections

Only those types which cannot be completely inspected on site are required to obtain acceptance from HUD. Those that receive acceptance will be periodically factory inspected by HUD, usually about every 6 months.

III. Panelized Housing Units That Do Not Require Factory Inspections

A. Housing completely assembled on the building site does not require HUD acceptance. This will include housing that is manufactured but is assembled on the site such as: precut pieces, log wall houses, trussed roof rafters or floor trusses; open panel walls, and other types that can be completely inspected on site.

B. Housing that is assembled in local materials dealers' yards for moving to local sites and to be purchased by an FmHA applicant, will be inspected during construction in the yard by the local FmHA County representative. These units must be constructed according to the applicable development standard and not transported out of the local FmHA County Office jurisdiction. The inspection must be recorded on Form FmHA 1924-12, "Inspection Report."

IV. Manufacturer's Actions Required for Submissions to FmHA Are Listed in Attachment 1 to This Exhibit B

V. State FmHA Office Actions When Manufacturing Facilities Are in its Jurisdiction. The State Office, Upon Receipt of Manufacturer's Submission, Must

A. Determine that the unit structural system has been accepted by HUD as appropriate under HUD Handbook 4950.1 requirements.

B. Review the thermal characteristics and approach of the calculations to determine actions to be taken in compliance with paragraph IV C of Exhibit D of this subpart.

C. Review the proposal for compliance with § 1924.5(d)(1) of this subpart.

D. Determine that the prerequisites for consideration of acceptance by FmHA are met. The prerequisites include all of the following:

1. A current acceptance document from HUD (SEB, RLA, LLA), except for Category III housing (modular/panelized housing that does not have to have a Structural Engineering Bulletin as prescribed in HUD Handbook 4950.1, which is available in any FmHA State Office). In Category III states, the state government requirements for manufactured housing must be followed.

2. A current HUD Factory Inspection Report, Form No. 2051m, or in the case of Category III states, a copy of the inspection report from the state government or accepted third party performing the factor inspection. Each report must be made by HUD or a HUD authorized agency, and must be no older than 6 months.

3. A letter from the manufacturer requesting a review for acceptance for loan consideration. Enclosed with the letter shall be all the information listed in Attachment 1 to this Exhibit B.

E. Issue acceptance letters to the manufacturer stating the conditions of acceptance in the format of Attachment 2 to this Exhibit B. The letter shall have an attachment listing all models accepted in the format of Attachment 3 to this Exhibit B. A copy of the acceptance letter and list of models shall be sent to each County Office in the State and, when requested by the manufacturer, to each other State FmHA Office in which the product is to be marketed.

F. After initial review of a submission, maintain a master file of accepted manufacturers and models and review the file twice yearly to determine the currency of the factory inspection reports and HUD or HUD or state government acceptance documents.

G. Notify manufacturers of overdue factory inspection reports, for acceptance of documents review and updating, using the format of Attachment 4 to this Exhibit B. Accompanying the notification will be a temporary acceptance sheet (Attachment 3 to this Exhibit B) indicating to the manufacturer that the company models have temporary acceptance for 60 days. If the manufacturer provides evidence that a review is being processed by HUD, a maximum of an additional 90 days may be granted. Otherwise, the acceptance shall terminate on the last extension date and it will be necessary for the manufacturer to resubmit as if it is for initial acceptance.

H. Distribute a list of added models, deleted models, or notice of deletion of any manufacturer's product to the County Offices and other State FmHA Offices as necessary.

I. Issue an initial supply of Manufacturer's and Builder's Certification forms (Attachment 5 to this Exhibit B) to each existing and newly accepted manufacturer. Manufacturers are to duplicate this form as necessary in their market areas.

(J) Resolved any problems with the manufacturer, as reported by the County Office. Action may include coordination, FmHA plant inspections or cancellation of Acceptance Letters when problems persist.

VI. County Office Action

A. When an application is received involving any of the manufacturer's products on the acceptance list, the County Office FmHA authorized personnel will:

1. Review the drawings and description of materials described in paragraphs A and B of Attachment 1 to this Exhibit B. The floor plans and elevations must be identifiable with the model listed in the acceptance list issued by the State Office.

2. Require a builder/dealer or the manufacturer to provide any drawings necessary to adapt the house to the site conditions where the house will be located.

3. Require site plan drawing such as illustrated in Attachments 1 and 2 to Exhibit C of this subpart.

4. Inspect and identify the model delivered against the manufacturer's certification and the accepted drawings and description of materials before the unit has been set on the foundation.

5. Require the builder/dealer to certify that the work for which the builder/dealer is responsible has been erected in compliance with the applicable development standard. This certification will be completed on a copy of Attachment 5 to this Exhibit B, and filed in County Office case file.

6. Observe any noncompliance with the applicable development standard or with paragraphs IV and V of this Exhibit B. In this respect:

a. Minor noncompliance will be resolved by the manufacturer through the builder/dealer. In cases where there is no builder/dealer, the County Office may resolve such issues with the manufacturer directly.

b. Noncompliance that cannot be resolved at the County Office level will be reported to the State Office.

7. Inspect manufactured housing according to § 1924.8(d) of this subpart.

8. Be aware that the Accepted List may include many models from which loan applicants may choose. No changes from accepted model designs are permitted. The model selected by an application should be apropriate to the needs of that particular family in accordance with FmHA Instruction 1944-A which is available in all FmHA offices.

VII. Noncompliance Issues

A. When minor issues are noted, the County Office will attempt to resolve them as described above. If they cannot be resolved locally, they will be referred to the State Office. When any issues cannot be resolved at State Office level, the National Office Program Support Staff (PSS) will be contacted for guidance.

B. The National Office PSS, coordinating with HUD, will take the appropriate actions to resolve the issues reported.

C. Manufacturers and builder/dealers must be aware that if the FmHA inspector finds any of the following conditions, the inspector may refuse to accept the construction until corrections have been made:

1. Evidence of noncompliance with any option of the method described in the HUD—SEB, RLA, or LLA.

2. Faulty shop fabrication, including surface defects.

3. Damage to shop fabricated items or materials due to transportation, improper storage, handling or assembly operation.

4. Unsatisfactory field or site workmanship.

VIII. Actions by Other State FmHA Offices.

When a State Office receives a copy of the Accepted List from the State Office in which a manufacturing plant is located, it will:

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A. Maintain a file, by manufacturer, of each acceptance list models.

B. Provide copies of the acceptance list of models to each County Office in the State.

C. Request a copy of the drawings, description of materials, and the thermal calculations to determine compliance with the thermal requirements for the county in which the house is to be located according to Exhibit D of this subpart.

D. Check to see that County Offices within the State will act as prescribed in paragraph VI of this Exhibit B.

E. When two or more State Offices have different interpretations of the acceptability of a particular model, there must be an agreement between the States so that they will have the same requirements. If the States cannot agree, the National Office, PSS, shall be consulted for guidance.

IX. Subsequent Review

FmHA will make periodic reviews of houses, both site-built and houses manufactured offsite, to determine acceptability of the finished product. If, in the judgment of the FmHA, the product has failed to perform satisfactorily, acceptance may be withdrawn. The State Director will notify the manufacturer and/or the builder/dealer of the reasons for the withdrawal no later than the time of withdrawal. Negotiations for corrections will be carried out by the County Office with the assistance of the State Office or National Office, as necessary.

X. Materials and Products Acceptance—Material Release Bulletins, Use of Materials Bulletins, Manufacturer's Instructions.

A. The Materials Release (MR) and Use of Materials Bulletins (UM) provide for the national acceptance of specific nonstandard materials and products not covered in the current MPS.

B. When contractors or builders intend to use products or materials not listed as approved in the MPS, the FmHA personnel reviewing or concerned with the approval of construction in which the product is to be used, will require the contractor or builder to furnish a Materials Release Bulletin or Use of Materials Bulletin on the materials or products. If the product has been accepted, the supplier should be able to obtain the bulletin for the contractor or builder from the manufacturer. These bulletines describe the product or materials limitations to use, method of installing or applying, approved type of fasteners, if used, etc. and will provide the contractor with instructions as to proper installation or application.

C. When FmHA personnel are unfamiliar with any materials or products which have been accepted in the MPS, they will request the contractor or builder to furnish the manufacturer's instructions to assure that the materials or products are properly installed or applied. Any questions on any product that cannot be resolved in the County Office should be referred to the State Office. When the question cannot be resolved at the State Office level, the National Office PSS should be consulted for guidance.

XI. Manufactured Farm Service Buildings

A. When a loan application is received that involves a manufactured building or special equipment that cannot be completely inspected on the site, the local State Land Grant University recommendations should be requested.

B. When the County Office questions the advisability of making a loan on a manufactured building, the State Office should also be consulted.

C. The State Office should review and make recommendations to the County Office. If doubt still exists, the National Office, PSS, should be consulted for guidance.

Attachment 1—Required Information for Acceptance of Modular/Panelized Housing Units

The manufacturer or sponsor of modular/panelized housing units wishing to participate in the Farmers Home Administration (FmHA), Rural Housing programs shall submit to the FmHA State Director having jurisdiction over the State in which the proposed housing is to be manufactured, two complete sets of the information listed below for evaluation. Submissions not including all the information requested will be returned to the manufacturer or sponsor.

A. *Statements.*

1. Name and location of organization, including titles and names of its principal officers.
2. A brief description of plant facilities.
3. Extent of intended market distribution, including a list of any other States in which units will be marketed.
4. The method of quality control during site installation.
5. A copy of the applicable current HUD Structural Engineering Bulletin (SEB), Regional Letter of Acceptance (RLA), or Area Letter of Acceptance (ALA).
6. A current factory inspection report made within 6 months by HUD or HUD authorized agency.
7. Name and address of any third party inspection agency.
8. Location of nearest assembled product for inspection.
9. Field manuals for site installation and/or set-up procedures.
10. Specifications or descriptions of materials using either Form FmHA 1924–2, (HUD–FHA Form 2005), "Description of Materials," including sizes, species and grade of all building and finishing materials. All blanks should be filled and additional sheets may be attached as well as equipment manufacturer's brochures. Use an asterisk (*) to denote all items of onsite construction that will be provided by the builder-dealer. The builder-dealer must complete a form for the builder-dealer's portion of the work. Use N/A in any blank which is not applicable.
11. Names and addresses of other public and private agencies which have rendered or been asked to render a technical suitability or acceptance determination with respect to the products or structural methods employed.
12. Written certification that construction drawings and specifications conform with the applicable development standard.
13. Any other pertinent information.
14. An index of all documents submitted.

B. *Working Drawings.* For emphasis as to the details required for modular/panelized housing proposals, the following items are listed in addition to and in more detail than the requirements in Exhibit C of this subpart. In some cases, the drawing presentation sheets may be required to be reduced to 200 mm by 266 mm (8 x 10½ inches) sheet size:

1. Foundation and/or Basement Plan. This plan shall include anchorage details, exterior and interior dimensions, typical footings, wall thickness, pilaster sizes and locations, column or pier sizes and locations and girders required to support the structures. Show location of all equipment (furance, water heater, laundry tubs, sump, etc.) floor drains, electrical outlets, electrical entrance panels, and all doors and windows or crawl space vents with all sizes indicated.

2. Floor Plans of all levels. Show square footage of each habitable room with square footage of each area of natural light and ventilation. In addition, a design sketch scaled properly to illustrate a typical furniture arrangement for all habitable levels is required to indicate intended occupancy functions of the design. A window and door schedule should also be provided indicating glazed size, sash, size, and thermal conductance of each type.

3. All exterior elevations including openings and sizes; wall finish materials, flashing, finish grades intended, depth of footings when known, finish floor, ceiling heights, roof slope, location of downspouts, gutters, vents for both structural spaces and for equipment. Indicate construction joint locations and details of connections between sections, modules or components.

4. Building cross sections showing size and spaces of all framing members from lowest member (bottom of footing) to highest point of roof (ridge) plus:

a. Type of material and method of application of all covering materials, such as, subflooring, combination subflooring and underlayment, sheathing and interior and exterior finishes;

(b) Complete details including computations of trussed rafter systems with the architect/engineer's stamp of those responsible for the design.

(c) Details of insulation and vapor barrier installation and attic ventilation. If the thermal characteristics to be provided are determined according to the optional method for overall structure performance allowed in Exhibit D of this subpart, the submission and complete engineering calculations with all details of construction shall be sent to Administrator, Attn. PSS, FmHA, Washington, DC 20250, for analysis as prescribed in paragraph IV C of Exhibit D of this subpart.

(d) Special details as necessary to show any special features of construction including method of fabricating, erection, joining, and finishing of all elements; and

(e) Details and sections of stairways including all critical dimensions, such as, rise, run, and headroom.

5. Interior elevations of kitchen cabinets and bathroom elevations with schedule of all shelf, counter top and drawer footage. Indicate whether kitchen cabinets are to be custom made for each model or made for any model by a cabinet manufacturing company.

6. Plumbing schematics, including pipe materials, sizes and plumbing code compliance.

7. Heating plan, including heat loss of each room, is needed for heating systems, sizings and capacities, forced air, electric baseboard, or electric space heaters and, if applicable, heat gain. For forced air systems, include supply and return duct layout and location of appropriate diffusers.

8. Electrical plan, including circuit chart or diagram.

9. Any other pertinent facts or drawings that will better explain why and how certain unusual materials or structural methods are employed.

John Dough Manufacturing Company,
3444 Residence Avenue, Elkton, Indiana 00051

Dear Sirs: Although the documents submitted to this office have only received a cursory review, they appear to be in substantial compliance to qualify your firm for the type of acceptance indicated on the attached list.

The acceptance being issued is subject to this letter of conditions, compliance with HUD Handbook 4950.1, Technical Suitability of Products Program Technical and Processing Procedures, compliance with Farmers Home Administration (FmHA) Thermal Performance Construction Standards, and compliance with the conditions set forth in the HUD acceptance document, if applicable, whose number appears on the acceptance.

The manufacturer and the authorized builder-dealer bear the responsibility of complying with the above exhibits submitted and the applicable development standard.

The manufacturer and/or builder-dealer also shall:

1. Provide positive identification of the modular unit by model, date of manufacture and factory in which the unit was manufactured.
2. Furnish with each home to be financed by FmHA in (State), a written certificate (Attachment 5 to this Exhibit B) endorsed by the builder-dealer certifying that all requirements have been satisfied.
3. Furnish the local FmHA County Supervisor with a complete set of drawings including site plans, description of materials, structural engineering bulletins when applicable in the State, and documentation relating to the manufacture, transportation, erection, and installation for each model of modular-panelized housing to be financed in the county. Electrical, plumbing and heating plans must be furnished for each model in addition to the basic drawings. Floor plans and elevation drawings may vary from those listed in Attachment 1 of Exhibit B to FmHA Instruction 1924–A to reflect each of the manufacturer's models provided they are in compliance with the applicable development standard and the FmHA Thermal Performance Construction Standards and provided they have been accepted and listed in this state's approval of manufactured structures. No field alterations to the accepted models will be allowed.
4. Furnish, when required by the County Supervisor, foundation drawings (including special foundation design considerations when the unit is to be erected in seismic zones 1, 2 or 3) adapting the modular home to any unusual site conditions needing information additional to that furnished by the standard drawings.
5. Furnish the County Office with a copy of inspection reports of the manufacturing facilities immediately after the inspection reports have been completed.
6. Allow FmHA personnel to inspect the plant facilities at any time and furnish all FmHA State Offices, where acceptance has been obtained, with a copy of any Farmers Home Administration Inspection Reports of the firm's manufacturing facilities immediately after the inspection reports have been completed.
7. In the event there are major changes to the submitted drawings obtain approval under the HUD Technical Suitability of Products Program and submit verification of this approval to the County Office for FmHA State Acceptance Listing. Any modular home shipped with major changes incorporated and not having such changes on file at the County Office may be rejected.

(Each State can add state and local requirements appropriate to this letter of conditions)

This acceptance may be subject to corrective action when deficiencies are noted in the product, field inspections, manufacturing facilities, or when there is noncompliance with the provisions of the HUD Technical Suitability of Products Program.

The inclusion of these models on the acceptance list is based only on the material and structural aspects of the manufactured units. Final determination of acceptability rests with FmHA personnel. Other factors relating to the property in its entirety such as appraisal, location, sustained market acceptance, architectural planning and appeal, thermal qualities, mechanical and electrical equipment, etc., must be considered in the final determination.

Your cooperation in this acceptance program is appreciated.

Sincerely,

State Director.

Attachment 3

Date______ File No. ____

ACCEPTANCE OF MODULAR/PANELIZED HOUSING UNITS

(Based on HUD Handbook 4950.1)

Manufacturer:
____
____
____
____

Acceptance Document ____________
Type of Acceptance:
____ Regular
____ Temporary, Expires______
Plant Locations: ____________
Date of Latest Plans Reviewed____________
Date of Latest Factory Inspection ________
Acceptance Document Review Date ________

FmHA THERMAL PERFORMANCE CONSTRUCTION STANDARDS, EXHIBIT D, 1924–A

State Office Review (Exh. D, IV, C, 1, a or b)	National Office Review (Exh. D, IV, C, 2)
Maximum Winter Degree Days for State___	Walls R___Glazing/Gross Wall Area Ratio___%
Ceilings R___Glazing___Pane(s)	Floor R___Glazing___Pane(s)
Insulated Door___Wood & Storm___	Insulated Door___Wood & Storm___

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Models Accepted:

Attachment 4

John Dough Manufacturing Company.
3444 Residence Drive, Elktown, Indiana 00061

Dear Sirs: As set forth in acceptance letters issued by this office, acceptance of modular/panelized homes in this state is based on HUD's Technical Suitability of Products Program and the conditions stated in the acceptance letter. Your file has been reviewed and the following has been noted

_____ An inspection report of your plant facilities is overdue. Inspections are required twice yearly. The last inspection report on file at this office is dated _____

_____ Your Structural Engineering Bulletin No. ___ dated _____ has not been reviewed by HUD. Reviews are generally required every three years. Temporary acceptance will be considered when you provide evidence that the review documents have been submitted to HUD.

_____ The drawings being used for the construction of your homes are not listed in your Structual Engineering Bulletins. Drawings used in the field should be those upon which the Structural Engineering Bulletin was issued.

_____ There have been ___ revisions to the development standards since _____, the date of the last drawings we have on file for your homes. It is recommended that you review the revisions to ascertain whether your drawings need to be updated.

Please submit a written response and appropriate documents for the above items within ___ days, or your product will be removed from the acceptance list until your firm can again qualify. If you have any problems furnishing the above within the time stated, please contact this office

We look forward to receiving the materials indicated so that your firm's listing may be continued.

Sincerely,

State Director.

Attachment 5—Certification by Manufacturer

Delivery location of structure or component—

This is to certify that Model _________ Serial Number _______ Manufactured _____ 19___ in our _________ plant and being sold to (name of builder-dealer or borrower) has been manufactured in accordance with drawings and specifications on file in the FmHA State Office and that the construction complies with applicable development standards except as modified by HUD Acceptance Document (SEB, RLA, LLA) No. _______ dated _______, and in compliance with the FmHA Thermal Performance Construction Standards.

Date ___________________________

____

Signature of Authorized Official

____

Title

Certification by Builder/Dealer

__________ Certifies that the foundations and other on-site work has been constructed in accordance with the drawings and specifications and the above structure or component has been erected, installed or applied in compliance with the applicable development standards.

It is understood that the manufacturer's certification does not relieve the builder/dealer of responsibility under the terms of the builder's warranty required by the National Housing Act.

Date ___________________________

____

Signature of Authorized Official

____

Title

Exhibit C—List of Required Drawings and Specifications

This exhibit applies to all new buildings to be constructed, including all single family housing and related facilities and, as applicable, farm housing and farm service buildings.

I. General

The documents recommended in this Exhibit correspond with the list of Exhibits required in Chapter 3 of the Department of Housing and Urban Development (HUD) "Architectural Handbook for Building Single-Family Dwellings" No. 4145.2. This exhibit may be used as a public handout and shall be used as a guide for drawings and specifications to be submitted in support of any type of application involving construction of major new buildings or extensive rehabilitation, alterations or additions to existing buildings. Descriptions of work for minor alterations or repairs need pertain only to work to be done and may be in narrative form when acceptable to the County Supervisor. Complete and accurate drawings and specifications are necessary.

A. To detemine the acceptability of the proposed development,

B. To determine compliance with the applicable standards and codes,

C. To perpare a cost estimate, and

D. To provide a basis for inspections and the builder's warranty.

II. Drawings for a Specific Structure

Drawing for individual single dwellings shall provide at least the following:

A. *Plot Plan.* Refer to Example Plot Plan No. 1, Attachment 1 to this Exhibit C. Ratio: 1:240 (1″=20′) (at scale, 1″=20′ or 1/16″=1′0″ minium):

1. Lot and block number.

2. Dimensions of plot and north point.

3. Dimensions of front, rear, and side yard.

4. Location and dimensions of garage, carport, and other accessory buildings.

5. Location and sizes of walks, driveways, and approaches.

6. Location and sizes of steps, terraces, porches, fences, and retaining walls.

7. Location and dimensions of easements and established setback requirements, if any.

8. Elevations at the following points: (a) First floor of dwelling and floor of garage, carport and other accessory building; (b) finish curb or crown of street at points of extension of lot lines; (c) finish grade elevation at each principal corner of structure; (d) finish grade at bottom of drainage swales at extension of each side of structure as feasible.

9. The following additional elevations, as applicable, if the topography of the site or the design of the structure is such that special grading, drainage or foundations may be necessary. Examples are irregular or steeply sloping sites, filled areas on sites, or multi-level structure designs; (a) Finish and existing grade elevations at each corner of the plot; (b) existing and finishi grade at each principal corner of dwelling; (c) finish grade at both sides of abrupt changes of grade such as retaining walls, slopes, etc.; (d) other elevations that may be necessary to show grading and drainage.

10. Indication of type and approximate location of drainage swales.

11. When an individual water supply and/or sewage system is proposed, drawings, specifications and other items prescribed in Paragraph V of this Exhibit.

B. *Floor Plans:*

1. Scale, 1:50 (¼″=1′0″).

2. Floor plan of each floor and basement, if any. Show typical furniture locations to suggest intended use of each habitable space.

3. Plan of all attached terraces and porches, and of garage or carport.

4. If dwelling is of crawl-space type, a separate foundation plan. Slab-type foundation may be shown on sections.

5. Direction, size and spacing of all floor and ceiling framing members, girders, columns or piers.

6. Location of all partitions and indication of door sizes, and direction of door swing.

7. Location and size of all permanently installed construction and equipment such as kitchen cabinets, closets, storage shelving, plumbing fixtures, water heaters, etc. Details of kitchen cabinets may be on separate drawing.

8. Location and symbols of all electrical equipment, including switches, outlets, fixtures, etc.

9. Heating system on separate drawing, or when it may be shown clearly it may be part of the floor or basement plan showing: (a) Layout of system; (b) location and size of ducts, piping, registers, radiators, etc.; (c) location of heating unit and room thermostat; (d) total calculated heat loss of dwelling including heat loss through all vertical surfaces, ceiling and floor. When a duct or piped distribution system is used, calculated heat loss of each heated space is required.

10. Cooling system, on separate drawings or, as part of heating plan, floor or basement plan showing: (a) Layout of system; (b) location and size of ducts, registers, compressors, coils, etc.; (c) heat gain calculations, including estimated heat gain for each space conditioned; (d) model number and Btu capacity of equipment or units in accordance with applicable Air Conditioning and Refrigeration Institute (ARI) or American Socity of Refrigerating Engineers (ASRE) Standard; (e) Btu capacity and total Kilowatt (KW) input at stated local design conditions; (f) if room or zone conditioners are used, provide location, size and installation details.

C. *Exterior Elevations:*

1. Scale, 1:50 (¼″=1′0″). Elevations, other than main elevation, which contain no special details may be drawn at 1:100 (⅛″=1′0″).

2. Front, rear and both side elevations, and elevations of any interior courts.

3. Windows and doors—indicate size unless separately scheduled or shown on floor plan.

4. Wall finish materials where more than one type is used.

5. Depth of wall footings, foundations, or piers, if stepped or at more than one level.

6. Finish floor lines.

7. Finish grade lines at buildings.

D. *Details and Sections:*

1. Section through exterior wall showing all details of construction from footings to highest point of road. Where more than one type of wall material is used, show each type. Scale, 1:25 (⅜″=1′0″) minimum.

2. Section through any portion of dwelling where rooms are situated various levels or where finished attic is proposed, Scale, 1:50 (¼″=1′0″) minimum.

3. Section through stair wells, landings, and stairs, including headroom clearances and surrounding framing. Scale, 1:50 (¼″=1′0″) minimum.

4. Details of roof trusses if proposed, including connections and stress or test data with seal of architect or engineer responsible. Scale of connections, 1:25 (⅜″ = 1′0″) minimum.

5. Elevation and section through fireplace. Scale, 1:25 (⅜″ = 1′0″) minimum.

6. Elevations and section through kitchen cabinets, indicating shelving. Scale, 1:50 (¼″ = 1′0″) minimum.

7. Sections and details of all critical construction points, fastening systems, anchorage methods, special structural items or special millwork. Scale as necessary to provide information, 1:25 (⅜″ = 1′0″) minimum.

III. Master Drawings for Group Structures

Drawings for a group of structures (such as for several conditional commitments) may be submitted in lieu of drawings for each individual property when a number of applications are simultaneously submitted involving repetition of the same type structure.

A. *Master plot plan* shall include the following:

1. Scale which will provide the following information in a clear and legible manner.

2. North point.

3. Location and width of streets and rights-of-way.

4. Location and dimensions of all easements.

5. Dimensions of each lot.

6. Location of each dwelling on lot with basic dimensions.

7. Dimensions of front, rear and side yard.

8. Location and dimensions of garages, carports, or other accessory buildings.

9. Identification of each lot by number and indication of basic plan and elevation type.

10. Location of walks, driveways, and other permanent improvements.

B. *Typical plot plan* for each basic type dwelling may be submitted in lieu of fully detailing each lot on master plot plan, when topography and lot arrangements present no individual planning or construction problems.

1. Information not shown on the typical plot plan shall be included on the master plot plan.

2. Typical plot plans shall not be used for corner lots, lots with irregular boundaries, lots involving pronounced topographic variations or other lots where individual detailing is necessary.

3. Location of dwelling on typical lot and full dimensions.

4. Location and dimensions of all typical improvements, such as garage, carport, accessory buildings, walks, drives, steps, porches, terraces, trees, shrubs, retaining walls, fences, etc.

C. *Grading* many be shown on separate grading plan or on the master plot plan. Scale shall be sufficiently large to provide the following information in clear and legible manner:

1. Contours of existing grade at intervals of not more than 1.524 m (5 feet). Intervals less than 1.524 m (5 feet) may be required when indicated by the character of the topography.

2. Location of house and accessory buildings on each lot.

3. Identification of each lot by number.

4. Elevations in accordance with individuals plot plan including bench mark and datum or, in lieu of finish grade elevations, contours of proposed finish grading may be submitted. Contour intervals selected shall be appropriate to the topography of the site.

5. Lot grading shall be shown by indicating protective slopes and approximate location of drainage swales.

6. Location of drainage outfall, if any drainage is not to a street.

D. *Floor Plans, Elevations Sections, and Details* shall be submitted for each basic plan. Alternate elevations to basic plan may be shown at scale, 1:100 (⅛″=1′0″).

IV. Specifications

Form FmHA 1924–2, "Description of Materials," or other acceptable and comparable descriptions of all materials forms shall be submitted with the drawings. The forms shall be completed in accordance with the instructions of Form FmHA 1924–2 to describe the materials to be used in the construction.

A. Form FmHA 1924–2 may be reproduced provided size, format and printed text are identical to the current official form. When it is reproduced, the following deletions must be made:

1. All lines indicating FmHA form numbers or other Government agency initials and/or numbers, and

2. The United States Government Printing Office (GPO) imprint and reference number.

B. The material identification shall be in sufficient detail to fully describe the material, size, grade and when applicable, manufacturer's model or identification numbers. When necessary, additional sheets must be attached as well as manufacturers specification sheets for equipment and/or special materials, such as aluminum siding or carpeting.

V. Individual Water Supply and Sewage Disposal Systems

When an individual water and/or sewage disposal system is proposed, the following additional information must be submitted.

A. *Approval and recommendations of other authorities.*

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1. A written opinion by the health authority having jurisdiction that the site is suitable and acceptable for the proposed system(s) and.

2. If available a soils report from the local USDA-Soil Conservation Service Office and any recommendations they may have.

3. Approval of appropriate environmental control authority.

4. A signature of the health authority on the plot plan indicating approval of design of the proposed system.

B. *Plot Plan.* Refer to Example Plot Plan No. 2 Attachment 2 to this Exhibit C.

1. Location and size of septic tank, distribution box, absorption field or bed, seepage pits and other essential parts of the sewage disposal system and distance to all individual wells and open streams or drainageways.

2. Location of well, service line and other essential parts of the water supply system and distance to other wells and/or sewage disposal system.

3. Exact location of individual systems (water or sewage) on adjacent properties and decription of system if available.

C. Construction details of all component parts of individual water supply and sewage disposal system shall clearly indicate material, equipment and construction. Extra sheets and drawings should be added as necessary to fully explain the proposed installation.

BILLING CODE 3410-07-M

Attachment 1

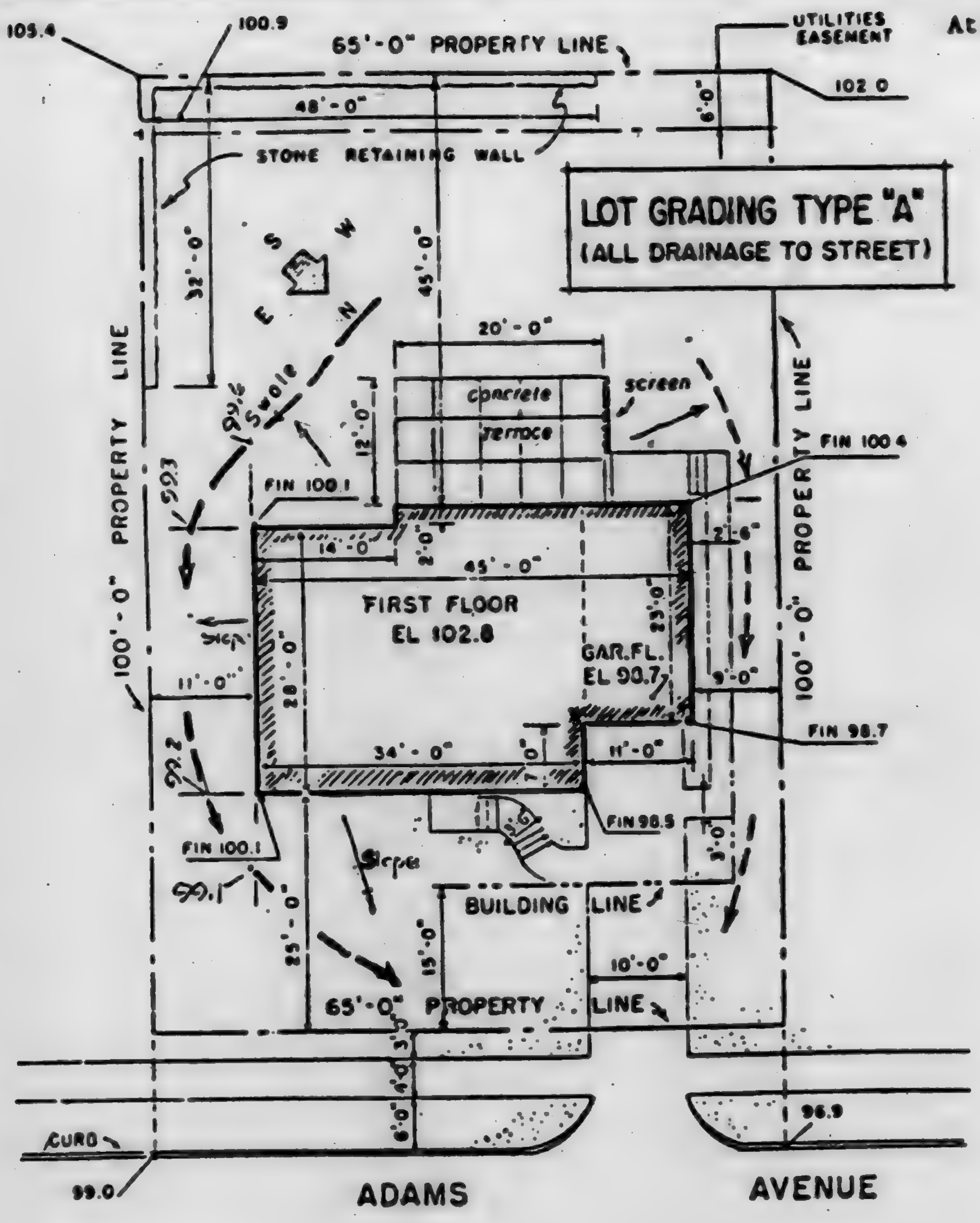
105.4
100.9
65'-0" PROPERTY LINE
UTILITIES EASEMENT
102.0
48'-0"
6'-0"
STONE RETAINING WALL
LOT GRADING TYPE "A"
(ALL DRAINAGE TO STREET)
32'-0"
45'-0"
S
W
E
N
Swale
99.6
99.3
20'-0"
concrete terrace
screen
12'-0"
FIN 100.1
FIN 100.4
14'-0"
2'-0"
45'-0"
2'-6"
FIRST FLOOR
EL 102.8
GAR. FL.
EL 98.7
23'-0"
100'-0" PROPERTY LINE
100'-0" PROPERTY LINE
Slope
11'-0"
28'-0"
9'-0"
34'-0"
11'-0"
FIN 98.7
99.2
FIN 100.1
FIN 98.5
99.1
Slope
BUILDING LINE
25'-0"
15'-0"
10'-0"
65'-0" PROPERTY LINE
CURB
99.0
6'-0" 4'-0" 3'-0"
96.9
ADAMS
AVENUE

Lot 4 Block 7
CHESTNUT HILL - BRAINARD, COLUMBIA

Scale 1/16" = 1'-0"

EXAMPLE PLOT PLAN No 1

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Attachment 2

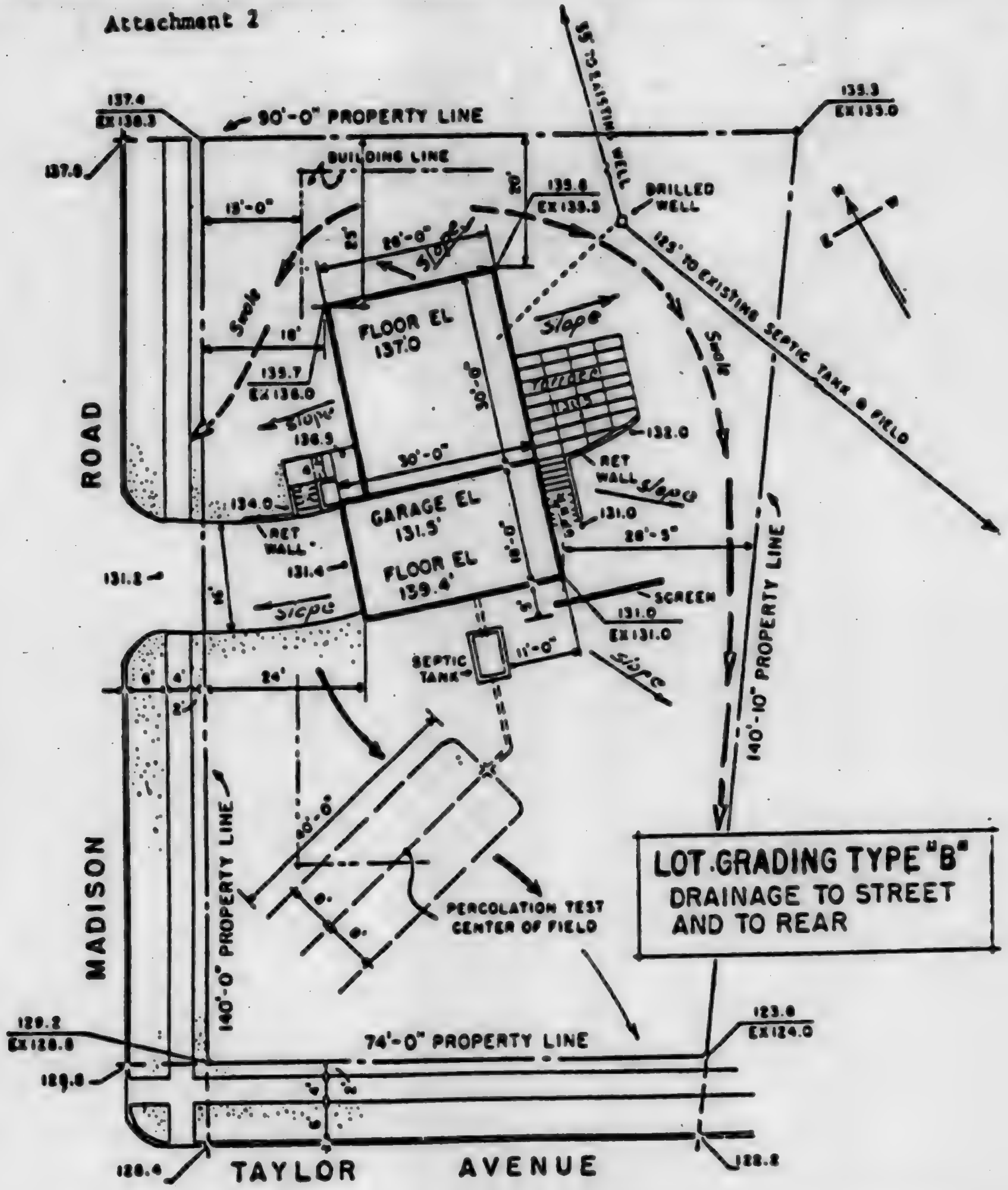

LOT 29. BLK. 2 HEALTH AUTHORITY
HOMESTEAD ADDITION, LINCOLN COUNTY, COLUMBIA
EXAMPLE PLOT PLAN NO. 2 Scale 1" = 20'

BILLING CODE 3410-07-C

Exhibit D—Thermal Performance Construction Standards

I. Purpose

This Exhibit prescribes thermal performance construction standards to be used in all housing loan and grant programs. These requirements shall supersede any of the development standards defined in § 1924.4(h) of this subpart.

II. Policy

All loan or grant application involving new construction and all applications for conditional commitments shall have drawings and specifications prepared to comply with paragraphs IV A or IV C and D of this Exhibit. All existing dwellings to be bought with FMHA loan funds shall be considered in accordance with paragraphs IV B or C of this Exhibit.

III. Definitions

A. *British thermal unit* (Btu) means the quantity of heat required to raise the temperature of one pound (.4535 Kg.) of water by one degree Fahrenheit. For example, one Btu is the amount of heat needed to raise the temperature of one pound of water from 59 degrees Fahrenheit to 60 degrees Fahrenheit.

B. *Glazing* is the material set into a sash or door when used as a natural light source and/or for occupant's views of the outdoors.

C. *"R" value,* thermal resistence, is a unit of measure of the ability to resist heat flow. The higher the R value, the higher the insulating ability.

D. *"U" value* is the overall coefficient of heat transmission and is the combined thermal value of all the materials in a building section. U is the reciprocal of R. Thus U=1/R or R=1/U or 1/C where C is the thermal conductance and is the unit of measure of the rate of heat flow for the actual thickness of a material one square foot in area at a temperature of one degree Fahrenheit. The lower the U value, the higher the insulating ability.

E. *Winter degree-day* is a unit based on temperature difference and time. For any one day, when the mean temperature is less than 65 degrees Fahrenheit (18.3 degrees Celsius), there are as many degree-days as the number of degrees difference between the mean temperature for the day and 65 degrees Fahrenheit. The daily mean temperature is computed as half the total of the daily maximum and daily minimum temperatures.

IV. Minimum Requirements

A. All dwellings, single family or multifamily, to be constructed with FmHA loans and/or grant funds and all repair, remodeling or renovation work performed on dwellings with FmHA loan/or grant funds shall be in conformance with the following, except as provided in paragraphs IV B 3 and IV D of this Exhibit:

NEW CONSTRUCTION

[Maximum U values for ceiling, wall and floor section or various construction]

Winter degree days (Note 1)	Ceilings (Note 2)	Walls	Floors (Note 3)	Glazing (Note 4)	Doors (Note 5)
1,000 or less	.05	.08	0.8	1.13	
1,001 to 2,500	.04	.07	0.7	.69	
2,501 to 4,500	.03	.05	0.5	.69	(1)
4,501 to 8,000	.03	.05	0.5	.47	(2)
8,001 or more	.026	.05	.05	.47	(2)

[1] Storm door if hollow core door or if over 25% glass.
[2] Storm door.

(U values are not adjusted for framing. Values calculated for components may be rounded. For example, a total R Value of 18.88 concerts to a U value of .0529 rounded to .05)

Note 1.—Winter degree-days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes Apartments"; local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

Note 2.—Insulation must be installed uniformly above the ceiling including all ceiling joists. In pitched roof construction, compression of insulation at the outside building walls is permitted to allow for a 1 inch ventilation space under the roof sheathing. For any loose fill insulation, a baffle must be provided. Raised trusses are not required.

Note 3.—For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces, the U value of floor section shall not exceed the value shown. A basement, crawl space, or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be obtained from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of the foundation wall section shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

Winter degree days (65 F base)	Maximum U value	Glazing [1]
2,500 or less	No requirement	1.13
2,501 to 4,500	0.17	1.13
4,501 or more	0.10	0.69

[1] Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

Note 4.—Sliding glass doors are considered as glazing. The glazing value is for glass only. Glazing shall be limited to 15 percent of the gross area of all exterior walls enclosing heated space, except when demonstrated that the winter daily solar heat gain exceeds the heat loss and the glass area is properly screened from summer solar heat gain.

Note 5.—1¾ inch metal-faced door systems with rigid insulation core and durable weatherstripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length tested according to ASTM E-283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped. Any glazed areas must be double-glazed.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

Winter degree-days (65 F base)	Minimum R values [1]	
	Heated slab	Unheated slab
500 or less	2.8	
1000	3.5	
2000	4.0	2.5
3000	4.8	2.8
4000	5.5	3.5
5000	6.3	4.2
6000	7.0	4.8
7000	7.8	5.5
8000	8.5	6.2
9000	9.2	6.8
10000 or greater	10.0	7.5

[1] For increments between degree days shown, R values may be interpolated.

B. All existing dwellings to be purchased with RH loan and grant funds shall be insulated in accordance with the following:

EXISTING CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OR VARIOUS CONSTRUCTION

Winter degree days (note 1)	Ceilings	Walls (note 2)	Floors (note 3)	Glazing	Doors (note 5)
1,000 or less.	.05		.08	1.13	
1,001 to 2,500.	.04		.07	.69	

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EXISTING CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OR VARIOUS CONSTRUCTION—Continued

Winter degree days (note 1)	Ceilings	Walls (note 2)	Floors (note 3)	Glazing	Doors (note 5)
2,501 to 4,500.	.03		.05	.69	Storm door if hollow core door or if over 25% glass.
4,501 to 6,000.	.03		.05	.69	Storm door.
6,001 or 7,000.	.026		.05	.69	Do.
7,001 or more.	.026		.05	.69	Do.

(U values are not adjusted for framing. Values calculated for components may be rounded. For example, a wall section with a total R Value of 18.86 converts to a U value of .0520 rounded to .05)

Note 1.—Winter degree days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes Apartments;" local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

Note 2.—Walls shall be insulated as near to new construction standards as economically feasible. Any exterior wall framing exposed during repair or rehabilitation work shall have vapor barrier installed and be fully insulated.

Note 3.—For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces the U value of floor section shall not exceed the value shown.

A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occuring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement of crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SAPCE

Winter degree-days (65°F base)	Maximum U value	Glazing[1]
2,500 or less	No requirement	1.13
2,501 to 4,500	0.17	1.13
4,501 or more	0.10	0.69

[1] Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

Note 4.—Slab edge insulation should be provided wherever practical in areas of 21,500 or more winter degree-days. Rigid insulation placed on the exterior face of the slab shall be protected by a durable and weather resistant material.

Note 5.—Storm doors are not required for double doors, sliding doors or others where installation would be economically infeasible. 1¾ inch metal faced door systems with rigid insulation core and durable weatherstripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than 0.50 cfm per foot of crack length, tested according to ASTM E-283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped.

C. *Optional Standards.* Housing design not in compliance with the requirements of paragraphs IV A or B of this Exhibit may be approved in accordance with the provisions of this paragraph. Requests for acceptance proposed under paragraph C 1 below, must be approved by the State Director. Requests for acceptance proposed under paragraph C 2 must be approved by the Administrator. All submissions of proposed options to the State Director of Administrator shall contain complete descriptions of materials, engineering data, test data when U values claimed are lower than the ASHRAE Handbook of Fundamentals, and calculations to document the validity of the proposal. All data and calculations will be based upon the current edition of the ASHRAE Handbook of Fundamentals or other universally accepted data sources.

1. *Overall "U" values for enveloped components.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and IV B of this Exhibit.

a. Uo (gross wall)-Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Figure 1. Equation 1 shall be used to determine acceptable combinations to meet the requirements of Figure 1.

Figure 1

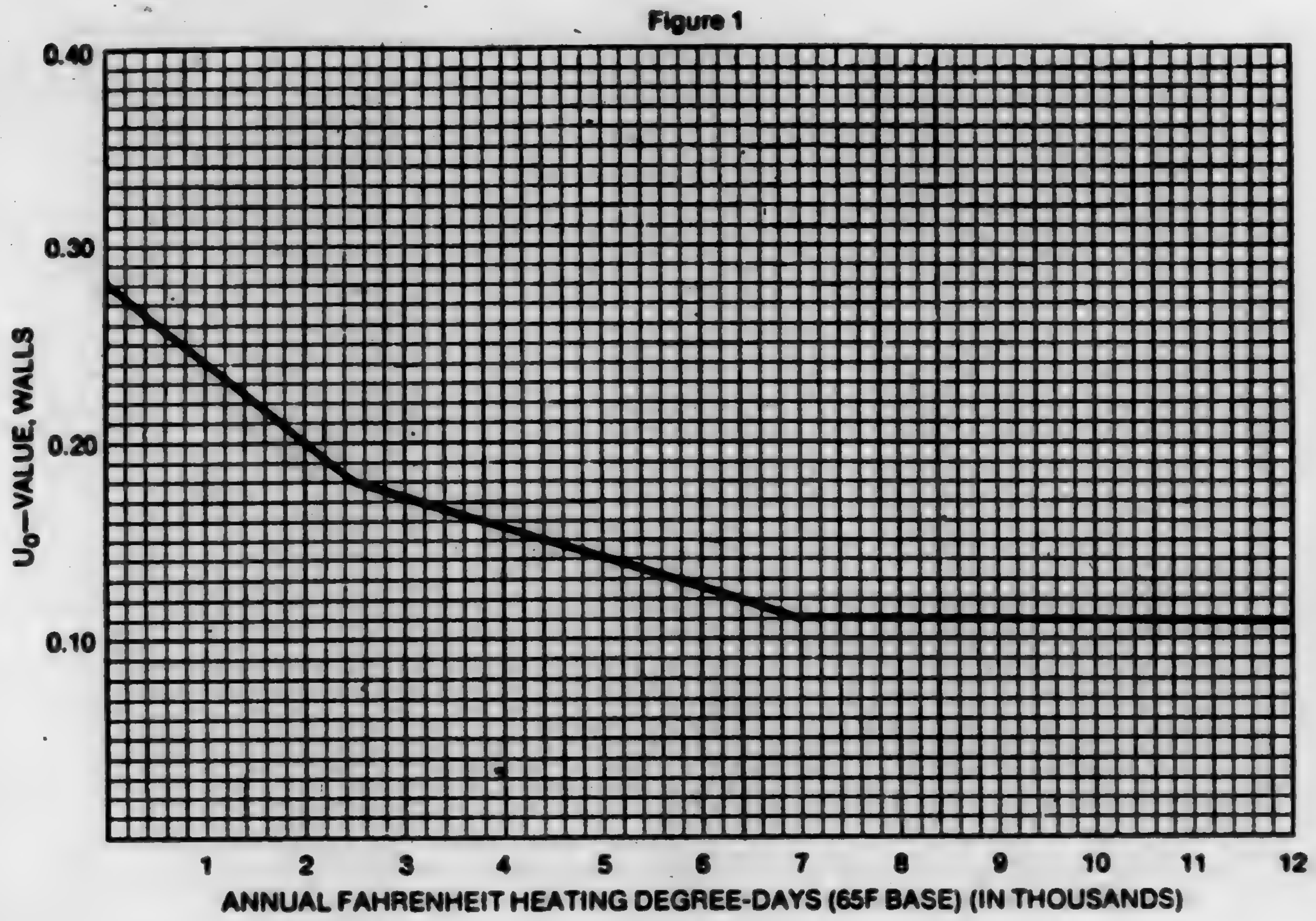

Equation 1, formula for determining combinations (See Figure 1):

$$U_o = \frac{U_{wall}A_{wall} + U_{window}A_{window} + U_{door}A_{door}}{A_o}$$

where:

U_o = the average thermal transmittance of the gross wall area, Btu/h.ft ^{2}.F

A_o = the gross area of exterior walls, ft ^{2}

U_{wall} = the thermal transmittance of all elements of the opaque wall area, Btu/h.ft ^{2}.F

A_{wall} = opaque wall area, ft ^{2}.

U_{window} = the thermal transmittance of the window area, Btu/h.ft^2.F

A_{window} = window area (including sash), ft^2

U_{door} = the thermal transmittance of the door area. Btu/h.ft^2.F

A_{door} = door area, ft^2

Note.—Where more than one type of wall, window and/or door is used, the U x A term for that exposure shall be expanded into its sub-elements as:

$U_{wall1}A_{wall1} + U_{wall2}A_{wall2}$ etc.

b. U_o (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (U_o-value) not to exceed the values shown in Figure 2. Equation 2 shall be used to determine acceptable combinations to meet the requirements of Figure 2.

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Figure 2

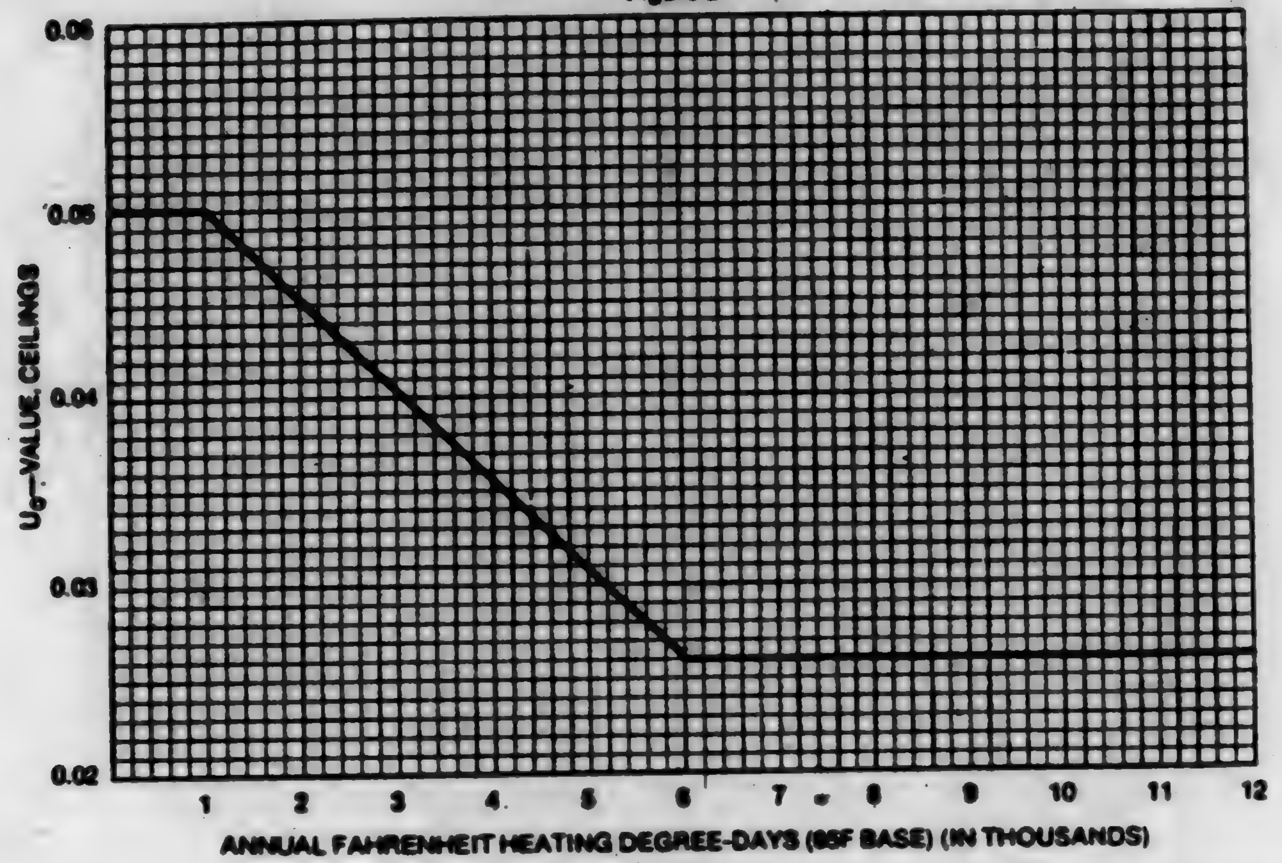

Equation 2, formula for determining roof/ceiling combinations:

$$U_o = \frac{U_{roof}A_{roof} + U_{skylight}A_{skylight} + U_{door}A_{door}}{A_o}$$

where:

U_o = the average thermal transmittance of the gross roof/ceiling area, Btu/h.ft ^{2}.F

A_o = the gross area of a roof/ceiling assembly, ft ^{2}

U_{roof} = the thermal transmittance of all elements of the opaque roof/ceiling area, Btu/h.ft ^{2}.F

A_{roof} = opaque roof/ceiling area, ft ^{2}

$U_{skylight}$ = the thermal transmittance of all skylight elements in the roof/ceiling assembly Btu/h.ft^2.F

$A_{skylight}$ = skylight area (including frame), ft^2

Note.—Where more than one type of roof/ceiling and/or skylight is used, the U x A term for that exposure shall be expanded into its sub-elements as:

$U_{roof1}A_{roof1} + U_{roof2}A_{roof2}$ etc.

2. *Overall structure performance.* The following requirements shall be used in determining acceptance options to the requirements of paragraphs IV A and B of this Exhibit.

a. The methodology must be cost effective to the energy user, and must not adversely affect the structural capacity, durability or safety aspects of the structure.

b. All data and calculations must show valid performance comparisons between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with paragraphs IV A or B. Structures may be considered for FmHA loan consideration which can be shown by accepted engineering practice to have energy consumption equal to or less than those which would be attained in a representative structure utilizing the requirements of paragraphs IV A or B.

3. *Special consideration for seasonally occupied farm labor housing.* The following sets forth the minimum acceptable options to the requirements of paragraphs IV A or B of this Exhibit for seasonally occupied housing serving as security for farm labor housing loans and grants.

a. When the period of occupancy does not encounter 500 or more heating degree-days (HDD) as determined by an average of the previous 10 years based upon local climatological data published by the National Oceanic and Atmospheric Administration, Environmental Data Service, the standards of paragraphs IV A or B will not apply.

b. When the period of use exceeds 500 heating degree-days (HDD), the 10-year average value of the period of occupancy shall be used to determine the degree to which the thermal insulation requirements of paragraphs IV A or B shall apply.

c. If mechanical cooling is provided and the period of occupancy encounters more than 700 cooling degree-days (CDD), as determined by an average of the previous 6 years based upon local climatological data published by the same source cited in paragraph IV C 3 a above, the thermal insulation requirements for 1,000 and less degree days as stated in paragraph IV A or B shall apply.

D. *Energy efficient construction practices.* This section prescribes those items of design and quality control which are necessary to guarantee the energy efficiency of homes built according to the standards of this Exhibit. Also included are recommendation for extra energy efficiency in dwellings.

1. *Infiltration.*

a. Requirements: All construction shall be performed in such a manner as to provide a building envelope free of excessive infiltration.

(i) Caulking and sealants. Exterior joints around windows and door frames, between wall cavities and window or door frames, between wall and foundation, between wall and roof, between wall panels, at penetrations of utility services through walls, floors and roofs, and all other openings in the exterior envelope shall be caulked, gasketed, weatherstripped, or otherwise sealed. Caulking shall be silicone rubber base or butyl rubber base, conforming to Federal Specifications TT–S–1543 and TT–S–1657 respectively, or materials demonstrating equivalent performance in resilince and durability.

(ii) Windows shall comply with ANSI 134.1, NWMA 15–2; the air infiltration rate shall not exceed 0.5 ft 3/min per ft. of sash crack.

(iii) Sliding glass doors shall comply with ANSI 134.2, NWM 15–3; the air infiltration rate shall not exceed .5 ft 3/min per square ft. of door area.

(iv) All insulation placed in open cavity walls shall be installed so that all space behind electrical switches and receptacles, plumbing, ductwork and other obstructions in the cavity are insulated as completely as possible. Insulation shall be omitted on the side facing the conditioned area, however, the vapor barrier in walls must not be cut or destroyed.

b. Recommendations:

(i) Wrap outside corners of wall sheathing with 15 lb. asphalt impregnated building felt before siding application.

(ii) Utilize vestibules for entry doors, expecially those facing into the direction of winter wind.

(iii) Install plumbing, mechanical and electrical components in interior partitions as much as possible. All water piping should be insulated from freezing temperatures.

2. *Heating and/or Cooling Equipment.*

a. Requirements: All mechanical equipment for heating and/or cooling habitable space shall be designed to provide economy of operation.

(i) All space heating equipment (including fireplaces) requiring combustion air shall be sealed combustion types, or be located in a nonconditioned area (such as unheated basements) or adequate combustion air must be provided from outside the conditioned space.

(ii) All ductwork shall be designed and installed so as to minimize leakage. All metal to metal connections shall be mechanically joined and taped.

b. Recommendations:

(i) Whenever possible, locate ductwork inside of conditioned areas in dropped ceiling, interior partitions or other similar areas.

(ii) Locate outside cooling units in areas not subject to direct sunlight or heat buildup.

3. *Vapor Barrier.*

a. Requirements: Adequate vapor barriers must be provided adjacent to the interior finish material of the wall or other closed envelope components which do not have ventilation space on the nonconditioned side of the insulation.

(i) A vapor barrier at the inside of the wall or other closed envelope component must have a perm rating less than that of any other material in that component and in no case have a perm rating greater than one. All vapor barriers must be sealed around all openings in the interior surface. Vapor barriers are not required in ceilings and floors. Continuous vapor barriers on ceilings, walls, and floors require adequate moisture vapor control in the conditioned space.

(ii) All vapor producing or exhausting equipment shall be ducted to the outside and be equipped with dampers. The equipment includes rangehoods, bathroom exhaust fans, and clothes dryers. If a dwelling design proposes the use of windows to satisfy the kitchen and/or bathroom ventilation requirements of the development standards, the incorporation of dehumidification equipment should be considered in accordance with paragraph IV D 3 b. Exhaust of any equipment shall not terminate in an attic or crawl space.

V. General Design Recommendations

A. Orient homes with greatest glass area facing south with adequate overhangs to control solar gain during non-heating periods.

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ROOF OVERHANGS

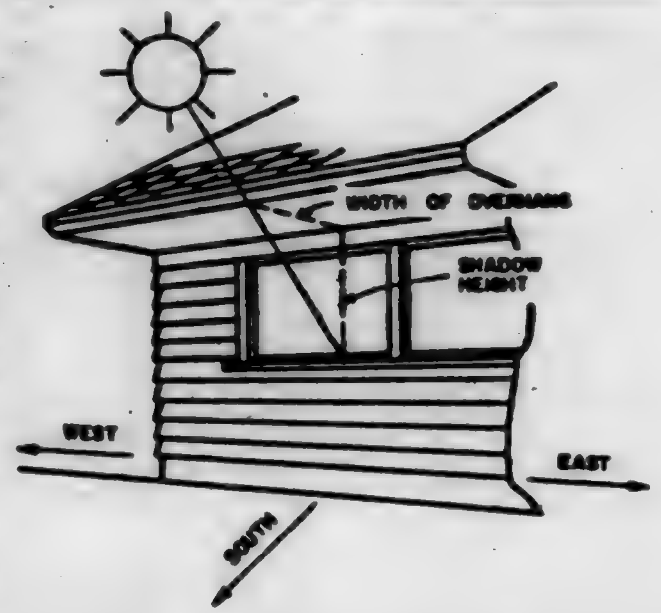

Roof overhangs, or extensions of the roof, over south walls are usually easy to incorporate into house designs. To determine the *width of overhang* needed to shade a south wall or window, follow this method:

(1) Consider the *latitude* of the geographical area in which your house is located. (See map below.) Latitude, together with season of the year, determines the angle at which the sun's rays strike the earth at different times of day.

(2) Measure on your plan or house the number of feet the south windows extend below the eave of the roof or horizontal overhang. This measurement is the *shadow height*.

(3) Then for that specific latitude and shadow height, you will find, from the table given here, the exact width of overhang needed.

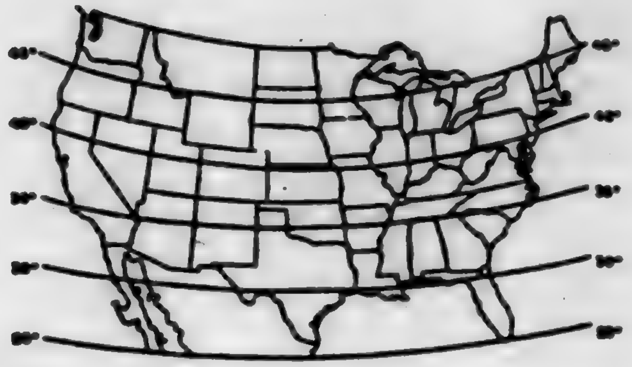

NORTH LATITUDE (DEGREES)	SHADOW HEIGHT (FEET)					
	3	4	5	6	7	8
	WIDTH OF OVERHANG (FEET)					
25	1.1	1.5	1.9	2.2	2.6	3.0
30	1.4	1.9	2.4	2.9	3.4	3.8
35	1.8	2.4	3.0	3.5	4.1	4.7
40	2.1	2.8	3.6	4.3	5.0	5.7
45	2.6	3.4	4.3	5.1	6.0	6.8
50	3.0	4.1	5.1	6.1	7.1	8.2

For example, in a latitude of 35° and for a shadow height of 5 feet, the width of overhang needed is 3 feet.

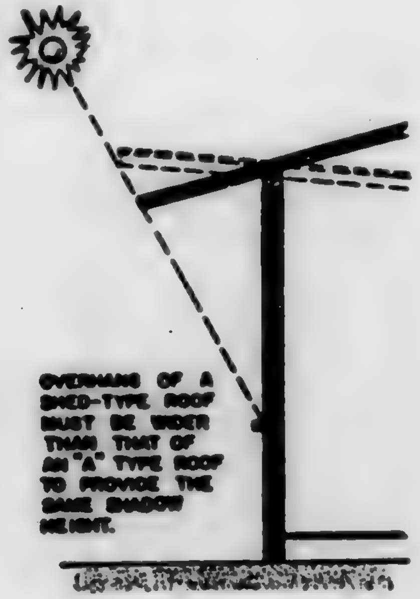
OVERHANG OF A SHED-TYPE ROOF MUST BE WIDER THAN THAT OF AN "A" TYPE ROOF TO PROVIDE THE SAME SHADOW HEIGHT.

BILLING CODE 3410-07-C

B. Arrange plantings with evergreen wind buffers on north side and deciduous trees on south.

C. Wheneve possible orient entry door away from winter winds.

D. Design house with simple shape to minimize exterior wall area.

E. Minimize glass areas within constraints of required light and ventilation, applicable safety codes and other appropriate consideration.

F. Minimize the amount of paved surface adjacent to the structure where heat gain is not desirable.

VI. State Supplements

State supplements or policies will not be issued or adopted to either supplement or set requirements different from those of this Exhibit without the prior written approval of the National Office.

Exhibit E.—Preconstruction Conference

Prior to the signing of a construction contract, there shall be a discussion between the borrower(s), prospective contractor, architect (if applicable), and the County Supervisor or District Director, as applicable. During this discussion a mutual understanding should be reached on the following points:

1. The contract is between the borrower and the contractor and although FmHA is interested in the proper execution of the contract it will not become a party to the contract nor incur any responsibility or liability thereunder.

2. The contractor's obligation under the terms of the contract to do the work in accordance with the drawings and specifications.

3. Compliance with the provisions of Form FmHA 1924.6, "Construction Contract," or any other authorized contract form being used.

4. Any changes made to the drawings and/or specifications must be initialed and dated on all copies by the contractor, the borrower, and the County Supervisor.

5. FmHA will be consulted prior to any changes in the contract. Changes will be made only upon approval of FmHA. Form FmHA 1924–7, "Contract Change Order" must be executed by the borrower and contractor, and approved by FmHA. Any additional funds required must be provided by the owner.

6. The time for completion of construction and provisions for liquidated damages.

7. Consideration of the State laws regarding the rights of persons furnishing material, equipment, or labor to place a claim or lien against the property in cases in which their bills are not paid.

8. The use of Forms FmHA 1924–10, "Release by Claimants," and FmHA 1924–9, "Certificate of Contractor's Release".

9. The borrower's responsibility to make site visits as the work progresses. Periodic and final inspections will be made by an authorized FmHA employee or representative to protect the security interest of the Government. The borrower is responsible for making any inspections necessary to adequately protect the interest of the borrower.

10. The contractor's responsibility to notify FmHA that work is ready for inspection 2 working days prior to the date of the inspection.

11. The contractor's responsibility to provide a warranty upon completion of the work.

12. Any other pertinent information.

Exhibit F.—Payment Bond

Know all persons by these presents: that ——— (Name of Contractor) ——— (Address of Contractor) ———; a (Corporation, Parnership or Individual) ——— hereinafter called principal and ——— (Name of Surety) hereinafter called surety, are held and firmly bound unto ——— (Name of Owner) ——— (Address of Owner) hereinafter called owner and the United States of America acting through the Farmers Home Administration hereinafter referred to as Government, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of ———, Dollars ($———) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the principal entered into a certain contract with the owner, dated the ——— day of ——— 19—, a copy of which is hereto attached and made a part hereof for the construction of:

Now, therefore, if the principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery; equipment and tools, consumed or used in connection with the construction of such work, and for all labor cost incurred in such work including that by a subcontractor, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

Provided, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms, and corporations having a direct contract with the principal or its subcontractors.

Provided, further, that the said surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

Provide, further, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the principal (or with the government in the event the government is performing the obligations of the owner), shall have given written notice to any two of the following: The principal, the owner, or the surety above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by register mail or certified mail, postage prepaid, in an envelope addressed to the principal, owner, or surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of *one* (1) year following the date of which principal ceased work on said contract, it being understood, however, that if any limitation embodied in the bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Provided, further, that it is expressly agreed that this bond shall be deemed

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amended authomatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the principal and the surety to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this bond and whether referring to this bond, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

Provided, further, that no final settlement between the owner or government and the contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In witness whereof, this instrument is executed in ——— Number counterparts, each one of which shall be deemed an original, this the ——— day of ———.

Attest:

———,

(Principal) Secretary

———,

Witness as to Principal

(Address) ———.

Attest:

———,

Witness as to Surety

(Address) ———.

———,

Principal.

By ———,

(Address).

———,

Surety.

By ———,

Attorney-in-Fact.

(Address) ———.

Note.—Date of bond must not be prior to date of Contract.

If contractor is partnership, all partners should execute bond.

Important: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

Exhibit G.—Performance Bond

Know all persons by these presents: that ——— (Name of Contractor) ——— (Address of Contractor) ———, hereinafter call principal, and (Corporation, Partnership, or Individual) ———(Name of Surety) ——— (Address of Surety) hereinafter called surety, are held and firmly bound unto ———(Name of Owner) ———(Address of Owner) hereinafter called owner, and the United States of America acting through the Farmers Home Administration hereinafter referred to as the government in the total aggregate penal sum of ——— Dollars ($———) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the principal entered into a certain contract with the owner, dated the ——— day of ——— 19—, a copy of which is hereto attached and made a part hereof for the construction of:

Now, therefore, if the principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which it may be granted by the owner, or government, with or without notice to the surety and during the guaranty period and if the principal shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the owner and government from all costs and damages which may suffer by reason of failure to do so, and shall reimburse and repay the owner and government all outlay and expense which the owner and government may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

Provided, further, that the liability of the principal and surety hereunder to the government shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the owner, provided, however, that the government may, at its option, perform any obligations of the owner required by the contract.

Provided, further, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

Provided, further, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the principal and the surety to the full and faithful performance of the contract as so amended. The term "Amendment", wherever used in this bond, and whether referring to this bond, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

Provided, further, that no final settlement between the owner or government and the principal shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The owner and government are the only beneficiaries hereunder.

In witness whereof, this instrument is executed in ——— Number counterparts, each one of which shall be deemed an original, this the ——— day of ———.

Attest:

———,

(Principal) Secretary.

———,

Witness as to Principal

(Address)———

Attest:

———,

Witness as to Surety

(Address)———.

———,

Principal.

By———,

(Address)———.

———,

Surety.

By———,

Attorney-in-Fact

(Address)———.

Exhibit H.—Prohibition of Lead-Based Paints

I. Purpose

This Exhibit prescribes the methods to be used to comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91–695, as amended, (42 U.S.C. 4801 et seq.) and the amendment to Section 501(3) of Pub. L. 91–695 (42 U.S.C. 4841(3)) as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94–317.

II. Policy

The Farmers Home Administration (FmHA) shall not permit the use of lead-based paint on applicable surfaces of any housing or buildings purchased,

repaired, or rehabilitated for human habitation with financial assistance provided by this agency. Paints used on applicable surfaces shall not contain more than 0.06 percent lead by weight calculated as lead metal in the total nonvolatile content of liquid paints or in the dried film of paint already applied.

III. Definitions

A. Housing and buildings mean any house, apartment, or structure intended for human habitation. This includes any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center or extended care facility, college housing, domestic or migratory labor housing, hospitals, group practice facilities, community facilities, and business or industrials facilities.

B. Applicable surfaces means all interior surfaces, whether accessible or not, and those exterior surfaces which are readily accessible to children under 7 years of age, such as stairs, decks, porches, railings, windows, and doors.

C. Lead-based paint means any paint containing more than .5 of 1 percentum lead by weight, or with respect to paint manufactured after June 22, 1977, lead-based paint containing more than six one-hundredths of 1 percentum lead by weight.

IV. Requirements

A. All new housing and buildings shall comply with paragraph II of this Exhibit H.

B. For all existing housing and buildings built *after* 1950, on which a loan is closed after July 19, 1978, FmHA rquires that the applicant, borrower or tenant be notified of the potential hazard of lead-based paints, of the symptoms and treatment of lead poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. This will be accomplished by providing each borrower or tenant with a copy of Attachment 1 to this Exhibit H, "Lead-based Paint Hazards, Symptoms, Treatment and Techniques for Eliminating Hazards," available in any FmHA County Office. Copies of Attachment 1 may be obtained by the County Supervisor from the Finance Office, 1520 Market Street, St. Louis, MO. 63103.

C. For all existing housing or buildings built *before* 1950 on which a loan is closed after July 19, 1978, FmHA requires that the applicant, borrower, or tenant be notified as in paragraph IV B and a copy of Attachment 2 to this Exhibit H, "Caution Note on Lead-Based Paint Hazard," available in any FmHA County Office, shall be delivered to the hands of the borrower.

D. For all property transfers and inventory property sales, Attachments 1 and 2 to this Exhibit H shall be handed to the purchaser by the FmHA representative.

E. All inventory housing or buildings built before 1950 to be repaired, renovated, or rehabilitated shall have tests for lead content, and where found to be hazardous, shall have any interior lead-based paint removed entirely. Loss or cracked surfaces shall be cleaned down to the base surface before repainting with a paint containing not more than six one-hundredths of 1 percentum lead by weight in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both. Contracting officers shall include the following provision prohibiting the use of lead-based paint in all contracts and subcontracts for construction or rehabilitation of housing or buildings:

Lead-Based Paint Prohibition

No lead-based paint containing more than .5 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 22, 1977, no lead-based paint containing more than .06 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any subsequent subcontractors.

Authority: This amendment is made under provisions of 5 U.S.C. 301, 40 U.S.C. 486(c).

Done at ———, ———, this ——— day of ———, 19—.

———

FmHA Representative.

V. Summary

Section 401 of the Lead-based Paint Poisoning Prevention Act as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94–317, provides a requirement that each federal agency issue regulations and to take such other steps necessary to prohibit the use of lead-based paint on all applicable surfaces in Federal and Federally-assisted construction or rehabilitation of residential structures. The Lead-Based Paint Poisoning Act, Pub. L. 91–695, January 13, 1971, provides for grants to units of general local government in any State for the purpose of detecting and treating incidents of lead-based paint poisoning. Title II of this Act also provides for grants to the same units to identify those area of risk including testing to detect the presence of lead-based paint on surfaces of residential housing.

Attachment 1.—Lead-Based Paint Hazards, Symptoms, Treatment, and Techniques for Eliminating Hazards

Your Federal Government is acting to provide children better protection from poisoning by lead in paint, but there are precautions parents can and should take for child safety.

If you live in a house with old, peeling paint containing lead, your children may be quietly poisoning themselves.

By eating only a small number of lead paint chips a day, a young child can consume enough to poison himself or cause permanent brain damage. Lead poisoning, known as plumbism, kills about 200 children a year and causes the life-time institutionalization of 150 more who suffer severe mental retardation.

An estimated 600,000 children in metropolitan areas have elevated blood lead levels, however. And about 2.5 million children are exposed to the danger of being poisoned from lead paint.

The problem of lead paint poisoning came about because many years ago, lead-containing pigments were used extensively to give paint its colors. Anywhere from 10 percent to 50 percent of the actual paint, after it had dried on the wall, constituted a form of lead. As layer after layer of paint was applied, the walls become veritable lead mines. They also became sources of poison for your children.

The use of expensive lead became increasingly uneconomical. Shortly before World War II a substitute for lead pigments was developed, and the use of lead in paint gradually decreased thereafter. Since 1955, paint manufacturers have limited the lead in their interior paints to one percent.

Thus, any housing in this country built before the mid 1950's is a potential lead hazard. For the hazard to be real, two other ingredients are needed. One is poor maintenance which permits paint to peel and flake. The second is the presence of small children who might pick paint from the wall or floor and put it in their mouths. By eating a paint chip the size of a fingernail, a young child can swallow as much as 100 times more than his body can safely handle. Over a period of weeks or months, children can slowly poison themselves.

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The most serious hazards are in cities where most of the housing was built before the 1950's and is now poorly maintained. This includes most of the ghetto areas of America. The Department of Housing and Urban Development estimates there are seven million of these old rundown houses.

Although most lead poisoning occurs in dilapidated houses, even a well-maintained house can be a hazard for small children. For example, if a child bangs a crib or toys against a wall and old paint chips off, it could contain lead. Even in the best of homes, a child can chew on a windowsill painted with lead paint.

Lead poisoning poses a particular hazard for children between the ages of 1 and 6 because of an eating abnormality called pica. This is a craving to eat things which are not food. Children with pica will eat anything within reach—cigarette butts, matches, dirt, newspapers, clay, plaster . . . and paint.

Pica is an old phenomenon, observed all over the world. The Romans many centuries ago named the condition "pica" after the magpie which picks up a wide variety of objects in its beak out of hunger or curiosity.

The dominant characteristic of pica is its compulsive hold on children. A mother can be hard put to prevent her child from eating nonfood substances.

Doctors know little about the causes of pica, and are a long way from finding a cure, if there is one. Studies have shown that up to 40 percent of children around one year old have pica. The tendency decreases as the child gets older, and averages around 20 percent for the entire age group of 1 to 6 years.

If a child does become poisoned by eating lead paint, medicines can be administered to remove the lead from the body. Medicines keep the mortality rate down from lead paint poisoning to 5 percent of the human victims. However, one out of four survivors of acute lead poisoning suffers permanent brain damage, and has learning difficulties, mental retardation, or epilepsy.

The only effective way to fight lead poisoning is to remove the child from contact with the source of lead. This can be accomplished in two ways:

1. Take the child away from the lead.
2. Take the lead away from the child.

Where housing is scarce, the first solution will in the long run only be a form of musical apartments. Whichever child moves into the residence with lead paint on the walls becomes "it."

Only the second solution deals with the problem in a permanent way. The obstacle here is money. Lead paint cannot just be painted over, because it would still be present in any paint chips which might flake off.

The only really permanent solutions are to remove all the old paint by blow torch, scraping, or other method, or to cover up old paint with wallboard or another covering.

Symptoms and Treatment

Here are some steps which parents can take to prevent their children from being poisoned by lead:

1. Never allow your child to eat paint or plaster.
2. Be alert for several of the symptoms listed below.

Symptoms of lead poisoning:

- decreased appetite
- irritability
- clumsiness
- unwillingness to play
- headache
- abdominal pain
- drowsiness
- vomiting

3. If your child has several of these symptoms or you suspect he or she may be eating paint, your child should be tested. Call your local health department to find out if your city has a lead poisoning prevention program. If it does, ask the program officers where to take your child for a blood-lead test.

If your community does not have a lead poisoning prevention program, take your child to a doctor or clinic and explain that you want to find out if he or she has lead poisoning. If the blood test shows your child has too much lead, make sure the doctor reports this to the local health department so it can test the paint in your home to find our whether it should be replaced or covered over. In many cities the landlord can be ordered by the city to remove or cover over dangerous paint.

Eliminating Hazards

To eliminate the lead hazard, you ought to take precautions. Remove all peeling plaster or paint from walls, or ceiling. Do as much as possible by brushing or scraping. When sanding is necessary, get lots of ventilation since breathing lead paint dust can also be dangerous. If the peeling is caused by moisture from a leaky pipe, fix it.

After all loose paint has been removed, cover the walls. It is important that the walls be scraped smooth of peeling paint and any grease is washed off because peeling paint or a greasy wall makes if difficult for any covering to stick to the wall. There are several ways to cover the walls: You can repaint them with an interior paint. A latex paint is appropriate. You can also cover then with wallpaper, contact paper, or paneling.

Remember that a child can chew right through a new coat of paint on edges like windowsills, banisters, and door edges. These should either be covered with contact paper or scraped and sanded down to the wood to remove the lead paint. Replaster any holes in the wall so they make a smooth surface, flat with the rest of the wall. This will make it harder for children to grab onto the plaster and pull off pieces to put into their mouths.

Lead poisoning from paint is a serious and difficult problem which a previous generation inadvertently created for our children. Once lead paint is on the walls, it is difficult and costly to remove. This is why a limit on the amount of lead in paint is so important, why you must use reasonable caution today, and why the Congress and FDA have taken action to protect the children of tomorrow.

Reminders

In carrying out these steps to prevent lead poisoning, you should bear these facts in mind to direct increased attention where it is needed:

- Although children get lead poisoning between the ages of 1 and 6, the most vulnerable are those around 1 or 2 years old. They should be watched with special care.
- The vast majority of lead poisonings occur during the summer months. Children should be carefully watched during the summer to prevent them from eating lead paint.
- The most likely place in an apartment to have high lead content is the windowsill, which is often painted with a different kind of paint than the walls. The windowsill is also one place where children can gnaw on the paint even if it is not peeling. Make sure to remove or cover any paint on the windowsill which might contain lead.

This information was adapted from DHEW Publication No. (FDA) 73–7016, a reprint from October 1972 FDA "Consumer" magazine.

USDA–Fm HA–PSS January 1978

Attachment 2

For all existing housing or buildings constructed before 1950, FmHA requires that the applicant, borrower or tenant be notified of a potential lead-based hazard by delivering to them a copy of the caution note provided below.

Caution Note on Lead-Based Paint Hazard

This House Was Constructed Before 1950

There is a possibility that it may contain some lead-based paint that was in use before 1950.

See Lead-Based Paint Hazards attachment for more information.

Caution Note on Lead-Based Paint Hazard

This House Was Constructed Before 1950

There is a possibility that it may contain some lead-based paint that was in use before 1950.

See Lead-Based Paint Hazards attachment for more information.

Caution Note on Lead-Based Paint Hazard

This House Was Constructed Before 1950

There is a possibility that it may contain some lead-based paint that was in use before 1950.

See Lead-Based Paint Hazards attachment for more information.

(Cut along lines)

Exhibit I.—Guidelines for Seasonal Farm Labor Housing

Section 100

General

This Exhibit sets forth the guidelines and minimum standards for planning and construction of new Labor Housing (LH) that will be occupied on a seasonal basis. Rehabilitation LH projects will be in substantial conformance with these guidelines and standards. A "seasonal basis" is defined as 6 months or less per year. Seasonal housing for the farm worker need not be convertible to year-round occupancy; however, the living units shall be designed for the intended type of tenant, the time of occupancy, the location, the specific site, and the planned method of operation. It is important that the design of the labor housing site and buildings will help to create a pleasing lifestyle which will promote human dignity and pride among its tenants.

Section 200

Codes and Regulations—Compliance is required with National, State and local codes or regualtions affecting design, construction, mechanical, electrical, fire prevention, sanitation, and site improvement.

Section 300

Planning

300–1 Complete architectural/engineering services in accordance with this subpart will be required if an LH grant is involved or the LH loan will involve more than four individual family units, or any number of group living units, or dormitory units accommodating 20 or more persons.

300–2 Building and site design shall provide for a safe, secure, economical, healthful, and attractive living facility and environment suited to the needs of the domestic farm laborer and his/her family.

300–3 At leat 5 percent of the individual family units in a project, or one unit, whichever is greater, and all common use facilities will be accessible to or adaptable for physically handicapped persons. This requirement may be modified if a recipient/borrower shows, through a market survey acceptable to FmHA, that a different percentage of accessible or adaptable units is more appropriate for a particular project and its service area.

Site Design

301–1 General—The site design shall be arranged to utilize and preserve the favorable features and characteristics of the property and to avoid or minimize the potential harmful effect of unfavorable features. Particular attention is directed to Section 1944.164(k), (1) and (m) of Subpart D of Part 1944 of this chapter with reference to compliance with Subpart G of Part 1901 of this chapter. Some of the features which must be considered are the topography, drainage, access, building orientation to sun and breezes; and advantageous features, such as vegetation, trees, good views, etc. or disadvantageous features, such as offensive odors, noxious plants, noise, dust, health hazards, etc.

301–2 Drainage—Surface and subsurface drainage systems shall be provided in accordance with the applicable development standard and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5.)

301–3 Water and Sewage Disposal—Water supply and sewage disposal installations shall comply with Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), the applicable development standard and all governing State and local department of health requirements. Where environmentally and economically feasible, the labor housing facility shall connect to public water and waste disposal systems.

301–4 Electrical—Adequate electrical service shall be provided for exterior and interior lighting and for the operation of equipment.

301–5 Vehicular Access and Parking.

301–5.1 Safe and convenient all-weather roads shall be provided to connect the site and its improvements to the off-site public road.

301–5.2 All weather drives and parking shall be provided for tenants, and for trucks and buses as needed within the site. Driveways, parking areas and walkway locations shall be in substantial conformance with the applicable development standard.

301–6 Walks.

301–6.1 Walks shall be provided for safe convenient access to all dwellings and for safe pedestrian circulation throughout the development between location, and facilities where major need for pedestrian access can be anticipated, such as, laundry, parking to dwelling units, common dining rooms and other.

301–6.2 Walkways shall be hard surface such as concrete, asphalt or stabilized gravel and shall be adequately drained.

301–7 Building Location.

301–7.1 Side and rear yards, and distances between buildings shall conform to the applicable development standard.

301–8 Garbage and Refuse.

301–8.1 Garbage and refuse containers for individual units are required and shall be stored on durable functional racks or shall be located in a central screened area with easily cleaned surfaces. Single containers for multiple units shall be screened and in locations designed to accommodate collection vehicle functions.

301–9 Fencing.

301–9.1 Fencing used in the site design for project privacy or building security shall be harmonious in appearance with other fences and surrounding facilities which fall within the same view.

301–10 Outdoor living.

301–10.1 All public areas where pedestrian use can be anticipated after sunset shall be adequately lighted for security purposes, such as walkways to common use facilities—launday, dining halls, building entrances, parking areas, etc.

301–11 Planting and Landscaping.

301–11.1 Planting and lawns or ground covers shall be provided as required to protect the site from erosion, control dust, for active and passive recreation areas, and provide a pleasant environment.

Building Design

302–1.1 Living Units Design.

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302-1.1. *Individual Family Unit*—One family or extended family to a unit which shall contain adequate space for living, dining, kitchen, bath and bedrooms. Multifamily type units are required whenever possible for economy of site and building construction.

a. The minimum total net living unit size shall be 400 square feet. This size assumes occupancy of four persons. Units planned for additional occupants shall include an additional 60 square feet for living area per person.

b. A living/dining area shall be provided to accommodate a table and chairs with adequate dining and circulation space for the intended number of occupants. The living/dining area should be combined with the kitchen area.

c. The kitchen shall contain a sink, cooking range and refrigerator. A minimum free countertop area of six square feet is required. A minimum of 40 square feet of shelf area is required.

d. Each bathroom shall contain adequate space and circulation for a bathtub and/or shower, water closet and lavatory. Access to the bathroom shall not be through another bedroom in dwelling units containing more than one bedroom.

e. Bedroom areas separate from living areas are required. The design of the unit shall provide a minimum of 50 square feet of sleeping area per intended occupant including storage. Housing for families with children shall have a separate bedroom or sleeping area for the adult couples. A two foot by two foot shelf with a two foot long clothes hanging rod is required for each occupant.

302-1.2 *Group Living Unit*—A living unit designed for the occupancy of more than one family or for separate occupancy of male and/or female groups. Common bath spaces shall be contained in the same building. Group living units for families shall have separate bedrooms for each adult couple.

a. The design of the unit shall provide for a minimum of 620 square feet of total net living area for eight persons and an additional 60 square feet for each additional occupant.

Additional area shall be planned for a second bathroom when anticipated occupancy will exceed eight persons, or if it will be occupied by persons of both sexes.

b. The kitchen shall contain an adequate sink, cooking range, refrigerator, and space the size of which is commensurate with the needs of the group living unit. A minimum of free countertop area of eight square feet is required. A minimum of 50 square feet of shelf area is required.

c. Refer to paragraph 302-1.1 b for living/dining requirements.

d. Each bathroom shall contain adequate space and circulation for comfortable access to, and use of, fixtures which will include a bathtub and/or shower, water closet and lavatory. In no case shall minimum fixtures be less than that required per paragraph 302-1.3 c below.

e. Refer to paragraph 302-1.1 e for bedroom requirements.

302.1.3 *Dormitory Living Unit*—A building which provides common sleeping quarters for persons of the same sex and may or may not contain kitchen and/or dining facilities in the same building as the sleeping quarters.

a. The design of areas for sleeping purposes, using single beds, shall provide for not less than 72 square feet per occupant including storage.

b. The design of areas for sleeping purpose, using double bunk beds, shall provide for not less than 40 square feet per occupant. Triple bunk beds will not be allowed.

c. The design of each dormitory building must include a water closet and a bathtub or shower for each 12 occupants, and a lavatory for each 8 persons. Urinals may be substituted for men's water closets on the basis of one urinal for one water closet, up to maximum of one-third of the required water closets.

d. Adequate kitchen and dining facilities must be provided which may be in the dormitory building or detached at a distance of not more than 200 feet from the sleeping quarters. In either case, the space must contain adequate cooking ranges, refrigerators, sinks, countertop, food storage shelves, tables and chairs, circulation space. These facilities will comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

302-2 Other Facilities.

302-2.1 *General*—Other facilities authorized by Subpart D of Part 1944 of this chapter, needed by farm workers may be provided in several ways: part of a living unit, located in the project, or, with the exception of laundry facilities, available nearby.

302-2.2 *Laundry Facilities*—Laundry facilities shall be required on-site. Drying yards shall be provided if dryer units are not provided. The design of washing facilities shall plan for a minimum rate of one washer for each 20 occupants. One drying unit may be provided for every two washers, if automatic dryers are customarily provided for rental housing in the community. Laundry facilities shall have adequate space for loading the units, circulation, and clothes folding.

302-2.3 *Office and Maintenance*—An office and maintenance space shall be provided or available, commensurate with the number of living units served, and shall meet the criteria of the FMHA Manual of Acceptable Practices. If necessary, the maintenance space shall have sufficient area to accommodate furniture storage.

302-2.4 *Child Care Center*—Where feasible, a child care center may be included to provide supervised activity and safety for children while the parents work. Supervisors and workers for such centers are sometimes enlisted on a volunteer basis and the cost borne by nonprofit associations or community organizations. Grants are sometimes available through Federal or State programs. Consequently, the design of the child care center should meet the requirements of those sources providing organizational personnel and/or financing.

302-2.5 *Manager's Dwelling*—If a manager's dwelling unit is to be provided as a part of the FmHA loan or grant, it will meet these guidelines. However, if it is necessary to provide a year-round caretaker/manager dwelling unit with FmHA loan or grant funds, it will meet the applicable development standard.

302-2.6 *Recreation*—Outdoor recreation space is required and shall be commensurate with the needs of the occupants. Active and passive recreation areas will be provided which may consist of outdoor sitting areas, playfields, tot lots and play equipment.

General Requirements

303-1 Materials and Construction—All materials and their installation in a labor housing facility shall meet the applicable development standard. Any exceptions to these requirements for materials and their installation must be obtained with the approval of the FmHA National Office. Material should be selected that is durable and easily cleaned and maintained.

303-2 Fire Protection—Fire protection and egress shall be provided to comply with the applicable development standard.

303-3 Light, Ventilation, Screening—Natural light and ventilation requirements as specified in the applicable development standard shall be followed. Screening of all exterior openings is required.

303-4 Ceiling Heights—Ceiling heights of habitable rooms shall be a minimum of seven feet six inches clear, and seven feet in halls or baths in dwelling units. Public rooms shall have a minimum of eight feet clear ceiling height. Sloping ceilings shall have at least seven feet six inches for ½ the room with no portion less than five feet in height.

303-5 Heating and Cooling—Heating and cooling and/or air circulation equipment shall be installed as needed for the comfort of the tenants, considering the climate and time of year the facility will be in operation. Maximum feasible use of passive solar heating and cooling techniques shall be required. All equipment installed will be in accordance with the applicable development standard to protect the health and safety of occupants.

303-6 Plumbing—Plumbing materials and their installation shall meet the applicable development standard. Hot water will be required to all living units, baths, kitchens and laundry facilities.

303-7 Insulation, Thermal Standards, Winterization—Insulation will be required where either heating or cooling is provided as per pargraph 303-5 above or when climatic conditions dictate a need for installation. Insulation Standards will comply with Exhibit D, paragraph IV C 3, of this subpart, or the State insulation standards, whichever are the more stringent.

303-8 Electrical—Electrical design, equipment and installation shall comply with the requirements of the latest edition of the National Electrical Code, and the applicable development standard for materials and their installation. Individual family units may be separately metered; other types of dwelling units may be separately metered as required.

303-9 Security and Winterization—Adequate management and physical measures will be provided as necessary to protect the facility during off-season periods, including adequate heating and insulation as required.

Exhibit K.—Classifications for Multi-Family Residential Rehabilitation Work

I. General

This Exhibit distinguishes between what FmHA considers maintenance and repair work, moderate rehabilitation and substantial rehabilitation. In all cases the building or project to be rehabilitated shall be structurally sound. The applicant shall have a structural analysis of the existing building made to determine the adequacy of all structural systems for the proposed rehabilitation.

II. Definitions

Maintenance and Repair—Work involved in the selective replacement and general maintenance and repair of certain materials, appliances or components of an existing residential building.

Moderate Rehabilitation—All work directly involved in the rearrangement of interior space, the replacement of finish materials or components of the electrical, plumbing, heating or conveyance systems of an existing multi-family residential building. Work and improvements are considered to be more than routine maintenance and repair.

Substantial Rehabilitation—All work directly involved in the rearrangement of interior space that involves alteration of load bearing partitions and columns; the replacement of the electrical, plumbing, heating or conveyance systems; and the addition to and/or major conversion of existing multi-family residential buildings or other building structures.

Moderate rehabilitation and repair shall not be limited to building changes for cosmetic or convenience purposes. In all cases moderate rehabilitation shall involve a minimum of three (3) components of building rehabilitation listed as moderate. Unless combined with other improvements in a project that are considered to be moderate or substantial rehabilitation the items identified as maintenance and repair are considered to be cosmetic and convenience changes.

When a rehabilitation project consists of both moderate and substantial rehabilitation components, those substantial rehabilitation components shall be in accordance with FmHA's development standards and local codes and regulation requirements. Where the majority of project components of building rehabilitation are considered substantial the project shall be considered in the substantial rehabilitation category.

Those site components of rehabilitation such as landscaping, grading, drainage, fencing, parking areas, recreation areas, water and waste disposal systems, etc., whether considered either maintenance and repair, moderate rehabilitation or substantial rehabilitation shall be in accordance with FmHA's development standards for site development work; all local codes and regulation requirements; and sound engineering and architectural practices.

Any alteration of a structure listed or eligible for listing on the National Register of Historic Places may be considered either moderate or substantial rehabilitation. However, it shall conform first to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and then to FmHA's requirements. In cases where the Secretary of the Interior's standards cannot be met, rehabilitation will conform to the agreed upon approaches, treatments and techniques resulting from the consultation process between FmHA, the borrower, the State Historic Preservation Officer and the Advisory Council of Historic Preservation.

III. Components of Multi-Family Building Rehabilitation

The components of multi-family building rehabilitation necessary and generally considered by FmHA to be either maintenance and repair, moderate rehabilitation or substantial rehabilitation include but are not limited to these listed in the follwing chart.

COMPONENTS OF MULTI-FAMILY BUILDING REHABILITATION

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
Partition repair	0		
Drywall repair	0		
Caulking	0		
Air conditioning	0		
Carpeting	0		
Clothes closets or shelving improvements	0		
Kitchen cabinet improvement	0		
Paneling	0		
Painting	0		
Wallpapering	0		
Lath and plaster repair	0		
Door repair	0		
Window shades and curtains	0		
Stair repair	0		
Roof repair	0		
Cabinet replacement or repair	0		
Lighting fixture replacement or repair	0		
Appliance replacement or repair	0		
Hardware replacement or repair	0		
Gutters and downspouts	0		
Tile work	0		
Mail boxes	0		
Signage	0		
Partition (non bearing) replacement, or relocation		0	
Exterior entrance redesign, relocation		0	
Porch and steps alteration or replacement		0	
New shingles or roof replacement		0	

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COMPONENTS OF MULTI-FAMILY BUILDING REHABILITATION—Continued

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
Drywall replacement		0	
Lath and plaster replacement		0	
Plumbing fixture replacement		0	
Furnace replacement		0	
Subfloor material replacement		0	
Storm windows and weatherstripping		0	
Finish flooring materials		0	
Trim—exterior and interior		0	
Window replacement		0	
Door replacement		0	
Ceiling framing		0	
Flashing		0	
Painting		0	
Insulation		0	
Elevator components replacement		0	
New or alteration to the:			
Water supply system			0
Gas pipes			0
Soil pipes			0
Waste pipes			0
Vent pipes			0
Electrical wiring system			0
Mechanical system			0
Alteration or replacement of structural components:			
Exterior walls			0
Interior walls			0
Floor construction			0
Chimneys and vents			0
Columns and post			0
Foundation wall			0
Footing			0
Beams			0
Elevator replacement			
Foundation waterproofing			0
Electrical service—replacement or new			0

Exhibit L.—Insured 10-year Home Warranty Plan Requirements

I. Purpose

In recent years, numerous third-party home warranty plans have been developed offering new homeowners varying degrees of protection against builder default and/or major structural defects in their homes. This exhibit establishes the criteria and procedures by which a warranty plan is found acceptable for new construction of single family homes financed by Farmers Home Administration (FmHA). An acceptable warranty plan will:

A. Assure that FmHA borrowers receive adequate warranty coverage.

B. in certain circumstances, eliminate the requirement for FmHA personnel to make the first two construction inspections, and

C. permit a loan up to the market value of the security (less the unpaid principal balance and past due interest of any other liens against the security) even though FmHA personnel did not perform periodic inspections during construction.

II. Types of acceptable Warranty Companies

A. An insured warranty company is underwritten by an insurance carrier, licensed to operate as an insurer in the states where the warranty company plans to operate and has an acceptable rating from a nationally recognized rating company such as A. M. Best Company.

B. A risk retention group is a company which is chartered in one state and is authorized, under the Products Liability Risk Rentention Act of 1981, to operate in all states. This authority is not challenged by FmHA; however, if at some future time any state insurance commission or regulatory agency challenges the legal authority of such group, FmHA will reconsider its acceptance of the group.

C. Individual state warranty plans, such as that offered by the State of New Jersey, are backed by the full faith and credit of the state government.

III. Plan Requirements

To be considered acceptable, a warranty plan must include the following features:

A. The entire cost (fee, premium, etc.) of the coverage is prepaid and coverage automatically transfers ot subsequent owners without additional cost.

B. The coverage is not cancellable by the warrantor (builder), warranty company or insurer.

C. The coverage includes at least the following:

(1) For one year from the effective date, any defects caused by faulty workmanship or defective materials.

(2) During the second year after the effective date, the warranty continues to cover the wiring, piping and duct work of the electrical, plumbing, heating and cooling systems, plus the items in (3).

(3) During the third through the tenth years, the warranty continues to cover major structural defects. A major structural defect is actual damage to the load-bearing portion of the home including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load-bearing function and which vitally affects or is imminently likely to affect use of the home for residential purposes.

D. A system is provided for complaint (claims) handling which includes a conciliation and, if necessary to resolve matters in dispute, arbitration arranged by the American Arbitration Association or similar organization.

E. A construction inspection plan is required if FmHA is to eliminate the first two FmHA inspections or permit a full market value loan when FmHA inspections are not conducted.

IV. The Review Process

A. Companies submitting warranty plans for a determination of acceptability must support requests with the following information.

(1) Evidence that the insured warranty company has met the state licensing and/or regulatory requirements in the state in which the company plans to operate.

(2) Evidence that the insurance carrier underwriting the warranty plan is licensed to operate as an insurer in the states in which the company plans to operate and has an acceptable rating from a nationally recognized rating company such as A. M. Best Company.

(3) A company claiming authority to operate as a risk retention group must submit certification it has complied with all requirements of the Products Liability Risk Retention Act of 1981 (Pub. L. 97–45) and information indicating the state in which it is chartered and licensed.

(4) State warranty plan agencies will provide evidence that the plan is backed by the full faith and credit of the state.

(5) A full description of the warrantly plan including information on the fees, builder and home registration procedures, required construction standards, construction inspection prcedures, coverage provided and claims procedures.

(6) A sample copy of the warranty information and/or policy which is provided to the homeowner.

(7) Suggested means by which FmHA field offices can readily assure that the builder is a member in good standing prior to loan approval and that a warranty will be issued upon the completion of construction prior to the final release of funds.

B. Submission and Acceptance.

(1) Insured warranty companies and state warranty plan agencies will submit their requests and supporting information to the FmHA State Director in the state in which they plan to operate.

(2) State Directors will determine the acceptability of insured warranty plans and state warranty plans in their jurisdictions, notify the appropriate company or agency of the decision in writing and notify field offices by issuance of a State Supplement including the names and addresses of acceptable warranty companies and any other pertinent information.

(3) Risk retention groups will submit their requests and supporting information to the FmHA National Office, Single Family Housing Processing Division.

(4) The National Office will determine the acceptability of risk retention groups, notify the organization of the decision in writing and notify field offices by publication of an attachment to the Exhibit.

V. Warranty Performance

A. County Supervisors will report inadequate warranty performance through their District Director to the State Director. State Directors will review the situation, assist in resolving any problems and, if necessary, initiate action under Subpart F of Part 1924 of this chapter. State Directors will inform, by memorandum, the Director, Single Family Housing Processing Division, National Office, of any problems with warranty performance and if any debarment action is initiated.

B. State Directors will annually monitor each warranty company and/or its insurer to assure continued compliance with state licensing and/or regulatory requirements.

Attachment 1—Acceptable Warranty Companies

The warranty company listed below claims authority to provide 10-year home warranties as a risk retention group under the Products Liability Risk Retention Act of 1981 and as such is authorized to operate in all states, subject to any future challenge to that authority by any state insurance commissioner or regulatory agency.

Name and Address: Home Owners Warranty Corporation, 2000 L Street, NW., Washington, DC. Telephone: 202–452–0450.

Area of Operation: All states.

Subpart F—Complaints and Compensation for Construction Defects

5. In § 1924.253, paragraph (c) is revised to read as follows:

§ 1924.253 Definitions.

* * * * *

(c) Newly constructed dwelling. A newly constructed dwelling is one which (1) is financed with a Section 502 RH insured loan, (2) was, at the time the loan was closed, not more than one year old and not previously occupied as a residence, and (3) the required construction inspections were made by Farmers Home Administration (FmHA), Department of Housing and Urban Development (HUD), Veterans Administration (VA) or as authoriged in Subpart A of Part 1924 of this chapter.

* * * * *

PART 1944—HOUSING

6. The authority citation for Part 1944 continues to read as follows and all other authority citation continued in this Part are revised.

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

7. In § 1944.16, paragraphs (a)(1)(i) and (a)(5) are revised to read as follows:

§ 1944.16 Building requirements.

(a) * * *

(1) * * *

(i) Living area will include all finished areas as well as unfinished areas that are designed for or normally considered as living area.

* * * * *

(5) Solid fuel burning devices may be authorized only if the loan approval official determines and documents in the case file that:

(i) A dependable and economical fuel supply is available,

(ii) the device complies with paragraph IVD2 of Exhibit D of Subpart A of Part 1924 of this chapter,

(iii) the device and installation drawings should be approved and will be inspected upon completion by at least one of the following:

(A) Local fire department official or the authority having jurisdiction,

(B) An insurance company representative that is providing fire coverage on the property; or,

(C) If required by local codes, the code authority having jurisdiction; and

(iv) The State Office policies and guidelines with respect to such devices are being followed.

* * * * *

Dated: January 30, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–5102 Filed 3–14–86; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 86–023]

Interstate Movement of Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends the comment period for a proposal to amend the regulations concerning the requirement that an owner-shipper statement or other document containing specified information accompany certain cattle during interstate movement.

DATE: Written comments must be received on or before April 16, 1986.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 84–118. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.E. Wagner, Chief Staff Veterinarian, Interstate and Compliance Staff, VS, APHIS, USDA, Room 808, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8684.

SUPPLEMENTARY INFORMATION: A document published in the Federal Register (50 FR 53330–53332) on December 31, 1985, proposed to amend the regulations in 9 CFR Part 71 with respect to the requirement that an owner-shipper statement or other document containing specified information accompany certain cattle during interstate movement. It was proposed to delete the requirement that cattle be accompanied by an owner-shipper statement or other document when moved interstate if the following

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conditions are met: If the cattle are moved interstate to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under 9 CFR 78.25(b); if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement. Further, for those movements of cattle for which an owner-shipper statement or other document would still be required, it was proposed to require additional information on the owner-shipper statement or other document.

The proposed rule provided for receipt of comments on or before March 3, 1986. An industry representative has requested additional time to review the proposal and offer substantive comments. It has been determined that additional time is needed to allow industry representatives and other interested persons adequate time in which to prepare comments. Therefore, the comment period is extended for an additional 30 days.

Done at Washington, DC, this 12th day of March 1986.

J. K. Atwell,

Deputy Administrator Veterinary Services.

[FR Doc. 86-5814 Filed 3-14-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 86; 0063]

Occidental Petroleum Corp. et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, allow Occidental Petroleum Corp to proceed with its tender offer for MidCon Corp. and their subsequent merger. Respondent would be required to divest MidCon's subsidiary, Mississippi River Transmission Corp. (MRT), within one year after the order becomes final. Additionally, respondent and its subsidiary, Cities Service Oil and Gas Corp., would be prohibited from entering into any new agreements to sell natural gas to MRT until the divestiture is completed.

DATE: Comments will be received until May 16, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-908, Ronald B. Rowe, Washington, DC 20580. (202) 724-1441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Mergers, Natural gas, Trade practices.

Agreement

Before Federal Trade Commission

[File 861 0063; Agreement Containing Consent Order]

In the matter of Occidental Petroleum Corp., a corporation, and MidCon Corp., a corporation.

The agreement herein, by and among Occidental Petroleum Corporation ("Occidental"), MidCon Corp. ("MidCon"), and counsel of the Federal Trade Commission ("Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance herewith the parties agree that:

1. Occidental is a corporation organized under the laws of California with its executive office at 10889 Wilshire Boulevard, Los Angeles, California 90024.

MidCon is a corporation organized under the laws of Delaware with its executive office at 701 East 22nd Street, Lombard, Illinois 60148.

2. Occidental and MidCon have been furnished a draft complaint, here attached, that the Bureau of Competition will present to the Commission for its consideration, which Occidental and MidCon understand may then be issued by the Commission, charging Occidental and MidCon with violations of the Clayton Act and Federal Trade Commission Act.

3. Occidental and MidCon admit only the jurisdictional facts set forth in the Commission's draft complaint in the proceeding.

4. Occidental and MidCon waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement is for purposes of settlement of the complaint and does not constitute an admission by Occidental and MidCon that the law has been violated as alleged in the complaint.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commision. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Occidental and MidCon, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. If this agreement is accepted by the Commission, the Commission shall not request that a temporary restraining order, preliminary injunction, or permanent injunction be sought with respect to the Acquisition, provided, however, that nothing contained in this Agreement shall bar the Commission from further investigation of the Acquisition or from issuing an administrative complaint concerning any other aspect of the Acquisition or from seeking judicial relief to enforce the Order or to enforce any order arising from such administrative proceeding.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Occidental and MidCon: (1) Issue its decision containing the following Order to divest in disposition of the complaint and (2) make information public with respect thereto. When so entered, the

Order to divest shall have the same force and effect andy may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Occidental's and MidCon's addresses as stated in this agreement shall constitute service. Occidental and MidCon waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

9. Occidental and MidCon have read the draft complaint and Order contemplated hereby. They understand that once that Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Occidental and MidCon further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is hereby Ordered that as used in this Order the following definitions shall apply:

1. "Acquisition" means Occidental's acquisition of shares of the Common Stock of MidCon and the subsequent merger of MidCon into an affiliate of Occidental pursuant to an Agreement and Plan of Reorganization.

2. "MRT" means Mississippi River Transmission Corporation, an indirect, wholly-owned subsidiary of MidCon.

3. "Occidental" means Occidental Petroleum Corporation, its subsidiaries, divisions, groups and affiliates controlled by Occidental and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

4. "MidCon" means MidCon Corp. as it was constituted prior to the Acquisition, including its parents, subsidiaries, divisions, groups and affiliates controlled by MidCon, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

II

It is further ordered that:

A. Within 12 months of the date this Order becomes final, Occidental shall divest, absolutely and in good faith, MRT.

B. Divestiture of MRT shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of MRT is to ensure the continuation of MRT as an ongoing, viable enterprise engaged in the same business in which it is presently engaged and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. So long as Occidental shall own MRT, Occidental and its subsidiary, Cities Service Oil and Gas Corporation, shall not enter into any new agreement(s) for sale of natural gas to MRT.

III

It is further ordered that:

A. If Occidental has not divested MRT within the 12-month period, Occidental shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, Occidental shall consent to the appointment of a trustee by the Commission pursuant to this Order.

B. If a trustee is appointed by a court or the Commission pursuant to paragraph III(A) of the Order, Occidental shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Occidental's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have 18 months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission, and if the trustee was appointed by the court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities of MRT and Occidental shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Occidental shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(B). If bona fide offers are received by the trustee from more than one prospective purchaser, the Commission shall determine whether to approve each such purchaser, and the trustee shall divest to the purchaser elected by Occidental from among the purchasers approved by the Commission.

5. The trustee shall serve at the cost and expense of Occidental on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Occidental and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting MRT.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission, Occidental shall, subject to the Commission's prior approval and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed for the balance of the 18-month period specified in paragraph III(B)(2) or any extension thereof.

8. The trustee shall report in writing to Occidental and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

C. Occidental shall maintain the viability and marketability of MRT and shall not cause or permit the destruction, removal or impairment of any assets of MRT except in the ordinary course of business and except for ordinary wear and tear. Occidental shall use its best efforts to ensure that MRT continues to be an ongoing, viable

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enterprise engaged in the same business in which it is presently engaged.

IV

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Occidental has fully complied with the provisions of paragraphs II and III of this Order, Occidental shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. Occidental shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of MRT, including the identity of all parties contacted. Occidental also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

V

It is further ordered that for a period commencing on the date this Order becomes final and continuing for ten (10) years from and after the date this Order becomes final, Occidental shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used by (and still suitable for use by), any interest in or the whole of any substantial part of the stock or share capital of any natural gas transmission line located in whole or part in the St. Louis MSA; these prohibitions shall not relate to participation in any joint venture in which Occidental or MidCon is a participant on the date of service of this Order or to the construction of new facilities.

VI

It is further ordered that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Occidental and MidCon made to its principal office, Occidental and MidCon shall permit any duly authorized representatives of the Commission;

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Occidental and MidCon relating to any matters contained in this Order; and

B. Upon five days notice to Occidental and MidCon and without restraint or interference from them, to interview officers or employees of Occidental and MidCon who may have counsel present, regarding such matters.

VII

It is further ordered that Occidental shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment from Occidental Petroleum Corporation and MidCon Corp. an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the February 1986 acquisition by Occidental Petroleum Corporation ("Occidental") of the stock of MidCon Corp. ("MidCon"). Occidental is a producer of natural gas. MidCon owns an extensive natural gas transmission system that transports gas from the natural gas producing areas of the country to various consuming areas. One pipeline subsidiary of MidCon, Mississippi River Transmission Corporation ("MRT"), supplies gas to the St. Louis area. Another MidCon pipeline subsidiary, Natural Gas Pipeline Company of America ("NGPL") supplies gas to various markets in Illinois, including Chicago. MidCon owns a number of additional pipeline subsidiaries, including United Gas Pipeline Company ("UGPL") which supplies markets in Louisiana.

The agreement containing consent order would, if issued by the Commission, settle the complaint that alleges an anticompetitive effect in the St. Louis market. The potential for such an anticompetitive effect is described in the United States Department of Justice, 1984 Merger Guidelines, 2 Trade Reg. Rep. (CCH) 14,490 (1984), as follows:

> 4.23 Evasion of Rate Regulation
>
> Non-horizontal mergers may be used by monopoly public utilities subject to rate regulation as a tool for circumventing that regulation. The clearest example is the acquisition by a regulated utility of a supplier of its fixed or variable inputs. After the merger, the utility would be selling to itself and might be able arbitrarily to inflate the prices of internal transactions. Regulators may have great difficulty in policing these prices, particularly if there is not an independent market for the product (or service) purchased from the affiliate. As a result, inflated prices could be passed along to consumers as "legitimate" costs. In extreme cases, the regulated firm may effectively preempt the adjacent market, perhaps for the purpose of suppressing observable market transactions, and may distort resources allocation in that adjacent market as well as in the regulated market. In such cases, however, the Department recognizes that genuine economies of integration may be involved. The Department will consider challenging mergers that create substantial opportunities for such abuses.[1]

If MidCon pipelines have market power in any consumer market, Occidental's acquisition of MidCon would be analogous to the situation set out in the Department of Justice Guidelines for the following reasons: First, as a result of the acquisition, Occidental will be able to internally transfer large quantities of deregulated natural gas to MidCon pipelines. Second, although MidCon's interstate pipeline subsidiaries are subject to Federal Energy Regulatory Commission rate-of-return regulation, Occidental is likely to be able to inflate the price of the gas it sells to its own pipelines in a manner that escapes regulatory strictures. Third, MidCon will be able to pass along inflated prices to customers in any market where MidCon pipelines have market power. Fourth, and finally, MidCon is likely to have market power in the St. Louis area because MidCon pipelines are the sole suppliers of the area. MRT, one of MidCon's interstate pipeline subsidiaries, is the sole supplier to the local gas distribution company for the city of St. Louis. MRT is not required by state or federal law to transport gas for others and alternative transportation facilities for natural gas into the St. Louis area are not available.

Because of the conditions described above, the Commission has reason to believe that the acquisition would have an anticompetitive effect in the St. Louis market that violates section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect. The order accepted for public comment contains provisions requiring the divestiture (sale) of MRT within twelve months of the date that the order becomes final. If Occidental fails to divest MRT within the twelve-month period, Occidental shall consent to the appointment of a trustee, who would have eighteen additional months to divest MRT. Any proposal to divest MRT must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. Prior to divestiture, the order prohibits Occidental from entering into any new agreements for the sale of natural gas to MRT.

For a period of ten years from its effective date, the order would also prohibit Occidental from acquiring, without prior Commission approval, any interest in any natural gas transmission line located in whole or in part in the St. Louis area.

It is anticipated that the provisions of the order would resolve the competitive problems alleged in the complaint. After divestiture, MRT would be an independent company serving the St. Louis area and would have an incentive to buy gas at the lowest possible prices.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. In this regard, the agreement containing consent order makes clear that nothing in the agreement shall bar the Commission from further investigation or from issuing an administrative complaint concerning any other aspect of the acquisition.

This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 86-5719 Filed 3-14-86 8:45 am]

BILLING CODE 6750-01-M

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[1] The Federal Trade Commission gives considerable weight to the Department of Justice Merger Guidelines in its evaluation of mergers and acquisitions. *See* Statement of Federal Trade Commission Concerning Horizontal Mergers, 2 Trade Reg. Rep. (CCH) ¶ 4510 (1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 150

[Docket No. 86N-0019]

Fruit Jelly and Fruit Preserves and Jams; Advance Notice of Proposed Rulemaking on the Possible Amendment of the U.S. Standards of Identity and Establishment of U.S. Standards of Quality and Fill of Container

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering interested persons an opportunity to review the Codex Standard for Jams (Fruit Preserves) and Jellies (Codex Standard 79-1981) (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability of and need for amending the U.S. standards of identity and establishing U.S. standards of quality and fill of container for these foods to achieve consistency with the Codex standard. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need to amend the U.S. standards of identity and establish U.S. standards of quality and fill of container for fruit jelly and fruit preserves and jams, FDA will not propose their amendment or establishment .

DATE: Comments by May 16, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0118.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a number of Codex standards, among which is the Codex standard for Jams (Fruit Preserves) and Jellies (Codex Standard 79-1981).

As a member of the Codex Alimentarius Commission, the United States is obligated to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to appropriately revise an existing standard to incorporate the provisions within the U.S. standard. At present the United States has standards of identity for fruit jelly (21 CFR 150.140) and fruit preserves and jams (21 CFR 150.160) which differ in some respects from the Codex standard. There are no U.S. standards of quality and fill of container for these foods.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirability of and need for amending the U.S. standards of identity and establishing U.S. standards of quality and fill of container for fruit jelly and fruit preserves and jams, (2) the specific provisions of the Codex standard, (3) additional or different requirements that should be in the U.S. standards, and (4) any other pertinent points.

FDA advises that if comments received do not support the need to amend the U.S. standards of identity or establish U.S. standards of quality and fill of container, no amendment or new standards will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission of the differences between the Codex and U.S. requirements and that imported foods may move freely in interstate commerce in this country, providing they comply

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with the applicable U.S. laws and regulations which include the U.S. standards of identity for fruit jelly and fruit preserves and jams.

Certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act, rather, they are dealt with under the authority of other sections of the act.

For the benefit of interested persons who may wish to submit comments relative to this notice, FDA points out that the following major differences exist between the Codex standard and the U.S. standards for fruit jelly and fruit preserves and jams:

(1) *Fruit Ingredients.* The Codex standard in sections 2.1.1 and 2.1.2 states that fruit jelly and fruit preserves and jams are prepared from a suitable fruit ingredient. Section 2.2.1 of the Codex standard states that fruit means all recognized fruits and those vegetables recognized as suitable in making jams, including but not limited to chestnuts, ginger, melon, rhubarb, and tomatoes. The U.S. standards in §§ 150.140(b)(1) and 150.160(b)(1) list 28 fruits for fruit jelly and 34 fruits, including rhubarb and tomatoes, for fruit preserves and jams.

(2) *Optional Ingredients.* The Codex standard provides for the following ingredients not provided for by the U.S. standards: in section 3.1.2 for the addition of herbs and spirituous liquors and for the use of butter, margarine, and other vegetable or animal oils; in 4.2 for the use of mono- and diglycerides of fatty acids of edible oils and dimethyl polysiloxane as antifoaming agents; and in 4.7 for the use of certain firming agents on the fruit ingredient. The Codex standard in section 3.1.2(7) also provides for the optional use of fruit juice or fruit juice concentrates in the case of jams. Of these optional ingredients, the U.S. standards of identity in §§ 150.140(c)(7) and 150.160(c)(7) provide only for the use of safe and suitable antifoaming agents that are not derived from animal fat.

(3) *Fruit Content.* The Codex standard in section 3.2 provides, with certain exceptions, specifications for two levels of fruit (or fruit juice) content for both fruit jelly and fruit preserves and jams. Specification A (3.2.1.1) requires not less than 45 parts by weight of fruit (or fruit juice) ingredient, exclusive of any added sugar or optional ingredients, for each 100 parts by weight of the finished product, except that blackcurrant, rosehip, or quince may contain not less than 35 parts, or ginger 25 parts, or cashew apple 23 parts, or passionfruit 8 parts. Specification B (3.2.1.2) requires not less than 33 parts by weight of fruit (or fruit juice) ingredient, exclusive of any added sugar or optional ingredients, for each 100 parts by weight of the finished product, except that blackcurrant, rosehip, or quince may contain not less than 25 parts, or cashew apple 16 parts, or ginger 15 parts, or passionfruit 6 parts. The U.S. standard of identity for fruit jelly in § 150.140(d)(1) requires not less than 45 parts by weight of fruit juice ingredient to each 55 parts by weight of the saccharine ingredient. The U.S. standard of identity for fruit preserves and jams in § 150.160(d)(1), requires not less than 47 parts by weight of fruit ingredient for Group I fruits, or permitted combination thereof, as specified in § 150.160(b)(1), and not less than 45 parts by weight of fruit ingredient for all other fruits (Group II) to each 55 parts by weight of the saccharine ingredient.

(4) *Mixtures of Fruits.* The Codex standard in section 3.2.2 requires, with limited exceptions, that the first named fruit in a two-fruit product be not less than 50 percent nor more than 75 percent of the total fruit content (3.2.2.1); in a three-fruit product, not less than 33⅓ percent nor more than 75 percent of the total fruit content (3.2.2.2); and in a four- or more fruit product, not less than 25 percent nor more than 75 percent of the total fruit content (3.2.2.3). There are no compositional requirements in the Codex standard for fruits other than the first named fruit. The U.S. standards in §§ 150.140(b)(2) and 150.160(b)(2) require, with limited exceptions, that each fruit in such mixed fruit products be not less than 20 percent of the weight of the combined fruits.

(5) *Conserve.* The Codex standard in section 7.1.1 recognizes the name "conserve" as an optional name for "preserve" or "jam." The U.S. standard does not recognize "conserve" as a permitted name for this food.

(6) *Labeling.* The Codex standard in section 7.1.1(a) provides for the labeling of products meeting Specification A as "Extra jam," "High fruit jam," or "Jam" (or "Jelly," "Preserve," or "Conserve," as appropriate). The Codex standard in section 7.1.1(b) provides for the labeling of products meeting Specification B as "Low fruit jam," "Light jam," "Jam", or "Fruit spread" (or "Jelly," "Preserve," or "Conserve," as appropriate). The U.S. standards of identity for fruit jelly and fruit preserves and jams in §§ 150.140(e)(1) and 150.160(e)(1) provide for the labeling of products as "Jelly," "Preserve," or "Jam," and when the fruit ingredient is a combination of two, three, four, or five fruits (or fruit juices), the name is "Jelly" or "Preserve" or "Jam" followed by the words "Mixed fruit" or by the names or synonyms of the fruit (or fruit juice) ingredients as designated by the respective standards.

(7) *Percentage Labeling.* The Codex standard in section 7.1.3 requires percentage labeling of the fruit ingredient(s). The U.S. standards have no such requirement.

(8) *Compliance.* The Codex standard specifies analytical methods by which compliance with certain provisions would be determined. In making such determinations, FDA prefers to rely on methods of analysis recognized by the Association of Official Analytical Chemists.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

List of Subjects in 21 CFR Part 150

Food standards, Fruits.

The Codex standard under consideration is as follows:

CODEX STAN 79-1981—CODEX STANDARD FOR JAMS (FRUIT PRESERVES) AND JELLIES[1]

(Wolrld-wide Standard)

1. *SCOPE.*

1.1 This standard applies to a class of fruit spreads commonly known as jams and jellies and which may be prepared from single fruits or from two or more fruits.

1.2 The distinguishing characteristics of the product are:

(a) a substantial amount of fruit ingredient is required in the formulation; and

(b) the end product has a relatively high soluble solids value.

1.3 The terms "jams" and "preserves" are frequently used interchangeably. "Jellies" are differentiated from jams in that the fruit ingredient consists of the juice that has been extracted from whole fruits and clarified by filtration or other means.

1.4 This standard does not apply to:

(a) Products prepared with non-carbohydrate sweeteners and which are clearly intended or labelled as intended for diabetic or dietetic use; or

(b) Products with a low sugar content; or

(c) Products prepared from citrus fruit, commonly referred to as marmalade, which products are covered by the "Codex

Recommended International Standard for Citrus Marmalade" (CODEX STAN. 80-1981); or

(d) Products clearly intended and marked as for manufacturing use.

2. *DESCRIPTION.*

2.1 *Product Definitions.*

2.1.1 "Jam" or "Preserve" or "Conserve" is the product prepared from a suitable fruit ingredient (as defined in 2.2.2.1):

(a) which may be whole fruit, pieces of fruit, fruit pulp, or fruit puree; and

(b) with or without fruit juice or concentrated fruit juice as optional ingredient(s); and

(c) mixed with a carbohydrate sweetner, with or without water; and

(d) processed to a suitable consistency.

2.1.2 "Jelly" is the product prepared from a suitable fruit ingredient (as defined in 2.2.2.2):

(a) which is practically free from suspended fruit particles; and

(b) mixed with a carbohydrate sweetener, with or without water; and

(c) processed to a semi-solid consistency.

2.2 *Other Definitions.*

2.2.1 "Fruit" means all of the recognized fruits and those vegetables recognized as suitable in making jams, including but not limited to chestnuts, ginger, melon, rhubarb, tomato.

2.2.2 "Fruit ingredient" means:

2.2.2.1 *In the case of jams, preserves or conserves* the product:

(a) prepared from fruit which is fresh, frozen, canned, concentrated or otherwise processed or preserved; and

(b) prepared from fruit which is substantially sound, wholesome, of suitable ripeness and clean; not deprived of any of its main constituents, except that it is trimmed, sorted and otherwise treated to remove objectionable bruises, stems, toppings, tailings, cores, pits (stones), and may or may not be peeled. In the case of ginger, rhubarb, and melon, it means respectively the drained edible and cleaned root of ginger (Zingiber officinale) preserved in syrup, trimmed rhubarb stems, and melons with seeds, stem, and rind removed; and

(c) containing all natural soluble solids (extractives) except for those lost during preparation under good manufacturing practices.

2.2.2.2 *In the case of jelly* the juice or aqueous extract:

(a) obtained from fruit which is fresh, frozen, canned, concentrated, or otherwise processed or preserved; and

(b) prepared from fruit which is substantially sound, wholesome, clean, and which is trimmed, sorted and otherwise treated to remove objectionable material; and

(c) prepared by removal of all, or practically all, of this insoluble solids and may be concentrated by the removal of water.

2.2.3 "Fruit Pulp" means the edible portions of the fruit, mashed, or cut into pieces, but not reduced to a puree.

2.2.4 "Fruit Puree" means fruit ingredient finely divided by sieving, screening, or other mechanical means.

2.2.5 "Soluble Solids" means percent by weight of soluble solids as determined by the refractometric method corrected to 20°C using the International Sucrose Scale but making no correction for insoluble solids or acids.

3. *Essential Composition and Quality Criteria.*

3.1 *Composition.*

3.1.1 Basic Ingredients.

(1) Fruit ingredient as defined in 2.2.2.

(2) One or more of the carbohydrate sweetener(s) (sugar(s)) defined by the Codex Alimentarius Commission, including sucrose, dextrose, invert sugar, invert sugar syrup, fructose, glucose syrup, dried glucose syrup.

3.1.2 Optional Ingredients.

(1) Citrus juice.

(2) Herbs, spices (including powdered ginger) and vinegar.

(3) Essential oils.

(4) Spirituous liquors.

(5) Butter, margarine, other edible vegetable or animal oils (used as anti-foaming agents).

(6) Honey.

(7) Fruit juice or fruit juice concentrates in the case of jams. In Labrusca grape jam, grape juice and grape juice concentrate may constitute a part of the required fruit content.

3.2 *Formulation.*

3.2.1 Fruit Content.

3.2.1.1 Specification A.

The product shall be manufactured from not less than 45 parts, by weight, of original fruit ingredient, exclusive of any added sugar or optional ingredients for each 100 parts, by weight, of finished product except for the following:

	Parts
Blackcurrant, rosehip, quince	35
ginger	25
cashew apple	23
passion fruit	8

When concentrated or diluted fruit ingredient is used, the formulation is based upon the equivalent of single strength fruits as determined by the relationship between the soluble solids of the concentrate or the dilution and the soluble solids of the natural (single strength) fruit.

3.2.1.2 Specification B.

The product shall be manufactured from not less than 33 parts, by weight, of original fruit ingredient, exclusive of any added sugar or optional ingredients used in the preparation of the fruit ingredient, for each 100 parts, by weight, of finished product except for the following:

	Parts
Blackcurrant, rosehip, quince	25
ginger	15
cashew apple	16
passionfruit	6

When concentrated or diluted fruit ingredient is used, the formulation is based upon the equivalent of single strength fruits as determined by the relationship between the soluble solids of the concentrate or the dilution and the soluble solids of the natural (single strength) fruit.

3.2.2 Mixtures of fruits.

3.2.2.1 Two fruits.

When a jam or jelly contains a mixture of two fruits, the first-named fruit shall contribute not less than 50 percent, nor more than 75 percent, of the total fruit content except when melon, passionfruit, lemon, papaya, or ginger is one of the two fruits. When melon or papaya is a constituent it may be present up to a level of 95 percent and where pineapple, passionfruit, lemon, and ginger are present they shall be present at a level of not less than 5 percent with the major ingredient being permitted at a level greater than 75 percent.

3.2.2.2 Three fruits.

When a jam or jelly contains a mixture of three fruits, the first-named fruit shall contribute not less than 33⅓ percent, nor more than 75 percent, of the total fruit content.

3.2.2.3 Four or more fruits.

When a jam or jelly contains a mixture of four or more fruits, the first-named fruit shall contribute not less than 25 percent nor more than 75 percent, of the total fruit content.

3.3 *Soluble solids* (finished product).

The soluble solids value of the finished product shall not be less than 65 percent (see sub-sections 7.1.3 and 8.2.1).

3.4 *Quality criteria.*

3.4.1 General requirements.

The end product shall be viscous or semi-solid, have a colour and flavour normal for the type or kind of fruit ingredient taking into consideration any flavour imparted by optional ingredients. Characteristic colour shall not, however, be a requirement where the colour of the product has been adjusted by use of permitted colouring agents. It shall be reasonably free from defective materials normally associated with the fruits.

In the case of jellies, the product shall be at least reasonably clear or transparent and shall contain no apparent defects.

Seeds, in the case of berries and passionfruit, are a natural fruit component and are not considered defects unless the product is presented as "Seedless".

3.4.2 Defects and allowances—Jams (Preserves).

Based on a sample unit of 450 g the product shall have not more than the following:

(a) *Harmless extraneous plant material.* (consisting of plant material common to specific fruit and includes leaves, full caps, stems over 10 mm in length and sepal bracts aggregating an area of 5 mm² or larger.)	2 pieces.
(b) *Pit (Stone)* (whole pit or stone in fruits such as cherries that are normally pitted; or a piece of pit of approximately one-half pit.)	1 piece.
(c) *Pit fragments* (a piece of pit less than the equivalent of one-half pit and which weighs at least 5 milligrammes.)	2 pieces.
(d) *Damaged*	5 pieces.

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[1] Formerly CAC/RS 79-1976.

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(a piece of fruit that is blemished, discoloured, or bruised by pathological or other means to the extent that it is materially affected.)

(e) *Mineral impurities* (see 8.2.4)

Strawberry jam (percent by weight). 0.04.

Other (percent by weight)...... 0.01.

3.4.3 Classification of "defectives".

A container that fails to meet one or more of the applicable quality requirements, as set out in sub-sections 3.4.1 and 3.4.2 shall be considered a "defective".

3.4.4 Lot Acceptance.

A lot will be considered as meeting the applicable quality requirements referred to in sub-section 3.4.1 when the number of "defectives", as defined in sub-section 3.4.3, does not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

	Maximum level
4. *Food Additives.*	
4.1 *Acidifying and pH Regulating Agents*	
4.1.1. Citric acid	Insufficient amount to maintain the pH at a level of 2.8–3.5.
4.1.2. Malic acid	
4.1.3. Lactic acid	
4.1.4. L-tartaric acid	
4.1.5. Fumaric acid	L-tartaric acid and fumaric acid and their salts expressed as the acid, 3g/kg.
4.1.6 Sodium, potassium and calcium salts of any of the acids listed in 4.1.1 through 4.1.5	
4.1.7 Sodium and potassium carbonates	
4.1.8 Sodium and potassium bicarbonates	
4.2 *Anti-Foaming Agents.*	
4.2.1. Mono-and diglycerides of fatty acids of edible oils.	Not more than is necessary to inhibit foaming.
4.2.2. Dimethyl polysiloxane	10 mg/kg.
4.3 *Thickening Agents.*	
4.3.1. Pectin (non-amidated)	Limited by GMP.
4.3.2. Pectin (amidated)	5 g/kg.
4.4 *Colours.*	
4.4.1. Erythrosine 45430	200 mg/kg singly or in combination.
4.4.2 Amaranth 16185 [1]	
4.4.3 Fast Green FCF 42053	
4.4.4 Ponceau 4R 16255	
4.4.5 Tarazine 19140	
4.4.6 Sunset Yellow FCF 15985	
4.4.7 Brilliant Blue FCF 42090	
4.4.8 Indigo Carmine (Indigotin) 73015	
4.4.9 Caramel colours (not made by the Ammonia Sulphite process)	
4.10 Caramel colours (made by the Ammonia Sulphite process) [1]	
4.4.11 Cholorophylls 75810	
4.4.12 Beta-apo-8'-carotenal 40820	
4.4.13 Ethyl ester of beta-apo-8'-carotenoic acid 40825	
4.4.14 Canthaxanthine	
4/5 *Preservatives.*	
4.5.1. Sodium benzoate	1 g/kg. singly or in combination.
4.5.2 Sorbic acid and potassium salt	
4.5.3 Esters of parahydroxy benzoic acid [2]	
4.5.4. Sulphur dioxide (as a carryover from raw material).	100 mg/kg—based on the end product.
4.6 *Flavours*	
4.6.1. Natural fruit essences of the named fruit(s) in the product.	
4.6.2 Natural mint flavour	
4.6.3 Natural cinnamon flavour	
4.6.4 Vanilla and vanillin (in chestnut preserves only)	Limited by CMP
4.7. *Firming Agents* (for use only on the fruit).	
4.7.1. Calcium bisulphite	200 mg/kg expressed as Ca, singly or in combination.
4.7.2 Calcium carbonate	
4.7.3 Calcium chloride	
4.7.4 Calcium lactate	
4.7.5 Calcium gluconate	
4.8 *Antioxidant.*	
4.8.1. L-ascorbic acid—generally	500 mg/kg.
4.8.2. L-ascorbic acid in blackcurrant jam	750 mg/kg.

[1] Temporarily endorsed.

[2] Methyl, ethyl and propyl esters

5. *Hygiene*

5.1 It is recommended that the product covered by the provisions of this standard be prepared in accordance with the Recommended International Code of Hygienic Practice for Canned Fruit and Vegetable Products (Ref. No. CAC/RCP 2-1969).

5.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

5.3 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may represent a hazard to health.

6. *Weights and Measures*

6.1 *Fill of container*

6.1.1 Minimum fill

The container shall be well filled with the product. When packed in rigid containers, the product shall occupy not less than 90% of the water capacity of the container. The water

capacity of the container is the volume of distilled water at 20°C which the sealed container will hold when completely filled (see 8.2.3).

6.1.2 Classification of "defectives"

A container that fails to meet the requirement for minimum fill (90 percent container capacity) of 6.1.1 shall be considered a "defective".

6.1.3 Lot Acceptance

A lot will be considered as meeting the requirement of 6.1.1 when the number of "defectives" does not exceed the acceptance number (c) of the appropriate sampling plan (AQL-6.5) in the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

7. *Labeling*

In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. CODEX STAN. 1-1981) the following specific provisions apply:

7.1 *The name of the food*

7.1.1 The name of the product shall be:

(a) with respect to Specification A:

Extra Jam or High Fruit Jam or Jam	(or Jelly, Preserve or Conserve as appropriate)

(b) with respect to Specification B:

Low Fruit Jam or Light Jam or Jam or Fruit Spread	(or Jelly, Preserve or Conserve as appropriate)

7.1.2 The name of the product may be:

(a) "Creme" for products made from chestnuts.

(b) When any ingredient has been added which imparts to the food the distinctive flavour of the ingredient, the name of the food shall be accompanied by the term "flavoured with X" or "X flavoured", as appropriate. In the case of apple jelly that is coloured green and flavoured with mint, the traditional name "Mint Jelly" may be used.

7.1.3 In all cases the name of the product shall be accompanied by a statement on the label showing the parts of fruit ingredient used in the preparation of 100 parts of finished product. In the case of products with soluble solids levels below 65%, the word "Jam (Preserve, Conserve or Jelly)" may, in accordance with the law and custom of the Country in which the product is sold, be included in the name provided that the name includes appropriate words other than "Jam (Preserve, Conserve or Jelly)" and the name of the fruit or fruits.

7.1.4 The name of the product shall be preceded or followed by the name of the fruit, or fruits, used in order of proportion by weight.

7.1.5 The name of the product may include the name of the variety of fruit (e.g. Victoria Plum Jam) or type descriptions (e.g. Yellow Plum Jam).

7.1.6 The name of the product or fruit may include and adjective describing the character (e.g., Seedless Blackberry Jam).

7.1.7 Jam made from ginger, or pineapple, or figs, with or without the addition of citrus fruit, may be designated "Ginger Marmalade", "Pineapple Marmalade", or "Fig Marmalade" if such product is customarily so described in the country in which it is sold.

7.2 *List of ingredients*

7.2.1 A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with sub-sections 3.2(b) and (c) of the General Standard for the Labelling of Prepackaged Foods (Ref. CODEX STAN. 1-1981).

7.2.2 If ascorbic acid is added to preserve colour, its presence shall be declared in the list of ingredients as ascorbic acid.

7.3 *Net Contents*

The net contents shall be declared by weight in either the metric system ("Systéme international" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

7.4 *Name and Address*

The name and address of the manufacturer, packer, distributor, importer, exporter, or vendor of the product shall be declared.

7.5 *Country of Origin*

The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7.6 *Lot Identification*

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

8. *Methods of Sampling, Analysis and Examination*

8.1 *Sampling*

In accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (Ref. No. CAC/RM 42-1969).

8.2 *Test Procedures*

8.2.1 Soluble Solids

Soluble solids shall be determined by the refractometric method, disregarding any adjustment of water insoluble solids and invert sugars, in accordance with the AOAC Method. (Reference: Official Methods of Analysis of the Association of Official Analytrical Chemists (1975) XII, 22.024 and 31.011).

8.2.2 Determination of Calcium in Jams

In accordance with the FAO/WHO Codex Alimentarius Recommended Method (Ref. No. CAC/RM 38-1970) ais shown in Methods of AOAC (1975) XII, 32.014 through 32.016 (complexometry).

8.2.3 *Method of Determination of Water Capacity of Containers*

In accordance with the FAO/WHO Codex Alimentarius Recommended Method (Ref. No. CAC/RM 46-1972).

8.2.4 Determination of Mineral Impurities

In accordance with the FAO/WHO Codex Alimentarius Recommended Method (Ref. No. CAC/RM 49-1972).

For the convenience of the reader, FDA is also including the text of the existing U.S. standards of identity for fruit jelly and fruit preserves and jams which are as follows:

§ 150.140 Fruit jelly.

(a) The jellies for which definitions and standards of identity are prescribed by this section are the jelled foods each of which is made from a mixture of one or a permitted combination of the fruit juice ingredients specified in paragraph (b) of this section and one or any combination of the optional ingredients specified in paragraph (c) of this section, which meets the specifications in paragraph (d) of this section and which is labeled in accordance with paragraph (e) of this section. Such mixture is concentrated with or without heat. The volatile flavoring materials or essence from such mixture may be captured during concentration, seperately concentrated, and added back to any such mixture, together with any concentrated essence accompanying any optional fruit ingredient.

(b)(1) Each of the fruit juice ingredients referred to in paragraph (a) of this section is the filtered or strained liquid extracted with or without the application of heat and with or without the addition of water, from one of the following mature, properly prepared fruits which are fresh, frozen and/or canned:

FACTOR REFERRED TO IN PARAGRAPH (D)(2) OF THIS SECTION

Name of fruit	
Apple	7.5
Apricot	7.0
Blackberry (other dewberry)	10.0
Black raspberry	9.0
Boysenberry	10.0
Cherry	7.0
Crabapple	6.5
Cranberry	9.5
Damson, damson plum	7.0
Dewberry (other than boysenberry, loganberry, and youngberry)	10.0
Fig	5.5
Gooseberry	12.0
Grape	7.0
Grapefruit	11.0
Greengage, greengage plum	7.0
Guava	13.0
Loganberry	9.5
Orange	8.0
Peach	8.5
Pineapple	7.0
Plum (other than damson, greengage, and prune)	7.0
Pomegranate	5.5
Pricky pear	11.0
Quince	7.5
Raspberry, red raspberry	9.5
Red currant, currant (other than black currant)	9.5
Strawberry	12.5
Youngberry	10.0

(2) The permitted combinations are of two, three, four, or five of the fruit juice ingredients specified in paragraph (b)(1) of this section, the weight of each is not less than one-fifth of the weight of the combination. Each such fruit juice ingredient in any such combination is an optional ingredient.

(c) The following safe and suitable optional ingredients may be used:

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(1) Nutritive carbohydrate sweeteners.

(2) Spice.

(3) Acidifying agents.

(4) Pectin, in a quantity which reasonably compensates for deficiency, if any, of the natural pectin content of the fruit juice ingredient.

(5) Buffering agents.

(6) Preservatives.

(7) Antifoaming agents except those derived from animal fats.

(8) Mint flavoring and artificial green coloring, in case the fruit juice ingredient or combination of fruit juice ingredients is extracted from apple, crabapple, pineapple, or two or all of such fruits.

(9) Cinnamon flavoring, other than artificial flavoring, and artificial red coloring in case the fruit juice ingredient or combination of fruit juice ingredients is extracted from apple or crabapple or both such fruits.

(d) For the purposes of this section:

(1) The mixture referred to in paragraph (a) of this section shall contain not less than 45 parts by weight of the fruit juice ingredients as measured in accordance with paragraph (d)(2) of this section to each 55 parts by weight of saccharine ingredient as measured in accordance with paragraph (d)(4) of this section.

(2) Any requirement with respect to the weight of any fruit juice ingredient, whether prepared from concentrated, unconcentrated, or diluted fruit juice means the weight determined by the following method: (i) Determine the percent of soluble solids in such fruit juice ingredient by the method for soluble solids referred to in paragraph (d)(3) of this section: (ii) multiply the percent so found by the weight of such fruit juice ingredient; (iii) divide the result by 100; (iv) subtract from the quotient the weight of any added saccharine ingredient solids or other added solids; and (v) multiply the remainder by the factor for such fruit juice ingredient prescribed in paragraph (b) of this section. The result is the weight of the fruit juice ingredient.

(3) The soluble-solids content of the finished jelly is not less than 65 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 31.011, under "Solids by Means of Refractometer—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(4) The weight of any optional saccharine ingredient means the weight of the solids of such ingredient.

(e)(1) The name of each jelly for which a definition and standard of identity is prescribed by this section is as follows:

(i) In case the jelly is made with a single fruit juice ingredient, the name is "Jelly", preceded or followed by the name or synonym whereby the fruit from which such fruit juice ingredient was extracted is designated in paragraph (b) of this section.

(ii) In case the jelly is made with a combination of two, three, four, or five fruit juice ingredients, the name is "Jelly", preceded or followed by the words "Mixed fruit" or by the names or synonyms whereby the fruits from which the fruit juice ingredients were extracted are designated in paragraph (b) of this section, in the order of predominance, if any, of the weights of any such fruit juice ingredients in the combination.

(2) Each of the optional ingredients specified in paragraphs (b) and (c) of this section shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(i) The name(s) of the fruit or fruits used may be declared without specifying the particular form of the fruit or fruits used.

(ii) When the optional ingredients listed in paragraphs (c) (3), (4), and (5) of this section are declared on the label, the declaration may be followed by the statement "Used as needed" on all jellies to which they are customarily, but not always, added to compensate for natural variations in the fruit juice ingredients used.

§ 150.160 Fruit preserves and jams.

(a) The preserves or jams for which definitions and standards of identity are perscribed by this section are the viscous or semi-solid foods; each of which is made from a mixture composed of one or a permitted combination of the fruit ingredients specified in paragraph (b) of this section and one or any combination of the optional ingredients specified in paragraph (c) of this section which meets the specifications in paragraph (d) of this section, and which is labeled in accordance with paragraph (e) of this section. Such mixture, with or without added water, is concentrated with or without heat. The volatile flavoring material from such mixture may be captured during concentration, separately concentrated, and added back to any such mixture, together with any concentrated essence accompanying any optional fruit ingredient.

(b)(1) The fruit ingredients referred to in paragraph (a) in this section are the following mature, property prepared fruits which are fresh, concentrated, frozen and/or canned:

Group I

Blackberry (other than dewberry), Black raspberry, Blueberry, Boysenberry Cherry, Crabapple, Dewberry (other than boysenberry, loganberry, and youngberry) Elderberry, Grape, Grapefruit, Huckleberry, Loganberry, Orange, Pineapple, Raspberry, Red raspberry, Rhubarb, Strawberry, Tangerine, Tomato, Yellow tomato, Youngberry

Group II

Apicot, Cranberry, Damson, damson plum, Fig, Gooseberry, Greengage, greengage plum, Guava, Nectarine, Peach, Pear, Plum (other than greengage plum and damson plum), Quince, Red currant, currant (other than black currant)

(2) The following combinations of fruit ingredients may be used:

(i) Any combination of two, three, four, or five of such fruits in which the weight of each is not less than one-fifth of the weight of the combination; except that the weight of pineapple may be not less than one-tenth of the weight of the combination.

(ii) Any combination of apple and one, two, three, or four of such fruits in which the weight of each is not less than one-fifth and the weight of apple is not more than one-half of the weight of the combination; except that the weight of pineapple may be not less than one-tenth of the weight of the combination.

In any combination of two, three, four, or five fruits, each such fruit is an optional ingredient. For the purposes of this section the word "fruit" includes the vegetables specified in this paragraph.

(c) The following safe and suitable optional ingredients may be used:

(1) Nutritive carbohydrate sweeteners.

(2) Spice.

(3) Acidifying agents.

(4) Pectin, in a quantity which reasonably compensates for deficiency, if any, of the natural pectin content of the fruit ingredient.

(5) Buffering agents.

(6) Preservatives.

(7) Antifoaming agents, except those derived from animal fat.

(d) For the purposes of this section:

(1) The mixture referred to in paragraph (a) of this section shall be composed of not less than: (i) In the case of a fruit ingredient consisting of a Group I fruit or a permitted combination exclusively of Group I fruits, 47 parts by

weight of the fruit ingredient to each 55 parts by weight of the saccharine ingredient; and (ii) in all other cases, 45 parts by weight of the fruit ingredient to each 55 parts by weight of the saccharine ingredient. The weight of the fruit ingredient shall be determined in accordance with paragraph (d)(2) of this section, and the weight of the saccharine ingredient shall be determined in accordance with paragraph (d)(5) of this section.

(2) Any requirement with respect to the weight of any fruit, combination of fruits, or fruit ingredient means:

(i) The weight of fruit exclusive of the weight of any sugar, water, or other substance added for any processing or packing or canning, or otherwise added to such fruit.

(ii) In the case of fruit prepared by the removal, in whole or in part, of pits, seeds skins, cores, or other parts; the weight of such fruit, exclusive of the weight of all such substances removed therefrom.

(iii) In the cases of apricots, cherries, grapes, nectarines, peaches, and all varieties of plums, whether or not pits and seeds are removed therefrom; the weight of such fruit, exclusive of the weight of such pits and seeds.

(iv) In case of concentrated fruit, the weight of the properly prepared fresh fruit used to produce such concentrated fruit.

(3) The term "concentrated fruit" means a concentrate made from the properly prepared edible portion of mature fresh or frozen fruits by removal of moisture with or without the use of heat or vacuum, but not to the point of drying. Such concentrate is canned or frozen without the addition of sugar or other sweetening agents and is identified to show or permit the calculation of the weight of the properly prepared fresh fruit used to produce any given quantity of such concentrate. The volative flavoring material or essence from such fruits may be captured during concentration and separately concentrated for subsequent addition to the concentrated fruit either directly or during manufacture of the preserve or jam, in the original proportions present in the fruit.

(4) The weight of any optional saccharine ingredient means the weight of the solids of such ingredient.

(5) The soluble-solids content of the finished jam or preserve is not less than 65 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 22.024, under "Soluble Solids by Refractometer in Fresh and Canned Fruits, Jellies, Marmalades, and preserves—Official Final Action," which is incorporated by reference, except that no correction is made for water-insoluble solids. Copies may be obtained from the Association of Official Analytical Chemists. P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 100 L St. NW., Washington, DC 20408.

(e)(1) The name of each preserve of jam for which a definition and standard of identity is prescribed by this section is as follows:

(i) If the fruit ingredient is a single fruit, the name is "Preserve" or "Jam", preceded or followed by the name or synonym whereby such fruit is designated in paragraph (b) of this section.

(ii) If the fruit ingredient is a combination of two, three, four, or five fruits, the name is "Preserve" or "Jam", preceded or followed by the words "Mixed fruit" or by the names or synonyms whereby such fruits are designated in paragraph (b) of this section, in the order of predominance, if any, of the weights of such fruits in the combination.

(2) Each of the optional ingredients specified in paragraphs (b) and (c) of this section shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(i) The name(s) of the fruit or fruits used may be declared without specifying the particular form of the fruit or fruits used.

(ii) When the optional ingredients listed in paragraphs (c) (3), (4), and (5) of this section are declared on the label, the declaration may be followed by the statement "used as-needed" on all preserves or jams to which they are customarily, but not always, added to compensate for natural variations in the fruit ingredients used.

Interested persons may, on or before May 16, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Any comments submitted in support of amending the U.S. standards of identity and establishment of U.S. standards of quality and fill of container for fruit jelly and fruit preserves and jams should be supported by appropriate infomation and data regarding impact on small business consistent with requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: March 4, 1986.

Robert Scheuplein,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5702 Filed 3–14–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD3-86-02]

Temporary Regulations, New York Harbor, July 2–5, 1986

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Coast Guard is correcting the proposed rule containing the temporary regulations for the Port of New York governing port activities and vessel movement and control during the forthcoming Opsail '86 and International Naval Review, July 2–5, 1986, that appeared in the **Federal Register** of February 19, 1986 (51 FR 6066). This action is necessary to correct typographical errors in certain latitudes and longitudes and to correct an error in identifying boat and spectator anchorages on Chartlet III, Appendix A. For the convenience of the reader, Chartlet III is reproduced in its entirety and relabeled as Chartlet III-change 1.

DATE: Comments on the proposed rule must be received on or before April 7, 1986.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T. S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION: The following corrections are made FR Doc.

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86-3215 appearing on page 6066 in the issue of February 19, 1986:

§ 100.35-323 [Corrected]

1. On page 6068, column 3, S 100.35-323(b)(9), line 17, change "73° 58'28" to "73° 57'28"".

2. On page 6068, column 3, S 100.35-323(b)(9), line 19, change "73° 57'55" to "73° 56'55"".

§ 110.T301 [Corrected]

3. On page 6070, column 1, S 110.T301(g)(1), line 9, change "40° 38'06" to "40° 38'36"".

§ 165.T388 [Corrected]

4. On page 6070, column 2, S 165.T388(a), line 6, change "74° 02'27" to "74° 02'11"".

5. On page 6070, column 2, S 165.T388(a), line 8, change "74° 02'50" to "74° 02'27"".

Appendix A—[Corrected]

6. On page 6070, column 3, in the table of contents for Appendix A, "Chartlet III" is corrected to read "Chartlet III-change 1".

7. On page 6073, Chartlet III is replaced by Chartlet III-change 1.

BILLING CODE 4910-14-M

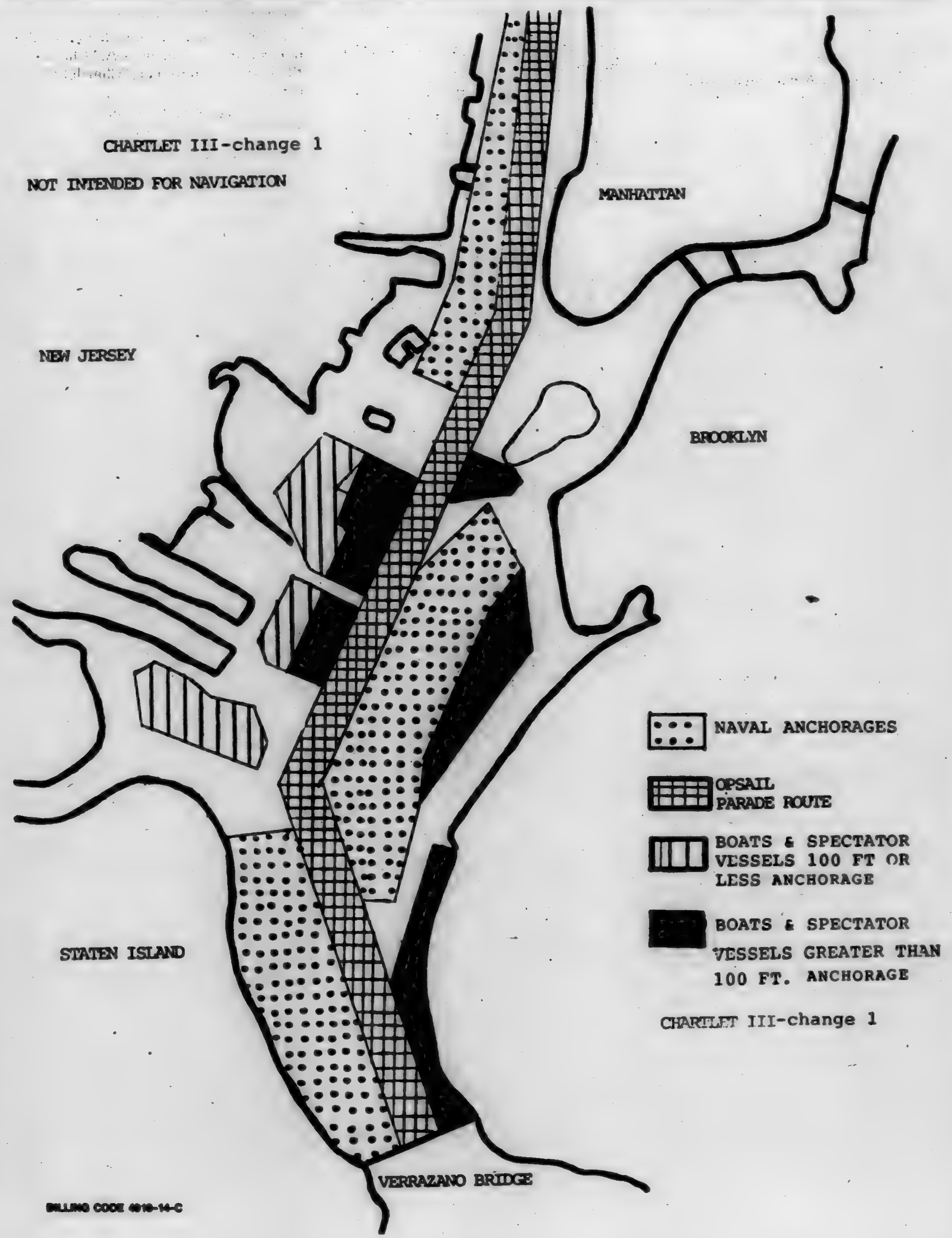
CHARTLET III-change 1
NOT INTENDED FOR NAVIGATION
MANHATTAN
NEW JERSEY
BROOKLYN
STATEN ISLAND
VERRAZANO BRIDGE
NAVAL ANCHORAGES
OPSAIL PARADE ROUTE
BOATS & SPECTATOR VESSELS 100 FT OR LESS ANCHORAGE
BOATS & SPECTATOR VESSELS GREATER THAN 100 FT. ANCHORAGE
CHARTLET III-change 1

BILLING CODE 4910-14-C

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ISS
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17
1986
UMI

Dated: March 7, 1986.

Paul A. Yost,

Vice Admiral, United States Coast Guard Commander, Third Coast Guard District.

[FR Doc. 86–5909 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[08–84–10]

Drawbridge Operation Regulations: Gulf Intracoastal Waterway, Harvey Canal Route, Louisiana; Withdrawal of Proposed Rule

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is withdrawing a proposed rule concerning the LA 18 (Fourth Street) bridge over the Harvey Canal, mile 0.24 in Harvey, Jefferson Parish, Louisiana. The proposed rule was to provide that the draw need not open for the passage of vessels from 6:15 to 8:15 a.m. and 4:30 to 5:45 p.m. Monday through Friday except holidays. The draw is presently required to open on signal at all times. The proposal is being withdrawn at the applicant's request pending completion of construction of the nearby expressway with its new high level fixed span bridge.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, Eighth Coast Guard District, 500 Camp Street, New Orleans, LA 70130–3396, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the Coast Guard published (50 FR 860) a proposal to revise these regulations. The Commander, Eighth Coast Guard District also published the proposal in a public notice dated January 18, 1985. In each notice interested persons were given until February 21, 1985, to submit comments.

The new expressway bridge will provide an additional crossing of the Harvey Canal just 0.6 mile from the LA 18 drawbridge and a substantial number of LA 18 users will divert to the new fixed span bridge. At that time, LDOTD may reevaluate the need for rush hour traffic closures of the LA 18 drawbridge.

List of Subjects in 33 CFR Part 117

Bridges.

Accordingly, the proposed rule published in the **Federal Register** (50 FR 860) on January 7, 1985, is hereby withdrawn.

Dated: March 3, 1986.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86–5907 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of Timber; Suspension and Debarment

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public comment period.

SUMMARY: On January 23, 1986, the Forest Service published a notice of proposed rulemaking to clarify Forest Service procedures for suspension and debarment of National Forest System timber sale purchasers (51 FR 3158). The intended effect of the rule is to ensure that Forest Service timber sale contracts are awarded to responsible purchasers. The proposed rule incorporates editorial changes to improve overall clarity of the text of the current interim rule, as well as changes that specifically clarify that the rule would apply solely to suspension and debarment from Forest Service timber sales. The proposed rule also substantially adopts the revisions to the governmentwide procurement regulations published as the Federal Acquisition Regulations (FAR), 48 CFR 9.4 (effective April 1, 1984). Because many timber sales purchasers have been developing operating plans for the forthcoming field season since publication of the proposed rule, they have not had adequate time to consider the proposed rule and provide comments. Therefore, the public comment period is extended until April 18, 1986.

DATE: Comments must be received on or before April 18, 1986.

ADDRESS: Send comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Olson, Timber Management Staff, Forest Service, USDA, (202) 475–3758.

Dated: March 10, 1986.

Peter C. Myers,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86–5716 Filed 3–14–86; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 264, 265, and 270

[FRL No. 2979–7]

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and information; solicitation of comments.

SUMMARY: The Environmental Protection Agency (EPA) today notifies the public that the draft reports for the Hazardous Waste Tank Risk Analysis are available for review and comment. These reports are title, "Hazardous Waste Tank Failure and Release Model" and "Hazardous Waste Tank Risk Analysis." EPA may use these reports in developing or implementing regulations for hazardous waste tanks, including underground tanks that cannot be entered for inspection, pursuant to section 3004(w) of the Resource Conservation and Recovery Act. The Agency solicits comments relating to these reports and other matters.

DATES: EPA will accept comments from the public on these draft reports until April 16, 1986. EPA may conduct additional anaylses and provide the docket with descriptions of the methodology and results by March 31 1986. If the Agency does complete such additional analyses, they will be available for public comment for 30 days from the date the descriptions are received in the docket.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. 3004, Revised Tank System Standards), Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments received by EPA and all references used in this document may be inspected in Room S–212(C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, from 9:00 am to 4:00 pm, Monday through Friday, excluding holdiays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, D.C., or Betsy Tam, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382–2791.

SUPPLEMENTARY INFORMATION: On June 26, 1985, the Environmental Protection Agency proposed to amend its regulations under the Resource Conservation and Recovery Act (RCRA) for tank systems storing or treating hazardous waste (50 FR 26444). These proposed regulations would revise substantially and would supplement existing regulations for hazardous waste tanks. In the preamble to the proposed regulations, EPA explained that it would develop a risk assessment that might be used in developing the final regulations.

Among the alternatives that the Agency discussed in the preamble to the proposed regulation were technical approaches such as full secondary containment, partial secondary containment, ground water monitoring, leak testing, and corrosion protection. In addition, the Agency solicited public comment on alternative regulatory strategies, such as national risk-based standards, minimum Federal performance standards, banning underground tanks, and forced retirement of underground tanks (50 FR 26451; June 26, 1985).

The Agency has developed a risk assessment methodology in order to examine these regulatory alternatives and has obtained preliminary results. Today the Agency is making the methodology and preliminary results available for public comment. The Agency has not decided whether to use the risk assessment in developing the final hazardous waste tank regulations or, if so, in what manner to use it.

One use to which the analysis may be put is to serve as guidance for implementing a risk-based variance or waiver from otherwise applicable standards. The proposed regulations contained provisions for such waivers at § 264.193(i) and 265.193(f). The risk analysis may also serve in other ways, such as supporting differences in regulatory requirements, or in the dates upon which requirements must be met, based upon the relative risks presented by differences in tank systems, such as age or size.

Methodology and Preliminary Results of the Risk Analysis

In order to examine the risks associated with hazardous waste tanks, the risk analysis examines the results of the Tank Risk Analysis Model (TRAM). The Tank Risk Analysis Model is composed of the following three component sub-models:

- The Hazardous Waste Tank Failure (HWTF) model, a Monte Carlo simulation model that predicts failure events for hazardous waste tanks and estimates release volumes associated with these failure events;
- A subsurface transport and environmental fate model that simulates contaminant transport and degradation in the unsaturated and saturated zones through the use of modified versions of the McWhorter-Nelson Wetting Front and Prickett-Lonnquist Random Walk models, respectively; and
- An exposure and risk model that estimates human exposure to hazardous chemicals via contaminated drinking water and calculates non-carcinogenic and carcinogenic risk to an exposed individual.

The analysis uses the TRAM to examine risks from different tank types (above-ground, underground, etc.), different tank materials (carbon steel, fiberglass, etc.), and different hazardous waste streams.

The Hazardous Waste Tank Failure Model

The Hazardous Waste Tank Failure (HWTF) Model is a Monte Carlo simulation model that simulates failure events and the volume of released waste for hazardous waste tanks. Its purpose is to simulate the various failure mechanisms associated with hazardous waste tanks in terms of: (1) The timing of occurrence for these failure events; and (2) the magnitude of release volumes associated with these failure events. The model relies on two basic techniques: Fault tree analysis and Monte Carlo simulation.

The model uses fault tree analysis to evaluate the reliability of complex tank systems. The fault trees are used to identify the sequence of contributing events leading to a tank system failure that results in a release of waste to the environment. Failure events considered in the model by fault trees include:

- Overflows
- Leaks and ruptures
- Natural catastrophes
- Secondary containment failures
- Operator errors.

The frequency of occurance and timing of these failure events is predicted using a Monte Carlo Simulation model.

In Monte Carlo simulation, probability distributions are assigned to model variables for which deterministic values are not available. These probability distributions reflect the uncertainty regarding a real value for a particular parameter. As a result, the degree to which the model is representative of a particular situation is dependent upon the availability of data for the construction of the probability distribution. Once these distributions are constructed, a value for each variable is randomly chosen from the distribution for that parameter, and the model calculates a release estimate.

Distributions for both the timing and magnitude of failure events are sampled randomly for 250 iterations for each model tank. The analysis assumed a 20-year time horizon for tanks; therefore, each iteration contains annual release volumes for 20 years. For each iteration, annual release volumes for failure events are calculated from the year in which a failure event occurred to the year in which the model predicts that the release is detected. At the time of detection the model assumes that the tank system is taken out of operation such that the source of the release ceases to exist.

The 250 iterations represent the spectrum of a model tank's performance over a 20-year time horizon. Of the 250 iterations, five or six were used in the contaminant transport and exposure sub-models. These five or six selected iterations are called "representative release profiles" because they represent what we consider the typical performance of a tank.

The HWTF model may be used not only to identify the failure events and release volumes for different tank systems (above-ground, underground, etc.), but it may also be used to estimate the effectiveness of various protective measures in preventing or reducing releases from hazardous waste tanks. This is accomplished within the model by varying the probability distributions for failure events associated with the protective measures.

Subsurface Transport Model

In the Tank Risk Analysis Model (TRAM), the representative release profiles from the HWTF model are input to a subsurface transport model that predicts the transport and environmental fate of contaminants released from hazardous waste tanks. The subsurface transport model simulates contaminant transport in both the unsaturated and saturated zones. The model uses in McWhorter-Nelson Wetting Front Model to simulate the transport of contaminants in the unsaturated zone and the Prickett-Lonnquist Random Walk Model to simulate saturated zone transport. These models are described briefly below.

McWhorter-Nelson Wetting Front Model: In this model, contaminant transport is represented by the movement of a wetting front generated by the release of liquid from the tank system. The travel time for the wetting front through the unsaturated zone is related to the difference in water content in the layers immediately above and below the wetting front, the distance traveled in the unsaturated zone, the leakage rate (Darcian flux), and the retardation of contaminant flow by soil adsorption.

Extensive testing has revealed that the McWhotrer-Nelson Model results depend on seven factors:

- Thickness of unsaturated zone
- Retardation coefficient of the contaminant
- Specific discharge of material from the contaminant source
- Porosity of the unsaturated zone
- Soil moisture content in the unsaturated zone
- Unsaturated zone permeability
- Pore size distribution.

Thus, contaminant transport in the unsaturated zone, as modeled by the McWhorter-Nelson Wetting Front Model, is dependent not only upon properties of the unsaturated zone, but also upon the quantity and physical and chemical properties of the released contaminants.

The McWhotrer-Nelson Model has been used extensively in subsurface transport studies and is a well documented and widely accepted unsaturated zone model. However, to use this model in the TRAM, we had to make several assumptions regarding soil properties and such contaminant characteristics as degradation and dispersion factors. While these assumptions tend to oversimplify transport and attenuation processes occurring in the unsaturated zone, they are consistent across all situations and thus allow for direct risk comparisions between different tank scenarios. The unsaturated zone model provides as its output a mass loading to the saturated zone for each contaminant released from the model tank used in the analysis.

Prickett-Lonnquist Random Walk Model: The Tank Risk Analysis Model uses the Prickett-Lonnquist ground water transport model with random walk particle tracking to simulate the transport of contaminants in the saturated zone. This model is a numerical (finite difference) model that simulates transport in two dimensions (longitudinal and vertical) and accounts for dispersion through the use of the random walk stochastic submodel. It is a widely used and well documented ground water transport model that has been utilized in many ground water contamination studies.

The TRAM does not actually use the Prickett-Lonnquist code, but rather a set of standard breakthrough curves are used to calculate the concentration of a particular contaminant at an exposure well for a given set of hydrogeologic and mass loading conditions over time. Hydrogeologic conditions such as horizontal and vertical ground water velocities and aquifer conditions are represented in the model by a set of nine generic flow fields.

Although the saturated zone model is considered adequate for comparing the transport of contaminants in hypothetical, generic situations, the model, as included in the TRAM, is not suitable for site-specific analyses. In addition, developing and using the saturated zone transport model required several simplyfying assumptions that affect the model's results and limit its applicability. However, since all assumptions are consistent to all situations in this analysis, EPA considers the model useful for comparative purposes.

Exposure and Risk Model

The subsurface transport model results are input to an exposure and risk model. This model estimates the time and magnitude of exposure to individuals using contaminated ground water as a drinking water source. The model also predicts the probability that the exposed individual will suffer an adverse health effect as a result of using the contaminated water supply. The yearly dose to an individual using a particular well is equal to the well contaminant concentration times the ratio of the intake rate of drinking water divided by the receptor weight.

The model calculates risk for the exposed individual based on dose and the inherent hazard of the particular contaminant to which the individual is exposed. For carcinogens, the analysis uses a linear dose-response model that assumes no minimum threshold. Thus, risks are estimated for carcinogens at very low concentrations.

The model used EPA unit risk values, when available, to estimate the inherent hazard for carcinogens and the one-hit model to estimate unit risk. When EPA unit risk values were unavailable, the inherent hazard was estimated by applying the one-hit equation to an appropriate set of experimental data. For non-carcinogens, the analysis assumes a threshold, or minimum effective dose (MED), and uses a non-linear dose-response model to calculate risk.

Limitations of the Tram

1. Limits for Use in Establishing Risk-Based Standards

During the course of this analysis, the Agency determined that there were insufficient data to establish different levels of protection based on levels of risk posed by different tank system, waste stream, and environmental combinations. In addition, the model structure is generalized such that it does not represent the entire spectrum of the regulated community's characteristics. Such complete representation would be essential for us to determine specific regulatory levels of stringency for different tank system, waste stream, and environmental combinations.

Among the data for which we have insufficient information are the following:

- Waste streams and constituent composition and concentrations for the hazardous waste tank population
- Hydrogeologic setting for the hazardous waste tank population
- Distances between drinking water wells and hazardous waste tanks
- Populations associated with those drinking water wells.

These data vary significantly on a site-by-site basis. Thus, it appears that the best way to utilize such information effectively may be to implement risk-based variances from the general standards.

2. Limits for Examining Effects of Banning Underground Tanks

The Tank Risk Analysis Model structure is inappropriate for examining the effects of banning underground hazardous waste tanks since the focus is on the effects of ground water contamination. One of the primary reasons for using underground tanks is the safe storage of ignitable or explosive wastes. Because the risk model does not simulate risks from fires or explosions, we would not be adequately addressing the risks associated with banning the use of underground tanks.

Further Analyses

The risk model may be used to assist the Agency in examining the effects of forced retirement of underground tanks, under the assumption that once the tank is retired it is replaced with a secondary contained underground tank. In addition to phasing-in secondary containment for underground tanks, we could examine the effect of phasing-in secondary containment for the entire tank population.

Before issuing a final rule, the Agency also hopes to analyze regulatory options in addition to those specified in the proposal. These alternatives include excavation zone monitoring (vapor well monitoring in the tank backfill area that is of a known consistency and permeability, not in the native soil) for

an appropriate volatile hazardous waste and corrosion protection in combination with leak detection methods, such as leak testing or excavation zone monitoring.

If the Agency analyzes these additional options, we will provide the docket with a description of the methodology and the results of these analyzes by March 31, 1986. The new analyses will then be available for comment for a period of 30 days. As with the already completed analyses, it is uncertain whether or how these analyses will be used in developing the final rule.

At this time, however, the model has been used only to examine the relative risks associated with hazardous waste tanks under the proposed alternative technical requirements. The hazardous waste tank risk analysis is useful for comparing risks of tanks under the proposed alternative technical standards because waste stream and hydrogeology assumptions can be kept constant while the technical standards are changed. The following discussion presents a summary of the risk results associated with the technical alternatives that were considered in this analysis.

Preliminary Results

Preliminary results of the analysis showed that retrofitting full secondary containment significantly reduced risks for all tanks, with a typical reduction of 50 percent for those cases where risks were estimated. More importantly, high risk estimates (for this analysis, assumed to be risk greater than 10^{-4}) were reduced by 80 percent or more for most modeled tanks by retrofitting full secondary containment.

As a result, this analysis indicates that full secondary containment with leak monitoring is the most effective method of reducing risks associated with hazardous waste tanks. Secondary containment systems prevent most releases from escaping to the environment, allowing hazardous waste releases mainly as a result of very low probability catastrophic failures.

Based on the results of this risk analysis, possible regulatory strategies were ranked in descending order of risk reduction compared to risks estimated for the baseline situation (assuming compliance with the existing regulations) as follows:

- Secondary containment
- Partial secondary containment and ground water monitoring
- Leak testing and ground water monitoring
- Corrosion protection without leak detection
- Existing (baseline) regulations.

Direct comparisons cannot be made between all strategies since not all of the alternatives are applicable to all tank types. This ranking scheme does provide an indication of the overall effectiveness of each of the alternatives compared to the baseline.

The preliminary results indicate that the Agency's proposed requirements of full secondary containment with interstitial leak monitoring is the most effective strategy for preventing environmental damage caused by leaking hazardous waste tanks. The partial containment approach is effective for preventing releases from such causes as overfilling, spills, and operator error. However, the on-grade or in-ground portion of the tank may have a leak that cannot be seen. Such a leak is not detected until the ground water monitoring indicates contamination.

For steel underground tanks, leak testing with ground water monitoring appears to be substantially less effective than full secondary containment since this approach does not prevent releases from occurring. Although the leak detection and ground water monitoring option allows the source of the leak to be removed upon detection, it does not guarantee prevention of substantial environmental damage and risk to human health. This is because leak detection methods are not reliable enough to detect all leaks. In addition, depending on the frequency of the leak test, substantial contamination could occur between tests.

However, for fiberglass reinforced plastic (FRP) tanks, the results of this analysis indicate that the leak testing and ground water monitoring approach is comparable to full secondary containment in reducing risks. This result may be due to the types of failures associated with FRP tanks. The model simulates FRP tank failures as large seam cracks or ruptures that would generally be detected by leak testing. This is in contrast to steel tanks that may develop leaks due to corrosion that are too small to be detected by leak testing.

Finally, corrosion protection without any form of leak detection does not appear to be very effective in reducing the risks presented by carbon steel and stainless steel tanks. This is because, while corrosion protection prevents or delays corrosion, it does not address all the other failures that result in releases. Such failures include installation deficiencies, overfills, spills, and tank or pipe ruptures.

The risk estimates developed in this analysis are not only a function of tank failure events and release volumes, but are also a function of the waste streams stored in a particular tank and the hydrogeologic settings in which the tank is located. As a result, although the alternative technical requirements may substantially reduce the quantities of released waste, substantial risks may remain due to waste stream and hydrogeologic characteristics.

The summary of results presented here is not complete. The docket report, "Hazardous Waste Tank Risk Analysis," provides a more detailed discussion of the preliminary results of this risk analysis.

Solicitation of Comments

1. Risk Analysis

The Agency is soliciting comments on this analysis for a period of thirty days. It is necessary to obtain comments quickly because the Agency may use the analysis in the hazardous waste tank regulation. Under an Order of the United States District Court for the District of Columbia, the regulations are required to be promulgated by June 30, 1986. The Agency specifically encourages commenters to address the appropriateness of the methodology for this analysis, including the assumptions used, as well as how the Agency should consider using the analysis in developing or implementing the final hazardous waste tank Regulations.

2. Other Issues

The Agency also requests comments on the possibility of the Agency's making distinctions, in the final hazardous waste tank regulations, in regulatory requirements, or effective dates of those requirements based upon the Agency's estimates of differences in risks presented. Specifically, the Agency is considering basing such distinctions for non-leaking tanks on age and size of tanks. Other factors that might be considered are whether the tanks are above-ground, in-ground, or underground, and what the tank material is (carbon steel, fiberglass, concrete, etc). Finally, the Agency requests comments on the duration of leaks once they occur, and the median or mean time to failure for various tank systems, such as concrete or fiberglass tank systems.

Dated: March 11, 1986.

Marcia Williams,

Director, Office of Solid Waste.

[FR Doc. 86–5743 Filed 3–14–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-2985-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comments.

SUMMARY: On May 1, 1985, the Environmental Protection Agency (EPA) proposed to list as hazardous three wastes generated during the production of linuron and bromacil. EPA has received additional information after the close of the comment period and is making these data available for public comment.

DATE: EPA will accept public comments on this notice until April 16, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should identify the regulatory docket "Listing Linuron and Bromacil." The public docket for this amendment is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

On May 1, 1985, EPA proposed to amend the hazardous waste list by adding three wastes generated during the production of linuron and bromacil (see 50 FR 18622). These wastes are:

- K119—Wastes from the decanter in the production of linuron,
- K120—Wastes from the spill control trap in the production of linuron, and
- K121—Wastewater from product filtration and water washing in the production of bromacil.

Comments were received from E.I. du Pont de Nemours & Company, Inc., the sole producer of linuron and bromacil. In their comments, Du Pont argued that the listing of these wastes should not be made final since they believe that they are not hazardous.

Du Pont, after the close of the comment period, contacted EPA to request a meeting to clarify their comments. The Agency met with Du Pont on December 16, 1985, at which time EPA received additional data. The major subjects discussed were as follows:

- Du Pont current surface impoundments and wastewater treatment process were described. Also discussed was the impact of the Clean Water Act's effluent guidelines for pesticide chemicals (made final (see 50 FR 40672) on October 4, 1985, after the close of the comment period) on the management of proposed waste K121.
- Du Pont's commented that proposed waste K119 is not a waste because it is recycled back into the process. Earlier information submitted by Du Pont, however, stated that this waste is incinerated off-site. Du Pont clarified that residues from cleaning the decanter are incinerated, but the organic material in the decanter is recycled back into the process continuously.
- Du Pont explained how wastes from the bromacil formulation process, rather than the bromacil production process, enter the spill control trap that services the linuron plant,

In addition, EPA received a letter from Du Pont dated January 17, 1986, in which they stated that:

(1) Linuron and bromacil should not be added to the list of commercial chemical products which are hazardous wastes when discarded (40 CFR 261.33(f)), and

(2) The one-pound CERCLA RQ is illogical.

These comments were based on Du Pont's belief that this would be inconsistent with linuron and bromacil's FIFRA registration as pesticide products for use on food crops.

Copies of these new data and comments (as well as the minutes of the meeting that was held with Du Pont) are available for public inspection from the RCRA Docket, in Room S-212. Du Pont also submitted data that is confidential business information; these data are not available to the public. Comments are solicited only on the new data. These comments must be received by EPA on or before April 16, 1986 to ensure their consideration.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: March 5, 1986.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-5748 Filed 3-14-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-75; RM-5002]

FM Broadcast Station in Clayton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to allot Channel 281A to Clayton, Georgia, as its first FM service in response to a petition filed by Richard J. Turner, Jr.

DATES: Comments must be filed on or before April 28, 1986, and reply comments on or before May 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and exectuve order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Clayton, Georgia); MM Docket No. 86-75; RM-5002.

Adopted: February 14, 1986.

Released: March 6, 1986.

By the Chief, Policy and Rules Division:

1. Before the Commission is a petition for rule making filed by Richard J. Turner, Jr. ("petitioner") which requests the allotment of Channel 281A to Clayton, Georgia, as its first FM channel. Petitioner stated his intention to apply for the channel.

2. Channel 281A can be allotted to Clayton in compliance with the minimum distance separation requirements.[1] In view of the fact that the proposed allotment could provide a first FM service to Clayton, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Clayton, GA		281A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before April 28, 1986, and reply comments on or before May 13, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Edward W. Hummers, Jr., Esq., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036. (Attorney).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divison, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply commments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during reguler business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-5801 Filed 3-14-86; 8:45 am]

BILLING CODE 6712-01-M

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[1] The separation would be met based on the permit issued to Station WAGQ, Athens, Georgia, to change its transmitter site.

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47 CFR Part 73

[MM Docket No. 86-77; RM-4935]

FM Broadcast Station in Mattoon, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 267A to Mattoon, Illinois, in response to a petition filed by Randal J. and Cathaleen R. Miller.

DATES: Comments must be filed on or before May 2, 1986, and reply comments on or before May 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

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Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Mattoon, Illinois); MM Docket No. 86–77 RM–4935.

Adopted: February 11, 1986.
Released: March 11, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Randal J. and Cathaleen R. Miller ("petitioners") which seeks the allotment of Channel 282A to Mattoon, Illinois, as its second FM service. Petitioners stated their intention to apply for the channel. However, the allotment of Channel 282A would be short-spaced to the recent allotment of Channel 282B1 for Casey, Illinois, Docket 84–231, *Memorandum Opinion and Order*, 50 FR 47391, published November 18, 1985. Our staff engineering study indicates that Channel 267A can be allotted instead. The proposal for Channel 267A at Mattoon meets the minimum spacing requirements of § 73.207 of the Rules.

PART 73—[AMENDED]

2. In view of the fact that the proposal could provide a second FM service to Mattoon, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Mattoon, IL	245	245, 267A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before May 2, 1986, and reply comments on or before May 17, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Randal J. Miller, Post Office Box 121, Mattoon, Illinois 61938, ("petitioner").

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the Public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–5802 Filed 3–14–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 174

[Docket No. HM–180, Notice No. 86–1]

Placarding Tank Cars Which Contain Hazardous Material Residue

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking; disposition of petitions for reconsideration.

SUMMARY: The Research and Special Programs Administration (RSPA) recently published amendments to the Department of Transportation's Hazardous Materials Regulations (HMR) changing the placarding and shipping paper requirements for tank cars which contain the residues of hazardous materials. The amendments, which contained a quantitative definition for "residue" were promulgated in a final rule issued under Docket HM–180, which was published on September 26, 1985 (50 FR 39005). Eight petitions for reconsideration were filed in connection with these amendments. This notice, requests comments regarding the changes which the RSPA is proposing in response to these petitions, as well as a change that relates to another recent amendment (Docket HM–196; 50 FR 41092, October 8, 1985).

DATE: Comments must be received on or before April 22, 1986.

ADDRESS: Address comments to: Dockets Branch, Office of Hazardous Materials Transportation (DHM–53), U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, when possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW, Washington, DC Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Standards Division, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426–2075.

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 1985, the RSPA published a final rule [Docket HM–180; 50 FR 39005], which concerned the placarding of empty tank cars. In the final rule, RSPA changed the placarding and shipping paper requirements for tank cars that contain residues of hazardous materials. Also contained in the final rule was a quantitative definition for the word "residue."

In response to the final rule, RSPA received eight petitions for reconsideration under 49 CFR 106.35. Each of the petitioners objected to the definition of residue which was contained in the final rule. Specifically, concern was expressed about that portion of the definition which states:

> "Residue of a hazardous material, as applied to the contents of a tank car (other than DOT Specification 106 or 110 tank cars), means a quantity of material not greater than 3 percent of the car's marked volumetric capacity."

One of the petitioners, Shell Oil Company, requested that RSPA reconsider the quantitative wording of the residue definition. Shell, as well as the other petitioners, contend that the public was given no opportunity to comment on the residue definition and that it is not operationally possible to comply with the definition. Commenters state that there is no accurate method of determining exactly how much material remains in a tank car after unloading.

Although the RSPA does not necessarily agree with certain of the factual statements made in the petition submitted by Shell, we believe their comments on the final rule concerning the residue definition represent a consensus of the concerns expressed by the other petitioners. For this reason, the substantive points of the Shell petition are quoted as follows:

> "There is no practical method of determining precisely how much material remains in a tank car after unloading, considering tank car design and the limitations of facilities at many unloading locations.
>
> Some gauging tapes are designed to gauge the liquid level at the top of the car rather than at the bottom.
>
> Devices used in pressure cars don't reach to the bottom of the car and therefore can't measure the remaining liquid which may be more or less than 3% depending on the pumping effort expended.
>
> Some receivers unload butane and other compressed gases by heating a small amount of the liquid and pumping the resulting vapor through the vapor line to force out the liquefied gas. The remaining vapors occupy 100% of the marked volumetric capacity of the car. Although for all practical purposes, the car contains only the residue of a hazardous material, it does not meet the definition in Section 171.8 and presumably would be considered a loaded car.
>
> Viscous liquids such as resins and regulated asphalts also present a problem since there is no accurate method of measuring the clingage on the tank walls.
>
> Weighing cars before they leave the unloading location is not a viable alternative since most facilities don't have track scales. Installing scales at all locations receiving hazardous material tank cars would be prohibitively expensive. Moving a car from the unloading point to a railroad scale to determine its status could result in a violation, if for example, a car displayed residue placards and the scale weight indicated it contained more than 3% of the volumetric capacity. The additional switching would also be costly in terms of time and money.
>
> The definition of what constitutes an empty car does not enhance safety but merely increases the potential for unintentional violations of the regulations. The 3% measure is basically an economic issue and is already covered in Rule 35 of the Uniform Freight Classification.
>
> There is no need for a specific percentage figure to be included in the residue definition since fire fighters would follow the same procedure regardless of the exact amount of the residue. Shell suggests the following definition be added to § 171.8 in lieu of the one in the final rule.
>
> "Residue means the hazardous material remaining in a packaging, including a tank car, after its contents have been emptied and before the packaging is refilled or cleaned and purged of vapor to remove any potential hazard."

II. Response to Comments

In response to the petitions, the RSPA proposes to redefine "residue" by limiting it to liquids (excluding vapor and gases) and expanding the quantitative limitation from 3% to 4% with a tolerance of plus or minus one percent in order to provide shippers greater flexibility in their determination of compliance with the rule. The RSPA is taking this action because of the problems that may be encountered in accurately determining the amount of residue which remains in an unloaded tank car. Aside from weighing the car, which may be impractical because most unloading facilities don't have track scales, there appears to be no accurate method of measuring the precise amount of residue which remains in a tank car. However, RSPA believes that a quantitative requirement must be adopted in order to make the rule effective.

The public is invited to submit any substantive comments or information which they may have concerning the "residue" definition proposed in this notice. Comments should, as a minimum, address the maximum amount of residue which, from a safety standpoint, could be left in a tank car which is placarded with the RESIDUE placard.

In addition to the petitions addressed to the definition of residue, the RSPA also received comments stating that it was inconsistent and confusing to require a COMBUSTIBLE placard to

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remain on a tank car which only contains the residue of a combustible liquid. Currently, tank cars which contain residue of hazardous material may be placarded with the appropriate RESIDUE placards.

The only exception to this is for tank cars which contain combustible liquid residue. These cars must continue to display the COMBUSTIBLE placard. Upon further consideration of this point, the RSPA agrees that this is inconsistent and may cause confusion. For this reason, the RSPA believes that a RESIDUE Placcard should be required on tank cars which contain combustible liquid residues. Therefore, the RSPA proposes to remove the second sentence in footnote 4 to Table 2 of § 172.504 and paragraph (c) of § 172.510. Revision to both of these sections is necessary to require the display of a RESIDUE placard on a tank car which contains residue of a combustible liquid. Further, RSPA proposes to revise § 172.525 to require the lower triangle of the combustible RESIDUE placard to be white and to require and word "RESIDUE" to be black on this same placard. This change is necessary to identify those tank cars which contain combustible residue so they are not subjected to the train placement requirements. In addition, it is proposed to reinstate the first sentence of footnote 4 to Table 2 of § 172.504 as it appeared prior to Amendment No. 172-98(50 FR 39005).

For clarification, the RSPA proposes to revise paragraph (c) of § 172.334. This revision was inadvertantly omitted from Docket HM-196, the final rule that addressed the *Packaging and Placarding Requirements for Liquids Toxic by Inhalation.* This revision would prohibit the display of identification numbers on subsidiary placards such as the POISON placard required by § 172.505. The RSPA proposes to revise § 172.525 to authorize the display of identification numbers on the RESIDUE placard or orange panel in accordance with the marking requirements contained in Subpart D of Part 172. The RSPA also proposes to revise the Table in paragraph (a)(2) of § 174.25 to clarify the shipping paper requirements for tank cars which contain combustible liquids.

Editorially, the RSPA proposes to amend § 172.525(a)(2) to include a reference to § 172.544 so there is a citation in this section which refers to the RESIDUE placard for combustible liquids. Further, the RSPA proposes to amend paragraph (c) of § 174.25 to clarify exactly when the letters "RQ" must be entered on the shipping paper and to remove the combustible liquid exception from the description requirements.

Also, § 174.93 would be amended to except tank cars which contain combustible liquid residue from the train placement requirements. This is consistent with the provision for loaded tank cars which contain Combustible liquids. In the case of a tank car which contains the residue of a hazardous material, the letters "RQ" are required to be shown on the shipping paper when the quantity of the residue is equal to or exceeds the reportable quantity level and the residue or a constituent of the residue is a hazardous substance. Comments are requested on the changes proposed to §§172.334, § 172.504, § 172.510, § 172.525, § 174.25 and § 174.93.

The RSPA is also interested in receiving comments on the placarding requirements for tank cars which carry residues of materials which exhibit inhalation toxicity. After April 30, 1986 tank cars loaded with these materials are required to display POISON placards as well as the placards required in § 172.504. When the tank car is unloaded, each of these placards would have to be changed to RESIDUE placards. The RSPA is interested in receiving suggestions on optional placarding methods that could be employed when placarding tank cars which contain residue of materials which exhibit inhalation toxicity.

III. Review by Sections

1. It is proposed to revise § 171.8 by expanding the quantitative limits of the "residue" definition and to restrict the application of the definition to liquids.

2. It is proposed to revise paragraph (c) of § 172.334 to prohibit the display of an identification number marking on a subsidiary placard.

3. It is proposed to reinstate the first sentence of footnote 4 to Table 2 of § 172.504 as it appeared prior to Amendment No. 172-98 and to remove the second sentence which prohibits a RESIDUE (EMPTY) placard on a tank car containing Combustible liquid.

4. It is proposed to revise paagraph (c) of § 172.510 by removing the prohibition against using a RESIDUE placard for combustible liquid residues.

5. It is proposed to revise § 172.525 so a reference to the RESIDUE placard for combustible liquids is shown.

6. It is proposed to revise § 172.525 to require the lower triangle of the RESIDUE placard for combustible liquid residues to be white and to require the word "RESIDUE" to be black on the combustible liquid RESIDUE placard.

7. It is also proposed to revise § 172.525 to authorize identification numbers to be displayed on RESIDUE placards or on orange panels in association with RESIDUE placards.

8. It is proposed to revise § 174.25 for clarification.

9. It is proposed to revise § 174.93 to except tank cars which contain combustible liquid residue from train placement requirements.

IV. Administrative Notice

A. Executive Order 12291

The effect of this rule, as proposed, does not meet criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This rule is not considered to be a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This proposed rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) The economic impact of this document has been found to be so minimal that further evaluation is unnecessary.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Placarding.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

Rules and Regulations

In consideration of the foregoing, it is proposed to amend Parts 171, 172 and 174 of Title 49 of the Code of Federal Regulations as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. Section 171.8 would be amended by the addition in, its correct alphabetic sequence, the following definition.

§ 171.8 Definition and abbreviations.

* * * * *

"Residue" means the hazardous material remaining in a packaging after its contents have been emptied to the maximum extent practicable and before the packaging is refilled, or cleaned of hazardous material and purged of vapor to remove any hazard. Residue of a hazardous material, as applied to the contents of a tank car (other than DOT Specification 106, 107 and 110 tank car tanks), means a quantity of material not exceeding 4% (plus or minus one percent) of the cars marked volumetric capacity and applies only to the liquid phase of the material in the tank car.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 49 CFR Part 1, unless otherwise noted.

4. In § 172.334, paragraph (c) would be revised as follows:

§ 172.334 Indentification numbers; prohibited display.

* * * * *

(c) Except as required by § 172.332(c)(4) for a combustible liquid, the identification number of a material may be displaced only on the placards required for the material by § 172.504.

* * * * *

5. In § 172.504, Footnote 4 to Table 2 would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

Table 2

* * * * *

4. A FLAMMABLE placard may be used on a cargo tank or portable tank during trasnportation by highway, rail or water, and on a compartmented tank car containing materials classed as Flammable liquid and Combustible liquid.

* * * * *

6. In § 172.510, paragraph (c)(1) is removed and paragraphs (c)(2) and (c)(3) are redesigned as (c)(1) and (c)(2) and are revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(c) * * *

(1) Is reloaded with a material requiring no placards or different placards; or

(2) Is sufficiently cleaned of residue and purged of vapor to remove any potential hazard.

* * * * *

7. In § 172.525, paragraph (a) would be revised to read as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

(a) Each RESIDUE placard must be as follows:

(1) Except as provided in paragraph (a)(3) of this section, the lower triangle of the RESIDUE placard must be black and the word "RESIDUE" must be in white letters approximately 1½ inches (40 mm) high made with approximately ¼ inch (6 mm) of an inch stroke.

(2) Except for the POISON GAS, RADIOACTIVE or EXPLOSIVES placard, the RESIDUE placard may be used to display the appropriate identification number in accordance with the provisions of Subpart D of this part.

(3) For a combustible liquid residue, the lower traingle of the RESIDUE placard must be white with the word "RESIDUE" in black letters.

(4) Otherwise, the RESIDUE placard must be as specified in § 172.519 and Appendix B to this Part, and §§ 172.528, 172.530, 172.532, 172.536, 171.540, 172.542, 172.544, 172.546, 172.548, 172.550, 172.552, 172.554, or 172.558, as appropriate for the residue of the hazardous material being transported and required by this subchapter to be placarded. No other placard may be used as a RESIDUE placard.

* * * * *

PART 174—CARRIAGE BY RAIL

8. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

9. In 174.25, the last entry in the table which follows paragraph (a)(2)(ii) is deleted and the following two entries are added to the end of the Table, and paragraph (c) of this section is revised, as follows:

§ 174.25 Additional information on waybills, switching orders and other billings.

(a) * * *

Hazardous material or class	Placard notation	Placard endorsement
* * *	* *	* *
Tank cars which contain a residue of a hazardous material other than a combustible liquid.	See sec. 174.25(c)	Dangerous.
Tank cars which contain a residue of a combustible liquid	See sec. 174.25(c)	None.

* * * * *

(c) For a tank car that contains only the residue of a hazardous material, the shipping papers must contain the words "RESIDUE: Last Contained * * *", followed by the basic description of the hazardous material last contained in the tank car and the placard notation specified in the second column of the table in paragraph (a)(2) of this section followed by the word RESIDUE. For example, "RESIDUE: Last Contained Petroleum Naptha, Combustible liquid, UN 1255, Placarded: COMBUSTIBLE—RESIDUE". For a tank car that contains a residue that is a hazardous substance, the letters "RQ" must also be entered on the shipping paper either before or after the basis description.

* * * * *

10. In 174.93, the text would be revised to read as follows:

§ 174.93 Position in train of a tank car displaying RESIDUE placards.

Except for a tank car placarded COMBUSTIBLE—RESIDUE, a tank car displaying RESIDUE placards in a moving or standing train may not be placed nearer than the second car from an engine or occupied caboose.

Issued in Washington, DC on March 11, 1986, under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-5730 Filed 3-14-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Threatened Status and Critical Habitat for the Concho Water Snake (Nerodia Harteri Paucimaculata)

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held to discuss its proposal to list the Concho water snake (*Nerodia harteri paucimaculata*) as a threatened species and to designate critical habitat for it. The period for acceptance of comments on this proposal is reopened. Comments are solicited on this proposal from all interested parties.

DATES: A public hearing will be held on this proposal on April 3, 1986 (Thursday), from 7:00 to 9:00 p.m. c.s.t. in Ballinger, Texas. The comment period on this proposal is reopened on April 3, 1986. The comment period, which originally closed on March 24, 1986, will now close on May 2, 1986. Comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Runnels County Courthouse, 2nd floor courtroom, in Ballinger, Texas. Written comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, 505/766–3972 (FTS 474–3972) (see "ADDRESSES").

SUPPLEMENTARY INFORMATION:

Background

The Concho water snake is found only in the Colorado and Concho Rivers in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, and Lampasas Counties, Texas. It is presently found in 199 miles of those rivers with the majority of the snakes concentrated in only 105 miles of that range. Twenty-eight percent of its known historic range has been destroyed due primarily to dam and reservoir construction and water diversion. The limited range, low numbers, and narrow habitat requirements of this riffle-dwelling snake make it vulnerable to further habitat loss from proposed water development and other activities. A proposal to list the Concho water snake as a threatened species and to designate critical habitat for this species was published in the **Federal Register** on January 22, 1986 (51 FR 2923). Critical habitat is proposed for 131 miles of the Colorado and Concho Rivers in Runnels, Tom Green, Concho, McCulloch, and Coleman Counties, Texas.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested, within 45 days of the publication of a proposed rule. The 45-day period for this proposal ended on March 10, 1986. Requests for a hearing were received from the Colorado River Municipal Water District, Big Spring, Texas on February 7, 1986, from Congressman Charles Stenholm, 17th District, Texas on February 24, 1986, and from M.C. Vinson, Midland, Texas, on February 28, 1986. In response to these requests, the Service has scheduled a public hearing for April 3, 1986, from 7:00 to 9:00 p.m. c.s.t., at the Runnels County Courthouse, 2nd floor courtroom, Ballinger, Texas. Those parties wishing to make statements for the record should have available a copy of their statements, to be presented to the moderator at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of statements to be presented necessitates some limitation. There are no limits on the length of written comments which may be presented at this hearing or mailed to the Service during the comment period.

The comment period on this proposal originally closed on March 24, 1986. To accommodate this hearing, the Service is reopening the comment period on this proposal. Written comments will now be received from April 3 until May 2, 1986 (see "ADDRESSES").

Author

This notice was prepared by Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 11, 1986.

M.J. Spear,
Regional Director.

[FR Doc. 86–5717 Filed 3–14–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 51
Monday, March 17, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Proposed Student Service-Learning Project Guidelines

AGENCY: ACTION.

ACTION: Notice of proposed Student Service-Learning Project Guidelines.

SUMMARY: The following Notice sets out the guidelines under which student service-learning projects will operate in the future. The Guidelines are divided into seven parts which deal with the overall program philosophy, responsibilities of the sponsor, staff, volunteers, and volunteer placement sites. It also includes basic data on the administration of a student service-learning project.

DATE: Written comments should be submitted no later than April 16, 1986, to Suzanne Gibson Wise, Director of VISTA/Service-Learning Programs, ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Suzanne Gibson Wise, Director of VISTA/Service-Learning Programs, ACTION, 806 Connecticut Avenue, NW., Washington, DC, 800–424–8867, or 202–634–9445.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period except in certain limited circumstances. These Guidelines, although not regulations under this Administrative Procedure Act (5 U.S.C. 551 et seq.), may, in whole or in part, be required by our Act to be published in proposed form for comments.

ACTION has determined that student service-learning project guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule.

Student Service-Learning Project Guidelines

I. Introduction

This Notice sets forth the guidelines under which student service-learning projects will operate. Student service-learning project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Young Volunteers in ACTION (YVA) Program Guidelines published in the **Federal Register**, dated August 12, 1982, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). However, existing YVA grantees eligible for second year renewal will be permitted to apply for second year funding under YVA Program Guidelines published in the **Federal Register** dated August 12, 1982, and must abide by requirements and procedures as outlined therein.

II. Purpose

Student service learning projects are authorized under Title I, Part B, sec. 111 and sec. 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of student service-learning projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining experiences through service in poverty communities which relate to classroom, vocational, or other learning needs.

It is the intent of student service-learning projects to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded after federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources can be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fund raising and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be employed by ACTION staff in the selection and approval of student service-learning projects:

a. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student service-learning project grant.

b. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

c. Grant funds must be used to initiate or expand a student volunteer service-learning project which addresses the needs of the low-income community.

d. The grantee must develop and maintain community support for the student service-learning project through a planned program including public awareness and communications.

e. Community representation in the project's operation, including representatives of youth groups, school

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systems, educational institutions, etc., must be identified in the grant application.

f. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

g. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

h. The grantee must identify resources which will permit continuation of the service-learning project upon the conclusion of federal funding as outlined in Part II.

i. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer placement sites as discussed in Part VI. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

j. The grantee must ensure compliance with the restrictions outlined in Part VII.

IV. Grant Application Procedures

A. Scope of Grant

Student service-learning project grants are awarded for up to a twelve month period. Requests for second or third year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their student service-learning projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

B. Procedures for New Grantees

Project application forms are available from ACTION State or Regional Offices which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from the ACTION State or Regional Offices.

Applications will be submitted to the appropriate ACTION State Office for programmatic and technical review. ACTION Regional Offices will review all new applications recommended for funding by the State Offices and send them, along with Regional recommendations, to the Director of VISTA/Service-Learning Programs. The Director of VISTA/Service-Learning will render final decisions on new student service-learning project grant applications.

Regional Grants and Contracts Officers will issue Notices of Grant Awards upon notification from the Director of VISTA/Service-Learning Programs.

C. Procedures for Renewal Grantees

Applications for renewal will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Renewal applications from first and second year grantees are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the renewal application is denied, the sponsor will be notified that ACTION intends to deny the application for renewal and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operations.

A. Local Support Contributions

The student service-learning project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the quarter.
3. The number of volunteer hours generated during the quarter.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible for ensuring that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, or with sound institutional and business practice.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds. Transportation reimbursement should be provided on the basis of need, at the discretion of the project director.

E. Project Staff

Each grantee will designate a person to serve as the Project Director. A full-time Director is desirable yet fiscal realities or project needs may dictate otherwise. A rationale for less than a full-time Project Director must be included with the project application. Supervision of the Project Director is the responsibility of the sponsor.

Student service-learning project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. *Public Awareness.* A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and Project Director should inform community, city and county officials, and the media about development, growth, and success of the student service-learning project.

2. *Volunteer Recognition.* With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

3. *Community support.* A viable community support system needs to be initiated to ensure project success and project continuation without federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, United Way, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Service-Learning Project Grantees

1. *Political Activities.* a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. *Lobbying.* a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions on Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. *Special Restrictions on State or Local Government Employees.* If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, D.C. 20525.

4. *Non-discrimination.* No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. *Religious Activity.* Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. *Labor and Anti-Labor Activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. *Non-displacement of Employed Workers.* A student vounteer may not perform any service or duty which could supplant the hiring of workers who would otherwise be employed to

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perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. *Non-compensation for Services.* No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute or to solicit contributions to establish any part of a local share. This does not prevent the acceptance of cash contribution made voluntarily and without condition to the SSLP grantee for legitimate charitable purposes.

9. *Volunteer Status.* Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. *Nepotism.* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Signed in Washington, DC, this 10th day of March, 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–5736 Filed 3–14–86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1986 Upland Cotton Marketing Quota Program; Producer Referendum

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice regarding the conduct of a producer referendum with respect to the 1986 Upland Cotton Marketing Quota Program.

SUMMARY: The purpose of this notice is to announce that the producer referendum with respect to the 1986 upland cotton marketing quota, originally proposed to be conducted during the week of December 9–13, 1985, and later postponed until no later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress, will not be conducted. The Food Security Act of 1985, Pub. L. 99–198, which provides for a 1986 upland cotton program, was signed into law on December 23, 1985, making the referendum unnecessary.

EFFECTIVE DATE: March 17, 1986.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), USDA, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013, or call (202) 475–4645. A preliminary Regulatory Impact Analysis has been prepared and is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non-major". It has been determined that this notice will not have any of the significant effects specified in those documents. The purpose of this notice is to announce that the producer referendum with respect to the national marketing quota for upland cotton for the marketing year beginning August 1, 1986, will not be held since the provisions of the Agricultural Adjustment Act of 1938 which required the referendum have been suspended for the 1986–1990 crops of upland cotton.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization; Number—10.052, and Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalogue of Federal Domestic Assistance.

The Administrator, Agricultural Stabilization and Conservation Service (ASCS), certifies that this notice will not have a significant economic impact on a substantial number of small entities. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 342 of the Agricultural Adjustment Act of 1938 (the "1938 Act") provides that, whenever a national marketing quota is proclaimed for upland cotton, the Secretary of Agriculture shall, not later than December 15 of the calendar year in which such quota is proclaimed, conduct a referendum of farmers to determine whether they favor or oppose marketing quotas. A notice of proposed determination was published in the **Federal Register** (50 FR 41541) on October 11, 1985, in which it was proposed that a producer referendum for the marketing year beginning August 1, 1986, would be conducted during the week of December 9–13, 1985.

Section 342 of the 1938 Act was amended by Pub. L. 99–157, effective November 15, 1985, to provide that the referendum with respect to the national marketing quota for upland cotton for the marketing year beginning August 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress. On December 6, 1985, the Secretary of Agriculture announced by press release that the marketing quota referendum for upland cotton for the 1986 Upland Cotton Marketing Quota Program would be postponed. However, section 502 of the Food Security Act of 1985, Pub. L. 99–198, provides that section 342 of the 1985 Act is not applicable to the 1986–1990 crops of upland cotton.

Notice

Accordingly, notice is hereby given that the producer referendum to determine whether farmers favor or oppose marketing quotas for upland cotton for the marketing year beginning August 1, 1986, will not be conducted.

Signed at Washington, DC, on March 11, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–5713 Filed 3–14–86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census Pub. L. 94–171 Program

Under the requirements of Pub. L. 94–171 (13 U.S.C. 141), the Director of the Bureau of the Census is issuing below a statement of the Census Bureau's plans for providing population counts for state legislative reapportionment/redistricting needs. The Census Bureau has provided this statement to the Governor, Secretary of State, and legislative leaders of each state. Copies are

available on request from the Director, Bureau of the Census, Washington, DC 20233.

Under the provisions of Pub. L. 94–171, the Census Bureau must provide each state with 1990 census population counts for legislative reapportionment/redistricting. In addition to counts by standard geographic areas (counties, minor civil or census county divisions, incorporated places, census tracts, and census blocks nationwide), the Census Bureau will provide population counts by voting district in participating states by aggregating data for census blocks within those voting districts that meet the criteria issued by the Census Bureau for the 1990 Census Pub. L. 94–171 Program.

The 1990 Census Pub. L. 94–171 Program has three major phases:

Phase 1

The Census Bureau announced this phase, the Block Boundary Suggestion Project, in the April 25, 1985 **Federal Register** and provided the guidelines and criteria to the Governor, Secretary of State, and legislative leaders of each state. The Census Bureau also offered to meet with officials in each state to discuss this program and answer questions; 40 states participated in such meetings.

The Block Boundary Suggestion Project afforded states the opportunity to suggest certain visible features they wanted the Census Bureau to use as block boundaries in the 1990 census to the extent those features conformed to the criteria issued by the Census Bureau. For any visible feature the state suggests that is not on the Census Bureau's maps, the state staff must provide topographic maps, aerial photographs, or other suitable materials for verification purposes.

July 31, 1985 was the deadline for the state to inform the Census Bureau of its intent to participate in this Project. Forty-two states elected to participate. A list of contact persons in the participating states is available from the Director, Bureau of the Census, Washington, DC 20233.

Phase 2

Beginning in late 1988, the Census Bureau will provide requesting states with copies of preliminary 1990 census maps showing block boundaries. State staff will delineate voting district boundaries using these blocks and the January 1, 1988 boundaries of counties, minor civil divisions, and incorporated places shown on these maps. The Census Bureau will include these voting district boundaries—updated for January 1, 1990 boundaries of counties, minor civil divisions, and incorporated places—in its census geographic system so that it can provide the state with counts for voting districts, voting district equivalents, standard census tabulation areas, and census blocks statewide no later than April 1, 1991.

Those states that are not participating in Phase 1 of the 1990 Census Pub. L. 94–171 Program may participate in Phase 2 by submitting their voting district boundaries on copies of these 1990 census block-numbered maps so long as they follow the boundaries of the census blocks.

Phase 3

The Census Bureau will deliver a copy of the final 1990 census block numbered maps and the 1990 Pub. L. 94–171 data to the Governor and the officers or public bodies having initial responsibility for legislative apportionment or districting in each state by April 1, 1991. States that did not participate in the earlier phases of this program will receive population counts and maps for standard census areas; i.e., counties, incorporated places, minor civil divisions, census tracts, block numbering areas, and census blocks. The planned subject content of these data is total population, major race groups, and Spanish origin. The Census Bureau is considering the feasibility of including voting age population counts.

Participation by a state in the Pub. L. 94–171 Program is voluntary, and questions concerning this Program should be addressed to the Director, Bureau of the Census, Washington, DC 20233.

Dated: March 11, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–5729 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A–588–504]

Erasable Programmable Read Only Memories (EPROMs) From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that EPROMs from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of EPROMs from Japan that are entered, or withdrawn from warehouse, for consumption , on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by May 27, 1986.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: David Mueller, William Kane, or Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2923, 377–1766, or 377–3464.

Preliminary Determination

We have preliminary determined that EPROMs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(b)) (the Act). Except in the instances where we used the best information available, we made fair value comparisons on virtually all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, April 1 through September 30, 1985. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 30, 1985, we received a petition from Intel Corporation, Advanced Micro Devices, Inc., and National Semiconductor Corporation on behalf of the domestic manufactuers of EPROMs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of EPROMs from Japan are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleged that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty

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investigation. We notified the ITC of our action and initiated such an investigation on October 21, 1985 (50 FR 43603). On November 14, 1985, the ITC detemined that there is reasonable indication that imports of EPROMs from Japan are materially injuring, or are threatening material injury to, a U.S. industry (50 FR 47852).

On December 2, 1985, we presented antidumping duty questionnaires to Hitachi Ltd. (Hitachi), Fujitsu Limited (Fujitsu), Toshiba Corporation (Toshiba), and NEC Corporation (NEC). Respondents were requested to answer the questionnaire in 30 days: However, at the requests of Hitachi, Fujitsu, Toshiba, and the Japanese Ministry of International Trade and industry, we granted an extension to January 17, 1986. On January 17, 1986, we received incomplete responses from Hitchi, Fujitsu, and Toshiba, and a letter from NEC stating that it would not respond to our questionnaire. In letters dated February 3, 1986, the Department requested supplemental information from each of the three respondents. Additional information was submitted by these respondents on February 18, 1986.

Products Under Investigation

The products covered by this investigation are erasable programmable read only memories (EPROMs), which are a type of memory integrated circuit that is manufactured using variations of Metal Oxide-Semiconductor (MOS) process technology, including both Complementary (CMOS) and N-Channel (NMOS). The products include processed wafers, dice and assembled EPROMs produced in Japan and imported into the United States from Japan.

Finished EPROMs are currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) under item 687.7445. Unassembled EPROMs, inlcuding unmounted chips, wafers, and dice, are provided for under TSUSA item 687.7405.

In the notice of initiation in this case, we tentatively included in the scope of this investigation processed wafers and dice produced in Japan and assembled into finished EPROMs in another country prior to importation into the United States from the other country. Based on the responses received, there are currently no such third-country assembly/imports. We have preliminarily determined that the question as to whether we have authority to include these third country imports is dependent, in part, on certain factual considerations. Thus, we can not make such a determination in the abstract, absent information as to what might actually occur in the third country. Should we receive evidence at some future date that these third-country assembly/imports are occurring, we will determine whether to include them in the scope of the proceeding at that time.

Fair Value Comparisons

For the three responding firms, to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below. For NEC, we made our fair value comparison using the best information available for both United States price and foreign market value, as NEC did not respond to our questionnaire. The best information available was the United States price and foreign market value developed in the petition.

For purposes of this preliminary determination, we used the date of shipment as the date of sale in both the U.S. and home markets. We will continue to evaluate whether these are the appropriate dates at verificaiton and for the final determination.

United States Price

As provided in section 772(c) of the Act, we used exporter's sales price (ESP) to represent United States price, as the merchandise was sold to unrelated purchasers after the date of importation. A small number of Hitachi's sales were made to unrelated purchasers prior to importation, but no calculations were performed on these sales.

We calculated ESP based on the packed, duty paid, C.I.F. delivered price to unrelated purchasers in the United States. Where appropriate, we made deductions for brokerage charges in Japan and the U.S., foreign inland freight and insurance, air freight and insurance, U.S. duty, U.S. freight and insurance, commissions to unrelated parties, U.S. selling expenses incurred in Japan and the U.S., credit expenses, warranties, technical services, advertising, discounts, and rebates in the U.S. market. The cost of additional packing performed in the U.S. was deducted. For Fujitsu, the cost of further processing in the U.S. was also deducted.

Foreign Market Value

The petitioner alleged that sales in the home market by all the respondents were at prices below the cost of producing the merchandise.

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices where there were sufficient home market sales at or above the cost of production to determine foreign market value. We used constructed value as the basis for calculating foreign market value where there were no sales of such or similar merchandise in the home market or where there were not sufficient sales above the cost of production, as defined in section 773(b) of the Act.

Where foreign market value was based on home market prices, we calculated a foreign market value for each product for each month of the period of investigation, due to sharp declines in monthly prices. Where foreign market value was based on constructed value we used a monthly constructed value for each product.

Cost of Production

The Department analyzed the unverified cost submissions of the respondents to determine the sufficiency of such data for the purposes of calculating the cost of production for the preliminary determination. Where the Department determined that a submission was substantially complete and sufficient, it used the submission for the preliminary determination. However, adjustments to the respondents' data were made when it appeared from the explanation provided in the response that certain costs necessary for the production of EPROMs were not included or were not appropriately quantified or valued.

Some adjustments were made to the cost of production of all the respondents. These were:

(1) Matching the sales to cost of production incurred two months prior to the sales.

(2) Including the expense of sales credit for the home market sales, and

(3) Including interest expense equal to the percentage of interest expense to the cost of sales, based on the consolidated operations of the company.

For Fujitsu, the product specific R&D was revised because the cost of production did not include historic R&D costs.

For Toshiba, the depreciation expense was revised because Toshiba based such expenses on a useful life of three years for its equipment; the product-specific R&D was revised because a clear explanation of the allocation method was not presented.

For Hitachi, general, administrative and selling expenses were revised because of the apparent omission of certain general costs.

Price to Price Comparisons

For each company examined, we found sufficient sales above the cost of production for certain products to allow use of home market prices in accordance with section 773(a)(1)(A) of the Act to determine foreign market value. Where we used home market prices as the basis for foreign market value, we calculated the home market price on the basis of the delivered price to unrelated purchasers. We made deductions, where appropriate, for foreign freight and insurance, discounts, rebates, and commissions to unrelated parties in the home market. We also made deductions, where appropriate, for differences in circumstances of sale for credit terms, technical services, and warranty, in accordance with § 353.15 of our regulations. We deducted home market packing costs and added U.S. packing costs. Where appropriate, we offset commissions paid on U.S. sales with indirect selling expenses in the home market, in accordance with § 353.15(c) of our regulations. We also used indirect selling expenses to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

On March 6, 1986, Fujitsu submitted a revised listing of home market sales reflecting a recalculation of credit expenses and discounts. We did not receive this new information in sufficient time to evaluate and incorporate it in our calculations. We will consider that information prior to our final determination.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value when there were insufficient home market sales of such or similar merchandise above the cost of production for comparison. For constructed value, the Department used the materials, fabrication, and general expenses, based on the respondents submissions revised as detailed under the "Foreign Market Value—Cost of Production" section of this notice. The actual general expenses were used, since in all cases, such expenses exceeded the statutory minimum of 10 percent of materials and fabrication. "Since all of the respondents' submissions indicated that the actual profit for merchandise of the same general class or kind was less than 8 percent, the Department used the 8 percent statutory minimum for profit. We made adjustments under § 353.15 of the regulations for differences in circumstances of sale between the two markets.

Currency Conversion. For ESP comparisons, we used the official exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later supersedes that section of the regulations.

Verification

We will verify all the information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 7733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of EPROMs from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Hitachi Ltd.	29.9
Fujitsu Limited	145.9
Toshiba Corporation	21.7
NEC Corporation	188.0
All others	63.1

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administraton. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry, before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on April 25, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 18, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 10, 1986.

[FR Doc. 86-5706 Filed 3-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-502]

Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain welded carbon steel standard pipe and tube (standard pipe and tube) from India are being, or are likely to be, sold in the United States at less than fair value and that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise, except that

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produced and exported by Zenith Steel Pipes and Industries Ltd. (Zenith) and Gujarat Steel Tubes Ltd. (Gujarat), as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Terri A. Feldman, or Jess M. Bratton, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769, (202) 377–0160, or (202) 377–1778.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we have determined that standard pipe and tube from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) (19 U.S.C. 1673d(a)) of the Tariff Act of 1930, as amended (the Act).

Two of the three companies investigated, Zenith and Gujarat, have been excluded from this final affirmative determination since we have found no sales at less than fair value. The weighted-average margin of all TISCO sales is 7.08%. The margins ranged from 0.81% to 57.98%. The weighted-average margin for each company is shown in the "Suspension of Liquidation" section of this notice.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI), and by each of the member companies who produce standard pipe and tube. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 9, 1985 (50 FR 32244). On August 30, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe and tube are materially injuring, or threatening material injury to, a U.S. industry (50 FR 37066).

On September 24, 1985, we received an amendment to the petition alleging that critical circumstances exist with respect to imports of standard pipe and tube from India.

On September 6, 1985, a questionnaire was presented to counsel for respondents. On October 21 and 22, 1985, Tata Iron & Steel Co., Ltd. (TISCO) and Zenith responded to our questionnaire. On November 13, 1985, Gujarat presented a voluntary response to our questionnaire. Because the above-named companies accounted for more than 60 percent of exports of the merchandise to the United States during the period of investigation, we limited our investigation to them. We investigated virtually all sales of standard pipe and tube by these companies for the period February 1, 1985, through July 31, 1985.

On December 31, 1985, we made an affirmative preliminary determination (50 FR 53356). We verified the questionnaire responses in January. A hearing was held in February.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipe or tube produced to various ASTM specifications, most notably A–120, A–53 or A–135.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise as the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the packed F.O.B. or C&F prices to unrelated customers in the United States. Where appropriate, we made deductions for foreign inland freight, ocean freight, government quality control and inspection charges, and clearing/forwarding charges. Where appropriate, we also made additions for indirect tax rebates through the cash compensatory support (CCS) scheme, central excise duty (tax), import duty, duty drawback, separate sales tax payments made on hot-rolled coil, duty exemptions on imported hot-rolled coil and zinc, and the Steel Development Fund (SDF) Levy.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices. We used packed C&F and F.O.B. delivered prices to unrelated home market purchasers to determine the foreign market value. We made deductions, where appropriate, for freight charges and discounts. We made comparisons of such or similar merchandise based upon product subgroups selected by Department of Commerce industry experts and, where appropriate, made adjustments for differences in physical characteristics based upon data provided by the companies and Department of Commerce industry experts. We also made adjustments for differences in packing costs. In accordance with § 353.15 of the Commerce Regulations, we made circumstance of sale adjustments for differences in advertising, the International Price Reimbursement Scheme (IPRS), commissions and credit terms in the two markets for all respondents.

We disallowed circumstances of sale adjustments claimed by TISCO for differences in technical services, legal expenses and bad debt. We disallowed these adjustments because they were not directly related to sales under consideration as required by § 353.15(a) of the Commerce Regulations.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Final Negative Determination of Critical Circumstances

The petitioners alleged that imports of standard pipe and tube from India present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of standard pipe and tube from India in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries. We did not find that there was a history of dumping of standard pipe and tube in the United States or elsewhere. Therefore, we considered whether importers of this product knew or should have known that it was being sold at less than fair value. We found the dumping margins too small to lead us to believe importers knew these firms were dumping.

Since we did not find a history of dumping in the United States or elsewhere, nor that importers of this product knew or should have known that it was being sold at less than fair value, we did not need to consider whether there have been massive imports over a relatively short period. Therefore, for the reasons described above, we determine that critical circumstances do not exist.

Verification

As provided in section 776(a) of the Act, we verified all information provided by respondents by using standard verification procedures, including on-site inspection of the manufacturers' operation and examination of accounting records and randomly selected documents.

Comments

Petitioners' Comments

Comment 1: Petitioners argue that the Department should not make a circumstances of sale adjustment to TISCO's home market sales price for the International Price Reimbursement Scheme (IPRS) because (1) the program might be countervailable; or (2) the program is not comparable to any situation in which circumstance of sale adjustments ordinarily are allowed; or (3) the program is merely an institutionalized cover for dumping because TISCO both pays into and receives rebates from the program.

DOC Response: We disagree. First, the countervailability of the IPRS should be addressed in the context of a countervailing duty investigation. Here, we are determining whether the IPRS meets the requirements for a difference in circumstances of sale adjustment, as provided for in the law and § 353.15 of the Commerce Regulations. Secondly, in this case, the IPRS rebate is directly related to, and in fact contingent upon, the export sale of the merchandise under investigation. Receipt of the IPRS effectively enhanced the net return to TISCO on those sales. Therefore, we believe this adjustment is comparable to other circumstances of sale adjustments.

Third, although TISCO pays required levies into and receives payments from the Engineering Goods Exports Assistance Fund (EGEAF), it does so according to the rates established by the Indian government. Monies for this generalized fund come from assessments included in the government-set price of steel. The formula for rebates is tied to the difference between domestically-produced and internationally-acquired steel prices. As such, the fact that this rebate acts as a revenue enhancement for TISCO does not constitute dumping.

Comment 2: Petitioners argue that no one in India pays the import duty on imports of hot-rolled coil (an input into pipes and tubes), even if the coil were to be imported for domestic consumption. Thus, the import duty is not "imposed" within the meaning of section 772(d)(1)(B) and Zenith and Gujarat are not entitled to an addition to United States price for duty drawback or exemption.

DOC Response: We verified that the Indian tariff schedule contains an entry establishing an import duty for hot-rolled coil. We found no evidence at verification that these duties would be rebated or not collected if hot-rolled coil were imported to be sold domestically. Based on verified information in the record, it is clear that the import duties set by the government of India were not collected on imports of coil because Zenith and Gujarat held import licenses showing they would export the pipes and tubes produced with the imported coil. Therefore, we allowed this adjustment to United States Price, under section 772(d)(1)(B) of the Tariff Act.

Comment 3: Petitioners contend that the amount of uncollected duties and taxes for Zenith should not include the four percent Central Sales Tax on hot-rolled coil because these payments have not been collected by reason of importation rather than exportation.

DOC Response: We disagree. Section 772(b)(1)(C) allows an adjustment for taxes on merchandise sold in the home market which are not paid on the product when exported to the United States. We verified that Zenith paid the Central Sales Tax on the hot-rolled coil input in its domestically sold pipe and tube. Since it is included in the price of the domestic goods and it is not collected on the exported product, we have made an appropriate adjustment.

Comment 4: Petitioners argue that the Department should not allow an adjustment for the Steel Development Fund levy because this amount is not collected by reason of importation of the steel coil, rather than by reason of exportation of the pipes and tubes.

DOC Response: Our analysis of this comment is similar to that in Petitioners Comment 2. This levy was included in the price of domestically sold pipe and tube but was not included in the price of the pipe and tube exported to the United States. Therefore, we made an adjustment as provided for in section 772(b)(1)(C).

Comment 5: Petitioners argue that the Department should not make an addition to the United States price for the CCS indirect tax rebate because no indirect taxes are actually "added to or included in the price of such or similar merchandise when sold in the country of exportation".

DOC Response: We disagree. Under section 772(b)(1)(C) we add to the United States price indirect taxes that would be included in the home market prices. For hot-rolled coil and zinc used to produce pipe and tube for the home market we verified that the companies paid a Central Sales Tax. Therefore, since this tax was not collected on the material inputs used to produce pipe and tube exported to the United States, we made an addition to the United States price, as required by the statute.

Comment 6: Petitioners argue that Department, consistent with its practice in the recent antidumping duty investigation on Circular Welded Carbon Steel Standard Pipes and Tubes from Thailand (51 FR 3384), should use domestic sales throughout the entire six month period of investigation to compare to the sales to the United States.

DOC Response: We agree, for reasons stated in DOC response to respondents' comment 9.

Comment 7: Petitioners argue that the Department should request that the Steel Authority of India, Limited (SAIL), the only known importer of hot-rolled coil for domestic use, submit documentation of imports of hot-rolled coil demonstrating that duties were actually paid on such imports when the finished product was sold domestically. The petitioners have submitted independent statements in their comments that SAIL never pays import duties on imported steel, whether imported for use in producing domestic or exported merchandise. Absent such

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documentation, an adjustment for duty exemption should not be allowed.

DOC Response: We disagree. The information submitted by petitioners after verification is contradicted by information submitted by respondents. Absent further verification which is not possible because of the statutory deadline for the final determination, we are relying on verified information in the record for our final determination. Based on the verified information, as indicated above in our response to comment 1, we are allowing this adjustment.

Comment 8: Petitioners argue that the Department should not use a 12% export financing rate when calculating imputed credit on sales to the United States because the program under which exports are financed at this rate was found to constitute a countervailable subsidy in the countervailing duty investigation.

DOC Response: We disagree. We verified that Zenith and Gujarat received short-term financing for U.S. exports of pipe and tube at the 12% interest rate and so used this actual interest rate for Zenith and Gujarat. We verified that TISCO did not use the 12% interest rate to finance its exports. Therefore, we used the commercial rate for this firm.

Comment 9: Petitioners argue that adjustments for certain advertising expenses claimed by TISCO should not be allowed because there is not direct relationship between the advertisements and the pipe and tube sales.

DOC Response: We disagree. We verified that the advertisements for which adjustments were claimed were of TISCO pipe and tube aimed directly at the end users, and not simply promotion of the company name. Accordingly, we made an appropriate circumstances of sale adjustment for these expenses.

Comment 10: Petitioners contend that the Department should not allow a circumstances of sale adjustment for technical services claimed by TISCO. These charges encompass for more than what is usually included in technical services, and a direct relationship between these expenditures and specific home market sales of pipe and tube has not been established.

DOC Response: We agree. We verified that the technical service expenses claimed by TISCO included general service charges, such as salaries, branch office overhead expenses, research and development, and sales taxes that do not qualify for a circumstances of sale adjustment. Therefore, we did not make an adjustment for technical services.

Comment 11: Petitioners argue that the Department should find that critical circumstances exist with respect to these imports. U.S. importers should know that merchandise is being sold at less than fair value if it is imported at prices that are similar to prices of imports from other countries which recently have been found to be dumping. Critical circumstances also should be found to exist because recent imports have been massive in comparison to previous import levels from India.

DOC Response: We disagree. The fact that we have found companies from one country to be dumping does not necessarily indicate that companies from another country also are dumping. Home market prices and the costs of production may differ substantially from country to country. Therefore, we are maintaining our case by case analysis for determining whether critical circumstances are present. In this case, the relatively small margins do not indicate that the importers knew or should have known, that the exports from India were sold at less than fair value. This, plus the fact that there is no history of dumping of these products, led us to determine that critical circumstances are not present in this case.

Comment 12: Petitioners argue that setting two different "all others" rates, one for companies using IPRS and another for those that do not, is administratively unfeasible.

DOC Response: Having allowed the IPRS adjustment, the issue is no longer relevant.

Respondents' Comments

Comment 1: Respondents argue that an adjustment should be made for the credit cost on the two percent of payments yet to be received by TISCO on home market sales. Respondents state that the Department should take the number of days from the date of shipment to the date of verification and should apply this cost as an adjustment to home market sales.

DOC Response: We agree. The two percent of the sales price still outstanding is directly related to the sale of the merchandise in the home market. Therefore, we have allowed this adjustment as a circumstances of sale and have imputed credit costs on home market sales on this basis.

Comment 2: Respondents argue that the Department should not find that critical circumstances exist with respect to exports from TISCO. Importers could not have known that the merchandise was being dumped because the magnitude of TISCO's margins was due solely to the Department's treatment of the IPRS.

DOC Response: We have allowed the IPRS adjustment and therefore this argument is moot. In this final determination TISCO's margins are not high enough to assume that importers knew or should have known, that TISCO was selling pipe and tube at less than fair value. See our response to petitioners' Comment 12.

Comment 3: Respondents argue that the Department should change its current practice of considering negative margins as zero, and instead calculate weighted-average margins by using both positive and negative margins from each sales transaction.

DOC Response: We disagree. Our methodology in calculating a weighted-average margin for each individual company ensures that sales made at less than fair value on a portion of a company's product line to the United States market are not negated by more profitable sales.

Comment 4: Respondents claim that an adjustment for exemption from the Steel Development Fund levy on export sales by Zenith and Gujarat should be made. Zenith and Gujarat pay the tax on domestic steel, but not on steel that they are permitted to import to produce the pipes which they export. Therefore, under section 772(d)(1)(C), an addition to U.S. price is required.

DOC Response: We agree. Although Zenith and Gujarat do not pay the SDF levy directly, the tax is included in price which they pay the domestic producer of the coil. Therefore the adjustment is appropriate and has been made.

Comment 5: Respondents argue that the credit costs in both the U.S. and home markets for Zenith and Gujarat were incorrectly calculated. The imputed credit factor was multiplied by the "net purchase price" rather than the gross price which is the amount on which interest is actually paid.

DOC Response: We agree. For this final determination we have recalculated the interest cost accordingly.

Comment 6: Gujarat and Zenith demonstrated at verification that the interest rate charged in India for financing their sales to the U.S. was 12%. Therefore, the credit expenses on the U.S. sales should be corrected accordingly.

DOC Response: We agree. See also our responses to petitioners' Comments 8 and 9.

Comment 7: Respondents argue that in adjusting for the difference in merchandise, the Department understated the discount which both Zenith and Gujarat offer on plain ended pipe by calculating it on the basis of new home market rather than gross unit price.

DOC Response: We agree. We verified that the discount was applied to invoice (gross) price. Therefore, in this final determination we made the adjustment to gross price.

Comment 8: Respondents contend that the Department incorrectly adjusted for the differences in galvanization in the United States and home markets for Gujarat's fence tubes. The price difference should have been converted from dollars to rupees and subtracted from foreign market value, rather than added to foreign market value.

DOC Response: We agree and have changed our calculation for this final determination accordingly.

Comment 9: Respondents argue that Zenith's one U.S. sale should be compared to home market sales of that same month. The one U.S. sale was made in February prior to the announcement of an increase in the domestic prices of the major input, steel. Home market prices fixed after the end of February reflect the increase in raw material costs and are not representative of home market prices at the time the U.S. sale was made. Further, citing the Department's practice of using monthly foreign market values when investigating prices which are rapidly changing, respondent argues that this sudden price increase makes post-February home market prices unrepresentative.

DOC Response: We disagree. We use month to month comparisons only under exceptional circumstances, such as when examining prices in a hyperinflationary economy or where prices are rapidly changing. One price increase during the six-month period, in our opinion, does not constitute rapidly changing prices, nor does the inflation rate in India approach a hyperinflationary rate. Therefore, we do not believe a deviation from our normal practice is warranted and we have compared the sale to the U.S. during the period of investigation to those of such or similar merchandise in the home market during the same period, as established in the law.

Comment 10: Respondents argue that an adjustment should be made for the yearly performance discount Zenith extended in late November to its customers for sales during the period of October through November.

DOC Response: We disagree. Since the claim for this discount was not made prior to verification the Department followed its usual procedure and did not verify this late claim.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of standard pipe and tube from India that are entered, or withdrawn from warehouse, for consumption, on or after the date on which the Department published its preliminary determination in the **Federal Register** (50 FR 53356). The retroactive suspension of liquidation of entries of the subject merchandise from TISCO is hereby terminated.

The Customs Service shall require a cash deposit or bond equal to the weighted/average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. Zenith and Gujarat have been excluded from this determination since they have made no sales at less than fair value. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/Sellers/Exporters	Weighted-average margin percentage
TISCO	7.08
Zenith	[1] 0
Gujarat	[1] 0
All Other Manufacturers/Producers/Exporters	7.08

[1] Excluded.

For all entries of pipe and tube from Zenith and Gujarat and entries from TISCO made prior to December 31, 1985, the Customs Service is directed to terminate the suspension of liquidation, release any bond, refund any cash deposit and liquidate all entries or withdrawals from warehouse for consumption.

ITC Determination

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it wil not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that materal injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on standard pipe and tube from India entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 10, 1986.

[FR Doc. 86-5767 Filed 3-14-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; Florida

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Develpment Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $764,706 for the project performance of July 1, 1986 to June 30, 1987. The MBDC will operate in the Miami, FL Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $650,000 in Federal funds and a minimum of $114,206 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-86009-01 for the Miami, FL SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and

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operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 11, 1986. Applications must be postmarked on or before April 11, 1986.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, (404) 347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Friday, March 21, 1986, at 9 am.

(11.800 Minority Business Development)
(Catalog of Federal Domestic Assistance)

Dated: March 21, 1986.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 86–5718 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcements; Pittsburgh, PA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of July 1, 1986 to June 30, 1987. The MBDC will operate in the Pittsburgh, Pa. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal Funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical asistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 14, 1986. Applications must be postmarked on or before April 14, 1986.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230, 202/377–8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development)
(Catalog of Federal Domestic Assistance)

Dated: March 4, 1986.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 86–5721 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcements; Richmond, VA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of July 1, 1986 to June 30, 1987. The MBDC will operate in the Richmond, VA. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal Funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 14, 1986. Applications must be postmarked on or before April 14, 1986.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230, 202/377–8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development)
(Catalog of Federal Domestic Assistance)

Dated: March 4, 1986.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 86–5722 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Additional Official of the Government of the Republic of the Philippines Authorized to Issue Export Visas and Exempt Certifications

March 12, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On November 28, 1979, a CITA directive was published in the **Federal Register** (44 FR 68005), which established an export visa requirement and certification for exemption of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported to the United States. One of the requirements is that the visas and certifications must be signed by an official authorized by the Government of the Republic of the Philippines. The Government of the Republic of the Philippines has named an additional official, Lorna del Rosario, to issue these documents in addition to those previously designated (49 FR 34389). A list of the currently authorized officials is published as an enclosure to the letter to the Commissioner of Customs which follows this notice. This list supersedes all previously such lists.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 12, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 23, 1979, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Effective on March 18, 1986, the directive of November 21, 1979, as amended, is hereby further amended to include the enclosed list of officials authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications. These are the only officials currently so authorized.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Officials Currently Authorized by the Government of the Republic of the Philippines to Issue Visas and Certifications for Exemption for Certain Cotton Wool and Man Made Fiber Textile and Apparel Products Exported to the United States

Aida Cabardo
Asuncion B. Kalalo
Eden Malapad
Lorna del Rosario

[FR Doc. 86–5770 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in India Effective on January 1, 1986; Correction

March 12, 1986.

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52985), which established the 1986 import control limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in India. In the letter to the Commissioner of Customs which followed that notice, the categories included in the apparel group limit of 115,634,600 square yards equivalent should be corrected to read as follows:

330–359, 431–459, and 630–659 [1]

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–5768 Filed 3–14–86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Revisions in Issuing Authorities Authorized To Issue Export Licenses/Commercial Invoices for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products, Produced or Manufactured in the People's Republic of China

March 12, 1986.

Under the terms of the cotton, wool and man-made fiber export licensing

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system, effected by an exchange of letters dated February 16, 1984, between the Governments of the United States and the People's Republic of China, the Government of the People's Republic of China has notified the United States Government that six additional authorities have been named to issue textile export licenses/commercial invoices for textile and apparel products subject to the terms of the bilateral agreement. The purpose of this notice is to advise the public of this change.

Following this notice is a complete list of issuing authorities of the Government of the People's Republic of China which are currently authorized to issue export licenses/commercial invoices.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation for Textile Agreements.

The Authorities for issuing Textile Export Licenses of the People's Republic of China

Foreign Trade Administration of the Ministry of Foreign Economic Relations and Trade, 2 Dong China An Street, Beijing
Beijing Foreign Trade Bureau, 17 Building, Yong An Li, Jianwai, Beijing
Tianjin Foreign Trade Bureau, 80 Qufu Road, Heping District, Tianjin
Hebei Foreign Economic Relations and Trade Department, 58 Beima Road, Shijiazhuang, Hebei Province
Shanxi Foreign Economic Relations and Trade Department, 6 Xinjian Road, Taiyuan, Shanxi Province
Neimenggu Foreign Economic Relations and Trade Department, 1 Xinhua Street, Huhehaote, Neimenggu
Liaoning Foreign Trade Bureau, 2 Zhongshan Square, Dalian, Liaoning Province
Jilin Foreign Economic Relations and Trade Commission, 58 Stalin Street, Changchun, Jilin Province
Heilongjiang Foreign Economic Relations and Trade Department, 55 Heping Road, Harbin, Heilongjiang Province
Shanghai Foreign Economic Relations and Trade Commission, 33 Building, 1 Dongshan Road, Shanghai
Jiangsu Foreign Economic Relations and Trade Department, 50 Zhonghua Road, Nanjing, Jiangsu Province
Zhejiang Foreign Economic Relations and Trade Department, 24 Changsheng Road, Hangzhou, Zhejiang Province
Anhui Foreign Economic Relations and Trade Commission, 65 Changjiang Road, Hefei, Anhui Province
Fujian Foreign Economic Relations and Trade Commission, 34 East Road, Fuzhou, Fujian Province
Jiangxi Foreign Economic Relations and Trade Department, 36 Zhanqian Road, Nanchang, Jiangxi Province
Shandong Foreign Trade Bureau, 11 Nanhai Road, Qingdao, Shandong Province
Henan Foreign Economic Relations and Trade Commission, 69 Wenhua Road, Zhengzhou, Henan Province
Hubei Foreign Economic Relations and Trade Department, 72 Yanjiang Road, Hankou, Wuhan, Hubei Province
Hunan Foreign Economic Relations and Trade Commission, Wuyi Road, Changsha, Hunan Province
Guangdong Foreign Economic Relations and Trade Commission, 774 Dongfeng Road, Guangzhou, Guangdong Province
Guanxi Foreign Economic Relations and Trade Commission, Hongxing Road, Nanning, Guangxi Province
Sichuan Foreign Economic Relations and Trade Department, Chenghua Street, Chendu, Sichuan Province
Yunnan Foreign Economic Relations and Trade Department, 113 Huashan Road, Kunming, Yunnan Province
Shaanxi Foreign Economic Relations and Trade Department, Xincheng, Xi An, Shaanxi Province
Xinjiang Foreign Economic Relations and Trade Department, 10 Tuanjie Road, Wulumuqi, Xinjiang
Chongqing Foreign Economic Relations and Trade Bureau, 35 Linjiang Road, Central District, Chongqing, Sichuan Province
Gansu Foreign Economic Relations and Trade Department, 28 Dingxi Road, Lanzhou, Gansu Province
Wuhan Foreign Economic Relations and Trade Commission, 344 Jiefang Road, Wuhan, Hubei Province
Qinghai Foreign Economic Relations and Trade Department, 102 Shulin Road, Xining, Qinghai Province
Dalian Foreign Economic Relations and Trade Commission, 1 Stalin Square, Xigang District, Dalian, Liaoning Province
Harbin Foreign Economic Relations and Trade Bureau, 102 Tongjiang Street, Harbin, Heilongjiang Province
Shenyang Foreign Economic Relations and Trade Bureau, 3 Zhongshan Road, Heping District, Shenyang, Liaoning Province.

[FR Doc. 86-5760 Filed 3-14-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Agency Information Collection Activities Under OMB Review; Guaranteed Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of Need to Obtain OMB Paperwork Reduction Act Approval.

In February, 1986, the Department of Education issued Bulletin 86-L-87 with ED Form 799 Addendum to all lenders participating in the Guaranteed Student Loan Program, and Bulletin 86-L-89 (LD) with ED Form 799A Addendum to all lenders who make or purchase Guaranteed Student Loans with tax-exempt funds, to inform the lenders of the effect of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177. The Secretary publishes this notice to clarify the status of the bulletins and their addenda.

The ED Form 799 Addendum and Form 799A Addendum were issued without the requisite approval by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Paperwork Reduction Act requires the assignment of a valid OMB control number to information collections of the sort contained in the two forms. No penalty will be imposed on lenders for failure to report using the addenda until the forms have been approved by OMB and assigned control numbers. The forms have been submitted to OMB for approval, and a notice will be published in the Federal Register to inform the public once approval is granted.

A presidential sequestration order, effective March 1, 1986, has been issued as required by section 256(c) of Pub. L. 99-177. The effect of the order is described in the bulletins issued by the Department. The effective date of the presidential sequestration order is not affected by OMB approval of the forms submitted by the Department.

FOR FURTHER INFORMATION CONTACT: Carol Roberts, Acting Chief, Guaranteed Student Loan Branch, Room 4310, ROB-3, 400 Maryland Ave., SW., Washington, DC 20202. Telephone: (202) 245-2475; or Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395-7316.

Dated: March 13, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-5869 Filed 3-13-86; 1:43 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Solicitation of Cooperative Agreement Proposals; Geothermal Research Holes in the Cascades

AGENCY: Department of Energy.

ACTION: Solicitation of cooperative agreement proposals (SCAP) No. DE-SC07-86ID12632 for geothermal research holes in the Cascades region of Washington, Oregon and California.

SUMMARY: The Department of Energy, Idaho Operations Office, desires to receive and consider for support proposals to enter into a Cooperative Agreement to perform the drilling of 3,000 feet or deeper geothermal research holes and to collect data. DOE will cost share up to 50% of the cost of drilling the hole and associated data collection. DOE will require access to the hole for further data and technology development for a specified period of time after drilling. The objectives of the program are: (1) To support research to understand the nature of the deep hydrothermal resource of the Cascade volcanic region, and (2) to transfer data to the public in order to understand the Cascades resource and to stimulate further technology development. Funding is estimated at approximately $400,000 in Fiscal Year 1986, anticipating a cost-sharing of 1-2 Cooperative Agreements.

Minimum Requirements

To qualify for evaluation under the SCAP, the proposer must meet the following qualification criteria: the proposed site must be located within the Cascades volcanic region of the United States; the proposal must include a cost-share plan in which DOE's share shall not exceed 50 percent; the proposed hole must be a minimum of 3,000 feet deep; the proposer must agree to meet minimum data collection requirements, complete the hole, and allow DOE access to the hole for data acquisition.

DATES: It is anticipated that the SCAP will be issued April 18, 1986, and proposals will be due May 30, 1986.

CONTACTS: Potential proposers desiring to receive a copy of the SCAP should request it from: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, Attn: Trudy Thorne, Contracts Management Division, (208) 526-9519.

Issued at Idaho Falls, ID, on March 5, 1986.

J. F. Marmo,

Director, Contracts Management Division.

[FR Doc. 86-5710 Filed 3-14-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-15-NG]

Application To Import Natural Gas From Canada; Ocelot Energy Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 28, 1985, of an application filed by Ocelot Energy Corporation (Ocelot), a wholly-owned subsidiary of Ocelot Mining Corporation and an affiliate of Ocelot Industries Limited, for a blanket authorization to import from Canada up to 300 Bcf of natural gas over a two-year period beginning on the date of first delivery. The gas will be supplied by Ocelot Industries Limited, its Canadian affiliate, as well as by a variety of other producer groups and associations and pipeline companies located in Canada. Ocelot would then resell the gas to local distribution companies, pipelines and industries and commercial end-users or would act as an agent on behalf of Canadian producers and marketers and the U.S. purchasers. Ocelot proposes to file quarterly reports showing the specific terms of each import and sale, including the price and volumes.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 16, 1986.

FOR FURTHER INFORMATION CONTACT:

Clifford P. Tomaszewski, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9760
Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 16, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should

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identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Ocelot's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, March 7, 1986.

Paula A. Daigneault,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 86-5709 Filed 3-14-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; Ted True, Inc., and Ted True

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Ted True, Inc. and Ted True; 1201 Elm Street, Suite 5377; Dallas, Texas 75270. This Proposed Remedial Order alleges pricing violations in the amount of $944,771.00 plus interest in connection with the sale of crude oil during the period June 1979 through November 1980.

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building, Room 1E-190; 1000 Independence Avenue, SW.; Washington, DC 20585. Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building, Room 6F-078; 1000 Independence Avenue, SW.; Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 18 day of February 1986.

Ben Lemos,

Director, Office of Field Operations, Dallas, Economic Regulatory Administration.

[FR Doc. 86-5708 Filed 3-14-86; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With Edwin L. Cox & Berry R. Cox

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Edwin L. Cox & Berry R. Cox (Cox) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Cox with the federal petroleum price and allocation regulations concerning production and first sales of domestic crude oil for the period June 1, 1979 through January 27, 1981. Cox will pay to the DOE the sum of $1,206,698 within 10 days of publication of this notice. The Consent Order is effective as a final order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002, (713) 229-3715.

SUPPLEMENTARY INFORMATION:

I. Introduction

ERA previously issued a notice announcing a proposed Consent Order between DOE and Cox which would resolve matters relating to the company's compliance with the federal petroleum price and allocation regulations pertinent to production and first sales of domestic crude oil for the period June 1, 1979 through January 27, 1981 (50 FR 51586, December 18, 1985). The proposed Consent Order requires Cox to pay $1,206,698 within 10 days of the effective date of the Consent Order. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received two comments. Those comments addressed the question of the ultimate disposition of the funds to be paid by Cox pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount.

The comments were devoted exclusively to establishing the proposition that monies received under Cox Consent Order that could not be paid to parties injured by alleged overcharges should be paid to the States and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by Cox related to the miscertification of its crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and refiners could then pass the overcharges on to others. See *United States* v. *Exxon Corp.*, 773, F.2d 1240 (EM. App. 1985).

The DOE's Office of Hearings and Appeals in a report to the District Court of the District of Kansas in *In re: the Department of Energy Stripper Well Litigation, MDL No. 378*, determined that where alleged crude oil violations involve crude oil miscertifications, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

> Essentially, OHA concluded that the direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.
>
> OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program. . . . is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 Fed. Reg. 27400 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

> It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comments on the Cox Consent Order appear to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by the alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from Cox pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final. The ERA, however, modified the Consent Order to reflect a higher interest rate that would apply should the company not meet the 10-day payment deadline.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Cox and DOE shall become a final order of the DOE on the date of publication of this notice in the Federal Register.

Issued in Houston, Texas, on February 20, 1986.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 86-5838 Filed 3-14-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Monday, February 24, 1986 (51 FR 6458).

FOR FURTHER INFORMATION CONTACT:

John Cross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to Mr. Broussalian within 10 days of this notice.

If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, DC, March 5, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated No. of respondents (7)	Annual respondent burden hrs. (8)	Abstract (9)
CE-189P, C, S	Industrial energy conservation program report forms.	Extension	Annually	Mandatory	Businesses or other for-profit.	12,222	124,598	CE-189P, C, and S collect data on energy efficiency improvement and on recovered materials utilization. Data are aggregated, analyzed and organized into an annual report to Congress and the President. Respondents are corporations identified by DOE as having used at least one trillion Btu's of energy.
EIA-846(F)	Manufacturing energy consumption survey.	New	Triennially	Mandatory	Businesses or other for-profit.	4,000	32,000	EIA-846 (F) will collect data on the consumption of energy sources and the fuel-switching capability of establishments in the manufacturing sector. Respondents are manufacturing establishments in the SIC 20-39.

[FR Doc. 86-5837 Filed 3-14-86; 8:45 am]

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Federal Energy Regulatory Commission

[Docket Nos. ER84-568-006 et al.]

Electric Rate and Corporate Regulation Filings; Gulf States Utilities Co. et al.

March 11, 1986.

Take notice that the following filings have been made with the Commission:

Gulf States Utilities Company

[Docket No. ER84-568-006]

Take notice that on February 21, 1986 Gulf States Utilities Company, pursuant to Commission order issued January 22, 1986, tendered for filing an amendment to the Agreement for wholesale electric service between Gulf States and the City of Abbeville.

Comment date: March 21, 1986, in accordance with Standard Paragraph H at the end of this notice.

Arkansas Power & Light Company

[Docket Nos. ER83-86-000, ER84-193-000, and ER84-194-000]

Take notice that on March 4, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a redeterminded Transmission Demand Rate, revenue comparisons and supporting workpapers in accordance with the agreements between AP&L and the City of Hope, Arkansas, Cajun Electric Power Cooperative, Inc. and Louisiana Energy and Power Authority in the above-referenced dockets.

AP&L asks that the updated rate supersede the currently effective rate and become effective on March 1, 1986, subject to refund, in accordance with the provisions of the agreements.

Comment date: March 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

Arkansas Power & Light Company

[Docket Nos. ER82-705-000, and ER83-230-000]

Take notice that on March 4, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a redeterminded formula rate, revenue comparisons and supporting workpapers for the Cities of West Memphis, Osceola, and Jonesboro and the Arkansas Electric Cooperative Corporation in accordance with the Power Coordination, Interchange and Transmission Service Agreements and Settlement Agreements (Agreements) filed in the above-referenced dockets.

AP&L requests that the updated rates supersede those that became effective on March 1, 1985, and that the updated rates become effective for service on and after March 1, 1986, subject to refund, in accordance with the provisions of the Agreements.

Comment date: March 21, 1986, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commision, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-5823 Filed 3-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9783-000 et al.]

Hydroelectric Applications (North American Hydro, Inc., et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9783-000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc., and Renaissance Hydro Associates.

e. Name of Project: Mauston Dam Project.

f. Location: On the Lemonweir River in the City of Mauston, Juneau County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., Post Office Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Mauston Dam approximately 190 feet long and 9 feet high; (2) an existing 828-acre reservoir having a storage capacity of 1,150 acre-feet; (3) an existing brick and concrete powerhouse approximately 40 feet by 80 feet containing two turbine/generator units having a total installed capacity of 480 kW operating at 8 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and placed back into service. The Applicant estimates that the average annual energy generation would be 800,000 kWh. The project dam is owned by the City of Mauston.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Wisconsin Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9782-000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance Hydro Associates.

e. Name of Project: Eau Galle Dam Project.

f. Location: On the Eau Galle River in the town of Eau Galle, Dunn County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing concrete Eau Galle Dam approximately 150 feet long and 30 feet high; (2) an existing 351-acre reservoir having a storage capacity of 2,073 acre-feet; (3) an existing concrete, brick and stone powerhouse 30 feet by 40 feet containing two turbine/generator units having a total installed capacity of 560 kW operating at 28 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and placed back into service. An existing 12.7-kV transmission line is available at the site. The Applicant estimates that the average annual energy generation would be 1,000 MWh. The project dam is owned by Dunn County, Wisconsin.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facilities to the Northern States Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9780-000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance Hydro Associates.

e. Name of Project: Big Falls Dam Project.

f. Location: On the Little Wolf River in the Village of Big Falls, Waupaca County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam approximately 76 feet long and 16 feet high; (2) an existing 22-acre reservoir having a storage capacity of 80 acre-feet; (3) an existing penstock 175 feet long and 6.5 feet in diameter; (4) an existing concrete and brick poweshouse approximately 24 feet by 38 feet containing a single turbine/generator unit with a capacity of 350 kW operating at 32 feet of hydraulic head; and (5) appurtenant facilities. An existing 12.7-kV transmission line is available at the site. The existing facilities would be rehabilitated and put back into service. The Applicant estimates that the average annual energy generation would be 1,800 MWh. The project dam is owned by the Village of Big Falls.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facilities to the Wisconsin Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

4 a. Type of Application: Preliminary Permit.

b. Project No: 9766-000.

c. Date Filed: December 30, 1985.

d. Applicant: Old Mill Power Company, Inc.

e. Name of Project: Old Mill.

f. Location: Bearcamp River in Carroll County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. William J. Spalke, Old Mill Power Company, Inc., P.O. Box 863, 31 Elm Street, Nashua, NH 03061, (603) 883-5571.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) repair to the existing 20-foot-high, 231-foot-long dam owned by Saunders Bros. with a crest elevation of 538 feet msl; (2) an existing reservoir with a surface area of 4 acres and a gross storage capacity of 40 acre-feet; (3) a proposed powerhouse at the dam containing a generating unit with a rated capacity of 220 kW; and (4) a proposed 100-foot-long transmission line tying into the existing Public Service Company of New Hampshire system. The Applicant estimates a 1,500,000 kWh average annual energy production.

k. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5 a. Type of Application: Minor License.

b. Project No.: 9668-000.

c. Date Filed: December 16, 1985.

d. Applicant: Chocorua Forestlands Limted Partnership.

e. Name of Project: Weed Brook/Halfway Brook.

f. Location: Weed and Halfway Brooks, Carroll County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)-825(r).

h. Contact Person: Mr. George K. Lagassa, Mainstream Associates, 86 Lafayette Road, P.O. Box 947, North Hampton, NH 03862, (603) 964-7113.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would be built at two sites. At the Weed Brook site, the project would consist of: (1) A proposed concrete intake structure 12 feet long, 6 feet wide, and 4 feet deep at an elevation of 1400 feet NGVD; (2) a proposed concrete diversion wall 8 feet long and 2 feet high; (3) a proposed 10-inch-diameter plastic penstock 5300 feet long; (4) a proposed concrete powerhouse 10 feet long and 10 feet wide housing a proposed turbine/generator of 57 kW capacity at a net hydraulic head of 440 feet; (5) a proposed 480 volt transmission line 200 feet long and a proposed 7.2 kV transmission line 50 feet long, and (6) appurtenant facilities.

k. At the Halfway Brook site, the project would consist of: (1) A proposed concrete intake structure 12 feet long, 6 feet wide, and 4 feet deep at an elevation of 1320 feet NGVD; (2) a proposed concrete diversion wall 18 feet long and 2 feet high; (3) a proposed 13-inch-diameter plastic penstock 2600 feet long; (4) a proposed concrete powerhouse 10 feet long and 10 feet wide housing a proposed turbine/generator of 25 kW capacity at a net hydraulic head of 230 feet; (5) a proposed 480 volt transmission line 100 feet long and a proposed 7.2 kW transmission line 75 feet long, and (6) appurtenant facilities. No significant

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impoundment would be created at either site. The estimated annual power generation is 300,000 kWh.

l. Purpose of Project: Project power would be sold to Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

6 a. Type of Application: Minor License.

b. Project No.: 9667-000.

c. Datae Filed: December 16, 1985.

d. Applicant: Chocorua Forestlands Limited Partnership.

e. Name of Project: Lovell River/White Brook.

f. Location: Lovell River and White Brook, Carroll County, New Hamsphire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. George K. Lagassa, Mainstream Associates, 86 Lafayette Road, P.O. Box 947, North Hampton, NH 03862, (603) 964–7113.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would be built at two sites. At the Lovell River site, the project would consist of: (1) A proposed concrete intake structure 10 feet long, 6 feet wide and 4 feet deep at an elevation of 1360 NGVD; (2) a proposed concrete diversion wall 16 feet long and 3 feet high; (3) a proposed 16-inch-diameter plastic penstock 3700 feet long; (4) a proposed concrete powerhouse 10 feet long and 10 feet wide housing a proposed turbine/generator of 76 kW capacity at a net hydraulic head of 163 feet; (5) a proposed 7.2 kV transmission line 1.3 miles long; and (6) appurtenant facilities.

At the White Brook site, the project would consist of (1) a proposed concrete intake structure 10 feet long, 6 feet wide, and 4 feet deep at an elevation of 1265 NGVD; (2) a proposed concrete diversion wall 6 feet long and 3 feet high; (3) a proposed 12-inch-diameter plastic penstock 4500 feet long; (4) a proposed concrete powerhouse 10 feet long and 10 feet wide housing a proposed turbine-generator of 50 kW capacity at a net hydraulic head of 244 feet; (5) a proposed 480 volt transmission line 75 feet long; and (6) appurtenant facilities. No signficant impoundment would be created at either site. The estimated annual power generation is 430,000 kWh.

k. Purpose of Project: Project power would be sold to Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

7 a. Type of Application: Preliminary Permit.

b. Project No: 9615-000.

c. Date Filed: November 13, 1985.

d. Applicant: Swift River/Hafslund Company.

e. Name of Project: Three Rivers Dam.

f. Location: Chicopee River in Hampden County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter B. Clark, Chief Executive Officer, Swift River/Hafslund Company, 10 Harbor Street, Danvers, MA 01923, (617) 777–7040.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing 32-foot-high, 250-foot-long concrete dam owned by the Town of Palmer with a crest elevation of 302 feet msl; (2) an existing reservoir with a surface area of 55 acres and a storage capacity of 600 acre-feet; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 2,360 kW; and (4) a proposed 350-foot-long transmission line tying into the existing New England Electric Company system. The Applicant estimates a 13.5 GWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9612-000.

c. Date Filed: November 4, 1985.

d. Applicant: Cedar Creek Limited Partnership.

e. Name of Project: Cedar Creek.

f. Location: On Cedar Creek and an unnamed tributary of Cedar Creek in Madison County, Montana near the town of Ennis. T6S R1E Sections 25, 26, 23, 14, 22, 15, 16, 21, 20, and 19 T6S R1W Sections 24 and 23.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Rhett Hurless, Water Engineering Inc., P.O. Box 3474, Bozeman, MT 59772, (406) 586–7017.

i. Comment Date: March 12, 1986.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-wide concrete diversion dam at elevation 7,000 feet on Cedar Creek; (2) a 14-inch-diameter, 16,500-foot-long pvc and steel buried penstock extending to the powerhouse; (3) a 3-foot-high, 8-foot-wide concrete diversion dam at elevation 7,200 feet on an unnamed tributary of Cedar Creek; (4) a 12-inch-diameter, 9,000-foot-long pvc and steel buried penstock also terminating at the powerhouse; (5) a powerhouse containing two generating units with a total rated capacity of 500 kW, producing an estimated average annual energy output of 2.3 million kWh; (6) a concrete tailrace discharging project flows into Cedar Creek; (7) a 3-mile-long, 12.5-kV transmission line tying into an existing Montana Power Company line.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $12,000.

k. Purpose of Project: Project power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9590-000.

c. Date Filed: November 1, 1985.

d. Applicant: Patterson Creek Partners.

e. Name of Project: Patterson Creek.

f. Location: In Challis National Forest, on Patterson Creek in Lemhi County, Idaho. Township 14N, Range 23E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Louis Rosenman, Suite 1100, 1333 New Hampshire Avenue NW., Washington, DC 20036, (202) 783–2100.

i. Comment Date: April 21, 1986.

j. Competing Application: Project No. 9587, Date Filed: 11/1/85 Due Date: 4/7/85.

k. Description of Project: The proposed project would consist of: (1) a 6-foot-high diversion dam at elevation 6,800 feet; (2) a 13,000-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 3,000 kW and an average annual generation of 15.0 GWh; and (4) a 150-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000.

No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9565-000.

c. Date Filed: October 30, 1985.

d. Applicant: Raymondville Hydro Corporation.

e. Name of Project: West Raymondville.

f. Location: Raquette River, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, New York 10170, (212) 986–0440.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Raquette River Project No. 2330, which includes (1) an existing concrete gravity dam 293 feet long and 17 feet high, a section of which is to be demolished; and (2) an existing impoundment 50 acres in surfact area with a storage capacity of 440 acre-feet at a normal maximum surface elevation of 212 feet mean sea level. The proposed project would consist of (1) a proposed reinforced concrete intake/powerhouse structure 110 feet long and 70 feet wide; (2) an excavated intake channel 180 feet long, 80 feet wide, and 40 feet deep; (3) two proposed turbine/generator units of 2.3 MW capacity each; (4) a proposed 115 kV transmission line 800 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 7,000,000 kWh. The net hydraulic head is 22 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dam owner is Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

11 a. Type of Application: Preliminary Permit.

b. Project No: 9853-000.

c. Date Filed: January 2, 1986.

d, Applicant: Arktech, Inc.

e. Name of Project: George #2.

f. Location: In Targhee National Forest, on Henrys Fork in Fremont County, Idaho, Township 11N and Range 42E, 43E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Michael Arkoosh, P.O. Box 93, Gooding, ID 83330, (208) 934–8464.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) A headgate on the river bank at elevation 6,000 feet; (2) a 1.25-mile-long canal; (3) a 300-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 3,098 kW and an average annual generation of 18,484 MWh; and (5) a 0.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $96,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9836-000.

c. Date Filed: December 31, 1985.

d. Applicant: West Slope Power Company.

e. Name of Project: Sand Creek Project.

f. Location: On Sand Creek, in Madera County, California; Sections 7, 18, 19, and 30, T.7S., R.23E., and Sections 25 and 26, T.7S., R.22E., MDB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Shirley Kimmel, P.O. Box 254800, Sacramento, CA 95865, (916) 924–3885.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 7.5-foot-long, diversion dam located at elevation 5,080 feet msl; (2) a 30-inch-diameter, 13,500-foot-long penstock; (3) a powerhouse with a total installed capacity of 4,750 kW; and (4) a 69-kV, 13,200-foot-long transmission line interconnecting the project to an existing utility distribution line. The estimated 13.9 GWh generated annually would be sold to the local utility company. The proposed project would be located within the Sierra National Forest.

k. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $75,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9831-000.

c. Date Filed: December 31, 1985.

d. Applicant: West Slope Power Company.

e. Name of Project: Whisky Creek No. 3 Project.

f. Location: On Whisky Creek in Madera County, California; Sections 9, 16, 17, 18 and 20, T.9S., R.23E., MDB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Shirley Kimmel, P.O. Box 254800, Sacramento, CA 95865, (916) 924–3885.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 50-foot-long diversion dam located at elevation 2,080 feet msl; (2) a 36-inch-diameter, 8,500-foot-long penstock; (3) a powerhouse with a total installed capacity of 3,800 kW; and (4) a 13,200-foot-long, 69-kV transmission line interconnecting the project to an existing utility distribution line. The estimated 10.2 GWh generated annually would be sold to a local utility. The proposed project would be located within the Sierra National Forest.

A preliminary permit, if issued, does not authorize construction. Applicant seeks to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $75,000.

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k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9765–000.

c. Date Filed: December 30, 1985.

d. Applicant: Ramah Energy, Inc.

e. Name of Project: Big Sand Wash Hydro Project.

f. Location: On Big Sand Wash, a tributary of Dry Gulch Creek, a tributary of the Duchesne River, in Duchesne County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–825(r).

h. Contact Person: James F. Smith, President, Ramah Energy, Inc., 291 East 200 North, Roosevelt, UT 84066.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would utilize the Big Sand Wash Dam and Reservoir, owned by the Utah Board of Water Resources and operated and maintained by the Moon Lake Water Users Association, and would consist of: (1) The existing earthfill dam, 112 feet high and 795 feet long, with a top elevation at 5,892 feet m.s.l.; (2) a reservoir having a capacity of 12,050 acre-feet at spillway elevation of 5,885 feet m.s.l; (3) a new penstock utilizing the existing 40-inch diameter outlet works conduit; (4) a new powerhouse with an installed capacity of 750 kW operating under a maximum head of 100 feet; (5) a tailrace returning flow to the stream a short distance downstream from the dam; (6) a new 13.8 kV transmission line, about one half mile long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,211,149 kWh.

k. Purpose of Project: Project energy would be sold to the Utah Power & Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $20,000.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9764–000.

c. Date Filed: December 30, 1985.

d. Applicant: American Hydro Power Company.

e. Name of Project: George B. Stevenson Dam Project.

f. Location: On the First Fork Sinnemahoning Creek in Grove Township, Cameron County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 33 Rock Hill Road, Bala Cynwyd, PA 19004–2010, (215) 668–8143.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 1,925-foot-long, 166-foot-high rolled earth George B. Stevenson Dam; (2) an impoundment having a surface area of 142 acres, a storage capacity of 2,000 acre-feet, and a normal water surface elevation of 920 feet msl; (3) a proposed intake; (4) a proposed powerhouse containing four generating units with a total installed capacity of 920 kW; (4) a proposed tailrace; (5) a proposed 13-mile-long, 46-kV transmission line; and (6) appurtenant facilities The Applicant estimates the average annual generation would be 4,335 MWh. The existing dam and project facilities are owned by the Pennsylvania Department of Environmental Resources.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $47,000.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9742–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Diamond Hill Hydro Power Project.

f. Location: On Spruce Creek near Salisbury, Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547
Mr. Neal F. Dunlevy, % Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing masonary stone gravity dam approximately 80 feet long and 14 feet high; (2) an existing 92 acre reservoir with 800 acre-feet of storage at an elevation of 1,360 mls; (3) rebuilding an existing intake structure; (4) a proposed penstock four feet in diameter and 1,200 feet long; (5) a new reinforced concrete powerhouse approximately 20 feet by 20 feet housing two 700 kW generators for a total capacity of 1,400 kW; (6) a proposed tailrace 15 feet wide, 6 feet deep, and 15 feet long; (7) a proposed 13.2 kV transmission line 400 feet long connecting with a single phase powerline which will be upgraded; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be approximately 6.0 GWh. The project energy would be sold to Niagara Mohawk Power Corporation. The Dam is owned by the City of Little Falls, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

17 a. Type of Application: Conduit Exemption.

b. Project No.: 9735–000.

c. Date Filed: December 27, 1985.

d. Applicant: City of Fullerton, California.

e. Name of Project: MWD Service Connection F–8.

f. Location: On the city of La Habra's Metropolitan Water District (MWD) Service Connection F–8, that obtains its water from the Colorado River, just south of the intersection of Lambert Road and Euclid Avenue, in the city of La Habra, in Orange County, California (Section 8 of T3S, R10W, S.B.M.&B.).

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person:

Mr. Hugh L. Berry, Assistant City Manager, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, CA 92632, (714) 738–6845.
Mr. David C. Auslam, Jr., Auslam & Associates, Inc., 4125 Temescal Street, Suite D, Fair Oaks, CA 95628, (916) 961–8579.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of a 20-foot-wide, 30-foot-long underground concrete vault (located beneath Euclid Avenue, adjacent to La Habra's pressure reducing and water distribution vault) containing all associated switchgear and two turbine-generator units with a combined rated capacity of 574 kW and operting under a head of 260 feet. A 60-kV, 50-foot-long transmission line would interconnect the project to an existing Southern California Edison Company line. The project's estimated average annual generation of 1.2 GWh would be sold to Southern California Edison Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9695–000.

c. Date Filed: December 19, 1985.

d. Applicant: American Hydro Power Company.

e. Name of Project: Little Pine Creek Dam Project.

f. Location: On the Little Pine Creek in Cummings and Pine Townships, Lycoming and Clinton Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 33 Rock Hill Road, Bala Cynwoyd, PA 19004–2010, (215) 668–8143.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist bf: (1) An existing 1,479-foot-long, 113-foot-high earth and rock filled Little Pine Creek Dam; (2) an impoundment with a surface area of 93.7 acres, a storage capacity of 1,100 acre-feet, and normal water surface elevation of 713 feet msl; (3) the existing 618-foot-long, 8.5-foot-diameter steel conduit; (4) a proposed powerhouse containing five generating units with a total installed capacity of 960 kW; (5) an existing tailrace; (6) a proposed 1.34-mile-long, 12.47-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the Average annual generation would be 3,999 MWh. The existing dam and project facilities area owned by the Pennsylvania Department of Environmental Resources.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $47,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 9566–000.

c. Date Filed: October 30, 1985.

d. Applicant: East Norfolk Hydro Corporation.

e. Name of Project: South Norfolk.

f. Location: Raquette River, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, New York 10170, (212) 986–0440.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Raquette River Project No. 2330, which includes (1) an existing concrete gravity dam 245 feet long and 16 feet high; and (2) an existing impoundment 135 acres in surface area with a storage capacity of 1100 acre-feet at a normal maximum surface elevation of 288 feet mean sea level. The proposed project would consist of (1) a proposed reinforced concrete intake/powerhouse structure 110 feet long and 35 feet wide; (2) a proposed excavated intake channel 140 feet long, 35 feet wide, and 30 feet deep; (3) a proposed turbine/generator unit of 3.5 MW capacity; (4) a proposed 23 kV transmission line 1800 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 4,000,000 kWh. The net hydraulic head is 15 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dam owner is Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

20 a. Type of Application: Preliminary Permit.

b. Project No: 9563–000.

c. Date Filed: October 30, 1985.

d. Applicant: Herrings Hydro Corporation.

e. Name of Project: North Herrings.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986–0440.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Black River Project No. 2569, which includes: (1) An existing concrete gravity dam 512 feet long and 25 feet high; and (2) an existing impoundment 140 acres in surface area with a storage capacity of 1800 acre-feet at a normal maximum surface elevation of 680 feet mean sea level. The proposed project would consist of: (1) A proposed reinforced concrete intake/powerhouse structure 100 feet long and 120 feet wide; (2) a proposed excavated intake channel 250 feet long, 120 feet wide, and 20 feet deep; (3) three proposed turbine/generators of 3.24 MW capacity each; (4) a proposed 23 kV transmission line 200 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 11,000,000 kWh. The net hydraulic head is 19 feet. Project Power would be sold to Niagara Mohawk Power Corporation. The dam is owned by Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project.

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Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

21 a. Type of Application: Exemption from Licensing, less than 5MW.

b. Project No.: 9569-000.

c. Date Filed: September 30, 1985.

d. Applicant: D.D. Bean and Sons Company, Incorporated.

e. Name of Project: Cheshire Dam.

f. Location: Cheshire Pond and Contoocook River, Cheshire County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Stephen H. Krause, D.D. Bean Environmental Systems, Incorporated, 41 Main Street, Jaffrey, NH 03452, (603) 532-4410.

i. Comment Date: April 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing earth and concrete dam 130 feet long and 10 feet high; (2) an existing impoundment 57 acres in area with a storage capacity of 342 acre-feet at a normal maximum surface elevation of 964 feet mean sea level; (3) an existing earthen headrace 500 feet long, an existing 6-foot-diameter penstock 70 feet long, and an existing earthen tailrace 430 feet long; (4) a proposed turbine/generator of 110 kW capacity to be housed in the existing D.D. Bean and Sons Company factory; and (5) appurtenant facilities.

The net hydraulic head is 19 feet. The estimated annual energy production is 482,000 kWh. Project power will be consumed on-site by the applicant.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

22 a. Type of Application: Exemption (less than 5MW).

b. Project No.: 9456-000.

c. Date Filed: September 16, 1985.

d. Applicant: Adirondack Hydro Inc.

e. Name of Project: Black Brook.

f. Location: Black Brook, Clinton County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. Christopher McGill, Adirondack Hydro Inc., P.O. Box 145, Wilmington, NY 12997, (518) 647-5955 or 946-7883.

i. Comment Date: April 18, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing stone masonry dam 455 feet long and varying between six and 34 feet in height, with 39 feet of breached section to be repaired; (2) an existing impoundment with surface area of 4.9 acres at a normal maximum surface elevation of 1015 feet msl, to be increased to a surface area of 34.9 acres and storage capacity of 279 acre-feet at a normal maximum surface elevation of 1022 feet msl; (3) an existing steel penstock, 100 feet long and 4 feet in diameter, to be extended by a proposed steel penstock 750 feet in length and 40 inches in diameter; (4) a proposed steel and concrete powerhouse 49 feet long, 30 feet wide, and 30 feet high, housing three proposed turbine/generators with a total capacity of 410 kW; (5) a proposed 2.3kV, ¾ mile-long transmission line; (6) two proposed access roads, 500 feet and 200 feet in length; and (7) appurtenant facilities. The estimated annual power production is 1,800,00 kWh. The net hydraulic head is 71 feet.

k. Purpose of Project: Project power will be sold to Niagara Mohawk Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

23 a. Type of Application: Amendment of License (New Capacity).

b. Project No.: 8278-001.

c. Date Filed: December 4, 1985.

d. Applicant: Crystal Springs Hydroelectric Company.

e. Name of Project: Cedar Draw Creek.

f. Location: On Cedar Draw Creek in Twin Falls County, Idaho near the town of Twin Falls.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)-825(r).

h. Contact Person:

Mr. Wynn Johnson, Crystal Springs Hydroelectric Company, 200 East South Temple, Suite 300, Salt Lake City, UT 84111

Mr. H. Wayne Gibbs, Project Coordinator, J-U-B Engineers, Inc., 250 S. Beechwood Ave., Suite 1, Boise, ID 83709, (208) 376-73330.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed amendment would consist of: (1) The installation of an additional generating unit with a capacity of 770 kW connecting to an existing penstock in the existing powerhouse, and (2) lengthening the existing powerhouse 18 feet to accommodate the additional unit. The estimated average annual energy output due to this addition would be 10,751 MWh.

k. Purpose of Project: The additional generating unit is being added to take advantage of additional return irrigation flows.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene.*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 12, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5825 Filed 3-14-86; 8:45 am]

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[Docket Nos. CP86-341-000 et al.]

Natural Gas Certificate Filings; Algonquin Gas Transmission Co. et al.

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Company

[Docket No. CP86-341-000]

March 10, 1986.

Take notice that on February 21, 1986, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP86-341-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 22,957 feet of 6-inch mainline pipe and 660 feet of 10-inch casing pipe on Applicant's existing G-8 pipeline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to (1) abandon in place a portion of its existing G-8 pipeline system consisting of approximately 21,457 feet of 6-inch pipeline and 586 feet of 10-inch casing pipe and any related appurtenances and (2) remove and salvage a portion of its existing G-8 pipeline system consisting of approximately 1,500 feet of 6-inch pipeline and 74 feet of 10-inch casing pipe and any related appurtenances. Such facilities are said to be part of Applicant's original G-8 pipeline system authorized in Docket No. G-1319 and are located in the towns of Rochester, Wareham, Carver and Plymouth, Massachusetts.

Applicant states that the proposed abandonment of facilities would facilitate the installation of a 20-inch pipeline loop previously authorized by the Commission in Docket No. CP84-429-000, *et al.* Applicant avers that installation of the authorized 20-inch pipeline loop effectively eliminates the need for the existing 6-inch pipeline and associated facilities proposed to be abandoned. In addition, Applicant states that the proposed abandonment would allow Applicant to reduce its right-of-way rquirements for the installation and operation of the authorized 20-inch pipeline loop adjacent to the facilities proposed to be abandoned, resulting in less damage and construction costs for the new 20-inch pipeline loop. Applicant alleges that the proposed abandonment of these facilities would not entail any abandonment of service, affect significantly Applicant's net plant, nor impair its ability to meet its existing contract commitments to its existing customers.

Comment date: March 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

Docket No. CP86-338-000

March 12, 1986.

Take notice that on February 20, 1986, Arkla Energy Resources, (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP86-338-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and related jurisdictional facilities necessary to enable Arkla to deliver gas from several of its jurisdictional pipelines to consumers served by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82-384-000 and CP82-382-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER proposes to construct and operate (1) a sales tap on its Line 6R2 in Sedgwick County, Kansas, to deliver gas to ALG for service to residential customer, Mrs. Judith L. Sawyer, who would use approximately 200 Mcf per year for residental purposes; (2) a sales tap on its Line BT-2A in Johnson County, Arkansas, to deliver gas to ALG for service to a retail customer, Mr. C.O. Blackard, who would use approximately 600 Mcf per year in connection with the operation of his chicken farm; (3) a sales tap on its Line BM-21 in Faulkner County, Arkansas, to deliver gas to ALG's Rural Extension No. 1171 for several retail customers to be served by ALG in the vicinity, who it is estimated would use an aggregate volume of about 2,000 Mcf per year; (4) a sales tap on its Line A in Hot Spring County, Arkansas, to deliver gas to ALG's Rural Extension No. 1175 for several retail customers to be served by ALG in the vicinity, who would use approximately 10,750 Mcf per year; (5) a sales tap on its Line LM-2 in Hot Spring County, Arkansas, to deliver gas to Mid-State Construction Co., which would use approximately 35,000 Mcf per year in an asphalt plant; (6) a sales tap on its Line J in White County, Arkansas, to deliver gas to ALG's Rural Extension No. 1163 for distribution to an anticipate 72 residential customers and 1 small industrial customer, who would use an aggregate volume estimated at about 280,400 Mcf per year; (7) a sales tap on its Line BM-24 in Yell County, Arkansas, to deliver gas to ALG for service to a retail customer, Mr. Floyd Avery, who would use approximately 925 Mcf per year for a chicken brooder house; (8) a sales tap on its Line AM-187 in Jefferson County, Arkansas, to deliver gas to ALG for service to Ms. Kathy Oliver and othes in the vicinity, who would use an aggregate volume estimated at about 212 Mcf per year for residential purposes; (9) a sales tap on its Line JM-12 to establish an additional town border delivery point as a needed supplemental feed into ALG's Truman, Arkansas, distribution system, it being estimated that about 20,000 Mcf per year would be deliverd through the proposed facilities; (10) a sales tap on its Line 638 to establish an additional town border delivery point to help relieve pressure problems on the east side of ALG's distribution system in Ada, Oklahoma, it being estimated that about 40,000 Mcf per year would be delivered through the proposed facilities.

The total estimated cost of facilities is $182,645.000.

AER states that the gas would be delivered from its general system supply, which it is stated is adequate to provide the service.

Comment date: April 28, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP82-74-003]

March 10, 1986.

Take notice that on February 20, 1986, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP), 414 Nicollet Mall, Minneapolis, Minnesota 55401, filed in Docket No. CP82-74-003 a petition to amend the order of June 1, 1984, in Docket No. RP83-73-000, *et al.*, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to Midwestern Gas Transmission Company (Midwestern) so as to authorize Midwestern to transport natural gas purchased by NSP from any third party supplier, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

NSP states that the order approved a stipulation and agreement jointly submitted by Midwestern and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), and granted Midwestern a certificate of public convenience and necessity authorizing Midwestern to provide gas transportation service for NSP under the Rate Schedule T-9 transportation contract between Midwestern and NSP. NSP further states that the stipulation and contract allow Midwestern to transport gas purchased by NSP from any third party supplier. Ordering paragraph (D) of the order authorizes Midwestern to transport gas sold to NSP by Northern. NSP requests that the Commission amend the order to authorize Midwestern to transport gas purchased by NSP from any third party supplier. NSP alleges that amending the order will reflect the intent and expectations of the parties under the stipulation and the contract and will not affect the rights and obligations of NSP, Northern and Midwestern under the contract and NSP's service agreement with Northern. NSP states that neither Midewestern nor Northern objects to NSP's filing of the instant petition.

Comment date: March 31, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-325-000]

March 12, 1986.

Take notice that on February 13, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-325-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 347 horsepower compressor unit (Unit #2) located in Hutchinson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to declining volume production, the compresser unit is no longer needed at the Hutchinson County gathering station. It is explained that the present production can be gathered and compressed by the remaining 468 horsepower compressor unit (Unit #1) at the Hutchinson County gathering station.

Northern proposes to utilize said compressor elsewhere on its system or sell it to a potential buyer. The estimated cost to remove the compressor is $24,000 and its salvage value is estimated to be $17,350.

Comment date: April 2, 1986, in accordance with Standard Pargraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required to intervene herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on it own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5824 Filed 3-14-86 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-33-000-001]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant To Purchased Gas Cost Adjustment

March 10, 1986.

Take notice that on February 20, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects a decrease in the purchased gas cost of $0.3282 per dth and a decrease of $0.0594 per dth in the surcharge rate for a total downward adjustment in El Paso's currently effective sales rates of $0.3876 per dth attributable to the PGA.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff Volume and Tariff Sheet

First Revised Volume No. 1—Eighth Revised Sheet No. 190 Sixth Revised Sheet No. 540
Third Revised Volume No. 2—Thirty-third Revised Sheet No. 1-D
Original Volume No. 2A—Thirty-fifth Revised Sheet No. 1-C

El Paso requests that the Federal Energy Regulatory Commission ("Commission") grant waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered revised tariff sheets to become effective on April 1, 1986.

El Paso further states that in compliance with ordering paragraph D of the Commission's order issued February 19, 1986, at Docket No. TA86-1-33-004, El Paso is tendering Second Revised Sheet Nos. 355 and 359 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective April 1, 1986 modifying its PGA provision (Section 19.7) to include language to reflect the treatment of exchange imbalances in the

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calculation of the monthly Account 191 balances.

El Paso also states that is is tendering Third Revised Sheet No. 24 to its FERC Gas Tariff, Original Volume No. 1–A to be effective April 1, 1986 in order to reflect the rate of $2.1686 per dth to be utilized to determine the fuel reimbursement charge payable under Sections 6 of Rate Schedule T–1 or T–2 of said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in-kind .

On January 31, 1986 at Docket No. RP86–45–000, El Paso filed with the Commission to establish rates, terms and conditions governing transportation service pursuant to Order Nos. 436 and 436–A, to become effective March 1, 1986. If said filing at Docket No. RP86–45–000 is approved and is acceptable to El Paso, Ninth Revised Sheet No. 100 and First Revised Sheet No. 100–A to El Paso's First Revised Volume No. 1 Tariff and Fourth Revised Sheet No. 24 to El Paso's Original Volume No. 1–A Tariff are proposed to be made effective April 1, 1986 in lieu of the counterpart revised tariff sheets.

El Paso also requests waiver of § 282.602(d)(2)(i) of the Commission's Regulations Under the NGPA. Preparation, duplication and service of the supplemental analysis required by § 282.602(d)(2)(i) necessitates a review of purchases from over 12,000 separate contract sellers, creating an extreme administrative burden. El Paso understands that the detail is for informational purposes, and is unnecessary for a thorough review of the rate change occasioned by this filing. Consequently, El Paso requests waiver of the need to file and serve the supplemental information on the condition that the data will be maintained and made available for inspection at El Paso's offices.

El Paso states the the filing has been served upon all interstate pipeline system customers of El Paso, all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.214 and 385.211 of the Chapter. All such motions or protests should be filed on or before March 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5818 Filed 3–14–86 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI79–499–001 and CI86–230–000]

Marathon Oil Co.; Application for Limited-Term Partial Abandonment and Certificate of Public Convenience and Necessity

March 12, 1986.

Take notice that on February 27, 1986, Marathon Oil Company (Applicant) P.O. Box 3128, Houston, Texas 77056, pursuant to Sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Commission's Regulations, filed an application for limited term partial abandonment for a period of two years and for a certificate of public convenience and necessity to make limited-term sales for resale of this gas with pre-granted abandonment. Applicant makes sales to Transcontinental Gas Pipe Line Corporation (Transco) from the West Cameron Area Block 619 (Block 619) Offshore Louisiana, under a contract dated June 5, 1979, certificated in Docket No. CI79–499–000 pursuant to Applicant's FERC Gas Rate Schedule 164. Applicant states that the subject gas is not being purchased by Transco due to lack of demand on its system, and that in Docket No. CI85–651–000. Applicant further states that on July 18, 1985, Transco and Applicant executed a limited release agreement covering Block 619 permitting Applicant to sell excess guantities of NGPA section 102(d) gas to Transco Energy Marketing Company (TEMCO) under Applicant's LTA authorization. This LTA authority expires on March 31, 1986. Applicant states that to ensure that it is able to market the released gas after March 31, 1986, it is essential that it receive both limited-term partial abandonment and a limited-term certificate with pre-granted abandonment permitting such released volumes to be sold to TEMCO. In further support of expeditous consideration of its requests, Applicant states that production from Block 619 is from a distress well and recoverable reserves are dependent upon the rate of production from 36,400 Mcf/d in January 1984 to 10,400 Mcf/d in January 1986 and with this curtailment the natural water drive has encroached to reduce recoverable reserves. Applicant states that, in accordance with the July 18, 1985, release agreement, Transco will receive take-or-pay credit under the original June 5, 1979, contract, to the extent gas quantities are released from such contract. Such release agreement, as amended by letter agreement dated December 12, 1985, covers up to a maximum 12,000 MMBtu/d quantity for sales by Applicant to TEMCO. Applicant states the rate for the proposed sale of NGPA section 102(d) gas to TEMCO will be the market price determined by TEMCO, presently $1.895/MMBtu for 70% of the volumes and $1.845/MMBtu for the remaining 30%. Finally, Applicant states that to the extent a permanent certificate cannot be issued prior to March 31, 1986, Applicant also requests a temporary certificate to continue sales to TEMCO.

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 27, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5819 Filed 3–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85–29–006]

Odeco Oil & Gas Co.; Application for Amendment and Extension of Certificate of Public Convenience and Necessity

March 12, 1986.

Take notice that on March 5, 1986, Odeco Oil & Gas Company (Odeco), of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to the provisions of the Natural Gas Act and Commission's rules and regulations thereunder, for amendment and extension of its certificate of public convenience and necessity to permit continuation of existing sales and allow blanket sales authority after March 31, 1986.

Odeco is not currently making sales pursuant to the authority granted due to the lack of transportation authority, but is concerned in light of Order 436 issued December 12, 1985 in Docket No. RM85–1–000 applicant must be in position to be able to make such sales after March 31, 1986 as it could be faced with large volumes of gas shut in due to expiration of its limited certificate and abandonment authority. Odeco does not believe that the Commission's proposed rules issued in Docket No. RM85–1–000 will provide the necessary authority to continue existing sales or permit new sales from its reserves. Loss of such authority could be detrimental not only to Odeco, but to the markets currently being served as well as those pipelines providing transportation service. Accordingly, Odeco is requesting extension of its certificate and associated limited term abandonment authority to January 1, 1990.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5820 Filed 3–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–33–001]

Sun Exploration and Production Co.; Application

March 12, 1986.

Take notice that on March 5, 1986, Sun Exploration and Production Company (Sun), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act requesting modification of the Commission's December 5, 1985 Order Permitting And Approving Limited-Term Abandonment And Granting Certificates by substituting March 31, 1987 for March 1, 1986 therein. The certificate would (1) continue to authorize the sale of natural gas by Sun and its working interest owners for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) and confer pre-granted abandonment authorization for sales; (3) and confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5821 Filed 3–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–3–18–003, 004]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

March 10, 1986.

Take notice that on March 6, 1986, Texas Gas Transmission Corporation (Texas Gas) tendered for filing First Revised Sheet Nos. 113 and 115 to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed pursuant to Ordering Paragraph (E) of the Commission's Order issued January 31, 1986, in Docket Nos. TA86–3–18–000 and TA86–3–18–001. Ordering Paragraph (E) requires Texas Gas to revise its tariff language to implement the "industry method" of accounting for concurrent exchange imbalances in the computation of Account No. 191 balances.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5822 Filed 3–14–86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Final Supplemental Environmental Impact Statement Availability; Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, CO

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of availability for final supplemental environmental impact statement.

SUMMARY: Notice is hereby given that the U.S. Department of Energy (DOE), Western Area Power Administration (Western) has issued a final supplemental environmental impact statement (EIS) for the proposed Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, Colorado, DOE/EIS 0116–FS. The final supplemental EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations, 40 CFR 1500–1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended. The final supplemental

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EIS must be used in conjunction with the draft supplemental EIS.

DATE: A decision on the proposal will not be made until after April 14, 1986.

FOR FURTHER INFORMATION CONTACT: For copies of the Final Supplemental EIS, contact:

Mr. William C. Melander, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224–7231.

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1527.

Ms. Lida Whitaker, Office of Environmental Guidance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–4610.

SUPPLEMENTARY INFORMATION:

Background Information

Western, in cooperation with the Forest Service, Bureau of Land Management, Rural Electrification Administration (REA), has developed a supplemental EIS to assess the environmental effects of constructing, operating, and maintaining approximately 30 miles of 230/345-kV transmission line between the existing Gore Pass Substation northwest of Kremmling, Colorado, and a proposed new substation (not part of this action) near the Ute Pass Road. As part of the proposal, Western would construct and provide access to an alternate hang-gliding launch area.

The project is part of the Hayden-Blue River 345–kV Transmission Line Project, the subject of a final EIS issued by the U.S. Department of Agriculture, REA, in July 1982. The action includes minor work at the Gore Pass Substation and at two taps, and also the removal of two existing transmission lines: A 69–kV line between Gore Pass Substation and Green Mountain Powerplant and a 115–kV line between Green Mountain Powerplant and Blue River Tap. The purpose of the project is to provide additonal transmission capacity into the areas of Gore Pass, Granby, Green Mountain, Dillon, Climax, Oak Creek, and Keystone, Colorado; and between the generation plants in western Colorado and the major load areas in eastern Colorado. Alternatives assessed include routing and design alternatives plus the alternatives addressed in the Hayden-Blue River final EIS, issued by the REA.

Copies of the final supplemental EIS are being provided to public and private agencies, organizations, and individuals who received the draft supplemental EIS. Copies of the draft and final supplemental EIS and the final EIS for the Hayden-Blue River Transmission Line Project are also available for public inspection at Western's Loveland Area Office, 5555 East County Road 26, Loveland, Colorado; Western's Headquarters Office, Room 304, 1627 Cole Boulevard, Golden, Colorado; the DOE Reading Room, 1000 Independence Avenue, SW., Washington, DC; the Bureau of Land Management's Kremmling Resource Area Office, 1116 Park Avenue, Kremmling, Colorado; and the Forest Service's Dillon District Ranger's Office, 135 Colorado Highway 9, Silverthorne, Colorado.

The final supplemental EIS must be used in conjunction with the draft supplemental EIS. The final supplemental EIS contains only changes and additons to the draft, comments on the draft, and responses to these comments. A limited number of draft supplemental EIS's are available for distribution at the addresses given above.

Correspondence on the Final Supplemental EIS should be sent to:

Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539.

Issued at Golden, Colorado, March 6, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86–5639 Filed 3–14–86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A–1–FRL–2983–3]

Prevention of Significant Deterioration of Air Quality (PSD); Determination of Exemption; Dartmouth College, Hanover, NH

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of final determination of exemption.

SUMMARY: The purpose of this notice is to announce that on January 6, 1986, John H. Sununu, Governor of New Hampshire, issued a final determination that the Dartmouth College Multi-Fuel Boiler Project, Phase I (the Project), located at Dartmouth College in Hanover, New Hampshire, is exempt from EPA's PSD review requirements (40 CFR 52.21(j)–(r)). This determination was made under the March 18, 1982 PSD delegation of authority agreement between Region I and the state of New Hampshire. The determination was issued because the institutional arrangement involving Dartmouth is such as to render the college a "nonprofit health or education" institution pursuant to section 169(1) of the Clean Air Act. 42 U.S.C. 7479(1), and 40 CFR 52.21(i)(4)(vi). Accordingly, the installation and operation of the multi-fuel boiler filed with #6 fuel oil (2.0% sulfur, maximum) at the Dartmouth College Heating Plant will not be subject to these PSD review requirements.

DATE: The determination was effective January 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Courcier, State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203, (617/223–4876) or Mr. James W. Marston, New Hampshire Air Resources Agency, Health & Human Services Building, Hazen Drive, Concord, New Hampshire 03301, (603/271–4576).

SUPPLEMENTARY INFORMATION: This final determination of exemption was made in response to a request, dated July 8, 1985, by John G. Skewes, Director of Business Affairs, Dartmouth College.

Copies of this Final Determination and all infomation used in making the determination are available for public inspection at the New Hampshire Air Resources Agency, Health & Human Services Building, Hazen Drive, Concord, New Hampshire 03301. Copies of the determination are also available for public inspection at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203 and at the Howe Library, Reference Department, 13 East South Street, Hanover, New Hampshire 03755.

The determination is a final action under the Clean Air Act. Under Section 307(b)(1) of the Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the First Circuit within 60 days from the date of publication in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: February 14, 1986.

Paul Keough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region I.

[FR Doc. 86–5612 Filed 3–14–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–51612; FRL–2975–5]

Certain Chemical Premanufacture Notices

Correction

In FR Doc. 86–4253, beginning on page 7118, in the issue of Friday, February 28, 1986, make the following corrections:

On page 7118, second column, in the heading, the document number should read as set forth above.

On the same page, third column, under **P86–541**, third line, "carbamoyl" was misspelled.

BILLING CODE 1505-01-M

[OPTS–59210B; FRL–2985–9]

Toxic and Hazardous Substances Control; Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for testing marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–86–11. The test marketing conditions are described below.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–609, 401 M Street, SW., Washington, DC 20460, (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–11

Date of Receipt: January 23, 1986.

Notice of Receipt: January 31, 1986 (51 FR 4029).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: Publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six months.

Commencing on: March 6, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activites will not present any unreasonable risk of injury to health or the environment.

Dated: March 6, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–5700 Filed 3–14–86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE–FRL–2989–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Development of New Source Performance Standards (NSPS) for Small Boilers (EPA ICR #1293). (This is a request for a new collection.)

Abstract: The purpose of this ICR is to gather data on small industrial-commercial-institutional boilers with heat input capacities of 100 Million Btu/hour or less. These data will be used in connection with regulatory development to analyze and evaluate various control technologies, regulatory options, costs, and economic, energy, and environmental impacts.

Respondents: Owners/operators of small industrial-commercial-institutional steam generating units.

Office of Administration and Resources Management

Title: Application for Federal Assistance—Short Form (EPA ICR #0873). (This is a reinstatement of a previously approved ICR; no changes are proposed).

Abstract: States submit EPA Form 5700–31 to apply for financial assistance under EPA's State Management Assistance Grant Program. The Agency uses the information to determine if the State-proposed work program is consistent with EPA requirements and the recipients' needs.

Respondents: States, local governments, and federally recognized Indian Tribal governments.

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Agency PRA Clearance Request Completed by OMB

EPA #1271; Household Survey of Exposure to Consumer Products Containing Methylene Chloride and Substitutes, was approved 2/18/86 (OMB #2070-0079; expires 12/31/87).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (ICR #1293), or Rick Otis (ICR #0873), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: March 11, 1986.

Daniel J. Fiorino,

Acting Director.

[FR Doc. 86-5744 Filed 3-14-86; 8:45 am]

BILLING CODE 6560-50-M

[EN-FRL-2986-3]

Fuel and Fuel Additives; American Methyl Corp.: Reconsideration of Waiver Granted

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the reconsideration of a waiver application submitted under section 211(f) of the Clean Air Act by American Methyl Corporation (American Methyl) for a proprietary fuel known as "Petrocoal." This action is being taken pursuant to a court order vacating the waiver and remanding the matter to the Environmental Protection Agency (EPA). This notice also announces EPA's policy for dealing wth existing stocks of Petrocoal.

DATE: The reconsideration process will begin immediately and EPA's policy on existing stocks of Petrocoal takes effect immediately and will last until April 16, 1986.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney/Advisor, Fuels Section, Field Operations and Support Division (EN-497F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977 it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of the EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, or the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act.

American Methyl [1] submitted an application for a waiver for methanol-gasoline blend called "Petrocoal" on February 20, 1981. The 180-day review period provided by section 211(f)(4) was extended until September 28, 1981, by mutual consent.

On September 28, 1981, the EPA granted a waiver to American Methyl for a Petrocoal, which consisted of up to 12 percent by volume methanol, up to six percent by volume cosolvents (certain four-carbon alcohols), in the presence of a proprietary inhibitor in unleaded gasoline. See 46 FR 48975 (October 5, 1981).

On December 4, 1981 the Motor Vehicle Manufacturers Association (MVMA) filed both a petition for administrative reconsideration of the waiver and a petition for judicial review of the waiver in the U.S. Court of Appeals for the District of Columbia Circuit (MVMA v. EPA, No. 81-2276). On February 22, 1983, MVMA submitted to EPA a supplemental petition for reconsideration referencing new data on the effects of methanol in gasoline on automotive evaporative emissions. In addition, information subsequently obtained by the Agency indicated that the fuel tested by American Methyl may not have been the fuel described in the waiver request.

On May 2, 1983, 48 FR 19789, EPA stated that it was considering administrative action to modify or revoke the waiver under section 211(f) of the Act, or to control or prohibit the sale of Petrocoal under section 211(c) of the Act. On March 28, 1984, 49 FR 11879, the Agency granted MVMA's petition for reconsideration and proposed to revoke the waiver under section 211(f). Shortly thereafter, the Court of Appeals granted a stay of proceedings in the MVMA case pending a final administrative decision by EPA.

On May 25, 1984, however, American Methyl petitioned the same Court of Appeals for review of the proposed revocation on the ground that section 211(f) did not authorize such action by the Agency. That Court subsequently held that EPA was not authorized to evoke the waiver under 211(f), although it might control or prohibit marketing of the product pursuant to section 211(c). See *American Methyl Corp. EPA,* 749 F.2d 826 (October 31, 1984).

Subsequently, the MVMA lawsuit was reactivated and on July 26, 1985, the Court of Appeals vacated the Administrator's decision granting the waiver for Petrocoal and remanded the matter to the Agency to make a new determination as to whether to grant such waiver on the basis of the record existing at the time of the original waiver decision 768 F.2d 385. The issuance of the mandate was stayed, however, pending American Methyl's unsuccessful request for consideration by the Court of Appeals and its subsequent petition for certiorari to the Supreme Court. That petition was denied on January 21, 1986 (*American Methyl Corp.* v. *MVMA,* No. 85-718). On February 5, 1986, Court of Appeals issued its mandate in the MVMA case.

Today's Action

As required by the Court of Appeals, the EPA will consider the original waiver application for Petrocoal submitted by American Methyl de novo, based on the record existing prior to September 28, 1981. No new comments or other information will be considered since the Court mandated that the decision be made only upon the existing record. EPA will complete its reconsideration as expeditiously as possible.

As of February 5, 1986, pursuant to the Court's order vacating the Administrator's decision, and under section 211(f)(1) of the Act, it is illegal to sell Petrocoal or to introduce that product into commerce. However, the Agency is aware that this product has been sold for five years and that some inventories or Petrocoal exist. In order to allow those who in good faith purchased Petrocoal during the time the waiver was in force to deplete their stocks, the Agency will not pursue any enforcement action concerning any sales made by April 16, 1986, of existing inventories of Petrocoal. This policy is applicable only to already existing finished inventories and does not apply to fuel produced after issuance of the mandate.

Dated: March 11, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-5749 Filed 3-14-86; 8:45 am]

BILLING CODE 6560-50-M

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[1] Until June 30, 1982, American Methyl was incorporated under the name Anafuel Unlimited. For the sake of clarity, its current name will be used.

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee); Main Committee Meeting

March 12, 1986.

The Space WARC Advisory Committee will convene its next meeting on April 22, 1986. The Committee will be reviewing the work of the working groups and will be considering recommendations and advice to the Commission concerning U.S. participation within the intersessional work program of the International Telecommunication Union in preparations for the second session in 1988. Details regarding the date, place and agenda of the meeting are provided below.

Chairman: Ronald F. Stowe.

Vice Chairman: Stephen E. Doyle.

Date: Tuesday, April 22, 1986.

Time: 9:30 A.M.-1:00 P.M.

Location: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, DC 20554

Designated Federal Employee: Thomas S. Tycz.

Agenda: (1) Adoption of Agenda, (2) Status of ITU Preparatory Activities, (3) Working Group Reports, (4) Date of Next Meeting, (5) Other Business, and (6) Adjournment.

For additional information, please contact Thomas S. Tycz, (202) 632-3214.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5803 Filed 3-14-86; 8:45 am]

BILLING CODE 6712-01-M

Seventh and Eighth Meetings of the Land Mobile Radio/UHF Television Technical Advisory Committee

The seventh meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on April 4, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC. The meeting will start at 10:00 A.M.

The eighth meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on April 28, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC. The meeting will start at 10:00 A.M.

All interested parties are invited to attend these meetings. Since this is a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for these meetings will consist of:

1. Approval of minutes of last meeting;
2. Status report from working group co-convenors;
3. Discussion of new business for the Committee;
4. Discussion of appropriate date and tentative agenda for next meeting.

Any questions regarding these meetings should be directed to Mr. Kenneth Nichols at (301) 725-1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5804 Filed 3-14-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

California; Major-Disaster Declaration

AGENCY: Federal Emergency Mangement Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Del Norte Country as an adjacent area for Individual Assistance only.

Trinity County for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-5704 Filed 3-14-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-758-DR]

California; Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Sutter, Tehama, Tuolumne, and Yuba Counties for Public Assistance.

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(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-5705 Filed 3-14-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010465-014.

Title: United States Atlantic & Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
Lykes Bros. Steamship Corp.
Med-America Express Service
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would reduce the scope of the conference to cargo discharged at ports in Italy, Spain and Mediterranean Ports of France and cargo destined for points in those countries to the extent it is moved through the above named ports. It would also exclude bulk cargo not carried in containers from the scope of the conference. The parties have requested a shortened review period.

Agreement No.: 217-010698.

Title: Lykes Bros. Steamship Co., Inc./Union International de Vapores, S.A. Space Charter Agreement.

Parties:

Lykes Bros. Steamship Co., Inc. (Lykes)
Union International de Vapores, S.A. (Univsa)

Synopsis: This agreement between Lykes and Univsa permits Univsa to charter container space on Lykes' vessels for carriage of cargo between foreign ports in the Far East, Asia, Mediterranean, Europe, United Kingdom and Central America, direct or via inland points/ports in the United States.

Agreement No.: 023-010699.

Title: Matson Terminals Maintenance and Repair Agreement

Parties:

Matson Terminals, Inc. (Matson)
HT&T Company, Inc. (HT&T)

Synopsis: The proposed agreement provides for HT&T to perform maintenance, repair and other miscellaneous services on the Island of Hawaii with respect to containers and related equipment owned and/or operated by Matson or Matson Navigation Company, Inc. which Matson has the obligation to maintain and repair.

Dated: March 12, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-5810 Filed 3-14-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ameritrust Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of First United Bancorp, Franklin, Indiana, thereby indirectly acquiring Franklin Bank and Trust Company, Franklin, Indiana.

Applicant has also applied to acquire Franklin Financial Corporation, Indianapolis, Indiana, and thereby arrange commercial and residential real estate loans and commercial lines of credit. Applicant also proposes to package and service mortgage loans and to engage in the leasing of personal property.

Applicant has also applied to acquire Franklin Mortgage Corporation, Indianapolis, Indiana, and thereby engage in making and servicing mortgage loans and other extensions of credit.

2. *First National Cincinnati Corporation*, Cincinnati, Ohio; to merge with Peoples National Bancorp of America, Lawrenceburg, Indiana, thereby indirectly acquiring The Peoples National Bank of Lawrenceburg, Lawrenceburg, Indiana.

Applicant has also applied to acquire P.N.B. Insurance Agency, Inc., Lawrenceburg, Indiana and First-In-Leasing, Inc., Lawrenceburg, Indiana, and thereby engage in the underwriting of credit life, accident and health insurance related to extensions of credit by the bank holding company system, pursuant to § 225.25(b)(9) of Regulation Y; and leasing of personal activity, pursuant to § 225.25(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5826 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

Community Banks, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 9, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Community Banks, Inc.*, Millersburg, Pennsylvania; to acquire 100 percent of the voting shares of Peoples Bank of Shamokin, Pennsylvania, Shamokin, Pennsylvania.

2. *First Lehigh Corporation*, Walnutport, Pennsylvania; to acquire 5.32 percent of the voting shares of Knoblauch Bank, Reading, Pennsylvania. Comments on this application must be received not later than April 10, 1986.

B. **Federal Reserve Bank of Kansas City** (Thomas Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robinson Bancshares, Inc.*, Robinson, Kansas; to acquire 91.80 percent of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, thereby indirectly acquiring Morrill and Janes Bank, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5827 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

The Conifer Group Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 7, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Conifer Group Inc.*, Worcester, Massachusetts; to acquire 100 percent of the voting shares of Hampshire National Bank of South Hadley, South Hadley, Massachusetts.

2. *The Conifer Group Inc.*, Worcester, Massachusetts; to acquire 100 percent of the voting shares of Patriot Bancorporation, Boston, Massachusetts, thereby indirectly acquiring Patriot Bank, N.A., Boston, Massachusetts.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Bank Corporation of New York*, Downsville, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Downsville, Downsville, New York.

C. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bellwood Bancorporation, Inc.*, Bellwood, Illinois; to acquire 10 percent or more of the voting shares of Peterson Bank, Chicago, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Brownstown CSB Bancorp*, Brownstown, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Citizens State Bank, Brownstown, Indiana.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Tanglewood Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Tanglewood Bank, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5828 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

Citizen Banking Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under §225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21 (a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

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inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 2, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Citizens Banking Corporation*, Detroit, Michigan; *Comerica Incorporated*, Detroit, Michigan; *First of America Bank Corporation*, Kalamazoo, Michigan; *Manufacturers National Corporation*, Detroit, Michigan; *Michigan National Corporation*, Bloomfield Hills, Michigan; and *Union Bancorp, Inc.*, Grand Rapids, Michigan; proposes to engage in providing data processing services to financial institutions through the organization of ML, Inc., Detroit, Michigan, and its subsequent merger with Magic Line, Inc., an existing not-for-profit corporation, pursuant to § 225.25(b) (7) of Regulation Y. This activity will be performed as a joint venture with the Mutual Savings & Loan Association, Michigan Credit Union League, and First Federal Savings of Michigan.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5829 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

Gulf Coast Holding Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23) (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Gulf Coast Holding Corporation*, Panama City, Florida; to acquire ATM Network, Inc., Panama City, Florida, and thereby engage in providing data processing and data transmissions services, facilities (including data processing and data transmission hardward, software, documentation or operating personnel), data bases, or access to such services, facilitities or data by any technological means, pursuant to § 225.25(b)(7)(i)(ii)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5830 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

Union Bancshares Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subisidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union Bancshares Corp.*, Bellevue, Ohio; to engage *de novo* through its subsidiary, Union Ohio Brokerage, Inc., Bellevue, Ohio, in discount brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

2. *Union Bancshares Corp.*, Bellevue, Ohio; to engage *de novo* through its subsidiary, Union Ohio Brokerage, Inc., Bellevue, Ohio, in the leasing of personal property, pursuant to § 225.25(b)(5) of Regulation Y.

Comments on this application must be received not later than March 31, 1986.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Midland Bank, Plc.*, London, England; to engage through its subsidiary, Samuel Montagu & Co. (Holdings) Limited, New York, New York, in the following activities: (1) Foreign exchange advisory and transactional services, including the providing of (i) general information and statistical forecasts concerning foreign exchange markets, (ii) advisory services to assist customers in monitoring, evaluating and managing foreign exchange exposures, and (iii) transactional services involving the arranging of (A) foreign exchange transactions and (B) "swaps" among customers with complementary foreign exchange exposure, pursuant to § 225.25(b)(17) of Regulation Y; (2) in soliciting, executing and clearing on major commodity exchanges, for nonaffiliated persons, futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments of the type that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of Regulation Y; (3) making, acquiring and servicing loans and other extensions of credit for its own account and the account of others, pursuant to § 225.25(b)(1) of Regulation Y; (4) providing investment and financial advice, including serving as an investment advisor to an investment company registered under the Investment Company Act of 1940 (including sponsoring, organizing and managing a closed-end investment company), providing portfolio investment advice, furnishing general economic information and advice and general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, pursuant to § 225.25(b)(4) of Regulation Y; (5) underwriting and dealing in obligations of the United States, general obligation of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in (including bankers acceptances and certificates of deposit) under the same limitations as are applicable to member banks of the Federal Reserve System, pursuant to § 225.25(b)(16) of Regulation Y.

Board of Governors of the Federal Reserve System, March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5831 Filed 3-14-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget; Profit/Loss Statement, Operating Statement

AGENCY: Office of Administration, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve the extension of the expiration date of a currently approved collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: George Lampman, Public Buildings Service (202-566-0542).

SUPPLEMENTARY INFORMATION:

A. *Purpose.* This collection is used in an offeror's proposal to perform a cafeteria service contract and is considered by the contracting officer to make an award.

B. *Annual reporting burden.* Respondents, responses and hours, 250 each.

C. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (CAID), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: March 7, 1986.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 86-5694 Filed 3-14-86; 8:45 am]

BILLING CODE 6820-23-M

[Wildlife Order 160; 1-D-NJ-552]

Portion, Artificial Island/Alloway Creek Disposal Area, New Castle County, DE; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated January 10, 1986, the property, consisting of approximately 92 acres of unimproved land known as Portion, Artificial Island/Alloway Creek Disposal Area, New Castle County, Delaware, was transferred to the State of Delaware, Department of Natural Resources and Environmental Control.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: March 5, 1986.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 86-5695 Filed 3-14-86; 8:45 am]

BILLING CODE 6820-96-M

[Wildlife Order 159; 1-D-NJ-552]

Portion, Artificial Island/Alloway Creek Disposal Area, Salem County, NJ; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated September 17, 1985, the property, consisting of approximately 1,270.30 acres of unimproved land known as Portion, Artificial Island/Alloway Creek Disposal Area, Salem County, New Jersey, was transferred to the State of New Jersey, Department of Environmental Protection.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: March 5, 1986.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 86-5696 Filed 3-14-86; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Collection of Fees for Proficiency Testing of Private Clinical Laboratories

AGENCY: Centers for Disease Control, Public Health Service, HHS.

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ACTION: Notice of Collection of Fees.

SUMMARY: The Public Health Service is initiating fees for proficiency testing of certain clinical laboratories participating in the program directly operated by the Centers for Disease Control (CDC). The purpose of these charges is to recover full costs of operating the program.

EFFECTIVE DATE: Fees for the period May 1–September 30, 1986, wil be due not later than April 15, 1986.

FOR FURTHER INFORMATION CONTACT: Harold W. Mair, Assistant Chief, Performance Evaluation Branch, Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, (404) 329–2131 or FTS 236–2131.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The purpose of this announcement is to specify administrative policies for charges for participation in the proficiency testing operated directly by CDC.

The Appropriations Act for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1986 (Pub. L. 99–178) contains a provision for collecting of fees, for the full cost of proficiency testing of private clinical laboratories to be credited to the appropriation.

The Centers for Disease Control (CDC) operates a proficiency program (PTP) for laboratories licensed under the Clinical Laboratories Improvement Act of 1967 (Section 353 of PHS Act, 42 U.S.C. 263a), and for laboratories participating on a voluntary basis. Regulations for the licensing program appear at 42 CFR Part 74.

Applicability

The fees are applicable to the private clinical laboratory participants who are enrolled to meet federal regulatory requirements or who are participating on a voluntary basis. The fees are not applicable to laboratories serving as reference laboratories for the PTP or to State or local public health laboratories.

Proposed Fees

For clinical laboratories enrolled in the CDC Proficiency Testing Program, the actual costs for each survey are determined by taking into account salaries, benefits, supplies, contract services, printing, postage and shipping, average equipment and instrument requirements, and appropriate overhead assessments. The costs per survey are divided by the number of enrollees (including nonlicensed laboratories) to arrive at a per laboratory per survey annual cost.

Fees will be levied against approximately 1,700 clinical laboratories. The estimated charge for the first full year during which fees for proficiency testing are assessed, is $3,185 for a clinical laboratory enrolled in *all of the surveys* offered by the CDC, or $1,593 for one-half year. Few laboratories are enrolled in all surveys.

The estimated costs for full year and for one-half year, for individual surveys, are shown below:

Survey	Number of shipments per year	Cost per year	Cost per one-half year
Bacteriology	4	$222	$111.00
Mycology	4	231	115.50
Parasitology	4	167	83.50
N. gonorrhoeae	2	131	65.50
HTLV	4	288	144.00
Public Health	1	64	32.00
Hepatitis	2	101	50.50
Chemistry Profile	4	251	125.50
TDM	4	380	190.00
Neonatal Screening	4	467	258.50
Blood Lead	4	294	147.00
Hematology Profile	4	184	92.00
Immunohematology	4	201	100.50
Hemoglobinopathy	4	127	63.50
Platelet Count	4	160	80.00

Since user fees initially will be charged for one-half year only, participants will be provided by mail. April 1, 1986, a fee schedule and instructions for submitting appropriate fees. The fees will be due at the address specified in the mailing, not later than April 15, 1986.

Dated: March 12, 1986.

William E. Muldoon,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 86–5863 Filed 3–14–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. April 3, 9 a.m., Bldg. 1, Wilson Hall, Third Floor, NIH, 9000 Rockville Pike; April 4, 8:30 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD. Please note that times for opening and closing sessions of the meeting are approximate.

Contact person. Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's reseach program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. April 3, 9 a.m. to 10 a.m., unless public participation does not last that long. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed committee deliberations. April 3, 10 a.m. to 4:30 p.m. The committee will review trade secret or confidential commercial information relevant to a pending license application. The portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. April 4, 8:30 to 9:30 a.m.; 11 a.m. to 12 m. The committee will review parts of the intramural research program in the Office of Biologics Research and Review (OBRR). Included for review are: (1) The Molecular Immunology Program of the Division of Biochemistry and Biophysics, and (2) the Pediatric, Enteric, and Neurologic Diseases Program of the Division of Virology. The research that is being conducted in each of these two programs will be discussed during the two open committee discussion times set forth above; FDA has not yet determined the order of discussion of the two programs. A number of individual projects under each of these programs will be reviewed.

Closed committee deliberations. April 4, 9:30 a.m. to 11 a.m., 12 m. to 1 p.m. Each of the two closed sessions involves a continuation of the review of the OBRR research program discussed in the preceding section. These closed sessions involve discussions of personal information concerning the scientific competence of individuals associated with these intramural research programs. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested form the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 10, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86–5703 Filed 3–14–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Minerals Management Service. The notice is titled "Mineral Lease and Royalty Accounting Files—Interior, MMS–1" (formerly EMM–1). Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other updating administrative revisions which have occurred since the publication of the material in the **Federal Register** on June 2, 1983 (48 FR 24791). The revised notice is published in its entirety below.

The sections of the notice describing categories of individuals covered by, and records contained in the system are being revised to expand and clarify the descriptions of information and scope of the records. In accordance with the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, et. seq.), the routine uses section of the notice is expanded to describe additional access to information by States and Indian tribes. Also, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget

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(OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. A routine disclosure to consumer reporting agencies pursuant to the provisions of 5 U.S.C. 552a(b)(12) also is added.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget requires a 60-day period to review such proposals pursuant to its Circular No. A–130. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before May 16, 1986, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: March 6, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/MMS–1

SYSTEM NAME:

Mineral Lease and Royalty Accounting Files—Interior, MMS–1.

SYSTEM LOCATION:

Department of the Interior, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Lease or permit holders, royalty payors and reporters and individuals who have reported rents, royalties, and bonuses from oil or other minerals or gas from producing or nonproducing Federal or Indian leases. Only the records reflecting information about individuals are subject to the Privacy Act. The system also contains records concerning corporations and other business entities that are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease numbers; dates due; debtors; billee; payor; lessee; permittee; lessor (Federal, Indian tribe, or allottee); names and addresses; ID numbers; products produced; production volume; sales value; royalty amounts; dates due; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The principal statutory authorities under which this system is maintained include the Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982 (30 U.S.C. 1701 et seq.); The Act of February 25, 1920 (30 U.S.C. 181 et seq.); The Act of March 3, 1909 (25 U.S.C. 396 et seq.); and, The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (1) Collect royalties and rents; (2) control revenues; (3) distribute funds collected; (4) keep records of royalty accounts, including rents, bonuses, royalties and associated sales and production information; (5) provide data to facilitate comparative auditing of mineral production, royalties due, revenues collected, and funds distributed; (6) gather statistics for managing the mineral leasing program; and (7) provide informational access to external users including States, Indian tribes or agencies, and Federal agencies.

Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation; and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records are compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; and (6) to a State or Indian tribe which has entered into a cooperative agreement pursuant to section 202 of FOGRMA (30 U.S.C. 1732) for sharing of oil and gas royalty information or for carrying out enforcement or other activities.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to the provision of 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies, as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form (i.e. in file folders) as well as machine readable (i.e. magnetic tapes, disks, diskettes and microforms).

RETRIEVABILITY:

Indexed by: Lease or contract number; lessee and/or payor; purchasers of royalty oil; permittee; billee; production reporter; and/or commodity. The information is also retrievable by location, and by whether the lease is an Indian lease or a Federal onshore or offshore lease.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records.

RETENTION AND DISPOSAL:

Determination of the disposition of the records is pending approval of the Archivist.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Royalty Management, Department of the Interior, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Denver, Colorado 80225.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of a record should be addressed to the System Manager. A written, signed request stating that the individual seeks information concerning his/her records is required (43 CFR 2.60).

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager,

signed by the requester and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Lessees, permittees, and individuals on whom records are maintained.

[FR Doc. 86-5725 Filed 3-14-86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Land Management

[ES-035851, Group]

Maine; Filing of Plat of Dependent Resurvey and Survey

March 10, 1986.

1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 4 Northern Division, Bingham's Penobscot Purchase, Hancock County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on April 24, 1986.

2. The dependent resurvey and survey were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., April 24, 1986.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-5677 Filed 3-14-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-035852, Group 29]

Missouri; Filing of Plat of Dependent Resurvey and Subdivision of Sections

March 10, 1986.

1. The plat of the dependent resurvey of a portion of the east boundary (Fifth Principal Meridian), a portion of the south boundary, Township 36 North, Range 1 West, a portion of the east boundary, Township 33 North, Range 2 West, a portion of the subdivisional lines, and the subdivision of sections 18 and 21, Township 33 North, Range 1 West, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on April 24, 1986.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., April 24, 1986.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-5698 Filed 3-14-86; 8:45 am]

BILLING CODE 4310-GJ-M

[4310-53]

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: 30 CFR 601—Helium Purchase Contract Application.

Abstract: This application is a form which requires the company name, address, and amount of original volume of helium desired on initial order with amount of cash advance required. Part 601 of 30 CFR gives information in regard to address and telephone number for securing the forms.

Bureau Form Number: 6–1584–X.

Frequency: Occasional.

Description of Respondents: Purchasers of Government Helium.

Annual Responses: 10.

Annual Burden Hours: 5.

Bureau clearance officer: James T. Hereford 202–634–1125.

Robert C. Horton,

Director, Bureau of Mines.

March 7, 1986.

[FR Doc. 86-5728 Filed 3-14-86; 8:45 am]

BILLING CODE 4310-53-M

[4310-53]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Gas Well Data—Survey of Helium-Bearing Natural Gas.

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations, to evaluate the helium resources of the United States. This evaluation helps assure a continued supply of the valuable natural resource to meet essential Government needs. Results of the gas analyses, along with the data supplied, are published to provide valuable information to industry and to the public when those data are released by the supplier.

Bureau Form Number: 6–1579–A.

Frequency: Annually.

Description of Respondents: Owners and operators of helium-bearing natural gas wells and transmission lines.

Annual Responses: 200.

Annual Burden Hours: 80.

Bureau clearance officer: James T. Hereford, 202–634–1125.

Robert C. Horton,

Director, Bureau of Mines.

March 7, 1986.

[FR Doc. 86-5727 Filed 3-14-86; 8:45 am]

BILLING CODE 4310-53-M

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Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Pesticide Use Proposal.

Abstract: This information collection provides information necessary to issue permits for use of pesticides on national Wildlife refuges. A description of the proposed use, including type of pesticide, method, rate, frequency of application, target pest, and area of treatment is needed to assess likely impacts and establish terms necessary for resource protection.

Form Number(s): No specific form required for respondents; refuge manager submits Pesticide Use Proposal for approval.

Frequency: On occasion.

Description of Respondents: Individuals or households, farms, businesses, non-profit organizations, and small entities.

Annual Responses: 500.

Annual Burden Hours: 50.

Acting Service Clearance Officer: James E. Pinkerton, 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 3, 1986.

Walter O. Stieglitz,

Acting Associate Director, Wildlife Resources.

[FR Doc. 86–5728 Filed 3–14–86; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30774]

Illinois Central Gulf Railroad Co.; Acquisition and Operation Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, The Commission exempts Illinois Central Gulf Railroad Company from regulation under 49 U.S.C. 11343–46 to acquire and operate certain rail lines owned and operated by Missouri Pacific Railroad Company in Natchez, MS, subject to standard employee protection conditions.

DATES: Exemption is effective on April 14, 1986. Petitions to stay are due on March 24, 1986. Petitions for reconsideration are due on April 3, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30774 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Howard D. Koontz, 233 North Michigan Ave., Chicag6, IL 60601.

FOR FURTHER INFORMATION CONTRACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–5733 Filed 3–14–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30792]

Missouri Pacific Railroad Co. and The Atchison, Topeka and Santa Fe Railway Co.; Trackage Rights

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company between Engineering Station 18252 + 37 (Tower 55) at Ft. Worth, TX, and Engineering Station 18425 + 71.4 (Tower 60) at North Ft. Worth, TX, a distance of approximately 3.28 miles.[1] The trackage rights will be effective on March 7, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–5734 Filed 3–14–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–6 (Sub-No. 270)]

Burlington Northern Railroad Company—Abandonment—in Henry and Mercer Counties, IL

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 20.88-mile line of railroad between Alpha (milepost 18.52) and Aledo, IL (milepost 39.40) in Henry and Mercer Counties, IL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 days period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5911 Filed 3–14–86; 8:45 am]

BILLING CODE 7035-01-M

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[1] The trackage rights also include 96.6 feet of ATSF Track No. 67; 450 feet of ATSF Track No. 2; 1,000 feet of ATSF Track No. 3, and 187 feet of ATSF Track No. 14.

[Docket No. AB–55 (Sub-No. 180)]

Seaboard System Railroad, Inc.; Abandonment in Levy County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 20.6-mile line of railroad between Ipco (milepost AND–818.40) and Lebanon Jct. (milepost AND–867.0) in Levy County, FL.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5735 Filed 3–14–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Department of Justice announces the following meetings of the Attorney General's Commission on Pornography.

Meeting

Date and Time: April 29, 1986, 9:00 a.m.–11:00 p.m.

Place: Room 801, Homeowners Loan Corporation Building, 320 First Street, NW., Washington, DC 20530.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material, and (4) Any other relevant matters.

Meeting

Date and Time: April 30, 1986, 9:00 a.m.–11:00 p.m.

Place: Room 801, Homeowners Loan Corporation Building, 320 First Street, NW., Washington, DC 20530.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material, and (4) Any other relevant matters.

Meeting

Date and Time: May 1, 1986, 9:00 a.m.–11:00 p.m.

Place: Room 801, Homeowners Loan Corporation Building, 320 First Street, NW., Washington, DC 20530.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material, and (4) Any other relevant matters.

Meeting

Date and Time: May 2, 1986, 9:00 a.m.–11:00 p.m.

Place: Room 801, Homeowners Loan Corporation Building, 320 First Street, NW., Washington, DC 20530.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material; and (4) Any other relevant matters.

The meetings will be open to the public. Written comments may be submitted regarding relevant issues. Approximately 20 seats will be available at the meeting on a first-come, first-served basis.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final meeting on May 2, 1986.

Contact person for more information or to submit written comments: Alan E. Sears, Executive Director; Attorney General's Commission on Pornography, Department of Justice, Room 1016, HOLC Building, 320 First Street, NW., Washington, DC 20530, (202) 724–7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 86–5742 Filed 3–14–86; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittee on Emergency Core Cooling Systems and Decay Heat Removal Systems; Meeting

The ACRS Subcommittee meeting on Emergency Core Cooling Systems scheduled for March 26, 1986 previously published in the Federal Register (51 FR 8580, Mar. 12, 1986) has been changed to a *combined* Subcommittee meeting with the Decay Heat Removal Systems Subcommittee. All other items regarding this meeting remain the same as previously published.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information related to Westinghouse ECCS codes.

The agenda for the subject meeting shall be as follows:

The Subcommittee will: (1) Continue review of the Duke Power Company's request to delete use of the ECCS UHI system at McGuire and (2) discuss the proposed NRR resolution position for Generic Issue 124, Auxiliary Feedwater System Reliability.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202–634–3267), between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 12, 1986.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 86–5811 Filed 3–14–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50–529]

Arizona Public Service Co. et al., Palo Verde Nuclear Generating Station, Unit 2; Correction

On March 12, 1986, a notice was published in the Federal Register (51 FR 8594 entitled "Bi-Weekly Notice, Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration." On page 8587 of that notice, in column 1, the following replaces the first paragraph of Description of Amendment Request in the section entitled "Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona,":

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The proposed amendment would reflect Commission approval, if granted, allowing: (i) Co-owner Public Service Company of New Mexico (PNM) to transfer a portion of its fee interest in PVNGS Unit 2 to equity investors and (ii) the simultaneous transfer by the equity investors back to PNM of a long-term (approximatley 29½ years) possessory leasehold interest of this share under the terms described in this application. It is contemplated that the equity investors will be third parties not affiliated with PNM. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust consideration may be present. Under the proposed transaction, it is represented that PNM will remain in possession of its present interests in PVNGS Unit 2 under leasehold rather than by virtue of ownership.

The comment period for this one section of the above notice is hereby extended to April 16, 1986, to allow the full 30 days comment period.

Dated at Bethesda, Maryland, this 10th day of March, 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–5812 Filed 3–14–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–354]

Public Service Electric & Gas Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of Appendix J to 10 CFR Part 50 Public Service Electric and Gas Company (the applicant) for the Hope Creek Generating Station located in Salem County, New Jersey.

Environmental Assessment

A. Containment Airlock Surveillance

Identification of Proposed Action: The exemption would eliminate the air lock full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J each time the air lock is opened during periods when containment integrity is not required. In lieu of the above Appendix J requirement, the applicant will perform an overall air lock integrity test when maintenance has been performed on the air lock that could effect the air lock sealing capability. If maintenance has not been performed on the air lock, the applicant intends to test the bulkhead door seal leakage.

Need for Proposed Action: The exemption is required to provide the applicant with greater plant availability over the lifetime of the plant.

Environmental Impact of Proposed Action: The exemption would allow the substitution of an air lock seal test for an air lock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage during an accident which would lead to potentially greater offsite radiological consequences. However, the potential increase due to this exemption is small and would result from the potential leakage path through the door mechanism which will not be measured by this modified test. The six month test requirement of paragraph III.D.2(b)(i) of Appendix J, the three day test requirement of paragraph III.D.2(b)(iii) of Appendix J, and the testing requirements when maintenance is performed on the air lock, will measure the leakage through the door mechanism and provide assurance that the air lock will not leak excessively.

Alternative to Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Leak Rate Testing of Main Steam Isolation Valves (MSIVs)

Identification of Proposed Action: The exemption would exclude the measured leakage for the MSIVs from the combined leak rate for the local leak rate test. The exemption would also allow the leak test for the MSIVs to be performed at reduced pressures. This is an exemption from the testing requirement of Paragraph III.C.2(b) of Appendix J which requires valves, which are sealed with fluid from a seal system, to be pressurized with that fluid to a pressure not less than 1.10Pa.

Need for Proposed Action: The exemption is needed because the design of the MSIVs is such that testing in the reverse direction tends to unseat the valve. Testing of the inboard and outboard MSIVs or outboard MSIV and main steam stop valve simultaneously by pressurizing between the valves at a design pressure of 52.9 psig (1.10 Pa) would lift the disc of the inboard valve, resulting in a meaningless test.

Environmental Impact of Proposed Action: The proposed exemption would exclude the measured leakage through the MSIVs from the combined local leak rate test results. The MSIV leakage control system at Hope Creek is designed to control and minimize the release of fission products that could leak through the closed MSIVs after onset of a loss of coolant accident (LOCA) by maintaining a positive pressure between the MSIVs in each steam line. A radiological analysis including this potential source of containment atmosphere leakage was performed, and the MSIVs will be periodically leak rate tested to verify that the leakage assumed in the radiological analysis is not exceeded.

Alternative to Proposed Action: The proposed Technical Specification requirements for the Hope Creek Generating Station will provide reasonable assurance that no material increase in the probability or extent of MSIV leakage is to be expected. Therefore, there is no significant increase in the probability of higher post-accident offsite or onsite doses related to the proposed exemption and no significant increase in environmental impact beyond that experienced with no exemption.

The principal alternative would be to deny the requested exemption. This would provide no greater assurance that offsite or onsite doses, in the event of an accident that resulted in fission product release, would be any less.

C. Traversing Incore Probe

Identification of Proposed Action: Paragraph III.D.3 of Appendix J states that Type C testing on valves shall be performed during each reactor shutdown for refueling but in no case at intervals greater than two years. The proposed exemption would eliminate the requirement of Type C testing of the Traversing Incore Probe (TIP) Systems shear valves. The TIP system is equipped with two isolation valves outside the containment, one is a solenoid-operated ball valve and the other is an explosive shear valve. Since the shear valve requires testing to destruction, the applicant has requested an exemption from Type C testing of the shear valve.

Need for Proposed Action: The exemption is required in order for the applicant to avoid continuously destroying TIP system shear valves.

Environmental Impact of Proposed Action: The exemption would allow the

applicant to implement a surveillance and replacement program on the shear valves as an alternative to Type C testing to ensure that the shear valves function. The staff concludes that exempting the shear valves from Type C testing will not increase radioactive leakage from the penetration because the valve is the second isolation valve and its closure is required only in emergencies. The staff finds that the functional capability of the shear valves is addressed by the applicant's maintenance program and in the Technical Specifications.

Alternative to Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operation.

D. Instrument Lines

Identification of Proposed Action: The exemption from Paragraph III. C.2(a) of Appendix J would allow exemption from the Type C testing requirements for instrument lines, including suppression pool level and pressure instrumentation, drywell pressure instrumentation and those lines containing excess flow check valves.

Need for Proposed Action: The exemption is needed because the above instrumentation is not capable of being Type C tested. Furthermore, the leak tightness for the above instrumentation is verified during the Integrated (Type A) Leak Rate Test.

Environmental Impact of Proposed Action: These instrument lines consist of small diameter piping located outside the containment connected to a sealed instrument transducer, and are passive systems. They are designed to withstand the pressure and temperature conditions following the onset of a LOCA. Additionally, the leak tightness for the instrument lines is verified during the Integrated (Type A) Leak Rate Test. With respect to this exemption from Appendix J, the increment of environmental impact is related soley to the potential increased probability and the magnitude of containment leakage during an accident which would lead to potentially greater offsite radiological consequences. However, the potential increase due to this exemption is small and would result from leakage through these instrument lines. Based on the applicant's proposed alternative for testing leakage and the design of these instrument lines, it has been determined that the environmental impact would be negligible.

Alternative to Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in unwarranted delays in power ascension.

E. Thermal Relief Valves (TRVs)

Identification of Proposed Action: The exemption from Paragraph III.C.2(a) of Appendix J would allow the applicant to be exempted from the Type C test requirement for the thermal relief valves (TRVs).

Need for Proposed Action: The exemption is needed because the above instrumentation is not capable of being Type C tested without adding a valve to form the test boundary. To add another valve on the TRV discharge piping would defeat the purpose for which the relief valves were installed, and also decrease the probability that the TRVs would function properly when required.

Environmental Impact of Proposed Action: The TRVs, in the Residual Heat Removal (RHR) System and Core Spray (CS), System, are of safety grade design with the containment isolation function in the reverse flow direction. Additionally, the pressure setpoint for the valves to open is much higher than the containment design pressure. These features will prevent an outward leakage path through the TRVs. Although the applicant is requesting an exemption to Type C testing, the integrity of the TRVs is being verified during the Type A test. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage during an accident which would lead to potentially greater offsite rediological consequences. However, the potential increase due to this exemption is small and would result from leakage through the TRVs. Based on the applicant's proposed alternative for testing leakage and the design of these instrument lines, it has been determined that the environmental impact would be negligible.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no envrionmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations but would result in unwarranted delays in power ascension.

Alternative Use of Resources: These actions in the granting of exemptions A through E above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Hope Creek Generating Station," dated December 1984.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests that support the requested exemptions A through E above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the requested exemptions.

For further details with respect to this action, see the request for the exemptions as listed herein, in the applicant's December 12, 1985, submittal, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 10th day of March 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–5813 Filed 3–14–86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 678; Docket No. A86–15]

Palo Verde, AZ; Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Issued: March 11, 1986.

Docket Number: A86–15

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Name of Affected Post Office: Palo Verde, Arizona 85343

Name(s) of Petitioner(s): Mrs. Eliza W. Narramore

Type of Determination: Consolidation

Date of Filing of Initial Appeal Papers: March 6, 1986

Categories of Issues Apparently Raised:

1. Effect on postal services. [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request: a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before March 21, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

March 6, 1986—Filing of Petition

March 11, 1986—Notice and Order of Filing of Appeal

March 31, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

April 10, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

April 30, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

May 15, 1986—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

May 22, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

July 7, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-5723 Filed 3-14-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14971; File No. 812-6166]

American Capital Government Securities, Inc.; Application

March 7, 1986.

Notice is hereby given that American Capital Government Securities, Inc. ("Applicant"), 2800 Post Oak Boulevard, Houston, Texas 77056, filed an application on July 31, 1985, and an amendment thereto on December 18, 1985, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from the provisions of section 19(b) of the Act and Rule 19b–1 thereunder, to permit Applicant to distribute long-term capital gains from certain options and futures transactions more frequently than once a year. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

According to the application, Applicant is designed for investors who seek a high current return with frequent distributions. It seeks high current return from interest, premiums from writing covered call options and secured put options, any gains from sales of portfolio securities (whether upon the exercise of options or otherwise) and profits from closing transactions with respect to options and futures contracts. Applicant generally invests all of its assets in debt obligations issued or quaranteed by the U.S. Government, its agencies or instrumentalities, options on such U.S. Government securities, interest rate futures contracts, options on such contracts and repurchase agreements fully collateralized by U.S. Government securities. Dividends from net investment income are declared and paid monthly to shareholders. Applicant distributes quarterly, or on such other basis as may be determined from time to time by its board of directors, any net realized short-term capital gains, including those derived from expired options it has written, from closing purchase transactions and from securities sold upon the exercise of options or otherwise. Distributions of any net long-term capital gains realized during a fiscal year have been made once a year.

Applicant states that the Tax Reform Act of 1984 amended section 1256 of the Internal Revenue Code and significantly altered the tax treatment of capital gains from options on U.S. Government securities held or written by the Applicant, all of which have become section 1256 contracts. Prior to the 1984 amendments to section 1256, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss. Under the 1984 amendments to the tax law, 60% of the gain or loss recognized by the Applicant with respect to options on U.S. Government securities is treated as long-term capital gain or loss, and the remaining 40% is treated as short-term capital gain or loss. The 1984 amendments also resolved the issue of the tax treatment of options on interest rate futures by designating such options as section 1256 contracts. Regulated futures contracts, which were made subject to section 1256 by the Economic Recovery Act of 1981, were also designated as section 1256 contracts by the 1984 amendments. Thus, 60% of all gains and losses recognized by Applicant with respect to options and futures contracts are treated as long-term capital gain or loss and 40% as short-term capital gain or loss.

According to Applicant, the purpose of this change in the tax law with respect to options on U.S. Government securities was to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions. There is no evidence that Congress intended the amendment of section 1256 to limit the frequency with which registered investment companies may distribute capital gains from options transactions. Nevertheless, the new characterization of 60% of the gain from options transactions as long-term capital gain triggers section 19(b) of the Act and Rule 19b–1 thereunder.

Applicant asserts that none of the purposes of section 19(b) of the Act and Rule 19b–1 thereunder would be served by a strict application of these provisions to 60% of the capital gains generated by options and futures transactions. It is submitted that characterization of these gains as long-term capital gains should not make Applicant's shareholders more likely to confuse them with dividends paid from net interest income, since shareholders receive distributions of short-term capital gains more frequently than once a year. Furthermore, Applicant will continue clearly to distinguish any distribution of capital gains from distributions out of net interest income in accordance with section 19(a) of the Act.

Applicant believes that designating an appropriate part of each distribution of gains from options and futures transactions as long-term capital gain is

in the best interest of its shareholders since it will spread the benefit of the lower capital gains tax rate to persons who are shareholders at various points during the year. Alternativley, Applicant would designate its final distribution of gains with respect to a fiscal year as being the distribution of long-term capital gains. It is submitted that this approach could be disadvantageous to Applicant's shareholders because they might not receive the full tax benefit that section 1256 provides because a portion of the long-term capital gain realized on options and futures transactions may not be designated as such if the portion exceeds the amount of the final distribution.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or low that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5763 Filed 3-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14981 (File No. 812-6185)]

IDS Certificate Co., Inc.; Notice of Application

March 11, 1986.

Notice is hereby given that IDS Certificate Company, Inc. ("Applicant"), IDS Tower, Minneapolis, Minnesota 55474, registered under the Investment Company Act of 1940 ("Act") as a face-amount certificate company, filed an application on August 19, 1985, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicant from certain provisions of Sections 28(a) and 28(i) of the Act, in order to permit Applicant to use an alternative method of calculating its reserves. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act thereunder for the text of the applicable provisions thereof.

Applicant, a wholly-owned subsidiary of IDS Financial Services Inc., a registered investment adviser and broker-dealer has issued face-amount certificates since 1941 and currently has 41 series of face-amount certificates outstanding. Applicant states that face-amount certificate companies are required by section 28(a)(2) of the Act to maintain, at all times, minimum certificate reserves on all outstanding face-amount certificates. A primary concern of Congress when the Act was adopted, Applicant asserts, was the adequacy and security of face-amount certificate company reserves, and so a uniform system of calculating reserves was imposed and minimum levels of reserves required, and the reserves of face-amount certificates companies could be invested only in certain types of "qualified assets."

Sections 28 and 28(i) of the Act specify the amount of reserves required to be maintained on fully paid and installment certificates. An interest rate of 3½% is used to calculate those reserves. The application states that reserve payments must be made in the same frequency as payments are made by the certificate holder and must be sufficient in amount, when accumulated at 3½% per annum compounded annually, to provide the minimum maturity or face-amount of the certificate when due. The 3½% per annum rate is also important to Applicant because it constitutes the maximum interest rate it can guarantee in advance on its certificate products. All other interest must be declared as additional interest or additional credits. According to Applicant, this concept is extremely confusing for certificate holders and potential customers who find it difficult to understand why the interest rates on certificate products must be split into guaranteed minimum interest (the 3½%) and additional interest or additional credits.

According to the application, when the Act's provisions were adopted, the 3½% rate of interest was a generous market rate of interest. The fixed 3½% interest rate now used in reserve calculations does not work well, according to the Applicant, in a rapidly changing financial environment and prevents it from offering its customers more modern products. Applicant asserts that these products are difficult if not impossible to offer with the current reserve calculations because depositing the customer's initial investment in Applicant's reserves would not be sufficient.

Applicant seeks an order pursuant to section 6(c) of the Act exempting it from the provisions of sections 28(a) and 28(i) as they relate to the 3½% reserve calculation. Applicant proposes that it be permitted to calculate its statutory reserves using a floating interest rate analogous to that now used by the insurance industry. On a date certain each year (such as April 1), Applicant would use the average of the Moody's Corporate Bond Yield Average-Monthly Average Corporates ("Moody's Index") for the preceding twelve months to determine the maximum interest rate which it could use to calculate its reserves for all certificates issued during the following 12-month period. Applicant could use a lower rate if it so desired. Once the average Moody's Index was determined, Applicant would weight the index by multiplying it by 80%. Applicant concedes that some weighting is appropriate to assure that a relatively conservative interest rate figure is used. The application uses the example that, if on April 1, 1986, the average Moody's Index for the preceding 12 months was 10.5%, Applicant would calculate the necessary reserves for all certificate products issued for the 12 months beginning May 1, 1986 based on a rate not in excess of 10.5% times 80%, or 8.4%. This process would continue each year.

Applicant believes the exemption requested is appropriate in the public interest and consistent with the protection of investors. By having a floating rate, Applicant's reserves would be aligned more closely with the prevailing economic conditions rather than being tied to an outmoded and arbitrary fixed interest rate. Applicant also submits that its proposal is appropriate in the public interest for the additional reasons mentioned above, such as the public demand for new products bearing higher interest rates. Insofar as investor protection is concerned, Applicant notes several conditions, which exist including the fact that the floating rate of interest to be used on Applicant's reserves will be a 12-month average to avoid unusual, temporary fluctuations. Furthermore, Applicant must also maintain a capital stock "cushion" of $250,000 pursuant to section 28(a)(1) of the Act. Beyond the $250,000 cushion, Applicant agreed in an earlier no-action letter request to the Commission (Investors Syndicate of America, Inc., March 22, 1974), to maintain an amount of unappropriated earned surplus and capital equal to at least 5% of net certificate reserves.

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Finally, with respect to the Applicant's being consistent with the purposes fairly intended by Section 28 the application submits that the Applicant will continue to be bound by the statutory provisions of qualified assets that restricts Applicant's "qualified assets" to those allowed to District of Columbia life insurance companies.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 3, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-5833 Filed 3-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22987; File No. SR-CSE-86-1]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating To Small Order Execution Guarantee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1986, The Cincinnati Stock Exchange ("CSE") filed with the Securities and Exchange Commission the Proposed Rule Change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Proposed Rule Change increases from 1099 to 2099 the number of shares of a public agency market order which is guaranteed an automatic execution at the best available price represented by all Intermarket Trading System participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Propose Rule Change is to improve the competitive position of the CSE in the national market system.

The Proposed Rule Change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") in that it is designed to perfect the mechanism of a free and open market and a national market system. The Proposed Rule Change is also consistent with section 11A(a)(1) of the Act because it assures economically efficient executions of securities transactions, thereby benefiting the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

The Exchange has neither solicited nor received comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC., 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Propsosed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5834 Filed 3-14-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/952]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 3, 1986 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services; Study Group B deals with preparations for the PC/WATTC Study Group meeting.

Study Group A will review matters relating to the January 1986 Working Party meetings.

Study Group B will review results and requirements for future activities following the recent preparatory committee meeting on PC-WATTC.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the

Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: March 7, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-5700 Filed 3-14-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/950]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 16, 1986 in Room 1205, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Consideration of contributions for U.S. CCITT Study Group XVII, (Geneva, April 21-25);
2. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: March 6, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-5399 Filed 3-14-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/951]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 15, 1986 in Room 1205, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on Study Group XI and Study Group XVIII Reapporteur Meetings;
2. Consideration of contributions to Study Group XI Working Parties meeting (Geneva, April 30);
3. Consideration of contributions to Study Group XVIII (Geneva, June 30-July 18);
4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: March 6, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-5699 Filed 3-14-86; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Office for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission
Title of Information Collection: Rebate Processing Form/Sales Data Form
Frequency of Use: On Occasion
Type of Affected Public: Individuals and small business
Small Business or Organizations Affected: Yes
Federal Budget Functional Category Code: 271
Estimated Number of Annual Responses: 1,200
Estimated Total Annual Burden Hours: 265

Need For and Use of Information: Increasing use of high-efficiency air conditioners (HEAC) in the Tennessee Valley must be encouraged to mitigate the costliness of high load growth on TVA's power system. TVA is encouraging consumer purchase of HEAC's through a rebate offering. These forms allow TVA to provide, monitor, and evaluate the rebate program.

Dated: March 10, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-5720 Filed 3-14-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Agreements Filed During the Week Ending March 7, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No	Parties	Subject	Proposed effective date
Mar. 4, 1986	43845	Members of International Air Transport Association	U.S. Algeria Airport Tax	Apr. 1, 1986.
Do	43846 R-1 and R-2	do	Standard Revalidation-North Atlantic	Do.
Mar. 5, 1986	43852	do	Proportional Fares-Netherlands	Do.
Mar. 3, 1986	43837	Trans World Airlines, Inc., c/o Mark A. Buckstein, 605 Third Avenue, New York, New York 10158. Ozark Holdings, Inc., c/o James T. Lloyd, Preston, Thorgrimson, Ellis & Holman, 1735 New York Avenue, NW., Suite 500, Washington, D.C. 20006. Joint Application of Trans World Airlines, Inc. and Ozark Holdings, Inc., among whose wholly owned subsidiaries is Ozark Air Lines, Inc., have entered into an Agreement of Merger pursuant to which Ozark would become a wholly owned subsidiary of TWA.		

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-5731 Filed 3-14-86; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended March 7, 1986

Subpart O Applications

The due date for answers conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (See 14 CFR 302.1701 et. seq.)

Date filed	Docket No.	Description
Mar. 3, 1986	43835	Aero Trasporti Italiani A.T.I.-S. p.A., c/o August T. Lembo, Carella, Byrne, Bain & Gilfillan, 666 Fifth Avenue New York, New York 10103. Application of Aero Trasporti Italiani A.T.I.-S.p.A. pursuant to Section 402 of the Act requests a foreign air carrier permit to operate charter passenger and cargo flights to and from United States cities. Answers may be filed by March 31, 1986.
Do.	43836	Eastern Air Lines, Inc., c/o Robert N. Duggan, 1030-15th Street NW., Washington, D.C. 20005. Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificates of public convenience and necessity for Routes 239, 240 and 258 which authorize Eastern to engage in air transportation between the United States and the Yucatan area of Mexico. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 31, 1986.
Do.	43838	Orion Lift Service, Inc. d/b/a Orion Air, c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Avenue NW., Washington, D.C. 20007. Application of Orion Lift Service, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for expedited issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the United States and Germany. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 31, 1986.
Do.	43840	Orion Lift Service, Inc. d/b/a Orion Air, c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Avenue NW., Washington, D.C. 20007. Application of Orion Lift Service, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for expedited issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the United States and the United Kingdom. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 31, 1986.
Do.	43842	Orion Lift Service, Inc. d/b/a Orion Air, c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Avenue NW., Washington, D.C. 20007. Application of Orion Lift Service, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for expedited issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the United States and France. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 31, 1986.
Mar. 4, 1986	43847	Air Puerto Rico Airlines, Inc., c/o Robert E. Cohn, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036. Application of Air Puerto Rico Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests issuance of a certificate of convenience and necessity authorizing it to engage in scheduled foreign air transportation of passengers, property and mail over the following routes: Between San Juan, Puerto Rico and a point or points in Haiti; the Dominican Republic; Tortola, British Virgin Islands; Virgin Gorda, British Virgin Islands; St. Maarten, Netherlands Antilles; St. Kitts, Leeward Islands; Antigua, West Indies; Guadeloupe; and Martinique. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 1, 1986.
Do.	43741	Statewest Airlines, Inc., c/o Richard A. Fitzgerald, 223 Cypress Hills Court, San Ramon, California 94583. Amendment No. 1 to the Application of Statewest Airlines, Inc. for a certificate of public convenience and necessity to engage in scheduled and charter interstate/overseas air transportation. (Additional Information). Answers may be filed by April 1, 1986.
Mar. 6, 1986	43855	Haines Airways, Inc., c/o Bill Miller, Bill Miller Associates, Suite 604, 1341 G Street NW., Washington, D.C. 20005. Application of Haines Airways, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate scheduled air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming applications, Motions to Modify Scope and Answers may be filed by April 3, 1986.
Mar. 7, 1986	42570	Bahamasair Holdings Ltd., c/o George U. Carneal, Hogan & Hartson, 815 Connecticut Avenue NW., Washington, D.C. 20006. Third Amendment to the Application of Bahamasair Holdings Ltd., requests renewal and amendment of its foreign air carrier permit. Bahamasair requests that its pending application should be amend by adding the following new coterminal points: Houston, Texas; New Orleans, Louisiana; Memphis, Tennessee; Nashville, Tennessee; and Charlotte, North Carolina. Answers may be filed by April 4, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division
[FR Doc. 86-5732 Filed 3-14-86; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD3 86-06]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT..

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on April 9, 1986, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, beginning at 9:30 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introduction of Vice Admiral P. A. Yost, Commander, Third Coast Guard District and Committee Sponsor.

2. Introduction of Committee members and Coast Guard officers.

3. Discussion of charter and purpose of the Committee by Captain L. N. Hein, Executive Director of Committee.

4. Short discussion on per-diem/travel entitlements for committee members and procedures for publishing of minutes by Captain R. J. Heym, Executive Secretary.

5. Election by popular vote of Committee Chairperson.

6. Report on USCG perception of Vessel Traffic Serivce (VTS) participation. The Coast Guard is particularly interested in obtaining views and recommendations on improving service, improving level of participation, and shortening the needed radio communications.

7. Establishment of rules for public participation in New York Harbor Traffic Management Advisory Committee meetings.

8. Discussion of items for next meeting by Committee Chairperson.

9. Discussion of dates and places of future meetings.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, Third Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Captain R. J. Heym, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

P.A. Yost,
Vice Admiral, United States Coast Guard Commander, Third Coast Guard District.
[FR Doc. 86-5606 Filed 3-14-86; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noice exposure maps submitted by City of Lebanon, New Hampshire, for Lebanon Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lebanon Municipal Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 3, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 7, 1986. The public comment period ends May 6, 1986.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, MA 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lebanon Municipal Airport are in compliance with applicable requirements of Part 150, effective March 7, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 3, 1986. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Lebanon, New Hampshire submitted to the FAA on February 28, 1986, noise exposure maps, descriptions and other documentation which were produced during Airport Noise Compatibility Planning (Part 150) Study at Lebanon Municipal Airport from October 1984 to November 1985. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104 (b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by City of Lebanon. The specific maps under consideration are Figure 4-2 and Figure 4-3 along with the supporting documentation in the final report of the

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Part 150 Study. The FAA has determined that these maps for Lebanon Municipal Airport are in compliance with applicable requirements. This determination is effective on March 7, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lebanon Municipal Airport, also effective on March 7, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 3, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC

Federal Aviation Administration, 12 New England Executive Park, Airports Division, ANE–610, 12 New England Executive Park, Burlington, MA 01803

Mr. Marcel J. Theberge, Airport Manager, Lebanon Municipal Airport, Lebanon, N.H. 03784

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on March 7, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–5680 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective August 22, 1985, First Trust Company of Saint Paul, Saint Paul, Minnesota, changed its name to First Trust Company, Inc.

Dated: March 12, 1986.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 86–5761 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-81-M

[Docket S–796]

American Shipping, Inc.; Application for Permission To Operate in the Domestic Alaskan Oil Trade

Notice is hereby given that American Shipping, Inc. owner of the BEAVER STATE by application dated March 12, 1986, has applied for written permission under sections 805(a) and 506 of the Merchant Marine Act, 1936, as amended (Act), for its 91,849 DWT tanker SS BEAVER STATE to operate in the domestic Alaskan oil trade for two months. Four consecutive voyages from Valdez to the West Coast would carry crude oil commencing about March 20–23, 1986. The vessel will be operated pursuant to consecutive voyage charters with SPC Shipping Corp., a subsidiary of SOHIO.

The applicants submitted a letter from SOHIO dated March 12, 1986, requesting the owners of the BEAVER STATE to apply for a month waiver. By letter dated March 12, 1986, to the Maritime Administration, SOHIO also stated that delays due to bad weather and ship repairs have now resulted in an urgent need for additional tonnage in the short term as evidenced by the recent reduction in throughput of the Trans Alaska Pipeline. SOHIO has canvassed all available tonnage and asserts that no suitable vessel would be available to load March 20–23, 1986.

The BEAVER STATE was built with construction-differential subsidy and is operating under a long-term operating-differential subsidy contract. Written permission pursuant to section 805(a) of the Act is required for the proposed Alaskan service notwithstanding the fact that the vessel would not be eligible for operating-differential subsidy for the period. Payback of construction-differential subsidy will be required pursuant to section 506 of the Act.

It will also be necessary to extend the section 805(a) written permission granted to American to its related companies which are holders of long-term operating-differential subsidy contracts. These companies are Atlas Marine Company and Aquarius Marine Company.

Although publication of a Notice with respect to American's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on American's application.

Any person, firm, or corporation having any interest in the application for sections 805(a) and 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by the close of business on March 20, 1986. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition shall state clearly and concisely

the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: March 13, 1986.

Georgia P. Stamas,

Secretary.

[FR Doc. 86–5893 Filed 3–14–86; 8:45 am]

BILLING CODE 4910-81-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances, that a hearing is scheduled for March 27, 1986 at 10:00 a.m. at the Denver Regional Office for Station Committee on Educational Allowances, in the Adjudication Hearing room, Room 410 of the Denver Veterans Administration Regional Office, 44 Union Blvd., Denver, CO, to determine whether Veterans Administration benefits for all eligible persons enrolled in the Management Trainee Course, offered by Shopmier-Fawcett, Office Equipment, Inc., 205 N. Main Street, Pueblo, CO 81003, should be discontinued as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: March 7, 1986.

Donald M. Twitty,

Director, VA Regional Office, Denver, CO.

[FR Doc. 86–5724 Filed 3–14–86; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, April 8 and 9, 1986. The sessions will begin at 9 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–389–2886) prior to March 28, 1986.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after meeting. Oral statements will be heard at 11:30 a.m. on April 9, 1986.

Dated: March 7, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–5765 Filed 3–14–86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 51
Monday, March 17, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Federal Home Loan Bank Board	2
Securities and Exchange Commission	3

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 19, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Monitoring Voluntary Standards

The Commission will consider policy options for monitoring industry conformance to voluntary standards and recent comments received on plans to monitor industry enforcement of voluntary standards.

Closed to the Public

2. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
March 13, 1986.

[FR Doc. 86-5876 Filed 3-13-86; 12:51 pm]

BILLING CODE 6355-01-M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Wednesday, March 26, 1986 (3:00—6:00 p.m.); Thursday, March 27, 1986 (8:00 a.m.—3:00 p.m.).

PLACE: The Mariott Marquis, Atlanta, Georgia.

STATUS: Federal Savings and Loan Advisory Council Meeting.

CONTACT PERSON FOR MORE INFORMATION: John M. Buckley, Jr. (202/377–6577) or Debra J. Ahearn (202/377–6924).

MATTERS TO BE CONSIDERED:

Committee reports regarding the following:

1. Interest Rate Risk and Fixed Rate Mortgages
2. FSLIC Funding Options
3. D & O Coverage
4. Classification of Assets

Jeff Sconyers,
Secretary.
March 13, 1986.

[FR Doc. 86-5897 Filed 3-13-86; 2:58 pm]

BILLING CODE 6720-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 7362 March 3, 1986].

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, February 24, 1986.

CHANGE IN THE MEETING: Additional items/meeting.

The following additional items were considered at a closed meeting held on Wednesday, March 5, 1986, at 2:30 p.m.

Formal orders of investigation.

Regulatory matter regarding financial institution.

Opinion.

The following items were considered at a closed meeting held on Thursday, March 6, 1986, following the 10:00 a.m. open meeting.

Proposed order in administrative proceeding of an enforcement nature.

Administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Mahaffey at (202) 272–2091.

Shirley E. Hollis,
Assistant Secretary.
March 10, 1986.

[FR Doc. 86-5832 Filed 3-12-86; 4:15 pm]

BILLING CODE 8010-01-M

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federal register

Monday
March 17, 1986

Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of March 1, 1986, of 77 rescission proposals and 58 deferrals contained in the first three special messages of FY 1986. These messages were transmitted to the Congress on October 1 and November 25, 1985, and February 5, 1986.

Rescissions (Table A and Attachment A)

As of March 1, 1986, there were rescission proposals totaling $9,945.7 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1986, $15,309.1 million in 1986 budget authority was being deferred from obligation and $105.2 million in 1986 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1986.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Register listed below:

Vol. 50, FR p. 41100, Tuesday, October 8, 1985

Vol. 50, FR p. 49496, Monday, December 2, 1985

Vol. 51, FR p. 5830, Tuesday, February 18, 1986.

James C. Miller III,
Director.

BILLING CODE 4710-01-M

TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President..............................	$9,945.7
Accepted by the Congress..	0
Rejected by the Congress..	0
Pending before the Congress..	$9,945.7

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TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.............................	$23,388.6
Routine Executive releases through March 1, 1986............. (OMB/Agency releases of $7,758.9 million and cumulative adjustments of $8.2 million)	-7,750.7
Overturned by the Congress...	-223.6
Currently before the Congress......................................	$15,414.3 a/

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a/ This amount includes $105.2 million in outlays for a Department of the Treasury deferral (D86-30A).

Attachments

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Multilateral Assistance								
International organizations and programs.	R86-1		39,760	2-5-86				
DEPARTMENT OF AGRICULTURE								
Agricultural Stabilization and Conservation Service								
Rural clean water program................	R86-2		6,000	2-5-86				
Agricultural conservation program........	R86-3		140,839	2-5-86				
Water bank program.......................	R86-4		8,371	2-5-86				
Dairy indemnity program..................	R86-5		95	2-5-86				
Rural Electrification Administration								
Reimbursement to the Rural electrification and telephone revolving fund for interest subsidies and losses..	R86-6		100,000	2-5-86				
Purchase of Rural Telephone Bank capital stock..................................	R86-7		28,710	2-5-86				
Farmers Home Administration								
Rural development loan fund..............	R86-10		13,674	2-5-86				
Soil Conservation Service								
Watershed and flood prevention operations	R86-11		60,401	2-5-86				
Great plains conservation program........	R86-12		6,606	2-5-86				
Food and Nutrition Service								
Food donations program...................	R86-13		5,183	2-5-86				
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs.	R86-14		101,309	2-5-86				
International Trade Administration								
Operations and administration............	R86-15		19,290	2-5-86				
National Oceanic and Atmospheric Administration								
Operations, research, and facilities.....	R86-16		63,323	2-5-86				

Attachment A - Status of Rescissions - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R86-17		21,820	2-5-86				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R86-18		7,177	2-5-86				
Special programs	R86-19		37,782	2-5-86				
Office of Bilingual Education and Minority Languages Affairs								
Immigrant education	R86-20		28,710	2-5-86				
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R86-21		44,364	2-5-86				
Rehabilitation services and handicapped research	R86-22		75,439	2-5-86				
Payments to institutions for the handicapped	R86-23		446	2-5-86				
Office of Vocational and Adult Education								
Vocational and adult education	R86-24		210,337	2-5-86				
Office of Postsecondary Education								
Student financial assistance	R86-25		456,347	2-5-86				
Higher education	R86-26		180,882	2-5-86				
Special Institutions								
Howard University	R86-27		5,699	2-5-86				
Office of Educational Research and Improvement								
Libraries	R86-28		33,017	2-5-86				

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before, Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R86-9		211,455	2-5-86				
Indian health	R86-29		24,262	2-5-86				
Indian health facilities	R96-30		38,642	2-5-86				
Centers for Disease Control								
Disease control, research, and training	R86-31		34,096	2-5-86				
National Institutes of Health								
National Cancer Institute	R86-32		6,800	2-5-86				
National Heart, Lung and Blood Institute	R86-33		11,469	2-5-86				
National Institute of Diabetes and Digestive and Kidney Diseases	R86-34		7,980	2-5-86				
National Institute of Neurological and Communicative Disorders and Strokes	R86-35		9,554	2-5-86				
National Institute of Allergy and Infectious Disease	R86-36		1,513	2-5-86				
National Institute of General Medical Sciences	R86-37		7,358	2-5-86				
National Institute of Child Health and Human Development	R86-38		1,150	2-5-86				
National Eye Institute	R86-39		5,224	2-5-86				
National Institute on Aging	R86-40		2,679	2-5-86				
Office of the Director	R86-41		23,055	2-5-86				
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R86-42		39,718	2-5-86				
Health Care Financing Administration								
Program management	R86-43		912	2-5-86				
Social Security Administration								
Refugee and entrant assistance	R86-44		87,551	2-5-86				
Human Development Services								
Human development services	R86-45		29,980	2-5-86				
Family social services	R86-46		6,157	2-5-86				
Work incentives	R86-47		45,884	2-5-86				
Community services block grant	R86-48		182,139	2-5-86				
Community development credit union revolving fund	R86-49		2,529	2-5-86				

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Departmental Management								
General Departmental management	R86-50		19,619	2-5-86				
Policy research	R86-51		220	2-5-86				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs	R86-52		4,416,151	2-5-86				
Congregate services program	R86-53		2,555	2-5-86				
Housing counseling assistance	R86-54		3,313	2-5-86				
Community Planning and Development								
Urban development action grants	R86-55		220,062	2-5-86				
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Land acquisition	R86-56		3,000	2-5-86				
United States Fish and Wildlife Service								
Land acquisition	R86-57		4,951	2-5-86				
National Park Service								
Construction	R86-58		13,613	2-5-86				
Land acquisition	R86-59		83,917	2-5-86				
Historic preservation fund	R86-60		18,523	2-5-86				
DEPARTMENT OF JUSTICE								
Federal Prison System								
National Institute of Corrections	R86-61		3,315	2-5-86				
Office of Justice Programs								
Justice assistance	R86-62		134,666	2-5-86				
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services	R86-63		416,037	2-5-86				

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Rail service assistance	R86-64		14,355	2-5-86				
Northeast corridor improvement program	R86-65		11,962	2-5-86				
Railroad rehabilitation and improvement financing funds	R86-66		32,059	2-5-86				
Urban Mass Transportation Administration								
Discretionary grants	R86-67		521,275	2-5-86				
DEPARTMENT OF THE TREASURY								
Office of Revenue Sharing								
Payments to State and local government fiscal assistance trust fund	R86-68		759,975	2-5-86				
Federal Law Enforcement Training Center								
Salaries and expenses	R86-69		4,976	2-5-86				
United States Customs Service								
Salaries and expenses	R86-70		4,169	2-5-86				
Operation and maintenance, air interdiction program	R86-71		19,275	2-5-86				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R86-72		26,796	2-5-86				
OFFICE OF PERSONNEL MANAGEMENT								
Government payment for annuitants, employees health benefits	R86-73		600,000	2-5-86				
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission								
Appalachian regional development programs	R86-74		81,000	2-5-86				
Corporation for Public Broadcasting								
Public broadcasting fund	R86-75		44,000	2-5-86				

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As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Endowment for the Humanities								
Grants and administration................	R86-76		1,903	2-5-86				
State Justice Institute								
Salaries and expenses....................	R86-78		7,656	2-5-86				
United States Railway Association								
Administrative expenses..................	R86-79		640	2-5-86				
Total, rescissions........................		0	9,945,671					

Note. - The amount of the rescission proposal for Subsidized housing programs (R86-52) for the "Rental rehabilitation grants program" was inadvertently shown in the Third Special Message as $71,755,000 instead of $71,775,000. This report reflects the correct amount.

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Attachment B - Status of Deferrals - Fiscal Year 1986

As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D86-1	10,000		10-1-85					10,000
International Security Assistance									
Foreign military sales credit..............	D86-32	4,590,000		2-5-86	1,545,770				3,044,230
Economic support fund......................	D86-24	1,222,216		11-25-85					2,751,005
	D86-24A		1,936,060	2-5-86	407,271				
Military assistance program................	D86-33	661,350		2-5-86	172,815				488,535
International military education and training..................................	D86-34	27,245		2-5-86	27,245				0
Multilateral Development Banks									
Contribution to the special facility for sub-saharan Africa........................	D86-35	75,000		2-5-86	75,000				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal..................	D86-2	77,913		10-1-85					77,913
Timber salvage sales.......................	D86-3	22,854		10-1-85	151				22,702
DEPARTMENT OF COMMERCE									
Economic Development Administration									
Economic development assistance programs......................	D86-36	40,000		2-5-86					40,000
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D86-26	32,333		11-25-85	[illegible]				0
Fisheries loan fund........................	D86-25	1,959		11-25-85					2,297
	D86-25A		338	2-5-86					

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DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.............	D86-4	353,079		10-1-85					
	D86-4A		1,488,579	2-5-86	558,509				1,283,149
Family Housing									
Family housing, Defense....................	D86-27	11,800		11-25-85					
	D86-27A		210,042	2-5-86					221,842
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation......................	D86-5	1,168		10-1-85					
	D86-5A		88	2-5-86	124			106	1,238
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply, research and development activities................................	D86-38	65,763		2-5-86					65,763
Uranium supply and enrichment activities...	D86-58	584,158		2-5-86					584,158
Fossil energy research and development.....	D86-6	9,247		10-1-85					
	D86-6A		55,565	2-5-86	6,640			6,640	64,812
Fossil energy construction.................	D86-7	7,038		10-1-85	4,964				2,074
Naval petroleum and oil shale reserves.....	D86-8	155,668		10-1-85					
	D86-8A		10,798	2-5-86	130,005				36,461
Energy conservation........................	D86-9	9,880		10-1-85	3,080				6,800
Strategic petroleum reserve................	D86-37	197,941		2-5-86					197,941
SPR petroleum account......................	D86-10	536,958		10-1-85					
	D86-10A		40,576	2-5-86					577,534
Alternative fuels production...............	D86-11	1,149		10-1-85					
	D86-11A		750	2-5-86	1,899				0
Power Marketing Administration									
Southeastern Power Administration, Operation and maintenance.................	D86-12	25,344		10-1-85	23,936			681	2,089
Southwestern Power Administration, Operation and maintenance.................	D86-13	5,000		10-1-85					
	D86-13A		8,243	2-5-86					13,243

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As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-86
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D86-14	27,095		10-1-85					27,095
Departmental Administration Departmental administration	D86-15	8,501		10-1-85	8,501				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D86-16	3,000		10-1-85					3,000
Health Care Financing Administration Program management	D86-57	8,489		2-5-86					8,489
Social Security Administration Limitation on administrative expenses (construction)	D86-28	6,489		11-25-85					6,647
	D86-28A		157	2-5-86					
Limitation on administrative expenses (excludes disability determination services)	D86-39	30,000		2-5-86					30,000
Limitation on administrative expenses (information technology systems)	D86-40	114,641		2-5-86					114,641
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs Annual contributions for assisted housing - Budget authority	D86-41	7,032,443		2-5-86	4,309,566				2,722,876
Contract authority	D86-42	641		2-5-86	641				0
Rental housing development grants	D86-43	77,400		2-5-86	74,175				3,225
Congregate services program	D86-44	2,670		2-5-86	2,555				115
Housing for the elderly or handicapped fund	D86-45	599,801		2-5-86					599,801
Nonprofit sponsor assistance	D86-46	1,000		2-5-86	500				500

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As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-86
Community Planning and Development									
Rental rehabilitation grants program.......	D86-47	77,000		2-5-86	77,000				0
Community development grants...............	D86-48	500,000		2-5-86					500,000
Urban development action grants............	D86-49	251,000		2-5-86	251,000				0
Rehabilitation loan fund...................	D86-50	135,535		2-5-86	4,402				131,133
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities...................	D86-17	20,000		10-1-85					30,730
	D86-17A		10,730	2-5-86					
Office of Justice Programs									
Crime victims fund.........................	D86-18	100,000		10-1-85					103,396
	D86-18A		3,396	2-5-86					
DEPARTMENT OF LABOR									
Employment and Training Administration									
State unemployment insurance and employment service operation.............	D86-51	37,000		2-5-86	33,089				3,911
DEPARTMENT OF STATE									
Bureau of Refugee Programs									
United States emergency refugee and migration assistance fund, executive......	D86-19	18,082		10-1-85					18,082
Other									
Assistance for implementation of a Contadora agreement.......................	D86-20	2,000		10-1-85					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Conrail labor protection.......	D86-52	4,565		2-5-86					4,565

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Urban Mass Transportation Administration									
Discretionary grants........................	D86-21	223,600		10-1-85		223,600	P.L. 99-190		0
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)........................	D86-29	686,430		11-25-85					
	D86-29A		681,723	2-5-86					1,368,162
Maritime Administration									
Operations and training........	D86-53	9,350		2-5-86					9,350
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund....................................	D86-30	7,743		11-25-85					
	D86-30A		97,483	2-5-86	712			712	105,226
Local government fiscal assistance trust fund....................................	D86-31	54,349		11-25-85	63			63	54,349
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine									
Salaries and expenses..........	D86-54	233		2-5-86					233
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund......	D86-22	10,947		10-1-85					10,947
Railroad Retirement Board									
Milwaukee railroad restructuring, administration............................	D86-23	243		10-1-85	43				200
Dual benefits payments account.............	D86-55	2,201		2-5-86	2,009				192
United States Information Agency									
Acquisition and construction of radio facilities..................................	D86-56	66,545		2-5-86	4,880				61,666

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As of March 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-86
TOTAL, DEFERRALS..............................		18,844,063	4,544,529		7,758,878	223,600		8,202	15,414,316

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D86-30A) of outlays only.

[FR Doc. 86-5764 Filed 3-14-86; 8:45 am]

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federal register

Monday
March 17, 1986

Part III

Office of Management and Budget

Budget Rescissions and Deferrals

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OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three new rescission proposals totaling $61,377,000, six new deferrals of budget authority totaling $1,209,629,624, and five revised deferrals of budget authority totaling $394,054,125.

The rescissions affect programs in the Department of Energy.

The deferrals affect programs in the Departments of Agriculture, Energy, Interior, and Treasury, and Funds Appropriated to the President.

The details of these rescission proposals and deferrals are contained in the attached report.

Ronald Reagan

The White House,
March 12, 1986.

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Energy	
	Energy Programs	
R86-8	Energy supply, research and development activities	38,489
R86-77	Energy conservation	9,816
R86-80	Fossil energy research and development	13,072
	Total, rescissions	61,377

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President	
	Agency for International Development	
D86-59	International disaster assistance	64,607
	Department of Agriculture	
	Farmers Home Administration	
D86-60	Rural housing insurance fund	700,000
	Forest Service	
D86-2A	Expenses, brush disposal	108,806
D86-61	Cooperative work	442,336
	Department of Energy	
	Energy Programs	
D86-9A	Energy conservation	36,782
	Power Marketing Administration	
D86-62	Alaska Power Administration, Operation and maintenance	400
D86-14A	Western Area Power Administration, Construction, rehabilitation, operation, and maintenance	43,466
	Departmental Administration	
D86-63	Departmental administration	393
	Department of the Interior	
	National Park Service	
D86-64	Land acquisition and state assistance	1,893
	Department of the Treasury	
	Office of Revenue Sharing	
D86-30B	Local government fiscal assistance trust fund	125,000
D86-31A	Local government fiscal assistance trust fund	80,000
	Total, deferrals	1,603,684

SUMMARY OF SPECIAL MESSAGES FOR FY 1986
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items	61,377	1,209,630
Revisions to previous special messages	---	119,591
Effects of fourth special message	61,377	1,329,221
Amounts from previous special messages that are changed by this message (changes noted above)	---	274,463
Subtotal, rescissions and deferrals	61,377	1,603,684
Amounts from previous special messages that are not changed by this message	9,945,671	23,114,130
Total amount proposed to date in all special messages	10,007,048	24,717,813

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R86-8

DEPARTMENT OF ENERGY

Energy Programs

Energy supply, research and development activities

Of the funds made available under this head in Public Law 99-190, $38,489,000 are rescinded.

Rescission Proposal No: R86-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $1,772,271,000 (P.L. 99-141)
Bureau: Energy Programs	Other budgetary resources 553,357,559
Appropriation title and symbol: Energy supply, research and development 89X0224	Total budgetary resources 2,325,628,559 Amount proposed for rescission $ 38,489,000
OMB identification code: 89-0224-0-1-271 Grant program: ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other________
Type of account or fund: ☐ Annual ☐ Multiple-year ________ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other________

Justification: The purpose of Energy supply, research and development activities is to: (1) support long-term research and development on a mix of technologies that have the potential to provide adequate supplies of energy at reasonable cost, and (2) fund other research programs which provide significant benefits to the Government and the public. The proposed rescission consists of university construction projects which include: the Center for Science and Technology, Advanced Science Center, Energy and Mineral Research Center, Center for Energy and Biomedical Technology, Demonstration Center for Information Technologies, and the National Center for Chemical Research. A reassessment of current budgetary constraints and concern over the deficit leads to the conclusion that Federal funding for these projects should be terminated, especially since these projects are not in direct support of the Department's basic energy sciences research and development program. The President's Budget assumed these funds would be used for other purposes in 1987. The Department of Energy will identify other unobligated balances in order to maintain the 1987 program at the program levels estimated in the President's 1987 Budget.

Estimated Program Effect: None

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,870,898	1,853,498	17,400	11,546	9,543	---	---	---

1/ This account is also the subject of a deferral in 1986 (D86-38) and a deferral in 1985 (D85-70).

DEPARTMENT OF ENERGY

Energy Programs

Energy conservation

Of the funds made available under this head in Public Law 99-190, $9,816,000 are rescinded.

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Rescission Proposal No: R86-77

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:

Energy conservation 1/

89X0215

OMB identification code:

89-0215-0-1-999

Grant program: ☐ Yes ☒ No

Type of account or fund:

☐ Annual

☐ Multiple-year ______ (expiration date)

☒ No-Year

New budget authority..... $ 446,721,492
(P.L. 99-190)

Other budgetary resources 23,059,807

Total budgetary resources 469,781,299

Amount proposed for rescission $ 9,816,000

Legal authority (in addition to sec. 1012):

☐ Antideficiency Act

☐ Other ______

Type of budget authority:

☒ Appropriation

☐ Contract authority

☐ Other ______

Justification: This account funds a variety of energy conservation research and development activities including buildings and community systems, industry, transportation, and multi-sector research. It also funds assistance to State and local governments for the weatherization of schools, hospitals, and low-income dwellings. The rescission consists of previously deferred construction funds that were added by the Congress. The addition of construction projects through legislative action bypasses the normal, and important, peer-review process for such funding. It also is not part of the research program to which the funds were added. As non-priority activities, these projects are also inconsistent with the Administration's effort to reduce the Federal deficit pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. The President's Budget assumed these funds would be used for other purposes in 1987. The Department of Energy will identify other unobligated balances in order to maintain the 1987 program at the program levels estimated in the President's 1987 Budget.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
434,146	434,146	---	6,871	2,945	---	---	---

1/ This account is also the subject of a deferral in 1986 (D86-9A) and was the subject of a deferral in 1985 (D85-30B) and a rescission proposal in 1985 (R85-87).

D86-80

DEPARTMENT OF ENERGY

Energy Programs

Fossil energy research and development

Of the funds made available under this head in P.L. 99-190, $13,072,000 are rescinded.

Rescission Proposal No: R86-80

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy	P.L. 99-190 310,970,912 **New budget authority.....** $ 15,000,000 (P.L. 98-146)
Bureau: Energy Programs	**Other budgetary resources** 42,235,103
Appropriation title and symbol: Fossil energy research and development 1/ 89X0213	**Total budgetary resources** 368,206,015 **Amount proposed for rescission** $ 13,072,000
OMB identification code: 89-0213-0-1-271 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other__________
Type of account or fund: ☐ Annual ☐ Multiple-year __________ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other__________

Justification: This account funds research and development activities in coal, petroleum and unconventional gas. The amount proposed for rescission consists of previously deferred funds for two projects: operation and testing of gas stream clean-up equipment at the Waltz Mill coal gasification test facility, and research and development of 7.5 Mw phosphoric acid fuel cells employing air-cooled technology. These projects support the development of new fossil energy technologies beyond the proof-of-concept stage. The Administration believes that further development of these technologies should be the responsibility of the private sector. The Department of Energy will identify other unobligated balances in order to maintain the 1987 program at the program levels estimated in the President's 1987 Budget.

Estimated Program Effect: None

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
307,945	302,945	5,000	8,072	---	---	---	---

1/ This account is also the subject of a deferral (D86-6A). It was the subject of a similar deferral in 1985 (D85-27A).

Deferral No: D86-59

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
Agency for International Development

Appropriation title and symbol:
International Disaster Assistance, Executive

115/61035 11X1035

OMB identification code:
11-1035-0-1-151

Grant program: ☒ Yes ☐ No

Type of account or fund:
☐ Annual
☒ Multiple-year 3/31/86 (expiration date)
☒ No-Year

New budget authority..... (P.L. 99-190)	$ 21,532,000
Other budgetary resources	82,213,698
Total budgetary resources	103,745,698
Amount to be deferred:	
Part of year	64,607,207
Entire year	

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other____________

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other____________

Coverage:

Appropriation	Symbol	Identification Code	Amount Deferred
International Disaster Assistance, Executive	115/61035	11-1035-0-1-151	35,000,000
	11X1035	11-1035-0-1-151	29,607,207
			64,607,207

The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The African Famine Relief Supplemental, P.L. 99-10, makes available funds for disaster assistance activities provided that a comprehensive country-by-country plan is established to ensure effective use of funds. As plans are developed, funds will be made available for African relief and other disaster assistance obligations. To date, $31.6 million of the $35 million has been made available for recovery aid to famine victims in Africa. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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Deferral No: D86-60

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Farmers Home Administration

Appropriation title and symbol:
Rural Housing Insurance Fund
(including FFB loan asset purchases)
12X4141

OMB identification code:
12-4141-0-3-371

Grant program: ☐ Yes ☒ No

Type of account or fund:
☐ Annual
☐ Multiple-year ______ (expiration date)
☒ No-Year

New budget authority..... $2,197,923,000
(P.L. 99-190)

Other budgetary resources ______

Total budgetary resources 2,197,923,000

Amount to be deferred:
Part of year $______
Entire year 700,000,000

Legal authority (in addition to sec. 1013):
☐ Antideficiency Act
☐ Other______

Type of budget authority:
☐ Appropriation
☐ Contract authority
☒ Other Permanent indefinite authority to borrow

Justification: This fund was established in 1965 (Public Law 89-117) pursuant to Section 517 of Title V of the Housing Act of 1949, as amended. This fund may be used to insure or guarantee rural housing loans for single family homes, rental and cooperative housing, farm labor housing, rural housing sites, and to make rental assistance payments authorized by Section 521(a). Loan programs are limited to rural areas that include towns, villages, and other places that are not part of an urban area and have a population not in excess of 2,500 inhabitants, or is in excess of 2,500 but not in excess of 10,000 if rural in character, or has a population in excess of 10,000 but not more than 20,000 and is not within a standard metropolitan statistical area and has a serious lack of mortgage credit for low- and moderate-income borrowers.

The deferral is part of the administration's efforts to reduce the size and scope of Federal credit programs and their adverse impact on the management of future fiscal policy. The $29 billion portfolio of direct and insured loans has an average effective interest rate of only five percent and represents a subsidy by the Government of over $2.6 billion during 1986. Large future year outlay savings can be achieved by reducing the direct and insured loan authorization levels in the Rural Housing Insurance Fund as proposed in the 1987 Budget for 1986 and 1987. This deferral action is taken pending Congressional action on supplemental language proposed in the 1987 Budget to reduce the direct lending program.

Estimated Program Effect: The proposal would reduce borrowing requirements.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
2,941,491	2,925,391	-16,100	-229,712	-106,125	-41,625	-21,925	-17,925

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Deferral No: D86-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Forest Service

Appropriation title and symbol:

Expenses, brush disposal 1/

12X5206

OMB identification code:

12-9922-0-2-302

Grant program: ☐ Yes ☒ No

Type of account or fund:

☐ Annual

☐ Multiple-year ______ (expiration date)

☒ No-Year

New budget authority..... $ 48,026,000
(16 U.S.C. 490)

Other budgetary resources 99,141,125*

Total budgetary resources 147,167,125*

Amount to be deferred:
Part of year $______
Entire year 108,806,125*

Legal authority (in addition to sec. 1013):

☒ Antideficiency Act

☐ Other______

Type of budget authority:

☒ Appropriation

☐ Contract authority

☐ Other______

Justification: *Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $48.0 million in 1986. The current fiscal year reserve of $108.8 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account was the subject of a similar deferral in 1985 (D85-5 and D85-5A).

D86-2A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-2 transmitted to Congress on October 1, 1985.

This increases by $30,893,347 the previous deferral of $77,912,778 in the Forest Service's Expenses, brush disposal account, resulting in a total deferral of $108,806,125. The additional funds can be deferred because more unobligated funds and recoveries were made available than previously anticipated.

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Deferral No: D86-61

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Forest Service

Appropriation title and symbol:
Cooperative work
12X8028

OMB identification code:
12-9973-0-7-999

Grant program: ☐ Yes ☒ No

Type of account or fund:
☐ Annual
☐ Multiple-year ______ (expiration date)
☒ No-Year

New budget authority..... $155,091,000
(16 U.S.C. 576b)

Other budgetary resources 506,180,417

Total budgetary resources 661,271,417

Amount to be deferred:
Part of year $______
Entire year 442,336,417

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other ______

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other ______

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D86-9A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-9 transmitted to Congress on October 1, 1985.

This revision to a deferral of the Department of Energy's Energy conservation account increases the amount previously reported as deferred from $9,880,000 to $36,782,000. This net increase of $26,902,000 is attributed to funding for low priority projects included in the 1986 appropriation, $9,816,000 of which is now being withheld pending rescission.

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Deferral No: D86-9A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Energy Conservation 1/
89X0215

OMB identification code:
89-0215-0-1-272

Grant program: ☒ Yes ☐ No

Type of account or fund:
☐ Annual
☐ Multiple-year ______ (expiration date)
☒ No-Year

New budget authority..... $ 446,721,492*
(P.L. 99-190)
Other budgetary resources 23,059,807*
Total budgetary resources 469,781,299*

Amount to be deferred:
Part of year $______
Entire year 36,782,000*

Legal authority (in addition to sec. 1013):
☐ Antideficiency Act
☐ Other______

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other______

Justification: *This account funds a variety of energy research and development activities including buildings and community systems, industry, transportation, and multi-sector research. It also funds assistance to State and local governments for the weatherization of schools, hospitals, and low-income dwellings. The deferred funds consist of (1) $6,556,000 from recoveries of prior year obligations for projects and activities which were completed or terminated, and (2) $30,226,000 for various research and development activities which are inconsistent with the Administration's policies, programs, and priorities, particularly in a period of fiscal constraint. The President's 1987 Budget proposes to utilize these funds to offset 1987 appropriation requirements. A portion of these funds ($9,816,000) is now being withheld pending rescission, but no adjustment is necessary to the 1987 Budget.

Estimated Program Effect: None

D86-9A
2

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Change					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
452,537	434,146	-18,391	7,356	3,679	7,356	---	---

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* Revised from previous report.

1/ This account is also the subject of a rescission proposal (R86-77). This account was the subject of a similar deferral in 1985 (D85-30B), and a rescission proposal in 1985 (R85-87)

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Deferral No: D86-62

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ 3,281,000 (P.L. 99-141)
Bureau: Power Marketing Administration	Other budgetary resources 864,197
Appropriation title and symbol: Alaska Power Administration, Operation and maintenance 89X0304	Total budgetary resources 4,145,197
	Amount to be deferred: Part of year $ ____ Entire year 400,000
OMB identification code: 89-0304-0-1-871	**Legal authority** (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This account funds the activities of the Alaska Power Administration (APA), an agency which operates and sells power from two hydroelectric projects located in Alaska. In 1985, $400,000 of appropriated funds were not used for procurements because contract costs were lower than anticipated. Consequently, the level of unobligated funds carried into 1986 was $400,000 higher than previously planned. There currently is no plan to use these funds in 1986, although the funds will be released later this year if a critical need arises. If a critical need does not arise, however, the funds will be deferred until 1987. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D86-14A

Supplementary Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-14 transmitted to Congress on October 1, 1985.

This revision to a deferral of the Department of Energy's account for construction, rehabilitation, operation and maintenance, Western Area Power Administration increases the amount previously reported as deferred from $27,095,000 to $43,466,000. This net increase of $16,371,000 results from lower costs of purchasing power.

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Deferral No: D86-14A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ 196,610,000* (P.L. 99-141)
Bureau: Power Marketing Administration	Other budgetary resources 87,632,731*
Appropriation title and symbol: Western Area Power Administration, Construction, rehabilitation, operation and maintenance 1/ 89X5068	Total budgetary resources 284,242,731*
	Amount to be deferred: Part of year $________ Entire year 43,466,000*
OMB identification code: 89-5068-0-2-271	**Legal authority** (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other________
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ________ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other________

Justification: *This account funds the activities of the Western Area Power Administration (WAPA), which markets power in 15 western States from power generating projects principally operated by the Bureau of Reclamation and the Corps of Engineers. WAPA activities also include the construction, operation, and maintenance of approximately 16,000 miles of power transmission lines. Funds are available for deferral for the following reasons:

- Almost $21 million became available as a result of a change in plans for power exchanges with Pacific Gas and Electric Company.
- Over $6 million became available because contract awards for construction of power transmission facilities were lower than budgeted.
- Over $16 million became available because less money was required to purchase power.

There is currently no plan to use any of these funds in 1986, although the funds will be released later this year if a critical need arises. If a critical need does not arise, however, the funds will be deferred until 1987. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

D86-14A
2

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account was the subject of a similar deferral (D85-188) and a rescission proposal in 1985 (R85-97).

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Deferral No: D86-63

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	**New budget authority.....** $ 410,366,000 (P.L. 99-141)
Bureau: Departmental Administration	**Other budgetary resources** 29,443,467
Appropriation title and symbol:	**Total budgetary resources** 439,809,467
Departmental administration 1/ 89X0228	**Amount to be deferred:** **Part of year** $ ______ **Entire year** 393,000
OMB identification code: 89-0228-0-1-276 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☐ Other______
Type of account or fund: ☐ Annual ☐ Multiple-year ______ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other______

Justification: Appropriations for Departmental Administration fund several policy development and program support functions necessary to ensure effective operation of the Department of Energy. The obligation of funds for the Office of Minority Economic Impact, an activity generally responsible for encouraging minority participation in Department of Energy programs, will be delayed until 1987 because of the lead time required to plan and implement the Minority Educational Institutions Program. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of an earlier deferral in 1986 (D86-15) and a similar deferral (D85-43) and a rescission proposal in 1985 (R85-98).

Deferral No: D86-64

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Interior	**New budget authority.....** $ 98,400,000 (P.L. 99-190)
Bureau: National Park Service	**Other budgetary resources** 184,754,161
Appropriation title and symbol:	**Total budgetary resources** 283,154,161
Land acquisition and State assistance 14X5035	**Amount to be deferred:** **Part of year** $ ______ **Entire year** 1,893,000
OMB identification code: 14-5035-0-2-303 **Grant program:** ☒ Yes ☐ No	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☐ Other______
Type of account or fund: ☐ Annual ☐ Multiple-year ______ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☒ Contract authority ☐ Other______

Justification: This appropriation provides (1) funds to acquire land for inclusion in the National Park System, and (2) grants to others for outdoor recreation purposes. The 1987 Budget proposes to pay administrative expenses for prior-year grants to States and administrative expenses for land acquisition from unobligated prior-year balances. Accordingly, $893,000 of the Secretary's contingency fund for grants and $1,000,000 of administrative expense funds are being deferred to cover estimated administrative costs in 1987. These funds are not needed to meet anticipated requirements in 1986. Appropriation language is proposed to make contingency grant funds available for administrative expenses. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: Funding availability for outdoor recreation grants from the Secretary's contingency fund will be reduced by $893,000. No significant program impacts are anticipated. The $1,000,000 for administrative expense funding can be deferred without reducing the 1986 operating level by using unobligated balances of prior-year administrative expense funds.

Outlay Effect: None

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D86-30B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-30A transmitted to Congress on February 5, 1986.

This increases by $19,774,149 the previous deferral of $105,225,851 in the Department of the Treasury's Local government fiscal assistance trust fund account, resulting in a total deferral of $125,000,000. The funds are payments withheld from various local governments due to annexations or disincorporations, or for non-compliance with General Revenue Sharing requirements.

Deferral No: D86-30B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority..... $4,185,000,000* (P.L. 99-160)
Bureau: Office of Revenue Sharing	Other budgetary resources -125,606,000*
Appropriation title and symbol: Local government fiscal assistance trust fund 1/ 20X8111	Total budgetary resources 4,059,394,000*
	Amount to be deferred: Part of year $________* Entire year 125,000,000* 2/
OMB identification code: 20-8111-0-7-851	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☒ Other 31 U.S.C. 6701-6724, particularly 31 U.S.C. 6704(c)
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ______ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ______

Justification: *The Local government fiscal assistance trust fund is the vehicle for disbursement of General Revenue Sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of non-compliance with the requirements of the Local Government Fiscal Assistance Amendments of 1983. The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations.

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account is subject to another deferral (D86-31A) and was the subject of a similar deferral in 1985 (D85-12).

2/ Deferral of outlays only.

D86-31A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-31 transmitted to Congress on November 25, 1985.

This increases by $25,650,791 the previous deferral of $54,349,209 in the Department of the Treasury's Local government fiscal assistance trust fund account, resulting in a total deferral of $80,000,000. The funds are held in reserve to permit the Secretary of the Treasury to satisfy legitimate claims that past revenue sharing payments have been too small without recurring recomputations of the entitlements of the over 39,000 governments.

Deferral No: D86-31A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Treasury	**New budget authority**..... $4,185,000,000* (P.L. 99-160)
Bureau: Office of Revenue Sharing	**Other budgetary resources** -125,606,000*
Appropriation title and symbol: Local government fiscal assistance trust fund 1/ 20X8111	**Total budgetary resources** 4,059,394,000*
	Amount to be deferred: Part of year $______* Entire year 80,000,000*
OMB identification code: 20-8111-0-7-851	**Legal authority** (in addition to sec. 1013): ☒ Antideficiency Act ☒ Other 31 U.S.C. 6701-6724, particularly 31 U.S.C. 6702(d)
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ______ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other______

Justification: *The Secretary of the Treasury must hold in reserve an amount sufficient enough to meet valid claims from local governments that past revenue sharing payments have been too small. Because the total amount appropriated for all governments is fixed, the alternative to such a reserve is recurring recomputations of the entitlements of the over 39,000 governments for prior entitlement periods. This cumulative unobligated reserve from entitlement periods 1-17 is available to the Secretary of the Treasury to satisfy legitimate claims against the Trust Fund for any prior entitlement periods. After adjusting for such releases from the reserve, the deferred amount projected to carry over into FY 1986 is $80.0 million. This unobligated amount will be further reduced whenever the Secretary determines the amount is adequate to meet forseeable liabilities against the Trust Fund and will be paid to recipients as part of the regular distribution.

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account is subject to another deferral (D86-30B) and was the subject of a similar deferral in 1985 (D85-13).

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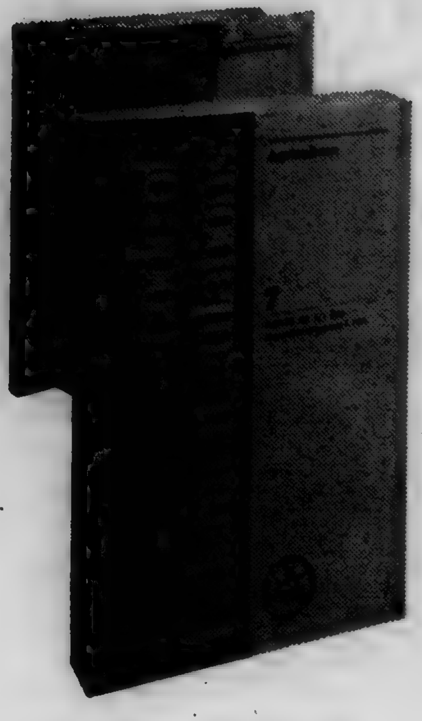

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Tuesday, March 18, 1986

Presidential Documents

Title 3—

The President

Proclamation 5447 of March 14, 1986

Freedom of Information Day, 1986

By the President of the United States of America

A Proclamation

A fundamental principle of our Government is that a well-informed citizenry can take part in the important decisions that set the present and future course of the Nation. Our Founding Fathers provided in the Constitution and in the Bill of Rights freedoms for all Americans, many of which are promoted by open access to information. Numerous Acts of Congress, including the Freedom of Information Act, are intended to further this principle. Most Americans, having never known any other way of life, take for granted open access to information about their Federal, State, and local governments. They also understand that some secrecy is necessary to protect both national security and the right to privacy.

March 16 is the anniversary of the birth of James Madison, our fourth President and one of the principal figures in the Constitutional Convention. Madison eloquently expressed the guarantees in the Bill of Rights, in particular in the freedoms of religion, speech, and of the press protected by the First Amendment. He understood the value of information in a democratic society, as well as the importance of its free and open dissemination. He believed that through the interaction of the Government and its citizens, facilitated by a free press and open access to information, the Government could be most responsive to the people it serves. Surely the American experience has proved him right.

This year marks the twentieth anniversary of the enactment by the Federal government of the Freedom of Information Act. On President Madison's birthday, it is particularly fitting that we recognize the value of reasonable access to information in our political process.

The Congress, by House Joint Resolution 371, has designated March 16, 1986, as "Freedom of Information Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 16, 1986, as Freedom of Information Day, and I call upon the people of the United States and all Federal, State, and local government officials to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-6073
Filed 3-17-86; 10:59 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 52
Tuesday, March 18, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Office Addresses and Geographic Jurisdictions; Cleveland Sub-Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(5)(a) (48 FR 45373) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location and mailing address for the Authority's Cleveland, Ohio Sub-Regional Office within the Authority's Chicago, Illinois Regional Office. The Cleveland, Ohio Sub-Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald J. Watkins, Deputy to the General Counsel and the Associate General Counsel (202) 382-0744.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Cleveland, Ohio Sub-Regional Office of the Authority. The Cleveland, Ohio Sub-Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(5)(a) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(5) * * *

* * * * *

(a) *Cleveland, Ohio Sub-Regional Office:* Suite 850, 1 Cleveland Center, 1375 East 9th Street, Cleveland, Ohio 44114. Telephone: FTS-942-2114, Commercial-(216) 522-2114.

(5 U.S.C. 7134)

Dated: March 12, 1986.

John C. Miller,
General Counsel, Federal Labor Relations Authority.

[FR Doc. 86-5859 Filed 3-17-86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corpation

7 CFR Part 1468

Payment Program for Mohair (1982-1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule without change an interim rule which was published in the Federal Register on November 14, 1985 (50 FR 47031). The interim rule amended the regulations at 7 CFR Part 1468 which set forth the requirements governing the Commodity Credit Corporation's (CCC) price support program for mohair. The interim rule amended the program with respect to: (1) Marketings of shorn mohair eligible for price support payments; (2) definitions which are applicable to the program; (3) producer eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references.

EFFECTIVE DATE: Effective March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1468) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0023 has been assigned.

This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: Commodity Loans and Purchases; 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on

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the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule amending the Commodity Credit Corporation's (CCC) price support program for mohair was published in the **Federal Register** on November 14, 1985 (50 FR 47031). This interim rule provided for a 60-day comment period. No comments were received.

The interim rule made several amendments with respect to the terms and conditions of the 1985 price support program for mohair. Most of the changes which were included in the interim rule were the result of a review conducted by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation which revealed marketing practices which defeat the purpose of the program. Since the mohair program is similar to the wool program, ASCS is concerned that mohair producers may adopt marketing practices similar to those which have been adopted by some wool producers and use these practices to defeat the purpose of the mohair price support program. The remaining changes involved the deletion of certain obsolete references.

The interim rule amended the regulations at 7 CFR Part 1468 by: (1) Adding the definitions of "Deputy Administrator", "grease mohair", "mohair incentive payment rate", "shorn mohair", and "family member" and amending the definition of "sales document"; (2) providing that the price support payment rate for shorn mohair shall be determined and announced by the Executive Vice President, CCC, or a designee, at the end of each specified marketing year; (3) clarifying that shorn mohair which has been processed in any manner into a mohair product, as determined by DASCO, shall not be eligible for price support payments; (4) providing that, in order to be considered a bona fide marketing, the mohair must be sold to a person or business engaged in the business of buying and selling grease basis mohair and the sale of the mohair must be based upon a reasonably appraised price of mohair; (5) providing that the sale of mohair by a producer to a family member or to a business in which the producer has more than a 20 percent interest is not considered a bona fide marketing; and (6) providing that any sales documents which are prepared by the purchaser of mohair must have the original signature of the purchaser or authorized representative. The interim rule also deleted obsolete regulations which were applicable to the mohair program for the 1974–1977 marketing years.

No comments were received by the Department with respect to the interim rule. Therefore, after reviewing the provisions of the interim rule, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1468

Price support programs, Mohair.

Final Rule

Accordingly, the interim rule published at 50 FR 47031, which amended 7 CFR 1468, is hereby adopted as a final rule without change.

Signed at Washington, D.C., on March 11, 1986.

Milt J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-5862 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1822, 1872, 1900, 1903, 1924, 1927, 1943, 1945, 1951, 1955, 1962, and 1965

Servicing of Real Estate Security

Correction

In FR Doc. 86-2029 beginning on page 4132 in the issue of Monday, February 3, 1986, make the following corrections:

1. On page 4132, first column, in the "SUMMARY," fourth line, insert "secured" between "loans" and "by".

2. On page 4136, first column, in the section heading following amendatory instruction 28, "§ 1943.135" should read "§ 1945.135".

BILLING CODE 1505-01-M

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7 CFR Part 1955

Property Management; Homestead Protection; Food Security Act of 1985

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration amends its regulations to provide for a dwelling retention program for leasing with the right of first refusal, for CONACT residential property with a dwelling to a farmer program borrower. This action is necessary to implement the applicable part of Section 1321 of the "Food Security Act of 1985" (Pub. L. 99-198). The major effect will be to assist certain borrowers that have lost or are losing their farms and have an immediate need for housing with their transition from farming to other occupations.

DATES: Interim rule effective March 18, 1986. Comments must be submitted on or before April 17, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this date will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382-1632.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because their will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The "Food Security Act of 1985," Pub. L. 99-198 provided for dwelling retention. It is essential that this provision of the "act" be implemented at once to provide immediate housing assistance for financially stressed farmers who have lost or will lose their farms, and will lose their permanent residential dwelling through foreclosure, voluntary conveyance, or bankruptcy proceeding. Field offices are already receiving requests for this provision. The Agency must provide immediate guidance by revising the regulations. It is urgent that these regulations become effective on publication so these farmers and their families can make plans for the transition to other occupations and have a place to live in the interim period and assist in removing some of the emotional stress involved in such a drastic change in lifestyle. The Government has a social responsibility to immediately assist farmers that have gone broke and would otherwise be forced out of their homes. This provision in the regulations will only provide assistance to those farmers that do not own other suitable housing. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impractical, and good cause is found for making this interim rule effective less than 30 days after publication in the **Federal Register.**

Highlights

The Farmers Home Administration amends its farmer program insured loan servicing regulations to implement the applicable provisions of Section 1321 of the "Food Security Act of 1985" (Pub. L. 99-198) to provide a farmer program dwelling reacquisition program. This program applies to CONACT inventory property that was or will be acquired as a result of FmHA foreclosure, voluntary conveyance or voluntary conveyance from a trustee in bankruptcy, with the borrower still in possession of the residence. A farmer program borrower meeting the eligibility requirements may apply to lease, with an option to purchase, the residence and a reasonable amount of adjoining land:

The applicant must have had gross annual farm sales of at least $40,000 in at least 2 calendar years during the 5 year period January 1, 1981, through December 31, 1985.

The applicant and spouse must have received at least 60% of their gross annual income from the farming operation during at least 2 years of the 5 year period.

The applicant must have possessed and occupied the dwelling and engaged in farming or ranching operations during the 5 year period.

The applicant must personally occupy the dwelling as his/her principal residence and must not own other suitable housing. Other eligibility requirements are set out in the regulation.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.18 is amended by adding paragraph (h) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(h) *Dwelling retention.* All those who were personally liable for a Farmer Program loan will be sent a letter similar to Exhibit G of this Subpart (available in any FmHA office), certified mail, return receipt requested, when CONACT real property with a dwelling is acquired as a result of foreclosure by FmHA, voluntary conveyance, or conveyance by a trustee in bankruptcy. This applies to dwellings located on or off the farm, so long as the dwelling(s) was occupied by those personally liable for the debt during the period from January 1, 1981, through December 31, 1985, and continues to be occupied by them.

Subpart B—Management of Property

3. § 1955.66 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(a) * * *

(2) * * *

(iii) *Farm property.* Any CONACT property with a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by one who is personally liable for a Farmer Program loan must be considered for dwelling retention under § 1955.73 of this subpart prior to lease under this section. The County Supervisor may approve the lease of farm property. Special Stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lesses will retain the right to harvest growing crops. Rental payments will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural and Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as

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required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property. The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

* * * * *

4. § 1955.73 is added to read as follows:

§ 1955.73 Farmer Program dwelling retention.

CONACT property that is presently in inventory and available for lease and that was acquired as a result of a foreclosure by FmHA, a voluntary conveyance, or a conveyance to the Government by a Trustee in bankruptcy and is still occupied by the borrower, may be considered for dwelling retention under this section.

(a) *Eligibility.* The County Supervisor will determine that the following eligibility requirements are met:

(1) The applicant must have responded to Exhibit G of Subpart A of this part during the 3-year period commencing on December 22, 1985, and ending at the close of business on December 22, 1988.

(2) The applicant must provide evidence of gross annual farm or ranch sales of at least $40,000 in at least 2 calendar years during the 5-year period beginning on January 1, 1981, and ending December 31, 1985, (or the equivalent crop or fiscal years).

(3) The applicant and any spouse must have received from the farming or ranching operation at least 60 percent of gross annual income during at least 2 years of the 5-year period set forth in § 1955.73(a)(2).

(4) The applicant must have possessed and occupied the dwelling and engaged in farming or ranching operations on adjoining land, or other land controlled by the borrower during the 5-year period set forth in § 1955.73(a)(2), and remain in possession.

(5) The applicant must have sufficient income to make rental payments, maintain the property in good condition and agree to all terms and conditions as set forth in this section and in "Lease of Real Property," Form FmHA 1955-20.

(6) The applicant must be an individual who was personally liable for a Farmer Program loan. The Farmer Program loan could have been made to an individual or an entity, so long as the applicant was personally liable for the debt.

(7) The applicant will personally occupy the dwelling as his/her personal residence and must not own other suitable housing.

(8) The borrower must have exhausted all remedies for restructuring the FmHA loans.

(9) When more than one member of an entity each possessed and occupied a separate dwelling, each may apply for the dwelling retention of their individual dwellings.

(10) The applicant must have been released from liability or have debt settled the FmHA debts or the debts must have been discharged in bankruptcy.

(b) *Appeal rights.* If the County Supervisor determines that the applicant is not eligible for dwelling retention, the County Supervisor will notify, in writing, the applicant of the decision and give the applicant the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until any appeal is concluded.

(c) *Property requirements.* (1) The lease may cover only the dwelling and a reasonable amount of land that is necessary for family maintenance. Not more than 5 acres of land will be leased with a dwelling unless additional land is needed for access to the property, local codes require a larger size lot, or additional land is needed to assure a source of water or provide for sanitation facilities. Sources of water, power lines, utility lines, sanitation facilities and/or access to the property may be located outside the land to be included with the dwelling provided appropriate rights or easements are obtained. Appropriate arrangements will be made for continued use of water sources, utilities, and sanitation facilities that will be jointly used. A right of entry and egress to a public way must exist or be provided.

(2) No lease will be approved if, upon exercise of the option, the remaining inventory property is not provided with entry and egress to a public way.

(3) A survey and legal description of the property to be leased and/or purchased will be obtained by FmHA. The cost of the survey will be charged to the inventory property account for the entire farm.

(d) *Appraisal.* The market value of the property, as improved, will be determined by an independent appraisal made within 6 months after the borrower responds to Exhibit G of Subpart A of this part. The cost of the appraisal will be charged to the inventory property account for the entire farm.

(e) *Rates and terms.* The lease will be offered with an option to purchase and will be for a period of not less than 3 years or more than 5 years. A lease of less than 5 years may be renewed, but not beyond 5 years from the date of the original lease. This requirement will be added as a stipulation to the lease.

(1) The amount of the lease will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document in the case file a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(2) Lease payments will be retained by the Government and remitted according to FmHA Instruction 1951-B (available in any FmHA office).

(3) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section.

(4) Any interference by the lessee with the Government's efforts to lease or sell the remainder of the farm property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. This stipulation will be added to the lease.

(f) *Exercising the option.* (1) The lessee may exercise the option in writing at any time prior to the expiration date of the lease. Failure to exercise the option within the lease period will terminate the lessee's rights to purchase the property.

(2) The option price to the lessee will be the appraised market value of the dwelling as established by the independent appraisal as set forth in paragraph (d) of this section.

(3) The sale will be handled as a credit sale of surplus CONACT property on ineligible terms under Subpart C of this part.

Subpart C—Disposal of Inventory Property

5. § 1955.105 is revised to read as follows:

§ 1955.105 Real property affected (CONACT).

Sections 1955.106–1955.108 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW);

Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; Irrigation and Drainage; Shift-in-land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Before property can be sold, § 1955.73 of Subpart B of this part concerning dwelling retention must be followed, if applicable.

6. § 1955.107 is amended by revising the introductory text of the paragraph and revising paragraph (a) to read as follows:

§ 1955.107 Sale of surplus property (CONACT).

Except where a lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part, concerning dwelling retention, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for 3 years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record.

(a) *Rates and terms.* Terms for a dwelling retention property where the lessee is exercising the option to purchase under § 1955.73 of Subpart B of this part will not exceed 35 years with equal amortized monthly installments. No down payment will be required. In all other cases, surplus property will be offered for cash or on ineligible terms of not less than a ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the market rate for Community Programs. The interest rate for dwelling retention will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for all other surplus property will be the current Farmer Program ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offering has been received, the State Director may request the Administrator to permit offer surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

Dated: March 13, 1986.

Kathleen W. Lawrence,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 86-5936 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 86-227]

Powers and Duties of Federal Association as Trustee

Date: March 12, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is revising 12 CFR 545.102 to clarify and expand the limited authority of federally chartered savings and loan associations and savings banks ("Federal associations") to offer self-directed Individual Retirement Accounts ("IRA") and Keogh Plan accounts, to act as trustees of passive trusts, and to invest the funds of such accounts or trusts in assets other than their own accounts, deposits, obligations, or securities without obtaining prior Board approval pursuant to 12 CFR Part 550.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-6649, Federal Home Loan Bank Board, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: Section 545.102 of the Board's regulations authorizes a Federal association to act as a trustee or custodian, without Board approval under 12 CFR Part 550, for IRAs and Keogh Plan accounts, provided that the funds of the trust or account are invested only in the Federal association's savings accounts, deposits, obligations, or securities. Subject to the same proviso, § 545.102 also permits a Federal association to act as a trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity. The provison arguably precludes Federal associations not exercising trust powers under Part 550 from acting as trustees or custodians of IRAs and Keogh Plan accounts in which the holder directs investments to be made in assets other than the savings accounts, deposits, obligations, or securities of the custodial institution (collectively, "self-directed retirement accounts").

The Board has recently been asked to amend section 545.102 to permit Federal associations to offer self-directed retirement accounts without obtaining prior Board approval pursuant to Part 550. Federal associations offering such accounts would perform only custodial or ministerial duties without exercising investment discretion, and a variety of other financial institutions not exercising trust powers, including nationally chartered banks, nonmember banks insured by the Federal Deposit Insurance Corporation ("FDIC") and federal credit unions, may offer self-directed retirement accounts. If Federal associations did not possess similar authority, they would be at a competitive disadvantage.

In responding to inquiries from Federal associations as to whether they may offer self-directed retirement accounts without applying for expanded trust powers under Part 550, the Office of General Counsel has taken the position that a Federal association may act as a trustee with no active fiduciary duties for self-directed retirement accounts pursuant to its authority under 12 CFR 545.102 and its implied powers. It is the Board's view that Federal associations are authorized to perform this function pursuant to the authority implicit in the express powers of Federal associations, consistent with the broadening of Federal association powers by the Garn-St Germain Depository Institutions Act of 1982 to include "the deposit or investment of funds" as well as "the extension of credit for homes and other goods and services." 12 U.S.C. 1464(a).

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Accordingly, the Board is revising § 545.102 to codify explicity the authority of Federal associations to act as trustees or custodians for self-directed retirement accounts without obtaining prior Board approval.[1] The Board wishes to emphasize that Federal associations may neither exercise investment discretion nor provide investment advice, either directly or indirectly, in connection with such accounts. Specifically, a Federal association's involvement in offering such accounts is limited to accepting IRAs or Keogh Plan funds as time deposits or savings accounts, serving as custodian of the IRAs or Keogh Plan accounts, preparing records and reports, and acting as the agent of IRAs or Keogh Plan customers to transmit customer funds pursuant to the customer's instructions. Additionally, the various agreements between the Federal association, the IRA or Keogh Plan customer, and the broker-dealer may not provide the Federal association with discretionary authority to act in any manner for any purpose or to offer investment advice in any fashion.

The Board notes that a Federal association, in offering self-directed retirement accounts, may utilize the services of either an affiliated[2] or unaffiliated broker-dealer. In the event a Federal association wishes to perform the brokerage function in connection with the offering of self-directed retirement accounts, an appropriate service corporation application and approval by the Board would be required.[3] Additionally, the Board notes that Federal Savings and Loan Insurance Corporation ("FSLIC") insurance coverage is limited to funds invested in accounts of insured institutions.[4] As revised, § 545.102 requires Federal associations to make appropriate written disclosures to ensure that accountholders understands this fact.

The Board wishes to note that a Federal association offering self-directed retirement accounts must operate in accordance with applicable laws and regulations governing IRAs and Keogh Plan accounts. Additionally, Federal associations offering such accounts must operate in a manner consistent with principles of sound trust (custodial) administration, including the segregation and/or adequate identification of corresponding assets of IRAs and Keogh Plan accounts, whether held by the Federal association or, under a contractual safekeeping arrangement, by a third party.

Finally, § 545.102 currently permits a Federal association to serve as the trustee of a passive trust only if the funds of the trust are invested solely in the accounts, deposits, obligations, or securities of the association. The Board is further amending § 545.102 to permit Federal associations to serve as trustees of passive trusts the funds of which are invested in assets other than those of the custodial association, subject to all the requirements of revised § 545.102. This amendment conforms the treatment of self-directed retirement accounts and passive trusts.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that because the amendment codifies an interpretive clarification of Federal association authority and furthermore relieves a restriction of that authority, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfer, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 545, Subchapter C, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

2. Section 545.102 is revised to read as follows:

§ 545.102 Trustee.

(a) A Federal association may act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954; as trustee or custodian of an Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code; or as trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity: *Provided*, that the association shall invest the funds of the trust or account only in the association's own accounts, deposits, obligations, or securities or, upon the condition that the association does not exercise any investment discretion or directly or indirectly provide any investment advice with respect to the trust or account assets, in such other assets as the customer may direct. The association shall observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and may receive reasonable compensation for acting in any trust capacity authorized by this section.

(b) A Federal association acting as trustee or custodian pursuant to paragraph (a) shall include in bold type on the first page of any contract documents the following language:

"Funds invested pursuant to this agreement are not insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") merely because the trustee or custodian is an institution the accounts of which are covered by such insurance. Only investments *in the accounts* of such an institution are insured by the FSLIC, subject to its rules and regulations."

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[1] The Board notes that Federal associations also may act as trustees or custodians for qualified corporate plans under section 401(a) of the Internal Revenue Code of 1954. 26 U.S.C. 401(a).

[2] The Board notes, however, that utilizing the services of an affiliate may create a potential conflict of interest, and the Federal association should be aware of the Board's policy statement regarding conflicts of interest. *See* 12 CFR 571.7. Additionally, the Board wishes to stress that Federal associations may not directly or indirectly offer or suggest to their IRA or Keogh Plan customers options for investing in persons or concerns affiliated with the Federal association. The Federal association also should take appropriate measures to ensure that the use of an affiliate in offering self-directed retirement accounts is not in violation of the Employees Retirement Income Security Act. *See* 29 U.S.C. 1106(b)(2) and 29 CFR 2550.408b–2; *see also* Prohibited Transaction Exemption 79–1, 44 FR 5963 (Jan. 30, 1079).

[3] The Board wishes to note that if a Federal association becomes involved in the brokerage-related securities activities conducted by a service corportion subsidiary, registration of the association itself as a broker-dealer may be required under Securities and Exchange Commission ("SEC") regulations and Federal securities laws. The SEC does not consider Federal associations to be "banks," and, therefore, Federal associations cannot rely on the bank exclusion from broker-dealer registration under 17 CFR 240.3b–9. *See* Securities Exchange Act Release No. 22205, 50 FR 28385, 28389 n.34 (July 12, 1985). SEC Rule 3b–9 illustrates that if the Federal association actively solicits customers to participate in self-directed retirement accounts and receives transaction-related compensation in connection with any trades, the association may be regarded as a broker-dealer and therefore the required to register with the SEC. *Id.* at 28388.

[4] Also, insurance coverage of such accounts is subject to the basic limit of $100,000 per customer and to the requirements of 12 CFR Parts 561 and 564.

By the Federal Home Loan Bank Board.

Jeff Sconyers,
Secretary.

[FR Doc. 86–5886 Filed 3–17–86; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, and 284

[Docket No. RM83–31–000; Order No. 449]

Emergency Natural Gas Sale, Transportation and Exchange Transactions

Issued: March 12, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations relating to emergency natural gas transactions that are exempt from the certification requirements of section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(c). The final rule eliminates unnecessary regulations and consolidates in a new Subpart I of Part 284 revised regulations that provide self-implementing authority for eligible participants, which include interstate pipelines, intrastate pipelines, and local distribution companies, to sell and/or transport natural gas to other eligible participants in emergency situations, as defined in new § 284.262(a).

The final rule generally retains the rate conditions currently applicable to suppliers that provide emergency transportation and sales services. An interstate pipeline's emergency transportation services will be subject, however, to the volumetric rate conditions of § 284.7 of Order No. 436, 33 FERC ¶ 61,007 (1985), 50 FR 41408 (October 18, 1985), if the pipeline is also providing other transportation that is subject to those rate conditions under Order No. 436. The final rule clarifies that, with this exception, transporters will not become subject to the conditions of Order No. 436, including the non-discriminatory access and contract demand reduction/conversion conditions, by reason of qualifying emergency transportation under the revised emergency regulations.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of hte General Counsel, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 357–8565.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

The Federal Energy Regulatory Commission (Commission) is revising its regulations (18 CFR Parts 2, 157, and 284) relating to emergency transactions that are exempt from the certification requirements of section 7(c) of the Natural Gas Act (NGA).[1] The final rule eliminates outdated or unnecessary regulations and consolidates in a new Subpart I of Part 284 the Commission's regulations that provide self-implementing emergency authority to interstate pipelines, intrastate pipelines, and local distribution companies.

The final rule retains the current rate conditions applicable to suppliers providing emergency transportation services, with the exception that an interstate pipeline will be subject to certain of the rate conditions of § 248.7 of Order No. 436,[2] if the pipeline becomes subject to § 284.7 by electing to participate in the new blanket certificate program or to commence or continue after June 30, 1986, any NGPA § 311 transportation arrangements begun after October 9, 1985. Finally, the final rule clarifies that an interstate pipeline, intrastate pipeline, or local distribution company will not become subject to the other conditions of Order No. 436, including the nondiscriminatory access and contract demand reduction/conversion conditions, by reason of qualifying emergency transportation under the revised emergency regulations.

I. Background

A. Natural Gas Act

Section 7(c) of the NGA provides that every jurisdictional natural gas company must obtain a certificate of public convenience and necessity before transporting or selling gas, or constructing or operating facilities for those purposes. However, NGA section 7(c)(1)(B) provides two exceptions to this certificate requirement:[3] one authorizing the issuance of a temporary certificate during emergencies pending a determination of a regular application, and one exempting from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The latter exception is the subject of this rulemaking.

Prior to the enactment of the Natural Gas Policy Act of 1978,[4] NGA section 7(c)(1)(B) was the only authority for the sale for resale of surplus intrastate gas into the interstate market without jurisdictional consequences to the seller. Over time, the Commission has used this authority under NGA section 7(c)(1)(B) to promulgate various implementing regulations (§§ 2.68, 157.22, and 157.29). These regulations set forth the Commission's policy of encouraging non-jurisdictional local distribution companies, intrastate pipelines and Hinshaw pipelines[5] to provide temporary emergency gas service in interstate commerce for up to 60 days.[6] They also authorized for 60 days the construction and operation of facilities or the sale or transportation of natural gas without a certificate in certain circumstances of emergency or other special need. The regulations required reports to be filed with the Commission describing the emergency and the transaction involved.[7]

B. The Natural Gas Policy Act

The NGPA had several impacts on the Commission's authority to provide for emergency transactions. Most significantly, sections 311 and 312 of the NGPA[8] provide an alternative to section 7(c)(1)(B) of the NGA for the following transactions in interstate commerce: Sales, assignments, and/or transportation of intrastate natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by

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[1] 15 U.S.C. 717f(c)(1)(A) provides in relevant part: "No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations . . . ."

[2] 33 FERC ¶ 61,007 (1985), 50 FR 41408 (October 18, 1985).

[3] 15 U.S.C. 717f(c)(1)(B) provides in relevant part: "[T]he Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirement of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest." *See* 18 CFR 157.17 (1983) (requirements for a temporary emergency certificate).

[4] 15 U.S.C. 3301–3342 (1982).

[5] *See* sections 1(b) and 1(c) of the Natural Gas Act, 15 U.S.C. 717(b) and (c) (1982). Generally speaking, these sections exempt intrastate transportation or sale of natural gas, the local distribution of natural gas, the facilities used for such distribution, and the production or gathering of natural gas.

[6] 18 CFR 2.68 (1983).

[7] 18 CFR 157.22 and 157.29 (1983).

[8] 15 U.S.C. 3371 and 3372 (1982).

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interstate pipelines and transportation by interstate pipelines on behalf of intrastate pipelines and local distribution companies. Therefore, as a result of the NGPA, these transactions have been authorized to proceed, subject to certain limitations, for longer periods than would be appropriate or permissible under NGA section 7(c)(1)(B).[9]

The Commission's interim regulations [10] implementing the NGPA effected several relevant changes to the emergency regulations. First, the interim regulations phased out the NGA emergency program covered by §§ 2.68, 157.22 and 157.29; these three sections were preserved only to the extent that they applied to then-existing contracts for emergency transactions.

Second, the interim NGPA regulations established new rules for emergency transactions that were designed to be transitional provisions until the Commission gained greater experience with the NGPA regulatory structure. The interim NGPA regulations established new rules implementing the authority provided by NGPA sections 311 and 312 for interstate and intrastate pipelines to provide services on behalf of each other and on behalf of local distribution companies. These regulations, set forth in Subparts B and C [11] of Part 284, have helped interstate pipelines and intrastate pipelines, respectively, to address natural gas emergencies, since they permit service to commence under certain circumstances without prior notice or application to the Commission. The self-implementing authority provided by these Part 284 regulations is not limited to emergency transactions, however.

The interim regulations also defined other emergency transactions that could not be provided under NGPA sections 311 and 312 but which could be authorized to commence on a self-implementing basis pursuant to NGA section 7(c)(1)(B). These are the regulations set forth in Subpart C of Part 157, which are limited to emergency situations.[12]

C. Order No. 436

On October 9, 1985, the Commission issued Order No. 436, a final rule pursuant to the NGA and the NGPA, which establishes a transportation program, including both blanket certificates under section 7 of the NGA and self-implementing transportation under section 311 of the NGPA. Interstate pipelines, intrastate pipelines, and local distribution companies transporting under the revised Order No. 436 self-implementing programs must provide nondiscriminatory access to all shippers. (*See* §§ 284.8, 284.9, and 284.224(e), respectively.) Interstate pipelines that accept blanket certificates or initiate new NGPA section 311 transportation under Order No. 436 are subject to additional conditions. Under § 284.7, rates for transportation service by an interstate pipeline must be volumetric, downwardly flexible, cost-of-service rates. Under § 284.10, an interstate pipeline must offer its firm sales customers an opportunity to reduce their firm sales entitlements and to convert firm sales to firm transportation service.

II. Discussion

A. Overview

On August 30, 1984, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket. 49 FR 35135 (Sept. 6, 1984) [FERC Statutes and Regulations ¶ 32385].

The Commission proposed to update, consolidate, and clarify the existing regulations applicable to the movement of natural gas for emergency purposes based on the Commission's experience with its emergency transaction regulations since passage of the NGPA. The NOPR proposed to eliminate unnecessary regulations and consolidate all of the emergency regulations in a new Subpart I of Part 284 of the regulations. Also, the NOPR proposed to add new regulations to new Subpart I. The NOPR was designed so that: (1) Companies engaged in non-certificated transactions would benefit from having to consult only one unified portion of the Commission's regulations; (2) litigation time and expense would be reduced for pipelines and their customers because the consolidation and clarification of the emergency transaction regulations would reduce uncertainty and ambiguity; and (3) the unified regulations would simplify the Commission's administrative responsibilities and reduce the need to expend agency resources on litigation over the application of the emergency transaction rules.

In response to the NOPR, the Commission received 19 comments.[13] Generally, the commenters favored updating and consolidating the regulations but opposed the proposed substantive changes. The Commission is persuaded by the arguments raised by the majority of the commenters and has not adopted many of the substantive proposals in the NOPR. The final regulations adopt the organizational framework of the proposed regulations and some of the proposed language. Where appropriate, in response to the commenters, the final regulations either use the language of the current regulations or modify the language of the proposed regulations.

Furthermore, because the Commission's self-implementing and blanket certificate transportation programs were revised by Order No. 436, the final rule also makes several technical revisions to the proposed emergency transaction regulations and makes certain of the rate conditions of § 284.7 of Order No. 436 applicable to interstate pipelines that transport under both the new Subpart I emergency regulations and Subpart B of Part 284.

The following detailed discussion explains the changes made to the proposal in light of the concerns raised by the commenters and the issuance of Order No. 436 and clarifies that implementation of the revised emergency regulations, as proposed, will remove qualifying emergency transactions conducted under new Subpart I from the scope of Order No. 436.

B. Elimination of Outdated Regulations

The Commission proposed to eliminate §§ 2.68, 157.22, and 157.29. These provisions apply to contracts for emergency transactions under the NGA that were executed either before November 9, 1978, in the case of a first sale of gas, or before December 1, 1978, for all other emergency sales. These provisions governing NGA transactions were essentially superseded by passage of the NGPA, and are no longer in use because no pre-NGPA emergency transactions are taking place. Therefore, the provisions pertaining to them are being deleted from the regulations.

The Commission further proposed to eliminate §§ 157.45–157.52 from Subpart C of Part 157 and to replace them with a new Subpart I in Part 284, entitled "Emergency Natural Gas Sale, Transportation, and Exchange Transactions." The commenters raised issues relevant only to a limited number of these new provisions. The new Subpart I of Part 284 revises and updates the existing provisions [14] in Subpart C of Part 157 relating to emergency transactions that involve the construction and operation of facilities, the sale or transportation of natural gas in interstate commerce, or the exchange of gas for emergency purposes.

C. New Subpart I

1. Definition of the Term "Emergency"

The current regulations in Subpart C of Part 157 address emergencies on the systems of interstate pipelines, intrastate pipelines, and local distribution companies. However, the transportation authority provided in Subpart C of Part 157 is limited to transportation by an interstate pipeline of emergency gas supplies to its direct sale customers, its local distribution company customers, and other interstate pipelines. Subpart C of Part 157 explicitly recognizes that an interstate pipeline may need to transport or sell supplies on behalf of an intrastate pipeline or local distributor that is not the interstate pipeline's customer, and that transportation by an intrastate pipeline or local distributor may be necessary to address emergencies as defined in § 157.40(a)(1) of Subpart C. However, the current regulations provide for emergency service in such situations under current Part 284 self-implementing authority (by interstate pipelines under § 284.102 of Subpart B and § 284.222 (previous § 284.221) of Subpart G; intrastate pipelines under § 284.122 of Subpart C; and local distribution companies and Hinshaw pipelines under § 284.224 (previous § 284.222) of Subpart G.

The Commission proposed that in an "emergency" such transportation could be commenced under the new Subpart I. To effect this change, the proposed regulations include additional "covered transactions" (*see* proposed § 284.263(b) and new § 284.263) and add a new definition of qualifying "participants," which includes interstate pipelines, intrastate pipelines, and local distribution companies and Hinshaw pipelines (see proposed § 284.262(e) and new § 284.262(f)).

The Commission also proposed to define more narrowly the types of "emergencies" that would trigger an exemption from certificate requirements, stating that the definition under current § 157.46(a) was too broad and was potentially subject to abuse. Under current §157.46(a) an emergency exists when the gas supply that is available or expected to be available would require an affected entity to curtail gas deliveries on its system; when there is a sudden, unanticipated loss of gas supply or increase in demand; or when a qualified purchaser, in good faith, needs gas immediately for the protection of life or health, or the maintenance of physical property.

Under proposed § 284.262, there would have been two categories of emergencies: "pipeline emergency" and "curtailment emergency." A "pipeline emergency" would have been limited to a "sudden, unanticipated loss of a recipient's gas supply" or an "unanticipated situation" in which a participant determines, in good faith, that immediate action is necessary to protect life or health, to maintain physical property, or to maintain scheduled levels of storage inventories. A "curtailment emergency" would have been limited to situations in which a pipeline or distributor would experience actual or imminent curtailment of high priority end users and situations in which the operations of persons unable to use alternative fuels would be impaired without purchase of emergency gas. Emergencies of a purely economic nature, the status of which has been unclear under the current definition, would not have been recognized under the proposed definition.

Many commenters objected to the proposed definition, arguing that it was too restictive. Many urged the Commission to retain the existing definition in § 157.46(a), which they viewed as being more flexible, or to broaden the proposed definition.

With regard to the proposed definition of "curtailment emergency," many commenters objected to the Commission's use of proposed § 284.262(a)(2)(iv) to preclude end users with alternative fuel capabilities from purchasing emergency gas. These commenters maintained that such an "alternative fuel test" would make unavailable, to a wide range of both high and low priority users, emergency gas otherwise currently available under short-term sales and transportation transactions.

Several commenters also asserted that pipelines and distributors would be burdened with compiling inventories of end users with alternative fuel capacity and availability. They further asserted that the benefits of the alternative fuel test did not justify its ultimate cost, because end users with alternative fuel capability benefit all customers on a pipeline's or local distributor's system by typically absorbing a major share of the system's fixed costs. Reducing or disrupting gas service to such "switchable" customers would hurt the remaining system customers by increasing their share of fixed system costs, and hurt the gas supplier by reducing its revenues. One commenter questioned whether some customers would rather opt for an alternative fuel supply simply because of the threat of not being able to obtain gas during an emergency.

One commenter stated that the proposed distinction between curtailments which threaten "life, health and physical property" in a pipeline emergency, versus curtailments of high priority end users in a curtailment emergency, is ambiguous because, under the proposed definition, high priority curtailment entitlements are essentially limited to end users whose curtailment would pose a threat to life, health or physical property.

Finally, another commenter pointed out that the proposed definition of "curtailment emergency" did not conform to the actual priority of end-uses under many curtailment plans. Therefore, the commenter asserted, the proposed definition would needlessly conflict with curtailment plans because

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[9] The establishment of a 60-day authorization period in the emergency regulations in Subpart C of Part 157 reflects the holding in *Consumers Federation of America* v. *F.P.C.*, 515 F.2d 347, 352–353 (D.C. Cir. 1975). In that case, the court, stating that section 7(c)(1)(B) allows only a narrow exception to the NGA section 7(c) certificate requirement to deal with temporary emergencies, prohibited, as too long, a 180-day certificate exemption period.

[10] 47 FR 56448 (Dec. 1, 1978) (Docket No. RM79-3-000).

[11] Approximately three months after issuing the interim regulations, the Commission promulgated Subpart D (now Subpart E) of Part 284 which sets forth self-executing regulations providing for intrastate pipeline sales of gas. *See* 44 FR 12406 (Mar. 7, 1979) (Docket No. RM79-20).

[12] 18 CFR 157.40(a) (1983) defines an "emergency" as:

(1) A situation where the gas supply either available or expected to be available would require the interstate pipeline company, distribution company, or person described in section 1(c) of the Natural Gas Act to impose curtailment on its system (including a situation where additional supplies are necessary to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system);

(2) A sudden unanticipated (i) loss of natual gas supply or (ii) increase in demand; or

(3) A situation in which the qualified purchaser, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

[13] Timely comments were filed by the American Gas Association, Associated Gas Distributors; Columbia Gas Transmission Corporation; Consolidated Edison Company of New York, Inc.; Equitable Gas Company; Mountain Fuel Resources, Inc.; Montana-Dakota Utilities Company; Northern Illinois Gas Company; Northern Indiana Public Service Company; Pacific Gas and Electric Company; Public Service Electric and Gas Company; Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; United Distribution Companies; and United Gas Pipe Line Company. Panhandle Eastern Pipeline Company and Trunkline Gas Company jointly filed a timely comment. Untimely comments were filed by Monterey Pipeline Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Petrochemical Energy Group.

[14] The Commission's existing regulations are prefaced with the designation "current." Regulations that were proposed in the NOPR are prefaced with the designation "proposed." Regulations that are being implemented by this final rule are prefaced with the designation "new."

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curtailment plans differ in their definitions of high-priority of uses.

The Commission agrees with the commenters' assertion that the proposed definition of "emergency" would unnecessarily restrict the types of end users on whose behalf pipelines and distributors engage in emergency natural gas transactions. Under the proposed bifurcated definition, during a curtailment emergency all low priority end users would be excluded from receiving emergency gas. Further, emergency transactions could be conducted on behalf of high priority end users only if they had not installed alternative fuel facilities or, if they had, did not have access to adequate supplies of alternative fuels.

The Commission also is persuaded that the proposed differentiation between a "pipeline emergency" and a "curtailment emergency" might have an adverse effect on gas suppliers and their customers, since each pipeline's curtailment plan in its FERC gas tariff was designed to fit the particular circumstances of that pipeline during periods of curtailment, but the proposed definition provided no guidance as to its effect on these plans. Furthermore, pipelines' curtailment plans differ in their definition of high priority uses.

In response to the comments, the Commission is not adopting the proposed distinction between "pipeline emergency" and "curtailment emergency." The final rule adopted herein retains, with certain modifications, the single definition of "emergency" in § 157.46(a) of the current rule, redesignated as § 284.262(a)(1). In so doing, the Commission is resolving some of the specific concerns expressed by the commenters, as discussed below.

By retaining the existing definition of "emergency", the Commission is eliminating the proposed restrictions on emergency transactions for certain classes of end users. However, the Commission has modified the current definition of emergency to clarify in new § 284.262(a)(1)(i) that emergency transactions under Subpart I are to be used only in those instances where they are necessary to maintain projected levels of service to particular customers, unless additional supplies are needed because of "a sudden unanticipated loss of natural gas supply or a sudden unanticipated increase in demand" (*see* new § 284.262(a)(1)(ii)) or the participant, in good faith, determines that additional supplies are required "for protection of life or health or for maintenance of physical property" (*see* new § 284.262(a)(1)(iii)). A company's total projected level of service for all of its customers is reported in its FERC Form No. 16. The company can determine its projected level of service for each customer from the information it uses to compile its total amount reported. Emergency transactions may be used to respond to weather-induced increases in requirements but may not be used to increase service levels to existing customers for any other reason. Further, while the definition adopted herein in § 284.262(a)(1) is broad enough to provide for emergency transactions on behalf of end users with alternative fuel capacity, sales and deliveries of emergency gas still must fall within planned service levels for those customers. This limitation also will avoid the problems inherent in ascertaining alternative fuel capacity and availability.

The revised definition will also accommodate those commenters that believe that the definition of "emergency" should include distribution companies that experience sudden and unanticipated losses of supply due to failure of facilities, so that they may secure emergency supplies for end users, including those users with alternative fuel capacity. The definition of emergency is also responsive to the request by another commenter that the definition include emergency shortages incurred by suppliers other than pipelines. Specifically, the final rule's definition of "emergency" in new § 284.262(a)(1), which is adapted from the current definition of emergency in § 157.46(a)(1), provides that shortages incurred by distribution companies or Hinshaw pipelines may also qualify as emergencies for purposes of the revised regulations.

The definition of emergency, however, does not include economic emergencies, contrary to the request of one commenter. That commenter stated that petrochemical companies are captive customers unable to use alternative fuels because they need the gas for feedstock or process fuel uses. The commenter is concerned that, if confronted with a sharp rise in other suppliers' gas prices, the proposed rule would prevent eligible participants from engaging in short-term emergency transactions on these customers' behalf while the customers negotiate acceptable long-term arrangements with existing or other suppliers.

The Commission has determined that the definition of "emergency" should not encompass "economic" emergencies. Rather, the Commission believes the emergency regulations of Subpart I of Part 284 should facilitate immediate responses to physical shortages of gas, but not situations in which gas is physically available but not at the desired price. In such situations, gas users should seek to obtain less expensive replacement supplies through transporters who either operate under the self-implementing provisions of Subparts B and C of Part 284, hold blanket certificates, or are willing to seek specific authorization under the Natural Gas Act.

Another commenter urged expansion of the definition of emergency to include a loss of a recipient's gas supply caused by other factors beyond pipelines' and distributors' control, such as the implementation by sellers or transporters of *force majeure* clauses, or the shutting-in of wells due either to disputes or low well pressure. The Commission declined to expand the definition in that manner as it would be vague and overly broad. A definition of *force majeure* in a private contract, and a seller's or transporter's unilateral interpretation of such a contractual provision when asserting it, could go well beyond the intended scope of the concept of an "emergency" as contemplated in the rule. Similarly, "disputes" could arise for many reasons, not all of which encompass the situations that the rule is designed to cure.

One commenter objected to the narrowing of the definition of emergency in the proposed rule unless Subparts B and C of Part 284 were concurrently amended to authorize self-implementing transportation directly to specific end users or classes of end users. The commenter's concern has been eliminated by retention of the existing definition of emergency and by providing emergency transportation authority independent of Subparts B and C of Part 284.[15]

Finally, one of the commenters that requested expansion of the term "pipeline emergency" also urged the Commission to distinguish an emergency which, under the proposed regulations, would be exempt from certification from an emergency which forms one aspect of the Commission's consideration of a request for a temporary certificate. As stated in the notice of proposed rulemaking, this proceeding does not relate to the issuance of a temporary certificate during an emergency pending consideration of an application for certificate authority under § 157.17.[16]

2. Clarification of Gas Storage Policy

Current § 157. 46(a)(1) permits emergency transactions to be used to maintain deliverability from storage or to replenish storage volumes. However, proposed § 284.262(a)(1)(ii) would permit only those emergency transactions necessary to maintain scheduled levels of gas inventory and thereby ensure maintenance of projected service levels, taking into account peak-day and seasonal requirements.

Many commenters expressed concern that they would not be able to maintain scheduled levels of gas inventory without maintaining deliverability and replenishing storage volumes. These commenters contended that replenishing storage volumes should be allowed in an amount at least up to the scheduled inventory level. These points are well taken. The proposed language was ambiguous and contradictory.

The Commission intended to revise § 157.46(a)(1) to permit an "emergency transaction" to maintain levels of storage inventory sufficient to ensure a pipeline's planned level of service, including deliverability needed to meet weather-induced demand, but not to increase the level of service to add new customers or for any other reason except abnormal weather conditions. Certificate authority, rather than emergency authority, should be used to supply gas if market expansion or special sales are being implemented through the use of storage.

In response to the comments, and to implement the Commission's original intent, the phrase "to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system" in proposed § 284.262(a)(1)(ii) has been revised so that new § 284.262(a)(1)(i) reads "to maintain levels of natural gas storage inventories sufficient to ensure a pipeline's projected level of service." Further, "projected level of service." is defined in § 284.262(b) to mean "the level of service projected by the company for each customer which the company uses to compile the total projected level of service that it reports in its FERC Form No. 16 plus any additional supplies needed by a customer due solely to a weather-induced increase in requirements."

3. Simultaneous Sale and Purchase of Emergency Gas

Both the current and proposed rule provide that participants should make every reasonable attempt to minimize or, if possible, to avoid reliance on emergency natural gas transactions. In the NOPR, the Commission proposed adding three clarifying provisions, §§ 284.264(a)(1)–(3), which were adapted from current § 157.48(a). Proposed subparagraph (4) of § 284.264(a) would have prohibited a participant from selling emergency gas under this subpart if the participant was simultaneously purchasing emergency gas.[17]

Several commenters pointed out that a participant serving a large geographic area might simultaneously need to make an emergency sale at one point on its system (to alleviate someone else's emergency) while making an emergency purchase elsewhere on its system (to avoid disruption or diminution of service at another point on its own system). That is, because of the configuration of the pipeline, it could not use its system supplies to alleviate the emergency in one part of its system, but it could use those supplies to assist someone elsewhere on its system.

The Commission is persuaded that these special circumstances outlined by the commenters could justify a simultaneous purchase and sale of emergency gas on a participant's system. Because the Commission would expect that, in any extended curtailment situation, other sources of supply would be actively pursued, the general prohibition described in subparagraph (4) has been retained in the final rule. However, in order to alleviate the potential problem of a need for emergency gas in one segment of a pipeline's system that cannot be met by moving gas from another part of its system, § 284.264(a)(4) in the final rule has been revised by adding the phrase "except when gas is being purchased to relieve an emergency on another, separate segment of the participant's system."

4. Rates and Costs Treatment

The current regulation, § 157.48(d), authorizes interstate pipelines to purchase emergency gas for system supply, and also authorizes direct assignment of emergency gas volumes and costs to particular customers who need the gas. Proposed § 284.265 provided that an interstate pipeline that puchased emergency gas for a pipeline emergency could roll the costs of that gas into its general system supply. However, during a curtailment emergency, an interstate pipeline would generally not have been allowed to roll the cost of emergency gas into the rates paid by all on-line customers, with the exception of minimal amounts of gas which had been inadvertently purchased in excess of the volumes needed to address the curtailment emergency. Similar to the current regulation, the proposed rule allowed a purchasing interstate pipeline to either directly assign specific emergency gas costs to particular emergency gas customers or to aggregate emergency gas costs and allocate the costs on a weighted-average or "rolled-in" costs basis among all of its emergency gas customers.[18]

Proposed § 284.266, which prescribed the allowable rates and charges for emergency transactions, paralleled current §§ 157.49 and 157.50. However, when possible, the Commission proposed to adopt the same methodology for determining rates and charges for emergency transactions that was applied under the self-implementing procedures of old Subparts B and C and current Subpart D of Part 284. Thus, the Commission proposed that, for the transportation of emergency gas, an interstate pipeline would apply the rate and revenue provisions in then effective § 284.103. An intrastate pipeline, local distribution company, or Hinshaw pipeline would apply the transportation rate and revenue provisions in then effective § 284.123. Accordingly, if one of these nonjursidictional firms had an appropriate existing rate on file with an appropriate state regulatory agency for city-gate services, it would use that rate, unless it filed a new rate for Commission approval. A local

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[15] The Commisson notes that Subparts B and C of Part 284 were amended by Order No. 436 to permit transportation directly to end users, eliminating the condition that gas transported under Subpart B or C of Part 284 must be received into system supply. Transportation under Subparts B and C is still subject to the condition that the transportation, if performed by an interstate pipeline, must be on behalf of an intrastate pipeline or local distribution company, or, if provided by an intrastate pipeline, on behalf of an interstate pipeline or one of its distributor customers.

[16] *See* 49 FR at 33005

[17] Proposed subparagraph (3) of § 284.284(a) prohibited a participant from engaging in an emergency transaction if this participation would render the participant unable to provide adequate service to its existing customers. This subparagraph has been adopted in the final rule without change. Proposed subparagraph (5) outlined the Commission's general enforcement procedures under proposed Subpart I. This subparagraph has been deleted from the final rule as it stated only the Commission's enforcement position which is applicable to all of the Commission's regulations.

[18] Under a "rolled-in" rate making approach, the costs of all of a pipeline's facilities or gas supplies are aggregated, and are then allocated among the pipeline's various services and customers. This method is generally used where the pipeline's incurrence of the costs under review can reasonably be determined to be the responsibility of and provide benefits for all of the pipeline's customers and services. Under a "direct assignment" approach, the costs of particular facilities or gas supplies are directly assigned to specific services or customers. This latter method is generally used only where a direct cost-causal relationship exists between specific costs incurred by the pipeline and specific beneficiaries of the service which engendered those costs.

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distribution company or Hinshaw Pipeline that did not have such a rate on file would apply the transportation rate provisions of then effective § 284.222(e)(2)(ii) (current § 284.224(e)(2)(ii)). Interstate pipelines would have based their rates for sales of emergency gas on applicable or comparable tariff rates. If there was no applicable or comparable tariff rates on file, interstate pipelines would base their sales rates on the methodology used in designing their effective sales rates, including their current purchased gas cost. This was similar to the current methodolgy. (Proposed § 284.264(a)(7), new § 284.264(a)(5), retains the prohibition against an interstate pipeline's receiving compensation for acting as a broker or agent in an emergency transaction.)

Finally, intrastate pipelines, local distribution companies, and Hinshaw pipelines would have set sales rates according to the provisions in current § 284.144 (the self-implementing provisions for gas sales by intrastate pipelines).

Many commenters opposed the direct assignment of costs of emergency purchases to remedy a curtailment emergency. Several contended that the proposed rate treatment of emergency gas purchases during curtailment emergencies contravened the Commission's traditional policy of allocating gas costs among all of a pipeline's customers through use of the rolled-in method. One commenter stated that in light of the differing curtailment plans established based on the differing circumstances of interstate pipelines, the requirement for direct assignment of costs may not be appropriate.

Several commenters added that the direct assignment of costs of emergency purchases should not be automatically required in curtailment emergencies if a pipeline makes such purchases for general system supply to remedy acute curtailment of high-priority end users. One of these commenters stated that this rate treatment would result in the inability of unwillingness of interstate pipelines to purchase emergency gas.

In the NOPR, the Commission stated that the purpose of prohibiting a pipeline from rolling the cost of emergency gas into the rates of all on-line customers was to permit normal "market signals" to flow from the incremental gas customers, who would otherwise face curtailments, to their supplies of emergency gas.[19] One commenter contended that such market signals would not exist where certain interstate pipelines have thousands of end users dependent upon those pipelines' quick responses to emergency shortfalls of gas supplies. This commenter also pointed out that "pipeline" or *force majeure* emergencies are more likely to affect a discrete portion of a pipeline's system than curtailment emergencies. This commenter concluded that the costs associated with all emergency purchases should be permitted to be rolled into the costs of system supplies.

One commenter, however, suggested that in the case of a curtailment emergency, particular recipients should be required either to pay the direct costs related to the discrete emergency gas supply that they receive or to pay the pipeline's weighted average cost of providing service to all customers which received emergency gas.

As noted above, the final rule eliminates the distinction between "pipeline" and "curtailment" emergencies by retaining the current definition of emergency. Under this format, it might be more difficult to determine where the benefits of emergency gas purchases will accrue. Thus, use of the rolled-in method on a systemwide basis would be more practical. Accordingly, with the exception noted below, § 284.265(b) of the final rule provides for rolled-in treatment of emergency gas purchase costs.

The Commission agrees with the commenters that some inequities might result during selected emergencies from allowing only the rolled-in cost allocation method. Further, the Commission also has determined that it would be inappropriate and unnecessarily complicated for an interstate pipeline to aggregate its gas costs in all emergency transactions in a separate account and allocate those costs on a weighted-average basis among customers in different emergency transactions. Accordingly, § 284.265 of the final rule provides that an interstate pipeline, when able to determine that the benefits of a particular purchase of emergency gas accrue only to particular customers, must directly assign the purchase costs of the emergency gas to those customers. Section 285.265 further provides, if the interstate pipeline is unable to determine that an emergency gas purchase benefits only particular customers, that the interstate pipeline must roll the emergency gas costs into general system supply costs.[20]

The proposed rate and revenue conditions applicable to participants that provide emergency transportation or make emergency sales are unchanged, with three exceptions. First, the language of proposed § 284.266(b) has been revised to provide that interstate pipelines that do not have comparable sales rates on file shall determine their emergency sales rates according to the methodology used in designing their currently effective sales rates, including their current purchased gas cost. This revision was made because the proposed language, while it would be substantively the same in most instances, would not be applicable to all interstate pipelines since it provided for every interstate pipeline to design its rates according to "the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas cost."

Second, interstate pipelines that file § 284.7 rates shall be required, after such filings become effective, to apply to any emergency transportation service a volumetric rate based upon the full costs properly allocable to that transportation service. The provisions of § 284.7(b)(5) that provide for rate flexibility will not apply to emergency transactions, since those provisions are intended to permit pipelines to meet competitive pressures. In view of the Commission's determination that qualification as an emergency should not depend on economic considerations, an interstate pipeline should not be allowed to charge a rate less than its properly allocable costs of service. Further, it would not be appropriate for an interstate pipeline to withhold service from a customer experiencing an emergency until the customer agrees to pay a rate higher than the properly allocable costs of service. Moreover, it does not appear appropriate to establish a separate projected level of emergency transportation in order to develop transportation rates. Therefore, an interstate pipeline must charge a volumetric and fully allocated-cost rate, as described in § 284.7(d)(1), adjusted only for time and distance as provided in § 284.7(d)(3). Moreover, since the proposal would have made interstate pipelines' emergency transportation rates subject to § 284.103 by reference, and Order No. 436 deleted § 284.103 from the Commission's regulations, it is necessary in this final rule to include, with certain modifications, the provisions of former § 284.103 in the new Subpart I emergency regulations in § 284.266. The emergency transportation and sales rate conditions applicable to intrastate pipelines and local distributors will be implemented, as proposed, by reference to § 284.123 of Subpart C, § 284.144 of Subpart D, and § 284.224(e)(2)(ii) (previously § 284.222(e)(2)(ii)) of Part 284.

Finally, in recognition that interstate pipelines will generally not include revenues from their emergency gas sales in their Purchased Gas Adjustments, the Commission has added a provision to new § 284.266(c) which clarifies that in such cases interstate pipelines are only required to credit to Account No. 191 those revenues in excess of the sum of their cost of purchased emergency gas and one cent per MMBtu. In addition, since the tariff of a pipeline that provides only transportation service may not provide for Purchased Gas Rate Adjustments, a new paragraph (iii) has been added to § 284.266(c)(1) to require that such pipelines credit emergency transportation revenues in excess of one cent per MMBtu to current bills in order to ensure that such revenues are flowed back to the interstate pipeline's customers.

5. Reporting Requirements

Current § 157.51 requires an interstate pipeline, within 48 hours after commencement of deliveries of emergency natural gas, to notify the Commission in writing of the sale, stating the specific nature and duration of the emergency, the amount of emergency natural gas to be purchased or transported on a daily basis, the name of the seller, the transporter, and any person to whom the emergency natural gas is to be assigned, and the price.

Proposed § 284.267 would have required a telegraphic report, rather than a written report, within 48 hours after deliveries commence under emergency gas sales, transportation, or exchanges by the purchasing participant, the recipient, or the initial recipient, respectively. Much of the same data about each transaction that were required under the proposed rule are currently required under § 157.51. These data include the specific nature and anticipated duration of the emergency, the amount of gas to be purchased or transported on a daily basis, the names of the sellers, the transporters, and any assignee, and the price. The proposed rule also would require the following additional data for each type of transaction. A statement that the report is made under § 284.267 (§ 284.270 in the final rule), the date the transaction began, the total amount of emergency gas expected to be moved in the transaction, and the identity of all participants involved. Proposed § 284.267(a)(3) would require similar data pertaining to exchanges except that instead of reporting the price for the gas, the proposed rule required data on whether the exchange is concurrent or nonconcurrent. The rule also required a statement of the redelivery schedule and any imbalances in the volumes, whether the exchange is on a thermal or volumetric basis, and the rates or charges for the exchange service.

Proposed § 284.267(b) contained a new requirement for a termination report.[21] Three sworn copies of the termination report were required to be filed 30 days after the emergency transaction ends. The report would include the following information: (1) A description of the emergency transaction; (2) the date it began and ended; (3) the date of the 48-hour report; (4) the way the emergency was resolved; (5) any corrections to the initial telegraphic report or a statement that it is correct; (6) the volumes delivered and compensation received for the emergency gas; (7) how the compensation was determined; (8) the volumes of natural gas that were assigned; (9) the total volume in system supply; (10) any information supplied to other participants that an emergency existed or was imminent so as to qualify as an emergency transaction; and (11) that the emergency was carried out under Subpart I. Like the 48-hour report, the 30-day termination report required data that would be readily available to a participant, because it was essentially a final version of the data previously sent in the 48-hour report. The Commission proposed the termination report to assist its effective administration of Part 284 in light of incidents where emergency transactions may have been used improperly to circumvent NGA certificate requirements.

One commenter argued that because telegraph facilities are not always available, the participate be given the option of making a report by telephone, followed by a written report. Another commenter suggested that the method of reporting not be restricted to a telegram, but rather, that any reasonable method of communication that complies with the 48-hour requirement be permitted.

The Commission's intent was to clarify the reporting requirements without increasing the reporting burden. In this context, the Commission believed that it would be less burdensome for a participant to send a telegram than to prepare and send a written report. However, a documented record of some sort is needed—either a written report or a telegram. Forty-eight hour reporting has been a requirement of emergency transactions for many years. The Commission needs such information to keep itself informed of emergency situations as they occur, in order to carry out its regulatory responsibility to ensure reliable service. Nevertheless, in response to the comments, the final rule has been modified in new § 284.270(a) to permit written reports in lieu of telegraphic reports; thus, for the 48-hour report, the reporting participant can send either a written report or a telegram.

One commenter stated that it may not be possible for the reporting participant to specify the actual total amount or average daily amount of emergency natural gas in the 48-hour report. Though the NOPR specified the amount of gas to be purchased or transported on a daily basis, it was not the Commission's intent to require actual volumes in these reports. Therefore, the final rule has been modified in § 284.270(a)(4) of the final rule to include the term "estimated" in the context of total and average daily volumes reported in 48-hour reports.

The Commission also agrees with the commenter's statement that inclusion of a redelivery schedule of the volumes in an exchange transaction is unnecessary and possibly burdensome. This commenter rightly pointed out that the requirement to correct any imbalance in volumes within 180 days was retained in the proposed regulations. This requirement is sufficient to achieve the Commission's objective. Therefore, the redelivery schedule reporting requirement is not included in the final rule.

One commenter suggested that for all parties to an emergency transaction to be kept fully informed, the reporting participant should be further required to serve copies on the other participants. While the Commission agrees that it would be good business practice for the reporting participants to provide copies of the reports to the other parties, and encourages them to do so, it does not wish to codify that practice as a legal requirement.

Finally, the reporting requirements have been revised to clarify that, when required to describe the specific nature of an emergency situation (*see* §§ 284.270 (a)(3), (b)(3), (c)(3), and (d)(1) of the final rule), the respondent should include sufficient information to demonstrate how the situation qualifies

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[19] 49 FR at 33000.

[20] Of course, the appropriateness and prudence of any purchases for emergency sales will be subject to scrutiny in the purchasing pipeline's appropriate PGA or general rate change filings.

[21] The quarterly report prescribed under current § 157.51(b) is required to be filed only at the end of each calendar quarter in 1979. This report was retained in the proposed rule.

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as an emergency under § 284.262 and under the conditions of § 284.264.

6. Relationship Between Emergency Transaction Regulations and Order No. 436

The amended emergency regulations promulgated in this order partially overlap the regulations for the transportation programs in Subparts B, C, G and H of Part 284. To prevent any ambiguity, the Commission clarifies here that the non-discriminatory access, customer contract demand reduction/conversion, and other conditions of Order No. 436 do not apply to emergency transportation performed under Subpart I. (The one exception, as discussed above, is that certain of the rate conditions of § 284.7 will apply to interstate pipelines that also transport under Order No. 436.)

On the other hand, the Commission wishes to clarify that the emergency regulations are not intended as a substitute for transportation authority available through the provisions of Order No. 436. Thus, an interruption of transportation resulting from a pipeline's decision not to participate in the self-implementing transportation provisions of Order No. 436, or not to seek specific authority for transportation or sales under section 7 of the Natural Gas Act, would not of itself constitute an emergency under new § 284.262. Such an interruption, for instance, would not constitute "a sudden unanticipated loss of natural gas supply," a curtailment of deliveries, or a situation requiring protection of life or health or the maintenance of physical property, within the meaning of that section.

III. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA), section 3, 5 U.S.C. 601–612 (1982), requires agencies to prepare certain statements, descriptions, and analyses of rules that, if promulgated, of small entities." The Commission is not required to make such analyses if a rule would not have such an impact.

Most of the pipeline companies affected by this rule do not fall within the RFA's definition of small entity.[22] Some local distribution companies may meet the small entity definition. However, the accounting, filing, and reporting burdens on all of the entities affected by the rule would either remain about the same or would be increased by a very small degree. The associated costs that would be incurred by participants to emergency transactions are likely to be insignificant. Conversely, the reporting requirements should be easier to understand and complete. The Commission is revising these reporting requirements only where its administrative and enforcement experience has shown a need to do so. In addition, any increased compliance burden should be offset by the clarifications and consolidations made in this rule. For example, a participant's election to file a telegraphic report rather than a more burdensome written report will probably reduce the overall time and resources that must be spent by transaction participants.

For these reasons, the Commission does not believe that the impact of this rule will be economically "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IV. Paperwork Reduction Act Statement

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [23] and OMB's regulations.[24] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Talib Shahid, (202) 357–8593). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

V. Effective Date

The amendments made by this final rule will be effective on June 2, 1986. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

In consideration of the foregoing, the Commission amends Part 2, Part 157, and Part 284, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12.009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1976), unless otherwise indicated.

§ 2.68 [Removed]

2. Part 2 is amended by removing § 2.68.

PART 157—[AMENDED]

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

§§ 157.22 and 157.29 [Removed]

4. Sections 157.22 and 157.29 are removed.

5. The table of contents for Part 157 is amended by removing the title of Subpart C and the section numbers and headings thereunder.

Subpart C (§§ 157.45–157.52)—[Removed]

6. In Part 157, Subpart C (§§ 157.45 through 157.52) is removed in its entirety.

PART 284—[AMENDED]

7. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

8. The table of contents of Part 284 is amended by adding a new Subpart I to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

* * * * *

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Sec.

284.261 Purpose.
284.262 Definitions.
284.263 Exemption from section 7 of Natural Gas Act and certain regulatory conditions.
284.264 Terms and conditions.
284.265 Cost recovery by interstate pipeline.
284.266 Rates and charges for Interstate Pipelines.
284.267 Intrastate pipeline emergency transportation rates.
284.268 Local distribution company emergency transportation rates.
284.269 Intrastate pipeline and local distribution company emergency sales rates.
284.270 Reporting requirements.
284.271 Waiver.

9. In Part 284, a new Subpart I is added to read as follows:

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

§ 284.261 Purpose.

This subpart exempts a person who engages in an emergency natural gas transaction, as defined for purposes of this subpart, in interstate commerce from the certificate requirements of section 7 of the Natural Gas Act and from the conditions of § 284.7, except as provided in § 284.266, and §§ 284.8–284.13 of Subpart A of this Chapter.

§ 284.262 Definitions.

For purposes of this subpart:

(a)(1) "Emergency" means, except as provided in paragraph (a)(2):

(i) Any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any customer, including any situation in which additional supplies are necessary to maintain levels of natural gas storage inventories sufficient to ensure a pipeline's projected level of service to any customer, but not including any situation in which additional supplies are needed to increase the projected level of service to an existing customer or to provide service to new customers; or

(ii) A sudden unanticipated loss of natural gas supply or a sudden unanticipated increase in demand; or

(iii) Any situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

(2) "Emergency" does not mean any situation under paragraph (a)(1) resulting solely from a failure by any person to transport natural gas under Subpart B, C, G, or H of this part.

(b) "Projected level of service" means the level of service projected level by the company for each customer which the company uses to compile the total projected level of service that it reports in its FERC Form No. 16 and additional supplies needed by a customer due solely to a weather-inducted increase in requirements.

(c) "Emergency natural gas" means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

(d) "Emergency natural gas transaction" means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart that is:

(1) Necessary to alleviate an emergency; and

(2) Not anticipated to extend for more than 60 days in duration.

(e) "Emergency costs" means the amount paid by a recipient of emergency natural gas and all associated costs, including all transportation costs.

(f) "Participant" means any first seller, interstate pipeline, intrastate pipeline, local distribution company or Hinshaw pipeline that participates in an emergency natural gas transaction under this subpart.

(g) "Recipient" means:

(1) In the case of the sale of emergency natural gas, the purchaser of such gas; or

(2) In the case of a transportation or exchange of emergency natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the gas.

(h) "Hinshaw pipeline" means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

§ 284.263 Exemption from section 7 of Natural Gas Act and certain regulatory conditions.

Any participant that engages in an emergency natural gas transaction conducted in accordance with this subpart is exempt from the requirements of section 7 of the Natural Gas Act and the conditions of § 284.7, except as provided in § 284.266, and from the requirements of §§ 284.8–284.13 of Subpart A of this part. Participation in any emergency natural gas transaction will not subject any participant to the jurisdiction of the Commission under section 7 of the Natural Gas Act except to the extent such transaction is provided for in this subpart.

§ 284.264 Terms and conditions.

(a) *General conditions.* (1) A participant must make every reasonable attempt to minimize use of emergency natural gas transactions.

(2) Before deliveries of emergency natural gas commence, a responsible official of the recipient must provide any participants in the emergency natural gas transaction sufficient information to enable the participants to form a good faith belief that an emergency exists or is imminent.

(3) No participant may engage in an emergency natural gas transaction if its participation will adversely affect service to its existing customers.

(4) A participant may not sell emergency natural gas if, during the term of the sale, it is also purchasing emergency natural gas under this subpart, except when natural gas is being sold to relieve an emergency on another, separate segment of the participant's system.

(5) An interstate pipeline, acting in an emergency gas transaction as a broker or agent on behalf of another participant or any other person, may not receive compensation for such brokerage or agency service.

(6) A recipient of emergency natural gas that directly benefits from the service must:

(i) Provide line loss and the fuel volumes required to transport the emergency natural gas; and

(ii) Pay for the facilities required to be constructed to conduct the emergency natural gas transaction.

(b) *Duration.—(1) Emergency sale or transportation.* An emergency natural gas transaction is limited to 60 consecutive calender days, except that such transaction may be continued for an additional 60 consecutive days if:

(i) Fifteen days prior to the end of the initial 60-day period, the recipient of

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[22] 5 U.S.C. 601(c) *citing* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also,* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[23] 44 U.S.C. 3501–3520 (1982).

[24] 5 CFR 1320.13 (1983).

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emergency natural gas files a petition that:

(A) Describes fully the continued emergency,

(B) Requests a waiver of the intitial 60-day limitation and permission for an extension of the transaction for an additional 60 days; and

(ii) Within the 15-day period, the Commission does not, by order, prohibit continuation of the emergency natural gas transaction for the additional 60-day period.

(2) *Redelivery in emergency exchange.* The redelivery of emergency natural gas received under an exchange arrangement must occur within 180 consecutive days following the termination of deliveries of the emergency natural gas.

§ 284.265 Cost recovery by interstate pipeline.

(a) Except as provided in paragraph (b), an interstate pipeine that provides emergency natural gas, whether from its system supply or by special purchase, must directly assign the emergency gas costs to the recipient.

(b) If an interstate pipeline cannot identify individual recipients, the interstate pipeline must roll the emergency gas costs into its general system supply costs.

§ 284.266 Rates and charges for interstate Pipelines.

(a) *Transportation rates.*—(1) *Rate on file.* If an interstate pipeline has on file with the Commission an effective transportation rate schedule that conforms to § 284.7, it must use volumetric rates based upon fully-allocated costs and adjusted only for time and distance.

(2) *Rate not on file.* If an interstate pipeline does not have on file with the Commission a transportation rate schedule that conforms to § 284.7, it may:

(i) Base its rates upon the methodology used in designing rates to recover the transmission and related storage costs included in one of its then-effective sales rates schedules; or

(ii) Use the rates contained in one of its transportation rate schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under this subpart.

(b) *Sales rates.*—(1) *Rate on file.* An interstate pipeline must determine its rates for sales of emergency natural gas under this subpart according to a rate schedule applicable or comparable to this type of service.

(2) *Rate not on file.* If no applicable or comparable rate schedule is on file for this type of service, the interstate pipeline must determine its rates according to the methodology used in designing its then effective sales rates, including its current purchased gas cost.

(c) *Treatment of revenues.* (1) Except as provided in paragraph (c)(2),

(i) All revenues received by an interstate pipeline for transportation or, if the interstate pipeline includes the cost of emergency natural gas in its Purchase Gas Adjustment, for sales authorized under this subpart in excess of an allowance of one cent per MMBtu must be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(ii) All revenues received by the interstate pipeline for transportation or, if the interstate pipeline does not include the cost of emergency natural gas in its Purchased Gas Adjustment, for sales authorized under this subpart in excess of the sum of (A) the cost of purchased gas plus (B) an allowance of one cent per MMBtu must be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(iii) If an interstate pipeline's tariff does not provide for Purchased Gas Rate Adjustments, all revenues received by the interstate pipeline for transportation authorized under this subpart in excess of one cent per MMBtu must be flowed back to the interstate pipeline's customers by credits to current bills.

(2) An interstate pipeline is not required to credit revenues received for transportation or sales authorized under this subpart:

(i) If representative levels of revenues attributable to transportation or sales, as applicable, under authority of this subpart have been credited in arriving at a test period cost-of-service; or

(ii) If representative levels of volumes transported or sold, as applicable, under authority of this subpart have been included in billing determinants for the purpose of establishing rates; or

(iii) which, upon application, the Commission finds to have been demonstrated as representing the out-of-pocket expenses of the interstate pipeline in connection with a transaction authorized under this subpart.

(d) *Interstate pipeline costs excluded from rate base.* An interstate pipeline may not include in its jurisdictional rate base any cost associated with facilities installed and operated in connection with an emergency natural gas transaction unless a certificate of public convenience and necessity has been issued authorizing the costs. Absent a certificate, such facilities may only be used to conduct emergency natural gas transactions or transactions authorized under section 311 of the NGPA.

§ 284.267 Intrastate pipeline emergency transportation rates.

General rule. Rates and charges for transportation of emergency gas by intrastate pipelines authorized under this subpart must be determined in accordance with § 284.123 of this chapter.

§ 284.268 Local distribution company emergency transportation rates.

(a) *Rate on file.* A local distribution company that has a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas in accordance with § 284.123 of this chapter.

(b) *Rate not on file.* A local distribution company that does not have a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas (per unit volume of emergency natural gas transported) in accordance with § 284.224(e)(2)(ii) of this chapter.

§ 284.269 Intrastate pipeline and local distribution company emergency sales rates.

An intrastate pipeline or local distribution company must determine its rates for sales of emergency natural gas under this subpart in accordance with § 284.144.

§ 284.270 Reporting requirements.

(a) *Forty-eight hour report for sales transactions.* Within 48 hours after deliveries of emergency natural gas commence, the purchasing participant must notify the Commission by telegraph or other written report of the sale, stating, in the following sequences:

(1) That the report is submitted pursuant to § 284.270 for an emergency natural gas transaction;

(2) The date deliveries commenced;

(3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be purchased during the term of the transaction;

(5) The purchase price of the emergency natural gas;

(6) The transportation rate; and

(7) The identity of all participants involved in the transaction, including any customers to whom the emergency natural gas is to be assigned.

(b) *Forty-eight hour report for transportation (excluding exchanges).* Within 48 hours after deliveries commence in an emergency natural gas transaction which does not involve the sale of emergency natural gas, the recipient of emergency natural gas shall notify the Commission by telegram or other written report of the transportation, stating, in the following sequence:

(1) That the report is submitted pursuant to § 284.270 for an emergency transaction;

(2) The date deliveries commenced;

(3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be transported during the term of the transaction;

(5) The transportation rate; and

(6) The identity of all the participants involved in the transaction.

(c) *Forty-eight hour report for Exchanges.* Within 48 hours after an exchange transaction for emergency natural gas commences, the initial recipient of the exchange volumes must notify the Commission by telegram or other written report of the exchange, stating, in the following sequence:

(1) That the report is for and submitted pursuant to § 284.270 for an emergency transaction;

(2) The date the exchange commenced;

(3) The specific nature of the situation, explained in sufficient detail to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be exchanged during the term of the transaction;

(5) The identity of all participants involved in the transaction;

(6) Whether the exchange is simultaneous or deferred, or any imbalances in the volumes;

(7) Whether the exchange is on a thermal or volumetric basis; and

(8) The rates or charges, if any, for the exchange service.

(d) *Termination report.* Within thirty days after the emergency natural gas transaction ends, the participant that received the emergency natural gas shall file with the Commission a sworn statement and two conformed copies thereof, which must include the following information in the following sequence:

(1) A description of the emergency natural gas transaction, including sufficient information to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264; the commencement and termination dates; the date of the 48-hour report, and the method of resolving the emergency;

(2) Any corrections to the 48-hour report information supplied to the Commission under paragraphs (a) through (c) of this section or a statement that the information was correct;

(3) The volumes of the emergency natural gas delivered during the transaction;

(4) The total compensation received by the seller for the emergency sale;

(5) The total compensation paid for the emergency natural gas transportation or exchange service, if any;

(6) The methods by which such compensation was derived;

(7) The total volumes of natural gas whose cost was assigned to specific customers, and the total volumes whose cost was included in system supply;

(8) The information supplied to any other participant pursuant to § 284.264(a)(2); and

(9) A statement that the emergency natural gas transaction was carried out in accordance with this subpart, and that identifies the circumstances demonstrating an emergency existed or was imminent so as to require an emergency natural gas transaction.

§ 284.271 Waiver.

The Commission may, by order, waive the requirements of this subpart in connection with any emergency natural gas transaction to the extent required by the public interest.

[FR Doc. 86-5910 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Apramycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. The NADA provides for the safe and effective use of an apramycin sulfate Type A medicated article to make a finished Type C swine feed used for control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *Escherichia coli.*

EFFECTIVE DATES: This rule is effective March 18, 1986, except that the amendment to § 558.4(d) is effective May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., P.O. Box 1750, Indianapolis, IN 46285, filed NADA 128-050. The NADA provides for use of Apralan® 75, an apramycin sulfate Type A medicated article containing 75 grams of apramycin per pound, to make a Type C swine feed used for control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *E. coli.* Apramycin is currently approved for use in the drinking water of swine. The NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an

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environmental assessment under 21 CFR 25.31a(a).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table entitled "Category II" by adding a new entry alphabetically to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits: Type A, percent [1]	Type B maximum (100x)	Assay limits (% of labeled amount) type B/C [2]
*	*	*	*
Apramycin	88–112	7.5 g/lb (1.65%).	80–120
*	*	*	*

* * * * *

3. A new § 558.59 is added to read as follows:

§ 558.59 Apramycin.

(a) *Approvals.* Type A articles to sponsors identified in § 510.600(c) of this chapter as follows:

(1) 000986 for 75 grams apramycin (as apramycin sulfate) per pound for use as in paragraph (d)(1) of this section.

(2) [Reserved]

(b) [Reserved]

(c) *Related tolerances.* See § 556.52 of this chapter.

(d) *Conditions of use—(1) Swine—*(i) *Amount.* 150 grams per ton.

(ii) *Indications for use.* For control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *Escherichia coli.*

(iii) *Limitations.* Use for 14 days. Withdraw 28 days before slaughter.

(2) [Reserved]

Dated: March 12, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–5855 Filed 3–17–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 25 and 252

[T.D. ATF–224; Reference Notice No. 449]

Beer

Correction

In FR Doc. 86–4369 beginning on page 7666 in the issue of Wednesday, March 5, 1986, make the following corrections:

1. On page 7680, in the first column, in § 25.81(b)(2), in the sixth line, "wall" should read "all".
2. On page 7683, in the second column, in § 25.122, in the second line, "or ATF" should read "on ATF".
3. Also on page 7683, in the third column, in § 25.125, in the second line, "of IRS" should read "on IRS".
4. On page 7691, in the first column, in § 25.221(b), in the last line, "his" should read "this".
5. On page 7695, in the third column, in § 25.286(a), in the sixteenth line, "whey" should read "why".
6. On page 7696, in the third column, in § 25.292(b)(5), in the second line, "removed" should read "removal".
7. On page 7700, in the first column, in the heading for § 252.150, "Changes" should read "Charges".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-7-FRL-2986-5]

Standards for Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Source (NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61. The action which involved EPA and the State of Missouri added eight (8) NSPS and three (3) NESHAPS categories to the delegations of authority. The delegations now include all categories for which federal standards have been promulgated by the agency through July 1, 1984.

EFFECTIVE DATE: March 18, 1986.

ADDRESSES: All requests, reports, applications, submittals and such other communications which are required to be submitted under 40 CFR Part 60 or Part 61 (including the notifications required to be submitted under Subpart A of the regulations) for affected facilities or activities in Missouri should be sent to the Missouri Department of Natural Resources (MDNR), P.O. Box 1368, Jefferson City, Missouri 65101. A copy of all Subpart A related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236–2896 or FTS: 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act, respectively, allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and 40 CFR Part 61. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards for the agency to the state government.

On October 29, 1984, the agency and the State of Missouri entered into a delegation of authority agreement whereby Missouri will automatically receive authority to implement and enforce federal NSPS and NESHAPS standards upon the adoption of the standards by the state government (see 50 FR 933).

Prior to October 29, 1984, Missouri was delegated authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. These previous delegation and extension of

authority actions were not affected by the action described below.

Missouri has updated its rules to incorporate, by reference, the provisions of 40 CFR Part 60 and Part 61 as in effect on July 1, 1984. The updating actions, in effect, incorporated the standards for eight (8) additional NSPS and three (3) additional NESHAPS regulations promulgated by the agency. The effective date of the updating actions were August 26, 1985 (NSPS) and October 26, 1985 (NESHAPS). The MDNR informed the agency of the adoption actions in a letter dated January 21, 1986.

The agency subsequently acknowledged the adoption actions and the corresponding delegations of authority in a letter to MDNR on February 19, 1986. The delegations occurred under the terms of the above mentioned October 29, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of August 26, 1985, (NSPS) and October 26, 1985 (NESHAPS), the State of Missouri has EPA's authorization to implement and enforce the federally established standards for the following additional categories:

NSPS:
- Subpart LL—Metallic Mineral Processing Plants;
- Subpart RR—Pressure Sensitive Tape and Label Surface Coating Operations;
- Subpart VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;
- Subpart WW—Beverage Can Surface Coating Industry;
- Subpart XX—Bulk Gasoline Terminals;
- Subpart FFF—Flexible Vinyl and Urethane Coating and Printing;
- Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries; and,
- Subpart HHH—Synthetic Fiber Production Facilities.

NESHAPS:
- Subpart M—Asbestos;
- Subpart J—Equipment Leaks (Fugitive Emissions Sources) of Benzene; and,
- Subpart V—Equipment Leaks (Fugitive Emission Sources).

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAPS regulation for facilities or activities in Missouri affected by the amended delegations of authority should be sent to the Missouri Department of Natural Resources at the above address rather than to the EPA Region VII office, *except* as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or Part 61, must *also* be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: March 6, 1986.

William Rice,

Acting Regional Administrator.

[FR Doc. 86–5881 Filed 3–17–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

Correction

In FR Doc. 86–2413 beginning on page 4347, in the issue of Tuesday, February 4, 1986, make the following correction:

On page 4347, beginning in the second column, the flood elevations in the table are final, and the table heading should be removed.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, 237

Aid to Families With Dependent Children Adult Assistance Programs

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV–A and the adult categories under titles I, X, XIV, or XVI (AABD) of the Social Security Act to promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of these programs. Specifically, regulations at 45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, and 237 are amended.

EFFECTIVE DATE: These final regulations are effective March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) published a Notice of Proposed Rulemaking on November 16, 1984 (49 FR 45558–45570) proposing regulatory changes that would result in savings to State and Federal governments, provide States greater flexibility, and/or relieve the burden of paperwork on State agencies.

These final regulations are applicable to both the AFDC and adult assistance programs unless otherwise specified. Additionally, some of the changes clarify policy areas as a result of implementation of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 (hereinafter referred to as OBRA). Unless otherwise noted, the estimated savings are Federal dollars only. This final rule is made effective upon publication in order to achieve the estimated fiscal savings already incorporated in the Federal budgets for AFDC and the Adult Assistance programs, and because many of these changes also allow States greater flexibility in their administration of these programs.

These final regulations: (1) Provide increased State flexibility by permitting:
—Telephone hearings in addition to face-to-face hearings;
—Recipients the option to refuse continued assistance pending a hearing decision;
—Different time frames for frequencies of eligibility redeterminations.

(2) Provide for more efficient program administration by clarifying:
—The amounts of income States may allocate and the individuals for whom such amounts may be allocated;
—How States are to treat windfalls and income tax refunds;
—What States may exclude as casual and inconsequential income and specifying a dollar limit per recipient, per quarter on such income of $30;
—The definition of stepparent marriage.

In addition, States can now assure the welfare of dependent children in instances of mismanagement of the AFDC grant, by making it easier in certain cases to make a direct payment of the shelter portion of the grant to the landlord.

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Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not:

(1) Have an annual effect on the economy of $100 million or more. Federal annual savings of these regulatory provisions are estimated to be up to $37 million.

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Pursuant to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department has determined that this rulemaking will not impose any new recordkeeping, information collection, or reporting requirement requiring OMB approval.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. For each particular regulation with a "significant impact on a substantial number of small entities" (e.g., small businesses) we must publish an initial analysis describing the regulation's impact on them. This analysis is to indicate the purpose and reason for the regulation and the number of small businesses to which it would apply, to anticipate reporting and recordkeeping requirements, to identify possible overlap and conflict with other Federal regulations and to describe possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

We certify that these regulations will not have any significant economic impact on a substantial number of small entities becasue the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entities within the intent of the Regulatory Flexibility Act and therefore, a regulatory flexibility analysis is not required.

Discussion of Major Provisions and Responses to Comments

We received approximately 200 comments from the following sources: Forty-five public interest groups; forty-eight various State agencies; seventy-two private citizens; seven landlords and landlord associations; sixteen tenants associations; thirty-eight lawyers and legal aid groups; and seventeen State and local housing authorities. The majority of these comments were related to the provision on the criteria for use of restricted payments. As a result of our review of these comments, the restricted payments regulation has been substantially amended.

Following is a discussion of the comments and our responses and the rationale for any significant changes from the proposed rulemaking. Based on our own further review, we have also made some minor and technical changes in the final rule.

Optional Telephone Hearings (Section 205.10(a)(2) of the Final Regulations

Current regulations require that each State provide applicants and recipients an opportunity for a hearing where the agency proposes to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payments to a protective, vendor, or two-party payment. We have amended the regulations at § 205.10(a) to specify that States have the option of offering a telephone hearing when mutually agreed upon by the applicant or recipient and the State agency, as an alternative to face-to-face hearings.

One State, New Mexico, operated a demonstration project to study the effects of telephone conferencing as a substitute for in-person hearings under the AFDC program. The experiment was designed based on the following research questions: (1) Are hearings conducted over the telephone perceived to meet due process standards as specified by the courts for administrative hearings? (2) is the quality of the hearing changed by the introduction of telephone conferencing? and (3) are telephone hearings cost-effective?

The results of this study were favorable in response to all three of the research questions and conclusively demonstrated that telephone hearings can generate savings in both hearing officer productivity and travel expenses.

The comments uniformly expressed by both recipients and caseworkers were that fair and impartial hearings were still conducted and that recipients had full opportunity to present testimony. There were no significant differences in outcome results. A higher percentage ended in the recipient's favor and the time frame for handing down the hearing decision was shortened.

During a telephone hearing, for example, the hearing officer can remain at his/her place of employment, while all other pertinent parties can gather at the State agency. Should the recipient for whatever reason be unable to attend at the last moment, the hearing officer has not lost time in travel and is able to continue with routine work. Telephone hearings also make the hearing system more accessible to applicants and recipients. Additionally, the waiting period for a hearing and the hearing decision may also be shortened and thus benefit applicants and recipients.

Under the final regulations, if a recipient chooses a telephone hearing rather than a face-to-face hearing, the State must still assure that all applicable provisons of the hearing process are met. Any request for a telephone hearing must be knowing and voluntary. In addition, the recipient must be given adequate opportunity to be represented, examine and cross-examine witnesses, and examine the contents of the case file, and the hearing must be conducted at a reasonable time and date.

If all States were to allow telephone hearings, savings are estimated to be up to $2 million annually, based on approximately 59 percent of all hearings being conducted by telephone.

Comment: One commenter recommended that "conferencing" or informal procedures be used routinely to resolve general disputes between recipients and State agencies and that telephone, or face-to-face hearings be used only as a last resort.

Response: States currently have the discretion to use informal procedures to resolve general disputes prior to a fair hearing.

Comment: Several commenters expressed concern that the regulation was unclear as to whether a State was required to offer telephone hearings or whether telephone hearings were optional at State discretion. The commenters suggested, therefore, that the regulation be made more explicit to address this issue.

Response: We agree with this recommendation. Accordingly, the language of the regulation at § 205.10(a)(2) has been changed to add the words "at State option" to make clear that telephone hearings are not required. Where the State elects the option, the applicant or recipient must also agree to a telephone hearing.

Comment: One commenter stated that the country was not specifically mentioned as being a party to the agreement to conduct a telephone hearing and expressed opposition to a fair hearing process in which the county's ability to participate would be excluded.

Response: It is the responsibility of States to define the scope of participation by their local agencies in conducting a telephone or fact-to face hearing. States, however, should obviously encourage input and participation from the local level in the development of agency procedures for telephone hearings.

Comment: One commenter questioned the need for a specific regulation on telephone hearings, since current regulations do not explicitly prohibit this form of hearing.

Response: The amendment to current regulations makes it explicit that telephone hearings are a State option.

Aid Paid Pending the Hearing Decision (Section 205.10(a)(4)(i)(B) and (6)(i) and (7) of the Final Regulations)

Current regulations at § 205.10(a)(6)(i) specify, in pertinent part, that if a recipient requests a hearing within the timely notice period, assistance shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing. The regulations do, however, specify two exceptions to the continuation of assistance: (1) A determination made at the hearing that the sole issue is one of State or Federal law or policy, or a change in State or Federal law and not one of incorrect grant computation; and (2) a change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after the notice of change. It is further provided in this regulation that if the agency's action is sustained at the hearing the aid pending the hearing is subject to recovery by the agency.

Many States have interpreted the current regulation very narrowly. Aside from the specific exceptions specified in the regulation, States believe they must continue the assistance in all cases, even where the recipient does not want aid paid pending the hearing.

Prior to OBRA, recovery of overpayments was optional under the AFDC program. As such, when an Agency's action was upheld, most States did not recover benefits paid during the period between the hearing request and the decision. However, OBRA now mandates the recovery of such AFDC payments, if the State's proposed action is upheld. Recovery of benefits remains optional for the adult assistance programs.

Because of this, some recipients and States are concerned over requiring the grant to be continued pending a hearing in all instances and then being confronted with recovery of this money when the State's action is upheld. Based on current available data, 58% of the hearing decisions rendered (January-March 1981) upheld the States' proposed actions.

We believe the recipient should be afforded a clear choice to refuse or to receive assistance pending a hearing. The regulations were not intended to preclude such action if requested by the recipient. Aid must be continued where the recipient requests this and it is not otherwise precluded under the regulations. Safeguards should be established in the State to ensure the recipient's decision is informed and not made under duress. Likewise, in the event the hearing decision is favorable to the recipient and he/she has elected not to receive aid paid pending, the State must retroactively pay him/her in accordance with § 205.10(a)(18).

We therefore, are amending the regulations to explicitly allow States to provide the recipient the opportunity to decline receipt of continued assistance, if the hearing is requested within the timely notice period.

This change provides consistency with current policy of two other Federal programs—Food Stamp and SSI. In many instances, the same individuals are receiving benefits from more than one of these programs. This change will clarify that States can coordinate this aspect of the AFDC and adult assistance programs with the Food Stamp and SSI programs.

In addition, we are amending § 205.10(a)(4)(i)(B) to provide where applicable, that the adequate notice inform an AFDC recipient that the assistance must be repaid if the agency action is upheld. Under the adult assistance programs, such notice will be provided where the State has elected to recover when an agency action is upheld.

These clarifications in the final regulations also apply to the adult assistance programs.

We estimate savings of up to $1 million annually.

Comment: One commenter expressed the opinion that by giving recipients the option of declining aid paid pending a hearing decision, they in effect waive their constitutional rights to a fair hearing.

Response: Under this provision, recipients only exercise the option of declining aid paid pending a hearing decision. However, this does not in any way affect the right to seek a fair hearing. The prior policy may have inadvertently prevented those who feared having to repay assistance paid while the hearing was pending from filing for a hearing in the first place.

Comment: Several commenters recommended that, with implementation of this provision, any resulting retroactive AFDC payments payable to such recipients should be exempt from consideration under the lump sum income rule.

Response: Under existing Federal regulations at § 233.20(a)(13)(ii), such retroactive AFDC payments are not considered as income or resources in the month of receipt or the following month. Any amount remaining in subsequent months is regarded as a resource to the AFDC assistance unit.

Comment: One commenter recommended that recipients be required to submit in writing any request that aid not be paid pending hearing decisions in order to ensure a recipient's "knowing and voluntary" declination of such aid.

Response: While a State may decide to require a written statement, the specific methods for ensuring that a decision is "knowing and voluntary" should be based on State law and practice.

Procedures for Issuance of Replacement Checks (Section 205.32 of the Final Regulations)

In a statement before a Congressional subcommittee hearing on fraud and abuse involving several Federal programs in 1981, the Associate Commissioner for the Office of Family Assistance described several initiatives under review including possible rulemaking changes to reduce the incidence of duplicate check issuance as a result of AFDC checks being lost or stolen. Preliminary findings from a study undertaken to gather statistical data on the incidence of duplicate checks showed that, in the 32 States responding, duplicate checks constituted 7.1 percent of all AFDC checks issued in 1979. They are costly, both administratively and from the standpoint of potential fraud.

We have, therefore, amended the regulations to prescribe procedures governing the issuance of duplicate (hereinafter referred to as replacement) checks under the AFDC program.

First, we have established procedures under which a State must, prior to the issuance of a replacement check: (1) Initiate, when appropriate, an immediate stop payment order on the original

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check through appropriate banking procedures (such action would not be applicable when the original check is returned by the recipient and a replacement check is issued because of a name change or there is a change in the grantee, etc.); and (2) where the original check is not returned, secure a signed statement from the recipient attesting to the non-receipt, loss or theft of the original check. In this way, an adequate audit trail is established for documenting potential fraud.

We further amended the regulations to provide that States may, at their option, require recipients to report lost or stolen checks to the police or other appropriate authorities. Such investigations would assist in resolving many reports of lost or stolen checks. More importantly, it may deter incidents of fraud. Early investigation of stolen check cases should lead to quicker apprehension and be a significant factor in crime prevention. A State may make filing such a report a prerequisite for issuance of a replacement check in cases of lost or stolen checks. A State may also establish procedures for the verification of such reports. For example, the State may require that the recipient provide a copy of the report made to the police or to other appropriate authorities. In establishing procedures for issuance of replacement checks, States must ensure that no undue delay occurs in issuing a new payment.

Annual savings are estimated at up to $1 million in Federal funds, and up to $5 million in State funds, based on State data relating to the number of replacement checks issued.

Comment: One State agency advocated the availability of Federal matching funds for both the original and replacement checks issued to a recipient which represent the same payment for the same month.

Response: Section 403(a)(1) of the Social Security Act authorizes Federal financial participation (FFP) for an amount expended for the AFDC program under the approved State plan. Whenever an assistance check is cashed by someone other than an authorized person, it is not an amount expended under the approved State plan, and therefore is not eligible for FFP under the provision of section 403(a)(1). Accordingly, only the check which was properly cashed by the authorized person is entitled to Federal matching.

Comment: Several commenters advocated that we require specific time frames ranging from 3 to 30 days, to be imposed on States for issuing replacement checks.

Response: We believe replacing the "undue delay" concept with specific time frames as suggested would remove the necessary flexibility States need in order to successfully implement these basic procedures. Due to operational differences among States, the States can best determine when it becomes necessary to issue a replacement check. Therefore, we have not changed this requirement.

Comment: One State asked whether these procedures are applicable to other types of payments which could be lost or stolen, e.g. the Office of Child Support Enforcement (OCSE) $50 "pass through" payment.

Response: Yes. The rules shall apply to all payments issued by the public assistance State agencies to eligible recipients under title IV–A of the Social Security Act. Since the IV–A agency is responsible for the issuance of OCSE "pass through" payments to ADFC recipients, these procedures also apply to such payments.

Comment: A legal services association and an advocacy group suggested that we drop the optional State provision requiring recipients who request replacement checks to report the theft or lost check to the local authorities. One reason cited is that if a recipient is fraudulently requesting a replacement check, sanctions for making such a false report already exist. Another reason noted was that local police, especially in metropolitan areas, will be inundated with reports of lost and stolen checks.

Response: This procedure is an optional measure because States can best determine whether the incidence of lost and stolen checks warrants exercising this option as a deterrent against fraudulent requests for replacement checks. Although this policy option was not explicitly mentioned in regulations, several State agencies already have this requirement and have not experienced these difficulties.

Comment: One State commented that these procedures should not apply because its State Treasury issues the assistance payments checks and has its own internal audit and fraud investigative procedures.

Response: A recipient requesting a replacement check because of a lost or stolen assistance check makes such a request to the State or local IV–A agency. Any actions taken by the IV–A agency may eventually be coordinated with the State Treasury for the issuance of a replacement check; however, the primary responsibility for authorizing payment lies with the State or local IV–A agency. Therefore, a State Treasury's internal audit and fraud investigative procedure cannot be solely relied upon in lieu of these procedures.

Redeterminations (Section 206.10 (a)(9) and (b)(4) of the Final Regulations)

Current regulations at § 206.10(a)(9) require that AFDC eligibility be redetermined at least every six months. We have amended the regulations to provide that it may take place less frequently than every 6 months but in no case less frequently than every 12 months for those recipients who must report monthly, or where the State has an approved alternative redetermination plan based on an error-prone profiling system under which the State varies redetermination frequencies (i.e., more or less frequent than every six months). In addition, we are requiring that at least one AFDC redetermination in each case each year must be face to face.

The final regulation permits States to schedule their AFDC redeterminations as infrequently as every 12 months, under certain circumstances, for several reasons. First, legislation enacted by OBRA and modified by the Deficit Reduction Act of 1984 provides that States require certain categories of recipients to submit monthly reporting forms. For those cases that must report monthly, whether as a Federal requirement or at State option, the State is reviewing very similar information to that which is secured when the State redetermines eligibility.

Prior to the monthly reporting requirement, States were only required to redetermine eligibility at least every 6 months to assure that no changes in family circumstances had occurred which would affect eligibility and the amount of payment. With monthly reporting, there is sufficient and timely contact with the case situation so that redeterminations may be scheduled less often than every 6 months, at the State's option.

Secondly, we believe cost savings can be maximized by concentrating and directing State efforts to cases which are most likely to have errors. Also, for those cases which are identified as low error-prone based on an approved State error-prone profiling system, the intervals between redeterminations may be as much as 12 months. The savings generated from reviewing less error-prone cases as infrequently as every 12 months will permit States to concentrate on high error-prone cases that are subject to frequent changes in eligibility status or have high average dollar errors per case. Thus, under this final rule, intervals between redeterminations in low error-prone cases could be once a year, while high error-prone

redeterminations could be monthly, but more typically, could occur three or four times a year.

The experience of the Supplemental Security Income (SSI) program with error-prone profiles and the results of AFDC demonstration projects in Texas, New Hampshire, South Carolina and West Virginia have shown considerable administrative cost savings can be achieved by concentrating and directing State efforts to cases which are most likely to have errors and, therefore, need more frequent redeterminations. Thus, earlier identification of changes can be made and costly long-term errors can be prevented.

We have also added a requirement that all cases be redetermined face to face at least once every 12 months in order to verify all eligibility factors and to ensure personal contact between the agency and the individual(s). However, if the State redetermines a case more frequently, the additional redeterminations are not required to be face to face. Yearly face-to-face redeterminations are most effective in identifying inconsistencies in the information provided in the monthly reports or in answers provided by the recipient during the interview. Face-to-face contact gives caseworkers an opportunity to restate agency requirements for receipt of AFDC and gives recipients time in which to ask questions and have policies clarified. We believe face-to-face redeterminations are cost effective because increases in administrative costs will be offset by the reduction in erroneous payments. This change also makes the AFDC program consistent with recertification requirements in the Food Stamp Program.

Since we published the proposed rule, we realized that the proposed definition of redetermination could cause confusion and conflict with other sections dealing with redeterminations. Currently, § 206.10(a)(9) requires that eligibility be "reconsidered or redetermined" in the following instances: (1) "when required on the basis of information the agency has obtained previously about anticipated changes . . . (2) promptly, after a report is obtained which indicates changes in the individual's circumstances . . . and (3) periodically, within agnecy-established time standards . . .".

As indicated by the regulations, the term "redetermination" has included both the scheduled re-examination of the case that takes place according to the agency established timetable and the spontaneous review that occurs when the agency discovers new and material information regarding the circumstances of the assistance unit.

In our proposed rule, however, we defined a redetermination as a "periodic, scheduled case folder review of all factors affecting AFDC eligibility and payment amount", thus inadvertently removing the actions termed "redeterminations" which are discussed in the current § 206.10(a)(9) (i) and (ii). Since it was never our intention to limit the definition of redetermination in this way, we have restored this original meaning by deleting the words "periodic" and "scheduled" from the definition. For further clarity, we have also removed the definition of redetermination from the body of the text at § 206.10(a)(9) and placed it with the other definitions at § 206.10(b)(4).

We have also clarified the action a State must take when it receives child support collection reports from the IV–D agency. Under § 232.20(b)(1), the amount of child support must be used to redetermine eligibility for an assistance payment under § 206.10(a)(9). We are concerned that some States may incorrectly believe that the proper action to take with each monthly report of child support collection is to contact the assistance unit and verify all other factors of eligibility such as deprivation, resources, family composition, etc., while other States may believe that the mere receipt of the child support collection report and the recomputation of assistance payments may, in and of itself, constitute a redetermination (thus making other, periodic redeterminations unnecessary).

To remove any doubt concerning the necessary and appropriate action that States must take upon receipt of the child support collection report from the IV–D agency, we have revised the language of § 232.20(b)(1) and deleted the reference to § 206.10(a)(9). This makes clear that we do not expect the State to perform a complete and comprehesive review of all factors of eligibility each month, but rather to review eligibility in light of any change in the single factor of child support. Moreover, the revision makes clear that we do not consider this mere review of child support income to be a redetermination. States may not use the child support review in lieu of the periodic, comprehensive redeterminations required by these regulations.

These final changes only apply to AFDC and not to the adult assistance programs. We estimate savings up to $15 million annually.

Comment: One commenter asked whether the proposed requirement for a face-to-face interview applies to foster care recipients.

Response: The face-to-face redetermination is required only for recipients under the title IV–A program. The administrative requirements for the Foster Care Program under title IV–E are issued by the Office of Human Development Services.

Allocation of Income (Section 233.20(a)(3)(ii)(C) of the Final Regulations)

Current regulations at § 233.20(a)(3)(ii)(C) provide that States may have a policy to allocate a portion of an individual's income to support his or her non-assistance dependents, before counting the remaining income available to the assistance unit. Dependents are not defined by regulation. States define the dependents for whom their allocation policy applies.

We have amended the regulations to address three specific concerns.

A. Some States have been interpreting the provisions to mean that income may be allocated only to an individual's dependents and not to the individual him/herself when such individual is not applying for assistance. The final regulation clarifies that, for purposes of allocating income, a dependent may include the individual, as well as his or her non-assistance dependents if they are not required to be in the assistance unit under section 402(a)(38). States that allocate income to meet the individual's own needs must check the allocation box on the State Plan Preprint.

B. Some States have been permitting income to be allocated to support individuals whose needs have been removed from the grant under the child support enforcement sanction provisions of §§ 232.11(a)(2) and 232.12(d) or because of a sanction for failing to meet the requirements of the WIN, Employment Search or Community Work Experience Programs provisions at §§ 224.51, 238.22 and 240.22. Permitting income to be allocated to the support of a sanctioned individual before counting the remaining income available to the assistance unit has the effect of circumventing the intent of the sanction provisions, i.e., that assistance will be determined without regard to the needs of the sanctioned person. Therefore, to remedy this, the final regulation provides that States may not allocate income to meet the needs of a sanctioned individual. We have also

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amended the regulations to prohibit States from allocating income to individuals who are required to be included in the assistance unit but who have failed to cooperate in meeting a condition of eligibility.

C. States have been permitting income to be allocated to meet the need of a wide variety of persons. As a result, in some cases income has been used to support other individuals rather than the individual's own children who are receiving AFDC. In order to assure that an individual's income is used primarily to support the members of his or her own family who are in the assistance unit, we have revised the existing provisions on the amounts of income that may be allocated and the persons for whom income may be allocated. The final regulation restricts the income allocation provision to permit allocation only for the individual's own needs (when he or she is not applying for, required to apply for, or receiving assistance), the needs of others who are or could be claimed as dependents for determining Federal personal income tax liability, or those whom the individual is legally obligated to support. Within this limitation, (and the one set forth in item B above), States may elect which dependents to include for coverage. The amounts which may be allocated and the individuals for whom income may be allocated are consistent with similar provisions regarding the income of stepparents and parents of minor parents (sections 233.20(a)(3) (xiv) and (xviii) and alien sponsors (section 233.51(b)(1))). In specifying the amount of income which would be considered available to an assistance unit, Congress included provisions to assure that these individuals would retain sufficient income to meet their own needs and the needs of their dependents. These amounts reflect the amount that States have determined are necessary to meet current living expenses as well as those amounts that are actually paid to support other individuals and therefore are not available to meet the needs of the assistance unit. Since these are amounts that Congress has determined are reasonable, we have adopted them as the maximum amounts that may be allocated in other similar cicumstances.

We estimate savings of up to $1 million annually.

Comment: One commenter suggested deleting the reference in § 233.20(a)(3)(ii)(C) to "those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability", arguing that this language would require training staff concerning income tax policies which have no other application to the program.

Response: The referenced language does not introduce a new concept to the program. It is the same language used in determining the countable income of stepparents and parents of minor parents (at §§ 233.20(a)(3) (xiv) and (xviii)) and alien sponsors (at § 233.51(b)(1)). Since the preposed language is consistent with these regulatory references, we have not made the suggested change.

Comment: One commenter suggested that we allow the full $75 work expense disregard in allocating the earned income of excluded individuals whether they are employed full-time or part-time before counting the remaining income available to the assistance unit. The commenter also recommended that the $75 be applicable to employed individuals whether sanctioned or not.

Response: While the statute does not specifically address allocation of income, the allocation situation is comparable to that of determining the countable income of stepparents and parents of minor parents who are living in the home with the AFDC family but are not part of the AFDC unit. Therefore, for ease of administration, the work expense disregard at § 233.20(a)(3)(xiv)(A), applicable to stepparents and parents of minor parents, is adopted as the applicable disregard for the allocation policy. For sanctioned individuals, to provide any disregard at all to such an individual, would defeat the purpose of the sanction.

Comment: One commenter suggested changing the stepparent disregard provision at § 233.20(a)(3)(xiv)(B) to provide that the needs of sanctioned individuals cannot be deducted from the stepparents' income in computing the amount of countable income to be consistent with the allocation policy. Otherwise, the commenter argued, in States where the payment standard is less than the need standard, simultaneously deducting their need standard from the stepparents' income results in a grant increase.

Response: We agree with the recommendation and have amended the regulation at § 233.20(a)(3)(xiv)(B) to clarify that the needs of sanctioned individuals and individuals who are required to be in the assistance unit and who have failed to cooperate cannot be deducted from the stepparents' income in computing countable income to the assistance unit.

Counting Windfalls as Income (Section 233.20(a)(3)(ii)(F) of the Final Regulations)

Counting Income Tax Refunds as Resources (Section 233.20(a)(3)(iv)(E) of the Final Regulations)

The general rule in assistance programs is that all earned and unearned funds received by an assistance unit must be counted as income for the month of receipt except funds that are expressly disregarded as income in a Federal statute. However, under longstanding Federal policy for the AFDC and adult assistance programs, a State agency has had the option to treat non-recurring payments which are in the nature of a windfall as resources instead of as income. A windfall is a sum that is not earned, does not occur on a regular basis, and does not represent acuomulated monthly income received in a single sum. A windfall might come from an inheritance, lottery winnings, personal injury awards or an income tax refund, but not title II Social Security or VA benefits. Social Security or VA benefits covering more than one month's benefits are instead examples of accumulated monthly income received in a single lump sum.

In reviewing the legislative history of OBRA, we believe that the Congress intended all lump sum payments (including windfalls) to be treated as income under the AFDC program. The Senate Finance Committee Report, No. 97–139, dated November 17, 1981 (on page 505) indicates that lump sum income should be "considered available to meet the ongoing needs of an AFDC family . . .". Given the intent of the lump sum provision to assure use of available funds in future months, we believe that windfall payments should be considered lump sum income. In the absence of the change, the very type of payments Congress intended to be counted and used to meet the family's future needs may not be budgeted for meeting future needs, if treated initially as a resource and not retained. Accordingly, for AFDC, we have classified payments in the nature of a windfall (with the sole exception of income tax refunds) as unearned income from a non-recurring source and treat them as a lump sum in accordance with § 233.20(a)(3)(ii)(F) unless otherwise disregarded, e.g., under the casual and inconsequential income policy at § 233.20(a)(3)(iv).

With respect to income tax refunds, except for an Earned Income Credit payment, a tax refund recognizes that there was an overwithholding of taxes

during the year. Under the AFDC program, since the $75 standard work expense disregard applies to gross income and represents all work expenses excluding child care, the actual amount of tax withheld has no bearing on the income counted or the amount of actual assistance payable to a recipient. Thus, since some portion of the income tax withholding may have exceeded, in combination with other work expenses, the $75 standard disregard, and therefore may have already been counted as income, it should not again be counted as income when it is returned to the recipient.

Therefore, for the AFDC program we are making an exception in the case of income tax refunds and require States to treat these refunds only as resources (liquid assets). However, any portion of a tax refund which represents an earned income credit (EIC) payment would still be considered as earned income in accordance with § 233.20(a)(6)(ix)(C). The EIC portion of any tax refund (or any EIC payments for that matter) must be treated as earned income because the statute specifically requires that such payments be considered as earned income (section 402(d) of the Social Security Act). When EIC payments are made in a single lump sum they are paid through the income tax collection system. Thus, in those cases, the payments would come in the form of a tax refund.

Neither the lump sum income change nor the $75 standard work expense change applies to the adult assistance programs. Therefore, we are not changing the policy in effect for these programs. At State option, these payments may be considered either as income or as a resource.

We estimate savings of up to $1 million annually.

Comment: Twenty four commenters expressed concern about this provision suggesting that flexibility remain with the States to determine whether to count payments in the nature of a windfall as income or resources. The commenters argue that: (1) There is no inferred or expressed Congressional intent in OBRA's legislative history that HHS should change its longstanding policy of permitting States to count payments in the nature of a windfall as income or resources, i.e., by the OBRA amendments, Congress meant to change the methodology applicable to lump sum income but not the definition of lump sum income; (2) there is logic to treating retroactive benefits in this manner because they are linked to ongoing benefits which can be used to meet future needs, while this is not so with nonrecurring windfall type benefits; (3) the statute provides a $1,000 resource limit and individuals who do not have the maximum resource limit when they come on the rolls but subsequently receive a windfall payment should be allowed to build up their resource limit from nonrecurring lump sum payments; and (4) individuals should be able to set aside the money from windfall payments for items not covered by the AFDC grant or Medicaid such as treatment, special education, special equipment, etc., or simply to build up a cushion for future emergencies.

Response: We have carefully considered the comments received and continue to believe that the provision is not only supportable under the statute but consistent with recent legislative history that large nonrecurring payments be considered available to meet the ongoing needs of an AFDC family. There is no logical basis for distinguishing between one type of large nonrecurring payment and another in determining whether it is income or resources and whether to apply the lump sum rule. From one standpoint, the legislative history expresses concern that considering such payments, prior to OBRA, as income in the month received and a resource thereafter had the perverse effect of encouraging the family to spend the income as quickly as possible in order retain AFDC eligibility. Since some States have always considered such payments as income, there was no specific definition of lump sum income that existed that can be argued that the Congress intended to maintain. Given the Congress' clear intent to have lump sums be used to meet future needs, States should not be allowed to exclude them by calling them resources.

States must disregard from the lump sum payment any amount that is earmarked and used for the purpose for which it is paid, i.e., monies paid for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair or resources, etc.

Finally, section 402(a)(17) of the Act, as amended by the Deficit Reduction Act of 1984 (Pub. L. 98–369), permits States to consider hardship situations and recalculate, under certain specified circumstances, the period of ineligibility determined under the lump sum rule.

Comment: There were several comments specifically in relation to personal injury awards and worker compensation payments. One commenter suggested that, because personal injury awards have been the subject of court challenge, we specify in the regulation how personal injury awards are to be treated. This would clarify the policy and avoid future misunderstanding as to their treatment. Several commenters suggested expanding the definition of funds treated as resources to specifically include worker's compensation payments and personal injury settlement payments. One commenter noted that Federal income taxes do not have to be paid on personal injury awards, yet for AFDC purposes such payments are counted as income.

Response: We agree that specifying in regulations how personal injury awards and workers' compensation payments are to be treated is necessary. We, therefore, have amended the regulation to clarify that personal injury awards and worker compensation must be treated as lump sum income. We believe it is consistent with Congressional intent that nonrecurring lump sum payments be used to meet current as well as future needs and that personal injury and worker compensation awards are encompassed by the lump sum rule. States are required to exclude from consideration, in determining the amount of the lump sum, that portion of the money that is earmarked and used for the purpose for which paid.

Casual and Inconsequential Income (Section 233.20(a)(3)(iv) of the Final Regulations)

Until 1975, Federal regulations at § 233.20(a)(3)(ii)(c) provided that "only such net income as is actually available for current use on a regular basis will be considered. . ." Even though the regulations were changed in 1975 to require that income available for current use be counted, States were still permitted to exclude income considered "casual and inconsequential." One major reason was to help States avoid administrative complexities associated with budgeting unpredictable income under the prospective budgeting system. This problem has now been eliminated under mandatory retrospective budgeting and monthly reporting in the AFDC program. The provisions for retrospective budgeting and monthly reporting make accurate income information available for determining the benefit amount.

Another consideration behind this policy was to allow some latitude in disregarding small gifts, which do not realistically represent income available to meet the family's living expenses, e.g., Christmas, graduation and birthday gifts, and which are difficult to administratively track. However, there is currently considerable variation in the amounts and types of income that States define as casual and inconsequential,

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and exceptionally large non-recurring sums have been disregarded under both the AFDC and adult assistance programs. Currently, 19 States have imposed dollar amounts to be disregarded as casual and inconsequential income.

These amounts include: $60 a quarter, $40 a month, $30 a quarter, or $10 a month. Therefore, we have amended the regulations at section 233.20(a)(3)(iv) to provide that States can optionally exclude gifts which represent reasonable nominal amounts not to exceed $30 for any recipient for any quarter. We selected $30 because it falls within the average range of the dollar amount currently used by States, and because it is the level used in the Food Stamp Program.

We estimate savings of up to $1 million annually.

Comment: Several commenters requested that the definition of casual and inconsequential income be revised to include small loans, earnings from odd jobs and interest on small savings accounts on the basis that this income is unpredictable and the amount is small.

Response: Existing regulations sufficiently address the disregard of loans and earnings. For example, the regulation at § 233.20(a)(3)(iv)(B) provides that loans obtained and used under conditions that preclude their use for current living costs are not counted as available income. Similarly, the regulations at § 233.20(a)(11) provide several earned income disregards. For example, $75 must be disregarded from gross earnings each month in lieu of actual work expenses. When total earnings received during the month do not exceed $75, the income is totally disregarded. Interest on savings accounts is not unpredictable and can be handled easily under the retrospective budgeting system when it is credited. Therefore, interest on savings accounts is treated as unearned income.

Comment: One commenter questioned whether casual and inconsequential income is to be budgeted prospectively or retrospectively.

Response: Casual and inconsequential income, as defined in these regulations, may be disregarded at State option. Other income is budgeted consistent with the prospective/retrospective budgeting rules.

Comment: Seven commenters expressed concern that applying the disregard on a quarterly basis rather than on a monthly basis would be very error prone because the income must be tracked.

Response: The quarterly maximum allows a recipient to receive a larger disregard for one month than would be allowed under a monthly maximum. However, States have the flexibility to establish monthly amounts which in total do not exceed the quarterly maximum, for example $10 per month.

Comment: Some commenters recommended that the regulation be clarified to show that the disregard is applied to each person's income individually.

Response: The regulations already provide that the disregard is for gifts that do not exceed a total of $30 per recipient per quarter.

Comment: Four States suggested that the regulations be revised to clarify whether the definition of "quarter" is calendar quarter, any three month period beginning with the first month in which the recipient receives a gift, or whether States can determine which period to use.

Response: For consistency with the Food Stamps exclusion, States can determine which period they wish to use.

Comment: Several commenters were opposed to limiting the amount of the disregard to $30 per recipient. The commenters would prefer to retain the current flexibility for States to set an amount they believe appropriate for their geographic area. If this isn't possible, they suggest that $50–60 per recipient is more realistic in relation to the cost of buying a gift.

Response: We consider $30 per recipient per quarter to be reasonable because it represents the average amount currently defined by States as casual and inconsequential income, and is consistent with the amount defined as irregular/infrequent income in the Food Stamp Program.

Definition of Stepparent (Section 233.20(a)(3)(xiv)); Section 233.90(a)(1); Section 237.50(b)(3)(ii); and Section 237.50(b)(4)(ii) of the Final Regulations)

Several States have questioned whether the AFDC provision at § 233.90, which specifies that a stepparent must be "ceremonially" married, includes common law marriage in States that recognize a common law marriage as valid under the laws of the State.

We have amended the regulation at § 233.90(a)(1) to remove the word "ceremonially" and clarify that in determining whether a child has been deprived of parental support, the marriage must only be one that is recognized as a valid marriage under the laws of the State. This includes common law marriages. The reason we included the word "ceremonially" was to deter States from counting the income of a "man in the house" as available to the assistance unit. We never intended to exclude the income of a person who was legally and validly married to the parent of an AFDC child under State law. Therefore, we are clarifying the regulations to reflect this intent.

The final regulation at § 233.20(a)(3)(xiv) is amended to clarify that a stepparent is one who is married to the child's parent under State law. We estimate savings up to $1 million annually.

We are also removing the word "ceremonially" from the provisions at § 237.50(b) (3)(ii) and (4)(ii) to conform with these changes.

Comment: Several commenters asked that we set some standards and protections to guide State agencies in establishing the existence of common-law marriages.

Response: Each State has the authority under State law to determine what constitutes a valid and legal marriage. Because States have this responsibility, we cannot establish guidelines in this particular area.

Comment: Several commenters believe that by deleting the term "ceremonially" we weaken the protections provided recipients by Supreme Court decisions such as *King* v. *Smith* against the "substitute parent" and "the man-in-the house" rules.

Response: We disagree. This change in no way provides States authority to consider a person in the home as a "substitute parent" for purposes of AFDC. The deletion of the term "ceremonially" simply means that if under State law a common law marriage is recognized as legal and valid by the State, the spouse of the parent of the AFDC child would be considered a stepparent. The obligation of the stepparent to support the AFDC child would exist only if the family resides in a State which has a law of general applicability. Only then would the stepparent be required to support the child to the same extent as a natural or adoptive parent.

Disregard of Income From VISTA Payments (Section 233.20(a)(4)(ii)(h) of the Final Regulations)

In accordance with section 404(g) of Pub. L. 93–113, the Domestic Volunteer Service Act of 1973, payments received by applicants and recipients participating in the Volunteers in Service to America (VISTA) Program have been disregarded, regardless of the amount of such payments.

On December 13, 1979, Congress enacted Pub. L. 96–143, the Domestic Volunteer Service Act of 1979, which included a provision limiting this

disregard. Section 9 of Pub. L. 96–143 provides that the disregard "shall not apply in case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, . . . or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater." Since Federal regulations were not revised at that time, we are amending them now to accurately reflect section 9 of Pub. L. 96–143.

Comment: One commenter asked whether the Director of ACTION will notify the States that the value of VISTA payments is equivalent to or greater than the minimum wage.

Response: The ACTION agency has advised that it has no established method for notifying the welfare agency of payments made to VISTA volunteers. Therefore, since it is the responsibility of the ACTION agency to determine whether the VISTA payments equal or exceed the minimum wage, based on the number of hours served, the State agency must request that information directly from the ACTION agency. However, to date, no VISTA payments to volunteers have been determined by the Director of ACTION to equal or exceed the applicable minimum wage.

Criteria for Use of Restricted Payments (Section 234.60(a)(1), (a)(6) of the Final Regulations)

The November 16, 1984, Notice of Proposed Rulemaking proposed several changes in the procedures governing use of restricted payments (use of a protective payee, vendor payments, or two-party checks) in situations where the caretaker relative has demonstrated an inability to manage funds, thereby imperiling the child's welfare. In response to State requests for more flexibility in this area, the NPRM removed specific criteria under which a determination of mismanagement is made and allowed States to establish the criteria for such a determination (with one exception). If States elect to use restricted payments, the NPRM proposed that mismanagement shall be presumed after nonpayment of rent equivalent to two months of rent. This minimum criterion was proposed because the non-payment of rent is a very serious problem as it may place the AFDC recipient family in jeopardy of eviction. We also noted that this new provision may help alleviate the shortage of housing available to AFDC families based on current unwillingness of landlords, in New York City for example, to rent to low income families based on concerns about possible nonpayment of rent.

Several related changes were also proposed, including added State flexibility regarding requirements for social services referrals and the methodology and timing of fair hearings regarding use of restricted payments.

We received numerous comments on these provisions. Some commenters supported the changes and noted the potentially beneficial effect on the availability of affordable housing for AFDC families.

Some commenters believed that waiting for two months nonpayment of rent is not strict enough, and suggested a shorter time period of nonpayment before mismanagement is presumed. Additionally, many of the commenters opposed the mandatory provision for determininig mismanagement, citing among other reasons, the possible increase in administrative costs which could result. Further, although some States provide for shelter costs separate from other needs, many States include shelter costs within a consolidated needs standard or payment standard. Thus, these latter States commented on possible administrative difficulties that may be encountered in determining the amount of the AFDC grant which is devoted to shelter costs and would be subject to the restricted payment rule as proposed.

In response to these comments, as well as our own further review, we have modified the provision for determining mismanagement and instituting vendor or two-party payments. Under the final rule, we have not only removed the specific criteria under which a determination of mismanagement is made, but in addition, have decided not to impose the mandatory minimum criterion of presuming mismanagement after two months nonpayment of rent. These changes, we believe, will provide States maximum flexibility to establish criteria for such a determination based on the circumstances in the individual States. We continue to believe, however, that the nonpayment of rent is a very serious problem because as a consequence, it may place the AFDC recipient family in jeopardy of eviction. Thus, for example, a State could, within the boundary of the final rule, establish as a minimum criterion, the presumption of mismanagement based on the recipient's nonpayment of rent. As is true for all other restricted payments, the institution of such payments in these circumstances will be subject to the normal AFDC administrative costs for which 50% Federal financing is available.

In the NPRM, we also proposed a change in the methodology and timing of fair hearings when mismanagement was presumed after two months nonpayment of rent. In light of our reconsideration of this issue, and of our efforts to increase State flexibility where possible, we have determined that such a change in fair hearings should still be available to States. Therefore, where a State's restricted payments program presumes mismanagement based on nonpayment of rent, such State may, under these limited circumstances, have the option to provide an opportunity for a hearing, where an individual wishes to appeal, either in advance of the State's intended action, or after the action has taken place.

Under previous policy, States were required to make referrals for social services when problems and needs for services and care for the recipients were beyond the ability of the protective payee to handle. The final regulations delete this automatic requirement for social services referral. States will be given flexibility so that they need not refer recipients to social services when they are unnecessary or unwanted. Counseling services, for example, are of little value when the recipient does not seek them.

We estimate savings of up to $1 million annually.

Due to the volume of comments received regarding the restricted payments provision, it is not feasible to respond to each one in the preamble. We have, however, included a discussion of several that are representative of many of the comments received.

Comment: One commenter recommended that the regulation be amended to mandate voluntary vendor payments in all States.

Response: The existing regulatory provision which allows a recipient, at State option, to voluntarily request a restricted payment is statutorily based and is permitted only in States that have elected the vendor payment option under section 406 of the Act. A legislative amendment would be necessary to impose this regulatory mandate on States.

Comment: Several public housing authorities recommended that the regulation be changed to provide that the amount of the AFDC recipient's grant that is designated for housing, be forwarded directly to the public housing authority rather than first requiring a determination of mismanagement by the State agency.

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Response: A basic principle of the AFDC program since its inception is that the assistance grant is an unrestricted money payment and that the caretaker relative has the responsibility to manage the funds. The statute has established limited circumstances in which this principle is not applied: when the State determines that the caretaker relative is not managing the funds in the best interest of the child(ren), the grant may be vendored in order to protect the children; and when the recipient voluntarily requests a restricted payment and the State provides for this option. In all other circumstances, however, the basic principle of unrestricted payments still prevails. Therefore, we are not able to accept this recommendation.

Comment: Many commenters were opposed to a finding of automatic mismanagement after two consecutive months of nonpayment of rent without prior rights to a hearing arguing that such action violates the principles of due process enunciated in the Supreme Court case of *Goldberg* v. *Kelly*. 397 US 254 (1970).

Response: The Supreme Court held in *Goldberg* v. *Kelly*, that public assistance may not be terminated without affording the recipient an opportunity for a prior hearing. Since this situation does not involve termination of the grant, but rather diversion of a portion of the grant, *Goldberg* v. *Kelly* need not be viewed as applying to this situation. Given the need for some States to act quickly in order to prevent evictions and the resulting family disruption, the final rule permits states that include a presumption of mismanagement based on nonpayment of rent, under their restricted payments program, the option to provide an opportunity for a hearing either in advance of or after the State's action. The option is limited to those cases involving the application of the presumption of mismanagement based on nonpayment of rent. In all other cases involving mismanagement, the State must continue to provide the opportunity for a fair hearing in advance of any change in the manner or form of payment. We have not extended the option for post hearings to other cases of mismanagement because, as a general rule, we do not believe that the risk of harm to the child or family in these other cases outweight the need for fairness that is afforded by the opportunity for a prior hearing as it does when needy families are evicted and have no place to live.

Comment: Many commenters opposed mandating the automatic mismanagement provision for all States, citing administrative difficulties, increased costs and the nonexistence of serious problems regarding the nonpayment of rent by AFDC recipients.

Response: We are persuaded that mandating the provision would not further the objectives of increasing State flexibility nor of limiting administrative and fiscal burdens on all States. Therefore, we have revised the final rule by deleting any specific criteria for making determinations of mismanagement. This will ensure maximum flexibility to States to establish criteria to tailor their restricted payments programs to the existing conditions and resources in the individual State.

Review of Restricted Payment Cases (Section 234.60(a)(9) of the Final Regulations

Currently, States are required to review restricted payment cases as frequently as indicated by the individual's circumstances and at least every 6 months in the AFDC program. The specified time frame for review was changed in 1980 from 3 months to 6 months to coincide with the time frame for periodic eligibility redeterminations. It was done in response to comments received in relation to the restricted payment NPRM to provide administrative ease in case management.

In light of our decision to not impose, in this final rule, the mandatory automatic mismanagement provision based on two months nonpayment of rent (see discussion governing Criteria for Use of Restricted Payment, § 234.60(a)(2)(ii) and 234.60(a)(6) of this final rule) we have also deleted the companion provision that review of such cases take place not more than once every 12 months. We are, however, retaining the revision which specifies that review of vendor, two-party and protective payments will be made as frequently as indicated by the individual's circumstances, but at least once every 12 months.

This change will enable States to continue to coincide, in the absence of changes in the individual's circumstances, the restricted payment review with the regularly scheduled eligibility redetermination. It will also minimize the number of times the recipient is required to report similar information and permit the State to avoid repetitions and unnecessary reviews.

We estimate saving of up to $1 million annually.

Technical Amendments

A. OBRA extensively revised the title IV–A statute. Because of the major work effort involved in developing regulations and providing guidance to States for implementation of these new provisions, several technical changes to the regulations were inadvertently not made. We have amended these regulations to reflect those technical changes to the Social Security Act.

1. Section 2181 of OBRA repealed section 403(g) of the Social Security Act. The latter section had established a penalty to reduce by 1 percent the quarterly amount payable to a State under title IV–A for failure to inform of and provide and arrange for early and periodic screening, diagnosis and treatment (EPSDT) under title XIX for children receiving assistance under AFDC. The regulations at §§ 201.14(a)(3) and 205.146(c) are removed to reflect this amendment to the Social Security Act.

2. Section 2319 of OBRA repealed section 403(a)(3)(A) of the Act which authorized 75% matching for training, and as a result, we consider training to be an administrative expense under section 403(a)(3)(C) which provides for 50% matching. The regulations at § 205.45 (b) and (c) are amended to reflect this change. This change does not apply to the adult assistance programs.

3. Section 2353(b) of OBRA repealed section 402(a)(5) of the Social Security Act, as in effect with respect to Puerto Rico, Guam, and the Virgin Islands. This provision had related to the establishment and maintenance of personnel standards on a merit basis, and for the training and effective use of paid subprofessional staff. The regulations at 45 CFR Part 225 are now currently applicable only to the adult assistance programs, and have been revised to delete the reference to the AFDC program.

4. Section 2605(f) of OBRA prohibits counting Low Income Home Energy Assistance Program (LIHEAP) benefits as either income or resources for any purpose under any Federal or State law relating to taxation, food stamps, public assistance, or welfare programs.

Although the statute is very clear and leaves no discretion to the Secretary, an amendment is needed to update the list of disregard requirements currently included in the regulations, and to distinguish the permanent and mandatory exclusion of LIHEAP benefits from the temporary and optional exclusion of certain other home energy assistance under sections 233.20(a)(3)(xvi) and 233.53. Therefore, the regulations at section 233.20(a)(4)(ii) are amended to exclude from income and resources, benefits provided under the Low Income Home Energy Assistance Program.

Additionally, we are making the following changes to conform regulatory policy to existing legislation.

1. Prior to the implementation of the Food Stamp Act of 1977, States could deduct the food stamp purchase price from a recipient's assistance payment, and regulations at section 234.11(b) were promulgated so that the deducted sum could be considered an AFDC payment for purposes of Federal financial participation.

The Food Stamp Act of 1977 eliminated the food stamp purchase requirement effective January 1, 1979. Therefore, the provision at section 234.11(b) is removed as it is now obsolete.

2. Pub. L. 97–34, The Economic Recovery Tax Act of 1981, terminated the separate WIN and Welfare Tax Credits, for providing employment to AFDC recipients, and effective January 1, 1982, added these two groups to the groups provided for in the Targeted Jobs Tax Credit program, i.e., recipents of AFDC for at least 90 days and WIN/WIN Demonstration participants.

Pub. L. 97–34 also provided that certification of AFDC recipient status is now a function of a designated local agency. Under Federal Department of Labor policy, the State Employment Security Agency (SESA) or qualified schools operating qualified cooperative education programs are the only agencies that may issue certifications. The State and local IV–A agency function will be limited to providing verification to the certifying agency that the individual being hired has been an AFDC recipient for at least 90 days or is a participant in the WIN or WIN Demonstration program.

The regulations at 45 CFR 235.40, relating to the certification of AFDC recipients for employment incentive tax credit, are removed as no longer applicable to the title IV–A agency.

The regulations at § 205.50(a)(1)(i)(D) have been revised to provide for the release of information to verify that an individual has been a recipient of AFDC for at least 90 days or is a WIN/WIN Demonstraton participant.

Comment: Concern was raised by a commenter regarding the certification of employees for Targeted Job Tax Credit (TJTC) by State and local agencies. When an employer requested certification for employees who were believed eligible for TJTC, the various State and local agencies were reluctant to provide the data. It was felt that without the necessary interchange between employers and public agencies, the intended results of the WIN program would not be achieved.

Response: The actual certification of employees for TJTC may only be done by the SESA or qualified schools operating a qualified cooperative education program. There is no provision in the IV–A statute to release information on AFDC applicant/recipients to other than the certifying agency (e.g., SESA). The policy which governs the disclosure of AFDC client information (section 402(a)(9) of the Social Security Act and regulations at 45 CFR 205.50), provides protection for the AFDC applicant's/recipient's right to privacy; and as such, States must exercise caution in responding to requests for the release of AFDC identifying information.

3. Pub. L. 92–603, October 30, 1972, provided the Secretary authority to assure that social security account numbers be assigned to, among others, any applicant for or recipient of benefits under federally funded programs. Subsequently, section 7 of Pub. L. 93–579, The Privacy Act of 1974, made it unlawful for any Federal, State, or local government agency to deny any right, benefit or privilege because of an individual's refusal to disclose his social security number, unless such disclosure is required by Federal statute, or the disclosure of the social security number is to a Federal, State, or local agency which maintained a system of records in existence and operating before January 1, 1975, if such disclosure was required by statute or regulation adopted prior to such date to verify the identity of the individual.

As a result of these statutory provisions, Federal regulations were developed (45 CFR 206.10 (b) and (c)); (section 206.10 was completely renumbered under TEFRA implementing regulations). They provide that the State IV–A agency could impose the disclosure as a condition of eligibility for AFDC only if the State had in effect prior to January 1975, a system of welfare or Medicaid records for which disclosure of the SSN was required by statute or regulations, in order to verify the identity of the individual. However, in 1975, Pub. L. 93–647 mandated that as a condition of eligibility for AFDC, all applicants and recipients must furnish the IV–A agency a social security number. Regulations implementing this statutory provision are codified at 45 CFR 232.10. This change in Federal statute and the regulations at 45 CFR 232.10 have rendered obsolete those provisions in 45 CFR 206.10, and they are accordingly removed.

4. Section 101(a) of Pub. L. 96–272 repealed section 408 of the Social Security Act, and established a new Part E under title IV of the Act. The State agency responsible for administering the program authorized by Part B of title IV is to administer or supervise administration of this new Part E, *Federal Payments for Foster Care and Adoption Assistance.* This repeal is effective at the time the State plan under IV–E becomes effective, but not later than September 30.1982. The regulations at 45 CFR 233.110 are revised to reflect this amendment to the Social Security Act. Other references to AFDC Foster Care at 45 CFR 233.90(c), 45 CFR 233.10(b), and 45 CFR 232.10(c) are deleted as well.

5. Section 507 of Pub. L. 94–566 amended section 407 of the Social Security Act to provide for a reduction in the AFDC payment by the amount of unemployment compensation a child's unemployed parent receives and that the family is ineligible if the parent refuses to apply for or accept unemployment compensation. Although the pertinent program policy was amended to reflect this change, the parallel FFP provision was not. The regulation now at § 233.100(c)(1)(v) is amended, therefore, to reflect this change in statute.

Comment: One commenter noted that the proposed change to § 233.100(c)(1)(v) incorrectly omits the parts of Pub. L. 94–566 which provides for the denial of aid when the unemployed parent qualifies for unemployment compensation but refuses to apply for or accept it.

Response: In the publication of the NPRM, language was inadvertently omitted from the proposed regulation which would bring it into conformity with the legislation. This final regulation at § 233.100(c)(1)(v) therefore is amended to conform to Pub. L. 94–566.

6. Section 407(c)(A)(i) of the Social Security Act provides that FFP is not available in any payment of aid made to an unemployed principal earner during the first 30 days of unemployment. The implementing regulation however provides that if the principal earner is "not unemployed" during the 30-day period, there is no FFP. This is a difficult grammatical construction to understand and might be read to mean that if the principal earner is "unemployed" during the 30-day period, FFP is available. Because this would contravene the statute, the regulation now at § 233.100(c)(2)(i) is amended to clarify that FFP is not available for payments that cover the first 30 days of unemployment.

Additionally, these regulatory provisions that still reference the word "father" are amended to substitute the word "parent" as required to eliminate, where possible, gender discrimination.

We have also corrected as a result of our own review, general references and citations. We have deleted some obsolete material from § 205.40(d) and § 233.27(b)(2) and corrected references in § 205.50(a) and § 205.50(a)(2)(i)(A).

These regulations are issued under the authority of section 1102 of the Social Security Act as amended, 49 Stat. 647, as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.808, Public Assistance Maintenance (State Aid))

List of Subjects

45 CFR Part 201

Aid to families with dependent children, Family assistance, Grant programs-social programs, Guam, Public assistance, Puerto Rico, Virgin Islands.

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 225

Aid to families with dependent children, Family assistance, Grant programs-social programs Public assistance programs, Volunteers.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family Assistance, Grant programs-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 234

Aid to families with dependent children, Family assistance, Grant programs-social programs, Health facilities, Public assistance, Public housing.

45 CFR Part 235

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 237

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

Dated: July 18, 1985.

Martha A. McSteen

Acting Commissioner of Social Security.

Approved: February 14, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 201—[AMENDED]

Part 201 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 201.14 [Amended]

2. Section 201.14 is amended by removing and reserving paragraph(a)(3).

PART 205—[AMENDED]

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. The Table of Contents in Part 205 is amended by adding § 205.32 to read as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

* * * * *

Sec.
205.32 Procedures for issuance of replacement checks.

* * * * *

3. Section 205.10 is amended by revising paragraph (a)(2) to read as follows:

§ 205.10 Hearings.

(a) * * *

(1) * * *

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone;

* * * * *

4. Section 205.10 is further amended by revising paragraph (a)(4)(i)(B) to read as follows:

§ 205.10 Hearings.

(a) * * *

(4) * * *

(i) * * *

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV–A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

* * * * *

5. Section 205.10 is further amended by adding a new paragraph (a)(4)(ii)(J) as follows:

§ 205.10 Hearings.

(a) * * *

(4) * * *

(ii) * * *

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances;

* * * * *

6. Section 205.10 is further amended by revising paragraphs (a)(6)(i) (A) and (B), and by adding new paragraphs (a)(6)(i)(C) & (a)(6)(i)(D) to read as follows: The introductory text of paragraph (a)(6)(i) is shown for the convenience of the reader.

§ 205.10 Hearings.

(a) * * *

(6) * * *

(i) Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision; or

(D) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for the opportunity for a hearing after the manner or form of payment has been changed for such cases in accordance with §§ 234.60 (a)(2) and (a)(11).

* * * * *

7. Section 205.10 is amended by revising paragraph (a)(7) to read as follows:

§ 205.10 Hearings.

(a) * * *

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

* * * * *

8. Part 205 is amended to add a new § 205.32 to read as follows:

§ 205.32 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the nonreceipt, loss, or theft of the original FDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

9. Section 205.40 is amended by removing and reserving paragraph (d) as follows:

10. Section 205.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

* * * * *

(b) Federal financial participation is available at 50 percent under title IV–A for providing training in emergency welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

* * * * *

11. Section 205.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) State plan requirements. A State plan for financial assistance under title IV–A of the Social Security Act, must provide that:

* * * * *

12. Section 205.50 is further amended to revise paragraph (a)(1)(i)(D) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97–34, the Economic Recovery Tax Act of 1981.

* * * * *

(13.) Section 205.50 is further amended by revising paragraph (a)(2)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(2) * * *

(i) * * *

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);

* * * * *

§ 205.146 [Amended]

(14.) Section 205.146 is amended by removing and reserving paragraph (c) as follows:

PART 206—[AMENDED]

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 206 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 206.10 is amended by removing and reserving paragraphs (a)(1)(iv) and (a)(1)(v) as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(1) * * *

(iv)–(v) [Reserved]

* * * * *

3. Section 206.10 is amended by revising paragraph (a)(9)(iii) and adding (a)(9)(iv) to read as follows. The introductory text of paragraph (a)(9) is shown for the convenience of the reader.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) * * *

(ii) * * *

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, all factors of eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an

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alternative redetermination plan based on error-prone profiling, which has been approved by the Secretary, and includes:

(A) a description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) the criteria to be used to vary the scope of review and to assign different types of cases; and

(C) a detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

* * * * *

4. Section 206.10 is amended by adding a new paragraph (b)(4) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

* * * * *

(b) * * *

(4) *Redetermination* is a review of factors affecting AFDC eligibility and payment amount; e.g. continued absence, income (including child and spousal support), etc.

PART 225—[AMENDED]

Part 225 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 225 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 225.2 is amended by revising the introductory paragraph and by revising paragraph (a)(1) to read as follows:

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV–B of the Act must:

(a) * * *

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients: and will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives:

* * * * *

3. Section 225.3 is revised to read as follows:

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV–B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

PART 232—[AMENDED]

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 232 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 232.20 is amended by revising paragraph (b)(1) to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV–A Program.

* * * * *

(b) * * *

(1) Upon notification by the IV–D agency of the amount of a support collection, the IV–A agency will use such amount to review eligibility of the assistance unit under section 206.10(a)(9)(ii). This use of these amounts so collected shall not be later than the second month after the month in which the IV–A agency received a report of the monthly collections from the IV–D agency. In determining whether a support collection made by the State's IV–D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the IV–A agency will notify the family and the IV–D agency of the effective date of the family's ineligibility. The IV–D agency will treat the support collection that caused ineligibility in accordance with § 302.32. If such treatment does not make the family ineligible for an assistance payment, the assistance payment will be calculated without regard to such collection.

* * * * *

PART 233—[AMENDED]

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 233 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302)

2. The Table of Contents in Part 233 is amended by revising the section heading for § 233.110 to read as follows:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

* * * * *

Sec.
233.110 Foster care maintenance and adoption assistance.

* * * * *

3. Section 233.10 is amended by revising paragraphs (b)(2)(ii)(*a*) (*2*) and (*3*) to read as follows:

§ 233.10 General provisions regarding coverage and eligibility.

* * * * *

(b) * * *

(ii) * * *

(*a*) * * *

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(*3*) Living in the home of a parent or of certain relatives specified in the Act.

* * * * *

4. Section 233.20 is amended by revising paragraph (a)(3)(ii)(C) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(ii) * * *

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal

personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under sections 224.51, 232.11(a)(2), 232.12(d), 238.22 or 240.22 or who is required to be included in the assistance unit and has failed to cooperate. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same composition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

* * * * *

5. Section 233.20 is amended by revising the first sentence of paragraph (a)(3)(ii)(F) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(ii) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.* * *

* * * * *

6. Section 233.20 is amended by revising (a)(3)(iv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(iv) Provide that in determining the availability of income and resources, the following will not be included as income (A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); (B) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; (C) home produce of an applicant or recipient, utilized by him and his household for their own consumption; (D) for AFDC, any amounts paid by a State IV–A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979; (E) for AFDC, income tax refunds (except the earned income credit (EIC) portion) but such payments shall be considered as resources; and (F) at State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter.

* * * * *

7. Section 233.20 is amended by revising paragraph (a)(3)(xiv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent (i.e., one who is married, under State law, to the child's parent) of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead:

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations except for sanctioned individuals or individuals who are required to be included in the assistance unit but have failed to cooperate and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income-tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

* * * * *

8. Section 233.20 is amended by revising paragraph (a)(4)(ii)(*h*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) * * *

(ii) * * *

(*h*) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. (Section 404(g) of Pub. L. 93–113, as amended by section 9 of Pub. L. 98–143):

* * * * *

9. Section 233.20 is amended by adding a new paragraph (a)(4)(ii)(*l*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) * * *

(ii) * * *

(*l*) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Pub. L. 97–35;

* * * * *

10. Section 233.27 is amended by revising paragraph (b)(2) to read as follows:

§ 233.27 Supplemental payments under retrospective budgeting.

* * * * *

(b) * * *

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by section 233.20(a)(4)(ii), paragraphs (c) on relocation assistance,

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(d) on educational grants or loans and (g) on payments for certain services.

11. Section 233.90 is amended by revising paragraph (a)(1) to read as follows. The introductory text of paragraph (a) is shown for the convenience of the reader.

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or

* * * * *

12. Section 233.90 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 233.90 Factors specific to AFDC.

* * * * *

(c) * * *

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for concurrent period for the same child in the home of another relative or as foster care under title IV–E;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV–E; and

* * * * *

13. Section 233.100 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV–A of the Social Security Act must:

* * * * *

14. Section 233.100 is amended by removing paragraphs (a)(7) and (a)(8):

15. Section 233.100 is amended by removing and reserving paragraph (b) as set forth below:

16. Section 233.100 is amended by revising paragraphs (c)(1)(iv) and (c)(1)(v) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(1) * * *

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner (*a*) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under § 224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (*b*) has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States.

* * * * *

17. Section 233.100 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(2) * * *

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

* * * * *

18. Section 233.110 is revised as set forth below:

§ 233.110 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act must provide that the State has in effect a plan approved under Part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

PART 234—[AMENDED]

Part 234 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 234 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 234.11 is amended by revising the section heading and by removing and reserving paragraph (b) as follows:

§ 234.11 Assistance in the form of money payments.

* * * * *

(b) [Reserved.]

3. Section 234.60 is amended to revise paragraph (a)(2)(ii) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(2) * * *

(ii) States will establish criteria to determine if mismanagement exists. Under this provision, States may elect to use as one criterion a presumption of mismanagement based on a recipient's nonpayment of rent.

* * * * *

4. Section 234.60 is amended to remove and reserve paragraph (a)(6) as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(6) [Reserved]

* * * * *

5. Section 234.60 is amended by revising the introductory text of paragraph (a)(9) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least once every 12 months, of:

* * * * *

6. Section 234.60 is amended by revising paragraph (a)(11) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(11)(i) Opportunity for a fair hearing pursuant to section 205.10 will be given to any individual claiming assistance in relation to the determination:

(A) That a protective, vendor, and two-party payment should be made or continued.

(B) As to the payee selected.

(ii) In cases where the agency has elected the option to presume mismanagement based on a recipient's nonpayment of rent pursuant to paragraph (a)(2)(ii), the agency may also elect the option to provide the opportunity for a fair hearing pursuant to § 205.10 either before or after the manner or form of payment has been changed for these cases.

* * * * *

PART 235—[AMENDED]

Part 235 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 235 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. The Table of Contents of Part 235 is amended by removing and reserving § 235.40:

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

3. Section 235.40 is removed and reserved as follows:

§ 235.40 [Reserved.]

PART 237—[AMENDED]

Part 237 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 237 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Section 237.50 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 237.50 Recipient count, Federal financial participation.

* * * * *

(b) * * *

(3) * * *

(ii) As used in paragraph (b)(3)(i) of this section, the term "parent" means the natural or adoptive parent, or the stepparent who was married under State law to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

* * * * *

3. Section 237.50 is amended by revising paragraph (b)(4) to read as follows:

§ 237. Recipient count, Federal financial participation.

* * * * *

(b) * * *

(4)(i) When at least one of the children in a family is eligible due to the unemployment of his or her parent who is the principal earner in the home, the recipient count may include all eligible children, the parent who is the principal earner and spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) For purposes of paragraph (b(4)(i) of this section, the definitions of the terms "parent" and "spouse" as specified in paragraph (b)(3)(ii) of this section are applicable.

* * * * *

[FR Doc. 86–5656 Filed 3–17–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

Blanket Approval for Bareboat Charters of Recreational Vessels to Noncitizens, Sales to Noncitizens and Transfers to Foreign Registry or Flag of Vessels Under 200 Gross Tons

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule under section 9 of the Shipping Act (Act), 1916 (46 U.S.C. 808). That provision makes it unlawful, without the approval of the Secretary of Transportation, to transfer to a noncitizen a vessel or other interests in a vessel owned by U.S. citizens that is documented, or was last documented under U.S. laws. This final rule extends the scope of an existing regulation at 46 CFR 221.7 to grant a general approval, not to exceed six months, to bareboat charters and subcharters to noncitizens of United States vessels that are U.S.-documented to be operated only for recreation. It also grants general MARAD approval of the sale to noncitizens, as well as the transfer to foreign registry or flag, of all vessels under 200 gross tons.

EFFECTIVE DATE: This rule is effective April 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Jessie Fernanders, Ship Disposals and Foreign Transfers Officer, Maritime Administration, Washington, DC 20590, Telephone (202) 426–5821.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1985, MARAD published in the **Federal Register** (50 FR 39737) a notice of proposed rulemaking (NPRM). The NPRM proposed two amendments to regulations at 46 CFR Part 221. Those regulations implement a statutory requirement, under 46 U.S.C. 808, that the Secretary of Transportation approve all vessel sales or the transfer of other interests in a vessel, owned by U.S. citizens, that is documented, or was last documented under U.S. laws. The Secretary has delegated this approval authority to MARAD.

Under the existing regulation at 46 CFR 221.7, MARAD grants a general approval, not to exceed six months, of vessel charters to noncitizens. This general approval specifically excludes bareboat charters, charters for the carriage of cargoes to Cuba and specified Communist countries in eastern Europe and southeast Asia, and charters for operation in the fisheries of the United States. A bareboat charter is one where the charterer takes possession of the vessel and exercises direct control over the actual operation of the vessel.

This rule finalizes the proposal to expand the general approval to include bareboat charters and subcharters to noncitizens of U.S. vessels that are documented for recreational purposes and that will be operated only for recreation by the bareboat charterer or subcharterer.

The other amendment proposed in the NPRM and adopted in this final rule grants approval under 46 U.S.C. 808 of the sale to noncitizens, and/or the transfer to foreign registry or flag, of all vessels under 200 gross tons. There is no existing provision in 46 U.S.C. Part 221 that grants a general approval, under 46 U.S.C. 808, of sales to noncitizens and/or the transfer to foreign registry or flag of U.S. vessels.

Bareboat Charters and Subcharters of Recreational Vessels

MARAD proposed the amendment expanding the general approval of charters to recreational vessels at the informal request of vessel owners and their representatives that are in the business of chartering for recreational operation vessels that are documented solely for such use under U.S. laws administered by the Coast Guard.

Owners and operators of recreational vessels receive many charter requests

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from noncitizens. These requests for recreational vessel charters are usually for immediate use, and in many cases, for very brief periods of time. A majority of the potential charter opportunities arise on short notice. Since obtaining the prior MARAD approval required under section 9 of the Act typically takes anywhere from 30 to 90 days, the vessel owners and operators have to reject most charter requests by noncitizens. Being unable to comply with 46 U.S.C. 808, they lose chartering opportunities and suffer financial injury. The alternative to rejecting a profitable vessel chartering opportunity is to charter without prior MARAD approval. This is a violation of the Act that subjects the owner to a fine which could amount to $5,000, or to imprisonment of up to five years, or both. Violation of the Act also subjects the vessel to forfeiture to the United States. Thus, many of the recreational vessel charterers are forced to choose between loss of customers and the risk of losing the vessels which are their principal assets.

Based on conservative estimates and assumptions set forth in the NPRM, MARAD determined that its existing approval requirement for bareboat charters to noncitizens could be responsible for lost chartering opportunities representing an annual loss of income of as much as $10.1 million to recreational boat owner/operators. Further, elimination of the required filing fee could save charter boat operators as much as $22.7 million. Elimination of the application process could save MARAD up to $7.3 million, which represents the cost of reviewing 87,600 applications for charter approvals. These calculations are based on estimated maximum costs and on the assumption that for all chartering transactions involving noncitizens, applications for prior approval would be filed with MARAD.

Sales of Vessels to Noncitizens

The NPRM also proposed a new § 221.6 that would grant general approval of the sale to noncitizens, or the transfer to foreign registry or flag, of a vessel of under 200 gross tons owned by a U.S. citizen and presently documented, or last documented under U.S. laws. MARAD proposed this amendment after determining that there is insufficient benefit to MARAD, administrative or otherwise, to be derived from an approval process with estimated annual costs of over $31,000 to an estimated 176 applicants, and of $15,000 to MARAD. Also, there have been negative economic consequences, to both the buyer and seller, during the period consumed by the approval process, that has taken from a minimum of 30 days, to as many as 90 days. The economic consequences include loss of revenue and reduction in business good will.

Discussion of Comments

MARAD received comments from 55 persons, all of whom supported this rulemaking action. Four of these comments concerned the general approval of sales of vessels under 200 gross tons to noncitizens. All the comments were strongly supportive of the proposed provision for general approval of bareboat charters and subcharters of recreational vessels.

Whenever the commenters estimated the percentage of potential business lost because of the inability to quickly and freely charter to noncitizens, the typical range of their estimate was between 10 to 20 percent of all charter opportunities. One Maine commenter stated that about 10 percent of its actual charters were to noncitizens, "particularly, Canadians," and that "at times we lose sales or charters due to the time required for processing an application." Another charterer in Florida commented that her company and other chartering companies are "forced to turn down hundreds of quality foreign charter clients each year." This charterer stated that the losses of the charterers, combined with revenue lost by U.S. airlines, hotels, restaurants and shops, has had an enormous economic impact. Another Florida charterer estimated that, because of the existing charter approval requirement, the yacht chartering business has lost two weeks of charters per month for every year it has operated, which translates into a revenue loss for that business of over $218,000.

For another yacht charterer in Florida, the "red tape" involved in applying for MARAD approval of noncitizen bareboat charters, estimated at 20 percent of its charter applications, has dictated its policy of not accepting any charter requests from noncitizens. This commenter stated that "based on last year's charter revenues, this loss factor results in $30,000 worth of potential charter revenues." A U.S.-owned corporation that owns or is the agent for over 135 vessels from Caribbean and South Pacific bases, measuring from 39 to 51 feet, as well as 12 fully-crewed larger yachts, commented that it has decided to restrict all marketing efforts for bareboat charters to U.S. yachtsmen in the United States. This decision was made to protect itself and its boat owners from penalty. It estimated a loss of charter revenue for 1985 of $1 million by excluding noncitizen applicants.

One charterer estimated an annual loss in charter revenues of $50,000 at its fleet locations in Boston, Fort Lauderdale and St. Thomas, VI. A yacht charterer in Florida commented on being forced to turn down a significant number of noncitizens, particularly Canadians, representing about 10 weeks of charter business valued at $14,500. Another yacht charterer estimated that he turns away 15 to 20 percent of his total charter applicants because they are noncitizens, at a cost of $15,000 annually, further stating that this estimate of lost business does not include those who do not call because "they are aware of the law."

There were also other more specific comments. One commenter noted that MARAD's proposal to deregulate the approval process for bareboat charters to noncitizens of recreational vessels is negated by U.S. Coast Guard requirements that there be a U.S. master on board all U.S.-documented vessels at all times. (46 U.S.C. 12110). He recommended that the Coast Guard facilitate implementation of MARAD's intent administratively under its authority to compromise, modify, or remit, with or without condition, any civil penalty (46 U.S.C. 2107) until the Congress acts to change the law that the Coast Guard implements through regulation.

As stated in the NPRM, the proposed general approval amendments relate only to MARAD's responsibilities under existing law with respect to transfers of vessels and vessel interests to noncitizens. It would have no effect upon the laws and regulations governing vessel documentation and operations that are administered by any other Federal agency. This requirement is within the exclusive authority of the Coast Guard and any requests for administrative action regarding implementation of that authority should be directed to the Coast Guard.

Another commenter who is a yacht broker, as well as a charterer, criticized a "legal requirement" that, to be eligible for U.S. documentation, a vessel must be owned by U.S. citizens (46 U.S.C. 12102), since U.S. financial institutions prefer that a vessel be U.S.-documented in order to obtain preferred status for mortgage purposes. He stated that he has lost potential clients because they were unable to finance purchases of U.S. vessels that were not eligible for U.S. documentation under statutory provisions implemented by the Coast Guard.

The legal requirements for vessel documentation and the vessel financing policies of financial institutions are

subjects that are beyond the scope of this rulemaking.

An owner/operator of a bareboat charter company in St. Thomas, Virgin Islands, supported the rulemaking, but thought that any MARAD regulation on this subject should be further liberalized to: (1) Extend the period of charter approval to 12 months to save both MARAD and the chartering companies time and trouble; and (2) Make the approval applicable to the fleet operated by a charterer, rather than to individual vessels, in view of the cost of $250 per boat for approval.

MARAD does not believe that either of these proposed amendments should be adopted. Irrespective of the chartering season's length, which varies with the climate and weather conditions, it has been our experience that there is a very low incidence of applications for charters for periods in excess of six months. With respect to the fleet approval recommendation, this general approval accomplishes the objective of this commenter, i.e., since the prior approval provision of the proposed rule would apply to each vessel in the fleet, and is not limited to names of specific vessels, it is effectively a fleet approval.

A law firm commenting in behalf of several U.S.-flag charter fleet operators contended that the documentation of a vessel for recreation only should not be a condition for a general approval of a bareboat charter if the vessel is actually chartered only for recreational use. It stated that many vessels that are currently in the charter fleet have been registered, i.e., documented for commercial use in the foreign trade of the United States, in order that they may qualify for investment tax credit under section 48(a) of the Internal Revenue Code, as interpreted by regulations of the Internal Revenue Service and a memorandum decision of the Tax Court of the United States. That commenter argued that the use of the vessel during the charter should be controlling and that the proposed regulation be amended to delete the requirement that a vessel be documented recreational, and require only that the vessel be chartered "to be operated personally by the charterers for recreation only."

MARAD's principal intention in proposing the amendments with respect to bareboat charters was to eliminate an impediment to the conduct of business activities by charterers of small yachts that are primarily intended for recreational purposes, and have been documented as such. Accordingly, MARAD has not incorporated this commenter's proposed amendment in the final rule.

The four comments on the general approval of sales of vessels under 200 gross tons support that amendment. One stated that the amendment "would welcome the avoidance of the filing fee and the time delay in accomplishing the sale." A commenter cited as an example of the consequences of delay in the existing MARAD approval process its inability to draw on a $1.2 million letter of credit for two weeks. It further states that "this proposed rule will enhance our ability to export vessels and could significantly contribute to the recovery of our depressed markets." Another commenter stated that countries without a delay of the type that is inherent in MARAD's existing sales approval process for noncitizens enjoy an advantage in the export market.

Although supporting adoption of the proposed amendments, another Federal agency questioned the selection of a vessel size under 200 gross tons as qualification for a general approval of a sale. The agency argued that most vessels are under that size, under any circumstances. It also recommended that MARAD continue to collect information about the transfer of fishing vessels in order that it could monitor the extent of such activity. MARAD chose 200 gross tons as an upper limit because its experience has shown that the great majority of vessel transfers involve vessels under 200 gross tons. With respect to information collection, MARAD has balanced the need for such information against the burden imposed, and has decided not to impose such a requirement.

E.O. 12291, Statutory Requirements and DOT Procedures

MARAD has made a determination that this final rule is not a major rule under Executive Order 12291. Pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), this is a nonsignificant regulation. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

While this proposed amendment will have some positive impact on small businesses, MARAD anticipates that its primary impact will be on individual owners of recreational boats. Accordingly, the Maritime Administrator certifies that the rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354). These amendments include amended requirements for the collection of information (Section 221.7(b)), within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), that have been submitted to the Office of Management and Budget (OMB) for approval. This amendment will cause a large reduction of the existing reporting burden, since it will eliminate an estimated 87,600 applications annually. The basic information collection approval number is OMB Control No. 2133-0006.

List of Subjects in 46 CFR Part 221

Banks, Banking, Charter Citizenship and Naturalization, Foreign Transfer, Maritime Administration, Maritime carriers, Reporting and record keeping requirements, Uniform System of Accounts.

Accordingly, 46 CFR Part 221 is amended as follows:

PART 221—[AMENDED]

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 9, 41 and 43, Shipping Act, 1916, as amended (46 U.S.C. 808, 839, 841(a); 49 CFR 1.66.

§ 221.7 [Amended]

2. In paragraph (a)(1) of 46 CFR 221.7, add the following parenthetical phrase before the final period: "(other than bareboat charters or bareboat subcharters of vessels documented recreational and to be operated personally by the charterer for recreation only)."

3. Revise paragraph (b) of 46 CFR 221.7 to read as follows:

* * * * *

(b) Not later twenty (20) days after the beginning of a charter period, the vessel owner or owner's representative shall file with the Maritime Administration a copy of any charter which is approved under paragraph (a) of this section (except a bareboat charter or bareboat subcharter of a vessel documented recreational to be operated personally by the charterer for recreation only). The Maritime Administration may grant a request for an extension of time to file such charter or other agreement. The vessel owner or bareboat charterer (or a representative) who charters a documented recreational vessel to a person not a citizen of the United States, which vessel is to be used personally by the charterer or subcharterer for recreation only, shall retain a copy of such charter for a period of one (1) year after the expiration date, and shall make it available for inspection upon request by the Maritime Administration or its designee.

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4. A new § 221.8 is added to read as follows:

§ 221.8 Approval of vessel sale to noncitizens; transfer to foreign registry.

(a) The Maritime Administration hereby approves under sections 9 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 839), the sale to a noncitizen, and/or the transfer to foreign registry or flag, of a vessel of under 200 gross tons that is owned by a United States citizen and is either documented or was last documented under United States laws. Pursuant to 46 U.S.C. 883, 12106, the sale to a noncitizen and/or the transfer to foreign flag or registry of a vessel terminates the right of such vessel to engage thereafter in the coastwise trade.

(b) The approvals granted in paragraph (a) of this section shall not apply if the vessel's purchaser, or a person (including a corporation or other entity) with a controlling interest in the vessel's purchaser, is a national of Iran, Libya the Union of Soviet Socialist Republics, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, or Cuba, unless such national has been lawfully admitted into, and resides in the United States; and such national does not remove the vessel from the territorial limits of the United States. Also, the approvals shall not apply if the vessel is to be transferred to or placed under the flag of any such country. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

Dated: March 13, 1986.

By Order of the Maritime Administrator.

Georgia P. Stamas,
Secretary, Maritime Administration.

[FR Doc. 86-5891 Filed 3-17-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-231; FCC 86-76]

Increasing the Availability of FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Summary of Reconsideration of Final Rule.

SUMMARY: This *Memorandum Opinion and Order* denies in part and grants in part various petitions for reconsideration of the *Second Report and Order* in MM Docket No. 84-231. In the *Second Report and Order* (50 FR 15558, April 19, 1985), the Commission added a new attribute under the comparative hearing criterion of securing the best practicable service which would enhance the integration proposal of daytime-only AM licensees applying for FM channels in the same community. The Commission affirmed its determination to award special consideration and that the weight accorded to upgraded enhancement credit should be equal to the credit given for local residence or minority ownership. In addition, the Commission retained the requirement that the credit was only available in the community of license and that the daytime-only licensee would be required to divest within three years of program test authority for the FM station. The Commission also clarified that an applicant for purposes of being granted the special consideration would be the licensee, as an entity and that the term "substantial participation" meant that members of the entity holding cognizable ownership interests spent at a minimum 20 hours per week in the management of the daytime-only station. In order to provide more certainty, the Commission determined that the applicant had to demonstrate that it had owned the daytime-only station for three continuous years prior to filing its application.

EFFECTIVE DATE: March 31, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Branson, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Summary of Memorandum Opinion and Order

In the Matter of Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments; (MM Docket No. 84-231).

This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket 84-231.

Adopted February 10, 1986.
Released February 21, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street, Northwest, Washington, D.C. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC. 20037.

The Commission affirmed and clarifed its *Second Report and Order* in this proceeding, which granted special consideration to daytime-only AM licensees when applying for FM broadcast allotments in their community of license and which established the system by which we would begin to accept applications for the 689 recently allotted FM channels. The Commission also concluded that its action in this proceeding rendered moot the National Black Media Coalition's "Motion for Expedited Treatment," with respect to its Petition for Reconsideration, its "Motion for Stay" and "Motion for Expedited Treatment" of that Motion.

Specifically, the Commission determined that daytime-only broadcasters do represent a unique class of licensees. Among other things, they are the only licensees who historically have been unable to provide nighttime service to their community of license. While other licensees, such as Class IV's and other full time AM broadcasters claim that they suffer detriments as well, the Commission continues to believe, that none have been subject to the same degree of limitations on their operations as the daytime-only licensee. As a result of actions by this Commission, most Class IV AM stations were able to increase their nighttime power from 250 watts to 1000 watts. This increase in power has helped them offer effective service at night. Although a small number of other AM stations operate with a lower nighttime power (typically 250 watts) these stations have nighttime protection and thus are able to provide a reliable service. The Commission also noted that as a result of its separate action in the *Report and Order* in MM Docket No. 84-281, many daytime-only broadcasters on the foreign clear channels have been authorized to operate with some level of limited nighttime power. Where the nighttime authority utilized is less than 250 watts of power, such nighttime service is given secondary status. Operating at this level is below the normal minimum nighttime power and the operator is forced to broadcast without signal protections. In these circumstances, the Commission determined it to be in the public interest that these broadcasters continue to be treated as daytime-only licensees for these purposes and be afforded the same upgraded enhancement credit. Accordingly, the Commission concluded that any daytime-only station that, as a result of MM Docket No. 84-281, has accepted authorization to operate at less than 250 watts nighttime power will be eligible for grant of the special consideration. Licensees operating at night with 250 watts or more are full time stations entitled to full time protection and thus, will not be entitled to the credit.

With respect to the weight to be accorded the daytime-only upgraded enhancement credit, the Commission stated that it continues to believe that the correct balance was struck in determining the weight of the special consideration vis-a-vis other comparative factors. In this regard, the Commission noted that it has and continues to support minority ownership of broadcast stations. To this end the Commission awards comparative merit for minority ownership. Similarly, local residence is a comparative criterion upon which the Commission places reliance in choosing between applicants. Enhancement credit for local residence is awarded because "[p]articipation in station affairs . . . by a local resident indicates a likelihood of continuing knowledge of changing local interests and needs." The Commission also is concerned with the plight of the daytime-only broadcaster and sought means to increase its service to its community of license. Weighing these three factors, the Commission determined that the credit accorded the daytime-only licensee should equal the credit given for minority ownership or the credit for local residence.

In light of the weight accorded the upgraded enhancement factor, the Commission deemed it appropriate to establish certain prerequisites. The Commission stated it continued to believe that these conditions are necessary to assure that the benefits upon which the grant is to be based are in fact realized. The decision to grant special consideration was in large part based upon the Commission's belief that these prerequisites reasonably serve to assure the Commission that an applicant will operate the FM facility in the public interest. With respect to the requirement that the credit is only available in the daytime-only licensee/applicant's community of license, the Commission noted that while the daytime-only licensee does in fact often serve surrounding communities, it was the service to the community of license upon which the Commission had determined that the licensee deserved special consideration. Likewise, the Commission's determination to require divestiture was based on the record of this proceeding, Commission policy and

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Congressional concerns about diversity. The Commission concluded that in light of its diversification policy it was appropriate that it retain the divestiture requirement where the AM daytime-only licensee wishes to receive an upgraded enhancement credit. Although petitioners suggested many alternatives to divestiture, the Commission determined that none of these would accomplish its diversity concerns as well as divestiture within the three year period.

The Commission clarified the term applicant for purposes of being granted the credit. Specifically, it determined that only the licensee, as an entity, should be eligible for grant of the special consideration. Grant of the special consideration, in situations where individual members of the entity apply, could create administrative problems and thwart our goals in awarding special consideration. In this regard, the Commission noted that if it allowed various factions from the daytime-only facility to be granted the upgraded enhancement credit, the Commission would have difficulty determining which party, in fact, deserved the special consideration. Moreover, the Commission deemed it appropriate to grant the credit solely to the licensee since it was this business enterprise that provided the service to its community of license upon which the Commission based its decision to grant special consideration.

In addition, the Commission clarified what level of participation in the daytime-only station is needed to meet the condition that the applicant have substantially participated in the operation of the daytime-only facility. In this regard the Commission stated that use of the term "substantial participation" in this context relates to the actual past participation in station operations by supervisory personnel whereas integration is based on the amount of proposed future involvement by owners in the management of the station. Upon consideration of its policy objectives, the Commission concluded that to satisfy this requirement, the applicant is not obligated to prove full time participation in the daytime-only facility. The licensee/applicant, however, is required to demonstrate that members of the entity holding cognizable ownership interests spent more than 20 hours per week (either individually or in the aggregate) participating in the management of the daytime-only facility during the three year period.

Finally, the Commission addressed Humes' suggestion that it alter the requirement that the applicant operate the daytime-only station for three continuous years prior to hearing designation for the FM allotment. Upon examination of this condition, the Commission determined that it would be more appropriate to require that the applicant have operated the daytime-only station for three continuous years prior to filing an application for the FM channel. The application stage would allow for more certainty for applicants concerned about when the Commission might designate the FM station for comparative hearing. In this regard, the Commission noted that the application deadline is less susceptible to delay caused by other interested parties. Lastly, the Commission clarified that for purposes of the "three continuous years" requirement the daytime-only licensee must have operated that station in same community as the FM for the entire three year period. Additionally, the Commission determined that NAB's request that it waive the three continuous years as a daytime-only licensee requirement, for the licensees on foreign clear channels if they experiment with nighttime power, should be denied to further the efficient use of this authorization.

Accordingly, it is ordered, That the Petitions for Reconsideration and/or Clarification filed in this docket by Committee for Community Access, WCSV, Inc., Humes Broadcasting Corporation, DAE Broadcasting Company, the National Black Media Coalition, Sarasota-Charlotte Broadcasting Corporation and Crittenden County Broadcasting Company, Inc., William O. Barry, Hancock Communications, Inc., and the National Association of Broadcasters are granted to the extent indicated herein, and in all other respects, are denied.

It is further ordered, That this action is effective March 31, 1986.

Authority for this action is contained in sections 4(i), 301, 303, 308, 309, and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–5815 Filed 3–17–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 255

[Docket No. 60102-6002]

Financial Aid to Fisheries; Fisheries Obligation Guarantee Program

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule revising Fisheries Obligation Guarantee Program regulations in order to comply with Office of Management and Budget (OMB) Circular No. A–70. This rule complies with A–70 by increasing the Program's income and decreasing Program risk.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Room 312, Page Building 2, 3300 Whitehaven St., NW., Washington, DC 20235, telephone 202–634–7496.

SUPPLEMENTARY INFORMATION: The Fisheries Obligation Guarantee Program, authorized by Title XI of the Merchant Marine Act 1936, as amended, 46 U.S.C. 1271 *et seq.* (the "Act"), authorizes a Federal guarantee of the debt portion of the cost of constructing, reconstructing, reconditioning, or (under limited circumstances) purchasing fishing vessels and fisheries shoreside facilities.

The Agency is authorized by the Act and current Program regulations, 50 CFR 255, to guarantee 100 percent of financings representing up to 87½ percent of the cost of such vessels or facilities. A–70 requires that guarantees be restricted to no more than 80 percent of such financings in those cases where authorizing legislation does not prohibit guarantees of less than 100 percent. The Commerce Department's General Counsel has determined that Title XI does not require guarantees of 100 percent. Consequently, the amount which this Program will guarantee is reduced by this rule revision from 100 percent to 80 percent of the debt involved. Thus, the amount to be guaranteed by the Federal government will be reduced to 70 percent of the cost of the vessel or facilities. All Program applications received after December 9, 1985, will be subject to the new rule in this respect.

A–70 also requires agencies to recover, from guarantee fees, administrative costs plus projected losses. This rule, consequently, raises the Program's guarantee fee for all new financings from ¾ of 1 percent to 1 percent, the maximum allowable by the Act.

A–70 also prohibits Federal financing programs from subordinating their claims on borrowers' assets to other lenders. This Program currently requires primary collateral positions on financings involving new construction, but allows secondary positions, subordinate to primary lenders, where reconstruction or reconditioning financing is involved. This rule revision requires primary collateral positions in return for all new Program financings, regardless of the nature of the project (i.e., new construction, reconstruction, reconditioning, etc.).

This rule revision makes four major changes in the Program:

(1) Program guarantees are restricted to 80 percent of the debt involved;

(2) The application-filing and commitment fee is raised to the statutory maximum of ½ of 1 percent (it presently is ⅛ of 1 percent on the first $2,000,000 of a proposed financing and ¼ of 1 percent on all amounts over $2,000,000); and

(3) The guarantee fee is raised to its statutory maximum of 1 percent (it is presently ¾ of 1 percent for normal risks); and

(4) Primary collateral positions are required in return for Program financings of all projects.

Classification

The NOAA Administrator determined that this rule revision is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. It is not major within that context because it does not significantly affect the economy, costs or prices, competition, employment, investment or productivity.

This rule revision is not required to be issued as a proposed rule subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, because it relates to benefits or contracts. Matters "relating to . . . loans, benefits, or contracts" are excepted from the APA, 5 U.S.C. 553(a)(2). The Regulatory Flexibility Act does not apply to this rule because it is not required to be issued as a proposed rule by the APA or any other act or law.

The rule imposes no new collection of information requirement for the purposes of the Paperwork Reduction Act. It continues existing requirements which have been approved by the Office of Management and Budget under control number 0648–0012.

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This action does not require an environmental impact analysis because it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Agency determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

The Catalog of Federal Domestic Assistance number is 11.410.

List of Subjects in 50 CFR Part 255

Fisheries, Fishing vessels, Fisheries shoreside facilities, Financing, Business.

Dated: March 13, 1986.

J.W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

For the reasons stated in the preamble, 50 CFR Part 255 is amended as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 is revised to read as follows:

Authority: 46 U.S.C. 1271–1279.

2. Section 255.6(b) is revised to read as follows:

§ 255.6 Guarantee limits, debt maturities, and interest rates.

* * * * *

(b) *Guarantee limits.* The Program shall guarantee 80 percent of financings representing no more than 87½ percent of the actual cost or depreciated actual cost of construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities. On a case-by-case basis for vessels or facilities previously guaranteed under the Program, the Program may guarantee 100 percent of financings representing up to 87½ percent of the cost of the vessels or facilities.

* * * * *

4. Section 255.10(a) is revised to read as follows:

§ 255.10 Collateral.

(a) *Mortgages.* The Programs will require a primary pledge, not subordinate to any other party, of the property being financed by the Program guarantee, unless such a primary pledge is available on substitute collateral of equal or greater value. Secondary pledges will be allowed, at the Program's discretion, on supplementary collateral.

* * * * *

5. In § 255.10, paragraph (c), which duplicates the provisions of § 255.7, is removed and paragraphs (d) and (e) are redesignated (c) and (d), respectively.

6. Section 255.12 is revised to read as follows:

§ 255.12 Fees.

(a) *Filing and commitment fees.* The Program's filing and commitment fee will be ½ of 1 percent of the principal amount of the Program guarantee for which application is made. The fee is due at the time an application is submitted, and no application for guarantee will be accepted unless the full filing and commitment fee accompanies it. The filing fee is 50 percent of the filing and commitment fee, and once an application for a guarantee is accepted, no portion of the filing fee will be returned for any reason. The commitment fee is the remaining 50 percent of the filing and commitment fee, and is returnable only if a refund is requested before the Program issues an Approval in Principle letter or if the application is declined.

(b) *Guarantee fee.* The Agency guarantee fee is 1 percent of the average unpaid principal balance of the debt obligation for which the guarantee is outstanding during each year of the life of the guarantee. The guarantee fee is due in advance based upon the debt obligation's amortization schedule. The first annual guarantee fee is due at closing of the guarantee. Each subsequent annual guarantee fee is due on the anniversary date of the closing of the guarantee. No refund of guarantee fees will be made regardless of the status of the financing or the guarantee during the year to which the guarantee fee relates.

(c) *Refinancing/assumption fee.* The Program's refinancing/assumption fee for financings already guaranteed under the Program (other refinancing applicants will be charged fees under paragraph (a) of this section) is ¼ of 1 percent of the principal amount of the debt obligation to be refinanced or assumed, and is due upon application for a guarantee for refinancing/assumption. The refinancing/assumption fee is nonreturnable regardless of the subsequent disposition of an application. The Chief, Financial Services Division, may however:

(1) Waive the refinancing/assumption fee where the refinancing/assumption is primarily to protect the Program's interest, or

(2) Charge an actual cost fee, where the refinancing/assumption does not substitute a wholly different obligor for the initial obligor.

(d) *Where payable.* Fees should be paid by check made payable, and mailed, to: "NMFS/FSFF", U.S. Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 73004, Chicago, Ill. 60673.

[FR Doc. 86-5917 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 52
Tuesday, March 18, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Use of Federal Rules of Evidence in Federal Agency Adjudications

Correction

In FR Doc. 86-5424 beginning on page 8328 in the issue of Tuesday, March 11, 1986. make the following corrections:

1 On page 8328:

a. In the first column, under **ADDRESS,** the name of Richard K. Berg was misspelled.

b. In the same column, under **SUPPLEMENTARY INFORMATION,** in the fifth line. "of the use" should read "on the use".

c In the second column, in the third line. remove "the".

d In the same column, in the sixth line "practicable" was misspelled.

e In the same column, in the last line before the footnote, "Presiding" was misspelled.

f. In the third column, in the twenty-fifth line from the bottom, "circumstances" was misspelled.

2 On page 8329:

a. In the first column, in paragraph 3, in the ninth line, "discretion" was misspelled.

b. In the same column, in paragraph 4, in the eighth line, "assist" was misspelled

c In the second column, in paragraph 1. in the fourth line, "It is" should read "Is it"

d In the same column, in paragraph 3, in the third line. "statute" was misspelled.

e. In the same paragraph, in the seventh line, "of" should read "or".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3274]

Blue Lustre Home Care Products, Inc., Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Indianapolis, Ind. manufacturer and marketer of chemical products and equipment for home and car care, to cease making unsubstantiated efficacy claims for "Rinsenvac 5", a carpet cleaning fluid sold to retailers in connection with the sale of rental do-it-yourself carpet cleaning machines.

DATE: Comments will be received until May 19, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Toby M. Levin, Washington, DC 20580. (202) 376-8648.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Carpet cleaning fluid, Trade practices.

Agreement Containing Consent Order to Cease and Desist

In the Matter of Blue Lustre Home Care Products, Inc., a corporation; File No. 842 3274.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Blue Lustre Home Care Products, Inc., and it now appearing that Blue Lustre Home Care Products, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Blue Lustre Home Care Products, Inc., its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Blue Lustre Home Care Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 7950 Castleway Drive, in the City of Indianapolis, State of Indiana.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the

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circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Blue Lustre Home Care Products, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any carpet cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

B. Representing in any manner, directly or by implication, any performance characteristic, including any comparative performance of any carpet cleaning product, unless at the time of such representation respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation; provided, however, that to the extent such evidence consists of any test, experiment, analysis, research, study or other evidence based on the expertise of any professional, such evidence shall be "competent and reliable" only if the test, experiment, analysis, research, study or other evidence is conducted and evaluated in an objective manner by a person qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and provided further, that for the purposes of this paragraph, testing conducted in accordance with the protocol ASTM D 3050–75 of the American Society of Testing and Materials shall not constitute competent and reliable evidence to substantiate any performance representation for any carpet cleaning product.

II

It is further ordered that for three years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

III

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

IV

It is further ordered that the respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Blue Lustre Home Care Products, Inc. (Blue Lustre).

The proposed consent order has been placed on the public record for sixty (60) days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Blue Lustre with disseminating advertisements containing false, misleading, and unsubstantiated representations concerning Blue Lustre's carpet cleaning product, Rinsenvac 5. The complaint challenges Blue Lustre's claims that Rinsenvac 5 cleans carpets better in cold water than other steam cleaners do in hot water and that it removes several times more dirt from carpets than two competitors' products. These claims are alleged to be false and unsubstantiated and therefore deceptive because: (1) The test used to substantiate the claims was based on a test protocol, American Society for Testing and Materials (ASTM) D 3050–75, that is inappropriate for those purposes; and (2) certain other carpet cleaning products had actually performed better than Rinsenvac 5 in the test. The complaint also alleges that Blue Lustre falsely represented that the test proves Rinsenvac 5 cleans better.

The consent order contains provisions prohibiting Blue Lustre from making future misrepresentations and

unsubstantiated claims about its carpet cleaning products. Part I of the order prohibits Blue Lustre from misrepresenting any study or test, and requires the company to have a reasonable basis, consisting of competent and reliable evidence, for representations of performance characteristics of any carpet cleaning product. The order specifies that ASTM D 3050–75, the test Blue Lustre used to support the claims the Commission challenges, does not constitute competent and reliable evidence to substantiate performance claims for carpet cleaning products.

Part II of the order requires Blue Lustre to maintain and upon request make available to the Commission all materials that it relied upon to substantiate any representation covered by the order, or which calls into question any such representation. Part III of the order requires Blue Lustre to notify the Commission of any proposed change in its corporate structure. Part IV requires Blue Lustre to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86–5853 Filed 3–17–86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Social Security Benefits; U.S. Residence Requirements for Non-Resident Aliens and Deductions for Work Outside the U.S.

Correction

In FR Doc. 86–4571, beginning on page 7452, in the issue of Tuesday, March 4, 1986, make the following corrections:

1. On page 7453, first column, twelfth line, after the word "or" insert "(4)".

2. On page 7454, second column, in § 404.460(d)(1)(ii), third line, after the word "each" insert "have".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N-0032]

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV-III)

Correction

In FR Doc. 86–3820, beginning on page 6362, in the issue of Friday, February 21, 1986, make the following corrections:

1. On page 6364, first column, under B, third paragraph, thirteenth line, "whire" should read "white".

2. On page 6368, third column, in § 640.72(a)(2), fifth line, "640.5" should read "640.65".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 86–6]

Agreement Provisions Regarding Overruns in Contract Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation contained in 23 CFR Part 630 concerning the assessment of liquidated damages on projects where a contractor overruns the contract time. The revised regulations would require each State highway agency (SHA) to keep liquidated damage provisions current so that the amounts recovered through contractor assessments would at a minimum cover the SHA's average daily construction engineering (CE) cost attributable to the contract time overrun. In addition, the FHWA rate table presently in the regulation would be removed, and the provisions for the FHWA recovery of costs would be modified.

DATE: Comments must be received on or before May 2, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to Federal Highway Administration, FHWA Docket No. 86–6, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET Monday through Friday. Those persons desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Myers, Construction and Maintenance Division, Telephone: (202) 426–0392; or Mr. Hugh T. O'Reilly, Office of Chief Counsel, Telephone: (202) 426–0780. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: It is standard operating practice for an SHA to set a time period or limit in which the contractor is to complete the project work. If the contractor overruns this initial time period, and any approved extensions, liquidated damages are to be assessed to recoup the delay-related loss to the SHA.

The current regulation (23 CFR 630.305) prescribes agreement provisions regarding overruns in contract time and provides guidance on the amount of these assessments. However, this guidance has remained unchange since December 1975. At that time, the rate table included in the rule was identical to the table found in the 1972 edition of the American Association of State Highway and Transportation Officials (ASSHTO) *Guide Specifications for Highway Construction.*[1] The figures included in these 1972 tables represented an estimate of the nationwide average CE costs to the SHA. Since that time, CE costs have risen significantly; however, the FHWA rate table has not been updated to take account of the increases. The AASHTO subsequently revised its Guide Specifications in 1979, and increased the rates by an inflationary factor of 1.5. No change was made in the 1984 edition; however, further changes are being considered for future editions.

During audit reviews in several regions of the country, personnel from the Department of Transportation Office of Inspector General (OIG) found that liquidated damage provisions in use by several of the SHAs were not allowing for the full recovery of CE costs due to contractor caused overruns. In several instances, it was found that amounts being assessed were only ⅓ to ½ of the actual incurred CE costs that were attributable to a contract time overrun.

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[1] The *Guide Specifications for Highway Construction*, 1984, is published by and available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.

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Many of the provisions were based on either the FHWA or the AASHTO rates.

The FHWA Washington Headquarters subsequently alerted its field offices of the OIG findings and requested that further discussions be held with the SHAs concerning the adequacy of these provisions. In a related informal survey of the State standard specifications, it was found that 16 SHAs still had liquidated damage contract provisions similar to the 1975 FHWA rate table.

The FHWA agrees that the current rate table found in the regulations is outdated and may not allow for full recovery of extra CE costs associated with contract time overruns. While the regulation allows the SHAs to set higher rates based upon CE costs in their States, there has been some reluctance to increase the rates significantly from the FHWA or AASHTO amounts. The FHWA is also aware that a nationwide rate table does not provide adequate guidance to the SHAs concerning liquidated damage assessments for their States. For these reasons, and because it is difficult to update and maintain an ever changing table in a regulatory format, it is being proposed to delete the table from the regulation and, in its place, require each SHA to maintain its own rate schedule(s). It is also proposed to require the rates to be reviewed periodically and updated, as appropriate. The FHWA feels that this is a SHA responsibility and would ultimately provide for better recovery of additional costs attributable to a contract time overrun.

The proposed regulation also addresses the use of liquidated damages to cover anticipated delay-related costs above and beyond those attributed to CE. Such costs to the SHA are those that could be reasonably anticipated if a delay were to occur in project completion, such as costs resulting from winter shutdown, retaining detours for an extended time, or additional demurrage. The amounts would be specified separately in the contract documents to permit a separate accounting of net CE costs to the project for Federal participation purposes.

The portion of the current regulation dealing with the FHWA recovery of the pro rata share of the assessed liquidated damages has been modified slightly in the proposed rule to address cases where assessments include more than CE expense factors. There is also a change concerning how the liquidated damages are credited to the project when the FHWA did not participate in the cost of CE. Whereas the current regulation indicates the amount of liquidated damages is to be credited to the federally participating cost of contract construction before calculating the Federal share, the proposed rule would allow the recovery of the SHA's CE costs first. This revision will correct an inequity in the present regulation.

The proposed regulation would require the SHA's liquidated damage provisions to be approved by the FHWA. By law, all specifications and special provisions have to be approved by the FHWA before use on a Federal-aid project. The only additional "burden" on the SHA will be the periodic review of their CE cost data to determine that the liquidated damage figures are adequate. The FHWA feels this is a SHA responsibility and should be a routine management task.

In addition to the regulatory changes, a definition of incentive/disincentive clauses is added to § 630.302.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposed revisions will improve the current undesirable situation that has developed and should provide for increased awareness by the SHA of the project related CE costs. Since there is no substantive change in the FHWA approach or procedures concerning liquidated damage assessments, it is anticipated that this action will not have a significant economic impact. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulgated, will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA proposes to amend Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—Transportation, Highways and roads, Project agreement provisions.

Issued on: March 12, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 630—PRECONSTRUCTION PROCEDURES

Subpart C—Project Agreements—[Amended]

The Federal Highway Administration (FHWA) proposes to amend Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 630 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, and 320; 23 CFR 1.32; 49 CFR 1.48(b), unless otherwise noted.

2. Section 630.302 is amended by redesignating paragraphs (h), (i), and (j) as (i), (j), and (k), respectively, and by adding a new definition "incentive/disincentive clause" as paragraph (h) as follows:

§ 630.302 Definitions.

* * * * *

(h) The term "incentive/disincentive clause," as used in this subpart, describes a contract provision which reimburses the contractor a certain amount of money for each day the work is completed ahead of schedule and makes a deduction for each day the contractor overruns the completion date. Its use is primarily intended for those projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety and motorist delay costs.

* * * * *

3. Section 630.305 is revised to read as follows:

§ 630.305 Agreement provisions regarding overruns in contract time.

(a) Each State highway agency (SHA) will establish specific liquidated damage rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs or project types. These rates will, as a minimum, be established to cover the average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts will be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established will be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the SHA will periodically review its cost data to ascertain if the rate table/schedule closely approximates the average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the SHA specifications or standard special provisons, verification by the SHA that the amounts are adequate must be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the SHA will be required to review the rates no less often than every 2 years and provide updated rates, if necessary, for FHWA approval. If updated rates are not warranted, documentation of this fact is to be sent to the FHWA for review and acceptance.

(c) If the FHWA so chooses, additional amounts to cover other anticipated costs of project-related delays or inconveniences to the SHA may be included as liquidated damages in each contract. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs may be included. However, these amounts are to be shown separately from the CE amounts.

(d) In addition to the liquidated damage provisions, the SHA may also include incentive/disincentive clauses in the contract to stimulate work completion and to compensate for increased or decreased road user costs resulting from an increased or decreased contract time period. The incentive/disincentive amounts shall be shown separately from the liquidated damage amounts.

(e) When there has been an overrun in contract time, the following principles apply to determine the reduction in the amount of SHA cost of a project that is eligible for Federal-aid reimbursement:

(1) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damage rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damage amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess is to be deducted from the federally participating contract construction cost before determining the final Federal share.

(2) Where the SHA is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportion of the total liquidated damage amounts assessed on the project.

(3) Where liquidated damages inlcude extra anticipated non-CE expenses to the SHA due to contractor caused delays, the amount that is assessed is to be used to pay for the actual expenses incurred by the SHA, and if a Federal participating item(s), to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred, a proportional share of the excess is to be credited to the federally participating contract construction cost of the project before the Federal share is figured.

(4) The proportional shares are to be figured as the ratio of final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(f) Where incentive/disincentive clauses are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor are to be added to the federally participating contract construction cost before calculating the Federal share. Where the disincentive portion is applicable, a proportional share of the amount assessed is to be credited to the participating contract construction cost before Federal share calculation. Proportions are to be calculated in the same manner as shown in paragraph (e)(4) of this section.

[FR Doc. 86-5933 Filed 3-17-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Reopening and Extension of Public Comment Period on a Proposed Amendment to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letters dated July 25 and 26, 1985, Iowa submitted proposed program amendments concerning certification and training of blasters, a penalty schedule for violation assessment, and modification of permit requirements and inspections. OSMRE published a notice in the **Federal Register** on October 25, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 43411).

Following a review of the Iowa amendments, OSMRE notified the State on January 13, 1986, of its concerns about the amendments. On February 13, 1986, the State responded by submitting a letter clarifying the amendments. On March 4, 1986, the State submitted further clarification.

Accordingly, OSMRE is reopening and extending the comment period on Iowa's July 25 and 26, 1985 amendments as modified on February 13, and March 4, 1986. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:30 p.m., April 2, 1986, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments, should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Copies of the Iowa program, the proposed amendment and modification to the amendment, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by the contacting OSMRE's Kansas City Field Office.

Office of Surface Mining Reclamation
and Enforcement, Room 5315A, 1100
"L" Street, NW., Washington, DC
20240

Iowa Department of Soil Conservation,
Mines and MInerals Division, Wallace
State Office Building, Des Moines,
Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas

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City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa's program can be found in the January 21, 1981 **Federal Register**.

II. Proposed Amendment

By letters dated July 25, and 26, 1985, Iowa submitted proposed program amendments consisting of:

1. Amendments to IAC Chapter 4 rules for Iowa's Coal Regulatory Program requiring payment of all reclamation fees from previous and existing operations as required by section 402 of SMCRA; modifying the provision for a presiding officer of contested case hearings; correcting the requirements for local filing of permit applications—permit applications will be availabe for public inspection in the county recorder's office; clarifying the provision for incidental boundary changes allowing a total of 20 acres of incidental boundary changes over the life of the permit; modifying requirements for frequency and type of inspections including inactive operations and aerial inspections and establishing the standards for extension of abatement periods for notices of violations beyond 90 days.

2. An amendment establishing IAC Chapter 26 "Blaster Training, Examination and Certification of Coal Mines." This chapter establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface or underground coal mining operations.

3. The Iowa submission included a final rule IR 780–4.61(83) "Penalty Schedule". This was approved by the Office of Surface Mining on May 24, 1985 (50 FR 21440]. The changes made to this rule are only minor editorial ones. Therefore, it was not reproposed in the **Federal Register**, but was placed in the Administrative Record.

OSMRE announced receipt of the amendment and initiated a public comment period on October 25, 1985 (50 FR 43411). The comment period closed on November 25, 1985.

During review of the amendments, OSMRE identified several concerns. The concerns involved how aerial inspections were to be counted, the definition of inactive surface coal mining and reclamation operations, and some of the provisions of the blaster training program. OSMRE notified Ohio about these concerns by letter dated January 13, 1986. On February 13, 1986, the State responded providing clarification and explanation of these concerns by letter. On March 4, 1986, the State sent another letter of clarification to OSMRE.

The full text of the proposed amendment and of the subsequent material is available for review at the locations listed above under "**ADDRESSES**". OSMRE is now seeking public comment on the adequacy of Iowa's July 25 and 26, 1985 amendments in light of the February 13, 1986 and March 4, 1986 modifications. If the Director determines that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved and become part of the approved permanent program.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1986.

H. Leonard Richeson,

Acting Assistant Director, Program Operations.

[FR Doc. 86–5894 Filed 3–17–86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Post Office Box Fee Group Application

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposd rule change is designed to simplify post office box fee groups in noncity delivery (NCD) offices. The NCD offices have experienced difficulty in administering two or three different fee groups for the same post office box service This proposed rule change will provide that all NCD offices charge only the Group 2 fees. These fees average 76 percent less than the regular Group 1 fees charged at city delivery offices. No changes are proposed to the assignment of Group 3 fees at Community Post Office (CPOs). Certain other minor editorial changes are also proposed.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, Rates & Classification Department, Attn: Special Services Division, Room 8430, 475 L'Enfant Plaza, Washington, DC 20260-5371. Copies of all written comments will be available for photocopying between 9 a.m. and 4 p.m. Monday through Friday in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 268–5178.

SUPPLEMENTARY INFORMATION: Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 951—POST OFFICE BOX (P.O. BOX) SERVICE

2. In 951.2, revise .221, .222, .23 and .24 to read as follows:

* * * * *

951.2 Fees.

* * * * *

951.22 Fee Groups.

.221 General Provisions

Customers at all facilities under the administration of the same post office are subject to the same post office box fees applicable at the main office. This includes any post office which has been discontinued and reestablished as a station or branch of another post office.

.222 Fee Group Application

a. Group 1 Fees

(1) Customers at all facilities of city delivery post offices who are eligible for any kind of delivery by postal carrier will be charged Group 1 fees. Customers may use one box at Group 2 fees if they

are ineligible for any kind of delivery by postal carrier.

(2) All customers who receive mail at a mail processing facility which is not under the administration of a post office must pay Group 1 fees.

b. Group 2 Fees

Customers at noncity delivery (NCD) offices will be charged Group 2 fees.

c. Group 3 Fees

Customers at Community Post Offices (CPOs) will be charged the flat Group 3 fee.

.23 Changes in Fees

Revised post office box fees may be required by a general fee change, by a change in carrier services, or by a change in the status of a postal facility. Revised post office box fees are effective on the date of the action which caused the change, unless another date is specified in an official announcement. If a post office box fee is increased, no customer will be required to pay at the new rate until the end of the period, (annual or semiannual), for which they have already paid.

.24 General Delivery

Customers who are eligible to use a post office box at Group 2 fees, but who, in fact, do not use a box, may receive no more than one separation is general delivery without time limit. Customers who are not eligible to use a post office box at Group 2 fees may not receive general delivery for periods longer than 30 days except as provided in 953.

* * * * *

PART 952—CALLER SERVICES

3. In 952, revise .124 and .222b(2) to read as follows:

952.124 Caller Service at Group 2 Noncity Delivery Offices Is Available Only as Provided by 952.222b(2).

* * * * * * *

952.222 b(2) Caller service will be provided for Group 2 non-city delivery offices only if a customer desires delivery through a post office box and either no post office box or no post office box of appropriate size is available. In that event, a single box number will be assigned and caller service proivided. The caller fee will be the same amount as the box fee for the largest box at the facility. Regular caller service fees are charged for any additional separations requested.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86–5850 Filed 3–17–86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS–50541; FRL–2987–2]

Substituted Benzenes, Halogenated; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs) P–84–660 and P–84–704, and a TSCA section 5(e) consent order issued by EPA. The Agency believes that these substances may be hazardous to human health and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by May 19, 1986.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS–50541. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XIII of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm E–543, 401 M St., SW., Washington, DC 20460.

Toll Free: (800–424–9065).
In Washington, D.C.: (545–1404).
Outside the USA: (Operator-202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines a use to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720, published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.135a.

III. Summary of This Proposed Rule

The chemical substances which are the subject of this proposed rule are identified generally as substituted

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benzenes, halogenated. They were the subject of PMNs P–84–660 and P–84–704. EPA is proposing to designate the following as significant new uses of these substances:

1. Use other than as allowed under the terms of the section 5(e) Consent Order issued for the two substances.

2. Manufacturing or importing an aggregate volume of P–84–660 for the uses allowed in the section 5(e) Consent Order greater than that permitted the PMN submitter under the terms of the order.

3. Any manner or method of disposal associated with any use of the substances other than removal from waste streams by carbon bed filtration where the substances are either incinerated with the carbon in a waste incinerator, destroyed during the regeneration of the carbon, or landfilled along with the carbon in a facility permitted under the Resource Conservation and Recovery Act.

4. Any manner or method of manufacturing, importing, or processing associated with any use of the substances without establishing a program whereby:

a. Any person who may be dermally exposed to the substances must wear:

i. Gloves determined to be impervious to the substances.

ii. Clothing which covers any other exposed areas of the arms, legs, and torso.

iii. Chemical safety goggles or equivalent eye protection.

b. Any person who may be exposed to the substances as a vapor must wear a National Institute for Occupational Safety and Health (NIOSH) approved air supplied, positive pressure respirator, excluding single-use or disposable and air purifying respirators in NIOSH approval category 19C and in accordance with 30 CFR 11.110 Subpart J.

c. Potentially exposed individuals are informed of the possible hazards associated with P–84–660 and P–84–704. Such notification are made as part of a training program at which attendance is recorded and by means of a written statement. Both methods of notification must include the statement as provided under proposed § 721.135a(a)(2)(iv)(c).

d. Labels are affixed to each container of the substances distributed in commerce in accordance with proposed § 721.135a(a)(2)(iv)(D).

e. A material safety data sheet (MSDS) is provided when the substances are distributed in commerce. The MSDS must include, at a minimum, the language specified in proposed § 721.135a(a)(2)(iv)(C), and must specify the requirement for protective equipment under proposed § 721.135a(a)(2)(iv) (A) and (B).

IV. Background

On April 26, 1984, EPA received a PMN which the Agency designated P–84–660. EPA announced receipt of the PMN is the **Federal Register** of May 4, 1985 (49 FR 19114). On May 14, 1984, EPA received a PMN which the Agency designated P–84–704. EPA announced receipt of the PMN in the **Federal Register** of May 25, 1984 (49 FR 22130).

The notice submitter claimed the following as confidential business information (CBI): Company identity, the specific chemical identities, the uses, and the estimated production volumes. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for the SNUR rulemaking. For purposes of clarity, these substances will be referred to by their PMN numbers.

Based upon analogy to compounds with high lipid solubility and low molecular weight, the Agency has determined that the two substances may be readily absorbed by the skin, lungs, and intestines. Based on animal assays on a structurally analogous chemical, both PMN substances may cause chronic liver and kidney effects. In addition, two other analogues of P–84–660 may cause a variety of nervous system effects as well as reproductive failure and teratogenic effects. Therefore, the Agency has determined that P–84–660 may also cause these effects. Because divulging the specific analogues utilized by the Agency in developing its analysis might compromise the confidential identities of P–84–660 and P–84–704, the Agency has elected not to disclose the specific chemical identity of any analogue.

Based upon the available data, the Agency believes P–84–660 may cause liver, kidney, neurotoxic, reproductive, and teratogenic effects. The Agency also believes that P–84–704 may cause liver and kidney effects. During the review of the PMNs, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substances may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substances under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that the use of appropriate protective equipment will significantly reduce exposure and potential risks to persons. The Agency negotiated a section 5(e) Consent Order with the notice submitter which requires that the submitter manufacture, import, and process the substances solely for the uses described in the PMNs. The aggregate volume from both manufacturing and importing P–84–660 is limited to a specified volume. During manufacturing and processing, or during response to emergencies or spills, the submitter is required to assure that persons who may be dermally exposed to these substances wear: (a) Gloves which have been determined to be impervious to the substance, (b) clothing which covers any other exposed areas of the arms, legs, and torso, and (c) chemical safety goggles or equivalent eye protection. It also requires that persons who may be exposed to the substances as vapors wear NIOSH-approved category 19C air supplied, positive pressure respirators, excluding single-use or disposable and air purifying respirators in accordance with 30 CFR 11.110. Subpart J. In addition, the submitter is required to label products containing P–84–660 and provide a MSDS to accompany the products when distributed in commerce, and notify persons potentially exposed to both substances through the use of specified warning statements. The Order also prohibits distribution of P–84–704 to others beside the PMN submitter. These requirements will remain in place until data are available to more accurately determine the risks associated with the substances. The Order became effective November 15, 1984.

By issuing a section 5(e) consent order which allows controlled commercial production and distribution of the substances, EPA adopted a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substances until additional data are submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a reasoned evaluation of the risks associated with the substances.

Section 5(e) orders apply only to the notice submitter. When the notice submitter commences commercial manufacture of the substances and submits a Notice of Commencement of Manufacture or Import to EPA, the Agency will add the substances to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.135a as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substances before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P–84–660 and P–84–704 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of these chemical substances, EPA considered relevant information about the toxicity of the substances, potential exposures associated with possible uses (such as uses other than those allowed under the section 5(e) consent order), and the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P–84–660 and P–84–704. Based on these considerations, EPA proposes to define the significant new uses of P–84–660 and P–84–704 as set forth in paragraph (a)(2) of the proposed § 721.135a.

EPA has already determined in the section 5(e) Order that unrestricted manufacture, import, processing, distribution in commerce, use, and disposal of the substances may present an unreasonable risk of injury to human health. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the new uses of the substances would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to the requirements in § 721.17, persons who manufacture, import, or process P–84–660 and P–84–704 maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to P–84–660 or P–84–704.

2. Names of persons who have attended safety meetings in accordance with proposed § 721.135a(a)(2)(iv)(C), dates of such meetings, and copies of any written information provided in accordance with proposed § 721.135a(a)(2)(iv)(C).

3. Dates of shipments of containers which have been labeled in accordance with proposed § 721.135a(a)(2)(iv)(D), copies of the labels, and the identities of persons to whom they have been shipped.

4. Any names used for P–84–660 and P–84–704 and the accompanying dates of use.

5. Documentation of quantities of P–84–660 which are manufactured and imported, with the accompanying dates.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TCSA is not applicable when the chemical substances which are the subject of the rule also are the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P–83–370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis, the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720, published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substances solely for export and label the substances in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substances, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substances solely for export from the United States, under the following restrictions: (1) There is no use of the substances in the United States, except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substances both for export and for use in the United States, such activity would not be "solely for export" because the manufacture and processing would be for use in the United States regardless of whether any quantity of the substances were later exported.

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substances in question have just undergone premanufacture review. When the notice submitter begins manufacture of the substances, the submitter will send

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EPA a Notice of Commencement of Manufacture, and the substances will be added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that when the chemical substances subject to this SNUR have been added to the Inventory, they may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substances are manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substances for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed signficant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the **Federal Register.**

IX. Determining When Substances are the Subject of This Proposed Rule

Because the identities of P-84-660 and P-84-704 are confidential, any person who proposes to manufacture or import P-84-660 and P-84-704 is unlikely to know that the substances are on the Inventory and, therefore, is likely to submit a *bona fide* request under either 40 CFR 710.7(e) or 720.25(b) to determine whether the substances are on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substances and that the substances the person proposes to maufacture or import are P-84-660 and P-84-704, EPA will inform the person that the substances are subject to this proposal. This will give the person notice of this proposal.

X. Determining When Certain Uses Are Subject to This Proposed Rule

EPA has codified procedures at § 721.6 under which any person who intends to manufacture, import, or process a chemical substance within the generic chemical name identified in this proposed rule would be able to ask EPA whether or not their chemical substance is subject to this SNUR. The process for doing so is very similar to the process required for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(q)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules as published in the **Federal Register** of May 13, 1983 (48 FR 21722). The Agency does not intend to modify these procedures for this proposal.

EPA is proposing two confidential significant new uses in this SNUR: use of both substances other than as allowed in the section 5(e) Order, and production of more than a specified amount of P-84-660. The original notice submitter claimed this information as confidential business information. The Agency is proposing that the allowed uses and the production volume remain confidential in the final rule. For the same reasons that EPA believes it is appropriate to keep specific chemical identity confidential, EPA believes it is appropriate to keep this information confidential to protect the interests of the original notice submitter. EPA specifically requests comments on this issue.

As to determining uses other than those allowed in the section 5(e) Order, EPA would allow the person to show a *bona fide* intent to manufacture or import under § 721.6 and to describe the intended uses. If EPA determined that the person had a *bona fide* intent to manufacture or import one of the substances, EPA would inform the person whether the intented use or uses would be significant new uses under paragraph (a)(2)(i).

EPA is also proposing to reveal the specific production volume allowed in paragraph (a)(2)(ii) of proposed § 721.135a only to a manufacturer or importer who demonstrates a *bona fide* intent to manufacture or import P-84-660 under the procedure in § 721.6 of the general SNUR provisions and who describes an intended use or uses that are identical to uses allowed in the section 5(e) Order..Thus, if the manufacturer or importer is told that P-84-660 is on the Inventory and subject to this SNUR and that the proposed use is one allowed in the section 5(e) Order for P-84-660, the person will also be told the specific volume allowed in paragraph (a)(2)(ii). This will enable the manufacturer or importer to determine whether a SNUR notice will be necessary.

As an alternative to this approach, EPA considered requiring a manufacturer or importer to show not only a *bona fide* intent to manufacture or import the substances and to describe the specific uses, but also to identify the specific production volume the person intends for P-84-660. EPA would then tell the manufacturer or importer whether the volume intended would be significant new use under paragraph (a)(2)(ii). EPA has not adopted this approach for the proposal because the Agency believes it would involve a greater burden on manufacturers and importers potentially subject to the SNUR and would provide little additional confidentiality protection.

XI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of these substances, EPA believes, as a result of its review of the original PMNs for the chemical substances which are the subjects of this SNUR, that a more reasoned evaluation of the risks posed by these substances would require additional data on potential liver, kidney, neurotoxic, reproductive, and teratogenic effects. These data might be generated by a 90-day subchronic oral study on P-84-660. This study may not be the only means of addressing the

potential risks. Since P-84-704 is structurally similar to P-84-660, it would not be necessary to test it if P-84-660 were tested.

EPA encourages potential SNUR notice submitters to test the substances for these concerns. SNUR notices submitted for significant new uses without such test data will increase the likelihood that EPA will take action under section 5(e). Because the original PMN submitter is required to perform testing when the cumulative production volume reaches a specified level, it would be advisable that potential manufacturers, importers, or processors check with the Agency before undertaking any testing. As part of optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substances.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substances. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by substitutes.

XII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for these substances. This evaluation is summarized below. The Agency's economic analysis is available in the public file.

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are $10,500-$17,600. While enforcement costs may also be incurred, the Agency cannot quantify them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes for companies that would manufacture, import, process, distribute in commerce, or dispose of the substances. The companies could: (1) Manufacture, import, process, distribute in commerce, or dispose of the substances within the limits of this SNUR; (2) manufacture, import, process, distribute in commerce, use, or dispose of the substances under circumstances requiring the submission of a SNUR notice; or, (3) not manufacture, import, process, distribute in commerce, use, or dispose of the substances. The costs of these outcomes are summarized below.

If a company decides to manufacture, import, process, distribute in commerce, use, or dispose of P-84-660 and P-84-704 within the limits of the SNUR and meets the limited production volume requirements, it will not incur the cost of submitting a SNUR notice. The only cost to the company would be the cost of specific protective equipment, recordkeeping, labeling, and imperviousness determinations. Protective equipment and recordkeeping costs, due to their recurring nature, are calculated as present value cost over an estimated 10-year life of the substances.

The PMN submitter claimed the actual exposure data as CBI. For analytical purposes, EPA has assumed that 10 workers will be exposed to P-84-660 and P-84-704 for 8 hours a day, 250 days per year. Each worker will be required to wear gloves (which are determined to be impervious to the chemcial substances), other protective clothing, chemical safety goggles, and an air-supplied positive pressure respirator, excluding single-use, disposable, and air purifying respirators. Assuming a 10 percent discount rate and a 10-year economic life for the two substances, the present value of outfitting each worker is estimated to cost $5,270 per worker; for 10 workers, the cost would be $52,700. On an annualized basis, these costs may exceed $780 and $7,800 for 1 worker and 10 workers, respectively. Permeation tests to determine if the gloves are impervious to the substances have been estimated to cost $500 per substance per test per substrate (annualized cost of $75). These tests may cost up to $7,000 to $10,000 if different substrates (i.e., different compositions of gloves) are tested (annualized cost of $1,480). To the extent a company is able to extrapolate from previous tests, draw from knowledge of similar types of chemicals, or rely on the glove manufacturer's specification as the basis for determining imperviousness, these costs may be less.

Workers who may be exposed to the two substances as vapors, in addition to the dermal protective equipment, are required to wear NIOSH-approved, category 19c air-supplied, positive pressure respirators. The total present value of supplying the respirator, hose, compressor, pressure reducing equipment, and other miscellaneous equipment has been estimated to cost $2,765 per worker (annualized cost of $410). The present value cost of the required respirators for 10 workers would be $20,720 (annualized cost of $3,065). EPA assumes that the other required protective clothing is standard equipment for every worker regardless of whether or not they work with the substances.

A company would also be required to inform the workers of the hazards associated with the chemical substances with an MSDS, with appropriate warning labels, and as part of a training program in safety meetings. In addition, the company would be required to maintain certain records. The initial cost of the labeling requirements is estimated to be between $135 and $500, which is the cost of developing the label. Other labeling costs are expected to be minimal. The annualized cost of labeling is $75. The present value of the cost of complying with the recordkeeping requirements over a 10-year period is estimated to be $1,520 (the annualized cost is $225).

If the intended production volume by a company exceeds the specific production limitations, or if the company decides to commence a significant new use, it will incur the cost of filing a SNUR notice ($1,400 to $8,000). The submitter may also experience up to a 3.2 percent reduction in profits due to delays in manufacturing, importing, or processing, and the cost of regulatory follow-up, if any.

If the company elects to test for central nervous system, liver, kidney, reproductive, and teratogenic effects, the estimated cost would range between an estimated $95,000 and $140,000, plus the cost of delay (probably a delay in profits of 2.5 to 3.0 years), and the cost of any regulatory follow-up.

Under this outcome, EPA will incur only enforcement costs once the SNUR has been issued.

If a company elects not to manufacture, import, process, distribute in commerce, use, or dispose of P-84-660 and P-84-704 within the limits of the SNUR, it will incur the cost of filing a SNUR notice. If a company decides to test, it will incur: (1) The cost of testing and possibly up to 3.2 percent reduction in profits due to delays in manufacturing or processing; and (2) the cost of any regulatory follow-up.

EPA costs following promulgation of the SNUR would include the cost of reviewing SNUR notices, estimated at $7,100 per notice, and the costs of modifying the terms of the SNUR if the information provided indicates that EPA's concerns would be adequately addressed by use of a different type of

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exposure control. This cost is estimated at $8,700.

Some companies could find the cost of controlling exposure and potential testing costs too expensive to justify production, processing, and/or use. Therefore, there would be no direct costs as a result of the SNUR. The companies and society could lose benefits associated with the manufacture, processing, and use of the substances. However, the fact that the original PMN submitter intends to manufacture the substances under the conditions of the section 5(e) consent order indicates that the intended uses of the two substances will still return an acceptable profit under terms of the SNUR.

The Agency has not quantified the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential health and environmental effects for these chemical substances.

XIII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comment not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50641). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMNs for the substances.
2. The Federal Register notices of receipt of the PMNs.
3. The section 5(e) consent order.
4. The economic analysis of this proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., SW., Washington, D.C.

XV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XII of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substances identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this proposed rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 7, 1986.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new §§ 721.135 and 721.135a to read as follows:

§ 721.135 Substituted benzenes, halogenated.

§ 721.135a Substituted benzenes, halogenated under PMN 84–660 and 84–704.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The following chemical substances, referred to by their Premanufacture Notice numbers and generic chemical name, are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this seciton: P–84–660, and P–84–704, substituted benzenes, halogenated.

(2) The significant new uses are:

(i) Use other than as allowed under the Order issued on November 15, 1984, under section 5(e) of the Act for Premanufacture Notices P–84–660 and P–84–704 (the Order).

(ii) Manufacturing or importing, for the uses allowed under the Order, an aggregate volume of P–84–660 greater than that allowed by the Order.

(iii) Any manner or method of disposal associated with any use of the substances other than removal from waste streams by carbon bed filtration where the substances are either incinerated with the carbon in a waste incinerator, destroyed during the regeneration of the carbon, or landfilled in a permitted facility under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

(iv) Any manner or method of manufacturing, importing, or processing associated with any use of the substances without establishing a program whereby:

(A) Any person who may be dermally exposed to the substances must wear:

(*1*) Gloves determined to be impervious to the substances under the conditons of exposure, including the duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluating the specifications includes consideration of permability penetration and potential chemical and mechanical degradation by the substances and associated chemical substances.

(*2*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(*3*) Chemical safety goggles or equivalent eye protection.

(B) Any person who may be exposed to the substances as a vapor must wear a National Institute for Occupational Safety and Health approved air-supplied, positive pressure respirator, excluding single-use or disposable and air purifying respirators in approval category 19C and in acordance with 30 CFR 11.110, Subpart J.

(C) All persons who may be exposed to the substances are informed in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded, by means of the following statement for P–84–660:

> WARNING: Avoid contact. Contact with skin and eyes may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause liver, kidney, neurotoxic, reproductive, and teratogenic effects in laboratory animals. To protect yourself, you must wear chemical safety goggles, impervious gloves, a respirator, and protective clothing while handling this material.

and the following statement for P–84–704:

> WARNING: Avoid contact. Contact with skin and eyes may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause liver and kidney effects in laboratory animals. To protect yourself, you must wear chemical safety goggles, impervious gloves, a respirator, and protective clothing while handling this material.

(D) A label is affixed to each container of the substances that may be distributed in commerce which includes a warning statement which consists, at a minimum, of the appropriate language in paragraph (a)(2)(iv)(C) of this section. The first word on the label is capitalized, and the type size for the first word is no smaller than 6 point type for a label 5 square inches or less in area, 10 point type for a label above 5 but no greater than 10 square inches in area, 12 point type for a label above 10 but no greater than 15 square inches in area, 14 point type for a label above 15 but no greater than 30 square inches in area, or 18 point type for all labels over 30 square inches in area. The type size of the remainder of the warning statement is no smaller than 6 point type. All required label text is of sufficient prominence, and is placed with such conspicuousness relative to other label text and graphic material, to insure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(E) A Material Safety Data Sheet (MSDS) is provided when the substances are distributed in commerce. The MSDS includes, at a minimum, the appropriate language specified in paragraph (a)(2)(iv)(C) of this section, and specifies the requirement for protective equipment in paragraph (a)(2)(iv)(A) and (B) of this section.

(b) *special Requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Determining whether a use is a significant new use.*

(i) a person who intends to manufacture, import, or process one of the substances identified in paragraph (a)(1) of this section may submit to EPA the use for which the person intends to manufacture, import, or process the substance and ask EPA whether that use is a significant new use under paragraph (a)(2)(i) of this section.

(ii) EPA will answer such an inquiry only if it determines that the person has a *bona fide* intent to manufacture, import, or process the substance. To establish a *bona fide* intent to manufacture, import, or process the substance, the person must submit to EPA the information required under § 721.6. If a person intends to manufacture, import, or process a substance described by the generic chemical name in paragraph (a)(1) of this section, but does not know whether the substance is one of the substances identified in paragraph (a)(1) of this section, the person may, in connection with a submission under § 721.6, ask both whether the substance is identified in paragraph (a)(1) of this section and whether the use is a significant new use under paragraph (a)(2)(i) of this section.

(iii) EPA will review the informaion submitted by the person under § 721.6 and this paragraph (b)(1) to determine whether the person has a *bona fide* intent to manufacture, import, or process the substance. If EPA determines that the person has a *bona fide* intent to manufacture, import, or process a substance identified in paragraph (a)(1) of this section, EPA will tell the person whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section.

(iv) If the person is a manufacturer or importer of P–84–660 and EPA informs the person that the use for which the person intends to manufacture or import P–84–660 would not be a significant new use under paragraph (a)(2)(i) of this section, EPA will inform the person of the aggregate production volume limit identified in paragraph (a)(2)(ii) of this section.

(v) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a substance identified in paragraph (a)(1) of this section that a use is or is not a significant new use under this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(vi) EPA will answer an inquiry as to whether a use is a significant new use under this section within 30 days after receipt for a complete submission under this paragraph (b)(1).

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substances identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Any determination that gloves are impervious to the substances in accordance with paragraph (a)(2)(iv) of this section.

(ii) Names of persons who attend safety meetings in accordance with paragraph (a)(2)(iv)(C) of this section, dates of such meetings, and copies of any written information provided in accordance with paragraph (a)(2)(iv)(C) of this section.

(iii) Dates of shipments of containers which have been labeled in accordance with paragraph (a)(2)(iv)(D) of this

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section, copies of labels used, and the identities of persons to whom they have been shipped.

(iv) Any names used for the substances and the accompanying dates of use.

(v) Documentation of quantities of P-84-660 which are manufactured or imported, with the accompanying dates. (Approved by Office of Management and Budget (OMB) under control number 2070-0012.)

[FR Doc. 86-5879 Filed 3-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6703]

Proposed Flood Elevation Determinations; Missouri

Correction

In FR Doc. 86-3750 beginning on page 6434, in the issue of Monday, February 24, 1986, make the following correction:

On page 6438, in the second column, under "Missouri", the bold heading "Flinghill" should read "Flinthill".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1177

Claims Collection

AGENCY: National Endowment for the Humanities.

ACTION: Proposed rule.

SUMMARY: The National Endowment for the Humanities (Endowment) proposes to publish at 45 CFR Part 1177 a rule for the processing of debts owed to the United States. This rule would implement the Federal Claims Collection Act of 1966, the Debt Collection Act of 1982, and is consistent with the regulations issued jointly by the Department of Justice and the General Accounting Office at 4 CFR parts 101–105, as amended by 49 FR 8889. The Debt Collection Act of 1982 provides that agency heads shall act under debt collection regulations prescribed by the head of the agency and standards that the Attorney General and the Comptroller General prescribe jointly. These jointly prescribed federal standards are at 4 CFR parts 101–105.

The proposed rule will enhance the Endowment's ability to collect its debts by providing guidance to officers and employees charged with debt collection responsibilities. In addition, the proposed rule provides notice to Endowment debtors concerning agency debt collection practices.

DATE: Comments must be received on or before April 17, 1986.

ADDRESS: Comments may be addressed to Stephen J. McCleary, Deputy General Counsel, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Deputy General Counsel at (202) 786-0322.

SUPPLEMENTARY INFORMATION: This rule implements the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice at 4 CFR parts 101–105 as amended by 49 FR 8889 on March 9, 1984. The Federal Claims Collection Act of 1966, codified at 31 U.S.C. 3711 and 3716–3718, and the Privacy Act, 5 U.S.C. 552a, were amended by the Debt Collection Act of 1982 to permit the disclosure of information from a system of records to a consumer reporting agency. The Debt Collection Act of 1982 also authorized the head of an agency to enter into contracts for private collection services.

E.O. 12291

The proposed rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981 because it is unlikely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity innovation or on the ability to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities including small businesses, small organizations and small local governments. Accordingly, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The proposed rule would establish no burdens as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These regulations impose no new reporting or recordkeeping requirements that must be cleared by the Office of Management and Budget.

List of Subjects in 45 CFR Part 1177

Administrative practice and procedure, Claims, Government employees, Privacy.

Dated: March 12, 1986.

John Agresto,

Acting Chairperson.

For the reasons set forth in the preamble, the National Endowment for the Humanities proposes to add at 45 CFR 1177 the following regulation:

PART 1177—CLAIMS COLLECTION

Sec.
1177.1 Purpose and scope.
1177.2 Definitions.
1177.3 Other remedies.
1177.4 Claims involving criminal activity or misconduct.
1177.5 Collection.
1177.6 Notices to debtor.
1177.7 Interest.
1177.8 Administrative offset
1177.9 Use of credit reporting agencies.
1177.10 Collection services.
1177.11 Referral to the Department of Justice or the General Accounting Office.
1177.12 Compromise, suspension and termination.
1177.13 Omissions not a defense.

Authority: 31 U.S.C. 3711, 3716–3719.

§ 1177.1 Purpose and scope.

This proposed rule prescribes standards and procedures for officers and employees of the Endowment who are responsible for the collection and disposition of debts owed to the United States. The authority for this proposed regulation is the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3711 and 3716–3718; the Federal Claims Collection Standards at 4 CFR Parts 101–105, as amended by 49 FR 8889, 5 U.S.C. 552a), and Office of Management and Budget Circular A-129. The covered activities include: collecting of claims in any amount; compromising claims, or suspending or terminating the collection of claims that do not exceed $20,000 exclusive of interest and charges; and referring debts that cannot be disposed of by the Endowment to the Department of Justice or to the General Accounting Office for further administrative action or litigation.

§ 1177.2 Definitions.

For the purposes of this proposed rule the following definitions will apply:

"Claim" or "Debt" means an amount or property owed to the United States. Debts include but are not limited to: overpayments program beneficiaries;

overpayments to contractors and grantees; including overpayments arising from audit disallowances; excessive cash advances to grantees and contractors; and civil penalties and assessments. A debt is overdue, or delinquent if it is not paid by the due date specified in the initial notice of the debt (see sec. 1177.6 of this part) of if the debtor fails to satisfy his or her obligations under a repayment agreement.

"Debtor" means an individual, organization, association, partnership, or corporation, indebted to the United States, or the person or entity with legal responsibility for assuming the debtor's obligation.

§ 1177.3 Other remedies.

The remedies and sanctions available to the National Endowment for the Humanities under this rule are not intended to be exclusive. The Chairperson of the National Endowment for the Humanities or his designee may impose other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Chairperson or his designee may place the debtor's name on a list of debarred, suspended or ineligible grantees and contractors; convert the method of payment under a grant from an advance to a reimbursement method; or revoke a grantee's letter of credit. In such cases, the debtor will be advised of the Endowment's action.

§ 1177.4 Claims involving criminal activity or misconduct

(a) A debtor whose indebtedness involves criminal activity such as fraud, embezzlement, theft, or misuse of government funds or property is subject to punishment by fine or imprisonment as well as to a civil claim by the United States for compensation for the misappropriated funds. The Endowment will refer these cases to the appropriate law enforcement agency for prosecution.

(b) Debts involving fraud, false claims or misrepresentation shall not be compromised, terminated, suspended or otherwise disposed of under this rule. Only the Department of Justice is authorized to compromise, terminate, suspend or otherwise dispose of such debts.

§ 1177.5 Collection.

(a) The Endowment will take aggressive action to collect debts and reduce delinquencies. Collection efforts shall include sending to the debtors's last known address a total of three progressively stronger written demands for payment at not more than 30-day intervals. When necessary to protect the Government's interest, written demand may be preceded by other appropriate action, including immediate referral for litigation. Other contact with the debtor or his or her representative or guarantor by telephone, in person and/or in writing may be appropriate to demand prompt payment, to discuss the debtor's position regarding the existence, amount and repayment of the debt, and to inform the debtor of his or her rights and the effect of nonpayment or delayed payment. A debtor who disputes a debt must promptly provide available supporting evidence.

(b) If a debtor is undergoing insolvency proceedings, the debt will be referred to the appropriate United States Attorney to file a claim. The United States may have a priority over other creditors under 31 U.S.C. 3713.

§ 1177.6 Notice to debtor.

(a) The first written demand for payment must inform the debtor of the following:

(1) The amount and nature of the debt;

(2) The date payment is due, which will generally be 30 days from the date the notice was mailed;

(3) The assessment of interest under § 1177.7 from the date the notice was mailed if payment is not received within the 30 days;

(4) The right to dispute the debt;

(5) The office, address and telephone number that the debtor should contact to discuss repayment or reconsideration of the debt; and

(6) The sanctions available to the National Endowment for the Humanities to collect a delinquent debt including, but not limited to, referral of the debt to a credit reporting agency, a private collection bureau, or to the Department of Justice for litigation.

§ 1177.7 Interest.

(a) Interest will accrue on all debts from the date when the first notice of the debt and the interest requirement is mailed to the last known address or hand-delivered to the debtor if the debt is not paid within 30 days from the date the first notice was mailed. The Endowment will charge an annual rate of interest that is equal to the average investment rate for the Treasury tax and loan accounts on September 30 of each year, rounded to the nearest whole per centum. This rate, which represents the current value of funds to the United States Treasury, may be revised quarterly by the Secretary of the Treasury and is published by the Secretary of the Treasury annually or quarterly in the **Federal Register** and the Treasury Financial Manual Bulletins.

(b) The rate of interest initially assessed will remain fixed for the duration of the indebtedness; except that if a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

§ 1177.8 Administrative offset of debts.

(a) "Administrative Offset" means satisfying a debt by withholding money payable by the United States or held by the United States for a debtor.

(b) The Endowment may collect debts owed by administrative offset if:

(1) The debt is certain in amount;

(2) Efforts to obtain direct payment have been, or would most likely be unsuccessful, or the Endowment and the debtor agree to the offset

(3) Offset is cost-effective or has significant deterrent value; and

(4) Offset is best suited to further and protect the Government's interest.

(c) The Endowment may offset a debt owed to another Federal agency from amounts due or payable by the Endowment to the debtor or request another Federal agency to offset a debt owed to the endowment.

(d) Prior to initiating administrative offset the National Endowment for the Humanities will send the debtor written notice of the following:

(1) The nature and amount of the debt and the agency's intention to collect the debt by offset 30 days from the date the notice was mailed if neither payment nor a satisfactory response is received by that date;

(2) The debtor's right to an opportunity to submit a good faith alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request a review of the determination of indebtedness; and to enter into a written agreement to repay the debt; and

(3) The applicable interest.

(e) The National Endowment for the Humanities may effect an administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (d) of this section if:

(1) Failure to offset would substantially prejudice the Government's ability to collect the debt, and

(2) The time before the payment is to be made does not reasonably permit completion of those procedures.

§ 1177.9 Use of credit reporting agencies.

(a) The Endowment may report delinquent debts over $100 to consumer or commercial credit reporting agencies

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consistent with the notice requirements contained in the § 1177.6 of this Part.

(b) Debts owed by individuals may be reported to consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The Endowment may disclose only an individual's name, address, social security number, and the nature, amount, status and history of the debt and the program under which the claim arose.

§ 1177.10 Collection services.

(a) The Endowment may contract for collection services to recover delinquent debts. The Endowment may refer delinquent debts to private collection agencies listed on the Schedule compiled by the General Services Administration. In such contracts, the National Endowment for the Humanities will retain the authority to resolve disputes, compromise claims, terminate or suspend collection, and refer the matter to the Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable federal and state laws and regulations pertaining to debt collection practices, such as the Fair Collection Practices Act, 15 U.S.C. 1692, and shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the Endowment any data contained in its files relating to the debt account upon agency request or upon returning an account to the Endowment for referral to the Department of Justice for litigation.

§ 1177.11 Referral to the Department of Justice or the General Accounting Office.

Debts over $600 but less than $100,000 which the Endowment determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding $100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1177.12 Compromise, suspension and termination.

(a) The Chairperson of the National Endowment for the Humanities or his designee may compromise, suspend, or terminate the collection of debts where the outstanding principal is not greater than $20,000. Endowment procedures for writing off outstanding accounts are available to the public.

(b) The Chairperson of the National Endowment for the Humanities may compromise, suspend, or terminate collection of debts where the outstanding prinicipal is greater than $20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the National Endowment for the Humanities will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1177.13 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

[FR Doc. 86-5711 Filed 3-17-86; 8:45 am]

BILLING CODE 7536-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Ch. II

[Docket No. R-101]

Marine Insurance Inquiry and Notice of Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Public Meeting.

SUMMARY: The Maritime Administration (MARAD) is continuing to review its policies concerning the eligibility of foreign insurance underwriters to write hull insurance on subsidized vessels or vessels that are security for MARAD vessel obligation guarantees issued under its Title XI program. To further evaluate the need for a rulemaking in this area and to elicit facts and opinions on this matter, MARAD has decided to hold a public meeting.

DATE: The meeting will be held on April 17, 1986, beginning at 10:00 A.M.

ADDRESS: Room 2230, Nassif Building, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. If necessary, the meeting will continue on the following day.

FOR FURTHER INFORMATION CONTACT: William B. Edersold, Office of the Associate Administrator for Maritime Aids, Maritime Adninistration, 400 Seventh Street, SW., Washington, D.C. 20590 Tel. (202) 382-0364. Persons desiring to participate in this hearing should notify the contact person by April 10, 1986, and indicate the amount of time they will need to present their views. Prepared statements and comments may be submitted by persons unable to participate in the inquiry, provided they are received by MARAD by April 14, 1986, so that they may be reproduced and made available at the inquiry.

SUPPLEMENTARY INFORMATION: On October 11, 1985, MARAD published an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 41531) in the **Federal Register** stating that the agency was considering whether to conduct a rulemaking, or take other administrative action, with respect to its existing policies of: accepting only American insurance underwriters, or certain British underwriters, as hull insurers of subsidized or Title XI program vessels; requiring that 75 percent of the required hull insurance coverage be placed in the American market when the rates and conditions are competitive; and limiting the underwriter's risk on any single vessel.

The board purpose of the (ANPRM) was to elicit information and opinions from commentors on the need for rulemaking in this area and data that would be useful in the formulation of a text for a Notice of Proposed Rulemaking. The ANPRM contained no specific proposals, but requested that comments on the basic policy change under consideration specifically address possible acceptance criteria for hull insurance underwriters. The comments received, however, were of a general nature and did not provide MARAD with sufficient information to achieve either the primary goal of determining the need for a rulemaking on the placement of hull insurance or, if appropriate, how to formulate the text of a proposed rule. Therefore, MARAD has decided to conduct a public marine insurance inquiry in order to give all interested parties an opportunity to provide more detailed information and support for their positions. In addition, this marine insurance inquiry should generate sufficient information to enable MARAD to decide whether to proceed with a rulemaking on this subject.

The broad scope of the inquiry, again, will encompass three general areas: (1) Whether MARAD should approve non-British foreign hull underwriters, and, if so, under what terms and conditions; (2) whether MARAD should modify or eliminate the current reservation of 75 percent of the required hull insurance coverage to the American market; and (3) whether the current limitation on a single underwriter's risk (10 percent of policyholder's surplus) should be increased, decreased, or eliminated.

During the inquiry, MARAD intends to specifically focus on obtaining meaningful information on the following issues:

1. Are the National Association of Insurance Commissioners (NAIC) tests an appropriate measure for all kinds of insuring organizations (large, small, stock, mutual)? Are there any biases in any of the ratios which would consistently produce satisfactory results for any group of insurers regardless of their financial condition? Should any failure to meet the "usual range" guidelines be cause for denying approval of a foreign insurer? Should MARAD withdraw approval of a U.S. insurer for a similar failure? If ratio tests are used as part of the approval process, what further evaluation would be recommended for ratio guidelines not met?

2. What requirements for state licensing in this country are particularly relevant? If MARAD does not require state licensing, but decides to use state standards as the basis for its approval, which requirements should be used? From the viewpoint of the foreign insurer, what are the pros and cons of opting for state licensing versus directly insuring from overseas? Similarly, what are the licensing or other requirements in England and Scandinavia (the only foreign areas for which comments were received) necessary for a domestic of U.S. underwriter to do business in those countries? Would it be appropriate for MARAD to accept approval by the insurance authorities in these countries as evidence of suitability for MARAD's program? If not, why not?

3. Some U.S. underwriters have stated that they do not object to additional competition, provided that the quality of security is high and does not present an inordinate risk for the U.S. taxpayer. One U.S. broker stated that there are strong, financially, secure insurers that meet broker security standards, but are unable to participate because of MARAD restrictions. what are those broker security standards and what markets are likely to provide sufficiently high quality insurance? Should the focus of MARAD's inquiry be limited to those markets?

4. What countries have the restrictive insurance practices which are of concern to the U.S. insurers? What are those practices that should be grounds for disqualification, and how should it be verified that such practices exist? Should only restrictive hull insurance practices be considered? Since MARAD's 75 percent U.S. market reservation is a restrictive practice, what kind of certification as to reciprocal treatment ought to be required as a condition for approval?

5. What would the impact be on the U.S. marine insurance market if MARAD changed its policy and admitted additional foreign underwriters, but retained a U.S. market reservation at 50 percent? 30 percent? what is the minimum level required to maintain a viable U.S. market? If this policy were adopted, on what basis, if any, should waivers of this requirement be granted?

6. Please comment on the view that hull insurance is marginally profitable at best, so that substantial premium savings must be a temporary action aimed at eliciting new business. Are overhead, expense levels and underwriting techniques so similar worldwide that there can be no appreciable long-term difference in rates? Is there a fundamental structural difference between stock and mutual companies which by reason of its non-profit orientation enables the mutual to operate on a significantly different rate structure?

7. What are the significant adverse effects which a policy change would have on competition, employment, investment, productivity or the ability of U.S.-based enterprises to compete with foreign enterprises? Is there anything inherent in the structure of the U.S. marine insurance industry which would make it unable to compete effectively and require protection? If protection is required and desirable, why is there a continuing need for an antitrust exemption under 46 App. U.S.C. 885? How can there be any real competition if operations are conducted under an umbrella of both an antitrust exemption and a market reservation? If this is not the case, please describe how true competition for the U.S.-flag operator's hull business does exist?

8. As a means of assessing the potential impact of a policy change on the balance of payments, approximately how much total hull premium is involved for MARAD program vessels? How much of that premium would be expected to be lost to foreign market if all restrictions on placement were removed? How much of what is lost could be expectd to flow back to the U.S. in the form of reinsurance? How much could rate levels be expected to decline as a result of deregulation?

9. Does "cut through" language, whereby a reinsurer agrees to direct suit by the assured, provide adequate access to the reinsurer? If it does, can reinsurance placed in this country by a foreign direct insurer be considered in the evaluation of the resources of the foreign insurer? Should the quality of the reinsurance be evaluated on the same basis as that of the direct insurer? Is diversification or concentration of reinsurance preferable? If reinsurers are subject to state regulation, shouldn't reinsurance placed in this country give an adequate measure of security to direct insurance placed with a foreign direct insurer?

10. The view has been stated that reserves must be adequate to cover shock losses, and that if the cost of reinsurance is adequate, there may not be enough to pay losses within their retention. Why must shock losses be covered from available surplus, if reinsurance is adequate and pays off quickly? Does not the ability of a mutual insurer to issue a supplemental call provide reasonable assurance of the ability to pay losses within their retention?

11. If it is important that there be adequate accessible assets in this country to protect the interests of the assureds, what type of assets are considered suitable and sufficiently accessible? (Bonds? Letters of Credit?) What is required to make such assets truly accessible to assureds?

12. If additional foreign underwriters were to be admitted only from Europe, what, if any, accounting practices and statutory requirements might cause MARAD to have difficulty evaluating financial statements and assessing financial condition, or could MARAD expect to be able to obtain sufficiently comparable data to that available in this country?

13. Are there currently any underwriting limitations in the American or London markets which would make it desirable to have additional approved underwriters in order to ensure that American assureds have adequate options? By limitations we mean any risks which will not be accepted, any types of vessels for which coverage is difficult to obtain at reasonable rates, any failure to grant rate reductions in response to improved loss records. If any such limitations exist, what is the justification?

14. If there is a state of crisis in the world insurance market, and the prospect that there will be a tightening of capacity, should this be compensated by an increase in the number of approved underwriters?

15. Given that quality of foreign insurance is of paramount importance, in order to assess the magnitude of the problem, what has been the incidence of insolvency among foreign hull underwriters and the amount of unpaid hull claims over the past several years? In the U.S., how does regulation ensure that losses will be paid? Would not attachable assets already be dissipated by the time insolvency occurs?

16. Are there any criteria for the approval of foreign underwriters, not

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mentioned in any earlier comments, which MARAD ought to consider?

17. What is the basis for recommending a lower percentage than the current 10 percent limit on the amount which an underwriter may take on a single risk? If there is adequate reinsurance, is there any basis for continuing to impose any limits at all? If there is adequate reinsurance, should MARAD continue to prohibit captives?

18. If a mutual insurance company is already approved to write protection and indemnity insurance on MARAD program vessels, is there any basis inherent in either protection and indemnity or hull insurance for precluding participation by such a company in hull insurance on MARAD program vessels?

MARAD requests that any parties interested in this inquiry (underwriters, brokers, owners, banks, state regulatory agencies, U.S. or foreign) participate actively by answering those questions that concern them and by providing knowledgeable witnesses and other pertinent information. In view of the many similar responses to the ANPRM from interested parties, and to avoid time-consuming duplication in the presentation of views and information, MARAD suggests that prospective participants in the inquiry with identical or substantially the same interests in the matter coordinate and consolidate their presentations or submissions for the record. MARAD further requests that these witnesses be prepared to present detailed information to justify their position.

Any rulemaking that might ensue from this inquiry has been determined not to be major, pursuant to Executive Order 12291 (February 17, 1981). It would be significant under the Department of Transportation's Regulatory Policies and Procedures (February 26, 1979) and would require the preparation of a regulatory evaluation. The Maritime Administrator certifies that such a rulemaking would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612), since its major impact in the United States would be on ship operators, marine casualty underwriters and insurance brokers, the great majority of which are not small entities. While such a rulemaking may contain information collection requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 95-511), the submission of information for purposes of this inquiry is exempt from the scope of the Act (5 CFR 1320.7(k)(8).

By Order of the Maritime Administrator.

Dated: March 12, 1986.

Georgia P. Stammes,

Secretary, Maritime Administration.

[FR Doc. 86-5762 Filed 3-17-86; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 51, No. 52
Tuesday, March 18, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Meeting Change and Amendment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a change and amendment is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity
Date: April 7-9, 1986
Place: Sheraton Hotel, 4728 Constitution Avenue, Baton Rouge, Louisiana
Time: 8:30 a.m.—5:00 p.m.
Purpose:
- —Advise the Secretary on the effectiveness of compliance program directives;
- —Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;
- —Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination;

Additionally, will specifically focus on:
- —Continued outreach efforts in Equal Opportunity that are being initiated by the Committee members;
- —Networking with constituents groups that are recipients of USDA services.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Bembry Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 201 14th Street SW. Room 2305 Auditors Building, Washington, DC 20250 (202) 447-5681.

Written statements may be submitted until March 28, 1986.

Lawrence Bembry,

Associate Director, Equal Opportunity Office of Advocacy and Enterprise.

[FR Doc. 86-5861 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Structural Strengthening and Raising of Gibraltar Dam; Los Padres National Forest, Santa Barbara County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, and the City of Santa Barbara jointly will prepare an environmental impact statement/environmental impact report to assess the impacts of raising and strengthening Gibraltar Dam. The dam is situated on the Santa Ynez River in Santa Barbara County and in the Santa Barbara Ranger District, Los Padres National Forest.

The City of Santa Barbara, owner of Gibraltar Dam, has been directed to strengthen the Dam by the State of California in order to provide seismic safety. In addition, much of the storage capacity of the reservoir has been lost as a result of siltation. The City of Santa Barbara wishes: (1) to Study means of strengthening Gibraltar Dam and (2) to study the possibility of increasing dam height in order protect the long-term reliability of the reservoir as a water supply for the City. Los Padres National Forest manages most of the lands which currently are inundated by the present reservoir and lands which could be inundated as a consequence of increased dam height.

A range of alternatives will be considered, including no action. The range of alternatives has not been established.

Federal, State, and local agencies and individuals and other organizations who may be interested in or affected by the decision will be invited to participate in the joint scoping process. The public involvement plan will be jointly prepared to ensure that issues are scoped correctly. The scoping process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues and those adequately treated in previous environmental analysis.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service and the Bureau of Reclamation, Department of the Interior, and the Federal Energy Regulatory Commission will be invited to participate as cooperating agencies in the environmental analysis.

The City of Santa Barbara and Los Padres National Forest will conduct a joint scoping hearing on May 2, 1986, at 9:00 a.m. in the City Council Chambers, City Hall, De La Guerra Plaza, Santa Barbara. Questions regarding this hearing should be addressed to Janice Hubbell, Environmental Analyst, City of Santa Barbara, P.O. Drawer P-P, 93102.

Erwin N. Ward, Acting Forest Supervisor, is the responsible official for the environmental impact statement.

The draft environmental impact statement should be available for public review by late September 1986. The final environmental impact statement is scheduled for completion in January 1986.

Written comments and suggestions concerning the analysis should be sent to Erwin N. Ward, Acting Forest Supervisor, Los Padres National Forest, Goleta, California, 93117-2053, by May 6, 1986.

Questions about the proposed action and environmental impact statement should be directed to John Bridgwater, Resource Officer, Santa Barbara Ranger District, Star Route, Santa Barbara, California, 93105; telephone (805) 967-3481 or 967-7312.

Dated: March 10, 1986.

Erwin N. Ward,

Acting Forest Supervisor, Los Padres National Forest.

[FR Doc. 86-5847 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-11-M

Wolf Creek Valley Winter Sport Site; San Juan National Forest; Mineral County, CO; Intent To Prepare a Revised Environmental Impact Statement

The Forest Service, Department of Agriculture in cooperation with other federal, state, and local agencies will prepare a revised draft environmental impact statement concerning development of the proposed Wolf Creek Valley Winter Sports Site.

Westfork Investments Ltd. proposes to develop an alpine skiing area and year-round resort on public and private land. The area proposed for development, identified as Windy Pass in the San Juan National Forest Land and Resource Management Plan, is

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located about eleven miles north and east of Pagosa Springs on U.S. Highway 160. The proposed skiing development would likely occur in phase and reach an ultimate capacity of 11,750 skiers-at-one-time served by approximately 15 lifts.

The environmental analysis of this proposal is being assisted and coordinated by a Joint Review Committee which was established and provided for in a Memorandum of Understanding dated August 27, 1984. Committee membership includes representatives of the USDA Forest Service; State of Colorado; Mineral County, Colorado; Archuleta County, Colorado; Town of Pagosa Springs; and Westfork Investments Ltd.

The alternatives analyzed are those of no action, of permitting development as proposed, and of permitting the development as proposed except in an area identified as the "back bowls".

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The Forest Service with the Joint Review Committee has held numerous public meetings to identify issues and concerns, review alternatives and discuss anticipated impacts related to the proposal. A draft Environmental Impact Statement was written and made available for public review and comment. The comment period closed December 2, 1985 and comments were received through January 16, 1986. The responsible official decided that a revision of the EIS should be written because: (1) Various state and federal agencies requested clarification on numerous points, (2) additional information is now available for the proposed East Fork Resort, another ski area proposal in the vicinity, so better cumulative impacts can be disclosed, and (3) it is desirable to allow the public to review additional data as it becomes available so as to avoid public misunderstanding.

The revised draft Environmental Impact Statement is expected to be available for public review before the end of June 1986. The final Environmental Impact Statement is scheduled to be filled by the end of October 1986. A Record of Decision will be issued by the USDA Forest Service when the final Environmental Impact Statement is released. If the decision is to allow development, construction could not realistically begin on National Forest System lands until spring 1988.

John R. Kirkpatrick, San Juan National Forest Supervisor, is the responsible official.

Questions and comments about the proposed action and Environmental Impact Statement should be directed to: Samuel A. Scange, District Ranger, Pagosa Ranger District, P.O. Box 310, Pagosa Springs, Colorado 81147, (303) 264–2268.

Dated: March 2, 1986.

John R. Kirkpatrick,

Forest Supervisor.

[FR Doc. 86–5848 Filed 3–17–86; 8:45 am]

BILLING CODE 3410-11-M

Quartz Hill Molybdenum Mine, Tongass National Forest, Ketchikan Area, Ketchikan, Alaska; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare, through a third party consultant, an Environmental Impact Statement for the development of a proposed molybdenum mine at Quartz Hill within the non-wilderness portion of Misty Fiords National Monument. A previously issued Draft Environmental Statement on this subject will be revised due to changes in the plan of operations submitted by the mine operater and to new information developed during the public comment period on the original draft. The Plan of Operations submitted by the United States Borax & Chemical Corporation on behalf of Pacific Coast Molybdenum includes:

1. Construction and operation of an open pit capable of producing 800,000 tons of ore per day for more than 55 years.

2. Construction and use of an access road suitable for mine development.

3. Construction and operation of a mill capable of processing 80,000 tons of ore per day.

4. Construction and operation of a 100 megawatt power plant.

5. Construction and use of a tunnel for transportation of crushed ore.

6. Disposal of tailings in the marine environment of the Wilson Arm-Smeaton Bay fjord.

7. Construction and use of a well-field adjacent to the Wilson River to provide a 16,000 gpm water supply.

8. The workforce and their families to be housed in Ketchikan, Alaska and to commute to the mine in alternating weekly shifts.

9. Construction and use of associated ancillary structures i.e. docks, fuel storage, sediment control facilities, pipelines etc.

Alternatives to the proposed Plan of Operation will be analyzed including a no action alternative and alternative ways to arrange facilities or processes at the mine site. Possible alternatives include developing a townsite near the mine, developing water supplies in drainages other than Wilson River, tailings disposal on land or in Boca de Quarda Fjord, and relocating the existing access road from the Blossom River valley to the Keta River valley.

The initial scoping process occurred in January and February 1983 and consisted of a public meeting in Ketchikan and a public comment period during which written comments were received from individuals and organizations having an interest in the project. Inderdisciplinary Team meetings were held to discuss and identify public and agency issues, concerns and opportunities to be analyzed in the Environmental Statement.

The following groups have participated in the planning process have provided individuals to be members of the Interdisciplinary Team preparing the Environmental Statement:

The State of Alaska Departments of—
  Transportation and Public Facilities
  Community and Regional Affairs
  Natural Resources
  Commerce and Economic Development
  Fish and Game
National Marine Fisheries Service
U.S. Bureau of Mines
U.S. Fish and Wildlife Service
Southern Southeast Regional Aquaculture Association
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
Ketchikan Gateway Borough
United States Borax & Chemical Corporation

A Draft Environmental Statement was circulated in July 1984 for public review and comment ending 10/5/84. A public hearing was held in Ketchikan on the DEIS and an associated NPDES permit on 9/6/84. The comments received both in writing and at the hearing will be displayed in the Revised Draft Environmental Statement. The Revised Draft Environmental Statement should be available for public review by May 1986. The Final Environmental Statement is scheduled for completion in November 1986.

Michael A. Barton, Regional Forester of the Alaska Region, located in Juneau, Alaska, is the responsible official.

Written comments and suggestions should be sent to Win Green, Forest Supervisor, Ketchikan Area, Tongass National Forest, Department QH, Federal Building, Ketchikan, Alaska 99901.

Questions about the proposed action and environmental statement should be directed to Ed Johnson, Minerals and Watershed Staff Officer/Borax IDT Leader, Ketchikan Area, Tongass National Forest, phone (907) 225–3101.

Dated: March 7, 1986.

Michael A. Barton,

Regional Forester.

[FR Doc. 86–5849 Filed 3–17–86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 8–86]

Foreign-Trade Zone 83—Huntsville, AL; Application for Subzone Chrysler Electronics Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority, grantee of Foreign-Trade Zone 83, requesting special-purpose subzone status for Chrysler Corporation's auto electronic products plant in Huntsville, Alabama, within the Huntsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 24, 1986.

The proposed subzone would be located at Chrysler's Huntsville Electronics Plant, 1024103 Wynn Drive, Huntsville. The 71-acre facility is used to produce radio/cassette players, ignition control computers and other electronic controls. Parts such as cassette heads, semiconductors, and capacitors, representing 6 percent of production costs, are sourced abroad. The finished electronic auto components are shipped to Chrysler assumbly plants in the U.S. and abroad.

Zone procedures would allow Chrysler to export finished components without paying customs duties on foreign materials. On the products used at its domestic auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate that is available to importers of finished autos. The duty rates on the parts imported by Chrysler range from 4.0 to 10.0 percent, whereas the rate for finished autos is 2.6 percent. The savings from subzone status would contribute to the company's overall cost reduction program, helping it to become more competitive with auto plants abroad.

In accordance with the Board's reguations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; David L. Willette, Acting District Director, U.S. Customs Service, South Central Region, 250 N. Water Street, Mobile, Alabama 36652; and Colonel William Kirkpatrick, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 17, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Huntsville-Madison County Airport, Huntsville, Alabama 35806;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: March 11, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–5898 Filed 3–17–86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 320]

Resolution and Order Approving the Application of the City of New York, NY for a Subzone at the Apparel Plant of Jack Young Associates, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of New York, New York, grantee of Foreign-Trade Zone 111, filed with the Foreign-Trade Zones Board (the Borad) on September 25, 1985, requesting special-purpose subzone status for the storage and sweater manufacturing-for-export operations of Jack Young Associates, Inc., in New York City, within the New York Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public intesest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in New York City

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of New York, New York, grantee of Foreign-Trade Zone No. 111, has made application (filed September 25, 1985, Docket 38–85, 50 FR 42198) in due and proper form to the Board for authority to establish a special-purpose subzone for the storage and sweater manufacturing-for-export operations of Jack Young Associates, Inc., in St. Albans (Queens), New York, within the New York Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed September 25, 1985, the Board hereby authorizes the establishment of a subzone for storage and export manufacturing at the Jack Young Associates plant in New York City, designated on the records of the Board as Foreign-Trade Subzone No. 111A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and

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also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C., this 10th day of March 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

[FR Doc. 86-5899 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held April 9, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Numerical Control Equipment.
4. Precision Inspection Equipment.
5. Sensory Systems.
6. Electric Arc Devices/Isostatic Presses.
7. Local Area Networking.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act Pub. L. 94-409, that the matters to be discussed in the Excutive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes, contact Liga Hagenah, (202) 377-4959.

Dated: March 12, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-5900 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DT-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held April 8, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agena

1. Introduction of members and attendees.
2. Presentation of papers or comments by the public.
3. Approval of the minutes of the meeting on January 7.
4. Proposed work plan for 1986.
5. Discussion of Section 379.3.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: March 13, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-5901 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 51208-5208]

Federal Information Processing Standard 21-2, COBOL

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a revision of Federal Information Processing Standard 21-1, COBOL, which will be published as FIPS 21-2.

SUMMARY: On November 20, 1984, notice was published in the **Federal Register** (49 FR 45772) that a revised Federal Information Processing Standard for COBOL was being proposed for Federal use. The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This approved revised standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard.

ADDRESS: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the FIPS PUB.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: March 12, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 21-2

(Date)

Announcing the Standard for COBOL

Federal Information Processing Standards Publications (FIPS PUB) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* COBOL (FIPS PUB 21-2).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard Programming Language, COBOL, ANSI X3.23-1985, as amplified herein, as a Federal Information Processing Standard (FIPS). This revision supersedes FIPS PUB 21-1 and reflects major changes and improvements in the COBOL specifications. It also contains changes to the Objectives, Applicability, and Implementation portions of FIPS PUB 21-1 to recognize advances in programming technology and to provide consistent policy for all FIPS languages. The American National Standard defines the elements of the COBOL programming language and the rules for their use. The purpose of the standard is to promote portability of COBOL programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing processors and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute of Computer Science and Technology).

6. *Cross Index.* American National Standard Programming Language COBOL, ANSI X3.23-1985, ISO 1989-1985.

7. *Related Documents.*[1]

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunication Standards.

b. Federal Information Processing Standards Publication 29, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/ouput (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment;

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[1] Refers to most recent revision of FIPS PUBS.

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—The application or program is under constant review for updating of the specifications, and changes may result frequently;

—The application is being designed and programmed centrally for a decentrailzed system that employs computers of different makes, models and configurations;

—The program will or might be run on equipment other than that for which the program is initially written;

—The program is to be understood and maintained by programmers other than the original ones;

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential;

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost data integrity, and the potential for data sharing

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

10. *Specifications.* FIPS COBOL specifications are the language specifications contained in American National Standard Programming Language COBOL. ANSI X3.23–1985.

ANSI X3.23–1985 specifies the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standard does not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in ANSI X3.23–1985 are combined into three subsets and four optional modules. The three subsets are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communications, Debug, and Segmentation. These four optional modules are not an integral part of any of the subsets; however, none, all, or any combination of the optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I–O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in ANSI X3.23–1985, and a dash denotes the corresponding module is omitted or may be omitted.

COBOL SUBSETS

Modules	Minimum	Intermediate	High
Required			
Nucleus	1	1	2
Sequential I–O	1	1	2
Relative I–O		1	2
Indexed I–O		1	2
Inter-program communication.	1	1	2
Sort-merge		1	2
Source text manipulation.		1	2
Optional			
Report writer	—, or 1	—, or 1	—, or 1
Communication	—, 1, or 2	—, 1, or 2	—, 1, or 2
Debug	—, 1, or 2	—, 1, or 2	—, 1, or 2
Segmentation	—, 1, or 2	—, 1, or 2	—, 1, or 2

b. A facility must be available in the processor for the user to optically specify monitoring of the source program at compile time. The monitoring may be specified for a FIPS COBOL subset, for any of the optional modules, for all of the obsolete language elements included in the processor, or for a combination of a FIPS COBOL subset, optional modules, and all obsolete elements. The monitoring may be specified for any FIPS COBOL subset at or below the highest subset for which the processor is implemented and for a level of an optional module at or below the level of the optional module for which the processor is implemented. The monitoring is an analysis of the snytax used in the source program against the syntax included in the user selected FIPS COBOL subset and optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The clause, statement or header that directly contains the nonconforming or obsolete syntax. (For the purpose of this requirement the definitions of clause, statement and header contained in American National Standard Programming Language COBOL, ANSI X3.23–1985, Section III. Glossary, and the definition of syntax contained in American National Dictionary for Information Processing Systems, X3/TR–1–82, apply).

—The source program line and an indication of the beginning location within the line of the clause, statement or header which contains the nonconforming or obsolete syntax;

—The syntax as "nonconforming standard" if the nonconforming syntax is included in the processor but is not within the user selected FIPS COBOL subset or optional modules except if monitoring is selected for the obsolete category then obsolete language elements are only flagged as "obsolete";

—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor;

—the syntax as "obsolete" if the syntax identified is in the obsolete category within a FIPS COBOL subset or optional module included in the processor.

11. *Implementation.* The implementation of FIPS COBOL involves, three areas of consideration: acquisition of COBOL processors, interpretation of FIPS COBOL, and validation of COBOL processors.

11.1 *Acquisition of COBOL Processors.* This publication is effective October 1, 1986. COBOL processors acquired for Federal use after this date

should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meets programmatic requirements, then those optional modules also should be acquired. Conformance to FIPS COBOL should be considered whether COBOL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

For processors conforming to FIPS PUB 21–1 ordered or delivered after (date of publication of final document in the **Federal Register**), the requirement to contain any of the optional modules defined herein is waived. Each optional module that is needed to meet programmatic requirements should be explicitly cited as a requirement in the order for the processor.

A transition period provides time for industry to produce COBOL processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 21–1, with the exception concerning optional modules stated above, apply to processors ordered before the effective date but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 21–2, if available, may be acquired for use prior to the effective date. If a conforming processor is not available, a processor conforming to FIPS PUB 21–1 may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS COBOL.* NBS provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: COBOL Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Processors.* The General Services Administration (GSA), through its Federal Software Management Support Center (FSMSC), provides a service for the purpose of validating the conformance to this standard of processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSMSC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6156).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–2 FIPS PUB 21–2), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 86–5852 Filed 3–17–86; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Bilateral Textile Consultations With the Government of Malaysia to Review Trade in Category 315

March 13, 1986.

On February 28, 1986, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 315 (cotton printcloth). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on February 28, 1986 and extends through May 28, 1986 at a level of 2,139,148 square yards. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 4,360,344 square yards for Category 315 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on May 29, 1986 and extending through December 31, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit imports of cotton textile products in Category 315 produced or manufactured in Malaysia and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986 in excess of the established limit. In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing comment or provide data or information regarding the treatment of Category 315 under the agreement with Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 315—Cotton Printcloth

February 1986.

Summary and Conslusions

U.S. imports of Category 315 from Malaysia were 7,391,000 square yards during 1985, a substantial increase over the 136,000 square yards imported a year earlier. There were no imports of Category 315 from Malaysia in

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1983; however, it is now the seventh largest supplier in the United States.

This sharp and substantial increase in imports of low-valued fabric is disrupting the U.S. market for Category 315.

U.S. Production and Producers' Market Share

U.S. production of Category 315 trended downward through 1982 when the U.S. market was severely impacted by recession and by a large carryover of printcloth stocks which had been imported in 1981. Production under these conditions was only 350 million square yards in 1982. After a slow start, production increased to 425 million square yeards in 1983 and to 450 million in 1984. For the first six months of 1985, production dropped 3 percent below the comparable period of 1984 level.

The apparent market for Category 315 is erratic. However, there has been a distinct downward trend in the U.S. producers' share of the market. In 1980, the domestic producers provided 81 percent of the market; in 1984, they provided 57 percent.

Imports and Import Penetration

Imports of Category 315 have been erratic but with a distinct upward trend. Imports in 1984 were a record 338 million square yards, nearly three times the 1980 imports of 116 million square yards. Imports temporarily dropped in 1985 due to embargoes on entries from certain countries and heavy stocks of unsold fabric in the marketing channels.

The ratio of imports to domestic production tripled from 23.5 percent in 1980 to 75.1 percent in 1984.

Duty-Paid Values and U.S. Producer Prices

Approximately 70 percent of the imports from Malaysia are entered under TSUSA No. 328.3927. This is a cotton/polyester printcloth with yarn count in the thirties. This fabric was priced below the U.S. prices for identical fabrics.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 19, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 315, produced or manufactured in Malaysia and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986, in excess of 2,139,148 square yards.[1]

Textile products in Category 315 which have been exported to the United States prior to February 28, 1986 shall not be subject to this directive.

Textile products in Category 315 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

the Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5905 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The limit has not been adjusted to account for any imports exported after February 27, 1986.

Import Limits for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil provides, among other things, for designated percentage increases in certain categories (swing), and for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year (carryforward). Increases for swing and carryforward are being applied to the restraint limits previously established for cotton textile products in Categories 300/301, 313, 317, and 350, produced or manufactured in Brazil and exported during the agreement year which began on April 1, 1985 and extends through March 31, 1986. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for these categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on October 15, 1985 by the Charmen, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986[1]

Effective on March 19, 1986, the directive of October 15, 1985 is hereby amended to include the following adjusted restraint limits:

Category	Adjusted limits [2]
300/301	9,369,263 pounds.
313	33,800,000 square yards.
317	13,720,909 square yards.
350	67,200 dozen.

[2] The limits have not been adjusted to account for any imports exported after March 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5902 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) Specific limits may be adjusted for carryover and carryforward; and (3) Administrative arrangements of adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

In consultations held in December 1985, pursuant to the terms of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan, the Government of the United States agreed to rescind calls previously made concerning imports of men's and boys' other cotton coats in Category 334 and cotton dressing gowns in Category 350, produced or manufactured in Pakistan. Accordingly, the import control limits currently in effect are being cancelled. The United States Government reserves the right to request consultations with the Government of Pakistan in the future concerning these categories should imports reach levels which are disruptive to the U.S. market.

The two Governments also agreed during the December 1985 consultations to further amend their bilateral agreement to establish an adjusted aggregate limit of 235,123,446, square yards equivalent for cotton textile products in Categories 300 through 369, exported to the United States during the agreement year which began on January 1, 1986 and extends through December 31, 1986. The United States Government reserves its right under the agreement, as further amended, to deny entry permanently to shipments which are in excess of this adjusted aggregate limit.

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to cancel the import restraint limits in effect for cotton textile products in Categories 334 and 350. Inasmuch as the aggregate limit has already been adjusted in accordance with this amendment, no further instructions to Customs concerning it are needed at this time.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreement.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear M. Commissioner: This directive amends, but does not cancel, the directive of December 26, 1985 concerning certain categories of cotton textile products, produced or manufactured in pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on March 19, 1986, the directive of December 26, 1985 is hereby amended to cancel the import restraint limits established for cotton textile products in Categories 334 and 350.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86-5904 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Restraint Limit for Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 19, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985 a notice was published in the Federal Register (50 FR 51739) which announced import restraint limits for certain wool textile products, including Category 433 (men's and boys' wool suit-type coats), produced or manufactured in the Hungarian People's Republic and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the limit established for Category 433 from 7,573 dozen to 7,123 dozen to account for carryforward used during the 1985 agreement period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1985, which directed you to prohibit entry of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on March 19, 1986, the directive of December 16, 1985 is hereby amended to include an adjusted restraint limit of 7,123 dozen in Category 433.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

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exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5963 Filed 3-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Deducting Charges From the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Israel

March 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 18, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On November 13, 1985 a notice was published in the Federal Register (950 FR 46809), which announced that, on November 4, 1985, the Governments of the United States and Israel had exchanged letters on an arrangement establishing a limit of 750,000 numbers for cotton sheets in Category 361, produced or manufactured in Israel and exported during the seven-month period which began on September 1, 1985 and extends through March 31, 1986. That limit is now filled.

In reviewing the import charges, the Committee for the Implementation of Textile Agreements has determined that an error in the import data has resulted in 189,330 numbers being incorrectly charged to the limit. Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to deduct 189,330 numbers from the import charges. This will reopen the category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 13, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the arrangement of November 4, 1985 between the Governments of the United States and Israel, I request that, effective on March 18, 1986, you deduct 189,330 numbers from the imports charged to the restraint limit established in the directive of November 7, 1985 for cotton textile products in Category 361, produced or manufactured in Israel and exported during the seven-month period which began on September 1, 1985 and extends through March 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5946 Filed 3-14-86; 11:30 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through March 31, 1989, of information collection requirements in regulations implementing flammability standards for carpets and rugs. The regulations are codified at 16 CFR Parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

Additional Details About the Requested Extension of Approval of Requirements for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Standard for the Flammability of Carpets and Rugs (FF 1-70), 16 CFR Part 1630; Standard for the Flammability of Small Carpets and Rugs (FF 2-70), 16 CFR Part 1631.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of goods manufactured or imported.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours for each respondent: 532 per year.

Comments: Comments on this requested extension of approval of information collection requirements should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 12, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-5875 Filed 3-17-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Semi-Conductor Dependency

ACTION: Notice of Advisory Committee offer for prearranged public witnesses.

SUMMARY: The Defense Science Board Task Force on Semi-Conductor Dependency will meet on 29 May as previously announced in closed session. However, during the 1300 to 1700 period, public witnesses will be permitted. Any individual or organization desiring to appear before the Task Force is encouraged to submit a written request. Individuals may contact Mr. Maynard, the Task Force Executive Secretary, at OUSDRE, Room 3E114, The Pentagon, Washington, DC 20301, for approval and scheduling.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the Department of Defense's Dependency on foreign sources of supply for Semi-Conductors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public, except for the afternoon of 29 May as explained above.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1986.

[FR Doc. 86-5864 Filed 3-17-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Meeting

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Board Summer Study Task Force on Use of Commercial Components in Military Equipment will hold preliminary closed sessions on 10 April 1986 in Redondo Beach, California, and on 8 May and 20 June 1986, at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will receive classified briefings on military acquisition programs and systems availability and the affect of increased use of commercial items on force posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 12, 1986.

[FR Doc. 86-5865 Filed 3-17-86; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Organization

ACTION: Notice of DoD intent to establish a Federally Funded Research and Development Center (FFRDC).

SUMMARY: The Department of Defense announces its intention to establish a Federally Funded Research and Development Center (FFRDC) to support the Strategic Defense Initiative Organization (SDIO) and to designate the FFRDC as the Strategic Defense Initiative Institute (SDII). The purpose of this action is to make continuously available to the Strategic Defense Initiative Organization (SDIO) a relatively small but dedicated technical support unit that can facilitate the utilization, in a manner that is more timely, cost effective, and productive than currently possible, of the large national capability that must be applied to the Strategic Defense initiative Program (SSIP). To accomplish this goal, the support unit personnel must have the across-the-board SDI-related technical skills and functional capabilities to preform a technology evaluation and integration role in support of the SDIO.

The SDII will seek flexible and innovative approaches to solving complex and multidimensional problems for the SDIP. In accomplishing this task, it will tap the broad base of talent, relevant experience, and perspectives available from addressing prior programmatic challenges. This will require contributions from a wide range of agencies and existing organizations, each of which already has some of the resource and skills in the needed areas, but no one of which can address SDIP technical support needs as a unified, coordinate whole

The SDII must be free from actual, potential, or apparent individual or organizational conflicts of interest. It must gain no competitive advantage from its position over those whose efforts it is helping the SDIO oversee; nor lack objectivity as a result of having profit-seeking manufacturing, or other conflicting organizational goals, such as a desire to serve other clients.

It has been decided, based on a careful comparative evaluation by the SDIO of all feasible institutional alternatives, that only a carefully designated, new Federally Funded Research and Development Center (FFRDC) within ready physical access of the SDIO can effectively satisfy the above purpose of the SDII. Accordingly, this announcement is being issued in compliance with the procedures of OFPP Policy Letter 84-1 of April 4, 1984, "Federally Funded Research and Development Centers."

The Mission Statement for the SDII is a follows:

Mission Statement

The specific mission of the SDII will be to perform, in a highly flexible manner, research, studies, and analyses of emerging technologies and system concepts relative to the Strategic Defense Initiative Program (SDIP); and to provide technical evaluation of basic and applied research efforts and program developments by other contractors. In particular, the scope and nature of the effort to be performed by the SDII in support of the SDIO will include, but not be limited to: (1) Identifying and evaluating existing and potential technical advances, technologies, and system concepts from all available sources; (2) Reducing the costs and increasing the effectiveness of basic and applied SDIP research; (3) Providing advice on the relative utility and integration implications of each of the complex technical aspects of the SDIP; (4) Assessing and helping to develop evolving technical requirements, architectures, and their related testbed needs; (5) Performing test and evaluation planning; (6) Integrating Offense/Defense scenarios and analyses into useful conclusions and framing of issues for decision by the SDIO; (7) Developing and maintaining a data base on active SDIP projects and capabilities, and continually analyzing same for overlap, duplication, and opportunities for coordination; (8) Conducting SDIP-related studies and analyses; and (9) Coordinating and performing other technical and liaison tasks, including interface with the pertinent acquisition activities of the military services, related to performance of SDIP-related technical activities in industry, universities, government laboratories, and elsewhere.

This announcement is not a synopsis in accordance with Section 16 of the Office of Federal Procurement Policy Act, or otherwise a synopsis of sources sought in connection with a procurement. Is it being published in response to Paragraph 6b(2) of the Office of Federal Procurement Policy policy letter on FFRDC's which provides

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for at least three notices over a 90-day period in the *Commerce Business Daily* and the **Federal Register** indicating an agency's intentions to sponsor an FFRDC and the scope and nature of the effort to be performed by the FFRDC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sybert, Special Assistant to the Secretary, Executive Secretariat/OSD, Pentagon 3E880, Washington, DC 20301-1000, telephone (202) 697-8388.

Dated: March 12, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-5888 Filed 3-17-86; 8:45 am]

BILLING CODE 3810-01-M

Foreign Language and Area Studies; Meeting

AGENCY: Office of Research and Laboratory Management.

ACTION: Notice of open meeting.

SUMMARY: The Working Group on Foreign Language and Area Studies of the DoD-University Forum will meet in open session on April 9, 1986, from 11:00 a.m. until 4:00 p.m., at the Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting is to discuss progress of implementation of recommendations of the Report, "Beyond Growth: The Next Stage in Language and Area Studies."

Public attendance will be accommodated as space permits. Public attendees are requested to contact the DoD Office of Research and Laboratory Management before COB, April 7, 1986, to be advised of the meeting room and seating accommodations.

FOR FURTHER INFORMATION CONTACT: Don DeYoung on, (202) 694-0205.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 13, 1986.

[FR Doc. 86-5916 Filed 3-17-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application notice for the comprehensive program final year dissemination competition for fiscal year 1986.

Applications are invited for new awards to be made in fiscal year 1986 under the Comprehensive Program Final Year Dissemination Competition conducted by the Fund for the Improvement of Postsecondary Education.

Under this competition, the Secretary of Education makes awards to institutions of postsecondary education and other public and private educational institutions and agencies. The purpose of the awards is to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results.

Authority for this program is contained in Part A of Title X of the Higher Education Act, as amended.

(20 U.S.C. 1135)

Closing Date for Transmittal of Applications: An application for a Final Year Dissemination award must be mailed or hand delivered by May 2, 1986.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 400 Maryland Avenue SW., Washington, DC 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 7th and D Streets SW., Region Office Building 3, Room 3633, Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on May 1, 1986.

Program Information

Type of Competition: Applications under the Final Year Dissemination competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this Competition within one year following the termination of its project.

Selection Criteria: The following selection criteria apply to the fiscal year 1986 competition:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving post-secondary education by determining the extent to which it would—

(1) Achieve the purposes of the Final Year Dissemination Competition;

(2) Address an important problem or need;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the project, as evidenced by the quality of the dissemination project design;

(3) The applicant is capable of carrying out the project, as evidenced by the adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(4) The applicant is capable of carrying out the dissemination project, as evidenced by the applicant's qualifications and relevant prior experience; and

(5) The applicant and any other participating organizations are committed to the success of the dissemination project, as evidenced by contributions of resources and prior work in the area.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availability of other funding sources for

the proposed dissemination activities.
(20 U.S.C. 1135)

The selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (c) are of equal importance. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Other Information To Be Requested from Applicants: During the final stages of the selection process, the Secretary will contact by telephone all applicants being considered for funding in order to clarify or verify information relevant to their applications.

Available Funds: The Department of Education Appropriation Act, 1986 (Pub. L. 99-178), appropriated $12,710,000 for the Fund for the Improvement of Postsecondary Education. Approximately $100,000 will be available for Final Year Dissemination awards under the Comprehensive program. These funds could support approximately 12 new awards. The estimated size of the final year awards is $8,000 for a 12-month period.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms included in the program information packages will be sent directly to all potential applicants that are eligible for a Final Year Dissemination award.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is intended only to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

(Approved by the Office of Management and Budget under control number 1840-0117)

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exceptions noted in the regulations referred to below.

(2) The regulations in 34 CFR Part 630.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education regarding the Comprehensive Program Final Year Dissemination Competition (84.116D), telephone (202) 245-8091.

(U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116D, Fund for the Improvement of Postsecondary Education—Comprehensive Program Final Year Dissemination Competition)

Dated: March 11, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-5867 Filed 3-17-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Bilingual Education and Minority Languages Affairs

Emergency Immigrant Education Program for fiscal year 1986; Application for New Awards

AGENCY: Department of Education.

ACTION: Applicaton notice for new awards under the Emergency Immigrant Education Program for fiscal year 1986.

Programmatic and Fiscal Information

Notice is given that the Secretary has established a closing date for the transmittal of applications for assistance under the Emergency Immigrant Education Program. A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2. This program provides financial assistance to SEAs for educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

For fiscal year 1986 awards to SEAs, $28,710,000 is available. This amount reflects a reduction of $1,290,000 pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177.

Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended and applicants should prepare and submit applications pending further notification. The Secretary estimates that these funds will support 34 States.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before May 9, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.162, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building No. 3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is

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included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 8, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (CFDA No. 84.162), 400 Maryland Avenue SW., Washington, DC 20202.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION.

Do Not Send Applications to the Above Address

Application forms

Application forms and program information packages are available.

These may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 421, Reporters Building), Washington, DC 20202. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Further Information: For further information contact Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 732–1842.

Program Authority: 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: March 12, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86–5866 Filed 3–17–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Survey Task Group; Date Change for Meeting

The date and time of the March 1, 1986, eighth meeting of the Refinery Survey Task Group has been changed. The meeting will now be held on Thursday, March 20, 1986, starting at 2:30 p.m., in the Reading Room of the National Petroleum Council, 1625 K Street NW., Suite 600, Washington, DC. Notice of this meeting first appeared in 51 FR 6164, Thursday February 20, 1986 (FR Doc. 86–3706).

Issued at Washington, DC, March 12, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–5918 Filed 3–17–86; 8:45 am]

BILLING CODE 6450-01-M

U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Rescheduled Meeting

The date of the March 14, 1986, tenth meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been changed. The meeting will now be held on Friday, March 21, 1986, starting at 8:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC. Notice of this meeting first appeared in 51 FR 6566, Tuesday, February 25, 1986 (FR Doc. 86–4055).

Issued at Washington, DC, March 12, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–5919 Filed 3–17–86; 8:45 am]

BILLING CODE 6450-01-M

Inventions Available for License

The Department of Energy hereby announces a number of inventions available for license, in accordance with 35 U.S.C. 207–209, in order to achieve expeditious commercialization of results of federally funded research and development. For further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of specifications of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Issued in Washington, DC on March 12, 1986.

J. Michael Farrell,

General Counsel.

Department of Energy Patent Applications

Serial No. and Title of Invention

667,255—Liquid-Film Electron Stripper
668,054—Fabrication of Low Density Ceramic Material
670,777—In-Line Beam Current Monitor
672,228—Thermoacoustic Magnetohydrodynamic Electrical Generator
672,229—Multi-port Valve Assembly
673,450—Tokamak Reactor First Wall
673,968—Method of Forming a Foamed Thermoplastic Polymer
673,969—Organic Metal Neutron Detector
673,970—Preparing Reflective Substrate Surfaces for Laser Treatment
676,045—Abrasive Slurry Composition for Machining Boron Carbide
676,046—Method for Improving Product Yields in an Anionic Metalloporphyin-Based Artificial Photosynthesis System
676,047—Transmissive Metallic Contact for Amorphous Silicon Solar Cells
676,149—Spot Test for 1,3,5-Triamino-2,4,6-Trinitrobenzene, TATB
676,338—Density Gradient Free Electron Collisionally Excited X-Ray Laser
676,340—Short Protection Device for Stack of Electrolytic Cells
676,342—Microwave Coupler and Method
676,343—Method of Synthesizing and Growing Copper-Indium-Diselenide ($CuInSe_2$) Crystals
676,344—Apparatus for Connecting Aligned Abutted Tubes
678,148—Cycling Cryopump
678,202—Process for Selectively Patterning Epitaxial Film Growth on a Semiconductor Substrate
678,913—Dump Assembly
679,841—Magnetically Focussed Liquid Drop Radiator
679,842—Method of Preparing P–I–N–Junctions in Amorphous Silicon Semiconductors
684,099—Process for Producing Peracids from Aliphatic Hydroxy Carboxylic Acids
685,013—Preparation of Nuclear Fuel Spheres by Flotation-Internal Gelation
685,096—Method for Sensing and Measuring a Concentration or Partial Pressure of a Reactant Used in a Redox Reaction
685,100—Process for Converting Magnesium Fluoride to Calcium Fluoride
685,177—Low Voltage Solid-State Lateral Coloration Electrochromic Device
688,668—Composite Material for Thermal Energy Storage
688,669—Electrolysis Cell for Reprocessing Plutonium Reactor Fuel
688,670—Optical Emission Line Monitor With Background Observation and Cancellation
688,671—Production of Glass or Glass-Ceramic to Metal Seals with the Application of Pressure

688,672—Miniature Plasma Accelerating Detonator and Method of Detonating Insensitive Materials
688,673—Radioactive Waste Disposal Package
689,104—Liquid Chromatography/Fourier Transform IR Spectrometry Interface Flow Cell
689,735—Glass Electrolyte Composition
690,022—Recirculating Electric Air Filter
690,023—Disk Filter
690,218—Narrow Band Gap Amorphous Silicon Semiconductors
690,544—Progressing Batch Hydrolysis Process
691,825—High Efficiency, Direct Detection of Ions from Resonance Ionization of Sputtered Atoms
692,747—Diagnostic Apparatus and Method for Use in the Alignment of One or More Laser Means Onto a Fiber Optics Interface
692,748—Recirculating Cross-Correlation Detector
692,760—Optical Switch
696,273—First Wall for Polarized Fusion Reactors
696,276—Extrusion Cast Explosive
696,547—Isoptic Generator for Bismuth-212 Based on Radium
696,548—Apparatus and Method for the Preparation of Dioxygen Difluoride
696,549—Apparatus for Laser Beam Profile Measurements
696,550—Machine Imparting Complex Rotary Motion for Lapping a Spherical Inner Diameter
697,296—Phase Comparator Apparatus and Method
697,824—Fiberoptic Spectrophotometer
697,828—Predicting Threshold and Location of Laser Damage on Optical Surfaces
697,989—Direct Fissile Assay of Enriched Uranium Using Random Self-Interrogation and Neutron Coincidence Response
699,092—Low Activation Ferritic Alloys
699,878—Log Amplifier with Pole Zero Compensation
699,879—Microwave Detector
699,887—Control System for a Small Fission Reactors
699,889—Removal of Sulfur and Nitrogen Containing Pollutants from Discharge Gases
700,845—Synthesis of New Amorphous Metallic Spin Glasses
701,010—Magnetic Shielding
702,540—Flexible Swivel Connection
702,569—Excimer Laser Phototherapy for the Dissolution of Abnormal Growth
702,692—Reactor Design for Uniform Chemical Vapor Deposition-Grown Films Without Substrate Rotation
702,715—Semiconductor Electrode with Improved Photostability Characteristics
702,716—Semiconductor Bridge (SCB) Igniter
702,751—Gated Strip Proportional Detector
702,752—Boiling Water Neutronic Reactor Incorporating a Process Inherent Safety Design
703,577—Steady-State Inductive Spheromak Operation
704,114—Pulse-Excited, Auto-Zeroing Multiple Channel Data Transmission System
704,115—Multiple Channel Optical Data Acquisition system
704,455—Gas Ampoule-Syringe
704,697—Inorganic-Polymer-Derived Dielectric Films

[FR Doc. 86–5877 Filed 3–17–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 9556–000, et al.]

Hydroelectric Applications (Kamargo Corp., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9556–000.

c. Date Filed: October 24, 1985.

d. Applicant: Kamargo Corporation.

e. Name of Project: Poors Island.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986–0440.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Black River Project No. 2569, which includes: (1) An existing concrete gravity dam, 770 feet long and 23 feet high; (2) an existing concrete gravity dam 90 feet long, to be demolished; and (3) an existing impoundment 40 acres in surface area with a storage capacity of 460 acre-feet at a normal maximum surface elevation of 564 feet mean sea level. The proposed project would consist of: (1) A proposed intake/powerhouse structure of reinforced concrete, 100 feet long and 120 feet wide; (2) a proposed excavated intake channel 170 feet long, 120 feet wide and 25 feet deep; (3) three proposed turbine/generators of 3.65 MW capacity each; (4) a proposed 23 kV transmission line 800 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 16,000,000 kWh. The net hydraulic head is 22 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dams are owned by Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

2 a. Type of Application: Preliminary Permit.

b. Project No. 9655–000.

c. Date Filed: December 2, 1985.

d. Applicant: American Power Producers, Inc.

e. Name of Project: Lake Isabel.

f. Location: On Lake Isabel in Sec. 36, T.28N., R.9E., in the Mt. Baker Snoqualmie National Forest near the town of Goldbar in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy W. Johnson, American Power Producers, Inc., 1819—12th Avenue, Seattle, WA 98122, (206) 323–3150.

i. Comment Date: May 2, 1986.

j. Description of Project: The proposed project would consist of: (1) A 32-foot-high dam at elevation 2,842 feet; (2) a 9,900-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 5,000 kW; and (4) a 250-foot-long transmission line. Applicant estimates the average annual energy production to be 43,800,000 KWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $9,000. No new roads would be constructed or drilling conducted during the feasibility study.

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k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

3 a. Type of Application: License (Over 5MW).

b. Project No.: 8990–000.

c. Date Filed: March 1, 1985.

d. Applicant: Noah Corporation.

e. Name of Project: Opekiska Lock and Dam.

f. Location: At the U.S. Army Corps of Engineers' Opekiska Lock and Dam on the Monongahela River in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James B. Price, President, Noah Corp., P.O. Drawer 640, Aiken, SC 29802, (803) 649–1115.

i. Comment Date: April 18, 1986.

j. Competing Application: Project No. 8179–000, Date Filed: March 19, 1984.

k. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Opekiska Lock and Dam and would consist of: (1) A new intake structure; (2) a new powerhouse with a 10-MW turbine-generator unit; (3) a new tailrace; (4) a new 4,400-foot-long transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 34,700 MWh.

l. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9622–000.

c. Date Filed: November 15, 1985.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Ploof Falls.

f. Location: St. Regis River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Malcolm M. Preston, Adirondack Hydro Development Corporation, Market Street, Potsdam Industrial Plaza, Potsdam, NY 13676, (315) 265–6090.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 250-foot-long concrete dam owned by the State of New York; (2) an existing reservoir with a surface area of 3 acres and a gross storage capacity of 30 acre-feet and a water surface elevation of 1,120 feet msl; (3) a proposed 96-inch-diameter, 60-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 925-kW; and (5) a proposed 1,800-foot-long transmission line tying in to the existing Niagara Mohawk Power Corporation system. The Applicant estimates a 4,980,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $110,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5 a. Type of Application: License (5 MW or less).

b. Project No.: 8460–001.

c. Date Filed: June 10, 1985.

d. Applicant: Contoocook Valley Paper Company, Inc.

e. Name of Project: West Hennicker.

f. Location: Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Mary E. Fletcher, President, Contoocook Valley Paper Company, Inc. P.O. Box 434, Milford, NH 03055, (603) 428–3263.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of (1) An existing 12-foot-high, 137-foot-long concrete dam owned by the Applicant with a crest elevation of 430 feet msl; (2) an existing reservoir with a surface area of 10 acres and a storage capacity of 98 acre-feet; (3) a proposed powerhouse at the dam containing a generating unit with a rated capacity of 95 kW; (4) a proposed canal 20 to 30-foot-wide, 5 to 12-foot-high, 1,000-foot-long; (5) a proposed millpond with a surface area of 1 acre and a storage capacity of 5 acre-feet; (6) a proposed 20-foot-high, 50-foot-long intake structure; (7) four 8-foot-diameter, 350-foot-long penstocks; (8) a proposed powerhouse containing a generating unit with a rated capacity of 1,400 kW; (9) a proposed 250-foot/long transmission line tying into the existing Pubic Service Company of New Hampshire system. The Applicant estimates a 4,189,300 kWh average annual energy production.

k. Purpose of Project: Power will be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and Dl.

6 a. Type of Application: Preliminary Permit.

b. Project No: 9793–000.

c. Date Filed: December 30, 1985.

d. Applicant: Hillcrest Hydroelectric Company.

e. Name of Project: Hillcrest.

f. Location: Upper Ammonoosuc River in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Harold Turner, Jr., Hillcrest Hydroelectric Company, P.O. Box 7191, Concord, NH 03301, (603) 497–3940.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17-foot-high, 105-foot-long concrete dam owned by the Berlin Water Department; (2) an existing reservoir with a surface area of 4.5 acres and a storage capcity of 40 acre-feet at elevation 1,490 feet msl; (3) an existing 16-inch-diameter, 27,700-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 50 kW; and (5) a proposed 1,600-foot-long transmission line typing into the existing Public Service Service Company of New Hampshire system. The Applicant estimates a 425,00 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7a. Type of Application: Minor License.

b. Project No: 9654–000.

c. Date Filed: November 29, 1985.

d. Applicant: Martin Wirkkala.

e. Name of Project: Burnham Creek.

f. Location: On Burnham Creek in Sec. 21, T10N, R9W, near Naselle in Pacific County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. R. L. Van Wormer, Independent Ecological Services, 1514 Muirhead, Olympia, WA 98502, (206) 943–0127.

i. Comment Date: May 9, 1986.

j. Description of Project: The existing project would consist of: (1) A 20-foot-high earthen dam; (2) a reservoir with a surface area of 5.57 acres with a water surface elevation of 53.2 feet MSL; (3) a 76-foot-long penstock varying in diameter from 30 inches to 18 inches; (4) a powerhouse containing one generating unit rated at 23 kW, producing an average annual output of 43,000 kWh; and (5) a 1,500-foot-long, 600-volt transmission line.

k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: Transfer of License.

b. Project No.: 2615–004.

c. Date Filed: December 30, 1985.

d. Applicant: Central Maine Power Company, Scott Paper Company, Milstar Manufacturing, and the Madison Paper Corporation (Owners of Brassua Dam or Transferors) and the Brassua Hydroelectric Limited Partnership.

e. Name of Project: Brassua Storage Project.

f. Location: On the Moose River in Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John Gulliver, c/o Peirce, Atwood, Scribner, Allen, Smith, & Lancaster, One Monument Square, Portland, ME 04101, (207) 773–6411.

i. Comment Date: April 21, 1986.

j. Description of Project: On September 16, 1977, a minor license was issued to the Central Maine Power Company, the Milstar Manufacturing Corporation and the Kennebec River Pulp and Paper Company, Inc. to construct, operate and maintain the Brassua Storage Project No. 2615. Subsequently, by order issued June 14, 1978, the Commission approved the transfer of Kennebec River Pulp and Paper Company, Inc.'s interest in Project No. 2615 to the Madison Paper Corporation. It is now proposed to transfer the license to the Owners of Brassua Dam and the Brassua Hydroelectric Limited Partnership (hereinafter referred to as the "Co-Transferees"). The Co-Transferees are an unincorporated association of domestic corporations (the Owners of Brassua Dam) and a private limited partnership organized under the laws of the State of Maine (Brassua Hydroelectric Limited Partnership). The purpose of the proposed transfer is to facilitate the expeditious development of hydroelectric generation capacity at the project. As stated in the application for amendment of license for the Brassua Dam filed simultaneously with this application for license transfer, the proposed development of hydroelectric generation capacity at the project will result in annual production of approximately 17 million kWh, thereby, reducing Maine's dependence on fossil fuels. Approval of the license transfer will be in the public interest because it will place both the license and the project properties in the hands of Co-transferees, entities appropriately structured and qualified to undertake the financial and operational steps necessary to develop the project expeditiously. Co-transferee, Owners of Brassua Dam, consists of corporate entities having business experience in the financing, design, and development of hydroelectric projects. Co-transferee, Brassua Hydroelectric Limited Partnership, a new entity, is structured so as to attract the level of financial participation necessary to ensure successful development of the project, and has, as its general partner, Swift River/Hafslund Company, an entity having business experience in the financing, design, and development of hydroelectric projects.

k. This notice also consists of the following standard paragraphs: B and C.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9897–000

c. Date Filed: February 3, 1986.

d. Applicant: Salmon Falls Creek Associates.

e. Name of Project: Salmon Falls Creek.

f. Location: At Salmon Falls Dam on Salmon Falls Creek in Twin Falls County, Idaho

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jordan Walker, 484 East 300 North Manti, UT 84642, (801) 835–0202.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would utilize the Salmon Falls Canal Company's existing Salmon Falls Dam and would consist of: (1) The existing 226-foot-high earthfilled dam; (2) the existing reservoir which has a surface area of 3,000 acres and a 228,000 acre/feet storage capacity at reservoir elevation 5007 feet; (3) a 1,000-foot-long, 48-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 4702 kW and an average annual generation of 8,231 MWh; and (4) a 2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

10 a. Type of Application: Preliminary Permit.

b. Project No. 9899–000.

c. Date Filed: February 3, 1986.

d. Applicant: Plymouth Dam Associates.

e. Name of Project: Plymouth Dam.

f. Location: On the Schuylkill River in Montgomery and Chester Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: April 18, 1986.

j. Competing Application: Project No. 9531–000, Date Filed October 9, 1985.

k. Description of Project: The proposed project would consist of: (1) The existing 8.2-foot-high and 530-foot-long gravity and timber crib Plymouth Dam owned by the Pennsylvania Department of Environmental Resources; (2) a reservoir with a surface area of 500 acres; (3) a new intake structure; (4) a new powerhouse at the dam with 4 turbine-generator units with a total installed capacity of 1,600 kW; (5) a new 12–kV and 1-mile-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 7,000,000 kWh.

l. Purpose of Project: Project energy would be sold to Philadelphia Electric Power.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

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11 a. Type of Application: License (5 MW or less).

b. Project No. 9175-001.

c. Date Filed: May 31, 1985.

d. Applicant: Rivers Electric Co., Inc.

e. Name of Project: Eddyville Falls Dam.

f. Location: Rondout Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles R. Pepe, River Electric Co., Inc., 120 North Pascack Road, Spring Valley, NY 10977, (914) 356–1900.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 11-foot-high, 220-foot-long gravity dam owned by Michael and Florence Briglia and has a crest elevation of 16 feet msl; (2) an existing reservoir with negligible storage capacity and a surface area of 15 acres; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 1,392 kW; (4) a proposed 200-foot-long transmission line tying into the existing Central Hudson Gas and Electric Corporation's system; and (5) appurtenant facilities. The Applicant estimates a 6.0 million kWh average annual energy production.

k. Purpose of Project: Power generated would be sold to Central Hudson Gas and Electric Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12 a. Type of Application: Preliminary Permit.

b. Project No: 9638–000.

c. Date Filed: November 22, 1985.

d. Applicant: Lock 16 Associates.

e. Name of Project: Mississippi Lock & Dam No. 16.

f. Location: On the Mississippi River in Rock Island County, Illinois and Muscatine County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Lock 16 Associates, 5041 S. Boabab Drive, Salt Lake City, UT 84117, (801) 272–2030.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 16, and would consist of: (1), 35 new steel penstocks each 60 feet long and 16 feet in diameter; (2) a new concrete powerhouse approximately 900 feet by 84 feet containing 35 turbine/generator units having a total installed capacity of 14,000 kW operating at 9 feet of hydraulic head; (3) a new rock tailrace approximately 130 feet long and 900 feet wide; (4) a new 28,000-foot-long 115-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 74.8 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the City of Muscatine, Iowa.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $155,000.

13 a. Type of Application: Major License (under 5 MW).

b. Project No.: 8436–001.

c. Date Filed: March 11, 1985.

d. Applicant: Idaho Natural Energy, Inc.

e. Name of Project: Smith Creek.

f. Location: On Smith Creek in Boundary County, Idaho near the town of Porthill within the Idaho Panhandle National Forest. T65N R3W Unsurveyed T65N R2W Sections 6, 31, 32, 33, 34, 27, and 26.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeff Burt, President, Idaho Natural Energy, Inc., 165 Wright Brothers Drive, Salt Lake City, Utah 84116 and Mr. Clark M. Mower, Vice-President, Bingham Engineering, 100 Lindbergh Plaza 2, 5160 Wiley Post Way, Salt Lake City, Utah 84116 (801) 532–2520.

i. Comment Date: May 9, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 75-foot-wide concrete diversion dam having sluice gates, trashracks, fish screening and a fish bypass located at elevation 3,450 feet; (2) a 27,770-foot-long steel penstock with a diameter varying from 72-inches, 66-inches, and 60-inches; (3) a 100-foot-wide, 50-foot-long, 30-foot-high powerhouse containing two generating units with a total rated capacity of 30 MW, producing an estimated annual average output of 81.8 million kWh; (4) a 20-foot-wide, 30-foot-long tailrace discharging water released from the turbines into Smith Creek at elevation 1,840 feet above Smith Falls; (5) a 700-foot-long, 115-kV transmission line interconnecting to an existing Northern Light Inc. transmission system. The existing system will be upgraded 30-miles to an existing Bonneville Power Authority Substation in Bonners Ferry, Idaho; (6) a 1,100-foot-long, 20-foot-wide access road allowing access from Forest Service Road # 281 to the south side of the diversion structure permitting construction and maintenance activities; and an existing 200-foot-long logging road widened to permit access to the diversion dam from the north side.

The cost of the project would be $27,381,000 dollars.

k. Purpose of Project: Project power will be sold to either Pacific Power and Light Company or Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9630–000.

c. Date Filed: November 19, 1985.

d. Applicant: Joint Venturers.

e. Name of Project: Burnside Project.

f. Location: Hockanum River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Brooke J. Pennypacker, Hydro-Tech, Inc., P.O. Box 277, South Barre, MA 01074, (617) 355–2139.

i. Comment Date: May 8, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 160-foot-long concrete gravity dam; (2) a reservoir with a surface area of 3 acres, a storage capacity of 21 acre-feet, and a normal water surface elevation of 34 feet m.s.l.; (3) a concrete intake structure; (4) a 62-foot-long masonry intake flume; (5) an existing concrete and brick powerhouse containing one generating unit with a capacity of 150 kW; (6) a 251-foot-long concrete, stone, and earth tailrace; (7) an existing transmission line, 150 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 570,000 kWh. The existing dam is owned by Joint Venturers, East Hartford, Connecticut.

k. Purpose of Project: Project power would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $3,500.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9784–000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance Hydro Associates.

e. Name of Project: Manawa Dam Project.

f. Location: On the Little Wolf River in the City of Manawa, Waupaca County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. Comment Date: May 12, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Manawa Dam approximately 114 feet long and 16 feet high; (2) an existing 195-acre reservoir having a storage capacity of 1,078 acre-feet; (3) an existing concrete powerhouse approximately 20 feet by 32 feet containing two turbine/generator units having a total installed capacity of 250 kW operating at 12 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and place back into service. An existing 12.7-kV transmission line is available at the site. The Applicant estimates that the average annual energy generation would be 900,000 kWh. The project dam is owned by the City of Manawa.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Wisconsin Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

16 a. Type of Application: Preliminary Permit.

b. Project No: 9781–000.

c. Date Filed: December 30, 1985.

d. Applicant: North American Hydro, Inc. and Renaissance hydro Associates.

e. Name of Project: Chetek Dam Project.

f. Location: On the Chetek River in the City of Chetek, Barron County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing concrete Chetek Dam approximately 110 feet long and 12 feet high; (2) an existing 3,425-acre reservoir having a storage capacity of 28,500 acre-feet; (3) an existing powerhouse located at the east end of the dam spillway containing a single turbine/generator unit with a capacity of 250 kW operating at 12 feet of hydraulic head; and (4) appurtenant facilities. The existing facilities would be rehabilitated and placed back into service. An existing 12.7-kV transmission line is available at the site. The Applicant estimates that the average annual energey generation would be 650,000 kWh. The project is owned by Barron County.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to Northern States Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

17 a. Type of Application: Preliminary Permit.

b. Project No: 9743–000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft hydropower, Inc.

e. Name of Project: Fort Drum Hydropower Porject.

f. Location: On the Indian River near Antwerp, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800.

i. Comment Date: May 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing stone masonry gravity dam approximately 250 feet long and 12 feet high; (2) an existing 30 acre reservoir with a storage capacity of 150 acre-feet at an elevation of 514 msl (the use of flashboards 3 feet high will be investigated); (3) a new intake cannel 15 feet wide, 7 feet deep, and 200 feet long; (4) a proposed intake structure, gate, and trash racks; (5) a new penstock eight feet in diameter and 150 feet long; (6) a new reinforced concrete powerhouse 15 feet wide, 25 feet long, and 10 feet high housing one 500 kW bulb turbine-generator; (7) a proposed tailrace 15 feet wide, 7 feet deep, and 50 feet long; (8) a proposed 13.8 kV transmission line approximately 3,000 feet long; and (9) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 2.0 GWh. The project energy would be sold to the Niagara Mohawk Power Company. The dam is owned by the Village of Antwerp, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9662–000.

c. Date Filed: December 3, 1985.

d. Applicant: Henrys Fork Conservationists I.

e. Name of Project: Henrys Fork I.

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f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Louis Rosenman, Suite 1100, 1333 New Hampshire Avenue, Washingon, DC 20036, (202) 783–2100.

i. Comment Date: April 21, 1986.

j. Competing Application: Project No. 9804, Date Filed 12–30–85.

k. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 6,080 feet; (2) a 1.25-mile-long canal (3) a 700-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 2,650 kW and an average annual generation of 15.8 GWh; and (5) a 1.3-mile-long Transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9666–000.

c. Date Filed: December 3, 1985.

d. Applicant: Marble Creek Associates.

e. Name of Project: Marble Creek.

f. Location: In St. Joe National Forest on Marble Creek, Township 45N, Range 3E, in Shoshone County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: April 21, 1986.

j. Competing Application: Project No. 9656, Date Filed: 12/02/85; Due Date: April 7, 1986.

k. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2600 feet; (2) a 4,150-mile-long, 60-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 1,810 kW and an average annual generation of 7,927,800 kWh; and (4) a 1.8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 13, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5909 Filed 3–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP83–30–043]

Transcontinental Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 12, 1986.

Take notice that on February 28, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff, proposed to be made effective April 1, 1986. Transco states that such sheets are being filed in compliance with Article IV of the "Interim Settlement Agreement as to Rates of Transcontinental Gas Pipe Line Corporation" (Interim Settlement) approved by the Commission as an uncontested settlement in Transco's Docket No. RP83–30. The revised tariff sheets are being filed to implement the second of three increments of the conversion of Transco's production area transportation rates to rolled-in, mileage-based rates as required by the Interim Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5915 Filed 3–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8235–001, et al.]

Hydroelectric Development, Inc., et al.; Availability of Environmental Assessment and Finding of No Significant Impact

March 13, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

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Project No.	Project Name	State	Water body	Nearest town	Applicant
Exemptions					
9235-001	Lower Robertson Dam	NH	Ashuelot River	Winchester	Hydroelectric Development, Inc.
9169-000	Thompson's Mill's	OR	Calapooia River	Shedd	Boston Power Company, Inc.
9231-000	Canyon Lake	WA	Canyon Creek	Deming	Scott Paper Co.
9379-000	Belding Dam	MI	Flat River	Belding	Grenfell, Inc.
9384-000	White's Brook Micro	ME	White's Brook	Gilead	David Head.
9545-000	Hotchkiss	CO	Leroux Creek	Hotchkiss	Town of Hotchkiss & Hotchkiss Hydropower Corp.
Licenses					
3991-002	Cross Cut Diversion Dam Black River.	ID	Henrys Fork River	St. Antony	Energenics Systems, Inc.
6661-001	Black River	LA	Black River	Catahoula and Concordia Parishes	F. and T. Services Corp.
6662-001	Ouachita	LA	Ouachita River	Columbia	F. and T. Services Corp.
6873-001	Southside II Water Power Project	CO	Southside Canal	Collbran	STS Energenics Inc.
6896-002	Forks of Butte	CA	Butte Creek	Paradise	Butte Creek Improvement Co. & Energy Growth Group.
7211-002	Salmon Falls Creek	ID	Salmon Falls Creek	Buhl	Vernon L. and Betty J. Herzinger.
7232-001	Columbus Lock & Dam	MS	Tombigbee River	Columbus	Aero Construction, Inc.
8178-000 and 8794-000	Falls Dam Rimmon Pond	CT	Naugatuck River	Seymour	Eveready Machinery Company, Inc. & McCallum Enterprises, Inc.
8546-000	Pine Creek	MT	Pine Creek	Livingston	Howard & Mildred Carter.
8774-000	Edwards Falls	NY	Limestone Creek	Syracuse	Limestone Hydro Associates.
9029-000	Grasshopper Flat Hydro	CA	Nelson Creek	Big Bend	Nelson Creek Power, Inc.
Amendments					
2031-003	Bartholomew Creek	UT	Bartholomew and Hobble Creek	Springville City	Springville City, Utah.
2310-015	Drum-Spaulding	CA	North Fork American River	Auburn	Pacific Gas and Electric Company.
3267-002	Ballard Mill Dam	NY	Salmon River	Village of Malone	The Greater Malone Community Council, Inc.
5795-001	Sugar Pine Dam	CA	North Shirttail	Foresthill	Foresthill Public Utility District.
7153-002	Victory Mills	NY	Fish Creek	Schuylerville	SNC Hydro, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review of the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NW., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5912 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-375-001]

Garden State Paper Co., Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 12, 1986.

On March 4, 1986, Garden State Paper Company, Inc. (Applicant), of 950 River Drive, Garfield, New Jersey 07026 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a topping-cycle cogeneration facility, wholly owned and operated by the applicant, and is located at 950 River Drive, Garfield, New Jersey. The facility contains five power boilers and is equipped with four turbine generators, and furnishes steam, electricity, mechanical energy and heated water. The electric power production capacity is 15 megawatts. The primary energy sources used by the facility are Natural Gas, 2.8% Sulfur No. 6 oil and .3% Sulfur No. 6 Oil. The facility was installed prior to November 9, 1978.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5913 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-542-000]

Springfield Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 12, 1986.

On February 28, 1986, Springfield Hydroelectric Company, (Applicant), of 26 State Street, Montpelier, Vermont 05602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 400 kilowatt hydroelectric facility (FERC P. 8014) will be located on the Black River in Windsor County, Vermont.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and

214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5914 Filed 3-17-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $100,000 gained as a result of a consent order which the DOE entered into with Ferrell Companies, Inc., a reseller-retailer of petroleum products, located in Liberty Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. All comments should conspicuously display a reference to case number HEF-0587.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulation of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedure and standards that the DOE has tentatively formulated to distribute to adversely affected parties $100,000 plus accrued interest obtained by the DOE under the terms of a consent order enterd into with Ferrell Companies, Inc. The funds were provided to the DOE by Ferrell to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of propane during the consent order period October 1, 1973, through January 27, 1981.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased propane from Ferrell. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Ferrell and to demonstrate that it was injured by Ferrell's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 7, 1986.

George B. Breznay,

Director, Office of Hearings, and Appeals.

Implementation of Special Refund Procedures

March 7, 1986.

Name of Firm: Farrell Companies, Inc.
Date of Filing: June 4, 1985.
Case Number: HEF-0587.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on June 4, 1985, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Ferrell Companies, Inc. (Farrell) and its subsidiaries.[1]

I. Background

Ferrell is a "reseller-retailer" of covered products as that term was defined in 10 CFR 212.31 with its home office located in Liberty, Missouri. A DOE audit of Ferrell's records revealed possible violations of the Mandatory Petroleum Price Regulations 10 CFR Part 212, Subpart F. The audit alleged that between October 1, 1973 and January 27, 1981, Ferrell committed certain pricing violations in its sales of propane.[2]

In order to settle all claims and disputes between Ferrell and the DOE regarding the firm's sales of propane during the period covered by the audit, Ferrell and the DOE entered into a consent order on December 12, 1984.[3]

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[1] The subsidiaries of Ferrell Companies, Inc., a Kansas corporation, are: Ferrell Companies, Inc., a Delaware corporation; Sentry Underground Storage Company; Indian Wells Oil Company; FCI, Inc.; Propane Industrial, Inc.; Ferrell Leasing Corporation; Indian Wells Production Company; Ferrell Securities, Inc.; One Liberty Plaza, Inc.; One Liberty Plaza Real Estate, Inc.; and Ferrellgas, Inc. For purposes of this proceeding, any reference to Ferrell includes its subsidiaries.

[2] The audit involved only two of Ferrell's subsidiaries, Ferrellgas, Inc. and Propane Industrial, Inc.

[3] We note, however, that the consent order has no effect upon, and resolves no matters regarding, the claims pending in Indian Wells Oil Company, Case No. HRO-0075, nor does it resolve any liability which Ferrell may have for the amounts claimed in that case based on any ownership interest which Ferrell may hold in Indian Wells.

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The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Ferrell does not admit that it violated the regulations.

Under the terms of the consent order, Ferrell agreed to deposit $100,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Ferrell remitted this sum on December 12, 1984. This decision concerns the distribution of the funds in the Ferrell escrow account.[4]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injures. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of propane that were injured by Ferrell's alleged pricing practices between October 1, 1973 and January 27, 1981 (the consent order period). Any funds that remain after all meritirious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Ferrell refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Ferrell's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of products marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Ferrell times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.000136 per gallon.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of Ferrell's products seeking small refunds were injured by Ferrell's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the small-claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which seeks a refund of more than $5,000 will be

required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a bank of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[6]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because:

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Ferrell not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of propane sold by Ferrell, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Ferrell's sales of propane. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of propane from Ferrell. If they claim injury at a level greater than the threshold level, they must document this injury in accordance with the procedures described above, including specific information as to the volume and per gallon price of propane purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding.[7] Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Ferrell Companies, Inc. pursuant to the Consent Order executed on December 12, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–5878 Filed 3–17–86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed the Week of February 21 Through February 28, 1986

During the Week of February 21 through February 28, 1986, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,
Director, Office of Hearings and Appeals.
March 12, 1986.

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[4] As of January 31, 1986, the Ferrell escrow account contained a total of $109,407.84, representing $100,000 in principal and $9,407.84 in accrued interest.

[5] This figure is derived by dividing the $100,000 principal amount by the 733,366,000 gallons of propane reportedly sold by Ferrell and its subsidiaries during the consent order period. *See* December 10, 1985 Letter from James E. Ferrell, President of Ferrell Companies, Inc. to Richard T. Tedrow, Deputy Director, OHA.

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[7] The audit files indicate that on December 26, 1974, Ferrell signed an Accord and Satisfaction with the FEA in which it agreed to remit $12,500 to the FEA to settle alleged overcharges on Ferrell's sales of propane to Lyons Diecasting, a wholesale customer of Ferrellgas, Inc. On the basis of this information, we propose that Lyons Diecasting be precluded from receiving a refund in this proceeding.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 21, 1986	Economic Regulatory Administration, Washington, DC	HRR-0036	Request for modification/rescission. If granted: The July 1, 1985 Remedial Order issued to P & R Trading Co. (Case No. HRO-0081) would be amended to include as a named party Benton Pratt, the individual, as stated in the Proposed Remedial Order.
Feb. 24, 1986	Tri-Service Drilling Company, Washington, DC	KRD-0120	Motion for discovery. If granted: Discovery would be granted to Tri-Service Drilling Company in connection with the firm's Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. KRO-0120).
Feb. 26, 1986	Vanderbilt Energy Corporation, Enid, OK	KRD-0014	Motion for discovery. If granted: Discovery would be granted Vanderbilt Energy Corporation in connection with the firm's Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. HRO-0080).
Feb. 27, 1986	Economic Regulatory Administration, Washington, DC	KRZ-0036	Interlocutory. If granted: The May 31, 1985 Proposed Remedial Order issued to Tonkawa Refining Company would be amended.
Do	Edwin Milton Jones, Jr., Houston, TX	KRD-0015	Motion for discovery. If granted: Discovery would be granted to Edwin Milton Jones, Jr. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0225) issued to Edwin Milton Jones, Jr.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/21/86	Hicks/C.T. Ross & Son, Inc	RF237-4
2/21/86	City Service/Ron Millard	RF219-7
2/21/86	Eastern/General Motors Corporation.	RF216-6
2/21/86	Amoco/South Carolina	RQ21-276
2/21/86	Perry Gas/South Carolina	RQ183-277
2/21/86	Belridge/South Carolina	RQ8-278
2/21/86	Charter/South Carolina	RQ23-279
2/21/86	Coline/South Carolina	RQ2-280
2/24/86	Gulf/Adelman's 301 Gulf	RF40-3111
2/24/86	Gulf/Ormond Beach Gulf	RF40-3112
2/24/86	Union Texas/General Telephone Co.	RF140-36
2/24/86	Quaker State/Shelby's	RF213-118
2/24/86	Mobil/Crescent Oil, Inc	RF225-155
2/24/86	Mobil/Kassman Service Center	RF225-156
2/24/86	Mobil/Dorsey K. Leith, Inc	RF225-157
2/24/86	Mobil/Hollingers Service Station	RF225-158
2/24/86	Mobil/Dimitrios Fereroils	RF225-159
2/24/86	Mobil/Cortese Motor Service	RF225-160
2/24/86	Hicks/Southern States Cooperative.	RF237-5
2/24/86	Hicks/Small's L.P. Gas Company.	RF237-6
2/24/86	Eastern NJ/Governor Morris Associates.	RF232-186
2/24/86	Eastern NJ/Jacobs S. Rudd	RF232-187
2/24/86	Belcher/Bay State Fuel Oil, Inc of Agawam.	RF227-7
2/24/86	Mobil/Gill Syrup Corporation	RF225-161
2/24/86	Mobil/Alvin Hollis & Company	RF225-162 & RF225-163
2/24/86	Mobil/Southwest Forest Industries, Inc.	RF225-164
2/24/86	Mobil/Grisha Hambarsumyn	RF225-165
2/24/86	Eastern NJ/Solvents Recovery Service of New Jersey, Inc.	RF232-188
2/24/86	Eastern NJ/Garnel Export Clothing Corporation.	RF232-189
2/24/86	Eastern NJ/Cumersell Properties, Inc.	RF232-190
2/24/86	Eastern NJ/Maurice Albert	RF232-191
2/24/86	Quaker State/Ken Stephens Oil Co.	RF213-120
2/24/86	Quaker State/Jim's Garage	RF213-121
2/24/86	Quaker State/Lube King	RF213-122
2/24/86	Quaker State/R.E. Mabon	RF213-123
2/24/86	Union Texas/Raymond E. Lee	RF104-10
2/24/86	Sid Richardson/Central Butane Gas Company.	RF28-39
2/24/86	Beacon/E. J. Brown	RF238-1
2/24/86	Beacon/Bobby D. Sprouse	RF238-2
2/24/86	Beacon/S.F. Four Wheel Brake Service.	RF238-3
2/24/86	Quaker State/H. E. Snyder	RF213-119
2/25/86	Quaker State/National Lubricating Products Company.	RF213-124
2/25/86	Quaker State/Kepler Supply Co., Inc.	RF213-125
2/25/86	Quaker State/Webster's Garage	RF213-126
2/25/86	Aminoil/Pawnee Industries	RF136-152
2/25/86	Mobil/Meyers Super Service	RF225-170

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/25/86	Mobil/Rosser DeLuxe Mobil	RF225-171
2/25/86	Mobil/Gene Steck	RF225-172
2/25/86	Mobil/Hansford Mobil Service	RF225-173
2/25/86	Mobil/Clois B. Sumner	RF225-174
2/25/86	Mobil/DeMartini's Service Station.	RF225-175
2/25/86	Mobil/Raymond P. Wilson	RF225-166
2/25/86	Mobil/Martin Fuel Distributors, Inc.	RF225-167
2/25/86	Mobil/North Market Mobil	RF225-168
2/25/86	Mobil/Metpar Steel Products Corp.	RF225-169
2/25/86	Eastern NJ/Whitredge Gardens, Inc.	RF232-192
2/25/86	Eastern NJ/Bishop Investment Trust.	RF232-193
2/25/86	Eastern NJ/Rose Tree Gardens	RF232-194
2/25/86	Mobil/Vehr Oil Company, Inc	RF225-176
2/26/86	Eastern NJ/S. B. Thomas, Inc	RF232-195
2/26/86	Eastern NJ/Topp's Cleaners of Fair Lawn, Inc.	RF232-196
2/26/86	Mobil/ D & G Dairy Mart	RF225-177
2/26/86	Eastern NJ/Ivex Corporation	RF232-197
2/26/86	Quaker State/Allegheny Clarion Valley.	RF213-127
2/26/86	Quaker State/May Brothers Company.	RF213-128
2/26/86	Quaker State/Sherrill Oil Co., Inc.	RF213-129
2/26/86	Quaker State/Bill Howdeshells Service & Auto Supply.	RF213-130
2/27/86	Mobil/Herbert Stentz	RF225-178
2/27/86	Mobil/Sound View Service Center.	RF225-179
2/27/86	Mobil/Zephree Vestell Cloud	RF225-180
2/27/86	Mobil/George Rice's Service	RF225-181
2/27/86	Mobil/Beblers Mobil	RF225-182
2/27/86	Mobil/Edward J. Marschilok	RF225-183
2/27/86	Quaker State/Niagara Lubricant Company.	RF213-131
2/27/86	Eastern NJ/Cranston Corporation.	RF232-198
2/27/86	Eastern NJ/Topps Cleaners of Hackensack.	RF232-199
2/27/86	Eastern NJ/Robert D. Schlengen Co.	RF232-200
2/27/86	Eastern NJ/Temple Israel	RF232-201
2/27/86	Eastern NJ/Mr. P. Perone	RF232-202
2/27/86	Eastern NJ/Colonial Manor	RF232-203
2/27/86	Eastern NJ/Suburban Court	RF232-204
2/27/86	Eastern NJ/General Cable Company.	RF232-205
2/27/86	Eastern NJ/Pharmachem Labs. Inc.	RF232-206
2/27/86	Eastern NJ/Park Lane	RF232-207
2/27/86	Quaker State/Don's Quaker State.	RF213-132
2/27/86	Quaker State/Ifa Hunsberger	RF213-133
2/27/86	Quaker State/Cable & Snyder Logging Company.	RF213-134
2/27/86	Quaker State/Spartan Petroleum Co.	RF213-135

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 21 through Feb. 28, 1986]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/27/86	Quaker State/Pierce's Service	RF213-136
2/27/86	Quaker State/Snyder Bros	RF213-137
2/27/86	Quaker State/Don Lucas Cadillac.	RF213-138
2/27/86	Mobil/Mobil Service Center	RF225-184
2/27/86	Mobil/Clayfield Service Station	RF225-185
2/27/86	Mobil/Prime Vista Mobil Service	RF225-186
2/27/86	Mobil/Ravenna Oil Company	RF225-187
2/27/86	Mobil/George Rice Service	RF225-188
2/27/86	Mobil/Fort Sutter Mobil	RF225-189
2/27/86	City Service/Tim Brown	RF219-8
2/28/86	Gate/Robert E. Hatcher	RF205-4
2/28/86	Field/Avis Rent-A-Car	RF173-13
2/28/86	Quaker State/Interstate Oil Company.	RF213-139
2/28/86	Quaker State/Salzston Chrysler Plymouth Dodge, Inc.	RF213-140
2/28/86	Quaker State/Bright Oil & Tire Co.	RF213-141
2/28/86	Eastern NJ/Corona Plastics, Inc.	RF232-208
2/28/86	Eastern/Essex Chair Company	RF232-209
2/28/86	Mobil/10 Mile & Ryan et al	RF225-191 RF225-192 RF225-193
2/28/86	Mobil/Joseph F. Papas	RF225-194
2/28/86	Mobil/South Clairemont Service	RF225-195
2/28/86	Mobil/Regional Publishing Corp.	RF225-196

[FR Doc. 86-5920 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,400,000.00 (plus accrued interest) obtained as the result of a Consent Order between the DOE and Placid Oil Company (Placid). The funds will be distributed to refund applicants who purchased petroleum products from Placid during the settlement period (August 19, 1973 through January 27, 1981).

DATE AND ADDRESS: Comments must be filed in duplicate by (30 days from date of publication in the *Federal Register*) and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should refer to Case No. KEF-0007.

FOR FURTHER INFORMATION CONTACT: Matt Husten, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order summarized below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Placid Oil Company (Placid). Placid, the owner and operator of a refinery located in Port Allen, Louisiana, entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period August 19, 1973 through January 27, 1981. Under the terms of the Consent Order, Placid has remitted $1,400,000 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE proposes that the Placid consent order funds be distributed in a two-stage refund proceeding. The first stage will attempt to refund monies to injured Placid customers who are able to document their purchases of Placid product. The Proposed Decision and Order provides that the funds will generally be distributed to successful claimants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by Placid's alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted with in 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 6, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

March 6, 1986.

Name of Case: Placid Oil Company
Date of Filing: October 18, 1985
Case Number: KEF-0007

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) of the DOE formulate and implement special refund procedures in certain instances. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE petroleum pricing regulations.

On October 18, 1985, the ERA requested that the OHA formulate and implement procedures to distribute funds the DOE had received pursuant to a Consent Order entered into with Placid Oil Company (Placid). This Proposed Decision outlines the procedures that the OHA has tentatively formulated to distribute the Placid consent order funds.

I. Background

Placid was a "refiner" and "reseller" of petroleum products as those terms were defined in 10 CFR 212.31.[1] The ERA audited Placid to determine the firm's compliance with the regulations applicable to refiners and resellers. On February 18, 1983, the ERA issued a Proposed Remedial Order (PRO) to Placid alleging that, from August 1973 through January 1976, the firm charged prices for motor gasoline, natural gas liquids (NGLs), natural gas liquid products (NGLPs), middle distillates and residual fuel in excess of the prices allowed under the DOE regulations.

In order to settle the claims made in the PRO and certain other claims by the DOE which might have arisen, Placid and the DOE entered into a Consent Order on February 22, 1984 (the Consent Order). Placid's first sales of crude oil were specifically excluded from the ambit of the Consent Order, as were Placid's obligations under the DOE Entitlements Program. *See* Consent Order, ¶¶ 302, 501. Pursuant to the Consent Order, Placid remitted the sum of $1,400,000 to the DOE to cover certain alleged violations of the applicable price regulations during the period between August 19, 1973 and January 28, 1981.

II. Jurisdiction and Authority To Fashion Refund Procedures

The Subpart V process is useful in situations where the DOE is unable to ascertain the identity of the particular persons entitled to receive refunds or the precise amounts of such refunds. 10 CFR 205.280; *see also* 44 Fed. Reg. 8562 (February 9, 1979). For a detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

We have considered the ERA's October 18, 1985 petition requesting that we implement a Subpart V proceeding with respect to the Placid consent order funds. We have determined that such a proceeding is appropriate in this case.

III. Proposed Refund Procedures

We propose a two-stage process to distribute the Placid monies. In the first stage, we will attempt to refund monies to those who purchase Placid products during the settlement period. Purchasers must file claims and document that purchases in order to be eligible for portions of the consent order funds. In addition, purchasers will be required to demonstrate that they were injured by the alleged overcharges—e.g., that they did not pass through any alleged overcharges to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We will not set forth second-stage procedures at this time.

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[1] According to documents in the DOE audit file, Toro Petroleum Corporation (Toro) operated a gasoline blending facility during 1973 and early 1974. In February 1974, Ryder Systems, Inc. (Ryder) acquired more than 50 percent of Toro's capital stock, and commenced building a refinery that by late 1974 allowed Toro to produce distillates and residual fuel. In December 1974, Placid Refining Company, a wholly-owned subsidiary of Placid Oil Company, purchased Toro from Ryder. Toro's and Ryder's activities from August 19, 1973 forward are covered under the terms of the Placid Consent Order, and we will accept Applications for Refund from Toro's and Ryder's customers who purchased covered product during the consent order period.

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With regard to first-stage procedures, we propose adoption of certain presumptions. Presumptions in refund cases are specifically authorized by the DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications efficiently.

A. Allocation of Funds and a Volumetric Refund Presumption

We note that Placid may have acted as a reseller of crude oil during the consent order period. Although crude oil resales are not specifically excluded from the scope of the Consent Order, the DOE audit underlying the Consent Order apparently did not examine any crude oil resales Placid may have made. *See* Consent Order, ¶ 302. Accordingly, we have tentatively concluded that the Placid consent order funds should be allocated to purchasers of products other than crude oil.

We propose the adoption of a presumption that the alleged overcharges were dispersed equally over all sales of products other than crude oil made by Placid during the consent order period. To implement such a presumption, we will calculate a volumetric refund figure. This figure is equal to the amount of available consent order funds divided by the number of gallons of covered product other than crude oil sold by Placid during the consent order period. Based on information from the Placid audit files, we estimate that Placid sold 4,083,904,613 gallons of covered products during the consent order period. This results in a volumetric refund figure of $0.000343 per gallon ($1,400,000 of consent order funds divided by 4,083,904,613 gallons sold). A claimant will be eligible to receive a refund equal to the documented number of gallons bought from Placid during the consent order period, multiplied by the volumetric refund figure of $0.000343.[2] In addition, interest which has accrued on the consent order funds will be applied to each paid refund on a pro rata basis.

B. Demonstrating Injury and Related Presumptions

In order to be eligible to receive a refund, claimants will, with several exceptions discussed later in this Proposed Decision, be required to demonstrate that they have been injured by Placid's alleged overcharges. While there are a variety of methods of demonstrating injury, several elements are common to the showings required of refiners, resellers and retailers that purchased covered product from Placid during the consent order period. First, as a preliminary to a showing of injury, a firm must demonstrate that during the period covered by the Consent Order, it maintained "banks" of unrecovered increased product costs which were at least equal to the amount of the refund claimed. Any demonstration of the existence of banks should show that banks where maintained, or could have been maintained, until the relevant product was decontrolled.[3] If actual, contemporaneously calculated cost banks are not available, we will accept other types of information that demonstrate the existence of cost banks during the relevant period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Co.*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985).

In addition to demonstrating the existence of banks, a refiner, reseller or retailer claimant must demonstrate that cognizable injury resulted from the purchase of Placid's allegedly overpriced product.[4] A firm migh establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982).

1. Small Claims Presumptions. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges that occurred many years ago. In prior refund proceedings, we have adoped a small claims procedure to assure that the costs of filing a refund application, and the cost to the OHA of analyzing it, do not exceed the anticipated refund. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). We find that such a small claims procedure is warranted in this refund proceeding as well.

In many recent cases, we have adopted $5,000 as a reasonable value for a threshold refund amount. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). The factual situations in the cases cited above are similar to the circumstances surrounding this case. Accordingly, we propose that firms claiming volumetric refunds of $5,000 or less should not be required to provide banks of unrecouped increased product costs or evidence of injury.[5]

2. End-User Presumption. In prior refund proceedings, we have adopted a presumption that end-users of covered products absorbed alleged overcharges. Unlike regulated firms in the petroleum industry, firms that were the ultimate consumers of covered products generally were not subject to price controls during the consent order period, and were not required to keep records that justified selling price increases by reference to petroleum cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices on non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983) *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that an end-user of Placid product will not be required to demonstrate that Placid's alleged overcharges caused injury. Documentation of purchase from Placid, we propose, will be a sufficient showing that the end-user was injured by the alleged overcharges.

3. Agricultural Cooperatives and Firms Not Regulated by the DOE. Firms regulated by a governmental agency other than the DOE or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed Placid's alleged overcharges. In the case of otherwise regulated firms, e.g., public utilities, any alleged overcharges incurred as a result of the alleged violations of the DOE regulations would routinely have been passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Overcharges incurred by, and refunds granted to, cooperatives will also directly influence the prices charged to member customers. Consequently, since the benefits of refunds will accrue to the ultimate consumers affected by Placid's alleged overcharges (the ratepayers or cooperative members), otherwise regulated firms and cooperatives need only document their purchase volumes from Placid to be eligible to receive refunds. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Nonetheless, these firms should include with their applications a full, detailed explanation of the manner in which refunds would be passed through to customers and an explanation of how the appropriate regulatory body or membership group would be advised of the applicant's receipt of a refund.

4. Spot Purchaser Presumption. We also propose to adopt a rebuttable presumption that firms which made only spot purchases of Placid product have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Placid's product at increased prices unless such purchases were economically advantageous. *See Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it suffered injury as a result of Placid's alleged overcharges. For example, a spot purchaser might attempt to show that it paid Placid uncompetitive prices, and was subsequently unable to recover those prices. *See Ropet, Inc./Duquesne Light Co.*, 13 DOE ¶ 85,153 (1985).

Comments regarding the tentative distribution scheme set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision in the **Federal Register**. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. *See Vickers.* Applications for Refund should not be filed at this time.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price and volume of product purchased; banks of unrecouped increased product costs; and the extent of any injury alleged. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim.

It is Therefore Ordered That:

The $1,400,000 refund amount obtained from Placid Oil Company pursuant to the Consent Order entered into with the Department of Energy on February 22, 1984 will be distributed in accordance with the foregoing Proposed Decision.

[FR Doc. 86–5921 Filed 3–17–86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $66,969 obtained as a result of a consent order which the DOE entered into with Key Oil Company, a reseller-retailer of diesel fuel located in Franklin, Kentucky. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0106.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b) notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $66,969 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Key Oil Company. The funds were provided to the DOE by Key to settle all claims and disputes between the firm and the DOE regarding the

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[2] The volumetric refund methodology does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer may receive an appropriate portion of the consent order funds. We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and therefore any purchaser will be allowed to file a claim that it absorbed a disproportionate share of the alleged Placid overcharges during the consent order period. An application requesting a refund greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[3] We note that effective July 15, 1979, the retailer price rule for motor gasoline was amended. That amendment eliminated the banking provision for retailers of motor gasoline. 44 FR 42541 (July 19, 1979). Accordingly, retailers will not be required to submit evidence that they maintained banks of unrecouped increased product costs for motor gasoline after July 15, 1979. They will, however, be required to furnish information demonstrating (1) the existence of banks through July 15, 1979, and (2) that they suffered injury as a result of their motor gasoline purchases from Placid, both before and after the banking provision change. See Note 4.

We also note that effective May 1, 1980, a new rule regarding the pricing of motor gasoline by resellers and reseller-retailers went into effect. As a result, these types of firms were allowed to calculate maximum lawful selling prices either under a fixed-margin approach set forth in the new rule or using the method established by rules in effect on April 30, 1980. 45 FR 29546 (May 2, 1980). As a result, Placid's customers who were motor gasoline resellers or reseller-retailers and who chose the fixed-margin approach were not to maintain banks subsequent to April 30, 1980. The lack of motor gasoline cost banks for the period beyond April 30, 1980, will not preclude a refund based upon a firm's total purchases of covered Placid products. Nonetheless, if a firm had chosen the fixed-margin approach, and is unable to show that it maintained cost banks for motor gasoline after April 30, 1980, it must still demonstrate that it maintained cost banks until that point, and that it absorbed the effects of Placid's alleged overcharges. See Note 4.

[4] The OHA has consistently held, an continues to believe, that the existence of banks of unrecouped increased product costs does not demonstrate injury. *National Helium Corp./Farmland Industries, Inc.*, 11 DOE ¶ 85,257 (1984); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In a recent district court case, our judgment in this matter was upheld:

> OHA's requirement of proof of nonpass-through is entirely reasonable and well within OHA's authority. . . The basis for OHA's presumption [that first purchasers passed through alleged overcharges] is strengthened by the very structure of the price control regulations. Under the regulations, refiners such as ARCO and Mobil were generally permitted to pass on their increased costs to the full extent that the market would bear. . . Indeed, plaintiffs [ARCO and Mobil] do not dispute that while substantial sums were amassed in cost banks, the size of these banks was small in comparision to the huge cost increases that were passed on to downstream consumers.
>
> Perhaps most important, OHA's requirement that a direct purchaser prove nonpass-through is consistent with the equitable principles under which the Subpart V provisions must operate.

Atlantic Richfield Co. v. DOE, Nos. 84–190/84–735, slip op. at 24–28 (D. Del. September 28, 1985).

[5] Firms that claim refunds in excess of $5,000 but which are unable to establish that they absorbed Placid's price increases will be eligible for refunds up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See Vickers*, 8 DOE at 85,396.

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manner in which the firm applied the federal price regulations with respect to its sales of diesel fuel during the consent order period November 1, 1973 through March 31, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to the eight first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Key or to submit a statement verifying that it purchased diesel fuel from Key and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Appications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributiong any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 11, 1986.

Name of Petitioner: Key Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF–0106.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Key Oil Company (Key).

I. Background

Key is a "reseller-retailer" of diesel fuel as that term was defined in 10 CFR 212.31 and is located in Franklin, Kentucky. Based on an audit of Key's records, ERA issued a Proposed Remedial Order (PRO) on March 20, 1981, alleging that Key committed certain pricing violations with respect to its sales of diesel fuel.

In order to settle all claims and disputes between Key and the DOE regarding the firm's sales of diesel fuel during the period covered by the PRO, Key and the DOE entered into a consent order on September 29, 1981. The consent order funds represented 64.3 percent of the amount of the overcharges originally stated in the PRO. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Key does not admit that it violated the regulations.

The consent order required Key to pay a total of $58,730, plus installment interest, in 24 equal monthly installments. The first payment was received on October 16, 1981 and the last on September 21, 1983.[1] This decision concerns the distribution of the funds in the escrow account.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Key's pricing practices during the consent order period. Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g. Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified and Unidentified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identify of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Key, eight first purchasers were identified as having allegedly been overcharged. ERA also alleged overcharges to customers who were not identified. We recogniae that the DOE audit files do not necessarily provide conclusive evidence regarding the identify of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the direct customers identified by the audit, other direct customers who can show injury, and subsequent repurchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, and the portion of the consent order fund which was allotted to each customer by ERA, are listed in the Appendix. We will allot the remaining $59,268 plus accrued interest to customers who are as yet unidentified.

As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As an initial matter, we will adopt a presumption that the alleged overcharges committed by Key were dispersed evenly among all sales of diesel fuel made by the firm during the relevant consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products/Co. Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Using a volumetric approach, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of diesel fuel purchased by the claimant. For claimants which purchased diesel fuel from Key but were ot identified by ERA, the volumetric factor is $0.01838 per gallon.[2] In addition, successful claimants will receie a proportionate share of accrued interest.

Second, we plan to presume that purchasers of Key's products seeking small refunds were injured by Key's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82, 541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund sicne it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco)*, and cases cited therein.

Unlike threshold claimants, a reseller or retailer which claims a refund in excess of $5,000 will be required to provide detailed documentation of its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increase costs.[3]

We are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. To prove injury, ultimate consumers must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharge for refined petroleum products. In the case of regulated firms, *e.g.*, public utilities, and overcharges incurred as a result or Key's alleged violátions of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982)

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[1] The total consent order payment including installment interest amounted to $66,969. We have used this figure as the principal amount. As of February 28, 1986, the escrow account contained $92,043, including accrued interest.

[2] This figure was derived by dividing the remaining $59,268 principal amount by the 3,224,075 gallons of diesel fuel sold by Key during the consent order period.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to $5,000 threshold, without being require to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

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(*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised to the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE At 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Key Oil Company pursuant to the consent order executed on *September 29, 1981*, will be distributed in accordance with the foregoing decision.

Appendix

KEY OIL COMPANY

First purchasers	Share of settlement[1]
Cecil Key Truck Stop, Highway 222 & 165, Glendale, KY 42740	$1,340
Tri County Paving & Stone, Post Office Box 92, Rockfield, KY 42274	736
Gassie Construction Company, 720 Beech Street, Bowling Green, KY 42101	409
Gallatin Oil Company, 411 West Main Street, Gallatin, TX 37066	2,546
Winn Oil Company, 2940 N. Main Street, Madisonville, KY 42431	1,071
Ney Oil Company[2] Louisville, KY 40201	1,004
V.E. Overhold[2]	67
Allen Oil Company[2]	469

[1] This figure includes the share of installment interest. It does not include accrued interest. See note 1, p. 2.

[2] No address available.

[FR Doc. 86-5822 Filed 3-17-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2986-4]

Science Advisory Board, Executive Committee, Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Science Advisory Board's Executive Committee on April 7–8, 1986 in the Administrator's Conference Room 1101, West Tower, of the Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on April 7, and will adjourn at approximately 12:00 noon on April 8, 1986.

The agenda for the meeting includes discussion of a resolution by the Environmental Health Committee on the preparation of Agency risk assessment; briefing on EPA's comparative risk project; EPA requests for new SAB reviews; briefing on the Agency's Risk Assessment Forum; committee and subcommittee reports; and other issues of members interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, D.C. 20460 or call, (202) 382-4126 by close of business April 1, 1986

Dated: March 10, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-5880 Filed 3-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Federal Deposit Insurance by Operating Noninsured Institutions (OMB No. 3064-0060).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESSES: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on the collection of information should be submitted on or before April 2, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval for extending the expiration date of the form used by operating noninsured financial institutions who apply for FDIC deposit insurance. The form, FDIC 6200/07, requires the applicant to furnish information about the institution's financial history and condition, capital structure, future earnings prospects, the identity of the management, and information about the community served. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) before approving the application. It is estimated that it takes an applicant, on its average, 15 hours to prepare the application form.

Dated: March 12, 1986.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5860 Filed 3-17-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on March 3, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane. Rockville, MD 20857, 301-443-2765.

Dated: March 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-5856 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

Radiopharmaceutical Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on March 3, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-5857 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Bioequivalence of Solid Oral Dosage Forms; Change of Meeting Dates

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in the dates for the forthcoming public workshop on bioequivalence of conventional release, solid-oral drug dosage forms.

DATE: The workshop will now be held on September 29 through October 1, 1986, 9 a.m. to 5 p.m.

ADDRESS: The meeting will be held in the first floor auditorium at the Department of Health and Human Services, North Building, 330 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Moore, Division of Bioequivalence, Center for Drugs and Biologics (HFN-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6776.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1986 (51 FR 2574), a public workshop on bioequivalence issues was announced. In late January, the National Association of Pharmaceutical Manufacturers and the Generic Pharmaceutical Industry Association requested that the workshop be postponed until September. The reasons given for their request were insufficient time to prepare for the meeting, previous commitments for key scientific and technical personnel, a conference already being held immediately preceding the planned workshop, and other conflicts with the May dates. In order to provide an opportunity for the greatest number of concerned individual to participate. FDA is moving the dates of the meeting from May 7 through 9, 1986, to September 29 through October 1, 1986. The hours and location of the meeting stay the same.

The workshop will follow the previously announced format and provide a forum to discuss:

(1) The design of in vivo bioequivalence testing for conventional release, solid oral dosage forms of drugs;

(2) Quantitative and statistical analysis and evaluation of bioequivalence testing studies for conventional release, solid oral dosage forms of drugs;

(3) In vivo and in vitro data correlation and its implications on bioequivalence; and

(4) Agency procedures and regulatory aspects of bioequivalence.

Additional information on the workshop and directions on participation as a speaker on the program will be provided in a subsequent notice.

Dated: March 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-5858 Filed 3-17-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Revision of Income Criteria for Eligibility for Uncompensated Services

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the applicability of the recent revision of the Poverty Income Guidelines to uncompensated services programs administered by health care facilities pursuant to Titles VI and XVI of the Public Health Service Act.

DATE: The revision of the guidelines must be implemented by affected facilities on April 12, 1986.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, Director, Division of Facilities Compliance, Office of Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 11-19,

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Rockville, Maryland 20857, Telephone 301 443-5856.

SUPPLEMENTARY INFORMATION: On February 11, 1986 [51 FR 5105], the annual revision of the Poverty Income Guidelines was issued effective upon publication in the **Federal Register**. That revision affects, among others, health care facilities that have received construction assistance under Title VI or Title XVI of the Public Health Service Act, 42 U.S.C. 291, et seq., and 42 U.S.C. 300q, et seq., respectively. The regulations applicable to those facilities provide that the eligibility of persons for uncompensated services is to be determined in accordance with the current Poverty Income Guidelines of the Department of Health and Human Services, formerly published by the Community Services Administration (CSA). See 42 CFR 124.506(a). The statute which gave this Department authority to revise the guidelines also provides that any reference in law to the Poverty Income Guidelines constitutes a reference to, in this case, the present revision [Pub. L. 97–35, 683(c)(1)]. A discussion of the basis for delaying the effective date of the guidelines for eligibility for uncompensated services can be found in the **Federal Register**, Volume 47, No. 79, page 17489, published on April 23, 1982.

Dated: March 12, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–5854 Filed 3–17–86; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Indian Reservation, MT; Ordinance Amending Laws Relating to the Use and Distribution of Liquor

February 28, 1986.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 283–85 and Ordinance No. 73 were duly adopted by the Blackfeet Tribal Business Council on June 6, 1985. Resolution 283–85 and Ordinance No. 73 provide for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Blackfeet Indian Tribe. The ordinance reads as follows:

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

Resolution 283–85

Whereas: The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation; and

Whereas: The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources or the Blackfeet Indian Reservation; and

Whereas: Pursuant to Article VI, Section 1(h), the Blackfeet Tribal Business Council has been empowered to adopt laws regulating and licensing all business activities conducted upon the Blackfeet Indian Reservation; and

Whereas: The Congress of the United States has delegated its authority to regulate the sale of alcoholic beverages within Indian reservations to the various tribal governments who occupy those reservations; and

Whereas: Pursuant to the Act of June 30, 1919 (41 Stat. 3, 17), the Congress of the United States expressly provided that the lands within the Blackfeet Reservation, whether allotted, unallotted, reserved, set aside for townsite purposes, or otherwise disposed of, shall be subject to all the laws of the United States prohibiting the introduction into the Blackfeet Reservation until otherwise provided by Congress; and

Whereas: Congress has never provided that the liquor laws of the United States would not be applicable to all lands within the exterior boundaries of the Blackfeet Reservation; and

Whereas: Pursuant to Title 18 of the United States Code, Section 1161, liquor ordinances of the Blackfeet Tribe are a part of the federal liquor laws; and

Whereas: The Blackfeet Tribal Business Council first advertised the attached Ordinance No. 73, in the local newspaper for two weeks and then held a public hearing in Browning, Montana, regarding said ordinance; and

Whereas: After due consideration the Blackfeet Tribal Business Council believes that the attached ordinance fairly represents the views, policy and needs of the Blackfeet Nation in the area of liquor regulation; now

Therefore Be It Resolve: That the Blackfeet Tribal Business Council hereby adopts the attached Ordinance No. 73, and requests its prompt approval by the Secretary of the Interior or his authorized agent; and

Be It Further Resolved: That all prior ordinances regulating the sale of alcoholic beverages shall be repealed as of the date of the approval of the attached Ordinance No. 73, by the Secretary of the Interior or his authorized representative and final publication in the Federal Register; and

Now Be It Finally Resolved: That upon final approval of the attached Ordinance No. 73, and its final publication in the Federal Register, the authority of the Tribal Council as stated in the ordinance shall be delegated to the Tribal Revenue Department until otherwise changed by the Blackfeet Tribal Business Council.

Attest:

Myra J. Galbreath,

Secretary, Blackfeet Tribal Business Council.

The Blackfeet Tribe of the Blackfeet Indian Nation.

John Yellow Kidney,

Vice-Chairman, Blackfeet Tribal Business Council.

Certification

I hereby certify that the foregoing resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed and convened Regular Session assembled for business the 6th day of June, 1985, with Seven (7) members present to constitute a quorum, and by a vote of Five (5) for and Two (2) opposed.

Myra J. Galbreath,

Secretary, Blackfeet Tribal Business Council.

Ordinance No. 73

Regulation and Control of Alcohol

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2. Sale of Alcoholic Beverages Privilege, Not Right

Part 2.—Retail Sales Restrictions

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2. Sales and Distribution of Alcoholic Beverages Lawful
3. Closing Hours for Licensed Retail Establishments
4. Sale of Alcoholic Beverages During Closed Hours Unlawful
5. Lapse of License for Non-Use
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1. License Classification
2. Beer Retailer's License—Application and Issuance—Check of Books of Account and Premises by Tribe

3. Retail Beer License for On-Premises Consumption—Wine License Amendment—Limit on Number of Licenses
4. Retail Beer and Wine License for Off-Premises Consumption Only—Discretionary Authority to Issue—Limited to Tribal Members Only or 51% Member Owned Businesses on New Licenses
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1. Effective Date
2. Repeal of Prior Ordinance and Resolutions

Ordinance No. 73

Regulation and Control of Liquor

Part 1.—General Provisions

1.0 *Declaration of Public Policy—Subject Matters of Regulation.* (A) It is hereby declared to be the public policy of the Blackfeet Tribe to effectuate and ensure the entire control of the sale and distribution of all alcoholic beverages within the Blackfeet Indian Reservation, subject to the inherent sovereign power of the Blackfeet Nation and the power delegated to the Tribe by the United States Congress and concurrently with the State of Montana.

(B) This code is an exercise of the police powers of the Blackfeet Nation and the power delegated pursuant to Title 18, Section 1161 of the United States Code, in and for the protection of the welfare, health, peace, morals and safety of the people of the Blackfeet Nation and residents of the Blackfeet Indian Reservation.

(C) It is further the policy of the Blackfeet Nation to effectuate the economic rights of members of the Blackfeet Nation, as guaranteed by Article VIII, Section 2, of the Blackfeet Constitution. This policy is implemented herein by limiting the issuance of new licenses to enrolled members of the Blackfeet Nation or business entities which are at least fifty-one percent (51%) owned by enrolled members of the Blackfeet Nation.

2.0 *Sale of Alcoholic Beverages Privilege, Not Right.* A license for the sale or distribution of alcoholic beverages within the Blackfeet Indian Reservation is a privilege which the Blackfeet Nation may grant or deny and is not a right to which any person or entity is entitled.

Part 2.—Retail Sales Restrictions

1.0 *Unlawful Sales and Other Transactions.* (A) It shall be unlawful for any licensee, his/her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to any person:

(1) Under nineteen (19) years of age; or

(2) Who is obviously, actually or apparently intoxicated.

(B) It shall be unlawful for any person or entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation without first obtaining a license pursuant to this ordinance.

(C) It shall be mandatory under this law for all licensees to display in a prominent place in their premises a placard stating fully the consequences for violations of provisions of this law by persons under nineteen (19) years of age.

2.0 *Sales and Distribution of Alcoholic Beverages Unlawful.* It shall be lawful for a licensed person or business entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation, provided that the licensee complies with the provisions of this ordinance, concurrently with the laws of the State of Montana.

3.0 *Closing Hours for Licensed Retail Establishments.* All licensed establishments wherein alcoholic beverages are offered for sale, or given away at retail shall be closed:

(A) Each day between 2:00 a.m. and 8:00 a.m., and

(B) Easter Sunday between 8:00 a.m. and 2:00 p.m. (all day);

(C) From 8:00 p.m. December 24 (Christmas Eve) to 8:00 p.m. December 25 (Christmas Day); and

The Blackfeet Tribal Business Council retains discretionary authority to close licensed retail establishments in recognition of Indian religious ceremonies, after giving due notice. Provided, however, that when a licensed retail establishment is operated in conjunction with a restaurant, hotel, or other lawful business other than the sale of intoxicating alcoholic beverages, then such other lawful business need not be closed, but only the part whereof such alcoholic beverages are sold.

4.0 *Sale of Alcoholic Beverages During Closed Hours Unlawful.* It shall be unlawful for any licensed tribal

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establishments to sell, offer for sale, or give away alcoholic beverages during the hours when the licensed retail establishments are required by this ordinance to be closed or otherwise refrain from the sale of alcoholic beverages.

5.0 *Lapse of License for Non-Use.* (A) Any retail license issued pursuant to this ordinance (including any retail license to sell alcoholic beverages for off-premises consumption) not actually used in a going establishment for ninety (90) days shall automatically lapse. Upon determining the fact of non-use, the Tribal Council shall cancel such license of record and no portion of the fee paid therefore shall be refundable.

(B) The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide resort, park hotel, tourist facility from the Tribal Business Council to close the business.

(C) The Tribal Council may, in its discretion, waive the effects of this section for a licensee who failed to use his license in a going establishment for ninety (90) days should the Council find that said lapse was reasonably beyond control of the licensee.

6.0 *Tribal License Automatically Revoked With Loss of State License.* Pursuant to federal law, the regulation of transactions involving alcoholic beverages within the Indian Reservation is a matter of concurrent jurisdiction between the various Indian tribes and the States in which their reservations are located. Thus to validly engage in the business of selling or distributing alcoholic beverages on Indian reservations a licensee must possess both a tribal and state license.

(A) Any tribal license issued pursuant to this ordinance will be automatically revoked ninety (90) days after the Tribal Council receives notification from proper State officials that the licensee's state license has been revoked or has otherwise expired, and that all state appeals processes have been exhausted.

Part 3.—License Administration

1.0 *License Classification.* (A) The issuance of licenses for the retail sale of alcoholic beverages within the Blackfeet Indian Reservation shall be based upon the following classifications.

CLASS 1. *All Beverage License:* This license enables the licensee to sell liquor, beer, wine and other alcoholic beverages, as provided by law, at retail within the boundaries of the Blackfeet Indian Reservation.

CLASS 2. *On-Premises Retail Beer License, With Available Wine Sales Amendment:* This license enables the licensee to sell beer for on-premises consumption. For an additioinal fee a wine amendment is available. The license must make an initial showing that the sale of beer for on premises consumption is supplementary to a restaurant or prepared food business. Non-retention of the beer license, for any reason, will mean automatic loss of the wine license amendment.

CLASS 3. *Off-Premises Retail Beer License With Available Wine Sales Amendment:* This license enables the licensee to sell beer and wine with an amendment, in the original package for off-premises consumption only. The licensee must make an initial showing that the license will be used in conjunction with a business operated primarily as a bona fide grocery store or drug store.

(B) The issuance of new licenses in Class 1, 2, and 3 shall be limited to enrolled members of the Blackfeet Indian Nation or business entities which are at least fifty-one percent (51%) owned and operated by an enrolled member of the Blackfeet Indian Nation.

CLASS 4. *Special Licenses:* This license consists of special permission enabling the licensee to sell beer or wine to the patrons of some preplanned community event, to be consumed within the enclosure where the event is held. Allowable events include company picnics, conventions, fairs, civil entertainment, and sporting events.

2.0 *Beer Retailer's License—Application and Issuance—Check of Books of Account and Premises by Tribe.* (A) Any person desiring to have and possess beer and wine for sale under this ordinance for the purpose of selling it at retail shall first apply to the Tribal Council for a license to do so and tender with said application the license fee provided for.

(B) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the Tribal Council shall issue a license to such person or applicant, which license shall at all times be prominently displayed in the place of business of the applicant.

(C) If the Tribal Council shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be promptly returned.

(D) The Tribal Council shall have the right and is hereby given the authority to make, at any time, an examination of the books of account of any such retailer and his premises and otherwise check his methods of conducting business in so much as it regards his retail liquor license, through independent licensed auditors.

3.0 *Retailer Beer License for On-Premises Consumption—Wine License Amendment—Limit On Number of Licenses.* (A) Except as otherwise provided by law, a license to sell beer at retail for on premises consumption, or beer and wine at retail for on-premises consumption, in accordance with the provisions of this ordinance, may be issued to any person, firm or corporation who is approved by the Tribal Council as a fit and proper person, firm or corporation to sell beer, except that:

(1) in the TOWN OF BROWNING, and within a distance of five (5) miles from the city limits of Browning, not more than one (1) license for every 1,000 persons residing in the above described area shall be issued and said license may not be used in conjunction with a retail all-beverage license.

(2) in the unincorporated TOWN OF EAST GLACIER PARK and within a distance of five (5) miles from the limits of East Glacier Park, not more than one (1) license for every 1,000 persons residing in the described area, shall be issued and said license may not be used in conjunction with a retail all-beverage license.

(3) the number of retail beer licenses for on-premises consumption, which may be issued by the Tribal Council, excluding those provided for in subsections (1) and (2) above, shall be determined on a limitation of no more than one (1) per 750 persons in that area and provided further, that, in the exercise of its sound discretion, the Tribal Council first determines that the issuance of said license is required by public convenience and necessity.

(B) Retail beer licenses, or beer and wine licenses, of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(C) An applicant for a license to sell beer, or beer and wine for on-premises consumption, at retail, must make a satisfactory showing that the sale of beer, or beer and wine for consumption on premises would be supplemental to the applicant's primary business activity of operating a restaurant or other prepared food business.

(D) Any licensee possessing an on-premises retail beer license may apply for an on-premises retail wine license amendment. An applicant to sell wine for on-premises consumption at retail, must first possess a valid retail on-premises beer license; provided, however, that this requirement shall not prevent an applicant from applying for an on-premises beer license and the retail on-premises wine license

simultaneously. Non-retention of the retail beer license, for whatever reason, shall mean automatic loss of the amendment.

A person holding a retail on-premises beer and wine license, may sell beer and wine for consumption on or off the premises.

4.0 *Retail Beer and Wine License for Off-Premises Consumption Only—Discretionary Authority to Issue—Limited to Tribal Members Only of 51% Member Owned Businesses on New Licenses.* (A) A retail license to sell beer or wine, or both in the original package for off-premises consumption only may be issued to any person, firm, or corporation to sell beer or wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or drug store.

(B) The number of such licenses which the Tribal Council may issue is not limited, but shall be determined by the Tribal Council in the exercise of its sound discretion, and the Tribal Council may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any cush license for cause.

(C) Provided, however, that the issueance of new licenses pursuant to this section is limited to enrolled members of the Blackfeet Indian Nation or business entities which are at least 51% owned by enrolled members of the Blackfeet Nation.

Retail beer, or beer and wine, licenses for off-premises consumption only, which are held by persons not members of the Blackfeet Nation, or by entities which are not 51% owned by enrolled members of the Blackfeet Nation, and which were of issue prior January 1, 1985 [sic], are not affected by the limitation in this sub-section. Said licenses shall be renewable and transferable subject to the limitations contained in this ordinance.

5.0 *Beer License Transfers.* (A) A transfer of any beer retailer's license, including transfer of a beer license with a wine license amendment, may be made upon application to the Tribal Council with the consent of the Council, provided that the transferee qualifies under this ordinance, and subject to the following limitations:

(1) Transfer of a license which was issued after January 1, 1985, as a new license with tribal member preference, may be made only to another enrolled member of the Blackfeet Nation or a business entity which is 51% owned by an enrolled member of the Blackfeet Nation.

(2) Transfer of a license issued prior to January 1, 1985, may be made to any qualified applicant, and will not be limited to tribal member preference.

6.0 *All-Beverage License—Quotas.* (A) Except as otherwise provided by law, a license to sell beer, wine and liquor at retail (an all-beverage license) in accordance with the provisions of this ordinance, may be issued to any person approved by the Tribal Council as a fit and proper person to sell such beverages, except that the number of all-beverage licenses which the Tribal Council may issue shall be limited as follows:

(1) There shall be no more than four (4) Class 1 all-beverage licenses for the TOWN OF BROWNING and within a five (5) mile radius of the town limits. An additional license will be available with each increase of 1,000 persons residing in the above described area.

(2) There shall be no more than one (1) Class 1 all-beverage license for the unincorporated TOWN OF EAST GLACIER PARK and within a five (5) mile distance from its limits, for every 1,000 persons residing in said area.

(3) The number of retail All-Beverage licenses which the Tribal Council may issue for premises situated outside the areas identified in (1) and (2) above, may not be more than one license for every 750 persons residing on the Blackfeet Indian Reservation, excluding the population of the area identified in (1) and (2) above.

(B) Retail all-beverage licenses of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(C) Any original license issued pursuant to this section, shall be issued only upon the Tribal Council having first determined, upon a hearing held pursuant to this ordinance, that the issuance of said license is justified by public convenience and necessity.

(D) Transfers of all-beverage licenses which were of issue prior to January 1, 1985, will not be limited to tribal members preference, and may otherwise be made to any qualified applicant.

7.0 *Census.* The most recent census of the Blackfeet Nation shall be the basis upon which the limitations outlined in this ordinance shall be detemined.

8.0 *Special License to Sell Beer and Wine—Application and Issuance.* (A) Any association or corporation conducting a picnic, convention, fair, community entertainment, or sporting event shall in the sound discretion of the Tribal Council be entitled to a special permit to sell beer and wine to the patrons of such event to be consumed within the enclosure where the event is to be held.

(B) An application for a special license shall be presented at least three (3) days in advance of the start of the proposed event and shall describe the location of the enclosure where the event is to be held.

(C) The application shall be accompanied by the amount of the license fee and a written statement of approval of the premises where the event is to be held issued by [sic] law enforcement agency that has jurisdiction over the premises and patrons.

(D) The license issued is a special license and authorises the sale of beer and wine only on the date and during the period stated in the application and approval.

Part 4.—Licensing Criteria and Procedure

1.0 *License as Privilege—Criteria for Decision on Application.* (A) A license under this ordinance is a privilege which the Blackfeet Nation may grant to, or deny, any applicant and is not a right to which any applicant is entitled.

(B) Except as provided herein, in the case of a license that permits onpremises consumption, the Tribal Council must find in every case in which it issues a new license, or in which it approves the transfer of a license that:

(1) In the case of the issuance of a new license, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that the applicant is at least 51% owned by an enrolled member of the Blackfeet Indian Nation.

(2) The applicant is financially responsible.

(3) The applicant will not have an interest in more than one establishment licensed for all-beverage sales.

(4) The applicant's past record and present status as a seller of alcoholic beverages and as a businessman and citizen demonstrates that he is likely to operate his establishment in compliance with all applicable tribal laws.

(5) The applicant is not under the age of twenty-one (21) years.

(6) The applicant has obtained the necessary general tribal business license.

(7) The applicant has not been convicted of a felony, or if the applicant has been convicted of a felony, that his rights have been restored.

(8) In the case of the transfer of a license originally issued as a new license after January 1, 1985, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that at

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least 51% of the firm or corporation is owned by enrolled members of the Blackfeet Indian Nation.

(C) The requirements of this sub-section will apply to all new licenses and transfers occurring after January 1, 1985, in Class 1, Class 2, and Class 3 licenses, except as otherwise provided in specific sub-sections. [sic, 2.0 *Application and Investigation*]

(A) Prior to the issuance of any license under this ordinance, the applicant shall file with the Tribal Council, any application in writing, signed by the applicant and containing such statements relative to the applicant and the premises where the alcoholic beverage is to be sold, as may be required by the Tribal Council, including, but not limited to the following:

(1) The name, age and place or residence of the applicant.

(2) The location of the premises where the license will be used.

(3) In the case of a firm or corporation, the names of all partners and shareholders in the firm or corporation; the percentage of ownership held by each partner or shareholder; the relationship, if any between the partners or shareholders (husband, wife, son, brother-in-law, etc.); and whether or not each shareholder or partner is an enrolled member of the Blackfeet Indian Nation.

(4) In the case of an individual applicant, whether the applicant is an enrolled member of the Blackfeet Indian Nation.

(5) Financial records and reports of the applicant. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(B) Upon receipt of a completed application of a license under this ordinance, accompanied by the necessary license fee, as further required in this ordinance, the Tribal Council shall within thirty (30) days make a complete and thorough investigation of all matters pertaining to the application and shall determine whether the applicant is qualified to receive a license and whether the applicant's premises are fit to carry on the business and that tribal law will be complied with.

(C) Upon proof that the applicant has made any false statement on the application, the application may be denied, or if issued, the license may be revoked.

3.0 *Notice of Application—Publication—Protest.* (A) When an application has been filed with the Tribal Council to sell alcoholic beverages at retail or to transfer such license, the Tribal Council shall promptly publish in a newspaper of general circulation within the Blackfeet Indian Reservation a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant may be mailed to a named tribal administrator within ten (10) days after the final notice is published. Notice of application for either transfer or sale shall be published once a week for four (4) consecutive weeks. Notice may be substantially as follows:

Notice of Application for Transfer of or for Retail Sale of Alcoholic Beverages

Notice is Hereby Given that on the ——— day of ———, 198—, one (name of applicant) filed an application for a license to engage in the retail sale of alcoholic beverages within the boundaries of the Blackfeet Indian Reservation.

The license is to be used at (describe location of premises where alcoholic beverages will be sold), and protests, if there are any, against the issuance of such license may be mailed to ———, Blackfeet Nation, Browning, Montana 59417, on or before ——— day of —, 198—.

Dated: ————————.

(B) Each applicant shall, at the time of filing his application, pay to the Blackfeet Nation an amount sufficient to cover the costs of publication of the notice.

(C) If the Tribal Council receives no written protests, it may issue a license without holding a public hearing. If written protests against the issuance of the license or transfer of an existing license are received, the Tribal Council shall hold a public hearing in Browning at the Blackfeet Tribal Offices. Additional public hearings may be held at the discretion of the Tribal Council.

4.0 *Protests and Hearing—Posting and Contents of License—Privilege—Expiration.* (A) No license may be issued until after the date set in the notice for hearing protests.

(B) Every license issued under this ordinance shall contain:

(1) The name of the person [sic] whom it was issued.

(2) The location of the premises, by street number or other appropriate description, where the license is to be used.

(3) Other information such as the Tribal Council shall deem necessary. Each license must be posted in a conspicuous place on the premises wherein the business authorized under the license is to be conducted. Such license shall be exhibited upon request to any authorized representative of the Tribal Council or to any peace officer of the Blackfeet Nation or Bureau of Indian Affairs.

(C) Any license issued under this ordinance shall be considered a personal privilege to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

5.0 *Transfer—By Sale—In Case of Death of Licensee—From Premises to Premises.* (A) Except as otherwise provided in this ordinance, no license for the retail sale of alcoholic beverages shall be transferred or sold. Nor shall said license be used for any place of business not described in the license without first making application to and receiving the approval of the Tribal Council.

(B) A license for the retail sale of alcoholic beverages may be transferred to the executor or administrator of the estate of any business of selling alcoholic beverages under a license, and in such event a license may descend or be disposed of with the business to which it is applicable under the appropriate probate proceedings.

(C) A license to sell alcoholic beverages at retail may be transferred to a qualified purchaser, upon a bona fide sale of the business operated under that license. No transfer of any license as to person or location shall be effective until approval by the Tribal Council, and any licensee, transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license shall be considered as operating without a license to operate the business to be transferred, under the license, pending final approval, providing an application for transfer has been filed with the Tribal Council.

6.0 *Denial of License—Public Safety and Welfare.* (A) The Tribal Council may deny the issuance of any license for the retail sale of alcoholic beverages if it determines that the premises proposed for licensing cannot be properly policed by local authorities.

(B) Nor may a license under this ordinance be issued if the Tribal Council finds upon the evidence presented at the hearing, that the welfare of the people residing in the vicinity of the place of which such license is desired will be adversely and seriously affected and the public interest will not be served by the issuance of such license.

7.0 *Expiration of License.* (A) Each July 1st, the Tribal Council shall issue licenses to holders of retail licenses to sell alcoholic beverages within the Blackfeet Reservation on an annual basis and as such fees as are prescribed by law, such licenses are subject to

revocation or suspension as provided for in Part 4, section 8 of this ordinance after midnight on June 30th of the licensing year for which the license fee has not been paid, if the annual license fees are not paid. Initial licenses issued under this ordinance, shall be issued, at the annual rate, for a period ending June 30, 1986, regardless of when issued.

8.0 *Renewal—Revocation or Suspension—Penalty.* (A) The Tribal Council may upon its own motion, and shall upon the written, verified complaint of any person, investigate the action and operation of any retail seller or alcoholic beverages licensed under this ordinance.

(B) If the Tribal Council, after investigation, shall have reasonable cause to believe that any such license has violated the provisions of this ordinance, it may, in its discretion, and in addition to other penalties prescribed:

(1) Reprimand the licensee; or

(2) Suspend a license for a period not to exceed three (3) months; or

(3) Revoke the license of any such licensee; or

(4) Refuse to grant a renewal of such license upon the expiration thereof; or

(5) Impose a civil penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00), subject to the right to a hearing in the Blackfeet Tribal Court. The affected licensee may seek a stay of the imposition of the fine provided the licensee files a petition for hearing on the fine with the Blackfeet Tribal Court within ten (10) working days of the day the licensee is notified of the fine. Failure to file a petition within the required time shall result in a loss of the Tribal Court's jurisdiction to review the fine pursuant to this ordinance.

9.0 *Judicial Review Concerning Alcoholic Beverage Laws.* (A) Any interested party shall have the right to seek judicial review of any decision of the Tribal Council concerning the issuance, transfer, suspension, or revocation of any license to sell at retail alcoholic beverages within the Blackfeet Reservation by the Blackfeet Tribal Court.

(B) Judicial revied under this provision will be limited to a review of the record of the prior proceedings on the affected license. The Court will be limited to determining:

(1) Whether the Tribal Council abused its discretion by acting arbitrarily or capriciously; or

(2) Whether the Tribal Council's decision is supported by the record of the case and the facts contained therein; or

(3) Whether the Tribal Council's decision is consistent with the applicable provisions of the law.

(C) The Tribal Council's decision shall be final unless modified or reversed by the Tribal Court.

Part 5.—Licensing Fees

1.0 *Retail Sales License and Special License Fees.* (A) Each retail beer, or retail beer and wine license, under the provisions of this ordinance, shall pay an annual license fee as follows:

(1) Retail on-premises beer license, Two Hundred Dollars ($200.00); with wine license amendment, an additional Two Hundred Dollars ($200.00).

(2) For a license to sell beer at retail for off-premises consumption only, Two Hundred Dollars ($200.00); for a wine license amendment to sell at retail for off-premises consumption only, an additional Two Hundred Dollars ($200.00).

(B) The fee of special license to sell beer and wine at certain gatherings shall be computed at a rate of Thirty Five Dollars ($35.00) a day for two or more days, but in no case less than Seventy Five Dollars ($75.00).

(C) The fee for licensees licensed as Class 1, All-Beverage retail sellers of alcoholic beverages shall be Five Hundred Dollars ($500.00).

(D) The license fee provided for in this ordinance are exclusive of and in addition to other license fees chargeable by the Blackfeet Nation for the privilege of carrying on business within the Blackfeet Indian Reservation.

(E) In addition to other license fees, the Tribal Council may require a licensee to pay a late fee of thirty percent (30%) of any license fee delinquent on July 1st of the renewal year, and sixty percent (60%) of any license fee delinquent of August 1st of the renewal year, and one hundred percent (100%) of any license fee delinquent on September 1st of the renewal year.

Part 6.—Violations and Enforcement

1.0 *Investigations—Search Warrants—Seizure and Forfeiture of Unlawful Alcoholic Beverages and Conveyance Devices.* (A) The Tribal Council may employ or appoint investigators or prosecuting officers who, under the Council's discretion, will perform such duties as it may require, and who shall be paid such fees and expenses as the Council may fix.

(B) Upon information or oath by any investigator appointed under this ordinance or any tribal or Bureau of Indian Affairs police officer showing reasonable cause to believe that alcoholic beverages are being illegally sold or kept for sale or for any unlawful purpose in any building or premises, it shall be lawful for the Tribal Court by warrant to authorize and empower the police officer or investigator or any other person named in the warrant to enter and search the building or premises and every part thereof and for that purpose to break open any lock, door, or fastening, to break open any closet, cupboard, box or other receptacle where alcoholic beverages might be concealed.

(C) The Tribal Council or any duly authorized representative thereof or any tribal or Bureau of Indian Affairs police officer shall have the right at any time to make an examination of the premises of any retail licensee as to whether the laws of the Blackfeet Nation are being complied with.

(D) Any investigator, duly appointed representative of the Blackfeet Tribal Council or any tribal or Bureau of Indian Affairs police officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this ordinance may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon a finding that the alcoholic beverage is being kept or sold in violation of this ordinance, the alcoholic beverage and all packages containing the same shall, in addition to other penalties prescribed by this ordinance, be forfeited as a matter of law to the Blackfeet Nation.

Whenever a vehicle or other conveyance device of any kind is used to store or transport alcoholic beverages for purposes contrary to the provisions of this ordinance, the vehicle or conveyance device may be seized forthwith. Upon a finding by the Tribal Court that the person in possession of the vehicle or conveyance device or person in charge in said vehicle or conveyance device was in violation of the provisions of this ordinance, the Court may, in addition to any other possible penalties, declare in and by decree that the vehicle or conveyance device, which had been seized, to be forfeited to the Blackfeet Nation.

2.0 *When Force May be Used in Seizure—Hearing Required in Forfeiture Cases.* (A) Where alcoholic beverages are found by an investigator or tribal or Bureau of Indian Affairs Police Officer on any premises or in any place in such quantities as to satisfy the investigator or police officer that such alcoholic beverage is being had or kept contrary to the provisions of this ordinance, it shall force if necessary and seize any alcoholic beverage found, including the packages in which it was had or kept, and immediately turn such alcoholic beverage over to the tribal council.

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(B) In all cases where alcoholic beverages, or alcoholic beverages and vehicles and conveyance devices, are seized, the Tribal Council or its designated prosecuting officer shall commence an action in the tribal court against the seized alcoholic beverage, vehicle or conveyance device, and the person or persons actually or apparently in possession or control thereof if any such person be presented at the time of the seizure. The alcoholic beverage shall be named as a defendant to the action.

(C) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in or [sic] control thereof if any such person be present at the time of the seizure, the reason the tribal council claims the right to possess the alcoholic beverage or conveyance device, or both, and shall demand that all persons who claim any right to the possession of the alcoholic beverage or conveyance device, or both, shall show the nature of their claim or claims and that the court declare the same to be contraband and that the court order the contraband forfeited to the Blackfeet Nation.

(D) A summons shall be issued, served or published as in all civil actions pursuant to the Tribal Law and Order Code, except that the court summons shall be published in a local newspaper within the Blackfeet Indian Reservation.

(E) In every case in which an alcoholic beverage or a conveyance device is seized by an investigator or police officer, it shall be his duty to forthwith make or cause to be made to the Tribal Council a report in writing of the particulars of the seizure.

3.0 *Inspection of Carrier's Records—Unlawful for Carrier to Refuse.* (A) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this ordinance, the Tribal Council or any person appointed by it in writing for the purpose, may inspect the freight and express books, and any other documents in the possession of any common carrier doing business within the exterior boundaries of the Blackfeet Indian Reservation, containing any information or record relating to any goods shipped, carried, received for shipment, or co-signed for shipment within the reservation. (B) Every common carrier and every official employee of any such company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document requested by the tribal council or its authorized representative, where that document relates to enforcement or administration under this ordinance, shall be deemed in violation of this ordinance and shall be subject to a fine of One Hundred Dollars ($100.00) per day for each day during which the violation continues, not to exceed Five Thousand Dollars ($5,000.00).

4.0 *Violation of Code Civil Action in Tribal Court—Corrective Action Before Judicial Proceedings.* (A) Every action charging a violation of the provisions of this ordinance shall be brought by the Tribal Council or its prosecuting officer, in the name of the Blackfeet Tribe, against the licensee or other alleged violator in the Blackfeet Tribal Court as a civil action.

(B) Provided, however, that the Tribal Council may, in the exercise of its sound discretion, resolve any alleged violation only when alleged to have been committed, by an authorized licensee, at the administrative level through the collection of an appropriate fine amount, an undertaking of corrective measures by the licensee, or other allowed penalty. Should an alleged violator agree to administrative resolution of the complaint, he shall not be allowed to seek judicial review of the administrative resolution.

Part 7.—Prohibitions and Penalties

1.0 *Unlawful Transfer, Sale and Possession of Alcoholic Beverages.* (A) Except when in possession of fully issued tribal license and as otherwise provided by this ordinance no person shall, within the Blackfeet Indian Reservation, by himself or through others, keep for sale, or directly or indirectly sell or offer to sell, or to give any other person alcoholic beverages.

(B) This section shall not apply to the county sheriff, tribal police, Bureau of Indian Affairs police, Blackfeet Tribal Council or its authorized representative when in possession of alcoholic beverages under judicial process or to sales by said entities and persons when under judicial process.

2.0 *Penalty for Sale of Alcoholic Beverages Without a License.* Any person who has not been issued a license for the retail sale of any alcoholic beverages under this ordinance who sells or keeps for sale any alcoholic beverage has committed a violation, and upon a finding thereof is punishable by a civil penalty of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Five Hundred Dollars ($1,500.00).

3.0 *Providing Alcoholic Beverages to Intoxicated Persons Prohibited.* (A) No retail seller of alcoholic beverages licensed pursuant to this ordinance may, either through themselves or an agent, sell any alcoholic beverages or permit alcoholic beverages to be sold to any person apparently under the influence of alcohol.

(B) Any retail seller of alcoholic beverages who is licensed pursuant to this ordinance who sells or allows to be sold alcoholic beverages to a person obviously intoxicated, is deemed to have violated this ordinance and upon a finding thereof is punishable of a civil penalty of up to Five Hundred Dollars ($500.00) for each infraction.

(C) No person may give alcoholic beverages to a person apparently under the influence of alcohol.

4.0 *Age Limit on Sale of Alcoholic Beverages—Penalty for Violation.* (A) Except in the case of an alcoholic beverage given to a person under nineteen (19) years of age by his parent or guardian for beverage purposes of administered or sold to him for medicinal purposes, no person shall sell, give or otherwise supply alcoholic beverages to any person under the age of nineteen (19) years or permit any person under that age to consume an alcoholic beverage.

(B) Any person shall have violated this provision who:

(1) invites a person under nineteen (19) years of age into a public place where alcoholic beverages are sold and treats, gives, or purchases an alcoholic beverage for such person; or

(2) holds out such person to the owner of a retail alcoholic beverage establishment that the person is older than nineteen (19) years of age or represents the same to the employees and agents of the owner.

(C) Any person who violates this provision may, upon a finding thereof, be punished through a civil penalty or a fine of not less than Two Hundred Fifty Dollars ($250.00) for each violation.

(D) Provided however, should the drinking age for the State of Montana be changed, the drinking age stated in this ordinance will automatically be changed to reflect the new change.

5.0 *Miscellaneous Prohibitions—Penalty.* (A) All licenses to sell at retail alcoholic beverages [sic] pursuant to this ordinance are hereby prohibited from engaging in the following activities:

(1) From engaging in pawnbroking or taking goods or materials in hock; or

(2) Lending money or engaging in similar activity to indigent persons solely for the purpose of enabling them to purchase alcoholic beverages in his establishment; or

(3) From allowing the consumption of alcoholic beverages on his premises which were purchased for off-premises consumption only; or

(4) From allowing fighting or threatening to fight on his premises or

from generally failing to keep order in his premises.

(B) Any licensee found to be in violation of any of the provisions of this section shall be deemed to have violated this ordinance and is subject to a civil penalty of not less than Three Hundred Dollars ($300.00) for each separate violation.

6.0 *Firearms Not Allowed on Premises.* (A) There shall be no firearms or other dangerous weapons allowed at any time on the premises where alcoholic beverages are being sold at retail, with the exception of licensed firearms for the maintenance of order, firearms possessed by duly authorized peace officers, and firearms maintained by the licensee for protection of himself, his agents, and invitees.

(B) Any person found in possession of a firearm or other dangerous weapon on a premises where alcoholic beverages are being sold at retail shall upon a finding thereof in court, be subject to a civil fine of not less than Two Hundred Fifty Dollars ($250.00).

7.0 *Minors Not Allowed—Eating Establishments Exception.* (A) Minors shall not be allowed in any establishment where alcoholic beverages are sold for on-premises consumption, except where a restaurant or other prepared food business is operated in conjunction therewith.

(B) Any licensee who is found to have violated this provision shall be deemed to have violated this ordinance and be subject to a civil fine of not less than Two Hundred Fifty Dollars ($250.00) for each violation.

8.0 *Sale of Alcoholic Beverages From Drive-In Windows or Similar Devices Prohibited.* (A) It is the public policy of the people of the Blackfeet Nation to stop the carnage that is taking place on the highways of the Blackfeet Reservation and which is occurring as a result of the high number of drinking drivers. It has been statistically proven that drinking drivers account for a significant percentage of all highway deaths and accidents. It is the public policy of the people of the Blackfeet Nation to prevent drinking and driving, not to encourage or facilitate such action.

(B) It shall be unlawful and a violation of this ordinance, to sell or offer to sell alcoholic beverages through drive-up windows or other similar devices which would allow the retail purchaser to purchase alcoholic beverages while remaining in his vehicle. Drive-up windows and other similar devices are hereby declared to be public nuisances and thus subject to injunction to prevent uses in violation of this ordinance.

(C) A licensee found to have violated this provision shall be subject to a civil penalty of not less than One Thousand Dollars ($1,000.00) and not more than Five Thousand Dollars ($5,000.00).

9.0 *Penalty for Violating Ordinance—Revocation of License.* (A) If any retail licensee is convicted of a violation under this ordinance, his license shall be immediately revoked or in the discretion of the Tribal Council such other sanction may be imposed as is authorized by this ordinance. Any person violating the provisions of this ordinance shall, upon a finding thereof, be deemed guilty and subject to such fine or penalty as is provided in this ordinance.

(B) A person under the age of nineteen (19) who is found to have violated any provision of this ordinance shall be subject to a One Hundred Dollar ($100.00) civil penalty for each offense.

10.0 *Officer or Agent, of Firm or Corporation, and Occupant of Premises Deemed Party to Violation.* (A) Where a violation of this ordinance is committed by a corporation or firm, the officer or agent in charge of the premises where the violation was committed shall be deemed to be a party to the violation and shall be personally liable to [sic] the penalties prescribed for the offense as principal offender.

(B) Upon proof of the fact that a violation of this ordinance has been committed by any person in the employ of the occupant of any house or premises, or by any guest of the occupant of any premises where the violation was committed, the occupant of the premises shall be personally liable for the penalties prescribed for the violation as principal offender, notwithstanding the fact that the occupant did not commit the violation or authorize its commission.

(C) Nothing in sections (A) and (B) above will relieve the person actually committing the offense for liability therefore.

11.0 *Injunction Actions.* (A) Upon the determination of the Tribal Council, in the exercise of its sound discretion, an injunction and immediate temporary restraining order may be sought against any retail licensee requesting that he be prohibited from further sales of alcoholic beverages and that his business activities be immediately suspended.

(B) The action may be started by the Tribal Council filing a petition in the Tribal Court, verified by affidavit, showing the need for immediate measures and showing that the licensee has been notified.

(C) If the Court finds that the circumstances present a public nuisance or that the public health and welfare has been or is endangered it shall issue a temporary restraining order and schedule a show cause hearing no later than five (5) working days from the date the temporary order is issued.

(D) The temporary restraining order will dissolve of its own force and effect on the fifth day if the Tribe fails to go forward on its petition on the day set for the hearing.

12.0 *Delegation of Authority.* The Blackfeet Tribal Council hereby reserves the right to delegate any of the powers and duties stated in this ordinance to any agency of the Blackfeet Tribe. In the event of such delegation, the Tribal Council shall promply notify all interested persons by proper publication of which activities or duties have been delegated and to which agency the delegation was made.

13.0 *Federal Laws Applicable.* The Federal Indian Liquor Laws remain applicable to any act or transaction not authorized by this ordinance and not otherwise in compliance with Federal law, violators may be subject to federal prosecution.

Part 8.—Regulation of Wholesalers, Brewers, and State Liquor Stores

1.0 *Brewers License to Sell Products—License Fee.* (A) It shall be unlawful for any brewer of beer, wherever located, to sell his product within the exterior boundaries of the Blackfeet Reservation without first obtaining a license and paying the appropriate fee as provided by this ordinance.

(B) Every brewer who is licensed to do business within the State of Montana, may obtain a license to sell his product within the Blackfeet Indian Reservation by making application with the Blackfeet Tribal Council and submitting a fee of Five Hundred Dollars ($500.00) therewith.

(C) Upon being satisfied that the applicant is duly licensed by the State of Montana and otherwise of good moral character, the Tribal Council shall issue such license to the applicant.

2.0 *Wholesale Distribution of Beer and Wine—License Required—Fee.* (A) It shall be unlawful for any person or firm to sell, offer to sell, or possess for sale any beer, or wine, or both, for wholesale distribution, within the exterior boundaries of the Blackfeet Reservation without first obtaining license and paying the appropriate fee as required by this ordinance.

(B) Any person desiring to possess and sell beer for wholesale or wine for

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wholesale, or both, under the provisions of this ordinance shall apply to the Tribal Council for a license to do so, submitting with his application his annual license fee of One Thousand Dollars ($1,000.00).

(C) Upon being satisfied that the applicant is of good moral character, has sufficient capital and is otherwise a law abiding citizen, the Tribal Council shall issue the license to the applicant.

(D) If the Tribal Council shall determine that the license should not be granted, the applicant shall be promptly notified and his license fee returned.

(E) This provision does not apply to stores owned or operated by the State of Montana as State Liquor Stores.

3.0 *State Liquor Store—Limit—Fee.* (A) There shall be one (1) State Liquor Store on the Blackfeet Indian Reservation. Said store shall not sell alcoholic beverages on the Blackfeet Indian Reservation, whether at wholesale or retail, without first obtaining a license pursuant to this ordinance and paying the appropriate fee.

(B) Upon application by the State of Montana and the tendering of a One Thousand Dollar ($1,000.00) license fee therewith, the Tribal Council shall issue a license to the State Liquor Store which will enable said store to sell alcoholic beverages at wholesale and at retail.

4.0 *Renewal—Suspension—Revocation—Expiration.* Licenses issued to wholesale distributors of alcoholic beverages, brewers, and the State Liquor Store, pursuant to this Part, shall be subject to expiration, renewal, revocation and suspension pursuant to the provisions of Part 4, sections 7, 8, and 9.

5.0 *Violators—Enforcement.* The provisions of this part may be enforced pursuant to the provisions of Part 8, sections 1 through 6 of the ordinance, including those provisions providing for the seizure and forfeiture of contraband alcoholic beverages and conveyance devices which are used in violation of this ordinance.

Part 9.—Effective Date and Repeal.

1.0 *Effective Date.* This ordinance shall be effective upon approval by the Bureau of Indian Affairs and publication as required by law.

2.0 *Repeal of Prior Ordinances and Resolutions.* This Ordinance No. 73, hereby repeals all prior ordinances and resolutons which regulate or purport to regulate the sale and distribution of alcoholic beverages within the Blackfeet Indian Reservation including Ordinance No. 6A. This ordinance is controlling.

[FR Doc. 86-5870 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau Of Land Management

Environmental Statement, Availability, etc.: Little Grand Canyon, San Rafael River, Side Mountain Wilderness Study Area, and Flume Canyon Wilderness Study Area, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of comment periods on two draft environmental assessments ending 30 days from publication of this notice.

SUMMARY: The first environmental assessment has been prepared in response to an application from an outfitter for a commercial Special Recreation Use Permit for the Little Grand Canyon portion of the San Rafael River. Most of this Canyon is located within the Side Mountain Wilderness Study Area, UT-060-023. Under the proposed action BLM would issue new permits on a year-to-year basis pending completion of the San Rafael Resource Management Plan.

The second evaluates a proposed change in kind of livestock from sheep to cattle for 2500 acres of the Corral Wash Grazing Allotment within the Flume Canyon Wilderness Study Area, UT-060-100B.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Moab District Office, P.O. Box 970, Moab, UT 84532, (801) 259-6111.

Gene Nodine,

District Manager.

[FR Doc. 86-5871 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-84-M

Availability of the House Range Resource Area Draft Resource Management Plan/Environmental Impact Statement, and Public Open House

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Availability of the draft RMP/EIS and notice of public open house.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a Draft House Range Resource Area Resource Management Plan/Environmental Impact Statement. The Draft RMP/EIS described and analyzes the impacts of four alternatives for managing the Public Lands in the House Range Resource Area. The alternatives recommend levels of grazing for livestock, wildlife, and wild horses and provide overall management prescriptions to guide the multiple-use management of all resoureces. Future recreation designations are also recommended.

DATES: Writen comments on the Draft RMP/EIS should be submitted by June 13, 1986. A Public Open House will be held as scheduled below to receive comments on the alternatives and potential impacts discussed in the Draft RMP/EIS. Written and verbal comments will be accepted.

Date: May 12, 1986
Time: Starting at 3:00 p.m. and ending at 7:00 p.m.
Place: Bureau of Land Management, 15 East 500 North, Fillmore, Utah 84631.

Written and verbal comments received during the Public Open House and all written comments received prior to June 13, 1986 concerning the adequacy of the Draft RMP/EIS will receive consideration in the preparation of the final RMP/EIS.

ADDRESS: Written comments on the Draft RMP/EIS should be sent to: Richfield District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Partridge at the above address or telephone (801) 896-8221.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Draft RMP/EIS are available upon request at the above address, or from BLM Offices at the following locations:

Bureau of Land Management, Office of Public Affairs, Main Interior Building, 18th and C Streets NW., Washington, DC 20240
Bureau of Land Mangement, Utah State Office, CPS Financial Center, 324 South State Street, Salt Lake City, Utah 84111-2303.

Dated: March 10, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-5872 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Funding Guidelines Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting of Working Panel Established by the Royalty Management Advisory Committee.

SUMMARY: The Minerals Management Service hereby gives notice that the 202/205 Funding Guidelines Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated in the Location and Dates section below.

Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 authorize the Secretary to delegate authority to any State to conduct audits of mineral leases on Federal and Indian lands. Standards and specific criteria are needed to ensure an equitable allocation of available funds among the participating States and Indian tribes. The 202/205 Funding Guidelines Working Panel will submit recommendations to the Advisory Committee regarding such standards and specific criteria.

SUPPLEMENTARY INFORMATION: The 202/205 Funding Guidelines Working Panel is one of six working panels established by then Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice recommendations to give to the Department of the Interior and MMS. Although the panels may meet with Department of the Interior or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panels will be made to the Advisory Committee and not to the Department of the Interior or the MMS.

Location and Dates

The 202/205 Funding Guidelines Working Panel will meet at the Sheraton Inn Hotel, 360 Union Boulevard, Lakewood, Colorado, April 8-10, 1986.

The panel will meet from 8 a.m. to 5 p.m. daily. If the meeting is completed in less than the three days scheduled, the panel will adjourn upon such completion.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by April 30, 1986, to the address listed in the **FOR FURTHER INFORMATION CONTACT** Section below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

Dated: March 13, 1986.

Donald T. Sant,

Acting Director, Minerals Management Service.

[FR Doc. 86-5906 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Boundary Adjustment of Lake Mead National Recreation Area.

By virtue of Section 2 of Pub. L. 88-639, 78 Statute 1039, enacted October 8, 1964 which authorizes the Secretary of the Interior to revise the boundaries of Lake Mead National Recreation Area, the following 935 acres of private land are hereby deleted from Lake Mead National Recreation Area:

All those parcels of land located in Township 21 South, Range 63 East, Mount Diablo Meridian, Nevada, and being more particularly described as follows:

Sec. 14, SW¼ NW¼ SE¼, NE¼, W½ SW¼ SE¼ NE¼, S½ NE¼ SW¼ NE¼, SE¼ SW¼ NE¼, W½ SW¼ NE¼, NW¼ NE¼ SW¼ NE¼, W½, W½ SE¼, W½ W½ NE¼ SE¼;

Section 23, W½ E½, W½.

The revised boundary of Lake Mead National Recreation Area reflecting this 935 acre deletion is depicted on the map entitled "Boundary Map, Lake Mead National Recreation Area", Numbered 80,013(B) and dated February 24, 1986. This map is available for public inspection at the Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, and at the Headquarters Office of the Superintendent of Lake Mead National Recreation Area.

Inquires concerning the area within Lake Mead National Recreation Area shall be directed to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20013-7127, or to the Regional Director, Western Regional Office.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 86-5923 Filed 3-17-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 8, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 2, 1986.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Whitley County

Columbia City, *Columbia City Historic District,* Roughly bounded by Jefferson, Walnut, Ellsworth, Wayne, and N. Chauncy Sts.

KENTUCKY

Boyle County

Danville vicinity, *Melrose,* US 127

Campbell County

Bellevue, *Seiter, Joseph, House,* 307—309 Berry Ave.

MAINE

Oxford County

Norway, *Baptist Church (Norway MRA),* 15 Cottage St.
Norway, *Barjo's (Norway MRA),* 204 Main St.
Norway, *Barker, Dr., House (Norway MRA),* 161 Main St.
Norway, *Crocker Block (Norway MRA),* 194 Main St.
Norway, *Cummings Stephen & Edward, House (Norway MRA),* 9 Whitman St.
Norway, *Danforth Block (Norway MRA),* 144 Main St.
Norway, *Danforth, Asa, House (Norway MRA),* 146 Main St.
Norway, *Dennison—Hathaway House (Norway MRA),* 185 Main St.
Norway, *Evans—Cummings House (Norway MRA),* 265 Main St.
Norway, *Grange Hall (Norway MRA),* 8 Whitman St.
Norway, *Hathaway Block (Norway MRA),* 229 Main St.
Norway, *Jackson's (Norway MRA),* 206 Main St.
Norway, *Knights of Pythias (Norway MRA),* 139 Main St.
Norway, *Leavitt Hardware (Norway MRA),* 198 Main St.
Norway, *Masonic Temple (Norway MRA),* 8 Cottage St.
Norway, *Norway National Bank (Norway MRA),* 174 Main St.
Norway, *Noyes Block (Norway MRA),* 171–175 Main St.
Norway, *Odd Fellows Block (Norway MRA),* 201 Main St.

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Norway, *Old Beal Block (Norway MRA)*, 160 Main St.
Norway, *Opera House Block (Norway MRA)*, 219 Main St.
Norway, *Pike, L. F., Company (Norway MRA)*, 170 Main St.
Norway, *Savings Bank Block (Norway MRA)*, 169 Main St.
Norway, *Tucker Block (Norway MRA)*, 167 Main St.
Norway, *Weary Club (Norway MRA)*, 178 Main St.
Norway, *Whitney—Cummings House (Norway MRA)*, 234 Main St.
Norway, *Z. L. Merchants (Norway MRA)*, 199 Main St.

NEW JERSEY

Bergen County

Lyndhurst, *Yeareance, Jeremiah J., House*, 410 Riverside Dr.

PUERTO RICO

Mayagues County

Mayaguez, *La Casa Solariega de Jose De Diego*, 52 Liceo St.

TENNESSEE

Hamilton County

Signal Montain, *Signal Mountain Inn*, 100 James Blvd.

VIRGINIA

Richmond (Independent City)

Boulevard Historic District, 10—300 S. Boulevard and 10—800 N. Boulevard

WEST VIRGINIA

Fayette County

Prince, *Prince Brothers General Store—Berry Store*, WV 41

Randolph County

Huttonsville, *Tygarts Valley Church*, US 219

Webster County

Webster Springs, *Morton House*, Union St.

Wood County

Williamstown vicinity, *Henderson Hall Historic District*, CR 14

WISCONSIN

Columbia County

Wisconsin Dells, *Bowman House*, 714 Broadway St.

Dane County

Madison, *East Wilson Street Historic District*, 402—524 E. Wilson St. and 133 S. Blair St.
Madison, *Grimm Book Bindery*, 454 W. Gilman St.
Mount Horeb, *Aslak Lie Cabin*, 3022 County Trunk P

Fon du Lac County

New Fane, *Saint John Evangelical Lutheran Church*, 670 County Trunk Highway S

Marquette County

Briggsville vicinity, *Bonnie Oaks Historic District*, Grouse Dr.

Milwaukee County

Milwaukee, *Blatz Brewery Complex*, 1101—1147 N. Broadway

Outagamie County

Appleton, *Tompkins, James, House*, 523 S. State St.

Pierce County

River Falls, *North Hall—River Falls State Normal School*, University of Wisconsin

Walworth County

Fontana, *Douglass—Stevenson House*, Main and Mill Sts.
Lake Geneva, *Riviera (The)*, 810 Wrigley Dr.
Linn, *Bonnie Brae*, 78 Snake Rd.

The 15-day commenting period for the following properties is to be waived in order to assist in the buildings preservation through an easement donation.

CALIFORNIA

Los Angeles County

Downey, *Casa de Parley Johnson*, 7749 Florence Ave.

Orange County

Irvine, *Irvine Blacksmith Shop*, 14952 Sand Canyon Ave.

COLORADO

Pitkin County

Aspen, *Hotel Jerome*, 330 E. Main St.

NEW YORK

Seneca County

Seneca Falls, *Fourth Ward School*, 8 Washington St. (Received 03/11/86)

[FR Doc. 86–5924 Filed 3–17–86; 8:45 am]

BILLING CODE 4310-10-M

Appalachian National Scenic Trail Sale of Excess Lands

AGENCY: National Park Service, Interior.

ACTION: Notice, Sale of Lands Excess to the Appalachian National Scenic Trail, Warren and Fauquier Counties, Virginia.

SUMMARY: The following lands have been identified as suitable for disposal by public sale under the provisions of Section 7(f)(2) of the National Trails Systems Act, Pub. L. 90–543, as amended by Pub. L. 98–11 on March 28, 1983.

Tract No.	Option	Size (acres)	Location	Fair market value
420-31		62.50	Fauquier County	62,500
420-32/33	(a)	5.62	Warren County	15,000
	(b)	2.60	Warren County	15,000
	(c)	3.22	Warren County	13,000
	(d)	3.63	Warren County	13,000
	(e)	3.64	Warren County	13,000
	(f)	3.77	Warren County	13,000
	(g)	4.74	Warren County	15,000
	(h)	5.15	Warren/Fauquier County.	13,000
	(i)	32.37	Warren/Fauquier County.	99,000
420-35/37		20.80	Warren/Fauquier County.	16,050
420-38/39	(a)	111.24	Warren/Fauquier County.	89,000
	(b)	111.24	Warren/Fauquier County.	66,700
420-41		23.00	Warren County	114,000
419-27		52.10	Fauquier County	31,300

The lands and improvements thereon, if any, are not required for the protection or management of the Appalachian National Scenic Trail. The lands are offered subject to existing rights of record and such terms and conditions as are deemed necessary for the protection and management of the Appalachian National Scenic Trail.

The lands will be offered for sale to the highest bidder. Bids in an amount less than the appraised fair market value will not be considered. Sealed bids must be received prior to 1:00 P.M. on May 5, 1986 at the Appalachian Trail Land Acquisition Field Office, P.O. Box 908, 210 Porter Avenue, Martinsburg, West Virginia 25401. Specifications for bidding and conveyance, legal descriptions, narrative descriptions of the lands and improvements thereon, maps, preference rights, deed restrictions and reservations, and other information regarding the terms and conditions of the sale are available for public inspection at the Appalachian Trail Land Acquisition Field Office, 210 Porter Avenue, Martinsburg, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Owen, Appalachian Trail Land Acquisition Field Office, P.O. Box 908, Martinsburg, West Virginia 25401, Telephone (304) 263–4943.

Charles R. Rinaldi,

Chief, Land Acquisition Field Office.

[FR Doc. 86–5925 Filed 3–17–86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–32 (Sub-32)]

Boston and Maine Corporation—Abandonment in Hillsborough County; NH; Findings

The Commission has found that public convenience and necessity permit Boston and Maine Corporation to abandon its 18.61-mile line of railroad between Wilton and Bennington, NH, extending from milepost N–16.36 to milepost N–32.36 and milepost W–59.39

to milepost W–62.00, in Hillsborough County, NH.

A certificate will be issued authorizing this abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5953 Filed 3–17–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 28, 1986, a proposed partial consent decree in *United States* v. *Broderick Investment Co., et al.*, Civil Action No. 86–Z369 was lodged with the United States District Court for the District of Colorado. The action arises under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and section 3008 of the Resource Conservation and Recovery Act ("RCRA"). The proposed decree imposes a civil penalty of one hundred thousand ($100,000) dollars under RCRA and requires the defendants to perform the Remedial Investigation and Feasibility Study ("RI/FS") for the Broderick wood processing and preservation facility in Denver, Colorado. The RI/FS will be designed to determine the full extent of contamination at the Broderick facility and to evaluate remedial action alternatives to abate such contamination.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Broderick Investment Co., et al.*, D.J. Ref. 90–7–1–254.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Office Building, Denver, Colorado 80294 and at the Region VIII Office of the Environmental Protection Agency, 999—18th Street, Suite 1300, One Denver Place, Denver, Colorado 80202–2413, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–5873 Filed 3–17–86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Pacific Telesis Group, et al.: Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Central District of California in *United States of America* v. *Pacific Telesis Group, et al.*, Civil Action No. 86–1298 RMT.

The complaint of the United States in this case alleges that the acquisition by Pacific Telesis Group ("Telesis") of Communications Industries, Inc. would result in Telesis becoming a partner of LIN Cellular Communications Corporation ("LIN") in one of the two cellular radio systems in Dallas-Ft. Worth, Texas, thereby gaining access to LIN's cellular strategies. By affording Telesis access to LIN's competitive plans, the acquisition would violate section 7 of the Clayton Act, 15 U.S.C. 18 and section 1 of the Sherman Act, 15 U.S.C. 1 by increasing the potential for collusion between Telesis and LIN in the Los Angeles, California cellular market, a market in which they are the only two competitors. The partnership between Telesis and LIN in the Dallas-Ft. Worth cellular system may have a significant anticompetitive effect by hampering LIN's ability to compete effectively in the Los Angeles or Dallas-Ft. Worth cellular markets, and thereby increase the already significant incentives and opportunities for collusion between LIN and Telesis in the Los Angeles cellular market.

The proposed Final Judgment denies Telesis access to LIN's competitive strategies by restricting Telesis to an essentially passive investment role in the Dallas-Ft. Worth partnership. Telesis is prohibited from participating in the affairs of the Dallas-Ft. Worth partnership except in very limited ways. It may not attend meetings of or have employees in common with the Dallas-Ft. Worth partnership and its right to vote is significantly limited. The information that Telesis may obtain concerning the Dallas-Ft. Worth cellular system is strictly limited.

Telesis has agreed to comply with the restrictions contained in the proposed Final Judgment as of the date of filing, and the Department has determined that the proposed Final Judgment provides effective antitrust relief without the costs and delay that would result from litigation.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division (SAFE–504), Department of Justice, Washington, DC 20530 (202/724–6693).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the Central District of California

United States of America, plaintiff, v. Pacific Telesis Group, and Communications Industries, Inc., defendants.

[No. CV–86–1298–RMT]

February 28, 1986.

Stipulation for Entry of Final Judgment

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements

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of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment; and

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 27, 1986.

For the Plaintiff United States of America: W. Stephen Cannon, *Acting Assistant Attorney General.* Joseph H. Widmar, Barry Grossman, Kevin R. Sullivan, *U.S. Department of Justice.*

For the Defendants: Nancy C. Garrison, Christine A. Wardell, John Dorsey, Michael L. Volkov, *Attorneys, U.S. Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6693.*

For Pacific Telesis Group: Stanley M. Gorinson, *Pillsbury, Madison & Sutro, 1667 K Street NW., Washington, D.C. 20006, (202) 887-0300.*

For Communications Industries, Inc: Carl W. Northrop, *Kadison, Pfaelzer, Woodard, Quinn & Rossi, 2000 Pennsylvania Ave. NW., Suite 7500, Washington, DC. 20006, (202) 452-8300.*

United States District Court for the Central District of California

United States of America, plaintiff, v. Pacific Telesis Group, and Communications Industries, Inc., defendants.

[No. CV-]

Final Judgment (Proposed)

Whereas, plaintiff, United States of America, filed its Complaint herein on February 28, 1986, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue; and

Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. 1), and section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Affiliate" or "affiliates" means any organization or entilty in which, directly or indirectly, the named person has control or substantial ownership. For purposes hereof, "substantial ownership" means a direct or indirect equity interest (or the equivalent thereof) of fifty percent (50%) or more of an entity. Any parent company of a named person shall also be deemed its affiliate.

B. "Agent" means any person who is in the service of the named person pursuant to a contract of hire, express or implied, where the named person has the power or right to control and direct such person in the material details of how the work is perfored, provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis or CI shall not be deemed its agent for purposes of this Final Judgment.

C. "Block A cellular license" means the authorization issued by the Federal Communications Commission granting authority to operate a cellular system on the Block A frequencies in a particular CGSA, assigned initially by the Federal Communications Commission for use by companies other than affiliates of an exchange telephone company.

D. "Block B cellular license" means the authorization issued by the Federal Communications Commission granting authority to operate a cellular system on the Block B frequencies in a particular CGSA, assigned initially by the Federal Communications Commission for use by affiliates of companies that provide local exchange telephone service in that area.

E. "Cellular system" menas a high capacity land mobile system (i.e., involving portable and car radiotelephones) authorized by the Federal Communications Commission, pursuant to §§ 22.900-22.921 of its rules (47 CFR 22.900-22.921), for use primarily to provide two-way mobile telephone service.

F. "CGSA" means the Cellular Geographic Service Area of a cellular system, which defines the geographic area intended to be served by that cellular system pursuant to §§22.903 of the Federal Communications Commission's rules, 47 CFR 22.903.

G. "CI" means the defendant Communications Industries, Inc.; each division, subsidiary (including but not limited to Gensub, Inc.), or affiliate thereof and each officer, director, employee, agent, or other person acting for or on behalf of any of them; provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with CI shall not be deemed on agent or other person acting on behalf of CI for purposes of this Final Judgment.

H. "D/FW" means the Texas partnership known as D/FW Signal, established pursuant to the Partnership Agreement in Respect of D/FW Signal Partnership, dated December 9, 1985.

I. "D/FW partner" means any current or future partner in D/FW, or any successor of any of them.

J. "Document" means written, recorded, or graphic material of any kind, including but not limited to electronically stored data from which information can be obtained either directly or by translation through detection devices or readers.

K. "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

L. "LACTC" means the California partnership known as Los Angeles Cellular Telephone Company, holding the Block A cellular license for the Los Angles CGSA, established pursuant to the partnership agreement dated June 22, 1983.

M. "LIN" means LIN Broadcasting Corporation; each division, subsidiary or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

N. "Metroplex" means the Texas partnership known as Metroplex Telephone Company, holding the Block A cellular license for the Dallas-Fort Worth CGSA, established pursuant to the Amended and Restated Partnership Agreement dated November 9, 1984.

O. "Metroplex partner" means any current or future partner in Metroplex, and any successor to any of them.

P. "Person" means any natural person, corporation, association, firm,

partnership, or other business or legal entity.

Q. "Telesis" means the defendant Pacific Telesis Group; each division, subsidiary or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them; provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis shall not be deemed an agent or other person acting on behalf of Telesis for purposes of this Final Judgment. Telesis includes Communications Industries, Inc. after its acquisition by Telesis. In addition, solely for purposes of this Final Judgment, Telesis includes the trustee under the Temporary Trust Agreement dated July 26, 1985, as amended, James F. Rill, andc any successor trustee.

R. "Telesis-CI closing" means the transfer of the stock of CI to the Temporary Voting Trust established pursuant to the Temporary Voting Trust Agreement, dated July 26, 1985, as amended, on the "Closing Date" as defined in section 10.02 of the Agreement and Plan of Reorganization, dated May 21, 1985.

III. Applicability

A. The provisions of this Final Judgment shall apply to Telesis and CI, their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, including but not limited to all persons who receive notice pursuant to Paragraph V of this Final Judgment.

B. Telesis shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, or of its interests in both D/FW and the Los Angeles cellular system to a single purchaser, that the acquiring party agree to be bound by the provisions of this Final Judgment; provided, however, that if Telesis' interests in both D/FW and the Los Angeles Block B cellular system are not transferred to a single purchaser, this provision shall not apply.

IV. Restrictions on Telesis' Access to D/FW aznd Metroplex Information

A. Except as expressly permitted by this Paragraph IV:

1. Telesis shall not participate in the management or operation of D/FW or Metroplex.

2. Telesis shall not be an officer, a member of the partners' committee or a member of any other committee of D/FW or Metroplex.

3. Telesis shall attend no meetings, formal or informal, of D/FW, Metroplex or any committee of D/FW or Metroplex.

4. No officer or employee of Telesis shall be an officer, employee or agent of D/FW or Metroplex, provided, however that Telesis shall not be precluded, upon the receipt of any necessary regulatory or judicial approvals, from acting as a reseller of Metroplex or D/FW in accordance with the provisions of this Final Judgment.

5. Telesis shall not request, obtain, inspect or otherwise have access to any books, records, documents or other information generated by or for D/FW, Metroplex or LIN, that relates directly or indirectly to their cellular radio operations, provided, however, that Telesis may obtain:

(a) Information that is available to the public;

(b) Financial statements of D/FW and Metroplex (i.e. a balance sheet, a statement of earnings and a statement of changes in financial condition);

(c) A summary of a financial audit of D/FW, not more than once annually, prepared by an independent financial auditor selected by Telesis;

(d) Notice of capital calls, limited to the amount of the call and not specifying the purpose for which the funds are to be expended;

(e) Notice of rights to purchase or sell interests in Metroplex or D/FW;

(f) Notice and full information of any transfer or proposed transfer by a Metroplex or D/FW partner of its interest in Metroplex or D/FW or any portion thereof and any notice and full information of rights of first refusal regarding such proposed transfer;

(g) Notice of and full information relating to any matter on which Telesis is permitted to vote under Paragraph IV(A)(7) of this Final Judgment;

(h) Notice of any allocations made to the partnership accounts of any of the Metroplex or D/FW partners;

(i) The names and business addresses of persons to whom notice is to be given pursuant to Paragraph V of this Final Judgment; and

(j) Any additional financial information necessary to permit Telesis to prepare its state or federal tax returns.

6. Telesis shall not discuss with any D/FW or Metroplex partner or any person acting on behalf of any D/FW or Metroplex partner, any information generated by or for D/FW, Metroplex, LACTC or LIN that relates directly or indirectly to their cellular radio operations and which is obtained through D/FW or Metroplex, except information permitted to be disclosed to Telesis pursuant to Paragraph IV(A)(5) of this Final Judgment.

7. Telesis shall not vote on any matters submitted for vote of the D/FW or Metroplex partnership except that Telesis may vote, by written ballot or consent and without attending any partnership or partners' committee meeting, on:

(a) The proposed admission of a partner to either D/FW or Metroplex;

(b) A proposed merger or consolidation of D/FW or Metroplex;

(c) A proposed sale of substantially all of the assets of D/FW or Metroplex; or

(d) A proposed amendment to the D/FW or Metroplex partnership agreement.

B. All communications between Telesis, and D/FW or Metroplex, and between Telesis and any of the D/FW or Metroplex partners, of information generated by or for D/FW, Metroplex, LACTC or LIN that relates directly or indirectly to their cellular radio operations and which is obtained through D/FW or Metroplex, and all votes on D/FW or Metroplex partnership matters, shall be in written form. Complete and accurate copies of such communications, information and votes shall be retained by Telesis and may be examined by representatives of the Department of Justice pursuant to Section VI of this decree.

C. The provisions of this Final Judgment do not prohibit Telesis from receiving distributions and any other payments to which it may be entitled under the D/FW partnership agreement or the Metroplex partnership agreement.

D. Prior to the Telesis-CI closing, Telesis shall have entered into an amendment to the D/FW partnership agreement in the form of Exhibit A to this Final Judgment. No subsequent amendments shall be made to the D/FW partnership agreement unless Telesis submits such proposed amendment to the Department of Justice at least thirty (30) days prior to its effective date. If the Department of Justice during the thirty (30) day period does not object to the proposed amendment, it shall take effect, but it shall not operate as a modification of this Final Judgment. If the Department of Justice during the thirty (30) day period objects in writing to such proposed amendment, the proposed amendment shall not become effective until the Department of Justice removes its objection or this Court rules, on the motion of either party to this Final Judgment, that the proposed amendment is consistent with this Final Judgment or that modification of the Final Judgment is warranted in accordance with legal standards governing modifications of consent

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decrees. Plaintiff and defendant shall take all reasonable steps to expedite a resolution of any matter submitted to the Court under this Section IV(D).

V. Compliance Provisions

A. Not later than fifteen (15) days after the Telesis-CI closing, Telesis shall distribute to each officer and each management official with significant responsibility for Telesis' cellular operations, to the trustee under the Temporary Trust Agreement dated July 26, 1985, to any consultant providing services related to the operation of Telesis' cellular business who also provides or has provided consulting services to D/FW or Metroplex or any D/FW partner or Metroplex partner, and to any independent financial auditor hired pursuant to Paragraph IV(A)(5)(c) above:

1. A copy of this Final Judgment; and

2. In the case of Telesis employees, an admonition that noncompliance with this Final Judgment will result in appropriate disciplinary action, which may include dismissal.

B. Within thirty (30) days after the Telesis-CI closing, Telesis shall obtain from each person to whom notice is given pursuant to Paragraph V(A) of this Final Judgment a certificate in substantially the following form:

The undersigned hereby (1) acknowledges receipt of a copy of the Final Judgment and a written directive setting forth the policy regarding compliance with the Final Judgment, (2) represents that the undersigned has read such Final Judgment and understands the restrictions on disclosure of information, (3) acknowledges that the undersigned (if an employee of Telesis) has been advised and understands that non-compliance with the Final Judgment will result in appropriate disciplinary measures, which may include dismissal, and (4) acknowledges that the undersigned has been advised and understands that willful non-compliance with the Final Judgment may also result in conviction for contempt of court and imprisonment and/or fine.

C. Within ten (10) days after any additional person becomes subject to the requirements of Paragraph V(A) and V(B) Telesis shall provide the notice specified in Paragraph V(A) and obtain the acknowledgment specified in Paragraph V(B) from such person.

D. Telesis shall take appropriate disciplinary action against any person under its control who refuses or fails to comply with this Final Judgment.

E. Within ten (10) days after the Telesis-CI closing, Telesis shall send to (i) each officer or management official of D/FW and Metroplex with significant responsibility for cellular operations, (ii) either the chief executive officer or the officer with primary responsibility for cellular operations for each Metroplex or D/FW partner; and (iii) each person who is a representative, alternate representative, or officer of the D/FW or Metroplex partnership committees; by registered mail return receipt requested, the following:

1. A copy of this Final Judgment;

2. An admonition that willful disclosure to Telesis of information prohibited to Telesis under the Final Judgment may result in conviction for contempt of court and imprisonment or fine;

3. A written request that such persons take all necessary steps to inform those persons under his or her supervision or control who may have access to information that directly or indirectly relates to the cellular operations of D/FW, Metroplex or LIN of the restrictions imposed by this Final Judgment on the disclosure of such information to Telesis.

F. Not later than ninety (90) days after the Telesis-CI closing, Telesis shall provide to the Department of Justice a list of the persons notified pursuant to Paragraphs V(A) and V(E) of this Final Judgment. Telesis shall retain in its files for at least five (5) years from date of signature, the certificates required by Paragraph V(B) and the registered receipts required by Paragraph (V)(E) of this Final Judgment.

VI. Visitorial Provisions

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Telesis made to its principal office, be permitted access during office hours of Telesis to depose or interview officers, employees, or agents, and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Telesis, which may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Telesis' principal office, Telesis shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Paragraph VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Telesis to plaintiff, Telesis represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Telesis marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Telesis prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Telesis is not a party.

VII. Termination of Judgment

This Final Judgment shall expire on the tenth anniversary of the date of its entry or, prior to that date, upon the happening of any of the following events:

A. The transfer by LIN of its entire interest in the Block A cellular license for the Los Angeles CGSA to a person not affiliated with LIN or with any D/FW or Metroplex partner (other than Telesis);

B. The transfer by LIN of its entire interest in Metroplex to any person unaffiliated with LIN and having no interest in the Block A cellular license in the Los Angeles CGSA;

C. The transfer by Telesis of its entire interest in D/FW and Metroplex to a third person unaffiliated with Telesis (or if any portion thereof is so transferred, this Final Judgment shall no longer have any force and effect with respect to such portion);

D. The transfer by Telesis of its entire interest in the Block B cellular license in the Los Angeles CGSA;

E. The failure to consummate the Telesis-CI merger and the termination of the Agreement and Plan of Reorganization dated May 21, 1985 between Telesis and CI; or

F. A determination by this Court that termination of this Final Judgment is warranted under the legal standards

applicable to termination of antitrust consent decrees because:

1. There has been a substantial reduction in the ownership interest, management role, or extent of control by LIN in either LACTC or Metroplex; or

2. There have been other substantial changes in the circumstances that led to entry of the decree.

G. The grant by this Court of a stipulated motion by the parties to this Final Judgment requesting termination.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, modification or termination of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated:__________

Presented by

Nancy C. Garrison, Christine A. Wardell,
John Dorsey, Michael L. Volkov,
Antitrust Division, Department of Justice, Washington, DC 20530, Attorneys for Plaintiff.

Exhibit A—First Amendment to Partnership Agreement of D/FW Signal Partnership

This first amendment to partnership agreement of D/FW signal partnership ("First Amendment"), dated as of February 27, 1986, is made by and among *GENSUB, INC.*, a Texas corporation ("Gensub"), *METROMEDIA TELECOMMUNICATIONS, INC.*, a Delaware corporation ("Metromedia"), and *PAGE COMMUNICATIONS, INC.*, a Texas corporation ("Page").

Witnesseth:

Whereas Gensub, Metromedia and Page have previously entered into a Partnership Agreement dated as of December 9, 1985 ("Prior Agreement") of D/FW Signal Partnership, a Texas general partnership ("D/FW Signal"); and

Whereas D/FW Signal is one of the general partners of Metroplex Telephone Company, a Texas general partnership ("Metroplex") which partnership is controlled and managed by Lin Cellular Communications Corporation, a Texas corporation ("Lin"); and

Whereas in connection with the proposed merger of an indirect wholly owned subsidiary of Pacific Telesis Group, a Nevada corporation ("Telesis"), with and into Communications Industries, Inc. ("CI"), a Texas corporation and the parent company of Gensub, the United States Department of Justice ("DOJ") has raised questions regarding Gensub's participation in Metroplex due to Lin's position as general manager of the Metroplex and Los Angeles Block A cellular systems and, as a result, that Gensub may gain access to certain information deemed by the DOJ to be competitively "sensitive" with respect to the cellular operations of Lin and its affiliates in Los Angeles;

Now, Therefore, in consideration of the mutual covenants and agreements set forth herein and in the Prior Agreement, the parties hereto agree as follows:

1. *Definitions.* For purposes of this First Amendment, Gensub shall include all affiliates of Gensub, including Telesis and CI. The term "affiliate" means any organization or entity in which, directly or indirectly, the named person has control or any substantial ownership. For purposes hereof, the term "substantial ownership" means a direct or indirect equity interest (or the equivalent thereof) of fifty percent (50%) or more of an entity. Any parent company of a named person shall also be deemed its affiliate. The term "Information" means knowledge or intelligence generated by or for D/FW Signal, Metroplex, or Lin represented by any form of writing, signs, signals, pictures, sounds or other symbols that relate, directly or indirectly, to the cellular radio operations of D/FW Signal, Metroplex or Lin or their affiliates. The term "Agent" means any person who is in the service of the named person pursuant to a contract of hire, express or implied, where the named person has the power or right to control and direct such person in the material details of how the work is performed provided, however, that a reseller of cellular services or a seller or lessor of cellular equipment not otherwise affiliated with Telesis shall not be deemed its agent.

2. *Amendment to section 3.4(b).* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not receive operating or capital budgets of Metroplex. Accordingly, section 3.4(b) of the Prior Agreement is amended to add the following clause at the end of the first sentence of such section:

> provided, however, that Gensub shall not be provided with copies of the aforesaid operating and capital budgets nor with any business plan of Metroplex.

3. *Amendment to Add section 5.1(d).* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not participate in the management or operation of D/FW Signal or Metroplex nor shall Gensub attend any formal or informal D/FW Signal or Metroplex meetings (including committee meetings) and shall not vote its Units except on any proposal to admit a partner to D/FW Signal or to Metroplex, to vote on a fundamental partnership change, or to vote on an amendment to the Metroplex or D/FW Signal Partnership Agreements. Accordingly, Section 5.1. of the Prior Agreement is amended to add a new Section 5.1(d) as follows:

> (d) Notwithstanding anything herein to the contrary, Gensub shall not vote its Units except that Gensub shall be entitled to vote by written ballot or consent, without attending any meeting, on any proposal regarding any of the following: (i) the proposed admission of a partner to either Metroplex or D/FW Signal; (ii) a proosed merger or consolidation of Metroplex or D/FW Signal; (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal or (iv) a proposed amendment of the D/FW Signal or Metroplex partnership agreements.

4. *Amendment to section 6.3.* It is the intent of the parties that, for the term of this First Amendment, Gensub shall be prohibited from inspecting the books and records of D/FW Signal and Metroplex otherwise than in accordance herein. Accordingly, Section 6.3 of the Prior Agreement is amended to add the following clause at the end of such section:

> *provided further, however* that Gensub shall not request, obtain, inspect or otherwise have access to any books, records, documents or other information, that relates directly or indirectly to the cellular radio operations of D/FW Signal, Metroplex or Lin otherwise than as permitted by the First Amendment to this Agreement dated as of February 27, 1986 ("First Amendment").

5. *Amendment to Add section 6.4* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not receive any Information or publicity notices. Accordingly, Section 12.11 of the Prior Agreement is amended by adding "except Gensub" after the word "Partners" on the sixth line of such section. In addition, Article VI of the Prior Agreement is amended to add the following as a new section 6.4:

> 6.4 *Restriction on Information.* The Partners each hereby agree to refrain fromp roviding Gensub with any material or Information they receive from Lin or

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Metroplex except that Gensub shall obtain: (i) Information that is available to the public; (ii) Financial statements of D/FW Signal and Metroplex (i.e. a balance sheet, a statement of earnings and a statement of changes in financial condition); (iii) Upon the request of Gensub, a summary of a financial audit of D/FW Signal, not more than once annually, prepared by an independent financial auditor selected by Gensub; (iv) Notice of capital calls, limited to the amount of the call and not specifying the purpose for which the funds are to be expended; (v) Notice of rights to purchase or sell interests in Metroplex or D/FW Signal; (vi) Notice and full information of any transfer or proposed transfer by a Partner to Metroplex or D/FW Signal of its interest in Metroplex or D/FW Signal or any portion thereof, and any notice and full information of rights of first refusal regarding such proposed transfer; (vii) Notice of and full information relating to any matter on which Gensub is permitted to vote pursuant to this First Amendment; (viii) Notice of any allocations made to the partnership accounts of any of the Partners to Metroplex or D/FW Signal; and (ix) Any additonal financial information necessary to permit Gensub and its affiliates to prepare its stae or fedeal tax returns. Any and all notices to which Gensub is entitled under this section 6.4 shall be given sufficiently in advance to permit Gensub to respond and thereby protect its interest in the partnerships.

6. *Amendment to section 12.3.* It is the intent of the parties that, during the term of this First Amendment, any proposed amendment to the Prior Agreement shall be made in compliance with Section 14 of this First Amendment. Accordingly, section 12.3 of the Prior Agreement is amended, in the second sentence thereof, by changing the comma after "herein" to a period, and by adding the following sentence to replace the remainder of section 12.3 as follows:

> It may be modified or amended only by an instrument in writing signed by all of the Partners, and must be furnished to the DOJ at least 30 days prior to the date such instrument is proposed to become effective. If the DOJ has not objected to the proposed amendment within such 30 day period, such amendment shall become immediately effective.

7. *Amendment to Add section 12.15.* It is the intent of the parties that the revisions made to the Prior Agreement pursuant to this First Amendment shall be automatically extinguished when the reasons for entering into this First Amendment are no longer present. Accordingly, Article XII of the Prior Agreement is amended to add the following as a new section 12.15:

> 12.15 *Temporary Amendments.* Sections 5.1(d) and 6.4 of this Agreement shall automatically be extinguished and void and shall no longer be in force and effect, and sections 3.4(b), 6.3, 12.3 and 12.11 of the Prior Agreement and sections 2.02, 2.03, 2.07, 2.08, 2.11 3.02, 3.03, 4.01, 4.02, 4.03, 8.02, 8.03, 11.03, and Article XII of the Rules shall automatically revert to the provisions set forth in the Prior Agreement before being revised pursuant to the First Amendment and shall no longer be in force and effect, upon the earliest to occur of ten years from the date that the Final Judgment in the *United States v. Pacific Telesis Group and Communications Industries, Inc.* is entered by the Court or any of the following events shall occur:
>
> (a) The transfer by Lin of its entire interest in the Block A cellular license for the Los Angeles Cellular Geographic Service Area ("Los Angeles CGSA") to a person not affiliated with Lin or with any D/FW Signal or Metroplex partner (other than Telesis); or
>
> (b) The transfer by Lin of its entire interest in Metroplex to any person unaffiliated with Lin and having no interest in the Block A license in the Los Angeles CGSA; or
>
> (c) The transfer by Telesis of its entire interest in D/FW Signal and Metroplex to a third party unaffiliated with Telesis (or if any portion thereof is so transferred, this Agreement shall terminate as to such portion and all voting, informational and inspection rights shall be reinstated with respect to such portion); or
>
> (d) The transfer by Telesis of its entire interest in the Block B cellular license in the Los Angeles CFSA; or
>
> (e) (i) The termination of the Final Judgment in *United States v. Pacific Telesis Group and Communications Industries, Inc.* filed in the United States District Court for the Central District of California or (ii) the failure by the Court to entes such Final Judgment, provided however that such failure by the Court shall not automatically terminate the First Amendment, which termination shall only be effective upon the written election of Gensub in its sole discretion; or
>
> (f) The failure to consummate the Telesis/CI merger and the termination of the Agreement and Plan of Reorganization dated as of May 21, 1985.

8. *Amendments to sections 2.02, 2.03, 4.01, 4.02 and 4.03 of the Rules.* Gensub hereby agrees to refrain from attending any formal or informal meetings of D/FW Signal or of Metroplex, or of either of their Partners' Committees. Accordingly, sections 2.03, 4.01, 4.02 and 4.03 of the Rules are hereby amended to add the following proviso at the end of such sections and in section 2.02 of the Rules at the end of the first sentence in such section:

> provided, however, that Gensub shall not be entitled to attend any such meetings.

9. *Amendments to sections 2.07, 2.08 and 2.11 of the Rules.* It is the intent of the parties that Gensub refrain from voting on any proposals except those specified in Section 3 of this First Amendment. Accordingly, the following clause is added at the end of sections 2.07 and 2.08 of the Rules:

> In calculating the vote on any matter to be considered, the number of Units held by Gensub shall first be deducted from the total number of Units available to vote, except that no such deduction shall be made when voting on any of the following: (i) The proposed admission of a Partner to Metroplex or D/FW Signal, (ii) a proposed merger or consolidation of Metroplex or D/FW Signal (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal, or (iv) a proposed amendment to the Metroplex or D/FW Signal partnership agreements.

In addition, section 2.11 is amended by adding the following proviso at the end of the first sentence of such section:

> provided however, that Gensub's consent shall not be required unless the consent relates to any of the following, which would require Gensub's consent: (i) The proposed admission of a Partner to Metroplex or D/FW Signal, (ii) a proposed merger or consolidation of Metroplex or D/FW Signal, (iii) a proposed sale of substantially all of the assets of Metroplex or D/FW Signal, or (iv) a proposed amendment to the Metroplex or D/FW Signal partnership agreements.

10. *Amendments to sections 3.02 and 3.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, Gensub shall not appoint a representative to either the Metroplex or the D/FW Signal Partners' Committees. Accordingly, Gensub hereby resigns from both of such Partners' Committees and, further, sections 3.02 and 3.03 of the Rules are amended to insert the following clause at the beginning of such sections:

> Except Gensub,

11. *Amendment to sections 8.02 and 8.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, no officer or employee of Gensub shall be an officer, employee or agent of D/FW Signal or Metroplex. Accordingly, Gensub hereby resigns as Chairman of D/FW Signal and, further, sections 8.02 and 8.03 of the Rules are amended to add the following sentence at the end of such sections:

> all officers elected or appointed pursuant to this Section shall be unaffiliated with Gensub.

12. *Amendment to section 11.03 of the Rules.* It is the intent of the parties that, during the term of this First Amendment, no reports shall be provided to Gensub that are prohibited hereunder. Accordingly, section 11.03 of the Rules is amended to add the following clause at the end of such Section:

> provided, however, that no reports shall be provided to Gensub that are prohibited by the First Amendment.

13. *Amendment to Article XII of the Rules.* It is the intent of the parties that the Rules of the Partnership, during the term of this First Amendment, may be

amended only in compliance with section 14 of this First Amendment. Accordingly, Article XII of the Rules is amended by restating such Article in its entirety as follows:

> These Rules may be altered, amended or repealed, or new rules may be adopted, only by an instrument in writing signed by all of the Partners, and must be furnished to the DOJ at least 30 days prior to the date such instrument is proposed to become effective. If the DOJ has not objected to the proposed amendment within such 30 day period, such amendment shall become immediately effective.

14. *Amendments.* Any proposed amendment to this First Amendment or to the Prior Agreement must be in writing, signed by all of the parties hereto, and must be furnished to the DOJ at least 30 days prior to the date it is proposed to become effective. If the DOJ has not objected to the amendment within such 30-day period, such amendment shall become immediately effective.

15. *Relation to Prior Agreement.* The parties hereto acknowledge and agree that, except to the extent expressly amended pursuant hereto, the Prior Agreement shall remain unchanged and in full force and effect.

16. *Governing Law.* This First Amendment and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas, as if all parties to this First Amendment were resident and doing business in such state.

17. *Counterparts.* This First Amendment may be executed and delivered by one or more parties to this First Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same agreement.

In witness whereof, the undersigned have executed and delivered this First Amendment as of the day and year first written above.

GENSUB, INC.
By ____________________
Title ____________________

Metromedia Telecommunications, Inc.
By ____________________
Title ____________________

Page Communications, Inc.
By ____________________
Title ____________________

United States District Court for the Central District of California

United States of America, Plaintiff, v. *Pacific Telesis Group, and Communications Industries, Inc.,* Defendants.

[No. CV-86-1298-RMT]

Competitive Impact Statement

February 28, 1986.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pacific Telesis Group ("Telesis") and Communications Industries, Inc. ("CI") in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on February 28, 1986, when the United States filed a complaint alleging that the proposed acquisition of CI by Telesis would violate section 7 of the Clayton Act (15 U.S.C. 18) and section 1 of the Sherman Act (15 U.S.C. 1). The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of cellular telephone service in Los Angeles, California. As a result of the acquisition, Telesis will become a partner with LIN Cellular Communications Corporation (LIN) in one of the two cellular systems in Dallas-Ft. Worth, Texas, thereby increasing the potential for collusion between Telesis and LIN, the only two firms in the Los Angeles cellular market. The complaint requests that Telesis be required to divest its interest in the Dallas-Ft. Worth cellular system or that other appropriate relief be granted to prevent Telesis from participating in or gaining access to confidential information about the Dallas-Ft. Worth cellular system.

The United States, Telesis and CI have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify or enforce the Final Judgment and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

On May 21, 1985, Telesis and CI entered into an Agreement and Plan of Reorganization (Merger Agreement) pursuant to which Telesis will acquire all of the outstanding common stock of CI for $32.75 per share or a total purchase price of approximately $432 million. The Merger Agreement provides for a two-step process. "Step One", the "closing" under the Merger Agreement, will result in transfer of CI's stock to a temporary trust, under which CI's present management will continue to run its businesses.[1] At that time, the CI stockholders will be paid and will have no further ownership interest in CI. "Step Two" of the transaction, transfer of control of CI from the trustee to Telesis, will occur after the necessary regulatory approvals have been secured and divestitures required by the FCC and the MFJ Court have been completed.

The alleged violation arises from the impact of the acquisition on the market for cellular radio services in Dallas-Forth Worth, Texas, and Los Angeles, California. Cellular radio is a high-capacity, two-way mobile telephone service. Unlike traditional mobile telephone systems, in which transmission on a particular frequency covers an entire metropolitan area, a cellular system is divided into several "cells," each of which is assigned a subsect of the 333 channels available to the entire system. The same frequency subsets can be reused in non-adjacent cells, thereby greatly increasing the system's capacity. Cellular telephone systems are connected to the public switched, or "landline" telephone network, and cellular subscribers are able to make local and interexchange calls in essentially the same manner as ordinary telephone users. Cellular systems are designed to provide subscribers with transmission quality and call completion ratios comparable to those traditional landline service.

Cellular radio is a product that under present technology is competitively distinct from other telecommunications services, particularly in urban markets. The capacity of older mobile telephone technologies is so limited relative to cellular radio that such systems cannot effectively constrain cellular prices. Local landline telephone service is not a substitute for cellular service because it does not offer mobility, an important attraction of cellular.[2]

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[1] The conditions to closing under the Merger Agreement include obtaining: (1) Federal Communications Commission ("FCC") approval of the transfer of CI's stock to the trust, (2) California Public Utility Commission (PUC) approvals, (3) a waiver of the Modification of Final Judgment, *United States v. AT&T,* 552 F. Supp. 131 (D.D.C. 1982), aff'd sub. nom. *Maryland v. United States,* 460 U.S. 1001 (1983) ("MFJ") to permit the transaction, and (4) approval by CI's shareholders. The FCC has approved the "Step One" transfers, the CI shareholders have approved the merger, and the MFJ Court has granted the waivers, with conditions, including divestiture of specified CI assets and businesses. The California PUC is expected to rule on February 28, 1986.

[2] In the future, cellular service could become a partial substitute for landline telephone service. Today, however, cellular prices are significantly higher and the capacity of cellular systems is more limited than that of landline te'ephone services.

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The FCC is responsible for licensing cellular radio systems, and has authorized two cellular systems in each franchise area (called a Cellular Geographic Service Area, or CGSA).[3] As a result of the FCC's regulations, all cellular radio markets are highly concentrated, with only two firms, and there is no possibility of new entry.

Telesis, which is the parent company of Pacific Bell and Nevada Bell, and CI each provides a variety of telecommunications services. PacTel Mobile Access, a wholly-owned subsidiary of Telesis, holds controlling interests in the wireline cellular systems in Los Angles, San Diego, Sacramento and Oxnard-Simi Valley-Ventura, California, and a 23.5 percent interest in the San Francisco non-wireline cellular system. CI holds substantial interests in the non-wireline cellular systems in San Diego and San Francisco, California; Atlanta, Georgia; and Tampa-St. Petersburg, Florida.[4]

CI, through its subsidiary, Gensub, Inc., owns approximately a 48 percent interest in D/FW Signal, a Texas general partnership, which in turn owns a 34 percent interest in Metroplex Telephone Company ("Metroplex"), a Texas general partnership that holds the non-wireline license for the Dallas-Ft. Worth, Texas CGSA. Thus, CI owns approximately a 16 percent interest in Metroplex. As a result of Telesis' acquisition of CI, Telesis will acquire this CI interest in the Dallas-Ft. Worth system.

LIN owns approximately a 60 percent interest in Metroplex and manages the Dallas-Ft. Worth non-wireline cellular system. LIN also has a 35 percent equity interest and a 50 percent voting interest in Los Angles Cellular Telephone Company ("LACTC"), the non-wireline cellular carrier that is Telesis" only competitor in the Los Angles, California CGSA.[5]

The effect of Telesis' acquisition of CI's interest in the Dallas-Ft. Worth non-wireline cellular system may be substantially to lessen competition or tend to create a monopoly in violation of section 7 of the Clayton Act and to unreasonably restrain competition in violation of Section 1 of the Sherman Act in the Los Angles market for cellular radio service. The partnership between Telesis and LIN in the Dallas-Ft. Worth cellular system may have a significant anticompetitive effect by hampering LIN's ability to compete effectively in Los Angeles or in Dallas-Ft. Worth, and thereby increasing the already significant incentives and opportunites for collusion between LIN and Telesis in the Los Angeles cellular market.[6]

In order to realize efficiencies from its ownership interests and management role in Dallas-Ft. Worth, Los Angeles and other cellular systems, LIN intends to operate those systems in a centralized manner, coordinating closely the operations of all of its cellular systems. It plans to use substantially similar operational and promotional strategies in each of these markets, and it intends to develop technical improvements that it will employ in all of its cellular systems. It is important to the success of LIN's centralized form of operation that its plans not be disclosed to its competitors in advance of implementation.

The partnership agreement governing the Dallas-Ft. Worth non-wireline cellular system, however, affords each partner advance access to all information and plans concerning the operation of that cellular system. Since LIN will employ much of the same technology and marketing plans in Los Angeles as it does in Dallas-Ft. Worth, its partners in Dallas-Ft. Worth will have advance knowledge of LIN's competitive strategy in Los Angeles. Thus, if Telesis, LIN's only competitor in Los Angeles, acquired CI's interest in the Dallas-Ft. Worth system without modification of the current partnership agreement, it would have access to otherwise confidential, competitively sensitive information held by LIN. Such access would give Telesis time to react to LIN's competitive technical and marketing strategies that it normally would not have. The effectiveness of LIN's strategies for the Los Angeles market may therefore be reduced because of Telesis' access to this information through the Dallas-Ft. Worth partnership. LIN would sacrifice significant efficiencies if it had to develop separate plans and strategies to prevent Telesis from gaining access to its proprietary information.

By making it more difficult for LIN to compete effectively with Telesis in Los Angeles, Telesis' presence in the Dallas-Ft. Worth partnership may facilitate, and increase the risk of, collusion between Telesis and LIN. A collusive agreement between Telesis and LIN in Los Angeles could involve a variety of elements, including pricing, the introduction of service enhancements, and the implementation of technical modifications. Collusion would be attractive to LIN because it would allow LIN to disclose information to the Dallas-Ft. Worth partnership without fear of adverse consequences in Los Angeles. By colluding with Telesis, LIN could avoid the harmful effects of information transfer and increase significantly the profitability of its cellular operations.

Moreover, the Dallas-Ft. Worth partnership between Telesis and LIN would provide additional opportunities for communications necessary to the creation and enforcement of any collusive agreement. The discussion of information in the Dallas-Ft. Worth partnership that would not normally be disclosed between competitors provides an attractive opportunity for reaching and enforcing anticompetitive agreements in Los Angeles without detection.

The reduced incentives to innovate and the increased potential for collusion created when competitors in one market become partners in another is of particular concern in cellular radio markets because of the absence of other competitors and the absolute barriers to entry. Because FCC rules permit only two cellular systems in each metropolitan area, there would be no cellular competition in Los Angeles if Telesis and LIN colluded.

III. Explanation of the Proposed Final Judgment and Its Effects on Competition

The United States brought this action because the effect of Telesis' acquisition

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[3] *Cellular Communications Systems*, 86 F.C.C.2d 469, 476 (1981). The FCC generally based its CGSA delineations on an area's corresponding Metropolitan Statistical Area. Each of the two cellular systems in an area is allocated 333 radio channels. 47 CFR 22.903. The FCC's rules initially reserved one of the two licenses in each CGSA for the local wireline telephone company affiliate; this is commonly referred to as the "wireline", or "block B", license. The second cellular franchise could be awarded to any other qualified applicant; it is commonly referred to as the "non-wireline", or "block A", license. *Cellular Communications Systems, supra*, at 487–92.

[4] CI also provides paging and other mobile communications services and manufactures telecommunications equipment. To comply with the MFJ and the FCC's rules, Telesis will divest or discontinue CI's manufacturing operations, CI's San Diego cellular system, voice storage and retrieval services in California, interexchange paging services in California, and certain interexchange microwave facilities owned by CI in Kentucky and Northern California.

[5] In addition, LIN holds controlling interests in the Philadelphia and New York non-wireline cellular systems, as well as a substantial interest in the Houston non-wireline cellular partnership.

[6] The acquisition also will create other partner-competitor overlaps that, due to nature and extent of the ownership interests involved and other relevant considerations, appear less likely to reduce competition, and thus, are not challenged in this complaint. These include relationships between Telesis and McCaw Communications, which is Telesis' partner in San Francisco and will be Telesis' competitor in Sacramento, and between Telesis and Graphic Scanning (Dallas-Fort Worth partner/Oxnard, Fresno competitor), and between Telesis and American Cellular Telephone Corp. (Louisville, Jacksonville partner/Los Angeles competitor).

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of CI's interest in the Dallas-Ft. Worth cellular partnership may be substantially to lessen competition in violation of Section 7 of the Clayton Act or to restrain competition in violation of Section 1 of the Sherman Act in the market for cellular services in Los Angeles. The anticompetitive effects associated with the merger, however, can be largely eliminated if Telesis does not participate actively in the Dallas-Ft. Worth cellular system.

To this end, Paragraph IV of the proposed Final Judgment restricts Telesis to an essentially passive investment role in the Dallas-Ft. Worth partnership, D/FW and Metroplex. It prohibits Telesis from participating in the affairs of these partnerships except in very limited ways. Telesis is prohibited from playing any role in the daily operations and planning of the Metroplex cellular system. It may not attend meetings of or have employees in common with D/FW or Metroplex. Telesis' right to vote is significantly limited. It may vote only (and only in writing) on the proposed admission of a partner to D/FW or Metroplex, a proposed merger or consolidation of D/FW or Metroplex, a proposed sale of all or substantially all of the assets of D/FW or Metroplex, or a proposed amendment of the D/FW or Metroplex partnership agreement.

Paragraphs IV(A)–(C) of the proposed Final Judgment also strictly limit the information Telesis may obtain about the Dallas-Ft. Worth system or about LIN's cellular operations. Telesis may obtain from the Dallas-Ft. Worth partnerships only information available to the public; financial statements of D/FW and Metroplex; a summary of results of an independent financial audit that it may request; notice of capital calls; notice of rights to purchase or sell interests in D/FW or Metroplex; notice and full information on any transfer or proposed transfer by a Metroplex or D/FW partner of its interest in Metroplex or D/FW and of rights of first refusal regarding such proposed transfer; notice and full information on matters on which it is permitted to vote; notice of any allocations made to the partnership accounts of any of the Metroplex or D/FW partners; information needed to notify persons of their decree obligations; and any additional financial information necessary to permit Telesis to prepare its state or federal tax returns. To facilitate monitoring of compliance with these restrictions, communications between Telesis and the D/FW and Metroplex partnerships and partners concerning the cellular operations of LIN or the Dallas-Ft. Worth system, and all Telesis votes in the D/FW and Metroplex partnerships must be in writing.

Paragraph IV (D) of the proposed Final Judgment requires Telesis to enter into an amendment to the D/FW partnership agreement in the form of Exhibit A to the proposed Final Judgment in order to conform the partnership agreement to the terms of the proposed Final Judgment. Paragraph IV(D) further requires that Telesis submit any proposed amendment to the D/FW partnership agreement to the Department of Justice at least thirty (30) days prior to the effective date of the amendment. If the Department of Justice during the thirty (30) day period does not object to the proposed amendment, it shall take effect. An amendment to the partnership agreement, however, would not operate as a modification of the Final Judgment. If the Department of Justice objects in writing to a proposed amendment to the D/FW partnership agreement, the proposed amendment shall not become effective until the Department of Justice removes its objection or the Court rules, on the motion of either party to the Final Judgment, that the proposed amendment is consistent with the Final Judgment or that modification of the Final Judgment is warranted.

Under Paragraph III of the Final Judgment, the restrictions on Telesis' access to information from the Dallas-Ft. Worth partnership are binding not only on Telesis and CI but on "all other persons in active concert or participation with any of them who shall have received actual notice of [the] proposed Final Judgment by personal service or otherwise." Telesis is required by Paragraph V of the proposed Final Judgment to inform its officers and management officials with significant responsibility for Telesis' cellular operations, the trustee under the Temporary Trust Agreement dated July 26, 1985, certain consultants providing services related to the operation of Telesis' cellular business, and any independent financial auditor that Telesis may hire, about the Final Judgment and their obligations to comply with it. In addition, Telesis is required by Paragraph V(E) of the proposed Final Judgment to inform each officer or management official of D/FW and Metroplex with significant responsibility for cellular operations, either the Chief operating officer or the officer with primary responsibility for cellular operations for each Metroplex or D/FW partner, and each person who is a representative, alternate representative, or officer of the D/FW or Metroplex partnership committee about the Final Judgment and their obligations to comply with it.

Paragraph VI of the proposed Final Judgment allows the United States to obtain information and documents relating to Telesis' compliance with the proposed Final Judgment.

Paragraph VII of the Final Judgment provides that the Final Judgment shall terminate ten years after it is entered. Because the anticompetitive effect at issue in this case arises from the resulting partner-competitor relationship between Telesis and LIN, Paragraph VII further provides that the Final Judgment will terminate if Telesis or LIN disposes of its entire interest in their competing Los Angeles systems, or if Telesis or LIN disposes of its entire interest in the Dallas-Ft. Worth partnership.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no *prima facie* effect in any private lawsuit that may be brought against Telesis or CI.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants Telesis and CI have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the

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comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Barry Grossman, Chief, Communications and Finance Section, Antitrust Division (504 Safeway), U.S. Department of Justice, Washington DC 20530.

Under Paragraph VIII of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States, Telesis or CI to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Final Judgment, or for the punishment of any violations of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The only alternative remedy considered was to require Telesis to divest CI's interest in the Dallas-Ft. Worth system. The United States determined that the competitive danger raised by the acquisition would be largely eliminated and the public interest would be served best by obtaining Telesis' consent to an enforceable decree limiting its participation in the Dallas-Ft. Worth partnership and by filing the proposed Final Judgment with the Court prior to the consummation of the proposed merger. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h) have been satisfied, the public will benefit immediately from the safeguards contained in the proposed Final Judgment because Telesis and CI have stipulated to comply with the terms of the Final Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of the proposed merger required that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the merger might be permitted to go forward without any enforcable safeguards in effect.

VII. Determinative Documents

The only document determinative in the formulation of the proposed Final Judgment was the First Amendment to Partnership Agreement D/FW Signal Partnership, amending that agreement to conform to the restrictions of the Final Judgment. A copy of that agreement is being filed by the United States pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), as Exhibit A to the proposed Final Judgment.

Dated: February 27, 1986.

Respectfully Submitted,

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Kevin R. Sullivan,
Nancy C. Garrison,
Christine A. Wardell,
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BILLING CODE 4410-01-M

Proposed Modification of Final Judgment

Notice is hereby given that Waste Management, Inc. and WM Acquiring Corp. (collectively "WMI") have filed with the United States District Court for the District of Columbia a petition to modify the final judgment in *United States v. Waste Management, Inc., et al.*, Civil No. 84-2832; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case, filed on September 12, 1984, challenged WMI's acquisition of SCA Services, Inc. ("SCA") under section 7 of the Clayton Act, 15 U.S.C. 18. It alleged, among other things, that the effect of the acquisition might be substantially to lessen competition in the provision of solid waste collection and disposal services in twenty local geographic markets throughout the United States and in the provision of hazardous waste landfill services in the southeastern United States and portions of the midwestern United States. A consent judgment was entered on June 6, 1985. That judgment required WMI to divest 39 SCA business, approximately 40 percent of SCA, and certain businesses of WMI to Genstar Refuse Services Corporation (since renamed GSX Corporation), of wholly-owned subsidiary of Genstar Corporation.

The proposed modification of the judgment allows WMI to acquire from GSX the following businesses:

Berkley Division/Cal's Collection—(Assonet, Massachusetts)
J.K. Municipal—(Rowley, Massachusetts)
Independent Landfill—(Muskegon, Michigan)
Interstate Waste Removal Co.—(Trenton, New Jersey)
Eastern Collection and Eastern Transfer (excepting Eastern Municipal Business)—(Rowley, Massachusetts)

The proposed modification also affects the divestiture of a ninety (90) acre potential hazardous waste landfill site in Northwood, Ohio. The proposal allows WMI to keep the site and divest to GSX (or its assignee) an option to purchase a 118 acre site immediately to the east of the original site.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that modification of the judgment would serve the public interest. Copies of the complaint, final judgment, WMI's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this petition will be available for inspection in the the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Washington, DC 20001. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received by the Division within the sixty day period established by court order, and will be filled with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202-633-2541).

Dated: March 10, 1986.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 86-5844 Filed 3-17-86; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Pyrethrin Joint Research Venture

Notice is hereby given pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), that Fairfield American Corporation has filed a written notification simultaneously with the

Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the PYRETHRIN Joint Research Venture and (2) the nature and objectives of the PYRETHRIN Joint Research Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the PYRETHRIN Joint Research Venture and its general areas of planned activities are given below.

The parties to the PYRETHRIN Joint Research Venture are as follows:

Chemical Specialties Manufacturers Association
Fairfield American Corporation
McLaughlin Gormley King Company
Office of Pyrethrum of Rwanda ("OPYRWA")
Penick—BIO-UCLAF Corporation
Prentiss Drug & Chemical Corporation
Pyrethrum Board of Kenya
S.C. Johnson & Son, Inc.
Tanganyika Pyrethrum Board

The objective of the PYRETHRIN Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient PYRETHRIN and to submit the results of the research to the U.S. Environmental Protection Agency ("EPA") in connection with the PYRETHRIN Date Call-In. This research on PYRETHRIN, which is the active ingredient in certain commercially available pesticide products, will be conducted pursuant to the Data Call-In Notice issued by the EPA on September 27, 1985.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 86-5845 Filed 3-17-86; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of E-Systems Inc. and Rockwell International Corp. to SRC; the deletion of Zilog, Incorporated, from SRC; the deletion of Micro Mask, Incorporated, from the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC; and the addition of the following companies to the SEMI Chapter of the SRC:

E/G Electrograph Inc.
Emergent Technologies Corporation
Genus, Inc.
Ion Implant Services
Machine Intelligence Corporation
MG Industries/Scientific Gases
The Micromanipulator Company, Inc.
Sage Enterprises, Inc.
UTI Instruments Company

SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the deletion and addition of the previously identified companies consists of the following members:

- Advanced Micro Devices, Incorporated
- AT&T Technologies, Incorporated
- Burroughs Corporation
- Control Data Corporation
- Digital Equipment Corporation
- E.I. du Pont de Nemours & Company
- Eastman Kodak Company
- Eaton Corporation
- E-Systems Inc.
- GCA Corporation
- General Electric Corporation
- General Motors Corporation
- Goodyear Aerospace Corporation
- GTE Laboratories, Incorporated
- Harris Corporation
- Hewlett-Packard Company
- Honeywell, Incorporated
- IBM Corporation
- Intel Corporation
- LSI Logic Corporation
- Monolithic Memories, Incorporated
- Monsanto Company
- Motorola, Incorporated
- National Semiconductor Corporation
- Perkin-Elmer Corporation
- RCA Corporation
- Rockwell International Corp.
- SEMI Chapter, consisting of:
  - FEP Analytic (division of Verity Instruments, Inc.)
  - Amedyne
  - E/G Electrograph Inc.
  - Eagle-Picher, Ind. Inc.
  - Emergent Technologies Corporation
  - Flexible Manufacturing Systems, Inc.
  - Genus, Inc.
  - Gryphon Products
  - Hercules Specialty Chemicals Company
  - Ion Beam Technologies, Inc.
  - Ion Implant Services
  - Isitec Corporation
  - Lehighton Electronic, Inc.
  - Mac Dermid, Inc.
  - Machine Intelligence Corporation
  - Machine Technology, Inc.
  - MG Industries/Scientific Gases
  - Micrion Corporation
  - Micronix Corporation
  - Oneac Corporation
  - Pacific Western System, Inc.
  - Peak Systems, Inc.
  - Probe-Rite, Inc.
  - Pure Aire Corporation
  - Sage Enterprises, Inc.
  - Semi-Gas Systems, Inc.
  - Silsco, Inc.
  - The Micromanipulator Company, Inc.
  - The SEMI Group, Inc.
  - Universal Energy System, Inc.
  - UTI Instruments Company
  - VLSI Standards, Inc.
  - XMR, Inc.
- Silicon Systems, Incorporated
- Sperry Corporation
- Texas Instruments, Incorporated
- Union Carbide Corporation
- Varian Associates, Incorporated
- Westinghouse Electric Corporation
- Xerox Corporation

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Indentifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources for many SRC members;

10. Promoting efficient communication of research results to SRC members and

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to the United States semiconductor community as a whole.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–5846 Filed 3–17–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523–6331 Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Authorization for Release of Medical Information
1215–0057; CM–936
On occasion
Individuals or households
3,000 responses; 250 hours; 1 form

This form is necessary to obtain information on miners from medical institutions and private physicians who normally would not release this information to the Department. The form is used by the miner to give consent for the release of medical information pertaining to the miner.

Employment Standards Administration
Establishment Information and Establishment Information (Spanish)
1215–0006, WH–45 and WH–45 (Sp.)
On Occasion
Business or other for profit; non-profit institutions; small business organizations
4500 responses; 750 hours; 2 forms

Forms WH–45 and WH–45 (Sp.) are used in determining coverage of various establishments that are being considered for investigation under the Fair Labor Standards Act.

Employment Standards Administration
Continuance of Compensation
1215–0154; CA–12
Annually
Individuals or households
7,300 responses; 608 hours; 1 form

The Continuance of Compensation Claims Form is used to provide information concerning the continued entitlement of beneficiaries in death cases under the provisions of 5 USC 8101, et seq.

Employment Standards Administration
Claims for Compensation by Dependents and Dependents Information Reports (Death)
1215–0155; CA–5, 5b, 1615, 1617, 1085, 1074, 1031, 1072, 1093
On occasion; Semi-annually (CA–1617)
Individuals or households
3,765 responses; 2,097 hours; 9 forms

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Mine Safety and Health Administration
Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
1,900 respondents; 8,056 hours

Requires underground coal mine operators to keep records of the results of examinations of self-rescue devices.

Mine Safety and Health Administration
Ventilation System and Methane and Dust Control Plan
1219–0064
On occasion; semi-annually
Businesses or other for profit; small businesses or organizations
2,100 respondents; 13,000 hours

Requires operators of underground coal mines to submit a detailed ventilation system and methane and dust control plan and revisions thereof to MSHA for approval.

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219–0088
Daily/weekly
Businesses or other for profit; small businesses or organizations
1,900 respondents; 5,343,137 hours

Standards require that records be kept of certain tests and examinations which are required to be performed to monitor the ventilation system in underground coal mines. The information is used to insure that the integrity of the ventilation system is being maintained and that a safe working environment is being provided to miners.

Signed at Washington, DC, this 13th day of March, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–5931 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-27-M, 4510-43-M

Employment and Training Administration

[TA–W–17,245]

Fieldcrest-Cannon, Inc., Concord, NC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 1986 in response to a worker petition which was

filed on behalf of workers at Fieldcrest-Cannon, Inc., Concord, North Carolina.

A negative determination applicable to the petitioning group of workers was issued on March 3, 1986 (TA–W–16,475). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–5929 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–16,383]

Western Nuclear, Incorporated, Jeffrey City, WY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 9, 1985 in response to a worker petition received on August 29, 1985 which was filed on behalf of workers at the Jeffrey City, Wyoming operations of Western Nuclear, Incorporated..

A negative determination applicable to the petitioning group of workers was issued on September 25, 1985 (TA–W–15,056). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of March 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–5930 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Conway-Winter, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 3, 1986—March 7, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to work separations at the firm.

TA–W–16,559; Conaway-Winter, Inc., Birch Tree, MO

TA–W–16,536; Advanced Hemstitching, New York, NY

TA–W–16,519; Ashland Petroleum Co., Freedom, PA

TA–W–16,475; Cannon Mills Co., Plant # 6, Concord, NC

TA–W–16,454; Cooper Range Co., White Pine Copper Div., White Pine, MI

TA–W–16,427; ASL Industries, Inc., Unionville, NY

TA–W–16,453; Coors Porcelain Co., Grand Junction, CO

TA–W–16,403; AVX Corp., Olean, NY

TA–W–16,407; Thatcher Glass Corp., Tampa, FL

TA–W–16,375; American Cyanamid Co., Milton, FL

TA–W–16,504; West Point Peppperell, Inc., Shawmut Cordurory Plant, Shawmut, AL

TA–W–16,312; Atlas Crankshaft Corp., Fostoria, OH

TA–W–16,349; United Technologies, Mostek Corp., Colorado Springs, CO

TA–W–16,352; Cummings Engine Co., Madison, IN

TA–W–16,353; Cummings Engine Co., Seymour, IN

TA–W–16,354; Cummings Engine Co., Indianapolis, IN

TA–W–16,355; Cummings Engine Co., Walesboro, IN

TA–W–16,356; Cummings Engine Co., Columbus, IN

TA–W–16,461; Midwest Steel and Iron Works, Pueblo, CO

TA–W–16,461A; Midwest Steet and Iron Works, Denver, CO

TA–W–16,364 and TA–W–16, 646; Cyclops Corp., Empire-Detroit Steel Div., Dover, OH

In the following cases in the investigation revealed that criterion (3) had not been met for the reasons specified.

TA–W–16,529; Sunshine Mining Co., Eureka, UT

Aggregate U.S. imports of flux for copper smelting are negligible.

TA–W–16,530; Vulcan Mold and Iron Co., Latrobe, PA

Aggregate U.S. imports of iron ingot molds are negligilbe.

TA–W–16,527; Nitrochem Energy Corp., Biwabik, MN

Aggregate U.S. imports of water gels and slurries; blasting agents and explosives are negligible.

TA–W–16,400; ASARCO, Inc. Corpus Christi, TX

Aggregate U.S. imports of slab zinc did not increase as required for certification.

TA–W–16,318; Health Co., Benton Harbor, MI

Sales, production and employment did not decline during the relevant period as required for certification.

TA–W–16,503; Monessen Southwestern Railway Co., Monessen, PA

Sales or production did not decline during the relevant period as required for certification. Declines in production/employment due to labor dispute are not a basis for certification under Section 222 of the Trade Act of 1974.

TA–W–16,567; Wheeling-Pittsburgh Steel Corp., Coke and By-Products Department, Monessen, PA

Sales or production did not decline during the relevant period as required for certification. Declines in production/employment due to labor disputes are not a basis for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–16,468; Samson Altman, Inc., Waltham, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before November 1, 1985.

TA–W–16,562; Hansley Industries, Inc., Paris, KY

A certification was issued covering all workers of the firm separated on or after October 15, 1984.

TA–W–16,513; Brown Shoe Co., Trenton, TN

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A certification was issued covering all workers of the firm separated on or after September 30, 1984.

TA–W–16,554; Elegant Sportswear, Inc., Elizabeth, NJ

A certification was issued covering all workers of the firm separated on or after October 3, 1984 and before May 19, 1985.

TA–W–16,499; Canton Apparel, Inc., Canton, MS

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before January 31, 1986.

TA–W–16,480; Jackson China, Inc., Falls Creek, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1985 and before November 1, 1985.

TA–W–16,515; LaTulipe Fashion, Inc., Irvington, NJ

A certification was issued covering all workers of the firm separated on or after September 9, 1984 and before August 19, 1985.

TA–W–16,441; Dalton Industries, Cleveland, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA–W–16,442; Dalton Industries, Willoughby, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA–W–16,443; Dalton Industries, Lorain, OH

A certification was issued covering all workers of the firm separated on or after Septeber 23, 1984 and before August 1, 1985.

TA–W–16,444; Dalton Industries, Conton, OH

A certification was issued covering all workers of the firm separated on or after September 23, 1984.

TA–W–16,321; Standard Plastic Products, Inc., Edison, NJ

A certification was issued covering all workers of the firm separated on or after August 30, 1985 and before September 30, 1985.

TA–W–16,437; Weyerhaeuser Co., North Bend, OR

A certification was issued covering all workers of the firm separated on or after September 11, 1984.

TA–W–16,405; Nicky Lee Sportswear, Waynesboro, PA

A certification was issued covering all workers of the firm separated on or after August 8, 1984 and before July 10, 1985.

TA–W–16,408; Lincoln Pulp and Paper Co., Inc., Lincoln, ME

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA–W–16,429; Farah Manufacturing, Inc., Las Cruces, NM

A certification was issued covering all workers of the firm separated on or after September 13, 1984 and before May 10, 1985.

TA–W–16,425; U.S. Steel Corp., Research Laboratory, Monroeville, PA

A certification was issued covering all workers of the firm separated on or after February 18, 1985.

TA–W–16,186; Opelika Manufacturing Corp., Phenix City, AL

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA–W–16,449; Rogers Manufacturing Co., Akron, OH

A certification was issued covering all workers of the firm separated on or after September 20, 1984.

TA–W–16,432; Permali Inc., Mt. Pleasant, PA

A certification was issued covering all workers of the firm separated on or after September 6, 1984.

TA–W–16,440; Columbia Sportswear Co., Portland, OR

A certification was issued covering all workers of the firm separated on or after August 1, 1985.

TA–W–16,426; U.S. Steel Corp., Railroad Axle Operations, McKees Rocks, PA

A certification was issued covering all workers of the firm separated on or after August 29, 1984 and before June 1, 1985.

TA–W–16,447; Milliken and Co., Manchester, GA

A certification was issued covering all workers of the firm producing yarn and woven fabric: pocketing separated on or after September 25, 1984 and before July 20, 1985.

TA–W–16,450; Sheller-Globe Corp., Quincy, IL

A certification was issued covering all workers of the firm separated on or after January 1, 1985 and before January 31, 1986.

TA–W–16,498; Act III, Div. of Jonathan Logan, Inc., Spartanburg, SC

A certification was issued covering all workers of the firm separated on or after February 1, 1985 and before February 1, 1986.

TA–W–16,418; Ertl Company, Dyersville, IA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,362; B.F. Goodrich, Akron, OH

A certification was issued covering all workers of Plant #1 engaged in the production of conveyor belts separated on or after December 1, 1984.

TA–W–16,291; Goodrich Distribution Center, Columbus, OH

A certification was issued covering all workers of the firm separated on or after December 1, 1984.

TA–W–16,466; Mutual Manufacturing, Lawrence, MA

A certification was issued covering all workers of the firm separated on or after September 18, 1984 and before November 30, 1985.

TA–W–16,476; Edgo Lab Design, Lawrence, MA

A certification was issued covering all workers of the firm separated on or after September 18, 1984, and before November 30, 1985.

TA–W–16,502; Mighty-Mac, Inc., Gloucester, MA

A certification was issued covering all workers of the firm separated on or after September 12, 1984.

TA–W–16,489; The Fabsteel Co., Waskon, TX

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA–W–16,490; Fabsteel of Louisiana, Shreveport, LA

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA–W–16,490A; Fabsteel Headquarters, Shreveport, LA

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

TA–W–16,491; Fabsteel of Texarkana, Texarkana, TX

A certification was issued covering all workers of the firm separated on or after September 17, 1984.

I hereby certify that the aforementioned determinations were issued during the period March 3, 1986–March 7, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC, during normal business hours or will be mailed to persons who write to the above address.

Dated: March 11, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–5928 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D–6063; et al.]

Proposed Exemptions; Allright Auto Parks, Inc., Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Adminsitration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions form certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be avaialble for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Departmnt for a complete satement of the facts and representations.

Allright Auto Parks, Inc. Profit Sharing Plan and Trust (the Plan) Located in Houston, Texas

[Application No. D–6063]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to Allright Auto Parks, Inc. (the Employer) of a certain parcel of improved real property (the Property), provided that the terms of the proposed sale, including the sale price, are at least as favorable to the Plan as an arm's-length transaction with an unrelated party at the time of the consummation of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of June 30, 1984, had 1,590 participants and total assets of $6,859,071. The trustee of the Plan is Texas Commerce Bank, N.A. (the Trustee). The Administrative Committee of the Plan (the Committee), which is composed of directors and officers of the Employer, has responsibility for directing Plan investments.

2. The Employer is a Texas corporation engaged in the automobile parking lot business with its headquarters located at the Concord Tower, Suite 1200, 1919 Smith Street, Houston, Texas. The Employer was acquired in July 1982 by a foreign interest, the Nedinco Acquisition Corporation (the Buyer), through the merger of the Employer and Nedinco Merger, Inc., a Delaware corporation wholly-owned by the Buyer. After the merger, the Buyer changed its corporate name to that of the Employer.

3. The Property is 11,250 square feet of land located at the northwest corner of Jackson and Prather Streets, Dallas, Texas. The Employer owns the adjacent 6,750 square foot tract of land located at the northeast corner of Jackson and S. Ervay Streets. Both the Property and the Employer's property are currently utilized as paved parking lots and are within the Dallas Central Business District. The Plan acquired the Property in 1972 from an unrelated party and entered into a lease of the Property with the Employer on December 1, 1973 (the Initial Lease). The term of the Initial Lease was for five years with rental payments of $2,340 per month. The Initial Lease was renewed on a month-to-month basis under the same terms until May 1, 1981, at which time a new two year lease was signed with an increase in rent to $3,600 per month (the Renewal Lease). The Renewal Lease expired on April 30, 1983, but continued thereafter under the same terms on a month-to-month basis. The applicant represents that the leasing of the Property satisfied the requirements of section 414(c)(2) of the Act through June 30, 1984 as a "binding contract" under applicable state law with terms at least as favorable to the Plan as an arm's-length transaction with an unrelated party.[1] The employer has continued to lease the Property beyond June 30, 1984, paying monthly rentals of $3,600 to the Plan. The Employer states that the necessary excise tax forms will be prepared and filed to report as a prohibited transaction the lease of the Property to the Employer, and that all appropriate taxes for the leasing transaction will be paid for the period from June 30, 1984 to the date of the proposed sale within 60 days of the date of a grant of this proposed exemption.

4. The applicant proposes that the Plan sell the Property to the Employer.

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[1] The Department expresses no opinion regarding the applicability of section 414(c)(2) of the Act to this lease arrangement.

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The Trustee states that it will serve as an independent fiduciary with respect to the sale. The Trustee chose the Cushman & Wakefield Appraisal Division (the Appraiser), an independent real estate appraiser in Dallas, Texas, to provide an updated appraisal of the Property's fair market value. The Appraiser initially estimated the Property's value at $956,000, or approximately $85.00 per square foot, as of September 27, 1985, and the fair market ground rental at $95,600 per annum based on a 10% rate of return on the appraised value. The Appraiser's valuation was based on an analysis of comparable land sales generally located along and south of Jackson Street in the Dallas Central Business District. However, the Appraiser later reconsidered the original evaluation based on some additional sales of properties located within the northern half of the Dallas Central Business District. Under the Appraiser's revised valuation, the fair market value of the Property is $100.00 per square foot or $1,125,000, as of September 27, 1985. The Appraiser states further that when the plottage value (i.e. the increment of value derived from the greater utility created when two or more sites are assembled under a single ownership) of the Property and the Employer's contiguous property is considered along with the market data, the fair market value of the subject half block would be $125.00 per square foot, making the Property's value approximately $1,406,250. In consideration of the Appraiser's findings and the other previous appraisals of the Property, the Employer proposes to pay $135.00 per square foot or $1,518,750 for the Property.[8] The Trustee states that the Employer's ownership of the adjacent property makes the Employer the best purchaser for the Property and that such a sale would be in the best interest of the Plan's participants and beneficiaries. The Trustee states further that the sale and use of the proceeds from the sale will have a positive effect on both the Plan's liquidity and its ability to diversify its investments with the available cash.

5. The Trustee acknowledges its duties, responsibilities and liabilities under the Act as a fiduciary of the Plan. The Trustee states that it has the authority, and will assume the responsibility, necessary to approve or disapprove the proposed sale. The Trustee will also pursue the Employer for the differences between the actual rentals paid on the Property under the current lease to the Employer and the fair market value rental as stated in the Appraiser's valuation of the Property, plus interest on the deficiency at an appropriate market rate of interest, beginning with June 30, 1984 through the date of sale. The Trustee states further that it has in place the necessary mechanisms to monitor the receipt of rental differentials and will take other such steps necessary to protect the interests of the Plan and assure that it is made whole based upon the fair market rental value of the Property as appraised by the Appraiser. The Employer has agreed to pay such amounts as are determined by the Trustee to be due.

6. The Trustee represents that it is not related to and shares no common interests with the Employer and that there are no owners or managers of the Employer serving on the Board of Directors of the Trustee. Loans outstanding to the Employer, as of April 1985, represented only .09% of the Trustee's total loans and lease financing. Total deposits of $530,104 for the Employer and its related companies represented .004% of the total deposits of the Trustee as of March 31, 1985. The applicant states that the Plan will not pay any commissions or other expenses in connection with the sale.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive an amount equal to or greater than the fair market value of the Property; (c) the Plan will not incur any expenses with respect to the sale; and (d) the Trustee states that the transaction is in the Plan's best interest and will allow the Plan to divest itself of the Property and reinvest the proceeds in investments yielding a higher rate of return.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Intrec, Inc. Money Purchase Pension Plan and Intrec, Inc. Defined Benefit Pension Plan (the Plans) Located in Santa Monica, California

[Application Nos. D-6167 and D-6168]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plans of certain real property to Quaestor, Inc. (Quaestor), a party in interest with respect to the Plans,[9] provided that the price received is not less than the fair market value of the real property on the date of sale, and provided further that the net cash proceeds to the Plans are at least equal to the Plans' cash outlay for the property to the date of sale, plus interest on funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate on the date of advance.

Summary of Facts and Representations

1. The Plans are a defined contribution (money purchase) pension plan and a defined benefit pension plan respectively, each with the same five participants. As of April 30, 1985, total assets of the money purchase plan were $393,733, and of the defined benefit plan $267,996. The Plans' sponsor is Intrec, Inc. (Intrec), a management consultant firm located in Santa Monica, California. The Plans' trustee is Michael A. Levin, Vice President and Treasurer of Intrec. The Plans' Investment Committee (the Committee) is composed of Richard R. Hallock, Director and President of both Intrec and Quaestor, and Saul M. Weingarten, Director and Secretary of both Intrec and Quaestor.

2. In May, 1983, the Committee received an application for a loan of $36,000 for a term of six months, to be secured by a fourth deed of trust on a house and lot and a contiguous lot which were at that time listed for sale (the Real Property), located in Carmel Valley, California, from Bernard L. Friedman (Mr. Friedman), an unrelated third party. At that time Mr. Friedman furnished the Committee with an appraisal of the house and lot prepared by Coutchie & Wolf Associates, real estate appraisers and consultants located in Salinas, California, estimating their fair market value as of April 12, 1982 at $850,000. Senior encumbrances borrowed by Mr. Friedman from unrelated financial institutions totaled $370,000, which, together with the applied for loan of $36,000, resulted in a loan/value ratio of 48%. The senior encumbrances consisted of a first deed of trust securing a loan of $99,000 from San Francisco Federal Savings and Loan; a second deed of trust securing a loan of $200,000 from Pan American Savings and Loan; and a third deed of trust securing a loan of $75,000 from Pan American Savings and Loan. Through amortization of principal the original total of $374,000 had been reduced to the $370,000 mentioned above. Accordingly, the Committee made the loan to Mr. Friedman, considering it to be a sound investment, since the loan/value ratio was well below the 70% upper limit used by the Committee, and since the prospect for the sale of the Real Property and repayment of the loans appeared excellent.

3. At the end of the six months, Mr. Friedman failed to pay the note, and also allowed the senior encumbrances to go into default. In order to protect the Plans' investment, the Committee decided to cure the default condition on the senior debt and commence foreclosure proceedings on the deliquent note. Accordingly, the Plans obtained title to the Real Property on June 18, 1984. During these proceedings, and subsequent to taking title to the Real Property, the Plans continued to make payments due on the senior debt, property taxes, and insurance at the rate of approximately $5,500 per month. The total of funds advanced by the Plans through December 3, 1985, including the original loan, delinquent payments on the senior encumbrances, and the pay off of the third note, is $246,907, with the underlying debt being approximately $291,000.

4. Upon completion of the foreclosure proceedings, the Real Property was listed for sale by Porter-Marquard Realty at $575,000 and subsequently reduced to $535,000. No offers to purchase the Real Property were received at these prices. The Real Property was then listed with another realtor, Sidney H. Yateman (Mr. Yateman), at $445,000 for the house alone and $75,000 for the contiguous lot. Two offers have been received at $350,000, and have been countered at $415,000; but there is little likelihood that the counter-offer will be accepted.

5. G.J. Kraft, a licensed real estate appraiser located in Monterey, California, estimated the fair market value of the Real Property at $510,000 ($420,000 for the house and $90,000 for the contiguous lot) as of August 5, 1985. The applicant represents that the great discrepancy between the original appraisal of the Real Property at $850,000 in 1982 and the latest appraisal is due, in part, to the failure of the original appraisal to take into account the lower average value of the other houses in the area. Further, the original appraisal was prepared to support an application by Mr. Friedman for a loan and lists no recent sales of comparable properties, but instead lists the asking prices (ranging from $900,000 to $1,500,000) of three homes then being offered for sale as a basis for appraised value. Mr. Kraft cites as further reasons for the decline in value a severe recessive economy with relatively high interest rates and a depressed real estate market in the Carmel Valley area, a growth moratorium on all major subdivisions under the Carmel Valley Master Plan, and increased traffic congestion in the area. Finally, the applicant notes that the Real Property is showing the results of deferred maintenance.

6. The applicant seeks an administrative exemption for the Plans to sell the Real Property to Quaestor for cash for no less than the fair market value of the Real Property on the date of sale, provided that the net cash proceeds to the Plans are at least equal to the Plans' total cash outlay for the Real Property to the date of sale, including all taxes, fees, payments of interest and principal, and underlying debt. Quaestor will also pay interest on the funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate as of the date of advance from the date of advance until the date of sale to Quaestor. The applicant thus represents that the proposed sale will make the Plans whole with respect to any losses sustained in connection with the Real Property. The Plans will not be required to pay any real estate commissions or fees in connection with the sale.

7. Mr. Yateman, who is also a practicing attorney and member of the California Bar, has agreed to serve as independent fiduciary to oversee the proposed transaction. Mr. Yateman represents that he is aware of his duties, responsibilities and potential liabilities in serving as independent fiduciary. After examining the terms of the proposed transaction and the overall needs of the Plans, Mr. Yateman represents that the proposed transaction is in the best interest of the Plans' participants and beneficiaries and protective of their rights. Mr. Yateman further states that the interest to be paid to the plans at 1% per annum over prime rate for the use of the funds advanced by the Plans is adequate compensation for the loss of earnings by the Plans occasioned by their acquisition and holding of the Real Property. Mr. Yateman finally states that when the proposed transaction is consummated he will review and verify all amounts paid by Quaestor to the Plans in accordance with the terms herein set forth.

8. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Real Property will be sold for no less than its fair market value at the time of the sale as determined by an independent appraiser; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions by the Plans; (d) the proposed sale will make the Plans whole with respect to any losses incurred in connection with the Real Property and compensate them for income lost through investment of the Plans' funds in the Real Property; and (e) the trustees of the Plans and the independent fiduciary have determined that the proposed transaction would be in the best interest and protective of the Plans and of their participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Mandel-Kahn Industries, Inc. Profit Sharing Plan (the Plan) Located in Houston, Texas

[Application No. D-6450]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective February 10, 1986, to the loans of money (the Loans) by the Plan to its sponsor, Mandel-Kahn Industries, Inc. (the Company). The proposed exemption would also exempt for the term of the Loans the personal guarantees of the Company's obligation by Joel H. Mandel and Jack B. Kahn, parties in interest with respect to the Plan.

Effective Date: If granted, this exemption will be effective February 10, 1986.

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[8] The applicant represents that the sale of the Property at this price will not result in a contribution to the Plan which exceeds the limitations set forth in section 415(c) of the Code.

[9] Quaestor is a party in interest with respect to the Plans under section 3(14) of the Act because 73% of its voting stock is owned by Richard R. Hallock, Director and President of Intrec, Inc., the Plans' sponsor.

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Summary of Facts and Representations

1. The Plan is a qualified profit sharing plan with approximately 633 participants and net assets of $3,061,720 as of April 30, 1985. The Plan Administrator is Gilbert Araiza, Jr. and the Trustees are Joel H. Mandel and Jack B. Kahn. The Trustees own or control a plurality of the Company's stock.

2. The Company, a corporation engaged in the wholesale distribution of non-food items to supermarkets, owns and maintains a fleet of vehicles (the Vehicles). Pursuant to Prohibited Transaction Exemption 81-9 (PTE 81-9) (February 10, 1981, 46 FR 11739), a temporary exemption for a five-year period, the Plan has financed the purchase of some of the Vehicles. First City National Bank of Houston (the Bank) has financed others at an interest rate of one percent above the prevailing prime rate of the Bank.

3. The Trustees are requesting an exemption beginning on the expiration date of PTE 81-9 for the Plan to make the Loans to the Company on a recurring basis for the purchase of the Vehicles. Each loan would be subject to the following conditions:

1. Each loan will be collateralized by a promissory note and security agreement.
2. Each loan will have a first lien on the vehicle and in addition will be collateralized by other vehicles which are owned by the Company such that at all times each loan will be collateralized in an amount at least equal to 150% of the outstanding balance of such loan.
3. Each vehicle purchased will be a new vehicle.
4. No loan will exceed 80% of the purchase price of the vehicle financed, excluding the tax, title and license costs.
5. The maximum length of each loan will be thirty-six months.
6. The interest rate on the Loans will be fixed at 2¼% above the prevailing prime rate set by the Bank with the maximum rate being the rate which is legally allowed under the usury statutes of the State of Texas.
7. At the time of its making, no loan, together with all other loans, will exceed 25% of the dollar volume of the total assets of the Plan.
8. Each loan will be personally guaranteed by Joel H. Mandel and Jack B. Kahn, who are principal stockholders of the Company.

4. Before the Plan enters into any loan transaction, an independent fiduciary, Mr. Dale A. Steele, Sr., C.P.A., will certify that such loan would be an appropriate investment for the Plan and that the terms of such loan are equal to or better than those which the Plan would receive in dealing with an unrelated third party. Mr. Steele will also be responsible for monitoring the payments on the Loans and for monitoring the fair market value of the collateral used in securing the Loans. Mr. Steele is engaged in the practice of public accounting in Houston, Texas, and is knowledgeable about loan transactions and trust administration. Mr. Steele represents that he has experience in ERISA, and both understands and acknowledges his duties, responsibilities and liabilities in acting as fiduciary under ERISA. Mr. Steele is unrelated to the Company and the Plan. The Bank will release money to fund a loan only upon its receipt of (1) a promissory note and security agreement in proper form, (2) proof of payment of the purchase price to the seller of the vehicle, (3) a true and correct copy of the application for a title to the vehicle, the sales tax receipt, and the seller's affidavit of sale, and (4) the written approval of Mr. Steele. The Bank will receive all loan payments and will notify Mr. Steele of any failure on the part of the Company to make a loan payment within fifteen days from the date such payment is due.

5. Kenneth H. Knop, Esquire (Mr. Knop), independent fiduciary with respect to PTE 81-9, represents that the Trustees and Plan Administrator discharged their fiduciary responsibilities with respect to PTE 81-9 fully, correctly, and timely; that all loans and loan payments have been properly accounted for by the Bank; and that all loan payments have been promptly paid when due. The applicant represents that Mr. Knop asked to be relieved as independent fiduciary because he was not able to charge the Plan fees commensurate with the time expended on behalf of the Plan.

6. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Loans will be in the best interest of the Plan; (b) the Loans will be approved and monitored by an independent fiduciary; (c) the Plan will receive a high rate of return on its investment; and (d) the Loans will be secured at all times by collateral valued at 150% of the outstanding balance of the Loans and by personal guarantees of the majority shareholders of the Company.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194 (This is not a toll-free number).

Eastern Carolina Neurosurgical Associates, Inc. Employees Retirement Plan (the Plan) Located in Greenville, North Carolina

[Application No. D-6503]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance wth the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to 1) the proposed purchase of 16,0000 shares of First Federal Savings and Loan Association of pitt County (First Federal) common stock (the Stock) by the individually directed account of Robert L. Timmons (Dr. Timmons) in the Plan (the Timmons Account) from Dr. Timmons, a party in interest with respect to the Plan; and 2) the proposed purchase of 15,000 shares of the Stock by the individually directed account of Ira M. Hardy, II (Dr. Hardy) in the Plan (the Hardy Account) from Dr. Hardy, a party in interest with respect to the Plan, provided that the price paid for the Stock is no greater than the fair market value of the Stock on the date of purchase.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with nine participants and total assets of $2,090,149 as of January 20, 1986. The Plan is sponsored by Eastern Carolina Neurosurgical Associates, Inc. (the Employer), a North Carolina medical professional corporation located at 125 Moye Boulevard, Greenville, North Carolina. The trustees of the Plan are Dr. Timmons, Dr. Hardy, and Dr. John R. Leonard, III, (the Trustees), who are the decision-makers with respect to Plan investments. The Trustees are officers and directors of the Employer.

2. Dr. Timmons and Dr. Hardy propose to sell 16,000 and 15,000 shares, respectively, of the Stock to the Timmons Account and the Hardy Account (the Accounts) in the Plan. Both Dr. Timmons and Dr. Hardy purchased the Stock in 1982 for a price of $6.00 per share as part of an original offering by First Federal. The Stock was purchased as an investment with anticipated long term capital gain. The applicant states that recent changes in federal banking regulations have made First Federal an attractive take-over candidate. Drs. Timmons and Hardy desire to sell the Stock to generate some liquidity for personal and business reasons, but they do not wish to sell the Stock on the open market at this time because a substantial increase in the Stock's value is anticipated. Therefore, Drs. Timmons and Hardy wish to sell their shares of the Stock to the Account so they can take advantage of any future appreciation of the Stock as participants of the Plan.

3. The applicant has submitted a valuation of the Stock by Burney S. Warren, II, (Mr. Warren), the President of First Federal, based on three major trades of the Stock which were the only trades of major blocks of the Stock during 1985. Mr. Warren, who is unrelated to Drs. Timmons and Hardy, represents that these major trades involved a total of 40,400 shares of the Stock which were transferred for a combined purchase price of $468,000 for an average of $11.58 per share. Two of the trades, on October 13, 1985 and November 21, 1985, were with parties totally unrelated to First Federal. Only one of the major trades mentioned by Mr. Warren involved a transaction with "insiders" or major stockholders. On August 14, 1985, 18,400 shares of the Stock were sold to seven major stockholders of First Federal for $12.00 per share by an individual who was selling all of his Stock. Mr. Warren States that there were approximately 329 stockholders of First Federal as of June 30, 1985 and that the marketplace generally has determined the value of the Stock when traded. The applicant proposes to have the Accounts purchase the Stock for $11.58 per share.

4. First Federal is a stockholder owned, federally chartered savings and loan association. The applicant states that there are presently about 370,000 outstanding shares of the Stock. The blocks of the Stock to be sold by Drs. Timmons and Hardy represent 4.32% and 4.05%, respectively, of the total outstanding shares. The Stock is registered with the Federal Home Loan Bank Board, which has substantially similar requirements as those of the Securities and Exchange Commission. The applicant represents that there are no restrictions on the sale or transfer of this Stock.

5. The applicant states that the Timmons Account and the Hardy Account had total assets of $752,608 and $731,109, respectively, as of January 20, 1986. The proposed purchase of 16,000 shares of the Stock by the Timmons Account and 15,000 shares of the Stock by the Hardy Account at $11.58 per share would involve less than 25% of the assets of each of the Accounts. In addition, the Plan will not incur any expenses on the purchase of the Stock for the Accounts. The Trustees state that any expenses relating to the proposed transactions will be paid by Dr. Timmons and Dr. Hardy.

6. In summary the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Stock will be a one-time transaction for cash; (b) the Accounts will purchase the Stock at a price no greater than the fair market value of the Stock; (c) the Accounts will not pay any expenses in connection with the transactions; and (d) Drs. Timmons and Hardy, the only paticipants to be affected by the transactions, have determined that the transactions are appropriate and in the best interest of the Accounts and desire that the transactions be consummated.

Notice to Interested Persons: Because Drs. Timmons and Hardy are the only participants in the Plan to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. E.F. Willians of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86-5927 Filed 3-17-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-38; Exemption Application No. D-6155 et al.]

Grant of Individual Exemptions; Knutson Companies, Employees Amended Profit Sharing Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also

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invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Knutson Companies Employees Amended Profit Sharing Trust (the Plan) Located in Minneapolis, Minnesota [Prohibited Transaction Exemption 86–38; Exemption Application No. D–6155]

Exemption

The restrictions of section 406(a) and 406 (b)((1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to The Knutson Companies, Inc., for $852,800 in cash, provided that such price is not less than the fair market value of the property on the date of sale and provided further that the net cash proceeds to the Plan are at least equal to the Plan's cash outlay for the property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2600.

For Further Informaton Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Benham Management Corporation Money Purchase Pension Plan and Trust (the Plan) Location in Palo Alto, California [Prohibited Transaction Exemption 86–39; Exemption Application No. D–6296]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) and (E) of the Code, shall not apply to the proposed sale by the Plan of 45 units (the Units) in Wester Timber Group 37, Ltd., a California limited partnership, to Benham Management Corporation, the sponsor of the Plan, provided that the sales price is not less than the higher of either $45,000 or the fair market value of the Units on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2604.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Burt Chevrolet, Inc. Employees Retirement Plan and Trust (the plan) Located in Englewood, Colorado [Prohibited Transaction Exemption 86–40; Exemption Application No. D–6331]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) and (E) of the Code, shall not apply to the proposed sale by the Plan to Burt Chevrolet, Inc. (the Employer) of a certain parcel of improved real property (the Property) which is currently being leased to the Employer, provided that the sales price is no less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2605.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Rex Moore Electrical Contractors & Engineers Profit Sharing Plan (the Plan) Located in Sacramento, CA [Prohibited Transaction Exemption 86–41; Exemption Application No. D–6363]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of 5 years, to the proposed loans by the Plan of up to 25% of its assets to Rex Moore Electrical Contractors and Engineers, Inc., provided that the terms of the transactions are not less favorable to the Plan that those obtainable in an arm's-length transaction with an unrelated party at the time of entering into each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2606.

Temporary Nature of Exemption

This exemption is temporary and will expire 5 years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this 5 year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the 5 year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Warner Plumbing Employee's Profit Sharing Plan (the Plan) Located in Springfield, Virginia [Prohibited Transaction Exemption 86–42; Exemption Application No. D–6434]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan, for the total cash consideration of $700,000, of certain real property (the Suitland Property), to The Warner Corporation, a contributing employer and a party in interest with respect to the Plan, provided the price paid for the Suitland Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2608.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Astro Homes, Inc. Profit Sharing Plan (the Plan) Located in Utica, Michigan [Prohibited Transaction Exemption 86–43; Exemption Application No. D–6165]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a parcel of vacant land located in Macomb County, Michigan and concurrent extension of credit by the Plan to Lombardo Enterprises, Inc., or to the guarantee of repayment by Mr. Cosimo Lombardo, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2601.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Travelers Separate Account "R" (the Account) Located in Hartford, Connecticut [Prohibited Transaction Exemption 86–44; Exemption Application No. D–6456]

Exemption

The restrictions of section 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 16, 1985, to the sale of certain agricultural properties by the Account to the Travelers Insurance Company, provided that the terms of the sale are not less favorable to the Account than those terms obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2609.

Effective Date: December 16, 1985.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86–5926 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of hearing.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy at the Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky.

DATE: Friday, April 11, 1986; 9:00 a.m. to 12:30 p.m.

Status: The hearing is open to the public.

Matters to be discussed: Commission members will hear testimony on dislocated worker issues from various witnesses representing State and local government, the private sector, and education. Witnesses will testify on the range of dislocated worker issues experienced in the Commonwealth of Kentucky generally and the Louisville area in particular. Attention will be given to the range of responses to dislocated worker problems with special attention being given to programs operated under Title III of the Job Training Partnership Act.

FOR FURTHER INFORMATON, CONTACT: Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street, NW, Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The national Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through April 25, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 12th day of March, 1986.

Carol J. Romero,

Acting Director.

[FR Doc. 86–5932 Filed 3–17–86; 8:45 am]

BILLING CODE 4510-30-M

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 to Commonwealth Edison Company (CECo) (the licensee) for Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action:

The proposed action would grant exemptions from certain requirements of section III.G of Appendix R to 10 CFR Part 50 which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of Section III.G or that alternate fire protection configurations can be justified by an acceptable fire hazard analysis.

The Need for the Proposed Action:

The proposed exemptions are needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability at Dresden Station.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at Dresden. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement dated November 1973 for the Dresden Nuclear Power Station, Unit Nos. 2 and 3.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 10, 1984 and September 18, 1985. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland this 12th day of March 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-5907 Filed 3-17-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Health Practitioners; Public Comments

AGENCY: Office of Personnel Management.

ACTION: Request for comments.

SUMMARY: The Office of Personnel Management (OPM) is requesting comments on the question of whether to extend a provision of the Federal Employees Health Benefits (FEHB) law to cover nonphysician health practitioners not currently covered. The comments being requested are not intended for the purpose of rulemaking. They are elicited to help OPM evaluate the feasibility, effectiveness and affordability of broadening the scope of health care providers covered under the FEHB law.

DATE: Comments must be received on or before March 25, 1986.

ADDRESS: Written comments may be sent to Jean M. Barber, Executive Assistant Director for Actuarial Analysis and Insurance, Compensation Group, Office of Personnel Management, P.O. Box 707, Washington, DC 20044, or delivered to OPM, Room 3415, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lease, Chief, Program Planning and Evaluation Division, (202) 632-4958. (Commenters who would like to expand on their written comments, or persons wishing to make their views known informally may also contact Mr. Lease by telephone.)

SUPPLEMENTARY INFORMATION: Under current law (5 U.S.C. 8902(k)(1)), FEHB fee-for-service plans that pay for or reimburse the cost of services which may be performed by licensed or certified clinical psychologists and optometrists must allow individuals they cover to be free to select and have direct access to such clinical psychologists and optometrists without supervision or referral by a physician and have payment or reimbursement made to them or on their behalf for services performed.

Pub. L. 99-251 directs OPM to conduct a study on the issue of extending current law to require FEHB fee-for-service plans that pay for or reimburse the cost of services which may be performed by other health practitioners, such as nursemidwives, nurse practitioners, chiropractors, and clinical social workers, to provide those whom they cover the same freedom of selection, direct access, and payment or reimbursement entitlement. OPM must send a written report on the study to the Congress before April 1, 1986. So that all interested parties may provide input for the study, the Director of OPM is requesting public comments on the following issues:

(1) Specific nonphysician health practioners that should be extended coverage under 5 U.S.C. 8902(k)(1) and the rationale for each in terms of service delivery and quality.

(2) Potential cost impact on enrollees and the Government for covering the above-specified health practitioners under 5 U.S.C. 8902(k)(1).

In addition, commenters are invited to submit any other views they may have on the subject, as well as statistical data and research studies in support of their views.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-5851 Filed 3-17-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-1015; (803-41)]

Rockefeller and Co., Inc.; Application for Order Permitting Performance-Based Fees

March 10, 1986.

Notice is hereby given that Rockefeller and Co., Inc. ("Applicant"), 30 Rockefeller Center, New York, NY 10112, a registered investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on September 17, 1984, and amendments thereto on January 31 and February 20, 1986, requesting a Commission order pursuant to section 206A of the Act granting an exemption from section 205(1) of the Act to the extent necessary to allow the general partners ("General Partners") of certain limited partnerships ("Partnerships") proposed to be organized by Applicant to receive fees ("Performance Fees") based upon a share of the profits and losses of such Partnerships. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant states that it was organized by the Rockefeller family ("Family") to provide investment advisory services to Family members and Family-related entities. Applicant is owned by 5600, Inc. ("5600"), which is owned by a Family trust ("Family Trust") established by Family members for descendants of the Family and their spouses ("Family Trust Beneficiaries"). The trustees of the Family Trust are advised by a committee of Family members. 5600's board of directors is elected by the trustees of the Family Trust and is comprised entirely of Family Members. (The office maintained by the Family, the Family Trust and the Family Trust Beneficiaries are collectively hereinafter referred to as the "Family Office.")

Applicant will act as investment adviser to each Partnership and will receive an annual fee of no more than two percent of Partnership assets as of the end of each year. Applicant states that each General Partner will be either (i) Applicant, (ii) a subsidiary of Applicant, (iii) key employees of, or consultants or other persons performing key services under contract with, the Family Office or a corporation controlled by the Family Office, or (iv) a partnership comprised of a combination of the foregoing. According to the application, each Partnership will have varying investment objectives and will require varying degrees of supervision and management by the General Partner. Further, the General Partner will be responsible for the management and administration of the Partnership's business and will be reimbursed by the Partnership for all expenses incurred by it on behalf of the Partnership. According to Applicant, each General Partner will maintain a Partnership interest equal to the greater of $150,000 or one percent of the total amount invested in the Partnership.

Applicant represents that limited partnership interests in the Partnership will be exempt from registration under the Securities Act of 1933 pursuant to section 4(2) thereof and that each Partnership will be exempt from registration as an investment company pursuant to either section 3(c)(1) of the Investment Company Act of 1940, or under an order issued by the Commission under section 6(c) thereof. Applicant further represents that individuals or entities desiring to invest in the Partnerships will either participate in accordance with Rule 205-3(b) under the Act or be "Family Partners" consisting of:

(i) Descendants of John D. Rockefeller, Jr. and their spouses, trusts created by or for such persons, and estates of such persons;

(ii) Charitable or educational institutions established by persons described in (i) or by John D. Rockefeller, Sr. or Jr.;

(iii) Businesses established by persons described in (i) and (ii), and which either are controlled by them or in which they have significant interest;

(iv) Certain organizations served by the Family Office; and

(v) Managers, supervisors and professionals ("Key Employees") of persons described in (i), (ii) and (iii) or trusts for the benefit of such Key Employees.

Family Partners who are Family Members must have a continuing and substantial relationship with the Family Office or have at least 50% of his or her assets available for investment under Family Office management. Applicants state that at present many Family Partners have at least $250,000 under management with the Family Office. Applicant also states that each Key Employee must (a) earn in excess of $50,000 per year; (b) have either a business or professional background and a college or professional degree or substantial specific experience in financial matters; (c) perform significant executive, professional or managerial functions; (d) be involved with the Family's business and/or philanthropic activities and have regular access to Family members; and (e) participate in a Key Employee investment program. Further, as described in the application, Family Partners have certain withdrawal and appraisal rights and Key Employees are subject to investment limitations.

According to the application, a General Partner will participate in the capital appreciation (or depreciation) of Partnership assets in two ways:

First, a General Partner will participate in the capital appreciation (or depreciation) of Partnership assets to the extent of its Interest in the same manner as Limited Partners so participate. Each Partner (General or Limited) will be allocated a pro rata share of all capital appreciation (or depreciation) which has not been specially allocated to the General Partner in the manner described below.

Second, a General Partner will receive a Performance Fee, ranging between 10% and 20% depending on the type of investments in which Partner assets are invested, of the realized and unrealized capital gains less realized and unrealized capital depreciation of Partnership assets. (The General Partner of a Partnership which requires more intensive supervision and management will receive a Performance Fee nearer 20%; the General Partner of a Partnership requiring less intensive supervision and management will receive nearer 10%.) If realized and unrealized capital depreciation exceeds realized and unrealized capital gains in any year, the General Partner will be specially allocated a percentage of such excess equal to its Performance Fee; *Provided, however,* Such net depreciation shall be so allocated to the General Partner only to the extent it does not exceed the aggregate amount of gains previously specially allocated to each such General Partner, net of any capital depreciation previously specially allocated to that General Partner. Thereafter, any excess net depreciation will be allocated to all Partners (General and Limited) in proportion to their capital contributions to be Partnership, adjusted for accretions, demunitions and withdrawals ("Interests"). Any net capital gains in subsequent years will also be allocated (pro rata) to all Partners until all allocated excess net

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depreciation has been fully offset. Applicant represents that permitting a General Partner to receive a Performance Fee representing a share of a Partnership's capital gains furthers the public interest, will not endanger the interests of the Limited Partners, and will not conflict with the policy of the Act against encouraging undue speculation by investment advisers.

Notice is further given that any interested person wishing to request a hearing on the applicaton may, not later than April 4, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-5898 Filed 3-17-86; 8:45 am]

BILLING CODE 8010-01-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-20]

Presidential Commission on the Space Shuttle Challenger Accident; Open Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces a forthcoming meeting.

DATE AND TIME: March 21, 1986, 10:00 a.m. to 4:00 p.m.

ADDRESS: Dean Atchison State Department Auditorium, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident (202-453-1797).

Purpose of Meeting: To receive the results of the latest analysis of photographic and film evidence relating to the Space Shuttle Challenger accident and to receive testimony to update the findings of the Commission's investigative efforts.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle *Challenger* which occurred on January 28, 1986.

Exceptional circumstances requiring less than 15 days notice: the meeting is required to be held promptly due to the Presidential direction that the Commission investigate the January 28, 1986, Space Shuttle Challenger accident and submit a final report to the President and the Administrator of the National Aeronautics and Space Administration within 120 days of issuance of Executive Order 12546, dated February 3, 1986.

Type of Meeting: Open.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 17, 1986.

[FR Doc. 86-6074 Filed 3-17-86; 11:21 am]

BILLING CODE 7510-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on April 21, 1986, at 9:00 a.m., the Washington Regional Office Station Committee on Educational Allowances shall at 941 North Capitol Street, NE., Washington, D.C., Room 8300-B, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Culinary School of Washington, LTD., 1050 Connecticut Avenue, NW., Washington, D.C., should be discontinued, as provided in 38 CFR 21.4134, because of requirement of law is not being met or provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: March 10, 1986.

W. David Smith,
Director, VA Regional Office.

[FR Doc. 86-5874 Filed 3-17-86; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 13, 1986.

By direction of the Administrator

Randall H. Bryant II,
Executive Assistant to the Associate Deputy Administrator for Management.

New

1. Department of Veterans Benefits
2. Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary
3. VA Form 29-541
4. On occasion
5. Individuals or households
6. 2,000 responses
7. 2,000 hours
8. Not applicable

[FR Doc. 86-5899 Filed 3-17-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 52
Tuesday, March 18, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 19, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Westmoreland Coal Company, Docket No. WEVA 82-152-R, etc. (Issues include appropriateness of the administrative law judge's civil penalty assessment).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-5960 Filed 3-14-86; 12:09 pm]

BILLING CODE 6735-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: 10:00 a.m., Thursday, March 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Michael Hogan and Robert Ventura v. Emerald Mines Corp., Docket No. PENN 83-141-D. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-5959 Filed 3-14-86; 12:09 pm]

BILLING CODE 6735-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 12, 1986.

TIME AND DATE: Wednesday, March 12, 1986.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission will discuss the following:

4. Robert Simpson v. FMSHRC, No. 86-1152, D.C. Circuit. (Discussion of complainant's petition for review in the court of appeals.)

5. NACCO Mining Co., Docket No. LAKE 85-87-R. (Dissussion of procedural motion.)

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-5958 Filed 3-14-86; 12:09 pm]

BILLING CODE 6735-01-M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 A.M. and 3:30 P.M., Monday, March 17, 1986.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW. Washington, DC 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Special Counsel* v. *Peace Corps*, MSPB Docket No. HQ12068610006

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of of the Board, (202) 653-7200.

Dated: March 14, 1986.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 86-5961 Filed 3-14-86; 8:45 am]

BILLING CODE 7400-01-M

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federal register

Tuesday
March 18, 1986

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250 and 256

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General and Outer Continental Shelf Orders for all Regions of the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would consolidate into one document the currently multitiered rules of the Offshore program of the Minerals Management Service (MMS) that govern oil and gas operations in the Outer Continental Shelf (OCS). The proposal also would eliminate redundant, burdensome, unnecessary, and counterproductive requirements imposed in current rules; introduce more performance standards; introduce new requirements; and simplify the language of the rules.

DATES: Comments must be hand delivered or postmarked no later than June 16, 1986.

ADDRESSES: Written comments must be mailed or hand delivered to the Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Room 6A110, Reston, Virginia 22091, Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone (703) 648–7729.

SUPPLEMENTARY INFORMATION:

Synopsis

The MMS is proposing to reform the rules governing oil and gas operations in the OCS. The reform is directed toward reducing the burden on industry resulting from the regulations while maintaining or increasing the level of safety and the protection provided for the environment. This is being accomplished by addressing issues identified by MMS as well as issues raised by industry in response to a request from the Secretary of the Interior (Secretary) for the identification of burdensome regulations.

The goal of minimizing the burden on industry while maintaining levels of safety and environmental protection mandated by statute is proposed to be accomplished through the following specific objectives:

(1) To consolidate all requirements into a single document, eliminating the multiple tiers of rules,

(2) To add more performance standards to the extent practicable,

(3) To update rules in areas where warranted by safety or environmental needs, operating experience, current operational practices, or advances in technology,

(4) To trim reporting and recordkeeping requirements to the minimum, and

(5) To remove redundant provisions, generally simplify the language, and clarify the rules.

Current regulations at 30 CFR Part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf, OCS Orders for each of the four OCS Regions, and portions of selected Notices to Lessees and Operators (NTL) would be combined into a proposed new Part 250 of Title 30 of the Code of Federal Regulations. The proposed rules would be organized into 14 subparts reflecting specific subject matter, e.g., Drilling Operations, and Remedies and Penalties.

The following summarizes the major proposed changes:

(1) *Performance Standards.* Performance standards would be added to the detailed requirements. Because the nature of the activities regulated are not readily amenable to performance standards (as in the case of emission standards or other numerically quantifiable standards) these standards are fairly general. They are descriptions of the safety, environmental, property, and resource protection goals intended to be achieved by the design and engineering requirements. They are intended to identify the purpose of the detailed requirements and provide a basis for alternative achievement of such purpose. New, different, better, and more efficient techniques and practices are intended to be available to lessees on the basis of these performance standards. We invite industry to comment as to whether the performance standards proposed present a welcome opportunity.

(a) *Performance Requirements.* A "Performance requirements" section would be added. This would clarify that specific detailed requirements of the regulations would not preclude the use of new or alternative techniques, procedures, equipment, or activities if they meet or exceed the protection intended to be provided by the specific requirements and if they have been approved by MMS. This is intended to remove obstacles to innovation and ensure that MMS's regulations are not unnecessarily prescriptive.

(b) *Well Casing Performance Characteristics.* A performance standard is proposed to be substituted for a reference in existing regulations incorporating the requirements in eight American Petroleum Institute (API) documents. The Applications for Permit to Drill, Deepen, or Plug Back (APD) and MMS inspections would provide review of actual casing being used.

(c) *Well Casing Setting Depths.* Specific depths for setting the conductor and surface casing are proposed to be deleted. The lessees' proposed casing programs would be reviewed by MMS as part of the APD approval procedure.

(d) *Well Completions and Well Workovers.* In this portion of the proposed regulations, performance standards for well-control fluids, blowout preventers (BOP), tubing, and wellhead equipment would be combined with limited additional requirements as opposed to the detailed design and engineering requirements proposed by MMS in May 1983. Industry voiced objection to the detailed prescriptive approach and suggested the use of performance standards.

(e) *Blowout-Prevention Systems.* The requirements concerning practices for blowout-prevention systems incorporated from various API documents would be replaced by a performance standard.

(2) *New Requirements.* Many of the OCS Orders have not been revised in more than 10 years. Some new requirements are proposed in response to recommendations made by accident investigation panels and others. Whenever possible, these new requirements would be described in terms of performance rather than design.

(a) *Periodic Inspections and Maintenance.* The MMS's regulations and rules presently are silent concerning periodic inspection and maintenance of platforms. Problems may increase as platforms age and as they are built in deeper waters and more hazardous areas. The proposed regulations would provide a minimal regulatory approach, lessee flexibility, and simple reporting to MMS.

(b) *Well-Completion and Well-Workover Operations.* Another gap in current MMS rules relates to well-workover operations and, to some extent, well completions. Numerous accidents have been associated with these operations. In May 1983, MMS proposed a comprehensive set of rules for these activities. The MMS received numerous industry objections to the May 1983 proposed rulemaking, primarily concerning the detail of the proposed requirements. This new

proposal would depend more on performance standards and would also respond to other industry comments. Although these proposed requirements are new, they represent widespread current industry practice. Specific requirements for well-completion and well-workover operations are included for equipment movement, emergency shutdown systems, hydrogen sulfide, subsea completions, crew instructions, welding and burning, electrical requirement, structures on fixed platforms, prevention of diesel engine "runaway", simultaneous operations, field rules, well-control, blow-out prevention, and tubing and wellhead equipment. Requirements are also included for well-workover wireline operations. Many of these requirements are based on similar requirements which are either currently applicable to drilling operations or are proposed to be applicable to drilling operations.

(c) *Hydrogen Sulfide (H_2S) Requirements and Procedures for Production, Well-Completion, and Well-Workover Operations.* The presence of H_2S represents a lethal threat to human safety and equipment/platform durability. Present H_2S requirements concerning drilling operations are proposed to be expanded to cover the other operations. The proposed rules concerning H_2S are tailored to whether or not the operations are in an area known to contain H_2S.

(d) *Diverter Equipment.* During the drilling of a well, shallow gas may be encountered. This equipment diverts gases to the side and away from the rig and may also prevent the destruction of a facility, loss of life or injury, and loss of resource which could occur from a blowout. The proposed rulemaking would require the use of diverters of a specific configuration (large diameter pipe and minimum turns). Because the configuration and use of diverters are controversial, we are posing a number of questions to guide the development of final rules.

(e) *Extension of Lease Terms.* A provision is proposed whereby a suspension which would extend the term of a lease beyond the primary term would be issued only if a well determined to be capable of producing in paying quantities has been drilled on the lease. This new provision is a restatement of existing MMS policy. In addition, the Director would be authorized to extend up to 180 days (currently 90 days), the allowable time that a lease term can be extended through a drilling or well-reworking operation.

(f) *Additions to Development and Production Plans.* Development and Production Plans shall include descriptions of new or unusual technology to be employed and technology and practices intended to increase the ultimate recovery of oil and gas.

(g) *Pollution Prevention and Control.* New provisions are included with regard to restricting the rate of drilling fluid discharge, requiring berms on artificial islands, and information to be included in an oil spill contingency plan.

(h) *Additional Safety Devices.* Requirements would be added for crown block safety devices and for devices to prevent diesel engine "runaway."

(i) *Pipelines.* Rules governing pipelines would expand requirements governing design, installation, testing safety equipment, abandonment and reporting.

(j) *Flaring and Venting.* Requirements for flaring and venting would be expanded to clarify the intent of requirements currently in OCS Order No. 11.

(k) *Enhanced Recovery of Oil and Gas.* Clarifying details would be added to rules concerning enhanced recovery, currently in OCS Order No. 11.

(l) *Site Security.* Requirements would be established for site security. These provisions are intended to ensure against the loss or theft of production and to assure accurate measurement for royalty purposes.

(m) *Enclosed Mud Rooms.* Gas detection systems would be required for enclosed mud-handling rooms.

The MMS invites comment as to the costs and benefits associated with each of the proposed new requirements.

(3) *Reduced or Eliminated Requirements.* Requirements are proposed to be reduced or eliminated where no adverse impact on safety or protection of the environment would result. Many of the requirements proposed to be eliminated have been identified as counterproductive by industry. Requirements are proposed to be eliminated only when we believe the requirements would no longer be needed or where functions would be better accomplished by performance standards.

(a) *Cranes on Platforms.* Requirements concerning cranes on platforms are proposed to be deleted. Recent discussions between the U.S. Coast Guard (USCG) and MMS have resulted in a division of responsibility with respect to cranes. In the agreement, the USCG will have responsibility for cranes on all OCS platforms.

(b) *Determination of Producibility.* The presently required determination of producibility of each well is proposed to be eliminated. The determination of producibility would be needed to suspend operations when a lease which has no producing wells would be extended beyond its primary term. Making those determinations only when the lessee requests it instead of for every completed well would save lessees and MMS considerable time and money. However, we do request comments on whether this proposal should become final, the current requirement remain, or some other alternative such as a requirement for at least one determination per lease for each lease that is not in production by the end of its primary term.

(c) *Maximum Efficient Rate (MER) on Nonsensitive Reservoirs.* The MER's would not be required for "nonsensitive reservoirs." Reservoirs would be classified as sensitive or nonsensitive, and MER's would be established only for the sensitive reservoirs.

(d) *Shallow Hazard Surveys.* Detailed specifications for shallow hazard surveys previously contained in NTL's are proposed to be eliminated. Site and regional differences and data availability preclude establishment of a single set of detailed national or regional requirements. The responsibility for designing an appropriate surveying strategy would be with the lessee.

(e) *Orientation and Motivational Training.* The majority of training requirements for the prevention of pollution relate to drilling and production procedures and would be addressed in subparts D, Drilling Operations, and H, Production Safety Systems. Therefore, the orientation and motivational training requirements currently found in OCS Order No. 7 are proposed to be deleted as unnecessary and redundant. The API Recommended Practice (RP) for Orientation Program for Personnel Going Offshore for the First Time (API RP T–1) and API Bulletin, Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations (API Bul. T–6), that are incorporated by reference in the current rules, are proposed to be eliminated. While trained personnel are key to safe conduct of operations, the two referenced documents are not appropriate as regulatory requirements. However, the training requirements for oil spill response operating teams in current OCS Order No. 7 would continue in effect.

The MMS invites comment as to the desirability and savings associated with the proposed deletions.

(4) *Reduced Recordkeeping and/or Reporting.* In a number of instances, recordkeeping and reporting

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requirements would be reduced or eliminated without affecting the level of safety or environmental protection. In some cases, redundant reports are proposed to be eliminated while in other cases the use of performance standards would reduce the need for reporting or for recordkeeping.

It has been suggested that it may be more efficient to refer to the brand name, model number, or other similar standardized designation of equipment in lieu of describing such equipment in reports and recordkeeping required by MMS. Comment is requested as to that suggestion.

(a) *Exploration Plans.* Intended development and production information is proposed to be dropped from the Exploration Plan. Since discoveries have not yet been made when the plan is prepared, intended development and production information has been speculative and adds little, if any, information to that which the MMS or coastal States already have.

(b) *Critical Operation and Curtailment Plans.* Critical Operation and Curtailment Plans are proposed to be eliminated for the Gulf of Mexico and Pacific OCS Regions. This information is often speculative and/or redundant to material MMS already receives in the Exploration Plan, Development and Production Plan, and the APD. For the Alaska and Atlantic OCS Regions, the requirements would be merged and refocused. Similarly, information required in the fitness of drilling unit report would be reduced for the Atlantic, Gulf of Mexico, and Pacific OCS Regions. In the Alaska OCS Region, it is proposed that third-party review of the drilling unit may be required by the District Supervisor.

(c) *Exploration Plan and Development and Production Plan.* The proposed regulations would reduce the amount of redundant or unnecessary information to be included in the Exploration Plan and Development and Production Plan. Only information of practical significance to States, localities, and MMS would be required. Local interests and/or regional situations may make some information unnecessary. Regulations would permit the Director of MMS, in consultation with the affected States, to inform lessees of reduced information requirements. This would be in addition to the current exemption from submitting Development and Production Plans in the western Gulf of Mexico.

(d) *Changes to Plans.* Regulations would provide that when plans are revised, only the portions actually being changed would need to be resubmitted. Changes usually involve only a few pages out of hundreds of pages, and many lessees have felt obliged to resubmit the entire plan.

(e) *Monthly Report of Operations.* The monthly report of operations would be discontinued. The production information for each well would be reported to MMS in accordance with rules issued by the Royalty Management Program of MMS.

(f) *Erosion-Control Program Report.* The annual report on erosion control programs would be deleted. The erosion control program would be retained. The lessee would be required to maintain records of the results obtained.

(g) *Pipeline-Safety Reports.* The semiannual reports on pipeline-safety devices and annual reports of monthly pipeline inspections would be deleted. The installation, maintenance, and operation of the safety devices and the conduct of the monthly inspections would continue to be required, but the submission of reports adds little, if anything, to the margin of safety and is proposed to be deleted.

(5) *Deleted and/or Modified References to Technical Documents.* The incorporation by reference of technical documents is proposed only when clearly needed. Only the specific, relevant portions of the document would be incorporated. In some cases, incorporated references would be replaced with a performance standard describing the level of performance rather than relying upon specific requirements.

(a) *Reference for Well-Casing Requirements.* References to eight API documents concerning well casing are proposed to be replaced by a performance standard. The API documents do not provide sufficient flexibility to allow the lessee to meet the desired performance in the most efficient manner for a particular well.

(b) *Electrical Code Reference.* References to the National Electrical code and the American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) publication, ANSI/IEEE Std 45–1977, Recommended Practice for Electric Installations on Shipboard, are proposed to be eliminated. These documents are bulky, vague as to which portions apply, and difficult to enforce. Essential electrical requirements would already be covered by requirements proposed to be incorporated by reference in API RP 14F for Design and Installation of Electrical Systems for Offshore Production Platforms and API RP 500B for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms.

(c) *References to MMS Documents.* References to MMS documents, Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms and Commentary on Requirements to Verifying the Structural Integrity of OCS Platforms are proposed to be eliminated. These documents are outdated and advisory in nature.

(6) *Simplified Format and Wording.* The approach of a single set of rules in place of regulations, Orders, standards, and selected NTL's would greatly simplify the rules format. In addition, many sections of Part 250 would be restructured and reworded for clarity. For example, in Subpart N, Remedies and Penalties, the language would be streamlined and simplified. Portions of current regulations which constitute instructions to MMS personnel would be removed.

(7) *Other Changes in Requirements.* Many other changes are proposed in an attempt to meet the established objectives.

(a) *Preliminary Activities.* Preliminary activities—those which occur prior to activities described in an Exploration Plan or a Development and Production Plan—would be redefined to permit seabed penetrations of up to 500 feet instead of 300 feet in unconsolidated formations or 50 feet in consolidated formations. Normally, significant hydrocarbons do not exist within the first 500 feet. Preliminary activities would not require prior MMS notification or approval except as may be required by the Regional Supervisor. In areas where shallow gas or other hazards might be present, the District Supervisor may specify appropriate procedures. The redefinition is intended to reduce paperwork for lessees and the MMS and to eliminate confusion over differing requirements in consolidated versus uncon solidated formations.

(b) *Combination of Plans and Environmental Reports.* It is proposed to combine the Exploration Plan and Development and Production Plan with their respective Environmental Reports (ER) into single documents. The separate documents now contain redundant material. The combined documents would contain all of the information previously required but with less redundancy.

(c) *Approval of Plans.* Significant changes in the approved plans would be sent to affected coastal zone management (CZM) agencies for review. Existing regulations make provision for a State Governor to review changes in approved plans but not for review by

CZM agencies even though the plan must be consistent with the CZM plan. The proposed regulations recognize the possible significance of modifications to plans and include CZM agency review of modifications.

(d) *Model Unit Agreements.* It is proposed to include the Model Unit Agreements in the regulations. The existing Model Unit Agreement would be rewritten as two model unit agreements—one for exploration units and one for development and production units. The model unit agreements would be published in the regulations and would be a standard for lessees to follow in proposing units. Procedures would be provided for requesting variations. This proposal is expected to save lessees and MMS considerable time and costs.

(e) *Extension of Lease Term by Production, Drilling, or Well Reworking.* Current rules require production, drilling, or well reworking every 90 days to extend a lease which is not in production beyond the primary term. The proposed rules would permit the Regional Supervisor to extend the time period during which production, drilling, or well reworking must occur for such purpose up to 180 days.

(f) *Criteria for Determinations.* The regulations would state criteria to be considered by the District or Regional Supervisor, as appropriate, in making numerous determinations. The proposed regulations would identify a number of circumstances where particular requirements need to be adapted to the situation. In exercising the necessary discretion, District and Regional Supervisors would be guided by appropriate criteria. The proposed regulations would recognize that it is important to articulate the criteria that would guide and affect those judgmental determinations.

(g) *Identification of Specific Authorities and Responsibilities.* The regulations would identify the MMS officials with specific authorities and responsibilities. In the past, MMS informed lessees of this information with NTL's. Such authorities may also be exercised by all MMS and Department of the Interior (DOI) officers superior to the officer designated in the regulations. Delegations of authority in the DOI are effected through DOI manual publications. The regulations would now make the identification of the responsible official explicit.

(h) *Timing of the Exploration Plan.* The requirement that an Exploration Plan be submitted by the fourth year of a lease term is proposed to be deleted. This requirement was originally included to promote exploration diligence. Lessees are fully aware that the failure to explore, discover, and produce by the end of the primary term will result in the loss of a lease and that the Exploration Plans must be submitted early enough to allow time for MMS review. The specific requirement to submit a plan by the fourth year, we believe, is an unnecessary intervention in a lessee's management of its lease.

(i) *Pipelines and Pipeline Rights-of-Way.* Requirements regarding pipelines on a lease would be combined with those regarding rights-of-way for pipelines to shore, currently covered in the leasing regulations in 30 CFR Part 256, Outer Continental Shelf Minerals and Rights-of-Way Management, General.

Background

Executive Order (E.O.) 12291, February 17, 1981, requires Agencies to "initiate reviews of currently effective rules in accordance with the purposes of the Order. . . ." One of the stated purposes of the Order is to reduce the burdens of existing regulations. Since the issuance of E.O. 12291, MMS has been reviewing and revising its rules governing operations on the OCS on an individual subject matter basis.

These revisions have included the following rules: Rescission of affirmative action plan requirements, 47 FR 45951, September 16, 1981; Deletion of requirements to segregate unitized leases, 47 FR 6620, February 16, 1982; Extension of submission deadline for deep stratigraphic test well data and information, 47 FR 15781, April 13, 1982; Deletion of failure and inventory reporting system, 47 FR 18682, April 30, 1982; Reimbursement for copying geological and geophysical data and information, and processing geophysical information, 47 FR 25330, June 11, 1982; Updating of safety equipment required in a hydrogen sulfide environment, 47 FR 28888, July 1, 1982; Provision for suspension of operation when delay results from governmental inaction, 47 FR 30055, July 12, 1982; Rescission of variable net profit and work commitment bidding systems, 48 FR 24873, June 3, 1983; Change status report on prelease permits from weekly to monthly, 48 FR 37967, August 22, 1983; Deletion of requirement of immediate notice of reprocessing geophysical information, 48 FR 46025, October 11, 1983; Reduction of information required prior to deep stratigraphic tests, 48 FR 54007, November 30, 1983; Streamlining of requirements for submission of environmental reports, 48 FR 55455, December 13, 1983: Deletion of requirement to submit Development and Production Plans in the western Gulf of Mexico, 48 FR 55565, December 14, 1983; and Revision of the marking of equipment requirements, 49 FR 1897, January 16, 1984.

On February 22, 1983, the Secretary asked the public for suggestions and recommendations on further reform of the DOI rules, including the offshore operating rules. In response to that request, numerous comments, recommendations, and suggestions were received from the public, especially from the offshore oil and gas industry.

During the summer of 1983, the Director of MMS appointed a Regulatory Reform Task Force of senior personnel from headquarters, regional, and district offices to examine all of the recommendations received from the public and to look at the entire structure of rules governing offshore lease operations, particularly 30 CFR Part 250, Oil and Gas and Sulphur Operations in the Outer Continental Shelf, the OCS Orders (including standards and other documents incorporated by reference), and appropriate NTL's. The Task Force reviewed the various rules and related documents with the view toward consolidating the multitiered structure into a single document. The proposed rules would merge the various operating requirements now found in regulations, OCS Orders, and other documents into a single set of requirements to be codified at 30 CFR Part 250. New internal guidelines and procedures have been established for NTL's to assure that their continued purpose would be to transmit administrative information and disseminate interpretations to lessees.

Performance Standards

The proposed rules would also introduce more performance standards, to the extent practicable, while eliminating those requirements which experience has shown to be needless, excessive to their purpose, or counterproductive in that the harm or costs associated with them outweigh the intended benefit or savings. An effort was made to restate the rules in simple, straightforward language.

The performance standards would generally identify safe and pollution-free (no discharges or emissions contrary to established standards) operations as a minimum requirement. These proposed performance standards are usually associated with more specific design or engineering requirements. The performance requirements would identify the purpose to be achieved by the more specific requirements. If a lessee complies with the specific requirements, it would be presumed that the performance standard would be

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achieved. If the lessee can show that something other than compliance with the specific requirements would achieve the performance standard (see discussion below of § 250.3, Performance requirements), MMS could approve the lessee's employment of alternatives to the specific requirements. In those instances, the burden would be on the lessee to demonstrate that the performance standard would be met or exceeded.

Fundamental to this proposed revision of the offshore operating rules is the requirement that the necessary margin of safety for the protection of life, property, environment, and natural resources be maintained. This proposed revision and reform of the operating rules to eliminate unnecessary burdens and excessive and counterproductive requirements is not intended to be achieved at the cost of increased hazards to safety, natural resources or the environment.

Current Rules

The current offshore operating rules are contained in regulations, OCS Orders, standards, NTL's, conditions of approval, and related documents. The regulations at 30 CFR Part 250 were the subject of major revisions following the enactment of amendments to the OCS Lands Act (Act) in 1978. They are rules of general applicability often stated in general policy terms. The OCS Orders are rules of general applicability, adopted in compliance with rulemaking requirements, published in the **Federal Register**, but not codified in the Code of Federal Regulations. The OCS Orders were adopted on a Region-specific basis with separate sets of Orders for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions. The Orders implement provisions in the regulations in more specific detail—often in terms of particular technical requirements. The requirements are essentially consistent in each of the Regions with variations to accommodate local environmental conditions, e.g., severe arctic weather in portions of the Alaska OCS Region. Standards are documents incorporated by reference into the Orders, thereby becoming requirements. These include statements of recommended practices adopted by industry and trade associations, such as API, or professional standards organizations, such as ANSI, as well as those drafted within MMS itself. The NTL's were intended to inform lessees of MMS's interpretations of its requirements but were not intended to impose new requirements themselves. However, such notices as well as documents reciting conditions of approval for various required approvals at times went beyond the realm of clarification or interpretation to impose new requirements.

The growth of multiple levels of rules, interpretations, and requirements incorporated from other documents tended to confuse industry, the Government, and the public in their understanding of offshore operating rules. In this proposed restructuring and consolidation of rules into a new 30 CFR Part 250, we are attempting to eliminate any inconsistency and redundancy in the current rules. We are proposing to narrow or eliminate references to incorporated material found to be excessive and also restate certain requirements found in NTL's and other documents which we believe have merit.

The MMS recognizes that the proposed reorganization of the offshore operating rules will necessitate an effort on the part of industry and the government to become acquainted with the new organization. This may entail some initial difficulty. However, MMS is of the view that long-term benefits of a consolidated, consistent, and comprehensive presentation of those rules far outweigh the initial inconvenience.

In many cases, the requirements ano procedures will be recognized to be identical with the current requirements and procedures. Therefore, the MMS believes that the proposed rules will be readily understood by those already familar with the current rules (regulations, OCS Orders, and NTLs).

Part 256 of Title 30 of the Code of Federal Regulations, Outer Continental Shelf Minerals and Rights-of-Way Management, General, is also proposed for revision.

Pursuant to the National Environmental Policy Act and the requirements of the DOI, the proposed rules are being analyzed to determine whether they would have significant effects on the human environment. An environmental assessment will be prepared and included in the administrative record of the rulemaking.

Specific Proposed Changes

The following represents the specific changes proposed to be made. References to OCS Orders are to the Gulf of Mexico OCS Orders, unless otherwise specified. A derivation table relating proposed new sections to current rule designations is included at the conclusion of this preamble. Editorial clarifications, eliminations of redundancy, and reformatting are not intended to effect substantive changes.

Subpart A—General

Section 250.0, Authority for information collection, is proposed to be retained. This section would report the status of information collection clearances by the Office of Management and Budget (OMB) concerning information collection requirements contained in this part. It would comply with OMB and **Federal Register** requirements under the Paperwork Reduction Act, 44 U.S.C. 35.

Proposed § 250.1, Documents incorporated by reference, would be added in accordance with the requirements of the Office of the Federal Register regulations contained in 1 CFR Part 51, Incorporation by reference. The introductory paragraph is self explanatory. It should be noted that certain of the documents incorporated by reference are published by nongovernmental entities as "Recommended Practices." Compliance with such recommended practices, procedures, and equipment become mandatory when incorporated by reference in this part.

Current § 250.1, Purpose and authority, is proposed to be deleted as an unnecessary recitation of statutory authority.

Section 250.2, Definitions is proposed to be revised to eliminate those definitions that are not believed to be essential for an understanding of the regulations in Part 250.

Definitions which are relevant only to a particular subpart or section would be provided in the subpart or section, as appropriate. For example, definitions of "Party," "Unit agreement," "Unit area," and "Unitized substances" are proposed to be deleted from § 250.2 as those terms would be dealt with in the context of the subparts on investigations, remedies and penalties, and on unit agreements.

Definitions of "Regional Director," "Regional Supervisor," and "District Supervisor" are proposed to be added. In that regard, it should be noted that we are proposing to name the appropriate MMS officer, e.g., the Regional Supervisor, the District Supervisor, or the Regional Director, as appropriate, to the context of the particular section involved. This would differ from the current regulations which consistently refer to the Director, necessitating reference to a delegation of authority document to ascertain the appropriate MMS official with authority or responsibility for specific provisions in the regulations.

A new § 250.3, Performance requirements, is proposed to be added to authorize the use of new or alternative

techniques, procedures, equipment, or activities other than those prescribed in the regulations of Part 250 if such new or alternative techniques, procedures, equipment, or activities would provide a degree of protection, safety, or performance equal to or better than that to be achieved by any particular provision in the regulations.

The requirements in these regulations would not exist for their own sake but are intended to achieve the beneficial purposes identified in the Act—the protection of life, property, and the environment, and the efficient production of our offshore resources. It is the achievement of those beneficial purposes, rather than adherence to any particular operating procedures, which we intend to pursue. We recognize that those beneficial, statutorily defined purposes might be better or equally achieved through practices other than those prescribed in these regulations. We believe this is especially important in a field such as offshore oil and gas operations where new and innovative technology and procedures are continually developing. We would hope that our proposed operating regulations would serve as an encouragement to new, better, and more efficient practices. We invite industry representatives to indicate whether performance standards present a welcome opportunity for efficiencies and innovations.

This policy should not be understood as opening the door to every alternative practice. Only those new or alternative practices which are found to achieve equal or superior results to those required in the regulations would be authorized. We do not expect that this would be an easy or pro-forma determination since the minimum requirements in our proposed regulations are adopted as the best available and safest technology practicable in the offshore oil and gas industry today as required by the Act.

Proposed § 250.3(b) is a restatement of current § 250.11(b). It would provide for departures from the requirements of this part as may be necessary under specific circumstances. These departures, whether required by the Regional or District Supervisor or requested by the lessee, would be dictated by the circumstances of the particular case.

Current § 250.4, Privileged and proprietary data and information to be available to affected States, is proposed to be deleted as it is redundant with 30 CFR 256.25, Areas near Coastal States. The provision is more appropriate in Part 256 which governs leasing than in Part 250 which governs operations.

Current § 250.5, Effect of regulations on provisions of section 6 leases, is proposed to be deleted as it is redundant with 30 CFR 256.79, Effect of regulations on lease. The provision is more appropriate in Part 256 which governs leasing than in Part 250 which governs operations.

Proposed § 250.4, Jurisdiction, and § 250.5, Functions, are proposed to replace and amend §§ 250.10 and 250.11, respectively, to eliminate references to OCS Orders since appropriate requirements of those Orders are proposed to be merged into this part. The OCS Orders would not exist as separate rules. References to royalty management functions are also proposed to be eliminated as those functions are now addressed in Subchapter A of Chapter II of 30 CFR.

Proposed § 250.6, Oral approvals would replace § 250.13 and indicate that oral approvals (to be later confirmed in writing) may be made by the appropriate MMS official from whom approval is required.

Proposed § 250.7, Right of use and easement, is proposed to revise § 250.18 to clarify the rule and remove unnecessary language.

The lease agreement executed between MMS and the lessee gives the lessee the exclusive right and privilege to drill for, develop, and produce oil and gas resources within the leased area. In addition, other rights are granted including the right to conduct certain operations on the leased area leading to the full enjoyment of the lease. (Proposed Subpart J, Pipelines and Pipeline Rights-of-Way, deals with rights-of-way for oil and gas pipelines for transportation of oil and gas off the lease.) Under certain circumstances, a lessee might have a legitimate reason to conduct operations such as construction of a platform on lands off a lease or to conduct operations on a lease which are not granted in the lease agreement or in proposed Subpart J. The granting of a right of use and easement in accordance with the proposed rule would provide for these circumstances.

Revisions are intended to clarify that a right of use and easement may be granted if a structure would be used for conducting exploration, development, or production activities or if an operation would be related to such activities. A right of use and easement may be on or off a lessee's lease.

A new paragraph would require that the holder of a right of use and easement comply with all rules which are applicable to a lessee. This is the intent of the existing rule although it recites only the requirements for use of best available and safest technology and requirements for disposition of equipment after use. The MMS believes that the proposed amendment would more clearly define the responsibilities of a holder of right of use and easement.

Proposed § 250.8, Designation of operator, and § 250.9, Local agent, would replace §§ 250.31 and 250.32, respectively. The District Supervisor would be substituted for the Director in § 250.8, and the Regional Supervisor would be substituted for the Director in § 250.9.

Proposed § 250.10, Suspension of operations, and § 250.12, Cancellation of leases, would incorporate the provisions of current § 250.12 governing suspension of operations.

Under current policy, a suspension of operations requested by a lessee which extends a lease beyond its primary term is not available unless the lease contains a well determined to be producible in paying quantities. A request for such determination under current OCS Order No. 4, Determination of Well Producibility, must be made within 60 days from the removal of a rig from the well. Under the proposed § 250.11, Determination of well producibility, such request could be made whenever the lessee wishes. We expect this change would reduce the number of applications for determinations of producibility and the associated administrative costs. Under the proposed rule, it would not be necessary to obtain a determination of producibility for each well. Further, a lessee need not obtain such determination if the lease has production in the primary term. However, we are requesting comments as to whether this proposal should become final, the requirement remain as it currently stands, or an alternative be used such as requiring at least one determination per lease for every lease that is not in production by the end of its primary term.

Proposed § 250.12, Cancellation of leases, would essentially repeat the provisions concerning lease cancellation in § 250.12.

Proposed § 250.13, Effect of production, drilling, or well reworking on lease term, would replace § 250.35 and authorize the extension of a lease based upon operations other than production, drilling, or well reworking for periods of up to 180 days. Such an extension would be conditioned upon a determination that it would be in the national interest. We believe that the Director should have the discretion to approve operations other than producing, drilling, or well reworking for

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periods up to 180 days to allow proper exploration and development of leases in certain frontier areas or in other circumstances where producing, drilling, or well reworking every 90 days would not serve a useful purpose and where the Director determines that prompt and appropriate exploration and/or development is underway.

Proposed § 250.14, Reinjection and subsurface storage of gas, would replace § 250.53 but would be modified in the following manner:

(1) The section would differentiate reinjection of gas for conservation purposes and subsurface storage of gas for later commercial benefits.

(2) Only the subsurface storage of gas, rather than oil and gas, would be addressed. In our experience, we need provide only for subsurface storage of gas on the OCS.

(3) Specific criteria would be identified as providing the basis for reinjection, i.e., for enhanced recovery projects to prevent the flaring of casinghead gas and for other conservation reasons.

(4) Clarification would be provided as to the availability of both on-lease and off-lease storage.

(5) Timing of royalty payments would be clarified.

Proposed § 250.15, Identification, would repeat the requirements of current § 250.37, and parts of current OCS Order No. 1 as revised on January 16, 1984, 49 FR 1897.

Proposed § 250.16, Reimbursement, would amend current § 250.56 which provides for reimbursement of lessees for the cost of reproducing geological and geophysical (G&G) data and information as well as certain processing costs to clarify that such reimbursement would be authorized whether the MMS retains the information required to be submitted or not.

Proposed § 250.17, Information and forms, relating to reports made by lessees would replace § 250.90 and add a paragraph (b) to require the submission of a "Public Information" copy of each required report. The "Public Information" copy would be available to the public and would exclude protected proprietary information. This is a restatement of a portion of current OCS Order No. 12.

Proposed § 250.18, Data and information to be made available to the public, would govern the release to the public of G&G data and information submitted by lessees, and would replace and amend § 250.3 as follows:

- The regulation would be clarified to indicate that the terms of protection it provides would apply to all G&G data and information, whenever submitted (either before the effective date of the regulation or thereafter).
- Processed geological information—a new category of information—would be protected to the same extent as analysed geological information.

It should be noted that MMS is amending its rules in 30 CFR Part 251 to eliminate reimbursement of permittees for costs of processing and reprocessing data and information in a form and manner used by the permittee in the normal conduct of business. This conforms with provisions in Pub. L. 99-190.

Paragraph 250.18(c) would restate pertinent portions of OCS Order No. 12, Public Inspection of Records, to indicate those specific entries required on MMS forms that are considered to fall within the class of G&G data and information which would be protected from public disclosure in accordance with the terms of § 250.18 or would otherwise be considered privileged information protected from disclosure (e.g., trade secrets, commercial information). The items are not intended to be a comprehensive identification of all G&G data and information protected from release to the public under proposed § 250.18, or otherwise protected as proprietary, but as an identification of the most frequently recurring instances where such data and information would be required on MMS forms.

Proposed § 250.18 would also clarify the status of information resulting from directional surveys for wells drilled in close proximity to a lease line. If the adjacent off-lease area is leased, the data and information may be required to be shared with the adjacent lessee but not with the public. If the adjacent off-lease area is unleased, the data and information obtained from the unleased land would be available to the public.

The determination of producibility pursuant to proposed § 250.11 would continue to be available to the public without the consent of the lessee. Such determinations are made not by the lessees but by MMS. This proposed restatement of a portion of OCS Order No. 12 is not intended to effect a substantive change.

Proposed § 250.19, Accident reports, would replace, retitle, and simplify § 250.45. The proposal would clarify the present requirements for reporting blowouts and explosions as well as the official to whom the report would be submitted. In addition, the current § 250.45(b) with respect to the reporting of "unusual conditions" is proposed to be deleted as a vague, unnecessary, and burdensome requirement. The proposal would also clarify that the owner of an easement, right-of-way, or permit would also be required to report accidents occurring in these events. Requirements for written reports are proposed to be eliminated. The MMS will obtain copies of accident reports from the U.S. Coast Guard in those instances where reporting is required under Coast Guard rules.

Proposed § 250.20, Safe and workmanlike operations, would replace § 250.46 without change.

Proposed § 250.21, Access to facilities, would incorporate the provisions of current § 250.19. This section, rather than addressing only lessees, has been expanded to include right-of-way holders, easement holders, and permit holders.

Current § 250.92, Sundry notices and reports on wells, is proposed to be deleted. Reporting requirements including Form No. MMS-331, Sundry Notices and Reports on Wells, would be reflected in the sections relating to drilling, production, and site abandonment, well-completion, or well-workover operations, as appropriate.

Current § 250.93, Monthly report of operations, is proposed to be deleted. The production information for each well now provided by this report will be reported to Royalty Management under the production Accounting and Auditing System.

Current § 250.96, Special forms or reports, is proposed to be deleted as unnecessary.

Subpart B—Exploration and Development and Production Plans

The current rules at § 250.17, Well spacing, and § 250.34, Exploration, development, and production activities, are proposed for revision as Subpart B, Exploration and Development and Production Plans, to combine reporting requirements, eliminate redundant and unnecessary requirements, eliminate descriptions of certain procedures internal to MMS, incorporate some provisions from the current OCS Orders and NTL's and simplify format and language.

The requirements of the Exploration Plan or the Development and Production Plan and the attendant ER's will be combined to strengthen the presentation and eliminate the submittal of redundant information. Information need not be repeated in separate sections of the document. Lessees would be encouraged to organize the document to facilitate the identification of each item of information required by this subpart. Including information in the plans in the same sequence in which it is required in this subpart would greatly

increase MMS's ability to promptly review and process such plans.

The procedures would continue to require the submittal of the environmental information presently included in ER's. Such information alerts the lessee of the possible environmental effects of the proposed actions so that any necessary mitigating measures can be included in the plan and provided to the affected States for CZM consistency determinations (pursuant to 15 CFR 930.77(a)) and used by MMS to expeditiously complete its responsibilities under the National Environmental Policy Act (NEPA). The Regional Director would be able to authorize lessees to jointly submit environmental information for leases in the same planning area that are covered by more than one Exploration Plan but have similar environmental conditions. This could significantly reduce the duplication prevalent in Exploration Plans, particularly in frontier areas.

After operational and environmental data have been gathered for an offshore area, the Regional Director could, after consultation with the affected States, limit the amount of information required to be submitted. This authority would permit the Regional Director to limit the content of plans to a minimum of information necessary for the MMS and the affected States to conduct their reviews. Such reductions should result in savings for lessees submitting plans describing proposed activities in established offshore areas and should facilitate MMS and coastal State review. This authority would be in addition to the current exemption from the requirement to submit Development and Production Plans for leases in the western Gulf of Mexico and would be applicable to all offshore areas.

The definition of preliminary activities is proposed to be modified to include seabed penetrations of up to 500 feet. The present rule is limited to 300 feet of unconsolidated formations or 50 feet of consolidated formations. This has proven confusing for both the MMS and the lessees. This change would simplify the requirement. The section would also be reformatted to clarify that the definition applies to activities conducted prior to submittal of both Exploration Plans and Development and Production Plans. The present language is unclear as to the status of such activities as soil borings conducted prior to development. As a result, lessees often file special plans to obtain approval for such activities. The 500-foot limit would be deep enough to exclude most soil borings from the Plan-approval process but shallow enough to assure that significant hydrocarbon accumulations would not be encountered (or would have been previously identified). Under certain unusual logistical and environmental problems, particularly related to arctic operations, the Regional Supervisor may require certain information to make a determination that preliminary activities excluded from plans would not result in any significant adverse environmental effects.

A specific deadline for submittal of an Exploration Plan would be deleted. Lessees have often submitted plans prematurely to fulfill the regulatory filing requirements. This has resulted in unnecessary efforts by lessees, MMS, affected States, and other reviewers. Lessees are aware of the statutory requirements that must be met to keep a lease. It would be the lessee's responsibility to submit a plan in sufficient time for approval of those activities necessary to keep a lease.

Unless considered necessary for explanatory purposes or to assure compliance with the Act, language related to some internal MMS procedures would be deleted. Such language is not necessary and has made it difficult to locate and excerpt those portions that constitute lessee requirements.

In Exploration Plans, lessees would be required to describe the type of mobile drilling unit, platform, or artificial island to be used rather than provide a description of the specific rig. State CZM consistency review and other considerations often dictate that lessees submit Exploration Plans well in advance of the proposed drilling operation. As it may be imprudent, if not impossible to commit to a specific rig contract at such an early date, lessees often describe rigs which may or may not be used, and they must later revise the plan to provide information on the actual rig. Under the proposed language, the lessee would need only to indicate the type of unit (e.g., jack-up or semisubmersible) and describe the characteristics of such a unit. Alternatively, the lessee could reference information already on file for a similar unit. The unit itself could then be specified in the APD. If there is no difference in the type or performance capabilities of the unit, the plan would not need to be revised.

Lessees would be required to submit only that information related to the proposed changes to modify or revise a plan. Under the present language, lessees often resubmitted the entire plan. This has resulted in unnecessary duplication of effort for industry and Government.

Lessees would no longer be required to identify those portions of plans considered to be proprietary. The release of data and information submitted with plans would be restricted in accordance with the provisions of § 250.18. Lessees would continue to be free to identify that data which they consider exempt from disclosure; however, such determinations would neither be required nor binding. Lessees would no longer be required to fully describe their Oil Spill Contingency Plans (OSCP) in their plans. Since the OSCP's are already provided to the USCG and the affected States, descriptions of the OSCP in the plans are an unnecessary duplication. The OSCP document itself or reference to an approved or previously submitted OSCP (including regional OSCP's covering leases where activity is proposed) would meet the requirement as part of the Exploration Plan or Development and Production Plan.

The requirement to submit a general statement of development and production intentions in current § 250.34-1(a)(4) with an Exploration Plan is proposed to be deleted. Lessees intending to develop a lease must submit a Development and Production Plan. Indications of such intentions are often given to MMS and the affected States prior to submission of a plan. Therefore, there has been sufficient notice of development and production intentions without requiring a general statement of intentions.

Some of the information requirements related to the effects of onshore activities are proposed to be limited to new or significantly expanded onshore facilities. The number of new employees and families to be added to the local population, increased energy and resource needs, contractors to be employed, and similar information are very important for new or expanded bases in isolated locations. Such information is of little value for established bases in the Gulf of Mexico. In making the determination regarding such facilities, the Regional Supervisor would consider local concerns and regional differences. In some cases, small incremental increases might be significant. For example, although onshore facilities to support Pacific offshore operations are well established, it would still be necessary to provide estimates on increased air emissions from new onshore activities because of regional air quality problems. The MMS and the Office of Management and

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Budget (OMB) request comments concerning the need for a provision to enable States to collect information directly from lessees when such information is collected solely for the States.

A requirement is proposed to be added to Development and Production Plans to describe the technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas. The consideration of secondary and tertiary recovery methods in the early stages of lease development can have a significant effect on the feasibility of greater oil and gas recovery. This is becoming more and more important as the use of enhanced oil recovery methods increases and the economic and social value of these activities grow.

Information requirements would be incorporated into this subpart from the OCS Orders and various NTL's. This incorporation would not result in any new information requirements but would consolidate them in one place and eliminate duplication.

Current §§ 250.34–1(j)(2) and 250.34–2(k)(2) excluding revised plans which could result in certain significant changes from further CZM review would be deleted. We propose that such significant changes should not be excluded from CZM review. Furthermore, as no revised plan with significant changes has ever been excluded, we do not anticipate any additional cost or delay as a result of this deletion.

The time provided for the Regional Supervisor to transmit Development and Production Plans to affected States would be reduced from 10 days to 5 days. This would be sufficient time to prepare such documents for transmittal and would help expedite the review process.

Requirements currently in § 250.17, Well spacing, and OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, related to well location and spacing would be incorporated into this subpart because these requirements relate to operational planning decisions. If a proposed well could intersect an offset property, the Regional Supervisor would be authorized to require additional directional control measures to assure that the well does not deviate into the adjacent lease. The Regional Supervisor could also release directional survey data to the adjacent lessee but not to the public. In the case of drainage wells, unitization may be required. If a well deviated into an unleased tract, those portions of the data obtained from beneath the unleased tract would be subject to public release. These measures would be necessary to protect the correlative rights of offset lessees from improper acquisition of geologic data or from hydrocarbon drainage. This would not be a significant change as these measures have frequently been required in the past.

Subpart C—Pollution Prevention and Control

The current OCS Order No. 7, Pollution Prevention and Control, and §§ 250.43, Pollution and waste disposal, and 250.57, Air quality, would be combined into Subpart C, Pollution Prevention and Control. The requirements of § 250.54, Marking of equipment, and parts of OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects, as they relate to marking of equipment, are proposed to be merged in Subpart C as well. Only slight editorial changes and some reformatting are proposed to be made to current § 250.43 for clarification and simplification. The following changes to current requirements are proposed:

Requirements for environmental information on drilling mud components would be covered in proposed Subpart B, Exploration and Development and Production Plans. Under the current requirements, such information on drilling fluid components is often redundant in the plan and the APD. Environmental information would only continue to be required with the Exploration Plan and Development and Production Plans while information on mud weights, reserve barite supplies, and other well-control considerations would be submitted in the APD eliminating any duplication.

Under proposed Subpart C, the District Supervisor would have the authority to restrict the rate of drilling fluid discharges, prescribe alternate discharge methods, and restrict the use of certain components. Such requirements are generally part of the Environmental Protection Agency's National Pollution Discharge Elimination System process, but under special circumstances, it might be necessary for the District Supervisor to exercise such authority.

As a result of studies by the National Research Council, *Drilling Discharges in the Marine Environment*, in particular, the use of petroleum-based additives is proposed to be prohibited without prior approval by the District Supervisor. The District Supervisor would approve the use of petroleum-based additives only to correct serious operational problems and only after alternative corrective actions have failed. Muds containing such additives would have to be collected for disposal at approved onshore sites. The majority of training requirements for the prevention of pollution relate to drilling and production procedures and are addressed in Subparts D, Drilling Operations, and H, Production Safety Systems. However, training of the designated oil spill response operating team and drills to demonstrate familiarization with pollution-control equipment and procedures is included in Subpart C, (§ 250.43). This team constitutes the key personnel involved in containing and removing an oil spill to minimize the environmental impact. The MMS will continue to monitor pollution-prevention programs, focusing on lessee maintenance practices and operational procedures. Lessees and contractors with ineffective pollution-prevention programs would be identified and dealt with under our enforcement program.

The pollution-reporting provisions are proposed to be changed as follows:

a. All oil spills would be required to be reported to MMS, but only spills of 1 barrel or more would require confirmation in writing.

b. Spill-size limits would be defined in barrels instead of cubic meters. As offshore separation and storage equipment is rated in barrels, personnel could better judge amounts in barrels. The level of detailed information would continue to be dependent on the size of the spill.

c. Certain OSCP requirements would be revised to include the specific size of spill that must be planned for and the expected response times. These proposed requirements are based on agreements with the USCG.

No substantive changes are being proposed to the rules concerning air quality (§ 250.57). On June 10, 1983, we proposed a distance-from-shore exemption to these rules (48 FR 26837). The comments received fell into two distinct categories—one feeling the exemption was too broad and the other feeling it was too narrow. Both objected to the background data used to calculate the proposed exemption. Therefore, no changes will be proposed until the results of an air quality modeling study are received.

Subpart D—Drilling Operations

The current rules which pertain to drilling operations at 30 CFR 250.36, 250.38, 250.39, 250.40, 250.41, and 250.92; Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions' Orders No. 2; and some provisions from NTL's and from Conditions of Approval are proposed to be merged in Subpart D, §§ 250.50 through 250.68. Unnecessary, excessive, and redundant requirements are removed; incorporation by reference of numerous API and other institutional standards are eliminated; and the requirements are restated as a unified and concise body of rules.

Eight API documents which address casing are removed. Sufficient supervision over the quality and design of casing already exist under the requirements for the APD.

The National Electrical Code (NEC) and the IEEE Recommended Practice for Electric Installation on Shipboard would be removed. The API RP 500B, Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, is retained. Those portions of API RP 14F for Design and Installation of Electrical Systems for Offshore Production Platforms, which pertain to drilling rigs, are newly introduced as proposed requirements. The NEC and IEEE documents now incorporated by reference are bulky, vague as to which of their sections are applicable, and difficult to administer for compliance. The API RP 500B and API RP 14F documents cover the essentials for minimum standards of safety without imposing excessive burdens.

The API RP T–1, Orientation Program for Personnel Going Offshore for the First Time, and API Bul. T–5, Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations, are proposed for removal. These documents do not lend themselves to appropriate regulatory requirements.

Sections 3–A and 3–B and subsection 5.B.13 in API RP 53, Blowout Prevention Equipment Systems, which address choke manifolds, closing units, and subsea control pods, are proposed to be replaced with more performance oriented standards, eliminating unnecessary requirements.

All of API RP 13B, Standard Procedure for Field Testing Drilling Fluids, is proposed to be replaced with a requirement that drilling fluids be tested in accordance with generally accepted industry practices. The intent is to eliminate unnecessarily specific and detailed procedures. Testing procedures have not proven to be a source of problems, and generally accepted industry practices are sufficiently ascertainable.

The National Fire Protection Association (NFPA) 51B, Cutting and Welding Processes 1977, is proposed to be removed. Proposed § 250.52 would provide the essential precautions and protective measures to be taken. The NFPA Standard is considered redundant.

The existing MMS Standard, MMSS–OCS–1, Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment, incorporates 10 documents by reference. All of these are proposed to be deleted except the ANSI Z88.2–1980, Practices for Respiratory Protection. The documents proposed to be removed are considered out-of-date, nonessential, and/or redundant to the H_2S rules proposed at § 250.67. The proposed rules would incorporate by reference the National Association of Corrosion Engineers (NACE) Standard MR–01–75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment. The proper selection of metals for use in well-control equipment in an H_2S environment is crucial. The NACE Standard, developed with the participation of the petroleum industry, is considered to be an appropriate requirement.

Proposed MMS rules require that certain H_2S personnel protection precautions, such as the installation of monitors, take place when drilling is initiated. These provisions differ from Occupational Safety and Health Administration (OSHA) requirements in that OSHA rules apply when within 1,000 feet of a hydrocarbon bearing zone. Installation of this equipment when drilling reaches a certain depth, as is required by OSHA, is less practical for operations at locations which are offshore and sometimes remote. The proposed rules require that H_2S monitors and detectors be calibrated daily when drilling approaches a potential H_2S-bearing zone and every 8 hours when in an H_2S environment. The MMS welcomes comments on the potential cost savings associated with allowing installation of the H_2S detection and monitoring equipment to take place when drilling reaches a prescribed distance from a potential H_2S-bearing zone. In addition, MMS welcomes comments concerning the proposed frequency of calibration of H_2S monitors. Is the proposed frequency both necessary and sufficient to ensure the accuracy of H_2S monitors?

Statistics from the Gulf of Mexico OCS Region indicate that about one-third of all fires have been caused by engines. Nearly one-half of these engine-caused fires have resulted from diesel engine "runaway" when hydrocarbons enter the air intake of the engine. To mitigate this problem, the proposed rules require that diesel engine air intakes be equipped with an automatic-shutdown device. The requirement concerning diesel engine "runaway" are contained in subparts relating to drilling, well-completions, well-workovers, and production.

The MMS surveys show that the preponderance of drilling rigs are now equipped with a crown-block safety device. The proposed rules require that this device be installed on all drilling rigs. We believe the device has proven its value in practice. The requirement for a crown-block safety device is contained in subparts relating to drilling, well-completions, and well-workovers.

Lessees are presently required by OCS Order No. 2, as supplemented by NTL's for each Region, to conduct geophysical surveys to identify surface or near-surface geologic conditions to be considered in a proposed drilling program.

The proposed rule incorporates such a requirement. However, for sites where predrilling surveys have previously been conducted or which are otherwise well-defined geologically, no surveys will be required. The significant inter- and intra-regional differences in data availability, water depths, seafloor gradients, surface sediments, seismicity, ice conditions, and other natural factors preclude one set of national site-survey requirements. Further, the rapid advances in site-survey technology necessitate continuous updates in the specifications. Therefore, the lessee is asked to submit a survey strategy prior to beginning the field program. If the District Supervisor concurs that the strategy is sufficient to identify potential geologic and manmade constraints, the lessee may proceed with the survey.

This flexibility allows the lessee to determine a survey program independent of rigid grid and instrumentation requirements. We believe prior approval of the survey strategy by MMS is necessary to prevent costly disagreements and possible resurveys after the data has been gathered. However, lessees will be given full opportunity to demonstrate the viability of their strategy. With this approach, the MMS believes lessees will have the incentive to tailor surveys to the region, site, and operation.

The proposed rule articulates that a magnetometer survey and/or soil borings may be required in areas where the competency of the ocean floor to support the load of a jack-up rig is in doubt. The purpose is to add clarity and specificity to existing rules.

The present requirements in OCS Order No. 2 for the filing of a Critical Operations and Curtailment Plan are proposed to be removed. This requirement has resulted in the

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preparation of lists of examples of critical operations which are often arbitrary and conjectural. Operators have been pressed into making tentative statements about future courses of action under a hypothetical set of circumstances with little relation to reality. The proposed requirements state that the design and use of unique and unproven drilling units in Alaska may require a third-party review. The purposes of the third-party review are to assure that the drilling unit is capable of operating under the environmental conditions at the site and to establish contingency plans to be followed in the event that operational limitations are reached or exceeded.

Setting-depth ranges specified in the present rules as between 500 and 1,000 feet for the conductor and between 1,500 and 4,500 feet for the surface casing are proposed to be removed. These setting-depth ranges are a source of confusion and unnecessary paper work. A properly engineered design may yield proposed setting depths outside the specified range which triggers a request for a departure. Conversely, setting depths within the specified range may be construed erroneously as prima facie evidence of proper design. Lessees routinely submit with the APD a single sheet containing plots of estimated pore pressures, estimated fracture gradients, proposed mud weights, and proposed casing points. This convention provides the information needed with a minimum of paperwork.

The requirement that the volume of excess cement be approved by the District Supervisor is proposed to be removed. This requirement for specific approval action generates paperwork which has not proven worthwhile. The lessee remains under an obligation to bring cement to the ocean floor, and excess volumes of cement are readily calculable when the geometry of the hole as drilled becomes known or estimable.

The last sentence of paragraph 3.8 in OCS Order No. 2 which reads, "The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required," is proposed to be removed. "Typical performance data" is a statistic on distribution of values and may or may not be applied properly to an individual well. The results-oriented requirements that the cement in place attain a compressive strength of 500 pounds per square inch (psi) and that inadequate cement jobs be remedied along with the cementing information contained in the APD are considered sufficient. There is no intent to change the objectives or substance of the requirement.

The OCS Order No. 2 requires that the casing be evaluated following prolonged drill-pipe rotation that could cause damage to the casing. The present wording is nondefinitive and unquantified as to the meaning of "prolonged drill pipe rotation." This gives rise to uncertainties about compliance. The proposed wording clarifies the intent by proposing that an evaluation survey be run every 30 days when certain drill-pipe operations are conducted within any casing string run to the surface. We recognize that casing wear is the result of a complex interplay of multiple variables and solicit comments you may have which would serve to further delineate, quantify, and clarify the rule.

The proposed rule revises the language in OCS Order No. 2 to specify the amount of pressure to be applied during pressure testing of the annulus between the liner top and the casing outside the liner top. We recognize that the proposed required test pressures (70 percent of the minimum internal-yield pressure of the larger casing) are a significant change from current requirements and solicit comments with respect to test pressures of a more general applicability and/or where exceptions to the rule as proposed are warranted.

The sentence in paragraph 3.5 in OCS Order No. 2 which reads, "Open-hole and slotted-liner completions are permitted when approved by the District Supervisor," is proposed to be removed as being essentially informational and, as such, unnecessary. No change in the rules is intended.

The OCS Order No. 2 requires that BOP stacks be pressure tested to the anticipated surface pressure. Lessees submit to the MMS the underlying assumptions and the calculations made in arriving at the anticipated surface pressure. Experience shows a wide divergence among lessees in the degree of conservatism in the underlying assumptions and in the methodologies used in the calculation. As such, there are significant variances among lessees in the estimates of anticipated surface pressure. Some of these variances are not explainable by differences in geology or local drilling conditions. This gives rise to requests for resubmittals and further paperwork. We propose that the required-test pressure be changed from anticipated surface pressure to 70 percent of the minimum internal-yield pressure of the casing. We believe that tying the required test pressure to casing-yield pressure provides a more concrete and objective basis, is reasonable, and will reduce paperwork.

The present rules require only actuation tests on the kelly cock, inside preventer, and the drillstring safety valve. The proposed rule requires pressure tests. Pressure seals on these valves deteriorate with time and use. Defective seals are not detectable by actuation tests only.

The proposed rules require that the blind and blind-shear rams in surface and subsea BOP stacks be actuated at least once every 7 days. Since the weekly pressure test is not required for blind and blind-shear rams, we believe it is important that these rams be actuated weekly to assure that control communication exists and that the rams will move. Full closing pressure on these rams is not required. Requirements relating to variable-bore pipe rams have been restated to eliminate needless complexity. The proposed language is more concise. There is no intent to alter the substance of the requirement.

The frequency and costly consequences of shallow-gas blowouts during drilling operations continue to be a source of serious concern to the MMS, industry, and the public. To combat this problem, requirements are proposed which focus primarily on improving diverter hardware reliability by reducing restrictions to flow and lessening causes of line parting and clogging and control instrument failure. The MMS believes that the use of diverters is important for the mitigation of damage once control of a drilling well is lost. Diverters direct well flow away from the drilling rig and allow time for personnel to evacuate the structure. From an examination of a number of diverter-related accidents and near-accidents on the OCS, it is fair to conclude that more injuries, fatalities, and platform and drilling rig losses would have occurred if diverters had not been installed. The MMS also believes that if the minimum size for diverters is increased to 12 inches, fewer losses in rigs, platforms, personnel, and wells will occur. A 12-inch line would provide for a much larger flow area and relieve pressures on the surface equipment and on shallow rock formations which may fracture under pressure and allow flow to the surface outside of the wellbore. We recognize that the proposed new line sizes and maximum number of turns may be debatable and also that the problems of shallow-gas drilling go beyond diverter hardware. Within this context, your recommendations and comments are solicited as to the appropriate design criteria and performance capabilities for a diverter system, as well as your comments on the following issues:

1. Appropriate vent pipe internal diameter, tensile and burst strengths, resistance to erosion, and thrust-load anchoring,

2. The advisability of changing the direction of flow while diverting in response to a change in wind speed and/or direction,

3. Suitability of flexible hose versus rigid vent pipe,

4. Maximum permissible number of and minimum radius of curvature of turns in the vent line(s),

5. Valve and valve actuator types suitable for use,

6. Optimum diverter control panel instrumentation and logic,

7. Protection of diverter system hardware from damage at all times, and

8. Functional reliability inspection and testing methods as well as frequency.

Other issues of a less equipment-specific nature are as follows:

1. Is elimination or abbreviation of MMS requirements appropriate in view of the historical failure rate and the outlook for those systems. What are acceptable means of substitution for coping with shallow-gas flow once control of the well is lost?

2. On balance, would the prohibition of venting from the marine riser into the ocean water serve the best interests of safety and prevention of pollution? Under what conditions, i.e., water depths, casing setting depths, fracture pressures, anticipated composition of the flowing fluids and solids, anticipated flow rates? Would disconnection of the marine riser or the use of dump or flood valves on the marine riser be a better alternative to bringing the flow to the surface? Under what specific conditions would it be best to drill without a marine riser even though it is possible to bring returns to the surface while drilling?

3. Should the requirements for diverters be modified or exempted on the basis of drilling history within a geologic/geographical area?

4. Under what conditions does the drilling of pilot holes provide worthwhile safety benefits?

5. What are the estimated costs and benefits of retrofitting existing rigs and the incremental costs of fitting future rigs as a result of the proposed requirements and as a result of any alternate sets of design criteria and equipment specifications that you may recommend?

In determining its policy on the design and use of diverters, MMS will consider the comments and suggestions in response to the foregoing questions and its own continuing examination of the question, including results of a study being conducted by Louisiana State University under contract with MMS.

Note.—The MMS published an OCS report entitled, Shallow Gas Events, MMS 84–0029, dated July 1984. Copies of this report may be obtained by contacting the Gulf of Mexico OCS Region, Minerals Management Service, Imperial Office Building, 3301 N. Causeway Boulevard, P.O. Box 7944, Metairie, Louisiana 70010.

The OCS Order No. 2 is proposed to be revised to remove the requirement for a tabulation of well depth and minimum mud quantities and the requirement that the District Supervisor approve plans to replenish mud supplies in an emergency. This paperwork and specific approval action by the District Supervisor has proven redundant and unnecessary. Information on availability of resupplies is obtainable from the Exploration Plan, Development and Production Plan, and from the APD. Alaska OCS Order No. 2 contains a requirement that enclosed mud-handling areas be equipped with gas detection, negative pressure, and ventilation equipment. Drilling units working in cold climates winterize (enclose) the mud rooms for the protection of personnel and materials. Gas emanating from gas-cut mud presents a fire and explosion hazard. The proposed rule extends the requirement to all OCS Regions. The intent is to include those drilling units which travel from cold to mild climates or are already located in a mild climate and which elect to maintain enclosed, unventilated mud rooms.

For clarity, a definition of field drilling rules in terms of their purpose and relationship to other drilling rules has been added. Further clarification as to the basis on which a lessee may apply for or the District Supervisor may require establishment of field drilling rules has been added. There is no intent to change the substance of this requirement.

The phrases "As approved by," "As required by" and "As prescribed by the District Supervisor" or "Regional Supervisor," appear without qualification numerous times throughout the existing drilling regulations and OCS Order No. 2. The purpose and condition on which the District Supervisor or Regional Supervisor require specific approval actions and the bases for such actions have been added.

Information collection and recordkeeping requirements are widely scattered in the present rules. The proposed rules consolidate and separate them from the safety requirements.

The proposed rules revise the existing MMS Standard, MMSS–OCS–1, Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment, which are currently applicable only to drilling operations, to include well-completion, well-workover, and production operations. The presence or potential presence of H_2S poses a hazard in these operations as it does in drilling. The MMS regulates H_2S safety during well-completion, well-workover, and production operations by requiring lessees to submit an H_2S Contingency Plan for approval in the Exploration Plan, Development and Production Plan, and the APD. Experience with this procedure shows that uncertainties and inefficiencies exist because there are no clear guidelines for the lessees' use in preparing the H_2S Contingency Plan. As a result, unnecessary paperwork is generated. The proposed rules provide guidelines and are intended to reduce paperwork. We believe that lessees are essentially in compliance with the proposed rules and that they impose no substantive new burdens.

Fully trained, technically competent personnel are essential for the safe conduct of offshore oil and gas operations. The MMS recognizes a responsibility under the Act to take appropriate measures toward that end. Although our responsibility is clear, there is question as to the measures which may be appropriate.

The MMS's objectives are to assure that the personnel employed by the lessees are trained and qualified, to assure that the standards for these qualifications are appropriate to ensure safety and environmental protection, and to reduce the amount of paperwork to be submitted by the lessee which MMS must review and upon which they must act.

As we reexamine our training requirements and programs, we would appreciate the advice and recommendations of the regulated industry, States, public interest groups, and the public as to the following:

General

1. How can MMS best assure that personnel engaged in oil and gas operations on the OCS are adequately trained?

2. To what extent, if any, should the training be provided by (a) the Federal Government, (b) OCS lessees, (c) State educational and training institutions, or (d) private training schools?

3. How should MMS assure itself that the training provided is adequate.

4. Should performance standards for job categories be established by MMS, by industry, or by others.

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5. Should MMS prescribe training criteria.

6. To what extent, if any, should on-the-job training be a part of MMS training requirements?

7. Should MMS training requirements call for periodic retraining or "refresher" training?

8. What is the appropriate training role for lessees, for oil and gas industry trade associations, and for others?

9. Have the current MMS training requirements provided satisfactory results?

10. Should MMS adopt a training program different from its current program? If so, what should it be, how would it be an improvement over the current program, and what are the cost implications of any recommended changes?

11. What are practical alternatives to the present MMS program for school certification, periodic recertification, and on-site evaluations that would maintain the standards of training?

12. Might such alternatives include an approach in which the MMS would require access to appropriate records at the field site and make periodic on-site evaluations of training facilities to determine compliance and take such corrective actions as warranted?

MMSS-OCS-T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations

The MMS promulgated in 1977 and revised in 1982 a training standard for certain categories of personnel engaged in offshore drilling operations. The currently effective standard is published at § 250.68 in these proposed rules. While not proposing specific changes in its existing drilling training requirements at this time, MMS is searching for ways to improve the program, reduce paperwork, and increase cost effectiveness.

We believe that the current MMS training program is basically sound in concept, except as follows:

1. How can the present program be improved, administrative procedures be simplified, and costs be reduced?

2. Is the curriculum too broad or too detailed?

3. Are there too many or too few job classifications?

4. Are there sufficient distinctions as to training requirements for each classification? What should the classifications be and how should the training requirements differ for each classification?

5. Would refresher-course training less often than once a year suffice? Should refresher-course training be required more frequently than once a year for certain activities? Should refresher-course training be placed on a graduated scale so that the longer a person is active on the job, the farther apart the required refresher training?

6. Should "hands-on" training be expanded?

7. Should MMS oversight of certified training institutions be expanded or reduced?

Training and Qualifications for Personnel in Well-Control Equipment and Techniques for Well-Completion and Workover Operations on Offshore Locations

The MMS (then the U.S. Geological Survey) published in the **Federal Register**, on February 8, 1979 (44 FR 8029), a Notice of Intent to develop a training standard for personnel engaged in well-completion and workover operations. In general, the comments received in 1979 (1) suggest that the standard follow the basic format used in GSS-OCS-T 1 (MMSS-OCS-T 1), and (2) urge the participation of industry in the development of the standard and its implementation.

In light of the concerns about training for these personnel, MMS is considering the develoment and adoption of training standards applicable to well-completion and workover operations. We are especially interested in your response to the following:

1. How should MMS establish training standards for well-completion and workover operations, and what should these standards include?

2. What are appropriate job classifications for such standards?

3. What should be the relationship between drilling and well-completion and workover standards and training?

4. Should refresher courses be required, and if so, how often?

5. What should be the implementation schedule for such a training requirement?

Training and Qualifications of Personnel in Well- and Process-Control Equipment and Techniques for Production Operations on Offshore Locations

Paragraph 5.7 in currently effective OCS Order No. 5 requires that personnel engaged in installing, inspecting, testing, and maintaining safety devices be qualified under a program as recommended by API RP T-2 for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices. Administratively, lessees submit an application to MMS for approval which describes the training to be conducted and the methods the lessee will utilize. After approval, lessees are required to maintain records of all qualified personnel in the field area. Experience with the program shows that uncertainty and inefficiencies exist primarily because there are no clear, written guidelines as to which employees should receive training and the lack of definition of a particular standard curriculum to match each particular job classification's duties and responsibilities. To resolve this problem, MMS is considering development of a training standard for personnel engaged in production operations.

The format of such a standard would be similar to that of MMSS-0CS-T 1 and would attempt to include the strengths and correct the deficiencies of API RP T-2 in an MMS document.

In addition to any general comments you may have, we would like your response to the following:

1. To strengthen the standard, should job classifications be added, and if so, which ones?

2. What training should be specified for each job classification?

3. Should refresher courses be required, and if so, how often and what should be their content?

4. How should MMS properly recognize individuals trained under currently approved programs?

5. What is an appropriate timetable for development and implementation of such a training requirement?

Subpart E—Well-Completion Operations and

Subpart F—Well-Workover Operations

The proposed revisions to the requirements in Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, presently contained in § 250.92 and OCS Order No. 6 regarding well-completion and well-workover operations, are intended to reflect experience in the field and advances in available technology. Well-completion and well-workover operations are a significant portion of oil and gas operations and involve a number of critical and dangerous tasks. A significant number of the blowouts on the OCS have occurred during well-completion and well-workover operations. However, there are few MMS requirements governing those operations. Despite advances in technology and an accumulation of operational experience, current requirements have not been revised in more than a decade. Considerations of good practice prompted most lessees to guide their well-completion and well-workover operations on the basis of

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other regulatory provisions such as current OCS Order No. 2, Drilling Operations, and Order No. 5, Production Safety Systems. We believe that both lessees and the MMS should have a clear understanding of the minimum requirements and safeguards needed for well-completion and well-workover operations. We are proposing requirements written specifically for such operations.

On July 27, 1983, MMS published in the **Federal Register** (48 FR 34063) a proposed revision to current OCS Order No. 6 concerning well completion and well-workover operations. Numerous comments were received in response to the Notice, and many oral comments were presented at a public meeting held on September 13, 1983.

Many commenters suggested that the proposed requirements were too detailed and should be replaced by "performance type" rules. In this proposal, we have attempted to define requirements in terms of performance to the extent we believe practicable. Specific engineering and design requirements are associated with those proposed performance standards. However, lessees would be free to use approved alternatives to those specific requirements if the performance standard would be met. (See discussion of § 250.3.).

Some commenters suggested that specific requirements for subsea completions and workovers should not be included since the technology is undergoing rapid development. It was suggested that specific requirements might stifle technological and equipment development. Because it is our intention to promote safety while encouraging innovation and improved technology, we are proposing for the foreseeable future that the District Supervisor approve subsea completions on a case-by-case basis (§§ 250.75 and 250.95).

Several commenters felt that the 1983 proposed rules involved too many detailed recordkeeping and reporting requirements. We have reexamined those requirements and are now proposing minimized recordkeeping and reporting burden on lessees.

Several commenters objected to the incorporation by reference of lengthy documents without identifying specific applicable sections. We agree with those comments. Commenters also objected to the incorporation by reference of documents developed by industry as recommended practices. We recognize that some recommended practices developed by industry are not suitable as Federal requirements, and those are not included in the proposal.

Several commenters felt that a number of operations should be considered routine, obviating the need for notice and approval. The MMS has reviewed the hazards associated with various types of well-workover operations, and we are proposing that a number of additional operations be considered routine and need not be preceded by notice, MMS approval, or after-the-fact reporting (§ 250.41). However, these routine operations shall be conducted in accordance with all other appropriate requirements of the regulations.

Some commenters felt that the earlier proposed requirements for surface safety valves (SSV) were too detailed and required too much recordkeeping. We are now proposing that the SSV requirements for well-completion and well-workover operations parallel those applicable to production operations.

Based on field experience, the responses from the public to our 1983 proposal concerning well-completion and well-workover operations, and our further analysis of the issues, a new set of requirements in a different structure are now being proposed. The requirements have been organized into two subparts, i.e., well-completion operations, and well-workover operations. Although this organization of the regulations results in some redundancy, we believe this will facilitate use of the regulations in field operations. However, for purposes of discussing the requirements, the following comments in many cases address both subparts.

A number of provisions included in our 1983 proposal are not included in this proposed rulemaking. We agree with the comments and suggestions of many of the commenters and have deleted a number of those detailed requirements, i.e., (1) storage and conveyance of flammable liquids, (2) certain pumping and testing safeguards, (3) requirements for drill-stem testing, and (4) verification of valve closure for wireline operations. The proposed general performance requirements that are discussed later would require safe operations with regard to these items. Possible future requirements for well-completion and well-workover training that are discussed in Subpart D, Drilling Operations, would provide additional safeguards.

Performance standards have been proposed to more clearly identify the regulatory objective of the subparts regarding well-completion and well-workover operations and subordinate sections, e.g., §§ 250.70, 250.85, 250.86, 250.88, 250.90, 250.105, 250.106, and 250.108. Such performance standards focus on the objective to be attained. While the performance standards do not specify the means to be used, they require that the means shall be compatible to whatever conditions or circumstances may exist, e.g., subfreezing conditions, storms or waves, and age of equipment. They further require that the equipment is maintained and is operable, that the crews are adequately trained, and that operating and maintenance tools and supplies are readily available so that the objective can be attained. We believe these performance standards will better accomplish the regulatory purpose than a large number of detailed requirements.

Sections 250.71 and 250.91 define well-completion operations and well-workover operations. The definition of well-completion operations, in part, distinguishes those operations from drilling operations.

Section 250.91 also distinguishes between routine and nonroutine well-workover operations.

Routine operations would be excluded from the advance notice and approval and reporting requirements associated with other operations. They are not excluded from compliance with other requirements. This would reduce recordkeeping and reporting requirements.

Requirements are proposed in §§ 250.72 and 250.92 concerning movement of rigs and equipment onto wells for well-completion and well-workover operations. We believe that the possibility of accidents resulting from such movements justify precautions and redundant securing of the wells.

A requirement is proposed in §§ 250.73 and 250.93 that an Emergency Shutdown (ESD) System to provide a rapid means of shutting in an entire platform in the event of an emergency be required when well-completion or well-workover operations are conducted on a platform. We believe an ESD System is a prudent and necessary system to minimize the threat of pollution during well-completion and well-workover operations. In the event of an emergency, the ESD would reduce the risk to wells, personnel, and production equipment on the platform.

A requirement has been proposed in §§ 250.74 and 250.94 to require special precautions when a well-completion or well-workover operation is conducted on a well in zones known to contain H_2S or in zones where the presence of H_2S is unknown. These zones and necessary requirements are spelled out in § 250.67. The danger of H_2S to the crews and equipment is such that we believe

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special requirements are appropriate during well-completion and well-workover operations.

It is proposed in §§ 250.75 and 250.95 that subsea well-completion and well-workover operations be subject to approval by the District Supervisor on a case-by-case basis. Our experience is yet insufficient to set out standard requirements as was proposed in the 1983 Notice of Proposed Rulemaking concerning revision of current OCS Order No. 6. A case-by-case review and approval at this time would provide necessary flexibility and assurance of safety.

A requirement for crew instructions is proposed in §§ 250.76 and 250.96. We believe properly informed and trained personnel are necessary for assuring safe well-completion and well-workover operations, and we are proposing that instruction of the involved personnel should occur before the operations begin. Thereafter, the timing and format of subsequent instruction, e.g., periodic meetings, would be best left to the lessee's judgment. Recordkeeping burdens would be reduced from the 1983 proposal to what we believe would be the minimum necessary to monitor the occurrence of these important meetings.

It is proposed in §§ 250.77, 250.78, 250.97 and 250.98 that well-completion and well-workover operations adhere to appropriate requirements of welding and burning practices and procedures (§ 250.52) and electrical requirements (§ 250.53). We believe these requirements to be prudent. They will contribute to the safety of operations, and they should be followed in well-completion and well-workover operations as well as in the drilling and production phases.

Requirements have been proposed in §§ 250.79 and 250.99 for determining the adequacy of well-completion or well-workover equipment and for determining the structural capacity of fixed platforms before moving well-completion or well-workover equipment onto them. The MMS is concerned with the hazard that may be involved in using inadequately designed well-completion and well-workover equipment and in placing additional stresses on old platforms. These proposed requirements will not entail a costly analysis but rather an analysis of the well-completion or well-workover equipment and a review of additional stresses which may be added to the platform during the well-completion or well-workover operations and of any changes in the capacity of the platform due to factors such as hurricanes, earthquakes, or workboat collisions.

It is proposed in §§ 250.80 and 250.100 to require an automatic shut-down device on all diesel engines used in well-completion and well-workover operations to prevent engine runaways. This requirement is similar to that proposed in Subpart D, Drilling Operations (§ 250.51), and Subpart H, Production Safety Systems (§ 250.123), and is proposed for the same reasons.

A requirement has been proposed in §§ 250.81 and 250.101 for a safety device to prevent the traveling block from striking the crown block. Accidents have occurred in the past from this event, and we believe precautions are warranted. The specific requirement that is now proposed has been modified to reflect comments received on our 1983 proposal.

Sections 250.82 and 250.102 regarding simultaneous operations provide the linkage in these subparts on well-completion and well-workover operations with the current production operation phase requirements proposed in § 250.123 requiring a plan for simultaneous operations.

The authority is proposed in §§ 250.83 and 250.103 to establish special field rules for well-completion and well-workover operations when field conditions indicate that a departure from the requirements of these subparts is appropriate. We believe such a convention provides operational flexibility to meet real-world conditions, eases administration for the lessee and MMS, and assures safety. A requirement is proposed in § 250.84 that all well-completions must be approved before those operations are commenced. The completion of a well is such a significant step in the lease development in terms of safety and resource management that we believe MMS's review and approval of the proposal is warranted. We propose that the review and approval of the completion can be handled on one of two forms at different times. In those cases when the proposed completion can be foreseen at the time the APD (Form MMS–331C) is submitted, as would be the case with many development wells, the APD can include the completion proposal. When completion is planned some time after the APD is submitted, when the drilling rig is moved off the hole and a well-completion rig is moved on, or when conditions have significantly changed from the completion proposed on the APD, the well-completion proposal and approval shall be handled on a Form MMS–331, Sundry Notices and Reports on Wells. We believe this use of forms will accomplish the desired approval step consistent with the status of knowledge in the field and minimal changes in the use of familiar forms.

It is also proposed that Form MMS–331 shall be submitted within 30 days of a well completion to report the "as built situation," instead of a second submission of Form MMS–330, Well Completion and Recompletion Report and Log. This latter report is frequently submitted at the end of the actual drilling and before completion begins. We believe it is redundant to have Form MMS–330 submitted again following actual completion when the needed information can be submitted on Form MMS–331. The regulations would provide that if Form MMS–330 had not already been submitted, it shall be submitted with the "as built" Form MMS–331 within 30 days of well completion.

A requirement for well-control fluid is proposed to be added to the subparts on well-completion operations (§ 250.85) and well-workover operations with the tree removed (§ 250.105). A good well-control fluid system and its operation are a primary mechanism for maintaining well-control during these activities. This requirement and others proposed for well-workover and well-completion operations are new rules although they reflect current practice in the OCS. We propose that this important phase of well control be addressed by well-completion and well-workover operations requirements and not through piecemeal application of requirements designed specifically for drilling operations. More is known of the expected pressures during the completion and workover operations as distinguished from the drilling operation. Accordingly, we are proposing a performance standard and only a few detailed requirements governing well-control fluids to allow the lessee to design a system to meet the needs of the particular situation.

The proposed requirements for BOP equipment and procedure requirements would be tailored to well-completion operations (§ 250.86), well-workover operations with the tree installed, and well-workover operations with the tree removed (§ 250.106). The number of blowouts which have occurred during well-completion and well-workover operations warrant the proposed inclusion of requirements addressing BOP equipment. As with well-control fluids, we are proposing a performance standard coupled with a few detailed requirements to allow the lessee to tailor a system to the circumstances. We believe this would provide needed safety with the minimum burden on the lessee.

A requirement has been proposed for BOP drills in §§ 250.87 and 250.107. We believe trained personnel are the most important means of preventing injury and loss. The proposed drills would be a key aspect of necessary training and are intended to increase the capability of personnel to deal with potential emergencies.

New requirements have been proposed in §§ 250.88 and 250.108 for wellhead equipment and tubing based on a performance standard approach to regulation. They would substitute for the requirements in current OCS Order No. 6 concerning wellhead-testing procedures. We believe that the testing requirements are unnecessarily prescriptive and are no longer appropriate. Would retention of the more prescriptive requirements be desirable? Does the performance standard approach present a welcome opportunity?

We are proposing a specific requirement for a minimum of one master valve and one SSV in the vertical run of the tree. This equipment would be required on all new wells completed after the effective date of these regulations and would be required on any previously completed wells at the time the existing tree is removed and reinstalled for a well-workover operation.

The current requirement in OCS Order No. 6 for "storm choke" is proposed to be reidentified as a part of subsurface safety equipment, inasmuch as "storm choke" is a proprietary name for a specific piece of equipment. The proposed amendment for subsurface safety equipment would require that the lessee meet the requirements which are in proposed Subpart H, Production Safety Systems.

Specific requirements for tubingless completions contained in current OCS Order No. 6 would be deleted. Tubingless completions have become relatively rare, and the existing requirements are felt to be unnecessarily prescriptive and detailed. Any proposed completion, including a tubingless one, would still have to be proposed and approved through an APD or Sundry Notices and Reports on Wells. We believe that the approval process and proposed general performance requirements would provide adequate precaution to achieve installation reliability, safety, and environmental protection.

It is proposed in § 250.109 to require the lessee to minimize leakage and to test the lubricator each time it is installed during wireline operations. These new requirements have been significantly modified as a result of comments on our 1983 proposal. We believe these proposed requirements address the most critical concerns about wireline operations and, when taken with the performance standard and other requirements of this subpart, will provide safe operations.

Subpart G—Abandonment of Wells

The requirements of current OCS Order No. 3 on plugging and abandonment of wells are proposed to be transferred to new Subpart G, Abandonment of Wells. A number of revisions of an editorial nature are proposed to be made. Under the requirements of current OCS Order No. 3, all casings, wellhead equipment, and pilings must be removed to a depth of 15 feet below the mud line to avoid conflict with other users of the seafloor. Under proposed § 250.112(i), wellhead removal and site clearance might be reduced or eliminated if the remaining material would not result in a hazard for other users of the seafloor. It is intended that this proposal would eliminate significant costs associated with site clearance when no resulting benefit can be identified.

Proposed § 250.114, Site clearance, would require the lessee to verify the clearance of the drill site by one of the prescribed methods and submit a certifying letter that the drill site had been cleared of all obstructions. The current Region-specific requirements would be deleted; the prescribed methods would apply to all Regions. An option would allow for the application of other methods.

Subpart H—Production Safety Systems

The requirements relating to production safety systems that are currently contained in OCS Order No. 5, Production Safety Systems, and 30 CFR 250.41(b) are proposed to be revised to remove unnecessary and redundant provisions and be incorporated into proposed Subpart H, Production Safety Systems.

Section 250.22 of Subpart A, General, is proposed to incorporate the requirements of Paragraph 1, *Use of Best Available and Safest Technologies (BAST)*, of current OCS Order No. 5 where applicable to all appropriate operations. This proposal takes into account the responses to comments on the proposed revision of current OCS Order No. 5 which was published in the **Federal Register** on July 25, 1983 (48 FR 33757). That Notice proposed the following:

(1) To delete the "grandfather provision" in the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Safety and Pollution Prevention Equipment (SPPE) program.

(2) To delete redundant citations, and

(3) To establish operator field practice controls for equipment used in the ANSI/ASME SPPE program.

Seventeen timely comments were received on the proposal. The **Federal Register** Notice was not clearly worded with respect to the "grandfather provision." It was possible to interpret the definition of "replaced" in two different fashions. One interpretation, the replacement of all non-SPPE valves with SPPE valves, was very costly, and the other interpretation, the replacement of valves being remanufactured, was not. Nine of the commenters understood the proposal to require the immediate replacement of all non-SPPE valves with SPPE valves and felt that the revised definition was too costly. Another five commenters felt that the definition needed to be clarified. As a result of the comments received, the definition of "replaced" is proposed to be revised as indicated in §§ 250.121(b) and 250.122(c). This revision would eliminate an ambiguous statement that could have resulted in significant expense without a corresponding gain in safety and pollution prevention. It should be noted that in the 4 years that the SPPE program has been in effect, approximately one-third of the safety valves in use offshore are now SPPE valves.

Section 250.126 is proposed to incorporate the substance of current Paragraph 2, *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment*, of OCS Order No. 5. The ANSI/ASME Standard, Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, ANSI/ASME SPPE–2–1982 Edition, is proposed for deletion as a redundant reference. Compliance with ANSI/ASME SPPE–2 is required by ANSI/ASME SPPE–1 which is proposed for incorporation by reference in § 250.126.

Proposed Subpart D, Drilling Operations, would incorporate the requirements of Subparagraphs 5.1.10, *Electrical Equipment*, and 5.4, *Welding and Burning Practices and Procedures*, of current OCS Order No. 5 into §§ 250.53, and 250.52. Language would be incorporated into those sections to make the appropriate parts applicable to platform and production operations. Electrical-system information-submittal requirements are proposed for § 250.122(e)(4) as safety-system design and installation features. Since this is design and installation information, it

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would seem appropriate to include it in Subpart H.

The requirements of Paragraph 7, *Crane Operations*, of current OCS Order No. 5 are proposed to be deleted to reflect an agreement between USCG and MMS. In that agreement, the USCG will have responsibility for cranes installed on all OCS platforms.

Sections 250.52 and 250.53 of proposed Subpart D, Drilling Operations, would incorporate the substance of Paragraph 9, *Requirements for Drilling Rigs*, of current OCS Order No. 5 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions.

There are numerous proposed changes in the language contained in current OCS Order No. 5 that are basically editorial in nature. The editorial changes would not result in substantive changes in the requirements. The effective date of current OCS Order No. 5 was January 1, 1980, for the Atlantic, Gulf of Mexico, and Pacific, OCS Regions. This is a pivotal date for many requirements of the current Order. For example, surface-controlled subsurface safety valves (SSSV) are currently required in all tubing installations after the effective date of the Order. On the other hand, if installation of the tubing had occurred prior to January 1, 1980, subsurface-controlled SSSV's, currently "grandfathered," would not require replacement until the tubing is first removed and reinstalled. In most instances, however, we have eliminated the "before" and "after" requirements based on the effective date of the current Order in this proposal.

Substantive changes in the regulation are addressed below:

Proposed §§ 250.120 through 250.127 would incorporate the requirements of the current paragraph (b) of § 250.41, Control of wells.

All references made to the NEC and IEEE RP for Electric Installations on Shipboard, IEEE Std 45–1977, are proposed to be eliminated. These references are not appropriate for fixed offshore facilities. In place of these references, we are proposing that industry standards such as API RP for Design and Installation of Electrical Systems for Offshore Production Platforms, API RP 14F, and API RP for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, API RP 500B, be incorporated by reference into the regulations. These changes would not have an effect on current industry practices.

Proposed § 250.123(b) would incorporate the requirements of subparagraph 5.1.1(d) of current OCS Order No. 5. The last three sentences of the current subparagraph contain a provision to permit the use of uncoded vessels if they have successfully passed a hydrostatic test. This provision would be eliminated in the proposed regulation. We believe the use of uncoded vessels should not be approved. However, proposed § 250.123(b)(1) would allow continued use of any uncoded vessels that have received approval under the current Order.

Statistics from Gulf of Mexico OCS operations indicate that about one-third of all fires have been caused by engines. Nearly half of these engine-caused fires have resulted from diesel engine "runaway" when hydrocarbons enter the air intake of the engine. To eliminate this problem, we are proposing in § 250.123(b)(5) that all diesel-engine air intakes be equipped with an automatic-shutdown device that would prevent engine "runaway." The same requirement is proposed in the subpart on drilling as discussed above.

Subparagraph 5.1.9(e) of current OCS Order No. 5 requires fire-detection systems to be designed and installed in accordance with the NFPA Standard on Automatic Fire Detectors, ANSI/NFPA 72E. Gas-detection systems are currently required to be designed and installed in accordance with sections 9.1 and 9.2 of API RP 14F. The proposed § 250.123(b)(9) would retain API RP 14F but would eliminate the NFPA Standard and replace it with API RP for Fire Prevention and Control on Open Type Offshore Production Platforms, API RP 14G. We believe that the API documents are more appropriate for offshore petroleum industry operations.

Subparagraph 5.1.11 of current OCS Order No. 5 requires an annual report on the erosion-control programs in effect and the results of those programs. Proposed § 250.123(b)(10) would retain the requirement for the erosion-control program but would not require an annual report to be submitted. It would require the lessee to maintain the records of results obtained from the programs. We believe that this change would provide for adequate monitoring of the programs while reducing the reporting burden for the lessee.

Proposed § 250.125 would retain the requirements of Paragraph 5.7, *Safety Device Training*, of current OCS Order No. 5. However, the requirement for the lessee to apply for and obtain MMS approval of the proposed training would be eliminated. Comments on the method of improving the Safety Device Training Program are requested. The substance of Paragraph 8, *Employee Orientation and Motivation Programs for Personnel Working Offshore*, of current OCS Order No. 5 is proposed to be deleted. While we agree that motivation of personnel is a desirable management tool, we believe that industry management can best implement such a program without the need for Federal regulatory involvement. The deletion of this program would have no effect on the Fisheries Training Program which is required by a stipulation.

Proposed § 250.126, Quality assurance and performance of safety and pollution prevention equipment, would repeat the requirement of OCS Order No. 5 that SPPE shall conform to ANSI/ASME SPPE–1–1982, Quality Assurance and Certification of Safety and Pollution Prevention Equipment used in Offshore Oil and Gas Operations, and related requirements.

The MMS believes the SPPE program contributes significantly to the safety of offshore oil and gas operations. Nevertheless, MMS invites comment as to whether alternatives to the SPPE program exist which could accomplish purposes of the SPPE program while reducing the paperwork burden on lessees and operators.

Current OCS Order No. 5 does not address the subject of H_2S. However, proposed § 250.127 would make the appropriate parts of proposed Subpart D, Drilling Operations, § 250.67 relating to H_2S applicable to production operations.

Subpart I—Platforms and Structures

The requirements pertaining to platforms and structures contained in current OCS Order No. 8, Platforms and Structures, are proposed to be revised to remove redundant provisions, update the requirements as appropriate, eliminate two referenced documents concerning the Platform Verification Program, consolidate and clarify the submittal of required technical data and verification plans, and add provisions for periodic inspection and platform removal.

Proposed Subpart I, Platforms and Structures, would merge the provisions of the four regional OCS Orders No. 8 into a single set of regulations which would apply generally to platforms and structures on the OCS. However, different geological and environmental conditions in the Regions continue to make it necessary to propose to retain certain specialized requirements, e.g., icing effects.

Proposed §§ 250.130, 250.131, 250.132, 250.143, and 250.144 would incorporate the requirements of current OCS Order No. 8. These proposed sections would specify the requirements for application,

documentation, structure removal, record retention, and the criteria for third-party verification. Proposed §§ 250.134 through 250.141 would specify the technical requirements, concepts, and performance standards for the design, fabrication, and installation of platforms on the OCS. These requirements would be transferred from the current MMS publication, Requirements for Verifying the Structural Integrity of OCS Platforms. There is no change intended. This document was issued in November 1979 and has been a part of current OCS Order No. 8 since January 1, 1980. It is a comprehensive tabulation of specific technical requirements, concepts, and considerations to be utilized in the design, fabrication, and installation of offshore platforms. Other standards, codes, or sets of rules exist pertaining to the full scope of activities involving offshore platforms. Two examples are the API RP for Planning, Designing, and Constructing Fixed Offshore Platforms, API RP 2A, and Part 1, Structures, of the American Bureau of Shipping Rules for Building and Classing Offshore Installations. Similar sets of rules have been issued by other Nations involved with offshore oil and gas operations, i.e., Norway, Great Britain, Canada, and France. Considering the total offshore industry experience with OCS Order No. 8 as well as these other standards and/or rules affecting platform activities, we are requesting comments as to the effective use and application of each and/or all of these existing documents. We invite your recommendations as to whether the requirements of the proposed Subpart I or the requirements of API RP 2A or those of the American Bureau of Shipping mentioned above would best accomplish the desired structural integrity of offshore platforms.

In proposed § 250.130(c), the criteria that currently determine the applicability of the Platform Verification Program for platforms in the Gulf of Mexico OCS Region would be revised and applied to all OCS Regions. We are proposing to replace current Criterion (d), Installed in Frontier Areas, and to revise Criterion (e) to read as follows: ". . . having configurations and designs which have not been used previously or proven for use in the area, . . ." We are also proposing a requirement whereby platforms to be installed in seismically active areas would also need third-party verification. The proposed revisions are intended to make the criteria more descriptive of the conditions encountered in frontier areas. The same criteria would apply, providing for similar exemptions in the Alaska, Atlantic, and Pacific OCS Regions when sufficient experience is obtained and designs are proven.

The MMS believes that the third-party verification program has contributed significantly to the safety and success of the offshore oil and gas program. Through the third-party verification program, a number of serious defects in design, fabrication, and installation of offshore platforms have been detected and corrected, thereby eliminating high potential for significant damage or loss. Nevertheless, we invite comment as to whether alternatives to the third-party verification program are available which would better and more economically accomplish the purposes of that program.

Proposed § 250.131(d) would revise the requirements of Paragraph 2.2, *Certification*, of current OCS Order No. 8. We do not propose to require the submittal of lessee certification but rather to require that the detailed structural plans and specifications for all platforms be certified by a registered professional or structural engineer. These drawings and specifications are routinely submitted and normally contain the professional engineer's stamp.

The requirements of item (c) of paragraph 3.2.1.1 of current OCS Order No. 8 would be deleted because the intended use of the platform would be provided in the Development and Production Plan or Exploration Plan. Item (d) of the same paragraph would be deleted since the submittal of information on personnel facilities, boat landings, cranes, and evacuation routes is covered by USCG requirements.

Proposed § 250.133 would contain the revised text of the current MMS publication, Operating Procedures for the OCS Platform Verification Program. This document covers the review process for a certified verification agent (CVA), qualification criteria for certification as a CVA, instructions and guidance to the CVA, and procedures for handling disputes between the CVA and the lessee. The proposed text at § 250.133 would describe only the CVA-review process and the criteria for nomination as a CVA. Parts of the current document that are proposed to be deleted concern the responsibility of parties and the dispute procedures which are inherent to the lessee/lessor relationship that are otherwise covered in the lease contract or the law.

A new § 250.142, Periodic inspections and maintenance, is proposed to require periodic inspections of the entire platform and the submittal of a brief annual report describing inspection techniques and the results of the inspections. This proposed requirement is intended to ensure that the integrity of the platform would be maintained throughout its useful life. On October 10, 1980, a Notice of Intent to develop these requirements was published in the Federal Register. After an analysis of the public comments and reconsideration of the objectives of the Platform Verification Program, we are proposing periodic inspection and maintenance requirements as logical methods to assure the continual structural integrity of these platforms.

A new § 250.143 is proposed to address removal of platforms and site clearance. Paragraph 2.9 of current OCS Order No. 3 (proposed Subpart G, Abandonment of Wells) addresses the removal of well equipment and site clearance but does not address platform removal. To cover this issue in a manner consistent with Subpart G, it is proposed to require the removal of all platforms to a depth of at least 15 feet below the ocean floor. Currently, under OCS Order No. 3 and Gulf of Mexico NTL 81–5, a letter is required concerning the location clearance for wellhead and equipment removal after the plugging and abandonment of wells. A similar provision is proposed for the clearance of a platform location. If final well abandonment is also involved, one letter concerning overall location clearance would suffice.

Concerning the removal of platforms and site clearance, we have considered the possibility of providing for the allowance of the entire platform to remain in place or to be partially removed. This may be considered if it could be shown that there was a beneficial use for the platform and that it would not unreasonably interfere with the other legitimate uses of the area. The MMS has recently funded a study to be conducted by the Marine Board of the National Research Council to analyze and advise on the national and international ramifications of platform removal and disposition. The MMS has considered this option in light of the objectives of the Recreational and Environmental Enhancement for Fishing in the Seas (REEFS) Task Force cochaired by the Secretary of the Interior, the proposed legislation (H.R. 5447), the possible economic savings to be derived, studies demonstrating considerable incidental biological, social, and economic values associated with offshore structures, and the absence of objection from State or Federal Agencies having jurisdiction. Therefore, we request comments as to the need for a provision relating to

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platform partial removal or nonremoval, the limitations or conditions that should be included, and a general expression of the pros and cons. If there are benefits to be obtained and the multiple-use concept of the OCS will not be violated, we would appreciate the benefit of your thoughts as to the need for such a provision.

Concerning the above consideration and the study to be made on platform removal and disposition by the Marine Board, we request your responses to the following:

Alternative Dispositions

1. What are the alternatives for the disposition of offshore platforms after they have reached the end of their useful life as oil and gas facilities? What are the opportunities for reusing platforms or sections of platforms as oil and gas facilities or for other industrial purposes? What are the costs of the alternatives?

Status of Technology

2. What are the technical problems in dismantling, transporting, relocating, and reusing platforms? What are the technological capabilities?

Environmental Protection

3. What disruption of fisheries habitats is likely to result from the removal of platforms?

4. The question of the reuse of offshore platforms for fisheries-habitat enhancement is of widespread interest. To this end, the structures can be left in place, toppled in place or removed, or transported and relocated as an artificial reef. What are the potential benefits of this alternative? What criteria could be used to identify platforms that have potential for fisheries-habitat enhancement?

Economic

5. What percentage of the cost of offshore resource development can be attributed to platform removal? How might this vary in the different Regions?

Legal

6. How is liability for safety, maintenance, marking, and third-party damage affected by the alternative strategies for the disposition of offshore platforms?

The existing MMS documents, Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms, and Commentary on the Requirements for Verifying the Structural Integrity of OCS Platforms, are proposed to be deleted. These documents contain guidelines and numerous technical references concerning how to design, fabricate, and install offshore platforms. As research efforts and experience have moved technology ahead, these guidelines and references have become outdated. Therefore, it is proposed to no longer reference these documents.

The substance of paragraph 5 of current OCS Order No. 8 would be deleted because departures from the regulations may be granted by the Regional Supervisor in accordance with proposed § 250.3(b) of Subpart A, General.

Subpart J—Pipelines and Pipeline Rights-of-Way

The DOI and the Department of Transportation (DOT) share responsibility for safety and prevention of pollution associated with offshore pipelines. In addition, DOI has the responsibility for the approval of the installation, modification, change of service, or abandonment of oil and gas pipelines under the jurisdiction of DOI on the OCS.

At present, there are three classifications of oil and gas pipelines approved by DOI on the OCS. They are as follows:

1. Lease—These pipelines are owned and operated by a lessee or operator and are wholly contained within a single lease, unitized leases, or contiguous (not cornering) leases.

2. Permit—These pipelines meet the same boundary limits as in 1. above; however, the pipelines are owned and operated by a nonlessee of the lease(s) involved.

3. Right-of-way—These pipelines are those which are not wholly contained within a single lease, unitized leases, or contiguous (not cornering) leases.

The proposed regulations would apply to the approval of all oil and gas pipelines on the OCS. No substantive change is intended in this regard.

The proposed revisions to the requirements for the design installation, and operation of pipelines, currently at 30 CFR 250.20, Pipeline approval, and OCS Order No. 9, Oil and Gas Pipelines, are intended to reflect experience in the field and advances in available technology. The requirements for pipeline rights-of-way, currently Subpart N of 30 CFR Part 256, are also proposed as §§ 250.158 through 250.163 for inclusion with the pipeline requirements into new Subpart J, Pipelines and Pipeline Rights-of-Way.

The proposed requirements for design, installation, and operation of pipelines would include the following:

1. In proposed § 250.152(e), requirements are proposed for independent and redundant shut-in systems on pipelines. These requirements are currently in force under OCS Order No. 5, Paragraph 5.1.2, *Flowlines*, and Section A9 of API RP for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). No substantive change is intended.

2. In § 250.152(f), requirements are proposed for cathodic protection of pipelines. While existing rules require protection from loss of metal for the pipeline, the proposed rule would specify a 20-year life for the protection system.

3. In § 250.153, requirements are proposed for pipeline burial to prevent interference with other pipelines and other uses of the OCS. These proposed rules would specify the degree of protection necessary for multiple use of the OCS. They also reflect current practice for most OCS operations. For example, in § 250.153(a)(4), requirements are proposed for pipeline risers installed after the effective date of this regulation to be protected from physical damage that could result from floating vessels. This requirement reflects current practice in the OCS.

4. In § 250.153(b), requirements are proposed for measurement of temperature during hydrostatic testing and increased length of hydrostatic tests. We believe the proposed requirements are warranted because of the pollution which might result if defects in pipelines are not discovered during testing.

5. In § 250.154(b) requirements are proposed for safety equipment on pipeline installations as follows:

(a) Paragraphs 1, 2, 3, 4, and 9 are taken from the current Gulf of Mexico OCS Region's Order No. 9, while paragraph 5 is taken from the Pacific OCS Region's Order No. 9. No new requirements are proposed.

(b) Paragraph 6 would require that a check valve and block valve be installed at all subsea tie-ins. These devices are currently installed as standard industry practice so as to eliminate production loss from the main trunk line in case a secondary pipeline were to rupture, thus minimizing the chance of pollution.

(c) Paragraph 7 would eliminate a present requirement for a shutdown valve (SDV) on all gas-lift pipelines to an unmanned well jacket. This change would result in a saving to the lessee with no substantial increased risk of pollution. These pipelines are required to be provided with a low-pressure sensor to shut off the source of gas.

(d) Paragraph 8 addresses bidirectional pipelines which are not addressed in current OCS Order No. 9.

For a bidirectional pipeline, it has been a condition of approval to require a high- and low-pressure sensor and an SDV at each platform in lieu of the boarding-flow safety valve. No substantive change is intended.

6. In § 250.155, requirements are proposed for abandoning a pipeline. These requirements reflect policy developed over the years and have become standard operating procedure in the OCS. These procedures would assure consistency with the multiple-use concept in the OCS.

7. In § 250.156, requirements are proposed for additional information to be included in pipeline applications. Since the effective date of the current OCS Order No. 9, there has been considerable growth in the number of pipelines and in the technology used to design, install, and operate these pipelines. The additional information is needed by both the lessee and the MMS to properly assess whether the pipeline would provide a safe and pollution-free transportation of fluids while not unduly interfering with other uses of the OCS. At present, lessees include this information in pipeline applications; therefore, no additional burden would result.

8. Semiannual reports of testing of pipeline safety devices and annual reports of monthly pipeline inspections are proposed to be deleted. We believe these reports are no longer necessary, and this proposal will reduce the reporting burden on lessees. The test results and inspection data continue to be available to MMS.

Are further reductions in paperwork burdens associated with pipeline requirements feasible? What reductions in the paperwork burden in this area are recommended?

Sections 250.158 through 250.163 of Subpart J relate to rights-of-way and would be a redesignation of Subpart N of 30 CFR Part 256.

Subpart K—Production Rates

The requirements of current OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, presently effective in the Gulf of Mexico and Pacific OCS Regions, are proposed to be revised and incorporated into the new Subpart K, Production Rates. It should be noted that the proposed revisions and additions are in answer to comments received from 13 organizations in response to our solicitation for comments on an earlier proposed revision of OCS Order No. 11 published in the Federal Register on May 4, 1983 (48 FR 20152).

Proposed § 250.170, Definitions for production rates, would incorporate the requirements of Paragraph 1, *Definition of Terms*, of current OCS Order No. 11. Definitions for sensitive and nonsensitive reservoirs are proposed to be added to clarify the use of those terms in this context.

Proposed § 250.171, General requirements and classification of reservoirs, would incorporate the substance of Paragraph 2, *Classification of Reservoirs*, of current OCS Order No. 11. The new section would require reservoirs to be classified as oil reservoirs, oil reservoirs with an associated gas cap, or gas reservoirs, and to be subclassified as sensitive or nonsensitive. We believe this new proposal would reduce administrative costs by providing for identification of the nonsensitive reservoirs so that information collection and production-rate requirements could be eliminated for such reservoirs. The information collection requirements would be reduced because data need not be submitted for approval of Maximum Efficient Rate (MER) of production for nonsensitive reservoirs. Administrative and recordkeeping costs would be reduced because rates of production would not need to be balanced to meet MER's for nonsensitive reservoirs. All oil reservoirs with an associated gas cap would be initially classified as sensitive because studies have shown that, although most reservoirs can be classified as nonsensitive, the majority of oil reservoirs with an associated gas cap are sensitive. All other oil reservoirs and all gas reservoirs would initially be classified as nonsensitive. Reservoirs might be reclassified whenever information became available to warrant it.

Proposed § 250.172, Oil and gas production rates, would incorporate the requirements of the current § 250.16, Well potentials and permissible flow, and Paragraphs 3A, *Maximum Efficient Rate (MER)*; 3B, *Maximum Production Rate (MPR)*; 4A, *Production Variances*; 5C, *Quarterly Test*; and 6C, *Semiannual Test*, of current OCS Order No. 11. Proposed Paragraph (a), MER, would require determination of MER's and the balancing of production only for sensitive reservoirs, eliminating the requirement for nonsensitive reservoirs in current OCS Order No. 11. Proposed paragraph (b), MPR, would require the determination of MPR's for each well completion as presently required in OCS Order No. 11. However, the provisions of current OCS Order No. 11 would be amended to allow the revision of the MPR based on well tests submitted on the Form MMS-1869, Quarterly Oil Well Test Report, and Form MMS-1870, Semi-Annual Gas Well Test Report. This would eliminate the present requirement for submitting a Form MMS-1867, Request for Well Maximum Production Rate (MPR), and Form MMS-1868, Well Potential Test Report, in order to increase an MPR.

We believe this new proposal would reduce administrative costs by eliminating a large portion of the provisions of current OCS Order No. 11 that require the submittal of applications and recordkeeping for MER's and balancing of production.

Proposed § 250.173, Well production testing, would incorporate the substance of the current § 250.38, Tests, surveys, and samples, and Paragraphs 5, *Oil Well Testing Procedures*; 6, *Gas Well Testing Procedures*; and 7, *Witnessing Well Tests*, of current OCS Order No. 11. Paragraph 8, *Sale or Transfer of Production*, of current OCS Order No. 11 would be deleted as an unnecessary provision that is inherent under the terms of an OCS oil and gas lease.

Proposed § 250.173(a) would clarify the procedures for conducting well tests. Proposed § 250.173(b) would change the requirement for conducting a multipoint back-pressure test on all gas wells to be mandatory only when requested by the Regional Supervisor. This information is no longer routinely needed; therefore, the test data will be required only upon request.

Proposed § 250.173(c) would provide for the witnessing of well tests by a representative of the Regional Supervisor. We believe this new proposal would eliminate redundancy in current § 250.38 and OCS Order No. 11 and would clarify well-production testing procedures and requirements.

Proposed § 250.174, Bottomhole pressure survey, would incorporate the requirements of Paragraph 9, *Bottom-Hole Pressure Tests*, of current OCS Order No. 11. We believe this new proposal would reduce administrative costs by eliminating the requirement presently in OCS Order No. 11 for a bottomhole pressure survey for reservoirs with less than three producing well completions.

Proposed § 250.175, Flaring and venting of gas, would incorporate the substance of current § 250.55, Flaring and venting of natural gas, current Gulf of Mexico OCS Region's NTL 75-9 (effective 5/13/75), and Paragraph 10, *Flaring and Venting of Gas*, of current OCS Order No. 11. Proposed paragraph (a) defines the time limits and conditions under which gas flaring or venting may occur. Proposed paragraph (b) would clarify the information

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required on applications to flare or vent gas for longer periods. Proposed paragraph (c) would specify the flaring or venting records required to be kept, the location where these records should be kept, and the length of time to keep them. We believe this new proposal would eliminate redundancy in current § 250.55, OCS Order No. 11, and NTL 75–9 and clarify MMS's procedures for approving the flaring or venting of gas.

Proposed § 250.176, Downhole commingling, would incorporate the requirements of current § 250.68, Commingling production, and Paragraph 12E, *Commingling*, of current OCS Order No. 11. Paragraph (a) is proposed to clarify the information required for a downhole commingling application. Paragraph (b) is proposed to require the lessee to notify all other lessees having an interest in the reservoir(s) of the pending application. We believe this new proposal would clarify MMS's requirements for downhole commingling.

Proposed § 250.177, Enhanced oil and gas recovery operations, would incorporate the substance of Paragraph 15, *Enhanced Oil and Gas Recovery Operations*, of current OCS Order No. 11. Details as to the type of projects to be submitted for approval and periodic reporting on project results have been added for clarity.

Subpart L—Production Measurement, Commingling, and Security

New Subpart L, Production Measurement, Commingling, and Security, proposes rules to ensure the accuracy and completeness of measurements used for royalty payment purposes. These proposed rules would govern the equipment and procedures to be used to measure the quantity of production leaving a lease or entering a storage tank, the procedures to be used if production from two or more leases is combined prior to measurement for royalty purposes (commingling), and the equipment to be used and procedures to be followed in establishing a site-security program.

Proposed Subpart L would replace current §§ 250.60, Measurement of oil; 250.61, Measurement of gas; 250.68, Commingling production; and 250.69, Measurement of sulphur; and current OCS Order No. 13, Production Measurement and Commingling. The proposed merging and revising of these rules would eliminate redundancy, clarify requirements, and address new technology. The following summarizes the major differences between the current rules and the proposed rules:

1. Requirements for the calibration of mechanical displacement provers every 5 years and for the monthly proving of allocation meters. Both requirements are intended to ensure that meters used in production measurement provide accurate readings. This reflects current widespread industry practice.

2. Requirements for preliminary runs would be deleted from the proposed rule. Preliminary runs are intended to ensure that the proving system is working properly prior to proving a meter. Proposed specifications for tolerances between results of consecutive runs obtained for meter proving would ensure that the system is working properly before results are actually used. This would negate any need for preliminary runs or records thereof.

3. Requirements to submit 14 specific items concerning gas calibration reports are proposed to be replaced by a requirement to retain results of calibration tests. This would reduce the reporting burden on the lessee while providing MMS access to information when necessary.

4. Specific requirements in current OCS Order No. 13 concerning automatic custody transfer (ACT) and ACT failures are proposed to be deleted. The proposed rules governing equipment and procedures for measurement of liquid hydrocarbons would apply to ACT facilities. Approval requirements would allow the Regional Supervisor to ensure that any unique aspects of ACT facilities would be properly accounted for prior to commencement of production.

5. Portions of current OCS Order No. 13 concerning reporting of accidents are proposed to be moved to Subpart A since requirements for reporting of accidents are proposed to be included in § 250.19, Accident reports, of Subpart A, General.

6. Requirements for the submittal of allocation schedules are proposed to be deleted from this rulemaking as they are proposed to be included in 30 CFR Part 216 by the Royalty Management office.

7. These proposed regulations establish requirements for site security in response to recommendations from the Linowes Commission Report and the Federal Oil and Gas Royalty Management Act of 1982.

Subpart M—Unitization

New § 250.190, Authority and requirements for unitization, is proposed to delete all reference to lease segregation in accordance with the DOI's Solicitor's Opinion M–36927 of December 16, 1980, to eliminate redundancy and excess verbiage and to clarify authority and requirements for unitization of operations on offshore leases as follows:

- Paragraphs (a), (b), (c), and (d) of current § 250.50 would be reworded to reduce excess verbiage and to delete reference to lease segregation. A requirement that the Regional Supervisor approve the costs and credits attributable to net profit share leases in accordance with applicable regulations is proposed to be included in § 250.190(d). No other substantive change is intended.
- Paragraphs (e) and (f) of current § 250.50 are proposed to be deleted as these provisions would be adequately addressed in the proposed Model Unit Agreements.
- Paragraph (g) of current § 250.50 is proposed to be deleted to conform with the Solicitor's Opinion of December 16, 1980, concerning lease segregation.
- Paragraph (h) of current § 250.50 is proposed to be redesignated as § 250.190(e). Editorial changes would be made for clarity, and all references to lease segregation would be deleted.
- Paragraphs (i) and (j) of current § 250.50 are proposed to be deleted as they contain references to lease segregation, and they are redundant as they also appear in proposed Articles XVII and XIII of the Exploration, Development, and Production Unit and Development and Production Unit Model Unit Agreements, respectively.

Proposed §§ 250.191, 250.192, and 250.193 would incorporate the requirements of current § 250.51, Procedures for unitization, and current OCS Order No. 11, Paragraph 16, *Competitive Reservoir Operations*, in order to clarify voluntary and compulsory unitization procedures. The following amendments are proposed:

- A new § 250.191, Competitive reservoir unitization, is proposed wherein operators having well completions in a competitive reservoir might be required to conduct operations under either voluntary joint Development and Production Plans or unitization agreements. No substantive change from the requirements of current OCS Order No. 11 is intended.
- Proposed § 250.192 would incorporate the requirements of current § 250.51–1, Voluntary unitization, and would be reworded to clarify required procedures.
- Proposed § 250.193 would incorporate the requirements of current § 250.51–2, Compulsory unitization, and editorial changes are proposed to clarify required procedures. Proposed subparagraph (c)(2) would allow questioning of both those seeking and those opposing compulsory unitization.

- Proposed § 250.194, Model unit agreements, would be added for use in unitization proposals initiated by lessees or required by the Regional Supervisor for the efficient exploration, development, and production of oil and gas in unproven areas and for unitization proposals for reservoirs that have been determined to be reasonably delineated and productive.

In lieu of a single Model Unit Agreement, two are proposed—a Model Unit Agreement for exploration, development, and production units and a Model Unit Agreement for development and production units involving a single reservoir. Both models are proposed for use in conjunction with §§ 250.190 through 250.193. The current Model Unit Agreement, published in the Federal Register on June 26, 1980 (45 FR 43256), is proposed to be amended and incorporated into the regulations in proposed § 250.194. Although there are relatively few differences in the two proposed Model Unit Agreements, we believe that they are necessary. Of the total 137 units in the Gulf of Mexico OCS Region, no two agreements proposed by lessees in different areas are alike in format although all are similar in concept. A Model Unit Agreement for OCS reservoir units would, therefore, be a significant aid for prospective unit operators, working-interest owners, and MMS personnel.

We believe that these two Model Unit Agreements would provide the flexibility to cover unitized exploration operations, unitized development operations following discovery by exploratory drilling, and unitized production operations for reasonably delineated reservoirs, including enhanced recovery operations. These Model Unit Agreements would serve the same purpose for unitization of Federal OCS oil and gas leases that the Model Unit Agreements previously found at 30 CFR 226.12 served for onshore oil and gas leases.

The following changes to the current Model Unit Agreement are proposed:

(a) *Model Unit Agreement for Exploration, Development, and Production Units:*

- The "whereas clauses" would be modified to replace "in the national interest" with "in the interest of conservation, prevention of waste, and protection of correlative rights" and to more properly recite the purposes of unitization. Since exploration, development, and production operations must be conducted in a timely and safe manner under the requirements of a single lease and under a unit agreement involving more than one lease, the current third "whereas clause" has been modified.
- In Article I, the definition of regulations would be modified; however, no substantive change is intended.
- The definition of reservoir would be modified to more accurately define the term.
- The definition of lease would be deleted since the term would be defined in proposed § 250.2, Definitions, of Subpart A, General.
- Two other definitions unitized substances and participating area, are proposed to be added.
- In Article II, the reference to sections 302 and 303 of the Department of Energy Organization Act would be deleted since those provisions have been repealed.
- In Article III, the descriptions of Exhibits A, B, and C would be modified to delete lease segregation provisions.
- In Article IV, a new paragraph is proposed to be added which now appears as Article VII in the current model form. Editorial changes would be made to provide for plans of operations and to require that such plans be consistent with the Act and proposed Subpart B.
- In Article V, redundant wording would be deleted.
- In Article VI, wording would be added to allow alternative voting procedures whereby a successor unit operator might be designated.
- Article VII would be amended and redesignated as paragraph 4.2 in Article IV.
- Article X would be redesignated Article IX and retitled, plans of operations, and modified to remove redundant verbiage. No substantive change is intended.
- Article XI would be redesignated Article X and modified to delete redundant language appearing elsewhere in new Articles XI, participating areas, and XIII, Automatic adjustment of unit area.
- New Article XI, participating areas, would be added to effect the purpose of an exploration/development unit and to provide for submittals to the Regional Supervisor of a schedule of all lands reasonably proven to be productive of unitized substances by drilling and completing a well.
- Article XII would be modified to reflect that allocation of production for exploration/development units might be proposed for approval on either a surface area or volumetric basis, depending upon the particular factual situation and timing of a unitization proposal.
- Article XV would be redesignated as Article XIII and modified and retitled, Automatic adjustment of the unit area, to provide for automatic adjustment down to the participating area on a particular anniversary date as approved by the Regional Supervisor and to delete the provision for lease segregation. Leases no longer subject to the agreement because of adjustment of the unit area in accordance with this article could be maintained only in accordance with the terms and provisions contained in the Act, regulations, and the leases affected.
- Article XIV, Relinquishment of leases, would be added to clarify that no relinquishment of interests within a participating area may be made without prior approval of the Regional Supervisor.
- Article XIII would be redesignated Article XV and be amended to reflect that unitization of operations would not alter the rental or minimum royalty obligation of leases committed to a unit agreement.
- In Article XIV, redesignated as Article XVI, editorial changes are proposed. No substantive change is intended.
- A new Article XVII, Leases and contracts conformed and extended, would be added to clarify that leases committed to a unit agreement would not expire as long as drilling for or production of unitized substances are being conducted on any unitized lease.
- Current Articles XVI, XVII, and XVIII would be renumbered XVIII, XIX, and XX, respectively, and amended by editorial changes and deletion of excess verbiage in the interest of clarity.
- New Articles XXI and XXII would be added for clarity.

(b) *Model Unit Agreement for Development and Production Units.* A separate Model Unit Agreement is proposed for reservoir units using the Proposed Model Unit Agreement for Exploration, Development, and Production Units as a guide but differs from it as follows:

- In the third "whereas clause," delete the word exploration.
- In Article I, Definitions, delete participating area.
- Article III, Unitized reservoir, unit area, and exhibits, is proposed to effect the purpose of a reservoir unit and to provide for submittal to the Regional Supervisor of a schedule of all land in the unit area overlying the unitized reservoir, the net-acre feet credited to each tract, and the unit participation of each tract in the unit area. The article would also specifically define unitized substances as all oil and/or gas produced from the particular unitized reservoir.

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- New Article X, Revision of unit area and allocation of production, is proposed to reflect the bases for revisions of the unit area and production allocation for reservoir units. In the case of reservoir unit proposals generally, considerable geological and engineering data and other information obtained as a result of actual drilling is available on which to base revisions to the unit area and production allocation schedules, and the proposed Model Unit Agreement would thus be revised to reflect the requirement to utilize additional information in preparing such revisions.

Subpart N—Remedies and Penalties

The regulations relating to civil penalties are proposed to be revised to remove unnecessary and redundant provisions. Specifically, the regulations pertaining to investigations, current §§ 250.70, 250.71, and 250.72 are proposed to be deleted because they contain MMS internal procedures that are inappropriate as regulatory provisions. Likewise, the regulations pertaining to penalties, current § 250.80-2, are proposed to be deleted because they merely repeat provisions found in the Act or contain MMS internal procedures that are inappropriate as regulatory provisions. We anticipate the inclusion of internal procedural matters in the MMS Manual.

The regulations pertaining to remedies, proposed §§ 250.200 through 250.206 (current § 250.80–1), are proposed to be revised by removing unnecessary language. Except as described below, no substantive change is intended by these revisions.

Current § 250.80–1(a)(4) grants authority to the Reviewing Officer to administer oaths and issue subpoenas as "necessary to conduct a hearing." However, this provision is silent on the authority of the Reviewing Officer to issue orders to produce evidence. Since such authority is clearly necessary to conduct a hearing, MMS is proposing to provide for it in the revised regulations.

Similarly, new § 250.200 is proposed to revise current § 250.80–1(a)(1) by authorizing Regional Directors and Chairmen of Investigative Panels to administer oaths and issue subpoenas and orders to produce evidence in conducting investigations. This authority is needed by investigative panels to carry out their responsibilities and by Regional Directors long before a case reaches a Reviewing Officer. Its exercise might reduce the number of cases that are pursued beyond the investigative stage.

New § 250.200(a)(2) is included in these proposed regulations to provide for the circumstance where corrective action cannot be accomplished in a reasonable period of time after detection of a violation and notification has occurred. Examples of these violations include, but are not limited to, the following:

1. Conductor casing was not set, as approved in an APD, and surface casing has been set.
2. A diverter system was not used during drilling the surface hole as approved in an APD.
3. In floating drilling operations, excessive rig movement or anchor-line tension occurred prior to disconnect.
4. Well abandonment was not conducted, as approved, leaving a bottom protrusion, and damage occurred to fishing gear.
5. A blowout occurred, and it is determined that the diverter system was locked out of service and may have contributed to the problem which resulted in fire, damage, injury, and death.

Such violations could occur, and some have occurred, but they are not common occurrences. This provision is to inform lessees that MMS may pursue the imposition of a civil penalty in such circumstance where "any reasonable period allowed for corrective action" can only be zero time.

Executive Order 12291

As the major purpose of the proposal would be to reduce or eliminate unnecessary burdens on lessees, it is expected to reduce costs of operating on the OCS if implemented as proposed. It would not be expected to cause an increase in costs or prices to consumers, other industries, or governmental entities and, in fact, could cause a slight decrease as cost savings might be passed on.

The DOI has determined that this document does not constitute a major rule under Executive Order 12291, and therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection requirements contained in proposed 30 CFR Parts 250 and 256 have been either approved by or submitted to the OMB for approval under 44 U.S.C. 3504(h).

Authors

The principal authors of this proposed rule are Maurice Adams, Dale Bajema, Daniel Bourgeois, Elmer P. Danenberger, Bill Dockery, Ralph Melancon, David Schuenke, and Rodney Smith of the MMS, DOI.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administration practice and procedure, Continental shelf, Environmental protection, Government contracts, Minerals royalties, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands/mineral resources, Public lands/rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 29, 1985.

Wm. D. Bettenberg,
Director, Minerals Management Service.

For the reasons set forth above, it is proposed that the OCS Orders be rescinded and 30 CFR Parts 250 and 256 be amended as shown:

* * * * *

1. The following OCS Orders are rescinded:

OCS Order No. 1, Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects for all Regions.

OCS Order No. 2, Drilling Operations, for all Regions.

OCS Order No. 3, Plugging and Abandonment of Wells, for all Regions.

OCS Order No. 4, Determination of Well Producibility, for all Regions.

OCS Order No. 5, Production Safety Systems, for all Regions.

OCS Order No. 6, Completion of Oil and Gas Wells, for the Gulf of Mexico OCS Region.

OCS Order No. 6, Procedure for Completion of Oil and Gas Wells, for the Pacific OCS Region.

OCS Order No. 7, Pollution Prevention and Control, for all Regions.

OCS Order No. 8, Platforms and Structures, for all Regions.

OCS Order No. 9, Oil and Gas Pipelines, for the Gulf of Mexico OCS Region.

OCS Order No. 9, Approval Procedure for pipelines, for the Pacific OCS Region.

OCS Order No. 10, Sulphur Drilling procedures, for the Gulf of Mexico OCS Region.

OCS Order No. 10, Drilling of Twin Core Holes, for the Pacific OCS Region.

OCS Order No. 11, Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights, for the Gulf of Mexico and Pacific OCS Regions.

OCS Order No. 12, Public Inspection of Records, for all Regions.

OCS Order No. 13, Production Measurement and Commingling, for the Gulf of Mexico OCS Region.

OCS Order No. 14, Approval of Suspensions of Production, for the Gulf of Mexico OCS Region.

PART 256—[AMENDED]

2. Part 256, Subpart N of Title 30 is removed.

3. Part 250 of Title 30 is revised to read as follows:

DERIVATION TABLE

New section	Old section
Subpart A—General	
250.0	250.0.
250.1	New Provision.
250.2	250.2.
250.3	New Provision.
250.4	250.10.[1]
250.5	250.11.[1]
250.6	250.13.[1]
250.7	250.18.[1]
250.8	250.31.[1]
250.9	250.32.[1]
250.10	250.12.
250.10(d)	New Provision.[2]
250.11	OCS Order No. 4.
250.12	250.12.[1]
250.13	250.35.
250.13(b)	New Provision.
250.14	250.53.
250.15	250.37; OCS Order No. 1.
250.16	250.58.
250.17	250.90.
250.18	250.3; OCS Order No. 12.
250.19	250.45.
250.20	250.46.[1]
250.21	250.19.
250.22	OCS Order No. 5, paragraph 1.
250.23	250.81.
Subpart B—Exploration and Development and Production Plans	
250.30	250.34–1 and –2.
250.31	250.34–1 and –2.
250.32	250.17; OCS Order No. 11.
250.33	250.34–1 and –3(a).
250.33(c)	New Provision.
250.34	250.34–2 and –3(b).
250.34(a)(2)	New Provision.
250.34(a)(4)	New Provision.
Subpart C—Pollution Prevention and Control	
250.40	250.43; OCS Order No. 7; OCS Order No. 1, paragraph 5.
250.40(b)(1)	New Provision.
250.40(b)(5)	New Provision.
250.40(c)(1)	New Provision.
250.40(c)(2)	New Provision.
250.40(c)(3)	New Provision.
250.40(c)(4)	New Provision.
250.40(d)	New Provision.
250.41	OCS Order No. 7.
250.42	250.43; OCS Order No. 7.
250.42(b)	New Provision.
250.42(c)	New Provision.
250.42(h)	New Provision.
250.42(i)	New Provision.
250.43	OCS Order No. 7.
250.44	250.2.[1]
250.45	250.57–1.[1]

DERIVATION TABLE—Continued

New section	Old section
250.46	250.57–2.[1]
Subpart D—Drilling Operations	
250.50	250.30; 250.42; 250.46.
250.51	
250.51(a)	OCS Order No. 2, paragraph 2, Alaska OCS Order.
250.51(b)	New Provision.
250.51(c)	OCS Order No. 2, paragraph 2.4.
250.51(d)	OCS Order No. 2, paragraph 2.3.
250.51(e)	250.39; 250.40; OCS Order No. 2, paragraph 4.
250.51(f)	OCS Order No. 8.
250.52	OCS Order No. 2, Alaska OCS Region, paragraph 2.1.6, OCS Order No. 5, paragraph 5.4.
250.53	OCS Order No. 2, Alaska OCS Region, paragraphs 12(a), (b), (e), and (f); OCS Order No. 5, paragraph 5.1.10.
250.54	3.250.41; OCS Order No. 2, paragraph
250.55	OCS Order No. 2, paragraph 3.6.
250.56	250.41; OCS Order No. 2, paragraph 5.
250.57	OCS Order No. 2, paragraph 5.7.
250.58	OCS Order No. 2, paragraph 5.9.
250.59	OCS Order No. 2, paragraphs 5.2, 5.3, 5.4.1, and 5.5.
250.60	250.41; OCS Order No. 2, paragraph 6.
250.61	250.44.
250.62	250.11; OCS Order No. 2, paragraph 10.
250.63	250.41; OCS Order No. 2; paragraph 7.
250.64	250.38; OCS Order No. 2, paragraphs 1.2 and 2.
250.65	250.92.
250.66	250.38; 250.92; 250.95.
250.67	OCS Order No. 2, paragraph 8; GSS–OCS–1.
250.68	250.42; OCS Order No. 2, paragraphs 5.9 and 7.3; MMSS–OCS–T1.
Subpart E—Well Completion Operations	
250.70	New Provision.
250.71	New Provision.
250.72	New Provision.
250.73	New Provision.
250.74	New Provision.
250.75	New Provision.
250.76	New Provision.
250.77	New Provision.
250.78	New Provision.
250.79	New Provision.
250.80	New Provision.
250.81	New Provision.
250.82	New Provision.
250.83	New Provision.
250.84	250.92.
250.85	New Provision.
250.86	New Provision.
250.87	New Provision.
250.88	OCS Order No. 6, paragraphs 1 and 2.
Subpart F—Well-Workover Operations	
250.90	New Provision.
250.91	New Provision.
250.92	New Provision.
250.93	New Provision.
250.94	New Provision.
250.95	New Provision.
250.96	New Provision.
250.97	New Provision.
250.98	New Provision.
250.99	New Provision.
250.100	New Provision.
250.101	New Provision.
250.102	New Provision.
250.103	New Provision.
250.104	250.92.
250.105	New Provision.
250.106	New Provision.

DERIVATION TABLE—Continued

New section	Old section
250.107	New Provision.
250.108	OSC Order No. 6, paragraphs 1 and 2.
250.109	New Provision
Subpart G—Abandonment of Wells	
250.110	250.15; 250.44; OCS Order No. 3.
250.111	250.44; 250.92; OCS Order No. 3.
250.112	OCS Order No. 3.
250.113	OCS Order No. 3.
250.114	250.92; OCS Order No. 1.
Subpart H—Production Safety Systems	
250.120	OCS Order No. 5.
250.121	250.41; OCS Order No. 5, paragraph 3.
250.122	250.41(b); OCS Order No. 5, paragraph 4.
250.123	OCS Order No. 5, paragraph 5.
250.124	OCS Order No. 5, paragraphs 5.5 and 5.6.
250.125	OCS Order No. 5, paragraph 5.7.
250.126	OCS Order No. 5, paragraph 2.
250.127	New Provision.
Subpart I—Platforms and Structures	
250.130	OCS Order No. 8, paragraph 1.
250.131	OCS Order No. 8, paragraphs 2 and 3.
250.132	OCS Order No. 8, paragraph 1.4.1.
250.133	OCS Order No. 8, paragraph 1.4.1.
250.134	OCS Order No. 8, paragraph 1.4.2.
250.135	OCS Order No. 8, paragraph 1.4.2.
250.136	OCS Order No. 8, paragraph 1.4.2.
250.137	OCS Order No. 8, paragraph 1.4.2.
250.138	OCS Order No. 8, paragraph 1.4.2.
250.139	OCS Order No. 8, paragraph 1.4.2.
250.140	OCS Order No. 8, paragraph 1.4.2.
250.141	OCS Order No. 8, paragraph 1.4.2.
250.142	New Provision.
250.143	OCS Order No. 3, paragraph 2.0.
250.144	OCS Order No. 8, paragraph 4.
Subpart J—Pipelines and Pipeline Rights-of-Way	
250.150	250.20.
250.150(a)	New Provision.
250.150(c)	New Provision.
250.151	New Provision.
250.152	OCS Order No. 9.
250.152(a)	New Provision.
250.152(b)	New Provision.
250.152(c)	New Provision.
250.152(d)	New Provision.
250.152(e)	New Provision
250.152(g)	New Provision.
250.153	OCS Order No. 9, paragraph 1.C.
250.153(a)(2)	New Provision.
250.153(a)(3)	New Provision.
250.153(a)(4)	New Provision.
250.153(b)	New Provision.
250.153(c)	New Provision.
250.154	OCS Order No. 9, paragraphs 1.A(2) (a) and (c).
250.154(a)	New Provision.
250.154(b)(6)	New Provision.
250.154(b)(7)	New Provision.
250.154(b)(8)	New Provision.
250.154(b)(9)	New Provision.
250.154(c)	New Provision.
250.155	New Provision.
250.156	OCS Order No. 9, paragraphs 2. A, B, and C.
250.156(b)(5)	New Provision.
250.156(c)	New Provision.
250.157	OCS Order No. 9, paragraph 1.E.
250.157(e)	New Provision.
250.157(f)	New Provision.
250.157(g)	New Provision.
250.158	256.83; 256.85; and 256.86.[1]
250.159	256.92.
250.160	256.94.
250.161	256.95.
250.162	256.97.
250.163	256.98.
250.164	256.100.

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DERIVATION TABLE—Continued

New section	Old section
250.165	256.101.
Subpart K—Production Rates	
250.170	OCS Order No. 11, paragraph 1.
250.170	New Provision—Enhanced Recovery Operations.
250.170	New Provision—Nonsensitive Reservoir.
250.170	New Provision—Sensitive Reservoir.
250.171	OCS Order No. 11, paragraph 2.
250.171(a)	New Provision.
250.171(c)	New Provision.
250.172	250.10; OCS Order No. 11, paragraphs 3 and 4.
250.172(a)(1)	New Provision.
250.172(a)(3)	New Provision.
250.172(a)(5)	New Provision.
250.172(a)(7)	New Provision.
250.172(a)(9)	New Provision.
250.172(b)(3)	New Provision.
250.172(b)(4)	New Provision.
250.172(b)(6)	New Provision.
250.172(c)	New Provision.
250.173	250.39; OCS Order No. 11, paragraphs 5, 6, 7, and 8.
250.174	OCS Order No. 11, paragraph 9.
250.174(a)	New Provision.
250.175	250.55; OCS Order No. 11, paragraph 10.
250.175(a)(2)(i)	New Provision.
250.175(a)(2)(ii)	New Provision.
250.175(c)	New Provision.
250.176	NTL 75-6 (5/13/75); 250.08; OCS Order No. 11, paragraph 12.
250.177	OCS Order No. 11, paragraph 15.
250.177(b)	New Provision.
250.177(c)	New Provision.
Subpart L—Production Measurement, Commingling, and Security	
250.180	250.60; OCS Order No. 13, paragraphs 2, 3, and 4.
250.181	250.61; OCS Order No. 13, paragraph 5.
250.182	250.68; OCS Order No. 13 paragraph 6.[1]
250.183	250.69.[2]
250.184	New Provision.
Subpart M—Unitization	
250.190	250.50.
250.191	OCS Order No. 11, paragraph 16.
250.192	250.51-1.
250.193	250.51-2.
250.194	Model Unit Agreement.
Subpart N—Remedies and Penalties	
250.200	250.80-1.
250.200(a)(2)	New Provision.
250.201	250.80-1.
250.202	250.80-1.
250.203	250.80-1.
250.204	250.80-1.
250.205	250.80-1.
250.206	250.80-2.

NOTE.—The following old sections were deleted as unnecessary and redundant with no substantive change intended: 250.1, 250.4, 250.5, 250.82, and 250.96.

[1] No substantive change.

[2] Codification of existing policy.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart A—General

Sec.
250.0 Authority for information collection.
250.1 Documents incorporated by reference.
250.2 Definitions.
250.3 Performance requirements.
250.4 Jurisdiction.
250.5 Functions.
250.6 Oral approvals.
250.7 Right of use and easement.
250.8 Designation of operator.
250.9 Local agent.
250.10 Suspension of operations.
250.11 Determination of well producibility.
250.12 Cancellation of leases.
250.13 Effect of production, drilling, or well reworking on lease term.
250.14 Reinjection and subsurface storage of gas.
250.15 Identification.
250.16 Reimbursement.
250.17 Information and forms.
250.18 Data and information to be made available to the public.
250.19 Accident reports.
250.20 Safe and workmanlike operations.
250.21 Access to facilities.
250.22 Best available and safest technologies.
250.23 Appeals, general.

Subpart B—Exploration and Development and Production Plans

250.30 Requirement for a plan.
250.31 Preliminary activities.
250.32 Well spacing.
250.33 Exploration Plan.
250.34 Development and Production Plan.

Subpart C—Pollution Prevention and Control

250.40 Pollution prevention.
250.41 Inspections and reports.
250.42 Oil Spill Contingency Plans.
250.43 Drills and training.
250.44 Definitions concerning air quality.
250.45 Facilities described in a new or revised Exploration Plan or Development and Production Plan.
(a) New plans.
(b) Applicability of this section to existing facilities.
(c) Revised facilities.
(d) Exemption formulas.
(e) Significance levels.
(f) Significance determinations.
(g) Controls required.
(h) Controls required on temporary facilities.
(i) Emission offsets.
(j) Review of facilities with emissions below the exemption amount.
(k) Emission monitoring requirements.
(l) Collection of meteorological data.
250.46 Existing facilities.
(a) Process leading to review of an existing facility.
(b) Exemption formulas.
(c) Significance levels.
(d) Significance determinations.
(e) Controls required.
(f) Review of facilities with emissions below the exemption amount.
(g) Emission monitoring requirements.
(h) Collection of meteorological data.

Subpart D—Drilling Operations

250.50 Control of wells.
250.51 General requirements.
(a) Fitness of drilling unit.
(b) Drilling unit safety devices.
(c) Oceanographic, meteorological, and drilling unit performance data.
(d) Shallow hazards surveys requirements.
(e) Tests, surveys, and samples.
(f) Fixed drilling platforms.
(g) Crane operations.
250.52 Welding and burning practices and procedures.
(a) General requirements.
(b) Welding, burning, and hot tapping plan.
(c) Designated safe-welding and burning areas.
(d) Undesignated welding and burning areas.
250.53 Electrical equipment.
250.54 Well casing and cementing.
(a) General requirements.
(b) Drive or structural casing.
(c) Conductor and surface casing setting and cementing requirements.
(d) Intermediate casing setting and cementing requirements.
(e) Production casing.
250.55 Pressure testing of casing.
250.56 Blowout preventer systems and system components.
(a) General.
(b) BOP stacks.
(c) Working pressure.
(d) BOP equipment.
(e) Subsea BOP equipment.
(f) Surface BOP requirements.
(g) Tapered drill-string operations.
250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.
250.58 Well-control drills.
250.59 Diverter systems.
250.60 Mud program.
(a) General requirements.
(b) Mud control.
(c) Mud-testing and monitoring equipment.
(d) Mud quantities.
(e) Safety precautions in enclosed mud-handling areas.
250.61 Well security.
250.62 Field drilling rules.
250.63 Supervision, surveillance, and training.
250.64 Applications for Permit to Drill, Deepen, or Plug Back.
250.65 Sundry notices and reports on wells.
250.66 Well records.
250.67 Hydrogen sulfide.
(a) Performance requirements and applicability.
(b) Definitions.
(c) Request for classification of probability of encountering H_2S during operations.
(d) Drilling, well-completion, and workover operations in zones known to contain H_2S.
(e) Drilling and well-completion operations in zones where the presence of H_2S is unknown.
(f) Production operations in zones known to contain H_2S.
(g) Simultaneous operations.
(h) Personnel safety and protection.
(i) Drilling, completion, and workover fluids program when operating in zones known to contain H_2S.
(j) Kick detection and well control.
(k) Well testing in an H_2S zone.

(l) Metallurgical properties of equipment for use in an H_2S zone.
(m) General requirements when operating in an H_2S zone.
250.68 Training in well control.
(a) Training performance standard.
(b) Personnel classifications.
(c) Training records.
(d) Training location.
(e) Rotary helper training.
(f) Derrickman training.
(g) Driller training.
(h) Toolpusher training.
(i) Operator's representative.
(j) Qualification procedures.
(k) Well-control drills.
(l) Relief assignments.
(m) General well-control training program.
(n) Basic and refresher well-control training program.
(o) Rotary helper and derrickman well-control training program.
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Subpart E—Well-Completion Operations

250.70 Performance standard.
250.71 Definition.
250.72 Equipment movement.
250.73 Emergency shutdown system.
250.74 Hydrogen sulfide.
250.75 Subsea completions.
250.76 Crew instructions.
250.77 Welding and burning practices and procedures.
250.78 Electrical requirements.
250.79 Well-completion structures on fixed OCS platforms.
250.80 Diesel engine air intakes.
250.81 Traveling-block safety device.
250.82 Simultaneous operations.
250.83 Field well-completion rules.
250.84 Approval and reporting of well-completion operations.
250.85 Well-control fluids, equipment, and operations.
250.86 Blowout prevention equipment.
250.87 Blowout preventer system testing, records, and drills.
250.88 Tubing and wellhead equipment.

Subpart F—Well-Workover Operations

250.90 Performance standard.
250.91 Definitions.
250.92 Equipment movement.
250.93 Emergency shutdown system.
250.94 Hydrogen sulfide.
250.95 Subsea workovers.
250.96 Crew instructions.
250.97 Welding and burning practices and procedures.
250.98 Electrical requirements.
250.99 Well-workover structures on fixed OCS platforms.
250.100 Diesel engine air intakes.
250.101 Traveling-block safety device.
250.102 Simultaneous operations.
250.103 Field well-workover rules.
250.104 Approval and reporting for well-workover operations.
250.105 Well-control fluids, equipment, and operations.
250.106 Blowout prevention equipment.
250.107 Blowout preventer system testing, records, and drills.
250.108 Tubing and wellhead equipment.
250.109 Wireline operations.

Subpart G—Abandonment of Wells

250.110 General requirements.
250.111 Approvals.
250.112 Permanent abandonment.
250.113 Temporary abandonment.
250.114 Site clearance.

Subpart H—Production Safety Systems

250.120 General requirements.
250.121 Subsurface safety devices.
(a) General.
(b) Specifications for SSSV's.
(c) Surface-controlled SSSV's.
(d) Subsurface-controlled SSSV's.
(e) Design, installation, and operation of SSSV's.
(f) Inspection and maintenance of subsurface-controlled SSSV's.
(g) Subsurface safety devices in shut-in wells.
(h) Subsurface safety devices in injection wells.
(i) Temporary removal for routine operations.
(j) Additional safety equipment.
(k) Emergency action.
250.122 Design, installation, and operation of surface production safety systems.
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(b) Platforms.
(c) Specification for surface safety valves (SSV) and underwater safety valves (USV).
(d) Use of SSV's and USV's.
(e) Approval of safety-systems design and installation features.
250.123 Additional production system requirements.
(a) General.
(b) Design, installation, and operation of additional production systems.
(c) General platform operations.
(d) Simultaneous platform operations.
250.124 Production safety-system testing and records.
(a) Testing.
(b) Records.
250.125 Safety device training.
250.126 Quality assurance and performance of safety and pollution prevention equipment.
250.127 Hydrogen sulfide.

Subpart I—Platforms and Structures

250.130 General requirements.
250.131 Application for approval.
250.132 Platform Verification Program requirements.
(a) Requirements.
(b) Verification plan requirements.
(c) Requirements for resubmittal.
(d) Combining of plans.
250.133 Certified Verification Agent duties and nomination.
(a) CVA duties.
(b) CVA nomination.
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(a) General.
(b) Statistical methods.
(c) Design considerations.
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250.135 Loads.
(a) Introduction.
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(c) Load definition.
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(e) Loads on steel pile-supported platforms.
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250.136 General design requirements.
(a) General.
(b) Analytical approaches.
(c) Overall design considerations.
250.137 Steel platforms.
(a) Materials.
(b) Fabrication and welding.
(c) Design and analysis.
(d) Corrosion protection.
(e) Connection of piles to structure.
250.138 Concrete-gravity platforms.
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(b) Materials.
(c) Design requirements.
(d) Analysis and design.
(e) Construction.
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Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Subpart A—General

§ 250.0 Authority for information collection.

(a) The information collection requirements in Subpart A,General, have been submitted for approval to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The information would be collected to inform the Minerals Management Service (MMS) of general operations on the Outer Continental Shelf (OCS). The information will be used to ensure that operations on the OCS will meet statutory and regulatory requirements, are safe and pollution-free, and will result in diligent exploration, development, and production on OCS leases. The requirement to respond is mandatory.

(b) The information collection requirements in Subpart B, Exploration and Development and Production Plans, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform a MMS, States, and the public of the planned exploration, development, and production activities on the OCS. The information will be used to ensure that operations on the OCS will meet statutory and regulatory requirements, are safe and pollution-free, and will result in diligent development of leases. The requirement to respond is mandatory.

(c) The information collection requirements in Subpart C, Pollution Prevention and Control, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq.

The information would be collected to inform MMS of potential pollution of the environment. The information will be used to identify potential sources of pollution for the purpose of preventing incidents of pollution. The requirement to respond is mandatory.

(d) The information collection requirements in Subpart D, Drilling Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used in drilling activities on the OCS. The information will be used to ensure that drilling operations are safe and pollution-free. The requirement to respond is mandatory.

(e) The information collection requirements in Subpart E, Well Completion Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during well-completion operations. The information will be used to ensure that well-completion operations are safe and pollution-free. The requirement to respond is mandatory?

(f) The information collection requirements in Subpart F, Well Workover Operations, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during well-workover operations. The information will be used to ensure that well-workover operàtions are safe and pollution-free. The requirement to respond is mandatory.

(g) Subpart G, Abandonment of Wells, does not contain any information collection which requires OMB approval under 44 U.S.C. 3501 et seq.

(h) The information collection requirements in Subpart H, Production Safety Systems, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the equipment and procedures used during the production operations. The information will be used to ensure that oil and gas are produced in a safe and pollution-free manner. The requirement to respond is mandatory.

(i) The information collection requirements in Subpart I, Platforms and Structures, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the design, fabrication, and installation of platforms on the OCS. The information will be used to ensure the structural integrity of platforms installed on the OCS. The requirement to respond is mandatory.

(j) The information collection requirements in Subpart J, Pipelines and Pipeline Rights-of-Way, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the location, design, and operation of pipelines on the OCS. The information will be used to ensure that pipelines on the OCS will provide safe and pollution-free transportation of oil and gas. The requirement to respond is mandatory.

(k) The information collection requirements in Subpart K, Production Rates, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of production rates for hydrocarbons produced on the OCS. The information will be used to ensure that wells are produced at rates which provide for efficient production of available hydrocarbons. The requirement to respond is mandatory.

(l) The information collection requirements in Subpart L, Production Measurement, Commingling, and Security, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to inform MMS of the measurement of production, the commingling of hydrocarbons, and site-security plans and will be used to ensure that produced hydrocarbons are measured and commingled in a manner which results in accurate royalty payments. The requirement to respond is mandatory.

(m) The information collection requirements in Subpart M, Unitization, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information would be collected to information of the unitization of leases. The information will be used to ensure that unitization is conducted in a manner which prevents waste, conserves natural resources, and protects correlative rights. The requirement to respond is mandatory.

(n) The information collection requirements in Subpart N, Remedies and Penalties, have been submitted for approval to OMB under 44 U.S.C. 3501 et seq. The information is being collected to inform MMS of evidence relating to violations of MMS rules. The information will be used to review violations and to determine whether the imposition of civil penalties is appropriate. The requirement to respond is mandatory.

(o) The information collection requirements for Form MMS–330 contained in Subpart D, Drilling Operations, and Subpart E, Well Completion Operations, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0046. The information will be used to evaluate the technical, safety, and environmental factor involved in completing or recompleting a well. The obligation to respond is mandatory.

(p) The information collection requirements for Form MMS–331 contained in Subpart E, Well-Completion Operations, and Subpart F, Well-Workover Operations, and Subpart G, Abandonment of Wells, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0045. The information will be used to evaluate the technical, safety, and environmental factors involved with wells offshore. The obligation to respond is mandatory.

(q) The information collection requirements for Form MMS–331C contained in Subpart D, Drilling Operations, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0044. The information will be used to evaluate and approve the lessees' proposal to drill, deepen, or plug back a well. The obligation to respond is mandatory.

(r) The information collection requirements for Form MMS–1866 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0018. The information is collected to provide MMS with data concerning an oil or gas well and is used to ensure that a requested production rate will not waste oil and gas. The obligation to respond is mandatory.

(s) The information collection requirements for Form MMS–1867 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0019. The information is collected to establish a maximum production rate for a well to prevent waste of oil and gas. The obligation to respond is mandatory.

(t) The information collection requirements for Form MMS–1868 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0039. The information is collected to provide MMS with data concerning the potential of an oil or gas well for the purpose of verifying the requested production rate. The obligation to respond is mandatory.

(u) The information collection requirements for Form MMS–1869 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0016. The information is collected to provide MMS with data concerning the status and capacity of oil wells. The information is used to verify the production capacity of each oil well. The obligation to respond is mandatory.

(v) The information collection requirements for Form MMS–1870 contained in Subpart K, Production Rates, have been approved by OMB under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0017. The information is collected to provide MMS with data concerning the status and capacity of gas wells. The information is used to verify the production capacity of each gas well. The obligation to respond is mandatory.

§ 250.1 Documents incorporated by reference.

The documents listed below are incorporated by reference as requirements in this part. The Director of the Federal Register approved the incorporation by reference of these documents on [insert date of Federal Register approval]. These documents are incorporated as they exist on the date of the approval, and a notice of any change in these documents will be published as a rule change in the Federal Register. Each document or specific portion thereof is incorporated by reference in the corresponding sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement cited in this section. In accordance with § 250.3, performance requirements, the lessee may comply with a later edition of a specific document incorporated by reference provided the lessee can demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition and provided the lessee obtains prior written approval of the Regional or District Supervisor, as appropriate, for such alternative compliance. The list includes the name and address of at least one organization from whom the document may be purchased. These documents are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. In order to facilitate correlation of the text of the corresponding sections with the list of documents incorporated by reference, the documents are listed in alphanumerical order.

(a) *American Concrete Institute (ACI) Document.* The ACI document listed in this paragraph may be purchased from the American Concrete Institute, P.O. Box 19150, Detroit, Michigan 48219.

ACI Standard 318–83, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary, 1983, Incorporated by Reference at: § 250.136(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3)(ii), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i).

(b) *American Institute of Steel Construction (AISC) Document.* The AISC document listed in this paragraph may be purchased from the American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, Illinois 60611.

AISC Standard S326, Specification for the Design, Fabrication and Erection of Structural Steel for Buildings, 1978 Edition, Incorporated by Reference at: § 250.137(b)(1)(ii), (c)(4)(ii), and (c)(4)(vii).

(c) *American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Documents.* The ANSI/ASME documents listed in this paragraph may be purchased from the American National Standards Institute, Attention: Sales Department, 1430 Broadway, New York, New York 10018, and from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1) (i) and (iv).

ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers, 1983 Edition, Incorporated by Reference at; § 250.123(b)(1) (i) and (iv).

ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, 1983 Edition, Incorporated by Reference at: § 250.123(b)(1) (i) and (iv).

ANSI/ASME SPPE–1–1985, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at: §§ 250.121 (b) and (e)(4); 250.122 (c) and (d), 250.124(a) (1) and (4); and 250.126.

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ANSI Z88.2–1980, Practices for Respiratory Protection, Incorporated by Reference at: § 250.67(h) (2)(iv) and (6)(i).

(d) *American Petroleum Institute (API) Documents.* The API documents listed in this paragraph may be purchased from the American Petroleum Institute, Production Department, 211 N. Ervay, Suite 1700, Dallas, Texas 75201, or American Petroleum Institute, 1220 L Street, NW., Washington, D.C. 20005.

API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 20, 1984, API Stock No. 811–00500, Incorporated by Reference at: §§ 250.51(g) and 250.123(e).

API RP T–2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised October 1975, API Stock No. 811–13710, Incorporated by Reference at: § 250.125 (a) and (c).

API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Third Edition, April 1984, API Stock No. 811–07180. Incorporated by Reference at: §§ 250.122(b), and (e)(2); 250.123(b) (2)(i), (4), (5)(i), and (9)(v); 250.124(a) and (a)(5); and 250.152(e).

API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 1984, API Stock No. 811–07185, Incorporated by Reference at: §§ 250.122(e)(3) and 250.152 (b) and (c).

API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, First Edition, July 1978, API Stock No. 811–07190, Incorporated by Reference at: §§ 250.53(c) and 250.123(b)(9)(v).

API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, First Edition, September 1978, API Stock No. 811–07194, Incorporated by Reference at: § 250.123(b) (8) and (9)(v).

API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, July 1973, and Supplement 2, May 1981, API Stock No. 811–06000, Incorporated by Reference at: § 250.53(b).

API Standard 1101, American Standard Method for Measurement of Petroleum Liquid Hydrocarbons by Positive Displacement Meter, August 1960, API Stock No. 852–11010, Incorporated by Reference at: § 250.180, (c)(6)(iii) and (d)(3)(v)(D).

API RP 1111, Recommended Practice for Design, Construction, Operation and Maintenance of Offshore Hydrocarbon Pipelines, First Edition, March 1976, API Stock No. 831–11110, Incorporated by Reference at: § 250.152(a).

API Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products, 1965, also ANSI/American Society of Testing and Materials ANSI/ASTM D 1086, API Stock No. 852–25430, Incorporated by Reference at: § 250.180(c)(6)(i) and (f)(2)(i).

API Standard 2545, USA Standard Method of Gaging Petroleum and Petroleum Products, 1965, also ANSI/ASTM D 1085, API Stock No. 852–25450, Incorporated by Reference at: § 250.180(f)(2)(ii)(B).

API Standard 2550, Method for Measurement and Calibration of Upright Cylindrical Tanks, 1965, also ANSI/ASTM D 1220, API Stock No. 852–25500, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2551, Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, also ANSI/ASTM D 1410, API Stock No. 852–25510, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, also ANSI/ASTM D 1408–65, API Stock No. 852–25520, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API Standard 2555, Method for Liquid Calibration of Tanks, First Edition, 1966, also ANSI/ASTM D 1406–65, API Stock No. 852–25550, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

API RP 2556, Recommended Practice for Correcting Gage Tables for Incrustation, First Edition, 1968, API Stock No. 852–25560, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

The following chapter and section citations refer to the API Manual of Petroleum Measurement Standards:

Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products, First Edition, October 1981, also ANSI/ASTM D 4057, API Stock No. 852–30161, Incorporated by Reference at: § 250.180 (c)(6)(ii)(A) and (f)(2)(ii)(C).

Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, also ANSI/ASTM D 1298–80, API Stock No. 852–30181, Incorporated by Reference at: § 250.180 (c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, API Stock No. 852–30182, Incorporated by Reference at: § 250.180 (c)(6)(ii)(B) and (f)(2)(ii)(D).

Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, also ANSI/ASTM D 473, API Stock No. 852–30201, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.2, Determination of Water in Crude Oil by the Distillation Method, First Edition, April 1981, also ANSI/ASTM D 4006, API Stock No. 852–30202, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, also ANSI/ASTM D 4007, API Stock No. 852–30203, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 10.4, Standard Methods of Test for Water and Sediment in Crude Oils, 1970, also ANSI/ASTM D 96–68, API Stock No. 825–30204, Incorporated by Reference at: § 250.180 (c)(6)(ii)(C) and (f)(2)(ii)(E).

Chapter 12.2, Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters, First Edition, September 1981, API Stock No. 852–30302, incorporated by Reference at: § 250.180(d)(3)(v)(C).

Chapter 14.1, Measuring, Sampling, Testing, and Base Conditions for Natural Gas Fluids, First Edition, March 1975, API Stock No. 852–30341, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.3, Orifice Metering of Natural Gas, March 1978, also ANSI/API 2530, API Stock No. 852–30343, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.5, Calculation of Gross Heating Value, Specific Gravity, and Compressibility of Natural Gas Mixtures from Compositional Analysis, September 1981, also American Gas Association 2172, API Stock No. 852–30345, Incorporated by Reference at: § 250.181(d)(1).

Chapter 14.6, Installing and Proving Density Meters Used to Measure Hydrocarbon Liquid with Densities Between 0.3 to 0.7 gm/cc at 15.56°C (60°F) and Saturation Vapor Pressure, September 1979, API Stock No. 852–30346, Incorporated by Reference at: § 250.181(d)(1).

(e) *American Society for Testing and Materials (ASTM) Documents.* The ASTM documents listed below may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

ASTM Standard C33–84, Specification for Concrete Aggregates, 1984, Incorporated by Reference at: § 250.138(b)(4)(i).

ASTM Standard C94–83, Specification for Ready-Mixed Concrete, 1983, Incorporated by Reference at: § 250.138(e)(2)(i).

ASTM Standard C150–83b, Specification for Portland Cement, 1983, Incorporated by Reference at: § 250.138(b)(2)(i).

ASTM Standard C330–82a, Specification for Lightweight Aggregates for Structural Concrete, 1982, Incorporated by Reference at: § 250.138(b)(4)(i).

ASTM Standard C595–83a, Specification for Blended Hydraulic Cements, 1983, Incorporated by Reference at: § 250.138(b)(2)(i).

ASTM D–1250, Chapter 11.1, Volume I, 1980, Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F, Incorporated by Reference at: § 250.180 (c)(6)(ii)(D), (d)(3)(v)(B), and (f)(2)(ii)(F).

(f) *American Welding Society (AWS) Documents.* The AWS documents listed in this paragraph may be purchased from the American Welding Society, 550 NW LeJeune Road, P.O. Box 351040, Miami, Florida 33135.

D1.1–84, Structural Welding Code—Steel, 1984, Incorporated by Reference at: § 250.137(b)(1)(i).

D1.4–79, Structural Welding Code—Reinforcing Steel, 1979, Incorporated by Reference at: § 250.138(e)(3)(ii).

(g) *National Association of Corrosion Engineers (NACE) Document.* The NACE documents listed in this paragraph may be purchased from the National Association of Corrosion Engineers, P.O. Box 218340, Houston, Texas 77218.

NACE Standard MR–01–75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment (1980 Revision), Supplement 1 issued September 1980, Supplement 2 issued May 1981, Supplement 3 issued November 1982, Supplement 4 issued January 1983, Supplement 5 issued July 1983, and Supplement 6 issued November 1983. Incorporated by Reference at: § 250.67(l) (1), (2), (3), and (6).

NACE Standard RP–01–76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production (1983 Revision), Incorporated by Reference at: § 250.137(d).

§ 250.2 Definitions.

Terms used in this part shall have the meanings given in the Act and as defined below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.).

"Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels,

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

"Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analysis of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

"Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

"Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelands of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

"Data" means facts and statistics or samples which have not been analyzed or processed.

"Development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities and which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior.

"District Supervisor" means the MMS officer with authority and responsibility for a district within an MMS Region.

"Eastern Gulf of Mexico" means all OCS areas in the Gulf of Mexico deemed by the Director to be adjacent to the State of Florida.

"Exploration" means the process of searching for minerals, including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and

(2) Any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

"Fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net-profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same Region of the OCS during such period, or (3) if there were no sales of such mineral from such Region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, fair market value shall be computed at an appropriate price determined by the Secretary.

"Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

"Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the State, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

"Information" when used without a qualifying adjective, includes analyzed geological information, processed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

"Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

"Interpreted geophysical information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

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"Lease" means any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals or the area covered by that authorization, whichever is required by the context,

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, 83d Cong., 1st sess.), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

"Processed geological information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation.

Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

"Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

"Production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and workover drilling.

"Regional Director" means the MMS officer with responsibility and authority for a Region within MMS.

"Regional Supervisor" means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

"Secretary" means the Secretary of the Interior.

"Western Gulf of Mexico" means all OCS areas of the Gulf of Mexico except those deemed by the Director to be adjacent to the State of Florida.

§ 250.3 Performance requirements.

(a) Nothing in this part shall preclude the use of new or alternative techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other techniques, procedures, equipment, or activities afford a degree of protection, safety, or performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the prior written approval of the District or Regional Supervisor, as appropriate, for the use of such new or alternative techniques, procedures, equipment, or activities.

(b) The District or Regional Supervisor may prescribe or approve, in writing or orally with subsequent written confirmation, departures from the operating requirements of the regulations of this part when such departures are necessary for the proper control of a well, the facilitation of the proper development of a lease, the conservation of natural resources, the protection of life (including fish and other aquatic life), property, or the marine, coastal or human environment.

§ 250.4 Jurisdiction.

(a) Subject to the supervisory authority of the Secretary, drilling and production operations, handling, measurement, and transportation of production, and other operations and activities conducted pursuant to a lease or right-of-way by or on behalf of a lessee or right-of-way holder are subject to the regulations in this part and are under the jurisdiction of the Director.

(b) In the exercise of that jurisdiction, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part, to issue either written or oral orders to govern lease operations, and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practice and are conducted in a manner which will preserve, protect, and develop mineral resources of the OCS in a manner which is consistent with the following need to:

(1) Make such resources available to timely meet the Nation's energy needs,

(2) Balance orderly energy resource development with protection of the human, marine, and coastal environments,

(3) Ensure the public a fair and equitable return on the resources of the OCS, and

(4) Preserve and maintain free enterprise competition.

§ 250.5 Functions.

The Director, in accordance with the regulations in this part, shall accomplish the following:

(a) Regulate all operations conducted under a lease or right-of-way to promote orderly exploration, development, and production of mineral resources and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposits in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b) Require on all new and, whenever practicable, existing oil and gas operations the use of the best available and safest technologies which the Director determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Director determines that the incremental benefits are clearly insufficient to justify the incremental cost of utilizing such technologies.

(c) Conduct a scheduled onsite inspection at least once a year of each offshore facility which is subject to environmental or safety regulations promulgated pursuant to the Act. The inspection shall be to determine that environmental protection equipment and safety equipment designed to prevent or

ameliorate blowouts, fires, spillages, or other major accidents have been installed and are operating properly in accordance with the requirements of this part.

(d) Conduct a periodic onsite inspection without advance notice to the operator of such facility to assure compliance with applicable regulations.

(e) Cooperate and consult with or solicit advice from affected States, executives of affected local governments, other interested parties, and relevant Departments and Agencies of the Federal Government.

(f) Identify for those activities under the jurisdiction of the Director those States which are deemed to be affected States.

§ 250.6 Oral approvals.

The appropriate MMS official may give oral orders and oral approvals whenever the regulations in this part require a lessee to obtain such official's approval before commencing an operation or activity. In the event an oral order or oral approval has been given by an MMS official, the lessee shall obtain any formal approval required by the regulations of this part. Oral orders shall be confirmed in writing as promptly as practicable.

§ 250.7 Right of use and easement.

(a) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, the Regional Supervisor may grant a lessee, subject to conditions prescribed by the Regional Supervisor, a right of use and easement on the OCS to construct off the lease and maintain platforms, artificial islands, and all installations and other devices which are permanently or temporarily attached to the seabed and which are used for conducting exploration, development, and production activities or other operations on or off the lease which are related to such activities. Rights of use and easement on the OCS shall be issued and exercised in accordance with the provisions of this section.

(b) A right of use and easement, if on an area subject to any lease issued or maintained under the Act, shall be granted only after the holder of the lease has been notified by the applicant and afforded an opportunity to comment on the application.

(c) The Regional Supervisor may require compliance with Subpart I and MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed as a condition of the granting of a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(d) A lessee shall exercise a right of use and easement in accordance with the requirements of the regulations in this part.

(e) A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee under a lease.

(f) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it has been demonstrated to the Regional Supervisor that the right of use and easement is maintained by the holder of the right and serves the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right of use and easement may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right of use and easement.

§ 250.8 Designation of operator.

In all cases where operations are not conducted by an exclusive owner of record, a "designation of operator" shall be submitted to the District Supervisor prior to the commencement of operations. This designation will be accepted as authority for the operator, or the operator's local representative, to act on behalf of the lessee and to fulfill the lessee's obligations under the Act and the regulations in this part. All changes of address and any termination of the authority of the operator shall be reported immediately, in writing, to the District Supervisor. In case of a termination or in the event of a controversy between the lessee and the designated operator, both the lessee and the operator will be required to protect the interests of the lessor.

§ 250.9 Local agent.

When required by the Regional Supervisor or at the option of the lessee, the lessee shall designate a representative empowered to receive notices and comply with orders issued pursuant to the regulations in this part.

§ 250.10 Suspension of operations.

(a) The Regional Supervisor may, on the Regional Supervisor's initiative or at the request of the lessee, suspend or temporarily prohibit production or any other operation or activity on all or any part of a lease (suspension) when the Regional Supervisor determines that such suspension is in the national interest and that the suspension is necessary as follows:

(1) To facilitate proper development of a lease including reasonable time to construct production facilities, or

(2) To allow for the construction or negotiation for use of transportation facilities.

(b) The Regional Supervisor may also direct or, at the request of the lessee, approve a suspension of any operation or activity, including production, because of the following:

(1) The lessee failed to comply with a provision of any applicable law, regulation, or order, or provision of a lease or permit,

(2) There is a threat of serious, irreparable, or immediate damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment,

(3) The suspension is in the interest of national security or defense,

(4) The suspension is necessary for the implementation of the requirements of the National Environmental Policy Act or to conduct an environmental analysis,

(5) The suspension is necessary to facilitate the installation of equipment necessary for safety and environmental reasons, or

(6) The suspension is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents.

(c) If provided for by lease stipulation, the Regional Supervisor shall suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when such lease is in water depths of 400 to 900 meters, provided that the suspension or temporary prohibition shall be for such period of time as is necessary to complete the activities described in a Development and Production Plan approved by the Regional Supervisor in accordance with § 250.34. However, in no case shall the suspension under this subsection be for periods of time which exceed a total of 5 years.

(d) A suspension pursuant to paragraph (a) of this section may not be issued if the suspension will extend the lease beyond its primary term unless a well on the lease for which the suspension is requested has been drilled and determined to be producible in paying quantities in accordance with § 250.11.

(e) Suspensions under this section may be granted for periods of time each of which shall not exceed 5 years.

(f) When the Regional Supervisor orders or approves a suspension pursuant to paragraphs (a), (b), or (c) of

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this section, the term of the lease shall be extended for a period of time equal to the period that the suspension is in effect, except that no lease shall be so extended when the suspension is the result of the lessee's gross negligence or willful violation of the lease or governing regulations.

(g) The Regional Supervisor may, at any time within the period prescribed for a suspension issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a plan for approval, disapproval, or modification in accordance with Subpart B, Exploration and Development and Production Plans.

(h) When the Regional Supervisor grants a suspension pursuant to paragraph (b)(2) of this section, the Regional Supervisor may require the lessee to conduct site-specific study(s) to identify and evaluate the cause(s) of the hazard(s) generating the suspension, the potential damage from the hazard(s), and the measures available for mitigating the hazard(s). The scope of the study(s) shall be approved by the Regional Supervisor. The lessee shall furnish copies and all results of the study(s) to the Regional Supervisor. The cost of the study(s) shall be borne by the lessee unless the Regional Supervisor arranges for the cost of the study(s) to be borne by a party other than the lessee. The Regional Supervisor shall make such results available to interested parties and to the public.

(i) The lessee must submit with a request for a suspension the reasons for requesting the suspension, a schedule of work leading to the initiation or restoration of production or any other operation or activity, and any other information the Regional Supervisor may require.

§ 250.11 Determination of well producibility.

Upon receiving a written request from the lessee, the District Supervisor will determine whether a well is capable of producing in paying quantities (production of oil and gas or both in quantities sufficient to yield a return in excess of operating costs). Such a determination shall be based upon the following:

(a) A production test for oil wells shall be of at least 2 hours' duration following stabilization of flow. A deliverability test for gas wells shall be of at least 2 hours' duration following stabilization of flow or a four-point back-pressure test. The lessee shall provide the District Supervisor a reasonable opportunity to witness all tests. Test data accompanied by the lessee's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided approval is obtained from the District Supervisor prior to the performance of the test.

(b) In the Gulf of Mexico OCS Region, the following shall also be considered as reliable evidence that a well is capable of producing oil or gas in paying quantities:

(1) A resistivity or induction electric log of the well showing a minimum of 15 feet of producible sand in one section that does not include any interval which appears to be water-saturated. All of the section counted as producible shall exhibit the following properties:

(i) Electrical spontaneous potential exceeding 20 negative millivolts beyond the shale base line. If mud conditions prevent a 20-negative millivolt reading beyond the shale base line, a gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean water bearing sand may be substituted, and

(ii) A minimum true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1.

(2) A porosity log indicating porosity in the producible section.

(3) Sidewall cores and core analyses which indicate that the section is capable of producing oil or gas or evidence that an attempt was made to obtain such cores, and

(4) A wireline formation test and/or mud-logging analysis or evidence that an attempt was made to obtain such tests.

§ 250.12 Cancellation of leases.

(a)(1) The Secretary may terminate a suspension and cancel a lease as follows after notice and opportunity for a hearing when:

(i) Continued activity pursuant to the lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), property, other mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment,

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time,

(iii) The advantages of cancellation outweigh the advantages of continuing the lease or permit in force, and

(iv) The suspension has been in effect for at least 5 years, or the termination of suspension and lease cancellation are at the request of the lessee.

(2) If a lease is cancelled under this section or under Part 256 of this Title, the lessee shall be entitled to compensation pursuant to the provisions of this section.

(b) Whenever an Exploration Plan is disapproved because the Regional Supervisor determines that approval of the activities called for in the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environment and the proposed activity cannot be modified to avoid these dangers, the Secretary, once the primary lease term has been extended continuously for a period of 5 years following the disapproval or upon request of the lessee at an earlier time, may terminate the suspension or temporary prohibition and cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (e) of this section.

(c)(1) Where a Development and Production Plan is submitted before the subsequent approval of a coastal zone management (CZM) program for an affected State, pursuant to the CZMA, and the plan is disapproved by the Regional Supervisor pursuant to § 250.34(k)(3)(ii), the following may occur:

(i) The term of the lease shall be duly extended and, at any time within 5 years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Regional Supervisor shall approve, disapprove, or require modification of the plan in accordance with the provisions of § 250.34.

(ii) Upon expiration of the 5-year period described in paragraph (c)(1)(i) of this section or, at the Secretary's discretion, at an earlier time upon request of the lessee, if the Regional Supervisor has not approved a plan or required the lessee to submit a Development and Production Plan for approval or modification, the Secretary shall cancel the lease, and the lessee shall be entitled to compensation pursuant to paragraph (e) of this section.

(d) The lessee shall not be entitled to compensation when a lease expires or is cancelled where the following exists:

(1) A Development and Production Plan submitted after approval of a State's CZM program, pursuant to the CZMA, is disapproved because the lessee does not receive concurrence by the State pursuant to section 307(c)(3)(B)(i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA.

(2) A lessee fails to submit a Development and Production Plan in accordance with § 250.34 or fails to comply with an approved plan,

(3) The owner of a nonproducing lease fails to comply with a provision of the

Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after the mailing of a notice by registered letter to the lessee, or

(4) A Development and Production Plan is disapproved because of a failure to demonstrate compliance with the requirements of applicable Federal law.

(e) Cancellation of a lease under paragraphs (a), (b), and (c) of this section shall entitle the lessee to receive such compensation as the lessee shows the Director as being equal to the lesser of the following:

(1) The fair value of the cancelled rights as of the date of cancellation, taking into account both anticipated revenues from the lease and costs reasonably anticipated on the lease, including costs of compliance with all applicable regulations and operating orders and liability for cleanup costs or damages, or both, in the case of an oil spill, or

(2) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of the lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on this consideration and expenditures from date of payment to date of reimbursement), except as follows:

(i) With respect to leases issued before enactment of the Act, compensation shall be equal to the amount specified in paragraph (e)(1) of this section, and

(ii) In the case of jointly held leases which are cancelled due to the failure of one or more partners to exercise due diligence, innocent party(s) shall have the right to seek damages for losses from the responsible party(s) and the right to acquire the interests of the negligent party(s) and be issued the lease in question.

§ 250.13 Effect of production, drilling, or well-reworking on lease term.

(a) Producing, drilling, or well-reworking operations on a leased area shall continue the lease in effect so long as the producing, drilling, or well-reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production, drilling, or well-reworking operations shall be continued in effect by production, drilling, or well-reworking operations which are commenced on or before the 90th day after the date of completion of the last production, drilling, or well-reworking operation. No time lapse in production, drilling, or well-reworking operations of greater than 90 days shall continue the lease in effect unless operations on the lease have been suspended pursuant to § 250.10.

(b) Notwithstanding the limitations of paragraph (a) of this section, the Director may approve such other time periods between operations, not to exceed 180 days from the date of the last production, drilling, or well-reworking operations, provided the Director determines that such lease extension is in the national interest.

(c) Nothing in the section obviates the necessity of obtaining approval of plans or notices required by this part.

§ 250.14 Reinjection and subsurface storage of gas.

(a)(1) The Regional Supervisor may authorize the reinjection of gas in the OCS to promote conservation of natural resources and to prevent waste when it can be shown that no undue interference with operations under existing leases will result.

(2) An application for reinjection of gas may be approved for the purpose of the following:

(i) Enhanced recovery projects,

(ii) Preventing of the flaring of casinghead gas, or

(iii) Other conservation measures determined by the Regional Supervisor.

(b)(1) The Regional Supervisor may authorize subsurface storage of gas in the OCS for later commercial benefit when it can be shown that no undue interference with operations under existing leases will result.

(2) In each case authorized in (b)(1) above, a storage agreement will be required, and the authorization for storage will provide for the payment of a storage fee or rental.

(c) Reinjection or storage of gas may be approved for locations on or off lease, provided that when gas is reinjected or stored off the lease from which it was produced, royalties shall be paid at the time the gas is first produced. Gas produced from a reservoir containing both reinjected or stored gas and gas original to the reservoir shall be presumed to be made up of proportionate amounts of injected or stored gas and gas original to the reservoir in accordance with a formula approved by the Regional Supervisor.

(d) The use of all or any part of a lease area for subsurface storage of gas shall not affect the continuance or expiration of such lease.

(e) Gas may not be stored on unleased lands unless a right of use and easement has been approved by the Regional Supervisor in accordance with § 250.7.

§ 250.15 Identification.

(a) Platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for smaller facilities shall use letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator,

(2) The area designation based on OCS Official Protraction Diagrams,

(3) The block number, if available, in which the facility is located,

(4) The lease number,

(5) Platform, structure, or rig name, and

(6) The well number.

(b) For each singly completed well, the lease number and well number shall be painted on the wellhead or on a sign affixed to the wellhead. In wells with multiple completions, each completion shall be individually identified at the well head. For subsea wellheads, the required sign shall be affixed to the flowline at a convenient surface location on the platform to which it is connected. All identifying signs shall be maintained in a legible condition.

§ 250.16 Reimbursement.

(a) After the delivery to the Regional Supervisor of geological data, geophysical data, analyzed geological information, processed geological and geophysical information, reprocessed geological and geophysical information, and interpreted geological and geophysical information (whether retained by the Regional Supervisor or not) and upon receipt of a request for reimbursement and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the reasonable costs of reproducing such data and information at the lessee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery to the Regional Supervisor of processed or reprocessed geological or geophysical information (whether retained by the Regional Supervisor or not) and upon receipt of a request for reimbursement and a determination by the Regional Supervisor that the requested reimbursement is proper, the lessee or third party shall be reimbursed for the

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reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition) but only if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of the lessee's business and was at the request of the Regional Supervisor.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The lessee shall not be reimbursed for the costs of analyzing geological information or for interpreting geological or geophysical information.

§ 250.17 Information and forms.

(a) Information, required to be submitted pursuant to the regulations in this part, shall be furnished in the manner and form prescribed in the regulations in this part or as ordered by the Director. Copies of forms may be obtained from the Regional or District Supervisor and shall be filled out completely and filed punctually with the Regional or District Supervisor.

(b) Reports submitted on forms prescribed under this part or otherwise required by the Director shall include a copy marked "Public Information" which shall include all required information except that exempt from public disclosure under § 250.18 or otherwise exempt from public disclosure under law or regulation.

§ 250.18 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.6 of this chapter, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geological and geophysical information, submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 10 years after the date of submission, whichever is less, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

(b) Except as provided in paragraph (c) of this section or in § 252.6 of this chapter, geological data, analyzed geological information, and processed geological information submitted at any time pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Director determines that earlier release of such data and information is necessary for the proper development of the field or area.

(c) Geophysical data, geological data, processed geological and geophysical information, and interpreted geological and geophysical information collected on a lease with high-resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler, and magnetometer) in compliance with stipulations concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Regional Supervisor. However, unless the lessee can demonstrate to the satisfaction of the Regional Supervisor that release of the information or data would unduly damage the lessee's competitive position, the Regional Supervisor may release the data and information at an earlier time if the Regional Supervisor determines it is needed by affected States to make determinations under Subpart B, Exploration and Development and Production Plans, of this part.

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (a) of this section:

(1) On Form MMS-330, Well-Completion or Recompletion Report and Log—

(i) The following entries under Item 4, LOCATION OF WELL:

—At top Prod. interval reported below, and
—At total depth,

(ii) Item 18, TOTAL DEPTH, MD & TVD,

(iii) Item 19, PLUG BACK, T.D., MD & TVD,

(iv) Item 20, IF MULTIPLE COMPL., HOW MANY,

(v) Item 21, PRODUCING INTERVAL(S), OF THIS COMPLETION—TOP, BOTTOM, NAME (MD AND TVD),

(vi) Item 25, CASING RECORD,

(vii) Item 26, LINER RECORD,

(viii) Item 27, TUBING RECORD,

(ix) Item 28, PERFORATION RECORD,

(x) Item 29, ACID, FRACTURE, CEMENT SQUEEZE, ETC.,

(xi) The following entries under Item 30, PRODUCTION:

—HOURS TESTED,
—CHOKE SIZE,
—PROD'N. FOR TEST PERIOD: OIL—BBL., GAS—MCF., and WATER—BBL.,
—GAS-OIL RATIO,
—FLOW. TUBING PRESS.,
—CASING PRESSURE,
—CALCULATED 24-HOUR RATE: OIL—BBL., GAS—MCF., and WATER—BBL., and
—OIL GRAVITY-API (CORR.)

(xii) Item 35, SUMMARY OF POROUS ZONES, and

(xiii) Item 36, GEOLOGIC MARKERS.

(2) On Form MMS-331, Sundry Notices and Reports on Wells—

(i) The following entries under Item 4, LOCATION OF WELL:

—AT TOP PROD. INTERVAL; and
—AT TOTAL DEPTH; and

(ii) Portions of Item 16 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

(3) On Form MMS-331C, Application for Permit to Drill, Deepen, or Plug Back—

(i) Item 4, LOCATION OF WELL: At proposed prod. zone, and

(ii) Item 20, PROPOSED CASING AND CEMENTING PROGRAM.

(e) Directional survey data released to the owner of an adjacent lease pursuant to § 250.51(e)(5) shall not be released to the public without the consent of the lessee from whose lease the directional survey was taken.

(f) Data and information obtained from beneath unleased land as a result of a well deviation shall be available to the public.

§ 250.19 Accident reports.

(a) The lessee shall immediately notify the District Supervisor of all serious accidents, any death or serious injury, and all fires, explosions, and blowouts connected with any activities or operations on the lease. All spills of oil or other liquid pollutants shall be reported as described in § 250.41(b).

(b) The owner of an easement, right-of-way, or other permit shall comply with paragraph (a) of this section by notification and report submittal to the Regional Supervisor for such incidents occurring on the area covered by the easement, right-of-way, or other permit.

§ 250.20 Safe and workmanlike operations.

(a) The lessee shall perform all operations in a safe and workmanlike manner and shall maintain all equipment in a safe condition for the protection of the lease and associated facilities, the health and safety of all persons, and for the preservation and conservation of property and the environment.

(b) The lessee shall immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.21 Access to facilities.

(a) The lessee shall make available for inspection by MMS representatives, all platforms, artificial islands, and other installations located on offshore leases. For installations equipped with helicopter landing sites and refueling facilities, the lessee shall provide the use of those facilities for helicopters used by the MMS in the supervision of offshore operations.

(b) Lessees and nonlessee owners of easements, rights-of-way, or other permits shall make available at all reasonable times for inspection by MMS the area covered by the lease, easement, right-of-way, or permit and all improvements, structures, and fixtures thereon and all records relative to the design, construction, operation, maintenance, repairs, or investigations on or with regard to such area.

(c) The lessee shall, on request, furnish food, quarters, and transportation for MMS representatives to inspect lease facilities and operations. Upon request, the lessee will be reimbursed for the costs incurred for the food, quarters, and transportation provided MMS representatives as determined by the Regional Director.

§ 250.22 Best available and safest technologies.

(a) As research and product improvement result in increased effectiveness of existing procedures, safety equipment, or the development of new equipment systems, such procedures or equipment may be used and, if such technologies provide a significant cost-effective incremental benefit to safety, health, or the environment, shall be required to be used if determined to be best available and safest technologies (BAST).

(b) Conformance to the standards, codes, and practices referenced in this part will be considered to be the application of BAST. Specific equipment and procedures or systems not covered by standards, codes, or practices will be analyzed to determine if the failure of such would have a significant effect on safety, health, or the environment. If such are identified and until specific performance standards are developed by MMS and as directed by the Regional Supervisor on a case-by-case basis, the lessee shall submit such information necessary to indicate the use of BAST, the alternatives considered to the specific equipment or procedures, and the rationale as to why one alternative technology was considered in place of another. This analysis shall include a discussion of the costs involved in the use of such technology and the incremental benefits gained.

§ 250.23 Appeals, general.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this Title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty. This requirement for compliance shall take precedence over any stay that may be granted other than a stay granted by the Secretary.

Subpart B—Exploration and Development and Production Plans

§ 250.30 Requirement for a plan.

All exploration, development, and production activities except for preliminary activities shall be conducted in accordance with an Exploration Plan or a Develoment and Production Plan approved by the Regional Supervisor. A proposed plan may apply to one or more leases held by an individual lessee or may be submitted by a group of lessees. The Regional Director may authorize lessees to jointly submit environmental information for leases that are in the same planning area and have similar environmental conditions. Any reference in this part to a Development and Production Plan shall be considered to include the Development Operations Coordination Document for the western Gulf of Mexico (see § 250.34(c)).

§ 250.31 Preliminary activities.

Preliminary activities are geological, geophysical, and other surveys necessary to develop a comprehensive Exploration Plan or Development and Production Plan. Such preliminary activities are those which do not result in any physical penetration of the seabed of greater than 500 feet and which do not result in any significant adverse impact on the natural resources of the OCS. The Regional Supervisor may require prior notification of the type, scope, and timing of any survey.

§ 250.32 Well spacing.

(a) The Regional Supervisor is authorized to approve well location and spacing programs necessary for exploration and development of a lease giving consideration to, among other factors, the location of drilling units and platforms, the geological and other reservoir characteristics of the field, the number of wells that can be economically drilled, the protection of correlative rights, and the minimization of unreasonable risk to the environment and interference with other uses offshore. Such location and spacing shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and avoid the drilling of unnecessary wells.

(b) For wells which could intersect or drain an offset property, the Regional Supervisor may require special measures to protect the rights of the lessor and objecting offset lessees. These may include special directional control measures, unitization requirements, production controls, and the release of certain well information.

§ 250.33 Exploration Plan.

(a) An Exploration Plan shall include the following:

(1) The proposed type and sequence of exploration activities to be undertaken together with a tentative timetable for their performance from commencement to completion,

(2) A description of the type of mobile drilling unit, platform, or artificial island to be used including a discussion of the important safety and pollution-prevention features. In the Alaska OCS Region, lessees shall include provisions for (i) drilling a relief well should a blowout occur, (ii) loss or disablement of a drilling unit, and (iii) loss or damage to support craft,

(3) A detailed discussion of new or unusual technology to be employed,

(4) A table indicating the appropriate location of each proposed exploratory well, including surface and projected bottom-hole locations, proposed well depths, and water depth at well sites,

(5) That data and information described below which the Regional Supervisor deems necessary to evaluate geologic conditions: (The release of this data and information shall be restricted in accordance with the provisions of § 250.18.)

(i) Current structure contour maps drawn to the top of each prospective hydrocarbon accumulation showing the approximate surface and bottomhole location of each proposed well,

(ii) Two full-scale interpreted, and if appropriate, migrated Common Depth Point seismic lines intersecting at or near the primary well locations,

(iii) A time versus depth chart based on the appropriate velocity analysis in the area of interpretation,

(iv) Interpreted structure sections corresponding to each seismic line submitted in paragraph (a)(5)(ii) of this section showing the location and proposed depth of each well,

(v) A generalized stratigraphic column from the surface to total depth,

(vi) A description of the geology of the prospect,

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(vii) A plat showing exploration seismic coverage of the lease.

(viii) A bathymetry map showing surface locations of proposed wells, and

(ix) An analysis of submarine geologic hazards. The Regional Supervisor may require the submission of the data upon which the analysis is based.

(6) An Oil Spill Contingency Plan (OSCP) as described in § 250.42 or reference to an approved regional plan.

(7) A discussion of the measures that have been or will be taken to satisfy the conditions of lease stipulations.

(8) A list of the proposed drilling fluids, including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal.

(9) Information concerning the presence of hydrogen sulfide (H_2S) and the following proposed precautionary measures:

(i) A classification of the lease area as to whether it is (A) a zone known to contain H_2S, (B) a zone where the presence of H_2S is unknown, or (C) a zone where the absence of H_2S has been confirmed as described in § 250.67 and the documentation supporting the classification, and

(ii) If the classification is a zone known to contain H_2S or a zone where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67.

(10) The most likely travel routes for boat and aircraft traffic between offshore and onshore facilities, the probable location of onshore terminals, and the estimated frequency such routes will be traversed.

(11) For new or significantly expanded onshore support facilities, indicate the following:

(i) The location, size, number, and land requirements (including rights-of-way and easements) of the onshore support and storage facilities and, where possible, a timetable for the acquisition of lands and the construction or expansion of any facilities,

(ii) The estimated number of persons expected to be employed in support of offshore, onshore, and transportation activities and, where possible, the approximate number of new employees and families likely to move into the affected area,

(iii) Major supplies, services, energy, water, or other resources within affected States necessary for carrying out the related plan, and

(iv) The source, composition, frequency, and duration of emissions of air pollutants.

(12) The quantity, composition, and method of disposal of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transportation operations.

(13) Historic weather patterns and other meteorological conditions of offshore areas including temperature, sky cover and visibility, precipitation, storm frequency and magnitude, wind direction and velocity, and freezing and icing conditions listing, where possible, the means and extremes of each.

(14) Physical oceanography including onsite direction and velocity of currents and tides, sea state, temperature and salinity, water quality, and icing conditions, where appropriate.

(15) Onsite flora and fauna including both pelagic and benthic communities, transitory birds and mammals that may breed or migrate through the area when proposed activities are being conducted, identification of endangered and threatened species and their critical habitats that could be affected by proposed activities, and typical fishing seasons and locations of fishing activities. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into this discussion.

(16) Environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act (CZMA) which may be affected by the proposed activities.

(17) Onsite uses of the area based on information available, e.g., shipping, military use, recreation, boating, commercial fishing, and other mineral exploration in the area.

(18) Archeological and cultural resources (including survey results) located within the area that may be disturbed by the proposed activities.

(19) Existing and planned monitoring systems that are measuring or will measure environmental conditions and provide information and data on the impacts of activities in the geographic areas.

(20) An assessment of the direct and cumulative effects on the offshore and onshore environments expected to occur as a result of implementation of the Exploration Plan, expressed in terms of magnitude and duration, with special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment. Measures to minimize or mitigate impacts should be identified and discussed.

(21) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930.

(22) For each OCS facility, the lessee shall submit such information described below needed to make the findings under § 250.45:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and the basis for all calculations to include—if the drilling unit has not yet been determined, the lessee shall use worst-case estimates for the type of unit proposed:

(*1*) For each source, the amount of the emission by air pollutant expressed in tons per year and the frequency and duration of emissions.

(*2*) For each facility, the total amount of emissions by air pollutant expressed in tons per year and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s).

(*3*) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned.

(*4*) A schematic drawing which identifies the location and elevation of each source, and

(*5*) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (a)(22)(iv) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the results obtained through the use of the model(s). Only model(s) that have been approved by the Director may be used.

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the data and information selected.

(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment attainment, or unclassifiable to include the status of each area by air pollutant, the class of attainment area, and the air-pollution control agency whose jurisdiction covers the area identified, and

(iv) The emission-reduction controls available to reduce emissions, including the source, the emission-reduction control technology, the reductions to be achieved, and the monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.

(23) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be made, and

(24) Such other information and data as the Regional Supervisor may require.

(b) Information and data discussed in other documents may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.

(c) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the coastal zone management agency of affected State(s), and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration (NOAA) may limit the amount of information required to be included to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions.

(d) The Regional Supervisor shall determine within 10 working days after receipt of the Exploration Plan whether additional information is needed. If no such deficiencies are determined and the required number of copies have been received, the plan will be deemed submitted.

(e) Within 2 working days after the date an Exploration Plan has been deemed submitted, the Regional Supervisor shall transmit by receipted mail a copy of the plan, except for those portions determined to be exempt from disclosure under the Freedom of Information Act and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the coastal zone management agency of each affected State. Receipt of the plan by the coastal zone management agency initiates the State coastal zone consistency review period.

(f) In accordance with the National Environmental Policy Act (NEPA), the Regional Supervisor shall evaluate the environmental impacts of the activities described in the Exploration Plan.

(g) In the evaluation of an Exploration Plan, the Regional Supervisor shall consider written comments from the Governor of an affected State or the Governor's designated representative which are received within 20 days of submission of the Exploration Plan. The Regional Supervisor may consult directly with affected States regarding matters contained in the comments.

(h) Within 30 days of submission of a proposed Exploration Plan, the Regional Supervisor shall accomplish one of the following:

(1) Approve the plan,

(2) Require the lessee to modify any plan which is inconsistent with the provisions of the lease, the Act, or the regulations prescribed under the Act including air quality, environmental, safety, and health requirements, or

(3) Disapprove the plan if it is determined that a proposed activity would probably cause serious harm or damage to life (including fish and other aquatic life), property, natural resources offshore including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(i) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving an Exploration Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(j) An Exploration Plan which has been disapproved pursuant to paragraph (h) of this section may be modified and resubmitted to the Regional Supervisor in the same manner as for a new plan. Only information related to the proposed revisions need be submitted. The Regional Supervisor shall approve or disapprove a plan as resubmitted within 30 days of the resubmission date.

(k) If the Regional Supervisor disapproves an Exploration Plan, the Secretary may, subject to the provisions of section 5(a)(2)(B) of the Act and the implementing regulations in §§ 250.12 and 250.77, cancel the lease(s), and the lessee shall be entitled to compensation in accordance with the above authorities.

(l)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Exploration Plan and may request updated information on schedules and procedures. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in other onshore or offshore conditions affecting or affected by exploration activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require such revision.

(2) Revisions to an approved or pending Exploration Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated or requires additional permits, the revisions shall be subject to all of the procedures in this section.

(m) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, biological, or other surveys or monitoring programs. The lessee shall provide the Regional Supervisor, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.

(n) The lessee may not drill any well until the District Supervisor's approval of an Application for Permit to Drill, Deepen, or Plug Back (APD), filed in accordance with the requirements of § 250.64, has been received. The District Supervisor shall not approve any APD until all affected States with approved coastal zone management programs have concurred or have been conclusively presumed to concur with the applicant's coastal zone consistency certification accompanying a plan, or the Secretary of Commerce has made the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The APD's must conform to the activities described in detail in the related approved Exploration Plan and shall not be subject to a separate State coastal zone consistency review.

(o) Nothing in this section or in an approved plan shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Exploration Plan.

§ 250.34 Development and Production Plan.

(a) A Development and Production Plan shall include the following:

(1) A description of and schedule for the development and production activities to be performed including plan commencement date, date of first production, total time to complete all development and production activities, and dates and sequences for drilling

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wells and installing facilities and equipment,

(2) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas, i.e., secondary, tertiary, or other enhanced recovery,

(3) A description of any drilling vessels, platforms, pipelines, or other facilities and operations located offshore which are proposed or known by the lessee (whether or not owned or operated by the lessee) to be directly related to the proposed development, including the location, size, design, and important safety, pollution prevention, and environmental monitoring features of the facilities and operations,

(4) A detailed description of new or unusual technology to be employed,

(5) Geological and geophysical data and information, including the following: (The release of this data and information is restricted in accordance with § 250.18.)

(i) A plat showing the surface location of any proposed fixed structure or well,

(ii) A plat showing the surface and bottomhole locations and giving the measured and true vertical depths for each proposed well,

(iii) Current interpretations of relevant geological and geophysical data,

(iv) Current structure map(s) showing the surface and bottomhole location of each proposed well and the depths of expected productive formations,

(v) Interpreted structure sections showing the depths of expected productive formations,

(vi) A bathymetric map showing surface locations of fixed structures and wells or a table of water depths at each proposed site, and

(vii) A discussion of seafloor conditions including a shallow hazards analysis for proposed drilling and platform sites and pipeline routes.

(6) Information concerning the presence of H_2S and proposed precautionary measures, including the following:

(i) A classification of the lease area as to whether it is a zone known to contain H_2S, a zone where the presence of H_2S is unknown, or a zone where the absence of H_2S has been confirmed as described in § 250.67 and the documentation supporting the classification, or

(ii) If the classification is a zone known to contain H_2S or a zone where the presence of H_2S is unknown, an H_2S Contingency Plan as required in § 250.67.

(7) A description of the environmental safeguards to be implemented including an updated OSCP as described in § 250.42 or reference to an approved plan,

(8) A discussion of the steps that have been or will be taken to satisfy the conditions of lease stipulations,

(9) A brief description of the following:

(i) The location, description, and size of any offshore, and to the maximum extent practicable, land-based operations to be conducted or contracted for as a result of the proposed activity, including the following:

(A) The acreage required within a State for facilities, rights-of-way, and easements,

(B) The means proposed for transportation of oil and gas to shore, the routes to be followed by each mode of transportation, and the estimated quantities of oil or gas, or both, to be moved along such routes,

(C) An estimate of the frequency of boat and aircraft departures and arrivals, the onshore location of terminals, and the normal routes for each mode of transportation,

(D) A list of the proposed drilling fluids including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal. If the information is provided in an approved Environmental Protection Agency National Pollutant Discharge Elimination System permit or a pending permit application, the lessee may reference these documents, and

(E) The quantities, types, and plans for disposal of other solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations and, regarding any wastes which may require onshore disposal, the means of transportation to be used to bring the wastes to shore, the disposal methods to be utilized, and the location of onshore waste disposal or treatment facilities.

(ii) The following new or significantly expanded onshore support facilities:

(A) The approximate number, timing, and duration of employment of persons who will be engaged in onshore development and production activities, an approximate number of local personnel who will be employed for or in support of the development activities (classified by the major skills or crafts that will be required from local sources and estimated number of each such skill needed), and the approximate total number of persons who will be employed during the onshore construction activity and during all activities related to offshore development and production,

(B) The approximate number of people and families to be added to the population of local nearshore areas as a result of the planned development,

(C) An estimate of significant quantities of energy and resources to be used or consumed including electricity, water, oil and gas, diesel fuel, aggregate, or other supplies which may be purchased within an affected State,

(D) The types of contractors or vendors which will be needed, although not specifically identified, and which may place a demand on local goods and services, and

(E) The source, composition, frequency, and duration of emissions of air pollutants.

(iii) A narrative description of the existing environment with an emphasis placed on those environmental values that may be affected by the proposed action. This section shall contain a description of the physical environment of the area covered by the related plan. This portion of the plan shall include data and information obtained or developed by the lessee together with other pertinent information and data available to the lessee from other sources. The environmental information and data shall include the following, where appropriate:

(A) Summary conclusions of cultural and historical resource surveys of the lease(s) (including a copy of survey reports or reference to previously-submitted reports).

(B) The aquatic biota, including a description of fishery and marine mammal significance and utilization of the lease.

(C) The predevelopment, ambient water-column quality and temperature data for incremental depths for the areas encompassed by the plan,

(D) The physical oceanography, including ocean currents described as to prevailing direction, seasonal variations, and variations at different water depths in the lease.

(E) Historic weather patterns and other meteorological conditions, including storm frequency and magnitude, wind direction and velocity, freezing and icing conditions, and ambient air quality listing, where possible, the means and extremes of each,

(F) The other uses of the area known to the lessee, including military use for national security or defense, subsistence hunting, and other mineral exploration, and

(G) The existing or planned monitoring systems that are measuring or will measure impacts of activities on the environment in the planning area.

(10) An assessment of the effects on the environment expected to occur as a result of implementation of the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts. Such impacts shall be quantified to the fullest extent possible including magnitude and duration and shall be accumulated for all activities for each of the major elements of the environment (i.e., water, biota, etc.),

(11) A discussion of alternatives to the activities proposed that were considered during the development of the plan including a comparison of the environmental effects,

(12) Certificate(s) of coastal zone consistency as provided in 15 CFR Part 930,

(13) For each OCS facility, such information described below needed to make the findings under § 250.45:

(i)(A) Projected emissions from each proposed or modified facility for each year of operation and basis for all calculations to include the following:

(1) For each source, the amount of the emission by air pollutant expressed in tons per year and frequency and duration of emissions,

(2) For each proposed facility, the total amount of emissions by air pollutant expressed in tons per year, the frequency distribution of total emissions by air pollutant expressed in pounds per day and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s),

(3) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned,

(4) A schematic drawing which identifies the location and elevation of each source, and

(5) If projected emissions are based on the use of emission-reduction control technology, a description of the controls providing the information required by paragraph (a)(13)(iv)(A) of this section.

(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.

(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the result obtained through the use of the model(s). Only model(s) that have been approved by the Director may be used, and

(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the information and data selected.

(iii) The air-quality status of any onshore area where the air quality is significantly affected (within the meaning of § 250.45) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable listing the status of each area by air pollutant, the class of attainment areas, and the air-pollution control agency whose jurisdiction covers the area identified,

(iv)(A) The emission-reduction controls available to reduce emissions including the source, the emission-reduction control technology, the reductions to be achieved, and the monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission-reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion, and

(B) The ownership of the offshore and onshore offsetting source(s) and the reduction obtainable from each offsetting source.

(14) A brief discussion of any approved or anticipated suspensions of production necessary to hold the lease(s) in an active status,

(15) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be directed, and

(16) Such other information and data as the Regional Supervisor may require.

(b) Information and data discussed in other documents may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.

(c)(1) Development and Production Plans will not be required for leases in the western Gulf of Mexico. For these leases, the Regional Supervisor may require submission of a Development Operations Coordination Document with that information necessary to assure conformance with the Act, other laws, applicable regulations, lease provisions, or as otherwise needed to carry out the functions and responsibilities of the Regional Supervisor.

(2) Any information required in paragraph (c)(1) of this section shall be considered a Development and Production Plan for the purpose of references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.

(d) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the coastal zone management agency of affected State(s), and the Office of Ocean and Coastal Resource Management of NOAA may limit the amount of information required to be included in a Development and Production Plan to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions. In determining the information to be included in a plan, the Regional Director shall consider current and expected operating conditions together with experience gained during past operations of a similar nature in the area of proposed activities.

(e) The Regional Supervisor shall determine within 20 working days after receipt whether additional material is needed. If no such deficiencies are determined and the requested number of copies have been received, the plan shall be deemed submitted.

(f) Within 5 working days after a Development and Production Plan has been deemed submitted, the Regional Supervisor shall transmit a copy of the plan, except for those portions of the plan determined to be exempt from disclosure under the Freedom of Information Act and the implementing regulations (43 CFR Part 2), to the Governor or the Governor's designated representative and the coastal zone management agency of each affected State and to the executive of each affected local government that requests a copy. The Regional Supervisor shall make copies available to appropriate Federal Agencies, interstate entities, and the public. The plan will be available for review at the appropriate MMS Regional Public Information Office.

(g) The Governor or the Governor's designated representative and the coastal zone management agency of each affected State and the executive of each affected local government shall have 60 days from the date of receipt of the Development and Production Plan to submit comments and recommendations to the Regional Supervisor. The executive of any affected local government must forward all recommendations to the Governor of the State prior to submitting them to the Regional Supervisor. The Regional Supervisor shall accept those recommendations from the Governor that provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Regional Supervisor shall

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explain in writing the reasons for accepting or rejecting any recommendations. In addition, any interested Federal Agency or person may submit comments and recommendations to the Regional Supervisor. All comments and recommendations shall be made available to the public.

(h) The plan will be processed in accordance with the regulations in this section and the regulations governing Federal coastal zone management consistency procedures (15 CFR Part 930).

(i) The Regional Supervisor shall evaluate the environmental impact of the activities described in the Development and Production Plan and prepare the appropriate environmental documentation in accordance with NEPA. At least once in each planning area, as identified in lease sale offerings, other than the Western and Central Gulf of Mexico Planning Areas, the Director shall determine that an Environmental Impact Statement (EIS) is required. A determination by the Director that approval of a Development and Production Plan requires proceedings under NEPA shall have no effect upon the timeframe that a State has to complete its coastal zone consistency review. Copies of the draft EIS shall be transmitted to the Governor of each affected State and the executive of each affected local government that requests a copy. The Regional Supervisor shall also make copies of the EIS available to any appropriate Federal Agency, interstate entity, and the public.

(j) Prior to or immediately after a determination by the Director that approval of a Development and Production Plan requires that the procedures under NEPA shall commence, the Regional Supervisor may require lessees of tracts in the vicinity, for which Development and Production Plans have not been approved, to submit preliminary or final plans for their leases.

(k) No later than 60 days after the last day of the comment period or within 60 days of the release of the final EIS describing the proposed activities, the Regional Supervisor shall accomplish the following:

(1) Approve the plan,

(2) Require modification of the plan, or

(3) Disapprove the plan if one or more of the following occurs:

(i) The lessee fails to demonstrate that compliance with the requirements of the Act or other applicable Federal laws is possible,

(ii) State concurrence with the applicant's coastal zone consistency certification has not been received, the State's concurrence has not been conclusively presumed, or the State objects to the consistency certification, and the Secretary of Commerce does not make the determination authorized by section 307(c)(3)(B)(iii) of the CZMA,

(iii) Operations threaten national security or defense, or

(iv) Exceptional geological conditions in the lease area, exceptional resource value in the marine or coastal environment, or other exceptional circumstances exist, and all of the following:

(A) Implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environments,

(B) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and

(C) The advantages of disapproving the plan outweigh the advantages of development and production.

(l) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving a Development and Production Plan or for requiring modification of a plan and the conditions which must be met for plan approval.

(m) A Development and Production Plan which has been disapproved may be modified. Only information related to the proposed revisions need be submitted.

(n) Development and Production Plans disapproved pursuant to paragraph (k)(3) of this section are subject to the provisions of section 25(h)(2) of the Act and the implementing regulations in §§ 250.12 and 256.77.

(o)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Development and Production Plan. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in onshore or offshore conditions affecting or impacted by development or production activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require such revisions.

(2) Additions or modifications to an approved or pending Development and Production Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated, requires additional permits, or proposes activities not previously identified and evaluated, the revision shall be subject to all of the procedures in this section.

(3) When any revision to an approved Development and Production Plan is proposed by the lessee, the Regional Supervisor may approve the revision if it is determined that the revision is consistent with the protection of the marine, coastal, and human environments and will lead to greater recovery of oil and natural gas; will improve the efficiency, safety, and environmental protection of the recovery operation; is the only means available to avoid substantial economic hardship to the lessee; or is otherwise, not inconsistent with the provisions of the Act.

(p) Whenever the lessee fails to submit a Development and Production Plan in accordance with provisions of this section or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5 (c) and (d) of the Act and the implementing regulations in §§ 250.12 and 256.77.

(q) To ensure safety and environmental protection, the Regional Supervisor may authorize or direct the lessee to conduct geological, geophysical, or other surveys. The lessee shall give the Regional Supervisor, upon request, copies of any data obtained as a result of the surveys.

(r) The lessee may not drill any well until the District Supervisor's approval of an APD, filed in accordance with the requirements of § 250.64, has been received. All applications for an APD to drill and applications to install platforms and structures, pipelines, and production equipment must conform to the activities described in detail in the related, approved Development and Production Plan and shall not be subject to a separate State coastal zone consistency review.

(s) Nothing in this section or approved plans shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Development and production plan.

Subpart C—Pollution Prevention and Control

§ 250.40 Pollution prevention.

(a) During the exploration, development, production, and transportation of oil and gas, the lessee shall take measures to prevent pollution of the ocean. The lessee shall not create conditions which will adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

(1) When pollution occurs as a result of operations conducted by or on behalf of the lessee and the pollution damages or threatens to damage life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment, the control and total removal of the pollution shall be at the expense of the lessee. Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan (OSCP) shall be subject to modification when directed by the District Supervisor.

(2) Upon failure of the lessee to control and remove the pollution, the Director, in cooperation with other appropriate Agencies of Federal, State, and local governments or in cooperation with the lessee, or both, shall have the right to control and remove the pollution. Such action shall not relieve the lessee of any responsibility provided for in the OSCP otherwise provided by law.

(b)(1) The District Supervisor may restrict the rate of drilling fluid discharges or prescribe alternative discharge methods. The District Supervisor may also restrict the use of components which could cause unreasonable degradation to the marine environment. No petroleum-based substances, including diesel fuel, may be added to the drilling mud system without prior approval of the District Supervisor.

(2) Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

(3) All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed, installed, and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of the ocean shall be undertaken immediately.

(4) Curbs, gutters, drip pans, and drains shall be installed in all deck areas in a manner necessary to collect all contaminants and piped to a properly designed, operated, and maintained sump system which will automatically maintain the oil at a level sufficient to prevent discharge of oil into offshore waters. All gravity drains shall be equipped with a water trap or other means to prevent gas in the sump from migrating back up the line. Sump piles shall not be used as processing devices to treat or skim liquids but may be used to collect treated-produced water, treated-produced sand, or liquids from drip pans and deck drains and as a final trap for hydrocarbon liquids in the event of equipment upsets. Improperly designed, operated, or maintained sump piles which do not prevent the discharge of oil into offshore waters shall be replaced or repaired.

(5) On artificial islands, all vessels containing hydrocarbons shall be placed inside an impervious berm or otherwise protected to contain spills. Drainage shall be directed away from the drilling rig to a sump. Drains and sumps shall be constructed to prevent seepage.

(6) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited. The location and description of such disposal shall be reported in accordance with paragraph (d) of this section.

(c) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(1) All loose material, small tools, and other small objects shall be kept in a marked container when not in use or before transport over open OCS waters,

(2) All cable, chain, or wire segments shall be recovered after use and securely stored,

(3) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over open OCS waters, and

(4) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(d) Any equipment or material described in paragraphs (b)(6), (c)(2), and (c)(3) of this section that is lost overboard shall be recorded on the daily operations report of the facility, as appropriate, and reported to the District Supervisor and to the U.S. Coast Guard Guard.

§ 250.41 Inspections and reports.

(a) Drilling and production facilities shall be inspected daily or at intervals prescribed by the District Supervisor to determine if pollution is occurring. Necessary maintenance or repairs shall be made immediately. Records of such inspections and repairs shall be maintained at the facility or at a nearby manned facility for 2 years.

(b) All spills of oil and liquid pollutants, including pipeline spills, spills onto the surface of sea ice, and spills penetrating the surface of an artificial island, shall be reported orally to the District Supervisor. Spills of more than 1 barrel shall be confirmed in writing. All reports shall include the cause, location, volume of spill, and remedial action taken. Reports of spills of more than 50 barrels shall include information on the sea state, meteorological conditions, size, and appearance of a slick.

(1) Spills shall be reported orally within the following time limits:

(i) Within 12 hours, if spills are 10 barrels or less, and

(ii) Without delay, if spills are more than 10 barrels.

(2) Lessees shall notify each other of observed pollution resulting from another's operation.

§ 250.42 Oil Spill Contingency Plans.

The lessee shall submit an OSCP for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. If an OSCP covering the area, such as a regional plan, has already been approved, it may be referred to in the Exploration Plan or the Development and Production Plan. An OSCP shall be reviewed and updated annually, and all modifications of the OSCP shall be submitted to the Regional Supervisor for approval. The OSCP shall contain the following:

(a) An oil spill risk analysis and complementary trajectory analysis indicating environmentally sensitive areas which may be impacted and strategies for their protection,

(b) Identification of response equipment, response times, materials, support vessels, and procedures to be employed in responding to continuous oil discharges (e.g., well blowout) and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). Response equipment and strategies shall be suitable for anticipated environmental conditions in the area of operations. Equipment capable of recovering at least 1,000 barrels of oil per day shall be positioned at a location where it can be deployed within a 12-hour period. After reviewing the risk analysis, the Regional Supervisor may specify greater recovery capabilities or reduced response times.

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(c) Provisions for inspecting and maintaining response equipment.

(d) Establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible persons and alternates on call to receive notification of an oil spill and the names, telephone numbers, and addresses of regulatory organizations and Agencies to be notified when an oil spill is discovered.

(e) An inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted.

(f) Well-defined and specific actions to be taken after discovery and notification of an oil spill including the following:

(1) Designation (by name or position) of an oil spill response operating team comprised of trained personnel available within a specified response time.

(2) Designation (by name or position) of a trained oil spill response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations, and

(3) A planned location for an oil spill response operations center and a reliable communications system for directing the coordinated overall response operations.

(g) Provisions for disposal of recovered oil, oil-contaminated material, and other oily wastes.

(h) Provisions for monitoring spill movement, and

(i) In the Alaska OCS Region only, provisions for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

§ 250.43 Drills and training.

(a) Drills for familiarization with pollution-control equipment and operational procedures shall be held when the equipment is placed initially and at least once every 6 months by the lessee or a contractor serving the lessee. The personnel identified as the oil spill response operating team in the OSCP shall participate in these drills. The drills shall simulate conditions in the area of operations and shall include deployment of equipment. A time schedule with a list of equipment to be deployed shall be submitted to the Regional Supervisor for approval. The schedule shall provide sufficient advance notice to allow MMS personnel to witness any of the exercises. Drill conditions, results, and participants shall be recorded, and the records shall be maintained at the site and made available to MMS personnel. Where drill performance and results are deemed inadequate or where it is necessary to prepare for changing environmental conditions (e.g., open water to sea ice), the Regional Supervisor may initiate unscheduled drills, require an increase in the frequency, or a change in the location of the drills.

(b) The lessee shall ensure that training classes for familiarization with pollution-control equipment and operational procedures are provided for the oil spill response operating team. The personnel responsible for supervising the oil spill response operations shall receive more extensive instructions and shall be capable of directing the deployment and use of all response equipment. The lessee shall retain, at the lessee's field office nearest the OCS facility, course completion certificates or attendance records issued by the organization providing the instructions. These records shall be made available to any authorized representative of the MMS upon request.

§ 250.44 Definitions concerning air quality.

For purposes of §§ 250.45 and 250.46:

"Air pollutant" means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

"Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The BACT shall be verified on a case-by-case basis by the Regional Supervisor and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

"Emission offsets" means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan or Development and Production Plan.

"Existing facility" is an OCS facility described in an Exploration Plan or a Development and Production Plan submitted or approved prior to June 2, 1980.

"Facility" means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

"Projected emissions" means emissions, either controlled or uncontrolled, from a source or sources.

"Source" means an emission point. Several sources may be included within a single facility.

"Temporary facility" means activities associated with the construction of platforms offshore or with facilities related to exploration for or development of offshore oil and gas resources which are conducted in one location for less than 3 years.

"Volatile organic compound" (VOC) means any organic compound which is emitted to the atmosphere as a vapor. The unreactive compounds are exempt from the above definition.

§ 250.45 Facilities described in a new or revised Exploration Plan or Development and Production Plan.

(a) *New plans.* All Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section, and the lessee shall comply with the requirements of this section as necessary.

(b) *Applicability of this section to existing facilities.* (1) The Regional Supervisor may review any Exploration

Plan or Development and Production Plan to determine whether any facility described in the plan should be subject to review under this section and has the potential to significantly affect the air quality of an onshore area. To make these decisions, the Regional Supervisor shall consider the distance of the facility from shore, the size of the facility, the number of sources planned for the facility and their operational status, and the air quality status of the onshore area.

(2) For a facility identified by the Regional Supervisor in paragraph (b)(1) of this section, the Regional Supervisor shall require the lessee to refer to the information required under § 250.33(a)(22) or 250.34(a)(13) and to submit only that information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(c) *Revised facilities.* All revised Exploration Plans and Development and Production Plans shall include the information required to make the necessary findings under paragraphs (d) through (i) of this section. The lessee shall comply with the requirements of this section as necessary.

(d) *Exemption formulas.* To determine whether a facility described in a new, modified, or revised Exploration Plan or Development and Production Plan is exempt from further air quality review, the lessee shall use the highest annual-total amount of emissions from the facility for each air pollutant calculated in § 250.33(a)(22)(i)(A) or 250.34(a)(13)(i)(A) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxides (NO_x), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt from further air quality review by paragraphs (e) through (i) of this section.

(e) *Significance levels.* For a facility not exempt under paragraph (d) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether the projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS (µg/m³)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5		25	
TSP	1	5			
NO_2	1				
CO			500		2,000

(f) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (e) of this section for that air pollutant, shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (d) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(g) *Controls required.* (1) The projected emissions of any air pollutant other than VOC from any facility, except a temporary facility, which significantly affect the quality of a nonattainment area, shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(2) The projected emissions of any air pollutant other than VOC from any facility which significantly affect the air quality of an attainment or unclassifiable area shall be reduced through the application of BACT.

(i) Except for temporary facilities, the lessee also shall use an approved air quality model to determine whether the emissions of TSP or SO_2 that remain after the application of BACT cause the following maximum allowable increases over the baseline concentrations established in 40 CFR 52.21 to be exceeded in the attainment or unclassifiable area:

MAXIMUM ALLOWABLE CONCENTRATION INCREASES (µg/m³)

Air pollutant	Averaging times		
	Annual Mean[1]	24-hour maximum	3-hour maximum
Class I:			
TSP	5	10	—
SO_2	2	5	25
Class II:			
TSP	19	37	—
SO_2	20	91	512
Class III:			
TSP	37	75	—
SO_2	40	182	700

[1] For TSP—geometric; For SO_2—arithmetic.

No concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one onshore location.

(ii) If the maximum allowable increases are exceeded, the lessee shall apply whatever additional emission controls are necessary to reduce or offset the remaining emissions of TSP or SO_2 so that concentrations in the onshore ambient air of an attainment or unclassifiable area do not exceed the maximum allowable increases.

(3)(i) The projected emissions of VOC from any facility, except a temporary facility, which significantly affect the onshore air quality of a nonattainment area shall be fully reduced. This shall be done through the application of BACT and, if additional reductions are necessary, through the application of additional emission controls or through the acquisition of offshore or onshore offsets.

(ii) The projected emissions of VOC from any facility which significantly affect the onshore air quality of an attainment area shall be reduced through the application of BACT.

(4)(i) If projected emissions from a facility significantly affect the onshore air quality of both a nonattainment and an attainment or unclassifiable area, the regulatory requirements applicable to projected emissions significantly affecting a nonattainment area shall apply.

(ii) If projected emissions from a facility significantly affect the onshore air quality of more than one class of attainment area, the lessee must reduce projected emissions to meet the maximum allowable increases specified for each class in paragraph (9)(2)(i) of this section.

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(h) *Controls required on temporary facilities.* The lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affect the air quality of an onshore area of a State.

(i) *Emission offsets.* When emission offsets are to be obtained, the lessee must demonstrate that the offsets are equivalent in nature and quantity to the projected emissions that must be reduced after the application of BACT; a binding commitment exists between the lessee and the owner or owners of the source or sources; the appropriate air quality control jurisdiction has been notified of the need to revise the State Implementation Plan to include the information regarding the offsets; and the required offsets come from sources which affect the air quality of the area significantly affected by the lessee's offshore operations.

(j) *Review of facilities with emissions below the exemption amount.* If, during the review of a new, modified, or revised Exploration Plan or Development and Production Plan, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(k) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(l) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

§ 250.46 Existing facilities.

(a) *Process leading to review of an existing facility.* (1) An affected State may request that the Regional Supervisor supply basic emission data from existing facilities when such data are needed for the updating of the State's emission inventory. In submitting the request, the State must demonstrate that similar offshore and onshore facilities in areas under the State's jurisdiction are also included in the emission inventory.

(2) The Regional Supervisor may require lessees of existing facilities to submit basic emission data to a State submitting a request under paragraph (a)(1) of this section.

(3) The State submitting a request under paragraph (a)(1) of this section may submit information from its emission inventory which indicates that emissions from existing facilities may be significantly affecting the air quality of the onshore area of the State. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the facility is not significantly affecting the air quality of the State.

(4) The Regional Supervisor shall evaluate the information submitted under paragraph (a)(3) of this section and shall determine, based on the basic emission data, available meteorological data and the distance of the facility or facilities from the onshore area, whether any existing facility has the potential to significantly affect the air quality of the onshore area of the State.

(5) If the Regional Supervisor determines that no existing facility has the potential to significantly affect the air quality of the onshore area of the State submitting information under paragraph (a)(3) of this section, the Regional Supervisor shall notify the State of and explain the reasons for this finding.

(6) If the Regional Supervisor determines that an existing facility has the potential to significantly affect the air quality of an onshore area of the State submitting information under paragraph (a)(3) of this section, the Regional Supervisor shall require the lessee to refer to the information requirements under §§ 250.33(a)(21) or 250.34(a)(12) and submit only that information required to make the necessary findings under paragraphs (b) through (e) of this section. The lessee shall submit this information within 120 days of the Regional Supervisor's determination or within a longer period of time at the discretion of the Regional Supervisor. The lessee shall comply with the requirements of this section as necessary.

(b) *Exemption formulas.* To determine whether an existing facility is exempt from further air quality review, the lessee shall use the highest annual total amount of emissions from the facility for each air pollutant calculated in §§ 250.33(a)(21)(i)(A) or 250.34(a)(12)(i)(A) and compare these emissions to the emission exemption amount "E" for each air pollutant calculated using the following formulas: $E=3400D^{2/3}$ for carbon monoxide (CO); and $E=33.3D$ for total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxides (NO^x), and VOC (where E is the emission exemption amount expressed in tons per year, and D is the distance of the facility from the closest onshore area of the State expressed in statute miles). If the amount of projected emissions is less than or equal to the emission exemption amount "E" for the air pollutant, the facility is exempt for that air pollutant from further air quality review required under paragraphs (c) through (e) of this section.

(c) *Significance levels.* For a facility not exempt under paragraph (b) of this section for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the following significance levels:

SIGNIFICANCE LEVELS: AIR POLLUTANT CONCENTRATIONS (μg/m³)

Air pollutant	Averaging time (hours)				
	Annual	24	8	3	1
SO_2	1	5		25	
TSP	1	5			
NO_2	1				
CO			500		2,000

(d) *Significance determinations.* (1) The projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the significance level determined under paragraph (c) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for that air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (b) of this section for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC.

(e) *Controls required.* (1) The projected emissions of any air pollutant which significantly affect the air quality of an onshore area shall be reduced through the application of BACT.

(2) The lessee shall submit a compliance schedule for the application of BACT. If it is necessary to cease operations to allow for the installation of emission controls, the lessee may

apply for a suspension of operations under the provisions of § 250.11.

(f) *Review of facilities with emissions below the exemption amount.* If, during the review of the information required under paragraph (a)(6) of this section, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether control measures are necessary. The lessee shall be given the opportunity to present information to the Regional Supervisor which demonstrates that the exempt facility is not significantly affecting the air quality of an onshore area of the State.

(g) *Emission monitoring requirements.* The lessee shall monitor, in a manner approved or prescribed by the Regional Supervisor, emissions from the facility following the installation of emission controls. The lessee shall submit this information monthly in a manner and form approved or prescribed by the Regional Supervisor.

(h) *Collection of meteorological data.* The Regional Supervisor may require the lessee to collect, for a period of time and in a manner approved or prescribed by the Regional Supervisor, and submit meteorological data from a facility.

Subpart D—Drilling Operations

§ 250.50 Control of wells.

The lessee shall take necessary precautions to keep its wells under control at all times. Operations shall be conducted in a safe and workmanlike manner. The lessee shall utilize the best available and safest drilling technology and state-of-the-art methods such as drilling-rate evaluation, shale-density analysis, or other appropriate methods in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick. The lessee shall utilize personnel who are trained and competent and shall utilize and maintain equipment and materials necessary to assure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.51 General requirements.

(a) *Fitness of drilling unit.* (1) Drilling units shall be capable of withstanding the oceanographic, meteorological, and ice conditions for the proposed season and location of operations.

(2) Prior to commencing operations, drilling units shall be made ready and available for a complete inspection by the District Supervisor.

(3) The lessee shall provide information and data on the fitness of the drilling unit to perform the proposed drilling operation. The information shall be submitted with or prior to the submission of Form MMS–331C, Application for Permit to Drill, Deepen, or Plug Back (APD), in accordance with § 250.64. In the Alaska OCS Region, the District Supervisor may require the submission of a third-party review of the design of drilling units proposed for use which are of a unique design and/or not proven in the arctic environment if the District Supervisor believes that the submitted information is insufficient to demonstrate suitability for site-specific use. A design Certified Verification Agent approved for the arctic in accordance with § 250.133 of this part shall be used for any required review.

(b) *Drilling unit safety devices.* (1) No later than [insert date 1 year from the effective date of these regulations], all drilling units shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked weekly for proper operation and after each drill-line slipping operation. The results of the operational check shall be entered in the driller's report.

(2) No later than [insert 1 year from the effective date of these regulations], all diesel engine air intakes shall be equipped with an automatic-shutdown device to prevent diesel engine runaway.

(c) *Oceanographic, meteorological, and drilling unit performance data.* Where such information is not otherwise readily available, upon request of the District Supervisor, lessees shall collect and report oceanographic, meteorological, and drilling unit performance data, and monitor ice conditions, if applicable, during the period of operations. The type of information to be collected and reported will be determined by the District Supervisor in the interests of safe conduct of operations and the structural integrity of the drilling unit.

(d) *Shallow hazards surveys requirements.* (1) In the design of all drilling programs, the lessee shall consider geologic and manmade conditions which could affect the safety of the proposed operations and the environment. Unless the lessee can demonstrate to the satisfaction of the District Supervisor that geologic and geophysical data sufficient to determine the presence or absence of such conditions are available, the lessee shall conduct a shallow hazards survey. Surveys shall be conducted in accordance with a survey strategy identifying the survey grid, navigation systems, data acquisition instrumentation, survey procedures, maps to be prepared, and the data records to be acquired. The lessee shall be required to survey areas outside the lease block if the District Supervisor determines that such information is necessary to evaluate geologic conditions which could affect the proposed operations. The proposed survey strategy shall be submitted to the District Supervisor for approval at least 20 days in advance of the date the lessee plans to initiate the survey.

(2) Prior to moving a jack-up rig with individual footings on location, the District Supervisor may require that a soil boring be drilled at the wellsite, considering seafloor and oceanographic conditions. Prior to moving a jack-up rig with mat-supported footings on location, the District Supervisor may require that a magnetometer survey be run at the wellsite and a soil boring.

(e) *Tests, surveys, and samples.* (1) The lessee shall conduct tests, obtain well and mud logs or surveys, and take samples to determine the reservoir energy; the presence, quantity, and quality of oil, gas, sulphur, water, and pressure in the formation; and casing, tubing, and other pressures. The lessee shall take formation samples or cores to determine the identity, fluid content, and character of any formation in accordance with requirements prescribed by the District Supervisor in the APD.

(2) Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 1,000 feet during the normal course of drilling. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 500 feet during the normal course of drilling and at intervals not exceeding 100 feet in all planned angle-change portions of the hole.

(3) On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet prior to or upon setting surface or intermediate casing, liners, and at total depth. Composite directional surveys shall be prepared with the interval shown from the bottom of the conductor casing or, in the absence of conductor casing, from the bottom of the drive or structural casing to total depth. In

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calculating all surveys, a correction from the true north to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey including a listing of the directionally computed inclinations and azimuths on a well classified as vertical will be acceptable as fulfilling the applicable requirements of this paragraph.

(4) Wells are classified as vertical if inclination does not exceed an average of 3 degrees from the vertical. If that inclination is exceeded, wells are classified as directional.

(5) The Regional Supervisor at the request of a holder of an adjoining lease may, for the protection of correlative rights, furnish a copy of the directional survey to that leaseholder.

(f) *Fixed drilling platforms.* Applications for installation of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with the provisions of Subpart I, Platforms and Structures, of this part. Mobile drilling units which have their jacking equipment removed or have been otherwise immobilized are classified as fixed drilling platforms.

(g) *Crane Operations.* Cranes installed on fixed drilling platforms shall be operated and maintained in accordance with the provisions of API RP 2D to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operators qualified in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years.

§ 250.52 Welding and burning practices and procedures.

(a) *General requirements.* (1) For the purpose of this rule, the terms "welding" and "burning" are defined to include arc or acetylene cutting and arc or acetylene welding.

(2) All offshore welding and burning shall be minimized by onshore fabrication when feasible. The requirements set forth in paragraphs (b), (c), and (d) of this section shall be applicable to any welding or burning practice or procedure performed on the following:

(i) An offshore mobile drilling unit during the drilling mode,

(ii) A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity,

(iii) A platform, structure, artificial island, or other installation during any drilling, well-completion, well-workover, or production operation, and

(iv) A platform, structure, artificial island, or other installation which contains a well open to a hydrocarbon-bearing zone.

(3) All water-discharge-point sources from hydrocarbon-handling vessels shall be monitored in order to stop welding and burning operations in case flammable fluids are discharged as a result of equipment upset or malfunction.

(b) *Welding, burning, and hot tapping plan.* Each lessee shall file for approval by the District Supervisor a "Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan" prior to beginning the first drilling and/or production operations on a lease. The plan shall include the qualification standards or requirements for personnel and the methods by which the lessee will assure that only personnel meeting such standards or requirements are utilized. A copy of this plan and approval letter shall be available on the facility where the welding is conducted. Any person designated as a welding supervisor shall be thoroughly familiar with this plan. An approved plan is required prior to conducting any welding, burning, or hot tapping operation. All welding and burning equipment shall be inspected by the welding supervisor or the lessee's designated person in charge prior to beginning any welding, burning, or hot tapping. All engine-driven welding machines shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition, oxygen and acetylene bottles shall be secured in a safe place, and leak-free hoses shall be equipped with proper fittings, gauges, and regulators.

(c) *Designated safe-welding and burning areas.* The lessee shall establish and designate areas determined to be safe-welding areas. These designated areas shall be identified in the plan, and a drawing showing the location of these areas shall be maintained on the facility.

(d) *Undesignated welding and burning areas.* All welding and burning, which cannot be done in an approved safe-welding area, shall be performed in compliance with the following:

(1) Prior to the commencement of any of these operations, the lessee's designated person in charge at the installation shall inspect the qualifications of the welder(s) to assure that the welder(s) is properly qualified in accordance with the lessee-approved qualification standards or requirements for welders. The designated person in charge and the welder(s) shall inspect the work area for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the designated person in charge shall issue a written authorization for the work,

(2) During these operations, one or more persons shall be designated as a Fire Watch. The person(s) assigned as a Fire Watch shall have no other duties while operations are in progress. If the operation is to be in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during such operation,

(3) Prior to any of these operations, the Fire Watch shall have in his/her possession firefighting equipment in a usable condition,

(4) No such operation, other than approved hot tapping, shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered inert and are determined to be safe for welding or burning by the designated person in charge,

(5) If drilling, workover, or wireline operations are in progress, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) where these operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the well bore is precluded, and

(6) If such operations are conducted in the well-bay or production area, all producing wells shall be shut in at the surface safety valve.

§ 250.53 Electrical equipment.

The following requirements shall be applicable to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities:

(a) All engines with electrical ignition systems shall be equipped with a low-tension ignition system of low-fire-hazard type and shall be designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture.

(b) All areas shall be classified in accordance with American Petroleum Institute (API) Recommended Practice (RP) for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms (API RP 500B).

(c) All electrical installations shall be made in accordance with API RP 14F for Design and Installation of Electrical Systems for Offshore Production Platforms, except Sections 7.4, Emergency Lighting and 9.3, Aids to Navigation Equipment.

(d) Maintenance of electrical systems shall be by personnel who are trained and experienced with the area classifications, distribution system, performance characteristics and operation of the equipment, and with the hazards involved.

§ 250.54 Well casing and cementing.

(a) *General requirements.* (1) For the purpose of this subpart, the several casing strings in order of normal installation are the following:

(i) Drive or structural,
(ii) Conductor,
(iii) Surface,
(iv) Intermediate, and
(v) Production casing.

(2) The lessee shall case and cement all wells with a sufficient number of strings of casing in a manner necessary to prevent release of fluids from any stratum through the wellbore (directly or indirectly) into the sea, prevent communication between separate hydrocarbon-bearing strata, protect freshwater aquifers from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids. Cement composition, placement techniques, and waiting time shall be designed and conducted so that the cement in place behind the bottom 500 feet of casing or total length of annular cement fill, if less, attains a minimum compressive strength of 500 pounds per square inch (psi).

(3) The lessee shall install casing designed to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof. Safety factors in the casing program design shall be of sufficient magnitude to provide well control during drilling and to assure safe operations for the life of the well. Any portion of an annulus opposite a permafrost zone which is not protected by cement shall be filled with a liquid which has a freezing point below the minimum permafrost temperature to prevent internal freezeback and which is treated to minimize corrosion.

(4) In cases where cement has filled the annular space back to the mud line, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment if the District Supervisor determines that subsurface protection against damage to freshwater aquifers and permafrost zones and against damage caused by adverse loads, pressures, and fluid flows is not jeopardized.

(5) If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temperature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall recement or take other remedial actions as approved by the District Supervisor.

(6) A pressure-integrity test shall be run below the surface casing, the intermediate casing(s), and the liner(s) used as intermediate casing(s). The District Supervisor may require a pressure-integrity test to be run at the conductor casing shoe due to local geologic conditions or planned casing setting depths. These tests shall be made after drilling new hole below the casing shoe and before drilling no more than 50 feet of new hole below a respective casing string and shall be conducted either by testing to formation leak-off or by testing to a predetermined equivalent mud weight as specified in the approved APD. Pressure-integrity and pore-pressure test results and related hole-behavior observations, such as gas-cut mud and well kicks made during the course of drilling, shall be used in planning the mud program and the setting depth of the next casing string. The results of all tests and of hole-behavior observations made during the course of drilling related to formation integrity and pore pressure shall be recorded in the driller's report.

(b) *Drive or structural casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth of 100 feet below the mud line or to such other depths, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, a quantity of cement sufficient to fill the annular space back to the mud line shall be used.

(c) *Conductor and surface casing setting and cementing requirements.*—(1) *Conductor and surface casing setting depths.* Conductor and surface casing design and setting depths shall be based upon relevant engineering and geologic factors including the presence or absence of hydrocarbons, potential hazards, and water depths. The proposed casing setting depths may be varied subject to District Supervisor approval to permit the casing to be set in a competent formation or through formations determined desirable to be isolated from the wellbore by casing for safer drilling operations. However, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas or, if unknown, upon encountering such formations. Upon encountering unexpected formation pressures, the lessee shall submit a revised casing program to the District Supervisor for approval. The District Supervisor may waive the requirements for setting conductor casing at a well location provided an approved logging and mud-monitoring program of a previously drilled correlatable well demonstrates the absence of shallow hydrocarbons or hazards.

(2) *Conductor casing cementing requirements.* Conductor casing shall be cemented with a quantity of cement that fills the calculated annular space back to the ocean floor except as applicable to the bottom of an excavation (glory hole) or to the surface of an artificial island. Cement fill shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible, additional quantities of cement shall be used to assure fill to the mud line.

(3) *Surface casing cementing requirements.* (i) Surface casing shall be cemented with a quantity of cement that fills the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near surface fractures and faulting exist, surface casing shall be cemented with a quantity of cement that fills the calculated annular space to the mud line, or as approved by the District Supervisor.

(ii) For floating drilling operations, a lesser volume of cement may be used to prevent sealing the annular space between the conductor casing and surface casing if the District Supervisor determines that the uncemented space is necessary to provide protection from burst and collapse pressures which may be applied inadvertently to the annulus between casings during blowout preventer (BOP) testing operations. Any annular space open to the drilled hole shall be sealed in accordance with the regulations for abandonment in Subpart G of this part.

(d) *Intermediate casing setting and cementing requirements.* (1) Intermediate casing string(s) shall be set for protection when geologic characteristics, wellbore conditions, or limitations of the drilling unit capability as anticipated or as encountered so indicate.

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(2) Quantities of cement that cover and isolate all hydrocarbon zones in the well and isolate abnormal pressure intervals from normal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 500 feet above the zones to be isolated or 500 feet above the casing shoe in cases where zonal coverage is not required.

(3) If a liner is used as an intermediate string, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for intermediate casing. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

(e) *Production casing.* (1) Production casing shall be cemented to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a volume sufficient to fill the annular space at least 500 feet above the uppermost hydrocarbon-bearing zone shall be used.

(2) When a liner is used as production casing below intermediate casing, it shall be lapped a minimum of 100 feet into the previous casing string and cemented as required for the production casing.

§ 250.55 Pressure testing of casing.

(a) Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure tested to 70 percent of the minimum internal-yield pressure of the casing. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run and the casing tested again. The above remedial actions shall be repeated until a satisfactory test is obtained. All casing pressure tests shall be recorded in the driller's report.

(b) Each liner lap shall be tested to 70 percent of the minimum internal-yield pressure of the casing into which the liner is lapped. The test shall be recorded on the driller's report. If the test indicates an improper seal, the top of the liner shall be squeeze cemented.

(c) In the event of prolonged drill-pipe rotation within a casing string run to the surface or extended operations such as milling, fishing, jarring, and washing over which could cause damage to the casing, the casing shall be pressure tested or evaluated by a logging technique such as a caliper every 30 days and the results submitted to the District Supervisor in the interest of assuring that integrity of the casing has not deteriorated to unsafe levels for service during drilling operations and over the life of the well.

(d) After cementing any string of casing other than structural, drilling shall not be resumed until there has been a time lapse of 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are shown to be holding the cement in place or when other means of holding pressure are used.

§ 250.56 Blowout preventer systems and system components.

(a) *General.* The BOP systems and system components shall be designed, installed, used, maintained, and tested to assure well control.

(b) *BOP stacks.* The BOP stacks shall consist of an annular preventer and the number of ram-type preventers as specified under paragraphs (e)(1), (f), and (g) of this section. The pipe rams shall be of proper size to fit the drill pipe in use.

(c) *Working pressure.* The working-pressure rating of any BOP shall exceed the surface pressure to which it may be anticipated to be subjected, except that the rated working pressure of the annular preventer need not exceed 5,000 psi. In the interest of well-control assurance, the District Supervisor may require a higher working pressure for the annular preventer upon a determination that the anticipated or actual well conditions place working-pressure demands on the annular preventer above 5,000 psi.

(d) *BOP equipment.* All BOP systems shall be equipped and provided with the following:

(1) An accumulator system which shall provide sufficient capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure,

(2) A backup to the accumulator system which shall be automatic, supplied by a power source independent from the power source to the required accumulator system, and possess sufficient capability to close the BOP and hold it closed.

(3) At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor,

(4) A drilling spool with side outlets if side outlets are not provided in the BOP body to provide for separate kill and choke lines,

(5) A choke line and a kill line each equipped with two full-opening valves. At least one of the valves on each choke line and the kill line shall be remotely controlled,

(6) A fill-up line above the uppermost preventer,

(7) A choke manifold designed with consideration of anticipated formation and surface pressures, method of well control to be employed, surrounding environment and corrosiveness, volume, and abrasiveness of fluids. The choke manifold shall also meet the following requirements:

(i) Manifold and choke equipment subject to well and/or pump pressure shall have a rated working pressure at least as great as the rated working pressure of the ram-type BOPs,

(ii) All components of the choke manifold system shall be protected from freezing by heating, draining, or filling with proper fluids, and

(iii) When buffer tanks are installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together, isolation valves shall be installed on each line.

(8) Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold shall have a pressure rating at least as great as the rated working pressure of the ram-type BOP's,

(9) A wellhead assembly with a rated working pressure at least as great as the minimum internal-yield pressure of the last full casing string, and

(10) The following system components:

(i) A kelly cock installed below the swivel (upper kelly cock), an essentially full-opening valve and a similar valve of such design that it can be run through the BOP stack installed at the bottom of the kelly (lower kelly cock), and a wrench to fit each valve stored in a location readily accessible to the drilling crew,

(ii) An inside BOP and an essentially full-opening, drill-string safety valve in the open position on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew,

(iii) A safety valve available on the rig floor assembled with the proper connection to fit the casing string being run in the hole, and

(iv) Locking devices installed on the ram-type preventers.

(e) *Subsea BOP requirements.* (1) Prior to drilling below surface and intermediate casing, BOP stacks shall be installed consisting of at least four remote-controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind-shear rams, and one annular type. A subsea accumulator-type closing unit shall be installed to provide fast closure of the BOP's and to operate all critical functions in case of loss of power fluid connection to the surface. When proposed casing setting depths or local geology dictate the use of a BOP to provide safety during the drilling of the surface hole, the District Supervisor may require that a subsea BOP stack be installed prior to drilling below the conductor casing.

(2) The BOP system shall include operable dual-pod control systems when drilling below the surface casing. Each control pod shall contain all valves and regulators necessary to ensure proper and independent operation of the BOP stack functions and to prevent movement of the hydraulic fluid between the two control pods.

(3) Prior to the removal of the marine riser, the riser shall be displaced with seawater. Sufficient hydrostatic pressure shall be maintained within the wellbore to compensate for the reduction in pressure and to maintain a safe well condition.

(4) Any necessary repair or replacement of the BOP stack after installation shall be accomplished under safe conditions, such as after casing has been cemented but prior to drilling out the casing shoe or by setting a cement plug, bridge plug, or a packer.

(5) When a subsea BOP stack is to be used in an area which is subject to ice scour, the BOP stack shall be placed in an excavation (glory hole) with the top of the BOP stack below the deepest probable ice-scour depth.

(f) *Surface BOP requirements.* Prior to drilling below surface and intermediate casing, a BOP stack shall be installed consisting of at least four remote-controlled, hydraulically operated BOP's including at least two equipped with pipe rams, one with blind rams, and one annular type.

(g) *Tapered drill-string operations.* (1) Prior to commencing tapered drill-pipe operations, the BOP stack shall be equipped with conventional and/or variable-bore pipe rams installed in two or more ram cavities to provide the following:

(i) Two sets of pipe rams capable of sealing around the larger sized string, and

(ii) One set of pipe rams capable of sealing around the smaller sized string.

(2) Subsea BOP stacks shall have blind-shear ram capacity. Surface BOP stacks shall have blind ram capacity.

(3) Surface BOP stacks which employ only two sets of conventional pipe rams and which are capable of sealing only around the larger sized pipe are acceptable, provided that blind-shear ram capacity is present and a crossover sub to the larger sized pipe is readily available on the rig floor.

§ 250.57 Blowout preventer systems tests, actuations, inspections, and maintenance.

(a) Prior to conducting high-pressure tests, all BOP stacks shall be tested to a low pressure of 200 to 300 psi.

(b) Surface ram-type BOP's and the choke manifold shall be pressure tested to no less than 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be pressure tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less.

(c) Subsea BOP stacks shall be stump pressure tested at the surface with water to their rated working pressure, except that the annular-type BOP shall not be pressure tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the seafloor, the pipe rams and choke manifold shall be pressure tested to no less than 70 percent of the minimum internal-yield pressure of the casing.

(d) In conjunction with the weekly pressure test of surface and subsea BOP stacks, the choke manifold valves, upper and lower kelly cocks, inside BOP, and the drill-string safety valves shall be pressure tested to pipe-ram test pressures. Casing safety valves shall be actuated prior to running casing.

(e) Surface and subsea BOP stacks shall be pressure tested as follows:

(1) When installed,

(2) Before drilling out each string of casing,

(3) At least once each week, but not exceeding 7 days between pressure tests, alternating between control stations and pods. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between BOP tests is allowed when well operations which prevent pressure testing, such as stuck drill pipe and well-control operations and remedial efforts are being performed, provided that the pressure tests are conducted as soon as possible before normal operations resume and the reason for postponing pressure testing is entered into the driller's report. Pressure testing shall be performed at intervals to allow each drilling crew to operate the equipment. The weekly pressure test is not required for blind and blind-shear rams. These rams need be pressure tested only when installed and prior to drilling out after each casing string has been set.

(4) Blind and blind-shear rams shall be actuated at least once every 7 days. Closing pressure on the blind and blind-shear rams greater than that necessary to indicate proper operation of the rams is not required,

(5) Variable bore-pipe rams shall be pressure-tested against both sizes of pipe, and

(6) Following the disconnection or repair of any well-pressure containment seal in the wellhead/BOP stack assembly.

(f) All BOP systems and marine risers shall be inspected and maintained to assure that the equipment will function properly. The manufacturer's recommended inspection and maintenance procedures are acceptable as guidelines in complying with this requirement. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of BOP systems and marine risers may be accomplished by the use of television equipment.

(g) The results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine risers shall be recorded in the driller's report.

§ 250.58 Well-control drills.

(a) Well-control drills shall be conducted for each drilling crew in accordance with the requirements in § 250.68(k) concerning well-control training.

(b) A well-control drill may be required by an MMS-authorized representative at any time during the drilling operations after notifying and consulting with the lessee's senior representative present.

§ 250.59 Diverter systems.

(a) When drilling a conductor and surface hole, all drilling units shall be equipped with a diverter system consisting of a diverter sealing element, diverter lines, and control systems unless otherwise approved by the District Supervisor for floating drilling operations. The diverter system shall be designed, installed, and maintained so as to divert gases, water, mud, and other materials away from the facilities and from personnel.

(b) No later than [insert 1 year from the effective date of these regulations], diverter systems shall be in compliance

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with the requirements of this section. The requirements applicable to diverters which were in effect immediately prior to the effective date of these regulations shall remain in effect until the diverter systems are in compliance with the requirements of this section.

(c) The diverter system shall be equipped with remote-control valves in the flow lines that can be operated from at least one remote-control station in addition to the one on the drilling floor. All valves with automatic actuators shall be fail-safe open, and any valve used in a diverter system shall be full-opening. The use of manual and butterfly valves in a diverter system is prohibited. There shall be no more than two turns in any flow path downstream of the spool outlet flange with a minimum radius of curvature in any turn of three pipe diameters. Flexible hose may be used for diversion lines instead of rigid pipe if the flexible hose has integral end couplings. The entire diverter system shall be firmly anchored and supported. Diverter system controls and control lines shall be protected from damage at all times.

(d) For drilling operations conducted with a surface BOP configuration, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 10 inches, except that dual spool outlets are acceptable provided that each outlet has a minimum internal diameter of 8 inches and that both outlets are piped to overboard lines and that each line downstream of the changeover nipple at the spool has a minimum internal diameter of 10 inches.

(e) For drilling operations conducted where a floating or semisubmersible type of drilling vessel is used and drilling fluids are circulated to the drilling vessel, the following shall apply:

(1) If the diverter system utilizes only one spool outlet, branch lines shall be installed to provide downwind diversion capability, and

(2) No spool outlet or diverter line internal diameter shall be less than 12 inches.

(f) The diverter sealing element, diverter valves, and diverter control systems (including the remote) shall be actuation-tested, and the diverter lines shall be tested for flow prior to spudding, and thereafter at least once each 24-hour period alternating between control stations. All test results shall be recorded in the driller's report.

(g) Diverter systems and components for use in subfreezing conditions shall be suitable for use under these conditions.

§ 250.60 Mud program.

(a) *General requirements.* The quantities, characteristics, use, and testing of drilling mud and the related drilling procedures shall be designed and implemented to prevent the loss of well control.

(b) *Mud control.* (1) Before starting out of the hole with drill pipe, the mud shall be properly conditioned by circulation with the drill pipe just off bottom to the extent that the annular volume is displaced. This procedure may be omitted if proper documentation in the driller's report shows the following:

(i) There is no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole,

(ii) The weight of the returning mud is essentially the same as the weight of the mud entering the hole. In the event that the returning mud is lighter than the entering mud by a weight differential equal to or greater than 0.2 pounds per gallon (1.5 pounds per cubic foot), the mud shall be circulated until the annular volume is displaced, and the mud properties shall be checked for the influx of gas or liquid, and

(iii) Other mud properties recorded on the daily drilling log are within the specified ranges required by the mud program.

(2) When mud in the hole is circulated, the driller's report shall be so noted.

(3) When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure 75 psi or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted near the driller's station. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

(4) Pipe and downhole tool running and pulling speeds shall be at controlled rates so as not to induce an influx of formation fluids from the effects of swabbing nor cause a loss of drilling fluid hydrostatic pressure from the effects of surging.

(5) When there is an indication of swabbing or influx of formation fluids, the safety devices and measures necessary to control the well shall be employed. The mud shall be circulated and conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

(6) For each casing string, the maximum pressure to be contained under the BOP, before controlling excess pressure by bleeding through the choke, shall be posted near the driller's control panel.

(7) In areas where permafrost and/or hydrate zones may be present or are known to be present, mud temperatures shall be controlled to drill safely through those zones.

(8) An operable degasser shall be installed in the mud system prior to commencement of drilling operations. The degasser shall be maintained for use throughout the drilling and completion of the well.

(9) The mud in the hole shall be circulated or reverse-circulated prior to pulling the drill-stem test tools from the hole.

(c) *Mud-testing and monitoring equipment.* (1) Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with industry-accepted practices and shall include mud density, viscosity and gel strength, hydrogenion concentration (ph), filtration, and other tests as may be deemed necessary by the District Supervisor in the interests of monitoring and maintaining mud quality for safe operations, prevention of downhole equipment problems, and for kick detection. The results of the test shall be recorded in the driller's report.

(2) The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

(i) Recording mud-pit level indicator to determine mud-pit volume gains and losses. This indicator shall include both a visual and an audible warning device,

(ii) Mud-volume measuring device to accurately determine mud volumes required to fill the hole on trips,

(iii) Mud-return indicator to determine whether returns essentially equal the pump discharge rate. This indicator shall include both a visual and an audible warning device, and

(iv) Gas-detecting equipment to monitor the drilling mud returns with indicators located in the mud-logging compartment or on the rig floor. If the indicators are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned. If the indicators are on the rig floor only, an audible alarm shall be installed.

(d) *Mud quantities.* (1) Quantities of mud and mud materials at the drill site shall be utilized, maintained, and replenished as necessary to ensure well control. Those quantities shall be based on known or anticipated drilling conditions to be encountered, rig storage capacity, weather conditions, and estimated time for delivery.

(2) Daily inventories of mud and mud materials including weight materials and additives at the drill site shall be recorded and records maintained at the well site.

(3) Drilling operations shall be suspended in the absence of sufficient quantities of mud and mud materials to maintain well control.

(e) *Safety precautions in enclosed mud-handling areas.* Enclosed mud-handling areas where dangerous concentrations of combustible gases may accumulate shall be equipped with a ventilation system and with gas monitors. These enclosed areas shall meet the following requirements after [insert date 1 year after the effective date of these regulations]. The following requirements in effect immediately prior to the effective date of these regulations shall continue in effect for 1 year after such date:

(1) Be ventilated with high-capacity mechanical ventilation systems capable of replacing the air within the enclosed area once every 5 minutes on signal from gas detectors that are operative at all times, indicating the presence of 1 percent or more of gas by volume,

(2) Be maintained at a negative pressure relative to the surrounding areas where discharge to an adjacent enclosed area may be hazardous. The negative-pressure areas are to be protected with a pressure-sensitive alarm,

(3) Be fitted with gas detectors and alarm, and

(4) Be equipped with either explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressurizing, the air intake shall be located outside of, and as far as practicable from, hazardous areas.

§ 250.61 Well security.

A downhole safety device such as a cement plug, bridge plug, or packer shall be timely installed when drilling operations are interrupted by events such as those which force evacuation of the drilling crew, prevent station keeping, or require repairs to major drilling unit or well-control equipment. In floating drilling operations, the use of blind-shear rams may be approved by the District Supervisor in lieu of the above requirements if supported by evidence of special circumstances and/or the lack of sufficient lead time.

§ 250.62 Field drilling rules.

When geological and engineering information obtained from drilling operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative, or in response to a request from a lessee, field drilling rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field drilling rules have been established, development wells to which such rules apply shall be drilled in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field drilling rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the approval of a request by a lessee.

§ 250.63 Supervision, surveillance, and training.

(a) The lessee shall provide onsite supervision of drilling operations on a 24-hour basis.

(b) From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with BOP's, bridge plugs, packer, or cement plugs.

(c) Lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of § 250.68 concerning well-control. Records of specific training and refresher courses successfully completed, the dates of completion, and the names and dates of the courses shall be maintained at the drill site.

§ 250.64 Applications for permit to drill, deepen, or plug back.

(a) Prior to drilling under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, the lessee shall file a Form MMS-331C, APD, with the District Supervisor for approval. Prior to commencing operations, written approval from the District Supervisor must be received by the lessee unless oral approval has been given.

(b) The APD's from mobile drilling units shall include the following:

(1) An identification of the maximum environmental and operational conditions the rig is designed to withstand,

(2) Current vessel certification documentation with operational limitations in the form of an American Bureau of Shipping classification or other appropriate classification and either a U.S. Coast Guard Certificate of Inspection (U.S.-flag vessels) or a U.S. Coast Guard Letter of Compliance (foreign-flag vessels),

(3) The design and operating limitations beyond which suspension, curtailment, or modification of the drilling or rig operations are required (e.g., vessel motion, offset, riser angle, anchor tensions, wind speed, wave height, currents, icing or ice-loading, settling, tilt or lateral movement, resupply capability) and contingency plans to be followed in the event the design or operating limitations are reached or exceeded, and

(4) A program which provides for safety in drilling operations where a floating or semisubmersible type of drilling vessel is used and formation competency at the structural and/or conductor casing setting depth(s) is (are) not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor and/or surface hole. This program shall include all known pertinent information including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to the proposed conductor and/or surface casing seat(s), and the contingency plan for moving off location.

(c) The APD's shall include rated capacities of the proposed drilling unit and of major drilling equipment.

(d) In those areas which are subject to subfreezing conditions, the lessee shall furnish evidence that the drilling equipment, drilling safety systems, diverter systems, and other associated equipment and materials are suitable for drilling operations under these conditions.

(e) After a drilling unit has been approved for use in a Region, the information listed in paragraphs (b) (1), (2), and (3), (c), and (d) of this section above need not be resubmitted unless required by the District Supervisor or there are changes in equipment that affect the rated capacity of the unit.

(f) An APD shall include the following in addition to a fully completed Form MMS-331C:

(1) A plat, drawn to a scale of 2,000 feet to the inch, showing the surface and subsurface location of the well to be drilled and of all the wells previously drilled in the vicinity from which

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information is available. Locations shall be indicated in feet from the block line.

(2) The design criteria considered for the well and for well control, including the following:

(i) Pore pressures,

(ii) Formation fracture gradients,

(iii) Potential lost circulation zones,

(iv) Mud weights,

(v) Casing setting depths,

(vi) Anticipated surface pressure (which for purposes of this section are defined as the surface well pressure which can reasonably be expected to be exerted upon a casing string and its related wellhead equipment). In the calculation of anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. The lessee shall consider mud densities to be used below various casing strings, fracture gradients of the exposed formations, casing setting depths, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressure the calculations used to determine this pressure during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design.

(vii) If a shallow hazards site survey is conducted, the lessee shall submit with or prior to the submittal of the APD, two copies of a summary report describing the geological and manmade conditions present. The lessee shall also submit two copies of the site maps and data records identified in the survey strategy, and

(viii) Permafrost zones, if applicable.

(3) A BOP equipment program including the following:

(i) A pressure rating of BOP equipment,

(ii) A well-control procedure for use of the annular preventer for those wells where the anticipated surface pressure exceeds the rated working pressure of the annular preventer,

(iii) A description of subsea BOP accumulator system or other type of closing unit proposed,

(iv) A dimensioned schematic drawing of the diverter system to be used (plan and elevation views) showing spool outlet internal diameter(s); diverter line lengths, burst strengths, and radius of curvature at each turn; valve type, working pressure rating, and location; the control instrumentation logic; and the operating procedure to be used by personnel, and

(v) A schematic drawing of the BOP stack showing the inside diameter of the BOP stack, and the number of annular, pipe ram, variable-bore pipe ram, blind ram, and blind-shear ram preventers.

(4) A casing program including the following:

(i) Casing size, weight, grade and setting depth,

(ii) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values, and

(iii) In areas containing permafrost, casing programs that incorporate setting depths for conductor and surface casing based on the anticipated depth of the permafrost at the proposed well location and which utilize the current state-of-the-art methods to safely drill and set casing. The casing program shall provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control until the next string of casing is set.

(5) The drilling prognosis including the following:

(i) Plans for coring at specified depths,

(ii) Plans for logging,

(iii) Estimated depths to the top of significant marker formations, and

(iv) Estimated depths at which encounters with water, oil, and gas are expected.

(6) A cementing program including type and amount of cement in cubic feet to be used for each casing string,

(7) A mud program including the minimum quantities of mud and mud materials, including weight materials, to be kept at the site,

(8) A directional survey program for directional wells,

(9) A plot of the estimated pore pressures and formation fracture gradients and the proposed mud weights and casing setting depths on the same sheet,

(10) A Hydrogren Sulfide (H_2S) Contingency Plan, if applicable, and not submitted previously, and

(11) Such other information as may be required by the Regional Supervisor or District Supervisor.

(g) Public information copies of the APD shall be submitted in accordance with § 250.17.

§ 250.65 Sundry notices and reports on wells.

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS-331, Sundry Notices and Reports on Wells. Prior to commencing operations, written approval must be received from the District Supervisor unless oral approval has been obtained.

(b) The Sundry Notices and Reports on Wells submittal shall contain a detailed statement of the proposed work that will materially change the approved APD. Information submitted shall include the present status of the well, including the production string or last string of casing, the well depth, the present production zones and productive capability, and all other information specified on Form MMS-331. After completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) A Form MMS-331 with a certified plat shall be filed as soon as the well's final surveyed surface location, water depth, and the rotary kelly bushing elevation have been determined.

(d) Public information copies of Sundry Notices and Reports on Wells shall be submitted in accordance with § 250.17.

§ 250.66 Well records.

(a) The lessee shall keep at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor accurate and complete records for each well and of all well operations. The records shall contain a description of any significant malfunction or problem; all the formations penetrated; the content and character of oil, gas, and other mineral deposits and water in each formation; the kind, weight, size, grade, and setting depth of casing; all well logs and surveys run in the wellbore; and all other information required by the District Supervisor in the interests of resource evaluation, conservation, protection of correlative rights, safety, and environmental protection.

(b) When drilling operations are suspended, or temporarily prohibited, the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS-330, Well-Completion or Recompletion Report and Log, or Form MMS-331, as appropriate.

(c) Upon request by the Regional Supervisor or District Supervisor, the lessee shall furnish the following:

(1) Copies immediately of the records of any of the well operations specified in paragraph (a) of this section,

(2) Paleontological reports identifying microscopic fossils by depth unless washed samples of drilling cuttings, normally maintained by the lessee for paleontological determinations, are made available to the MMS for inspection,

(3) Copies of the daily drilling report showing the location, description, and status of all wells on leased lands, and

(4) Legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, testing, or other similar services.

(d) As soon as available, the lessee shall transmit copies (field or final prints of individual runs) of logs or charts of electrical, radioactive, sonic, and other well-logging operations, directional well surveys, and analyses of cores. Composite logs of multiple runs and directional well surveys shall be transmitted to the District Supervisor in duplicate as soon as available but not later than 30 days after completion of such operations for each well.

(e) If the drilling unit moves from the wellbore prior to completing the well, the lessee shall submit to the District Supervisor copies of the well records with completed Form MMS-330, Well-Completion or Recompletion Report and Log, within 30 days after moving from the wellbore.

(f) If the District Supervisor determines that circumstances warrant, the lessee shall submit any other reports and records of operations requested.

§ 250.67 Hydrogen sulfide.

(a) *Performance requirements and applicability.* (1) The lessee shall take all necessary precautions and measures to protect personnel from the toxic effects of H_2S and to mitigate the adverse effects of H_2S to property and to the environment.

(2) The requirements of this section apply, as appropriate, to drilling, well-completion, well-workover (including well-servicing), and production operations in zones known to contain H_2S and to drilling, well-completion, and well-workover operations in zones where the presence of H_2S is unknown. The requirements are not applicable to operations in zones where the absence of H_2S has been confirmed.

(b) *Definitions.* As used in this section, terms shall have the meanings given below:

"Facility" means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

"Well-control fluid" means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

"Zones known to contain H_2S" means geologic formations where prior drilling operations or logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that could potentially result in atmospheric concentrations of 20 parts per million (ppm) or more of H_2S.

"Zones where the absence of H_2S has been confirmed" means one of the following:

(1) Geologic formations where prior drilling operations or logging, coring, testing, or producing operations have indicated that H_2S-bearing zones have not been encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S,

(2) Geologic formations where analysis of produced gas samples have indicated the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, or

(3) An area in a geological province in which there has been no prior drilling but from prior drilling in the surrounding areas, it can be shown by correlation of geological and seismic data that continuous and homogeneous bedding exists with an absence of H_2S throughout the area to be drilled.

"Zones where the presence of H_2S is unknown" means geologic formations where neither the presence nor absence of H_2S has been confirmed.

(c) *Request for classification of probability of encountering H_2S during operations.* Prior to beginning operations in an area, the lessee shall submit to the District Supervisor for approval a request for determination as to whether the proposed operations will be in areas classified as "Zones known to contain H_2S," "Zones where the presence of H_2S is unknown," or "Zones where the absence of H_2S has been confirmed." The classification request shall be supported by a recommendation drawn from available information such as geologic and geophysical data and correlations, well logs, formation tests, cores, and analyses of formation fluids.

(d) *Drilling, well-completion, and workover operations in zones known to contain H_2S.* Drilling, well-completion, and well-workover operations in zones known to contain H_2S shall be conducted in accordance with the requirements of this paragraph and of paragraphs (h), (i), (j), (k), (l) (1) through (5), and (m) (1) through (12) of this section.

(e) *Drilling and well-completion operations in zones where the presence of H_2S is unknown.* When drilling or completing in zones where the presence of H_2S is unknown, only the requirements of paragraph (h) of this section shall apply. In the event that H_2S is encountered that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S, the requirements of paragraph (d) of this section shall apply.

(f) *Production operations in zones known to contain H_2S.* Production operations in zones known to contain H_2S shall implement the requirements in paragraphs (h), (l) (1) through (6), and (m) (7) through (16) of this section.

(g) *Simultaneous operations.* Any combination of drilling, well-completion, well-workover, and production operations conducted simultaneously shall implement all the requirements in this section applicable to each individual operation and in conformance with the coordinated Contingency Plan as required in paragraph (h)(1) of this section.

(h) *Personnel safety and protection.* The following requirements shall be implemented for personnel safety and protection.

(1) *Contingency Plan.* A Contingency Plan shall be submitted for approval to the District Supervisor prior to the commencement of operations and, as applicable, encompass simultaneous drilling, well-completion, well-workover, and production operations. A copy of the approved Contingency Plan shall be made available in the field area until operations are completed. The Contingency Plan shall include the following:

(i) Safety procedures and equipment, training, drills, and smoking rules,

(ii) Identity of the job position, title of the person responsible for the overall safety of personnel, and a description of the organization of assignments of functions, duties, and responsibilities of other identified job positions,

(iii) Duties, responsibilities, and operating procedures when the concentration of H_2S in the air has reached the following:

(A) 10 ppm level,

(B) 20 ppm level, and

(C) 50 ppm level.

(iv) Designation of briefing areas as locations for assembly of personnel during conditions of 20-ppm and 50-ppm concentrations. At least two briefing areas shall be established on each facility. The briefing area that is upwind of the H_2S source at any given time shall be the designated briefing area,

(v) Evacuation plan,

(vi) Agencies to be notified in case of an emergency, and

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(vii) A list of medical personnel and facilities including addresses and telephone numbers.

(2) *Training Program.* An onsite H_2S-safety training program shall be established that includes the following:

(i) All personnel whether regularly assigned, contracted for, or employed on an unscheduled basis shall be informed of the hazards of H_2S and of sulphur dioxide (SO_2) resulting from burning H_2S and instructed in the provisions for personnel safety contained in the Contingency Plan,

(ii) All personnel shall be instructed in the proper use of safety equipment which they may be required to use,

(iii) All personnel shall be informed of the location of protective-breathing apparatus, H_2S detectors and alarms, ventilation equipment, briefing areas, warning systems, evacuation procedures, and the direction of the prevailing winds,

(iv) All personnel shall be informed of the restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with ANSI Z88.2, practices for Respiratory Protection,

(v) Safety information shall be prominently posted on the facility and on vessels serving the facility,

(vi) A drill and training session shall be conducted for each crew prior to beginning operations and at least once during any subsequent 7-day period. Records of attendance shall be maintained on the facility until operations are completed,

(vii) Personnel shall be instructed in basic first-aid procedures applicable to victims of H_2S exposure. During all drills and training sessions, procedures for rescue and first aid for H_2S victims shall be addressed. Each facility shall have the following equipment readily available, and personnel shall be instructed as to the location and use of the following items:

(A) A first-aid kit of appropriate size and content for the number of personnel on the facility,

(B) Resuscitators complete with face masks, oxygen bottles, and spare oxygen bottles, and

(C) At least one litter or an equivalent device.

(vii) Personnel shall be informed of the meaning of all warning signals.

(3) *Visible warning system.* Visible warning systems shall comply with the following:

(i) Wind-direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the facility, the wind direction at all times to determine safe upwind areas in the event that H_2S or SO_2 is present in the vicinity, and

(ii) Operational danger signs shall be displayed from each side of the facility and a sufficient number of rectangular red flags shall be hoisted in a manner visible to watercraft and aircraft, and shall comply with the following:

(A) Each sign shall be of a minimum width of 8 feet and a minimum height of 4 feet and shall be a high-visibility yellow color with black lettering of a minimum of 12 inches in height reading as follows:

DANGER—HYDROGEN SULFIDE—H_2S

(B) Each red flag shall be of a minimum width of 3 feet and a minimum height of 2 feet,

(C) All signs and flags shall be illuminated at night and under conditions of poor visibility, and

(D) Only signs shall be displayed in cases where the concentration in the air reaches 20 ppm. Signs and flags shall be displayed in cases where the concentration in the air reaches 50 ppm.

(4) *Audible warning system.* A public address system and a siren, horn, or other similar warning device shall be installed at appropriate locations on the facility. The warning devices shall be explosion-proof and shall be activated by the H_2S-detection and H_2S-monitoring equipment. When the warning devices are activated, the designated responsible person shall inform personnel of the level of danger and issue instructions on appropriate protective measures.

(5) *H_2S-detection and H_2S-monitoring equipment.* (i) Each facility shall have an H_2S-detection and H_2S-monitoring system which activates audible and visible alarms when the concentration of H_2S exceeds 20 ppm. This system shall be capable of sensing a minimum of 10 ppm of H_2S in the air with sensing points located at the bell nipple, shale shaker, well-control fluid pit area, driller's station, living quarters, and other areas which are low, poorly ventilated, or confined where H_2S might accumulate in hazardous quantities,

(ii) The H_2S-detection and H_2S-monitoring equipment shall be calibrated daily when drilling approaches a potential H_2S-bearing zone and at least once every 8 hours when drilling, well-completion, and/or well-workover operations are being conducted in an H_2S environment. The H_2S detectors for production operations shall be calibrated at least twice weekly. The calibration shall be conducted by a person trained to calibrate the particular H_2S-detection and H_2S-monitoring equipment being used. All calibrations shall be recorded in the driller's or production operations report as applicable, and

(iii) The H_2S-detection ampoules or any other comparable H_2S-monitoring devices capable of detecting 20 ppm shall be available for use by all personnel. After H_2S has been initially detected, frequent inspections of all areas of poor ventilation shall be made with a portable H_2S-detection instrument.

(6) *Protective-breathing apparatus.* Protective-breathing apparatus and their use shall conform to the following:

(i) Personnel on a facility operating in known or unknown H_2S and/or SO_2 zones shall have immediate access to pressure-demand-type respirators. The design, selection, use, and maintenance of these respirators shall conform to ANSI Z88.2, Practices for Respiratory Protection. Accessory equipment such as voice-transmission devices and spectacle kits shall be made available as needed,

(ii) The storage location of protective-breathing apparatus shall be quickly and easily accessible to all personnel,

(iii) All breathing-air bottles shall be labeled as containing breathing-quality air for human use,

(iv) Workboats attendant to facilities operating in known or unknown H_2S and/or SO_2 zones shall carry a pressure-demand-type respirator for each crew member. When 20 ppm or more of H_2S is detected, workboats shall be notified to move upwind and stay under power until the H_2S is brought under control at the source. In frontier areas, the District Supervisor may require additional breathing-air equipment on workboats,

(v) Helicopters attendant to facilities operating in known H_2S zones shall carry pressure-demand-type respirators for the pilots. Facilities operating in unknown H_2S and/or SO_2 zones shall store pressure-demand-type respirators on the heliport for the use of pilots and copilots, and

(vi) For drilling, well-completion, and well-workover operations, a system of breathing-air manifolds, hoses, and masks shall be provided on the rig floor and in the briefing areas. A cascade air-bottle system shall be provided for the breathing-air manifolds and to refill individual protective-breathing apparatus bottles. The cascade air-bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air provided the compressor suction is located in an uncontaminated atmosphere.

(7) *Additional personnel-safety equipment.* The following additional personnel-safety equipment shall be available:

(i) Portable H_2S detectors,

(ii) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas,

(iii) Chalkboards and note pads for communication purposes located on the rig floor, shale-shaker area, the cement-pump rooms, well bay area, production processing equipment area, gas compressor area, and pipeline-pump area,

(iv) Bull horns and flashing lights, and

(v) Resuscitators.

(8) *Ventilation equipment.* All ventilation devices shall be explosion-proof and situated in areas where H_2S or SO_2 may accumulate. Movable ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H_2S or SO_2 vapors away from working personnel.

(9) *Notification of regulatory Agencies.* The MMS and U.S. Coast Guard shall be notified immediately in cases where the H_2S concentrations in the air have reached 20 ppm and 50 ppm levels.

(i) *Drilling, completion, and workover fluids program when operating in zones known to contain H_2S.*

(1) *Well-control fluid base.* Either water- or oil-base muds may be used in drilling formations containing H_2S.

(2) *Well-control fluid testing.* If water-base, well-control fluids are used, and if H_2S is detected by air sensors, either the Garrett-Gas-Train test or comparable test techniques for soluble sulfides shall be conducted immediately, and the results shall be compared with the readings of the other sensors. Personnel conducting the tests shall don protective-breathing apparatus conforming to paragraph (h)(6)(i) of this section.

(3) *Additives.* Sufficient quantities of additives for the control of H_2S, well-control fluid pH, and corrosion of equipment shall be maintained on the facility.

(i) *Scavengers.* When drilling within 100 feet of a known H_2S-bearing zone or when H_2S is detected, scavengers for control of H_2S shall be added to the oil- or water-base mud systems. Drilling shall be suspended until scavengers are circulated throughout the system,

(ii) *Control of pH.* Additives for the control of pH shall be added to water-base well-control fluids in sufficient quantities to maintain a pH of at least 10.0, and

(iii) *Corrosion inhibitors.* Additives for the control of corrosion shall be added to the well-control fluid system as needed.

(4) *Degassing.* Well-control fluids containing H_2S shall be degassed at the optimum location for the particular facility. The gases so removed shall be collected and burned in a closed flare system conforming to paragraph (m)(7) of this section.

(j) *Kick detection and well control.* In the event of a kick, the disposal of the well-influx fluids shall be accomplished by one of the following alternatives giving consideration to personnel safety, possible environmental damage, and possible facility well-equipment damage:

(1) Contain the well-fluid influx by shutting in the well and pumping the fluids back into the formation, or

(2) Control the kick by using appropriate well-control techniques to prevent formation fracturing in an open hole within the pressure limits of the well equipment (drill pipe, work string, casing, wellhead, BOP's, and related equipment). The disposal of H_2S and other gases shall be through pressurized or atmospheric mud-gas separator equipment depending on volume, pressure, and concentration of H_2S. The equipment shall be designed to recover well-control fluids and to vent to the atmosphere and burn the gases separated from the well-control fluid. The well-control fluid shall be treated to neutralize H_2S and restore and maintain the proper quality.

(k) *Well testing in an H_2S* zone. (1) Prior to initiation of a well test, safety meetings shall be conducted for all personnel who will be on the facility during the test. The meetings shall emphasize the use of personnel protective-breathing apparatus, first-aid procedures, and the Contingency Plan. Only competent personnel who are trained and are knowledgeable of the hazardous effects of H_2S shall be engaged in these tests.

(2) Well testing shall be performed with the minimum number of personnel in the immediate vicinity of the rig floor and with the appropriate test equipment to safely and adequately perform the test. During the test, H_2S levels shall be continuously monitored.

(3) All produced gases shall be vented and burned through a flare which meets the requirements of paragraph (m)(7) of this section. Gases from stored test fluids shall be vented into the flare outlet.

(4) Downhole test tools and wellhead equipment shall be suitable for H_2S service.

(5) Tubing suitable for H_2S service shall be used for well testing. Drill pipe shall not be used for well testing without the prior approval of the District Supervisor. When using a water cushion, it shall be thoroughly inhibited in order to prevent H_2S corrosion. The test string shall be flushed with treated fluid for this purpose after completion of the test.

(6) All surface test units and related equipment shall be designed for H_2S service.

(l) *Metallurgical properties of equipment for use in an H_2S zone*—(1) *General provisions.* Equipment used in H_2S environments shall be constructed of materials whose metallurgical properties resist or prevent sulfide stress cracking (also known as hydrogen embrittlement, stress corrosion cracking, and/or H_2S embrittlement). The metallurgical properties of the materials shall conform to NACE Standard MR-01-75, Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.

(2) *Casing and tubing.* Casing, tubing, couplings, flanges, and related equipment shall be designed for H_2S service as specified in Table 4, Acceptable API and American Society of Testing and Materials Specifications for Tubular Goods of NACE Standard MR-01-75. Approval of the District Supervisor is required prior to commencing field welding on such casing (except conductor and surface strings).

(3) *Wellhead, BOP's, and pressure-control equipment.* The BOP stack assembly, wellhead, pressure-control equipment, and related equipment such as bolts, nuts, flanges, bonnet covers, and clamp-type connectors shall conform to NACE Standard MR-01-75. However, the BOP's manufactured prior to April 1978, which are not in compliance with NACE Standard MR-01-75, may be used in an H_2S zone provided the BOP's incorporate the manufacturer's own design considerations for H_2S service.

(4) *Downhole well-security equipment.* Temporary downhole well-security devices such as retrievable packers and bridge plugs shall be designed for H_2S service.

(5) *Production equipment.* Equipment used when producing zones bearing H_2S shall be constructed of materials capable of resisting or preventing sulfide stress cracking.

(6) *Installation or modification.* The use of welding shall be kept to a minimum during the installation or modification of the producing facility. Weldments shall be annealed and stress relieved according to the requirements of NACE Standard MR-01-75.

(m) *General requirements when operating in an H_2S zone.*—(1) *Additional precautions after penetration of an H_2S-bearing zone.* The H_2S levels shall be continuously monitored in the work areas in addition to monitoring

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requirements in paragraph (h)(5)(i) during the following operations:

(i) When it is necessary to pull a wet string of drill pipe or workover string,

(ii) Circulating bottoms-up after a drilling break,

(iii) Cementing operations,

(iv) Logging operations, and

(v) Circulating to condition mud.

(2) *Coring operations.* When coring operations are conducted in H_2S-bearing zones, protective-breathing apparatus shall be worn by those personnel in the working area at least 10 stands in advance of retrieving the core barrel. Cores to be transported shall be sealed and marked for the presence of H_2S.

(3) *Logging operations.* Well-control fluid in use for logging operations shall be conditioned and treated to minimize the effects of H_2S on the logging equipment.

(4) *Stripping operations.* Displaced well-control fluid returns shall be monitored, and protective-breathing apparatus shall be worn by those personnel in the working area if H_2S is detected at levels of 20 ppm or above.

(5) *Gas-cut well-control fluid or well kick from H_2S-bearing zone.* Should a decision be made to circulate out a kick, protective-breathing apparatus shall be worn by those personnel in the working area prior to and subsequent to bottoms-up and during an extended-kill operation.

(6) *Drill-string and workover-string design and precautions.* Drill and workover strings shall be designed consistent with the anticipated depth, conditions of the hole, and reservoir environment to be encountered. Care shall be taken to minimize exposure of the drill or workover string to high stresses as much as is practical and consistent with well conditions. Proper handling techniques shall be employed to minimize notching and stress concentrations. Precautions shall be taken to minimize stresses caused by doglegs, improper stiffness ratios, improper torque, whip, abrasive wear on tool joints, and joint imbalance.

(7) *Flare system.* The flare outlet shall be of such diameter to allow easy nonrestricted flow of gas. Flare lines shall be located on the downwind side and as far from the facility as is feasible, taking into account the prevailing wind directions, the wake effects caused by the facility and adjacent structure(s), and the height of all such facilities and structures. The flare outlet shall be equipped with an automatic ignition system including a pilot-light gas source or an equivalent system. There shall be a backup ignitor for each flare. All vents from production process equipment, tanks, relief valves, burst plates, and similar devices shall be piped to the flare system.

(8) *Corrosion mitigation.* An effective means of controlling corrosion shall be used in both the downhole and surface portions of a production system. Specific corrosion monitoring and mitigating measures shall be taken in areas of unusually severe corrosion where accumulation of water and/or higher concentrations of H_2S exist.

(9) *Wireline lubricators.* Lubricators which may be exposed to fluids containing H_2S shall be of H_2S-resistant materials.

(10) *Fuel and/or instrument gas.* Gas containing H_2S shall not be used for fuel or instrument gas.

(11) *Instruments.* Metals used for instruments, sensing lines, and other safety-control devices shall be either externally coated or of H_2S-resistant materials if the metals are in an atmosphere with H_2S present in corrosive concentrations.

(12) *Threaded connections.* Threaded couplings and fittings shall have smooth-cut (free of galls) and tapered threads of appropriate lengths.

(13) *Elastomer seals.* All seals which may be exposed to fluids containing H_2S shall be of H_2S-resistant materials.

(14) *Water disposal.* Produced water disposed of by means other than subsurface injection shall be treated for removal of H_2S.

(15) *Deck drains.* Open deck drains shall be equipped with traps or similar devices to prevent backflow of H_2S gas into the atmosphere.

(16) *Sealed voids.* Precautions shall be taken to eliminate sealed spaces in piping designs (e.g., slip-on flanges, reinforcing pads) which can be invaded by atomic hydrogen when H_2S is present.

§ 250.68 Training in well control.

(a) *Training performance standard.* Personnel engaged in drilling activities on the OCS shall be trained in the use of well-control equipment, operations, and techniques to avoid hazards to personnel and property and to prevent pollution during drilling.

(b) *Personnel classifications.* The following drilling personnel shall be trained and qualified in accordance with the requirements of this section:

(1) Rotary helper,

(2) Derrickman,

(3) Driller,

(4) Toolpusher, and

(5) Operator's representative.

(c) *Training records.* Employers of personnel identified in paragraph (b) of this section shall maintain a record of training required by this section for each such employee and shall provide such employee with documentation of the successful completion of each training requirement of this section.

(d) *Training location.* Hands-on training and qualification drills required by this section for rotary helpers and derrickmen shall be performed at their job sites.

(e) *Rotary helper training.* Rotary helpers shall be trained in accordance with the following:

(1) The candidate shall receive general instructions on Government regulations that pertain to the work in regard to well-control activities. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(2) The candidate shall receive general instructions on BOP equipment consistent with the type of BOP stack utilized on the drilling rig upon which the candidate is employed. These instructions shall consist of the purpose, operation, and general care of the following:

(i) Annular BOP with and without diverter systems,

(ii) Diverter system,

(iii) Ram-type BOP,

(iv) Accumulator system,

(v) Drill string inside BOP,

(vi) Drill-string safety valve,

(vii) Kelly cock,

(viii) Choke manifold, and

(ix) In addition to the above, the candidate shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment:

(A) Mud-pit level indicator,

(B) Mud-volume measuring device,

(C) Mud-return indicator,

(D) Gas detector,

(E) Mud-gas separator, and

(F) Trip tank.

(3) The candidate shall receive instructions on the standard warning signals of kicks including, but not limited to, the following:

(i) Gain in pit volume and/or increase in mud-return rate,

(ii) Hole not taking proper amount of mud during trips, and

(iii) Well flowing with pump shutdown.

(4) The candidate shall receive hands-on training at the job site for well-control operations such as operation of the choke manifold, stand pipe, and mud-room valves which require settings for kill operations different from those used in normal drilling operations.

(f) *Derrickman training.* Derrickmen shall be trained in accordance with the following:

(1) The candidate shall have completed the training as a rotary helper or possess equivalent experience before enrolling in the derrickman course,

(2) The candidate shall receive general instructions on Government regulations that pertain to the work in regard to well-control activities. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive general instructions on BOP equipment consistent with the type of BOP stack utilized by the drilling rig upon which the candidate is employed. The candidate shall also receive instructions on the purpose, operation, and care of the following equipment:

(i) Equipment listed under paragraph (e)(2) of this section,

(ii) Degasser, and

(iii) Adjustable choke.

(4) The candidate shall receive general instructions on drilling fluids including the following:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing mud density.

(5) The candidate shall receive general instructions consistent with assigned duties on warning signals that indicate a kick or conditions that can lead to a kick such as, but not limited to, the following:

(i) Items in paragraph (e)(3) of this section,

(ii) Sloughing shale and its appearance at surface,

(iii) Drilling rate change,

(iv) Change in salinity,

(v) Change in flow properties of drilling fluid, and

(vi) Trip, connection, and background gas changes.

(6) The candidate shall receive hands-on training at the job site on the items covered in paragraph (e)(4) of this section and general instructions on well-killing operations.

(g) *Driller training.* Drillers shall be trained in accordance with the following:

(1) The candidate shall have completed training as a rotary helper and derrickman or possess equivalent experience before enrolling in the driller's course,

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on drilling fluids including the following:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing mud density.

(4) The candidate shall receive instructions on the major causes of kicks including the following:

(i) Failure to keep the hole full,

(ii) Swabbing effect of pulling the pipe,

(iii) Loss of circulation,

(iv) Insufficient density of drilling fluid,

(v) Abnormally pressured formations, and

(vi) Effect of too rapid lowering pipe in the hole.

(5) The candidate shall receive instructions on the importance of measuring the mud required to fill the hole during trips and methods for measuring and recording hole-fill volumes including such importance as it relates to shallow-gas conditions,

(6) The candidate shall receive instructions on the warning signals that indicate a kick or conditions that can lead to a kick including the following:

(i) Gain in pit volume,

(ii) Increase in return mud-flow rate,

(iii) Hole not taking proper amount of mud during trips,

(iv) Drilling rate change,

(v) Decrease in circulating pressure or increase in pump strokes,

(vi) Trip, connection, and background gas changes,

(vii) Gas-cut mud,

(viii) Water-cut mud or chloride change,

(ix) Sloughing shale and its appearance at the surface,

(x) Well flowing with pump shutdown, and

(xi) Change in flow properties of drilling fluid.

(7) The candidate shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including controlling a well with the BOP system, the choke manifold, and/or the diverter system. These instructions shall include the sequential steps to be followed consistent with the type of BOP stack utilized by the drilling rig on which the candidate is employed,

(8) The candidate shall receive instructions on one of the following constant bottomhole pressure methods of well control including those conditions which may be unique to either the surface- or subsea-BOP stack utilized by the drilling rig upon which the candidate is employed:

(i) Driller's method,

(ii) Wait and weight method,

(iii) Concurrent (circulate and weight) method, and

(iv) Other applicable constant bottomhole pressure methods.

(9) A complete well-killing exercise shall be carried out using a simulator or a model well.

(10) The candidate shall be instructed on well-control calculations and the reasons for their use including the following:

(i) Mud-density increase required to control kick,

(ii) Conversion between mud density and pressures and the importance of the conversions in understanding formation breakdown, particularly with shallow casing setting,

(iii) Drop in pump pressure as mud density increases during kill operations; relationships between pump pressure, pump rate, and mud density, and

(iv) Pressure limitations on casings.

(11) The candidate shall receive the following instructions on unusual well-control situations to include as a minimum:

(i) When drill pipe is off bottom,

(ii) When out of hole,

(iii) When lost circulation occurs,

(iv) When drill pipe is plugged,

(v) Excessive casing pressure, and

(vi) Hole in drill pipe.

(12) The candidate shall receive instructions on the following:

(i) Controlling shallow gas kicks,

(ii) Use of diverters, and

(iii) Use of marine risers (subsea candidates only).

(13) The candidate shall receive instructions on the installation, operation, maintenance, and testing of the BOP and diverter systems.

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(14) The candidate shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary equipment:

(i) Mud-pit level indicator,

(ii) Mud-volume measuring device,

(iii) Mud-return indicator,

(iv) Gas detector,

(v) Trip tank,

(vi) Mud-gas separator,

(vii) Degasser, and

(viii) Adjustable choke.

(15) The candidate shall receive instructions on proper accumulator precharge pressures and the relationship between precharge pressure, operating pressure, and usable volumes using appropriate problems including the maintenance of equipment.

(h) *Toolpusher training.* (1) The candidate shall have completed the training described in paragraph (g) of this section or possess the equivalent experience.

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate.

This material shall be kept current in accordance with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on the calculations required for well-control operations. Example calculations shall be practiced. The candidate shall also receive instructions on the calculation of equivalent pressures at the casing seat including the importance of casing-seat depth.

(4) The candidate shall receive instructions on the limitations of the various items of equipment which will be subjected to pressure and/or wear.

(5) The candidate shall receive instructions on the mechanics involved in various well-control situations including the following subjects:

(i) Gas-bubble migration and expansion,

(ii) Bleeding volume from a shut-in well during gas migration,

(iii) Excessive annular surface pressures,

(iv) Differences between a gas kick and a salt water and/or oil kick,

(v) Procedures and problems involved in stripping operations with drill pipe,

(vi) Special well-control techniques such as, but not limited to, barite plugs and cement plugs, and

(vii) Procedures and problems involved when experiencing loss circulation in well-killing operations.

(6) The candidate shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or equivalent simulation device.

(7) The candidate shall receive instructions on a diverter operation.

(8) The candidate shall receive instructions on the purpose and usage of closing units including the following:

(i) Charging procedures which include precharge and operating pressure,

(ii) Fluid volumes (usable and required),

(iii) Fluid pumps, and

(iv) Maintenance which includes charging fluid and inspection procedures.

(i) *Operator's representative.* (1) All candidates shall be familiar with the basic duties and training of the rotary helper, the derrickman, the driller, and the toolpusher during well-control situations.

(2) The candidate shall receive instructions on all applicable Government regulations that pertain to work in regard to well-control operations and equipment. Copies of the regulations or abstracts of pertinent sections shall be furnished to the candidate. This material shall be kept current with the revisions or additions to Government requirements. These instructions shall include the following as a minimum:

(i) Drilling procedures including field drilling rules,

(ii) Plugging and abandonment, and

(iii) Pollution and waste disposal.

(3) The candidate shall receive instructions on one of the constant bottomhole pressure methods of well control as set out under paragraphs (g)(8), (g)(9), and (g)(10) of this section. The candidate shall also receive instructions on the calculation of equivalent pressures at the casing seat including the importance of casing-seat depth.

(4) The candidate shall receive stripping and snubbing operations instructions on the use of the entire BOP system for working pipe in or out of a wellbore which is under well pressure.

(5) The candidate shall receive instructions on accepted practices used for detecting entry into abnormally pressured formations and the accompanying warning signals including the following:

(i) Penetration rate change,

(ii) Shale-density change,

(iii) Mud-chloride change,

(iv) Shale-cutting characteristics, and

(v) Trip, connection, and background gas changes.

(6) The candidate shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or equivalent simulation device.

(7) The candidate shall receive instructions on a diverter operation.

(j) *Qualification procedures.* No rotary helper, derrickman, driller, toolpusher, or operator's representative shall perform or participate in drilling operations on the OCS unless the qualification procedures of this section are met.

(1) *Rotary helpers* shall meet the following qualifications:

(i) A rotary helper candidate shall have satisfied the training criteria of paragraph (e) of this section within the first 6 months of initial employment,

(ii) A rotary helper candidate shall successfully complete a qualification test consisting of a crew performance drill that requires the rotary helper to carry out the assignment in a well-control drill within a prescribed time limit commensurate with anticipated operating circumstance, and

(iii) To maintain qualification, the candidate must participate in well-control drills, as prescribed in paragraph (k) of this section, and carry out the assignments within the time limit prescribed for the drill. The time required for the candidate to complete the drill shall be recorded on the driller's log. Appropriate documentation of initial qualification shall be furnished to the successful candidate.

(2) *Derrickmen* shall meet the following qualifications:

(i) The candidate shall have satisfied the criteria of paragraphs (f) and (j)(1) of this section,

(ii) A derrickman candidate shall successfully complete a qualification test consisting of a crew performance drill that requires the derrickman to carry out the assignment in a well-control drill within a prescribed time limit, and

(iii) To maintain the qualification, the candidate must participate in well-control drills, as prescribed in paragraph (k) of this section, and carry out the assignments within the time limit prescribed for the drill. The time required for the candidate to complete the drill shall be recorded on the driller's log. Appropriate documentation of initial qualification shall be furnished to the successful candidate.

(3) *Drillers* shall meet the following qualifications:

(i) The candidate shall have completed the training for rotary helper and derrickman or possess the equivalent experience and shall have completed the training identified in paragraph (g) of this section,

(ii) The candidate shall successfully complete written and/or verbal tests and hands-on demonstrations to verify that the candidate has a thorough understanding of the well-control equipment and techniques outlined in paragraph (g) of this section,

(iii) The candidate shall maintain qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (g) and (j)(3) of this section every 4 years, and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 8 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention using a test well or simulator during the intermediate period.

(iv) Test results shall be entered in the candidate's training record, and appropriate documentation shall be furnished the candidate upon successful completion.

(4) *Toolpushers* shall meet the following qualifications:

(i) The candidate shall have completed the training for driller or possess the equivalent experience and shall have completed the training requirements in paragraph (h) of this section,

(ii) The candidate shall successfully complete written and/or verbal tests and hands-on demonstrations to verify that the candidate has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (h) of this section,

(iii) The candidate shall maintain the qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (h) and (j)(4) of this section every 4 years; and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 6 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention and including the successful individual control of a well kick using a test well or simulator during the intermediate period.

(iv) Test results shall be recorded in the candidate's training file, and appropriate documentation shall be furnished the candidate upon successful completion.

(5) *Operators' representatives* shall meet the following qualifications:

(i) The candidate shall be familiar with the basic duties of rotary helper, derrickman, driller, and toolpusher during well-control operations and shall have completed the training requirements in paragraph (i) of this section,

(ii) The candidate shall successfully complete qualification tests and hands-on demonstrations to assure that the operator's representative candidate has a thorough understanding of the well-control equipment principles and practices in paragraph (i) of this section and is qualified to organize and direct a well-control operation,

(iii) The candidate shall maintain the qualification by the following:

(A) Successful repetition of the criteria set forth in paragraphs (i) and (j)(5) of this section every 4 years, and

(B) Successful completion of an annual refresher course in well-control operations consisting of a minimum of 8 hours and including instruction and training in the most recent improvements in equipment and methods for blowout prevention including the successful individual control of a well kick using a test well or simulator during the intermediate period.

(iv) Test results shall be recorded in the candidate's training file, and appropriate documentation shall be furnished the candidate upon successful completion.

(k) *Well-control drills.* (1) Drills shall be designed to acquaint each crew member with each member's function on the particular test station so each can perform it promptly and efficiently.

(2) A well-control drill plan, applicable to the particular site, shall be prepared for each crew member outlining the assignments each is to fulfill during the drill and establishing a prescribed time for the completion of each portion of the drill. A copy of the complete well-control drill plan shall be posted on the rig's floor and/or bulletin board.

(3) The drill shall be carried out during periods of activity selected to minimize the risk of sticking the drill pipe or otherwise endangering the operation. In each of these drills, the reaction time of participants shall be measured up to the point when the designated person is in the position to activate the closing sequence of the BOP. The total time for the crew to complete its entire pit drill assignment shall also be measured. This operation shall be recorded on the driller's log as "Well-Control Drill." All drills shall be initiated by the toolpusher through the raising of the float on the pit level device, activating the mud-return indicator, or their equivalent. This operation shall be performed at least once each week (well conditions permitting) with each crew. The drills shall be timed so they will cover a range of different operations which include on-bottom drilling and tripping. A diverter drill shall be developed and conducted in a similar manner for shallow operations.

(4) *On-bottom drilling.* A drill conducted while on bottom shall include the following as appropriate:

(i) Detect kick and sound alarm,

(ii) Position kelly and tool joints so connections are accessible from floor, but tool joints are clear of sealing elements in stack, stop pumps, check for flow, close in the well,

(iii) Record time,

(iv) Record drill pipe pressure and casing pressure,

(v) Measure pit gain and mark new level,

(vi) Estimate volume of additional mud in pits,

(vii) Weigh sample of mud from suction pit,

(viii) Check all valves on choke manifold and BOP stack for correct position (open or closed),

(ix) Check BOP stack and choke manifold for leaks,

(x) Check flow line and choke exhaust lines for flow,

(xi) Check accumulator pressure,

(xii) Prepare to extinguish sources of ignition,

(xiii) Alert standby boat or prepare safety capsule for launching,

(xiv) Place crane operator on duty for possible personnel evacuation,

(xv) Prepare to lower all escape ladders and prepare other abandonment devices for possible use,

(xvi) Determine materials needed to circulate out kick, and

(xvii) Time drill and enter drill report on driller's log.

(5) *Tripping pipe.* A drill conducted during a trip shall include the following as appropriate:

(i) Detect kick and sound alarm,

(ii) Install safety valve, close safety valve,

(iii) Position pipe, prepare to close annular preventer,

(iv) Install inside preventer, open safety valve,

(v) Record time,

(vi) Record casing pressure,

(vii) Check all valves on choke manifold and BOP stack for correct position (open or closed),

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(viii) Check for leaks on BOP stack and choke manifold,

(ix) Check flowline and choke exhaust lines for flow,

(x) Check accumulator pressure,

(xi) Prepare to extinguish sources of ignition,

(xii) Alert standby boat or prepare safety capsule for launching,

(xiii) Place crane operator on duty for possible personnel evacuation,

(xiv) Prepare to lower escape ladders and prepare other abandonment devices for possible use,

(xv) Prepare to strip back to bottom, and

(xvi) Time drill and enter drill report on driller's log.

(l) *Relief assignments.* Any employee who acts as assigned relief for another employee with a higher classification (as covered by this section) shall meet the requirements of the higher classified job, unless such temporary duties are performed under direct supervision of an employee of higher classification.

(m) *General well-control training program.* Well-control training programs shall be submitted for approval as meeting the requirements of this section to the Deputy Associate Director for Offshore Operations in accordance with the following:

(1) All programs and related correspondence shall be mailed to the Deputy Associate Director for Offshore Operations, Minerals Management Service, Mail Stop 642, 12203 Sunrise Valley Drive, Reston, Virginia 22091,

(2) Three copies of the information required in paragraphs (n) and (o) of this section, including a listing of the materials contained therein, except for the information in paragraphs (n)(1)(viii), (n)(2)(ii), and (o)(8) of this section, shall be submitted to the Deputy Associate Director for Offshore Operations,

(3) Two copies of the information required in paragraphs (n)(1)(viii), (n)(2)(ii), and (o)(8) of this section shall be submitted to the Deputy Associate Director for Offshore Operations,

(4) A training plan containing a cross-reference of its training manual to these regulations shall be submitted by an applicant school,

(5) A training manual shall be representative of the subject matter addressed during the course of the school,

(6) Candidates who are absent from any part of the class shall make up the missed portion of the course before credits are awarded,

(7) Schools shall furnish the MMS-onsite evaluators a copy of their training manual during the onsite evaluation,

(8) Certified basic and refresher well-control schools shall retain all required records for the first 5 years from the date of school approval. At the end of the fifth year, a school may destroy the records of the first year, and at the end of the sixth year, a school may destroy the records of the second year, and so forth,

(9) Recertification shall be comprised of the following requirements:

(i) Basic well-control courses and refresher courses shall be approved for a maximum of 4 years, and

(ii) Previously approved schools shall forward to the Deputy Associate Director for Offshore Operations, at least 90 days prior to their 4-year anniversary date, a letter requesting certification and state the changes, additions, or deletions, if any, to their previously approved course material and curriculum.

(10) Certified schools shall be subject to unannounced onsite evaluations by MMS personnel.

(n) *Basic and refresher well-control training program.* Plans for these programs shall be submitted in accordance with the following:

(1) *Basic well-control course.* Organizations are required to submit a training plan to the MMS for approval. This plan shall contain the following:

(i) A curriculum outline describing subject matter content in relation to these regulations. The outline submitted shall be similar to the format listed below:

Job Classification—Driller
First Day—10 hours
Subject X—5 hours
  Detail A
  Detail B
  Detail C
  Subject Y—3 hours
  Detail D
Subject Z—2 hours
  Detail E
  Detail F
Second Day—10 hours
Subject M—5 hours
  Detail G
  Detail H
  Detail I
Subject N—5 hours
  Detail J
  Detail K

(ii) Qualifying credentials of instructors including education and experience (both work experience and teaching experience),

(iii) Class sizes of no more than 20 candidates per lecture, and no more than 4 candidates per (hands-on) lab exercise with a daily record of student attendance.

(iv) A description of the classroom and lab including equipment and simulator/test well,

(v) Classroom/lab time ratio,

(vi) Material presentation method (lecture, video, filmstrip, etc.,) indicating approximate percentages of overall instructional time presented by each method as shown in the following examples:

Lecture—70 percent
Video tape—10 percent
Film strips—10 percent
Simulator—10 percent

Method of presentation as shown in the following examples:

Subject X—4-hour lecture plus 1-hour video tape
Subject Y—2-hour lecture plus 1-hour film strips,

(vii) Testing methods (including a sample of the tests to be given) with the following requirements:

(A) Take-home tests shall not be permitted,

(B) The candidate shall satisfactorily and completely perform the hands-on test,

(C) The candidate shall answer at least 70 percent of all test questions correctly,

(D) The school shall submit the methods they will use to assure that the test shall be nonrepetitive and remain confidential,

(E) Retest (written or simulator) shall be authorized if accomplished within 48 hours. Test questions or problems on retest shall be different than those given candidates originally. If the candidate fails either the written or simulator retest, the candidate shall repeat the entire course, and

(F) Personnel trained and qualified for subsea-BOP stacks shall be automatically qualified for surface-BOP stacks.

(viii) A copy of handouts or materials to be provided candidates for use and retention for future reference. These handouts shall form a complete training manual,

(ix) A copy of the proposed certificate of successful completion including the following:

(A) Candidate's full name,

(B) Course and school,

(C) Date candidate successfully completed course,

(D) Job classification for which certification is awarded, and

(E) Surface or subsea qualification.

(x) Differences in instructional material for qualifying personnel employed on drilling rigs utilizing a surface-BOP stack versus a subsea-BOP stack,

(xi) School's method of updating curriculum and/or facilities to reflect technological advances on changes in Government regulations, such as the following:

(A) Attendance at technical meetings,

(B) Review of technical publications,

(C) Review of course by technical and industry advisory boards (e.g., International Association of Drilling Contractors, API, etc.),

(D) Feedback from prior candidates, and

(E) Input from company research and development programs.

(xii) Methods for performing candidates's hands-on qualification test including at least three practice problems with the candidate's position rotated as part of a team and one official test problem,

(xiii) Means to verify candidate entrance prerequisites,

(xiv) A course schedule submitted to the MMS after acceptance of training plan and on at least a semiannual basis thereafter,

(xv) A requirement to notify the Deputy Associate Director for Offshore Operations, by letter, of all the candidates that have successfully completed the course. This letter shall contain the following information:

(A) Candidate's full name,

(B) Name of school,

(C) Course type (Basic or Refresher),

(D) Date candidate successfully completed course,

(E) Name of instructor teaching each class,

(F) Candidate's social security number (optional),

(G) Candidate's employer,

(H) Job title of candidate,

(I) Job classification for which certification is awarded.

(J) Qualification achieved/awarded candidate (surface, subsea),

(K) Test score for each candidate awarded certificate,

(L) Name of last school attended by student, and

(M) Date of last well-control course taken by candidate.

(xvi) The applicant shall also state the methods they will use to instruct and test those individuals believed to be qualified but nonresponsive to conventional education and testing techniques. The methods employed may include, but not be limited to, oral tests, use of an interpreter, or tutorial assistance.

(2) *Refresher course.* Schools applying for refresher course certification shall submit information containing the following:

(i) Refresher course "Training plan" composed of the following:

(A) A curriculum outline showing, as a minimum, one constant bottomhole pressure method, a simulated well-kick control (as a minimum, one practice test run), improvements in BOP equipment and methods, and new Government requirements applicable to offshore operations, and

(B) Qualifying credentials of instructors including education and experience (both work experience and teaching experience).

(ii) A copy of a training manual comprised of the handouts or materials to be furnished the candidates for their use and retention for future reference (not required for schools certified for a basic well-control course),

(iii) A request for approval of refresher courses conducted by schools not certified to teach basic wall-control courses,

(iv) A requirement for a minimum of 8 hours of instruction of subject matter covered in the course curriculum outline,

(v) Class sizes of no more than 20 candidates per lecture and no more than 4 candidates per (hands-on) lab exercise with a daily record of candidate attendance,

(vi) A requirement that the candidate must satisfactorily and completely perform the hands-on test,

(vii) A requirement that the hands-on retest be authorized if accomplished within 48 hours. Test problems shall be different than those given the candidate originally. If the candidate fails the retest, the candidate shall repeat the entire course,

(viii) Certificates of successful completion including the following:

(A) Candidate's full name,

(B) Course and school name,

(C) Date of successful completion,

(D) Job classification, and

(E) Surface or subsea qualification;

(ix) A requirement that refresher course training be given on an annual basis and accomplished within 60 days before or after candidate's anniversary date. The anniversary date shall be established upon the candidate's successful completion of a basic course in well-control,

(x) A requirement that candidates can upgrade their qualifications, i.e., surface to subsea, driller to toolpusher, only by attendance at an approved basic course, and

(xi) A requirement that a school shall notify the Deputy Associate Director for Offshore Operations, by letter, of all the candidates that have successfully completed the course.

(o) *Rotary helper and derrickman well-control training program.* Organizations shall submit a training plan to MMS for approval. This plan shall contain the following:

(1) A curriculum outline describing subject matter content in relation to these regulations for rotary helper and derrickman classifications. The outline submitted shall be similar to the format listed below:

First Day—8 hours

Subject X—3 hours
  Detail A
  Detail B
  Detail C
Subject Y—3 hours
  Detail D
Subject Z—2 hours
  Detail E
  Detail F

Second Day—8 hours

Subject M—2 hours
  Detail G
  Detail H
Subject N—6 hours
  Detail I
  Detail J

(2) Identification and qualification of personnel responsible for providing the instructions of the applicable requirements of these regulations for their respective classification,

(3) Class sizes consisting of no more than 20 candidates per lecture where hands-on are completed with a representative rig crew,

(4) A description of the classroom unless training is conducted at the job site,

(5) Classroom/lab time ratio,

(6) Material presentation method (lecture, video, filmstrip, etc.,) indicating approximate percentages of overall instructional time presented by each method as shown in the following examples:

Lecture—70 percent
Video tape—10 percent
Film strips—10 percent
Hands-on—10 percent,

Method of presentation as shown in the following examples:

Subject X—4-hour lecture plus 1-hour video tape
Subject Y—2-hour lecture plus 1-hour filmstrip,

(7) A testing method to measure the candidate's successful completion of training course,

(8) A copy of handouts or materials to be provided candidates for their use and retention for future reference. These handouts shall form a complete training manual,

(9) A copy of proposed certificates of successful completion with the following information:

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(i) Candidate's full name,

(ii) Course location,

(iii) Date candidate successfully completed initial qualification, and

(iv) Job classification for which certification is awarded.

(10) School's method of updating curriculum to reflect technological advances and changes in Government regulation, and

(11) Means to verify candidate's entrance prerequisite.

(p) *Records of training.* Operations including identification of all participants and results of testing shall be maintained by the lessee at the lessee's field office nearest the OCS facility for a period of 5 years.

Subpart E—Well-Completion Operations

§ 250.70 Performance standard.

Well-completion operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.71 Definition.

When used in this subpart, the following term shall have the meaning given below:

"Well-completion operations" means the work conducted to establish the producibility of a well after the production-casing string has been set and cemented.

§ 250.72 Equipment movement.

The movement of well-completion rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner. Prior to moving such rigs and related equipment, all wells which are capable of producing hydrocarbons shall be shut in and equipped with a pump-through-type tubing plug, a back-pressure valve, and a closed master valve. A surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation.

§ 250.73 Emergency shutdown system.

When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency Shutdown System manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

§ 250.74 Hydrogen sulfide.

When a well-completion operation is conducted on a well in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67), the lessee shall take appropriate precautions to protect life and property on the platform or completion unit, especially during operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, and pulling pumps and packers. The lessee shall comply with the requirements in § 250.67 as well as the appropriate requirements of this subpart.

§ 250.75 Subsea completions.

All subsea well completions shall be submitted for approval by the District Supervisor. The District Supervisor will approve the proposal on a case-by-case basis upon a determination that the proposed equipment and procedures will adequately control the well and permit safe production operations.

§ 250.76 Crew instructions.

Prior to engaging in well-completion operations, personnel shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded in the operations log.

§ 250.77 Welding and burning practices and procedures.

All welding, burning, and hot tapping activities involved in well-completion operations shall be conducted with well maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property on the platform or rig and according to the specific requirements in § 250.52.

§ 250.78 Electrical requirements.

All electrical equipment and systems involved in well-completion operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property on the rig or platform and in accordance with the requirements in § 250.53.

§ 250.79 Well-completion structures on fixed OCS platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. The conditions affecting loading include, but are not limited to, setback, wind, possible icing, pulling and running tubular goods and subsurface equipment, and fishing and jarring operations. Prior to moving a well-completion rig or equipment onto a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations taking into consideration the corrosion protection, age of platform, and previous stresses.

§ 250.80 Diesel engine air intakes.

All diesel engine air intakes shall be equipped with an automatic shutdown device that will prevent engine runaway after [insert date 1 year after the effective date of these regulations].

§ 250.81 Traveling-block safety device.

After [insert date 1 year after the effective date of these regulations], all units being used for well-completion operations shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.82 Simultaneous operations.

No well-completion operations shall be conducted on a platform where there are production operations until a General Plan for Conducting Simultaneous Operations has been approved as described in § 250.123.

§ 250.83 Field well-completion rules.

When geological and engineering information obtained from drilling operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative or in response to a request from a lessee, field well-completion rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field well-completion rules have been established, well-completion operations, to which such rules apply, shall be conducted in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field well-completion rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.84 Approval and reporting for well-completion operations.

(a) No well-completion operation shall begin until the lessee receives written approval from the District Supervisor. If completion is planned and the data is available at the time the Application for Permit to Drill, Deepen, or Plug Back, Form MMS–331C (§ 250.64), is submitted, approval for a well completion may be requested on that form. If the completion has not been approved on that form or if conditions or plans have significantly changed, approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS, including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331 (or with Form MMS–331C):

(1) The well-completion procedures to be followed and a statement of the expected surface pressure,

(2) A well schematic drawing showing the proposed zones and the subsurface well-completion equipment to be used,

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted, and

(4) Where the well is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, a description of the safety precautions to be used.

(c) Within 30 days after completion, Form MMS–331, including a schematic of the tubing and the results of any well tests, shall be submitted to the District Supervisor. In addition, if Form MMS–330, Well-Completion or Recompletion Report and Log, has not been submitted previously, it shall accompany Form MMS–331.

§ 250.85 Well-control fluids, equipment, and operations.

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-completion operations and shall not be left unattended at any time unless the well is shut in and secured.

(b) Quantities of well-control fluids sufficient for well control shall be maintained and readily accessible at all times.

(c) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost blowout preventer,

(2) A well-control fluid-volume measuring device for determining fluid volumes when filling the hole on trips,

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device, and

(4) When coming out of the hole with drill pipe, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized.

§ 250.86 Blowout prevention equipment.

(a) The blowout preventer (BOP) system and system components shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP stack and BOP system components shall equal or exceed the expected surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 5,000 psi. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS–331 or Form MMS–331C, as appropriate, a well-control procedure that indicates how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP stack for well-completion operations shall consist of the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams,

(2) Four preventers, for multiple tubing strings or when the expected surface pressure is greater than 5,000 psi, consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers, or

(3) When tapered drill pipe is used, regardless of the expected surface pressure, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, two sets of pipe rams capable of sealing around the larger sized string, one set of pipe rams capable of sealing around the smaller sized string, and a preventer equipped with blind or blind-shears rams, or

(ii) An annular preventer, two sets of pipe rams capable of sealing around the larger string, a preventer equipped with blind-shear rams, and a crossover sub to the larger sized pipe that shall be readily available on the rig floor.

(c) The BOP systems for well completions shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure,

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP's and hold them closed,

(3) Locking devices on the pipe-ram preventers,

(4) At least one remote BOP-control station and one BOP-control station on the rig floor, and

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. One of the choke-line valves shall be remotely controlled. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-completion operations. A wrench to fit the inside BOP and work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string.

§ 250.87 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high-pressure tests, all BOP's shall be successfully tested to a low pressure of 200 psi to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill

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manifolds, and safety valves shall be successfully tested to 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be successfully tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed,

(2) At least every 7 days, alternating between control stations and at staggered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional system is operable. The test every 7 days is not required for blind or blind-shear rams. The blind or blind-shear rams shall be tested at least once every 30 days during operation, except that the periods between tests may be longer when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log, and

(3) Following repairs that require disconnecting a pressure seal in the assembly.

(c) All personnel engaged in well-completion operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.88 Tubing and wellhead equipment.

(a) No tubing string shall be placed into service or continued to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged drilling or extended operations such as milling, fishing, jarring, or washing over that could damage the casing, the casing shall be pressure tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When the tree is installed, the wellhead shall be equipped to be monitored for sustained pressure in all of the annuli.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve in the vertical run of the tree.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121.

Subpart F—Well-Workover Operations

§ 250.90 Performance standard.

Well-workover operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS including any mineral deposits (in areas leased and not leased), the national security or defense, or the marine, coastal, or human environment.

§ 250.91 Definitions.

When used in this subpart, the following terms shall have the meanings given below:

"Workover operations" means the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

"Routine operations" means any of the following operations conducted on a well with the tree installed:

(a) Cutting paraffin,

(b) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations,

(c) Bailing sand,

(d) Pressure surveys,

(e) Swabbing,

(f) Scale or corrosion treatment,

(g) Caliper and gauge surveys,

(h) Corrosion inhibiter treatment,

(i) Removing or replacing subsurface pumps,

(j) Through-tubing logging (diagnostics),

(k) Wireline fishing, and

(l) Setting and retrieving other subsurface flow-control devices.

§ 250.92 Equipment movement.

The movement of well-workover rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform, including rigging up and rigging down, shall be conducted in a safe manner. Prior to moving such rigs and related equipment, all wells which are capable of producing hydrocarbons shall be shut in and equipped with a pump-through-type tubing plug, a back-pressure valve, and a closed master valve. The well(s) from which or to which the rig or related equipment is to be moved shall be equipped with a pump-through-type tubing plug and a back-pressure valve prior to and during moving operations and prior to removing the tree and installing and testing the blowout-preventer (BOP) stack. A surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug provided that the surface control has been locked out of operation.

§ 250.93 Emergency shutdown system.

When well-workover operations are conducted on wells with the tree removed, an Emergency Shutdown System manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well on the platform and there is no other hydrocarbon flow.

§ 250.94 Hydrogen sulfide.

When a well-workover operation is conducted on a well in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown (as defined in § 250.67), the lessee shall take appropriate precautions to protect life and property on the platform or rig, especially during operations such as blowing the well down, dismantling wellhead equipment and flow lines, circulating the well, pulling pumps and packers, and swabbing after acidizing operations. The lessee shall comply with the requirements in § 250.67 as well as the appropriate requirements of this subpart.

§ 250.95 Subsea workovers.

All nonroutine and routine subsea well-workover operations shall be submitted for approval by the District Supervisor. The District Supervisor will approve the proposal on a case-by-case basis upon a determination that the proposed equipment and procedures will maintain adequate control of the well and permit continued safe production operations.

§ 250.96 Crew instructions.

Prior to engaging in well-workover operations, personnel shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded in the operations log.

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§ 250.97 Welding and burning practices and procedures.

All welding, burning, and hot-tapping activities involved in well-workover operations shall be conducted with well maintained equipment, trained personnel, and appropriate procedures in order to minimize the danger to life and property on the platform or rig and according to the specific requirements of § 250.52.

§ 250.98 Electrical requirements.

All electrical equipment and systems involved in well-workover operations shall be designed, installed, equipped, protected, operated, and maintained so as to minimize the danger to life and property on the platform and in accordance with the requirements in § 250.53.

§ 250.99 Well-workover structures on fixed OCS platforms.

Derricks, masts, substructures, and related equipment shall be selected, designed, installed, used, and maintained so as to be adequate for the potential loads and conditions of loading that may be encountered during the operations. The conditions affecting loading include, but are not limited to, setback, wind, possible icing, pulling and running tubular goods and subsurface equipment, and fishing, drilling, and jarring operations. Prior to moving a well-workover rig or well-servicing equipment on to a platform, the lessee shall determine the structural capability of the platform to safely support the equipment and operations, taking into consideration the age of the platform, corrosion protection, and previous stresses.

§ 250.100 Diesel engine air intakes.

All diesel engine air intakes shall be equipped with an automatic shutdown device that will prevent engine runaway after (insert date 1 year after the effective date of these regulations).

§ 250.101 Traveling-block safety device.

After (insert date 1 year after the effective date of these regulations), all units being used for well-workover operations shall be equipped with a safety device which is designed to prevent the traveling block from striking the crown block. The device shall be checked weekly for proper operation and after each drill-line slipping operation. The results of the operational check shall be entered in the operations log.

§ 250.102 Simultaneous operations.

No well-workover operations shall be conducted on a platform where there are production operations until a General Plan for Conducting Simultaneous Operations has been approved as described in § 250.123.

§ 250.103 Field well-workover rules.

When geological and engineering information obtained from drilling and/or production operations in an area enables a District Supervisor to determine specific operating requirements appropriate to specific wells or a group of wells, on the District Supervisor's initiative or in response to a request from a lessee, field well-workover rules may be established. Such rules may authorize departure from identified requirements of this subpart. After field well-workover rules have been established, well-workover operations to which such rules apply shall be conducted in accordance with such rules and the requirements of this subpart which are not affected by such rules. Field well-workover rules may be amended or cancelled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

§ 250.104 Approval and reporting for well-workover operations.

(a) No workover operation except routine operations, as defined in § 250.91, shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–331, Sundry Notices and Reports on Wells. Approvals by the District Supervisor shall be based upon a determination that the operations will be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS, including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment.

(b) The following information shall be submitted with Form MMS–331:

(1) The well-workover procedures to be followed and a statement of the expected surface pressure,

(2) When changes in existing subsurface equipment are proposed, a well-schematic drawing showing the proposed zone and equipment, and

(3) Where the well is in zones known to contain H_2S or zones where the presence of H_2S is unknown, a description of the safety precautions to be used.

(c) The following additional information shall be submitted if completing to a new zone:

(1) Reason for abandonment of present zone, and

(2) A statement of anticipated or known surface pressure of the new zone.

(d) Within 30 days after completing the well-workover operation, except routine operations, Form MMS–331 shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic if any subsurface equipment has been changed.

§ 250.105 Well-control fluids, equipment, and operations.

The following requirements apply during all well-workover operations with the tree removed:

(a) Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances, including subfreezing conditions. The well shall be continuously monitored during well-workover operations and shall not be left unattended at any time unless the well is shut-in and secured,

(b) Quantities of well-control fluids sufficient for well control shall be maintained and readily accessible at all times,

(c) When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hole shall be utilized, and

(d) The following well-control-fluid equipment shall be installed, maintained, and utilized:

(1) A fill-up line above the uppermost BOP,

(2) A well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips, and

(3) A recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

§ 250.106 Blowout prevention equipment.

(a) The BOP system and system components and related well-control equipment shall be designed, used, maintained, and tested in a manner necessary to assure well control in foreseeable conditions and circumstances, including subfreezing conditions. The working pressure of the BOP stack and BOP system components shall equal or exceed the expected surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 5,000 psi. If the expected surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with Form MMS-331, requesting approval of the well-workover operation, a well-control procedure that indicates how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.

(b) The minimum BOP stack for well-workover operations with the tree removed shall consist of the following:

(1) Three preventers, when the expected surface pressure is less than 5,000 psi, consisting of an annular preventer, one preventer equipped with pipe rams, and one preventer equipped with blind or blind-shear rams;

(2) Four preventers, for multiple tubing strings or when the expected surface pressure is greater than 5,000 psi, consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams. When dual tubing strings are being handled simultaneously, dual pipe rams shall be installed on one of the pipe-ram preventers, or

(3) When tapered drill pipe is used, regardless of the expected surface pressure, the minimum BOP stack shall consist of either of the following:

(i) An annular preventer, two sets of pipe rams capable of sealing around the larger sized string, one set of pipe rams capable of sealing around the smaller sized string, and a preventer equipped with blind or blind-shear-rams, or

(ii) An annular preventer, two sets of pipe rams capable of sealing around the larger size string, a preventer equipped with blind-shear rams, and a crossover sub to the larger size pipe that shall be readily available on the rig floor.

(c) The BOP systems for well-workover operations with the tree removed shall be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure.

(2) A secondary power source, independent from the primary power source, with sufficient capacity to close all BOP's and hold them closed,

(3) Locking devices on the pipe-ram preventers,

(4) At least one remote BOP-control station and one BOP-control station on the rig floor, and

(5) A choke line and a kill line each equipped with two full opening valves and a choke manifold. One of the choke-line valves shall be remotely controlled. This equipment shall have a pressure rating at least equivalent to the ram preventers.

(d) The minimum BOP-stack components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually ¾ inch to 1¼ inch) as a work string, i.e., small-tubing operations, shall consist of the following:

(1) Two sets of pipe rams, and

(2) One set of blind rams.

(e) The minimum BOP-stack components for well-workover operations with the tree in place and performed by manipulating spooled, non-jointed pipe through the wellhead; i.e., coiled-tubing operations, shall consist of the following:

(1) One set of pipe rams hydraulically operated,

(2) One two-way slip assembly hydraulically operated,

(3) One pipe-cutter assembly hydraulically operated,

(4) One set of blind rams hydraulically operated,

(5) One pipe-stripper assembly, and

(6) One spool with side outlets.

(f) The minimum BOP-stack components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall consist of the following:

(1) One set of pipe rams hydraulically operated, and

(2) Two sets of stripper-type pipe rams hydraulically operated with spacer spool.

(g) An inside BOP or a spring-loaded, back-pressure safety valve and an essentially full-opening, work-string safety valve shall be maintained on the rig floor at all times during well-workover operations when the tree is removed or during well-workover operations with the tree installed and using small tubing as the work string. A wrench to fit the inside BOP and work-string safety valve shall be readily available. Proper connections shall be readily available for inserting valves in the work string. The full-opening safety valve is not required for coiled tubing or snubbing operations.

§ 250.107 Blowout preventer system testing, records, and drills.

(a) Prior to conducting high pressure tests, all BOP's shall be successfully tested to a low pressure of 200 psi to 300 psi. Ram-type BOP's, related control equipment, including the choke and kill manifolds, and safety valves shall be successfully tested to 70 percent of the minimum internal-yield pressure of the casing. The annular-type BOP shall be successfully tested at 70 percent of its rated working pressure or 70 percent of the minimum internal-yield pressure of the casing, whichever is less. Each valve in the choke and kill manifolds shall be successfully, sequentially pressure tested to the ram-type BOP test pressure.

(b) The BOP systems shall be tested at the following times:

(1) When installed,

(2) At least every 7 days, alternating between control stations and at stagered intervals to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional system is operable. The test every 7 days is not required for blind or blind-shear rams. The blind or blind-shear rams shall be tested at least once every 30 days during operation, except that the periods between tests may be longer when there is a stuck pipe or pressure-control operation and remedial efforts are being performed. The tests shall be conducted as soon as possible and before normal operations resume. The reason for postponing testing shall be entered into the operations log, and

(3) Following repairs that require disconnecting a pressure seal in the assembly.

(c) All personnel engaged in well-workover operations shall participate in a weekly BOP drill to familiarize crew members with appropriate safety measures.

(d) The time, dates, and results of the BOP tests, actuations, and crew drills shall be recorded in the operations log.

§ 250.108 Tubing and wellhead equipment.

The lessee shall comply with the following requirements during well-workover operations with the tree removed:

(a) No tubing string shall be placed into service or continued to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

(b) In the event of prolonged drilling or extended operations such as milling, fishing, jarring, or washing over that could damage the casing , the casing shall be pressure tested, calipered, or otherwise evaluated every 30 days and the results submitted to the District Supervisor.

(c) When reinstalling the tree, the wellhead shall be equipped to be monitored for sustained pressure in all of the annuli.

(d) Wellhead, tree, and related equipment shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. If the tree is removed during a well-workover operation, the tree shall be equipped with a minimum of one master valve and one surface safety valve in the vertical run of the tree when it is reinstalled.

(e) Subsurface safety equipment shall be installed, maintained, and tested in compliance with § 250.121.

§ 250.109 Wireline operations.

The lessee shall comply with the following requirements during routine, as defined in § 250.91, and nonroutine wireline workover operations:

(a) Wireline operations shall be conducted so as to minimize leakage. Such leakage which does occur shall be contained to prevent pollution.

(b) Each time the lubricator is installed on the wellhead, it shall be successfully pressure tested to the expected shut-in surface pressure.

Subpart G—Abandonment of Wells

§ 250.110 General requirements.

The lessee shall abandon all wells in a manner to assure downhole isolation of hydrocarbon zones, protection of freshwater aquifers, clearance of sites in a manner to avoid conflict with other uses of the OCS, and prevention of migration of formation fluids within the wellbore or to the seafloor. Any well which is no longer used or useful for lease operations shall be plugged and abandoned in accordance with the provisions of this subpart. However, no producing well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor. No producing well shall be plugged if the plugging operation would jeopardize safe and economic operations of nearby wells.

§ 250.111 Approvals.

The lessee shall not commence abandonment operations without prior approval of the District Supervisor. The lessee shall submit a request for approval to abandon a well and a subsequent report of abandonment on Form MMS-331, Sundry Notices and Reports on Wells, in accordance with the following:

(a) A request for approval to abandon a well shall contain the reason for abandonment, a description and schematic of proposed work including depths, type, location, and length of plugs, the plans for mudding, cementing, shooting, testing, casing removal, and other pertinent information, and

(b) The subsequent report of abandonment shall be submitted within 30 days from the completion of the work and shall include a description of the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging, and all information listed in (a) with a revised schematic. If an attempt was made to cut and pull any casing string, the subsequent report shall include a description of the methods used and results obtained.

§ 250.112 Permanent abandonment.

(a) In uncased portions of wells, cement plugs shall be set to extend from 100 feet below the bottom to 100 feet above the top of any oil, gas, or freshwater zones to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata or to the seafloor. The placement of additional cement plugs to prevent the migration of formation fluids in the wellbore may be required by the District Supervisor.

(b) Where there is an open hole below the casing, a cement plug shall be placed in the deepest casing in accordance with paragraph (b)(1) or (b)(2) of this section. If lost circulation conditions have been experienced or are anticipated, a permanent type bridge plug may be placed within the first 150 feet above the casing shoe with 50 feet of cement on top of the bridge plug. This bridge plug shall be tested in accordance with paragraph (g) of this section.

(1) A cement plug shall be set by the displacement method and shall extend a minimum of 100 feet above and 100 feet below the casing shoe, or

(2) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the casing shoe. The cement plug shall use a cement volume to ensure that the plug extends at least 100 feet below the casing shoe and at least 50 feet above the retainer.

(c) A cement plug shall be set by the displacement method opposite all perforations which have not been squeezed with cement. The cement plug shall extend a minimum of 100 feet above the perforated interval and either 100 feet below the perforated interval or down to a casing plug, whichever is the lesser. In lieu of setting a cement plug by the displacement method, either of the following methods is acceptable, provided the perforations are isolated from the hole below:

(1) A cement retainer and a cement plug shall be set. The cement retainer shall have effective back-pressure control and shall be set not less than 50 feet and not more than 100 feet above the top of the perforated interval. The cement plug shall use a cement volume calculated to extend at least 100 feet below the bottom of the perforated interval with 50 feet placed above the retainer, or

(2) A permanent-type bridge plug shall be set within the first 150 feet above the top of the perforated interval with 50 feet of cement on top of the bridge plug.

(d) If casing is cut and recovered leaving a stub, the stub shall be plugged in accordance with either of the following methods:

(1) A stub terminating inside a casing string shall be plugged in accordance with one of the following:

(i) A cement plug shall be set to extend 100 feet above and 100 feet below the stub, or

(ii) A cement retainer or a permanent-type bridge plug shall be set 50 feet above the stub and capped with 50 feet of cement.

(2) If the stub is below the next larger string, plugging shall be accomplished as required to isolate zones or to isolate an open hole as described in paragraphs (a) and (b) of this section.

(e) Any annular space communicating with any open hole and extending to the mud line shall be plugged with cement.

(f) A cement plug which is at least 150 feet in length shall be set with the top of the plug within the first 150 feet below the mud line. The plug shall be placed in the smallest string of casing which extends to the mud line.

(g) The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

(1) The lessee shall place a minimum pipe weight of 15,000 pounds on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer is not required to be tested, or

(2) The lessee shall successfully test the plug with a minimum pump pressure of 1,000 pounds per square inch with a

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result of no more than a 10 percent pressure drop during a 15-minute period.

(h) Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert a hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs.

(i) All casing, wellhead equipment, and piling shall be removed to a depth of at least 15 feet below the mud line or to a depth approved by the District Supervisor after a review of the data on ocean-bottom conditions. The lessee shall verify that the location has been cleared of all obstructions in accordance with § 250.114. The requirement for removing subsea wellheads and for verifying location clearance may be reduced or eliminated when in the opinion of the District Supervisor the wellheads would not constitute a hazard to other users of the seafloor and other uses of that portion of the OCS or other legitimate uses of the area.

(j) Fluid left in the hole adjacent to permafrost zones shall have a freezing point below the temperature of the permafrost and shall be treated to inhibit corrosion.

(k) The cement used for cement plugs placed across permafrost zones shall be designed to set before freezing and to have a low heat of hydration.

§ 250.113 Temporary abandonment.

(a) Any drilling well which is to be temporarily abandoned shall meet the requirements for permanent abandonment except for the provisions of §§ 250.112(f), 250.112(i), 250.114, and the following:

(1) The lessee shall set a retrievable or a permanent-type bridge plug or a cement plug at least 100 feet in length in the casing within the first 200 feet below the mud line, and

(2) When a drilling well is temporarily abandoned, a bridge plug or a cement plug at least 100 feet in length shall be set at the base of the deepest casing string.

(b) If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole.

(c) Identification and reporting of subsea wellheads or casing stubs extending above the mud line will be accomplished in accordance with the requirements of the U.S. Coast Guard.

§ 250.114 Site clearance.

(a) The lessees shall verify site clearance after abandonment by one or more of the following methods as approved by the District Supervisor:

(1) Dragging a trawl in two directions across the location,

(2) A diver search around the wellbore for a minimum radius of 100 feet,

(3) Using a side-scan or an on-bottom scanning sonar across the location, or

(4) Other methods based on particular site conditions.

(b) A letter from the company performing the work shall be submitted with Form MMS-331, Item 15, Subsequent Report of permanent Abandonment, certifying that the area was cleared of all obstructions, the date the work was performed, the extent of the area searched around the location, and the search method utilized.

Subpart H—Production Safety Systems

§ 250.120 General requirements.

The lessee shall conduct all production operations in accordance with current technology and state-of-the-art methods. Production safety equipment shall be designed, installed, used, maintained, and tested in a manner to assure the safety and protection of the human, marine, and coastal environments. Production safety systems operated in subfreezing climates shall utilize equipment and procedures selected with consideration of floating ice, icing, and other extreme environmental conditions that may occur in the area. Production shall not commence unless the production safety system has been approved and the preproduction test and inspection has been conducted.

§ 250.121 Subsurface safety devices.

(a) *General.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with subsurface safety devices that will shut off the flow from the well in the event of an emergency unless, after application and justification, the well is determined by the District Supervisor to be incapable of flowing. These devices may consist of a surface-controlled subsurface safety valve (SSSV), a subsurface-controlled SSSV, an injection valve, a tubing plug, or a tubing/annular subsurface safety device.

(b) *Specifications for SSSV's.* Surface-controlled and subsurface-controlled SSSV's installed on new installations or replaced on old installations shall conform to the requirements of § 250.126. A valve qualified under a previous edition of American Petroleum Institute (API) Specification (Spec) for Subsurface Safety Valves (API Spec 14A) at the time such edition was current may also be used provided that the valve enters the manufacturer's inventory within 3 years of its qualifying performance test date. For purposes of this requirement, the term "replaced" means occurring when the SSSV is removed from service for remanufacture.

(c) *Surface-controlled SSSV's.* All tubing installations open to a hydrocarbon-bearing zone which is capable of natural flow shall be equipped with a surface-controlled SSSV, except as specified in paragraphs (g) and (h) of this section. The surface controls may be located on the site or a remote location.

(d) *Subsurface-controlled SSSV's.* Wells may be equipped with subsurface-controlled SSSV's in lieu of a surface-controlled SSSV provided the following criteria are met:

(1) Wells not previously equipped with surface-controlled SSSV shall be so equipped when the tubing is first removed and reinstalled,

(2) The subsurface-controlled SSSV is installed in wells completed from a single-well or multi-well satellite caisson or ocean-floor completions, and

(3) The subsurface-controlled SSSV is installed in wells with a surface-controlled SSSV that has become inoperable and cannot be repaired without removal and reinstallation of the tubing.

(e) *Design, installation, and operation of SSSV's.* The SSSV's shall be designed, installed, operated, and maintained to ensure reliable operation.

(1) The device shall be installed at a depth of 100 feet or more below the mud line within 2 days after production is established. In permafrost areas, the setting depth of the subsurface safety device shall be below the permafrost base as approved by the District Supervisor.

(2) Until a subsurface safety device is installed, the well shall be attended so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface safety device has been installed in the well.

(3) The well shall not be open to flow while the subsurface safety device is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

(4) All SSSV's safety valves shall be inspected, installed, maintained, tested, removed, field repaired, remanufactured, and documented in accordance with § 250.126.

(f) *Inspection and maintenance of subsurface-controlled SSSV's.* Each subsurface-controlled SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled at intervals not exceeding the following:

(1) Six months for those valves not installed in a landing nipple, and

(2) Twelve months for those valves installed in a landing nipple.

(g) *Subsurface safety devices in shut-in wells.* New completions (perforated but not placed on production) and completions shut in for a period of 6 months shall be equipped with a pump-through type tubing plug or a surface controlled SSSV, provided the surface-control has been rendered inoperative. In permafrost areas, the setting depth of the subsurface safety device shall be below the permafrost base as approved by the District Supervisor.

(h) *Subsurface safety devices in injection wells.* A surface-controlled SSSV or an injection valve capable of preventing backflow shall be installed in all injection wells.

(i) *Temporary removal for routine operations.*

(1) Each wireline- or pumpdown-retrievable subsurface safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Form MMS-331, Sundry Notices and Reports on Wells, under § 250.91 for a period not to exceed 15 days.

(2) The well shall be identified by a sign on the wellhead stating that the subsurface safety device has been removed. The removal of the subsurface safety device shall be noted in the records as required by § 250.124(b). If the master valve is open, the well shall be attended in the immediate vicinity of the well so that emergency actions may be taken, if necessary.

(3) A platform well shall be monitored, but a person need not remain in the well bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mudline and the master valve closed, unless otherwise approved by the District Supervisor.

(4) The well shall not be allowed to flow while the subsurface safety device is removed, except when flowing the well is necessary for that particular operation. The provisions of this paragraph are not applicable to the testing and inspection procedures in § 250.124.

(j) *Additional safety equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface safety device is installed shall be equipped with a landing nipple with flow couplings or other protective equipment above and below to provide for the setting of the SSSV. The control system for all surface-controlled SSSVs shall be an integral part of the platform Emergency Shutdown System (ESD). In addition to the activation of the ESD by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled SSSVs shall close in response to shut-in signals from the ESD system and the fire loop.

(k) *Emergency action.* In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

§ 250.122 Design, installation, and operation of surface production-safety systems.

(a) *General.* All production facilities, including separators, treaters, compressors, headers, and flowlines shall be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

(b) *Platforms.* All platform production facilities shall be protected with a basic and ancillary surface safety system designed, analyzed, installed, tested, and maintained in operating condition in accordance with the provisions of API Recommended Practice (RP) for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). If processing components are to be utilized, other than those for which Safety Analysis Checklists are included in API RP 14C, the analysis technique and docmentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

(c) *Specification for surface safety valves (SSV) and underwater safety valves (USV).* All wellhead SSV's, USV's, and their actuators which are installed on new installations or replaced on old installations shall conform to the requirements of § 250.126. For purposes of this requirement, the term "replaced" is defined as occurring when the SSV/USV or SSV/USV actuator is removed from service for remanufacture.

(d) *Use of SSV's and USV's.* All SSV's and USV's shall be inspected, installed, maintained, field repaired, remanufactured, and documented in accordance with § 250.126. If any SSV or USV does not operate properly or if leakage exceeds the allowable limits, the valve shall be repaired or replaced.

(e) *Approval of safety-systems design and installation features.* Prior to installation, the lessee shall submit in duplicate for approval to the District Supervisor information relative to design and installation features. Information concerning approved design and installation features shall be maintained by the lessee at the lessee's offshore field office nearest the OCS facility or other location conveniently available to the District Supervisor. All approvals are subject to field verifications. The information shall include the following:

(1) A schematic flow diagram showing tubing pressure, size, capacity, design working pressure of separators, flare scrubbers, treaters, storage tanks, compressors, pipeline pumps, metering devices, and other hydrocarbon-handling vessels,

(2) A schematic flow diagram (API RP 14C, Figure E1) and the related Safety Analysis Function Evaluation chart (API RP 14C, subsection 4.3c),

(3) A schematic piping diagram showing the size and maximum allowable working pressures as determined in accordance with API RP for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E),

(4) Electrical system information including the following:

(i) A plan of each platform deck outlining any nonrestricted area, i.e., areas which are unclassified with respect to electrical equipment installations and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information:

(A) Any surrounding production or other hydrocarbon source and a description of the deck, overhead, and firewall, and

(B) Location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the wiring method, including the identification of each wire and cable type that is utilized.

(ii) Elementary electrical schematic of any platform safety shut-down system with a functional legend.

(5) Certification that the design for the mechanical and electrical systems to be installed were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that new installations conform to the approved designs of this subpart, and

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(6) The design and schematics of the installation and maintenance of all fire- and gas-detection systems shall include the following:

(i) Type, location, and number of detection heads,

(ii) Type and kind of alarm, including emergency equipment to be activated,

(iii) Method used for detection,

(iv) Method and frequency of calibration, and

(v) A functional block diagram of the detection system, including the electric power supply.

§ 250.123 Additional production system requirements.

(a) *General.* Lessees shall comply with the following production safety systems requirements (some of which are in addition to those contained in API RP 14C, incorporated by reference in § 250.122(b)).

(b) *Design, installation, and operation of additional production systems.*—(1) *Pressure vessels.* Pressure vessels shall be designed, fabricated, stamped, and maintained in accordance with appropriate sections of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(i) Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

(ii) Steam generators operating at less than 15 pounds per square inch gauge (psig) shall be equipped with a level safety low (LSL) sensor which will shut off the fuel supply when the water level drops below the minimum safe level. Steam generators operating at greater than 15 psig require, in addition to an LSL, a water-feeding device which will automatically control the water level.

(iii) The lessee shall determine by the use of pressure recorders the operating pressure ranges of all pressure-operated vessels in order to establish the pressure-sensor settings. Pressure-recorder charts shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor shall be set no higher than 15 percent above the highest operating pressure of the vessel. This setting shall also be set sufficiently below (5 percent or 5 psi, whichever is greater) the relief valve's set pressure to assure that the pressure source is shut in before the relief valve starts relieving. The low-pressure shut-in sensor shall activate no lower than 15 percent or 5 psi, whichever is greater, below the lowest pressure in the operating range. The activation of low-pressure sensors on pressure vessels which operate at less than 5 psi shall be approved by the District Supervisor on a case-by-case basis.

(iv) All pressure or fired vessels installed after the effective date of this subpart for use in the production of oil or gas shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, sections I, IV, and VIII, as appropriate.

(2) *Flowlines.* (i) All flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located in accordance with section A.1 and Figure A1 of API RP 14C. Operating pressure ranges for downstream segments of a flowline may be based on a pressure recording taken at the separator provided there are no chokes or other control devices between the flowline and the separator. The lessee shall determine by the use of pressure recorders the operating pressure ranges of flowlines in order to establish pressure-sensor settings. Pressure-recorder charts shall be maintained by the lessee for a period of 2 years at the lessee's field office nearest the OCS facility or at other locations conveniently available to the District Supervisor. The high-pressure shut-in sensor(s) shall be set no higher than 15 percent above the highest operating pressure of the line. But in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the SSV. The low-pressure shut-in sensor(s) shall be set no lower than 15 percent or 5 psi, whichever is greater, below the lowest operating pressure of the line in which it is installed.

(ii) If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of and including the header inlet valve(s) shall have a working pressure equal to or greater than the maximum shut-in pressure of the well unless the flowline is protected by one of the following:

(A) A relief valve which vents into the platform flare scrubber or some other location approved by the District Supervisor. The platform flare scrubber shall be designed to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid hydrocarbons which may be relieved to the vessel, and

(B) Two automatic shutdown valves with independent high-pressure sensors installed with adequate volume upstream of any block valve to allow sufficient time for the shutdown valve(s) (SDV) to close before exceeding the maximum allowable working pressure.

(3) *Safety sensors.* All safety sensors shall function in a manual reset mode. Sensors with integral automatic reset shall be equipped with an appropriate device to override the automatic reset mode.

(4) *ESD.* The ESD shall conform to the requirements of Appendix C, section C1, of API RP 14C, and the following:

(i) The manually operated ESD valve(s) shall be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. Only ESD stations at the boat landing may utilize a loop of breakable synthetic tubing in lieu of a valve,

(ii) The surface-controlled SSSV shall close in not more than 2 minutes after the shut-in signal has closed the SSV. Design-delayed closure time greater than 2 minutes shall be justified by the lessee based on the individual well's mechanical/production characteristics and be approved by the District Supervisor, and

(iii) A schematic of the ESD which indicates the control functions of all safety devices for platforms shall be maintained by the lessee on the platform and at the lessee's field office nearest the OCS facility or other location conveniently available to the District Supervisor.

(5) *Engines.* (i) *Engine exhaust.* Engine exhausts shall be equipped to comply with the insulation and personnel protection requirements of API RP 14C, section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arresters.

(ii) *Diesel engine air intake.* After [insert date 1 year after effective date of these regulations], all diesel engine air intakes shall be equipped with an automatic-shutdown device so as to prevent diesel engine runaway.

(6) *Glycol dehydration units.* A pressure relief system or an adequate vent shall be installed on the glycol regenerator which will prevent overpressurization of all glycol dehydration units. The discharge of the relief valve shall be vented in a nonhazardous manner.

(7) *Gas compressors.* Compressor installations shall be equipped with the following protective equipment:

(i) A Pressure Safety High (PSH), a Pressure Safety Low (PSL), a Pressure Safety Valve, and a Level Safety High (LSH) to protect each interstage and suction scrubber,

(ii) An LSL to protect each interstage and suction scrubber, unless the fluid is dumped through a choke restriction to another pressure vessel. An LSL shut-in control(s) installed in interstage and suction scrubber(s) may be designed to actuate the automatic SDV's installed in the scrubber dump line(s),

(iii) A Temperature Safety High (TSH) on each compressor cylinder or other components as applicable,

(iv) The PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers designed also to actuate automatic SDV's located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Supervisor, gas-well gas affected by the closure or the automatic SDV on a compressor suction shall be diverted to the pipeline or shut in at the wellhead, and

(v) *Small compressor installations.* A blowdown valve on the discharge line of a compressor installation of 745 kilowatts (1,000 horsepower) or greater.

(8) *Firefighting systems.* Firefighting systems installed after January 1, 1980, shall conform to Subsection 5.2, Fire Water Systems, of API RP for Fire Prevention and Control on Open Type Offshore Production Platforms (API RP 14G) and the following additional requirements:

(i) A firewater system consisting of rigid pipe with firehose stations shall be installed. The firewater system shall be installed to provide needed protection in all areas where production-handling equipment is located. A fixed waterspray system shall be installed in enclosed well-bay areas where hydrocarbon vapors may accumulate,

(ii) Fuel or power for firewater pump drivers shall be available for at least 30 minutes of run time during platform shut-in time. If necessary, an alternate fuel supply shall be installed to provide for this pump-operating time unless an alternate firefighting system has been approved by the District Supervisor,

(iii) A firefighting system using chemicals may be used in lieu of a water system if the District Supervisor determines that the use of a chemical system provides equivalent fire-protection control, and

(iv) A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the facility or structure.

(9) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be used in all enclosed high-hazard areas. Gas sensors shall be used in all inadequately ventilated, enclosed, high-hazard areas. Adequate ventilation means a change of air volume each 5 minutes or 1.5 cubic feet of air-volume flow per minute per square foot of area, whichever is greater.

(ii) All detection systems shall be capable of continuous monitoring. Fire-detection systems and portions of combustible gas-detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas-detection systems related to the lower gas-concentration level may be of the automatic-reset type.

(iii) A fuel-gas odorant or an automatic gas-detection and alarm system is required in enclosed, continuously manned areas of the facility.

(iv) The District Supervisor may require the installation and maintenance of a gas detector or alarm in any potentially hazardous area.

(v) Fire- and gas-detection systems shall be an approved type, designed and installed in accordance with API RP 14C, API RP 14G, and API RP for Design and Installation of Electrical Systems for Offshore Production Platforms (API RP 14F).

(10) *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. Records by lease, indicating the wells which have erosion-control programs in effect and the results of the programs, shall be maintained by the lessee at the lessee's field office nearest the OCS facility for a period of 2 years and made available for inspection by MMS representatives.

(c) *General platform operations.* (1) Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until they are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged by the person taking such device out of service.

(2) When wells are disconnected from producing facilities or equipped with a tubing plug or the master valves have been locked closed, compliance is not required with the provisions of API RP 14C or this regulation concerning the following:

(i) Installation of automatic fail-close SSV on wellhead assemblies,

(ii) Installation of the PSH and the PSL shut-in sensors downstream of the choke in flowlines from wells, and

(iii) Installation of flow safety valves in header individual flowlines.

(3) When pressure or atmospheric vessels are isolated from production facilities (e.g., inlet valve locked closed or inlet blind-flanged) and are to remain isolated for an extended period of time, safety device compliance with API RP 14C or this subpart is not required.

(4) All open-ended lines connected to producing facilities and wells shall be plugged or blind-flanged, except those lines designed to be open-ended such as flare or vent lines.

(d) *Simultaneous platform operations.* Prior to conducting activities simultaneously with production operations which could increase the possibility of occurrence of undesirable events, approval of a General Plan for Conducting Simultaneous Operations in a producing field shall be obtained from the District Supervisor. This plan shall be modified and updated by approved supplemental plans when simultaneous operations are scheduled which are significantly different from those covered in the plan. Activities requiring these plans include drilling, completion, workover, wireline, pumpdown, and major construction operations.

(1) *General Plan.* The General Plan for Conducting Simultaneous Operations shall include the following:

(i) A narrative description of operations indicating critical areas of simultaneous operations on the platform,

(ii) Procedures for the mitigation of potentially undesirable events including the following:

(A) Guidelines the lessee will follow to assure coordination and control of simultaneous activities, and

(B) Identity of the person having overall responsibility at the site for the safety of platform operations.

(2) *Supplemental Plan.* The Supplemental Plan for Conducting Simultaneous Operations shall include the following:

(i) An outline of any additional safety measures that are required for simultaneous operations, and

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(ii) Specification of any added or special equipment or procedural conditions to be imposed when simultaneous activities are in progress.

§ 250.124 Production safety-system testing and records.

(a) *Testing.* The safety-system devices shall be successfully tested by the lessee at the interval specified below or more frequently if operating conditions warrant. Testing shall be in accordance with API RP 14C, Appendix D, and the following:

(1) Each surface-controlled subsurface safety device installed in a well, including such devices in shut-in and injection wells, shall be tested in place for proper operation when installed or reinstalled and thereafter at intervals not exceeding 6 months. If the device does not operate properly, it shall be removed, repaired, reinstalled, or replaced, and tested to ensure proper operation. The testing shall be in accordance with § 250.126.

(2) All relief valves such as PSV's shall be tested for operation at least once every 12 months. These valves shall be either bench-tested or equipped to permit testing with an external pressure source.

(3) The following safety devices shall be tested at least once each calendar month but at no time shall more than 6 weeks elapse between tests:

(i) All PSH or PSL,

(ii) All LSH and LSL controls, and

(iii) All automatic inlet SDV's which are actuated by a sensor.

(4) All SSSV's and USV's shall be tested for operation and for leakage at least once each calendar month but at no time shall more than 6 weeks elapse between tests. The testing shall be conducted pursuant to § 250.126.

(5) All flowline Flow Safety Valves (FSV) shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedure specified in API RP 14C, Appendix D, section D4, Table D2, subsection D. If the leakage measured in step 6 exceeds a liquid flow of 200 cubic centimeters per minute or a gas flow of 5 cubic feet per minute, the FSV's shall be repaired or replaced,

(6) The TSH shutdown controls installed on compressor installations which can be nondestructively tested shall be tested every 6 months and repaired or replaced as necessary,

(7) All pumps for firewater systems shall be inspected and operated weekly,

(8) All fire- (flame, heat, or smoke) and gas-detection systems shall be tested for operation and recalibrated every 3 months,

(9) All TSH devices shall be tested at least once every 12 months, excluding those addressed in paragraph (a)(6) of this section and those which would be destroyed by testing. Burner safety low and flow safety low devices shall also be tested at least once every 12 months,

(10) The ESD system shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The test shall be conducted by alternating ESD stations monthly to close at least one wellhead SSV and verify a surface-controlled SSSV closure for that well as indicated by control circuitry actuation, and

(11) Prior to the commencement of production, the lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a complete inspection may be conducted.

(b) *Records.* The lessee shall maintain records for a period of 2 years for each subsurface and surface safety device installed. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the District Supervisor. These records shall be available for review by MMS. The records shall show the present status and history of each device, including dates and details of installation, removal, inspection, testing, repairing, adjustments, and reinstallation.

§ 250.125 Safety device training.

(a) Personnel installing, inspecting, testing, and maintaining these safety devices and personnel operating the production platforms shall be qualified under a program identified in API RP for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices (API RP T–2). Instrument personnel shall repeat the basic API RP T–2 course every 4 years.

(b) Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area or other locations conveniently available to the District Supervisor.

(c) Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company, provided they have received training and are qualified by the manufacturer to install, service, or repair the specific safety device or safety system and if they are directly supervised by an API RP T–2-qualified person who is capable of evaluating the impact of the work on the total system.

(d) On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

§ 250.126 Quality assurance and performance of safety and pollution prevention equipment.

Safety and Pollution Prevention Equipment (SPPE) shall conform to the American National Standards Institute/American Society of Mechanical Engineers Standard ANSI/ASME SPPE-1, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.

§ 250.127 Hydrogen sulfide.

Production operations in zones known to contain hydrogen sulfide (H_2S) or in zones where the presence of H_2S is unknown, as defined in § 250.67, shall be conducted in accordance with that section and other relevant requirements of Subpart H, Production Safety Systems.

Subpart I—Platforms and Structures

§ 250.130 General requirements.

(a) The lessee shall design, fabricate, install, use, inspect, and maintain all platforms and structures on the OCS to assure the structural integrity of all platforms and structures for the safe conduct of drilling, workover, and production operations, considering the specific environmental conditions at the platforms location.

(b) All new fixed or bottom-founded platforms or other structures, e.g., single-well caissons, artificial islands (platforms), shall be designed, fabricated, installed, inspected, and maintained in accordance with all the requirements of this subpart, except §§ 250.132 and 250.133, and shall require the approval of the Regional Supervisor.

(c) All new platforms which meet any of the conditions listed below shall be designed, fabricated, and installed in accordance with the requirements of §§ 250.132 through 250.141 (Platform Verification Program) as well as §§ 250.131, 250.142, 250.143, and 250.144.

(1) Platforms installed in water depths exceeding 400 feet.

(2) Platforms having natural periods in excess of 3 seconds.

(3) Platforms installed in areas of unstable bottom conditions.

(4) Platforms having configurations and designs which have not previously been used or proven for use in the area, and

(5) Platforms installed in seismically active areas.

(d) Major modification to any platform shall be subject to the requirements of this subpart and shall require the approval of the Regional Supervisor. Major modification means any structural changes which materially alter the original plan or causes a major deviation from operations.

(e)(1) Major repairs of damage to any platform shall require the approval of the Regional Supervisor. Major repairs of damage means operations involving members affecting the structural integrity of a portion of or all of the platform.

(2) Under emergency conditions, repairs to primary structural elements may be made to restore an existing permitted condition without prior approval. The Regional Supervisor shall be notified within 24 hours of the damage that occurred and repairs that were made. The Regional Supervisor's approval for repairs shall be obtained.

(f) The requirements for the reuse or conversion of the use of an existing fixed or mobile structure shall be determined on a case-by-case basis. An application shall be submitted to the Regional Supervisor for approval and shall include location, intended use, and details of the original design, operating history, cathodic protection system, and physical examination results to demonstrate the adequacy of the design and structural condition of the platform.

§ 250.131 Application for approval.

(a) All applications under the provisions of this subpart shall be submitted to the Regional Supervisor for approval. All significant changes or modifications to approved applications shall be submitted to the Regional Supervisor for approval.

(b) Applications for all new platforms or major modifications shall be submitted in triplicate and shall contain the following information:

(1) General platform information including the following:

(i) The platform designation, lease number, area name, and block number,

(ii) Longitude and latitude coordinates, Universal Transverse Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection system, and a plat drawn to a scale of 1 inch=2,000 feet showing surface location of the platform and distance from the nearest block lines,

(iii) Drawings, plats, front and side elevations of the entire platform, and plan views that clearly illustrate essential parts, i.e., number and location of well slots design loadings of each deck; water depth; nominal size and thickness of all primary load-bearing jacket and deck structural members; and nominal size, makeup, thickness, and design penetration of piling,

(iv) Corrosion protection or durability details which consist of the corrosion-protection method; expected life; and durability criteria for the submerged, splash, and atmospheric zones, and

(v) In the Alaska OCS Region, the following additional information shall be submitted:

(A) Slope protection and berm elevation for gravel or silt islands,

(B) Wall thickness with size and placement of major steel reinforcement for concrete-gravity structures, and

(C) Shell thickness with size and location of major reinforcement members for steel-gravity structures.

(2) A summary of environmental data, as addressed in § 250.134, which has a bearing on the platform's design, installation, and operation, e.g., wave heights and periods, current, vertical distribution of wind and gust velocities, water depth, storm and astronomical tide data, marine growth, snow and ice effects, and air and sea temperatures,

(3) Foundation information including the following:

(i) A geotechnical investigation report containing a brief summary of the major strata encountered at the location of the boring(s) presented in tabular form, a detailed subsurface profile illustrating results of field and laboratory testing, a listing of field and laboratory investigations and tests with a basic summary of resultant determinations, the identification of properties and conditions of the seabed and the subsoil, and the identification of any manmade hazards or obstructions,

(ii) A description of the effect of the environmental and functional loads on the foundation,

(iii) A determination, with supporting information, of the susceptibility of the area to soil movement and, if susceptible, an analysis of slope and soil stability,

(iv) A summary of the foundation design criteria as specified in § 250.139, and

(v) A summary of the seafloor survey results specified in § 250.139(b)(2).

(4) Structural information including the following:

(i) The design life of the platform and the basis for such determination,

(ii) A summary description of the design load conditions and design load combinations, taking into consideration the worst environmental and operational conditions anticipated over the service life of the platform,

(iii) A listing and description of the appropriate material specifications,

(iv) Design strength criteria, i.e., elastic, inelastic, and ultimate,

(v) A summary of pertinent derived factors of safety against failure for major structural members, e.g., unity check ratios exceeding 0.85 for steel-jacket platform members, indicated on "line" sketches of jacket sections, and

(vi)(A) In the Alaska, Atlantic, and Pacific OCS Regions, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139. The requirement for a fatigue analysis shall be determined by the Regional Supervisor on a case-by-case basis to determine the adequacy of the design and to assure the structural integrity of the platform, and

(B) In the Gulf of Mexico OCS Region, a summary of the fatigue analysis as specified in §§ 250.135 through 250.139. A fatigue analysis shall be performed for each steel template, pile-supported platform with natural periods greater than 3 seconds, and for each platform to be fabricated of high-strength steel (i.e., over 50 thousand pounds per square inch minimum yield) where components of high-strength steel are subjected to cyclic loading. The requirement for a fatigue analysis shall be determined by the Regional Supervisor on a case-by-case basis for all other platforms to determine the adequacy of the design and to assure the integrity of the platform.

(c) The information shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. Additional detailed data and information may be requested by the Regional Supervisor in order to determine the adequacy of the design.

(d) For all new platforms and major modifications, the lessee shall submit detailed structural plans and specifications certified by a registered professional structural engineer or civil engineer specializing in structural design. Such plans shall be affixed with the professional engineer's stamp, and

(e) The lessee shall notify the Regional Supervisor at least 1 week prior to transporting the platform to the installation site.

§ 250.132 Platform Verification Program requirements.

(a) Requirements. These requirements apply to the design, fabrication, installation, and inspection of new fixed and/or bottom-founded steel, pile-supported, or concrete-gravity platforms. The applicability of these requirements

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to other types of platforms shall be determined by the MMS on a case-by-case basis. For all new platforms or major modifications which meet any of the conditions contained in § 250.130(c), the lessee shall submit for approval to the Regional Supervisor the design, fabrication, and installation verification plans in accordance with paragraph (b) of this section. The design plan shall be submitted with or subsequent to the submittal of an Exploration Plan or Development and Production Plan. The fabrication and installation plans shall be submitted before such operations are initiated.

(b) *Verification plan requirements.*—(1) *General plan requirements.* Each verification plan shall be submitted in triplicate and include the following:

(i) A nomination of a Certified Verification Agent (CVA) who shall conduct specified reviews in accordance with § 250.133,

(ii) The CVA qualification statement consisting of the following:

(A) Previous experience in third-party verification or experience in the design, fabrication, and/or installation of offshore oil and gas platforms, gravel islands, or other marine structures,

(B) Technical capabilities of the individual or the primary staff to be associated with the CVA functions for the specific project,

(C) Size and type of organization or corporation,

(D) In-house availability of, or access to, appropriate technology, i.e., computer programs and hardware and testing materials and equipment,

(E) Ability to perform the CVA functions for the specific project considering current commitments, and

(F) Previous experience with MMS requirements and procedures.

(iii) The level of work to be performed by the CVA, and

(iv) A list of documents to be furnished to the CVA.

(2) *Design verification plan requirements.* The design plan shall also include the following:

(i) All design documentation specified in § 250.131(b), and

(ii) Abstracts of the computer programs used in the design process.

(3) *Fabrication verification plan requirements.* The fabrication plan shall also include fabrication drawings and material specifications for artificial island structures, major members of concrete- and steel-gravity structures, all the primary load-bearing members included in the space-frame analysis for jacket structures, and a summary description of the following:

(i) Structural tolerances,

(ii) Welding procedures,

(iii) Material (concrete, gravel, or silt) placement methods,

(iv) Fabrication standards,

(v) Material quality-control procedures,

(vi) Methods and extent of nondestructive examinations (NDE) for welds and materials, and

(vii) Quality assurance procedures.

(4) *Installation verification plan requirements.* Additionally, the installation plan shall include a summary description of the planned marine operations, contingencies considered, alternate courses of action, and the inspections to be performed including a graphical identification of areas to be inspected and the acceptance/rejection criteria.

(c) *Requirements for resubmittal.* All such plans shall be resubmitted for approval if the CVA is changed, if the CVA's personnel assigned to the project changes, or if the level of work to be performed by the CVA changes.

(d) *Combining of plans.* For gravel or silt islands or other platforms fabricated and installed in place, the fabrication and installation verification plans shall be combined.

§ 250.133 Certified Verification Agent duties and nomination.

(a) *CVA duties.* The CVA nominated by the lessee and approved by the Regional Supervisor shall conduct the appropriate reviews in accordance with the following:

(1) *Design phase.* (i) The CVA shall conduct the design verification to ensure that the proposed platform or major modification has been designed to withstand the maximum environmental and functional load conditions anticipated during the intended service life at the proposed location,

(ii) The design verification shall be conducted by, or be under the direct supervision of, a registered professional civil or structural engineer,

(iii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of all proposed planning criteria, environmental data, load determinations, stress analyses, material designations, soil and foundation conditions, safety factors, and other pertinent parameters of the proposed design,

(iv) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee, and

(v) Upon completion of the design verification, a final report shall be prepared which summarizes the material reviewed by the CVA and the findings and includes a recommendation that the Regional Supervisor either accept, request modification(s), or reject the proposed design. In addition, the report shall include the particulars of how, by whom, and when the independent review was conducted and any special comments considered necessary. The final report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 6 weeks of the receipt of the design data or from the date the approval to act as a CVA was issued, whichever is later.

(2) *Fabrication verification.* The CVA shall monitor the fabrication of the platform or major modification to ensure that it has been built in accordance with the approved design plans and specifications and the fabrication plan, including the following:

(i) Periodic onsite inspections shall be made while fabrication is in progress. The following of the fabrication items, as appropriate, shall be verified:

(A) Quality control by lessee and builder,

(B) Fabrication site facilities,

(C) Material quality and identification methods,

(D) Fabrication procedures specified in the approved plan and adherence to such procedures,

(E) Welder and welding procedure qualification and identification,

(F) Structural tolerances specified and adherence to these tolerances,

(G) The NDE requirements and evaluation results of the specified examinations,

(H) Destructive testing requirements and results,

(I) Repair procedures,

(J) Installation of corrosion-protection systems and splash-zone protection,

(K) Erection procedures to ensure that overstressing of members does not occur,

(L) Alignment procedures,

(M) Dimensional check of the overall structure, and

(N) Status of quality-control records at various stages of fabrication.

(ii) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of the fabrication of the platform or major modification,

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee,

(iv) If the CVA finds that fabrication procedures are changed or design specifications are modified, both the lessee and the Regional Supervisor shall be informed. The Regional Supervisor may require submittal of additional applications for approval of design or fabrication plan changes, and

(v) A final report shall be prepared by the CVA covering the adequacy of the entire fabrication phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report is not required to cover aspects of the fabrication already included in interim reports. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the design specifications and the approved fabrication plan, and a recommendation to accept or reject the fabrication. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor immediately after completion of the fabrication of the platform.

(3) *Installation phase.* The CVA shall witness the loadout of the jacket, deck(s), and piles from the fabrication site(s); review the towing records; conduct an onsite survey after transportation to the proposed location; witness the actual installation of the platform or major modification; determine that the platform has been installed at the proposed location in accordance with the approved design and the installation plan; and shall comply with the following:

(i) The CVA shall consider the applicable provisions of §§ 250.134 through 250.141 and use good engineering practice in conducting an independent assessment of the adequacy of the installation activities. The following parts of the overall installation process, as appropriate, shall be verified:

(A) Loadout and initial flotation operations, if any,

(B) Towing operations to the specified location,

(C) Launching and uprighting operations,

(D) Submergence operations,

(E) Pile installation, and

(F) Final deck and/or component installation.

(ii) The CVA shall observe the installation activities, spot-check equipment, procedures, and recordkeeping, as necessary, to determine compliance with §§ 250.134 through 250.141 and the approved plans, and immediately report to the Regional Supervisor and the lessee any discrepancies or damage to structural members. Approval for modified installation procedures or for major deviation from approved installation procedures shall be obtained from the Regional Supervisor,

(iii) Interim reports shall be submitted by the CVA, as appropriate, to the Regional Supervisor and the lessee, and

(iv) A final report shall be prepared by the CVA covering the adequacy of the entire installation phase giving details of how, by whom, and when the independent monitoring activities were conducted and providing any special comments considered necessary. The final report shall describe the CVA's activities during the verification process, summarize the findings, contain a confirmation or denial of compliance with the approved installation plan, and a recommendation to accept or reject the installation. The report shall be submitted to the lessee and, in triplicate, to the Regional Supervisor within 2 weeks of completion of the installation of the platform.

(4) All data provided to the CVA shall be handled in the strictest confidence and not be released by the CVA without the consent of the lessee, and

(5) Individuals or organizations acting as CVA's for a particular platform shall not function in any capacity other than that of a CVA for that specific project, whenever any additional activities would create a conflict of interest.

(b) *CVA nomination*—(1) *Nomination.* Individuals or organizations shall be nominated by the lessee planning to use their services. The lessee shall specify whether the nomination is for the design, fabrication, or installation phase of verification or for all three phases.

(2) *Qualifications.* Qualification submissions shall contain sufficient information to determine compliance with § 250.132(b)(1)(ii).

§ 250.134 Environmental conditions.

(a) *General.* The performance standards of this section pertain to all platforms covered by these requirements regardless of the fabrication material.

(1) *Environmental considerations.* All environmental phenomena appropriate to the areas of fabrication, transportation, and installation of an offshore platform shall be considered and their influence on the platform accounted for. Such phenomena shall include wind, waves, current, temperature, tide, marine growth, chemical components of air and water, snow and ice, earthquakes, tsunami, seiche, and other appropriate phenomena.

(2) *Environmental data.* Statistical data and defensible statistical and mathematical models shall be employed to describe the range of pertinent expected variations of environmental phenomena. Defensible data supplied by meteorologists, oceanographers, or other appropriate specialists are acceptable as the basis for design. Where possible, environmental phenomena shall be described by the characteristic parameters most relevant in the evaluation of effects on the platform.

(b) *Statistical methods.*—(1) When statistical methods are employed in the determination of parameters characterizing environmental phenomena, the statistical methods and distributions employed shall be appropriate to their application as evidenced by relevant statistical tests, confidence limits, and other measures of statistical significance.

(2) Short-term and long-term variations of environmental phenomena such as wind, waves, and current shall be described by statistical distributions relevant to the parameter considered. Defensible statistical modeling techniques shall be used in the prediction of extreme values.

(3) When hindcasting techniques are employed to approximate environmental parameters, the validity of the model used shall be defensible.

(c) *Design considerations.*—(1) *General.* A thorough assessment of the environment in the vicinity of the installation site shall be made to determine the conditions expected to occur at the site over the life of the platform.

(2) *Design environmental condition.* (i) "Design environmental condition" means the environmental factors producing the most unfavorable effects on the platform. Parameters describing the design environmental condition are given in paragraphs (c)(2)(ii) (A), (B), and (C) of this section.

(ii) The design environmental condition shall reflect the various environmental events that individually or collectively represent the most severe conditions the platform is anticipated to experience. Such conditions shall be formulated with a set of parameters that describe the relevant environmental events, including the following:

(A) The maximum wave corresponding to a selected recurrence period together with the associated wind, current, and appropriate ice and snow effects,

(B) The minimum air and sea temperatures appropriate to the event being treated, and

(C) The maximum water level due to tide and storm surge.

(iii) Consideration shall be given to other combinations of the parameters specified in paragraph (c)(2)(ii) (A) of this section involving either maximum

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wind, maximum current, or maximum ice load which may cause a greater response of the platform,

(iv) In general, the recurrence period chosen for the events specified in paragraphs (c)(2)(ii) (A) and (C) of this section shall primarily be based on the design service life of the platform. For platforms designed for a service life of 20 years, the recurrence period chosen for the determination of these events shall not be less than 100 years unless sufficient justification for a reduction of this value can be provided, and

(v) For installation sites located in seismically active areas, see paragraph (d)(8) of this section.

(3) *Operating environmental conditions.* Operating environmental conditions means the set of characteristic parameters of environmental conditions associated with a normal function or operation to be conducted on the platform. For each such intended normal function or operation, the lessee shall determine a set of characteristic parameters of environmental conditions.

(d) *Specific environmental conditions.*—(1) *Waves.* The following shall apply:

(i) Wave conditions considered for design shall be described by defensible statistical and/or deterministic methods,

(ii) Parameters characterizing design environmental waves shall be based on wave statistics or the results of defensible analytic prediction methods such as hindcasting techniques,

(iii) When using probabilistic analyses, the probability of occurrence of various wave height groups classified by directionality and for a wide range of possible periods (i.e., tables of exceedance) shall be determined. Where required by the method selected to predict extreme values, the average duration of various wave-height groups (i.e., persistence data) shall be determined. All extrapolations and long-term wave data analyses shall use defensible techniques, and available data on extreme values measured in the vicinity of the site shall be included in the long-term prediction,

(iv) When using deterministic methods, waves shall be described by the parameters, height, period, and other relevant shape characteristics. The design-wave formulation used shall be valid for the problem considered,

(v) Breaking-wave criteria appropriate to the installation site shall be determined using defensible formulations, and

(vi) If spectral wave data is established for the dynamic analysis of structural response to waves, such data shall be derived in accordance with defensible methods. If spectral data is not available in adequate quantities for the intended application, defensible mathematical formulations that best fit the available data shall be used.

(2) *Wind.* The following shall apply:

(i) Wind velocities shall be classified on the basis of their duration. Wind velocities having a duration of less than 1 minute are referred to as gust winds. Wind velocities having a duration equal to or greater than 1 minute are referred to as sustained winds. The reference elevation is 33 feet above still-water level (SWL),

(ii) Wind conditions considered for design shall be described by defensible statistical or deterministic methods,

(iii) Wind profiles shall be determined on the basis of defensible statistical or mathematical models. Corrections of wind velocity data to averaging periods other than those employed in the collection of data shall be based on defensible methods, and

(iv) Distribution of the direction and speed of wind approach to the platform shall be determined, or alternatively, winds shall be considered to approach from any direction.

(3) *Currents.* The following shall apply:

(i) Current velocities to be used in design shall be determined on the basis of the best statistics available. Tidal current, wind-generated current, density current, circulation current, and river-outflow current shall be combined on the basis of their probability of simultaneous occurrence in arriving at current velocities to be used in design,

(ii) Current velocity profiles shall be determined on the basis of site-specific studies or defensible empirical relationships. Unusual profiles due to bottom currents and stratified effects in regions near the mouth of large rivers shall be accounted for, and

(iii) Directional data on currents which exist in the absence of waves shall be described for each month or by season. Unless a detailed study of current directions is made, currents shall be assumed to run in any direction.

(4) *Tide.* The following shall apply:

(i) The design storm-tide elevation shall be identified for the installation site. For design purposes, the design environmental wave height shall be superimposed on the storm-tide elevation,

(ii) Variations in the elevation of the daily lunar tide shall be used in determining the elevations of boat landings, barge fenders, and the corrosion-prevention treatment of platforms in the splash zone (see § 250.138(c)(5)),

(iii) The assumed maximum or storm tide shall include astronomical tide, wind tide, and pressure-induced storm surge. Minimum-tide estimates shall be based on either the astronomical or lunar tide only. The water depth shall be referenced to a datum (e.g., mean low/water or mean low low/water) consistent with all other references to elevations and depths, and

(iv) If data directly applicable to the installation site are not available, the best estimate based on data for nearby locations shall be used.

(5) *Temperature.* The following shall apply:

(i) Extreme values of low temperatures shall be expressed in terms of the most probable, lowest values with their corresponding recurrence periods, and

(ii) Air, sea surface, and seabed temperatures shall be accounted for in describing the environment and in justifying the temperatures used in design.

(6) *Snow and ice.* The following shall apply:

(i) If the platform is to be located in an area where sea ice may develop or drift, ice conditions shall be accounted for. Data shall be derived from actual field investigations, laboratory analyses, or other appropriate analogous sources,

(ii)(A) Relevant statistical and physical data on the sea-ice and snow conditions shall be described with particular attention to the following:

(*1*) Concentration and distribution of ice and snow,

(*2*) Morphology of sea ice (ice floes, ice ridges, rafted ice, etc.),

(*3*) Mechanical properties of ice (mode of failure),

(*4*) Drift speed and direction,

(*5*) Thickness of ice and keel depth of pressure ridges,

(*6*) Probability of encountering icebergs, ice floes, ice-floe fragments, and hummocks.

(B) The weight of the maximum snow and ice anticipated to accumulate on the platform shall be determined.

(7) *Marine growth.* The following shall apply:

(i) When assessing the potential for marine growth, account shall be taken of relevant observations and experience in the area. In the absence of such information, defensible analytical techniques shall be employed to assess the potential for marine growth. These techniques shall take into account salinity, oxygen content, hydrogen-ion concentration value, current, temperature, water turbidity, and other appropriate factors,

(ii) Consideration shall be given to the selection of surface coatings which resist breakdown by micro-organisms which reduce the onset of corrosion, and

(iii) Particular attention shall be paid to the effects that marine growth has on surface roughness characteristics of submerged structural members.

(8) *Earthquake.* The following shall apply:

(i) The effects of earthquakes on platforms located in areas known to be seismically active shall be addressed,

(ii) Except for the provision of § 250.137(c)(5)(ii), the seismicity of the site shall be determined. Preferably, this shall be based on site-specific data. However, regional data shall be deemed acceptable for use when site-specific data is not available and the regional data is interpreted in a manner to produce the most adverse effect on a platform at the specific site. The following data shall be obtained:

(A) Recurrence interval of seismic events appropriate to the design life of the structure,

(B) Proximity to active faults,

(C) Type of faulting,

(D) Attenuation of ground motion between the faults and the site,

(E) Subsurface soil conditions, and

(F) Records from past seismic events at the site or from analogous sites.

(iii) The use of available data to describe the seismic characteristics of the site is permitted where it can be shown that such data is consistent with the requirements of paragraph (d)(8)(ii) of this section, and

(iv) The seismic data shall be used to establish a quantitative design earthquake criterion describing the design earthquake-induced ground motion. In addition to ground motion and as applicable to the installation site, the following earthquake-related phenomena shall be taken into account:

(A) Liquefaction of subsurface soils,

(B) Submarine slides,

(C) Tsunamis, and

(D) Fluid motions in tanks.

§ 250.135 Loads.

(a) *Introduction.* This section covers the identification, definition, and determination of the loads to which a fixed offshore platform may be exposed during and after its transportation and installation. The requirements contained in paragraphs (b) through (d) of this section apply to both steel-piled platforms and concrete-gravity platforms. Additional requirements covering steel-piled platforms are contained in paragraph (e) of this section. Additional requirements covering concrete-gravity platforms are contained in paragraph (f) of this section.

(b) *General.* (1) All types of loads specified in paragraphs (c)(1) through (c)(5) of this section shall be accounted for in the design and operation of the platform.

(2) Where applicable, the effects of increased dimensions and weight due to marine growth and snow and ice accumulation shall be addressed in the design.

(c) *Load definition.*—(1) *Dead loads.* Dead loads associated with the platform are loads that do not change during the mode of operation under consideration. Dead loads include the following:

(i) Weight in air of the platform (see paragraphs (e)(2) and (f)(2) of this section for itemizations of weight for steel-piled platforms and concrete-gravity platforms, respectively),

(ii) Weight of permanent ballast and the weight of permanent machinery including liquids at operating levels,

(iii) External hydrostatic pressure and buoyancy in calm sea conditions, calculated on the basis of the design waterline, and

(iv) Static earth pressure.

(2) *Live loads.* Live loads associated with the normal operation and use of the platform are loads that could change during the mode of operation considered. Live loads acting after construction and installation include the following:

(i) Weight of drilling and production equipment that can be removed such as derrick, draw works, mud pumps, mud tanks, separators, and tanks,

(ii) Weight of crew and consumable supplies such as mud, chemicals, water, fuel, pipe, cable, stores, drill stem, casing, etc.,

(iii) Weight of liquids in storage tanks,

(iv) Forces exerted on the platform due to drilling, e.g., the maximum derrick reaction when placing or pulling casing,

(v) The forces exerted on the platform during the operation of cranes and vehicles,

(vi) The forces exerted on the platform by vessels moored to the platform, and

(vii) The forces exerted on the platform by helicopters during takeoff and landing or while parked on the platform.

When applicable, the dynamic effects on the platform of the forces specified in paragraphs (c)(2) (iv) through (vii) of this section shall be taken into account. Live loads occurring during transportation and installation shall be determined for each specific operation involved, and the dynamic effects of such loads shall be addressed (see § 250.142).

(3) *Deformation loads.* Deformation loads are loads due to deformations imposed on the platform. For an itemization of deformation loads applicable to steel-piled platforms, and concrete-gravity platforms, see paragraphs (e)(2) and (f)(2) of this section, respectively.

(4) *Accidental loads.* Consideration shall be given to accidental loadings, and where such loadings are incorporated in design, they shall be quantified. Accidental loads are loads that could occur as the result of an accident or exceptional conditions, such as the following:

(i) Extreme impact loads caused by supply boats, barges, and other craft anticipated to work in the vicinity of the platform,

(ii) Impact loads caused by dropped objects, such as drill collars, casing, blowout-preventer (BOP) stacks,

(iii) Loss of internal pressure required to resist hydrostatic loading and to maintain buoyancy during the installation of the platform,

(iv) Explosion,

(v) Effects of fire, and

(vi) Iceberg collision.

(5) *Environmental loads.* The following shall apply:

(i) Environmental loads are loads due to wind, waves, current, ice, snow, earthquake, and other environmental phenomena,

(ii) The characteristic parameters defining an environmental load shall be appropriate to the installation site as determined by the studies required by § 250.134. Operating environmental loads are loads derived from the parameters characterizing operating environmental conditions (see § 250.134(c)(3)). Design environmental loads are loads derived from the parameters characterizing the design environmental condition (see § 250.134(c)(2)),

(iii) Environmental loads shall be applied to the platform from directions producing the most unfavorable effects on the platform unless site-specific studies allow for a less stringent requirement,

(iv) The combination and severity of design environmental loads shall be consistent with the likelihood of their simultaneous occurrence. The simultaneous occurrence of environmental loads shall be modeled by appropriate superposition methods, and

(v) Earthquake loads and loads resulting from accidental or rare environmental phenomena need not be combined with other environmental loads unless site-specific conditions

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indicate that such combination is appropriate.

(d) *Determination of environmental loads.*—(1) *Wave loads.* The following shall apply:

(i) Wave-induced loads shall be calculated using defensible methods or shall be obtained from adequate model or field test data,

(ii) A sufficient range of waves and wavecrest positions relative to the platform shall be investigated to ensure an accurate determination of the maximum wave load on the platform,

(iii) Wave impact loads on structural members below the design wave crest elevation shall be accounted for by defensible theoretical methods or relevant model test or full-scale data,

(iv) Where applicable, the possibility of dynamic excitation of the platform due to flow-induced cyclic loading shall be addressed,

(v) For additional requirements pertaining to steel-piled platforms and concrete gravity-platforms, see paragraphs (e)(3) and (f)(3) of this section, respectively, and

(vi) Additional hydrostatic loading effects shall be addressed.

(2) *Wind loads.* The following shall apply:

(i) Wind loads, local wind pressures, and wind profiles shall be determined on the basis of defensible analytical methods or wind tunnel tests on a representative model of the platform,

(ii) In determining design environmental loads on the overall platform, wind loads calculated on the basis of the design-sustained wind velocity shall be combined with other design environmental loads,

(iii) The design gust wind load shall be used in the design of local structure unless the effects of the load combination described in paragraph (d)(2)(ii) of this section are more severe, and

(iv) Where appropriate, the dynamic effects due to the cyclic nature of gust wind and cyclic loads due to vortex shedding shall be taken into account. Both the drag and lift components of loads due to vortex shedding shall be taken into account.

(3) *Current loads.* The following shall apply:

(i) Current-induced loads on immersed members of the platform shall be accounted for by defensible methods or the results of model test or site-specific data,

(ii) The lift and drag coefficients used in the determination of current loads shall be appropriate to the current velocity and structural configuration,

(iii) Current velocity profiles used in design shall be appropriate to the installation site,

(iv) For determination of loads induced by the simultaneous occurrence of wave and current fields, the total velocity field shall be computed by defensible methods before computing the total force, and

(v) Where appropriate, flutter and load amplification due to vortex shedding shall be addressed.

(4) *Ice and snow loads.* The following shall apply:

(i) Contact loads caused by floating ice shall be determined according to defensible theoretical methods, model test data, or full-scale measurements,

(ii) In locations where platforms are subject to ice and snow accumulation, the additional weight of snow and ice on the platform shall be addressed,

(iii) The effects of ice accumulation and ice jam, including the effects of changes in configuration due to adhesion, shall be accounted for in the determination of the total environmental load, and

(iv) The incident pressure due to pack ice, pressure ridges, and where appropriate, ice island fragments impinging on the platform shall be addressed.

(5) *Earthquake loads.* The following shall apply:

(i) For platforms located in seismically active areas, design earthquake-induced ground motions shall be determined on the basis of seismic data applicable to the installation site. Design earthquake ground motions shall be described by either applicable ground motion records or response spectra consistent with the recurrence period appropriate to the design life of the platform,

(ii) Available and defensible standardized spectra applicable to the region of the installation site are acceptable if such spectra reflect those site-specific conditions affecting frequency content and energy distribution. These conditions include the type of active faults in the region, the proximity of the site to the potential source faults, the attenuation or amplification of ground motion between the faults and the site, and the soil conditions at the site,

(iii) Ground-motion descriptions shall consist of three components corresponding to two orthogonal horizontal directions and the vertical direction. All three components shall be applied to the platform simultaneously,

(iv)(A) When the response spectrum method is used for structural analysis, input values of ground motion (spectral acceleration representation) shall not be less severe than the following:

(*1*) One hundred percent in a principal horizontal direction,

(*2*) Sixty-seven percent in the orthogonal horizontal direction, and

(*3*) Fifty percent in the vertical direction.

(B) The horizontal components shall also be applied in the alternative orthogonal horizontal directions.

(v) If the time history method is used for structural analysis, at least three sets of ground-motion time histories shall be employed. The manner in which the time histories are used shall account for the potential sensitivity of the platform's response to variations in the phasing of the ground-motion records, and

(vi) When applicable, effects of soil liquefaction and/or loads resulting from submarine slides or creep, tsunamis, and earthquake motions shall be addressed.

(e) *Loads on steel pile-supported platforms.* The following requirements apply to loads on steel pile-supported platforms and shall be applied together with the requirements in paragraphs (b), (c), and (d) of this section:

(1) The dead load of the platform shall include, as appropriate, the weight in air of the jacket, piling, grout, superstructure modules, stiffeners, decking, piping, heliport, and any other fixed structural part less buoyancy, with due allowance for flooding.

(2) The deformation loads to be accounted for are those resulting from temperature variations leading to thermal stresses in the platform, and where appropriate, those resulting from soil displacements (e.g., differential settlements or lateral displacements).

(3) *Wave loads.* The following shall apply:

(i) For platforms composed of members having diameters that are negligible in relation to the wave lengths considered, semiempirical formulations accounting for wave-induced drag and inertia forces based on the water particle velocities and accelerations on an undisturbed, incident flow field are acceptable,

(ii) When a method as described in paragraph (e)(3)(i) of this section is used, the wave field shall be described by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site,

(iii) The coefficients of drag and inertia used in calculating wave loads shall be determined on the basis of model test results, published data, or full-scale measurements appropriate to the structural configuration, surface roughness, and wave field, and

(iv) For platforms composed of members whose diameters are not negligible in relation to the wave lengths considered and for structural configurations that will substantially alter the undisturbed, incident flow field, diffraction forces and the hydrodynamic interaction of structural members shall be taken into account.

(f) *Loads on concrete-gravity platforms.* The following requirements apply to loads on concrete-gravity platforms and shall be applied together with the requirements described in paragraphs (b), (c), and (d) of this section.

(1) The dead load of the platform shall include, as appropriate, the weight in air of the foundation, skirts, columns, superstructure modules, decking, piping, heliport, and any other fixed structural part less buoyancy with due allowance for flooding. Weight calculations based on nominal dimensions and mean values of density are acceptable,

(2) The deformation loads to be accounted for are those due to prestress, shrinkage and expansion, creep, temperature variations, and differential settlements,

(3) *Wave loads.* The following shall apply:

(i) For platforms composed of large gravity bases and one or more columns whose diameters are not negligible in relation to the wave lengths considered, defensible wave-load theories which account for the drag, inertia, and diffraction forces on the platform shall be employed,

(ii) For complex structural configurations, the hydrodynamic interaction of large, immersed structural members shall be addressed,

(iii) When diffraction forces and hydrodynamic interaction are negligible, only semiempirical formulations comparable to those mentioned in paragraphs (e)(3) (i) and (iii) of this section accounting for drag and inertia forces are acceptable, and

(iv) The undisturbed, incident flow field shall be addressed by a defensible wave theory appropriate to the wave heights, wave periods, and water depth at the installation site.

§ 250.136 General design requirements.

(a) *General.* This section specifies the general concepts and methods of analysis to be incorporated in the design of a platform.

(b) *Analytical approaches.*

(1) *Structural response.* The following shall apply:

(i) Methods of analysis employed in association with the specifications of these requirements shall treat geometric and material nonlinearities in a defensible manner. When nonlinear methods of analysis are used to assess collapse mechanisms, it shall be demonstrated that the platform has sufficient ductility to develop the required resistance or structural displacements, and

(ii) Where theoretically based analytical procedures covering the platform or parts thereof are unavailable or not well defined, model studies shall be utilized. The acceptability of model studies depends on the procedures employed, including enumeration of the possible sources of errors, the limits of applicability of the model test results, and the methods of extrapolation to full-scale data.

(2) *Loading formats.* The following shall apply:

(i) Either a deterministic or spectral format shall be employed to describe various load components. When a static approach is used, it shall be demonstrated, where appropriate, that the general effects of dynamic amplification were addressed. The influence of waves other than the highest waves shall be investigated for their potential to produce maximum peak stresses resulting from possible resonance with the platform,

(ii) When considering the design earthquake as discussed in § 250.135, a dynamic analysis shall be performed. A dynamic analysis shall also be performed to assess the effects of environmental or other types of loads if significant dynamic amplification is expected, and

(iii) For fatigue analysis, the long-term distribution of the stress range, with proper consideration of dynamic effects, shall be obtained for relevant loadings anticipated during the design life of the platform (see §§ 250.137(c)(6) and 250.138(c)(6)).

(3) *Combination of loading components.* The following shall apply:

(i) Loads imposed during and after installation shall be taken into account. Of the various loads described in § 250.134, those loads to be considered for design shall be combined in a manner consistent with their probability of simultaneous occurrence. However, earthquake loadings shall be applied without consideration of other environmental effects unless conditions at the site necessitate their inclusion. The direction of applied environmental loads shall be that producing the highest possible influences on the platform, considering the platform's orientation and location with respect to bottom topography, direction of fetch, and nearby land masses,

(ii) While it is required to obtain and use those loading components which produce realistic maximum effects on the platform, loading combinations corresponding to conditions after installation shall reflect both operating and design environmental loadings. Sections 250.137, 250.138, and 250.139 give the minimum load combinations to be considered, and

(iii) The operating environmental conditions and the maximum tolerable environmental loads during installation shall be specified.

(c) *Overall design considerations.*

(1) *Design life.* The design service life of the platform shall be specified as prescribed in § 250.134(c)(2)(iv).

(2) *Air gap.* An air gap of 5 feet shall be provided between the maximum crest elevation of the design wave (including tidal effects) and the lowest portion of the platform upon which wave forces have not been included in the design. After accounting for the initial and long-term settlements resulting from consolidation and subsidence, the elevation of the crest of the design wave shall be based on the elevation of the mean low-water line, astronomical and storm tides, wave runup, the tilting of the platform, and where necessary, tsunamis.

(3) *Long-term and secondary effects.* The following effects shall be addressed, as appropriate, for the planned platform:

(i) Local vibration due to machinery, equipment, and vortex shedding,

(ii) Stress concentrations at critical joints,

(iii) Secondary stresses induced by large deflections (P-Δ effects),

(iv) Cumulative fatigue,

(v) Corrosion,

(vi) Marine growth, and

(vii) Ice abrasion.

(4) *General arrangement.* The platform and equipment shall be arranged to minimize the potential of structural damage and personal injury resulting from accidents. In this regard, the consequences of the arrangement or placement of the following components and their effects shall be addressed:

(i) Equipment and machinery—noise and vibration,

(ii) High-pressure piping—leakage in closed spaces,

(iii) Lifting devices—dropped loads, and

(iv) Vessel mooring devices—line breakage and tripping quick-release mechanisms.

(5) *Corrosion-protection zones.* Measures taken to mitigate the effects of corrosion as required by §§ 250.137(d) and 250.138(c)(5) shall be specified and described in terms of the following definitions for corrosion-protection zones:

(i) Submerged zone—that part of the platform below the splash zone,

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(ii) Splash zone—that part of the platform between the highest and lowest water levels reached by sea states exceeded for 1 percent of the time annually when superimposed on the highest and lowest levels of tide with due allowance for high and low installation of the platform,

(iii) Atmospheric zone—that part of the platform above the splash zone,

(iv) Ice zone—that part of the platform which can reasonably be expected to come into contact with floating or submerged ice annually.

§ 250.137 Steel platforms.

(a) *Materials.*

(1) *General.*

(i) This section covers specifications for materials used for the construction of offshore steel pile-supported platforms. Steels shall be suitable for their intended service as demonstrated by testing under relevant service conditions or previous satisfactory performance under service conditions similar to those intended. Steels shall be of good commercial quality, defined by specification, and free of injurious defects,

(ii) Steels shall exhibit satisfactory formability and weld-ability characteristics and fracture toughness satisfactory for the intended applications. Materials for structural members which are fracture critical or for members which sustain significant tensile stress and whose fracture would pose a threat to the survival of the platform shall have sufficient toughness to guard against brittle fracture. Materials selected for members which are subjected to significant tensile stress shall have toughness suitable to their intended application, and

(iii) In cases where principal loads from either service or weld residual stresses are imposed normal to the plate, appropriate precautions shall be taken to avoid lamellar tearing parallel to the plate surface.

(2) *Material selection.* The following shall apply:

(i) Steels for structural members shall be selected according to criteria that take into account the required yield strength, fracture toughness, service temperature (see paragraph (a)(3) of this section), and intended application,

(ii) Bolts and nuts shall have mechanical and corrosion properties comparable to the structural elements being joined. Materials for bolts and nuts shall be defined by and tested in accordance with material standards compatible with those for the joined structural members,

(iii) When new alloys are used, the adequacy of fracture toughness shall be supported by appropriate fracture tests, and

(iv) When materials other than steel are used, the mechanical and durability properties necessary for their intended function shall be designated, including toughness and fatigue characteristics, where necessary.

(3) *Service temperature.* Service temperature means the temperature that the material is expected to achieve in the operational environment.

(i) For material at or below the waterline, the minimum service temperature shall be the lowest average daily water temperature applicable to the particular depth. For material above the waterline, the minimum service temperature shall be the lowest 1-day average daily atmospheric temperature over a 10-year period, unless the material is warmed by auxiliary heating, and

(ii) In all cases where material temperature is reduced by localized cryogenic storage or other cooling means, such factors shall be accounted for in establishing minimum service temperature.

(4) *Classification of applications.* When considering the welding requirements given in subsequent sections, materials shall be considered as "Weld Class A" if the members are critical or special structural elements, "Weld Class B" if the members are primary load-carrying members of the platform, or "Weld Class C" if the members are secondary structural elements.

(5) *Material designation.* All material employed in platform construction shall be described and designated by a material specification.

(b) *Fabrication and welding.*

(1) *General.* The following shall apply:

(i) Welding shall be performed in accordance with the applicable provisions of the American Welding Society (AWS) publication, AWS D1.1, Structural Welding Code—Steel, or other appropriate welding codes, and

(ii) Fabrication other than welding shall be performed in accordance with the American Institute of Steel Construction (AISC) publication, S326, Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, or other appropriate codes. The code to be followed during fabrication and construction shall be specified on design documents.

(2) *Welding.* The following shall apply:

(i) Welding procedures and filler metals shall be selected to produce sound welds, and the filler metal shall have strength and toughness compatible with the base metal. Workmanship shall be in compliance with paragraph (b)(1)(i) of this section,

(ii) Forming processes shall not degrade the base metals below their minimum required properties. A heat treatment shall be employed to provide the required properties, where necessary,

(iii) Misalignment, between parallel (abutting) members shall be minimized. Weld size for fillet welds shall be sufficient to compensate for the gap between faying surfaces of the members. Lapped joints shall possess sufficient overlaps. Both edges of an overlap joint shall have continuous fillet welds,

(iv) When arc-air gouging is employed, the carbon buildup and burning of the weld or base metals shall be minimized, and

(v) Peening shall not be used for single-pass welds or for the root or cover passes of multipass welds. Peening shall be used only after cleaning of weld passes. Fairing by heating, flame shrinking, or other methods, when applied to Weld Class A or B structural elements, shall be performed without damaging the base metals. Such corrective measures shall be kept to a minimum when treating high-strength steels.

(3) *Quality assurance.* A documented inspection plan shall be prepared and followed and shall cover the following items:

(i) A suitable system for material identification and quality control during all stages of construction,

(ii) Requirements for welding procedures and welder qualifications,

(iii) The extent of weld inspection (including nondestructive examination methods) and the criteria for weld acceptance or rejection, and

(iv) Necessary dimensional tolerances.

(4) *Weld nondestructive examination.* The following shall apply:

(i) All welds shall be subjected to visual examination. Nondestructive examination shall be conducted to the extent indicated in paragraph (b)(4)(ii) of this section after all forming and post-weld heat treatments have been completed. Welding examination procedures shall be adequate to detect delayed weld cracking in cases involving high-strength steels or high-hydrogen welding processes,

(ii) As called for in paragraph (b)(3)(iii) of this section, a plan for nondestructive examination of the welds shall be prepared and followed. The extent of inspection of Weld Classes A and B structural elements shall be consistent with the application involved. Important welds of Weld Classes A and B structural elements are those inaccessible or very difficult to inspect in service. Important welds shall be subjected to an increased level of nondestructive examination during fabrication, and

(iii) If the proportion of unacceptable welds becomes excessive, the frequency of nondestructive examination shall be increased.

(c) *Design and analysis.*

(1) *General.* The following shall apply:

(i) The objective of this subsection is to ensure that steel platforms are adequately designed and analyzed to withstand the loads to which they are likely to be exposed during their design life. This subsection requires that the effects on the platform be determined for a minimum set of loading conditions by using a defensible method, and that the resulting responses do not exceed the safety criteria appropriate to the methods employed,

(ii) The use of design methods, other than those specifically covered in this section, and their associated safety criteria are allowed if it can be demonstrated that such alternative methods will result in a structural safety level equivalent to that provided by the direct application of these requirements, and

(iii) Sections 250.135 and 250.136 shall be consulted regarding definitions and requirements pertinent to the determination of loads and general design requirements.

(2) *Loading conditions.* The following shall apply:

(i) Appropriate loading conditions that produce the most adverse effects on the platform during and after fabrication and installation shall be considered, and

(ii) Loadings corresponding to conditions after installation shall include at least those relating to both the operating and design environmental conditions, combined with other pertinent loads in the following manner:

(A) Operating environmental conditions combined with dead and live loads appropriate to the function and operation of the platform,

(B) Design environmental conditions combined with dead and live loads appropriate to the function and operation of the platform, and

(C) Design environmental conditions combined with dead loads and minimum live loads appropriate to the function and operation of the platform.

(iii) For platforms located in seismically active areas, design-earthquake loads shall be combined with dead and live loads appropriate to the operation and function of the platform.

(3) *Methods of design and analysis.* The following shall apply:

(i) The nature of loads and loading combinations as well as the local environmental conditions shall be considered in the selection of design methods. Methods of analysis and their associated assumptions shall be compatible with the overall design principles,

(ii) Linear, elastic methods (working stress methods) of design and analysis are acceptable if proper measures are taken to prevent general and local buckling failure. Regarding structural instability as a possible mode of failure, the effects of initial stresses and geometric imperfection shall be taken into account,

(iii) Dynamic effects shall be accounted for if the wave energy in the frequency range of the structural resonance frequencies is of sufficient magnitude to produce significant stresses in the platform. The determination of dynamic effects shall be accomplished either by computing the dynamic amplification effects in conjunction with a deterministic analysis or by a random dynamic analysis based on a spectral formulation. In the latter case, the analysis shall be accompanied by a statistical description and evaluation of the relevant input parameters,

(iv) The interaction of the soil with the platform's piles shall be included in the analytical model used to obtain the structural response (see § 250.139(d)(1)(iv)),

(v) For static loads, plastic methods of design and analysis shall be employed only when the properties of the steel and the connections exclude the possibility of brittle fracture and allow for formation of plastic hinges with sufficient plastic rotation capacity and adequate fatigue resistance,

(vi) Whenever plastic analysis is used, it shall be demonstrated that the collapse mode (mechanism) corresponding to the smallest loading intensities has been used for the determination of the ultimate strength of the platform. The effect of buckling and other destabilizing nonlinear effects shall be taken into account in the plastic analysis of platforms with compressive forces. Whenever nonmonotonic or repeating loads are present, it shall be demonstrated that the structure will not fail by incremental collapse or fatigue, and

(vii) Under dynamic loads when plastic strains may occur, the considerations specified in paragraph (c)(3)(v) of this section shall be satisfied and any buckling and destabilizing nonlinear effects shall be taken into account.

(4) *Allowable stresses and load factors.* The following shall apply:

(i) When the design is based on a working-stress method (see paragraphs (c)(1)(ii) and (c)(3)(ii) of this section), the safety criteria shall be expressed in terms of appropriate basic allowable stresses in accordance with requirements specified in paragraphs (c)(4) (ii) through (vi) of this section,

(ii) For structural members and loadings covered by the AISC publication, S326, Part 1, with the exception of earthquake loadings (see paragraph (c)(4)(v) of this section) and tubular structural members under the combined loading of axial compression and bending, the basic allowable stresses of the members shall be obtained using the AISC specification. For tubular members subjected to the aforementioned interaction, stress limits shall be set in accordance with a defensible formulation,

(iii) Where stresses in members listed in paragraph (c)(4)(ii) of this section are shown to result from forces imposed by the design environmental conditions acting alone or in combination with dead and live loads (see paragraph (c)(2)(ii) of this section), the basic allowable stresses cited in paragraph (c)(4)(ii) of this section, modified by a factor of four-thirds, are permitted for the design environmental load contribution if the resulting structural member sizes are not less than those required for dead and live loads plus operating environmental conditions without the one-third increase in allowable stresses,

(iv) For any two- or three-dimensional stress fields within the scope of the working-stress formulation, the equivalent stress (e.g., the von Mises stress intensity) shall be limited by an appropriate allowable stress less the yield stress, with the exception of stresses of a highly localized nature. In the latter case, local yielding of the structure is acceptable if it can be demonstrated that such yielding does not lead to progressive collapse of the overall platform and that the general structural stability can be maintained,

(v) When considering loading combinations on individual members or on the overall platform, which include loads defined as accidental (see § 250.135(c)(4)), or in pursuing structural analysis for earthquake loads (see paragraph (c)(2)(iii) of this section), the allowable stress set at a level of the minimum yield or buckling strength of the material shall be considered appropriate,

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(vi) Whenever elastic instability, overall or local, may occur before the compressive stresses reach the minimum specified yield strength of the material, appropriate allowable buckling stresses shall govern,

(vii) Whenever the ultimate strength of the platform is used as the basis for the design of its members, the safety factors or the factored loads shall be formulated in accordance with the requirements of AISC publication, S328, Part 2, or an equivalent code. The capability of the primary structural members to develop their predicted ultimate load capacity shall be demonstrated, and

(viii) For details of high-stress concentration, consideration shall be given to safety against brittle fracture and to material quality-control procedures.

(5) *Structural response to earthquake loads.* The following shall apply:

(i) Platforms located in seismically active areas shall be designed to possess adequate strength and stiffness as well as sufficient ductility to withstand the effects of the design earthquake combined with other loads (see paragraph (c)(2)(iii) of this section) and to remain stable during rare motions of greater severity,

(ii) For platforms in seismically active areas, the adequacy of structural strength and ductility shall be demonstrated by a strength analysis and a ductility analysis,

(iii) The platform shall be capable of withstanding the loadings specified in paragraph (c)(2)(iii) of this section with no significant structural damage. The analysis to verify this strength requirement shall demonstrate that the nominal stresses in structural members do not exceed the material yield strength or the buckling stresses, and

(iv) The ductility check shall demonstrate that the platform-foundation system is capable of absorbing at least four times the amount of energy associated with the level of structural response determined in the strength analysis with the platform remaining stable.

(6) *Fatigue assessment.* The following shall apply:

(i) Structural members and joints for which fatigue is a probable mode of failure and for which past experiences are insufficient to ensure safety from possible cumulative fatigue damage shall be analyzed. Emphasis shall be given to joints and members in the splash zone, those that are difficult to inspect and repair after the platform is in service' and those susceptible to corrosion-accelerated fatigue, and

(ii) For structural members and joints which require a detailed analysis of cumulative fatigue damage, the results of the analysis shall indicate a minimum calculated life of twice the design life (see § 250.136(c)(1)) of the platform if there is sufficient structural redundancy to prevent catastrophic failure of the platform as a result of fatigue failure of the member or joint under consideration. If such redundancy does not exist or if the desirable degree of redundancy is significantly reduced as a result of fatigue damages, the results of a fatigue analysis shall indicate a minimum calculated life of three times the design life of the platform.

(d) *Corrosion protection.* All materials shall be protected from the effects of corrosion by a corrosion-protection system. The design of such systems shall take into account the possible existence of stress corrosion, corrpsion fatigue, and galvanic corrosion. If the intended sea environment contains unusual contaminants, any special corrosive effects of such contaminants shall also be considered. Protection systems shall be designed in accordance with the National Association of Corrosion Engineers (NACE) publication, NACE Standard RP–01–76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated with Petroleum Production, or other comparable standards.

(e) *Connection of piles to structure.* The attachment of the jacket structure to the piles shall be accomplished by positive, controlled means. Such attachments shall be capable of withstanding the static and long-term cyclic loadings to which they will be subjected.

§ 250.138 Concrete-gravity platforms.

(a) *General.*

(1) This section covers the materials, analysis, design, and construction of reinforced and/or prestressed concrete-gravity platforms.

(2) Materials, structural systems, methods of design, and methods of construction that do not conform to the requirements of this section shall not be used unless it is shown that they will result in a safety level at least equivalent to that provided by the direct application of this section.

(b) *Materials.*

(1) *General.* All materials shall be selected with due attention to their strength and durability in the marine environment. All material tests shall be performed in accordance with the latest, applicable standards of the American Society for Testing and Materials (ASTM).

(2) *Cement.* The following shall apply:

(i) Cement shall be equivalent to Type I, II, or III portland cement as specified by ASTM C150, Specification for Portland Cement, or portland-pozzolan cement as specified by ASTM C595, Specification for Blended Hydraulic Cements. However, the suitability of Type III cement to serve its intended function shall be demonstrated,

(ii) The tricalcium aluminate content of the cement shall be such as to enhance the corrosion protection of reinforcing steel without impairing the durability of concrete, and

(iii) If oil storage is planned and the oil is expected to contain soluble sulfates in amounts that may impair the durability of concrete, the tricalcium content shall be reduced or a suitable coating employed to protect the concrete.

(3) *Water.* The following shall apply:

(i) Water used in mixing concrete shall be clean and free from injurious amounts of oils, acids, alkalis, salts, organic materials, or other substances that may be deleterious to concrete or steel,

(ii) If nonpotable water is used, the proportions of materials in the concrete shall be based on test concrete mixes using water from the same source. The strength of mortar test cubes made with nonpotable water shall not be significantly below the strength of similar cubes made with potable water, and

(iii) Water for reinforced or prestressed concrete or grout shall not contain chlorides and sulfates in amounts detrimental to the durability of the platform.

(4) *Aggregates.* The following shall apply:

(i) Aggregates shall conform to the requirements of ASTM C33, Specifications for Concrete Aggregates. Lightweight aggregates conforming to ASTM C330, Specifications for Lightweight Aggregates for Structural Concretes, shall only be permitted if they do not pose durability problems and where they are used in accordance with the applicable provisions of the American Concrete Institute (ACI) publication, ACI 318, Comb, Building Code Requirements for Reinforced Concrete, plus Supplement and Commentary.

(ii) Marine aggregates shall be washed with fresh water before use to remove the surface and soluble chlorides and sulfates so that the total chloride and sulfate content of the concrete mix water does not exceed the limits of paragraph (b)(3)(iii) of this section, and

(iii) The maximum size of the aggregate shall be such that the concrete can be placed without voids.

(5) *Admixtures.* The admixture shall be shown capable of maintaining essentially the same composition and performance throughout the work as the product used in establishing concrete proportions. Admixtures containing chloride ions shall not be used in prestressed concrete or in concrete containing aluminum embedments.

(6) *Reinforcing and prestressing systems.* The following shall apply:

(i) Reinforcing and prestressing systems shall conform to the requirements of ACI 318.

(ii) Structural steel used in composite structures shall conform to the requirements of § 250.137.

(7) *Concrete.* The concrete shall be designed to ensure sufficient strength and durability. The quality control of concrete shall conform to ACI 318. The mixing, placing, and curing of concrete shall conform to the requirements of paragraph (e) of this section. The water-cement ratio shall be strictly controlled and in no case shall it exceed 0.45.

(8) *Grout for bonded tendons.* The following shall apply:

(i) Grout for bonded tendons shall conform to ACI 318, and

(ii) The maximum allowable contents of chlorides and sulfates determined in accordance with paragraph (b)(3)(iii) of this section shall also apply to grout mixes.

(9) *Post-tensioning ducts.* Post-tensioning ducts shall conform to the requirements of ACI 318. Ducts and duct splices shall be watertight and grout-tight and shall be of suitable thickness to prevent crushing, deformation, and blockage.

(10) *Post-tensioning anchorages and couplers.* Post-tensioning anchorages and couplers shall conform to the requirements of ACI 318.

(c) *Design requirements.*

(1) *General.* The following shall apply:

(i) The strength of the platform shall be adequate to resist failure of the platform or its components. Among the modes of possible failure that shall be considered are the following:

(A) Loss of overall equilibrium,

(B) Failure of critical sections, and

(C) Instability (buckling).

(ii) Additionally, the following items shall be considered in relation to their potential influences on the platform:

(A) Cracking or spalling,

(B) Deformations,

(C) Corrosion of reinforcement or deterioration of concrete, and

(D) Vibrations.

(2) *Required strength.* The following shall apply:

(i) The required strength of the structure and each member (U) shall be equal to or greater than the maximum of the following:

$$U = 1.2\ (D+T) + 1.6\ L_{max} + 1.0\ E_{o}$$
$$U = 1.2\ (D+T) + 1.2\ L_{max} + \gamma\ L^{E}_{max}$$
$$U = 0.9\ (D+T) + 0.9\ L_{min} + \gamma\ L^{E}_{max}$$

in which

$\gamma L = 1.3$ for wave, current, wind, or ice load,
$= 1.4$ for earthquake loads, and
$= 1.0$ for accidental loads.

(ii) In the formulas specified in paragraph (c)(2)(i) of this section, the symbols D, T, and L represent dead load, deformation load, and live load, respectively. The symbol E_o represents the operating environmental loads, E_{max} represents the design environmental loads (see § 250.135(c)(5)(ii)), and L_{min} and L_{max} represent minimum and maximum expected live loads, respectively, and

(iii) For loads of type D, the load factor 1.2 shall be replaced by 1.0 if it leads to a more unfavorable load combination. For strength evaluation, the effects of deformation load may be ignored if adequate ductility is available.

(3) *Design strength.* The following shall apply:

(i) The design strength of a member or a section shall be taken as the nominal strength multiplied by a strength-reduction factor,

(ii) The values of the strength-reduction factors shall be as specified in ACI 318,

(iii) For shell structures, the strength-reduction factor shall be equal to 0.7, and

(iv) Design strength of nonprestressed reinforcement shall not be based on a yield strength in excess of 80,000 pounds per square inch.

(4) *Other design requirements.* The following shall apply:

(i) In considering these items listed in paragraph (c)(1)(ii) of this section, the ability of the platform to withstand unfactored loads in the following combination shall be demonstrated:

$$D+T+L+E_{o}$$

where L represents the most unfavorable live load.

(ii) Crack control design shall be achieved by limiting the crack width in concrete subjected to tension or by limiting the tensile stress in reinforcing steel and prestressing tendons.

(5) *Durability.* The following shall apply:

(i) Materials, design, construction procedures, and quality control shall be such as to produce satisfactory durability of platforms in a marine environment, and

(ii) The following items shall be considered in the four zones of exposure (see § 250.136(c)(5)):

(A) Submerged zone—chemical deterioration of the concrete, corrosion of the reinforcement and hardware, and abrasion of the concrete,

(B) Splash zone—freeze-thaw durability, corrosion of the reinforcement and hardware, the chemical deterioration of the concrete, and fire hazards,

(C) Atmospheric zone—freeze-thaw durability, corrosion of reinforcement and hardware, and fire hazards, and

(D) Ice zone—mechanical deterioration resulting from the abrasive action of moving ice.

(6) *Fatigue.* Platforms for which fatigue is a probable mode of failure shall be designed to limit the effects of cumulative material fatigue. The effects of fatigue induced by normal stress and those resulting from shear and bond stress shall be considered. Particular attention shall be given to submerged areas subjected to the low-cycle, high-stress components of the anticipated loading history. If an analysis of the fatigue life is performed in lieu of employing other methods to obviate the possibility of fatigue damage, the calculated fatigue life of the platform shall be at least twice the design life (see § 250.136(c)(1)).

(d) *Analysis and design.*

(1) *General.* The following shall apply:

(i) The analysis of platforms shall be pursued under the assumptions of linearly elastic materials and linearly elastic structural behavior, except as listed in paragraphs (d)(1) (ii) and (iii) of this section,

(ii) The inelastic behavior of concrete, based on the true variation of the modulus of elasticity with stress, shall be taken into account whenever its effect reduces the strength of the platform,

(iii) The geometric nonlinearities and the effect of initial deviation of the platform from the design geometry shall be taken into account whenever their effects reduce the strength of the platform,

(iv) Where appropriate, dynamic effects shall be taken into account. The dynamic response shall be determined by a defensible method that includes the effects of the foundation—platform interaction and the effective mass of the surrounding water, and

(v) The material properties used in the analysis shall be based on actual laboratory tests or shall follow the appropriate sections of ACI 318.

(2) *Analysis of frames.* The analysis of frames shall be performed by a

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defensible method of structural mechanics. The buckling strength of the frame shall be assessed, and the safety against buckling failure shall be ensured to a degree consistent with the requirements in paragraphs (c)(2) and (c)(3) of this section.

(3) *Analysis of plates, shells, and folded plates.* The analysis of plates, shells, and folded plates shall be performed by a defensible method of the theory of plates and shells. The analysis shall determine the resultant forces and moments. The building strength of these platforms shall be determined, and a sufficient safety margin against instability shall be ensured.

(4) *Determination of deflections.* Deflections shall be determined by a defensible method. In addition to the immediate (instantaneous) deflections, the long-term deflections due to creep shall be accounted for.

(5) *Analysis and design for bending and axial loads.* The provisions of ACI 318 shall apply to the analysis and design of members subject to flexure or axial loads or to combined flexure and axial loads.

(6) *Analysis and design for shear and torsion.* The provisions of ACI 318 shall apply to the analysis and design of members subject to shear or torsion or to combined shear and torsion.

(7) *Analysis and design of prestressed concrete.* The analysis and design of prestressed concrete members and structures shall comply with ACI 318. In addition, the safety requirements of paragraph (c) of this section shall be satisfied.

(8) *Details of reinforcement and prestressing systems.* Details of reinforcement and prestressing systems shall conform to the requirements of ACI 318 with special attention given to the fatigue resistance and ultimate behavior of offshore structures.

(9) *Minimum reinforcement.* The minimum amount of reinforcement shall conform to the requirements of ACI 318. Additionally, sufficient reinforcement shall be provided to control crack growth, especially at surfaces exposed to severe hydraulic pressures.

(10) *Concrete cover of reinforcement and prestressing tendons.* The concrete cover of reinforcement and prestressing tendons shall be sufficient to provide for corrosion protection of the steel.

(11) *Seismic analysis.* A dynamic analysis shall be performed to determine the response of the platform to design-earthquake loading. The platform shall be designed to withstand this loading without damage. In addition, a ductility check shall also be performed to ensure that the platform has sufficient ductility to experience deflections more severe than those resulting from the design-earthquake loading without the collapse of the platform or its foundation or any primary structural component.

(12) *Seismic design.* The design of structural members and details of platforms subjected to seismic loading shall ensure maximum ductility at critically loaded sections.

(e) *Construction.*

(1) *General.* The following shall apply:

(i) Construction methods and workmanship shall conform to the provisions of ACI 318 and to the following requirements, and

(ii) At each stage of construction, i.e., fabrication, initial flotation, towing, and installation in situ, the forces acting on the platform shall be kept within the safety limits listed in paragraph (c) of this section. Appropriate static and/or dynamic analysis shall be performed for the operating loading conditions of each of the construction operations mentioned above. Buoyancy and stability shall be considered during all phases of construction.

(2) *Mixing, placing, and curing of concrete.* The following shall apply:

(i) Mixing of concrete shall conform to the requirements of ACI 318 and ASTM C94, Specification for Ready Mixed Concrete,

(ii) When concreting in cold weather, the temperature of the fresh concrete shall be maintained sufficiently above freezing until the process of hardening is well in progress,

(iii) In hot weather, the temperature of the fresh concrete shall be controlled so that it does not impair attainment of the desired strength and durability,

(iv) The methods for curing concrete shall ensure maximum compressive and tensile strength, durability, and a minimum of cracking, and

(v) The location and workmanship of construction joints shall not impair the strength, crack resistance, and watertightness of the platform.

(3) *Reinforcement.* The following shall apply:

(i) Reinforcement shall be free from loose rust, grease, oil, deposits of salt, or any other material that may adversely affect the strength, durability, or bond of the reinforcement. The specified cover of reinforcement shall be maintained accurately. The cutting, bending, and fixing of reinforcement shall ensure that it is correctly positioned and rigidly held, and

(ii) The welding of reinforcement shall conform to the requirements of AWS publication, AWS D1.4, Structural Welding Code—Reinforcing Steel.

(4) *Prestressing tendons, ducts, and grouting.* The following shall apply:

(i) Steps shall be taken to ensure that the achieved prestressing force is that specified in the design,

(ii) Tendons and ducts shall be in a condition that ensures the required strength, durability, and bond, and

(iii) The grouting procedures shall produce the required bond strength of the tendons and provide permanent corrosion protection for the tendons. Anchorages shall also be protected adequately against corrosion.

§ 250.139 Foundation.

(a) *General.*

(1) *Coverage.* Soil investigations, design considerations for the supporting soil, and the influence of the soil on the foundation structure are addressed in this section, including criteria for the strength and deformation characteristics of the foundation employed by both steel pile-supported and concrete-gravity platforms.

(2) *Guidelines.* The following shall apply:

(i) The degree of design conservatism shall reflect prior experience under similar conditions, the manner and extent of data collection, the scatter of design data, and the consequences of failure,

(ii) For cases where the limits of applicability of any method of calculation employed are not well defined or where the soil characteristics are quite variable, the use of more than one method of calculation or a parametric study of the sensitivity of the important design variables shall be considered, and

(iii) A listing of design parameters, necessary calculations, and test results shall be retained by the designer.

(b) *Site investigation.*

(1) *General.* The following shall apply:

(i) The actual extent, depth, and degree of precision to be obtained in the site investigation program shall reflect the type, site, and intended use of the platform, familiarity of the area based on previous site studies or platform installations as well as the consequences of a failure of the foundation. The site investigation program shall consist of three major phases as follows:

(A) Seafloor survey (see paragraph (b)(2) of this section) to obtain relevant geophysical data,

(B) Geological survey (see paragraph (b)(3) of this section) to obtain data of a regional nature concerning the site, and

(C) Subsurface investigation and testing (see paragraph (b)(4) of this section) to obtain the necessary geotechnical data.

The results of these investigations shall be the bases for the additional site-related studies specified in paragraph (b)(5) of this section, and

(ii) A complete site-investigation program shall be accomplished for each offshore platform. Due attention shall be given to the accuracy of positioning devices used on the vessel employed in the site investigation as well as those used during the installation of the platform to ensure that the data obtained are pertinent to the actual final location of the platform.

(2) *Seafloor survey.* The following shall apply:

(i) Consistent with the objectives of paragraph (b)(1)(i) of this section, a high-resolution or acoustic-profiling survey shall be performed to obtain information on the conditions existing at and near the surface of the seafloor, and

(ii) The information to be obtained from this survey shall include the following items, as appropriate, for the planned platform:

(A) Contours of the sea bed,

(B) Presence of boulders, obstructions, and small craters,

(C) Shallow faults,

(D) Gas seeps,

(E) Slump blocks,

(F) Occurrence of shallow gas, and

(G) Ice scour of seafloor sediments.

(3) *Geological survey.* The following shall apply:

(i) Background geological data shall be obtained to provide regional information that can affect the design and siting of the platfom. The data shall be considered in planning the subsurface investigation and shall be used to ensure that the findings of the subsurface investigation are consistent with known geological conditions,

(ii) Where necessary, the seismic activity at the site shall be assessed. Fault zones, the extent and geometry of faulting, and attenuation effects of conditions in the vicinity of the site shall be identified, and

(iii) For platforms located in a producing area, the possibility of seafloor subsidence due to a drop in reservoir pressure shall be considered.

(4) *Subsurface investigation and testing.* The following shall apply:

(i) The primary objective of the subsurface investigation and testing program shall be the attainment of reliable geotechnical data concerning the stratigraphic and engineering properties of the soil. These data shall be used to determine if the desired structural safety level can be obtained and to assess the feasibility of the proposed method of installation,

(ii) The subsurface investigation and soil testing program shall consist of adequate in situ testing, boring, and sampling to examine all important soil and rock strata. The testing program shall reveal the necessary strength, classification, and deformation properties of the soil. Further tests, as needed, shall describe the dynamic characteristics of the soil,

(iii) At least one borehole shall be drilled at the installation site for a pile-supported platform, having a minimum depth of the anticipated length of the pile plus a zone of influence. The zone of influence shall be sufficient to ensure that punch-through failures will not occur. Additional boreholes of a lesser depth shall be required by the Regional Supervisor if discontinuities in the soil are indicated to exist in the area of the platform,

(iv) For a gravity-type platform foundation, the required depth of the borehole shall be at least equal to the largest horizontal dimension of the base. In situ tests shall be performed, where possible, to a depth that will include the anticipated shearing failure zone,

(v) When samples from the field are sent to a laboratory for further testing, they shall be labeled accurately, and the results of the visual inspection shall be recorded,

(vi) A summary report showing the results of the soil testing program shall be prepared. The report shall describe briefly the various field and laboratory test methods employed and shall indicate the applicability of these methods as they relate to the quality of the sample, the type of soil, and the anticipated design application, and

(vii) The engineering properties of the soil to be used in the design shall be listed for each stratum. The selected design properties shall specify the uncertainties inherent in the overall testing program and in the reliability and applicability of the individual test methods.

(5) *Additional requirements.* Based on the results of the overall site investigation program, studies shall be performed, as applicable, to assess the following effects of the installed platform:

(i) Scouring potential of the seafloor,

(ii) Hydraulic instability and the occurrence of sand waves,

(iii) Instability of slopes in the area where the platform is to be placed,

(iv) Liquefaction and/or possible reduction of soil strength due to increased pore pressures, and

(v) Degradation of subsea permafrost layers.

(c) *Foundation design requirements.*

(1) *General.* The following shall apply:

(i) The loadings used in the analysis of the safety of the foundation shall include those defined in paragraph (c)(6)(ii) of this section. Loadings experienced by the foundation during installation shall also be considered,

(ii) Foundation displacements shall be evaluated to ensure that they are within limits that do not impair the intended function and safety of the platform, and

(iii) The soil and the platform shall be considered as an interactive system, and the results of the analysis as required in paragraphs (c)(2) through (c)(6) of this section shall be evaluated from this point of view.

(2) *Cyclic loading effects.* Evaluation of the short-term and long-term effects of cyclic loading, whether caused by conditions during installation, seismic activity, or storms with respect to changes in soil characteristics shall be accomplished by using defensible methods.

(3) *Scour.* The following shall apply:

(i) If scour is not accounted for in design, either effective protection shall be furnished soon after the installation of the structure or frequent visual inspection shall be carried out, particularly after major storms, and

(ii) For unprotected foundations, the depth and lateral extent of scouring, as determined in the site investigation program, shall be accounted for in design.

(4) *Settlements and displacements.* The following shall apply:

(i) Tolerable limits of settlements and lateral deflections shall be established and based on the type and the function of the platform and the effects of these movements on risers, piles, and other components which interact with the platform, and

(ii) Maximum allowable values of platform movements, as limited by these structural considerations or overall platform stability, shall be considered in the design.

(5) *Dynamic considerations.* The following shall apply:

(i) For dynamic-loading conditions, a defensible method shall be employed to simulate the interactive effects between the soil and the platform, and

(ii) The evaluation of the dynamic response of the platform shall account for, as appropriate, the nonlinear and inelastic characteristics of the soil, the possible deteriorating soil strength, the increased or decreased damping due to cyclic soil loading, and the influence of nearby platforms.

(6) *Loading Conditions.* The following shall apply:

(i) Loadings producing the worst effects on the foundation during and after installation shall be addressed, and

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(ii) Postinstallation loadings to be checked shall include at least those relating to both the operating and design environmental conditions, combined in accordance with the following:

(A) Operating environmental conditions with dead and live loads appropriate to the function and operation of the platform,

(B) Design environmental conditions with dead and live loads appropriate to the function and operation of the platform, and

(C) Design environmental conditions with dead and minimum live loads appropriate to the function and operation of the platform.

(d) *Pile foundations.*

(1) *General.* The following shall apply:

(i) The following requirements apply to foundations employing piles. Pertinent parts of these requirements dealing with steel design shall be consulted regarding the design of the steel piles,

(ii) In the design of individual piles and piles in a group, the effects of axial, bending, and lateral loads shall be addressed,

(iii) The design of a pile shall reflect the interactive behavior between the soil and the pile and between the pile and the platform,

(iv) Methods of pile installation shall be consistent with the type of soil at the site and the installation equipment available. If unexpectedly high-driving resistance or other conditions lead to a failure of the pile to reach the desired penetration, the pile's capacities shall be reevaluated by considering the actual installation situation,

(v) Pile driving shall be performed and supervised by qualified and experienced personnel, and driving records including such information as estimated hammer performance and stoppages shall be retained, and

(vi) Where necessary, the effects of bottom instability in the vicinity of the platform shall be assessed.

(2) *Axial piles.* The following shall apply:

(i) For piles in compression, the axial capacity shall be considered to consist of the skin friction, Q_f, developed along the length of the pile and the end bearing, Q_p, at the tip of the pile. The various parameters needed to evaluate Q_f and Q_p shall be predicted by using a defensible analytical method that employs reliably obtained soil data consistent with the prediction method selected. The acceptability of any method used to predict the components of pile resistance shall be demonstrated by showing satisfactory performance of the method under conditions similar to those existing at the actual site,

(ii) The results of the dynamic pile driving analysis alone shall not be used to predict the axial load capacity of a pile,

(iii) For piles driven through clay, the estimated skin friction developed over any increment of the pile surface shall not exceed the in situ shear strength of the clay,

(iv) The capacity of the internal plug of an open-ended pile shall be considered since it may limit the estimated end bearing to the pile,

(v) When combining side friction and end-bearing effects in determining axial pile capacity, the load deflection response of the soil-pile system shall be addressed, and

(vi) For piles subjected to pullout loads, the contribution of the end resistance of the pile to its axial capacity shall not be considered. The possible variation of predicted pile-skin friction between the compressive and tensile modes of the axial-pile loading shall be considered.

(3) *Laterally loaded piles.* The following shall apply:

(i) In evaluating the pile's behavior when acted upon by lateral loadings, the combined load deflection characteristics of the soil and the pile and the pile and the platform shall be addressed,

(ii) The representation of the soil's lateral displacement when it is subjected to lateral loads shall adequately reflect the deterioration of the lateral bearing capacity when the soil is subjected to cyclic loading,

(iii) The description of the lateral load versus displacement characteristics for the various soil strata shall be based on constitutive data obtained from suitable soil tests. The use of empirical methods to provide the description of the soil's lateral response shall be permitted if such methods are documented,

(iv) Where applicable, the rapidly deteriorating cyclic-bearing capacity of stiff clays, especially those exhibiting the presence of a secondary structure, shall be addressed in the design, and

(v) Calculation of pile deflection and stress induced by lateral loads shall account for the nonlinear interaction between the soil and the pile.

(4) *Pile groups.* Where applicable, the effects of close spacing on the load and deflection characteristics of pile groups shall be determined. The allowable load for a group, both axial and lateral, shall not exceed the sum of the apparent individual pile allowable loads.

(5) *Plastic analysis.* When the design of a platform is based on the formation collapse mechanisms associated with a plastic analysis method, the influence of the soil's support on the pile shall be addressed.

(e) *Gravity platforms.*

(1) *General.* The following shall apply:

(i) The following requirements apply to soil foundations for gravity platforms. Section 250.138 shall be consulted regarding the design of the base slab,

(ii) The influence of hydraulic and slope instability, if any, shall be determined for the structural loading cases that include the design environmental loading,

(iii) The effects of adjacent platforms and the variation of soil properties in the horizontal direction shall be considered, as appropriate,

(iv) The stability of the foundation with regard to bearing and sliding failure modes shall be investigated by employing the soil shear strengths determined with consideration of paragraphs (b)(4) and (c)(2) of this section,

(v) When an underpressure or overpressure is experienced by the seafloor under the platform, provisions shall be made to prevent piping that could impair the integrity of the foundation,

(vi) Initial, consolidation, and secondary settlements, as well as permanent horizontal displacements, shall be determined, and

(vii) If the intended site is not level, the predicted tilt of the overall platform shall be based on the average bottom slope of the seafloor and the tolerance of the elevation measuring device used in the site-investigation program. Differential settlement shall also be calculated, and the tilting of the platform caused by this settlement shall be combined with the mentioned predicted structural tilt. Any increased loading effects caused by tilting of the platform shall be addressed in stability requirements specified for the foundation.

(2) *Stability.* The following shall apply:

(i) The bearing capacity and lateral resistance shall be calculated by considering the most unfavorable combination of loads. The long-term redistribution of bearing pressures under the base slab shall be considered to ensure that the maximum edge pressures are used in the design of the base,

(ii) The lateral resistance of the platform shall be investigated considering various potential shearing planes. The presence of any soft layers shall require special consideration,

(iii) Calculations for overturning moment and vertical forces induced by the passage of a wave shall include the vertical pressure distribution across the top of the foundation and along the seafloor. The foundation shall not lose contact with the soil due to uplift created by the maximum overturning moment,

(iv) The capacity of the foundation to resist a deep-seated bearing failure shall be analyzed, and

(v) Where present, the additional effects of penetrating walls or skirts that transfer vertical and lateral loads to the soil shall be investigated for their contribution to bearing load capacity and lateral resistance.

(3) *Soil reaction on the platform.* The following shall apply:

(i) For conditions during and after installation, the reaction of the soil against all structural members seated on or penetrating into the seafloor shall be determined and accounted for in the design of these members,

(ii) The distribution of soil reactions shall be based on the results obtained in paragraphs (b)(2) and (b)(4) of this section, and the calculations of soil reactions shall account for any deviation from a plane surface, the load-deflection characteristics of the soil, and the geometry of the platform base,

(iii) Where applicable, effects of local soil stiffening, nonhomogeneous soil properties, and boulders and other obstructions shall be addressed in the design. During installation, the possibility of local contact pressures due to irregular contact between the base and the seafloor shall be considered. Such pressures shall be added to the hydrostatic pressure, and

(iv) The penetration resistance of structural elements projecting into the sea floor below the foundation structure shall be analyzed. The design of the ballasting system shall reflect uncertainties associated with achieving the required penetration of the platform.

§ 250.140 Marine operations.

(a) *General.*

(1) Marine operations means all activities necessary for the transportation and installation of an offshore platform from the time it enters the marine environment until it is fixed in place at its final destination. Marine operations generally include such activities as follows:

(i) Lifting and mooring,

(ii) Loadout or initial flotation,

(iii) Fabrication afloat,

(iv) Towing,

(v) Launching and uprighting,

(vi) Submergence,

(vii) Pile installation, and

(viii) Final field erection.

(2) The requirements of this section apply to all platforms covered by this subpart, regardless of structural type or material of construction.

(b) *Objective.* The objective of these requirements is to ensure that the structural strength and integrity are not reduced or otherwise jeopardized by the performance of the activities required to install the platform on site. This objective shall be achieved by analysis as required in paragraph (c) of this section, except where the use of proven and well-controlled methods of fabrication and installation are proposed and justified. The lessee shall provide the necessary systems to ballast the platform safely. The systems shall have sufficient redundancy and feedback to ensure reliable control of ballasting operations.

(c) *Analysis.*

(1) Analyses shall be performed to determine the type and magnitude of the loads and load combinations to which the platform will be exposed during the performance of marine operations.

(2) Analyses shall be performed to ensure that the structural design is sufficient to withstand the type and magnitude of the loads and load combinations determined, in accordance with paragraph (c)(1) of this section, without loss or degradation of structural integrity.

(3) Analyses shall be performed to ensure that the platform or its means of support has sufficient hydrostatic stability and reserve buoyancy to allow for successful execution of all phases of marine operations.

§ 250.141 Inspection during construction.

(a) *General*—(1) *Coverage.* The following shall apply:

(i) This section covers inspections during the construction of pile-supported and gravity platforms. These requirements apply to all platforms covered by this subpart. Additional requirements for steel pile-supported platforms are contained in paragraph (b) of this section, and additional requirements pertaining to concrete-gravity platforms are contained in paragraph (c) of this section, and

(ii) The phases of construction subject to inspection include material manufacture, fabrication, loadout, transportation, positioning, installation, and final field erection.

(2) *Objective.* The objective of inspection during construction is to verify that the platform is constructed in accordance with the approved plan. Any unusual or innovative application of materials or method of construction not adequately covered by the requirements of this section shall receive special inspection relevant to its effect on the integrity of the planned platform in accordance with the stated objective for inspection.

(3) *Remedial action.* If the results of an inspection performed pursuant to the requirements of this section reveal that materials, procedures, or workmanship deviate significantly from the approved design, remedial action shall be taken.

(4) *Identification of materials.* The origin of materials used in the platform and the results of relevant material tests for all significant structural materials shall be retained and made readily available for inspection by MMS representatives during all stages of construction. Records shall be kept of the location throughout the platform of the various heat numbers for such materials.

(b) *Steel pile-supported platforms*—(1) *Scope.* Inspections of steel pile-supported platforms shall address the following topics, as appropriate:

(i) Material quality and forming,

(ii) Welder and welding procedure qualifications,

(iii) Weld inspection,

(iv) Tolerances and alignments, and

(v) Corrosion-control systems.

(2) *Material quality and forming.* Inspection shall verify that all materials employed are of good quality and suitable for their intended service as specified in the approved design. Inspection shall ensure the compliance of materials to the relevant material standard selected in the design of the platform. Inspection shall ensure that formed members satisfy the dimensional tolerances listed in the design.

(3) *Welder and welding-procedure qualifications.* The following shall apply:

(i) Welders shall be tested and possess a current welder's certification, and

(ii) All welding procedures to be employed shall be tested and certified for the production of satisfactory welds. Welding procedures previously tested and certified shall be considered prequalified.

(4) *Weld inspection.* The following shall apply:

(i) Inspection shall include, but not be limited to, visual inspection of all welds and representative magnetic particle or dye penetrant inspection of welds of Weld Classes A and B materials (see § 250.137(a)(4)) not subjected to ultrasonic or radiographic inspection. The extent of ultrasonic or radiographic inspection shall be specified and shall emphasize, but not be confined to, welds of Weld Class A materials,

(ii) The extent and methods of inspection shall be consistent with the classification of applications (see § 250.137(a)(14)) of the area being examined. The extent of inspection shall

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reflect a relatively increased level of scrutiny for field welds and welds in areas that will be inaccessible or very difficult to inspect in service, and

(iii) Any welding not meeting the acceptance criteria specified in the inspection plan shall be rejected and appropriate remedial action taken.

(5) *Tolerances and alignments.* Overall dimensional tolerances, forming tolerances, and local alignment tolerances shall be commensurate with those considered in developing the structural design. Inspections shall ensure that the dimensional tolerance criteria are being met. Out of roundness of structural elements for which buckling is the anticipated mode of failure shall receive individual inspection.

(6) *Corrosion-control systems.* Corrosion-control systems employed on the platform shall be inspected to ensure that they are installed as specified in the approved design. Inspection shall ensure that proper protection against galvanic effects, especially in locations where nonferrous materials are used in conjunction with steel, has been provided in the corrosion-control system.

(7) *Additional inspection items.* (i) The provisions of paragraphs (b)(2) through (b)(6) of this section relate only to matters directly affecting the onshore construction phases of the platform. Other items relating to the onshore construction site and the construction phases from loadout to final erection shall also be performed.

(ii) The construction site shall be inspected to ensure that adequate consideration has been given to the following items:

(A) Support of the platform during construction,

(B) Employment of a sufficient number of certified welders and inspectors to maintain an adequate quality of work, and

(C) Weathertight storage of welding consumables under conditions specified by their manufacturers.

(iii) Inspection shall verify that the following operations have been accomplished in a manner conforming to approved plans or drawings:

(A) Loadout,

(B) Tie down,

(C) Positioning at the site,

(D) Installation (see § 250.139(d)(1)(v) for piles), and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during towing operations exceeded those employed in the analyses required by § 250.140(c), and

(v) When the inspections indicate that overstressing has occurred during loadout, transportation, or installation, the affected parts of the platform shall be surveyed to determine the extent of actual damage, if any. Where necessary, a reevaluation of the structural capacity shall be carried out, considering the results of the survey.

(8) *Records.* The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Mill certificates,

(ii) Weld-procedure qualification records,

(iii) Weld inspection records,

(iv) Dimensional tolerance reports,

(v) Towing records, and

(vi) Pile driving records.

(c) *Concrete-gravity platforms*—(1) *Scope.* Inspection of concrete-gravity platforms shall address the following topics, as appropriate:

(i) Preparation for concrete production and placement,

(ii) Batching, mixing, and placing concrete,

(iii) Form removal and concrete curing,

(iv) Pretensioning and grouting,

(v) Joints, and

(vi) Finished concrete.

(2) *Preparation for concrete production and placement.* The following shall apply:

(i) Inspection shall ensure that the pertinent physical properties of cement, reinforcing steel, prestressing tendons, and appurtenances comply with those specified in the approved design,

(ii) Forms and shoring supporting the forms shall be inspected to ensure that they are adequate in number and type and are located correctly,

(iii) The dimensional tolerances of the forms shall be inspected to ensure that the finished dimensional tolerances are comparable to those allowed for in the approved design, and

(iv) Reinforcing steel, prestressing tendons, post-tensioning ducts, anchorages, and any other embedded steel shall be inspected, as appropriate, for size, bending, spacing, location, firmness of installation, surface condition, vent locations, proper duct coupling, and duct capping.

(3) *Batching, mixing, and placing concrete.* The following shall apply:

(i) Inspection shall be performed to ensure that the procedures for the production and placement of concrete provide a well-mixed and well-compacted concrete. The procedures shall also limit segregation, loss of material, contamination, and premature initial set during all operations,

(ii) Inspection shall verify that the mix components of each batch of concrete are properly proportioned and within allowable variations specified in the approved design. Inspection shall ensure that the water/cement ratio of each batch is within the limit specified in § 250.138(b)(7),

(iii) Aggregate gradation, cleanliness, moisture content, and unit weight shall be tested. The frequency of testing shall be determined taking into account the uniformity of the supply source, volume of concrete used, and variations of atmospheric conditions,

(iv) Mix water shall be tested for purity following specified methods and schedules, and

(v) Testing during the production of concrete shall be performed to monitor, as a minimum, the following concrete qualities:

(A) Consistency,

(B) Air content, and

(C) Strength.

(4) *Form removal and concrete curing.* The following shall apply:

(i) Inspection shall ensure that forms and form supports are not removed until the platform has attained sufficient strength to bear its own weight, construction loads, and anticipated environmental loads without undue deformation and that they are removed according to schedule,

(ii) Inspection shall ensure that curing of concrete is accomplished in accordance with the provisions of a predetermined procedure, and

(iii) Where the construction procedures require the submergence of recently placed concrete, inspection shall ensure that methods for protecting the concrete from the effects of salt water are properly executed.

(5) *Pretensioning and grouting.* The following shall apply:

(i) Inspection shall verify that the sequence of tendon tensioning and the resulting elongation and force are in accordance with provisions specified in the approved design,

(ii) Pretensioning or post-tensioning stress shall be determined by measuring both tendon elongation and tendon force. Inspection shall verify that the variation of measurements does not exceed a specified amount,

(iii) Inspection shall verify that grout mix proportions and ambient conditions during mixing are in accordance with provisions designated in the approved design. Tests for grout, viscosity expansion, bleeding, compressive strength, and setting time shall be performed to ensure compliance with

design requirements. Procedures shall be observed to ensure that ducts are completely filled, and

(iv) Anchorages shall be inspected to ensure that they are located and sized as specified in the design and are provided with adequate cover to mitigate the effects of corrosion.

(6) *Joints.* Where appropriate, leak testing of construction joints shall be performed by using specified procedures. When deciding which joints to inspect, consideration shall be given to the hydrostatic head on the subject joint during normal operation, the consequence of a leak at the subject joint, and the ease of repair once the platform is in service.

(7) *Finished concrete.* The following shall apply:

(i) The surface of the hardened concrete shall be completely inspected for cracks, honeycombing, popouts, spalling, and other surface imperfections,

(ii) The platform shall be examined by using a calibrated rebound hammer or a similar nondestructive examination device. Inspection shall verify that the results of surface inspection, cylinder strength test, or nondestructive examination are in accordance with the approved design criteria, and

(iii) The completed sections of the platform shall be checked for compliance to specified design tolerances of thickness and alignment and, to the extent practicable, the location of reinforcing and prestressing steel and post-tensioning ducts.

(8) *Additional inspection items.* The following shall apply:

(i) While the provisions of paragraphs (c)(2) through (c)(7) of this section relate only to some matters directly affecting the onshore or nearshore construction phases of the platform, other items relating to such phases and from loadout to final erection shall also be considered,

(ii) Inspection shall ensure that adequate consideration has been given the following items:

(A) Support of the structure during construction,

(B) Employment of a sufficient number of competent workmen and inspectors to maintain an adequate quality of work,

(C) Storage of cement and prestressing tendons in weathertight areas,

(D) Storage of admixtures and epoxies according to manufacturers' specifications, and

(E) Storage of aggregates to limit segregation, contamination by deleterious substances, and moisture variations within the stockpile.

(iii) Inspection shall verify that the following operations, as applicable to the planned platform, have been accomplished in a manner conforming to approved plans or drawings developed for these operations:

(A) Loadout,

(B) Towing arrangements,

(C) Positioning at the site,

(D) Installation, and

(E) Final field erection.

(iv) To determine if overstressing of the platform during transportation has occurred, towing records shall be reviewed to ascertain if conditions during the towing operations exceeded those employed in the analyses required by § 250.140(c).

(9) *Records.* The following construction records shall be compiled, retained, and made available for inspection by MMS representatives:

(i) Material certificates and test reports,

(ii) Tensioning and grouting records,

(iii) Concreting records including weight, moisture content, mix proportions, test methods and results, ambient conditions during the pour, and test equipment calibration data,

(iv) Deviations from design or fabrication specifications and repairs carried out,

(v) Towing records, and

(vi) Data on initial structural settlements.

§ 250.142 Periodic inspection and maintenance.

(a) All platforms installed on the OCS shall be inspected periodically to determine the condition of the entire structure. Proper maintenance shall be performed to assure the structural integrity of the platform as a work base for oil and gas operations.

(b) A report shall be submitted annually on November 1 to the Regional Supervisor stating which platforms have been inspected in the preceding 12 months, the extent and area of inspection, and the type of inspection employed, i.e., visual, magnetic particle, ultrasonic testing. A summary of the testing results shall be submitted indicating what repairs, if any, were needed and the overall structural condition of the platform.

§ 250.143 Platform removal and location clearance.

(a) The lessee shall remove all structures in a manner approved by the Regional Supervisor to assure that the location has been cleared of all obstructions to other activities in the area.

(b) All platforms (including casing, wellhead equipment, templates, and piling) shall be removed by the lessee to a depth of at least 15 feet below the ocean floor or to a depth approved by the Regional Supervisor based upon the type of structure or ocean-bottom conditions.

(c) The lessee shall verify by appropriate means that the location has been cleared of all obstructions. The results of the location clearance survey shall be submitted to the Regional Supervisor by means of a letter from the company performing the work certifying that the area was cleared of all obstructions, the date the work was performed, the extent of the area surveyed, and the survey method used.

§ 250.144 Records.

The lessee shall compile, retain, and make available to MMS representatives for the functional life of all platforms, the as-built structural drawings, the design assumptions and analyses, and a summary of the NDE records.

Subpart J—Pipelines and Pipeline Rights-of-Way

§ 250.150 General requirements.

(a) Pipelines and the associated valves, flanges, and fittings shall be designed, installed, operated, maintained, and abandoned to provide safe and pollution-free transportation of fluids in a manner which does not unduly interfere with other uses in the OCS.

(b) Approval by the Regional Supervisor is required for the design, fabrication, and plan of installation of pipelines.

(c) Pipelines which are not wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of the same owner or operator shall not be installed until a right-of-way has been granted in accordance with this subpart.

§ 250.151 Definition.

"Pipelines" mean the piping, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced water that are under the jurisdiction of the Department of the Interior. (Piping confined to a production platform or structure is covered in Subpart H, Production Safety Systems, and is excluded from this subpart.)

§ 250.152 Design requirements.

(a) The internal design pressure for submerged piping shall be in accordance with the provisions of section 2 of American Petroleum Institute (API) Recommended Practice (RP) for Design, Construction, Operation and

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Maintenance of Offshore Hydrocarbon Pipelines (API RP 1111).

(b) The internal design pressure for risers shall be in accordance with the provisions of section 2 of API RP for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E).

(c) The internal design pressure for valves installed as integral parts of a pipeline shall be in accordance with Table 3.1, API RP 14E.

(d) The maximum allowable operating pressure (MAOP) shall not exceed the least of the following:

(1) Internal design pressure of the pipelines, valves, flanges, and fittings,

(2) Eighty percent of the hydrostatic test pressure of the pipeline, or

(3) The MAOP of the receiving pipeline located downstream of the pipeline.

(e) If the maximum source pressure (MSP) exceeds the MAOP of the pipeline, redundant safety devices meeting the requirements of Section A9 of API RP for Analysis Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C) shall be installed and maintained. Pressure safety valves (PSV) may be used only after determination by the Regional Supervisor that the pressure will be relieved in a safe and pollution-free manner. The setting level at which the primary and redundant safety equipment actuates shall not exceed the MAOP of the pipeline.

(f) Pipelines shall be provided with an external protective coating capable of minimizing underfilm corrosion and a cathodic protection system designed to mitigate corrosion for a minimum 20-year life.

(g) Pipelines shall be designed and maintained to withstand the effects of water currents, storm or ice scouring, soft bottoms, mud sides, earthquakes, subfreezing temperatures, and other environmental factors.

§ 250.153 Installation and testing requirements.

(a)(1) Pipelines greater than 8⅝ inches in diameter shall be buried to a depth of 3 feet in water depths less than 200 feet unless located in pipeline-congested or seismically active areas as determined by the Regional Supervisor. The Regional Supervisor may also require pipeline burial if the Supervisor determines that such burial will reduce the likelihood of environmental degradation, or that the pipeline may constitute a hazard to trawling operations or other uses. A trawl test or diver survey may be required to determine whether the pipeline is buried. Burial is not required in seismically active areas.

(2) Pipeline valves, taps, tie-ins, capped lines, and repaired sections that could be obstructive shall be provided with at least 3 feet of cover unless the Regional Supervisor determines that such items present no hazard to trawling or other operations. The use of a protective device to cover an obstruction in lieu of burial may be used if it is approved by the Regional Supervisor prior to installation.

(3) Pipelines shall be installed with a minimum separation of 18 inches from other pipelines and obstructions.

(4) Pipeline risers installed after (insert effective date of regulation) shall be protected from physical damage that could result from floating vessels. Riser protection on structures installed before (insert effective date of regulation) may be required when the Regional Supervisor determines that significant damage potential exists.

(b)(1) Pipelines shall be hydrostatically tested with water at a stabilized pressure of at least 1.25 times the MAOP for an 8-hour period when installed, relocated, uprated, reactivated after being out of service for more than 6 months, or following repairs during which segments or components were replaced.

(2) Pipelines shall not be hydrostatically tested at a pressure which produces a stress in the pipeline in excess of 95 percent of the pipe's specified minimum-yield strength. A temperature recorder synchronized with the pressure recorder along with deadweight test readings shall be employed for the duration of all hydrostatic testing.

(3) Prior to returning a pipeline to service after a repair which does not require the replacement of any segment or component, the pipeline shall be pressure tested with water or processed natural gas at a minimum stabilized pressure of 1.25 times the MAOP for 4 hours.

(c) The lessee shall notify the Regional Supervisor at least 48 hours prior to commencing the installation, relocation, or repair of a pipeline or conducting a hydrostatic test.

§ 250.154 Safety equipment requirements.

(a) The lessee shall install, operate, and maintain the safety devices required by this subpart on all incoming, departing, and crossing pipelines including those not operated or owned by the lessee. Lessees with platforms in existence on (insert effective date of regulation) shall comply with the following requirements by (insert date 12 months after effective date of this regulation) and until such time shall comply with regulations in effect immediately prior to (insert effective date of this regulation).

(b)(1) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV) located upstream of all safety equipment to prevent backflow.

(2) Incoming pipelines delivering to production facilities shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform. The SDV shall be connected to both the automatic- and remote-emergency shut-in systems.

(3) Departing pipelines receiving production from production facilities shall be protected by high- and low-pressure sensors (PSHL) to directly or indirectly shut in all production facilities.

(4) Incoming pipelines on production or manned nonproduction platforms delivering to departing pipelines shall be equipped with an SDV immediately upon boarding the platform. The SDV shall be operated by a PSHL on the departing pipelines and connected to the platform automatic- and remote-emergency shut-in systems.

(5) The Regional Supervisor may require all oil pipelines to have a metering system to provide a continuous volumetric comparison of input to the line at the structure(s) with deliveries onshore. The system shall include an alarm system and shall be of adequate sensitivity to detect significant variations between input and discharge volumes.

(6) Pipelines incoming to a subsea tie-in shall be equipped with a block valve to isolate the existing pipeline and an FSV immediately upstream to isolate the proposed pipeline.

(7) Lift-gas or water-injection pipelines on unmanned well jackets which contain only wellhead assemblies may be equipped with only an FSV installed immediately upstream of each casing annulus.

(8) Bidirectional pipelines shall be equipped with a PSHL and an SDV immediately upon boarding the platform at each incoming pipeline riser to prevent backflow.

(9) All pipeline pumps shall be equipped with PSHL shut-in devices. The PSHL shall be located upstream of any FSV.

(c) If the required safety equipment is rendered ineffective or removed from service on pipelines which are continued in operation, an equivalent degree of safety shall be provided. If required equipment is to be out of service for more than 12 hours, prior written approval shall be obtained from the Regional Supervisor who shall be notified upon return to service.

§ 250.155 Abandonment requirements.

(a) Pipelines shall be abandoned or taken temporarily out of service only after submitting an application for abandonment and obtaining written approval from the Regional Supervisor.

(b) A pipeline may be abandoned in place if, in the opinion of the Regional Supervisor, it does not constitute a hazard to navigation or commercial fishing operations. Pipelines to be abandoned in place shall be flushed, filled with seawater cut, and plugged with the ends buried at least 3 feet.

(c) Pipelines abandoned by removal shall be pigged and flushed with water prior to removal unless the Regional Supervisor determines that such procedure is not practical.

(d) Pipelines taken out of service for a period not exceeding 6 months shall be blind flanged or isolated with a closed block valve at each end.

(e) Pipelines out of service for a period exceeding 6 months shall be flushed and filled with seawater and either blind flanged or capped at both ends. The Regional Supervisor shall be notified in writing of the action taken within 10 days of completion. Such pipelines shall be returned to service within 5 years or be abandoned in accordance with this section.

§ 250.156 Applications and approvals.

(a) Prior to the installation, modification, or change of service of pipelines, the lessee shall submit for approval an application to the Regional Supervisor.

(b) Applications for the installation of new pipelines shall include the following:

(1) Plat(s) with a scale of 1″ = 2,000′ showing the major features and other pertinent data, including area, lease and block designations, water depths, route, length, connecting facilities, size, product(s) to be transported with anticipated gravity or density, burial depth, direction of flow, coordinates of key points, and the location of other pipelines within 1,000 feet of the proposed pipeline(s).

(2) A schematic drawing showing the size, weight, grade, wall thickness, and type of line pipe and risers, pressure-regulating devices (including back-pressure regulators), sensing devices and settings with associated pressure-control lines, PSV's and settings, SDV's, FSV's, block valves, and manifolds. This schematic drawing shall also show input source(s), i.e., wells, pumps, compressors, vessels; maximum input pressure(s); rated working pressure or American National Standards Institute/API series of all valves, flanges, and fittings; the initial receiving equipment and its rated working pressure; and associated safety equipment and pig launchers and receivers.

(3) General information is as follows:

(i) Description of cathodic protection system. If pipeline anodes are used, specify the type, size, weight, number, spacing, and anticipated life,

(ii) Description of external pipeline coating system,

(iii) Description of internal protective measures,

(iv) Specific gravity of the empty pipe,

(v) Maximum and minimum operating pressures,

(vi) MSP,

(vii) MAOP and calculations used in its determining,

(viii) Hydrostatic test pressure, medium, and period of time to which the line will be tested,

(ix) MAOP of receiving pipeline/facility,

(x) Proposed date for commencing installation and estimated number of days for construction, and

(xi) Type of protection to be afforded subsea valve, tap, and manifold assemblies (if applicable).

(4) The application shall include a description of any design precautions which were taken to enable the pipeline to withstand the effects of water currents, storm or ice scouring, soft bottoms, mud slides, earthquakes, permafrost, and other environmental factors, and

(5) The pipeline application shall include a shallow hazards analysis which covers the entire length of the pipeline and which is in accordance with § 250.51.

(c) Applications for a modification shall be submitted by the lessee when any of the following changes in pipeline service are contemplated:

(1) An uprated MAOP,

(2) Reversal of flow,

(3) Major changes in products to be transported,

(4) Conversion to bidirectional flow,

(5) Rerouted pipelines, or

(6) Proposed application revisions.

(d) Applications to abandon or to temporarily take a pipeline out of service shall include the following:

(1) Reason for operation,

(2) Proposed procedures,

(3) "As-built" location plat,

(4) Length in feet of segment abandoned or taken out of service, and

(5) Length in feet of segment remaining.

§ 250.157 Inspection and reporting requirements.

(a) The lessee shall submit a report to the Regional Supervisor within 90 days after completion of pipeline construction. The report shall include an "as-built" location plat with a scale of 1″ = 2,000′ showing the location, length, completion date, proposed date of first operation, and hydrostatic test data.

(b) The lessee shall inspect pipeline routes at least monthly for indication of pipeline leakage. The results of these inspections will be retained by the lessee at the lessee's field office nearest the OCS facility or at a location conveniently available to the Regional Supervisor for at least 2 years.

(c) All spills or leakages that are in any way related or suspected to be related to pipeline systems or component failures shall be orally reported to the Regional Supervisor when discovered. Both oral and written reports shall be submitted to the Regional Supervisor in accordance with the requirements of § 250.41(b) within 15 days after completion of the repairs.

(d) A detailed report of the repair to the pipeline or component shall be submitted to the Regional Supervisor within 15 days after completion of the repairs. The report shall include the following:

(1) Description of repairs,

(2) Results of hydrostatic test, and

(3) Date returned to service.

(e) The Regional Supervisor may require lessees to inspect and analyze pipeline failures and select samples of the failed section for laboratory examination to assist in determining the cause. A comprehensive written report of the information obtained shall be submitted to the Regional Supervisor as soon as available.

(f) If the effects of scouring, soft bottoms, or other environmental factors are observed to be detrimentally affecting a pipeline, the lessee shall, within 30 days of the observation, submit plans to the Regional Supervisor for approval of proposed corrective action. A report of the remedial action taken shall be submitted to the Regional Supervisor within 30 days after completion.

(g) When pipelines are protected by rectifiers or anodes for which the initial life expectancy of the cathodic protection system either cannot be calculated or calculations indicate a life expectancy of less than 20 years, such pipelines shall be inspected by taking measurements of pipe-to-electrolyte potential measurements annually but not to exceed 15-month intervals. The results and conclusions shall be

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submitted to the Regional Supervisor before March of each year.

§ 250.158 Pipeline rights-of-way.

(a) In addition to applicable requirements under §§ 250.150 through 250.157 or regulations of the Department of Transportation (DOT), Department of the Army, or the Federal Energy Regulatory Commission (FERC), when a pipeline will not be wholly contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of the same owner or operator, the pipeline shall not be installed until a right-of-way has been requested and granted in accordance with this subpart. Such right-of-way shall include the site on which the pipeline and associated structures are situated and shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures.

(b) An applicant, by accepting a right-of-way grant, agrees to comply with the terms and conditions of the right-of-way and the requirements set out below.

(1) The holder shall comply with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS, and protection of correlative rights therein.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders and shall indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation, and use of the area covered by the right-of-way grant.

(3) The Regional Supervisor shall be kept informed at all times of the holder's address and, if a corporation, the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration, or the granting of other rights by the United States, either prior or subsequent to the right-of-way grant. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees, or other right-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration, or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and annually thereafter, the holder shall pay the MMS, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited to, a platform. Payments may be on an annual basis for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation, or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in accordance with regulations governing abandonment on a lease. Any improvement required to be removed shall be removed by the holder within 1 year of the effective date of the relinquishment, revocation, termination, or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Furthermore, the holder is responsible for accidents or damages which might occur as a result of failure to timely remove equipment and restore a site. Any application for relinquishment of a right-of-way shall be filed in accordance with this subpart.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the Regional Supervisor upon a determination by the Regional Supervisor that continued operation would threaten or result in serious, irrepairable, or immediate harm to life (including fish and other aquatic life), property, mineral deposits, or the marine, coastal, or human environments. The Regional Supervisor may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The Regional Supervisor may also suspend operations if the holder fails to comply with applicable laws, regulations, or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the Act.

(8) The holder shall assure that such oil and gas pipelines shall, at the option of the FERC, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the FERC may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(9) Unless otherwise exempted by the FERC pursuant to section 5(f)(2) of the Act, the holder shall provide open and non-discriminatory access to the pipelines to both owner and nonowner shippers, and

(10) The holder shall comply with the provisions of section 5(f)(1)(B) of the Act under which the FERC may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(c) Failure to comply with the Act, regulations, or any conditions of approval prescribed by the Regional Supervisor as to the right-of-way and the survey, location, and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any U.S. District Court having jurisdiction under the provisions of section 23 of the Act.

(d) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

§ 250.159 Applications for right-of-way.

(a) No special form of application is required. The application shall be filed in triplicate with the Regional Supervisor. It shall specify that it is made pursuant to the Act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced, and by whom, and the date the applicant obtained control of the improvement. A nonrefundable filing fee of $1,400 and the rental required herein

under § 250.158(b)(5) shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map showing the center line of the right-of-way properly identified so that the right-of-way can be accurately located. The map shall comply with the following requirements:

(1) The scale shall be at least 1":4,000' or such other scale as may be approved by the Regional Supervisor,

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on attached sheet(s) with the courses referring to the true or grid meridian, either by deflection from a line of known bearing or by independent observation, and calculated distances in feet and decimals,

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline shall be specified,

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point, and

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map and that the design characteristics are in accordance with applicable regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the Act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), private, public, or municipal corporations organized under the laws of the United States or territory thereof, the District of Columbia, or of any State, or associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States or political subdivisions of States.

(d)(1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the MMS in which such a copy has already been filed, with a statement as to any subsequent amendments, or

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(i) A statement certified by the Secretary or Assistant Secretary of the corporation with the corporate seal showing the State in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) In lieu of such a statement, an appropriate reference to statements or records previously submitted to the MMS (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show where the right-of-way applied for intersects mineral leases and all rights-of-way granted by or pipelines permitted by MMS including those of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, or right-of-way or pipeline-permit holder whose lease, right-of-way, or pipeline permit is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the Regional Supervisor.

(2) If the Regional Supervisor determines that a change in the application, as filed, should be made based on the comments received, the Regional Supervisor shall notify the applicant that an amended application shall be filed subject to stipulated changes. The Regional Supervisor shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to paragraph (e)(1) of this section.

§ 250.160 Right-of-way approval.

(a) In considering the application for a right-of-way, the Regional Supervisor shall consider the potential effect of the pipeline on the human, marine and coastal environments, life (including aquatic life), property, and mineral resources in the entire area during construction and operational phases. The Regional Supervisor shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the Regional Supervisor may request and consider views and recommendations of appropriate Federal Agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries, and individuals. The Regional Supervisor shall attach, as a condition of approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life (including aquatic life), property, and mineral resources located on or adjacent to the proposed right-of-way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way, as applied for, crosses any lands not subject to disposition by leasing or restricted from oil and gas activities, it shall be rejected unless the Federal Agency in charge of such excluded or restricted area gives its consent to the granting of the right-of-way. In such case, the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the Regional Supervisor evidence that the State(s) so affected have reviewed the application. The applicant shall also submit any comment received, including any recommendations to relocate the route if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the Regional Supervisor shall coordinate with the appropriate State officials on all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a right-of-way grant affecting any land or water use in the coastal zone of any State with a coastal zone management (CZM) program approved under section 306 of the Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1455), then the application shall not be approved unless the affected State concurs that it is consistent with the approved CZM program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the CZMA of 1972 or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved Development and Production Plan, then the application may be approved without a further finding of consistency with any approved CZM program or a further

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finding on the part of the Secretary of Commerce.

(e) If the application and other required information are found to be in compliance with applicable laws and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 250.161 Requirements for construction under right-of-way.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the Regional Supervisor within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built in triplicate, a signed certificate by the engineer that the pipeline is accurately represented, grid references for all turning points on the line, and other data as required by the Regional Supervisor. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished, and maps of the location of the right-of-way as constructed shall be furnished in triplicate to the Regional Supervisor as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder of the right-of-way.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way, but prior to commencement of construction, may be grounds for a request to alter the grant by the Regional Supervisor. The Regional Supervisor shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 250.162 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant, in whole or of any lineal segment thereof, subject to the approval of the Regional Supervisor. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 250.159(c) and agree to the terms and conditions prescribed in § 250.158(b).

(b) Any proposed assignment, in whole or in part, of any right, title, or interest in a right-of-way grant shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the Regional Supervisor. A nonrefundable fee of $50 shall accompany the application for the approval of an assignment.

§ 250.163 Relinquishment of right-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment in triplicate with the Regional Supervisor. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 250.158(b)(6).

§ 250.164 Change of use or flow under right-of-way.

A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from DOT, where applicable, and the Regional Supervisor. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

§ 250.165 Bonding.

(a) Prior to the issuance of a right-of-way grant, the applicant shall furnish the Regional Supervisor a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be, in addition to any bond, required of a lessee in Part 256, Outer Continental Shelf Minerals and Rights-of-Way Management, General, of this Title.

(b) For the purposes of this subpart, listed below are the four areas:

(1) The Alaska OCS Region,

(2) The Atlantic OCS Region,

(3) The Gulf of Mexico OCS Region, and

(4) The Pacific OCS Region.

(c) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(d) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the Regional Supervisor may direct after a default. Failure to post a new bond shall, at the discretion of the Regional Supervisor, be the basis of cancellation of all grants covered by the defaulted bond.

Subpart K—Production Rates

§ 250.170 Definitions for production rates.

Terms used in this subpart shall have meanings given below:

"Correlative Rights," when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, oil or gas, or both, from a common source.

"Enhanced Recovery Operations" means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

"Gas Reservoir" means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

"Gas-Well Completion" means a well completed in a gas reservoir or in the gas-cap of an oil reservoir with an associated gas cap.

"Maximum Efficient Rate" (MER) means the maximum sustainable daily oil or gas withdrawal rate from a reservoir classified as sensitive which will permit economic development and depletion of that reservoir without detriment to ultimate recovery.

"Maximum Production Rate" (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

"Nonsensitive Reservoir" means a reservoir in which ultimate recovery is not affected by total reservoir production rates and individual well production rates.

"Oil Reservoir" means a reservoir that contains hydrocarbons predominately in a liquid (single-phase) state.

"Oil Reservoir with an Associated Gas Cap" means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

"Oil-Well Completion" means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

"Sensitive Reservoir" means a reservoir in which ultimate recovery is affected by total reservoir production rates or individual well production rates.

"Waste of Oil and Gas" means (1) the physical waste of oil and gas; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; or (3) the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well(s) in a manner which causes or tends to cause a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and (4) the inefficient storage of oil.

§ 250.171 General requirements and classification of reservoirs.

(a) Wells and reservoirs shall be produced at rates that will provide economic development, depletion of the hydrocarbon resources in a manner that would maximize the ultimate recovery, and without adversely affecting correlative rights.

(b) Each producing reservoir shall be classified by the lessee to be an oil reservoir, an oil reservoir with an associated gas cap, or a gas reservoir and shall also be classified as sensitive or nonsensitive.

(c) All oil reservoirs with associated gas caps shall be initially classified as sensitive and shall require establishing a maximum efficient production rate and balancing of production in accordance with § 250.172(a) (1) and (5). All other oil reservoirs and all gas reservoirs shall be initially classified as nonsensitive.

(d) A reservoir may be reclassified as to type and sensitivity at any time during its productive life when information becomes available showing that such reclassification is warranted.

§ 250.172 Oil and gas production rates.

(a) *MER.* (1) The lessee shall propose an MER for each producing sensitive reservoir and submit Form MMS–1866, Request for Reservoir MER, with the appropriate supporting information to the Regional Supervisor for approval within [Insert date 6 months after the effective date of this regulation]. Thereafter, the lessee shall determine an MER and submit Form MMS–1866 within 45 days of discovering that a reservoir is sensitive.

(2) The lessee may propose to revise an MER by submitting Form MMS–1866 with appropriate supporting information.

(3) The effective date of an MER, or revision thereof, shall be the first day of the month in which Form MMS–1866 was submitted.

(4) When approved, the MER shall not be exceeded.

(5) If a reservoir is produced at a rate in excess of the MER for any month, the lessee shall take measures necessary to balance production during the next succeeding month. All overproduction shall be balanced by the end of the next succeeding calendar quarter following the quarter in which the overproduction occurred. Any operation in an overproduction status in any reservoir for two successive calendar quarters shall be shut in from that reservoir until the actual production is equivalent to the approved MER, unless an alternative plan is approved by the Regional Supervisor.

(6) The lessee shall review the MER for each producing sensitive reservoir at least once a year and submit Form MMS–1866 with appropriate supporting information.

(7) The lessee may request the reclassification of a reservoir as sensitive or nonsensitive and request approval for termination of an MER by submitting Form MMS–1866 with information supporting the reclassification or termination.

(8) At the request of the Regional Supervisor, the lessee shall furnish the information specified on Form MMS–1866 for any producing nonsensitive reservoir.

(b) *MPR.* (1) The lessee shall propose an MPR for each producing well completion together with full information on the method used in its determination. The MPR shall be based on well tests and any limitations imposed by well and surface equipment, sand production, gas-oil and water-oil ratios, location of perforated intervals, and prudent operating practices.

(2) The lessee shall have 30 days from the date of first continuous production to conduct a well-flow potential test on all new, recompleted, and reworked well completions. Within 15 days after the end of the test period, the lessee shall submit a proposed MPR for the individual well completion on Form MMS–1867, Request for Well MPR, with the results of the well-flow potential test on Form MMS-1868, Well Potential Test Report. The initial MPR shall not exceed 110 percent of the test rate submitted and shall be effective on the first day of the month following the end of the test period if approved by the Regional Supervisor. During the 30-day period allowed for testing, the lessee may produce a new, recompleted, or reworked completion at rates necessary to establish the MPR. After the 30-day period and prior to approval of the initial MPR, a well completion may be produced at a rate not to exceed the proposed rate. The lessee shall report the total production obtained during the test period and shall identify all wells completed in the reservoir on Form MMS–1868.

(3) At least one well test shall be conducted and submitted during a calendar quarter for oil-well completions on Form MMS–1869, Quarterly Oil Well Test Report, and during a calendar half for gas-well completions on Form MMS–1870, Semi-Annual Gas Well Test Report. Well tests shall be submitted within 45 days of the day the test was conducted.

(4) Unless otherwise ordered by the Regional Supervisor, a revised MPR shall automatically be approved for each well completion for each well test submitted equal to 110 percent of the test rate. The revised MPR will be effective on the first day of the month following the date the well test was conducted. Prior to the approval of a proposed increase of the MPR, a well completion may be produced at a rate not to exceed the proposed increased rate.

(5) When a well test is not submitted during a calendar quarter for an oil-well completion or during a calendar half for a gas-well completion, the MPR will be cancelled effective on the first day of the appropriate following calendar period.

(6) When the results of a quarterly well test for an oil-well completion or a semiannual well test for a gas-well completion cannot be submitted within the specified time, the lessee shall request an extension of time for submitting those test results. The extension must be approved in advance to continue production under the last approved MPR.

(7) When approved by the Regional Supervisor, an MPR shall not be exceeded, except as provided in paragraph (c) of this section.

(c) *Temporary rates.* Temporary production rates resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation, provided that such excess is balanced by production in the succeeding month.

§ 250.173 Well production testing.

(a) The required well testing shall be conducted for a period of not less than 4 consecutive hours. Immediately prior to the 4-hour test period, the well completion shall have produced under stabilized conditions for a period of not less than 6 consecutive hours. The 6-hour pretest period shall not begin until after the recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation for any purpose. Measured gas volumes shall be adjusted to the standard conditions of

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15.025 pounds per square inch absolute (psia) (14.73 psia in the Pacific OCS Region) and 60 °F for all tests. When orifice meters are used a specific gravity for the gas shall be obtained or estimated, and a specific gravity-correction factor shall be applied to the orifice coefficient. The Regional Supervisor may require a prolonged test or retest of a well completion if the test is determined to be necessary for the establishment of a well MPR or a reservoir MER. The Regional Supervisor may approve test periods of less than 4 hours and pretest stabilization periods of less than 6 hours for well completions provided that test reliability can be demonstrated under such procedures.

(b) At the request of the Regional Supervisor, the lessee shall conduct a multipoint back-pressure test to determine the theoretical open-flow potential of a gas well. The test shall be conducted within 30 days of the Regional Supervisor's request or within the time period specified by the Regional Supervisor.

(c) The MMS may witness any well test of oil-well and gas-well completions. Upon request, a lessee shall notify the Regional Supervisor of the time and date of well tests.

§ 250.174 Bottomhole pressure survey.

(a) For each new reservoir, the lessee shall conduct a static bottomhole pressure survey within 3 months after the date of first continuous production.

(b) For each producing reservoir with three or more producing completions, the lessee shall conduct annual, static bottomhole pressure surveys in a sufficient number of key wells to establish an average reservoir pressure. The Regional Supervisor may require a survey of specific wells.

(c) The results of all bottomhole pressure surveys obtained by the lessee shall be filed with the Regional Supervisor within 60 days after the date of the survey.

§ 250.175 Flaring and venting of gas.

(a) Oil-well and gas-well gas shall not be flared or vented without the approval of the Regional Supervisor except in the following situations:

(1) If gas vapors are released in small volumes from storage and other low-pressure production vessels and cannot be economically recovered,

(2) During temporary situations such as a compressor or other equipment failure or the relief of abnormal system pressures except the following:

(i) Oil-well gas shall not be flared for more than 24 hours without the approval of the Regional Supervisor. Flaring at a point shall not continue beyond a cumulative time of 144 hours during any calendar month without the approval of the Regional Supervisor, and

(ii) The flaring of gas-well gas shall not be permitted beyond the time required to eliminate a temporary emergency or to immediately shut in the gas wells contributing to the flare.

(3) During the unloading or cleaning of a well, and

(4) During drill-stem tests, production or other well-evaluation tests for periods not to exceed 24 hours.

(b) Except as provided in paragraph (a) of this section, oil-well gas shall not be flared unless the flaring will be for a period not exceeding 1 year and is approved by the Regional Supervisor in the following situations:

(1) The lessee has initiated an action which, when completed, will eliminate flaring or venting, or

(2) The lessee has submitted an evaluation supported by engineering, geologic, and economic data indicating that the oil and gas produced from the well(s) will not economically support the facilities necessary to save and sell the gas or that sufficient quantities of gas are not available for marketing.

(c) Records detailing flare occurrences shall be maintained for each flare point and shall be available for inspection by MMS representatives. These records shall include daily volumes of gas flared, number of hours of flaring on a daily basis, reasons for flaring, and a list of producing wells contributing to the flare along with respective gas-oil ratio data. These records shall be maintained by the lessee at the lessee's field office nearest the OCS facility or other locations conveniently available to the Regional Supervisor for a minimum of 2 years.

§ 250.176 Downhole commingling.

(a) An application to commingle hydrocarbons produced from multiple reservoirs within a common wellbore shall be submitted to the Regional Supervisor for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. The application shall provide the estimated recoverable reserves as well as any available alternate drainage points which might be used to produce the reservoirs separately.

(b) For all competitive reservoirs, notice of intent to submit the application shall be sent by the applicant to all other lessees having an interest in the reservoirs prior to submitting the application to the Regional Supervisor.

(c) The application shall specify the well-completion number to be used for subsequent reporting purposes.

§ 250.177 Enhanced oil and gas recovery operations.

(a) The lessee shall timely initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles.

(b) A proposed plan for pressure maintenance, secondary and tertiary recovery, cycling, and similar recovery operations to increase the ultimate recovery of oil and/or gas from a reservoir shall be submitted to the Regional Supervisor for approval before such operations are initiated.

(c) Periodic reports of the volumes of oil, gas, or other products injected, produced, or reproduced shall be submitted as required by the Regional Supervisor.

Subpart L—Production Measurement, Commingling, and Security

§ 250.180 Measurement of liquid hydrocarbons.

(a) *General.* Production measurement, commingling, and security procedures and equipment shall be designed, installed, used, maintained, and tested so as to accurately and completely measure the hydrocarbons produced on a lease for purposes of royalty determination.

(b) *Application and approval.* The lessee shall not commence production of liquid hydrocarbons unless the Regional Supervisor has approved an application for the measurement of liquid hydrocarbons and for commingling, if applicable. The application shall be submitted to the Regional Supervisor for approval and shall contain information sufficient to demonstrate that the requirements of this section will be met.

(c) *Sales meter facility requirements.* (1) A meter upon which royalty is based shall be considered a sales meter.

(2) Sales meter facilities shall include the following components which shall be compatible with the systems to which they are connected:

(i) A positive-displacement or other meter approved by the Regional Supervisor. The meter shall be equipped with a nonreset totalizer,

(ii) A calibrated prover tank, a master meter, a mechanical displacement prover, or other devices capable of proving the meter approved by the Regional Supervisor, and

(iii) A proportional-to-flow sampling device which is pulsed by the meter counter.

(3) Sales meters for liquid hydrocarbons shall be designed and installed to include the following:

(i) The piping system is arranged to prevent reversal of flow of liquid through the meter,

(ii) Meters subjected to pressure pulsation or surges are adequately protected by surge tanks, expansion chambers, or similar devices,

(iii) The meter is not subjected to shock pressures which are greater than its maximum-rated working pressure,

(iv) All meters are operated within the gravity range specified by the manufacturer, and

(v) The pressure and flow rate through each meter are maintained within manufacturer's maximum and minimum specifications for rated capacity.

(4) The required sampling device shall conform to the following:

(i) The sampling device shall be installed such that the sampling point is in the flow stream immediately upstream or downstream of the meter or diverter valve,

(ii) The sample container for the sampling device is vaportight and includes a mixing device to permit complete mixing of the sample prior to removal from the container, and

(iii) The sampling device is installed such that the sample probe is in the center of the flow piping in a vertical run and is at least three pipe diameters downstream of any pipe fitting where a region of turbulent flow exists.

(5) No equipment other than that which meets the requirements of this subsection shall be used unless it is approved by the Regional Supervisor prior to use.

(6) When obtaining net volume and associated measurement parameters, the lessee shall use procedures and correction factors in accordance with the following standards:

(i) American Petroleum Institute (API) Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products (American Society of Testing and Materials (ASTM) D 1086-64),

(ii) The following chapters of API Manual of Petroleum Measurement Standards:

(A) Chapter 8, Sampling.

(B) Chapter 9, Density Determination.

(C) Chapter 10, Sediment and Water.

(D) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A, Generalized Crude Oils Correction of Volume to 60°F Against API Gravity at 60°F.

(iii) API Standard 1101, American Standard Method for Measurement of Petroleum Liquid Hydrocarbons by Positive Displacement Meter.

(7) Sales meter facility shall be appropriately located as approved by the Regional Supervisor.

(d) *Sales meter provings.* Sales meters for liquid hydrocarbons shall be proved and calibrated in accordance with the following requirements:

(1) The MMS representatives may witness any regularly scheduled provings or any proving requested by the Regional Supervisor.

(2) The integrity of the calibration of each mechanical displacement prover, prover tank, master meter, or other type of prover shall be traceable to test measures which have been certified by the National Bureau of Standards.

(3) Master meters, mechanical-displacement provers, and prover tanks shall be designed and calibrated in accordance with the following requirements:

(i) The master meter shall be calibrated within the manufacturer's specifications to obtain a master meter factor before using the master meter to establish an operating meter factor. The master meter shall be calibrated with a similar gravity crude and a similar flow rate monthly but not to exceed 42 days or other period as approved by the Regional Supervisor,

(ii) The lessee shall calibrate a master meter by conducting and recording runs until the results of two consecutive runs, if a prover tank is used, or five out of six consecutive runs, if a mechanical-displacement prover is used, produce results such that the greatest difference between runs is not greater than 0.0002. The average of the two or the five runs which produced the acceptable results shall be used to compute the master meter factor,

(iii) The master meter shall be installed with a back-pressure valve downstream of the operating master meter and a check valve to prevent back flow,

(iv) Mechanical-displacement provers shall be calibrated every 5 years, and

(v) When calibrating meters with a mechanical-displacement prover, prover tank, or master meter, the following appropriate correction factors shall be taken into account:

(A) The change in prover volume due to pressure in the steel pipe (Cps) using API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, Appendix A, Table A–3, Pressure Correction Factors for Steel, Cps.

(B) The change in volume of the test liquid with the change in temperature (Ctl) using API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume I, Table 6A, Generalized Crude Oils Correction of Volume to 60°F Against API Gravity at 60°F.

(C) The change in tank shell dimensions with the change in temperature (Cts) using API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, Appendix A, Table A–1, Temperature Correction Factors for Mild Steel, and Table A–2, Temperature Correction Factors for Stainless Steel. Where applicable, the API table that combines the correction factors Cts and Ctl may be used, and

(D) The change in volume of the test liquid with the change in pressure (Cpl) using API Standard 1101, Appendix B, Table II, Compressibility Factors.

(4) Each operating sales meter shall be proved to determine the meter factor monthly but not to exceed 42 days. Meter provings shall be in accordance with the following:

(i) When establishing an operating meter factor with a prover tank, proof runs shall be made and recorded until two consecutive runs produce results such that the difference between results is not greater than .05 percent of the prover tank volume. The average of the results of these two runs shall be used to compute the meter factor,

(ii) When establishing an operating meter factor with a master meter, proof runs shall be made until three consecutive runs produce results such that the difference between results is not greater than 0.0005. The volume of each of these runs shall be at least 10 percent of the hourly rated capacity of the operating meter and shall be of sufficient amount for the determination of an accurate operating meter factor. The average of the results of these three runs shall be used to compute the meter factor, and

(iii) When establishing an operating meter factor with a mechnical-displacement prover, proof runs shall be made and recorded until five out of six consecutive runs produce results such that the difference between results is not greater than 0.0005. The average of the results of the five runs shall be used to compute the meter factor.

(5) The lessee shall submit results of all prover calibrations and meter proving reports of sales and master meters to the Regional Supervisor within 10 days after the calibration or the proving.

(i) A meter factor is considered a malfunction factor when the deviation between the factor and the previous factor exceeds 0.0025. In the event of such a malfunction, the meter shall be immediately removed from service,

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adjusted and/or repaired, and reproven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments,

(ii) When a malfunction results in the failure of the meter to register production, the meter shall be immediately removed from service, repaired, and reproven prior to returning it to service. The previous meter factor shall be applied to the production run between the date of that factor and the date of the failure. Any unregistered production shall be estimated by the best possible means and shall be reported as estimated production, and

(iii) When the results of a sales meter proving exceed the run tolerance criteria and all measures excluding the adjustment and/or repair of the meter and meter components cannot bring the proving results to within tolerance, a factor shall be established using proving results made prior to any adjustment and/or repair of the meter and meter components. The established factor shall be considered a malfunction factor and treated in accordance with paragraph (d)(5)(i) of this section.

(6) To correct gross volumes metered under nonstandard conditions (standard conditions are 0 psig and 60 °F), Cpl factors shall be calculated into the meter factor or listed on the appropriate run ticket. The Ctl factors shall be listed on the appropriate run ticket when the meter is not automatically temperature compensated.

(7) Run tickets shall be pulled at the time of any proving which is conducted for the purpose of establishing a monthly meter factor or which results in the establishment of a malfunction meter factor. All run tickets shall be sent to the Regional Supervisor within 10 days of being pulled or made up and shall clearly identify all correction factors not included in the meter factor.

(e) *Allocation meter facility requirements.* (1) Allocation meter facilities shall include a meter or other measuring device approved by the Regional Supervisor, a device capable of proving the allocation meter, and a continuous sampling system.

(2)(i) Allocation meters measuring 50 barrels of oil per day or more shall be proven monthly in accordance with paragraphs (d)(4), (d)(4) (i), (ii), and (iii) of this section.

(ii) Allocation meters measuring less than 50 barrels of oil per day shall be proven quarterly in accordance with paragraphs (d)(4) (i), (ii), and (iii) of this section.

(3) A copy of allocation meter proving reports must be kept by the lessee on file at the lessee's field office nearest the OCS facility for a period of 6 years.

(4) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount greater than 0.02 and less than 0.07, the allocation meter shall be adjusted and reproven prior to return to service.

(5) If an allocation meter proving results in a meter factor which differs from the previous meter factor by an amount equal to or greater than 0.07, the allocation meter shall be repaired and reproven prior to return to service.

(f) *Sales tank requirements.* (1) Sales tank facilities designated by the Regional Supervisor as a sales location on which royalty shall be based shall be equipped with a vaportight thief hatch and vent-line valve and a fill line designed to minimize free fall and splashing.

(2) A complete set of calibration charts (tank tables) shall be submitted to the Regional Supervisor prior to use of the tank for sales measurement purposes. The volume and other measurement parameters of the liquid production in sales tanks shall be obtained using correction factors and procedures in accordance with the following standards:

(i) API Standard 2543, American Standard Method of Measuring the Temperature of Petroleum and Petroleum Products, ASTM D 1086-64.

(ii) The following chapters of API Manual of Petroleum Measurement Standards:

(A) Chapter 2, Tank Calibration (except Standards 2553 and 2554),

(B) Chapter 3, Tank Gauging,

(C) Chapter 8, Sampling,

(D) Chapter 9, Density Determination,

(E) Chapter 10, Sediment and Water, and

(F) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A, Generalized Crude Oils Correction of Volume to 60 °F, Against API Gravity at 60 °F.

(3) All run tickets written from gaugings shall be submitted to the Regional Supervisor within 10 days of being written.

§ 250.181 Measurement of gas.

(a) *General.* The lessee shall measure all gas production in accordance with the requirements of this section.

(b) *Applicability.* This section applies to all gas meters designated by the Regional Supervisor as gas sales or allocation meters.

(c) *Applications and approvals.* The lessee shall not commence production of gas hydrocarbons unless the Regional Supervisor has approved an application for measurement of gas production. The application shall be submitted to the Regional Supervisor for approval and shall contain information sufficient to demonstrate that the requirements of this section will be met.

(d) *Gas meter requirements.* (1) The measuring equipment shall be installed and operated in accordance with the recommendations contained in the API Manual of Petroleum Measurement Standards, Chapter 14, Natural Gas Fluids Measurement.

(2) The unit of volume for gas measurement shall be 1 cubic foot at a base temperature of 60 °F and at a base pressure of 15.025 pounds per square inch absolute (psia) (14.73 psia for Pacific OCS Region), and the measurement unit shall be 1,000 cubic feet (Mcf) of gas.

(3) Gas meters shall be operated in accordance with the following requirements:

(i) The MMS representatives shall be permitted to witness regularly scheduled calibrations and any calibration requested by the Regional Supervisor,

(ii) The integrity of the calibration equipment shall be in accordance with the standards in paragraph (d)(1) of this section,

(iii) Each gas meter shall be calibrated at reasonable intervals not to exceed 45 days. The calibration shall be conducted at the average hourly rate of flow for the period since the last calibration. The lessee shall retain calibration test data at the field location for a period of 6 years,

(iv) Whenever a meter is not functioning or not registering within the limits of accuracy prescribed by the manufacturer, it shall be immediately removed from service and not returned to service until repaired or adjusted to read accurately, and

(v) During calibration, if the meter readings of static and differential pressure are found to be within contractual tolerances with respect to test device readings, previous meter readings shall be considered correct in computing deliveries of gas since the previous calibration. If the readings are greater than contractual tolerances, the volume measured since the last calibration shall be corrected as follows:

(A) If the time the error occurred is ascertainable, the volume adjustment

shall be calculated for that period of time. No retroactive adjustment of volumes metered for allocation beyond a 23-day period is required, or

(B) If the time the error occurred is not ascertainable, the volume adjustment shall be applied to one-half of the time elapsed since the last date of calibration or 23 days, whichever is less.

§ 250.182 Commingling of production.

(a) *General requirements.* Commingling of production from different leases prior to measurement for royalty sales determination shall be in accordance with this section.

(b) *Applications and approvals.* (1) The lessee shall not commence commingling of production unless the Regional Supervisor has approved the commingling and the method of measurement. The lessee shall submit an application for commingling to the Regional Supervisor for approval, and the application shall contain appropriate information regarding the method of allocation measurement, processing, if applicable, and the manner of entry into the particular commingling system.

(2) All allocation methods and procedures and changes thereto shall be approved by the Regional Supervisor.

(c) *Well tests.* The lessee shall conduct a well test for allocation purposes at least once every 2 months or other period as determined by the Regional Supervisor and shall retain test data at the lessee's field office nearest the OCS facility for a period of 6 years.

§ 250.183 Measurement of sulphur.

The lessee shall not commence production of sulphur until the Regional Supervisor has approved the method of measurement. Proposed method of measurement shall be submitted to the Regional Supervisor for approval and shall contain appropriate information to demonstrate that the method of measurement provides for accurate measurement of produced sulphur.

§ 250.184 Site security.

All locations where oil, gas, or both are measured shall be operated and maintained to ensure against the loss or theft of production and to assure accurate measurement for royalty purposes. At each location, a written copy of a site-security program shall be maintained and used in the transportation, measurement, and storage of production. Production, transportation to shore, and sales activities shall comply with the following requirements:

(a) The components of sales measuring devices (metering units and tanks) shall be sealed in a manner to preclude tampering. Wire or other acceptable types of seals shall be numbered and recorded. The list of seal numbers and the installation location shall be maintained by the lessee at the lessee's field office nearest the OCS facility and be available for inspection by MMS representatives.

(1) The following metering unit components shall be sealed in such a manner that the component cannot be opened, closed, or altered in any way without destroying the seal:

(i) All meter stack component connections from the base of the stack to the register,

(ii) The gravity selector, registration adjustment, and thermal system components of the Automatic Temperature and Gravity (ATG) Compensator,

(iii) The ATG inspection plate,

(iv) The thermal system component of the Automatic Temperature Compensator (ATC),

(v) The cover of the transmitter that paces the sampling device,

(vi) The right angle drive when the meter is ATC compensated,

(vii) The meter housing,

(viii) The meter drain,

(ix) All fittings on the sampler system tubing (liquid seals permissible),

(x) The sampler container lid,

(xi) The sampler drain,

(xii) The following sampler sight glass connections,

(A) Sight glass petcocks (drain valves), or

(B) Sight glass packing nuts (liquid seals permissible), and

(xiii) Additional components as required by the Regional Supervisor for unusual metering units.

(2) All valves on lines leaving an oil storage tank including load-out line valves, drain-line valves, and connection-line valves between sale and nonsale tanks shall be sealed in such a manner that the valve is closed and cannot be opened without destroying the seal.

(b) Each storage tank shall be clearly identified by a sign that contains the name of the lessee, the size of the tank, and the tank number.

(c) All deliveries from meters and tanks, whether onshore or offshore, shall be properly recorded and available for inspection by MMS representatives.

(d) No one shall bypass MMS-approved allocation meters, royalty sales meters, and tanks.

(e) Evidence of theft or mishandling of production from an offshore lease, or of tampering or bypassing with metering or proving devices, or of falsifying any measurement of production from an offshore lease shall be reported to the Regional Supervisor as soon as possible but not later than the next business day after discovery of the theft or mishandling.

Subpart M—Unitization

§ 250.190 Authority and requirements for unitization.

(a) Unitization may be approved or required by the Regional Supervisor for the prevention of waste, the conservation of the natural resources of the OCS, and for the protection of correlative rights therein, including the protection of Federal royalty interests. Lessees may agree among themselves to unitization, subject to the Regional Supervisor's approval (voluntary unitization), or the Regional Supervisor may require unitization on the initiative of one or more lessees or on the Regional Supervisor's own initiative (compulsory unitization).

(b) Unitized operations may be approved when the Regional Supervisor has determined that such action will expedite and promote exploration and development efforts. Unitized operations may also be approved or required by the Regional Supervisor when a reservoir has been determined to be reasonably delineated and productive and such action is found to be necessary for the prevention of waste, conservation of natural resources of the OCS, or for the protection of correlative rights.

(c) A unit area shall include the minimum number of leases required to permit one or more mineral reservoirs or potential hydrocarbon accumulations to be served by a minimum number of platforms, facility installations, and wells necessary for the efficient exploration for or development and production of oil and gas.

(d) A unit agreement shall provide for the appointment of a unit operator and the allocation of benefits to the unitized leases. The unit operator and the owners of working interests shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to the unit agreement shall be apportioned. In units involving one or more net-profit share leases, approval by the Regional Supervisor of the costs and credits attributable to the net-profit share leases shall be required.

(e) Upon the expiration or termination of a unit agreement, or when there is an adjustment of a unit area that results in the elimination of a lease from the unit agreement, each lease that was but is no longer subject in whole or in part to the unit agreement shall expire unless (1) its

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initial term has not expired, (2) drilling, production, or well-reworking operations are being conducted thereon in accordance with applicable regulations, or (3) a suspension of production or operations has been ordered or approved for the excluded lease.

§ 250.191 Competitive reservoir unitization.

(a) The Regional Supervisor may require development and production operations in a reservoir in which there are one or more well completions on each of two or more leases from which the lessees plan future production (competitive reservoir) to be conducted under either a voluntary joint Development and Production Plan or unitization agreement.

(b) Lessees may request at any time that the Regional Supervisor make a preliminary determination as to whether a reservoir is competitive. The Regional Supervisor shall notify the lessees upon making such determination. The lessees, within 30 days of such notice or such time as approved by the Regional Supervisor, shall advise the Regional Supervisor of their concurrence or submit an objection with supporting evidence. The Regional Supervisor will make a final determination and notify the lessees.

(c) When drilling and/or production operations are conducted in a competitive reservoir, the lessees shall submit a joint plan for approval governing the applicable operations. The joint plan shall be submitted within 90 days after the final determination by the Regional Supervisor that the reservoir is competitive and shall provide for the development and/or production of the reservoir and may provide for the submittal of supplemental plans for approval by the Regional Supervisor. If agreement on a joint Development and Production plan cannot be reached by the lessees within the approved period of time and the Regional Supervisor determines that conservation will be best served by unitization of operations, unitization may be required.

§ 250.192 Voluntary unitization.

(a) Lessees who seek approval of unitization shall file a request with the Regional Supervisor accompanied by a draft of the proposed unit agreement, supporting geological, geophysical, and engineering data, and any other information that may be necessary to show that the unitization proposal meets the criteria of § 250.190.

(b) The proposed unit agreement shall conform to the appropriate Model Unit Agreement in § 250.194. The Regional Supervisor may require or upon request approve variations from the Model Unit Agreement. Any request for variation shall be made at the time the proposed unit agreement is submitted to the Regional Supervisor.

(c) After the Regional Supervisor approves the proposed unit agreement, lessees shall execute the unit agreement and file with the Regional Supervisor such copies of the unit agreement, unit operating agreement, and the initial plan of operations (including appropriate environmental considerations) as the Regional Supervisor may require.

§ 250.193 Compulsory unitization.

(a) If it is determined by the Regional Supervisor that unitization of operations within the proposed unit area is necessary for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein or if unitization is proposed by less than all lessees of the proposed unit area, unitization shall be imposed according to a unitization plan which shall consist of the following:

(1) Conformance to Model Unit Agreement in 250.194, unless variation from the Model Unit Agreement has been approved by the Regional Supervisor, or

(2) Conformance to a previously approved unit agreement executed by less than all of the lessees, unless good cause exists for variation from the proposed unit agreement and the reasons for the variation are stated in writing and are approved by the Regional Supervisor.

(b)(1) Lessees who seek compulsory unitization shall file a request with the Regional Supervisor accompanied by a proposed unit agreement conforming to the appropriate Model Unit it Agreement, a proposed unit operating agreement, and a proposed initial plan of operations together with supporting geological; geophysical, and engineering data, and any other information that may be necessary to show that unitization meets the criteria of § 250.190. The proposed unit agreement shall include a counterpart executed by each lessee seeking compulsory unitization. Lessees seeking compulsory unitization shall serve copies of the request, the proposed unit agreement with executed counterparts, the proposed unit operating agreement, and the proposed initial plan of operations on the nonconsenting lessees.

(2) If the Regional Supervisor initiates compulsory unitization, all lessees of the proposed unit area shall be served with a copy of the proposed unit agreement or unitization plan and a statement of reasons for the proposed unitization.

(c)(1) The Regional Supervisor may not require compulsory unitization until all lessees of the proposed unit area are provided reasonable notice and an opportunity for a hearing. Any lessee owning an interest in the proposed unit area may request a hearing within 30 days of service of notice by the Regional Supervisor or service of a request for compulsory unitization by a lessee.

(2) No hearing may be held pursuant to this paragraph until written notice has been provided to all parties owning interests which would be made subject to the unit agreement at least 30 days in advance of the hearing. The Regional Supervisor shall afford all lessees of the proposed unit area an opportunity to submit views orally and in writing and to question both those seeking and those opposing compulsory unitization. Adjudicatory procedures are not required, but the decision of the Regional Supervisor shall be based upon a record of the hearing including any written information made a part of the record. A party to a hearing may, at its own expense, cause a verbatim transcript to be made by a court reporter. If a verbatim transcript is made, three copies of the transcript shall be provided to the Regional Supervisor without charge within 10 days after the hearing.

(d) The Regional Supervisor may issue an order(s) that requires or disapproves compulsory unitization. Any such order shall include a statement of reasons for the action taken including identification of those parts of the record which form the basis of the decision. The final order of the Regional Supervisor may be appealed in accordance with 30 CFR Part 290.

§ 250.194 Model unit agreements.

(a) *Model unit agreement for exploration, development, and production units.*

Unit Agreement for Outer Continental Shelf Exploration, Development, and Production Operations on the ——— Unit Blocks ——, Area Offshore ——— Contract No. ———

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, et seq., it is deemed to be in the interest of conservation, prevention of waste, and the protection of correlative rights to unitize the oil and gas interest in the unit area; and

WHEREAS, it is deemed to be in the interest of conservation to conduct exploration, development, and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—Definitions

The following definitions of terms shall apply to this Agreement:

ACT means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, et seq.

AGREEMENT means this unit agreement, approved by the Regional Supervisor for conducting exploration, development, and production operations within the unit area.

BLOCK means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

PARTICIPATING AREA is that part of the unit area that is reasonably proven by producible wells, geological information, and engineering data to be capable of producing hydrocarbons in paying quantities.

REGIONAL SUPERVISOR means the Regional Supervisor of the MMS, Department of the Interior (DOI), or a designee, authorized and empowered to regulate and approve unit operations.

REGULATIONS means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

RESERVOIR means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

UNIT AREA means the area of the OCS which is made subject to his Agreement and described in Article III.

UNIT OPERATING AGREEMENT means an agreement made between the working interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

UNIT OPERATOR means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct operations within the unit area in accordance with plans of operations approved pursuant to the Act, applicable regulations, and this Agreement.

UNITIZED SUBSTANCES means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

WORKING INTEREST means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working interest.

Article II—Incorporation

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—Unit area and exhibits

3.1 The following described offshore area as shown on the U.S. Official Leasing Protraction Diagram is subject to valid leases and constitutes the unit area.

3.2 Exhibit "A", which is attached to this Agreement and made a part hereof, is a plat identifying the unit area and component blocks and leases.

3.3 Exhibit "B", which is attached to this Agreement and made a part hereof, is a schedule listing the component leases and the ownership of each.

3.4 Exhibit "C", which will be submitted in accordance with the provisions of this Agreement and will be made a part hereof, is a schedule listing the component parts of the participating area(s) by lease and the percentage of oil or gas, or both, that is to be allocated to each lease.

3.5 Exhibits "A", "B", and "C" shall be revised by the unit operator whenever changes in the unit area, changes in the participating area, changes in the ownership of one or more leases, or changes in the percentages of oil or gas, or both, allocated to the individual leases render such changes necessary. Four copies of the revised exhibits shall be submitted to the Regional Supervisor for approval.

Article IV—Designation of unit operator

4.1 ——— is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to explore for, develop, and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and conditions of approved plans of operations, the exclusive rights and obligations of the owners of working interests to conduct unit operations to explore for, develop, and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—Resignation or removal of unit operator

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working -interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area, are placed in a condition satisfactory to the Regional Supervisor for suspension or abandonment of operations. However, if a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working interests as provided by Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and any other assets used for conducting operations for the unit area.

Article VI—Successor unit operator

6.1 Whenever the unit operator tenders its resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volume of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreements, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of

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the resignation or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—Unit operating agreement

7.1 The owners of working interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and the unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor.

Article VIII—Appearances and notices

8.1 The unit operator shall, after notice to other parties affected, have the right to appeal on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in a unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working interests shall be deemed properly given if given in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—Plan of operations

9.1 The unit operator shall submit a plan of operations which is consistent with the requirements for Exploration Plans or Development and Production Plans as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operations has been ordered or approved by the Regional Supervisor. Plans may call for a cessation of drilling operations for a reasonable period of time between the discovery and delineation of a reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operations has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operations shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operations shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operations for approval in accordance with this Article.

Article X—Revision of unit area

10.1 The unit area may be further revised by additions necessary for unit operations or for the inclusion of an area capable of producing oil and/or gas in paying quantities whenever such action appears proper to include additional lands, or may be further revised by the contraction of the unit area when such contraction is necessary or advisable to conform with the purposes of this Agreement. Such additions or contractions shall be effected by the unit operator on its own motion after preliminary concurrence of the Regional Supervisor or on demand of the Regional Supervisor. The effective date of any expansion or contraction of the unit area shall be the first of the month following the date of approval of the expansion or contraction by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.2 The unit area shall not be reduced on account of the depletion of the unitized substances for which it was established, but the unit area established under the provisions of this article shall terminate automatically whenever operations are permanently abandoned in the unit.

Article XI—Participating areas

11.1 Prior to commencement of production of unitized substances, or as soon thereafter as required by the Regional Supervisor, the unit operator shall submit to the Regional Supervisor, as Exhibit "C," a schedule by lease of (a) all land reasonably proven to be productive of unitized substances in paying quantities by the drilling and completion of producible wells, geological information, and engineering data, and (b) the percentage of unitized substances to be allocated as provided in Article XII to each lease. All lands in said schedule, upon approval thereof by the Regional Supervisor, shall constitute the initial participating area, effective as of the date such production commences. The participating area shall be described in parcels no smaller than ¼ x ¼ x ¼ blocks.

11.2 Subject to approval of the Regional Supervisor, the participating area(s) so established shall be revised from time to time to include additional land reasonably proven to be productive in the same manner as provided in paragraph 11.1 of this Article, or lands proven not to be productive to be excluded in the same manner, and Exhibit "C" shall be revised accordingly. The effective date of any revision shall be the first of the month in which the information is obtained which provides the basis for the approval of the revision by the Regional Supervisor provided, however, that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor. No land shall be excluded from the participating area(s) on account of depletion of the unitized substances.

11.3 A separate participating area may be established for each accumulation of unitized substances or for any group thereof which is produced as a single pool or zone and any two or more participating areas so established may be combined into one, all subject to approval of the Regional Supervisor.

11.4 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

Article XII—Allocation of production

12.1 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States. Unitized substances shall be allocated within the participating area(s) on (a) a volumetric basis of oil and gas in place under original reservoir conditions, or (b) a surface area basis, and proportionally credited to the respective leases committed hereto. The unit operator shall furnish the Regional Supervisor geological and engineering maps and data sufficient to support the net-acre feet determination for volumetric allocation between leases. Oil and gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases subject hereto shall be based and calculated upon the production allocated to the leases as specifically provided herein. The oil and gas saved, removed, or sold from a unit area shall be allocated in this manner, regardless of where any well is drilled and produced in the unit area.

12.2 For the purpose of determining royalty obligations, unitized substances on which royalty has been paid and which are

used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operations, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operations and the amounts of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid-hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XIII—Automatic adjustment of unit area

13.1 Any lease(s) not entitled to receive an allocation of unit production on the fifth/tenth anniversary of the effective date of the initial participating area established under this Agreement shall be eliminated automatically from the unit area as of said fifth/tenth anniversary; and thereafter, the unit area shall only be comprised of the participating area(s) subject to the provisions of Articles X and XVII.

13.2 If a lease is no longer subject to this Agreement in accordance with the provisions of this Article, that lease shall only be maintained and continued in force and effect in accordance with the terms and provisions contained in the Act, regulations, and the lease.

Article XIV—Relinquishment of leases

Pursuant to the provisions of the leases and applicable regulations, a lessee of record shall, subject to the provisions of the unit operating agreement, have the right to relinquish any of its interests committed hereto, in whole or in part, provided that no relinquishment shall be made of any interests within a participating area without the prior approval of the Regional Supervisor. In the event such relinquishments result in the leasehold interest of only one lease remaining committed hereto, this Agreement shall terminate automatically effective as of the date that only one lease remains subject to the Agreement.

Article XV—Rentals and minimum royalties

15.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefore at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

15.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XVI—Effective date and termination

16.1 This Agreement shall be effective on ——— and shall terminate when oil and gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered or approved a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for the period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

16.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working interests in each tract committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XVII—Leases and contracts conformed and extended

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

17.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands, pursuant to direction or consent of the Secretary or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate is produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment.

17.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XVIII—Counterparts

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XIX—Subsequent joinder

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XX—Remedies

20.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operations, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

20.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XXI—No waiver of certain rights

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

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Article XXII—Covenants run with the land

22.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

22.2 No assignment or transfer of any working interest or other interest subject hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

ACCEPTANCE OF RIGHTS AND OBLIGATIONS BY UNIT OPERATOR

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated: ______
Authorized Signature: ______
Name: ______
Title: ______
Corporation: ______
Subscribed and sworn to me this —— day of 19—.
Notary Public: ______
My Commission Expires: ______

Approval by Working-Interest Owner(s)

As an owner of a working interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: ______
Authorized Signature: ______
Name: ______
Title: ______
Corporation: ______
Address: ______
Subscribed and sworn to me this —— day of 19—.
Notary Public: ______
My Commission Expires: ______

(b) Model unit agreement for development and production units.

Unit Agreement for Outer Continental Shelf Development and Production Operations on the ——— Unit Blocks ———, ——— Area Offshore ——— Contract No. ———

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Witnesseth:

WHEREAS, section 5(a) of the Act authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations which shall provide for unitization, pooling, and drilling agreements;

WHEREAS, pursuant to the rules and regulations of the Secretary, 30 CFR 250.190, et seq., it is deemed to be in the interest of conservation, prevention of waste, and protection of correlative rights to unitize the oil and gas interests in the unit area; and

WHEREAS, it is deemed to be in the interest of conservation to conduct development and production operations in the unit area as though the area were subject to a single lease;

NOW, THEREFORE, in consideration of the premises and promises contained herein, it is agreed that:

Article I—Definitions

The following definitions of terms shall apply to this Agreement:

ACT means the OCS Lands Act of 1953, as amended, 43 U.S.C. 1331, et seq.

AGREEMENT means this unit agreement, approved by the Regional Supervisor for conducting development and production operations within the unit area.

BLOCK means an area designated as a block on a U.S. Official Leasing Protraction Diagram for an area of the OCS.

REGIONAL SUPERVISOR means the Regional Supervisor of MMS, DOI, or a designee authorized and empowered to regulate and approve unit operations.

REGULATIONS means all rules prescribed or adopted pursuant to the Act. They include all regulations prescribed or amended at any time to provide for the prevention of waste, conservation of natural resources of the OCS, and the protection of correlative rights therein.

RESERVOIR means an underground porous, permeable medium containing an accumulation of oil or gas or both. Each zone of a general structure containing such an accumulation that is separated from any other accumulation of oil or gas or both in the structure is a separate "reservoir."

UNIT AREA means the area of the OCS which is made subject to this Agreement and described in Article III.

UNIT OPERATING AGREEMENT means an agreement made between the working-interest owners and the unit operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

UNIT OPERATOR means the person, association, partnership, corporation, or other business entity designated by the working-interest owners and approved by the Regional Supervisor to conduct operations within the unit area in accordance with a plan of operations approved pursuant to the Act and applicable regulations.

UNITIZED SUBSTANCES means oil and/or gas within the reservoir(s) that underlie the unitized lands and which are recovered or produced by operations pursuant to this Agreement.

WORKING INTEREST means an interest in the unit area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, the rights or authority to explore for, develop, and produce oil and gas are conferred. The right delegated to the unit operator by this Agreement is not a working interest.

Article II—Incorporation

All provisions of the Act, the regulations, other applicable laws, and the leases covering OCS lands within the unit area are made part of this Agreement.

Article III—Unitized reservoir, unit area, and exhibits

3.1 The (———, reservoir ———) is defined as that productive zone occurring within the interval —— feet to —— feet, electric log depths, in Well No. —— hereinafter referred to as the unitized reservoir.

3.2 All land committed to this Agreement shall constitute land referred to in Exhibit "A." The area specified in Exhibit "A" is hereby designated and recognized as overlying the unitized reservoir and as constituting the unit area containing —— acres, more or less. All oil and/or gas produced from the unitized reservoir, which lies within the unit area, are unitized under the terms of this Agreement and are referred to herein as unitized substances.

3.3 The above unit area may, subject to appropriate approval, be expanded to include therein additional acreage whenever such expansion is necessary or advisable to conform with the purposes of this Agreement.

3.4 Exhibit "A," attached hereto and made a part hereof, is a plat showing the unit area, boundaries, and oil and gas leases in said area. Exhibit "B," attached hereto and made a part hereof, is a schedule showing the acreage, percentage, and kind of ownership of oil and gas interests in all land in the unit area. Exhibit "C," attached hereto and made a part hereof, is a schedule setting out the number of productive net —— acre-feet creditable to each tract under original reservoir conditions and the percentage of unit participation credited to each tract in the unit area. The number of net —— acre-feet and the percentage of unit participation credited to each tract in Exhibit "C" are accepted and approved by the Regional Supervisor. Exhibits "A," "B," and "C" shall be revised by the unit operator whenever changes render it necessary, and four copies shall be filed with the Regional Supervisor for approval.

Article IV—Designation of unit operator

4.1 ——— is designated as the unit operator and agrees to accept the rights and obligations of the unit operator to explore for, develop, and produce oil and/or gas as provided in this Agreement.

4.2 Except as otherwise provided in this Agreement and subject to the terms and

conditions of approved plans of operations, the exclusive rights and obligations of the owners of working interests to conduct unit operations to explore for, develop, and produce oil and/or gas in the unit area are delegated to and shall be exercised by the unit operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms nor transfers title to any lease or operating agreement.

Article V—Resignation or removal of unit operator

5.1 The unit operator shall have the right to resign at any time. Such resignation shall not become effective until 60 days after written notice of an intention to resign has been delivered by the unit operator to the working-interest owners and the Regional Supervisor and until all platforms, artificial islands, installations, and other devices, including wells used for conducting operations in the unit area, are placed in a condition satisfactory to the Regional Supervisor for suspension or abandonment of operations. However, if a successor unit operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor unit operator.

5.2 The unit operator may be subject to removal by the same percentage vote of the owners of working interests as provided in Article VI for the designation of a successor unit operator. This removal shall not be effective until the working-interest owners notify the Regional Supervisor and the unit operator and until the Regional Supervisor approves the designation of a successor unit operator.

5.3 The resignation or removal of the unit operator shall not release the unit operator from liability for any failure to meet any obligations which accrued before the effective date of resignation or removal.

5.4 The resignation or removal of the unit operator shall not terminate any right, title, or interest as the owner of a working interest or other interest in the unit area. However, when the resignation or removal of the unit operator becomes effective, the unit operator shall relinquish to the successor unit operator all wells, platforms, artificial islands, installations, devices, records, and any other assets used for conducting operations for the unit area.

Article VI—Successor unit operator

6.1 Whenever the unit operator tenders a resignation as unit operator or is removed as provided in Article V, a successor unit operator may be designated by (a) an affirmative vote of the owner(s) of a majority of the working interests, based on (1) their respective shares of the acreage subject to this Agreement; (2) their respective estimated volumes of oil or gas, or both, originally in place; or (3) their decision pursuant to the unit operating agreements, and (b) the successor unit operator's acceptance in writing of the rights and obligations of the unit operator. The successor unit operator shall file with the Regional Supervisor four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Regional Supervisor.

6.2 If no successor unit operator is designated as herein provided within 60 days following notice to the Regional Supervisor of the resignation or removal of a unit operator, the Regional Supervisor may elect to designate one of the working-interest owners other than the unit operator as successor unit operator or may declare this Agreement terminated.

Article VII—Unit operating agreement

7.1 The owners of working interests and the unit operator shall enter into a unit operating agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The unit operating agreement shall also describe how the benefits which may accrue from operations conducted on the unit area shall be apportioned.

7.2 The owners of working interests and the unit operator may establish by means of one or more unit operating agreements such other rights and obligations as they deem necessary or appropriate. However, no provision of the unit operating agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the working-interest owners or the unit operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and a unit operating agreement, the terms of this Agreement shall prevail.

7.3 Three copies of the unit operating agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Regional Supervisor with a request for approval. Three copies of all other unit operating agreements and any amendments thereto also shall be filed with the Regional Supervisor.

Article VIII—Appearances and notices

8.1 The unit operator shall, after notice to other parties affected, have the right to appeal on behalf of all working-interest owners before the DOI or any other body legally empowered to issue decisions concerning orders or regulations of the DOI and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in a unit operating agreement. However, any affected working-interest owners shall have the right at their own expense to be heard in any proceeding.

8.2 Any Order or notice relating to this Agreement which is given to the unit operator by the Regional Supervisor shall be deemed given to all working-interest owners of the unit area. All notices required by this Agreement to be given to the unit operator or the owners of working interests shall be deemed properly given if in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article IX—Plan of operations

9.1 The unit operator shall submit a plan of operations which is consistent with the requirements for a Development and Production Plan as required by the Act, Subpart B of 30 CFR Part 250, and other sections of the regulations. All operations within the unit area shall be conducted in accordance with an approved plan.

9.2 When no oil or gas is being produced in paying quantities from the unit area and when all or part of the area is subject to one or more leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days per lapse between such operations unless a suspension of production or other operations has been ordered or approved by the Regional Supervisor. The plan may call for a cessation of drilling operations for a reasonable period of time after the discovery and delineation of a reservoir when such a pause in drilling activities is warranted to permit the design, fabrication, and erection of platforms and other installations needed for development and production operations, provided a suspension of production or other operations has been ordered or approved by the Regional Supervisor.

9.3 An acceptable initial plan of operations shall be submitted at the time this Agreement is filed for the Regional Supervisor's approval. Each plan of operations shall expire on the date specified in the plan. At least 60 days before the scheduled expiration of any plan, unless the Regional Supervisor grants an extension for good cause, the unit operator shall file an acceptable subsequent plan of operations for approval in accordance with this Article.

Article X—Revision of unit area and allocation of production

10.1 Unitized substances produced from the unit area shall be allocated on the basis of net acre-feet, under original reservoir conditions, credited to the respective tracts committed hereto. A net acre-foot as used in this Agreement means one acre of producing formation which contains one foot of net —— pay. Oil and/or gas produced from the unit area prior to the effective date of this Agreement shall not be allocated under this Agreement. The royalty payments under leases committed hereto shall be based and calculated upon the production allocated to the tracts as specifically provided herein.

10.2 The unit area so established shall be revised from time to time, subject to the approval of the Regional Supervisor, whenever such action appears proper as a result of further drilling operations or otherwise to include additional lands or to exclude lands. The effective date of any revision of the unit area shall be the first day of the month in which is obtained the knowledge or information on which such revision is predicated, provided that a more appropriate effective date may be used if justified by the unit operator and approved by the Regional Supervisor.

10.3 In the event any lands are added to the unit area, a reasonable and fair participation shall be allocated to the new lands on the basis of net acre-feet. The determination of the net acre-feet creditable to such lands shall be done in the same

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manner and by the same procedures used to determine the tract percentages of participation as shown on Exhibit "C." If the unit area is so expanded, the net acre-feet credited to land originally in the unit area shall not be subject to change. The only change will be to increase the total number of net acre-feet in the unit area by adding to the original total the total number of net acre-feet allocated to new lands, provided that there shall never be any retroactive allocation of interest in the unitized substances produced, or the proceeds thereof, by reason of any revision.

10.4 The unit operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken-in-kind or which, pursuant to the Act, are purchased by the United States.

10.5 For the purpose of determining royalty obligations, gas and liquid-hydrocarbon substances on which royalty has been paid and which are used for repressuring, stimulation of production, or increasing ultimate recovery from the unit area, in conformity with an approved plan of operations, may be deemed to be a portion of the gas and liquid-hydrocarbon substances subsequently saved, removed, or sold from the unit area. In such instances, a like amount of gas and liquid-hydrocarbon substances similar to that previously used may be saved, removed, or sold from the unit area without paying a royalty thereon. However, as to dry gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty free. The royalty-free withdrawal shall be accomplished in accordance with an approved plan of operations, and the shares of gas and liquid-hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Regional Supervisor. Any withdrawal of royalty-free gas or liquid-hydrocarbon substances shall terminate upon the termination of this Agreement, unless otherwise permitted. For the purposes of this paragraph, liquid hydrocarbon substances include natural gasoline and liquid-petroleum gas fractions.

Article XI—Rentals and minimum royalties

11.1 Rentals or minimum royalties due on leases committed hereto shall be paid by the working-interest owners responsible therefore at the time and rate(s) specified in their respective lease from the United States unless such rental or minimum royalty is suspended or reduced by law or by approval of the Secretary.

11.2 If there is production from the unit area during the lease year, the amount of royalty paid for production allocated to a lease during the lease year shall be credited against the minimum royalty obligation of the lease.

Article XII—Effective date and termination

12.1 This Agreement shall be effective on ——— and shall terminate when oil and/or gas is no longer being produced from the unit area and drilling or well-reworking operations are no longer being conducted in accordance with the provisions of Article IX of this Agreement. If the Regional Supervisor has ordered a suspension of operations or production on all or part of the unit area pursuant to the regulations, this Agreement shall be continued in force and effect for the period of time equal to the length of the authorized suspension and thereafter so long as operations are being conducted in accordance with the provisions of Article IX herein.

12.2 This Agreement may be terminated, with the approval of the Regional Supervisor, at any time by an affirmative vote of the owner(s) of a majority of the working interests in each tract committed to this Agreement or as otherwise specified in the unit operating agreement.

Article XIII—Leases and contracts conform and extended

13.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or production operations for oil or gas on lands committed to this Agreement are hereby modified and amended only to the extent necessary to make the same conform to the provisions hereof but otherwise shall remain in force and effect.

13.2 The Regional Supervisor, by the approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty, and royalty requirements of the Federal leases committed hereto, to conform said requirements to the provisions of this Agreement, and without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) Drilling and/or producing operations performed hereunder upon any unitized lease will be accepted and deemed to be performed upon and for the benefit of each and every unitized lease, and no lease committed to this Agreement shall be deemed to expire by reason of failure to drill or produce a well thereon.

(b) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the Secretary, or a duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every unitized lease.

(c) Each lease committed hereto shall continue in force as to all lands covered thereby for the term so provided therein, or as extended by law, and so long thereafter as gas or oil and/or condensate are produced from a unit well in paying quantities, drilling or well-reworking operations pursuant to the regulations are conducted within the unit area, or operations are suspended hereunder as provided herein, and operations are being conducted pursuant to the provisions of Article IX of this Agreement. This subsection shall not operate to continue in force any whole lease excluded from the unit area by adjustment.

13.3 Upon termination of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XIV—Counterparts

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties. If this Agreement is executed in counterparts, all counterparts taken together shall have the same effect as if all parties had signed the same instrument.

Article XV—Subsequent joinder

The Regional Supervisor may order or, upon request, approve a subsequent joinder to this Agreement pursuant to the expansion provisions of Article X. A request for a subsequent joinder shall be accompanied by a signed counterpart to this Agreement and shall be submitted by the unit operator at the time a notice of proposed expansion is submitted pursuant to Article X. A subsequent joinder shall be subject to the requirements which may be contained in the unit operating agreement, if any, except that the Regional Supervisor may require modifications of any provision in a unit operating agreement which would prevent a subsequent joinder.

Article XVI—Remedies

16.1 The failure of the unit operator to conduct operations in accordance with an approved plan of operations, to timely submit an acceptable plan for approval by the Regional Supervisor, or to comply with any other requirement of this Agreement in a timely manner shall, after notice of default to the unit operator with copies to all working-interest owners by the Regional Supervisor and after failure of the unit operator to remedy any default within a reasonable time as determined by the Regional Supervisor, result in automatic termination of this Agreement effective as of the first day of the default.

16.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

Article XVII—No waiver of certain rights

Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond such party's authority to waive.

Article XVIII—Covenants run with the land

18.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby are conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

18.2 No assignment or transfer of any working interest or other interest subject

hereto shall be binding upon the unit operator until the first day of the calendar month after the unit operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

In Witness Whereof, the working-interest owners and the unit operator have caused this Agreement to be executed as follows:

Acceptance of Rights and Obligations by Unit Operator

I hereby accept and assume all rights and obligations of the unit operator as set forth above.

Dated: ________________
Authorized Signature: ________________
Name: ________________
Title: ________________
Corporation: ________________
Address: ________________
Subscribed and sworn to me this —— day of ———, 19—.
Notary Public: ________________
My Commission Expires: ________________

Approval by Working-Interest Owner(s)

As an owner of a working interest in the unitized area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: ________________
Authorized Signature: ________________
Name: ________________
Title: ________________
Corporation: ________________
Address: ________________
Subscribed and sworn to me this —— day of ———, 19—.
Notary Public: ________________
My Commission Expires: ________________

Subpart N—Remedies and Penalties

§ 250.200 Remedies.

(a)(1) Whenever the Regional Director determines, on the basis of sufficient evidence, that a violation of or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation issued under the Act (hereinafter referred to as "violation") probably occurred and that such violation continued beyond actual notice of the violation and the expiration of any reasonable period allowed for corrective action, the Regional Director may direct the preparation of a case file and shall appoint an employee of MMS to serve as a Reviewing Officer. In making this determination, the Regional Director shall have the authority to summon witnesses, administer oaths, and issue orders to produce evidence. Chairmen of investigative panels appointed to investigate violations, accidents, or other matters shall also have such authority in conducting investigations.

(2) Notwithstanding any other provision of this subpart, the Regional Director may direct the preparation of a civil penalty case file in the event a violation has occurred and the granting of any time for correction would be unreasonable in that such correction is no longer useful or possible and the violation has resulted in increased risk to human safety or the environment, or actual harm occurred.

(3) The Reviewing Officer shall have no other responsibility, direct or supervisory, for the investigation or prosecution of the case.

(4) The Reviewing Officer shall decide each case on the basis of the evidence.

(5) The Reviewing Officer may administer oaths and issue subpoenas requiring the attendance of witnesses at hearings or for the taking of depositions and may issue orders to produce evidence.

(6) The Reviewing Officer may assess civil penalties and, when appropriate, recommend the initiation of criminal proceedings.

(b) If the Reviewing Officer determines that there is sufficient evidence that a violation probably occurred and that the violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, except as provided in paragraph (a)(2) of this section, the Reviewing Officer shall notify in writing the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based,

(2) The amount of penalty that appears would be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available to the Reviewing Officer,

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant, and

(4) The fact that, subject to the provisions of § 250.201, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(c) A party has the right to be represented by counsel, qualified to practice before the Department under 43 CFR Part 1, at all stages of the proceeding. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

§ 250.201 Hearings.

(a) Within 30 working days after receipt of a notice pursuant to § 250.200(b), the party may accomplish one of the following:

(1) Request a hearing before the Reviewing Officer,

(2) Provide any written evidence and arguments in lieu of a hearing, or

(3) Pay the amount specified in the notice.

(b) A request for a hearing before the Reviewing Officer shall be in writing and shall specify the particular issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration except as the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(1) The Reviewing Officer may grant the party additional time to submit a request for a hearing.

(2) The Reviewing Officer shall promptly schedule all requested hearings to be held in the office of the Reviewing Officer or such other location as the Reviewing Officer may designate. The Reviewing Officer shall grant any delays or continuances which the Reviewing Officer determines to be necessary or desirable in the interest of obtaining a fair resolution of the case.

(c) Prior to a hearing, the party may examine all evidence in the case file except material that would disclose or lead to the disclosure of the identity of a confidential informant.

(d)(1) Confidential treatment shall be accorded to all or a portion of any document at the request of the person supplying the information if the information is as follows:

(i) Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552),

(ii) Information required to be held in confidence by these regulations, or

(iii) Information that is otherwise exempt by law from disclosure.

(2) The person desiring confidential treatment of information shall submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure.

(e) The Regional Director may, upon request of a party, transfer the case to another Reviewing Officer or direct that the hearing be held at a location other than that specified by the Reviewing Officer.

(f)(1) The testimony of any witness may be presented either through a personal appearance or through a written statement.

(2) A witness may be required to attend a hearing or deposition at a place

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not more than 100 miles from the place of service.

(3) Witnesses subpoenaed shall be paid the same fees and mileage paid for similar services in the U.S. District Courts. These expenses shall be paid by the party at whose insistence the witness appears.

(4) Any witness who attends a hearing or the taking of a deposition at the request of the party, without having been subpoenaed to do so, shall be entitled to the same mileage and attendance fees paid to a subpoenaed witness. The witness fees and mileage shall be paid by the party at whose insistence the witness appears.

(5) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

§ 250.202 Hearing procedures.

(a) Material in the case file which is pertinent to the issues shall be presented to the party who may respond to or rebut this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(b) The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received.

(c) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matter of which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(d) In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence but is not bound by strict rules of evidence.

(e)(1) A verbatim transcript of hearings before a Reviewing Officer need not be prepared. The Reviewing Officer shall prepare notes on the material and points raised by the party in sufficient detail to permit a full and fair review and resolution of the case should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made and the Reviewing Officer's decision is appealed, the party shall submit a copy of the verbatim transcript with the appeal to the Director and to the Reviewing Officer for inclusion in the case file.

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for them. Any decision shall be based upon substantial evidence in the record. If the Reviewing Officer finds that there is not substantial evidence in the record establishing that the alleged violation occurred, or that the required notice of the alleged violation was not provided, or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, except as provided in § 250.200(a)(2), the Reviewing Officer shall dismiss the case and remand it to the Regional Director. A dismissal is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to Part 290 of this Title. The party shall be advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding. An appeal from any interim ruling of the Reviewing Officer shall be reserved and considered only at the time of and as part of an appeal from the Reviewing Officer's final decision.

§ 250.204 Appeals from Reviewing Officer's decision.

(a)(1) Any appeal from a decision of the Reviewing Officer, together with any supporting argument, shall be submitted by a party to the Director within 30 working days after the date of receipt of the decision. The appellant shall provide a copy of the notice of appeal and supporting brief to the Reviewing Officer. Except as provided in § 250.205, the only issues which will be considered on appeal are jurisdictional questions and those issues specified in the notice of appeal which were properly raised before the Reviewing Officer.

(2) The Reviewing Officer may extend the time allowed for filing an appeal if the party so requests within 30 working days after receipt of the decision.

(3) The failure to file a notice of appeal within the time prescribed (or as extended by the Reviewing Officer) shall result in the action of the Reviewing Officer becoming the final action of the U.S. Department of the Interior (DOI) in the case.

(b) A copy of all of the Reviewing Officer's comments on the appeal submitted to the Director shall be provided to the appellant.

(c)(1) The Director may affirm, reverse, or modify the Reviewing Officer's decision or remand the case for new or additional proceedings.

(2) The Director may increase, remit, mitigate, or suspend, in whole or in part, any penalty assessed by the Reviewing Officer.

(d) The Director's decision shall be in writing, and copies shall be provided to the appellant and the Reviewing Officer.

(e) Decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director or the DOI Board of Land Appeals shall not suspend the requirement for compliance with an order or decision issued under these regulations, except that payment of any civil penalty shall not be due until 30 working days after the Director's decision is received by the appellant.

§ 250.205 Reopening a case.

(a)(1) At any time prior to final MMS action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner shall state whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered during the original proceedings. The party shall submit the petition to the Reviewing Officer and provide a copy to the Regional Director.

(3) The Reviewing Officer shall consider a petition to reopen a case unless an appeal has been filed. In those cases where an appeal has been timely filed, a petition to reopen a case shall be considered by the Director.

(4) A petition to reopen a case shall be granted only when the Reviewing Officer determines that the petition explains why newly found evidence that would have a direct and material bearing on the issue(s) of the case was not and could not have been produced at the time of the hearing. A decision on a petition to reopen a case shall be in writing and, if issued by the Reviewing Officer, may be appealed to the Director in accordance with § 250.203.

(b) The denial of a petition to reopen a case shall be final and may not be appealed in an action separate from the appeal of the case pursuant to § 250.203 or Part 290 of this title.

(c) The Regional Director may, on the basis of newly found evidence that would probably produce a different result, reopen a case at any time.

§ 250.206 Civil penalties.

(a)(1) The MMS Associate Director for Royalty Management shall collect civil penalties assessed by a Reviewing Officer, the Director, or DOI's Board of Land Appeals.

(2) Payment of a civil penalty shall be in accordance with instructions that accompany the bill sent to the party upon whom the penalty is imposed.

(b) Within 30 working days after receipt of the bill issued by the MMS Accounting Center, the party shall submit payment of the assessed penalty to the MMS Accounting Center or file an appeal in accordance with § 250.203. Failure to either make timely payment or file a timely appeal will result in the collection of the amount assessed plus interest from the date of assessment until the date of payment as determined by MMS. Interest shall be computed on a daily basis at the rate applicable under section 6651 of the Internal Revenue Code of 1954. Such failure may also result in the initiation of additional enforcement proceedings including, if appropriate, cancellation of the lease or permit under this part.

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 1

Federal Acquisition Regulation (FAR); Ratification of Unauthorized Commitments; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

Federal Acquisition Regulation (FAR); Ratification of Unauthorized Commitments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 1.602 to provide uniform guidance concerning ratification of unauthorized commitments.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 19, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 85-25 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal agencies have expressed a need for guidelines concerning ratification of unauthorized commitments and have requested that coverage on this subject be included in the FAR.

B. Regulatory Flexibility Act

The proposed change to FAR 1.602 appears not to have a significant economic impact on a substantial number of small entities because very few ratification actions are necessary.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed change to FAR 1.602 does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: March 12, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

Therefore, it is proposed that 48 CFR Part 1 be amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 1.602-3 is added to read as follows:

1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

"Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment only if—

(i) The Government has obtained a benefit resulting from the unauthorized commitment;

(ii) The ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; and

(iii) The resulting contract would otherwise have been proper if made by a contracting officer.

(2) The ratification authority in subparagraph (b)(1) may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(3) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebat" claims.

(4) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(1) may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government;

(2) The contracting officer determines the price to be fair and reasonable;

(3) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(4) Funds are available and were available at the time the unauthorized commitment was made; and

(5) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Agency procedures.* Cases that do not meet the above requirements, but appear to be meritorious, should be processed in accordance with any supplementary agency procedures governing the ratification of unauthorized commitments.

(e) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection or agency procedures may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, and 135
Pilot Oxygen Mask Requirements; Withdrawal of Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 135

[Docket No. 23243; Ref. Notice No. 82-11]

Pilot Oxygen Mask Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws a notice of proposed rulemaking which proposed amendments to the pilot oxygen mask requirements applicable to operations under certain Federal Aviation Regulations. The proposal, if adopted, would have allowed the operation of airplanes to higher altitudes without requiring at least one pilot at the controls to wear and use an oxygen mask.

FOR FURTHER INFORMATION CONTACT: Larry Bedore, Project Development Branch (AFS-240), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1982, the FAA published Notice of Proposed Rulemaking (NPRM) No. 82-11, Pilot Oxygen Mask Requirements (47 FR 35146), which proposed amendments to certain sections of Parts 91, 121, and 135 of the Federal Aviation Regulations (FAR). The pertinent sections of those Parts specify maximum altitudes to which a pressurized aircraft may be operated without requiring at least one pilot to wear and use an oxygen mask. The availability of an approved quick-donning type of oxygen mask at each flight crewmember's station permits operation to another, higher maximum altitude above which at least one pilot must wear and use that mask. In operations conducted under Part 135 of the FAR, at least one pilot at the controls must wear and use an oxygen mask when conducting operations above 35,000 feet mean sea level, commonly referred to as flight level (FL 350). Under Parts 91 and 121 of the FAR, one pilot at the controls must wear and use an oxygen mask when conducting operations above FL 410.

Notice 82-11 proposed to allow an aircraft whose total pressure volume is 20,000 cubic feet or more to be operated up to and including FL 450 or the maximum certificated altitude of the aircraft, whichever is lower, without one pilot at the controls having to wear and use an oxygen mask. Aircraft whose total pressure volume is less than 20,000 cubic feet would not be allowed to operate above FL 410 without one pilot at the controls having to wear and use an oxygen mask.

Discussion of Comments

Sixteen public comments were received in response to Notice 82-11. In summary, thirteen commenters agree with the proposals, three disagree. The thirteen concurrences are from the Air Transport Association of America (ATA), Air Line Pilots Association (ALPA), National Business Aircraft Association, Inc. (NBAA), one air carrier, and various consultant, sales and service, corporate, charter, and air taxi organizations. Those not concurring are an aeronautical consultant, the Aerospace Industries Association of America, Inc. (AIA), and the United States Air Force (USAF).

ALPA comments that § 135.89(b)(2) should be amended to further describe an approved quick-donning type oxygen mask as one ". . . that can be placed on the face from the ready position within 5 seconds, supplying oxygen and properly secured and sealed." ALPA stated that this change would bring § 135.89 in line with mask requirements as essentially stated in current §§ 91.32 and 121.333 of the FAR.

The three commenters opposed to the proposed amendments raise the question of potentially severe physiological consequences resulting from high altitude decompression that possibly would incapacitate the flight crew and result in an accident. AIA states that despite the structural integrity of modern technology aircraft, rapid decompressions do occur. The theoretical 168 square-inch fuselage skin-panel rupture considered in Notice 82-11 does not consider a rupture in or near the vicinity of the cockpit nor bigger ruptures (e.g., door failure) that can and have occurred. AIA states that at 45,000 feet the pressure demand regulatory and quick-donning mask combination provide only marginal respiratory protection for the flight crew; the aerage time of useful consciousness at 45,000 feet is only 10-12 seconds.

The aeronautical consultant comments that should a penetration of the aircraft fuselage or windshield occur, and the crew compartment door is closed or closes, the crew compartment will decompress in a very short time, resulting in decreased flight crew performance capability or loss of consciousness.

The USAF states that its regulations for pressurized aircraft stipulate that above 41,000 feet through 45,000 feet, oxygen is required to be used by the pilot and must be immediately available to all other crewmembers at their duty stations. These requirements are based on physiological needs to preclude hypoxia and decompression effects. The USAF states that if depressurized, the time of useful consciousness at 35,000 feet is 30-60 seconds, 15-20 seconds at 40,000 feet, and 9-12 seconds at 43,000 feet. To avoid decompression sickness and loss of consciousness in the event of depressurizations resulting in aircraft ambient cabin altitudes of 41,000 through 45,000 feet, it is desirable for the pilot to prebreathe 100 percent oxygen for a minimum of 20 to 30 minutes to denitrogenate the body. The aircraft cabin volume and the quick-donning oxygen mask will not preclude adverse physiological effects in the altitude range 41,000 feet to 45,000 feet. USAF requirements make it clear that prebreathing 100 percent oxygen at ambient cabin altitude above 41,000 feet through 45,000 feet is essential to meet the minimum physiological requirements of the pilot in all USAF aircraft regardless of the volume of the Pressurized cabin and the quick-donning oxygen equipment provided.

Physiological and Operational Considerations

The FAA is concerned regarding the effects on crewmember performance in the event a rapid decompression occurs above FL 350. The technological advances in aircraft engines and airframe design has facilitated increased flight operations of modern turbojets in the high altitude stratum. Notwithstanding the technological accomplishments of the aviation industry, the aircraft is only one element to consider in the total operational environment. An equally important and esential element that must be considered is the finite physiological limit of the human body.

The body has a great capacity to adjust to its surroundings. It constantly makes adjustments for changes in external temperature; acclimates to barometric pressure variations from one habitat to another; and compensates for motion in space and postural changes in relation to gravity. The body performs all of these adjustments while meeting changing energy requirements for varying amounts of physical and mental activity.

In aviation, the demands upon the compensatory mechanisms of the body are numerous and of considerable magnitude. One of the environmental changes of greatest physiological

significance related to flight is a marked change in atmospheric pressure. In unpressurized aircraft, as altitude increases, the atmospheric pressure decreases and the body enters a physiological deficient zone where oxygen deficiency becomes an ever increasing problem. To overcome this deficiency and allow aircraft operations to be conducted at higher flight altitudes, aircraft cabins are pressurized to a cabin altitude lower than the aircraft flight altitude with the cabin altitude gradually increasing as the aircraft climbs to its cruise altitude, but generally not exceeding a cabin altitude of 8,000 feet. In the event a cabin depressurization occurs while flying at today's high operating altitudes, other methods are necessary to provide for a person's physiological needs. Supplying supplemental oxygen to the user at sufficient pressure to maintain the partial pressure of oxygen in the blood, due to the rapid reduction of pressure on the body, is one method. As ambient altitude increases, a greater positive oxygen pressure is required to enable the user's lungs to be pressurized with oxygen.

Ultimately, the increased oxygen pressure must be countered by some form of external body pressure garment which counters the increased internal body pressure. There is no alternative. Studies show that persons lacking oxygen under pressure at ambient altitudes above approximately 41,000 feet (tests at significantly higher altitudes pose an unacceptable risk and have not been performed), and lacking pressure garments at ambient altitudes above 45,000 feet, will become hypoxic and a lower ambient altitude must be attained or eventual loss of consciousness or death will result.

Hypoxia is the lack of adequate oxygen in the tissues of the body. When the state of oxygen deficiency is sufficient to impair functions of the brain and other organs, hypoxia becomes a definite threat to pilot performance and aviation safety. In pressurized aircraft, the exposure to higher altitudes as a result of loss of pressurization is of great concern. The period of time between an individual's sudden deprivation of oxygen at a given altitude (assuming that supplemental oxygen is not being used) and the onset of physical or mental impairment which prohibits rational action is considered the effective performance time (EPT) or is sometimes referred to as the time of useful consciousness. This period represents the time during which the individual can recognize the problem, establish a supplemental oxygen supply (don his/her oxygen mask) and/or initiate a descent to lower altitude. The EPT is primarily related to the aircraft's pressurized cabin altitude and the length of time for the cabin altitude to equal the flight altitude of the aircraft following depressurization, but is also influenced by individual tolerance and physical activity.

Tests conducted without the use of an oxygen mask (i.e., a "shirtsleeve" environment) show that, in sudden depressurizations to altitudes below 30,000 feet, the EPT may differ considerably from the time to unconsciousnes. Above 35,000 feet, the period between the EPT and time to unconsciousness becomes shorter and eventually coincides with the time it takes for the blood to circulate from the lungs to the brain. In a pressurized aircraft, the cabin altitude at the time of depressurization represents the "environmental condition" prior to exposure. In a rapid depressurization to 30,000 feet actual (flight) altitude, the average EPT would be about 1 minute. At 35,000 feet the average EPT is about 30 to 40 seconds. EPT in a depressurization at altitudes near 41,000 feet is reduced to 10 to 20 seconds. In studies using data obtained in altitude chamber tests conducted at ambient altitudes of about 41,000 feet or below, the expectations are that at 45,000 feet and above, the time of consciousness is about 10 seconds or less, and even if the pilot is able to don a mask successfully, a loss of useful consciousness will most likely occur. Consciousness may not be recovered for 2-3 minutes or more, depending upon rate of descent initiated by the conscious pilot. In depressurizations to altitudes between approximately 41,000 feet and 45,000 feet, if the pilot has not been breathing 100 percent oxygen for several minutes beforehand, the 80 percent nitrogen which exists in the lungs during pressurized flight will cause consciousness to be lost in about 10 seconds for most flight crewmembers even if an oxygen mask with 100 percent oxygen is donned at the instant of depressurization. Assuming that the oxygen mask was donned promptly in such a depressurization, this loss of consciousness will last briefly—perhaps 10 or 20 seconds for most individuals. Even such a brief loss of consciousness could be expected to be intolerable in most situations involving a depressurization, and recovery of control of the aircraft is questionable. These assumptions are based upon worst case scenarios where the pilot was not prebreathing 100 percent oxygen and may not necessarily reflect what has actually occurred during flight operations.

Reasons for Withdrawal

It was stated in Notice 82-11 that because of its large-volume cabin, a wide-body airplane (defined here as those airplanes whose total pressure volume is 20,000 cubic feet or more) can operate safely up to and including FL 450 or its maximum certificated altitude, whichever is lower, without requiring at least one pilot, seated at the controls, to wear and use an oxygen mask at all times above FL 450. The example cited to support this statement is based on an analysis of a hyhothetical, 168-square-inch pressure vessel rupture resulting in depressurization in approximately 3 minutes that allows the crew sufficient time to realize that an emergency has occurred, don their masks, and initiate an emergency descent that ensures the safety of the crew and passengers.

The assumption that any structural failure will not exceed the hypothetical example and that cabin volumes of 20,000 cubic feet or more ensure safety cannot be supported. As noted by AIA, rapid depressurization may be caused by other than a fuselage skin-panel rupture of 168 square inches. For example, a rapid depressurization of a DC-10 at 39,000 feet over New Mexico in 1973 as reported by the National Transportation Safety Board (NTSB) indicates that when an engine fan assembly disintegrated, fragments of the fan caused the loss of a 160 square-inch cabin window, as well as puncturing the lower fuselage skin in six areas, each area ranging between 170 and 540 square inches.

The NTSB accident report concerning the DC-10 aircraft depressurization over New Mexico in 1973 stated that the aircraft was at 39,000 feet, well below its maximum certificated altitude of 43,000 feet or the 45,000 feet maximum altitude proposed for wide-body aircraft in Notice 82-11. The first officer was in the passenger cabin; therefore, the captain was already wearing an oxygen mask. An emergency descent was initiated immediately following the engine fan assembly failure and yet the NTSB calculated a decompression profile which indicated that the aircraft depressurized to about 34,000 feet in 26 seconds. The loss of a passenger through the cabin window opening indicates the extent and immediacy of the depressurization. Calculations further indicate that aircraft occupants were exposed to altitudes above 30,000 feet for about 1 minute and to altitudes above 25,000 feet for more than 2 minutes. Five persons reported that they

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became unconscious, two of which were flight attendants seated in the lower galley area.

The NTSB stated that there was evidence indicating that a significant pressure differential existed between the passenger cabin and the lower galley. The depressurization profile for the lower galley could have been significantly steeper and thus would have exposed the two galley occupants to an altitude above 35,000 feet. Overall, the extensive compartmentalization of the aircraft and its intricate interconnections may account, in part, for the disparity between the expected physiological effects on the aircraft occupants and those actually encountered.

This accident occurred under relatively fortuitous circumstances; the flight altitude of 39,000 feet was 4,000 feet below the maximum certificated altitude, and the captain was already wearing an oxygen mask. However, as noted above, the potential adverse physiological consequences become increasingly severe as altitude increases. Large cabin volume aircraft may appear to offer a relative degree of safety because of size alone, but it is not possible to quantify a cabin volume that ensures safety on that basis alone. A rapid depressurization above 41,000 feet, such as that cited above, could result in the incapacitation of both pilots with subsequent disastrous results.

Since 1977, more than 700 incidents involving pressurization problems have been reported to the FAA. It is probable that additional incidents have occurred and have not been reported. In 50 of the more than 700 incidents, emergency action was imperative to ensure the survival of the aircraft's occupants. Unfortunately, the reports of these more serious incidents are highly subjective and do not provide adequate data to substantiate a rule change to permit operations above FL 410 without at least one pilot at the controls wearing and using an oxygen mask secured, sealed, and supplying oxygen. Data regarding sudden or rapid depressurizations normally fail to show pilot reaction time, time until start of emergency descent, rate of increase in cabin altitude, maximum cabin altitude attained, and time required to reach an altitude at which supplemental oxygen was no longer required by the occupants. These data inadequacies thwart any rational assessment of regulatory options which would eliminate the need for at least one pilot at the controls to wear and use an oxygen mask at altitudes above FL 410 while providing, in the event of a rapid or explosive depressurization, the minimum safety standards necessary in the public interest for the operation of an air carrier.

It was also stated in Notice No. 82–11 that while it would take approximately 3 minutes for the cabin of a B–747 airplane to depressurize in the event of a 168-square-inch skin-panel rupture, many "business jet" airplanes have small, pressurized cabins of perhaps 1/50 the volume of a wide-body airplane. The failure of even a small (3 or 4-square-inch) fuselage skin area of a "business jet" could result in a rapid decompression to flight altitude in less than 10 seconds. Thus, the Part 135 requirement that at least one pilot at the controls wear and use an oxygen mask when operating above FL 350 should be retained in the interest of public safety.

The question of potentially severe physiological consequences resulting from high altitude depressurization in both large and small cabin volume aircraft warrants further consideration. The concerns expressed by those opposed to the proposals contained in Notice No. 82–11 prompted the FAA to reconsider the proposed amendments and supporting rationale. That reconsideration has led the FAA to conclusions different from those expressed in Notice No. 82–11. Clearly, sound technical and medical data and valid operational data are lacking to support any rulemaking which establishes cabin volume as the sole criterion which governs at which altitudes an oxygen mask should be worn, used, and supplying oxygen to at least one pilot at the controls.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, Notice No. 82–11 is withdrawn. This action does not preclude the FAA from considering rulemaking in the future or commit it to any future course of action on this subject.

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Authority: 49 U.S.C. 1354(A), 1355(A), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington, D.C. on February 3, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86–5841 Filed 3–17–86 8:45 am]

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Selected Subjects

Air Pollution Control
  Environmental Protection Agency
Common Carriers
  Federal Communications Commission
Equal Access to Justice
  National Labor Relations Board
Foreign Service
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Presidential Documents

Title 3—

The President

Proclamation 5448 of March 16, 1986

Increase in the Rates of Duty on Certain Articles From Japan

By the President of the United States of America

A Proclamation

1. On September 7, 1985, I announced my decision to take action in response to quantitative restrictions on imports of United States leather and footwear maintained by Japan, in the event that a satisfactory settlement of the matter was not achieved by December 1, 1985. I have determined pursuant to Section 301 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411), that these restrictions deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable, and constitute a burden or restriction on United States commerce. Discussions with Japan concerning the elimination of these restrictions have resulted in an understanding as to the appropriate course of action to be taken by both the United States and Japan. Accordingly, pursuant to Section 301 of the Act, I have determined to accept compensation from Japan and also to increase duties on certain imports of leather and footwear from Japan.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that 1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or 2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce. Section 301(b) of the Act (19 U.S.C. 2411(b)) also authorizes the President to suspend, withdraw, or prevent the application of benefits of trade agreement concessions with respect to, and to impose duties or other import restrictions on the products of, such foreign government or instrumentality. Pursuant to Section 301(a) of the Act, such actions can be taken on a discriminatory basis solely against the foreign government or instrumentality involved. Section 301(d)(1) of the Act (19 U.S.C. 2411(d)(1)) authorizes the President to take action on his own motion.

3. I have decided, pursuant to Section 301(a), (b), and (d)(1) of the Act, to increase United States import duties on the articles provided for in the Annex to this proclamation that are the product of Japan.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Section 301(a), (b), and (d)(1) and Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), do proclaim that:

1. Subpart B of part 2 of the Appendix to the TSUS is modified as provided in the Annex to this proclamation.

2. The United States Trade Representative (USTR) is hereby authorized to suspend, modify, or terminate the increase in United States import duties on any of the articles covered by the Annex to this proclamation, upon the publication in the **Federal Register** of his determination that such suspension, modification, or termination is justified by further actions taken by Japan with respect to this matter, or is appropriate to carry out the understanding between the United States and Japan, or is otherwise appropriate, taking into account relevant domestic production and employment in the United States.

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3. This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date on which this proclamation is signed.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-6205
Filed 3-18-86; 11:34 am]
Billing code 3195-01-M

ANNEX

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified—

(1) by inserting the following new headnote 2:

"2. For purposes of items 945.75 and 945.76, inclusive, the duties provided for in this subpart are cumulative duties which apply in addition to the duties otherwise imposed on the articles involved."; and

(2) by inserting in numerical sequence the following new items, set forth herein in columnar form under the headings "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively:

	"Articles the product of Japan:		
945.75	Bovine (including buffalo) and equine leather (provided for in items 121.25, 121.30, 121.35, 121.40, 121.45, 121.55, 121.61, 121.63, and 121.65, part 5A of schedule 1), the foregoing, except metalized leather; and goat, kid, sheep, and lamb leather, the foregoing dyed, colored, stamped, or embossed but not metalized (provided for in items 121.62, 121.63, 121.64, and 121.65, part 5A of schedule 1)	40% ad val.	No change
945.76	Footwear with uppers containing leather (provided for in part 1A of schedule 7), the foregoing, except slippers provided for in item 700.32, footwear which is designed for a sporting activity and has, or has provision for, attached spikes, sprigs, stops, clips, bars, or the like, and skating boots, ski-boots and cross-country ski footwear, wrestling boots, boxing boots, and cycling shoes	40% ad val.	No change"

Presidential Documents

Memorandum of March 16, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the global quotas maintained by the Government of Japan on imports of leather and leather footwear deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden and restriction on U.S. commerce. Pursuant to Section 301(a) of the Trade Act, I have determined to accept compensation from the Government of Japan to restore the balance for the major portion of this case and also to proclaim an increase in duties on certain imports from Japan in order to resolve this case.

Reasons for Determination

In 1973, the United States initiated a Section 301 investigation after receiving a petition from the U.S. Tanners Council alleging that Japanese tariffs, quotas and administrative practices concerning leather imports effectively denied U.S. exporters access to the Japanese market. After bilateral discussions with the Japanese Government failed, the United States requested formation of a panel under Article XXIII of the General Agreement on Tariffs and Trade (GATT) and threatened preemptive retaliation. In early 1979, we reached an agreement with Japan in which Japan promised to: (1) give U.S. exporters a specified number of quota licenses; (2) provide the names of the quota holders, and (3) expand the quota on wet blue, finished and upholstery leather. We believed at that time that these measures would improve our access to the Japanese market. In 1982, however, the United States refused to extend the agreement. We noted that the U.S. industry was still unable to penetrate the Japanese market system, the deterrence imposed by the very low level of quotas to the significant marketing efforts by U.S. firms, and the high leather tariffs. Instead, we reinstituted our GATT complaint.

In 1984 a GATT panel found that Japan had violated Article XI of the GATT. The panel further determined that the illegal quota had damaged U.S. exports. Subsequent to the adoption of the GATT panel report, the Japanese Government: (1) reduced the tariff on semi-finished leather to zero; (2) promised to liberalize the allocation of the quota on semi-finished leather; and (3) agreed to publish the level of the quota on a regular basis. The tariff reduction on semi-finished leather imports has been of modest value to the U.S. industry, because it affects only a miniscule portion of their exports to Japan. Additionally, the publication of the level of the quota, while useful information, has not aided U.S. leather exporters in increasing their sales. U.S. exporters remain substantially excluded from the Japanese market and there is no prospect that this situation will change in the foreseeable future.

In December 1982, we initiated a Section 301 investigation based on a petition filed by the Footwear Industries of America, et. al. which included allegations that the quota and administrative practices maintained by the Government of Japan with respect to leather footwear imports effectively denied U.S. footwear exporters access to the Japanese market. Although there has been no GATT panel finding with respect to the leather footwear quota, it is identical to the leather quota which has been found by a GATT panel to be inconsistent with Article XI of the GATT. The Japanese have taken no steps to liberalize or eliminate the footwear quota.

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On September 7, 1985, I announced that I would take counter-measures against Japan unless a satisfactory settlement of our complaint was reached by December 1, 1985.

On September 23, 1985, the Government of Japan notified the GATT Secretariat of its intention to enter into negotiations pursuant to Article XXVIII:5 of the GATT in order to modify or withdraw its tariff concessions on leather and leather footwear imports. The Government of Japan has notified the GATT of its intent to enter into Article XXVIII:5 negotiations so that it can remove its global quotas on leather and leather footwear imports and replace the quotas with new tariff measures.

The United States has agreed to accept compensation from Japan with an estimated value to the United States of $236 million and will increase duties on an estimated $24 million of U.S. imports from Japan that together will satisfy the United States fully for trade damage caused by import restrictions on leather and leather footwear. The settlement involves tariff concessions on $2.3 billion worth of U.S. exports to Japan in 1984. The settlement will increase opportunities for American producers to sell products in Japan. This is far preferable to protectionist measures that would restrict imports without increasing U.S. exports.

This determination shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, March 16, 1986.

[FR Doc. 86-6206
Filed 3-18-86; 11:43 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 3H5412/R813; FRL-2984-6]

Pesticide Tolerance for 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends to March 15, 1987 the feed additive regulation to permit residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the feed commodity apple pomace. This extension will allow continued testing and gathering of data on the pesticide and marketing of apple pomace in connection with an experimental use program also concurrently extended to March 15, 1987. This extension was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: Effective on March 18, 1986.

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R813], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460
Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a regulation, published in the Federal Register of September 12, 1984 (49 FR 8999) to permit residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the feed commodity apple pomace in conjunction with an experimental use program (45639-EUP-14) to expire March 15, 1985. This regulation and program was extended to March 15, 1986 (50 FR 8999; March 6, 1985).

At the request of the Nor-Am Chemical Co., Wilmington, DE 19803, the regulation is further extended to March 15, 1987 to permit continued testing and gathering of data on the pesticide and marketing of apple pomace in connection with an experimental use program also concurrently extended to March 15, 1987.

The data and other relevant material submitted in support of the regulation have been evaluated. The toxicological data considered in support of the tolerance include a 90-day rat feeding study with a no-observed-effect level (NOEL) of 2.8 milligrams (mg)/kilogram (kg)/day (40 ppm); a 26-week feeding study in dogs with a NOEL of 1.25 mg/kg/day (50 ppm); a rat teratology study with a NOEL of 1,280 mg/kg/day for maternal toxicity and a teratogenic and fetotoxic NOEL of 3,200 mg/kg/day (highest dose tested); a rabbit teratogenicity study with a NOEL of 1,000 mg/kg/day for fetoxicity and maternal toxicity; and a 1-year dog feeding study with a NOEL of 1.25 mg/kg/day. Based on this 1-year dog study, the acceptable daily intake (ADI) for humans of 0.0125 mg/kg/day. The theoretical maximum residue contribution for existing tolerances for a 1.5-kg daily diet is calculated to be 0.00628 mg/day and represents 5.76 percent of the ADI. Studies on mutagenicity demonstrated negative potential.

The metabolism of 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine is adequately understood for this use, and an adequate analytical method, liquid chromatography, is available for enforcement purposes. No action is currently pending against registration of the pesticide.

Based on the data and information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136a *et seq.*). Therefore the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.92 is revised to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use

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permit number 45639–EUP–14 that expires March 15, 1986.

[FR Doc. 86–5750 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Nomenclature and Other Changes; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation included in the final regulations making nomenclature changes in Parts 1301 through 1316 of Title 21 of the Code of Federal Regulations which was published February 13, 1986 (51 FR 5319).

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537. Telephone (202) 633–1216.

Accordingly, the following correction is made in FR Doc. 86–2903 appearing on page 5319 in the issue of February 13, 1986:

On page 5320, second column, top of column, in paragraph 23 amending § 1308.11, "21 CFR 1308.11(b)(16)" should read, "21 CFR 1308.11(b)(17)".

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–5980 Filed 3–18–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 56

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 224

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

AGENCIES: Employment and Training Administration, Labor, and Office of Human Development Services, HHS.

ACTION: Final rules.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor (DOL), and the Office of Human Development Services (HDS), Department of Health and Human Services (HHS), are amending the final rules for the Work Incentive Program (WIN) published on February 14, 1985 (50 FR 6164) with a 60 day comment period. That rule implemented changes made in the WIN program by the Deficit Reduction Act (DRA) of 1984. A technical amendment to the final rule deletes one word in the section on sanctions regarding the caretaker relative in order to comport with the exact language of the statute.

EFFECTIVE DATES: The provisions of 29 CFR 56.20(b)(12) and 56.51(b)(1) and 45 CFR 224.20(b)(12) and 224.51(b)(1) are effective as of October 1, 1984, as required by statute. The provisions of 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) are effective as of July 18, 1984, the date of enactment of the DRA.

FOR FURTHER INFORMATION CONTACT: William J. Kacvinsky, (202) 376–6890.

SUPPLEMENTARY INFORMATION: The Work Incentive Program was established by amendments to Title IV (Parts A and C) of the Social Security Act in 1967, Pub. L. 90–248. The purpose of the program is to: (1) Assist AFDC recipients in finding employment, (2) train them to work, and (3) assist them in participating in on the job training and public service employment, thus restoring them and their families to economic independence and useful roles in the communities. All persons applying for AFDC must register for WIN unless specifically exempt by law.

The Deficit Reduction Act of 1984 (DRA) includes three provisions which affect the WIN program and for which final rules with a 60 day comment period were published in the **Federal Register** on February 14, 1985 (50 FR 6164). First, section 2631 of the DRA adds a specific new exemption from WIN registration for women, in the sixth month of pregnancy. The new exemption appears in the final rules at 29 CFR 56.20(b)(12) and 45 CFR 224.20(b)(12). Second, section 2634 of the DRA modifies the protective payment requirements in sanction cases. It permits a sanctioned caretaker relative to continue to receive the AFDC payment on behalf of the remaining members of the assistance unit if a suitable protective payee cannot be located. The final rules at 29 CFR 56.51(b)(1) and 45 CFR 224.51(b)(1) reflect this change. Third, section 2638(a)(4) of the DRA provides that any individual participating in a work supplementation program under section 414 of the Social Security Act shall be exempt from the WIN work program. The final rules at 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) implement this exemption.

Response to Comments and Change Made in This Final Rule

Three letters were recieved from State governments and one from a public interest group containing a total of 9 comments. The comments from the State governments were favorable. They appreciated the changes that eliminated paperwork previously imposed on AFDC clients and on WIN and AFDC staff.

One comment from a State government expressed concern about the lack of a difinition for what constitutes "reasonable efforts" to locate a protective payee to receive the AFDC payments instead of the sanctioned parent or caretaker.

The Department believes that States are best able to decide what constitutes a "reasonable effort" in the context of their various circumstances. However, the comment caused us to look again at those sections of the rules (29 CFR 56.51(b)(1) and 45 CFR 224.51(b)(1)).

In the rules published on February 14, 1985, the wording was identical with the language of the DRA except that the word "all" preceded the phrase "reasonable efforts" in the second sentence of paragraph (b)(1). The Department added this word in an attempt to emphasize Congressional intent, as reflected in the legislative history, that States make every diligent effort to identify a suitable payee before continuing the grant to the sanctioned caretaker. However, upon reconsideration, we believe the word "all" is not necessary to convey that intent and we want to use the precise statutory language. Accordingly, the word "all" has been removed from these final rules.

The public interest group recommended that the Targeted Job Tax Credit program could be better utilized to help provide employment for caretaker relatives who refuse to work, a matter best raised with the IRS. However, it should be noted the Targeted Jobs Tax Credit Program expired on December 31, 1985.

Impact Analysis

Regulatory Flexibility Act

The Secretaries certify in accordance with section 603 of the Regulatory Flexibility Act, Pub. L. 96.354 (5 U.S.C. 603), that these final rules will not have a significant economic impact on a

substantial number of small entities including small businesses, small organizational units and small governmental jurisdictions. Consequently, a regulatory flexibility analysis has not been prepared for these rules. The primary impact of these rules is on State governments and individuals, and not on small entities.

Executive Order 12291

The Secretaries have also determined in accordance with Executive Order 12291 that these final rules do not constitute a major rule requiring the preparation of a regulatory impact analysis. These rules are not likely to result in:

(1) An annual effect on the economy of $100 million or more; (2) a major increase in cost prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, or innovation.

They implement statutory requirements that will reduce administrative burdens on States. Program costs are expected to be minor.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These final rules do not contain information collection requirements or increased Federal paperwork burden on the public or private sector. However, we are taking this opportunity to add the Office of Management and Budget (OMB) approval numbers to give sections of the HHS–WIN regulations that contain reporting and recordkeeping requirements. Those sections and approval numbers are: § 224.10(c)–OMB number 1205–0155; § 224.10 (f) and (g)–OMB number 1205–0214; § 224.11–OMB number 1205–0214; § 224.17–OMB number 1205–0155; § 224.22–OMB number 1205–0156; and § 224.63–OMB number 1205–0175. They are effective through September, 1985. A request has been submitted to OMB to extend the approval on these sections. The approval numbers already appear in identical sections of the Labor Department WIN regulations in 29 CFR Part 56.

List of Subjects in 29 CFR Part 56 and 45 CFR Part 224

Administrative practice and procedure, Grant programs/social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) program, Aid to Families with Dependent Children.

(Catalog of Federal Domestic Assistance Program No. 13–646, Work Incentive Program (WIN)).

Dated: August 19, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: September 18, 1985.

Margaret M. Heckler,

Secretary, Department of Health and Human Services.

Dated: January 8, 1986.

Roger D. Semerad,

Assistant Secretary of Labor for Employment and Training.

Approved: March 7, 1986.

William E. Brock,

Secretary, Department of Labor.

For the reasons set forth in the preamble, 29 CFR Part 56 and 45 CFR Part 224 are amended as follows:

Title 29—Labor

PART 56—[AMENDED]

1. The authority citation for 29 CFR Part 56 is revised to read as follows:

Authority: Secs. 402(a)(19), 430–444 and 1102 of the Social Security Act as amended (42 U.S.C. 602(a)(19), 630–44 and 1302).

2. In § 56.51(b)(1) of Title 29 the word "all" preceding "reasonable efforts" is removed.

Title 45—Public Welfare

PART 244—[AMENDED]

3. The authority citation for 45 CFR Part 224 is revised to read as follows:

Authority: Secs. 402(a)(19), 430–444 and 1102 of the Social Security Act as amended (42 U.S.C. 602(a)(19), 630–44 and 1302).

4. The Office of Management and Budget control numbers are added at the end of § 224.10 for paragraphs (c), (f), and (g) as follows:

§ 224.10 General administration provision.

* * * * *

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under OMB control No. 1205–0155. The information collection requirements contained in paragraphs (f) and (g) were approved under control No. 1205–0214)

5. The Office of Management and Budget control number is added at the end of § 224.11 as follows:

§ 224.11 Annual State WIN plans.

* * * * *

(Approved by the Office of Management and Budget under OMB control No. 1205–0214)

6. The Office of Management and Budget control number is added to § 224.17 as follows:

§ 224.17 Reports, records, financial statements and audits.

* * * * *

(Approved by the Office of Management and Budget under OMB control No. 1205–0155)

7. The Office of Management and Budget control number is added to § 224.22 as follows:

§ 224.22 Appraisal and certification.

* * * * *

(Approved by the Office of Management and Budget under OMB OMB control No. 1205–0156)

8. The Office of Management and Budget control number is added to § 224.63 as follows:

§ 224.63 Requirement of conciliation and notice.

* * * * *

(Approved by the Office of Management and Budget under control No. 1205–0175)

9. In 45 CFR 224.51(b)(1) the word "all" preceding "reasonable efforts" is removed.

[FR Doc. 86–5975 Filed 3–18–86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 886

Abandoned Mine Land Reclamation Programs; State Reclamation Plan Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining (OSM) Reclamation and Enforcement is promulgating revisions to the requirements in 30 CFR 884.15 concerning amendments or revisions to State Abandoned Mine Land Reclamation (AMLR) Plans. Under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, States having approved abandoned mine land reclamation plans are eligible to receive grants from OSM to reclaim lands and water damaged by mining prior to August 3, 1977. Current regulations do not specifically address whether a State must amend its AMLR plan in response to regulatory changes adopted by OSM. To correct this situation, OSM is promulgating rules specifying that either OSM or a State can initiate procedures for amending State AMLR plans. This will ensure that

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State AMLR plans can be adjusted to meet changes in the Act or regulations.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Fery, Abandoned Mined Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Room 5401–L, Washington, D.C. 20240, Telephone (202) 343–7960.

SUPPLEMENTARY INFORMATION: Title IV of the SMCRA establishes an abandoned mine land program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of the SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 47 FR 28600–28606, June 30, 1982). Under these regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM established Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 955.

Procedures for amending State reclamation plans are found at 30 CFR 884.15. They specify that a State may submit at any time a proposed amendment to the Director. If the proposed revision or amendment changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director is to follow the procedures in 30 CFR 884.14 in approving or disapproving the submission. Those regulations, however, until now did not address whether the Director, on his own initiative, can require States to amend their State reclamation plans in response to regulatory, statutory, or other changes. This rulemaking adds this authority for the Director in order to ensure that all State AMLR Plans reflect current regulatory and statutory provisions.

Disposition of Comments

Proposed rules were published on January 4, 1985 (50 FR 483), and the public comment period was reopened on February 19, 1985. Numerous comments were received and are discussed below.

General Comments

One commenter stated that OSM rule changes should not be grounds for requiring States to amend their State reclamation plans because "rules are in too much of a state of flux", and States should not have to be put in the position of constantly amending reclamation plans to the detriment of other activities. For this commenter, the only instances in which a State should be made to amend its reclamation plan are if amendments are made to the enabling legislation or if a State is "clearly not following" the procedures set forth in its plan. In addition, this commenter notes that the Director of OSM has not needed to require States to change their plans in the first eight of the Program's fifteen year life and, at this time, there is no compelling reason or specific need for the Director to be able to require States to amend their plans. OSM's response is that the reclamation plans were approved because they were found to be compatible with the regulations implementing Title IV of the Surface Mining Control and Reclamation Act. If these implementing regulations should change, then the State reclamation plans should also be amended to incorporate revisions to the regulations. Otherwise, the basis for approval of the State plans could be questioned. The purpose of this rulemaking is to avoid this situation by ensuring that the State reclamation plans will be no less effective than the implementing regulations. OSM does not intend to put the States in the position of "constantly amending reclamation plans to the detriment of other activities" as the commenter fears. As the commenter notes, few rule changes have occurred during the first eight years of the abandoned mine land program and few are expected in the future.

Two commenters indicated that the proposed expansion of the OSM Director's authority to require plan revisions is appropriate. One of these commenters further noted that any regulatory revision which requires State programs to "mirror Federal regulations, insofar as the State programs must be equally as stringent, if not more stringent than Federal regulations require, is in accordance with the goals established by the SMCRA and is in the best interests of the environmentally concerned public." OSM's response is that the purpose of this rulemaking is not to require the State reclamation plans "to mirror" Federal regulations as the commenter appears to assume, but rather to ensure that State regulations are no less effective than the Federal.

One commenter indicated that OSM already has regulatory authority to suspend a State's plan if that State is not conducting its abandoned mine land reclamation program in accordance with its approved plan. This commenter concludes that, for the above reason, this "additional regulatory authority to force States to amend approved plans is unnecessary." While OSM agrees with the commenter that it has the authority to suspend a State plan if a State is not conducting its program in accordance with its approved plan, it believes that this rulemaking is necessary because it provides for less drastic actions than suspension of a State's plan. These less drastic actions are discussed below in responses to § 884.15(f).

Section 884.15(a)

Section 884.15(a) provides that a State may submit to the Director of OSM a proposed amendment to the State reclamation plan at any time. If the proposed amendment changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, § 884.15(a) requires the Director to follow the procedures in existing § 884.14 in approving or disapproving the proposed amendment. One commenter indicated concern over the language in this subsection in that it does not provide examples of procedural changes which are considered to be "minor changes" by OSM.

OSM's response is that given the complexity of the State plans it is not advisable to attempt to define what constitutes a "major" or a "minor" change in a State plan. OSM will continue to follow a rule of reasonableness in determining which revision to a State plan requires an amendment because it "changes the objectives, scope or major policies followed by the State in the conduct of the reclamation program."

Section 884.15(b)

Proposed § 884.15(b) would have required the Director to promptly notify the States of all changes in the SMCRA, the Secretary's regulations or other circumstances which will require an amendment to the State reclamation plan. Three commenters requested that the word "will" be changed to "may" in the final rule. The purpose of this change would be to give a State the opportunity to present possible arguments that in some instances a plan amendment might not be necessary. OSM agrees and has changed the regulations to read "which may require an amendment to the State reclamation plan."

One commenter requested deletion of the words "or other circumstances" in the proposed rule. For this commenter, section 405 of SMCRA "seems to limit the (Director's) authority to request changes (in State Plans) to rule changes". OSM has declined to delete the words requested by the commenter because it interprets section 405 of SMCRA as not limiting the Director's authority to request changes in State Plans to only those changes required by amendment of the Statute or regulations.

Section 884.15(c)

Section 884.15(c) provides that States shall promptly notify OSM of any conditions or events that prevent or impede administration of their State reclamation program in accordance with their approved reclamation plans. One commenter contends that this subsection is unnecessary because "conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan will be identified through normal coordination between the State and OSM through the oversight process." OSM's response is that merely because the oversight process identifies conditions or events that prevent or impede a State from administering its program in accordance with its approved reclamation plan, it does not follow that these conditions or events will be addressed or resolved and that the proposed rule is therefore unnecessary. The purpose of the proposed rule is to provide a mechanism to require changes in State plans when the oversight process reveals, but does not resolve, conditions or events that prevent or impede a State from administering its State reclamation program in accordance with its approved reclamation plan.

Section 884.15(d)

Section 884.15(d) provides that State reclamation plan amendments may be required by the Director when there are changes in the Act or regulations that result in approved State reclamation plans no longer meeting the requirements of the Act or the regulations or whenever a State is not conducting its State reclamation program in accordance with its approved State reclamation plan. Four commenters opposed proposed sections (d)(2) and (3) because they refer to unnamed conditions and unspecified events that are too vague. For these commenters the only conditions or events which should initiate a required plan amendment would be if a plan no longer meets the requirements of the Act and regulations. While OSM disagrees that the Director's authority to require a State plan amendment is limited to changes in the statute or regulations, it has decided to delete sections (d)(2) and (3) since they are not necessary. OSM believes that proposed section (d)(4) (now renumbered as (d)(2)) provides the Director with sufficient authority to require State plan amendments because it allows the Director to require State Plan amendments whenever a State "is not conducting its reclamation program in accordance with the approved State reclamation plan".

Section 884.15(e)

Section 884.15(e) provides that if the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative and legislative procedures in the State for submitting an amendment to the reclamation plan. No comments were received on this subsection.

Section 884.15(f)

Proposed § 884.15(f) provides that failure of a State to submit an amendment within the timetable established or to make reasonable or diligent efforts to submit an amendment may result in either suspension of the reclamation plan, reduction suspension or termination of existing AML grants or withdrawal from consideration for approval of grant applications.

Four commenters requested deletion of the second part of proposed section (f). These commenters said that if a State does not have a reclamation plan which meets the requirements of the Act and regulations promulgated pursuant thereto and has not submitted an amendment in accordance with the established timetable, plan suspension would be initiated as provided by § 884.16.

Reduction, suspension, or termination of existing AMLR grants under § 886.18 would be the next step following suspension of the plan. These commenters said that reduction, suspension, or termination of existing AMLR grants should follow suspension of the plan and not precede it. Likewise, they said that "withdrawal from consideration for approval of all grant applications submitted under § 886.15" should follow, not precede, plan suspension.

OSM has decided to retain the regulation as proposed because it offers increased flexibility for the Director of OSM. The commenters are correct in noting that, under the existing regulations, grants cannot be reduced, suspended or terminated until after a State plan has been suspended. The result is that, under the existing regulations, the Director of OSM has only two options—suspension or termination. Such actions by the Director would force a State reclamation program to begin to close down. Moreover, if the situation which caused the plan to be terminated is remedied, the plan would have to go through a formal re-approval process. The result would be cumbersome and costly. These regulations, by giving the Director of OSM more flexibility, allow less drastic actions to be considered that could accomplish the purpose of ensuring that States are conducting their reclamation programs in accordance with their reclamation plans.

Section 886.18(a)(7)

Section 886.18(a)(7) provides that if an agency fails to submit a reclamation plan amendment, OSM may reduce, suspend, or terminate in whole or in part

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all existing AML grants or may refuse to process all future grant applications. Three commenters oppose the proposed regulation for the same reasons given to support their position on proposed § 884.15(b). OSM disagrees; see the discussion on § 884.15(b) above and OSM's response thereto.

One commenter requests that the proposed rule be amended to require that reduction, suspension or termination of grants should be done in accordance with the conditions and procedures stated in § 886.18(b). Section 886.18(b) provides for written notice of intent to reduce, suspend or terminate a grant, opportunity for consultation and remedial action prior to reducing or terminating, and other procedural safeguards for a State agency against which an action to reduce, suspend, or terminate a grant is taken. OSM does not believe that granting the commenter's request is necessary since if any action is taken to reduce, suspend, or terminate a grant because of application of any part of § 884.15, OSM must follow the procedures set forth in § 886.18(b).

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The revisions to §§ 884.15, 884.16, 886.18 of the abandoned mine regulations would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule that reached the conclusion that this rule should not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record Room 5315, 1100 "L" Street, NW., Washington, D.C.

List of Subjects in 30 CFR Parts 884 and 886

Grants Program-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

For the foregoing reasons, OSM amends 30 CFR Parts 884 and 886 as follows:

Dated: January 31, 1986.

James E. Cason,

Assistant Secretary, Land and Minerals Management.

PART 884—STATE RECLAMATION PLANS

1. The authority citation for Part 884 is revised to read as follows:

Authority: Pub. L. 95–87; 30 U.S.C. 1201 *et seq.*

30 CFR 884.15 is revised as follows:

§ 884.15 State reclamation plan amendments.

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which may require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when—

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established under paragraph (e) of this section or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval of all grant applications submitted under § 886.15.

§ 884.16 [Amended]

3. 30 CFR 884.16 is amended by revising paragraph (a) as follows:

§ 884.16 Suspension of plan.

(a) The Director may suspend a State reclamation plan in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part;

(2) The State is not conducting the State reclamation program in accordance with its approved State reclamation plan; or

(3) The state has not submitted a reclamation plan amendment within the time specified under § 884.15.

* * * * *

PART 886—STATE RECLAMATION GRANTS

4. The authority citation for part 886 is revised to read as follows:

Authority: Pub. L. 95–87; 30 U.S.C. 1201 *et seq.*

5. 30 CFR 886.18 is amended by adding paragraph (a)(7) as follows:

§ 886.18 Grant reduction, suspension, and termination.

(a) * * *

(7) If an agency fails to submit a reclamation plan amendment as required by § 884.15, OSM may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

[FR Doc. 86–5892 Filed 3–18–86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-022, -025, A-4-FRL-2986-6]

Approval and Promulgation of Implementation Plans, Tennessee; Visible Emission Evaluation Method 3

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves Tennessee Visible Evaluation Method 3, which the State submitted as an implementation plan revision on January 16 and June 14, 1985. This method gives the State a means of enforcing permit conditions requiring "zero percent opacity." It will also be used to enforce the "no visible emissions" provisions of EPA's standards for asbestos (40 CFR Part 61, Subpart M).

EFFECTIVE DATE: This action will be effective on May 19, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Program Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Hughes, Air Programs Branch, EPA Region IV, at the above address, telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: Measuring the opacity of emissions from an air pollution source is one way of determining whether the source is in compliance with the particulate emission limits to which it is subject. Written procedures for evaluating visible emissions are useful in assuring that emission limits are enforced fairly and uniformly. EPA previously approved Tennessee Visible Evaluation (TVEE) Methods 1 and 2 (50 FR 15892, April 23, 1985). The State has adopted a third method for use in evaluating sources subject to a visible emission requirement of zero percent opacity. Such a requirement is incorporated in the construction permit whenever the agency feels it will be necessary to assure compliance with mass particulate limits to which the source is subject. In addition, Tennessee will use TVEE Method 3 as a tool to enforce the "no visible emissions" provisions of EPA's national emission standards for asbestos (40 CFR Part 61, Subpart M) until such time as EPA promulgates a method for this purpose.

TVEE Method 3 is comprised of five sections:

1. Principle and Applicability,
2. Procedures,
3. Observational Error,
4. Certification Procedures, and
5. Rules of Certification.

The procedures specify details governing the observer's position; field records; method of observations, including those for attached steam plumes, detached steam plumes, and fugitive emissions; the recording of observations; and data reduction. Opacity is determined as an average of 24 consecutive observations recorded at 15-second intervals. To allow for observational error, any combination of readings not to exceed 10% opacity (that is, one reading of 10% or two of 5% in the set of 24) will be allowed before a notice of violation is issued.

Final Action. Since TVEE Method 3 is consistent with EPA policy and requirements, it is hereby approved. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, particulate matter, incorporation by reference.

Dated: March 10, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(69) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(69) Tennessee Visible Emission Evaluation Method 3, was submitted on January 16 and June 14, 1985, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(*a*) January 16, 1985 letter from Tennessee Department of Health and Environment and Tennessee Visible Emission Evaluation Method 3, §§ 1, 2, and 5, became State-effective on December 12, 1984.

(*b*) June 14, 1985 letter from Tennessee Department of Health and Environment and Tennessee Visible Emission Evaluation Method 3, §§ 3 and 4, became State-effective on May 30, 1985.

(ii) Other material—none.

[FR Doc. 86–5970 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4F3126/R821, FRL-2985-7]

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4, 4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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SUMMARY: This rule establishes a tolerance for the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity soybeans. The regulation, to establish maximum permissible level of residues of the herbicide in or on soybeans, was requested in a petition by the FMC Chemical Corp.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3128/821], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM-25), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 17, 1984 (49 FR 40659), which announced that the FMC Chemical Corp., 2000 Market St., Philadelphia, PA 19103, submitted pesticide petition 4F3128 to EPA, proposing to amend 40 CFR 180 by establishing a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

There were no comments received in response to the notice of filing.

The pesticide is considered useful for the purposes for which the tolerance is sought. The data submitted in the petition and other relevant material have been evaluated.

The data considered include the following acute studies: an acute oral study in rats; an acute dermal study in rabbits; an acute inhalation study in rats; a primary eye irritation study in rabbits (moderate to severe); a primary dermal irritation study in rabbits (moderate to severe); skin sensitization study in guinea pigs (non-sensitizer); a teratology study in rats at dosage levels of 0, 100, 300, and 600 mg/kg/day, with a maternal no-observed-effect level (NOEL) of 100 mg/kg/day, maternal lowest-effect level (LEL) of 300 mg/kg/day and a fetotoxicity NOEL of 100 mg/kg/day, fetotoxic LEL of 300 mg/kg/day; a teratology study in rabbits at dosage levels of 0, 30, 240, and 1,000 (700) mg/kg/day with negative results at the highest dose tested (HDT. 700 mg/kg/day) for teratogenic effects. maternal NOEL of 240 mg/kg/day, a maternal LEL of 700 mg/kg/day and a fetoxicity NOEL of 240 mg/gk/day, fetotoxic LEL of 700 mg/gk/day; a 90-day feeding study in rats with no established NOEL due to an incomplete report; a 90-day feeding study in dogs with no established NOEL due to insufficient numbers of animals sacrified; a 90-day feeding study in mice with no established NOEL due to liver cytomegaly at the lowest dose tested (20 ppm); a 1-year feeding study in dogs at dose levels of 0, 100, 500, 2,500, 5,000 ppm with an NOEL of 12.5 mg/kg/day, an LEL of 62.5 mg/kg/day; a 2-year feeding study in rats at dose levels of 0, 20, 100, 500, 1,000, 2,000 ppm with a NOEL of 4.3 mg/kg/day and a LEL of 21.5 mg/kg/day; a 2-year feeding study in mice at dose levels of 0, 20, 100, 500, 1,000, 2,000 ppm with a NOEL of 14.3 mg/kg/day and a LEL of 71.4 mg/kg/day; mutagenic testing including, an unscheduled DNA synthesis test negative for mutagencity, reverse mutation tests (two studies) *(Salmonella)* both negative with/without activation, point mutation test (CHO/HGPT) weakly positive with a positive control, in vivo cytogenics (chromosomal aberations) test negative for mutagenicity.

An acceptable daily intake (ADI) of 0.043 mg/kg/day has been established based on a NOEL of 4.30 mg/kg/day in a two-generation rat reproduction study using a safety factor of 100. The per cent of ADI utilized is 0.03 percent.

The nature of the residue of dimethazone in soybeans is adequately understood. From the proposed use on soybeans there is no reasonable expectation of residues in meat, milk, poultry, and eggs (40 CFR 180.6(a)(3)), and tolerances are not required for these items. An adequate analytical method, gas chromatography, is available for enforcement purposes.

Based on the information and data considered, the Agency has determined that the establishment of the tolerance for residues of the herbicide in or on the commodities will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 27, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.425 is added to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

Tolerances are established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, in or on the following raw agricultural commodities:

Commodities	Parts per million
Soybeans	0.05

[FR Doc. 86-5755 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-3000132A; FRL-2982-6]

Ammonium Polyphosphate; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts ammonium polyphosphate from the requirement of a tolerance when used as an inert ingredient (sequestrant, buffer, or

surfactant) in pesticide formulations. This regulation was requested by the Rohm and Haas Co.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of June 26, 1985 (50 FR 26388), which announced that Rohm and Haas Co., Philadelphia, PA 19105, had requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for ammonium polyphosphate when used as a sequestrant, buffer, or surfactant in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the envisonment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	*	*
Ammonium polyphosphate (CAS Reg. No. 68333-79-9).		Sequestrant, buffer, or surfactant.
* * *	*	*

[FR Doc. 86-5462 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300134A, FRL-2982-6]

Croscarmellose Sodium; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts croscarmellose sodium from the requirement of a tolerance when used as an inert ingredient disintegrant, solid diluent, carrier, and thickener in pesticide formulations. This regulation was requested by the FMC Corp.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By Mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of July 10, 1985 (50 FR 28108), which announced that FMC Corp., Newark, DE 19711, had requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for croscarmellose sodium when used as a disintegrant, solid diluent, carrier, and thickener in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed

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objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Croscarmellose sodium (CAS Reg. No. 74811-65-7).		Disintegrant, solid diluent, carrier, and thickener.
* * * * *		

* * * * *

[FR. Doc. 86-5493 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300137A, FRL-2962-4]

Sulfur; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: This rule exempts sulfur from the requirement of a tolerance when used as an inert ingredient stabilizer in pesticide formulations applied to animals. This regulation was requested by the Ralston Purina Co.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 31, 1985 (50 FR 30966), which announced that the Ralston Purina Co., St. Louis, MO 63164, had requested that 40 CFR 180.100,(e) be amended by establishing an exemption from the requirement of a tolerance for sulfur when used as a stabilizer in pesticide formulations applied to animals.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 4, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * *		
Sulfur (CAS Reg. No. 7704-34-9).		Stabilizer.
* * * * *		

* * * * *

[FR Doc. 86-5494 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2E2736/R822; FRL-2965-8]

Pesticide Tolerances for Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide thiabendazole in or on imported cantaloupes and strawberries. This regulation, to establish maximum permissible levels of residues for thiabendazole in or on the raw agricultural commodities, was requested by Merck and Co., Inc.

EFFECTIVE DATE: Effective on March 19, 1986.

ADDRESS: Written objections, identified by the document control number [PP 2E2736/R822], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 29, 1982 (47 FR 42806), which announced that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had filed pesticide petition 2E2736 with EPA. The petition proposed to amend 40 CFR 180.242 by establishing tolerances for residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on the raw agricultural commodities cantaloupe at 12.0 parts per million (ppm), strawberries at 5.0 ppm, and tomatoes at 0.5 ppm.

The petition was subsequently amended (48 FR 52975; November 23, 1983) by deleting tomatoes and increasing the tolerance level for cantaloupes from 12.0 to 15.0 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include an acute oral lethal dose rat study (median lethal dose (LD_{50})=3.3 grams per kilogram (g/kg)); an acute oral lethal dose mouse study $(LD_{50}$=3.8 g/kg); a 2-year rat-feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day that was negative for oncogenic effects under the conditions of the study up to, and including, 160 mg/kg/day; a 2-year dog-feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study was negative for oncogenic effects under the conditions of the study up to, and including, 799.5 mg/kg/day; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 800 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day; and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat-feeding study (NOEL=10 mg/kg/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day; the maximum permissible intake (MPI) is 6.0 mg/kg/day for a 60-kg person. Established tolerances and these tolerances result in a maximum theoretical exposure of 2.5788 mg/day for a 60-kg person and utilize 42.98 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in on a variety of raw agricultural commodities in 40 CFR 180.242. There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing the tolerances. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes. No secondary residues in meat, milk, poultry and eggs would be expected from the use of the pesticide in the culture of strawberries and cantaloupes.

Based on the information and data considered, the Agency concludes that the establishment of these tolerances for thiabendazole in or on cantaloupes and strawberries, will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 10, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.242(a) is amended by adding, and alphabetically inserting, the following commodities to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cantaloupes	15.0
* * * * *	
Strawberries	5.0
* * * * *	

[FR Doc. 86-5754 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 5F3260/R820; FRL-2967-8]

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide chlorpyrifos and its metabolite in or on the raw agricultural crop grouping legume vegetables. This regulation was requested in a petition submitted by Dow Chemical Co.

EFFECTIVE DATE: March 19, 1986.

ADDRESS: Written objections may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 14, 1985 (50 FR 32767), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640, had filed a pesticide petition (PP 5F3260) to EPA proposing that 40 CFR 180.342 be amended by establishing tolerances for the residues of the insecticide chlorpyrifos [0,0-diethyl 0-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in

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or on the raw agricultural commodity group legume vegetables (succulent or dried snapbeans, kidney beans, field beans, peas, and lima beans (except soybeans)) at 0.1 part per million (ppm).

There were no comments received in response to the notice of filing.

This tolerance action is an administrative change as requested by the Agency in the document "Guidance for the Reregistration of Pesticide Products Containing Chlorpyrifos," dated September 28, 1984. This is a change in the expression of certain established chlorpyrifos tolerances rather than the establishment of a tolerance for any additional commodities. This action revises the crop grouping designation for bean and pea crop commodities from the seed and pod vegetable group, which is obsolete (see the Federal Register of June 29, 1985 (48 FR 29855)), to the legume vegetable crop group. In making this conversion there will be no impact on the dietary exposure of chlorpyrifos residues.

The Agency has considered the following toxicological data in support of the chlorpyrifos tolerance. The data include a 2-year rat feeding/oncogenicity study (core supplementary data) with a red-blood cell (RBC) cholinesterase (ChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0, and 3.0 mg/kg); a 2-year dog feeding study (core minimum) with an RBC ChE NOEL of 0.01 mg/kg/day and a NOEL of 0.03 mg/kg/day (highest dose tested) for systemic effects; a voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level); a 2-year mouse oncogenicity study (core minimum data) that was negative for oncogenic effects at all levels tested (0.5 ppm, 5.0 ppm, and 15.0 ppm); a 3-generation rat reproduction study (core minimum data) with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested); a rat teratology study (core minimum data) that was negative for teratogenic effects at 0.1 mg/kg/day; and an acute delayed neurotoxicity study in the hen (core minimum data) that was negative at 100 mg/kg. The existing rat feeding/oncogenicity study is not adequate for regulatory purposes (core supplementary data) and represents a data gap for the chemical.

The provisional acceptance daily intake (PADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0322 mg/day; the current action will have no effect upon the TMRC.

The nature of the residue is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Secondary residues in meat and milk of livestock and meat and eggs of poultry would be adequately covered by the already established tolerances for these commodities. There are no regulatory actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 10, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. 40 CFR 180.342 is amended by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Legume vegetables, succulent or dried (except soybeans)	0.1
* * * * *	

[FR Doc. 86-5971 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50520A, FRL-2966-1]

Hexamethylphosphoramide and Urethane; Significant New Uses of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) pursuant to section 5(a)(2) of the Toxic Substances Control Act (TSCA), for two chemical substances. These substances are hexamethylphosphoramide (HMPA; CAS No. 680-31-9) and urethane (CAS No. 51-79-6). The Agency believes that these substances may be hazardous to human health, and that the use of these substances rule may result in significant human and environmental exposures. Persons who intend to commence a designated significant new use of these substances must notify EPA at least 90 days before commencing such an activity. This notice will furnish EPA with the information needed to evaluate an intended use and the opportunity to protect against a potentially adverse exposure to the chemical substance before it can occur.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on April 2, 1986. This rule becomes effective on May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, pursuant to section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

The notice is subject generally to the same statutory requirements and EPA regulatory procedures as a premanufacture notice (PMN) submitted pursuant to section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action pursuant to section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If no action is taken, section 5(g) requires EPA to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the Federal Register of September 5, 1984 (49 FR 35011), EPA promulgated general provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail, and interested persons should refer to that document for further information. These general provisions apply to this SNUR.

III. Summary of This Rule

The chemical substances which are the subject of this significant new use rule are HMPA (CAS No. 680-31-9) and urethane (CAS No. 51-79-6). Urethane is also known as ethyl carbamate. A detailed discussion of the production, end uses, health and environmental effects, past and current exposures, and regulatory background of HMPA and urethane is contained in the preamble to the proposed rule (49 FR 39703). In summary, both HMPA and urethane are known animal carcinogens; are suspect human carcinogens; are not currently used and, thus have not been manufactured, imported, or processed for commercial purposes for some time; and are not subject to any regulation that would notify EPA of potentially adverse exposures to these chemical substances or provide EPA with a regulatory mechanism that could protect human health or the environment from an adverse exposure before it occurred.

This rule designates "any use" of HMPA and urethane as a significant new use. EPA has modified this language from the proposed rule which would have designated the "manufacture, importation, and processing for commercial purposes" as the significant new uses. EPA has made this language change to clarify that it is concerned about all potential uses of HMPA and urethane and the activities associated with such uses, including manufacturing, importing, and processing for such uses. However, the change in language does not change the effect of the rule, for any person who intends to manufacture, import, or process HMPA or urethane for any use must submit a SNUR notice. This rule will allow EPA to review the potential risks resulting from any use of HMPA and urethane, including risks that would result from manufacturing, importing, or processing the substances for those uses. EPA's analysis shows that no uses of HMPA or urethane have occurred for some time, and thus, that it is appropriate to designate any uses as a significant new use at this time.

Consistent with EPA's concern about any exposure to HMPA and urethane resulting from any use, including exposure resulting from manufacture, importation, or processing related to any use of HMPA or urethane, the regulatory text clarifies that any person who intends to manufacture, import, or process HMPA or urethane and intends to distribute the substance in commerce must submit a significant new use notice so that EPA can review all activities before they occur. See paragraph (b)(1) in §§ 721.350 and 721.1125.

IV. Designation of Significant New Uses

To determine what would constitute a significant new use of these substances, EPA considered relevant information about the toxicity of the substances, likely exposures to the substances, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA is designating the significant new uses of HMPA and urethane as any use. Therefore persons who intend to manufacture, import, or process either of these substances for any use must submit a significant new use notice to EPA. Exempt by law from the SNUR requirements are the manufacture, importation, and processing of HMPA or urethane in small quantities solely for research and development purposes.

EPA believes that resumption of the manufacture, importation, or processing of HMPA or urethane for commercial purposes has the potential to substantially increase human and environmental exposures to these substances. Each one of these activities has a high potential to increase the magnitude and duration of exposure above, and to change the type or form of exposure from, that which currently exists. Given the toxicity of these substances, the reasonably anticipated circumstances of exposure, and the lack of available regulatory controls, individuals who would be involved in any use of and the related manufacture, importation, or processing of HMPA or urethane may be exposed to these substances at levels which may result in adverse effects. Furthermore, such uses and related activities may result in the environmental release of these substances, thereby creating additional opportunities for adverse effects on human health or the environment.

V. Alternatives

In the proposed SNUR, EPA considered another information gathering approach for these two substances, that is promulgation of a section 8(a) reporting rule. For the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for HMPA and urethane.

VI. Applicability of Rule to Uses Which May Have Occurred Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than as of the promulgation of a final rule. If uses begun during the proposal period of the SNUR were considered ongoing, it would be extremely difficult for the Agency to establish SNUR notice requirements. Any person could defeat the SNUR by initiating a proposed

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significant new use before the rule became final.

Thus, persons who began manufacture, importation, or processing of HMPA or urethane for any use between proposal and promulgation of this rule, must cease any such activity before the effective date of this rule. To resume their activities, they must comply with all SNUR notice requirements, and wait until the notice review period, including all extensions, expires.

VII. Test Data and Other Information

EPA recognizes that, pursuant to TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, since EPA lacks data on the potential environmental effects of HMPA or urethane, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the substance's potential for adverse effects to the environment when utilized for an intended use.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed in accordance with the TSCA Good Laboratory Practice standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substance.

As an alternative to testing the substances, potential SNUR notice submitters may want to consider the use of engineering controls to reduce the release of these substances. In addition, EPA urges persons to submit information on potential benefits of these substances and information on risks posed by these substances compared to risks posed by potential substitutes. SNUR notices submitted with such data would improve EPA's ability to make a reasoned evaluation of the environmental effects of these substances.

VIII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for these substances. This evaluation is summarized in the preamble to the proposed rule (49 FR 39703).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50529A) which is available for inspection in Room E–107, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The record includes basic information considered by the Agency in developing this rule. The record includes the following:

1. Use and substitute analysis of HMPA.
2. Use and substitute analysis of urethane.
3. A chemical hazard information profile for HMPA.
4. A chemical hazard information profile for urethane.
5. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to man: Urethane (Vol. 7, 1974).
6. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to humans: Appendix 2 (Supplement 4, 1982).
7. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to humans: HMPA (Vol. 15, 1977).
8. American Conference of Governmental Industrial Hygienists, Threshold Limit Values Appendix 2.
9. July 1975 Department of State Telegram on "The Use of Urethane in Analgesic Injections."
10. Relevant pages of the United Nations Document "Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments" (first issue revised).
11. EPA memorandum on the Classification of Urethane and HMPA as Potential Human Carcinogens.
12. Comment to the proposed rule.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reasons explained in the preamble to the proposed rule, EPA believes that the cost will be low. EPA believes that, because of the nature of the rule and the two substances identified in it, there will be few SNUR notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial end uses of these substances.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, importation, or processing of these substances, and substitutes are available for all identified uses of these substances, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070–0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 7, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding §§ 721.350 and 721.1125 to read as follows:

§ 721.350 Hexamethylphosphoramide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance hexamethylphosphoramide, CAS Number 680–31–9, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Special provisions.* The provisions of Subpart A of the Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0038)

§ 721.1125 Urethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance urethane, CAS Number 51–79–6, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Special provisions.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 86–5756 Filed 3–18–86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–655; RM–4687]

FM Broadcast Station in Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 298C2 to Las Vegas, Nevada, as the community's ninth FM service, at the request of Nevada Number One Radio Company.

EFFECTIVE DATE: April 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

(Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Las Vegas, Nevada); MM Docket No. 84–655 RM–4687.

Adopted: March 5, 1986.
Released: March 11, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 29425, published July 20, 1984, proposing the allocation of Channel 300 to Las Vegas, Nevada, as the community's ninth FM service, at the request of Nevada Number One Radio Company ("petitioner"). Comments were filed by the petitioner, by Minority Media of Pahrump, Inc. ("MMP"), and by Hualapai Broadcasters, Inc. ("Hualapai"), and reply comments were filed by petitioner, by MMP, and by JaDonn Communications, Inc. ("JaDonn"). MMP also filed a petition for reconsideration of the issuance of the *Notice* to which William H. Hernstadt ("Hernstadt") filed an opposition and MMP filed a reply. New Radio, Inc. ("New Radio") filed a counterproposal seeking the allocation of Channel 300 to Paradise, Nevada, to which Las Vegas Electronics, Inc. ("LVE") filed a "Motion to Dismiss."[1]

2. As stated in the *Notice*, Channel 300 can be allocated to Las Vegas in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 22.6 miles northeast to avoid a short-spacing to Station KYRK (then KEER), Channel 246, Las Vegas. It also noted that the site restriction would avoid a conflict with one of two pending applications for Channel 298 at Pahrump, Nevada (BPH–830901AA, Tamarack Investment Corporation). The *Notice* inadvertently omitted mention of MMP's application for Channel 298 at Pahrump (BPH–840105AJ) which specified a site in conflict with the Las Vegas proposal.

3. MMP objects to the allocation of Channel 300 at Las Vegas since it would be short-spaced to the Mt. Potosi transmitter site specified in its application. It argues that cut-off applicants have "equities which cannot be readily deprived," citing *Howard University*, 23 F.C.C. 2d 714 (1970); *Camelot, Inc.* 61 F.C.C. 2d 15 (1976); *220 Television, Inc.*, 81 F.C.C. 2d 575 (1980); and *Cook, Inc.*, 10 F.C.C. 2d 160 (1967). It also contends that grant of the petitioner's request would result in MMP's loss of due process and a full and fair hearing on the merits of its application. However, should the Commission decide that Las Vegas should receive a ninth FM service, MMP counterproposes that: (1) Channel 285A be allocated to Las Vegas, as a simple "drop-in," or (2) Channel 290C2 be allocated to Las Vegas by substituting Channel 294 for Channel 293 at Las Vegas and substituting Channel 255 for Channel 290 at Kingman, Arizona.[2]

4. MMP filed supplemental comments stating that the Commission had issued a *Memorandum Opinion and Order* in the comparative hearing granting its application conditioned on the outcome of this rule making proceeding (FCC 84M–2519, released June 17, 1985).[3]

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[1] New Radio filed its counterproposal after the comment period had closed and thus is not acceptable for consideration herein. See paragraph 3 of the Appendix to the *Notice* and § 1.420(d) of the Commission's Rules. In view of this decision, LVE's opposition will not be discussed.

[2] The allocation of Channel 290C2 at Las Vegas is not technically feasible. The required substitution of Channel 255 for Channel 290 at Kingman, Arizona, is short-spaced to the recent allocation of Channel 256 at Prescott, Arizona, and was filed too late to be considered as a counterproposal (MM Docket 84–512). No interest in the use of a Class A channel at Las Vegas has been expressed and absent such an expression of intent, the channel shall not be allocated. Therefore, MMP's counterproposal cannot be accepted and the comments of Hernstadt and Hualapai need not be discussed.

[3] We believe that MMP's supplemental comments should be accepted. Although it could have provided us with the first and second aural service showing in its earlier comments, we could not have accorded it any decisional weight until the comparative hearing was resolved. Therefore, the comments will be considered herein.

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While reiterating much of what is contained in its earlier comments, MMP states that if it is able to construct at its specified Mt. Potosi site, the new Pahrump station would provide a first fulltime aural service to 2,357 persons in a 2,142 square mile area and a second fulltime aural service to 743 persons in a 1,096 square mile area, in addition to providing Pahrump with its first local service. MMP also proposes that in lieu of Channel 300, the Commission could allocate Channel 286 as a Class C1 or C2 to Las Vegas, which would provide the additional service sought by the petitioner, as well as maintaining the first and second aural service benefits from use of MMP's Mt. Potosi transmitter site.

5. Petitioner filed comments reiterating his intention to apply for Channel 300, if allocated to Las Vegas. In reply comments, it states that it has no interest in a Class A allocation but supports any counterproposal which would allocate a Class C, C1 or C2 channel there.

6. In comparing the need for the proposed Pahrump FM station and the need for a ninth FM channel at Las Vegas, we believe it is appropriate to consider MMP's proposed site since a permit has been granted conditioned on the outcome of this proceeding. We believe that MMP has made a clear and convincing showing that its use of the Mt. Potosi site for Channel 298 at Pahrump should prevail over the allocation of another FM channel to Las Vegas. As stated in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88, 92 (1982), "[i]n adopting new priorities, we continue to believe that greatest emphasis needs to be given to assuring the availability of at least one fulltime radio service to as many people as possible." We have confirmed that MMP's station would indeed provide both first and second fulltime aural service to persons currently lacking such reception. Therefore, Channel 300 will not be allocated to Las Vegas. However, we have also examined MMP's proposed allocation of Channel 286C2 to Las Vegas in light of petitioner's statement of intent and find that it can be allocated in compliance with the Commission's minimum distance separation requirements and not conflict with the Mt. Potosi transmitter site.[4] The use of Channel 286C2 at Las Vegas requires the imposition of a site restriction of 22.9 kilometers (14.2 miles) northwest to avoid a short spacing to Station KRRI, Channel 288A, Boulder City, Nevada.

7. While not of decisional significance here, we would like to take this opportunity to clarify a cut-off applicant's status and its right to a full and fair hearing on its application. MMP argues that a cut-off applicant has the same rights and protection against a conflicting petition for rule making as that of a licensee or permittee. While an applicant is protected against the acceptance of untimely filed competing applications, as stated in each of the cases which MMP cites, we do not believe, and MMP has not provided us with any case to the contrary, that the Commission has ever protected an applicant's preferred transmitter site from a rule making which proposes a new service. As the Commission has held on previous occasions, an applied for but unauthorized transmitter site reflects only a preference for a particular location and absent a compelling showing that use of the site would provide a greater public benefit, we would favor the provision of a new service. See, *Andalusia, Alabama*, 49 Fed. Reg. 32201, published August 13, 1984, and cases cited therein. An applicant is provided an opportunity to make such a showing in response to the *Notice of Proposed Rule Making*. Here, MMP could not argue that denial of its preferred site would result in the loss of a first local service at Pahrump since there was another applied for site which did not conflict with the proposed Channel 300 Las Vegas allocation. It did provide us with a showing that its proposed operation would better serve the public interest by providing both first and second fulltime aural service to currently unserved and underserved populations which a Channel 300 operation at Las Vegas would not. However, as stated in footnote 3, *supra*, this first and second aural service showing took on decisional significance only after MMP's status changed from that of only an applicant to that of a permittee. Therefore, we believe that MMP has received both a full and fair hearing on its application as well as being afforded every protection to which it is entitled as an applicant.

8. Based on the above discussion, we believe the public interest would be served by allocating Channel 286C2 to Las Vegas, as the community's ninth local FM service. Accordingly, IT IS ORDERED, That effective April 17, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the community listed below to read as follows:

City	Channel No.
Las Vegas, NV	222, 226, 242, 246, 253, 270, 277, 286C2, and 293.

9. It is further ordered, That the Petition for Reconsideration filed by Minority Media of Pahrump, Inc., IS DISMISSED AS MOOT.

10. It is futher ordered, That the counterproposal filed by New Radio, Inc., is dismissed.

11. It is further ordered, That this proceeding is terminated.

12. The window period for filing applications on this allocation will open on April 18, 1986, and close on May 19, 1986.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–6063 Filed 3–18–86; 8:45 am]

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[4] Petitioner filed supplemental comments detailing transmitter site problems associated with the use of Channel 286C1 at Las Vegas. However, it states that no such obstacles should occur with the use of Channel 286C2 and therefore requests its allocation.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 84–4; Notice 4]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule—Modifications to type F headlamp systems: Optional Compliance.

SUMMARY: This notice amends Safety Standard No. 108 to allow a manufacturer to provide an enhanced upper beam in Type F headlamp systems by wiring the lower beam headlamp to be activated simultaneously with the upper beam headlamp.

Type F headlamps feature identical aiming and seating planes, with the intention that re-aiming will not be necessary when a correctly aimed Type F headlamp is replaced with another Type F. The standard is also amended to provide that each half of the system may be aimed simultaneously if the manufacturer chooses (aiming the lower beam headlamp would automatically re-aim the upper beam lamp), but in order to permit this option, the re-aim tolerance of ¼ degree for photometric performance compliance will not be permitted for the upper beam headlamp in the Type F system.

This rule is based upon comments to a notice of proposed rulemaking published on May 13, 1985. The agency also proposed, but is not adopting the proposal that Type F lamps be permitted to have an auxiliary filament in the lower beam lamp to be used for purposes other than upper or lower beam performance.

DATES: Effective date of the amendment is April 18, 1986. Petitions for reconsideration of the rule must be filed not later than April 18, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202–426–2720).

SUPPLEMENTARY INFORMATION: When Standard No. 108 was amended to adopt the small four-lamp rectangular headlamp system known as Type F (49 FR 50176), three aspects of the original proposal (49 FR 18321) were reserved for further discussion. These were the use of the lower beam headlamps (Type LF) when the upper beam lamps (Type UF) were activated, simultaneous aim of pairs of headlamps on each side of the vehicle, and the desirability of an optional auxiliary filament in the lower beam lamp. NHTSA had decided that further comment on these issues was desirable before a decision could be made about incorporating them into the Type F system, and issued a second proposal on May 13, 1985 (50 FR 19986). This notice discusses the second proposal and NHTSA's decisions with respect to modifications in the Type F system.

Simultaneous Use of Upper and Lower Beam Headlamps

NHTSA finds merit in the concept of having additional light available during upper beam operation to increase roadway illumination. Such light is readily available from the lower beam filament in the LF lamp. However, since Type F's upper beam (Type UF) lamp alone can meet current upper beam photometric requirements and already exceeds current minimum requirements, there is little or no basis upon which to mandate even more light by requiring the simultaneous use of both beams during upper beam selection, and NHTSA therefore proposed that this method of wiring the headlamps be at the option of the vehicle manufacturer. However, in order to reduce the possibility of excessive foreground light and glare resulting from simultaneous use, NHTSA proposed two new lower beam test points in Type LF lamps, and maximum photometric values for them, 7,000 cd at test point 4D–V (Down-Vertical), and 5,000 cd at the H–V (Horizontal-Vertical) axis. NHTSA tentatively concluded that adopting these new maximum values at 4D–V and H–V would allow safe simultaneous use of the lower and upper beam headlamps during upper beam operation.

Commenters supported the proposal as specified. The California Highway Patrol (CHP) expressed reservations about removing the option from the driver's control though convinced of the occasional utility of a supplement to the upper beam.

NHTSA does not agree with the CHP on this issue. While a driver might be in the best position to decide whether to use additional illumination, as NHTSA has stated before, it believes that additional specifications would be needed to ensure fail-safe switching from the upper beam or upper/lower beam to the lower beam alone, and that an additional warning telltale might be required as well. NHTSA does not believe that the benefits of allowing this choice to the driver would outweigh the costs, and the final rule adopts simultaneous use as a wiring option for the manufacturer rather than an operational option for the driver.

Simultaneous Aim (Co-Aiming) of Headlamps

General Motors, the developer of the Type F system, recommended a method to aim simultaneously both the upper and lower beam headlamps. Both lamps would be mounted in a common housing and have a common aim adjustment to permit such "co-aiming." It would be possible to co-aim both lamps as long as the combination of the two lamps in the common co-aiming assembly could meet the overall photometric requirements. The agency proposed that Type F lamps could be mounted on common and parallel seating and aiming planes provided that: (a) when tested in accordance with the provisions of Standard No. 108, the assembly is designed to conform to the test point values of the revised Figure 15 and (b) there shall be no provision for adjustment between the common or parallel aiming and seating planes of the two lamps. The agency also proposed to remove the ±¼ degree re-aim tolerance for the UF headlamp and to permit that tolerance to be allowed for the co-aiming assembly.

Ten of the 11 commenters to the docket concurred, the eleventh, Insurance Institute for Highway Safety, offering no comment on the point. Many of the comments asked for clarification of the language in the test procedure for co-aiming. The agency has clarified the test procedure by providing that the assembly shall be located on a goniometer placed at least 60 feet from the photometer. The LF lamp is aimed mechanically by centering the unit on the photometer axis and aligning its aiming plane to be perpendicular to the photometer axis. The assembly is then moved in a plane parallel to the established aiming plane of the LF unit until the UF lamp is centered on the photometer axis. The photometry measurement of the UF lamp is completed by using the aiming plane thus established, and allowing a ±¼ degree reaim tolerance for meeting the test points as measured in the co-aimed assembly.

To provide consistency in the aiming requirements, it was also proposed that testing of the individual lamps could not include a ±¼ degree re-aim tolerance for the UF lamp alone. Therefore, paragraph S4.1.1.43(b) and Figure 15 have been revised to accomplish this. Heretofore, such allowances were placed in Figure 15, however for regulatory consistency, such allowances and restrictions should be placed in the text as other requirements are. Paragraph S4.1.1.43(b) now includes such requirements and Figure 15 does not. This arrangement of photometric and construction specifications assures that the entire assembly will be properly aimed in service if a mechanical aimer is used to aim the LF lamp in co-aimed assembly. However, if optical aiming is used or if a mechanical aimer is used in conjunction with the UF lamp of the assembly, the in-service aim of the assembly may be in error. As a partial remedy to the possibility of using a mechanical aimer in conjunction with the UF lamp, a safeguard was originally proposed in the first NPRM for the Type F headlamp system. This proposal would have required manufacturers to provide a means of preventing use of the mechanical aimer on the UF lamp of the co-aimed assembly. However, the proposal was not included in the second NPRM because NHTSA tentatively concluded that without similar provision to prevent optical or visual aiming, only

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a portion of the problem would be addressed. Labelling could be provided as a guide to reduce the likelihood of optical aim, but the likelihood of success is unknown.

There is also the question of whether or not the possibility of use of inappropriate aiming procedures in service is likely to have a significant safety impact. NHTSA believes that the likelihood of there being a significant safety impact is low. Because properly aimed Type F headlamps may be replaced without re-aim, and because the co-aim assembly will have only two aiming screws, NHTSA believes that these assemblies will usually be treated as a two beam headlamp is treated in that the lower beam is used for aiming purposes. Consequently, NHTSA will allow the optional use of co-aiming, using the clarified procedure above, but will not require the prevention of aim of the upper beam lamp.

Optional Auxiliary Filament in the Lower Beam Lamp

Incorporation of an optional auxiliary filament in the Type F system was a feature of the original GM design, which was subsequently deleted by the developer. In the original rulemaking, NHTSA determined that there were no safety reasons to mandate or permit its use. However, because Chrysler Corporation strongly recommended the incorporation of the auxiliary filament for safety purposes other than upper beam or lower beam use, the agency again proposed its optional inclusion. Specifically, Chrysler would use the auxiliary filament to increse conspicuity of the vehicle during daytime operation.

Five commenters opposed the proposal while three were in favor of it and one, the California Highway Patrol, was neutral. Of the three, Chrysler suggested that it could be used to provide a daytime running light. North American Phillips saw no reason to oppose it. American Motors commented that manufacturers should have the design flexibility to use such a filament. GM offered arguments against the auxiliary filament similarly to those previously offered, stating that the auxiliary filament would reduce lamp life and reliability, reduce bulb reliability, cause a filament shadow during lower beam use, and increase cost. Commenters recommended against it on the basis that it was premature to permit such a feature which could adversely affect headlamp performance when the need and specifications for daytime running lights remained to be determined. Additionally, because the auxiliary filament would be unregulated in both design and performance, manufacturers could choose to use the filament for other functions where optics must be controlled, such as for use as driving or fog lamps, with the possibility of a resulting optical prescription for the lens that would be in conflict with that necessary for a headlamp. The inappropriate prescription would thereby compromise lower beam performance. Should lamps with auxiliary filaments be produced, the headlamps would be physically interchangeable, but would not be functionally interchangeable. In addition this would result in proliferation without accompanying advantages for the public. Accordingly, NHTSA has not adopted the proposal to allow a third type of Type F headlamp, one incorporating an auxiliary filament.

Standardization of SAE References

Under Standard No. 108, Type F headlamps and those incorporating standardized replacement light sources are designed to meet the requirements of SAE J579c, December 1978, but original equipment sealed beam headlamps must conform to SAE J579c, December 1974. For regulatory clarity, NHTSA proposed that the December 1978 version be the sole version incorporated by reference. Similarly it proposed that a standardized reference to SAE J580 be adopted. The changes between the earlier and later versions of the two SAE standards were discussed in detail in the notice of proposed rulemaking and their effect deemed non-substantive. These changes have been adopted, there being no negative comments submitted.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291, "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. Therefore, a regulatory evaluation has not been prepared. Since us of the headlamps is optional, the rule will not impose additional requirements or costs but will permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect on the human environment.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared. Manufacturers of motor vehicle headlamps, those affected by this rule, are generally not small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Because of the necessity of vehicle, headlamp, and bulb manufacturers to plan production and distribution on an orderly basis, it is found that an effective date earlier than 180 days after issuance of the final rule is in the public interest.

The engineer and lawyer primarily responsible for this rule are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

The authority citation for Part 571 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

1. In § 571.108, subparagraph (b) of paragraph S4.1.1.43 is revised to read:

* * * * *

(b) The photometric requirements of Figure 15. A reaim tolerance of ±¼ degree is allowed for any test point on the Type LF lamp when tested alone, and such a tolerance is not allowed for the Type UF lamp when tested alone. For the test point 10U–90U, measurement shall be from the normally exposed surface of the lens face.

* * * * *

2. A new paragraph S4.1.1.46 is added to § 571.108 to read:

* * * * *

S4.1.1.46 Type F headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming of both headlamps provided that or when tested with any conforming Type UF and LF headlamps according to paragraph S8—

(a) The assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism), shall be designed to conform to the test point values of Figure 15.

(b) There shall no provision for adjustment between the common or parallel aiming and seating planes of the two lamps.

3. A new paragraph S4.5.12 is added to § 571.108 to read:

* * * * *

S4.5.12 On a motor vehicle equipped with a Type F headlighting system, the lower beam headlamps (Type LF) may be wired to remain permanently activated when the upper beam headlamps (Type UF) are activated.

* * * * *

4. A new paragraph S8 is added to § 571.108 to read:

* * * * *

S8. *Photometry Test for Simultaneous Aim, Type F Headlamps.* The assembly shall be located on a goniometer placed not less than 60 feet (18.3 m) from the photometer. The LF unit shall be aimed mechanically by centering the unit on the photometer axis and aligning the aiming plane of the lens perpendicular to the photometer axis. Then the assembly shall be moved in a plane parallel to the established aiming plane of the LF headlamp until the UF headlamp is centered on the photometer axis. Photometry measurements of the UF photometry unit shall be completed using the aiming plane so established. A reaim tolerance of ±¼ degree is allowed for any test point.

5. Figure 15 of § 571.108 is revised as follows:

FIG. 15.—PHOTOMETRIC TEST POINT VALUES

Upper beam			Lower beam		
Test points deg	Cd. max.	Cd. min.	Test points deg	Cd max.	Cd. min.
2U–V		1,900	10U–90U	125	
1U–3R and 3L		5,000	1U–1–½L to L	700	
H–V	70,000	40,000	½U–1–½L to L	1,000	
			½D–1–½L to L	3,000	
			1–½U–1R to R	1,400	
H–3R and 3L		15,000			
H–6R and 6L		5,000	½U–1R to 3R	2,700	
H–9R and 9L		3,000	½D–1–½R	20,000	10,000
H–12R and 12L		1,500	1D–6L		1,000
			1–½D–2R		15,000
1–½D–V		5,000	1–½D–9L and 9R		1,000
1–½D–9R and 9L		2,000	2D–15L and 15R		850
2–½D–V		2,500	4D–4R	12,500	
2–½D–12R and 12L		1,000			
4D–V	5,000		4D–V	7,000	
			M–V	5,000	

6. In § 571.108, paragraphs S4.1.1.13(b), S4.1.1.21, S4.1.1.33, S5.1 and Tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") are amended by changing "December 1974" to "December 1978."

7a. In § 571.108, Tables I and III, the right hand columns "Applicable SAE standard or recommended practice" are amended by adding the wording "(See S5 for subreferenced SAE materials)".

7b. In § 571.108, tables I and III (under the right hand column "Applicable SAE standard or recommended practice" parallel to the item "Headlamps") are amended by changing "J580b February 1974" to J580 AUG 79".

Issued on March 13, 1986.

Diane K. Steed,
Administrator.

[FR. Doc. 86–5962 Filed 3–18–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-3]

Petitions for Rulemaking; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, May 19, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 13, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
24674	National Association for Rocketing and Hobby Industry Association.	*Description of Petition:* To increase model rocket exempted limits to 125 grams (4.4 ounces or propellent, and total weight to 1500 grams (52.91 ounces). *Regulations Affected:* 14 CFR 101.1(a), (3), (i), (a), and (c).
24667	Mr. Stephen B. Jordan	*Description of Petition:* To establish Flight Level intervals between FL 290 and FL 420 as follows: Westbound: FL300, FL330, FL360, FL390, FL420; Eastbound: FL290, 315, 345, 375, 405. *Regulations Affected:* 14 CFR 91.121. *Petitioner's Reason for Rule:* 1. There would be a 33⅓ increase in available flight levels. 2. Fuel Savings: (a) increased flight levels should allow greater controller flexibility and more direct flights; (b) very heavy aircraft would be able to use step climbs of 3,000 feet vs 4,000 feet which is closer to the ideal cruise climb; (c) ability of aircraft to operate closer to their most efficient cruising altitude for their goes weight. 3. Reduced controller workload by reducing aircraft conflicts caused by increased spacing. 4. Passenger comfort increased by greater capability in finding a smoother, less turbulent cruising altitude. 5. More effective use of aircraft equipped with INS, RNAV or OMEGA.
24902	Sierra Academy of Aeronautics	*Description of Petition:* To amend Paragraph (3)(iv)(a) of Appendix C of Part 63 to require that the 5 hours of flight instruction time in an airplane be reduced to 2 hours, provided that (1) the remaining 3 hours of required flight instruction in an airplane be substituted on a 2 to 1 basis by an FAA-approved Phase II Simulator with crew; (2) the test required by § 63.39(b)(3) be conducted in an FAA-approved Phase II Simulator with full crew; (3) instruction in an FAA-approved training device and FAA-approved Simulator in accordance with the formula of Part 63, Appendix C, Paragraph (3)(iv) will not equal 10 hours of flight instruction time in an airplane and will not be reduced to less than the 10-hour equivalency; (4) ground course will not be reduced below 240 hours of instruction; and (5) 6 hours of aircraft preflight instruction on a static aircraft will be included in the course. *Regulations Affected:* 14 CFR § 63, Appendix C (3)(iv)(a).
24890	Strong Enterprises, Inc. and the Relative Workshop, Inc.	*Description of Petition:* To permit general use of approved dual harness, and dual parachute packs. *Regulations Affected:* 14 CFR 105.43(a)

Research and Special Programs Administration

14 CFR Part 250

[Docket No. 43872; Notice No. 86-1]

Aviation Economic Regulations; Oversales; Recordkeeping and Reporting Requirements

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT) is proposing to reduce the reporting frequency of RSPA Form 251, "Report of Passengers Denied Confirmed Space" from monthly to quarterly. This proposed action would reduce reporting burden on the airline industry while bringing DOT's oversales rule into conformance with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. Part 1320 implements the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. 5 CFR 1320.6(a) states that the Office of Management and Budget (OMB) will not approve a collection of information that requires respondents to report information more often than quarterly, unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial needs.

DATES: Comments to the proposed rule must be received on or before May 19, 1986.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 43872, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jack Calloway or Bernard Stankus, Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-7372.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed regulation would result in a reduction in reporting burden for U.S. and foreign scheduled passenger air carriers servicing the United States.

This proposed regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, as it does not involve important Departmental policies. Its economic impact is minimal and full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[1] The proposed amendments would affect only large U.S. and foreign air carriers.

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements will be submitted to the OMB for review and comment. Persons may submit comments on the collection-of-information requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket.

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views or arguments as they may desire. Comments that provide factual basis supporting their views and suggestions on reporting frequency would be particularly helpful. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 43872. The post card will be date/time stamped and returned to the commenters. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contract with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

The provision that requires air carriers to file Form 251 on a monthly basis was adopted during a period when there was a serious oversale problem in the airline industry. Carriers were overselling their seating capacity because a number of ticket holders did not use nor cancel their reservations. Under these circumstances, two avenues were open to the Civil Aeronautics Board[2] (CAB). It could reduce oversales by closely regulating the details of the carriers' reservation practices, with the inevitable result of curtailing the flexibility by which passengers make, change and cancel reservations. Carriers were strongly against this action. On the other hand, the CAB could take positive steps to assure prompt, effective and adequate compensation to passengers who were denied boarding, and to refrain from detailed regulation of carrier reservation practices.

The latter course was taken. On August 3, 1967, the CAB adopted Part 250 of its Economic Regulations (32 FR 11939). This part established financial compensation, usually equal to the amount of the unused tickets, to passengers who were denied confirmed space as well as a reporting provision to monitor carrier practices. Despite this regulation, the incidence of denied boardings continued to rise, reaching a peak of over 150,000 in 1977.

On May 30, 1978, the CAB amended Part 250 by requiring airlines not to deny boarding to any passengers against his will until volunteers were first sought to give up their reservations willingly in exchange for a compensatory payment (42 FR 24277). This amendment was adopted to minimize involuntary denied boardings. In the event of an oversold flight, air carriers are required to seek volunteers for denied boarding before using any other boarding priority. A volunteer is a person who willingly accepts the carrier's offer of

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[1] For the purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) as small entities for purposes of the Regulatory Flexibility Act.

[2] The Airline Deregulation Act (Pub. L. 95-504, October 24, 1978) as amended by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984) revised 49 U.S.C. 329(b)(1) to require the Secretary of Transportation to continue the data collection activities of the former CAB

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compensation in any amount in exchange for relinquishing the confirmed reserved space. The denied boarding regulations were refined further on May 7, 1980 (45 FR 30084), November 24, 1982 (47 FR 52985), June 28, 1983 (48 FR 29680) and October 16, 1984 (49 FR 40401). Presently, if a passenger holding confirmed space is involuntarily denied boarding, that passenger must be compensated at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons to the passenger's next stopover, or if none, to the final destination, with a maximum of $400. Half this compensation shall be paid if the carrier arranges comparable air transportation at no additional cost and the passenger's planned arrival at his stopover or destination is not later than two hours after the original scheduled arrival (four hours on international flights). No compensation is required if the carrier arranges comparable air transportation at no additional cost and the planned arrival at the next stopover or destination is not later than 1 hour after the planned arrival time of the passenger's original flight.

Form 251 has been in place since the inception of the denied boarding rules. It is used to monitor the extent of the overselling in the industry and how passengers with a confirmed reservation who are denied a seat are being accommodated. Since 1978, the Form distinguishes between involuntary and voluntary denied boardings.

Between 1977 and October 31, 1984, annual enplanements have increased almost 100 million, the number of passengers who are involuntarily denied seats has remained relatively constant and the denied boarding rate per 10,000 passengers has decreased (see Appendix A). Although the Department still needs Form 251 reports to adequately monitor individual carrier and industry performance, it is felt that quarterly reporting will suffice for this purpose. However, if an individual carrier experiences an extremely abnormal high denied-boarding rate, the Department has authority to require that carrier to submit special reports, on a monthly basis, if needed.

The Paperwork Reduction Act of 1980 gave the Office of Management and Budget (OMB) the responsibility to set standards for information collections. OMB's General Information Guidelines, 5 CFR 1320.6 state that, unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information requiring respondents to report information to the agency more often than quarterly. Since the denied boarding rate has improved and domestic air transportation has been economically deregulated to a large extent, there is no longer a need for monthly reporting.

List of Subjects in 14 CFR Part 250

Air transportation, Airlines, Oversales, Consumer Protection.

Proposed Rule

PART 250—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 250, *Oversales* as follows:

1. The authority for Part 250 continues to read:

Authority: Sec. 204, 401, 402, 404, 407, 411, 416, 1002 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386 and 1482.

2. The Table of Contents would be amended by retitling § 250.10 *Reports of unaccommodated passengers* to read:

* * * * *

Sec.
250.10 *Report of passengers denied confirmed space.*

* * * * *

3. Section 250.10 *Reports of Unaccommodated Passengers* is amended by retitling and revising the section to read as follows:

§ 250.10 Report of passenger denied confirmed space.

Every carrier shall file, on a quarterly basis, the information specified in RSPA Form 251. The reporting basis shall be flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. "Total Boardings" on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of this part do not apply.

4. RSPA Form 251 "Report of Passengers Denied Confirmed Space" would be amended as shown in Appendix B attached.

Issued in Washington, DC on March 14, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

APPENDIX A.—PERCENTAGE RELATIONSHIP OF DENIED BOARDINGS (INVOLUNTARY) TO ENPLANEMENTS

[Calendar year 1977 through 1984]

Year (1)	Denied boardings (involuntary) [1] (2)	Enplanements (3)	Involuntary denied boardings per 10,000 boardings (4)
1977	150,000	241,328,000	6.24
1978	175,000	261,371,000	6.70
1979	172,000	311,482,000	5.52
1980	139,000	291,660,000	4.77
1981	139,000	276,884,000	5.02
1982	150,000	284,427,000	5.27
1983	147,000	308,472,000	4.76
1984	185,000	333,870,000	5.55

[1] Source: Taken from reports prepared by DOT's Office of Community and Consumer Affairs. Does not include foreign carrier statistics.

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Appendix B
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U.S. Department of Transportation
Research and Special Programs Administration

REPORT OF PASSENGERS DENIED CONFIRMED SPACE

(To be filed with the Data Administration Division, Office of Aviation Information Management, RSPA within 30 days after the end of each quarter)

Name of Air Carrier

OAG Carrier Code

Quarter ended ______

(See Instructions on Back)

1.	Number of passengers denied boarding involuntarily who qualified for denied boarding compensation and:	
	(a) were given alternate transportation within the meaning of §250.5.	
	(b) were not given such alternate transportation.	
2.	Number of passengers denied boarding involuntarily who did not qualify for denied boarding compensation due to:	
	(a) accommodation on another flight that arrives within 1 hour after the scheduled arrival time of the original flight.	
	(b) substitution of smaller capacity equipment.	
	(c) failure of passenger to comply with ticketing, check-in, or reconfirmation procedures, or to be acceptable for transportation under carrier's tariff.	
3.	TOTAL NUMBER DENIED BOARDING INVOLUNTARILY	
4.	Number of passengers denied boarding involuntarily who actually received compensation.*	
5.	Number of passengers who volunteered to give up reserved space in exchange for a payment of the carrier's choosing.	
6.	Number of passengers accommodated in another section of the aircraft:	
	(a) Upgrades	
	(b) Downgrades	
7.	Total Boardings	
8.	Amount of compensation paid to passengers who:	
	(a) were denied boarding involuntarily and were given alternate transportation within meaning of §250.5 (See Item 1(a) above).	
	(b) were denied boarding involuntarily and were not given alternate transportation. (See Item 1(b) above).	
	(c) volunteered for denied boarding. (See Item 5 above).	

I, the undersigned, (Title)______ of the above-named carrier certify that the above report has been examined by me and to the best of my knowledge and belief is a true, correct and complete report for the period stated.

______ (Date)

______ (Signature)

* If any passengers qualified for denied boarding compensation but were not offered compensation, attach a statement as to the number of such passengers and an explanation of why the offer was not made.

RSPA Form 251
Formerly CAB Form 251

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Instructions

(a) Reports shall be filed by every carrier with respect to flight segments with large aircraft (more than 60 seats) in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States. Carriers are defined as air carriers holding certificates under section 401(d)(1), (2), (5), or (8) or exemptions from section 401(a) of the Federal Aviation Act of 1958, and all foreign route air carriers holding section 402 permits or exemption from section 402, authorizing the transportation of persons in scheduled service. See Part 250 of DOT regulations (14 CFR Part 250) for further information.

(b) With respect to line 1, "alternate transportation" for passengers denied boarding involuntarily means comparable air transportation accepted by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's destination or first stopover (of 4 or more hours) no later than 2 hours for domestic flights or 4 hours for international flights. See § 250.5 of DOT regulations for further information.

(c) "Total number denied boarding involuntarily" should equal the sum of lines 1 and 2. If this is not so, attach notes explaining any discrepancy.

(d) With respect to line 5, a passenger who "volunteers" is a person who responds to the carrier's request for volunteers pursuant to § 250.2b of DOT regulations and willingly consents to exchange his confirmed reserved space for a payment of the carrier's choosing. Any passenger selected by the carrier for denied boarding in accordance with any boarding priority other than a request for volunteers is considered to have been denied boarding "involuntarily," whether or not the passenger accepts denied boarding compensation.

(e) "Total Boardings" on line 7 shall include only passengers on flights for which confirmed reservations are offered. For international flights, "Total Boardings" shall include only passengers on flight segments from the United States that are subject to Part 250, and for which confirmed reservations are offered.

(f) With respect to line 8, "compensation paid" includes all payments made to passengers, *i.e.* payments actually accepted by passengers, plus payments offered or mailed that are not rejected.

(g) Note on the report any abnormal conditions, such as strikes, having a bearing on the results.

[FR Doc. 86–5988 Filed 3–18–86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Residence and Citizenship

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing rules to implement the order of the United States Court of Appeals for the Second Circuit in the case of *Berger* v. *Heckler* 771 F. 2d 1556 (1985). The court order affirms the order of the District Court in *Berger* v. *Schweiker*, No. 76 C 1420 (E.D.N.Y. July 31, 1984) which sets out criteria for determining whether an alien is permanently residing in the United States (U.S.) under color of law and lists specific categories of aliens who meet the criteria and thus, may be eligible for Supplemental Security Income (SSI) benefits. The proposed regulations provide that aliens residing in the U.S. with the knowledge and permission of the Immigration and Naturalization Service (INS) and whose departure INS does not contemplate enforcing, are permanently residing under color of law. The proposed rules set out specific categories of aliens who meet these criteria and the documents an individual must provide to prove permanent residence in the U.S. under color of law for SSI purposes.

DATE: Comments must be received on or before May 19, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7457.

SUPPLEMENTAL INFORMATION: Section 1614(a)(1)(B) of the Social Security Act requires that an individual must be a citizen, or an alien either lawfully admitted for permanent residence or permanently residing in the U.S. under color of law to be eligible for SSI benefits. The current regulations at § 416.1618 do not define color of law but rather set out what evidence an individual must provide to prove he or she is permanently residing in the U.S. under color of law. Our policies regarding this color of law requirement under the SSI program were the subject of litigation in *Berger* v. *Secretary*, No. 76C 1420 (E.D.N.Y. June 13, 1978). Under the final judgment entered June 13, 1978, aliens who were residing in the U.S. with the knowledge and permission of INS and whose departure INS did not contemplate enforcing were permanently residing in the U.S. under color of law and thus, may be eligible for SSI benefits. The final judgment contained language to that effect.

After further litigation, the District Court in *Berger* v. *Schweiker*, No. 76C 1420 (E.D.N.Y. July 31, 1984) set out more specific criteria for determining if an alien is permanently residing in the U.S. under color of law. The court order again provided that aliens residing in the U.S. with the knowledge and permission of INS and whose departure INS does not contemplate enforcing are aliens permanently residing in the U.S. under color of law for SSI purposes. Under the terms of the court order, INS will not be considered as contemplating enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category or if from all facts and circumstances in a particular case it appears that INS is permitting the alien to reside in the U.S. indefinitely. The court order also listed certain categories of aliens as examples of categories which meet the criteria. The court order required that our regulations and operating instructions contain its criteria for color of law determinations and the specified categories of aliens who are considered as permanently residing under color of law. On appeal the United States Court of Appeals for the Second Circuit in *Berger* v. *Heckler*, 771 F. 2d 1556 (2d Cir. 1985), affirmed the district court order except that it did not require the Secretary to use the exact language specified by the district court. However, we have decided to adopt the language provided by the district court as it gives the most specific guidance on how the court's holding is to be interpreted. Because under the courts' orders more aliens will meet the definition of color of law than under our current regulations, more aliens may now be eligible for SSI benefits if they meet all other requirements for eligibility.

Provisions of the Regulations

We propose to amend § 416.1618 to set out the criteria as specified by the district court for determining whether an alien is permanently residing in the U.S. under color of law and to specify categories of aliens who meet these criteria. The proposed regulations also describe the documents an alien must furnish to us to enable us to determine whether he or she is permanently residing in the U.S. under color of law. SSA cannot make independent judgments about an alien's status. These criteria depend on a determination of alien status by the INS. In instances in which an applicant cannot provide the required documentation, SSA will ask the INS to provide the alien's status.

The proposed regulations also contain an assumption that INS does not contemplate enforcing the departure of an individual who has a document valid for an indefinite period of time. Therefore, if all other factors of eligibility are met, we will begin payment immediately. However, we will contact INS to verify that it does not contemplates enforcing the departure of the individual. If INS indicates that it contemplates enforcing the departure of the individual, we will suspend benefits. Based on our experience with INS practice we will assume that INS does not contemplate enforcing the departure of an individual who has a document valid for at least 1 year, and, if all other factors of eligibility are met, we will begin payment immediately. However, we will contact INS to verify that it does not contemplate enforcing the departure of the individual. If INS indicates that it contemplates enforcing the departure of the individual, we will suspend benefits. If an individual presents a document valid for less than 1 year, we will assume that INS contemplates enforcing his or her departure and we will contact INS and ask whether it contemplates enforcing departure before we make any payments. Once we begin paying an individual with a definite status which must be renewed, we will contact INS when the status comes up for renewal to determine whether INS will renew the individual's status or whether it contemplates enforcing departure. If at any time after an individual begins receiving benefits INS indicates that it contemplated enforcing departure, we will suspend benefits and assess an overpayment for benefits received from that date. This policy was developed based on our experience in processing such claims and on information obtained from INS. Our experience with INS practices indicates that INS usually continues to renew statuses which are valid for at least a year and, therefore, does not contemplate enforcing departure of individuals with these statuses. By contrast it has been our experience that INS generally does not renew statuses that are valid for less than a year. This policy will enable us to pay benefits as promptly as possible to those individuals whose departure INS most likely does not contemplate enforcing.

We propose to delete the provision at § 416.1618(a)(3) that provides for certain aliens to be considered permanently residing in the U.S. under color of law as a result of a March 10, 1977 court order. That court order in *Silva* v. *Levi*, No. 76 C 4268 (N.D.Ill. 1977), enjoined INS from deporting certain aliens and required INS to notify the aliens that they were authorized to remain in the U.S. for an indefinite period of time. Since these aliens could reside in the U.S. indefinitely, we considered them permanently residing under color of law and our regulations at § 416.1618(a)(3) so provide. The *Silva* court order was dissolved as of November 1, 1981. Since *Silva* aliens who had not obtained an adjustment of their status while the March 10, 1977 court order was in effect were no longer protected from deportation, they are no longer being allowed to reside in the U.S. indefinitely. Therefore, we no longer consider these aliens to be permanently residing under color of law for SSI purposes. Since this provisions at § 416.1618(a)(3) is obsolete, we propose to delete it.

Regulatory Procedures

Executive Order 12291—This proposed rule has been reviewed under Executive Order 12291 and we have determined that it will not have an annual effect on the economy of $100 million or more, or otherwise meet the threshold of the Executive Order. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—This proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 2053, Attention: Desk Officer for Health and Human Services.

Regulatory Flexibility Act—We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities since they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

Administrative practice and procedures, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: January 22, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 19, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart P of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614, and 1631, of the Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1471, and 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

2. Section 416.1618 is revised to read as follows:

§ 416.1618 When you are considered permanently residing in the United States under color of law.

(a) *General.* We will consider you to be permanently residing in the United Stated under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and that agency does not contemplate enforcing your departure. The Immigration and Naturalization Service does not contemplate enforcing your departure if it is the policy or practice of the Immigration and Naturalization Service not to enforce the departure of aliens in the same category or if from all the facts and

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circumstances in your case it appears that the Immigration and Naturalization Service is otherwise permitting you to reside in the United States indefinitely.

(b) *Categories and proof you will need.* Aliens who are permanently residing in the United States under color of law include but are not limited to those listed below. Also listed is the proof that we ask for:

(1) Aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7), (section 203(a)(7) of the Immigration and Nationality Act). We ask for INS Form I-94 endorsed "Refugee-Conditional Entry";

(2) Aliens paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) (section 212(d)(5) of the Immigration and Nationality Act) including Cuban/Haitian Entrants. We ask for INS Form I-94 with the notation that the alien was paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian Entrants, we ask for INS Form I-94 stamped "Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." (Although the forms bear this notation, Cuban/Haitian Entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act.);

(3) Aliens residing in the United States pursuant to an indefinite stay of deportation. We ask for an Immigration and Naturalization Service letter with this information or INS Form I-94 with such a notation;

(4) Aliens residing in the United States pursuant to an indefinite voluntary departure. We ask for an Immigration and Naturalization Service letter or INS Form I-94 showing that a voluntary departure has been granted for an indefinite time period;

(5) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for a copy of INS Form I-94 or I-210 letter showing that status;

(6) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as "properly filed" (within the meaning of 8 CFR 242.5(a) or (b)) or granted and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-181 or a passport properly endorsed;

(7) Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to 8 U.S.C. 1253(a) (section 243 of the Immigration and Nationality Act) or relevant Immigration and Naturalization Service instructions, whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-94 or a letter from the Immigration and Naturalization Service, or copy of a court order establishing the alien's status;

(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). We ask for INS Form I-94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7). We ask for INS Form I-94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to 8 U.S.C. 1252(b) (section 242(b) of the Immigration and Nationality Act) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-94 or I-210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1a(i) prior to June 15, 1984 or 242.1(a)(22) June 15, 1984 and later. We ask for INS Form I-210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 252(d)). We ask for INS Form I-220B;

(13) Aliens who have entered and continuously resided in the United States since before June 30, 1948 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). We ask for any proof establishing this entry and continuous residence;

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act (8 U.S.C. 1254). We ask for INS Form I-94 and an order from the immigration judge; or

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld.

(c) *How we determine if the Immigration and Naturalization Service contemplates enforcing your departure.*

(1) If you have a document that shows that you have an Immigration and Naturalization Service status that is valid for an indefinite period, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. We will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that it does not contemplate enforcing your departure. If the Immigration and Naturalization Service indicates it does not contemplate enforcing your departure we will continue your benefits. However, if the Immigration and Naturalization Service indicates it does contemplate enforcing your departure we will suspend your benefits under § 416.1329.

(2) If you have a document that shows you have an Immigration and Naturalization Service status valid for at least 1 year, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that it does not contemplate enforcing your departure. If the Immigration and Naturalization Service indicates it does not contemplate enforcing your departure we will continue your benefits. However, if the Immigration and Naturalization Service indicates it does contemplate enforcing your departure we will suspend your benefits under § 416.1329.

(3) If you have a document that shows you have an Immigration and Naturalization Service status valid for less than 1 year, we will contact the Immigration and Naturalization Service to verify that it will continue to renew your status and, therefore, does not contemplate enforcing your departure before we pay you any benefits.

(4) If the Immigration and Naturalization Service at any time after you begin receiving benefits indicates that it contemplates enforcing your departure, we will suspend your benefits under § 416.1329 and any benefits you have received after the date the Immigration and Naturalization Service began contemplating enforcing departure will be overpayments under Subpart E of this Part.

(d) *What to do if you do not meet one of the categories or cannot give us the proof listed in paragraph (b).* If you are not within one of the above categories or you cannot give us any of the documents listed in paragraph (b), we may still find you to be permanently residing in the United States under color of law if you—

(1) Explain why you cannot give us any of the documents; and

(2) Give us any information you have which supports the fact that you are living in the United States with the knowledge and permission of the Immigration and Naturalization Service and the Immigration and Naturalization Service does not contemplate enforcing your departure from the United States. We will contact the Immigration and Naturalization Service to help establish that you meet this rule.

(e) *What "United States" means.* We use the term "United States" in this section to mean the 50 States, the District of Columbia, and the Northern Mariana Islands.

[FR Doc. 86-6088 Filed 3-17-86; 2:58 pm]

BILLING CODE 4190-11-M

DEPARTMENT OF STATE

Assistant Secretary for Consular Affairs

22 CFR Part 71

[No. SD-196]

Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to add a new Subpart C to 22 CFR Part 71 identifying the eligibility criteria and services covered in the Department of State's emergency medical/dietary assistance loan programs for temporarily destitute U.S. citizens abroad. These three loan programs—emergency medical, dietary, and subsistence assistance—in large part parallel the programs for incarcerated U.S. citizens abroad (see 22 CFR Part 71, Subpart B).

Emergency medical and short term dietary assistance to destitute U.S. citizens abroad was authorized by an amendment [Sec. 108, Pub. L. 95-426, 92 Stat. 966, 22 U.S.C. 2670 (j) (retroactively effective to October 1, 1978)] to Pub. L. 95-45, 91 Stat. 221, 22 U.S.C. 2670 (j)]. It was enacted to ensure that when an emergency occurs, all Americans abroad may have access to life-sustaining assistance. Although the Department implemented this program by internal instructions in 1979, experience now permits formal publication of rules with respect thereto.

DATES: Comments must be received on or before May 19, 1986.

ADDRESS: Written comments should be addressed to John H. Adams, Director, Citizens Emergency Center, Overseas Citizens Services, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Thomas L. Randall, Jr., Chief, Latin America and the Caribbean, Citizens Emergency Center, Department of State, Washington, DC 20520, (202) 647-5225.

SUPPLEMENTARY INFORMATION: Pub. L. 95-45, 91 Stat. 221, 22 U.S.C. 2670 (j), (1977), authorized the Department of State to provide emergency medical and dietary assistance to U.S. citizens incarcerated abroad. In implementing this law, it soon became apparent that there was another group of Americans overseas who frequently needed emergency assistance and whom the Department was unable to help. As the Assistant Secretary of Consular Affairs testified in 1978 before Congress: "We now have the authority and funds to assist Americans who are in prison and also those who need financial assistance to return home. We do not, however, have the authority or funds to help Americans who are traveling and who may be the subject of a tragic occurrence such as having their luggage, passport, or wallet stolen or who are injured in an accident. They are destitute, but only for a short period of time while they are sending back home for additional funds."

In response to the Department's request, the Congress enacted Sec. 108, Pub. L. 95-426, 92 Stat. 966, 22 U.S.C. 2670(j), which authorizes the Department to provide short term emergency loans to destitute Americans overseas. There are three programs the Department administers under this law. Emergency medical assistance is provided U.S. citizens abroad when such assistance is needed to protect life or limb and cannot be funded privately, or will not be provided by the host government, or supplied by a local medical facility unless an assurance of payment is provided in advance. Loans for dietary assistance are available to destitute U.S. citizens who are not seeking to return to the United States but require such assistance on an emergency basis. Finally, loans for up to three days emergency subsistence are available to those who are temporarily destitute but can show they are awaiting an overdue check from a U.S. Federal agency or funds from private sources. All three elements of this loan program are authorized only on a reimbursable basis and require the completion of a loan application and a promissory note before funds are disbursed.

The Department believes that the proposed rule for administering the emergency medical and dietary assistance programs for temporarily destitute Americans abroad complies with the intent of Congress and will not adversely affect any of the potential applicants.

Since 1979, the Department has successfully administered this program in tandem with the U.S. prisoner emergency assistance loan program under basically the same guidelines. The proposed rule will codify existing practice.

List of Subjects in 22 CFR Part 71

Foreign service, Security measures, Protection and welfare of U.S. citizens abroad, Emergency medical and dietary assistance.

PART 71—[AMENDED]

As proposed, Part 71 would be amended as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: Sec. 4 of the Act entitled, "An Act to strengthen and improve the organization and administration of the Department of State," of May 26, 1949, as amended (63 Stat. 111, 22 U.S.C. 2658); Sec. 2 of "An Act to authorize additional appropriations for the Department of State for fiscal year 1977," of June 15, 1977, as amended (Pub. L. 95-45, 9 Stat. 221, 22 U.S.C. 2670(j)); and Sec. 108(a) of the Foreign Relations Authorization Act, Fiscal Year 1979, of October 7, 1978 (Pub. L. 95-462, 92 Stat. 966, 22 U.S.C. 2670(j)).

2. Subpart C, consisting of §§ 71.13 through 71.15, is added to Part 71 to read as follows:

Subpart C—Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

Sec.
71.13 Emergency medical assistance.
71.14 Short term dietary assistance.
71.15 Temporary subsistence loans while awaiting funds.

Subpart C—Emergency Medical/Dietary Assistance for Temporarily Destitute U.S. Citizens Abroad

§ 71.13 Emergency medical assistance.

(a) *Eligibility criteria.* A destitute U.S. citizen abroad who is not in prison is considered eligible to receive funded medical treatment under the following general criteria:

(1) There is medical evidence that the emergency medical assistance is

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necessary to prevent, or attempt to prevent, death or that failure to provide the service may result in permanent disablement;

(2) All reasonable attempts to obtain private resources in a timely manner (family, friends, etc.) have failed or are impracticable under the circumstances;

(3) Adequate treatment for an emergency physical or psychiatric condition cannot or will not be provided by the host government or by local medical facilities unless advance assurance of payment of costs incurred is given.

(b) *Services covered.* Funds, once approved, may be expended for:

(1) Emergency medical examination, when required;

(2) Emergency treatment;

(3) Non-elective surgery;

(4) Medications and related medical supplies and equipment required to sustain life (such as insulin) or to prevent permanent injury;

(5) Preventive or protective medications and medical supplies and equipment (vaccinations, inoculations, etc.) required to combat epidemic conditions (general or intramural);

(6) Childbirth attendance, including necessary medical care of newborn children; and

(7) Transportation for the U.S. citizen and attendant(s) between the citizen's residence or site where injury/illness occurred and the place(s) of treatment.

(c) *Consular responsibility.* As soon as the consular officer is aware that a destitute U.S. citizen, whether a resident abroad or a traveler, faces a physical or psychiatric emergency requiring immediate medical attention to prevent the loss of life or serious injury, the officer should take the following actions:

(1) Make every effort to contact the ill or injured U.S. citizen as soon as possible;

(2) Obtain a professional medical diagnosis and prognosis of the U.S. citizen's condition;

(3) Determine as accurately as possible the estimated costs of required treatment or transportation;

(4) Obtain the names and addresses of family or friends who might serve as a source of private funds for medical services, and attempt to obtain the necessary funds;

(5) If the circumstances permit, obtain a promissory note from the citizen, since funds expended by the Department to cover medical services are provided on a reimbursable basis to the extent feasible; and

(6) Report to the Department concerning the above information for approval and authorization.

(d) *Pre-authorised expenditures.* When a medical emergency precludes contacting the Department to obtain advance authority to expend funds, the consular officer can expend up to an amount to be established by the Department without prior Departmental approval if:

(1) Immediate emergency medical treatment or surgery is necessary to prevent death or permanent disablement, and there is insufficient time to explore sources or private funds or obtain Departmental approval; and

(2) A promissory note already has been executed by the U.S. citizen, or if the circumstances warrant, by the consular officer without recourse.

§ 71.14 Short term dietary assistance.

(a) *Eligibility criteria.* A U.S. citizen is considered eligible for financial assistance for food and lodging under the short term dietary assistance program if the following general criteria are met:

(1) The U.S. citizen is not seeking repatriation but is in a situation of an emergency nature;

(2) Food and lodging are not available from any other sources, including private funding from family or friends; and

(3) The U.S. citizen executes a promissory note for funds expended, since the assistance is on a reimbursable basis to the extent feasible.

(b) *Consular responsibility.* As soon as the consular officer is aware that a destitute U.S. citizen needs dietary assistance, the consular officer should:

(1) Contact the citizen in accordance with existing procedures;

(2) Determine the normal cost of basic diet and lodging and the best method of effecting payment;

(3) Attempt to secure funds from private sources such as family or friends.

(4) Because funds expended by the Department to cover the short term dietary assistance program are provided on a reimbursable basis to the extent feasible, have the citizen execute a promissory note; and

(5) Contact the Department, providing the above information, for approval and authorization.

(c) *Pre-authorised expenditures.* Since the immediate need for assistance under the short term dietary program often precludes contacting the Department and receiving authority to expend funds, consular officers can expend up to an amount to be establishment by the Department without prior Departmental approval if the citizen's case meets the criteria establsihed under paragraph (a) of this section. Expenditures above the predetermined limit must receive the prior approval of the Department.

(d) *Terminationof loan.* This program is intended only to provide short term emergency dietary assistance for a citizen who may plan to remain abroad for some period of time. If the beneficiary does not obtain further assistance from private or local public sources, the consular officer should suggest that the applicant return to the United States, where sustained or long term assistance is available. If the beneficiary refuses to make application for a repatriation loan, the consular officer should obtain instructions from the Department.

§ 71.15 Temporary subsistence loans while awaiting funds.

(a) *Eligibility criteria.* A citizen (and accompanying alien spouse or unmarried children who are members of their households) are considered eligible for emergency temporary subsistence under the following general criteria:

(1) The applicant is not seeking repatriation, is temporarily destitute, and would suffer hardships while awaiting receipt of funds from private sources or an overdue check from a federal agency;

(2) The applicant can demonstrate that sufficient private funds have been requested and/or are readily available from private sources, a banking institution for immediate transfer, or an overdue federal benefits check; and

(3) The applicant agrees in writing to repay promptly the temporary subsistence loan upon receipt of funds from private sources and/or a Federal check.

(b) *Ineligible persons.* The following persons are specifically excluded from receiving temporary subsistence loans under this section:

(1) U.S. citizens seeking return to the United States;

(2) U.S. citizens not seeking to return to the United States who are incarcerated and who are eligible for assistance under sections §§ 71.10, 71.11, and 71.12; and

(3) U.S. citizens who have not repaid official funds previously expended in their behalf under this section.

(c) *Consular reponsibility.* As soon as a consular officer is aware that a temporarily destitute U.S. citizen needs assistance, the consular officer should:

(1) Determine if the U.S. citizen is eligible under paragraphs (a) and (b) of this section;

(2) Confirm that the applicant does, in fact, have a source of funds readily

available from which repayment can be made; and

(3) Have the applicant execute a loan application and promissory note agreeing to repay the loan upon receipt of funds from private sources and/or a Federal check.

(d) *Pre-authorized expenditures.* The consular officer may expend for the subsistence of each applicant an amount not to exceed the amunt of three days per diem at the U.S. Government authorized per diem rate applicable at the post. An additional two days of subsistence may be expended in exceptional circumstances.

Dated: July 29, 1985.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 86-5941 Filed 3-18-86; 8:45 am]

BILLING CODE 4710-06-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Implementation of Equal Access to Justice Act

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: On 25 July 1985, Congress passed Pub. L. 99-80, 99 Stat. 183, amending and reauthorizing the Equal Access to Justice Act, retroactive to 1 October 1984. On 5 August 1985, the President signed the legislation and the amended Equal Access to Justice Act became law. The rules of the National Labor Relations Board have not been changed since initially established in October 1981. These proposed revisions are to change the rules as they are affected by the 1985 amendments to the Equal Access to Justice Act and, in one instance, to conform language in the rules to the statutory language.

DATE: Comments by: April 18, 1986.

ADDRESS: Send or deliver written comments to: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), and in accordance with the requirements of 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)), the National Labor Relations Board gives notice of its intent to promulgate a revision to its rules implementing the Equal Access to Justice Act governing the award of fees and other expenses to eligible parties who prevail in litigation before the Agency. In 1985, the Equal Access to Justice Act was amended with the changes in the Act made applicable to any case commenced after 1 October 1984. The amendments that affect the Board's procedures and require a revision of the Board's rules are those increasing the net worth eligibility limits and adding small local governmental units as parties eligible for an award. In drafting these rules, consideration has been given to the model prepared by the Administrative Conference of the United States (50 FR 46250) when appropriate.

Section 102.143(c) of the Board's rules presently provides that applicants who are eligible to receive awards include individuals with net worth of no more than $1 million, and the sole owner of an unincoporated business, a partnership, a corporation, an association, or a public or private organization with a net worth of not more than $5 million and not more than 500 employees. This section is amended to substitute the new net worth limitations of $2 million and $7 million for $1 million and $5 million, respectively. In addition, this section of the rules is amended to provide that a "unit of local government" is a party eligible to receive an award.

Section 102.144(a) is amended to include the statutory language "substantially justified" to evaluate the position of the General Counsel in place of the phrase "reasonable in law and fact." The case law under the Equal Access to Justice Act and Committee reports accompanying the amendments to the Act raise questions as to whether "reasonable in law and fact" remains a viable standard. To avoid any confusion or misunderstanding, the statutory language has been used.

Section 102.147(b) is amended to require that an application for an award include a statement that net worth does not exceed $2 million for an individual and $7 million for all other applicants, reflecting the higher net worth figures in the amended Act.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Equal access to justice.

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

Accordingly, it is proposed to amend 29 CFR Part 102 as follows:

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Sections 102.143(c), 102.144(a), and 102.147(b) also issued under sec. 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.143(c) is revised to read as follows:

§ 102.143 "Adversary adjudication" defined' entitlement to award; eligibility for award.

* * * * *

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

3. Section 102.144(a) is revised to read as follows:

§ 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel's position in the proceeding was substantially justified.

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4. Section 102.147(b) introductory text is revised to read as follows:

102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

* * * * *

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

Dated, Washington, D.C., March 11, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-5961 Filed 3-18-86; 8:45 am]

BILLING CODE 7545-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300140 FRL-2984-8]

Polypropylene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption from the requirement of a tolerance for polypropylene when used as an inert ingredient (Carrier) in pesticide formulations applied to animals. This proposed regulation was requested by Akzo Chemie America.

DATE: Written comments, identified by the document control number [OPP-300140], must be received on or before April 18, 1986.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava,
Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number:
Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Akzo Chemie America, the Administrator proposes to amend 40 CFR 180.1001(e) by expanding the existing exemption from the requirement of a tolerance for polypropylene. This ingredient is listed for use as a component of plastic slow-release tags in pesticide formulations applied to animals, and the amendment would add the additional use use as a carrier. A separate entry is not necessary in order to reflect this change.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Polypropylene.

Name and address of requestor. Akzo Chemie America, McCook, IL 60525.

Bases for approval. Polypropylene is already cleared under 40 CFR 180.1001(e) for use as a component of plastic slow-release tags (see the Federal Register of August 8, 1984 (49 FR 31695)). The present clearance can be amended to reflect this change of an additional use as a carrier. The Agency does not consider this additional use as a carrier to be of toxicological significance. Accordingly, the present entry in 40 CFR 180.1001(e) should be amended to reflect this additional use as a carrier.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains this inert ingredient may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300140]. All written comments filed in response to this notice of proposed rulemaking will be avaliabe for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for 40 CFR Part 180 continues to read as set forth below:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(e) is amended by revising the entry for Polypropylene, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* *	* * *
Polypropylene (CAS. Reg. No. 9003-07-0).	Carrier, component of plastic slow-release tag.	
* *	* *	* * *

[FR Doc. 86-5751 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 765

[OPTS-62033A; FRL-2967-8]

Toxic and Hazardous Substances Control; Formaldehyde; Termination of Regulatory Investigation Concerned With Occupational Exposure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of termination of EPA's regulatory investigation of occupational exposure to formaldehyde.

SUMMARY: This notice announces the termination of EPA's regulatory investigation addressing potential risks arising from occupational exposure to formaldehyde. The Department of Labor's Occupational Safety and Health Administration (OSHA) has initiated regulatory action to address this risk. EPA has determined that OSHA has authority under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, to sufficiently reduce this risk, and EPA is taking this action, therefore, to avoid duplicative Federal regulatory activity and to redirect its own regulatory resources. In accordance with section 9(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(d) EPA has transmitted to OSHA all studies and documents in EPA's docket pertaining to this issue. EPA will continue to investigate formaldehyde exposures that are occurring in other non-occupational settings, especially those arising from the use of pressed wood products made with formaldehyde-based resins.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll-Free: 800-424-9065. In Washington, DC.: 554-1404.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 1984, EPA issued a notice in the Federal Register entitled "Formaldehyde; Determination of Significant Risk" (49 FR 21896). This notice announced that EPA had determined, under section 4(f) of TSCA, that there might be a reasonable basis to conclude that certain exposures to formaldehyde present or will present a significant risk of widespread harm to humans from cancer. Concern for the health of persons exposed to formaldehyde in the following exposure conditions triggered this determination: (1) Occupational exposure arising from the manufacture of apparel using fabrics treated with formaldehyde-based resins, and (2) residential exposure occurring in conventional and manufactured (mobile) homes where construction materials are used that contain certain formaldehyde-based resins. In conjunction with that notice, EPA issued at the same time an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (49 FR 21870). The ANPR initiated "appropriate action," as required by section 4(f) of TSCA, by announcing that EPA had begun a full investigation of regulatory options to address the health risks associated with these exposure categories.

II. Occupational Exposure

A. Apparel Manufacturing Workers

Exposure to formaldehyde in apparel-manufacturing workers arises principally form the slow release of formaldehyde from textiles treated with most commercial durable press (DP) finishes. An estimated 50 percent of all garments sold in the U.S. have DP finishes. The rate of formaldehyde release varies according to the type of finish used and local environmental conditions existing within a given workplace.

Monitoring data available to EPA indicate that the average pre-1980 ambient workplace exposure level in the apparel-manufacturing industry was probably below 3 ppm; the average value may have declined since then. Current exposure data, however, are limited. Data from a 1983 National Institute for Occupational Safety and Health (NIOSH) study of two large manufacturers of shirts show that workplace levels were at, or below, 0.51 ppm on a time weighted average (TWA) basis, and the combined mean exposure level was 0.17 ppm. From other data, EPA has estimated that exposure levels may range from 0.23 to 0.64 ppm.

Approximately 800,000 apparel workers may be regularly exposed to formaldehyde emitted from DP-treated textiles. This number of workers constitutes 70 percent of the total population estimated to be at risk currently from occupational exposures to this chemical. In other occupational groups, the risk estimates for an individual worker were generally similar to that calculated for apparel workers, but far fewer workers are exposed in these other industries.

Workplace exposure to formaldehyde emitted from DP-treated textiles is believed to have diminished substantially over the last decade due to engineering controls put in place by the apparel manufacturing industry, and to advances in chemical technology that have yielded low or zero formaldehyde-emitting DP resins. This decline in formaldehyde emissions from DP-treated fabric is believed to have been encouraged, in part, by consumer preference for fabrics without a formaldehyde odor. High formaldehyde-emitting DP finishes are now rarely used. EPA believes that further reductions in, or elimination of, apparel workers' exposure to formaldehyde may be technically feasible and may be achieved principally by using methods such as low formaldehyde-emitting finishes, optimizing the finishing conditions at textile plants, or diminishing the use of sensitized fabrics that require post-curing following apparel assembly.

B. Other Worker Exposure

In making its section 4(f) determination concerning formaldehyde, EPA reviewed all available data on known human exposures to the chemical. Over 30 occupationaliy-exposed populations were identified. Detailed discussion of these populations

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can be found in the **Federal Register** of May 23, 1984 (49 FR 21870).

III. Conclusion

On December 10, 1985, OSHA published in the **Federal Register** a proposed standard that addresses formaldehyde exposure risks to workers in all occupational settings, including workers engaged in apparel manufacturing (50 FR 50412). The proposed standard limits permissible exposure to 1 ppm or 1.5 ppm, as an 8-hour, time-weighted average, and would regulate formaldehyde as an irritant or carcinogen.

This action by OSHA demonstrates that its statutory authority may prevent or reduce to a sufficient extent the risks connected with formaldehyde exposure to workers in apparel manufacturing. EPA has therefore terminated its regulatory investigation of formaldehyde exposure in apparel manufacturing. By this action, EPA will avoid engaging in duplicative Federal rulemaking activities and will be able to redirect some of its regulatory resources.

In order to assist OSHA in its deliberations, and in accordance with section 9(d) of TSCA, 15 U.S.C. 2608(d), EPA has transmitted to OSHA copies of all studies and documents in EPA's docket that may pertain to their rulemaking, including data collected prior to the 4(f) determination on occupational categories other than apparel exposure, and is prepared to provide technical support to OSHA, if requested.

EPA will continue to investigate for possible regulatory action formaldehyde exposure arising from the use of pressed wood products; this activity will involve close coordination with OSHA and other appropriate Federal regulatory agencies.

Dated: March 11, 1986.

Lee M. Thomas,
Administrator.

[FR Doc. 86–5972 Filed 3–18–86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 83–525; FCC 86–29]

Inquiry Into Policies To Be Followed in the Authorization of Common Carrier Facilities

AGENCY: Federal Communications Commission.

ACTION: Summary of notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is necessary to develop policies and guidelines for the construction and use of common carrier transmission facilities in the Caribbean region during the 1985–1995 period. This notice of proposed rulemaking sets forth the Commission's tentative conclusions regarding the guidelines the Commission will follow in considering applications for the construction and use of common carrier facilities in the Caribbean region during the 1985–1995 period and requests comments on those tentative conclusions.

The Commission tentatively concludes that the range of alternative facilities plans submitted in response to the Notice of Inquiry which should receive further consideration can be narrowed. The Commission further tentatively concludes that circuits used by all carriers to provide all services, other than circuits used by the American Telephone and Telegraph Company (AT&T) for the provision of international message telephone service (IMTS) and 800 Service-Overseas should be exempted from specific circuit distribution guidelines.

DATES: Entities made parties to this proceeding shall, and other interested parties may submit:

A. The additional information requested by February 25, 1986
B. Comments by March 27, 1986
C. Reply Comments by April 11, 1986.

ADDRESS: Responses to this notice should be submitted to: The Secretary Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, Jacqueline Spindler, International Policy Division, Common Carrier Bureau, Federal Communications Division, Washington, DC 20554, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

In the matter of Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985–1995 Period; CC Docket No. 83–525.

This is a summary of the Commission's notice of proposed rulemaking adopted January 14, 1986 and released February 5, 1986. Commissioner Dawson concurring and issuing a statement at a later date.

The full text of this Commission Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (Notice), the Commission is seeking comments and additional information to aid it in developing United States policies and guidelines governing the participation of the United States International Service Carriers (USISCs) and the Communications Satellite Corporation (Comsat) in the construction and use of common carrier transmission facilities in the Caribbean region during the 1985–1995 period. The Commission examines the facilities planning information alternative facilities plans and the analyses of those plans submitted by the USISC's and Comsat reaches certain tentative conclusions and requests additional information of the USISCs and Comsat.

2. The Commission tentatively concludes that the range of alternative facilities construction and use plans which should receive further consideration can be narrowed. Specificaly, the Commission tentatively concludes that the USISC's Plans 1, 2 and 2A can be excluded from further consideration. The Commission notes that the analog cables proposed by these plans had higher per circuit and total system costs than the digital, optical fiber submarine cables being proposed in another USISC plan. Moreover, recent updates of the American Telephone and Telegraph Company's (AT&T) traffic forecast appears to confirm the USISC's conclusion that existing cable and satellite facilities in the Caribbean region are adequate to satisfy demand for service for the near term. In addition, it appears that the development of digital, optical fiber submarine cables operating at 45 and 90 megabits per second (mb/s) as proposed in these three USISC plans has been abandoned, at least at this time, in favor of using digital, optical fiber submarine cables operating at 140 and 280 mb/s.

3. Because the Commission does not have before it cost, demand flexibility or service reliability analyses for any of the USISC or Comsat alternative plans based on AT&T's most recent traffic forecast update or information on all INTELSAT options for replacement of INTELSAT V–A satellites, the Commission is unable to reach firm tentative preferences for all aspects of any of the alternative plans before it. It therefore requests the USISCs and

Comsat to provide updated traffic forecasts, a full range of analyses and other information. The information requested is set forth in Attachment 1 of the Notice and is available with the complete text of the Notice.

4. The Commission also describes a number of its previous decisions in which factors such a fostering the development of technological innovations, the introduction of new, more cost effective technologies and the maintenance of adequate service reliability through media and route diversity and redundancy had been considered in reaching those decisions. The Commission requests interested persons to comment on the applicability of these prior decisions to its decision in this proceeding. The Commission also notes that its observations pertaining to these prior decisions will also have to be considered in light of its examination of the cost and demand flexibility analyses for the USISCs' Plan 2A Modified and the Comsat's No New Cable plans based on the USISCs' most recent traffic forecast and the other information it is requesting be submitted.

5. The Commission also tentatively concludes that the general approach to circuit distribution guidelines it has recently adopted in the North Atlantic and Pacific regions is applicable as well to the Caribbean region. Therefore, the Commission tentatively concludes that circuits used by any carrier for the provision of any service, with the exception of circuits used by AT&T for the provision of international message telephone service (IMTS) and 800 Service-Overseas, should not be subjected to circuit distribution guidelines. The Commission does not reach tentative conclusions regarding circuit distribution guidelines for AT&T's IMTS and 800 Service-Overseas circuits but, rather, requests comments on AT&T's modified economic loading proposal and on any additional circuit distribution proposals the parties may wish to submit. The Commission also requests comments on its tentative conclusion that the general approach it took in the North Atlantic and Pacific regions with respect to circuit distribution is equally applicable to the Caribbean region. The Commission notes that there also have been a number of other recent developments affecting the international telecommunications environment and requests the parties to provide it with their views on what effect these developments should have on its development of circuit distribution guidelines.

6. The Commission also tentatively concludes that the question of whether AT&T should be required to continue to make capacity available on an indefeasible right of user basis in its domestic satellite system used by the other USISCs to provide services between the United States mainland and the Virgin Islands and Puerto Rico is a domestic communications matter which is not germane to this proceeding.

Ordering Clauses

7. Accordingly, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1976) and section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1976), IT IS ORDERED that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Caribbean region during the 1985–1995 period is hereby instituted.

8. It is further ordered, that All America Cables and Radio, Inc., the American Telephone and Telegraph Company, the Communications Satellite Corporation, ITT Communications Inc.–Virgin Islands, ITT World Communications Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, and the Western Union Telegraph Company are made parties respondent to the rulemaking initiated herein.

9. It is further ordered, that the parties named herein shall file the additional planning information requested in ATTACHMENT 1 on or before the dates there indicated.

10. It is further ordered, pursuant to applicable procedures set forth in §§ 1.410 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.410 and 1.415 (1983), that, on or before March 27, 1986, all parties to this proceeding must file, and other interested persons may file, comments, on the issues in this proceeding and that, on or before April 11, 1986, interested persons may file reply comments. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching decision on this matter, we may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of our reliance upon such information is noted in our Report and Order. Participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Those filing comments in this proceeding should serve copies thereof upon the persons named as parties in the preceding paragraph supra. They should serve reply comments upon all those who file comments in this rulemaking. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

11. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time it issues a public notice stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's rules, 47 CFR 1.1231 (1983).

12. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), it is certified, that sections 603 and

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604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances," 5 U.S.C. 601(2).

13. It is further ordered, that the Secretary shall provide a copy of the above certification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the **Federal Register**.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5901 Filed 3-18-86; 8:45 am]

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Notices

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 14, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Agricultural Cooperative Service

Agricultural Exports by Cooperatives, 1985
Five year intervals
Businesses or other for-profit; Small businesses or organization; 113 responses; 57 hours; not applicable under 3504(h)
Tracey L. Kennedy, (202) 382-1759.

- Economic Research Service

Natural Resource and Manufactured Input Use Survey
Annually
Farms; 600 responses; 300 hours; not applicable under 3504(h)
Dr. John Schaub, (202) 786-1469.

- Food and Nutrition Service

Deficit Reduction Act
Recordkeeping; Annually
State of local governments; 53 responses; 1,120,298 hours; not applicable under 3504(h)
John S. Hitchcock, (703) 756-3385.

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR Part 1435—Price Support Loan Program for Sugar Beets and Sugarcane
CCC-278; SU-2 SU-3
Annually
Businesses or other for-profit; 3,130 responses; 900 hours; not applicable under 3504(h)
Ross Ballard, (202) 447-8480.

- Farmers Home Administration

7 CFR 1945-D, Emergency Loan Policies, Procedures and Authorizations
FmHA 1940-38, 1945-22
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 126,705 responses; 68,435 hours; not applicable under 3504(h)
Jim Chrysler, (202) 382-1657.

- Farmers Home Administration

7 CFR 1924-F, Complaints and Compensation for Construction Defects
FmHA 424-4
On occasion
Individuals or households; 6,600 responses; 3,250 hours; not applicable under 3504(h)
Dave Villano, (202) 382-1452.

Revision

- Agriculture Marketing Service

Reporting and Recordkeeping Requirements Under 7 CFR 29
Form TB-87, TB-88
Recordkeeping: On occasion
Businesses or other for-profit; Small businesses or organizations; 14,208 responses; 2,769 hours; not applicable under 3504(h)
Larry Crabteee, (202) 447-2337.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-5998 Filed 3-18-86; 8:45 am]

BILLING CODE 3410-01-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 6:00 p.m., on April 3, 1986, at the Biscayne Bay Marriott Hotel, Palm Island Room, 1633 North Bayshire Drive, Miami, Florida. The purpose of the meeting is to discuss and approve the briefing memorandum *Impact of Immigration Laws and Practices in Southern Florida* and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committe Chairperson, Paul Porter or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391 (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6001 Filed 3-18-86; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and the CAC on Population Statistics. The joint meeting will convene on April 10, 1986, at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the April 10 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is introductory remarks by the Director, Bureau of the Census, including staff changes and Census Bureau organization, budget and program developments, and other topices of current interest.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:30 a.m. and adjourn at 5:15 p.m. on April 10 are as follows:

The CAC of the AEA: (1) Report of the Nonsampling Error Task Force (joint with CAC of the ASA), (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA, (3) improving the response rates for economic surveys (joint with CAC and ASA), (4) coverage and publication of data for nonemployer businesses in the 1982 and 1987 Economic Censuses (joint with CAC of the AMA), (5) longitudinal establishment data file, and (6) Census Bureau responses—Part 2.

The CAC of the AMA: (1) Secondary services—what are they and how do you measure them? (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, (3) report of the nonsampling Error Task Force (joint with CAC on Population Statistics), (4) coverage and publication of data for nonemployer businesses in the 1982 and 1987 Economic Censuses, (joint with CAC of the AEA), (5) marketing of economic census products, and (6) Census Bureau responses—Part 2.

The CAC of the ASA: (1) Report of the Nonsampling Error Task Force (joint with CAC of the AEA); (2) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA; (3) improving the response rates for economic surveys (joint with CAC of the AEA); and (4) four aspects of the Survey of Income and Program Participation (SIPP) including: (a) Planned data collection methodology, (b) analysis of the data, (c) planned evaluation procedures, and (d) nonsampling error (joint with CAC on Population Statistics).

The CAC on Population Statistics: (1) Plans for 1990 census data products; (2) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics; (3) report of the Nonsampling Error Task Force (joint with CAC of the AMA); (4) four aspects of SIPP including: (a) Planned data collection methodology, (b) analysis of the data, (c) planned evaluation procedures, and (d) nonsampling error (joint with CAC of the ASA); and (5) Census Bureau responses—Part 2.

The agendas for the April 11 meetings that will begin at 8:45 a.m. and adjour at 3 p.m. are:

The CAC of the AEA: (1) Alternative ways of classifying economic activities (joint with CAC of the AMA); (2) release of economic and agricultural census data by ZIP Code (joint with CAC of the AMA); (3) development and discussion of recommedations; and (4) closing session including: (a) Continued Committee and staff discussion, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Alternative ways of classifying economic activities (joint with CAC of the AEA); (2) release of economic and agricultural census data by ZIP Code (joint with CAC of the AEA); (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussions, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC of the ASA: (1) Panel on Decennial Census Methodology of the Committee on National Statistics (joint with CAC on Population Statistics); (2) test census results; (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussions, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) Panel on Decennial Cenus Methodology of the Committee on National Statistics (joint with CAC of the ASA); (2) postcensal estimates of households for states and counties; (3) development and discussion of recommendations; and (4) closing session including: (a) Continued Committee and staff discussion, (b) comments by outside observers, and (c) plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 11 for public comment and questions. Those persons with extentive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Alfred J. Tella, Office of the Director, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland, (Mailing address; Washington, D.C. 20233). Telephone (301) 763–7914.

Dated: March 13, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–5956 Filed 3–18–86; 8:45 am]

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International Trade Administration

[A–588–505]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that dynamic random access memory semiconductors of 256 kilobits and above from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of dynamic random access memory semiconductors of 256 kilobits and above from Japan whether in the form of processed wafers, unmounted die, mounted die, or assembled devices that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by May 27, 1986.

EFFECTIVE DATE: March 19, 1986.

FOR INFORMATION CONTACT: Stephen Munroe, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2923.

Preliminary Determination

We have preliminarily determined that dynamic random access memory semiconductors of 256 kilobits and above (256K and above DRAMs) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930 ("the Act"). Except for Mitsubishi, we made fair value comparisons on all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation. Because we received an untimely response to our questionnaire from Mitsubishi, we used the best information available to determine its margin. The margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 6, 1985, the Department of Commerce ("the Department") initiated an antidumping duty investigation under section 732(a) of the Act, to determine whether 256K and above DRAMs are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and whether these imports are materially injuring, or are threatening material injury to a United States industry, or are materially retarding the etablishment of a United States industry (50 FR 51450, December 17, 1985). The notice also indicated that the Department is examining whether sales of the subject merchandise are being made at less than the cost of production. On December 9, 1985 we notified the International Trade Commission ("ITC") of our action. On January 22, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of Japanese 256K and above DRAMs are materially injuring or threatening to materially injure a U.S. industry (51 FR 4661, February 6, 1986).

On December 24, 1985, we presented antidumping duty questionnaires to Fujitsu Limited, Hitachi Ltds., Mitsubishi Electric Corporation, NEC Corporation, and Toshiba Corporation. Those respondents were requested to answer the questionnaires within 30 days. However, at the request of the companies, we granted a two-week extension for responses to our questionnaires. On February 6, 1986, we received responses from all companies except Mitsubishi. We received Mitsubishi's response on February 13, 1986. After analysis of the resposes, the Department requested supplemental information from each of the respondents. The Department received additional information from Fujitsu, Hitachi, NEC and Toshiba on February 25 and 26, 1986. Mitsubishi submitted additional information on March 6, 1986.

Products Under Investigation

The merchandise covered by this investigation is Japanese DRAMs having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices. Finished DRAMs of 256 kilobits and above are currently classifiable under items 687.7443 and 687.7444 of the *Tariff Schedules of the United States, Annotated* ("TSUSA"). Unassembled DRAMs, including processed wafers and mounted and unmounted die, are currently classifiable under item 687.7405 of the *TSUSA*.

In the notice of initiation in this case, we tentatively included in the scope of this investigation processed wafers and dice produced in Japan and assembled into finished DRAMs in another country prior to importation into the United States from the other country. On January 3, 1986, we notified the ITC that we had determined not to investigate such third-country imports. We subsequently notified interested parties of this determination. Specifically, 256K DRAMs assembled by mounting, bonding, and encapsulating wafers and dice in a third country are not within the scope of this investigation. The basis for this decision was that, upon review, we concluded that these third-country imports were not a part of the concern which gave rise to this investigation.

We investigated sales of 256K and above DRAMs during the period July 1, 1985 through December 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for Fujitsu, Hitachi, NEC, and Toshiba using data provided in their responses, as explained in the "Foreign Market Value" section of this notice except where otherwise noted. For purposes of this preliminary determination, we used the date of shipment as the date of sale in both the U.S. and home markets. We will continue to evaluate at verification and for the final determination whether these are the appropriate dates for determining when a sale occurs.

For Mitsubishi, we made our fair value comparison using the best information available for both United States price and foreign market value. We were unable to include Mitsubishi's untimely response in our analysis.

United States Price

As provided in section 772(b) of the Act, for certain Hitachi and Fujitsu sales we used the purchase price of the subject merchandise to represent United States price where the merchandise was sold to unrelated purchasers prior to its importation into the United States. For other Hitachi and Fujitsu sales and sales

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of all other respondents, in accordance with section 772(c) of the Act, we used exporter's sales price (ESP) to represent United States price, since the merchandise was sold to unrelated purchasers after the date of importation.

We calculated purchase price and ESP based on the packed, c.i.f. or f.o.b. prices to unrelated purchasers in the United States. For purchase price, we made deductions for foreign inland freight and insurance, brokerage charges, air freight and international air insurance. For ESP, where appropriate, we made deductions for discounts, rebates, where appropriate, we made deductions for discounts, rebates, brokerage charges in Japan and the U.S., foreign inland freight and insurance, air freight and international air insurance, U.S. freight and insurance, commissions to unrelated parties, U.S. selling expenses incurred in Japan and in the U.S., including credit expenses, warranties, technical services, royalties, and advertising. We also deducted any increased value resulting from further processing in the U.S.

Foreign Market Value

In accordance with section 773(a) of the Act, for certain Hitachi and Fujitsu sales we calculated foreign market value based on home market prices since there were sufficient home market sales at or above the cost of production, as defined in section 773(b) of the Act to determine foreign market value. We used constructed value as the basis for calculating foreign market value for the remaining Hitachi and Fujitsu sales and for the other respondents because there were insufficient sales above the cost of production.

Where foreign market value was based on home market prices, we calculated a foreign market value for each product group for each month of the period of investigation due to sharp declines in monthly prices. Where foreign market value was based on constructed value we used a monthly constructed value for each product group due to significant monthly cost fluctuations.

Cost of Production

The Department analyzed the as yet unverified cost submissions, where submitted in a timely manner, of the respondents to determine the sufficiency of such data for the purpose of calculating the cost of production for the preliminary determination. Where the Department determined that a submission was subsequently complete and sufficient, it used the submission for the preliminary determination. However, adjustments to respondents' data were made when it appeared from the explanation provided in the response that certain costs necessary for the production of 256K DRAMs were not included or were not appropriately quantified or valued. Some adjustments were made to the cost of production of all the respondents. These were:

(1) Matching the sales to cost of production incurred two months prior to the sales;

(2) Including the expense of sales credit for the home market sales; and

(3) Including interest expense equal to the percentage of interest expense to the cost of sales, based on the consolidated operations of the company.

For Fujitsu Limited, the product-specific R&D was revised because the cost of production did not include historic R&D costs. The U.S. fabrication expenses were determined by dividing total U.S. cost by production.

For Toshiba, the depreciation expense was revised because Toshiba based such expenses on a useful life of three years for some of its equipment; the product-specific R&D was revised because a clear explanation of the allocation method was not presented.

For Hitachi Ltd., general, administrative and selling expenses were revised because of the apparent omission of certain general costs.

For NEC Corporation, product-specific R&D was included since the company did not include this in its submission and certain depreciation expenses were adjusted because the company did not apply the depreciation method used for its financial statements.

Price to Price Comparisons

For Hitachi and Fujitsu we found sufficient sales above the cost of production for certain product groups to allow use of home market prices in accordance with section 773(a) of the Act to determine foreign market value. Where we used home market prices as the basis for foreign market value, we calculated the home market price on the basis of the f.o.b. or c.i.f. price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight and insurance, discounts, rebates and commissions to unrelated parties. We made adjustments for differences in circumstances of sale for credit terms, technical services, and warranty, in accordance with § 353.15 of the Commerce Regulations. We deducted home market packing costs and added U.S. packing costs. We offset commissions to unrelated parties paid in one market with indirect selling expenses in the other market, when there were no commissions in that market, in accordance with § 353.15(c) of our regulations.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value when there were insufficient home market sales of such or similar merchandise above the cost of production for comparison. For constructed value, the Department used the materials, fabrication, and general expenses, based on the respondents' submissions revised as detailed under the "Foreign Market Value—Cost of Production" section of this notice. The actual general expenses were used, since in all cases, such expenses exceeded the statutory minimum of 10 percent of materials and fabrication. Since all the respondents' submissions indicated that the actual profit for merchandise of the same general class or kind was less than eight percent, the Department used the eight percent statutory minimum for profit. We made adustments under § 353.15 of the Regulations for differences in circumstances of sale between the two markets.

Best Information Available

Since we are unable to fully analyze the sales and the cost of production data submitted by Mitsubishi, we used the highest rate for a responding firm, as the best information available, in accordance with section 776(b) of the Act.

Currency Conversion

In calculating foreign market value, we made currency conversions from Japanese yen to United States dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates for comparisons involving purchase price. For comparisons involving ESP, we used the certified daily exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 ("the 1984 Act"). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

Verification

We will verify all the information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of 256K and above DRAMs from Japan whether in the form of processed wafers, unmounted die, mounted die, or assembled devices that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin/percentage
NEC Corporation	108.72
Hitachi Ltd	19.80
Fujitsu Ltd	74.35
Toshiba Corporation	40.50
Mitsubishi Electric Corporation	108.72
All others	39.66

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on April 18, 1986, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) The number of participants; (3) The reason for attending; and (4) A list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 11, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with § 353.46 of our regulations, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: March 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-5962 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-503]

Certain Iron Construction Castings From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain iron construction castings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice and to require a cash deposit or posting of a bond for each such entry in amounts equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination:

Based upon our investigation, we determine that certain iron construction castings from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We have found margins on sales of iron construction castings for all of the firms investigated. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition filed in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and fifteen individually-named members of the association. Those members are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Works, Inc.; E.L. LeBaron Foundry Co.; Municipal Castings, Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry & Manufacturing Co. and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on June 7, 1985 (50 FR 24008), and notified the ITC of our action. On June 27, 1985, the ITC found that there was a reasonable indication that imports of certain iron construction castings from Brazil are materially injuring, or threatening material injury to, a U.S. industry (50 FR 27498).

We investigated Fundicao Aldebara Ltda. (Aldebara), Sociedade de Metalurgia E Processos Ltda. (Somep), and Usina Siderurgica Paraense S.A. (Usipa), three manufacturers who account for at least 60 percent of the

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exports of the subject merchandise to the United States. We examined all of the sales made by Somep of the subject merchandise during the period of investigation. For Aldebara, we examined 98 percent of its sales to the United States. For Usipa, we examined 73 percent of its sales to the United States. For Aldebara and Usipa, we disregarded those sales for which we had insufficient information.

On July 29, 1985, questionnaires were presented to Aldebara, Somep, and Usipa. Responses to the questionnaires were received between September 4 and September 24, 1985. Supplemental submissions were received between October, 1985 and January, 1986.

On October 21, 1985 we made an affirmative prelimiary determination that certain iron construction castings from Brazil were being, or were likely to be, sold in the United States at less than fair value (50 FR 43591).

We verified the respondents' questionnaire responses in Brazil from January 13 to January 24, 1986. Verification was also conducted at Philipp Brothers, Usipa's parent company, in New York on February 6, 1986.

On October 25 and 26, 1985, we received requests from respondents to extend the date for our final determination to not more than 135 days after the date of publication of the preliminary determination. This request was granted and we postponed our final determination until not later than March 12, 1986 (50 FR 48826).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments and on February 10, 1986, a public hearing was held to allow parties to address the issues arising in this investigation.

Scope of Investigation

The merchandise covered by this investigation consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems (heavy castings); and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters (light castings). These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States* (TSUS). The period of investigation is December 1, 1984 through May 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value based on home market prices or, where appropriate, constructed value as explained below.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price for all respondents because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the F.O.B., C. & F. or C.I.F. packed price to unrelated purchasers in the United States. We deducted, where appropriate, foreign inland freight, handling, brokerage, ocean freight, marine insurance, wharfage, loading and unloading charges and U.S. inland freight. We also made an adjustment for the amount of taxes imposed on such sales in Brazil which were not collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

Price to Price Comparisons

In accordance with section 773(a) of the Act, we calculated foreign market value for Aldebara based on ex-factory or C.&F., unpacked home market prices net of discounts, to unrelated purchasers since there were sufficient sales in the home market at or above the cost of production to determine foreign market value. From these prices we deducted inland freight and insurance. We made adjustments, were appropriate, for differences in credit costs in accordance with section 353.15 of our Regulations (19 CFR 353.15). We also added the packing cost incurred on sales to the United States since the merchandise was sold unpacked in the home market.

We made comparisons of "such or similar" merchandise based on a distinction between "heavy" and "light" castings since there were no significant cost differences on a per-kilogram basis between products within each of these two categories. For Aldebara, we made adjustments for physical differences in the merchandise in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the cost of materials, direct labor and directly related factory overhead. Pursuant to § 353.56 of our Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank of New York for the dates of the sales to the United States.

Constructed Value

in accordance with section 773(e) of the Act, we calculated foreign market value for Somep and Usipa based on constructed value. For Somep, there were no sales of such or similar merchandise in the home market or in third country markets. For Usipa, there were also no sales of such or similar merchandise in the home market. Usipa did, however, make three sales to a third country market during the period of investigation through its related parent company in the United States. However, insufficient information was provided by Usipa on price adjustments relating to these sales to use them as the basis for foreign market value in this final determination.

For constructed value, the Department used the cost of materials and fabrication, actual selling, general and administrative expenses (GS&A) and the statutory 8 percent minimum for profit.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making this final determination using standard verification procedures including on-site examination of accounting records and selected original documentation containing relevant information.

Comments. This section addresses comments received from petitioners and respondents on or before March 6, 1986. Written comments submitted after this date were not received in time for inclusion in this final determination.

Petitioner's Comments

Comment 1. Petitioners argue that submitted cost data on Aldebara and Somep did not reflect increases which would be expected in a hyper-inflationary economy.

DOC Position. While initial submission data did not reflect increasing values for certain costs, actual costs for each month were obtained during the verification and these costs did reflect inflationary increases.

Comment 2. Petitioners contend that the Department should reject claims by respondents that they incurred no credit costs on U.S. sales and urge the Department to calculate a credit expense based on the period from the date of shipment to the date that the purchaser makes payment under the FINEX financing program. However, if the Department rejects this approach, credit should be calculated based upon

the date of shipment and the date of receipt of payment in cruzeiros, including any clearance period when funds are converted to cruzeiros.

DOC Position. We disagree. For Aldebara and Somep, we did not calculate a credit expense for financing under FINEX. We determined that these terms were actually arranged between the U.S. buyers and the Brazilian financing banks. Aldebara and Somep incurred no credit costs on these sales in relation to the FINEX financing. The Department does not consider any credit costs borne by an unrelated third party to be a circumstance of sale directly related to the sales under consideration since there are no costs to Aldebara or Somep. Regarding Usipa's FINEX financing, see our response to Comment 3 below.

Further, we determined the U.S. sales of Aldebara and Somep were made "at sight". Consistent with our findings in Carbon Steel Products from Brazil (49 FR 28296), we have not calculated a credit expense for "at sight" sales.

That there may be a clearance period which banks require to process payments by U.S. purchasers does not mean that Aldebara and Somep are extending credit during that period.

Comment 3. Petitioners contend that Philipp Brothers incurs two credit costs on its U.S. sales and that the Department's calculation of credit costs on a transactional basis must include the cost of financing the importation of the goods under the FINEX program and the implicit cost of providing credit to customers on resales.

DOC Position. For purposes of this final determination we have continued to use the methodology employed in numerous previous cases, and have included credit expenses incurred by the exporter between the date of sale to the unrelated U.S. customer and payment by that customer. Since Philipp Brothers did not provide the Department with information on its short-term borrowing history, we used as best information otherwise available quarterly Federal Reserve Board benchmark interest rates for short-term fixed-interest loans denominated in U.S. dollars.

Comment 4. Petitioners argue that when making a circumstance of sale adjustment for differences in credit expenses, the Department must include all bank handling charges to close exchange contracts and any discounting of letters of credit relating to those U.S. sales.

DOC Position. Discounting fees are considered a pre-shipment credit expense and are, therefore, not relevant here. As for bank handling charges on exchange contracts, the exchange contracts are not sale specific and, thus, are not circumstances of sale.

Comment 5. Petitioners claim that the Department should use constructed value to establish foreign market value for Usipa and Somep because they reported no home market sales of iron construction castings during the period of investigation.

DOC Position. We agree. See the "Constructed Value" section of this notice.

Comment 6. Petitioners contend that the Department should not allow Aldebara's claims for an offset for indirect selling expenses in the home market or a level of trade adjustment because the company alleged that a large percentage of the home market sales were made to end-users in small quantities.

DOC Position. We agree since Aldebara was not able to provide documentation substantiating these claims at verification.

Comment 7. Petitioners state the Department should publish a revised preliminary determination because of the inordinate amount of supplemental material submitted by respondents since the preliminary determination.

DOC Position. We disagree. Section 733 of the Act establishes a strict time frame for each stage of the proceeding, including the preliminary determination. At the same time, the law does not require us to stop accepting supplemental submissions after a preliminary determination. Consequently, the Department is not required to update the preliminary determination upon every receipt of new information, or after such new information has reached some significant accumulation. In addition, petitioners have enjoyed a continuing access and opportunity to comment with regard to every new submission.

Comment 8. Petitioners contend that the Department should determine foreign market value for Aldebara based on best information otherwise available because it failed to report complete and accurate data in a timely manner. Petitioners also state that, if best information otherwise available is not used, then home market prices may be appropriate to establish foreign market value if the statutory criteria are met to allow for their use.

DOC Position. We disagree with petitioners' claim that best information otherwise available should be used for Aldebara to determine foreign market value. Finding omissions or errors in responses is common during verification. Aldebara's omission or errors were not of a type or magnitude that would cause the Department to use the petitioners' information as best information otherwise available. We used Aldebara's home market sales since they were made over an extended period of time and in substantial quantities at prices which permitted recovery of all costs within a reasonable period of time.

Comment 9. Petitioners contend that there is no statutory authority to use date of shipment as date of sale if Aldebara's home market sales are used for comparison purposes.

DOC Position. We disagree. In order to compensate for Brazil's hyper-inflationary environment, we have compared home market sales on the date of shipment with U.S. sales at the submitted sales date. When price and terms are set for home market sales, they are made with the delivery date in mind and therefore inflationary expectations are built into those prices. U.S. sales prices, in dollars, similarly reflect home market inflation through depreciation of the cruzeiro. Since we apply conversion rates of the cruzeiro as of the date of the U.S. sale according to § 353.56 of our regulations, it does not reflect the inflationary effects on the cruzeiro from the date of sale to the date of shipment to offset the inflationary expectations built into the home market price for that period. Therefore, home market shipments that are contemporaneous with U.S. sales are a more accurate measure of fair value. See also the Department's response to respondents' comment 13.

Comment 10. Petitioners argue that an adjustment to U.S. price for countervailing duties must be denied because no such duties have actually been imposed on the subject merchandise. Petitioners also urge the Department not to deduct an estimated export subsidy from cash deposit or bonding requirements.

DOC Position. We disagree. The Departmental practice has been to deduct the amount of estimated countervailing duties which reflect the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty rate in effect on the imported merchandise

Although no adjustment to the U.S. price is warranted under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for the portion of the antidumping duty which cannot be ultimately assessed.

Comment 11. Petitioners suggest that the Department treat sales by Somep to Aldebara as purchase price transactions if the Department determines that

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Aldebara knew at the time of purchase that the merchandise was to be exported to the U.S. Petitioners also allege that Somep may have purchased castings from domestic suppliers during the period of investigation. Petitioners contend that, if the supplier knew that this merchandise was destined for the U.S. market, the price of the merchandise from Somep's suppliers to Somep should be used as the basis for determining United States price.

DOC Position. We verified that these sales by Somep to Aldebara involved unfinished castings. Since Aldebara had to further process these castings before exporting, they are correctly treated as sales by Aldebara. In our calculations of the cost of production for Aldebara, we included the cost of purchasing the unfinished castings. To the extent that Somep further processed manhold covers and rings purchased from domestic suppliers before selling to the U.S., they are included in Somep's cost of production and U.S. sales of finished castings.

Comment 12. To the extent that respondents incurred expenses on U.S. sales in cruzeiros, petitioners contend that the Department must convert these charges into U.S. dollars on the date of each U.S. sale using the certified exchange rates issued by the Federal Reserve Bank of New York.

DOC Response. We agree. For those expenses incurred in cruzeiros but reported in U.S. dollars, we converted these expenses back to cruzeiros on the date of shipment and then re-converted these charges into U.S. dollars on the date of sale, using the certified exchange rates of the Federal Reserve Board. In the case of Usipa where such expenses were reported in cruzeiros, we simply converted to dollars on the date of each U S. sale.

Comment 13. Petitioners claim that Aldebara submitted GS&A and financing expenses incurred in connection with its U.S. sales for purposes of the Department's constructed value calculations. Petitioners argue that the Department must reject these expenses and use home market expense in calculating the constructed value.

DOC Position. This issue is moot since the Department used Aldebara's home market prices to establish foreign market value.

Comment 14. Petitioners argue that Aldebara and Somep provided the Department, not with standard cost of production formation or actual cost of production information, but with estimates of cost of production created expressly for the purpose of this dumping investigation. Therefore, petitioners urge the Department to reject Aldebara's and Somep's cost of production information.

DOC Position. We disagree. We evaluated Aldebara's and Somep's methods for developing cost of production data, including allocation of costs to heavy and light castings and found that generally such allocation methods were reasonable for the costs which were being allocated. In situations where these methods were not accepted, appropriate adjustments were made.

Comment 15. To calculate properly Aldebara's constructed value, petitioners claim the Department must account for the acquisition of the electric furnace, with full monetary correction, in Aldebara's factory overhead.

DOC Position. See the Department's response to petitioners' comment 13.

Comment 16. Petitioners argue that the full cost of patterns should be included as part of raw material costs for Aldebara in the Department's cost of production calculations, or if the patterns were not sold, they should be treated as assets with depreciation costs allocated to factory overhead.

DOC Position. We agree. The submission accounted for pattern costs in the costs of production. No discrepancies were noted in their methodology.

Comment 17. Petitioners claim that Aldebara and Somep did not include ICM or IPI taxes paid on material purchases in their raw material costs. These taxes are not recoverable on foreign or U.S. sales.

DOC Position. ICM and IPI taxes paid by these companies on purchases on raw materials are credited to the company upon the sale of the finished goods. Therefore, these taxes have not been included in the cost of products or constructed value.

Comment 18. Petitioners contend that certain finished castings made by Aldebara were rejected at quality control and returned to inventory for remelting as scrap. The Department should transfer the rejected castings to inventory at scrap value and allocate the labor and overhead costs to finished castings.

DOC Position. We agree. The transferred castings were revalued as scrap and adjustments were made to finish castings costs.

Comment 19. Petitioners argue that the Department should allocate general factory overhead expenses for Aldebara on the basis of usable finished tonnage production.

DOC Position. We disagree. We evaluated Aldebara's methodology for allocating general overhead expenses and found them generally reasonable. Direct labor hours were used to segregate costs between castings of different types and values such as heavy and light.

Comment 20. Petitioners claim that Aldebara allocated GS&A expenses on the basis of production volume. The Department should follow its past practice and allocate GS&A on the basis of cost of goods sold.

DOC Position. We agree. GS&A expenses were reallocated on the basis of cost of goods sold.

Comment 21. Petitioners contend that interest income which did not result from production or sales of the products under investigation should not be applied to offset Aldebara's cost of production.

DOC Position. We agree. The nature of all financial expenses and revenues were evaluated to determine if these items were directly related to production or sales of castings. All financial revenues and expenses not directly related to castings were not included in cost of production calculations.

Comment 22. Petitioners argue that the Department must determine the full amount of packing costs associated with the U.S. sales and include these costs in its constructed value calculations.

DOC Position. We agree. All packing costs were examined and reallocated to products produced for the U.S. market. Also, for Aldebara we added the verified U.S. packing costs to foreign market value.

Comment 23. Petitioners claim that Somep and Aldebara failed to include 1984 and 1985 year-end monetary correction in its cost of production for the months covered by the period of investigation. These costs should be included.

DOC Position. We agree. Monetary correction is a cost incurred by the company and was included in the cost of production and constructed value for the period of investigation. It is allocated based on production volume.

Comment 24. Petitioners argue that Somep submitted an estimate for 1985 depreciation expenses instead of actual figures. Therefore, they urge the Department to reject the submitted figures.

DOC Position. Somep had not yet closed its books for 1985. Thus, end-of-year depreciation had not been finalized. We examined depreciation calculations and allocations and made adjustments were depreciation did not reflect the full actual costs.

Comment 25. Petitioners contend that all end-of-year or accrued costs of Somep, including the "13 month salary" must be indexed to inflation to insure an accurate constructed value analysis.

DOC Position. We agree. All costs of this nature were adjusted using ORTN to reflect accurately current costs and inflation effects.

Comment 26. Petitioners argue that the Department should include depreciation on idle iron ore grinding media equipment in its constructed value calculation for Somep.

DOC Position. We disagree. The idle equipment is not currently used and has never been used for the production of such or similar merchandise to that under investigation. The depreciation on these items reflects a cost associated with a different business and as such should not be included as a casting cost.

Comment 27. Petitioners claim that monetary correction was calculated by Somep based on all permanent assets but not on all depreciation, and that the Department should adjust costs to reflect this.

DOC Position. Monetary correction calculations were adjusted at verification to reflect all assets and all depreciation.

Comment 28. Petitioners contend that certain factory overhead expenses included in GS&A are directly related to the operation of Somep's factory and as such should be allocated to factory overhead in the Department's constructed value analyses.

DOC Position. We agree. These costs, such as equipment maintenance, were reclassified as factory overhead.

Comment 29. Petitioners claim that the Department should follow its past practice and allocate Somep's GS&A on the basis of cost of goods sold.

DOC Position. We agree. Somep's GS&A expenses were reallocated by cost of goods sold.

Comment 30. Petitioners urge the Department to allocate all of Somep's packing costs to the U.S. sales covered by the period of investigation.

DOC Position. We agree. In Somep's response, packing was distributed over sales of all its products in domestic and export markets. All packing costs were reallocated to only those products which were packed, which were those produced for the U.S. market.

Comment 31. Assuming that Usipa's cost of sales account is based on inventory valulations, petitioners are concerned that such valuations may not reflect the hyper-inflationary environment that exists in Brazil.

DOC Position. We agree. Pig iron used in the castings production was revalued using current actual costs from the foundries.

Comment 32. Petitioners claim that the Department should allocate Usipa's general factory overhead applicable to both pig iron and castings production on the basis of direct labor hours per ton.

DOC Position. The Department decided that Usipa's methodology for allocating overhead costs was the most reasonable basis available and used the costs developed by this methodology.

Comment 33. Because Usipa's plant fabricating expenses are directly related to production, petitioners argue that the Department should allocate them to factory overhead rather than GS&A is its final constructed value calculations.

DOC Position. We agree. Costs associated with plant administration and fabrication, as opposed to corporate GS&A, were reclassified as factory overhead.

Comment 34. Petitioners contend the Usipa' GS&A and financing expenses should be allocated on the basis of cost of goods sold.

DOC Position. We agree. Adjusted GS&A and financing expenses were reallocated using cost of goods sold.

Comment 35. Petitioners urge the Department of allocate Usipa's packing costs only to exports.

DOC Position. We agree. Packing costs were allocated to export products.

Comment 36. Petitioners state that it is unclear what the Department considers the date of sale for the U.S. sales reported by Usipa. Petitioner contends that if prices and terms are finalized with a contract, the Department should use the date of that contract as the U.S. sale date. This date of sale in relation to date of importation must govern the Department's determination of whether Usipa's U.S. sales are purchase price or exporter's sales price transactions.

DOC Position. Since Usipa's prices and terms are finalized with a sales contract, we have used this date as the U.S. sale date. We treated all of Usipa's sales used in our final calculations as purchase price transactions, since the date of each contract preceded the date of importation of the merchandise. We also based our calculations on contract quantities since the actual contracts were examined at verification. We found no evidence of warehousing of merchandise by Usipa to fulfill shipment schedules.

Comment 37. Petitioners argue that the Department must ensure that all U.S. sales by Usipa during the investigatory period are analyzed in its final determination. Furthermore, the U.S. sales included in the Department's final calculations on Usipa must be adjusted for actual ocean freight and U.S. movement expenses.

DOC Position. We have included all of USIPA's sales made during the period of investigation that corresponded with sales made by Philipp Brothers during this same period to unrelated U.S. customers, except for three sales for which we had insufficient information. with regard to ocean freight and other U.S. movement expenses, we used the actual verified charges incurred on each sale.

Comment 38. If the Department determined that Usipa purchased castings for export and determined that Usipa's suppliers knew at the time of sale that the merchandise was to be exported to the United States, petitioners contend that the Department should use the price of the merchandise from Usipa's supplier to Usipa, if at arms-length, for the purpose of establishing United States price.

DOC Position. At verification, the Department found that some finished castings were purchased from unrelated Brazilian suppliers. In accordance with DOC polices (see Dried Heavy Salted Codfish from Canada (50 FR 20819)), the cost of these castings was weight-averaged into Usipa's cost of production. We do not have information which indicates that Usipa's suppliers knew destination at the time of sale.

Comment 39. Petitioners contend that Philipp Brothers gave discounts to at least one third-country customer for "trimming", shortweight" and "broken pieces", and that similar discounts may have been offered on its U.S. sales. Furthermore, peititioner believe that Usipa and Philipp Brothers incurred direct selling expenses of its U.S. sales, and that these costs must be accounted for in the Department's final calculations.

DOC Position. We verified that there were no discounts given on U.S. sales. The other types of expenses allegedly incurred are not considered directly related to Usipa's or Philipp Brothers' sales and, hence, no adjustments have been made for these.

Comment 40. Petitioners contend that the verified adjustment for physical differences in Aldebara's home market and U.S. merchandise must be denied because Aldebara did not claim this adjustment in its questionnaire response.

DOC Position. We disagree for the same reasons as stated in the Department's response to petitioners' comment 8. In accordance with section 773(a)(4)(C) of the Act, we made an adjustment for the bolts and nuts

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included in casting sold in the home market.

Respondents' Comments

Aldebara and Somep

Comment 1. Aldebara urges the Department to use constructed value and not home market sales to determine foreign market value because the quantities sold are negligible in Brazil in relation to U.S. sales and the home market sales involve different levels of trade. Additionally, Aldebara claims that home market sales cannot be used due to the hyper-inflationary economy, the parallel market for exchange currency, and the limited convertibility of the cruzeiro, which place the home market sales outside the ordinary course of trade.

DOC Position. We disagree that Aldebara's home market sales cannot be used. Aldebara has not produced any evidence to justify the claim that it has different costs associated with home market versus U.S. sales due to quantity size or customer category. Also, we are not persuaded that Aldebara's home market prices are an inappropriate basis for calculating foreign market value due to the hyper-inflationary economy, parallel markets for exchange currency, or the limited convertibility of the cruzeiro. These factors do not invalidate these prices for fair value comparisons.

Comment 2. If the Department decides to use Aldebara's home market sales in its final determination, then each U.S. sale should be compared to a Brazilian sale with a date of shipment on or near the date of each U.S. sale.

DOC Position. We agree. See the Department's response to petitioners' comment 9.

Comment 3. Respondents argue that the Department must grant an adjustment for the countervailing duties imposed on the subject merchandise by either subtracting the amount of export subsidies for deposit or bonding purposes from the dumping margins or adjusting the U.S. price for both heavy and light castings.

DOC Position. The Department is not authorized to make adjustments for subsidies, but only for countervailing duties imposed to offset such subsidies. Since no countervailing duty will be imposed on light castings due to the negative injury determination by the ITC, there can be no adjustment with regard to light castings. See our response to petitioners' comment 10 in regard to the adjustment for countervailing duties to be assessed on heavy castings.

Comment 4. Respondents argue that Aldebara and Somep do not incur credit expenses on their sales to the U.S. because customers are obligated to pay by irrevocable letter of credit in U.S. dollars at sight. Respondents futher argue that the clearance period between time of shipment and the closing of the exchange contract cannot be considered an extension of credit since the importer has already paid. Respondents also argue that if the Department does calculate a credit expense for the lag between shipment and payment, then that expense should be offset by the exchange gains that accompany the delay.

DOC Position. We agree with respect to the first two points raised by respondents. See the Department's response to petitioners' comment 2. As for respondents' argument that credit expenses be offset by exchange gains, this issue is moot since we did not calculate any credit expense on these U.S. sales.

Comment 5. Respondents argue that any bank charges associated with discounting letters of credit in advance of the shipment date should not be treated as a credit expense since finance charges on these advances are not directly related to specific U.S. sales.

DOC Position. We agree for the reasons stated in our response to petitioners' comment 4.

Comment 6. Respondents urge the Department to use the cost data submitted by Aldebara and Somep in calculating foreign market value since the data accurately reflect the replacement costs of the merchandise under investigation

DOC Position. We used the verified actual costs. See the Department's response to petitioners' comment 1.

Comment 7. Somep believes that the Department's sales verification report incorrectly states verified handling charges on certain U.S. sales. Somep states that the amounts used should be based on the charges appearing on the bills for each sale divided by net weight of each shipment.

DOC Position. The verification report shows the per ton charge found on each invoice. For purposes of our final calculations, we agree with Somep and have divided the total amount on each bill by the net weight of each shipment.

Comment 8. Somep argues that sales of unfinished castings to other Brazilian exporters are not subject to this invistigation and should, therefore, not be used to establish United States price, even if the Brazilian producer knew at the time of sale that the merchandise was destined for the U.S. Somep also claims that the price of manhole covers and rings purchased from domestic suppliers should not be used as the basis for determining United States price, even if the supplier knew that this merchandise was destined for the U.S. market.

DOC Position. We agree. See the Department's response to petitioners' comment 11.

Comment 9. Somep argues that the Department, in accordance with section 773(e)(1)(A) of the act, must not include ICM and IPI taxes as part of raw material costs in its constructed value calculations since ICM and IPI taxes on raw materials used in exported products are refunded.

DOC Position. See the Department's response to petitioners' comment 17.

Comment 10. Somep disputes petitioners' allegation that its selling, general and administrative data were incorrect. Somep claims that certain credit and financing costs were properly segregated between the United States and home markets.

DOC Position. Certain items of SG&A were misclassified and, therefore, were reallocated to factory overhead. With regard to Somep's second claim, separation of financial costs were evaluated for reasonableness and adjustments were made where allocations were incorrect.

Comment 11. Somep disputes petitioners' claim that depreciation on certain molding machines be included as a depreciation expense in constructed value calculations. Somep argues that since molding machines were not used to produce the products under investigation, or "such or similar merchandise" in the home market, they are not required to include this expense in its calculations, in accordance with section 773(e)(1)(A) of the Act.

DOC Position. Molding machines were neither installed nor operational during the period of investigation. Depreciation was, therefore, not included for this equipment in constructed value calculations.

Comment 12. Usipa states that the preliminary determination was unlawful and in violation of section 776(b) of the Act because information from the petition was used in lieu of information furnished directly by Usipa.

DOC Position. Section 776(b) requires the Department to use information from other sources if a party has refused or was unable to provide the relevant information as requested by the Department in a timely manner and in proper form. Because of the numerous deficiencies found in the respondents' submissions, the Department did not violate, but specifically complied with the requirement of this section by using information other than that submitted by Usipa.

Comment 13. Respondents claim there is neither statutory nor judicial authority for any adjustments to reflect a hyper-inflationary economy and that actual costs should be used instead of replacement costs.

DOC Position. Section 773(b) of the Act does not specify the methodology to be used in calculating the cost of production for purposes of determining whether home market sales have been made at prices which are below cost. We recognize that, in dealing with costs and prices in hyper-inflationary economies, distortions arise when all factors included are not contemporaneous. Therefore, we use replacement costs of materials in order to reflect the true cost to the manufacturer. We feel that this adjusts for any possible revaluation of inventory to reflect the effects of inflation and the fact that materials will be replaced at current prices. Therefore, the practice of taking the effects of a hyper-inflationary economy into consideration is a proper exercise of administrative discretion.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of certain iron construction castings from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated final weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The security amounts established in our preliminary determination published in the **Federal Register** on October 28, 1985 will no longer be in effect. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin (percent)
Aldebara	58.74
Somep	16.61
Usipa	5.95
All other manufacturers/producers/exporters	26.16

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and courtervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the portion of estimated countervailing duties attributable to the level of export subsidies found on certain heavy iron construction castings from Brazil (as determined in the March 12, 1986, final affirmative countervailing duty determination on certain iron construction castings from Brazil) will be subtracted from the dumping margins for deposit or bonding purposes on imports of certain heavy iron construction castings.

Since the ITC determined in the concurrent countervailing duty investigation that there is no reasonable indication that imports of certain light iron construction castings cause or threaten material injury to a U.S. industry (50 FR 27498), the export subsidies apply only to heavy iron construction castings as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess antidumping duties on the subject products entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This notice is published pursuant to section 735(d) of the Act.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 12, 1986.

[FR Doc. 86-5967 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From the People's Republic of China; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less than Fair Value.

SUMMARY: We have determined that certain iron construction castings (castings) from the People's Republic of China (PRC) are being sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine within 45 days of publication of this notice whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur J. Simonetti or Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-4929 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we have determined that castings from the PRC are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.;

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Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry Inc.; Tyler Pipe Corp.; U. S. Foundry and Manufacturing Co.; and Vulcan Foundry Inc.; filing on behalf of the U. S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated this investigation on June 6, 1985 (50 FR 24014). On June 27, 1985, the ITC determined that there is a reasonable indication that imports of certain iron construction castings from the PRC are materially injuring a U.S. industry.

On July 3, 1985, questionnaires were presented to the Embassy of the PRC for transmission on China National Machinery and Equipment Import & Export Corp., China National Metals & Minerals Import & Export Corp., and China National Machinery Import & Export Corp.

On August 23, 1985, correspondence was received from the Embassy of the PRC; however, it was not responsive to the questionnaire. On September 3, 1985, the Embassy of the PRC was informed that we required responses to all elements of the questionnaire.

On September 26, 1985, we informed the Embassy of the PRC that we may have to use best information available for purposes of our preliminary determination.

On October 28, 1985, we made an affirmative preliminary determination (50 FR 43594).

On December 9, 1985, we postponed our final determination (50 FR 50188) until no later than March 12, 1986.

We stated in our preliminary determination that if questionnaire responses were received in time to be verified and evaluated, we would use them for purposes of our final determination. Responses were received from all three companies on December 16, 1985. Verification was conducted from January 27 through February 7, 1986.

Our notice of preliminary determination and our postponement notice provided interested parties an opportunity to submit views orally and in writing. We did not hold a public hearing because none of the interested parties requested a hearing.

As discussed under the "Foreign Market Value" section of this notice, we have determined that the PRC is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by the investigation consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utililty, water and sanitary systems, and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item numbers 657.0950 and 657.0990 of the *Tariff Schedules of the United States Annotated* (TSUSA). The period of investigation is December 1, 1984 through May 31, 1985.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Prices

We used the purchae price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF packed price with deductions, where applicable, for ocean freight and marine insurance.

Foreign Market Value

In accordance with section 773(c) of the Act, we used the weighted-average price of castings imported into the United States from a basket of countries as the basis for foreign market value.

Petitioner alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in the country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC economy, and consideration of the briefs submitted by the parties, we have concluded that the PRC is a state-controlled-economy country for the purpose of this investigation.

As a result, section 773(c) of the Act requires us to use either the prices of, or the constructed value of, such or similar merchandise in a non-state-controlled-economy country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country.

We determined that Egypt, India, Indonesia, Morocco, Pakistan, The Philippines, Sri Lanka, and Thailand were at levels of economic development most comparable to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of castings in each of these countries. However none of the manufacturers, with the exception of an Indonesian manufacturer, has to date replied to our questionnaire. The response submitted by Indonesia was determined unsatisfactory for the purpose of our final determination.

We lacked home market prices from non-state-controlled-economy countries at a level of economic development comparable to that of the PRC. Therefore, we selected, from the basket of countries exporting the subject merchandise to the United States during the March 1, 1985, through August 31, 1985 period upon which we have based foreign market value, all countries not currently subject to antidumping duty or countervailing duty orders or investigations, involving the products under investigation. This yielded Belgium, France, Italy, Japan, Switzerland, Taiwan and the United Kingdom; none of which are considered to be at levels of economic development comparable to that of the PRC. Examining each on a dollars per metric ton basis, the Department determined both France's and Belgium's prices to be aberrations and, thus, has excluded them for purposes of determining foreign market value. Also, because the TSUSA category, 657.0990, contains imports of products other than those under investigation, the Department determined it to be inadequate for purposes of making fair value comparisons and, therefore, is basing its fair value comparisons on the TSUSA category 657.0950, which includes manhole covers, rings and frames.

Before using the basket of countries, we looked at South Korea and Hong Kong as countries from which we would gather IM-146 statistics for purposes of determining foreign market value. However, due to the fact that IM-146 tables showed no imports from South Korea under TSUSA category 657.0950 during the March, 1985 to August, 1985 period, and because Hong Kong was merely transshipping the merchandise under investigation, we determined both countries to be inadequate for purposes of our investigation.

Therefore, we calculated foreign market value on the basis of the average f.o.b. values of castings imported into the United States from the aforementioned basket of countries during the six month period between March, 1985 and August, 1985, as provided in the IM-146, compiled by the Bureau of the Census. This time period was employed to account for a time lag on the order of 10 to 15 weeks between the date of sale and the month in which the Bureau of the Census actually records the importation of merchandise, for purposes of compiling IM-146 statistics.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Petitioners' Comments

Comment #1: Petitioners feel that the basket TSUSA category, 657.0990, is the most appropriate category to use in comparison with Chinese light castings prices to the United States.

DOC Position: We disagree. Because this category contains such a small percentage of the merchandise under investigation, we feel that it does not constitute a basis for fair comparison to Chinese light castings prices to the United States. The basket category can contain a variety of imports which are not castings products. We, therefore, have decided to use only TSUSA category 657.0950 because we are certain that the merchandise included in this category is comparable to the merchandise under investigation.

Comment #2: Petitioners contend that, where expenses from the U.S. sales price are paid in local Chinese currency, free-market rates for these expenses should supplant Yuan denominated expenses for purposes of reaching a net U.S. purchase price.

DOC Position: We agree. Where expenses are incurred in Chinese Yuan, we have applied, as surrogate information, free-market rates for purposes of determining the net U.S. purchase price.

Comment #3: Petitioners contend that gross price on CMEC sales to the United States should be determined by the sales price between CMEC and related purchaser, Wah Yuet (Hong Kong or U.S.A.).

DOC Position: We disagree. It is established Department policy to use the sales price in the first unrelated party transaction as the gross sales price. Because Wah Yuet is a related purchaser, DOC determines gross price to be the price between Wah Yuet and the unrelated purchaser in the United States.

Respondents' Comments

Comment #1: Respondents assert that Indian home market prices should be used as DOC's basis for determining foreign market value.

DOC Position: We disagree. Section 777(b)(1), 19 U.S.C. 1677f(b)(1), states "information submitted to the administering authority . . . which is designated as confidential by the person submitting it, shall not be disclosed to any person (other than an officer or employee of the administering authority . . . who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it." In conformity with this statute, it is established Department policy not to use confidential information gathered in concurrent investigations for purposes of another investigation involving the same merchandise, without the consent of the party submitting it. In this case, the Indian government, on behalf of its producers, has refused to allow the Indian information to be used in this investigation.

Comment #2: Respondents contend that another alternative for determining foreign market value would be for the DOC to use the Indian sales prices to the United States, adjusted upward by any dumping margin found in the concurrent Indian investigation, as the basis for determining foreign market value. Respondents also suggest that we use publicly available information from IM-146 statistics to determine Indian prices to the United States, and then adjust these prices to account for any dumping margin found in the concurrent Indian investigation involving the same merchandise.

DOC Position: We disagree. Because doing so would be contrary to the Indian government's request that the Department not use confidential Indian pricing data as its basis for determining foreign market value in this investigation, and for the reason stated in DOC's position to respondents' comment number one, this is not a viable alternative. We also decline to use publicly available IM-146 information from India for purposes of calculating foreign market value. The dumping margin in the Indian investigation has been determined on the basis of confidential information submitted by the Indian producers to the Department of Commerce, not from figures in the IM-146. Both section 773(c) and 19 CFR 353.8(a) provide that in determining foreign market value for a state-controlled-economy country, the preference is to utilize actual third country prices to the United States or third country costs. If the Department of Commerce were to adjust the Indian sales prices in the IM-146 by an estimated dumping margin, which was calculated on the basis of Indian confidential information, not IM-146 data, the resulting figure would be neither a price nor a cost, but a completely artificial number. [See Shop Towels from the People's Republic of China [50 FR 26023, June 24, 1985]].

Comment #3: Respondents contend that, in the case of CMEC sales to the United States, the gross price should be the price between Wah Yuet and the unrelated purchaser in the United States.

DOC Position: For reasoning set forth in comment #3 of *Petitioners' Comments* section, we agree.

Comment #4: Respondents assert that the basket TSUSA category, 657.0990, should not be used in determining foreign market value.

DOC Position: For reasoning set forth in comment #1 of *Petitioners' Comments* section, we agree.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of castings from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter and Weighted-Average Margin

All Producers, Manufacturers and Exporters—11.66%

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ITC Notification

Pursuant to section 733(f) of the Act, we will notify the ITC and make available to it all non-privileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain iron construction castings from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d).

Dated: March 12, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-5984 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-501]

Certain Iron Construction Castings From India; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain iron construction castings (construction castings) from India are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise, exept that produced and exported by RSI India Pvt. Ltd. (RSI), Kejriwal Iron & Steel Works (Kejriwal) and Kajaria Castings Pvt. Ltd. (Kajaria) as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0160 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final determination

Based upon our investigation, we have determined that construction castings from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) (19 U.S.C. 1673d(a)) of the Tariff Act of 1930, as amended (the Act). Three of the four companies investigated, RSI, Kejriwal and Kajaria, have been excluded from this final affirmative determination since we have found Kejriwal and Kajaria's weighted-average margin to be *de minimis* and since we have found that RSI made no sales at less than fair value. The margins ranged from 0.033% to 35.13%. The weighted-average margin for each company is shown in the "Suspension of Liquidation" section of this notice.

Case History

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings, and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening material, injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon wich to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on June 7, 1985 (50 FR 24014). On June 27, 1985, the ITC determined that there is a reasonable indication that imports of iron construction castings are materially injuring, or threatening material injury to, a U.S. industry (50 FR 27498).

On June 21, 1985, a questionnaire was presented to respondents. On August 8 and 19, 1985, RSI India Pvt. Ltd. (RSI), Kejriwal Iron & steel works (Kejriwal), Serampore Industries Pvt. Ltd. (Serampore) and Kajaria Castings Pvt. Ltd. (Kajaria) responded to our questionnaire.

Because the above-named companies accounted for more than 60 percent of exports of the merchandise to the United States during the period of investigation, we limited our investigation to them. We investigated virtually all sales of standard pipe and tube by these companies for the period December 1, 1984, through May 31, 1985.

On October 28, 1985, we made an affirmative preliminary determination (50 FR 43595).

We verified the questionnaire responses in January. A hearing was held on February 21, 1986.

Scope of Investigation

The products covered by this investigation are certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States.*

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase price with the foreign market value based on the constructed value of the imported merchandise.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the

purchase price based on the packed F.O.B. or C&F price to unrelated customers in the United States. Where appropriate, we made deductions for foreign inland freight, ocean freight, port charges, inspection charges, brokerage and handling, service charges, and insurance. We also added duty drawback.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value since there were not sufficient home market or third country sales of such or similar merchandise. Constructed value was based on the constructed value reponses of the respondents.

In determining constructed value for each company, we calculated the cost of materials, fabrication, general expenses, and profit. In addition, we added the packing costs for sales to the United States. The amounts added for general expenses were calculated from data provided in the responses. For the companies where general expenses were less than the statutory minimum, we used the statutory minimum of 10 percent of the sum of material and fabrication costs. Where general expenses were greater than this mimimum, we used the actual general expenses of the company. The amount added for profit was the statutory minimum of 8 percent since there were no home market sales. We added the packing costs for sales to the United States. We made an adjustment for difference in circumstances of sale based on credit cost.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

In accordance with section 776(a) of the Act, we verified all information provided by respondents by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents.

Petitioner's Comments

Comment 1: Petitioner argues that the Department should treat the sales between Kajaria and its suppliers as the appropriate transactions in order to determine United States price because Kajaria exports only to the United States and so its suppliers knew the merchandise was destined for the United States.

DOC Response: We disagree. We verified that Kajaria is related to its suppliers. Therefore, we used Kajaria's prices to its unrelated U.S. customers for purposes of comparison to constructed value to determine whether there were sales at less than fair value.

Comment 2: Petitioners argue that the Department should treat the sales between Kejriwal and its supplier as the appropriate transactions because there is nothing in the record which disposes of the issue of whether Kejriwal's supplier knew at the time of its sales to Kejriwal that the merchandise was destined for export to the United States.

DOC Response: We verified that Kejriwal is unrelated to its supplier, and that Kejriwal's supplier does not know the ultimate destination of its products. At verification, we were shown that Kejriwal closely supervised the production of the castings and exported to various countries. We found no indication that its suppliers knew the destination of the castings. Therefore, we used Kejriwal's prices to its unrelated U.S. customers for purposes of comparison to constructed value.

Comment 3: Petitioners argue that no adjustment should be made to United States price for rebated duties and taxes in the form of cash compensatory support payments (CCS) and duty drawback because, since there are no home market sales, there could be no tax added or included in home market sales. Furthermore, petitioners state that if an adjustment for CCS on heavy castings is made, then at least this adjustment should exclude an amount representing the overrebate of indirect taxes.

DOC Response: We agree in part. We have not made an adjustment to United States price for indirect taxes that are rebated under the CCS. Duty drawbacks have been added to United States price, in accordance with section 772(d)(1)(B).

Comment 4: Petitioners argue that no adjustment should be made to United States price for the 10 percent CCS payment of light castings because there is no link between the rebate amount and the amount of indirect taxes and therefore the rebate is not directly related to the sales being investigated.

DOC Response: We agree and have not made an adjustment to United States price. However, we note that since there has not been a countervailing duty investigation on light castings from India, we have not as yet determined whether there is a link between the amount of the rebate and the amount of indirect taxes.

Comment 5: Petitioners argue that an adjustment to United States price for estimated countervailing duties must be denied because countervailing duties have not yet been imposed on these entries of castings. Petitioners also urge the Department not to deduct an estimated export subsidy from any dumping cash deposit or bonding requirements.

DOC Response: We disagree. The Departmental practice has been to deduct the amount of the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty order in effect on the imported merchandise.

Although no adjustment to the United States price is specifically prescribed under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for the portion of the antidumping duty which cannot be ultimately assessed.

In addition, the position advocated by the petitioners would defeat the purpose and effect of the 1984 amendment to section 751 of the Act which provides for assessments of antidumping duties at the rates of estimated deposits collected on the merchandise unless an administrative review has been requested. Respondents would be compelled to request an administrative review for all imports in order to prevent the situation of double-assessments due to the countervailing duty subsequently assessed.

Comment 6: Petitioners argue that bank charges are direct selling expenses for which the Department should make a circumstances of sale adjustment.

DOC Response: We agree. Section 353.15 of our regulations provides for reasonable allowances for bona fide differences in circumstances of sale which bear a direct relationship to the sales under investigation. Since bank charges would not be incurred absent a sale, we believe they are directly related to each U.S. sale and we have included them in the circumstances of sale adjustment for differences in credit terms.

Comment 7: Petitioners claim that the Department made a number of computational errors. Specifically, they argue that the Department should differentiate between sales of light and heavy castings, that inspection charges should be applied to appropriate U.S. sales of heavy castings, that U.S. sales of products outside the scope of the investigation should not be included, and that the "all other" category should be calculated accurately.

DOC Response: We agree and have corrected our calculations as necessary.

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Comment 8: Petitioners claim that, because Serampore's response reported inaccurate and incomplete sales data, it lacks credibility. The Department should use the best information otherwise available to establish United States price, and should not rely on the respondent's submissions.

DOC Response: Because all information used by the Department in analyzing Serampore's U.S. sales was verified, we do not need to resort to the best information otherwise available.

Comment 9: Petitioners argue that the Department should use actual charges for ocean and inland freight and interest rates by which to adjust United States price.

DOC Response: We agree. All adjustments made by the Department are based on verified, actual amounts.

Comment 10: Petitioners argue that where the cost of interest in a particular transaction has been passed on to the customer and reported in the sales price, the Department should make a circumstances of sale adjustments to arrive at the gross unit price comparable to the constructed value.

DOC Response: We believe this issue is moot. We verified that the unit price reported by respondents did not include the cost of interest passed on the customer. We therefore made no adjustment

Comment 11: Petitioners claim that the IPRS rebate should be assumed to rebate a proportional amount of indirect taxes and the tax incidence of castings exporters should be adjusted proportionately.

DOC Response: The IPRS rebate is not related to the indirect taxes. The IPRS rebate is the difference between the price charged for the pig iron used to produce castings for the home market and that used to produce castings for the export market.

Comment 12: Petitioners argue that the Department should use actual, rather than theoretical (i.e., 8 percent), profit figures in its constructed value analyses.

DOC Response: Because the respondent companies do not have viable home market or third country market sales, the profit used in the constructed value for all four companies was the statutory minimum 8 percent of the total manufacturing cost plus sales, general, and administrative (SG&A) expenses.

Comment 13: Petitioners claim that the cost related to idle facilities should be included in constructed value.

DOC Response: The facilities of the respondents were not considered to be idle capacity by the Department since such facilities were permanently closed.

Comment 14: Petitioners argue that post-sale warehousing expenses incurred by all respondents should be a circumstances of sale adjustment if the Department determined that these expenses were directly related to the U.S. sales under consideration.

DOC Response: The warehouse facilities maintained by three of the four respondents were used for finishing, warehousing, painting and packing castings. The cost of these facilities is included in the constructed value. The fourth company does not maintain a separate warehouse facility.

Comment 15: Petitioners argue that, with regard to Serampore, actual production tonnage of finished castings less pattern tonnage obtained at verification should be used to determine unit production costs in the constructed value. Factory staff wages, benefits and factory security costs should be included in factory overhead rather than SG&A.

DOC Response: The actual production tonnage of finished castings obtained at verification was used to determine the unit production costs for the constructed value. Pattern tonnage is not considered to be production, since such tonnage is not produced for resale. Factory staff wages, benefits and factory security costs were included in factory overhead since such costs relate to the manufacturing process in the constructed value.

Comment 16: Petitioners argue that, with regard to Serampore, the cost of purchasing finished castings for resale should be included in the constructed value for in-house produced castings, if the Department is not going to calculate a separate constructed value for purchased and resold castings.

DOC Response: The Department uses the actual costs which were incurred by the company as its basis for determining the cost of production. If some of the company's production was purchased in a semi-finished state, or a completed state, these purchased costs are part of the overall costs to the company and are therefore included in the calculation.

Comment 17: Petitioners argue that, with regard to Serampore, if interest expenses included in SG&A were in connection with its production assets, these expenses should be included in the factory overhead calculation for constructed value purposes.

DOC Response: The Department views the funds obtained from debt as being fungible; therefore, interest expense is not identified with specific assets.

Comment 18: Petitioners argue that, if the Department determined that Serampore's cost of production response was not sufficiently supported by corporate cost accounting records, the Department should use best information available to establish constructed value.

DOC Response: In cases where primary source documentation was not available, the Department used alternative procedures to determine the reasonableness of the data. In any situation where alternative documentation may not have been available, the Department used a reasonable amount for the specific costs obtained from other company records as best information available.

Comment 19: Petitioners argue that, with regard to Kejriwal, direct stores and factory overhead should not be allocated between export and domestic sales because these costs are not associated with domestic sales. SG&A expenses should be allocated between export and domestic sales on the basis of cost-of-goods sold and not on the basis of sales value.

DOC Response: The Department identified certain costs included in direct stores and factory overhead with the export and domestic products. Corporate documentaton did not permit the allocation of SG&A on the basis of cost of sales. Therefore, the Department used sales value as the best alternative basis.

Comment 20: Petitioners argue that, with regard to Kejriwal, accrued year-end bonuses for the period of investigation, depreciation expenses for warehouse and office assets and patterns acquired during the fiscal year should be included in the constructed value.

DOC Response: We agree. Accrued year-end bonuses for the period of investigation, depreciation expenses for warehouse and office assets and patterns acquired during the fiscal year were included in the constructed value.

Comment 21: Petitioners argue that, with regard to RSI, pattern and mold box tonnage should be deducted from the total casting production tonnage for the purpose of calculating unit constructed values. The Department should include in the constructed value one-third of the mold box and pattern expense transferred from the closed foundry to RSI. Travel expenses, as all other expenses, should be calculated on an accrual basis. SG&A expenses should be allocated between the Import Division, the Applied Power and Engineering Division, and the Foundry and Export Division on the basis of cost-of-goods sold and not on the basis of office salaries exclusive to any one division.

DOC Response: Pattern and mold box production tonnage was deducted from the total castings production tonnage for the purpose of calculating the constructed value.

The Department calculated the depreciation for the patterns and mold boxes at an annual rate of 30%, the rate normally used by the company.

Travel expenses were included on an accrual basis in the constructed value.

General and administrative expenses were allocated among divisions on the basis of office salaries exclusive to any one division. Selling expenses were allocated on the basis of cost of goods sold.

Comment 22: Petitioners argue that, with regard to RSI, the cost of purchasing finished castings for resale should be included in the constructed value for in-house produced castings, if the Department is not going to calculate a separate constructed value for purchased and resold castings. Depreciation for factory assets acquired during the fiscal year and all other assets purchased through May 31, 1985, should be included in the constructed value.

DOC Response: The cost of purchasing finished castings for resale was included in the constructed value for in-house produced castings. Depreciation for factory assets acquired through the period ended May 31, 1985, was included in the constructed value.

Comment 23: Petitioners argue that, with regard to Kajaria, SG&A expenses should be allocated between Kajaria's various divisions on the basis of cost-of-goods sold and not on the basis of sales value. Warehouse maintenance, repairs, maintenance, and production asset depreciation expenses should be allocated to factory overhead in the constructed value and not SG&A. Pattern depreciation expenses should be calculated using the rate typically applied by Kajaria.

DOC Response: Since the respondent's records did not permit us to identify the cost of sales of the various products sold, we have allocated SG&A on the basis of relative sales as the best alternative method.

Warehouse maintenance, repairs, other maintenance, and production assets depreciation expenses were included in factory overhead.

The pattern depreciation was calculated at an annual rate of 30%, the rate normally used by the company.

Comment 24: Petitioners argue that, with regard to Kajaria, office staff welfare, donations, wealth tax and books and periodicals expenses should be included in SG&A in the constructed value. Purchases of finished castings, hard coke, direct stores and delivery transportation changes for raw materials should be included in the constructed value. Actual, not estimated, pattern and mold box tonnage should be excluded from the total production tonnage of finished castings in the constructed value. The Department should include the amount of accrued interest that was in dispute during the period of investigation in the constructed value in factory overhead if the funds were used to purchase or service productive assets, or in SG&A if the funds were used for working capital. The Department should deny the request to offset interest expense with interest income.

DOC Response: Expenses for office staff welfare, donations, wealth tax and books and periodicals were included in SG&A in the constructed value. The cost of purchasing finished castings for resale was included in the constructed value for in-house produced castings.

Purchases of hard coke, direct stores and delivery transportation charges for raw materials were included in the constructed value. The pattern production tonnage was removed from the total production tonnage of finished castings in the measurement of constructed value. The amount of accrued interest that was in dispute during the period of investigation was included in the constructed value as a SG&A expense. The Department determined that interest expense is offset only by interest income related to operations.

Comment 25: Petitioners argue that, with regard to Neenaa, depreciation, printing and stationery, salaries, factory office, factory office administration, miscellaneous, entertainment and audit expenses should be included in factory overhead in the constructed value. Interest expenses should be allocated over the length of the loan agreement and not over the fiscal year.

DOC Response: These expenses were included in factory overhead in the constructed value. Interest expenses were allocated over the length of the loan agreement.

Comment 26: Petitioners argue that, with regard to Neenaa, delivery transportation charges for raw materials, transportation of finished goods from factory to warehouse, accured year-end bonuses for the period of investigation, depreciation expenses, December 1984 interest expenses, machinery costs, and actual, rather than submitted, printing costs should be included in the constructed value.

DOC Response: These expenses are part of the cost of production and have been included in the constructed value.

Comments 27: Petitioners argue that, with regard to Overseas, factory office administration expenses should be allocated to factory overhead and not SG&A. Overseas should be allowed to expense the full value of patterns acquired during the fiscal year rather than depreciate them in the constructed value. Pattern and mold box tonnage shuld be deducted from total castings production tonnage for the purpose of calculating unit constructed values.

DOC Response: Factory office administration expenses were allocated to factory overhead in the constructed value. The Department calculated, for the period of investigation, the pattern depreciation at an annual rate of 30%, the rate normally used by Kajaria, a related company. The pattern production tonnage was removed from the total production tonnage of finished castings in the measure of constructed value.

Comment 28: Petitioners argue that, with regard to Overseas, delivery transportation charges for raw materials, factory salary bonuses, factory start-up costs and actual, rather than submitted, factor staff salary expenses should be inlcuded in the constructed value.

DOC Response: These expenses are part of the cost of production and have been inlcuded in the constructed value.

Respondent's Comments

Comment 1: Respondents argue that the Department should calculate weighted-average margins by reference to both positive and negative margins from individual sales transactions because the current practice is inequitable.

DOC Response: We disagree. Our methodology in calculating weighted-average margins for an individual company insures that sales at less than fair value on a portion of a company's product line to the United States market are not negated by more profitable sales in other portions of the company's product line, which would mask dumping.

Comment 2: Respondents argue that the Department should make currency conversions at the actual rates reflected in the companies' books and records, not on data furnished by the Federal Reserve Bank of New York. Respondents argue that, where conversions are already made in the companies' books, no conversion using Federal Reserve Bank data is necessary.

DOC Response: We disagree. Section 353.56 of our regulations mandates that the Department make currency conversions using the certified exchange

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rates issued by the Federal Reserve Bank of New York. Our methodology complies with the regulations.

Comment 3: Respondents argue that bank charges should be included under the rubric of selling, general and administrative expenses and not as direct selling expenses because these charges are incurred on all documents irrespective of the terms of sale.

DOC Response: We disagree. See our repsonse to Petitioners' Comment 6.

Comment 4: Respondents argue that the Department should use actual credit costs in its calculations.

DOC Response: We agree. All credit costs used have been verified.

Comment 5: Respondents argue that U.S. profits are never an appropriate addition to constructed value.

DOC Response: Because the respondents do not have adequate home market or third country market sales, the profit used in the constructed value for all four companies was the statutory minimum 8 percent of the total manufacturing cost plus SG&A.

Comment 6: Respondents argue that the IPRS rebated does not include a rebate of indirect taxes.

DOC Response: We agree. The IPRS rebate was not offset by indirect taxes in our calculation of constructed value. See DOC response to petitioners' Comment 11.

Comment 7: Respondents argue that the constructed value for the preliminary determination incorrectly added indirect taxes back into the raw material cost which already included the indirect taxes.

DOC Response: Indirect taxes were not double counted in the Department's calculations.

Comment 8: Respondents argue that costs associated with idle or closed facilities should not be included in constructed value.

DOC Response: We agree. See DOC response to petitioners' Comment 13.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of iron construction castings from India that are entered, or withdrawn from warehouse, for consumption, on or after October 28, 1985, the date of publication of the Department's preliminary determination in the **Federal Register** (50 FR 43595). The Customs Service shall require a cash deposit or a bond equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. RSI, Kejriwal and Kajaria have been excluded from this determination since we have found they have made no or *de minimis* sales at less than fair value. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
RSI (excluded)	0
Kejriwal (*de minimis*) (excluded)	0.39
Serampore	0.90
Kajaria (*de minimis*) (excluded)	0.09
All others	0.90

For all entries of castings from RSI, Kejriwal and Kajaria, the Customs Service is directed to terminate the suspension of liquidation, release any bond, refund any cash deposit and liquidate all entries or withdrawals from warehouse for consumption.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the October 18, 1984 final affirmative countervailing duty determination on certain heavy iron construction castings from India) will be subtracted from the dumping margins for deposit or bonding purposes only on imports of certain heavy iron construction castings, as defined in the "Scope of Investigations" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an anitdumping duty on iron construction castings from India entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: March 12, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-5985 Filed 3-18-86; 8:45 am]

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[A-570-504]

Postponement of Final Antidumping Duty Determination; Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 5, 1986, we received a request from counsel for the respondent China National Native Produce & Animal By-Products Import & Export Corporation in the antidumping duty investigation of petroleum wax candles from the People's Republic of China that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of petroleum wax candles from the People's Republic of China have been made at less than fair value until not later than July 7, 1986.

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2613 or 377-1769.

SUPPLEMENTARY INFORMATION: On September 30, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of petroleum wax candles from the People's Republic of China are being, or are likely to be sold at less than fair value (50 FR 39743). We published our preliminary affirmative determination on February 19, 1986 (51 FR 6016). This notice stated that we would issue a final determination on or before April 28, 1986. On March 5, 1986, counsel for the respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than July 7, 1986.

This notice is published pursuant to section 735(d) of the Act.

Dated: March 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-5983 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-504]

Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings. The estimated net subsidy is 5.77 percent *ad valorem* during the review period. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the cash deposit rate to reflect changes in the Preferential Working Capital Financing for Exports program.

We have notified the U.S. International Trade Commission ((ITC) of our determination. Therefore, if the ITC determines that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume the suspension of liquidation of certain heavy iron construction castings from Brazil and to require a cash deposit on entries or withdrawals from warehouse for consumption in an amunt equal to 3.40 percent *ad valorem.*

EFFECTIVE DATE: March 19, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings. For purposes of this investigation, the following programs are found to confer subsidies;

- Preferential Working Capital Financing for Exports—Resolutions 674 and 950;
- Income Tax Exemption for Export Earnings; and
- Export Financing Under Resolution 509 (FINEX).

We determine the estimated net subsidy to be 5.77 percent *ad valorem* for all manufacturers, producers, or exporters of certain heavy iron construction castings from Brazil.

Case History

On May 13, 1985, we received a petition in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and 15 individually-named members of the association. Those members are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundary Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings, Inc.; Neenah Foundary Co.; Opelika Foundary Co., Inc.; Pinkerton Foundary, Inc.; Tyler Pipe Corp.; U.S. Foundary & Manufacturing Co.; and Vulcan Foundary, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain iron construction castings received, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 3, 1985, we initiated such an investigation (50 FR 24269). We stated that we expected to issue a preliminary determination by August 6, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On June 27, 1985, the ITC preliminarily determined that there is a reasonable indication that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry (50 FR 27498).

The ITC also determined that there is no reasonable indication that imports of certain light iron construction castings cause or threaten material injury to a U.S. industry. For the purpose of this investigation, the term "certain light iron construction castings" is limited to valve, service and meter boxes. Such castings are placed below ground to encase water, gas or other valves, or water or gas meters. Therefore, our investigation is limited to certain heavy iron construction castings as defined in the "Scope of Investigation" section of this notice, and we have changed the title of the investigation accordingly.

On June 12, 1985, Phillip Brothers, Inc., a U.S. importer of the subject merchandise, filed a notice of appearance as an interested party in this proceeding.

We presented a questionnaire concerning petitioners' allegations to the government of Brazil in Washington, D.C. on June 11, 1985. On July 22, 1985, we received a response to the questionnaire. There are four known producers and exporters in Brazil of certain heavy iron construction castings that exported to the United States during the review period. We have received information on three of the companies, which, based on information obtained at verification, account for

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substantially all exports to the United States. These are Fundicao Aldebara, Ltda. (Aldebara), Usine Siderurgica Paraense—Usipa Ltda. (Usipa) and Sociedade de Metalurgica e Processos Ltda. (Somep).

On the basis of information supplied in the July 22, 1985 responses, we made a preliminary determination on August 6, 1985 (50 FR 32462). We verified the responses of the government of Brazil and the producers of heavy iron construction castings, from August 27 to September 17, 1985. Subsequent to the verification, we received an amended response from the government of Brazil and the producers under investigation on September 23, 1985.

On August 8, 1986, we received a request from petitioners that the deadline for the final determation in this investigation be extended to correspond to the date of the final determination in the antidumping investigation of the same products from Brazil. This request was made pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984. On August 23, 1985, we extended the date of this final determination to January 6, 1986, the originally scheduled date of the final antidumping duty determination (50 FR 35280). On October 25 and October 29, 1985, we received requests from respondents in the antidumping duty investigation of certain iron construction castings from Brazil that the final determination be postponed as provided for in section 735(a)(2)(A) of the Act, as amended. Pursuant to this request, and in accordance with petitioners' request that the date of the final countervailing duty determination correspond to the date of the final antidumping duty determination, we extended the date fo this final determination to March 12, 1986 (November 21, 1985, 50 FR 48626).

Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), prohibits provisional measures (*i.e.*, suspension of liquidation) for more than 120 days in the absence of a final determination. Therefore, on December 11, 1985, we terminated the suspension of liquidation ordered in our preliminary determination.

During verification in Brazil, we discovered that Philipp Brothers, Inc., a U.S. importer of the subject merchandise, financed the importation of these goods by loans made available to foreign importers through Resolution 509 (FINEX) of the government of Brazil. Because of the extra time in which to issue a final determination afforded by the extensions in this case, we obtained specific loan utilization information from Philipp Brothers after our return to Washington. On December 26, 1985, we mailed a questionnaire requesting Resolution 509 loan data from Philipp Brothers. On January 21 and February 12, 1986 we received responses to our questionnaire. Because the responses included, as confidential exhibits, complete documentation of the type normally gathered at verification, we did not travel to Philipp Brothers headquarters in New York City as part of our verification of the responses.

Petitioners, respondents and an interested party submitted briefs addressing the issues arising in this investigation on February 3, 12, and 18, 1986.

Scope of the Investigation

The products covered by this investigation are certain heavy iron construction castings, which are defined for purposes of this proceeding as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water and sanitary systems. Manhole covers, rings and frames are currently provided for in item 657.0950 of the *Tariff Schedules of the United States, Annotated* (TSUSA). All other certain heavy iron construction castings are subsumed in item 657.0990 of the *TSUSA*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1984. In its response, the government of Brazil provided data for the applicable period, including financial statements for Somep, Usipa and Aldebara.

Based upon our analysis of the petition, the responses submitted by the government of Brazil and by Somep, Usipa, Aldebara, and Philipp Brothers to our questionnaires, our verification, and the comments filed by the petitioners, respondents and the interested party, we determine the following:

Programs Determined To Confer Subsidies

I. We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings under the following programs:

A. Preferential Working-Capital Financing for Exports

The Cartèria do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were authorized under Resolution 674. On January 1, 1984, Resolution 674 was superceded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports; at present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates, which must be used within one year of their issue, may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue, and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. This interest rate is below our commercial benchmark rate for short-term loans in Brazil, which is the short-term discount rate for accounts receivable in Brazil, published in *Business Trends* magazine. On January 1, 1984, Resolution 882 changed the payment date for both interest and principal to the expiration date of the loan. On August 21, 1984, Resolution 950 made this working-capital financing available from commercial banks at prevailing market rates, with interest calculated at time of repayment.

Under Resolution 950, the Banco do Brasil paid the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). In May 1985, the equalization fee was increased up to 15 percent of the interest. Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. In our "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil" (50 FR 34525), we verified that the lending bank, in turn, passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to the borrower's account. Receipt of the equalization fee by the borrower reduces the interest rate of these working capital loans below the commercial rate of interest. In addition, Resolution 950 working capital loans are exempted from the Imposto Sobre Opercoes Fianancieros, (IOF), which is charged on all Brazilian financial transactions.

Since receipt of working-capital financing under both Resolution 674 and Resolution 950 is contingent on export performance, and since the loans are provided at interest rates lower than those available from commercial sources, we determine that this program confers an export subsidy.

During the review period, exporters of castings received loans based on the criteria set forth in Resolution 674. Therefore, to determine the *ad valorem* subsidy bestowed by this program during the review period, we compared the actual interest rates charged on the loans received under Resolution 674 by the respondents and on which interest was paid during the review period, to the benchmark and multiplied the difference by the loan principal. We then allocated the benefit over total exports of the three castings producers, which resulted in an estimated net subsidy of 2.85 percent *ad valòrem*.

Consistent with our stated policy of taking into account program-wide changes that go into effect after the review period but before our preliminary determination, we calculated a subsidy rate for duty deposit purposes based on the interest rate rebate provided for under Resolution 950. To do this, we first determined the three companies' historical utilization rate of this program by dividing the total value of loans, on which interest payments were made during the review period, by the total value of the three companies' 1984 exports. We then multiplied this figure by the equalization fee (15 percent), plus the Imposto Sobre Opercoes Financieros (IOF), which is charged on all financial transactions in Brazil. We thus calculated a rate of 0.48 percent *ad valorem* for duty deposit purposes.

B. Income Tax Exemption for Export Earnings

Under Decree–Laws 1158 and 1721, exporters of certain heavy iron construction castings are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy. One producer of certain heavy iron construction castings took an exemption from income tax payable in 1984 on the portion of taxable income earned from export sales in 1983.

According to information developed and verified in past investigations in Brazil [e.g., "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil" (50 FR 34525), and "Final Affirmative Copuntervailing Duty Determination: Fuel Ethanol from Brazil" (51 FR 3361)], companies in Brazil may opt to invest up to 26 percent of their tax liability, as stated on their federal tax return, in specified companies and funds, thereby lowering their effective corporate tax rate. In the two cases cited above, we accepted this investment in calculating an effective corporate tax rate, because the respondents furnished all requested documentation demonstrating that investments made under this program can yield returns and are not merely a means by which the government of Brazil targets a firm's taxes.

In this investigation, we asked the one respondent company which claimed the income tax exemption on export earnings on its 1983 tax form, filed in 1984, for documentation regarding the investments made through this program. We requested this information as further evidence of the appropriateness of calculating an effective tax rate when measuring the benefit from the income tax exemption on export earnings. The respondent did not furnish the requested documents regarding these investments either during the September 1985 verification or following the verification. Because the company did not respond to our request, we are not accepting, for purposes of this final determination, respondents' arguments that the benefit from the income tax exemption on export earnings should be measured on the basis of the company's effective tax rate. Therefore, to determine the benefit from this program, we indexed the exempted profit from exports, as required by Brazilian tax laws, and multiplied it by the nominal corporate tax rate, and allocated the benefit over the total value of respondents' 1984 exports to calculate an estimated net subsidy of 1.86 percent *ad valorem*.

C. FINEX Export Financing

Resolution 509 of the Conselho Nacional do Comèrcio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportaxão (FINEX) to subsidize short- and long-term loans to foreign importers of Brazilian goods. The loans are extended to the importer by a bank in the importer's country at interest rates set by FINEX. These interest rates are based on LIBOR plus a spread. CACEX will in turn provide the lending bank, via a correspondent bank in Brazil with an "equalization fee" which makes up the difference to the bank between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal to encourage foreign bank participation in the program.

During verification, we discovered that Usipa's U.S. importer had used short-term Resolution 509 loans to finance 100 percent of its imports of heavy iron construction castings from Brazil to the United States during the review period. We verified that neither Somep's nor Aldebara' U.S. importers applied for or used Resolution 509 financing during the review period.

Because use of Resolution 509 FINEX financing is contingent upon exports, we determine that it is contervailable to the extent that it is offered on preferential terms. We learned from the government officials in Brazil who administer the FINEX program, for examination of company documents, and from the information published in the *Jornal do Brasil* and the *Gazeta Mercantil* that the interest rates on Resolution 509 loans for financing the products under investigation during the review period ranged from eight to nine percent per annum. Since these are short-term loans which are given in U.S. dollars to U.S. importers, we chose as a benchmark interest rate for comparble loans in the United States, the mean average interest rate for commercial and industrial short-term loans as published by the U.S. Federal Reserve Board. Comparison of the FINEX interest rate to this domestic U.S. rate published by the Federal Reserve indicates that FINEX financing is made at preferential interest rates.

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In order to measure the benefit conferred by Resolution 509 financing on exports of heavy iron construction castings from Brazil, we multiplied the value of financing on which interest was paid during the review period by the difference between the U.S. benchmark rate and the actual interest rate paid by Usipa's U.S. importer. We then divided the resulting benefit over total exports of certain heavy iron construction castings to the United States, and calculated an estimated net subsidy of 1.06 percent *ad valorem.*

II. Programs determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters of certain heavy iron construction castings in Brazil under the following programs:

A. Resolution 695—Financing to Small- and Medium-Size Firms

At verification, we discovered the use by one company of a line of credit, classified under Resolution 695, that is available to small- and medium-size firms through commercial banks in Brazil. The text of Resolution 695 indicates that there are no conditions which would limit or target the distribution of these loans to any particular type or group of companies. We held extensive discussions with company and government officials, and, independently, with commercial bankers regarding the statutory definition and operation of Resolution 695. According to this information, there is no regional preference, either in the distribution of, or in the purpose for these loans. Furthermore, Resolution 695 loans are made with commercial banks' own funds, to all types of companies. We have consistently held that a line of credit extended only to small-and medium-size firms, without any further limitation, is not contervailable. Accordingly, we determine that Resolution 695 loans are not limited to a specific enterprise or industry or group of enterprises or industries.

B. Regional Bank Financing

Petitioners alleged that regional development banks in Brazil make loans to foundries on terms inconsistent with commercial considerations. During verification, we discovered that one of the companies under investigation had loans outstanding during the review period from the government-owned Development Bank of Minas Gerais (BDMG), through the Fund for Development of Mining and Metallurgy (FDM). According to information gathered during the verification, the FDM is a program administered by the BDMG and funded entirely by its own resources. The purpose of the FDM is to provide working capital to mining and metallurgy companies in the state of Minas Gerais, the center of Brazil's mining and metallurgical activities. In Minas Gerais, mining and metallurgy activities encompass extracting, processing and refining gold, bauxite, tin, columbium, nickel, coal, phosphate, sulfur, zinc, zirconium, graphite, tungsten, iron ore, gems, and many other minerals and metals. According to government of Brazil documents submitted after the verification, mining and metallurgy together contributed over 51 percent to the Gross Domestic Product of the state, while receiving 33 percent of the credit extended by the BDMG in 1984. There is no evidence of targeting of these or other BDMG funds to the industry under investigation. Accordingly, we determine that loans under the FDM program are not limited to a specific enterprise or industry or group of enterprises or industries. [See also, "Certain Carbon Steel Products from France: Final Affirmative Countervailing Duty Determination" (49 FR 39332), where we held that benefits extended to the extractive sector of the economy are not limited to a specific enterprise or industry or group of enterprises or industries.]

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Brazil of certain heavy iron construction castings did not use the following programs.

A. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in specified bonded warehouses and destined for export. Exporters of iron construction castings would be eligible for financing under this program. We verified that none of the producers of construction castings under investigation participated in this program during the review period.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides 180- and 360-day cruzerio loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

We verified that none of the companies under investigation received loans under this program which were outstanding during the review period.

C. Exemption of IPI and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

We verified that none of the construction castings producers subject to the investigation received incentives under this program during the review period.

D. The BEFIEX Program

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

We verified that the construction castings producers under investigation did not participate in this program.

E. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that none of the construction castings producers under investigation participated in this program.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents used this program during the review period.

G. Incentives for Trading Companies

Under Resolution 883 of the Banco Central do Brasil, trading companies can obtain export financing simailar to that obtained by manufacturers under Resolution 882. We verified that the construction casting producers under investigation did not use trading companies for exports of the subject merchandise during the review period.

H. The PROEX Prigram

Short-term credits for exports are available under the Programa de Finaciamento a Producao para a Exportacao (PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). We vertified that none of the companies under investigation participated in this program during the review preriod.

I. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional de Comercio Exterior (CONCEX) provides that CONCEX may draw upon the resources of the Fundo de Financiamento a Exportcao (FINEX) to extend short-term loans to exporters of Brazilian goods. Financing is granted on a transaction-by-transaction basis. We verified that none of the respondents received Resolution 68 financing during the review period.

J. Government Loan Guarantees on Foreign-Denominated Debt

Petitioners allege that the government of Brazil provides guarantees on long-term, foreign-denominated loans in order to help enterprises service such loans. We verified that none of the companies under investigation received government loan quarantees on foreign-denominated debt during the review period. In the time since the initiation of this investigation, we determined that this program does not constitute a subsidy because it is not limited to a specific enterprise or industry or group or enterprise or industries. [See, "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil," (50 FR 34525).]

K. FINEP/ADTEN Long Term Loans

Petitioners allege that the government of Brazil maintains, through the Financiadora de Estudos Projectos (FINEP), a loan program, ADTEN, that provides long-term loans on preferential terms to encourage the growth of industries and development of technology. We verified that none through this program outstanding during the review period.

L. IPI Rebates for Capital Investment

Decree law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of IPI, a value-added tax imposed on domestic sales. We verified that iron construction castings producers are not eligible to participate in this program.

M. Loans Through the National Bank of Economic and Social Development

The National Bank of Economic and Social Development (Banco Nacional do Desenvolvimento Economico e Social, or BNDES) is the sole source of long-term cruzeiro loans in Brazil. Petitioners allege that BNDES loans are allocated in accordance with government development plans to finance the needs of designated priority sectors, and that they are granted on terms inconsistent with commercial considerations.

In support of their allegation, petitioners argue that the iron and steel industry, in which foundries are included, received a disproportionate amount of BNDES lending in 1982.

We verified that none of the companies under investigation had BNDES loans outstanding during the review period.

N. Loan From the Secretariat for Technology and Industry

At verification, we discovered that one of the companies under investigation, Somep, had a long-term loan from the Secretariat of Technology and Industry (STI). This loan was given to Somep for the purpose of developing a new process for the manufacture of "clinkers." Clinkers are used in the processing of iron ore which is used to manufacture pig iron which in turn is used in the manufacture of castings. A review of all the loan contracts and associated documents regarding this loan substantiated that the loan was given solely for this specific purpose. Information in the public record of the antidumping duty investigation of the same products from Brazil indicates that Somep does not fabricate pig iron, but rather purchases the pig iron used in the production of castings from unrelated suppliers. Because the STI loan is tied specifically to the development of a "clinker" machine, and because "clinkers" are used in the fabrication of pig iron, which Somep does not produce, we determine that this loan was not used by SOMEP in the production of the product under investigation.

O. Loan Through the Caixa Economica Federal

At verification, we learned that Aldebara had a loan borrowed during the review period, from the BDMG. The funds for this loan, however, originated with the Caixa Economica Federal (CEF), a government-controlled bank in Brazil. According to information gathered at verification, this loan represents a pass-through of CEF's funds through the BDMG. Examination of the loan contract and bank repayment receipts indicates that no interest or principal payments on this loan were due during the review period. Thus, we determine that no benefits were provided during the review period. This loan will be examined again in any section 751 administrative review that is requested.

IV. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tas on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, has been found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the IPI credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice) of the Ministry of Finance No. 176 of September 12, 1984, the credit premium was eliminated effective May

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1, 1985. We verified that the companies under investigation received no IPI export credit premiums after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of heavy iron construction castings to the United States.

Petitioners' Comments

Comment 1: Petitioners argue that, given the substantial use of Resolution 674 financing by Brazilian respondents, the Department is correct to assume maximum utilization of preferential export financing. They assert that in the "Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil," (50 FR 34525), the burden to demonstrate under-utilization of Resolution 674 loans is on the respondent. Verification has shown two of the respondents have used their maximum eligibility while a third had several unreported loans.

DOC Position: Prior to the enactment of Resolution 950 on Augst 1, 1984, the Department, in prior cases, calculated the deposit rate for the working captial financing program by multiplying the historical utilization of the program by the current interest differential. (See, *e.g.*, "Final Results of Administrative Review of Certain Castor Oil Products," (49 FR 9921); "Final Results of Administrative Review of Cotton Yarn from Brazil," (48 FR 34999); and, "Final Results of Administrative Review of Pig Iron from Brazil" (48 FR 9923).) Rsolution 950 completely changed the program, unlike earlier resoltuions which had usually just changed the interest rate. Therefore, we were reluctant to use historical utilization until we understood the changes. We have no seen several Resolution 950 loans and conclude that historical utilization is the most accurate calculation method for deposit puroses.

Comment 2: Petitioners assert that the Department should continue to include the IOF tax exemption in any calcuation of the benefit from preferential working capital export loans. The Department, in "Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Brazil," (49 FR 46570), denied respondent's contention that the IOF tax exemption was not countervailable, Commerce should also use a compounded interest rate, which includes compensating balances when determining a benchmark rate against which to measure the benefit from these loans.

DOC Position: Consistent with our past practice, we have included the value of the IOF tax exemption on preferential working capital export loans as part of the subsidy in order to measure the benefit provided under this program. We disagree that we should use a compounded rate that includes compensating balances. We have found that in Brazil, there is no uniform requirement for such balances. In prior Brazilian determinations, compensating balances have only been included in a benchmark rate for uncreditworthy companies in order to calculate the highest commercial rate plus a risk premium.

Comment 3: Petitioners argue that while Resolution 695 loans may appear to be *de jure* generally available, the terms are so preferential that it is unlikely that they are *de facto* generally available, and therefore, these loans should be countervailed. The benchmark rate against which to measure the benefit should include compensating balances.

DOC Position: We disagree. We have consistently held that a line of credit extended to small- and medium-sized firms is not limited to a specific enterprise or industry or group of enterprises or industries. The regulations provide no indication of any limitation other than the small- and medium-sized criteria.

Comment 4: Petitioners argue that the government of Brazil's request that the nominal tax rate be adjusted for investments into specified companies or funds before the income tax exemption benefit is calculated creates an unauthorized offset to a subsidy. Even if permissible, respondents have not provided sufficient information on the "investments" to demonstrate their eligibility. Petitioners also maintain that since the income tax exemption program is tied to exports, the benefit must be allocated over total export sales.

DOC Position: For purposes of this final determination, because the respondent did not respond to our request for further documentation on these investments, we have not valued the income tax exemption on export earnings on the basis of the effective tax rate. We also agree that the benefit should be calculated over total export sales. See our determination in section I.B. of this notice.

Comment 5: Petitioners content that BNDES loans passed-through to the Development Bank of Minas Gerais (BDMG), a regional bank, provide a subsidy. Development banks, like BDMG, make credit available to industrial sectors on the basis of the State Planning Secretariat's annual development plan. The benefits from the FDM and CEF loans provided by BDMG are *de facto* not generally available because they are limited to a specific enterprise or industry or group of enterprises or industries. Because one of the respondents had two loans that were paid off by the issuance of new loans, the benefit from these loans should be calculated using the Department's long-term loan methodology using a compounded rate which includes compensating balances as a benchmark.

DOC Position: We disagree that loans given by regional banks are *de facto* limited to a specific enterprise or industry or group of enterprises or industries simply because such activities are confined to the geographical area defined by a regional bank's charter. The BDMG is a regional bank which provides funds throughout the state of Minas Gerais. Where a loan program, such as FDM, is completely funded by a regional or state organization, and is not a pass-through of funds from the federal government, then we must only examine whether it is limited to a specific enterprise or industry or group of enterprises or industries within the political jurisdiction specified by its charter (*i.e.*, the state of Minas Gerais). We have found that FDM is not limited (see section II.B above).

With respect to CEF, no interest or principal payments were due during the review period. Thus, it is not necessary to determine at this time, whether CEF loans are countervailable. Since there are no countervailable benefits under these two programs, and since respondents had no BNDES loans outstanding during the review period, petitioners' remaining comments are moot.

Comment 6: Petitioners argue that the STI loan to Somep should be regarded as a long-term preferential loan which provides a countervailable benefit because such research and development financing is targeted to specific sectors of the economy and is provided on terms inconsistent with commercial considerations. Furthermore, since the Department did not verify that there is a direct link between Somep's expenditures on the "clinker" project and the amount of the loan disbursements, Somep's ability to produce castings was enhanced because of a lower weighted cost of capital from the STI loan.

DOC Position: We verified that the loan in question was tied to the

development of the "clinker" project and, therefore, provided no benefit to the products under investigations during the review period. See Section III. N. of this notice for our determination.

Comment 7: Petitioners argue that because FINEX Resolutions 68 and 509 financing is contigent upon experts, and is at preferencial rates, the programs provide countervailable benefits.

DOC Position: We verified that exporters did not use Resolution 68 or Resolution 509 export financing. However, one U.S. importer did take advantage of Resolution 509 financing for imports. We have determined that this financing is countervailable. See our determination in Section I.C. of this notice.

Comment 8: Petitioners contend that the Department should use as its benchmark rate for Resolution 509 loans either the Brazilian exporter's cost for borrowing non-guaranteed dollars or the national average rate for non-government controlled short-term dollar financing. This benchmark should then be compared to the FINEX rate. The interest differential should be multiplied by the principal for each transaction. These values should be summed and divided by the net FOB value of the exporters' total net proceeds from their export castings sales. In addition, the two percent inducement commission paid to the foreign bank should be countervailed separately by dividing the value of the commission by the portion of the year that the imports are financed. This amount should be added to the weighted-average rate of subsidy. If the Department cannot determine the above suggested benchmark rate, it should use the Brazilian government's cost of borrowing dollars plus a risk premium or, lastly, use a benchmark based on U.S. interest rates. Finally, the conflicting nature of the information provided by the three parties in the transaction may necessitate the use of best information available.

DOC Position: The Department does have information on the actual terms of the FINEX financing used. We used this information to calculate the benefit rather than the best information otherwise available.

This program benefits the exportation of a product by reducing the potential importer's financing costs if he purchases the Brazilian made product. Thus, it is appropriate to use, as a benchmark, what the importer would otherwise have to pay to finance the import. Since these loans were dollar-denominated loans obtained through a banking facility in the United States even if ultimately financed by the Brazilian government, a rate for short-term dollar denominated loans in the United States is appropriate, and captures completely the benefit from these loans.

Comment 9: Petitioners contend that exports of Somep and Aldebara have benefitted from Resolution 509 FINEX financing in 1985. Thus, petitioners request that the Department include this Resolution 509 financing for cash deposit purposes and apply a country-wide rate that reflects the subsidy bestowed by Resolution 509.

DOC Position: We verified that neither Somep's or Aldebara's importers used this program during the review period. Public information in the record of the companion antidumping duty investigation indicates that Somep's and Aldebara's importers may have used this program subsequent to the review period. Therefore, we will reexamine FINEX financing in any section 751 administrative review that is requested.

Comment 10: Petitioners contend that a two-week interest-free loan given to USIPA by Banco Sudameris, discovered at verification, is a subsidy to the extent it is provided on terms inconsistent with commerical considerations.

DOC Position: Documents provided after the verification by the government of Brazil indicate that Banco Sudameris is a private bank. Since Banco Sudameris is a private bank and we have no evidence that this loan was given under government direction , we find that this loan is not inconsistent with commerical considerations.

Comment 11: Petitioners request that the Department investigate all entries in USIPA's interest ledger which record interest payments to Banco do Brasil because they may relate to countervailable loan programs.

DOC Position: During verification, we throughly examined USIPA's financial records and found no countervailable or non-countervailable loans other than those discussed in this notice.

Respondents' Comments

Comment 1: Respondents claim that the Department erred in assuming maximum utilization and maximum interest differential in its calculation of the benefit of Resolution 950 financing. Commerce should have calculated the benefit by reviewing loans with payments during the review period to estimate future loan utilization. The "Final Results of Administration Review of Cotton Yarn from Brazil" (47 FR 15392), provides that using verified historical utilization rates is preferable to assuming full utilization in calculating the deposit rates.

DOC Position: We agree that historic utilization is appropriate in calculating the deposit rate. See our response to petitioners' *Comment 1.*

Comment 2: The government of Brazil contends that the Imposto sobre Operacoes Fianceiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolutions 674/950 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of the benefit. Respondents further argue we should reject petitioners' argument that compensating balances be included in the calculation of the benchmark against which any benefit is measured.

DOC Position: We disagree that the value of the IOF tax exemption should not be included in our benefit calculation. Since all domestic financing transactions are subject to the IOF tax, it is appropriate that we reflect the exemption of Resolution 950 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program. Moreover, we do not view the IOF as a tax on the production or distribution of the product. We agree that compensating balances should not be included in the calculation of the benchmark. See our response to petitioners' *Comment 2.*

Comment 3: Respondents argue that Resolution 674/950 export financing is tied to particular products because such financing requires an export commitment based on projected or past exports of eligible products. At the end of each year, the company must show that it has satisifed its obligation through the export of specific products. In this investigation, one company satisfied its commitment through export of a product other than heavy iron construction castings, therefore, the benefit from this financing must be considered to have been conferred only on that product. If the Department rejects this argument, then the benefit must be apportioned over total sales, not export sales.

DOC Position: We disagree. At verification we learned that a company may qualify for the loans in question based on past export performance or projected export performance. We also verified that the export of heavy iron construction castings qualifies a company to receive such loans and that two of the firms under investigation did use heavy construction castings to qualify for these loans. Therefore, because castings are eligible to benefit from such financing, it is irrelevant if a company qualifies for these export loans on the basis of past exports of another product. With respect to the argument

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that we should value the subsidy by allocating the benefit over total sales, we have consistently held in prior Brazilian determinations that, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 4: Respondents argue that the Department should have considered effective rather than nominal tax rates in calculating the value of the income tax exemption for export earnings. Brazilian tax law allows corporations to invest 26 percent of tax liability into specified companies or funds, effectively lowering a company's tax rate and lessening the benefit from the income tax exemption from export earnings.

DOC Position: We disagree with respondents' argument that the nominal tax rate should not be used in this determination. See our response to petitioners' *Comment 4*, and our determination under Section I.B. of this notice.

Comment 5: The government of Brazil argues that the Department erred in valuing the subsidy arising from the income tax exemption for export earnings by allocating the benefit over export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefits accrue to the entire operations of the firm and not just to exports. Further an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it has a general effect on all prices, both domestic and export.

DOC Position: We disagree. As we have stated in prior Brazilian determinations, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 6: Respondents claim that the IPI export credit premium is not countervailable because it no longer exists. The response to the questionnaire contained the legislation phasing out this program. Verification reports and previous Commerce rulings have consistently held that this program has been eliminated and is not countervailable.

DOC Position: We agree and have determined this program to be terminated. See Section IV. of this notice.

Comment 7: Respondents argue that none of the companies had outstanding BNDES or FINAME loans during the review period. Furthermore, BNDES financing is generally available and has been recognized by Commerce previously as non-countervailable. [See, "Final Affirmative Countervailing Duty Determination: Tool Steel from Brazil" (48 FR 25282).]

DOC Position: We verified that none of the companies under investigation had BNDES or FINAME loans outstanding during the review period.

Comment 8: Respondents request that the Department review the standing of petitioners to file a petition. The original petition, in which petitioners claimed to account for over 86 percent of total domestic production of construction castings, included both heavy and light castings. The ITC eliminated light iron construction castings from its investigations based on a preliminary negative injury determination after concluding that these are two separate industries, and that producers of light castings do not produce heavy castings. Because of this change, respondents argue that the Department must consider petitioners' standing by obtaining information verifying that the petitioners constitute the majority of domestic production of heavy iron construction castings.

DOC Position: In the petition filed in this investigation, petitioners filed "on behalf of" the domestic heavy and light iron construction castings industry in accordance with 19 U.S.C. 1671a(b)(1). Thereafter, in response to respondents' assertion that petitioners might lack standing in light of the fact that the investigation currently only covers heavy iron construction castings, petitioners filed a letter asserting and supporting their continued representation of a majority of the industry under investigation.

The petition was filed on behalf of the castings industry by the Municipal Castings Fair Trade Council and its 15 individually-named members, and no opposition to the petition has been expressed from the domestic heavy iron construction castings industry. Therefore, the Department finds that there is insufficient evidence to warrant a conclusion that petitioners have not filed "on behalf of an industry" pursuant to 19 U.S.C. 1671a(b)(1). [See also, "Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia" (50 FR 9852, March 12, 1985).]

Comment 9: Respondents contend that Resolution 695 loans are not industry, region, product, or export related. Resolution 695 authorizes commercial banks to make loans available to small- and medium-sized businesses. The Department has previously determined that similar loan programs to small- and medium-sized firms are not countervailable.

DOC Position: We agree and have determined this program not to confer a subsidy. See Section II.A. of this notice for our determination.

Comment 10: Respondents argue that FDM financing from BDMG is not countervailable. If all credit lines available through the bank are generally available, no countervailable benefit exists. [See, "Fuel Ethanol from Brazil," (51 FR 3361).]

DOC Position: For the reasons set out in Section II.A of this notice, we found FDM loans do not constitute a subsidy because they are not limited to a specific enterprise or industry or group of enterprises or industries.

Comment 11: Respondents argue that if FDM provide preferential financing, the proper benchmark is the generally available rate in the region.

DOC Position: Since we have determined that FDM loans are not countervailable, this issue is moot.

Comment 12: Respondents argue that regional development loans through the BDMG are not countervailable. Regional development banks in Brazil obtain their funds through foreign sources, BNDES, or their own operations. Generally available loans from a regional or state authority are not countervailable.

DOC Position: We agree the loans from the BDMG found in this investigation do not confer a countervailable benefit. See our response to petitioner' *Comment 5.*

Comment 13: Respondents contend the STI loan to one respondent was not used in the production of castings. Loans which are not linked specifically to the product under investigation are not countervailable. [See, "Lime from Mexico" (49 FR 35672).] Futhermore, these loans are made to diverse sectors of the Brazilian economy and all information developed from STI-financed projects must be publicly disseminated.

DOC Position: We agree that this loan did not benefit the production of castings. Therefore, we are not determining whether the STI program itself is countervailable. See our determination under Section III.N. of this notice.

Comment 14: Respondents argue that a short-term loan to USIPA from Banco Sudameris is not countervailable. It was verified that there was no government involvement and no countervailable benefit.

DOC Position: We agree that the short-term loan to Usipa is not countervailable. See our response to petitioners' *Comment 10.*

Comment 15: Respondents argue that the Department should disregard amendments to the original petition which have not been filed concurrently with the ITC as they are in violation of 19 CFR 355.26(e). Also, the Department should adhere to the spirit of its proposed countervailing duty regulations and not consider any new allegations submitted beyond the 20 day period after the notice of initiation was published in the **Federal Register.**

DOC Position: Petitioners' submissions were related to programs discovered during the course of verification. Section 775 of the Tariff Act of 1930, as amended, states that if, in the course of an investigation, the Department discovers a practice which appears to be a subsidy, but was not included in the matters alleged in the countervailing duty petition, it shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise under investigation. Therefore, we do not consider petitioners' submissions to be amendments to the original petition.

Interested Party Comments

Comment 1: Interested party submits that the historical utilization rate of Preferential Working Capital for Export Financing should be used to quantify any benefits from this program.

DOC Position: We agree. See our response to petitioners' *Comment 1.*

Comment 2: Interested party asserts that the one company which benefitted from the income tax exemption for export earnings on its 1983 tax form, filed in 1984, did not export the subject merchandise in 1983. Therefore, no countervailable benefit has been conferred on exports of heavy iron construction castings.

DOC Position: We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received depends directly or indirectly on the firm's level of exports, that program confers an export subsidy. The fact that a firm earned an export subsidy from one product in one year, and shifted or diversified its export output to other products the next year, is irrelevant to the calculation of the export subsidy.

Comment 3: Interested party contends the appropriate benchmark against which to compare the FINEX interest rate is the short-term interest rates actually paid by Philipp Brothers on its other domestic borrowing.

DOC Position: We disagree. The "Subsidies Appendix" states that the appropriate benchmark for short-term borrowing is a national average commercial method of short-term financing, rather than a rate derived from company-specific financing.

Comment 4: Interested party argues that should there be a final affirmative determination in this case, the CVD deposit rate should not include an amount related to FINEX financing. The sale of Usipa by Philipp Brothers, the uncertainty of continued sales to the U.S., and the question of whether future sales of iron construction castings will be eligible for this program represent significant changes from those circumstances or programs during the investigatory period. ITA should recognize those changes and exclude FINEX from the CVD deposit rate.

DOC Position: The above situation does not constitute a "program-wide change" because the Department has no evidence of a "program-wide change" in the benefits conferred by FINEX financing prior to the preliminary determination. Therefore, we will not change the CVD deposit rate in an attempt to approximate future events.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published August 12, 1985, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond equal to the estimated net subsidy. This final countervailing duty determination was extended to coincide with the final antidumping determination on the same product from Brazil, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of final affirmative determinations of subsidization and injury. Therefore, on December 10, 1985, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after December 11, 1985. If the ITC determines that imports of certain heavy iron construction castings materially injure, or threaten material injury to, a U.S. industry, we will order the U.S. Customs Service to resume the suspension of liquidation of the products which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit in an amount equal to 3.40 percent *ad valorem.*

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on all entries of certain heavy iron construction castings from Brazil entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 12, 1986.

[FR Doc. 86–5966 Filed 3–18–86; 8:45 am]

BILLING CODE 3510-DS-M

For Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

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Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86–133. Applicant: The University of the District of Columbia, 4200 Connecticut Avenue, Washington, DC 20008. Instrument: Electron Microscope, Model JEM-100CX–SEG with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument is intended to be used for studies of the following:

1. Morphology and cyto- and histochemistry of cercariae and early schistosomules of Schistosoma mansoni, a parasitic trematode.

2. Kidney and liver of mice fed plants grown in sludge amended soil that contains heavy metals (e.g. cadmium, iron and zinc).

3. Induced changes at the beta cell membrane and other subcellular sites following the administration of alloxan or steptozotocin.

4. SV40 infectious paocess and a structural analysis of the characteristics of conformationally altered SV40 DNA and SV40 minichromosomes.

5. Localization of lead in contaminated plants grown in an urban garden.

In addition, the instrument will be used for teaching purposes in a course in electron microscopy techniques. Application received by Commissioner of Customs: February 14, 1986.

Docket number: 86–134. Applicant: The University of Iowa, Department of Dental Research, N419 Dental Science Building, Iowa City, IA 52242. Instrument: Reflected Light Microscope with Accessories. Manufacturer: Department of Biophysics, Charles University, Czechoslovakia. Intended use: The instrument is intended to be used to conduct experiments on intact living cells and tissues of the oro-facial regions in order to increase knowledge of normal structure function and disease processes of oral and dental tissues. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86–135. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Intended use: The instrument is intended to be used for analysis of food chemicals to identify important food peptides, oligosaccharides, glycopeptides, peroxides, triglycerides and browning products. In addition, the instrument will be used in the identification and quantitation of naturally occurring toxins and environmental toxins in various foods. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86–136. Applicant: Research Foundation of State of New York, Upstate Medical Center, 155 Elizabeth Blackwell Street, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM-100SX. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used for various research projects including but not limited to the following:

1. Intrinsic defects in the neurogenic bladder.

2. Neuromuscular ultrastructure of the obstructed rabbit bladder.

3. Correlative anatomical and physiopharmacologic studies of the normal and denervated feline rhabdosphincter.

4. Neuromuscular ultrastructure of the bladder.

5. Effects of lower urinary tract obstruction on the bladder, upper urinary tract and kidney parenchyma.

6. Studies in nephrotoxicity of gentamicin and cyclosporine A.

7. Ultrastructural axonal regrowth following cold injury of rat spinal cord.

8. Electron microscopy study of the ocular zonules and the elastic fiber system of the eye.

9. Immuno-electron microscopic makers of lymphoid and histiocytic disorders.

Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86–137. Applicant: SUNY, Optometric Center of New York, State College of Optometry, 100 East 24th Street, New York, NY 10010. Instrument: CRT Display Unit and GRSYS–2 Microprocessor Grating Generator with special interface hardware. Manufacturer: Joyce Electronics Ltd., United Kingdom. Intended use: The instrument is intended to be used to study human ability to detect, discriminate and match visual pattern composed of sinusoidal grating which can be rotated in orientation, spatially localized to a small patch or ring and repositioned at different locations of the scope. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86–138. Applicant: Veterans Administration, Hines Hospital, Hines, IL 60141. Instrument: Electron Microscope, Model JEM-100CXII with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used to identify and study the effects of diseases on various human tissues at the ultrastructural level. The instrument will also be used in the training of pathology residents. Application received by Commissioner of Customs: February 18, 1986.

Docket number: 86–139. Applicant: Rutgers-The State University of New Jersey, Neurotoxicology Laboratory, Biological Science Building, Room 001C, New Brunswick, NJ 08903. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used to study the ultrastructure of the neurons and supportive cells comprising the spinal cords and peripheral nerves in animals intoxicated with a variety of neurotoxic agents. The numbers of neurofilaments comprising the axons and the length of the myelin sheath will be quantitated to determine how these structural changes play a role in the development of the neuropathy produced by these agents. In addition, the instrument will be used for teaching electron microscopy techniques to graduate students and post-doctoral fellows. Application received by Commissioner of Customs: February 19, 1986.

Docket number: 86–140. Applicant: Medical Research Foundation of Oregon, 505 NW 185th Avenue, Beaverton, OR 97006. Instrument: Schleimpflug Camera with ultraviolet attachments. Manufacturer: Topcon Deutschland GmbH, West Germany. Intended use: The instrument is intended to be used to document the changes in the human lens secondary to drugs, diseases and normal aging changes. Specifically the study of the normal aging changes of the lens in patients with hereditary hypercholesterolemia; and to see if a drug, mevinolin, has any effect on this, either in causing cataracts or impeding lens changes. Application received by Commissioner of Customs: February 19, 1986.

Docket number: 86–141. Applicant: Fred Hutchinson Cancer Research Center, 1124 Columbia Street, Seattle, WA 98104. Instrument: Mass Spectrometer, Model JMS–HX110. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for studies of the chemical structures of biologically-active molecules or molecules composing biolological structures, such as proteins (polypeptides), polysaccharides, lipids,

glycolipids and glycoproteins. Application received by Commissioner of Customs: February 19, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–5997 Filed 3–18–86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements North Dakota Indian Business Development Center

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$100,000* for the budget period *July 1, 1986 to June 30, 1987.* The IBDC will operate in the *State of North Dakota.*

The funding instrument for the IBDC will be cooperative agreement and competition is open to American Indian Non-Profit Organizations and For-Profit Firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business development.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Project specifications

Program Number and Title: *11,800 Minority Business Development Centers.*

Project Name: *State of North Dakota Indian Business Development Center.*

Project I.D. No.: *06–10–86012–01.*
Project Duration: *12 months.*

Project Start and End Dates: *July 1, 1986 thru June 30, 1987.*

Project Funding Level: *Total Federal $100,000.*

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the *State of North Dakota.*

Eligibility Criteria: Competition is open to American Indian For-Profit Firms and Non-Profit Organizations (those entities which are owned or controlled by one or more American Indian persons).

Project Period: The competitive award period will be approximately three (3) years, consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon availability of funds, the IBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort: *Financial Packages Secured—$828,480.*

M&TA Hours: 815. Procurements Secured: $920.960. No. Clients: 36.

Closing Date: The closing date for applications is *April 17, 1986.* Applications must be postmarked *ON or BEFORE April 17, 1986.*

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7819, Dallas, Texas 75242–0790, (214) 767–8001. ATTN. Marie Hearne.

FOR FURTHER INFORMATION, CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: March 13, 1986.

Melda Cabrera,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 86–6048 Filed 3–18–86; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcements; Oklamoma Indian Business Development Center

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first twelve (12) months is estimated at *$157,500* for the budget period *July 1, 1986 to June 30, 1987.* The IBDC will operate in the *State of Oklahoma.*

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian Non-Profit organizations and For-Profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business development.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on

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such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Project Specifications

Program Number and Title : 11.800 Minority Business Development Centers.

Project Name: *State of Oklahoma Indian Business Development Center.*

Project I.D. No.: [illegible]

Project Duration: *12 months.*

Project Start and End Dates: *July 1, 1986 thru June 30, 1987.*

Project Funding Level: *Total Federal—$157,500.*

Geographic Specification: The Indian Business Development Center (IBDC) shall offer assistance in the *State of Oklahoma.*

Eligibility Criteria: Competition is open to American Indian For-Profit Firms and Non-Profit Organizations (those entities which are owned or controlled by one or more American Indian persons.)

Project Period: The competitive award period will be approximately three (3) years, consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon availability of funds, the IBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort: *Financial Packages Secured—$962,000.*

M&TA Hours: 1,274. Procurements Secured: [illegible] *No. Clients: 58.*

Closing Date: The closing date for applications is April 17, 1986. Applications must be postmarked *ON or BEFORE April 17, 1986.*

ADDRESS: Dallas Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242-0790, (214) 767-8001, ATTN: Marie Hearne.

FOR FURTHER INFORMATION, CONTACT: Dennis Drayson, Business Development Specialist, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicale regulations can be obtained at the above address.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: March 13, 1986.

Melda Cabrera,

Acting Regional Director.

[FR Doc. 86-6047 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Charges for Certain Cotton Textile Products Produced or Manufactured in Brazil

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 20, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202 377-4212.

Background

On October 18, 1985 a notice was published in the Federal Register (50 FR 42200) announcing that the Governments of the United States and the Federative Republic of Brazil had exchanged notes on a new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement dating from April 1, 1985 and extending through March 31, 1988. The new agreement established a limit of 450,000 numbers for cotton sheets in Category 361, among other categories, produced or manufactured in Brazi and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986. That limit was increased to 564,000 numbers by a directive of January 30, 1986 (51 FR 4409). That limit is now filled.

We have determined in reviewing import charges made to the adjusted limit that 18,240 numbers were charged incorrectly by Customs. Accordingly, the letter which follows this notice, directs the Commissioner of Customs to deduct that quantity from the current charges. This will reopen the category .

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397) June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Coton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and Brazil, I request that, effective on March 20, 1986, you deduct 18,240 numbers from the restraint limit established in the directive of October 15, 1985, as amended, for cotton texfile products in Category 361, produced or manufactured in Brazil and exported through March 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5950 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 20, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 31, 1985 a notice was published in the Federal Register (50 FR 53373) announcing import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the Bilateral Cotton Textile Agreement, effected by an exchange of notes dated March 9, 1982 and March 11, 1982, as amended, the Governments of

the United States and Pakistan have agreed to further amend the bilateral agreement to increase to 45,000 dozen the limit for women's, girls', and infants' cotton coats in Category 335, produced and manufactured in Pakistan and exported during the period which began on January 1, 1986 and extends through December 31, 1986.

In the letter published below, the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to amend the directive of December 26, 1985 to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986 in excess of the adjusted restraint limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 26, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan.

Effective on March 20, 1986, the directive of December 26, 1985 is hereby amended to establish an adjusted limit of 45,000 dozen for women's, girls' and infants' cotton coats in category 335.[1]

The Committee for the Implemention of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for Implementation of the Textile Agreements.

[FR Doc. 86-5951 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Federative Republic of Brazil on Category 341

On February 28, 1986, the Government of the United States requested consultations with the Government of the Federative Republic of Brazil with respect to Category 341 (woven cotton blouses). This request was made on the basis of the agreement between the Governments of the United States and Brazil relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated August 7 and 29, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to markets disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on February 28, 1986 and extends through May 28, 1986 at a level of 48,066 dozen. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 138,637 dozen for Category 341 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Brazil and exported during the period beginning on May 29, 1986 and extending through March 31, 1987.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit imports of cotton textile products in Category 341, produced or manufactured in Brazil and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1987 in excess of the established limit. In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 341 under the agreement with Brazil, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Comittee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consulatations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public with the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

MARKET STATEMENT

Category 341—WGI Cotton Woven Blouses

[Brazil, February 1986]

Summary and Conclusion

U.S. imports of Category 341 from Brazil were 142,000 dozens in 1985, a threefold increase from the 47,000 dozens imported in 1984.

The sharp and substantial increase of low-valued Category 341 imports is disrupting the U.S. market for WGI cotton woven blouses. Category 341 imports from Brazil must be controlled before further injury is sustained.

U.S. Production and Market Share

After rising in 1982 and 1983, U.S. production leveled off in 1984 at 7,080,000 dozens, only 2 percent above the 1983 level. Between 1982 and 1984, the market for WGI cotton blouses grew by 3,986,000 dozens; however, the U.S. producers' share of this

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

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market dropped from 46 percent to 42 percent as imports grew faster.

U.S. Cutting Data

Production data for 1985 are not currently available; however, government cuttings data are reported. These data show cuttings of women's blouses [1] down 16 percent in 1985 compared to the previous year.

Employment Data

Government sources report that, in 1985, total employment in the women's and misses' blouse and waist industries (SIC 2331) fell 2.6 percent. The decline in production worker employment was more severe with 4.3 percent and the average manhours worked fell 4.0 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 341 increased 41 percent between 1982 and 1984, rising from 6,852,000 dozens to 9,628,000 dozens. This upward trend continued into 1985 as imports reached 11,234,000 dozens, a 17 percent increase over the 1984 level. The import to production ratio increased from 117 percent in 1982 to 137 percent in 1984.

Duty-Paid Value and U.S. Producer Price

Approximately 85 percent of Category 341 imports from Brazil during 1985 entered under TSUSA Nos. 384.0505 (previously 383.0505)—women's cotton woven blouses, or ornamented, and 384.4609 (previously 383.4709)—women's other cotton woven blouses, not ornamented. These garments entered at landed, duty-paid values below U.S. producers' prices for comparable blouses.

Committee for the Implementation of Textile Agreements

March 14, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 7 and 29, 1985, between the Governments of the United States and Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 21, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 341 produced or manufactured in Brazil and exported during the ninety-day period which began on February 28, 1986 and extends through May 28, 1986, in excess of 48,068 dozen.[1]

Textile products in Category 341 which have been exported to the United States prior to February 28, 1986 shall not be subject to this directive.

Textile products in Category 341 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-5996 Filed 3-18-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] Cuttings of data are for cotton, wool and man-made fiber blouses and include both wovens and knits, excluding knit tops.

[2] The limit has not been adjusted to account for any imports exported after February 27, 1986.

DELAWARE RIVER BASIN COMMISSION

Commission Metting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 26, 1986 beginning at 1:30 p.m. in the Benjamin West Room of the Holiday Inn Center City, 1800 Market Street, Philadelphia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjecs of the hearing will be as follows:

Current Expenses and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1986, in the aggregate amount of $2,209,000 and a capital budget for the same period in the amount of $837,500 in revenue and $716,800 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

Revised Proposed Amendments to the Comprehensive Plan, Water Code of the Delaware River Basin, and the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania Relating to Source Metering, Recording and Reporting. Notice was given in the February 13, 1986 **Federal Register**, Vol. 51, No. 30, that the Commission would hold a public hearing on March 26, 1986 to receive comments on proposed amendments to the Comprehensive Plan, Water Code and Ground Water Protected Area Regulations for Southeastern Pennsylvania in relation to source metering, recording, and reporting of waters withdrawn from the Basin. The proposed amendments to the Comprehensive Plan and Water Code would require source metering and recording of both new and existing surface and ground water withdrawals that exceed 100,000 gpd during any 30-day period. The Commission is also proposing a similar amendment to the Ground Water Protected Area Regulations for Southeastern Pennsylvania which would require metering, recording, and reporting of ground water withdrawals in excess of 10,000 gpd.

Applications for Approval of the Following Projects Pursuant to Article 10.3 Article 11 and/or Section 3.8 of the Compact

1. *Palmer Water Company D-81-24 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 10.5 million gallons (mg)-30 days of water to the applicant's distribution system from Well A. Commission approval on May 27, 1981 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 35 mg/30 days. The project is located in Palmerton Borough, Carbon County, Pennsylvania.

2. *Hatfield Packing Company D-83-24.* A ground water withdrawal project to supply approximately 0.1585 million gallons per day (mgd) of water to the applicant's meat packing facility in Hatfield Township, Montgomery County, Pennsylvania. Well Nos. 1, 2, 3 and 4, located in Hatfield Township, were previously placed in service and have collectively withdrawn in excess of 100,000 gallons per day (gpd) without approval of the Delaware River Basin Commission. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority.

3. *Hoffmann-La Roche D-85-14.* A ground water decontamination project at the applicant's manufacturing facility in White Township, Warren County, New Jersey. Contaminated ground water will be recovered through two new wells, designated as Abatement Well Nos. 8 and 9, located northwest of the intersection of Route 46 and Manunkachunk Road and will be pumped at rates of 4.3 mg/30 days and 17.3 mg/30 days, respectively. The recovered pumpage will be treated at the applicant's existing wastewater treatment facility and discharged to the Delaware River.

4. *Richland Meadows Mobile Home Park D-85-43.* Approval is sought by the applicant to enlarge and modify its existing domestic sewage treatment plant located on Yankee Road in Richland Township, Bucks County, Pennsylvania. The existing NPDES permit No. 0045187 limits the effluent discharge to 0.045 mgd. The Mobile home park is at capacity with 406 mobile homes and a population of approximately 1,000 people. Monthly average sewage flow between June 1984 and September 1984 ranged from 0.060 mgd to 0.071 mgd. The clarifier, sand filter and chlorine contact tank will be increased in size and treatment steps altered to treat an average wastewater flow of 0.080 mgd to required levels. Treated effluent will continue to be discharged to Morgan Creek, a tributary of Tohickon Creek.

5. *Schering Corporation D-86-4.* An application for expansion of an existing 0.022 mgd wastewater treatment plant to a new design flow of 0.040 mgd at the applicant's Lafayette Safety Evaluation Center, in Lafayette Township, Sussex County, New Jersey. The facility will provide advanced secondary treatment of the wastewater generated from the raising and care of laboratory test animals. Treated effluent will continue to discharge to a small tributary of the Paulins' Kill at River Mile 207.0-33.8-0.3.

6. *Water and Supply Company, Inc. D-86-6 CP.* An application to replace the withdrawal of water from Well No. 2 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 2R be limited to 8.1 mg/30 days, and that the total withdrawal from all wells remain limited to 8.1 mg/30 days. The project is located in the Town of Georgetown, Sussex County, Delaware.

7. *Delaware Water Gap Borough Council D-86-8 CP.* An application for the construction of a new 176,000 gpd wastewater treatment plant to serve the Borough of Delaware Water Gap in Monroe County, Pennsylvania. Approval of the proposed plant requires deletion of the regional plant currently in the Comprehensive Plan for eastern Monroe County. The Borough is presently served by individual on-lot septic tanks, many of which are malfunctioning. Untreated sewage has been found in Delaware River monitoring near the mouth of Cherry Creek. Treated wastewater will be discharged into Cherry Creek through the outfall line at the existing Howard Johnson Restaurant treatment facility which will be abandoned upon completion of the proposed treatment plant.

8. A resolution to extend Commission approval of Docket Decisions until March 31, 1987 for: D-78-84 CP RENEWAL for Well No. 8, Borough of Hatfield; D-77-90 CP RENEWAL for Well No. 23, North Wales Water Authority; and D-78-94 CP RENEWAL for Well No. 25, North Wales Water Authority.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

The Commission will hold a public hearing on Tuesday, April 15, 1986, beginning at 1:30 p.m. in the Banquet Room of the Holiday Inn at Route 100 and West King Street, Pottstown, Pennsylvania to consider the following application.

1. *Philadelphia Electric Company (PECO); Reading Anthracite Company (RAC); Tamaqua Borough Authority (TBA); and Borough of Tamaqua (BOT) D-69-210 CP (Final) Revision No. 6.* A joint application by PECO, RAC, TBA, and BOT to temporarily, during 1986, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revision requests that the consumptive use of Schuylkill River water be permitted to continue when applicable flow or temperature/dissolved oxygen limits would otherwise restrict such use. The application proposes that whenever applicable restrictions would otherwise restrict the consumptive use at Limerick, the applicants would release water from upstream storage facilities at such times and in such quantities to be available to meet consumptive water needs at the Limerick Station. The upstream storage facilities proposed to be used consist of Still Creek and Owl Creek Reservoirs which are operated by TBA to supply water to the BOT and a water-filled abandoned strip mine known as Beechwood Pool.

Since Beechwood Pool water contains high levels of TDS (1700 mg/1), the applicant proposes to discharge water from Beechwood Pool in proportion to releases from Still Creek and/or Owl Creek (TDS 32 mg/1) such that specific quality objectives can be met downstream. Release rates are proposed to vary from 0 to 28 cfs from Still and/or Owl Creek Reservoirs and from 0 to 7 cfs from Beechwood Pool.

The applicants have proposed a plan of operation of this reservoir release project to be coordinated with the pending application D-69-210 CP (Final) Revision No. 5 requesting approval to substitute specific dissolved oxygen limits for the original temperature limitation and to have the option of substituting consumptive use at Limerick Unit No. 1 for reduced consumptive use at the Titus and/or Cromby generating stations.

A public hearing was held on Docket No. D-69-210 CP (Final) Revision No. 5 on January 22, 1986 for which the hearing record was held open for additional testimony through February 14, 1986. The record compiled in connection with the Commission's January 22 public hearing shall be incorporated into and considered by the Commission as a part of a joint hearing record on these applications. It will not be necessary to resubmit comments previously provided in order to be considered in connection with these applications. Documents relating to these applications may be examined at the Commission's offices and at the Pottstown Public Library. Persons wishing to testify at the April 15, 1986 public hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

March 11, 1986.

[FR Doc. 86-5937 Filed 3-18-86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86-14-NG]

Yankee International Co.; Application To Amend Authorization To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

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ACTION: Notice of application to amend authorization to export natural gas to Canada on a short-term basis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 28, 1986, of an application filed by Yankee International Company (Yankee) requesting an amendment to its natural gas export authorization granted by the ERA in Opinion and Order No. 99 in Docket No. 85–38–NG on December 30, 1985. Under its existing authorization, Yankee may export up to 50 MMcf per day for a total of up to 2 Bcf of natural gas to Canada from the date of approval through April 30, 1986, at a price of $2.45 per MMBtu. In the instant application, Yankee proposes to amend its authorization by increasing the maximum export levels to 86 MMcf per day for a total of up to 10 Bcf for a term ending February 4, 1988. The natural gas will be purchased by Yankee from various suppliers principally located in the states of Oklahoma and Kansas and resold to Union Gas, Ltd. (Union) at the U.S./Canadian border. Union is a local distribution company located in the province of Ontario, Canada, serving the cities of Hamilton and Windsor. Yankee has asked for expedited treatment of its application in order that the ERA can make a determination on its request prior to April 30, 1986, this avoiding any lapse in time between its existing authorization and its current request.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 18, 1986.

FOR FURTHER INFORMATION CONTACT:

John Glynn, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–0482

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with Section 3 of the Natural Gas Act, and DOE Delegation Order No. 0204–111, under which domestic need for the gas to be exported is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments whether there is a national or regional domestic need for the gas supply proposed to be exported.

In making its request for expedited treatment of its application to amend its existing export authorization, Yankee states that prompt ERA action will serve both the national and regional public interest. Yankee cites three reasons why prompt ERA action is necessary in its request: (1) The amendment would allow the continuation of the existing export authorization beyond the presently effective April 30, 1986 termination date; (2) the export would work to alleviate a severe surplus of gas in the states supplying this gas; and (3) the project will reduce the U.S. foreign trade deficit. The ERA has determined that the reasons cited by Yankee in requesting expedited treatment of its application are insufficient to warrant a reduction in the public comment period, particularly in light of the fact that our normal administrative procedures will most likely result in a determination on this application prior to the April 30, 1986, termination date of Yankee's as yet to be used export authorization.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076A, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 18, 1986

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Yankee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 11, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–5963 Filed 3–18–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86–339–000, et al.]

Arizona Public Service Company et al.; Electric Rate and Corporate Regulation Filings

March 14, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86–339–000]

Take notice that Arizona Public Service Company (APS), on March 6, 1986 tendered for filing the Memorandum of Understanding between Arizona Public Service Company (APS) and Electrical District No. 3 executed February 11, 1986.

The District wishes to begin implementation of time-of-use (TOU) metering on some of its loads or energy conservation purposes, and it's anticipated that this will affect the coincident demand of the District's load. The Company, in accordance with the provisions in the current agreement, has agreed to a change in the factor used in establishing the District's monthly coincident billing demand. An effective date of February 24, 1986 is requested pursuant to the terms of this Memorandum of Understanding.

Copies of this filing have been served upon Electrical District No. 3 and the Arizona Corporation Commission.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER86–340–000]

Take notice that Arizona Public Service Company (APS), on March 6, 1986 tendered for filing the Memorandum of Understanding between Arizona Public Service Company (APS) and Electrical District No. 1 executed February 11, 1986.

The District wishes to begin implementation of time-of-use (TOU) metering on some of its loads for energy conservation purposes, and it's anticipated that this will affect the coincident demand of the District's load. The Company, in accordance with the provisions in the current agreement, has agreed to a change in the factor used in establishing the District's monthly coincident billing demand. An effective date of February 21, 1986 is requested pursuant to the terms of this Memorandum of Understanding.

Copies of this filing have been served upon Electrical District No. 1 and the Arizona Corporation Commission.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER86–335–000]

Take notice that on March 10, 1986 Central Illinois Public Service Company ("CIPS") tendered for filing amended Rate Schedule W–2 (Metropolis) for Wholesale Electric Service to the City of Metropolis for Distribution and Retail Sale to Its Customers ("Rate Schedule W–2 (Metropolis)"). CIPS also tendered for filing an amendment to the supply contract between CIPS and the City of Metropolis ("City").

The tendered rate schedule and amendment to supply contract comprise integral parts of a comprehensive agreement between CIPS and the City, reached after negotiations, to continue and extend their long-term customer-supplier relationship. Among other things, the amendment to the supply contract provides for an extension of the primary term of that contract to July 1, 1996.

CIPS requests an effective date of January 1, 1986, and therefore requests a waiver of the Commission's notice requirements.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER86–344–000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on Marrch 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated February 5, 1986.

Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to PASNY's "Out-of-State" customers utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY, designated Rate Schedule FERC 135 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 135.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements to as to allow the proposed initial rate schedule to become effective on July 1, 1985.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER86–348–000]

Take notice that Niagara Mohawk Power Corporation (Nigara), on March 10, 1986, tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas & Electric Corporation (Rochester) dated January 29, 1986.

This contingency agreement between both parties is to cover, during the maintenance outage (if required), the supplemental delivery of short-term power by Niagara Mohawk to Rochester Gas & Electric Corporation.

Copies of this filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, New York 14649

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, New York 12223

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER86–349–000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on March 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated November 27, 1985.

Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to the City of Niagara Falls utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY, designated Rate Schedule FERC 136 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 136.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

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Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements to as to allow the proposed initial rate schedule to become effective on November 1, 1985.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5994 Filed 3-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-533-000, et al.]

Chevron U.S.A. Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, Etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

March 14, 1986.

Take notice that the following filings have been made with the Commission.

1. Chevron U.S.A. Inc.

[Docket No. QF86-533-000]

On March 5, 1986, Chevron U.S.A. Inc. (Applicant), of P.O. Box 1392, Bakersfield, California 93302 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located three miles north of McKittrick, California. The facility will consist of two gas turbine generators and two waste heat recovery steam generators. The electric power production capacity of the facility is 5400 kW. The primary source of energy will be natural gas. The thermal energy will be used for tertiary petroleum production.

2. Miller Hydro Group

[Docket No. QF86-546-000]

On March 3, 1986, Miller Hydro Group (Applicant), of P.O Box 97, Lisbon Falls, Maine 04252 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 14 MW hydroelectric facility (P. 3428) will be located in Androscoggin County, Maine.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Tenneco Oil Company

[Docket No. QF86-549-000]

On February 28, 1986, Tenneco Oil Company (Applicant), of 10000 Ming Avenue, Bakersfield, California 93311, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of one combustion turbine generating unit with a waste heat recovery steam boiler. Steam produced by the facility will be used for enhanced oil production. The electric power production capacity of the facility will be 3,725 KW. The primary energy source will be natural gas. The installation of the facility will begin in the first quarter of 1986.

4. Tenneco Oil Company

[Docket No. QF86-550-000]

On February 28, 1986, Tenneco Oil Company (Applicant), of 10000 Ming Avenue, Bakersfield, California 93311, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam boilers. Steam produced by the facility will be used for enhanced oil production. The electric power production capacity of the facility will be 7.45 MW. The primary energy source will be natural gas. The installation of the facility will begin in the first quarter of 1986.

5. University Cogeneration Partners, Ltd.

[Docket No. QF86-529-000]

On February 28, 1986, University Cogeneration Partners, Ltd. (Applicant), of 3430 Camino Del Rio North, Suite 200, San Diego, California 92108, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in San Diego, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam boilers, and one extraction system turbine generating unit. Steam produced by the facility will be used in Rohr's manufacturing plant. The electric power production capacity of the facility will be 8.9 MW. The primary energy source will be natural gas. The installation of the facility will begin in October 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5995 Filed 3-18-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 17 Through February 21, 1986

During the week of February 17 through February 21 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Committee to Bridge the Gap, 2/21/86, KFA-0013

The Committee to Bridge the Gap filed an Appeal from a partial denial by the Deputy Assistant Secretary for Reactor Systems, Development and Technology, office of Nuclear Energy of a request for information which the organization had submitted under the Freedom of Information Act. The Committee had requested a copy of a report concerning safety assessments for space nuclear reactors. In considering the Appeal, the DOE determined that the report was properly withheld pursuant to 5 U.S.C. 552(b)(5) (Exemption 5) as a pre-decisional, deliberative document. The DOE further determined that the agency did not waive its Exemption 5 privilege merely because the report was cited in published articles. Accordingly, the Appeal was denied.

Plumbers & Steamfitters Local 106, 2/18/86, KFA-0011

Plumbers and Steamfitters Local 106 (the Union) filed an Appeal from a partial denial by the Authorizing Official of the Louisiana Strategic Petroleum Reserve project (SPRP) of a request for information which the Union sought under the Freedom of Information Act (FOIA). In its request, the Union sought certified payroll records allegedly filed with the SPRP by PDQ Contractors, Inc. (PDQ), a DOE subcontractor, as well as copies of the applicable prevailing wage determination established by the Department of Labor for the pipefitter craft and the surety bond for the project filed by the general contractor, Boeing Petroleum Services, Inc. (Boeing). The Authorizing Official released the wage determination and surety bond information, but indicated that the payroll records were in the possession of Boeing, not the SPRP. In its Appeal, the Union contended that because PDQ allegedly must file its payroll records with the SPRP as a matter of federal law, those records are necessarily "agency records." In considering the Appeal, the DOE determined that the payroll records do not qualify as "agency records" under the FOIA because Boeing is not an "agency." In addition, the payroll records do not qualify as "agency records" because the SPRP did not create them or obtain them from Boeing. In this regard, the DOE found that under the Service Contract Act, 41 U.S.C. 351 *et seq.*, as implemented by the Department of Labor in 29 CFR Part 4, PDQ is not legally obligated to file its payroll records. Accordingly, the DOE denied the Union's Appeal.

Request for Exception

Ed Flood Oil Company, Inc., 2/18/86, KEE-0006

Ed Flood Oil Company, Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file Form EIA-782B. Accordingly, exception relief was denied to the firm.

Request for Modification and/or Rescission

Economic Regulatory Administration, 2/18/86, KRR-0005

The Economic Regulatory Adminstration (ERA) filed a Request for a Supplemental Order following the issuance of a Remedial Order (RO) to Oil-Tex Petroleum, Inc. and David E. Myres. *Oil-Tex Petroleum Inc.*, 13 DOE ¶ 83,055 (1985) (*Oil-Tex*). In its Request, the ERA asked the Office of Hearings and Appeals (OHA) to (i) clarify the factual findings of the *Oil-Tex* Decision, and (ii) find permissible average markup (PAM) violations for certain crude oil resale transactions for which there were no allegations of layering violations in the PRO. OHA provided the clarification. In addition, OHA determined that no further PAM violations should be found, but that Oil-Tex should be granted credit for general and administrative expenses with regard to those PAM violations which had been found in the Remedial Order. Accordingly, the PRO was modified to credit Oil-Tex with such expenses.

Refund Applications

Conoco, Inc./Zephyr, Inc., 2/20/86, FR220-0006

The Department of Energy issued a Decision and Order concerning the Application for Refund filed by Zephyr, Inc., a reseller of Conoco petroleum products. The firm's claim fell below the $5,000 threshold for small claims set forth in *Conoco, Inc.*, 13 DOE ¶ 85,316 (1985). In considering this application, the DOE concluded that Zephyr should receive a refund of $5,060, including accrued interest.

Consumers Power Company, 2/19/86, RF171-30

Consumer Power Company obtained a mandatory court order requiring the DOE to disburse $23,668,509.80 in "entitlements receive order" funds to the firm. Those funds were being held in escrow by the DOE on behalf of the firm after approval of its claim in *Amber Refining Inc.*, 13 DOE ¶ 85,217, 50 FR 41572 (1985). The present order directs immediate payment of those funds.

Gulf Oil Corporation, Agway Petroleum Company et al., 2/20/86, RF40-00275 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $42,527, consisting of $36,030 in principal and $6,497 in interest, based on a total purchase volume of 29,531,773 gallons of Gulf petroleum products.

Gulf Oil Corp./E.I. du Pont de Nemours and Company, 2/18/86, FR40-608

The DOE issued a Decision and Order concerning an Application for Refund filed by E.I. du Pont de Nemours and Company in the Gulf Oil Corporation special refund proceeding. The firm filed a claim as an end-user of various petroleum products purchased from Gulf during the consent order period (August 19, 1973 through January 31, 1976). In its application, Du Pont based its claim in part on purchases of an NGL mixture consisting of ethane and propane. However, after determining the ethane was not price-regulated after March 31, 1974, OHA excluded gallons of ethane purchased after this date from the firm's refund claim. The resulting award granted to Du Pont was $612,365, consisting of $518,809 in principal and $93,556 in interest.

Gulf Oil Corporation/S&H Gulf Service Center et al., 2/21/86, RF40-129 et al.

The DOE issued a Decision granting refunds from the Gulf Oil Corporation consent order escrow fund to 29 purchasers of Gulf refined petroleum products. Each refund applicant had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. The total amount of refunds granted was $29,456, consisting of $24,954 in principal and $4,502 in interest.

Little America Refining Company/Metro Oil Products, Inc. et al., 2/20/86, RF112-12 et al.

The Doe issued a Decision and Order concerning six Applications for Refund filed by purchasers of products covered by a consent order the agency entered into with

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Little America Refining Company (Larco). Based on cost bank evidence submitted by each of the firms, and the finding by the DOE in an earlier Decision that direct purchasers from Larco were generally charged higher than market prices, the DOE concluded that the applicants were injured. Therefore, the DOE granted each firm a refund comprising its full volumetric share plus its share of interest accrued on the Larco deposit fund escrow account. The refunds granted in this proceeding total $80,945 in principal and $38,319 in interest.

Mobil Oil Corporation/County of Burlington, 2/18/86, RF225-6040

The Doe issued a Decision and Order concerning an Application for Refund filed by the County of Burlington, New Jersey, an end-user of Mobil motor gasoline who purchased the product directly from Mobil. The claimant applied for a refund based on the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that the county should receive a total of $498 ($420 principal plus $78 interest) based upon a total volume of 1,081,440 gallons of Mobil gasoline purchases.

Pennzoil Co./Puerto Rico, Pennzoil Co./Louisiana, 2/20/86, RQ10-368; RQ10-288

The DOE issued a Decision and Order approving the second-stage refund plan of Puerto Rico and rejecting Louisiana's plan, both intended for use of funds from the Pennzoil Co. escrow account. Puerto Rico plans to use $3,717 for the publication and distribution of residential energy conservation brochures. Because of pending litigation, however, the OHA cannot currently disburse second-stage Pennzoil funds, and approval of the plan is contingent upon the DOE's success in this litigation. The DOE found that the State of Louisiana's plan provided insufficient restitution to injured consumers of Pennzoil products, and will permit Louisiana to submit a revised plan for use of these funds.

Texas Oil and Gas Corporation/Mobil Oil Corporation, 2/18/86, RF 29-3

Mobil Oil Corporation (Mobil) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOGCO). The DOE found that Mobil paid above-market average prices for the propane, isobutane, normal butane and natural gasoline it purchased from TOGCO during most of the quarters of the TOGCO consent order period. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Mobil's competitive disadvantage. A refund of $1,504,688 was found to equitably compensate Mobil for the harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $1,166,730 for a total refund of $2,671,418.

Vickers Energy Corp./Illinois, Arkansas, Oklahoma, Coline Gasoline Corp./Connecticut, National Helium Corp./Connecticut, Rhode Island, Palo Pinto Oil and Gas/Connecticut, Belridge Oil Co./Connecticut, Perry Gas Processors/Connecticut, 2/20/86, RQ3-284; RQ3-308; RQ3-309; RQ3-338; RQ5-340; RQ5-341; RQ8-342; RQ183-343; RQ1-358.

The States of Illinois, Arkansas, Rhode Island, Connecticut and Oklahoma filed second-stage refund plans for funds remitted to the DOE under consent orders with Vickers Energy Corp., National Helium Corp., Coline Gasoline Corp., Palo Pinto Oil and Gas, Perry Gas Processors and Belridge Oil Co. The OHA approved Illinois' proposed refund plan to use $2,954 allotted to it from the Vickers' escrow account to supplement funds for the Illinois Alternative Transportation Fuel Program. The disbursement of $1,180, also from the Vickers escrow account, was approved for Arkansas to promote the state's energy conservation programs. Rhode Island's proposed refund plan to use $72,342 from the National Helium escrow account for detection of leaking underground fuel storage tanks and other environment-related programs was denied. The OHA approved a disbursement of $170,471 to Connecticut from the Coline, National Helium, Perry Gas, Palo Pinto, and Belridge escrow accounts. Connecticut's approved plans include a ridesharing marketing and promotional program and an improved transportation for the handicapped program. Finally, the OHA partially approved Oklahoma's proposed refund plans to expand the state's low income weatherization program as well as its low income home energy assistance program. Oklahoma's plan to provide transportation for the mentally retarded, implement a public building energy conservation demonstration project and to implement a technical assistance program for each of the poorest one-third of the Oklahoma school districts were denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

C. N. Brown Company—RF40-550

Eastern Oil Company—HEA-0013

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room IE-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-6084 Filed 3-18-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2987-5]

Extension of the Public Comment Periods on the Notices of Intent To List Trichloroethylene and Perchloroethylene as Potentially Toxic Air Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Extension of the public comment period.

SUMMARY: This notice extends the public comment periods provided in EPA's *Notice of Intent to List Trichloroethylene (TCE)* and *Notice of Intent to List Perchloroethylene (PERC)* under section 112 of the Clean Air Act published on December 23, 1985 (50 FR 52422) and December 26, 1985 (50 FR 52880) for TCE and PERC, respectively. Clarification notices for each of these chemicals were published in the Federal Register March 5, 1986 (51 FR 7714 and 7718). These notices described the results of EPA's preliminary assessment of TCE and PERC as potentially toxic air pollutants and announced EPA's intent to add TCE and PERC to the section 12(b)(1)(A) list based on the health and risk assessments. In response to the 60-day public comment period provided in the notices, requests were submitted for extensions of the public comment periods. For this reason the public comment periods have been extended for 30 days from today's date and will not close on [April 18, 1986] for both chemicals.

FOR FURTHER INFORMATION CONTACT: John Vandenberg, (919) 541-5519.

Dated: March 13, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-5974 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-439, FRL-2986-5]

Withdrawal of Pesticide Tolerance Petitions; American Cyanamid Co.

AGENCY: Environmental Protection Agency (WPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal by American Cyanamid Co., of pesticide tolerance petitions for residues of the insecticide flucythrinate in on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-439] and the petition

number, attention Product Manager (PM-15), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm 236 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: George T. LaRocca, (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (702-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued notice cited below, which announced filing of petitions by the American Cyanamid Co., P.O. Box 400 Princeton, NJ 08540 proposing tolerances for flucythrinate ((±) cyano(-phenoxphenyl) methyl(±)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate) in or on certain commodities as follows:

Petition ID	Pub. date (FR citation)	CFR affected	Commodities	Parts per million
PP 4F3077	June 27, 1984 (49 FR 26267).	40 CFR 180.400	Tomatoes	0.2
FAP 4H5431	do	21 CFR 561.435	Tomato pomace (dry) Tomato pomace (wet)	10.5 1.5
PP 4F3099	August 1, 1984 (49 FR 30789).	40 CFR 180.400	Potato tubers	0.05
PP 4F3102	do	do	Soybean seed	0.05
FAP 4H5435	do	21 CFR 561.435	Soybean oil, refined	0.10

American Cyanamid Co. has withdrawn these petitions without prejudice to future filing in accordance with 40 CFR 180.8.

Authority: 21 U.S.C. 346a and 348.

Dated: February 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR. Doc. 85-5757 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-442, FRL-2985-6]

Pesticide Tolerance Petitions; Ciba Giegy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for cyromazine in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-442] and the petition number, attention Product Manager (PM-17), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy A. Gardner, (PM-17), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Ciba Giegy Corp., Agricultural Divison, P.O. Box 18300, Greensboro, NC 27419, proposing to amend 40 CFR 180.414 by establishing tolerances for the combined residues of the insecticide cyromazine, *N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine, calculated as cyromazine in or on the commodities as follows:

Petition identity	Commodities	Parts per million (ppm)
PP 6F3329	Carrots	3.0
PP 6F3332	Sweet corn, fodder and forage	0.50
	Meat, fat, and meat byproducts, kidney and liver.	0.05
	Milk	0.01
	Radishes	0.50
PP 6F3333	Tomatoes	1.0
PP 6F3342	Peppers	2.0

The proposed analytical method for determining residues is identified as AG-408, using high pressure liquid chromatography and an ultra violet detector.

Authority: 21 U.S.C. 346a.

Dated: February 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5758 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-440, FRL-2982-5]

Pesticide Tolerance Petitions; Dow Chemical, U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for chlorpyrifos in or on certain agricultural commodities.

ADDRESS: By mail, submit commnents identified by the document control number [PE-440] and the petition number, attention Product Manager

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(PM-12), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, (PM-12), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460 Office location and telephone number: Room 202, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), from Dow Chemical U.S.A. P.O. Box 1706, Midland, MI 48640, proposing to amend 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorprifos [*O,O*-diethyly *O*-(3,5,6-trichloro-2-pyridylphosphorothioate] and its metabolite 3,5,6,-trichloro-2-pyridinol in or on the commodities as follows:

Petition identity	Commodities	Parts per million (ppm)
PP 6F3356	Apricots	0.05 ppm (of which no more than 0.01 ppm is chlorpyrifos).
PP 6F3357	Nectarines	0.5.
	Plums (including fresh prunes).	0.2.
PP 6F3358	Pears	1.0 ppm (of which no more than 0.5 ppm is chlorpyrifos).

The proposed analytical method for determining residues is gas liquid chromatography using the Coulson conductivity detector specific for nitrogen.

Authority: 21 U.S.C. 346a.

Dated: March 5, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6495 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-431, FRL-2985-4]

Pesticide Tolerance Petitions; Methyl Bromide Industry Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food additive petitions relating to the establishment of tolerances for methyl bromide in or on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-431] and the petition number, attention Product Manager (PM-32), at the following address:

Information Services Section (TS-757C),
Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:
Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Arturo Castillo, (PM-32),
Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:
Rm. 393, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-3994).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food additive petitions (FAP), from the Methyl Bromide Industry Panel, P.O. Box 2200, Highway 52 N.W., West Lafayette, IN 47906, relating to the establishment of tolerances for residues of the insecticide methyl bromide in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3300.* The Methyl Bromide Industry Panel proposes amending 40 CFR Part 180 by establishing tolerances for residues of the insecticide methyl bromide as follows:

Crop group commodities	Parts per million (ppm)
Brassica (cole) leafy vegetables	0.1
Bulb vegetables	0.1
Cereal grains (except corn)	0.3
Citrus fruits	1.0
Cucurbit vegetables (except melons)	0.1
Fruiting vegetables (except cucurbits)	0.1
Herbs and spices	0.2
Legume vegetables (succulent or dried)	0.5
Pome fruits	0.2
Root and tuber vegetables	0.1
Small fruits and berries	0.1
Stone fruits	0.1
Tree nuts	2.0

Individual commodities	Parts per million (ppm)
Corn	2.0
Green cocoa beans	5.0
Green coffee beans	1.0
Melons	0.5

The proposed analytical method for determining residues is rapid head space assay for methyl bromide.

2. *FAP 6H5485.* The Methyl Bromide Industry Panel proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide methyl bromide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Apricots	0.4
Candy bars	1.0
Cheese	2.0
Ham	2.0
Raisins	3.4
Sugar	0.1

Authority: 21 U.S.C. 346a and 348.

Dated: February 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5788 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-441, FRL-2986-9]

Pesticide Tolerance Petitions; Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF-441] and the petition number, attention Product Manager (PM-16), at the following address:

Information Services Section (TS-757C),
Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:
Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by making any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller (PM-16),
Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:
Room 211, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) and feed and food additive petitions (FAP) relating to the establishment of tolerance for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3373.* Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.330 by establishing tolerances for the combined residues of the insecticide *S*-[2-(ethylsulfinyl)-ethyl] *O,O*-dimethyl phosphorothioate and its cholinesterase-inhibiting metabolites in or on poultry fat, meat, and meat byproducts (mbyp) at 0.01 part per million (ppm); and increasing the established tolerance in or on grapes from 0.1 ppm to 1.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a phosphorous sensitive detector.

2. *FAP 6H5498.* Mobay Chemical Corp. Proposes amending 21 CFR Part 193 (food) and § 561.234 (feed) by establishing regulations permitting residues of the insecticide designated in PP 6F3373 above in or on the commodities as follows:

CFR affected	Commodity	PPM
21 CFR Part 193	Raisins	2.5
21 CFR 561.234	Raisin waste	10.0

3. *PP 6F3364.* FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.173 by increasing the established tolerance for residues of the insecticide ethion (*O,O,O,O'*-tetraethyl *S,'*-methylene bisphosphorodithioate) including its oxygen analog (*S,S'*-[[(diethoxyphosphinothioyl)thio]methyl] *O,O*-diethyl phosphorothioate) in or on the commodities as follows:

Commodities	PPM	
	From	To
Apples	2.0	4.0
Citrus fruits	2.0	5.0
Grapes	2.0	6.0
Pears	2.0	4.0

The proposed analytical method for determining residues is a gas chromatographic method utilizing a nitrogen-phosphorous detector.

5. *FAP 6H5494.* FMC Corp. Proposes amending 21 CFR 193.190 and 561.230 by establishing and/or increasing regulations permitting residues of the insecticide designated in PP 6F3364 above in or on the commodities as follows:

CFR affected	Commodity	PPM	
		From	To
21 CFR 193.190.	Citrus oil		55.0
	Raisins	4.0	[illegible]
21 CFR 561.231.	Apple pomace (dry)		55.0
	Citrus pulp (dehydrated)	10.0	25.0
	Raisin waste		65.0

Authority: 21 U.S.C. 346a and 348.

Dated: March 11, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-5882 Filed 3-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-437, (FRL-2983-7)]

Pesticide Tolerance Petitions; Pennwalt Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-437] and the petition number, attention Product Manager (PM-21), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C),

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Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed, and food additive petitions (FAP), relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings

1. *PP 6F3343.* Pennwalt Corp., Agchem Division, 3 Partway, Philadelphia, PA 19102. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the fungicide thiophanate-methyl(dimethy[(1,2-phenylene)-bis (iminocarbonothioyl)] bis[carbamate]), its oxygen analogue, dimethy1-4,4-0-phenylene bis (allophanate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the agricultural commodities grapes at 10.0 parts per million (ppm), rice at 5.0 ppm, and rice straw at 15.0 ppm. The proposed analytical method for determining residues is ultraviolet spectrophotometry for thiophanate-methyl-high pressure liquid chromatography-allophanate.

2. *FAP 6H5466.* Pennwalt Corp. Proposes amending 21 CFR Part 561 by establishing regulations permitting residues of the above mentioned fungicide in or on the commodities as follows:

Commodities	PPM
Grape pomace, dried	125.0
Raisins	50.0
Raisin waste	125.0
Rice hulls	20.0

3. *PP 6F3355.* Merck & Co. Inc., P.O. Box 2000–WBD–360, Rahway, NJ 07065. Proposes amending 40 CFR 180.242(a) by establishing tolerances for the residues of the fungicide thiabenazole (2-(4-thiazolyl) benzimidazole in or on the commodities peanuts at 0.1 ppm, and peanut hulls at 2.0 ppm.

The proposed analytical method for determining residues is spectrophotoflurometry.

4. *PP 6F3362.* Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.408 by establishing a tolerance for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) ananine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester each expressed as metalaxyl in or on the commodity grapes at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen/phosphorus detector.

5. *FAP 6H5493.* Ciba Geigy Corp. Proposes amending 21 CFR 193.277 (food) and 561.273 (feed) by establishing regulations permitting residues of the above fungicide (I. 4) in or on the commodities as follows:

CFR affected	Commodities	PPM
21 CFR 193.277	Grape juice	2.0
	Grape wine	2.0
	Raisins	6.0
21 CFR 561.273	Grape pomace dry	6.0
21 CFR 561.273	Grape pomace wet	3.0
	Raisin waste	9.0

6. *PP 6F3372.* Uniroyal Chemical Co., Inc., 76 Amity Rd., Bethany, CT 06525. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide triflumizole 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole and its aniline containing metabolites 4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide in or on the agricultural commodities as follows:

Commodities	PPM
Apples	0.1
Cattle, fat, meat and meat byproducts (mbyp)	0.05
Grapes	0.3
Hogs, fat, meat and mbyp	0.05
Milk	0.05
Pears	0.1
Poultry, eggs, fat, meat and mbyp	0.05

The proposed analytical method for determining residues is chromatography and mass spectroscopy.

7. *FAP 6H5497.* Uniroyal Chemical Co., Inc. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the above fungicide (I. 6) in or on the agricultural commodities as follows:

Commodities	PPM
Apples, dried	3.0
Apple pomace, dry	1.0
Apple pomace, wet	3.0
Grape juice	1.0
Grape pomace, dry	1.0
Grape pomace, wet	4.0
Raisins	1.0
Raisin waste	2.0

II. Amended Petition

FAP 5H5449. EPA issued a notice, published in the **Federal Register** of December 12, 1984 (49 FR 48374), which announced that E.I. Du Pont De Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898 proposed amending 21 CFR part 561 by establishing a regulation permitting residues of the fungicide bis(4-fluorophenyl)methyl(1*H*-1,2,4-triazol-1-ylmethyl)silane in or on apple pomace at 1.5 ppm.

E.I. Du Pont De Nemours & Co., Inc., has amended the petition by revising the chemical name to read "1=[[Bis(4-fluorophenyl)methylsilyl] methyl]-1*H*-1,2,4-triazole" in or on apple pomace at 1.5 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: March 5, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–5496 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

[PF–443, FRL–2987–1]

Pesticide Tolerance Petitions; Rhone-Poulenc Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–443] and the petition number, attention Product Manager (PM–21), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this

notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP), feed and food additive petitions (FAP), relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3366.* Rhone-Poulenc Inc., P O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm). The proposed analytical method for determining residues is gas chromatography with an Ni^{63} electron capture detector.

2. *FAP 6H5498.* Rhone-Poulenc Inc. Proposes amending 21 CFR 193.253 by establishing regulations permitting residues of the fungicide iprodione in or on the commodity potato chips and dried flakes at 2.5 ppm.

3. *FAP 6H5495.* Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611. Proposes amending 21 CFR Parts 193 and 561 by establishing regulations permitting the combined residues of the fungicide *O,O*-dimethyl *O*-(2,6-dichloro-4-methylphenyl) phosphorothioate and its metabolites *O,O*-dimethyl *O*-(2,6-dichloro-4-methylphenyl)phosphate and 2,6-dichloro-4-methylphenol in or on the following commodities:

CFR Part affected	Commodities	PPM
21CFR Part 193	Cottonseed crude oil	0.04
	Cottonseed refined oil	0.04
	Peanut crude oil	0.08
	Peanut refined oil	0.08
21 CFR Part 561	Cottonseed hulls	0.01
	Cottonseed soapstock	0.04
	Peanut meal	0.01
	Peanut soapstock	0.03

Authority: 21 U.S.C. 346a and 348.

Dated: March 11, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR. Doc. 86–5663 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP–36105; FRL–2987–7]

M–44 Sodium Cyanide Capsules; Hearing and Proposed Modification of Order

AGENCY: Environmental Protection Agency.

ACTION: Notice of Hearing and Notice of Intent to Modify Order.

SUMMARY: In 1972, EPA prohibited the use of sodium cyanide to control predators, in part, because of the adverse effects of this pesticide on nontarget species. In 1975, EPA modified that decision to permit use of sodium cyanide in a spring-loaded ejector device known as the "M–44" to control certain wild canid predators, subject to a number of restrictions. These restrictions include one which prohibits the use of M–44's in wildlife refuges, national wilderness, State and Federal parks, and similar areas. M–44's were subsequently registered for use in accordance with the 1975 decision.

The U.S. Department of the Interior (USDI) has requested that EPA amend the registration of M–44's to permit control of wild predators on Federally designated threatened or endangered species at sites where the use of M–44's is currently prohibited by the 1975 order. Under EPA regulations, this application may be approved only if EPA finds that there may be "substantial new evidence" to warrant the change and then holds an adjudicatory hearing to consider the evidence. EPA finds that USDI's request, which includes information showing that wild canids kill endangered whooping cranes and Mississippi sandhill cranes in National Wildlife Refuges, contain "substantial new evidence." Accordingly, this notice announces that EPA will hold a hearing to determine whether this proposed change may be approved.

Additionally, USDI has requested modification of 10 other restrictions contained in the 1975 order to allow for more efficient use of sodium cyanide in predator control. EPA has determined that USDI has presented a persuasive justification for making these changes. These proposed changes range from eliminating the limits on the density of M–44's in the field to reducing the frequency of checking M–44's from weekly to once every 4 weeks. Although EPA rules do not require a hearing on these proposed changes, EPA will hold a hearing if any person who may be adversely affected by the proposed action requests a hearing. Interested persons may also submit comments on the proposed changes. If no hearing is requested on any of the 10 proposed changes, EPA will review any public comments and issue a final order with respect to those proposed changes.

DATES: Notices indicating an intention to participate in the hearing on whether to allow use of the M–44 to protect endangered/threatened species in areas where such use is currently prohibited must be filed by April 18, 1986. In addition, persons who may be adversely affected by the proposal to modify the 10 additional restrictions may, by April 18, 1986, (1) submit written comments and/or (2) request that one or more of the 10 proposed modified restrictions be considered in the adjudicatory hearing. Procedures for submitting comments and requesting a hearing are explained below in unit IV of this notice. If no adversely affected person requests a hearing by April 18, 1986, that any of these 10 proposed changes be considered in the Subpart D hearing, the Agency will schedule a hearing limited to consideration only of the proposed restriction on the sites where M–44 sodium cyanide capsules are permitted to be used. As for the other 10 modifications, EPA will issue a Final Order which reflects the Agency's conclusions on these proposed changes after taking into account any comments received. The Agency will subsequently publish a notice in the Federal Register announcing the hearing data and the effective date for any of the modifications for which a hearing was not requested. Any request to expand the adjudicatory hearing to include one or more of the proposed modifications must specify which modification(s) is to be included.

ADDRESS: Addresses given below are for where to send requests to participate in the hearing, requests to include one or more of the proposed modifications in the adjudicatory hearing, and comments on the proposed modifications. Specific procedures are described in detail in Unit IV of this notice.

A. Requests to participate in the hearing or to include one or more of the 10 proposed modified restrictions in the adjudicatory hearing will be addressed to: Ms. Bessie Hammiel, Hearing Clerk

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(A–110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

B. Address written comments, identified by the document control number [OPP–36105], to:

Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, Cm #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

All written comments, as well as published reports, letters, and other documents cited in this notice, will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Agency recommends that persons wishing to review comments or documents contact Ms. Frances Mann (703–557–3262), in advance, to schedule a time to view the available material.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: This notice is arranged in four units. Unit I discusses the regulatory history of sodium cyanide and provides a chronology of past actions.

Unit II lists the modifications proposed by the Fish and Wildlife Service (FWS) of the United States Department of the Interior (USDI) and provides the rationale for proposed changes.

Unit III provides the Agency's determinations regarding the 11 modifications proposed by USDI. Briefly, EPA has determined that one of the 11 changes is subject to the requirements in Subpart D of 40 CFR Part 164 (§§ 164.130–164.133, herein after called Subpart D). These rules generally prohibit the Agency from authorizing the use of a previously cancelled pesticide, such as sodium cyanide, at a site where such use has been prohibited, unless the Agency finds there is "substantial new evidence" which may warrant holding a hearing to reconsider the previous cancellation. EPA has determined, with respect to the proposed change covered by Subpart D, that such evidence exists and accordingly will hold a hearing to consider this proposal. EPA has further determined that the other 10 changes proposed by USDI are not subject to Subpart D. EPA, however, will expand the Subpart D hearing to address any of the 10 USDI proposals if a person who would be adversely affected by the change requests that it be considered in the hearing. Interested persons are also permitted to comment on the 10 proposed changes. Finally, EPA has determined that if no comments are submitted and no one requests a hearing on one or more of the proposed changes, EPA will approve the change.

Finally, unit IV explains the procedures by which EPA will implement and/or consider the proposed changes.

I. Background, Findings, and Opinion

A. 1972 Cancellation and Suspension Order

On March 9, 1972, the Agency issued notices and an order cancelling and suspending registrations of products for predator control containing sodium cyanide, as well as strychnine, 1080 (sodium fluoroacetate) and thallium sulfate—three other compounds used as predacides (PR Notices 72–2 and 72–3, published in the **Federal Register** of March 18, 1972 (37 FR 5718)). The order was not contested, nor was judicial review of the order sought. Accordingly, the order became final after 30 days.

The decision to ban these poisons was based, in part, on the findings of a special committee chaired by Dr. Stanley Cain, which the USDI and the President's Council on Environmental Quality had commissioned to study the use of chemical toxicants for predator control. The committee's findings dealt at length with the effects of the use of sodium cyanide, strychnine, and 1080 for predator control. The report points out the extreme toxicity of these compounds, their nonselectivity, and their potential impact on the environment, which "is increased by secondary hazard, accumulation in the animal, and combined characteristics of chemical stability and solubility in water." This report reconfirmed an earlier finding that the predator control program took a heavy environmental toll.

The Cain committee noted the absence of any meaningful information on the efficacy of poison baiting, especially in relation to the economic loss caused by predators to the sheep industry.

It was this and other available information which led to the Agency's conclusion that the hazards from the use of these chemicals were not counterbalanced by the benefits derived through their use, and ultimately to the decision to cancel the predator uses.

B. 1975 Registration of M–44 Cyanide Capsules

In July 1975, the Fish and Wildlife Service submitted an application to register sodium cyanide for use in the "M–44" to control coyotes and certain other predators. The M–44 is a spring-loaded device that ejects a lethal amount of sodium cyanide into the mouth of a coyote or other canine tugging on the device.

Regulations in Subpart D provide that an application for "use of a pesticide at a site and on a pest [that had] been finally cancelled or suspended" would be considered a petition for reconsideration of the prior cancellation decision (40 CFR 164.130). Under the Subpart D regulations, the Agency must determine whether the applicant submitted "substantial new evidence which may materially affect the prior cancellation" order and which "could not, through exercise of due diligence, have been discovered * * * prior to the issuance of the final order" (40 CFR 164.131(a)). If the Administrator finds that such evidence was presented, he then initiates a formal adjudicatory hearing, employing to the extent feasible the same procedures used in a cancellation hearing. *Id.* at 164.131(c). (If the Administrator concludes that there is no substantial new evidence, he denies the application. *Id.* at 164.131(b).)

As in other proceedings under FIFRA, the proponent of use bears the burden of proof in a reconsideration hearing (40 CFR 164.132(a)). Following the presentation of evidence and an Initial Decision by the presiding officer, the Administrator makes a Final Decision on whether to modify the previous cancellation order.

After reviewing the application for registration of the M–44, the Administrator determined that the FWS had presented sufficient information to warrant holding a reconsideration hearing under the Subpart D rules. Accordingly, pursuant to a notice published in the **Federal Register** of July 15, 1975 (40 FR 29755), EPA conducted public hearings on August 12–15, 1975, to reconsider the 1972 order cancelling the use of sodium cyanide for predator control. Following this hearing, on September 16, 1975, the Administrator modified the March 9, 1972 Order to allow registration of the M–44 Cyanide Capsules. A notice announcing this decision was published in the **Federal Register** on September 29, 1975 (40 FR 44726).

C. Previous Modifications to M–44 Cyanide Capsules Registration

Since 1975, EPA has received and approved two requests to modify some of the restrictions in the 1975 order. As explained below, neither of the requests was subject to the Subpart D rules because neither involved a proposal to use the M–44 at a site or on a pest that was currently prohibited. Rather, the requests affected other terms and conditions of the use of the M–44's.

Even though the Subpart D rules did not apply to these modifications, EPA designed its review procedures to recognize and implement the policy goals that led to promulgation of those rules. The Subpart D requirement to hold a public hearing before changing a prior cancellation or suspension order is designed to protect the procedural rights of affected persons. The hearing opportunities and other procedural protections afforded to such persons under FIFRA and the Administrative Procedure Act in connection with the original decision to cancel or suspend a pesticide registration would be rendered meaningless if similar procedural protections were not available in connection with a decision to modify or rescind a prior cancellation or suspension order. Likewise, the procedural safeguards established by Subpart D would be rendered meaningless if the order resulting from the Subpart D hearing were subsequently modified without providing similar procedural protections to persons who might be adversely affected by such modification. Therefore, an opportunity to request a public hearing was provided in connection with the proposed modifications of the restrictions.

Following this policy, the Agency announced in the **Federal Register** of March 22, 1976 (41 FR 11871) a proposal to modify Restriction Number 22(24) [1] the restriction pertaining to the antidote kit. The proposal to modify the restriction resulted after the State of Montana pointed out that the antidote kits were expensive, a fact not presented at the public hearings in August 1975, which were held to reconsider the cancellation and suspension Order of 1972. Although expense alone was not sufficient reason to justify a modification, a reassessment of the human health considerations did permit the Agency to propose a modification of the restriction regarding the contents of the antidote kit by decreasing the number of perals of amyl nitrite from 12 to a minimum of 6 and deleting reference to antidote injections of sodium nitrite and sodium thiosulfate. After receiving no comments or requests for a formal hearing, the Agency announced in the **Federal Register** of May 27, 1976 (41 FR 21690), that it had amended the restriction.

Similarly, in the **Federal Register** of February 10, 1977 (42 FR 8406), the Agency announced a proposal to modify Restrictions 18(3) and 20(4) to allow use of M–44 Sodium Cyanide Capsules by Indian Governing Authorities. The original restrictions contained wording which, in effect, did not permit the governing authorities of Indian reservations not subject to State jurisdiction to be eligible registrants of sodium cyanide capsules to be used in the M–44 device. The Navajo Nation informed the Agency of certain facts not presented at the public hearings in August 1975. In particular, Federal law and treaties between the Navajo Nation and the United States provide that there shall be no State jurisdiction over the Navajo reservation and that lands subject to Navajo authority are not under the direct control of the Federal Government. After receiving no comments on the proposed modification or requests for a formal hearing, this modification became effective on March 15, 1977 (42 FR 8406).

D. Emergency Use of M–44's to Protect Threatened/Endangered Wildlife

Specific exemptions under the provisions of section 18 of FIFRA have been granted to USDI since 1977 for the use of sodium cyanide in M–44 devices to protect the endangered whooping crane against predators in Gray's Lake National Wildlife Refuge in Idaho.

Specific exemptions were also granted to USDI during the years of 1977 to 1982 for the use of sodium cyanide in M–44 devices to protect the endangered Aleutian Canada goose against the Arctic fox at Agattu Island, which is part of the Alaska Maritime National Wildlife Refuge.

In accordance with Subpart D procedures, these requests for specific exemptions constituted petitions for reconsideration of the September 16, 1975 Order, which prohibited use of sodium cyanide in wildlife refuge areas (restriction Numer 5 in the Administrator's Order and Number 8 in the product label). Additionally, the requests were for control of wild canids suspected of preying on a Federally designated endangered species, i.e., the whooping crane and the Aleutian Canada goose, whereas the Order permits the use of sodium cyanide only to control wild canids suspected of preying on livestock and poultry (restriction Number 2 in the Administrator's Order and Number 5 in the product label).

The Agency granted these exemptions after determining that an emergency condition did in fact exist and that the criteria which provide for an emergency waiver of hearing had been met (40 CFR 164.133).

In addition to receiving a specific exemption in May 1985 to use sodium cyanide to protect the whooping crane at the Gray's Lake site, USDI also requested and received a specific exemption to allow the use of M–44 sodium cyanide capsules in the M–44 device in the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi sandhill crane against predators. This is the first year that this use was requested at the Mississippi Sandhill Crane National Wildlife Refuge. This exemption was granted in accordance with Subpart D procedures as described above.

E. Current Applications

On July 6, 1984, FWS submitted an application to amend its registration by modification of 10 use restrictions imposed by the Order dated September 16, 1975, and published in the **Federal Register** of September 29, 1975 (40 FR 44726), regarding registration of M–44 sodium cyanide capsules for use in predator control. USDI subsequently requested another modification on July 18, 1985. The restrictions affected by the requested modifications are described in detail in Unit II of this Notice.

II. Proposed Modifications

The following paragraphs set out the current wording for each of the 11 restrictions which FWS has asked EPA to modify, the wording of the revision proposed by FWS, and the rationale offered by FWS for these proposed changes. The proposed changes are based on practical considerations that have become clear after 10 years of using the M–44 in the field. In 1975, when EPA established the initial 26 use restrictions for M–44's, it was not possible to foresee the need for these changes.

The rationales below summarize the facts and explanations presented by USDI in support of the proposed changes. Some of the material USDI uses to support the proposed changes are specifically named in the rationale discussion below. The materials that were utilized included USDI's requests for specific exemptions, final reports submitted by USDI in connection with

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[1] The numbers identify the restriction numbers given in the *Final Order* and in the product label. The number in parentheses corresponds to the product label restriction number.

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past use under specific exemptions, a 1981 Environmental Assessment by USDI of the proposed use of the M–44 at Grays Lake, a draft paper entitled "The Whooping Crane Recovery Program: The Role of Animal Damage Control," as well as other correspondence and conversations between USDI and EPA Personel.

A. Restriction Number 2(5)

Current wording:

The M–44 device shall be used only to take wild canids suspected of preying upon livestock and poultry.

Proposed change:

The M–44 device shall only be used to take wild canids suspected of preying on livestock, poultry or federally designated threatened or endangered species.

USDI rationale:

As result of this change, USDI expects to be able to take action more promptly to protect threatened or endangered species, in accordance with their responsibility under the Endangered Species Act (16 U.S.C. 1531–1543). USDI cites the results and information gained through the use of M–44 under section 18 of FIFRA to protect the endangered whooping crane at Gray's Lake National Wildlife Refuge (GLNWR) as support for this modification.

USDI has been involved in an effort to increase populations of the endangered whooping crane. One of the sites at which this project is being carried out is GLNWR. When the project was first originated, the coyote, now the major predator on cranes at GLNWR, was very scarce in this area. USDI believes that the coyote population was held in check by the use of 1080 in bait stations at the refuge because when the use of 1080 was discontinued in 1972, an increase in the coyote population followed. By 1977, it became apparent to USDI that coyote populations had increased sharply and that control measures would be necessary if the whooping crane program was to succeed. USDI found that control by trapping was difficult due to the terrain and land ownership patterns. Their greatest success in control came from shooting from a helicopter, but aerial gunning tended to disrupt the cranes and was expensive in terms of manpower and cost.

The use of sodium cyanide in the M–44 device has been authorized under emergency exemptions to protect the whooping crane against predators at GLNWR since late in 1977. USDI considers the use of M–44's to be a critical component of an integrated predator control program at this site. USDI claims that the success of efforts to increase the population of whooping cranes is evident from a comparison of the number of chicks fledged as a percentage of the eggs which hatched. USDI submitted a draft of a paper entitled "The Whooping Crane Recovery Program: The Role of Animal Damage Control" by R.C. Drewien, *et al.*, which showed that when M–44's were not used for the 3-year period of 1975 to 1977, 41 percent of the chicks fledged. The percentage fledged increased to 54 percent for the 3-year period of 1982 to 1984, when M–44's were being used. USDI considers the success of their efforts to be directly dependent on reducing predation. Since its first use at the Gray's Lake site, the M–44 has been responsible for taking 47 whooping crane predators (correspondence to EPA dated May 23, 1985.)

USDI also believes that the use of the M–44 under the specific exemption granted for use on Agattu Island to protect the Aleutian Canada goose was responsibile for taking the last Arctic fox on this island, thus eliminating the predation problem.

Based on the success of the use of M–44's at GLNWR and on Agattu Island, USDI requested and was granted the use of the device under an emergency exemption in May 1985 at the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi sandhill crane.

In summary, USDI contends that there is a need for this use to continue at the above sites and that the M–44 would probably be useful at other sites to protect threatened or endangered species from predation.

B. Restriction Number 4(7)

Current wording:

The M–44 device shall only be used in instances where actual livestock losses due to predation by wild canids are occurring. M–44 devices may also be used prior to recurrence of seasonal depredation, but only when a chronic problem exists in a specific area. In each case, full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M–44 is undertaken.

Proposed change:

The M–44 device shall only be used in instances where losses due ot predation by wild canids are occurring or where losses can be reasonably expected to occur based upon prior experience of predation in a specific area. Full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M–44 is undertaken.

USDI rationale:

USDI proposes that this change is intended to simplify the language of the restriction. USDI does not expect that the actual use of the device will change under the proposed wording, but the intent will be clarified by deleting imprecise language such as "recurrence of seasonal depredation" and "chronic problems."

C. Restriction Number 5(8)

Current wording:

The M–44 device shall not be used in: (1) National or State Parks; (2) National or State Monuments; (3) Federally designated Wilderness areas; (4) Wildlife refuge areas; (5) areas within National forests or other Federal lands set aside for recreational use (6) Prairie dog towns; and (6) areas where exposure to the public and family and pets is probable.

Proposed change:

The M–44 device shall not be used: (1) In areas within National forests or other Federal lands set aside for recreational use, (2) areas where exposure to the public and family and pets is probable, (3) in prairie dog towns, or, (4) except for the protection of federally designated threatened or endangered species, in National or State Parks; National or State Monuments; Federally designated Wilderness areas; and wildlife refuge areas.

USDI rationale:

USDI has employed the use of the M–44 sodium cyanide capsules under specific exemptions since 1977 to protect the endangered whooping crane from wild canids at the Gray's Lake National Wildlife Refuge. USDI concludes from this experience that the M–44 is an effective, highly selective device which can be used safely in National wildlife refuges and similar areas. Data collected over the 8 years of use under the section 18 program at Gray's Lake National Wildlife Refuge indicate that 47 animals from the target species were taken while only nine nontarget animals (all crows) were killed (USDI correspondence to EPA dated May 23, 1985).

USDI considers the use of M–44 sodium cyanide capsules to be a critical component of an integrated predator control program to protect whooping crane eggs and chicks from mammalian predation at Gray's Lake National Wildlife Refuge. The success with this program over the years prompted USDI to request the use of this device under a specific exemption at the Mississippi Sandhill Crane National Wildlife Refuge to protect the endangered Mississippi Sandhill Crane against wild canids.

There is a need to protect threatened and endangered species regardless of where they occur. The current restriction prohibits use of the M–44 on those lands where these species are most often found, such as National wildlife refuges and wilderness areas. USDI contends that unless this restriction is modified to allow use of the M–44 device on these areas where its use is currently restricted, one of the most effective methods of controlling predators of various threatened or endangered species would not be available on lands where such species are most likely to be found.

D. Restriction Number 10(15)

Current wording:

The maximum density of M–44's placed in any 100 acre pastureland area shall not exceed 10; and the density in any one square mile of open range shall not exceed 12.

Proposed change:

The density of M–44 devices shall, as a rule, be the minimum necessary to prevent or reduce losses:

USDI rationale:

Because USDI believes that the M–44 has been shown to be highly selective for canids, USDI contends that restrictions on the density of M–44 are not needed to protect nontarget wildlife. The present restriction limits the efficient and effective use of M–44's in some locations. USDI argues that prompt resolution of depredation problems occasionally requires placement of more than the number of devices allowed by the current restriction. USDI contends that conditions of terrain, vegetation, coyote density, or coyote movements may necessitate local placement of more devices.

E. Restriction Number 11(16)

Current wording:

The M–44 device may be placed in the vicinity of draw stations (livestock carcasses), provided, that no M–44 device shall be placed within 30 feet of a carcass; no more than 4 M–44 devices shall be placed per draw station; and no more than 3 draw stations shall be operated per square mile.

Proposed change:

No M–44 device shall be placed within thirty (30) feet of a livestock carcass used as a draw station.

USDI Rationale:

See USDI's rationale in Unit II D. above for Restriction Number 10(15).

F. Restriction Number 12(18)

Current wording:

M–44 devices shall be inspected at least once a week to check for interference or unusual conditions and shall be serviced as required.

Proposed change:

Each M–44 device shall be inspected by the applicator at least once every four (4) weeks to check for interference or unusual conditions and shall be serviced as required.

USDI rationale:

USDI states that weekly checks do little to protect nontarget animals or to ensure device safety since M–44's are traditionally used in areas where there is minimum exposure to people. In addition, USDI argues that frequent checks often require travel to remote areas and therefore are time consuming and expensive. Further, USDI notes that expended devices pose no danger.

G. Restriction Number 14(20)

Current wording:

An M–44 device shall be removed from an area if, after 30 days, there is no sign that a target predator has visited the site.

Proposed change:

An M–44 device shall be removed from an area if, after thirty (30) days, there is a cessation of predation due to target species unless documented prior experience indicates that a predator problem may recur during the 30 day period immediately ahead.

USDI rationale:

USDI proposes to modify this restriction to make it consistent with the proposed revision of Restriction Number 4(7), which would permit M–44 use where losses can reasonably be expected to occur based on prior experience of predation in a specific area.

H. Restriction Number 17(23)

Current wording:

Bilingual warning signs in English and Spanish shall be used in all areas containing M–44 devices. All such signs shall be removed when M–44 devices are removed.

a. Main entrances or commonly used access points to areas in which M–44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected weekly to ensure their continued presence and ensure that they are conspicuous and legible.

b. An elevated sign shall be placed within 6 feet of each individual M–44 device warning persons not to handle the device.

Proposed change:

Bilingual warning signs in English and Spanish shall be used in all areas containing M–44 devices. All such signs shall be removed when M–44 devices are removed.

a. Main entrances or commonly used access points to areas in which M–44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected at least once every four (4) weeks to ensure their continued presence and ensure that they are conspicuous and legible.

b. An elevated sign shall be placed within fifty (50) feet of each individual M–44 device warning persons not to handle the device.

USDI rationale:

USDI proposes to revise subparagraph (a) to require inspection of signs every 4 weeks to be consistent with Restriction Number 12(18). Based on its experience with M–44's since 1975, USDI believes that signs rarely need maintenance or replacement more often than once every 4 weeks. USDI also proposes to revise subparagraph (b) to provide for placement of a warning sign within 50 feet of a device. USDI reasons that a sign placed within 6 feet of a device works against its own purpose to keep people and animals away from M–44's because people (and perhaps domestic animals accompanying them) will approach dangerously close to the device in order to read the sign.

I. Restriction Number 19(26)

Current wording:

Each authorized M–44 applicator shall keep records dealing with the placement of the device and the results of each placement. Said records shall include, but need not be limited to:

1. The number of devices placed.
2. The location of each device placed.
3. The date of each placement, as well as the date of each inspection.

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4. The number and location of devices which have been discharged and the apparent reason for each discharge.
5. Species of animals taken.
6. All accidents or injuries to humans or domestic animals.

Proposed change:

Each applicator shall keep records dealing with the placement of M–44 devices and the result of such placement. Such records shall include but need not be limited to:
1. The number of devices placed per ranch unit or allotment.
2. The general description of the ranch unit or allotment where placed.
3. The date of placement and removal.
4. The number and species of animals taken per ranch unit or allotment.
5. All accidents or injuries to humans or domestic animals.

USDI rationale:

USDI argues that the recordkeeping requirements it proposes to delete are unnecessary based on USDI's experience with M–44's since 1975. The Agency has considered that the wording "Location of each device placed * * *" to mean that detailed maps showing the location of each device must be maintained. Such maps have been maintained since 1975. However, USDI states that the devices can be easily located without the use of these maps. Similarly, USDI argues that records on "number and location of devices which have been discharged and the apparent reason for each discharge" are superfluous. Most discharges are caused by target animals that are taken, and therefore recorded as taken. Moreover, USDI states that when the units are discharged but animals are not found, field men can only speculate as to the reason for discharge. USDI argues that such speculation has no value in managing or regulating M–44 use.

J. Restriction Number 23(10)

Current wording:

One person other than the individual applicator shall have knowledge of the exact placement location of all M–44 devices in the field.

Proposed change:

One person other than the individual applicator shall have general knowledge of the location of M–44 devices in the field.

USDI rationale:

The current language creates excessive manpower costs by requiring two people to travel to each location where M–44's are set. Only rarely do M–44's have to be recovered by a person other than the individual who placed them. Such unusual situations are adequately covered by Restriction Number 17(23), which requires a warning sign at each location, and Restriction Number 19(26), which requires records of numbers of units on each ranch or land unit. These signs and records, together with supervisors', cooperators', and colleagues' knowledge of coyote behavior, local terrain, and logical M–44 use patterns, are sufficient for retrieval of the devices.

K. Restriction Number 25(11)

Current wording:

In areas where more than one governmental agency is authorized to place the M–44 devices, the agencies shall exchange placement information and other relevant facts to ensure that the maximum number of M–44's allowed is not exceeded.

Proposed change:

In areas where more than one government agency is authorized to place M–44 devices, the agencies shall exchange placement information and other relevant data.

USDI rationale:

USDI contends that this change is appropriate if restrictions on the density of M–44s are removed. See USDI's rationale in Unit II D. and E. above of Restriction Numbers 10(15) and 11(16).

III. EPA's Determinations

A. Applicability of Subpart D Rules to USDI's Applications

The 1984 USDI application proposes changes in 10 of the restrictions (Restriction Numbers 2(5), 4(7), 10(15), 11(16), 12(18), 14(20), 17(23), 19(26), 23(10), and 25(11)) on use of the M–44. None of those proposed changes would authorize use of the M–44 against a pest or on a site that is prohibited by a previous cancellation or suspension order. Hence, the requirements of the Subpart D rules do not apply to the 1984 USDI application.

The provisions of Subpart D do, however, apply to the 1985 FWS application which proposes modification of Restriction Number 5(8). This proposal seeks to expand the use of the M–44 to a site where use is prohibited under the September 1975 Order. As such, the regulations governing Subpart D require that the Agency treat this application to modify the restriction as a petition to reconsider its 1972 cancellation as modified by the September 1975 Order. The regulations state that if the Administrator finds that there is "substantial new evidence" which may warrant reconsideration of the prior order, he shall issue a notice announcing that the Agency will hold a hearing to examine the new evidence and to determine whether the order should be modified or reversed (40 CFR 164.131).

B. Substantial New Evidence Pertaining To Use of M–44's at New Sites

The EPA has reviewed the information submitted with the 1984 and 1985 USDI applications for registration and the requests for emergency exemptions described above as well as information available from other sources. EPA has determined that this information meets the standard of 40 CFR 164.131. Specifically, EPA finds that new evidence is available that suggests that the presence of coyotes and other wild canids on wildlife refuge lands poses a great obstacle to the success of increasing populations of endangered or threatened species in those areas, that the M–44 device is a highly selective means of predator control which minimizes disruption of the species being protected, and that the M–44 device is less costly and more effective than other control methods.

USDI is involved in an effort designed to increase populations of the endangered whooping crane. Gray's Lake National Wildlife Refuge (GLNWR) in Idaho is one of the areas where this effort is being made. When the project was first proposed in 1972, the coyote, now the major predator on cranes at GLNWR, was very scarce in this area. The whooping crane program experienced no serious problems from predators until 1975 when two eggs were lost and two chicks were suspected of being killed by predators. In 1977, it became apparent that coyote populations had increased sharply and that control measuers would be necessary if the whooping crane program were to succeed. Control by trapping was difficult owning to the terrain and land ownership patterns. The greatest success in control came from shooting from helicopter, but aerial gunning disrupted the cranes and was expensive in manpowr and cost.

The M–44 device, use of which has been authorized under emergency exemptions since 1977, has been a highly effective method of predator control at GLNWR. USDI considers the use of M–44's to be a critical component of an integrated predator control program at GLNWR. USDI believes its use could be beneficial in similar projects for endangered or threatened species. One example is the protection of the Mississippi Sandhill Crane at the

Mississippi Sandhill Crane National Wildlife Refuge where a problem similar to that at Gray's Lake is curently being experienced.

Because predators did not become a significant factor affecting endangered species until after 1975, the use of M–44's to control predators on wildlife refuge areas for the protection of threatened or endangered species was not considered in previous Agency action regarding use of sodium cyanide in 1972 and 1975.

The 1972 decision to suspend and cancel uses of sodium cyanide was based, in part, on the heavy environmental toll resulting from predator control use. With the registration in 1975 of the M–44 sodium cyanide capsules, this decision was modified, based in part on the demonstrated high selectivity on this control method. USDI has developed data under specific exemptions that have been authorized since 1977 for this use. These data further demonstrate that kills of nontarget species by the M–44 device are minimal. Specifically, during this time, 47 target animals and nine nontarget species (all crows) were killed during approximately 30,000 M–44 use nights at GLNWR (one M–44 left for 1 day is equivalent to one use night).

No human mishaps have occurred during the use of the M–44 under the emergency exemptions. The devices are placed in areas to which the public does not have access, or they are used only at times the areas are closed to public.

Upon consideration of the data and information presented, EPA concludes that there is substantial new evidence that may materially affect the prior decision regarding sodium cyanide use. Accordingly, EPA is directing that a public hearing be conducted. The issues in the hearing shall be whether substantial new evidence exists and whether such substantial new evidence requires further modification of the 1972 order.

C. Proposed Modifications Not Involving New Sites or Pests

EPA is persuaded by the information and rationales presented by USDI that each of the proposed changes for Restriction Numbers 2 (5), 4(7), 10(15), 11(16), 12(18), 14(20), 17(23), 19(26), 23(10), and 25(11) is consistent with the statute and the Agency's regulations. These changes are not subject to Subpart D rules for the reasons discussed above. The Agency further concludes that use of the M–44 subjects to the restrictions, modified as proposed by USDI, would not cause unreasonable adverse effects on the environment. Accordingly, EPA has determined that the proposed changes should be approved. Unless a hearing is requested, in accordance with the procedures in unit IV B. below, or comments are submitted which persuade the Agency the changes should not be approved as proposed, EPA will issue an order, which modifies the 1975 order, adopting the changes. The order EPA proposes to issue is presented below.

Proposed Order

Before the Administrator, U.S. Environmental Protection Agency, Washington, D.C., In the matter of: Applications to Register Sodium Cyanide For Use In The M–44 Device to Control Predators, FIFRA Docket No. 382.

For the reasons contained in unit II of this document, portions of the Order of the Administrator dated September 16, 1975, regarding applications to register sodium cyanide for use in the M–44 device to control predators are superseded.

Accordingly Restrictions Numbers 2, 4, 10, 11, 12, 14, 17, 19, 23, 25 in the Order of September 16, 1985, are hereby amended by this Order to read as follows:

* * * * *

Restriction Number 2. The M–44 device shall only be used to take wild canids suspected of preying on livestock, poultry or federally designated threatened or endangered species.

* * * * *

Restriction number 4. The M–44 device shall only be used in instances where losses due to predation by wild canids are occurring or where losses can be reasonably expected to occur based upon prior experience of predation in a specific area. Full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M–44 is undertaken.

* * * * *

Restriction number 10. The density of M–44 devices shall, as a rule, be the minimum necessary to prevent or reduce losses.

* * * * *

Restriction number 11. No M–44 device shall be placed within thirty (30) feet of a livestock carcass used as a draw station.

* * * * *

Restriction number 12. Each M–44 device shall be inspected by the applicator at least once every four (4) weeks to check for interference or unusual conditions and shall be serviced as required.

* * * * *

Restriction number 14. An M–44 device shall be removed from an area if, after thirty (30) days, there is a cessation of predation due to target species, unless documented prior experience indicates that a predator problem may recur during the 30 day period immediately ahead.

* * * * *

Restriction number 17. Bilingual warning signs in English and Spanish shall be used in all areas containing M–44 devices. All such signs shall be removed when M–44 devices are removed.

a. Main entrances or commonly used access points to areas in which M–44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and to the danger to pets. Signs shall be inspected at least once every four (4) weeks to insure their continued presence and insure that they are conspicuous and legible.

b. An elevated sign shall be placed within fifty (50) feet of each individual M–44 device warning persons not to handle the device.

* * * * *

Restriction number 19. Each applicator shall keep records dealing with the placement of M–44 devices and the result of such placement. Such records shall include but need not be limited to:
1. The number of devices placed per ranch unit or allotment.
2. The general description of the ranch unit or allotment where placed.
3. The date of placement and removal.
4. The number and species of animals taken per ranch unit or allotment.
5. All accidents or injuries to humans or domestic animals.

* * * * *

Restriction number 23. One person other than the individual applicator shall have general knowledge of the location of M–44 devices in the field.

* * * * *

Restriction number 25. In areas where more than one government agency is authorized to place M–44 devices, the agencies shall exchange placement information and other relevant data.

IV. Procedural Matters

The deadlines and procedures for participating in the Subpart D proceeding to consider allowing the use of the M–44 at a new site are described below in unit IV. A. Deadlines and procedures for commenting and or

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requesting a hearing for one or more of the proposed modifications not subject to Subpart D are described below in unit IV. B.

A. Deadlines and Procedures for the Subpart D Proceeding

In view of the findings discussed in units III A. and B. above, a hearing will be held to reconsider the 1972 order, as modified by the September 1975 order. This hearing will be conducted under the provisions of the Administrative Procedure Act governing formal adjudications, under EPA's rules of practice governing hearings (40 CFR 163.1–164.111 and 164.130–164–133) and under the procedures established in this notice. The hearing will be conducted by an EPA Administrative Law Judge (ALJ) who will preside over the presentation of sworn testimony and oral cross-examination and who will generally supervise the proceeding. During the hearing, the proponents of the modifications will have the burden of proof (40 CFR 164.132(a)).

At the close of the hearing, the parties will have an opportunity to present briefs to the ALJ, who in turn will prepare an Initial Decision containing findings of facts and conclusions of law. The Initial Decision must specifically determine whether substantial new evidence exists and if so, whether it requires reversal or modification of the 1972 order, as modified by the September 1975 order, to permit the use of sodium cyanide in the M–44 device to protect federally threatened or endangered species in areas where the use of the M–44 is prohibited (40 CFR 164.132). This preliminary decision may be appealed to the Administrator for a final Agency decision. Under EPA's Rules of Practice, if no appeal is taken within 20 days after the ALJ files his Initial Decision, the Initial Decision becomes final (40 CFR 164.101).

A final Agency decision modifying or reversing the September 1975 Order would not, by itself, constitute registration of sodium cyanide use on lands to protect Federally designated endangered or threatened species. A section 3 or 24(c) registration would have to be issued. Such regulatory actions could only authorize use of sodium cyanide to the extent allowed by the Agency's final decision in the Subpart D proceeding. Currently, this use is authorized under the provisions of section 18. This exemption expires on May 28, 1986. EPA could issue another emergency exemption if M–44 has not been registered for this use, the criteria in 40 CFR 164.133 are met, and an emergency condition is deemed to exist.

1. *Procedures for requesting to participate in the proceedings.* Any interested person who wishes to participate in this proceeding either as a party or as an *amicus curiae*[3] shall submit a Notice of Inent to Participate to the Hearing Clerk on or before April 18, 1986.

The Notice shall identify the person (individual or organization) and his representative, if any. The Notice of Intent to Participate shall also provide an address at which documents in the proceeding can be served. The Notice of Intent to Participate shall indicate whether the person wishes to participate as a party or as an *amicus curiae.* The United States Department of the Interior, Fish and Wildlife Service, is also being notified by registered mail of EPA's decision to hold a Subpart D hearing. USDI is required to submit its Notice to Participate within 30 days of receiving the registered letter or within 30 days of publication of this, whichever is later.

Notices of Intent to Participate must be submitted to: Ms. Bessie Hammiel, Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Any person who fails to submit a Notice of Intent to Participate in the proceeding within the specified time period shall not be allowed to participate in the proceeding unless he or she shows good cause why he or she should be admitted.

Applicants and other interested parties who might be affected by a decision to modify or reverse the 1972 order as modified by the September 1975 order should be aware that participation in the hearing initiated by this notice may be their sole opportunity to present evidence and/or testimony concerning the predacidal use of sodium cyanide prior to final Agency action. Moreover, judicial review under FIFRA section 16(b) of any action concerning the use of sodium cyanide which is taken by the Administrator at the conclusion of this Subpart D proceeding can only be obtained by a person who has been "a party to the proceedings * * *."

Each person requesting to participate in this proceeding as a party shall file with the Hearing Clerk a Statement of Position. This statement must be part of the Notice of Intent to Participate and shall contain a written response describing the person's position and interest with respect to the issues in unit III B. of this notice. If the person is an applicant, the statement shall also contain the number assigned by EPA to his or her application, a copy of the proposed labeling of his or her product, and a description of the proposed use (40 CFR 164.24). The Statement of Position shall be submitted to the address above and served on all parties.

2. *Schedule for the hearing and the decisions of the Administrative Law Judge and the Administrator.* The use of sodium cyanide in the M–44 device to protect endangered species has, as discussed earlier, been authorised under the provisions of FIFRA section 18 since 1977. Because such use is generally part of long-term programs, requests under section 18 can be expected in the future.

EPA does not believe that section 18 should be used to permit the long-term use of a pesticide; rather, the section 3 registration process would be the proper mechanism in securing this use. Additionally, EPA believes that it would be in the public interest to reach a prompt, final decision in this matter. Accordingly, EPA is establishing a deadline for issuance of an Initial Decision. The ALJ assigned to any adjudicatory hearing requested on the action initiated by this notice shall issue an Initial Decision no later than 9 months from the date on which this notice is published in the Federal Register. Review of any exceptions to the Initial Decision will follow the schedule provided in 40 CFR 164.101, and a Final Decision will be issued as soon as possible thereafter.

In view of the limited scope of the issues and their relatively straightforward nature, EPA believes that 9 months should give the participants ample time to conduct discovery, to present evidence, to conduct cross-examination, and to prepare briefs for the ALJ, and for the ALJ to prepare and issue an Initial Decision.

If it appears that additional time will be needed, the ALJ shall promptly inform the Judicial Officer of the circumstances which contribute to the need for more time and shall propose a schedule for completing the hearing, together with a new deadline for issuance of the Initial Decision. The Judicial Officer is given authority to establish a new schedule.

If an appeal from the Initial Decision is taken, it is expected that a final decision would be issued within 60 days.

3. *Field hearings.* The principal location for this hearing will be EPA headquarters in Washington, DC. However, EPA recognizes that some of the potential witnesses are located throughout the United States. Accordingly, EPA authorizes the ALJ upon a showing of good cause to hold field hearings at other locations, if appropriate. The ALJ shall determine the appropriate location, timing, and duration of such field hearings (40 CFR 164.50(a)(10)).

4. *Separation of functions.* Finally, the Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of this proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in an investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated as the trial staff to perform all investigative and prosecutorial functions in this case: The Office of Pesticides and Toxic Substances and the Office of General Counsel.

From the date of this notice until any final decision in this case, the ALJ, the Judicial Officer, the members of the staff in the immediate offices of the Deputy Administrator and the Administrator, the Deputy Administrator, and the Administrator shall not have any *ex parte* contact or communication with any members of the trial staff, or with any other interested persons not employed by EPA, on any of the issues involved in this proceeding. However, persons interested in this case should feel free to contact any other EPA employee, including the trial staff, with any questions they may have.

B. Deadlines and Procedures for Commenting and/or Requesting a Hearing on the Proposed Modifications Not Subject to Subpart D

The specific procedures and deadlines for commenting on any of the proposed modifications or requesting that any of the proposed modifications be included as part of the adjudicatory hearing are set forth below.

1. *Procedure for commenting on the proposed modifications.* Any interested person may comment on one or more of the 10 proposed modifications not subject to the *Subpart D* proceedings. Written comments, in triplicate, must be received on or before April 18, 1986. The Agency will not consider requests to extend the comment period.

Written comments must be identified by the document control number [OPP-36105] and—

Mailed to: Program Management and
Support Division (TS–757C), Office of
Pesticide Programs, Environmental
Protection Agency, 401 M St., SW.,
Washington, DC 20460.

In person: bring comments to: Rm 236,
CM #2, 1921 Jefferson Davis Highway,
Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter.

2. *Procedure for requesting inclusion of a proposed modification in the adjudicatory hearing.* Any person who would be adversely affected by any of the proposed modifications of the restrictons may request a formal public hearing be held on the proposed modification. Such requests shall set forth with specificity the factual and/or legal issues which the requesting party proposes for consideration at such hearing. Any request must specifically identify which of the 10 proposed modified restrictions the party wants to be included in the adjudicatory hearing. Such requests must be received on or before *April 18, 1986.* Requests shall be addressed to: Ms. Bessie Hammiel, Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

3. *Consequences of not commenting/requesting a hearing.* If no such request is received within 30 days of the publication of this notice, the proposed order will be made final, taking into account any comments received (see unit III C. of this notice for the proposed action), and will become effective immediately, and the adjudicatory hearing will be limited to consideration of the use of M–44 sodium cyanide capsules on lands for the protection of Federally designated threatened or endangered species.

Dated: March 11, 1986.

Lee M. Thomas,
Administrator, Environmental Protection Agency.

[FR Doc. 86–5973 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50653; FRL-2984-8]

Issuance of Experimental Use Permits; FMC Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purpose.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Program, Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

279–EUP–78. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 4,599 pounds of the insecticide carbosulfan on alfalfa to evaluate the control of various alfalfa insects. A total of 1,533 acres are involved; the program is authorized in the States of Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

279–EUP–79. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 431.25 pounds of the insecticide carbosulfan on citrus to evaluate the control of various citrus insects. A total of 85 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and Texas. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

279–EUP–89. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of a 2,112 pounds of the insecticide carbosulfan on apples to evaluate the control of various apple insects. A total of 132 acres are involved; the program is authorized only in the States of

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[3] An *amicus curiae* is a person whose role is limited to filing written briefs. An *amicus curiae* is not a party, and thus would not be entitled to obtain judicial review.

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California, Georgia, Idaho, Indiana, Maine, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. This permit and the two above are effective from February 14, 1986 to February 14, 1987. The permits are issued with the limitation that all treated crops are destroyed or used for research purpose only. (Jay Ellenberger, PM 12, Rm. 202 CM#2, (703–557–2386))

10182–EUP–37. Renewal. ICI Americas, Inc., Concord Pike & New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 556 pounds of the herbicide butyl (*R*)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate on various crops to evaluate postemergence control of annual and perennial grasses. A total of 2,780 acres are involved. The program is authorized in all 50 States, except the State of Alaska. The permit was previously effective from November 6, 1984 to November 30, 1985. The permit is now effective from February 14, 1986 to February 14, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort PM 23, Rm. 237, CM#2, (703–557–1830))

45639–EUP–25. Extension. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 22,600 pounds of the herbicide diethatyl-ethyl on carrots, celery, and peppers to evaluate the control of weeds. A total of 4,250 acres are involved; the program is authorized only in the States of California, Delaware, Florida, Georgia, Kentucky, Michigan, New Jersey, New York, North Carolina, Pennsylvania, and Wisconsin. The experimental use permit is effective from February 4, 1986 to February 1, 1987. A temporary tolerance for residues of the active ingredient in or on carrots, celery, and peppers has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

773–EUP–1. Issuance. Pitman Moore, Inc., P.O. Box 344, Washington Crossing, NJ 08560. This experimental use permit allows the use of 5.7 pounds of the fungicide 1-(2-(2,4–dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole on poultry to evaluate the control of *Aspergillus fumigatus*. Approximately 30 hatcheries are involved. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

773–EUP–2. Issuance. Pitman Moore, Inc., P.O. Box 344, Washington Crossing, NJ 08560. This experimental use permit allows the use of 36.3 pounds of the fungicide 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole on poultry to evaluate the control of *Aspergillus fumigatus*. Approximately 30 hatcheries are involved. This permit and the one above are authorized only in the States of Alabama, Georgia, North Carolina, and South Carolina. Both experimental use permits are effective from January 1, 1986 to December 31, 1987. The permits are issued with the limitation that treated chicks are not sold or used for feed or human consumption. The permits will use the same active ingredient but different formulations. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–5732 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50650; FRL-2984-7]

Issuance of an Experimental Use Permit to the U.S. Department of the Interior

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an Experimental Use Permit (EUP) to the U.S. Department of the Interior (USDI). The permit 6704–EUP–28 allows the use of a total of 0.96 pound of sodium fluoroacetate (Compound 1080) in single lethal dose baits (SDB's) on Kiska Island to evaluate the control of the arctic fox and impacts on nontarget wildlife. A maximum of 6,128 acres may be treated; the program is authorized only in the State of Alaska.

DATE: The permit is in effect from November 6, 1985 to November 6, 1987.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2600).

SUPPLEMENTARY INFORMATION: On February 14, 1985, EPA received an application from USDI for an EUP to test the use of Compound 1080-treated baits to eradicate the arctic fox. The program allows the use of up to 100,000 SDB's (50,000 per year) treated with 4 mg each of Compound 1080. Testing is being conducted on the Kiska Island, Aleutian Islands, Alaska. Kiska Island is about 22 miles long, 1.5 to 6.2 miles wide, and contains 69,596 acres.

The purpose in eradicating the arctic fox is to benefit the endangered Aleutian Canada Goose. The USDI contends that prior to the introduction of arctic foxes by man, the Aleutian Canada Goose was a common breeding bird throughout the Aleutian Islands. Foxes subsequently eradicated the goose on all islands except Buldir (these predators were not introduced on Buldir because access to the island is very difficult by boat). If the goose population is to recover from its current endangered status, its breeding range must be expanded beyond Buldir Island.

Foxes were eradicated on several small islands through a combination of trapping shooting, and the use of M–44's. The logistical difficulties involved in maintaining a successful operational program in the remote Aleutian Islands makes the eradication of arctic foxes on any of the large islands an extremely difficult, time-consuming task. The USDI contends that if expansion of the Aleutian Canada Goose is to be achieved, a more efficient and effective method to eliminate arctic foxes must be found.

As authorized under EPA's regulations, 40 CFR 172.11(a), the Agency issued a notice in the Federal Register of April 17, 1985 (50 FR 15216), announcing the receipt of an EUP application from USDI and inviting public comments on the application. The public was given a 30-day period to comment on the USDI application.

The Agency received three sets of comments on this EUP application. All three sets of comments objected to the issuance of the permit. A discussion of those comments follows.

1. *Size of proposed use site.* One commenter questioned the size of the proposed use site in that it would cover an area of approximately 6,128 acres. The purpose of this experiment is to determine whether it is possible to use SDB's to eliminate arctic foxes from larger islands in the Aleutian chain where shooting, trapping, and M–44's have been unsuccessful. It appears necessary to treat a large portion of Kiska Island in order to have a chance at eradicating the fox.

2. *The number of toxic baits.* The use of 50,000 baits per year appeared excessive to two commenters. The Agency agrees that the number of baits used may be very large and that many baits may be available to nontarget organisms. However, the large number of baits is a necessary part of the testing program, as the complete removal of the arctic fox is the objective of the program, along with evaluation of impacts to nontargets. In view of the objective, however, the large number of baits is a necessary part of the test program to ensure that every fox on the Island is likely to be exposed to a SDB. The experimental program, of course, will closely evaluate the effects on nontargets. The effects of the SDB's on nontargets will be limited to the area of use. If nontarget losses occur, they should be mitigated through reinvasion from neighboring islands as well as other population-adjusting factors.

3. *Aleutian Canada Goose.* The Aleutian Canada Goose is already on the road to recovery. One commenter felt that since the overall population of the Aleutian Canada Goose is increasing, the eradication of the fox may not be necessary.

The Agency feels that since recolonization by Aleutian Canada Geese in areas from which arctic foxes have been eradicated has proved to be a slow process, delaying eradication programs would only serve to prolong the period of time when the species is confined to small breeding colonies (which tend to limit overall reproductive potential and which make the species very vulnerable to isolated "disasters"). By acting now to expand the total range of possible breeding habitat for the Aleutian Canada Goose, USDI would provide the species an opportunity to expand its breeding range and its population. Transplanting birds might be necessary to start breeding colonies on Kiska, due to the island's distance from current breeding ranges and the bird's tendency to "home," that is, return to the same breeding area every year. This chancy and slow process would be time consuming. A successful effort, however, would greatly increase the reproductive potential of the species due to the much larger size of Kiska Island in comparison to the areas where the geese now breed.

4. *Compound 1080 baits on arctic foxes.* One comment objected that registration of 1080 baits for arctic fox control would create problems of abuse and enforcement. The Agency feels that the chance of abuse is slight considering that the proposed treatments of any one island would be limited to 2 years, only one or two islands would be treated in a given period, and only Federal employees familiar with 1080 and this program would be involved. In any event, such a concern is not present with this permit.

5. *The use of Compound 1080 for animal control.* Two commenters were opposed to issuance of the EUP because they were opposed to the use of 1080 under most circumstances. The Agency feels that although this EUP will not provide all the answers needed to evaluate the use of 1080 baits to control the arctic fox, it should provide insight into the more specific comments discussed elsewhere.

6. *Alternative control methods.* One commenter suggested introducing neutered red foxes to Kiska Island as an alternative control measure. The contention is that red foxes would outcompete arctic foxes by occupying preferred denning and feeding locations. As the red foxes die out, the island would, in theory, become fox-free. The USDI considered the red fox alternative and dismissed the idea as they felt the idea was not practical on a large island.

The Agency believes that USDI's request for an EUP for the SDB is reasonable and accordingly has issued the permit.

Authority: 7 U.S.C. 136c.

Dated: March 28, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–5253 Filed 3–18–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3507).

Copies of this submission are available from the Commission by calling Doris R. Benz, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB No.: 3060–0139

Title: Request for Approval of Proposed
  Amateur Radio Antenna and
  Notification of Action

Form No.: FCC 854

Action: Revision

Estimated Annual Burden: 250
  Responses; 125 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–5902 Filed 3–18–86; 8:45 am]

BILLING CODE 6712-01-M

Window Notice for the Filing of FM Broadcast Applications

[Report No. CF-2 [1]]

Released: March 14, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning March 24, 1986, and ending April 24, 1986, inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel [illegible] A

SPARTA, GA

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–[illegible] Filed 3–18–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-758-DR]

Amendment to Notice of a Major Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–758–DR), dated February 21, 1986, and related determinations.

DATED: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the

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[1] NON-80/90 Allocation.

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President in his declaration of February 21, 1986:

Trinity and Nevada Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–5948 Filed 3–18–86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–760–DR]

Notice of Major Disaster and Related Determinations; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–760–DR), dated March 13, 1986, and related determinations.

DATED: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of March 13, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Public Law 93–288), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from severe storms and flooding, beginning on February 12, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these pruposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster and are designated eligible as follows:

Cache, Morgan, Wasatch, and Weber Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86–5949 Filed 3–18–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed

Correction

In FR Doc. 86–5142, beginning on page 8242 in the issue of Monday, March 10, 1986, make the following correction:

On page 8242, in the third column, the last line should read "Agreement No.: 203–010894".

BILLING CODE 1505-01-D

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Sea to Sea, Foreign Forwarders, c/o 128 Squirrel Tree Lane, Mt. Laurel, NJ 08054, Catherine F. Hennick, Partner, James A Covello, Partner

Robert Rye Lee dba Lee's Material Services, 5701–A Bellaire Blvd., Houston, TX 77081

Meteor Air Freight, Inc., 2610 N.W. 72nd Avenue, Miami, FL 33122, Officers: Maria E. Lledo, President, William Lledo, Treasurer, Joanne Fernandez, Secretary

Virginia A. Miller and Company, Inc., 6945 Clinton Drive, Houston, TX 77020, Officers: Virginia Ann Miller, President, Warren Chester Eitelbach, Vice President, Lavone McClellan, Assistant Vice President, Robert Eikel, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: March 14, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–5966 Filed 3–18–86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–009735–016.

Title: Steamship Operators Intermodal Committee Agreement.

Parties:

Associated Container Transportation (Australia Ltd.)
Barber Blue Sea Line
Companhia de Navegacao Maritima Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Cia Sud Americana de Vapores

Synopsis: The proposed amendment would add Cia Sud Americana de Vapores and delete Atlantic Container Line G.I.E. as parties to the agreement.

Agreement No.: 202–010252–003.

Title: New Zealand-Pacific Coast Agreement.

Parties:

Blue Star Line, Ltd.
Columbus Line

Synopsis: The proposed amendment would extend the independent action waiting period from seven to ten days.

Agreement No.: 224–010716–001.

Title: Port of San Francisco Terminal Revenue Sharing Agreement.

Parties:

City and County of San Francisco (Port)
Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen)

Synopsis: The proposed amendment would modify the agreement to change the minimum annual TEU thruput guarantee and the scale of charges for wharfage and dockage, and to provide that the new schedule of rates apply to the Space Charter and Sailing Agreement of Evergreen and Japan Line. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 14, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–5969 Filed 3–18–86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86–10]

Volga Forwarders Service, Inc., Application for an Ocean Freight Forwarder License; Order of Investigation and Hearing

Volga Forwarders Service, Inc. is a Florida corporation now operating as an air freight forwarder. Volga held an ocean freight forwarder license until October 1984, when its license was revoked for failure to maintain a surety bond as required by the Commission's regulations governing the licensing and operations of ocean freight forwarders. 46 CFR 510.14. Volga applied for a new license in August 1985. Between the revocation of its license and the application now pending, Volga had a change of ownership and organization. The current officers of Volga are: (1) Aisa N. O'Hallorans, President Director; (2) Cesar O'Hallorans, Treasurer Director; and (3) Orlando A. Arenciba, Secretary.

Aisa O'Hallorans owns 100% of the Volga stock and is the proposed qualifying individual under the Commission's regulations. 46 CFR 510.11. In July 1980, Ms. O'Hallorans, as the sole proprietor of L. G. Int'l. Freight Forwarder, was denied an ocean freight forwarder license for engaging in the business of ocean freight forwarding without a license in violation of the then applicable law.[1] In settlement of the Commission's claim against her for the unlawful forwarding, Ms. O'Hallorans signed a promissory note in the amount of $3,500 on July 28, 1981. Ms. O'Hallorans made payments on the note only until November 1982, and at the time of the current Volga application, Ms. O'Hallorans still owed $1,467. It was not until this obligation was called to Ms. O'Hallorans' attention during the processing of Volga's current application for a license that she satisfied the debt.

The cancellation of Volga's surety bond, which in turn resulted in the revocation of Volga's initial license, was based upon the failure of Volga to reimburse the bonding company for the company's payment of a claim for unpaid freight charges against Volga. As in the case of promissory note, the claim was satisfied only after it was discovered by the Commission while processing the current application and then brought to the attention of Ms. O'Hallorans.

As part of its application for a new license, Volga submitted a credit reference from the Coral Gables Federal Savings and Loan. Subsequent inquiry revealed that after the letter had left the savings and loan, it had been altered to make it appear that the bank account which had been certified by Coral Gables was that of Ms. O'Hallorans only and not the actual joint account which Ms. O'Hallorans, in fact, shared with a Mr. Benjamin Rodriguez.

Under section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, an ocean freight forwarder license may be issued to any person that the Commission determines to be qualified by experience and character to render forwarding services. The failure of both Volga and Ms. O'Hallorans to reasonably meet financial obligations in the past and the falsification of information submitted to the Commission as part of the application for a license indicate that Volga lacks the character required of a licensed ocean freight forwarder.

Therefore, it is ordered, that pursuant to sections 11 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1710, 1718, a formal investigation and hearing is instituted to determine whether Volga Forwarders Service, Inc., possesses the necessary experience and character to render forwarding services and be licensed as an ocean freight forwarder;

It is further ordered, that Volga Forwarders Service, Inc., is named Respondent in this proceeding;

It is further ordered, that a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the Initial Decision of the Presiding Officer in this proceeding shall be issued by March 13, 1987, and the final decision of the Commission shall be issued by July 13, 1987;

It is further ordered, that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42, the Director of the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, that notice of this Order be published in the Federal Register, and a copy be served upon the Respondent and the Commission's Bureau of Hearing Counsel;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as mailed directly to all parties of record.

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–5968 Filed 3–18–86; 8:45 am]

BILLING CODE 6730-01-M

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[1] Until the passage of the Shipping Act of 1984, 46 U.S.C. app. 1701–1720, ocean freight forwarders were licensed under section 44 of the Shipping Act, 1916. This statutory provision was repealed by section 20(a) of the Shipping Act of 1984, 46 U.S.C. app. 1719(a), and forwarders are now licensed under section 19 of that Act, 46 U.S.C. app. 1718.

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[Docket No. 86–1]

Cancellation of Tariffs or Assessment of Penalties Against Non-Vessel, Operating Common Carriers in the Foreign Commerce of the United States; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined tht Docket No. 86–1 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and the preparation of an environmental impact statement is not required.

Docket No. 86–1, published on January 7, 1986 (51 FR 683), involves cancellation of tariffs or assessment of penalties against non-vessel operating common carriers in the foreign commerce of the United States.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 533–5725.

John Robert Ewers,

Secretary.

[FR Doc. 86–5967 Filed 3–18–86; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A–40, Supplement 17]

Changes to Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A–40, Supplement 17, transmitting new pages to amend Federal Travel Regulations (FTR) FPMR 101–7 to include Federal and State tax tables to be used when computing the relocation income tax (RIT) allowance for reimbursements received in calendar year 1985.

EFFECTIVE DATE: The revised provisions transmitted by Supplement 17 are effective for transferred employees whose effective date of transfer is on or after November 14, 1983, and who received reimbursement for relocation expenses during calendar year 1985. For purposes of these regulations, the effective date of transfer is the date the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Cooke, Regulations and Policy Division (703) 557–1253 and 557–1256 or FTS 557–1253 and 557–1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

a. Public Laws 98–151, November 14, 1983 (97 Stat. 977) and 98–473, October 12, 1984 (98 Stat. 1969) amended the statutory authbrity for reimbursement of the employee relocation expenses contained in Subchapter II of chapter 57, title 5, United States Code, by adding new section 5724b authorizing agencies to reimburse transferred employees for the additional income tax liability incurred by them as a result of certain relocation expenses reimbursements.

b. GSA Bulletin FPMR A–40, Supplement 14, which was issued April 1, 1985, and effective November 14, 1983, implemented the procedures for the calculation and payment of a RIT allowance. Supplement 14 contained prescribed Federal and State marginal tax rate tables for calendar years 1983–84.

Explanation of Changes

Supplement 17 amends the FTR as follows:

a. Appendix 2–11.A, Federal Tax Table for RIT allowance, Page 3 and 4 is added for use in the calculation of the RIT allowance for covered taxable reimbursements received during calendar year 1985.

b. Appendix 2–11.B, State Tax Table for RIT allowance, Page 5 and 7 is added for use in the calculation of the RIT allowance for covered taxable reimbursements received during calendar year 1985.

c. Appendix 2–A, Page 7 is amended to include reference to relocation services and the RIT allowance in the quick reference table of current allowances. (This change is not published in the **Federal Register**).

Accordingly, the Federal Travel Regulations (FTR) are amended as follows:

Chapter 2. Relocation Allowances

1. Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707, Executive Order No. 11609, July 22, 1971 and No. 12466, February 27, 1984.

2. Appendix 2–11.A, Federal Tax Table for RIT allowance is amended by adding the following new table:

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1985

The following table is to be used to determine the Federal marginal tax rate for computation of the RIT allowance as prescribed in FTR 2–11.8e(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1985.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifyingWidows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
11 percent	$3,456	$4,668	$4,834	$7,245	$7,770	$9,568	$3,320	$4,460
12 percent	4,668	5,865	7,245	9,726	9,568	12,134	4,460	5,767
14 percent	5,865	8,209	9,726	12,174	12,134	17,001	5,767	8,384
15 percent	8,209	10,420	NA	NA	NA	NA	NA	NA
16 percent	10,420	12,957	NA	NA	17,001	21,757	8,384	10,688
17 percent	NA	NA	12,174	15,623	NA	NA	NA	NA
18 percent	12,957	15,242	15,623	19,303	21,757	26,795	10,688	13,161
20 percent	15,242	17,601	19,303	23,250	NA	NA	NA	NA
22 percent	NA	NA	NA	NA	26,795	32,275	13,161	15,569
23 percent	17,601	21,513	NA	NA	NA	NA	NA	NA
24 percent	NA	NA	23,250	29,995	NA	NA	NA	NA
25 percent	NA	NA	NA	NA	32,275	38,016	15,569	18,998
26 percent	21,513	29,102	NA	NA	NA	NA	NA	NA
28 percent	NA	NA	29,995	37,075	38,016	46,428	18,998	22,953
30 percent	29,102	35,112	NA	NA	NA	NA	NA	NA
32 percent	NA	NA	37,075	44,145	NA	NA	NA	NA
33 percent	NA	NA	NA	NA	46,428	60,694	22,953	29,565
34 percent	35,112	42,507	NA	NA	NA	NA	NA	NA
35 percent	NA	NA	44,145	59,644	NA	NA	NA	NA
38 percent	42,507	53,394	NA	NA	60,694	80,537	29,565	39,359
42 percent	53,394	72,157	59,644	83,982	80,537	114,119	39,359	54,702
45 percent	NA	NA	83,982	113,986	114,119	147,522	54,702	75,409
48 percent	72,157	101,995	113,986	145,359	NA	NA	NA	NA
49 percent	NA	NA	NA	NA	147,522	207,441	75,409	110,906
50 percent	101,995	....	145,359	....	207,441	....	110,906	....

3. Appendix 2–11.B, State Tax Table for RIT allowance is amended by adding the following new table:

State Marginal Tax Rates by Earned Income Level—Tax Year 1985

The following table (pages 5 thru 8, Appendix 2–11.B) is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed in FTR 2–11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1985.

	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000 to $24,999	$25,000 to $49,999	$50,000 to $74,999	$75,000 and over
State (or district):				
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	8	8	8	8
4. Arkansas	6	7	7	7
5. California	3	7	11	11
If single status [3]	8	11	11	11
6. Colorado	8	8	8	8
7. Connecticut	0	0	0	0
8. Delaware	7.6	9.9	10.7	10.7
9. District of Columbia	10	11	11	11
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8.5	10	10.5	11
If single status [3]	10.5	11	11	11
13. Idaho	7.5	7.5	7.5	7.5
14. Illinois	2.5	2.5	2.5	2.5
15. Indiana	3	3	3	3
16. Iowa	8	11	12	13
17. Kansas	7.5	9	9	9
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	7	9.2	10	10
If single status [3]	9.2	10	10	10
21. Maryland	5	5	5	5
22. Massachusetts	5.375	5.375	5.375	5.375
23. Michigan	5.35	5.35	5.35	5.35
24. Minnesota	14	16	16	16
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	9	10	11	11
28. Nebraska	(4)	(4)	(4)	(4)
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.5	5.6	6.5	7.8
If single status [3]	6.1	6.9	7.4	7.8
33. New York	11	14	14	14
If single status [3]	13	14	14	14
34. North Carolina	7	7	7	7
35. North Dakota	6	8	9	9
36. Ohio	4.75	5.7	6.65	9.5
37. Oklahoma	6	6	6	6
38. Oregon	10.8	10.8	10.8	10.8
39. Pennsylvania	2.35	2.35	2.35	2.35
40. Rhode Island	(5)	(5)	(5)	(5)
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.75	7.75	7.75	7.75
46. Vermont	(6)	(6)	(6)	(6)
47. Virginia	5.75	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	3.5	7.4	10.5	13
If single status [3]	8.2	12.8	13	13
50. Wisconsin	8.7	9.5	10	10
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

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² If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2-11.8a(2)(b).

³ This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

⁴ 19 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8a(2).

⁵ 23.15 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8a(2).

⁶ 26.5 percent of Federal income tax liability. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8a(2).

Dated: February 28, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-5957 Filed 3-18-86; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April, 1986:

Name: Secretary's Private/Public Sector Advisory Committee on Catastrophic Illness.

Date and Time: April 2, 1986, 9:00 a.m. until 12 noon.

Place: The Humphrey Auditorium, The Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Purpose: The purpose of the Private/Public Sector Advisory Committee on Catastrophic Illness will be to: (1) Solicit input from all interested parties regarding how government and the private sector can work together to address the problems of affordable insurance for catastrophic illness; and (2) to reflect periodically the views of the interested parties as well as the constituencies represented on the committee regarding the report on catastrophic health care which the Secretary of Health and Human Services must submit to the President by the end of the year.

Agenda: This meeting will be the initial meeting of the Advisory Committee. It will include welcome and opening remarks; a review of purpose, scope and membership of the catastrophic illness study; and discussion of final product and time frame.

Anyone wishing to obtain a roster of members, minutes of meetings, or the other relevant information should write to or call Ms. Charlene Quinn, Executive Director, Advisory Committee on Catastrophic Illness, Immediate Office of the Secretary, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245–2641.

Agenda items are subject to change as priorities dictate.

Dated: March 17, 1986.

Charlene Quinn,

Executive Director.

[FR Doc. 86-6173 Filed 3-18-86; 9:34 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-345-PN]

Medicare Program; Monthly Capitation Payment for Physicians Outpatient Maintenance Dialysis Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: Under the Medicare program, physicians receive a monthly capitation payment (MCP) for services provided to outpatient maintenance dialysis patients. The ratesetting methodology used to compute the MCP includes a home/facility physician treatment capability ratio which reflects that physicians can care for more home dialysis patients than infacility patients in a given time. The current ratio is 10:7 (or about 1.4 to 1). This notice would correct this ratio based on statistically valid physician treatment capability data. The new ratio would be 3.9 to 1.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 18, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–345–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC; or
Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–345–PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (301) 597–1810.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Physicians' services to renal dialysis patients are reimbursable if the services are otherwise covered by the Medicare program and if they are reasonable and medically necessary. Before August 1983, the Medicare program reimbursed physicians for services provided to outpatient maintenance dialysis patients under one of two methods—the initial method or the alternative reimbursement method (ARM).

On May 11, 1983, under the authority of section 1881(b)(3)(B) of the Social Security Act, we published in the **Federal Register** final regulations (48 FR 21254) that effective August 1983, eliminated the initial method and the ARM and implemented a new monthly capitation payment (MCP) system.[1] Regulations implementing the MCP system are located at 42 CFR 405.542. Under the MCP system a physician is reimbursed a single predetermined amount per patient per month for the physician's outpatient dialysis services. The same amount is paid for home dialysis patients as for in-facility dialysis patients. Because physicians spend much less time with home dialysis patients as compared to in-facility dialysis patients, the MCP provides an economic incentive for physicians to promote the use of home dialysis. Until a modified form of the initial method is reinstated in accordance with the court's order, the MCP is the only way that the Medicare program pays for physicians' outpatient maintenance dialysis services.

B. MCP System—Ratesetting Methodology and Current Rates

The current rates for physicians' services to outpatient maintenance dialysis patients set under the May 11 final rule range from $144 per patient per month to $220 per month, with an average rate of $187.88 per month. (This number represents a weighted average by State ESRD population using the latest figures.) Each locality has an MCP rate, determined as follows:

As a proxy for the physician's involvement with a dialysis patient we assumed a value of one physician-patient contact per dialysis session, and 149 dialysis sessions per patient per year, or 12.4 dialysis sessions per patient month. We used this figure of 12.4 sessions as a base multiplier. This multiplier was applied to the local prevailing charge for a medical specialist's brief follow-up office visit for an established patient (CPT–4 Code 90040). We added to the resulting figure an amount representing a routine monthly examination, based on the prevailing charge for an intermediate follow-up office visit (CPT–4 Code 90060). We weighted this sum for the national averages of patients dialyzing in-facility (83 percent) and at home (17 percent). We weighted for the in-facility proportion by multiplying the sum based on the medical procedure model by .83. We weighted for the home proportion by multiplying the base sum by .17, and then multiplied that result by .7 which represents the 10:7 home/facility physician treatment capability ratio used under the previous ARM system. A home physician treatment capability ratio of 10:7 means that a physician can care for about 10 home patients for every 7 facility patients, a ratio of about 1.4 1. In other words, home patients require about 70 percent as much physician care as facility patients.

Finally, as under the previous ARM system of payment, we set upper and lower limits on physician monthly capitation payments based on a truncated list of national prevailing charges for CPT–4 Codes 90040 and 90060. We set the upper limit based on the ninetieth percentile of charges and the lower limit based on the sixteenth percentile. The sixteenth percentile was chosen because there was only a $1 difference between the tenth and sixteenth percentiles and the resulting lower limit yielded a more reasonable range of payments compared to the previous ARM range.

II. Provisions of This Notice

A. Physician Treatment Capability Ratio and MCP Rates

This notice proposes to correct the 1.4 to 1 physician treatment capability ratio currently used in the MCP ratesetting methodology to 3.9 to 1, based on independently-collected statistically valid physician treatment capability data. We believe this correction is reasonable for the following reasons:

On February 1, 1985, the General Accounting Office (GAO) issued a final report, GAO/HRD–85–14, entitled "Changes Needed in Medicare Payments to Physicians Under the End-Stage Renal Disease Program." In this report the GAO referred to a statement we had made in our May 11, 1983 final rule in response to a comment regarding the 1.4 to 1 physician treatment capability ratio. In general, we stated that this ratio was based on expert medical advice provided at the time the ARM payment method has been established (1974) and that absent any further data to the contrary, we believed it would be reasonable to continue using this ratio as the weighting factor under the MCP system.

The GAO report then summarized data from questionnaires GAO has sent in 1982 to a nationwide statistical sample of nephrologists. The GAO questionnaire included questions asking the nephrologists how ofter they saw their infacility patients and how often they saw their home dialysis patients. The GAO attempted to obtain responses from all of the ESRD physicians in ten selected States (Alaska, Arizona, Arkansas, Hawaii, Massachusetts, Nevada, Oregon, Rhode Island, Louisiana and Washington). There was a 75 percent response rate (183 responses).

A sample of physicians was selected from the remaining 40 States. It was drawn from a sample of ESRD facilities stratified by size; then all physicians practicing at the selected facilities were queried. The sample six was selected so that the overall expected sampling error would be no more than plus or minus 0.8 percent at the 95 percent confidence level. The response rate was 64 percent, or 162 out of the 254 physicians selected.

The data collected show that nephrologists furnish 3.9 times as many services to infacility dialysis patients as they do to home dialysis patients. Therefore, the physician treatment capability ratio is 3.9 to 1, not 1.4 to 1. The GAO recommended that this ratio be used in setting MCP rates instead of the 1.4 to 1 ratio.

We believe that the GAO data warrant a change in the MCP rates. This notice would not change the methodology for calculating the MCP. Rather, it would correct the physician treatment capability ratio by using the statistically valid 1982 GAO data that would have been used in the May 11, 1983 final rule had they been available to us at that time.

B. New MCP Rates

The proposed change discussed in A. above would result in a new average MCP rate of $173.07 per patient per month with upper and lower limit rates of $203.00 and $132.00, respectively.

III. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Introduction

Executive Order 12291 requires that, for any major rule, a regulatory impact analysis be performed and made available to the public. A "major rule" is defined as one that is likely to result in:

- An annual effect on the national economy of $100 million or more;
- A major increase in costs or prices for consumers, any industries, any government agencies, or any goegraphic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for notices such as this for which an opportunity for public comment is offered, unless the Secretary certifies that the notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians participating in Medicare as small entities.

In considering whether the change to the MCP requires a regulatory impact analysis or regulatory flexibility analysis, we determined that it would not meet the criteria for a major rule under the Executive Order. However, we determined that the proposed change would have a significant impact on a substantial number of physicians. Therefore, although a regulatory impact analysis is not required, we have performed a regulatory flexibility analysis.

In the discussion below, we discuss the expected impact of this proposed change and summarize our expectations of the net effect. This discussion, combined with the rest of this notice, serves as a regulatory flexibility analysis consistent with the requirements of the RFA.

B. Estimated Savings

We estimate the following impact for fiscal years 1986 to 1990 in annualized savings to the program and in beneficiary savings:

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[1] In response to a law suit, *National Association of Patients on Hemodialysis and Transplantation, Inc. et. al. v. Heckler*, 580 F. Supp. 1106 (D.D.C. 1984), a federal district court has ordered the Secretary to reinstate a modified form of the initial method. the effect of this court decision would essentially provide two options for payment for physician outpatient maintenance dialysis services. We are proceeding to develop a notice of proposed rulemaking to accomplish this end. It will be published in the **Federal Register** shortly.

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IMPACT CAUSED BY CORRECTION TO MCP SAVINGS
[In millions]

Fiscal year	Medicare Program	Beneficiary	Total
1986	[1] $2.1	[1] $0.5	$2.6
1987	12.8	3.2	16.0
1988	13.4	3.4	16.8
1989	14.0	3.5	17.5
1990	14.6	3.6	18.2

[1] Assumes implementation date of Aug. 1, 1986.

C. Impact on Physicians

We estimate the average MCP reduction to be 7.88 percent of $187.88, or $14.81 per dialysis patient per month. Generally, a physician who treats dialysis patients spends about 21.3 percent of his or her time performing services covered by the MCP.[2] Assuming that physicians are reimbursed comparably for both the services included under the MCP and their other patient care services, the MCP reduction would represent a 1.67 percent (21.3 percent times 7.88 percent) reduction in overall earnings from patient care. This would not be a substantial reduction in net earnings.

Although there would be a reduction in payment to the physician, we do not expect the change to affect the rate of assignment or participation because there is an ample supply of physicians in the ESRD program (approximately one physician per twenty-eight patients).

D. Impact on Beneficiaries

In Fiscal Year 1986, approximately 86,600 ESRD beneficiaries would experience on the average, a $2.96 decrease in their monthly coinsurance obligation on the MCP. As previously mentioned, because there is an ample supply of physicians in the ESRD program, we do not believe there would be an adverse effect on access to care.

E. Conclusion

There would be a definite benefit to beneficiaries in cost savings on coinsurance payments. Further, the program savings to the government would be substantial.

The costs of this change would be borne by physicians treating dialysis patients. Since we anticipate no adverse effect on access to care, we conclude that the benefits to society as a whole outweigh the related costs.

IV. Other Required Information

A. Paperwork Burden

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

B. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in the notice.

(Sec. 1881 of the Social Security Act (42 U.S.C. 1395rr); 42 CFR 405.542)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 6, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86-5965 Filed 3-18-86; 8:45 am]

BILLING CODE 4120-01-M

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[2] Based on our analysis of the final report of HCFA Grant Number 95-P-98174-9-01, *Physicians Who Care for End-Stage Renal Disease Patients: A National Study of Their Practices, Patients and Patient Care.* December 15, 1983. Robert E. Mendenhall, Project Director. For further information contact Ed Dean (301) [illegible].

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-27596]

Issuance of Disclaimer of Interest to Lands in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Issue Disclaimer of Interest.

SUMMARY: The United States of America, pursuant to section 315(a)(1) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745(a)(1)(1982), does hereby give notice of its intention to disclaim and release all mineral interest, if any, of the real property described below.

Through a private exchange the United States acquired a record interest in the mineral estate of the subject land due to an inadvertent omission of a mineral reservation in the warranty deed conveying the land to the United States. A correction warranty deed later issued to correct the omission. However, a cloud on the title of the mineral estate of the land continues to exist.

DATE: For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201-1397. A decision whether to issue the disclaimer will be made within 45 days following the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Roswell Resource Area, (505) 624-1790, P.O. Drawer 1857, Roswell, New Mexico 88201.

The land is described as follows:

New Mexico Principal Meridian

T. 8 S., R. 25 E.,
  Sec. 25, that portion of the SE¼ known as Japan placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 60 acres, more or less.
T. 8 S., R. 26 E.,
  Sec. 28, that portion of the SW¼ known as Hettie placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 28 acres, more or less;
  Sec. 28, that portion of the SE¼ known as Korea placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 60.80 acres, more or less;
  Sec. 29, that portion of the S½N½ known as Apex placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 2 acres, more or less;
  Sec. 29, that portion of the N½S½ known as Kaiser placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 38.20 acres, more or less;
  Sec. 29, that portion of the S½S½ known as Columbia placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad and exclusive of said right-of-way, and of highways, containing 82.40 acres, more or less;
  Sec. 30, that portion of the S½NE¼, SE¼NW¼, and Lot 2 known as Lawrence placer mining claim, located south of the right-of-way of the Atchison, Topeka and Santa Fe Railroad, and exclusive of said right-of-way, and of highways, containing 18.50 acres, more or less;
  Sec. 30, the N½SE¼, NE¼SW¼ known as Princess placer mining claim, containing 120 acres, more or less;
  Sec. 30, the S½S½ known as Shoestring placer mining claim, containing 158.96 acres, more or less;
  Sec. 31, the NW¼ known as Juarez placer mining claim, containing 153.67 acres, more or less;
  Sec. 32, N½NE¼;

  Sec. 33, N½NW¼.
T. 9 S., R. 25 E.,
  Sec. 11, W½NE¼;
  Sec. 14, W½NE¼, E½NE¼NW¼.

Aggregating 1080.53 acres, more or less.

Dated: March 11, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-5938 Filed 3-18-86; 8:45 am]

BILLING CODE 4310-FB-M

[CA 10678]

Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order providing for opening of public lands.

SUMMARY: The purpose of this exchange was to acquire the non-Federal land for inclusion in the Mecca Hills Recreation Area located in the Southern California Desert. To equalize the values of the public and non-Federal lands in the exchange a cash payment in the amount of $500 was paid to the United States. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to the operation of the public land laws, but not the United States mining and mineral leasing laws. The United States did not acquire the mineral estate.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978-4815.

The United States issued an exchange conveyance document to the County of Riverside, California, on February 10, 1986, for the following described land under the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

San Bernardino Meridian, CA

T. 2 S., R. 2 W.
  Sec. 34, NE¼NW¼, S½NW¼, SW¼ and W½SE¼
T. 3 S., R. 2 W.
  Sec. 4, Lots 1, 2, 3, 4, 7, and 8

Containing 613.38 acres of public land.

In exchange for these lands, the United States acquired the surface estate of the following described land from the County of Riverside, California:

San Bernardino Meridian, CA

T. 6 S., R. 9 E.
  Sec. 36, All

Containing 640 acres of non-federal land.

At 10 a.m. on April 21, 1986, the non-Federal land described above shall be open to the operation of the public land laws generally, except the United States mining laws and mineral leasing laws, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 21, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: March 10, 1986.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86-5947 Filed 3-18-86 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3125, Block 144, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 7, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 11, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5939 Filed 3-18-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting on Tuesday, March 25, 1986, from 9:00 A.M. to 5:00 P.M. and ending Wednesday afternoon, March 26, 1986.

Location: Traveler's Inn, Chena Room, 813 Noble Street, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order
2. Roll call
3. Introduction of visitors and guests
4. Approval of minutes
5. National Park Service reports
   a. Charter amendments
   b. Budget reports
6. Committee workshops
   a. Access
   b. Eligibility
   c. Traditional use areas
7. Committee reports
8. Public/Agency testimony
9. Other business
10. Date and agenda for next meeting
11. Adjournment.

Written comments and recommendations received prior to November 11, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence

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Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Robert L. Peterson,

Regional Director.

[FR Doc. 86-5934 Filed 3-18-86; 8:45 am]

BILLING CODE 4310-10-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Import Investigations; Certain Amorphous Metal Alloys and Amorphous Metal Articles; Issuance of Initial Advisory Opinion and Recommended Determination; Extended Filing Schedule and Review Decision Deadline

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the presiding administrative law judge (ALJ) in the above-captioned investigation has issued an initial advisory opinion (IAO), which states that the modified amorphous metal casting processes used by certain respondents would not infringe the patent in controversy if those processes were used in the United States. The ALJ also has issued a recommended determination (RD), which states that (1) the exclusion order issued in the subject investigation on October 15, 1984, should be modified; and (2) the Commission should issue an order directing all respondents in the investigation to cease and desist from importing into the United States and selling amorphous metal articles made by the patented process.

Notice is also given that the Commission has revised the previous schedule for parties, other Government agencies, and interested members of the public to file written submission concerning the IAO and the RD. The Commission also has extended its deadline for determining whether to review the IAO.

FOR FURTHER INFORMATION CONTACT: For further information about the current proceedings and the original investigation, contact P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350; or contact Stephen L. Sulzer, Esq., Commission investigative attorney, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419.

SUPPLEMENTARY INFORMATION: Investigation No. 337-TA-143 was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain amorphous metal alloys and articles, by reason of the alleged infringement of three U.S. patents owned by complainant Allied Corp. (See 48 FR 15963, Apr. 13, 1983.) The investigation resulted in the issuance of a general exclusion order prohibiting the entry of amorphous metal articles manufactured abroad in accordance with the casting process disclosed in claims, 1, 2, 3 ,5, 8, or 12 of Allied's U.S. Letters Patent 4,221,257 (the/275 patent) from entering the United States. (See 49 FR 42803 (Oct. 24, 1984); and USITC Publication 1664 (November 1984), Commission Action and Order of Oct. 15, 1984.)

The Commission currently is conducting advisory opinion proceedings under 19 CFR 211.54(b) to determine whether the modified casting processes used by respondents Hitachi Metals, Ltd., Hitachi Metals International, Ltd., and Vacuumschmelze GmbH would infringe the '257 patent if those processes were used in the United States. (See Motion No. 143-86"C"; Commission Action and Order of July 26, 1985; Motion No. 143-89"C"; and Commission Action and Order of Sept. 11, 1985.)

The Commission also is conducting modification proceedings under 19 CFR 211.57 to determine (1) whether the exclusion order can be enforced without excluding products made by noninfringing processes, and (2) whether the exclusion order should be modified, limited, vacated, or left unchanged. (See Commission Action and Order of July 26, 1985; 50 FR 31260 (Aug. 1, 1985); Motions Nos. 143-86"C" and 143-89"C"; and Letter dated Apr. 16, 1985, from former United States Trade Representative William E. Brock to Commission Chairwoman Paula Stern.)

On March 3, 1986, the ALJ issued an IAO, which states that the modified amorphous metal casting processes used by the Hitachi and Vacuumschmelze respondents would not infringe the '257 patent if those processes were used in the United States. The ALJ also issued an RD (together with proposed findings of fact and conclusions of law), which indicates that the exclusion order should be modified to include: (1) A description of the patented process, (2) the width of amorphous metal articles covered by the order, (3) provisions for recordkeeping and a certification process, and (4) provision for further administrative proceedings as needed. The RD also states that the Commission shoud issue an order directing all respondents to cease and desist from importing into the United States and selling amorphous metal articles made by the patented process.

Written submissions: The filing schedule and Commission deadlines set forth in the Commission Actions and Orders of July 26 and September 11, 1985 (and pubished in the **Federal Register** of Aug. 1, 1985, 50 FR 31260) have been revised and extended. The new schedule and deadlines are set forth below.

March 28, 1986—Deadline for parties to the proceedings to file (1) petitions for review of the IAO, and (2) exceptions to the RD, as well as alternative proposed findings of fact and conclusions of law.

April 9, 1986—Deadline for parties to file (1) responses to the petitions for review of the IAO, and (2) responses to exceptions to the RD and proposed findings and conclusions.

April 16, 1986—Deadline for parties to file (1) replies to responses to petitions for review of the IAO, and (2) replies to responses to exceptions to the RD and alternative proposed findings and conclusions.[1]

May 19, 1986—Deadline for the Commission to determine whether to review the IAO. (See 19 CFR 210.53-.55.)

Interested members of the public and Federal agencies other than those listed below may file written comments concerning the RD (and the issue of whether the Commission should modify the exclusion order) with 14 days after the date of publication of this notice in the **Federal Register**.

The U.S. Customs Service, the Federal Trade Commission, the U.S. Department of Justice, and the U.S. Department of Health and Human Services may file written comments concerning the IAO and the RD within 21 days after service of the IAO and the RD.

No deadline has been set for the Commission to determine whether to adopt or reject the advice set forth in the RD. However, after considering the RD, all information obtained in the modification proceedings, and information on the record of the investigation, the Commission will determine whether the exclusion order should be modified, limited, vacated, or left unchanged.

Parties, other Federal agencies, and interested members of the public who file written submissions must file the original and 14 true copies thereof with the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC, on or before the deadlines listed above. Any submission that contains confidential business information covered by the protective order must be appropriately marked. At the same time that the confidential copies of the submission are filed, the submitting party must file a public inspection copy (with all confidential business information deleted).

Any interested member of the public or Government agency that wishes to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why such treatment should be granted. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly.

All nonconfidential written submissions will be available for public inspection at the Secretary's Office, indicated below.

Public Inspection: Public inspection copies of all documents cited in this notice, and all other nonconfidential documents on the record of the investigation, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Hearing-impaired individuals are advised that information concerning the subject investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-[illegible] Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-286 (Final)]

Import Investigation; Anhydrous Sodium Metasilicate From the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-286 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of anhydrous sodium metasilicate, provided for in item 421.34 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 10, 1986, and the Commission will make its final injury determination by June 30, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedures, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of anhydrous sodium metasilicate from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 16, 1985, by PQ Corp., Valley Forge, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (50 FR 46366, Nov. 7, 1985).

Participation in the investigation.—Person wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the name and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 6, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 28, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 13, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 16, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 21, 1986.

Testimony at the public hearing is governed by § 207.23 of the

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[1] The original schedule did not provide for reply submissions. However, the Commission has since determined that the complexity of the issues makes such submissions appropriate.

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Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 4, 1986. In additon, any person who has not entered an appearance as a party to the investigation may sumit a written statement of information pertinent to the subject of the investigation on or before June 4, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6006 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-269 and 270 (Preliminary) and 731-TA-311-317 (Preliminary)]

Import Investigation; Certain Brass Sheets and Strips From Brazil, Canada, France, Italy, South Korea, Sweden, and West Germany

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-269 and 270 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil (investigation No. 701-TA-269 (Preliminary)) and France (investigation No. 701-TA-270 (Preliminary)) of certain brass sheets and strips (UNS C20000-series), the foregoing not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Brazil and France.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-311-317 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil (investigation No. 731-TA-311 (Preliminary)); Canada (investigation No. 731-TA-312 (Preliminary)); France (investigation No. 731-TA-313 (Preliminary)); Italy (investigation No. 731-TA-314 (Preliminary)); South Korea (investigation No. 731-TA-315 (Preliminary)); Sweden (investigation No. 731-TA-316 (Preliminary)); and West Germany (investigation No. 731-TA-317 (Preliminary)) of certain brass sheets and strips (UNS C20000-series), the foregoing not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by April 24, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A though E (19 CFR part 201).

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on these matters can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on March 10, 1986, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Metals Div. (Copper Range Co.), Leetsdale, PA; The Miller Co., Meriden, CT; Olin Corp. (Brass Group), East Alton, IL; and Revere Copper Products, Inc., Rome, NY.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursaunt to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The

Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 4, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202-523-4612) not later than March 31, 1986, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before April 8, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and request for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant of § 207.12 of the Commission's rules (19 CFR 207.12)

By order of the Commission.

Issued: March 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6007 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Import Investigations; Certain Dynamic Random Access Memories

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 1986, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Texas Instruments, Inc., P.O. Box 225474, 13500 North Central Expressway, Dallas, Texas 75265. Supplements to the complaint were filed on February 13, 27, and 28, and March 3 and 6, 1986. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain dynamic random access memories, components thereof, and products containing same, and in their sale, by reason of alleged direct, contributory, and induced infringement of (1) claims 12-15 and 17 of U.S. Letters Patent 4,043,027; (2) claims 1-3 of U.S. Letters Patent 3,940,747; (3) claims 1-11 of U.S. Letters Patent 4,081,701; (4) Claims 5-8 and 10-18 of U.S. Letters Patent 4,240,092; (5) claims 1-7 of U.S. Letters Patent 4,249,194; (6) claims 1-4 and 6-7 of U.S. Letters Patent 4,533,843; (7) claims 1-4 and 6-7 of U.S. Letters Patent 4,543,500; (8) claims 7-18 and 20-26 of U.S. Letters Patent 3,541,543; (9) claims 1-3 of U.S. Letters Patent 4,495,376; and (10) claims 16-17, 19-22, and 24 of U.S. Letters Patent 3,716,764. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., or Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419 and 202-523-1273, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12)

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 10, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain dynamic random access memories, components thereof, and products containing same, or in their sale, by reason of alleged direct, contributory, and induced infringement of (1) claims 12-15 and 17 of U.S. Letters Patent 4,043,027; (2) claims 1-3 of U.S. Letters Patent 3,940,747; (3) claims 1-11 of U.S. Letters Patent 4,081,701; (4) claims 5-8 and 10-18 of U.S. Letters Patent 4,240,092; (5) claims 1-7 of U.S. Letters Patent 4,249,194; (6) claims 1-4 and 6-7 of U.S. Letters Patent 4,533,843; (7) claims 1-4 and 6-7 of U.S. Letters Patent 4,543,500; (8) claims 7-18 and 20-26 of U.S. Letters Patent 3,541,543; (9) claims 1-3 of U.S. Letters Patent 4,495,376; and (10) claims 16-17, 19-22, and 24 of U.S. Letters Patent 3,716,764, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Texas Instruments, Inc., P.O. Box 225474, 13500 North Central Expressway, Dallas, Texas 75265.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fujitsu, Limited, Marunouchi Center Building, Marunouchi 1-6-1, Chiyoda-ku, Tokyo 100, Japan.
Hitachi, Limited, 6, Kanda-Surugadai 4-Chome, Chiyoda-ku, Tokyo, 101, Japan.
Oki Electric Industry, Company, Limited, 10-3 Shibaura 4-Chome, Minato-ku, Tokyo 108, Japan.
Toshiba Corporation, 1-1 Shibaura, 1-Chome Minatu-ku, Tokyo 105, Japan.
Matsushita Electric Industrial Co., Ltd., P.O. Box 288 Central, Osaka 570-91, Japan.
Matsushita Electronics Corporation, 1-1 Saiwai-cho, Takatsuki, Osaka 569, Japan.
NEC Corporation, 33-1, Shiba 5-Chome, Minato-ku, Tokyo 108, Japan.
Mitsubishi Electric Corporation, Mitsubishi Denki Building, 2-3 Marunouchi, 2-Chome, Chiyoda-ku, Tokyo 100, Japan.
Sharp Corporation, 22-22 Nagaike-cho, Abeno-ku, Osaka 545, Japan.
Samsung Company, Ltd., Samsung Main Building, 250, 2-KA Taepyung-ro, Chung-ku, Seoul, Korea.
Samsung Semiconductor and Telecommunications Co., Ltd., Dong Bang Main Building, 150, 2-KA Taepyung-ro, Chung-ku, Seoul, Korea.
Fujitsu Microelectronics, Inc., 3320 Scott Boulevard, Santa Clara, California 95051.
Hitachi America, Limited, 2210 O'Toole Avenue, San Jose, California 95131.

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OKI America Inc., 1 University Place, Hackensack, New Jersey 07601.
Toshiba America, Inc., 2441 Michelle Drive, Tustin, California 92680.
Matsushita Electric Corporation of America, 1 Panasonic Way, Secaucus, New Jersey 07094.
NEC Electronics, Inc., 401 Ellis Street, P.O. Box 7241, Mountain View, California 94043.
Mitsubishi Electronics America, Inc., 991 Knox Street, Torrance, California 90502.
Sharp Electronics Corporations, 10 Sharp Plaza, Paramus, New Jersey 07652.

(c) Stephen L. Salzer, Esq., and Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124 and Room 128, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR § 210.21). Pursuant to §§ 201.16(d) and § 210.21(a) of the rules (19 CFR §§ 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official busienss hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6008 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-239 (Final) and 731-TA-248 (Final)]

Import Investigations; Ethyl Alcohol From Brazil

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] [3] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain ethyl alcohol,[4] provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) and mixtures of certain ethyl alcahol provided for in items 430.10, 430.20, and 432.10 of the TSUS, which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-239 (Final) effective November 12, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 4, 1985 (50 FR 49777).

The Commission instituted investigation No. 731-TA-248 (Final) effective September 24, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 10, 1985 (50 FR 41427). Subsequently, the Department of Commerce postponed its final antidumping duty determination and, accordingly, the Commission published a notice in the **Federal Register** of November 14, 1985 (50 FR 47123), revising its schedule for conduct of the investigation.

The hearing was held in Washington, DC, on February 5, 1986, and was a consolidated proceeding for both investigations. All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 11, 1986. The views of the Commission are contained in USITC Publication 1818 (March 1986), entitled "Certain Ethyl Alcohol from Brazil: Determinations of the Commission in Investigations Nos. 701-TA-239 (Final) and 731-TA-248 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: March 11, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6009 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines that an industry in the United States is materially injured by reason of imports from Brazil of certain ethyl alcohol which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[3] Commissioner Lodwick did not participate in these determinations.

[4] The ethyl alcohol (ethanol) covered by these investigations is fuel ethyl alcohol (fuel ethanol), provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) as ethyl-alcohol for nonbeverage purposes. The U.S. Department of Commerce has included mixtures of fuel ethanol, provided for in items 430.10, 430.20, and 432.10 of the TSUS, within the scope of these investigations. Further, Commerce stated that other blends may also be included within the scope of these investigations. Fuel ethyl alcohol is subject to additional duties under TSUS item 901.50.

[Investigation No. 337-TA-228]

Import Investigations; Certain Fans With Brushless DC Motors

Notice is hereby given that the prehearing conference in this matter will commence at 8:00 a.m. on March 24,

1986, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: March 11, 1986.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 86-6010 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[332-225]

Import Investigation; Probable Effects Advice Concerning the Possible Removal of Israel's Eligibility for Duty-Free Treatment of Sodium Bromide Under the Generalized System of Preferences

AGENCY: United States International Trade Commission (ITC).

ACTION: Institution of investigation.

SUMMARY: In accordance with the provisions of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation No. 332-225 for the purpose of obtaining information for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR), at the direction of the President, as to the probable economic effect on the U.S. industry producing a like or directly competitive article and on consumers of the removal of Generalized System of Preferences (GSP) duty-free status from sodium bromide, provided for in item 420.82 of the Tariff Schedules of the United States, which is imported from Israel.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Emanuel (202-523-0334) in the Commission's Office of Industries. For information on legal aspects of the investigation, contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-523-0487.

Background and Scope of Investigation: USTR requested the investigation following initiation of a review by the Trade Policy Staff Committee (TPSC). The review was initiated following receipt of a petition filed by the U.S. Bromine Alliance and concerns the possible removal of Israel's eligibility for duty-free treatment of sodium bromide under the GSP. Notice of the TPSC investigation was published in the **Federal Register** of February 18, 1986 (51 FR 5817). The USTR requested that the Commission complete its investigation within 60 days of receipt of the request.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 28, 1986. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6004 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order

AGENCY: United States International Trade Commission.

ACTION: Termination of repondent Scotty's, Inc., on the basis of a consent order.

SUMMARY: The Commission has determined not to review an initial determination (ID) (Order No. 2) terminating Scotty's, Inc. (Scotty's), as a respondent in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1641.

SUPPLEMENTARY INFORMATION: On February 7, 1986, complainant The Stanley Works, respondent Scotty's, Inc., and the Commission investigative attorney jointly moved (Motion No. 237-3) to terminate this investigation as to respondent Scotty's on the basis of a consent order agreement and a proposed consent order. On February 10, 1986, the presiding administrative law judge issued an ID terminating the investigation with respect to respondent Scotty's on the basis of the proposed consent order. The Commission has received no petitions for review of the ID or comments from Government agencies or the public.

Termination of the investigation as to respondent Scotty's on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6011 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Consent Order

AGENCY: United States International Trade Commission.

ACTION: Termination of respondent U.S. General Supply Corp. on the basis of a consent order.

SUMMARY: The Commission has determined not to review an initial determination (ID) (Order No. 1) terminating U.S. General Supply Corp. (U.S. General) as a respondent in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1641.

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SUPPLEMENTARY INFORMATION: On February 6, 1986, complainant The Stanley Works, respondent U.S. General Supply Corp., and the Commission investigative attorney jointly moved (Motion No. 237-2) to terminate this investigation as to respondent U.S. General on the basis of a consent order agreement and a proposed consent order. On February 10, 1986, the presiding administrative law judge issued an ID terminating the investigation with respect to respondent U.S. General on the basis of the proposed consent order. The Commission has received no petitions for review of the ID or comments from Government agencies or the public.

Termination of the investigation as to respondent U.S. General on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6012 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-275 (Final)]

Import Investigation; Oil Country Tubular Goods From Argentina

AGENCY: United States International Trade Commission.

ACTION: Schedule for the subject investigation.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On January 22, 1986, the Commission instituted the subject investigation without establishing a schedule for its conduct (51 FR 4663, February 6, 1986). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from April 8, 1986 to May 21, 1986. The Commission's schedule for the investigation is as follows: the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on April 28, 1986; the public version of the prehearing staff report will be placed on the public record on April 16, 1986; the deadline for filing prehearing briefs is April 28,1986; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 10:00 a.m. on May 6, 1986; written submissions directly relating to Commerce's final determination will be due on May 28, 1986; and the dealine for filing all other written submissions, including posthearing briefs, is May 13, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6013 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-255 (Final) and 731-TA-276 and 277]

Import Investigations; Oil Country Tubular Goods From Canada and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: March 10, 1986.

FOR FUTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPLEMENTARY INFORMATION: On December 30, 1985, the Commission instituted the subject investigations and established a schedule for their conduct (51 FR 3270, January 24, 1986). Subsequently, the Department of Commerce extended the dates for its final determinations in the investigations from March 4, 1986 to April 16, 1986 for inv. no. 701-TA-255 (51 FR 3389, January 27, 1986), from March 17, 1986 to April 16, 1986 for inv. no. 731-TA-276, and from March 17, 1986 to May 21, 1986 for inv. no. 731-TA-277. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedules.

The Commission's new schedule for the investigation is as follows: The prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on April 28, 1986; the public version of the prehearing staff report will be placed on the public record on April 18, 1986; the deadline for filing prehearing briefs is April 28, 1986; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 10:00 a.m. on May 6, 1986; written submissions directly relating to Commerce's final dumping determination on Taiwan will be due on May 28, 1986; and the deadline for filing all other written submissions, including posthearing briefs, is May 13, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Issued: March 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6014 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-271 and 731-TA-318 (Preliminary)]

Import Investigations; Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-271 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) of a preliminary antidumping investigation No. 731-TA-318 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel of oil country tubular goods,[1] provided for in items 610.32, 610,37, 610.39, 610.40, 610.42, 610.43, 601.49, and 610.52 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Israel and which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 28, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 12, 1986 by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring the file the entry.

Service list.—Pursuant to § 202.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on April 7, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202-523-0282) not later than April 2, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before April 9, 1986, a written statement of informaiton pertinent to the subject of the investigations, as provided in section 207.15 of the Commission's rules (19 CR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must by submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigation are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: March 14, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6015 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

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[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil and gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

[Investigations Nos. 701-TA-267 and 268 (Preliminary) and 731-TA-304 and 305 (Preliminary)]

Import Investigations; Top-of-the Stove Stainless Steel Cooking Ware From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a resonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Korea and Taiwan of cooking ware of stainless steel, not including teakettles, ovenware, and kitchenware, for cooking on stove-top burners, provided for in item 653.94 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Korea and Taiwan.

The Commission also determines,[2] pursuant to section 733(a) of the Act (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of such cooking ware of stainless steel from Korea and Taiwan which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 21, 1986, petitions were filed with the Commission and the Department of Commerce on behalf of

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[1] The record is defined in § 207.2(i) of the Commission's Ruels of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Eckes determined that there is a reasonable indication of material injury. Vice Chairman Liebeler determined that there is a reasonable indication of threat of material injury.

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the Fair Trade Committee of the Cookware Manufacturers Association, Walworth, WI, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of subsidized and LTFV imports of top-of-the-stove stainless steel cooking ware from Korea and Taiwan. Accordingly, effective January 21, 1986, the Commission instituted preliminary countervailing duty investigations Nos. 701–TA–267 and 268 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–304 and 305 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 6, 1986 (51 FR 4664). The conference was held in Washington, DC, on February 12, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 7, 1986. The views of the Commission are contained in USITC Publication 1820 (March 1986), entitled "Top-Of-The-Stove Stainless Steel Cooking Ware From Korea and Taiwan: Determination of the Commission in Investigations Nos. 701–TA–267 and 268 (Preliminary) and 731–TA–304 and 305 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: March 10, 1986.

Kenneth R. Mason,

Secretary.

[Fr Doc. 86-6016 Filed 3-18-86-8:45 am]

BILLING CODE 7020-02-M

[332-223]

Locations and Times of Public Hearings; The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development

AGENCY: United States International Trade Commission.

ACTION: Notice of locations and times of public hearings.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Jose Mendez (202–523–8267), Research Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background: The Commission instituted investigation No. 332–223, The Impact of Increased U.S.-Mexican Trade on Southwest-Border Development, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on November 25, 1985, of a request therefore from the Committee on Finance of the United States Senate.

Public Hearings: The Commission will hold three public hearing sin connection with this investigation. The first hearing will be held in the Conference Room, Sheraton Fairway Inn, South 10th Street at Wichita avenue, McAllen, Texas, beginning at 9:00 a.m. on April 7, 1986. The second hearing will be held in the 4th floor Auditorium, Texas Commerce Building, Main and Mesa, El Paso, Texas, beginning at 10:00 a.m. on April 8, 1986. The third hearing will be held in the Board of Supervisors Room, County of San Diego Administration Building, 1600 Pacific Highway, San Diego, California, beginning at 10:00 a.m. on April 10, 1986.

Written Submissions: In lieu of or in addition to appearances at the public hearings, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a party desires the Commisison to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commissions' *Rules of Practice and Procedure* (19 CFR 201.6). all written submission, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than March 24, 1986. All submissions should be addressed to the Secretary, U.S. International Trade Commission, Washington, DC. 20436.

Posthearing briefs must be submitted not later than the close of business on April 21, 1986. A sined original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: March 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-6003 Filed 3-18-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30793]

Boston and Maine Corp. Trackage Rights; Delaware and Hudson Railway Co.; Exemption

Delaware and Hudson Railway Company has agreed to grant overhead trackage rights to the Boston and Maine Corporation between Crescent and Mohawk Yard, NY, for a distance of approximately 8.65 miles. The trackage rights will be effective after the notice period required pursuant to 49 CFR 1180.4(g) and after the expiration of the appropriate notice period under the applicable labor protective conditions.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry, Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: March 13, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-5954 Filed 3-18-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18; (Sub-No. 81X)]

Chesapeake and Ohio Railway Co. Abandonment Exemption in Bay County, MI; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.04 miles of rail line between Valuation Station 1+38.1, near Patterson Street, and Valuation Station 56+32.89, near Bangor Street, in Bay City, Country, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that the line does not handle overhead traffic, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency was notified in writing at least 10 days prior to filing this notice.

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective April 17, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 28, 1986, and petitions for reconsideration, including environmental; energy, and public use concerns, must be filed by April 7, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Rene J. Cunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon enviromental or public use conditions.

Decided: March 7, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-5955 Filed 3-18-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-46]

Emerson Emory, M.D.; Denial of Application

On August 8, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Emerson Emory, M.D. of Dallas, Texas, (Respondent), an Order to Show Cause proposing to deny the application for registration submitted by Respondent. The statutory predicate for the proposed action is that on August 24, 1979, in the U.S. District Court for the Northern District of Texas, Respondent was convicted of violations of 21 U.S.C. 841(a)(1) and 846, felony offenses relating to controlled substances, and for further reason that Respondent is not authorized to prescribe, dispense or administer controlled substances in the State in which he practices.

By mailgram dated September 15, 1985, Respondent requested a hearing on the issues raised in the Order to Show Cause. Prehearing statements were filed, and on December 4, 1985, Government counsel filed a motion for summary disposition, including copies of supporting documents. Respondent filed no opposition or other response to this motion. Accordingly, Administrative Law Judge Francis L. Young considered the motion, accepting as genuine the supporting materials submitted by the Government.

On January 14, 1986, Administrative Law Judge Young issued his opinion and recommended ruling. No exceptions were filed, and on February 10, 1986, Judge Young transmitted the record in this matter to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based on the following findings of fact and conclusions of law.

The Administrative Law Judge found that, by order dated August 26, 1983, the Texas State Board of Medical Examiners revoked Respondent's license to practice medicine in Texas. The Board then stayed the revocation, suspending Respondent's license for one year, and thereafter placing Respondent's license on probation for ten years. Respondent appealed from this ruling and the reviewing court sustained the Board but set the period of suspension for Respondent's license for 350 days from January 13, 1984. By its Amended Order dated February 23, 1985, the Texas State Board of Medical Examiners placed Respondent's license to practice medicine on probation for 10 years, subject to certain terms and conditions. One of these terms was that "Respondent shall not apply for his Federal Drug Enforcement Administration Controlled Substance Registration and Texas Controlled Substance Registration Certificates without first obtaining written permission of the Texas Board of Medical Examiners." To date, Respondent has not obtained permission to file such an application. Respondent is therefore not authorized to handle controlled substances in Texas, the State from which he has applied for DEA registration.

State authorization to dispense controlled substances is a prerequisite to registration of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See *Dennis Howard Harris, M.D.,* Docket No. 84–19, 49 FR 39930 (1984); *Marshall S. Tuck, M.D.,* Docket No. 80–28, 45 FR 85845 (1980); *John M. Whitenight, D.O.,* Docket No. 77–30, 43 FR 28259 (1978).

In such cases, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *U.S.* v. *Consolidated Mines and Smelting Co., Ltd.,* 455 F.2d 432, 453 (9th Cir. 1971).

The Administrative Law Judge concluded that there is a lawful basis for denial of Respondent's application and recommended that the application for registration executed by Respondent be denied.

The Administrator has examined the entire record in this matter, and hereby adopts the recommended findings and conclusions of the Administrative Law Judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration as a practitioner, submitted by Emerson Emory, M.D. be, and it hereby is, denied.

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-5978 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-32]

John Howard Hottinger, D.D.S.; Partial Revocation of Registration

On June 4, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John Howard Hottinger, D.D.S. (Respondent), of 4170 Gross Road, Capitola, California 95010, proposing to revoke DEA Certificate of Registration AH1660821, issued to Respondent as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's

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September 14, 1984 conviction in the Superior Court of the County of El Dorado, California for issuing an unauthorized prescription in violation of Section 11153(b) of the California Health and Safety Code, a felony conviction relating to controlled substances.

Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in San Francisco, California on September 10, 1985, Administrative Law Judge Francis L. Young presiding. On December 2, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Government counsel filed exceptions to the Administrative Law Judge's opinion and recommended decision pursuant to 21 CFR 1316.66. On January 10, 1986, Judge Young transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusion of law as hereinafter set forth.

The Administrative Law Judge found that Respondent received his degree in Dental Surgery from Georgetown University in 1970 and then began to practice dentistry in California. Respondent married shortly before graduation and had a son in 1970. About the same time, Respondent began to abuse cocaine.

On February 21, 1975, in the Superior Court of California, Marin County, Respondent pled guilty to two counts of violating section 11173(a) of the California Health and Safety Code, obtaining a controlled substance by fraud, and one count of violating section 11173(b), making a false statement in a controlled substance prescription. Both offenses are related to controlled substances. Imposition of sentence was suspended and Respondent was placed on two years supervised probation. The conditions of Respondent's probation included ninety days in the Marin County Jail, execution of which was stayed; participation in a treatment/counseling program; that Respondent submit to drug testing; and that Respondent not practice dentistry during the probationary period without court approval.

The Administrative Law Judge found that, at the time of the above-mentioned offenses, Respondent was in the midst of a divorce action. He used cocaine in an attempt to relieve the stress involved and then wrote prescriptions in his wife's name for medications with which he tried to offset the effects of the cocaine.

In June 1975, the California State Board of Dental Examiners instituted disciplinary proceedings against Respondent and alleged eight grounds for such action. The Board based its action on the above-mentioned conviction in Marin County and other matters relating to the prescribing of drugs, including prescribing controlled substances for non-dental purposes. In October 1977, Respondent entered into a stipulation of settlement with the Department of Health and the Board of Dental Examiners. He admitted the factual allegations contained in the eight grounds for the disciplinary action. As a result, Respondent was placed on probation for five years, on condition that his dental license be suspended for one year and his DEA Certificate of Registration be surrendered to the Board of Dental Examiners.

After the one year suspension period, Respondent resumed his practice of dentistry. In December of 1978, Respondent again began abusing cocaine. In early 1979, he voluntarily entered into an intensive rehabilitation program in San Francisco in order to control his cocaine abuse problem. After five weeks of in-patient therapy, Respondent commenced regular participation in an Alcoholics Anonymous program, which he continued until approximately January, 1983, when he moved from the San Francisco Bay Area to Santa Cruz, California.

Respondent remained drug-free and sober between 1979 and early 1983. Respondent believed that his substance abuse problem was under control and, therefore, did not join an Alcoholics Anonymous Chapter upon his arrival in Santa Cruz.

Judge Young further found that Respondent joined the dental practice of a Dr. Richard Andrews in early 1983 in Santa Cruz. Dr. Andrews was sufficiently impressed with Respondent that he proposed to Respondent that they become partners in the dental practice. Toward the end of 1983, Dr. Andrews decided to retire from dentistry and sell the entire practice to Respondent. The ensuing negotiations, involving a sum of money in excess of $200,000, created considerable tension between the two dentists as they continued to work together.

In early December 1983, Respondent once again began to abuse cocaine. Just before Christmas of that year, Respondent and his fiancee went to Lake Tahoe for a short vacation. Anticipating his impending first meeting with his fiancee's parents, a reunion with his 15 year old son, poor weather conditions which prevented skiing, and the strain of the still on-going business negotiations, Respondent again turned to alcohol and cocaine use as he had done in 1974 under similarly stressful circumstances. Respondent again used his prescription writing privileges, this time at a South Lake Tahoe hospital, to try to obtain Demerol, a Schedule II narcotic controlled substance. The South Lake Tahoe Police were called to the hospital and upon arriving they found Respondent, who appeared to be intoxicated, attempting to obtain Demerol with an outdated prescription that he had written himself. Respondent was later charged and arrested for this unlawful attempt to obtain Demerol.

On March 14, 1984, a four count information was filed in the Superior Court for El Dorado County, California, charging Respondent with violations of the California Business and Professional Code and the California Health and Safety Code, arising out of his attempt to obtain controlled substances at the South Lake Tahoe Hospital the previous December. Respondent was convicted in California Superior Court on September 14, 1984, based on his plea of *nolo contendere,* to one count of violation of the California Health and Safety Code, issuing an unauthorized prescription, a felony. Imposition of sentence on this conviction was suspended and Respondent was placed on five years probation, required to perform 150 hours of community work and fined $1,000.

On December 6, 1984, an accusation was filed against Respondent by the California State Board of Dental Examiners to subject him to disciplinary action for unprofessional conduct. There has been no final action by the Dental Board as a result of this accusation.

The Administrative Law Judge found that Respondent has attempted to rehabilitate himself a number of times. In January 1984, after his disastrous Lake Tahoe vacation, Respondent joined Alcoholics Anonymous in Santa Cruz, where he remains an active member. In May 1984, Respondent joined the Physician's Diversion Program, a rehabilitative program sponsored by the California Board of Medical Quality Assurance. He also began a year of intensive psychotherapy starting in July 1984.

The Administrative Law Judge further found, based on Respondent's background, that he suffers from an addictive pesonality and must remain in treatment for the rest of his life to avoid abusing drugs and alcohol. He also believes that Respondent has

demonstrated a determination now to undertake this commitment.

The Administrative Law Judge observed that this is another in the increasing number of cases presenting health care professionals who, falling into drug abuse, misuse their DEA registration to obtain drugs for their own indulgence. There is no evidence in the record that Respondent utilized the drugs in question except for his own use. He further stated that the evidence shows reasonable assurance that Respondent will refrain from further drug abuse and will not misuse his DEA registration. Accordingly, the Administrative Law Judge recommended that Respondent be permitted to retain his DEA registration provided that, beginning six months after the effective date of the final agency order in this case, and every six months thereafter, Respondent shall submit to the DEA Special Agent in Charge, San Francisco, California:

(1) A list itemizing each prescription for a controlled substance written by Respondent during the preceding six months and each occasion during that period which he administered a controlled substance, stating the date, the substance, the quantity, the purpose, and the patient's name and address, and

(2) A written statement from the Facilitator or other appropriate person having personal knowledge that Respondent has regularly and effectively continued his participation in an appropriate continuing therapy program during the preceding six months, detailing any lapses of Respondent in attendance, or into drug or alcohol abuse which may have occurred.

The Government filed exceptions to the Administrative Law Judge's recommended ruling premised on the belief that the Administrative Law Judge did not accord sufficient weight to Respondent's continued recidivism regarding the abuse of controlled substances and the fact that Respondent has two convictions relating to misuse of his DEA registration. Government counsel points to the fact that every time Respondent comes under stress or faces a crisis, he turns to cocaine and alcohol. There is no more significant indicator of what a person's future conduct will be than the example set by his past conduct. Respondent has been involved in several rehabilitative programs and failed. The Administrative Law Judge found that he must remain in constant treatment to ensure that he does not relapse into drug abuse. Government counsel argues that, based on his background, Respondent should not be permitted to retain his registration to handle controlled substances. In the event that the Administrator did not consider revocation to be appropriate, Government counsel suggested that, at very lest, he consider restricting Respondent to Schedules III through V and that Respondent be denied registration in Schedule II.

The Administrator agrees with Government counsel that Respondent should not be permitted to remain registered in Schedule II. However, based on Respondent's strong rehabilitative efforts, the Administrator believes that Respondent should be permitted to retain a DEA registration in Schedules III, IV and V, conditioned along the lines recommended by the Administrative Law Judge.

Based on the foregoing, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH1660621, issued to Respondent John Howard Hottinger, D.D.S., be revoked in Schedule II. It is further ordered that the Respondent be issued a DEA registration in Schedules III, IV and V subject to the previously enumerated conditions. This order is effective April 18, 1986.

Dated: March 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-5979 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed State planning estimates and revised allocation formula; request for comments.

SUMMARY: The Employment and Training Administration is publishing (1) the proposed State planning estimates for Program Year 1986 for Job Training Partnership Act migrant and seasonal farmworker programs, and (2) a description of the allocation formula and rationale used in arriving at the planning estimates for each State, including a discussion of the comments received on the report of the Interagency Task Force on Farmworker Population Data, Comments are requested on the proposed allocation formula and the State planning estimates.

DATE: Written comments on this notice are invited from the public. Written comments must be received on or before April 18, 1986.

ADDRESS: Written comments should be submitted to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room 6122, Patrick Henry Building, 601 D Street NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 376-1226.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction; Scope and Purpose of Notice.
II. Description of Allocation Formula; Comments on Interagency Task Force Report on Farmworker Population Data.
III. Program Year 1986 Proposed State Planning Estimates.

I. Introduction; Scope and Purpose of Notice

For each program year, The Employment and Training Administration (ETA) publishes State Planning Estimates resulting from an allocation formula to enable Job Training Partnership Act (JTPA) Section 402 grant applicants to develop required modifications to their current grants. Since Program Year (PY) 1986 (July 1, 1986–June 30, 1987) is the second year of the current 2-year designation period, current grantees will be funded for PY 1986 unless the actions called for at § 633.315 of the JTPA regulations are appropriate, 20 CFR 633.315 (Replacement, corrective action, termination.). Applications therefore will not be accepted from other organizations.

This year (PY 1986), a revised allocation formula is being used as a result of an exhaustive 2-year study of farmworker population data and the allocation formula by the Department of Labor (Department) and the Interagency Task Force on Farmworker Population Data (Task Force). The Task Force was convened by the Department in an effort to further refine the allocation formula used since the inception of JTPA. Accordingly, Part II of this notice provides a description of the revised formula and the rationale for it for public comment, and a discussion of the Task Force report factors which influenced the revision of the formula. Part III of this notice provides the PY 1986 Proposed State Planning Estimates.

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II. Description of Allocation Formula; Comments on Interagency Task Force Report on Farmworker Population Data

Allocation Formula

The proposed distribution is based on data obtained in the Decennial Census of the Population, 1980. More specifically, the proposed planning estimates derive from the Census occupational codes which the Department considered to represent most accurately the nation's disadvantaged agricultural labor force. The persons included in the data base are individual workers who reported on the Census questionnaire that they earned an income at or below 70% of the Lower Living Standard Income Level (LLSIL) set by the Bureau of Labor Statistics and who earned more than half of their income from wages (See 50 FR 24506, June 11, 1985). Basically, the formula proposed differs from the one currently in use in that (1) the 70% LLSIL is now used rather than the Department of Health and Human Services (HHS) Poverty Index for the income threshold, and (2) farm operators are now counted only if over half of their income is derived from wages.

Task Force Report

When it announced the Program Year 1985 State Planning Estimates in its notice published in the **Federal Register** on April 30, 1985, the Department stated:

> The Department does not now expect to receive the report of the Interagency Task Force on Farmworker Population Data in time for review and comment until after Program Year 1985 has begun. Program Year 1985 will afford the Department and interested organizations a full opportunity to consider the results of the report and implement changes, if any, to become effective Program Year 1986.

The Task Force Report provides the information for the changes that are being made in the allocation formula on which the State Planning Estimates are based.

The Task Force was convened in November 1983, after the Department first used Census occupational data to form the data base for determining allotments for JTPA section 402 programs. Public comments raised a number of issues which the Department concluded merited study. The Task Force consisted of specialists in the fields of demography, economics, sociology, and statistics, an employment and training programs specialist, and a representative of JTPA section 402 grantees. Staff from ETA, the U.S. Department of Agriculture, and the Bureau of the Census were represented in this group.

The Task Force examined the issues which were considered to be the most important in arriving at a formula for determining State allotments for JTPA section 402 programs. Those issues were:

i. Selection of the appropriate data base.

ii. Inclusion or exclusion of farm operators, farm managers, and farmworker supervisors in or from the data base.

iii. Use of Standard Occupational Classification (SOC) codes. Standard Industrial Classification (SIC) codes Standard Industrial Classification (SIC) codes.

iv. Use of LLSIL versus Department of Health and Human Services (HHS) Poverty Index as the total income criterion.

v. Inclusion or exclusion of dependents in or from the data base.

The Task Force report was presented to the Department in August 1985, and a notice announcing its availability and requesting comments was published at 50 FR 42789 on October 22, 1985. In response to written requests for copies of the report, the Department distributed a total of 119 copies of the report and received 11 responses, only nine of which included substantive comments. There was no consensus of any of the issues discussed in the report. The Department proceeded to select the data base population which seemed most relevant and which provided a closer agreement with the population which is eligible for, and traditionally receives, full job training services.

The report did not contain recommendations. Rather, for each of the issues examined, the report presented the options available to the Department with arguments for and against each option.

A. Selection of the Appropriate Data Base

The Department has decided that the data source for the distribution of JTPA section 402 funds will continue to be the 1980 Census of the Population. The Census data provide a closer agreement with the population which is eligible for, and traditionally receives, full job training services.

This decision complies with the requirements of section 162(a) of JTPA which provides:

> All allotments and allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to economically disadvantaged and lower income persons shall be based on 1980 Census or later data.

The Department believes that the use of Census data permits a better targeting of scarce available resources.

That data contained in the Census of the Population are occupational data rather than industrial. Therefore, only persons actually engaged in agricultural labor are counted. This is as opposed to industrial data which include, in this case, all people who worked in the agricultural industry even if they never performed farm work.

The Census data also include income totals which identify the disadvantaged, and distinguish between income earned through wages and that earned through self-employment. Although other sources are updated more frequently than the Census, those data have shortcomings which the Department believes render them inferior to the 1980 Census as a source on the number and occurrence of disadvantage farmworkers.

"[T]he Department could have decided to allocate all of the funds at its discretion." *California Human Development Corp.* v. *Brock,* 762 F. 2d 1044, 1049 (D.C. Cir. 1985). Instead, it "carefuly sought to arrive at an allocation formula based on factual data available" to the Department. *California Human Development Corp.* v. *Donovan,* 586 F. Supp. 696, 698 (D.D.C. 1984), *aff'd, sub nom. California Human Deveopment Corp.* v. *Brock, supra.*

The Department's use of the 1980 Census as a data source "is reasonably consistent with its congressional mandate. . . ." 762 F. 2d 1045. The proposed continued use of that data source, along with the refinements and adjustments in the allocation formula described in this notice, and the full review conducted by the Task Force, fulfill the Department's promise to conduct " 'on-going review and analysis of data sources' in future years." 762 F. 2d at 1051 and n. 46, *citing* 48 FR 54915 (1983). It is the Department's view that the result is a reasonable approach, carefully arrived at, and satisfactory to the Secretary and the Department. *See* 29 U.S.C. 1572(a).

The following is a list and short discussion of alternative sources of data on farmworkers:

(1) *Hired Farm Working Force Survey.* This Department of Agriculture (USDA) survey is made every 2 years. The data are a projection from a small sample and count only hired farmworker, and as such, excluded sharecroppers, tenant farmers, and renters who are classified as farm operators. Also, the sample does not provide State and county data.

(2) *Census of Agriculture.* Although published every 5 years as opposed to

the 10-year intervals in the Census of the Population, this is industrial data without income figures. Also, the figures include considerable multiple counting, since the data concern relatively short periods of employment and the same workers are probably counted more than once.

(3) *Department of Labor Publications.*—(a) *ES–202 Report*—This is a monthly publication which contains income data, but the count is industrial, not occupational, and represents a projection of the total population from a sample. The sample size and collection method vary from State to State.

(b) *ES–223 Data*—This is a bi-monthly publication which provides data down to the county level, but does not classify workers either by industry or occupation and provides no information on income. Furthermore, workers employed for 150 or more days in a year are not counted, and employers who employ fewer than 500 employees do not contribute to the report. Considerable multiple counting occurs.

(c) *Farm Labor Survey*—This is a quarterly publication which projects from a small sample the average number of persons engaged in agriculture each month by State. However, the data are industrial and contain no information on income. Therefore, this source was not considered suitable as a data base for determining State allocations.

(4) *Current Population Survey (CPS).* This is a monthly updating of the Decennial Census. The chief disadvantage of the CPS is the small sample size which prohibits the collection of statistically reliable data at the State and county level. It has been estimated that it would cost more than $1,000,000 to sufficiently enlarge the sample to provide data for all States.

Therefore, with these choices in mind, the Department decided that no alternate source provided later reliable data.

B. Inclusion of Farm Operators, Farm Managers, and Farm Supervisors in or From the Data Base

The JTPA permits persons in the occupational codes for Farm Operators, Farm Managers, and Farm Supervisors to be considered to be farmworkers if they are disadvantaged and derive more than half of their earned income from wages. These are the same requirements that apply to all persons in the 10 occupational codes which the Department has determined best represent the agricultural labor force.

Farm managers and farm supervisors historically have been included in the data base for farmworker job training programs. Inclusion of disadvantaged farm operators allows the Department to count sharecroppers, tenant farmers, renters, and other disadvantaged small farm owners and operators.

C. Use of Standard Occupational Classification (SOC) Codes and Standard Industrial Classification (SIC) Codes

The Department decided to continue to use the SOC and not SIC data, since the former is limited to persons in agricultural occupations while the later include all persons engaged in the agricultural industry whether they do farm work or not, e.g., persons who work in clerical, administrative and technical positions, but who do not perform farm work.

D. Use of LLSIL Versus Department of Health and Human Services (HHS) Poverty Index as the Total Income Criterion

The Department has decided to change from the HHS Poverty Index to the 70% LLSIL level as the income criterion.

This change is consistent with the eligibility criteria in the regulations for JTPA section 402 programs and with the practice of other programs funded through other Titles of JTPA.

E. Inclusion or Exclusion of Dependents in or From the Data Base

The Department has decided to use 70% of LLSIL and individual workers, without dependents because dependents of JTPA section 402 eligible persons normally receive only nontraining-related supportive services on which by regulations at 20 CFR 633.304(b)(2), not more than 15% of grant funds can be spent. This change is consistent with the section 402 eligibility criteria.

III. Program Year 1986 Proposed State Planning Estimates

The proposed State Planning Estimates are set forth in this notice. They reflect the revised formula provisions described above. In addition, the planning estimates reflect (1) the application of a 75% hold-harmless provision to minimize the effects of the revised formula and reduced appropriation amount, and (2) that States and Territories which would receive less than $60,000 by application of the formula (Alaska, Rhode Island, and the District of Columbia), will receive no allotment since the amount they would receive is deemed insufficient to effectively operate a program. Although the Department reserves the right not to allocate any funds for use in a State whose allocation is less than $120,000 in accordance with 20 CFR 633.105(b)(2), jurisdictions which would receive more than $60,000 but less than $120,000 (Delaware and New Hampshire), will be given a minimum allocation of $120,000.

The formula is applied to a total amount to be distributed of $55,535,000. This figure represents the enacted level of $60,357,000 reduced by a $2,595,000 sequestration effective March 1, 1986 pursuant to Pub. L. 99–177, the Balanced Budget and Emergency Deficit Control Act of 1985. In addition, $2,227,000 is being withheld for the section 402 national account, of which $1,983,861 is for migrant housing and $170,000 is for the Hope, Arkansas Rest Center.

The Department intends to employ a hold-harmless provision for a period of 3 years, and thereafter, allocate to each jurisdiction the amount it would receive by a direct application of the Census data without a hold-harmless provision.

Signed at Washington, D.C. this 12th day of March 1986.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Appendix.—U.S. Department of Labor—Employment and Training Administration Office of Financial Control and Management Systems PY 1986 MSFW Allotment to States 02–18–1986

	Allotment
Alabama	774,193
Alaska	0
Arizona	1,001,566
Arkansas	1,140,959
California	7,881,007
Colorado	705,840
Connecticut	253,520
Delaware	120,000
District of Columbia	0
Florida	3,419,487
Georgia	1,515,670
Hawaii	241,161
Idaho	796,276
Illinois	1,059,592
Indiana	806,617
Iowa	1,456,693
Kansas	894,709
Kentucky	1,342,394
Louisiana	781,203
Maine	322,950
Maryland	274,926
Massachusetts	281,121
Michigan	835,651
Minnesota	1,379,565
Mississippi	1,437,736
Missouri	1,080,785
Montana	861,908
Nebraska	1,077,714
Nevada	132,732
New Hampshire	120,000
New Jersey	316,914
New Mexico	463,976
New York	1,373,941
North Carolina	2,825,698
North Dakota	646,626
Ohio	907,535
Oklahoma	599,973
Oregon	831,679
Pennsylvania	1,160,237
Rhode Island	0
South Carolina	1,049,566
South Dakota	696,665
Tennessee	941,977
Texas	4,521,771
Utah	215,105

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	Allotment
Vermont	211,483
Virginia	947,703
Washington	1,415,186
West Virginia	215,573
Wisconsin	1,338,296
Wyoming	198,995
Puerto Rico	2,870,098
Formula Total	85,535,000
TA/Hous.	2,227,000
Grand Total	87,762,000

[FR Doc. 86-5976 Filed 3-18-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development/Overview Section) to the National Council on the Arts will be held on April 3–4, 1986 from 9:00 a.m. to 5:30 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on April 4, 1986 from 11:00 a.m. to 5:30 p.m., to discuss Policy and guidelines.

The remaining sessions of this meeting on April 3, 1986 from 9:00 a.m. to 5:30 p.m. and April 4, 1986 from 9:00 a.m. to 11:00 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 12, 1986.

[FR Doc. 86-5940 Filed 3-18-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS).

Date and Time: April 3 and 4, 1986; 9:00 a.m. to 5:00 p.m.

Place: Room 506, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. David T. Kingsbury, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, Room 506, National Science Foundation, Washington, DC 20550.

Summary of Minutes: May be obtained from the contact person.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda: Discussion of BBS directorate-wide priorities and planning activities; mode of committee operation regarding expanded committee responsibility in the area of review of biotechnology-related environmental research; and plans for subsequent meetings of the committee.

Dated: March 13, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 6002 Filed 3-18-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1985 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health or safety). The following incidents were determined to be abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial action taken. These events are also being included in NUREG-0090, Vol. 8, No. 3 ("Report to Congress on Abnormal Occurrences: July–September, 1985"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, D.C. 20555, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Management Control Deficiencies

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—Because of continuing problems with the operation of LaSalle Nuclear Power Station, the NRC Region III Office initiated a special Task Force in July 1985 to perform an in-depth review of the facility's operations. Among the problems which triggered the task force study were three instances where errors in installation during equipment modifications affected the operability of Emergency Core Coolant System (ECCS) and the shutdown cooling systems. The Task Force identified a number of items indicative of poor management performance by the licensee (Commonwealth Edison Company). The LaSalle Nuclear Power Station, a two unit facility utilizing boiling water reactors designed by General Electric, is located in LaSalle County, Illinois.

Nature and Probable Consequences—LaSalle Units 1 and 2 received full power licenses in June 1982 and March 1984, respectively. Subsequently, the licensee has experienced numerous personnel, equipment, and regulatory problems, many of which can be attributed to deficiencies in management controls. These recurring problems have not individually been of major safety significance, but represent a trend which is not acceptable over the long run at an operating nuclear station.

To fully assess the scope and nature of the problems, the NRC Region III Office initiated a special Task Force review of the performance of the LaSalle Station in July 1985. The task group identified a number of items indicative of poor management performance. Among the principal findings of the task force, and other NRC inspections:

—Three instances in which installation errors occurred during equipment modifications at the facility in 1985. One event led to the inoperability of Unit 2 Emergency Core Cooling System (although the plant was shut down at the time) for several days. In addition, for part of this time secondary containment was not maintained as required by Technical Specifications.

—The other two events affected the operability of the shutdown cooling systems of Units 1 and 2, respectively. These events are discussed further below.

—A total of 172 violations of NRC requirements have been identified by NRC inspections from 1982 through July 1985. Three fines have been assessed, and a fourth one has been proposed (for the modification errors mentioned above, and described further below).

—Twenty-four instances between October 1984 and July 1985 where personnel errors or other actions during maintenance or modification work affected the operations of the plant. Included were five instances where reactor scrams (automatic shutdowns) were triggered by persons performing maintenance or modification work.

—Reported equipment problems—caused either by hardware failures or personnel errors—have occurred in a number of systems. Among the problems have been 25 failures of the control room ventilation system toxic gas detectors, 56 Licensee Event Reports (submitted to the NRC by the licensee) or Deviation Reports (internal licensee reports) on fire protection system problems, and 10 failures of the vent stack wide range gas monitors.

—The plant appears to routinely operate with several Limiting Condition for Operation (LCO) "time clocks" running. The plant's Technical Specifications contain numerous instances where the plant must reduce power or shut down within a specified time period if certain conditions or equipment problems exist. During a two week period reviewed by the Task Force, the number of time clocks for these LCOs averaged from three to six per unit at any one time.

—The number of outstanding work requests for repairs or maintenance of control room equipment remains high—running about 80 per unit in September 1985. These outstanding work requests may not be significant on an individual basis, but they tend to decrease the reactor operators' confidence in control room instruments and indicators.

—There is an excessive backlog of equipment modifications. In September 1985 the number totaled 543, not including those in progress and 270 of these have been designated as priority modifications. The priority modifications include 65 resulting from commitments to the NRC. The licensee's ability to complete these modifications in a timely manner is in doubt—only 74 modifications were completed between January and August 1985.

As mentioned previously, among the problems which resulted in the task force study were three instances where equipment modification errors affected the operability of the ECCS and the shutdown cooling systems. These events are described as follows.

1. Unit 2 was shut down in February 1985 for an outage that included installation of environmentally qualified electrical equipment. The Unit has three divisions of ECCS equipment. Division III of the ECCS was removed from service in March 1985 for normal maintenance. Between April and June 1985, due to inadequate controls in the design, inspection, and testing areas, the piping to two reactor vessel water level actuation switches in Division I of the Unit 2 Emergency Core Cooling System (ECCS) was installed backwards and, as a result, the Division I ECCS pumps would not have initiated as required on a low-low-low reactor vessel water level trip signal. On June 5, 1985, while unaware that Division I was inoperable, the licensee removed Division II of the ECCS from service for modification. Therefore, all three ECCS divisions were inoperable and automatic initiation capability of the ECCS in response to a low-low-low reactor vessel water level signal was lost until the problem was discovered and corrected on June 10, 1985.

In addition, again because the licensee was unaware that Division I of the ECCS was inoperable, the secondary containment was declared inoperable from June 5 to June 8, 1985, due to maintenance on the reactor building ventilation system. Even though the reactor was in cold shutdown, failing to maintain containment integrity when all ECCS capability is lost is a violation of Technical Specifications.

The event was caused by a lack of adequate design documentation, inspection, and testing controls. The NRC considered this violation particularly significant since its causes were almost identical to a violation which was discovered in Unit 1 in April 1985, and for which the licensee was cited for inadequacies in design and test controls. On April 17, 1985, while performing monthly functional tests on Unit 1, the licensee found that two switches for the Unit 1 Automatic Depressurization System (ADS) were miswired, making the trip system "B" for ADS initiation inoperable.

Following the discovery on June 10, 1985, of the loss of automatic actuation of ECCS capability, NRC Region III sent a Confirmatory Action Letter to the licensee on June 17, 1985, documenting the steps to be taken by the licensee both prior and after startup of Unit 2.

2. On July 17, 1985, the licensee discovered that the piping to the Unit 1 Residual Heat Removal (RHR) shutdown cooling pump high suction flow alarm and isolation switches was installed backwards. A verification walkdown failed to identify this improper installation. This installation resulted in these switches being inoperable during power operation, and a Technical Specification Limiting Condition for Operation was exceeded. Although there are several redundant signals that may provide this same system isolation function, this violation demonstrates another example of the lack of adequate design document and testing controls in the licensee's program.

The NRC Region III forwarded a Conformatory Action Letter to the licensee on July 22, 1985, documenting additional actions to be taken by the licensee prior to startup of either Unit 1 or Unit 2.

3. During this same period of time, another instance was discovered in which the piping to the two Unit 2 RHR Shutdown Cooling pump suction high flow isolation switches was installed backwards. The licensee failed to recognize this improper installation during a verification walkdown, but after a review of data associated with an alternate test, identified the problem with the installation of the lines to the switches. Although the Technical Specification does not require these switches to be operable in cold shutdown, this violation demonstrates further design and testing failures in the licensee's modification program.

Cause or Causes—The deficiencies appear to have resulted from a failure to aggressively resolve equipment problems, inadequate planning and control of site activities, and an excessive number of personnel errors—all of which are indicative of significant deficiencies in the licensee's site management structures and systems to control site activities.

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Actions Taken To Prevent Recurrence

Licensee—The immediate actions required prior to startup (as described in the two Confirmatory Action Letters referenced above) were completed and Unit 2 was authorized to start up on July 20, 1985. The licensee is performing the actions required after Unit 2 startup. In addition, the licensee has completed the actions required prior to Unit 1 startup (the licensee has shut down Unit 1 for maintenance on July 12, 1985; the plant was restarted on July 27, 1985.)

Over the past two years the licensee has undertaken a company-wide Regulatory Improvement Program to improve the performance of its management for its nuclear power plants. This program has included issuance of policy directives, organization modifications, some personnel changes, increased management involvement in the day-to-day operations at the nuclear facilities (by both corporate and station management), training activities, and efforts to reduce the number of personnel errors and procedural violations.

The licensee also retained a consultant to review its station operations.

The licensee's Regulatory Improvement Plan has been less effective at the LaSalle Station than at the other Commonwealth Edison facilities. Some evidence of improved performance has been observed, but additional steps are needed to obtain effective, continued improvements.

Additional corrective actions may be required in response to the NRC escalated enforcement actyion, issued September 27, 1985, described below.

NRC—Considerable effort has been required to monitor the licensee's performance and to review and document violations. As discussed previously, numerous violations have been found and several fines have been assessed.

In regard to the equipment modification errors which occurred in June and July 1985, on September 27, 1985, the NRC issued a notice of violation and proposed imposition of civil penalties of $125,000. The base penalty for violations would normally be $50,000; however, the amount was increased to $125,000 because of the number of incidents and because of previous poor performance of the licensee in similar areas.

The NRC letter noted that the violations demonstrated a need for the licensee to re-examine its commitments made to the NRC with regard to operability testing. On October 30, 1984, the licensee failed to perform adequate tests on the Standby Gas Treatment System (SBGT) after maintenance work was performed. As a result, plant personnel were not aware that the SBGT was inoperable until the problem was brought to their attention by the NRC Resident Inspector. That event resulted in a $25,000 civil penalty. In its response, the licensee stated, "In order to preclude this type of problem in the future, LaSalle Station will require that a test be conducted to demonstrate operability anytime a safety-related system is returned to service. A Post Maintenance Operational Test Checklist has been developed to ensure that the post maintenance test specified adequately demonstrates system operability in light of work performed."

The violations cited in the September 27, 1985 NRC letter indicate that more effective controls must be implemented to ensure that operability tests will be performed on safety-related systems after maintenance or modification and before these systems are returned to service.

The results of the Task Force formed by NRC Region III in July 1985 have been discussed with the licensee's Chief Executive Officer.

On November 22, 1985, the Regional Administrator of Region III issued a letter to the licensee under 10 CFR Part 50.54(f) requesting information on the licensee's plans to improve its performance in managing its maintenance, operation, and modification activities, including those problems identified in the Task Force report.

The licensee replied to the request on December 23, 1985. NRC Region III is currently evaluating the adequacy of the response. Further regulatory action will be taken, as appropriate.

* * * * *

Inoperable Steam Generator Low Pressure Trip

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On August 7, 1985, Maine Yankee Atomic Power Company found 9 of the 12 pressure transmitters that monitor pressure of the three steam generators (SGs) inoperable due to closed or partially closed root valves. These transmitters provide low steam pressure inputs to the Reactor Protection System, the Main Steam Isolation System, and the Feedwater Isolation System. The closed root valves caused three of the four low-SG-pressure logic channels of these systems to be inoperable. The significance of this is that in the event of a steam line rupture the subsequent reactor trip, main steam isolation and main feedwater isolation would not have initiated automatically on low steam pressure signals. This condition had existed since June 20, 1984.

Maine Yankee utilizes a three loop pressurized water reactor designed by Combustion Engineering, Inc. and is located in Lincoln County, Maine.

Background

Low steam pressure provides several protection signals in the event of a main steam line break. The three main steam lines exit containment into the mechanical penetrations room where each line is provided with an isolation non-return valve and an excess flow check valve. Each of these steam lines has four instrument taps between the non-return valve and the containment wall. Each instrument tap contains a root valve, instrument isolation valve, a drain valve, and a pressure transmitter. The pressure transmitters provide low pressure signals to four independent measurement channels, designated as channels A, B, C and D. Each channel provides the following:

—Pressure indication on the main control board (MCB) sigma meter for each SG. (Sigma meters are a brand name of a small horizontally mounted meter. All twelve sigma meters are located in the same area of the MCB so that all channels can be easily compared.)

—An input to the Reactor Protection System (RPS). The low-SG-pressure trip setpoint is 485 psig. RPS logic is any 2 of 4 low-SG-pressure signals on any two independent protection channels from one or more SGs.

—Independent of RPS:

- An input to close all excess flow check valves on low pressure (400 psig) from a single SG and provide a pretrip alarm (535 psig). Signal is any 2/4 from a single SG.
- A low-SG-pressure signal to provide a feedwater isolation signal. Signal is 2/4 from a single SG.
- A low-SG-pressure signal coincident with a safety injection actuation signal to provide a main feedwater pump train trip. Signal is 2/4 from a single SG.

The purposes of the above trips in the event of a main steam line break are: to scram the reactor, isolate the SGs, and stop feedwater to the SGs preventing continued steam release, reactor overcooling, and a possible reactor restart.

In addition to the trip signals, Channel A provides an input to the plant computer, indication on the safe shutdown panel, and a second meter on the MCB.

Nature and Probable Consequences—On August 7, 1985, the control room operators noted that the SG pressure indication for SG #1 Channel D was reading approximately 520 psig vice actual SG pressure of 630 psig. Calibration of the pressure transmitter by Instrumentation and Control (I&C) personnel was satisfactory and the technicians suspected that the instrument line may have been blocked. Using the drain valve, the technicians blew down the line and found that after an initial volume of water was drained, the steam pressure in the line was minimal.

An operator was sent to the mechanical penetration room to check the position of the instrument root valve. The operator, suspecting that the valve (MS-46) for SG #1 Channel B was open, attempted to verify it as open by turning the valve in the open direction and discovered the valve was, in fact, not open. The next valve check was MS-47 which was also checked in the open direction and was found to be similar to MS-46.

All root valves (four for each of the three SGs for a total of 12) were checked. Three valves were found open (MS-45, 65 and 85). These three valves are the Channel A pressure detector root valves. The other nine root valves were found shut or nearly shut. The operator reported moving a number of valves approximately 1/16 to 1/32 of a turn in the closed direction. Full stem travel is approximately 5 and 1/2 turns. Six valves (MS-44, 64, 66, 84, 86 and 87) were found cracked open and three valves (MS-46, 47, and 67) were found shut.

The low-SG-pressure trip is designed to operate even when one of the four channels is out of service, with a trip occurring if two of the remaining channels sensed low pressure. However, the closed root valves affected three channels (Channels B, C, and D) and thus the low-SG-pressure trip would not have operated if a main steam line break had occurred.

Three possible consequences of the closed root valves were of primary concern: (1) The loss of a trip signal to the Reactor Protection System which controls the insertion of reactor control rods, (2) delayed isolation of the intact steam generators from the ruptured pipe following a main steam line break accident, and, (3) the prevention of automatic main feedwater pump trip. These consequences are discussed as follows

In the unlikely event of a large main steam line rupture, the reactor trip on low-SG-pressure would be the first trip received by the RPS resulting in a reactor scram within several seconds. The closed root valves would have prevented this trip. However a number of other trips were available to scram the reactor, e.g., delta T power, high nuclear flux, or low primary system pressure. Thus the closed root valves would have caused a delay in reactor scram.

Of greater concern was the possibility of extended steam blowdown outside containment and reactor overcooling. The closed root valves would delay main steam and feedwater isolation and prevent automatic trip of the main feedwater pumps. Thus, if a main steam line rupture had occurred, the steam blowdown and flow of main feedwater to the affected SGs would have continued beyond the termination point currently assumed in plant safety analyses. This would result in overcooling of the reactor vessel and possible reactor recriticality. In addition, the ruptures outside containment, there would be adverse environmental conditions for equipment in the turbine building.

Cause or Causes—Inadequate administrative controls resulted in the SG pressure instrument root valves being left in the closed position. A hydrostatic test required that the root valves be closed by operations personnel and the instrument isolation valves be closed by I&C personnel. The test procedure did require I&C personnel to reopen the instrument isolation valves but did not specifically call for the root valves to be opened by operations personnel. The licensee does not manipulate root valves on normal system aligaments. The three root valves for Channel A were opened following completion of a plant modification involving installation of the subcooled margin monitor (SMM). The two activities (hydrostatic test and plant modification) were worked concurrently and both required the "A" root valves to be shut. However, maintenance controls for the SMM modification properly directed opening of the "A" root valves following completion of the modification. Consequently, 9 of the 12 root valves remained in a closed or nearly closed position for a fifteen month period.

The licensee found on September 3, 1985 that the installation of the SMM modification also adversely affected the low-SG-pressure reactor trip. Errors in design and post installation testing of the SMM modification resulted in the Channel A portion of low-SG-pressure reactor trip being disabled. Therefore, even though the Channel A root valves were open, a proper trip signal would not have been received by the RPS. The feedwater trip for Channel A was unaffected.

It should be noted that since the Channel A root valves were open, and the root valves for Channels B, C and D leaked or were partially open, the sigma meters in the control room accurately displayed steam generator pressure. However, due to the restricted path for sensing steam pressure, the RPS would not have responded in accordance with design and tripped the reactor on low steam pressure.

Actions Taken to Prevent Recurrence

Licensee—The licensee has developed a program to correct and prevent recurrence of the mispositioning of instrumentation root valves as well as inadequate design change review as delineated below:

Root Valves

1. Verify as open all root valves associated with safety related instrumentation identified in the Technical Specifications.
2. Incorporate all root valves identified in (1) above into appropriate operating procedures to ensure that they are open and verified to be open prior to startup from each refueling outage.
3. Verify that appropriate administrative controls (procedures) exist on all isolation valves associated with instrumentation identified in (1) above.
4. Review all special tests and temporary procedures prior to use to ensure that each valve position is individually specified when realigning systems.
5. Review the generic procedures governing the preparation and review of procedures to ensure valve positions are individually specified when realigning systems.

Design Changes/Post Maintenance Testing

1. Redesign the SMM circuitry to eliminate the common connection.
2. Review all previous design changes which involve or could interact with the safety instrumentation system identified in the Technical Specifications.
3. Provide an independent design review of all the design changes identified in (2) above.
4. Develop functional test requirements that are more comprehensive for all systems identified in (2) above that have been significantly modified since the issuance of the

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facility operating license (1972), including those undergoing modification during the current outage.

5. Provide documented assurance that the functional test requirements identified in (4) above have been previously satisfied, and no further modifications have been performed, or perform new comprehensive functional tests to satisfy the applicable requirements.

6. Review the engineering design change request (EDCR) procedures to specifically identify instrumentation lead "commoning" as requiring special design review emphasis.

7. Review the quality assurance procedures to require that a comprehensive functional test be performed on modified circuits including any associated circuits that may be affected.

8. Review the EDCR procedures to require a second independent design review of all EDCRs associated with instrumentation identified in (2) above, with particular emphasis to detecting sneak or interactive circuits.

9. Review the procedures governing design change implementation instructions to provide an independent review to ensure that the functional test requirements are appropriately comprehensive.

NRC—An enforcement conference was held with the licensee in the Region I Office on September 9, 1985. At the conference, the licensee was asked to discuss root causes of the occurrences from the aspect of both the root valve closure and the breakdowns in the design review process and post maintenance testing.

At the enforcement conference, the licensee offered a comprehensive analysis of all aspects of the occurrences and outlined a comprehensive program for corrective actions.

The licensee formally transmitted their corrective action program in a letter to the Region I Office on September 13, 1985 and addressed the points outlined above. A special inspection was initiated following the enforcement conference to assess the adequacy of implementation of the proposed licensee corrective actions. The inspection concluded on October 21, 1985, the day before recovery from the then ongoing refueling outage. The inspection found the licensee's corrective program comprehensive, well conceived, and properly implemented. There were no issues found by the inspection that impacted on timely plant startup.

On October 29, 1985, the NRC Region I Office issued a Severity Level II violation and civil penalty in the amount of $80,000. The Regional Administrator emphasized that corrections were needed in the areas of improved administrative control of valves, control of design changes, preparation and implementation of temporary procedures, and control of the post maintenance or post modification testing process including test design, test procedures, and their review.

* * * * *

Management Deficiencies at Tennessee Valley Authority

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place.—Because of serious NRC concern regarding significant programmatic and management deficiencies at Tennessee Valley Authority (TVA), on September 17, 1985, the NRC issued a request for information pursuant to 10 CFR Part 50.54(f) to enable the NRC to determine whether or not the licenses for the Browns Ferry and Sequoyah facilities should be modified or suspended or the application for the Watts Bar facility should be denied. The licensee's facilities are described as follows:

Facility	Number of units	Reactor designer	Reactor type	Facility located
Browns Ferry	3	General Electric	Boiling Water	Limestone County, AL.
Sequoyah	2	Westinghouse	Pressurized Water	Hamilton County, TN.
Watts Bar	2	Westinghouse	Pressurized Water	Rhea County, TN.
Bellefonte	2	Babcock & Wilcox	Pressurized Water	Jackson County, AL.

Operations at all three Browns Ferry units have been suspended by the licensee since March 1985. Operations at both Sequoyah units have been suspended by the licensee since August 1985. The two units at Watts Bar are under construction and fuel loading for Unit 1 had been projected for January 1986; however, the licensee issued a stop-work order on all safety related welding activities for both units during August 1985. This order was lifted in September 1985.

Nature and Probable Consequences—The September 17, 1985, NRC letter forwarded to the licensee the latest Systematic Assessment of Licensee Performance (SALP) Reports. This assessment was prepared by the staff for each of the facilities described above, as well as for the TVA headquarters' functions.

The SALP program is an integrated NRC staff effort to collect available observations and data on a periodic basis and to evaluate licensee performance based upon this information. SALP is supplemental to normal regulatory processes used to ensure compliance to NRC rules and regulations. SALP is intended to be sufficiently diagnostic to provide a rational basis for allocating NRC resources and to provide meaningful guidance to the licensee's managment to promote quality and safety of plant construction and operation.

The collection of performance observations and data are then reviewed by a SALP Board, composed of NRC senior personnel, to assess licensee performance. Licensee performance is assessed in selected functional areas, depending upon whether the facility is in a construction, preoperational, or operating phase. Each functional area normally represents areas which are significant to nuclear safety and the environment, and which are normal programmatic areas. Some functional areas may not be assessed because of little or no licensee activities or lack of meaningful observations. Special areas may be added to highlight significant observations.

Each functional area is classified into one of three performance categories. Briefly, these are (1) Category 1: Reduced NRC attention may be appropriate, (2) Category 2: NCR attention should be maintained at normal levels; and (3) Category 3: Both NRC and licensee attention should be increased. The SALP Board also categorizes the performance trend over the course of the SALP assessment period, i.e., the performance is improving, remaining constant, or declining. The SALP reports for TVA covered the period from March 1, 1984 through May 31, 1985 (Watts Bar Unit 1 was for January 1, 1985 through May 31, 1985).

Based on an overall assessment of the licensee's performance, the NRC has concluded that TVA has demonstrated ineffective management of its nuclear program. This poor performance is indicated by:

—Four successive SALP periods with Category 3 performance in Plant Operations for the Browns Ferry facility,

—Three successive SALP periods with Category 3 performance in Quality Assurance and Administrative Controls Affecting Quality for both the Browns Ferry and Sequoyah facilities,

—Three successive SALP periods with Category 3 performance in Maintenance and Security and Safeguards for the Browns Ferry facility,

—Multiple escalated enforcement actions, including a Confirmatory Order regarding the Browns Ferry Regulatory Performance Improvement Program, an Order regarding identification, evaluation and reporting of significant issues, frequent enforcement conferences, and several significant civil penalties since March 7, 1984,

—Numerous significant events since March 1, 1984, at TVA facilities. Several of these events are described below.

Browns Ferry Facility

1. On August 14, 1984, overpressurization of the Unit 1 core spray system occurred while conducting a core spray system logic surveillance test with the reactor operating at 100 percent power. The air control solenoid for the actuator of the core spray system inboard isolation valve was incorrectly rebuilt during maintenance sometime prior to the beginning of the current fuel cycle on December 29, 1983. The isolation valve is a check valve with an air actuator which is used to move the flapper for test purposes. This, in conjunction with operator error and procedural deficiencies caused the opening of the inboard injection valve during the performance of the core spray logic surveillance test. Backflow of reactor coolant at reactor system pressure into the low pressure core spray system resulted. The low pressure section of the core spray system was overpressurized and portions of the core spray system piping were heated to approximately 400°F.

The high pressure/low pressure isolation arrangements provided between the high pressure reactor coolant system and the low pressure core spray system were substantially degraded, reducing primary system containment integrity and providing the potential for structural damage to the core spray system. In addition, as a result of this event, thirteen persons received minor radioactive skin contamination.

The event was caused by a combination of personnel errors, lack of control over maintenance activities, inadequate post-maintenance testing, and procedural deficiencies.

This event, together with other events involving degraded isolation valves in emergency core cooling systems, were reported as abnormal occurrence AO 84–8 in NUREG–0090, Vol. 7, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1984"). As described in the report, on January 28, 1985, the licensee was issued a civil penalty in the amount of $100,000.

2. While conducting a shutdown margin test on Unit 3 on October 22, 1984 (after an extended shutdown for refueling, plant modifications, and inspections), numerous procedural and equipment deficiencies necessitated a re-evaluation, which extended the outage for another month.

The Technical Specifications require that the correct rod withdrawal sequence be verified prior to reactor startup. However, an incorrect rod withdrawal sequence was programmed into the Rod Worth Minimizer computer program and due to inadequate verification of the program, the errors in control rod programming were not discovered until 31 rods had been fully withdrawn from the core. No rods were actually withdrawn in the wrong sequence, however.

The Technical Specifications require that jet pumps be demonstrated to be operable prior to startup. Two jet pump differential flow instruments were inoperable due to valve alignment errors and were therefore unavailable for the demonstration of jet pump operability. The reactor was taken to the startup mode and made critical in violation of Technical Specifications.

In addition to the above, various other procedural steps of several different procedures were not accomplished which were required to be completed prior to criticality. One of the examples involved the failure to perform steps in one procedure which were identified as critical steps that resulted in the low pressure coolant injection mode of the residual heat removal system not being fully operable and could have led to a violation of Technical Specification Limiting Condition for Operation. A subsequent procedure which required verification that the critical steps were accomplished was also not completed. Additional examples of procedural violations as well as two examples of inadequate procedures were also identified.

The event was caused by a lack of discipline in the conduct of operations. This was exemplified by personnel errors, inattentiveness to procedural details, inadequate control of safety equipment during return to service following maintenance, and a fundamental misunderstanding of the definition of "reactor startup".

On February 27, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $112,500 for violations associated with the improper startup.

3. During a reactor startup on Unit 3 on February 13, 1985, the licensee failed to satisfy Technical Specification requirements for reactor vessel water level instrumentation operability. Specifically, due to normal error inherent to low reactor pressures and temperatures, two Yarway water level instruments indicated a reactor vessel water level about 39" (25" greater than the actual vessel water level). Two of the three GEMAC water level instruments were indicating a reactor vessel water level of 37", and the third GEMAC water level instrument was indicating 10". The operators believed the GEMAC instrument indicating 10" was erroneous because the other two were approximately in numerical agreement with the Yarways. (the 10", 37", and 39" levels are control point levels; even at 10", there was over 17 feet of water above the top of the core.)

Even when a half scram occurred as a result of low reactor water level, the operators failed to determine which instruments were providing correct reactor water level indication. However, the heatup was discontinued until the instruments began to converge. The NRC believes reactor operation should have been suspended until the cause of the problem was determined. Such action in necessary because the errors in the GEMAC instruments were caused by a malfunctioning reference leg which was common to the Barton water level instruments and which degraded two channels of the one-of-two-taken-twice logic associated with the reactor water level scram in the Reactor Protection System. Instead, operators reset the half scram by raising the reactor vessel water level in manual control, and continued the heatup of the system.

This event was considered serious by the NRC because operators had sufficient information to indicate that important instrumentation was inoperable and, instead of identifying and fixing the cause of the problem, they continued with the reactor startup. In addition, the Plant Superintendent for Operations and Operations Supervisor became aware of this event approximately at midnight on February 13, 1985; however, the fact that the

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water level instruments were inoperable was not recognized and they did not direct discontinuation of startup.

The event resulted from a failure to take corrective action when a similar reactor vessel water level instrument problem occurred on November 20, 1984. If effective corrective actions had been taken at that time, the event in February could have been prevented. Contributing causes were a lack of knowledge by the operators due to a deficient training program and communications and coordination problems between operators, maintenance, and management.

On July 22, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $150,000.

4. During a routine inspection on August 16, 1985, it was determined that major discrepancies existed in the design of cable tray supports at all three Browns Ferry units. Cable tray supports in the control bay area were not designed to accommodate seismic loading. Cable tray supports in the Diesel Generator Buildings were improperly designed in that the seismic loads used in the design calculations were obtained from the Reactor Building seismic analysis instead of the Diesal Building seismic analysis. In addition, cable tray support calculations in the Reactor Building showed a lack of thoroughness, clarity, consistency, and accuracy. As a result, many supports may not be able to serve their intended function during a seismic event.

During this same inspection, the licensee's implementation of corrective action to address as known deficiency related to cable trays was found to be inadequate. In February, 1981, the licensee became aware of many overloaded cable trays in the cable spreading room of the control bay and a corrective action report was initiated. The root cause determination and corrective action associated with the report was delinquent and ineffective until July, 1985. The actions taken between the time period of February, 1981 to July, 1985 consisted of forwarding the information to various design groups within TVA, and attempts at preventing additional cable trays from becoming overloaded. The cable trays which were known to be overloaded were not evaluated until July, 1985, when the licensee determined that the cable trays could not be considered qualified for a seismic event.

The inadequate design of safety related cable tray supports was caused by inadequate design controls during the construction phase of the plant. This condition was aggravated during subsequent modifications which resulted in cable trays being overloaded beyond their original design. A lack of aggressive action to correct the deficiencies once they were identified in 1981 further exemplified the inability of management to coordinate resources available in the design, modification, and quality assurance organizations in a timely manner.

5. On September 24, 1985, the licensee delared all eight emergency diesel generators associated with the standby a.c. power supply and distribution system inoperable. The diesels were considered inoperable for two reasons. Although some of the diesels have been in service for about thirteen years, the manufacturer's recommended three, six and twelve-year inspections and maintenance activities had not been performed. (The recommended annual maintenance had been performed). Simultaneously, the diesel battery racks that support the batteries which are required for startup and operation of the diesels were found to be not qualified for the loads resulting from a postulated seismic event. As a result of the diesel generators being inoperable, the licensee was unable to satisfy three Technical Specification requirements regarding diesel generator operability and emergency core cooling system operability. The resulting unanalyzed condition prompted compensatory measures and several safety evaluations. This occurrence is considered significant by the NRC in that once again, the degraded condition of the plant could have been prevented had proper corrective action been initiated following previous identification of the problem. The failure to perform the manufacturer's recommended maintenance on the diesel generators was identified by the NRC resident staff and cited as a violation of Technical Specifications on July 16, 1984. The licensee reported on August 16, 1984, that full compliance with the requirement would be met on October 5, 1984; however, full compliance was never achieved.

Sequoyah Facility

1. On April 19, 1984, a significant event at Unit 1 occurred involving damage to a compression fitting at the incore probe seal table. Unit 1 was at 30% power, with maintenance in progress for cleaning of the interior of the D–12 thimble tube (stainless steel tubing about 0.3 inch O.D.). The cleaning assembly for drybrushing of the thimble tube was inserted about 80 feet into tube D–12 when the high pressure seal fitting, which forms the reactor coolant system (RCS) pressure boundary, failed. At the first indication of leakage, the eight workers in the incore instrument room immediately left the room through the containment airlock without injury or significant exposures. Shortly after the workers left the area, RCS pressure caused ejection of thimble tube D–12. The RCS pressure caused a 25–35 gallons per minute (gpm) average unisolable reactor coolant leak. After extensive preplanning and mockup training, plant personnel recovered the highly radioactive thimble tube over the period of April 25–28, 1984.

The cause of the event is attributed to failure of the licensee to control modifications made to the cleaning fixture used to support the dry brushing apparatus. The tool had been repeatedly modified since 1979 by plant personnel without performing technical evaluations or tests to determine the effects of the modifications of the tool on the thimble tube seal reactor coolant pressure boundary.

On May 7, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $112,500. This event was reported in Appendix C of NUREG–0090, Vol. 7, No. 3 ("Report to Congress on Abnormal Occurences: July–September 1984").

2. During early 1985, the NRC expressed concern to TVA regarding environmental qualification of electrical equipment issues. TVA hired an independent contractor to review the documentation to determine compliance with 10 CFR Part 50.59. The contractor found that the documentation appeared to be inadequate at all TVA sites. As a result of this, as well as other certain technical concerns, the licensee shut down the operating Sequoyah Units 1 and 2 on August 21, 1984; as discussed previously, all three Browns Ferry units were already shut down.

Watts Bar and Bellefonte Facilities

Construction at Watts Bar Unit 1 is essentially complete and the licensee had projected a fuel load date of March 1985; Unit 2 is about 75% complete. Unit 1 fuel load has been delayed pending resolution of various concerns raised by the NRC staff and TVA employees. Bellefonte Units 1 and 2 are abut 86% complete, respectively.

1. On July 18 and 19, 1985, the licensee issued stop-work orders on installation of Class 1E electrical cable at the Belllefonte and Watts Bar sites, respectively. The orders followed a review by TVA of its general construction specifications which set electrical cable installation requirements for all TVA facilities. TVA advised NRC Region II that this review found an inadequacy in cable pull tension requirements with respect to industry practices.

2. On August 23, 1985, TVA issued a stop-work order on all safety-related welding activities at the Watts Bar site as the result of preliminary NRC Region II inspection findings which raised questions on the adequacy and accuracy of welder recertification. On August 23, 1985, NRC Region II issued a confirmation-of-action letter which provides that TVA will thoroughly review its welder recertification program, determine if appropriate code welding activities have been conducted by properly certified welders, and determine the safety significance of any welding activities conducted by uncertified welders. TVA agreed not to resume safety-related welding activities at the site without NRC concurrence. Welding activities were resumed in September 1985 after NRC Region II reviewed the certification program.

3. On August 29, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000 to TVA for violation involving control room design modifications at Watts Bar Unit 1. The violations concerned inaccurate status reports submitted from November 8, 1983 to October 3, 1984. The licensee stated that certain items were complete when in fact they were not, despite notice from the NRC inspectors that the reports were not accurate. The violations resulted from carelessness and inattention to detail in assuring the accuracy of information submitted to the NRC and was indicative of a breakdown in management controls.

Cause or Causes—Most of the problems encountered by the licensee were caused primarily by breakdowns in managment and procedural controls, with personnel errors also a contributing factor. Deficiencies have been noted in procedures, training of personnel, maintenance, required documentation, accuracy of the submittals to the NRC, and in taking timely, effective action on problems which are identified. The NRC believes that there is a lack of effective management both at the Corporate and site levels.

Actions Taken To Prevent Recurrence

Licensee—The licensee, in addition to taking corrective actions in regard to specific problem areas, has made attempts to improve management at their plants. For example, the licensee initiated a Regulatory Performance Improvement Program at the Browns Ferry Facility in mid-1984 to improve performance. However, this has not apparently been effective as evidenced by the NRC SALP report as enclosed in the previously referenced NRC September 17, 1985 letter.

TVA is evaluating the apparent ineffectiveness of the Program and has acknowledged the management shortcomings, attributing them to the past organization which has led to a lack of responsibility, accountability and productivity. A reorganization was accomplished with key personnel changes. At Brown Ferry, the plant manager, assistant plant manager for maintenance and the operations supervisor have been replaced. A corporate entity was established with a single chain of command responsible for all nuclear activities. This eliminated the dual organizational structure which has, in the past, separated the engineering/construction activities from the operating activities. Prior to the restart of Browns Ferry, the licensee plans an in-depth operational readiness review to verify the integrity of personnel, procedures, and equipment. An industry peer review to be conducted by personnel from other utilities and the Institute of Nuclear Power Operations is also planned.

TVA has recently undertaken reorganization at its other sites to effect more timely resolution of potential safety issues. This action is essentially a decentralization of plant-specific engineering staff deemed necessary to support the operating staff.

TVA has initiated some policy changes to help correct weaknesses in nuclear and operating experience of some of the lower levels of management, as well as reactor operators. During the past several years, a number of key managers with extensive nuclear and operating experience left TVA. A number of licensed reactor operators and senior reactor operators have also left to work at other utilities.

In addition to the above, TVA is required to address the general and specific concerns noted in the NRC September 17, 1985 letter.

As previously noted, TVA has shut down all of their operating plants (Browns Ferry and Sequoyah facilities) until plant specific problems and general concerns are resolved to the satisfaction of the NRC.

NRC—In order to assure high level attention to the problems at TVA, an NRC Senior Management Team (consisting of the Executive Director for Operations, the Directors of the Offices of Nuclear Reactor Regulation, Inspection and Enforcement, and Investigations, the Regional Administrator of Region II, and senior managers from these four Offices) was formed and meets regularly to discuss and implement corrective actions. These corrective actions consist of an augmented inspection program for Browns Ferry; Commission briefings; a re-evaluation of the Browns Ferry Regulatory Performance Improvement Plan; augmented Systematic Appraisal of Licensee Performance of all TVA facilities; and an in-depth operational readiness inspection program.

On July 3 and August 1, 1985, the Executive Director for Operations (EDO) forwarded to TVA concerns with TVA performance. On September 10, 1985, the NRC Team met to review the latest SALP reports for TVA's four sites and for TVA headquarters functions. Based on continuing concerns with TVA performance, the EDO forwarded previously referenced 10 CFR Part 50.54(f) letter.

The letter addressed a number of concerns, including corporate oversight, qualifications of new personnel, commitment control, timely resolution of conditions adverse to quality, adequacy of the operational readiness plan, maintenance improvement program, plant modification control, evaluation of seismic design concerns, environmental qualification of electrical equipment important to safety, onsite independent safety engineering group, fire protection program, and outstanding licensing issues.

The letter requested information in accordance with the following schedules:

1. Information specific to Sequoyah 60 days prior to restart of either Sequoyah unit.
2. Information specific to Browns Ferry 90 days prior to restart of any Browns Ferry unit.
3. Information specific to Watts Bar 90 days before the licensee anticipates requesting a fuel-load license for Watts Bar Unit 1.
4. Information specific to TVA corporate 60 days prior to startup of any of the TVA Units or a request for licensing of Watts Bar Unit 1.

On November 1, 1985, TVA submitted the requested information specific to Sequoyah and TVA corporate changes. These submittals are under review. The information pertaining to the Browns Ferry and Watts Bar facilities is expected in early 1986.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

During the third calendar quarter of 1985, an overview of 1984 misadminstration events disclosed that

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the first two events below (which occurred during 1984) should have been reported as abnormal occurrences.

Therapeutic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—From October 17, 1984 to November 1, 1984, a patient treated on the cobalt-60 teletherapy unit at the University Health Center of Pittsburgh's Joint Radiation Oncology Center, Magee—Women's Hospital site, received a radiotherapy administration of 3584 rads rather than the prescribed 2000 rads.

Nature and Probable Consequences—The patient was receiving the second of two courses of therapy to the ninth and tenth ribs using cobalt-60 external beam therapy. This region was being treated palliatively to relieve pain from metastatic disease. There was, in addition, a primary site under treatment with an entirely separate treatment plan which included the lung and mediastinum. Both treatment plans involved supraclavicular regions. The course of treatment to the primary site proceeded normally to its conclusion.

The first course to the metastatic area, 2000 rads in five treatments, prescribed on September 13, 1984, had been completed without any problems. The prescription for the second course of treatment, prescribed on October 16, 1984, was 2000 rads to be delivered in ten treatments. However, when the treatment dose for the second course was calculated, the dosimetrist assumed that the prescription was the same as the earlier one.

Rather than checking the prescription and preparing a new calculation as required by the Joint Radiation Oncology Center (JROC) procedures, the dosimetrist relied on a verbal communication and only decay-corrected the output from the first treatment. As a result, the patient began to receive treatment fractions that were twice those of the prescribed dose. This error was not discovered until the patient had received 3584 rads in the second course of therapy, when one of the treatment technologists noticed that the delivered dose differed from the prescribed dose by greater than 10%. Further treatment was stopped at that time.

The consequence of this incident was that the patient received an unprescribed does to the ribs of 1584 rads. The licensee reported that although the patient received more radiation than was prescribed, the patient has not, and likely will not suffer any ill-effects other than a modestly aggravated soft tissue reaction. The licensee reported that the actual dosage received is within a clinically acceptable range for the desired effect.

Cause or Causes—The cause was failure to comply with established procedures and oversights by the responsible staff, as evidenced by the following:

1. A requisition slip, required by established procedure, was not issued to request the second course calculation by the dosimetrist. The dosimetrist proceeded on verbal instructions which were relayed rather than received directly.
2. The dosimetrist failed to read the prescription in the patient's chart.
3. The dosimetrist failed to initiate a new calculation sheet for the new course of treatment.
4. A second dosimetrist, requested to make a correction for a separation change after the third treatment of the course in question, made that correction on the wrong sheet. Finding no calculation sheet for the second course, due to error 3, she made the corrections on the calculation sheet of the first course, overlooking the fact that the dates did not coincide.
5. The physician reviewing the chart after the fifth treatment of the course in question, failed to observe that the dose had already exceeded the prescription, and marked the chart "continue", referring to the primary treatment course of greater concern, going on concurrently.
6. The error was not noticed by the treatment technologists in their routine handling of the patient until the ninth treatment.

Actions Taken to Prevent Recurrence

Licensee—The policies and procedures which should have prevented this occurrence are clearly stated in a Physics Procedure Manual in the possession of each of the dosimetry staff. The policies were reviewed in inservice meetings held for the staff on July 2, 1984 and July 16, 1984 which dosimetrists and technologists attended.

Enforcement of these policies will receive the continued vigilance of management and supervisory staff. A general meeting of the entire physics and dosimetry staff was held on November 8, 1984 to discuss this issue and to re-emphasize the importance and necessity of strictly following the procedures. In addition, management and physics personnel have discussed the occurrence, the consequences, and the importance of following the standard practices with each of the persons involved. The dosimetrist who committed the most critical errors (numbers 2 and 3 above) has received a formal admonishment in writing which is incorporated as part of her personnel record. A memorandum has also been delivered to the physicists in charge at each site reminding them of their responsibility for assuring that procedures are followed correctly at their sites.

NRC—No violations of NRC regulations were associated with this incident. An NRC medical consultant is reviewing the case. Upon receipt of the consultant's report, an inspection will be scheduled.

* * * * *

Therapeutic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On October 25, 1984, NRC was notified that a patient of the Milton S. Hershey Medical Center in Hershey, Pennsylvania, received 15 millicuries of iodine-131 rather than the prescribed dose of 10 millicuries.

Nature and Probable Consequences—A 10 millicurie dose of iodine-131 had been ordered for one patient for treatment for hyperthyroidism and a 5 millicurie dose had been ordered for a second patient as a whole body scanning dose. When the first patient arrived, the technologist opened the bottle containing capsules which had the patient's name on it, dumped them in the patient's hand and gave the patient water with which to take them. The technologist neither verified the activity nor the number of capsules. Later in the day when the second patient arrived, the bottle with this patient's name on it was found to be empty. Several days passed before the licensee was successful in contacting the first patient who remembered taking three capsules, rather than the appropriate two.

The capsules were provided in vials labelled with each patient's name by Nuclear Pharmacy, Inc. It appears that although Nuclear Pharmacy accurately verified the activity of each capsule before dispensing, they dispensed three capsules in one bottle and none in the second. The prescriptive information labels indicated two capsules of 5 millicuries each in the first bottle and one capsule of 5 millicuries in the second bottle.

The referring physicians determined that effects should be minimal and involve only an increased probability of

the first patient ultimately developing hypothyroidism.

Cause or Causes—The cause was failure on the part of a nuclear medicine technologist to verify the activity of the administered dose and failure on the part of Nuclear Pharmacy to properly dispense two patient doses.

Actions Taken To Prevent Recurrence

Licensee—The technologist involved, who was new and apparently not thoroughly familiar with procedures, was reprimanded for not following required procedures. All technologists were retrained regarding procedures and requirements for receipt of radioisotopes, survey of radioisotopes received, dose calibrator verification of all radiopharmaceutical activities, administration to patients, record keeping and notification of incidents. The written procedures were modified and all technologists who are hired in the future will be required to demonstrate thorough understanding of the procedures before being given approval to administer radioisotopes to patients.

Nuclear Pharmacy, Inc.—As a result of this occurrence and a recent enforcement action, Nuclear Pharmacy, Inc. has significantly improved management control of its dispensing operations. Significant improvement was also made to recordkeeping and auditing procedures.

NRC—The incident is being reviewed by an NRC medical consultant. The corrective actions taken by the licensee will be reviewed during a future routine inspection.

* * * * *

Exposure of Radiographic Personnel Due to Management and Procedural Control Deficiencies

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On August 5, 1985, Western Stress, with offices located in Evanston, Wyoming and Houston, Texas, notified the NRC Region IV Office that radiographic personnel had received whole body radiation exposures in excess of NRC regulatory limits. Subsequent NRC inspections showed that the root causes were due to serious management and procedural control deficiencies.

Nature and Probable Consequences—On August 1, 1985, a radiographer and his helper went to a site at Table Rock, Wyoming to perform radiography with a radiographic camera containing a 29 curie Ir–192 source. After radiographing welds, the helper began developing the film while the radiographer disassembled the radiographic equipment. After being informed that one of the films did not receive the proper amount of exposure, the radiographer went to examine it. As he did, the helper reconnected the drive cable and radioactive source guide tube to the radiography camera. The source was cranked out, and a second exposure of the weld was made. Next, the radiographer developed the film as the helper disconnected the equipment. Neither realized that the radioactive source had not been connected to the drive cable and therefore could not be returned to the exposure device. Consequently, the radioactive source remained in an unshielded condition at the end of the guide tube. The radiography camera was placed near the rear of the truck, but the guide tube and cable were left lying on the ground approximately 20 feet from the weld. The two men then prepared to perform the job of stress relief around the weld. The process took about 5 hours. During this operation, they were either in the truck cab or watching the instrumentation near the weld.

Upon completion of work, all equipment was placed in the truck including the guide tube containing the source and the men returned the truck and equipment to the Western Stress facility in Evanston, Wyoming. The following day, two radiographers took the truck to a job site at Black Canyon, Wyoming. Radiography was performed using the guide tube containing the 29 curie Ir–192 source attached to a radiography camera different from the camera used the previous day. Several exposures were made, and the developed film was found to have double images. The radiographer was then aware of the problem and placed the exposure device and guide tube in a transport container and covered it with bricks. They contacted the company Radiation Safety Officer, and the truck and equipment were returned to the Western Stress facility in Evanston. The source was secured by the Radiation Safety Officer the following day.

The personnel dosimeters of the employees involved in the incident were evaluated. They indicated whole body radiation doses of 22.1, 7.4, and 0.6 rem to the original radiographer, his helper, and another employee, respectively.

On August 6, 1985, NRC Region IV inspectors met with representatives of Western Stress in Evanston, Wyoming and discussed the incident and evaluated information relative to the event.

Subsequently, an anonymous caller contacted NRC Headquarters on August 12, 1985, concerning Western Stress and stated that there had been other work involving the truck containing the exposed source by radiographic personnel who were unauthorized and who did not wear personnel monitoring devices. The job site, at which work was performed after the Table Rock work and before the Black Canyon work, was at Green River, Wyoming.

On August 13, 1985, NRC Region IV was notified by Western Stress management that additional use of the truck containing the radioactive source while in the unshielded condition had not been reported to the NRC during the week of August 6.

An extensive inspection was initiated by NRC Region IV personnel at Evanston, Wyoming on August 14, 1985. The inspection confirmed the information reported by the anonymous caller and later reported by company management. Interviews with radiographic personnel and reenactment of the events indicated that as many as six members of the general public may have received some exposures. However, best estimates are that the exposures were very low.

Oak Ridge Associated Universities Medical and Health Science Division performed cytogenetic dosimetry evaluations on blood samples taken form the radiographic personnel involved. Results of these studies showed at the 80 percent confidence level that the original radiographer's dose was not smaller than 8 rad nor larger than 31 rad and his helper's dose was not greater than 15 rad.

Cause or Causes—The root cause was due to a serious breakdown in management controls and oversight of the licensed program.

Actions Taken To Prevent Recurrence

Licensee—On August 9, 1985, Western Stress voluntarily agreed to suspend operations until management had made the necessary changes in the program to satisfy the NRC that they could meet the NRC's regulatory requirements. Permission to resume operation was given on October 3, 1985, after an additional NRC Region IV inspection confirmed that program improvements had been made. A license amendment was subsequently issued on October 4, 1985, to Western Stress, which included procedural and management changes.

NRC—On August 21, 1985, an enforcement conference was held in the NRC Region IV Office with members of Western Stress management. Items discussed were: the use of unauthorized

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radiographers to perform radiography, failure to wear personnel monitoring equipment, multiple failures to make radiation surveys required by regulations or company procedures, and the general breakdown in management controls and oversight of the licensed program.

The event remains under review by the NRC.

* * * * *

Diagnostic Medical Misadministration

The general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considerated an abnormal occurrence.

Date and Place—On August 19, 1985, Riverside Methodist Hospital of Columbus, Ohio, reported to the NRC that a 78-year-old patient had received a radiation exposure from a diagnostic test that was 10 times greater than that which had been intended.

Nature and Probable Consequences—On August 17, 1985, the patient underwent a blood pool imaging study. The diagnostic test involves injecting a radioactive material (sodium pertechnetate-99m) into the patient and then recording the movement and location of the radioactive material with a scanning device. The diagnositc test called for use of 20 millicuries of the sodium pertechnetate-99m, but the patient received 200 millicuries of the material.

A technologist prepared the material for the test, using a dose calibrating device to measure the amount of radioactivity. Measurements were made of the bulk supply of the sodium pertechnetate and of the single-dose syringe prepared by the technologist. The dose calibrator malfunctioned in both measurements, showing a measurement which was 1/10th of the actual amount. Therefore, the dose, measured as 20 millicuries in the calibrator, was actually 200 millicuries.

The error was discovered when the scanning test was performed. The licensee calculated that the patient received a whole body radiation dose of 3.28 to 3.5 rads. (A rad is a standard measure of radiation expsoure.) This level is far below the point where any detectable medical effects would be anticipated.

Cause or Causes—The misadministration was caused by the malfunction of the dose calibrator. The digital display on the calibrator misplaced the decimal point, thereby leading to the use of 200 millicuries of the material instead of the intended 20 millicuries.

The dose calibrator had previously malfunctioned in June 1985 and was returned to the manufacturer for service. The malfunction-by a factor of 10-resurfaced again in August, but could have been corrected by removing and reinserting the container being measured. The Chief Technologist was not informed of the problem, and no action was taken at that time.

Actions Taken To Prevent Recurrence

Licensee—After the misadministration occurred, the licensee attempted to duplicate the instrument malfunction, but was unable to do so. It was placed back in service until August 22, when the malfunction reoccurred. The device was then returned to the manufacturer for repair.

NRC—A special inspection was conducted on September 3, 1985, to review the circumstances of the misadministration. The licensee's handling of the incident and the corrective measures taken were found to be acceptable. No violations of NRC regulations were identified.

Dated in Washington, D.C. this 14th day of March, 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-6035 Filed 3-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA-2; ASLBP No. 86-526-04-LA]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company

Limerick Generating Station, Unit No. 1

Facility Operating License No. NPF-39

This Board is being established pursuant to a notice published by the Commission on December 30, 1985 in the **Federal Register** (50 FR 53226, 53235) entitled "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would revise Technical Specifications (TS) 4.6.1.2.d and g to allow a one-time-only extension of time to satisfy local leak rate testing requirements on primary containment isolation valves as listed in the amendment application.

The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 13th day of March, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-6034 Filed 3-18-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Application To Withdraw From Listing and Registration; American Stock Exchange (Common Stock, Par Value $1.00 Per Share); Pacific Stock Exchange (Common Stock, Par Value $1.00 Per Share); Marshall Industries, (File No. 1-5441)

March 12, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. and the Pacific Stock Exchange, Inc.

The reasons cited in the application for withdrawing this security from listing and registration include the following:

The issuer's direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange and the American and Pacific Stock Exchanges. The issuer does not see any particular advantage in the dual trading of its stocks. The issuer believes that listing solely on the New York Exchange provides the issuer with sufficient order depth and liquidity, that dual listing

would result in inappropriate additional costs, and that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 2, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6024 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23000; File No. SR-AMEX-86-7]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for Commission approval of a three month extension of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In June 1984, the Commission approved on a twelve month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.[1] The Exchange made the modified procedure available to companies listing on the Exchange on or after July 1, 1984 as an alternative to the allocation procedure which permits company participation in the selection process to a limited extent (the "limited participation procedure").[2] In June 1985, the Commission granted a six month extension of the modified procedure and in January 1986, a three month extension, to permit it to further review the adequacy of the Exchange's procedures under the pilot and to provide the Exchange with the opportunity to continue to assess the pilot's impact prior to requesting permanent approval.[3]

At the Commission's request, the Exchange is currently compiling information regarding its experience under the pilot to provide the Commission with a comprehensive review of the operation of the pilot to date. To avoid interruption of the pilot program, which is scheduled to terminate at the end of March, the Exchange is requesting a three month extension of the pilot. The Exchange anticipates that it will request permanent approval of the pilot procedure at the close of the three month period.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act to enable it to continue its allocation and evaluation pilot without interruption.

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

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[1] *See* Securities Exchange Act of 1934 Release No. 34-21062 (June 18, 1984).

[2] Under the limited participation procedure, the Exchange's Committee on Equities Allocations ("Allocations Committee") submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven units.

[3] *See* Securities Exchange Act of 1934 Release No. 34-22185 (June 28, 1985) and Securities and Exchange Act of 1934 Release No. 34-22780 (January 8, 1986).

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The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to allow the Amex to continue its pilot without interruption and to permit the Exchange to further evaluate the pilot and to develop any changes and amendments to the program which may be appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6030 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22998; SR-BSE-85-10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc., Order Approving Proposed Rule Change

The Boston Stock Exchange, Inc. ("BSE") submitted on December 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend its rules with regard to the registration of a member or member organization as an independent floor broker. According to the rule change, a member or member organization may be registered as an independent floor broker upon application to and with the consent of the Exchange. Such registration allows the independent floor broker to execute orders on behalf of his public customers, other members on the floor, and members of the Exchange who do not have their Exchange member on the floor.

An Exchange member who desires to act as an independent floor broker must: (1) Establish and maintain on deposit with the Exchange at all times no less than $25,000 in cash or securities or such greater amount as determined by the Market Performance Committee and (2) pass the Exchange administered floor member examination. In addition, an independent floor broker can initiate transactions while on the floor for an account in which he has an interest only if he is registered as a dealer-specialist with the Exchange, and the Exchange has approved of his so acting as a dealer-specialist and has not suspended or withdrawn its approval.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22759, January 2, 1986) and by publication in the **Federal Register** (51 FR 797, January 8, 1986). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6021 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23005; File No. SR-BSE-85-9]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Boston Stock Exchange Inc., Relating to Amendments to Chapter XIV of the Boston Stock Exchange Rules

The Boston Stock Exchange, Inc. ("BSE") submitted on December 13, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Chapter XIV of the BSE Rules to require that in order to register as a BSE floor clerk, and applicant must pass the BSE Floor Member Examination. Under the proposal, an individual may perform limited clerical duties with the consent of the Exchange prior to passing the Floor Member Examination, but must take the examination within three months of receiving such consent and cannot assist members in transmitting or executing orders prior to passing the examination.

Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Commission release (Securities Exchange Act Release No. 22819, January 22, 1986) and by publication in the **Federal Register** (51 FR 4254, February 3, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6025 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22986; File No. SR-BSE-85-11]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Incorporated Relating to Amendments to Chapter II, Section 15 of the Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1985 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as

described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to provide enhanced standardized procedures for the execution of good-till-cancelled ("GTC") orders under Chapter II, section 15 of the BSE Rules. The proposal would amend this section to provide that GTC orders must be confirmed or renewed with the specialist on the last business day of each month. In addition, the rule proposal would provide that, irrespective of whether such orders are confirmed or renewed in the manner of their original entry, they shall be executed according to their terms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to provide uniformity for confirmations and reduce risk to member organizations.

(b) The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934, as amended, in that the rule will foster cooperation and coordination as well as reducing risk to member organizations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange does not believe that the proposed change will have any impact upon competition. The proposed modifications are designed to improve record keeping by providing uniformity in confirmation procedures, thus reducing risk to member organizations.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was approved by the Market Performance Committee consisting of members active on the floor of the Exchange, as well as representatives of upstairs member firms. General comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6027 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23006; File No. SR-CBOE-85-50]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating To Establishment of Rules Governing Trading of Equity Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1985, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared in principal part by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed rule change would amend CBOE Rule 6.01 and establish new rules 5.08 and 25, subsections .01 through .116, governing the trading of equity securities on the CBOE. The text of the proposed rule change is available at the offices of the Commission and the CBOE, as described further in Section IV ("Solicitation of Comments") of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On May 8, 1985, the Commission issued a release that, among other things, approved in concept a pilot program in side-by-side market-making involving the six most active National Market System ("NMS") Securities, subject to Commission determinations that grants of unlisted trading privileges ("UTP") and exchange side-by-side trading in the pilot stocks would be consistent with the Securities Exchange Act of 1934 ("Act") and the creation of adequate equity and options audit trails. *See* Securities Exchange Act Release

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No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985) ("OTC Options Release"). The Commission subsequently stated that it was prepared to grant exchanges UTP in certain NMS Securities, subject to certain conditions. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (September 24, 1985) ("UTP Release").

On September 20, 1985, the Commission recited the foregoing background and stated its continued belief "that the side-by-side pilot is appropriate, and that exchange participation in the pilot appears appropriate." Securities Exchange Act Release No. 22439 (September 20, 1985) ("Side-By-Side Release"). The Commission also announced in the Side-By-Side Release that the side-by-side pilot "will begin on January 20, 1985."

In the Release, the Commission acknowledged that this Exchange has until now made a conscious business decision to remain an options-only exchange, and the Commission noted that it "does not believe it would be appropriate to delay the introduction of new trading programs for other marketplaces solely to allow the CBOE to reposition itself as a stock exchange." Side-By-Side Release at 11.

This proposed rule change is a set of rules for trading stock on this Exchange, the approval of which will, among other things, enable the Exchange to be granted UTP in over-the-counter stocks and to participate in any side-by-side pilot.[1] The Exchange has previously stated its intention to apply for UTP, by a letter to Michael Simon, Assistant Director, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated October 15, 1985.

The system of trading stock, as set forth in the rules, will be a competitive market-maker system, with the market-maker serving in a rotation as Designated Primary Market-Maker ("DPMM"). The DPMM will be responsible for firm quotes and trading crowd accountability. The rules contemplate that the DPMM will be the principal interface for disseminated quotations. The rules track the Exchange's options rules where feasible, continuing the separation between agency and principal functions on the trading floor, as well as maintenance of a limit order book on which public customer orders may be placed.

To effectuate orderly business, the rules have a variety of priority provisions, including book priority, and time priority until occurance of a clearing transaction. To facilitate stock-option combination business, priority is given for stock trades related to stock-option combination transactions. Cross transactions may be effected witout crowd participation if the order can be crossed between the best bid and offer in the crowd.

The rules also contemplate that members will be eligible to trade stock if supported by an appropriate letter of guarantee from a stock clearing firm. This approach is consistent with the use of letters of guarantee in options trading.

The Exchange believes that the proposed rules for trading stock at the Exchange are consistent with the provisions of the Act, and in particular section 6(b)(5) thereof, in that the rules are designed to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents; the Commission will:

(A) *By order approve such proposed rule change, or*

(B) *Institute proceedings to determine whether the proposed rule change should be disapproved.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6029 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22985; File No. SR-MSE-86-1]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to the Use of Midwest's Automatic Execution System (MAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 31, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of one change to the rules regarding the use of Midwest's Automatic Execution System (MAX) as follows:

The time frame between the time a market order is entered into MAX and the time it is automatically executed ("order exposure time") will be reduced from 15 seconds to 0 seconds (i.e., an immediate execution) when, at the time of order entry, the ITS best quotation spread between the bid and the offer in a MAX eligible stock is ⅛ point and the stock is quoted with a minimum variation of ⅛ point.

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[1] The CBOE has filed with the U.S. Court of Appeals for the Seventh Circuit two petitions for review of the Commission releases relating to side-by-side trading. On September 10, 1985, the Court of Appeals dismissed the CBOE's first petition to review the OTC Options Release, finding that the release did not constitute a final decision by the Commission and therefore was not currently subject to judicial review. *CBOE v. SEC*, No. 85-2146 (7th Cir., September 10, 1985) Further, on January 29, 1986, the Court of Appeals granted the Commission's motion to dismiss the CBOE's second petition to review the side-by-side release. The court found that the second release, was "no more a final order" than the first release and therefore was not subject to judicial review. *CBOE v. SEC*, No. 85-3008 (7th Cir., January 29, 1986).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSE's MAX System establishes the price at which a market order sent over MAX will be automatically executed at the time of order entry. Currently, market orders of up to 1,099 shares are executed automatically by the system at the best ITS bid or offer. The system, however, currently will not automatically execute the order until 15 seconds have elapsed. This allows the specialist time to expose the order to the market and obtain a better execution if available.

The proposed rule change will eliminate the order exposure time, and provide an immediate execution, for market orders up to 1,099 shares sent over MAX where, at the time of order entry, the stock is trading at a ⅛ point, ITS best quotation, market. Because the market can't be bettered if the order is exposed, delaying an automatic execution serves no purpose.

The Exchange believes that eliminating the order exposure time under these circumstances offers a major benefit to order-sending firms by providing them with immediate, guaranteed executions over MAX.

Implementation of the proposed change is consistent with those provisions of sections 6(b)(5) and 11A(a)(1) of the Act which encourage the use of data processing and communications techniques which create more efficient and effective facilitation of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE has requested accelerated approval of the proposed rule change because, according to MSE, the proposal currently is ready to be implemented and the benefits arising from implementation thereby would be available as soon as possible.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the proposal in that benefits to the investing public thereby could be maximized for orders up to 1,099 shares where, at the time of order entry, there is a ⅛ point spread between the best ITS bid and offer and the stock is quoted at a minimum variation of ⅛ point. Because such a market offers the best quotation available for MAX orders, the elimination of order exposure time will provide faster executions for such orders and will continue to provide executions at the best available price. Moreover, the Commission notes that it has approved a substantially similar system for the New York Stock Exchange, Inc., ("NYSE").[1] The NYSE proposal was published for comment, but none were received.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6028 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23004; File No. SR-OCC-85-18]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving a Proposed Rule Change

The Options Clearing Corporation ("OCC") on November 20, 1985, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal on January 2, 1986.[1] No comments were received. This order approves the proposal.

I. Description

OCC's proposed rule change amends its By-Laws and Rules to provide for the issuance, clearance and settlement of European-style Treasury bill options.[2]

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[1] *See* Securities Exchange Act Release No. 22496 (October 2, 1985), 50 FR 41082 (October 8, 1985) (File No. SR-NYSE-85-26).

[1] *See* Securities Exchange Act Release No. 22732 (December 20, 1985), 51 FR 144 (January 2, 1986).

[2] OCC Article I, section (uuu) defines a European-style option as one that may be exercised only at expiration. In contrast, American-style options can be exercised at any time up to and including their expiration date. *See* OCC Article I, section 1 (ttt).

OCC's filing followed a proposed rule change filed by the American Stock Exchange ("Amex") in which Amex proposed that these options be traded on the exchange (File No. SR–Amex–85–30).[3] The Commission is publishing today a companion order to this order which approves Amex's proposal.[4]

Recently, the Commission granted approval to OCC to begin the issuance, clearance and settlement of European-style index options (File No. SR–OCC–85–9).[5] The amendments to OCC's By-Laws and Rules that were necessitated by those new-style options will, for the most part, apply to European-style Treasury bill options, as well. In the present filing, OCC has proposed amendments to its By-Laws and Rules which will address the unique character of European-style Treasury bill options. Unlike all other OCC options, these new options ordinarily have a Tuesday, rather than Saturday, exercise date and the proposed amendments adapt OCC procedures to accommodate the differing exercise date.

OCC's By-Laws and Rules that were adapted for European-style options in File No. SR–OCC–85–9 regarding definitions, general rights and obligations of options holders and writers, submission of trade reports, margin requirements, exercise procedures and exercise settlement procedures will apply, with some slight differences discussed below, to European-style Treasury bill options as well. Clearance and settlement of opening and closing transactions in European-style Treasury bill options will be identical to clearance and settlement of transactions in all other Treasury securities options.[6]

Since European-style Treasury bill options differ from all other European-style options which expire on Saturdays in that their expiration dates fall on business days,[7] OCC has proposed to institute new procedures for business-day exercise and settlement of these new options. First, OCC will not issue Preliminary and Final Exercise Reports on expiring European-style Treasury bill options as is the case for other options. Instead, under proposed Rule 808, OCC will issue, on the morning of expiration date, a report listing European-style Treasury bill options expiring on that date and closing prices for the underlying Treasury bills.[8] Clearing Members will not be required to respond to the report. Furthermore, the provisions of Rule 805(f)(2), OCC's automatic exercise procedures, will not apply to European-style Treasury bill options.

Clearing Members may exercise their options by submitting exercise notices in accordance with proposed Rule 808, which essentially mirrors OCC procedures currently in effect for the exercise of any option on a day other than its expiration date.[9] Furthermore, the procedures in proposed Rule 808 for tendering exercise notices after the deadline but prior to their expiration time are analogous to those in Rule 805(e). Procedures for assignment of exercise notices of Clearing Members with open short positions in European-style Treasury bill options will be identical to procedures for assignment of American-style Treasury security options exercise notices.[10] The proposed rule change also would amend Rule 1405 to establish as the exercise settlement date for European-style Treasury bill options the Thursday following the expiration date. Finally, the proposed rule change makes various conforming amendments to the Rules.

II. OCC's Rationale

OCC states that the proposed rule change is consistent with the Act because it facilitates the prompt and accurate clearance and settlement of European-style Treasury bill options. OCC states that the proposal does so by applying to Euopean-style options substantially the same clearing system and rules currently used for American-style Treasury bill options, varied only to the extent necessary or desirable to reflect the distinctive exercise features of European-style Treasury bill options.

III. Discussion

For the following reasons, the Commission believes that OCC's proposals should be approved. The Commission believes that the procedures established by OCC to issue, clear and settle European-style Treasury bill options are consistent with its duty to safeguard securities and funds. A noted above, the proposed Rules were adapted from already existing procedures under which OCC has been operating. The changes made to settlement procedures to accommodate European-style Treasury bill options are necessary because of the business-day expiration date of European-style Treasury bill options. For example, the proposed Rules do not provide for Preliminary and Final Exercise Reports and automatic exercise procedures, as OCC currently provides for expirations that occur over weekends, because overnight business-day processing significantly limits the time available both to OCC and its members to comply with such procedures. Although the proposed system would not provide these reports and procedures, the Commission believes that OCC's proposal adequately meets Clearing Member needs at this time. First, Treasury bill options have historically been a low-volume product and, thus, Clearing Members should have little difficulty keeping track of the European-style Treasury bill options they told. Second, although OCC has indicated that it is not now economically feasible to set up new systems to provide these services, OCC has assured the Commission that should Clearing Member interest in European-style Treasury bill options increase significantly, it will establish systems that will more closely parallel those established for other options, including Exercise Reports and automatic exercise. Nevertheless, the Commission expects OCC to monitor volume in European-style Treasury bill options and to implement those services at appropriate volume levels.

In addition, the Commission believes that the limited period between the exercise date and settlement date for European-style Treasury bill options (the options ordinarily must be exercised on a Tuesday and settled two days lated on Thursday) does not impose an inappropriate burden on Clearing Members. Under OCC's current rules the settlement date for Treasury bond and note options is ordinarily two days after the exercise date. Clearing Members have been operating under these procedures for quite some time

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[3] *See* Securities Exchange Act Release No. 22492 (October 2, 1985), 50 FR 41076 (October 8, 1985).

[4] *See* Securities Exchange Act Release No. 22990 (March 12, 1986).

[5] *See* Securities Exchange Act Release No. 22369 (August 28, 1985), 50 FR 36170 (September 5, 1985).

[6] *See* Article VI of OCC's By-Laws and Rules 401–503.

[7] Section 1(o) of OCC By-Law Article XIII, as amended by this rule change, will define the expiration date of European-style Treasury bill options to be the "second business day preceding the earliest day of the expiration month on which a one-year Treasury bill has thirteen weeks remaining to maturity." Since Treasury bills mature on Thursdays, European-style Treasury bill options will ordinarily expire on Tuesdays. The expiration dates of all other options fall on Saturdays.

[8] In its original filing, OCC stated that it would not provide price information. However, in the interim, OCC has been able to establish the internal procedures necessary to provide price information to Clearing Members on the expiration date report. OCC filed an amendment to that effect on January 14, 1986.

[9] *See* OCC Rule 801.

[10] *See* OCC Rule 1403.

with no unusual difficulty and there is no reason to suspect that it would be more difficult to cover European-style Treasury bill options in a two-day time frame.

Finally, the issuance of these options, and all European-style options generally, poses potential financial exposure to OCC in the event that a Clearing Member were to become insolvent. Unlike American-style options, European-style options can only be exercised on their expiration date and if a Clearing Member were to become insolvent prior to the expiration date, OCC could not liquidate any European-style options by immediately exercising those options. Under OCC Rule 1106, however, OCC is required to close out an insolvent Clearing Member's long positions as soon as is practicable, which OCC can accomplish by executing appropriate closing transactions immediately. Accordingly, the Commission believes that this adequately assures the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible.

IV. Conclusion

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–85–18) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6026 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22997; File No. SR–PSE–86–2]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change; Relating to Telephone System Charges

The Pacific Stock Exchange, Inc. ("PSE") submitted on February 3, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4, to institute charges to recover substantially all of the costs for the installation and operation of a new telephone system for use by Exchange members on the new Los Angeles equity trading floor.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–PSE–86–2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 11, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6029 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 12, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Compaq Computer Corporation
Common Stock, $0.01 Par Value (File No. 7–8819)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 2, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6031 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23001; File No. SR–PHLX 86–9]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1986, the Philadelphia Stock Exchange, Inc., filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to amend its Rule 1010, relating to withdrawal of approval of underlying stocks, by rescinding Commentary .01(a)(i) relating to certain defaults by an issuer. All other provisions of the rule remain unchanged. Italics indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

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Withdrawal of Approval of Underlying Stocks or Underlying Foreign Currencies

Rule 1010 (a) through (c)—No change
Commentary .01(a)

(i) *Rescinded.* [The issuer and its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest, or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long-term leases, and such default has not been cured within twelve months of the date on which the default occurred.]

(ii) through (iv)—No change
(b) and (c)—No change
.02 through .04—No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) *Purpose.* The purpose of the proposed rule change is to modify the maintenance criteria for securities underlying listed options. At present, whenever the Exchange, ordinarily relying upon information publicly available at the Securities and exchange Commission, determines with respect to a previously approved underlying stock that the issuer and its significant subsidiaries have defaulted in the payment of certain specified obligations and such default has not been cured within twelve months, the Exchange may not open for trading any additional series of options of the class covering that underlying stock.

Among other things, the maintenance criteria under PHLX Rule 1010, precludes the opening of new series of options contracts when the market price of the subject security is less than $6.00, as measured by the highest closing price recorded in any market on which the underlying security trades. When an issuer defaults in the payment of the obligations, the marketplace will assess the effect of such action and such assessment will be reflected in the price of the stock. In addition, the ability of investors to engage in strategies involving put options affords the opportuntiy to react accordingly in the event an issuer announces a default in the payment of its obligations. Should the stock fall below $6.00, then no additional series can be added and the option will be delisted in due course unless the underlying security is able to comply with eligiblity criteria for listing required by PHLX Rule 1009.

As a general matter, the maintenance criteria for securities underlying listed options has become significantly less restictive over the past five (5) years. This evolutionary process has been the natural result of the maturation of the standardized options program which began in 1973. Stocks eligible for options trading will continue to be widely held and actively traded and considerable information on the issuer will be publicly available.

(b) *Statutory Basis.* The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange for the establishment of reasonable standards in maintaining appropriate stocks to be the subject of options trading.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, in that it will facilitate transactions in securities and perfect the mechanism of a free and open market and protect the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that any burdens will be placed on competition as a result of such change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 235 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order, approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six (6) copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 9, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–6019 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22990; File No. Phlx 86–7]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1986 the Philadephia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission a proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Philadelphia Stock Exchange proposes to amend Exchange Rules 1012 and 1047 to extend trading hours in foreign currency options on the day prior to expiration to 2:30 p.m. (EST) and eliminate closing rotations at expiration in foreign currency options.

Under curent Exchange Rule 1012, foreign currency options trade until 1:30 p.m. on the day before expiration. In comparison foreign curency options trade on the Chicago Board Options Exchange ("CBOE") until 2:30 p.m. (E.S.T.) and foreign currency futures and options on foreign currency futures trade until 2:16–2:28 p.m. (depending on the particular currency) on the day before expiration. Phlx states that participants frequently assume positions in the foreign currency contracts traded on the exchanges to hedge their positions in Phlx foreign currency options, and, conversely, hedge their Phlx foreign currency options positions with contracts traded on other exchanges.

To beter coordinate the close of Phlx foreign currency options on the last day of trading prior to expiration with the close of trading on the same day in CBOE foreign currency options and in foreign currency futures and options on foreign currency futures, the Phlx proposes to amend Rule 1012 to extend the trading hours in foreign currency options on the day prior to expiration until 2:30 p.m. Phlx believes the proposed change will enable market participants in exchange traded contracts based on foreign currencies to assume, hedge and adjust their positions in response to price movements during the last hour of foreign currency options trading on the CBOE and the staggered closings which occur betwen 2:16–2:28 p.m. (depending on the particular currency) on the International Monetary Market.

Under current Exchange Rule 1047 on the business day prior to expiration of particular series of currency options, a closing rotation is commenced. Phlx proposes to eliminate the use of the closing rotation in foreign currency options. Phlix states that their experience has shown that there is no interst in a closing rotation in currency options. Positions are routinely closed out during free trading. Phlx also indicates that it believes there is no need to adjust a position to the closing price of the underlying vehicle, because currencies unlike stocks are traded continuously.

Phlx states that the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provided in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Commission is publishing this release to solicit comment on the proposed rule change. Persons interested in commenting on the proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the Federal Register. Comments should be sent to the Secretary of the Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the proposed rule changes, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the proposal also are available at the Phlx.

The Commission finds that the first portion of the proposed rule change—the portion that would extend trading hours in foreign currency options on the day prior to expiration until 2:30 p.m. (E.S.T.)—is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the portion of the proposed rule change pertaining to the extention of trading hours for foreign currency options prior to the thirtieth day after the date of publication of notice thereof, in that the proposed hours are identical to the foreign currency trading hours of the CBOE which are set forth in CBOE Rule 22.5, which were noticed for public comment, although none were received.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change extending trading hours for foreign currency options on the day prior to expiration from 1:30 p.m. (EST) to 2:30 p.m. (EST) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–6022 Filed 3–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33–6631; File No. 18–100]

Application and Opportunity for Hearing; The Equitable Life Assurance Society of the United States, et al.

March 12, 1986.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), and Separate Account No. 2A of Equitable (Pooled) (the "Account") (collectively "Applicants"), 787 Seventh Avenue, New York, New York 10019, filed an application on January 14, 1986, for an order pursuant to section 3(a)(2) of the Securities Act of 1933 ("1933 Act"), amending a prior order exempting from the requirements of section 5 of the 1933 Act, certain interests in the Account attributed to contributions derived under certain plans designed to comply with the Self-Employed Individuals Tax Retirement Act of 1962 ("HR–10"), as described below. All interested persons are referred to the application which is on file with the Commission for the facts and representations contained therein, which are summarized below, and to the 1933 Act for the text of relevant provisions.

Background

The application states that the Account was established and is maintained by Equitable as a "pooled" separate account pursuant to provisions of the New York Insurance Law. Amounts allocated to the Account are derived from contributions under group annuity contracts issued by Equitable in connection with pension and profit-sharing plans qualified under section 401 of the Internal Revenue Code of 1954, as amended ("Code"), annuity plans meeting the requirements for deduction of the employer's contribution under section 404(a)(2) of the Code; and governmental plans as defined in section 414(d) of the Code and as specified in section 3(a)(2) of the 1933 Act.

According to the application, the Account serves as an internal short-term investment account and is maintained solely for the collective investment of the temporary cash positions of Equitable's separate accounts ("Participating Accounts") that are exempt from registration under the Investment Company of 1940 ("1940 Act") pursuant to section 3(c)(11) thereof. The Account invests in high-quality money market instruments of the same type as a Participating Account would otherwise invest in on a direct basis. The purpose of the Account, Applicants represent, is to provide a central vehicle for the more efficient investment of the temporary cash positions of the Participating Accounts, at no additional cost to those accounts or to persons having interests in the Participating Accounts. Applicants point out that there is no separate or additional investment management fee charged to the Account or to the Participating Accounts, no sales charge

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for the units of the Account issued to the Participating Accounts, nor any other charges imposed with respect to the Account.

Prior Commission Order

On July 20, 1982, the Commission ordered, pursuant to section 3(a)(2) of the 1933 Act, that interests in the Account credited to Equitable's Separate Account No. 4 ("SA–4") and Separate Account No. 100 ("SA–100") under certain HR–10 plans be exempt from the registration requirements of section 5 of the 1933 Act. Applicants note that, at the time, the HR–10 plans included plans sponsored by certain large professional associations (collectively, "Association Sponsored Plans"), and the only separate accounts funding the Association Sponsored Plans were SA–4 and SA–100. Applicants state that those separate accounts are exempt from 1940 Act registration, but units of interest in SA–4 and SA–100 under group annuity contracts issued by Equitable for the Association Sponsored Plans are registered under the 1933 Act in view of the exclusion of self-employed persons, or HR–10, plans from the exemption otherwise provided by section 3(a)(2).

As pointed out in the application, to the extent that cash assets of SA–4 and SA–100 attributable to contributions under Association Sponsored Plans are allocated to the Account, those assets would be derived from plans covering self-employed persons, and, therefore, the interests in the Account associated with those assets would fall within the HR–10 exclusion of the section 3(a)(2) exemption. Applicants state that in the circumstances, and in view of the nature and purpose of the Account, it believed that it was appropriate to seek an exemptive order under section 3(a)(2). Applicants note that although units in the Account are exempt under the section 3(a)(2) order, Equitable's prospectuses for the Association Sponsored Plans contain certain narrative and financial statement disclosures with respect to the Account.

Expanded Separate Account Funding and Additional Retirement Plan Offerings

The application explains that during 1984, Equitable added its Separate Account No. 3 ("SA–3") to one of the Association Sponsored Plans and filed a 1933 Act registration statement for its Retirement Investment Account ("RIA"), which utilizes SA–4 and Equitable's Separate Account No. 10 ("SA–10"). RIA, according to Applicants, is designed for employers who are partnerships or sole proprietors and maintain retirement plans qualified under section 401 of the Code. In 1985, SA–3 and SA–10 became available under other Association Sponsored Plans and the 1933 Act registration statement for two of those plans included a prospectus for Equitable's new Association Members Retirement Program ("Association Members Program"), under which SA–3, SA–4 and SA–10 are available. The Association Members Program, Applicants state, is designed for smaller businesses owned by employers who are members of trade, professional or other associations. It is available to self-employed persons maintaining retirement plans qualified under section 401 of the Code.

Applicants state that SA–3 and SA–10, like SA–4 and SA–100, invest their temporary cash balances in short-term money market instruments through the acquisition of units of the Account, and it is expected that any future Equitable separate account that may be added to the Association Sponsored Plans, RIA or the Association Members Program, or made available under any similar retirement programs involving HR–10 plans (all of which separate accounts are comprehended within the term "Plan Separate Accounts" herein), would likewise invest their temporary cash balances in units of the Account.

Applicants claim that in all essential respects, the basis upon which the Commission's order of July 20, 1982 was granted is unchanged. It asserts that the use of the Account by SA–3 and SA–4 and SA–100, by SA–100, or by future Plan Separate Accounts is, and will be, as stated in the original application, "essentially a mechanical improvement in the handling of cash assets designed to produce enhanced investment results."

It is stated by Applicants that prospectus disclosures regarding the Account included in each of the prospectuses for the Association Sponsored Plans with respect to SA–4 and SA–100, also are included with respect to SA–3 and SA–10, and that disclosures to the same extent with respect to the Account are set forth in the prospectuses for RIA and the Association Members Program. Applicants further represent that such disclosures would be similarly set forth in any prospectus relating to Plan Separate Accounts.

Applicants contend that if SA–3 and SA–10 has been contemplated as Plan Separate Accounts at the time of the original application they would have been included therein, and covered by the Commission's order. Because additional Plan Separate Accounts are comtemplated, Applicants are requesting a "class" exemption to avoid the effort and expense of further exemptive applications. They represent in that regard, that as the circumstances today are, in essence, the same as they were with respect to SA–4 and SA–100 so far as the use of the Account is concerned, this also will be the case as and when additional Plan Separate Accounts are introduced.

Applicants believe that the amended order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1933 Act.

Request for Amended Order

Based on the foregoing, Applicants request that the Commission issue an amended order pursuant to section 3(a)(2) of the 1933 Act exempting from the registration requirements of section 5 of the 1933 Act, units of interest in Equitable's Separate Account No. 2A issued to Equitable's Separate Account Nos. 3, 4, 10 and100, and to any other Equitable separate account that is used to fund HR–10 plans and is exempt under section 3(c)(11) of the 1940 Act (Plan Separate Accounts).

Notice is further given that any interested persons may, not later than April 7, 1986, at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanid by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Equitable at the address stated above. Proof of service (or affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued after April 7, 1986, unless the Commission orders a hearing, upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6023 Filed 3-18-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Delegation of Authority No. 145–4]

Organization, Functions, and Delegations of Authority Under Defense Authorization Act of 1985

By virtue of the authority vested in me by section 1540 of the Department of Defense Authorization Act, 1985, (Pub. L. 98–525), section 306 of the Department of Defense Authorization Act, 1986, (Pub. L. 99–145), Executive Order 12163 of September 29, 1979, 44 FR 56673, as amended, and other applicable authorities concerning delegation of authority, State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, February 21, 1980, as amended, is hereby further amended as follows:

(1) In section 1(a)(4), by adding at the end thereof the following new subsection:

"(C) section 1540(b)(1)(A) of the Department of Defense Authorization Act, 1985, (Pub. L. 98–525), who shall exercise such function in consultation with the Secretary of Defense."

(2) In section 2, by striking out "The functions conferred" and inserting in lieu thereof "(a) The functions conferred" and by adding at the end thereof the following new subsection:

"(b) The functions conferred upon the President and upon the Secretary of State by section 1540 of the Department of Defense Authorization Act, 1985, (Pub. L. 98–525), not otherwise delegated herein, are hereby delegated to the Administrator of the Agency for International Development, who shall exercise such functions in consultation with the Secretary of Defense and with the Under Secretary of State for Security Assistance, Science and Technology."

Dated: February 19, 1986.

George P. Shultz,

Secretary of State.

[FR Doc. 86-5942 Filed 3-18-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Winston-Salem, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Winston-Salem, North Carolina.

FOR FURTHER INFORMATION CONTACT: J. M. Tate, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856–4270.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed Silas Creek Parkway Completion in Winston-Salem. The proposed action would be the construction of a four-lane divided, partially controlled highway on new location from existing Silas Creek Parkway near Reynolda Road to North Point Boulevard thereby providing a continuous inner loop facility. The proposed action also includes a short connector road from the proposed new facility to existing Reynolda Road. The proposed Silas Creek Parkway Completion is needed to complete an inner loop facility providing circumferential travel and will relieve traffic along existing Reynolda Road, Polo Road and Marshall Street. The proposed action is a part of the City of Winston-Salem's Thoroughfare Plan.

Alternatives under consideration include (1) the "no-build," (2) improving existing facilities, and (3) a partially controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and a meeting with local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

J. M. Tate,

District Engineer, Raleigh, North Carolina.

[FR Doc. 86-5943 Filed 3-18-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 10, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Financial Management Service

OMB number: 1510–
Form Number: TFS Form 5805
Type of Review: New
Title: Request for Funds
Clearance Officer: Douglas Lewis (202) 287–4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, N.W., Washington, D.C. 20228
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

John Poore,

Departmental Reports Management Office.

[FR Doc. 86-5952 Filed 3-18-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Services—No. 12-86]

Treasury Notes of March 31, 1988, Series X–1988

Washington, March 13, 1986.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31, of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of March 31, 1988, Series X–1988 (CUSIP No. 912827 TK 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described

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below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1986, and will accrue interest from that date, payable on a semiannual basis on September 30, 1986, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.4. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 pm., Eastern Standard time, Wednesday, March 19, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 18, 1986, and received no later than Monday, March 31, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.00 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, March 31, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, March 27, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, March 31, 1986. When payment has been submitted with the tender and the purchase price of the Notes allocated is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

John Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 86–6097 Filed 3–17–86; 2:57 pm]

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[Number: 150–01]

Designation of Internal Revenue Districts

Dated: February 27, 1986.

Under the authority given to the President to establish and alter Internal Revenue Districts by section 7621 of the Internal Revenue Code of 1954, as amended, and vested in me as Secretary of the Treasury by Executive Order 10289, approved September 17, 1951, as made applicable to the Internal revenue Code of 1954 by Executive Order 10574, approved November 5, 1954, and pursuant to the authority vested in me by section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order 10574, the following Internal Revenue Districts continue as they existed prior to this order, with the changes noted below.

1. Designation of Internal Revenue Districts That Comprise an Entire State

Alabama, headquarters located in Birmingham, Alabama
Alaska, headquarters located in Anchorage, Alaska
Arizona, headquarters located in Phoenix, Arizona
Arkansas, headquarters located in Little Rock, Arkansas
Colorado, headquarters located in Denver, Colorado
Connecticut, headquarters located in Hartford, Connecticut
Delaware, headquarters located in Wilmington, Delaware
Florida, headquarters located in Jacksonville, Florida
Georgia, headquarters located in Atlanta, Georgia
Hawaii, headquarters located in Honolulu, Hawaii
Idaho, headquarters located in Boise, Idaho
Indiana, headquarters located in Indianapolis, Indiana
Iowa, headquarters located in Des Moines, Iowa
Kansas, headquarters located in Wichita, Kansas
Kentucky, headquarters located in Louisville, Kentucky
Louisiana, headquarters located in New Orleans, Louisiana
Maine, headquarters located in Augusta, Maine
Maryland (including the District of Columbia), with headquarters located in Baltimore, Maryland
Massachusetts, headquarters located in Boston, Massachusetts
Michigan, headquarters located in Detroit, Michigan
Minnesota, headquarters located in St. Paul, Minnesota
Mississippi, headquarters located in Jackson, Mississippi
Missouri, headquarters located in St. Louis, Missouri
Montana, headquarters located in Helena, Montana
Nebraska, headquarters located in Omaha, Nebraska
Nevada, headquarters located in Las Vegas, Nevada
New Hampshire, headquarters located in Portsmouth, New Hampshire
New Jersey, headquarters located in Newark, New Jersey
New Mexico, headquarters located in Albuquerque, New Mexico
North Dakota, headquarters located in Fargo, North Dakota
North Carolina, headquarters located in Greensboro, North Carolina
Oklahoma, headquarters located in Oklahoma City, Oklahoma
Oregon, headquarters located in Portland, Oregon
Rhode Island, headquarters located in Providence, Rhode Island
South Dakota, headquarters located in Aberdeen, South Dakota
South Carolina, headquarters located in Columbia, South Carolina
Tennessee, headquarters located in Nashville, Tennessee
Utah, headquarters located in Salt Lake City, Utah
Vermont, headquarters located in Burlington, Vermont
Virginia, headquarters located in Richmond, Virginia
Washington, headquarters located in Seattle, Washington
West Virginia, headquarters located in Parkersburg, West Virginia

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Wisconsin, headquarters located in Milwaukee, Wisconsin
Wyoming, headquarters located in Cheyenne, Wyoming

2. Designation of Internal Revenue Districts Within Certain States

a. California

(1) *Laguna Niguel District.* Shall include the Counties of Imperial, Orange Riverside, San Bernardino, San Diego, and that portion of Los Angeles County serviced by the Carson post of duty, in the State of California, with the headquarters office located in Laguna Niguel, California. (The Carson post of duty services the area of Los Angeles County which is generally bordered by the Artesia Freeway on the north, the Pacific Ocean on the west and south, and the Orange County line on the east, and includes in total the following 1982 zip code areas: 90254, 90274, 90277, 90278, 90501, 90502, 90503, 90504, 90505, 90507, 90508, 90509, 90510, 90701, 90706, 90710, 90712, 90713, 90714, 90715, 90716, 90717, 90731, 90732, 9073, 90744, 90745, 90746, 90747, 90749, 90802, 90803, 90804, 90805, 90806, 90807, 90808, 90809, 90810, 90813, 90814, 90815, 90822 and 90840).

(2) *Los Angeles District.* Shall include the County of Los Angeles, except for that portion serviced by the Carson post of duty, in the State of California, with the headquarters office located in Los Angeles, California.

(3) *San Jose District.* Shall include the Counties of Fresno, Inyo, kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, in the State of California, with the headquarters office located in San Jose, California.

(4) *Sacramento District.* Shall include the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba in the State of California, with the headquarters office located in Sacramento, California.

(5) *San Francisco District.* Shall include the Counties of Alameda, San Francisco and San Mateo, in the State of California, with the headquarters office located in San Francisco, California.

b. Illinois

(1) *Chicago District.* Shall include the Counties of Boone, Bureau, Carroll, Cook, De Kalb, Du Page, Grundy, Henry, Jo Daviess, Kane, Kankakee, Kendall, Lake, La Salle, Lee, McHenry, Marshall, Mercer, Ogle Putnam, Rock Island, Stark, Stephenson, Whiteside, Will, and Winnebago within the State of Illinois, with the headquarters office located in Chicago, Illinois.

(2) *Springfield District.* Shall include the Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Knox, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford within the State of Illinois, with the headquarters office located in Springfield, Illinois.

c. New York

(1) *Brooklyn District.* Shall include the Counties of Kings, Nassau, Queens, and Suffolk within the State of New York, with the headquarters office located in Brooklyn, New York.

(2) *Manhattan District.* Shall include Blackwells Island, Manhattan Island, Staten Island, Randalls Island, and Wards Island; and the Counties of Bronx, Richmond, Rockland, and Westchester within the State of New York, with the headquarters office located in New York, New York.

(3) *Albany District.* Shall include the Counties of Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schohari, St. Lawrence, Sullivan, Ulster, Warren, and Washington within the State of New York, with the headquarters office located in Albany, New York.

(4) *Buffalo District.* Shall include the Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates, within the State of New York with the headquarters office located in Buffalo, New York.

d. Ohio

(1) *Cleveland District.* Shall include the Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Lake, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Monroe, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Wayne, Williams, Wood, and Wyandot within the State of Ohio, with the headquarters office located in Cleveland, Ohio.

(2) *Cincinnati District.* Shall include the Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren, and Washington within the State of Ohio, with the headquarters office located in Cincinnati, Ohio.

e. Pennsylvania

(1) *Philadelphia District.* Shall include the Counties of Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monore, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York within the State of Pennsylvania, with the headquarters office located in Philadelphia, Pennsylvania.

(2) *Pittsburgh District.* Shall include the Counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland within the State of Pennsylvania, with the headquarters office located in Pittsburgh, Pennsylvania.

f. Texas

(1) *Austin District.* Shall include the Counties of Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal,

Coryell, Culberson, DeWitt, Dimmitt, Duval, Edwards, El Paso, Falls, Fayette, Freestone, Frio, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hays, Hidalgo, Hill, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, McCulloch, McLennan, McMullen, Madison, Mason, Matagorda, Maverick, Medina, Milam, Nueces, Pecos, Presidio, Real, Reeves, Refugio, Robertson, San Patricio, San Saba, Somervell, Starr, Terrell, Travis, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala within the State of Texas, with the headquarters office located in Austin, Texas.

(2) *Dallas District.* Shall include the Counties of Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Borden, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lipscomb, Loving, Lubbock, Lynn, Marion, Martin, Menard, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, Rusk, Sabine, San Augustine, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Wood, Yoakum, and Young within the State of Texas, with the headquarters office located in Dallas, Texas.

(3) *Houston District.* Shall include the Counties of Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker within the State of Texas, with the headquarters office located in Houston, Texas.

3. The Foreign Operations District is abolished and the functions transferred primarily to the newly established Assistant Commissioner (International). This change shall be implemented upon such date as the Commissioner of Internal Revenue may determine. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

4. *Internal Revenue Districts.* Each district established pursuant to Section 7621 of the Internal Revenue Code of 1954, as amended, shall be known as an internal revenue district and shall be identified by the name of the city or subdivision thereof in which the headquarters office of the District Director of Internal Revenue is located.

5. *District Director of Internal Revenue.* The title of each District office shall bear the title "District Director of Internal Revenue" identified by the name of the city or subdivision thereof, in which the headquarters office is located.

6. *U.S. Territories and Insular Possessions.* The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world.

7. *Effect on Prior Treasury Department Orders.* This order supersedes Treasury Department Orders: 150–105, January 24, 1985, and 150–106, February 8, 1985.

James A. Baker III,
Secretary of the Treasury.

[FR Doc. 86–5999 Filed 3–18–86; 8:45 am]
BILLING CODE 4810-25-M

[Number: 150–02]

Establishment of Certain Offices in the National Office of the Internal Revenue Service

Dated: February 27, 1986.

By the authority vested in me as Secretary of the Treasury by section 1002 of 31 U.S.C.; section 7801(a) and 7803 of the Internal Revenue Code of 1954, as amended; section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order No. 10574, approved November 5, 1954; and as provided by section 7802(b) of the Internal Revenue Code of 1954, the following offices continue uninterrupted as they existed prior to this order, with the changes noted below:

1. Establishment and Continuation.

a. Office of the Associate Commissioner (Operations)

The Associate Commissioner (Operations) is the principal advisor to the Commissioner on policy matters affecting operations.

(1) The Associate Commissioner (Operations) is responsible for the following activities:

(a) Serves as the spokesperson for the operating functions, which are: Collection of delinquent accounts and securing of delinquent returns; investigation of criminal fraud involving any internal revenue laws (except those concerning alcohol, tobacco, or firearms); examination of tax returns; approval and subsequent examination of Employee Plans and Exempt Organizations. With this order, also provides guidance on tax treaty administration, international compliance, and foreign tax administration assistance.

(b) Provides policy guidance and direction to the Assistant Commissioner (Collection), Assistant Commissioner (Examination), Assistant Commissioner (Criminal Investigation), Assistant Commissioner (Employee Plans and Exempt Organizations) and, with this order, the Assistant Commissioner (International).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, foreign tax authorities and the public on major cross-functional issues and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Operations) are the following organizations:

(a) Office of the Assistant Commissioner (Collection)

(b) Office of the Assistant Commissioner (Examination)

(c) Office of the Assistant Commissioner (Criminal Investigation)

(d) Office of the Assistant Commissioner (Employee Plans and Exempt Organizations)

(e) Office of the Assistant Commissioner (International), established with this Order.

b. Office of Associate Commissioner (Policy and Management)

The Associate Commissioner (Policy and Management) is the principal advisor to the Commissioner on policy matters affecting agency administration.

(1) The Associate Commissioner (Policy and Management) is responsible for the following activities:

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(a) Serves as the spokesperson for the management functions, which are: Personnel administration; financial management; planning; research; training and employee development; management information systems; management of the Service's physical plant, equipment, property, and support services; disclosure and security; tax forms and publication design, printing, and distribution; and operation of the IRS Data Center (payroll and non-tax data processing).

(b) Provides policy guidance and direction to the Assistant Commissioner (Support and Services), the Assistant Commissioner (Human Resources), and the Assistant Commissioner (Planning, Finance, and Research).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, and the public on major policy and management issues, and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Policy and Management) are the following organizations:

(a) Office of the Assistant Commissioner (Support and Services)

(b) Office of the Assistant Commissioner (Human Resources)

(c) Office of the Assistant Commissioner (Planning, Finance, and Research)

c. Office of Associate Commissioner (Data Processing)

The Associate Commissioner (Data Processing) is the principal advisor to the Commissioner on policy matters affecting data processing.

(1) The Associate Commissioner (Data Processing) is responsible for the following activities:

(a) Serves as the spokesperson for the data processing functions, which are: processing of tax returns and information documents; accounting for all revenues collected by the Service; maintaining master files of all taxpayer accounts; managing all large-scale tax-processing computers in the Service; the tax information program; and, designing, developing, testing, and maintaining computer software used on large-scale tax-processing computers in the Service.

(b) Provides policy guidance and direction to the Assistant Commissioner (Computer Services), the Assistant Commissioner (Returns and Information Processing), and the Assistant Commissioner (Tax System Redesign).

(c) Represents the Service, as designated by the Commissioner, to the Department of the Treasury, Office of Management and Budget, Congress, and the public on major data processing issues, and discusses or explains the Service's policy formulation and long-term plans.

(2) Under the supervision of the Associate Commissioner (Data Processing) are the following organizations:

(a) Office of the Assistant Commissioner (Computer Services)

(b) Office of the Assistant Commissioner (Returns and Information Processing)

(c) Office of the Assistant Commissioner (Tax System Redesign)

d. Office of Assistant to the Commissioner (Legislative Liaison)

The assistant to the Commissioner (Legislative Liaison) is the principal advisor to the Commissioner, Deputy Commissioner, and top executives of the Service on all Congressional and legislative matters except those involving appropriation hearings, and is responsible for planning, developing, directing, and evaluating the Congressional Affairs program and activities of the Service.

e. The Assistant Commissioner (Inspection) and the Deputy Assistant Commissioner (Inspection)

The Assistant Commissioner (Inspection) and the Deputy Assistant Commissioner (Inspection) will, to ensure objectivity and integrity, continue to report directly to the Commissioner and Deputy Commissioner.

2. The Appeals Division is transferred to the Chief Counsel, and the Commissioner of Internal Revenue will exercise line supervision over the Chief Counsel for this function. The transfer of such personnel, records, equipment and funds will be determined by the Commissioner of Internal Revenue and Chief Counsel, as appropriate.

3. The Corporation Tax and Individual Tax Divisions are transferred to the Chief Counsel, with the authority to supervise and evaluate the work of all officers and employees of the functions transferred. The transfer of such personnel, records, equipment and funds will be determined by the Commissioner of Internal Revenue and Chief Counsel, as appropriate.

4. The Chief Counsel, pursuant to delegated authority from the General Counsel, is authorized to take necessary action on all personnel and administrative matters pertaining to the Office of Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or Performance Management Recognition System employees in the Office of Associate Chief Counsel (International) whose primary duties do not involve litigation or in the Office of Associate Chief Counsel (Technical), shall be approved by the Commissioner of Internal Revenue prior to implementation.

5. The Commissioner will exercise the Service's final authority concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.

6. The Office of the Commissioner shall consist of the Commissioner, Deputy Commissioner, Assistants to the Commissioner, Assistant to the Commissioner (Public Affairs), Assistant to the Commissioner (Legislative Liaison), Assistant to the Commissioner (Taxpayer Ombudsman), the Assistant to the Commissioner (Equal Opportunity), and the Assistant to the Deputy Commissioner.

7. Except for the specific positions and titles in Sections 1 and 6 of this order, the Commissioner, Internal Revenue Service, may create, abolish, or modify offices and positions within the Internal Revenue Service as may be necessary to effectively and efficiently provide for the administration of tax laws or other responsibilities assigned to the Internal Revenue Service. The authority of the Commissioner, Internal Revenue Service, to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations.

8. The above changes shall be implemented upon such date as the Commissioner of Internal Revenue may determine. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

9. All offices in existence within the Internal Revenue Service but not mentioned in this order are continued without interruption.

10. *Effect on Other Treasury Department Orders.* This order

supersedes Treasury Department Order: 150–103, October 3, 1985.

James A. Baker,

Secretary of the Treasury.

[FR Doc. 86-6000 Filed 3–18–86; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Implementation of the Balanced Budget and Emergency Deficit Control Act of 1985

AGENCY: Veterans Administration.

ACTION: Notice of benefit reductions.

SUMMARY: The Veterans Administration (VA) is giving notice of reductions in payments which will be made for certain benefits and is giving notice of other actions the agency will take in order to comply with the Balanced Budget and Emergency Deficit Control Act of 1985. The nonrecurring benefits affected are grants for specially adapted housing and special housing adaptations for certain severely disabled veterans, the service-connected and nonservice-connected burial allowances, the plot allowance, the headstone or marker allowance, and the automobile allowance. The affected recurring benefits include the subsistence allowance payable to disabled veterans undergoing training in the vocational rehabilitation program, educational assistance allowance payable to eligible persons in the Dependents' Educational Assistance program, training allowance payable to eligible children in that program who are undergoing special restorative training, educational assistance allowance payable to veterans training under the Vietnam Era GI Bill, and tutorial assistance payable to these veterans.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Individuals who wish additional information about adjustments in education benefits should contact June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389–2092.

Individuals who wish further information about adjustments in the vocational rehabilitation program should contact Dr. Karen Boies, (202) 389–2886.

Individuals who wish additional information about adjustments in specially adapated housing grants should contact Walter N. Burke, Assistant Director for Construction and Valuation, Loan Guaranty Service, Department of Veterans Benefits, (202) 389–2691.

Individuals who wish further information about adjustments in the other programs mentioned in this notice should contact Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: When certain targeted Federal budget deficits are not met for a fiscal year, section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the President to issue an order sequestering a portion of the monies appropriated for payment of various benefits to eligible persons. This order has been issued on February 1, 1986. It is effective March 1, 1986.

As a result of the order the VA must reduce payments of certain benefits. The agency could either have paid benefits at the statutory rate until the monies available to pay those benefits were exhausted, or the agency could have made a percentage reduction in all payments of those benefits which were obligated after the effective date of the order. The VA has chosen the latter alternative. The VA thinks it is more equitable to provide each eligible person with a reduced payment than it would be to pay some eligible persons at the statutory rate while paying nothing to people who become eligible later in the fiscal year.

A 4.3% reduction in payments during this fiscal year is necessary to meet the Federal budget deficit target imposed as a result of the Balanced Budget and Emergency Deficit Control Act. However, the reader will notice that none of the reductions contained in this notice is 4.3%. The VA is unable by law to reduce the obligations which had already been made before the effective date of the order. Consequently, the entire reduction has to be made to unobligated funds. The amount of unobligated funds available on March 1, 1986, varies from program to program. Hence, the amount that the payments to individuals have to be reduced in order to achieve an overall 4.3% reduction for the fiscal year varies from program to program.

The Balanced Budget and Emergency Deficit Control Act also contains Federal budget deficit targets for the fiscal years 1987 through 1991. As a result of the provisions of this Act, it may become necessary to make percentage reductions during those fiscal years to the programs mentioned in this notice. Any reductions which may be made will be the subject of a separate notice.

Effective March 1, 1986, through September 30, 1986, as a result of the order issued on February 1, 1986, each payment the VA will make during this period for each of the benefits specified below will be made at 92.25% of the amount otherwise payable (or in the case of the automobile or other conveyance allowance 92% of the amount otherwise payable), but will not exceed the maximum payment shown below. The new maximum payment for automobile or other conveyance allowance represents an 8% reduction from the rate found in title 38, U.S. Code. Similar items furnished under authority of 38 U.S.C. 612 and 617 will be reduced by a like amount.

The new maximum payments for the burial benefits represent a 7.75% reduction from the rates found in title 38, U.S. Code. The new maximum payments for the headstone or marker allowance represents a 7.75% reduction from the rate specified in 38 CFR 3.1612.

Benefit	Maximum payment
Nonservice-connected burial allowance (38 U.S.C. 902(a) and 903(a))	$276
Plot allowance (38 U.S.C. 903(b))	138
Service-connected burial allowance (38 U.S.C. 907)	1,014
Headstone or marker allowance (38 U.S.C. 906)	65
Automobile or other conveyance allowance (38 U.S.C. 1902)	4,600

Furthermore, for payments authorized during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA will pay 92% of the cost of providing, repairing, replacing, or reinstalling adaptive equipment for automobiles or other conveyances (38 U.S.C. 1902 (b) and (c)).

For applications approved during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA will reduce by 8% the amount of the grant otherwise computed for specially adapted housing or special housing adaptations for severely disabled veterans (38 U.S.C. 801 (a) and (b)).

The monthly subsistence allowance payable to veterans training in the vocational rehabilitation program (38 U.S.C. ch. 31) are reduced by 13.1% for payments obligated during the period beginning on March 1, 1986, and ending on September 30, 1986.

This reduction will affect both retroactive payment authorizations and recurring payment obligations. If a veteran's enrollment period overlaps March 1, 1986, and the VA approves an award of benefits during the period beginning on March 1, 1986, and ending on September 30, 1986, the veteran would receive reduced payments for all

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training completed before the award action as well as that due for future months included in the authorization, not beyond September 30, 1986.

If the VA approves an award before March 1, 1986, in the same situation, only those payments due the veteran for training completed during the period beginning on March 1, 1986, and ending on the last day of the award, not beyond September 30, 1986, will be reduced 13.1 percent.

During the period beginning on March 1, 1986, and ending on September 30, 1986, if the VA authorizes a retroactive increase in monthly payments for training completed before March 1, 1986, as a result of an increase in the number of the veteran's dependents or an increase in the veteran's training time, or for other reasons, the amount of the increase will be reduced by 13.1 percent.

The maximum amount which may be authorized during the period beginning on March 1, 1986, and ending on September 30, 1986, to be advanced from the Vocational Rehabilitation Fund Revolving Loan is reduced 13.1%. The two-month payment of employment adjustment allowance provided to veterans who successfully complete their training is reduced 13.1% when payment of this allowance is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986. There is also a 13.1% reduction in the maximum amount which may be paid as a special transportation allowance when the special transportation allowance is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986.

The allowance payable to a veteran who elects payment at the educational assistance rate paid under 38 U.S.C. ch. 34 in lieu of subsistence allowance and training costs under 38 U.S.C. ch. 31, is reduced by 8.7% for payments obligated during the period beginning on March 1, 1986, and ending on September 30, 1986. As is the case with payments of subsistence allowance, this may result in reductions for training completed before March 1, 1986, if the payment for this training is authorized during the period beginning on March 1, 1986, and ending on September 30, 1986.

During the period beginning on March 1, 1986, and ending on September 30, 1986, monies for payments which the VA obligates for many of the other education programs which the VA administers will be 8.7 percent below the rate stated in title 38, U.S.C. This reduction applies to those receiving educational assistance allowance in the Dependents' Educational Assistance program (38 U.S.C. ch. 35); those receiving special training allowance while undergoing special restorative training in that program; and those receiving educational assistance allowance while training under the Vietnam Era GI Bill (38 U.S.C. ch. 34). This reduction will affect both retroactive payment authorizations and recurring payment obligations.

If the VA approves an award after February 28, 1986, to a veteran or eligible person who is pursuing a standard college degree, and whose enrollment period begins after February 28, 1986, those payments due the veteran or eligible person for training completed during the period beginning on the first date of the enrollment period, but not before March 1, 1986, and ending on the last date of the award, but not beyond September 30, 1986, will be reduced 8.7 percent.

If during the period beginning on March 1, 1986, and ending on September 30, 1986, the VA approves an award of benefits to a veteran or eligible person who is enrolled in courses leading to a standard college degree, and whose enrollment period overlaps March 1, 1986, the veteran or eligible person would receive reduced payments for all training completed before the award action, as well as that due for any future months included in the authorization, not beyond September 30, 1986.

If the VA approved an award before March 1, 1986, for a veteran or eligible person who is pursuing a standard college degree, and whose enrollment period overlaps March 1, 1986, those payments due the veteran or eligible person for training completed during the period beginning on March 1, 1986, and ending on the last date of the award, not beyond September 30, 1986, will be reduced 8.7 percent.

For a veteran or eligible person who is enrolled in a course not leading to a standard college degree payments will be reduced 8.7 percent for all periods of training for which the veteran's or eligible person's certified attendance is processed by the VA during the period beginning on March 1, 1986, and ending on September 30, 1986. This reduction will apply regardless of when the veteran or eligible person trained or when the VA authorized the award of benefits.

During the period beginning on March 1, 1986, and ending on September 30, 1986, if the VA authorizes a retroactive increase in monthly payments for training completed before March 1, 1986, as a result of an increase in the number of a veteran's dependents or an increase in a veteran's or eligible person's training time, or for other reasons, the amount of the increase will be reduced by 8.7 percent.

In addition there is an 8.7% reduction applied to the cost of tutorial assistance for which payment may be obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, for those training under the Vietnam Era GI Bill. This payment may not exceed $77 per month for a maximum of 12 months. The ceiling on the total amount of tutorial assistance payable to any individual veteran or servicemember is $924, including any amount paid or authorized before March 1, 1986.

Those in flight training under the Vietnam Era GI Bill who would otherwise be eligible to be reimbursed for 90% of the cost of their flight lessons will, if benefit payment is obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, instead be reimbursed for 82% of the cost of the flight lessons. Those for whom benefit payment is obligated during the same period and who would otherwise be eligible to be reimbursed for 60% of the cost of their flight lessons, will instead be reimbursed for 55% of the cost of their flight lessons. The reduction to 55% of the cost of flight lessons will have no effect on the requirements for entitlement to an education loan.

Educational assistance obligated during the period beginning on March 1, 1986, and ending on September 30, 1986, for those people pursuing correspondence courses under the Vietnam Era GI Bill or the Dependents' Educational Assistance program who otherwise would be eligible to be paid for 90% of the cost of the lessons they complete, will instead be paid for 82% of the cost of the lessons completed. For those otherwise eligible to be paid for 55% of the cost of the lessons they complete, payments will be for 50% of the cost of the lessons completed.

If any of the reductions in either vocational rehabilitation benefits or educational benefits do not result in an even dollar, the amount will be rounded to the nearest dollar.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this notice are 64.013, 64.100, 64.101, 64.106, 64.111, 64.116, and 64.117.

Approved: March 14, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

[FR Doc. 86-6033 Filed 3-18-86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a

meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in room 119 on April 10, 1986, and in the Omar Bradley Conference Room on April 11, 1986, of Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Both meetings will begin at 8:45 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202-389-3317/3303).

Dated: March 11, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-5977 Filed 3-18-86; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 53
Wednesday, March 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 24, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Legislative recommendations for the Annual Report.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 14, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–6046 Filed 3–17–86; 9:52 am]

BILLING CODE 6210-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 17, 24, 31, and April 7, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 17

Monday, March 17

1:30 p.m.
Executive Branch Briefing (Closed—Ex. 1)

Tuesday, March 18

10:00 a.m.
Briefing by Southern California Edison Co. on San Onofre–1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting)
a. Final Rule to Modify General Design Criterion 4 of Appendix A, 10 CFR 50 (Tentative) (postponed from March 13)
b. Review of ALAB–823 (In the Matter of Philadelphia Electric Company) (Tentative) (postponed from March 13)
c. Review of ALAB–819 (In the Matter of Philadelphia Electric Company) (Tentative) (postponed from March 13)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)

2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

Week of March 31—Tentative

Tuesday, April 1

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

Wednesday, April 2

2:00 p.m.
Discussion/Possible Vote on Palo Verde–2 Full Power Operating License (Public Meeting)

4:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 7—Tentative

Thursday, April 10

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, April 11

10:00 a.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

ADDITIONAL INFORMATION: Status of Pending Investigations (Closed—Ex. 5 & 7) was held on March 10. Affirmation of "Procedural Amendments to 10 CFR 60 Dealing with Site Characterization and the Participation of States and Indian Tribes" (Public Meeting) was held on March 13.

Periodic Meeting with Advisory Committee on Reactor Safeguards scheduled for March 14, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,
Office of the Secretary.
March 13, 1986.

[FR Doc. 86–6036 Filed 3–14–86; 4:54 p.m.]

BILLING CODE 7590-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 17, 1986.

A closed meeting will be held on Thursday, March 20, 1986, at 10:000 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C.

552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 20, 1986, at 10:00 a.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injuctive actions.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

John Wheeler,
Secretary.
March 13, 1986.

[FR Doc. 86–6017 Filed 3–14–86; 4:18 pm]

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federal register

Wednesday,
March 19, 1986

Part II

Environmental Protection Agency

40 CFR Part 58
Ambient Air Quality Surveillance; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD-FRL 2949-1]

Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action promulgates revisions to Part 58 of Chapter 1 of Title 40 of the Code of Federal Regulations which are needed to meet changing air monitoring program requirements. These changes were identified by State and local air pollution control agencies through the Standing Air Monitoring Work Group (SAMWG) and through the individual operating experiences of State and local agencies and the EPA over the last 5 years. The revisions were proposed on March 8, 1985 and include provisions to: use the most current census population figures to estimate air monitoring network size, allow 120 days instead of 90 days to submit National Air Monitoring Stations (NAMS) quarterly data to the National Aerometric Data Bank (NADB), require reporting organizations to submit the results of each individual precision and accuracy test, and modify network design and siting requirements.

DATE: This regulation takes effect on April 18, 1986.

ADDRESS: Docket No. A-84-28 containing material relevant to this action is located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on week days, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Neil Berg or Stanley Sleva, Monitoring and Data Analysis Division (MD-14), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, N.C. 27711, phone: 919-541-5651 or (FTS) 629-5651.

Preamble

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(C) of the Clean Air Act requires ambient air quality monitoring for purposes of State Implementation Plans (SIP's) and for reporting air quality data to EPA. Criteria to be followed when measuring air quality and provisions for daily air pollution index reporting are required by section 319 of the Act. To satisfy these requirements, on May 10, 1979 (44 FR 27558), EPA established 40 CFR Part 58, which provided detailed requirements for air quality monitoring, data reporting, and surveillance for all of the pollutants for which ambient air quality standards have been established (criteria pollutants) except lead (Pb). On September 3, 1981 (46 FR 44159), similar rules were promulgated for Pb. On March 20, 1984 (49 FR 10435), similar rules were proposed for particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers (PM_{10}) and for total suspended particulate matter (TSP) as a secondary standard.

Today's action deals with changes to the ambient air quality monitoring, data reporting, and surveillance requirements of 40 CFR 58 based on the experience of State and local agencies and the EPA, during the past 5 years. The regulations being promulgated today are, with the exception of changes made due to public comment, the same as those proposed on March 8, 1985 (50 FR 9538).

Public Comments

EPA received comments from a total of 23 respondents on the proposal of March 8, 1985. The respondents are categorized as follows: EPA Regional Offices, 1; State Air Pollution Control Agencies, 16; Local Air Pollution Control Agencies, 4; private citizens, one; and industrial concerns, one.

Difference Between the Final Rule and Proposal

The following paragraphs discuss the changes to the proposed regulation that are related to the comments received, the nature of the comments, and resulting modifications, if any, to the changes originally proposed.

Section 58.1, Definitions. Four commenters supported the change in the definition of urban area population to that of the most current decennial census figures. One commenter wanted the term "dripline" included in the definitions section. EPA believes that while it is important to define the term "dripline", it is more appropriate to define it in Appendix E of the regulation.

Section 58.26, Annual SLAMS Summary Report. The March 8, 1985 action contained no change to this section; however, the requirement in 58.26(b)(2) for submission of annual precision and accuracy information as part of the Annual State and Local Air Monitoring Stations (SLAMS) Summary Report has been deleted. This action is taken because the revision of Appendix A transfers the responsibility for the calculation of the reporting organization's annual precision and accuracy information from the State to EPA's Environmental Monitoring Systems Laboratory (EMSL). Consequently, EPA will already have the annual precision and accuracy information available for association with the summary air quality data required by the annual SLAMS report.

Section 58.35, NAMS data submittal. The change to allow 120 rather than 90 days after the end of each reporting period to report NAMS data to the NADB was endorsed by four respondents. One respondent requested the same 120 days to report SLAMS data, while another wanted to keep the date of July 1 of the year following the one in which the data were collected as the date for SLAMS reporting in order to throughly validate the SLAMS data. In the March 8 proposal, EPA proposed a change only in the NAMS quarterly reporting requirement. It was not EPA's intention to change the reporting requirements for SLAMS data. The existing requirements provide for an annual summary report to be submitted by July 1 of the year following data collection. Also, the report must be certified by the State as being correct to the best of its ability. The reporting of SLAMS raw data is optional and as such has no deadline. In practice, many agencies find it convenient to send both NAMS and SLAMS data together to the NADB on a monthly or quarterly basis. In this case the 120 days allowed for NAMS would be the constraining deadline.

Section 58.36—System Modification. In response to a request for a time period of 18 months to implement the changes to the NAMS network caused by the new census population figures, the issue of completion time requirements for NAMS network changes was investigated. In reviewing the regulations, it was found that the only NAMS completion time requirements specified in § 58.30 were for the initial 1980 NAMS network and subsequently for new criteria pollutants. There was no NAMS section analogous to § 58.25 (System Modifications) for SLAMS. EPA has decided to broaden the issue and create a new *Section 58.36—System Modification* to address not only network changes invoked by new census populations but also changes in the network due to changing air quality levels, emission sources, etc. The new section will provide for the changes to be identified by the EPA and/or proposed by the State during the annual SLAMS network evaluation. The State would then be given one year

(until the next annual SLAMS network evaluation) to implement the changes.

Section 58.40, Index Reporting. Three commenters supported the use of the current census figures to determine the requirements for air quality index reporting while one commenter suggested that specific language be added in *Appendix G—Uniform Air Qualtity Index and Daily Reporting* to permit less than the previous 24 hours of data to be considered in an attempt to make the index more current. For the pollutants TSP and sulfur dioxide (SO_2), a 24-hour averaging time is necessary; for carbon monoxide (CO) and ozone (O_3), EPA feels that the existing wording in Appendix G, which states that the report should "coincide to the extent practicable with the reporting day," expresses EPA's intent adequately.

Revisions to Appendix A—Quality Assurance Requirements for SLAMS

Appendix A prescribes minimum quality assurance and specific quality assessment requirements applicable to SLAMS air monitoring data submitted to EPA. Several changes were proposed to the requirements of Appendix A (50 FR 9538). These changes and the rationale for them were discussed in the preamble associated with the proposed amendments. The final amendments to Appendix A being promulgated today are very similar to the proposed amendments, with the differences being confined largely to simplification or clarification of the proposed amendments. Although the amendments are not extensive and most of the provisions of Appendix A remain unchanged, the entire text of Appendix A is being repromulgated to accommodate the many word changes and some reorganization of sections. Also, a new table (Table A-1) is added to summarize the minimum quality assessment requirements of Appendix A.

The most significant change to Appendix A is in the requirements for reporting assessments of the quality of ambient air pollutant monitoring data collected from NAMS and SLAMS. These monitoring data are used by State and local air pollution control agencies, EPA and other governmental and private agencies for a variety of purposes including determining compliance with air quality standards, developing State implementation plans for achieving and maintaining air quality, reviewing new sources, estimating health risks, re-evaluating the national air quality standards, developing new regulations, and studying air quality trends.

Assessments of the quality of the NAMS and SLAMS air monitoring data provide the data users with essential estimates of the accuracy (degree of bias) and precision (variability) of the monitoring data so that the data can be appropriately and meaningfully utilized for the various purposes. Under the previous Appendix A requirements, data quality (precision and accuracy) measurements have been combined and reported on an integrated basis for an entire "reporting organization". These reporting organizations are State level agencies or subordinate organizations within a State for which pooled precision and accuracy assessments serve to characterize the overall data quality being achieved by the reporting organization as a whole. This reporting system thus does not provide information concerning the quality of data from individual sites or site categories or from specific types of monitoring methods or analyzers.

To allow EPA to produce site specific assessments and thereby improve and expand the application and usefulness of the data quality estimates associated with the NAMS and SLAMS monitoring data, the revised provisions of Appendix A require reporting organizations to submit to EPA the actual test results from each individual precision and accuracy test carried out. EPA will then calculate and report the same type of integrated precision and accuracy assessments representative of each reporting organization as have been previously calculated and reported by the States. In addition, the detailed precision and accuracy information for each individual monitoring site will also be available. Access to these individual precision and accuracy test results will allow EPA to analyze data quality at specific sites, in specific areas, for specific types of methods or analyzers, under specific conditions, etc. This additional information will greatly augment the the description of the quality of specific blocks of the NAMS and SLAMS monitoring data and allow more detailed analysis and utilization of the data. The more detailed information will also be useful for monitoring the performance or adequacy of specific methods or types of monitoring instruments.

Nine comments were received regarding this change, most of which were fully or generally supportive of the change and the rationale for it. Three agencies opposed the change in the reporting requirements, citing reasons such as insufficient justification of need, possible misuse of the individual data, and (in the case of accuracy data) too few data to be meaninful except in the aggregate. Other negative comments suggested alternative data quality assessment procedures or the comments related to other provisions of Appendix A that were not proposed to be changed. Overall, however, the negative comments were in the minority, and the reasons given for opposition were judged insufficient to outweight EPA's need for the more detailed site-specific data.

Under the revised Appendix A, reporting organizations will report the individual results of all precision tests and accuracy audits conducted during each quarter, as specified in Appendix A, directly to EPA. The reporting organizations or States will no longer need to calculate the pooled precision and accuracy probability limits, as these calculations will now be carried out by EPA. However, the calculation procedures are still provided (in section 5 of Appendix A) to indicate how the calculations are to be made and to allow reporting organizations to continue to calculate pooled precision and accuracy estimates for their own use if desired, although those pooled agency-calculated estimates will not be reported to EPA. Reporting of the individual precision and accuracy test results under the new reporting system must begin not later than for the quarterly report corresponding to the first calendar quarter (January to March) of 1987; this report is due 120 calendar days after the end of that quarter. The new type quarterly report will be accepted earlier, however, beginning with the report for the third calendar quarter (July to September) of 1986.

To facilitate the new individual data reporting requirements, new data quality reporting forms have been prepared—one for precision and one for accuracy. Instructions for the forms are provided in Section 4. Fifteen comments were received concerning these forms, indicating various preferences for general, site-specific, and method-specific forms and suggesting various minor improvements. The revised forms incorporate most of the suggested improvements and are designed with a "universal" format: data quality test results for different methods or from different sites may be reported on the same form, or either form may be used as a site-specific or method-specific form (or both) by entering common site or method information in special boxes located in the upper left corner of the forms.

Four agencies commented that provisions should be made to submit the precision and accuracy data on

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magnetic tape or in other machine-generated form, pointing out that for large agencies the amount of data to be submitted would be substantial. Such provisions are being made. The data may be reported in any of three ways: (1) Via magnetic computer tape (contact the approipriate EPA Regional Office for the data format specifications), (2) by direct, interactive computer entry via a data terminal and the PARS data entry system, or (3) via the Data Quality Assessment Reporting Forms. The first two methods are preferable and are strongly encouraged. If the forms are used, they may be modified slightly to facilitate local use, or computer-generated (facsimile) forms may be used, provided that such modified forms follow the same general format and use the same block numbers as the suggested forms and are clear and completely legible.

Another provision of Appendix A proposed to be changed was the number of collocated sites required to assess the precision of data collected by networks of manual methods (TSP and Pb). Since the new provision may require an additional collocated sampler for large networks, one comment opposed the change on the basis of the increased cost to install and operate the additional sampler and the lack of perceived benefits from the additional collocated site. However, EPA believes that the change is needed to adequately assess the precision of manual methods, and that the cost impact of the change is quite small. Also, two comments indicated support for the change. The new provision requires 1, 2, or 3 collocated sites for each manual method network depending on the size of the network: 1 collocated site for networks of 1 to 5 sites, 2 collocated sites for networks of 6 to 20 sites, and 3 collocated sites for networks having over 20 sites.

An associated modification specifies that the amended collocation requirements also apply to Pb measurement networks, replacing the previous requirement for analysis of duplicate filter strips. Three comments opposed this change, citing (1) lack of continuity with previous lead precision measurements because of the change in procedure, (2) additional cost of purchasing, installing, and operating additional Pb samplers needed for collocation, and (3) lack of perceived benefit. However, seven monitoring agencies supported the change, and EPA believes that the collocation requirement for Pb networks is necessary to adequately assess the precision of the overall Pb measurement rather than just the Pb analytical procedure.

Since many TSP and Pb monitoring networks often share the same high-volume samplers, three of the comments indicated (1) some confusion as to whether TSP and Pb networks should be treated separately or jointly in determining the number of collocated sites needed, and (2) a desire that a common collocated sampler site could serve for both TSP and Pb networks. In response to these comments, the language of this provision was changed slightly to (1) indicate clearly that TSP and Pb networks must be considered separately in determining the number of collocated sites needed for each, and (2) allow a common collocated sampler pair to serve as a collocation site for both TSP and Pb networks, provided that the site meets the collocation requirements of both networks. Also, the TSP network collocation requirements were changed slightly to allow the selection of any site at which the annual average TSP is among the upper 25 percent of the annual averages at all the sites in the TSP network.

A final change concerning assessment of precision from collocated measurements specifies that the percent difference between the two measurements is to be referenced to the average of the two measurements rather than the measurement from the primary sampler. Seven of eight comments supported this change.

Nine comments were received on the proposed provision to require that nitrogen dioxide (NO_2) audit gas standards used in assessing the accuracy of automated (NO_2) analyzers contain 0.1±.02 ppm nitrogen oxide (NO). Two agencies supported this change even though they recognized that the requirement would make the (NO_2) audits somewhat more difficult. However, the majority of comments, (seven), although acknowledging the need for some level of NO in the NO_2 audit gas, indicated that the 0.1±.02 ppm specification was too restrictive, too arbitrary, too difficult and costly to obtain, or not adequately justified; and that more flexibility in this requirement was needed. Many of the comments suggested that the provision specify a minimum concentration of NO such as 0.1 or 0.08 ppm, without an upper limit, to allow continued, convenient use of the commonly employed gas phase titration (GPT) audit procedure.

In response to these comments, the provision has been changed to require that NO_2 audit gas concentrations contain at least 0.08 ppm NO, with no upper limit. However, the language of the provision has been augmented to indicate that substantially higher concentrations of NO in the NO_2 audit gas—as may occur when using some GPT techniques—may lead to non-representative audit errors, and that such errors may be minimized by modifying the GPT technique to lower the NO concentrations to levels more typical of the NO concentrations prevalent at the monitoring site.

A few other modifications have been made to the proposed Appendix A amendments in response to comments received. The language in Section 3.2 has been clarified to indicate that audits of automated analyzers are required only for quarters during which the analyzers are operated.

Section 3.3 has been augmented to indicate that although collocated samplers are required to be operated at least once per week, the every-sixth-day schedule widely used by many monitoring agencies is recommended. And minor changes in the language of section 4 clarify (1) that quarterly estimates of precision and accuracy calculated by EPA will be available to the reporting organizations within 120 days after the end of the quarterly reporting period (i.e., 240 days after the end of the quarter) and (2) that annual precision and accuracy limits will be properly weighted to reflect the actual test data over the entire year and will not merely be averages of the quarterly limits.

On March 8, 1985 when these amendments were proposed, it was noted that other amendments to Appendix A which had been proposed on March 20, 1984 (49 FR 10435) for the purpose of incorporating provisions applicable to methods for monitoring size-specific particulate matter (PM_{10}) were still pending. Most of the (PM_{10}) provisions proposed on March 20, 1984 have now been incorporated into the revised Appendix A, being promulgated today, by use of generic terms such as "particulate matter method" or "particulate matter sampler," which are intended to refer to methods for either TSP or PM_{10}. Specific references to PM_{10}, originally contained in brackets in the amendments proposed on March 8, 1985, do not appear in the final revised Appendix A. Those specific PM_{10} provisions will be promulgated as part of the entire PM_{10} amendment package, which is still pending at this time.

Another Appendix A issue under current consideration by EPA is a potential requirement that would increase the auditing frequency of automated analyzers to quarterly from the current once-per-year requirement.

The amendments proposed on March 8, 1985 did not include provisions for increased auditing frequency but raised the issue for consideration. No Provisions were proposed because of strong preliminary comments from numerous monitoring agencies indicating that the cost to implement the increased auditing would be prohibitive or would substantially divert resources from other quality assurance functions. However, equally numerous preliminary comments from many other agencies strongly supported EPA's belief that the increased auditing frequency is needed to adequately assess the accuracy of automated methods.

Fourteen comments on this issue were received, with five supporting EPA's contention that the increased auditing frequency is needed and nine opposing the increased requirement due to cost, equipment, and personnel considerations or claimed lack of convincing justification. Many of the comments suggested potential alternative or compromise audit requirements that might improve the accuracy assessment at a lower cost or using fewer resources. In view of this dichotomy of opinion, the revised Appendix A contains no change in the current annual audit frequency requirement. However, the issue of improved accuracy assessment of automated analyzers will continue to be studied by EPA.

Revisions to Appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Monitoring

Appendix B prescribes minimum quality assurance and quality assessment requirements applicable to air monitoring data submitted to EPA in connection with the regulations for Prevention of Significant Deterioration (PSD). Of the three comments received on the proposed amendments to Appendix B, two related to provisions that were not proposed to be changed. Accordingly, the amendments to Appendix B are being promulgated almost exactly as proposed. The only significant difference from the proposed amendments to Appendix B is that NO_2 audit gases used to assess the accuracy of automated analyzers will be required to contain at least 0.08 ppm of NO, instead of 0.1±.02 ppm as proposed. Also, a recommendation was added to indicate that the NO concentration contained in the NO_2 audit gas should not be substantially higher than typical NO concentrations at the site to minimize audit error. The nature of this change and the reasons for it are the same as for the identical change made to Appendix A.

Revisions to Appendix C—Ambient Air Quality Monitoring Methodology

Amendments to Appendix C are very minor and are nearly the same as proposed. The proposed revisions concerning methods for measuring PM_{10} has been deleted because that revision will be considered in connection with the other PM_{10} amendments proposed on March 20, 1984 (49 FR 10435). No comments pertaining to Appendix C were received.

Revisions to Appendix D—Network Design for SLAMS and NAMS

Two respondents supported the concept of monitoring for O_3 only during the proposed O_3 season. One respondent suggested auditing O_3 monitors only during the O_3 season as well. The language in Appendix A, section 3.2 has been clarified to indicate that audits of automated analyzers are required only for quarters in which the analyzers are operated. One respondent wanted the regulation to explicitly state that NAMS as well as SLAMS O_3 monitoring could be turned off during the non-ozone season. This was EPA's intent and the language in Appendix D, section 2.5 is modified to reflect this. Two comments were received questioning the length of the published O_3 season. One comment inferred that the season was too long in some areas and should not be designated on a State-wide basis but should consider geography, climatology and population density. Another respondent wanted to rely on historical data to document that the O_3 season was indeed long enough. All of these factors are important and were considered in the original consideration of defining O_3 seasons on a State-wide basis. Although there may be some such regions of a given State that may logically have a different, i.e., shorter O_3 season than the rest of the State, EPA believes that considering the general large scale coverage of O_3, State-wide uniformity is more appropriate than providing parts of some States with 15 to 30 extra days of monitoring relief.

Three respondents supported the March 8, 1985 proposed additional scales or representativeness for NAMS monitoring for CO, SO_2, NO_2, and Pb. Thus, these additional scales are included in today's promulgation. Appendix D did not address any general changes to PM_{10} or TSP because they were addressed in the March 20, 1984 proposed regulations for the PM_{10} primary standards and TSP secondary standard. Nevertheless, one reviewer commented that he did not support the March 1984 proposed microscale monitoring for PM_{10} or TSP. Since these regulations are still pending, all references to PM_{10} are being eliminated in the final revised Appendices D, E, F, and G. Similarly, in section 4, Table 4, the TSP microscale for SLAMS and TSP microscale and middle scale for NAMS have been deleted in this rulemaking, but are being considered as part of the entire PM_{10} rulemaking package. However, the March 20, 1984 proposed changes to Table 2, Appendix D, concerning the number of TSP NAMS per urban area, are being promulgated. EPA believes that these revised numbers will provide for sufficient TSP NAMS to adequately meet the national TSP data needs of the Agency. These revised numbers are similar to the March 8, 1985 proposed revisions to the number of SO_2 NAMS per urban area (Table 3, Appendix D).

Revisions to Appendix E—Probe Siting Criteria for Ambient Air Quality Monitoring

In the March 8, 1985, proposal, EPA solicited data and/or monitoring experiences in situations where trees may or may not bias air quality data. EPA also proposed two changes with respect to monitoring in the vicinity of trees as possible examples. The first change defined a specific point to measure the sampler or probe setback distance from trees rather than leaving it ambiguous. This resulted in the setback distances being measured anywhere from the tree trunk to the outermost branch tip. The second change proposed a required minimum setback distance from trees. This was done by proposing that the wording "the inlet probe should be 20 meters from trees" be changed to "the sampler must be placed at least 10 meters from the dripline of the obstructing tree."

Although EPA did not receive any additional information concerning the impact of trees on air quality data, the proposed change concerning trees were generally well received.

Two reviewers supported the change that would require the minimum setback from trees if the trees also acted as an obstruction to wind flow. The reviewer also endorsed the specificity in the setback distance being measured "from the dripline." One commenter wanted the setback distance from trees to remain a guideline rather than a requirement. Another wanted an automatic waiver for those sites which were approved under the current regulation. Another respondent expressed the view that EPA was over-

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emphasizing the distance of sampling devices from trees to the point of absurdity.

One of the driving forces behind the development of the Part 58 monitoring regulations was the desire to promote uniformity in air monitoring throughout the country. The generic revisions to Part 58 were to further promote this uniformity making use of the 5 years of experience obtained from the use of the regulation. One of the EPA Air Program's responsibilities and accomplishments over the last 5 years was to physically visit every NAMS and a fair sampling of SLAMS monitors in the Nation. On these visits, it was observed that some monitoring sites totally disregarded the suggested guideline with respect to trees. Continuous monitoring instrument probes were observed to be within the tree canopy, some hi-vols were found sitting on the ground under trees whose branches were so low that one needs to stoop over to service the sampler, and on one occasion, a wind speed and direction instrument was observed among the branches of a tree. EPA feels that complying with a minimum setback of 10 meters from the dripline when the tree is at least 5 meters above the height of the sampling inlet is a reasonable alternative to the existing situation.

Also in Appendix E, one commentor took strong exception to the provision in section 4.3 of Appendix E which states that the preferred location of the inlet probe of a street canyon/corridor (microscale) CO site is midblock. One of the major reasons given by the respondent for opposing this provision is that the midblock location does not, in many instances, satisfy the monitoring objective in the regulation, that requires establishing monitoring stations in areas of expected maximum concentrations. The Agency agrees that the regulations do require the establishment of peak concentration stations (Appendix D, sections 2.4, 3, 3.3 and Appendix E, section 4). The use of the phrase "preferably at a midblock" instead of "must" was used to give some flexibility in the siting of the monitor. However, the final siting of the monitor must meet the objectives and intent of Appendix D, sections 2.4, 3, 3.3 and Appendix E, section 4. Accordingly, wording has been added to section 4.3 of Appendix E to clarify this intent.

Revisions to Appendix F—Annual SLAMS Air Quality Information

Although no changes were proposed nor formal comments received on the items in Appendix F, it has been pointed out that in situations when the concentration level (hourly average, 24-hour average, etc.) falls in the gap between two ranges, it is not clear to which range the level should be assigned. Therefore, wording is being added to Appendix F to specify the rounding convention to be used to resolve the problem.

Revisions to Appendix G—Uniform Air Quality Index and Daily Reporting

The only comment on Appendix G was that in an effort to make the Pollutant Standard Index (PSI) more current, language should be added to allow for the use of less than a 24-hour period for index reporting. Since there is a 24-hour measurement period required for TSP and SO_2 and an 8-hour period for CO, EPA feels the current wording in the regulation, which states "that to the extent practicable the measurements should be from the reporting day", is sufficient to express EPA's concern over the timeliness of the reported index.

Impact on Small Entities

The Regulatory Flexibility Act requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by the rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

Since this revision is classified as minor, no additional reviews are required.

This is not a "major" rule under E.O. 12291 because it does not meet any of the criteria defined in the Executive Order. The revisions to Part 58 were submitted to the Office of Management and Budget (OMB) for review (under Executive Order 12291).

The information collection requirements in this final rule has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This rulemaking is promulgated under authority of section 110, 301(a) and 319 of the Clean Air Act, 42 U.S.C. 7410, 7601(a), 7619.

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Pollutant standard index, and Ambient air quality monitoring network.

Dated: February 21, 1986.

Lee M. Thomas,
Administrator.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

For the reasons set forth in the Preamble, Part 58 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7619.

2. Section 58.1 is amended by revising paragraph (s) to read as follows:

§ 58.1 Definitions.

* * * * *

(s) "Urban area population" means the population defined in the most recent decennial U.S. Census of Population Report.

§ 58.26 [Amended]

3. Section 58.26 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2).

4. Paragraph (c)(1) of § 58.35 is revised to read as follows:

§ 58.35 NAMS data submittal.

* * * * *

(c) * * *

(1) Be received by the National Aerometric Data Bank within 120 days of the end of each reporting period, after being submitted by the States to the Regional Offices for review.

* * * * *

5. A new § 58.36 is added to subpart D to read as follows:

§ 58.36 System modification.

During the annual SLAMS Network Review specified in § 58.20, any changes to the NAMS network identified by the EPA and/or proposed by the State and agreed to by the EPA will be evaluated. These modifications should address changes invoked by a new census and changes to the network due to changing air quality levels, emission patterns, etc. The State shall be given one year (until the next annual evaluation) to implement the appropriate changes to the NAMS network.

6. Section 58.40 is amended by revising paragraph (c) to read as follows:

§ 58.40 Index reporting.

* * * * *

(c) The population of an urban area for purposes of index reporting is the

most recent U.S. census population figure as defined in § 58.1 paragraph (s).

7. Appendix A to part 58 is revised to read as follows:

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

1. General Information.

This Appendix specifies the minimum quality assurance requirements applicable to SLAMS air monitoring data submitted to EPA. States are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of SLAMS data quality are required to be reported to EPA periodically.

To provide national uniformity in this assessment and reporting of data quality for all SLAMS networks, specific assessment and reporting procedures are prescribed in detail in sections 3, 4, and 5 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring agency depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in section 2 of this Appendix, are specified in general terms to allow each State to develop a quality assurance system that is most efficient and effective for its own circumstances.

2. Quality assurance requirements

2.1 Each State must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the appropriate Regional Administrator, or his designee. The Quality Assurance Program will be reviewed during the annual system audit described in section 2.4.

2.2 Primary guidance for developing the quality assurance program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for SLAMS automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in the respective operation and instruction manuals associated with those analyzers. This guidance, and any other pertinent information from appropriate sources, should be used by the States in developing their quality assurance programs.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Quality control procedures for air pollution episode monitoring;

(12) Recording and validating data;

(13) Data quality assessment (precision and accuracy);

(14) Documentation of quality control information.

2.3 *Pollutant Concentration and Flow Rate Standards.*

2.3.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentration for CO, SO_2, and NO_2 must be traceable to either a National Bureau of Standards (NBS) Standard Reference Material (SRM) or an NBS/EPA-approved commercially available Certified Reference Material (CRM). CRM's are described in Reference 5, and a list of CRM sources is available from the Quality Assurance Division (MD-77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

General guidance and recommended techniques for certifying gaseous working standards against an SRM or CRM are provided in section 2.0.7 of Reference 3. Direct use of a CRM as a working standard is acceptable, but direct use of an NBS SRM as a working standard is discouraged because of the limited supply and expense of SRMs.

2.3.2 Test concentrations for O_3 must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for O_3.

2.3.3 Flow rate measurements must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying some types of flowmeters is provided in Reference 3.

2.4 National Performance and System Audit Programs

Agencies operating SLAMS network stations shall be subject to annual EPA systems audits of their ambient air monitoring program and are required to participate in EPA's National Performance Audit Program. These audits are described in section 1.4.16 of Reference 2 and section 2.0.11 of Reference 3. For instructions, agencies should contact either the appropriate EPA Regional Quality Assurance Coordinator or the Quality Assurance Division (MD-77B), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

3. Data quality assessment requirements

All ambient monitoring methods or analyzers used in SLAMS shall be tested periodically, as described in this section 3, to quantitatively assess the quality of the SLAMS data being routinely produced. Measurement accuracy and precision are estimated for both automated and manual methods. The individual results of these tests for each method or analyzer shall be reported to EPA as specified in section 4. EPA will then calculate quarterly integrated estimates of precision and accuracy applicable to the SLAMS data as described in section 5. Data assessment results should be reported to EPA only for methods and analyzers approved for use in SLAMS monitoring under Appendix C of this Part.

The integrated data quality assessment estimates will be calculated on the basis of "reporting organizations." A reporting organization is defined as a State, subordinate organization within a State, or other organization that is responsible for a set of stations that monitor the same pollutant and for which precision or accuracy assessments can be pooled. States must define one or more reporting organizations for each pollutant such that each monitoring station in the State SLAMS network is included in one, and only one, reporting organization.

Each reporting organization shall be defined such that precision or accuracy among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. Common factors that should be considered by States in defining reporting organizations include: (1) operation by a common team of field operators, (2) common calibration facilities

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and (3) support by a common laboratory or headquarters. Where there is uncertainty in defining the reporting organizations or in assigning specific sites to reporting organizations, States shall consult with the appropriate EPA Regional Office for guidance. All definitions of reporting organizations shall be subject to final approval by the appropriate EPA Regional Office.

Assessment results shall be reported as specified in section 4. Concentration and flow standards must be as specified in sections 2.3 or 3.4. In addition, working standards and equipment used for accuracy audits must not be the same standards and equipment used for routine calibration. Concentration measurements reported from analyzers or analytical systems (indicated concentrations) should be based on stable readings and must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data (see Reference 1, page 62, and Reference 3, section 2.0.9.1.3(d)). Table A–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 Precision of Automated Methods. A one-point precision check must be carried out at least once every two weeks on each automated analyzer used to measure SO_2, NO_2, O_3 and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm SO_2, NO_2, and O_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the appropriate Regional Administrator or his designee. However, the results of precision checks at concentration levels other than those shown above need not be reported to EPA. The standards from which precision check test concentrations are obtained must meet the specifications of section 2.3.

Except for certain CO analyzers described below, analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO analyzer may be temporarily modified during the precision check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, *provided that* the analyzer's response is not likely to be altered by these deviations from the normal operational mode. If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments. Randomization of the precision check with respect to time of day, day of week, and routine service and adjustments is encouraged where possible.

Report the actual concentrations of the precision check gas and the corresponding concentrations indicated by the analyzer. The percent differences between these concentrations are used to assess the precision of the monitoring data as described in section 5.1.

3.2 Accuracy of Automated Methods. Each calendar quarter (during which analyzers are operated), audit at least 25 percent of the SLAMS analyzers that monitor for SO_2, NO_2, O_3, or CO such that each analyzer is audited at least once per year. If there are fewer than four analyzers for a pollutant within a reporting organization, randomly reaudit one or more analyzers so that at least one analyzer for that pollutant is audited each calendar quarter. Where possible, EPA strongly encourages more frequent auditing, up to an audit frequency of once per quarter for each SLAMS analyzer.

The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges that fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		CO
	SO_2, O_3	NO_2	
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain at least 0.08 ppm NO. Note. NO concentrations substantially higher than 0.08 ppm, as may occur when using some gas phase titration (GPT) techniques, may lead to audit errors in chemiluminescence analyzers due to inevitable minor NO–NO_x channel imbalance. Such errors may be atypical of routine monitoring errors to the extent that such NO concentrations exceed typical ambient NO concentrations at the site. These errors may be minimized by modifying the GPT technique to lower the NO concentrations remaining in the NO_2 audit gas to levels closer to typical ambient NO concentrations at the site.

To audit SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO, use audit gases of appropriately higher concentration as approved by the appropriate Regional Administrator or his designee. The results of audits at concentration levels other than those shown in the above table need not be reported to EPA.

The standards from which audit gas test concentrations are obtained must meet the specifications of section 2.3. Working or transfer standards and equipment used for auditing must not be the same as the standards and equipment used for calibration and spanning, but may be referenced to the same NBS SRM, CRM, or primary UV photometer. The auditor should not be the operator or analyst who conducts the routine monitoring, calibration, and analysis.

The audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception given in section 3.1 for certain CO analyzers does not apply for audits.

Report both the audit test concentrations and the corresponding concentration measurements indicated or produced by the analyzer being tested. The percent differences between these concentrations are used to assess the accuracy of the monitoring data as described in section 5.2.

3.3 Precision of Manual Methods. For networks of manual methods, select one or more monitoring sites within the reporting organization for duplicate, collocated sampling as follows: for 1 to 5 sites, select 1 site; for 6 to 20 sites, select 2 sites; and for over 20 sites, select 3 sites. Where possible, additional collocated sampling is encouraged. Sites having annual mean particulate matter concentrations among the highest 25 percent of the annual mean concentrations for all the sites in the network must be selected or, if such sites are impractical, alternate sites approved by the Regional Administrator may be selected.

In determining the number of collocated sites required, monitoring networks for Pb should be treated independently from networks for particulate matter, even though the separate networks may share one or more common samplers. However, a single pair of samplers collocated at a common-sampler monitoring site that meets the requirements for both a collocated lead site and a collocated particulate matter site may serve as a collocated site for both networks.

The two collocated samplers must be within 4 meters of each other, and particulate matter samplers must be at least 2 meters apart to preclude airflow interference. Calibration, sampling and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

For each pair of collocated samplers, designate one sampler as the primary sampler whose samples will be used to report air quality for the site, and designate the other as the duplicate sampler. Each duplicate sampler must be operated concurrently with its associated routine sampler at least once per week. The operation schedule should be selected so that the sampling days are distributed evenly over the year and over the seven days of the week. The every-6-day schedule used by many monitoring agencies is recommended. Report the measurements from both samplers at each collocated sampling site, including measurements falling below the limits specified in 5.3.1. The percent differences in measured concentration (μg/m³) between the two collocated samplers are used to calculate precision as described in section 5.3.

3.4 Accuracy of Manual Methods. The accuracy of manual sampling methods is assessed by auditing a portion of the measurement process. For particulate matter methods, the flow rate during sample collection is audited. For SO_2 and NO_2 methods, the analytical measurement is audited. For Pb methods, the flow rate and analytical measurement are audited.

3.4.1 Particulate matter methods. Each calendar quarter, audit the flow rate of at least 25 percent of the samplers such that each sampler is audited at least once per year. If there are fewer than four samplers within a reporting organization, randomly reaudit one or more samplers so that one sampler is audited each calendar quarter. Audit each sampler at its normal operating flow rate, using a flow rate transfer standard as described in section 2.3.3. The flow rate standard used for auditing must not be the same flow rate standard used to calibrate the sampler. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate standard. The flow audit should be scheduled so as to avoid interference with a scheduled sampling period. Report the audit flow rates and the corresponding flow rates indicated by the sampler's normally used flow indicator. The percent differences between these flow rates are used to calculate accuracy as described in section 5.4.1.

Great care must be used in auditing high-volume particulate matter samplers having flow regulators because the introduction of resistance plates in the audit flow standard device can cause abnormal flow patterns at the point of flow sensing. For this reason, the flow audit standard should be used with a normal filter in place and without resistance plates in auditing flow-regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

3.4.2 SO_2 Methods. Prepare audit solutions from a working sulfite-tetrachloromercurate (TCM) solution as described in section 10.2 of the SO_2 Reference Method (Appendix A of Part 50 of this chapter). These audit samples must be prepared independently from the standardized sulfite solutions used in the routine calibration procedure. Sulfite-TCM audit samples must be stored between 0 and 5 °C and expire 30 days after preparation.

Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg SO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. Report the audit concentrations (in μg SO_2/ml) and the corresponding indicated concentrations (in μg SO_2/ml). The percent differences between these concentrations are used to calculate accuracy as described in section 5.4.2.

3.4.3 NO_2 Methods. Prepare audit solutions from a working sodium nitrite solution as described in the appropriate equivalent method (see Reference 4). These audit samples must be prepared independently from the standardized nitrite solutions used in the routine calibration procedure. Sodium nitrite audit samples expire in 3 months after preparation. Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg NO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. Report the audit concentrations (in μg NO_2/ml) and the corresponding indicated concentrations (in μg NO_2/ml). The percent differences between these concentrations are used to calculate accuracy as described in section 5.4.2.

3.4.4 Pb Methods. For the Pb Reference Method (Appendix G of Part 50 of this chapter), the flow rates of the high-volume Pb samplers shall be audited as part of the TSP network using the same procedures described in Section 3.4.1. For agencies operating both TSP and Pb networks, 25 percent of the total number of high-volume samplers are to be audited each quarter.

Each calendar quarter, audit the Pb Reference Method analytical procedure using glass fiber filter strips containing a known quantity of Pb. These audit sample strips are prepared by depositing a Pb solution on 1.9 cm by 20.3 cm (¾ inch by 8 inch) unexposed glass fiber filter strips and allowing them to dry thoroughly. The audit samples must be prepared using batches of reagents different from those used to calibrate the Pb analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Pb concentration, μg/strip	Equivalent ambient Pb concentration,[1] μg/m³
1	100–300	0.5–1.5
2	600–1000	3.0–5.0

[1] Equivalent ambient Pb concentration in μg/m³ is based on sampling at 1.7 m³/min for 24 hours on a 20.3 cm×25.4 cm (8 inch×10 inch) glass fiber filter.

Audit samples must be extracted using the same extraction procedure used for exposed filters.

Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter. Report the audit concentrations (in μg Pb/strip) and the corresponding measured concentrations (in μg Pb/strip) using unit code 77. The percent differences between the concentrations are used to calculate analytical accuracy as described in section 5.4.2.

The accuracy of an equivalent Pb method is assessed in the same manner as for the reference method. The flow auditing device and Pb analysis audit samples must be compatible with the specific requirements of the equivalent method.

4. *Reporting Requirements*

For each pollutant, prepare a list of all monitoring sites and their SAROAD site identification codes in each reporting organization and submit the list to the appropriate EPA Regional Office, with a copy to the Environmental Monitoring Systems Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (EMSL/RTP). Whenever there is a change in this list of monitoring sites in a reporting organization, report this change to the Regional Office and to EMSL/RTP.

4.1 Quarterly Reports. Within 120 calendar days after the end of each calendar quarter, each reporting organization shall report to EMSL/RTP via the appropriate EPA Regional Office the results of all valid precision and accuracy tests it has carried out during the quarter. Report all collocated measurements including those falling below the levels specified in section 5.3.1. Do not report results from invalid tests, from tests carried out during a time period for which ambient data immediately prior or subsequent to the tests were invalidated for appropriate reasons, or from tests of methods or analyzers not approved for use in SLAMS monitoring networks under Appendix C of this Part.

Quarterly reports as specified herein shall commence not later than the report pertaining to the first calendar quarter of 1987, although such reports will be accepted beginning with the report pertaining to the third calendar quarter of 1986.

The information should be reported in a format similar to that shown in Figures A–1 and A–2. The data may be reported (1) via magnetic computer tape according to data format specifications provided by the Regional Offices, (2) by direct, interactive computer entry via a data terminal and the PARS data entry system, or (3) on the forms illustrated in Figures A–1 and A–2. Minor variations of these forms (to facilitate local use) or computer-generated (facsimile) forms may also be used, provided they follow the same general format, use the same block numbers, and are clear and completely legible. Instructions for using these forms are provided in section 4.3.

Within 240 days after the end of the reporting quarter, EPA will calculate integrated precision and accuracy assessments for each reporting organization as specified in section 5 and return, through the Regional Offices, reports of the respective assessments to each reporting organization.

4.2 Annual Reports. When precision and accuracy estimates for a reporting organization have been calculated for all four quarters of the calendar year, EPA will calculate the properly weighted probability limits for precision and accuracy for the entire calendar year. These limits will then be associated with the data submitted in the annual SLAMS report required by § 58.26.

Each reporting organization shall submit, along with its annual SLAMS report, a listing by pollutant of all monitoring sites in the reporting organization.

4.3 Instructions for Using Data Quality Assessment Reporting Forms. Suggested forms for reporting data quality assessment information are provided in Figure A–1 (for reporting accuracy data) and Figure A–2 (for reporting precision data). The forms may be used in a "universal" way to report data for different pollutants and for different sites on the same form. Or, either form may be used as a site-specific or pollutant-specific form (where all entries on the form are for a common site, a common pollutant, or both) by filling in the site or pollutant information in the appropriate box in the upper left corner of the form. Detailed instructions for individual blocks are as follows:

Instructions common to both forms:

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Block No.	Description
1–2	State: The two digit SAROAD State code.
3–5	Reporting Organization: A unique 3-digit code assigned by each State to each of its respective reporting organizations.
6–7	Year: Last two digits of the calendar year corresponding to the quarter specified in block 8.
8	Quarter: Enter 1, 2, 3, or 4 to refer to the calendar quarter during which the data quality assessments were obtained.
9	Enter "1" for original assessment data, "2" to revise assessment data previously submitted, or "3" to delete previously submitted assessment data. When a "3" is entered, only blocks 1 to 28 need be completed.

Also enter the name of the reporting organization, the date the form is submitted, and (optionally) the name of the person who prepared the form on the blanks provided.

Block No.	Description
10–18	Site: Enter the SAROAD site identification code (first 9 digits only). If all entries on the form are for the same site, enter the site code and site identification in the upper left corner of the form. Also check the block in the corner of the box and leave the other blocks 10 to 18 on the form blank.
21–23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., SO₂, CO, TSP, etc.) on the blank to the left of block No. 21 If all entries on the form are for the same method, enter the code, symbol, and method identification in the lower box in the upper left corner of the form. Also check the block in the corner of the box and leave the other blocks 21 to 23 on the form blank.
24	Precoded with an "A" or a "P".
25–28	Date: Enter the month and day of the test.

Additional instructions for Accuracy form (Figure A–1):

Block No.	Description
29	T: Enter "1" if the reporting organization conducted the audit and also certified the audit standard used; enter "2" if the reporting organization conducted the audit but did not certify the audit standard used; enter "3" if the audit was not conducted by the reporting organization.
30	S: Enter the code letter of the source of the local primary standard used, from the list on the form.
31–32	Unit code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
33	Precoded with a "0" or a "1."
34–40	Level 1 Actual: Enter the actual concentration determined from the audit standard in the appropriate blocks with respect to the precoded decimal point.
41–47	Level 1 Indicated: Enter the concentration indicated by the analyzer, sampler, or method being audited in the appropriate blocks with respect to the precoded decimal point.
48–61	Level 2: Enter the actual and indicated concentrations for audit level 2, if applicable.
34–61	Levels 3 and 4 (if applicable): On the second line, enter the actual and indicated concentrations for audit level 3 and, if used, audit level 4.

Additional instructions for Precision form (Figure A–2):

Block No.	Description
31–32	Unit Code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
34–40	Actual or Primary: Enter the value of the known test concentration or the concentration measurement associated with the sampler designated as the primary sampler in the appropriate blocks with respect to the precoded decimal point.
41–47	Indicated or Duplicate: Enter the value of the concentration measurement from the analyzer or the duplicate collected sampler in the appropriate blocks with respect to the precoded decimal point.

5. Calculations for Data Quality Assessment

Calculation of estimates of integrated precision and accuracy are carried out by EPA according to the following procedures. Reporting organizations should report the results of individual precision and accuracy tests as specified in sections 3 and 4 even though they may elect to carry out some or all of the calculations in this section on their own.

5.1 Precision of Automated Methods. Estimates of the precision of automated methods are calculated from the results of biweekly precision checks as specified in section 3.1. At the end of each calendar quarter, an integrated precision probability interval for all SLAMS analyzers in the organization is calculated for each pollutant.

5.1.1 Single Analyzer Precision. The percentage difference (d_i) for each precision check is calculated using equation 1, where Y_i is the concentration indicated by the analyzer for the i-th precision check and X_i is the known concentration for the i-th precision check.

$$d_i = \frac{Y_i - X_i}{X_i} \times 100 \qquad (1)$$

For each analyzer, the quarterly average (d_j) is calculated with equation 2, and the standard deviation (S_j) with equation 3, where n is the number of precision checks on the instrument made during the calendar quarter. For example, n should be 6 or 7 if precision checks are made biweekly during a quarter.

$$d_j = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (2)$$

$$S_j = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (3)$$

5.1.2 Precision for Reporting Organization. For each pollutant, the average of averages (D) and the pooled standard deviation (S_a) are calculated for all analyzers audited for the pollutant during the quarter, using either equations 4 and 5 or 4a and 5a, where k is the number of analyzers audited within the reporting organization for a single pollutant.

$$D = \frac{1}{k} \sum_{j=1}^{k} d_j \qquad (4)$$

$$D = \frac{n_1 d_1 + n_2 d_2 + \ldots + n_j d_j + \ldots + n_k d_k}{n_1 + n_2 + \ldots + n_j + \ldots + n_k} \qquad (4a)$$

$$S_a = \sqrt{\frac{1}{k} \sum_{j=1}^{k} S_j^2} \qquad (5)$$

$$S_a = \sqrt{\frac{(n_1 - 1)S_1^2 + (n_2 - 1)S_2^2 + \ldots + (n_j - 1)S_j^2 + \ldots + (n_k - 1)S_k^2}{n_1 + n_2 + \ldots + n_j + \ldots + n_k - k}} \qquad (5a)$$

Equations 4 and 5 are used when the same number of precision checks are made for each analyzer. Equations 4a and 5a are used to obtain a weighted average and a weighted standard deviation when different numbers of precision checks are made for the analyzers.

For each pollutant, the 95 Percent Probability Limits for the precision of a reporting organization are calculated using equations 6 and 7.

Upper 95 Percent Probability Limit=D+1.96 S_a .... (6)
Lower 95 Percent Probability Limit=D−1.96 S_a .... (7)

5.2 Accuracy of Automated Methods. Estimates of the accuracy of automated methods are calculated from the results of independent audits as described in section 3.2 At the end of each calendar quarter, an integrated accuracy probability interval for all SLAMS analyzers audited in the reporting organization is calculated for each pollutant. Separate probability limits are calculated for each audit concentration level in section 3.2.

5.2.1 Single Analyzer Accuracy. The percentage difference (d_i) for each audit concentration is calculated using equation 1, where Y_i is the analyzer's indicated concentration measurement from the i-th audit check and X_i is the actual concentration of the audit gas used for the i-th audit check.

5.2.2 Accuracy for Reporting Organization. For each audit concentration level, the average (D) of the individual percentage differences (d_i) for all n analyzers measuring a given pollutant audited during the quarter is calculated using equation 8.

$$D = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (8)$$

For each concentration level, the standard deviation (S_a) of all the individual percentage differences for all analyzers audited during the quarter is calculated, for each pollutant, using equation 9.

$$S_a = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (9)$$

For reporting organizations having four or fewer analyzers for a particular pollutant, only one audit is required each quarter, and the average and standard deviation cannot be calculated. For such reporting organizations, the audit results of two consecutive quarters are required to calculate an average and a standard deviation, using equations 8 and 9. Therefore, the reporting of probability limits shall be on a semiannual (instead of a quarterly) basis.

For each pollutant, the 95 Percent Probability Limits for the accuracy of a reporting organization are calculated at each audit concentration level using equations 6 and 7.

5.3 Precision of Manual Methods. Estimates of precision of manual methods are calculated from the results obtained from collocated samplers as described in section 3.3. At the end of each calendar quarter, an integrated precision probability interval for all collocated samplers operating in the reporting organization is calculated for each manual method network.

5.3.1 Single Sampler Precision. At low concentrations, agreement between the measurements of collocated samplers, expressed as percent differences, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision calculations only when both measurements are above the following limits:

TSP: 20 µg/m³,
SO_2: 45 µg/m³,
NO_2: 30 µg/m³, and
Pb: 0.15 µg/m³.

For each selected measurement pair, the percent difference (d_i) is calculated, using equation 10,

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (10)$$

where y_i is the pollutant concentration measurement obtained from the duplicate sampler and X_i is the concentration measurement obtained from the primary sampler designated for reporting air quality for the site. For each site, the quarterly average percent difference (d_j) is calculated from equation 2 and the standard deviation (S_j) is calculated from equation 3, where n = the number of selected measurement pairs at the site.

5.3.2 Precision for Reporting Organization. For each pollutant, the average percentage difference (D) and the pooled standard deviation (S_a) are calculated, using equations 4 and 5, or using equations 4a and 5a if different numbers of paired measurements are obtained at the collocated sites. For these calculations, the k of equations 4, 4a, 5 and 5a is the number of collocated sites.

The 95 Percent Probability Limits for the integrated precision for a reporting organization are calculated using equations 11 and 12.

Upper 95 Percent Probability Limit=D+1.96 $S_a/\sqrt{2}$ .... (11)
Lower 95 Percent Probability Limit=D−1.96 $S_a/\sqrt{2}$ .... (12)

5.4 Accuracy of Manual Methods. Estimates of the accuracy of manual methods are calculated from the results of independent audits as described in Section 3.4. At the end of each calendar quarter, an integrated accuracy probability interval is calculated for each manual method network operated by the reporting organization.

5.4.1 Particulate Matter Samplers (including reference method Pb samplers).

(1) *Single Sampler Accuracy.* For the flow rate audit described in Section 3.4.1, the percentage difference (d_i) for each audit is calculated using equation 1, where X_i represents the known flow rate and Y_i represents the flow rate indicated by the sampler.

(b) *Accuracy for Reporting Organization.* For each type of particulate matter measured (e.g., TSP/Pb), the average (D) of the individual percent differences for all similar particulate matter samplers audited during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences for all of the similar particulate matter samplers audited during the calendar quarter is calulated using equation 9. The 95 percent probability limits for the integrated accuracy for the reporting organization are calculated using equations 6 and 7. For reporting organizations having four or fewer particulate matter samplers of one type, only one audit is required each quarter, and the audit results of two consecutive quarters are required to calculate an average and a standard deviation. In that case, probability limits shall be reported semi-annually rather than quarterly.

5.4.2 Analytical Methods for SO_2, NO_2, and Pb.

(a) *Single Analysis-Day Accuracy.* For each of the audits of the analytical methods for SO_2, NO_2, and Pb described in section 3.4.2, 3.4.3, and 3.4.4, the percentage difference (d_i) at each concentration level is calculated using equation 1, where X_i represents the known value of the audit sample and Y_i represents the value of SO, NO_2, and Pb indicated by the analytical method.

(b) *Accuracy for Reporting Organization.* For each analytical method, the average (D) of the individual percent differences at each concentration level for all audits during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the accuracy for the reporting organization are calculated using equations 6 and 7.

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6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979.

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TABLE A-1. MINIMUM DATA ASSESSMENT REQUIREMENTS

PRECISION

Method	Assessment Method	Coverage	Minimum Frequency	Parameters Reported
Automated methods for SO_2, NO_2, O_3, and CO	Response check at concentration between .08 and .10 ppm (8 & 10 ppm for CO)	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration
Manual methods including lead	Collocated samplers	1 site for 1-5 sites 2 sites " 6-20 sites 3 sites " > 20 sites (sites with highest conc.)	Once per week	Two concentration measurements

ACCURACY

Method	Assessment Method	Coverage	Minimum Frequency	Parameters Reported
Automated methods for SO_2, NO_2, O_3 CO	Response check at .03-.08 ppm* .15-.20 ppm* .35-.45 ppm* .80-.90 ppm* (if applicable) *Conc. times 100 for CO	1. Each analyzer 2. 25% of analyzers (at least 1)	1. Once per year 2. Each calendar quarter	Actual concentration and measured (indicated) concentration for each level
Manual methods for SO_2 and NO_2	Check of analytical procedure with audit standard solutions	Analytical system	Each day samples are analyzed, at least twice per quarter	Actual concentration and measured (indicated) concentration for each audit solution
TSP	Check of sampler flow rate	1. Each sampler 2. 25% of samplers (at least 1)	1. Once per year 2. Each calendar quarter	Actual flow rate and flow rate indicated by the sampler
Lead	1. Check sample flow rate as for TSP 2. Check analytical system with Pb audit strips	1. Each sampler 2. Analytical system	1. Include with TSP 2. Each quarter	1. Same as for TSP 2. Actual concentration and measured (indicated) concentration of audit samples (µg Pb/strip)

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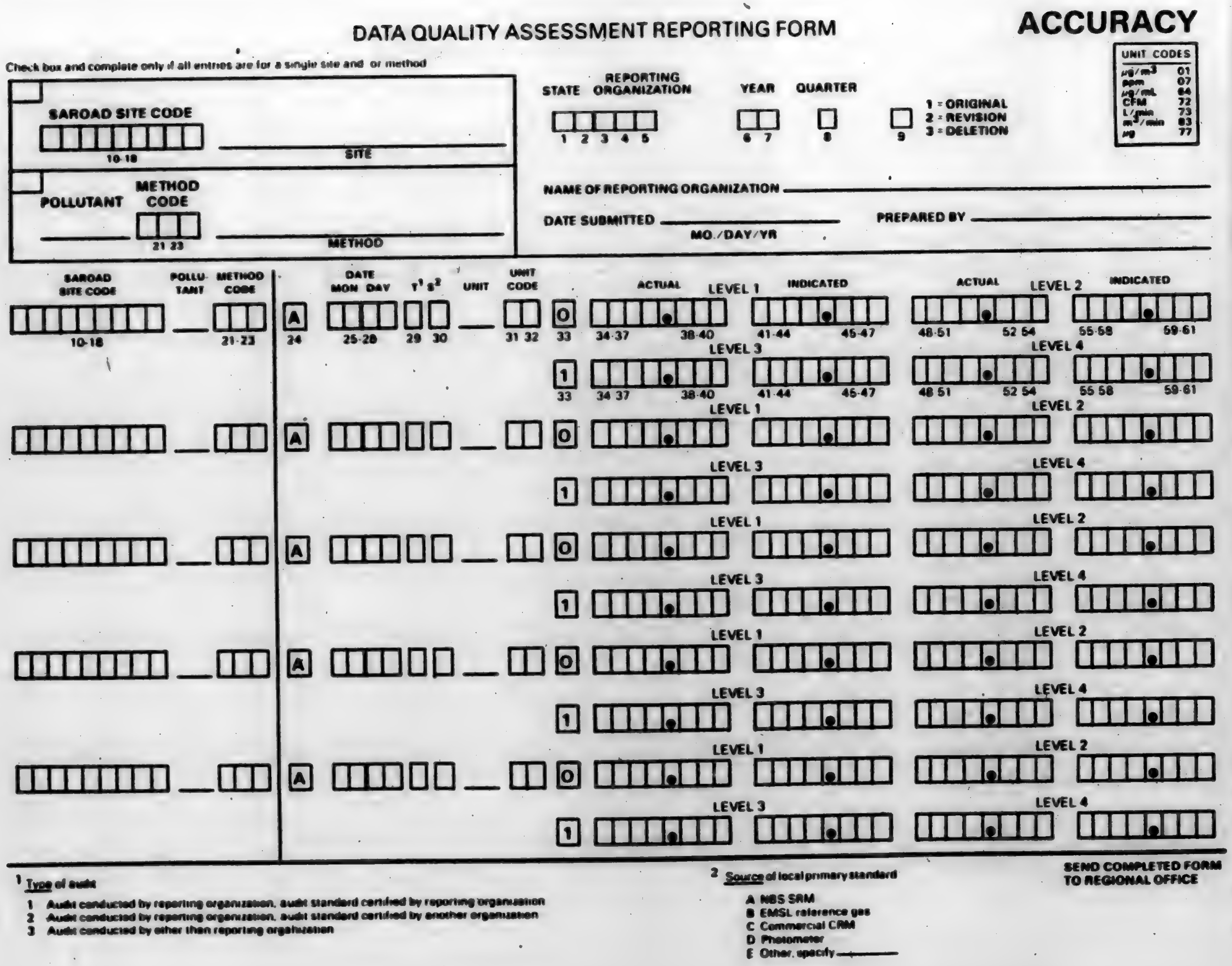

DATA QUALITY ASSESSMENT REPORTING FORM

ACCURACY

UNIT CODES	
$\mu g/m^3$	01
ppm	07
$\mu g/mL$	64
CFM	72
L/min	73
m^3/min	83
μg	77

Check box and complete only if all entries are for a single site and or method

☐ **SAROAD SITE CODE** ☐☐☐☐☐☐☐☐☐ (10-18) ______ SITE

☐ **POLLUTANT** ______ **METHOD CODE** ☐☐☐ (21 23) ______ METHOD

STATE **REPORTING ORGANIZATION** ☐☐☐☐☐ (1 2 3 4 5)

YEAR ☐☐ (6 7)

QUARTER ☐ (8)

☐ (9) 1 = ORIGINAL 2 = REVISION 3 = DELETION

NAME OF REPORTING ORGANIZATION ______

DATE SUBMITTED ______ MO./DAY/YR

PREPARED BY ______

SAROAD SITE CODE	POLLUTANT	METHOD CODE		DATE MON DAY	T[1]	S[2]	UNIT	UNIT CODE		LEVEL 1 ACTUAL	LEVEL 1 INDICATED	LEVEL 2 ACTUAL	LEVEL 2 INDICATED
☐☐☐☐☐☐☐☐☐ 10-18	___	☐☐☐ 21-23	A 24	☐☐☐☐ 25-28	☐ 29	☐ 30	___	☐☐ 31 32	0 33	☐☐☐☐.☐☐☐ 34-37 38-40	☐☐☐☐.☐☐☐ 41-44 45-47	☐☐☐☐.☐☐☐ 48-51 52 54	☐☐☐☐.☐☐☐ 55-58 59-61
										LEVEL 3		LEVEL 4	
									1 33	☐☐☐☐.☐☐☐ 34 37 38-40	☐☐☐☐.☐☐☐ 41-44 45-47	☐☐☐☐.☐☐☐ 48 51 52 54	☐☐☐☐.☐☐☐ 55 58 59-61
										LEVEL 1		LEVEL 2	
☐☐☐☐☐☐☐☐☐	___	☐☐☐	A	☐☐☐☐	☐	☐	___	☐☐	0	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 3		LEVEL 4	
									1	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 1		LEVEL 2	
☐☐☐☐☐☐☐☐☐	___	☐☐☐	A	☐☐☐☐	☐	☐	___	☐☐	0	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 3		LEVEL 4	
									1	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 1		LEVEL 2	
☐☐☐☐☐☐☐☐☐	___	☐☐☐	A	☐☐☐☐	☐	☐	___	☐☐	0	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 3		LEVEL 4	
									1	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 1		LEVEL 2	
☐☐☐☐☐☐☐☐☐	___	☐☐☐	A	☐☐☐☐	☐	☐	___	☐☐	0	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐
										LEVEL 3		LEVEL 4	
									1	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐	☐☐☐☐.☐☐☐

[1] Type of audit

1 Audit conducted by reporting organization, audit standard certified by reporting organization
2 Audit conducted by reporting organization, audit standard certified by another organization
3 Audit conducted by other than reporting organization

[2] Source of local primary standard

A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other, specify ______

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DATA QUALITY ASSESSMENT REPORTING FORM

PRECISION

UNIT CODES	
µg/m³	01
ppm	07
µg/mL	64
CFM	72
L/min	73
m³/min	83
µg	77

Check box and complete only if all entries are for a single site and/or method

☐ SAROAD SITE CODE ☐☐☐☐☐☐☐☐☐ 10-18 ______ SITE

☐ POLLUTANT ______ METHOD CODE ☐☐☐ 21 23 ______ METHOD

STATE ☐☐ REPORTING ORGANIZATION ☐☐☐ 1 2 3 4 5

YEAR ☐☐ 6 7

QUARTER ☐ 8

☐ 9
1 ORIGINAL
2 REVISION
3 DELETION

NAME OF REPORTING ORGANIZATION ______

DATE SUBMITTED ______ MO./DAY/YR

PREPARED BY ______

SAROAD SITE CODE 10-18	POLLUTANT	METHOD CODE 21-23	DATE 24	DATE MON. 25-26	DATE DAY 27-28	UNIT	UNIT CODE 31-32	ACTUAL OR DESIGNATED 34-37	ACTUAL OR DESIGNATED 38-40	INDICATED OR COLLOCATED 41-44	INDICATED OR COLLOCATED 45-47
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METHOD	DESIGNATION NUMBER	METHOD CODE
SO_2 Manual Methods		
Ref. method (pararosaniline)	--	801
Technicon I (pararosaniline)	EQS-0775-001	001
Technicon II (Pararosaniline)	EQS-0775-002	002
SO_2 Analyzers		
Asarco 500	EQSA-0877-024	024
Beckman 953	EQSA-0678-029	029
Bendix 8303	EQSA-1078-030	030
Lear Siegler AM2020	EQSA-1280-049	049
Lear Siegler SM1000	EQSA-1275-005	005
Meloy SA185-2A	EQSA-1275-006	006
Meloy SA285E	EQSA-1078-032	032
Meloy SA700	EQSA-0580-046	046
Monitor Labs 8450	EQSA-0876-013	013
Monitor Labs 8850	EQSA-0779-039	039
Philips PW9700	EQSA-0876-011	011
Philips PW9755	EQSA-0676-010	010
Thermo Electron 43	EQSA-0276-009	009
O_3 Analyzers		
Beckman 950A	RFOA-0577-020	020
Bendix 8002	RFOA-0176-007	007
CSI 2000	RFOA-0279-036	036
Dasibi 1003-AH,-PC,-RS	EQOA-0577-019	019
Dasibi 1008-AH	EQOA-0383-056	056
McMillan 1100-1	RFOA-1076-014	014
McMillan 1100-2	RFOA-1076-015	015
McMillan 1100-3	RFOA-1076-016	016
Meloy OA325-2R	RFOA-1075-003	003
Meloy OA350-2R	RFOA-1075-004	004
Monitor Labs 8410E	RFOA-1176-017	017
Monitor Labs 8810	EQOA-0881-053	053
PCI Ozone Corp. LC-12	EQOA-0382-055	055
Philips PW9771	EQOA-0777-023	023
Thermo Electron 49	EQOA-0880-047	047
TSP Manual Method		
Reference method (high-volume)	--	802

BILLING CODE 6560-50-C

METHOD	DESIGNATION NUMBER	METHOD CODE
NO_2 Manual Methods		
Sodium arsenite	EQN-1277-026	026
Sodium arsenite/Technicon II	EQN-1277-027	027
TGS-ANSA	EQN-1277-028	028
NO_2 Analyzers		
Beckman 952A	RFNA-0179-034	034
Bendix 8101-B	RFNA-0479-038	038
Bendix 8101-C	RFNA-0777-022	022
CSI 1600	RFNA-0977-025	025
Meloy NA530R	RFNA-1078-031	031
Monitor Labs 8440E	RFNA-0677-021	021
Monitor Labs 8840	RFNA-0280-042	042
Philips PW9762/02	RFNA-0879-040	040
Thermo Electron 14B/E	RFNA-0179-035	035
Thermo Electron 14D/E	RFNA-0279-037	037
Pb Manual Methods		
Ref. method (hi-vol/AA spect.)	--	803
Hi-vol/AA spect. (alt. extr.)	EQL-0380-043	043
Hi-vol/Flameless AA (EMSL/EPA)	EQL-0380-044	044
Hi-vol/ICAP spect. (EMSL/EPA)	EQL-0380-045	045
Hi-vol/Wavelength disp. XRF	EQL-0581-052	052
Hi-vol/ICAP spect. (Montana)	EQL-0483-057	057
Hi-vol/Energy-disp. XRF	EQL-0783-058	058
Hi-vol/Flameless AA (Omaha)	EQL-0785-059	059
CO Analyzers		
Beckman 866	RFCA-0876-012	012
Bendix 8501-5CA	RFCA-0276-008	008
Dasibi 3003	RFCA-0381-051	051
Horiba AQM-10, -11, -12	RFCA-1278-033	033
Horiba 300E/300SE	RFCA-1180-048	048
MASS - CO 1 (Massachusetts)	RFCA-1280-050	050
Monitor Labs 8310	RFCA-0979-041	041
MSA 202S	RFCA-0177-018	018
Thermo Electron 48	RFCA-0981-054	054

INFORMATION TO BE CONTAINED ON THE BACK OF THE DATA REPORTING FORMS

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Appendix B—[Amended]

8. Appendix B to Part 58 is amended as follows:

a. Section 1 is revised to read as follows:

1. General Information

This Appendix specifies the minimum quality assurance requirements for the control and assessment of the quality of the PSD ambient air monitoring data submitted to EPA by an organization operating a network of PSD stations. Such organizations are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort and effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of PSD monitoring data quality are required to be made and reported periodically by the monitoring organization.

To provide national uniformity in the assessment and reporting of data quality among all PSD networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, 5, and 6 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring organization depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each organization to develop a quality control system that is most efficient and effective for its own circumstances.

For purposes of this Appendix, "organization" is defined as a source owner/operator, a government agency, or their contractor that operates an ambient air pollution monitoring network for PSD purposes.

b. Sections 2.1 and 2.2 are revised to read as follows:

2. Quality Assurance Requirements

2.1 Each organization must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives and quality assurance requirements of the permit-granting authority, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the permit-granting authority. The Quality Assurance Program will be reviewed during the system audits described in Section 2.4.

2.2 Primary guidance for developing the Quality Assurance Program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in their respective operation and instruction manuals. This guidance, and any other pertinent information from appropriate sources, should be used by the organization in developing its quality assurance program.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Recording and validating data;

(12) Date quality assessment (precision and accuracy);

(13) Documentation of quality control information.

* * * * *

(c) In Section 2.3.1, the phrase "in Reference 7" is changed to "in Reference 5" and the phrase "References 2 and 3" is changed to "Section 2.0.7 of Reference 3." Also, the phrase "the address shown in Reference 7." is changed to "Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711."

d. Sections 2.3.2 and 2.3.3. are revised to read as follows:

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3. Flow measurement must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying various types of flowmeters is provided in Reference 3.

e. In Section 2.4., the phrase "Section 1.4.16 of reference 1 and reference 4" is changed to "Section 1.4.16 of reference 2 and Section 2.0.11 of reference 3."

f. In Section 3, an introductory paragraph is added to precede section 3.1 to read as follows:

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in PSD monitoring shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the data being routinely collected. The results of these tests shall be reported as specified in Section 6. Concentration standards used for the tests must be as specified in Section 2.3. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table B–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following section.

* * * * *

g. The first paragraph of Section 3.2 is revised to read as follows:

3.2 Accuracy of Automated Methods. Each sampling quarter audit each analyzer that monitors for SO_2, NO_2, O_3, or CO at least once. The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		CO
	SO_2, O_3	NO_2	
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain at least 0.08 ppm NO. Note.—NO concentrations substantially higher than 0.08 ppm, as may occur when using some gas phase titration (GPT) techniques, may lead to audit errors in chemiluminescence analyzers due to inevitable minor NO–NO_x channel imbalance. Such errors may be atypical of routine monitoring errors to the extent that such NO concentrations exceed typical ambient NO concentrations. These errors may be minimized by modifying the GPT technique to lower the NO concentrations remaining in the NO_2 audit gas to levels closer to typical ambient NO concentrations at the site.

* * * * *

h. In the second paragraph of section 5.1, the phrase "equation 1" is changed to "equation 1a," and equation 1a is added to read as follows:

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (1a)$$

i. The section entitled "REFERENCES" is revised to read as follows:

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA–600/4–83–023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I—Principles." EPA–600/9–76–005. March 1976. Available from U.S Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II—Ambient Air Specific Methods." EPA–600/4–77–027a. May 1979. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

4. "List of Designated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD–77), Research Triangle Park, NC 27711.

5. Hughes, E.E. and J. Mandel. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards SRM's. EPA–600/7–81–010. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, May, 1981. (Joint NBS/EPA Publication)

6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

j. Table B–1 is added to read as follows:

TABLE B–1. MINIMUM PSD DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at concentrations between .08 and .10 ppm (8 and 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
TSP, Lead	Collocated samplers	Highest concentration site in monitoring network.	Once per week or every 3rd day for continuous sampling.	Two concentration measurements.
Accuracy				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03–.08 ppm*, .15–.20 ppm*, .35–.45 ppm*, .80–.90 ppm* (if applicable).	Each analyzer	Once per sampling quarter	Actual concentration and measured concentration for each level.
TSP	Sampler flow check	Each sampler	Once per sampling quarter	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Sample flow rate check 2. Check of analytical systems with Pb audit strips.	1. Each sampler 2. Analytical system	1. Once/quarter 2. Each quarter Pb samples are analyzed.	1. Same as for TSP. 2. Actual concentration and measured concentration of audit samples (µg Pb/strip).

*Concentration shown times 100 for CO.

9. Appendix C is amended as follows:

a. Sections 2.4 and 2.5 are removed and reserved.

b. In Section 2.6, subsection 2.6.1 is removed and reserved, and the heading of Section 2.6 is revised to read as follows: 2.6 *Use of methods with higher, nonconforming ranges in certain geographical areas.*

Appendix D—[Amended]

10. Appendix D is amended as follows:

a. In Section 2.5, the following sentence is inserted after the first sentence in the "*Middle Scale*" discussion which appears after the third paragraph. *Middle Scale.* * * * Trees also may have a strong scavenging effect on O_3 and may tend to suppress O_3 concentrations in their immediate vicinity.

a–1. The first sentence in the last paragraph of Section 2.5 is revised to read as follows: "Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored at NAMS and SLAMS monitoring sites only during the "ozone season" as designated in the SAROAD files on a State by State basis and described below:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Alabama	March	November.
Alaska	April	October.
Arizona	January	December.
Arkansas	March	November.
California	January	December.
Colorado	March	September.
Connecticut	April	October.
Delaware	April	October.
District of Columbia	April	October.
Florida	January	December.
Georgia	March	November.
Hawaii	January	December.
Idaho	April	October.
Illinois	April	October.
Indiana	April	October.
Iowa	April	October.

OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Kansas	April	October.
Kentucky	April	October.
Louisiana	January	December.
Maine	April	October.
Maryland	April	October.
Massachusetts	April	October.
Michigan	April	October.
Minnesota	April	October.
Mississippi	March	November.
Missouri	April	October.
Montana	June	September.
Nebraska	April	October.
Nevada	January	December.
New Hampshire	April	October.
New Jersey	April	October.
New Mexico	January	December.
New York	April	October.
North Carolina	April	October.
North Dakota	May	September.
Ohio	April	October.
Oklahoma	March	November.
Oregon	April	October.
Pennsylvania	April	October.
Puerto Rico	January	December.
Rhode Island	April	October.
South Carolina	April	October.
South Dakota	June	September.

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OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Tennessee	April	October.
Texas	January	December.
Utah	May	September.
Vermont	April	October.
Virginia	April	October.
Washington	April	October.
West Virginia	April	October.
Wisconsin	April	October.
Wyoming	April	October.
American Samoa	January	December.
Guam	January	December.
Virgin Islands	January	December.

b. In Section 3.1 in the second sentence, "500,000" is replaced by "1,000,000", and the number "8" is replaced by the number "10." Table 2 is revised to read as follows:

TABLE 2.—TSP NATIONAL AIR MONITORING STATION CRITERIA

[Approximate number of stations per area[a]]

Population category	High concentration[b]	Medium concentration[c]	Low concentration[d]
>1,000,000	6–10	4–8	2–4
500,000 to 1,000,000	4–8	2–4	1–2
250,000 to 500,000	3–4	1–2	0–1
100,000 to 250,000	1–2	0–1	0

[a] Selection of urban and actual number of stations per area will be jointly determined by EPA and the State agency.
[b] High concentration—exceeding level of the primary NAAQS by 20 percent or more.
[c] Medium concentration—exceeding secondary NAAQS.
[d] Low concentration—less than secondary NAAQS.

c. In Section 3.2 the third sentence, "500,000" is replaced by "1,000,000", and the number "8" is replaced by the number "10", and Table 3 is revised to read as follows:

TABLE 3.—SO_2 NATIONAL AIR MONITORING STATION CRITERIA

[Approximate number of stations per area][a]

Population category	High concentration[b]	Medium concentration[c]	Low concentration[d]
>1,000,000	6–10	4–8	2–4
500,000 to 1,000,000	4–8	2–4	1–2
250,000 to 500,000	3–4	1–2	0–1
100,000 to 250,000	1–2	0–1	0

[a] Selection of urban areas and actual number of stations per area will be jointly determined by EPA and the State agency.
[b] High concentration—exceeding level of the primary NAAQS.
[c] Medium concentration—exceeding 60 percent of the level of the primary or 100% of the secondary NAAQS.
[d] Low concentration—less than 60 percent of the level of the primary or 100% of the secondary NAAQS.

d. In Section 3.3 the parenthetical expression "(neighborhood scale)" at the end of the last sentence in the 2nd paragraph is amended to read "(middle scale, neighborhood scale)". In the first sentence of the 4th paragraph the first use of the word "neighborhood" is removed and replaced by "category (b)" and the parenthetical expression "(neighborhood scale)" is replaced by "(middle scale or neighborhood scale)." In the 3rd sentence of the 4th paragraph the term "under the influence" is replaced by "unduly influenced by".

e. In Section 3.5 the first parenthetical expression in the second paragraph "(category (a) neighborhood scale)" is amended to read "(category (a), middle scale or neighborhood scale)."

f. Table 4 in Section 4 is revised as follows:

Table 4.—SUMMARY OF SPATIAL SCALES FOR SLAMS AND NAMS

Spatial scale	Scales applicable for SLAMS						Scales applicable for NAMS					
	TSP	SO_2	CO	O_3	NO_2	Pb	TSP	SO_2	CO	O_3	NO_2	Pb
Micro			X			X			X			X
Middle	X	X	X	X	X	X		X	X		X	X
Neighborhood	X	X	X	X	X	X	X	X	X	X	X	X
Urban	X	X		X	X	X				X	X	
Regional	X	X		X	X	X						

Appendix E—[Amended]

11. Appendix E is amended as follows:

a. In the table of contents, Section 2.4 is revised and sections 3.3, 4.4, 5.4, 6.4, and 7.4 are added in the appropriate places as follows:

* * * * *

2.4 Spacing from trees and other considerations.

* * * * *

3.3 Spacing from trees and other considerations.

* * * * *

4.4 Spacing from trees and other considerations.

* * * * *

5.4 Spacing from trees and other considerations.

* * * * *

6.4 Spacing from trees and other considerations.

* * * * *

7.4 Spacing from trees and other considerations.

* * * * *

b. In Section 2.2, the last two sentences in the second paragraph are removed.

c. In Section 2, a new Section 2.4 replaces the existing Section 2.4

2. Total Suspended Particulates (TSP).

* * * * *

2.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for particulate deposits or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flow pattern. To minimize the possible effects of trees on the measured TSP levels, the sampler should be placed at least 20 meters from the drip line of trees. For the purposes of this regulation the term *drip line* is defined as follows: If the tree were to act as a perfect umbrella, the drip line will be the circumference or line around the tree where the ground changes from predominantly wet to dry during a heavy rain. However, in situations where trees could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

In order to minimize the impact of wind blown dusts, stations should not be located on barren ground. Additional information on TSP probe siting may be found in reference 10.*

d. In Section 3.2 the words "should be placed more than 20 meters from trees and" are removed from the first sentence of the second paragraph.

e. In Section 3, a new Section 3.3 is added.

3. *Sulfur Dioxide (SO_2).*

* * * * *

3.3 *Spacing from trees and other considerations.*

Trees can provide surfaces for SO_2 adsorption and act as an obstruction to normal wind flow patterns. To minimize the possible effects of trees on the measured SO_2 levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree(s) protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

f. In Section 4.3, the first word of the last sentence of the second paragraph is replaced with "Also" and the following sentence is added to the end of the second paragraph: "However, the final siting of the monitor must meet the objectives and intent of Appendix D, Section 2.4, 3, 3.3 and Appendix E, Section 4." " The next to last sentence in paragraph 3 is removed.

g. In Section 4, a new Section 4.4 is added.

4. Carbon Monoxide (CO)

* * * * *

4.4 *Spacing from trees and other considerations.*

Since CO is relatively non-reactive, the major factor concerned trees is as obstructions to normal wind flow patterns. For middle and neighborhood scale stations, trees should not be located between the major sources of CO, usually vehicles on a heavily traveled road, and the sampler. The sampler must be at least 10 meters from the drip line of a tree which is between the

sampler and the road and extends at least 5 meters above the sampler. For microscale stations, no trees or shrubs should be located between the sampling inlet probe and the road.

h. In Section 5.2, the second and third sentences in the first paragraph are removed.

i. In Section 5.3, the 6th and 7th sentences in the first paragraph are removed.

j. In Section 5, a new section 5.4 is added.

5. Ozone (O_3)

* * * * *

5.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for O_3 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible effect of trees on measured O_3 levels, the probe should be placed at least 20 meters from the drip line of trees. Since the scavenging effect of trees is greater for ozone than for the other criteria pollutants, strong consideration of this effect must be given in locating the O_3 inlet probe to avoid this problem. Therefore, the sampler must be at least 10 meters from the drip line of trees that are located between the urban city core area and the sampler along the predominant summer day-time wind direction.

k. In Section 6.2, the word "trees" is removed from the 1st sentence. The sixth sentence is also removed.

l. In Section 6.3, the next to last sentence is removed.

m. In Section 6, a new Section 6.4 is added.

6. Nitrogen Dioxide (NO_2)

* * * * *

6.4 *Spacing from trees and other considerations.*

* * * * *

Trees can provide surfaces for NO_2 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible scavenging effect of trees on the measured levels of NO_2 the probe should be placed at least 20 meters from the drip line. For trees that protrude above the height of the probe by 5 meters or more, the sampler must be at least 10 meters from the drip line of the trees.

n. In Section 7.2 the first sentence is removed.

o. In Section 7.2, a new Section 7.4 is added.

7. (Lead (Pb)

* * * * *

7.4. *Spacing from trees and other considerations.*

Trees can provide surfaces for deposition or adsorption of lead particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) roadway sites there must not be any tree(s) between the source of the lead, i.e., the vehicles on the roadway, and the sampler. For neighborhood scale category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than the height that the tree protrudes above the sampler.

P. In Section 10, Table 5 is revised as follows:

TABLE 5.—SUMMARY OF PROBE SITING CRITERIA

Pollutant	Scale	Height above ground, meters	Distance from supporting structure, meters		Other spacing criteria
			Vertical	Horizontal[a]	
TSP	All	2–15		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Must have minimum spacing from roads. This varies with spatial scale (see Figure 1).
SO_2	All	3–15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. No furnace or incineration flues should be nearby.[c]
CO	Micro	3 ± ½	>1	>1	1. Must be >10 meters from street intersection and should be at a midblock location. 2. Must be 2–10 meters from edge of nearest traffic lane. 3. Must have unrestricted airflow 180° around the inlet probe.
	Middle Neighborhood.	3–15	>1	>1	1. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 2. Spacing from roads varies with traffic (see Table 1).
O_3	All	3–15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 2).
NO_2	All	3–15	>1	>1	1. Should be >20 meters from dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 3).
Pb	Micro	2–7		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler except for street canyon sites. 4. No furnace or incineration flues should be nearby.[c] 5. Must be 5 to 15 meters from major roadway.
	Middle, neighborhood, urban and regional.	2–15		>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Spacing from roads varies with traffic (see Table 4).

[a] When probe is located on rooftop, this separation distance is in reference to walls, parapets, or penthouses located on the roof.
[b] Sites not meeting this criterion would be classified as middle scale (see text).
[c] Distance is dependent on height of furnace or incineration flues, type of fuel or waste burned, and of fuel (sulfur, ash, or lead content). This is to avoid undue influences from minor pollutant sources.

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Appendix F—[Amended]

12. Appendix F is amended as follows:

a. the following is added to the end of Section 2: For the purposes of range assignments the following rounding convention will be used. The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m^3 rounds to 101 ug/m^3 and 0.1245 ppm rounds to 0.12 ppm.

Appendix G—[Amended]

13. Appendix G is amended as follows:

a. In Section 8, the following is added to the end of the first paragraph "Also, in situations where the PSI value has not exceeded 50, as calculated by the critical pollutant, for the previous calendar year, the requirement to measure and report the PSI will be left up to the discretion of the reporting agency.

[FR Doc. 86-4756 Filed 3-18-86; 8:45 am]

BILLING CODE [illegible]

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federal register

Wednesday
March 19, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Act of 1985 (Act), approved December 23, 1985 (7 U.S.C. 4801–4819), authorizes the establishment of a national, industry- funded and -operated pork promotion, research, and consumer information program. In response to an invitation to submit proposals published in the February 14, 1986, issue of the **Federal Register**, the Agricultural Marketing Service has received an industry proposal for a pork promotion, research, and consumer information order. That industry proposal on which comments are being requested is set forth below. All comments will be considered before issuing a final rule establishing a pork promotion, research, and consumer information order.

Additionally, notice is hereby given that a public meeting will be held during the comment period to facilitate a better understanding of the intent and application of the proposed order. The record of the meeting will also be considered in the development of a final rule. All interested persons are invited to attend.

DATES: Date of public meeting: The meeting will convene at 9:00 a.m., eastern standard time, on Monday, April 21, 1986.

Place of meeting: Jefferson Auditorium, 14th and Independence Avenue, S.W., South Agricultural Bldg., Washington, DC.

Date for comments: Comments must be received by May 5, 1986.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, P.O. Box 23762, Washington, D.C. 20026-3762. Comments will be available for public inspection during regular business hours, at the above office in Room 2610 South Agriculture Bldg., 14th and Independence Avenue, SW.; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, (202–447–2650).

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Invitation to submit proposals—published February 14, 1986, (51 FR 5542).

Proposed Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, February 21, 1986, (51 FR 6255).

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a nonmajor rule. Accordingly, a regulatory impact analysis is not required.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is published to effectuate the declared purpose of the Act, to authorize the establishment of an orderly procedure for financing and carrying out a coordinated program of promotion, research, and consumer information designed to strengthen the pork industry's position in the marketplace and to maintain, develop, and expand markets for pork and pork products.

Comments and Public Meeting

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Livestock and Seed Division's Marketing Programs and Procurement Branch and must make reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection during regular business hours. Comments must be received by May 2, 1986.

Additionally, notice is given that a public meeting will be held beginning at 9:00 a.m., eastern standard time, on Monday, April 21, 1986, at the Jefferson Auditorium, 14th and Independence Avenue,. SW., South Agricultural Bldg., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning the proposed rule should do so through exhibits, written statements, or an oral presentation. All those making oral presentations are encouraged to submit their presentations in writing. An original and three copies of written statements must be provided for the record. Persons attending the meeting will be allowed to direct questions to participants making oral presentations. It is anticipated that the proponents of this proposal will attend the meeting to explain its various provisions and to answer questions.

Any interested person shall be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed pork promotion, research, and consumer information order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and, insofar as practicable, exclude views and data which are immaterial, irrelevant or unduly repetitious. Such action will be intended to limit the amount of corroborative or cumulative material presented and prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Hearing Clerk's office. However, the transcript will be available for public inspection during normal business hours at the previously stated address. Anyone wishing to purchase a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35), the forms, reporting, and recordkeeping included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval.

Background

The Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B, of the Food Security Act of 1985) approved December 23, 1985, authorizes the Secretary of Agriculture to establish a national pork promotion, research, and consumer information program. The program will be funded initially by an assessment of up to .25 percent of market value on all hogs sold in the United States, and an equivalent

assessment on imported hogs, pork, and pork products.

The Act provides for submission of proposals for a pork promotion, research, and consumer information order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a National Pork Producers Delegate Body. The Delegate Body would be comprised of pork producers nominated through statewide elections for appointment to the Delegate Body by the Secretary. Importers would be appointed to the Delegate Body by the Secretary from nominations submitted by importer organizations.

The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the Federal Register. The Agency also issued for comment a proposed rule; "Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the initial National Pork Producers Delegate Body" in the February 21, 1986, issue of the **Federal Register**. The proposed rule was published so that State associations, organizations, and others who may select nominees for the Delgate Body may begin planning for the nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early establishment of such procedures should prevent unnecessary delay in selecting and appointing a Delegate Body in the event an order is issued.

In response to the in vitation to submit proposals, one proposed order was received from the National Pork Producers Council. As provided in the Act, the Agricultural Marketing Service is publishing this proposed order for comment. The Agricultural Marketing Service will consider all comment received in issuing a final rule.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure,
Advertising,
Agricultural research,
Marketing agreements,
Meat and meat products,
Pork and pork products.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819

2. It is hereby proposed by the National Pork Producers Council that Title 7 of the Code of Federal Regulation be amended by adding the following sections:

Part 1230—Pork Promotion, Research, and Consumer Information Order

Section 1230.1 Act.

"Act" means Title XVI, Subtitle B, of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. ————, as approved December 23, 1985, and any amendments thereto.

Section 1230.2 Department.

"Department" means the United States Department of Agriculture.

Section 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

Section 1230.4 Board.

"Board" means the National Pork Board established pursuant to section 1230.50.

Section 1230.5 Consumer Information.

"Consumer Information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

Section 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in § 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

Section 1230.7 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to section 1230.30.

Section 1230.8 Equivalent Value.

"Equivalent value of the live porcine animal" means 70 per centum of the dollar market value determined by multiplying the weight of imported pork and pork products.

Section 1230.9 Fiscal Period.

"Fiscal Period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

Section 1230.10 Imported.

"Imported" means entered or withdrawn from a warehouse for consumption in the customs territory of the United States.

Section 1230.11 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

Section 1230.12 Market Value.

"Market value" means, for porcine animals, the price at which they are sold and, for imported pork and pork products listed in part 2 of Schedule 1 of the Tariff Schedules of the United States Annotated (1985), excluding the other meats and edible meat offal, prepared or preserved category, the price at which they are sold to the importer.

Section 1230.13 Part.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "supbart" of such part.

Section 1230.14 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

Section 1230.15 Plans and Projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects pursuant to section 1230.60.

Section 1230.16 Porcine Animal.

"Porcine animal" means a swine that is raised as (a) a feeder pig, that is a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

Section 1230.17 Pork.

"Pork" means the flesh of a porcine animal.

Section 1230.18 Pork Product.

"Pork product" means a product produced or processed in whole or in part from pork.

Section 1230.19 Produced in.

"Produced in" means, with respect to a State and in the case of a porcine animal raised as a feeder pig under §1230.16(a) or for breeding purposes as seed stock under § 1230.16(b), the State in which that swine was born, and in the case of a swine that is raised as a market hog under § 1230.16(c), the State in which that porcine animal was fed for market.

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Section 1230.20 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

Section 1230.21 Promotion.

"Promotion" means any action, including paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

Section 1230.22 Research.

"Research" means research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, or dissemination to a person of the results of such research.

Section 1230.23 State.

"State" means each of the 50 States.

Section 1230.24 State Association.

"State association means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may refuse to continue to recognize a State association and instead recognize another organization of producers in a State as that State's State association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

Section 1230.25 To Market.

"To market" means to sell or otherwise dispose of a porcine animal, pork, or pork products in commerce.

National Pork Producers Delegate Body

Section 1230.30 Establishment and Membership.

(a) There is hereby established a National Pork Producers Delegate Body which will consist of a number of producers determined in accordance with (b)(1) and a number of importers determined in accordance with (c)(1). The number of producer members from each State and the number of importers are determined by first assigning a number of shares to each State and to importers on the basis of the dollar volumes of collected assessments that are attributable to producers in such State and to importers, and, second, applying a formula to translate the shares assigned each State and importers into an equivalent, but smaller number of members of the Delegate Body. The shares assigned each State and importers also represent the total number of votes that may be cast by producer members representing such State and by importers at a meeting of the Delegate Body if all the members are present at a meeting. Each member is entitled to vote only that member's percentage of a State's or the importers' total shares.

(b)(1) At least two producer members shall be allocated to each State, but any State that, during any fiscal period, has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) In fiscal period 1986, shares shall be assigned each State on the basis of one share for each $400,000 of market value (rounded to the nearest $400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three calendar years preceding 1986 for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the aggregate amount of assessments collected from producers for porcine animals produced in such State less refunds under section 1230.77 to producers for porcine animals produced in such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 importer-assigned shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) In fiscal period 1986, shares shall be assigned importers on the basis of one share for each $575,000 (rounded to the nearest $575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the most recent calendar year preceding 1986 for which data is available).

(3) In each fiscal period thereafter, shares shall be assigned importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the aggregate amount of assessments collected from importers less refunds under §1230.77 to importers.

Section 1230.31 Nominations for Producer Members.

Nominations for producer members of the Delegate Body shall be submitted to the Secretary in the appropriate number as follows:

(a) In the case of each Delegate Body after the initial one, by each State association either (1) after an election conducted in accordance with section 1230.32 and by nominating the producers who receive the highest number of votes in such State, or (2) by way of selection by such State association, pursuant to a process (i) that is approved by the Secretary, (ii) is publicly noticed at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and (iii) provides complete and equal access to every producer who has paid all assessments pursuant to §1230.71 and who has not demanded any refund of an assessment pursuant to section 1230.77 in the period since the election or selection of the previous Delegate Body;

(b) If a State either has a State association that does not submit nominations or has no State association, the Secretary shall select producers from such State to represent that State on the Delegate Body after consultation with representatives of the pork industry in such State.

Section 1230.32 Conduct of Election.

Elections shall be conducted in the manner prescribed in sections 1230.33–39.

Section 1230.33 Nomination of Candidates for Election.

(a) In the case of elections for each Delegate Body after the initial one, the nomination process of candidates for election as producer members of each such Body shall begin on a date in each State that is established by each State association announced in advance by the Board and occurs on or after October 1 of each year after 1986 but before January 1 of the following year. The nomination process shall be closed 30 days after it begins.

(b) Persons who may be nominated as candidates for election as producer members of the Delegate Body shall be, at the time of their nomination and subsequent election, (1) either individual producers or representatives of producers who are other than individuals and (2) residents of the State from which they are nominated.

(c) Nominations in a State of candidates for election as producer members of each Delegate Body after the initial one shall be made by a nominating committee of persons who are (1) either individual producers or representatives of producers who are other than individuals and (2) residents of that State and who are appointed by the Board prior to the commencement date of that State's nomination process in each year. Nominations of such candidates may be made as well by written petition signed by 100 persons who are producers in that State as of the time of signing such petition or by 5 percent of the producers in that State (as determinated by the Board in light of the most recent available data), whichever number is less.

(d) Written petition for submitting nominations in a State of candidates for election as producer members of each Delegate Body after the initial one shall be made available by the Board as of the commencement date of that State's nominations process in each year.

(e) Written petitions for submitting nominations of candidates for election as producer members of the Delegate Body as well as the nominations made by State associations or State nominating committees shall be filed with the Secretary on or before the date of closing of the nominating process pursuant to (a). Such petitions shall contain the requisite number of signatures and a certification by each person signing them that such person is a producer in such State or a representative of such a producer if that producer is other than an individual.

(f) The Board shall give public notice of these nomination procedures and the time and place of filing petitions by:

(1) Furnishing press releases and other information to available media of public information (including but not limited to press; radio, and television facilities);

(2) Publishing the information in a newspaper or newspapers of general circulation in each State;

(3) Publishing the information in pork production and agriculture trade publications; and

(4) By such other means as the Board determines to be advisable.

Section 1230.34 Who May Vote.

(a) Each producer shall be entitled to only one vote in each election. No person who may claim to be a producer shall be refused a ballot. Any producer casting more than one ballot shall thereby invalidate all ballots cast by such producer in such election. No ballot may be cast until the person casting the ballot separately certifies that such person is currently a producer and a resident of the State in which such election is taking place, and has paid all assessments due pursuant to section 1230.71 and has not demanded any refund of an assessment pursuant to section 1230.77.

(b) Voting by proxy or agent will not be permitted. However, a producer who is other than an individual may cast its ballot by a person who is duly authorized. No such ballot shall be cast until the person casting the ballot separately certifies that the person on whose behalf the ballot is cast is currently a producer and a resident of the State in which such election is taking place and that the person on whose behalf the ballot is cast has paid all assessments due pursuant to section 1230.71 and has not demanded any refund of an assessment pursuant to section 1230.77.

Section 1230.35 Board Conduct of Elections.

The Board, in addition to any other duties imposed by this subpart, shall:

(a) Verify the eligibility of all producers to vote in the election by reviewing:

(1) All ballots cast to ensure that each ballot, if mailed, is mailed within the prescribed time; and

(2) All the certifications required pursuant to section 1230.34 (a) and (b) to ensure that they meet the requirements.

(b) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) In the case of a producer that is other than an individual, the business unit shall be regarded as a producer;

(2) No person may vote more than once even though such person may operate more than one farm producing porcine animals.

Section 1230.36 Date of Election.

(a) Election for appointment of producer members to each Delegate Body after the initial one shall be held during a 5-day period in each State that commences no earlier than 30 days after the cutoff for nominations under section 1230.33(a) and terminates no later than the last day of February of each year in 1987 and thereafter. The dates and periods for voting in each State shall be established and announced in advance by the Board.

(b) Voting shall occur during a 5-day period either in person or by mail (postmarked within that same period) or both as determined by the Board. No ballot cast outside of these time periods shall be valid.

Section 1230.37 Notice of Election.

(a) The Board shall provide notice of election for appointment of producer members to each Delegate Body after the initial one at least 1 week prior to the election by:

(1) Generally making material and information widely available to producers through the Department and other means. Such information shall include a notice of the election and:

(A) Instructions for completing the ballot;

(B) A statement as to the time within which ballots must be cast in person or within which ballots must be mailed to the Board;

(C) A ballot containing a list of the producers nominated as candidates in the election in each State;

(D) A description of the eligibility requirements for producers to vote; and

(E) A description of the separate certifications that must be made by a producer to cast a valid ballot.

(2) Giving public notice of the election by:

(A) Furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be cast or mailed; the manner of casting ballots; eligibility requirements; required certifications to cast a valid ballot; where additional information, ballots, and instructions may be obtained; and other pertinent information.

(B) Publishing the information described in (A) in a newspaper or newspapers of general circulation in each State;

(C) Publishing the information described in (A) in pork production and agriculture trade publications; and

(D) By such other means as the Board determines to be advisable.

Section 1230.38 Tabulation of Ballots.

(a) The election Board shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in sections 1230.34 and 1230.36. Invalid ballots shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast for each candidate shall also be ascertained.

(c) Announcement of the results of the election will be made by the Board.

Section 1230.39 Confidential Information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the election agent shall be regarded as confidential.

Section 1230.40 Appointment of Producer and Importer Members.

(a) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with section 1230.31 and in the number specified in section 1230.30.

(b) The Secretary shall appoint the importer members of each Delegate Body after consultation with importers and in the number specified in section 1230.30.

Section 1230.41 Supplementary Instructions.

The Board is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of elections by election agents.

Section 1230.42 Term of Office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve until the completion of the nomination and appointment process of the succeeding Delegate Body pursuant to section 1230.31 and section 1230.40.

(b) Each member of the Delegate Body shall serve until that member's term expires, or until a successor is appointed in accordance with section 1230.40, whichever occurs later.

Section 1230.43 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the relevant State association or by importers, depending upon whether the vacancy occurs with respect to producer or importer members.

Section 1230.44 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

Section 1230.45 Officers.

The Delegate Body shall elect its Chairman by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairman.

Section 1230.46 Compensation and Reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to section 1230.72.

1230.47 Powers and Duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 1230.71(D)(E);

(c) To determine the percentage of the aggregate amount of assessments attributable to porcine animals produced in a State by producers that each State association shall receive; and

(d) To nominate no less than 23 persons, including producers or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy in the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with section 1230.44(a).

National Pork Board

Section 1230.50 Establishment and Membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to section 1230.47(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

Section 1230.51 Term of Office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for 1-year terms; one-third shall serve for 2-year terms; and the remaining one-third shall serve for 3-year terms.

(b) Each member of the Board shall serve until that's member's term expires, except if the Secretary acts pursuant to section 1230.55(b) and except that a retiring member may serve until a successor is appointed pursuant to section 1230.54.

(c) No member shall serve more than two consecutive terms of 3 years, *provided* that those members serving an initial term of 1 year are eligible to serve two additional conservative terms, but in no event, more than seven years in total.

(d) The term of office for the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

Section 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with section 1230.47(d).

Section 1230.53 Nominee's Agreement to Serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed.

(b) Disclose any relationship with the Council of a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters where paragraph (b) applies if such nominee is an officer or member of the executive committee of the entities referred to in paragraph (b).

Section 1230.54 Appointment.

From the nominations submitted pursuant to section 1230.47(d), the Secretary shall appoint the 15 producer or importer members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

Section 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office.

Section 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of it meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

Section 1230.57 Compensation and Reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to section 1230.72.

Section 1230.58 Powers and Duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented: (1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and (2) the budget, plans, or projects for which State associations are to receive funds under section 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to section 1230.71. Any such contract or agreement shall provide that

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ such persons as staff as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers of State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To elect committees and subcommittees of Board members and to adopt such rules and bylaws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To make rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest pending disbursement pursuant to a plan or project, funds collected through assessments authorized under section 1230.71 in, and only in, an obligation of the United States, in a general obligation of any State of any political subdivision thereof, in an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at

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the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

Promotion, Research and Consumer Information

Section 1230.60 Promotion, Research, and Consumer Information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan and project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan and project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

Expenses and Assessments

Section 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body for the conduct of referenda.

Section 1230.71 Assessments.

(a)(1) Each producer producing in the United States a swine raised as a feeder pig that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised as a feeder pig.

(2) Each producer producing in the United States a swine raised for slaughter that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised for slaughter.

(3) Each producer producing in the United States a swine raised for slaughter that such producer slaughters for sale shall pay an assessment on that swine.

(4) Each producer producing in the United States a swine raised for seed stock that is sold shall pay an assessment on that swine, unless such producer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such swine raised for seed stock.

(5) Each importer importing a porcine animal, pork, or pork products into the United States shall pay an assessment on that porcine animal, pork, or pork products, unless such importer proves to the Board by appropriate documentation that an assessment was previously paid by a person for such porcine animal, pork, or pork product.

(b) Each purchaser of a swine raised by a producer as a feeder pig or raised for slaughter and then sold or slaughtered for sale, each producer of a swine raised for seed stock that is sold, and each importer of each porcine animal, pork, or pork product that is imported into the United States shall collect an assessment on such porcine animal, pork, or pork product and remit that assessment to the Secretary until the Board is constituted and to the Board, once it is constituted. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such swine for sale on commission or for or on behalf of producer shall be deemed to be a purchaser.

(c) The initial rate of assessment to be paid, collected, and remitted on porcine animals sold or imported shall be 0.25 percent of the market value of the porcine animal sold or imported or an amount established by the Secretary upon recommendation of the Delegate Body, if such amount is lower.

(d) The initial rate of assessment to be paid, collected, and remitted on pork or pork products imported into the United States shall be 0.25 percent of the equivalent value of the live porcine animal from which such pork or pork products were produced, or an amount established by the Secretary upon recommendation of the Delegate Body if such amount is lower *provided* that the Secretary may waive the collection of such assessments on types of imported pork or pork products if the Secretary determines that such collection is not practicable or the amount of assessment that could be collected is too small to warrant such collection.

(e) The initial rates of assessment described in (c) and (d) may be increased by the Secretary by no more than 0.1 percent of such market value per fiscal period on recommendation of the Delegate Body, but the rate cannot exceed 0.50 percent of such market value upon recommendation of the Delegate Body until after the referendum is approved and the increase in excess of 0.50 percent of such market value is itself approved in a referendum.

(f) The collection of assessments pursuant to section 1230.71 shall begin with respect to porcine animals, pork, and pork products sold not later than 30 days after the effective date of this subpart and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive and distribute the assessments on behalf of the Board either directly or through a collecting agent. The Secretary shall require the assessments remaining after such distribution to be placed in escrow and to be remitted to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to section 1230.71(b) shall remit the assessment to the Board (or, until the Board is constituted, to the Secretary) not later than the 10th day of the month following the month in which the porcine animal, pork, or pork products were marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Pork Board." Remittances and reports specified in section 1230.80 shall be mailed to the location designated by the Board, but, until the Board is constituted, by the Secretary.

Section 1230.72 Distribution of Assessments.

(a) Assessments remitted to the Secretary pursuant to section 1230.71(g) after the commencement of assessment and until the first day of the month after the Board is constituted shall be distributed at the end of each month by the Secretary directly or through an agent by distributing (1) 37.5 percent of the monthly aggregate amount of such assessments to the Council, less the Council's share of refunds under (f), and (2) to each State association, an amount of such assessments equal to the product of the monthly aggregate amount of assessments attributable to porcine animals produced in such State, less such State's share of refunds under (f) times the percentage applicable to such State association determined by the Delegate Body or 16.5 percent, whichever is higher, or an amount determined in accordance with (e). The remainder of the monthly aggregate amount of such assessments less refunds shall be held in escrow by the Secretary for distribution to the Board once it is constituted.

(b) Assessments remitted to the Board pursuant to section 1230.71(g) after the Board is constituted and until the referendum is conducted shall be distributed at the end of each month by the Board by distributing (1) 35 percent of the monthly aggregate amount of such assessments to the Council, less the Council's share of refunds under (f), and (2) to each State association, an amount of such assessments determined in accordance with (a)(2) or (e). The remainder of the monthly aggregate amount of such assessments less refunds shall be retained by the Board for its own use.

(c) Assessments remitted to the Board pursuant to section 1230.71(g) from the date of the referendum and for 12 months thereafter shall be distributed at the end of each month by the Board by distributing (1) 25 percent of the monthly aggregate amount of such assessments to the Council, and (2) to each State association, an amount of such assessments determined in accordance with (a)(2) or (e). The remainder of the monthly aggregate amount of such assessments shall be retained by the Board for its own use.

(d) Assessments remitted to the Board pursuant to section 1230.71(g) after 12 months after the referendum has been conducted shall be distributed to each State association in accordance with (a)(2) or (e), with the remainder of the monthly aggregate amount of such assessments retained by the Board for its own use.

(e) If a State association was conducting a pork promotion program from July 1, 1984, to June 30, 1985, then such State association is entitled, in the monthly distribution of assessments by the Secretary or the Board, to either the amount determined in accordance with (a)(2) or, if greater, an amount equal to the product of the number of porcine animals produced in such State of which assessment was remitted to the Secretary or the Board less the number of porcine animals produced in such State on which refund was remitted by the Secretary or the Board times the average assessment rate in effect in such State from July 1, 1984, to June 30, 1985, less the average per porcine animal rate of return from such State from July 1, 1984, to June 30, 1985, to the Council and to other national entities involved in pork promotion, research, and consumer information.

(f)(1) Each State's share of refunds is equal to the product of the aggregate amount of refunds received by producers in such State in a given month times the percentage applicable to such State association determined by the Delegate Body or 16½ percent, whichever is higher.

(2) The Council's share of refunds is equal to the product of the Council's percentage of distribution of assessments under (a)(1) or (b)(1), whichever is applicable, times the sum of the aggregate amount of refunds received by producers pursuant to section 1230.77 less the aggregate amount of the States' share of refunds determined pursuant to (1) plus the aggregate amount of refunds received by importers pursuant to section 1230.77.

Section 1230.73 Uses of Distributed Assessments.

(a) Each State association shall use its distribution of assessments pursuant to section 1230.72(a)(2) as well as any proceeds from the investment of such funds pending their use for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to section 1230.72(a)(1), (b)(1), and (c)(1) as well as any proceeds from the investment of such funds pending their use for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to section 1230.72(a), (b), (c), and (d), as well as any proceeds from the investment of such funds pending their use, for: (1) Financing plans and projects; (2) the Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary; (3) accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and (4) the Secretary's administrative costs in carrying out this part pursuant to section 1230.70(a).

Section 1230.74 Prohibited Use of Distributed Assessments.

No funds collected by the Secretary or Board under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in § 4911(d) and (e)(2) of the Internal Revenue Code of 1954, which sections are hereby incorporated by reference.

Section 1230.75 Adjustment of Accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in section 1230.61(g). Overpayments shall be credited to the account of the person

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remitting the overpayment and shall be applied against amounts due in succeeding months.

Section 1230.76 Charges.

Any unpaid assessments to the Board pursuant to section 1230.71 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

Section 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Secretary until the Board is constituted and from the Board thereafter a refund of such an assessment upon submission of proof satisfactory to the Secretary or Board, as the case may be, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, and within a time period prescribed by the Secretary or the Board and approved by the Secretary, as the case may be, but not later than 30 days after the end of the month in which the assessment was paid.

(c) Refunds properly demanded in accordance with (a) and (b) shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Delegate Body that are administered by the Board.

Reports, Books, and Records

Section 1230.80 Reports.

Each person responsible for collecting an assessment under section 1230.71(b) shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information will include, but shall not be limited to, the following:

(a) The quantity and value of porcine animals, pork, or pork products purchased, sold, or imported which are subject to the collection of the assessment;

(b) The amount of assessment collected;

(c) The date, month or period assessment was collected, and;

(d) The State in which any porcine animal purchased or sold was produced or the place of origin of an imported porcine animal, pork, or pork products.

Section 1230.81 Books and Records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any reports required and documentation of the State in which a purchased or sold porcine animal was produced or the place of origin of an imported porcine animal, pork, or pork product. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

Section 1230.82 Confidential Treatment.

All information obtained from the books, records or reports required to be maintained under sections 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only these persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

Section 1130.85 Proceedings after Termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The aid trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to section 1230.47(f);

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

Section 1230.86 Effect of Termination or Amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

Section 1230.87 Personal Liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

Section 1230.88 Patents, Copyrights, Inventions, and Publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, section 1230.75 shall apply to determine disposition of all such property.

Section 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

Section 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Section 1230.91 Paperwork Reduction Act Assigned Number.

The information collection and recordkeeping requirements contained in sections 1230.31, 1230.33, 1230.37, 1230.38, 1230.41, 1230.58, 1230.71, 1230.77, 1230.80, 1230.81, and 1230.82 of these regulations (7 CFR Part 1230) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0151.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

Section 1230.100 Words in Singular Form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

Section 1230.101 Definitions.

As used in this subpart:

(a) "Act" means Title 16, Subpart B of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. ——, as approved December 23, 1985, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) "Judge" means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture;

(e) "Administrator" means the Administrator of the Department's Agricultural Marketing Serivce, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) "**Federal Register**" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it;

(g) "Order" means any regulation or any amendment thereto which may be issued pursuant to the Act;

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) "Proceeding" means a proceeding before the Secretary arising under Section 1625 of the Act;

(j) "Hearing" means that part of the proceeding which involves the submission of evidence;

(k) "Party" includes the Department;

(l) "Hearing Clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(m) "Presiding Officer" means the administrative law judge conducting a proceeding under the Act;

(n) "Presiding Officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed: (1) Findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) ruling on findings, conclusions and orders submitted by the parties; and

(o) "Petition" includes an amended petition.

Section 1230.102 Institution of Proceeding.

(a) *Filing and Service of Petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the Department's General Counsel, respectively.

(b) *Contents of Petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions

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held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *An Application to Dismiss Petition Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition or any portion thereof on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based in whole or in part on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his/her consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceeding on Petitions to Modify or to be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Done at Washington, DC, on: March 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-6037 Filed 3-17-86; 8:45 am]

BILLING CODE 3410-02-M

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federal register

Wednesday
March 19, 1986

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 544 and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing a final amendment to its rule on minimum standards for administration, interpretation, and use of education tests. The primary purpose for this amendment is to revise the language pertaining to newly committed inmates taking the Stanford Achievement Test within 30 days of their arrival at a Bureau institution.

EFFECTIVE DATE: March 19, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing amendments to its final rule on minimum standards for administration, interpretation, and use of education tests. Proposed amendments were published in the **Federal Register** October 1, 1985 (at 50 FR 40116 et seq.). Interested persons were invited to submit comments on the proposed amendments. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

The Bureau of Prisons has decided not to adopt proposed § 544.12(a)(3), which would have allowed an SAT to be given to an inmate whom the Adult Basic Education Teacher tentatively identified as able to function at the 6.0 academic grade level. The word "record" has been added to § 544.12(c). The existing rule states an inmate is not allowed to administer, score, or interpret tests, nor to be involved in the clerical handling of such tests. The prohibition against an inmate recording results is added to more fully encompass and explain the intent of existing paragraph (c). For this reason, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to publish this amendment without notice of proposed rulemaking, and an opportunity for public comment. Similarly, because these amendments do not change the general intent of the existing rule, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d), to publish these amendments without delay in the effective date.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR, 0.96(q), 28 CFR, Chapter V is amended by amending Subchapter C, Part 544, Subpart B, to read as set forth below.

Dated: March 12, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

In Subchapter C, amend Part 544 by amending Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart B—Minimum Standards for Administration, Interpretation, and Use of Education Tests.

1. The authority citation for Part 544, is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 544.12, revise paragraphs (a)(1) and (c) to read as follows:

§ 544.12 Procedures.

(a) * * *

(1) Except as specified in § 544.11, a newly committed inmate shall be required to take the SAT within 30 days of the inmate's arrival at the institution. For the non-English-speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement.

* * * * *

(c) Staff may not allow inmates to administer, score, record, or interpet tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

[FR. Doc. 86-5945 Filed 3-18-86; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 551

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on smoking/no smoking areas. The rule sets forth the Bureau's policy on establishing smoking and no smoking areas within its institutions.

EFFECTIVE DATE: April 28, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing its final rule on smoking/no smoking areas. A proposed rule on this subject was published in the **Federal Register** June 20, 1985 (at 50 FR 25668 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Comments

1. In the **Federal Register** publication of June 20, 1985, the Bureau of Prisons proposed rule was entitled Smoking/Non-Smoking Areas. For purpose of the final rule, the Bureau is changing the title to read Smoking/No Smoking Areas.

2. Section 551.160—Public comment suggests that the proposed restrictions [smoking/no smoking], to the extent they are based upon a perception of

health harm to non-smokers, are not justified on scientific grounds, and that imposing unnecessary smoking regulations "introduces a new potential source of discord among inmates". We do not agree. The Surgeon General of the United States has determined that smoking and passive inhalation of environmental tobacco smoke pose a health hazard. The Bureau of Prisons, in establishing its smoking/no smoking rule, is attempting to reduce potential hazards to individual health and safety, and to provide a more comfortable living and working environment for staff and inmates. By providing designated areas for smokers, as well as other areas where individuals are not exposed to smoke, the Bureau is eliminating a potential source of discord among inmates.

3. Section 551.162—Public comment stated that, where disciplinary action may be taken for failure to observe posted smoking restrictions, "the potential for selective enforcement will be considerable". The commenter suggested that smoking restrictions will introduce another potential source of tension between staff and inmates and "can only exacerbate existing problems" in prison. While a potential for selective enforcement exists for virtually any rule, Bureau staff are trained, and expected, to apply Bureau policy in an objective and sensible manner. We do not believe the rule will "exacerbate existing problems", but rather that it may help reduce tensions by clearly identifying smoking/no smoking areas within the institution.

List of Subjects in 28 CFR Part 551

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended by adding a new Subpart N to Part 551.

Dated: March 12, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

I. In Subchapter C, Part 551 is amended by adding a new Subpart N to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

* * * * *

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 *Purpose and scope.*
551.161 *Definition.*
551.162 *Notice of "No Smoking" areas.*

Subpart N—Smoking/No Smoking Areas

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 551.160 Purpose and scope.

The Warden, as set forth in this rule, may establish smoking/no smoking areas within the institution.

(a) Smoking is prohibited in those areas where to allow smoking would pose a hazard to health or safety.

(b) Smoking/no smoking areas may be established in other areas of the institution, in the discretion of the Warden.

§ 551.161 Definition.

For purposes of this rule, smoking is defined as the use or carrying of any lit tobacco product.

§ 551.162 Notice of "No Smoking" areas.

The Warden shall ensure that "no smoking" areas are clearly identified. Disciplinary action may be taken for failure to observe posted smoking restrictions.

[FR Doc. 86-5944 Filed 2-18-86; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 467

Aluminum Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 467

[OW-FRL-2942-2]

Aluminum Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend 40 CFR Part 467 which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that form aluminum and aluminum alloys. EPA agreed to propose these amendments in a settlement agreement to resolve a lawsuit challenging the final aluminum forming regulation promulgated by EPA on October 24, 1983 (48 FR 49126).

After considering comments received in response to this proposal, EPA will take final action.

DATES: Comments on this proposal must be submitted on or before April 18, 1986.

ADDRESS: Send comments to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background
III. Proposed Amendments to the Aluminum Forming Regulation
IV. Environmental Impact of the Proposed Amendments to the Aluminum Forming Regulation
V. Economic Impact of the Proposed Amendments
VI. Solicitation of Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 467

I. Legal Authority

The regulation described in this notice is proposed under authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92–217).

II. Background

A. Rulemaking and Settlement Agreement. On November 22, 1982, EPA proposed a regulation to establish effluent limitations guidelines for existing direct dischargers based on the best practicable control technology currently achievable ("BPT") and the best available technology economically achievable ("BAT"); new source performance standards ("NSPS") for new direct dischargers; and pretreatment standards for existing sources and new sources that are indirect discharges ("PSES" and "PSNS", respectively) for the aluminum forming point source category (47 FR 52626). EPA published final effluent limitations guidelines and standards for the aluminum forming category on October 24, 1983 (40 CFR Part 467; 48 FR 49126) and made technical corrections to the final rule on March 27, 1984 (49 FR 11629). This regulation applies to all wastewater discharges resulting from the forming of aluminum and aluminum alloys. See, 40 CFR 467.01. The preamble to the final aluminum forming effluent limitations guidelines and standards promulgated on October 24, 1983, contains a complete discussion of the development of the regulation.

Following promulgation of the aluminum forming regulation, The Aluminum Association Inc., et al., and the Aluminum Extruders Council, Inc., et al. filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Sixth Circuit (*The Aluminum Association, Inc., et al.* v. *EPA,* No. 84–3090; and *Aluminum Extruders Council, Inc., et al.* v. *EPA,* No. 84–3101.)

On April 1, 1985, EPA and the Petitioners executed a Settlement Agreement to resolve all issues raised with respect to the aluminum forming effluent limitations guidelines and standards. The parties to the litigation filed this agreement with the Court and requested a stay of the effectiveness of those portions of the aluminum forming regulation affected by the Settlement Agreement. On October 15, 1985 the Court granted a stay of the portions of the regulation that EPA agreed to propose to amend.

B. Effect of the Settlement Agreement. Under the Settlement Agreement, EPA has agreed to propose to amend portions of the aluminum forming regulation or to add preamble language relating to (1) nonscope waters (2) discharge allowance for hot water seal, (3) the BAT and PSES pollutant discharge allowances for the cleaning or etching rinse in the extrusion and forging subcategories (Subparts C and D, respectively); (4) the discharge allowance for the alternative monitoring parameter of oil and grease for PSES; (5) the BPT and NSPS requirement for pH in the direct chill casting contact cooling water ancillary operation; and (6) the addition of a definition for hot water seal to the general definitions of 40 CFR Part 467. If, after EPA has taken final action under the Settlement Agreement, the provisions of the aluminum forming amendments are consistent with the Settlement Agreement, the Petitioners will voluntarily dismiss their petitions for review. Petitioners have also agreed not to seek judicial review of any final amendments that are consistent with the Settlement Agreement.

The Settlement Agreement provides that the parties will treat each proposed amendment and preamble provision as the applicable effluent limitations guidelines and standards or interpretation after the stay of the existing provisions by the U.S. Court of Appeals.

III. Proposed Amendments to the Aluminum Forming Regulation

Below is a list of those sections of the aluminum forming regulation subject to the proposed amendments. All limitations and standards contained in the final aluminum forming regulation published on October 24, 1983 and corrected on March 27, 1984 which are not specifically listed below are not affected by the proposed amendments. EPA is not proposing to delete or amend any of the limitations and standards not specifically addressed in this proposal.

A. Sections 467.33 and 467.35 (Subpart C), and Section 467.45 (Subpart D), Flow Allowances for the Cleaning or Etching Rinse. EPA is proposing to revise the BAT and PSES flow bases for the limitations and standards for the Cleaning or Etching Rinse for the extrusion Subcategory (Subpart C) and the Forging Subcategory (Subpart D). Petitioners claimed that 90 percent flow reduction was not attainable for rinsing irregular shapes but that 72 percent flow reduction could be attained with two-stage countercurrent cascade rinse. The Agency has agreed to propose to revise the BAT flow allowance for cleaning or

etching rinses based on two-stage countercurrent cascade rinsing that achieves 72 percent flow reduction, instead of 90 percent, to ensure adequate rinsing for irregular shapes. This change will increase the limitations and standards for these waste streams.

B. Sections 467.15 (Subpart A), 467.25 (Subpart B), 467.35 (Subpart C), 467.45 (Subpart D), 467.55 (Subpart E) and 467.65 (Subpart F) "Oil and Grease (alternate monitoring parameter)". EPA is proposing to change the oil and grease alternate monitoring parameter for total toxic organics for PSES. The concentrations of oil and grease on which the alternate monitoring parameter for the promulgated PSES was based were 20 mg/l for the daily maximum and 12 mg/l for the monthly average. Petitioners asserted that EPA should amend these concentrations to 52 mg/l for the daily maximum and 26 mg/l for the monthly average. The Agency agreed to propose this revision because it will not change the TTO standard.

C. Sections 467.22, 467.24, 467.32 and 467.34 pH Limits for Direct Chill Casting Contact Cooling Water. EPA is proposing to change pH requirement from 7.0–10.0 to 6.0–10.0 when certain conditions are met for Direct Chill Casting Contact Cooling Water in each provision. The requirement which, at present, states that "the pH shall be within 7.0 to 10.0 at all times," is revised to state that "the pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times." The petitioners argued that the effluent limitations for the other pollutant parameters for this waste stream can be met when the pH is in the range of 6.0 to 10.0. The data the Agency collected from this waste stream indicates that it may sometimes be relatively clean and compliance with the BAT limitations may be possible without adjusting the pH. Accordingly, the Agency has agreed to propose a broader pH requirement for direct chill casting contact cooling water if it is discharged separately without commingling with any other wastewater.

D. Section 467.02 (Definitions). The Agency is proposing to add a definition of "hot water seal". A hot water seal is defined as a heated water bath (heated to approximately 180° F) used to seal the surface coating on formed aluminum which has been anodized and coated. In establishing an effluent allowance for this operation, the hot water seal shall be classified as a cleaning or etching rinse. This reflects the fact that the hot water seal bath has wastewater characteristics more similar to cleaning or etching rinses than to other baths.

E. Preamble Language to 40 CFR Part 467.—1. *Nonscope waters.* Waste streams not given flow allowances in the regulation (such as noncontact cooling water) do not warrant national effluent limitations or standards because they are generally not contaminated or occur at only one or two plants. EPA has agreed to include the following language clarifying the discussion of nonscope waters that was included in the final preamble (48 FR 49140).

"To account for site-specific wastewater sources for which the permit writer in his best professional judgment determines that co-treatment with process wastewater is appropriate, the permit writer must quantify the discharge rate of the waste stream. The mass allowance provided for the waste stream is then obtained from the product of the discharge rate and treatment performance of the technology basis of the promulgated regulation. For example, if the permit writer determines that contaminated ground water seepage requires treatment, he must determine the flow rate of contaminated water to be treated. He then can determine the appropriate model treatment technology by referring to the technical development document. Treatment effectiveness values are presented in Section VII of the Development Document. The product of the discharge rate and treatment performance is then the allowed mass discharge. This quantity can then be added to the other building blocks (i.e., mass discharge for the regulated streams) to determine total allowed mass discharge."

2. *Discharge Allowance for Hot Water Seal.* EPA is proposing to clarify the BPT discussion of miscellaneous waste streams (Section V. C. of the October 24, 1983 preamble) by adding a phrase to a sentence which appeared at the end of the bottom paragraph, middle column 48 FR 49131 of the final preamble. This sentence at present reads: "The miscellaneous nondescript wastewater flow allowance is production normalized to a plant's core production and covers waste streams generated by maintenance, clean-up, ultrasonic ingot scalping, processing area scrubbers, and dye solution baths and seal baths (along with any other cleaning or etching bath) when not followed by a rinse." The Agency proposes to clarify this sentence as follows: "The miscellaneous nondescript wastewater flow allowance is production normalized to a plant's core production and covers waste streams generated by maintenance, clean-up, ultrasonic testing, roll grinding of caster rolls, ingot scalping, processing area scrubbers, and dye solution baths and seal baths (along with any other cleaning or etching bath, except a hot water seal) when not followed by a rinse."

EPA also proposes to clarify the response to comment number 7 in section IX of the October 24, 1983 preamble (48 FR 49141) by including the following sentence in the preamble:

"The hot water seal bath has high flow and, therefore, is not included in the miscellaneous wastewater sources allowance, but is considered as an etch line rinse for the purpose of calculating pollutant discharge allowances."

IV. Environmental Impact of the Proposed Amendments to the Aluminum Forming Regulation

EPA estimates that 112 to 132 plants will be affected by this proposed rule. The Agency estimates that this amendment would result in the discharge of an additional 500 kg/yr of toxic metal pollutants and cyanide. This is an increase of 3 percent of the estimated mass that would be discharged by existing sources in accordance with the existing regulation.

V. Economic Impact of the Proposed Amendments

The proposed amendment will not alter the recommended technologies for complying with the aluminum forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 48 FR 49134). These proposed amendments will not alter the determinations with respect to the economic impact on aluminum formers.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, like the regulation promulgated October 24, 1983, is not

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major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VIII. Regulatory Flexibility Analysis

Public Law 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the October 24, 1983 final Aluminum forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (48 FR 49135). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 467

Aluminum forming, Water pollution control, Waste treatment and disposal.

Dated: March 6, 1986.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA is proposing to amend 40 CFR Part 467 as follows:

PART 467—ALUMINUM FORMING POINT SOURCE CATEGORY

1. The authority citation continues to read as follows:

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 467.02 [Amended]

2. Section 467.02; *general definitions*, is amended to add a definition of "hot water seal." Paragraphs (m) through (z) are redesignated (n) through (aa) respectively. A new Paragraph (m) is added to read as follows:

* * * * *

(m) Hot water seal is a heated water bath (heated to approximately 180 °F) used to seal the surface coating on formed aluminum which has been anodized and coated. In establishing an effluent allowance for this operation, the hot water seal shall be classified as a cleaning or etching rinse.

* * * * *

3. Section 467.15 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" in all of the following tables in this section to read as follows:

§ 467.15 Pretreatment standards for existing sources.

* * * * *

SUBPART A.—CORE WITH AN ANNEALING FURNACE SCRUBBER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with neat oils	
* * *	*	*
Oil and grease (alternate monitoring parameter)	4.2	2.1

SUBPART A.— CORE WITHOUT AN ANNEALING FURNACE SCRUBBER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with neat oils	
* * *	*	*
Oil and grease (alternate monitoring parameter)	2.9	1.5

SUBPART A.—CONTINUOUS SHEET CASTING LUBRICANT

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cast	
* * *	*	*
Oil and grease (alternate monitoring parameter)	0.10	0.052

* * * * *

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

4. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Solution Heat Treatment Contact Cooling Water" to read as follows:

* * * * *

SOLUTION HEAT TREATMENT CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum quenched	
* * *	*	*
Oil and grease (alternate monitoring parameter)	110	53

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

* * * * *

5. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Bath" to read as follows:

* * * * *

CLEANING OR ETCHING BATH

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameters)	9.3	4.7

* * * * *

§§ 467.15, 467.25, 467.55 and 467.65 [Amended]

6. Sections 467.15, 467.25, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Rinse" to read as follows:

* * * * *

CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameters)	73	36

* * * * *

§§ 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 [Amended]

7. Sections 467.15, 467.25, 467.35, 467.45, 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Cleaning or Etching Scrubber Liquor" to read as follows:

* * * * *

CLEANING OR ETCHING SCRUBBER LIQUOR

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
* * *	*	*
Oil and grease (alternate monitoring parameter)	100	50

* * * * *

8. Section 467.22, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

§ 467.22 Effluent Limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

SUBPART B.—DIRECT CHILL CASTING CONTACT COOLING WATER

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

§ 467.24 [Amended]

9. Section 467.24, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

§ 467.25 [Amended]

10. Section 467.25 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" in the table titled "Core" in this section to read as follows:

* * * * *

SUBPART B.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rolled with emulsions	
* * *	*	*
Oil and grease (alternate monitoring parameter)	6.8	3.4

* * * * *

§§ 467.25 and 467.35 [Amended]

11. Sections 467.25 and 467.35 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" in the tables titled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

DIRECT CHILL CASTING CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cast	
* * *	*	*
Oil and grease (alternate monitoring parameters)	69	35

* * * * *

§ 467.32 [Amended]

12. Section 467.32, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows:

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

13. Section 467.33 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

SUBPART C.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
Aluminum	25	13

* * * * *

14. Section 467.34, is amended to revise the footnote for the table entitled "Direct Chill Casting Contact Cooling Water" to read as follows :

* * * * *

§ 467.34 New service performance standards, direct chill casting contact cooling water.

* * * * *

[1] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste stream is discharged separately and without commingling with any other wastewater in which case the pH shall be within the range of 6.0 to 10.0 at all times.

* * * * *

15. Section 467.35 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.35 Pretreatment standards for existing sources.

* * * * *

SUBPART C.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
TTO	2.7	
Oil and grease (alternate monitoring parameter)	200	100

* * * * *

16. Section 467.35 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the following tables to read as follows:

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SUBPART C.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum extruded	
* * * * *		
Oil and grease (alternate monitoring parameter)	18	8.8

SUBPART C.—EXTRUSION PRESS LEAKAGE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum extruded	
* * * * *		
Oil and grease (alternate monitoring parameter)	77	39

SUBPART C.—PRESS HEAT TREATMENT CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum quenched	
* * * * *		
Oil and grease (alternate monitoring parameter)	110	53

* * * * *

§ 465.45 [Amended]

17. Section 465.45 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the following tables to read as follows:

SUBPART D.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum forged	
* * * * *		
Oil and grease (alternate monitoring parameter)	2.6	1.3

SUBPART D.—FORGING SCRUBBER LIQUOR

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum forged	
* * * * *		
Oil and grease (alternate monitoring parameter)	4.9	2.5

* * * * *

18. Section 467.45 is amended by revising the table entitled "Cleaning or Etching Rinse" to read as follows:

§ 467.45 Pretreatment Standards For Existing Sources.

* * * * *

SUBPART D.—CLEANING OR ETCHING RINSE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum cleaned or etched	
Chromium	1.7	0.7
Cyanide	1.2	0.5
Zinc	5.7	2.4
TTO	2.7	
Oil and grease (alternate monitoring parameter)	200	100

* * * * *

§ 467.55 [Amended]

19. Section 467.55 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tabled titled "Core" to read as follows:

SUBPART E.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum drawn with neat oils	
* * * * *		
Oil and grease (alternate monitoring parameter)	2.6	1.3

* * * * *

§§ 467.55 and 467.65 [Amended]

20. Section 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Continuous Rod Casting Lubricant" to read as follows:

* * * * *

CONTINUOUS ROD CASTING LUBRICANT

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rod cast	
* * * * *		
Oil and grease (alternate monitoring parameter)	0.10	0.052

* * * * *

21. Sections 467.55 and 467.65 are amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the tables titled "Continuous Rod Casting Contact Cooling Water" to read as follows:

* * * * *

CONTINUOUS ROD CASTING CONTACT COOLING WATER

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum rod cast	
* * * * *		
Oil and grease (alternate monitoring parameter)	10	5.1

* * * * *

§ 467.65 [Amended]

22. Section 467.65 is amended by revising the values for "Oil and grease (alternate monitoring parameter)" for the table titled "Core" to read as follows:

SUBPART F.—CORE

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of aluminum drawn with emulsions or soaps	
* * * * *		
Oil and grease (alternate monitoring parameter)	25	12

* * * * *

[FR Doc. 86-5747 Filed 3-18-86; 8:45 am]

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federal register

**Wednesday
March 19, 1986**

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 273

Education Contracts Under Johnson-O'Malley Act; Run-Off Vote on Distribution Formula; Proposed Rules

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 273

Education Contracts Under Johnson-O'Malley Act; Run-Off Vote on Distribution Formula

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Run-off vote on distribution formula under the Johnson-O'Malley Act.

SUMMARY: This notice advises tribes recognized by the Secretary of Interior that the recent tribal vote on the Johnson-O'Malley program formula options did not result in any formula receiving a majority vote as required by Pub. L. 95–561. Therefore, the Bureau will conduct a run-off vote on the two formulas receiving the most votes for distribution of supplemental funds under the Johnson-O'Malley Act.

FOR FURTHER INFORMATION CONTACT: Maribel W. Printup, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, DC 20240, telephone number (202) 343–6364.

SUPPLEMENTARY INFORMATION: On August 23, 1984, a notice was published in the **Federal Register** (49 FR 33585) advising tribes recognized by the Secretary of the Interior that the Bureau intended to amend the Johnson-O'Malley program distribution formula. Tribes were invited to comment on the four formula options included in the notice or to recommend additional formulas for prescribing equitable distribution of the Snyder Act funds to contractors.

Following the publication and during the sixty (60) day comment period, consultation meetings with tribes and tribal organizations were arranged and conducted by the Bureau's Area Education Program Administrators and/or Agency Superintendents for Education. The opportunity to comment and/or submit additional alternatives was provided. Sixty-seven (67) comments were received on the four formulas along with five additional alternatives. Two of the alternatives could not be used. One could not be utilized in a national formula format and the other could not accommodate a pro-rata procedure based on the actual appropriated funds. The seven formula options presented for tribal vote included the four published options and three of the additional options. The sixty (60) day vote period was from December 3, 1985 through January 31, 1986.

Pub. L. 95–561, section 1102(b) requires that the formula receiving a majority of tribal votes, as evidenced by a vote count certified to the Secretary, will be adopted for distribution of funds.

Tribes, recognized by the Secretary of Interior, had one vote each. The votes were counted on February 14, 1986 and the results were certified by an independent Certified Public Accountant. No formula received over 50 percent of the vote. The two formulas receiving the most votes are as follows: Formula 1 received 51 votes (31 percent of the 162 votes cast); Formula 4 received 65 votes (40 percent of the votes); and 17 votes were declared invalid.

A run-off vote on Formulas 1 and 4 will be open for a sixty (60) day period. The formula which receives more than 50 percent of the vote of the eligible voting tribes will be adopted for distribution of funds and published in the **Federal Register**.

List of Subjects in 25 CFR Part 273

Government Contracts, Indians—Education, Indian-Self Determination.

Distribution Formulas

The distribution formulas to be voted upon by tribes are as follows:

Formula 1 is the current formula used in the distribution of funds. This is based on the number of eligible Indian students to be served, the national average per pupil expenditure and a weighting factor which is intended to take into account the differences in education costs among the States. The weighting factor is the quotient obtained by dividing the State's cost of delivering educational services by the national average; except that for every State whose cost is at or below the national average, that State's cost will be based on the national average.

Formula 4 is the equal distribution of funds for all eligible students. The per pupil amount is the quotient obtained by dividing the appropriated amount by the total number of students served. (There is no weight factor).

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs under 209 DM8.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 86-6115 Filed 3-18-86; 8:45 am]

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H.J. Res. 371/Pub. L. 99-257

To designate March 16, 1986, as "Freedom of Information Day." (Mar. 14, 1986; 100 Stat. 41; 1 page) Price: $1.00

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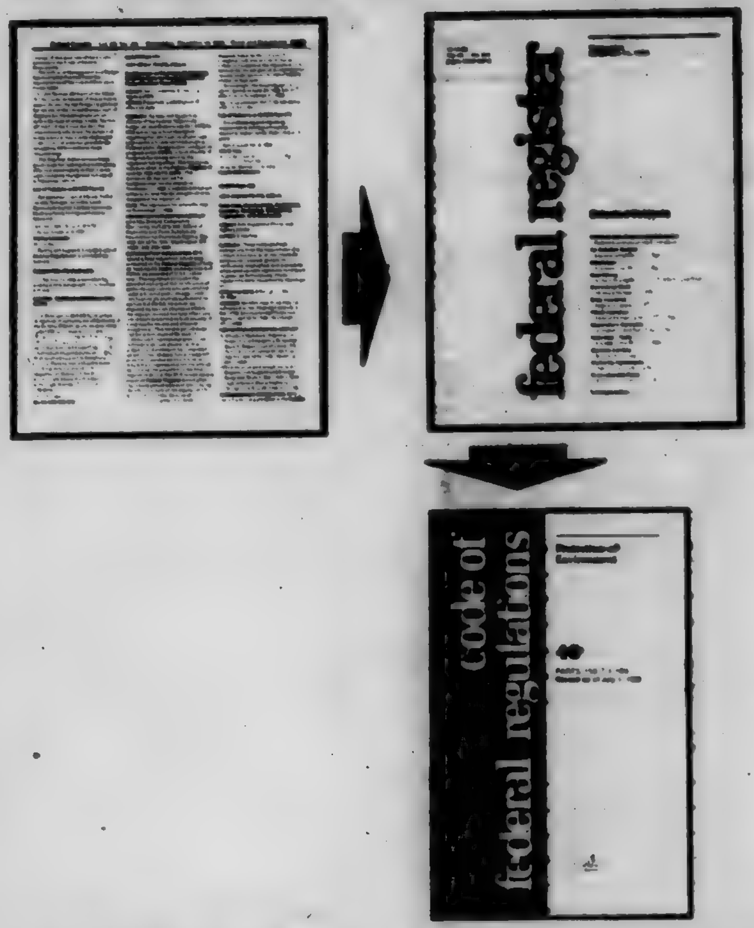

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Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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Air Pollution Control
Environmental Protection Agency
Animal Diseases
Animal and Plant Health Inspection Service
Aviation Safety
Federal Aviation Administration
Banks, Banking
Federal Reserve System
Bridges
Coast Guard
Civil Rights
Tennessee Valley Authority
Credit
Federal Reserve System
Fisheries
National Oceanic and Atmospheric Administration
Government Property Management
General Services Administration
Handicapped
Federal Deposit Insurance Corporation
Marketing Agreements
Agricultural Marketing Service
Marine Safety
Coast Guard

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Room 239,
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RESERVATIONS: Elizabeth Stout,
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303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

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1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:
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Plant Diseases and Pests
Animal and Plant Health Inspection Service

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-309]

Africanized Honey Bee; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Domestic Quarantine Notices by removing the "Africanized Honey Bee" regulations. Prior to the effective date of this document, these regulations quarantined a portion of Kern County in California because of the Africanized honey bee and restricted the interstate movement of bees of the genus *Apis* (in any life stage) and certain other regulated articles from the quarantined portion of Kern County. It has been determined that bees in the previously quarantined area are no longer a threat to other bees, and that the regulations are no longer necessary.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: A document published in the Federal Register on December 27, 1985 (50 FR 52929-52931) proposed to amend the Domestic Quarantine Notices (7 CFR Part 301 *et seq.*) by removing the "Africanized Honey Bee" regulations (previously contained in 7 CFR 301.94 *et seq.;* referred to below as the regulations). Comments were solicited for 30 days after publication of the proposed rule. No comments were received.

Prior to the effective date of this document, the regulations quarantined a portion of Kern County, California, and restricted the interstate movement from the quarantined area of the following regulated articles:

(a) Bees of the genus *Apis*, in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unprocessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

The regulations were established to prevent the artificial spread of the Africanized honey bee (*Apis mellifera scutellata*) into noninfested areas of the United States. Based on surveys conducted by the Department and the California Department of Food and Agriculture, it has been determined that the regulations are no longer necessary for that purpose. For reasons discussed in the proposal and in this document, the proposal to remove the regulations is adopted.

Effective Date

The final rule relieves restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete the restrictions. Therefore, in accordance with the provisions of 5 U.S.C. 553, the final rule is made effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment deletes restrictions previously imposed on the interstate movement of certain bees and other regulated articles from a portion of Kern County, California. The previously regulated articles that are affected by this final rule represent significantly less than one percent of such articles in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Africanized honey bee.

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Africanized Honey Bee

§301.94-301.94-9 [Removed]

Accordingly, 7 CFR Part 301 is amended by removing "Subpart—Africanized Honey Bee" (§§ 301.94 through 301.94-9).

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Done at Washington, DC, this 14th day of March 1986.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-6079 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California Reapportionment of Valencia Orange Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action reapportions the membership on the Valencia Orange Administrative Committee to assure equitable representation among the different marketing organizations in the industry.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

This action increases the number of members on the Valencia Orange Administrative Committee representing "other cooperatives" from two to three and decreases the number of members representing independents from three to two. Such allocation of representation reflects the proportional amount of Valencia oranges handled by the respective types of marketing organizations.

It is estimated that approximately 104 handlers of California-Arizona Valencia oranges will be subject to regulation under the marketing order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This rule is issued under Marketing Order 908, as amended (7 CFR Part 908, 50 FR 1429, 34076), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as "the act". It is hereby found that this action will tend to effectuate the declared policy of the act.

On January 14, 1986, the Valencia Orange Administrative Committee (VOAC), which administers the marketing order locally, voted to recommend to the Department that membership on the committee be reallocated to more accurately reflect the quantity of oranges handled by the various marketing organizations eligible for membership on the committee. The committee recommended that the number of members in the other cooperative category of membership be increased by one grower member and that the members in the independent or unaffiliated category of membership be decreased by one grower member. Currently, there are two other cooperative member positions (one grower and one handler and their respective alternates) and three independent member positions (two growers and one handler and their respective alternates).

The committee's recommendation was based on § 908.29(n) of the marketing order which states that the committee may, with the approval of the Secretary, "reapportion the number of grower members or handler members on the Valencia Orange Administrative Committee who are nominated pursuant to § 908.22 (c) and (d). Any such changes shall be based, insofar as practicable, upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations, provided that each of the grower groups described in § 908.22 (c) and (d) shall be entitled to nominate at least one grower and one handler member together with their respective alternates." As of December 26, 1985, other cooperative marketing organizations handled 20.34 percent (4,848,070 cartons) of the Valencia oranges shipped to fresh domestic markets while independents handled 13.98 percent (3,332,700 cartons).

Notice of this rule was published in the February 14, 1986, issue of the **Federal Register** (51 FR 5530) and comments were requested thereon. Eight comments were received from growers, handlers, and marketers within the Valencia orange industry. Those commenters addressed a number of issues.

All commenters claimed that three grower cooperatives which currently operate in the California-Arizona Valencia orange industry, but which do not market their own fruit, should be placed in the independent category for representational purposes on the committee. The comments point out that, since such cooperatives do not market their own fruit, they are more "independent" in nature than "cooperative." However, § 908.104 of the order defines cooperative marketing organizations as those Capper-Volstead Cooperatives which either market their members' oranges or which perform handling functions, as defined in § 908.11, for their members' oranges. During the 1984-85 season, these three organizations applied for and received prorate bases and allotments to handle Valencia oranges under the terms of the marketing order. In addition, each organization paid assessments on oranges handled in fresh domestic markets. Thus, each meets the definition of "handle" specified in the marketing order. Each organization is considered to be a Capper-Volstead cooperative. Therefore, under current rules and regulations, all three organizations are correctly placed in the "other cooperative" category for representational purposes on the VOAC.

Two commenters proposed that reapportionment should be postponed until it can be dealt with under formal rulemaking procedures. Additional commenters claimed that the act requires formal rulemaking procedures in order to accomplish committee reapportionment and that such reapportionment accomplished by informal rulemaking is not authorized by the act. Some commenters also believed that definitions of the terms "marketing affiliation" and "handle" as used in connection with committee apportionment should be included in rulemaking proceedings on amendment of the order.

As previously indicated, § 908.29(n) of the Valencia orange order provides for reapportionment of VOAC membership between the "other cooperative" and "independent" categories based upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations. Accordingly, informal rulemaking procedures are authorized when such changes in proportionate amounts occur, as in the current situation. Postponing such reapportionment until formal rulemaking procedures can be accomplished would not be responsive to recent changes in industry structure. Failure to promulgate rules effectuating reapportionment would disregard the requirements of the order as it now exists. While refinements in the definitions of "marketing affiliation" and "handle" may result from a formal rulemaking procedure, such refinements are not necessary for the Department to proceed with this action.

One commenter stated that, since the structure of the VOAC was the subject of a formal rulemaking proceeding which concluded in 1985, the subject could not now be addressed under informal rulemaking. The recent amendment to the Valencia orange order was based on evidence of record developed during the rulemaking proceeding. Information on recent changes in the volume of Valencia oranges handled by the respective marketing groups was not available during the amendatory proceeding and therefore was not considered at that time.

A majority of the commenters expressed the opinion that reducing the number of independent members would result in a reduction or underrepresentation of diverse viewpoints on the VOAC. In fact, one commenter claimed that independent growers and handlers were the only individuals with such diverse viewpoints. While the number of independent members will be reduced by one, the remaining two members will have ample opportunity to express the diversity of opinions of their constituency. Also, any individual may attend committee meetings, talk or correspond with committee members or staff, or otherwise communicate their concerns. It is also unreasonable to conclude that only independent members have diverse opinions. A review of minutes of past VOAC meetings indicates that members freely express their views and opinions. Many proposed committee actions fail when put to a vote because of that diversity, and those actions which pass do not always do so unanimously.

Two commenters stated that this action could have a detrimental impact on small businesses by reducing such businesses' voice on the committee. However, as indicated above, individuals representing such small businesses will not have reduced access to committee members or staff and may continue to have their views made known.

One commenter said that this action is illegal because the Department has already conducted nomination meetings at which only two independent members were nominated. This is incorrect. Three independent members were nominated on February 26, 1986. However, only two independent members and their respective alternatives were selected by the Secretary to serve. This action was taken to preclude the possibility of selecting an individual who would serve for less than a month if the committee was reapportioned in the near future. In the interim, a holdover member in the independent category is serving on the committee to ensure that, until this rule is effective, there are three industry members representing independents—in full compliance with the marketing order. Upon reapportionment, the holdover position will be abolished, and an additional grower member will be nominated and selected to represent the other cooperatives.

One commenter stated that the percentages of fresh domestic oranges handled by other cooperative marketing organizations (20.34 percent) and independent marketing organization (13.98 percent) during the 1985 season are unverified and unaudited by the Department. However, such percentages were calculated from committee records derived from handler reports which were submitted to the committee pursuant to requirements of the marketing order. The Department has taken the necessary steps to verify their accuracy.

All comments submitted with respect to this final rule have been considered in full. While the comments raise some issues which deserve additional industry consideration, those issues could be resolved in a formal rulemaking proceeding expected to begin later this year. Resolution of those issues should not take precedence over the adoption of this final rule, and order requirements would not be met if this rule was delayed until formal rulemaking on those related issues was completed. It is found that this action will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The current term of office for committee members expired on January 31, 1986; and (2) a new committee should be appointed prior to the completion of deliberations on the marketing policy for the 1985-86 Valencia orange season.

List of Subjects in 7 CFR Part 908

California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Paragraphs (a)(2) and (3) of § 908.102 are revised to read as follows:

§ 908.102 Nomination procedure.

(a) * * *

(2) All cooperative marketing organizations which are not qualified to nominate member and alternate members pursuant to § 908.22(b), or the growers affiliated therewith, shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee. The vote of each such organization shall be weighted, as provided in § 908.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Not less than five meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a)(1) and (2) of this section may vote. At each such meetings, the growers present shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member. The number of ballots to be cast in selecting the nominees at any such meeting shall be determined at that meeting. All growers at any such meeting shall submit their names and addresses to the agent of the Secretary.

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Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-6279 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1985–86 Crop Year for Certain Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule designates final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins from California's 1985 production. They are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome supply situation facing the raisin industry. Free raisins can be shipped immediately to any market, while reserve raisins must be held by handlers in a pool for the account of the Raisin Administrative Committee (Committee). The Committee works with the USDA in administering the marketing order program. Under the order, reserve raisins may be: Sold later by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; sold to government agencies; or disposed of in other outlets noncompetitive with those for free raisins. Almost the entire 1985–86 reserve pool has been designated to be used in the 1986 raisin diversion program.

EFFECTIVE DATE: August 1, 1985 through July 31, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities by this action, if present at all, is not significant.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The relevant provisions of this part require that the percentages designated herein for the 1985–86 crop year apply to all Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins acquired by handlers from the beginning of that crop year; (2) handlers are marketing 1985–86 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee for these varietal types available to handlers; (3) this action relieves restrictions on handlers; and (4) handlers are aware of this action which was unanimously recommended by the Committee at an open meeting and need no additional time to comply with these percentages. In fact, many handlers have been conducting their operations on the basis that no more than the full trade demand would be released for immediate sale to domestic and export markets.

This action designates final free and reserve percentages for the 1985–86 crop year for Natural (sun-dried) Seedless raisins of 59 percent and 41 percent, for Dipped Seedless raisins of 74 percent and 26 percent, for Oleate and Related Seedless raisins of 85 percent and 15 percent, for Zante Currant raisins of 74 percent and 26 percent, and for Monukka raisins of 100 percent, and 0 percent, respectively. These percentages apply to all standard raisins of these varietal types acquired by handlers during the 1985–86 crop year.

These final marketing percentage designations are established pursuant to §§ 989.54 and 989.55 of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Pursuant to § 989.54(a), on or before August 15 of each crop year, the Committee is required to hold a meeting to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee is required to compute a trade demand under a formula prescribed in that paragraph. In accordance with these provisions, the Committee computed and announced a trade demand of 211,045 tons for Natural (sun-dried) Seedless raisins, 9,489 tons for Dipped Seedless raisins, 4,172 tons for Oleate and Related Seedless raisins, 2,584 tons for Zante Currant raisins, and 1,556 tons for Monukka raisins.

As required under § 989.54(b), the Committee met on October 10, 1985, and computed and announced preliminary free and reserve percentages for each of these varietal types. The Committee determined that the field price for all five varietal types was firmly established. Hence, in accordance with § 989.54(b), preliminary free and reserve percentages were computed and announced by the Committee for the five varietal types to release 65 percent of each type's computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. Section 989.54(d) also provides that the difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage.

On December 30, 1985, the Committee met and recommended final free and reserve percentages for the 1985–86 crop year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins.

The Committee's final estimate of 1985–86 production of Natural (sundried) Seedless raisins totaled 359,221 tons, which includes the 1985 diversion tonnage of 59,378 tons (6,094 tons more than its preliminary estimate of 353,127 tons). Dividing the computed trade demand of 211,045 tons by the final estimate of production results in a final free percentage of 58.75 percent. The Committee rounded that percentage to 59 percent which results in a final reserve percentage of 41 percent.

For Dipped Seedless raisins, the Commttee's final estimate of 1985–86 production totaled 12,765 tons (332 tons more than its preliminary estimate of 12,433 tons). Dividing the computed trade demand of 9,489 tons by the final estimates of production for this varietal type results in a free percentage of 74.33 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Oleate and Related Seedless raisins, the Committee's final estimate of 1985–86 production totaled 4,907 tons (127 tons less than its preliminary estimate of 5,034 tons). Dividing the computed trade demand of 4,172 tons by the final estimate of production for this varietal type results in a free percentage of 85.02 percent. The Committee rounded that percentage to 85 percent which results in a final reserve percentage of 15 percent.

For Zante Currant raisins, the Committee's final estimate of 1985–86 production totaled 3,509 tons (383 tons more than its preliminary estimate of 3,126 tons). Dividing the computed trade demand of 2,584 tons by the final production estimate results in a free percentage of 73.63 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Monukka raisins, the Committee's final estimate of 1985–86 production totaled 1,492 tons (708 tons less than its preliminary estimate of 2,200 tons). Because the computed trade demand of 1,556 tons exceeds the final production estimate, a free percentage of 100 percent must be established and the reserve percentage shall be 0 percent.

Pursuant to § 989.54(c), the Committee at its December 30, 1985, meeting, computed and announced interim free percentages of 58 percent for Natural (sun-dried) Seedless, 73 percent for Dipped Seedless, 84 percent for Oleate and Related Seedless, 73 percent for Zante Currants, and 99 percent for Monukka raisins. These percentages released almost all of the computed trade demand for each of these varietal types. This decision reflects the strong marketing conditions which currently exist in domestic and export markets, and the Committee's belief that it's final production estimates are accurate.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentage for the 1985–86 crop year for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.238 is added to Subpart—Supplementary Regulations to read as follows:

Note. The following section will not be published in the Code of Federal Regulations.

§ 989.238 Final free and reserve percentages for the 1985–86 crop year.

The percentage of standard Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins acquired by handlers during the crop year beginning August 1, 1985, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	59	41
Dipped Seedless	74	26
Oleate and Related Seedless	85	15
Zante Currant	74	26
Monukka	100	0

Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-6062 Filed 3-19-86; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0565]

Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting final rules amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). Concurrently, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). The amendments are being adopted after consideration of public comments received on proposed amendments to Regulation D (51 FR 27, January 2, 1986) and Regulation Q (51 FR 31, January 2, 1986).

The amendments are due to the expiration on March 31, 1986, of the Depository Institutions Deregulation Committee ("DIDC") and with it the authority to set regulatory interest rate ceilings on deposits other than demand deposits. In addition, the DIDC's rules authorizing money market deposit accounts ("MMDAs") expire on that date along with the provisions in Regulation Q prescribing early withdrawal penalties. The statutory prohibition against the payment of interest on demand deposits remains in effect.

Generally, the amendments to Regulation D are intended to preserve the current scheme of reserve requirements for transaction accounts, savings deposits (including MMDAs), and time deposits. The amendments to Regulation D include revised minimum early withdrawal penalties designed to distinguish between certain types of deposits for reserve requirement purposes. The amendments also include minor changes to the definitions in Regulation D and clarification of existing requirements for classifying accounts.

At this time, the Board is also adopting other technical amendments to Regulations D and Q. The Board will be amending the advertising rule in its Regulation Q at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778) or Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, Thomas Simpson, Deputy Associate

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Director (202/452-3546), Division of Research and Statistics, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b) of the *Federal Reserve Act*, 12 U.S.C. 461(b), provides the Board with the authority to impose reserve requirements on deposits held by depository institutions, and section 19(a) of that Act, 12 U.S.C. 461(a), gives the Board the authority to define terms used in section 19 and to prevent evasions of section 19. Pursuant to this authority, the Board promulgated Regulation D. In the past, Regulation D definitions of deposit categories have been used in the regulation of the payment of interest on deposits under the Board's Regulation Q—Interest on Deposits (12 CFR Part 217), and this practice will continue. One such definition is the money market deposit account ("MMDA").[1]

The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320) directed the DIDC to create the MMDA. As implemented by the DIDC, the MMDA permits depositors limited authority to make third party payments from the account. Senate Joint Resolution 97–271 (Pub. L. 97–457) also provided that the MMDA would not be considered a "transaction account" for purposes of Regulation D, provided that third-party payments were limited. Consequently, Regulation D excluded the MMDA from the definitions of "transaction account" and "demand deposit" even though funds could be withdrawn from an MMDA by check or draft.

On March 31, 1986, the regulations of the DIDC implementing the MMDA expire along with the regulatory limitations on the payment of interest on deposits and the prescribed early withdrawal penalties.[2]

In order to take these changes into account and to make clarifying and technical changes, the Board is amending its Regulation D. The amendments are designed to: (1) Preserve the MMDA, largely in its current form; (2) establish limited early withdrawal penalties for reserve requirement purposes; and (3) remove the $150,000 limit on business savings deposits and clarify the limit on telephone transfers from such accounts. In so doing, the amendments redefine the terms "transaction account," "savings deposit" and "time deposit" and, with certain exceptions, preserve the current scheme of reserve requirements on deposits. The amendments also make other clarifying and technical changes to Regulation D.

The principal amendments are discussed in detail below.

Preservation of the MMDA

The current Regulation D incorporates by reference the regulatory description of the MMDA adopted by the Depository Institutions Deregulation Committee ("DIDC"). Because the DIDC and its rules expire on March 31, 1986, Regulation D, as amended, will include the descriptive characteristics of the MMDA for the purposes of the regulation. Generally, the MMDA continues to be limited to six preauthorized, automatic, or telephone transfers per month. Three of the six transfers may be by check payable to third-parties. Consequently, an existing MMDA will continue to be treated as a "savings deposit" under the amended rule, provided the applicable transfer limitations are adhered to. Generally, comments favored retention of the current MMDA treatment.

The amendments also liberalize the treatment of certain transfers from MMDAs. Under existing rules, loan payments from an MMDAs. Under existing rules, loan payments from an MMDA to the institution itself are counted toward the six transfer limit, while such payments made from an ordinary savings account are not counted toward the three transfer limit currently applicable to such accounts for preauthorized or telephone transfers. Consequently, a depositor may make unlimited loan repayments from a savings account but only three per month from an MMDA. Several comments suggested treating both accounts similarly to reduce monitoring and administrative costs. The revised regulation provides for unlimited loan payments to the institution from an MMDA as well as from a savings deposit.

Currently, any account from which a payment can be made to a third party by debit card is a "transaction account." The Board's proposal would have permitted debit card transfers to third parties from MMDAs so long as they were counted towards the three check or draft limitation. The revised Regulation D incorporates this change.

Time Deposits and Early Withdrawals

Currently, section 19(j) of the Federal Reserve Act provides that a depositor may withdraw funds from a time deposit before maturity only under the rules and regulations of the Board. Under this authority, Regulation Q currently prescribes certain minimum penalties for early withdrawals from time deposits. Early withdrawal penalties help to maintain the distinction between a "transaction account" and a "time deposit" and to maintain the differences in maturities on time deposits primarily to enforce interest rate ceilings. The express statutory authority to prescribe rules regarding early withdrawals from time deposits expires on March 31, 1986 and the Board no longer will require such a penalty under that authority. Nevertheless, the Board still believes that the early withdrawal of funds from time deposits undermines the distinction between a "transaction account" and a "time deposit" and between time deposits of varying maturities for monetary policy purposes under Regulation D.

The Board is amending its definition of "time deposit" to provide that a time deposit with a minimum maturity of seven days or more from which withdrawals are permitted within the first six days after the date of deposit will be a "time deposit" only if it meets the other criteria for a time deposit and is subject to a minimum early withdrawal penalty equal to seven days' simple interest on the amount withdrawn.

Under Regulation D, nonpersonal time deposits with a maturity of one and one-half years or more are subject to a zero percent reserve requirement while nonpersonal time deposits with a shorter maturity are subject to a three percent reserve requirement. If a nonpersonal time deposit has a stated maturity or notice period of one and one-half years or more and early withdrawals are permitted after six days but within one and one-half years after the date of deposit, it must be subject to a minimum penalty equal to one month's simple interest on the amount withdrawn in order to be treated as a "nonpersonal time deposit" with a maturity of one and one-half years or more for purposes of Regulation D.

Any deposit failing to meet either the definition of "time deposit" or "savings deposit" will be considered a "transaction account" and will be subject to the transaction account reserve requirements.

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[1] Similar categories were established under comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

[2] Statutory limitations, such as the prohibition against the payment of interest on demand deposits and the eligibility requirements for NOW and ATS accounts, are not affected by the expiration.

The proposal had provided that after a partial early withdrawal, a deposit ceased to be a time deposit unless the remaining balance was placed in a new account. A number of commentators indicated that it would be burdensome to establish separate new accounts in such cases. Accordingly, the final rule provides that the remaining balance in a time deposit after a partial early withdrawal will continue to be regarded as a "time deposit" if subsequent early withdrawals are subject to the seven day penalty for withdrawals made within six days after the last partial withdrawal.

Several commentators expressed concern over the implementation of the early withdrawal penalty provisions in the definition of "time deposit." This issue was of particular concern to the National Credit Union Administration which noted that for Federal credit unions, limitations on early withdrawals were deregulated in 1982. The NCUA requested a transition period to allow modification of credit union forms.

In general response to these comments, under the final rule, existing time deposits will continue to be time deposits. The new early withdrawal penalties must be imposed on accounts opened on or after April 1, 1986. In response to the NCUA's concerns, the final rule provides a longer implementation period for institutions that currently lack a regulatory requirement for such a penalty, as in the case of Federal credit unions or nonfederally insured institutions that have no such penalty prescribed by state law or regulation. For these institutions, the penalty must be included in any account opened, renewed or to which additional deposits are made on or after January 1, 1987.[3]

Commentators also suggested retention of the current exceptions to the early withdrawal penalty rules. The final rule incorporates into Regulation D the exceptions for early withdrawals penalties currently specified by Regulation Q.

Additional Early Withdrawal Penalties

In its proposal, the Board indicated an interest in retaining early withdrawal penalties in order to assist institutions in matching the maturities of assets and liabilities for purposes of safety and soundness of the institutions. A number of comments supported this concept. The Board also indicated that it would consult with the federal depository institution regulatory agencies concerning the appropriate structure and use of penalties for this purpose. This issue has been raised with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Home Loan Bank Board. In proposed regulations adapting to the expiration of the DIDC, the Federal Home Loan Bank Board also requested comment on the retention of early withdrawal penalties for this purpose. The Board intends to study the economic and legal issues relating to imposing early withdrawal penalties for safety and soundness purposes in cooperation with the other federal depository institution regulatory agencies. In the interim, the Board continues to believe that such penalties serve a useful purpose in maintaining the stability of an institution's liabilities, and institutions are encouraged to consider including them in their time deposit contracts.

Transfers From Savings Deposits

Under existing regulations, a depositor may make up to three preauthorized or telephone transfers per month from a savings deposit to another account of the depositor or a third person. MHDAs permit up to six preauthorized, telephone or automatic transfers per month.

The final rule permits automatic transfers to be included within the three transfers per month permitted for savings deposits, in order to make the transfer limitations more consistent with the transfer limitations applicable to MMDAs.

Enforcement of Transfer Limitations

Under the proposed rule and the final rule, the definition of "savings deposit" includes an ordinary savings account and an MMDA unless the depositor is authorized to exceed the transfer limitations for such accounts. If the depositor is authorized to exceed the transfer limitation, the account would be considered to be a "transaction account" for the purposes of Regulation D reserve requirements. (Such account would not be a "demand deposit" for purposes of the Regulation Q prohibition against payment of interest on demand deposits if the depositor is eligible to hold another type of transaction account, such as a NOW account or an ATS account, that would permit the particular excess transfers.)

Commentators expressed concern that under the proposal, an excess transfer might result in automatic reclassification of the account even though the transfer was an isolated occurrence and the depository institution could not prevent the occasional excess transfer at the time it occurred. The final rule incorporates the procedures for monitoring accounts on an *ex post* basis that are currently specified in § 217.7(g)(5)(ii) of Regulation Q for MMDAs.

Under this procedure, institutions must contact customers who exceed the transfer limitations on more than an occasional basis. For customers who continue to violate the transfer limitations after being contacted, the institution must close the account or take away its transfer and draft capacities. If an institution continues to permit recurring excess transfers from a savings deposit or an MMDA or fails to maintain procedures to enforce the transfer limitations, the account may be determined to authorize such excess transfers and the institution may be required to reclassify the account as a "transaction account." For example, if the depositor is eligible to maintain a NOW account and excess transfers are made by check, the account may be required to be reclassified as a NOW account against which transaction account reserves will be required to be held. If the depositor is not eligible to hold a NOW account, the account may be required to be reclassified as a demand deposit on which interest could not be paid under Regulation Q.

Business Savings Deposits

The proposal removed the separate definition of savings deposit from Regulation Q and relied instead on the Regulation D definition. This change eliminated the current $150,000 limitation on business savings deposits, this bringing the treatment of business savings deposits in line with the treatment of MMDAs. All comments on the proposal to remove this limitation supported the change.

This change also limited business telephone transfers from a savings deposit to three per month. If a depository institution authorized a business depositor to exceed the applicable transfer limitation, however, the institution may be required to reclassify the account as a "demand deposit" because businesses are not

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[3] For institutions with an existing stock of deposit contract forms, the Board believes that early withdrawal penalties may be implemented with an addendum attached to the existing form. For example, the following language could be used to implement the seven day penalty: "Addendum to (*time deposit or the institution's name for such deposit*) issued to *(name of customer)* on *(date)*. This deposit has a maturity of *(state maturity)*. If it is withdrawn within the six (6) calendar days following the date of deposit, or within six (6) days following any partial withdrawal made prior to the maturity date, such withdrawal shall be subject to a minimum penalty of seven (7) days' simple interest on the amount withdrawn."

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authorized to maintain NOW accounts or ATS accounts. The final rule also retains this limitation.

Miscellaneous

1. The proposal treated transfers made by remote (or home) computer or other telecommunications access device, other than an ATM, as transfers counting toward the telephone transfer limitations. The few comments that were received on this issue were divided. The Board is amending its definitions of "transaction account" and "savings deposit" (including "MMDA") to clarify that each such transfer should be counted toward the monthly limitations because there is no practical difference between the customer using data signals from a site remote from the premises of the depository institution to order transfers and using oral commands over the telephone to order transfers.

2. A number of comments on the proposal expressed concern that the wording of the draft regulation seemed to indicate that the Board was seeking to place limits on withdrawals from savings deposits and MMDAs at ATMs where no such limits currently exist. The Board intended no such change. The final rule incorporates language currently found in Regulation Q delineating permissible withdrawals from MMDAs at ATMs in the definition of savings deposits, including the definition of MMDAs.

3. Under the existing definitions in Regulation D, the term "transaction account" includes demand deposits, NOW accounts, and ATS accounts. Currently, the term "demand deposit" in Regulation D includes any deposit that is not a "time deposit" or a "savings deposit." Currently, NOW accounts and ATS accounts are "savings deposits" and therefore are not "demand deposits." Under the revised definitions, the term "transaction account" continues to include "demand deposits," NOW accounts, and ATS accounts and specifically provides that the term includes any deposit that is not a "time deposit" or "savings deposit." The definition of "demand deposit" expressly excludes NOW accounts and ATS accounts. NOW accounts and ATS accounts enjoy a statutory exemption from the prohibition against the payment of interest on demand deposits and, under the amendments to Regulation Q being adopted concurrently with these amendments, the Regulation D definition of demand deposit is used in Regulation Q to define those accounts on which the payment of interest is prohibited.

4. The Board is making technical amendments to other portions of the regulation to remove obsolete terms and requirements. These technical amendments include the following provisions:

a. Section 204.3(h) of Regulation D provides for a phase-in of the carryover of excesses or deficiencies for depository institutions that report reservable liabilities weekly. Because the phase-in is now complete, the Board is simplifying the section and eliminating its obsolete phase-in schedule.

b. Section 204.4 prescribes transitional adjustments for computing federal reserve requirements. Reserve phase-in schedules were established in 1980 for member, former member, and nonmember depository institutions. Because several of these transitional schedules have been completed, and because the statute providing that MMDAs are not subject to the phase-in expires on March 31, 1986, the Board is revising §204.4, and cross references in other sections of the regulation, to remove obsolete provisions and schedules.

c. Section 204.8(e) provides that the failure of an international banking facility to comply with the requirements of §204.8 may cause it to be subject to the limitations on the payment of interest on time deposits contained in the Board's Regulation Q. Because these limitations expire on March 31, 1986, the Board is deleting the cross reference.

5. Finally, nonpersonal MMDA-type deposits held by depository institutions (other than Hawaiian nonmember institutions), will be subject to the phase-in schedules for federal reserve requirements rather than to full reserve requirements beginning with April 1, 1986. The Board has determined that for weekly reporters full reserves shall continue to be maintained on these deposits until the reserve maintenance period for nontransaction accounts beginning April 24, 1986, which corresponds to the computation period commencing March 25, 1986. For quarterly reporters, full reserves shall be maintained until the reserve maintenance period commencing April 17, 1986, which corresponds to the quarterly computation period beginning March 18, 1986. Hawaiian institutions will continue to be governed by the Board's December 13, 1985 amendment to Regulation D (50 FR 51506; December 17, 1985).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, the Board recognized a potential transition problem for credit unions and other entities not now subject to regulations requiring early withdrawal penalties. It acted to alleviate this problem by delaying the effective date of its requirements for such penalties for such institutions until January 1, 1987. It is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. To a large extent, the amendments retain the current reserve maintenance and deposit reporting system. Obsolete terms and provisions are being removed from the regulation to simplify it, and several of the clarifying amendments ensure more liberal treatment for savings deposits and MMDAs. This rule applies to all depository institutions. It is not anticipated that the amendments will have a negative effect on the ability of small depository institutions to attract deposits.

This rule relieves certain existing regulatory restrictions on depository institutions, preserves current policies regarding the treatment of these deposits under the regulation, and replaces statutory and regulatory provisions expiring March 31, 1986. Accordingly, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 204

Banks, banking; Federal Reserve System; Foreign banking.

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 USC 461(a)), the Board is amending Part 204 as follows:

PART 204—[AMENDED]

1. The authority citation for 12 CFR Part 204 continues to read:

Authority: Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601, 611); and sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105), unless otherwise noted.

2. In § 204.2, the introductory text and paragraphs (b); (c); (d); (e); (f)(1)(i), (ii), and (v) are revised; and (f)(3) is added to read:

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

* * * * *

(b)(1) "Demand deposit" means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing

funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of:

(i) Checking accounts;

(ii) Certified, cashier's and officer's checks (including checks issued by the depository institution in payment of dividends);

(iii) Traveler's checks and money orders that are primary obligations of the issuing institution;

(iv) Checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices;

(v) Letters of credit sold for cash or its equivalent;

(vi) Withheld taxes, withheld insurance and other withheld funds;

(vii) Time deposits that have matured or time deposits upon which the contractually required notice of withdrawal as given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and

(viii) An obligation to pay, on demand or within six days, a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited.

(2) The term "demand deposit" also means deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which the depositor is authorized to make withdrawals or transfers in excess of the withdrawal or transfer limitations specified in § 204.2(d)(2) for such an account and the account is not a NOW account, or an ATS account or other account that meets the criteria specified in either § 204.2(b)(3)(ii) or (iii) below.

(3) "Demand deposit" does not include:

(i) Any account that is a time deposit or a savings deposit under this Part;

(ii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and either—

(A) Is subject to check, draft, negotiable order of withdrawal, share draft or similar item, such as an account authorized by 12 USC 1832(a) ("NOW Account") and an MMDA as described in § 204.2(d)(2)(ii), provided that the depositor is eligible to hold a NOW account; or

(B) From which the depositor is authorized to make transfers by preauthorized transfer or telephonic (including data transmission) agreement, order or instruction to another account or to a third party, provided that the depositor is eligible to hold a NOW account;

(iii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such other account, such as accounts authorized by 12 USC 371a (automatic transfer account or ATS account), provided that the depositor is eligible to hold an ATS account;

(iv) Any obligation that is a time deposit under § 204.2(c)(1)(iv);

(v) Checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution; or

(vi) IBF time deposits meeting the requirements of § 204.8(a)(2).

(c)(1) "Time deposit" means:

(i) A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit.[2] A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account.[3] "Time deposit" includes funds—

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;

(D) Held in "club" accounts (such as "Christmas club" accounts and "vacation club" accounts that are not maintained as "savings deposits") that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or

(E) Share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;

(ii) A "savings deposit;"

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[2] Accounts existing on March 31, 1986, may satisfy the early withdrawal penalties specified by this Part by meeting the Depository Institutions Deregulation Committee's early withdrawal penalties in existence on March 31, 1986. Accounts that otherwise meet the requirements for time deposits but that lack such penalties due to a lack of a regulatory requirement for such a penalty, as in the case of Federally-chartered credit unions, may continue to be classified as time deposits; however, the penalty should be included in time deposits opened, renewed or to which additional deposits are made on or after January 1, 1987.

A time deposit, or a portion thereof, may be paid before maturity without imposing the early withdrawal penalties specified by this part:

(a) Where the time deposit is maintained in an Individual Retirement Account established in accordance with 26 U.S.C. 408 and is paid within seven days after establishment of the Individual Retirement Account pursuant to 26 CFR 1.408–6(d)(4), or where it is maintained in a Keogh (H.R. 10) plan; provided that the depositor forfeits an amount at least equal to the simple interest earned on the amount withdrawn;

(b) Where the depository institution pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. 408 or 26 U.S.C. 401 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. 72(m)(7)) or thereafter;

(c) Where the depository institution pays that portion of a time deposit on which federal deposit insurance has been lost as the result of the merger of two or more federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger;

(d) Upon the death of any owner of the time deposit funds;

(e) When the owner of the time deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction; or

(f) Where a time deposit is withdrawn within ten days after a specified maturity date even though the deposit contract provided for automatic renewal at the maturity date.

[3] A nonpersonal time deposit with a stated maturity of one and one-half years or more may be treated as having an original maturity of one and one-half years or more for reserve requirement purposes only if it is subject to the minimum penalty described in § 204.2(f)(3).

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(iii) An "IBF time deposit" meeting the requirements of § 204.8(a)(2); and

(iv) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by—

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[3] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[4]

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

(d)(1) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term "savings deposit' includes a regular share account at a credit union and a regular account at a savings and loan association.

(2) The term "savings deposit" also means:

(i) A deposit or account that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the account agreement, or by practice of the depository institution, the depositor is permitted or authorized to make no more than three withdrawals per calendar month, or statement cycle (or similar period) of at least four weeks, for the purpose of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, provided that no such withdrawals may be by check, draft or similar order (including debit card) drawn by the depositor to third persons. A "preauthorized transfer" includes any arrangement by the depositor institution to pay a third party from the account of a depository upon written or oral instruction (including an order received through an automated clearing house (ACH) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from the account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[5]

(ii) A deposit or account, such as an account commonly known as a "money market deposit account" ("MMDA"), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks to another account (including a transaction account) of the depositor at the same institution or to a third party by means of the preauthorized or automatic transfer (see § 204.2(d)(2)(i)), or telephonic (including data transmission) agreement, order or instruction and no more than three of the six such transfers may be made by check, draft, debit card or similar order made by the depositor and payable to third parties. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[6]

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e) "Transaction account" means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine ("ATM") or a remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in § 204.2(d)(2) even though such accounts permit third party transfers. "Transaction account" includes:

(1) Demand deposits;

(2) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, except accounts described in § 204.2(d)(2)(ii) (MMDAs), but including accounts authorized by 12 USC 1832(a) ("NOW accounts").

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer or credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, except accounts described in § 204.2(d)(2), but including accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or ATS accounts).

(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make more than three withdrawals per month or statement cycle (or similar period) of at least four weeks for purposes of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of preauthorized transfer, or telephonic (including data transmission) agreement, order or instruction, except accounts described in § 204.2(d)(2). An account that authorizes more than three such withdrawals in a calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" whether or not more than three such transfers are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.

(5) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others or to a deposit account of the depositor.

(6) All deposits other than time and savings deposits.

(f)(1) "Nonpersonal time deposit" means:

(i) A time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including an MMDA or any other savings deposit, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

* * * * *

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by:

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[7] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[8]

* * * * *

(3) Any nonpersonal time deposit with a stated maturity or notice period of one and one-half years or more that permits any early withdrawal must be subject to a minimum early withdrawal penalty equal to at least thirty days' simple interest on the amount withdrawn for any withdrawal that occurs more than six days but within one and one-half years after the date of deposit. Any such account not subject to this minimum early withdrawal penalty will be regarded as a nonpersonal time deposit with an original maturity or notice period of from seven days to less than one and one-half years from the date of the deposit.[9]

* * * * *

§ 204.2 [Amended]

3. Section 204.2 is amended as follows:

(a) By redesignating the first footnote 1 in paragraph (h)(1)(ii)(A) as footnote 10.

(b) By redesignating the second footnote 1 in paragraph (h)(2)(ii) as footnote 11 and revising the footnote to read, "See footnote 10."

(c) By redesignating footnote 2 in paragraph (t)(1) as footnote 12.

4. Section 204.3 is amended by revising paragraphs (a)(3)(i) and (h) to read:

§ 204.3 Computation and maintenance.

(a) * * *

(3) * * * (i) In determining the reserve requirements of a depository institution, the exemption provided for in section 204.9(a) shall apply in the following order of priorities:

(A) First, to net transaction accounts that are first authorized by federal law in any state after April 1, 1980;

(B) Second, to other net transaction accounts; and

(C) Third, to nonpersonal time deposits (including MMDAs and other savings deposits) and Eurocurrency liabilities starting with those with the highest reserve ratio under § 204.2(a) and then to succeeding lower reserve ratios.

* * * * *

(h) *Carryover of Excesses or Deficiencies.* Any excess or deficiency

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[3] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[4] The designated entities are specified in 12 CFR 217.126.

[5] In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definitions in § 204.2(d)(2), a depository institution must either:

(a) prevent withdrawals or transfers of funds in this account that are in excess of the limits established by § 204.2(d)(2)(i) or (ii), or

(b) adopt procedures to monitor those transfers on an *ex post* basis and contact customers who exceed the limits established by § 204.2(d)(2)(i) or (ii) on more than an occasional basis.

For customers who continue to violate those limits after being contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

An account that authorizes withdrawals or transfers in excess of the permitted number in a transaction account regardless of whether the authorized number of transactions are actually made.

[6] See footnote 5. For accounts described in § 204.2(d)(2)(ii), the institution at its option may use on a consistent basis either the date on the check, draft or similar item or the date the item is paid in applying the limits on such items.

[7] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[8] The designated entities are specified in 12 CFR 217.126.

[9] See Footnote 1 for treatment of accounts existing on March 31, 1986 and for exceptions to the imposition of the early withdrawal penalties imposed by this Part. The penalty required by this § 204.2(f)(3) and that required by § 204.2(c)(1) need not be aggregated.

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in a required reserve balance for any maintenance period that does not exceed the greater of two percent of the institution's required reserves (including required clearing balances and net of the required clearing balance penalty free band where applicable) or $25,000, shall be carried forward to the next maintenance period. Any carryover not offset during the next period may not be carried forward to subsequent periods.

* * * * *

§204.4 [Amended]

5. Section 204.4 is amended as follows:

a. By amending the last sentence of paragraph (a) by removing the language after "1980" and replacing it with a period.

b. By removing paragraphs (b) and (c).

c. By redesignating paragraph (d) as paragraph (b) and removing the phrase "or (c), as applicable,".

d. By redesignating paragraph (e) as paragraph (c) and in new paragraph (c)(2)(ii) replacing "eight" with "seventeen".

e. By redesignating paragraph (f) as paragraph (d) and by removing from new paragraph (d)(2) the language", including deposits or accounts issued pursuant to 12 CFR 1204.122,".

f. By redesignating paragraph (g) as paragraph (e) and changing the references in paragraphs (e)(1) and (2) from "(a) through (f)" to "(a) through (d)" and the reference in paragraph (e)(2)(iii) from "(g)" to "(e)".

§ 204.8 [Amended]

6. Section 204.8 is amended as follows:

a. revising paragraph (a)(2)(i)(B)(5) to read: A foreign national government, or an agency or instrumentality thereof,[13] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[14] or

b. By revising paragraph (a)(3)(v) to read: A foreign national government, or an agency or instrumentality thereof,[15] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board; [16] or

c. By amending paragraph (e) by removing the phrase "and to interest payment limitations that may be applicable under Regulation Q (12 CFR Part 217) on its IBF time deposits,".

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6143 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 217

[Reg. Q; Docket No. R-0566]

Interest on Deposits; Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). Concurrently, the Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). The amendments are being adopted after consideration of public comment on proposed amendments to Regulation Q (51 FR 31) and Regulation D (51 FR 27).

The amendments are due to the expiration on March 31, 1986, of the statutory authority to set interest rate ceilings on time and savings deposits and to prescribe rules regarding early withdrawals from time deposits. All regulations of the Board issued under this authority and all regulations of the Depository Institutions Deregulation Committee ("DIDC") also expire on that date.

These amendments rely on the definitions of "deposit" and "demand deposit" in the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) for the purposes of Regulation Q. The amendments eliminate the sections of Regulation Q that govern withdrawals from time deposits and savings deposits, set early withdrawal penalties, and establish account characteristics and interest rate ceilings. Rules regarding early withdrawal penalties for reserve requirement purposes (rather than for enforcement of interest rate limitations) and definitions of the various categories of "deposit" now appear in Regulation D.

This final rule does not address advertising of deposits by member banks (§ 217.6 of Regulation Q) which the Board also published for comment (51 FR 1379) and which will be adopted at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney, (202/452-3818), Legal Division, or Ernestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a), gives the Board the authority to issue rules defining terms used in section 19 in order to prevent evasions of that section. Section 19(i) of that Act (12 U.S.C. 371a) prohibits the payment of interest on a demand deposit by a member bank, and section 19(j) of that Act (12 U.S.C. 371b) gives the Board authority to issue rules governing the payment and advertising of interest on deposits.[1] Pursuant to this authority, the Board promulgated its current Regulation Q which regulates the payment of interest on deposits.

The Board's authority under section 19(j) to issue rules governing the payment of interest on deposits, other than demand deposits, and the comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board expire with the expiration of the Depository Institutions Deregulation Act of 1980 at the end of March 31, 1986.

The expiration of the rules of the DIDC and of the authorities transferred to the DIDC at the end of March 31, 1986, will not affect section 19(i) of the Federal Reserve Act which prohibits a member bank from paying interest on a demand deposit. Nor will these expirations affect the authority of member banks to offer accounts that permit automatic transfers to checking accounts ("ATS accounts") as authorized by the last sentence of section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) or to offer accounts subject to negotiable orders of

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[13] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[14] The designated entities are specified in 12 CFR 217.120.

[15] See footnote 13.

[16] See footnote 14.

[1] The current advertising rule is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. In a separate rulemaking proceeding, the Board requested comment on proposed revisions to its rules on member bank advertising of interest on deposits (51 FR 1379). The comment period for the separate rulemaking on advertising closed on March 6, 1986.

withdrawal ("NOW accounts") as authorized by section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)).

The amendments being adopted by the Board revise §§ 217.1-217.5 and 217.7 of Regulation Q by removing the rules relating to penalties for early withdrawals from time deposits (section 217.4) and the interest rate ceilings and account characteristics for time and savings deposits (primarily § 217.7).[2]

In order to prevent savings deposits from being used to evade the prohibition against the payment of interest on "demand deposits," the Board in the past prescribed rules regarding withdrawals from savings deposits. The Board is retaining the substance of these provisions but has incorporated them into Regulation D. Consequently, the rules governing withdrawals from savings deposits, currently contained in § 217.5, are unnecessary and are being rescinded.

The revised definition of "demand deposit" in Regulation D, which is being incorporated by reference in Regulation Q, defines the accounts subject to the prohibition against the payment of interest on demand deposits. Under the revised definition, the term "demand deposit" excludes NOW accounts and ATS accounts as well as ordinary savings deposits and money market deposit accounts ("MMDAs") if the applicable transfer limitations are adhered to. If the depositor is authorized to exceed the transfer limitations applicable to savings deposits and MMDAs, however, such accounts would be "transaction accounts" for the purpose of Regulation D but would not be "demand deposits" for the interest payment prohibition purposes of Regulation Q if the depositor is eligible to hold another type of account, such as a NOW account or an ATS account, that would permit the particular excess transfers. For other depositors, savings deposits and MMDAs authorized to exceed the withdrawal or transfer limitations would be considered to be demand deposits on which interest could not be paid.

The definition of "savings deposit" is also deleted from Regulation Q, and an amended definition of that term is contained in Regulation D. The Regulation D definition also removes the $150,000 limitation on business savings accounts but treats a business telephone transfer account authorizing more than three telephone transfers per month as "demand deposit."

The Board's rules regarding the payment of interest are also set forth in various Board interpretations and policy statements and in staff opinions and rulings. These amendments render many of these interpretations, policy statements, and staff opinions unnecessary, and the Board will be revising these positions accordingly. Unless a contrary intent is evidenced in the revised Regulations D and Q, until the technical revisions are promulgated, member banks may continue to rely upon existing interpretations and policies concerning the exceptions from early withdrawal penalties, the use of premiums, the payment of interest after maturity of a deposit, and the grace period for withdrawals without penalty from an automatically renewable time deposit after a rollover or maturity date. Further, certain disclosure requirements currently found in the related or revised sections of the current Regulation Q are retained in a new § 217.4.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. The purpose of this rule is to simplify Regulation Q and to remove obsolete terms and conditions that affect the payment of interest on deposits. The rule applies to banks that are members of the Federal Reserve System. It is anticipated that this rule will have little or no adverse effect on the ability of small depository institutions to attract deposits.

This rule removes existing regulatory provisions, the authority for which expires on March 31, 1986 and amends provisions to preserve current requirements in light of the expiration of other requirements. Consequently, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 217

Banks, banking, Federal Reserve System, Interest on deposits.

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 et seq., 371a and 371b), the Board is amending Part 217 as follows:

PART 217—[AMENDED]

1. The Authority citation for 12 CFR Part 217 is revised to read.

Authority: 12 U.S.C. 248, 371, 371a, 371b, 461, 1828, and 3105, unless otherwise noted.

§§ 217.3, 217.4, 217.5, and 217.7 [Removed]

2. Current §§ 217.3, 217.4, 217.5, and 217.7 of this Part are removed.

3. Current §§ 217.0 through 217.2 are redesignated as §§ 217.1 through 217.3 and are revised to read:

§ 217.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371, 371a, 371b, 461), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), and section 11 of the Federal Reserve Act (12 U.S.C. 248), unless otherwise noted.

(b) *Purpose.* This regulation prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this regulation and sets forth requirements concerning the advertisement of interest on deposits by member banks and these other institutions.

(c) *Scope.* (1) This regulation applies to state chartered banks that are members of the Federal Reserve under section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) and to all national banks. The regulation also applies to any Federal branch or agency of a foreign bank and to a State uninsured branch or agency of a foreign bank in the same manner and to the same extent as if the branch or agency were a member bank, except as may be otherwise provided by the Board, if:

(i) Its parent foreign bank has total worldwide consolidated bank assets in excess of $1 billion;

(ii) Its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion; or

(iii) Its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion.

(2) For deposits held by a member bank or a foreign bank, this regulation does not apply to "any deposit that is payable only at an office located outside of the United States" (*i.e.*, the States of the United States and the District of Columbia) as defined in § 204.2(t) of the Board's Regulation D— Reserve Requirements of Depository Institutions (12 CFR Part 20.4).

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[2] Section 217.4 of this final rule retains the current requirement that a member bank disclose to the customer the effect of any early withdrawal penalty. That section also retains the current requirement that interest cannot be paid after a maturity date unless the contract provides otherwise.

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§ 217.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a) "Demand deposit" means any deposit that is considered to be a "demand deposit" under § 204.2(b) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(b) "Deposit" means any liability of a member bank that is considered to be a "deposit" under § 204.2(a) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(c) "Foreign bank" means any bank that is considered to be a "foreign bank" under § 204.2(o) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(d) "Interest" means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A member bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

§ 217.3 Interest on demand deposits.

No member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.[1]

4. A new § 217.4 is added as follows:

§ 217.4 Miscellaneous.

(a) *Early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of any early withdrawal penalty which shall (1) state clearly that the customer has contracted to keep the funds on deposit for the stated maturity, and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statement shall be expressly called to the attention of the customer.

(b) *Payment of interest.* On each automatically renewable certificate, passbook, or other document representing a time deposit, the bank shall have printed or stamped a conspicuous statement indicating that the contract will be renewed automatically upon maturity and indicating the terms of such renewal.

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6142 Filed 3-19-86; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 352

Nondiscrimination on the Basis of Handicap

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This final regulation, which implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, defines the scope of the FDIC's obligation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Ann Marie Kohlligian, Attorney, Legal Division (202/898-3711) or Thomas W. Louden, Jr., Assistant to the Associate Director, Division of Accounting and Corporate Service (202/298-3615), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This regulation implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by various agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has voluntarily chosen to promulgate this regulation pursuant to section 504.

On April 18, 1985 the FDIC published a Notice of Proposed Rulemaking ("NPRM") pursuant to its policy of voluntary compliance. The prohibitions against discrimination on the basis of handicap contained in the proposed regulation applied only to those FDIC programs or activities which are available to members of the general public. The proposed regulations also stated that the FDIC did not have to take any action to accommodate handicapped persons if such action would result in a fundamental alteration in the nature of the program or activity or in undue financial or administrative costs. The deadline for receiving comments on the proposed regulation was set for June 18, 1985. Five comments were received in response to the notice, two from organizations representing handicapped persons and three from other federal agencies, including the Department of Justice and the Equal Employment Opportunity Commission ("EEOC").

In general, the commenters objected to the limitation of the application of the proposed regulation to only those programs and activities in which the general public participates and to the use of the fundamental alteration and/or undue burdens defenses in areas which they argued are inappropriate, such as in the definition of qualified handicapped person or with respect to program accessibility in cases of new construction. The FDIC has discussed all the comments with the Justice Department and the EEOC. A complete analysis of these comments and of the changes made to the proposed regulation is provided below.

Section-by-Section Analysis and Response to Comments

Section 352.1 Purpose.

This section, as proposed, described the general purpose of the regulation and there is no change from the proposed regulation.

Section 352.2 Application.

In the proposed regulation, this section stated that Part 352 applies to those FDIC programs and activities which are available to members of the general public. The section has been modified in response to the comments received and now states that this rule applies to all activities and programs conducted by the FDIC. Since this rule will most likely apply to the programs and activities which are open to members of the general public, the final regulation retains the list of such programs and activities that was contained in the proposed rule to provide notice to interested persons. Also, in response to commenters, the FDIC has added a paragraph (b) which specifically states that FDIC personnel will comply with this part in their interaction with employees of insured

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[1] A member bank may continue to pay interest on a time deposit for not more than ten calendar days: (1) Where the member bank has provided in the time deposit contract that, if the deposit or any portion thereof is withdrawn not more than ten calendar days after a maturity date (one business day for "IBF time deposits" as defined in § 204.8(a)(2) of Regulation D), interest will continue to be paid for such period; or (2) for a period between a maturity date and the date of renewal of the deposit, provided that such certificate is renewed within ten calendar days after maturity.

banks and other state or federal agencies during the discharge of their official FDIC duties. This paragraph is not intended to reach the activities of the banks themselves merely because they are regulated or insured by the FDIC. *See, Community Television of Southern California* v. *Gottfried*, 459 U.S. 498 (1983).

One commenter noted that references to employment in this section could result in confusion as to which standard governs employment—those set forth in the proposed regulation or those in section 501 of the Rehabilitation Act and at 29 CFR Part 1613. The FDIC agrees and, therefore, paragraph (c) has been added to make it clear that employment and application for employment are "programs and activities" of the FDIC but are governed by the standards set forth in section 501 of the Rehabilitation Act and at 29 CFR Part 1613 as expressly provided in § 352.6 of the final rule.

Another commenter noted that the proposed regulation mentioned "FDIC-assisted programs" and pointed out that the FDIC does not administer any federal financial assistance programs. The FDIC concurs with this comment and, therefore, all references to "FDIC-assisted programs" have been deleted from the final rule. The same commenter criticized the proposed regulation for stating that the programs and activities enumerated in this section "constitute the programs and activities of the FDIC governed by this regulation." This commenter argued that such a statement implies that the FDIC conducts other programs and activities which it is unlawfully excluding from the nondiscrimination requirements of section 504. The FDIC does not intend that Part 352 be read in such a narrow fashion and has modified paragraph (a) accordingly.

Section 352.3(a) Definition of "auxiliary aids."

The proposed definition of "auxiliary aids" stated that this term means services or devices that enable persons with impaired sensory, manual or speaking skills to participate in or enjoy the benefits of FDIC programs or activities. Two commenters suggested that the FDIC add to the definition of "auxiliary aids" examples of what such aids may include. Since primary consideration will be given to any reasonable requests of handicapped persons in determining what type of auxiliary aid is required by § 352.9(a)(1)(i), the FDIC believes that such an expansive definition of "auxiliary aid" is unnecessary.

One commenter recommended that the term "aids for reasonable accommodation" be used instead of "auxiliary aids" as the term to be defined because the latter term implies something that is extra or discretionary. This suggestion has not been adopted. The FDIC believes that the term "auxiliary aids" adequately indicates what is intended and what is required. Moreover, the term "reasonable accommodation" is a term of art applicable only to discrimination in employment under section 501 of the Rehabilitation Act. The use of this term in Part 352 would be inappropriate and confusing since Part 352 covers more than employment programs and activities.

A further suggestion by the same commenter called for the expansion of the definition to encompass services or devices for persons who have "auditory, visual and physical impairments" and include attendant services for such persons. The proposed definition of "auxiliary aids" takes into account services or devices to aid persons with "impaired sensory, manual or speaking skills." The FDIC believes that this coverage adequately addresses the auditory, physical and visual impairments that are pertinent to § 352.9 (Communications), where the term "auxiliary aids" is used. Therefore, no change has been made in this regard. The FDIC has also declined to incorporate attendant services in the definition of "auxiliary aids." Such services are generally personal in nature and thus are properly outside the scope of "auxiliary aids," as indicated by the Justice Department in the preamble to its final rule under section 504. *See* 49 *F.R.* 35724, 35732 (1984). Nevertheless, to the extent that attendant services are not personal in nature and are directly related to a program or activity listed in § 352.2, such services may be provided when necessary for FDIC purposes under the final version of § 352.9(a)(1)(ii).

Section 352.3(b) Definition of "complete complaint."

"Complete complaint" in the proposed regulation was defined to mean a written statement with sufficient detail about an alleged violation of Part 352 to enable the FDIC to determine the beginning of its obligation to investigate a complaint. In response to a suggestion by one commenter, a sentence has been added to the definition of "complete complaint" requiring that complaints filed on behalf of classes or third parties describe or identify by name, if possible, the alleged victims of discrimination. The definition has also been clarified to indicate that it does not apply to complaints regarding allegations of discrimination on the basis of handicap in employment, which is governed only by the standards set forth in § 352.6 of this part.

Section 352.3(c) Definition of "facility."

The proposed regulation defined "facility" to mean buildings and other real estate which must be accessible to ensure participation in FDIC-conducted programs or activities. One commenter stated that the definition should include all programs and activities conducted by the FDIC regardless of whether the facility in which they are conducted is owned, leased or used on some other basis by the agency. The proposed definition of "facility" is consistent with this recommendation and therefore has not been changed. Another commenter noted that the definition was limited by the phrase, "which must be accessible to ensure participation." The commenter stated that the limitation should be in § 352.7 where the term is used rather than in the definition. The FDIC agrees with this commenter and has deleted the qualification from the definition. The same commenter suggested that personal property, such as furniture and similar fixtures, be added to the definition of facility because not all problems concerning accessibility involve real estate. The FDIC agrees and has included personal property in the definition of "facility." Personal property is further defined in this regulation to mean only furniture, carpeting, and the like, and does not include items of a personal nature.

Section 352.3(e) Definition of "qualified handicapped person."

In the proposed regulation, "qualified handicapped person" was defined to mean a handicapped person who meets the essential eligibility requirements of a program or activity and whose participation would not result in fundamental alteration in the nature of the program or activity or in undue financial or administrative burdens. The FDIC received criticism over the proposed rule's definition of "qualified handicapped person" from three commenters. All three argued that the FDIC has the burden of proving that a handicapped person is not a "qualified handicapped person" for purposes of section 504. The commenters cite no authority for this proposition and, in fact, the case law does not support their contention. *See, Plummer by Plummer* v. *Brandstand,* 731 F.2d 574 (8th Cir. 1984); *Doe* v. *New York University,* 666 F. 2d

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761 (2d Cir. 1981); *Pushkin* v. *Regents of University of Colorado*, 658 F.2d 1372 (10th Cir. 1981).

Instead of adopting the suggested language, the FDIC has revised § 352.3(e) to make it clear that the question as to whether a handicapped person is a "qualified handicapped person" is to be determined by the FDIC on the basis of a written record. By requiring that such determinations be based on a written record, the final version of § 352.3(e) facilitates both the FDIC's decision on this issue and any subsequent judicial review of FDIC determinations.

The FDIC has also revised this section, as discussed in § 352.2, in order to eliminate the possibility of confusion regarding the applicable standards for matters involving employment. The language, "such as employment" and "perform the tasks required by the position," has been removed and a new paragraph (3) has been added which makes clear that "qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 352.6. Nothing in this part changes existing regulations applicable to employment. The FDIC has not adopted the suggestion of one commenter that the term "reasonable accommodation" be included in the definition of "qualified handicapped person." This would result in the possibility of needless confusion since "reasonable accommodation" is a term of art used exclusively in the employment context.

Two commenters recommended eliminating from the definition of "qualified handicapped person" the requirement that the person's participation must not cause a fundamental alteration to the program or activity or undue financial and administrative burdens. They argued that any handicapped person who meets the essential eligibility requirements for the program or activity in question as set forth in the definition is a qualified handicapped person and that the "fundamental alteration" and "undue financial and administrative burdens" limitations are to be considered only in determining the extent to which the qualified handicapped person must be accommodated. These commenters support their position by noting that the United States Supreme Court has upheld the validity of regulations promulgated by the Department of Health, Education and Welfare ("HEW") (now Department of Health and Human Services ("HHS")), 45 CFR 84.3(k), in which HHS defines "qualified handicapped person" without reference to fundamental alterations or undue burdens. *See, Consolidated Rail Corporation* v. *Darrone*, 104 S. Ct. 1248 (1984). A third commenter did not criticize the use of the fundamental alteration limitation in the definition of "qualified handicapped person," but did recommend that the undue burdens exception be eliminated.

The FDIC believes that the standard to be applied is set forth in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), where the United States Supreme Court analyzed the term "qualified handicapped person" for the purposes of section 504. The FDIC construes the Court's language in *Davis* to mean that a handicapped person is a "qualified handicapped person" when he or she can meet the essential eligibility requirements of the program or activity in question without requiring a fundamental alteration in the nature of the program or activity. Although in *Consolidated Rail Corp.* v. *Darrone* and *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), the Supreme Court upheld the validity of the aforementioned HHS regulations, neither case challenges or modifies *Davis*. In accord with *Davis*, the FDIC recognizes that compliance with section 504 may require affirmative efforts to accommodate handicapped persons. The definition of "qualified handicapped persons" in § 352.3(e) simply restates the rule, set forth in *Davis* and subsequent cases, that the obligation to accommodate handicapped persons is not without limit.

While the Court's language in *Davis* includes the fundamental alteration limitation in the definition of "qualified handicapped person," it does not appear to incorporate the undue financial and administrative burdens limitation. Accordingly, the FDIC has deleted the undue burden limitation from § 352.3(e).

The FDIC agrees with the recommendation of one commenter to delete the fundamental alteration limitation from the definition of qualified handicapped persons in subparagraph (2), which concerns programs and activities in which handicapped persons are not required to perform services or achieve a level of accomplishment in order to participate. Since *Davis* states that a handicapped person is a "qualified handicapped person" except where participation in a program or activity requires participants to perform services or achieve a level of accomplishment, the fundamental alteration limitation has no bearing on the definition of "qualified handicapped person" in reference to programs or activities governed by subparagraph (2).

Finally, one commenter criticized the use of the phase, "level of achievement [sic accomplishment]," in the definition of "qualified handicapped person" as being inconsistent with HHS regulations. Contrary to the view expressed by this commenter, the use of this term is consistent with section 504 and the HHS regulations. As explained in *Davis*, the HHS regulations reinforce the conclusion that the language "otherwise qualified handicapped person" in section 504 means a person who, despite his or her handicap, is able to meet all of a program's requirements, i.e., attain a certain level of achievement. 442 U.S. at 406.

Section 352.3(f) Definition of "section 504."

Paragraph (f) in the proposed rule contained the definition of "reasonable accommodation." The use of the term "reasonable accommodation" was criticized by several commenters because the term is used with respect to employment matters and may involve different standards than those called for by section 504 in connection with the range of services or other benefits covered by this regulation. To eliminate the possibility that there might be confusion over the two standards, the proposed "reasonable accommodation" difinition for § 352.3(f) has been deleted and the reference to the term in § 352.5 has been eliminated from this part for the same reason. The final version of § 352.3(f) contains what was formerly § 352.3(g) in the proposed regulations.

Section 352.4 Self-evaluation.

This section, as proposed, stated that the FDIC will conduct an evaluation of its program to implement Part 352. The procedures for the self-evaluation have been revised to reflect some of the suggestions made by two commenters. The final version calls for the FDIC to make available to the public for a period of three years after the self-evaluation a description of areas examined, problems identified, and modifications made. The FDIC has also clarified the procedures to be used by persons interested in participating in the self-evaluation process by specifying that handicapped persons and persons representing such individuals may participate through the submission of written comments.

The FDIC has declined to adopt additional provisions recommended by one commenter which would require: (1) That an assurance be submitted with the self-evaluation which would pledge that the effects of any discriminatory policy be eliminated; (2) the submission of a transition plan for compliance;' and (3) specific modification requirements. The FDIC does not find these additional

provisions to be necessary in order to carry out the spirit of section 504.

Section 352.5 General requirements.

This section in the proposed rule contained the general principles of nondiscrimination which serve as the foundation for the remaining sections of the regulation. Three commenters suggested that the FDIC revise this section to incorporate the very detailed language contained in the prototype section 504 regulation developed by the Department of Justice. In drafting the proposed rule, the FDIC did not adopt many of the provisions in the prototype regulation for several reasons. First, many of the specific prohibitions against discriminatory treatment discussed in the prototype have no application to FDIC-conducted programs and activities and their inclusion in this section is, therefore, unnecessary. Secondly, the proposed regulation adequately covers those situations in which issues of discrimination against qualified handicapped persons might arise. As was stated in the preamble to the proposed rule, 50 FR 15453, this section provides the "general principles which serve as the analytical foundation for the remaining sections of the regulation." *Id.* at 15454. The preamble goes on to say that when no provision in any of the subsequent, more specific, sections apply to a particular alleged discriminatory act by the FDIC, "the general prohibition in this section would apply." *Id.* The FDIC believes that the final rule as proposed provides adequate notice to both the FDIC and potential victims of discrimination of the FDIC's obligation under Part 352.

The FDIC has modified paragraph (b) to make it clear that the term "equal opportunity" means "equal opportunity to benefit from or to reach the same level of achievement from [FDIC-conducted programs and activities] as that provided to non-handicapped persons." Further, the FDIC has adopted a suggestion from one commenter by adding a paragraph (c) which obligates the Corporation to give priority to those methods of administering programs or activities which will not segregate participation by qualified handicapped persons in FDIC-conducted programs from that by non-handicapped persons.

Another commenter suggested that the FDIC revise this section to provide that the FDIC will not aid or perpetuate discrimination against a qualified handicapped person by another agency, organization, or person by providing significant assistance to such other agency, organization, or person that discriminates. The commenter noted that several federal agencies are not required to promulgate regulations under section 504 of the Rehabilitation Act and explained that such a revision would allow a person who has been discriminated against by another agency, organization, or person to file a complaint with the FDIC regarding the discriminatory actions of such parties if the FDIC has provided assistance to them. While the language recommended by this commenter may be applicable to programs receiving federal financial assistance, it does not apply to the FDIC because the FDIC does not conduct such programs. Furthermore, courts have held that a federal agency having supervisory or regulatory authority over a private entity does not have authority to enforce section 504 against such entity absent a clear grant of statutory authority to do so, *see, Community Television of Southern California* v. *Gottfried*, and the FDIC has no clear grant of statutory authority to enforce section 504 against the banks it regulates.

Section 352.6 Employment.

In the proposed regulation, this section states that no qualified handicapped person shall be subjected to discrimination in employment and that all matters concerning employment shall be governed by standards in section 501 of the Rehabilitation Act and 29 CFR Part 1613. No changes have been made in § 352.6.

Section 352.7 Program accessibility: Existing facilities.

This section, as proposed, contained the standards by which the FDIC will make its programs and activities accessible to and usable by qualified handicapped persons in existing facilities. It stated that ensuring program accessibility does not necessarily require that the FDIC make each of its existing facilities accessible or take any action which would result in the fundamental alteration in the nature of the program or activity or in undue financial or administrative burdens. Two commenters pointed out that the proposed rule defined the "undue burdens" limitation as one of excessive financial *or* adminstrative costs and that the Supreme Court in *Davis* spoke in terms of excessive financial *and* administrative burdens. 442 U.S. at 412. The FDIC acknowledges that the *Davis* Court used the conjunctive term and has, therefore, made the requisite change in this and subsequent sections where this phrase appears.

The Supreme Court in *Davis* was far from clear in specifying what constitutes an "undue burden." The Court spoke in terms of excessive financial *and* administrative costs, but subsequent decisions have not given equal weight to each factor and have focused on the total impact a requested modification would have on the program or activity in question. *See, e.g., Alexander* v. *Choate, supra; Dopico* v. *Goldschmidt*, 518 F. Supp. 1161 (S.D.N.Y. 1981), *rev'd on other grounds*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Ass'n* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981). The existence of financial or administrative costs alone, therefore, will not preclude a finding that a proposed modification is "undue" since either, if excessive, could have substantial repercussions on the FDIC's capacity to meet its primary regulatory obligations.

Two commenters were critical of the use of the limiting phrase, "undue financial [and] administrative burdens," in this section on the ground that its repeated use in the regulation constitutes an unjustified, additional limitation on the responsibility of the FDIC for accommodating qualified handicapped persons. As previously explained above, the FDIC is not obligated to make changes in existing facilities which impose undue burdens. The commenters also contended that the phrase is overly broad and, therefore, offers little guidance. Since every instance in which this issue may arise presents differing factual circumstances, the regulations cannot be formulated to provide any more detail than is contained in the proposed rule. This section has been modified, however, to require that all determinations regarding undue burdens, as well as those concerning fundamental alterations in the nature of the program or activity, be made on the basis of a written record in order to guarantee objective and substantiated decision-making. This change also responds to the recommendation of three commenters that the rule be revised to require explicitly that all agency resources be considered in determining whether or not a modification should be made.

Another commenter expressed concern over the FDIC's use of the term "feasible actions" in paragraph (a)(2) with respect to the efforts the FDIC would undertake to ensure that qualified handicapped persons receive the benefits and services of a program or activity. The commenter contended that the term implied a standard lower than that required by the fundamental alteration or undue burdens limitations. The FDIC did not intend that the term be read to imply a lower standard and has decided to delete it from the final rule in order to avoid any unnecessary confusion. The time period for compliance with this part (except where

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structural changes in facilities are undertaken) that is contained in paragraph (b) was extended from sixty to ninety days to ensure that the FDIC will be able to implement its program within the time frame established by this rule.

One commenter recommended that the FDIC include provisons which reaffirm the Corporation's commitment to provide accesible facilities and the most appropriate integrated setting for the programs and activities as is possible. Since the suggested language only reiterates what is explicity stated in § 352.5, its inclusion here is unnecessary. Two commenters also recommended that the FDIC include a provision to indicate that, in carrying out this section, the FDIC will comply with section 106 of the National Historic Preservation Act, the regulations at 36 CFR Part 800 and the supplementary guidance for handicapped access to historic places at 45 FR 9757 (1980) and the Architectural Barriers Act of 1968, as amended, and the regulations at 41 CFR Part 101–19. Since the requirements of these two Acts stand independently of section 504, the FDIC has determined that Part 352 need not reference these Acts and has, therefore, declined to adopt this suggestion.

Section 352.8 Program accessibility: New construction and alterations.

As proposed, this section stated that the FDIC need only make new construction or substantial alterations accessible if to do so would not result in a fundamental alteration or in an undue burden. This section has been revised to incorporate the observation of a commenter that the fundamental alteration and undue burdens exceptions should not apply in cases of new construction and substantial alterations. The FDIC agrees with the underlying premise that the fundamental alteration or undue burden limitation is not likely to arise in cases of new construction or substantial alterations. The recommendations concerning the National Historic Preservation Act and the Architectural Barriers Act made for § 352.7 were also made in reference to this section. For the reason discussed in § 352.7, no change has been made to § 352.8 to incorporate this suggestion.

Section 352.9 Communications.

This section in the proposed regulation contained the standards by which the FDIC will ensure effective communication with participants in its programs and activities. In response to the recommendation of one commenter, the FDIC has changed paragraph (a)(1)(i) of the proposed rule to indicate that it will give primary consideration to any reasonable requests of handicapped persons in determining what type of auxiliary aid is necessary. The FDIC has clarified § 352.9(a)(1)(ii) to state that it need not provide individually prescribed devices or other devices of a personal nature such as hearing aids or eyeglasses. If sign interpreters or special readers are needed, the FDIC may require that it be given reasonable prior notice of the need for an interpreter or reader.

One commenter stated that proposed subparagraph (a)(2) was ambiguous because it could be construed as establishing a special FDIC obligation for persons with hearing impairments, regardless of whether the FDIC provides comparable communications to others. The FDIC agrees and, accordingly, the revised subparagraph indicates that the FDIC will use telecommunications devices for deaf persons ("TDD's") or similar devices to communicate with hearing impaired participants and beneficiaries only when it communicates by telephone with persons who do not have such impairments.

Another commenter expressed concern that the inclusion of the word "applicants" in §352.9(a) might confuse the fact that employment and application for employment are covered only by the standards set forth in section 501 of the Rehabilitation Act and at 29 CFR Part 1613. The FDIC agrees and the term "applicants" has been deleted from the final version of § 352.9. It was also noted that the proposed rule provided that information about accessible facilities is only to be available at the primary entrance of accessible facilities. The FDIC has modified this so that such information will be available at inaccessible facilities to direct handicapped persons who arrive at such facilities as to where they should go to obtain services. Should persons require additional information, paragraph (b) indicates how they may obtain such information. Information will be provided at inaccessible entrances of accessible facilities to direct handicapped persons to the accessible entrances.

In response to a recommendation that this section be revised to make it clear that the FDIC has the burden of proving "fundamental alterations" and "undue financial or administrative burdens," the FDIC has made a change in the new paragraph (d) of this section that is identical to those made in §§ 352.3(e) and 352.7 and explained previously in connection with § 352.3(e). Likewise, for the reasons set forth in regard to § 352.7, this paragraph retains the "fundamental alteration" and "undue burdens" language, but reflects the changes made in other sections that the latter term is properly phrased as undue financial *and* administrative costs. The term "feasible," which was contained in paragraph (e) of the proposed rule, has been deleted to avoid confusion as to the nature of the FDIC's obligation to ensure effective communication.

Finally, in view of the new notice provision in § 352.11, paragraph (d) of proposed § 352.9 is redundant and has been eliminated from the final regulation. Paragraph (e) of the proposed regulation is now paragraph (d) of the final version.

Section 352.10 Compliance procedures.

The proposed section outlined the procedures by which complaints about discrimination on the basis of handicap will be processed by the FDIC. One commenter recommended expanding the compliance section to include: (1) A provision for obtaining the expertise of the Architectural and Transportation Barriers Compliance Board ("ATBCB") to help resolve deficiencies in the construction or location of facilities; (2) a provision for judicial review; (3) a provision to ensure that all other regulations, forms and directives issued by the FDIC are superseded by the nondiscrimination requirement of this regulation; (4) a provision for the availability of attorneys fees in administrative proceedings; and (5) a provision for the availability of compensation to the prevailing party in such proceedings. Another commenter recommended that the FDIC notify the ATBCB of any complaint alleging that a FDIC facility is not readily accessible to and usable by handicapped persons in order to assist the Board in carrying out its statutory responsibilities. These suggestions are not called for by section 504 of the Rehabilitation Act and, therefore, have not been adopted in the final version of this section.

Paragraph (c) has been modified to incorporate a suggestion from one commenter that the FDIC state the official to whom persons who allege discriminatory treatment on the basis of handicap in FDIC programs or activities should submit their complaints. The final rule states that the FDIC's Office of Equal Employment Opportunity is responsible for implementing the compliance procedure and directs that all such complaints be submitted to this office.

A new paragraph (j) has been added which allows the time frames for complaint investigations and appeals to

be extended in an individual case by the Chairman of the FDIC or the Chairman's designee for good cause based on the particular circumstances of that case. Paragraph (j) of the proposed regulation is now paragraph (k) of the final version.

Section 352.11 Notice.

In response to the suggestions of two commenters a notice provision has been added to the final regulation. This new provision resembles, almost verbatim, equivalent sections in the final rules promulgated by the Justice Department and by the Federal Reserve Board. It states that the FDIC will provide all interested persons with information regarding this part in a manner which will apprise such persons of the protections assured them by this regulation.

Other Matters

Regulatory Flexibility Act statement. This rule applies to all programs and activities conducted by the FDIC but does not reach the activities of the banks regulated and/or insured by the FDIC. On this basis, and in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act statement. This rule neither alters any existing nor creates any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act is inapplicable.

List of Subjects in 12 CFR Part 352

Blind, Civil rights, Equal employment opportunity, Federal building and facilities, Handicapped.

In consideration of the foregoing, the FDIC hereby adds Part 352 of title 12 of the Code of Federal Regulations as follows:

PART 352—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.
352.1 Purpose.
352.2 Application.
352.3 Definitions.
352.4 Self-evaluation.
352.5 General requirements.
352.6 Employment.
352.7 Program accessibility: Existing facilities.
352.8 Program accessibility: New construction and alterations.
352.9 Communications.
352.10 Compliance procedures.
352.11 Notice.

Authority: 12 U.S.C. 1819.

§ 352.1 Purpose.

The purpose of this part is to implement the spirit of section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by various Executive agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has chosen to promulgate this final regulation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

§ 352.2 Application.

(a) This part applies to all programs and activities conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings.

(2) Making inquiries or filing complaints at the FDIC Office of Congressional Relations and Corporate Communications;

(3) Using the FDIC library in Washington, DC;

(4) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(5) Seeking employment with the FDIC;

(6) Conducting regular banking business at a Deposit Insurance National Bank formed by the FDIC pursuant to the authority in 12 U.S.C. 1821(h).

(b) This regulation governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It does not apply to financial institutions insured by the FDIC.

(c) Although application for employment and employment with the FDIC are programs and activities of the FDIC for purposes of this regulation, they shall be governed only by the standards set forth in § 352.6 of this part.

§ 352.3 Definitions.

For purposes of this part, the term—

(a) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities set forth in § 352.2.

(b) "Complete complaint" means, with respect to any FDIC program or activity other than employment, a written statement that contains the complainant's name and address and describes the FDIC's action in sufficient detail to inform the FDIC of the nature and date of the alleged violation of these regulations. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name if possible) the alleged victims of discrimination.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots and other real or personal property. As used in this definition, "personal property" means only furniture, carpeting and similar features not considered to be real property.

(d) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) A mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" including functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the FDIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d)(1) of this definition but is treated by the FDIC as having such an impairment.

(e) "Qualified handicapped person" means—

(1) With respect to any FDIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and can achieve the purpose of the program or activity without modifications in the program or activity that the FDIC can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity;

(3) With respect to employment, a handicapped person as defined in 29 CFR 1613.702(f), which is made applicable to this part by § 352.6.

(f) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this regulation, section 504 shall be applied only to the programs and activities conducted by the FDIC as set forth in § 352.2 of this regulation.

§ 352.4 Self-evaluation.

(a) Within one year of the effective date of this regulation, the FDIC shall conduct a self-evaluation of its program implementing the spirit of section 504.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representating handicapped persons, to participate in the self-evaluation process by submitting written comments. Comments on the program made by such persons or organizations, while not binding on the FDIC for adoption, will be received and considered as part of the FDIC's self-evaluation process.

(c) The FDIC shall, for a period of three years from the date of completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified in the program implementing the spirit of section 504; and

(2) A description of any modifications made in the program.

§ 352.5 General requirements.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the programs and activities conducted by the FDIC and set forth in § 352.2 of this regulation.

(b) The FDIC, in providing any services under the programs and activities set forth in § 352.2 of this part, shall ensure that qualified handicapped persons are provided with an equal opportunity to benefit from or to reach the same level of achievement from such services as that provided to non-handicapped persons.

(c) The FDIC, in providing any services under the programs and activities set forth in § 352.2 of this part, shall give priority to those methods of administration which will not segregate participation by qualified handicapped persons in FDIC-conducted programs and activities from participation by non-handicapped individuals.

§ 352.6 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the FDIC. The definitions, requirements, and procedures (including those pertaining to employment discrimination complaints) of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in the FDIC.

§ 352.7 Program accessibility: Existing facilities.

(a) *General.* The FDIC shall operate each of the programs or activities set forth in § 352.2 of this part so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the FDIC to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the FDIC to take any action that the FDIC can determine on the basis of a written record would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If it is determined that an action would result in such an alteration or such burdens, the FDIC shall take other reasonable actions that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The FDIC may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The FDIC is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(c) *Time period for compliance.* The FDIC shall comply with the obligations established under this section within ninety days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to existing facilities will be undertaken to achieve program accessibility, the FDIC shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed after consultation with representatives of the General Services Administration and the Architectural and Transportation Barriers Compliance Board. The plan shall—

(1) Identify physical obstacles in the FDIC's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe the methods that will be used to make the facilities accessible;

(3) Specify the proposed schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify proposed steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 352.8 Program accessibility: New construction and alterations.

Each building or part of a building in which the programs or activities set forth in § 352.2 will be carried on, and which is newly constructed, or substantially altered by, on behalf of, or for the use of the FDIC, shall be designed, constructed or altered so as to be readily accessible to, and usable by, handicapped persons.

§ 352.9 Communications.

(a) The FDIC shall take appropriate steps to ensure effective communication with participants in the FDIC programs and activities set forth in § 352.2.

(1) The FDIC shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities set forth in § 352.2 of this part.

(i) In determining what type of auxiliary aid is necessary, the FDIC shall give primary consideration to any reasonable requests of the handicapped person.

(ii) The FDIC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the FDIC communicates by telephone, it shall use telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems with hearing impaired participants and beneficiaries.

(b) The FDIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. Interested persons may obtain such information by calling, writing or visiting the FDIC Office of Equal Employment Opportunity, located at 550 17th Street, NW., Washington, DC 20429. The Office of Equal Employment Opportunity telephone number is (202) 898–6745 (District of Columbia area) and (800) 424–5488 (all others) (TDD).

(c) The FDIC shall provide information at a primary entrance to each of its accessible and inaccessible facilities where programs or activities as set forth in § 352.2 are conducted, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the FDIC to take any action that the FDIC can determine on the basis of a written record would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action that is required to comply with this section would result in such an alteration or such burdens, the FDIC shall take other reasonable actions that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 352.10 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in the FDIC programs or activities set forth in § 352.2 of this part.

(b) The FDIC shall process complaints alleging employment discrimination on the basis of handicap according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The FDIC's Office of Equal Employment Opportunity shall be responsible for coordinating implementation of this section. All complaints should be sent to the FDIC's Office of Equal Employment Opportunity, 550 17th Street, NW., Washington, DC 20429.

(d) The FDIC shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The FDIC may extend this time period for good cause.

(e) If the FDIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(f) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the FDIC shall notify the complainant of the results of the investigation in a letter containing—

(1) Finding regarding the alleged violations;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(g) Appeals of the findings or remedies must be filed by the complainant within 90 days of receipt from the FDIC of the letter required by § 352.10(f). The FDIC may extend this time for good cause.

(h) Timely appeals shall be accepted and processed by the Chairman of the FDIC or designee.

(i) The Chairman of the FDIC or designee shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Chairman of the FDIC or designee determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make a determination on the appeal.

(j) The time limits set forth in (f) and (i) above may be extended for an individual case when the Chairman of the FDIC or designee determines that there is good cause, based on the particular circumstances of that case, for the extension.

(k) The FDIC may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated.

§ 352.11 Notice.

The FDIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Chairman or his designee finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

By order of the Board of Directors, 7th day of March, 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–6056 Filed 3–19–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ASW–5, Amdt. 39–5253]

Airworthiness Directives; Boeing Vertol Company Model 234 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons a new airworthiness directive (AD) part of which was previously made effective as to all know U.S. owners and operators of Boeing Vertol 234 series helicopters by individual telegrams. The AD requires initial and repetitive bore-scope inspections of main rotor head vertical hinge pins and a one-time eddy current and magnetic particle inpsection. Failure of a main rotor head vertical hinge pin could result in possible loss of the helicopter.

EFFECTIVE DATE: March 31, 1986, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T85–23–51 issued November 20, 1985, which contained parts of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register effective March 31, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 1858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE–172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone number (516) 791–6221.

SUPPLEMENTARY INFORMATION: On November 20, 1985, telegrahic AD T85–23–51 was issued and made effective immediately to all known U.S. owners and operators of Boeing Vertol Model 234 helicopters. The AD required an initial and daily repetitive bore-scope inspection of main rotor head vertical hinge pins, Part Number (P/N) 114R2172–1, and removal and replacement of any vertical hinge pin found cracked.

The AD was prompted by the reported failure, in flight, of a main rotor head vertical hinge pin on a U.S. Army CH–47D helicopter, after which a precautionary landing was made. During fleet inspection, another CH–47D vertical hinge pin was found cracked. The same parts, P/N 114R2172–1, are installed on the civil Model 234 helicopter. Inspection of the two vertical pins showed that the failed surface developed a crack during manufacture. Subsequently it was determined that a one-time eddy current and magnetic particle inspection should be accomplished which would also eliminate the need for any further daily bore-scope inspection. This AD incorporates these additional inspections.

Since it was found that immediate correction was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegram issued November 20, 1985 to all known U.S. owners and operators of Boeing Vertol Model 234 helicopters. These conditions still exist and the AD is revised as noted and hereby published in the Federal Register as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Boeing Vertol Company: Applies to Boeing Vertol Model 234 series helicopters certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent possible hazards in flight associated with a cracked main rotor head vertical hinge pin, accomplish the following:

(a) Prior to further flight, conduct a visual inspection of the forward and aft main rotor head vertical hinge pins, P/N 114R2172–1, internal surface with a light assisted bore-scope for cracks.

(b) After the initial inspection of paragraph (a), repeat the inspection prior to the first flight of each day.

(c) Within the next 150 hours' time in service from March 31, 1986, conduct an eddy current inspection of the internal surfaces of the forward and aft main rotor head vertical hinge pins, P/N 114R2172–1, in accordance with the instructions contained in Boeing Vertol Document D210–12069–1 titled "Eddy Current Inspection Requirements for Detection of Cracks in P/N 114R2172, Vertical Hinge Pins." Upon accomplishment of this paragraph, the daily bore-scope inspection of paragraph (b) may be eliminated.

(d) Within the next 500 hours' time in service from March 31, 1986, remove from the helicopter the main rotor head vertical hinge pins and conduct a magnetic particle inspection in accordance with Boeing Airplane Company document BAC 5424 titled "Magnetic Particle Inspection" Class B.

(e) Remove from service vertical hinge pins found cracked and replace with a serviceable part prior to further flight.

(f) Any alternate method of compliance with the AD which provides an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Vertol Company, Boeing Center, P.O. Box 1858, Philadelphia, Pennsylvania 19142. These documents may also be examined at the Office of the Regional Counsel, FAA Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective March 31, 1986, as to all persons except those to whom it was made immediately effective by telegraphic AD T85–23–51 issued November 20, 1985, which contained part of this amendment.

Issued in Fort Worth, Texas, on March 3, 1986.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 86–6043 Filed 3–19–86; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–ASW–32, Amdt. 39–5254]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 332 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of all SNIAS AS 332 series helicopters by individual priority letters. The AD requires installation of a placard which advises the flightcrew that all flight operations at temperatures below +3 °C in the presence of ice crystals, rain, mist, drizzle, dense clouds, snow, or sleet are prohibited. The AD is needed to prevent engine failure which could result in a forced landing. Subsequently, modifications which alleviate the limitations of the above placard have been devised and are mandated by this AD. Also, it has been determined that only certain configurations of the SNIAS Model AS 332 helicopter are subject to the requirements of the AD. The limitations section of the AD is revised accordingly.

EFFECTIVE DATE: March 19, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service documents pertinent to this AD is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or Wilbur F. Wells, Aircraft Certification Division, ASW–100, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877–2551.

SUPPLEMENTARY INFORMATON: On October 30, 1985, priority letter AD 85–22–09 was issued and made effective immediately as to all known U.S. owners and operators of all SNIAS AS 332 helicopters. The AD requires installation of a placard which advises the flightcrew that all flight operations in ambient temperatures below +3 °C in the presence of ice crystals, rain, mist, drizzle, dense clouds, snow, or sleet are prohibited. This limitation was prompted by a report of a dual engine failure (flameout) of an AS 332 helicopter operating in atmospheric conditions involving one or more of the icing phenomena listed by the placard described above.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued October 30, 1985, to all known U.S. owners and operators of SNIAS AS 332 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Since issuance of priority letter AD 85–22–09, it has been determined that the restrictions of AD 85–22–09 are not applicable to helicopters with certain engine inlet configurations; therefore, the applicability section of this AD is revised to exempt those helicopters. In addition, the manufacturer has developed and tested other engine inlet modifications and adjustments which enable the engines to operate satisfactorily in the icing conditions which prompted issuance of the original priority letter AD. These modifications and adjustments are required for safety and are mandated by this AD in accordance with a schedule defined in the body of this AD. Upon accomplishment of these actions, the restrictions imposed by the original priority letter AD are removed.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983) 14 CFR 11.89.

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to SNIAS Model AS 332 C or CL helicopters fitted with engine stubframe Part Number (P/N) 332 A 58.00.12.00 and Model AS 332 L or L1 helicopters fitted with engine stubframe P/N 332 A 58.00.13.00, certificated in any category.

Compliance is required as indicated, unless already accomplished.

(a) Compliance required within 10 hours' time in service after the effective date of this AD. To avoid operating conditions where ice ingestion into the engines may cause engine failure, permanently attach a placard, stencil, or decal to the instrument panel in full view of the flightcrew which includes the following

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limitations statement: ALL FLIGHT OPERATIONS BELOW PLUS 3 DEGREES CELSIUS IN THE PRESENCE OF ICE CRYSTALS, RAIN, MIST, DRIZZLE, DENSE CLOUDS, SNOW, OR SLEET ARE PROHIBITED.

(b) Modify and adjust the engine air inlets of applicable helicopters as specified below:

(1) Within 200 hours' time in service after the effective date of this AD but not later than March 31, 1986, accomplish the engine air intake modifications prescribed by Aerospatiale Service Bulletin No. 53.62 (corresponds to Modification AMS 332 A 07.22.752).

(2) Within 400 hours' time in service after the effective date of this AD but not later than March 31, 1986, accomplish the engine intake alignment inspections and adjustments prescribed by Aerospatiale Service Bulletin No. 71.07 (corresponds to Modification AMS 332 A 07.22.702).

(c) Upon accomplishment of the requirements of paragraph (b), the limitations placard, stencil, or decal required by paragraph (a) may be removed.

Note 1.—This AD conforms in part to French AD 85-169-20(B), Revision 1, dated December 17, 1985.

Note 2.—For the requirements regarding recording compliance and method of compliance with this AD in the aircraft's permanent maintenance records, see FAR § 91.173.

(d) Upon request, an alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, or by the Manager, Aircraft Certification Division, FAA, Southwest Region, ASW-100, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2581.

(e) The aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the requirements of paragraph (b) of this AD may be accomplished.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective March 19, 1986.

Issued in Fort Worth, Texas, on March 3, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-6045 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-34]

Amend Transition Areas; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides additional controlled airspace from 700 feet and 1,200 feet above the surface for aircraft executing a new instrument approach at the Gunnison Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 UTC, June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1986, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Gunnison, Colorado, transition areas (51 FR 3991).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations provides controlled airspace for aircraft executing a new instrument approach to Gunnison, Colorado, Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Aspen, Colorado—[Amended]

That airspace extending upward from 700 feet above the surface within 9.5 miles northwest and 6 miles southeast of the Gunnison VORTAC 045° and 225° radials extending from 12 miles northeast to 19 miles southwest of the VORTAC and within a 16.5 mile radius of the VORTAC clockwise between the 254° and 294° radials; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the VORTAC clockwise between the 204° and 275° radials.

Issued in Seattle, Washington, on March 7, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-6044 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373, 376, and 385

[Docket No. 60106-6006]

Donations of Goods To Meet Basic Human Needs

Correction

In FR Doc. 86-5375 beginning on page 8482 in the issue of Wednesday, March 12, 1986, make the following corrections:

1. On page 8483, in the first column, in the section heading for § 373.5, "procedures" should read "procedure".

2. On page 8484, in the second column, in § 373.5(h)(4), in the second line, "of any" should read "or any".

3. On page 8484, in the third column, in amendatory instruction 7, in the third line, remove "introductory text".

4. On page 8485, in the first column, in § 385.7(a), in the fourth line, "§ 375.5" should read "§ 378.5".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1302

Nondiscrimination in Federally Assisted Programs of TVA; Technical Amendment

AGENCY: Tennessee Valley Authority.

ACTION: Final rule; technical amendment.

SUMMARY: This document gives public notice that information collection requirement in TVA regulations have been approved by the Office of Management and Budget under the Paperwork Reduction Act.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, telephone No. 615-632-4142.

PART 1302—[AMENDED]

1. The authority citation for 18 CFR Part 1302 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831-831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1.

§ 1302.6 [Amended]

2. 18 CFR 1302.6 is amended by adding the following parenthetical text at the end of the section:

(Section 1302.6 contains information collection requirements approved by OMB for use through February 29, 1988, OMB No. 3316-0077)

§ 1302.7 [Amended]

3. 18 CFR 1302.7 is amended by adding the following parenthetical text at the end of the section:

(Section 1302.7 contains information collection requirements approved by OMB for use through February 29, 1988, OMB No. 3316-0077).

Dated: March 12, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86-6085 Filed 3-19-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Approval of Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of West Virginia as a modification to its permanent regulatory program (hereinafter referred to as the West Virginia program), which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a letter and supporting documents from West Virginia dated November 11, 1985 discussing the State's anticipated withdrawals from the special reclamation fund, which is part of the alternative bonding system, for general administrative expenses not related to bond forfeiture site reclamation.

After considering all comments received during the public comment period ending February 13, 1985, and after conducting a thorough review of the proposed amendment, the Director has determined that the submission meets the requirements of SMCRA and the Federal regulations and he is, therefore, approving it. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background and Submission of Amendment

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program to the Secretary of the Interior. On October 22, 1980, following a review of the proposed amendment in accordance with 30 CFR Part 732, the Secretary approved the proposed program in part and disapproved it in part (45 FR 69249-69271). West Virginia resubmitted its proposed program on December 19, 1980. On January 21, 1981, the Secretary conditionally approved the resubmitted program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915-5956).

Since then, the West Virginia program has been amended several times, including a July 11, 1985 amendment approving the West Virginia Energy Act (WVEA), with certain exceptions (50 FR 28316-28324). WVEA 22A-3-11(g) provides that all special reclamation taxes collected as part of West Virginia's alternative bonding program shall be deposited in the special reclamation fund for use in reclaiming bond forfeiture sites where the site-specific bond proves insufficient. However, it also authorizes the Commissioner to "expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code." This provision would allow expenditures from the fund for general administrative purposes not related to reclamation on forfeiture sites and for expenses associated with noncoal programs.

The Secretary orginally approved West Virginia's alternative bonding system, as contained in the revised program submission of December 19, 1980, on the condition that the State obtain an actuarial study showing that the special reclamation fund would always contain sufficient monies to meet all anticipated needs. On October 29, 1982, West Virginia submitted the required study (Administrative Record No. WV 456), and, after reviewing the study, the Secretary, removed condition on March 1, 1983 (48 FR 9447-9451). However, this study did not consider the impact on the fund of authorizing expenditures for general administrative purposes or for noncoal programs.

Therefore, in approving the WVEA, the Director required West Virginia to submit, no later than October 11, 1985, a new analysis demonstrating that the special reclamation fund could withstand all authorized administrative

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expense withdrawals without hampering the State's ability to reclaim all bond forfeiture sites in a timely manner and in accordance with their approved reclamation plans. On November 11, 1985, West Virginia submitted a letter containing an analysis of the fund's current financial status and explaining the State's current intentions regarding administrative expense withdrawals. The letter was accompanied by quarterly financial reports for the special reclamation fund covering the period of October 1, 1982 through September 30, 1985, and by tables summarizing the collection history and status of civil penalties and forfeited bonds, and the estimated reclamation liabilities for unreclaimed sites for which bonds had been forfeited and collected (Administrative Record No. WV 694).

The January 1, 1986 **Federal Register** (51 FR 1520–1521) announced receipt of these materials and requested public comment on their adequacy. The public hearing scheduled for February 3, 1986 was not held since no one requested to testify in such a forum. The public comment period closed on February 13, 1986.

II. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that the proposed amendment, as submitted by West Virginia on November 11, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

Section 509(c) of SMCRA and the Federal regulations at 30 CFR 800.11(e) provide that the Secretary, acting through OSMRE, may approve an alternative bonding system if (1) it will assure that the regulatory authority will have sufficient money available to complete the approved reclamation plans for any areas which may be in default at any time and (2) it will provide a substantial economic incentive for the permittee to comply with all reclamation provisions. As discussed in Finding 18.1 of the January 21, 1981 **Federal Register** (46 FR 5926) and Finding 7 of the March 1, 1983 **Federal Register** (48 FR 8448), the Secretary has determined that the West Virginia alternative bonding system, as orginally approved, meets these objectives and purposes. However, section 22A–3–11(g) of the WVEA, which became effective on July 11, 1985, authorizes expenditures from the fund of such amounts as are reasonably necessary to implement and administer Chapters 22A and 22B of the WVEA. Since the actuarial study upon which OSMRE based its 1983 approval did not consider the effects of administrative expense withdrawals unrelated to bond forfeitures, the Secretary, in approving the WVEA, required that the State submit a comprehensive financial analysis demonstrating that such withdrawals would not hamper the State's ability to complete the approved reclamation plans of all areas which may be in default at any time in a timely manner.

In its response on November 11, 1985, West Virginia states that the bulk of the Department of Energy's administrative expenses would be incurred under Chapter 22 of the WVEA, costs for which the statute does not authorize withdrawals from the special reclamation fund. In addition, the letter stated that West Virginia would not use fund monies to cover noncoal administrative expenses (Chapter 22B).

Over the fund's three years of operation, annual income from bond forfeitures, civil penalties and coal severance tax revenues has averaged $1,835,000 and annual expenditures have averaged $1,550,000, creating an average annual increase in current assets of $285,000. As of September 30, 1985, the fund's current assets totaled in excess of $5,000,000. Current liabilities as of that date include the reclamation of 81 sites for which bond has been forfeited, totaling 1,666 acres. Based on previous experience, the State estimates that the reclamation work required for these sites will cost approximately $3,000,000, leaving the fund with a net balance of $2,000,000 in the current assets account.

The letter further states that West Virginia interprets the term "reasonably necessary" as preventing withdrawals which would jeopardize the fund's solvency, and that such withdrawals are not expected to exceed ten percent of the total current assets. Thus, under the September 30, 1985 conditions, West Virginia would be able to withdraw approximately $500,000, leaving a net current assets balance of $1,500,000. Since State law provides that collection of the coal severance tax, which is the fund's largest and most stable source of income, averaging $900,000 per year, will cease when the fund's net current assets exceed $2,000,000 and will not resume until the balance in that account dips below $1,000,000, the Director finds that a withdrawal of the proposed magnitude will not alter the amount of funds available for reclamation purposes in the next fiscal year and that it will not hamper the State's ability to fulfill reclamation commitments on bond forfeiture sites. Therefore, the Director finds that the financial analysis submitted by West Virginia satisfies the requirements of 30 CFR 948.16(b) for fiscal year 1985–86.

However, income and liabilities from bond forfeitures and income from civil penalties are subject to substantial fluctuation as is interest income on fund assets. Given the magnitude of the current anticipated administrative expense withdrawals and the uncertainty of future income and liabilities, the Director finds that, before any further withdrawals for administrative expenses unrelated to bond forfeitures may be made, the State either must perform a withdrawal-specific financial analysis for each fiscal year similar to that approved in this amendment or must conduct a comprehensive study of the fund's future performance under this new set of assumptions. If the study or analysis indicates that administrative expense withdrawals would hamper the fund's ability to achieve its objectives, the withdrawals would not be permitted.

III. Public Comments

No comments from the public were received by the close of the comment period of February 13, 1986.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. Of the agencies which responded (the National Park Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Mine Safety and Health Administration and the U.S. Department of Energy), none elected to comment on the proposed amendment.

IV. Director's Decision

The Director, based on the above finding and West Virginia's commitments to prohibit all noncoal administrative expense withdrawals and to limit other general administrative expenses to ten percent of the fund's current assets on an annual basis, is approving the November 11, 1985 amendment to the West Virginia program as being sufficient to demonstrate that withdrawals of the specified magnitude from the special reclamation fund for non-forfeiture-related administrative expenses in fiscal year 1985–86 will not hamper the State's ability to promptly complete the approved reclamation plans of all areas which may be in default at any time. Accordingly, he is removing and reserving the required amendment codified at 30 CFR 948.16(b). However, in approving the amendment, the Director is requiring that, before any such withdrawals may be made in future years, West Virginia must make a

similar demonstration on fiscal year basis or conduct an actuarial study demonstrating that the fund can withstand all such projected withdrawals without impairing its reclamation capability with respect to either extent of work or timeliness. The Federal rules at 30 CFR Part 948 are being amended to implement this decision.

Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.15 is amended by adding paragraph (i) to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(i) The financial analysis and supporting documentation submitted by West Virginia on November 11, 1985 is approved as being adequate to demonstrate that sufficient money will be available in the special reclamation fund both to complete the approved reclamation plans for any areas that may be in default at any time and to cover the general administrative expense withdrawals proposed for fiscal year 1985–86. This amendment also prohibits all withdrawals for noncoal administrative expenses and limits all administrative expense withdrawals to an amount which cumulatively does not exceed ten percent of the fund's current assets as of September 30, 1985.

Before making any withdrawals in subsequent fiscal years to cover administrative expenses unrelated to bond forfeitures, West Virginia must submit, for OSMRE concurrence, a comprehensive analysis demonstrating that sufficient money will be available in the special reclamation fund both to promptly complete the approved reclamation plans for any areas that may be in default at any time and to cover the administrative expense withdrawals proposed under section 22A–3–11(g) of the Code of West Virginia.

§ 948.16 [Amended]

3. 30 CFR 948.16 is amended by removing and reserving paragraph (b).

[FR Doc. 86-6075 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Bunker Hill

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its speical construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

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Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I. sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS Bunker Hill	CG 52						x	x	38

Dated: March 10, 1986.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 86-6101 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu Regulation 86-01]

Security Zone Regulations; Outer Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: This Coast Guard is establishing a security zone around the U.S. Navy vessel USS PROTEUS which will be moored at mooring buoy no. 951 located at 13°26′51″ N, 144°38′13.8″ E, in Outer Apra Harbor, Guam, Marianas Islands. The security zone will extend for a distance of 200 yards in all directions from USS PROTEUS. The zone is needed to safeguard USS PROTEUS against destruction from sabotage or other causes of similar nature. Entry into this zone is prohibited unless authorized by Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on April 29, 1986. It terminates on May 9, 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT R.E. Tinker, (671) 339-6110, at USCG Marianas Section Office, Guam.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation. Publishing an NPRM or delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction of USS PROTEUS.

Drafting Information

The drafters of this regulation are LT R.E. Tinker, project officer for the Captain of the Port, and LCDR S.R. Campbell, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation will begin on April 29, 1986 when the USS PROTEUS will moor at mooring buoy no. 951 in Outer Apra Harbor, Guam. Since mooring buoy no. 951 is a Navy maintained mooring buoy, and is located in excess of 500 yards from the main shipping channel, there should be no adverse impact on harbor use due to this security zone. USS PROTEUS will moor at the buoy to undertake routine maintenance work, and the security zone will be terminated when the USS PROTEUS leaves the moorage upon completion of this work. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1401 is added to read as follows:

§ 165.T1401 Security Zone: OUTER APRA HARBOR, GUAM

(a) *Location.* The following area is a security zone: In Outer Apra Harbor, Guam, when the USS PROTEUS is moored to mooring buoy no. 951 located at 13°26′51″ N, 144°38′13.8″ E, a security zone will extend in all directions from the vessel for a distance of 200 yards.

(b) *Effective date.* This regulation becomes effective on April 29, 1986. It terminates on May 9, 1986 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: March 7, 1986.

C.W. Gray,

Captain, U.S. Coast Guard, Captain of the Port Honolulu, Hawaii.

[FR Doc. 86-6170 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Annual Fee; Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule change amends section 641 of the Domestic Mail Manual concerning annual third-class bulk fees. The change will make it clear that when a bulk third-class mailing is made under the permit imprint system, only the individual or organization whose permit imprint is shown on the mailing piece itself and on the mailing statement must pay the annual bulk mailing fee. Currently, a bulk fee must be paid for the person or organization actually entering mailings at the bulk rates at a post office, regardless of the method of postage payment.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 268-5166.

SUPPLEMENTARY INFORMATION: On February 3, 1986, the Postal Service published in the **Federal Register**, for comment, a proposed rule concerning section 641 of the Domestic Mail Manual. 51 FR 4189-90. The change was proposed to clarify the applicability of the requirement for payment of bulk fees.

No written comments were received. Therefore, the Postal Service hereby adopts the following final regulation on this subject as an amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3621, 5001; 42 U.S.C. 1973cc-13, 1973cc-14.

PART 6—THIRD-CLASS MAIL

640 Authorizations and Permits

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Except when a third-class bulk mailing is made under the permit imprint system, each person or organization that enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where one or more mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. When a third-class bulk mailing is made under the permit imprint system, the person or organization whose permit imprint is on the mailing piece must put his or its permit number on the mailing statement and must pay the annual bulk mailing fee. The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year. Note: This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2).

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. This change will be published in the **Federal Register** as provided in 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-6106 Filed 3-19-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2988-3; MS-004]

Approval and Promulgation of Implementation Plans; Mississippi; Revised New Source Review Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 17, 1981, the State of Mississippi adopted a revision to its State Implementation Plan regarding nonattainment areas. This revision specifies the conditions that a new facility which is a major stationary source or a major modification must satisify in order to receive a permit to construct in a nonattainment area or in an area that impacts a nonattainment area. This revision was submitted to EPA for approval on November 25, 1981. EPA has reviewed this submittal and found that it satisfies the requirements of 40 CFR 51.18(k) as promulgated on May 13, 1980, and is therefore approving Mississippi's revised plan as it applies to sources impacting areas which are not attaining the National Ambient Air Quality Standards. Since there are no designated nonattainment areas in Mississippi, EPA is deferring action on the part of the plan covering sources locating in such areas.

EFFECTIVE DATE: This action will be effective on April 21, 1986.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit,
  Library Systems Branch,
  Environmental Protection Agency, 401
  M Street, SW., Washington, DC 20460.
Air Programs Branch, EPA Region IV,
  345 Courtland Street, NE., Atlanta,
  Georgia 30365.
Library, Office of Federal Register, 1100
  L Street, NW., Room 8401,
  Washington, DC.
Mississippi Department of Natural
  Resources, Bureau of Pollution
  Control, Post Office Box 10385,
  Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Al Yeast of EPA Region IV's Air Programs Branch, at the above listed address and phone (404) 881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Section 172 of the Clean Air Act requires states to adopt regulations which prevent the construction or operation of new or modified major sources in areas which have been designated as not attaining the National Ambient Air Quality Standards (NAAQS), except under certain conditions, as described in section 173. Sections 110(a)(2)(D) and 165(A)(3)(B) require state plans to prohibit sources in areas attaining the NAAQS from causing or contributing to violations on NAAQS.

On May 14, 1980, and August 7, 1980, EPA promulgated to its regulations which govern review of the sources described above. The May 13, 1980, **Federal Register** notice (45 FR 31304) required States to modify their SIP to: (1) Require new sources locating in all portions of designated nonattainment areas to undergo nonattainment review; (2) preclude sources outside designated nonattainment areas from causing or exacerbating violations; and (3) preclude sources from significantly impacting newly discovered nonattainment areas. The August 7, 1980, **Federal Register** notice (45 FR 52676) required Part D SIPs to be more stringent for some modified sources in nonattainment areas, and decreased the number of new sources, and the number of some modified sources, covered by the regulations.

On November 17, the Mississippi Commission on Natural Resources adopted an amendment to Mississippi Regulation APC-S-2, "Permit Regulations for Construction and/or Operation of Air emission Equipment."

This regulation specifies the conditions that a new facility which is a major stationary source or major modification must satisfy in order to receive a permit to construct in a nonattainment area or in an area that impacts a nonattainment area.

Additionally, the regulation affects sources locating in or near areas where an air quality standard is being or will be exceeded but for which no nonattainment area implementing plan has been adopted by Mississippi. Under section 2.4.8.3, the Mississippi regulation applies EPA's Emission Offset Ruling (40 CFR 51.18, Appendix S) to any facility that is a major source or major modification which locates in or near an area where NAAQS is being or will be exceeded, but for which no Mississippi nonattainment plan has been adopted. It also regulates under section 2.4.8.2, sources locating in designated nonattainment areas where a plan has been adopted. Mississippi has clarified in a letter dated November 25, 1985, that section 2.4.8.3 applies to sources in Mississippi which impact designated nonattainment areas in other states even if a Part D nonattainment plan has been adopted by the neighboring state.

On July 2, 1982, EPA proposed to approve Mississippi's submittal as part of the state implementation plan (47 FR 28976). On August 17, 1982, the United States Court of Appeals for the District of Columbia Circuit vacated a portion of EPA's regulation under which Mississippi's regulations were being approved. Specifically, the court disallowed the use of a plantwide definition of source in nonattainment areas, a definition which causes fewer

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construction projects to be subject to review than EPA's previous version of the definition. Because Mississippi's regulations employ the plantwide definition, approval of the regulations was delayed until resolution of appeal of the Circuit Court decision.

On June 25, 1984, the U.S. Supreme Court upheld the plantwide definition, making it possible for EPA to proceed to approve state regulations employing it, provided a demonstration is made that use of the plantwide definition does not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) or reasonable further progress.

Since the time of the proposed approval, however, the attainment status in Mississippi has changed. The one nonattainment area (Laurel) which would have been affected by the requirements under Part D of the Act, was redesignated to attainment on August 27, 1985. Thus, the only Act requirements affecting the Mississippi submittal are 110(a)(2)(D) and 165(a)(3)(B), which are implemented by 40 CFR 51.18(k).

Under the current version of the federally approved SIP, sources affected by 40 CFR 51.18(k) are not covered by the Mississippi regulations. In such cases, these sources are regulated by the state under Appendix S to 40 CFR 51.18, entitled Emission Offset Interpretative Ruling. Under the regulations submitted by Mississippi, the Interpretative Ruling is adopted by reference to cover the same set of sources.

The Interpretative Ruling satisfies all requirements of 40 CFR 51.18(k). (See 45 FR 31310, first column.) Since the Mississippi submittal fully complies with 40 CFR 51.18(k), and since the adoption of the new regulations causes no change in the way sources outside nonattainment areas are treated, EPA is today fully approving Mississippi's submittal as satisfying the requirements of 40 CFR 51.18(k).

The specific portions of the Mississippi submittal which are being approved are: Regulation APC–S–2, sections 2.4.8.1, 2.4.8.3 and 2.4.8.4. Section 2.4.8.3 applies to any major source which locates in or impacts an area where NAAQS is exceeded, but for which the State of Mississippi has not submitted a nonattainment area implementation plan. These areas include (a) a newly designated nonattainment area in Mississippi, (b) any designated nonattainment area outside Mississippi which is impacted by a source in Mississippi, (c) an area which is violating NAAQS, but has not yet been designated nonattainment, and (d) an area which would violate NAAQS due to the new or modified source.

Since there are currently no designated nonattainment areas in Mississippi, Regulation APC–S–2, section 2.4.8.2 no longer applies to any area. When such an area is designated in the future, EPA's rules may be different than now, and 2.4.8.2 may not be adequate. Therefore, EPA is deferring action on 2.4.8.2 until such time as an area is designated nonattainment.

On July 8, 1985, EPA promulgated final regulations concerning credit for stack heights in conducting air quality simulation modelling. EPA policy requires that, in order for EPA to approve any new source review regulations, states must be able to implement the substantive requirements of those regulations for sources covered by the new source review program. Mississippi has stated in a letter to EPA dated November 25, 1985, that the Bureau of Pollution Control can enforce the EPA regulation.

Final Action

EPA has reviewed the submitted material and found it to meet the provisions of 40 CFR Part 51. Therefore, EPA is today approving the State's submittal as satisfying the requirements of an acceptable plan.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this final rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Mississippi was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: March 12, 1986.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart Z—Mississippi

1. The authoritty citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 51.1270 is amended by adding (c)(18) as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(18) Part D and other new source review provisions were submitted by the Mississippi Department of Natural Resources on November 25, 1981.

(i) Incorporation by reference.

(A) Letter dated November 25, 1981 from Mississippi Department of Natural Resources, and Mississippi Regulation APC–S–2, section 2.4.8, "Additional Requirements for a Construction Permit for a New Facility Significantly Impacting an area in which a National Ambient Air Quality Standard is being Exceeded or will be Exceeded", was adopted by the Mississippi Commission on Natural Resources on November 12, 1981. Subsection 2.4.8.1, 2.4.8.3, and 2.4.8.4 are incorporated by reference.

(ii) Additional material.

(A) Letter to Jack Ravan from Charlie E. Blalock, dated November 25, 1985, interpreting Mississippi regulations with respect to source coverage and stack heights.

[FR Doc. 86-6090 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-25 and 101-26

[FPMR Amendment E-26]

Property Management; Transfer of Regulations Pertaining to Management of Government-Owned and -Leased Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration in an effort to consolidate policies and procedures governing the management of Government-owned and -leased motor vehicles has redesignated certain sections that appear in Subchapter E to Subchapter G. Revisions to these sections are made pursuant to recommendations by the Interagency Motor Equipment Management Committee and comments from other Federal agencies.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Frisbee, Federal Supply Service, Fleet Management Division, (703/557–1288).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternate approach involving the least net cost to society.

List of Subjects

41 CFR Part 101–25

Energy conservation, Government property management, Reporting and record keeping requirements.

41 CFR Part 101–26

Government property management.

Title 41 Parts 101–25 and 101–26 of the code of Federal Regulations are amended as follows:

PART 101-25—GENERAL

1. The authority citation for 41 CFR Part 101–25 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101–25 is amended by removing the following entries:

Subpart 101-25.3—Use Standards

Sec.
101–25.303 [Removed]
101–25.304 [Removed]
101–25.304–1 [Removed]
101–25.304–2 [Removed]

§§101-25.303, 101-25.304, 101-25.304-1, 101-25.304-2 [Removed]

3. Sections 101–25.303, 101–25.304, 101–25.304–1, and 101–25.304–2 are removed.

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

4. The authority citation for 41 CFR Part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

5. The table of contents for Part 101–26 is amended by removing the following entries:

Subpart 101-26.4—Purchase of Items From Federal Supply Schedule Contracts

Sec.
101–26.406 [Removed]
101–26.406–1 [Removed]
101–26.406–2—101–26.406–4 [Removed]
101–26.406–5 [Removed]
101–26.406–6 [Removed]

101-26.406, 101-26.406-1, 101-26.406-2—101-26.406-4, 101-40-5, 101-26-406-6 [Removed]

6. Sections 101–26.406, 101–26.406–1, 101–26.406–2—101–26.406–4, 101–26.406–5, and 101–26.406–6 are removed.

Dated: February 26, 1986.

T.C. Golden,
Administrator of General Services.

[FR Doc. 86-6051 Filed 3-19-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

[Circular No. 2578]

Conveyance of Federally-Owned Mineral Interests; Amendment to the Conveyance Procedure

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations on conveyance of federally-owned mineral interests by simplifying the processing of applications to acquire the federally-owned mineral interests. These changes, for the most part, are derived from experience gained in implementing the existing regulations.

EFFECTIVE DATE: April 21, 1986.

ADDRESS: Suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, Main Interior Bldg., Room 3643, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Hemstreet (202) 343–8693.

SUPPLEMENTARY INFORMATION: Proposed rulemaking amending the existing regulations on conveyance of federally-owned mineral interests was published in the **Federal Register** on February 7, 1985 (50 FR 5269), with a 60-day comment period. During the comment period, comments were received from 12 sources, 4 from business interests, 6 from Federal agencies and 2 from private nonprofit organizations.

General Comments

The comments generally were favorable to the changes made by the proposed rulemaking, with several of the comments recommending changes to sections of the existing regulations that were not included in the proposed rulemaking. The recommended changes to sections of the existing regulations not considered by the proposed rulemaking cannot be made part of the final rulemaking because the public has not had an opportunity to review and comment on the changes, but those changes will be considered during any future amendment of part 2720.

One general comment asked what effect this rulemaking would have on pending applications. The changes made by the proposed rulemaking and adopted by this final rulemaking will be applicable to all pending applications, except those that have essentially been completed, and the issuance of a patent is all that remains to vest title to the federally-owned mineral interests in the surface owner. Except for the provision for the segregation of lands covered by an application, the amendments covered by this rulemaking are clarifications of the existing regulations and make only minor changes in the processing procedure for an application. Therefore, the final rulemaking would have little impact on the processing of pending applications.

Four comments suggested that the definition of the term "known mineral values" found in § 2720.0–5(b) of the existing regulations is too ambiguous and should be amended. The suggestions for amendment ranged from changing two words in the existing text to a total revision of the definition. Since this defintion was not included in the proposed rulemaking, no change has been made in it in the final definition. In response to the comments, the definition of this term will be reviewed and, if appropriate, a change will be made the next time Part 2720 is amended.

As a streamlining measure, one comment recommended that the final rulemaking provide that a $500 deposit be required with each application which would eliminate the need for the authorized officer to request a deposit after the application is filed. This requirement would be a substantive change in the existing regulations, a change that would require public comment before its adoption. Since the provision was not included in the proposed rulemaking for public review and comment, it cannot be included in the final rulemaking.

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Another comment suggested that the final rulemaking include a definition of the term "nominal value". In classifying lands as prospectively valuable for a mineral, it is recognized that the degree of value may range from zero to a near certainty, depending on such factors as the nature of the rocks on the lands, extent of dissection by erosion and proximity to production or previously drilled exploratory holes. The term "nominal" as used by the Department of the Interior in relation to mineral value, since at least 1967, denotes a degree of value near the zero end of the scale. Since the determination of nominal value is a matter of judgment, it is appropriate that the standard used in reaching that judgment be included in the Bureau of Land Management Manual, rather than including it in the regulations. The final rulemaking has not adopted this suggestion.

Two comments suggested that the regulations should contain separate guidelines for use in connection with locatable, salable and leasable minerals. Those offering the comments expressed the view that the term "prospectively valuable" was being misused: (1) When assessing locatable minerals; (2) in situations where there is no market for salable minerals; and (3) the presumption of value of leasable minerals derived from generalized maps of sedimentary basins without regard to more specific factual information. This suggestion is being considered for inclusion in the Bureau of Land Management manuals, where it is more appropriate. The final rulemaking has not adopted the suggestion.

Specific Comments

One comment suggested a change in the definition of the term "proof of ownership" contained in the proposed rulemaking. The comment made the point that the only information needed is the identity of the surface owner of record which could be met by a certified copy of a document from the county tax assessor showing the current surface owner of record. The key element in the definition of the term "proof of ownership" is the phrase ". . . evidence of title acceptable in local realty practice by attorneys and title examiners. . . ." The remainder of the definition is only one form of evidence that is universally acceptable. The definition does not attempt to include all such acceptable documents. If a certification by the county tax assessor showing the current surface owner of record is acceptable to attorneys and title examiners in local realty practice, it will meet the requirements of the definition. The final rulemaking has not adopted the suggested change.

All of the comments pointed out that the Federal Land Policy and Management Act provides for the conveyance of federally reserved mineral interests that do not contain known mineral values without a determination of interference or beneficial use. This point is well taken and the final rulemaking has been corrected to properly reflect the law. One of the comments suggested that the final rulemaking should contain more discussion of and a definition of what constitutes interference or preclusion. The comment questioned whether nonmineral development included the use of lands for plant sites, waste dumps, tailing sites, etc. The comment went on to ask how much discretion does the authorized officer have in making the determination of interference or preclusion? Each case will be unique, with a different set of facts, making it impractical to attempt to define what constitutes interference or preclusion so that it covers every case. The facts presented with an application dictate the action to be taken by the authorized officer, with his decision of whether interference or preclusion exists being dependent upon those facts. Mineral extraction plant sites, waste dumps, tailing sites and other such mining related activities would not be considered nonmineral development. Sale of federally reserved mineral interests of known value would be inappropriate for these purposes. Such development should be placed on lands having no known mineral value. If a surface owner insists upon placing such facilities on lands with known mineral values that have been reserved by the United States, it will be at that surface owner's risk.

A comment suggested that the word "hypothecation" that appears in § 2720.6 of the proposed rulemaking be changed to the word "hypothesis" in the final rulemaking. The comment pointed out that the word "hypothecation" means to pledge without delivery of title and is not appropriate. The suggestion is well taken and the final rulemaking contains the word "hypothesis".

A final comment on the policy section of the proposed rulemaking asked whether the proposed rulemaking dealt only with sale of federally reserved mineral interests or included exchanges of such interests. The proposed and final rulemakings cover only the sale of federally reserved mineral interests, with the exchange of public lands and the interests therein, including mineral interests, covered by the regulations in 43 CFR Part 2200.

A comment on the provisions of § 2720.1-1 of the proposed rulemaking suggested that the final rulemaking be amended to simply state that pending the issuance of the conveyance document for the mineral interests, the mineral interests will not be available for leasing. The comment reasoned that the term "segregate" had a special meaning in the oil and gas program of the Bureau of Land Management, which is to separate or divide a lease. The term "segregate" is used throughout the various Parts of Subchapter B of Title 43 of the Code of Federal Regulations with a meaning that is consistent with its use in the proposed rulemaking; therefore, the final rulemaking makes no change in its use of the term.

A comment recommended that the final rulemaking contain language specifically requiring that the applicant pay the cost of publication of the notice of realty action. This recommendation has not been adopted by the final rulemaking because §§ 2720.1-3(b) and 2720.3(a) of the existing regulations make the applicant responsible for all administrative costs incurred by the United States in connection with the processing of an application for the conveyance of federally-owned mineral interests.

A comment stated that publication in the **Federal Register** was not necessary to effect segregation of the interest in lands covered by the application. The comment went on to suggest that the final rulemaking provide that segregation became effective upon filing of an application for conveyance of federally-owned mineral interests. The final rulemaking has made no change in the publication requirement because the segregation of lands without proper publication has been criticized in the past as being inconsistent with section 5 of the Federal Register Act (44 U.S.C. 1505). Publication of the notice of segregation in the **Federal Register** assures that constructive notice is given to all parties of interest.

One comment interpreted the segregation provision of the proposed rulemaking as segregating the lands covered by an application from all forms of application, including conveyance of federally-owned mineral interests applications. Since the notice segregating the federally-owned mineral interests will be published after receipt of an application, the filing of the application will have no segregative effect. No change has been made in the final rulemaking in response to this comment.

Several comments opposed the requirement in the proposed rulemaking for a metes and bounds survey because it was an unnecessary departure from longstanding procedure and precedent. It was suggested that there may be gaps and overlaps between metes and bounds descriptions that would be unmanageable. These comments also expressed the view that the use of legal subdivisions and aliquot parts is subject to the least amount of error. Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719(b)) provides for the conveyance of federally-owned mineral interests only to the existing or proposed record owner of the surface. While the use of legal subdivisions and aliquot parts is normally the method used to describe ownership, there are situations where a metes and bounds description in the only accurate way to describe ownership. This is especially true when lands are divided and sold by metes and bounds descriptions. The final rulemaking has been amended to require that the survey evidence be acceptable to the authorized officer. Any survey evidence submitted will be reviewed by the Chief of Cadastral Survey for the State to make certain that the description closes and does not overlap other lands that are not owned by the applicant.

A final comment on the requirement in the proposed rulemaking for survey evidence suggested that the language be changed from ". . . and a showing in the applicant. . ." to ". . . and a showing by the applicant. . . ." This suggestion has not been adopted by the final rulemaking because the word "in" modifies the word "ownership" and the preferred usage is to say ownership in rather than ownership by.

Four of the comments strongly suggested retention of the 90-day period during which the authorized officer is to determine whether an application meets the requirements for further processing and to determine the amount of the deposit required and so inform the applicant. Those comments expressed the view that the 90-day requirement is the only thing in the regulations that assures an applicant of prompt consideration of an application. The final rulemaking retains the 90-day requirement now contained in the existing regulations.

One of the comments on § 2720.1-3 of the proposed rulemaking suggested that the references to the U.S. Geological Survey contained in the section be deleted because the functions described are now handled by the Bureau of Land Management. The final rulemaking has adopted this suggestion because the change is an administrative recognition of changes in the functions of the two bureaus that have already occurred.

The principal author of this final rulemaking is David C. Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0153.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will simplify the conveyance of federally-owned mineral interests and speed the processing of applications for the conveyance of federally-owned mineral interests. The changes will impact and benefit all entities equally because the conveyance of federally-owned mineral interests is open to all existing or proposed surface owners, regardless of their size.

List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands—mineral resources, Public lands—sales.

PART 2720—[AMENDED]

Under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719, 1740), Part 2720, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

February 24, 1986

J. Steven Griles,

Assistant Secretary of the Interior.

1. The "Note" appearing immediately after the heading for Group 2700 is revised to read:

Note.—The information collection requirements contained in Parts 2720 and 1740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

2. The authority citation for part 2720 continues to read:

Authority: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

§ 2720.0-5 [Amended]

3. Section 2720.0-5 is amended by adding a new paragraph (d) to read:

(d) Proof of ownership means evidence of title acceptable in local realty practice by attorneys and title examiners and may include a current title attorney's opinon, based on a current abstract of title prepared by a bonded title insurance or title abstract company doing business in the locale where the lands are located.

4. A new section 2720.0-6 is added to read:

§ 2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, conveyance of federally reserved mineral interest shall be made only upon a determination of no know value or if it can be clearly demonstrated that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. Allegation, hypothesis or speculation that such conditions could or may exist at some future time shall not be sufficient basis for conveyance. Failure to establish by convincing factual evidence that the requisite conditions of interference or preclusion presently exist, and that nonmineral development is a more beneficial use, shall result in the rejection of an application.

§ 2720.1-1 [Amended]

5. Section 2720.1-1 is amended by designating the introductory text as paragraph (a), redesignating the existing paragraphs (a) and (b) as paragraphs (a) (1) and (2) and adding a new paragraph (b) to read:

(b) Publication in the *Federal Register* of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either

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upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

§ 2720.1-2 [Amended]

6. Section 2720.1–2(d)(3) is amended by removing the phrase "to the applicant; and" at the end thereof and replacing it with the phase "and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepard and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and".

§ 2720.1-3 [Amended]

7. Section 2720.1–3 is amended by:

A. Amending paragraph (b)(2) by removing from where it appears in the first sentence thereof the phrase "after he has obtained the approval of the U.S. Geological Survey" and by removing from where it appears in the second sentence thereof the phrase "locatable and saleable minerals prepared by the Bureau of Land Management and mineral resources evaluation reports on leasable minerals prepared by the U.S. Geological Survey" and replace it with the phrase "minerals prepared by the Bureau of Land Management";

B. Amending paragraph (c) by removing from where it appears the phrase "after having obtained the approval of the U.S. Geological Survey";

C. Amending paragraph (d) by removing from where it appears the phrase", with the approval of the U.S. Geological Survey,"; and

D. Amending paragraph (e) by removing from where it appears in the first sentence the phrase", after the authorized officer has obtained the approval of the U.S. Geological Survey", by removing from where it appears in seventh sentence the phrase "and with the approval of the plan of operations by the U.S. Geological Survey" and by also removing the phrase "and the U.S. Geological Survey", and by removing from where it appears in the eleventh sentence the phrase "leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and salable mineral resources" and replace it with the phrase "mineral resources".

[FR Doc. 86–6102 Filed 3–19–86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Fishery Conservation and Management; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of amounts of pollock apportioned to domestic annual processing (DAP) and reserve amounts of flounders and the "other species" category to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action is necessary to provide sufficient bycatch for the foreign longline fishery on Pacific cod. It is intended as a management measure that promotes full utilization of Alaska groundfish.

DATES: This notice is effective March 17, 1986. Comments on this action are invited until April 1, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at § 672.20(c) authorize the apportionment of surplus amounts of the reserve and the domestic annual harvest (DAH) to TALFF if the Director, Alaska Region, NMFS (Regional Director), after consulting with the North Pacific Fishery Management Council (Council), has determined that these amounts will not be harvested by domestic fishermen during the remainder of the year. Interim initial specifications for Gulf of Alaska groundfish (51 FR 956, January 9, 1986) were modified later (51 FR 5198, February 12, 1986), and pollock reserves were reapportioned to joint venture processing (JVP) by another action (51 FR 7446, March 4, 1986). DAP and JVP together comprise TALFF.

The Regional Director has determined that the current TALFF specifications of pollock and flounders in the Western and Central areas in the Gulf of Alaska and "other species" Gulf-wide are insufficient to provide appropriate bycatch amounts for the Pacific cod TALFFs in the Western and Central areas, and that it is necessary immediately to increase those amounts to avoid disruption to the foreign fishery. He also has determined that the amounts to be reapportioned from DAP and reserves will not be taken by U.S. fishermen. Consequently, 100 metric tons (mt) of pollock in the Western/Central area is reapportioned from DAP to TALFF, and 40 mt of flounders in the Western area, 10 mt of flounders in the Central area, and 100 mt of "other species" Gulf-wide are reapportioned from their respective reserves to TALFF.

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT FROM DAH AND RESERVE TO TALFF. (FIGURES ARE IN METRIC TONS) DAH=DAP+JVP.

Species/regulatory area	Current	This action	Revised
Pollock:			
Western/Central (OY=305,000)			
Reserve	0	0	0
TALFF	40	+100	140
DAH	304,960	−100	304,860
DAP	201,960	−100	201,860
JVP	103,000	0	103,000
Flounders:			
Western (OY=10,400)			
Reserve	2,020	40	1,980
TALFF	60	+40	100
DAH	8,320	0	8,320
DAP	7,284	0	7,284
JVP	1,036	0	1,036
Central (OY=14,700)			
Reserve	2,920	−10	2,910
TALFF	10	+10	20
DAH	11,770	0	11,770
DAP	10,686	0	10,686
JVP	1,084	0	1,084
Other species:			
Gulf-wide (OY=22,460)			
Reserve	4,312	−100	4,212
TALFF	180	+100	280
DAH	17,968	0	17,968
DAP	9,074	0	9,074
JVP	8,894	0	8,894

Classification

This action is taken under 50 CFR Part 672 and complies with Executive Order 12291.

In view of the need to avoid disruption of domestic fisheries, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–6095 Filed 3–17–86; 2:02 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 50587-6042]

Fishery Conservation and Management; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; change in total allowable catch, permit requirements, and bag limits for the Atlantic migratory group of king mackerel.

SUMMARY: The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC), permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This notice reduces TAC and allocations for Atlantic migratory group king mackerel based on recent catch data, requires permits for commercial vessels, and bag limits for recreational fishermen. The intended effects are to protect the Atlantic migratory group of king mackerel and still allow catches by the important recreational and commercial fisheries that are dependent on this species and to implement a permit requiremet for commercial vessels for the purpose of improved management.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The king mackerel fishery is regulated under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34840, August 28, 1985). On January 8, 1986 (51 FR 769) a notice of preliminary changes in the total allowable catch, permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the FMP was published for public comment. The comment period ended January 23, 1986.

The preamble to the preliminary notice contained a description of the need and rationale for implementing the changes in TAC, permitting requirements, and bag limits. These discussions are not repeated here.

Comments and Responses

Seventeen comments on the preliminary notice were received from seven commenters including fishermen, a seafood technologist, a recreational fishing organization, a marina operator, and a boat manufacturer.

Sale of Recreational Catches

A recreational fishing organization and a seafood technologist stated that recreational fishermen should not be allowed to sell their catch because they cannot ensure a quality product since they are either unfamiliar with proper storage techniques or unable to adequately care for their catch. Both commenters also stated that allowing the sale of recreational catches encourages recreational fishermen to compete with commercial fishermen for the fish and market. NOAA does not agree. Purchasers of the catch determine the quality, thus fishermen with less than adequate quality fish will be unable to sell their catch. The bag limit on recreational fishermen should prevent any significant competition with the unrestricted catch of an individual permitted to fish under the commercial quota.

Quotas and Allocations

A recreational fishing organization stated that the 18 percent reduction in total allowable catch of the Atlantic migratory group was insufficient to prevent the collapse of the resource because the best available scientific information was not used. NOAA does not agree. NOAA acknowledges there are data deficiencies, but concludes that the Councils used the best scientific information available. Allowable catches will be adjusted annually, on a pre-season basis, as additional information is gathered.

One commenter opposed any restrictions because he did not believe that the Councils' decisions are sound and based on the best scientific information available. NOAA disagrees. As stated above, the Councils utilized the best scientific data available.

Two commenters opposed quotas and allocations because of negative effects on tournaments. One commenter suggested a special concession for major tournaments. The Councils fully considered the impact of the allocations and quotas on tournaments and determined that tournament participants must share the burden for the conservation of king mackerel. NOAA agrees with the Councils' decision.

Bag Limits

One recreational fisherman questioned whether a size limit rather than a bag limit would achieve the same purpose. The Councils considered the advantages and disadvantages associated with size and bag limits. Since king mackerel are migratory, the Councils selected the bag limit because this allows the residents of different States to participate in this fishery in a fair and equitable manner. A size limit favors the areas where the larger fish occur during migration. NOAA agrees with the Councils' decision in selecting the bag limit.

One recreational fisherman questioned how the bag limit will be enforced. Based on comments from Federal and State law enforcement personnel, the Councils concluded that the bag limit was enforceable. NOAA also concluded that this measure was enforceable. The bag limit will be enforced by Federal agencies such as the U.S. Coast Guard and National Marine Fisheries Service and by State agencies through Federal/State cooperative agreements.

One recreational fisherman questioned whether any government body could unilaterally impose such a rule without public participation in the rule-making process. The Councils that developed these measures are composed of representatives from the coastal States' governments, the recreational and commercial fishing communities, and the Federal government. As required by the Magnuson Act, the Councils obtained public participation through fourteen public hearings held on Amendment 1 under which this notice action has been developed. During these hearings, the Councils solicited public comments on the use of bag limits for the recreational fishery in the area of the Atlantic migratory group. The public had opportunity also to comment during the 15-day public review period for this notice action that ended January 23, 1986.

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A recreational fisherman inquired as to why there was no mention of restrictions on the west coast of Florida (including the Keys) and the Gulf of Mexico. This notice action is applicable only to the Atlantic migratory group. In Amendment 1, the Councils previously reviewed the status of the Gulf of Mexico king mackerel migratory group and concluded that this group is overfished. As a result the total allowable catch was reduced by 22 percent.

A recreational fisherman did not believe that the recreational sector could catch enough king mackerel to overfish the Atlantic migratory group and therefore, should not be included with commercial net vessels. A sport fishing organization recommended that the taking of king mackerel be restricted to hook-and-line commercial and rod and reel recreational fishermen. Historically, the recreational and commercial sectors have taken 62.9 and 37.1 percent, respectively, of the total harvest. The Councils reviewed this information and concluded that both sectors must be managed to prevent overfishing of the Atlantic group. NOAA agrees with the Council's decision.

A recreational fisherman inquired as to the commercial quota amount, the identity of the enforcing agency, and the foreign catch inside the fishery conservation zone (FCZ). The Councils reviewed the best available scientific information and set the commercial quota at 3.59 million pounds as measured by the commercial sales reported by dealers. The quota will be enforced by NMFS, the U.S. Coast Guard, and State agencies through the Federal/State cooperative agreements. Since the domestic sectors catch the entire optimum yield, there is no surplus available for foreign fishing. Any foreign vessel fishing for king mackerel in the FCZ is in violation of the Magnuson Act. Furthermore, such violation is unlikely since all foreign vessels fishing in the FCZ must have a NMFS observer aboard. NOAA agrees with the Councils' decision regarding the commercial quotas.

Changes From the Preliminary Notice

Section 642.4

Paragraph (b) is revised to allow commercial king mackerel fishermen to submit one application for permits to fish either or both the Atlantic migratory group and the Gulf migratory group. This will lessen the paperwork burden on fishermen. Permits for fishing the two migratory groups will be issued during the two months prior to the start of the respective migratory groups' fishing year.

Paragraph (g) is modified to require that a copy of the executed (signed) bill of sale be available for inspection aboard a newly purchased permitted vessel while the new owner is awaiting issuance of a new permit. This will assist in enforcement of the permitting requirement under paragraph (a) and reduce the possibility for inconvenience to the vessel owner in the event he is inspected prior to receipt of his new permit.

Section 642.7

Paragraph (a)(2) is revised by deleting the reference to § 642.22 since closures under this section are addressed in other paragraphs of § 642.7. Paragraphs (a)(17), (19), and (20) are modified to reflect the amended designations for paragraphs (c), (d), and (e) of § 642.21. Paragraph (a)(28) is added to clarify that king mackerel harvested by recreational fishermen may not be sold after closure of the respective king mackerel group allocation or quota under § 642.21. Paragraphs (a)(29) and (30) are added for application of paragraphs at § 642.28 (e) and (f).

Section 642.24

Paragraph (c) is corrected by changing the word "abroad" to aboard" wherever it occurs in the paragraph.

Section 642.28

Paragraph (c) is revised for clarification and the reference to persons fishing under the bag limit selling their fish has been deleted. Paragraph (d) is added to address the selling of king mackerel harvested under the bag limit.

Paragraph (e) is added to clarify that fishermen may not combine the bag and possession limits applicable to the FCZ and State waters.

Paragraph (f) is added to identify the operator of a vessel as the person responsible for the cumulative bag limit of king mackerel applicable to the vessel. This conforms with the responsibilities of vessel operators described under § 642.2 Definitions.

Changes to the Permit Application Process

Due to procedural delays, applications for 1986–1987 commercial fishing permits to fish the Atlantic migratory group of king mackerel or to fish the Atlantic and Gulf migratory groups of king mackerel will be received until May 19, 1986. The Regional Director or his designee will issue a 1986–1987 commercial fishing permit to fish Atlantic migratory group king mackerel, after a permit application is submitted as specified above. The Atlantic migratory group king mackerel 1986–1987 fishing year will still begin April 1, 1986. Commercial fisherman may fish commercially for Atlantic migratory group king mackerel without a permit during the permit application period, ending May 19, 1986.

Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review and supplemental regulatory flexibility analysis which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities.

This rule contains a collection of information requirement subject to the Paperwork Reductions Act. The collection of this information has been approved by the office of Management and Budget, OMB Control Number 0648–0097.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is revised as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 642, the Table of Contents is amended by revising the heading for § 642.21 from "Quotas" to "Quotas and allocations".

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with commercial permits to fish Atlantic migratory group king mackerel are under charter when there are more

than three (3) persons aboard including captain and crew.

* * * * *

4. Section 642.4 is amended by revising paragraphs (a), (b) introductory text, (b)(7), (d), (f) and (g), and adding a new paragraph (b)(8) to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability* (1) Owners or operators of fishing vessels which fish for king mackerel under the commercial quotas (§ 642.21) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels and headboats that fish for Gulf migratory group king mackerel are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(3) Owners or operators of charter vessels may obtain a permit to fish Atlantic migratory group king mackerel provided they adhere to bag limits while under charter.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. Applications for permits to fish both the Atlantic and Gulf migratory groups of king mackerel or for a permit to fish only the Atlantic migratory group of king mackerel must be submitted to the Regional Director or his designee within 60 days prior to April 1 each year. Applications for permits to fish only the Gulf migratory group of king mackerel must be submitted to the Regional Director or his designee 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

* * * * *

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director; and

(8) The migratory group of king mackerel that will be fished.

* * * * *

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during February and March of each year to fish Atlantic migratory group king mackerel and May and June of each year to fish Gulf migratory group king mackerel, after permit applications are submitted according to paragraph (b) of this section. The Regional Director may issue permits at other times to newly registered or documented vessels, or in case of demonstrated hardship. Until the permit is received, fishermen must comply with the bag limits under § 642.28 and have a copy of an executed bill of sale per § 642.4(g).

* * * * *

(f) *Duration.* A permit is valid only for the period of the year for which it is issued (July 1–June 30 for the Gulf migratory group and April 1–March 31 for the Atlantic migratory group) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf or Atlantic migratory groups' quotas must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

* * * * *

5. Section 642.6 is amended by revising paragraph (a) introductory text to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king mackerel under a commercial quota and the permit specified in § 642.4 must—

* * * * *

6. Section 642.7 is amended by revising existing paragraphs (a) (2), (19), (20), (21), (22), and (25); revising the reference that reads "§ 642.21(b)" to "§ 642.21(c)"in paragraph (a)(17); changing the period at the end of paragraph (a)(27) to a semicolon and adding new paragraphs (a) (28), (29), (30), and (31), to read as follows:

§ 642.7 [Amended]

(a) * * *

(2) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.26;

* * * * *

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21(c) and (e) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession aboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(d) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or at time of landing king mackerel in excess of the bag limits specified in § 642.28 except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf and Atlantic migratory groups in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

* * * * *

(25) Land king mackerel in other than an identifiable form as specified in § 642.28(b);

* * * * *

(28) Possess king mackerel harvested from the FCZ under the recreational allocation set forth at § 642.21(b) after closure has been invoked as specified in § 642.22;

(29) Sell king mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d);

(30) Combine the bag and possession limits for king mackerel under § 642.28(a) with bag and possession limits applicable to State waters as specified under § 642.28(e); or

(31) Operate a vessel that fishes king mackerel in the FCZ with king mackerel aboard in excess of the cummulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f).

* * * * *

7. Section 642.21 is amended by revising the last two sentences of paragraph (a), redesignating existing paragraphs (b) through (e) as (c), (d), (e) and (i), and adding a new paragraph (b) to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* * * * The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Recreational allocations for king mackerel.* The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

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8. Section 642.22 is amended by designating the existing paragraph as (a), amending paragraph (a) by inserting the reference "§ 652.21(a), (c), and (e)" in place of "§ 642.21" throughout the paragraph, and adding a new paragraph (b) as follows:

§ 624.22 Closures.

* * * * *

(b) The Secretary, by publication of a notice in the **Federal Register**, will close the recreational fishery for king mackerel of the Atlantic migratory group when the allocation for that group under § 642.21(b) is reached or is projected to be reached.

§ 642.24 [Amended]

9. In § 642.24, paragraph (c) is amended by changing the word "abroad" to "aboard" wherever it occurs.

10. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limits.* Persons who fish for king mackerel from the Gulf or Atlantic migratory group (see Figure 2) in the FCZ, except those fishing under the permits and quotas specified in § 642.4; § 642.21(a); and § 642.24(c), are limited to the following:

(1) *Gulf migratory group.* (i) Possessing three (3) king mackerel per person per trip, excluding the captain and crew or possessing two (2) king mackerel per person per trip, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(ii) Possessing two (2) king mackerel per person per trip when fishing from other vessels.

(2) *Atlantic migratory group.* Possessing three (3) king mackerel per person per trip.

(b) All king mackerel must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) (1) After a closure under § 642.22(a) is invoked for the quota(s) (specified in § 642.21(a)) for either or both Gulf allocation zone(s), vessels permitted under § 642.4 may not fish for Gulf migratory group king mackerel in that zone(s) under the bag limit specified in paragraph (a) of this section.

(2) Charter vessels permitted to fish under the commercial quota of Atlantic migratory group king mackerel may fish under the bag limit specified in (a)(2) of this section provided they are under charter (more than three (3) persons aboard including captain and crew) and the recreational fishing allocation for Atlantic migratory group king mackerel under § 642.21(b) has not been closed under § 642.22(b).

(d) Recreational fishermen may sell their catch of Gulf and Atlantic migratory group king mackerel taken under the bag limits in paragraph (a) of this section unless the respective king mackerel migratory group allocation or quota in § 642.21 has been closed under § 642.22. King mackerel sold by recreational fishermen are counted against the appropriate commerical allocation or quota in § 642.21(a) for the area where they are in effect.

(e) Persons who fish for king mackerel in the FCZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for king mackerel in the FCZ is responsible for the cumulative bag limit, based on number of persons aboard, applicable to that vessel.

11. Part 642 is amended by designating Tables 1 and 2 and Figures 1 through 3 as Appendix A to the part. Table 2 is amended by revising the "King Mackerel—Atlantic" line and adding a new "King Mackerel—Atlantic Recreational" line to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota/TAC (million lbs)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic Commercial	1 Apr–31 Mar	All types	Entire range [2]	3.590	Sales from migratory group are projected to reach quota.
Atlantic Recreational	1 Apr–31 Mar	All types	Entire range [2]	6.080	Catches from migratory group are projected to reach allocation.

[1] See Figure 2 for dilineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)-See Figure 2.

[FR Doc. 86-6096 Filed 3-17-86; 3:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO-99-A5]

Pears Grown in Oregon, Washington, and California; Marketing Agreement and Order

AGENCY: Agricultural Marketing Service USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on a proposed amendment of the marketing agreement and Marketing Order 927 (7 CFR Part 927), covering Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California. The proposal would revise the size and composition of the Control Committee, limit the tenure of Control Committee members, change the varieties of winter pears covered under the order, authorize public advisors, add authority for research and development programs on a varietal basis, provide for periodic referenda on the order, and provide for certain other minor changes intended to improve program administration.

DATE: Written exceptions to this recommended decision must be received by April 4, 1986.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, DC 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone 202-447-5053.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Small businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small businesses.

During the fiscal year ending June 30, 1985, 96 handlers regulated under M.O. 927 handled winter pears for fresh market with an estimated crop value of $65.5 million. The average value per handler was approximately $680,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of winter pears would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 927 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

Further, while the amendment recommended herein would impose some requirements on affected small businesses and the number of such may be substantial, and added burden should not be significant in light of the potential benefits that should be derived by such small businesses.

Most of the substantive proposals would not have a significant impact on small businesses' recordkeeping and reporting burdens. One of the proposals in this rulemaking would authorize the funding of promotional programs on a varietal basis. Because this would provide added flexibility in the collection and use of assessment funds, various segments of the industry would be able to focus more clearly on their research and promotion goals and to more effectively pool their resources to mount promotional campaigns. Small businesses could especially benefit as they are the least likely to be in a position to initiate and maintain such marketing expansion projects individually.

The overall impact of the proposed amendment upon other small businesses is more difficult to evaluate. Some such businesses, including retail food stores, restaurants, and others that sell winter pears to the public in various forms, could experience slightly increased costs due to potentially higher winter pear price levels under the amendment. However, if an increased volume of winter pears were to be shipped as a result of varietal promotional efforts, greater returns to growers, handlers and other marketers could result. This might offset potential promotional expenses enough to benefit all groups, including consumers. However the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these potential added costs could well be counterbalanced by the advantages to small businesses that are winter pear growers who will benefit from the proposed amendment.

Based on the foregoing, it is hereby determined and certified that this action will not have a significant economic impact on a substantial number of small entities. A comment period of 15 days is provided. A longer period would unnecessarily delay the amendatory process and prevent the proposed changes from being implemented by the industry in time for the 1986 marketing season.

Preliminary statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreement and Order No. 927 regulating the handling of winter pears grown in Oregon, Washington, and California, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from William J. Doyle whose address is listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

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On June 20, 1985, a public hearing was held on proposed further amendment the marketing agreement, as amended, and Order No. 927, as amended. The hearing was held in Portland, Oregon, pursuant to the provisions of the act and the applicable rules of practice. Notice of this hearing was published in the Federal Register on June 11, 1985 (50 FR 24531). The notice of hearing contained a proposal by the Winter Pear Control Committee, which operates under the order, to amend the order to authorize varietal promotion and paid advertising, revise the size and composition of the Control Committee, change the varieties of winter pears included under the order, limit the tenure of committee members, provide for periodic continuance referenda, and make certain minor administrative changes. The notice included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

Material issues: The material issues presented on the record of the hearing are: (1) Whether the Control Committee should be authorized under the order to engage in marketing promotion and paid advertising to promote the marketing, distribution and consumption of winter pears by types or varieties; (2) whether changes in the size, composition and voting procedures of the Control Committee should be authorized; (3) whether the order should be amended to change the varieties and subvarieties of winter pears covered; (4) whether a limit should be established on the tenure of Control Committee members; (5) whether periodic continuance referenda should be held on the order; and (6) whether certain minor administrative changes and conforming changes should be made to the order if any of these proposals were to become effective.

Findings and conclusions: The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and the record of it, are as follows:

(1) The order should be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears on the basis of types or varieties. Such authority is provided under section 8c(6)(I) of the act.

Authority for generic marketing promotion and paid advertising of winter pears was added under the order on November 28, 1984. Certain testimony during that rulemaking proceeding also favored the promotion of winter pears on a varietal basis. However, this was inadequately supported and the order, as amended, did not provide for promotion on a varietal basis. On March 22, 1985, the industry requested that a public hearing be held to consider amending the order to add varietal promotion authority.

The hearing record indicates that the proposal would effectuate the declared purpose of the act by making the program more responsive to industry marketing needs. Varietal promotion authority would permit producers and handlers of different winter pear varieties to pursue marketing strategies tailored specifically to the marketing conditions that each specific variety or industry group faces. This could be desirable if new cultivars are developed and come into commercial production, since producers of these hybrids or crosses could fund projects solely directed toward informing consumers of their qualities and availability. Similarly if a particular variety were especially plentiful during a particular season, producers of that variety could develop and fund a program directed solely toward marketing this type of pear. In essence the proposed authority provides flexibility in marketing promotion and advertising under the order.

To effectuate this authority §§ 927.41 and 927.52 of the order should be amended to permit supplemental assessments based upon specific winter pear varieties. As proposed in the notice such supplemental assessments would be authorized whenever 80 percent of the votes cast by committee members on behalf of a variety support such levies. Hearing evidence supports supplemental assessment authority but not the requirement in the notice that 80 percent of all votes cast must be in support of an assessment levy for it to become effective. Witnesses testified that obtaining an 80 percent majority could be difficult, because even among producers of the same variety members may hold contrasting views on the need for supplemental promotions. Testimony indicated that recommendations for supplemental assessments should require 75 percent of the applicable number of votes of that variety to be valid. Such percentage is reasonable and should assure that adequate support exists for the imposition of a supplemental assessment on handlers of that variety. Evidence in the record also makes clear that handlers of any winter pear varieties or subvarieties covered under the order would be required to pay the base assessment rate recommended by the Control Committee and set by the Secretary, regardless of whether a supplemental assessment rate is subsequently levied on a particular variety.

Another revision proposed to effectuate varietal promotion authority is to amend § 927.47 to specify that funds spent for a particular variety of pears should approximate funds collected for the variety. Testimony indicates that this would safeguard promotion funds by ensuring that funds from assessments on one variety do not subsidize projects of other varieties. However, testimony indicates that the language should be strengthened further to make this mandatory rather than permissive as contained in the proposal. This would provide an additional degree of protection against the inappropriate use of funds. It is intended that the level of promotional expenditures for each varietal type would be required to be approximately the same as the assessment revenue collected for that varietal type of winter pears, including any unspent revenue from prior years. In addition, supplemental assessment income which remains unspent at the end of a season may be set aside in a reserve fund for the applicable variety, to be spent for promoting that variety in future seasons.

Another revision would modify § 927.52 to provide Control Committee members a procedural basis to vote to recommend supplemental varietal assessments. As proposed, committee decisions on the establishment or modification of a supplemental rate of assessment for an individual variety of pears would be made in the same manner as are decisions pertaining to grade, size, and quality recommendations. A vote would be allocated to each member and an additional volume vote would be allocated to each member on the basis of each 25,000 boxes of a particular variety that were marketed from the member's district.

One witness pointed out that certain varieties proposed for inclusion under the order (Seckels and Forelles) are produced in such small quantities that such a method of voting would result in unrepresentative tallies. For example, because no district currently produces and markets over 25,000 boxes of Forelles annually, each district would be entitled to one vote, even though only two districts account for most of the production. That witness proposed an alternative method of voting for Seckel and Forelles Varieties which allocates an additional vote for each 2,500 boxes of production in each district. This method would ensure that each district's vote was proportional to its production of Seckels and Forelles and is recommended for inclusion in the proposed amendment. Testimony

indicates that this alternative basis for volume votes is intended to be used for varietal votes on supplemental assessments, however, it would also be appropriate to use this method for votes on other varietal matters, including grade and size regulation recommendations. It is recognized, however, that the method of computing votes, including the proposed alternative method, does not provide flexibility in addressing changing conditions, especially any growth or decline in production of any winter pear varieties. Because such change in the industry is likely, it would be inappropriate to establish procedural methods for computing the votes for specified winter pear varieties that could become obsolete within a few years. Therefore, the committee should be authorized to authorized to consider other methods of allocating volume votes. One suggestion offered at the hearing would base votes on the percentage of production in a district compared to the whole production area. Other suggestions may also have merit. Of course, the committee may conclude that the proposed two-tiered system would be most practical at present. In any event, based upon the testimony presented at the hearing, the control committee should be provided additional authority to recommend to the Secretary alternative procedures to allocate each district additional votes based upon production, to be considered and implemented by means of informal rulemaking.

(2) The order should be amended, as hereinafter set forth, to authorize changes in the number of producer/handler members, the allocation of committee membership by district and the voting procedures of the Control Committee.

Testimony indicates that winter pear production has shifted over the years. California production has declined to less than three percent of the total of Oregon, Washington and California. Conversely production in the Wenatchee and Mid-Columbia districts has increased to the extent that each now account for about a third of total production. The current order entitles each district to one producer member and one handler member on the Control Committee. As a result the committee has become less representative of the industry in recent years.

The proposal would combine the two California districts, the Placerville District and the Santa Clara District, into one, designated as the California District, which would encompass the entire State of California. As stated above, winter pear production in California has declined significantly, and producers and handlers are similarly fewer in number. Because of this, and testimony which indicates that winter pear producers and handlers throughout California have similar concerns with regard to marketing order issues, one Control Committee producer member and one handler member from the State would be able to take positions representative of California as a whole.

The proposal would also enlarge the Control Committee to 14 member positions (from the current 12). The Medford, Yakima and California districts would each be allocated one producer and one handler position, and the Wenatchee and Mid-Columbia districts would each be allocated two producer and two handler positions. This would apportion membership on the committee as closely as possible to average winter pear production in each district and yet ensure each district representation on the committee.

Testimony indicates that committee quorum and voting procedures should also be changed to reflect the larger control committee size. It is appropriate that ten of the 14 members be present to constitute a quorum for conducting committee business. This is nearly equivalent to the present ratio, where nine member quorum is required of a twelve member committee.

The order currently provides in § 927.33 that decisions of the Control Committee shall be made by a majority of those voting, but not less than 7 concurring votes. As proposed in the hearing notice, decisions would be made by the concurring votes of 80 percent of those voting, but not less than 10 concurring votes. A substantial amount of testimony indicates that these requirements regarding all decisions except those made pursuant to § 927.50, might be too restrictive and would hamper committee operations. As no testimony was received regarding the need for a change in appropriate level of concurrence which should be required for decisions made pursuant to § 927.50, this provision remains unchanged. On other decisions, most witnesses testified that the concurring votes of 75 percent of those voting should be required. Further, reducing by five percent, to 75 percent, the concurrence necessary for committee action could potentially change the outcome of a vote when 12, 13 or 14 members (or alternates acting as members) are voting. For example, if an 80 percent concurrence were required in voting, three voting members or alternates could veto all actions. While all members are likely to continue to serve responsibly, it seems prudent and in the interests of effective decisionmaking to require that only 75 percent of those voting must concur in committee decisions.

The second requirement for committee decisions proposed, that of ten concurring votes, was opposed by a large number of those testifying at the hearing. These witnesses noted that this provision would require a unanimous affirmative vote for action if only ten members or alternates attended a meeting. Evidence suggests that this is an unreasonable requirement. Thus, no minimum number of concurring votes is specified.

(3) The order should be amended, as hereinafter set forth, to authorize changes in the varieties and subvarieties covered under the program.

Presently § 927.4 which defines pears under the order, includes Beurre Easter and Beurre Clairgeau varieties. However, testimony indicates that these varieties have been declining in commercial importance for many years, and currently have minimal commercial value relative to other varieties. Therefore, these varieties should be deleted from coverage under the order.

Testimony indicates that production of two other varieties, Forelle and Seckel, has become commercially significant within the States of Oregon and Washington and should be added to the list of varieties subject to regulation under the order. Additionally, producers of these varieties have indicated interest in developing and funding research and development projects. Forelle and Seckel variety pears grown in California are presently covered under Marketing Order No. 917, which is applicable to pears, peaches and plums grown in California, and therefore pears of these two varieties grown in California should not be included under Marketing Order 927.

Testimony also indicates that similar gradual changes in the relative prominence or commercial importance of various winter pear varieties is likely to occur in the future. In the event such changes occur the Control Committee and the producers of the affected varieties may elect to be included, or perhaps excluded, from coverage under the order. As proposed in the notice, effectuating such a change in coverage would require a formal rulemaking proceeding. It would be desirable to accomplish this without such formal rulemaking in the interests of time and expense, but only upon the recommendation of the control committee and the approval of the Secretary. It is also intended that

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producers of the affected varieties be polled as to their preferences in such matters and that the results of each such poll be submitted to the Secretary before any action to change coverage is undertaken. Section 927.4 should therefore be changed accordingly. It is understood, however, that any newly added coverage of any varieties would be applicable only to fruit produced in the State of Oregon and Washington, because varieties produced in California, other than those enumerated under Order 927, are covered under Order 917.

Testimony also indicates that a new § 927.13 subvariety should be added to the order. Under this provision each new subvariety developed from a cross of fall and winter pears would be classified as to parentage to clarify whether it would be covered under the program. Further, each new subvariety coverded under the program would be classified under a varietal group for the purpose of votes conducted by the Control Committee on supplemental promotion funding. Since the commercial production of new varieties and subvarieties is likely to develop over a number of seasons, producers and the Control Committee would have ample opportunity to determine whether particular varieties or subvarieties would be covered under the program. Upon determination by the Control Committee pursuant to § 927.33 that a particular variety or subvariety should be covered, the committee would request approval of the Secretary. Upon such approval the committee would notify all producers and handlers.

As a conforming change the title of the order should be modified to read "Winter Pears Grown in Oregon, Washington and California." This title would more closely identify the intent and coverage of the order.

(4) The order should be amended, as hereinafter set forth, to change the terms of office of Control Committee members and to establish a limit on the tenure of Control Committee members.

Testimony indicates that changing the terms of office of Control Committee members and alternates to two years from the current one year and providing for staggered terms of office will improve administration of the program. Expanding the term of office should provide the opportunity for members and alternates to become more familar with order operations which should enhance their contributions to the administration of the order. By staggering the terms of committee positions, particularly those within a district, the industry is ensured that knowledgeable persons will always be on the committee in each district.

It is recommended that this be accomplished by dividing the industry into odd and even-numbered year groups, and § 927.27 should be amended to provide that seven committee members and their alternates shall be nominated in even-numbered years and seven members and their alternates be nominated in odd-numbered years. To effectuate this change, nominations in 1987 should select one half of the committee membership for a one-year term of office and the remaining membership for a two-year term of office.

A reasonable schedule to nominate committee members and their respective alternates in 1987 would be as follows:

District	Position	Term
Medford	Grower	2 years.
	Handler	1 year.
Hood River-White Salmon-Underwood	Grower	2 years.
	Grower	1 year.
	Handler	2 years.
	Handler	1 year.
Wenatchee	Grower	2 years.
	Grower	1 year.
	Handler	2 years.
	Handler	1 year.
Yakima	Grower	2 years.
	Handler	1 year.
California	Grower	2 years.
	Handler	1 year.

All nominations subsequent to the 1987 nominations would be for two-year terms of office.

In recognition of the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders," industry witnesses also testified in support of limiting the length of time that committee members may serve to three consecutive two-year terms. Testimony indicates that such a limitation on tenure could help bring additional persons into active roles in the administration of the program. A number of clarifications were made in the course of the hearing on how the provision would be administered. Testimony indicates that the limitation should not be applied retroactively, but rather it would apply to those selected to full terms after the provision became effective. Also the limitation is intended to apply only to members, not to alternates. Additionally, persons no longer eligible to serve as members could serve as alternates and could also serve as members again after they had not served in that capacity for two years. Testimony indicates, however, that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nonetheless it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(5) The order should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the order within every six-year period.

The order provides that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the winter pears for market. Since less than 50 percent of all growers usually participate in a referendum, it is difficult to determine producer support for termination of an order. In order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 927.78 to authorize continuance referenda.

The results of such referenda should be based on the number of producers participating. Such requirements should be the same percentages set forth in section 8(c)(8) of the act with respect to producer approval of the issuance of a marketing agreement and order. This requires approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a presentative period. This is an appropriate basis for ascertaining whether winter pear growers favor continuation of the program. In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of the order, the Secretary should consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination and such majority produced more than 50 percent of the winter pears for market. To be effective, termination of the order should be announced on or before the

last day of a fiscal year. This date precedes the beginning of committee operations for a new fiscal year and is considered to be appropriate under the circumstances. Current paragraph (d) of § 927.78 should be redesignated as paragraph (e).

Hearing evidence supports this amendment to the order since it would provide winter pear producers with the opportunity periodically to indicate their support for or rejection of the order. Testimony indicates that such referenda would help to ensure that the program continues to be accountable to the producers. Such authority would also obligate producers to periodically evaluate their program and so involve them more closely in its operation.

(6) The order should be amended to authorize certain minor administrative and conforming changes, as hereinafter set forth.

Testimony supports a number of minor administrative changes proposed to improve administration of the program. None of these would result in changes in coverage or objectives of the program.

Testimony indicates that revising § 927.9 to authorize the Control Committee to recommend an alternative fiscal period to the Secretary could provide desirable flexibility. For example should payment or accounting practices change, it may be desirable to revise the fiscal period accordingly. This proposal would allow such a change, if approved by the Secretary, to be more simply accomplished through informal rulemaking in lieu of present authority, which would require formal rulemaking procedures.

Evidence indicates that § 927.26 should be amended to allow nominees to indicate in writing their willingness to serve on the Control Committee at the same time that they submit a statement of their qualifications for the position to the Secretary. Presently nominees are required to file written acceptance after selection by the Secretary. This proposal would reduce the paperwork and postage required in the selection of persons to the control committee.

Testimony also supports adding a new "§ 927.36 Public advisors" which provides specific authority to the Control Committee to appoint public advisors, define their duties, and set their compensation. Since this authority is already implied in § 927.32 (c) and (f), and since the Control Committee has already had the services and counsel of a nonindustry advisor for several years, this proposal merely clarifies the committee's authority.

Witnesses also testified that the Control Committee, with the approval of the Secretary, should be authorized to impose late payment and interest charges upon any handler who fails to pay an assessment within the time prescribed by the committee. This change is intended to encourage prompt payment of assessments. Testimony indicates that this is a good business practice and could help ensure that payment problems do not arise in the future. Provision for late payment and interest charges would allow the committee to defray additional costs incurred in preparing and mailing handler invoices for late assessment payments and interest charges on borrowed funds should borrowing become necessary to meet a shortfall in assessment income. Evidence also supports a related proposal, which would allow the committee to accept advance assessment payments from handlers prior to the commencement of shipments, which would then be credited to the handler's accounts. This would help to ensure that funds were available to the Control Committee to carry out desired activities. Witnesses testified that any advance payment of assessments would be entirely voluntary. Further, if it were determined by the Secretary to be permissible, the Control Committee might provide a monetary incentive to handlers to make such advance payments. Such payment discounts, if approved, would be available to all handlers on a pro rata basis.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed July 19, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing. None were filed during this period.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary and in addition to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings an determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The proposed marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as hereby proposed to be further amended, regulate the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, and Doyenne du Comice varieties of winter pears grown in the States of Oregon, Washington, and California, and other varieties of winter pears, including Forelle and Seckel, grown in the States of Oregon and Washington, in the same manner as, and are applicable only to persons in the respective classes of commerical and industry activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of said varieties of pears grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of said varieties of pears grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Oregon, Washington, California, Pears, Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Forelle, and Seckel.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

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PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

Proposal No. 1

Revise § 927.4 to read:

Section 927.4 Pears.

"Pears" means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, and Doyenne du Gomice varieties of pears grown in Oregon, Washington, and California and any other winter pear varieties or subvarieties that are recognized by the Control Committee and approved by the Secretary, including the Forelle and Seckel varieties, that are commercially grown in the States of Oregon and Washington.

Proposal No. 2

Revise § 927.9 to read:

Section 927.9 Fiscal period.

"Fiscal period" means the period beginning July 1 of any year and ending June 30 of the following year or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations by the Control Committee.

Proposal No. 3

Amend § 927.11 by removing paragraph (f) and by revising paragraph (e) to read:

Section 927.11 District.

* * * * *

(e) California District shall include all of the State of California.

Proposal No. 4

Add a new § 927.13 to read:

Section 927.13 Subvariety.

"Subvariety" means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Control Committee and approved by the Secretary. Recognition of a subvariety by the Control Committee shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

Proposal No. 5

Revise § 927.20 to read:

Section 927.20 Establishment and membership.

A Control Committee, consisting of 14 individual persons as its members, is hereby established to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35. There shall be two alternates, designated as the "first alternate" and the "second alternate," respectively, for each member of the committee. Seven members of the Control Committee and their respective alternates shall be growers of pears, and seven members and their respective alternates shall be handlers of pears. Each district shall be represented on the Control Committee by one grower member and one handler member except that the Hood River-White Salmon-Underwood District and the Wenatchee District shall be represented on the committee by two grower members and two handler members.

Proposal No. 6

Revise § 927.26 to read:

Section 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Control Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

Proposal No. 7

Revise § 927.27 to read:

Section 927.27 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending June 30: *Provided*, That the terms of office of one-half the initial members and alternates shall end June 30, 1988; and that beginning with the 1987–88 marketing year, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

Proposal No. 8

Revise paragraph (a) of § 927.33 to read:

Section 927.33 Procedure of Control Committee.

(a) Quorum and voting. A quorum at a meeting of the Control Committee shall consist of ten members, or alternates then serving in the place of any members. Except as otherwise provided in § 927.52, all decisions of the Control Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

* * * * *

Proposal No. 9

Add a new § 927.36 to read:

Section 927.36 Public advisors.

The Control Committee may appoint such public advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

Proposal No. 10

Revise § 927.41 to read:

Section 947.41 *Assessments.*

(a) Assessments will be levied only upon the handler who first handles pears which subsequently are shipped from the State of Oregon, the State of Washington, or the State of California. Each handler shall pay, upon demand, assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Based upon a recommendation of the Control Committee or other available data, the Secretary shall fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all pears or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal year.

(c) The Control Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Control Committee may impose an additional charge in the form of interest on such outstanding amount. The amount of such late payment charge and rate of interest, shall be prescribed by the Control Committee, with the aproval of the Secretary.

(d) In order to provide funds to carry out the functions of the Control Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Control Committee upon the approval of the Secretary to handlers making such advance assessment payments.

Proposal No. 11

Revised § 927.47 to read:

Section 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41. Expenditures for a particular variety of pears shall approximate the amount of assessments collected for that variety of pears.

Proposal No. 12

Revised § 927.52 to read:

Section 927.52 Prerequisites to committee recommendations.

(a) Decisions of the Control Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety of pears shall be made by an affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner hereinafter described in this section, of all committee members. Decisions of the Control Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all committee members.

(b) With respect to a particular variety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members of the committee in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by such member; and such district vote shall be computed by the Control Committee as soon as practical after the beginning of each fiscal period on either (1) the basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations outside the State in which produced; or (2) such other basis as the Control Committee may recommend and the Secretary may approve. The votes so allotted to a member of the committe may be cast by such member on each recommendation relative to the variety of pears on which such votes were computed.

Proposal No. 13

Revise paragraphs (c) and (d) and add a new paragraph (e) to § 927.78 to read:

Section 927.78 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of the growers of pears who, during such fiscal period, have been engaged in the area in the production of pears for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of pears produced for market in the area; but such termination shall be effective only if announed on or before the last day of the then current fiscal year.

(d) The committee shall recommend to the Secretary within every six-year period beginning on the date this section becomes effective that a referendum be conducted to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of pears in the production area: *Provided*, That termination of the order shall be effective only if annonced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event terminate whenever the provisions of the act authorizing them cease to be in effect.

Dated: March 12, 1986.

James C. Handley,

Administration.

[FR Doc. 86-6081 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Ch. X

[Docket Nos. AO-160-A64, etc.]

Milk Marketing Orders; Expedited Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A64
1001	New England	AO-14-A61
1002	New York-New Jersey	AO-71-A75
1006	Upper Florida	AO-356-A24
1007	Georgia	AO-366-A26
1011	Tennessee Valley	AO-251-A29
1012	Tampa Bay	AO-347-A27
1013	Southeastern Florida	AO-286-A34
1030	Chicago Regional	AO-361-A23
1032	Southern Illinois	AO-313-A34
1033	Ohio Valley	AO-166-A54
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A50
1040	Southern Michigan	AO-225-A37
1044	Michigan Upper Peninsula	AO-299-A24
1046	Louisville-Lexington-Evansville	AO-123-A55
1049	Indiana	AO-319-A34
1050	Central Illinois	AO-355-A23
1064	Greater Kansas City	AO-23-A56
1065	Nebraska-Western Iowa	AO-86-A43
1068	Upper Midwest	AO-178-A39
1075	Black Hills	AO-248-A19
1076	Eastern South Dakota	AO-260-A27
1079	Iowa	AO-295-A36
1093	Alabama-West Florida	AO-386-A5
1094	New Orleans-Mississippi	AO-103-A47
1096	Greater Louisiana	AO-257-A34
1097	Memphis	AO-219-A42
1098	Nashville	AO-184-A49
1099	Paducah	AO-183-A41
1102	Fort Smith	AO-237-A35
1106	Southwest Plains	AO-210-A46
1108	Central Arkansas	AO-243-A36
1120	Lubbock-Plainview	AO-328-A26
1124	Oregon-Washington	AO-368-A15
1125	Puget Sound-Inland	AO-226-A31
1126	Texas	AO-231-A53
1131	Central Arizona	AO-271-A26
1132	Texas Panhandle	AO-262-A36
1134	Western Colorado	AO-301-A19
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A6
1136	Great Basin	AO-309-A26
1137	Eastern Colorado	AO-326-A23
1138	Rio Grande Valley	AO-335-A31
1139	Lake Mead	AO-374-A10

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AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an expedited basis, mandated amendments to the Middle Atlantic and 43 other Federal milk marketing orders. The order changes would increase the Class I differentials in 35 orders and provide a specific minimum Class I differential for each of the 44 orders for a two-year period. The order changes were mandated by Congress through the enactment of the Food Security Act of 1985 (Pub. L. 99–198).

The order changes must be effective by May 1, 1986 for milk received on and after that date. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted. A hearing on implementation of these provisions was held January 28, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior document in this proceeding:

Notice of Hearing: Issued January 3, 1986; published January 13, 1986 (51 FR 1378).

Preliminary Statement

A public hearing was held upon mandated amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Alexandria, Virginia on January 28, 1986. Notice of such hearing was issued on January 3, 1986, and published in the Federal Register on January 13, 1986 (51 FR 1378).

Interested parties were given until February 10, 1986, to file post-hearing briefs on the mandated amendments as published in the notice of hearings and on whether the amendments should be considered on an emergency basis.

The material issues on the record of the hearing relate to:

1. Class I differentials mandated by the Food Security Act of 1985; and

2. Omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented and the record thereof:

1. Class I Price Differentials Mandated by the Food Security Act of 1985

Each of the 44 Federal marketing orders should be amended to provide minimum Class I price differentials for a two-year period, and subsequently unless modified by amendment to the order involved.

The Class I milk price (the highest priced use-classification) under each order is established each month by adding a specified dollar amount to the Minnesota-Wisconsin manufacturing grade milk prices (M–W price) for the second preceding month. These specific amounts, which are provided in the orders but not defined, are commonly referred to throughout the industry as "Class I differentials" or "fluid differentials." It is these differentials that the Food Security Act of 1985 establishes at higher levels in 35 of the orders and fixes at a minimum level in each of the 44 orders.

The Food Security Act of 1985, Title I, Dairy, Subtitle C—Milk Marketing Orders, amends Section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act (Act). This new law (Pub. L. 99–198) mandates that the present 44 Federal milk marketing orders be amended, and that these amendments be applicable to milk received on and after May 1, 1986. The Food Security Act of 1985 increases Class I differentials in 35 of the 44 orders and provides a specific minimum Class I differential for each of the 44 orders for a two-year period.

Official notice was taken at the public hearing held January 28, 1986, of Federal Milk Order Market Statistics for April 1985 and the Code of Federal Regulations for each of the 44 orders for the purpose of showing the present Class I differentials. The present Class I differentials, shown below, were taken from Table I on page 9 of the Federal Milk Order Market Statistics for April 1985. The new mandated Class I differentials that appear below are taken from the Congressional Record (official notice taken) dated December 17, 1985, at page H 12255.

Federal marketing order	Class I differentials		Increase
	Effective May 1, 1986	Before May 1, 1986	
Middle Atlantic	$3.03	$2.78	$0.25
New England	3.24	3.00	.24
New York-New Jersey	3.14	2.84	.30
Upper Florida	3.58	2.85	.73
Georgia	3.08	2.30	.78
Tennessee Valley	2.77	2.10	.67
Tampa Bay	3.88	2.95	.93
Southeastern Florida	4.18	3.15	1.03
Chicago Regional	1.40	1.26	.14
Southern Illinois	1.92	1.53	.39
Ohio Valley	2.04	1.70	.34
Eastern Ohio-Western Pennsylvania	1.95	1.85	.10
Southern Michigan	1.75	1.60	.15
Michigan Upper Peninsula	1.35	1.35	0
Louisville-Lexington-Evansville	2.11	1.70	.41
Indiana	2.00	1.53	.47
Central Illinois	1.61	1.39	.22
Greater Kansas City	1.92	1.74	.18
Nebraska-Western Iowa	1.75	1.60	.15
Upper Midwest	1.20	1.12	.08
Black Hills, South Dakota	2.05	1.95	.10
Eastern South Dakota	1.50	1.40	.10
Iowa	1.55	1.40	.15
Alabama-West Florida	3.08	2.30	.78
New Orleans-Mississippi	3.85	2.85	1.00
Greater Louisiana	3.28	2.47	.81
Memphis, Tennessee	2.77	1.94	.83
Nashville, Tennessee	2.52	1.85	.67
Paducah, Kentucky	2.39	1.70	.69
Fort Smith, Arkansas	2.77	1.95	.82
Southwest Plains	2.77	1.98	.79
Central Arkansas	2.77	1.94	.83
Lubbock-Plainview, Texas	2.49	2.42	.07
Oregon-Washington	1.95	1.95	0
Puget Sound-Inland	1.85	1.85	0
Texas	3.28	2.32	.96
Central Arizona	2.52	2.52	0
Texas Panhandle	2.49	2.25	.24
Western Colorado	2.00	2.00	0
Southwestern Idaho-Eastern Oregon	1.50	1.50	0
Great Basin	1.90	1.90	0
Eastern Colorado	2.73	2.30	.43
Rio Grande Valley	2.35	2.35	0
Lake Mead	1.60	1.60	0

The new Class I differentials shown above for the New England, New York-New Jersey, and Michigan Upper Peninsula orders are the same as those that appeared in the notice of hearing signed January 3, 1986. For the New England market, the above differential of $3.24 is the differential for plant location zone 1. For the New York-New Jersey market, the differential of $3.14 is the differential for the 1 to 10 mile freight zone. For the Michigan Upper Peninsula market, the Class I differential of $1.35 applies to Zone 2.

The Class I prices for these three orders, however, are not announced at those locations. In the New England market, the Class I price is announced for plant location zone 21 and the price is increased in 10-mile increments so that the price is 72 cents higher for Zone 1. In the New York-New Jersey market, the Class I price is announced for the 201–210 mile freight zone and the price is increased in 10-mile increments so that the price is 59 cents higher for the 1 to 10 mile freight zone. In the Michigan Upper Peninsula market, the Class I

price is announced for Zone 1 and is increased 20 cents for Zone 2.

The order language adopted to implement the new differentials continues to announce the prices at the pricing zones that are presently used in the New England, New York-New Jersey, and Michigan Upper Penninsula orders. These amounts, when adjusted as indicated previously, reflect the Class I differentials that appear in the preceding table and in the Congressional Record. The Department's interpretation in this regard was supported in testimony at the hearing and in briefs filed after the close of the hearing.

Shown below is the Congressional rationale for these minimum two-year Class I differentials. The following paragraphs appear on pages 22 through 24 of the "Report of the Committee on Agriculture" to accompany H.R. 2100. Official notice of this report was taken at the hearing.

"Federal Milk Marketing Orders

"The Federal milk marketing order program is authorized by the Agriculture Marketing Agreement Act of 1937, as amended. Federal orders are part of a broad program of marketing arrangements and whereby the Secretary of Agriculture is authorized to stabilize market conditions by issuing regulations which apply to handlers of milk and its products. The program is designed to achieve this orderly marketing by establishing terms and conditions which all affected milk processors must follow in dealing with producers. In 1984, over two-thirds of all milk sold to plants and dealers, and over 80 percent of the fluid grade deliveries in the United States were regulated by federal milk marketing orders.

"Orders establish minimum prices which must be paid by handlers to farmers for milk used in various ways. The current minimum order prices for milk used in fluid form are, however, in many cases inadequate to cover the cost of supplying the fluid market. This has resulted in payments by handlers greater than the minimum order price in order to assure an adequate supply of milk for the fluid market. The variability of 'cover-order charges' has caused instability that the federal milk order program was designed to alleviate.

"The last major changes made by the Department of Agriculture to Class I price differentials were in the late 1960's. Since costs, including transportation, assembly, and handling, ~~have increased~~ substantially during that time, the Committee feels it is necessary to adjust the fluid milk differentials in 35 of the 44 federal milk orders so that the prevailing minimum order prices will better cover the cost of supplying these markets. This action will reduce the need for over-order payments and provide equity among handlers supplying the market.

* * * * *

"The bill provides for differential adjustments under the provisions of the Agricultural Marketing Agreement Act of 1937, which sets up the milk marketing orders in 44 marketing order areas. The bill requires that specified minimum levels be set for a two-year period following enactment of this law. It limits the adjustments to the highest use classification of milk under the current orders.

"In the implementation of the minimum prices for highest use classification of milk, the Secretary is also required to make necessary location adjustments within each order in order to assure that the new adjustments are effective throughout the order. In addition, the Secretary is required to address the varied locations of delivery of milk throughout each marketing order.

"The purpose of the Agricultural Marketing Agreement Act of 1937 is to use milk marketing orders as instruments for stabilizing marketing conditions for fluid milk. The Act of 1937 also states that minimum prices established by orders shall be uniform as to all handlers subject only to adjustments for (1) volume, market and production differentials customarily applied by the handlers subject to such an order, (2) the grade or quality of milk purchased, and (3) the location at which delivery of such milk, or any classification thereof, is made to such handlers.

"Furthermore, under the Agricultural Adjustment Act of 1949, Provisions require that milk be supported at specified prices establishment by the Secretary in accordance with the law. Under the prices support program, the objective was the establishment of the prices necessary in order to maintain an adequate supply of milk to meet current needs and to maintain the productive capacity to meet anticipated future needs.

"It is noted that the 1983–1984 diversion program exacerbated milk supply deficiencies in certain areas of the country. The prevailing minimum Federal order prices do not reflect the cost of moving milk from surplus to deficit areas. The result is therefore an ineffectiveness of the Order System to assure an adequate supply of milk for fluid use in deficient areas. The proposed marketing order minimums included in title I will facilitate the acquisition of an adequate supply of milk for fluid use in those deficit areas.

"The proposed changes in the marketing order minimums will more fully address the cost of transferring milk from the surplus areas to the deficit areas which in turn will assist in providing a more uniform price to handlers or uniform payments to producers. At the moment, there are three major problems with respect to the operation of the Federal order systems: (1) Minimum Federal order Class I prices are not adequate to attract the necessary supply to meet the Class I needs in deficit areas; (2) handlers who must go outside their territory to acquire additional milk incur greater costs for milk than handlers who obtain all of their milk from the local area; and (3) those producers who assume the responsibility of supplying the needs of the market have to pay the costs of transporting supplemental milk, resulting in producers not receiving uniform prices.

"There have been expressed concerns that implementation of minimum Class I prices would set a precedent in regard to management of Orders. The Secretary has not made permanent adjustments since the late 1960's The Act does not suggest that milk be locally produced nor that it come from any specific area. It only requires that milk be attracted to those locations where it is needed for fluid use. The manner in which to attract milk is through adjusted prices. In deficit areas, that means that price must be high enough to cause it to be moved from where it is being produced to where it is needed. Class I differentials under the orders are not high enough to do this under today's cost of transportation. It now costs about 3.4 cents per hundredweight per ten miles to move milk; however when the Class I differentials under Federal orders were established, It was at a rate of about 1.5 cents per hundredweight per ten miles. Despite this dramatic increase in transportation costs, the minimum prices have not been permanently increased."

Early in the hearing, Counsel for the Milk Foundation of Indiana raised an objection to the Notice of Hearing as improper on the basis that the Food Security Act of 1985 did not mandate changes in the Class I differentials. Instead, it was argued, the new law ". . . requires changes in the quality, volume, production and market differentials customarily applied by the handlers . . ." under clauses (1) and (2) of section 8c(5)(A) of the Agricultural Marketing Agreement Act of 1937. The objection maintained that Class I prices are established under the first part of the first sentence in section 8c(5)(A), not under Clauses 1 and 2. Thus, it was argued, ". . . the notice is defective because it purports to support the Class I differentials between markets on a congressional mandate that is, in fact, contrary to the plain meaning of this statutory language." The objection to the Notice of Hearing was overruled by the presiding Administrative Law Judge, who ruled that the record would not be closed at that point because of the legal issue raised by Counsel. The same position was held in the brief filed on behalf of the Milk Foundation of Indiana.

The Administrative Law Judge's ruling to keep the record open was correct. We believe it is clear from the preceding quoted paragraphs that the Congress intended that Class I differentials (and, thus, Class I milk prices) be increased in 35 of the 44 Federal milk orders. This is unmistakably clear in the third quoted paragraph, which refers to both the "Class I price differentials" and "fluid milk differentials." It is concluded that the Notice of Hearing was proper and the Congress indeed has mandated that the orders must be amended to provide the minimum differentials specified in

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the Food Security Act of 1985, Subtitle C, section 131(a).

At the hearing held on January 28, 1986, ten witnesses testified in opposition to the mandated Class I differentials. Two of these witnesses represented the States of Wisconsin and Minnesota. The other witnesses represented either proprietary handlers or cooperative associations from almost all regions of the country. Their opposition, in many cases, went beyond the issue of the mandated Class I differentials. In general, their opposition to these new Class I differentials can be characterized as follows:

1. The Federal order rulemaking process was not followed;

2. Milk supplies at this time are more than sufficient; therefore, any price increase can not be justified;

3. These new Class I differentials are arbitrary, inconsistent and without any economically justifiable basis;

4. There is a wide disparity in the new Class I differentials as they relate to transportation costs from Eau Claire, Wisconsin;

5. Congress in drafting the Food Security Act of 1985, referred to the wrong section of the Agricultural Marketing Agreement Act, as amended, when creating these new Class I differentials;

6. The new Class I differentials discriminate against dairy farmers in Wisconsin, Minnesota and other midwest areas;

7. The new Class I differentials will cause permanent inefficient milk production in higher cost production regions such as the southeast at the expense of the low cost regions in the upper midwest;

8. The new Class I differentials discriminate against producers of Grade B milk and between Grade A producers because the new differential increases vary from zero to $1.03;

9. The new Class I differentials in the three northeastern Federal orders will disrupt orderly marketing because the rate of increase in these three Class I differentials was not the same; and

10. Fluid milk distributors regulated by the Indiana milk order and by several orders in the southeast will be at a competitive disadvantage in competing with milk distributors regulated by surrounding markets.

Several witnesses indicated that a national hearing should be called before these new Class I differentials are implemented. In their view, there were several important issues that should be resolved, such as improvement in price alignments and better methods to move Class I milk to population centers, before these new Class I differentials are implemented.

The Department believes that it is under a legal obligation to implement these new Class I differentials as drafted and within the time frame prescribed by Congress. Consequently, the Department has chosen not to comment on the merits of the testimony in opposition.

Testimony at the hearing and proposed findings in briefs filed by various persons also concerned the effective date of the mandated differentials and the period of time that the differentials should remain in effect.

The orders must be amended so that the Class I differentials are effective by May 1, 1986. The Department believes, therefore, that the amendment action must be completed no later than April 4, 1986, so that the May 1986 Class I prices that are scheduled to be announced on that date will reflect the new Class I differentials. This timetable carries out the provision of the new law that "The amendment made by this section shall take effect on the first day of the first month beginning more than 120 days after the date of enactment of this Act." The date of enactment was December 23, 1985.

As required by the Act, the minimum differentials will remain in effect through April 30, 1988, and will then continue in effect thereafter until amended. Any such amendments would have to be based on evidence obtained at a public hearing.

It was argued that the order amendments should be structured such that the differentials would terminate automatically at the end of the minimum two-year period specified in the law. One view was that at that time the differentials should be those now provided in the orders. Another view urged that a hearing be set at least 90 days prior to the end of the two-year period to review the effects of the higher differentials.

Automatic termination of the differentials cannot be provided. The new law requires that the differentials remain in effect until amended. Even if this were not the case, there is no basis for concluding at this time, and on the basis of this hearing, what the appropriate differentials should be some two years in the future.

There is no need to incorporate in the amendments a provision that specifies a hearing. If a hearing appears warranted near the end of the two-year period, the industry can request one at that time.

Another view expressed in most of the opposing testimony and in briefs was that changes in the location adjustments to reflect the locations at which delivery of milk of the highest use classification must be made effective at the same time that the minimum Class I differentials become effective. Similarly, some persons urged that any changes in location adjustments should be terminated at the same time as the differentials, if they are terminated.

This proceeding does not involve location adjustments. However, it should be noted that proposals to change location adjustments have been solicited from the industry, and four regional hearings have been solicited from the industry, and four regional hearings have been scheduled. These proceedings will be handled as quickly as possible. Congress did not specify the location adjustments to be used. Therefore, these hearings are the only way to determine what changes, if any, should be made.

One view expressed was that changes should not be made to the location adjustment provisions of the orders. Instead, it was urged that a national hearing be called to consider implementing transportation pools. Another view stated that cooperatives should deal with price aligment problems through over-order charges. Both views are beyond the scope of this proceeding and, therefore, no further discussion is warranted.

Testimony presented at the hearing and proposed findings in briefs contended that the Secretary, in implementing the Class I differentials must adopt any other amendments necessary to ensure that the resulting orders, as amended, will ensure that minimum prices will be uniform as to all handlers and that no order establishes a trade barrier. To this end, it was urged that a Notice of Hearing be issued promptly entertaining proposals for the following:

1. Whether existing definitions in any order should be changed to include new geographic territory or exclude existing geographic territory;

2. Whether the Department should require Class I milk to be priced according to the order in the market in which the milk is sold, rather than the order in which the plant has its largest amount of route dispositions;

3. Whether existing definitions of "pool plant" should be changed, including but not limited to the percentage of receipts disposed of as route dispositions necessary for classification as a pool plant;

4. Whether, consistent with the *minimum* Class I differentials established in the Food Security Act, existing Class I differentials in some markets should be changed to conform

with economic realities created by new Class I differentials in other markets; and

5. Whether any other changes to existing orders are necessary to adjust to the new Class I differentials.

It is not possible in this decision, on the limited basis of this proceeding, to respond to the issues set forth above. It should be noted, however, that the hearings on location adjustments, previously mentioned, may address the issues of price uniformity and trade barriers.

A brief filed on behalf of Foremost Dairies, contented that the new differentials will cause misalignment of prices between the Texas and Lubbock-Plainview orders. Accordingly, the brief urges increasing the Class I differential at Lubbock to $3.38 instead of $2.49.

This request is denied. The only issue in this proceeding is implementation of the minimum Class I differentials mandated by the Food Security Act of 1985.

At the hearing, several witnesses and an attorney for a regional cooperative association questioned the need to hold a public hearing to implement these Class I differentials. The Department's rules and regulations require the holding of a public hearing prior to amending any Federal milk order. The hearing provided an opportunity for the industry to express views on whether the orders should exist with the Class I differentials mandated by Congress. Also, the rulemaking process gives producers an opportunity to approve or reject the orders as proposed to be amended.

2. Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto

The due and timely executive of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to issue No. 1.

The Food Security Act of 1985 provides that the Secretary must implement these new Class I differentials on the first day of the first month beginning more than 120 days after the date of the enactment of this Act. The Department has interpreted this mandate to mean that the 44 orders should be amended so that the specified differentials will be incorporated in the minimum order Class I prices to be applicable to milk received on and after May 1, 1986. The 44 orders presently provide that the Class I price is announced on the fifth day of the month to apply to the following month (advanced pricing). As previously indicated, the Class I differential is part of the Class I price.

The hearing notice stated that evidence would be taken to determine whether conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure.

A witness for the Department testified with considerable specificity as to the procedures that must be followed by the Department in amendment proceedings and the approximately minimum time required between the time the hearing is closed and the publication of the Final Rule (Order Amending the Order). It is reasonable to conclude from the testimony that there is not sufficient time to provide for a recommended decision and the opportunity to file exceptions and meet the date mandated for implementation of the specified differentials.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

At the hearing, and in a brief filed after the close of the hearing, Counsel for Malone and Hyde, and Southeastern Dairies made a motion that the record of this proceeding remain open pending completion of hearings on location adjustments. The presiding Administrative Law Judge ruled that the record would be closed at the close of the hearing. The motion also urged the Secretary to rule that Section 131 of the Food Security Act of 1985 requires location adjustments and that the Class I differentials be effected on the same date as such location adjustments. These matters have been dealt with earlier in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effetuate the declared policy of the Act as amended by the Food Security Act of 1985; and

(b) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

November 1985 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas, except the New York-New-Jersey, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, and Memphis, Tennessee, marketing areas, is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referendums be conducted and completed on or before the 25th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached orders as amended and as

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hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, and Memphis, Tennessee, marketing areas are approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referendums is hereby determined to be November 1985, except that September 1985 shall be the representative period for the New York-New Jersey order.

The agent of the Secretary to conduct such referendums is hereby designated to be Norman, K. Garber (New York-New Jersey), C. Mack Endsley (Eastern Ohio-Western Pennsylvania), Arnold M. Stallings (Louisville-Lexington-Evansville), and Richard E. Arnold (Memphis, Tennessee).

List of Subjects in 7 CFR Chapter X

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC., on: March 14, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

Order[1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act as amended by the Food Security Act of 1985; and

(2) The said orders as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR Chapter X continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.50, paragraph (a) is revised to read as follows:

§ 1004.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.03

* * * * *

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. In § 1001.50, paragraph (a) is revised to read as follows:

§ 1001.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof the Class I price in Zone 21 shall be the basic formula price for the second preceding month plus $2.52. Through April 30, 1988, and thereafter until amended, the differential value for Zone 1 shall be $3.24.

* * * * *

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. In § 1002.50a, paragraph (a) is revised to read as follows:

§ 1002.50a Class prices.

* * * * *

(a) For Class I–A milk, from the effective date hereof the Class I price in the 201–210 mile freight zone shall be the basic formula price for the second preceding month plus $2.55. Through April 30, 1988, and thereafter until amended, the differential value in the 1–10 mile freight zone shall be $3.14.

* * * * *

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.50, paragraph (a) is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.58.

* * * * *

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.50, paragraph (a) is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.08.

* * * * *

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.88.

* * * * *

---

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.50, paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $4.18.

* * * * *

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. In § 1030.50, paragraph (a) is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1986, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. In § 1032.50, paragraph (a) is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.92.

* * * * *

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. In § 1033.51, paragraph (a) is revised to read as follows:

§ 1033.51a Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.04.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. In § 1036.50, paragraph (a) is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.95.

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. In § 1040.50, paragraph (a) is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus § 1.75.

* * * * *

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. In § 1044.51, paragraph (a) is revised to read as follows:

§ 1044.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof, the Class I price in Zone 1 shall be the basic formula prices for the second preceding month plus $1.15. For plants located in Zone 1(a) the price shall be the price specified for Zone 1 less 10 cents; for plants located in Zone 2 the price shall be the price specified for Zone 1 plus 20 cents. Through April 30, 1988, and thereafter until amended, the differential value for Zone 2 shall be $1.35 and for plants located outside the marketing area and west of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 1 and for plants located outside the marketing area and east of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 2.

* * * * *

PART 1046—MILK IN THE LOUSIVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.50, paragraph (a) is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus §2.11.

* * * * *

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. In § 1049.50, paragraph (a) is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

* * * * *

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. In § 1050.50, paragraph (a) is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second precding month plus $1.61.

* * * * *

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. In § 1064.50 paragraph (a) is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second precding month plus $1.92.

* * * * *

PART 1065—MILK IN THE NEBRASKA—WESTERN IOWA MARKETING AREA

1. In § 1065.50, paragraph (a) is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. In § 1068.50, paragraph (a) is revised to read as follows:

§ 1068.50 Class prices

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

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PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

1. In § 1075.51, paragraph (a) is revised to read as follows:

§ 1075.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.05.

* * * * *

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. In § 1076.50, paragraph (a) is revised to read as follows:

§ 1076.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. In § 1079.50, paragraph (a) is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.50, paragraph (a) is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.08.

* * * * *

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.50, paragraph (a) is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.85.

* * * * *

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.50, paragraph (a) is revised to read as follows

§ 1096.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.28.

* * * * *

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. In § 1097.50, paragraph (a) is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. In § 1098.50, paragraph (a) is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. In § 1099.50, paragraph (a) is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.39.

* * * * *

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. In § 1102.50, paragraph (a) is revised to read as follows:

§ 1102.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. In § 1106.50, paragraph (a) is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price in Zone 1 shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. In § 1108.50, paragraph (a) is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

1. In § 1120.50, paragraph (a) is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

* * * * *

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. In § 1124.51, paragraph (a) is revised to read as follows:

§ 1124.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.95.

* * * * *

PART 1125—MILK IN THE PUGET SOUND-INLAND MARKETING AREA

1. In § 1125.50, paragraph (a) is revised to read as follows:

§ 1125.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.85.

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. In § 1126.50, paragraph (a) is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.28.

* * * * *

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. In § 1131.50. paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

1. In § 1132.50, paragraph (a) is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

* * * * *

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. In § 1134.50. paragraph (a) is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

* * * * *

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. In § 1135.50. paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1986, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plust $1.50.

* * * * *

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. In § 1136.50. paragraph (a) is revised to read as follows:

§ 1136.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. In § 1137.50. paragraph (a) is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.73.

* * * * *

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. In § 1138.50. paragraph (a) is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.35.

* * * * *

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. In § 1139.50. paragraph (a) is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.60.

* * * * *

[FR Doc. 86-6078 Filed 3-19-86; 8:45 am]

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7 CFR Part 1135

[Docket No. AO-380-A5]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts several amendments to the Southwestern Idaho-Eastern Oregon Federal milk order. The changes would relax the standards required under the order for distributing plants, supply plants, and producers to participate in the marketwide pool. The percentage of a pool distributing plant's total receipts that must be accounted for as route dispositions would be reduced from 40 to 25 percent. The amount of its receipts that a pool supply plant would be required to ship to pool distributing plants also would be reduced from 40 to 25 percent. The requirement that at least one day's production of milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be eligible for unlimited diversion would be changed to a requirement that one day's production of each producer's milk must be physically received at a pool plant for three consecutive months on a one-time basis. The limit on the percentage of a handler's milk that may be diverted to nonpool plants would be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

The amendments were proposed by Dairymen's Creamery Association, a cooperative association representing nearly two-thirds of the dairy farmers supplying milk to the Southwestern Idaho-Eastern Oregon market, and are based on the record of a public hearing

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held at Boise, Idaho, on October 16, 1985. The amendments are necessary to reflect current marketing conditions and to assure orderly marketing in the Southwestern Idaho-Eastern Oregon marketing area. Cooperative associations will be polled to determine whether producers favor the issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250 (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers, and will tend to ensure the use of efficient milk marketing practices.

Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1985; published September 4, 1985 (50 FR 35829).

Recommended Decision: Issued February 6, 1986; published February 12, 1986 (51 FR 5199).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southwest Idaho-Eastern Oregon marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Boise, Idaho, on October 16, 1985. Notice of such hearing was issued on August 29, 1985, and published September 4, 1985 (50 FR 35829).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on February 6, 1986, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issues on the record of the hearing relate to:

1. Pool plant qualification requirements.
   (a) Distributing plant.
   (b) Supply plant.
2. Diversion of producer milk.
   (a) Producer delivery requirement.
   (b) Limitation on diversions to nonpool plants.
3. Continued suspension of producer delivery requirement and limitation on diversions to nonpool plants.
4. Correction of published Class I price computation procedure.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Plant Qualification Requirements

Dairymen's Creamery Association proposed that the pool plant qualification requirements be relaxed for both distributing and supply plants. Those requirements are discussed in the following findings.

(a) *Distributing plant.* The total route distribution requirement that must be met by distributing plants to qualify for pool status under the order should be reduced from 40 to 25 percent of the plant's total receipts of fluid milk products. The change was proposed by Dairymen's Creamery Association (DCA), and was supported at the hearing by spokesmen for DCA and Associated Dairies, a distributing plant operator with two distributing plants pooled under the order. The DCA representative introduced statistics showing that all of the producer milk of DCA, Mountain Empire Dairymen's Association (MEDA) and one long-term contract producer, representing over 80 percent of the producer milk on the market, is pooled on the basis of Associated Dairies' route dispositions. He testified further that, as Associated Dairies' fluid milk sales represent less than half of the Class I sales under the order, the Class I utilization of milk pooled through Associated Dairies is much less than the 16 percent currently experienced by the market as a whole.

The witness stated that the two Associated Dairies' plants currently receive more milk than is needed at either plant for milk products processed there in order to assure that all of the DCA and MEDA milk will be eligible for pooling. He introduced an exhibit that showed an average of over 2,500,000 pounds of milk per month delivered to Associated Dairies and transferred back out to nonpool plants during the period from January 1984 through August 1985. This practice, he testified, resulted in the failure of one of the two Associated Dairies' plants to meet the order's route disposition requirements for pooling during the summer of 1985, and necessitated the suspension of the limits on diversions of producer milk directly to nonpool plants to assure the continued pooling of the two cooperatives' milk supplies.

The president of Associated Dairies testified in favor of the proposed amendment to reduce the pooling standard for distributing plants. He stated that DCA is a half owner of Associated Dairies, and that Associated Dairies cooperates with DCA in helping to assure that a maximum amount of DCA's and MEDA's milk is eligible for pooling by maximizing receipts of the cooperatives' milk at Associated Dairies. In doing so, he said, Associated Dairies has incurred added costs, increased the potential for shrinkage in the milk for which they are held accountable, and caused additional work in their accounting and office operations. The witness also stated that in transferring unneeded milk to handlers with whom they had no prior dealings, Associated Dairies had encountered some cashflow problems because of delays in payments for milk. The Associated Dairies' witness testified that an increase in Class II use has contributed to the difficulty of maintaining pool status for the handler's two plants. He stated that a contract to supply ice cream mix to a number of fast-food outlets in the Northwest has created an imbalance in the relationship between Class I and Class II sales within Associated Dairies' operations. The witness indicated that as Class II sales increase it will become more difficult to dispose of at least 40 percent of Associated Dairies' receipts as Class I route dispositions, and urged adoption of the reduced percentage requirements.

Statistics introduced at the hearing by the Southwestern Idaho-Eastern Oregon market administrator's office show that the percentage of producer milk used in Class I in the market since the effective date of the order in 1981 has ranged from 13 to 24 percent. In the 18 months immediately preceding the hearing, the Southwestern Idaho-Eastern Oregon Class I use percentage at no time reached 20 percent. At the present time, Class I use in the market is increasing, but at a lesser rate than production. As a result, the percentage of the total producer milk used in Class I is declining.

Adoption of the proposed increases in the limits on the amount of milk that may be delivered directly to nonpool plants would allow DCA and Associated Dairies to reduce the amount of producer milk received at Associated's plants to a quantity more in line with Associated's requirements, and thereby increase the percentage of such receipts used in Class I. However, in the Associated Dairies' operation, Class II use apparently is accounting for a growing percentage of the handler's fluid milk receipts. Therefore, Associated Dairies is likely to continue to experience difficulty in meeting the pool plant qualification requirements since much of the milk received at Associated's plants will be needed for use in Class II products.

The current provision that requires a distributing plant to distribute on routes 40 percent of its fluid milk receipts is not consistent with the intent of the marketwide pooling provisions of the order, since it threatens the pooling status of a large proportion of the milk supply associated with the market. It is appropriate to adjust the requirement downward to better reflect the market's present balance between the supply of and demand for fluid milk. Accordingly, DCA's proposal to reduce from 40 to 25 percent the percentage of a distributing plant's fluid milk receipts that must be distributed on routes in order for the distributing plant to qualify for pooling should be adopted.

(b) *Supply plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order should be reduced from 40 to 25 percent of the plant's receipts. The receipts to be included in calculation of a supply plant's pool qualification should continue to include producer milk diverted from the plant by the plant operator.

The proposal to lower the monthly delivery requirement for supply plants from 40 to 25 percent was made by Dairymen's Cooperative Association and supported by Associated Dairies. Mountain Empire Dairymen's Association, the operator of the only supply plant pooled under the order, did not testify at the hearing or file a post-hearing brief.

The witness for the proponent testified that the supply plant operated by MEDA at Meridian, Idaho, represents the primary supply of milk for Associated Dairies' Boise plant. He also stated that the supply plant is the only other pool outlet for MEDA and DCA producer milk in addition to the Associated Dairies distributing plant at Twin Falls that receives deliveries of DCA member milk direct from farms. In order to assure that the supply plant is pooled, he said, milk is move first to the supply plant and then to the Boise distributing plant or to a DCA nonpool manufacturing plant at Caldwell. The witness stated that some uneconomic handling is associated with pooling milk through the supply plant. In a post-hearing brief filed by DCA, it was pointed out that the milk supply has increased by 31 percent since 1981, causing a much higher volume of milk to be transferred to nonpool manufacturing pants. The brief stated that a reduction in the supply plant shipping standard would asist the cooperative in attaining orderly, efficient pooling of its milk supply. Although DCA had proposed the removal of diversions of producer milk to nonpool plants from the receipts to be included when computing the supply plant's qualification for pooling, the witness did not address that portion of the proposal in his testimony.

The amount of milk that a supply plant is required to ship to pool distributing plants in order to qualify for pooling should be reduced from 40 to 25 percent of its receipts of fluid milk. The reduced percentage would bring the supply plant pool qualification requirement into closer conformity with the market's percentage of Class I use. As stated by proponent witness in relation to the distributing plant qualification percentage, the Associated Dairies-DCA-MEDA group represents over 80 percent of the producer milk on the market, but less than 50 percent of the market's Class I sales. A requirement that the supply plant through which much of the group's milk is pooled ship 40 percent of its receipts to distributing plants when the marketwide percentage of producer milk used in Class I products is less than 20 percent could only result in excessive levels of unnecessary and uneconomic handling and hauling of milk between plants solely for the purpose of qualifying milk for pooling. In the absence of any support from proponent for the portion of the DCA proposal that would remove diverted milk from receipts in the computation of supply plant pool qualification, that part of the proposal should not be considered.

2. Diversion of Producer Milk

Dairymen's Creamery Association proposed that the producer milk definition in the order be amended to reduce the number of deliveries of a dairy farmer's milk that must be physically received at pool plants if the rest of the farmer's milk is to be eligible for diversion to nonpool plants, and to increase the percentage of a handler's total milk supply that may be diverted directly from farms to nonpool plants. The president of DCA testified that four years' experience in pooling milk under the order has shown these order provisions to be unnecessarily burdensome on handlers and producers in light of the low Class I use percentage of the market and the increasing supply of milk. The proposed amendments are discussed in the following paragraphs.

(a) *Producer delivery requirement.* The requirement that at least one day's production of each producer's milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be diverted to nonpool plants as producer milk should be relaxed. Instead, one day's production of each producer's milk should be received at a pool plant for three consecutive months on a one-time basis, as proposed by DCA.

The DCA controller testified that the order's present "touch-base" requirements place an unneeded burden on handlers and producers. He stated that compliance with the provisions causes unnecessary handling and hauling of producer milk to assure that it is received at pool plants as required by the order. The witness pointed out that the milk of producers located closer than others to pool plants can be delivered to those plants more economically than the milk of producers located farther away from the pool plants. At the same time, he noted, it is costly and inefficient to displace the milk of nearby producers to a distant nonpool plant when the milk of more distant producers must be moved to the pool plant solely for purposes of pool qualification.

The witness testified that the proposed requirement that new producers deliver at least one day's production per month to pool plants for three consecutive months will demonstrate that producers who wish their milk to be pooled actually are able to supply milk to meet the fluid needs of the market. The witness expressed his belief that once a producer's ability to supply the market has been established, there is no longer any need for the producer to prove that ability as long as he remains associated with the market. A requirement that a producer continue to demonstrate his ability to supply the market, he stated, serves only to increase the cost to producers of supplying the market by requiring unnecessary and uneconomic hauling and handling. The witness suggested, however, that if a producer is not pooled under the Southwestern Idaho-Eastern Oregon order for a period of 60 consecutive days, the producer should be required to demonstrate his

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willingness and ability to once again supply the market by again fulfilling the proposed three-month delivery requirement.

In support of DCA's proposal to relax the order's limitations on the diversion of producer milk from producers' farms directly to nonpool plants, the witness submitted an exhibit showing the amounts of producer milk moved unnecessarily to pool plants solely to qualify it for pooling, and the amount that failed to qualify for pooling, for each month of January 1984 through August 1985. During the months of September through February, when the "touch-base" provisions of the order were in effect, the amount of milk per day that failed to qualify for pooling averaged over 40 percent higher than the daily average amount of milk that went unpooled during the months of March through August.

The "touch-base" requirement proposed by DCA should represent an adequate standard for individual producers to meet in order to qualify their milk for unlimited diversion to nonpool plants. There is no indication in the record of the hearing that relaxation of the individual producer delivery requirements would attract additional unneeded supplies of milk to the market. A producer located at some distance from the marketing area would still have to maintain a close association with the market. If the milk of such producer were not pooled on the Southwestern Idaho-Eastern Oregon market for a period of 60 days, the producer would have to requalify his milk for unlimited diversions.

It is apparent from the witnesses' testimony that the present "touch-base" requirements of the order are overly burdensome. Producers are required to demonstrate an association with the fluid market that substantially exceeds the market's demand for milk to be used in fluid products. As a result, the uneconomic hauling and handling required to comply with the provisions of the order are unnecessarily burdensome to producers and cooperative associations supplying the market. Accordingly, DCA's proposed changes to the individual producer delivery standards should be adopted. For easier administration, however, the proposed 60-day period off the market after which a producer's milk would have to be requalified should be changed to two months.

(b) *Limitation on diversions to nonpool plants.* The limit on the percentage of a handler's milk that may be diverted from producers' farms directly to nonpool plants should be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

Dairymen's Creamery Association proposed that the diversion limits of the order be relaxed to enable cooperative associations and proprietary handlers to more easily handle milk supplies in excess of the market's fluid needs. The DCA controller cited market statistics that show milk production increasing substantially while Class I use has increased at a lesser rate. He stated that the growing imbalance between production and fluid use has caused increasing difficulties in assuring that all Grade A producer milk in the area and available for pooling will actually be pooled without incurring severe handling and hauling costs. The witness emphasized that all of the milk of DCA and MEDA producers that is pooled on the Southwestern Idaho-Eastern Oregon market is associated with the market on the basis of Associated Dairies' fluid milk sales. He stated that the DCA and MEDA milk represents over 60 percent of the milk pooled on the market, while Associates Dairies' represents less than half of the market's Class I disposition.

Given the Southwestern Idaho-Easter Oregon marketwide average Class I utilization of approximately 16 percent for the first eight months of 1985, the Class I use percentage of all the DCA and MEDA milk pooled on the basis of Associated Dairies' fluid milk disposition would Final Decision—Southwestern Idaho Eastern Oregon be less than 10 percent. The level of Class I use in the market is clearly not high enough to justify a requirement that 30 percent of all producer milk be received at pool plants during the months of September through February. In order that the milk of producer members of DCA and MEDA who have been supplying the fluid needs of the market since its inception in 1981 is not to be excluded from the pool or the cooperatives are not to undertake unnecessary, inefficient and burdensome hauling and handling practices to assure that their member producers' milk is pooled, the diversion limits should be relaxed in accordance with DCA's proposal.

3. *Continued Suspensions of Producer Delivery Requirement and Limitation on Diversions to Nonpool Plants*

There is no need at this time for a further suspension of the order's diversion limits and "touch-base" requirement. At the time of the hearing, the diversion limits and producer delivery requirements had been suspended for the months of September 1985 through February 1986. The DCA witness testified that suspension of the provisions would be necessary until the order is amended. However, the order does not require each individual producer's milk to be received at pool plants during the period of March through August, and allows 80 percent, rather than 70 percent, of a handler's supply of producer milk to be diverted to nonpool plants. On cross-examination, the witness stated that DCA will be able to operate under the provisions of the order without incurring the costs of unnecessary hauling during the months of March through August 1986. There is no reason to believe that the process of amending the Southwestern Idaho-Eastern Oregon milk order will not be complete well before September 1986. Therefore, the suspensions currently in effect through February 1986 need not be extended.

4. *Correction of Published Class I Price Computation Procedure*

The instructions currently contained in the order for computing the Class I price should be changed to reflect the findings and conclusions of the final decision published December 7, 1982 (47 FR 54978). The language of § 1135.50(a) should read "The Class I price shall be the basic formula price for the second preceding month plus $1.50." Due to a typographical error in the final order, published December 20, 1982 (47 FR 57445), § 1135.50(a) in the Code of Federal Regulations (CFR) reads "The Class I price shall be the basic formula price for the preceding month plus $1.50." This error must be corrected by means of a docket in order to be corrected in the CFR. This proceeding is an appropriate opportunity for making the correction.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southwestern

Idaho-Eastern Oregon order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

No exceptions were received.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

January 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on March 14, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Order Regulating the Handling of Milk in the Southwestern Idaho-Eastern Oregon Marketing Area

Findings and determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on February 6, 1986, and published in the **Federal Register** on February 12, 1986 (51 FR 5199), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for CFR Part 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1135.7, the first sentence of paragraph (a)(2) and the text in paragraph (b) preceding (b)(1) are revised to read as follows:

§ 1135.7 Pool plant.

* * * * *

(a) * * *

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts.

* * * * *

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

* * * * *

3. In § 1135.13, paragraph (f) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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(1) Milk of a dairy farmer who was not a "producer" in the preceding two months shall not be eligible for diversion until one day's production of milk is physically received at a pool plant;

(2) During each of a dairy farmer's first three months as a "producer" under this order, and after any period of two months or longer that a dairy farmer is not a "producer" under this order, milk of the dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the months if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler causes to be delivered to or diverted from pool plants during the months;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f) (3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

* * * * *

4. In § 1135.50, paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.50.

[FR Doc. 86-6060 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 85-017]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 166 (referred to below as the regulations) which contain provisions concerning swine health protection. Specifically, this document would require the cancellation of the license held by the operator of a garbage treatment facility that treats no garbage for 3 consecutive months, and would also provide a mechanism for a licensee to request cancellation of his or her license. These proposed amendments appear to be necessary to eliminate unnecessary visits by Department inspectors to inactive facilities, and would save the Department an unnecessary expenditure of workhours.

DATES: Written comments concerning this proposed rule must be received on or before May 19, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-017. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. L.W. Schnurrenberger, VS, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION: Any person who operates a treatment facility for garbage to be treated and fed to swine is required to do so under a license issued by the Deputy Administrator. Such facilities are inspected by a Department inspector on a periodic, unannounced basis. Presently, the regulations contain no provisions for cancellation of an operator's license after a facility ceases to treat garbage. This can consequently cause an unnecessary expenditure of Department resources in maintaining files on inactive facilities and in scheduling and carrying out unnecessary inspections. Therefore, this document proposes that an operator's license shall be canceled when the operator's facility has treated no garbage for a period of 3 consecutive months.

This document also proposes that before a license is so canceled, the Veterinarian in Charge will inform the licensee in writing of the reasons for the proposed cancellation. It proposes also that in those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing to resolve such conflict, in accordance with rules of practice which shall be adopted for the proceeding.

Additionally, this document would provide a mechanism by which a licensee can voluntarily have his or her license canceled. To have a license so canceled, the licensee would request cancellation of his or her license in writing. The Veterinarian in Charge would then cancel the license and notify the person of the cancellation in writing.

This document would also provide that a licensee whose license is canceled because of a facility that has ceased to treat garbage may reapply for a license at any time, but will have to follow the procedures for applying for a new license as provided for in present § 166.10.

This document would delete the definitions of "Administrator", "Birds" and "Department" from the regulations, because the terms "Administrator" and "Birds" are not used elsewhere in the regulations and the term "Department" would be deleted from the regulations by this proposal. It would also change the language throughout the regulations that refers to "Area Veterinarian in Charge" to language that refers to "Veterinarian in Charge." This change appears to be necessary because the Department presently uses the term "Veterinarian in Charge" to refer to each of its employees formerly referred to as an "Area Veterinarian in Charge." This change in nomenclature reflects the fact that presently most Veterinarians in Charge are assigned to supervise and perform the official work of Veterinary Services in only one State, rather than in a larger geographical region as in the past.

Miscellaneous

This document would also make certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule would be issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been

determined that this rule would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed cancellation provisions in this document would apply only to those facilities that have already become inactive, and any person who has a license canceled pursuant to this proposal would be eligible to reapply for a license to operate the facility again immediately after any such cancellation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0065.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 166

African swine fever, Animal Diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166 would be amended as follows:

1. The authority for 9 CFR Part 166 would continue to read:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.15 and 371.2(d)

2. Section 166.1 would be amended by deleting the definitions for "Administrator", "Birds" and "Department".

3. Section 166.1 would be amended by revising the definitions of the word "Inspector" and the terms "Animal and Plant Health Inspection Service (APHIS)" "Deputy Administrator" and "State Animal Health Official" to read:

§ 166.1 Definitions in alphabetical order.

Animal and Plant Health Inspection Service. Animal and Plant Health Inspection Service, United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other official to whom authority is delegated to act for the Deputy Administrator.

Inspector. Any individual employed by the United States Department of Agriculture or by the State for the purposes of enforcing the Act and this part.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs or any other official to whom authority is delegated to act for the State animal health official.

4. In Part 166, all references to "Area Veterinarian in Charge" would be changed to read "Veterinarian in Charge", and in § 166.1, the definition of "Area Veterinarian in Charge" would be revised to read:

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the animal health activities of the Animal and Plant Health Inspection Service in the State concerned or any other official to whom authority is delegated to act for the Veterinarian in Charge.

§ 166.2 [Amended]

5. In paragraph (b) of § 166.2, the reference to "of dissemination" would be changed to "or dissemination".

6. In paragraph (c) of § 166.2, the word "Federal" would be deleted.

§ 166.4 [Amended]

7. In paragraph (b) of § 166.4, the reference to "§ 166.13 of this part" would be changed to "§ 166.14".

§ 166.5 [Amended]

8. In paragraph (b) of § 166.5, the reference to "§ 166.13(b)" would be changed to "§ 166.14(b)".

§ 166.6 [Amended]

9. In § 166.6, the reference to "§ 166.13(b)" would be changed to "166.14(b)".

§ 166.8 [Amended]

10. In § 166.8, the reference to "§ 166.13(c)" would be changed to "§ 166.14(c)".

§ 166.9 [Amended]

11. In paragraph (d) of § 166.9, the reference to "(one)" would be deleted.

§ 166.10 [Amended]

12. In paragraph (c)(1) of § 166.10, the word "his" would be changed to "the" both times it appears.

13. In paragraph (c)(2) of § 166.10, the word "his" would be changed to "the" and the term "authorized representative of the Secretary" would be changed to "inspector".

14. In paragraph (d) of § 166.10, the word "Federal" and the reference to "(one)" would be deleted.

§ 166.11 [Amended]

15. In paragraph (b) of § 166.11, the word "Federal" would be deleted and the word "he" would be change to "the Deputy Administrator".

16. In paragraph (d) of § 166.11, the word "his" would be changed to "such person's" both times it appears and the reference to "(one)" would be deleted.

§ 166.12 [Amended]

17. In paragraph (c) of § 166.12, the reference to "(thirty)" would be deleted.

18. In paragraph (d) of § 166.12, the reference to "authorized representative of the Department" would be changed to "inspector".

§ 166.13 [Amended]

19. In paragraph (a) of § 166.13, the reference to "§§ 71.10(b) and 71.11 to Title 9, Code of Federal Regulations", would be changed to "§§ 71.10(b) and 71.11 of this chapter".

20. In paragraph (b) of § 166.13, the words "as defined in Part 160 or this chapter" would be inserted immediately after the words "accredited veterinarian", the reference to "§ 166.13(a)" would be changed to "paragraph (a) of this section", and the reference to "State Animal Health Official" would be changed to "State animal health official".

21. In paragraph (c) of § 166.13, the reference to "§ 166.13(a)" would be changed to "paragraph (a) of this section".

22. In paragraph (d) of § 166.13, the reference to "Department of Agriculture" would be changed to the

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United States Department of Agriculture".

§ 166.14 [Amended]

23. In paragraph (d) of § 166.14, the reference to "USDA" would be changed to "United States Department of Agriculture".

24. In paragraph (e) of § 166.14, the reference to "the public" would be changed to "The public", the references to "U.S." would be changed to "United States" each time it appears, and the references to "(APHIS)", "(USDA)" and "(usually the State Veterinarian)" would be deleted.

§§ 166.13, 166.14 and 166.15 [Redesignated from §§ 166.12, 166.13 and 166.14]

25. Present §§ 166.12, 166.13, and 166.14 would be redesignated as §§ 166.13, 166.14, and 166.15 respectively and a new § 166.12 would be added to read as follows:

§ 166.12 Cancellation of licenses.

(a) The Veterinarian in Charge shall cancel the license of a licensee when the Veterinarian in Charge finds that no garbage has been treated for a period of 3 consecutive months at the facility operated by the licensee. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for the proposed action and be given an opportunity to respond in writing. In those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing in accordance with rules of practice which shall be adopted for the proceeding.

(b) Any licensee may voluntarily have his or her license canceled by requesting such cancellation in writing and sending such request to the Veterinarian in Charge.[1] The Veterinarian in Charge shall cancel such license and shall notify the licensee of the cancellation in writing.

(c) Any person whose license is canceled in accordance with paragraph (a) or (b) of this section may apply for a new license at any time by following the procedure for obtaining a license set forth in § 166.10

Done at Washington, DC., this 17th day of March 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-6139 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-34-M

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[1] The name and address of the Veterinarian in Charge may be obtained from the Assistant Deputy Administrator, Animal Health Programs, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, Hyattsville, Maryland 20782.

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Docket No. R-0570]

Unfair or Deceptive Acts or Practices; Exemption Application From the State of Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make an exemption determination.

SUMMARY: The Board has received from the state of Wisconsin an application for an exemption from the Boards Credit Practices Rule, Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices). The rule prohibits banks from entering into consumer credit obligations that contain certain prohibited provisions, from using a certain late charge practice, and from obligating a cosigner prior to providing a required notice explaining the cosigner's obligations. The Board is publishing notice of the Wisconsin application, with an opportunity for public comment, in accordance with § 227.16(b) of Regulation AA. That section provides that the exemption procedures detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) are to be followed in applying for an exemption from the Credit Practices Rule.

DATE: Comments must be received on or before April 24, 1986.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance, 20th Street, between C Street and Constitution Avenue NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0570. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Susan J. Kraeger, or Heather L. Hansche, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3867; or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

In April 1985 the Board adopted its Credit Practices Rule, 12 CFR 227 (50 FR 16695), thereby amending its Regulation AA (Unfair or Deceptive Acts or Practices). The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740), effective March 1, 1985.[1] The Board's rule applies to all banks and their subsidiaries. Staff guidelines—in question and answer format—designed to aid banks in complying with the Credit Practices Rule were issued in November 1985 (50 FR 47036).

The Credit Practices Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, an assignment of wages, or a nonpossessory, nonpurchase money security interest in certain types of household goods. The rule prohibits the enforcement of these provisions in a consumer credit obligation purchased by a bank.

The rule also prohibits a practice known as "pyramiding of late charges." Under the pyramiding provision, a bank is prevented from assessing multiple late charges based on a single delinquent payment that is subsequently paid. In addition, the rule prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give a cosigner, prior to becoming obligated in a consumer credit transaction, a disclosure notice which explains the nature of the cosigner's obligations and liabilities under the contract.

Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties of up to $1,000 per day for violation of an order.

(2) Wisconsin's Exemption Application

The state of Wisconsin, through its Banking Commissioner, has applied to the Board for an exemption from the Board's Credit Practices Rule.[2] The

application contains copies of the Wisconsin Consumer Act and relevant administrative rules, a comparison of the provisions of the Credit Practices Rule and the Wisconsin statutory provisions, and copies of the Banking Commissioner's Annual Reports to the Governor and Legislature on the Wisconsin Consumer Act for three separate years. The application also contains information about the enforcement activities of the Division of Consumer Credit in the Office of the Commissioner of Banking.

The Board's rule (§ 227.16) states that, in applying for an exemption from its Credit Practices Rule, the procedures to be followed are the same as those detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) for applying for an exemption from the regulation. In accordance with those procedures, the Board is publishing for comment notice of its intent to make an exemption determination on the Wisconsin application. The notice summarizes the Wisconsin exemption application, and includes a comparison of the relevant provisions of Wisconsin law and the Board's Credit Practices Rule. In order to avoid undue delay in expediting final action on the Wisconsin exemption request, the notice is being published for a 30 day comment period. Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), copies of the Wisconsin application are available from the Board in Washington or from the Federal Reserve Banks of Chicago and Minneapolis.

Section 227.16 of the Credit Practices Rule provides that if a state applies for an exemption from a provision of the rule, such an exemption may be granted if the Board determines that: (i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of the Credit Practices Rule applies: and (ii) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule's provision. If the Board makes such a determination, the prohibition or requirement in the Board's rule will not be in effect in the state to the extent specified by the Board in its determination, for as long as the state effectively administers and enforces the state requirement of prohibition. The effect of an exemption is that banks and their subsidiaries (other than federally chartered institutions) that are subject to the Board's rule will be subject solely to state law and enforcement.

Applicable state law provisions need not be the same as the comparable federal requirement in order to meet the rule's substantially equivalent standard. Variations, however, should not deprive consumers of the protections provided by federal law. An analysis of the state's enforcement activities focuses on the ways in which a state demonstrates a commitment to enforcement and administration of the state's law; factors such as staffing, training activities, examination and administrative procedures, and other indicators of enforcement efforts may be considered, as well as the existence under the state law of any private right of action by aggrieved consumers.

(3) A Comparison of the Wisconsin Consumer Act and the Board's Credit Practices Rule

The state of Wisconsin asserts that the Wisconsin Consumer Act and the state enforcement scheme meet the standards for exemption contained in the Board's Credit Practices Rule, and requests and exemption on that basis. A comparison of the Wisconsin Consumer Act (as described in the Wisconsin application) and the Board's Credit Practices Rule is set forth below. In particular, the Board solicits comments on the following:

- The degree to which differences in coverage between the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in treatment of waivers of exemption under the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in the definitions of household goods protected by the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in the cosigner provisions of the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- Whether the penalty provisions and other remedies available for violations of Wisconsin law afford a level of protection substantially equivalent to, or greater than, that afforded by the Board's rule; and
- Whether Wisconsin administers and enforces its law effectively.

A. Coverage

Section 421.301(10) of the Wisconsin Consumer Act provides that the consumer credit transactions covered by the act include credit sales, loans, leases, and transactions made under open-end credit plans. Section 421.301(17) of the Wisconsin law provides that the act covers consumers who are natural persons and who acquire real or personal property, services, money or credit for personal, family, household or agricultural purposes. The Credit Practices Rule covers consumer credit obligations other than loans made for the purchase of real property (§ 227.12(a)). It does not cover consumer leases or loans made for agricultural purposes.

Sections 421.301(10) and 421.301(30) of the Wisconsin Consumer Act provide that the act covers: (1) Consumer credit transactions in which a finance charge is or may be assessed; or (2) if finance charges will not be assessed, credit transactions that are repaid in two or more installments (where any installment other than the downpayment is more than twice the amount of any other installment excluding the downpayment), or credit transactions that are repaid in more than four installments. The Credit Practices Rule covers all consumer credit transactions regardless of the number of installments in the repayment period, or whether a finance charge is assessed (§ 227.11(b)).

The Wisconsin Administrative Code (§ 80.06) provides that only credit that is used primarily for personal, family, household or agricultural purposes is covered by the act. The code indicates that "primarily" means 50% or more. The Credit Practices Rule also covers consumer credit transactions made primarily for personal, family or household use; term "primarily," however, is not defined. (Staff Guidelines, Q12(a)-1.)

Section 421.202(6) of the Wisconsin Consumer Act provides that consumer transactions that are in excess of $25,000 are not covered by the act. The Credit Practices Rule does not exclude consumer transactions over $25,000 from the rule's coverage. The dollar amount of the transaction, however, is one of the factors that can be considered in determining whether a transaction is for a business purpose rather than a consumer purpose. (Staff Guidelines, Q12(a)-2.)

B. Confession of Judgment

The Wisconsin Consumer Act prohibits a creditor from taking or accepting from a consumer a warrant or power of attorney or other authorization allowing the creditor, or other person acting for the creditor, to confess judgment on behalf of the consumer (§ 422.405). If a contract contains a

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[1] Under section 18(a)(1)(B) and section 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Bank Board (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank System: the FHLBB did so in May 1985 (50 FR 19325), with its rule also taking effect on January 1, 1986.

[2] The state of Wisconsin has submitted similar applications to the FTC and to the FHLBB, in order to obtain exemptions from the Credit Practices

Continued

Rules of those agencies. The Wisconsin exemption request to the FTC has been published for comment in the Federal Register (50 FR 46082), but no final determination by the FTC has as yet been made.

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confession of judgment, the consumer may, in a private action, void the contract, retain the goods or service provided without any further obligation to pay, and obtain a refund of all monies paid to the creditor (§ 425.305).

The Credit Practices Rule prohibits a confession of judgment in a consumer credit obligation where the consumer waives his or her procedural due process rights prior to the institution of a legal proceeding on the underlying obligation (§ 227.13(a)). The rule does not prohibit a power of attorney in a mortgage loan obligation or deed of trust for purposes of foreclosure; nor does the provision affect a power of attorney given to expedite the transfer of pledged securities or the disposal of repossessed collateral, or to allow prompt cancellation of insurance in an insurance premium finance contract. (Staff Guidelinees, Q13(a)–1.)

C. Waiver of Exemption

The Credit Practices Rule prohibits the inclusion of an executory waiver or a limitation of a state property exemption in a consumer credit obligation, unless the property serves as security for the obligation (§ 227.13(b)). Under the Wisconsin Consumer Act, a certain portion of a consumer's earnings and certain personal and real property are exempt from execution (§ 425.106). Section 421.106(1) of the act provides, in general, that a consumer may not waive or agree to forego rights or benefits under the act, except as the act otherwise provides; there is no provision of that act which expressly enables a consumer to waive a property exemption, and the state asserts that such a waiver would be unenforceable.

Section 425.107(1) of the Wisconsin Consumer Act provides that, with respect to a consumer credit transaction, if a court finds any aspect of the transaction unconscionable, in addition to remedies and penalties provided by statute, the court either will refuse to enforce the transaction or it will modify any unconscionable aspect of the transaction. Under § 427.107(3)(e), if the terms of a transaction require consumers to waive legal rights, such may be considered by a court in determining unconscionability. If a contract is deemed unconscionable, in addition to being unenforceable in whole or in part, the creditor is subject to a penalty of $100 and any actual damages including incidental and consequential damages sustained by the consumer (§§ 425.107(5) and 425.303). In addition, the state indicates that under its § 426.104 authority to review consumer credit contract forms, a form that contains a provision waiving the consumer's right to claim any exemption for personal or real property contained in the act would not be approved.

D. Assignment of Wages

The Wisconsin Consumer Act prohibits an assignment of earnings for payment, or as security for payment, of a consumer credit obligation, unless the assignment is revocable at will by the consumer (§ 422.404(1)). Section 80.361 of the Wisconsin Administrative Code requires a creditor who takes a permissible assigment of earnings to provide the consumer with a notice of the assignment's revocability. If a creditor takes a prohibited wage assignment, the creditor is subject to a penalty of twice th amount of the finance charge (not less than $100 or more than $1,000), or the consumer's actual damages, whichever is greater, in an action brought by the consumer (§ 425.304).

The Credit Practices Rule prohibits a wage assignment in a consumer credit obligation unless the assignment is revocable, is a payroll deduction or preauthorized payment plan, or applies to wages already earned (§ 227.13(c)). The Wisconsin Consumer Act does not expressly address payroll deduction or preauthorized payment plans. The state indicates, however, that payroll deduction plans would be permissible under the act as long as the consumer may revoke them at any time; such plans would include any preauthorized transfer of a consumer's wages from an employer to a particular creditor. With regard to a preauthorized transfer of an amount from a consumer's checking account to a particular creditor, the state doubts that such a preauthorized transaction would have to be revocable because a consumer's checking account would not fall within the definition of earnings a defined in § 421.301(18) of the act.

E. Security Interest in Household Goods

Section 422.417(1)(a) of the Wisconsin Consumer Act provides that, in general, a seller may only take a security interest in the goods sold. If, however, the extension of credit is for $500 or more, the seller may take (1) a security interest in property upon which goods sold are installed or annexed, and (2) a security interest in property upon which services sold are performed (§ 422.417(1)(b)). Under § 422.417(3) of the act, a lender that is not a seller may not take a security interest, other than a purchase money security interest, in certain specifically enumerated household goods. In addition, a lender is prohibited from taking a security interest in real property other than a purchase money security interest, if the credit obligation is less than $1,000. If a lender takes a security interest prohibited by § 422.417, it is subject to a penalty of twice the amount of the finance charge (not less than $100 or more than $1,000), or the actual amount of the damages sustained by the consumer, whichever is greater, in a private action brought by the consumer (§ 425.304).

The Credit Practices Rule prohibits banks from entering into or enforcing consumer credit obligations containing nonpurchase money security interests in specifically enumerated household goods. The rule places no limitations on the lender's ability to take security interests in real property. The list of specific items that are considered protected household goods differs somewhat under the Credit Practices Rule (§ 227.12(d)) and the Wisconsin Consumer Act (§ 442.417(3)(a)). Specifically, unlike the Credit Practices Rule, Wisconsin law does not protect the categories "china" and "personal effects," nor does it protect a television set. In addition, the rule protects the broad classification "appliances," while the act only protects a refrigerator, heating stove and cooking stove. Similarly, the rule protects the broad category, "furniture" (which includes all household furnishings except antiques), while the act limits protection to a dining table and chairs, beds, and a couch and chairs. Both laws specifically protect clothing and kitchenware, as well as linens (referred to as bedding in the Wisconsin Consumer Act) and crockery (referred to as utensils in the Wisconsin Consumer Act).

F. Unfair or Deceptive Practices Involving Cosigners

Under the Credit Practices Rule, before a cosigner becomes obligated for an extension of credit to a consumer, a bank must notify the cosigner in writing of the nature of his or her obligation (§ 227.14(a)(2)). The rule contains a prescribed disclosure statement. A bank must provide a cosigner statement which is substantially similar to that in the rule (§ 227.14(b)(2)). Under the rule the cosigner notice must be clear and conspicuous, and may be contained in a separate document or in the documents evidencing the credit obligation. The Wisconsin Consumer Act requires that a creditor provide a cosigner either with a written notice called "An Explanation of Personal Obligation" or a copy of the documents evidencing the consumer's obligation (§ 422.305(1)). If the notice is given, it must be printed in at least 10-point type, and substantially similar to

the one detailed in the Wisconsin law (§ 422.305(2)).

The notice required by the Credit Practices Rule states: (1) That the cosigner may have to pay the full amount of the debt and late fees or collection costs; (2) that the creditor can collect from the cosigner without first trying to collect from the borrower; (3) that the same collection remedies may be used against the cosigner as against the borrower; (4) that the notice is not the contract that makes the cosigner liable; (5) that if the debt goes into default that fact could become a part of the cosigner's credit history; and (6) the cosigner should think carefully before becoming obligated.

The notice contained in the Wisconsin Consumer Act states: (1) The parties to the contract, the date, the purpose of the credit and the amount of the credit; (2) the cosigner's obligation to pay even though the cosigner may not be entitled to any of the goods or services or the loan proceeds provided to the borrower; (3) the fact that the cosigner may be sued even though the borrower may be able to pay; (4) the fact that the notice is not the agreement that makes the cosigner liable; and (5) the fact that the cosigner is entitled to a free copy of any document the cosigner signs endorsing the transaction. In addition, the Wisconsin notice contains an acknowledgment to be executed by the cosigner upon receipt of the notice.

The Credit Practices Rule specifically prohibits a bank from misrepresenting the nature and extent of cosigner liability to any person (§ 227.14(a)(1)). Misrepresentation of cosigner liability is not specifically prohibited by the Wisconsin Consumer Act. Section 423.301 of the act does in general, however, prohibit false, misleading or deceptive statements with regard to consumer credit transactions. The state contends that directly or indirectly misrepresenting the nature or extent of a cosigner's liability would violate that section of the act. In addition, consumer credit contracts may not include terms which deprive cosigners of any rights provided to consumers under the act, nor may creditors charge cosigners for fees and charges which could not be imposed upon the consumer (§ 422.420). Under Wisconsin law, it is an unconscionable practice to unfairly take advantage of the lack of knowledge, ability, experience or capacity of consumers (§ 425.107(3)(a)), and it is an unfair collection practice for a creditor to attempt to enforce a right with knowledge that the right does not exist (§ 427.104(1)(j)).

If a cosigner does not receive a copy of the consumer credit obligation or a copy of the cosigner disclosure, the cosigner may recover, in a private action, the greater of twice the amount of the finance charge (not less than $100 or more than $1,000) or actual damages (§ 425.304). With regard to an unfair collection practice, the creditor may be liable for twice the amount of the finance charge (not less than $100 or more than $1,000) and the actual damages sustained by the consumer, including damages caused by emotional distress, in a private action brought by the consumer (§ 427.105).

G. Late Charges

Under the Credit Practices Rule, a bank is prohibited from collecting a late charge on a payment when the only delinquency is attributable to a late charge assessed on an earlier installment, and the payment is a full payment made on its due date or within the applicable grace period (§ 227.15). In an open-end credit plan where the bank discloses late charges to the consumer as they are imposed and informs the consumer of the full amount that the consumer must pay for the applicable period in order to remain current on the account, the rule's provision on late charges does not come into play. (Staff Guidelines, Q15–6).

The Wisconsin law prohibits the pyramiding of late charges in separate provisions governing open-end and closed-end credit. Section 422.202(2m)(a) provides that, in connection with an open-end credit plan, an unpaid late charge may not be included in any outstanding balance for the purpose of calculating the minimum payment due in a subsequent billing cycle. Section 422.203(2) of Wisconsin law provides that, with regard to closed-end credit, all payments must be applied first to current installments due, and then to delinquent installments for purposes of determining whether a delinquency charge may be assessed. Under this accounting procedure, if a consumer pays the full amount of the current installment on its due date or within the grace period, no late charge can be assessed on this payment even though all or part of a previous installment is unpaid and even though the unpaid installment is comprised of principal, interest or late charges. If a lender pyramids late charges, the lender is subject to a penalty equal to the greater of twice the amount of the finance charge (not less than $100 or more than $1,000), or the actual damages sustained by the consumer, in an action brought by the consumer (§ 425.304).

H. Enforcement

The Wisconsin Consumer Act is administered by the Commissioner of Banking. The Office of the Commissioner of Banking is funded through program revenues that include funds obtained through examinations and funds obtained by collecting fees from creditors pursuant to § 426.202 of the Wisconsin Consumer Act. The Commissioner is authorized to receive and act on complaints, adopt administrative rules, review and approve contract forms, commence administrative proceedings, and institute judicial proceedings through the state's Department of Justice. Administrative rules to interpret and carry out the purposes of the act were adopted in 1973. Where the Banking Commissioner reviews and approves contract forms used by creditors in consumer credit transactions—a function handled by the Commissioner's legal staff—such approval affords creditor protection from civil liability under the Wisconsin Consumer Act.

The Division of Consumer Credit has a field staff of five examiners who conduct on-site examinations of the consumer credit practices of all state banks, loan companies and motor vehicle dealers licensed to sell motor vehicles on credit. Bank examinations constitute between 15–20% of all of the examinations conducted by the Division of Consumer Credit, and range in length from one to five days. Currently, the time between the examination of each state bank is approximately 24 months. During the years 1983 and 1984, consumer credit examiners conducted an average of 134 bank examinations each year. Wisconsin asserts that its examination and approval procedures result in a high level of compliance with the Wisconsin Consumer Act.

Where compliance cannot be obtained through administrative enforcement, the Banking Commissioner may commence suit to enforce the act through the state of Wisconsin's Department of Justice (§ 426.104(1)(a)). In such an action a civil penalty of not less than $100 and not more than $1,000 for each violation may be recovered. If a violation is knowing and willful, a civil penalty of not less than $1,000 and not more than $10,000 for each violation may be recovered. (§ 426.301.)

(4) Comments Requested

Interested persons are invited to submit written comments on the state of Wisconsin's application for an exemption from the Board's Credit Practices Rule. After the close of the

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comment period, based upon its own analysis and analysis of the comments received, the Board will publish in the **Federal Register** notice of the final action on the exemption request.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6128 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09 86-01]

Drawbridge Requirements; Black River, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Lorain County Engineer, Elyria, Ohio, the Coast Guard is considering a change to the operating regulations governing the Erie Avenue Bridge, mile 0.6 over the Black River at Lorain, Ohio, by permitting the number of openings to be limited during certain times and by permitting the bridge to remain closed at certain other times unless advance notice is given to open the draw for the passage of vessels. This change is being considered because of land traffic tie-ups during the day and a decrease of requests to have the bridge opened at night and during the winter months. This action should alleviate the traffic tie-ups and will relieve the bridge owner of the burden of having a perons constantly available to open the draw while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before May 5, 1986.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199. The comments and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, Ohio. Normal office hours are between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday, except legal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Fred H. Mieser, project officer, and Lt R.A. Pelletier, project attorney.

Discussion of Proposed Requirements

Presently, the Erie Avenue bridge opens on a signal and bridgetenders are required to be in constant attendance at the bridge.

From April 1 though November 30, the proposed requirements would allow the bridge owner to open the draw for pleasure craft only on the hour and half-hour from 7 a.m. to 6 p.m., with no openings for pleasure craft during the peak vehicular traffic times of 8 a.m., 3 p.m., 4 p.m. and 5 p.m., Monday through Friday, except legal holidays. On Saturdays, Sundays and legal holidays, the draw would be required to open for pleasure craft only on the hour and half-hour between the hours of 11 a.m. and 6 p.m. From 11 p.m. to 7 a.m., seven days a week and legal holidays, no bridgetender would be required to be in attendance and the draw would open for pleasure craft and commerical vessels if at least a one hour advance notice is given.

From December 1 through March 31, the bridge would not be manned and the bridge would be required to open on signal if at least a twelve hour advance notice is given.

At all times, the bridge would be required to open on signal as soon as possible for the passage of public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

This change has been requested by the Lorain County Engineer because random bridge openings for the passage of high masted pleasure craft cause land traffic tie-ups. Traffic counts taken at the bridge show an average amount of vehicles passing over the bridge, Monday through Friday, to be from 213 to as many as 412 vehicles in a 15 minute period and from 21 to 376 vehicles in a 15 minute period on Saturdays and Sundays. Bridgetender logs show that there are as few as six minutes between bridge openings for the passage of high masted pleasure craft. Also, requests for opening the draw between the hours of 11 p.m. and 7 a.m. during the navigation season and all times during the winter months are so minimal that removing the bridgetenders during these periods of time should meet the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessels would be unaffected except when the bridge is unattended. During the periods of time when the bridge is unattended, there is little or no significant navigation on the river. The periods of time when the bridge opens for the passage of pleasure craft on a regulated schedule should help relieve the problem of land traffic tie-ups due to the random openings of the draw while still allowing recreational boaters to navigate the river. Since the impact of this proposal is expected to so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Requirements

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended as follows:

PART 117—DRAWBRIDGE REQUIREMENTS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. It is proposed that Part 117 be amended by adding a new section, § 117.850, under the listing for the State of Ohio to read as follows:

§ 117.850 Black River.

The draw of the Erie Avenue bridge, mile 0.6 at Lorain, shall open on signal excepts as follows:

(a) From April 1 through November 30—

(1) From 7 a.m. to 6 p.m., Monday through Friday, except legal holidays, the draw need open only on the hour and half-hour for pleasure craft; however, the draw need not open for pleasure craft at 8 a.m., 3 p.m., 4 p.m. and 5 p.m.

(2) From 11 a.m. to 6 p.m., Saturdays, Sundays and legal holidays, the draw need open only on the hour and half-hour for pleasure craft.

(3) From 11 p.m. to 7 a.m., seven days a week and legal holidays, no bridgetender is required to be in constant attendance and the bridge shall open on signal if at least a one hour advance notice is given.

(b) From December 1 through March 31, the draw shall open on signal if at least a twelve hour advance notice is given.

(c) At all times, the draw shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: March 11, 1986.

A. M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 86-6171 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 183

[CGD 85-098]

Boating Safety; Fuel System Standard

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to amend its regulations on fuel systems for recreational boats by incorporating SAE Standard J1527DEC85 instead of SAE Standard J30C in Subpart J of Part 183. Under the proposal, the definitions and performance requirements for "USCG Type A" and "USCG Type B" fuel hose would be changed because the increasing level of aromatics in fuel and the use of alcohols has raised safety questions over the permeation rates and longevity of hose meeting only the minimum requirements of the present standard incorporated by reference. The intended effect of the proposed amendments is to specify four grades of fuel hose that are more resistant to alcohol permeation. Hoses used for fuel fill and vent lines would not have to offer as high a degree of resistance to alcohol permeation as hoses used for fuel distribution lines. Additional editorial changes would be made to Subpart A of Part 183 to reflect changes in the applicability of the part and to the names and addresses of organizations whose standards are incorporated by reference in Subpart J.

DATES: Comments must be received on or before June 18, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), [CGD 85-098], U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1065, between 8 a.m., and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD 85-098] and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelop is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council voted in favor of a proposed rule for changing the incorporation by reference from SAE Standard J30C to SAE Standard J1527DEC85 in the Fuel System Standard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Exectitive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593.

The increasing level of aromatics and the use of alcohols in fuel has raised safety questions over the permeation rates and longevity of hose meeting only the minimum requirements of the Society of Automotive Engineers (SAE) Standard J30C, incorporated by reference in § 183.506 of the Fuel Systems Standard. While alcohol boosts the octane level of gasoline, it also attacks rubber fuel hoses. Nitrile rubber fuel hoses, the most common fuel hose material used for a number of years, suffer increased swelling and elongation when soaked in alcohol-gasoline blends. Tests indicate that ethanol blended fuels may double the permeation rate in marine fuel hoses and methanol blended fuels may increase permeation by as much as two and one-half times. Under the proposal, SAE Standard J1527DEC85 would replace the existing reference to SAE Standard J30C. SAE Standard J1527DEC85 establishes a permeation rate for fuel distribution lines which is one-sixth of that specified for hose meeting SAE Standard J30C. These hoses are designated Class 1 and are marked USCG Type A1 or B1. SAE Standard J1527DEC85 also establishes a permeation rate for fuel fill and tank vent hoses which is one-half of that specified for hose meeting SAE Standard J30C. The permeation rate for these hoses is less stringent because normally they do not hold fuel for more than a few minutes. These hoses are designated Class 2 and are marked USCG Type A2 or Type B2. Manufacturers installing fill and vent lines therefore would be permitted to use either USCG Type A1, B1, A2 or B2 hoses depending upon other conditions specified in the regulations.

In SAE Standard J1527DEC85 the permeation rate is expressed in terms of the amount of fuel lost through the walls of the hose in 24 hours. Class 1, for fuel distribution lines, permits 100 grams of fuel loss per square meter of inside surface of the hose. Class 2, for fill and vent hoses, permits 300 grams. American Society for Testing and Materials (ASTM) Reference fuel "C" is used for the testing.

Since applicable portions of the Federal Boat Safety Act of 1971 has been recodified as Chapter 43 of Subtitle II of Title 46 of the United States Code

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(U.S.C.), § 183.1 would be revised to show that Part 183 prescribes standards and regulations for boats and associated equipment to which 46 U.S.C. 4302 applies. The authority citation for Part 183 is being revised to reflect the recodification.

A new § 183.5 would be added which lists material approved for incorporation by reference in Part 183. Material currently approved for incorporation by reference is listed in the Finding Aids section of Chapter I of Title 33, which is not a part of the regulations. Editorial changes would be made to reflect the correct name of the organization which publishes AMCA Standard 210-74, the Air Movement and Control Association; the correct address for the Institute of Electrical and Electronic Engineers, Inc. which publishes IEEE Standard 45; and the correct address for the National Fire Protection Association which publishes NFPA No. 70.

Section 183.505 contains definitions for "USCG Type A" and "USCG Type B" fuel hose. Under the proposal, "USCG Type A1 and Type A2" and "USCG Type B1 and Type B2", which refer to different degrees of resistance to permeation, would replace the existing references in §§ 183.505, 183.528, 183.532, 183.540, 183.558, 183.568 and 183.590.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. It is estimated that the proposal to change the incorporation by reference in the Fuel Systems Standard from SAE Standard J30C to SAE Standard J1527DEC85 and the definitions for "USCG Type A" and "USCG Type B" fuel hose would result in an increased cost for fuel hose of approximately $.20 per foot. It is further estimated that 100,000 new boats would be affected annually by this rulemaking and that the average boat contains about 10 feet of fuel hose. Therefore, this rule, if promulgated, would result in a total annual cost to the industry of $200,000 or approximately $2.00 per boat. Since this rule, if promulgated, would reduce the possibility of fires and explosions caused by fuel hoses which leak fuel or vapor due to alcohol permeation, the Coast Guard considers this a minimal increase in the cost of manufacturing a boat.

Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects for 33 CFR Part 183

Marine safety.

In consideration of the foregoing, the Coast Guard proposes to amend Part 183 of Title 33, Code of Federal Regulations to read as follows:

PART 183—BOATS AND ASSOCIATED EQUIPMENT

1. The authority citation for Part 183 is revised to read as follows (all other authority citations in the Subparts of Part 183 are removed):

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. § 183.1 is revised to read as follows:

§ 183.1 Purpose and applicability.

This part prescribes standards and regulations for boats and associated equipment to which 46 U.S.C Chapter 43 applies and to which certification requirements in Part 181 of this subchapter apply.

3. Part 183 is amended by adding a new § 183.5 to subpart A to read as follows:

§ 183.5 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Incorporated by Reference", which appears in the Finding Aids section of this volume. The table contains citations of the particular sections of this part where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the United States Coast Guard Boating Safety Division, Washington, DC 20593.

(b) The materials approved for incorporation by reference in this part are:

Air Movement and Control Association

30 W. University Drive, Arlington Heights, IL 60004

AMCA 210-74—Laboratory Methods of Testing Fans for Ratings—1974

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103

ASTM D-471—Rubber Property—Effect of Liquids—1979

ASTM D-1622—Apparent Density of Rigid Cellular Plastics—1975

ASTM D-1621—Compressive Properties of Rigid Cellular Plastics—1975

Naval Publications Forms Center

Customer Service—Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120

MILSPEC-P-21929B—Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid—1970

Society of Automotive Engineers, Inc.

400 Commonwealth Drive, Warrendale, PA 15096

SAE J378—Marine Engine Wiring—1978
SAE J557—High Tension Ignition Cable—1968
SAE J1127—Battery Cable—1980
SAE J1128—Low Tension Primary Cable—1975
SAE J1527DEC85—Marine Fuel Hoses—1985

Underwriter's Laboratories, Inc.

333 Pfingsten Road, Northbrook, IL 60062

UL 83—Standard for Thermoplastic Insulated Wires—1980

UL 1114—Standard for Marine Use: Flexible Fuel Line Hose—1979

UL 1128—Marine Blowers—1977

National Fire Protection Association

Batterymarch Park, Quincy, MA 02269

NFPA No. 70—National Electric Code—Articles 310 & 400—1981

Institute of Electrical and Electronics Engineers, Inc.

445 Hoes Lane, Piscataway, NJ 08854

IEEE 45-1977—Cable Construction—1977

4. Section 183.505 is amended by removing the definitions for "USCG Type A Hose", and "USCG Type B Hose" and by adding the following new definitions.

§ 183.505 Definitions

* * * * *

"USCG Type A1" hose means hose that has a permeation rating of 100 grams or less fuel loss per square meter of interior surface and meets the performance requirements of:

(1) SAE Standard J1527DEC85 and the fire test in § 183.590; or

(2) Underwriters' Laboratories, Inc. (UL) Standard 1114.

"USCG Type A2" hose means hose that has a permeation rating of 300 grams or less fuel loss per square meter of interior surface and meets the performance requirements of SAE Standard J1527DEC85 and the fire test in § 183.590;

"USCG Type B1" hose means hose that has a permeation rating of 100 grams or less fuel loss per square meter of interior surface and meets the performance requirements of SAE Standard J1527DEC85.

"USCG Type B2" hose means hose that has a permeation rating of 300 grams or less fuel loss per square meter of interior surface and meets the

performance requirements of SAE Standard J1527DEC85.

5. § 183.528, paragraph (b) is revised to read as follows:

§ 183.528 Fuel stop valves.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a fuel stop valve installed in a fuel line system requiring metallic fuel lines or "USCG Type A1" or "USCG Type A2" hose must not leak fuel.

6. In § 183.532 paragraph (b) is revised to read as follows:

§ 183.532 Clips, straps and hose clamps.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a clip, strap or hose clamp installed on a fuel line system requiring metallic fuel lines or "USCG Type A1" or "USCG Type A2" hose must not separate under a one pound tensile force.

7. In § 183.540, paragraphs (a) and (b)(1) are revised to read as follows:

§ 183.540 Hoses: Identification.

(a) Each "USCG Type A1," USCG Type A2," "USCG Type B1," and "USCG Type B2" hose must be identified by the manufacturer by a marking on the hose.

(b) * * *

(1) The statement "USCG TYPE (insert A1 or A2 or B1 or B2)."

* * * * *

8. In § 183.558, paragraph (a) and paragraph (b)(1) and the introductary text of (b) (2) are revised to read as follows:

§ 183.558 Hoses and connections.

(a) Each hose between the fuel pump and the carburetor must be "USCG Type A1" hose.

(b) * * *

(1) "USCG Type A1" or "USCG Type A2" hose; or

(2) "USCG Type A1" or "USCG Type A2" or "USCG Type B1" or "USCG Type B2" hose, if no more than five ounces of fuel is discharged in 2½ minutes when:

* * * * *

9. In § 183.568, paragraph (c) introductary text is revised to read as follows:

§ 183.568 Anti-siphon protection.

* * * * *

(c) Provided that the fuel tank top is below the level of the carburetor inlet, be metallic fuel lines meeting the construction requirements of § 183.538 or "USCG Type A1" hose, with one or two manual shutoff valves installed as follows:

* * * * *

10. In § 183.590, paragraph (a)1) is revised to read as follows:

§ 183.590 Fire test.

(a) * * *

(1) Fuel stop valves, "USCG Type A1" or "USCG Type A2" hoses, clips, straps and hose clamps are tested in a fire chamber.

* * * * *

Dated: March 17, 1986.

T.T. Matteson,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 86-6169 Filed 3-19-86; 8:45 am]

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 323 and 326

Proposal To Amend Permit Regulations for Controlling Certain Activities in the Waters of the United States

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend 33 CFR Part 326 to reflect the sequence of enforcement actions, to clarify ambiguous procedures and language, and to provide district engineers with the flexibility needed to resolve violations in the most effective manner and to be able to concentrate existing staff resources on the most critical enforcement actions. Some procedures in this part would be revised to provide for a more practical approach to certain enforcement problems. The Army is also proposing changes to 33 CFR Part 323 in response to recent court decisions. These changes reflect the Army's policy regarding *de minimis* or incidental soil movement occurring during normal dredging operations.

DATE: Written comments must be received by April 21, 1986.

ADDRESS: Office of the Chief of Engineers, ATTN: DAEN-CWO-N, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT:

Mr. Chuck Foster

or

Mr. Jack Chowning, Regulatory Branch, (202) 272-0199.

SUPPLEMENTARY INFORMATION:

Proposed Changes

Part 323—Permits for Discharges of Dredged or Fill Materials Into Waters of the United States

Section 323.2(j): A sentence would be added to this section to clarify our longstanding policy that *de minimis* or incidental soil movement occurring during normal dredging operations, such as the drippings from a dragline bucket, are not considered to be a discharge of dredged material for purposes of section 404. This policy was formally announced in Regulatory Guidance Letter 81-4, issued on June 3, 1981. All the guidance letters issued in 1981 expired December 31, 1983. To the extent that the decision of the U.S. District Court for the Northern District of Ohio in *Reid* v. *Marsh,* No. C-81-690 (N.D. Ohio, 1984), could be construed as including a holding inconsistent with this longstanding Corps of Engineers interpretation of section 404, we believe that it can be explained by our failure to express the *de minimis* rule clearly in Corps regulations. Thus the proposed rule includes a provision clearly stating that *de minimis* or incidental soil movement occurring during normal dredging operations do not require 404 permits.

Part 326—Enforcement

Title: The title of this part would be shortened from "Enforcement, Supervision and Inspection" to simply "Enforcement."

Section 326.1: This section would be modified to provide a general outline of Part 326.

Section 326.2: This section would be added to identify the general policy objective of the Corps' enforcement program.

Section 326.3: This section would generally include the procedures previously found in §§ 326.2 and 326.3. Most of the changes relate to improving clarity, organization and flexibility. However, the revisions in this section would also provide new legal options for enforcing the orders, directives, and decisions of district engineers; and a provision for interim protective measures where simply stopping the illegal work in progress would be inappropriate.

Section 326.4: This section would generally include procedures previously found in § 326.5. In § 326.4(c), we would introduce revisions to fully implement section 404(s) of the Clean Water Act.

Section 326.5: This section would generally include the procedures previously found in § 326.4. These procedures would be rewritten to make

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clear the discretionary nature, under the relevant statutes, of the district engineer's selection of the appropriate legal action to pursue. Further, § 326.5(e) would be added to allow district engineers to close case records on those violations that do not warrant legal action or the processing of a permit. Typically, enforcement actions on such minor violations, not involving repeat offenders, can be resolved with appropriate correspondence.

Note 1.—The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12291.

Note 2—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water pollution control, Waterways.

Dated: March 6, 1986.

Approved:

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army proposes to amend 33 CFR Parts 323 and 3261 as set forth below:

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

1. The authority citation for 33 CFR Part 323 continues to read:

Authority: 33 U.S.C. 1344.

2. Section 323.2 is amended by revising paragraph (j) to read:

§ 323.2 Definitions.

* * * * *

(j) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products; see § 323.4 for the definitions. The term does not include *de minimis* or incidental soil movement occurring during normal dredging operations, such as the drippings from a dragline bucket, backhoe, clamshell, or other similar types of equipment.

* * * * *

3. Part 326 is revised to read:

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Policy.
326.3 Unauthorized activities.
326.4 Supervision of authorized activities.
326.5 Legal action.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This regulation prescribes enforcement policies (Section 326.2) and procedures applicable to activities performed without required Department of the Army permits (Section 326.3) and to activities not in compliance with the terms and conditions of issued Department of the Army permits (Section 326.4). Procedures for initiating legal actions are prescribed in § 326.5.

§ 326.2 Policy.

Enforcement, as part of the Corps' overall regulatory program, is based on a policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures, where appropriate, to ensure those waters are not misused and to maintain the integrity of the program. There are several methods discussed in the remainder of this part which can be used either singly or in combination to implement this policy, while making the most effective use of the enforcement resources available.

§ 326.3 Unauthorized activities.

(a) *Surveillance*. To detect unauthorized activities requiring permits, district engineers should make the best use of all available resources. Corps employees; members of the public; and representatives of state, local, and other Federal agencies should be encouraged to report suspected violations. Additionally, district engineers should consider developing joint surveillance procedures with Federal, state, or local agencies having similar regulatory responsibilities, special expertise, or interest.

(b) *Initial investigation.* District engineers should take steps to investigate suspected violations in a timely manner. The scheduling of investigations will reflect the nature and location of the suspected violations, the anticipated impacts, and the most effective use of inspection resources available to the district engineer. These investigations should confirm whether a violation exists, and if so, will identify the extent of the violation and the parties responsible.

(c) *Formal notification to parties responsible for violations.* Once the district engineer has determined that a violation exists, he should take appropriate steps to notify the responsible parties.

(1) If the violation involves a project that is not complete, the district engineer's notification should be in the form of a cease and desist order prohibiting any further work pending resolution of the violation in accordance with the procedures contained in this part. See subparagraph (4) below for exception to this procedure.

(2) If the violation involves a completed project, the district engineer's notification should normally direct the parties responsible not to initiate any additional work before obtaining required Department of the Army authorizations.

(3) All notifications should identify the relevant statutory authorities and will direct the responsible parties to submit any additional information that the district engineer may need at that time to determine what initial corrective measures, if any, are required; further information may be requested, as needed, in the future.

(4) In situation which would, if a violation were not involved, qualify for emergency procedures pursuant to 33 CFR 325.2(e)(4), the district engineer may decide it would not be appropriate to direct that the unauthorized work be stopped. Therefore, in such situations, the district engineer may, at his discretion, allow the work to continue, subject to appropriate limitations and conditions as he may prescribe, while the violation is being resolved in accordance with the procedures contained in this part.

(5) When an unauthorized activity requiring a permit has been undertaken by American Indians (including Alaskan natives, Eskimos, and Aleuts, but not including Native Hawaiians) on reservation lands or in pursuit of specific treaty rights, the district

engineer should use appropriate means to coordinate proposed directives and orders with the Assistant Chief Counsel for Indian Affairs (DAEN–CCI).

(6) When an unauthorized activity requiring a permit has been undertaken by an official acting on behalf of a foreign government, the district engineer should use appropriate means to coordinate proposed directives and orders with the Office, Chief of Engineers, ATTN: DAEN–CCK.

(d) *Initial corrective measures.* (1) The district engineer should, in appropriate cases, depending upon the potential impacts of the unauthorized completed work, solicit the views of the Environmental Protection Agency; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service, and other Federal, state, and local agencies to facilitate his decision on what initial corrective measures are required. If the district engineer determines as a result of his investigation, coordination, and preliminary evaluation that initial corrective measures are required, he should issue an appropriate order to the parties responsible for the violation. In determining what initial corrective measures are required, the district engineer should consider whether serious jeopardy to life, property, or important public resources (see 33 CFR 320.4) may be reasonably anticipated to occur during the period required for the ultimate resolution of the violation. In his order, the district engineer will specify the initial corrective measures required and the time limits for completing this work. In unusual cases where initial corrective measures substantially eliminate all current and future detrimental impacts resulting from the unauthorized work, further enforcement actions should normally be unnecessary. For all other cases, the district engineer's order should normally specify that compliance with the order will not foreclose the Government's options to initiate appropriate legal action or to later require the submission of a permit application.

(2) An order requiring corrective measures that resolve the violation may also be issued by the district engineer in situations where an application for an after-the-fact permit cannot be accepted or where such acceptance would not be appropriate (see § 326.3(3)). However, such orders will be issued only when the district engineer has reached an independent determination that such measures are necessary and appropriate.

(e) *After-the-fact permit applications.* (1) Following the completion of any required initial corrective measures, the district engineer will accept an after-the-fact permit application unless he determines that one of the exceptions listed in subparagraphs i–v below is applicable. Applications for after-the-fact permits will be processed in 33 CFR Parts 320–325. Situations where no permit application will be processed or where the acceptance of a permit application must be deferred are as follows:

(i) No permit application will be processed for initial corrective measures (§ 326.3(d)) undertaken at the direction of the district engineer.

(ii) No permit application will be processed when restoration of the waters of the United States has been completed that eliminates current and funture deterimental impacts to the statisfaction of the district engineer.

(iii) No permit application will be accepted in connection with a violation where the district engineer determines that legal action is appropriate (§ 326.5(a)) until such legal action has been completed.

(iv) No permit application will be accepted where a Federal, state, or local authorization or certification, required by Federal law, has already been denied.

(v) No permit application will be accepted nor will the processing of an application be continued when the district engineer is aware of litigation that has been initiated by other Federal, state, or local regulatory agencies, unless he determines that concurrent processing of an after-the-fact permit application is clearly appropriate.

(2) Upon completion of his review in accordance with 33 CFR Parts 320–325, the district engineer will determine if a permit should be issued, with special conditions if appropriate, or denied. In reaching a decision to issue, he must determine that the work involved is not contrary to the public interest, and if section 404 is applicable, that the work also complies with the Environmental Protection Agency's section 404(b)(7) guidelines. If he determines that a denial is warranted, his notification of denial should prescribe any final corrective actions required and should establish a reasonable period of time for the applicant to complete such actions unless he determines that further information is required, the final corrective measures may be specified at a later date. If an applicant refuses to undertake prescribed corrective actions ordered subsequent to permit denial or refuses to accept a conditioned permit, the district engineer may initiate legal action in accordance with § 326.5.

(f) *Combining steps.* The procedural steps in this section are in the normal sequence. However, these regulations do not prohibit the streamlining of the enforcement process through the combining of steps.

(g) *Coordination with EPA.* In all cases where the district engineer is aware that EPA has issued an order under section 309 of the Clean Water Act or that EPA has referred, or is preparing to refer, a violation to the Department of Justice, he should consult with EPA, as appropriate, to attempt to avoid conflict.

§ 326.4 Supervision of authorized activities.

(a) *Inspections.* District engineers should take reasonable measures to inspect permitted activities to insure that these activities comply with specified terms and conditions. To supplement inspections by their enforcement personnel, district engineers should encourage their other personnel; members of the public; and interested state, local, and other Federal agency representatives to report suspected violations of Corps permits. To facilitate inspections, district engineers may, in appropriate cases, require that copies of ENG Form 4336 be posted conspicuously at the sites of authorized activities and will make available to all interested persons information on the terms and conditions of issued permits. The U.S. Coast Guard will inspect permitted ocean dumping activities pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(b) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activities will normally be paid by the Federal Government unless daily supervision or other unusual expenses are involved. In such unusual cases, the district engineer may condition permits to require permittees to pay inspection expenses pursuant to the authority contained in section 9701 of Pub. L. 97–258 (33 U.S.C. 9701). The collection and disposition of inspection expense funds obtained from applicants will be administered in accordance with the relevant Corps regulations governing such funds.

(c) *Non-compliance.* If a district engineer determines that a permittee has violated the terms or conditions of the permit and that the violation is sufficiently serious to require an enforcement action, then normally he should: (1) First contact the permittee; (2) request corrected plans reflecting actual work, if needed; and (3) attempt to resolve the violation. Resolution of the violation may take the form of the permitted project being voluntarily brought into compliance or of a permit

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modification (33 CFR 325.7(b)). If a mutually agreeable solution cannot be reached, a written order requiring compliance should normally be issued and delivered by personal service. Issuance of an order is not, however, a prerequisite to legal action. If an order is issued, it will specify a time period of not more than 30 days for bringing the permitted project into compliance, and a copy will be sent to the appropriate state official pursuant to section 404(s)(2) of the Clean Water Act. If the permittee fails to comply with the order within the specified period of time, the district engineer may consider using the suspension/revocation procedures in 33 CFR 325.7(c) and/or he may recommend legal action in accordance with § 326.5.

§ 326.5 Legal action.

(a) *General.* For cases the district engineer determines to be appropriate, he will recommend criminal or civil actions to obtain penalties for violations, compliance with the orders and directives (§§ 326.3(c–d) and 326.4(c)) he has issued, or other relief as appropriate. Appropriate cases for criminal or civil action include, but are not limited to, violations which, in the district engineer's opinion, are willful, repeated, or flagrant.

(b) *Preparation of case.* If the district engineer determines that legal action is appropriate, he will prepare a litigation report or such other documentation that he and the local U.S. Attorney have mutually agreed to, which contains an analysis of the information obtained during his investigation of the violation or during the processing of a permit application and a recommendation of appropriate legal action. The litigation report or alternative documentation will also recommend what, if any, restoration or mitigative measures are required and will provide the rationale for any such recommendation.

(c) *Referral to the local U.S. Attorney.* Except as provided in paragraph (d) below, district engineers are authorized to refer cases directly to the U.S. Attorney. Because of the unique legal system in the Trust Territories, all cases over which the Department of Justice has no authority will be referred to the Attorney General for the Trust Territories. Information copies of all letters of referral shall be forwarded to the appropriate division counsel, the Office, Chief of Engineers, ATTN: DAEN–CCK, and the Office of the Assistant Secretary of the Army (Civil Works).

(d) *Referral to the Office, Chief of Engineers.* District engineers will forward litigation reports through division offices with recommendations to the Office, Chief of Engineers, ATTN: DAEN–CCK, for all cases that quality under the following criteria:

(1) Significant precedential or controversial questions of law or fact;

(2) Discharges of dredged or fill materials into the waters of the United States that are not interstate waters or navigable waters of the United States or part of a surface tributary system to these waters;

(3) Requests for elevation to the Washington level by the Department of Justice;

(4) Violations of section 9 of the Rivers and Harbors Act of 1899;

(5) Violations of section 103 the Marine Protection, Research and Sanctuaries Act of 1972;

(6) All cases involving vioaltions by American Indians (original of litigation report to DAEN–CCI with copy to DAEN–CCK) on reservation lands or in pursuit of specific treaty rights;

(7) All cases involving violations by officials acting on behalf of foreign governments; and

(8) Cases requiring action pursuant to subparagraph (e) below.

(e) *Legal option not available.* In cases where the local U.S. Attorney declines to take legal action, it would be appropriate for the district engineer to close the enforcement case record unless he believes that the case warrants special attention. In that situation, he may forward a litigation report to the Office, Chief of Engineers, ATTN; DAEN–CCK, for direct coordination through the Office of the Assistant Secretary of the Army (Civil Works) with the Department of Justice. Further, the case record should not be closed if the district engineer anticipates that further administrative enforcement actions, taken in accordance with the procedures prescribed in this part, will identify remedial measures which, if not complied with by the parties responsible for the violation, will result in appropriate legal action at a later date.

[FR Doc. 86–6076 Filed 3–19–86; 8:45 am]

BILLING CODE 3710–92–M

Notices

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This Section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86–012]

Viruses, Serums, Toxins, and Analogous Products; Amendment of the Virus-Serum-Toxic Act of 1913

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of new licensing requirements under the Virus-Serum-Toxic Act of 1913, 21 U.S.C. 151–158. The Act was amended by the Food Security Act of 1985, approved December 23, 1985. The amendment requires that, unless exempted, all producers of veterinary biological products shipping such products anywhere in the United States or exporting them, must be licensed by the Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION: Effective December 23, 1985, it is unlawful for any person, not exempted by regulation, to ship a veterinary biological product anywhere in the United States, or to export such product unless that product is prepared "under and in compliance with regulations prescribed by the Secretary of Agriculture, at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture . . .". The amendment to the Virus-Serum-Toxin Act provides that, in the case of a person preparing a veterinary biological product solely for intrastate commerce or for export during the 12-month period ending December 23, 1985, such product will not be considered to be in violation of the Act as a result of its not being produced under license until the 1st day of the 49th month following December 23, 1985, that is, until January 1, 1990.

This notice is issued to inform the biologics industry and other interested persons that the 4-year exemption granted under the Act is not automatic and must be claimed by the person, or corporation affected in the form and manner prescribed by the Secretary. All such claims for the exemption must be made by the 1st day of the 13th month following December 23, 1985, which is January 1987.

The Department is in the process of developing rules which specifically address the exemption process and other requirements under the Act. Pending issuance of these rules and in order to facilitate implementation of the new amendments and the 4-year exemption provision, a person, firm, or corporation may claim the exemption by filing an application for an establishment license and a product license for each product which qualifies for the exemption. The filing of such applications shall be deemed by the Department to satisfy the statutory requirements for claiming the exemption. Rules and regulations with respect to licensing may be found at 9 CFR 101.1 *et seq.* Application forms, along with instructions and assistance, may be obtained by calling or writing to Dr. David A. Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

Done at Washington, DC, this 17th day of March 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–6138 Filed 3–19–86; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Environmental Statements; Dorchester Village RC&D Measure Plan, Georgia

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dorchester Village RC&D Measure Plan, Liberty County, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns are flooding which causes economic losses and social well being losses to area residents. The planned works of improvement include two flood prevention channels.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewd by contacting Mr. B.C. Graham. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: March 12, 1986.

B.C. Graham,

State Conservationist.

[FR Doc. 86–6052 Filed 3–19–86; 8:45 am]

BILLING CODE 3410–16–M

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Environmental Statements; South Delta Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the South Delta Watershed, Humphreys, Sharkey, and Yazoo Countries, Mississippi.

FOR FURTHER INFORMATION CONTACT: A.E. Sullivan, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, A.E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. Alternatives under consideration to reach these objectives include systems for conservation land treatment and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from A.E. Sullivan, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: March 13, 1986.

A.E. Sullivan,

State Conservationist.

[FR Doc. 86-6064 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Subcommittee of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 9:00 p.m., on April 11, 1986, at the Holiday Inn, 800 Camino Del Rio, Durango, Colorado. The purpose of the meeting is to conduct a community forum to gather information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6111 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission previously scheduled for April 3, 1986, convening at 1:00 p.m. and adjourning at 6:00 p.m., at the Biscayne Bay Marriott Hotel, Miami, Florida has a new meeting date and time.

The meeting location will remain the same. The date of the meeting will be April 25, 1986, convening at 10:30 a.m. and adjourning at 4:00 p.m.

Dated at Washington, DC, March 14, 1986.

Ann E. Goode,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-6112 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on April 10, 1986, at the Holiday Inn, Board Room, Western Avenue, Augusta, Maine. The purpose of the meeting is to continue discussion of the proposed project concept on the civil rights of Maine Indians.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Morgan or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-6109 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 9:00 p.m. on April 9, 1986, and convene at 8:30 a.m. and adjourn at 12:00 noon on April 10, 1986, at the City Hall, Daniel Boone Building, 3rd Floor, 701 East Broadway, Columbia, Missouri. The purpose of the meeting is to review the status of civil rights in Missouri and engage in future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Morrie Zimring or Melvin Jenkins Director of the Central

States Regional Office at (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-6110 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on April 7, 1986, at the Federal Building, Room 2886, 915 Second Avenue, Seattle, Washington. The purpose of the meeting is to engage in future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Roger Manseth or Susan McDuffie, Director of the North Western Regional Office at (206) 442-1245, (TDD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6108 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 9-86]

Proposed Foreign-Trade Zone—Franklin County, OH, Within the Columbus Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority, a political subdivision of the State of Ohio, requesting authority to establish a general-purpose foreign-trade zone in Franklin County, Ohio, within the Columbus Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 7, 1986. The applicant is authorized to make this proposal under section 1743.11 of the Ohio Revised Code.

The proposed foreign-trade zone involves the 1642-acre Rickenbacker Air Industrial Park, located at Alum Creek Road and Route 317 in southeastern Franklin County. The project has existing warehouse buildings as well as open space for firms requiring their own facilities. Diversified/Turner Company, which is the airpark developer, has been designated to operate the zone.

The application contains evidence of the need for zone services in the Columbus area. Several firms have indicated an interest in using zone procedures for general warehousing and for handling products such as truck chassis, utility vehicles and pharmaceuticals. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Robert B. Wilson, District Engineer, U.S. Army Engineer District Huntington, 502 8th Street, Huntington, West Virginia 25701.

As part of its investigation, the examiners committee will hold a public hearing on April 16, 1986, beginning at 9:00 a.m., in the Main Conference Room of the Columbus Area Chamber of Commerce Building, 37 North High Street, Columbus.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by April 9. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 16, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Port Columbus Int'l Airport, 4600 17th Avenue, Rm 221, Columbus, Ohio 43219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: March 14, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-6094 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Case No. OEE-2-85]

Werner Scheele et al.; Export Privileges

In the matter of Werner Scheele, individually and doing business as CHB COMPUTER HARDWARE VERTRIEBS GmbH a/k/a CHB GmbH and COMSERV GmbH and COMSERV COMPUTER LEASING GmbH with addresses at 427 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany and 449-451 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany, BENGT ANDERSSON, individually with an address at Bodalsvagen 20 XII, Lidingo, Sweden, and doing business as BEA Computer, Vasagatan 15-17, S-111 20 Stockholm, Sweden and Beacom International AB, Vasagatan 15-17, S-111 20 Stockholm, Sweden, VEB Deutrans International, Sassnitzgatan 2, 231 00 Trelleborg, Sweden, respondents.

Decision and Order

By letter dated February 17, 1986, Werner Scheele, on behalf of himself and CHB Computer Hardware Vertriebs GmbH, also known as CHB GmbH, and Comserv Computer Leasing GmbH (hereinafter collectively referred to as "Scheele") appealed the renewal of the temporary denial order ("TDO") issued against them by the Deputy Assistant Secretary for Export Enforcement on February 6, 1986 (51 FR 5389 (February 13, 1986)). The appeal was filed in the Office of Administrative Law Judges on February 28, 1986. In accordance with § 388.19 of the Export Administration Regulations (15 CFR Parts 368 through

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399 (1985)) (the "Regulations"),[1] the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the "Department") timely submitted its response to Scheele's appeal.

In its Response, the Department, without indicating reasons therefor, stated that it did not oppose Scheele's request that the TDO be vacated. The Administrative Law Judge, finding no sufficient basis for maintaining a TDO, also recommended that the TDO be vacated. The Department has stated that it does not intend to file a request for renewal of the TDO on or before March 19, 1986.

Accordingly, pursuant to the authority granted to me by § 388.19 of the Regulations, I hereby vacate, effective immediately, the TDO issued on February 6, 1986, against Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a/ CHB GmbH, Comserv GmbH, and Comserv Computer Leasing GmbH, all of Essen, Federal Republic of Germany, and against Bengt Andersson of Lidingo, Sweden, individually and doing business as BEA Computer and Beacom International AB of Stockholm, Sweden, and against VEB Deutrans International of Trelleborg, Sweden. This Order sets forth the sole basis for my decision in this proceeding and shall be published in the **Federal Register**.

Dated: March 13, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-6062 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-25-M

[C-201-009]

Iron-Metal Construction Castings From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 24, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal construction castings from Mexico. The review covers the period December 1, 1982 through March 31, 1983 and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After considering all of the comments received, the Department has determined the bounty or grant during the period of review to be 0.08 percent *ad valorem*, a rate the Department considers to be *de minimis*.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8834) a final determination and countervailing duty order on certain iron-metal construction castings from Mexico. We began this review of the order under our old regulations on May 28, 1983, and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, a group of Mexican exporters, on September 13, 1985, requested that we complete the administrative review, in accordance with section 355.10(a) of the Commerce Regulations. We published the new initiation and preliminary results of administrative review on October 24, 1985 (50 FR 43262). We have now completed the administrative review, in accordance with section 751 of the Tariff Act of 1930.

Scope of the Review

Imports covered by the review are shipments of Mexican iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers and grates, meter boxes, and valve boxes. These castings are commonly called municipal or public works castings. Such merchandise is normally classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated ("TSUSA"). However, alloyed municipal castings are currently classifiable under TSUSA items 657.2540 and 657.2550. After reviewing the petition and the Department's final determination in this case, we do not find any indication of an intent to limit the scope of the order to non-alloyed castings. Therefore, we determine that the order covers municipal or public works castings, whether or not alloyed.

The review covers the period December 1, 1982 through March 31, 1983 and eight programs: (1) FONEI; (2) FOGAIN; (3) state tax incentives; (4) CEDI; (5) CEPROFI; (6) FOMEX; (7) import duty reductions and exemptions; and (8) FOMIN.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, we held a public hearing on December 9, 1985.

Comment 1: The petitioners argue that the Department's verification report describes three different methodologies for calculating the benefits from the state tax incentives. The widely differing benefits calculated indicate that those methods are inconsistent. The program involves an exemption from a state tax based on wages, and labor costs should not differ greatly among foundries producing similar castings by similar methods. Further, the Department did not use the amount of exemption that it verified existed for Fundiciones Tijuana. Finally, the Department's practice of weight-averaging each firm's benefit according to its share of exports to the U.S., instead of allocating all firms' benefits over total Mexican exports to the U.S., undervalues the total *ad valorem* benefit because of the Department's greater use of the rounding of numbers. The rounding effectively eliminates the benefits to small producers. This is particularly important in a case like this where the aggregate net bounty or grant is close to the 0.5 percent cutoff for *de minimis* rates.

Department's Position: While lacking parallel data for all firms, the Department used the same methodology for all firms in calculating the benefit from state tax incentives. The Baja California state tax on wages and salaries is by statute equal to 75 percent of the one percent federal housing tax, which is in turn tied to wages and salaries. Five companies were eligible for an exemption from this tax during the period of review. The Mexican government reported that only one of them used the program during the period of review. We conducted verifications at three of the five firms and found that all three used the program. We obtained and verified and actual amount of federal housing taxes that Fundiciones Tijuana paid during the review period and that Arechiga Sarinana paid in 1982. However, we were not able to obtain data on housing taxes from the third verified firm, B.C. 76. Therefore, we used that company's total federal tax liability as a substitute for its housing tax liability. For the two eligible firms that we did not verify, we have now chosen the highest *ad valorem* rate among the

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[1] Parts 387 and 388 of the Regulations were recently amended and republished. *See* 50 FR 53130 (December 30, 1985).

three verified firms and then weight-averaged the two additional rates with the three verified rates according to each firm's share of exports to the U.S.

Labor costs may differ greatly in absolute terms among foundries because the work forces vary substantially in size. Nonetheless, the proportion of the work force (and therefore of the exemption) to the total production of two of the three verified firms is similar. We could not judge the labor costs for B.C. 76, where we had to rely on the total federal tax liability as the basis for our calculations rather than on the federal housing tax liability.

We agree that we used the wrong figure for Fundiciones Tijuana's federal housing tax liability and have recalculated the benefit using the verified amount. In the preliminary results, we used the full 12-month exemption for Arechiga Sarinana. To calculate the benefit for the review period, we have now used one-third of the 1982 figure. Finally, in our weight-averaging in the preliminary results, we calculated the weights for the two unverified firms by using each firm's exports expressed in dollars and total Mexican exports to the U.S. expressed in pesos. We have now used dollar figures for both. After making these adjustments, we determine the total bounty or grant from the program to be 0.04 percent *ad valorem*.

We fail to see how rounding eliminates the benefits to small producers from the aggregate net subsidy. Both the benefit (the numerator) and the exports (the denominator) are correspondingly small. Thus, there is no increased likelihood that benefits of small producers (in contrast to those of large producers) will be eliminated from the calculation. Even extending the numbers in our calculations to six decimal places does not change the total bounty or grant from the program.

Comment 2: The petitioners contend that the Government of Mexico's questionnaire response shows three loans under the FOGAIN program, but that the Department included only two of the loans in its calculations.

Department's Position: We agree and have now included benefits from the third loan, which Arechiga Sarinana obtained in 1980. At that time, the highest rate available under FOGAIN was 21 percent. Using the long-term loan methodology described in the preliminary results, we determine the benefit from all three loans to be 0.02 percent (see also Comment 7).

Comment 3: The petitioners contend that the commerical benchmark for preferential loans should include the effects of prepayment of interest, commissions, and compensating balances. Further, the Department should evaluate the preferential loans in light of payment holidays for such loans.

Department's Position: We agree that the comparison of effective preferential loan terms to effective commercial loan terms is the most appropriate method for measuring the benefit from preferential loans. However, when we do not have information on such practices as prepayment of interest, grace periods, compensating balances, or fees and commissions, we must often rely on a comparison of nominal interest rates. The terms of the FONEI and FOGAIN loans that we examined in this case do not include payment holidays on interest. Furthermore, we have no evidence that prepayment of interest, commissions, or compensating balance requirements are uniform commercial practices in Mexico. Therefore, we have used nominal interest rates to measure the benefits from the FONEI and FOGAIN programs.

Comment 4: The petitioners contend that the benefits from the FOMEX loans found countervailable during the original investigation extend into the current review period because the life of the loans themselves extend into the review period.

Department's Position: We disagree. We consider the benefit from preferential loans to occur when a company realizes the interest saving or "cash-flow" effect. We determined that the exporters did not receive any benefits from FOMEX loans during the current review period because no interest or principal payments on FOMEX loans came due during the period for either new FOMEX loans during the review period or old FOMEX loans still outstanding during the period.

Comment 5: The petitioners state that the Department failed to investigate the use of import duty reductions and exemptions with regard to machinery or parts imported prior to the review period. The Department should allocate such benefits over the useful life of the imported equipment.

Department's Position: We disagree. We consider the benefit from import duty reductions to occur at the time of receipt. A firm realizes the "cash-flow" effect at the time of importation because that is the time it would have had to pay the import duty. The Department has verified that manufacturers of iron-metal construction castings did not receive any import duty reductions or exemptions for imports of machinery or equipment during the period of review. *See* notice of final results of administrative review of countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985).

Comment 6: The petitioners contend that, during the period examined in the original investigation as well as the period currently under review, actions of the Mexican government caused the deferral of payments of private loans from U.S. banks. Such rescheduling of foreign debt constitutes a bounty or grant.

Department's Position: The only program during the review period for the rescheduling of private debt in Mexico was the Trust Fund for Coverage of Risks ("FICORCA"). The Department found this program not countervailable in its final affirmative countervailing duty determination on unprocessed float glass from Mexico (49 FR 23097, June 4, 1984). Because we had previously found this program not countervailable, we did not consider it in this review.

Comment 7: The exporters contend that the Department did not use the correct commercial interest rate benchmark for calculating the benefit of one of the FOGAIN loans.

Department's Position: We agree. Arechiga Sarinana obtained two FOGAIN loans in November 1981. We should have used the same 22 percent commercial interest rate benchmark for both loans, the highest rate available under FOGAIN at the time. Using that rate, we have now calculated the benefit from the FOGAIN loans to be 0.02 percent.

Comment 8: The exporters contend that the Department improperly allocated the benefits from FOGAIN and FONEI loans over the value of exports rather than the value of production. The Department has previously determined that FOGAIN and FONEI loans are domestic, rather than export, bounties or grants and that benefits attributable to such loans should be allocated over total sales, rather than export sales. The Department should have used the value of total production as the basis for allocation.

Department's Position: We do not have total sales data. In the preliminary results, we used export sales as the best information for total sales but have now chosen total production to be the best information available. We determine the total benefit from FONEI to be 0.02 percent *ad valorem*. The FOGAIN benefit remains the same because Arechiga Sarinana received the only benefits under FOGAIN and the firm's total exports equalled its total production.

Comment 9: The exporters contend that the Department should revoke the

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order. Under the terms of the "Understanding Between the United States and Mexico regarding Subsidies and Countervailing Duties" ("the Understanding") signed on April 23, 1985, Mexico became a "country under the Agreement," as defined in section 701(b) of the Tariff Act. As such, section 303 of the Tariff Act no longer applies to any products from Mexico, and Mexico is entitled to an injury test under section 701 before the Department may impose countervailing duties on any products, including castings.

Alternatively, if the Department persists in holding that section 303 applies to this case, section 303 prohibits the Department from assessing countervailing duties on duty-free products without an affirmative finding of injury if the United States has an international obligation to provide such an injury test. Contrary to the Department's stated belief, the Understanding does require the injury test for pre-existing orders. The Department's distinction between "investigations in progress" (the phrase contained in the Understanding) and existing order would render article 5 of the Understanding superfluous in light of section 102(a) of the Trade Agreements Act of 1979 ("the TAA") and disregard the teachings of the Court of Appeals for the Federal Circuit ("CAFC") in *Al Tech Specialty Steel Corporation* vs. *United States* (754 F. 2d 632 (1984)).

Finally, the United States in the Understanding granted Mexico "most-favored-nation" ("MFN") status. The MFN clause of the Understanding creates an international obligation on the United States to apply the same procedures in countervailing duty proceedings on Mexican products as for products from other countries. The products as for products covered by this order are by U.S. statute duty-free. In two instances involving duty-free products covered by section 303 countervailing duty orders, the Department has refused or preliminarily refused to impose duties. In *Certain Fasteners from India* (47 FR 44129; October 6, 1982), the Department revoked the portion of the order covering duty-free fasteners. In *Carbon Steel Wire Rod from Trinidad and Tobago* (50 FR 19561; May 9, 1985), the Department tentatively determined to revoke the oder because the products became duty-free. The circumstances of those cases are very similar to those of this case and Mexico must receive no less favorable treatment.

Department's Position: We continue to believe that we cannot revoke this countervailing duty order on the basis of the Understanding. While it is true that the United States Trade Representative determined on April 23, 1985, that Mexico became a "country under the Agreement" (50 FR 18335; April 30, 1985), the application of that status was limited by article 5 of the Understanding to countervailing duty proceedings which had not progressed to the issuance of a final determination (and simultaneous order). We have confirmed with the principal U.S. negotiators that the intent of article 5 was to exclude from the application of the Understanding, and hence application of "country under the Agreement" status, orders existing before April 23, 1985. Section 303 continues to apply to such orders.

As to the argument that even if section 303 applies, the Understanding is an international obligation requiring an injury test, once again article 5 precludes application to pre-April 23, 1985 orders. We agree with the exporters that our reading of article 5 provides only the injury test provided by section 102(a) of the TAA; we do not agree that such a reading renders article 5 superfluous. The Understanding states its own limitations. Furthermore, we are in no way disregarding the determination of the CAFC in *Al Tech.* The use of the phrase "investigations in progress" in the Understanding, despite the discussion in the Department's memorandum of October 9, 1985, was not meant to refer to the use of the phrase "investigation" in the TAA or in the TAA amendments to the Tariff Act, and therefore the CAFC discussion of the term "investigation" in *Al Tech* is irrelevant here. The phrase "investigations in progress" is a bilaterally negotiated phrase with clear meaning to the U.S. negotiators.

Finally, the MFN argument cannot be sustained for the same reasons as in the above two arguments. In both *Certain Fasteners from India* and *Carbon Steel Wire Rod from Trinidad and Tobago* (regardless of the ultimate outcome), the countries involved have a clear claim, as GATT members, to the injury test. The only claim of the Government of Mexico is the Understanding, which the U.S. negotiators precluded from applying to pre-April 23, 1985 orders.

For additional information, see notice of final results of administrative review of countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985).

Final Results of Review

After reviewing all of the comments received, we determined the total bounty or grant to be 0.06 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis.*

The Department will instruct the Customs Service not to assess countervailing duties for shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after December 16, 1982, the date of our affirmative preliminary determination (47 FR 56377), and exported on or before March 31, 1983.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 355.41 of the Commerce Regulations (19 CFR 355.10; 50 FR 32550, August 13, 1985).

Dated: March 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-6121 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

March 17, 1986.

On March 6, 1986 a notice was published announcing a partially closed meeting of the Management-Labor Textile Advisory Committee on March 27, 1986 (51 FR 7844).

The date of this meeting has been changed to March 25, 1986 in Room 6802, Herbert C. Hoover Building, at 1:00 p.m.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6116 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Tuesday, 29 April 1986 from

9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia 22311, (703) 824-5531.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

March 17, 1986.

[FR Doc. 86-6144 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 15 April 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: March 17, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-6156 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5:00 p.m. on 28 and 29 March 1986 at the Hyatt Regency Monterey; One Old Golf Course Road; Monterey, California. The purpose of the meeting is to review the development of ninth and tenth grade norms for the Department of Defense Student Testing Program and to write the Committee's biennial report. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than 21 March 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1986.

[FR Doc. 86-6155 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on April 22-23, 1986, at the Supervisor of Shipbuilding, Conversion and Repair, Pascagoula, Mississippi. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on April 22 and commence at 8:15 a.m. and terminate at 3:30 p.m. on April 23. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide update briefings for the Committee members on research and development relative to ship construction. The agenda for the meeting will consist of briefings on naval research and development applications related to ship construction, as well as a tour of the facilities of the shipyard. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217-5000. Telephone number (202) 696-4870.

Dated: March 7, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-6100 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

National Petroleum Council U.S. Refinery Capability Task Group Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in April 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will be addressing a current study of the capability of the U.S. refining industry. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its thirteenth meeting on Thursday, April 3, 1986, starting at 8:30 a.m., in the California Room of the Union Oil Center, 1201 West Fifth Street, Los Angeles, California.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
3. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group is empowered to conduct the meeting in a fashion that

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will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 17, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-6158 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Atlantic Richfield Co.

AGENCY: Economic Regulatory Administration, of Energy.

ACTION: Notice of cancellation of public hearing regarding proposed consent order with Atlantic Richfield Company.

SUMMARY: The Economic regulatory Administration of the Department of Energy hereby cancels the public hearing regarding the Proposed Consent Order with Atlantic Richfield Company which was scheduled for Friday, March 21, 1986, in Washington, DC [51 FR 5394, February 13, 1986]. As stated in the notice, the deadline for requests to make presentations was 5:00 p.m. on March 17, 1986. Two requests to make presentations were received, but were subsequently withdrawn.

FOR FURTHER INFORMATION CONTACT: Robert Heiss, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6727.

Issued in Washington, DC on March 18, 1986.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-6311 Filed 3-19-86; 10:18 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-18-NG]

Chieftain International, Inc.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 7, 1986, of an application filed by Chieftain International, Inc. (Chieftain), an affiliate of Chieftain Development Co. Ltd. (Chieftain Development), for blanket authorization to import up to 10 Bcf of natural gas annually for a two-year period beginning on the date of first delivery. The gas would be supplied by Chieftain Development or other Canadian suppliers located in the Province of Alberta and sold on a short-term or spot basis to U.S. purchasers, including gas distributors, pipelines, electric utilities, and industrial or agricultural users. Chieftain would also act as a broker or agent on behalf of U.S. purchasers and/or Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. Chieftain proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6050.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Chieftain's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-6038 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-17-NG]

Community Gas Acquisition, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 6, 1986, of an application filed by Community Gas Acquisition, Inc. (Community), a District of Columbia non-profit corporation, for a blanket authorization to import up to 300 Bcf of natural gas for a two-year period beginning on the date of first delivery. The gas would be supplied by various Canadian pipelines, producers, and producer groups and sold on a short-term or spot basis to U.S. purchasers, including local distribution companies, industrial and commercial end-users, and residential cooperatives. Community requests authorization to import for its own account as well as for the accounts of its foreign supplier clients and U.S. purchaser clients. The specific terms of each import and sale would be negotiated on an individual basis, including the price and volumes. Community proposes to make quarterly reports to the ERA.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW, Washington, DC, 20585, (202) 252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW, Washington, DC, 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their respopses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Community's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, March 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-6041 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket No. GP86-15-000]

Jeems Bayou Production Corp., Martin A No. 1 Well, FERC JD No. 84-20414; Petition To Reopen and Vacate Final Well Category Determination and Request for Withdrawal of Application

Issued March 14, 1986.

Take notice that on November 20, 1985, Jeems Bayou Production Corporation filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate a final well category determination under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for the Martin A No. 1 well located in DeSoto Parish, Louisiana, and to withdraw its application for the determination.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20460, not later than 30 days following publication of this notice in the Federal Register. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6160 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-253-000]

Natural Gas Companies; Application of Kerr-McGee Corporation for Certificate of Public Convenience and Necessity for Abandonment and Pre-granted Abandonment and for Expedited Consideration

March 17, 1986.

Take notice that on March 7, 1986, Kerr-McGee Corporation (Kerr-McGee) pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717(c) and 717(f) (1982) Parts 157 and 284 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1986), and § 2.77 of the Commission's Regulations, 18 CFR 2.77 (1986) applied for a Certificate of Public Convenience and Necessity (1) authorizing sales for resale of natural gas by Kerr-McGee in interstate commerce from the sources of production listed on Appendix A attached to said application; (2) authorizing the sale for resale of natural gas by Kerr-McGee attributable to other interest owners having an interest in the same production; (3) authorizing partial abandonment and pre-granted abandonment of certain sales as described herein; (4) authorizing transportation by interstate pipelines (and pre-granted abandonment of the same) where and if necessary, under section 7(c) of the NGA, 15 U.S.C. 717f(c), to effectuate the delivery of gas sold thereunder; and (5) authorizing transportation by interstate pipelines, local distribution companies, and Hinshaw pipelines as set forth in said Application. The authority is requested to be effective no later than April 1, 1986 for a two and one-half year period commencing on the date of issuance of a Commission Order approving same.

If approved, Kerr-McGee states that it will be authorized to sell gas released by Kerr-McGee's interstate pipeline purchaser (Transco) listed on Appendix A attached to said application from contractual commitment which is: (1) Subject to the maximum lawful price established by section 102(d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3319; and (2) subject to substantially reduced takes without payment to Kerr-McGee. Kerr-McGee states that the authority will also enable it to make sales for resale in interstate commerce of the gas so released to any and all customers having the ability to purchase such gas on the open market and have gas, as well as gas which is released by Kerr-McGee's interstate pipeline customers but which is outside the Commission's NGA jurisdiction, transported to such customers.

Kerr-McGee states that the grant of authority applied for will further the policies and objectives of the Commission set forth in its Final Rule issued in *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Docket No. RM85-1-000 (Oct. 9, 1985) (Order No. 436), the Commission's decision in *Felmont Oil Corporation and Essex Offshore, Inc.,* 33 F.E.R.C. (CCH) ¶ 61,333 (1985) and in *Pennzoil Producing Co., et al.,* Docket No. CI86-54-000 (March 5, 1986).

Any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX A

Field/contract area	Purchaser	NGPA category
Ship Shoal Block 208/214	Transco	(102D)
Ship Shoal Block 230	Transco	(102D)
Ship Shoal Block 233	Transco	(102D)
Ship Shoal Block 239	Transco	(102D)
Galveston Block 129	Transco	(102D)

[FR Doc. 86-6161 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-1-001]

Magma Copper Co.; Petition for Temporary Exemption and Interim Relief From Incremental Pricing

Issued: March 17, 1986.

Take notice that on November 12, 1985, Magma Copper Company (Magma) filed with the Commission, pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) a petition for a one-year extension of temporary relief, commencing with the January 1986 billing period, from the incremental pricing regulations which impose a surcharge on the natural gas purchased for use in its copper mining, smelting, and refining facility located in Arizona. Magma was granted temporary relief for a one-year period, commencing with the January 1985 billing period, by order of the Director, Office of Pipeline and Producer Regulation, issued January 2, 1985. On November 29, 1985, Magma petitioned under § 381.106 of the Commission's regulations for waiver of the filing fee prescribed by § 381.401 of such regulations.

In support of its petition, Magma states that due to continued price deflation in the copper market and increased costs of production, it is suffering cash out-of-pocket losses.

Magma states that without continued exemption from the incremental pricing regulations its losses will increase. Magma requested interim relief from the incremental pricing regulations pending action on its petition for temporary exemption. Interim relief was granted by the Director on December 24, 1985.

The procedures applicable to the conduct of this proceeding are set forth in rules 1101-1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6162 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-12-001]

Natural Gas Companies; Application for Modification of Order Permitting and Approving Limited-Term Abandonments and Granting Certificates; Mesa Petroleum Co.

March 17, 1986.

Take notice that on March 10, 1986, Mesa Operating Limited Partnership (Mesa), pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder (18 CFR Parts 154 and 157), filed an application requesting that in Docket No. CI86-12-000 the Commission modify Paragraph (A) of its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985 by substituting March 31, 1987 for March 31, 1986 therein, all as more fully shown in the application which is on file with the Commission and open to public inspection.

Mesa states that the circumstances that called forth Mesa's application filed on October 7, 1985 and supported issuance of the Commission's October 29, 1985 Order will continue past the March 31, 1986 termination date prescribed in Paragraph (A) of the October 29, 1985 Order to at least until March 31, 1987. If the limited-term abandonment and certificate authorization granted by the November 1, 1985 Order is extended past March 31, 1986, Mesa states that it could continue existing spot market sales and make additional sales.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 27, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6164 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8716-001]

New Hope Hydro Partners; Surrender of Preliminary Permit

March 14, 1986

Take notice that the New Hope Hydro Partners, Permittee for the Union Mills Project No. 8716, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8716 was issued on July 11, 1985, and would have expired on June 30, 1987. The project would have been located on the Delaware River, in Bucks County, Pennsylvania.

The Permittee filed the request on March 10, 1986, and the preliminary permit for Project No. 6716 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6163 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-011]

Northwest Pipeline Corp.; Compliance Filing

March 14, 1986.

Take notice that on March 10, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1-A:

First Revised Sheet No. 313
First Revised Sheet No. 314
First Revised Sheet No. 415

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 12, 1986.

On July 12, 1985, Northwest tendered for filing and acceptance Original Volume No. 1-A pursuant to Northwest's Offer of Settlement in the above-referenced docket which was approved by Commission order dated May 31, 1985. The Commission issued an order, dated February 28, 1986, approving Northwest's Original Volume No. 1-A subject to the filing of the revised tariff sheets above.

Northwest requests an effective date of May 1, 1985, for the tendered tariff sheets which is the effective date of the rates approved by the Commission order dated May 31, 1985. [*Northwest Pipeline Corp.,* 31 FERC ¶ 61,263 (1985)] and Volume No. 1-A Tariff approved February 28, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 24, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6165 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP86-56-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 13, 1986.

Take notice that on March 4, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing Second Revised Sheet No. 68 to be a part of its FERC Gas Tariff, Original Volume No. 2. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 10, 1986.

Rate Schedule X–24 is the San Juan Gathering Agreement (Gathering Agreement) dated January 31, 1974, as amended between Northwest and El Paso Natural Gas Company (El Paso). The Gathering Agreement is also on file with the Federal Energy Regulatory Commission (Commission) as Rate Schedule X–31 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2.

Northwest and El Paso entered into a Letter Agreement (Agreement) dated December 27, 1985, providing for market responsive production control. Each party also agreed to waive (not charge or collect) the gathering charge set forth in Article IX of the Gathering Agreement. Second Revised Sheet No. 68 incorporates such agreement to waive the gathering charge.

El Paso has already tendered its companion filing, with respect to Rate Schedule X–31; therefore, Northwest requests waiver of § 154.22 in order to allow an effective date of March 31, 1986, which is the anticipated effective date of the El Paso filing, in order to maintain continuity of the respective tariffs. While Northwest believes that no further waiver of the Commission's regulations are required to make this filing effective as proposed, Northwest requests that the Commission grant any waivers it may deem necessary for the acceptance of this proposed filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 24, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6166 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-57-000]

Northwest Pipeline Corp.; Proposed Change in Gathering Rates

March 13, 1986.

Take notice that on March 7, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, and Original Volume No. 1–A the following tariff sheets:

Original Volume No. 2—Second Revised Sheet No. 2.2 and Tenth Revised Sheet No. 2–B
Original Volume No. 1–A—Second Revised Sheet No. 201

Northwest states that the purpose of the filing is to establish a minimum rate for gathering services applicable to all of Northwest's gathering areas and to limit the amount of gathering credit which would be received under its Rate Schedule T–5 for transportation services where a related charge is made for gathering services by Northwest. There is no change in Northwest's previously effective maximum gathering rates.

The proposed effective date of the tendered tariff sheets is May 1, 1986.

A copy of this filing has been served on all jurisdictional and affected customers and all affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6167 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-13059-000, et al.]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

March 17, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 31, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-13059-000, D, Mar. 6, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Southern Natural Gas Company, Gwinville Field, Jefferson Davis County, Mississippi.	(¹)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI61-1073-000, D, Mar. 10, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Arkansas Louisiana Gas Company, Ouachita Parish, Louisiana.	(²)	
CI61-1103-001, D, Mar. 6, 1986	Sun Exploration & Production Co.	ANR Pipeline Company, Woodward Area Field, Woodward County, Oklahoma.	(³)	
CI62-559-000, D, Mar. 10, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, North Alden Field, Caddo County, Oklahoma.	(⁴)	
CI64-781-000, D, Mar. 6, 1986	do	ANR Pipeline Company, Jeanerette Field, St. Mary Parish, Louisiana.	(⁵)	
CI67-541-000, D, Mar. 10, 1986	do	do	(²)	
CI75-709-000, D, Mar. 10, 1986	Texaco Production Inc., P.O. Box 52332, Houston, Texas 77052.	Trunkline Gas Company, South Marsh Island Block 281 Field, Offshore Louisiana.	(⁶)	
CI86-239-000, B, Feb. 26, 1986	Artex Oil Company, 3916 State Street, Santa Barbara, Calif. 93105.	Consolidated Gas Transmission Corporation, Gilmer County, West Virginia.	(⁷)	
CI86-241-000, B, Feb. 26, 1986	Francis E. Cain, Agent for Cain-Smith Gas, P.O. Box 60, Big Bend, W. Va. 26136.	Consolidated Gas Transmission Corporation, Sheriden District, Calhoun County, West Virginia.	(⁸)	
CI86-242-000, F, Mar. 3, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Northern Natural Gas Company, Prentice Gasoline Plant, Yoakum County, Texas.	(⁹)	
CI86-243-000, A, Mar. 5, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Bridgeline Gas Distribution Company, High Island Area Block A-582, Offshore Texas.	(¹⁰)	
CI86-244-000, A, Mar. 5, 1986	do	Transcontinental Gas Pipe Line Corporation, High Island Area Block A-582, Offshore Texas.	(¹¹)	
CI86-246-000, F, Mar. 5, 1986	Texaco Inc. (Succ. in Interest to Sun Exploration & Production Co.), P.O. Box 52332, Houston, Texas 77052.	El Paso Natural Gas Company, Rhodes Yates Unit, Lea County, New Mexico.	(¹²)	
CI86-247-000, B, Mar. 3, 1986	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Michigan Wisconsin Pipeline Company, Calcasieu Lake Field, Cameron Parish, Louisiana.	(¹³)	
CI86-248-000, B, Mar. 4, 1986	Houston Oil & Minerals Corporation, P.O. Box 2511, Houston, Texas 77001.	United Gas Pipe Line Company, Roanoke Field, Jefferson Davis Parish, Louisiana.	(¹⁴)	
CI86-249-000 (CI86-89-000), B, Mar. 4, 1986.	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Arkansas Louisiana Gas Company, Village Field, Columbia County, Arkansas.	(¹⁵)	
CI86-250-000 (CI66-1010), B, Mar. 5, 1986.	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northern Natural Gas Company, Tangier Field, Woodward County, Oklahoma.	(¹⁶)	
CI86-257-000 (CI70-396), B, Mar. 10, 1986.	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Texas Eastern Transmission Corporation, West Cameron Block 192 Field, Offshore Louisiana.	(¹⁷)	
CI86-258-000, B, Mar. 10, 1986	TXO Production Corp., First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Colorado Interstate Gas Company, Hickman #1 Well, Sec. 34, Twp. 28N, Range 25W, Harper County, Oklahoma.	(¹⁸)	
CI86-259-000, B, Mar. 10, 1986	do	Transwestern Pipeline Company, Hester No. 1 Well, Sec. 24, 3N, 26ECM, Beaver County, Oklahoma.	(¹⁹)	
CI86-260-000, B, Mar. 10, 1986	do	Northern Natural Gas Company, Shafer No. 1 Well, Sec. 12, 22, 25W, Ellis County, Oklahoma.	(¹⁸)	
CI86-261-000 (G-15250), B, Mar. 10, 1986.	Shell Offshore Inc.	Tennessee Gas Pipeline Company, West Cameron Block 192 Field, Offshore Louisiana.	(¹⁷)	

[1] Property sold to Robert B. Lambert.
[2] Deletion of acreage. ARCO no longer holds an interest in acreage to be deleted.
[3] Property sold to Robert L. Ham.
[4] ARCO no longer holds an interest in subject acreage and acreage released back to the landowners.
[5] Deletion of acreage. ARCO no longer holds an interest in acreage to be deleted (released 10-8-85).
[6] Assignment of a part of TPI's interest to Hallco.
[7] This well has declined beyond its economic limit. The operating expenses exceed the income from production.
[8] Uneconomical.
[9] Assignment, Bill of Sale and conveyance to Amoco Production Company from John J. Christmann, *et al.* was effective 9-17-85.
[10] Applicant is filing under Gas Sales and Purchase Contract dated 2-7-86.
[11] Applicant is filing under Gas Purchase Agreement dated 2-18-86.
[12] By Assignment effective 10-1-84, Applicant acquired certain property from Sun Exploration & Production Co.
[13] Applicant's interest in the field was conveyed to Marsh Engineering, Inc., effective 11-7-83.
[14] Assignment and/or sale of certain dedicated leases.
[15] Effective 9-1-85, ENSTAR conveyed its interest in the properties dedicated to the contract to TXO Production Corp.
[16] All acreage has been assigned to Maynard Oil Company.
[17] By Release of Oil and Gas Lease dated 11-22-83 and 11-21-85, Applicant has released all of its interest to the United States of America, Department of the Interior, Bureau of Land Management.
[18] Depleted.
[19] Casing leak, deemed uneconomical to repair.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-6168 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-30-000, et al.]

Iowa Public Service Co. et al.; Electric Rate and Corporate Regulations Filings

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Company

[Docket No. ES86-30-000]

March 17, 1986.

Take notice that on March 10, 1986, Iowa Public Service Company (Applicant), filed an application seeking an order pursuant to section 204 of the Federal Power Act, authorizing it to issue and sell, in one or more public offerings or private placements, prior to December 31, 1987, fixed rate debt in aggregate principal amount of not more than the $140 million and exempting the issuance from competitive bidding requirements.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. ES86-29-000]

March 17, 1986.

Take notice that on March 7, 1986, Kansas Gas and Electric Company (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to $50,000,000 principal amount of one or more series of its first mortgage bonds.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER86-342-000]

March 14, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on March 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated July 30, 1985.

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Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to the Niagara Frontier Transportation Authority (NFTA) utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY designated Rate Schedule FERC 19 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 19.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements so as to allow the proposed initial rate schedule to become effective on July 1, 1985.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER86-343-000]

March 17, 1986.

Take notice that Pacific Gas and Electric Company (PGandE) on March 10, 1986, tendered for filing as an initial rate schedule a DWR Letter Agreement for emergency transmission service by PGandE for the State of California Department of Water Resources (DWR).

The Agreementl provides for emergency transmission service over PGandE's Diablo Canyon Generation Tie Lines from September 21, 1983 to October 5, 1983, a period when regular service being rendered to DWR under the Comprehensive Agreement, as amended, (FERC Rate Schedule No. 77), was interrupted because of wind damage to transmission towers between Gates and Midway substations. The transmission rate of 1.08 mills/kWh is a negotiated rate for generation tie services. Transmission losses between the Table Mountain Substation and Midway Substation for energy transmitted using this service shall be the 1.7 percent transmission loss factor for Backbone.

PGandE has requested a waiver of the Commission's usual notice requirement so as to permit an immediate effective date of September 21, 1983. PGandE also has requested a waiver of the usual notice requirement in § 35.15 of the Commission's Regulations so as to permit termination of the rate schedule on October 5, 1983, as provided in the Letter Agreement.

Copies of the filing and proposed termination were served upon DWR and the California Public Utilities Commission.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER86-350-000]

March 14, 1986.

Take notice that on March 11, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes to Rate Schedule FERC No. 85. These changes are to certain rates, terms and conditions concerning those services rendered by PGandE under the agreement entitled "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara" (the Interconnection Agreement) which has been filed as part of Rate Schedule FERC No. 85. These changes are embodied in two bilateral agreements:

- "Agreement For An Implementation Procedure For Certain 1984 and 1985 Rate Adjustments under the 1984–1985 Appendix A to the Interconnection Agreement between Pacific Gas and Electric Company and the City of Santa Clara" (Implementation Agreement).
- Revised Appendix A (rate appendix) to the Interconnection Agreement.

The Implementation Agreement embodies the agreement between PGandE and the City of Santa Clara (Santa Clara) on the procedure and mechanism designed to recover amounts due PGandE from Santa Clara and Santa Clara from PGandE as a result of certain California Public Utilities Commission and Federal Energy Regulatory Commission decisions, under the provisions of the Appendix A to the Interconnection Agreement presently on file with the Commission.

The proposed changes to the rates, terms and conditions in revised Appendix A for services provided by PGandE to Santa Clara extend and modify the present rate agreement between PGandE and Santa Clara and provide for an interim rate arrangement for the Diablo Canyon Nuclear Power Plant. Using 1986 billing determinants the rate change would result in an estimated revenue increase of $537,938.

Copies of this filing were served upon Santa Clara and the Public Utilities Commission of the State of California.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Public Service Authority

[Docket No. ES86-32-000]

March 17, 1986.

Take notice that on March 12, 1986, South Carolina Public Service Authority (Applicant) filed an application seeking an order authorizing the issuance of up to $600,000,000 in Electric System Expansion Revenue Bonds, Refunding series at one or more times. The Authority asks, in the alternative, an order dismissing the asspplication for lack of jurisdiction. The bonds are to be sold at negotiated sales with a single underwriting group for all sales.

Comment date: April 7, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. UNITIL Power Corp., Concord Electric Company, Exeter & Hampton Electric Company

[Docket No. EL86-28-000]

March 17, 1986.

Please take notice that on March 12, 1986, UNITIL Power Corp., of Bedford, New Hampshire, Concord Electric Company of Concord, New Hampshire, and Exeter & Hampton Electric Company, of Exeter, New Hampshire, filed an Petition for a Declaratory Order in the docket referred to above.

Petitioners seek a declaration by the Commission that: (1) The New England Electric Power Pool Agreement entitles Petitioners, who are members of that Pool, to receive transmission and subtransmission service from Public Service Company of New Hampshire for power from pool-planned units under the terms of that Agreement; and (2) the existing transmission tariff filed with this Commission by Public Service Company of New Hampshire entitles Petitioners to receive transmission and subtransmission service, for power from non-pool units, under the terms of that tariff. In the alternative, to the extent that such relief is not forthcoming by October 1, 1986, Petitioners request an order under section 202(c) of the Federal Power Act compelling transmission as may be required to prevent a power emergency.

The Petitioners have served Public Service Company of New Hampshire and the Public Utility Commission of New Hampshire.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6159 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Colorado Interstate Gas Company, Order Granting Request for Clarification

Issued: March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On February 12, 1986, Colorado Interstate Gas Company (CIG) filed a request for clarification of the transitional provisions of Order No. 436 with respect to transportation under section 311 of the Natural Gas Policy Act.[1] Specifically, CIG requests clarification that the natural gas transportation service commenced for Mountain Industrial Gas Company (MIC)[2] on behalf of Pacific Lighting Gas Supply Company (Pacific Lighting)[3] falls within the scope of the transitional provisions of Order No. 436.

On August 30, 1985, CIG commenced transportation services for MIC on behalf of Pacific Lighting under section 311 and Part 284 of the Commission's regulations. Service was commenced pursuant to an oral agreement. CIG filed a summary report of the transaction on September 3, 1985, pursuant to the applicable reporting requirements of then existing § 284.4(b).[4] On September 30, 1985, CIG filed a request for waiver of the 30-day filing requirement for the initial full report required under § 284.106(a). CIG subsequently filed this initial report on November 4, 1985.

Section 284.105 of the regulations promulgated by Order No. 436 provides that any NGPA section 311 transportation service authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms and conditions that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the end of the expiration of the term of contract.

The Commission has previously clarified that the transitional provisions of § 284.105 are applicable to service which commenced pursuant to a verbal agreement prior to October 9, 1985, as long as the parties to the transaction complied with all applicable reporting requirements.[5] The Commission has further clarified that transportation service which was commenced under the self-implementing procedures of § 284.102 prior to October 9, 1985, in which the initial report was filed five days late, yet prior to October 9, 1985, qualified for transitional treatment under § 285.105.[6]

In the instant case, CIG commenced the transportation service, filed the then-required 48 hour report, and filed a request for a waiver of the 30-day filing requirement for the initial full report required under § 284.106(a), all prior to October 9, 1985. CIG subsequently filed the initial report on November 4, 1985. The Commisison finds that CIG's transportation service on behalf of Pacific Lighting was authorized and commenced under the self-implementing procedures of § 284.102 prior to October 9, 1985. The service thus qualifies under the transitional provisions of section 284.105 of the Commission's Regulations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6129 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] *See* § 284.105 and Order No. 436, 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] MIC, a wholly owned affiliate of CIG, was incorporated to engage in nonregulated sales of natural gas, natural gas brokering, and natural gas gathering.

[3] Pacific Lighting is a local distribution company which will use the gas for system supply requirements.

[4] Section 284.4(b) required any interstate pipeline engaging in a transaction to file a summary report with the Commission within forty-eight hours after the commencement of deliveries of natural gas. This section was amended on October 18, 1985, and subsection (b) was eliminated effective November 1, 1985, 50 FR 42408.

[5] *See* Pacific Gas & Electric Company, 33 FERC ¶ 61,155 (October 31, 1985).

[6] *See* Tex-La Gas Company, 33 FERC ¶ 61,208 (November 13, 1985).

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Industrial Groups); Order Granting Request for Clarification

Issued: March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On November 1, 1985, the Industrial Groups[1] filed a request for two clarifications and one modification of certain of the transitional provisions of the transportation regulations issued October 9, 1985 in Order No. 436.[2] Since the filing of the request, Order No. 436–A has been issued, disposing of numerous applications for rehearing of the original order.[3] We consider the requests *seriatim* in light of both orders:

(1) The first request involves a situation where a transportation service for high-priority end uses was authorized and commenced prior to October 9, 1985, but the pipeline processed the transaction under the notice and protest procedures of §§ 157.205 and 157.209(e) of the Regulations, notwithstanding the self-implementing authorization available under § 157.209(a)(1). In several similar situations, we have held that transportation for high-priority end users was authorized automatically under § 157.209(a)(1) with the commencement of service, irrespective of the procedures actually followed, and thus qualifies for continuing transportation authorization under § 284.223(g)(1). *See Midwest Solvents Co. (Order Granting Rehearing),* 33 FERC ¶ 61,395 (1985); *Southern Natural Gas Co.,* 33 FERC ¶ 61,444 (1985); *Battle Creek Gas Co.,* 33 FERC ¶ 61,450; and *Michigan Paperboard Co.,* 34 FERC

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[1] Process Gas Consumers Group, American Iron and Steel Institute, Chemical Manufacturers Association, Association of Businesses Advocating Tariff Equity, and Georgia Industrial Group.

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (October 18, 1985); Technical Corrections issued October 24, 1985.

[3] *Id.*, Order No. 436–A, 50 FR 52217 (December 23, 1985), III FERC Statutes and Regulations ¶ 30,675 (December 12, 1985).

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¶ 61,046 (1986). The same conclusion is applicable here.

(2) In their second request, the Industrial Groups seek clarification that if a pipeline files a non-discriminatory access statement, it may initiate new transportation transactions under Order Nos. 319, 234–B and 60, and under section 311 of the NGPA.

First, it is important to note that the statement of intent not to discriminate was required only for continuing transportation under previous Order No. 234–B arrangements. Order Nos. 436 and 436–A provide that any pipeline could continue to provide transportation services after November 1, 1985, under a blanket certificate issued pursuant to Order No. 234–B, if the pipeline filed a non-discriminatory access statement before that date.

However, to be able to continue to provide such transportation services after December 16, 1985, § 284.223(g)(3)(i) of the Regulations requires that the pipeline file for a new blanket certificate under § 284.221 before that time. Only three pipeline companies, Mid-Louisiana Gas Company, Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation, in fact made the requisite filings within the time specified and are thus authorized to continue to provide transportation for Order No. 234–B transactions under the transitional provisions. Each has since been issued a new blanket certificate.

Since December 16, 1985, several additional pipelines have applied for new blanket certificates under Subpart G of Part 284 of the Regulations. Applications by Gas Gathering Corporation and Valley Gas Transmission, Inc. have been granted at this time, while others remain pending. These applications are effective only on issuance of the certificate and do not qualify under the transition provisions.

Where a pipeline did not apply for a new blanket certificate by December 16, 1985, it must now have ceased all blanket certificate transportation under Part 157 except for any Order No. 319 transportation initially authorized under previously effective § 157.209(a)(1), as since clarified by the Commission, which may qualify to continue under new § 284.223(g)(1).

Insofar as transportation under NGPA section 311 is concerned, § 284.105 of the Regulations allows any such transactions which were authorized and commenced by October 9, 1985, to continue under the earlier of their full term or October 9, 1987. If a pipeline has undertaken new Section 311 transportation after October 9, 1985, it must continue to provide such transportation on a non-discriminatory basis. However, if the pipeline wishes to avoid the contract demand reduction/conversion conditions of § 284.10, any such section 311 transportation initiated after October 9, 1985, must terminate by July 1, 1986.[4] Additional clarification in this area is provided in Order No. 436–A at mimeo. pp. 48–49 and pp. 257–70, 50 FR 52229 and 52269–52272 (December 23, 1985).

With regard to Order No. 60 transactions, the filing of a statement of notification under § 284.223(g) did not authorize the pipeline to commence new transactions under Order No. 60. Order No. 60 promulgated § 284.221 of our former rules. Section 284.222 of our new rules provides that for a pipeline to commence new transactions of the kind previously authorized by Order No. 60, a pipeline must first apply for and receive a blanket certificate under new § 284.221.[5]

(3) The Industrial Groups request modification of Order No. 436 to permit a pipeline which failed to file a statement of its intention not to discriminate, prior to November 1, 1985, to make such filing after November 1 and thereby reactivate its previous Order No. 234–B transactions for the remainder of the period up to December 16, 1985. This request is not moot. We note that no pipeline sought to file an untimely statement of intention.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6130 Filed 3–19–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Oregon Steel Mills and Northwest Natural Gas Co; Order Dismissing Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 30, 1986, Oregon Steel Mills and Northwest Natural Gas Company filed a joint request for clarification of Order No. 436–A,[1] requesting authority for their transportation arrangement with Northwest Pipeline Company to continue beyond February 15, until its expiration on March 31, 1986, without subjecting Northwest Pipeline to the conditions in § 284.10 of the Regulations after February 15, 1986. On February 14, 1986, the Commission issued Order No. 436–B,[2] authorizing new NGPA section 311 transportation arrangements to continue through June 30, 1986 without triggering the § 284.10 conditions. Accordingly, the petitioners' request for clarification is dismissed as moot.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6131 Filed 3–19–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Sohio Petroleum Company; Order Granting Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 28, 1986, as supplemented on February 3, 1986, Sohio Petroleum Company (Sohio) filed a request for clarification of § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] Specifically, Sohio requests clarification that new gas wells may be connected to a central delivery point for transportation under the transitional provisions where no modification or amendment to the transportation agreement is required.

The Commission has already clarified that where a transportation arrangement was authorized and service commenced on or before October 9, 1985, commencement of use of a particular receipt or delivery point after that date will not subject the pipeline to §§ 284.8, 284.9, and 284.10, as long as those points were specified in the agreement on or before October 9, 1985.[2]

Sohio also requests "further clarification that grandfathered transportation service is determined without regard to the effective date of a gas purchase or sales contract." That matter was fully clarified in *Hadson Gas Systems, Inc.*, 33 FERC ¶ 61,142 (October 30, 1985), *rehearing denied*, 34 FERC ¶ 61,039 (January 21, 1986), where we held that section 284.105 pertains to transportation arrangements independent of purchase agreements.

Finally, we reiterate that orders clarifying Order No. 436 apply to *all* regulated pipelines and *all* transactions covered by the regulations that are clarified.[3] We expect that transactions coming within the regulations as clarified will proceed without the need for a Commission order in each case.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6133 Filed 3–19–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Texcol Gas Services, Inc.; Order Denying Request for Clarification and Denying Waiver

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabrandt and C.M. Naeve.

On January 16, 1986, Texcol Gas Services, Inc. filed a request for clarification, or alternatively, a waiver of our Regulations such that its transportation arrangement on behalf of Holly Sugar Company would qualify under the transitional rules of Order No. 436.[1]

Texcol, an intrastate pipeline, states that on September 13, 1985, it entered into a gas purchase contract to sell gas to Holly. Texcol also entered into an oral agreement with Texcol Industrial Sales Company (TISCo) to provide transportation for TISCo and Holly. Texcol also began negotiating with Natural Gas Pipe Line Company to transport the gas on its behalf to the Texcol line. Texcol also agreed to construct and operate a five mile, 8-inch connecting pipeline to deliver the gas to Holly. Texcol states that, as of October 9, 1985, it had incurred expenses of $84,000 to prepare for deliveries.

Texcol further states that, when Order No. 436 was issued, Natural ceased negotiations with it. However, Transwestern Pipeline Company has indicated its willingness to provide the interstate transportation under section 311 of the Natural Gas Policy Act of 1978 if it is covered by the transition rules of Order No. 436. Texcol requests clarification that the arrangement is covered by the transition rules, or alternatively, citing *Judel Glassware Co., Inc., et al.*,[2] requests a waiver of the transition rules.

We deny Texcol's request for clarification and waiver. It is evident from Texcol's petition that if Natural agrees to transport the gas, the transportation agreement will be entered into after October 9, 1985. Since the transition rule in section 284.105 requires that the transportation service be authorized and commenced on or before October 9, 1985, Texcol's transaction would not qualify for transitional treatment. Our decision in *Judel* is inapplicable because the standard for grant of a waiver established therein involves construction or expenditures in reliance on an agreement prior to October 9, 1985. Since Texcol never had an agreement with Natural on or before October 9, 1985, it is clear that the construction and expenditures made by Texcol were not in reliance on such an agreement.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6134 Filed 3–19–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000]

Regulation of Natural Gas After Partial Wellhead Decontrol; Trunkline Gas Company; Order Dismissing Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 6, 1986, Trunkline Gas Company filed a petition for clarification of Order Nos. 436 and 436–A.[1] Briefly, Trunkline requests clarification of the treatment of imbalances that accrue solely as a result of authorized deliveries under § 284.10(a). Inasmuch as those issues have now been addressed in our order issued on February 18, 1986,[2] we will dismiss Trunkline's request as moot.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6132 Filed 3–19–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to adversely affected parties $256,730.87 obtained as a result of a consent order which the DOE entered into with Martin Oil Service, Inc., a reseller-retailer of motor gasoline located in Blue Island, Illinois. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Martin consent order fund must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0123 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $256,730.87 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Martin Oil Service, Inc. The funds were provided to the DOE by Martin to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period March 1, 1979 through August 31, 1979. A Proposed Decision and Order tentatively

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[4] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket Nos. RM85–1–000, *et al.*, Order No. 436–B, Order Granting In Part Petitions For Rehearing and Reconsideration, 34 FERC ¶ 61,204 (February 14, 1986).

[5] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Co.), 34 FERC ¶ 61,140 (1986).

[1] 50 FR 52217 (December 23, 1985); FERC Statutes and Regulations ¶30,675 (issued December 12, 1985).

[2] 34 FERC ¶61,204 (issued February 18, 1986).

[1] 33 FERC ¶ 61,007 (1985); 50 FR 42408 (October 10, 1985).

[3] Order Granting Request for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Sohio Petroleum Company and Sohio Chemical Company, *et al.*), 33 FERC ¶ 61,449 (issued December 30, 1985).

[2] Order Granting Petition for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (The Alpha Corporation), 34 FERC ¶ 61,184 (issued February 10, 1986).

[1] 33 FERC ¶ 61,007 50 FR 42408 (October 10, 1985).

[2] 33 FERC ¶ 61,386, 51 FR 434 (1986).

[1] 40 FR 41408 (1985) (Order No. 436). 50 FR 52217 (1985) (Order No. 436–A).

[3] 34 FERC ¶ 61,207 (1986).

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establishing refund procedures and soliciting comments from the public concerning the distribution of the Martin consent order funds was issued on October 9, 1985. 50 FR 42081 (October 17, 1985).

The Decision and Order sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Martin pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals who purchased motor gasoline from Martin. OHA has decided that a two-stage refund process be followed. In the first stage, OHA has determined that a portion of the consent order funds should be distributed to 67 first purchasers who may have been overcharged. In order to obtain a refund, each claimant must either submit a schedule of its monthly purchases from Martin or submit a statement verifying that it purchased motor gasoline from Martin and is willing to rely on the data in the audit files. Certain firms must also make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers must provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

At the Decision and Order published with this Notice indicates applications for refunds may now be filed by customers who purchased motor gasoline from Martin during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: March 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 4, 1986.
Name of Firm: Martin Oil Service, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0123

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Martin Oil Service, Inc. (Martin).

I. Background

Martin is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR § 212.31 and is located in Blue Island, Illinois. Based on an audit of Martin's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that Martin had committed violations of the Mandatory Petroleum Price Regulations: 10 CFR Part 212, Subpart F. The NOPV stated that between March 1, 1979 and August 31, 1979 Martin committed possible price violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Martin and the DOE regarding the firm's sales of motor gasoline during the period covered by the NOPV, Martin and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Martin does not admit that it violated the regulations.

The consent order required Martin to pay a total of $225,652, plus installment interest, in 24 equal monthly installments. The first payment was received on September 17, 1981 and the last on August 15, 1983.[1] This decision concerns the distribution of the funds in the escrow account.

On October 9, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable demonstration of injury as a result of Martin's alleged violations in its sales of motor gasoline during the consent order period. 50 FR 42081 (October 17, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for violations of the DOE regulations.

In order to effect restitution in this proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's product are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination regarding the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured by the consent order firm's pricing practices during the audit period who would also be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the Federal Register and comments regarding the proposed refund procedures were solicited. Copies were also sent to various service station dealers' associations. No comments on the proposed procedures were submitted, however.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who are likely to have been injured by the alleged overcharges or to easily determine the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Martin's pricing practices between March 1, 1979 and August 31, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect a restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Martin, 67 first purchasers were identified as having allegedly been overcharged. ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the direct customers identified by the audit, other direct customers who can show injury, and subsequent repurchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, and the portion of the consent order fund which was allotted to each customer by ERA, are listed in the Appendices.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we will employ three rebuttable presumptions to determine the level of a purchaser's injury. These presumptions have been used in many previous special refund cases. First, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Martin motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Second, we will presume that purchasers of Martin motor gasoline who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Third, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Lastly, we will make a finding that end-users or ultimate consumers of Martin products whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Prior OHA decisions provide detailed explanations of the bases of these presumptions and the end-user finding. *E.g., James Petroleum Corp.*, 13 DOE ¶ 85,361 at 88,894–96 (1985). The rationale for these presumptions was also fully explained in the PD&O. 50 FR 42,081 (October 17, 1985). These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

Unlike threshold-type claimants, an applicant which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. [2] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil & Gas Corp./Cities Service Co.*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

The demonstration of injury for retailer claimants will be different than that reseller applicants. This is appropriate because, during part of the consent order period, *i.e.*, July 16, 1979 through August 31, 1979, motor gasoline retailers established their MLSPs by adding a specified margin to product costs, rather than by reference to May 15, 1973 selling prices and increased banked costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Since for retailers the banking requirement was eliminated for this period, any blanket requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered "cost banks," would effectively eliminate all retailer claimants for this last part of the consent order period. Therefore, for the part of the consent order period after July 16, 1979, retailers may apply for refunds above the $5,000 threshold without demonstrating the existence of cost banks. [3] Like resellers, retailers will still be required to show that market conditions prevented them from recovering increased product costs. Such a demonstration might be based upon a demonstration of lowered profit margins, decreased market shares, or depressed sales volumes. [4]

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we will distribute a portion of the escrow funds to those firms listed in Appendices 1 and 4. [5]

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[1] The consent order fund represents 3.37 percent of the amount of the overcharge originally alleged in the NOPV. The total consent order payment including installment interest amounted to $256,730.87. We have used this figure as the principal amount. As of January 31, 1986, the escrow account contained $354,776, including accrued interest.

[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[3] The cost bank requirement has been relaxed in other instances reflected the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Co./United Fuels Corp., 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[5] Purchasers identified in the ERA audit as having allegedly been overcharged may submit information to show that they should receive refunds larger than those indicated.

Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury.[6]

B. Refunds to Other Purchasers

There were also some first purchasers who were not identified by the ERA audit. These firms, and downstream purchasers, may have been injured as a result of Martin's pricing practices. If so, they would be entitled to a portion of the consent order funds provided by Martin. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric presumption. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel purchased by the claimant.[7] The volumetric refund amount is the average per gallon refund, and in this case equals $.00044409 per gallon.[8] Potential applicants who were not identified by the ERA audit may use this figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). The presumptions and finding noted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in the escrow account, all refunds will be reduced by a pro rata amount. Actual refunds will be determined after analyzing all appropriate claims.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Martin consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Martin between March 1, 1979 and August 31, 1979. As we proposed, a portion of the consent order funds will be distributed to these firms listed in the Appendices 1 and 4 who file applications for refund provided they make any necessary demonstrations of injury. Martin's other eligible customers may also apply for a refund. Firms listed in Appendix 2 may receive refunds if they can rebut the spot purchaser presumption.

No valid addresses are available for those Martin customers listed in Appendix 4. In an attempt to locate these firms, we will provide Martin and various petroleum dealers' associations with copies of this Decision and will publish a notice in the **Federal Register**. We will accept information regarding the identities and present locations of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register**.[9]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of petroleum products from the applicable consent order firm. An applicant listed in Appendices 1 or 4 may instead submit a statement verifying that it purchased petroleum products from the applicable firm and is willing to rely on the data in the audit file;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issue in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. Hef–0123 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to Department of Energy by Martin Oil Service, Inc. pursuant to the consent order executed on August 31, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: March 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX 1.—MARTIN OIL SERVICE COMPANY

First purchasers	Share of settlement[1]
Amoco Oil Company, 200 E. Randolph Drive, Chicago, IL 60601	$55,398.36
Atlantic Richfield Company, 515 South Flower Street, Los Angeles, CA 90071	49,533.86
Mr. William C. Pitcher, Koch Industries, Post Office Box 2256, Wichita, KS 67201	30,795.03
Athens Trucking, 6710 Pingree Road, Crystal Lake, Illinois 60014	15.40
Banks, 234 E. 24th Street, Chicago, Illinois 60616	30.54
Dowell, Post Office Box 8, Henderson, CO 80640	40.31
Pioneer Steel, 9520 E. 104th Street, Henderson, Colorado 80212	17.45
U.S. Steel, North Buchanan Street, Gary, Indiana 46402	197.88
D. Owens, 1395 Clark Road, Gary, Indiana 46404	317.57
U.D. Abbring, Highway 231, S. Halleck Street, Demotte, Indiana 46310	64.60
B. Farmer, 824 Seventh Street, Rockford, Illinois 61104	118.87
M. Perez, 3401 S. California Avenue, Chicago, Illinois 60608	129.13
E. Larkins, 10350 Woodward Street, Detroit, Michigan 48202	181.53
C. Johnson, 7915 West Flournoy, Chicago, Illinois 60624	198.97
L. Hinds, 3516 S. Ashland Avenue, Chicago, Illinois 60609	213.60
Burner, 2929 S. Cicero, Cicero, Illinois 60650	157.36
Buy-Rite, 2 North Brainard Avenue, LaGrange, Illinois 60525	757.61
Century, Post Office Box 6192, Denver, Colorado 80206	29.52
Chief Petroleum, 301 S. Tenth Street, Colorado Springs, Colorado 80904	3,231.96
Dearborn Wheels, 4425 Telegraph Road, Dearborn Heights, Michigan 48125	727.83
Drews Oil, 22941 Kothe Street, Taylor, Michigan 48180	340.17
Gas Center, 5859 Archer Avenue, Chicago, Illinois 60638	1,492.63
General Petroleum, 5459 N.W. Highway, Chicago, Illinois 60630	65.73
Gladieux Refining, 4133 New Haven Avenue, Ft. Wayne, Indiana 46803	77.27
Texor Petroleum, 3346 Harlem Avenue, Riverside, Illinois 60546	1,228.71
HS&L, 4220 Shirley Lane, Alsip, Illinois 60658	718.33
M & M Oil, 911 N. Baldwin, Marion, Indiana 46952	96.27
Minuteman Gas & Pantry, 131 Washington Street, Woodstock, Illinois 60098	2,153.20
Remote Service, Post Office Box 35580, Louisville, Kentucky 40232	537.94
Schweigert Oil, 16590 Ewell Road, Belleville, MI 48111	137.10
E.A. Shell, 6560 Old U.S. 23, Brighton, Michigan 48111	82.17
Spruce Oil, Post Office Box 8586 T.A., Denver, Colorado 80217	3,375.76
J.M. Sweeney, 5200 W. 41st Street, Chicago, Illinois 60650	134.81
Taylor Tire Service, 206 W. 14 Mile Road, Clawson, Michigan 48017	208.47
Watkins Oil, Box 195, Hillsdale, Michigan 49242	17.20
Wise Buy, 6630 W. Montrose, Harwood Heights, Illinois 60634	280.67
Carson Petroleum, 332 S. Michigan Avenue, Chicago, Illinois 60604	66.04
Jubilee Oil, 4301 N. Lincoln, Chicago, Illinois 60618	76.65
Paulson Oil Company, 836 Broadway, Chesterton, Indiana 46304	21.82

[1] This figure includes the share of installment interest. It does not include accrued interest. *See* note 1, p. 2.

APPENDIX 2.—MARTIN OIL SERVICE COMPANY

Spot purchasers	Share of settlement[1]
Conoco, Building TA 1130, Post Office Box 2197, Houston, Texas 77252	$16,969.46
Shell Oil, 1025 Connecticut Avenue NW., Washington, DC 20036	5,164.65
Total Petroleum, East Superior, Alma, Michigan 48801	22,543.51
Wood River Oil Company, Post Office Box 2302, Wichita, Kansas 67201	14,281.94
Walter Meade, 38762 Warren Avenue, Westland, Michigan 48185	7.98
Morrison Refining	4.26
Osceola Refining, Post Office Box 517, West Branch, Michigan 48661	15.14
Tiger Petroleum, Post Office Box 38, Lebanon, Illinois 62254	60.60
Vickers Oil, 6868 Stapleton S. Drive, Denver, Colorado 80216	451.34
Ashland, Post Office Box 391, Ashland, Kentucky 41101	$496.66

[1] This figure includes the share of installment interest. It does not include accrued interest. *See* note 1, p. 2.

APPENDIX 3.—MARTIN OIL SERVICE COMPANY

First purchasers	Share of settlement[1]
Bulkmatic, 12000 S. Doty, Chicago, Illinois 60628	99.76
Largo Management, 4999 Lariat Way, Boulder, Colorado 80301	11.81
Village of Robbins, 3329 W. 13th Street, Robbins, Illinois 60472	7.44
Moran Fuel, 409 Cornell, Calumet City, Illinois 60409	1.54
Omni Petroleum, Post Office Box 50032, Chicago, Illinois 60650	12.50
Automatic Gas, Post Office Box 5595, Denver, Colorado 80217	.51
Gasgo, 803 W. Hill Grove Avenue, LaGrange, Illinois 60525	2.96
State Oil, 357 N. Cedar Lake Road, Round Lake, Illinois 60073	.77

[1] As stated in the Proposed Decision and Order, we do not intend to process refund claims for under $15.00.

APPENDIX 4.—MARTIN OIL SERVICE COMPANY NO ADDRESSES AVAILABLE

Purchaser's name	Share of settlement
J. Duszynski	848.55
W. Summers	244.87
Addison	796.11
Excel Sales	1,005.35
Fitzco	631.94
Industrial Oil	98.01
Saturn Petroleum	313.47
Circle G	37.29
Elm Street Service	9.34
Keller-Heartt	5.64

[FR Doc. 86-6039 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $59,995 obtained as a result of a consent order which the DOE entered into with Petroleum Sales and Service, Inc., a reseller-retailer of petroleum products located in Buffalo, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0151.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $59,995 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Petroleum Sales and Service, Inc. (PS&S). The funds were provided to the DOE by PS&S to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through March 31, 1980

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased PS&S motor gasoline during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of PS&S motor gasoline and to demonstrate that it was injured by PS&S's pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments

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[6] The share of the Martin escrow fund allocated to each firm listed in the Appendices represents 3.37 percent of the amount each was allegedly overcharged. This allocation is consistent with the terms of the consent order, which settled for 3.37 percent of the amount of the overcharge originally alleged in the NOPV.

[7] A volumetric approach is particularly appropriate in special refund proceedings in which the DOE is unable to identify readily persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what portion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury for those claimants who are unable to quantify their injury.

[8] This figure is obtained by dividing the $30,463.90 not allotted to identified purchasers by the 68,594,227 gallons of motor gasoline sold to purchasers not identified by ERA.

[9] If we are unable to locate any firm listed in Appendix 4, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

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received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 13, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 13, 1986.
Name of Firm: Petroleum Sales and Service, Inc.
Date of Filing: October 13, 1983
Case Number: HEF–0151

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Petroleum Sales and Service, Inc. (PS&S).

I. Background

PS&S is a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31, and is located in Buffalo, New York. A DOE audit of PS&S's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and March 31, 1980, PS&S committed possible pricing violations amounting to $129,428 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between PS&S and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, PS&S and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that PS&S does not admit that it violated the regulations.

Under the terms of the consent order, PS&S was required, in a series of installments, to deposit $59,995, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. PS&S avoided paying any installment interest by remitting the full sum on September 30, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by PS&S's pricing practices during the period April 1, 1979, through March 31, 1980. If any funds remain after all mertitorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the PS&S refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by PS&S's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury.

The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of PS&S's sales of motor gasoline made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by PS&S's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of PS&S motor gasoline that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.001081 per gallon.[2] In addition, successful claimants will reveive a proportionate share of the accured interest.

The second presumption we plan to use is that purchasers of PS&S motor gasoline seeking small refunds were injured by the firm's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982).

These firms were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a

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[1] The total value of the PS&S escrow account stood at $91,334.84 as of February 28, 1986.

[2] This figure is computed by dividing the $59,995 received from PS&S by the 55,481,424 gallons of motor gasoline estimated to have been sold by the firm during the consent order period. The volume estimate was derived from data concerning PS&S's purchases of motor gasoline during the first six months of the consent order period. Since the firm has limited storage capacity, it is reasonable to assume that PS&S's sales of motor gasoline were roughly equal to its purchases during a given period. After making this assumption, we then extrapolated from the six month data to arrive at a sales estimate for the entire consent order period. The volumetric factor will be revised; however, if we are able to obtain more precise sales information at a later date.

specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed both the expected refund and the benefits from any additional precision. As a result, without simplified procedures injured parties could effectively be denied the opportunity to receive a refund.

Under the small-claims presumption, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of PS&S motor gasoline purchased if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. For example, the cost to the applicant and the government of compiling and analyzing information sufficient to show injury should not exceed the amount of any relevent refund. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that as a result of market conditions, it did not pass through those increased costs.[3]

A modification of the standard injury requirement is necessary in this proceeding because for 8½ months of the 12-month PS&S consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 8½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we will allow retailers which lack banks subsequent to July 16, 1979 to file a claim for a refund which exceeds $5,000.[4] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from PS&S not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of PS&S motor gasoline during the consent order period.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *See also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein.[6]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the motor gasoline overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of PS&S's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of

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[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

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processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principal applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases of PS&S motor gasoline as well as all relevant information necessary to support their claim in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Petroleum Sales and Service, Inc., pursuant to the consent order executed on September 29, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 86-6090 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-2988-2]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the allotments to the States of $574.2 million for the municipal wastewater treatment works construction grants program. On December 20, 1985, in Pub. L. No. 99-190, Congress appropriated and made immediately available $600 million for allotment to the States in fiscal year (FY) 1986. As part of the Administration's Balanced Budget and Emergency Deficit Control Act sequestration order for FY 1986, there has been a 4.3 percent reduction to the $600 million, resulting in a revised allotment total of $574.2 million.

Section 205(c)(2) of the Clean Water Act (the Act), as amended by Pub. L. 97-117, provides that sums appropriated through FY 1985 be allotted to the States in accordance with the table in section 205(c)(2). Although the construction grants program's authorization period ended on October 1, 1985, in Pub. L. 99-190 Congress directed that the $600 million to be made immediately available be allotted to the States according to the referenced table; and, in the conference report, Congress directed that the funds be expended subject to the statutory provisions that were in effect during FY 1985.

Through promulgation of this notice, the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants for the construction of municipal wastewater treatment works.

FOR FURTHER INFORMATION CONTACT: Mr. John Olsen, Chief, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382-5837.

SUPPLEMENTARY INFORMATION: Pub. L. 99-190 appropriated and made immediately available $600 million to fund the construction grants program in fiscal year (FY) 1986. Congress directed that the funds are to be allotted to the States under section 205 of the Clean Water Act (the Act). Subsequently, as part of the Balanced Budget and Emergency Deficit Control Act sequestration order for FY 1986, there has been a 4.3 percent reduction to the $600 million, resulting in a revised allotment total of $574.2 million. Congress stated in the conference report to Pub. L. 99-190; H.R. Rep. No. 450, 99th Cong., 1st Sess. 359; that it expects to make an additional $1,800,000,000 available at the earliest opportunity after enactment of the Clean Water Act amendments.

As directed by Congress, the funds to be made immediately available for FY 1986 are hereby allotted on the basis of the percentages listed in the table contained in section 205(c)(2). This table complies with section 205(e) of the Act, which requires that all States receive at least one-half of one percent of the total allotment. The percentages in the table were applied to the revised allotment total of $574.2 million to determine actual dollar amounts, which follow.

The conference report to Pub. L. 99-190 directed that funds be subject to the statutory provisions that were in effect during FY 1985. Pub. L. 99-190 contains the following passage relative to the use of these funds: ". . . funds appropriated by this section shall not be limited to phases or segments of previously funded projects."

These allotments are available for obligation until September 30, 1987. After that date, unobligated balances will be reallotted in accordance with the Act and EPA regulated 40 CFR 35.2010. Grants from the allotments may be awarded as of the date that advices of allowance are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: March 12, 1986.

Lee M. Thomas,

Administrator.

FISCAL YEAR 1986 STATE ALLOTMENTS BASED ON THE $574.2 MILLION REVISED TOTAL

State	Share	Dollar allotment
Alabama	.011398	6,545,000
Alaska	.006101	3,503,000
Arizona	.006885	3,953,000
Arkansas	.006668	3,829,000
California	.072901	41,860,000
Colorado	.008154	4,682,000
Connecticut	.012487	7,170,000
Delaware	.004965	2,851,000
Dist. of Columbia	.004965	2,851,000
Florida	.034407	19,757,000
Georgia	.017234	9,896,000
Hawaii	.007895	4,533,000
Idaho	.004965	2,851,000
Illinois	.046101	26,471,000
Indiana	.024566	14,106,000
Iowa	.013796	7,922,000
Kansas	.009201	5,283,000
Kentucky	.012973	7,449,000
Louisiana	.011205	6,434,000
Maine	.007788	4,472,000
Maryland	.024653	14,156,000
Massachusetts	.034608	19,872,000
Michigan	.043829	25,167,000
Minnesota	.018735	10,758,000
Mississippi	.009184	5,273,000
Missouri	.028257	16,225,000
Montana	.004965	2,851,000
Nebraska	.005214	2,994,000
Nevada	.004965	2,851,000
New Hampshire	.010186	5,849,000
New Jersey	.041654	23,918,000
New Mexico	.004965	2,851,000
New York	.113097	64,940,000
North Carolina	.018396	10,563,000
North Dakota	.004965	2,851,000
Ohio	.057383	32,949,000
Oklahoma	.008235	4,729,000
Oregon	.011515	6,612,000
Pennsylvania	.040377	23,185,000
Rhode Island	.006750	3,876,000
South Carolina	.010442	5,996,000
South Dakota	.004965	2,851,000
Tennessee	.014807	8,502,000
Texas	.038726	22,237,000
Utah	.005371	3,084,000
Vermont	.004965	2,851,000
Virginia	.020861	11,978,000
Washington	.017726	10,178,000
West Virginia	.015890	9,124,000
Wisconsin	.027557	15,823,000
Wyoming	.004965	2,851,000
Guam	.000662	380,000
Puerto Rico	.013295	7,634,000
Virgin Islands	.000531	305,000
American Samoa	.000915	525,000
Trust Territories of Pacific Isl	.001305	749,000
Northern Mariana Islands	.000425	244,000
Total	.999996	574,200,000

[FR Doc. 86-6091 Filed 3-19-86; 8:45 am]

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[OW-1-FRL-2967-3]

Water Pollution Control; Sweedens Swamp, MA; Recommended Determination To Prohibit the Specification of an Area for Use as a Disposal Site; Extension of Time

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has for good cause extended the time for making a recommendation under section 404(c) of the Clean Water Act concerning a proposal by The Pyramid Companies to fill portions of Sweedens Swamp in Attleboro, Massachusetts, for the purpose of building a shopping mall. The time for making the recommendation has been extended from October 26, 1985 to March 4, 1986.

DATE: Extension of recommendation until March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas Thompson, U.S. EPA, Region I, J.F. Kennedy Building, Boston, MA 02203; (617) 223-5600.

SUPPLEMENTARY INFORMATION:

I. Description of the Section 404(c) Process

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404(c) authorizes EPA to prohibit or restrict the use of waters of the U.S. for the discharge of dredged or fill material, if the Agency determines, after opportunity for a public hearing and consultation with the Corps of Engineers ("Corps") that such use would have an unacceptable adverse effect on certain resources, including wildlife habitat.

Under EPA's implementing regulations (40 CFR Part 231), the Regional Administrator is responsible for initiating the 404(c) process, consulting with the Corps and the prospective discharger, seeking public comment, holding a public hearing if requested, and preparing a recommended decision based on a review of the record.

The Regional Administrator's recommendation is then reviewed at EPA Headquarters, and after further consultation with the Corps and the discharger, is either affirmed, modified, or reversed by the Assistant Administrator for External Affairs. While the regulations specify normal time periods for these steps, it authorizes the Administrator and the Regional Administrator to extend those time periods for good cause and to publish notice of the extension in the **Federal Register**. The regulation does not require advance publication in order for the extension to be effective.

II. Proceedings to Date and Extension of Time in Attleboro, Massachusetts Case

The Pyramid Companies ("Pyramid") proposes to fill 32 acres of forested wetland (known as Sweedens Swamp) in Attleboro, Massachusetts, in order to build a shopping mall.

The Regional Administrator of EPA initiated the instant 404(c) process on July 23, 1985, by notifying the Corps and Pyramid of his intention to issue a proposed determination to prohibit or restrict the use of Sweedens Swamp as a disposal site, based on the belief that the proposed project may have unacceptable adverse effects on wildlife habitat at the site. The proposed determination was signed by the Regional Administrator on August 13, 1985. The public notice of the proposed determination, published in the **Federal Register** on August 21, 1985, established a public comment period from August 21 through October 21, 1985 and scheduled a public hearing in Attleboro on September 26, 1985.

Pursuant to 40 CFR 231.5, the Regional Administrator initially expected to withdraw his proposed determination or forward a recommendation to EPA Headquarters by October 26, 1985. For several reasons, as discussed below, the time for completing the regional recommendation was extended until March 4, 1986. This notice is being published pursuant to 40 CFR 231.8 to inform the public of the good cause for the time extension.

One of the issues on which EPA sought public comment was Pyramid's plan to create artificial wetlands at an offsite location. Pyramid did not make its detailed plans available, however, until near the close of EPA's comment period. On October 18, 1985, the New England Division of the Corps issued a public notice soliciting comment on Pyramid's proposal. A public hearing on the plan was conducted by the Corps on November 18, 1985, and public comments were accepted until November 28, 1985. Because the Corps had sought comments on an issue that was also a subject of EPA's request for comments, the Regional Administrator determined that there was good cause to wait to incorporate the comments submitted to the Corps into EPA's 404(c) record.

Additional causes for the extension of time in preparing the recommendation were the unexpectedly high number of public comments submitted to EPA and the Corps, and the complexity of the issues posed by this case. Over 1,200 comments, totalling thousands of pages, were submitted to EPA during the comment period. Hundreds of other comments were submitted before and after the comment period. All of these were reviewed and evaluated in preparation of the recommendation, a process which took a substantial amount of time.

Also, as described in detail in the recommendation, Pyramid's proposed project and the Corps' notice of intent to issue a permit presented numerous technical, legal, and policy issues of a complexity not anticipated by the 30-day time frame provided by § 231.5. The Regional Administrator required additional time to give full consideration to these issues.

Accordingly, the Regional Administrator determined that all of these reasons constituted good cause for

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extending the time for making the regional recommendation from October 26, 1985 to March 4, 1986.

The recommendation has been forwarded to EPA's Assistant Administrator for External Affairs, who is responsible for making the final decision. A copy of the recommendation may be obtained by writing to or calling the person listed above under the section captioned For Further Information Contact.

Dated: March 11, 1986.

Michael R. Deland,

Regional Administrator.

[FR Doc. 86-6092 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 17, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten calendar days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB-Delegated Authority a Revision of the Following Report

1. Report title: Monthly Survey of Selected Deposits and Other Accounts.

Agency form number: FR 2042.

OMB Docket number: 7100-0066.

Frequency: Monthly.

Reporters: Commercial banks, mutual savings banks and FDIC-insured Federal savings banks.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [U.S.C. 552(b)(4)].

These data, which are collected from a sample of commercial banks, mutual savings banks, and FDIC-insured Federal savings banks, are used by the Federal Reserve (1) to analyze and interpret movements in the monetary aggregates, (2) to observe competitive developments between banks and thrift institutions, and (3) to help monitor the earnings position of banks and thrifts.

Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6157 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Mental Health Small Grant Review Committee. This meeting will be open for discussion of administrative announcements and program developments. The committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 section 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee.

Date and Time: April 18-19, 1:30 p.m.

Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting:

OPEN—April 18, 1:30-2:30 p.m.

CLOSED—Otherwise.

Contact: Barbara McCracken, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Committee is charged with initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Summary of meeting and roster of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: March 14, 1986.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-6050 Filed 3-19-86; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, April 11, 1986, at the St. Jude Children's Research Hospital Auditorium, 332 North Lauderdale, Memphis, Tennessee 38105.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will furnish substantive program information.

Dated: March 11, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-6070 Filed 3-19-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Camping and Firearms Use Restriction; Merced River and Folsom Resource Areas, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Camping and Firearms Use Restriction Order on Public Lands along the Merced River of the Folsom Resource Area, Bakersfield District, CA.

SUMMARY: Persons without commercial permits may camp along the Merced River in designated campsites only, between Bryceburg and Halls Gulch. Each campsite will have a maximum occupancy of 4 adults (16 years and older). Each campsite may have no more than two motor vehicles, or combination of a motor vehicle and a recreational vehicle. Discharge of firearms is prohibited within ½ mile of the center of the river for all public lands along the Merced River. For the purpose of this order, a firearm is defined as under Title 18, U.S.C., Chapter 44, section 921(a)(3). Federal, State and local law enforcement officers are exempt from this order in the course of their official duties. This order goes into effect on March 31, 1986.

DATE: This order is in effect on March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. Telephone: (916) 985-4474.

SUPPLEMENTARY INFORMATION: The purpose of this order is to protect resources of the public land, persons and property, and augment the Camping and Occupancy Restriction Order published in the **Federal Register**, Volume 48, No. 208, October 26, 1983, 49555. Authority for this restriction order is contained in CFR Title 43, Chapter II, Part 8364, Subparts 8364.1 and 8365.1-2(a).

Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0-7.

D.K. Swickard,

Area Manager.

[FR Doc. 86-6054 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-40-M

[A-21787]

Classification of Public Lands; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The city of Mesa proposes to develop a training facility for law enforcement and firefighting personnel within the following described forty acres of public land:

G&SR Meridian, Arizona

T. 2 N., R. 6 E.,
  Sec. 33, SE¼NW¼.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869; 869-4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912.

In addition, the lands are determined to meet general classification criteria of 43 CFR 2410.1(a)(d) and specific public purposes classification criteria of 43 CFR 2430.4(a)(c).

Classification of this land under the provisions of the above cited Recreation and Public Purposes Act segregates them on the date of publication in the **Federal Register** from all appropriations including location under the mining laws, but not from applications under the mineral leasing laws or the Recreation and Public Purposes Act.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 14, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-6066 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-32-M

Environmental Statements; California Vegetation Management; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management with the United States Forest Service as Cooperating Agency will prepare a programmatic Environmental Impact Statement for proposed vegetation management activities on public lands in California and northwest Nevada.

Proposed vegetation management includes chemical, manual, mechanical and prescribed burning control of vegetation which interferes with the survival and growth of commercial tree species, range vegetation, and wildlife habitat; encroaches upon recreation sites, roads and rights-of-way; is considered a fire hazard; or is identified as toxic or noxious to animals or humans.

The control practices would be applied to public lands throughout California and in northwest Nevada. The amount of land being considered for vegetation control annually is 3,000 acres of chemical spraying, 25,000 acres of prescribed burning and 2,500 acres of mechanical treatments.

Chemicals being considered for use include the following: Amitrole; Asulam; Atrazine; Bromacil; 2,4-D; 2,4-DP; Dalapon; Dicamba; Diuron; Fosamine; Glyphosate; Hexazinone; Picloram; Simazine; Tebuthiuron; Triclopyr and Ureabor.

The EIS will be prepared by an interdisciplinary team which will consider the following general issues which were developed from internal issue identification efforts and from the

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experiences of other Vegetation Management EIS's:

1. Air Quality
2. Soils
3. Water Resources
4. Vegetation
5. Animals
6. Cultural Resources
7. Visual Resources and Recreation
8. Wilderness and Special areas
9. Socio-Economics
10. Human Health

This programmatic EIS will assess the overall impacts of implementing a vegetation control program. Site specific impacts will be assessed by EAs on specific project proposals to be developed in the future.

Written input will be requested through public mailings and news releases. Input should be received at the address below by May 1, 1986 to be considered in the EIS.

Public meetings have not been scheduled for this scoping process. If it is determined, as a result of public response to this NOI, that public meetings are needed they will be held prior to initiation of Draft EIS preparation.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, Vegetation Management EIS Team Leader, Bureau of Land Management, 2800 Cottage Way, Room E–2841, Sacramento, CA 95825 (916) 978–4725.

Dated: March 14, 1986.

Ed Hastey,

State Director.

[FR Doc. 86–6053 Filed 3–19–86; 8:45 am]

BILLING CODE 4310–40–M

Lakeview District Multiple Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 92–463 that the Lakeview District Multiple Use Advisory Council will hold a meeting/tour on April 29th 1986. The council will assemble at 7:30 a.m. in the conference room of the Bureau of Land Management office located at 1000 South 9th Street, P.O. Box 151, Lakeview, Oregon 97630. The council will then depart for an all day tour at 8:00 A.M. The tour will take place in High Desert Resource Area. The tour will center on recreation use and rangeland monitoring. The BLM will also brief the council on ongoing program developments including range, wildlife, and land exchanges.

The tour is open to the public. Public wishing to attend must provide their own transportation. Anyone wishing to attend and/or make written or oral statements to the council is requested to contact the District Manager at the above address prior to April 12, 1986. Time will be allowed during lunch for public comments. Summary minutes of the meeting will be available for review and reproduction within 30 days following the tour.

Dated: March 14, 1986.

Jerry Asher,

District Manager.

[FR Doc. 86–6127 Filed 3–19–86; 8:45 am]

BILLING CODE 4310–33–M

Roseburg District Advisory Council, Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet May 2, 1986. The meeting will convene at 9:30 a.m. in the conference room at the Roseburg District Office, 777 N. W. Garden Valley Blvd., Roseburg, Oregon.

The agenda for the meeting will include:

1. Opening remarks and general business.
2. Introduction of new members and review of the council charter.
3. Election of Chairman and Vice-Chairman.
4. Review of district programs.
5. Briefing regarding BLM land exchange strategy.
6. Public comment period—begins about 11:00 a.m.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration.

Summary minutes of the Council meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 12, 1986.

Melvin D. Berg,

District Manager.

[FR Doc. 86–6113 Filed 3–19–86; 8:45 am]

BILLING CODE 4310–33–M

[W–86583]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

March 12, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–86583 for lands in Niobrara County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86583 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–6066 Filed 3–19–86; 8:45 am]

BILLING CODE 4310–22–M

[M–66128(SD), M66129(SD), M66130(SD), M66131(SD), M–66132(SD)]

Realty Action; Sale of Public Lands; South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Notice of Realty Action Modified Competitive Sale of Public Land in Stanley County, South Dakota.

SUMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to 43 CFR 2710 and under the authority of Title II, sec. 203 of the Federal Land Policy and Management Act of 1976.

Black Hills Meridian

M–66128(SD) appraised value $75.00 per acre.

T. 4N., R. 33 E.,
  Sec. 24, lot 3.

Containing 29.35 acres and located approximately 15 miles southeast of Fort Pierre, South Dakota. Designated bidder is Henry Huckfeldt.

M–66129(SD) appraised value $75.00 per acre.

T. 7N., R. 29 E.,
  Sec. 31, SE¼SE¼.

Containing 40 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M–66130(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
  Sec. 32, E½NW¼.

Containing 80 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M–66131(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
  Sec. 32, W½SW¼.

Containing 80 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M–66132(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
  Sec. 34, NE¼NW¼.

Containing 40 acres and located 17½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

All of the above parcels are isolated from other large blocks of public lands and are difficult and uneconomical to manage. The ditches and canal reservations, as well as all minerals will be reserved to the Federal government in all parcels.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Information related to the sales, including planning documents and environmental assessment is available for review at the South Dakota Resource Area, 310 Roundup St., Belle Fourche, South Dakota 57717, Telephone Number (605) 892–2526.

SUPPLEMENTARY INFORMATION: The proposed action is consistent with the State, County, and BLM policies and plans and has been discussed with the Stanley County Commission on April 3, 1985.

Bids will be opened on May 21, 1986, at 9 a.m. If not sold, the land will remain available for sale on a continuing basis until a sale is completed. Any sealed bids received will be opened at 9 a.m. each succeeding first and third Wednesdays until the lands are sold or the sale is closed.

Method of Bidding: The land will be sold by sealed bid only on a modified competitive basis. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount bid.

Modified Bidding: For a period of 30 days following the date of the sale, Henry Huckfeldt and J. Clinton McQuisition, the designated bidders, will be offered the right to meet the highest qualifying bid. The designated bidder must submit a bid of at least the fair market value prior to the sale date in order to be considered under the modified bidding provisions. If he meets the highest bid, the land will be sold to him, and the other bid will be returned. His refusal to meet the highest bid or to submit any bid at all prior to the sale date shall constitute a waiver of such bidding provisions.

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be individually submitted for each parcel in this notice.

The sealed bid envelope must be addressed as follows:

Cahier—Sealed Bid.
Public Land Sale M– —— (SD)
P.O. Box 31434
Billings, Montana 59107–1434

Final Details: Once a high bidder is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days. Failure to submit the required amount within the alloted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 11, 1986.

Bob Teegarden,

Acting District Manager.

[FR Doc 86–6059 Filed 3–19–86; 8:45 am]

BILLING CODE 4310–DN

[M–66124(SD), M–66125(SD), M66126(SD), M–66127(SD), M–66584(SD), M–66585(SD)]

Realty Action; Sale of Public Lands; South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Notice of Realty Action Competitive Sale of Public Land in Stanley County, South Dakota.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to 43 CFR 2710 and under the authority of Title II, sec. 203 of the Federal Land Policy and Management Act of 1976.

Black Hills Meridian

M–66124(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
  Sec. 28, NE¼SW¼.

Containing 40 acres and located 12½ miles southwest of Fort Pierre, South Dakota.

M–66125(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
  Sec. 28, SE¼SW¼.

Containing 40 acres and located 12½ miles southwest of Fort Pierre, South Dakota.

M–66126(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
  Sec. 28, NW¼NE¼.

Containing 40 acres and located 13 miles southwest of Fort Pierre, South Dakota.

M–66127(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.
  Sec. 28, SW¼NE¼.

Containing 40 acres and located 13 miles southwest of Fort Pierre, South Dakota.

M–66584(SD) appraised value $90.00 per acre.

T. 5 N., R. 29 E.,
  Sec. 1, Lot 1.

Containing 39.93 acres and located 10 miles northwest of Fort Pierre, South Dakota.

M–66585(SD) appraised value $90.00 per acre.

T. 5 N., R. 29 E.,
  Sec. 1, Lot 2.

Containing 39.81 acres and located 10 miles northwest of Fort Pierre, South Dakota.

All of the parcels are isolated from other large blocks of public lands and are difficult and uneconomical to manage. The ditches and canal reservations, as well as all minerals will be reserved to the Federal government in all parcels.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Information related to the sales, including planning documents and environmental assessment is available for review at the South Dakota Resource Area, 310 Roundup St., Belle Fourche, South Dakota 57717, Telephone Number (605) 892–2526.

SUPPLEMENTARY INFORMATION: The proposed action is consistent with the State, County, and BLM policies and plans and has been discussed with the Stanley County Commission on April 3, 1985.

The subject land will be offered for sale on an open competitive basis by sealed bid only. Each bid must be

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accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount bid. Bids will be opened on May 21, 1986, at 9 a.m. If not sold, the land will remain available for sale on a continuing basis until a sale is completed.

Any sealed bids received will be opened at 9 a.m. each succeeding first and third Wednesday until the lands are sold or the sale is closed.

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be individually submitted for each parcel in this notice.

The sealed bid envelope must be addressed as follows: Cashier—Sealed Bids, Public Land Sale M-______ (SD), P.O. Box 31434, Billings Montana 59107-1434.

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bid. The highest qualifying sealed bid shall then be declared.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 11, 1986.

Bob Teegarden,

Acting District Manager.

[FR Doc. 86-6060 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plats of Survey; Colorado

March 13, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 13, 1986.

The plat representing the depending resurvey of a portion of the south and east boundaries, the north boundary, a portion of the subdivisional lines, and the survey of private land tract 37, T. 43 N., R. 3 W., New Mexico Principal Meridian, Colorado.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The protraction diagrams of the following described lands approved March 6, 1986, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective April 30, 1986.

Protraction Diagram No. 43, prepared to delineate the remaining unsurveyed public lands in T. 39 N., R. 2 E., New Mexico Principal Meridian, Colorado, was approved March 6, 1986.

Protraction Diagram No. 44, prepared to delineate the remaining unsurveyed public lands in T. 36 N., R. 9 W., New Mexico Principal Meridian, Colorado, was approved March 6, 1986.

These diagrams were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-6057 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Royalty Management Advisory Committee, Production Accounting and Auditing System Onshore Conversion Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that the Production Accounting and Auditing System (PAAS) Onshore Conversion Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated below.

This notice is published in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

The PAAS Onshore Conversion Working Panel will submit recommendations to the Advisory Committee regarding the feasibility and practicality of converting onshore Federal and/or Indian leases to PAAS as well as recommendations regarding the report and findings of the Mineral Lease Information Study. (See Supplementary Information Section below.) The Panel will also advise if there are other alternatives that should be considered.

Location and dates: The PAAS Onshore Conversion Working Panel will meet at the COMPRI Hotel, 137 Union Boulevard, Lakewood, Colorado, March 26-28, 1986.

The Panel will meet from 8 a.m. to 5 p.m. daily. If the meeting is completed in less than the three days scheduled, the Panel will adjourn upon such completion.

The public is invited to attend these meetings and make oral or witten comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by April 25, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals management Service, Royalty management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: MMS implemented PAAS for all reporters of offshore lease production and for a select number of reporters of onshore lease production who were included in the pilot phase of the PAAS implementation. Although most of the royalties are generated by Federal oil and gas production from offshore leases, there are relatively few offshore Federal leases and wells compared to onshore Federal leases and wells. A Department of the Interior (DOI) project, the Mineral Lease Information Study, was begun in the fall of 1985 to evaluate the cost effectiveness of PAAS and to recommend whether additional onshore Federal and Indian leases should be converted to PAAS.

The PAAS Onshore Conversion Working Panel is one of six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice and recommendations to give to the DOI and the MMS. Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panel will be made to the Advisory Committee and not to the DOI or the MMS.

Dated: March 14, 1986.

William D. Bettenberg,

Director, Minerals Management Service

[FR Doc. 86-6069 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than March 31, 1986. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Mr. Fred D. Allen, (202) 632-3378, IRM-PE, Room 708, SA-12, Washington, D.C. 20523.

Date Submitted: March 7, 1986.

Submitting Agency: Agency for International Development.

OMB Number:

Form Number: AID 1550-11.

Type of Submission: New.

Title: PVO Project Reporting Information on AID Supported PVO Projects.

Purpose: To provide a data base for Agency reporting and inquiry in reference to field projects being implemented by Private and Voluntary Organizations (PVOs) registered with the Agency.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: March 7, 1986.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 86-6055 Filed 3-19-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30765]

Missouri Pacific Railroad Co.; Control and Consolidation Exemption; Jefferson Southwestern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Missouri Pacific Railroad Company (MP) from the requirements of 49 U.S.C. 11343 with respect to: (1) The acquisition by MP of sole control of The Jefferson Southwestern Railroad Company (JSW); and (2) the consolidation of MP and JSW through either merger or purchase of assets, subject to standard employee protective conditions.

DATES: This exemption is effective on April 18, 1986. Petitions to stay must be filed by March 31, 1986. Petitions for reconsideration must be filed by April 9, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30765 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commisison, Washington, DC 20423.
(2) James C. Stroo, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: March 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-6086 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30786]

N.D.C. Railroad Co., a Division of Horwith Leasing Co., Inc.; Operation Exemption in Northampton, PA

N.D.C. Railroad Company, a division of Horwith Leasing Company, Inc., has filed a notice of exemption to operate Consolidated Rail Corporation's line between milepost 0.1 and approximately milepost 0.6, a distance of approximately 0.5 miles, in Northampton, PA. Any comments must be filed with the Commission and served on Jeffrey Horwith, P.O. Box 7, Route 329, Northampton, PA 18067.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 4, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-6083 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30756]

Phelps Dodge Corp.; Exemption; Continuance in Control

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements (1) of 49 U.S.C. 11343 the continuance in control by Phelps Dodge Corporation of Tucson, Cornelia and Gila Bend Railroad Company and PDMW Transportation Division, a recently authorized motor contract carrier, subject to standard employee protective conditions for rail employees, and (2) of 49 U.S.C. 11322, the holding (a) by George B. Munroe of the positions of chairman of the board of director of Phelps Dodge Corporation and director of Santa Fe Southern Pacific Corporation and Phelps Dodge Industries, Inc., and (b) by Edward L. Palmer of the positions of directors of Phelps Dodge Corporation, Union Pacific Corporation, and Union Pacific Railroad Company.

DATES: This exemption is effective on March 19, 1986. Petitions to reopen must be filed by April 9, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30756 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Richard A. Carr, 3015 Lindberg Avenue, Allentown, PA 18103.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202)-275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase

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a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800)–424–5403.

Decided: March 12, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–6087 Filed 3–19–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30787]

Willamette Valley Railroad Co.; Merger Exemption; Willamina & Grand Ronde Railroad Co.

Willamette Valley Railroad Co. (WVRC) and Willamina & Grand Ronde Railroad Co. (W&GRR) filed a notice of exemption for W&GRR to merge into WVRC.

WVRC and W&GRR are both controlled by Mr. David P. Root and other members of the Root family. Consummation of the merger will promote corporate simplification and eliminate the expense and burden associated with maintenance of W&GRR as a separate corporate entity. Under the merger plan, W&GRR will be dissolved as a separate corporate entity, and all of its assets and liabilities will be vested in WVRC. No reduction of transportation facilities is contemplated, and no obligations of WVRC will be impaired.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption any employees affected by the merger will be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Decided: March 4, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–6084 Filed 3–19–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–52 (Sub-47)]

The Atchison, Topeka & Santa Fe Railway Co.; Abandonment in Prowers County, CO; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka & Santa Fe Railway Company to abandon its 22.96-mile rail line between Wilson Junction (milepost 30.4) and Hartman (milepost 7.44) in Prowers County, CO. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–6085 Filed 3–19–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Brandenburg et al. (N.D. Ill.)* Civil Action No. 85 C 4884, was lodged with the United States District Court for the Northern District of Illinois. The proposed Consent Order requires that defendants, Brandenburg Demolition, Inc. and Well Pump company: (1) Comply with all procedural and substantive standards set out in the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations for asbestos, promulgated pursuant to section 112(c) of the Clean Air Act, 42 U.S.C. of 7412(c), (2) file periodic reports certifying their compliance, and (3) pay a civil penalty for past noncompliance.

The Department of Justice will receive, for a period of thirty (30) days from the publication of this notice, comments on the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Brandenburg et al.*, D.J. reference 90–5–2–1–790.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1500 South Everett Dicksen Bldg., 219 S. Dearborn Street, Chicago, Illinois; at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–6067 Filed 3–19–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 85–59]

Richard English, M.D., Miami, FL; Hearing

Notice is hereby given that on November 20, 1985, the Drug Enforcement Administration, Department of Justice, issued to Richard English, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), such application having been executed on September 6, 1985.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Tuesday, April 15, 1986, in Courtroom 1406 of the U.S. Bankruptcy Court, 51 SW. First Avenue, Miami, Florida.

Dated: March 14, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–6098 Filed 3–19–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–4]

Anne L. Hendricks, M.D., Plantation, FL; Hearing

Notice is hereby given that on December 11, 1985, the Drug Enforcement Administration, Department of Justice, issued to Anne L. Hendricks, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke her DEA Certification of Registration, AH0152239, and deny any pending applicaiton for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Wednesday, April 16, 1986, in Courtroom 1409 of the U.S. Bankruptcy Court, 51 SW. First Avenue, Miami, Florida.

Dated: March 14, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–6099 Filed 3–19–86; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

The next meeting of the National Commission on Agricultural Trade and Export Policy will be on Friday, April 11, 1986, at 9:00 a.m. The meeting will be in The Ballroom of The Ritz Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

The agenda will include decisions on recommendations for use in the final report of the Commission. The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 86–6049 Filed 3–19–86; 8:45 am]

BILLING CODE 3410–06–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeometry (Anthropology Program); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeometry (Anthropology Program).

Date and Time: April 4, 1986; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 543, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7804.

Purpose of meeting: To provide advice and recommendations concerning support for archaeometry.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 17, 1986.

[FR Doc. 86–6137 Filed 3–19–86; 8:45 am]

BILLING CODE 7555–01–M

Archaeometry Advisory Panel; Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Advisory Panel for Archaeometry is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of panel: Advisory Panel for Archaeometry.

Purpose: Primarily, to advise on the merit of proposals for research and research-related purposes submitted to NSF for financial support. The Panel also provides oversight, general advice, and policy guidance to the Anthropology Program.

M. Rebecca Winkler,

Committee Management Officer.

March 17, 1986.

[FR Doc. 86–6136 Filed 3–19–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289–OLA–2; [ASLBP No. 86–526–05–LA]

GPU Nuclear Corp., et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

GPU Nuclear Corporation, et al., Three Mile Island Nuclear Station, Unit 1, Facility Operating License No. DPR–50

This Board is being established pursuant to a notice published by the Commission on February 28, 1986 in the **Federal Register** (51 FR 7157–7159), entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would modify the Once Through Steam Generator (OTSG) tube repair criteria for TMI–1 in accordance with the Licensees' application dated February 4, 1986.

The Board is comprised of the following administrative judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 14th day of March, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-6122 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA, ASLBP No. 86-522-02-LA (Check Valves); Docket No. 50-353-OLA-2, ASLBP No. 86-526-04-LA (Containment Isolation)]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Prehearing Conference

March 14, 1986.

Before Administrative Judges: Ivan W. Smith, Chairman; Richard F. Cole; Gustave A. Linenberger, Jr.

On December 18, 1985 the Philadelphia Electric Company applied for two amendments to the Facility Operating License No. NPF-39 for the Limerick Generating Station, Unit No. 1, located in Montgomery County, Pennsylvania. The amendments provide for an extension of time within which the Licensee may perform certain tests on the primary constainment isolation valves and certain reactor instrument lines excess flow check valves. These tests must be performed when the pant is shut down. The amendents would provide a one-time only extension until the scheduled maintenance and surveillance shutdown scheduled on or before May 26, 1986.

By notices in the **Federal Register** on December 26,1985 (50 F.R. 52874) and December 30, 1985 (50 F.R. 53226, 53235), the Commission announced its determination that the proposed amendments involved no significant hazards and provide an opportunity for a public hearing to persons whose interest may be affected by the amendment.

Two petitioners, Robert L. Anthony and Air and Water Pollution Patrol, by its Chairman Frank R. Romano, have petitioned for hearings and have requested leave to intervene in the proceedings.

An Atomic Safety and Licensing Board has been designated to preside over any such hearing. The Board will convene a prehearing conference on the issues raised by the petitions for leave to intervene on Thursday, March 27, 1986, beginning at 9:00 a.m. EST, at Old Customs Courtroom (Room 300), U.S. Customs House, Second and Chestnut Streets, Philadelphia, Pennsylvania.

The public is invited to attend but there will be no opportunity for public participation in the prehearing conference.

Bethesda, Maryland, March 14, 1986.

For The Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 86-6123 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Kansas Gas and Electric Company, Kansas City Power and Light Company, and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise Technical Specifications 3/4.2.1, Figure 3.2-1, Table 2.2-1, Bases Section 3/4.2.1 and Figure B 3/4.2.1 to implement the Relaxed Axial Offset Control (RAOC) mode of operation after fuel burnup of 8000 MWD/MTU (megawatt days/metric ton of uranium) is achieved. This change was requested in the licensees' application for amendment dated January 20, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (iv) states that "a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met."

The licensee has concluded and the staff agrees, that the proposed amendment fits the guidance provided in example (iv) because it reflects a relaxation in the Axial Flux Difference Specification that had been analyzed and found to be in acordance with the related FSAR analysis. This relaxation is based upon satisfying the NRC approved methodology in Westinghouse Topical Report, WCAP-10216, which requires that the relaxation does not become applicable until the core burnup reaches 8000 MWD/MTU. Accordingly, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By April 21, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the William Allen White Library, Emporia State University, Emporia, Kansas and the Washburn University School of Law, Topeka, Kansas.

Dated at Bethesda, Maryland, this 14th day of March 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A, NRR.

[FR Doc. 86-6125 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-364]

Babcock & Wilcox Volume Reduction Services Facility, Parks Township, PA; Issuance of Environmental Assessment and Proposed Finding of No Significant Impact Amendment of Materials License No. SNM-414

The U.S. Nuclear Regulatory Commission (NRC or Commission) has issued an Environmental Assessment and a Proposed Finding of No Significant Impact in connection with a request to amend NRC Materials License No. SNM-414 which would authorize operation of a low-level radioactive waste Volume Reduction Services Facility (VRSF) at Babcock & Wilcox's plant in Parks Township, Pennsylvania.

Identification of the Proposed Action

Babcock & Wilcox has proposed to operate, as an adjunct to their nuclear service operations, a facility for the purpose of reducing the volume of low-level radioactive waste (LLW) generated by nuclear power utilities and industrial and institutional users of radioactive materials. The VRSF would serve waste generators in the northeast region of the United States, although it would be available to others as well.

Babcock & Wilcox would use a high-force compactor to reduce the volume of non-combustible LLW and a controlled

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air incinerator to reduce the volume of combustible LLW, including contaminated oil and scintillation fluids. The expected throughput would be about 470,000 cubic feet per year of non-combustible waste and about 120,000 cubic feet per year of combustible waste, although for purposes of the Environmental Assessment higher throughputs were evaluated. Volume-reduced LLW, in the form of compressed waste drums and stabilized incinerator ash, would be shipped by truck to licensed disposal sites or returned to the waste generators.

Reasons for No Significant Environmental Impact

The reasons why the proposed action will not have a significant effect on the quality of the human environment are as follows:

1. Construction of the VRSF consisted primarily of remodeling of interior building structures and installation of equipment. Thus, no disruption of the environment occurred.
2. Airborne effluents from normal operation of the VRSF would result in concentrations of radionuclides in air less than one percent of the NRC annual limits at the site boundary. The radiation dose to the maximally exposed individual would be substantially less than the limits of the U.S. Environmental Protection Agency's (EPA) Clean Air Act standard, 40 CFR Part 61.
3. Non-radiological airborne effluents from normal operation of the VRSF are expected to be within the limits set by the EPA and the Pennsylvania Department of Environmental Resources.
4. There would be no liquid effluents resulting from operation of the VRSF.
5. Calculated radiation doses resulting from postulated accidents in the VRSF would not, with two possible exceptions, be cause for any protective actions under EPA's Draft Protective Action Guidance. For the exceptions, conservative calculations indicate that evacuation of individuals near the site boundary might have to be considered to minimize exposure.
6. Transportation of LLW to and from the VRSF would not significantly increase the amount of traffic or highway deterioration, nor would the risk from normal or accident conditions in transport be significantly affected.

Summary of Environmental Assessment

In accordance with 10 CFR 51.30, the Environmental Assessment of the Babcock & Wilcox Volume Reduction Services Facility identified the proposed action (as briefly described above) and included a discussion of: Need for the VRSF, alternatives to operation of the VRSF, the environmental impacts of construction and operation of the VRSF and alternatives, a list of agencies and persons consulted, and identification of sources used in preparing the assessment.

With a lack of new LLW disposal sites and an increasing volume of waste being generated by nuclear power utilities and industrial/institutional users of radioactive materials, the need for waste volume minimization and reduction has become apparent. Babcock & Wilcox recognized the need for volume reduction as a commercial venture and proposed the VRSF to help fill that need.

Since the proposed VRSF wold be at the location of an existing plant operating under an NRC license, references to the ongoing activities were used in the environmental assessment, including provisions of the NRC license and a previous NRC environmental impact appraisal. The latter was used extensively in describing the site environment and updated as the result of a site visit and information obtained from local sources.

Information about the VRSF operations, processes and facilities, including methods of waste confinement and effluent control, was obtained from reports and descriptions submitted by Babcock & Wilcox as part of the application for license amendment. This included a topical report, AECC–4–NP–A, accepted by the NRC for referencing in applications by nuclear utility licensees, describing the incinerator proposed to be used in the VRSF.

The quantities and composition of incoming LLW from nuclear power plants and industrial/institutional generators were estimated and verified with those estimated by Babcock & Wilcox. The NRC's estimates of radionuclide composition were used in subsequent determinations of quantities and composition of VRSF end-products and effluent releases. The radiological effects from normal operations including transportation were calculated independently and found to be insignificant. In addition, the non-radiological effects were evaluated, including a review of dioxin formation and destruction in incinerators. However, effluent and environmental monitoring to demonstrate the insignificance of the effects is difficult. Babcock & Wilcox had proposed a monitoring program, and the NRC will require more frequent sampling and additional monitoring for this purpose. The NRC will also require seminanual reports analyzing the correlation among incoming waste, system performance, and emissions as an aid in determining the reliance which can be placed on information contained in incoming shipment manifests and administrative limits on effluents (tritium, carbon-14 and iodine-125).

The impacts of several postulated accidents in VRSF operations and transportation were evaluated in the assessment. Other accidents were not evaluated but were bounded by those that were. The calculated impacts were somewhat higher than those determined by Babcock & Wilcox due to differences in assumptions used. However, in either case, they are conservative estimates, and the projected doses, for a frame of reference, are less than the annual limit for radiation workers.

No alternatives to operation of the VRSF were identified as being clearly superior, either in greater benefit or less impact.

Other Related Environmental Documents

Babcock & Wilcox prepared an Environmental Analysis of the VRSF which was submitted as part of their application for license amendment.

Proposed Finding of No Significant Impact

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment for the operation of the Volume Reduction Services Facility at Babcock & Wilcox's Parks Township site. On the basis of this Assessment, the Commission has concluded that the determined not to prepare an Environmental Impact Statement for the proposed action and has concluded that a Proposed Finding of No Significant Impact is appropriate.

Availability of Proposed Finding of No Significant Impact and Environmental Assessment

This Proposed Finding, the Staff's Environmental Assessment and the Applicant's Environmental Analysis are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room located at the Apollo Memorial Library in Apollo, Pennsylvania.

Dated at Silver Spring, Maryland, this 14th day of March 1986

For the Nuclear Regulatory Commission.

L.C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 86-6124 Filed 3-19-86; 8:45 am]

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[Docket No STN. 50–400]

Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of Construction Permit No. CPPR–158 to Carolina Power and Light Company and the North Carolina Eastern Municipal Power Agency (the Permittees), for the Shearon Harris Nuclear Power Plant, Unit 1 located in Wake County, North Carolina.

Environmental Assessment

Identification of Proposed Action: The extension would change the expiration date of the Construction Permit CPPR–158 from June 1, 1984 to June 30, 1987. The proposed extension is responsive to Carolina Power and Light Company's applications dated March 16, 1984 and January 29, 1986.

The Need for the Proposed Action: The proposed extension is needed because the completion date of Shearon Harris, Unit 1 has been postponed for the following reasons:

1. Revised Energy and Load Forecasts reflecting a slower rate of growth in customer demand than previously projected.
2. Carolina Power and Light Company's Expanded Conservation and Load Management Program.
3. Additional time to allow the permittees to complete construction ensure that commitments and regulatory requirements have been met and to allow for contingencies such as delays in construction or licensing.

Environmental Impacts of the Proposed Action: The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action: As required by section 102(2)(E) of NEPA (42 U.S.C. 4332(2)(E)), the staff has considered possible alternatives to the proposed action. The only possible alternative to the proposed action is not to renew the construction permit. This alternative would have led to a change in status and would result in a greater impact on Carolina Power and Light Company personnel and the environment (the project is approximately 94% complete).

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Shearon Harris Nuclear Power Plant, Unit 1.

Agencies and Persons Consulted: The NRC staff reviewed the permittees' requests and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the extension dated March 16, 1984 and January 29, 1986 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Wake County Public Library, Fayetteville Street, Raleigh, North Carolina 27601.

Dated at Bethesda, Maryland, this 14th day of March, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-6125 Filed 3-19-86; 8:45 am]

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Nrthwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Mainstem passage rulemaking process review
- Alternatives to summer spill
- Production planning process
- Alternative long-range mainstem pasage objectives
- Other
- Public comment

DATE: April 3, 1986. 9:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-6114 Filed 3-19-86; 8:45 am]

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PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86–21]

Presidential Commission on the Space Shuttle Challenger Accident

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of meeting change.

SUMMARY: The scheduled meeting on March 21, 1986, of the Presidential Commission on the Space Shuttle Challenger Accident, published in the Federal Register March 18, 1986 (51 FR 9300), Notice No. 86–20, has been changed as follows:

Date and time: March 21, 1986, 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space

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Shuttle Challenger Accident (202/453-1797).

Dated: March 18, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-6308 Filed 3-19-86; 8:49 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24050; 70-7225]

Consolidated Natural Gas Co.; Proposed Sale and Acquisition of Securities of Proposed Company

March 14, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 thereunder.

Consolidated proposes to form a corporation, to be called CNG Trading Company ("Trading Co."). Trading Co., either alone or in conjunction with others, proposes to broker gas and participate in markets for gas and other hydrocarbons on a spot or longer term basis. It will also transport, exchange, store gas, pool sources of gas for sale and participate as a trader and marketer in spot and futures markets for gas and other hydrocarbons. It will sell to affiliated and non-affiliated utilities and their customers. Consolidated proposes to assist Trading Co., if required, by acting as surety, indemnitor and guarantor for certain of Trading Co.'s activities.

Trading Co. proposes to issue and sell the Consolidated up to 50,000 shares of its common stock, $100 par value, per share. Consolidated proposes to make open account advances of up to $15,000,000 such advances to bear interest at a rate equal to Consolidated's effective cost of short-term funds. The advances will be repaid by Trading Co. as gas is sold. In the event that Trading Co. does not repay the advances within 360 days following the date of advances, authorization is requested to convert such advances into long-term non-negotiable notes and/or common stock or any combination thereof not to exceed $15,000,000 in total. Any such long-term non-negotiable notes of Trading Co. will mature over a period of time to be determined by the officers of Consolidated, with the interest rate at substantially the same effective rate as the related long-term debt of Consolidated. If Consolidated should not issue long-term debt, the interest rate shall be predicated on the prime commercial rate of interest at the Chase Manhattan Bank, N.A., in effect at the time of initial borrowing by Trading Co.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 7, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues for fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6150 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14991; 811-2730]

Broad Oaks Securities, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

March 14, 1986.

Notice is hereby given that Broad Oaks Securities, Inc. ("Applicant"), Eleven Greenway Plaza, Suite 1919, Houston, TX 77046, registered as an opened, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on March 4, 1986, for an order pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, Applicant is a corporation under the laws of the state of Maryland. Applicant states that its registration statement was filed on February 25, 1977, but that it never became effective. Applicant further states that it has never made a public offering, has no security holders and has retained no assets. Finally, Applicant represents that it is not a party to any litigation or adminstrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding up of its business and affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

[FR Doc. 86-6149 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23012; File Nos. 4-281 and S7-433]

Joint Industry Plans; Approval of Amendments to the Consolidated Tape Association Plan and Consolidated Quotation Plan Relating to Concurrent Use Indemnification

The participants in the Consolidated Quotation Plan ("CQ Plan") and the Consolidated Tape Association Plan ("CTA Plan") on October 16, 1985 submitted amendments[1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and to the Plan governing the operation of the consolidated transaction system ("CTS").[2]

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[1] These amendments were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act").

[2] The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act

Continued

I. Description of the Amendments

The purpose of the amendments is to amend section XI of the CQ Plan and section XI(d) of the CTA Plan to provide indemnification to Plan participants and others from claims with respect to a participant's concurrent use of the CQS or CTS high speed line to make available market data other than as part of the consolidated dissemination of equities quotation or last sale information.

Since 1978, the CQ Plan and CTA Plan have permitted a participant to provide market data not subject to consolidated dissemination to vndors and others over the CQS or CTS high speed line. This avoids the need to maintain separate transmission facilities to vendors and others. In 1983, the Options Price Reporting Authority ("OPRA"), an options organization similar to the CTA and CQ, amended the OPRA Plan to add a provision whereby each OPRA participant indemnifies each other OPRA participant for losses resulting from dissemination of its own market data over OPRA transmission facilities. The proposed amendments to the CQ Plan and the CTA Plan add this requirements to the idemnification requirements of the CQ and CTA Plans.

II. Approval of the Amendments

The Commission solicited comment on the amendments in Securities Exchange Act Release No. 22562 (October 25, 1985), published in 50 FR 45516 (October 31, 1985). No comments were received.

The Commission believes that the proposed amendments appropriately provide for allocation of losses resulting from informaton carried over CQS and CTA to the parties responsible for that information, thereby safeguarding the financial integrity of the CTA and CQS. The Commission therefore finds that approval of the amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for protection of investors.

Therefore, it is ordered, pursuant to section 11A of the Act and Rule 11Aa3-2(c)(2) thereunder, that the amendments to the CTA and CQ Plans be, and hereby, are approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Dated: March 13, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6152 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

Release No. 16518 (January 22, 1980), 45 FR 6528. The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the 1980 Restated and Amended CTA Plan in Securities Exchange Act Release No. 16983 (July 10, 1980), 45 FR 49414.

[Release No. 34-23007; File No. 4-208]

Joint Industry Plan; Approval of an Amendment to the Intermarket Trading System Plan Relating to Complaint Procedures for Locked Markets in ITS

The Operating Committee of the Intermarket Trading System ("ITS") in June 1985 submitted to the Commission an amendment to the "Plan for the Purpose of Creating an Intermarket Communication Linkage" ("ITS Plan")[1], pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa3-2("Rule") thereunder.

I. Description of Amendment

The purpose of the Amendment is to clarify the complaint procedures for responding through ITS to "locked markets",[2] and to otherwise refine the ITS locked market rule. The present rule does not specify when a complaint must be filed, and recognizes a locked market complaint that is filed regardless of whether or not the locking bid or offer still exists.

The Amendment would release the market that locked the quotation from liability if the locking bid or offer is removed prior to the time that a complaint is received. The Amendment also would give the market whose quote was locked the option of requesting satisfaction by either the issuance of a commitment or the removal of the locking bid or offer. A final refinement to the Amendment states that in error situations, a locking market must respond within two minutes of the receipt of a complaint in order to avoid liability for a locked market.

II. Approval of the Amendment

The amendment was noticed for comment and given temporary summary effectiveness in Securities Exchange Act Release No. 22139 (June 12, 1985), published in the Federal Register (50 FR 25640) on June 20, 1986. No comments were received.

The Commission believes that the Amendment represents a positive enhancement to ITS that creates opportunities for more efficient and effective market operations.[3] The Commission finds that approval of the Amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

Therefore, it is ordered, pursuant to section 11A of the Act and Rule 11Aa3-2(c)(2) thereunder, that the Amendment to the ITS Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6146 Filed 3-19-86; 8:45 am]

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[1] The ITS Plan and subsequent amendments are contained in File No. 4-208. The Commission initially approved the ITS Plan on an interim basis on April 14, 1978. Subsequently, the Commission authorized the ITS participants to act jointly in operating the ITS for a further period of indefinite duration. *See* Securities Exchange Act Release No. 19456 (January 23, 1983); 48 FR 4938.

[2] A "locked market" occurs when the published bid quotation of one market is at the same price as the published asked quotation of another market.

[3] *See* section 11A(a)(1)(B) of the Act.

[Release No. 34-22999; File No. SR-Amex-85-30]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the American Stock Exchange, Inc. ("Amex") filed with the Commission a proposed rule change to list and trade European-style 13-week Treasury bill options ("T-bill options") that would be exercisable only at the time of their expiration.[3] Amex currently trades American-style 13-week T-bill options that can be exercised at any time until their expiration date.

II. Description of Proposal

The Amex proposal would permit the trading of European-style options on 13-week T-bills. Currently, Amex trades American-style 13-week T-bill options. For the most part, the mechanics of European-style T-bill options trading will be the same as American-style T-bill options trading with similar regulatory safeguards. In addition, the

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Notice of the proposed rule change was published in Securities Exchange Act Release No. 22492 (October 2, 1985), 50 FR 41078. No comments were received on the proposal, although Amex did submit three letters regarding its filing that are discussed below. *See infra*, notes 6, 16 and 20.

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contract specifications for the proposed European-style T-bill options are similar to those applicable to the American-style T-bill options currently listed on Amex. There are several significant differences, however, between Amex's proposed T-bill options contract and the existing one. First, as a European-style option, the proposed options can be exercised only on their expiration date and not, as is the case with American-style options, at any time during the term of the contract.[4] Second, because of the European-exercise feature of the proposed T-bill options, the T-bills to be delivered upon settlement of an option exercise will remain the same throughout the life of the option.[5]

The Amex proposed that the expiration cycle for European-style T-bill options will be similar to the March expiration cycle now used for American-style T-bill options. Unlike Amex's existing options, however, which always expire on the Saturday following the third Friday of an expiration month, the exact expiration date for European-style T-bill options will vary within each expiration month. Under the proposed rules, excercise settlement dates for the European-style options would be the earliest day of each March, June, September and December expiration month on which one-year T-bills have 13 weeks remaining to maturity.[6] The expiration date would be two business days prior to exercise settlement date in order to allow for the delivery of T-bills with exactly 13 weeks to maturity.[7] Under this proposed expiration plan it would be possible for an option to expire at almost any time during the months of March, June, September and December. In addition, it would be possible for an expiration to actually occur during a prior month if the exercise settlement date occurs very early in one of those months. Generally, option expiration dates will occur at twelve week intervals, with a sixteen week interval between expiration dates occurring occasionally.

Amex's proposed rules also will permit the introduction of a series of T-bill options with up to four different expiration dates at one time. Amex intends, however, to maintain only two expiration dates at one time, replacing expired series with new series having approximately 6 months to expiration at the time of listing.

Amex is also proposing to introduce strike prices with price intervals of only .20 (20 basis points) for its new European-style T-bill options. This would be a change from Amex's currently traded American-style T-bill options which have half point (50 basis points) intervals between strikes. The proposal also would permit the establishment of up to 5 exercise prices when series of options having new expirations are opened for trading. Amex has stated, however, that it intends to establish only three exercise prices when new expirations are added.

Amex's rules also propose to set position limits at 1,500 contracts on each side of the market for European-style T-bills, as opposed to the 1,000 contract limit that applies to Amex's currently traded T-bill options. In addition, Amex is not proposing any exercise limits for the European-style T-bills because they can only be exercised on its expiration date.

The last significant change between Amex's proposed European-style options T-bills market and its existing market in American-style T-bill options will concern the use of T-bill forward or futures prices, rather than T-bill spot prices, as benchmarks for determining whether the European-style T-bill options are in- or out-of-the-money. Under this aspect of Amex's proposal, the in- or out-of-the-money value of each series would be determined by reference to the prevailing market price of a forward or futures contract that has the same delivery requirements of the particular option series involved.[8] Amex has termed the particular forward or futures price relied on for these purposes as the "Treasury Bill Reference Price ("T-Bill Reference Price").[9] Amex's proposed rule provides discretion to decide which particular forward or futures market to rely on for purposes of determining the T-Bill Reference Price.[10] For the most part, however, Amex intends to designate the daily settlement prices of futures contracts traded on the

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[4] The trading of European-style options on United States securities exchanges is a relatively recent development. Currently, the only two types of European-style options contracts are traded both on the Chicago Board Options Exchange, Inc. ("CBOE"). *See* File No. SR-CBOE-84-31, Securities Exchange Act Release No. 22471 (September 28, 1985), 50 FR 40638, in which the Commission approved a proposal by the CBOE to trade European-style foreign currency options and File No. SR-CBOE-85-34, Securities Exchange Act Release No. 22309 (August 9, 1985), 50 FR 32994, approving a proposal to convert the Standard and Poor's 500 stock index option from an American to a European-style option. Trading in those options commenced on October 1, 1985.

[5] This is because, under the rules of the Options Clearing Corporation ("OCC"), options exercises will be limited to the expiration date of a contract, thereby permitting all such exercises to be settled on a single exercise settlement date. Because all options of the same series will have the same exercise settlement date, and OCC rules will call for exercises to be settled by the delivery of T-bills maturing 13 weeks after the exercise settlement date, the specific maturity date of the T-bills underlying a particular options contract will be known from the time the option commences trading on Amex. *See* Securities Exchange Act Release No. 23004 (March 12, 1986), and Securities Exchange Release No. 22369 (August 28, 1985), 50 FR 36176.

[6] Each exercise settlement date would occur precisely 13 weeks before the maturity date of a one-year T-bill. Because 52-week T-bills are generally issued at 4-week intervals, there will normally be only one such date per month. If two such dates occur during the same month, Amex's rules provide that the earlier of the two dates will be selected. We also note that Amex rules provide that the party obligated to make delivery of the underlying T-bills may choose whether to make delivery on the exercise settlement date or on the following business day, but without a price adjustment for the later delivery. This is the same rule that Amex currently applies to its American-style T-bill options. Amex has submitted a letter to the Commission to clarify that the alternative delivery date is intended to deal with situations where the Federal Reserve Bank wire transfer system becomes overloaded and therefore a timely transfer order is not completed on the settlement date. OCC rules deal with this situation in a slightly different manner. In the event of Federal Reserve wire failure or failure of access to the Federal Reserve wire by the clearing member's correspondent bank, OCC Rule 1411 permits settlement to be made on the next business day such wire is operable. Because Amex rules state that all exercise settlements must be in accordance with OCC rules, the Commission does not believe this difference in language should give rise to interpretive problems: the OCC rules would override any possible broader reading of Amex rules. *See* letter from Nathan Most, Vice President, New Products Development, Amex, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated October 22, 1985.

[7] Because T-bills generally mature on Thursdays, Amex intends to establish Thursdays as exercise settlement dates so that T-bills with exactly 13 weeks to maturity will be delivered upon exercise. Amex states that these dates were selected to coincide with the delivery dates specified for 13-week T-bill futures contracts traded on the Chicago Mercantile Exchange ("CME"). Amex's proposed rules establishing expiration dates two business days before the exercise settlement date would result in options expiring on Tuesdays. In this regard, we note that the Commission today is also approving a related proposed rule change submitted by the OCC that would allow European-style T-bill options to expire on Tuesdays, 2 days prior to the Thursday expiration settlement dates, rather than on the Saturday prior to the exercise settlement date (which is the rule applicable to expirations of T-bill options currently trading on Amex). *See* Securities Exchange Act Release No. 23004 (March 12, 1986).

[8] In this regard, we note that the futures contract would have to have delivery dates that coincide with the T-bill options exercise settlement date and would require delivery of 1,000,000 principal amount of T-bills having 13 weeks to maturity.

[9] The designated T-Bill Reference Price for a particular option series will be used to (1) determine the exercise prices at which new series of options will be opened for trading and (2) determine the applicable minimum margin requirements (because margin requirements are adjusted by out-of-the-money positions being held).

[10] In addition, under the proposed rule Amex would have authority to use forward or futures contracts with somewhat different delivery specifications than those of Amex's T-bill options to extrapolate the correct T-Bill Reference Price.

CME as the T-Bill Reference Price for its corresponding options.[11]

III. Discussion

The Amex proposal to establish a market in European-style T-bill options does not, for the most part, raise novel questions. The Commission previously has approved trading options on T-bills in approving Amex's existing market in American-style T-bill options. In this regard, we note that Amex's existing and proposed T-bill option contracts both require, upon exercise, the delivery of T-bills having 13 weeks remaining to maturity at the time of delivery. Amex's proposed T-bill options market, however, differs in one significant respect from its existing market: the proposed T-bill options only can be exercised at the time of expiration ("European-style options") rather than any time prior to the expiration date ("American-style options") as in the case with Amex's current T-bill options markets.

In reviewing this aspect of Amex's proposal, the Commission notes that, in recently approving CBOE proposals to convert the S&P 500 index option to a European-style option and to establish a European-style foreign currency options market,[12] the Commission recognized that there are advantages and disadvantages to each type of option with purchasers generally benefiting from the American-style options and sellers from European-style options.[13] For European options, the purchaser must rely on the continued existence of a secondary market in the options to be able to close out an option position before expiration. On the other hand, European-style options provide benefits to options writers, because the writers know the options they have written cannot be exercised until expiration. This can facilitate long-range planning and may prove particularly useful for investors in the T-bill options market.

Accordingly, although the European-style T-bill options proposed by Amex may limit the flexibility of options purchasers, the European-style exercise feature may facilitate certain trading strategies. The Commission, however, continues to believe that appropriate disclosure of such options and the unique risks associated with the use of options with this type of exercise restriction is necessary. In this connection, the Commission notes that the Amex in conjunction with the OCC has made the appropriate risk disclosures pertaining to the trading of European-style options in a recently revised options disclosure document ("ODD").[14]

With respect to matters of contract design and delivery specifications, so long as the Commission has no regulatory concerns, it is not inclined to substitute its judgment for the business judgment of the self-regulatory organization. Rather, in matters such as these, the marketplace generally should be permitted to determine whether a particular contract meets the needs of market participants.[15]

After carefully reviewing the contract specifications, the Commission believes that the proposed rules should be approved. As noted above, Amex has decided to trade T-bill options similar to those it currently trades, except for the European exercise feature of the contract. The Commission does not believe this aspect of Amex's proposal presents any particular regulatory or surveillance concerns and finds the contract terms, including premium bids and offers, minimum price fluctuations, expiration cycles and option exercise procedures, are appropriate.

The Commission, however, does maintain a regulatory interest in certain other terms of the proposed European-style T-bill options market. The Amex has proposed position limits that are designed to prohibit market participants from acquiring a position in European-style T-bill options in excess of 1,500 contracts on the same side of the market. Amex's rules currently provide for a position limit of 1,000 contracts for its American-style T-bill options. In reviewing position limits the Commission has been careful to balance regulatory concerns with the need not to restrict depth and liquidity in the options markets. Moreover, in establishing position limits for T-bill options, the Commission has looked to the deliverable supply of underlying 13-week T-bills that are available upon exercise. At the time of approval of Amex's original T-bill options the deliverable supply of 13-week T-bills available upon exercise, including 26 week and 52 week T-bills with 13 weeks remaining to maturity, was approximately $10–12 billion. Since then the deliverable supply of 13 week T-bills, taking into account 26 and 52 week T-bills with 13 weeks remaining to maturity that will be available upon exercise, has increased to approximately $18–20 billion. Based on the approximate doubling in the deliverable suppy of T-bills available upon exercise, the Commission believes that the 500 contract increase (or 50% increase) proposed for Amex's European-style T-bill options are appropriate. The Commission believes that the proposed position limit will be sufficient to protect the options and related markets from disruptions caused either by congestion or manipulation.[16]

As noted above, the Amex has not proposed any exercise limits for its European-style T-bills because they only can be exercised on one day at expiration. The Commission believes that the elimination of exercise limits for European-style T-bill options does not present any distinct regulatory problems or congestion concerns. This is because an investor only can hold positions up to 1,500 contracts on either side of the market, which, in effect, will limit exercises to 1,500 contracts on the one day at expiration that such European-style options can be exercised. We note, however, that Amex can grant exemptions to existing position limits under certain circumstances. In granting exemptions for higher limits in European-style T-bill options, the Commission expects Amex to take into account the total effect of such increased limits, including their effect on the number of contracts that can be exercised on expiration day and any resulting congestion concerns.

As previously discussed, expiration dates will vary within the designated expiration months of March, June, September and December because they are tied to the maturity dates of one year T-bills being auctioned every four weeks. This system is different from the expiration schedule used for existing options traded on Amex which always

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[11] As noted above, the expiration settlement dates for Amex's European-style T-bill options will coincide with the delivery dates specified for Treasury bill futures contracts traded on the CME. In the event Amex cannot use the futures prices on the CME, it has indicated it intends to poll government securities dealers to obtain forward prices on which to base the T-Bill Reference Price. *See* note 22, *infra*.

[12] *See* note 4, *supra*.

[13] The Commission also noted that as long as adequate disclosure is made of the terms and conditions of these contracts, it would expect that the premiums of each kind of contract generally should reflect these differences in benefits for purchasers and writers.

[14] *See* Securities Exchange Act Release No. 22418 (September 17, 1985), 50 FR 38732.

[15] *See* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 65423, approving Amex's proposed rules for the trading of American-style T-bill options, including its rules pertaining to contract design and delivery specifications.

[16] Although Amex has been phasing out its American-style T-bill options, any outstanding positions in such options will be aggregated with positions in European-style T-bills for position limit purposes. *See* letter from Nathan Most, Amex, to Sharon Lawson, Attorney, Division of Market Regulation, dated December 16, 1985 ("December 1985 Letter").

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expire on the Saturday following the third Friday of an expiration month. In order to avoid confusion and alert market participants trading European-style T-bill options when expirations will occur, Amex regularly will publish the expiration dates of such T-bill options in its market bulletins prior to expiration.[17] This should provide market participants with adequate notice and alert them to the fact that expiration dates for European-style T-bills are non-standard. Based on these representations, the Commission believes that this aspect of the proposal should be approved.

Amex has proposed strike price intervals of .20 for European-style T-bill options, rather than the .50 intervals currently applicable to American-style T-bills. Amex states that this change is based on its experience with its existing options, not any specific differences between European- and American-style T-bill options.

The Commission recognizes that any narrowing of strike price intervals increases the flexibility accorded market participants and allows options positions to be more finely tailored to achieve intended investment objectives by providing additional investment opportunities.[18] At the same time, however, the narrower strike price intervals create the possibility of dispersing trading interest to the degree that there is an excessive dilution of liquidity in open options series. Accordingly, an evaluation of the appropriate strike price intervals requires a balancing of the need to accommodate market participants and the need to avoid causing excessive proliferation of options series.

With respect to the Amex's proposals, the Commission has concluded that the benefits to be derived from narrower intervals, in offering participants greater flexibility in achieving investment objectives, outweighs the possible adverse effects on market liquidity and dispersion of interest that may result from that action. While the Commission recognizes that, if the market in European-style T-bill options are excessively thin, the proliferation of illiquid series can result, the Commission expects the Amex to monitor closely the situation to determine if too many illiquid open option series exist in European-style T-bills as a result of the .20 strike price intervals and to act promptly to remedy this situation should it occur.[19]

A related portion of Amex's proposal would permit up to five different exercise prices to be introduced when series of options having a new expiration date are opened for trading, with additional exercise prices being added as the underlying price changes. Under the proposed rules, however, Amex may not introduce any new option series having less than 10 days left to expiration. Amex has stated that it generally intends to establish only three exercise prices for each new expiration introduced. Nevertheless, the Amex rules would provide it with the authority to introduce up to five exercise prices at one time because it takes, operationally, at least 24 hours to have a new series posted and in periods of high volatility the lack of such authority could result in the absence of at-the-money series for a period of time.

The Commission believes that this aspect of Amex's proposal strikes an appropriate balance by simultaniously accommodating market participants without causing excessive proliferation of options series. First, we note that Amex's proposal sets the maximum permissible number of strike prices.[20] Amex intends, as a routine matter, to introduce only three different exercise prices for newly introduced expiration dates.[21] Second, Amex rules provide for the delisting of option series with no open interest; thus should Amex list a new series in anticipation of a large market movement that does not materialize, Amex would be able to delist series that attract no trading interest. Finally, we also note that although under the rules Amex will have the authority to list up to 4 expirations at one time, it intends to keep only 2 expiration dates open at a time. This policy should help to avoid a large number of illiquid series from proliferating because new series having the same expiration dates would be added over time to reflect price changes in the underlying T-bills.

As discussed above, the Amex is proposing to use the Treasury Bill Reference Price to determine the in- or out-of-the-money value of a particular series of options. Under Amex's rules, the T-Bill Reference Price is established based on the prevailing market price of a forward or futures contract with similar delivery periods as Amex's European-style T-bill options. Although the Commission understands that, except under unusual circumstances or market conditions,[22] Amex will rely on the CME's futures market to determine its T-Bill Reference Prices,[23] the proposed rules provide Amex with discretion to decide which particular forward or futures markets it will rely on.

Finally, we note the proposed expiration settlement dates for European-style T-bills were selected because they are the delivery dates specified in the CME's rules with respect to its 13 week T-bill futures contract.[24] In the corresponding options, the proposed rules provide Amex with discretion to determine which particular forward or futures markets it will use as a reference market in establishing settlement dates. The Commission's order originally approving the trading of T-bill options noted the possibility of market congestion being caused by simultaneous delivery settlement dates for options and futures on T-bills.[25]

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[17] *See* December 1985 Letter, note 16, *supra*.

[18] *See* Securities Exchange Act Release No. 17238 (October 22, 1980), 45 FR 71453. *See also* Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2380, approving reduced strike intervals for Amex's index options.

[19] Amex will take steps to either increase strike price intervals or skip intervals in the event volatility in the underlying T-bills results in the proliferation of illiquid options series.

[20] Under the proposal, Amex would be limited to maintaining two out-of-the-money, two in-the-money and one at-the-money T-bill options contracts at any one time. *See* letter from Heidi Litt Spitzer, Senior Attorney, Amex, to Sharon Lawson, SEC, dated February 4, 1986.

[21] Although Amex would have the authority to introduce and maintain up to five strike prices it is generally understood that three strikes, one out-of-the-money, one-in-the-money and one at-the-money, will be maintained during normal market conditions with two additional strikes added only at times of high volatility or other unusual market conditions. This should provide Amex with the flexibility to respond to market changes and develop its new product. The Commission expects Amex to submit a proposed rule change if it decides it wants to maintain five strikes at all times under any market conditions.

[22] For example, in its filing Amex notes that if a daily limit is reached on the CME early in the trading day, it might poll government securities dealers to obtain forward prices that would be the basis for determining the T-Bill Reference Price for that day.

[23] If the Amex did intend to rely on another market to generate its T-Bill Reference Price on a permanent basis it would have to submit a proposed rule change to the Commission.

[24] In its filing, Amex states that because the futures contract has the same delivery specifications as Amex's proposed options contract, the selection of option exercise settlement dates that coincide with CME's futures delivery dates should result in a relatively straightforward mathematical relationship between the options traded on the Amex and the futures contracts traded on the CME.

[25] Under Rule 1405(b), the OCC has the authority to extend or postpone any exercise settlement date for T-bill options whenever it is necessary in the public interest or in unusual conditions. This authority permits the OCC to select dates for the expiration of options contracts that do not coincide with the week that the CME's futures contracts are scheduled to terminate if congestion concerns are raised by the simultaneous settlements. Amex has indicated that, to date, the OCC has never had to exercise this authority even though delivery dates in the futures and options have coincided.

Accordingly, the Commission must assess whether there is a sufficient deliverable supply of T-bill options to avert the possibility of market congestion.

As indicated earlier, the deliverable supply of 13-week T-bills, including 26 and 52 week T-bills with 13 weeks remaining to maturity that can be supplied upon exercise, has nearly doubled since the original proposal to trade T-bill options was approved by the Commission. In addition, Amex has indicated that, in its experience, only a small percentage of actual exercises occur in T-bill options. Based on the above information, the Commission believes that congestion should not occur even though options and futures that expire at the same time. We also note that if congestion problems occur, the OCC will be able to take remedial action, and has the authority to impose restrictions on exercises and, if necessary, to prescribe cash settlement in lieu of the underlying security.[26]

In general, secondary trading in European-style T-bill options contracts will be governed by the same or comparable floor and upstairs rules and will be subject to the same regulatory controls as the T-bill options currently traded on Amex. For example, all existing customer protection rules would apply to European-style T-bill options. In addition, Amex will use the same surveillance techniques that it has used for American-style T-bill options to detect manipulation and other improper trading activities. The Commission has examined carefully the proposed rules governing trading activities in European-style T-bill options on the floor of the Amex and has concluded that the proposed rules provide sufficient regulatory safeguards and investor protections to accommodate the Amex's start-up of a European-style T-bill options market.

IV. Conclusion

Under section 19(b)(2) of the Act, the Commission must approve the foregoing rule change if it determines that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully the rules proposed by the Amex to accommodate the listing and trading of European-style 13 week T-bill options and has concluded that the rules provide for adequate and proper regulation of the proposed market. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6151 Filed 3-19-86; 8:45 am]

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[26] The possibility that the deliverable supply to satisfy options exercises would be constricted by simultaneous Treasury bill futures delivery obligations has existed since Amex commenced trading Treasury bill options. This concern, however, has been brought into even sharper focus by the increased overlap in delivery terms effected by the changes to develop a European-style options contract. Hence, the Commission staff has requested that the Amex commence discussions with the CME on the possibility of developing coordinated surveillance information sharing arrangements, particularly in the event that either exchange anticipates possible substantial exercises or deliveries of Treasury bill options or futures contracts. *See* letter from Brandon Becker, Assistant Director, Division of Market Regulation, to Nathan Most, Vice President, Amex, dated March 4, 1986.

[Release No. 34-23006; File No. SR-CSE-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Application of ITS Trade-Through and Block Policy Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1986, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the Proposed Rule Change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change amends CSE Rules 14.9 and 14.10 so as to extend the coverage of the Exchange's trade-through and block policies to additional trading situations involving CSE members. The terms "Exchange trade-through" and "block trade" are redefined, and conforming changes are made to the subparagraphs within Rules 14.9 and 14.10 related to remedies and exemptions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Stautory Basis for, the Proposed Rule Change

The purpose of the Proposed Rule Change is to apply the Intermarket Trading System ("ITS") trade-through and block policy rules: (1) To Designated Dealers when they effect transactions otherwise than on an exchange in ITS securities for which they are assigned as Designated Dealers; and (2) to Users when they effect transactions on the Exchange in ITS securities for which the Exchange does not have a Designated Dealer.

The Application of the ITS trade-through and block policy rules in the manner described above is consistent with Section 6(a)(5) of the Act in that it will promote just and equitable principles of trade and contribute to the perfection of the national market system, which, in turn, will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that Rules 14.9 and 14.10, as amended by the Proposed Rule Change, will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has received comments on the Proposed Rule Change from the New York Stock Exchange, Inc.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longe period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

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arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements such respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [April 10, 1986].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6147 Filed 3-19-86; 8:45 am]

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[Release No. 34-23022; File No. SR-NASD-86-4]

Self-Regulatory Organizations; Request for Approval by National Association of Securities Dealers, Inc. of a Pilot Program With the Stock Exchange, London, England, for the Exchange and Distribution of International Securities Information

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been perpared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") is requesting approval from the Securities and Exchange Commission ("SEC") of a Pilot Program to be jointly undertaken by the NASD and The Stock Exchange, London, England ("Exchange"). The terms of substance of the proposed Pilot Program are set forth below.

Scope of the Pilot Program

The Pilot Program has been undertaken to enable the NASD and Exchange to formally exchange and thereafter utilize proprietary quotation and last sale information for dissemination to participants in their respective marketplaces through the existing NASDAQ System, operated by the NASD, and the TOPIC System, operated by the Exchange. Initially, the information to be utilized by each party shall be limited to the quotation information described below. By virtue of the nature of the Pilot Program, it is anticipated that both the extent and use of the information and access to the facilities operated by the other party may be expanded during the course of the Pilot Program upon further written agreement of the NASD and Exchange. An important function of the Pilot Program will be to explore the possibility of appropriate trading linkages between the NASDAQ market and the Exchange market and the necessity for and development of regulatory programs and procedures to be applied to such linkages. An additional area for consideration under the Pilot Program may be the exploration of appropriate international clearance and settlement procedures for any proposed linkage.

Description of Information

Exchange Securities Information. The Exchange will furnish to the NASD, and the NASD shall be permitted to display on each of its NASDAQ Level ⅔ authorized terminals, current price quotations in each category of Exchange securities as described below:

1. Financial Times/Stock Exchange 100 ("FTSE")

The 100 most highly capitalized companies in the U.K. domestic market. Initially only jobbers middle prices shall be disseminated through the Exchange Price Information Computer ("EPIC"), with all individual market maker quotations becoming available on or about October 27, 1986.

2. Financial Times/Stock Exchange 100 Index

The Financial Times/Stock Exchange 100 Index is calculated in one minute intervals based upon a capitalization weighted measure of the value of the individual securities included in the Index.

3. Non U.K. Domiciled Securities

All individual market maker quotations in non U.K. domiciled securities diseminated through the TOPIC International Service.

For those Exchange securities comprising the FTSE–100 Index, "price quotation" shall be understood to initially mean middle prices with inside bid and offer quotation information and last sale information being added on or about October 27, 1986 ("Big Bang Day") and two-sided individual market maker's quotation thereafter added when generally available. For the Exchange securities of non-UK-domiciled companies, "price quotations" shall be understood to mean two-sided, individual market makers' quotations. The quotation information received from the Exchange and displayed by the NASD shall include all available quotations in each applicable Exchange security and be displayed in a non-discriminatory format mutually agreeable to the Exchange and NASD.

NASDAQ Securities Information. The NASD will furnish the Exchange, and the Exchange shall be permitted to display on each of its TOPIC authorized terminals and TOPICLINE, current bid and ask quotations of all market makers in each category of NASDAQ securities described below:

1. NASDAQ–100 List

All individual market maker quotations displayed in the NASDAQ system on securities included in the NASDAQ–100 Index™, which represents 100 of the largest non-financial companies, both domestic and foreign, in the NASDAQ/NMS.

2. NASDAQ–100 Index™

The NASDAQ–100 Index™ is a capitalization weighted measure of the value of the individual securities included in the Index.

3. NASDAQ Financial 100 List

All individual market maker quotations displayed in the NASDAQ system on securities included in the NASDAQ Financial Index™, which represents the 100 largest domestic financial companies in the NASDAQ/NMS.

4. Non U.K. American Depository Receipts (ADR's)

All individual market maker quotations in ADR's underlying non-U.K. domiciled securities.

The quotation information received from the NASD and displayed by the Exchange shall include all available quotations in each applicable NASDAQ

security and be displayed in a non-discriminatory format mutually agreeable to the NASD and Exchange.

During the course of the Pilot Program, the NASD and Exchange categories of securities described above may be modified to incorporate changes, additions, and deletions of the constituent securities, and/or expanded to include additional NASDAQ or Exchange quotation and/or last sale information upon written authorization of the other, to the extent such expansion would be consistent with the technical and operational capability of the NASD and Exchange systems.

The NASD is currently considering development of an International Subset of NASDAQ data, which would incorporate approximately 500 issues. At the same time, the Exchange's International Service is expanding as market makers increasingly participate. As a result of these developments, the NASD and the Exchange may agree to expand the set of securities for which information is exchanged, up to approximately 500 from each side.

Provision of Information. The Exchange will furnish Exchange Information to the NASD during the Exchange's normal hours of operation, currently 3:30 A.M. to 12:00 P.M. Washington Time (8:30 A.M. to 5:00 P.M. London Time). The Exchange Information furnished to the NASD shall be denominated in the currency of convention for the particular security.

The NASD will furnish NASD Information to the Exchange during the NASD's normal hours of operation which are currently 8:30 A.M. to 4:00 P.M. Washington Time (1:30 P.M. to 9:00 P.M. London Time). NASD Information furnished to the Exchange shall be denominated in United States dollars.

The quotation exchange system to be operated jointly by the NASD and the Exchange will enable the display, over the other's network, of "live" prices for the subset of international securities described above from the NASDAQ and Exchange databases. Current prices for Exchange securities will be sent via direct feed to NASDAQ, from which the particular securities in the exchange set will be filtered and saved in a database for formatting consistent with the NASDAQ level 2/3 display. Current NASDAQ prices will likewise be sent via the NQDS feed to the Exchange, which will be similarly filtered and saved for display in the TOPIC videotex system and TOPICLINE. A transatlantic satellite link currently operated by the Exchange for delivery of its TOPIC service to its subsidiary in North America will be used to transmit the price information both ways between the U.S. and the U.K. A private line from the NASDAQ computers to the Exchange subsidiary's vendor-agent in New York, in whose premises the transatlantic link terminates, will be used to carry the NQDS and Exchange feeds simultaneously via multiplexing.

The delivery of Exchange data over the NASDAQ network will be via database inquiry from Level 2/3 terminals which serve primarily broker/dealer and institutional subscribers. Exchange data will not be disseminated over any NASDAQ broadcast service. Inquiry facilities will be provided which will allow access to a list of the names and symbols of Exchange securities, the middle prices for the FTSE 100 Share Index components (until "Big Bang Day"), the competing market makers' quotations for the international issues, and a directory of Exchange market maker symbols and their telephone numbers. In the various displays that include prices, the amount displayed will be denominated in the currency in which the individual security trades: pounds or pence sterling for the U.K. issues, or the currency of convention for the international issues. The currency will be identified on the screen using an appropriate identifier, e.g. USD for United States dollars, £ for pounds sterling, NLG for Netherlands (Dutch) guilders. If a particular Exchange listed security also appears in the NASDAQ database (either in stock certificate or ADR form), the NASDAQ security symbol will be displayed, but not any price data. In no case will NASDAQ and Exchange data be consolidated on a single screen display. Individual market makers' quotes will be alphabetically arranged, and no inside price will be calculated.

NASD data will be displayed in the Exchange's system on the TOPIC network of videotex terminals and TOPICLINE. The display will include price and size plus any necessary indication of a special bid condition (penalty, stabilizing, presyndicate). Market makers' quotations will be alphabetically arranged. Although each screen can display up to 32 market makers with expansion planned to 48, provision is being made for overflow pages. In the case of overflow, the number of market makers displayed on each screen will be balanced. On the first screen pertaining to a security additional data, consisting of last sale information and the inside price with the ID's of the three market makers at each side of the inside market, will also be displayed. The inside market will be computed by the Exchange using the NASDAQ standard formula, i.e., oldest highest bid, oldest lowest offer.

Usage and Fees. The Exchange is authorized to disseminate NASD information through its TOPIC network of videotex terminals and TOPICLINE. NASD Information shall be provided to the Exchange for display over its network(s) under the same terms and conditions utilized by the Exchange to protect the integrity and proprietary nature of its own data.

The NASD will be authorized to disseminate Exchange information solely through its network of Level ⅔ interactive terminals. Exchange information shall be provided to NASD for display over its network of level ⅔ terminals under the same terms and conditions utilized by the NASD to protect the intergrity and proprietary nature of its own information.

The cost of transfer of information between the parties over the transatlantic satellite link will be shared equally. The exchange of comparable information between the parties and their right to disseminate this information to subscribers through comparable networks under this Pilot Program was believed to obviate the need for any separate fee arrangement between the parties or between a party and the subscribers of the other party. However, nothing shall preclude future modification to this fee arrangement, upon written agreement of the parties, in the event additional information, services or costs arising under the Pilot Program would make such modification appropriate.

The term of the Pilot Program is for a period of two years, but may be extended for additional periods with the mutual consent of the NASD and the Exchange.

Cooperative Regulatory Undertakings. The Pilot Program to be implemented provides for the exchange of certain quotation information which is currently made available by the NASD and Exchange to its NASDAQ Level ⅔ and TOPIC subscribers respectively. The exchange of information provided for under the Pilot Program is believed to represent a definitive step toward greater cooperation between the Exchange and NASD in the evolving international securities markets. The Exchange and NASD for several years have experienced significant cooperation and coordination in the areas of information disclosure, quotation and trading halts and/or suspensions and the resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. With the

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initiation of the Pilot Program, the NASD and the Exchange contemplate the continued prioritization of coordination with, and communication of relevant information to the other with respect to quotation and trading halts and/or suspensions and the resumption of trading in each market. Similarly, it is contemplated that the parties will cooperate in sharing regulatory information as needed by either the Exchange or NASD for purposes of their surveillance and investigation responsibilities with respect to the securities included within the Pilot Program.

In furtherance of these cooperative regulatory efforts, the NASD and the Exchange comtemplate the exploration of joint regulatory initiatives which may include the development of uniform standards applicable to international transactions in NASD or Exchange securities and appropriate procedures to assure compliance with such standards by the respective members of the NASD and Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposal and disscussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Pilot Program is twofold. The Pilot Program will provide market participants in both the United States and the United Kingdom and Republic of Ireland with real time access to an expanded universe of international securities information. The Pilot Program will also serve as the foundation for evaluation of the technical ramifications and regulatory implications of international securities transactions, information dissemination and clearance and settlement in the evolving international marketplace.

The statutory basis for undertaking the Pilot Program is found in section 11A(a)(1)(B) and (C), 15A(b)(6), and 17(A)(1)(B) and (C) of the Securities Exchange Act of 1934 ("Act"). Section 11A(a)(1)(B) and (C) sets forth the Congressional goal of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulatory, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. . ." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience to enhance the potential for achievement of these goals in the international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed Pilot Program will provide for the sharing of market data between the NASD and Exchange on a nonexclusive basis, and the NASD believes that it imposes no burden on competition and may in fact significantly improve the competitive dynamics of the marketplace for these securities. To the extent that any burden on competition may be found to exist, the NASD believes that the benefit to be derived from the cooperative regulatory undertakings contemplated and operational experience to be gained will outweigh any potential burden upon competition and materially advance the purposes to be served under the foregoing sections of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received in connection with the proposed Pilot Program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 14, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6154 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23014; File No. SR-OCC-86-04]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On February 21, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this Notice to solicit comment on the rule change.

The proposed rule change amends the OCC By-law Article XV(k)'s definition of "country of origin" and adds related Interpretations and Policies to OCC Rule 1607. The By-Law's definition of

"country of origin" for ECU options exercise and assignment settlement purposes has been changed to refer to its meaning in OCC's Rules.[1] New Interpretation and Policy 1.a. to OCC Rule 1607 specifically defines that term for these purposes as Belgium, unless OCC directs otherwise. New Interpretation and Policy 1.b, however, states that OCC can deliver ECUs to a Clearing Member through the Member's ECU-denominated account at its correspondent bank, even if that bank is located outside Belgium.[2] Previously, exercises and assignments of ECU options could be settled only in Belgium.[3]

OCC states that the proposal should enable Clearing Members to establish banking relationships necessary to participate in the ECU options markets. OCC represents that Clearing Members have had difficulty finding banks to process ECU exercise and assignment activity because few Belgium banks offer ECU-denominated accounts. Conversely, many European banks outside Belgium offer those accounts and thus can process this activity.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by March 31, 1986.

For the Commisison, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 13, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6148 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] The ECU is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community. *See* Securities Exchange Act Release No. 22854 (February 3, 1986), 51 FR 5128 (February 11, 1986).

[2] Clearing Members still can settle ECU option exercise and assignment obligations through multi-currency accounts under OCC Rule 1607. *See* Securities Exchange Act Release No. 21359 (September 27, 1984), 49 FR 39138 (October 3, 1984) amending OCC Rule 1607 to permit foreign currencies to be delivered through multi-currency accounts maintained at banks outside the country of origin.

[3] The proposal does not change OCC's requirement that Clearing Members' ECU deliveries to OCC occur only through OCC's correspondent bank in Belgium

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DEPARTMENT OF STATE

[CM-8/953]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes, Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on Mary 1, 1986 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting is to discuss:

1. United States positions on matters to be discussed at the 27th Session of the International Maritime Organization (IMO) Subcommittee on Containers and Cargoes to be held May 12-16, 1986.

2. Proposed revision of SOLAS, Chapter VI to include basic regulations for the safe carriage of cargoes except liquids and gases in bulk and to reference the following standards:

—Code of Safe Practice for Solid Bulk Cargoes;
—Code of Safe Practice for the Safe Stowage and Securing of Cargo, Cargo Units and Vehicles (under development);
—Code of Safe Practice for Ships Carrying Timber Deck Cargoes;
—IMO/ILO Guidelines for the Packing of Cargo in Freight Containers and Vehicles; and
—Code for the Safe Carriage of Grain in Bulk.

3. Proposed amendments to the Code of Safe Practice for Solid Bulk Cargoes, including:

—Development of new criteria in respect of liquefaction and sliding failures in solid bulk cargoes;
—Stability criteria for ships carrying cargoes which may liquefy; and
—Requirements for materials possessing chemical hazards.

4. Carriage of packaged timber deck cargoes.

5. IMO activities of a continuing nature.

In addition, the National Cargo Bureau will give a brief presentation on the shipment of problematic bulk cargoes.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Commander Larry H. Gibson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 426-1577.

Dated: March 7, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-6071 Filed 3-19-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/954]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 10, 1986 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the sixteenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for April 28-May 2, 1986.

The agenda for this meeting includes the following items:

—Implication of MARPOL 73/78, Annex II
—Mixtures of MARPOL 73/78, Annex I and Annex II substances
—Guidelines on the carriage of bulk chemicals on offshore support vessels
—Venting requirements for chemical tankers

Members of the public may attend up to the seating capacity of the room.

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For further information, contact Mr. Frits Wybenga, U.S. Coast Guard Headquarters (G-MTH-1/12), 2100 Second Street SW., Washington, DC 20593, Tel: (202) 426-1217.

Dated: March 12, 1986.

William H. Demeron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-6072 Filed 3-19-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB February 20, 1986 to March 12, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period February 20, 1986—March 12, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from February 20, 1986—March 12, 1986.

DOT No: 2701
OMB No: 2137-0510
By: Research and Special Programs Administration
Title: RAM Transportation Requirements
Form(s): None
Frequency: On occasion
Respondents: Shippers and carriers of radioactive materials
Need/Use: To maintain transportation safety in the shipping of radioactive materials so as to avoid the radioactive exposure hazards inherent in the transportation of these materials.

DOT No: 2708
OMB No: New
By: United States Coast Guard
Title: Liquified Natural Gas (LNG) Waterfront Facilities
Form(s): None
Frequency: On occasion
Respondents: Owners/operators of LNG facilities
Need/Use: This information collection requirement is needed and used to prevent or mitigate the results of an accidental release of liquified natural gas at such waterfront facility. This requirement would reduce the possibility that such an accident could occur, and will reduce the damage and injury to persons and property in the event of an accident.

DOT No: 2709
OMB No: 2125-0526
By: Federal Highway Administration
Title: Motor Carrier Accident Reports
Form(s): MCS-50T, MCS-50B
Frequency: On occasion
Respondents: Motor carriers
Need/Use: Accident reports provide vital information to the FHWA/BMCS in administering its regulatory program

DOT No: 2710
OMB No: 2125-0518
By: Federal Highway Administration
Title: Immediate Notification of Fatal Accidents
Form(s): None
Frequency: On occasion
Respondents: Motor Carriers
Need/Use: To meet the requirement that motor carriers notify FHWA by telephone, deaths of persons that occur within 24 hours of a reportable accident.

DOT No: 2712
OMB No: 2125-0518
By: Federal Highway Administration
Title: Minimum Levels of Financial Responsibility for Motor Carriers of Passengers
Form(s): MCS-90B, MCS-82B
Frequency: Annually
Respondents: Insurance Companies
Need/Use: The law requires for-hire motor carriers of passengers to maintain minimum levels of financial responsibility. The endorsement amends the carriers policy of insurance to assure compliance by the insured.

DOT No: 2713
OMB No: New
By: United States Coast Guard
Title: 33 CFR 140.15 Equivalents and Approved Equipment
Form(s): None
Frequency: On occasion
Respondents: Industries desiring to operate on U.S. Outer Continental Shelf (OSC)
Need/Use: This requirement is needed and used by the Coast Guard to ensure that an equivalent level of safety is maintained for certain unspecified equipment or procedures as provided in the regulations.

DOT No: 2714
OMB No: 2115-0007
By: United States Coast Guard
Title: Application for Inspection of U.S. Vessel
Form(s): CG-3752
Frequency: Annually, biennially, triennially
Respondents: Owners and operators of commercial vessels.
Need/Use: The Application for Inspection (CG-3752), must be completed prior to the Coast Guard inspecting a vessel for certification. The requirements are contained in 46 CFR 2.01-1. The application provides the Coast Guard with notification and basic information needed for planning and carrying out an inspection.

DOT No: 2115
OMB No: 2137-0009
By: Research and Special Programs Administration

Title: Applications to Add or Change Materials in the IM Table
Form(s): None
Frequency: On occasion
Respondents: Businesses wishing to have the IM Portable Tank Table Modified
Need/Use: The Office of hazardous Materials Transportation uses the information as a basis for modification of the Intermodal Tank Table of Hazardous materials and the regulated public as a means to request modification of the table.

DOT No: 2716
OMB No: New
By: Office of Commercial Space Transportation, OST
Title: Commercial Space Transportation: Licensing Regulations
Form(s): None
Frequency: When submitting a license application
Respondents: Organizations applying for licenses for launches
Need/Use: Launch licenses are required to protect the public health and safety, national security and foreign policy interests of the U.S.

DOT No: 2717
OMB No: 2138-0023
By: Research and Special Programs Administration
Title: Part 291 Domestic Cargo Transportation
Form(s): RSPA—291-A
Frequency: Annual
Respondents: 40
Need/Use: The data from 291-A is used to monitor the domestic all-cargo industry. This is the only recurring statistical and financial reporting requirement on this segment of the airline industry.

DOT No: 2718
OMB No: 2138-0014
By: Research and Special Programs Administration
Title: Accessibility and Transmittal of Service-Segment Data
Form(s): None
Frequency: Monthly
Respondents: Large Certificated Route Air Carriers
Need/Use: Provides the Department with traffic and capacity data needed for determining traffic flows and adequacy of service.

DOT No: 2720
OMB No: 2127-0040
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 551.45 Designation of Agent
Form(s): None
Frequency: On occasion
Respondents: Foreign businesses
Need/Use: Every foreign manufacturer offering a motor vehicle/equipment for importation in the United States must designate an agent upon whom service of processes, notices, orders and requirements may be made.

DOT No: 2721
OMB No: 2125-0515
By: Federal Highway Administration
Title: Submission of Eligibility Statement for Utility Adjustments
Form(s): None
Frequency: On occasion
Respondents: State Highway Agencies
Need/Use: The eligibility statement is necessary in order for FHWA to determine whether the States statutes establish the legal authority or obligation to pay for utility adjustments on Federal-aid highway projects.

DOT No: 2722
OMB No: 2120-0518
By: Federal Aviation Administration
Title: Special Federal Aviation Regulation-Special Flight Authorizations for Noise Restricted Aircraft
Form(s): None
Frequency: On occasion
Respondents: Businesses and small businesses
Need/Use: Under Part 91, beginning January 1, 1985, operations of large turboject aircraft are prohibited at U.S. airports unless compliance with Part 36 noise levels is demonstrated. Therefore, operators (foreign, domestic, and corporate) will need a Special Flight Authorization for U.S. operators to dispose of aircraft or take them to be modified to comply.

DOT No: 2723
OMB No: 2127-0505
By: National Highway Traffic Safety Administration
Title: 49 CFR 571.217, Bus Window Retention and Release
Form(s): None
Frequency: On occasion
Respondents: Businesses
Need/Use: This standard requires emergency exit identification to be marked in all buses, along with concise operating instructions explaining how to unlatch and open the exit.

Issued in Washington, DC, on March 14, 1986.

John E. Turner,

Director of Information Systems and Telecommunications.

[FR Doc. 86-6135 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in February 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
3302-X	DOT-E 3302	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases (modes 1, 2, 3, 4).
3302-X	DOT-E 3302	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize (modes use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases (modes 1, 2, 3, 4)
3998-X	DOT-E 3998	Stauffer Chemical Company, Westport, CT.	49 CFR 173.188	To authorize shipment of phosphoric anhydride in DOT Specification 6K metal drums (modes 1, 2).
4850-X	DOT-E 4850	GOEX, Inc., Cleburne, TX.	49 CFR 173.100(cc), 175.3.	To authorize shipment of flexible linear shaped charges, metal clad, in 100' lengths, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive (modes 1, 2, 4).
5843-X	DOT-E 5843	Union Carbide Corporation, Danbury, CT.	49 CFR 172.101, 173.315(a)(1).	To authorize shipment of 2 nonflammable gas in vacuum insulated non-DOT specification portable tanks (modes 1, 3).
6016-X	DOT-E 6016	Strate Welding Supply Co., Inc., Buffalo, NY.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
6016-X	DOT-E 6016	Acety-Arc, Inc., Paducah, KY	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6015-X	DOT-E 6016	Langdon Oxygen Co., Texarkana, TX.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	O.E. Meyer & Sons, Inc., Sandusky, OH.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	Southern Welding Supply Co., Inc., Bowling Green, KY.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	Wilson Welding Supply, Inc., Warren, MI.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6045-P	DOT-E 6045	Viskase Corporation, Chicago, IL.	49 CFR 173.121	To become a party to Exemption 6045 (modes 1, 3).
6325-X	DOT-E 6325	Atlas Powder Company, Dallas, TX.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks (mode 1).
6325-X	DOT-E 6325	Mining Services International Corp., Salt Lake City, UT.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks (mode 1).
6530-X	DOT-E 6530	Acme Welding Supply Co., Inc., Bismarck, ND.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX steel cylinders (modes 1, 2).
6530-X	DOT-E 6530	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders (modes 1, 2).
6530-X	DOT-E 6530	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders (modes 1, 2).
6691-X	DOT-E 6691	Union Carbide Corporation, Danbury, CT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To authorize use of DOT Specification 3A or 3AA cylinders over 35 years old which may be retested every 10 years, for transportation of certain flammable and nonflammable compressed gases (modes 1, 2, 3, 4, 5).
6735-X	DOT-E 6735	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.252	To authorize transport of bromine in a non-DOT specification cylinder constructed in accordance with all requirements of DOT Specification 4B, 4BA or 4BW except that the cylinder shall be marked "DOT-E 6735" in lieu of the DOT specification marking (modes 1, 2, 3).
6743-X	DOT-E 6743	Atlas Powder Company, Dallas, TX.	49 CFR 173.114a(h)(3), 173.182.	To authorize shipment of an oxidizing material and a blasting agent in DOT Specification 56 or 57 portable tanks (mode 1).
6765-X	DOT-E 6765	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.315(a), 178.780(a)(4).	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas (modes 1, 3).
6874-X	DOT-E 6874	Harrisons & Crosfield (Pacific), Inc., Emeryville, CA.	49 CFR 172.101, 173.370(a)(13).	To become a party to Exemption 6874 (modes 1, 2, 3).
6963-X	DOT-E 6963	Hedwin Corporation, Baltimore, MD.	49 CFR 173.119, 173.154, 173.221, 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.256(a), 173.257(a)(1), 173.263(a)(26), 173.265(d)(6), 173.268(b)(6), 173.278(g), 173.272(i)(6), 173.277(a)(6), 173.287(c)(1), 173.288, 173.289(a)(1), 173.292(a)(1), 173.346(a), 178.19.	To authorize manufacture, marking and sale of non-DOT specification molded polyethylene containers, for shipment of oxidizers, poison B, corrosive liquids, organic peroxides and flammable liquids (modes 1, 2, 3).
6921-X	DOT-E 6921	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 172.101, 173.315(a)(1).	To authorize use of a insulated containerized non-DOT specification portable tank, for transportation of liquefied helium (modes 1, 3).
7052-X	DOT-E 7052	Plainview Electronics Corporation, Plainview, NY.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials, classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Rockwell International Corporation, Anaheim, CA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Ballard Technologies Corporation, North Vancouver, B.C.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Datasonics, Inc., Cataumet, MA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-P	DOT-E 7052	Wespol, Inc., Houston, TX	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Hazeltine Corporation, Braintree, MA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	DURACELL Inc., Bethel, CT	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-P	DOT-E 7052	The Foxboro, Company, Foxboro, MA.	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Sonatech, Inc., Goleta, CA	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Exploration Logging Inc., Sacramento, CA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-P	DOT-E 7052	Mather Corporation, Bryn Mawr, PA.	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Saft Corporation of America, Cockeysville, MD.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Geophysical Research Corporation, Tulsa, OK.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	DOT-E 7052	GTE Products Corp., Waltham, MA.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	XCELATRON, Incorporated; Chimacum, WA.	49 CFR 172.101, 172.420, 175.3.	To become a party to Exemption 7052, (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Technical Oil Tool, Corporation Norman, OK.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	ENMET Corporation, Ann Arbor, MI.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Northrop Corp., Hawthorne, CA.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Sparton Corporation, Jackson, MI.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Flopetrol Johnston, a Division of Schlumberger, Houston, TX.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	GEODATA Systems Limited, Wiltshire, England.	49 CFR 172.101, 172.420, 175.3.	To To become a party to Exemption 7052 (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Bren-Tronics, Inc., Commack, NY.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7073-X	DOT-E 7073	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354(a) (6), 174.63(b).	To authorize use of non-DOT specification portable tanks for transportation of a Class B poisonous liquid, (modes 1, 2, 3).
7073-X	DOT-E 7073	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354,(a) (6), 174.63(b).	To authorize use of non-DOT specification portable tanks for transportation of a Class B poisonous liquid, (modes 1, 2, 3).
7495-X	DOT-E 7495	Brewer Chemical Corp., Honolulu, HI.	49 CFR 173.315,(a) (1), 173.353, 174.63(b).	To authorize methyl bromide, Class B poison, as an additional class of material (modes 1, 2, 3).
7541-X	DOT-E 7541	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of non-DOT specification portable tank for transportation of certain flammable and nonflammable compressed gases (modes 1, 3).
7598-X	DOT-E 7598	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	49 CFR 173.182(b), 173.194(a), 173.234(a), 173.245(a), 173.249(a), 173.263, 173.264, 173.266, 173.268, 173.272, 173.283, 173.287, 173.352, 173.370, 173.54(a), 178.255-1(a).	To authorize shipment of certain corrosive materials, oxidizers and Class B poisons in a portable tank complying with DOT Specification 60, except the ends are bolted instead of welded (mode 1).
7654-X	DOT-E 7654	Texas Eastman Company, Longview, TX.	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid (modes 1, 2).
7753-X	DOT-E 7753	Stauffer Chemical Company, Westport, CT.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum (modes 1, 2, 3).
7835-P	DOT-E 7835	AmeriGas, Inc., Valley Forge, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to Exemption 7835 (mode 1).
7835-P	DOT-E 7835	General Air Service & Supply, Denver, CO.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to Exemption 7835 (mode 1).
7891-X	DOT-E 7891	Sigma-Aldrich Corporation, Saint Louis, MO.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W (modes 1, 2, 4).
7891-P	DOT-E 7891	Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To become a party to Exemption 7891 (modes 1, 2, 4).
7926-X	DOT-E 7926	Alaska Marine Highway System, State of Alaska, Juneau, AK.	49 CFR 172.101, 176.905(L).	To authorize stowage of certain hazardous materials on the vehicle deck of passenger vessels (mode 3).
7945-X	DOT-E 7945	HTL Industries, Inc., Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize use of a stainless steel other than that prescribed in the regulations, in the construction of a cylinder patterned after DOT Specification 4DS cylinders, for shipment of a nonflammable compressed gas (modes 1, 2, 4, 5).
7954-X	DOT-E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.504, 173.301(d)(2), 173.302(a)(3).	To authorize shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders (modes 1, 3).
7981-P	DOT-E 7981	The Denver and Rio Grande Western Railroad Company, Denver, CO.	49 CFR 100-177	To become a party Exemption 7981 (mode 1).
8156-X	DOT-E 8156	Ashland Chemical, Columbus, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Union Carbide Corporation, Danbury, CT.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
8162–X	DOT–E 8162	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases (modes 1, 2, 3, 4, 5).
8354–X	DOT–E 8354	Compagnie des Containers Reservoirs (CCR), Paris, France.	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8354–X	DOT–E 8354	VTG, Hamburg, Germany	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8354–X	DOT–E 8354	ARBEL FAUVET RAIL, Paris, France.	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8451–P	DOT–E 8451	Pyrotechnic Specialities, Inc., Byron, GA.	49 CFR 173.86, 173.88(e), 175.3.	To become a party to Exemption 8451 (modes 1, 2, 4).
8453–X	DOT–E 8453	Atlas Powder Company, Dallas, TX.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or MC–312 stainless steel cargo tanks, to transport blasting agent (mode 1).
8468–X	DOT–E 8468	Hedwin Corporation, Baltimore, MD.	49 CFR 173.119, 173.125, 173.154, 173.272, 173.289, 173.348.	To authorize manufacture, marking and sale of DOT Specification 34 drums of 4, 5 and 6-gallon capacity, for shipmnet of certain flammable, poison B, corrosive liquids, oxidizers and organic peroxides (modes 1, 2, 3).
8650–X	DOT–E 8650	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354, 174.63(b).	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound (modes 1, 2, 3).
8650–X	DOT–E 8650	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354, 174.63(b).	To authorize non-DOT specification portable tanks in an ISO frame containing motor fuel antiknock compound to be shipped in container-on-flat-car-service (modes 1, 2, 3).
8718–X	DOT–E 8718	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinder for use as an equipment component aboard aircraft and marine craft, for transportation of certain nonflammable compressed gases (modes 1, 2, 3, 4, 5).
8770–X	DOT–E 8770	Eastman Kodak Co., Rochester, NY.	49 CFR 172.402, 173.206(c).	To authorize shipment of a corrosive liquid and minute quantity of a flammable, poisonous solid in DOT Specification 12A, 12B or 15A fiberboard or wooden boxes with inside glass bottles (modes 1, 2, 3).
8843–X	DOT–E 8843	GOEX, Inc., Cleburne, TX	49 CFR 173.246, 175.3	To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride (modes 1, 2, 3, 4).
8937–P	DOT–E 8937	Industrial Mineral Product, Inc., Ravensdale, WA.	49 CFR 173.178	To become a party to Exemption 8937 (modes 1, 2, 3).
8967–X	DOT–E 8967	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.93(a)(11)	To authorize shipment of a solid propellant explosive, in a non-DOT specification fiberboard tube, overpacked in a non-DOT specification palletized metal cage (mode 1).
9015–X	DOT–E 9015	Monsanto Company, St. Louis, MO.	49 CFR 173.217	To renew and to authorize potassium dichloro-s-triazinetrione and sodium dichloro-s-triazinetrione as additional oxidizers for shipment in bulk bags (modes 1, 2, 3).
9118–X	DOT–E 9118	ICI Americas Inc., Wilmington, DE.	49 CFR 173.245(a)(30)	To authorize shipment of 1,2-benzisothiazolin-3-one in aqueous solution or dispersion, either by itself or in combination with ethylenediamine or sodium hydroxide, in DOT Specification 57 steel portable tanks (modes 1, 2, 3).
9168–X	DOT–E 9168	All-Pak, Inc., Pittsburgh, PA	49 CFR 172.400, 172.504, 173.118, 173.244, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33.	To authorize manufacture, marking and sale of specially designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids shipped without POISON, CORROSIVE, or FLAMMABLE labels (modes 1, 2, 4).
9176–X	DOT–E 9176	Minnesota Valley Engineering, New Prague, MN.	49 CFR 173.304(a), 177.840(a)(1).	To authorize manufacture, marking and sale of DOT Specification 4L cylinders; for transportation of certain nonflammable gases (mode 1).
9181–X	DOT–E 9181	Honeywell, Inc., Horsham, PA.	49 CFR 173.206, 173.21, 173.247.	To authorize a DOT Specification 17C drum as overpack and to require the electical connector of the piston actuator to be covered with a Faraday shield cap (mode 1).
9184–X	DOT–E 9184	Midwest Carbide Corporation, Keokuk, IA.	49 CFR 173.178	To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only (modes 1, 2).
9184–X	DOT–E 9184	Cynamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.178	To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only (modes 1, 2).
9195–X	DOT–E 9195	Owens-Illinois, Inc., Toledo, OH.	49 CFR 173.119(b)(4)	To authorize manufacture, marking and sale of DOT Specification 12B fiberboard boxes with inside bottles of plastic other than polyethylene, of one quart capacity, for shipment of certain insect control chemicals (modes 1, 2, 3).
9251–X	DOT–E 9251	Orchard Supply Company of Sacramento, Sacramento, CA.	49 CFR 173.245	To authorize shipment of a corrosive liquid, n.o.s. in DOT Specification 51 portable tanks (mode 1).
9275–P	DOT–E 9275	Boyle-Midway, New York, NY.	49 CFR Parts 100–199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Firmenich, Inc., Princeton, NJ.	49 CFR Parts 100–199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Hercules, Incorporated, Wilmington, DE.	49 CFR Parts 100–199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Carter-Wallace, Inc., New York.	49 CFR Parts 100–199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Mary Kay Cosmetics, Dallas, TX.	49 CFR Parts 100–199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9340–X	DOT–E 9340	Pioneer Plastics & Services Co., Ltd., Brampton, Ont., Canada.	49 CFR 178.19, 178.253 Part 173, Subpart F.	To authorize a 540 gallon capacity polyethylene portable tank for shipment of certain corrosive liquids (modes 1, 2).
9529–P	DOT–E 9529	Viskase Corporation, Chicago, IL.	49 CFR 173.21	To become a party to Exemption 9529 (modes 1, 3).
9545–X	DOT–E 9545	Medical Diagnostics, Inc., Columbia, MO.	49 CFR 173.118(a)	To authorize rail as an additional mode of transportation (modes 1, 2).

NEW EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
9414–N	DOT–E 9414	Union Carbide Corporation, Danbury, CT.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane in DOT Specification 3AL aluminum cylinders (modes 1, 3).
9513–N	DOT–E 9513	American Cyanamid Company, Wayne, NJ.	49 CFR 173.343, 173.377.	To authorize transport of an organic phosphate formulation in a bulk motor vehicle (mode 1).
9518–N	DOT–E 9518	Hawthorne Aviation Inc., Hawthorne, NV.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), PART 107, APPENDIX B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment (mode 4).
9520–N	DOT–E 9520	Atlantic Richfield Company, Pasadena, CA.	49 CFR 173.315(h), 173.315(i), 173.32(n) 178.245–1, 178.245–4, 178.245–5.	To authorize a one time shipment of a nonflammable gas in thirty (30), non-DOT specification ASME Code "U" stamped portable tanks (modes 1, 3).

NEW EXEMPTIONS—Continued

EMERGENCY EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9574–N	DOT–E 9574	Chugach Electric Association, Inc., Anchorage, AK.	49 CFR 172.101 column 6, 173.315, 175.30.	To authorize use of non-DOT specification ASME Code "U" Stamped portable tank containing 4,000 pounds of carbon dioxide (mode 4).
EE 9575–N	DOT–E 9575	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101 column 6(b), 175.30, 175.320(b).	To authorize transport of shaped charges, commercial, and detonating cord, aboard cargo aircraft (mode 4).

WITHDRAWALS

Application number	Applicant	Regulation(s) Affected	Nature of exemption thereof
8522–P	Ashland Oil, Inc., Dublin, OH	49 CFR 177.839(a), 177.839(b), 178.150, Part 173 Subpart F	To become a party to Exemption 8522. (modes 1, 2, 3).

Denials

9444–N—Request by Champion Chemicals, Inc., Houston, TX to authorize reuse, without subjecting drums to the cleaning and rinsing steps of the reconditioning process of DOT Specification, Series 17 steel drums, for shipment of certain solvent-based intermediate materials, classed as flammable liquids denied February 5, 1986.

9482–N—Request by Dow Corning Corporation, Midland, MI to authorize transport of fammable liquids which are also corrosive materials in DOT specification 51 portable tanks denied February 18, 1986.

9556–N—Request by American Fireworks Company, Hudson, OH to authorize highway transport of limited quantities of certain special fireworks (Class B exposives) as fammable solid denied February 11, 1986.

Issued in Washington, DC, on March 13, 1986

J.R. Grothe,

Chief, Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 86–6042 Filed 3–19–86; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Grants and Cooperative Agreements; Elderly, Handicapped and Rural Programs in Insular Areas

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of policy.

SUMMARY: In response to a request from the Guam Mass Transit Authority (GMTA), the Urban Mass Transportation Administration (UMTA) announces its policy to provide for the consolidation of section 16(b)(2) and section 18 grants to the Insular Areas, as provided for in 48 U.S.C. 1469a. Public comment is invited. Consolidated of these grant programs is intended to minimize application and reporting requirements.

48 U.S.C. 1469a permits Federal agencies to streamline and consolidate certain grant-in-aid programs, such as the section 16(b)(2) elderly and handicapped program and the section 18 rural program, available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These areas are referred to collectively as the U.S. Insular Areas. Specifically, 48 U.S.C. 1469a permits:

(a) Agencies to consolidate any or all grants to each of these Insular Areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants, and

(b) Each Insular Area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

In light of this provision UMTA will permit Guam and other interested Insular Areas to consolidate section 18 and section 16(b)(2) grants.

Consolidation of these UMTA grant programs and application requirements should improve the efficiency of grant-making procedures. This is especially important for the Insular Areas since they have small staff resources which have been strained to fulfill the existing application and reporting requirements of the affected programs, and since the amount of funding under the affected programs is not large.

In addition, 48 U.S.C. 1469a(d) allows an agency to waive any local matching share requirements of less than $200,000 for grants to Insular Areas.

Insular Areas interested in submitting applications for consolidated grants and/or local share waivers should notify the appropriate UMTA Regional Office for application procedures and

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consolidation requirements. Among other things, the Area should identify the intended use of consolidated funds and should show that the transportation of the elderly and handicapped will not be adversely affected. Applications should be submitted in accordance with section 18 and section 16(b)(2 circulars as determined by UMTA.

DATE: This policy is effective immediately. However, UMTA is interested in receiving comments on this policy. Comments must be received within 60 days of this publication.

ADDRESS: Comments on this policy should be submitted to the UMTA Docket Number 85–A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. All written communications received on or before this comment period will be considered in determining whether adjustments to this policy may be warranted.

All comments and suggestions made will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA, if a self-addressed stamped postcard is included with each amount.

FOR FURTHER INFORMATION CONTACT: Daniel Duff, Assistant Chief Counsel for Legislation and Regulation, Office of the Chief Counsel, Room 9228, Telephone (202) 426–4011, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: March 17, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–6104 Filed 3–19–86; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:53 a.m. on Friday, March 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the liquidation of an asset acquired by the Corporation from The Bowery Savings Bank, New York City (Manhattan), New York (Case No. 46,456).

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–6212 Filed 3–18–86; 12:24 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Friday, March 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution (a) making funds available for the payment of insured deposits in Farmers and Merchants State Bank of Lamberton, Lamberton, Minnesota, which had been closed by the Deputy Commissioner of Commerce for the State of Minnesota on Friday, March 14, 1986, (b) accepting the bid of American Bank Mankato, Mankato, Minnesota, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (c) designating American Bank Mankato, Mankato, Minnesota, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of American Bank Mankato, Mankato, Minnesota, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Farmers and Merchants State Bank of Lamberton, Lamberton, Minnesota, and for consent to establish the sole office of Farmers and Merchants State Bank of Lamberton as a branch of American Bank Mankato.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–6213 Filed 3–18–86; 12:24 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 24, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish one branch:

The German American Bank, Jasper, Indiana, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Ireland, Ireland, Indiana, and for consent to establish the sole office of Bank of Ireland as a branch of the resultant bank.

Application for consent to purchase assets and assume liabilities:

First National Bank of Versailles, Versailles, Kentucky, for consent to purchase certain assets of and assume the liability to pay deposits made in the Versailles Branch of Future Federal Savings Bank, Louisville, Kentucky, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,452–L (Amendment)
  First National Bank, Snyder, Texas
Case No. 46,453–SR (Amendment)
  State Bank of Alexandria, Alexandria, Nebraska
Case No. 46,459
  The New Boston Bank and Trust Company, Boston Massachusetts
Case No. 46,460
  Mutual Savings Banks, New York Region Consolidation

Memorandum and resolution re: Delegations of authority to the Director, Division of Bank Supervision, to grant written approval for repayment of net worth certificates.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation

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pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Parts 303 and 309 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Disclosure of Information," respectively, which (1) require persons who have filed notices with the Corporation under the Change in Bank Control Act of 1978 ("CBCA") (12 U.S.C. 1817(j)), to publish an announcement of the notice's acceptance in a newspaper; and (2) make certain information regarding CBCA notices accepted by the Corporation available to the public upon request.

Memorandum and resolution re: Final amendments to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which amendments define the category of demand deposit and prohibit payment of interest on demand deposits.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6214 Filed 3-18-86; 12:24 p.m.]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 24, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meetings.

Discussion Agenda:

Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1985

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6215 Filed 3-18-86; 12:24 pm]

BILLING CODE 6714-01-M

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FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 11:00 a.m., Monday, March 24, 1986.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202) 377-6677.

MATTERS TO BE CONSIDERED: Deposit, Share, and Withdrawable Accounts.

Dated: March 17, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-6145 Filed 3-18-86; 9:03 am]

BILLING CODE 6720-01-M

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FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of office space needs of the Federal Reserve Board. (This item was originally announced for a closed meeting on March 17, 1986.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6254 Filed 3-18-86; 3:15 pm]

BILLING CODE 6210-01-M

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POSTAL SERVICE

By telephone vote on March 14 and 17, 1986, a majority of the members contacted and voting, the Board voted to add to the agenda for the closed session on Monday, April 7, 1986, the following item:

Consideration of proposed temporary third-class domestic mail classification schedule changes—sacking requirements.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and §7.3(c) of title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting

requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, classification, and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of title 39, United States Code, and §7.3(j) of title 39 Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of title 5, United States Code, and §7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code, and §7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 86-6252 Filed 3-18-86; 3:15 pm]

BILLING CODE 7710-12-M

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federal register

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Part II

Department of Transportation

Urban Mass Transportation Administration

Revised Fiscal Year 1986 UMTA Formula Grant Apportionments

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DEPARTMENT OF TRANSPORTATION

Revised Fiscal Year 1986 UMTA Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) established a formula grant program for Fiscal Years 1984, 1985, and 1986 under section 9 and section 18 of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). A notice published in the **Federal Register** on January 24, 1986 (51 FR 3310), provided the Fiscal Year 1986 apportionment of funds to each urbanized area over 200,000 in population, and to State Governors for both urbanized areas under 200,000 in population and nonurbanized areas. However, in light of the then pending reductions required by Gramm-Rudman-Hollings legislation, that Notice stated that only 50% of the apportionment would be available until further notice. Since the required reductions have now been determined, this Notice provides the revised apportionments. In addition, this Notice also includes revised apportionments for the section 16(b)(2) elderly and handicapped program.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 426–2053, 400 Seventh Street, SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance was enacted January 6, 1983, under the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The legislation is authorized for Fiscal Years 1984, 1985, and 1986. Funds for Fiscal Year 1986 were appropriated by the Department of Transportation and Related Agencies Appropriations Act, 1986, Pub. L. 99–190 (the Fiscal Year 1986 Appropriations Act).

Section 9 and 18 Programs

A Notice published in the **Federal Register** on January 24, 1986 (51 FR 3310), provided the Fiscal Year 1986 apportionment of section 9 and section 18 funds for urbanized and nonurbanized areas, based on census information and operating and financial data submitted for the 1984 section 15 Annual Report. However, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), Pub. L. 99–177, required reductions to be made in Fiscal Year 1986 funding availability to meet deficit reduction targets. These reductions for UMTA total 4.3 percent of Fiscal Year 1986 appropriated funds (in the case of the Formula program, a $92,450,000 reduction from $2,150,000,000).

Therefore, this Notice provides revised apportionment tables which reflect these required reductions. Since the section 9 apportionment tables include adjustments to correct previous data errors and, in addition, contain the apportionment of prior year unobligated section 5 funds, the actual figures shown do not only represent the 4.3 percent reduction.

Section 16(b) (2) Program

Governors were notified in a February 7, 1986, letter from the UMTA Administrator of the Fiscal Year 1986 apportionment under the section 16(b)(2) elderly and handicapped program. This Notice includes revised apportionments of those amounts based upon the Gramm-Rudman-Hollings reductions of 4.3 percent of Fiscal Year 1986 appropriated funds ($1,312,000 reduction from $30,500,000).

The revised section 16(b)(2) apportionments also do not reflect only the 4.3 percent reduction since the apportionment includes an amount of prior year redistributed funds, and since the section 16(b)(2) administrative formula provides a basic floor level of funding for each State. Also, some States received additional funding in Fiscal Year 1984 and 1985 in order to hold them harmless to Fiscal Year 1983 funding levels during the transition to the new section 16(b)(2) formula based on the 1980 census data. That transition is completed and States are no longer being held harmless to Fiscal Year 1983 levels.

Application Procedures

Applications for Section 9 funds should be submitted to the appropriate UMTA Regional Office in conference with UMTA Circular 9030.1, published June 27, 1983. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1, published May 23, 1985. Applications for section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9070.1A, published May 14, 1985.

Issued on: March 14, 1986.

Ralph L. Stanley,

Administrator.

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS, AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

Urbanized area	Apportionment
Akron, Ohio	$4,021,271
Albany-Schenectady-Troy, New York	5,901,850
Albuquerque, New Mexico	3,527,809
Allentown-Bethlehem-Easton, Pa.-N.J	2,994,919
Ann Arbor, Michigan	2,059,455
Atlanta, Georgia	22,141,631
Augusta, Georgia-South Carolina	1,299,610
Austin, Texas	3,221,857
Bakersfield, California	1,959,173
Baltimore, Maryland	23,089,602
Baton Rouge, Louisiana	2,477,951
Birmingham, Alabama	3,823,713
Boston, Massachusetts	60,802,242
Bridgeport, Connecticut	4,434,684
Buffalo, New York	9,228,082
Canton, Ohio	1,636,413
Charleston, South Carolina	1,142,365
Charlotte, North Carolina	2,925,282
Chattanooga, Tennessee-Georgia	1,959,120
Chicago, Illinois-Northwestern Indiana	162,638,650
Cincinnati, Ohio-Kentucky	9,572,570
Cleveland, Ohio	21,307,081
Colorado Springs, Colorado	2,341,228
Columbia, South Carolina	1,151,963
Columbus, Georgia-Alabama	1,565,041
Columbus, Ohio	9,330,014
Corpus Christi, Texas	1,561,462
Dallas-Fort Worth, Texas	18,060,680
Davenport-Rock Island-Moline, Iowa-Illinois	2,365,112
Dayton, Ohio	10,527,967
Denver, Colorado	14,920,819
Des Moines, Iowa	2,330,601
Detroit, Michigan	37,408,627
El Paso, Texas	3,866,291
Fayetteville, North Carolina	1,070,626
Flint, Michigan	2,379,192
Fort Lauderdale-Hollywood, Florida	7,766,931
Fort Wayne, Indiana	1,738,196
Fresno, California	3,360,677
Grand Rapids, Michigan	3,046,368
Greenville, South Carolina	1,250,968
Harrisburg, Pennsylvania	2,063,895
Hartford, Connecticut	5,871,194
Honolulu, Hawaii	16,753,677
Houston, Texas	24,965,612
Indianapolis, Indiana	6,643,277
Jackson, Mississippi	1,517,456
Jacksonville, Florida	5,078,299
Kansas City, Missouri-Kansas	9,970,352
Knoxville, Tennessee	1,427,383
Lansing, Michigan	2,236,067
Las Vegas, Nevada	2,683,287
Lawrence-Haverhill, Mass.-New Hampshire	2,503,384
Little Rock-North Little Rock, Arkansas	1,966,014
Lorain-Elyria, Ohio	991,190
Los Angeles-Long Beach, California	122,599,912
Louisville, Kentucky-Indiana	6,276,367
Madison, Wisconsin	3,499,323
Melbourne-Cocoa, Florida	1,353,231
Memphis, Tennessee-Arkansas-Mississippi	6,702,731
Miami, Florida	19,546,932
Milwaukee, Wisconsin	14,756,606
Minneapolis-St. Paul, Minnesota	17,432,877
Mobile, Alabama	1,766,741
Nashville-Davidson, Tennessee	4,073,009
New Haven, Connecticut	5,043,470
New Orleans, Louisiana	13,257,513
Newport News-Hampton, Virginia	2,281,969
New York, N.Y.-Northeastern New Jersey	516,089,671
Norfolk-Portsmouth, Virginia	5,672,668
Ogden, Utah	2,174,324
Oklahoma City, Oklahoma	3,559,866
Omaha, Nebraska-Iowa	5,152,373
Orlando, Florida	4,073,692
Oxnard-Ventura-Thousand Oaks, California	2,254,244
Pensacola, Florida	1,191,829
Peoria, Illinois	1,964,818
Philadelphia, Pennsylvania-New Jersey	67,815,703
Phoenix, Arizona	9,489,126
Pittsburgh, Pennsylvania	27,274,823
Portland, Oregon-Washington	14,594,184
Providence-Pawtucket-Warwick, R.I.-Mass	11,321,090

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS, AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION—Continued

Urbanized area	Apportionment
Raleigh, North Carolina	1,568,036
Richmond, Virginia	4,919,412
Rochester, New York	6,513,584
Rockford, Illinois	1,562,267
Sacramento, California	7,810,465
St. Louis, Missouri-Illinois	16,379,287
St. Petersburg, Florida	6,524,143
Salt Lake City, Utah	7,616,713
San Antonio, Texas	12,399,766
San Bernardino-Riverside, California	5,528,733
San Diego, California	20,823,912
San Francisco-Oakland, California	66,381,639
San Jose, California	18,030,080
San Juan, Puerto Rico	12,947,596
Sarasota-Bradenton, Florida	2,119,602
Scranton-Wilkes-Barre, Pennsylvania	3,179,534
Seattle-Everett, Washington	29,209,489
Shreveport, Louisiana	1,992,241
South Bend, Indiana-Michigan	2,017,034
Spokane, Washington	3,965,481
Springfield-Chicopee-Holyoke, Mass.-Conn	4,466,560
Syracuse, New York	4,898,341
Tacoma, Washington	5,529,449
Tampa, Florida	5,230,959
Toledo, Ohio-Michigan	5,185,496
Trenton, New Jersey-Pennsylvania	0
Tucson, Arizona	5,114,991
Tulsa, Oklahoma	2,961,260
Washington, D.C.-Maryland-Virginia	80,901,609
West Palm Beach, Florida	3,239,628
Wichita, Kansas	2,278,665
Wilmington, Delaware-New Jersey-Maryland	2,905,228
Worcester, Massachusetts	2,396,960
Youngstown-Warren, Ohio	2,187,083
Total	1,839,456,965

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS AMOUNTS APPORTIONED TO STATE GOVERNORS FOR AREAS UNDER 200,000 POPULATION

State	Apportionment
Alabama	$4,871,977
Alaska	987,897
Arizona	425,470
Arkansas	1,435,609
California	14,573,753
Colorado	3,220,991
Connecticut	12,861,046
Delaware	0
Florida	6,733,577
Georgia	3,750,390
Hawaii	961,215
Idaho	1,394,891
Illinois	9,252,466
Indiana	5,099,159
Iowa	3,178,898
Kansas	1,396,509
Kentucky	2,891,093
Louisiana	3,376,745
Maine	1,457,694
Maryland	1,279,629
Massachusetts	6,377,394
Michigan	5,894,955
Minnesota	1,927,781
Mississippi	1,628,445
Missouri	2,253,545
Montana	1,630,709
Nebraska	1,594,908
Nevada	1,294,474
New Hampshire	1,845,686
New Jersey	1,447,023
New Mexico	899,762
New York	4,613,496
North Carolina	7,906,509
North Dakota	1,386,216
Ohio	4,490,100
Oklahoma	977,611
Oregon	3,124,794
Pennsylvania	8,947,313
Puerto Rico	6,251,434
Rhode Island	497,429
South Carolina	1,562,664
South Dakota	992,763
Tennessee	1,700,694
Texas	15,643,452
Utah	1,267,857
Vermont	494,347
Virginia	3,543,330
Washington	2,986,221
West Virginia	3,269,018
Wisconsin	7,419,455
Wyoming	931,742
Total	183,974,151

REVISED FISCAL YEAR 1986 UMTA SECTION 18 FORMULA APPORTIONMENTS AMOUNTS APPORTIONED TO STATES FOR NONURBANIZED AREAS

State	Apportionment
Alabama	$1,432,960
Alaska	155,916
American Samoa	21,742
Arizona	541,678
Arkansas	1,159,965
California	2,822,792
Colorado	587,636
Connecticut	533,685
Delaware	152,668
Florida	1,560,365
Georgia	1,925,261
Guam	71,345
Hawaii	198,151
Idaho	908,729
Illinois	2,109,698
Indiana	1,944,921
Iowa	1,334,253
Kansas	1,015,946
Kentucky	1,634,597
Louisiana	1,349,257
Maine	599,382
Maryland	794,069
Massachusetts	870,007
Michigan	2,342,958
Minnesota	1,361,234
Mississippi	1,300,550
Missouri	1,546,052
Montana	369,158
Nebraska	629,896
Nevada	139,230
New Hampshire	422,468
New Jersey	722,495
New Mexico	523,464
New York	2,535,073
North Carolina	2,611,847
North Dakota	320,358
Northern Mariana Islands	11,298
Ohio	2,867,451
Oklahoma	1,163,778
Oregon	918,839
Pennsylvania	3,161,115
Puerto Rico	994,327
Rhode Island	106,252
South Carolina	1,309,723
South Dakota	371,649
Tennessee	1,699,118
Texas	3,439,862
Utah	276,950
Vermont	292,794
Virginia	1,549,946
Virgin Islands	65,010
Washington	1,017,089
West Virginia	1,040,949
Wisconsin	1,894,863
Wyoming	236,860
Total	69,094,784

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

State/Urbanized area	Percentage of State total	Amount
ALABAMA		
Governor's apportionment for areas 50,000 to 200,000 population		$4,871,977
Anniston	0.086822528	422,997
Auburn-Opelika	0.053977809	262,976
Decatur	0.063229779	308,054
Dothan	0.055416054	269,986
Florence	0.084918670	413,722
Gadsden	0.080022591	389,868
Huntsville	0.178566925	869,971
Montgomery	0.266398907	1,297,869
Tuscaloosa	0.130647942	636,514
ALASKA		
Governor's apportionment for areas 50,000 to 200,000 population		987,897
Anchorage	1.000000000	987,897
ARIZONA		
Governor's apportionment for area 50,000 to 200,000 population		425,470
Yuma, Ariz.-Calif	1.000000000	425,470
ARKANSAS		
Governor's apportionment for areas 50,000 to 200,000 population		1,435,609
Fayetteville-Springdale	0.237863535	341,506
Fort Smith, Ark.-Okla	0.355694045	510,636
Pine Bluff	0.326152749	468,228
Texarkana, Tex.-Ark	0.080289670	115,236
CALIFORNIA		
Governor's apportionment for areas 50,000 to 200,000 population		14,573,753
Antioch-Pittsburg	0.056144233	818,232
Chico	0.026000699	378,928
Fairfield	0.035404375	515,975
Hemet	0.027081398	394,677
Lancaster	0.022669529	330,380
Modesto	0.106369980	1,550,186
Napa	0.037061544	540,125
Palm Springs	0.025166937	366,777
Redding	0.020791165	303,005
Salinas	0.068773946	1,002,292
Santa Barbara	0.097776338	1,424,987
Santa Cruz	0.055662277	811,208
Santa Maria	0.031478975	458,767
Santa Rosa	0.077742782	1,133,004
Seaside-Monterey	0.072146587	1,051,476
Simi Valley	0.048443711	706,007
Stockton	0.127058944	1,851,692
Visalia	0.031503948	459,129
Yuba City	0.032594436	475,023
Yuma, Ariz.-Calif	0.000129223	1,883
COLORADO		
Governor's apportionment for areas 50,000 to 200,000 population		3,220,991
Boulder	0.247888669	798,412
Fort Collins	0.184172224	593,199
Grand Junction	0.119638374	385,342
Greeley	0.176069895	567,109
Pueblo	0.272238904	876,896
CONNECTICUT		
Governor's apportionment for areas 50,000 to 200,000 population		12,861,046
Bristol	0.076321818	981,541
Danbury, Conn.-N.Y.[1]	0.078443989	1,048,498
Meriden	0.064422523	457,217
New Britain	0.159172578	1,129,674
New London-Norwich	0.130540889	828,470

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Revised Fiscal Year 1986 UMTA Section 9 Formula Apportionments; Governor's Apportionment Attributable to 1980 Census Data for the Governor's Individual Urbanized Areas—Continued

State/Urbanized area	Percentage of State total	Amount
Norwalk¹	0.114930196	2,207,450
Stamford¹	0.200239129	2,809,898
Waterbury¹	0.173129234	2,620,498
DELAWARE		
FLORIDA		
Governor's apportionment for areas 50,to 200,000 population		6,733,577
Daytona Beach	0.165214252	1,112,493
Fort Myers	0.131222633	883,596
Fort Pierce	0.061882985	416,761
Fort Walton Beach	0.077563553	522,213
Gainesville	0.110314382	742,810
Lakeland	0.106491096	717,066
Naples	0.044267682	298,216
Ocala	0.044144210	297,246
Panama City	0.070912898	477,497
Tallahassee	0.118676086	799,115
Winter Haven	0.069290261	466,571
GEORGIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,750,380
Albany	0.144253459	541,007
Athens	0.106586724	399,731
Macon	0.246768154	925,481
Rome	0.081261000	304,760
Savannah	0.310501815	1,164,503
Warner Robins	0.100631849	377,408
HAWAII		
Governor's apportionment for areas 50,000 to 200,000 population		961,215
Kailua-Kaneohe	1.000000000	961,215
IDAHO		
Governor's apportionment for areas 50,000 to 200,000 population		$1,394,891
Boise City	0.722095208	1,007,244
Pocatello	0.277904792	387,647
ILLINOIS		
Governor's apportionment for areas 50,000 to 200,000 population		9,252,486
Alton	0.065843006	609,211
Aurora	0.132109676	1,222,334
Beloit, Wis.-Ill.	0.004716446	43,639
Bloomington-Normal	0.085098443	785,616
Champaign-Urbana	0.123690122	1,144,441
Danville	0.043117586	398,945
Decatur	0.088538812	819,186
Dubuque, Iowa-Ill.	0.001799864	16,645
Elgin	0.098666155	912,907
Joliet	0.142059532	1,314,404
Kankakee	0.058277686	539,216
Round Lake Beach	0.045950951	425,161
Springfield	0.109244401	1,010,782
INDIANA		
Governor's apportionment for areas 50,000 to 200,000 population		5,699,150
Anderson	0.090936671	518,263
Bloomington	0.102630098	584,906
Elkhart-Goshen	0.103129168	587,750
Evansville, Ind.-Ky.	0.231665437	1,320,298
Kokomo	0.094059162	536,052
Lafayette-West Lafayette	0.146963465	837,569
Muncie	0.132141744	753,097
Terre Haute	0.098475257	561,226
IOWA		
Governor's apportionment for areas 50,00 to 200,000 population		3,178,889
Cedar Rapids	0.312701377	994,043
Dubuque, Iowa-Ill.	0.167889022	533,729
Iowa City	0.132907300	422,487
Sioux City, Iowa-Nebr.-S. Dak.	0.166192865	528,309
Waterloo	0.220300436	700,311
KANSAS		
Governor's apportionment for areas 50,000 to 200,000 population		1,365,900
Lawrence	0.329236236	449,901
St. Joseph, Mo.-Kans.	0.005447895	7,445
Topeka	0.665316879	909,156
KENTUCKY		
Governor's apportionment for areas 50,000 to 200,000 population		2,891,003
Clarksville, Tenn.-Ky.	0.055470701	160,366
Evansville, Ind.-Ky.	0.059812843	172,919
Huntington-Ashland, W. VA.-Ky.-Ohio	0.141129969	408,005
Lexington-Fayette	0.545700611	1,577,623
Owensboro	0.197886288	572,090
LOUISIANA		
Governor's apportionment for areas 50,000 to 200,000 population		3,376,745
Alexandria	0.177653691	599,891
Houma	0.115544189	390,163
Lafayette	0.263904780	891,139
Lake Charles	0.228136026	770,357
Monroe	0.214761314	725,194
MAINE		
Governor's apportionment for areas 50,000 to 200,000 population		1,457,894
Bangor	0.212315736	309,491
Lewiston-Auburn	0.251591973	366,730
Portland	0.488139396	711,658
Portsmouth-Dover-Rochester, N.H.-Me.	0.047952895	69,915
MARYLAND		
Governor's apportionment for areas 50,000 to 200,000 population		1,279,629
Annapolis	0.362098677	463,352
Cumberland, Md.-W. Va.	0.290063590	371,174
Hagerstown, Md.-Pa.	0.347837831	445,103
MASSACHUSETTS		
Governor's apportionment for areas 50,000 to 200,000 population		6,377,394
Brockton	0.237443851	1,514,274
Fall River, Mass.-R.I.	0.188895876	1,204,664
Fitchburg-Leominster	0.069765776	444,924
Lowell, Mass.-N.H.	0.202923451	1,294,123
New Bedford	0.204475189	1,304,019
Pittsfield	0.053355844	340,272
Taunton	0.043139819	275,120
MICHIGAN		
Governor's apportionment for areas 50,000 to 200,000 population		5,674,955
Battle Creek	0.089999033	510,740
Bay City	0.103287972	586,155
Benton Harbor	0.075747058	429,861
Jackson	0.107320309	609,036
Kalamazoo	0.195076958	1,107,052
Muskegon-Muskegon Heights	0.128620277	729,914
Port Huron	0.077666360	440,967
Saginaw	0.222282149	1,261,328
MINNESOTA		
Governor's apportionment for areas 50,000 to 200,000 population		1,927,781
Duluth-Superior, Minn.-Wis.	0.298230847	575,040
Fargo-Moorhead, N. Dak.-Minn.	0.141370892	272,532
Grand Forks, N. Dak.-Minn.	0.0330541994	64,662
La Crosse, Wis.-Minn.	0.014340085	27,645
Rochester	0.272746223	525,799
St. Cloud	0.239708239	462,105
MISSISSIPPI		
Governor's apportionment for areas 50,000 to 200,000 population		1,829,445
Biloxi-Gulfport	0.606110832	1,108,240
Hattiesburg	0.184761601	337,828
Pascagoula-Moss Point	0.209127567	382,376
MISSOURI		
Governor's apportionment for areas 50,000 to 200,000 population		2,253,545
Columbia	0.181963996	410,069
Joplin	0.142773670	321,747
St. Joseph, Mo.-Kans.	0.234707183	528,923
Springfield	0.440555611	992,812
MONTANA		
Governor's apportionment for areas 50,000 to 200,000 population		1,630,709
Billings	0.395612195	645,128
Great Falls	0.344866928	562,378
Missoula	0.259520876	423,203
NEBRASKA		
Governor's apportionemnt for areas 50,000 to 200,000 population		1,534,808
Lincoln	0.950154973	1,458,303
Sioux City, Iowa-Nebr.-S. Dak.	0.049845027	76,502
NEVADA		
Governor's apportionment for areas 50,000 to 200,000 population		1,234,474
Reno	1.000000000	1,234,474
NEW HAMPSHIRE		
Governor's apportionment for areas 50,000 to 200,000 population		1,845,896
Lowell, Mass.-N.H.	0.002438545	4,501
Manchester	0.442744197	817,187
Nashua	0.303032757	559,303
Portsmouth-Dover-Rochester, N.H.-Me.	0.251784491	464,715
NEW JERSEY		
Governor's apportionment for areas 50,000 to 200,000 population		1,447,023
Atlantic City	0.700675556	1,013,894
Vineland-Millville	0.299324444	433,129

Revised Fiscal Year 1986 UMTA Section 9 Formula Apportionments; Governor's Apportionment Attributable to 1980 Census Data for the Governor's Individual Urbanized Areas—Continued

State/Urbanized area	Percentage of State total	Amount
NEW MEXICO		
Governor's apportionment for areas 50,000 to 200,000 population		699,762
Las Cruces	0.533416538	373,284
Santa Fe	0.466583462	326,497
NEW YORK		
Governor's apportionment for areas 50,000 to 200,000 population		4,613,486
Binghamton	0.279626652	1,290,067
Danbury, Conn.-N.Y.	0.003197697	14,753
Elmira	0.122003483	562,862
Glen Falls	0.072176050	332,983
Newburgh	0.089508855	412,938
Poughkeepsie	0.197037178	909,029
Utica-Rome	0.236250084	1,089,937
NORTH CAROLINA		
Governor's apportionment for areas 50,000 to 200,000 population		7,906,506
Asheville	0.075558357	597,403
Burlington	0.053723274	424,763
Concord	0.053581488	423,642
Durham	0.147901442	1,169,384
Gastonia	0.082485330	652,171
Goldsboro	0.041830828	330,734
Greensboro	0.165831085	1,311,146
Hickory	0.044607153	352,687
High Point	0.078627451	621,669
Jacksonville	0.052550863	415,482
Wilmington	0.063915624	505,349
Winston-Salem	0.139387625	1,102,069
NORTH DAKOTA		
Governor's apportionment for areas 50,000 to 200,000 population		1,386,216
Bismarck-Mandan	0.318685462	441,707
Fargo-Moorhead, N. Dak.-Minn.	0.386936110	536,377
Grand Forks, N. Dak.-Minn.	0.294378428	408,072
OHIO		
Governor's apportionment for areas 50,000 to 200,000 population		4,490,100
Hamilton	0.181179062	813,512
Huntington-Ashland, W.Va.-Ky.-Ohio	0.052518802	235,815
Lima	0.115237140	517,426
Mansfield	0.114098268	512,313
Middletown	0.128771660	578,189
Newark	0.077506284	348,080
Parkersburg, W.Va.-Ohio	0.012799829	57,470
Sharon, Pa.-Ohio	0.007796417	34,908
Springfield	0.179150675	804,404
Steubenville-Weirton, Ohio-W.Va.-Pa.	0.070639439	317,174
Wheeling, W.Va.-Ohio	0.060412069	271,258
OKLAHOMA		
Governor's apportionment for areas 50,000 to 200,000 population		977,811
Enid	0.320973680	313,851
Fort Smith, Ark.-Okla.	0.012156093	11,886
Lawton	0.666870417	652,073
OREGON		
Governor's apportionment for areas 50,000 to 200,000 population		3,124,704
Eugene	0.514203707	1,606,734
Longview, Wash.-Oreg.	0.002632844	8,227
Medford	0.125746026	392,919
Salem	0.357417422	1,116,824
PENNSYLVANIA		
Governor's apportionment for areas 50,000 to 200,000 population		8,947,313
Altoona	0.077174727	690,506
Erie	0.197103347	1,763,545
Hagerstown, Md.-Pa.	0.000639064	5,718
Johnstown	0.081167236	726,229
Lancaster	0.137809684	1,233,026
Monessen	0.047732680	427,079
Reading	0.183918037	1,645,572
Sharon, Pa.-Ohio	0.042343946	378,865
State College	0.057662270	515,922
Steubenville-Weirton, Ohio-W.Va.-Pa.	0.000176471	1,579
Williamsport	0.053234944	476,310
York	0.121037572	1,082,961
PUERTO RICO		
Governor's apportionment for areas 50,000 to 200,000 population		6,251,434
Aguadilla	0.080008368	500,173
Arecibo	0.091640011	572,881
Caguas	0.214622934	1,341,701
Mayaguez	0.150299096	939,586
Ponce	0.353241780	2,208,289
Vega Baja-Manati	0.110186793	688,825
RHODE ISLAND		
Governor's apportionment for areas 50,000 to 200,000 population		497,429
Fall River, Mass.-R.I.	0.217861331	108,370
Newport	0.782138669	389,059
SOUTH CAROLINA		
Governor's apportionment for areas 50,000 to 200,000 population		1,562,954
Anderson	0.205620609	321,301
Florence	0.216505405	338,389
Rock Hill	0.193761240	302,822
Spartanburg	0.384212746	600,472
SOUTH DAKOTA		
Governor's apportionment for areas 50,000 to, 200,000 population		992,763
Rapid City	0.363412810	360,784
Sioux City, Iowa-Nebr.-S.Dak.	0.010462344	10,387
Sioux Falls	0.626123846	621,592
TENNESSEE		
Governor's apportionment for areas 50,000 to 200,000 population		1,700,684
Bristol, Tenn.-Bristol, Va.	0.096894436	164,858
Clarksville, Tenn.-Ky.	0.183644602	312,322
Jackson	0.177359857	301,634
Johnson City	0.273361635	464,895
Kingsport, Tenn.-Va.	0.269640470	458,875
TEXAS		
Governor's apportionment for areas 50,000 to 200,000 population		$15,943,452
Abilene	0.037183113	591,672
Amarillo	0.065119035	1,034,287
Beaumont	0.050184620	7685,059
Brownsville	0.051081542	808,476
Bryan-College Station	0.035542669	556,015
Galveston	0.028913277	462,304
Harlingen-San Benito	0.027787978	434,700
Killeen	0.042271712	682,840
Laredo	0.067930323	1,082,985
Longview	0.026850446	416,905
Lubbock	0.077763403	1,216,801
McAllen-Pharr-Edinburg	0.080833437	1,284,512
Midland	0.032710807	511,712
Odessa	0.049389847	772,578
Port Arthur	0.044571784	697,256
San Angelo	0.033458508	523,375
Sherman-Denison	0.020695205	323,598
Temple	0.019092261	298,659
Texarkana, Tex.-Ark.	0.018258769	285,630
Texas City-La Marque	0.036791451	575,454
Tyler	0.033614132	525,841
Victoria	0.026254742	410,715
Waco	0.050320985	787,194
Wichita Falls	0.041878992	655,131
UTAH		
Governor's apportionment for areas 50,000 to 200,000 population		1,267,857
Provo-Orem	1.000000000	1,267,857
VERMONT		
Governor's apportionment for areas 50,000 to 200,000 population		$494,347
Burlington	1.000000000	494,347
VIRGINIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,543,330
Bristol, Tenn.-Bristol, Va.	0.036236980	128,396
Charlottesville	0.148464485	526,059
Danville	0.104609124	370,665
Kingsport, Tenn.-Va.	0.007005082	24,821
Lynchburg	0.146392785	518,718
Petersburg-Colonial Heights	0.200938928	711,942
Roanoke	0.356452707	1,263,099
WASHINGTON		
Governor's apportionment for areas 50,000 to 200,000 population		2,986,221
Bellingham	0.121333911	362,330
Bremerton	0.148902280	444,964
Longview, Wash.-Oreg.	0.118787872	354,727
Olympia	0.150025195	448,003
Richland-Kennewick	0.244733674	730,829
Yakima	0.216127079	645,403
WEST VIRGINIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,283,018
Charleston	0.364170692	1,196,290
Cumberland, Md.-W.Va.	0.005419834	17,855
Huntington-Ashland, W.Va.-Ky.-Ohio	0.236730936	778,192
Parkersburg, W.Va.-Ohio	0.155083819	507,067
Steubenville-Weirton, Ohio-W.Va.-Pa.	0.081409712	266,965
Wheeling, W.Va.-Ohio	0.170100139	581,173
WISCONSIN		
Governor's apportionment for areas 50,000 to 200,000 population		7,418,455
Appleton	0.167294251	1,241,158
Beloit, Wis.-Ill.	0.043604138	323,519
Duluth-Superior, Minn.-Wis.	0.019806871	146,463
Eau Claire	0.065130677	483,234
Green Bay	0.123466586	838,479
Janesville	0.052937082	392,029
Kenosha	0.120808523	897,080
La Crosse, Wis.-Minn.	0.070149272	520,425
Oshkosh	0.062629975	465,164
Racine	0.153983181	1,142,100

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REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
Sheboygan	0.055669135	466,636
Wausau	0.051646651	383,190
WYOMING		
Governor's apportionment for areas 50,000 to 200,000 population		931,742
Casper	0.532792106	496,425
Cheyenne	0.467207894	435,317
Total	103,974,181	

[1] An appropriate amount for commuter rail from UZA's above 200,000 has been included.

REVISED FISCAL YEAR 1986 UMTA SECTION 16(b)(2) APPORTIONMENTS TO STATES

State	Apportionment
Alabama	591,212
Alaska	136,434
American Samoa	50,758
Arizona	387,003
Arkansas	410,198
California	2,277,187
Colorado	341,877
Connecticut	438,819
Delaware	177,309
District of Columbia	192,474
Florida	1,581,409
Georgia	803,886
Guam	127,384
Hawaii	192,836
Idaho	208,732
Illinois	1,240,954
Indiana	630,986
Iowa	453,565
Kansas	384,332
Kentucky	505,467
Louisiana	496,454
Maine	246,934
Maryland	491,716
Massachusetts	762,526
Michigan	944,540
Minnesota	531,605
Mississippi	390,817
Missouri	586,632
Montana	187,027
Nebraska	290,281
Nevada	183,184
New Hampshire	212,838
New Jersey	884,885
New Mexico	229,092
New York	2,042,794
North Carolina	678,777
North Dakota	191,868
Northern Mariana Islands	80,387
Ohio	1,164,258
Oklahoma	455,839
Oregon	386,072
Pennsylvania	1,457,169
Puerto Rico	373,030
Rhode Island	258,389
South Carolina	391,400
South Dakota	201,582
Tennessee	581,788
Texas	1,249,930
Utah	219,852
Vermont	175,461
Virginia	575,262
Virgin Islands	128,589
Washington	499,141
West Virginia	337,406
Wisconsin	601,813
Wyoming	156,434
Total	$29,887,554

[FR Doc. 86-6105 Filed 3-19-86; 8:45 am]

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federal register

Thursday
March 20, 1986

Part III

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1435

Loan and Purchase Programs; Sugar Producers Protection; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Protection of Sugar Producers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth provisions which are designed to protect sugar producers as mandated by section 401(e)(2) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Under the rule, the Commodity Credit Corporation (CCC) will pay sugar producers the maximum benefits from the sugar price support program, less benefits previously received by the producers, in the event of the insolvency of the processor with whom they have entered into a contract for the processing of sugar beets or sugarcane. Interested persons are invited to submit written comments on the proposed rule.

DATES: Comments must be received on or before April 10, 1986 in order to be assured of consideration.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Ross ballard, Program Specialist, Cotton, grain, and Rice Price Support Division, Agricultural Stabilization and Conservation service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-4704.

SUPPLEMENTARY INFORMATION: The Information collection requirements proposed by this rule will not become effective until they have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in this rule may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, DC 20503, Telephone (202) 395-7340.

This proposed rule has been reviewed under USDA procedures established in accordance with the provisions of Departmental Regulations 1512-1 and Executive Order 12291 and has been classified "not major." The provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Statutory Authority

This activity is required pursuant to section 401(e) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

Section 401(e)(2) of the 1949 Act provides that if bankruptcy or other insolvency of a sugar processor caused producers of sugar beets and sugarcane not to receive maximum benefits from the sugar price support program within 30 days after the final settlement date provided for in the contract between such producers and processor, the Secretary of Agriculture, through CCC, on demand of the producers and on such assurances as to nonpayment as the Secretary may require, shall pay such producers the maximum benefits from the price support program, minus any benefits previously received by the producers. Section 401(e)(2) of the 1949 Act creates an obligation under which the Secretary is required to pay producers amounts which, previously, the producers could legally only recover from the bankrupt or insolvent sugar company through bankruptcy or insolvency proceedings.

The payments which are made available to producers in accordance with the terms and conditions of this regulations are subject to reduction to the extent required by the Balanced Budget and Emergency Deficit Control Act of 1985, Title II of Pub. L 99-177 (popularly known as the "Gramm-Rudman-Hollings Act").

Need for Immediate Action

Some producers of 1984 crop sugar beets that were delivered to a processor participating in the 1984 sugar program will not receive the maximum benefit of the price support program as a result of the bankruptcy or other insolvency of the processor. These producers are eligible to apply for payment because the final settelement date provided for in their contract with the sugar processor was after January 1, 1985. Therefore, the comment period with respect to this proposed rule is limited to 21 days. Comments are requested and should be submitted on or before April 10, 1986 in order to be assured of consideration.

Major Program Provisions

Producer Eligibility

Only those producers whose contracts with their processors had a final settlement date after January 1, 1985 and who have not received the maximum price support benefits due to the bankruptcy or other insolvency of a processor who was a participant in the sugar price support program would be eligible for payment. Producers of sugar beets and sugarcane that contracted with processors not participating in the sugar price support program would not be eligible for payment under this subpart.

Subrogation

In order to be eligible to receive a payment from CCC under this subpart a producer must subrogate to CCC all claims against the processor and other persons responsible for nonpayment. CCC would then have the authority to pursue such claims against the processor and other persons responsible for nonpayment to recover any benefits not paid to the producers in accordance with the terms and conditions of the sugar price support program.

Administration

A producer who has not received at least the price support level applicable to that producer's crop of sugar beets or sugarcane from a processor participating in the price support program may apply at the producer's local county Agricultural Stabilization and

Conservation Service (ASCS) office for payments made available under this subpart. The application must be submitted no earlier than 30 days after, and no later than 60 days after, the final settlement date provided for in the contract between the producer and the processor. A request for payment must be made by producers or their designated agent on a form prepared by CCC. Commodity Credit Corporation expects that this form will include (1) a certification as to the quality and quantity of the sugar beets or sugarcane that the producer delivered to the processor, (2) a certification concerning liens or other encumbrances with respect to such sugar beets or sugarcane, and (3) an agreement by the producer regarding subrogation. CCC also expects that county offices will verify some of the information obtained from producers and identify possible claims due to CCC, and this material will be forwarded to a central location which will (1) perform necessary compliance checks and (2) disburse payments. In the case of eligible producers of 1984 crop sugar beets, the final date for producers to apply for payment will be 30 days following the effective date of the final rule. Producers must provide information required by CCC to assure eligibility.

List of Subjects in 7 CFR Part 1435

Agriculture, Loan programs, Payments, Price support programs, Sugar.

Proposed Rule

PART 1435—[AMENDED]

Accordingly, it is proposed that a new subpart be added to 7 CFR Part 1435 as follows:

A new subpart consisting of §§ 1435.200 through 1435.206 is added to read as follows:

Subpart—Regulations Governing the Protection of Sugar Producers

Sec.	
1435.200	General statement.
1435.201	Definitions.
1435.202	Producer eligibility.
1435.203	Benefit payment to producers.
1435.204	Liens.
1435.205	Subrogation of claims.
1435.206	OMB control number assigned pursuant to Paperwork Reduction Act.

Subpart—Regulations Governing the Production of Sugar Producers

Authority: Sec. 401(e)(2), Agricultural Act of 1949 (7 U.S.C. 1421(e)(2)); 5 U.S.C. 301.

§ 1435.200 General statement.

If the bankruptcy or other insolvency of a processor has caused producers of sugar beets or sugarcane not to receive maximum benefits from the price support program for sugar beets or sugarcane within 30 days after the final settlement date provided for in the contract between such producers and processor, CCC, on demand of the producers and on such assurances as to nonpayment as CCC may require, shall pay such producers benefit payments.

§ 1435.201 Definitions.

The following definitions apply to terms used in this subpart:

"ASCS" means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

"Benefit payment(s)" means an amount to be paid to eligible producers equal to the difference between the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments, and any benefits previously received by the producers with respect to such crop of sugar beets and sugarcane.

"CCC" means the Commodity Credit Corporation, United States Department of Agriculture.

§ 1435.202 Producer eligibility.

(a) A producer of sugar beets or sugarcane shall be considered to be eligible for benefit payments only: (1) For that quantity of domestically-produced sugar beets or sugarcane sold under contract to a processor who was a participant in the price support program for sugarcane or sugar beets for the applicable corp; (2) if the contract with the processor provided for a final settlement date after January 1, 1985; (3) if the processor failed to make payment on the final settlement date due to bankruptcy or other insolvency; and (4) if the producer was an eligible producer for purposes of the price support program for the applicable crop of sugar beets or sugarcane.

(c) CCC may require as a condition of payment such documentation or other proof of the producer's eligibility, the processor's nonpayment, or other element of the benefit payment as CCC determines appropriate.

§ 1435.203 Benefit payment to producers.

(a) *Where to request benefit payments.* A producer must request a benefit payment from CCC at the producer's local county ASCS office, in a manner and on a form prescribed by CCC.

(b) *Availability dates.* A producer must request a benefit payment no earlier than 30 days, and no later than 60 days, after the final settlement date provided for in the contract between the producer and the processor, unless otherwise approved by CCC. In the case of eligible producers of 1984 crop sugar beets, the final date for producers to demand a benefit payment shall be 30 days following the effective date of this regulation, unless otherwise approved by CCC.

(c) *Method of payment.* Benefit payments will be made by checks drawn on CCC, by credit to the producer's account, or by such other means as CCC determines appropriate.

§ 1435.204 Liens.

(a) In order to receive a benefit payment, a producer must certify to CCC whether there were any liens or encumbrances on the sugar beets or sugarcane that that producer sold to the applicable processor under the applicable contract as of the time of delivery of the sugar beets or sugarcane to the processor, or as of the time title to the sugar beets or sugarcane transferred from the producer if title transferred at a time other than at the time of delivery to the processor. If there were any such liens or encumbrances, the producer must provide CCC with a certified list of all such liens or encumbrances together with the names and addresses of the holders of such liens or encumbrances and the amount held by each such holder.

(b) Commodity Credit Corporation will make all benefit payments jointly to the producer and the holders of such liens or encumbrances unless the producer provides CCC with a waiver of all such liens or encumbrances by each such holder or a certified statement by such holder that the liens or encumbrances have been extinguished. Commodity Credit Corporation may prescribe the form for such waivers or statements.

§ 1435.205 Subrogation of claims.

(a) A producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment. Any recoveries by that producer from any source whatsoever for the processor's nonpayment must be immediately forwarded to CCC. The producer shall cooperate with CCC in CCC's efforts to collect on the claims subrogated to CCC.

(b) A producer shall maintain the books and records pertaining to the benefit payments and the applicable contracts with the processor for a period of at least 3 years following the producer's demand for payment under

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this subpart. Authorized officials of the United States Department of Agriculture shall have access to, and right to examine, any pertinent books, documents, papers and records of the producer.

§ 1435.206 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1435.200 through 1435.206) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0095.

Signed at Washington DC, on March 17, 1986.

Milton J. Hertz,

Acting Executive Vice President, CCC.

[FR Doc. 86–6069 Filed 3–19–86; 9:58 am]

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Alcohol, Tobacco and Firearms Bureau

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout,
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WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
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Rules and Regulations

Federal Register
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Friday, March 21, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action makes a correction in the administrative rules and regulations issued under the Federal marketing order for California almonds. A final rule published in the Federal Register on April 13, 1977 (42 FR 19321) established a paragraph concerning reserve reporting as § 981.474(c). However, that paragraph was never published in the Code of Federal Regulations. On November 20, 1985, a paragraph concerning custom processing reporting was published as § 981.474(c) by a final rule published in the Federal Register (50 FR 47707). This action corrects this error of designating two separate paragraphs as § 981.474(c) by redesignating the paragraph concerning reserve reporting as § 981.474(d) and allowing the paragraph concerning custom processing reporting to remain § 981.474(c).

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This action corrects § 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 50 FR 16451, 24174, 30263, and 47707) by redesignating a paragraph which was inadvertently omitted from the Code of Federal Regulations. This subpart is issued under the marketing agreement and Order No. 981 (7 CFR 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The redesignated paragraph concerns reporting requirements for handlers diverting reserve almonds to noncompetitive outlets. The paragraph was originally published in the Federal Register on April 13, 1977 (42 FR 19321) as § 981.474(c). However, the paragraph was inadvertently omitted from the Code of Federal Regulations. This omission has had no adverse effect on handler compliance with the provision's reporting requirements as all affected persons were aware of the regulation.

A regulation involving custom processing reporting was inadvertently published as § 981.474(c) by a final rule published in the Federal Register on November 20, 1985 (50 FR 47707). This action corrects this error of designating two separate paragraphs as § 981.474(c) by redesignating the paragraph concerning reserve reporting as § 981.474(d) and allowing the paragraph concerning custom processing to remain § 981.474(c).

List of Subjects in 7 CFR Part 981

Marketing agreements and order, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as Amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.474 is amended by adding a new paragraph (d) as follows:

§ 981.474 Other reports.

* * * * *

(d) *Reserve reports.* In any crop year when reserve almonds are diverted to noncompetitive outlets, such handler shall report such handler's intentions to divert on ABC Form 13 and the completion of diversion on ABC Form 14. Upon notice to all handlers, the Board may waive the requirements to file ABC Form 13 for diversion of almonds to noncompetitive outlets which are acceptable to the Board.

Dated: March 14, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86-6148 Filed 3-20-86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 51, 74 and 150

Material Balance Reports of Source Material and Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations concerning the submission of material balance inventory reports of source material and special nuclear material. The rule will reduce the reporting requirements imposed on affected licensees without adversely affecting the domestic safeguards program or NRC's ability to satisfy existing international and domestic safeguards commitments. This action eliminates the requirement to submit a statement of material balance for U.S. origin source material for all licensees except those reporting under the U.S./IAEA Safeguards Agreement. It also eliminates the requirement to report the composition of ending inventory on Form 742C for all except nuclear reactor licensees and licensees reporting under the Agreement.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427-4233.

SUPPLEMENTARY INFORMATION:

Background

Currently, NRC licensees authorized to possess more than 350 grams of special nuclear material are required to submit an inventory report for each material type on Forms 742 and 742C as of March 31 and September 30 each

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year. Also, NRC and Agreement State licensees authorized to possess more than 1,000 kilograms of source material are required to submit a yearly statement of their source material holdings as of September 30 each year. This information is necessary to the domestic inspection program and is needed to provide to the Australian and Canadian Governments a periodic report showing the inventory of all the materials in each U.S. facility that is subject to their respective bilateral agreements. As a part of a reevaluation of the safeguards data collection and processing requirements, the NRC examined the possibility of eliminating the requirements for licensees to report inventories on Forms 742 (Material Balance Report) and 742C (Physical Inventory Listing) for most licensees. It concluded that, with the exception of those licensees reporting under the U.S./IAEA Safeguards Agreement, the requirements for reporting inventories on Material Balance Reports could be deleted. It also concluded, however, that it needed a composition of ending inventory to be submitted on Form 742C by licensees of nuclear reactors for meeting its domestic responsibilities. Therefore, it decided to retain the requirements for submitting Form 742C for nuclear reactor licensees and licensees reporting under the U.S./IAEA Safeguards Agreement.

Proposed Rule

For licensees other than those reporting under the U.S./IAEA Safeguards Agreement, the proposed rule (50 FR 19695, May 10, 1985) would have eliminated the requirement to submit Form 742. For all licensees other than those with nuclear reactors and those reporting under the U.S./IAEA Safeguards Agreement, the proposed rule woud have eliminated the requirement to submit Form 742C. Instead, the NRC would have computer-generated for each licensee, an inventory report based on material transaction reports submitted to it on Form 741 for special nuclear material and foreign origin source material. (In a separate rulemaking action effective July 16, 1984 (49 FR 24705, June 15, 1984), the requirement to report domestic transfers of U.S. origin source material was deleted. Only imports, exports, and domestic transfers of foreign origin source material are currently reported to the transaction data base.) This NRC-generated report would have been submitted to the licensee for review and verification with the licensee's book inventory data or with the results of a physical inventory by the licensee, as the case may be. The licensee would then have submitted any supplemental data necessary to reconcile any difference between the NRC's data and its data.

The proposed amendment would have affected approximately 350 NRC and Agreement State licensees of which approximately 150 are small independent industrial manufacturers each with an estimated annual gross income of less than $1 million and a staff of fewer than 500 people. The NRC concluded that, as a result of this change, the reporting requirements for each affected special nuclear material licensee would have been reduced by two reports per year and the reporting requirements for each affected source material licensee would have been reduced by one statement per year. The process of the licensee verification of the computer-generated report would have affected partially the reduction in licensee reporting, but the net requirements on licensees was thought to be less than those of generating and submitting the currently required reports.

When 10 CFR Part 74 was published on February 25, 1985 (50 FR 7575), it contained the MC&A regulatory requirements for low enrichment uranium (LEU) licensees. Certain safeguards-related recordkeeping and reporting requirements, formerly found in Part 70, were also moved to new Part 74 in order to separate them from safety reporting requirements. The reporting requirement for SNM physical inventory results is therefore included in Part 74.

On March 12, 1984 (49 FR 9362), the NRC published a final rule which implemented section 102(2) of the National Environmental Policy Act of 1969 as amended (NEPA). Section 51.22 identifies the type of regulatory and licensing actions which may be eligible for categorical exclusion. The categorical exclusion in 10 CFR 51.22(c)(3) which applies to amendments to the Commission's regulations which relate to recordkeeping and reporting requirements includes Part 70 but does not include Part 74. When Part 74 was promulgated in February 1985, portions of the existing recordkeeping requirements in Part 70 and all of the reporting requirements in Part 70, both of which were specifically covered by the environmental impact categorical exclusion in § 51.22(c)(3), were transferred to Part 74. At that time, however, the requisite conforming amendment to add Part 74 to the list of parts identified in § 51.22(c)(3) was not made. To remedy this inadvertent oversight, a conforming amendment is now being made to 10 CFR 51.22(c)(3) to add Part 74 to the list of parts referenced in that categorical exclusion.

Summary of Public Comments

The sixty-day comment period for the proposed rule expired on July 9, 1985. The NRC received comments from twelve respondents. The comments were mixed as to whether or not an actual reduction in reporting requirements would be achieved.

Proposed § 40.64

There were no public comments received which specifically addressed this proposed section. However, the NRC determined to revise this section (which deals with reports on material balances of source material) so that it is compatible with its revisions to proposed § 74.13 (discussed below) on material balance statements of special nuclear material. The NRC has revised existing § 40.64 by explicitly eliminating the requirement for reporting material balances of source material by licensees who possess only domestic origin source material. This fulfills the intent, implicit in the proposed procedure for an NRC-generated report to not require this information.

Proposed § 70.53

As a consequence of the promulgation of 10 CFR Part 74 on March 27, 1985 (50 FR 7575), reporting requirements of Part 70 are now contained in Part 74. All changes proposed to § 70.53 are therefore contained in § 74.13 as described below.

Revised § 74.13

Four commenters, all power reactor licensees, opposed the proposed revision. They pointed out that a requirement to verify and update the proposed report generated by NRC was likely to increase rather than decrease a power reactor licensee's reporting effort. It was also pointed out that there was a workload associated with changing the existing licensees' programs and procedures and that the result might be a degradation of the accounting systems. One of the commenters opposing adoption of the proposed amendment to this section also suggested that NRC revise DOE Form RW–859 to allow reporting of current isotopes by assembly. This would allow elimination of Forms 742 and 742C for reactor licensees which report composition of special nuclear material on an assembly basis. Seven commenters, four power reactor licensees, too university reactor licensees and one fuel facility licensee, supported the proposed amendments. Some of these commenters suggested

modifications to the amendments as proposed. (One of these supporting the amendment pointed out that promulgation of new Part 74 now makes it necessary to reflect changes to reporting requirements in Part 74 as well as in Part 70. This suggestion has been adopted.)

After reviewing the comments, NRC has concluded that replacing licensee-generated reports of material balances for both source material and special nuclear material with an NRC-generated report is likely to increase rather than decrease licensees' reporting efforts. Licensees would be obliged to retain most of their current accounting and reporting programs and procedures in addition to verifying and updating data produced outside of that system. For that reason, NRC is abandoning the proposal to generate material balance reports and to require source material and special nuclear material licensees to verify and update them. It will continue to require special nuclear material licensees to submit reports of material balances on Form 742.

By retaining the requirements for licensees to submit Form 742 and by not adopting the proposed amendments, the suggestions by two power reactor licensees and by a fuel facility licensee to extend the period for verifying the NRC-generated report become moot. Similarly, the suggestion by a power reactor licensee to tie the date for submission of Form 742C to that of Form 742 is also moot.

The proposal is being adopted to eliminate the requirement for licensees other than those reporting under the US/IAEA Safeguards Agreement and those with nuclear reactors (power, test, research and others) to report composition of inventory semi-annually on Form 742C.

A number of suggestions unrelated to the proposal to generate an NRC report were not adopted. (1) A suggestion that Form 741 (Material Transaction Report) be revised to simplify its completion by licensees was not adopted because this was outside the scope of the original proposal. (2) Another commenter suggested eliminating the requirement for nuclear reactor licenses to submit material balance information entirely. This suggestion was not adopted because it was determined that use of the Form 742 by nuclear reactor licensees was necessary to ensure the accounting of material by these licensees on a periodic basis. (3) A suggestion to revise DOE Form RW–850 to provide current isotopes on an assembly basis was not adopted. That form is currently undergoing revision by DOE. After completion of that revision, modification to provide NRC reporting requirements may be explored. (4) Another suggestion that licensees of "small" reactors be excused from submitting this report was also not adopted. Low power reactors do not produce substantial changes in the isotopic composition of their fuel over considerable periods of time. Nonetheless, there is no readily distinguishing feature for identifying reactors to be excused from the requirement. This suggestion, however, may become part of another effort to reduce the reporting requirements imposed upon nonpower reactor licensees.

Proposed § 150.17

No comments were received specifically addressing this proposed amendment. This section is being revised to be consistent with § 40.64(b), the other portion of regulations treating source material.

Environmental Impact: Categorical Exclusion

The NRC has determined that the amendments to Parts 40, 51 and 74 in this final regulation are the type of action described in categorical exclusion of 10 CFR 51.22(c)(3) and that the amendment to Part 150 in this final regulation is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule had been approved by the Office of Management and Budget. OMB approval Nos. 3150–004, 3150–0020, 3150–0032, 3150–0058, 3150–0123.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Single copies of the draft analysis may be obtained from June Robertson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4233.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact upon a substantial number of small entities due to the fact that all affected licensees will experience a decrease in their reporting requirements.

The final rule reduces the number of specific licensees required to report inventories of nuclear materials under 10 CFR 40.64 and 150.17 from 350 to 250. Currently, approximately 200 of these licensees submit two reports each year to report inventories of special nuclear materials. The remaining 150 licensees submit one report each year to report holdings of source material. The economic impact on all licensees will be reduced because approximately 100 small licensees which currently complete a report(s) will not report inventories at all. Currently, the time needed to complete the report is two hours.

The approximately 100 licensees which need not complete and submit an inventory report are small independent industrial licensees which currently submit one report each year. This is a reduction of (2 hrs×100) 200 hours each year.

The average small independent industrial licensee has an annual gross income of less than $1 million and employs fewer than 500 people. The cost for complying with the reduced requirement does not pose an economic impact. There will be no additional cost for any licensee as a result of these amendments.

Backfit Analysis

On May 10, 1985 (50 FR 19695), the Commission published in the **Federal Register** proposed amendments to the NRC's safeguards data collection and reporting requirements. The proposed amendments would have eliminated the requirement for licensees possessing special nuclear material (SNM) with more than 350 grams of contained uranium-235 to complete and submit semiannual Material Balance Reports, DOE/NRC Form 742. In its stead, NRC proposed to prepare a report of material balance for each licensee based upon information submitted by these licenses on Nuclear Material Transaction Reports, DOE/NRC Form 741. The NRC report was then to be reviewed, corrected, and updated by licensees as necessary. Power reactor licensees would have been subject to these revised procedures. The Commission intended by this change to reduce the reporting burden.

Four power reactor licensees commented that these proposed

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amendments were more likely to increase their reporting effort than decrease it. In view of this comment, these proposed rules that would have required changes in the recordkeeping and reporting requirements for power reactor licensees have been deleted from the final rule. Power reactor licensee reporting requirements will remain unchanged. Because there is nothing in the final amendments that requires a change in any component system, or procedure at a nuclear power reactor, the Commission's backfit rule (10 CFR 50.109) is not applicable to this rulemaking proceeding.

List of Subjects

10 CFR Part 40

Governmental contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 74

Accounting, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 522 and 553, the NRC is adopting the following amendments to 10 CFR Parts 40, 51, 74 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 40.64, paragraph (b) is revised to read as follows:

§ 40.64 Reports.

* * * * *

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year a statement of its foreign origin source material inventory. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained by writing to the U.S. Nuclear Regulatory Commission, Division of Safeguards, Washington, DC 20555.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

2. In § 51.22, paragraph (c)(3) is revised to read as follows. Paragraph (c) introductory text is shown for the convenience of the reader.

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

* * * * *

(c) The following categories of actions are categorical exclusions:

* * * * *

(3) Amendments to Parts 20, 30, 31, 32, 33, 34, 35, 40, 50, 51, 60, 61, 70, 71, 72, 73, 74, 81 and 100 of this chapter which relate to (i) procedures for filing and reviewing applications for licenses or construction permits or other forms of permission or for amendments to or renewals of licenses or construction permits or other forms of permission; (ii) recordkeeping requirements; or (iii) reporting requirements; and (iv) actions on petitions for rulemaking relating to these amendments.

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846).

For the purposes of sec. 223, 63 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.31, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b), 2201(i)); and §§74.11, 74.13, and 74.15 are issued under sec. #161o 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 74.13, paragraph (a)(1) is revised to read as follows:

§ 74.13 Material status reports.

(a)(1) Each licensee authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit to the Commission (on DOE/NRC Form 742, Material Balance Report) material balance reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by it. Each nuclear reactor licensee, as defined in §§ 50.21 and 50.22 of this chapter, also shall prepare (on DOE/NRC Form 742C, Physical Inventory Listing) a statement of the composition of the ending inventory, and submit it to the Commission as an attachment to each material balance report. Each licensee shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. The

Commission may permit a licensee to submit such reports at other times when good cause is shown. In preparing and submitting the reports described in this paragraph, each licensee shall comply with the printed instructions for completing the particular form.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

6. The authority citation for Part 150 continues to read as follows:

Authority: Section 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 150.17, paragraph (b) is revised to read as follows:

§ 150.17 Submission to the Commission of source material reports.

* * * * *

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year, a statement of the licensee's foreign origin source material inventory. This statement must be submitted to the address specified in the printed instructions (NUREG/BR–0007) and must include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained by writing to U.S. Nuclear Regulatory Commission, Division of Safeguards, Washington, DC 20555.

* * * * *

Dated at Bethesda, Maryland, this 11th day of March, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Acting Executive Director for Operations.

[FR Doc. 86-6268 Filed 3-20-86; 8:45 am]

BILLING CODE 7590-01-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Ch. XII

Termination of Functions; Revocation of Regulations

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule, Notice of Termination of Depository Institutions Deregulation Committee, Revocation of Regulations, Delegation of Authority over Records and Residual Matters.

SUMMARY: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96–221; 12 U.S.C. 3501 et seq.) ("DIDA") mandates that on March 31, 1986, the Depository Institutions Deregulation Committee ("DIDC") be terminated. Pub. L. 96–211, Title II, section 210; 12 U.S.C. 3509. In accordance with that requirement, this document revokes the regulations of the DIDC and removes the regulations of the DIDC from the Code of Federal Regulations since they no longer have any legal existence. All future correspondence concerning the DIDA should be directed to the Assistant Secretary of Treasury (Domestic Finance).

EFFECTIVE DATE: 12:01 A.M., April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Bowman, Office of the General Counsel, Department of Treasury, Room 2026, Main Treasury Building, Washington, DC 20220 (202) 566–6737.

SUPPLEMENTARY INFORMATION: The DIDC has resolved to delegate to the Assistant Secretary of the Treasury (Domestic Finance) the authority to deal with any residual matters relating to the disposition of records and Freedom of Information Act requests and the permanent responsibility and authority to take all necessary and appropriate actions incidental to the termination of the DIDC's operations. Because the DIDC's regulations have no further legal existence, the DIDC voted to take such actions as are necessary to revoke those regulations and remove them from the Code of Federal Regulations: 12 CFR Parts 1201, 1202, 1203, 1204. These CFR sections deal with rules of organization and procedure for the DIDC, rules regarding availability of DIDC information, rules regarding public observation of the DIDC meetings, and rules regarding interest on deposits. Readers are referred to 31 CFR, Subtitle A, for regulations concerning the Office of the Assistant Secretary of the Treasury (Domestic Finance).

The DIDC has determined that notice and public procedure on this rule are unnecessary, pursuant to 5 U.S.C. 553(b), since there is no authority for the DIDC to exist or exercise any authority after March 31, 1986. The DIDA has terminated the DIDC effective March 31, 1986. Pub. L. 96–221, Title II, section 210; 12 U.S.C. 3509. For these same reasons, the DIDC has determined that a delayed effective date for this rule is unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(d)(3).

Accordingly, for the reasons set out in the preamble, 12 CFR is amended by removing Parts 1201, 1202, 1203, 1204 and vacating Chapter XII.

List of Subjects in 12 CFR Chapter XII

Banks, Banking, Savings and loan associations.

Authority: Title II of Pub. L. 96–221; 12 U.S.C. 3501 et seq.

Dated: March 18, 1986.

Mark G. Bender,

Executive Secretary of the Depository Institutions Deregulation Committee.

[FR Doc. 86-6277 Filed 3-20-86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Special Air Traffic Rules; High Density Traffic Airports Slot Allocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting to withdraw high density traffic airport slots.

SUMMARY: On March 7, 1986, the Department issued a Special Federal Aviation Regulation which announced the date and location of lotteries to reallocate certain air carrier slots at LaGuardia, O'Hare International, and Washington National Airports (51 FR 8632, March 12, 1986). A lottery to allocate five percent of slots at the three airports will be held on March 27, 1986. A lottery will be held on March 26, 1986, to withdraw slots from incumbent air carriers at each airport as necessary to make a total of five percent of slots

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available. At the request of affected incumbent carriers, the drawing to determine the order in which carriers will select the slots to be withdrawn has been rescheduled for 1:00 p.m. on March 25. This will provide carriers subject to withdrawal of slots additional time to plan for the actual withdrawal on March 26.

This notice announces a meeting to conduct a drawing to determine the order in which incumbent air carriers at LaGuardia, O'Hare, and Washington National Airports will select slots to be withdrawn. The meeting will be held at FAA Headquarters on March 25, 1986.

DATE: The meeting will be held on Tuesday, March 25, 1986, at 1:00 p.m.

ADDRESS: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC–230, Telephone: (202) 426–3691, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of Special Federal Aviation Regulation No. 48, "Special Slot Withdrawal and Reallocation Procedures," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 426–8058. Communications must identify the amendment number of the document.

Public Process

This notice announces a meeting to conduct a drawing to determine the order in which incumbent air carriers will select slots for withdrawal at LaGuardia, O'Hare, and Washington National Airports. The meeting is open to the public and all interested persons are invited to attend. The meeting will begin at 1:00 p.m. on Tuesday, March 25, 1986, at FAA Headquarters, in the Third Floor Auditorium.

Issued in Washington, DC, on March 17, 1986.

E. Tazewell Ellett,

Chief Counsel.

[FR Doc. 86–6178 Filed 3–20–86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 760]

United States Steel Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1924 order (8 F.T.C. 1) issued against respondent by deleting a requirement that the company included specific price and transportation information on its contracts and invoices.

DATES: Order issued July 21, 1924. Modifying Order issued March 10, 1986.

FOR FURTHER INFORMATION CONTACT: FTC/L–301, Daniel P. Ducore, Washington, DC 20580. (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of United States Steel Corporation, et al.

List of Subjects in 16 CFR Part 13

Steel, Trade practices.

(Sec. 6, 38 Stat., 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Federal Trade Commission

Order Reopening and Modifying Order Issued on July 21, 1924

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

[Docket No. 760]

In the Matter of United States Steel Corporation, *et al.*

On November 7, 1985, respondent United States Steel Corporation ("USS") filed its "Request to Reopen and Set Aside in Part and Modify in Part the Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. 760 and to modify the order issued by the Commission in this case on July 21, 1924, by deleting paragraph 3, which requires USS to state clearly on its contracts and invoices how much is charged for the steel f.o.b. the producing or shipping point and how much, if any, is charged for the actual transportation. USS also asks that the order be modified to specify that, "Quotations and sales may be made on a net delivered price basis so long as there is no concerted refusal to quote or sell rolled steel products f.o.b. the plant where the products are manufactured or from which they are shipped." USS' request was placed on the public record for thirty days; no comments were received.

After reviewing USS' request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order to eliminate paragraph 3. The requirement that price and transportation information be included on USS' contracts and invoices for rolled steel products was adopted principally as a fencing-in restraint ancillary to the order's prohibitions against the use of the "Pittsburgh Plus" or other basing point pricing system and against price discrimination. USS has shown that since the deregulation of railroad freight rates by the Staggers Rail Act of 1980, 49 U.S.C. 10701 *et seq.*, enacted by Congress to promote competition by allowing carriers to negotiate confidential contract rates with their customers, many carriers have insisted that USS not disclose their negotiated rates. This change in the legal framework within which carriers and USS now operate, and the carriers' insistence upon confidentiality within that new framework, represents a changed condition of fact warranting elimination of the order's requirement that the actual freight charge appear on contracts and invoices between USS and its customers. Disclosure of USS' rates in its invoices allows USS' competitors to discover any favorable terms which it has negotiated with carriers and would reduce the incentive of a rail carrier to offer USS a favorable rate. Elimination of Paragraph 3 is therefore in the public interest because it will enable USS to compete effectively for contract rates.

The disclosure requirements of paragraph 3 appear to have served their remedial purpose. There is no indication that USS has used the "Pittsburgh Plus" or other basing point system of pricing or engaged in price discrimination of the type contemplated by the order since July 21, 1924. Nothing in the record suggests that the requirements of paragraph 3 are now needed to ensure that basing point pricing or price discrimination are not reinstituted by USS.

With respect to the remainder of the Request, which asks that the order be modified to specify that, "Quotations and sales may be made on a net delivered price basis so long as there is no concerted refusal to quote or sell rolled steel products f.o.b. the plant where the products are manufactured or from which they are shipped," such modification is not necessary. Once paragraph 3 is deleted, the remaining provisions of the order do not restrict USS' ability to quote or sell on a net delivered price basis. Rather, these provisions only ban quoting or selling of rolled steel products at "Pittsburgh Plus" prices, which the order defines as adding to the price of products shipped from points outside Pittsburgh amounts equal to the freight if the products had been shipped from Pittsburgh, or upon any other basing point. Net delivered pricing would not, therefore, be precluded so long as there was no charge for fictitious freight.

Accordingly, it is ordered that this matter be, and it hereby is, reopened and that paragraph 3 of the order be, and it hereby is, deleted.

Issued: March 10, 1986.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86–6183 Filed 3–20–86; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–6653; 34–23026; 35–24051; 39–1089; IC–14992; IA–1017]

Approved Information Collections; Current OMB Expiration Dates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Subpart N of Part 200 relating to collection requirements under the Paperwork Reduction Act to reflect current OMB expiration dates for approved information collections.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fogash, Deputy Executive Director, SEC, 450 Fifth Street, NW., Washington, DC 20549 (202) 272–2142.

SUPPLEMENTARY INFORMATION: The Commission will amend Subpart N periodically to reflect current information.

The Commission finds that this amendment, concerning the display of the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act, pertains only to procedural matters; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq., requiring advance notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register.**

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Securities.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information, Collection Requirements Under the Paperwork Reduction Act: OMB, Control Nos. and Expiration Dates

The authority citation for Part 200, Subpart N continues to read as follows:

Authority

44 U.S.C. 3507(f); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 902, 904, 905, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 14981500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54, Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a–37.

Section 200.800 is amended by revising the OMB control number and expiration date for Rule 17Ad4 (b) and (c); by adding Form N–7, Form S–4, Form N–14, Form F–4, Form ET, Form ID, Form SE, Form TA–2, Form N–SAR, Rule 2a19–1, Rule 26a–3, Form N–3, and Form N–4; by deleting Form C–3, Form S–12, Form S–14, Rule 17a–12, Rule 17a–16, Rule 17a–17, Rule 17a–20, Rule 24b–2, Form 2–MD, Form X–17a–12(1), Form X–17a–12(2), Form X–17A–16(1), Form X–17A–16(2), Form X–17a–17, Rule 48(b), Form N–1R, Form N–30A–2, Form N–30A–3, Form N–5R and Form N–1Q; and revising certain expiration dates in paragraph (b) as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Revise:			
Regulation S–X	Part 210	3235–0009	Jan. 31, 1988.
Regulation S–K	Part 229	3235–0071	Jan. 31, 1988.
Rule 236	§ 230.236	3235–0095	Mar. 31, 1987.
Regulation A	§§ 230.251 through 230.264	3235–0286	Jan. 31, 1988.
Regulation B	§§ 230.300 through 230.345	3235–0093	May 31, 1987.
Regulation C	§§ 230.400 through 230.494	3235–0074	Mar. 31, 1987.
Regulation D	§§ 230.501 through 230.506	3235–0076	Jan. 31, 1988.
Rule 604	§ 230.604	3235–0232	June 30, 1987.
Rule 605	§ 230.605	3235–0232	June 30, 1987.
Rule 606	§ 230.606	3235–0232	June 30, 1987.
Rule 607	§ 230.607	3235–0232	June 30, 1987.
Rule 609	§ 230.609	3235–0232	June 30, 1987.
Regulation F	§§ 230.651 through 230.656	3235–0094	Oct. 31, 1987.
Form S–1	§ 239.11	3235–0065	Sept. 30, 1988.
Form S–2	§ 239.12	3235–0072	Sept. 30, 1988.
Form S–3	§ 239.13	3235–0073	Sept. 30, 1988.
Form N–1A	§ 239.15A	3235–0307	Dec. 31, 1986.
Form S–6	§ 239.16	3235–0184	Sept. 30, 1987.
Form S–11	§ 239.18	3235–0067	Sept. 30, 1988.
Form S–18	§ 239.28	3235–0098	Nov. 30, 1986.
Form S–15	§ 239.29	3235–0053	Mar. 31, 1988.
Form F–1	§ 239.31	3235–0258	May 31, 1988.
Form F–2	§ 239.32	3235–0257	May 31, 1988.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Form F-3	§ 239.38	3235-0256	May 31, 1988.
Form F-6	§ 239.36	3235-0292	Jan. 31, 1988.
Form S-R	§ 239.61	3235-0124	Oct. 31, 1987.
Form 1-A	§ 239.90	3235-0286	Jan. 31, 1988.
Form 2-A	§ 239.91	3235-0286	Jan. 31, 1988.
Form 3-A	§ 239.92	3235-0286	Jan. 31, 1988.
Form 4-A	§ 239.93	3235-0286	Jan. 31, 1988.
Form 5-A	§ 239.94	3235-0286	Jan. 31, 1988.
Form 6-A	§ 239.95	3235-0286	Jan. 31, 1988.
Form 7-A	§ 239.96	3235-0286	Jan. 31, 1988.
Schedules A, B, C, D	§ 239.101	3235-0093	Mar. 31, 1987.
Form 1-G	§ 239.101	3235-0093	Mar. 31, 1987.
Form 3-G	§ 239.101	3235-0093	Mar. 31, 1987.

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Form 1-E	§ 239.200	3235-0232	June 30, 1987.
Form 2-E	§ 239.201	3235-0233	Jan. 31, 1988.
Form 1-F	§ 239.300	3235-0094	Oct. 31, 1987.
Form D	§ 239.500	3235-0076	Jan. 31, 1988.
Rule 6a-1	§ 240.6a-1	3235-0017	Sept. 30, 1988.
Rule 6a-2	§ 240.6a-2	3235-0022	Sept. 30, 1988.

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Rule 11Ab2-1	§ 240.11Ab2-1	3235-0043	Sept. 30, 1987.
Rule 12a-5	§ 240.12a-5	3235-0079	Oct. 31, 1987.
Regulation 12B	§ 240.12b-1 through 240.12b-36	3235-0062	Oct. 31, 1987.
Rule 12d1-3	§ 240.12d1-3	3235-0109	Oct. 31, 1987.
Rule 12d2-1	§ 240.12d2-1	3235-0081	Oct. 31, 1987.
Rule 12d2-2	§ 240.12d2-2	3235-0080	Oct. 31, 1987.
Rule 12f-1	§ 240.12f-1	3235-0128	Oct. 31, 1987.
Rule 12f-2	§ 240.12f-2	3235-0248	Nov. 30, 1987.
Rule 12f-3	§ 240.12f-3	3235-0249	Nov. 30, 1987.
Rule 12g3-2	§ 240.12g3-2	3235-0119	Jan. 31, 1988.
Regulation 13D/G	§ 240.13d-1 through 240.13d-7	3235-0145	Sept. 30, 1988.
Schedule 13D	§ 240.13d-101	3235-0145	Sept. 30, 1988.
Schedule 13G	§ 240.13d-102	3235-0145	Sept. 30, 1988.
Rule 13e-1	§ 240.13e-1	3235-0305	Feb. 28, 1989.

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Rule 13e-4	§ 240.13e-4	3235-0203	Feb. 28, 1989.
Schedule 13e3	§ 240.13e-100	3235-0007	June 30, 1988.
Schedule 13e-4	§ 240.13e-101	3235-0203	Feb. 28, 1989.
Regulation 14A	§§ 240.14a-1 through 240.14a-12	3235-0059	Sept. 30, 1988.
Schedule 14A	§ 240.14a-101	3235-0059	Sept. 30, 1988.
Schedule 14B	§ 240.14a-102	3235-0059	Sept. 30, 1988.
Regulation 14C	§ 240.14c-1	3235-0057	Sept. 30, 1988.
Schedule 14C	§ 240.14c-101	3235-0057	Sept. 30, 1988.
Regulation 14D	§ 240.14d-1 through 240.14d-8	3235-0102	Jan 31, 1987.
Schedule 14d-1	§ 240.14d-100	3235-0102	Jan. 31, 1987.
Schedule 14d-9	§ 240.14d-101	3235-0102	Jan. 31, 1987.
Regulation 14E	§§ 240.14e-1 through 240.14e-2	3235-0102	Jan. 31, 1987.
Rule 14f-1	§ 240.14f-1	3235-0108	Dec. 31, 1987.

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Rule 15Aa-1	§ 240.15Aa-1	3235-0089	Sept. 30, 1987.
Rule 15Aj-1	§ 240.15Aj-1	3235-0044	Sept. 30, 1987.
Rule 15b1-1	§ 240.15b1-1	3235-0012	May 31, 1988.

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Rule 15b1-3	§ 240.15b1-3	3235-0011	May 31, 1988.

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Rule 15b2-1	§ 240.15b2-1	3235-0014	Sept. 30, 1987.
Rule 15b3-1	§ 240.15b3-1	3235-0013	Sept. 30, 1987.

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Rule 15Ba2-1	§ 240.15Ba2-1	3235-0083	Sept. 30, 1988.
Rule 15Ba2-2	§ 240.15Ba2-2	3235-0090	Oct. 31, 1987.
Rule 15Ba2-4	§ 240.15Ba2-4	3235-0089	Oct. 31, 1987.
Rule 15Ba2-5	§ 240.15Ba2-5	3235-0088	Oct. 31, 1987.
Rule 15Ba2-6	§ 240.15Ba2-6	3235-0086	Oct. 31, 1987.
Rule 15Bc3-1	§ 240.15Bc3-1	3235-0087	Oct. 31, 1987.
Rule 15c2-5	§ 240.15c2-5	3235-0198	Nov. 30, 1987.

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Rule 15c3-1	§ 240.15c3-1	3235-0200	May 31, 1987.
Rule 15c3-3	§ 240.15c3-3	3235-0078	Apr. 30, 1987.
Rule 15c1-7	§ 240.15c1-7	3235-0134	Oct. 31, 1987.

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Rule 17a-3	§ 240.17a-3	3235-0033	May 31, 1988.

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Rule 17a-5	§ 240.17a-5	3235-0123	May 31, 1987.
Rule 17a5(c)	§ 240.17a5(c)	3235-0199	Sept. 30, 1988.
Rule 17a-7	§ 240.17a-7	3235-0131	Oct. 31, 1988.
Rule 17a-8	§ 240.17a-8	3235-0092	Nov. 30, 1987.
Rule 17a-10	§ 240.17a-10	3235-0122	Oct. 31, 1987.
Rule 17a-11	§ 240.17a-11	3235-0085	Sept. 30, 1987.
Rule 17a-13	§ 240.17a-13	3235-0035	Oct. 31, 1987.
Rule 17a-19	§ 240.17a-19	3235-0133	Oct. 31, 1987.
Rule 17a-22	§ 240.17a-22	3235-0196	Nov. 30, 1987.
Rule 17Ab2-1 (a) and (e)	§ 240.17Ab2-1 (a) and (e)	3235-0195	Nov. 30, 1987.
Rule 17Ac2-1 (a) and (c)	§ 240.17Ac2-1 (a) and (c)	3235-0084	June 30, 1988.
Rule 17Ac3-1(a)	§ 240.17Ac3-1	3235-0151	Oct. 31, 1987.

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Rule 17Ad2 (c), (d) and (h)	§ 240.Ad2 (c), (d) and (h)	3235-0130	Oct. 31, 1987.
Rule 17Ad4 (b) and (c)	§ 240.17Ad4 (b) and (c)	3235-0341	Jan. 31, 1989.

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Rule 17Ad-11	§ 240.17Ad(11)	3235-0274	Jan. 31, 1989.
Rule 17Ad-13	§ 240.17Ad(13	3235-0275	Jan. 31, 1989.
Rule 17f-1(b)	§ 240.17f-1(b)	3235-0032	Nov. 30, 1988.
Rule 17f-1(c)	§ 240.17f-1(c)	3235-0037	Nov. 30, 1988.

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Rule 17f-2(a)	§ 240.17f-2(a)	3235-0034	Oct. 31, 1988.
Rule 17f-2(c)	§ 240.17f-2(c)	3235-0029	Sept. 30, 1987.
Rule 17f-2(d)	§ 240.17f-2(d)	3235-0028	Sept. 30, 1987.
Rule 17f-2(e)	§ 240.17f-2(e)	3235-0031	Sept. 30, 1988.
Rule 17f-5	§ 240.17f-5	3235-0269	Sept. 30, 1988.
Rule 19b-4	§ 240.19b-4	3235-0045	Sept. 30, 1987.

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Rule 19d-2	§ 240.19d-2	3235-0205	Nov. 30, 1987.
Rule 19d-3(b)-(1)	§ 240.19d-3(b)-(1)	3235-0240	Nov. 30, 1987.

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Rule 24b-1	§ 240.24b-1	3235-0194	Nov. 30, 1987.
Form 1	§ 249.1	3235-0017	Sept. 30, 1988.
Form 1-A	§ 249.1a	3235-0022	Sept. 30, 1988.
Form 25	§ 249.25	3235-0080	Oct. 31, 1987.
Form 26	§ 249.26	3235-0079	Oct. 31, 1987.
Form 27	§ 249.27	3235-0248	Nov. 30, 1987.
Form 28	§ 249.28	3235-0249	Nov. 30, 1987.
Form 3	§ 249.103	3235-0104	Nov. 30, 1987.
Form 4	§ 249.104	3235-0287	Jan. 31, 1989.
Form 8-A	§ 249.208a	3235-0056	Oct. 31, 1987.
Form 8-B	§ 249.208b	3235-0068	Sept. 30, 1988.
Form 10	§ 249.210	3235-0064	Sept. 30, 1988.
Form 18	§ 249.218	3235-0121	May 31, 1988.
Form 20-F	§ 249.220f	3235-0288	May 31, 1987.
Form 6-K	§ 249.306	3235-0116	May 31, 1988.
Form 8-K	§ 249.308	3235-0060	Oct. 31, 1987.
Form 10-Q	§ 249.308a	3235-0070	Sept. 30, 1988.
Form 10-K	§ 249.310	3235-0063	Feb. 28, 1989.
Form 10-C	§ 249.310c	3235-0191	Nov. 30, 1987.
Form 11-K	§ 249.311	3235-0082	Mar. 31, 1987.
Form 18-K	§ 249.318	3235-0120	May 31, 1988.
Form 12b-25	§ 249.322	3235-0058	Mar. 31, 1988.

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Form 13F	§ 249.325	3235-0006	Jan. 31, 1988.
Form 8	§ 249.460	3235-0141	Mar. 31, 1987.
Form BD	§ 249.501	3235-0012	May 31, 1988.

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Form X-17A-5	§ 249.617	3235-0123	May 31, 1987.
Form X-17A-19	§ 249.635	3235-0133	Oct. 31, 1987.

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Form X-15AA-1	§ 249.801	3235-0030	Sept. 30, 1987.
Form X-15AJ-1	§ 249.802	3235-0044	Sept. 30, 1987.
Form X-15AJ-2	§ 249.803	3235-0044	Sept. 30, 1987.
Form 19b-4	§ 249.819	3235-0045	Sept. 30, 1987.
Form SIP	§ 249.1001	3235-0043	Sept. 30, 1987.
Form MSD	§ 249.1100	3235-0083	Sept. 30, 1988.
Form MSDW	§ 249.1110	3235-0087	Oct. 31, 1987.
Form X-17f-1A	§ 249.1200	3235-0037	Nov. 30, 1988.
Form TA-1	§ 249b.100	3235-0084	June 30, 1988.
Form TA-W	§ 249b.101	3235-0151	Oct. 31, 1987.
Form CA-1	§ 249b.200	3235-0195	Nov. 30, 1987.
Rule 1(a)	§ 250.1(a)	3235-0170	Sept. 30, 1988.
Rule 1(b)	§ 250.1(b)	3235-0170	Sept. 30, 1988.

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Rule 2	§ 250.2	3235-0161	Sept. 30, 1988.
Rule 3	§ 250.3	3235-0160	Sept. 30, 1988.
Rule 7	§ 250.7	3235-0165	Sept. 30, 1988.
Rule 7(d)	§ 250.7(d)	3235-0165	Sept. 30, 1988.
Rule 20(b)	§ 250.20(b)	3235-0125	Sept. 30, 1988.
Rule 20(d)	§ 250.10(d)	3235-0163	Sept. 30, 1988.
Rule 24	§ 250.24	3235-0128	Sept. 30, 1988.
Rule 26	§ 250.26	3235-0183	Sept. 30, 1988.
Rule 29(a)	§ 250.29a	3235-0149	Sept. 30, 1988.
Rule 29(b)	§ 250.29(b)	3235-0149	Sept. 30, 1988.
Rule 42	§ 250.42	3235-0171	Sept. 30, 1988.
Rule 44	§ 250.44	3235-0147	Sept. 30, 1988.
Rule 45	§ 250.45	3235-0154	Sept. 30, 1988.
Rules 47(b) and 20(d)	§§ 250.47(b) and 250.20(d)	3235-0163	Sept. 30, 1988.
Rule 48(b)	§ 250.48(b)	3235-0158	Sept. 30, 1988.
Rule 50	§ 250.50	3235-0128	Sept. 30, 1988.
Rule 62	§ 250.62	3235-0152	Sept. 30, 1988.
Rule 71(a)	§ 250.71(a)	3235-0173	Sept. 30, 1988.
Rule 72	§ 250.72	3235-0148	Sept. 30, 1988.
Rule 83	§ 250.83	3235-0181	Sept. 30, 1988.
Rule 87	§ 250.87	3235-0182	Sept. 30, 1988.
Rule 88	§ 250.88	3235-0182	Sept. 30, 1988.
Rule 93	§ 250.93	3235-0153	Sept. 30, 1988.
Rule 94	§ 250.94	3235-0153	Sept. 30, 1988.

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Rule 95	§ 250.95	3235-0162	Sept. 30, 1988.
Rules 100(a), 20(c) and 23	§§ 250.100(a), 250.20(c) and 250.23	3235-0125	Sept. 30, 1988.
	Part 256	3235-0153	Sept. 30, 1988.
	Part 256(a)	3235-0153	Sept. 30, 1988.
	Part 257	3235-0306	Sept. 30, 1988.
Form U5A	§ 259.5a	3235-0170	Sept. 30, 1988.
Form U5B	§ 259.5b	3235-0170	Sept. 30, 1988.
Form U5S	§ 259.5s	3235-0164	Sept. 30, 1988.
Form U-12(1)A	§ 259.12(a)	3235-0173	Sept. 30, 1988.
Form U-12(1)B	§ 259.12(b)	3235-0173	Sept. 30, 1988.
Form U-13E-1	§ 259.213	3235-0162	Sept. 30, 1988.
Form U-R-1	§ 259.221	3235-0152	Sept. 30, 1988.
Form U-13-60	§ 259.313	3235-0153	Sept. 30, 1988.
Form U-3A-2	§ 259.402	3235-0161	Sept. 30, 1988.
Form U-3A3-1	§ 259.403	3235-0160	Sept. 30, 1988.
Form U-7d	§ 259.404	3235-0165	Sept. 30, 1988.
Form U-A	§ 259.501	3235-0125	Sept. 30, 1988.
Rules 7a-15 through 7a-37	§§ 260.7a-15 through 260.7a-37	3235-0132	Dec. 31, 1987.
Form T-1	§ 269.1	3235-0110	Dec. 31, 1987.
Form T-2	§ 269.2	3235-0111	Dec. 31, 1987.
Form T-3	§ 269.3	3235-0105	Dec. 31, 1987.
Form T-4	§ 269.4	3235-0107	Dec. 31, 1987.
Rule 2A-7	§ 270.2a-7	3235-0268	Sept. 30, 1987.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 6c-7	§ 270.6c-7	3235-0276	Jan. 31, 1987.
Rule 6e	§ 270.6e-2(b)(8)	3235-0177	Jan. 31, 1987.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 8b-11	§ 270.8b-11	3235-0176	Jan. 31, 1987.
Rule 8b-16	§ 270.8b-16	3235-0176	Jan. 31, 1987.
Rule 8b-20	§ 270.8b-20	3235-0176	Jan. 31, 1987.
Rule 8b-21(b)	§ 270.8b-21(b)	3235-0176	Jan. 31, 1987.
Rule 8b-25	§ 270.8b-25	3235-0176	Jan. 31, 1987.
Rule 8b-32(b)	§ 270.8b-32(b)	3235-0176	Jan. 31, 1987.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 11a-2	§ 270.11a-2	3235-0272	Jan. 31, 1989.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 17a-7(b)	§ 270.17a-7(f)	3235-0214	Jan. 31, 1988.
Rule 17a-8	§ 270.17a-8	3235-0235	Jan. 31, 1988.
Rule 17e-1	§ 270.17e-1	3235-0217	Oct. 31, 1987.
Rule 17f-1	§ 270.17f-1	3235-0222	Feb. 29, 1988.
Rule 17f-2	§ 270.17f-2	3235-0223	Oct. 31, 1988.
Rule 17f-4	§ 270.17f-4	3235-0225	Aug. 31, 1987.
Rule 17f-1(g)	§ 270.17f-1(g)	3235-0213	Jan. 31, 1988.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 18f-1	§ 270.18f-1	3235-0211	Jan. 31, 1988.
Rule 19a-1	§ 270.19a-1	3235-0216	Jan. 31, 1988.
Rule 20a-1(b)	§ 270.20a-1(b)	3235-0158	Sept. 30, 1988.
Rule 20a-2	§ 270.20a-2	3235-0158	Sept. 30, 1988.
Rule 20a-3	§ 270.20a-3	3235-0158	Sept. 30, 1988.
Rule 22d-4	§ 270.22d-4	3235-0234	Jan. 31, 1988.
Rule 23c-1	§ 270.23c-1	3235-0260	Feb. 29, 1988.
Rule 24f-1	§ 270.24f-1	3235-0155	Jan. 31, 1988.
Rule 24f-2	§ 270.24f-2	3235-0159	Jan. 31, 1988.
Rule 30a-1	§ 270.30a-1	3235-0219	Jan. 31, 1988.
Rule 30b2-1	§ 270.30b2-1	3235-0220	Jan. 31, 1988.
Rule 30d-1	§ 270.30d-1	3235-0025	Dec. 31, 1987.
Rule 31a-1	§ 270.31a-1	3235-0178	Mar. 31, 1987.
Rule 31a-2	§ 270.31a-2	3235-0179	Sept. 30, 1988.
Form N-5	§ 274.5	3235-0169	Feb. 29, 1988.
Form N-8A	§ 274.10	3235-0175	Jan. 31, 1988.
Form N-1	§ 274.11	3235-0027	Feb. 29, 1988.
Form N-1A	§ 274.11a	3235-0307	Dec. 31, 1988.
Form N-2	§ 274.11a-1	3235-0026	Dec. 31, 1987.
Form N-8B-2	§ 274.12	3235-0186	Feb. 29, 1988.
Form N-8B-3	§ 274.13	3235-0186	Dec. 31, 1987.
Form N-8B-4	§ 274.14	3234-0247	Dec. 31, 1987.
Form N-6F	§ 274.15	3235-0238	Jan. 31, 1988.
Form N-18f	§ 274.51	3235-0211	Jan. 31, 1988.
Form N-17d-1	§ 274.200	3235-0229	Jan. 31, 1988.
Form N-23C-1	§ 274.201	3235-0230	Jan. 31, 1988.
Form N-8F	§ 274.218	3235-0157	Jan. 31, 1988.
Form N-6E1-1	§ 274.301	3235-0177	Jan. 31, 1988.
Rule O-2	§ 275.0-2	3235-0240	Jan. 31, 1988.
Form N-54A	§ 275.53	3235-0237	Jan. 31, 1988.
Form N-54C	§ 275.54	3235-0236	Jan. 31, 1988.
Rule 203-1	§ 275.203-1	3235-0049	June 30, 1988.
Rule 203-2	§ 275.203-2	3235-0313	June 30, 1988.
Rule 204-1	§ 275.204-1	3235-0048	June 30, 1988.

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Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Rule 204-3	§ 275.204-3	3235-0047	Jan. 31, 1989.

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Rule 206(4)-2	§ 275.206(4)-2	3235-0241	Jan. 31, 1989.
Rule 206(4)-3	§ 275.206(4)-3	3235-0242	Feb. 28, 1989.
Form ADV	§ 279.1	3235-0049	June 30, 1988.
Form ADV-W	§ 279.2	3235-0313	Jan. 31, 1989.
Form ADV-S	§ 279.3	3235-0046	Sept. 30, 1987.
Form 4-R	§ 279.4	3235-0240	Jan. 31, 1989.

Information collection requirement	17 CFR Part or section where identified and described	Current OMB control No.	Expiration date
Form 5-R	§ 279.5	3235-0240	Jan. 31, 1989.
Form 6-R	§ 279.6	3235-0240	Jan. 31, 1989.
Form 7-R	§ 279.7	3235-0240	Jan. 31, 1989.
Add:			
Form N-7	§ 239.19A	3235-0336	June 30, 1988.
Form S-4	§ 239.25	3235-0324	Jul. 31, 1987.
Form N-14	§ 239.23	3235-0336	May 31, 1988.
Form F-4	§ 239.34	3235-0325	Jul. 31, 1987.
Form ET	§ 239.62	3235-0329	Oct. 31, 1986.
Form ID	§ 239.63	3235-0328	Oct. 31, 1986.
Form SE	§ 239.64	3235-0327	Oct. 31, 1986.
Form TA-2	§ 249b.102	3235-0337	June 30, 1988.
Form N-SAR	§ 249.330	3235-0330	Mar. 31, 1988.
Form SE	§ 249.444	3235-0327	Oct. 31, 1986.
Form ET	§ 249.445	3235-0329	Oct. 31, 1986.
Form ID	§ 249.446	3235-0328	Oct. 31, 1986.
Form SE	§ 259.603	3235-0327	Oct. 31, 1986.
Form ET	§ 259.601	3235-0329	Oct. 31, 1986.
Form ID	§ 259.602	3235-0328	Oct. 31, 1986.
Form SE	§ 269.7	3235-0327	Oct. 31, 1986.
Form ET	§ 269.5	3235-0329	Oct. 31, 1986.
Form ID	§ 269.6	3235-0328	Oct. 31, 1986.
Rule 2a19-1	§ 270.2a19-1	3235-0332	Dec. 31, 1988.
Rule 20a-3	§ 270.20a-3	3235-0333	Dec. 31, 1987.
Form N-3	§ 274.11b	3235-0316	Apr. 30, 1987.
Form N-4	§ 274.11c	3235-0318	Apr. 30, 1987.
Form N-SAR	§ 274.101	3235-0330	Mar. 31, 1988.
Form SE	§ 274.400	3235-0327	Oct. 31, 1986.
Form ET	§ 274.401	3235-0329	Oct. 31, 1986.
Form ID	§ 274.402	3235-0328	Oct. 31, 1986.
Form N-7	§ 274.12A	3235-0336	June 30, 1988.
Delete:			
Form C-8	§ 239.5	3235-0112	Nov. 30, 1984.
Form S-12	§ 239.19	3235-0112	Nov. 30, 1984.
Form S-14	§ 239.23	3235-0052	Oct. 31, 1984.
Rule 17a-12	§ 240.17a-12	3235-0182	Dec. 31, 1984.
Rule 17a-16	§ 240.17a-16	3235-0038	Sept. 30, 1984.
Rule 17a-17	§ 240.17a-17	3235-0038	Sept. 30, 1984.
Rule 17a-20	§ 240.17a-20	3235-0207	Dec. 31, 1984.
Rule 24b-2	§ 240.24b-2	3235-0127	Nov. 30, 1984.
Form 2-MD	§ 249.462	3235-0215	Dec. 31, 1984.
Form X-17a-12(1)	§ 249.619	3235-0182	Dec. 31, 1984.
Form X-17a-12(2)	§ 249.620	3235-0193	Dec. 31, 1984.
Form X-17a-16(1)	§ 249.631	3235-0038	Sept. 30, 1984.
Form X-17a-16(2)	§ 249.632	3235-0040	Sept. 30, 1984.
Form X-17a-17	§ 249.629	3235-0038	Sept. 30, 1984.
Rule 48(b)	§ 250.48(b)	3235-0156	Dec. 31, 1984.
Form N-1R	§ 274.104	3235-0227	Oct. 31, 1985.
Form N-30A-2	§ 274.201	3235-0051	Oct. 31, 1984.
Form N-30A-3	§ 274.103	3235-0051	Oct. 31, 1984.
Form N-5R	§ 274.105	3235-0210	Dec. 31, 1984.
Form N-1Q	§ 274.106	3235-0246	Oct. 31, 1985.

Dated: March 17, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-6209 Filed 3-20-86; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 270

[Release No. IC-14983; File No. S7-30-85]

Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rule and rule amendments.

SUMMARY: The Commission is adopting amendments to an existing rule that permits money market funds to use the amortized cost method of valuing their portfolio securities or the penny-rounding method of computing their price per share. The amendments will allow funds replying on the rule to acquire put options and to treat variable rate or floating rate debt securities with periodic demand features, a type of put option, as short-term debt securities under certain conditions. The amendments also clarify the responsibilities that the existing rule assigns to money market fund directors and allow money market funds to rely on a high quality rating assigned by a nationally recognized statistical rating organization that does not control and is not controlled by or under common control with the issuer of or any insurer, guarantor or provider of credit support for the rated securities.

The Commission is also adopting an amendment to an existing rule that exempts certain investment company acquisitions of securities issued by persons engaged in securities related activities in order to clarify the circumstances under which investment companies may acquire demand features and another type of put option known as standby commitments. Finally, the Commission is adopting a new rule that allows registered investment companies to assign a fair value of zero to standby commitments.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Attorney, (202) 272–2048 or Elizabeth K. Norsworthy, Chief, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

After the effective date, questions should be directed to the Office of the Chief Counsel, (202) 272–2030, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is adopting amendments to rules 2a–7 [17 CFR 270.2a–7] and 12d3–1 [17 CFR 270.12d3–1] and adopting rule 2a41–1 [17 CFR 270.2a41–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] ("Act").

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Last July, the Commission proposed amendments to rules 2a–7 and 12d3–1 and adoption of new rule 2a41–1 [1] to give money market funds more flexibility to acquire certain types of put options known as demand features and standby commitments. The fifteen commentators on the proposal generally supported the initiative taken by the Commission, but believed that certain aspects of the proposal should be modified or eliminated. Those comments are reflected in the final version of the rule and rule amendments as discussed below.

Subject to specified conditions, rule 2a–7 allows certain open-end investment companies known as money market funds to use either the amortized cost method of valuing their portfolio securities[2] or the penny-rounding method of pricing their securities.[3] The rule requires money market funds using the above methods to limit their investments to instruments that are of high quality and that have a remaining maturity of one year or less. Funds relying on the rule must also maintain an average dollar-weighted portfolio maturity of no more than 120 days.[4]

The amendments to rule 2a–7 permit money market funds relying on the rule to acquire put options, including demand features and standby commitments, under certain conditions. The final version of the rule uses the term "put" to describe the type of options that may be acquired, instead of the term "liquidity put" that was used in the proposal. As proposed, the final rule imposes a five percent limitation on the puts that a fund may acquire from the same institution. However, unlike the proposal, the final rule tracks section 5(b)(1) of the Act [15 U.S.C. 80a–5(b)(1)] and rule 5b–2 thereunder [17 CFR 270.5b–2] by imposing that limitation with respect to only 75 percent of a fund's portfolio and allowing a fund to invest up to ten percent of its assets in unconditional puts or other securities issued by the same institution.[5]

The final rule also clarifies the circumstances under which a demand feature or standby commitment may be considered to be of high quality. Both the long-term and the short-term aspects of demand instruments must be of high quality before they can be acquired by a fund relying on the rule unless the demand feature is unconditional. In that event, the fund may focus only on the short-term quality of the instrument. This provision modifies the proposal which would have required that a fund examine both the short-term and long-term aspects of any demand instrument before treating the instrument as a short-term debt security. The final version of the rule also makes it clear that a fund may not acquire a standby commitment unless a determination has been made that the issuer of the commitment presents a minimal risk of default.

As in the proposal, the amendments permit funds relying on rule 2a–7 to use certain demand features to shorten the maturity of variable and floating rate instruments.[6] In the final version of the rule, such demand features must entitle the fund to receive the principal amount of the underlying security or securities and must be exercisable either (i) at any time on no more than thirty days' notice; or (ii) at specified intervals not exceeding one year and upon no more than thirty days' notice. Since the proposal would have prescribed a seven day minimum notice period, a note has been added to the final rule to remind money market fund directors of their responsibility to ensure that the fund has sufficient liquidity.

As in the proposal, amended rule 2a–7 simply states the conditions that must be satisfied before a demand feature can be used to shorten the maturity of the security or securities underlying the feature. While the directors, of course, remain ultimately responsible for that decision, the amended rule no longer requires them to make an explicit finding with respect to each instrument.[7]

Finally, rule 2a–7 is amended to allow money market funds to rely on a high quality rating if the rating is assigned by a nationally recognized statistical rating organization ("NRSRO") that does not control and is not controlled by or under common control with the issuer of, or any insurer, guarantor or provider of credit support for the securities. The final rule refers only to that aspect of the Act's definition of "affiliated person" that includes any person directly or indirectly controlling, controlled by or under common control with another person and not, as proposed, to all aspects of that definition.[8]

Rule 12d3–1 provides exemptive relief from section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)] to allow investment companies to purchase or otherwise acquire securities issued by persons engaged in securities related activities. The amendment to rule 12d3–1 permits any type of investment company—not just money market funds relying on rule 2a–7—to acquire puts issued by persons engaged in securities related activities so long as the company complies with the same diversification requirements that are found in amended rule 2a–7. Finally, the Commission is adopting rule 2a41–1 under section 2(a)(41) of the Act [15 U.S.C. 80a–2(a)(41)] essentially as proposed to allow investment companies to assign a fair value of zero

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[1] *See* Investment Company Act Release No. 14607 (July 1, 1985) [50 FR 27982] ("proposing release").

[2] A money market fund using the amortized cost method of valuation values the debt securities in its portfolio and other assets at acquisition cost. The interest earned on each portfolio debt security (plus any discount received or less any premium paid upon purchase) is then accrued ratably over the remaining maturity of the security. By declaring these accruals to its shareholders as a daily dividend, the money market fund is able to set a fixed price per share, which is usually $1.00.

The final version of the rule retains the description of the amortized cost method that appears in the existing rule. Although the proposal would have clarified that language, the Commission has decided to retain the original language because the commentators expressed so much concern that the proposed change might have some hidden meaning.

[3] A money market fund using the penny-rounding pricing method values portfolio securities for which market quotations are readily available at current market value, and other securities and assets at fair value as determined in good faith by the board of directors. The current net asset value per share is then rounded to the nearest one percent, allowing the fund to maintain a fixed price per share (usually $1.00). Penny-rounding funds may also use the amortized cost valuation method to value portfolio securities having a remaining maturity of sixty days or less. *See* Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555] adopting the existing rule ("adopting release") at footnote 44, *citing* Investment Company Act Release No. 9786 (May 31, 1977), 42 FR 28999.

The final version of the rule retains the description of penny-rounding that appears in the existing rule. As in the case of the description of the amortized cost method that appears in the existing rule, the Commission had proposed to describe the penny-rounding method more precisely. The original rule language is retained to assuage commentator concern as to any hidden meaning behind the proposed language change.

[4] Generally, the maturity of an instrument is considered to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount must be paid.

[5] An unconditional put is defined in the rule as a put that is readily exercisable in the event of a default in the payment of principal or interest on the underlying security or securities. Conversely, a conditional put would not be readily exercisable in the event of default.

[6] As proposed, the definitions of variable and floating rate in struments have been clarified.

[7] *See* the proposing release, *supra* note 1, at notes 40–43 and accompanying text. *See also* adopting release, *supra* note 3, at notes 19–25 and accompanying text.

Also, as proposed, parenthetical references to "trustees" that appear in the existing rule are deleted because the definition of "director" in section 2(a)(12) of the Act [15 U.S.C. 80a–2(a)(12)] specifically includes a member of a board of trustees.

[8] *See* section 2(a)(3) [15 U.S.C. 80a–2(a)(3)]. Control is defined in section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)] to include direct or indirect ownership of more than 25 percent of the voting securities of a company.

to standby commitments under certain conditions.

Since the proposing release described in detail the market changes and exemptive applications that prompted the proposed rule and rule amendments, this release focuses on the changes that have been made in the proposal to reflect the comments received.

Discussion

A. Amendments to Rule 2a–7

1. *Puts that may be acquired by funds relying on the rule and puts that may be used to shorten maturity.* The final amendments to rule 2a–7 use the general term "put" to describe the options that money market funds relying on the rule may acquire. A put is defined as a right to sell a specified underlying security or securities within a specified period of time and at a specified exercise price, that may be sold, transferred or assigned only with the underlying security or securities.[9]

The proposed amendments used the term "liquidity puts" to refer to the put options that funds relying on the rule could acquire. Several commentators, however, felt that the use of this term, together with certain statements contained in the proposing release, might unnecessarily restrict money market funds to purchasing put options solely for liquidity purposes. In this regard, they pointed out that while funds relying on the rule may acquire puts for such purposes, they may also acquire the puts to shorten the maturity of the underlying securities or to permit reinvestment of fund assets at a more favorable rate of return. Since the Commission did not intend to prevent funds from acquiring puts for these other purposes, the term "put" is used in the final version of the rule.

The final version of the rule separately defines demand features and standby commitments instead of describing those options within the definition of put. The definition of standby commitment is adopted as proposed. The definition of demand feature, however, has been modified so that the final rule makes clear that the exercise price need not include accrued interest. This change has been made because the proposal could have been read to require that accrued interest must always be paid at the time of exercise, a result that was not intended.

As in the proposal, a fund relying on the rule may use demand features to shorten the maturity of only variable or floating rate instruments.[10] One commentator suggested that the final rule permit funds to use demand features to shorten the maturity of fixed rate instruments. However, the Commission still believes that an instrument should have an adjustable interest rate, as well as a demand feature, to be treated as a short-term debt security. For example, if a fund using amortized cost decides that exercise of a demand feature is not in the best interests of the fund or if the demand feature cannot be exercised, then the Commission believes that a mechanism must exist that can be reasonably expected to return the value of the instrument to par, *i.e.*, a variable interest rate, or that can reasonably be expected to keep the value of the instrument at par, *i.e.*, a floating interest rate. Otherwise, the market-based value of the instrument could deviate significantly from its amortized cost value after the exercise date.

A few commentators urged the Commission to permit funds to use standby commitments as well as demand features to shorten maturity. However, applicants for exemptive relief have routinely represented that they are unlikely to exercise their standy commitments; they only exercise this type of put as a last resort to facilitate portfolio liquidity.[11] In view of these representations, the Commission does not believe that it would be appropriate to allow funds to use the commitments to shorten maturity.

2. *Limitation on puts from a single institution.* The diversification requirements contained in the final amendments to rule 2a–7 track those in section 5(b)(1) of the Act and provide that immediately after the acquisition of any put, a money market fund which uses the amortized cost valuation method may not, with respect to 75 percent of the total amortized cost value of its assets, have more than five percent of its assets invested in securities subject to puts from the same institution. Similarly, in the case of a money market fund which uses the penny-rounding pricing method, the fund may not, with respect to 75 percent of the total market-based value of its assets, have more than five percent of its assets invested in securities subject to puts from the same institution. In each case, however, the amended rule also tracks rule 5b–2 under the Act and provides that a fund may invest up to ten percent of its assets in unconditional puts and other securities issued by the same institution. An unconditional put is considered to be a put that is exercisable even in the event of a default in the payment of principal or interest on the underlying securities. A put is considered to be from the institution to whom the fund will look for payment of the exercise price.[12]

Since, as noted above, these requirements track the diversification requirements of section 5(b)(1) of the Act [15 U.S.C. 80a–5(b)(1)] and rule 5b–2 thereunder [17 CFR 270.5b–2],[13] a diversified fund complying with rule 2a–7 will not have to take any further steps to ensure compliance with section 5 with respect to the puts in its portfolio. However, the fund will still have to comply with section 5 with respect to the securities underlying those puts.

The proposed amendments would have limited funds relying on the rule to investing no more than five percent of their total assets in securities subject to any type of put from the same institution. A number of commentators felt that these proposed limitations were unnecessarily restrictive. Several questioned the need for any separate limitation in rule 2a–7, given the existing diversification requirements imposed by section 5 [14] and by subchapter M of the Internal Revenue Code of 1954 ("IRC").[15] Another commentator maintained that the acquisition of puts should not be subject to any diversification requirements, given the relatively small number of financial institutions engaged in issuing puts.

On the other hand, several commentators did not oppose the

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[9] Several commentators believed that although a fund relying on the rule may not "sever" a put from the underlying security or securities, the put itself may be "severable." The Commission continues to believe, however, that the cost of a separately traded put could differ significantly from its market value and therefore could cause the fixed price of a fund's shares to deviate significantly from the market-based value of its portfolio.

[10] The maturity of a variable rate instrument must be the longer of the period remaining until the principal amount can be recovered through demand or the period remaining until the interest rate is to be readjusted. Although a few commentators suggested that the maturity should be the shorter of the specified periods, the Commission continues to believe that the more prudent measurement is the longer of the periods.

[11] *See* the proposing release, *supra* note 1, at notes 18–24 and accompanying text.

[12] In the case of a standby commitment, the put would be from the broker, dealer or bank that has agreed to repurchase the underlying securities. In the case of a demand feature, the put would be from the party that has provided a letter of credit or other credit facility to ensure payment of the exercise price.

[13] The diversification requirements of rule 2a–7 and section 5 are not identical because the puts that a money market fund may acquire are typically not assigned a separate value. Accordingly, the amended rule's percentage limitations are applied to the securities subject to puts from the same institution, not to the puts themselves.

[14] *See* section 5(b)(1) and rule 5b–2 thereunder.

[15] *See* 26 U.S.C. 851 *et seq.*

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inclusion of a separate limitation in rule 2a–7. One commentator expressly supported the proposed five percent limitation on the grounds that it would prevent money market funds from being subjected to "unnecessary and unintended market risks." Other commentators argued that the proposed five percent limitation should be modified so that it would track the Act's diversification requirements, *i.e.*, the limitation should apply only to 75 percent of the fund's portfolio and the fund should be able to invest up to ten percent of its portfolio in unconditional puts from the same institution. Still other commentators expressed the opinion that funds should be able to invest up to ten percent of their assets in any kind of puts issued by the same institution.

Two commentators noted that if the final version of the rule contained a diversification requirement, the provision should more clearly identify the party that would be considered the issuer of the put. One of these commentators stated that the limitation should not be applicable to the remarketing agent for a demand instrument, but should apply to the provider of credit support, such as a letter of credit, since the holder of the instrument relies primarily upon that party in assessing the quality of the put. On the other hand, another commentator felt that it could be inappropriate to apply a limitation to the issuer of a letter of credit supporting a demand feature in light of the tax implications of *Philadelphia Gear Corp. v. FDIC.*[16] Several commentators also noted that if the final version of the rule contained a diversification requirement, the Commission should clarify the interrelationship between that requirement and diversification requirements under section 5.

The Commission has decided to include a separate diversification requirement in the final version of the rule in order to ensure that a fund's liquidity will not be impaired by relying too heavily upon the same institution or upon only a handful of institutions to support whatever puts are in the fund's portfolio. However, as described above, the proposed five percent limitation has been clarified and modified to track the Act's diversification requirements.

3. *Quality of portfolio securities.* The final version of the amendments specifically provides that funds relying on the rule may only acquire securities that are of high quality, as determined by at least one NRSRO that is not an affiliated person, as defined in section 2(a)(3)(C) of the Act, of the issuer of or any insurer, guarantor or provider of credit support for, the rated securities or that are found to be of comparable quality by the board of directors. This allows a fund to rely on a NRSRO rating only if the NRSRO does not control, and is not controlled by or under common control with the issuer or any insurer, guarantor or provider of credit support.[17]

As proposed, a fund could not rely on a NRSRO rating if the NRSRO were an affiliated person of the issuer, insurer, guarantor or provider of credit support, *i.e.*, meeting all parts of the definition of affiliated person found in section 2(a)(3). One commentator urged the Commission to eliminate the unaffiliated requirement altogether, arguing that the requirement would place an undue burden of compliance on funds relying on the rule. However, as discussed in the proposing release, although the concept of independence is implicit in the term NRSRO, the Commission believes that for the purposes of rule 2a–7, independence should be defined within the context of the Act. The proposal has been modified, however, to focus only on the control aspect of the definition of affiliated person because the Commission believes that funds should have little or no difficulty in ascertaining whether a control relationship exists between a NRSRO and the issuer, insurer, guarantor or provider of credit support of the rated securities.

The final amendments provide that both the short-term and long-term aspects of a demand instrument must be rated high quality or found by the board to be of high quality [18] unless the demand feature is unconditional. In that event, the fund may focus only on the short-term quality of the instrument. A demand feature is considered to be unconditional if exercisable even in the event of a default in the payment of principal or interest on the underlying securities.

The proposed amendments would have provided that a fund may use a demand feature to shorten the maturity of a demand instrument only if the demand instrument has a short-term and a long-term high quality rating or is found to be of comparable quality. Several commentators urged the Commission to focus only on the quality of the demand feature, not on the quality of the securities underlying the demand feature. Two commentators believed, however, that this should be the case only if the demand feature is unconditional. In addition, several commentators noted that the qualtity of the securities underlying a demand feature should still be taken into account when a fund makes its investment decision.[19] Finally, some commentators maintained that a separate quality requirement for demand instruments is unnecessary, given the high quality requirements presently contained in rule 2a–7.

In view of the nature of demand instruments, the Commission continues to believe that rule 2a–7 should separately address the quality requirements that should be applicable to those instruments. Since a demand instrument must be of high quality for a fund relying on the rule to acquire it, as well as to shorten its maturity, this separate requirement has been added to the rule's existing quality requirements, not to the rule's maturity requirements as originally proposed. While the final version of the rule still generally requires a fund to focus on both the long-term and short-term aspects of a demand instrument, an exception is made in the case of demand instruments with unconditional demand features. Where credit support will be provided even in the event of default on the underlying securities, the Commission agrees that a fund should be able to focus only on the quality of the short-term aspect of the demand instrument—the demand feature. If the quality of any demand instrument falls below the high quality level required by the rule, a fund must dispose of the instrument within a reasonable period of time by exercising the demand feature or by selling the demand instrument on the secondary market, whichever is in the best interests of the fund and its shareholders.

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[16] 751 F.2d 1131 (10th Cir. 1984), *cert. granted* 106 S.Ct 245 (1985) (No. 84–1672). That case held that a standby letter of credit is a "deposit" for purposes of Federal Deposit Insurance Corporation ("FDIC") insurance. Since federal tax law denies tax-exempt status to municipal debt securities that are guaranteed in whole or in part by the United States Government, the holding in *Philadelphia Gear* could mean the loss of the tax-exempt status of any municipal bond that is supported by a letter of credit issued by an FDIC-insured bank. Such a holding could significantly limit the number of institutions that could continue to provide credit support for tax-exempt issues.

[17] *See supra* note 8.

[18] *See* proposing release, *supra* note 1, at note 30 for a discussion of the credit factors that the board should examine in making a comparable quality determination. A demand instrument may be considered an unrated security in the event that a rating agency has not taken into account the existence of an external agreement to provide credit support, such as insurance or a letter of credit. Also, where only the long-term or short-term quality has been rated, the board may make a comparable quality determination with regard to the unrated credit aspect.

[19] One commentator maintained that a fund should focus only on the quality of the underlying security or securities. That commentator believed that a demand instrument is analogous to a short-term repurchase agreement ("repo") collateralized by long-term securities and that a fund's board of directors should be allowed to make a high quality determination if the securities underlying the demand feature are of high quality, just as the Commission has permitted when the securities underlying a repo are of high quality. *See* adopting release, *supra* note 3, at note 31.

Finally, the quality requirements of the amended rule provide that a standby commitment will be considered to be of high quality if the directors have determined that the issuer of the commitment presents a minimal risk of default. This representation has been routinely made by applicants who have received exemptive relief to acquire standby commitments [20] and is added to the rule at the request of one commentator who pointed out that without clarification, it would be difficult for the directors to know how to ascertain whether a standby commitment is of high quality.

4. *Notice limitations on demand instruments.* As noted above, the final rule expands from seven to 30 days the notice requirement for the demand features that funds relying on the rule may use to shorten the maturity of variable and floating rate debt instruments. Because the notice period has been lengthened, a note has been added to the rule reminding directors of their responsibility to ensure that their fund has sufficient liquidity.

Open-end investment companies are required to limit their acquisition of illiquid securities to ensure that all redemption requests will be satisfied within the seven day period prescribed by section 22(e) of the Act [15 U.S.C. 80a–22(e)]. In 1969, the Commission took the position that in no event should the percentage of illiquid securities held by an open-end investment company exceed 10% of the market-based value of the company's net assets.[21] The term "illiquid security" generally includes any security which cannot be disposed of promptly and in the ordinary course of business without taking a reduced price. A security is considered illiquid if a fund cannot receive the amount at which it values the instrument within seven days.

In the release adopting rule 2a–7, the Commission elaborated upon the responsibilities of money market fund board of directors with regard to the acquisition and valuation of illiquid securities, noting that because of the nature of money market funds, the difficulties that could arise in conjunction with the purchase of illiquid securities might be even greater than for other types of open-end management investment companies. In particular, the Commission pointed out that money market funds often have a greater and perhaps less predictable volume of redemptions than other open-end investment companies. Further, the portfolio management of a money market fund might be impaired if a fund were forced to meet redemption requests by selling marketable securities that it would otherwise wish to retain in order to avoid attempting to dispose of illiquid portfolio instruments. Finally, the valuation of illiquid securities may potentially overstate or understate the fund's net asset value to the detriment of shareholders. In light of these potential problems, the board of directors of a money market fund relying on the rule must take steps to limit the acquisition of illiquid portfolio instruments to a lever lower than the ten percent limit set for other types of open-end investment companies.[22]

A number of the commentators felt that a seven day notice period was unreasonably short for periodic demand instruments that entitle the holder to receive the principal amount of the underlying securities at specified intervals not exceeding one year. Several commentators asked the Commission to lengthen the prescribed notice period to 30 days because present market conditions have resulted in a standard notice period of 15 to 30 days for such instruments. In addition, one commentator indicated that limiting the notice period to seven days could impair the ability of a remarketing agent to successfully remarket the instrument. Other commentators believed that the rule should not contain any notice requirement for periodic demand instruments. These commentators observed that, after notice has been given, a periodic demand instrument trades in the market as a security having a maturity equal to the period remaining until the date on which the exercise price is to be paid.

In addition to addressing the proposed notice requirement for periodic demand instruments, several commentators questioned whether the amended rule should continue to have a seven day notice requirement for demand features that are exercisable at any time.[23] Those commentators felt that this requirement should be removed or expanded in light of the market conditions discussed above. Moreover, one commentator noted that while the widespread use of seven day demand instruments demonstrates that a successful remarketing effort is possible within seven days, all involved parties would prefer a longer notice period so that a longer and possibly more effective remarketing effort could take place.

In the final version of the rule, the Commission has decided to expand to 30 days the notice requirements for all types of demand features, whether exercisable at specified intervals or at any time. The Commission still believes that some limit must be placed on the extent to which funds relying on the rule will have to anticipate their cash and investment needs more than seven days in advance. However, the Commission believes that funds should be able to invest in the demand instruments that are being marketed with notice periods of up to 30 days, as long as the directors are cognizant of their responsibility to maintain an adequate level of liquidity. To emphasize that responsibility, a note has been added to the rule summarizing and referring to the Commission's position outlined above. It the context of determining the liquidity of demand instruments, the Commission expects that the directors would establish procedures to evaluate the existence and depth of the secondary market for such instruments, as well as the period remaining until the principal amount can be recovered.

B. Amendment to Rule 12d3–1

As amended, rule 12d3–1 provides exemptive relief to allow registered investment companies to acquire puts, as defined in amended rule 2a–7, from persons engaged in securities related activities. This is in contrast to the proposal that provided exemptive relief only to money market funds that have complied with all of the provisions of rule 2a–7. At the request of two commentators, the proposal has been redrafted so that the final amendment applies to all types of investment companies and conditions exemptive relief upon a company's compliance with the same diversification requirements that are found in amended rule 2a–7. Since these diversification

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[20] *See* Notices of applications and orders cited in the proposing release, *supra* note 1, at note 10.

[21] *See* Investment Company Act Release No. 5847 (October 21, 1969)[35 FR 19989].

[22] *See* adopting release, *supra* note 3, at notes 37–39 and accompanying text. In view of these liquidity concerns, the proposed amendments to rule 2a–7 would have permitted funds relying on the rule to shorten the maturity of long-term debt securities subject to demand features only if the demand features could be exercised upon no more than seven days' notice.

[23] The seven day notice period for demand features exercisable at any time was carried over from the text of the existing rule.

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requirements track those of section 5(b)(1) of the Act and rule 5b–2 thereunder, a diversified fund would not have to take any additional steps to diversify the puts that it has acquired from persons engaged in securities related activities. However, the fund would still have to comply with section 5 with respect to the securities underlying those puts.

C. Rule 2a41–1

The Commission is also adopting new rule 2a41–1 essentially as proposed to allow a registered investment company to assign a fair value of zero to a standby commitment, provided that the standby commitment is not used to affect the fund's valuation of the underlying security or securities and any consideration paid for the commitment is accounted for as unrealized depreciation until the commitment is exercised or expires.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Rule Amendments

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citations:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80a–39 * * * §§ 270.2a–7, 270.2a41–1 and 270.12d3–1 also issued under secs. 6(c) [15 U.S.C. 80a–6(c)], 22(c) [15 U.S.C. 80a–22(c)] and 38(a) [15 U.S.C. 80a–37(a)].

2. Section 270.2a–7 is amended by removing the parenthetical phrase "trustees in the case of a trust" in paragraph (a)(1); removing the parenthetical term "trustees" throughout paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(v) and (a)(3)(i); redesignating (a)(2)(v) as (a)(2)(vi), and (a)(2)(vi) as (vii); revising paragraphs (a)(2)(iv), (a)(3)(iii), and (b); and adding a note to the end of the section and new paragraphs (a)(2)(v), (a)(3)(iv), and (c) to read as follows. The authority citation at the end of the section is removed.

§ 270.2a–7 Use of the amortized cost valuation and penny-rounding pricing methods by certain money market funds.

(a) * * *

(2) * * *

(iv) The money market fund will limit its portfolio investments, including puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are (A) of "high quality" as determined by any nationally recognized statistical rating organization that is not an affiliated person, as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a–2(a)(3)(C)], of the issuer of, or any insurer, guarantor or provider of credit support for the instrument which the money market fund is considering acquiring, or (B) in the case of any instrument that is not rated, of comparable quality as determined by the board of directors. In this regard, a demand instrument must have received both a short-term and a long-term high quality rating or have been determined to be of comparable quality by the board of directors, *except* that a demand instrument that has an unconditional demand feature may be acquired solely in reliance upon a short-term high quality rating or upon a finding of comparable short-term quality by the board of directors. The directors may base a determination that a standby commitment is of comparable quality upon a finding that the issuer of the commitment presents a minimal risk of default.

(v) Immediately after the acquisition of any put, the money market fund will not, with respect to 75 percent of the total amortized cost value of its assets, have invested more than 5% of the total amortized cost value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered to be a put from that institution, *provided, that,* the amortized cost value of all securities held by the money market fund and issued or guaranteed by the same institution does not exceed 10 percent of the total amortized cost value of the fund's assets. For the purposes of this paragraph, a put will be considered to be from the party to whom the fund will look for payment of the exercise price and an unconditional put will be considered to be a guarantee of the underlying security or securities.

* * * * *

(3) * * *

(iii) The money market fund will limit its portfolio investments, including puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are (A) of "high quality" as determined by any nationally recognized statistical rating organization that is not an affiliated person, as defined in section 2(a)(3)(C) of the Act [15 U.S.C. 80a–2(a)(3)(C)], of the issuer of or any insurer, guarantor or provider of credit support for the instrument which the money market fund is considering acquiring, or (B) or, in the case of an instrument that is not rated, of comparable quality as determined by the board of directors. In this regard, a demand instrument must have received both a short-term and a long-term high quality rating or have been determined to be of comparable quality by the board of directors, *except* that a demand instrument that has an unconditional demand feature may be acquired solely in reliance upon a short-term high quality rating or upon a finding of comparable short-term quality by the board of directors. The directors may base a determination that a standby commitment is of comparable quality upon a finding that the issuer of the commitment presents a minimal risk of default.

(iv) Immediately after the acquisition of any put, the money market fund will not, with respect to 75 percent of the total market-based value of its assets, have invested more than 5% of the total market-based value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered to be a put from that institution, *provided, that,* the market based value of all securities issued or guaranteed by the same institution and held by the money market fund does not exceed ten percent of the total market-based value of the fund's assets. For the purposes of this paragraph, a put will be considered to be from the party to whom the fund will look for payment of the exercise price and an unconditional put will be considered to be a guarantee of the undelrying security or securities.

(b) For the purposes of this rule, the maturity of a portfolio instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made, except that:

(1) An instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than annually may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(2) A variable rate instrument, the principal amount of which is scheduled on the face of the instrument to be paid in one year or less, may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(3) A variable rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) A floating rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) A repurchase agreement may be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(6) A portfolio lending agreement may be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(c) *Definitions.* (1) The "amortized cost method of valuation" is the method of calculating an investment company's net asset value whereby portfolio securities are valued by reference to the fund's acquisition cost as adjusted for amortization of premium or accumulation of discount rather than by reference to their value based on current market factors.

(2) The "penny-rounding method of pricing" is the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(3) A "put" is a right to sell a specified underlying security or securities within a specified period of time and at a specified exercise price, that may be sold, transferred or assigned only with the underlying security or securities.

(4) A "standby commitment" is a put that entitles the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise.

(5) A "demand feature" is a put that entitles the holder to receive the principal amount of the underlying security or securities and which may be exercised either (A) at any time on no more than 30 days' notice; or (B) at specified intervals not exceeding one year and upon no more than 30 days' notice.

(6) An "unconditional put" or an "unconditional demand feature" is a put or a demand feature that by its terms, would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(7) A "variable rate instrument" is one whose terms provide for the adjustment of its interest rate on set dates and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value.

(8) A "floating rate instrument" is one whose terms provide for the adjustment of its interest rate whenever a specified interest rate changes and which, at any time, can reasonably be expected to have a market value that approximates its par value.

(9) The term "nationally recognized statistical rating organization" shall mean any nationally recognized statistical rating organization, as that term is used in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 [17 CFR 240.15c3–1(c)(2)(vi)(F)].

(10) "One year" shall mean 365 days except, in the case of an instrument that was originally issued as a one year instrument, but had up to 375 days until maturity, one year shall mean 375 days.

Note:—The board of directors of a money market fund relying on this rule is reminded that the Commission has said that "because of the nature of money market funds, the difficulties that could arise in conjunction with the purchase of illiquid instruments by such funds might be even greater than for other types of openend management investment companies. . . . By purchasing or otherwise acquiring illiquid instruments, a money market fund exposes itself to a risk that it will be unable to satisfy redemption requests promptly. . . . In addition, . . . management of the investment company's portfolio could also be affected by the purchase of illiquid instruments. . . . Finally, the purchase of illiquid instruments can seriously complicate the valuation of a money market fund's shares and can result in the dilution of shareholders' interests." *See* Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 at 32561–32562 July 18, 1983]. *See also* Investment Company Act Release No. 5847 (October 21, 1969) [35 FR 19989].

3. By adding § 270.2a41–1 to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment as defined in rule 2a–7(c)(4) under the Act [17 CFR 270.2a–7(c)(4)] may be assigned a fair value of zero, *Provided,* That:

(1) The standby commitment is not used to affect the company's valuation of the security or securities underlying the standby commitment; and

(2) Any consideration paid by the company for the standby commitment, whether paid in cash or by paying a premium for the underlying security or securities, is accounted for by the company as unrealized depreciation until the standby commitment is exercised or expires.

4. By revising paragraphs (d)(8)(iii) and (d)(8)(iv) and adding new paragraph (d)(8)(v) of § 270.12d3–1 to read as follows. The authority citation at the end of the section is removed.

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(8) * * *

(iii) Exercise of options, warrants, or rights acquired in compliance with this rule;

(iv) Conversion of convertible securities acquired in compliance with this rule; and

(v) Acquisition of puts, as defined in rule 2a–7(c)(3) under the Act [17 CFR 270.2a–7(c)(3)], provided that, immediately after the acquisition of any put, the company will not, with respect to 75 percent of the total value of its assets, have invested more than five percent of the total value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered a put from that institution, *provided, that,* the value of all securities issued or guaranteed by the same institution and held by the investment company does not exceed ten percent of the total value of the company's assets. For the purposes of this section, a put will be considered to be from the party to whom the company will look for payment of the exercise price and an unconditional put, as defined in rule 2a–7(c)(6) under the Act [17 CFR 270.2a–7(c)(6)], will be considered to be a guarantee of the underlying security or securities.

* * * * *

Dated: March 12, 1986.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–6018 Filed 3–20–86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 86-66]

Change in the Customs Field Organization; Pascagoula, MS

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by extending the geographical limits of the port of entry of Pascagoula, Mississippi. The change extends the existing port limits to include all of Jackson County, Mississippi. These extended port limits coincide with the jurisdiction of the Jackson County Port Authority, and encompass areas undergoing industrial development and growth, thereby allowing them access to Customs services. Moreover, they will enable Customs to provide better service to carriers, importers and the public.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of entry of Pascagoula, Mississippi.

Prior to this amendment, T.D. 56333, published in the **Federal Register** on January 12, 1965 (30 FR 344), extended the geographical limits of Pascagoula, Mississippi, to include the corporate limits of Pascagoula, and that area lying eastward of the city limits to 88° 28 minutes west longitude, and south of 30° 23 minutes north latitude to the existing shoreline.

The amendment extends the existing port limits to include all of Jackson County, Mississippi. These extended port limits coincide with the jurisdiction of the Jackson County Port Authority, and encompass areas undergoing industrial development and growth, thereby allowing them access to Customs services. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, is being amended accordingly.

The change set forth in this document was set forth in a notice published in the **Federal Register** on October 8, 1985 (50 FR 40982), and although public comments were invited, none were received. Accordingly, after further review of the matter, Customs has determined to make the change as proposed.

Change in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449), the existing geographical limits of the port of Pascagoula, Mississippi, are extended to include all of Jackson County, Mississippi. Accordingly, the limits of the port of Pascagoula, Mississippi, include all of Jackson County, Mississippi.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR Part 1965 Supp.

§ 101.3 [Amended]

2. To reflect the change, the list of Customs regions, districts, and ports of entry in § 101.3, Customs Regulations (19 CFR 101.3), is amended by removing "T.D. 56333" under the column headed "Ports of entry" after the phrase "Pascagoula, Miss., including territory described in" and inserting, in its place, "T.D. 86–66," in the Mobile, Alabama, Customs district in the South Central Region.

Executive Order 12291

Because the amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to the Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Pascagoula, Mississippi, area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: March 5, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86-6061 Filed 3-20-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 82

[Docket Nos. 83C-0012 and 84C-0426]

D&C Green No. 6; Listing as a Color Additive for Coloring Absorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for an increase in the level at which D&C Green No. 6 can be used to color certain polyglycolic acid surgical sutures and to provide for its use for coloring poly(glycolic acid-*co*-trimethylene carbonate) absorbable sutures for general surgical use. These actions respond to two petitions filed by American Cyanamid Co. FDA is also incorporating the listing of this color additive for use in sutures into the subpart of its regulations that the agency has established for color additives used in medical devices. Elsewhere in this issue of the Federal Register, FDA is proposing to remove the restriction that bars migration of D&C Green No. 6 from a suture to surrounding tissues and to establish a uniform set of specifications for D&C Green No. 6 for all of its regulated uses.

DATES: Effective April 22, 1986, except as to any provisions that may be stayed by the filing of proper objections; objections by April 21, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 29, 1983 (48 FR 13098), FDA announced that a color additive petition (CAP 3C0170) had been filed by American Cyanamid Co., Pearl River, NY 10965, proposing that § 74.1206(c)(1)(ii) (21 CFR 74.1206(c)(1)(ii)) (incorrectly cited in the March 29, 1983, notice as § 74.1206(c)(1)(i)) of the agency's color additive regulations be amended to provide for an increase to 0.5 percent by weight of D&C Green No. 6 in polyglycolic acid absorbable sutures. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

In a second notice published in the **Federal Register** of February 14, 1985 (50 FR 6252), FDA announced that a color additive petition (CAP 4C0186) had been filed by Davis and Geck, American Cyanamid Co., Danbury, CT 06810, proposing that 21 CFR 74.3206 be amended to allow the use of D&C Green No. 6 for coloring an absorbable monofilament suture, 1,4-dioxan-2,5-dione polymer with 1,3-dioxan-2-one, for general surgery. The polymer is made from glycolic acid and trimethylene carbonate and is also described by the chemical name poly(glycolic acid-*co*-trimethylene carbonate). The agency has considered the alternate names for this polymer and has decided to use poly(glycolic acid-*co*-trimethylene carbonate) as the preferred name in this document and in the regulation because it is more commonly used. The notice of filing was issued under section 706 of the act.

I. Regulatory History

In the **Federal Register** of December 28, 1962 (27 FR 12828), in response to a color additive petition (CAP 2C0004), FDA issued a final rule listing D&C Green No. 6 for coloring polyethylene terephthalate surgical sutures, including sutures for ophthalmic use. In the **Federal Register** of April 25, 1975 (40 FR 18167), FDA amended § 74.1206 to provide for the use of D&C Green No. 6 in coloring polyglycolic acid surgical sutures, including sutures for ophthalmic use, as a result of a second petition (CAP 2C0104).

In the **Federal Register** of April 2, 1982 (47 FR 14138), FDA issued a final rule listing D&C Green No. 6 for use in externally applied drugs (21 CFR 74.1206) and cosmetics (21 CFR 74.2206) in response to color additive petitions 8C0085. The preamble to the April 2, 1982 final rule provides a detailed account of the regulatory history of D&C Green No. 6 and a detailed explanation of why the agency found its use in externally applied drugs and cosmetics to be safe.

In the **Federal Register** of March 29, 1983 (48 FR 13020), FDA issued a final rule listing D&C Green No. 6 for use in contact lenses (21 CFR 74.3206). FDA issued this regulation in response to color additive petitions 3C0164, 3C0171, and 3C0172.

II. The Color Additive

D&C Green No. 6 is principally 1,4-bis[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 128–80–3). This material is formed by chemically reacting 1 molecule of quinizarin with 2 molecules of *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain some unreacted quinizarin and *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine and other manufacturing aids, are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives, however. Numerous impurities are present in all chemical products, even in highly purified reagent grade chemicals.

III. The Use of D&C Green No. 6 in Sutures

Surgical sutures of different diameters are used in different types of surgery. The suture size (or diameter) is usually designated by a numerical coding system published in the U.S. Pharmacopeia (U.S.P.). For the range of sizes considered in this document, the diameter of the suture decreases as the first digit in the size description increases. Thus, size 2–0 is larger than size 8–0.

Color additives are added to the sutures to increase their visibility for the physician. Smaller size sutures, being more difficult to see, require a more intense color and, hence, a higher percentage of color additive. Although the percentage of color additive in a small suture may be higher than that in a large suture, the smaller suture may still contain less total color additive because of its smaller size.

In CAP 3C0170, the petitioner requested a change in the color additive regulations to allow for a fivefold increase in the percentage of D&C Green No. 6 in polyglycolic acid sutures of U.S.P. size 8–0 and smaller. The petitioner asserted that even with this higher concentration of color, the smaller size sutures contain no more color additive per unit length than those sutures used in the safety tests supporting the original regulation for polyglycolic acid sutures (CAP 2C0104).

In the second petition (CAP 4C0186), the petitioner requested that the regulations be amended to provide for the use of D&C Green No. 6 at a level not to exceed 0.21 percent by weight of suture material for coloring poly(glycolic acid-*co*-trimethylene carbonate) absorbable sutures other than those sutures used in ophthalmic surgery. This petition relies on studies in which sutures containing 0.21 percent color additive were implanted in animals.

IV. Safety of D&C Green No. 6

A. Legal Standard

Under section 706(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color additive is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history of the Color Additive Amendments of 1960 (Pub. L. 86–618) makes clear that this word is to have the same meaning for color additives as for food additives.

"Safe" is defined in the legislative history of the Food Additives Amendment of 1958 as a "reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable

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circumstance." S. Rept. 2422, 85th Cong., 2d Sess. (1958). This concept of "safe" is incorporated in FDA's color additive regulations (21 CFR 70.3(i)). In addition, the anticancer or Delaney Clause of the color additive provisions (section 706(b)(5)(B) of the act) provides that a noningested color additive shall be deemed to be unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to cause cancer in man or animal.

B. Toxicology

The petitioner did not submit additional toxicological studies with CAP 3C0170. The petitioner relied instead on the agency's previous conclusion of safety for the use of D&C Green No. 6 at 0.1 percent in polyglycolic acid sutures and argued that use at 0.5 percent in microsurgical sutures would result in substantially lower exposure to the color additive than from its currently authorized use for general surgical suture applications. The petitioner states that the largest microsurgical suture (U.S.P. size 8–0) colored at the 0.5 percent level requires about one-tenth as much color additive per centimeter as a typical suture used for general surgery (U.S.P. size 2–0) colored at the 0.1 percent level.

In making its safety evaluation, the agency has considered the following toxicology studies submitted by the petitioner as part of its previous petition (CAP 2C0104) to list the use of D&C Green No. 6 at a level of 0.1 percent by weight in polyglycolic acid sutures: (1) a subcutaneous suture implantation study in rabbits for up to 90 days with sutures ranging in diameter from U.S.P. size 8–0 to U.S.P. size 2–0, (2) an ophthalmic surgery study in cats for up to 120 days with U.S.P. size 6–0 sutures, and (3) corneal implantation study in cats for up to 120 days with U.S.P. size 6–0 sutures.

Because polyglycolic acid sutures are absorbable, all the color additive was released into the neighboring tissue during these studies. Thus, the animals were exposed to at least as much color additive during these studies as they would have been if sutures of size 8–0 and smaller, containing 0.5 percent color additive, had been used. For example, U.S.P. size 6–0 sutures with 0.1 percent color additive and U.S.P. size 8–0 sutures with 0.5 percent color additive will both contain approximately 0.07 microgram of color additive per centimeter of suture. (The actual amount will vary because the size describes a range of allowed diameters.) On the other hand, a U.S.P. size 2–0 suture, commonly used in general surgery, with 0.1 percent color additive will contain approximately 10 times that amount.

In CAP 4C0186, the petitioner submitted the reports of several toxicity studies to establish that there is a reasonable certainty of no harm from use of D&C Green No. 6 in poly(glycolic acid-*co*-trimethylene carbonate) sutures. These studies include acute toxicity studies with suture extracts in mice, acute toxicity studies with suture implants in rats, 6 month suture implantation toxicity studies in rats and dogs, an antigenicity study with suture implants in guinea pigs, a fertility and general reproductive performance study with suture implants in rats, a teratology study with suture implants in rabbits, an evaluation of the suture for possible hemolytic activity on human blood, a pyrogenicity study with suture extract in rabbits, an in vitro cytotoxicity study on the suture, and genotoxicity studies on D&C Green No. 6, the suture, and extracts from the colored suture. The sutures used in the studies contained 0.21 percent D&C Green No. 6. Exaggerated amount of suture material were used in the implant studies. As part of its safety evaluation, the agency also considered the safety data previously submitted to support the listing of D&C Green No. 6 for use in polyglycolic acid sutures, externally applied drugs and cosmetics, and contact lenses.

The agency finds that the data referenced or submitted in 3C0170 and 4C0186 provide adequate bases on which to assess the safety of the respective petitioned uses of D&C Green No. 6. In its evaluation of the various studies, FDA found no adverse toxic effects that were attributable to D&C Green No. 6.

C. Carcinogenic Impurity and Risk Assessment

Although D&C Green No. 6 itself has not been shown to cause cancer, it does contain a carcinogenic impurity, *p*-toluidine. FDA has concluded that it is possible to list the use of such a color additive. (See 47 FR 14140–14145.) In deciding whether the use of such an additive is safe, FDA considers, among other things, its calculation of the upper limit of risk from lifetime exposure to the carcinogenic impurity. Evaluation of the risk from exposure to *p*-toluidine from the use of D&C Green No. 6 in sutures has two parts: (1) An assessment of probable exposure to *p*-toluidine and (2) an extrapolation of the risk from *p*-toluidine from the levels of exposure to it in the animal bioassay to the much lower levels of exposure for humans. For a complete discussion of risk from D&C Green No. 6 in sutures, see the agency's proposal to establish uniform specifications elsewhere in this issue of the **Federal Register.**

1. Exposure

In estimating a high user's lifetime-averaged probable exposure to *p*-toluidine from the petitioned uses of D&C Green No. 6 in polglycolic acid and poly(glycolic acid-*co*-trimethylene carbonate) sutures, the agency has considered the amount of *p*-toluidine in D&C Green No. 6 and the amount of suture that might be implanted in a person as a result of multiple surgeries over a lifetime.

Data on the amount of *p*-toluidine in D&C Green No. 6 indicate that the color additive will contain approximately 500 parts per million of *p*-toluidine. (See discussion of *p*-toluidine analyses at 47 FR 14140.)

The amount of suture used during surgery will vary with the type of surgery. The agency estimates that the maximum length of suture used in any one surgery is not likely to exceed 5 meters. Most types of surgery would use far less. The agency also believes that, over a lifetime, a person is not likely to receive more than 10 meters of any suture material (Ref. 2).

Finally, for purposes of estimating exposure, the agency is using U.S.P. size 2–0 suture as a model because it is a very common size suture for general surgery.

In assessing the safety of the petitioned uses of D&C Green No. 6, FDA is evaluating the suture use that would result in the greatest exposure to *p*-toluidine and is assuming that all exposure arises from this use. The uses of D&C Green No. 6 that are the subject of 3C0170 and 4C0186 would only replace the highest exposure with a lower one.

The highest level at which D&C Green No. 6 added to sutures is 0.75 percent, the level at which this color additive is used in polyethylene terephthalate suture material. The agency recognizes that the polyethylene terephthalate suture is a nonabsorbable suture, and that the suture will be removed long before all of the color additive migrates. Nonetheless, the agency will assume that all the *p*-toluidine in a polyethylene terephthalate suture containing 0.75 percent D&C Green No. 6 migrates because this assumption provides the basis for a worst-case estimate for all suture use.

Using this assumption, the agency estimates that lifetime-averaged exposure to *p*-toluidine from D&C Green No. 6 in sutures is not likely to exceed 0.15 nanogram per day (150 picograms per day) (Ref. 3). This estimate of exposure far exceeds the estimated level of exposure from 0.5 percent D&C Green No. 6 in U.S.P. size 8–0 and smaller polyglycolic acid sutures (no more than .003 nanogram per day) or from poly(glycolic acid-*co*-trimethylene carbonate) absorbable sutures containing 0.21 percent D&C Green No. 6 (0.065 nanogram per day).

2. Risk Extrapolation

In the agency's 1982 document permanently listing D&C Green No. 6 for use in externally applied drugs and cosmetics (47 FR 14138), FDA described its use of quantitative risk assessment procedures to extrapolate from the *p*-toluidine dietary dose in the animal experiment to the very low levels of human exposure. The risk analysis employed in the present document relies on the same risk assessment procedures.

The simplest method for estimating risk to compare the human lifetime-averaged systemic exposure to *p*-toluidine from sutures colored with D&C Green No. 6 to the lifetime-averaged systemic exposure of mice fed *p*-toluidine in the Weisburger et al. bioassay (Ref. 1), in which *p*-toluidine was shown to be a carcinogen. On this basis, using a linear extrapolation, the agency estimates the upper limit individual lifetime carcinogenic risk from exposure to sutures containing 0.75 percent D&C Green No. 6 is 1 in 10 billion or 1 in 100 billion, depending on the specific assumptions in the linear extrapolation procedure (Ref. 3).

The agency recognizes that exposure to *p*-toluidine from sutures is different from that encountered in the Weisburger bioassay, which the agency is using for its risk extrapolation. Exposure to *p*-toluidine from sutures is parenteral and localized, while exposure in the Weisburger bioassay was through lifetime dietary administration. The agency does not wish to imply that linear time-averaging of dose from a dietary study is necessarily the best way to estimate risk from sutures. However, in the absence of explicit scientific information indicating how these exposure differences affect risk, the agency believes that the extremely small risk estimated by simple linear time-averaging of the dose provides a sufficiently large margin of safety for the agency to conclude that the petitioned use of this color additive in sutures is safe.

D. Specifications

In the 1982 document, the agency established new specifications for D&C Green No. 6 limiting the maximum concentration at which *p*-toluidine may be present. FDA has incorporated these new specifications in all of the final rules listing uses of D&C Green No. 6 that it has issued since 1982. The agency is also requiring that the D&C Green No. 6 used in polyglycolic acid and ploy(glycolic acid-*co*-trimethylene carbonate) sutures in accordance with this final rule comply with the new specifications. Elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the regulations to apply this set of specifications to all permitted uses of D&C Green No. 6.

V. Conclusion on Safety

Based on the available toxicity data, the small amount of the color additive in sutures, the agency's exposure calculation, and the vanishingly small risk from the exposure to *p*-toluidine that results from this use of the color additive, FDA finds that the color additive D&C Green No. 6 is safe for use at 0.5 percent by weight in polyglycolic acid general surgical and ophthalmic surgical sutures not exceeding U.S.P. size 8–0. The agency also finds that this level of color additive is suitable for this use because it will impart an intense green color to the sutures which will enhance their visibility. Based on the information in CAP 4C0186, FDA also finds that the color additive D&C Green No. 6 is safe and suitable for use at 0.21 percent by weight in poly(glycolic acid-*co*-trimethylene carbonate) absorbable general surgical sutures.

VI. Changes in Codified Language

Sutures were regulated as drugs before the passage of the Medical Device Amendments of 1976 but are now regulated as medical devices. In a final rule published in the **Federal Register** of March 19, 1983 (48 FR 13020), FDA amended the color additive regulations by establishing new Subpart D under 21 CFR Part 74 to provide for listing certified color additives for use in or on medical devices and by listing in § 74.3206 (21 CFR 74.3206) D&C Green No. 6 for use in contact lenses. In the preamble to the March 29, 1983, final rule, FDA announced that, in the near future, it would move to Subpart D those color additives used in or on medical devices that are currently listed in Part 74 under Subpart B (drugs).

FDA is now moving to Subpart D the provisions of § 74.1206(b)(1), which set forth the specifications for D&C Green No. 6 for use in sutures, and of § 74.1206(c)(1), which list D&C Green No. 6 for that use. The agency is redesignating § 74.3206(b) as § 74.3206(b)(1) and § 74.1206(b)(1) as § 74.3206(b)(2). The agency is also redesignating § 74.1206(b)(2) as § 74.1206(b). Finally, FDA is revising §§ 74.2206 and 82.1206, which reference the specifications in § 74.1206(b)(2), to reflect the redesignation of § 74.1206(b)(2) as § 74.1206(b). These actions will avoid redundancy and simplify the regulations pertaining to D&C Green No. 6.

The agency is making two other editorial changes. First, because sutures are now regulated as medical devices instead of as drugs, the agency is deleting § 74.1206(c)(4), which states that if a suture is a new drug, it must have an approved new drug application in effect. Second, the agency is revising § 74.3206(c)(2), which currently provides that a contact lens in which D&C Green No. 6 is used is subject to the requirements of sections 510(k) and 515 of the act (21 U.S.C. 360(k) and 360e). To that section, the agency is adding a reference to section 520(g) of the act (21 U.S.C. 360j(g)), which was inadvertently omitted from the March 29, 1983, final rule, and is removing the specific reference to "contact lenses" and replacing it with a reference to "medical devices," to make clear that these requirements also apply to sutures. Because these changes are merely editorial, and do not impose nor delete any requirements but simply refer to existing statutory requirements, FDA finds that notice and comment rulemaking is unnecessary.

Finally, elsewhere in this issue of the **Federal Register**, FDA is proposing to revise § 74.3206(b) by substituting the term "medical devices" for the term "contact lenses" in § 74.3206(b)(1), so that all listings of D&C Green No. 6 in medical devices reference the same specifications, and by deleting the obsolete specifications for D&C Green No. 6 in § 74.3206(b)(2). In that document FDA is also proposing to remove § 74.3206(c)(3) (21 CFR 74.3206(c)(3), formerly 21 CFR 74.1206(c)(3)), which prohibits migration of the color additive to the surrounding tissue. A final rule based on this proposal will establish a uniform set of specifications for the use of D&C Green No. 6 in drugs, cosmetics, and medical devices.

In accordance with § 71.15 (21 CFR 71.15), the petitions and the documents that FDA considered and relied upon in reaching its decisions to approve these petitions are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public

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disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of these actions and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's findings of no significant impact and the evidence supporting these findings may be seen in the Docket Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, actions of this type would require an environmental assessment under 21 CFR 25.31a(a).

VII. Reference

The following information has been placed on file at the Dockets Management Branch (address above) and is available for review in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, F.K., *et al.*, "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicity or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.
2. Memorandum to the record dated October 10, 1985, from the Food Additive Chemistry Evaluation Branch, Re: "Exposure Estimates for Color Additives in Sutures."
3. Memorandum dated November 1, 1985, from the Quantitative Risk Assessment Committee to Director, Office of Toxicological Sciences, Re: "Risk from *p*-Toluidine in Sutures."

Any person who will be adversely affected by these regulations may at any time on or before April 21, 1986, file with the Dockets Management Branch (address above), written objections thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issue for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Notice of the filing of objections or the lack thereof will be announced by publication in the **Federal Register.**

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74 and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 74.1206 by revising paragraphs (b) and (c), to read as follows:

§ 74.1206 D&C Green No. 6.

* * * * *

(b) *Specifications.* The color additive D&C Green No. 6 for use in coloring externally applied drugs shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Volatile matter (at 135 °C), not more than 2.0 percent.
Water-soluble matter, not more than 0.3 percent.
Matter insoluble in carbon tetrachloride, not more than 1.5 percent.
p-Toluidine, not more than 0.1 percent.
1,4-Dihydroxyanthraquinone, not more than 0.2 percent.
1-Hydroxy-4-[(4-methylphenyl)amino]-9, 10-anthracenedione, not more than 5.0 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 96.0 percent.

(c) *Uses and restrictions.* The color additive D&C Green No. 6 may be safely used for coloring externally applied drugs in amounts consistent with current good manufacturing practice.

* * * * *

3. In § 74.2206 by revising paragraph (a), to read as follows:

§ 74.2206 D&C Green No. 6.

(a) *Identity and specifications.* The color additive D&C Green No. 6 shall conform in identity and specifications to the requirements of § 74.1206 (a) and (b).

* * * * *

4. In § 74.3206 by revising paragraphs (a), (b), and (c), to read as follows:

§ 74.3206 D&C Green No. 6.

(a) *Identity.* The color additive D&C Green No. 6 shall conform in identity to the requirements of § 74.1206(a).

(b) *Specifications.* (1) The color additive D&C Green No. 6 for use in coloring contact lenses shall conform to the specifications of § 74.1206(b).

(2) The color additive D&C Green No. 6 for use in coloring surgical sutures shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice, except that D&C Green No. 6 for use in coloring surgical sutures listed in paragraph (c)(1) (iv) and (v) of this section shall conform to the specifications in § 74.1206(b):

Volatile matter (at 135 °C), not more than 2.0 percent.
Water-soluble matter, not more than 0.3 percent.
Matter insoluble in carbon tetrachloride, not more than 1.5 percent.
Intermediates, not more than 0.5 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 1 part per million.
Pure color, not less than 96.0 percent.

(c) *Uses and restrictions.* (1) The color additive D&C Green No. 6 may be safely used at a level (i) not to exceed 0.03 percent by weight of the lens material for coloring contact lenses; (ii) not to exceed 0.75 percent by weight of the suture material for coloring polyethylene terephthalate surgical sutures, including sutures for ophthalmic use; (iii) not to exceed 0.1 percent by weight of the suture material for coloring polyglycolic acid surgical sutures with diameter greater than U.S.P. size 8–0, including sutures for ophthalmic use; (iv) not to exceed 0.5 percent by weight of the suture material for coloring polyglycolic acid surgical sutures with diameter not greater than U.S.P. size 8–0, including sutures for ophthalmic use; and (v) not to exceed 0.21 percent by weight of the suture material for coloring poly(glycolic acid-*co*-trimethylene carbonate) sutures (also referred to as 1,4-dioxan-2,5-dione polymer with 1,3-dioxan-2-one) for general surgical use.

(2) Authorization for these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the medical device in which D&C Green No. 6 is used.

(3) When the sutures listed in paragraph (c)(1) (ii) through (iv) of this section are used for the purposes specified in their labeling, the color additive does not migrate to the surrounding tissue.

* * * * *

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

5. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 317, 376); 21 CFR 5.10.

6. In § 82.1206 by revising the first sentence, to read as follows:

§ 82.1206 D&C Green No. 6.

The color additive D&C Green No. 6 shall conform in identity and specifications to the requirements of § 74.1206 (a) and (b) of this chapter. * * *

Dated: March 18, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–6315 Filed 3–19–86; 11:23 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 201

[Docket No. N-86-1600; FR-2200]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Eligible Use of Loan Proceeds and Income Requirements for Borrowers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice on the eligible use of loan proceeds and income requirements for borrowers.

SUMMARY: This notice announces certain HUD findings required under the rule for property improvement and manufactured home loans under Title I, section 2 of the National Housing Act (12 U.S.C. 1703). This rule (24 CFR Part 201) was published in the **Federal Register** of October 25, 1985 (50 FR 43516) and requires that these findings be published by Notice in the **Federal Register.** Under §§ 201.20(b)(2) and 201.21(b)(5), the Secretary finds that certain products, improvements, items, and activities may not be financed with the proceeds of Title I loans. Under § 201.22(b), in order for a borrower's income to be considered adequate for a manufactured home loan, the Secretary has determined that certain maximum percentages of net effective income will be required.

EFFECTIVE DATE: January 15, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Sorrentino, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–5210. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published in the **Federal Register** of October 25, 1985 (50 FR 43516) a final rule on property improvement and manufactured home loans under Title I, section 2 of the National Housing Act (12 U.S.C. 1703). Included among the requirements in that rule (24 CFR Part 201) is HUD's obligation to publish certain determinations by Notice in the **Federal Register** concerning the eligible use of loan proceeds and income requirements for borrowers. This Notice implements the **Federal Register** publication requirements in §§ 201.20(b)(2), 201.21(b)(5), and 201.22(b) of that rule.

Concerning § 201.20(b)(2), the rule states that proceeds from property improvement loans must be used only to finance renovations that substantially protect or improve the basic livability or utility of the property. In addition, the Secretary is required to publish by Notice in the **Federal Register** a list of items and activities that may not be financed with the proceeds of any property improvement loan. This list may also be amended by Notice. If a lender questions the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

Under § 201.20(b)(2), the Secretary finds that the following categories of products and improvements may not be financed with a Title I property improvement loan: (1) Products or improvements that do not become a permanent part of the real property and (2) products or improvements that are considered luxury items, as follows:

Barbecue pits.
Bathhouses.
Dumbwaiters.
Exterior hot tubs, saunas, spas or whirlpool baths.
Flower boxes.
Hangars for airplanes.
Kennels.
Kitchen appliances which are not designed or manufactured to be built into or permanently affixed to the structure.
Outdoor fireplaces or hearths.
Photo murals.
Sprinkler systems and fire extinguishers (except that these items shall be eligible in the case of fire safety equipment loans).
Swimming pools.
Television antennae and satellite discs.
Tennis courts.
Tree surgery.
Waterproofing of a structure by pumping or injecting any substance in the earth adjacent to or beneath the foundation or basement floor.

Section 201.21(b)(5) of the rule states requirements for HUD's publication by Notice of a list of items and activities that similarly may not be financed with proceeds of any manufactured home loan. Under § 201.21(b)(5), the Secretary finds that the following items may not be financed with a Title I manufactured home loan: (1) Small appliances (e.g., radios, stereos, toasters, and televisions) that are not a permanent part of the property; (2) HUD inspection fees, permits, and seals (although they may be included in the wholesale (base) price of the home); (3) decorator kits, bed linen and spreads; and (4) decorations or appurtenances that are

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not a permanent part of or attached to the property securing repayment of the loan. In addition, the following items may not be included in a manufactured home purchase loan, except at their actual cost to the borrower as stated in the retail purchase contract under § 201.16(b)(4) and as approved by the Secretary: garage, patio, carport, or other comparable appurtenance.

Section 201.22(b) of the rule states that the Secretary will publish by Notice in the Federal Register the maximum percentages of net effective income for borrowers for Title I manufactured home loan applications. An applicant's income may not exceed certain maximum percentages of net effective income published by the Secretary, which will be based upon generally prevailing interest rates and upon HUD's experience of claims/loan ratios, for prospective use by lenders in approving such loan applications.

Under the criteria in § 201.22(b), the Secretary has determined that a borrower's income will be considered adequate: (1) Where the total prospective housing expenses do not exceed 38 percent of the borrower's net effective income and (2) where the total of such prospective housing expenses and other recurring expenses do not exceed 53 percent of the borrower's net effective income. The terms "total prospective housing expenses" and "net effective income" are defined in § 201.22(b).

Dated: January 16, 1986.

Susan K. Zagame,

Acting General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 86-6225 Filed 3-20-86; 8:45 am]

BILLING CODE 4210-27-M

Office of the Secretary

24 CFR Parts 800, 813, 900, and 913

[Docket No. R-86-1279; FR-2181]

Transfer of Section 23 Programs to the Assistant Secretary for Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This document makes changes in Parts 800, 813 and 913 to reflect a change made in the delegation of authority for administration of the housing programs authorized by sections 10(c) and 23 of the United States Housing Act of 1937, 42 U.S.C. 1410 and 1421(b). The amendment to the delegation of authority, published on May 21, 1985 (50 FR 20943), transferred authority for the section 23 programs from the Assistant Secretary for Housing—Federal Housing Commissioner to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Sherman, Director, Office of Public Housing, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 755-5380. [This is not a toll free-telephone number.]

SUPPLEMENTARY INFORMATION: Part 800 governs the section 23 Housing Assistance Payments (Section 23 HAP) program for newly constructed or substantially rehabilitated housing. The regulations for this program were first published on April 22, 1974 (39 FR 14303) to implement section 23 of the United States Housing Act of 1937 (1937 Act), before amendment of that Act by the Housing and Community Development Act of 1974 (1974 Act). Although section 8 of the 1974 Act authorized a housing assistance payments (Section 8 HAP) program that has essentially replaced the section 23 HAP program and many section 23 projects have been converted to section 8 assistance, there are still some section 23 projects that are covered by Part 800.

Part 800 is located in Chapter VIII, a chapter for the housing assistance payments program regulations of the Assistant Secretary of Housing. Since authority for this program has been transferred to the Assistant Secretary for Public and Indian Housing, whose rules appear in Chapter IX, it is necessary to redesignate Part 800 as a new Part 900, placing it in Chapter IX.

Two other parts are affected by this document. Part 813 prescribes the definition of income and rent calculations for the section 8 HAP programs. It also has covered the section 23 programs and programs administered under section 10(c) of the 1937 Act before its amendment by the 1974 Act. The counterpart of Part 813 for programs administered by the Assistant Secretary for Public and Indian Housing is Part 913. Therefore, this document amends § 813.101 to remove these programs from the list of those covered by Part 813, and it amends § 913.101 to add these programs to the list of covered programs This change has no substantive effect.

Findings and Certifications

The Department has determined that this reorganization of regulations need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rulemaking merely reflects agency organization and practice. It is thus exempt under section 553(b)(A) of the APA from the requirement of prior notice and comment.

A Finding of No Significant Impact with respect to the environment under the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary, since this reorganization of regulations is categorically exempt from the requirement of an environmental assessment under § 50.20 (k) of HUD regulations implementing that Act.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on small entities, because it merely changes the organization of the Department's regulations.

This rule was not listed in the Department's Semiannual Regulatory Agenda published on October 29, 1985 (50 FR 44166), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program.

List of Subjects

24 CFR Part 800

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 813

Lower income housing, Loan programs—Housing and community development, Utilities.

24 CFR Part 900

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 913

Grant programs: Housing and community development, Low and moderate income housing, Public housing.

PART 800—[REDESIGNATED AS 900]

Accordingly, the Department hereby amends Chapters VIII and IX as follows:

1. Part 800—Section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation is redesignated as a new Part 900—Section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation, and §§ 800.101–800.203 are redesignated as Section 900.101–900.203, respectively.

2. In the list below, for each section listed in the left column, remove the reference indicated in the middle column from wherever it appears and add in its place the reference indicated in the right column:

Section	Remove	Add
900.102	Part 813	Part 913.
900.103	§ 800.102(b)	§ 900.102(b).
900.103	Parts 812 and 813	Parts 912 and 913.
900.202	§ 800.202(e)	§ 900.202(e).

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

3. The title of Part 813 is revised to read as set forth above.

4. The authority citation for Part 813 continues to read as follows:

Authority: Sections 3, 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437f and 1437n); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 813.101 [Amended]

5. Section 813.101 is amended by removing the phrase "; and applicants and tenants assisted under Sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.))." and by adding a period.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

6. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 913.101 [Amended]

7. Section 913.101 is amended by adding after "Opportunities Programs" the phrase "; and applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.))."

Dated: March 12, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-6227 Filed 3-20-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8071]

Income Tax; Reserve for Certain Guaranteed Debt Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the Federal Register publication on Friday, January 17, 1986, beginning at 51 FR 2478 of the final regulations which were the subject of Treasury Decision 8071. T.D. 8071 relates to the treatment of reserves for certain guaranteed debt obligations.

EFFECTIVE DATE: The final regulations that are the subject of this correction are effective for taxable years ending after October 21, 1965.

FOR FURTHER INFORMATION CONTACT: Carroll Yue of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. (Attention: CC:LR:T). Telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1986, final regulations relating to the treatment of reserves for certain guaranteed debt obligations were published in the Federal Register (51 FR 2478). These regulations are effective for taxable years ending after October 21, 1965. These amendments were made to conform the regulations to changes made by the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151), which added section 166(g) to the Internal Revenue Code of 1954. Section 166(g) was redesignated as section 166(f) by section 605 of the Tax Reform Act of 1976 (90 Stat. 1575).

Need for Correction

As published, Treasury Decision 8071 includes the following language in incorrect sequence:

"*Example.* For 1977, A, a dealer in automobiles who uses the calendar year as the taxable year, adopts in accordance with this section the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations. A's first year in business as an automobile dealer is 1973. For 1972, 1973, 1974, 1975, and 1976, A's records disclose the following information with respect to these obligations:

Year	Obligations outstanding at close of year	Gross losses from these obligations	Recoveries from these obligations	Net losses from these obligations
1972	$0	$0	$0	$0
1973	780,000	9,700	1,000	8,700
1974	795,000	8,900	1,050	7,850
1975	850,000	8,850	850	8,000
1976	820,000	9,300	1,400	7,900
Total	3,245,000	36,750	4,300	32,450

The opening balance for 1977 of A's reserve for these obligations is $8,200, determined as follows:

$$\$8,200 = \$820,000 \times \frac{\$32,450}{\$3,245,000}$$

(3) *More appropriate balance.* A taxpayer may select a balance other than the one produced under paragraph (e)(1) of this section if it is more appropriate, based upon the taxpayer's actual experience, and in the event the taxpayer's return is examined, if the balance is approved by the district director.

This language appears on page 2480, third column, immediately following paragraph (d)(8), and preceding paragraph (e)(1).

Correction of Publication

Accordingly, the publication of Treasury Decision 8071, which was the subject of FR Doc. 86-1132, is corrected by removing the above-mentioned language which appears on page 2480, third column, immediately following paragraph (d)(8) and preceding paragraph (e)(1), and inserting the same

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language on page 2481, first column, immediately following paragraph (e)(2) and preceding paragraph (e)(4).

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-6264 Filed 3-20-86; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

31 CFR Part 128

Reporting of International Capital and Foreign Currency Transactions and Holdings, Transfers of Credit, and Export of Coin and Currency

AGENCY: Department of the Treasury, Office of the Secretary.

ACTION: Final rule.

SUMMARY: Subpart B of Part 128, Title 31, Code of Federal Regulations, describes those forms prescribed under Part 128 for reporting of data on international capital transactions. This final rule adds to Subpart B a new § 128.11c, which describes and thereby authorizes the issuance of Treasury International Capital (TIC) Form BL–3. TIC Form BL–3 (a copy of which is attached) is designed for use by a bank or other financial intermediary in the United States to notify a nonbanking customer that a new foreign borrowing denominated in U.S. dollars is effective and that the customer may have an obligation to report the outstanding loan balance on TIC Form CQ–1. The obligation to report on TIC Form CQ–1 applies when such outstanding borrowings from foreigners will not be reported by the bank or other financial intermediary on TIC Form BL–2.

DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Gary A. Lee, Manager, Treasury International Capital Reporting System, Room 5453, Department of the Treasury, 15th and Pennsylvania Avenue NW., Washington, DC 20220 (202–566–3114).

SUPPLEMENTARY INFORMATION:

Background

Part 128 of Title 31, Code of Federal Regulations, sets forth the requirements and describes the forms used for reporting international capital and foreign currency transactions and holdings. Large amounts of offshore loans to U.S. nonbank residents are not being properly reported on the TIC C-series forms prescribed in Subpart B of Part 128. Much of this under reporting results from confusion among nonbank borrowers over whether the source of their loans is domestic or foreign. This confusion is exacerbated by the failure of U.S. intermediaries to comply with existing obligations, specified in the Form BL–2 instructions, either to report certain foreign transactions on behalf of their U.S. customers or to inform those customers of foreign ownership of claims held against them so the customers can themselves report the transactions on their own TIC forms.

New TIC Forms BL–3 formalizes the present arrangement whereby the intermediary is given the option to either include "reportable foreign borrowings" or Form BL–2, "Custody Liabilities of Reporting Banks, Brokers and Dealers to Foreigners,' Payable in Dollars," (OMB No. 1505–0018), on an unidentified basis or to notify the customer of certain foreign borrowings on Form BL–3. On the latter form, a bank or other financial intermediary advises the U.S. nonbanking entity that (1) the intermediary is acting as the U.S. address of the foreign lender in servicing drawn and outstanding loan balances; and (2) that the loan balances will not be reported as custody liabilities to foreign lenders on the intermediary's TIC Form BL–2. On receipt of the notification, the nonbanking firm will be formally advised of his subsequent reporting responsibility to include the liability on TIC Form CO–1, "Financial Liabilities to, and Claims on, Unaffiliated Foreigners," (OMB No 1505–0024). Banks and other financial intermediaries will also be required to file copies of every Form BL–3 with the Federal Reserve Bank of New York for data monitoring purposes.

Section 128.2(a)(2) of Title 31 mandates that persons subject to the jurisdiction of the United States and engaged in any transfer of credit between any person within the United States and any person outside of the United States shall furnish information concerning such transfers as required by report forms and instructions prescribed in Subpart B of Part 128. The addition to Subpart B of § 128.11c, describing new TIC Form BL–3, will provide the necessary authorization for use of this form.

Notice and Comment

In response to a notice of proposed rule making dated May 10, 1985 which invited comments through July 15, 1985 and during an earlier April 1 to June 1, 1985 informal comment period, the Department of the Treasury received twenty-one comments on proposed TIC Form BL–3. These comments came from fourteen individual banks, four domestic banking associations and three associations of foreign banks. In addition, two letters of comment were received several weeks after the comment period had ended, including a foreign bank association and a representative office. The Treasury has considered all of the comments received in formulating the final rule. The following summarizes the comments and sets forth Treasury's responses.

Burden and Cost of Reporting

Comment: Commenters cited three reasons why Form BL–3 would greatly increase the current reporting burden and associated costs. First, that the proposed scope of the BL–3 would encompass foreign loan transactions in addition to those in which the U.S. intermediary actually acts as the U.S. address of the foreign lender. Second, the Form BL–3 instructions were interpreted by some commenters to require U.S. banking offices to gather information and file a notification form on all loans granted to U.S. nonbank residents by related foreign offices whether or not a U.S. banking office is directly involved in the transaction. Based on this interpretation, some commenters argued that Form BL–3 requirements constituted an extraterritorial attempt by Treasury to collect information and, with respect to U.S. offices of foreign banks, a penalty for conducting business in the U.S. Third, that a separate Form BL–3 notification would be required each time a reportable borrowing arrangement was renegotiated or rolled-over.

Response: Treasury has taken steps to provide that any notification pursuant to Form BL–3 requirements will not be unreasonably burdensome either to U.S.-chartered banks or to U.S. offices of foreign banks. First, Treasury has amended the Form BL–3 instructions to require a U.S. intermediary to make notification only of loans and transactions *drawn down* and *outstanding* and for which the intermediary knowingly acts as the U.S. address of a foreign lender. Second, Treasury has amended Form BL–3 notification requirements so that they clearly require information from U.S. banking offices only with regard to loan arrangements in which they are directly involved and not with regard to all loans granted to U.S. nonbank residents by related foreign offices. In all cases, the intermediary will have the option to report such transactions on Form BL–2 or to file the Form BL–3 Notification. Third, a rollover of a foreign loan need not be subject to Form BL–3 notification provided either that a notification is issued at the time of the first take-down of the loan or that the intermediary

includes the outstanding balances on such loans on its own Form BL–2.

Inclusion of Representative Offices

Comment: There was strong objection to the specific inclusion of representative offices among potential Form BL–3 respondents on the grounds that representative offices do not report on Form BL–2, may not legally undertake banking business, maintain no records and often are one-person operations. Further, it was argued that in most cases the loans that were generated by representative offices for the foreign parent were in fact serviced by a U.S. branch or agency of the parent. In such cases, the branch or agency would be able to shoulder any TIC reporting responsibility.

Response: Treasury has exempted representative offices from any Form BL–3 notification responsibility.

Foreign Confidentiality Laws

Comment: Many commenters stated that the requirement for filing a copy of Form BL–3 with the Federal Reserve Bank of New York could in many cases put the U.S. intermediary in violation of foreign bank secrecy laws because it would reveal proprietary information; e.g., customer names and amounts in accounts of foreign banking offices. Many in the industry asserted that this could result in jurisdictional conflicts and litigation, thereby involving substantial additional costs.

Response: Treasury has amended the Form BL–3 instructions to clarify that the intermediary has the option of including "reportable foreign borrowings" on Form BL–2 on an unidentified basis if it chooses not to notify both the customer and the Federal Reserve Bank of New York of such foreign borrowings on Form BL–3.

Definitional Problems—Need for Clarification

Comment: A number of commenters stated that the instructions to proposed Form BL–3 did not clearly define the types of transactions that were to be encompassed by the term "reportable foreign borrowing," and that the instructions should contain examples of loans and credit arrangements either covered or excluded from the scope of the reporting requirement. In particular, commenters asked that Treasury clearly state whether the following arrangements are within the scope of the Form BL–3 reporting requirement: loans to foreign affiliates of U.S. nonbank entities, loan participations and "contingent" liabilities such as standby letters of credit, performance bonds and guarantees.

Response: Treasury has refined the reporting instructions for Form BL–3 to define clearly the types of loans and credit arrangements that are to be considered "reportable foreign borrowings."

Reporting Threshold and Exemptions

Comment: Several commenters argued that the notification threshold on proposed Form BL–3 ($1 million per borrowing arrangement) should be tied to the Form BL–2 reporting threshold (currently $15 million of aggregate reportable liabilities). Further, several commenters objected to the proposed Form BL–3 notification requirement for new foreign loans (overnights and others) scheduled to mature before the end of the current calendar quarter since loans outstanding at the quarter end only are reportable by nonbank borrowers on TIC Form CQ–1.

Response: Treasury has amended the requirements to provide that banks and other intermediaries who opt for Form BL–3 notification of "reportable foreign borrowings" will not be required to submit Form BL–3 until "reportable foreign borrowings" and other "custody" items covered by Form BL–2 aggregate to $15 million or more as of the month end in which the borrowing is initially drawn and outstanding. Further, in the interest of reduced reporting burden, Treasury has exempted from optional Form BL–3 notification any "reportable foreign borrowings" which are scheduled to mature before the end of the current calendar quarter. Form BL–3 notification will be applicable to borrowings maturing during the next or subsequent quarters only. However, outstanding balances of overnights and other loans booked abroad which constitute "reportable foreign borrowings" and which mature before the end of the next calendar quarter may be reportable on Form BL–2 if outstanding as of the last business day of a month.

In addition, Treasury has changed the filing date of Form BL–3 from 10 days to 15 days following the month-end so as to correspond with the filing deadline for Form BL–2.

Foreign Currency Denominated Borrowings

Comment: Several commenters complained that proposed Form BL–3 exceeded the scope of Form BL–2 in that it would require notification of borrowings payable in foreign currencies as well as borrowings payable in dollars.

Response: Treasury has limited the notification requirements of Form BL–3 to encompass borrowings payable in U.S. dollars only.

Alternative Sources of Information

Comment: There were some suggestions that Treasury should explore other avenues of information as a means of measuring the completeness of U.S. data on foreign lending to U.S. nonbanks. It was pointed out such data are currently collected by a number of foreign governments and central banks that perhaps could be used by the Treasury. A specific source of alternative aggregate information was cited: Table 7YR–D, "Cross-Border Bank Credits to Nonbanks by Residence of Borrower," published in the IMF's *International Financial Statistics*. It was suggested that Treasury seek any necessary additional detail on these borrowings from the foreign collection authorities themselves.

Response: The Treasury fully recognizes the data collection activities of other countries and in fact directly shares non-confidential TIC aggregates on an ongoing basis with several countries and international agencies, including the IMF. The data readily available from these other sources are not detailed enough for Treasury's needs. Even if other countries were to share finer detail, which is most unlikely given their confidential character, the data would not be sufficiently precise to complement respondent data reported in the TIC System and to facilitate TIC data editing procedures. Further, data collection systems differ among counties. Form BL'–3's purpose is to improve compliance with existing TIC reporting requirements. We believe that implementation of the form, as revised, will help close current reporting gaps in the TIC statistical series.

Special Analyses

This rule provides technical clarification of existing reporting requirements. For this reason, the Department of the Treasury has determined that this document does not constitute a "major" rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required; has certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities; and has determined that a delayed effective date is unnecessary pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 31 CFR Part 128

Banks, Banking, Currency, Federal Reserve System, Foreign banking.

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Reporting or recordkeeping requirements.

Amendment

Part 128, Subpart B, Chapter I of Title 31, Code of Federal Regulations is amended as set forth below:

PART 128—[AMENDED]

1. The authority citation for Part 128 continues to read as follows:

Authority: Sec. 8, Pub. L. 79–171, 59 Stat. 515, 22 U.S.C. 286f; Sec. 4, Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3103; E.O. 10033, 14 FR 561, 3 CFR, 1949–1953, Comp: E.O. 11961, January 9, 1977, 42 FR 4321, as amended.

2. In Part 128, § 128.11c is added to read as follows:

§ 128.11c International Capital Form BL–3: Intermediary's notification of foreign borrowing denominated in U.S. dollars.

On this form any intermediary in the United States which knows that it is being used as the U.S. address of "foreigners" in connection with the servicing of their U.S. dollar loans to nonbank borrowers in the United States is required to notify its nonbanking customer in the United States and the Federal Reserve Bank of New York of that nonbanking customer's obligation to report borrowings from foreigners on Treasury International Capital (TIC) Form CQ–1 if the intermediary does not exercise its option to report the outstanding borrowings on TIC Form BL–2.

Dated: March 6, 1986.

David C. Mulford,

Assistant Secretary, International Affairs.

Note.—The attached form is printed for the convenience of the reader. It will not appear in the CFR.

The data furnished on this report will be held in confidence.

International Capital Form BL–3

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

Form Approved OMB No. 1505–0088

REPORT TO THE FEDERAL RESERVE BANK OF NEW YORK

Intermediary's Notification of Foreign Borrowing Denominated In U.S. Dollars

Note.—This notification should be sent not later than the fifteenth day following the month-end in which a "reportable foreign borrowing" is initially drawn and outstanding.

This report is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128). Failure to report can result in a civil penalty not exceeding $10,000. Willful failure to report can result in criminal prosecution and upon conviction a fine of not more than $10,000, or, if an individual, imprisonment for not more than one year, or both. Any officer, director, employee or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both (22 U.S.C. 3105; 31 CFR 128.4(a)).

To: ______________________

Name of Borrower

____

Address of Borrower

____

Contact Officer at Borrower

____

Name of Parent (if any)

____

Address of Parent

This is to notify you that on

____

Take-down date

a new borrowing, payable in U.S. dollars, was effective for your account amounting to (Total amount of borrowing in thousands of dollars).

This borrowing was extended by a foreign lender located in (Country of Residence of Lender) and is to be repaid on (Date).

Since we will not be reporting this borrowing from a "foreigner" on the Treasury International Capital (TIC) Form BL–2, your firm may be required to report the balance *drawn* and *outstanding* as of each quarter-end on Treasury International Capital (TIC) Form CQ–1, Part 1, "Financial Liabilities to Unaffiliated 'Foreigners,'" which must be filed with the International Reports Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045. A copy of this notification has been filed by us with the Federal Reserve Bank of New York as required by law.

Name and address of notifying intermediary:

____

____

____

____

Person to be contacted concerning this notification

____

Telephone (Area code, telephone number and extension)

____

Name and title of responsible officer *(please print or type)*

____

Signature of responsible officer

BEFORE PREPARING THIS REPORT PLEASE READ CAREFULLY THE GENERAL INSTRUCTIONS AND DEFINITIONS FOR THE TIC BANKING FORMS AND THE INSTRUCTIONS FOR THIS FORM.

INSTRUCTIONS FOR THE PREPARATION OF FORM BL–3

Intermediary's Notification of Foreign Borrowing Denominated in U.S. Dollars

Noted.—This notification should be sent no later than the fifteenth day following the month-end in which a "reportable foreign borrowing" is initially drawn and outstanding.

A. INTRODUCTION

The purpose of this report is to gather timely and reliable information on the international financial position of the United States and on movements of capital between the United States and foreign countries.

This form is specifically designed for use by an intermediary (as defined in these instructions) to notify a nonbanking customer in the United States of its obligation to report on Treasury International Capital (TIC) Form CQ–1 borrowings from foreigners which will not be reported by the intermediary on TIC Form BL–2. These borrowings, as defined in these instructions, are those payable in U.S. dollars to "foreigners" which represent claims, acquired either here or abroad, on persons in the United States.

The General Instructions and Definitions for the Preparation of Reports on the Treasury International Capital Banking Forms apply to the preparation of reports on this form, as well as the instructions below.

This notification is required by law (22 U.S.C. 2861; 22 U.S.C. 3103; E.O. 10033; 31 C.F.R. 128). Failure to report can result in a civil penalty not exceeding $10,000. Willfull failure to report can result in criminal prosecution and upon conviction a fine of not more than $10,000, or, if an individual, imprisonment for not more than one year, or both. Any officer, director, employee or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both (22 U.S.C. 3105; 31 C.F.R. 128.4(a)).

Data reported on this form will be held in confidence by the Department of the Treasury and the Federal Reserve Bank of New York acting as fiscal agent of the Treasury. The data reported by individual respondents will not be published or otherwise publicly disclosed. Data reported by individual respondents may be made available to the Board of Governors of the Federal Reserve System and to other Federal agencies insofar as authorized by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the international investment Survey Act of 1976 (22 U.S.C. 3101 *et seq.*).

B. WHO MUST REPORT

Any intermediary, i.e., any bank, banking institution (including the U.S. agencies, branches and subsidiaries of foreign banks), thrift institution, broker or dealer in the United States, which knows that it is being used as the U.S. address of "foreigners" in connection with the servicing of their loans to nonbank borrowers in the United States (i.e., "reportable foreign borrowings" as defined in these instructions), may be required to report on this form. For instance, a bank in the United States may be an "intermediary" for "reportable foreign borrowings" that are carried on the books of a "shell" branch or other related foreign office.

Note.—Your attention is drawn to General Instruction B., "Who Must Report," of TIC Form BL–2, which states: Reporting institutions are required to report all financial claims on persons in the United States, other than "long-term" securities, which they hold for "foreigners" either in direct custody or in their own name with a custodian bank of

other institution. If the reporting institution is used by "foreigners" as their U.S. address in connection with their financial transactions with persons in the United States, the reporting institution must report claims on persons in the United States which result from such transactions as if such claims were in the report's custody, or must inform the U.S. persons against whom the claims are held that they are owned by "foreigners," identifying the countries and the amounts relevant to each.

In the case of a "reportable foreign borrowing" that you do not elect to include on your Form BL–2 as a "custody" liability to "foreigners," you must notify the U.S. borrower and the Federal Reserve Bank of New York using Form BL–3.

C. EXEMPTIONS

A bank, banking or thrift institution, broker or dealer need not file Form BL–3 for any "reportable foreign borrowing" if *either* of the following conditions is met:

1. Total "custody" liabilities to "foreigners" (including "reportable foreign borrowings") for purposes of reporting on Form BL–2 aggregate less than $15 million as of the month-end in which the foreign dollar borrowing is *drawn* and *outstanding;* or

2. You elect to include on your own monthly Form BL–2 the amount of the "reportable foreign borrowing" *drawn* and *outstanding* at month-end.

Note.—Form BL–3 need not be filed for any borrowing *drawn* and *outstanding* that is less than $1,000,000 or that is scheduled to mature before the end of the current calendar quarter.

D. FILING OF REPORTS

A notification on this form should be sent to the borrower, with a copy to the Federal Reserve Bank of New York, not later than 15 days following the month-end in which the "reportable foreign borrowing" is initially *drawn* and *outstanding,* at the following address: Corporate Unit, International Reports Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

Form BL–3 need only be filed once per borrowing, showing the date of the first draw-down.

E. NONBANK BORROWER

A "nonbank borrower" means any person located in the United States other than a bank, bank holding company, thrift institution, security broker or dealer, including their domestic, majority-owned nonbanking subsidiaries, and the U.S. Government and its agencies, corporations and other instrumentalities.

F. REPORTABLE FOREIGN BORROWING

A "reportable foreign borrowing" is a foreign credit, denominated in U.S. dollars, extended to a nonbank borrower in the United States for which you are *knowingly* being used as the U.S. address of the "foreign" lender in connection with its loan servicing transactions with the U.S. borrower. The term "reportable foreign borrowing" includes:

1. Loans and syndicated borrowings when the notes evidencing such borrowings *are not held* by you for account of the foreign lenders. (Note: When such notes *are directly held* by you for the account of foreign lenders, they *are reportable* as custody liabilities on Form BL–2. See General Instruction B., "Who Must Report," Form BL–2.)

2. Overnight and call borrowings.

3. Borrowings that were switched without the knowledge of the U.S. borrower from the books of the U.S. intermediary to the books of the foreign lender.

4. Participations to foreign lenders of loans granted by you to U.S. nonbank borrowers if the terms (e.g., interest rate and maturity) of the participation are identical to those of the underlying loan and such participation certificates *are not held* by you for account of the foreign lenders. (See Note in F. 1. above.)

G. EXCLUSIONS

The following should be excluded from amounts reported on Form BL–3:

1. Borrowings denominated in foreign currencies.

2. Extensions of credit in connection with letters of credit, acceptances and due bills.

3. Performance bonds, standby letters of credit, guarantees or other similar contingent liabilities.

4. Overdrafts of U.S. firms with banks abroad.

5. Commercial paper and other short-term (*original* maturity of one year or less) negotiable and readily marketable obligations issued by U.S. firms that are being *held* by you for account of "foreigners." (Note: When such instruments are directly *held* by you for the account of "foreigners," they *are reportable* as custody liabilities on TIC Form BL–2. See General Instruction B., "Who Must Report," Form BL–2.)

6. Loans granted by "foreign" lenders to foreign affiliates of U.S.-based firms.

7. "Long-term" marketable securities of public and private issuers in the United States. Such securities include bonds, notes, and debentures with an *original* maturity of more than one year.

8. Nonnegotiable and nonmarketable notes and loan participation certificates of U.S. firms *held* by you for the account of foreigners. (Note: These items *are reportable* as custody liabilities on Form BL–2. See item G. 5 above.)

9. Loans granted by foreign lenders to banks, bank holding companies, thrift institutions and brokers or dealers located in the United States, including their domestic nonbanking subsidiaries.

10. Borrowings which are scheduled to mature before the end of the current calendar quarter.

11. Borrowings for which the intermediary does not know it is serving as the U.S. address of a "foreign" lender (including commitments or lines of credit arranged by the intermediary but for which the intermediary does not know when or whether the U.S. nonbank borrower draws upon the commitment or line or credit).

[FR Doc. 86–6197 Filed 3–20–86; 8:45 am]

BILLING CODE 4810-25-M

POSTAL SERVICE

39 CFR Part 3

Increase of Delegated Authority for Capital Investment Projects

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the bylaws of the Board of Governors to increase the Postmaster General's delegated authority for capital investment projects from $5 to $10 million. The previous authority was established in 1977. Since that time construction costs have increased almost 80%, so that the purchasing power of $5 million has been reduced to the equivalent of less than $2.8 million in 1986 dollars. This inflation has resulted in the Board being required to review and approve many small, uncomplicated investment projects that, under the original delegation, it did not intend to review. By increasing the authority to $10 million the Board will restore the delegation to its original force.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: John Ward (202) 268–3392.

Accordingly, Part 3 of 39 CFR is amended as follows:

List of Subjects in 3 CFR Part 3

Organization and functions (Government agencies), Postal Service.

PART 3—BOARD OF GOVERNORS [ARTICLE III]

1. The authority citation for Part 3 continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 1003, 3013; 5 U.S.C. 552b (g), (j).

§ 3.4 [Amended]

2. In § 3.4, paragraph (g) is amended by striking out "$5 million" and inserting "$10 million" in lieu thereof.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86–6253 Filed 3–20–86; 8:45 am]

BILLING CODE 7710-12-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400

[OMB-9-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends a general HCFA regulation to display control numbers assigned by the Office of Management and Budget (OMB) for approved "collection of information" requirements that are contained in regulations governing the Medicare and Medicaid programs.

This rule is issued in accordance with OMB regulations for controlling paperwork burdens on the public (5 CFR Part 1320) and serves as notice that the collection of information is approved.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Odachowski, (301) 594-3075.

SUPPLEMENTARY INFORMATION:

General Information

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain OMB approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this Act, the OMB has established regulations under Part 1320 of title 5 of the Code of Federal Regulations. The OMB regulations require Federal agencies to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the Federal Register, and to display the control number assigned by OMB after approval of the requirement as part of the agency's regulatory text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections as a means of notifying the public. We update this regulation routinely to add the most recent OMB control numbers or to delete entries that are no longer in effect. This document contains our latest update of control numbers.

Waiver of Proposed Rulemaking and Waiver of Delayed Effective Date

This regulation merely updates our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations. It is technical in nature. To publish the regulation in proposed form is unnecessary and would serve no useful purpose. Therefore, we find good cause to waive notice of proposed rulemaking.

In addition, we find justification to waive the 30 day delay in effective date required by the Administrative Procedure Act for the following reasons. Under EOMB regulations at 5 CFR 1320.13(j), a collection of information requirement is not effective until EOMB has assigned a control number and the number is displayed. We display the OMB control number by publishing it in the Federal Register. We believe that it is unreasonable to use a 30 day delayed effective date for the OMB control number displayed in this rule because we are displaying the control number before the effective date of the regulations containing the controlled collection of information requirements. To use a 30 day delayed effective date would merely delay implementation of those sections of the regulations subject to OMB approval, and is unnecessary. Therefore, we find good cause to waive the 30 day delay in effective date.

Impact Analysis

As noted above, this regulation is technical in nature and merely updates the display of OMB control numbers of approved collection of information requirements contained in HCFA regulations. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive Order 12291. In addition, the Secretary certifies, consistent with the Regulatory Flexibility Act, that this document would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 400 is amended as follows:

PART 400—INTRODUCTION: DEFINITIONS

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is amended by adding, in numerical order by CFR section, the following entries of sections that contain collections of information and assigned OMB control numbers.

§ 400.310 Display of currently valid OMB control numbers:

Sections in 42 CFR that contain collections of information	Current OMB control No.
405.334 (b) and (c), 405.336 (a), (c), and (d)	0938-0465

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 11, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 18, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-6343 Filed 3-20-86; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 405

[BERC-273-CN]

Medicare Program; Procedures for Determining Whether Providers, Practitioners, or Other Suppliers of Services Are Liable for Certain Noncovered Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule, published February 21, 1986, that revised procedures for determining whether providers, practitioners, or other suppliers of services are liable for services that are found not to be medically reasonable and necessary or to constitute custodial care.

FOR FURTHER INFORMATION CONTACT: Denis M. Garrison, (301) 594-9435.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-3847, beginning on page 6222 in the issue of February 21, 1986, make the following corrections:

§ 405.330 [Corrected]

Page 6235, in the third column, in the amendatory language designated as "3": (1) In the third line, "§ 405.334(a)" is corrected to read "§ 405.334"; and (2) In the sixth line, "§ 405.336(b)" is corrected to read "§ 405.336", correcting the amendatory language to read as follows:

3. In § 405.330, paragraph (b)(1) is amended by revising the citation "§ 405.332(a)" to read "§ 405.334" and paragraph (b)(2) is amended by revising the citation "§ 405.332(b)" to read "§ 405.336".

(Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 17, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-6217 Filed 3-20-86; 8:45 am]

BILLING CODE 4120-01-M

Office of the Secretary

42 CFR Part 455

[LRR-2-CN]

Medicare and Medicaid Programs; Fraud and Abuse Technical Amendments

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule, published September 13, 1985 (50 FR 37370), that implemented sections 2348 and 2370 of the Deficit Reduction Act of 1984, and set forth a series of technical changes transferring the responsibility of making fraud and abuse determinations from the Health Care Financing Administration to the Department's OIG.

FOR FURTHER INFORMATION CONTACT: Ronald Ritchie (301) 594-1832.

SUPPLEMENTARY INFORMATION: Following the publication of the OIG Fraud and Abuse Technical Amendments final rule (50 FR 37370, September 13, 1985), one commenter pointed out that revisions to 42 CFR 455.208 and 455.213 failed to include specific reference to "intermediate care facility services" in the regulations. As a result of this comment and upon reexamination of past and existing policies and regulatory actions in this area, we believe now that a further revision is necessary to clarify these regulations and to insure that intermediate care facility services are specifically delineated in these provisions.

To correct these omissions in 42 CFR 455.208 and 455.213, we are making the following corrections:

§ 455.208 [Corrected]

A. Page 37375: In column 2, § 455.208(c)(1), in the third line, the phrase "posthospital extended care services" is corrected to read as "skilled nursing facility and intermediate care facility services."

§ 455.213 [Corrected]

A. Page 37375: In column 3, § 455.213(b)(1), in the third line, the phrase "posthospital extended care services" is corrected to read as "skilled nursing facility and intermediate care facility services."

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; and No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: March 17, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-6216 Filed 3-20-86; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6614

[I-8856]

Idaho; Public Land Order No. 6605, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the land description of Public Land Order No. 6605 of May 24, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6605 of May 17, 1985, in FR Doc. 85-12618, published at page 21443 in May 24, 1985, is corrected as follows:

On Page 21443, under T. 5 S., R. 3 W., the line reading "Sec. 6, Lots 11, 12, 29-59, 63-86, 91-96, 100, 106-110" should read "Sec. 6, Lots 11, 12, 29-59, 63-86, 89, 91-96, 99, 100, 106-110."

J. Steven Griles,

Assistant Secretary of the Interior.

March 11, 1986.

[FR Doc. 86-6203 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-84-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program Appendix A: New York

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before April 21, 1986.

ADDRESS: Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, (202) 632-5544.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Bronx, Kings, and New York Counties, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on November 1, 1985, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed

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rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because it adds a new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973).

2. Section 801.202 is amended by alphabetically adding New York (which include Bronx, Kings, and New York Counties) to Appendix A to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

New York

County; Place for filing; Beginning date.

* * * * *

Bronx, Kings, and New York Counties, New York—26 Federal Plaza, Room 29108, New York, New York.

* * * * *

[FR Doc. 86-6194 Filed 3-20-86; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[MM Docket No. 85-218; FCC 86-67]

Tender Offers and Proxy Contests

AGENCY: Federal Communications Commission.

ACTION: Policy Statement.

SUMMARY: The Commission determined that the mandatory use of the traditional long form procedures in connection with tender offers and proxy contests involving Commission licensees disserves the public interest. In the extraordinary circumstances surrounding a tender offer, the Commission found that the grant of special temporary authority pursuant to section 309(f) of the Communications Act to an independent trustee with restricted authority would provide an appropriate mechanism to permit shareholder consideration of tender offers. In situations in which the use of proxies may result in a transfer of corporate control, the Commission decided to employ an expedited procedure which entails the submission of a short form 316 supplemented by specific data on citizenship, other media interests and law violations. In situations in which the use of proxies does not effectuate a transfer of control, the Commission determined to retain the current practice of obtaining notification of changes in the Board at the time that the annual ownership report is filed.

ADDRESS: Federal Communications Commission, Washington DC 20554.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel Bergold, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: Effective immediately, the complete text of the decision adopted by the Commission will be summarized for Federal Register publication rather than published in full.

In the Matter of Tender Offers and Proxy Contests [MM Docket No. 85-218].

This is a summary of the Commission's policy statement, MM Docket No. 85-218, adopted January 30, 1986 and released March 17, 1986.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of Policy Statement

1. On January 30, 1986, the Federal Communications Commission ("Commission") adopted a *Policy Statement* on the appropriate procedures governing tender offers and proxy contests involving Commission licensees and corporations that control Commission licensees. In that *Policy Statement*, the Commission concluded that the mandatory and exclusive use of the long form procedures, in the context of tender offers and proxy contests, is not required and, in fact, would contravene the public interest. Consequently, it found that the formulation of specific alternative approaches to this traditional procedure was necessary. The Commission emphasized that these determinations were based upon the record that it compiled in that proceeding, its experience in regulating the broadcasting industry and careful consideration of four fundamental objectives: The need to comply fully with the strictures and policies of the Communications Act, the promotion of strict neutrality of its regulatory procedures, the elimination of unnecessary regulatory delay and the accommodation of the policies underlying federal and state statutes concerning the governance of corporations.

2. In light of the varying factual settings in which proxy contests can arise, the Commission stated that it would be inappropriate for it to fashion generic procedures applicable in all situations involving proxy contests. It noted that section 310(d) of the Communications Act of 1934, *as amended*, requires the Commission to grant prior approval only with respect to those changes in the composition of a Board of Directors of a licensee corporation which constitute a transfer

of control. The Commission determined, however, that many proxy contests involving the election of a Board do not result in a transfer of control cognizable under section 310(d). In such situations, the Commission found the application of prior approval procedures to be both unnecessary and unwarranted. The Commission also stated that it would be inappropriate to adopt potentially burdensome and costly filing requirements in such cases, either on a pre-election or on an accelerated post-election basis. Rather, when no change of control over a licensee is involved, the Commission found that its regulatory objectives would be best served by continuation of its current practice of obtaining notification of changes in the Board in the ordinary course pursuant to the annual ownership report.

3. The Commission recognized, however, that there are certain types of proxy contests, such as the contested Board election in *Full Value of Storer Communications Inc.*, 101 FCC 2d 434, *aff'd sub nom. Storer Communications, Inc. v. FCC*, 763 F.2d 436 (D.C. Cir. 1985), that involve a transfer of control requiring its prior approval. It noted, however, that such transfers do not involve any change in ownership or on-going voting interests. Consequently, the Commission determined that this type of transfer annually will not be considered substantial under the Communications Act requiring that use of long form procedures. Moreover, in this context, the Commission found that the use of long form procedures would conflict with the purposes of the securities laws, would thwart the objective of assuring governmental neutrality and would result in unnecessary and potentially costly regulatory delay. For such transfers, therefore, the Commission stated that it would utilize a modified short form procedure, supplemented by data on citizenship, other attributable media interests, and adverse findings regarding law violations.

4. With respect to tender offers, in its *Policy Statement*, the Commission indicated that a tender offer involving its licensee may be simultaneously subject to the potentially conflicting procedures prescribed by the Communications Act and its implementing rules, the Williams Act, other federal laws and regulations and state law. The Commission decided that the accommodation of these diverse regulatory structures would warrant the use of special procedures. It also found that the exclusive use of the long form procedures would result in protracted delays, effectively insulate incumbent management from takeover challenges, and conflict with the objective of governmental neutrality set forth in the Williams Act. Indeed, it determined that the regulatory delays arising from this procedure in effect would deprive shareholders of communications corporations of the ability to consider tender offers. For these reasons, the Commission concluded that extraordinary circumstances exist which fully justify the application of the exceptional procedures prescribed by section 309(f) of the Communications Act.

5. Accordingly, in the context of a tender offer, the Commission determined to supplement the long form procedure with use of a temporary voting trust. Pursuant to section 309(f) of the Communications Act, the Commission concluded that it would grant an STA to a qualified, independent trustee with power to consummate the tender offer and, subject to certain prescribed limitations, to exercise control over the corporation during the pendency of the long form review of the offeror. The Commission stated that this supplementary, expedited regulatory approach would eliminate the deleterious effect of regulatory delay which would otherwise effectively deny shareholders the ability to consider tender offers without depriving interested parties of the right to fully participate in the long form review of the offeror.

6. The Commission also decided to impose specific restrictions on the offeror designed to prevent him or her from exercising control over the corporation or from influencing the trustee pending the completion of the long form review. Specifically, from the time that the tender offer is consummated the Commission stated that it would strictly prohibit the offeror from either becoming involved in, or seeking to influence, directly or indirectly, the operation or management of the corporation. For example, under this restriction the offeror could not nominate a director as his or her representative or attempt to influence the trustee's selection of Board members. In addition, the Commission determined that the offeror would be required to place all his or her existing stock holdings in trust at or before the consummation of the tender offer.

7. The Commission noted that the imposition of regulatory restrictions which do not further statutory objectives would both unnecessarily burden the offeror and would constitute unwarranted governmental interference in the marketplace. Accordingly, before consummation of the tender offer, the Commission determined that the offeror would not be restricted from exercising voting rights in existing stock interests or from taking any other actions he or she deems appropriate to promote a successful takeover bid, providing such actions do not amount to an exercise of *de facto* control of the licensee. Additionally, the Commission concluded that the offeror would not be obligated to place his or her existing stock holdings in trust prior to the time the tender offer is consummated.

8. In addition to direct limitations on the offeror, the Commission stated that additional prescriptions concerning the relationship between the offeror and the trustee are essential to ensure that the trustee will be able to act independently in exercising the powers granted pursuant to the STA. As a consequence, the Commission required strict separation between the trustee and the offeror. In establishing such separation, the Commission stated that it would not grant an STA to a trustee if that trustee either has any direct or indirect familial ties or business relationships, apart from the trust agreement, with the offeror, related entities or its principals, officers, or directors. In addition, it applied the same type of insulation criteria to any director who may be elected by the trustee. Because an offeror could influence the licensee by communicating with the trustee on matters relating to the management and operations of the corporation, the Commission decided to ban such communications.

9. The Commission emphasized, however, that it would not completely prohibit all communications between the offeror and the trustee. In this regard, the Commission stated that it would permit the trustee to send written information to the offeror regarding the management or operations of the company. It noted that the mere receipt of written reports would not provide the offeror with the means by which to influence corporate affairs. The Commission also determined that there was no reason to prohibit communications between the trustee and the offeror relating to the purchase of tendered stock. It did require, however, that all permissible communications between the trustee and the offeror, during the time in which the STA is in effect, be in writing.

10. The Commission recognized that the trustee must have sufficient authority to direct the operations of the business, should the need arise. It concluded, therefore, that the trustee requires a certain degree of flexibility in the manner in which he or she exercises control over the corporation. For

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example, the Commission stated that the trustee would be permitted to participate in the election of the Board of Directors.

11. The Commission asserted, however, that the need for flexibility should be balanced against the limited purpose and temporary duration of the trust. It enunciated three broad principles to guide the trustee's participation in the management and operations of the company as well as the manner in which he or she exercises the power granted by the STA. First, the Commission stated that the trustee has a general obligation to safeguard the assets of the corporation. Second, the Commission determined that the trustee should exercise his or her power in a manner which assures the continuity of broadcast operations. Third, the Commission stated that the trustee must act in a manner which facilitates the underlying long form transaction. In addition, the Commission stated that it would expect the trustee to act, whenever possible, and except where necessary to promote the three objectives set forth above, in a manner which preserves the *status quo* and maintains the general character of the corporation. It concluded, therefore, that the trustee would be presumptively disallowed from undertaking, initiating or supporting any significant departures from existing corporate operations or practices.

Ordering Clauses

12. Accordingly, it is ordered, that this proceeding is terminated.

13. It is further ordered, that the "Motion for Acceptance of Late Filed Comments" filed by Gurman, Kurtis & Blask, Chartered is granted.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-5969 Filed 3-20-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 83-523; FCC 86-66]

In Regard to the Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Summary of reconsideration of final rule.

SUMMARY: This action considers petitions for reconsideration and clarification of the *Second Report and Order* in MM Docket No, 83-523, regarding the Instructional Television Fixed Service. Some petitioners question the legality and necessity of the "local priority period" adopted and also request clarification or modification of the Commission's definition of "local." Others challenge aspects of the "point system" comparative selection process and its random-chance tie-breaker. Others have sought modification or clarification of some of the characteristics for which points are awarded to competing applicants under that system. For the most part, petitioners arguments were already considered in the originating Order. New arguments advanced are not persuasive, and the petitions are denied, except to the extent some minor modifications are made for purposes of clarity or to better effect the Commission's original intentions.

EFFECTIVE DATE: April 21, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Romano, Mass Media Bureau, (202) 632-9356.

List of Subjects in 47 CFR Part 74

Television broadcasting.

In the matter of Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Services, [MM Docket No. 83-523].

This is a summary of the Commission's memorandum opinion and order in MM Docket No. 83-523, adopted January 30, 1986, and released March 14, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. The subject decision disposes of the various petitions for reconsideration filed in response to the Commission's *Second Report and Order* in MM Docket No. 83-523, 101 FCC 2d 49, 50 FR 28736 (June 29, 1985). In the *Second Report and Order, supra,* the Commission modified eligibility and operating rules for the Instructional Television Fixed Service ("ITFS"), instituted comparative proceeding procedures for selecting among mutually exclusive ITFS applications, instituted cut-off procedures, finalized requirements for non-ITFS use of ITFS facilities, and modified certain of the technical standards for ITFS.

Eligibility

2. In the *Second Report and Order, supra,* the Commission instituted a "local priority period" of one year, during which time only local entities are eligible to apply for and receive ITFS authorizations, and pending applications by nonlocal entities are disregarded. (The last day of that period will be July 27, 1986.) The local priority period was challenged on a variety of grounds, all of which are rejected. Contrary to petitioners' assertions, the notice provisions of the Administrative Procedure Act (5 U.S.C. 553) were satisfied. While the particular provision ultimately adopted was not specifically proposed earlier in the proceeding, all parties were on explicit notice that the eligibility requirements were under review generally, and specifically that the Commission was troubled by the nonlocal nature of many of the applicants. Furthermore, other specific severe restrictions on nonlocal applicants' fundamental eligibility were proposed earlier by the Commission and by commenting parties. Thus, interested parties were fairly apprised of the subjects and issues involved and the fact that their interests were at stake.

3. The Commission also rejects petitioners' assertions that the perceived need for the local priority period was based on mistakes of fact or perception regarding the availability of facilities, local parties' desire for facilities, and the number of applications. The Commission finds that petitioners misunderstand its interpretation of these facts and the reasons for its actions. It also finds that while ultimate achievement of the desired goal, increased availability of MDS support for local ITFS entities and a consequent increase in local ITFS applications, cannot be proven in advance, it is a reasonable deduction, based on the facts available.

4. Petitioner's argument that the local priority period violates their rights to a comparative hearing on all pending "cut-off" applications is also rejected. The Commission notes that the cases cited by petitioners presume an applicant's basic eligibility in establishing that applicant's right to a comparative hearing. An ineligible applicant is not entitled to a hearing, and the nonlocal applicants are currently ineligible. The Commission refers to a series of cases asserting its authority to establish eligibility standards by general rule, even where qualification changes disqualify pending applicants, and even where the standard is only temporary. One petitioner's similar argument that the local priority period constitutes retroactive application of a new rule, in violation of section 553 of the Administrative Procedure Act, is similarly dismissed. In this regard the Commission also observes that petitioners cannot be said to have relied to their detriment on the original rules in the sense of choosing one available course of action over another. The Commission found this result consistent also with the other considerations specified in *Retail Wholesale and Department Store Union, AFL-CIO v. N.L.R.B.,* 466 F.2d 380 (D.C. Cir. 1972).

5. The Commission rejects petitioners' contention that the requirement for a local program committee for all nonlocal entities (47 CFR 74.932(a)(5)) puts nonlocal entities on a par with local entities in ability to serve local needs. Rather, it is intended only to guarantee some measure of local involvement, less than control, in educational decisions.

6. In response to one nonlocal entity's proposal, the Commission will permit nonlocal entities to participate in local corporations (or other organizations) which may qualify as local entities, both for eligibility and for comparative purposes. They may also be entitled to an accreditation preference for comparative purposes. It sets out specific guidelines regarding the structure of the entity necessary to ensure unequivocal local control. It also provides that nonlocal entities with cut-off applications may amend their applications to substitute local parties, under specific procedures and within specific timeframes set out in the decision. A cut-off nonlocal application mutually exclusive with a cut-off local application must be amended to comply with the provisions in the *Second Report and Order, supra* at paras. 12-15, within 90 days of the publication of this Summary in the **Federal Register**. Local applicants which are mutually exclusive with any such nonlocal applicants will also be permitted to amend their applications are provided in the decision. A cut-off nonlocal application that is not mutually exclusive with any cut-off local application must be amended during the local priority period. Competing new applications for those facilities may also be filed by other local entities during the local priority period. The Commission will also permit local stations which are members of the Public Broadcasting Service to be substituted in PBS's pending applications; it does not find PBS local.

7. The Commission declines several proposed modifications to its definition of "local," finding some inappropriate and others simply unnecessary. It specifically affirms the eligibility of state educational television commissions under the present rules. It also provides that any such entity need not submit the letters from proposed receive sites, required of other nonlocal applicants, if it can demonstrate that the public schools it proposes to serve are required to use its proposed formal educational programming.

Mutually Exclusive Selection Procedure

8. In the *Second Report and Order, supra,* the Commission adopted a point accumulation procedure, based on specific predetermined attributes, for choosing among mutually exclusive applicants for ITFS facilities. In those cases where the highest point accumulation is shared by two or more parties, a random chance tie-breaker is employed to select the licensee. Petitioners contest the inclusion of various criteria adopted, as well as the exclusion of others not adopted. The Commission observes that most of the arguments regarding criteria were offered and discussed in its prior decision. It acknowledges particularly the weight of the preference for local entities, pointing to the many concerns regarding nonlocal entities which developed during the prior stages of the proceeding, but shows that the local preference, taken alone, can be overcome by combinations of other factors.

9. The Commission declines to erode the significance of the accreditation preference, refusing to award it to applicants which are not accredited but have an arrangement or relationship to an accredited institution. The point of this preference, it states, is to prefer situations where there is no middleman, so that control over operations flows directly and uninterrupted from the accredited institution. An umbrella organization which is composed of entities which would be individually entitled to this preference will be itself entitled to the preference points. Also, when a governmental agency qualifies for this preference, any directly controlled arm of that agency may receive the preference if its specific duties include that educational function. The Commission does not extend the accreditation preference to hospitals and medical consortia. Where they are affiliated with an accrediated institution, the medical school or other educational institution would be the appropriate body to receive the accreditation preference points. While this formal distinction may impose some procedural burden on such parties, it protects the integrity of the preference without necessarily disadvantaging the hospital or health-related organization.

10. The Commission defends the weight accorded its "diversity" preference, pointing out that the two-point award for applicants which do not exceed the four-channel limitation is surpassed by only two other preferences. It also addresses, for the first time, comparative decisions between mutually exclusive applications involving the modification of existing facilities. It states that it will insist on coordination efforts by the parties, and that a comparative procedure will be implemented only after the parties submit documentation of their attempts to resolve the conflicts and those specific points which preclude a resolution. Then, any comparative procedure implemented will include a two-point preference to favor the institution of a new service over modification of an existing service.

11. The Commission affirms its decision to give somewhat greater preference to proposed formal educational service than to proposed "other" ITFS service, as such service is the primary objective of the ITFS spectrum dedication. The mechanics for determining this point award is modified to effect more accurately the Commission's stated intention.

12. None of the other proposed preferences, including service to specified grade levels, "fair and efficient use of the spectrum," and prior telecommunications experience, are adopted. The absence of a minority preference is defended by reference to the diversity goal underlying the traditional minority preference in broadcasting, which does not apply equally when choosing among applicants for an educational service.

13. The Commission concludes that the random chance tie-breaker need not follow the provisions of the lottery statute (47 U.S.C. 309(i)), as the statute and its legislative history indicate that it was not intended to apply to a tie-breaker situation, but rather where the lottery is used as a primary selection method. The Commission rejects one petitioner's contention that there was sufficient notice of the Commission's intention to adopt a lottery without the lottery statute preferences, citing a specific solicitation during the rulemaking proceeding. (*Further Notice of Proposed Rulemaking,* 98 FCC 2d 1249, 1263 (1984)).

14. An alternative to the tie-breaker, mandated equal division of the

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contested facilities, was rejected. The Commission does state its intention to advise and permit tied parties time to reach a cooperative settlement before instituting a tie-breaker lottery.

Petitions To Deny

15. Denying one petitioner's request, the Commission will not provide a specific period of time for petitions to deny to be filed against amendments filed in response to the *Second Report and Order, supra.* A period for petitions to deny those applications has already passed, and amendments are not expected to be substantive. In any case where an applicant proposes material changes or otherwise exceeds the scope of clarifying amendments, interested parties can file objections or comments without reopening a petition period generally for all cut-off applications. However, where a new local entity files an amendment to supplant a current nonlocal applicant, and where a local applicant files an amendment or new application, pursuant to the new provisions in the instant decision, referred to above, petitions to deny can be filed within thirty days of public notice of the filing of such amendment or application. Such petitions to deny addressing an amendment may only treat new matters raised by the amendment.

Licensee Control

16. A proposal to require any ITFS excess capacity lessee to submit a copy of any sublease to its lessor/licensee is rejected by the Commission. It finds its current rules sufficient to ensure that licensees maintain control over their facilities. Whether licensees exercise that control to their greatest economic benefit (the purpose of the proposal) is not germane to the issue. The provision that lease terms cannot exceed license terms is retained to meet the Commission's responsibility to ensure the proper use of the scarce spectrum resource it has allocated to a particular, valuable service.

Service Classification of ITFS

17. One petitioner contends that ITFS service should be classified as "broadcasting," with its attendant responsibilities observed, because its excess capacity use is an omnidirectional transmission to the general public. However, the excess capacity use to which the petitioner refers is typically provided on a subscription basis. In a separate proceeding, the Commission has proposed to classify all subscription services as "nonbroadcast," based on their specialized point-to-point or point-to-multipoint nature, and will not change its initial classification of ITFS as a nonbroadcast service. Petitioner's comments will be associated with the proceeding considering regulatory classification of subscription services. *Notice of Proposed Rulemaking* in General Docket No. 85–305, 51 FR 1817 (January 15, 1986).

Four-Channel Limitation

18. In maintaining its four-channel limitation as currently written, the Commission rejects a petitioner's suggestion that it be expanded to preclude any entity from having direct or indirect interests in more than eight channels within a 50-mile geographic area, via funding, jurisdictional controls, or consortia-membership restrictions. The Commission notes that such a provision could restrict state funding of education and that consortia can actually contribute to the efficient use of the facilities by combining resources and uses of facilities. The Commission maintains the capacity to review the merit of individual cases if monopolization appears to threaten.

Permissible Use

19. *Essential Use.* The essential use requirement provides that "every channel authorized must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools." 47 CFR 74.931(a). The Commission again rejects arguments to expand the definition to include less formal kinds of instructional programming, including various forms of continuing education and in-service training, stressing the primary purpose of ITFS service. In response to concerns raised by a hospital association, the definition is rewarded to include nationally accredited as well as a state accredited instruction, and instruction directed at students as well as "staff."

20. *Substantial Use.* Commission rules required that at least forty hours must be preserved for ITFS use on a channel before it can be used for non-ITFS purposes, with at least twenty of those hours in active use. 47 CFR § 74.931(e). The Commission denies one petitioner's request that the requirement be delayed for one year from the date of this decision. It also affirms its determination that while any reserved hours used to fulfill the requirement may be utilized for non-ITFS purposes on an interim basis, they must be recapturable by the lessor/licensee without charge and without procedural impediment.

Technical Standards

21. *15-Mile Protected Service Area.* The Commission again rejects the proposal for a 15-mile radius or mathematically defined service area for ITFS stations, and will continue to protect individual receive sites. It repeats its reasoning that due to the nature of ITFS service, many carefully engineered receive sites fall outside of the protected area and would not receive protection, in effect penalizing good engineering practices. Additionally, in certain situations, the mathematically specified boundary would protect areas not receiving ITFS service, unnecessarily reducing the availability of facilities. It repeats its requirement that applications be filed in order to afford protection to new receive sites and reasserts its conclusion that this burden is not significant, given the simplicity of the procedure. (Applications to add receive sites are minor changes and are not subject to cut-off procedures.)

22. *Major/Minor Changes.* The Commission will maintain its current definition of "major" change. One petitioner contends that is should be expanded, as some types of changes that do not fall into the category involve potential significant interference or preclusion considerations. However, the Commission's staff has the discretion to classify any individual change as a major change, if appropriate, and the public interest is best served by expeditiously processing those modification applications which are not likely to have an adverse impact, and by affording a greater opportunity for review and challenge only in those isolated cases where warranted. The Commission maintains that there is ample time for staff review of each application before such a determination must be made.

23. *Receive Antenna Appropriateness.* One petitioner maintains that the rule revisions dealing with appropriate receive site antenna selections would have the effect of discouraging efficient spectrum utilization, and further contends that individual licensees should be required to install the "best practical" receive antenna. The Commission agrees with other parties that such antenna upgrades would represent a costly burden to existing licensees, and affirms its decision. An additional provision, developed by the parties, is adopted to permit grant of applications which would otherwise involve interference with existing licensees provided that the applicant bears all costs of upgrading the existing licensees reception equipment to prevent such interference. Applicants wishing to take advantage of this policy are required to submit appropriate documentation.

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24. *Interference Ratios.* One petitioner contends that unless received video signal-to-noise ratios are considered in interference calculations, some individual receive sites will be overprotected, reducing the availability of additional ITFS service to the public. The Commission's experience is that the majority of ITFS stations are designed to avoid such situations, and that there is not sufficient evidence to justify this additional processing burden on applicants and the Commission's staff.

25. The protection standard for adjacent channel interference depends on the date of the installation of equipment being protected, with the standard relaxed with respect to newer equipment. The rule will be modified, however, to depend on the date of the installation of reception equipment, rather than of the transmitting equipment, as the quality of the receive equipment determines the capability to discriminate between adjacent channel signals. Determining such dates will be the resonsibility of the applicant wishing to utilize the relaxed standard; absent information presented to the contrary, it will be assumed that reception equipment installation occurred simultaneously with original station construction.

26. The Commission denies one petitioner's request that cochannel and adjacent channel interference ratios be increased from 45 dB to 55 dB and 10 dB, to 15 dB, respectively. The established ratios are based on extensive Television Allocation Study Organization (TASO) test results. While alternative viewing tests, for which the Commission has also provided, would be expensive, factual data is necessary for making such decisions. No such information has been advanced to persuade the Commission to change the adopted interference ratios.

27. *Identification of Receive Site Equipment.* The Commission rejects petitioner's request that the Commission require submission of pertinent data on receive sites retroactively from ITFS licensees. Such a requirement would impose an unnecessary burden on existing licensees and the characteristics of the two-foot reference antenna provide a reasonable alternative. Alternate showings may be made by an applicant when accompained by appropriate data.

28. *Out-of-Band Emission Limits.* One petitioner contends that our present limitation on out-of-band emissions are inadequate, especially in situations where adjacent channel facilities are colocated. New limitations are suggested. The Commission concludes that inadequate documentation has been presented on both the technical need and the economic impact of stricter out-of-band emission limitations and maintains that the present limitations are adequate. The Commission also considers a request for relaxation of aural power and modulation rules and concludes that such matters could be resolved as case-by-case waiver requests.

29. *Interoperability Standards.* Several petitioners assert that the Commission's current regulations are inadequate to provide mutual protection of spectrally adjacent facilities in different services. As a guideline, the Commission maintains that an applicant in ITFS, OFS or MDS should provide previously granted adjacent channel stations in any of the other services the level of protection specified in the rules applicable to the previously granted service. This will provide adequate protection to all services while avoiding unnecessary delays in authorizing new facilities.

30. *International Considerations.* The Commission determines that, based upon recent bilateral discussions, 50 miles is a more appropriate figure for cross-border coordination than the present 35 mile standard.

Ordering Clauses

31. Accordingly, it is ordered, That the petitions for reconsideration filed by the parties listed in Appendix A are denied, except to the extent indicated above.

32. It is further ordered, That any nonlocal entity that wishes to amend its ITFS application pursuant to the provisions of paragraphs 12–14 [in the original text], shall file such amendment within the time periods set out in paragraph 15 and 16 [in the original text].

33. It is further ordered, That any local entity, whose ITFS application is mutually exclusive with that of a nonlocal entity, that wishes to amend its application pursuant to the provisions of paragraph 15 [in the original text], shall file such amendment within ninety days of the publication of the Summary of this order in the **Federal Register**.

34. It is further ordered, That Part 74 of the Commission's Rules and Regulations is amended, effective thirty days after publication in the **Federal Register**, as set forth in Appendix B, under authority contained in 47 U.S.C. 2, 4(i) and 303.

35. It is further ordered, That the revisions of FCC Form 330–P (now designated as FCC Form 330) are adopted and the revised formats effective upon final approval by the Office of Management and Budget and the release of a Public Notice announcing the availability of the revised form.

36. It is further ordered, That the Secretary shall cause a Summary of this *Memorandum Opinion and Order* to be printed in the **Federal Register**.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix B

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read:

Authority: Secs. 4 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307, unless otherwise noted.

2. Section 74.903 is amended by revising paragraph (a)(2) and the introductory text of (b), and paragraph (b)(3), and by adding paragraph (a)(4) to read as follows:

§ 74.903 Interference.

(a) * * *

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the antenna input terminals of the affected receiver, when the ratio is less than 0 dB, except in cases where the stations were constructed before May 26, 1983. In such cases, the desired to undesired signal ratio shall not be less than 10 dB unless the individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment. Absent information presented to the contrary, the Commission will assume that reception equipment installation occurred simultaneously with original station construction.

(3) * * *

(4) If an application can demonstrate that the installation of a receiving antenna at an existing licensee's site with characteristics superior to those of the standard antenna (or, alternatively, the appropriate existing antenna in use at the site) will permit the applicant to

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provide service without interference to the existing licensees, the application will be considered grantable with the condition that the applicant bears all costs of upgrading the existing licensee's reception equipment at that site(s). Such a showing should include interference calculations for both the existing or reference antenna and the proposed antenna. The manufacturer, model number(s), co-polar and cross-polar gain patterns of the replacement antenna should be supplied as well as an accurate assessment of the expected reimbursement costs.

(b) All applicants for instructional television fixed stations are expected to take full advantage of such directive antenna techniques to prevent interference to the reception of any existing operational fixed, multichannel multipoint distribution, international control or instructional television fixed station at authorized receiving locations. Therefore, all applications for new or major changes must include an analysis of potential interference to all existing and previously proposed stations in accordance with § 74.903(a). An applicant for a new instructional television fixed station or for changes in an existing ITFS facility for a construction permit must include the following technical information with the application:

* * * * *

(3) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 50 miles of the border.

* * * * *

3. Section 74.913 is amended by revising paragraphs (b) (2), (3), (4) and (c); and adding new Note 1 and redesignating present Note 1 as Note 2, as follows:

§ 74.913 Selection procedure for mutually exclusive ITFS applications.

* * * * *

(b) Each applicant will be awarded a predetermined number of points under the criteria listed:

* * * * *

(2) Three points for accredited schools, or their governing bodies applying within their jurisdiction;

(3)(i) Two points for applicants whose request, if granted, would result in the acquisition of four or fewer ITFS channels by that applicant within the particular area;

(ii) Two points for new applicants, *i.e.*, applicants that are not already authorized to operate an ITFS station within the particular area;

(4) One point for a proposed weekly schedule of twenty-one or more average hours per channel per week of formal educational programming (§ 74.931(a)), or of forty-one or more average hours per channel per week of other ITFS programming; two points for forty-one or more average hours per channel per week of formal education programming, or for sixty-one or more hours per channel per week of ITFS programming where at least twenty-one of those hours are formal educational programming;

(5) * * *

(c) If the best qualified (highest scoring) two or more applicants have the same point accumulation, they will be given thirty days from the date of release of such decision to notify the Commission of any agreement to divide the use of the channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee will then be determined through a tie-breaker mechanism.

* * * * *

Note 1: Entities entitled to the accreditation points will include umbrella organizations whose membership is composed of entities which are individually eligible for the points. Also, a state's department of education (or equivalent agency) would qualify, as well as any directly controlled arm of that department if its specific duties include that department's educational function.

Note 2: * * *

4. Section 74.932 is amended by revising paragraph (a)(4), as follows:

§ 74.932 Eligibility and licensing requirements.

(a) * * *

(4) These applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating they will receive and use the applicant's formal educational programming. In place of this documentation, a state educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed formal educational programming.

5. Section 74.931 is amended by revising note 1, which follows paragraph (e), as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(e) * * *

Note 1: Any medical service courses offered by hospitals to their staffs or to medical students as training for state or national licenses or certifications will qualify as formal educational programming to satisfy the requirement of paragraph (e) of this section.

[FR Doc. 86-5890 Filed 3-20-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 43]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On April 12, 1985, NHTSA issued a notice proposing a number of amendments to Standard No. 208, *Occupant Crash Protection*. Based on its analysis of the comments received in response to that notice, the agency has decided to take the following actions: Retain the oblique crash test for automatic restraint equipped cars, adopt some New Car Assessment Program test procedures for use in the standard's crash tests, provide in the standard for a due care defense with respect to the automatic restraint requirement, and require the dynamic testing of manual lap/shoulder belts in passenger cars. This notice also creates a new Part 585 that sets reporting requirements regarding compliance with the automatic restraint phase-in requirements of the standard.

DATES: The amendments made by this notice will take effect on May 5, 1986, except the requirement for dynamic testing of manual safety belts in passenger cars § 571.208, S4.6.1) will go into effect on September 1, 1989, if the automatic restraint requirement is rescinded. Petitions for reconsideration must be filed by April 21, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 426-2264.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1984 (49 FR 28962), the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars. The rule is based on a phase-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989. However, if before April 1, 1989, two-thirds of the population of the United States are covered by effective state mandatory safety belt use laws (MULs) meeting specified criteria, the automatic restraint requirement will be rescinded.

More specifically, the rule requires:

- Front outboard seating positions in passenger cars manufactured on or after September 1, 1986, for sale in the United States, will have to be equipped with automatic restraints based on the following schedule:
- Ten percent of all cars manufactured on or after September 1, 1986.
- Twenty-five percent of all cars manufactured on or after September 1, 1987.
- Forty percent of all cars manufactured on or after September 1, 1988.
- One hundred percent of all cars manufactured on or after September 1, 1989.
- During the phase-in period, each car that is manufactured with a system that provides automatic protection to the driver without the use of safety belts and automatic protection of any sort to the passenger will be given an extra credit equal to one-half car toward meeting the percentage requirement. In addition, each car which provides non-belt automatic protection solely to the driver will be given a one vehicle credit.
- The requirement for automatic restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989, to cover two-thirds of the population of the United States. The MULs must go into effect no later than September 1, 1989.

In the July 1984 notice, the Secretary identified various issues requiring additional rulemaking. On April 12, 1985, the agency issued two notices setting forth proposals on all of those issues. One notice (50 FR 14589), which is the basis for the final rule being issued today, proposed: reporting requirements for the phase-in, deletion of the oblique test, alternative calculations of the head injury criterion (HIC), allowing the installation of manual belts in convertibles, use of the New Car Assessment Program (NCAP) test procedures, and adoption of a due care defense. The notice also proposed the dynamic testing of manual lap/shoulder belts for passenger cars, light trucks and light vans. The second notice (50 FR 14602) set forth the agency's proposals on the use of the Hybrid III test dummy and additional injury criteria. NHTSA has not yet completed its analysis of the comments and issues raised by the Hybrid III proposal or the proposal regarding convertibles and dynamic testing of safety belts in light trucks and light vans. The agency will publish a separate **Federal Register** notice announcing its decision with regard to these issues when it has completed its analysis.

Oblique Crash Tests

Standard No. 208 currently requires cars with automatic restraints to pass the injury protection criteria in 30 mph head-on and oblique impacts into a barrier. The April 1985 notice contained an extensive discussion of the value of the oblique test and requested commenters to provide additional data regarding the safety and other effects of deleting the requirement.

The responses to the April notice reflected the same difference of opinion found in the prior responses on this issue. Those favoring elimination of the test argue that the test is unnecessary since oblique crash tests generally show lower injury levels. They also said the additional test adds to the cost of complying with the standard—although manufacturers differed as to the extent of costs. Four manufacturers suggested that any cost reduction resulting from elimination of the test would be minimal, in part because they will continue to use the oblique tests in their restraint system development programs, regardless of what action the agency takes. Another manufacturer, however, said that while it would continue to use oblique testing during its vehicle development programs, the elimination of the oblique test in Standard No. 208 would result in cost and manpower savings. These savings would result because the parts used in vehicles for certification testing must be more representative of actual production parts than the parts used in vehicles crashing during development tests.

Those favoring retention of the test again emphasized that the test is more representative of real-world crashes. In addition, they said that occupants in systems without upper torso belts, such as some air bag or passive interior systems, could experience contact with the A-pillar and other vehicle structures in the oblique test that they would not experience in a head-on test. Although, again, there were confliciting opinions on this issue—one manufacturer said that oblique tests would not affect air bag design, while other manufacturers argued that the oblique test is necessary to ensure the proper design of air bag systems. The same manufacturer that said air bag design would not be effected by the oblique test, emphasized that vehicles with 2-point automatic belts or passive interiors, "may show performance characteristcs in oblique tests that do not show up on perpendicular tests." Similarly, one manufacturer said that oblique tests will not result in test dummy contact with the A-pillar or front door—while another manufacturer argued that in the oblique test contact could occur with the A-pillar in vehicles using non-belt technologies.

After examining the issues raised by the commenters, the agency has decided to retain the oblique tests. There are a number of factors underlying the agency's decision. First, although oblique tests generally produce lower injury levels, they do not consistently produce those results. For example, the agency has conducted both oblique and frontal crash tests on 14 different cars as part of its research activities and NCAP testing. The driver and passenger HIC's and chest acceleration results for those tests show that the results in the oblique tests are lower in 31 of the 38 cases for which data were available. However, looking at the results in terms of vehicles, 6 of the 14 cars had higher results, exclusive of femur results, in either passenger or driver HIC's or chest accelerations in the oblique tests. The femur results in approximately one-third of the measurements were also higher in the oblique tests. Accident data also indicate that oblique impacts pose a problem. The 1982 FARS and NASS accident records show that 14 percent of the fatalities and 22 percent of the AIS 2-5 injuries occur in 30 degree impacts.

The agency is also concerned that elimination of the oblique test could lead to potential design problems in some automatic restraint systems. For example, air bags that meet only a perpendicular impact test could be made much smaller. In such a case, in an oblique car crash, the occupant would roll off the smaller bag and strike the A-pillar or instrument panel. Similarly, the upper torso belt of an automatic belt system could slip off an occupant's shoulder in an oblique crash. In belt systems with a tension-relieving device, the system will be tested with the maximum amount of slack recommended by the vehicle manufacturer, potentially increasing the possibility of the upper

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torso belt slipping off the occupant's shoulder. In the case of passive interiors, an occupant may be able to contact hard vehicle structures, such as the A-pillar, in oblique crashes that would not be contacted in a perpendicular test. If the A-pillar and other hard structures are not designed to provide protection in oblique crashes then there would be no assurance, as there presently is, that occupants would be adequately protected. Thus, the oblique test is needed to protect unrestrained occupants in passive interiors, and to ensure that air bags and automatic or manual safety belts are designed to accommodate some degree of oblique impact.

The agency recognizes that retention of the oblique test will result in additional testing costs for manufacturers. The agency believes, however, that there are a number of factors which should minimize those costs. First, even manufacturers opposing retention of the oblique test indicated that they will continue to perform oblique crash tests to meet their own internal requirements as well as to meet the oblique test requirements of the Standard No. 301, *Fuel System Integrity*. Since the oblique tests of Standard No. 208 and Standard No. 301 can be run simultaneously, the costs resulting from retention of the oblique crash test requirements of Standard No. 208 should not be significant.

Dynamic Testing of Manual Belts

The April notice proposed that manual lap/shoulder belts installed at the outboard seating positions of the front seat of four different vehicle types comply with the dynamic testing requirements of Standard No. 208. Those requirements provide for using test dummies in vehicle crashes for measuring the level of protection offered by the restraint system. The four vehicle types subject to this proposal are passenger cars, light trucks, small van-like buses, and light multipurpose passenger vehicles (MPV's). (The agency considers light trucks, small van-like buses, and light MPV's to be vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The 5,500 pound unloaded vehicle weight limit is also used in Standard No. 212, *Windshield Retention*, and Standard No. 219, *Windshield Zone Intrusion*. The limit was adopted in those standards on April 3, 1980 (45 FR 22044) to reduce compliance problems for final-stage manufacturers. Readers are referred to the April 1980 notice for a complete discussion of the 5,500 pound limit.)

Currently, manual belts are not subject to dynamic test requirements. Instead they must be tested in accordance with Standard No. 209, *Seat Belt Assemblies*, for strength and other qualities in laboratory bench tests. Once a safety belt is certified as complying with the requirements of Standard No. 209, it currently may be installed in a vehicle without any further testing or certification as to its performance in that vehicle. The safety belt anchorages in the vehicle are tested for strength in accordance with Standard No. 210, *Seat Belt Assembly Anchorages*.

The April 1985 notice also addressed the issue of tension-relieving devices on manual belts. Tension-relieving devices are used to introduce slack in the shoulder portion of a lap-shoulder belt to reduce the pressure of the belt on an occupant or to effect a more comfortable "fit" of the belt to an occupant. The notice proposed that manufacturers be required to specify in their vehicle owner's manuals the maximum amount of slack they recommend introducing into the belt under normal use condition. Further, the owner's manual would be required to warn that introducing slack beyond the maximum amount specified by the manufacturer could significantly reduce the effectiveness of the belt in a crash. During the agency's dynamic tesing of manual belts, the tension-relieving devices would be adjusted so as to introduce the maximum amount of slack specified in the owner's manual.

The agency proposed that the dynamic test requirement for passenger cars take effect on September 1, 1989, and only if the Secretary determines that two-thirds of the population is covered by effective safety belt use laws, thereby rescinding the automatic restraint requirement. Should such a determination be made, it is important that users of manual belts be assured that their vehicles offer the same level of occupant protection as if automatic restraints were in their vehicles. Absent a rescission of the automatic restraint requirement, application of the dynamic testing requirements to manual safety belts in passenger cars would be unnecessary since those belts would not be required in the outboard seating positions of the front seat. In the case of light trucks, light MPV's and small van-like buses, the agency proposed that the dynamic test requirement take effect on September 1, 1989. The proposed effective date for light trucks, light MPV's and van-like buses was not conditional, because those vehicles are not covered by the automatic restraint requirement and will likely continue to have manual safety belts.

Adoption of the Requirement

As discussed in detail below, the agency has decided to adopt a dynamic test requirement for safety belts used in passenger cars. The agency is still analyzing the issues raised in the comments about dynamic testing for safety belt systems in other vehicles and will announce its decision about safety belt systems in light trucks, MPV's and buses at a later date.

Most of the commenters favored adopting a dynamic test requirement for manual belts at least with respect to passenger cars, although many of those commenters raised questions about the leadtime needed to comply with the requirement. Those opposing the requirement argued that the field experience has shown that current manual belts provide substantial protection and thus a dynamic test requirement is not necessary. In addition, they argued that dynamic testing would substantially increase a manufacturer's testing costs, and its testing workload. One commenter said that because of the unique nature of the testing, it could not necessarily be combined with other compliance testing done by a manufacturer. The same commenter argued that vehicle downsizing, cited by the agency as one reason for dynamically testing belts, does not create safety problems since the interior space of passenger cars has remained essentially the same as it was prior to downsizing. The commenter also argued there is no field evidence that the use of tension-relieving devices in safety belts, the other reason cited by the agency in support of the need to test dynamically manual safety belts, is compromising the performance of safety belts.

The agency strongly believes that current manual belts provide very substantial protection in a crash. The Secretary's 1984 automatic protection decision concluded that current manual safety belts are at least as effective, and in some cases, more effective than current automatic belt designs. That conclusion was based on current manual safety belts, which are not certified to dynamic tests. However, as discussed in the April 1985 notice, the agency is concerned that as an increasing number of vehicles are reduced in size for fuel economy purposes and as more tension-relieving devices are used on manual belts, the potential for occupant injury increases. The agency agrees that downsizing efforts by manufacturers have attempted to preserve the interior space of passenger cars, while reducing their

exterior dimensions. Preserving the interior dimensions of the passenger compartment means that occupants will not be placed closer to instrument panels and other vehicle structures which they could strike in a crash. However, the reduction in exterior dimensions can result in a lessening of the protective crush distance available in a car. Thus the agency believes it is important to ensure that safety belts in downsized vehicles will perform adequately. In the case of tension-relieving devices, agency tests of lap/shoulder belt restrained test dummies have shown that as more slack is introduced into a shoulder belt, the injuries measured on the test dummies increased. Thus, as discussed in detail later in this notice, the agency believes it is important to ensure that safety belts with tension-relievers provide adequate protection when they are used in the manner recommended by vehicle manufacturers. This is of particular concern to the agency since the vast majority of new cars (nearly all domestically-produced cars) now are equipped with such devices. For those reasons, the agency is adopting the dynamic test requirement.

The adoption of this requirement will ensure that each and every passenger car, as compared to the vehicle population in general, offers a consistent, minimum level of protection to front seat occupants. By requiring dynamic testing, the standard will assure that the vehicle's structure, safety belts, steering column, etc., perform as a unit to protect occupants, as it is only in such a test that the synergistic and combination effects of these vehicle components can be measured. As discussed in detail in the Final Regulatory Evaluation (FRE), vehicle safety improvements will result from dynamic testing; and, as discussed later in this notice, such improvements can often be made quickly and at low cost.

The agency recognizes that manufacturers may have to conduct more testing than they currently do. However, the dynamic testing of manual belts in passenger cars, as with testing of automatic restraints, can be combined with other compliance tests to reduce the overall number of tests. The agency notes that in its NCAP tests, it has been able to combine the dynamic testing of belts with measuring the vehicle's compliance with other standards. The agency has followed the same practice in its compliance tests. For example, the agency has done compliance testing for Standard Nos. 208, 212, 219, and 301 in one test. The agency would, of course, recognize a manufacturer's use of combined tests as a valid testing procedure to certify compliance with these standards.

Effective Date

Two commenters argued that the requirement should become effective as soon as practical. As discussed in the April 1985 notice, the agency proposed an effective date of September 1, 1989, because it did not want to divert industry resources away from designing automatic restraints for passenger cars. The agency continues to believe it would be inappropriate to divert those resources for the purposes of requiring improvements on manual belt systems that might not be permitted in passenger cars.

Other commenters asked for a delay in the effective date—one asked for a delay until September 1, 1991, while another asked that the effective date be set 2–3 years after the determination of whether a sufficient number of States have passed effective mandatory safety belt use laws. NHTSA does not agree there is a need to delay the effective date beyond September 1, 1989 for passenger cars. Commenters argued that the time span between any decision on rescission of the automatic restraint requirements (as late as April 1, 1989) and the effective date of the dynamic testing of manual belts (September 1, 1985) is too short to certify manual belts.

The agency believes there is sufficient leadtime for passenger cars. Most of the vehicle components in passenger cars necessary for injury reduction management are the same for automatic restraint vehicles and dynamically tested manual belt vehicles. Additionally, as indicated and discussed in the April notice, approximately 40 percent of the passenger cars tested in the agency's 35 mph (NCAP) program meet the injury criteria specified in Standard No. 208, even though a 35 mph crash involves 36 percent more energy than the 30 mph crash test required by Standard No. 208. In addition, the FRE shows that with relatively minor vehicle and/or restraint system changes some safety belt systems can be dramatically improved. This is further evidence that development of dynamically tested manual belts for passenger cars in 30 mph tests should not be a major engineering program. Thus, a delay in the effective date for passenger cars is not needed.

Webbing Tension-Relieving Devices

With one exception, those manufacturers who commented on the proposal concerning tension-relieving devices supported testing safety belts adjusted so that they have the amount of slack recommended by the manufacturer in the vehicle owner's manual. However, one manufacturer and two other commenters objected to the provision related to dynamic testing with the tension-relieving device adjusted to the manufacturer's maximum recommended slack position. The manufacturer objected to a dynamic test that would require any slack at all to be introduced into the belt system, on the grounds that uncontrolled variability would be introduced into the dynamic test procedure, which would then lack objectivity. The manufacturer asserted that it might have to eliminate all tension-relieving devices for its safety belts.

The agency's proposed test procedure was intended to accommodate tension-relieving devices since they can increase the comfort of belts. At the same time, the proposal would limit the potential reduction in effectiveness for safety belt systems with excessive slack. The agency does not agree that this test procedure need result in the elimination of tension-relieving devices from the marketplace. As mentioned earlier, other manufacturers supported the proposal and did not indicate they would have to remove tension-relieving devices from their belt systems. The commenter opposing the requirement did not show that injury levels cannot be controlled within the specified injury criteria by testing with the recommended amount of slack, as determined by the manufacturer. The recommended slack could be very small or at any level selected by the manufacturer as appropriate to relieve belt pressure and still ensure that the injury reduction criteria of Standard No. 208 would be met. As a practical matter, most tension-relievers automatically introduce some slack into the belt for all occupants. Testing without such slack would be unrealistic.

The two other commenters objected to the proposal that manual belt systems using tension-relieving devices meet the injury criteria with only the specified amount of slack recommended in the owner's manual. They stated that most owners would not read the instructions in the owner's manual regarding the proper use of the tension-relieving device. They said an occupant could have a false sense of adequate restraint when wearing a belt system adjusted beyond the recommended limit.

The agency's views on allowing the use of tension relievers in safety belts were detailed in the April 1985 notice. The agency specifically noted the effectiveness of a safety belt system

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could be compromised if excessive slack were introduced into the belt. However, the agency recognizes that a belt system must be used to be effective at all. Allowing manufacturers to install tension-relieving devices makes it possible for an occupant to introduce a small amount of slack to relieve shoulder belt pressure or to divert the belt away from the neck. As a result, safety belt use is promoted. This factor should outweigh any loss in effectiveness due to the introduction of a recommended amount of slack in normal use. This is particularly likely in light of the requirement that the belt system, so adjusted, must meet the injury criteria of Standard No. 208 under 30 mph test conditions. Further, the inadvertent introduction of slack into a belt system, which is beyond that for normal use, is unlikely in most current systems. In addition, even if too much slack is introduced, the occupant should notice that excessive slack is present and a correction is needed, regardless of whether he or she has read the vehicle's owner's manual.

Exemption From Standard Nos. 203 and 204

One commenter suggested that vehicles equipped with dynamically tested manual belts be exempt from Standard Nos. 203, *Impact Protection for the Driver from the Steering Control Systems,* and 204, *Steering Column Rearward Displacement.* The agency does not believe such an exemption would be appropriate because both those standards have been shown to provide substantial protection to belted drivers.

Latching Procedure in Standard No. 208

One commenter asked that Standard No. 208 be modified to include a test procedure for latching and adjusting a manual safety belt prior to the belt being dynamically tested. NHTSA agrees that Standard 208 should include such a procedure. The final rule incorporates the instructions contained in the NCAP test procedures for adjusting manual belts, as modified to reflect the introduction of the amount of slack recommended by the vehicle manufacturer.

Revisions to Standard No. 209

The notice proposed to exempt dynamically tested belts from the static laboratory strength tests for safety belt assemblies set forth in S4.4 of Standard No. 209. One commenter asked that such belts be exempted from the remaining requirements of Standard No. 209 as well.

NHTSA agrees that an additional exemption from some performance requirements of Standard No. 209 is appropriate. Currently, the webbing of automatic belts is exempt from the elongation and other belt webbing and attachment hardware requirements of Standard No. 209, since those belts have to meet the injury protection criteria of Standard No. 208 during a crash. For dynamically-tested manual belts, NHTSA believes that an exemption from the webbing width, strength and elongation requirements (sections 4.2(a)–(c)) is also appropriate, since these belts will also have to meet the injury protection requirements of Standard No. 208. The agency has made the necessary changes in the rule to adopt that exemption.

The agency does not believe that manual belts should be exempt from the other requirements in Standard No. 209. For example, the requirements on buckle release force should continue to apply, since manual safety belts, unlike automatic belts, must be buckled every time they are used. As with retractors in automatic belts, retractors in dynamically tested manual belts will still have to meet Standard No. 209's performance requirements.

Revisions to Standard No. 210

The notice proposed that dynamically tested manual belts would not have to meet the location requirements set forth in Standard No. 210, *Seat Belt Assembly Anchorages.* One commenter suggested that dynamically tested belts be completely exempt from Standard No. 210; it also recommended that Standard No. 210 be harmonized with Economic Commission for Europe (ECE) Regulation No. 14. Two other commenters suggested using the "out-of-vehicle" dynamic test procedure for manual belts contained in ECE Regulation No. 16, instead of the proposed barrier crash test in Standard No. 208.

The agency does not believe that the "out of vehicle" laboratory bench test of ECE Regulation No. 16 should be allowed as a substitute for a dynamic vehicle crash test. The protection provided by safety belts depends on the performance of the safety belts themselves, in conjunction with the structural characteristics and interior design of the vehicle. The best way to measure the performance of the safety belt/vehicle combination is through a vehicle crash test.

The agency has already announced its intention to propose revisions to Standard No. 210 to harmonize it with ECE Regulation No. 14; therefore the commenters' suggestions concerning harmonization and exclusion of dynamically tested safety belts from the other requirements of Standard No. 210 will be considered during that rulemaking. At the present time, the agency is adopting only the proposed exclusion of anchorages for dynamically tested safety belts from the location requirements, which was not opposed by any commenter.

Belt Labelling

One commenter objected to the proposal that dynamically tested belts have a label indicating that they may be installed only at the front outboard seating positions of certain vehicles. The commenter said that it is unlikely that anyone would attempt to install a Type 2 lap shoulder belt in any vehicle other than the model for which it was designed. The agency does not agree. NHTSA believes that care must be taken to distinguish dynamically tested belt systems from other systems, since misapplication of a belt in a vehicle designed for use with a specific dynamically tested belt could pose a risk of injury. If there is a label on the belt itself, a person making the installation will be aware that the belt should be installed only in certain vehicles.

Use of the Head Injury Criterion

The April 1985 notice set forth two proposed alternative methods of using the head injury criterion (HIC) in situations when there is no contact between the test dummy's head and the vehicle's interior during a crash. The first proposed alternative was to retain the current HIC calculation for contact situations. However, in non-contact situations, the agency proposed that a HIC would not be calculated, but instead new neck injury criteria would be calculated. The agency explained that a crucial element necessary for deciding whether to use the HIC calculation or the neck criteria was an objective technique for determining the occurrence and duration of head contact in the crash test. As discussed in detail in the April 1985 notice, there are several methods available for establishing the duration of head contact, but there are questions about their levels of consistency and accuracy.

The second alternative proposed by the agency would have calculated a HIC in both contact and non-contact situations, but it would limit the calculation to a time interval of 36 milliseconds. Along with the requirement that a HIC not exceed 1000, this would limit average head acceleration of 60 g's or less.

Almost all of the commenters opposed the use of the first proposed alternative. The commenters uniformly noted that there is no current technique that can accurately identify whether head contact has or has not occurred during a crash test in all situations. However, one commenter urged the agency to adopt the proposed neck criteria, regardless of whether the HIC calculation is modified. There was a sharp division among the commenters on the second proposed alternative. Manufacturers commenting on the issue uniformly supported the use of the second alternative; although many manufacturers argued that the HIC calculation should be limited to a time interval of approximately 15 to 17 milliseconds (ms), which would limit average head accelerations to 80–85 g's. Another manufacturer, who supported the second alternative, urged the agency to measure HIC only during the time interval that the acceleration level in the head exceeds 60 g's. It said that this method would more effectively differentiate results received in contacts with hard surfaces and results obtained from systems, such as airbags, which provide good distribution of the loads experienced during a crash. Other commenters argued that the current HIC calculation should be retained; they said that the proposed alternatives would lower HIC calculations without ensuring that motorists were still receiving adequate head protection.

NHTSA is in the process of reexamining the potential effects of the two alternatives proposed by the agency and of the two additional alternatives suggested by the commenters. Once that review has been completed, the agency will issue a separate notice announcing its decision.

NCAP Test Procedures

The April 1985 notice proposed adopting the test procedures on test dummy positioning and vehicle loading used in the agency's NCAP testing. The commenters generally supported the adoption of the test procedures, although several commenters suggested changes in some of the proposals. In addition, several commenters argued that the new procedures may improve test consistency, but the changes do not affect what they claim is variability in crash test results. As discussed in the April 1985 notice, the agency believes that the test used in Standard No. 208 does produce repeatable results. The proposed changes in the test procedures were meant to correct isolated problems that occurred in some NCAP tests. The following discussion addresses the issues raised by the commenters about the specific test procedure changes.

Vehicle Test Attitude

The NPRM proposed that when a vehicle is tested, its attitude should be between its "as delivered" condition and its "loaded" condition. (The "as delivered" condition is based on the vehicle attitude measured when it is received at the test site, with 100 percent of all its fluid capacities and with all its tires inflated to the manufacturer's specifications. For passenger cars, the "loaded" condition is based on the vehicle's attitude with a test dummy in each front outboard designated seating position, plus carrying the cargo load specified by the manufacturer.)

One commenter said that the weight distribution, and therefore the attitude, of the vehicle is governed more by the Gross Axle Weight Rating (defined in 49 CFR Part 571.3) than the loading conditions identified by the agency. The commenter recommended that the proposal not be adopted. Another commenter said that the agency should adopt more specific procedures for the positioning of the dummy and the cargo weight. For example, that commenter recommended that the "cargo weight shall be placed in such manner that its center of gravity will be coincident with the longitudinal center of the trunk, measured on the vehicle's longitudinal centerline." The commenter said that unless a more specific procedure is adopted, a vehicle's attitude in the fully loaded condition would not be constant.

The agency believes that a vehicle attitude specification should be adopted. The purpose of the requirement is to ensure that a vehicle's attitude during a crash test is not significantly different than the fully loaded attitude of the vehicle as designed by the manufacturer. Random placement of any necessary ballast could have an effect on the test attitude of the vehicle. If these variables are not controlled, then the vehicle's test attitude could be affected and potential test variability increased.

NHTSA does not agree that the use of the Gross Axle Weight Rating (GAWR) is sufficient to determine the attitude of a vehicle. The use of GAWR only defines the maximum load-carrying capacity of each axle rather than in effect specifying a minimum and maximum loading as proposed by the agency. In addition, use of the GAWR may, under certain conditions, make it necessary to place additional cargo in the passenger compartment in order to achieve the GAWR loading. This condition is not desirable for crash testing, since the passenger compartment should be used for dummy placement and instrumentation and not ballast cargo. Thus the commenter's recommendation is not accepted.

The other commenter's recommendations regarding more specific test dummy placement procedures for the outboard seating positions were already accommodated in the NPRM by the proposed new S10.1.1, Driver position placement, and S10.1.2, Passenger position placement. Since those proposals adequately describe dummy placement in these positions, they are adopted.

NHTSA has evaluated the commenter's other suggestion for placing cargo weight with its center of gravity coincident with the longitudinal center of the trunk. The agency does not believe that it is necessary to determine the center of gravity of the cargo mass, which would add unnecessary complexity to the test procedure, but does agree that the cargo load should be placed so that it is over the longitudinal center of the trunk. The test procedures have been amended accordingly.

Open Window

One commenter raised a question about the requirement in S8.1.5 of Standard No. 208 that the vehicle's windows are to be closed during the crash test. It said adjustment of the dummy arm and the automatic safety belt can be performed only after an automatic belt is fully in place, which occurs only after the door is closed. Therefore, the window needs to be open to allow proper arm and belt placement after the door is closed.

NHTSA agrees that the need to adjust the slack in automatic and dynamically-tested manual belts prior to the crash test may require that the window remain open. The agency has modified the test procedure to allow manufacturers the option of having the window open during the crash test.

Seat Back Position

One commenter recommended that proposed S8.1.3, *Adjustable seat back placement,* be modified. The notice proposed that adjustable seat backs should be set in their design riding position as measured by such things as specific latch or seat track detent positions. The commenter suggested two options. The first option would be to allow vehicle manufacturers to specify any means they want to determine the seat back angle and the resulting dummy torso angle. As its second option, the commenter recommended that if the agency decides to adopt the proposal, it should determine the "torso

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angle with an H-point machine according to SAE J826." The commenter said that depending on how the torso angle is established, different dummy torso angle could result in substantial adjustment deviations that can affect seat back placement.

The purpose of the requirement is to position the seat at the design riding position used by the manufacturer. The agency agrees with the commenter that manufacturers should have the flexibility to use any method they want to specify the seat back angle. Thus, the agency has made the necessary changes to the test procedure.

Dummy Placement

One commenter made several general comments about dummy placement. It agreed that positioning is very important and can have an influence on the outcome of crash tests. It argued that both the old and the proposed procedures are complicated and impractical to use. The commenter claims this situation will become more complicated if the Hybrid III is permitted, since the positioning must be carried out within a narrow temperature range (3 °F) for the test dummy to remain in calibration.

The commenter also believes that the positioning of the dummy should relate to vehicle type. It said that the posture and seating position of a vehicle occupant will not be the same in a van as in a sports car. For example, it said it has tried the proposed positioning procedures and found that they can result in an "unnatural" position for the dummy in a sports vehicle. The commenter argued that this "unnatural" position would then lead to a knee bolster design which would perform well in a crash test, but would likely not provide the same protection to a real occupant because of difference in positioning. The commenter recommended that the old positioning procedure be retained and the new procedure be provided as an option for those manufacturers whose vehicles cannot be adequately tested otherwise.

Because consistency in positioning the dummy is required prior to test, NHTSA believes that a single set of procedures should apply. As discussed in the April 1985 notice, the agency proposed the new procedures because of positioning problems identified in the NCAP testing. Allowing the use of the old positioning procedures could lead to sources of variability, thus negating a major objective of the procedures. The commenter's suggestion is therefore not adopted. The agency also notes that during its NCAP testing, which has involved tests of a wide variety of cars (including sports cars), trucks and MPV's, NHTSA has not experienced the "unnatural" seating position problem cited by the commenter.

Knee Pivot Bolt Head Clearance

Two commenters said that the proposal did not specify the correct distance between the dummy's knees, as measured by the clearance between the knee pivot bolt heads. The commenters are correct that the distance should be 11¾ inches rather than the proposed value of 14⅛ inches. The agency has corrected the number in the final rule.

Foot Rest

One commenter believes that a driver of cars equipped with foot rests typically will place his or her left foot on the foot rest during most driving and therefore this position should be used to simulate normal usage. The commenter said that using the foot rest will minimize variations in the positioning of the left leg, thus improving the repeatability of the test. In a discussion with the commenter, the agency has learned that the type of foot rest the commenter is referring to is a pedal-like structure where the driver can place his or her foot.

For vehicles without foot rests, the commenter recommended the agency use the same provisions for positioning the left leg of the driver as are used for the right leg of the passenger. It noted that positioning the driver's left leg, as with the passenger's right leg, can be hampered by wheelwell housing that projects into the passenger compartment and thus similar procedures for each of those legs should be used.

NHTSA agrees that in vehicles with foot rests, the test dummy's left foot should be positioned on the foot rest as long as placing the foot there will not elevate the test dummy's left leg. As discussed below, the agency is concerned that foot rests, such as pads on the wheelwell, that elevate the test dummy's leg can contribute to test variability. The agency also agrees that the positioning procedures for the driver's left leg and the passenger's right leg should be similar in situations where the wheelwell housing projects into the passenger compartment and has made the necessary changes to the test procedure.

Wheelwell

One commenter believes that the wheelwell should be used to rest the dummy's foot. It said that positioning the test dummy's foot there is particularly appropriate if the wheelwell has a design feature, such as a rubber pad, installed by the manufacturer for this purpose.

NHTSA disagrees that the dummy's foot should be rested on the wheelwell housing. The agency is concerned that elevating the test dummy's leg could lead to test variability by, among other things, making the test dummy unstable during a crash test. Although the wheelwell problem is similar to the foot rest problem, placement of the test dummy's foot on a separate, pedal-like foot rest can be accomplished while retaining the heel of the test dummy in a stable position on the floor. That is not the case with pads located on the wheelwell.

Another commenter also said that the proposed procedure for positioning the test dummy's legs in vehicles where the wheelwell projected into the passenger compartment was unclear as to how the centerlines of the upper and lower legs should be adjusted so that both remain in a vertical longitudinal plane. In particular, it was concerned that in a vehicle with a large wheelhousing, it may not be possible to keep the left foot of the driver test dummy in the vertical longitudinal plane after the right foot has been positioned. It believes that the procedure should specify which foot position should be given priority; it recommended that the position of the right leg be required to remain in the plane, while bringing the left leg as close to the vertical longitudinal plane as possible. The agency agrees that maintaining the inboard leg of the test dummy in the vertical plane is more easily accomplished since it will not be blocked by the wheelwell. The agency has modified the test procedure to specify that when it is not possible to maintain both legs in the vertical longitudinal plane, that the inboard leg must be kept as close as possible to in the vertical longitudinal plane and the outboard leg should be placed as close as possible to the vertical plane.

Lower Leg Angle

One commenter argued that proposed sections on lower leg positioning (S10.1.2.1(b) and S10.1.2.2(b)) will not result in a constant positioning of the test dummy's heels on the floor pan, thus causing differences in the lower leg angles. It stated that the lower leg angles will affect the femur load generated at the moment the foot hits the toe board during a collision. The commenter therefore proposed that the test procedure be revised to include placing a 20 pound load on the test dummy's knee during the foot positioning procedure. The commenter

did not, however, explain the basis for choosing a force of 20 pounds.

NHTSA believes that use of the additional weight loading and settling procedure proposed by the commenter will add an unnecessary level of complexity to the test procedure without adding any corresponding benefit. The positioning of the test dummy's heel has not been a problem in the agency's NCAP tests. Accordingly, the agency is not adopting the commenter's recommendation.

Shoulder Adjustment

One commenter asked the agency to specify that the shoulders of the test dummy be placed at their lowest adjustment position. While the shoulders are slightly adjustable, the agency believes that specifying an adjustment position is unnecessary. The agency's test experience has shown that the up and down movement of the shoulders is physically limited by the test dummy's rubber "skin" around the openings where the arms are connected to the test dummy's upper torso.

Dummy Lifting Procedure

One commenter was concerned about the dummy lifting proposed in (Section S10.4.1, Dummy Vertical Upward Displacement). It said that if the dummy lifting method is not standardized, test results could be affected by allowing variability in the position of the dummy's H point (the H point essentially represents the hip joint) through use of different lifting methods. It recommended use of a different chest lifting method to avoid variability in the subsequent positioning of the test dummy H-point.

The agency is not aware of any test data indicating that the use of different lifting methods is a significant source of variability. As long as a manufacturer follows the procedures set forth in S10.4.1 in positioning the test dummy, it can use any lifting procedure it wants.

Dummy Settling Load

One commenter was concerned about the proposed requirements for dummy settling (S10.4.2, Lower torso force application, and S10.4.5, Upper torso force application). The commenter believes that the proposals are inadequate because they do not prescribe the area over which to apply the load used to settle the test dummy in the seat. The commenter said that if the proposed 50 pound settling force is applied to an extremely small contact area, then the dummy may be deformed. It recommended that the load be applied to a specified area of 9 square inches on the dummy. In addition, it recommended that the agency specify the duration of the 50 lb. force application during the adjustment of the upper torso; it suggested a period of load application ranging from 5 to 10 seconds.

NHTSA and others have successfully used the proposed settling test procedures in their own tests without having any variability problems. Unless abnormally small contact areas are employed, or extremely short durations are used, standard laboratory practices should not result in any such problems. The agency believes that further specifying the area and timing of the force application is not necessary.

Dummy Head Adjustment

One commenter pointed out that it is impossible to adjust the head according to S10.6, Head Adjustment, because the Part 572 test dummy does not have a head adjustment mechanism. The agency agrees and has deleted the provision.

Additional Dummy Settling and Shoulder Belt Positioning Procedures

One commenter suggested a substantial revised dummy settling procedure and new procedures for positioning of the shoulder belt. NHTSA believes that its proposed procedures sufficiently address the settling and belt position issues. In addition, the commenter did not provide any data to show that variability would be further reduced by its suggested procedures. A substantial amount of testing would be needed to verify if the commenter's suggested test procedures do, in fact, provide any further decrease in variability than that obtained by the agency's test procedures. For those reasons, the agency is not adopting the commenter's suggestions for new procedures.

Due Care

In the April 1985 notice, the agency proposed amending the standard to state that the due care provision of section 108(b)(2) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(b)(2)) applies to compliance with the standard. Thus, a vehicle would not be deemed in noncompliance if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the standard.

Commenters raised a number of questions about the proposal, with some saying that the agency needed to clarify what constitutes "due care," others recommending that the agency reconsider the use of "design to conform" language instead of due care and another opposing the use of any due care provision.

A number of commenters, while supporting the use of a due care provision, said that the proposal provides no assurance that a manufacturer's good faith effort will be considered due care. They said that the agency should identify the level of testing and analysis necessary to constitute due care. Another commenter emphasized that in defining due care, the agency must ensure that a manufacturer uses recognized statistical procedures in determining that its products comply with the requirements of the standard.

Another group of commenters requested the agency to reconsider its decision not to use "design to conform" language in the standard; they said that the agency's concerns about the subjectivity of a "design to conform" language are not greater and could well be less than that resulting from use of due care language.

One commenter opposed the use of any due care language in the standard. It argued that the National Traffic and Motor Vehicle Safety Act requires the agency to set objective performance requirements in its standards. When a manufacturer determines that it has not met those performance requirements, then the manufacturer is under an obligation to notify owners and remedy the noncomplying vehicles. It argued that the proposed due care provision, in effect, provides manufacturers with an exemption from the Vehicle Safety Act recall provisions.

As discussed in the July 1984 final rule and the April 1985 notice, the agency believes that the test procedure of Standard No. 208 produces repeatable results in vehicle crash tests. The agency does, however, recognize that the Standard No. 208 test is more complicated than NHTSA's other crash test standards since a number of different injury measurements must be made on the the two test dummies used in the testing. Because of this complexity, the agency believes that manufacturers need assurance from the agency that, if they have made a good faith effort in designing their vehicles and have instituted adequate quality control measures, they will not face the recall of their vehicles because of an isolated apparent failure to meet one of the injury criteria. The adoption of a due care provision provides that assurance. For the reasons discussed in the July 1984 final rule, the agency still believes use of a due care provision is a better approach to this issue than use of a design to conform provision.

As the agency has emphasized in its prior interpretation letters, a

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determination of what constitutes due care only be made on a case-by-case basis. Whether a manufacturer's action will constitute due care will depend, in part, upon the availability of test equipment, the limitations of available technology, and above all, the diligence evidenced by the manufacturer.

Adoption of a due care defense is in line with the agency's longstanding and well-known enforcement policy on test differences. Under this long standing practice if the agency's testing shows noncompliance and a manufacturer's tests, valid on their face, show complying results, the agency will conduct an inquiry into the reason for the differing results. If the agency concludes that the difference in results can be explained to the agency's satisfaction, that the agency's results do not indicate an unreasonable risk to safety, and that the manufacturer's tests were reasonably conducted and were in conformity with standard, then the agency does not use its own tests as a basis for a finding of noncompliance. Although this interpretation has long been a matter of public record, Congress, in subsequent amendments of the Vehicle Safety Act, has not acted to alter that interpretation. The Supreme Court has said that under those circumstances, it can be presumed that the agency's interpretation has correctly followed the intent of the statute. (*See United States* v. *Rutherford*, 442 U.S. 544, 554n. 10 (1979))

Phase-In

Attribution Rules

With respect to cars manufactured by two or more companies, and cars manufactured by one company and imported by another, the April 1985 notice proposed to clarify who would be considered the manufacturer for purposes of calculating the average annual production of passenger cars for each manufacturer and the amount of passenger cars manufactured by each manufacturer that must comply with the automatic restraint phase-in requirements. In order to provide maximum flexiblity to manufacturers, while assuring that the percentage phase-in goals are met, the notice proposed to permit manufacturers to determine, by contract, which of them will count, as its own, passenger cars manufactured by two or more companies or cars manufactured by one company and imported by another.

The notice also proposed two rules of attribution in the absence of such a contract. First, a passenger car which is imported for purposes of resale would be attributed to the importer. The agency intended that this proposed attribution rule would apply to both direct importers as well as importers authorized by the vehicle's original manufacturer. (In this context, direct importation refers to the importation of cars which are originally manufactured for sale outside the U.S. and which are then imported without the manufacturer's authorization into the U.S. by an importer for purposes of resale. The Vehicle Safety Act requires that such vehicles be brought into conformity with Federal motor vehicle safety standards.) Under the second proposed attribution rule, a passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, would be attributed to the manufacturer which markets the vehicle.

These two proposed rules would generally attribute a vehicle to the manufacturer which is most responsible for the existence of the vehicle in the United States, i.e., by importing the vehicle or by manufacturing the vehicle for its own account as part of a joint venture, and marketing the vehicle. (Importers generally market the vehicles they import.) All commenters on these proposals supported giving manufacturers the flexibility to determine contractually which manufacturer would count the passenger car as its own. The commenters also supported the proposed attribution rules. Therefore, the agency is adopting the provisions as proposed.

Credit for Early Phase-In

The April 1985 notice proposed that manufacturers that exceeded the minimum percentage phase-in requirements in the first or second years could count those extra vehicles toward meeting the requirements in the second or third years. In addition, manufacturers could also count any automatic restraint vehicles produced during the one year preceding the first year of the phase-in. Since all the commenters addressing these proposals supported them, the agency is adopting them as proposed. The agency believes that providing credit for early introduction will encourage introduction of larger numbers of automatic restaints and provide increased flexibility for manufacturers. In addition, it will assure an orderly build-up of production capability for automatic restraint equippped cars as contemplated by the July 1984 final rule.

One commenter asked the agency to establish a new credit for vehicles equipped with non-belt automatic restraints at the driver's position and a dynamically-tested manual belt at the passenger position. The commenter requested that such a vehicle receive a 1.0 credit. The commenter also asked the agency to allow vehicles equipped with driver-only automatic restraint systems to be manufactured after September 1, 1989, the effective date for automatic restraints for the driver and front right passenger seating positions in all passenger cars. In its August 30, 1985 notice (50 FR 35233) responding to petitions for reconsideration of the July 1984 final rule on Standard No. 208, the agency has already adopted a part of the commenter's suggestion by establishing a 1.0 vehicle credit for vehicles equipped with a non-belt automatic restraint at the driver's position and a manual lap/shoulder belt at the passenger's position. For reasons detailed in the July 1984 final rule, the agency believes that the automatic restraint requirement should apply to both front outboard seating positions beginning on September 1, 1989, and is therefore not adopting the commenter's second suggestion.

Phase-In Reporting Requirements

The April 1985 notice proposed to establish a new Part 585, *Automatic Restraint Phase-in Reporting Requirements*. The agency proposed requiring manufacturers to submit three reports to NHTSA, one for each of the three automatic restraint phase-in periods. Each report, covering production during a 12-month period beginning September 1 and ending August 31, would be required to be submitted within 60 days after the end of such period. Information required by each report would include a statement regarding the extent to which the manufacturer had complied with the applicable percentage phase-in requirement of Standard No. 208 for the period covered by the report; the number of passenger cars manufactured for sale in the United States for each of the three previous 12-month production periods; the actual number of passenger cars manufactured during the reporting production (or during a previous production period and counted toward compliance in the reporting production period) period with automatic safety belts, air bags and other specified forms of automatic restraint technology, respectively; and brief information about any express written contracts which concern passenger cars produced by more than one manufacturer and affect the report.

One commenter questioned the need for a reporting requirement, saying that the requirement was unnecessary since manufacturers must self-certify that

their vehicles meet Standard No. 208. The agency believes that a reporting requirement is needed for the limited period of the phase-in of automatic restraints so that the agency can carry out its statutory duty to monitor compliance with the Federal motor vehicle safety standards. During the phase-in, only a certain percentage of vehicles are required to have automatic restraints. It would be virtually impossible for the agency to determine if the applicable percentage of passenger cars has been equipped with automatic restraints unless manufacturers provide certain production information to the agency. NHTSA is therefore adopting the reporting requirement.

The same commenter said that requiring the report to be due 60 days after the end of the production year can be a problem for importers. The commenter said that production records may accompany the vehicle, which may not actually reach the United States until 30 or 45 days after the production year ends. The commenter asked the agency to provide an appeal process to seek an extension of the period to file the report. The agency believes that the example presented by the commenter represents a worst case situation and complying with the 60 day requirement should not be a problem for manufacturers, including importers. However, to eliminate any problems in worst case situations, the agency is amending the regulation to provide that manufacturers seeking an extension of the deadline to file a report must file a request for an extension at least 15 days before the report is due.

Calculation of Average Annual Production

The agency also proposed an alternative to the requirement that the number of cars that must be equipped with automatic restraints must be based on a percentage of each manufacturer's average annual production for the past three model years. The proposed alternative would permit manufacturers to equip the required percentage of its actual production of passenger cars with automatic restraints during each affected year. Since all commenters addressing this proposal supported it, the agency is adopting it as an alternative means of compliance, at the manufacturer's option. In the case of a new manufacturer, the manufacturer would have to calculate the amount of passenger cars required to have automatic restraints based on its production of passenger cars during each of the affected years. Since the agency has decided to adopt the alternative basis for determining the production quota, it has made the necessary conforming changes in the reporting requirements adopted in this notice.

One commenter also requested the agency to clarify whether a manufacturer does have to include its production volume of convertibles when it is calculating the percentage of vehicles that must meet the phase-in requirement. The automatic restraint requirement applies to all passenger cars. Thus, a manufacturer's production figures for passenger car convertibles must be counted when the manufacturer is calculating its phase-in requirements.

Retention of VINs

In order to keep administrative burdens to a minimum, the agency proposed that the required report need not use the VIN to identify the particular type of automatic restraint installed in each passenger car produced during the phase-in period. Since that information could be necessary for purposes of enforcement, however, the agency proposed to require that manufacturers maintain records until December 31, 1991, of the VIN and type of automatic restraint for each passenger car which is produced during the phase-in period and is reported as having automatic restraints. Although direct import cars are not required to have a US-format VIN number, those cars would still have a European-format VIN number and thus direct importers would be required to retain that VIN information. (The agency is considering a petition from Volkswagen requesting that direct import cars be required to have US-format VINs.)

The reason for retaining the information until 1991 is to ensure that such information would then be available until the completion of any agency enforcement action begun after the final phase-in report is filed in 1990. The agency believes this requirement meets the needs of the agency, with minimal impacts on manufacturers, and therefore is adopting it as proposed. One commenter asked whether a manufacturer is required to keep the VIN information as a separate file or whether keeping the information as a part of its general business records is sufficient. As long as the VIN information is retrievable, it may be stored in any manner that is convenient for a manufacturer.

Impact Analyses

The agency has considered the economic and other effects of the requirement adopted in this final rule and determined that they are not major within the meaning of Executive Order 12291 nor significant within the meaning of DOT's regulatory policies and procedures. A Final Regulatory Evaluation (FRE) has been prepared and placed in the public docket.

Two of the actions adopted in this notice potentially have measurable economic consequences or effects on consumers, which are fully detailed in the FRE and briefly discussed below. The two actions are requiring the use of dynamic testing for manual belt systems in passenger cars and retaining the oblique test. The remaining changes adopted in this notice concern technical changes that should not have more than minimal economic effects on either consumers or manufacturers and thus require no regulatory evaluation.

The proposed dynamic testing of lap-shoulder belt systems could result in increased testing costs to vehicle manufacturers. At present, manufacturers already conduct crash testing for Standard Nos. 204, *Steering Column Rearward Displacement*, 212, *Windshield Mounting*, 219, *Windshield Zone Intrusion*, and 301, *Fuel System Integrity*. In many cases, manufacturers can combine the dynamic testing of safety belts with the testing done to meet these other standards and thus avoid the cost of testing an additional vehicle for the proposed safety belt requirements. The agency estimates that the incremental costs associated with the instrumentation of the test dummy and measurements needed for the dynamic testing of safety belts in passenger cars would be approximately $8,500 per test, excluding the cost of the vehicle. In the case of the oblique test, the agency notes that, as discussed earlier in this notice, even most manufacturers opposing retention of the oblique test said that they would continue to use it in their own testing.

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. The suppliers of webbing and other manual or automatic restraint components would not likely be significantly affected. Small organizations or governmental units should not be significantly affected since the price increases associated with this final rule should not affect the purchasing of new cars by these entities.

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The reporting and recordkeeping requirements in this rule have been submitted and approved by the Office of Management and Budget, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved under several OMB approval numbers (approval number 2127–0535 (expires June 30, 1986), 2127–0541 (expires December 31, 1986), 2127–0512 (expires Feb. 29, 1988).

Finally, the agency has analyzed this final rule for purposes of the National Environmental Policy Act. The agency has determined that this action would not have any significant impact on the quality of the human environment.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Reporting and recordkeeping requirements.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 Standard No. 208; Occupant crash protection.

1. Section S4.1.3.1.2 is revised to read as follows:

S4.1.3.1.2 Subject to S4.1.3.4 and S4.1.5, the amount of passenger cars, specified in S4.1.3.1.1 complying with the requirements of S4.1.2.1 shall be not less than 10 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1983, and before September 1, 1986, by each manufacturer, or

(b) The manufacturer's annual production of passenger cars during the period specified in S4.1.3.1.1.

2. Section 4.1.3.2.2 is revised to read as follows:

S4.1.3.2.2 Subject to S4.1.3.4 and S4.1.3.4 and S4.1.5, the amount of passenger cars specified in S4.1.3.2.1 complying with the requirements of S4.1.2.1. shall be not less than 25 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1984, and before September 1, 1987, by each manufacturer, or

(b) The manufacturer's annual production of passenger car during the period specified in S4.1.3.2.1.

3. Section 4.1.3.3.2 is revised to read as follows:

S4.1.3.3.2 Subject to S4.1.3.4 and S4.1.5, the amount of passenger cars specified in S4.1.3.3.1 complying with the requirements of S4.1.2.1 shall be not less than 40 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer or

(b) The manufacturer's annual production of passenger cars during the period specified in S4.1.3.3.1.

4. Section S4.1.3.4 is revised to read as follows:

S4.1.3.4 *Calculation of complying passenger cars.*

(a) For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2, or S4.1.3.3.2 to comply with S4.1.2.1:

(1) Each car whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position will comply with the requirements of S4.1.2.1(a) by any means is counted is counted as 1.5 vehicles, and

(2) Each car whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front seat seating position is equipped with a manual Type 2 seat belt is counted as one vehicle.

(b) For the purposes of complying with S4.1.3.1.2, a passenger car may be counted if it:

(1) Is manufactured on or after September 1, 1985, but before September 1, 1986, and

(2) Complies with S4.1.2.1.

(c) For the purposes of complying with S4.1.3.2.2, a passenger car may be counted if it:

(1) Is manufactured on or after September 1, 1985, but before September 1, 1987,

(2) Complies with S4.1.2.1, and

(3) Is not counted toward compliance with S4.1.3.1.2

(d) For the purposes of complying with S4.1.3.3.2, a passenger car may be counted if it:

(1) Is manufactured on or after September 1, 1985, but before September 1, 1988,

(2) Complies with S4.1.2.1, and

(3) Is not counted toward compliance with S4.1.3.1.2 or S4.1.3.2.2.

5. A new section S4.1.3.5 is added to read as follows:

S4.1.3.5. Passenger cars produced by more than one manufacturer.

S4.1.3.5.1 For the purposes of calculating average annual production of passenger cars for each manufacturer and the amount of passenger cars manufactured by each manufacturer under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.3.5.2:

(a) A passenger car which is imported shall be attributed to the importer.

(b) A passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S4.1.3.5.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.1.3.5.1.

6. A new section S4.6 is added to read as follows:

S4.6 *Dynamic testing of manual belt systems.*

S4.6.1 If the automatic restraint requirement of S4.1.4 is rescinded pursuant to S4.1.5, then each passenger car that is manufactured after September 1, 1989, and is equipped with a Type 2 manual seat belt assembly at each front outboard designated seating position pursuant to S4.1.2.3 shall meet the frontal crash protection requirements of S5.1 at those designated seating positions with a test dummy restrained by a Type 2 seat belt assembly that has been adjusted in accordance with S7.4.2.

S4.6.2 A Type 2 seat belt assembly subject to the requirements of S4.6.1 of this standard does not have to meet the requirements of S4.2 (a)–(c) and S4.4 of Standard No. 209 (49 CFR 571.209) of this Part.

7. S7.4.2 is revised to read as follows:

S7.4.2 *Webbing tension relieving device.* Each vehicle with an automatic seat belt assembly or with a Type 2 manual seat belt assembly that must meet S4.6 installed in a front outboard designated seating position that has either manual or automatic devices permitting the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices) shall:

(a) Comply with the requirements of S5.1 with the shoulder belt webbing adjusted to introduce the maximum amount of slack recommended by the manufacturer pursuant to S7.4.2(b);

(b) Have a section in the vehicle owner's manual that explains how the tension-relieving device works and specifies the maximum amount of slack (in inches) recommended by the vehicle manufacturer to be introduced into the shoulder belt under normal use conditions. The explanation shall also warn that introducing slack beyond the amount specified by the manufacturer can significantly reduce the effectiveness of the shoulder belt in a crash; and

(c) Have an automatic means to cancel an shoulder belt slack introduced into the belt system by a tension-relieving device each time the safety belt is unbuckled or the adjacent vehicle door is opened, except that open-body vehicles with no doors can have a manual means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device.

8. Section 8.1.1(c) is revised to read as follows:

S8.1.1 * * *

(c) *Fuel system capacity.* With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

* * * * *

9. A new 8.1.1(d) is added to read as follows:

S8.1.1 * * *

(d) *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its "as delivered" condition. The "as delivered" condition is the vehicle as received at the test site, with 100 percent of all fluid capacities and all tires inflated to the manufacturer's specifications as listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's "fully loaded condition." The "fully loaded condition" is the test vehicle loaded in accordance with S8.1.1 (a) or (b), as applicable. The load placed in the cargo area shall be center over the longitudinal centerline of the vehicle. The pretest vehicle attitude shall be equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

10. S7.4.3 is amended by removing the reference to "S10.6" and replacing it with a reference to "S10.7."

11. S7.4.4 is amended by removing the reference to "S10.5" and replacing it with a reference to "S10.6."

12. S7.4.5 is amended by removing the reference to "S8.1.11" and replacing it with a reference to "S10."

13. Section 8.1.3 is revised to read as follows:

S8.1.3 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position.

14. Sections 8.1.11 through 8.1.11.2.3 are removed.

15. Sections 8.1.12 and 8.1.13 are redesignated 8.1.11 and 8.1.12, respectively.

16. Section 10 is revised to read as follows:

S10 *Test dummy positioning procedures.* Position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as specified in S10.1 through S10.9. Each test dummy is:

(a) Not restrained during an impact by any means that require occupant action if the vehicle is equipped with automatic restraints.

(b) Restrained by manual Type 2 safety belts, adjusted in accordance with S10.9, if the vehicle is equipped with manual safety belts in the front outboard seating positions.

S10.1 *Vehicle equipped with front bucket seats.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10. Center the test dummy on the seat cushion of the bucket seat and set its midsagittal plane so that it is vertical and parallel to the centerline of the vehicle.

S10.1.1 *Driver position placement.*

(a) Initially set the knees of the test dummy 11–3/4 inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the test dummy.

(b) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it perpendicular to the lower leg and place it as far forward as possible in the direction of the geometric center of the pedal with the rearmost point of the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the right leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical longitudinal plane without inducing torso movement.

(c) Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan. If the foot cannot be positioned on the toeboard, set it perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the left leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot; place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S10.1.2 *Passenger position placement.*

S10.1.2.1 *Vehicles with a flat floor pan/toeboard.*

(a) Initially set the knees 11¾ inches apart, measured between the outer surface of the knee pivot bolt heads.

(b) Place the right and left feet on the vehicle's toeboard with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower centerlines and place them as far forward as possible with the heel resting on the floor pan.

(c) Place the right and left legs so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S10.1.2.2 *Vehicles with wheelhouse projections in passenger compartment.*

(a) Initially set the knees 11¾ inches apart, measured between outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and as far forward as possible with the heels resting on the floor pan.

(c) If it is not possible to maintain vertical and longitudinal planes through the upper and lower leg centerlines for each leg, then place the left leg so that its upper and lower centerlines fall, as closely as possible, in a vertical

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longitudinal plane and place the right leg so that its upper and lower leg centerlines fall, as closely as possible, in a vertical plane.

S10.2 *Vehicle equipped with bench seating.* Place a test dummy with its torso against the seat back and its upper legs against the seat cushion, to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10.1.

S10.2.1 *Driver position placement.* Place the test dummy at the left front outboard designated seating position so that its midsagittal plane is vertical and parallel to the centerline of the vehicle and so that the midsagittal plane of the test dummy passes through the center of the steering wheel rim. Place the legs, knees, and feet of the test dummy as specified in S10.1.1.

S10.2.2 *Passenger position placement.* Place the test dummy at the right front outboard designated seating position as specified in S10.1.2, except that the midsagittal plane of the test dummy shall be vertical and longitudinal, and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the test dummy at the driver's position.

S10.3 *Initial test dummy placement.* With the test dummy at its designated seating position as specified by the appropriate requirements of S10.1 or S10.2, place the upper arms against the seat back and tangent to the side of the upper torso. Place the lower arms and palms against the outside of the upper legs.

S10.4 *Test dummy settling.*

S10.4.1 *Test dummy vertical upward displacement.* Slowly lift the test dummy parallel to the seat back plane until the test dummy's buttocks no longer contact the seat cushion or until there is test dummy head contact with the vehicle's headlining.

S10.4.2 *Lower torso force application.* Using a test dummy positioning fixture, apply a rearward force of 50 pounds through the center of the rigid surface against the test dummy's lower torso in a horizontal direction. The line of force application shall by 6½ inches above the bottom surface of the test dummy's buttocks. The 50 pound force shall be maintained with the rigid fixture applying reaction forces to either the floor pan/toeboard, the 'A' post, or the vehicle's seat frame.

S10.4.3 *Test dummy vertical downward displacement.* While maintaining the contact of the horizontal rearward force positioning fixture with the test dummy's lower torso, remove as much of the 50 pound force as recessary to allow the test dummy to return downward to the seat cushion by its own weight.

S10.4.4 *Test dummy upper torso rocking.* Without totally removing the horizontal rearward force being applied to the test dummy's lower torso, apply a horizontal forward force to the test dummy's shoulders sufficient to flex the upper torso forward until its back no longer contacts the seat back. Rock the test dummy from side to side 3 or 4 times so that the test dummy's spine is at any angle from the vertical in the 14 to 16 degree range at the extremes of each rocking movement.

S10.4.5 *Upper torso force application.* With the test dummy's midsagittal plane vertical, push the upper torso back against the seat back with a force of 50 pounds applied in a horizonal rearward direction along a line that is coincident with the test dummy's midsagittal plane and 18 inches above the bottom surface of the test dummy's buttocks.

S10.5 *Placement of test dummy arms and hands.* With the test dummy positioned as specified by S10.3 and without including torso movement, place the arms, elbows and hands of the test dummy, as appropriate for each designated seating position in accordance with S10.3.1 or S10.3.2. Following placement of the arms, elbows and hands, remove the force applied against the lower half of the torso.

S10.5.1 *Driver's position.* Move the upper and the lower arms of the test dummy at the driver's position to their fully outstretched position in the lowest possible orientation. Push each arm rearward permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the test dummy's thumbs over the steering wheel rim and position the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement.

S10.5.2 *Passenger position.* Move the upper and the lower arms of the test dummy at the passenger position to fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contacts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

S10.6 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning a test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.7 *Test dummy positioning for belt contact force.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Pull the belt webbing three inches from the test dummy's chest and release until the webbing is within 1 inch of the test dummy's chest and measure the belt contact force.

S10.9 *Manual belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S8.1.2, S8.1.3 and S10.1 through S10.5, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 2 to 4 pound tension load to the lap belt. If the belt system is equipped with a tension-relieving device introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer for normal use in the owner's manual for the vehicle. If the belt system is not equipped with a tension relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

17. S11 is removed.

18. S4.1.3.1.1, S4.1.3.2.1, S4.1.3.3.1, S4.1.4 and S4.6.1 are amended by adding a new second sentence to S4.1.3.1.1, S4.1.3.2.1, S4.1.3.3.1 and S4.1.4 and a new second sentence to S4.6.1 to read as follows:

A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

19. S8.1.5 is revised to read as follows:

S8.1.5 Movable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position.

20. S7.4 is revised to read as follows:

7.4 *Seat belt comfort and convenience.*

(a) *Automatic seat belts.* Automatic seat belts installed in any vehicle, other then walk-in van-type vehicles, which has a gross vehicle weight rating of 10,000 pounds or less, and which is manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) *Manual seat belts.*

(1) *Vehicles manufactured after September 1, 1986.* Manual seat belts installed in any vehicle, other than manual Type 2 belt systems installed in the front outboard seating positions in passenger cars or manual belts in walk-in van-type vehicles, which have a gross vehicle weight rating of 10,000 pounds or less, shall meet the requirements of S7.4.3, S7.4., S7.4.5, and S7.4.6.

(2) *Vehicles manufactured after September 1, 1989.*

(i) If the automatic restraint requirement of S4.1.4 is rescinded pursuant to S4.1.5, then manual seat belts installed in a passenger car shall meet the requirements of S7.1.1.3(a), 7.4.2, 7.4.3, S7.4.4, S7.4.5, and S7.4.6.

(ii) Manual seat belts installed in a bus, multipurpose passenger vehicle and truck with a gross vehicle weight rating of 10,000 pounds or less, except for walk-in van-type vehicles, shall meet the requirements of 7.4.3, S7.4.4, S7.4.5, and S7.4.6.

§ 571.209 Standard No. 209, Seat belt assemblies.

1. A new S4.6 is added, to read as follows:

S4.6 *Manual belts subject to crash protection requirements of Standard No. 208.*

(a) A seat belt assembly subject to the requirements of S4.6.1 of Standard No. 208 (49 CFR Part 571.208) does not have to meet the requirements of S4.2(a)–(c) and S4.4 of this standard.

(b) A seat belt assembly that does not comply with the requirements of S4.4 of this standard shall be permanently and legibly marked or labeled with the following language:

This seat belt assembly may only be installed at a front outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less.

§ 571.210 Standard No. 210, Seat belt assembly anchorages.

1. The second sentence of S4.3 is revised to read as follows:

S4.3 Location.

Anchorages for automatic and for dynamically tested seat belt assemblies that meet the frontal crash protection requirement of S5.1 of Standard No. 208 (49 CFR Part 571.208) are exempt from the location requirements of this section.

* * * * *

1. Chapter V, Title 49, Transportation, the Code of Federal Regulations, is amended to add the following Part:

PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING REQUIREMENTS

Sec.
585.1 Scope.
585.2 Purpose.
585.3 Applicability.
585.4 Definitions.
585.5 Reporting requirements.
585.6 Records.
585.7 Petition to extend period to file report.

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

§ 585.1 Scope.

This section establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars equipped with automatic restraints in compliance with the requirements of S4.1.3 of Standard No. 208, *Occupant Crash Protection* (49 CFR Part 571.208).

§ 585.2 Purpose.

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 208 of this Chapter (49 CFR 571.208) for the installation of automatic restraints in a percentage of each manufacturer's annual passenger car production.

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars.

§ 585.4 Definitions.

All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

"Passenger car" is used as defined in 49 CFR Part 571.3.

"Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 585.5 Reporting requirements.

(a) *General reporting requirements.* Within 60-days after the end of each of the production years ending August 31, 1987, August 31, 1988, and August 31, 1989, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 for installation of automatic restraints in its passenger cars produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.1.3 of Standard No. 208;

(5) Provide the information specified in § 585.5(b);

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

(b) *Report content.*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production.*

Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that cars produced during the preceding years are treated under Standard No. 208 as having been produced during the production year being reported on, the following information:

(i) The number of passenger cars equipped with automatic seat belts and the seating positions at which they are installed,

(ii) The number of passenger cars equipped with air bags and the seating positions at which they are installed, and

(iii) The number of passenger cars equipped with other forms of automatic restraint technology, which shall be described, and the seating positions at which they are installed.

(3) *Passenger cars produced by more than one manufacturer.*

Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.1.3.5.2. of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how

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the contract afffects the report being submitted.

(ii) Report the actual number of passenger cars covered by each contract.

§ 585.6 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car for which information is reported under § 585.5(b)(2), until December 31, 1991.

§ 585.7 Petition to extend period to file report.

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 585.5(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

Issued on March 18, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-6231 Filed 3-18-86; 2:22 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-176]

Short Notice Effectiveness for Independently Filed Motor Passenger Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission, pursuant to applications filed by several passenger carriers, and under 49 U.S.C. 10762(d)(1), adopts final rules that amend 49 CFR Part 1312, to reduce the notice period required for independent rate filings by motor carriers of passengers, including regular route passenger, express and special and charter operations. Independently established rate reductions, rate increases, and new rates for motor passenger carrier fares may now become effective on 1-day's notice, rather than the 30-days' notice previously required by 49 CFR 1312.4(e)(1)(ii)(A). The reduced notice period will enable passenger-carriers to compete more effectively and to respond more quickly to various types of competition, particularly since fuel prices and insurance costs continue to fluctuate. The final rules are set forth in the appendix to this notice.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Robin Williams Denick (202) 275-7711
or
Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION: Proposed rules in this proceeding were published at 50 FR 53168, December 30, 1985.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll fee (800) 424-5403.

Energy and Environmental Considerations

The final rules as adopted here will not affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that adoption of these rules will not have a significant economic impact on a substantial number of small entities because they affect only the notice period required for motor passenger carrier rate filings. Reduction of the notice period is consistent with the National Transportation Policy, 49 U.S.C. 10101, which encourages the Commission to reduce burdens and promote an economic and efficient transportation system.

List of Subjects in 49 CFR Part 1312

Buses, Tariffs.

Decided: March 14, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Title 49 CFR Part 1312, is amended as follows:

PART 1312—[AMENDED]

1. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

2. Section 1312.4(e)(1)(ii) is amended by revising paragraph (A) and by adding a new paragraph (C) to precede the flush paragraph at the end of paragraph (e)(1)(ii) to read as follows:

§ 1312.4 Filing tariffs

* * * * *

(e) * * *
(ii) * * *
(A) 30 days' notice is required.

* * * * *

(C) For independently set rates of motor carriers of passengers, including regular route passenger, package express and special and charter operations, the rule generally is 1-day's notice for reductions and increases of passenger rates. See § 1312.39(i) for details.

* * * * *

3. Section 1312.39 is amended by revising paragraph (f); and adding a new paragraph (i) to read as follows:

§ 1312.39 Miscellaneous provisions that may be filed on less than statutory notice.

* * * * *

(f) *Roundtrip excursion fares.* Fares for a roundtrip excursion limited to a designated period may be established upon posting and filing the tariff on 1-day's notice.

* * * * *

(i) *Tariffs of Motor Carriers of Passengers—Changes—New, Reduced and Increased Rates.* Except as otherwise provided in paragraph (h)(5) of this section, each independently established new or changed rate, charge, rule, or other provision must be filed with the Commission in Washington, DC, at least 1 day before the date upon which it is to become effective. Similarly, each independently established change in a rule or other provision that effects a reduction in the value of service or increase in a rate or charge must be filed with the Commission in Washington, DC, at least 1 day before the date upon which it is to become effective.

[FR Doc. 86-6327 Filed 3-20-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Argyroxiphium Sandwicense ssp. Sandwicense ('Ahinahina or Mauna Kea Silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Argyroxiphium sandwicense* ssp. *sandwicense* ('Ahinahina or Mauna Kea silversword) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. The only known natural population of this plant is located on the east slope of Mauna Kea on the island of Hawaii, State of Hawaii. In addition, a small number of individuals have been planted at other places on the mountain. This species in vulnerable to any substantial habitat alteration, and faces the present threat of elimination through grazing and trampling by feral animals, and the potential threat of damage by insect larvae. This determination that *Argyroxiphium sandwicense* ssp. *sandwicense* is an endangered species implements the protection provided by the Endangered Species Act of 1983, as amended.

DATE: The effective date of this rule is April 21, 1986.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

This taxon was first collected in 1825 by James Macrae,and was described in 1836 by De Candolle. When Macrae visited Mauna Kea, several populations of this silversword were extant on the upper slopes of the volcano, and the species presumably numbered thousands of individuals. The only known collections of the Mauna Kea silversword after 1916 are from the Wailuku River population. In 1916, the taxon was abundant at the Wailuku site. However, today only about 110 individuals remain, 95 of which are nursery-raised plants transplanted into the area. Several undocumented sightings of individuals or small numbers of plants have been recorded as recently as 1955 from other places on the mountain.

There has been some disagreement concerning the proper taxonomic disposition of the taxon. *Argyroxiphium sandwicense* has sometimes been interpreted broadly to include plants of both the islands of Maui and Hawaii, without any recognition of infraspecific taxa. Alternatively, the Maui plants have been segregated at the specific level as *A. macrocephalum.* Recent research supports the acceptance of an inclusive concept of the species, with one subspecies (ssp. *sandwicense*) confined to the island of Hawaii and one (ssp. *macrocephalum*) native to Maui. Both taxa are known as 'ahinahina in Hawaiian.

The Hawaii taxon historically occupied the alpine slopes of the Mauna Kea volcanic dome, mostly above the tree line and including barren alpine desert areas above other vegetation. The only known extant natural population is found in the upper limits of *Sophora* woodland and the alpine scrub above the tree line along the Wailuku River drainage. The Wailuku River population is found on State lands in the Mauna Kea Forest Reserve and on Hawaiian Home Lands.

There are also historic reports of silverswords from Hualalai and Mauna Loa on the island of Hawaii. The plants of Hualalai may have been *A. sandwicense* ssp. *sandwicense.* No specimens are know from this population, which is no longer believed to be extant. It may have represented an undescribed and now-extinct taxon. Reports from Mauna Loa are believed to have been based on the related *A. kauense,* which is endemic to Mauna Loa.

Argyroxiphium sandwicense ssp. *sandwicense* produces a globose basal rosette of dagger-shaped leaves that are up to 1 foot long and usually less than ½ inch wide at their midpoint; the leaves are cloaked with silvery hairs. These rosettes grow for an average of 5 to 15 years, reaching diameters of 2 feet or more before producing a rather narrow flowering stalk with numerous branches, each bearing a flowering head about 1 inch in diameter with pinkish ray flowers. After flowering, plants with a single rosette die. Individual rosettes of multiple-rosette plants also die after flowering.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). *Argyroxiphium macrocephalum* was included in the June 16, 1976, proposal. It is apparent that this was mistaken, and that the intent was to indicate *A. sandwicense* in an inclusive sense, comprising both the Maui and Hawaii taxa.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Argyroxiphium macrocephalum.*

Argyroxiphium sandwicense was included in the December 15, 1980 (45 FR 82479) updated review notice. *Argyroxiphium macrocephalum* was included in that notice as a taxon no longer under review because it was not considered to be a separate entity. A reproposal for the Mauna Kea silversword subspecies was published March 6, 1985 (50 FR 9092), based on information available at the time of the 1976 proposal and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Carr 1982). The Service now determines the Mauna Kea silversword to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9092) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Star Bulletin* on April 1, 1985. Nine comments were received and are discussed below. A public hearing was requested and held in Hilo, Hawaii, June 24, 1985, five people testified, and their testimony is also included in the following summary.

Comments were received from the Governor of Hawaii, the Hawaii Audubon Society, the Director of the Waimea Arboretum and Botanical Garden, the Environmental Defense Fund, and five private individuals. Testimony at the public hearing was presented on behalf of the Chairperson of the State Department of Land and Natural Resources, and four private individuals. All comments received in the period from March 6, 1985, to May 6, 1985, and all testimony given at the public hearing, have been considered in formulating this final rule. The comment period was reopened for 15 working days following the public hearing, closing again July 15, 1985. One additional letter of comment, from Dr.

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Otto Degener, was received during this period. The Governor deferred his support of the listing of the taxon. He stated in his letter of May 1, 1985, that it would be ". . . premature to make any firm decision," and recommended that representatives of the Service and Department of Land and Natural Resources staff meet to discuss the activities which the State had undertaken, such as the construction of exclosures and propagation of silverswords in these exclosures. All other responding organizations and individuals supported the listing as an endangered species.

The activities listed in the Governor's letter include the construction of a 2-acre exclosure in 1973, a 50-acre exclosure near Wailuku in 1975, and two 5-acre exclosures above Pu'u La'au in 1978; these are all of Mauna Kea within the historic range of the Mauna Kea silversword. Approximately 50 seedlings were planted in the two 5-acre exclosures. In June 1985, the Service inspected the two exclosures; there were 10 silverswords growing in one, and 21 in the other. At least three of the silverswords had flowered during past flowering seasons and one was just coming into flower, but no seedlings or young plants were evident. A total of 385 silversword seedlings were planted in the 50-acre and adjoining 2-acre exclosures between 1974 and 1982. Some of these plants have flowered, and at least 17 seedlings were produced. A census of these exclosures, made by four botanists in August 1984, produced a total count of 110 plants, 15 of which they believed to be remnants of the natural population. The other 95 had been nursery-raised and planted out by the Hawaii State Division of Forestry and Wildlife. The proposed rule, which was based upon a status report completed in 1982 by a University of Hawaii Professor of Botany (Carr 1982), treated only naturally occurring individuals. The estimate at that time was 35, and is now believed to be down to 15 individuals. The comments of Ms. Elizabeth Powell, a botany graduate student presently studying the silversword, indicate that the plant is not self-compatible and that sibling incompatibility may prevent 50% of sibling matings from resulting in viable seed. She states that closely spaced, synchronously blooming plants are required for cross-pollination. As most of the out-planted individuals are from seed collected from one or two parents, and as the remaining populations are small, and the plant is monocarpic, a greater number of individuals must be propagated and new seed sources must be incorporated if the outplanting program is to be successful and the plant is to be saved from eventual extinction.

Mr. Tom K. Tagawa, testifying as a private citizen, strongly objected to the Service's statement that, "A portion of the only known extant population has been fenced by the State of Hawaii; however, the exclosure has not been effective against the more recently introduced mouflon sheep, which are currently threatening the species' survival by grazing and browsing activities." He believes that, "This statement implies that the State have [sic] constructed exclosure haphazardly and is indifferent to the protection and perpetuation of the Mauna Kea silversword," that ". . . the success of the endangered species programs depends upon the good working relationship between the Federal and State agencies," and that the Federal Government ". . . should have supported the State with grants to build a strong, durable exclosure to avoid significant adverse effects on the preservation of the Mauna Kea silversword." Dr. Donald Kyhos, Professor of Botany, University of California at Davis, Dr. Carl Christensen, commenting for the Hawaii Audubon Society, Mr. Rick Warshauer, and Ms. Powell all commented on the ineffectiveness of the exclosures. They contended that the mouflon can readily leap the 4.5 foot fence surrounding the silversword. The Service agrees, as personnel from its Honolulu Endangered Species Field Office have seen mouflon in the Wailuku exclosure. The proposed rule was referring only to the inadequacy of the height of the fence, and was not intended to imply indifference on the part of the State to the protection and preservation of the silversword. Mr. Susumu Ono, Chairperson of the Board of Land and Natural Resources, in reference to the Wailuku exclosure, stated that, "We did have problems in the beginning. However, the problem has been taken care of and the fence has proved quite adequate . . ." The construction of the exclosures and the planting of silverswords testify to the State's interest in the species. The Service agrees that the success of the endangered species program in Hawaii is dependent upon the cooperation of State and Federal agencies, and believes that it presently has a good working relationship with the State concerning these programs. Formal and informal meetings, exchange of information, funding of programs, and the cooperative development and implementation of recovery plans are all parts of this. Once a species is listed, funding is available for its conservation through cooperative agreements under section 6 of the Act.

Mr. Tagawa also questioned a statement in the proposed rule that, "[W]ithout the institution of appropriate conservation measures, the species is likely to become extinct . . ." The statement was intended to express the Service's belief that the Mauna Kea silversword requires immediate attention and management to ensure its survival. A recovery plan to address these needs has been given high priority and will be scheduled for completion as soon as possible.

In the proposed rule, under factor "D" of the Summary of Factors Affecting the Species, the Service stated that, "No regulatory mechanisms exist at the present time." Mr. Tagawa and Ms. Powell both pointed out that the silverswords grow within a State Forest Reserve, and that by law the removal, injury, or destruction of any form of plant or animal life therein is prohibited. The Service has corrected this statement in this final rule. Ms. Powell noted that the mouflon sheep in the same area are also presently being managed on a sustained-yield basis by the State Division of Forestry and Wildlife, and that the two resources are in direct conflict.

Mr. Tagawa strongly objected to having graduate or undergraduate students conduct ecological or other related botanical studies because of a statement ". . . made by three peers in the environmental fields in the past. 'None of these students were competent to conduct a serious scientific ecological study, although the excursion provided excellent experience for them . . . . Their final report, however does not in any sense consitute a significant contribution to knowledge.' " He also questioned the "creditability [sic]" of the ". . . so called environmental experts in Hawaii." Mr. Tagawa was referring to a student-originated National Science Foundation grant that was awarded to university undergraduate students, based upon their submitted proposal, and whose purpose was primarily to provide field experience for qualified undergraduates. The ecological study at issue was conducted in the rain forests on the island of Maui and had no relation to any study of the Mauna Kea silversword, which grows in the alpine and sub-alpine regions of Mauna Kea on the island of Hawaii. The quoted statement was made by a university professor. The status survey that

provided the documentation to justify listing the Mauna Kea silversword as an endangered species was compiled by Dr. Gerald D. Carr, Associate Professor of Botany at the University of Hawaii. Any information in it provided by students resulted from research leading to an advanced degree. All status-survey work was supervised, reviewed, and accepted by members of the University graduate faculty.

Another of Mr. Tagawa's concerns was the manner in which priorities were set in deciding which species to list as endangered. In Hawaii, priorities for the listing of plants have been set by the Service after consultation with local professional and amateur botanists and after considering the Service's listing priority guidelines (48 FR 43098, Sept. 21, 1983) the individuals consulted on listing priorities, including the State Botanist, botanists from the University of Hawaii and the Bishop Museum, and knowledgeable naturalists, made recommendations to the Service's botanist, who developed a list of what were considered the most endangered of the Hawaiian plants. This list was used by the Service to determine the order in which listing packages were developed for the local species of plants.

The testimony of Mr. Susumu Ono was read at the public hearing by Mr. Libert Landgraf, Administrator of the State Division of Forestry and Wildlife. Two topics, the construction of exclosures and the planting out of silverswords, and the effectiveness of the exclosure fence against the mouflon sheep have been addressed above.

Mr. Ono mentioned that former forester, L.W. Bryan, stated in his notes that he observed a single silversword above Kanakaleonui in 1950, while the proposed rule stated that "the only known collections of Mauna Kea silverswords after 1916 are from the Wailuku River population." The Service has on file nine records of occurrences of the silverswords, other than the Wailuku population, dating from 1834 to 1955. The records include the 1950 Bryan sighting as well as another made by him at a lower elevation in the Wailuku area in 1955. The proposal included only those records that had been documented by the collection of herbarium specimens.

The proposed rule, under factor "B" of the Summary of Factors Affecting the Species, refers to large quantities of fruit removed for propagation purposes and to threats due to collection for horticultural purposes. Both Mr. Ono and Ms. Powell stated that the last large collection of seed was made in 1973 by a well-intentioned individual, and that the seed eventually was given to the National Park Service and served as the core of the out-planting project. Ms. Powell further stated that the collection was probably more beneficial than detrimental to the species. The Service concurs, and has modified factor "B" to reflect these comments. Collections of whole plants for ornamental or horticultural purposes apparently have been minimal for the last 50 or 60 years.

Under the same item in the proposed rule, the Service made the statement that, "Propagation of silverswords is not easy as few flowers produce viable seed and seed germination is low." Mr. Ono stated that, although detailed germination tests have not been conducted, the State has found Mauna Kea silversword seed quite viable, but short-lived, even when stored under refrigeration. He noted that even with abundant viable seed, very few seedlings in nature become established, but believed this is due to the moisture requirements of the plant rather than its seed viability. Studies by Siegel et al. (1970), Kobayashi (1973), and Powell (information included in her written comments and oral testimony on the proposed rule) all indicate that self-incompatibility, depressed inter-sibling fertility, a narrow range of temperature tolerance, seed dormancy factors, a relatively short seed life, and the soil moisture and other edaphic requirements of the silversword species in Hawaii result in a low rate of regeneration. The highest germination rate, under optimal laboratory conditions, of seed of the Haleakala subspecies was 27.7% (Siegel et al. 1970). Mr. Kaoru Sunada, in his testimony at the public hearing, reported a germination percentage of 20% for the Haleakala plants and 6% for the Mauna Kea plants used in his propagation project.

The proposed rule stated that, "The species grows as a rosette for between 5 and 15 years before flowering." Mr. Ono commented that, "There are some naturally occurring plants which we have observed for about 15 years that have not grown appreciably and still show no indication of flowering," and that, "It is not uncommon for the silverswords planted in better sites to bloom in two to three years. We had some bloom one year after planting." A silversword plant, unless multiheaded, flowers and produces seeds once, then dies. The age at which it flowers varies, but 5 to 15 years is frequently used as an average. Younger or older flowering plants, especially under artificial stress or non-optimal conditions, are to be expected.

Mr. Ono questioned whether the Service had assessed the best scientific information available regarding the species in formulating its proposal and stated that the Service had not made an effort to contact the State Division of Forestry and Wildlife in gathering its information. He was concerned by an apparent lack of response by the Service to the public and a failure to work with the landowner (the State) while gathering status information. He believed that the Service may have been unaware of the conditions under which the remaining naturally-occurring silverswords have survived and of what was being done by the State to protect and perpetuate the species. Although he disagreed with statements made in the Service's proposal, he did agree that the silversword warranted listing and offered the support of the State Department of Land and Natural Resources in the listing. In gathering the information that led to its proposal to list the Mauna Kea silversword, the Service attempted to address all known threats to the species. The status report and first draft of the proposed rule were prepared under contract by the Research Corporation of the University of Hawaii, whose staff were in informal contact with State personnel. Any information thus provided to the Research Corporation was incorporated into the survey and proposal. The Service has also provided all its endangered plant data to the State Division of Forestry in a cooperative effort to develop a data base. Apparently, these efforts failed to reveal the State's program to plant out silverswords at Pu'u La'au. The Service believes that it has made a good-faith effort to gather information regarding the status of the species and has responded adequately to the concerns of the public and the State, as borne out by the fact that, with the exception of an interim response from the Governor of Hawaii, all the written and informal comments received, and all testimony presented at the public hearing, have supported its determination that the Mauna Kea silversword is an endangered species. Further information brought out in response to the proposed rule regarding the species' status has been incorporated into the final rule.

Mr. Ono's letter continues that the next vital step in protecting a species, after its listing, ". . . is to develop a recovery plan to which those involved are committed." He believes that the agency proposing listing should be the lead agency in formulating a recovery plan and that the landowner should be involved. He states that recovery programs initiated by the State have suffered from the lack of coordination

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among agencies and from recovery activities carried out by other agencies without the State's knowledge. The Service intends to develop a recovery plan for this species and, as with all previous recovery plans, will involve all interested parties, including the landowners.

Comments from six individuals or agencies were received concerning the designation of critical habitat for the Mauna Kea silversword. Mr. Ono did not believe it necessary to designate critical habitat; the other five favored its designation. The Service continues to believe that no net benefit would be provided for the plant by designating critical habitat, and that the designation could make the species more vulnerable to acts of vandalism. The remainder of Mr. Ono's comments concerned recovery actions.

Ms. Elizabeth Powell submitted written comments on the proposal, and testified as an individual and on behalf of the Hawaii Audubon Society at the public hearing. Much of her contribution consisted of extensive historical, biological, distributional, and demographic information. Other of her comments have been incorporated above.

The correct scientific name for the Mauna Kea silversword was the concern of three individuals. Ms. Powell and Dr. Degener believe that the Mauna Kea and the Haleakala plants are distinct at the specific level. Dr. Carr, based on the master's thesis of one of his students (Meyrat et al. 1983), considers the two to be distinct at the subspecific level. The proposed rule distinguishes the two at the varietal level. Based upon research by a Service botanist, the Service now recognizes the taxon at the subspecific level.

Ms. Powell and five other commenters, in their letters or testimony, addressed problems caused by feral ungulates. Mr. Ono believed that the existing enclosures have protected, and can continue to protect, the silversword against damage by feral animals. The remainder believe the feral animals, in some comments specifically the mouflon sheep, to be a great, if not the greatest, single threat to the silversword.

Dr. Otto Degener and Mr. Kaoru Sunda supported the listing of the silversword as an endangered species. Both supplied background and historical information. Their specific comments have been incorporated above. Mr. Rick Warshauer stated that the listing of the silversword is long past due and may now be too late. His other comments also have been incorporated above.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mauna Kea silversword should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Argyroxiphium sandwicense* DC. ssp. *sandwicense* (Mauna Kea silversword or 'ahinahina) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The species historically was abundant on Mauna Kea from the 8,500 foot level to the 12,000 foot level. The activity of feral animals (goats, cattle, sheep, pigs, and horses) that was first introduced in the late 18th century has eliminated the silversword from the fragile upper zones of its former range and has reduced the species throughout its range to one known natural population of about 15 individuals. Feral animal populations have vastly altered and degraded the vegetation of Mauna Kea in general (Warner 1960). Direct results of animal activity have included mechanical damage of aerial and subterranean plant parts, consumption of plant material, and dispersal of exotic plant species. Secondary effects include wind and water erosion of the thin soil mantle after it has been stripped of stabilizing vegetation.

The only known extant natural population of this species has been fenced by the State of Hawaii; however, the exclosure is too low to be effective against more recently introduced mouflon sheep, which threaten the species' survival by grazing and browsing activities.

B. *Overutilisation for commercial, recreational, scientific, or educational purposes.* The species is of horticultural and ornamental interest, and in the past was threatened by collection of seed for propagation or of entire plants for ornamental purposes. However, these activities are now believed to be minimal, and represent only a potential threat to its existence. Propagation of silverswords is not easy as few flowers produce viable seed and seed germination is low (Kobayashi 1974).

C. *Disease or predation.* The closely related Haleakala silversword is damaged by the predacious larvae of insects such as *Rhynchephestia rhabdotis* and *Tephritis cratericola*, which were found to have damaged a mean of 60% of the seeds produced. An insect thought to be the latter or a similar species has been observed on the Mauna Kea silversword (Carr 1982). As these are native insects which evolved with the silversword, they may not be a threat to the plant, at least under normal conditions. Plants have been severely grazed by introduced herbivores even within exclosures estalished for the protection of the silversword.

D. *The inadequacy of existing regulatory mechanisms.* Most of the silverswords grow within the boundaries of the Mauna Kea Forest Reserve and are thus protected by State law against removal, injury or destruction. Federal listing would automatically invoke listing under Hawaiian State law, which would provide additional protection, and which would make Section 6 funds available for conservation programs under a cooperative agreement between the State and the Service.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the remaining populations of the species threatens its reproductive capacity and has resulted in a reduced gene pool that may threaten its adaptive capacity. The species grows as a rosette for between 5 and 15 years before flowering. Its low reproductive potential has been severely affected by reduction of the population size. Very few individuals produce a fruit crop in any given year. For 2 or more years no plants may bloom, and in some years only 4 or 5 plants may bloom.

Concurrent with population decline in insect-pollinated species, such as the silversword, is often a loss of evolved pollinator species. The drastic alteration of the upper forest zone on Mauna Kea in general (Warner 1960) may have resulted in a parallel reduction of potential pollinators.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Argyroxiphium sandwicense* ssp. *sandwicense* as endangered. This designation reflects the strong likelihood that, without the institution of appropriate conservation measures, the species is likely to

become extinct throughout its range. The reasons for which critical habitat is not being designated are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the Summary of Factors Affecting the Species, *Argyroxiphium sandwicense* ssp. *sandwicense* potentially is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction.

The species is known only from lands owned by the State of Hawaii and from Hawaiian Home Lands. The State is aware of the existence of the species and has taken preliminary steps for protection. Upon Federal listing the silversword will be placed upon the Hawaii State list of Endangered plants; Hawaii law prohibits taking and encourages conservation by State governmental agencies for such species. See Hawaii Rev. Stat. ch. 195D, as amended (1976 Replacement & Supp. 1984). Management for the survival and recovery of the species can be coordinated between the U.S. Fish and Wildlife Service and the State of Hawaii. No net benefit would be provided to *Argyroxiphium sandwicense* ssp. *sandwicense* through critical habitat designation, and publication of critical habitat descriptions in the **Federal Register** and local newspapers, as required by law, could make this species even more vulnerable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against collection are discussed, in part, below.

Section (7)(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to consult with the Service on any action that is likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Argyroxiphium sandwicense* ssp. *sandwicense*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Argyroxiphium sandwicense* ssp. *sandwicense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. No trade in this species presently is known. It is anticipated that few trade permits involving this species will be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisidiction. This prohibition now applies to *Argyroxiphium sandwicense* ssp. *sandwicense* if it is found to occur on land under Federal jurisidiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act and regulations to be codified at 50 CFR 17.62 (50 FR 39681, September 30, 1985). The only known extant natural population of this species occurs on State of Hawaii or Hawaiian Home lands. It is anticipated that no collecting permits will be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903 or FTS 235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

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Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Argyroxiphium sandwicense ssp. *sandwicense*.	'Ahinahina (Mauna Kea silversword)	U.S.A. (HI)	E	219	NA	NA
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Dated: March 11, 1986.

P. Daniel Smith

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–5559 Filed 3–20–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 55
Friday, March 21, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 275 and 276

[Amdt. No. 268]

Food Stamp Program; Administrative Review Process for Liabilities and Quality Control Arbitration Process

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Food Stamp Program's administrative review process through which State agencies can seek reconsideration of claims filed against them by the Food and Nutrition Service (FNS). This proposed rule streamlines and simplifies the procedures that State agencies and FNS would follow when State agencies seek reconsideration, making the administrative review process less time consuming and more efficient to administer. Further, this rulemaking establishes arbitration procedures for quality control case findings that are disputed by State agencies.

DATE: Comments on this proposed rulemaking must be received on or before May 20, 1986 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed in relation to the requirements of Executive Order No. 12291 and Secretary's Memorandum No. 1512–1, and it has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "not major." The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule would simplify the administrative review process for liabilities and establish arbitration procedures for quality control (QC) case findings that are disputed by State agencies. Requirements would not be placed on small businesses or small organizations. Some requirements would be placed on State agencies. However, the requirements would not have a significant economic impact on local governments.

This rule does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Quality Control Arbitration

Regulations issued on January 23, 1981, at 46 FR 7257, allowed State agencies to have Quality Control cases arbitrated when the State disputed the Federal review findings. Informally, procedures were developed at the regional and national levels to arbitrate disputes about case findings. There were no time limits established as part of these informal procedures. Because of an increased emphasis on timeliness, the Department believes that it is necessary to change the procedures to impose time limits on the arbitration process for FNS and State agencies. As time limits on requests for arbitration will be imposed on State agencies by this change, we have determined that these procedures should be included in the regulations. Discussed below are the significant changes from the current regulations and policy on arbitration. Comments are being sought on all aspects of the arbitration process.

Under the existing procedures, there are two levels of appeal, first is to the regional office and second to the national office of FNS. In this rulemaking, we are proposing to eliminate the appeal to the national office. This one-tiered arbitration system will bring cases to finality sooner. Thus, FNS will be able to make earlier determinations regarding States' eligibility for enhanced funding or liability for errors.

Currently, the regulations at § 275.3(c)(5) specify that the regional office shall designate the arbitrator. At the regional level under the current two-tier system, the individual designated as arbitrator has varied from region to region. Some arbitrators have worked in the Food Stamp Program; others have worked outside it. In this rulemaking, we are proposing to revise the regulation to state that the Regional Administrator or his/her designee shall serve as the arbitrator. If the Regional Administrator designates someone to serve as the arbitrator, that individual should be knowledgeable about Food Stamp policy and have the authority to carry out determinations.

Presently, there are no timeframes established for States to request arbitration of a particular case determination nor for FNS to conduct the review and make a decision. Under this proposed rulemaking, State

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agencies would be given 28 calendar days to submit a request for arbitration. In the event the last day of the time limit falls on a weekend or holiday, the final date would be moved forward to the next working day. We believe that 28 days is sufficient to allow a State agency to review the regional findings to determine any disagreement and to prepare and submit a request for arbitration. Further, 28 days is consistent with current Aid to Families with Dependent Children program practices. In addition, we are also proposing a 30-day time limit for the FNS arbitrator to review a case and make a decision or to notify the State agency of the status of the case.

Administrative Review Process

The provisions of Section 14 of the Food Stamp Act of 1977 (7 U.S.C. 2023) require that State agencies aggrieved by claims issued by FNS under section 13 of the Act be given the opportunity to have the claims reviewed through an administrative review process.

Proposed rules published November 9, 1979 (44 FR 65336) gave State agencies the opportunity to seek a review of any claims against them under section 13 of the Act. These rules also proposed that State agencies might request a hearing for claims based on either negligence or on a disallowance for failure to meet the corrective action plan. The Department expected that such claims might require a more detailed review of the circumstances and might be more satisfactorily resolved if a State agency representative were allowed to present a case in person. The Department did not propose to allow hearings for all types of claims, since this would require an unnecessary and excessive commitment of manpower.

On November 21, 1980, the Department issued final rules on Federal Sanctions and State Agency Liabilities (45 FR 77258). All of the provisions of those regulations were issued as final, except the provisions pertaining to the Administrative Review Process, which were issued as interim rules with commitments solicited.

Comments received on the November 9, 1979, proposed regulations included a suggestion that State agencies be given the opportunity to have an in-person hearing on all claims that are appealed. This would include in-person hearings of appeals of issuance claims, as well as negligence claims or disallowances of funds. The Department felt that issuance claims would generally be disputes over records, such as accountability and inventory reports, and did not foresee that in-person hearings would be necessary to reach equitable decision in these cases. The Department believed that a review of the disputed records, along with any other information provided by the State agency, would be adequate. However, to ensure that the appeals process was equitable, the Department, in the interim rules published November 21, 1980, stated its willingness to grant State agencies the option of having in-person hearings in all cases.

Under the interim rules, whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are: billings based on excessive quality control error rates; billings resulting from financial losses involved in the acceptance, storage and issuance of coupons; billings based on charges of negligence or fraud; and disallowances of Federal matching funds for State agency failures to comply with the Food Stamp Act, the regulations, or the FNS-approved State Plan of Operations.

Currently, a State agency aggrieved by a claim has the option of requesting a hearing to present its position in addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, appeals of quality control and negligence claims and disallowances of Federal funds are heard before a full Appeals Board appointed by the Secretary.

Appeals of other claims are heard before a single hearing official. In all cases, the person(s) reviewing the claim was not involved in the decision to file the claim.

In light of the Administration's efforts to improve and simplify program administration and the comments received on the interim procedures, the Department has reexamined the interim administrative review procedures and intends to significantly modify them. Therefore, the Department has decided to issue new regulations for public comment prior to publishing a final rule. Comments received on the interim procedures were considered in the development of this proposed rule and this preamble discusses the basis and purpose of the revisions of the interim rule that the Department is proposing in this rulemaking.

The law provides that, when a claim against a State agency is made, a State agency may request an opportunity to submit information in support of its position. The law does not mandate formal hearings. What the Department had originally envisioned as an informal discussion or review under the requirements of the Act has become a costly, time-consuming, quasi-judicial procedure. Under section 14 of the Food Stamp Act (7 U.S.C. 2023(a)), State agencies may obtain a formal judicial review by the courts through a trial *de novo* if they wish to appeal a final administrative determination. Therefore, the Department feels that the formal review by the current Appeals Board is unnecessary and should be replaced by more informal review procedures.

The Department proposes to substitute for the Appeals Board an administrative review process based solely on a single official's review of the record submitted by the State agency. This does not preclude personal contact between the reviewing official, FNS and the State agency, when necessary. However, any such contact would not affect the established timeframes for completing reviews or delay the review process. The reviewing officials, designated by the Secretary, would be an individual in a position to modify the original determination made by FNS while ensuring that the determination is in keeping with Food Stamp Program law and regulations. To assure this combination of authority to affect the original determination and program expertise, this proposal would permit the Secretary to designate an official who participated in the original decision to assert the claim against the State agency.

We believe this type of review will have practical advantages both for the Department and State agencies pursuing administrative review. Aside from the reduced procedural burdens inherent in simplification of the review process, the system will assure State agencies the opportunity to present their cases directly to an official who has broad authority to reconsider the Department's position.

While the current Appeals Board would be abolished, the role of the Executive Secretary would be retained. The Director, Administrative Review Division (ARD), FNS, who currently serves as Executive Secretary to the Appeals Board would retain the functions now being performed by the Executive Secretary. This would include acknowledgment, in writing, of all State agency requests for administrative review and informing the State agency whether the request is timely and acceptable.

Another proposed change affecting the nature of review has to do with the kinds of arguments that Senate agencies may raise during reviews of quality control billings. Currently, a State agency that fails to meet its quality control error rate target is informed of

its potential liability and has an opportunity to submit any good cause arguments for the failure. If FNS rejects the Stage agency's good cause arguments, a bill is sent to the State agency. Under the current rules the State agency may then appeal the billing through the administrative review process. Very often, many of the arguments raised by State agencies during the adminstrative review are the same as those raised during the consideration of good cause. Thus, the same arguments are being heard twice.

When Congress enacted the quality control billing provisions in the 1980 Food Stamp Amendments (Pub. L. 96–249, May 26, 1980), the possibility of good cause arguments being heard twice was realized and addressed. In the House *Report* accompanying these amendments, the House noted:

> Every State against which the Secretary asserted a claim would have the right to seek administrative and judicial review of the claim in accordance with the procedures contained in section 14 of the Act. None of these procedures would be applicable to the Secretary's review of the State's contention that it had good cause for its failure to meet the appropriate level of error. (House Report No. 96–788, page 74.)

Thus, Congress' stated method to avoid the redundancy currently being experienced was to exclude good cause arguments from the administrative review process.

The current administrative review process is being slowed down by having to consider good cause arguments that have already been rejected by the Department and which the Department is not obligated to consider again Unlike the billing itself, which is computed according to reviewable standards, good cause is an exercise of discretion which makes administrative review difficult.

To eliminate these problems, the Department proposes to prohibit State agencies from raising good cause arguments during the administrative review of quality control billings. This change would not only help to streamline the administrative review process, it would also make the Department's policy in this area the same as the policy followed in the AFDC Program. This prohibition would not limit the ability of State agencies to have quality control billings themselves reviewed through the administrative review process. It would apply only in an instance where a State agency sought to challenge the decision not to waive a sanction on the basis of good cause.

Review of Suspensions of Funds

The Department received comments on the interim rule recommending that State agencies be allowed to appeal suspensions of funds. Several State agencies argued that it was unfair to exempt suspensions from appeals because the Department could willfully tie up State agency funds through lengthy suspensions and the State agency would not have the ability to appeal the basis of the withholding.

The Department is concerned that allowing suspensions to be reviewed could result in certain cases being reviewed twice. This could occur if a review of a suspension were decided against the State agency, and at some later date the State agency sought review of the disallowance that was asserted against it as a result of the same issues that led to the initial suspension of funds. Therefore, this rule does not propose that suspensions of funds be included in the review process. Although not covered by the review process, State agencies would be free to dispute suspensions with FNS personnel and to contact the Department if they continue to feel suspensions are unwarranted.

Process Timeframes

A number of State agencies have contended that the initial 10-day limit for submitting a request for review does not allow them enough time to determine whether the FNS action was warranted and, thus, whether review should be requested. As discussed in the preamble to the interim rule, the 10-day limit is prescribed by Section 14 of the Act, and is appropriate in light of the need to expeditiously process reviews. The Department, however, is proposing to amend the regulations so that the time limit would be computed by work days rather than calendar days. This would allow State agencies additional time to study any disallowance or claims made against them. All other timeframes would continue to be computed by calendar days.

This proposed rule also clarifies the deadlines that may be extended by the reviewing official. In addition to prohibiting any extension of the deadline by which State agencies must file their initial request for administrative review, this proposed rule provides that the date that a review decision becomes final and the deadline by which a State agency must file for judicial review will not be delayed. These timeframes are set out in section 14 of the Act. Under the current rules, all other requests for the extension of any deadline contained in 7 CFR 276.7 will be granted only for good cause shown and only when received by the Director of ARD before the expiration of the particular deadline involved. The Department is proposing that any requests for extensions other than those prescribed by the law would be granted only in unusual cases and only when the requests are postmarked prior to the expiration of the particular deadline involved. These requests would be granted by the reviewing official on a case-by-case basis.

Under the current rule, State agencies have 30 days from their request for a review to submit any additional information. This means that the timeframes for submitting information begin before the State agency knows whether its request for review has been accepted. It also means that State agencies have often had to prepare their cases without knowing the Department's administrative record. In many cases, this has resulted in State agencies requesting and being granted more time to ready their arguments. In order to rectify this problem, the Department proposes to allow the State agencies 30 days from the date of their receipt of the administrative record to submit any additional information. The regulations would require the administrative record to be provided promptly. Except in unusual cases, promptly means the State agency should expect to receive the administrative record within 30 days of the request for review being accepted. The additional time gives the State agencies a greater opportunity to review the administrative record and assemble data and any other supportive information, if necessary.

Final Determinations

Under the current rules, when a hearing is not held a final determination must be made within 30 days after receipt of a State agency's information. The Department is proposing that reviews of claims under the revised system reach a final determination promptly. As noted above, the expectation is that final determinations would be made within 30 days after receipt of the State agency's information.

Other Issues

It has been suggested that claims or disallowances resulting from an alleged failure by a State agency to reduce, cancel, or suspend benefits, if such action became necessary under § 271.7, should be stayed during the review process as is the case with all other claims. A State agency violation of a Department order to reduce or cancel benefits clearly results in the State agency being out of compliance with the Food Stamp Act and Program regulations. Under section 18(b) of the

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Act, (7 U.S.C. 2027(b)) the Secretary is without authority to obligate funds in excess of the amount authorized by Congress in any fiscal year and is specifically required to direct States to reduce benefits to avoid such an occurrence. Such expenditures could also result in a violation of the Anti-Deficiency Act (31 U.S.C. 665) by the Department. For these reasons, the Department needs maximum authority to enforce any directive to reduce, cancel or suspend benefits. Therefore, the Department would not, under this proposal, return any funds withheld from State agencies under § 271.7(h) during reviews. The Department is, however, including in this proposed rule a requirement that these withheld funds be returned to the State agency within 30 days of the review decision if the State agency's position is upheld.

Another commenter asked that the regulations be amended to stay the collection of a claim until a final judicial decision is reached, if the State agency requests judicial review of the matter. The Department has not amended the regulation, however, because section 14 of the Food Stamp Act specifically requires that the decision remain in effect during judicial review unless the court orders that funds be returned to the State agency.

The Department is also proposing a new provision to 7 CFR 276.7 of the regulations allowing the State agency to withdraw, at any time, its request for the review and pay the claim. While this has always been the case in practice, the Department wanted to explicitly state the policy into the regulations so that there was no confusion about it.

Finally, the Department wishes to call to your attention an amendment to section 14 of the Food Stamp Act enacted by the Food Security Act of 1985. That legislation changed the criterion a State agency would need to meet to obtain a judicial stay of an administration action. Prior to this legislative change, a State agency could obtain a judicial stay of an administrative review if it could show that irreparable injury would result if the administrative action remained in force. Under the legislative change, the courts would also consider the State agency's likelihood of prevailing on the merits of the case. The Department considers this legislative change to be "self-implementing," i.e., effective upon enactment of the statute. Given the fact that the provision is a directive aimed at the courts and that Congress gave no discretion in this area, regulations do not need to be issued to implement the policy. However, in the interest of ensuring that our regulations present a complete picture of the administrative and judicial review process, we will include this provision in another rulemaking that will be issued in the near future.

Implementation

The Department proposes that the QC arbitration rules and the revised Administrative Review Process become effective 30 days after the publication of the final rulemaking. Any QC cases submitted for review after this date would be subject to the arbitration rules. Where requests for review of claims have been filed prior to the effective date of the final rule, State agencies would still have the option of requesting a review of the record or an in-person hearing before the current Appeals Board. The 30-day transition period minimizes the overlap between requests filed under the current rule and the revised procedures. As to requests filed after the effective date of the final rulemaking, all reviews would be conducted according to the procedures set forth in the final rule.

List of Subjects

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

Therefore, 7 CFR Parts 275 and 276 are proposed to be amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for Parts 275 and 276 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

2. Section 275.3 is amended by revising paragraph (c)(5) to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(5) *Arbitration.* Whenever the State agency disagrees with the FNS regional office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases on a case-by-case basis, the State agency may request that the dispute be arbitrated by the regional office.

(i) The FNS Regional Administrator or his/her designee shall be the arbitrator and shall sign the decision.

(ii) *Timeframes for arbitration.* (A) The State agency shall request arbitration within 28 calendar days of the date the regional office transmits its case findings to the State agency. Requests submitted later than 28 calendar days shall be denied. In the event the last day of this time period falls on a Saturday, Sunday or Federal or State holiday, the period runs to the end of the next work day.

(B) The arbitrator shall have 30 days to review the case and make a decision or to notify the State agency of the status of the case.

(iii) Full documentation of the case and the policy in question must be submitted with the request for arbitration. Requests without such documentation shall be returned to the State agency. The State agency may resubmit the request with the documentation, provided it can do so within the 28 days allowed in § 275.3(c)(5)(ii)(A).

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

3. Section 276.7 is revised in its entirety to read as follows:

§ 276.7 Administrative review process.

(a) *General.* (1) Whenever FNS asserts a claim against a State agency or disallows federal funds to collect a claim, the State agency may seek reconsideration of the claim or disallowance by requesting an administrative review. State agencies may request review of FNS billings to enforce orders to reduce, cancel or suspend benefits in accordance with § 271.7; billings based on excessive quality control error rates, except for the Department's prior determination of good cause (§ 275.25); billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§ 276.2); billings based on charges of negligence or fraud (§ 276.3); and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations or the FNS-approved State Plan of Operations (§ 276.4), but not suspensions of funds preceding disallowances (§ 276.4).

(2) A State agency aggrieved by a claim or disallowance shall be given the opportunity to have its case reviewed through a review of the record which

shall include a written submission presented by the State agency. The review shall be performed by the Secretary or his delegate. The reviewing official may be an individual who was involved in the decision to file the claim or disallow funds. At any time during the appeals process, a State agency may withdraw its request for the review and pay the Department's claim.

(b) *Notice of claims.* FNS shall provide a notice by certified mail or personal service when asserting claims against or disallowing funds to State agencies.

(c) *Filing a request for review.* A State agency aggrieved by a claim or disallowance may file a written request for review with the Director, Administrative Review Division (ARD), Food and Nutrition Service, USDA, Alexandria, Virginia 22302, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the notice which it received pursuant to § 276.7(b). Requests must be filed with the Director, ARD, or postmarked within 10 work days of the date of delivery of the notice. If the State agency does not request a review within the prescribed 10 work day period or fails, after requesting such review, to submit information pursuant to § 276.7(g) in support of its position, the administrative determination on the claim shall be final. No extension shall be granted in the time allowed for requesting review.

(d) *Computation of time.* The time period for the State agency's filing of a request for administrative review shall be computed according to work days. A work day is any day that is not a Saturday, Sunday or Federal or state holiday. All other time periods shall be computed using calendar days. In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgement, or reply shall not be included. If the last day of any time period is not a work day, the period runs until the end of the next day which is a work day.

(e) *Stay of administrative action.* The filing of a timely request for administrative review of a claim or disallowance shall automatically stay the action of FNS to collect the claim or disallowance asserted against the state agency until a decision is reached on the acceptability of the request, and in the case of an acceptable request, until a final determination has been issued. However, if a State agency requests review of any action taken against it because of its failure to comply with an order to reduce, suspend or cancel benefits in accordance with § 271.7, the disallowance and/or billing shall remain in effect during the entire review process. Should the State agency's position be upheld, disallowed funds and/or funds collected as a result of a billing shall be restored to the State agency within 30 days.

(f) *Acceptability of an appeal.* Upon receipt of a request for administrative review, the Director, ARD, shall provide the State agency with a written acknowledgement of the request. This acknowledgement shall also notify the state agency of the acceptability of the request. A request shall be acceptable if it is submitted in a timely manner as defined in § 276.7(c) and is for the purpose of obtaining review of any FNS action described in § 276.7(a).

(g) *Submitting additional information.* (1) A State agency shall have 30 days from the date of its receipt of the administrative record pursuant to § 276.7(g)(2) to submit three sets of all information it wishes the reviewing official to consider. This information shall be completed in a format prescribed by FNS and sent to the Director, ARD. In order to expedite the review process, the submission should, to the extent possible, include the following:

(i) A clear, concise identification of the issue or issues in dispute;

(ii) The State agency's position with respect to the issue or issues in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue or issues in dispute;

(iv) All pertinent documents, correspondence and records which the state agency believes are relevant and helpful toward a more thorough understanding of the issue or issues in dispute; and,

(v) The relief sought by the State agency.

(2) With regard to reviews of quality control billings, arguments relating to whether or not the State agency had good cause for an error rate that resulted in a billing shall not be considered by the review official. Therefore, State agencies should not submit information relating to these issues.

(3) FNS shall, upon receipt of an acceptable appeal pursuant to § 276.7(f), promptly provide one copy of the administrative record, including all documents, correspondence and records compiled by FNS in support of the claim or disallowance, to the State agency.

(h) *Final determination.* (1) For reviews of all claims, a final determination shall be made promptly after receipt of supporting information submitted by the State agency pursuant to § 276.7(g). The final determination shall take effect 30 days after delivery of the notice of the final decision to the State agency.

(2) The reviewing official shall either uphold the claim, deny the claim, or adjust the claim downward in such amounts as the reviewing official shall determine. The final determination is not subject to reconsideration.

(i) *Judicial review.* State agencies aggrieved by the final determination may obtain judicial review and trial *de novo* by filing a complaint against the United States within 30 days after the date of delivery or service of the final notice of determination, pursuant to the provisions of section 14 of the Food Stamp Act of 1977. The final determination shall remain in effect during the period the judicial review is pending unless the court temporarily stays such administrative action pending disposition of the complaint.

(j) *Extension of time.* No extension of time shall be permitted with regard to filing an initial request for an administrative review or the effective date of the final review decision or filing a complaint for judicial review. All other requests from a State agency for the extension of any deadline contained in § 276.7 of the regulations or imposed by the reviewing official shall be granted only for good cause and only when the request is postmarked prior to the expiration of the particular deadline involved. A request for an extension shall be in writing. Requests shall be granted by the reviewing official on a case-by-case basis. Filing a request for an extension stops the running of the prescribed period of time. When a request for an extension is granted, the requester shall be notified in writing of the amount of additional time granted. When a request is denied for being untimely or because good cause is not found, the requester shall be notified and the prescribed period of time shall resume from the date of the receipt of the denial.

Dated: March 17, 1986.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 86-6281 Filed 3-20-86; 8:45 am]

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Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0067A]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Late Planting Option (7 CFR Part 400, Subpart A), effective with the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Delete the adverse weather condition requirement; (2) Publish a corrected list of crop insurance regulations to which the Late Planting Option applies; (3) Provide availability of the Late Planting Option beginning with 1987 crop year fall-planted crops; and (4) Add a new subsection to comply with OMB regulations requiring codification of OMB control numbers assigned to information collection requirements. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than April 21, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1 This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations in January 1, 1991.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the Late Planting Option Regulations are:

1. Section 400.3.—Add a new subsection in the Late Planting Agreement Option (LPAO) regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations.

2. Section 400.5.—Delete the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434) as this tobacco is now insured under the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436).

Add Sweet Corn (Canning and Freezing) Crop Insurance Regulations (7 CFR Part 437) as a crop eligible for the Late Planting Option.

Allow the Late Planting Agreement (LPA) to be used beginning with 1987 crop year fall-planted crops. The availability of this option to most spring planted crops has allowed FCIC to avoid extension of final planting dates with the concurrent reduction in yields. The Agreement actually allows an extension of the final planting date with a reduction in guarantee and is more actuarially sound than the previous procedure. FCIC has allowed the program in a limited winter wheat area and the results have been favorable for both the Corporation and the insured. This change will allow the LPA to be used for all fall planted wheat, barley, oat and rye programs provided these corps are insurable under the basic policy.

3. Section 400.6.—Delete the adverse weather conditions requirement. It is difficult to determine if the planting delay is due to adverse weather conditions or some other factor. Since no actuarial basis exists for the restriction, FCIC proposes to delete it and allow an optio regardless of the reason. This change will allow the Late Planting Option to be used whenever the otherwise insurable crop is planted after the final planting date without regard to the reason.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop Insurance; Late Planting Agreement Option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Late Planting Agreement Option Regulations, Subpart A of Part 400, Title 7 of the Code of Federal Regulations, effective for the 1987 and succeeding crop years, as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1987 and Succeeding Crop Years

Sec.
400.1 Availability of the Late Planting Option.
400.2 Definitions.
400.3 OMB control numbers.
400.4 Responsibilities of the insured.
400.5 Applicability to crops insured.
400.6 The Late Planting Agreement.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart A—Late Planting Agreement Option; Regulations for the 1987 and Succeeding Crop Years

§ 400.1 Availability of the late planting option.

The Late Planting Option shall be offered under the provisions contained in 7 CFR Parts 402, *et seq.*, within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this part.

§ 400.2 Definitions.

For the purposes of the Late Planting Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement Option" means that agreement between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 400.4 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Option Application and for the accuracy of the data provided on that application. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§ 400.5 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 437 Sweet Corn (Canning and Freezing)
7 CFR Part 438 Tomatoes
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn

The Late Planting Option shall be available in all counties in which the Corporation offers insurance on these crops.

§ 400.6 The late planting agreement.

The provisions of the Late Planting Agreement are as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

LATE PLANTING AGREEMENT

Insured's Name __________
Address __________
____
Contract No. __________
Crop Year __________
Crop __________

Notwithstanding the provisions of section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's signature __________
Date __________
Corporation representative's signature and Code Number __________
Date __________

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR Part 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies, U.S. Government contract collection agencies and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement not being accepted by the Corporation.

Done in Washington, DC, on January 22, 1986.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–6201 Filed 3–20–86; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Plum Reg. 17, Amdt. 3, Plum Reg. 18, Amdt. 8]

Pears, Plums and Peaches Grown in California; Container and Pack Requirements; Grade and Size Requirements for Plums

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on several changes to the container and pack requirements and grade and size requirements for shipments of fresh plums grown in California. The proposed requirements are designed to provide uniformity of sizes of plums in containers and assure adequate quality of the plum pack during the 1986 season.

DATES: Comments are due by April 7, 1986.

ADDRESSES: Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's

Memorandum No. 1512–1 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders, issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 608 handlers will be subject to regulation under the Marketing Order for California pears, peaches, and plums (7 CFR Part 917) during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden on small entities, if present at all, is not significant.

The proposed rule is issued under the marketing agreement, as amended, and Marketing order 917, as amended (7 CFR Part 917), regulating the handling of pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by container and pack under Plum Regulation 17 (7 CFR 917.454) and by grade and size under Plum Regulation 19 (7 CFR 917.460). Because these regulations do not change substantially from season to season, they are issued on a continuing basis subject to amendment. modification or suspension as may be recommended by the applicable committee and approved by the Secretary.

It is found that good cause exists for limiting the comment period on this action to 15 days after publication in the **Federal Register** (5 U.S.C. 553) because the 1986 shipping season is expected to begin shortly. Therefore, prompt commenting on this action is necessary so that handlers can adjust in a timely manner to any possible changes resulting from this action.

This proposed rule is based upon the recommendation and information submitted by the Plum Commodity Committee, and other available information.

With respect to container and pack requirements, the committee recommended a size variance between the smallest and largest plums of ⅜ inch for plums 2¼ inch in diameter and larger packed in volume-filled containers. Currently, the maximum variation permitted is ¼ inch (or ⅜ inch) regardless of the diameter of the plums and the type of container. The proposed size variation requirement would allow handlers additional flexibility in packing larger size plums in volume-filled containers. For plums smaller than 2¼ inches in diameter packed in volume-filled containers and any size plums packed in tray packs the ¼ inch size variance would continue to apply. In addition, because the proposed ⅜ inch variance is greater than the ¼ inch variance permitted in the standard pack requirements in the United States Standards for Grades of Fresh Plums and Prunes (§§ 51.1520 to 51.1538), the current requirement that shipments of plums meet all standard pack requirements would be deleted. Instead, the proposed rule lists the specified pack requirements for shipments of plums.

With respect to size requirements, the committee recommended that all plums regulated by size be subject to a two-pound subsample of the smallest plums taken from each eight-pound sample used in checking compliance with size requirements. The volume-filled container is the most frequently used container in the California plum industry (it comprised more than 89 percent of total 1985 shipments). However, the nature of such packs allows for significant diameter variation. The additional two-pound subsample would limit such variations and help assure that the individual plums in each pack are uniformly sized.

Another proposed size requirement change would establish minimum size requirements for three varieties of plums, and would remove minimum size requirements for six varieties of plums. This change would bring the variety-specific size regulations established for plums into conformity with a long-standing industry practice of applying such regulations to varieties produced in commercially significant quantities. Shipments of the varieties that would be regulated exceeded 10,000 packages per variety during the 1985 season. Shipments of the varieties that would be removed from variety-specific size regulation fell below 5,000 packages per variety during the season.

A final size recommendation would require all varieties not subject to the variety-specific regulations to be subject to a minimum size requirement. That requirement would require the eight-pound sample to contain no more than 139 plums and the two-pound subsample of the smallest plums to contain no more than 38 plums. This change would help to improve the size and maturity of the varieties not specifically regulated by size and thereby promote the availability of suitable quality fruit in the interest of producers and consumers.

These proposals would amend Subpart—Container and Pack Regulation (7 CFR 917.454; 50 FR 39073) by revising § 917.454 (a)(1), (a)(2), and (d) and Subpart—Grade and Size Regulation (7 CFR 917.460; 50 FR 27813) by revising § 917.460(a), deleting the provisions presently contained in § 917.460(b) and redesignating the present § 917.460(c) as § 917.460(b), adding and deleting certain varieties to Table I and adding a new column to Table I, revising the redesignated § 917.460(b), and adding a new paragraph and designating it § 917.460(c).

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, and Peaches from California.

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

2. Section 917.454 (a)(1), (a)(2), and (d) are proposed to be revised to read as follows:

Subpart—Container and Pack Regulation

§ 917.454 Plum Regulation 17.

(a) * * *

(1) Such plums, when shipped in closed packages or containers, except master containers of consumer packages and individual consumer packages therein, shall meet the following pack requirements as set forth below.

(i) All packages shall be tightly packed or well filled, according to the approved and recognized methods.

(ii) The plums in the top layer of any package shall be reasonably representative in quality and size of those in the remainder of the package.

(iii) Four-basked crates shall not be packed more than three layers deep. The arrangement of the bottom layer shall be one row less one way, and may be one row less each way than the arrangement of the top layer; the arrangement of the middle layer may be the same as the top layer, or may be one row less one way than the arrangement of the top layer. In the 3½—4x5 and 3½—4x4 packs the face of each half of the crate shall be packed as a unit, with no shim between the two baskets.

(2) The diameter of the smallest and largest plums in any individual pack or container shall not vary more than one-fourth (¼) inch, except that plums which are placed in volume-fill or tight-fill type containers and have a diameter of two and one-fourth (2¼) inches or larger shall not vary more than three-eights (⅜) inch. A total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

* * * * *

(d) When used herein "diameter" shall have the same meaning as set forth in the U.S. Sandards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 to 51.1538) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅝ to 7⅛x11½x16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛x13½x16⅛ inches, "No. 22G standard lug box" measures 7⅜ to 7½x13¼x15⅞ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

3. Section 917.460 would be revised to read as follows:

Subpart—Grade and Size Regulation

§ 917.460 Plum Regulation 19.

(a) No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal-State Inspection Service. Internal discoloration not considered serious damage and healed growth cracks emanating from the step end which do not cause serious damage shall be permitted. In addition to the above, any lot of Tragedy or Kelsey plums shall be permitted and additional 10 percent tolerance for defects not considered serious damage.

(b) No handler shall ship any package or other container of any variety of plums listed in Column A of the following Table I unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table, and that a two pound subsample of the smallest plums in each eight pound sample contains not more than the number of plums listed for the variety in Column C of said table.

TABLE I

Col. A, variety	Col. B, plums per sample	Column C, plums per subsample
Amazon	64	17
Ambra	67	18
Andys Pride	69	18
Angeleno	67	18
Angee	67	18
Autumn Rose	72	19
Bee Gee	65	17
Blackamber	56	15
Black Beaut	69	19
Black Diamond	59	16
Black Jewel	54	14
Black Knight	66	16
Carolyn Harris	61	17
Casselman	63	17
Catalina	59	18
Durado	74	20
Early Hawaiian Ann	60	16
Ebony	66	18
El Dorado	66	18
Empress	57	15
Freedom	56	16
Friar	56	15
Frontier	61	17
Gar-Rosa	71	19
Grand Rosa	54	14
July Red	64	17
July Santa Rosa	69	18
Kelsey	47	13
King David	50	14
King Richard	54	14
King's Black	58	16
Laroda	58	16
Late Santa Rosa (including improved Late Santa Rosa and Swall Rosa)	64	17
Linda Rosa	63	17
Mariposa	61	17
Midsummer	63	17
Nubiana	56	15
President	57	16
Prima Black	60	13
Queen Ann	50	14
Queen Rosa	53	14
Red Beaut	74	20
Red Glow	60	16
Red Rosa	64	17
Redroy	56	16
Rich Red	74	20
Rosa Ann	69	18
Rosemary	50	14
Rose Ann	60	16
Royal Red	74	20
Roysum	74	20
Santa Rosa	69	19
Simka, Arrosa, New Yorker	50	14
Spring Beaut	74	20
Standard	83	21
Wickson	51	14

(c) No handler shall ship any package or container of any variety of plums not specifically named in paragraph (b) of this section, unless such plums are of a size that an eight pound sample representative of the sizes of the plums in the package or container contains not more than 139 plums, and that a two pound subsample of the smallest plums in each eight-pound sample contains not more than 38 plums.

(d) As used herein, "U.S. No. 1" and "serious damage" mean the same as defined in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538).

Dated: March 14, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–6141 Filed 3–20–86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Station Blackout

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to require that light-water-cooled nuclear power plants be capable of withstanding a total loss of alternating current (AC) electric power (called "station blackout") for a specified duration and maintaining reactor core cooling during that period. This proposed requirement is based on information developed under the Commission's study of Unresolved Safety Issue A–44, "Station Blackout." The proposed change is intended to provide further assurance that a station blackout (loss of both offsite power and onsite emergency AC power systems) will not adversely affect the public health and safety.

DATE: The comment period expires on June 19, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alan Rubin, Division of Safety Review and Oversight, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–8303.

SUPPLEMENTARY INFORMATION: The alternating current (AC) electric power for essential and nonessential service in a nuclear power plant is supplied primarily by offsite power. Redundant onsite emergency AC power systems are also provided in the event that all offsite power sources are lost. These systems

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provide power for various safety systems including reactor core decay heat removal and containment heat removal which are essential for preserving the integrity of the reactor core and the containment building, respectively. The reactor core decay heat can also be removed for a limited time period by safety systems that are independent of AC power.

The term "station blackout" means the loss of offsite AC power to the essential and nonessential electrical buses concurrent with turbine trip and the unavailability of the redundant onsite emergency AC power systems (e.g., as a result of units out of service for maintenance or repair, failure to start on demand, or failure to continue to run after start). If a station blackout persists for a sufficient time during which the capability of the AC-independent systems to remove decay heat is exceeded, core melt and containment failure could result.

The Commission's existing regulations establish requirements for the design and testing of onsite and offsite electric power systems that are intended to reduce the probability of losing all AC power to an acceptable level. (See General Design Criteria 17 and 18, 10 CFR Part 50, Appendix A.) The existing regulations do not require explicitly that nuclear power plants be designed to assure that the core can be cooled and the integrity of the reactor coolant pressure boundary can be maintained for any specified period of loss of all AC power.

As operating experience has accumulated, the concern has arisen that the reliability of both the onsite and offsite emergency AC power systems might be less than originally anticipated, even for designs that meet the requirements of General Design Criteria 17 and 18. Many operating plants have experienced a total loss of offsite power, and more occurrences can be expected in the future. Also, operating experience with onsite emergency power systems has included many instances when diesel generators failed to start. In a few cases, there has been a complete loss of both the offsite and the onsite AC power systems. During these events, AC power was restored in a short time without any serious consequences.

In 1975, the results of the Reactor Safety Study (WASH-1400) showed that station blackout could be an important contributor to the total risk from nuclear power plant accidents. Although this total risk was found to be small, the relative importance of the station blackout accident was established. Subsequently, the Commission designated the issue of station blackout as an Unresolved Safety Issue (USI); a Task Action Plan (TAP A-44) was issued in July 1980, and work was initiated to determine whether additional safety requirements were needed. Factors considered in the analysis of risk from station blackout included: (1) The likelihood and duration of the loss of offsite power; (2) the reliability of the onsite AC power system; and (3) the potential for severe accident sequences after a loss of all AC power, including consideration of the capability to remove core decay heat without AC power for a limited time period.

The technical findings of the staff's studies of the station blackout issue are presented in NUREG-1032, "Evaluation of Station Blackout Accidents at Nuclear Power Plants, Technical Findings Related to Unresolved Safety Issue A-44." [1] Additional information is provided in supporting contractor reports: NUREG/CR-3226, "Station Blackout Accident Analyses" published in May 1983; NUREG/CR-2989, "Reliability of Emergency AC Power System at Nuclear Power Plants" published in July 1983; and NUREG/CR-3992, "Collection and Evaluation of Complete and Partial Losses of Offsite Power at Nuclear Power Plants" published in February 1985.[2] The major results of these studies are given below.

- Losses of offsite power can be characterized as those resulting from plant-centered faults, utility grid blackout, and severe weather-induced failures of offsite power sources. Based on operating experience, the frequency of total losses of offsite power in operating nuclear power plants was found to be about one per 10 site-years. The median restoration time was about one-half hour, and 90 percent of the offsite power losses were restored in approximately 3 hours (NUREG/CR-3992).
- The review of a number of representative designs of onsite emergency AC power systems has indicated a variety of potentially important failure causes. However, no single improvement was identified that could result in a significant improvement in overall diesel generator reliability. Data obtained from operating experience show that the typical individual emergency diesel generator failure rate is about 2.5×10^{-2} per demand (i.e., one chance of failure in 40 demands), and that the emergency AC power system unavailability for a plant which has two emergency diesel generators, one of which is required for decay heat removal, is about 2×10^{-3} per demand (NUREG/CR-2989).
- Given the occurrence of a station blackout, the likelihood of resultant core damage or core melt is dependent on the reliability and capability of decay heat removal systems that are not dependent on AC power. If sufficient AC-independent capability exists, additional time will be available to restore AC power needed for long-term cooling (NUREG/CR-3226).
- It was determined by reviewing design, operational, and site-dependent factors that the expected frequency of core damage resulting from station blackout events could be maintained near or below 10^{-5} per reactor-year for any nuclear plant with readily achievable diesel generator reliabilities, provided that the plant is designed to cope with station blackout for a specified duration. The duration for a specific plant is based on a comparison of the plant's characteristics to those factors that have been identified as the main contributors to risk from station blackout (NUREG-1032).

As a result of the station blackout studies, improved guidance will be provided to licensees regarding maintaining minimum emergency diesel generator reliability to minimize the probability of losing all AC power. In addition, the Commission is proposing to amend its regulations by adding a new § 50.63 and by adding a new final paragraph to General Design Criterion 17, Appendix A of 10 CFR Part 50, to require that all nuclear power plants be capable of coping with a station blackout for some specified period of time. The period of time for specific plant would be determined based on the existing capability of the plant as well as a comparison of the individual plant design with factors that have been identified as the main contributors to risk of core melt resulting from station blackout.

These factors, which vary significantly from plant to plant because of considerable differences in design of plant electric power systems as well as site-specific considerations, include: (1) Redundancy of onsite emergency AC power sources (i.e., number of sources minus the number needed for decay heat removal (2) reliability of onsite emergency AC power sources (usually diesel generators), (3) frequency of loss of offsite power, and (4) probable time to restore offsite power. The frequency of loss of, and time to restore offsite power are related to grid and switchyard reliabilities, historical weather data for severe storms, and the availability of nearby alternate power sources (e.g., gas turbines). Experience has shown that long duration offsite power outages are caused primarily by severe storms (hurricanes, ice, snow, etc.).

The objective of the proposed rule is to reduce the risk of severe accidents resulting from station blackout by maintaining highly reliable AC electric power systems and, as additional defense-in-depth, assuring that plants can cope with a station blackout for some period of time. If the proposed rule is adopted, all licensees and applicants would be required to assess the capability of their plants to cope with a station blackout (i.e., determine the amount of time the plant can maintain core cooling and containment integrity with AC power unavailable), and to have procedures and training to cope with such an event. Plants would be required to be able to cope with a specified minimum duration station blackout selected on a plant-specific basis.

On the basis of station blackout studies conducted for USI A-44, and presented in the reports referenced above, the NRC staff has developed a draft regulatory guide entitled "Station Blackout,"[3] which presents guidance on (1) maintaining a high level of reliability for emergency diesel generators, (2) developing procedures and training to restore offsite and onsite emergency AC power should either one or both become unavailable, and (3) selecting a plant-specific minimum duration for station blackout capability to comply with the proposed amendment to General Design Criterion 17. Application of the methods in this guide would result in selection of a 4-hour or 8-hour station blackout duration, depending on the specific plant design and site-related characteristics. However, applicants and licensees could propose alternative methods to that specified in the regulatory guide in order to justify other minimum durations for station blackout capability.

If the proposed rule and regulatory guide are issued, those plants with an already low risk from station blackout would be required to withstand a station blackout for a relatively short period of time and probably would need few, if any, modifications as a result of the rule. Plants with currently higher risk from station blackout would be required to withstand somewhat longer duration blackouts. Depending on their existing capability, these plants might also need to make modifications (such as increasing station battery capacity or condensate storage tank capacity) in order to cope with the longer station blackout duration. The proposed rule would require licensees to develop, in consultation with the Office of Nuclear Reactor Regulation, proposed plant-specific schedules for implementation of any needed modifications.

Additional Comments by the Commission

The proposed rule does not require that a single failure be assumed concurrent with a station blackout because station blackout goes beyond the normal single failure criterion. That is, for a station blackout to occur, four AC power supplies must fail (two offsite sources and two safety-related onsite emergency AC sources). The staff's estimated probability of the concurrent failure of all four power supplies leads us to believe that the staff should give further consideration to upgrading to safety grade the plant modifications needed (if any) to meet the proposed rule. Upgrading to safety grade will further ensure appropriate licensee attention is paid to maintaining a high state of operability and reliability. The Commission believes that the question of quality classification of modifications should be addressed by interested parties in comments on the proposed rule.

In addition to comments on the merits of the proposed rule, the Commission specifically requests comments on whether the backfit analysis for this rule adequately implements the Backfit Rule, 10 CFR 50.109.

Additional Comments by Commissioners Roberts and Zech

We agree with soliciting public comments on the proposed rulemaking on station blackout. We will be interested in comments received and staff responses associated with analysis of cost benefit, value impact, and safety improvements and the station blackout standing on the overall risk (e.g., Is the reduction of risk only a small percentage of the overall risk or is it a major component of an already small risk?). This will be one of the first proposed rules to be evaluated by the NRC under its new backfitting requirements. We would be particularly interested in specific comments assessing whether or not this proposal meets the "substantial increase in the overall protection of the public health and safety . . ." threshold now required by the backfit rule.

Separate Views of Commissioner Asselstine

I support the proposed rulemaking but believe substantial additional safety improvements beyond those called for in this rulemaking are achievable and practicable. How to prevent and mitigate a station blackout event is one of the most significant unresolved safety issues associated with nuclear power plants. Extended station blackout can result in core meltdown and loss of containment integrity. Since existing mitigation features such as containment spray would be inoperable, a station blackout could result in a large release of radioactive material to the environment.

Countries abroad that have made a serious commitment to nuclear power and to nuclear safety have, or are planning, backfit features which markedly reduce station blackout risks. For example, the new French 1300 MWe nuclear power plants are designed with a goal of coping with a station blackout for at least 20 hours. According to the NRC staff, the design features that provide this capability (listed below) permit the plant to withstand a station blackout for three days.

- A steam-driven generator provides power for a small positive displacement pump that supplies cooling for reactor coolant pump (RCP) seals and also provides power for instrumentation and controls and control room lighting necessary to withstand a station blackout. This design feature, which is also being backfitted onto all operating 900 MWe nuclear plants in France, addresses two factors that impact the ability to cope with a station blackout—RCP seal cooling with AC power unavailable and battery depletion.
- Two turbine-driven auxiliary feedwater (AFW) pumps included in the 1300 MWE French design in addition to two motor-driven AFW pumps. Most

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[1] Draft NUREG-1032 was issued for public comment on June 15, 1985. Copies of this report are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC 20555. Free single copies of Draft NUREG-1032 may be requested by writing to the Publication Services Section, Room P-130A, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

[2] Copies of these documents are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC 20555. Copies may also be purchased by calling (202) 275-2171 or (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

[3] A notice of availability and request for comments on the draft regulatory guide will be published within a few days of this Notice of Proposed Rulemaking. Copies of the draft regulatory guide are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC 20555, and will be distributed to those on the automatic distribution list for draft regulatory guides. Free single copies of the draft regulatory guide may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control.

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U.S. pressurized water reactors have one turbine-driven AFW pump in addition to two-motor-driven pumps. Therefore, the French design provides additional redundancy in the AC-independent trains of the AFW system.

- Gravity feed back-up water supply from onsite sources to the condensate storage tank provides additional water for decay heat removal via the AFW system for long-duration station blackout events, i.e., up to three days.

This three-day station blackout capability would permit sufficient time to connect a mobile gas turbine generator to provide power if AC power could not be restored from other, preferred sources. A mobile gas turbine genertor is located at, or in the vicinity of, every nuclear power plant site in France. These improvements in safety are being achieved at not unreasonable costs and are being driven by the French goal of achieving a probability of one in ten million (10^{-7}) per reactor-year for a major event such as station blackout. The Commission's rule proposes much less. It proposes an objective of one in one hundred thousand (10^{-5}) per reactor-year for station blackout caused core meltdown and an objective of only about four hours coping capability.

I would appreciate comments on whether the NRC should require substantial improvements in safety with respect to station blackout, like those being accomplished in other countries, which can be achieved at reasonable cost and which go beyond those proposed in this rulemaking.

Finding of No Significant Environmental Impact: Availability

The Commission has determine under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. There would not be any adverse environmental impacts as a result of the proposed rule for the following reasons: (1) There would be no additional radiological exposure to the general public or plant employees, and (2) plant shutdown is not required so there would be no additional environmental impacts as a result of the need for replacement power. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mr. Warren Minners, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7827.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as considered by the Commission. A copy of the regulatory analysis, NUREG-1109, For Comment, "Regulatory Analysis for the Resolution of Unresolved Safety Issue A-44, Station Blackout" (Published in January 1986), is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555. Free single copies of Draft NUREG-1109 may be obtained by writing to the Publication Services Section, Room P-130A, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Commission requests public comment on the regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule specifies that nuclear power plants be able to withstand a total loss of AC power for a specified time duration and maintain reactor core cooling during that period. These facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the small business size standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.2, a definition of "station blackout" is added in the alphabetical sequence to read as follows:

§ 50.2 Definitions.

* * * * *

"Station blackout" means the complete loss of alternating current (AC) electric power to the essential and nonessential switchgear buses in a nuclear power plant (i.e., loss of the offsite electric power system concurrent with turbine trip and unavailability of the onsite emergency AC power system).

3. A new § 50.63 is added to read as follows:

§ 50.63 Loss of all alternating current power.

(a) *Requirements.* Each light-water-cooled nuclear power plant licensed to operate must be able to withstand and recover from a station blackout as defined in § 50.2 for a specified duration in accordance with the requirements in paragraph (e) of General Design Criterion 17 of Appendix A of this part.

(b) *Limitation of Scope.* Paragraphs (c) and (d) of this section do not apply to those plants licensed to operate prior to [insert the effective date of this amendment] if the capability to withstand station blackout was considered in the operating license proceeding and a specified duration was accepted as the licensing basis for the facility.

(c) *Implementation—Determination of Station Blackout Duration.* (1) For each light-water-cooled nuclear power plant licensed to operate on or before [insert the effective date of this amendment], the licensee shall submit to the Director of the Office of Nuclear Reactor Regulation by [insert a date 270 days after the effective date of this amendment]:

(i) A determination of the maximum duration for which the plant as currently designed is able to maintain core cooling and containment integrity in the event of a station blackout as defined in § 50.2;

(ii) A description of the procedures that have been established for station blackout events for the duration determined in paragraph (c)(1)(i) of this section and for recovery therefrom;

(iii) An identification of the factor(s) that limit the capability of the plant to cope with a station blackout for a longer time than that determined in paragraph (c)(1)(i) of this section;

(iv) A proposed station blackout duration to be used in determining compliance with paragraph (e) of General Design Criterion 17 of Appendix A of this part, including a justification for the selection based on—

(A) The redundancy of the onsite emergency AC power sources;

(B) The reliability of the onsite emergency AC power sources;

(C) The expected frequency of loss of offsite power; and

(D) The probable time needed to restore offsite power; and

(v) An identification of the factors, if any, that limit the capability of the plant to meet the requirements of Criterion 17 for the specified station blackout duration proposed in the response to paragraph (c)(1)(iv) of this section.

(2) After consideration of the information submitted in accordance with paragraph (c)(1) of this section, the Commission will notify the licensee of its determination of the specified station blackout duration to be used in determining compliance with General Design Criterion 17 of Appendix A of this part.

(d) *Implementation—Schedule for Implementing Equipment Modifications.* (1) For each light-water-cooled nuclear power plant licensed to operate on or before [insert the effective date of this amendment], the licensee shall, within 180 days of the notification provided in accordance with paragraph (c)(2) of this section, submit to the Director of the Office of Nuclear Reactor Regulation a schedule for implementing any equipment and procedure modifications necessary to meet the requirements of General Design Criterion 17 of Appendix A of this part. This submittal must include an explanation of the schedule and a justification if the schedule does not provide for completion of the modifications within two years of the notification provided in accordance with paragraph (c)(2) of this section.

(2) The licensee and the NRC staff shall mutually agree upon a final schedule for implementing modifications necessary to comply with the requirements of Criterion 17.

4. In Appendix A, General Design Criterion 17 is revised to read as follows.

Appendix A—General Design Criteria for Nuclear Power Plants

* * * * *

II. Protection by Multiple Fission Product Barriers

* * * * *

Criterion 17—Electric power systems. (a) An onsite electric power system and an offsite electric power system shall be provided to permit functioning of structures, systems, and components important to safety. The safety function for each system (assuming the other system is not functioning) shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

(b) The onsite electric power supplies, including the batteries, and the onsite electric distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure.

(c) Electric power from the transmission network to the onsite electric distribution system shall be supplied by two physically independent circuits (not necessarily on separate rights of way) designed and located so as to minimize to the extent practical the likelihood of their simultaneous failure under operating and postulated accident and environmental conditions. A switchyard common to both circuits is acceptable. Each of these circuits shall be designed to be available in sufficient time following a loss of all onsite alternating current power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. One of these circuits shall be designed to be available within a few seconds following a loss-of-coolant accident to assure that core cooling, containment integrity, and other vital safety functions are maintained.

(d) Provisions shall be included to minimize the probability of losing electric power from any of the remaining supplies as a result of, or coincident with, the loss of power generated by the nuclear power unit, the loss of power from the transmission network, or the loss of power from the onsite electric power supplies.

(e) The reactor core and associated coolant, control, and protection systems, including the station batteries, shall provide sufficient capacity and capability to assure that the core is cooled and containment integrity is maintained in the event of a station blackout (as defined in § 50.2) for a specified duration. The following factors shall be considered in specifying the station blackout duration: (1) the redundancy of the onsite emergency AC power sources, (2) the reliability of the onsite emergency AC power sources, (3) the expected frequency of loss of offsite power, and (4) the probable time needed to restore offsite power.

Dated at Washington, DC, this 17th day of March 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

Backfit Analysis

Analysis and Determination That the Proposed Rulemaking To Amend 10 CFR 50 Concerning Station Blackout Complies With the Backfit Rule 10 CFR 50.109

The Commission's existing regulations establish requirements for the design and testing of onsite and offsite electric power systems (10 CFR Part 50, Appendix A, General Design Criteria 17 and 18). However, as operating experience has accumulated, the concern has arisen regarding the reliability of both the offsite and onsite emergency AC power systems. These systems provide power for various safety systems including reactor core decay heat removal and containment heat removal which are essential for preserving the integrity of the reactor core and the containment building, respectively. In numerous instances emergency diesel generators have failed to start and run during tests conducted at operating plants. In addition, a

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number of operating plants have experienced a total loss of offsite electric power, and more such occurrences are expected. Existing regulations do not require explicitly that nuclear power plants be designed to withstand the loss of all AC power for any specified period.

This issue has been studied by the staff as part of Unresolved Safety Issue (USI) A–44, "Station Blackout." Both deterministic and probabilistic analyses were performed to determine the timing and consequences of various accident sequences and to identify the dominant factors affecting the likelihood of core melt accidents from station blackout. These studies indicate that station blackout can be a significant contributor to the overall plant risk. Consequently, the Commission is proposing to amend its regulations to require that plants be capable of withstanding a total loss of AC power for a specified duration and to maintain reactor core cooling during that period.

An analysis of the benefits and costs of implementing the proposed station blackout rule is presented in NUREG–1109, Draft Report For Comment, "Regulatory Analysis for the Resolution of Unresolved Safety Issue A–44, Station Blackout." [4] The benefit from implementing the proposed rule is a reduction in the frequency of core melt per reactor-year due to station blackout and the associated risk of offsite radioactive releases. The risk reduction for 67 operating reactors is estimated to be 80,000 person-rems.[5]

The cost for licensees to comply with the proposed backfit would vary depending on the existing capability of each plant to cope with a station blackout, as well as the specified station blackout duration for that plant. The costs would be primarily for licensees to develop procedures, to improve diesel generator reliability if the reliability falls below certain levels, and to retrofit plants with additional components or systems, as necessary, to meet the proposed requirements.

The estimated total cost for 67 operating reactors to comply with the proposed resolution of USI A–44 is about $40 million. The average cost per reactor would be around $600,000 ranging from $200,000 if only a station blackout assessment and procedures and training are necessary, to a maximum of about $4 million if substantial modifications are needed, including requalification of a diesel generator.

The overall value-impact ratio, not including accident avoidance costs, is about 2,000 person-rems averted per million dollars. If cost savings to industry from accident avoidance (i.e., cleanup and repair of onsite damages and replacement power) were included, the overall value-impact ratio would improve significantly to about 8,000 person-rems averted per million dollars.

This analysis supports a determination that a substantial increase in the protection of the public health and safety will be derived from the backfit in the proposed station blackout rule, and that the backfit is justified in view of the direct and indirect costs of implementing the proposed rule.

The quantitative value-impact analysis discussed above was one of the factors considered in evaluating the proposed rule, but other factors also played a part in the decision-making process. Probabilistic risk assessment (PRA) studies performed for this USI, as well as some plant-specific PRAs, have shown that station blackout can be a significant contributor to core melt frequency, and, with consideration of containment failure, station blackout events can represent an important contributor to reactor risk. In general, active containment systems required for heat removal, pressure suppression, and radioactivity removal from the containment atmosphere following an accident are unavailable during a station blackout. Therefore, the offsite risk is higher from a core melt resulting from station blackout than it is from many other accident scenarios.

Although there are licensing requirements for guidance directed at providing reliable offsite and onsite AC power, experience has shown that there are practical limitations in ensuring the reliability of offsite and onsite emergency AC power systems. Potential vulnerabilities to common cause failures associated with design, operational and environmental factors can affect AC power system reliability. For example, if potential common cause failures of emergency diesel generators exist (e.g., in service-water or DC power support systems), then the estimated core damage frequency from station blackout events can increase significantly.

The estimated frequency of core damage from station blackout events is directly proportional to the frequency of the initiating event. Estimates of station blackout frequencies for this USI were based on actual operational experience. This is assumed to be a realistic indicator of future performance. An argument can be made that the future performance will be better than the past. For example, when problems with the offsite power grid arise, they are fixed, and therefore, grid reliability should improve. On the other hand, grid power failures may become more frequent because fewer plants are being built, and more power is being transmitted between regions, thus placing greater stress on transmission lines.

A number of foreign countries, including France, Britain, Sweden, Germany and Belgium, have taken steps to reduce the risk from station blackout events. These steps include adding design features to enhance the capability of the plant to cope with a station blackout for a substantial period of time, and/or adding redundant and diverse emergency AC power sources.

The factors discussed above support the determination that additional defense in depth provided by the ability of a plant to cope with station blackout for a specific duration is warranted. The Commission has considered how this backfit should be prioritized and scheduled in light of other regulatory activities ongoing at operating nuclear power plants. Station blackout warrants a high priority ranking based on both its status as an "unresolved safety issue" and the results and conclusions reached in resolving this issue. As noted in the implementation section of the proposed rule (§ 50.63(d)), the schedule for equipment modification (if needed to meet the requirements of the proposed rule) shall be mutually agreed upon by the licensee and NRC. Modifications that cannot be scheduled for completion within two years after NRC accepts the licensee's specified station blackout duration must be justified by the licensee.

Analysis of 50.109(c) Factors

1. Statement of the specific objectives that the proposed backfit is designed to achieve.

The NRC staff has completed a review and evaluation of information developed over the past 5 years on Unresolved Safety Issue (USI) A–44, Station blackout. As a result of these efforts, the NRC is proposing to amend 10 CFR Part 50, by the introduction of new § 50.63, "Station Blackout," and an additional paragraph to General Design Criterion 17, "Electric Power Systems" in Appendix A.

The objective of the proposed rule is to reduce the risk of severe accidents associated with station blackout by making station blackout a relatively small contributor to total core melt frequency. Specifically, the proposed rule would require all light-water-cooled nuclear power plants to be able to cope with a station blackout for a specified duration, and to have procedures and training for such an event. A draft Regulatory Guide, to be issued along with the proposed rule, would provide an acceptable method to determine the station blackout duration for each plant. The duration would be determined for each plant based on a comparison of the individual plant design with factors that have been identified as the main contributors to risk of core melt resulting from station blackout. These factors are: (1) The redundancy of onsite emergency AC power sources, (2) the reliability of onsite emergency AC power sources, (3) the frequency of loss of offsite power and (4) the probable time needed to restore offsite power.

2. General description of the activity that would be required by the licensee or applicant in order to complete the backfit.

In order to assure that each nuclear power plant is able to withstand and recover from a station blackout for a specified minimum duration, licensees would be required to assess their plants' capability to withstand and recover from a station blackout. This evaluation would include:

- Verifying the adequacy of station battery power, condensate storage tank capacity, and plant/instrument air for the station blackout duration.
- Verifying adequate reactor coolant pump seal integrity for the station blackout duration so that seal leakage due to lack of seal cooling would not result in a sufficient primary system coolant inventory reduction to lose the ability to cool the core.
- Verifying operability of equipment needed to operate during a station blackout for environmental conditions associated with total loss of AC power (i.e., loss of heating, ventilation and air conditioning).

Depending on the plant's existing capability to cope with a station blackout, licensees may or may not need to backfit hardware modifications (e.g., adding battery capacity) to comply with the proposed rule. (See item 8 for additional discussion.) Licensees would be required to have procedures and training to cope with and recover from a station blackout.

3. Potential change in the risk to the public from the accidental off-site release of radioactive material.

Based on an analysis of potential consequences presented in Section 4 of NUREG–1109, if the proposed rule were implemented, the estimated total risk reduction to the public from 67 operating reactors is 80,000 person-rem.

4. Potential impact on radiological exposure of facility employees.

For 67 operating reactors, the estimated total reduction in occupational exposure resulting from reduced core melt frequencies and associated post-accident cleanup and repair activities is 2,000 person-rem (Table 8 in NUREG–1109). No increase in occupational exposure is expected from operation and maintenance or implementing the proposed rule. Equipment additions and modifications contemplated do not require work in and around the reactor coolant system and therefore would not be expected to result in significant radiation exposure (Table 8 in NUREG–1109).

5. Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.

For 67 operating reactors, the total estimated cost for assessing the station blackout coping capability, procedures and training, installation of hardware backfits (if necessary), plant downtime, and operation and maintenance is $40 million. (See Tables 6 and 8 in NUREG–1109).

6. The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

The proposed rule for plants to be able to cope with a station blackout should not add to plant or operational complexity. The relationship between the proposed station blackout rule and proposed and existing regulatory requirements is discussed in Section 4.2 of NUREG–1109. This discussion includes the following NRC generic programs:

- Generic Issue B–56 "Proposed Actions for Enhancing Reliability of Diesel Generators at Operating Plants,"
- Generic Issue 23, "Reactor Coolant Pump Seal Failures,"
- USI A–45, "Shutdown Decay Heat Removal Requirements,"
- Generic Issue A–30, "Adequacy of Safety-Related DC Power Supply."

7. The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources.

For 67 operating reactors, the estimated total cost for NRC review of industry submittals required by the proposed rule is $500,000 (based on an estimated average of 120 person-hours per reactor; see Table 8 in NUREG–1109).

8. The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit.

The proposed rule applies to all pressurized water reactors and boiling water reactors. However, in determining the specific minimim station blackout coping capability for each plant, differences in plant design (e.g., number of emergency generators) and the reliability of the offsite and onsite emergency AC power systems could result in different coping capabilities. For example, plants with an already low risk from station blackout would be required to withstand a station blackout for a relatively short period of time; and few, if any, hardware backfits would be required as a result of the proposed rule. Plants with currently higher risk from station blackout would be required to withstand somewhat longer duration blackouts; and, depending on their existing capability, may need some modifications to achieve the longer station blackout capability.

9. Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

The proposed rule is a final resolution of USI A–44; it is not an interim measure.

[FR Doc. 86–6284 Filed 3–20–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–ASW–1]

Proposed Amendment of Transition Area; Dallas/Fort Worth, TX

Correction

In FR Doc. 86–4939, beginning on page 7950, in the issue of Friday, March 7, 1986, make the following corrections:

1. On page 7951, third column, thirty-first line, at the end insert "to latitude 33°13'00" N.,".

2. On same page, third column, thirty-fourth line, before "thence" insert "longitude 97°39'30" W.,".

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[4] Draft NUREG–1109 was issued for public comment in January 1986. Copies of this report are available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Free single copies of Draft NUREG–1109 may be obtained by writing to the Publication Services Section, Room P–1030A, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

[5] The value-impact analysis in NUREG–1109 was based on plant-specific information for a total of 67 reactors. Although there are currently about 100 operating reactors, the overall value-impact ratio in NUREG–1109 would not change significantly because of the increase in the number of operating plants.

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 801 0097]

Max Factor & Co.; Proposed consent agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Stamford, Conn. cosmetics company to make promotional allowances available on proportionally equal terms to all of its customers, and in particular, to make alternatives, such as handbills or other in-store promotional activities, available to customers for whom its basic promotional plans are not usable or economically feasible. Respondent would be required to notify all its customers that the promotional payments and alternatives are available.

DATE: Comments will be received until May 20, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul W. Turley, Director, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7890.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Cosmetics, Promotional allowances, Trade practices.

Before Federal Trade Commission

[File No. 801 0007]

Agreement Containing Consent, Order To Cease and Desist

In the Matter of Max Factor & Co., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Max Factor & Co., a corporation, and it now appearing that Max Factor & Co., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Max Factor & Co., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Max Factor & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 Gatehouse Road, Stamford, Connecticut 06902.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for the purposes of this order, the following definitions shall apply:

A. the term "cosmetic products" shall mean cosmetics, fragrances, toiletries, and beauty aids.

B. The term "respondent's cosmetic products" shall include (a) all cosmetic products advertised, offered for sale, sold, or distributed by respondent; (b) all cosmetic products bearing any of respondent's trademarks that are advertised, offered for sale, sold, or distributed by respondent's corporate parent or a division or subsidiary of such parent; and (c) all cosmetic products advertised, offered for sale, sold, or distributed by respondent's corporate parent or a division or subsidiary of such parent as part of a program in which cosmetic products bearing any of respondent's trademarks are also advertised, offered for sale, sold, or distributed.

II

A. It is further ordered that respondent Max Factor & Co., a corporation, and its officers, directors, agents, representatives, and employees, and its successors and assigns, directly or indirectly or through any corporation, subsidiary, division or other device, shall cease and desist from paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for advertising or promotional services or facilities furnished by or through such customer in connection with the advertising, offering for sale, sale, or distribution of respondent's cosmetic products in or affecting commerce, as "commerce" is defined in the Clayton Act, as amended, or the Federal Trade Commission Act, as amended, unless:

1. Respondent makes such compensation or consideration available on proportionally equal terms for alternative services or facilities that are usable and economically feasible; for all customers who compete in the distribution or resale of respondent's cosmetic products and for whom respondent's basic promotional plans are not usable or economically feasible; provided that with respect to respondent's cooperative advertising and drive plans, such alternative services or facilities may include handbills and circulars in amounts not less than 1,000, or other in-store promotional activities acceptable to respondent; and

2. All customers who compete in the distribution or resale of respondent's cosmetic products are informed in the manner provided in Paragraph II.B. of this order of the availability of such compensation or consideration.

B. It is further ordered that respondent shall inform those retailers who purchase respondent's cosmetic products, including retailers who do not purchase directly from respondent, of the availability of its promotional plans, as required by Paragraph II.A. of this order, as follows:

1. Respondent shall imprint on the smallest shipping container used for respondent's cosmetic products the legend, "Promotional allowances are periodically made available by Max Factor & Co. to all retailers. To obtain information about these promotional opportunities contact your Sales Representative or call [Mary O'Brian at our Headquarters office (212) 856–6664]"; and

2. For each promotion respondent shall cause copies of "offer letters" or similar materials explaining the availability of alternative methods of participation in respondent's advertising or promotional program or plan to be supplied to all direct purchasing retailers, and to its wholesalers or distributors in sufficient quantity for presentation or delivery by such wholesalers or distributors to each customer of such wholesaler or distributor, and shall request such wholesalers and distributors to present or deliver such materials to such customers.

C. Provided, however, that nothing herein contained shall be construed or interpreted to abridge or otherwise restrict respondent's entitlement to avail itself of the "Meeting Competition Defense," the provisions of which are contained in section 2(b) of the Clayton Act, 15 U.S.C. 13(b), as amended.

III

It is further ordered that respondent shall deliver, within thirty (30) days of the date of service upon it of this order, a copy of this order to all current sales management and sales personnel who are engaged in the sale of any of respondent's cosmetic products within the United States, and shall for a period of five (5) years thereafter deliver a copy of this order to all such future sales management and sales personnel within thirty (30) days of their employment in such positions.

IV

It is further ordered that respondent shall, within sixty (60) days after the date of service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries doing business in the United States, or any other change in respondent that may affect compliance obligations arising out of the order.

Analysis of Proposed Consent Order To Aid Public Comment

[File No. 801 0097]

The Federal Trade Commission has accepted an agreement to a proposed consent order from Max Factor & Co.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The compliant in this matter alleges that Max Factor & Co. violated section 5 of the Federal Trade Commission Act, as amended, and section 2(d) of the Clayton Act, as amended, by paying discriminatory promotional allowances to some of its customers in connection with the sale of its cosmetic products. In granting promotional allowances, respondent allegedly discriminated against particular customers in that it did not make such promotional allowances functionally available, on proportionally equal terms, to all customers competing in the sale and distribution of respondent's cosmetic products. Respondent allegedly failed to offer alternative terms and conditions to customers for whom its basic promotional allowances were not usable and suitable.

The proposed consent order requires that Max Factor & Co. cease and desist from paying promotional allowances to any customer, unless respondent provides functionally available alternatives for customers that cannot take advantage of its regular promotional programs.

The proposed consent order specifies that with respect to respondent's cooperative advertising and drive plans, such alternative services or facilities may include handbills and circulars in amounts not less than 1,000, or other in-store promotional activities acceptable to respondent.

The proposed consent order requires that respondent notify its competing customers of the availability of promotional payments in two ways. First, notice of the general availability of the promotional payments and how to obtain further information must be imprinted on respondent's shipping containers. Second, for each promotion, respondent must cause copies of materials explaining the availability of alternative methods of participation in respondent's promotional program to be

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supplied to all direct purchasing retailers and to its wholesalers for presentation to each of its indirect customers.

The proposed consent order explicitly preserves for respondent the availability of the "Meeting Competition Defense," contained in section 2(b) of the Clayton Act, as amended.

Additionally, the proposed consent order requires that respondent provide copies of the order to sales personnel, that respondent file a compliance report with the Commission within sixty days after service upon it of the order, and that respondent notify the Commission of certain corporate reorganizations thirty days prior to each such proposed change.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 86-6182 Filed 3-20-86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6630; IC-14984; S7-8-86]

Disclosure of Security Ratings by Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment three proposed rule amendments under the Securities Act of 1933 regarding the voluntary disclosure of ratings assigned by nationally recognized statistical rating organizations to money market funds. The Commission also is publishing a proposed staff guideline regarding disclosures that should be made when security ratings assigned to money market funds are used in Form N-1A, the simplified registration statement for mutual funds. The rule amendments, if adopted, would facilitate the use of money market fund ratings in the statutory and omitting prospectuses and tombstone ads of money market funds.

DATE: Comments on the proposed rule amendments must be received on or before May 16, 1986.

ADDRESS: Three copies of all comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments letters should refer to File No. S7-8-86. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jay Gould, Staff Attorney (202) 272-2107, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed amendments to rules under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a *et seq.*] to facilitate the use in money market fund prospectuses and certain advertisements of ratings assigned by nationally recognized statistical rating organizations ("NRSROs").[1] The proposal consists of three rule changes. The first would amend subparagraph (g) of Rule 436 under the Securities Act [17 CFR 230.436(g)] to provide that a rating assigned to a money market fund by an NRSRO is not part of a registration statement, report, or valuation prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act [15 U.S.C. 77g and 77k]. The second revision would amend Rule 134(a)(14)(i) under the Securities Act [17 CFR 230.134] to permit the disclosure of and set conditions on the use of ratings assigned to a money market fund by an NRSRO in certain communications deemed not to be a prospectus ("tombstone ads"). The third change would amend Rule 482 [17 CFR 230.482] by adding a new paragraph (e) to permit the disclosure of and set conditions on the use of money market fund ratings in certain investment company advertisements which satisfy the conditions of section 10(b) [15 U.S.C. 77j(b)] of the Securities Act ("omitting prospectuses"). If adopted, these proposed amendments would (i) eliminate the requirement of section 7 of the Securities Act that a money market fund file with its registration statement the consent of any NRSRO issuing a money market fund rating when the rating is used in the fund's prospectus; (ii) exempt from civil liability under section 11 the NRSRO issuing the rating if the rating is included in a money market fund prospectus;[2] and (iii) facilitate the use by a money market fund of an NRSRO rating in its statutory and omitting prospectuses and tombstone ads, subject to certain conditions.

While the proposed rule changes would be limited to ratings of money market fund securities, the Commission is requesting comment on whether similar changes should be considered for NRSRO ratings assigned to securities issued by unit investment trusts and other types of investment companies and, if so, under what conditions.

I. Background

A. Prior Commission Action

In 1982, the Commission amended Rule 436 to provide that a rating assigned to a class of debt securities, convertible debt securities, or class of preferred stock by an NRSRO would not be deemed part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act. The effect of the action was to exempt issuers of the designated securities from obtaining consents under section 7 and exempt NRSROs from section 11 liabiity, where a rating of those securities is included in a Securities Act registration statement. The Commission took this action, in part, due to the practical problem of registrant's obtaining consents from the NRSROs to use the ratings in registration statements and the recognition that NRSROs, irrespective of consents, are subject to the antifraud provisions of the federal securities laws. The Commission also amended Rule 134 to permit issuers of debt and preferred stock to use their ratings in tombstone ads.

The Commission's 1982 action did not extend to equity securities other than preferred stock. Therefore, because money market fund shares are equity securities, a money market fund which has received an NRSRO rating must obtain the consent of the NRSRO or seek a waiver of consent under Rule 437 [17 CFR 230.437][3] before using the rating in its registration statement. Beginning in 1984, a number of money market funds obtained NRSRO ratings of their securities. These funds have been precluded from using these ratings in their registration statements filed under the Securities Act because of the refusal of the NRSRO assigning the ratings, based on concerns over the effect of Section 7[4] and section 11[5] of the Securities Act, to consent to the use of the ratings in this manner. Money market funds may, however, use their rating in certain types of sales literature, without consent, so long as the sales literature is preceded or accompanied by a statutory prospectus. They may not use their ratings in tombstone ads, though, because the Commission's 1982 revision of Rule 134 did not apply to equity securities other than preferred stock.

B. Money Market Fund Ratings

A money market fund rating purports to evaluate the safety of principal invested in a money market fund. Like ratings assigned to classes of debt securities, convertible debt securities, and preferred securities, a money market fund rating uses an alphabetical designation to indicate the NRSRO's assessment of the fund's relative degree of investment safety. One NRSRO, which provides rating of money market funds, has advised the Commission's staff that it typically considers a wide variety of factors in formulating a rating for a money market fund. These include management philosophy, operating policies and procedures; credit risk, including the types and diversity of portfolio investments; and market price exposure, specifically the degree of liquidity of investments, distribution and average length of maturities, and volatility of portfolio cash flows. The rating purports to summarize these factors and indicate the NRSRO's assessment of the fund's overall investment safety.[6]

The Commission believes that the information provided by a money market fund rating may be of interest to investors. Currently, investors are able to compare money market funds primarily on the basis of yield calculations disclosed in fund prospectuses and advertising and reported in news publications. In determining whether to invest in a particular fund, an investor also may wish to consider other factors such as preservation of capital, risk preference and management policies.[7] A money market fund rating could provide a convenient means of conveying additional information to investors in these areas. To date, relatively few money market funds have obtained ratings. Under current Securities Act requirements, funds may not use NRSRO ratings in statutory and omitting prospectuses without obtaining NRSRO expert consent, although they may use them in sales literature that is accompanied, or preceded, by a statutory prospectus. Because current requirements limit the ability of money market funds to use these ratings in prospectuses and advertising, they may operate as an impediment to funds seeking these ratings. Accordingly, the Commission believes it appropriate to consider providing money market funds greater flexibility in the disclosure of NRSRO ratings assigned to their shares.

The Commission wishes to emphasize that none of the proposed rule amendments, if adopted, would require the use of money market fund ratings. Each money market fund would be responsible for deciding whether to obtain a rating and, once obtained, whether to disclose it.[8] However, as stated in the proposed new guideline for Form N-1A and in the proposed revisions to Rules 134 and 482, a money market fund disclosing a rating in its statutory or omitting prospectus or tombstone ad must disclose the most recent rating and disclose any other rating assigned by an NRSRO and intended for public dissemination which differs materially from the one initially disclosed.

II. Proposed Rule Amendments

A. Rating Organization Consent

The proposed amendment to Rule 436(g) would provide that a rating assigned to a money market fund by an NRSRO[9] will not be considered part of a registration statement, report or valuation prepared or certified by a person within the meaning of sections 7 and 11 of the Securities Act. This proposal would, if adopted, exempt money market funds from the section 7 requirement of filing the consent of the NRSRO assigning the rating to their securities and exempt the NRSRO from civil liability as an expert under section 11 for use of the rating in that situation.

The Commission believes that exempting money market funds from the consent requirement of section 7 and NRSROs from the civil liability provisions of section 11 is a logical extension of the Commission's action in 1982 adopting Rule 436(g) and providing similar relief to issuers and NRSROs in connection with debt securities, convertible debt securities and preferred stock.[10] The proposed change should facilitate the use of money market fund ratings in registration statements and provide money market funds with greater flexibility in the disclosure

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[1] The term "nationally recognized statistical rating organization" as used in existing Rules 134 and 436(g) and the proposed revisions to these rules and Rule 482 would have the same meaning as in the Commission's uniform net capital rule [17 CFR 240.15c3-1(c)(2)(vi)(F)]. Currently, the following organizations are considered NRSROs under the net capital rule: Duff and Phelps, Inc.; Fitch Investors Services, Inc.; Moodys Investors Services, Inc.; McCarthy, Crisanti & Maffei; and Standard & Poors Corporation. The Commission's Division of Market Regulation responds to requests for NRSRO designation through no-action letters.

[2] The NRSRO would continue to be subject the antifraud provisions of the federal securities laws. *See* section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5]; an NRSRO which was registered as an investment adviser or subject to regulation under the Investment Advisers Act of 1940 also would be subject to section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-6].

[3] Rule 437 under the Securities Act sets up a procedure for the Commission, upon application by a registrant, to dispense with the written consent required by section 7.

[4] Section 7 [15 U.S.C. 77g] provides in part "[i]f any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement."

[5] Section 11(a) [15 U.S.C. 77k(a)] provides in part that "[i]n case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue [five separate categories of persons]." Section 11(a)(4) subjects to liability "every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him."

[6] This NRSRO uses four categories of ratings ranging from AAm (indicating a fund where it believes safety is excellent and there is superior capacity to maintain principal value and limit exposure to loss) to Bm (indicating a fund where the NRSRO believes safety is uncertain and there is limited capacity to maintain principal value and limit exposure to loss.)

[7] For example, a money market fund with a lower yield than other funds may have arrived at this yield through a more conservative investment strategy. Disclosure of the fund's rating in its prospectus could assist the investor in evaluating the appropriateness of investing in that fund relative to others.

[8] As discussed below, the Commission is seeking comment on whether the cost of obtaining a rating would be paid by the fund, or another person such as its principal underwriter or adviser.

[9] Organizations other than NRSROs which provide ratings would continue to be required to provide consents under section 7 and would be subject to section 11 of the Securities Act.

[10] Although this proposal would extend the 1982 action to a type of equity security, securities issued by money market funds are merely equity interests in a pool of debt securities and their NRSRO ratings are based primarily on the NRSRO's assessment of these debt securities.

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process without impairing investor protection. NRSROs are now, and will continue to be, subject to the antifraud provisions of the securities laws.[11] Adopting the proposed amendments to Rules 134, 436, and 482 will not alter the applicability of the antifraud provisions to NRSROs.

B. Tombstone Ads

Subparagraph (14) of Rule 134(a) would be amended to permit a tombstone ad to include a money market fund rating (or ratings) and the name or names of the NRSRO(s) assigning the rating or ratings. As in the case of Rule 436(g), the term "Nationally recognized statistical rating organization" would be defined by reference to the uniform net capital rule under the Exchange Act. To ensure that investors adequately understand the meaning of ratings used in tombstone ads, the proposed amendment to Rule 134(a) provides that the ad, if it includes any money market fund rating, must include the date of any rating and all other currently available NRSRO ratings intended for public dissemination which materially differ from one another and the name (or names) of the person(s) assigning such ratings. To ensure the currency of any advertised NRSRO money market fund rating, the rule would require that the most recent rating assigned by a NRSRO be used.

C. Omitting Prospectus

Money market funds frequently advertise their securities through the use of omitting prospectuses under Rule 482. Advertisements relying on Rule 482 may contain only information the substance of which is included in the statutory or section 10(a) [15 U.S.C. 77j(a)] prospectus. Because money market funds disclosing their ratings in their registration statements may seek to advertise the rating in a Rule 482 advertisement, the Commission proposes to amend Rule 482 under the Securities Act to indicate the conditions under which it would be permissible to use a money market fund rating in an omitting prospectus. The conditions follow those developed in proposed Guide 34 for use in Form N–1A (discussed below), but have been streamlined to accommodate the abbreviated nature of many omitting prospectuses.

III. Staff Position on the Use of Exempt Money Market Fund Ratings

In connection with the proposed amendments to Rules 134, 436(g), and 482, the Commission is publishing a proposed new guide—Guide 34—to the staff "Guidelines for Form N–1A." The proposed guideline represents the staff's interpretation on the appropriate disclosure of money market fund ratings in registration statements. The guideline generally follows Regulation S–K [17 CFR 229.10], which sets forth the Commission's basic policy on the use of security ratings of debt securities, convertible debt securities, and preferred securities in Commission filings. Guide 34 differs in some respects from Regulation S–K to accommodate the unique nature of money market funds and the ratings of their securities. While Regulation S–K advises registrants to consider disclosure of certain matters, Guide 34 calls for information which, in the staff's view, must be disclosed if a money market fund rating is to be used in Form N–1A, *e.g.*, the nature of a money market fund rating, material changes in a rating, the date of the rating, the availability of materially different ratings, a decision to discontinue a rating, and related matters. The staff considers the disclosures mandatory because the securities of a money market fund are typically highly liquid, short term, and subject to rapid turnover—factors which could cause a given rating to become quickly outdated.[12]

IV. Cost/Benefit of Proposed Action

Because the proposed rule amendments would make the use of securities ratings optional, the proposal would not impose any costs on money market funds except those associated with the required disclosure about the ratings, which would appear to be minimal. Only where it was decided that the use of a rating would be economically beneficial would the cost of obtaining and maintaining a rating be incurred. Presently, because NRSROs will not consent to expert status as to money market fund ratings, funds may use these ratings only in sales literature which accompanies, or is preceded by, a statutory prospectus. The proposed rule revisions would facilitate the use of ratings in statutory and omitting prospectuses, and in advertising materials such as tombstone ads not accompanied by a statutory prospectus, and would thus reduce the cost to funds of making their ratings known. The Commission believes that, in addition to providing greater flexibility to funds in the use of these ratings, the proposal benefits those investors who find the ratings useful in making investment decisions. The Commission requests specific comment on its assessment of the costs and benefits associated with the proposal, including specific estimates of any costs and benefits perceived by commentators.

V. Other Matters

A. Ratings of Other Types of Investment Company Securities

NRSROs have assigned ratings to the units of unit investment trusts, particularly units of insured unit investment trusts. The Commission understands that NRSROs have provided consents under section 7 to use of ratings of insured unit investment trusts and the ratings routinely have been included in unit investment trust registration statements and omitting prospectuses. Nevertheless, the Commission requests comment on whether, and under what conditions, it should consider relief with respect to unit investment trusts and other investment company ratings similar to that being proposed for money market funds.

B. Currency of Ratings

The Commission requests comment on the registration statement updating that would be required by the proposed guideline to ensure that material information about ratings is disclosed. The Commission is concerned that money market funds not be permitted to use outdated ratings, given the liquid, short term nature of their portfolios. For this reason the proposal would require that only the most recent rating assigned by each NRSRO could be used in the fund's prospectus and advertising, and that prospectus disclosure be made of any rating change, including a decision by the fund to no longer be rated.

C. Cost of Ratings

The Commission seeks information and comment on how the cost of NRSRO money market fund ratings would be paid and whether payments for ratings could be made pursuant to a distribution plan adopted under Rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act.[13]

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[11] *See* Section 17(a) of the Securities Act, section 10(b) of the Exchange Act and Rule 10b–5 thereunder; with respect to advisers registered or subject to regulation under the Investment Advisers Act of 1940, see section 206 of the Investment Advisers Act. The five organizations which now qualify as NRSROs (see note 1, *supra*) are registered with the Commission as investment advisers.

[12] In this regard, the one NRSRO which today rates money market funds has advised the Commission staff that it reviews its money market fund ratings at least weekly to ensure currency.

[13] Rule 12b–1 permits funds to pay expenditures primarily intended to result in the sale of fund shares only under the circumstances described in the rule.

List of Subjects in 17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations:

(Citations before * * * indicate general rulemaking authority)

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted. * * *

§ 230.134 also issued under 15 U.S.C. 77b, secs. 2(10), 10(b), 10(c), 10(f) and 19(a) of the 1933 Act;

§ 230.436 also issued under 15 U.S.C. 77f, 77g, 77h, 77s(a), 78c(b), 771, 78m, 78n, 780(d), 78w(a), 78t(a), 78sss(a), 80a–37; and

§ 230.482 also issued under 15 U.S.C. 77g, 77j and 77s(a).

2. By revising paragraph (a)(14)(i) of § 230.134 to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) * * *

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by a nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s). With respect to any class of money market fund securities, the security rating or ratings assigned to the class of securities by a nationally recognized statitical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s) and the date(s) the ratings were assigned, *provided* that the communication discloses the most recent rating assigned by each such nationally recognized statistical rating organization and discloses all currently available ratings by a nationally recognized statistical rating organization of such securities which are intended for public dissemination and are materially different from one another.

* * * * *

3. By revising paragraph (g)(1) of § 230.436 to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, a class of preferred stock or a class of money market fund securities by an nationally recognized statistical rating organization shall not be considered a part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

* * * * *

4. By amending § 230.482 by adding paragraph (e) before the note to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(e) In the case of a money market fund which includes in such advertisement a security rating issued by a nationally recognized statistical rating organization it shall include only the most recent rating assigned by each nationally recognized statistical rating organization and shall also include in such advertisement: (1) Any other materially different current rating intended for public dissemination and assigned to the fund by a nationally recognized statistical rating organization; (2) the name of each rating organization whose rating is disclosed and the date the rating was assigned; (3) each rating organization's definition or description of the category in which it rated the fund; (4) the relative rank of each rating within the assigning rating organization's overall classification system; and (5) a statement informing investors that a money market fund rating is not a recommendation to buy, sell, or hold the shares of the fund, and that the rating may be subject to revision or withdrawal at any time by the assigning rating organization.

5. Guideline 34 of Guidelines to Form N–1A which does not appear in the Code of Federal Regulations in published to read as follows:

Guideline 34 to Form N–1A

If a registrant includes in a registration statement filed under the Investment Company Act of Securities Act of 1933 any rating(s) assigned to a money market fund, it must include (A) any other current rating assigned to the fund and intended for public dissemination by an NRSRO ("additional NRSRO rating") that is available on the date of the initial filing to the document and that materially differs from any rating disclosed; and (B) the name of each rating organization whose rating is diclosed and the date the rating was assigned; each rating organization's definition or description of the category in which it rated the fund; the relatives rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a money market fund rating is not a recommendation to buy, sell or hold the shares of a particular money market fund, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating is to be evaluated independently of any other rating. The registrant also is to include the written consent of any rating organization that is not an NRSRO whose rating is included.

If a change in a rating already included in the registration statement is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant must include the rating change and its date in the final prospectus. If an additional NRSRO rating which materially differs from any disclosed in the registration statement becomes available during this period, the registrant must amend the registration statement to include the additional rating and its date.

If the fund receives a materially different rating from an additional NRSRO or a change in a rating already included in the registration statement of the fund becomes available during any period in which offers or sales are being made, the registrant must immediately disclose such additional rating or rating change, and its date, by means of a sticker to the prospectus under Rule 497(d) [17 CFR 230.497(d)]. The sticker also must disclose the reason for the change in the rating.

If at any time a registrant decides to no longer disclose its rating, the registrant must immediately disclose the fact by means of a sticker to the prospectus under Rule 497(d). Where the registrant's decision to discontinue disclosure of its rating is preceded by notification from the NRSRO (or other rating organizational) that the rating is under review and is at risk of being lowered, the sticker must disclose these facts.

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By the Commission.

Shirley E. Hollis,

Assistant Secretary.

March 4, 1986.

Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rulemaking published in Release Nos. 33-6630 and IC-14984 (March 14, 1986) "Disclosure of Security Ratings by Money Market Funds," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for such certification is that the proposed rules will impose no mandatory requirements upon issuers but, instead, will remove certain regulatory impediments to the voluntary disclosure of security ratings. It is anticipated that the effects of the proposed rules will not be significant for any class of registrants. Thus, the proposed rules will not have a significant economic impact on any small entities.

John Shad,

Chairman.

March 13, 1986

[FR Doc. 86-6153 Filed 3-20-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 86N-0063]

Over-the-Counter Marketing of Beta-Adrenergic Bronchodilators in metered-Dose Inhalers; Establishment of a Public File and Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Request for comments

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket containing a public record of the comments, views, and other information submitted to the agency from interested persons concerning the over-the-counter (OTC) marketing of beta-adrenergic bronchodilator drug products in metered-dose inhalers.

DATE: Comments by April 21, 1986.

ADDRESS: Written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Conrad J. Ledet, Center for Drugs and Biologics (HFN-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3500.

SUPPLEMENTARY INFORMATION: FDA has established in the Dockets Management Branch, under Docket No. 86N-0063, a public file for all comments, views, and other information submitted to FDA concerning the possible OTC marketing of beta-adrenergic bronchodilators in metered-dose inhalers. At a meeting with firms that submitted applications for the OTC marketing of metered-dose bronchodilators, FDA indicated that the issue would be discussed at a May meeting of the Pulmonary-Allergy Drugs Advisory Committee. The agency also advised applicants of its preliminary view that the information submitted to date in support of the OTC marketing of these products appears to be insufficient, but that the purpose of the advisory committee meeting and the establishment of a docket would be to provide an ample opportunity for all interested parties to submit comments and information for a full consideration of the safety issues involved. Comments supporting or opposing OTC marketing should submit, among other appropriate information, information relating to the safety of OTC marketing beta-adrenergic bronchodilators in metered-dose inhalers. Drug products included in this class are albuterol, isoetharine, isoproterenol, and metaproterenol. The information submitted will be made available to the committee for its consideration at an open meeting of the committee, planned for May 1986. The exact date and detailed agenda for this open meeting will be published in the **Federal Register** at a later date. Received comments will be incorporated into this public file and may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

It is FDA's intent that the discussion at the forthcoming committee meeting be limited to a discussion of OTC marketing of beta-adrenergic bronchodilators in metered-dose inhalers as a class and not a discussion of OTC marketing of specific drug products within the class. Discussion of beta-adrenergic bronchodilators in metered-dose inhalers as a class should include the appropriate criteria that should be used to determine whether any beta-adrenergic bronchodilator in metered-dose inhaler can be safely marketed OTC. Examples of possible appropriate safety considerations include the analysis of abuse and misuse data and adverse reaction data for inhaled beta-adrenergic drugs, the need for physician supervision of the use of these drugs by patients, possible beta-adrenergic drug interactions with other drugs such as theophylline, and the ability to provide adequate labeling that addresses safety concerns and ensures safe self-medication with these products. Safety issues concerning the OTC marketing of specific beta-adrenergic drug products will not be discussed. A discussion of the OTC marketing of specific products within the class may occur at a future meeting of the Pulmonary-Allergy Drugs Advisory Committee depending upon the recommendations at the May 1986 meeting.

The committee's discussion and conclusions regarding beta-adrenergic bronchodilators in metered-dose inhalers may be considered by the agency in its preparation of a final monograph for OTC bronchodilator drug products. Such a monograph is being developed as part of the OTC drug review under Docket No. 76N-052B. The tentative final monograph (proposed rulemaking) for OTC bronchodilator drug products was published in the **Federal Register** of October 26, 1982 (47 FR 47520). Information that has been submitted to the OTC drug review will not be included in this new public file. Any interested person who has submitted information to the OTC drug review and who would like that information made available to the advisory committee should also submit the information to this public file.

It is not FDA's intent to discuss the new drug status of these products at the May meeting. Of course, if the metered-dose product contains a chlorofluorocarbon as a propellant, the product is considered adulterated and/or misbranded unless it is the subject of an approved new drug application under the provisions of 21 CFR 2.125.

Interested persons may submit written comments to the Dockets Management Branch (address above). To assure consideration of comments by the committee, the comments should be submitted on or before April 21, 1986. Two copies of any comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: March 17, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-6317 Filed 3-19-86; 11:11 am]

BILLING CODE 4160-01-M

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21 CFR Part 74

[Docket No. 85N-0160]

D&C Green No. 6; Uniform Specifications

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a uniform set of specifications for D&C Green No. 6 for all of its regulated uses by rescinding the specifications that were established before 1982 for the use of this color additive in sutures and by making that use subject to the specifications that the agency has established for all other uses of this color additive. FDA is also proposing to remove the provision that bars the migration of D&C Green No. 6 from a suture to the surrounding tissues. FDA is taking the latter action because this restriction is not necessary to assure the safety or suitability of the use of D&C Green No. 6 in sutures. Elsewhere in this issue of the Federal Register, FDA is issuing a final order that increases the level of D&C Green No. 6 that can be used to color certain sizes of polyglycolic acid surgical sutures, lists the use of the color additive in poly(glycolic acid-*co*-trimethylene carbonate) sutures, and moves the listing of the suture use of D&C Green No. 6 into the subpart of Part 74 for color additives in medical devices.

DATE: Comments by May 20, 1986.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the past 4 years, FDA has adopted three final rules listing new uses of D&C Green No. 6 in drugs, cosmetics, and medical devices (see 47 14138; April 2, 1982; 48 FR 13020; March 29, 1983; and the final rule published elsewhere in this issue of the **Federal Register**). As a result of these changes and of scientific advances, certain provisions of the regulations have become obsolete. FDA is therefore proposing to revise its regulations to establish a uniform set of specifications for all regulated uses of D&C Green No. 6 and to remove an obsolete restriction on its use in sutures.

I. Specifications

There currently are two sets of specifications for D&C Green No. 6. FDA established the first set of specifications in 1962 when it listed the color additive for use in polyethylene terephthalate sutures (27 FR 12828; December 28, 1962; and 33 FR 8815; June 18, 1968). These specifications have been codified at § 74.1206(b)(1) (21 CFR 74.1206(b)(1)). However, elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule that moves the provisions of § 74.1206(b)(1) to § 74.3206 (21 CFR 74.3206). As a result, these specifications are now codified at § 74.3206(b)(2).

In 1982, the agency adopted a second set of specifications for D&C Green No. 6 when it permanently listed the color additive for use in externally applied drugs and cosmetics (47 FR 14138). FDA codified this new set of specifications at § 74.1206(b)(2), although the agency is now recodifying them at § 74.1206(b) (see the final rule published elsewhere in this issue of the **Federal Register**). These specifications are based on the results of methods of analysis that are, for the most part, more specific and more sensitive than those that were used in establishing the original specifications. As a result, § 74.1206(b) contains specifications for specific intermediates instead of a general specification for "intermediates." These newer specifications include a limitation on the carcinogenic impurity *p*-toluidine and restrict the levels of lead and arsenic to no more than 20 parts per million (ppm) and 3 ppm, respectively. The levels for lead and arsenic in the new specifications are higher than in the 1962 specifications. These new levels are appropriate, however, because they are consistent with the current specifications for other D&C color additives and yet still ensure the safety of the color additive.

At the time that it adopted the second set of specifications, FDA announced its intention to establish a single set of specifications for D&C Green No. 6 for all of its regulated uses (47 FR 14145). The agency is now effectuating that intent. This action is appropriate for two reasons. First, because the new specifications are more specific and are based on improved methods, they are more likely to assure the safe use of this color additive than the original specifications. Second, it is more efficient for both the agency and industry to operate under a single set of specifications.

Therefore, FDA is proposing to rescind the specifications in § 74.3206(b)(2). The agency is also proposing to redesignate § 74.3206(b)(1) as § 74.3206(b) and to amend it to provide that the color additive D&C Green No. 6 for use in medical devices shall conform to the specifications of § 74.1206(b).

II. Restriction on Migration

A. Consideration of Need for Restriction

The final rule listing D&C Green No. 6 for use in nonabsorbable polyethylene terephthalate sutures included a restriction that D&C Green No. 6 be added to sutures in such a way as to ensure that there is no migration of the color additive to the surrounding tissue (current § 74.1206(c)(3); redesignated as § 74.3206(c)(3) in the final rule published elsewhere in this issue of the **Federal Register**). This restriction was originally imposed as a suitability requirement. It has no application to absorbable sutures because such sutures, including the color additive, are designed to be absorbed by the surrounding tissue. Nevertheless, in the **Federal Register** of April 25, 1975 (40 FR 18167), when FDA amended § 74.1206 to provide for the use of D&C Green No. 6 in coloring absorbable polyglycolic acid surgical sutures, it inadvertently failed to limit the restriction on migration to nonabsorbable sutures. Consequently, this restriction now applies to polyglycolic acid sutures, which are absorbable, as well as to polyethylene terephthalate sutures, which are not.

FDA has tentatively concluded that the prohibition against migration is not necessary, is impractical for nonabsorbable sutures, and is inappropriate for absorbable sutures. Because analytical methods have become more sensitive since 1962, levels of migration that were undetectable at that time now are measurable. These low levels of migration, which would render the nonabsorbable sutures technically in violation of the current regulation, have no bearing on the suitability of the color additive for suture use.

Color additives are added to sutures to improve their visibility both during suturing and, depending upon the application, during removal of the suture after the sutured area has healed. Thus, to be suitable for use in nonabsorbable sutures, D&C Green No. 6 should be added to the sutures in a way that will ensure that the sutures will retain enough of their color to be visible for removal after healing and that will also preclude visible staining of the surrounding tissues. The petition on the use of D&C Green No. 6 that was submitted in 1982 (CAP 2C0004) includes letters from physicians attesting that the

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use of D&C Green No. 6 in polyethylene terephthalate nonabsorbable sutures meets these suitability criteria. Moreover, FDA believes that physicians would not use a suture if the color additive migrated to the extent that removal of the suture would be hindered by visibility problems or that there was marked staining of the tissues. Consequently, the agency tentatively finds that a regulatory restriction on migration is not necessary to assure the suitability of D&C Green No. 6 for suture use.

B. Safety Consideration

FDA also believes that the restriction against migration is not necessary to assure the safety of the use of D&C Green No. 6 in either absorbable or nonabsorbable sutures. The safety of the listed uses of D&C Green No. 6 for coloring absorbable and nonabsorbable sutures is supported by the toxicology studies submitted with the petitions for their listings. These toxicology studies were designed to discover if there were any safety problems from exposure to any D&C Green No. 6 that migrated to the surrounding tissues. They revealed none. Further, none of the toxicology studies submitted to the agency in any of the other petitions for uses of D&C Green No. 6 give any indication that the color additive migrating from sutures poses a potential for harm.

D&C Green No. 6 is manufactured by reacting 1 molecule of quinizarin with 2 molecules of *p*-toluidine. Residual amounts of *p*-toluidine are commonly found among the impurities of this color additive. The presence of *p*-toluidine as a reaction impurity in D&C Green No. 6 is significant because Weisburger et al. have shown that *P*-toluidine is a carcinogen where ingested by mice (Ref. 1). When D&C Green No. 6 originally was listed for coloring polyglycolic acid and polyethylene terephthalate sutures, however, *p*-toluidine had not yet been shown to be a carcinogen. Therefore, FDA did not explicitly evaluate the safety of exposure to *p*-toluidine, which has recently been found to be present in D&C Green No. 6 at levels that average approximately 500 parts per million (see 47 FR 14140), when it listed the use of D&C Green No. 6 in polyethylene terephthalate sutures and in polyglycolic acid sutures.

FDA has concluded that it is possible to list a color additive like D&C Green No. 6 that has not been shown to cause cancer but that contains a carcinogenic impurity (see 47 FR 14140–14145). In deciding whether the use of such an additive is safe, FDA will consider among other things, its calculations of the upper limit of risk from lifetime exposure to the carcinogenic impurity. Evaluation of the risk from exposure to *p*-toluidine from the use of D&C Green No. 6 in polyglycolic acid and polyethylene terephthalate sutures has two parts: (1) An assessment of probable exposure to *p*-toluidine and (2) an extrapolation of the risk from *p*-toluidine observed in the animal bioassay to the possible risk to humans under conditions of use.

1. Exposure

FDA originally listed D&C Green No. 6 for use at levels not to exceed 0.1 percent in polyglycolic acid absorbable sutures and at levels not to exceed 0.75 percent in polyethylene terephthalate nonabsorbable sutures. Although the migration of D&C Green No. 6 from polyethylene terephthalate sutures makes it likely that some *p*-toluidine will move into the surrounding tissues, no data are available on the extent to which *p*-toluidine will migrate from those sutures. For the polyglycolic acid suture, which is absorbable, all of the color additive is released to tissue.

In assessing exposure to *p*-toluidine from the use of D&C Green No. 6 in sutures, the agency has estimated the amount of suture material that a person might receive over a lifetime. Considering the amount of suture material used in various types of surgery, allowing for surgery using a particularly large amount of suture, and considering the probability of multiple surgeries, the agency believes that 10 meters of suture is a reasonable estimate for lifetime use (Ref. 2). Also, to calculate the amount of color additive, the agency is assuming that all suture material is of U.S.P. size 2-0 because that is a common size for general surgery.

The agency is also making the assumptions that all of the suture material to which a person is exposed during his or her lifetime (i.e., 10 meters) contains D&C Green No. 6 at the 0.75 percent level and that all of the *p*-toluidine in the suture migrates. Thus, although (1) nonabsorbable sutures, such as polyethylene terephthalate, would be removed long before all of the color would migrate; and (2) it is extremely unlikely that a person would be exposed to only polyethylene terephthalate suture material (other types of suture materials contain either lower levels or no D&C Green No. 6), the assumptions above are used to represent a worst-case estimate for *p*-toluidine exposure from D&C Green No. 6 in sutures. Based on these assumptions, the agency estimates that lifetime-averaged exposure to *p*-toluidine from D&C Green No. 6 in sutures is not likely to exceed 0.15 nanogram per day (150 picograms per day) (Ref. 3). This estimate of exposure far exceeds the estimated level of exposure from 0.1 percent D&C Green No. 6 in U.S.P. size 2-0 polyglycolic acid sutures (0.03 nanogram per day).

2. Risk Extrapolation

In the agency's document permanently listing D&C Green No. 6 for use in externally applied drugs and cosmetics (47 FR 14138; April 2, 1982), FDA described its use of quantitative risk assessment procedures to extrapolate from the *p*-toluidine dietary dose in the animal experiment to the very low levels of human exposure. The risk analysis employed in this document relies on the same risk assessment procedures.

The simplest method for estimating risk is to compare the human lifetime-averaged systemic exposure to *p*-toluidine from sutures colored with D&C Green No. 6 to the lifetime-averaged systemic exposure of mich fed *p*-toluidine in the Weisburger et al. bioassay (Ref. 1). On this basis, using a linear extrapolation, the agency estimates the upper limit individual lifetime carcinogenic risk from exposure to sutures containing up to 0.75 percent D&C Green No. 6 is 1 in 10 billion or 1 in 100 billion, depending on the specific assumptions in the linear extrapolation procedure (Ref. 3).

The agency recognizes that exposure to *p*-toluidine from sutures is different from that encountered in the Weisburger et al. bioassay, which the agency is using for its risk extrapolation. Exposure to *p*-toluidine from sutures is parenteral and localized, while exposure in the Weisburger bioassay was through lifetime dietary administration. The agency does not wish to imply that linear time-averaging of dose from a dietary study is necessarily the best way to estimate risk from sutures. However, in the absence of explicit scientific information indicating how these exposure differences affect risk, the agency believes that the extremely small risk estimated by simple linear time-averaging of the dose provides a sufficiently large margin of safety for the agency to conclude that use of the color additive in sutures is safe.

The available toxicity data on D&C Green No. 6 and the vanishingly small risk estimate for the exposure to *p*-toluidine that results from the use of this color additive in sutures provide the basis for concluding that there is a

reasonable certainty of no harm from the possibly higher exposure to D&C Green No. 6, including *p*-toluidine, that might occur if all D&C Green No. 6 migrates from nonabsorbably polyethylene terephthalate sutures (or combinations of polyethylene terephthalate and other sutures for which D&C Green No. 6 is listed). As a result, the agency tentatively concludes that the restriction prohibiting migration of the color additive to the surrounding tissue is unnecessary to assure the safety of this use.

Because this restriction is not necessary to assure either the safety or the suitability of the sutures, FDA is proposing to remove it from the regulation.

The agency has determined under 21 CFR 25.24(a)(9) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This proposed rule will subject D&C Green No. 6 for use in sutures to the same specifications that the agency has established for the other uses of this color additive. Because the agency believes that all affected color additive manufacturers are currently able to meet these uniform specifications, FDA does not expect that any additional cost will result from the specifications outlined in the proposal. In addition, the removal of the provision that bars the migration of D&C Green No. 6 is permissive in nature, so no additional cost will be associated with this action.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that this regulation will not result in any additional cost to manufacturers of D&C Green No. 6. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

Although this action is exempt from Executive Order 12291, the agency has analyzed the economic effects of this rule and has determined that it will not result in a major rule as defined by that Order.

Interested persons may, on or before May 20, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following information has been placed on display with the Dockets Management Branch (address above) and is available for review in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E.K., et al., "Testing of Twenty-one Enviornmental Aromatic Amines or Derivatives for Long-Term Toxicity or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Memorandum to the record dated October 10, 1985, from the Food Additive Chemistry Evaluation Branch, Re: "Exposure Estimates from Color Additives in Sutures."

3. Memorandum dated November 1, 1985, from the Quantitative Risk Assessment Committee to Director, Office of Toxicological Sciences, Re: "Risk from p-Toluidine in Sutures."

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 74 be amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 74.3206 by removing paragraph (c)(3) and by revising paragraph (b), to read as follows:

§ 74.3206 D&C Green No. 6.

* * * * *

(b) *Specifications.* The color additive D&C Green No. 6 for use in medical devices shall conform to the specifications of § 74.1206(b).

* * * * *

Dated: March 18, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-6316 Filed 3-19-86; 11:48 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 390

[Docket No. R-86-1271; FR-2135]

Guaranty of Mortgage-Backed Securities

AGENCY: Office of the President of the Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the date for the first scheduled monthly payment of principal and interest for a mortgage in a pool backing mortgage-backed securities. Under this rule, a mortgage would have to have a date of first scheduled monthly payment that is no more than 24 months before the issue date of the securities. The current rule requires this date to be no more than 12 months before the date on which GNMA commits to guarantee the issue of securities. This technical revision is being proposed to help implement GNMA's new automated system for handling the issuance of commitments for mortgage-backed securities.

DATE: Comments must be received by May 20, 1986.

ADDRESS: Interested persons are invited to submit written comments regarding this rule on or before the due date to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at above address.

FOR FURTHER INFORMATION CONTACT: Richark W. Dyas, Vice President, Office of Mortgage-Backed Securities, Government National Mortgage Association, Room 6224, 451 Seventh Street, SW., Washington DC 20410–9000. Telephone: (202) 755–8772. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: GNMA is developing a new, highly automated system for dispensing and managing commitments to guarantee mortgage-backed securities. Under this new "commitment line system," issuers will request initial or additional "commitment authority," as opposed to commitments for specific pools, as is

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done at present. This new system will eleminate the problems currently experienced with after-the-fact changes to the individual commitments by issuers.

In order to implement this new system, it is necessary to revise the current regulations governing the age of a mortgage eligible for pooling. Currently, the age of a mortgage is measured from the date of GNMA's commitment to guarantee the issue of securities. Since under the new "commitment line system" the date of GNMA's commitment is no longer a critical date, the rule proposes to measure the age of a mortgage from the issue date of the securities. Under this proposed rule a mortgage must have a date for the first scheduled monthly payment of principal and interest that is no more than 24 months before the issue date of the securities. This period is comparable to the period under the current regulations, which is no more than 12 months before the date on which GNMA commits to guarantee the issue of securities. Since the GNMA commitment itself is effective for a period of 12 months, the combined period for the pooling of newly-originated mortgages is currently 24 months.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The change to be effected by this rule is a technical revision. It is intended to help implement an automated tracking system; it should have little or no economic impact on any entities participating in the affected program.

The rule was listed as item 933 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166, 44205), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, GNMA proposes to amend 24 CFR Part 390 as follows:

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citations for Part 390, Subparts A, B, C, D, and E would be removed, and the authority citation for Part 390 would be revised to read as follows:

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. In § 390.7 paragraph (b) would be revised to read as follows:

§ 390.7 Mortgages.

* * * * *

(b) Have a date for the first scheduled monthly payment of principal and interest, or a date of purchase from an Association-approved auction, that is no more than 24 months before the issue date of the securities.

* * * * *

3. In § 390.27, paragraph (b) would be revised to read as follows:

§ 390.27 Mortgages.

* * * * *

(b) Have a date for the first scheduled monthly payment of principal and interest that is no more than 24 months before the issue date of the securities.

* * * * *

4. In § 390.43, paragraph (c) would be revised to read as follows:

§ 390.43 Motgages.

* * * * *

(c) Have a date for the first scheduled monthly payment of principal (which may be negative) and interest, or a date of purchase from an Association-approved auction, that is no more than 24 months before the issue date of the securities.

* * * * *

Dated: March 12, 1986.

Glenn R. Wilson, Jr.,

President, Government National Mortgage Association.

[FR Doc. 86-6226 Filed 3-20-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 585]

North Fork of Long Island Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Suffolk County on the North Fork of eastern Long Island, New York. The proposed viticultural area includes all of the land areas in the Townships of Riverhead, Shelter Island, and Southold. The petition was submitted by a group of Long Island grape growers and bonded viticultural area. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase.

DATES: Written comments must be received by May 5, 1986.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 585).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR,

Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name and boundaries of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticutural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticutural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition for "North Fork of Long Island"

AFT has received a petition proposing a viticultural area on the North Fork of eastern Long Island, New York. The proposed viticultural area is to be known as the "North Fork of Long Island." The petition was submitted by the Long Island Grape Growers Association based in Riverhead, New York. The petition was compiled by Richard T. Olsen-Harbich, Winemaker of the Bridgehampton Winery, Bridgehampton, New York and President of the Long Island Grape Growers Association.

Mr. Harbich also prepared a petition on behalf of the Bridgehampton Winery for "The Hamptons, Long Island" viticultural area. "The Hamptons, Long Island" was approved as an American viticultural area on June 17, 1985 (50 FR 20409). It includes all of the land areas in the (South Fork) Townships of Southampton and East Hampton. This viticultural area is located just across the bay from the proposed viticultural area.

The proposed North Fork of Long Island viticultural area consists of the Townships of Riverhead, Shelter Island, and Southold (including all mainland and island areas). The total area encompassed by the proposed boundaries consists of 158.5 square miles of 101,440 acres of land. There are 5 bonded wineries operating within the proposed viticultural area. The petitioner bases this petition on the following information:

Evidence of Name

According to the petitioner, the origin of the name North Fork was based on the way Long Island "forks" at its eastern end at Riverhead into the North and South Fork. The Long Island Railroad uses the term North Line and South Line to describe the rail routes that travel through those parts of Long Island. Those rail route names also point out the division between the North Shore (the area bounded by the Long Island Sound) and South Shore (the area bounded by the Atlantic Ocean) of Long Island. Today, the references North Shore and South Shore are commonly used by Long Islanders to identify the dual maritime coasts of Long Island out to the east end, where the North Fork and South Fork are formed. The two eastern Long Island forks are described as the North and South Forks. The South Fork is also commonly known as The Hamptons.

According to the petitioner, the name "North Fork" is locally used to describe the land area on the North Shore of Long Island beginning at Riverhead Township and extending east for approximately 40 miles to Orient Point. This description is supported by many publications, businesses, and landmarks which use the name North Fork to distinguish this region from the rest of Long Island. According to local phone directories there are at least 45 Long Island businesses which use the term "North Fork" as part of their name.

Evidence of Boundaries

The actual geographic area of the North Fork, although attached to a larger island, may be referred to as a peninsula. This is due to the fact that three of its boundaries are surrounded by water: The Long Island Sound to the north, the Peconic Bay to the south and the Atlantic Ocean to the east.

The proposed North Fork of Long Island viticultural area lies entirely in Suffolk County. The western boundary of the proposed North Fork appellation is the 6.5 mile long boundary line separating Brookhaven and Riverhead Townships. The boundary starts at the mouth of the Wading River and follows it in a southeasterly direction. It then heads south in a straight line cutting through Peconic River Park to meet the beginning of the Peconic River. The boundary travels east along the river until it empties into the Peconic Bay. It is at this point that the boundary line becomes three bodies of water. The Peconic Bay accounts for the rest of the southern boundary, meeting the Atlantic Ocean at Orient Point. The entire length of the North Fork from its start at the Brookhaven/Riverhead Town line, east to Orient Point, is approximately 40 miles. The North Fork is 6 miles wide at its widest point and less than .5 mile wide at its narrowest point. The townships making up the area—Riverhead (78 square miles), Shelter Island (11.5 square miles) and Southold (69 square miles)—cover a combined total of 101,440 acres of land or 158.5 square miles. Shelter Island, although a separate land area from the mainland of Long Island was included in the boundaries of the proposed North Fork viticultural area because of its immediate proximity to the area. Also, another reason for its inclusion in the proposed viticultural area is because it is composed of similar soil associations as those making up the remainder of the North Fork.

According to the petitioner, it is the sea that surrounds Long Island (and more specifically the North Fork) which makes it a unique agricultural area. According to information gathered from the book titled *History of Long Island, New York*, by Benjamin F. Thompson (1839), the sea renders it more temperate than many other places in the same latitude in the interior. Information gathered from that book states that the area is almost regularly fanned by a breeze from the ocean. It states that the air from the sea also has a powerful effect on the climate. It modulates the heat in the summer and the cold in the winter. The petitioner claims that it is this moderating effect of the water on the North Fork which makes it an area suitable for fine wine grapes.

The petitioner referred to the following statement in the book on Long Island history by Thompson: "When Long Island was discovered by Henry Hudson in 1609, he found an island covered with forests, trees loaded with fruit and grapevines of many kinds."

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According to the same book, the North Fork was the home of several tribes of Indians prior to its settlement by the English. The primary tribes were Corchougs. It is from these Indians that the English settlers purchased the area known as Southold (the Indians called it Yennecock). This area is roughly equivalent to the boundaries of the proposed viticultural area; the western boundaries of Wading and Peconic Rivers to the eastern boundary of Orient Point.

According to information gathered by the petitioner from Edna Yeager, a historian of the North Fork, "The first settlers found that grapes were just waiting for the winemaker."

The petitioner claims that during Colonial times the major industry of the proposed viticultural area was agriculture. Over the years the conservatism of the farmers helped maintain the area. Today agriculture still is the major industry of the area.

Viticultural History

According to a conversation held between the petitioner and John Wickham (a fruit farmer and pioneer Long Island grape grower whose family dates back some 300 years on the North Fork), the settlers trained the native grapes onto arbors behind their homes. According to Wickham, many of the older homes still have grape arbors. European wine grapes were not used on Long Island until the Prince Nurseries started in the late 1700's. Prince Nurseries located in the Borrough of Queens (New York City), sent European vinifera vines to purchasers all over Long Island, including the North Fork. The backyard arbors were pretty much the extent of grape-growing on the North Fork for the period from 1830 to 1963. There were a few attempts at commercial grape-growing on the North Fork but these failed (most notably by a Moses Fournier who in the late 1800's planted quite a large vinifera vineyard near Mattituck).

According to the petitioner, the beginning of the successful commercial vineyards on the North Fork was in 1963. In that year John Wickham planted a selection of table grapes from Cornell University. So successful was one of the varieties that it was named "Suffolk Red," for the county where it thrieved. Mr. Wickham has grown grapes on the North Fork for over 20 years. Prior to his success, vinifera grapes did not survive because of a combination of diseases.

It is the petitioner's opinion that the success of John Wickham has led others to the North Fork. The petitioner stated that the interest in grape growing on the North Fork started slowly, but has continued at an accelerated pace in recent years. Professor John Tomkins of Cornell University held conferences in the North Fork area in 1968 and 1971. In the Suffolk County Agricultural News, Volume LV, No. 5, (1971), Tomkins wrote, "There are many good sites for grapes on Long Island. Some apple and dairy farmers are taking a real careful look at the opportunities in grape-growing."

The petitioner said that it was Professor Tomkins who steered Alex Hargrave to the North Fork. Hargrave Vineyard was planted in 1973. It was the first commercial vinifera vineyard on the North Fork in the 20th Century. The book *North Fork and Shelter Island Guidebook*, edited by James I. Masters, (1981), quoted Alex Hargrave in the following text: "The Sound and the Great Peconic Bay act as a natural thermostat in the spring and the fall, giving it a longer frost-free season than southern Virginia. The North Fork is a sliver of land almost completely surrounded by water. Compare this with the famous regions of Bordeaux which are on the leeward side of a river a couple of kilometers wide. Long Island is much more at the bord d'eau (at the waters edge) than Bordeaux. The growing season is 45 days longer than upstate. There are over 3,000 hours of sunlight (Cutchogue is the sunniest village in the state). Because there is virtually no fog on the North Fork, crops ripen three weeks earlier than the South Fork and danger from humidity is minimized. The constant offshore breezes control mildew as the leaf blades of the vine are dried within hours of rain. The North Fork is almost 100% photosynthetically efficient."

Present and Future Viticultural Situation

The total grape acreage on the North Fork is approximately 1,000 acres. The petitioner stated that by the end of 1985 it is estimated that there will be over 1,200 acres of grapes on the North Fork. He claims that Long Island's North Fork has been and is today one of the more prominent agricultural areas in New York. The petitioner states that the North Fork is known for a distinction being primarily agricultural with a substantially different character and culture than the South Fork.

According to the petitioner, the North Fork is just beginning to break out of its infancy as a viticultural region. To support this statement, he said that the North Fork has supported vinifera grapes successfully for over a decade. The petitioner said that as the second decade of North Fork grape-growing approaches, much more acreage is expected to produce a full crop as well as new plantings.

Currently, there are 5 wineries in operation on the North Fork of Long Island: Hargrave, Lenz, Jamesport, Pindar and Peconic Bay Vineyards. The petitioner claims that there are 3 other wineries scheduled for opening in 1986 at Riverhead, Laurel, and Cutchogue. The petitioner states that it is very possible that as many as 25–50 wineries could eventually be in operation on the North Fork by the end of this century.

According to the petitioner, the North Fork of Long Island and its potential for producing quality grapes and wine, represents opportunity for the prospective vintner. He said the soil and climate are suited to vinifera grape production like no other area in the Eastern United States. According to the petitioner the early results from grape plantings on the North Fork hold promise for red vinifera varietals such as Carbernet Sauvignon and Merlot.

Appropriate Maps With Boundaries Marked

The petitioner submitted 5 U.S.G.S. maps with the boundaries prominently marked on them. The boundaries of the proposed "The North Fork of Long Island" viticultural area may be found on the following maps: Riverhead, N.Y., 1956, 7.5 minute series, scaled at 1:24,000; Wading River, N.Y. edition of 1956, 7.5 minute series, scaled at 1:24,000; New York, N.Y.; N.J.; Conn., U.S. 1:250,000 series, scaled at 1:250:000, edition of 1960, revised 1979; Hartford, Conn.; N.Y.; N.J.; Mass., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1962, revised 1975; and Providence, R.I.; Mass.; Conn., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969.

Geographical Evidence Which Distinguishes the Proposed Area From Surrounding Areas

Soils

The grape growing region of the North Fork when compared to the South Fork (The Hamptons), has distinctly different soil types. The difference in soil types begins north of the Peconic River and continues eastward toward Orient Point. According to the United States Soil Conservation Service, the major soil types which are found on the North Fork are as follows:

1. *Carver-Plymouth-Riverhead Association.* These soils are excessively well-drained and are very sandy, which may limit its farmability. They are located primarily on the perimeter of the North Fork and are usually rolling or

sloping. The natural fertility of these soils is low and the rapid permeability of water through these soils makes irrigation a desirable option for vineyards in these areas. They are found mainly along the North Shore adjoining the Long Island Sound.

Fishers and Plum Islands, although separate islands located east of the mainland of the North Fork, are composed of this same soil association.

2. *Haven-Riverhead Association.* These soils are characteristically deep and somewhat level and are located further inland on the North Fork. They are well-drained and have a medium texture. Most of these soils have a moderate to high water holding capacity and crops respond well to lime and fertilizer when grown on these soils. Due to these factors, this soil assocation (which is the predominant one of the North Fork) is considered one of the best farming areas in Suffolk County.

3. *Montauk-Haven-Riverhead Associations.* These soils are deep, nearly level to strongly sloping in character. They are well drained to moderately well drained soils. They tend to be moderately coarse in texture. They are the associations found on the North Fork areas of Robins and Shelter Island, located just south of the mainland.

The soils of the South Fork (The Hamptons), on the other hand, are somewhat different, and many more associations are present:

1. *Plymouth-Carver Association.* These soils are rolling, hilly, deep and excessively drained. Characteristically, scrub oak and other minor trees are found as cover. Permeability is rapid and natural fertility is low.

2. *Bridgehampton-Haven Association.* These soils are deep and excessively drained and have a medium texture.

3. *Montauk-Montauk, Sandy Variant—Bridgehampton Association.* These soils are deep and usually very sloping. Presently, most of this area is either idle or wooded.

4. *Montauk, Sandy Variant—Plymouth Association.* These soils are excessively drained and coarse textured. This loamy-sand is droughty but contains a black surface layer which is high in organic matter content.

5. *Montauk-Haven-Riverhead Association.* These soils are fairly well-drained and are sparsely found on the northern side of the South Fork along the Peconic Bay at Cow Neck, Noyack, North Haven, and outlying Gardiners Island. The surface layer is a silt loam, with a fine sandy loam found at deeper levels. These soils are very deep and well-suited to cultivation.

The remainder of the soils on the South Fork consist of the *Dune-Land-Tidal Marsh-Beach Association,* which make up the beach and marshland areas.

Westward from here and into New York City, the soil associations become even more foreign to those found on the eastern end of Long Island. It must also be pointed out that while various soil types found in western Long Island may be similar to those found on the North Fork, the encroachment of suburban development and industry on Long Island has made commercial agriculture and land available for it, almost non-existent in the townships west of Brookhaven.

As one can see, the soils of the North Fork and the South Fork (The Hamptons) are quite different, each giving the grapes that are grown there, a distinct and unique character. At the Town of Brookhaven/Riverhead boundary line where the forks meet, there is still some slight separation of the different soil associations. West of this area, however, the soil associations of Long Island tend to become less restricted to a distinct geographic area and much more intermingling and blending of soil series can be found. Also, there are the soils making up the "spine" of Long Island, namely "The Pine Barrens." The soils of the "Pine Barrens" can support just that; short scrubby pine forests are the only vegetation in the light, extremely sandy and unfertile soils of this area.

Land Classes are sub-divisions determined by the U.S. Soil Conservation Service to rate the capabilities of various soil series. Most of the soils on the North and South Forks fall into the Land Class members I and II, which state that "the soils contain few or moderate limitations that restrict their use." There are, however, a greater percentage of soil series on the South Fork which are listed under Land Class III, which states: "These soils have limitations that reduce the choice of plants, require special conservation practices, or both."

In general, the soils of the North Fork contain a smaller percentage of silt and loam than the soil series found on the South Fork (The Hamptons). This accounts for the fact that South Fork soils have a greater water-holding capacity than North Fork soils and require less irrigation. The soils for the North Fork are also generally slightly higher in natural fertility than the soils of the South Fork.

Climate

According to the petitioner, the climate classification for the North Fork is "humid-continental." However, this is greatly modified by the Atlantic Ocean. The maritime influence on the North Fork is significant. The surrounding water extends the period of freeze-free temperatures, reduces the range of diurnal and annual temperatures, and increases the amount of winter precipitation relative to summer.

Although the North and South Forks of Long Island are relatively close together, there are many climatic differences which exist between these two areas. These differences are due to the unique topography of the Eastern End and the relationship of the two forks to the Atlantic Ocean.

Most of the climatic data for the Eastern End of Long Island is recorded from three stations; the Cornell University Experimental Station in northeast Riverhead Township (located on the North Fork), The Greenport weather station (located on the North Fork), and the U.S. weather station in Bridgehampton (located on the South Fork). The Cornell University station has been recording weather data since the 1950's, while the Bridgehampton station has been operating for almost half a century.

According to this data there are definite climatic differences which exist between the two forks. For example, the average winter temperature on the North Fork is usually lower than that of the South Fork. This is true even though there are often much lower winter minimum temperatures recorded on the South Fork for certain cold days of the year. The reason for this is that the North Fork is further away from the Atlantic Ocean and hence does not receive as great an effect from the warmed southwest winds which come in from the Atlantic Ocean. In the winter, the prevailing winds come from the southwest and are warmed slightly by the Atlantic Ocean. In the winter, the sound, bay, and ocean have buffering effects due to their accumulation of heat from the summer and fall months. This wind will therefore buffer the temperatures of the South Fork, as it passes over, however, by the time the wind passes over the colder land and Peconic Bay and reaches the North Fork, it has lost some of its warmth and has less of a buffering effect on the temperatures of the North Fork. These breezes, along with those coming off the Long Island Sound, will almost always keep winter minimum temperatures high enough to prevent commercial vine damage.

By the time spring arrives, the ocean has cooled somewhat from the low winter temperatures. Breezes coming

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from the south at this time of year will therefore become cooled by the ocean, and as they pass over the warming land, a fog will often be produced. This fog will often become trapped on the South Fork and can reduce the accumulation of sunlight and warmth for vine growth. Therefore, in the springtime, the North Fork will usually have more sunshine earlier and also have a higher average temperature.

During the summer months the southern breezes coming off the South Fork and bay will keep the average temperatures of the North Fork slightly higher. As the winds pass over the South Fork, they travel over the Peconic Bay, which is a smaller body of water and hence warmer. During the summer, the North Fork of the Island also receives a greater number of thunder storms. These storms usually arrive from the west, and are pushed over towards the North Fork by the prevailing southwest winds.

During the fall, the North Fork of Long Island can also expect slightly warmer temperatures than the South Fork. Otherwise, both forks have the benefit of enjoying a fall season consisting of a lot of sunshine and normal amounts of precipitation. The ocean effect, which alters the climate of both the North and South Fork, is considerably reduced west of Riverhead, where the island widens. The petitioner claims it is this reason along with the increased blending of soil series, which keeps either Fork from being considered part of a large Long Island appellation.

The petitioner believes that although the amount of sunshine and rainfall can have an effect on the length of the growing season, the single most important factor is the number of days between the spring and fall frosts. In data taken from the Riverhead station on the North Fork and from the Bridgehampton station on the South Fork, the petitioner states that there are differences in the frost dates for both forks. During the 11-year period from 1973–1983, the number of days between frosts, or the length of the growing season averages 195 days at Riverhead (North Fork), 201 days at Greenport (North Fork) and 188 days at Bridgehamption (South Fork).

In 7 out of the 11 years recorded, there was anywhere from 1 to over 3 weeks longer growing season on the North Fork as compared to the South Fork.

The use of heat summation of "Growing-Degree Days" is also another standard for determining climatic differences in the grape-growing areas. Heat-summation is a standard developed by the University of California at Davis, and is the measurement of the mean monthly temperatures of a single area, above 50 degrees F. The importance of heat-summation above 50 degrees F (10 degrees C) as a factor in grape quality has been indicated by Koblet and Zwicky (1965) and also by Amerine and Winkler (1944). The University of California at Davis broke down various areas into 5 climatic regions. They are as follows:

Region I—Less than 2,500 degree days
Region II—2,501–3,000 degree days
Region III—3,001–3,500 degree days
Region IV—3,501–4,000 degree days
Region V—4,001 or more degree days

The average number of degree days for 1941 through 1970 at Riverhead (North Fork) and Bridgehampton (South Fork) are as follows:

Riverhead (North Fork)—2,932
Bridgehampton (South Fork)—2,531

From the period of 1941 and through 1970, the average number of heat summation days for the Riverhead Station (North Fork) placed them between the Regions II and III. During this same period, Bridgehampton (South Fork) was placed between the Region I and II. The Growing Degree Days average for the periods of 1973–1979 averages as follows:

Riverhead (North Fork)—2,987
Bridgehampton (South Fork)—2,572

Once again, it may be observed that during the period of 1973 through 1982, the area of the Riverhead Station (North Fork) varied between Regions II and III while Bridgehampton (South Fork) area varied between Regions I and II.

As the previous data has shown there are quite a few differences between the climate of the North Fork and that of the South Fork. From the following data, one will be able to see that the climate on the rest of Long Island is also significantly different from the climate found in the North Fork:

Days of Growing Season 1973–1982 Averages

Riverhead (North Fork)	194
Bridgehampton (South Fork)	184
Brookhaven Lab (10 miles west of North Fork)	152
Patchogue (20 miles southwest of North Fork)	177
Mineola (50 miles west of North Fork)	206
Central Park NYC (60 miles west of North Fork)	222

According to the petitioner, the previous data shows the differences in growing seasons that can occur from eastern to western Long Island. The Long Island Sound, Atlantic Ocean, and bay areas are the main reasons for the North Fork's buffered climate. As the forks merge into the main body of Long Island, the effect of these waters is greatly diminished especially with southwest winds prevailing. This is evident in the data shown for both Brookhaven and Patchogue. Brookhaven, located 10 miles west of the North Fork, can have as much as 50 days (almost 2 months) less growing season than Riverhead. Patchogue (located on the south shore about 20 miles from the North Fork) can also be seen to be as much as 45 days less, with most seasons being around 1–2 weeks less than Riverhead. The data given for Mineola (a large suburban area in Nassua County about 50 miles west) and Central Park-New York City (located 60 miles west), show the increasing effect of the buffering ocean winds as the western end of the island begins to narrow once again. A great deal of this effect as well, is most likely due to the great amount of industrial warmth supplied from what is largely an urban area.

The petitioner stated that the amount of heat summation or "growing degree days" accumulated in areas west of the North Fork also differs considerably. The following data is taken from the Brookhaven National Laboratory for the periods 1973 through 1979:

Growing Degree Days Averages

Riverhead (North Fork)	2,987
Brookhaven Nat. Lab. (10 miles west)	2,403

Over the period of 1973–1979, Brookhaven averaged 584 growing days less than Riverhead. This significant difference in heat summation correlates with the shorter growing season found there, as shown previously.

The main reason the climate differs west of the North Fork is due to the lesser effect of the ocean and bay on buffering temperatures. The following data shows further, the decreasing buffering effect of the winds of the North Fork:

Minimum Temperatures 1973–1982

	Average
Riverhead (North Fork)	+4
Patchogue (20 miles west—South Shore)	−1.7
Westbury (40 miles west—Central L.I.)	−1
Wantagh (45 miles west—South Shore)	+.5

From the previous data the area of Patchogue averaged 5.7 degrees (F) colder than Riverhead; the limited data on Wantagh also shows a 3.5 degree average lower temperature for the area. The North Fork is a much narrower strip of land than the main body of Long Island, and therefore the temperature of this area is buffered to a much greater degree than the wider area west of Riverhead.

Based on the evidence provided in this notice, it is the opinion of the petitioner, that the proposed boundary for the North Fork of Long Island appellation defines an area with unique climatic and soil conditions, different from the rest of Long Island.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the "North Fork of Long Island" viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural areas is amended as follows:

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.
9.113 North Fork of Long Island

Par. 3. Subpart C is amended by adding 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.113 North Fork of Long Island.

(a) *Name.* The name of the viticultural area described in this section is "North Fork of Long Island."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "North Fork of Long Island" viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) Wading River, N.Y. 7.5 minute series, scaled at 1:24,000, edition of 1967.

(2) Riverhead, N.Y. 7.5 minute series, scaled at 1:24,000, edition of 1956.

(3) New York, N.Y.; N.J.; Conn., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979.

(4) Providence, R.I.; Mass.; Conn.; N.Y., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969.

(5) Hartford, Conn.; N.Y.; N.J.; Mass., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1962, revised 1972.

(c) *Boundaries.* The boundaries of the proposed viticultural area are as follows:

The proposed North Fork of Long Island viticultural area is located entirely within eastern Suffolk County, Long Island, New York. The proposed viticultural area boundaries consist of all of the land areas of the North Fork of Long Island, New York, including all of the mainland, shorelines and islands in the Townships of Riverhead, Shelter Island and Southold, New York.

(1) The point of beginning is on the Wading River, N.Y., 7.5 minute series U.S.G.S. map at the northern boundary of the Brookhaven/Riverhead Township lines on the Long Island Sound approximately 500 feet east of the mouth of the Wading River;

(2) The boundary goes south on the Brookhaven/Riverhead Town line for approximately 6.5 miles until it meets the Peconic River approximately 1 mile east of U.S. Reservation Brookhaven National Laboratory;

(3) Then the boundary travels east on the Peconic River (Brookhaven/Riverhead Town line) for 2.7 miles until it meets the Riverhead/Southampton Township line on the Riverhead, N.Y. U.S.G.S. map;

(4) It then goes east on the (Riverhead/Southampton Township line) for 4.2 miles until it reaches an area where the Peconic River widens north of Flanders;

(5) Then the boundary proceeds east to Orient Point then west along the shoreline, beaches, islands and mainland areas of the North Fork of Long Island described on the "New York," "Providence," and "Hartford"

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U.S.G.S. maps until it reaches the Brookhaven/Riverhead Township line at the point of beginning. These boundaries consist of all of the land (and isolated islands including, without limitation, Wicopesset Island, Robins Island, Fishers Island, Great Gull Island, Plum Island, and Shelter Island) in the Townships of Riverhead, Shelter Island, and Southold.

Approved: March 10, 1986.

W.T. Drake,

Acting Director.

[FR Doc. 86-6195 Filed 3-20-86; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Parts 310 and 320

Restrictions on Private Carriage of Letters; Withdrawal of Proposed Rule; Advance Notice of Proposed Rulemaking and Request for Information

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule; advance notice of proposed rulemaking and request for information.

SUMMARY: On October 10, 1985, the Postal Service published in the Federal Register (50 FR 41462) a proposed modification and clarification of the regulations on the Private Express Statutes, with minor and procedural revisions on October 22, 1985 (50 FR 42729) and November 8, 1985 (50 FR 46464). The proposed rule, which is hereby being withdrawn, dealt for the most part with the carriage of international letters by private firms who remail them outside the United States.

The Postal Service received a significant number of comments on the proposed rule. Following review of the comments, the Chairman of the Board of Governors of the Postal Service issued a statement, which is reproduced below. The Chairman noted, among other things, that the remail issue has generated considerable controversy about the proper scope of the Private Express Statutes and implementing regulations. Accordingly, the Chairman announced that a new rulemaking proceeding will be initiated as soon as a factual record is fully developed. The Postal Service has sent a letter to each commenter, a sample of which is reproduced below, requesting information for that record. The principal purpose of this notice is to request the same information from other members of the public.

DATE: Withdrawal of the proposed rule is effective March 20, 1986. Comments and information needed to develop a full and factual record must be received on or before April 30, 1986.

ADDRESS: Written comments and information should be addressed to the General Counsel, Law Department, United States Postal Service, Washington, DC 20260-1113. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 5128, 955 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 268-2970.

SUPPLEMENTARY INFORMATION: As noted above, the Postal Service is undertaking to develop a factual record in preparation for a new rulemaking proceeding and has sent a letter to each commenter soliciting information for that record. The Postal Service requests the same information from other members of the public. Accordingly, a sample of the letter is reproduced here, along with the Statement of the Chairman of the Board.

List of Subjects in 39 CFR Parts 310 and 320

Postal Service, Computer technology, Advertising.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

March 14, 1986.

Dear ———: For the reasons more fully discussed in the enclosed statement by John McKean, Chairman of the Board of Governors, the Postal Service is undertaking to gather information and develop a factual record in preparation for the initiation of a new rulemaking proceeding relating to the practice of international remailing. We are writing to you, as a person who submitted comments in response to our earlier notice of proposed rulemaking on this subject, to solicit information for that record.

The particular focus of our inquiry is the appropriate scope of a new suspension of the Private Express Statutes which may be necessary to serve the interests of our customers. We solicit information from you as to the kind or kinds of private services which in your experience have met, or in your estimation would meet, your needs or the needs of the public, with respect to letters being sent to addressees in foreign countries, more satisfactorily than those provided by the postal Service. Of greatest value to us in this respect would be information that addresses such points as the following:

- The nature of the correspondence;
- The degree of urgency and the type of harm that would be caused by delay;
- Any differential in promptness of service between letters that are "remailed" and those sent through the Postal Service;
- Whether the correspondence is eligible for private carriage under the current loss-of-value test of the suspension for extremely urgent letters (see 39 CFR 320.6 (b), copy attached);
- The extent to which the correspondence is intra-company;
- The extent to which letters privately carried to foreign countries are "remailed" or are delivered to the adresses by private means;
- Any estimate of the volume of letters "remailed" over the past year;
- Any differential in cost between letters privately carried and letters sent through the Postal Service;
- The extent to which considerations of cost rather than speed of delivery determine the choice of carrier for letters sent overseas; and
- The extent to which a suspension for remailing would preserve the benefits of desirable competition between the Postal Service and private companies.

This is by no means an exhaustive list of points that may be material to the development of the full factual record that we need as a basis for proposing a new suspension of the Statutes. We welcome any additional information and urge that it be as factual and specific as possible. We also solicit your views as to the scope of a suspension which will best serve the relevant interests, and we invite you to suggest specific language for an implementing regulation.

We anticipate proceeding in accordance with the following schedule:

April 30, 1986—Responses due to solicitation of information for factual record.

May 22-23, 1986—Meeting with interested persons to discuss responses and parameters of proposed suspension.

June 16, 1986—Publish notice of proposed rulemaking in Federal Register.

July 16, 1986—Comments due on proposed rule.

August 29, 1986—Publish notice of final rule.

We ask that you send your response so as to reach me not later than Wednesday, April 30, 1986.

We are withdrawing the earlier proposal in order to avoid uncertainty over its status while this new proceeding is pending. To the extent that the earlier proposal dealt with the suspension for extremely urgent letters on matters other than international remailing, we anticipate initiating a further proposal in the near future.

If you have questions, my telephone number is (202) 268-2970.

Sincerely,

Charles D. Hawley,

Assistant General Counsel, General Administrative Law Division, Law Department.

Enclosures.

39 CFR 320.6(b)

(b)(1) For letters dispatched within 50 miles of the intended destination, delivery of those dispatched by noon must be completed within 6 hours or by the close of the addresse's normal business hours that day, whichever is later, and delivery of those dispatched after noon and before midnight must be completed by 10 A.M. of the addresse's next business day. For other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day. The suspension is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits. For any part of the shipment of letters to qualify under this paragraph (b), each of the letters must be extremely urgent.

(2) Letters sent from the 48 contiguous states of the United States to other jurisdictions of the United States or to other nations are deemed "delivered" when they are in the custody of the international or overseas carrier at its last scheduled point of departure from the 48 contiguous states. Letters sent from other jurisdictions of the United States or from other nations into the 48 contiguous states are deemed "dispatched" when they are in the custody of the domestic carrier, having been passed by United States Customs, if applicable, at the letters' point of arrival in the 48 contiguous states.

(3) Except as provided in this paragraph (b)(3), the times and time limits specified in paragraph (b)(1) of this section are not applicable to any locations outside the 48 contiguous states. The times and time limits specified in paragraph (b)(1) are applicable to letters dispatched and delivered wholly within Alaska, Hawaii, Puerto Rico or a territory or possession of the United States. The regulations provided in paragraph (b)(2) relating to the delivery and dispatch of letters are applicable by analogy to letters shipped between these jurisdictions and other nations.

Statement of John R. McKean, Chairman, United States Postal Service Board of Governors, on Remail Issue

March 4, 1986

As some of you may be aware, the Postal Service recently initiated a rulemaking concerning its regulations under the Private Express Statutes. That rulemaking involved the rules bearing on the carriage of international mail by private firms who remail it outside the United States.

In response to this proposed rulemaking, the Postal Service has received a significant number of comments. The Board of Governors has been kept informed of the nature of these comments.

The remail issue has generated considerable controversy about the proper scope of the monopoly under which we operate. It is worth emphasizing that Congress entrusted us with this monopoly not for our own benefit but in order to let us better serve the American people. The critical question raised by this rulemaking is whether enforcement of the monopoly in this context would advance or retard consumer welfare and the interests of this nation.

It is the sense of the Board that private sector competition with the Postal Service in the provision of international remailing services can—and already does—produce significant benefits for the public. Ultimately, even the Postal Service itself can benefit from this kind of competition.

Many businesses appear to view the private sector alternative as preferable to the service we are providing—preferable in terms of price and service. That tells us something important about the way we are now doing our job in this area. The monopoly was not intended to protect us from having to face up to our own shortcomings. I am glad to say that the competition from private remailers has already spurred us on to improve our own efforts and be more competitive in providing international mail services.

As things now stand, therefore, remail services would appear to advance consumer welfare while at the same time fostering innovation and economic efficiency.

The Board of Governors does not believe that any attempt to suppress this kind of competition would advance the long-term objectives of the Postal Reorganization Act or otherwise enhance the welfare of our customers and the American people. Yet we have to deal with the laws and regulations now on the books. As now drafted, they do not appear to leave room for the lawful operation of international remail services. At the very least there is a serious question on this point.

The Board of Governors believes that the appropriate course of action under these circumstances is to change our regulations to make them conform to sound public policy. Accordingly, we are announcing today that the Postal Service will soon be initiating another rulemaking proceeding, this time to remove the cloud that now hangs over the international remail services and preserve the benefits of desirable competition between the Postal Service and private companies.

The Private Express Statutes permit us to suspend their application when the public interest so requires. Such a suspension must be predicated on a fully developed factual record. The Postal Service intends to take the steps necessary to gather information in this regard and proceed with a new rulemaking as quickly as possible.

[FR Doc. 86-6107 Filed 3-20-86; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 86-78; RM-5220; FCC 86-103]

Radio Service, Special; Secondary Fixed Tone Signalling and Alarm Operations by End Users of Trunked SMRS Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to allow trunked SMRS end users to conduct fixed tone signalling and alarm operations on their mobile service frequencies. Allowing such fixed use would increase spectrum utilization without interfering with mobile communications.

DATES: Comments must be filed on or before May 5, 1986, and reply comments on or before May 20, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

In the matter of Amendment of Part 90 of the Commission's rules to permit secondary fixed tone signalling and alarm operations by end users of trunked SMRS systems; [PR Docket No. 86-78].

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This is a summary of the Commission's notice of proposed rule making, PR Docket No. 86–78, Adopted March 6, 1986, and released March 13, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. On November 5, 1985, the American SMR Network Association, Inc. (ASNA) petitioned the Commission to amend Part 90 of the rules and regulations to allow trunked Specialized Mobile Radio Service (SMRS) end users to conduct fixed operations on mobile service frequencies. The rule changes sought by ASNA would simply extend to end users of trunked 800 MHz SMRS systems the same option available to licensees in certain Public Safety and Industrial Radio Services of using mobile service frequencies for fixed signalling operations. Under the ASNA proposal such fixed use would be secondary to base/mobile communications and subject to the technical limitations put forth in § 90.235.

2. In response to the ASNA petition the Commission proposed to allow trunked SMRS end users to conduct fixed tone signalling and alarm operations on their authorized mobile service frequencies. It was the Commission's belief that allowing such operations would facilitate more effective use of these channels without significantly increasing the potential for interference. Under the Commission proposal any such fixed use must meet the technical requirements specified under § 90.235. Further any fixed transmitters would not count toward meeting the Commission's loading requirements specified in §§ 90.366 and 90.631.

3. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Accordingly, notice is hereby given of rule making to amend Part 90 of the Commission's rules and regulations, in accordance with the proposal set forth in the attached Appendix. The proposed amendment to the rules is issued pursuant to authority contained in sections 4(i) 303(b), 303(f), 303(g), and 303(i) of the Communications Act, as amended.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.1415 and 1.419, interested parties may file comments on or before May 5, 1986, and reply comments on or before May 20, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of the Commission's Rules is proposed to be amended as follows:

PART 90—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 90.235 is amended by revising the introductory paragraph, adding a new paragraph (c) and changing old paragraph (c) to (d).

§ 90.235 Secondary fixed tone signalling and alarm operations.

In the Local Government, Police, Fire, Highway Maintenance, Forestry Conservation, Power, and Petroleum Radio Services, fixed operations may be authorized for tone or impulse signalling on mobile service frequencies above 25 MHz within the area normally covered by the licensee's mobile system. Such operations will be on a secondary basis to the primary mobile service operation of any other licensee. Such fixed operations are also permitted on trunked SMR systems operating on frequencies available under Subpart M or frequencies in the SMRS Pools listed in Subpart S of this Part.

(a) * * *

(b) * * *

(c) Secondary fixed signalling on frequencies authorized under Subpart M or on SMRS Pool frequencies authorized under Subpart S may be used for any of the purposes specified in subparagraphs (a) and (b) of this section.

(d) All such secondary signalling shall be subject to the following requirements:

* * * * *

[FR Doc. 86–6185 Filed 3–20–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Deprtment of Defense Federal Acquisition Regulation Supplement Cost and Price Management

Correction

In FR Doc. 86–4471 beginning on page 7296 in the issue of Monday, March 3, 1986, make the following correction: In the sixth line of the "DATE" paragraph, "DAR Case 85–215" should read "DAR Case 85–219".

BILLING CODE 1086-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1986–87 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1986–87. The Service annually prescribes migratory bird hunting regulations. These regulations provide hunting opportunities, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds. The Service also proposes to amend § 20.1 of 50 CFR Part 20 by adding a paragraph that serves to clarify the conditions under which a memorandum of understanding between the Service and Indian tribes on the management of migratory birds within a reservation or Indian Territory may be employed and permits such agreements to be formalized.

DATES: The comment period for proposed regulations frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 19, 1986; for other early-season proposals (seasons opening before October 1) on July 14, 1986; and for late-season proposals (seasons opening on or about October 1 or later) on August 25, 1986. The comment period on the proposal to amend § 20.1 will end May 1, 1986. Public Hearings: Early-Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 19, 1986, at 9 a.m.; Late-Season Regulations—August 1, 1986, at 9 a.m.

ADDRESSES: Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1986–87 under §§ 20.101 through 20.107 of subpart K of 50 CFR 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. During the 1986–87 hunting season, regulations are proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and moorhens and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under Proposed 1986–87 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

Notice of Intention To Establish Open Seasons

The notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1986–87 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed shooting hours and season frameworks, including daily bag and possession limits, are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United States opening prior to October 1 (early seasons); and (3) seasons opening in the remainder of the United States about October 1 and later (late seasons). Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late-July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemakings—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

2. Final rulemakings—frameworks. Final migratory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

3. Final rulemakings—season selections. Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1986–87 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram.

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1986 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS

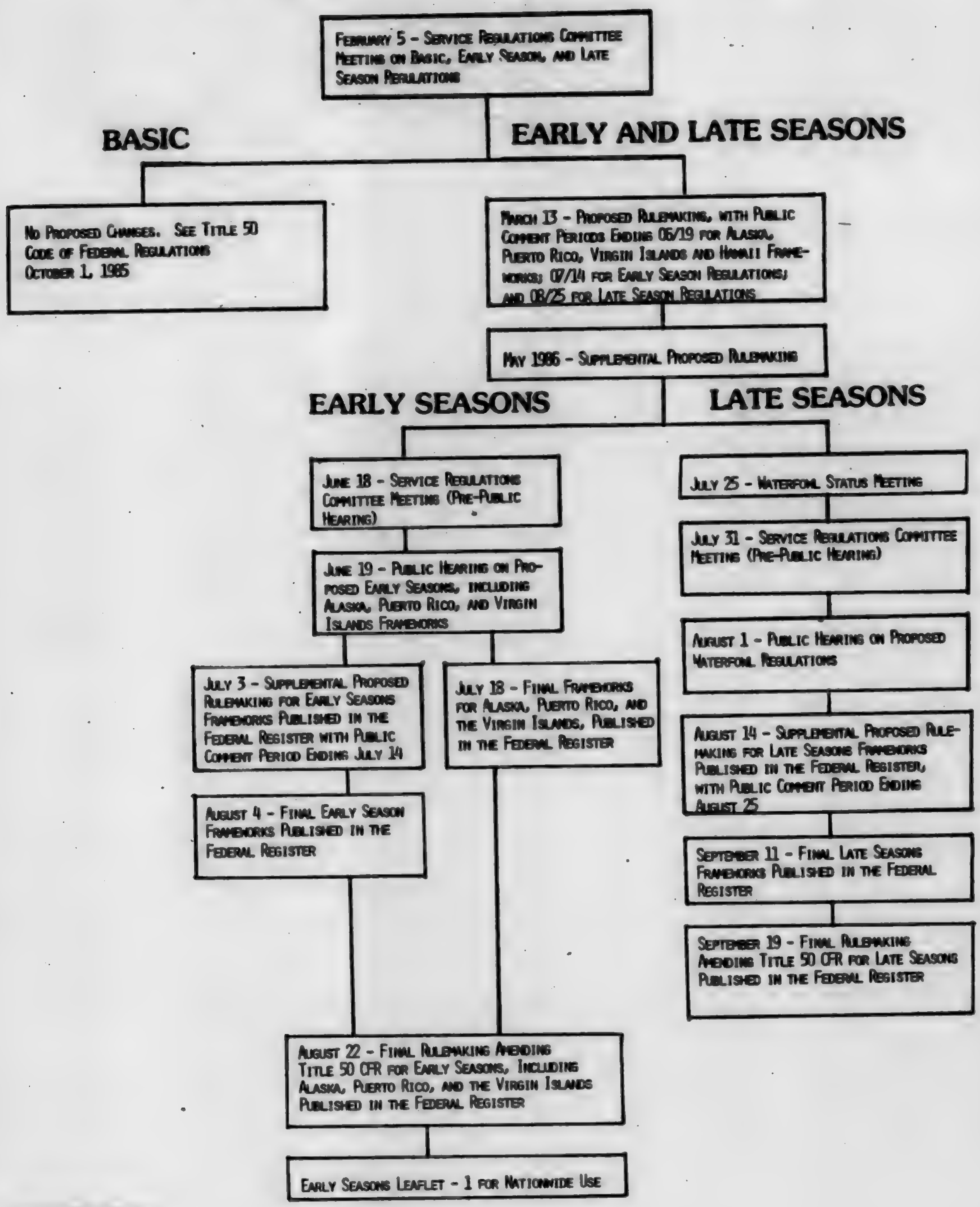
February 5 - Service Regulations Committee Meeting on Basic, Early Season, and Late Season Regulations
BASIC
EARLY AND LATE SEASONS
No Proposed Changes. See Title 50 Code of Federal Regulations October 1, 1985
March 13 - Proposed Rulemaking, with Public Comment Periods Ending 06/19 for Alaska, Puerto Rico, Virgin Islands and Hawaii Frameworks; 07/14 for Early Season Regulations; and 08/25 for Late Season Regulations
May 1986 - Supplemental Proposed Rulemaking
EARLY SEASONS
LATE SEASONS
June 18 - Service Regulations Committee Meeting (Pre-Public Hearing)
June 19 - Public Hearing on Proposed Early Seasons, including Alaska, Puerto Rico, and Virgin Islands Frameworks
July 3 - Supplemental Proposed Rulemaking for Early Seasons Frameworks Published in the Federal Register with Public Comment Period Ending July 14
July 18 - Final Frameworks for Alaska, Puerto Rico, and the Virgin Islands, Published in the Federal Register
August 4 - Final Early Season Frameworks Published in the Federal Register
August 22 - Final Rulemaking Amending Title 50 CFR for Early Seasons, Including Alaska, Puerto Rico, and the Virgin Islands Published in the Federal Register
Early Seasons Leaflet - 1 for Nationwide Use
July 25 - Waterfowl Status Meeting
July 31 - Service Regulations Committee Meeting (Pre-Public Hearing)
August 1 - Public Hearing on Proposed Waterfowl Regulations
August 14 - Supplemental Proposed Rulemaking for Late Seasons Frameworks Published in the Federal Register, with Public Comment Period Ending August 25
September 11 - Final Late Seasons Frameworks Published in the Federal Register
September 19 - Final Rulemaking Amending Title 50 CFR for Late Seasons Published in the Federal Register

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All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.
2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.
3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.
4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.
5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.
6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions.

The establishment of hunting regulations for migratory game birds in the United States during the 1986–87 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data result from operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de la Flora y Fauna Silvestres of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska. The Service also solicits information on these and other species from knowledgeable individuals. Last year the Service continued the study to determine if its Waterfowl Harvest Survey can be adjusted to measure harvest trends in migratory shore and upland game birds. Results should be made available in March 1986.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. These are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly

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oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Stabilized Regulations for Duck Hunting

In 1979, a five-year program of stabilized waterfowl hunting regulations was initiated in Canada through the cooperation of the Canadian Wildlife Service and the 3 Prairie Provinces. In 1980 the U.S. Fish and Wildlife Service, with support from the Flyway Councils and other organizations, joined Canada in this program by stabilizing season lengths and bag limits for a 5-year period beginning with the 1980–81 season at the 1979–80 hunting season level. During this five-year program, Canada and the United States have cooperated in investigating the relationship between duck populations and ducks harvests continentally in the absence of annual changes in season lengths and bag limits. The July 1, 1980 **Federal Register** (at 45 FR 44546) advised that the Service planned to take this action in connection with an evaluation program to be conducted in cooperation with the Canadian Wildlife Service. The immediate goal of the study is to develop a strategy to manage duck harvests. The long-term goal is to identify management steps to maintain North American duck populations.

Cooperative U.S.-Canadian investigations of the stabilized regulations program have focused on the mallard. Although, the 1984–85 hunting season marked the final harvest period in the program, field activities, including banding, radio-telemetry, and nesting studies continued through 1985. Because of the time required for analysis and interpretation of data collected, a final, comprehensive report on the evaluation of stabilized regulations will not be available until late 1986.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented interim guidelines for establishing special migratory bird hunting regulations on Federal Indian reservations, Indian Territory, and ceded lands, and amended Section 20.110 of 50 CDE Part 20 by prescribing final hunting regulations for certain tribes in the 1985–86 hunting season. The guidelines provide appropriate flexibility for tribes members to exercise their reserved hunting rights while ensuring that the migratory bird resource receives necessary protection. On December 5, 1985, (at 50 FR 49670), the Service gave notice of its intent to continue to employ the interim guidelines and establish special migratory bird hunting regulations for interested Indian tribes in the 1986–87 hunting season. The Service recognizes that some changes in the guidelines may be necessary and has kept the comment period on them open indefinitely. Use of the guidelines is not necessary if a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located.

One of the guidelines applies solely to hunting by tribal memberss with reserved hunting rights on their reservations (including Indian Territory). It provides for hunting regulations outside of usual Federal frameworks but consistent with the closed season requirement mandated by the 1916 Migratory Bird Treaty with Canada. In an August 21, 1985, environmental assessment and in development of the guidelines, the Service concluded that the migratory bird harvest by tribal hunters was not large and indicated the intention of employing a memorandum of understanding to reach mutual agreement on hunting regulations with interested tribes that wish for the Service to recognize their traditional hunting practices. The Service proposes to amend § 20.1 (Scope of regulations) of 50 CFR Part 20 by adding a paragraph to clarify the conditions under which a memorandum of understanding may be employed and to permit such agreements to be made. The paragraph is as follows:

(c) *Hunting by tribal members on Federal Indian Reservations.*

The regulations contained in this Part do not apply to the taking, possession, or transportation of migratory game birds by members of Federally-recognized Indian tribes if: (1) Such taking, possession, or transportation occurs within the boundaries of the tribe's reservation (including Indian Territory); (2) the tribal government has entered into a memorandum of understanding with the U.S. Fish and Wildlife Service on the management of migratory birds within the reservation or Indian Territory; and (3) the tribal members possess legitimate hunting rights created or reserved by treaty, statute, Executive order, agreement, or other law.

The Service welcomes comments on this proposal. All such comments should be submitted to the Service by May 1, 1986, at the address shown under the addresses section of this document.

Subsistence Hunting in Alaska

On January 24, 1986, the U.S. District Court in Alaska ruled that the Migratory Bird Treaty Act did not apply to Native subsistence hunting for migratory birds in Alaska. *Alaska Fish and Wildlife Federation and Outdoor Council* v. *Jantzen*, No. J84–013 CIV. The Court ruled that subsistence hunting in Alaska is governed by the 1925 Alaska Game Law of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04 (1940). Under the Court's order, Alaska Natives may harvest migratory waterfowl during any season of the year when they are in need of food and other sufficient food is not available until such time as the Department adopts regulations pursuant to section 3(h)(2) of the Fish and Wildlife Improvement Act, 16 U.S.C. § 712(1).

The Service is assessing this decision in order to determine what action is needed for the 1986 and 1987 spring and summer subsistence hunting seasons in Alaska. The Service will announce any actions to be taken in a future **Federal Register** notice(s).

Hearings

Two public hearings pertaining to 1986–87 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Department Manual. One June 19 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and special falconry seasons. On August 1 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 19 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules, woodcock, common snipe, coots, cranes, and waterfowl; coots, cranes, common snipe and waterfowl in Alaska; migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments as follows:

For comments on Proposed 1986–87 Migratory Game Bird Hunting Regulations (Preliminary) write to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240.

Comments received on the proposed annual regulations will be available for public Inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service will consider but may not respond in detail to each comment. Specific comment periods will be established for each of the three series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the part, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory game bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department officials will be in attendance. In this regard, Departmental representatives will be present at the following spring meetings of the various flyway councils:

DATES: March 22, 1986

—Pacific Flyway Council, 2:00 p.m.

March 23, 1986

—Atlantic Flyway Council, 10:00 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3:00 p.m.

ADDRESS: Council meetings will be held at the MGM Grand Hotel, Reno, Nevada as follows:

Atlantic Flyway Council, Metro Room B, Mezzanine Level
Mississippi Flyway Council, Capitol Room I, Lobby Level
Central Flyway Council, Capitol Room 4, Lobby Level
Pacific Flyway Council, Palace Room, Mezzanine Level
National Waterfowl Council, Capitol Room 4, Lobby Level

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action signficantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement (FES). These have addressed regulations for various species of migratory game birds and hunting strategies. Endangered

Species Act Consideration

Prior to issuance of the 1986–87 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species of 1973, as amended. (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habital and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

In particular, the Service notes that it has published in the **Federal Register** on January 6, 1986 at 51 FR 409, a proposal to implements additional steel-shot-only zone for the protection of the bald eagle and of migratory waterfowl. In that Notice, the Service pointed out that should such a zone be judged necessary to conservation of the bald eagle, and implementation prevented by a failure of the relevant State wildlife agency to consent, the Service will not open the zone to waterfowl hunting. The Service here reiterates this position, which will be reflected, as necessary, in the final rule.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act.

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**: March 25, 1981, at 46 FR 18669; August

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17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterflowl hunting, was completed by the Service March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980. The Service estimated the expenditures for waterfowl hunting in 1980 to be $317 million (adjusted to 1981 dollars).

A Determination of Effects approved by the Assisted Secreatry, Fish and Wildlife and Parks, on February 21, 1986 concluded that the hunting frameworks being proposed for 1986–87 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in development of the 1986–87 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information from the 1984–85 season. The summary of the 1986 update of the 1981 FRIA follows:

> New information which the can be compared to that appearing in the 1985 update of the 1981 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1984 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1984–85 hunting season. The data indicate that fall flights of ducks remained the same as those of 1983–84 in all flyways. Hunter numbers declined and hunter days and seasonal trips per hunter increased while there was no change in the total fall fight. This again demonstrate that non-regulatory factors, e.g., weather, local availability of ducks, habitat conditions, and local economy, also affect hunter participation and the resulting benefits of duck hunting to the economy.

Copies of the supplemental FRIA are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, 18th and C Street, NW., Washington, DC 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a signficant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

PART 20—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 20 is proposed to be amended as follows:

I. The authority for 50 CFR Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712), unless otherwise noted.

II. In § 20.1, paragraph (c) is added to read as follows:

§ 20.1 Scope of regulations.

* * * * *

(c) *Hunting by tribal members on Federal Indian Reservations.*

The regulations contained in this Part do not apply to the taking, possession, or transportation of migratory game birds by members of Federally-recognized Indian tribes if: (1) such taking, possession, or transportation occurs within the boundaries of the tribe's reservation (including Indian Territory); (2) the tribal government has entered into a memorandum of understanding with the U.S. Fish and Wildlife Service on the management of migratory birds within the reservation or Indian Territory; and (3) the tribal members possess legitimate hunting rights created or reserved by treaty, statute, Executive Order, agreement, or other law.

III. Proposed 1986–87 Migratory Game Bird Hunting Regulations (Preliminary).

The following general framework and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails, coots, common snipe, and woodcock during the 1986–87 season are proposed. Changes or possible changes, when noted, are in relation to 1985–86 final frameworks or regulations. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. Where applicable, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. These and the Service's responses or comments follow the frameworks being proposed. Service views on the items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

In connection with some of the general framework and guidelines of this proposed rulemaking, the Service believes it is time to weigh the cumulative effect of zoning and other special duck management strategies (experimental seasons) on the resource. Information produced by the Service's harvest survey, while meaningful at flyway and regional levels, may not be fully satisfactory for evaluation of some experimental seasons. Until some better informed judgments can be made, the Service believes that present duck hunting zones should not be modified, new duck hunting zones or experimental duck seasons should not be initiated, and decisions concerning operational status for existing experimental duck seasons should be deferred. The Service has requested assistance in this assessment from the four flyway councils.

The proposed changes from the 1985–86 final frameworks are described below:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* (Possible change.) In 1985, survey information indicated declines in the breeding indices for nine out of 10 important game ducks, including the lowest breeding indices for mallards and pintails in the 31 years of survey records. The forecasted duck fall flight was the smallest on record, and there were other long- and short-term indicators that duck populations were reduced. As a result, the Service initiated various duck season framework restrictions in 1985. Pending the availability of current duck population, habitat and harvest

information, and the receipt of recommendations from the four flyway councils, specific duck framework proposals for opening and closing dates, season lengths and bag limits are deferred. Exceptions to the regular duck season frameworks are given in various numbered items that follow.

3. *American black ducks.* (Possible change.) In 1983 a program to further restrict harvest of American black ducks was developed and initiated in cooperation with flyway councils, State wildlife agencies, and private organizations. The program's harvest restrictions were to remain in place for a period of 3–5 years to facilitate the evaluation of the effects of hunting on the status of the species. However, if the protection provided to the species by the harvest restrictions is considered inadequate, there is provision for modification of the restrictions prior to completion of the program. Alternatives were discussed in an Environmental Assessment, *Proposed Hunting Regulations on Black Ducks, 1983,* (available upon request to the Service).

The duck season framework restrictions initiated in 1985 resulted in some Atlantic Flyway States altering their black duck harvest control strategies that had been in place since 1983. Prior to establishment of the 1986–87 hunting regulations, the Service intends to assess the effect of the black duck harvest management program in the Atlantic and Mississippi Flyways, as well as each member State's harvest reduction strategy, in relation to achieving the goal of a 25% reduction in black duck harvest from the 1977–81 harvest level (5-year average). Those strategies that have not reached the goal will be reviewed and further restrictions imposed.

4. *Wood ducks.* (No change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early-October hunting season during which no special bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

> The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:
>
> A. In 1986 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 8 and October 16.
>
> B. During this period under conventional regulations, no special restrictions within the regular daily bag and posession limits established for the Flyway in 1986 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.
>
> C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.
>
> D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 16.
>
> E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.
>
> F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

The Service proposes to retain this option for the 1986 season.

5. *See ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1986, and January 20, 1987, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia. Such areas shall be described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than July 31, 1986. Those States desiring their sea duck season to open after September may make their selection at the time they select their waterfowl seasons.

6. *September teal season.* (No change.) An open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not exceed 9 consecutive days between September 1 and September 30, 1986, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by July 31, 1986.

7. *Extra teal option.* (No change.)

A. States in the Atlantic Flyway (except Florida), not selecting the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season.

These extra limits are in addition to the regular duck bag and possession limits.

8. *Experimental September Duck Seasons.* Kentucky, Tennessee, and Florida conducted experimental duck seasons during the 1981–83 waterfowl seasons. Regulatory provisions in effect during the 3-year studies were continued through 1984 while each State prepared the final report of its study. In 1985 the Service agreed with the recommendation of the Mississippi

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Flyway Council's Lower Region Regulations Committee that additional information was needed regarding the effects of the September duck seasons on the survival rates of wood ducks in Kentucky and Tennessee, and continued these seasons as experimental. In lieu of an Atlantic Flyway Council recommendation, the Service also continued the 1985–86 September duck season in Florida as experimental.

1984 was the final year of a 6-year experimental duck season in Iowa. In response to a recommendation from the Mississippi Flyway Council's Upper Region Regulations Committee, the Service continued the experimental season in Iowa through 1985–86. The State's final report is due by the 1986 winter meeting of the Mississippi Flyway Council Technical Section.

The Service proposes to continue the September duck seasons in Florida, Kentucky, Tennessee and Iowa as experimental in 1986–87 unless final or progress reports provide evidence of a detrimental effect on any segment of the duck resource.

Additional information. At the July 31, 1985, Service Regulations Committee Meeting, the Atlantic Flyway Council recommended that the experimental September duck season in Florida be granted operational status.

Response. The Service notes again its belief that until some better informed judgments can be made regarding the cumulative effect of special duck management strategies on the resource, decisions regarding operational status for existing experimental duck seasons should be deferred.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The season must occur between October 1, 1986, and January 31, 1987, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1986, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions C and D listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* In 1983 the Service initiated a program whereby the focus of canvasback harvest regulations was changed from one of area closures to one of restrictive bag limits, and an experimental canvasback season was implemented in portions of the closed area in the Atlantic Flyway. This program and alternatives were presented in an Environmental Assessment, *Proposed Hunting Regulations on Canvasback Ducks, 1983* (copies available upon request to the Service). A condition of the harvest program is that all possible actions including a closure on canvasback hunting will be considered should the indicated breeding population of canvasbacks decline below 500,000 birds, consisting of an eastern population of at least 360,000 and a western population of 140,000 canvasbacks. These figures are to be derived from 3-year averages of aerial breeding pair surveys. The intent is to manage the harvest of canvasbacks separately by eastern and western populations. The current continential breeding population index for canvasbacks is near the 500,000 bird level, that for the eastern is 343,000 and the western is 160,000 (1983–85 average). The 1986 breeding population survey data and harvest information from the 1985–86 season will be available in July. At that time the Service, in coordination with the flyway councils, will review the data and consider specific changes in the hunting frameworks for the canvasback.

13. *Duck Zones.* The Service reiterates its earlier statement that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made. The Service intends to continue these constraints until zoning proposals are again considered.

States in all Flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing that option for ducks.

In the June 13, 1984 **Federal Register** (at 49 FR 24421) the Service proposed the following for Louisiana: apply Central Flyway duck season length in its West Zone, Mississippi Flyway duck season length in its East Zone, and Mississippi Flyway bag limits in both zones. The season as proposed was not initiated but the 5 additional days in the west zone was continued during 1985–86. The Service will review this issue in subsequent **Federal Register** documents.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* The Canadian Wildlife Service, the four waterfowl flyway councils, State conservation agencies, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1986 will provide additional information.

Atlantic Flyway. (No change). Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1985–86 are anticipated at this time.

Additional information. In a letter dated November 15, 1985, the State of Georgia requested a limited season during 1986–87 on Canada geese previously transplanted in the State.

Response. The Service defers action on the request until such time that the Atlantic Flyway Council reviews it and submits a recommendation.

Mississippi Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1985–86 are anticipated at this time.

Harvests of the Eastern Prairie and Mississippi Valley (MVP) Populations of Canada geese in this flyway are controlled in part by quota allocations and harvest objectives. Specific quotas will be established after population management objectives, recent population information, production information, and expected fall flights have been taken into consideration. In quota areas it is intended that the entire quota can be safely taken without detriment to population, and that such harvests are appropriate considering population objectives. Goose seasons in quota areas end when the quota has been achieved and the season terminated by State action, emergency order under § 20.26 of CFR 50, or when the permissible number of hunting days has expired. Specific procedural information for seasons closures of quota areas will be included in the final regulations.

Additional information. The General Accounting Office (GAO) by letter dated February 5, 1986, Transmitted to the Department of interior a copy of their report entites *Mississippi Valley Population of Canada Geese: Flyway Management Obstacles.* GAO also supplied a copy to each Mississippi Flyway State. The Department must respond to this report.

The Service anticipates full discussion by the Mississippi Flyway Council regarding MVP management issues. In earlier correspondence to the Mississippi Flyway Council Chairman, the Service identified what it believes to be three principal issues needing close attention for MVP management.

a. Review of the overall MVP program in light of experience to date with harvest controls and progress toward the population objective.

b. Review all States harvest objectives for MVP geese. Provision should be made regarding future MVP harvests in States not now harvesting MVP geese. Further, the harvest of MVP geese in States outside of what is considered the principal MVP range needs to be considered.

c. Criteria should be developed for the establishment of control/quota zones and the necessary monitoring systems.

The cooperation of all states involved in MVP management will be essential in achieving the goal of the Flyway Council's management program. A Departmental response to the GAO report will be developed prior to the due date of April 5, 1986.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1985–86 are anticipated at this time.

Pacific Flyway. (No change.) As a result of available information indicating that substantial declines in populations of dusky Canada geese, Pacific Flyway Greater white-fronted geese, cackling Canada geese and Pacific brant had occurred in recent years, the Service initiated various harvest restrictions on these species in 1984. Additional measures were required for some of the populations in 1985. No significant changes from the restrictive regulations in effect in 1985–86 are anticipated at this time but the Service understands there may be some additional concerns about these species this year. Specific season frameworks, season lengths, an daily bag limits for geese are deferred pending additional information and recommendations.

15. *Tundra Swan.* (No change.) The Fllowing frameworks for tundra swans are proposed. In Utah, Nevada, Montana (Central and Pacific Flyways), North Dakota, and South Dakota an open season for taking a limited number of tundra swans may be selected subject to the following condition:

A. Execept in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway poriton of Montana, the season mut run concurrent with the goose season;

B. In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan;

C. In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties;

D. In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties;

E. In Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

F. In North Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

G.

G. In South Dakota, no more than 1,000 permits may be issued authorizing each permittee to take 1 tundra swan;

H. States must employ a method to assure that hunters validate their harvest.

In North Carolina an experimental seson for taking a limited number of tundra swans may be selected subject to the following conditions:

A. The season may be 90 days and must run concurrently with the snow goose season.

B. The state agency must issue permits and obtain harvest and hunter participation data.

C. No more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

16. *Sandhill cranes.* (No change.) Pending evaluation of harvest data from the 1985–86 season, seasons for hunting sandhill cranes may be selected within specified areas in Arizona, Colorado, Kansas, New Mexico, Texas, Oklahoma, North Dakota, South Dakota, Montana, and Wyoming with no substantial change in dates from the 1985–86 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes, except in special season areas in Arizona and Wyoming where the limit is 2 cranes per season for 200 and 250 permit holders, respectively. The provision for a Federal sandhill crane hunting permit is continued in all the above areas except special season areas in Arizona and Wyoming.

Additional information. By letter dated January 13, 1986, Wyoming advised the Service it intended to submit to the Pacific and Central Flyway Councils a proposal for an operational sandhill crane—Canada goose hunting season for the Eden-Farson agricultural areas of Sweetwater and Sublette Counties in southwestern Wyoming. The Service awaits the Councils' reviews and recommendations on the proposal.

17. *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens (formerly Common Gallinules) and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1986, and January 20, 1987, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1986 and January 18, 1987, or not more than 70 days. Any state may split its moorhen/gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In

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this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1986, and January 20, 1987, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and King Rails.

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly, or in the aggregate of the two species:

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia Rails.

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1986, and February 28, 1987, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1986, and February 28, 1987, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock.*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1985 and February 28, 1986. States may split their woodcock season without penalty.

B. Atlantic Flyway. (No change.)

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1982, the Service implemented an October 1 framework opening date for woodcock hunting in the Atlantic Flyway in order to provide additional protection to woodcock populations. The October 1 opening was continued in 1983 and 1984. In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current population status. No changes in seasons and bag limits from those in effect in 1985–86 are anticipated at this time pending an evaluation of the changes implemented. For the 1986–87 hunting season in the Atlantic Flyway the Service proposes the following:

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1986 and January 31, 1987. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States California, Oregon, and Washington and the *Nevada* counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1986, and January 15, 1987. The daily bag and possession limits may not exceed 5 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

In *Nevada* each hunter must have in possession a valid band-tailed pigeon hunting permit issued by the State.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1986. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1986, in the North Zone, and October 1 and November 30, 1986, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) States were offered an option of a season length of 70 half or full days with a daily bag and possession limit of 12 and 24, respectively, or a season length of 60 half or full days with a daily bag limit and posseeion limit of 15 and 30, respectively. States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods.

The Service proposes to offer these option, again during the 1986–87 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Between September 1, 1986, and January 15, 1987, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit: All States east of the Mississippi River and Louisiana.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full or half days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 full or half days and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three time periods.

C. As an option to the above, Alabama, Georgia, Illinois, Louisiana, and Mississippi may elect to zone their State as follows:

a. Two zones per State as described in 48 FR 35103.

b. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may run consecutively or be split into not more than three periods.

c. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1986.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 days, and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three periods.

C. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 under the alternative), singly or in the aggregate of the two species.

D. In addition to the basic framework and the alternative, Texas may divide the State into three zones for purposes of dove hunting in accordance with zoning proposals prviously approved by the Service and he Central Flyway Council. The various zones are described in 50 FR 33740.

a. The hunting seasons may be split into not more than two periods except as noted below.

b. The North and Central Zones may have seasons of not more than 70 (or 60 under the alternative) days between September 1, 1986, and January 25, 1987.

C. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1986, and January 25, 1987. In the special white-winged dove portion of the South Zone, a limited mourning dove season may be held concurrently with the 2-day white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining 68 (or 58 under the alternative) days must be within the September 20, 1986, through January 25, 1987 period.

d. The daily bag limit may not exceed 12 (or 15 under the alternative) mourning, white-winged, and white-tipped doves in the aggregate, no more then 2 of which may be white-winged doves nor 2 of which may be white-tipped doves; the possession limit may not exceed 24 (or 30 under the alternative) doves in the aggregate including no more than 4 white-winged and 4 white-tipped doves.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

A. Shooting hours of one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full days with daily bag limits not to exceed 12 and 24 doves, respectively, which may run consecutively or be split into not more than three periods.

C. As an alternative, except in Arizona, seasons not exceeding 60 days and limits of 15 to 30 doves, respectively, may run consecutively or be split into not more than 3 periods.

24. *White-winged and white-tipped doves.* (No change). Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1986, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively singly or in the aggregate, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. The daily bag limit may not exeeed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1986, and January 25, 1987, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1986, and January 15, 1987, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

Additional Information. In 1985, because of declines in white-winged dove numbers as a result of reduced citrus habitat, the Service shortened the normal 4-day white-winged dove season in Texas' special white-winged dove area of its South Zone to 2 days. Texas chose not to open the 2-day season in 1985–86 but has indicated it may recommend a return to the 4-day season for 1986–87. Service action is deferred pending receipt of 1986 status information on whitewings and their nesting habitat.

25. *Migratory bird hunting seasons in Alaska.* The Service proposes to allow Alaska to continue their stabilized duck

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hunting frameworks during the 1986–87 season.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1986–87

Outside Dates: Between September 1, 1986, and January 28, 1987, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations;

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days in each of the following: North Zone (State Game Management Unit 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10-except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian and Cackling Canada geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1986–87.

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1986, and February 28, 1987, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica carabaea*).

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1986, and January 15, 1987, as follows.

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons in prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west to Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1986–87

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1986, and January 31, 1987, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1986, and January 15, 1987, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Season: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change).

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1986, and January 15, 1987, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indidn Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations, Indian territory and ceded lands, and established special hunting regulations for certain tribes in the 1985–86 hunting season. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1986–87; however, the comment period on the guidelines remains open. In the December 5, 1985, **Federal Register** (50 FR 49870), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1986–87 migratory game bird hunting regulations. In a later **Federal Register** document the Service will publish for public review the pertinent details of proposals received from tribes.

Dated: March 7, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–6174 Filed 3–20–86; 8:45 am]

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50 CFR Part 23

Transfer of Nile Crocodile Population in Botswana to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of amendment to appendix; request for comments.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and FLora (CITES) regulates trade in certain animal and plant species. Appendices I, II, and III to CITES list those species for which trade is controlled. Any nation that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties. The Republic of Botswana has proposed that the population of the Nile crocodile (*Crocodylus niloticus*) in the Republic of Botswana be transferred from Appendix I to Appendix II subject to an annual export quota of 2,000 specimens. This proposal is being considered under the postal procedure provided by CITES. The Republic of Botswana entered a reservation on the Nile crocodile when acceding to CITES because the Republic of Botswana did not believe the species to be endangered. The transfer of this population of the Nile crocodile, subject to export quotas, would allow limited trade in this species. The Republic of Botswana does not believe the Nile crocodile to be endangered in their country and believes quotas would permit proper utilization of this resource. The Fish and Wildlife (Service) requests information on this population and asks for comments on the proposal in order to transmit relevant information on the proposal to the CITES Scecretariat by April 12, 1986. The Service wil have until at least May 12, 1986, to register an objection, if any, to the proposed amendment, and thereby necessitate a vote on the proposed amendment.

DATES: Relevant information received by April 8, 1986, will be considered in formulating a reply to the CITES Secretariat. All information and comments received by April 21, 1986 will be considered in developing the final United States position on the proposed amendment.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. The full text of the proposed amendment and notification from the CITES Secretariat, as well as materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday in Room 537, 1717 H Street, NW., Washington, DC.

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FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at address given above, or telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

Postal procedures for amending the list of wildlife and plant species included in Appendices I and II to CITES are provided in Article XV of CITES. Under this article, any Party may propose an amendment for consideration between the meetings of the Parties. In response, any Party may transmit comments, information, and data to the CITES Secretariat within 60 days of the date when the Secretariat Communicated its recommendations on such proposal to the Parties. As soon as possible thereafter, the Secretariat will then communicate the replies received together with its own recommendations to the Parties. If the Secretariat receives no objection within 30 days of communicating these replies and recommendations, the proposal is adopted and enters into effect 90 days later. If any Party objects during the 30-day period, the proposal is submitted to a postal vote. The proposal then could be adopted by a two-thirds majority of those Parties casting an affirmative or negative vote, provided that at least one-half of all Parties cast a vote or indicate their abstention within 60 days.

The Republic of Botswana has submitted a proposal, for consideration under the postal procedure, to transfer the Botswana population of Nile crocodile (*Crocodile niloticus*) from Appendix I to Appendix II subject to an annual export quota of 2,000 specimens. The Secretariat sent the proposal together with its own recommendations to the Parties on February 12, 1986. This material was received by the Office of Scientific Authority on March 3, 1986. The closing date for receipt of comments and information by the Secretariat is April 13, 1986.

Information in the Proposal

The Republic of Botswana provided information, as summarized below, in support of its proposal. Both historically and at present, the Nile crocodile in the Republic of Botswana occurs in the few perenial rivers of the country including associated swamps and lakes, especially Lake Ngami and the Okavango Swamps which has a mean area of 10,000 km^2. Although no proper census has been undertaken mainly because of the difficulty in conducting a census in the *Phragmites/Papyrus* infested Okavango Swamps where the crocodiles are principally found, qualitative observations indicate that the population is not only healthy, but rapidly recovering from the effects of past exploitation (Graham, 1976; Medem, 1981; Slogrove, 1985 are referenced in the proposal).

Apart from drought, which causes some of the smaller rivers and streams to dry up, the crocodile's habitat is secure. Although there is talk of taking water from the Okavango Swamps for mining and domestic use, there is also a proposal to declare most of this swamp area as a wildlife management area. Regardless, some 3,800 km^2 of the Okavango Delta is included in a game reserve where no hunting or capture of any species is allowed, and at least 100 km of the Linyanti/Chobe river system falls within the Chobe National Park. Reportedly, the Nile crocodile is given complete protection along almost 1,000 km out of a total of 1,760 km of river length and lake shoreline along which the Nile crocodile occurs.

The Republic of Botswana legislation classifies the crocodile as a game animal and hunting licenses and capture permits are required. During the last 10 years, the allowed hunting quota has been 150 per annum. In addition, in recent years two crocodile farms have been assigned capture quotas amounting to a total of about 1,600 crocodiles and 12,000 eggs for a 3-year period. However, only 380 crocodile and about 700 eggs have been collected according to information in the proposal. The killing of an animal in cases where crocodile attack people and/or livestock is also legal.

The Republic of Botswana entered a reservation when it acceded to CITES because it did not believe that the crocodiles were endangered. However, estimates of the number of crocodiles taken or exported during previous periods are 7,600 (between 1957 and 1974); 10,000 (1957–1969); and 40,000 (1959–1969) as reported by Graham, 1976; Blomberg, 1976; and Medem, 1981, respectively (as referenced in the proposal). Because many thousands of crocodiles had been killed for their skins, the Republic of Botswana banned commercial hunting in 1975, and established an annual hunting quota of only 150 crocodiles. The Republic of Botswana says that it has developed effective legal machinery to control overharvest, and they believe that the population has recovered sufficently and can now be cropped. In spite of its reservation, the Republic of Botswana reports that restrictions by other CITES countries have closed markets for legally taken crocodiles.

The Republic of Botswana has indicated that if its proposed amendment is adopted by the Parties, the Republic of Botswana will immediately withdraw its reservation and will implement a marking system mutually acceptable with the CITES Secretariat so as to ensure proper enforcement of the quota system.

The Republic of Botswana contends that the transfer of the Nile crocodile population in the Republic of Botswana to Appendix II and establishment of an appropriate quota will not only ensure preservation of this population, but also will allow export of crocodiles killed to protect humans and livestock, and support crocodile farms, and therefore crocodiles will be seen as "paying for [their] own conservation."

Comments of the CITES Secretariat

The Secretariat provided the following comments and recommendation on this proposal. At the Fifth Meeting of the Conference of the Parties, Malawi presented a proposal which called for downlisting of the species subject to export quotas for some nine African countries. This amendment was accepted by the Parties [refer to 50 FR 48212]. Noting that the Republic of Botswana did not request a quota for the export of Nile crocodile specimens at the Fifth Meeting of the Parties (COP5), the Secretariat believes that a quota of 2,000 specimens would have been granted to the Republic of Botswana if one had been requested at COP5. Annual report quotas established for Nile crocodiles populations in other countries were set at 20 for Cameroon, 1,000 for the Congo, 150 for Kenya, 1,000 for Madagascar, 500 for Malawi, 1,000 for Mozambique, 5,000 for Sudan, 1,000 for the United Republic of Tanzania, and 2,000 for Zambia. [The Nile crocodile population in Zimbabwe had been transferred from Appendix I to Appendix II subject to ranching provisions at the Fourth Conference of the Parties.]

The Secretariat noted that the proposal indicated that ranching and captive breeding have started in the Republic of Botswana and that the quota would cover the products of these operations, and therefore the effects on the wild populations should be limited.

Further, the Secretariat reported that, although the questionnaire accompanying the proposal indicated that only 15 skins were exported per year, the CITES statistics indicted the export of 1,164 skins from 1979 to 1982, of which 1,158 were reportedly imported into the Federal Republic of Germany in 1979.

The Secretariat also noted that no indication of the population size is given, despite a request made by the Secretariat to the Republic of Botswana for such information. Nevertheless, the Secretariat provisionally supports the request and recommends the adoption of this proposed amendment, but will communicate its final recommendations after receipt of comments and information received from the Parties, including an indication of the population size.

Information Sought

The service requests any information that might be useful in developing a response to the Secretariat, and in developing the final United States position. Please transmit any such information and comments to the Service on or before the dates given above. The Service will develop a position on the proposal after additional information is available, including consideration of all comments received, any population estimate provided, and clarification of earlier harvest estimates. The final United States decision as to whether to support or oppose the proposal or abstain from voting is to be based on the best available biological and trade information, including comments received in response to this notice, and any further comments transmitted to us by the Secretariat.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.)

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: March 19, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–6382 Filed 3–20–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a revised fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic Fishery Management Council (Council) has submitted revisions to the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP) for Secretarial review and is requesting comments from the public. The revisions to the FMP are intended to augment the management program for Atlantic swordfish and is in response to disapproval of §§ 611.61, 630.4, 630.5, 630.7, 630.21, 630.24, and 630.25.

DATE: Comments on the FMP revisions should be submitted on or before April 15, 1986.

ADDRESS: All comments should be sent to Jack T. Brawner, Regional Director, NMFS, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Clearly mark, "Comments on Atlantic Swordfish Plan revisions", on the envelope.

Copies of the FMP revisions are available upon request from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: Section 304(b)(3) of the Magnuson Fishery Conservation and Management Act, as amended, (16 U.S.C. 1801 *et. seq.*) provides a procedure whereby a Council may modify a partially disapproved FMP and submit it to the Secretary of Commerce (Secretary) for an accelerated review and approval or disapproval. This act also requires that the Secretary, upon receiving the revised plan, must immediately publish a notice that the revised plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the revised plan.

The revisions to the FMP propose measures for managing foreign fisheries that have an incidental catch of swordfish and domestic fisheries for swordfish in the Atlantic, Gulf of Mexico, and Caribbean. On May 2, 1985, the Environmental Protection Agency published a notice of availability of the final environmental impact statement for this plan (50 FR 18717).

Regulations proposed by the Council and based on this revised plan are scheduled to be published within 10 days.

(16 U.S.C. 1801 *et. seq.*)

Dated: March 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–6276 Filed 3–18–86; 4:26 pm]

BILLING CODE 3510–22–M

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50 CFR Part 661

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings concerning the 1986 ocean salmon fishing regulation options off the coasts of Washington, Oregon, and California.

DATE: Written comments concerning the Council's proposed ocean fishery management options for 1986 are invited through April 4, 1986. Individuals or organizations desiring to comment in person may do so at the public hearings. See "**SUPPLEMENTARY INFORMATION**" for dated, times, and locations of the hearings.

ADDRESSES: Written comments should be sent to the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201. Copies of the 1986 salmon status report and the Council's regulation options are available at this address. An impact analysis of the Council's proposed option is being developed by the Salmon Plan Development Team and should be available just prior to and at the public hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Greenley (Executive Director), 503–221–6352.

SUPPLEMENTARY INFORMATION: The Council will meet on April 7–11 at the Eureka Inn, Eureka, California, to consider the input from the public hearings and written comments received, and to hear additional comments from its advisors and the public. The Council will then develop its recommendations for the 1986 ocean salmon fishing season regulations for submission to the Secretary of Commerce.

The hearings will take place at the following locations:

April 1, 1986—7:00 p.m.

Sheraton-Renton Inn, Evergreen Ballroom A, 800 Ranier Avenue, South, Renton, WA 98055.

California Department of Fish & Game, First Floor Auditorium Resource Building, 1416 Ninth Street, Sacramento, CA 95814.

Thunderbird Motor Inn, North & South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420.

April 2, 1986—7:00 p.m.—Elks Hall, 453–11th Street, Astoria, OR 97103.

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April 7, 1986—6:00 p.m.—Eureka Inn,
Colonnade Room, Seventh & F Streets,
Eureka, CA 95501.

Dated: March 17, 1986.

Ricard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6251 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 55
Friday, March 21, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Arizona State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-138R. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: X-Ray Powder Diffractometer, Model D/MAX-RB and Accessories. Manufacturer: Rigaku Corporation, Japan. Original notice of this resubmitted application was published in the **Federal Register** of May 3, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a combination of high intensity and high resolution for studies of thin film deposits in substrates. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign intrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-6242 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-269. Applicant: Columbia University, New York, NY 10027. Instrument: Spectropolarimeter, Model J-500A. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended Use: See notice at 50 FR 34537.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left- and right-circularly polarized light. The National Institutes of Health advises in its memorandum dated January 22, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-6243 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Emory University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 86-047. Applicant: Emory University, Atlanta, GA 30322. Instrument: Monolayer Surface Balance. Manufacturer: Mayer Feintechnik, West Germany. Intended Use: See notice at 50 FR 52821.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is capable of determining pressure-area isotherms for fatty acids and other lipids. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 86-6244 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Eunice Kennedy Shriver Center for Mental Retardation; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-242. Applicant: Eunice Kennedy Shriver Center for Mental Retardation, Inc., Waltham, MA 02254. Instrument: Gas Chromatograph Mass Spectrometer, Model MM70-250SE with Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended Use: See notice at 50 FR 32757.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

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Reasons: The foreign instrument provides (1) a mass range of 1 to 6000 atomic mass units at an accelerating potential of 3000 volts and (2) LC/MS analysis capability using a moving belt interface with FAB ionization. The National Institutes of Health advises in its memorandum dated February 6, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-6249 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DS-M

The Ohio State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of the 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14, and Constitution Avenue, NW., Washington, DC.

Docket No.: 85–229. Applicant: The Ohio State University, Columbus, OH 43210. Instrument; STEM-SE attachments with Ion Getter Pumps. Manufacturer: Carl Zeiss, West Germany. Intended Use; See notice at 50 FR 30217.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated February 6, 1986 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105 Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6241 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

The Research Foundation of the State University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–009. Instrument: The Research Foundation of the State University of New York, Albany, NY 12201. Instrument: Cubic Anvil System. Manufacturer: NRD Corporation, Japan. Intended Use: See notice at 50 FR 51445.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument can apply pressure to 130 kilobars at temperatures to 1100 degrees centigrade on a sample having a volume up to 10 cubic-millimeters and provides in situ x-ray powder diffraction capabilities. The National Bureau of Standards advises in its memorandum dated February 5, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6247 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

Southern Research Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–046. Applicant: Southern Research Institute, Birmingham, AL 35355–5305. Instrument: High Resolution Mass Spectrometer, Model MM7070S with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended use: See notice at 50 FR 52820.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a guaranteed mass resolution of 40,000 (10% valley definition), a mass range of 2600 amu at 6 Kv, a maximum scan rate below m/z 600 of 0.1 seconds/decade and a sensitivity of 2.5×10^{11} amps for mass 369 in the fast atom bombardment mode. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6245 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

State University of New York at Buffalo; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–287. Applicant: State University of New York at Buffalo, Buffalo, NY 14260. Instrument: Nanosecond Fluorescence Spectrometer System, Model 2000. Manufacturer: Photochemical Research Associates Inc., Canada. Intended use: See notice at 50 FR 41380.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument operates in the nanosecond to millisecond range, with a pulsed light mode providing time-correlated single photon counting. The National Institutes of Health and advises in its memorandum dated January 22, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use,

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6246 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Army Institute of Dental Research; Decision on Application for Duty-Free Entry of Scentific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–213. Applicant: U.S. Army Institute of Dental Research, Washington, DC 20307–5300. Instrument: Mass Spectrometer, Model 8230B and Accessories. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 50 FR 29243.

Comments: None received:

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) high resolution (50,000 with 10% valley), (2) scan speed of 0.1 seconds per decade, (3) MS/MS capability and (4) FAB source. The National Institutes of Health advises in its memorandum dated February 6, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6240 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–086. Applicant: University of California, Los Alamos, NM 87545. Instrument: Camera, X-Ray Streak. Manufacturer: Kentech Instruments Ltd., United Kingdom. Intended use: See notice at 51 FR 4648.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides time resolution for x-ray measurements of 20 picoseconds. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6250 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Pittsburgh; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–063. Applicant: University of Pittsburgh, Pittsburgh, PA 15260. Instrument: Far Infrared Polarizing Michelson Interferometer and Accessories. Manufacturer: Analytical Accessories Ltd., (SPECAC), United Kingdom. Intended use: See notice at 50 FR 51445.

Coments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a spectral range from $3 cm^{-1}$ to $200 cm^{-1}$ with a resolution of $0.1 cm^{-1}$. The National Bureau of Standards advises in its memorandum dated January 30, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6248 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Rhode Island; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–271. Applicant: University of Rhode Island, Kingston, RI 02881. Instrument: Thermal Balance, Model 409. Manufacturer: Netzsch Geraetebau GmbH, West Germany. Intended use: See notice at 50 FR 36128.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

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Reasons: The foreign instrument can operate under vacuum conditions at temperatures up to 2400 degrees centigrade. The U.S. Customs Service advises in its memorandum dated February 12, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6238 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

Woods Hole Oceanographic Institution; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–220. Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543. Instrument: Mass Spectrometer, Model VG54 with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: See notice at 50 FR 28001.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can measure element/isotope ratios with a guaranteed external precision of 0.003 percent for strontium and neodymium and of 0.05 percent for lead. The National Bureau of Standards advises in its memorandum dated February 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–6239 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Emergency Striped Bass Research Study; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 98–118).

DATE: The meeting will convene on Friday, April 18, 1986, at 10:00 a.m., and will adjourn at approximately 4:00 p.m. The meeting is open to the public.

ADDRESS: Room 7000 B, Department of the Interior Building, C Street between 18th and 19th Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Resource Investigations, National Marine Fisheries Service, Washington, DC 20235. Telephone: (202) 634–7466.

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 86–6198 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

Meeting

AGENCY: Commission on the Bicentennial of the Constitution.

ACTION: Notice of meeting.

SUMMARY: This Notice announces a forthcoming meeting of the Commission on the Bicentennial of the United States Constitution, to be held in Washington, DC, and chaired the Commission's Chairman, Chief Justice Warren E. Burger.

Date and time: Sunday, April 13, 1986 at 1:30 p.m.; Monday, April 14, 1986 at 9:00 a.m. and 12:15 p.m.

Place

On April 13, in the East Conference Room of the Supreme Court Building, at 1 First Street, NE., Washington, DC. On April 14, from 9:00 a.m. to 12:00 noon, in the West Conference Room of the Supreme Court Building; from 12:15 to 3:30 p.m., in the East Conference Room.

Status

On April 14, the morning meeting will be a public hearing in open session; on April 13 and 14, the afternoon meetings will be executive sessions, closed to the public.

Press

On Monday, April 14, from 8:15 to 8:45 a.m., a session with the press will be held in the Lawyers Lounge, second floor, of the Supreme Court Building. The open session public hearing on April 14 will also be open to print and broadcast media.

Agenda

Executive Sessions. Evaluations of proposed projects, examination of Commission budgets, appropriations and personnel structure, review of office space problems, personnel selection procedures, proposed legislation and regulations, status of negotiations on potential national commemorative programs.

Open Session: Progress reports on commemorative plans and programs, announcement of project recognition decisions, discussion of regional and national bicentennial projects, and reception of testimony from witnesses presenting proposals and programs for the bicentennial of the Constitution.

Statements

The Commission is interested in hearing from all persons and organizations with proposed plans, projects or programs which would enhance the bicentennial commemoration of the U.S. Constitution, the Bill of Rights or the founding of the Federal Government. All such statements which can be prepared prior to the Commission meetings on April 13 and 14 should be filed with the Commission on or before April 4, 1986. All written statements so filed will be reviewed by the Commission and its staff.

Presentations

At the public hearing on April 14, available time will permit only a few oral presentations. The Commission will notify in advance those witnesses who have been asked to appear and will limit oral presentations to those selected.

FOR FURTHER INFORMATION CONTACT: Gene Mater, Special Assistant to the Director, 734 Jackson Place, NW., Washington, DC 20503, Tel: (202) USA-1787.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to give the Commission an opportunity to review the current status of operations and to report on its activities. It will also provide an opportunity for witnesses and persons filing statements to advise the Commission about proposed bicentennial plans and programs.

Dated: March 11, 1986.

Mark W. Cannon,

Staff Director.

[FR Doc. 86–6270 Filed 3–20–86; 8:45 am]

BILLING CODE 634-001-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limit for Certain Cotton Apparel Products Produced or Manufactured in Uruguay

March 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 24, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textile and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

The Governments of the United States and Uruguay have agreed to further amend their Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, to establish a specific limit of 47,700 dozen for women's, girls' and infants' cotton coats in Category 335, produced or manufactured in Uruguay and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The United States Government has decided to control imports at the new limit. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to establish this limit. The limit is being adjusted to reflect carryforward in the amount of 1,050 dozen, used during the previous agreement period. The adjusted limit will be 46,650 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 18, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, and the Arrangement Regarding the International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 24, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Uruguay and exported during the twelve-month period which begin on January 1, 1986 and extends through December 31, 1986, in excess of 46,650 dozen.[1]

Textile products in Category 335 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Category 335 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement of December 30, 1983 and January 23, 1984, which provide, in part, that: (1) The specific limit may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–6235 Filed 3–20–86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Brazil, Effective on April 1, 1986

March 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 7 and 29, 1985, between the Governments of the United States and the Federative Republic of Brazil establishes an aggregate specific limit and, within the aggregate, individual specific limits for cotton, wool and man-made fiber textiles and textile products in Categories 300/301, 310/318, 313, 315, 317, 319, 334/335, 336, 337, 338/339, 347/348, 350, 352, 359/659, 361, 363, 369pt. (dish towels in T.S.U.S.A. numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, and 366.2440), 445/446, 604, 614, 638/639, 647/648, 666, and 669pt. (polypropylene bags in T.S.U.S.A. number 385.5300), produced or manufactured in Brazil and exported during the agreement year which begins on April 1, 1986 and extends through March 31, 1987. The new agreement includes sublimits for corduroy coats and trousers in Categories 334/335 and 347/348, amounting to 20 percent of the

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[1] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

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overall limit established for each of these two categories. The limit for Category 361 is adjusted downward by 27,000 numbers for carryforward used during the previous agreement period. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Brazil and exported during the twelve-month period which begins on April 1, 1986 and extends through March 31, 1987, in excess of the designated restraint limits. This letter also directs that charges be made against the limit for Category 604 as a result of an administrative arrangement described in the directive to the Commissioner of Customs, published in the **Federal Register** on February 19, 1986 (51 FR 6024).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 14, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period which begins on April 1, 1986 and extends through March 31, 1987, in excess of the following restraint limits:

Category	12-month restraint limits
300-369, 400-469, and 600-670	288,000,000 square yard equivalents.
300/301	6,886,210 pounds.
310/318	3,180,000 square yards.
313	31,800,000 square yards.
315	14,310,000 square yards.
317	12,986,000 square yards.
319	10,600,000 square yards.
334/335	72,080 dozen of which not more than 14,416 dozen shall be in T.S.U.S.A. nos. 381.4610, 381.4650, 384.3705, 384.3720, 384.3755, 384.3763, 384.3766, 384.3770, 384.3772, 384.3774.
336	37,100 dozen.
337	103,880 dozen.
338/339	558,500 dozen.
347/348	477,000 dozen of which not more than 95,400 dozen shall be in T.S.U.S.A. nos. 381.0542, 381.6230, 381.6260, 384.0722, 384.0724, 384.0726, 384.0729, 384.4735, 384.4740, 384.4746.
360	63,600 dozen.
362	371,000 dozen.
359/659	5,830,000 square yards equivalent.
361	460,000 numbers.
363	14,310,000 numbers.
369pt.[1]	636,000 pounds.
445/446	84,640 dozen.
604	477,000 pounds.
614	5,300,000 square yards.
638/639	212,000 dozen.
647/648	477,000 dozen.
666	1,696,000 pounds.
669pt.[2]	2,120,000 pounds.

[1] In Category 369pt., only T.S.U.S.A. nos. 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440.

[2] In Category 669pt., only T.S.U.S.A. no. 385.5300.

In carrying out this directive, cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Brazil, and exported to the United States on and after April 1, 1985 and extending through March 31, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive. In Category 604, 112,161 pounds should be charged to the limit for the period which begins on April 1, 1986 and extends through March 31, 1987.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of August 7 and August 29, 1985 between the Governments of the United States and the Federative Republic of Brazil which provide, in part, that: (1) Specific limits may be exceeded by designated percentages; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924.) December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (1)(a).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6236 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DR-M

Cancellation of Staged Entry for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

March 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On March 3, 1986 a notice was published in the **Federal Register** (51 FR 7312), which, among other things, established staged entry periods for imports of cotton textile products in Category 340 (men's and boys' woven cotton shirts), produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1985 and extends through January 31, 1986. It has been determined that the remaining staged entry period is no longer needed and it is being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 (FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14,

1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986)

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 18, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, between the Governments of the United States and the People's Republic of Bangledesh, I request that, effective on March 28, 1986, you cancel the remaining staged entry period established in the directive of February 28, 1986 for cotton textile products in Category 340, produced or manufactured in Bangladesh.

The Committee for the Implementation of Textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6237 Filed 3-20-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions and Deletion

Correction

In FR Doc. 86-5651 beginning on page 8868 in the issue of Friday, March 14, 1986, make the following correction: On page 8869, in the first column, the second line from the bottom should read "139-7601".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Grade 1 Copper Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Exchange, Inc. ("Comex") has applied for designation as a contract market in Grade 1 copper. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 20, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the Comex Grade 1 copper futures contract.

FOR FURTHER INFORMATION CONTACT: Rick Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7303.

Copies of the terms and conditions of the proposed Comex Grade 1 copper futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Comex in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the Comex in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC on March 17, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-6193 Filed 3-20-86; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The meeting of the Technical Study Group on Cigarette and Little Cigar Fire Safety originally scheduled for March 25, 1986, has been postponed until May 8 and 9, 1986. The purpose of the meeting is to consider reports on: (1) Testing conducted by the National Bureau of Standards to measure the ignition propensity of cigarettes; (2) gathering and analyzing data to support a cost-benefit study; and (3) testing of cigarettes which have been produced in accordance with various patents but which are not manufactured commercially.

DATE: The meeting will be on May 8 and 9, 1986, from 9:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be in Room 703-A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Hylton, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6554.

Dated: March 13, 1986.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 86-6202 Filed 3-20-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Restriction of Eligibility for Grant Award; Massachusetts Institute of Technology

AGENCY: Department of Energy.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: In accordance with Part 600.7(b), eligibility for award of a grant

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resulting from (PR No. 07–86ID12380.502) is restricted to the Massachusetts Institute of Technology.

Project Scope: The overall objective of this research is to define material compositions, critical fabrication process steps, and critical operating conditions that will permit economically viable inert anodes and cathodes to be made which will exhibit adequate performance characteristics in Hall cell aluminum reduction environments.

FOR FURTHER INFORMATION CONTACT: J.O. Lee, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.

Issued at Idaho Falls, Idaho, on December 31, 1985.

J.F. Marmo,

Director, Contracts Management Division.

[FR Doc. 86–6303 Filed 3–20–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Suburban Propane Gas Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Suburban Propane Gas Corporation (Suburban) shall be made final as proposed. The Consent Order resolves the issues of Suburban's compliance for the period November 1973 through October 1978 with DOE's regulations regarding resales of propane, butane and natural gasoline. Suburban will pay to the DOE $1,800,000 for distribution pursuant to 10 CFR Part 205, Subpart V. Persons claiming to have been harmed by Suburban's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Suburban Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207. Tel: (214) 767–4646.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On February 3, 1986, ERA published a Notice announcing a proposed Consent Order between DOE and Suburban which would resolve matters pertaining to Suburban's compliance with the regulations regarding resales of propane, butane and natural gasoline (51 FR 4218). The proposed Consent Order required Suburban to pay $1,800,000 for the settlement of alleged overcharges of $2,059,997 plus interest.

The February 3 Notice sets forth ERA's view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final.

II. Comments Received

ERA received one timely written comment. The comment addressed only the ultimate disposition or distribution of the Suburban settlement funds. The adequacy of the settlement amount or the terms and conditions of the proposed Consent Order was not addressed. The commenters were: Attorneys General of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia.

III. Analysis of Comments

The February 3 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected.

The comments received voiced no objection to the basis or adequacy of the settlement and were supportive in regard to the use of the special refund procedures of Subpart V. Indeed, the Attorneys General stated that the States should receive any funds remaining after distributions to identifiable injured parties.

ERA has determined that the distribution of the settlement funds should be the subject of a separate Subpart V proceeding conducted by OHA, to be initiated shortly after publication of this Notice. This is consistent with ERA's general policy that the special refund procedures of Subpart V are best suited for cases, such as this, in which ERA cannot readily identify the injured parties or their relative amount of economic harm.

Comments on the actual disbursement of money accordingly will not be addressed here, but will be referred to OHA for consideration in the Suburban Consent Order claims proceeding.

The review and analysis of the comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Suburban. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Suburban and DOE executed on October 21, 1985, is made a final order of the Department of Energy; effective on the date of publication of this Notice in the **Federal Register**.

Issued in Dallas, Texas on the 6th day of March, 1986.

Ben L. Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 86–6302 Filed 3–20–86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Public Law 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective April 1, 1986. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, S.W., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I.

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Per million BTU's
Alabama	2.24
Arizona [1]	2.49
Arkansas	2.60
California [1]	2.49
Colorado [2]	2.52
Connecticut [1]	2.50
Delaware [1]	2.72
Florida	2.48
Georgia	2.50
Idaho [2]	2.52
Illinois	2.34
Indiana [1]	2.42
Iowa [1]	2.30
Kansas [1]	2.30
Kentucky [1]	2.42
Louisiana [1]	2.74
Maine [1]	2.50
Maryland [1]	2.72
Massachusetts	2.42
Michigan [1]	2.42
Minnesota [1]	2.30
Mississippi [1]	2.52
Missouri	2.24
Montana [2]	2.52
Nebraska [1]	2.30
Nevada [1]	2.49
New Hampshire [1]	2.50
New Jersey [1]	2.72
New Mexico [1]	2.74
New York	2.72
North Carolina	2.51
North Dakota [1]	2.30
Ohio	2.33
Oklahoma [1]	2.74
Oregon	2.34
Pennsylvania	2.70
Rhode Island [1]	2.50
South Carolina [1]	2.52
South Dakota [1]	2.30
Tennessee	2.34
Texas	2.41
Utah [2]	2.52
Vermont [1]	2.50
Virginia [1]	2.52
Washington [1]	2.49
West Virginia	2.42
Wisconsin [1]	2.42
Wyoming [2]	2.52

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during January 1986 was $30.77 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending March 14, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of January 1986. This lag adjustment factor was applied to the January price yielding $23.60 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective April 1, 1986, is $5.29 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of November 1985, December 1985, and January 1986.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective March 1, 1986, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, November 1985, December 1985, and January 1986. Reported prices for sales in November 1985 were adjusted by the percent change in the nationwide volume-weighted average price from November 1985 to January 1986. Prices for December 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from December 1985 to January 1986. The volume-weighted 3-month average of the adjusted November 1985 and December 1985, and the reported January 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was

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[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

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compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of November 1985, December 1985, and January 1986. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending March 14, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of January 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B. (3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region B

Delaware
Maryland
New Jersey
New York
Pennsylvania

Region C

Alabama
Florida
Georgia
Mississippi
North Carolina
South CArolina
Tennessee
Virginia

Region D

Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Dated: March 19, 1986.

L.A. Pettis,
Acting Deputy Administrator, Energy Information Administration.

[FR Doc. 86-6378 Filed 3-20-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-348-000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

1. ANR Pipeline Company

[Docket Nos. CP86-348-000, et al.]

March 18, 1986.

Take notice that on February 26, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-348-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Standard Gas Marketing Company (SGM), a marketing subsidiary of Sohio Petroleum Company, and, incident thereto, the construction and operation of delivery facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to provide transportation services for SGM pursuant to a transportation agreement between the parties dated November 19, 1985, as amended February 13, 1986, for a term of 5 years and year to year thereafter. Pursuant to the agreement, ANR proposes to transport up to 14,000 dt equivalent, and such other quantities as the parties may agree, of natural gas per day which SGM would sell and deliver through pipeline facilities to be constructed to connnect Potlatch Corporation, an industrial end-user, in Desha County, Arkansas. In order to accomplish delivery of the transported natural gas, ANR further proposes to construct and operate delivery facilities consisting of a hot tap, side valve and associated measurement facilities at the proposed point of interconnection with SGM's facilities in either Chicot County, Arkansas or Bolivar County, Mississippi. The estimated cost of these facilities is approximately $300,000.00, which would be reimbursed to ANR by SGM. ANR explains that it would transport SGM's gas from various

receipt points in offshore and onshore Texas, Oklahoma and Kansas.

For volumes transported from Oklahoma, onshore Texas and Kansas, ANR proposes to charge SGM (1) 36.8 cents per dt equivalent if the volumes are delivered in Chicot County, Arkansas or Bolivar County, Mississippi, or (2) if the volumes are delivered in Chicot County, Arkansas, 10.6 cents per dt equivalent for gas transported from ANR's West Cameron Block 167, or if the volumes are delivered in Bolivar County, Mississippi, 12.1 cents per dt equivalent. For deliveries of the offshore volumes at either delivery point ANR proposes to charge SGM an additional charge equal to the overrun rate charged by the High Island Offshore System for any gas transported through such system for the account of SGM. ANR would transport and deliver the volumes, as adjusted for fuel use and lost-and-unaccounted-for gas, to SGM at one of the proposed points of delivery, for the account of Potlatch.

Comment date: April 8, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket Nos. CP86-179-000, CP86-179-001]

March 17, 1986.

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-179-000 an application, as amended February 28, 1986, in Docket No. CP86-179-001, pursuant to section 7 of the Natural Gas Act for a certficate of public convenience and necessity authorizing the transportation of up to 40 billion Btu equivalent of natural gas per day for Tenngasco Corporation (Tenngasco), acting as agent for United Illuminating Company (United Illuminating), and the addition of four delivery points for the proposed tranportation service and for permission and approval to abandon such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the terms of their transporation agreement, dated October 30, 1985, as amended February 7, 1986, Tennessee requests authorization to transport up to 40 billion Btu equivalent of gas per day, less gas for Tennessee's fuel uses, gas lost, and unaccounted-for and plant volume reduction (PVR) due to processing,[1] for Tenngasco, acting as agent for United Illuminating. Tennessee states that it has been informed that United Illuminating desires quantities of gas in excess of 40,000 Mcf per day. As a result of the Commission's directive to Tennessee issued on July 22, 1985, in Opinion No. 240, 32 FERC ¶61,086, Tennessee is stating the transportation quantity of gas on a thermal basis rather than a volumetric basis.

Tennessee requests authorization to add four delivery points for the proposed transportation service. Two of the additional delivery points are to Algonquin Gas Transmission Company (Algonquin Gas) at the interconnection between Tennessee and Algonquin Gas at Wallingford, Connecticut, and at the interconnection between Tennessee and Algonquin Gas at Mendon, Massachusetts. The other two additional delivery points are to Southern Connecticut Gas Company (Southern Connecticut) at the interconnection between Tennessee and Southern Connecticut at Westpoint, Connecticut, and at the interconnection between Tennessee and Southern Connecticut at Trumbull, Connecticut.

Tennessee states that is has been informed by Tenngasco, as agent for United Illuminating, that United Illuminating desires to receive gas supplies for a longer period of time than the period which was stated in the transportation agreement filed with Tennessee's initial application. Tennessee states that the proposed transportation service would expire on December 31, 1990, rather than December 31, 1988. Therefore, Tennessee requests abandonment authorization to be effective 11:59 p.m. CST, December 31, 1990, at which time transportation service rendered by Tennessee pursuant to the agreement would terminate.

In accordance with the agreement, Tennessee states that it would charge a rate for this transportation service, based upon Tennessee's Rate Schedule IT, as shown on its effective FERC Gas Tariff Sheet No. 22. It is indicated that the rates for transportation of PVR, if any, would also be based on Tennessee's Rate Schedule IT and the rate for transportation of liquids, if any, would be established pursuant to the provisions of the agreement.

The Commission published a Notice of Tennessee's application in the **Federal Register** on December 13, 1985 (50 F.R. 51910), in Docket No. CP86-179-000.

Comment date: April 7, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-343-000]

March 18, 1986.

Take notice that on February 24, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-343-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transco to transport natural gas on behalf of XMCO, Inc. (XMCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authorization herein to transport up to 20,000 Mcf of natural gas per day on behalf of XMCO, on an interruptible basis, pursuant to a transportation agreement between Transco and XMCO dated May 31, 1985, as amended October 30, 1985. It is averred that such quantities would be purchased by Florida Gas Transmission Company (Florida) for its system supply from XMCO in the Boykin Church field, Smith County, Mississippi, and would be received by Transco from Mississippi Fuel Company (Fuelco) at the existing points of interconnection between facilities of Transco and Fuelco in Clark and Jefferson Davis Counties, Mississippi. It is indicated that Transco would deliver such quantities at existing points of interconnection between the facilities of Transco and Florida in Vermilion and St. Helena Parishes, Louisiana. Transco states that the initial term of this transportation would be 10 years and would continue on yearly basis thereafter.

Transco further states that, initially, it would charge 6.90 cents per dt equivalent of gas for all such quantities transported to Florida for the account of XMCO, and would not retain initially, any of such quantities to compensate for compressor fuel and line loss make-up. Pending issuance of the requested certificate, self-implementing transportation commenced September 1, 1985 pursuant to Subpart G of Part 284 of the Commission's Regulations (Docket No. ST85-520), it is stated.

Transco submits that by filing subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations.

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[1] PVR is defined to include fuel, shrinkage and other uses or losses of gas resulting from the processing of the gas.

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Comment date: April 8, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP85-906-001]

March 18, 1986.

Take notice that on February 28, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP85-906-001 an amendment to its application filed in Docket No. CP85 906-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction of facilities to connect two processing plants to its existing pipeline system, in Livingston and Calcasieu Parishes, Louisiana, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

The amendment reflects that United now proposes to install facilities to tap its pipeline at locations in Livingston and Calcasieu Parishes as originally proposed and additionally to install and operate 355 feet of lateral lines at the Livingston Parish location.

It is stated that in its application, United requested authorization to construct taps to connect proposed processing plants to be owned and operated by an affiliate, PetroUnited Products Inc. (PetroUnited). It is further stated that the parties have been unable to resolve certain issues regarding payback of plant volume reduction volumes by PetroUnited to United and that, therefore, the parties have mutually agreed to the withdrawal of PetroUnited from the project. United states that it would construct and operate both plants and the connecting facilities. United indicates that it is not requesting authorization to construct and operate the processing plants because it believes that they are exempt from jurisdiction under section 7(c) of the Natural Gas Act by reason of § 2.55(a) of the Commission's Regulations.

United estimates it would cost $149,935 to install the connecting facilities, which would be financed from funds on hand.

Comment date: April 8, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filled, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6258 Filed 3-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-18-000]

City of Tacoma, Washington v. The Washington Water Power Co. et al.; Order Setting Matter for Investigation and Hearing

Issued: March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On December 28, 1984, Puget Sound Power & Light Company (Puget), on behalf of the members of the Pacific Northwest Coordination Agreement (PNCA or Agreement) filed a letter dated June 27, 1984, sent by the City of Tacoma, Washington (Tacoma) to PNCA members [1] stating that Tacoma sought to increase its rates for certain services provided under the PNCA, pursuant to section 14(j) of that agreement.

The PNCA provides for the coordinated operation of the electric systems of 16 utilities in order to make the maximum possible use of hydroelectric capacity in the Pacific Northwest. To this end, the Agreement provides for both the sale and exchange of hydroelectric and thermal capacity and energy and for the storage of water for hydroelectric generation. Section 14(j) provides that the parties may agree to amend the charges for the services provided in the PNCA and that, if they cannot agree, the parties subject to the Commission's jurisdiction shall submit the matter to the Commission for determination of charges to become effective thereafter.[2] Section 14(j) further provides that the charges shall become effective prospectively at the beginning of the contract year following the Commission's determination. Since several of the PNCA signatories did not agree to the proposed revisions, Puget, in accordance with the agreement, submitted the matter to the Commission for our resolution.[3]

Notice of Tacoma's complaint was published in the **Federal Register**, with comments due on or before February 25, 1985. Timely motions to intervene were filed by Snohomish, Seattle, Eugene, Chelan, Douglas County, Pend Oreille, and Grant County, (collectively referred to herein as Municipals), and by BPA. Seattle and Eugene joined Tacoma in requesting revised rates. The Municipals and BPA requested intervenor status.

On February 25, 1985, the IOUs filed an answer to Tacoma's complaint. The answer alleged that Tacoma's request lacked sufficient legal or factual content upon which the IOUs could respond or comment. The IOUs further stated that the present rates under the PNCA are just and reasonable and, therefore, no increase in the rates is warranted. On that same date, the IOUs filed a motion requesting that the Commission direct Tacoma to amend its request setting forth, in detail, the basis in fact or law for each of the proposed rate changes.

On May 25, 1985, Tacoma filed a motion to amend and supplement the original complaint. On May 30, 1985, Tacoma filed an amended complaint. As a legal basis for its requested changes, Tacoma states that, unless there are reasonable increases in the charges under the PNCA, Tacoma will be subsidizing other members of the PNCA. Tacoma maintains that subsidization is prohibited by the constitution of the State of Washington. In addition, Tacoma states that, since the inception of the PNCA, charges have been determined by way of comparison with BPA's rates and that, in keeping with historical practice, its proposed rates are intended to track BPA's current rates.

Tacoma states that the rates for the two major services (interchange Energy imbalance and Interchange Capacity Imbalance) have been derived historically by reference to BPA's rates. Tacoma states, for example, that the charge for Interchange Energy under the original PNCA was equivalent to BPA's H-4 nonfirm rate and that there have been several increases in BPA's nonfirm rate since 1964 with corresponding increases in the Interchange Energy charges. Tacoma notes that BPA's current nonfirm energy charge is 22 mills/kWh. As to the charge for Interchange Capacity under the PNCA, Tacoma maintains that it has been set historically at 115% of BPA's firm capacity charge. Tacoma notes that BPA's latest proposed firm capacity charge is $1.12/kW/week, and that the Interchange Capacity charge under the PNCA is now no longer sufficient.

In support of its proposed charges for Interchange Energy Service, Holding Interchange Energy Service, and Transfers to Avoid Spill, Tacoma states that these services are similar to Stored Energy Service under the PNCA and that the charges should be raised to a level equivalent to the current charge for Stored Energy Service. The current charge for stored energy is 3 mills/kWh when returned during heavy load hours and 1 mill/kWh when returned during light load hours.

On July 1, 1985, the IOUs answered the amended complaint. According to the IOUs, Tacoma does not allege that the present rates are unjust or unreasonable under section 206 of the Federal Power Act, that the present rates are less than Tacoma's or any other party's cost of providing service, or that Tacoma's costs have increased since the present rates took effect. The IOUs contend that charges under Section 14 of the PNCA should be based on the costs of the services provided, while recognizing the benefits obtained by the parties to the agreement. They state that Tacoma, in essence, is proposing rates for hydro transactions based upon the city's perception of the market value of power, even though such market value is determined by the cost of thermal generating resources. The jurisdictional utilities also dispute Tacoma's specific allegations regarding the various charges presently collected for services performed under the PNCA. Finally, they deny that the present charges result in improper subsidization by Tacoma or violate the constitution of the State of Washington.

On July 16, 1985, BPA filed a motion for leave to file an answer out of time to Tacoma's amended complaint.[5] In its answer, BPA proposes its own changes to the rates addressed by Tacoma and to rates for several other services under the PNCA.

On July 31, 1985, Puget filed an answer opposing BPA's motion to answer out of time and, in the alternative, a motion for permission to answer BPA's new issues. According to Puget, BPA's motion should be denied because it failed to show extraordinary circumstances that would justify making an untimely filing. According to Puget, the Commission was not obligated to issue notice of Tacoma's amended complaint. Therefore, BPA's reason for its failure to timely answer the amended complaint is allegedly not sufficient to permit the untimely pleading. Puget also states that the relief requested by Tacoma in its amended complaint is identical to that requested in the original complaint and that BPA errs in suggesting otherwise. If the Commission grants BPA's motion, Puget requests that it and other respondents be permitted to respond BPA's pleading. In support, Puget alleges that BPA's answer goes beyond the scope of Tacoma's complaint and raises entirely new issues.[6]

On August 15, 1985, Grant County filed a response to BPA's pleading. According to Grant County, the Commission's Rules of Practice and Procedure bar BPA from using its answer to request Commission approval of new charges for services under the PNCA. According to Grant County, the PNCA also bars BPA from seeking the proposed changes because BPA did not follow the proper procedure, as set forth in Section 14(j) of the PNCA. On August 20, 1985, Chelan, Douglas, Eugene, and Seattle filed a joint answer to BPA's filing, adopting Grant County's position.

On August 20, 1985, the IOUs filed an answer to BPA's pleading and moved to strike those portions of BPA's answer in which it proposed new charges under the PNCA. The jurisdictional utilities also complain that BPA has failed to follow the procedures set forth in section 14(j) of the PNCA. In addition, they object to BPA's proposed rates on the ground that they are not cost-based.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make the Municipals and BPA parties to this proceeding. Pursuant to Rule 102 of the Commission's Rules of Practice and Procedure (18 CFR 385.102), the IOSs are, as respondents to Tacoma's complaint, automatically parties to this proceeding.

Tacoma, in its complaint, proposes to increase charges under the PNCA only for certain selected services. Under the present circumstances, we believe that such a proposal is too narrow. The PNCA deals with an unusual abundance of hydroelectric generation. The predominance of hydro generation requires a particularly close interdependency among utilities due to the need for extensive coordinated water storage and release in order to maximize the benefits and use of the regional water resources. In this comprehensive plan, the thermal systems also play an important role in allowing the predominantly hydro systems to operate reliably. These thermal systems provide a firm source of power to back up hydro resources and provide a market for surplus hydro power. Various parties to this proceeding recognize that the various charges are interrelated. BPA, in its response to Tacoma's amended complaint, proposes to increase charges for services under the PNCA in addition to those for which Tacoma proposes changes. The IOUs stated, in the letter originally transmitting Tacoma's

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[1] The members of the PNCA are: The Washington Water Power Company (Water Power), the Montana Power Company (Montana), Pacific Power & Light Company (PP&L), Portland General Electric Company (PGE), Puget Sound Power & Light Company (Puget), Bonneville Power Administration (BPA), the Eugene Water & Electric Board (Eugene), the City of Seattle (Seattle), Washington, Grant County Public Utility District No. 2 (Grant County), Pend Oreille County Public Utility District No. 1 (Pend Oreille), Douglas County Public Utility District No. 1 (Douglas), Cowlitz County Public Utility District No. 1, Colockum Transmission Company, Inc., Chelan County Public Utility District No. 1 (Chelan), the City of Tacoma, and Snohomish County Utility District No. 1 (Snohomish).

[2] The five investor-owned utilities (IOUs) subject to the Commission's rate jurisdiction under the Federal Power Act (FPA) are Puget, PGE, PP&L, Water Power, and Montana. BPA is separately subject to Commission rate jurisdiction in certain respects under the Pacific Northwest Electric Power Planning and Conservation Act.

[3] The filing by Puget of Tacoma's letter is in the nature of a complaint by Tacoma regarding the present rates charged under the PNCA. The IOUs and Tacoma have requested that we treat Tacoma's letter as a complaint under section 206 of the FPA, and we have done so.

[4] 50 FR 4263 (1985).

[5] As grounds for its untimely pleading, BPA states that it mistakenly expected Tacoma's amended complaint to be noticed in the Federal Register.

[6] On August 9, 1985, the Commission's Secretary granted Puget's motion for leave to file an answer and gave all parties until August 20, 1985, to respond to BPA's answer.

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proposed charges, that if any charges are revised, all present charges listed in section 14 of the PNCA should be reviewed.

The present rates under the PNCA have been in effect since 1980 and may no longer be just and reasonable. In light of the period of time which has passed since the present rates became effective, the proposals by BPA and Tacoma for revision to some or all of these charges, and the particular features of the PNCA, we shall set for hearing, pursuant to section 206 of the Federal Power Act, the justness and reasonableness of all the rates currently charged under the PNCA by the IOUs.[7] Any modification to the IOUs' present rates shall become effective following a final determination by the Commission, pursuant to the terms of section 14(j) of the PNCA.

The Commission also notes that, while BPA and the municipals have contracted not to exceed the IOUs' rates under the PNCA, to the extent they may lawfully do so, neither BPA's nor the municipals' rates are subject to the rate setting standards or procedures of the Federal Power Act. The standards and procedures applicable to the municipals rates are found, if at all, in State legislation or regulations. The standards and procedures for establishing BPA's rates are found in section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The Commission is not empowered to initiate investigations of BPA's rates under that Act. The Commission does, however, have authority to review BPA's rates pursuant to section 7 of the Northwest Power Act, when those rates are submitted to the Commission by BPA pursuant to the procedures established in the Northwest Power Act. Thus, BPA's costs and revenues relating to PNCA services will be considered in the context of a BPA regional rate proceeding under section 7(a) of the Northwest Power Act. We note that BPA has not previously filed its PNCA rates as a separate rate schedule with the Commission or indicated whether any existing schedules accommodate the PNCA services. As BPA's rates are subject to Commission approval, BPA will be directed to file its current and future PNCA rates with the Commission so that they may be separately identified and reviewed in BPA regional rate proceedings. In addition, BPA should elaborate on its view of the interrelationship between the PNCA and the Northwest Power Act requirements as pertinent to the criteria for Commission review.

The Commission notes that the parties have a history of settling PNCA rate proceedings. We encourage efforts toward such a resolution here as well in the interest of expedition and mutuality.

The Commission Orders

(A) The IOUs' motion to strike certain portions of BPA's answer to Tacoma's amended complaint is denied.

(B) BPA's motion to file an answer to Tacoma's amended complaint is granted.

(C) BPA is hereby directed to submit the rate schedules and explanatory material discussed in the body of this order.

(D) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and Regulations under the Federal Power Act (18 CFR Ch. 1), a public hearing shall be held concerning the justness and reasonableness of the IOUs' present rates for services under the PNCA.

(E) A presiding administrative law judge, to be designated by the Chief Administrative law judge, shall convene a prehearing conference, to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule upon all motions (except motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) Subdocket -000 of Docket No. EL85-18 is hereby terminated. Subdocket No. EL85-18-001 is hereby assigned to the evidentiary hearing ordered herein.

(G) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6259 Filed 3-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-255-000]

Hadson Gas Systems, Inc.; Application for Blanket Certificate of Public Convenience and Necessity and for Order Permitting and Approving Pre-Granted Abandonment

March 18, 1986.

Take Notice that on March 11, 1986, Hadson Gas Systems, Inc. ("Hadson") applied for a blanket certificate of public convenience and necessity authorizing (1) Hadson to make sales of all duly certificated natural gas for resale in interstate commerce, (2) authorizing sales of natural gas by others to Hadson for resale in interstate commerce, (3) authorizing sales for resale of natural gas by others through Hadson acting as their agent, and (4) authorizing the pregranted abandonment of all sales for resale for which sales certificate authority is requested herein. This application is filed pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") and Part 157 of Title 18 of the Code of Federal Regulations.

The certificate and abandonment authority sought herein, if granted, will enable Hadson to purchase from various producers and resell natural gas which remains subject to the NGA jurisdiction of the Federal Energy Regulatory Commission ("Commission") and will allow producers to sell such gas to Hadson. It will also allow Hadson to act as agent in sales by producers of natural gas which remains subject to the NGA. Hadson is not seeking abandonment of producer-pipeline commitments, nor any transportation authority. A more detailed description of the authority Hadson seeks is contained in its Application which is on file with the Commission and open for public inspection.

Hadson is willing to subject itself to the Commission's NGA jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions. Hadson requests that the Commission clarify and declare that Hadson will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 1, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6260 Filed 3-20-86; 8:45 am]

BILLING CODE 6717-01-M

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[7] In light of our action and the opportunity that has been provided for other parties to respond to BPA's answer to Tacoma's amended complaint, we shall deny Puget's motion to strike portions of BPA's pleading. Whether or not BPA should have followed a different procedure for questioning other rates under the PNCA, the Commission is empowered to set all the PNCA rates for investigation on its own motion.

[Docket No. CI84-392-002]

Hunt Petroleum Corp.; Merger and Change of Name

March 18, 1986.

Take notice that on February 28, 1986, Hunt Petroleum Corporation (HPC) of 2800 Thanksgiving Tower, Dallas, Texas 75201, filed an application pursuant to § 154.92(d)(1) of the Commission's regulations requesting a redesignation of the certificates and rate schedules of Hunt Petroleum Corporation (HPC), Grand Isle Oil and Gas Company (GIOAGC), and Louisiana-Hunt Petroleum Corporation (LHPC) to Hunt Petroleum Corporation, effective December 31, 1985, all as more fully shown in Exhibit A and in the application on file with the Commission and open to public inspection.

Hunt Petroleum Corporation (HPC) and Grand Isle Oil and Gas Company (GIOAGC) merged with and into Louisiana-Hunt Petroleum Corporation (LPHC) on December 31, 1985. LPHC the surviving corporation, then changed its name to Hunt Petroleum Corporation as of the same date as the merger.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 1, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not seve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Rate schedule holder	Rate schedule No.	Certificate No.	Purchaser
Louisiana-Hunt Petroleum Corp	1	CI84-392-000	Texas Eastern Transmission Corp.
Do	2	CI84-393-000	United Gas Pipe Line Co.
Do	3	CI84-394-000	Texas Gas Transmission Corp.
Do	4	CI84-395-000	Do.
Grand Isle Oil and Gas Co	1	CI78-572	ANR Pipeline Co.
Hunt Petroleum Corp	1	G11268	Tennessee Gas Pipeline Co.
Do	2	CI64-184	El Paso Natural Gas Co.
Do	3	CI65-631	Northern Natural Gas.
Do	4	CI72-240	ANR Pipeline Co.
Do	5	CI72-543	Do.
Do	8	CI74-532	Do.
Do	9	CI74-533	Do.
Do	10	CI75-66	Truckline Gas Co.
Do	11	CI77-354	ANR Pipeline Co.

[FR Doc. 86-6261 Filed 3-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-642-001 et al.]

LLOXY Holdings, Inc.; Petition To Amend Certificates of Public Convenience and Necessity and To Redesignate Rate Schedules

March 18, 1986.

Take notice that on February 20, 1986, LLOXY Holdings, Inc. (LLOXY), of 225 Baronne Street, New Orleans, Louisiana 70163, filed an application pursuant to §§ 154.91, *et seq.*, (and §§ 157.23, *et seq.*, of the Regulations [18 CFR 154.91, *et seq.*, and 157.23, *et seq.*, (1985)], requesting that the Commission amend the certificates of public convenience and necessity heretofore issued to Louisiana Land Offshore Exploration Company, Inc. (Louisiana Land) and the related rate schedules to reflect the merger of Louisiana Land into LLOXY effective November 1, 1984, all as more fully shown in Exhibit II and in the application on file with the Commission and open to public inspection.

In addition, LLOXY requests that the Commission proceedings in which Louisiana Land was heretofore a party-applicant, party-respondent, or intervenor reflect this name change.

Any change desiring to be heard or to make any protest with reference to said applications should on or before April 1, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS TO BE COVERED BY LLOXY HOLDINGS, INC.

Docket No.	Louisiana land offshore exploration company, Inc., rate schedule No.	LLOXY Holdings, Inc., proposed rate schedule No.	Purchaser	Location
CI75-642	2	2	Texas Eastern Transmission Corp	Eugene Island Area Block 349, Offshore Louisiana.
CI77-805	3	3	do	W. Cameron Area, Block 620, Offshore Louisiana.
CI77-806	4	4	do	W. Cameron Area, Block 606, Offshore Louisiana.
CI78-158	5	5	United Gas Pipe Line Co	High Island Area, Block A-323, Offshore Texas.
CI78-201	6	6	Transco Gas Supply Co	Vermilion Area, Block 331, Gulf of Mexico.
CI78-628	7	7	United Gas Pipe Line Co	High Island Area, Block A-460, Offshore Texas.
CI79-515	8	8	Transco Gas Supply System	W. Cameron Area, Block 540, Gulf of Mexico.
CI79-670	9	9	Transcontinental Gas Pipe Line Corp	W. Cameron Area, Block 540, Gulf of Mexico.
CI80-21	10	10	Texas Eastern Transmission Corp	E. Cameron Area, Block 353, Offshore Louisiana.
CI80-147	11	11	Transcontinental Gas Pipe Line Corp	W. Cameron Area, Block 619, Offshore Louisiana.
CI80-465	12	12	United Gas Pipe Line Co	High Island Area, Block A-555, Offshore Texas.
CI81-102	13	13	Texas Eastern & Transmission Corp	Vermilion Area, Blocks 369 and 366, Offshore Louisiana.
CI81-366-000	14	14	United Gas Pipe Line Co	High Island Area, Block A-351, Offshore Texas.
CI83-244-000	15	15	Transco Gas Supply Co	High Island Area, Block A-569 Field, Gulf of Mexico.
CI84-118-000	16	16	ANR Pipeline Co	High Island Area, Blocks A-351 and A-369, Offshore Texas.
CI85-170-000	17	17	Tennessee Gas Pipeline Co	S. Marsh Island, Blocks 173-75, Offshore Louisiana.
Other Proceedings				
CI86-43-000				

[FR Doc. 86-6262 Filed 3-20-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Decisions and Orders; Week of February 24 Through February 28, 1986

During the week of February 24 through February 28, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Dated: March 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

OHR'S Fuel Wallingford Connecticut, KEE-0012

Ohr's Fuel filed an Application for Exception from the Form EIA-782B reporting requirement. The exception request, if granted, would relieve the firm from its obligation to file the monthly report. On February 25, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Phelps Petroleum Company, Burnside, Kentucky, HEE-0169

Phelps Petroleum Company filed an Application for Exception from the Form EIA-782B reporting requirement. The exception request, if granted, would relieve the firm from its obligation to file the monthly report. On February 25, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-6304 Filed 3-20-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2988-5]

Environmental Impact Statements; Availability of EPA Comments

Availability of EPA comments prepared March 3, 1986 through March 7, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DA-APH-A82105-00, Rating 3, Rangeland Grasshopper Cooperative Management Program, U.S. **SUMMARY:** EPA is concerned with the adequacy of the EIS due, first, to the absence of a serious explanation of a comprehensive Integrated Pest Management Approach including the use of the biological control agent Nosema locustae and, second, the inadequate characterization of the potential impacts from the chemical spraying alternative on humans and non-target wildlife.

ERP No. D-CDB-C89025-NY, Rating LO, Brooklyn Renaissance Plaza, Construction and Operation, Special Permit, UDAG, NY. **SUMMARY:** EPA anticipates that no significant environmental impacts would result from implementation of this project.

However, EPA suggested that additional information on air quality impacts be included in the final EIS.

ERP No. D-FHW-F40284-OH, Rating EC2, US 422 Relocation, I-271 to OH-44, 404 Permit, Right-of-Way Acquisition, OH. **SUMMARY:** EPA is concerned with potential noise, air, and wetlands/drinking water impacts. EPA recommended that additional analysis and mitigation measures be included in the final EIS.

ERP No. DS-JUS-A82113-00, Rating LO, Cannabis Eradication on Non-Federal and Indian Lands in the Contiguous U.S. and HI. **SUMMARY:** EPA offers no further comments on this action.

Final EISs

F-COE-E23005-AL, Huntsville Spring Branch and Indian Creek System, DDT Contamination Isolation, Olin's Remedial Action Plan, Permits (COE—404 and 10; TVA—26A, FWS—Refuge Use), Redstone Arsenal, Wheeler Reservoir, Tennessee, R., AL. **SUMMARY:** EPA finds that our concerns were satisfactorily addressed in the final EIS, and we have no objections to the project.

ERP No. F-HUD-G85177-OK, Shenandoah Planned Community Development, Mortgage Insurance, OK. **SUMMARY:** EPA finds the final EIS unresponsive to previous environmental concerns and information request regarding the inclusion and evaluation of the completed Superfund investigative study of the Compass Industries site prior to the filing of the final EIS. EPA recommended that a supplemental EIS be prepared. EPA asks that no decision be made on the approval of the FHA mortgage insurance application until NEPA and any required remedial clean-up activity is completed.

Dated: March 18, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-6233 Filed 3-20-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2988-4]

Environmental Impact Statements, Availability, etc.: Agency Statements—Weekly Receipts

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed March 10, 1986 Through March 14, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860091, Draft, AFS, CA, NV, Lake Tahoe Basin Management Unit National Forest, Land and Resource Management Plan, Due: June 27, 1986, Contact: Ralph Cisco (916) 544-6420.

EIS No. 860092, FSuppl, COE, HI, West Beach Resort Development, Construction of a Marina and Beach Lagoons, Permit, Hawaii County, Due: April 21, 1986, Contact: Michael Lee (808) 438-9258.

EIS No. 860093, Final, CDB, CA, San Bernardino Enterprise Zone Application, Designation and CDBG, Due: April 21, 1986, Contact: Valerie Ross (714) 383-5057.

EIS No. 860094, Draft, FHW, MT, Bozeman Arterials Developments, North 19th Avenue Construction, Durston Road to Oak Street, Oak Street Construction, North 19th Avenue to North 7th Avenue and Kagy Boulevard Construction, South 3rd Avenue to South 19th Avenue, Gallatin County, Due: May 5, 1986, Contact: William Dunbar (406) 449-5310.

EIS No. 860095, Final, AFS, AL, Alabama National Forest, Land and Resource Management Plan, Due: April 21, 1986, Contact: Joe Brown (205) 832-7630.

EIS No. 860096, Draft, AFS, WA, Okanogan National Forest, Land and Resource Management Plan, Due: July 15, 1986, Contact: William McLaughlin (509) 422-2704.

EIS No. 860097, Final, SCS, OK, North Deer Creek Watershed Multipurpose Plan, Oklahoma, Pottawatomie, and Cleveland Cos., Due: April 21, 1986, Contact: Roland Willis (405) 624-4360.

EIS No. 860098, Legislative, Joint Lead, DOI, USDA, Bureau of Land Management and Forest Service, Transfer of Jurisdiction over Certain Federal Lands and Minerals, Contact: Robert Burford (202) 343-9435.

EIS No. 860099, Draft, COE, IL, North-South Tollway Construction, I-55 to I1-53, Fill Material Discharge, Lily Cache Creek and Dupage River, Dupage and Will Cos., Due: May 5, 1986, Tom Slowinski (312) 353-6428.

EIS No. 860100, Draft, AFS, MT, Deerlodge National Forest, Individual Lodgepole Pine Trees Protection from Mountain Pine Beetle Attacks, Jefferson County, Due: May 5, 1986, Contact: Roger Siemens (406) 287-3223.

EIS No. 860101, Draft, BLM, NM, Carlsbad Resource Area, Resource Management Plan, Eddy, Lea, and Chaves Cos., Due: June 9, 1986, Contact: Charles Dahlen (505) 887-6544.

EIS No. 860102, Draft, OSM, TN, Rock Creek Watershed, Designation of Land Unsuitable for Surface Coal Mining Operations, Hamilton and Bledsoe Cos., Due: May 5, 1986, Contact: Willis Gainer (615) 673-4348.

EIS No. 860103, FSupply, COE, OR, WA, Bonneville Lock and Dam, Navigation Lock Construction, Project Change, Columbia-Snake River Navigation System, Due: April 21, 1986, Contact: Eric Braun (503) 221-6096.

EIS No. 860104, DSuppl, AFS, AK, 1986-1990 Alaska Pulp Long-Term Sale Area, Operating Plan and Designation, Additional Alternatives Tongass National Forest, Chatham and Stikine Areas, Due: May 9, 1986, Contact: K. W. Roberts (907) 747-6691.

Amended Notices

EIS No. 850513, Draft, AFS, CA, Sequoia National Forest, Land and Resource Management Plan, Due: April 28, 1986, Published FR 11-29-85—Review period extended.

EIS No. 860067, Draft, AFS, MT, ND, SD, Custer National Forest, Noxious Weed Treatment Program, Due: April 25, 1986, Published FR 3-7-86—Review period extended.

EIS No. 860084, DSuppl, IBR, ND, Garrison Diversion Unit, New Irrigation Areas and New Project Features, Operation and Maintenance, Pick-Sloan Missouri Basin Program, James River, Due: May 5, 1986, Published FR 3-14-86—Review period reestablished.

Dated: March 18, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-6232 Filed 3-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180690; FRL-2988-8]

Receipt of Application for an Emergency Exemption From Texas To Use Dichlorophenyltriazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA had received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as "Applicant") to use the pesticide TILT, active ingredient 1-[[2-(2,4-dichlorophenyl)-4propyl-1,3-dioxolan-2-yl] methyl] -1*H*-1,2,4-triazole (dichlorophenyltriazole), plus its metabolites containing the dichlorobenzyl moiety (EPA Reg. No. 100-617: CAS 60 207-90-1) on rice to control sheath blight caused by *Rhizoctonia solani*.

The Applicant plans to treat 160,000 acres of rice mainly in the Upper Gulf

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Coast Region of the State. It is EPA's policy to solicit public comment on applications involving active ingredients which have not been previously registered for a food use. Accordingly, EPA is soliciting comments before making the decision whether or not to grant this emergency exemption.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180690" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption

The Applicant has requested the Administrator to issue a specific exemption to permit the use of TILT, EPA Reg. No. 100-617, on rice to control sheath blight caused by *Rhizoctonia solani.*

Information in accordance with 40 CFR Part 166 was submitted as part of this request. TILT is currently registered for use on grasses grown for seed.

The Applicant states that the incidence of rice sheath blight has increased since the late 1960s and has severely reduced rice yields in various locations. The Applicant predicts that the disease situation will continue and even worsen because of the following factors: (1) The susceptibility of all currently available long-grain rice varieties and particularly the newly adopted, high-yielding semi-dwarf types; (2) the incidence of aerial web blight in soybeans during the fall of 1985 (Aerial web blight of soybeans is caused by the same fungus that causes sheath blight in rice and soybeans are a major rotational crop for rice.); and (3) the registered use rates of benomyl do not control sheath blight sufficiently to achieve an economic return.

According to the Applicant, crop rotation, host resistance and deep tillage are alternatives to chemical control to minimize yield loss caused by sheath blight. All three alternative control methods plus chemical control are used to the extent possible, but have not resulted in acceptable control, particularly in plantings of the new semi-dwarf varieties. Available methods of control are not expected to provide economic control next season due to increased presence of the fungi and the wide-spread adoption of the semi-dwarf cultivars. Yields of the semi-dwarf cultivars were reduced nearly 2½ times the amount of traditional varieties by equivalent levels of sheath blight. However, a return to standard height varieties for purposes of reduced disease loss would result in a net production loss of 3 million hundredweight.

The Applicant plans to treat up to 180,000 acres using 10,000 gallons of product. Applications are proposed from May 1, through September 30, 1986. Applications will be made by certified aerial applicators. Applications will not be made within 41 days of harvest or to stubble, ratoon crop rice, or headed rice. Water drained from treated areas may not be used to irrigate other crops. The Applicant indicates that treatment of affected acreage with TILT in 1986 could save growers at least $10.1 million.

This notice does not constitute a decision by EPA on this application. Use of the pesticide TILT has been determined to be of public interest, and therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.24 is called for as a part of the information adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: March 14, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6221 Filed 3-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00223; FRL-2990-8]

FIFRA Scientific Advisory Panel; Partially Closed Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of a subpanel of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel to review an application submitted pursuant to section 5 of FIFRA by the Monsanto Company for an EPA experimental use permit (EUP) for a genetically engineered microbial pesticide. The meeting will be open to the public from 9 a.m. to 2 p.m. and closed to the public from 2 p.m. to 4 p.m.

DATE: Tuesday, April 22, 1986.

ADDRESS: The meeting will be held at: Hyatt-Regency Hotel-Crystal City, 2799 Jefferson Davis Highway, Arlington, VA. (703-486-1234).

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M. St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION:

I. Notification of Meeting

The Federal Advisory Committee Act (FACA) (5 U.S.C. App. I (1982)) requires that timely notice of each meeting of an advisory committee be published in the **Federal Register**. The interim regulations of the General Services Administration (GSA) (41 CFR Parts 101 through 106) implementing FACA generally require 15 days notice of the meeting. The subpanel is to meet in order to review an application submitted pursuant to section 5 of FIFRA by the Monsanto Company for an EUP for a genetically engineered microbial pesticide. This application proposes small scale field testing in corn of *Pseudomonas fluorescens* isolate Ps 3732-3-7 or isolate 112-12, engineered to contain the delta endotoxin gene from *Bacillus thuringiensis* var. *kurstaki*. The purpose of the EUP is to assess the efficicy of the product on root associated lepidopteran insects following the planting of corn seeds which have been treated with the product prior to planting.

II. Reasons for Closed Meeting

Section 10(d) of FACA provides that an advisory committee meeting may be closed to the public "in accordance with subsection (c) of section 552b of title 5, United States Code." Subsection (c)(4) of 5 U.S.C. 552b provides that an advisory committee meeting may be closed to the public when it is determined that material to be considered at the meeting consists of trade secrets and commercial or financial information obtained from a person and privileged or confidential (hereafter "CBI"). The Agency has determined that the Monsanto submission contains information that is CBI. Therefore, insofar as the subpanel will review CBI in the April 22, 1986 meeting, provision must be made for a portion of the meeting of the subpanel to be conducted in executive session. A written determination that the meeting shall be closed from 2 p.m. to 4 p.m. was made by the Administrator on March 14, 1986, pursuant to section 10(d) of FACA for the following reasons:

1. The Monsanto submission contains CBI.
2. Making the submission public would disclose information that could do substantial harm to Monsanto's competitive position.
3. The Monsanto product is at an early stage of development, i.e., 1 to 3 years before the company would normally request a registration from EPA. Thus, Monsanto is anxious to protect its product for as long as possible, in order to prevent competitors from unfairly benefitting from its research and development efforts.

The Agency intends to make a verbatim transcript of the subpanel meeting, which will be available to the public from the portion of the open meeting. If, upon review of that portion of the transcript from the executive session, EPA should determine that any portions of the transcript do not contain exempt material, EPA will make those portions of the transcript also available to the public.

The agenda for this meeting is:

1. Review of an application by the Monsanto Company for an EUP for a genetically engineered microbal pesticide.
2. Consideration of EPA's scientific assessment and issues in response to the EUP.

Copies of documents pertaining to the above agenda items may be obtained by contacting:

By mail: Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460.

Office location and telephone number: Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the subpanel. There is no limit on written comments for consideration by the subpanel, but oral statements before the subpanel are limited to approximately 15 minutes. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no late than April 11, 1986, in order to ensure appropriate consideration by the subpanel. Information submitted in any comment concerning this notice may be claimed confidential by marking any part of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Those comments which do not contain CBI will be included in the public record. Comments submitted not marked CBI may be disclosed publicly by EPA without prior notice to the submitter.

Dated: March 18, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-6392 Filed 3-20-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1573]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

March 14, 1986.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2, 73 and 90 of the Commission's Rules to Allocate Additional Channels in the 470-512 MHz Band for Public Safety Services. (Gen Docket No. 84-902, RM-3975) Number of Petitions received: 1

Subject: Review of Technical and Operational Requirements: Part 74-D Broadcast Remote Pickup Service; and Part 74-H Low Power Auxiliary Stations. (MM Docket No. 85-126) Number of Petitions received: 2

Subject: Amendment of Part 15 of the Commission's Rules to Permit the Operation of Low Power Communication Devices in the 1.6-10 MHz Band. (Gen Docket No. 85-129, RM-4427) Number of Petitions received: 1

Subject: Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes. (CC Docket No. 85-204) Number of Petitions received: 6

Subject: Provisions of Access for 800 Service. (CC Docket No. 86-10, RM-5101) Number of Petitions received: 1

Erratum To Petition for Partial Reconsideration

Subject: Amendment of Part 97 of the Commission's Rules to Permit Automatic Control of Amateur Radio Stations. (PR Docket No. 85-105) Number of Petitions received: 1

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Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-6184 Filed 3-20-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-761-DR]

Major Disaster and Related Determinations; Montana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA-761-DR), dated March 15, 1986, and related determinations.

DATED: March 15, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of March 15, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from severe storms, ice jams, and flooding, beginning on or about February 24, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David P. Grier IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster and are designated eligible as follows: Deer Lodge, Glacier, Pondera, Sanders, Teton, and Toole Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-6191 Filed 3-20-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement Name Change

Agreement No.: 207-010884.

Title: Trans Freight Lines, Inc. Joint Service Agreement.

Synopsis: By letter dated March 11, 1986, the Commission was advised by the Attorney for Trans Freight Lines that (1) Trans Freight Lines expects to commence operations as a joint service under FMC Agreement No. 207-010884; (2) change its name from Trans Freight Lines, Inc. to Trans Freight Lines; and (3) will succeed to the business and interests under its respective agreements and tariffs effective March 17, 1986. The following agreements are involved:

No. 202-000093 North Europe—U.S. Pacific Freight Conference

No. 202-010270 Gulf-Europe Freight Association

No. 202-010636 U.S. Atlantic—North Europe Conference

No. 202-010637 North Europe—U.S. Atlantic Conference

No. 202-010656 North Europe—U.S. Gulf Freight Association

No. 217-010792 TFL/Lykes Bros. Space Charter Agreement

No. 202-010848 North Europe—Virgin Islands Rate Agreement

No. 203-010851 Advisory Commission Study Agreement

No. T-3991 South Carolina State Ports Authority/TFL Terminal Lease

No. T-4091 Galveston Wharves/TFL Terminal Lease

No. 224-010611 Massport-TFL Terminal Lease.

Dated: March 18, 1986.

By the Order of the Federal Maritime Commission

John Robert Ewers,

Secretary.

[FR Doc. 86-6275 Filed 3-20-86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003753-005.

Title: Port of Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
ITO Corporation of Baltimore (ITO)

Synopsis: The proposed amendment would extend ITO's current lease at MPA's South Locust Point Marine Terminal from its scheduled April 30, 1986 expiration date to January 31, 1987. The parties have requested a shortened review period.

Agreement No.: 202-010676-012.

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" di Navigazione, S.P.A.
Jugolinija
Jugooceanija
Lykes Lines
Med-America Express Service
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the agreement to provide that any chartering of vessel space between the members will be done pursuant to the terms of a new Annex B which is incorporated by reference.

Agreement No.: 224-010900.

Title: San Francisco Port Commission Terminal Agreement.

Parties:

San Francisco Port Commission
Japan Line, Ltd.

Synopsis: The proposed agreement calls for the utilization of the Port of San Francisco by Japan Line as its published, regularly scheduled Northern California port of call. Japan Line jointly with Evergreen Marine Corp. guarantees a minimum annual thruput of loaded containers and in return will pay less than 100 percent of wharfage and dockage charges. The parties have requested a shortened review period.

Agreement No.: 024-010901.

Title: Port of Galveston Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (Wharves)
Del Monte Fresh Fruit Company (Del Monte)

Synopsis: The proposed agreement would permit the Wharves to assign Del Monte preferential first call at Pier 18 on berth, shed space and upland marshaling areas. It would also provide Del Monte reduced tariff charges after minimum annual tonnage thresholds are achieved. The initial term of the agreement is five (5) years. The parties have requested a shortened review period.

Agreement No.: 224-010903.

Title: Agreement and Lease between the Maryland Port Administration and Atlantic Container Line, Ltd.

Parties:

Atlantic Container Line, Ltd. (ACL)
Maryland Port Administration (MPA)

Synopsis: The agreement and lease provides ACL with 18.49 acres at Dundalk Marine Terminal for three years. ACL will receive an annual tonnage discount based on the achievement of tonnage beyond a guaranteed level of cargo throughput on the terminal. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 18, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-6274 Filed 3-20-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fidelity Bank, N.A., Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-4849), published at page 7852 of the issue for Thursday, March 6, 1986.

Comments on this application must be received not later than March 26, 1986.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6192 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

Mid Town Bancorp, Inc., et al.; Applications To Engage de Novo Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mid Town Bancorp Inc.*, Chicago Illinois; to provide *de novo* through its subsidiary, Mid Town Development Corporation, Chicago, Illinois, real estate development and rehabilitation loans, pursuant to § 225.25(b)(1)(iii) of Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Central Arizona Bancorp.*, Chandler, Arizona; to engage *de novo* through its subsidiary, Central Arizona Mortgage Corporation, Chandler, Arizona, in mortgage banking and commercial finance activities relating to residential and commercial real estate, pursuant to § 225.25(b)(1) (iii) and (iv) of Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6187 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Mount Sterling National Holding Co. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

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Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mount Sterling National Holding Company,* Mount Sterling, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Mount Sterling National Bank, Mount Sterling, Kentucky.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bankers' Bancorp of Illinois,* Springfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Bankers' Bank of Illinois, Springfield, Illinois.

2. *Wenona Bancorp, Inc.,* Wenona, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Wenona State Bank, Wenona, Illinois.

3. *East Side Bancorporation.* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of East Side Bank and Trust Company, Chicago, Illinois.

C **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Guaranty Bancorp, Inc.,* Oklahoma City, Oklahoma; to become a bank holding company by acquiring 80.30 percent of the voting shares of Guaranty Bancshares, Inc., Oklahoma City, Oklahoma, and thereby acquire Guaranty Bank and Trust Company, Oklahoma City, Oklahoma.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Trinity Bancorp, Inc.,* Benbrook, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Trinity National Bank, Benbrook, Texas.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6188 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

Peoples National Bancorp of America et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement ot the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peoples National Bancorp of America,* Lawrenceburg, Indiana; to retain P.N.B. Insurance Agency, Inc., Lawrenceburg, Indiana, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(c)(8)(C)(i) of the Act.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to acquire Bankline, Inc., Phoenix, Arizona, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases or access to such services or facilities by any technological means, so long as: (i) The data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering, all to the extent authorized by § 225.25(b)(7) of Regulation Y. Such applications needed to meet the data processing requirements of financial and banking institutions, including the processing of general ledgers, deposits and extensions of credit. The activities will be conducted from an office of Bankline located in Phoenix, Arizona, serving the United States and the District of Columbia. Comment on the application must be received not later than April 3, 1986.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6186 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

United Jersey Banks; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 22521(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Jersey Banks,* Princeton, New Jersey; to engage in making or acquiring commercial, consumer and mortgage loans, pursuant to § 225.25(b)(1) of the Act.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6189 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

United Southeastern Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 11, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *United Southeastern Bancshares, Inc.,* Athens, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Athens-Limestone Bank, Athens, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pinnacle Financial Services, Inc.,* St. Joseph, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of the The Peoples State Bank of St. Joseph, Saint Joseph, Michigan. Comments on this application must be received not later than April 9, 1986.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation,* Frankfort, Kentucky; to acquire 100 percent of the voting shares of Farmers Bancshares of Georgetown, Inc., Georgetown, Kentucky, thereby indirectly acquiring The Farmers Bank and Trust Company, Georgetown, Kentucky.

2. *Medina Bancshares, Inc.,* Medina, Tennessee; to become a bank holding company acquiring 94.30 percent of the voting shares of Medina Banking Company, Medina, Tennessee.

3. *Old National Bancorp,* Evansville, Indiana; to acquire 100 percent of the voting shares of People's Bank & Trust Company, Mount Vernon, Indiana.

4. *Pioneer Bancshares, Inc. of Horatio, Arkansas,* Horatio, Arkansas; to become a bank holding company by acquiring 94.15 percent of the voting shares of Horatio State Bank, Horatio, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota.

1. *Franklin Bancorp, Inc.,* Minneapolis, Minnesota; to become a bank holding company by acquiring 96.75 percent of the voting shares of Franklin National Bank of Minneapolis, Minneapolis, Minnesota.

2. *Lake Elmo Bancorp, Inc.,* Lake Elmo, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Lake Elmo, Lake Elmo Minnesota.

3. *Peninsula Financial Corporation,* Ishpeming, Michigan; to become a bank holding company by acquiring The Peninsula Bank, Ishpeming, Michigan. Comments on this application must be received not later than April 14, 1986.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *WFB Company, Inc.,* Wauneta, Nebraska; top become a bank holding company by acquiring 98 percent of the voting shares of Wauneta Falls Bank, Wauneta, Nebraska.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *North Houston Bancshares, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of North Houston Bank, Houston, Texas. Comments on this application must be received not later than April 10, 1986.

Board of Governors of the Federal Reserve System, March 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6190 Filed 3-20-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 14, 1986.

Social Security Administration

(Call 301-594-5706 for copies of packages)

Subject: Letter to Employer Requesting Information About Wages Earned by Beneficiary—Extension—(0960-0034)

Respondents: Businesses or other for-profit institutions; Small businesses or organizations

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Subject: Transitional Employment Training Demonstration Data—Extension—(0960-0387)
Respondents: Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations
Subject: Statement Regarding the Inferred Death of an Individual by Reason of Continued and Unexplained Absence—Extension—(0960-0002)
Respondents: Individuals or households
Subject: Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—Revision—(0960-0293)
Respondents: Businesses or other for-profit institutions; Small businesses or organizations
Subject: Certificate of Support—Extension—(0960-0001)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh.

Office of Human Development Services

(Call 202–472–4415 for copies of packages)

Subject: National Study of the Incidence and Prevalence of Child Abuse and Neglect—Reinstatement—
Respondents: State or local governments
OMB Desk Officer: Judy A. McIntosh.

Public Health Service

(Call 202–245–2100 for copies of packages)

Health Resources Services Administration

Subject: Reporting Requirements for Reviews by Health Systems Agencies and State Health Planning and Development Agencies under State Certificate of Need Programs—Reinstatement—(0915-0070)
Respondents: State of local governments; Businesses or for-profit institutions; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Bruce Artim.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: March 17, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-6219 Filed 3-20-86; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended to reflect the changes in responsibilities for the security functions. Specifically, Chapter AF, Office of the Inspector General (as last amended at 50 FR 45491, October 31, 1985); Chapter AH, Office of the Assistant Secretary for Personnel Administration (as last amended at 50 FR 20850, May 20, 1985); and Chapter AMS, Office of Facilities and Management Services (as last amended at 50 FR 45488, October 31, 1985) are amended. These changes transfer personal security services to the Immediate Office of the Secretary, employee and facility protection services to the Office of Facilities and Management Services, and personnel-related security services to the Office of the Assistant Secretary for Personnel Administration.

These changes are as follows:

1. Amend Chapter AF, Office of the Inspector General as follows:

a. Delete from section AF.20 Functions, paragraph E, The Office of Investigations, subparagraph (f). Reletter subparagraphs (g), (h), (i), (j), (k), and (1) as (f), (g), (h), (i), (j), and (k).

b. Delete from section AF.20, paragraph E, subparagraph (3)(c) items (iii) and (iv) and renumber items (v), (iv) and (vii) as (iii), (iv), and (v).

2. Amend Chapter AH, Office of the Assistant Secretary for Personnel Administration as follows:

a. Amend Section AH.20 Functions, subsection C, Office of Personnel Operations, subparagraph 2, Division of Executive Personnel and Career Development by: changing the word "Career" in the title to "Employee" and by adding the following at the end of the subparagraph: Establishes, implements, and directs programs for personnel and document security.

3. Amend Chapter AMS, Office of Facilities and Management Services as follows:

a. Add to section AMS.20 Functions, subsection E, Telecommunications a new item 9 to read:

9. Maintains employee and facility protection for buildings and employees in the Southwest Complex area.

Dated: March 13, 1986.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 86-6218 Filed 3-20-86; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organizations, Functions and Delegations of Authority

Part H, Public Health Service, Chapter HB, Health Resources and Services Administration and Part F, Health Care Financing Administration, of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services are amended to reflect the transfer of responsibility for the Health Maintenance Organization Program from the Health Resources and Services Administration to the Health Care Financing Administration. Specifically, Chapter HB (as last amended at 50 FR 21357, May 23, 1985) and Chapter F, Health Care Financing Administration (as last amended at 51 FR 1042, January 9, 1986) are amended. This change is made in order to more closely coordinate the Health Maintenance Organization Program with the Medicare Program and improve the objectives of both programs to improve health care and the use of prepaid health care.

The changes are as follows:

1. Amend Chapter HB, Health Resources and Services Administration as follows:

(a) Delete from HB.20 the entire subsection beginning with "Office of the Associate Director for Health Maintenance Organizations (HBHE)" through, and including the entire functional statement for "Division of HMO Compliance (HBHE4)."

(b) Delete from HB.20, from the subsection beginning "Bureau of Health Maintenance Organizations and Resources Development" the term "Health Maintenance Organizations and" from the title and delete items (3), (4), (5), and (6) from the same subsection. Renumber items (7) through (13) as items (3) through (9).

2. Amend Chapter F, Health Care Financing Administration, Section F.20 Office of the Administrator by adding a new subsection C, titled Office of Health Maintenance Organizations. Transfer the entire deleted subsections identified in paragraph 1(a) of this Notice to this new subsection, deleting the title "Office of the Associate Director for Health Maintenance Organizations (HBHE)" and the following from the titles of the various subordinate organizations: "(HBHE2), (HBHE3) and (HBHE4)."

3. Amend Chapter F, Health Care Financing Administrator, Section F. 30 Delegations of Authority by adding a new subsection W, to read as follows:

W. The authority under Title XIII of the Public Health Services Act (42 U.S.C. 300e et. seq.), as amended, concerning the Health Maintenance Organizations.

4. Amend Chapter F, Health Care Financing Administration, Section F. 40 Reservations of Authority by adding a new subsection 4. to read as follows:

4. Under Title XIII of the Public Health Service Act. The Secretary shall exercise the authority pertaining to reports to Congress.

5. Amend Chapter F. Health Care Financing Administration, Section F. 50 Limitations of Authority by deleting subparagraph 2.d., relettering 2.e. as 2.d, and deleting subparagraph 3.b. and relettering 3.c. as 3.b.

6. The May 1, 1978 Delegation of Authority to the Assistant Secretary for Health, delegating Title XIII, Health Maintenance Organizations, of the Public Health Service Act, as Amended; and section 1876(b)(2)(A) of the Social Security Act, as Amended; and the January 19, 1977 Delegation of Authority to the Assistant Secretary for Health delegating authority to Title XIII of the Public Health Services Act and Amendments to the Social Security Act (Pub. L. 94–460), section 202(a) Determination of Organizational Compliance to the Provision of section 1301 (b) and (c) are hereby superseded. The Administrator of the Health Care Financing Administration will exercise these authorities under previous delegations from the Secretary.

Dated: March 14, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-6220 Filed 3-20-86; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the Executive Subcommittee of the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, April 3, 1986 from 9:00 a.m. to 1:00 p.m. in Room 405A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC. 20201.

The Executive Subcommittee will consider administrative matters related to operations of the National Committee on Vital and Health Statistics.

Further information regarding the Subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: March 11, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86-6287 Filed 3-20-86; 8:45 am]

BILLING CODE 4160-17-M

Cardiokymography for Diagnosing Coronary Artery Disease

The Public Health Services (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of what is known of the safety, clinical effectiveness, appropriateness, and use of cardiokymography. Specifically, we are interested in the clinical utility of cardiokymography as it is used in diagnosing coronary artery disease and its sensitivity and specificity when compared with other methods of cardiac screening and diganosis.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to cardiokymography, a bibliography of published, controleld clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought. Specifically, the interchangeability of cardiokymography with electrocardiography, and the need for adjunctive cardiokymography with electrocardiography is of interest.

Written material should be submitted to: Ernest Feigenbaum, M.D., Office of Health Technology Assessment, Park Building, Rm. 3–10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4990.

Dated: March 7, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-6286 Filed 3-20-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, April 3, 1986, starting at 9:00 a.m. in the Meeting Room of Faneuil Hall, One Faneuil Place, Boston, MA 02201. Due to the number of speakers requesting time to address the Commission a second hearing room has been designated for Thursday, April 3, 1986, starting at 9:00 a.m., in the City Council Chambers, One City Hall Plaza, Boston, MA 02201.

Thisl will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

The meeting is open to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street, NW., Washington, DC 20036–8547, (202) 634–7310.

Dated: March 17, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-6257 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-70-M

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Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Request for Banding Data.

Abstract: The report is completed by licensed bird banders and provides banding data when a bird band recovery report on a specific band number is received and there is no matching band data on file. Such data is used by Federal, State, and Provincial personnel, conservation organizations, and scientific cooperators to aid in the study of population size, mortality and survival rates, longevity and migration patterns of birds. Band recovery information is also used in the preparation of the annual United States and Canadian Wildlife Service's hunting and shooting regulations.

Form Number: 3-860a
Frequency: On occasion
Description of Respondents: Individuals and households, and licensed bird banders
Annual Responses: 4,000
Annual Burden Hours: 133.

Acting Service Clearance Officer: James E. Pinkerton, telephone 202-653-7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: March 5, 1986.

Walter O. Stieglitz,
Acting Associate Director—Wildlife Resources.

[FR Doc. 86-6204 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[W-94205]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-94205 for lands in Niobrara County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-94205 effective May 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 86-6178 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-22-M

[Designation Order MT-025-6601; Supersedes Designation Order MT-060-002]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decision.

Decision

Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. Off-road vehicle use on the following described lands under administration of the Bureau of Land Management is limited to designated roads except for permitted and licensed use authorized by the authorized officer. Permits and licenses will be restricted to the person holding the grazing lease for the purpose of maintaining and constructing new livestock facilities and to Bureau of Land Management employees for the purpose of resource management. The 3,760 acre area affected by the designation is known as the Southwest End Allotment (Action area) located within the Billings Resource Area. This final designation is the result of land use decisions made in the 1984 Billings Resource Management Plan. This designation is published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

Limited Designations

A. Approximately 3,760 acres are designated as limited to designated roads or to permitted or licensed use. This acreage is described as:

T. 3 N., R. 25 E.,
  Secs. 5, 8, 9, and 17: All.
T. 3 N., R. 25 E.,
  Sec. 6, lots 1 and 2, S½NE¼;
  Sec. 7, lots 1 and 2, E½, E½W½;
  Sec. 20, N½N½;
  Sec. 31, E½.

All motorized vehicle use is limited in this area to protect the fragile environment, cultural values, scenic values, vegetational values, and to prevent undue erosion.

This designation becomes effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impacts of this designation is available for inspection at the Billings Resource Area Office.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301, or Area Manager, Billings Resource Area, BLM, 810 East Main, Billings, Montana 59105.

Dated: March 12, 1986.

Robert A. Teegarden,
Acting District Manager.

[FR Doc. 86-6256 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202-395-7340.

Title: Park Visitation Census

Abstract: To effectively manage National Park Service areas, there is a need to collect information about the characteristics of park visitors. Park managers will use the data to plan maintenance schedules, design programs, access and other management strategies.
Bureau Form Number: 10-157
Frequency: On Occasion
Description of Respondents: Individuals
Annual Responses: 9,600
Annual Burden Hours: 800
Bureau Clearance Officer: Russell K. Olsen, 202-523-5133

Russell K. Olsen,
Information Collection Clearance Officer.

[FR Doc. 85-6285 Filed 3-20-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Current Schedule of Reviews of Government Vesus Contract Operation of Commercial or Industrial Activities and Service Contracts

AGENCY: Agency for International Development, IDCA.

ACTION: Notification of current schedule of reviews.

SUMMARY: Pursuant to Office of Management and Budget (OMB) Circular A-76, notice is hereby given that the Agency for International Development (AID) intends to conduct reviews of the feasibility and/or cost of contract operation versus government operation of commercial and industrial activities listed below under Supplemental Information. Specific invitation for bids or request for proposals will be announced in the *Commerce Business Daily*. A contract or contracts may or may not result from each feasibility or cost-comparison study. Results of each study will be made available to responding bidders or offerors and other interested parties.

FOR FURTHER INFORMATION CONTACT: Fred Allen, 632-3378, John H. Elgin, 632-3378.

SUPPLEMENTARY INFORMATION: Studies to be made are identified in the following tabulation:

Name of activity	Location of activity	Review start date
ADP services	Washington, DC	In process.
Mail and file/motor pool warehousing.	Washington, DC	In process.
Voucher examination	Washington, DC	June 2, 1986.
Audiovisual products and services.	Washington, DC	May 1, 1986.

Dated: March 13, 1986.

R.T. Rollis, Jr.,
Assistant to the Administrator for Management.

[FR Doc. 86-6056 Filed 3-20-86; 8:45 am]

BILLING CODE 6116-01-M

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on April 1 and 2, 1986.

The purpose of the meeting is to receive reports and recommendations and to discuss the Proposal to extend the Peanut Collaborative Research Support Program (CRSP); to discuss the proposal to extend the Small Ruminent CRSP as well as to receive reports on and discuss AID's nutrition programs. A deliberation on the current role of JCARD will take place and JCARD will receive Panel reports on and discuss Agricultural Policy for AID. JCARD will assess the impact of proposed agricultural, rural development and nutrition budget. The Committee will review institution building plans in Africa and review BIFAD's role in monitoring and evaluating AID's Title XII Projects.

JCARD will meet from 1:15 p.m. to 5:00 p.m. on April 1 and from 8:30 a.m. to 12:15 p.m. on April 2, 1986. The meeting will be held in Room 1406 in the State Department. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, DC 20523 or telephone him at (202) 647-7332.

Dated: March 18, 1986.

John Stovall,
AID Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 86-6196 Filed 3-20-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent company and address of principal office: A&M Building Systems, Inc., 2610 E. Mabry Drive, P.O. Box 1450, Clovis, New Mexico 88101.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation: A&M Farm & Ranch, Inc., 2600 E. Mabry Drive, P.O. Box 1450, Clovis, New Mexico 88101 (Inc. in New Mexico).

B. 1. Parent corporation and address of principal office: Brown Pipe Company, 640-646 W. 19th Street, P.O. Drawer 1408, Jasper, Alabama 35501.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

(i) Brown Pipe Company of Tennessee, Inc., a Tennessee corporation (will engage in operations but not hauling).

(ii) Heavy Haulers, Inc., an Alabama corporation (will be exclusive hauler for intercorporate group).

C. 1. The parent corporation is: Hauserman, Inc., 5711 Grant Avenue, Cleveland, Ohio 44105.

2. The wholly-owned subsidiaries which will participate in the operations and states of incorporation are:

SunarHauserman, Inc., Ohio,
SunarHauserman, Ltd. Waterloo, Ontario, Canada

D. 1. Parent corporation and address of principal office: K mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation:

Bishop Buffets, Inc.—Iowa
Furr's Cafeterias, Inc.—Texas
K mart Apparel corp.—New York

E. 1. Parent corporation and address of principal office: PetroSource

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Corporation, 185 South State Street, Suite 900, Salt Lake City, Utah 84111.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

a. Petro Source, Inc., a Utah corporation.

b. Petro Source Oil Company, a Utah corporation.

c. Petro Source Energy, a Utah corporation.

d. Petro Source Hydrocarbon Services, a Utah corporation.

e. Petro Source Company, a Utah corporation.

f. Petro Source Resources, a Utah corporation.

g. Petrosource Transportation, a Utah corporation.

h. Petro Source Products Company, a Utah corporation.

i. Petro Source Refining Corporation, a Utah corporation.

j. Texon Corporation, a Utah corporation.

James H. Bayne,

Secretary.

[FR Doc. 85-6228 Filed 3-20-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30789]

Indiana Rail Road Co.; Exemption; Acquisition and Operation

Indiana Rail Company has filed a notice of exemption to acquire and operate the Illinois Central Gulf Railroad Company's line between Indianapolis and Sullivan, IN, and a branch from Bloomington to Victor, IN. Any comments must be filed with the Commission and served on Carl M. Miller, 407 Broadway, P.O. Box 346, New Haven, IN 46774.

The notice is filed under 49 CFR 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 14, 1986.

By the Commission, Director Jane F. Mackall, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-6328 Filed 3-20-86; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-16951]

Philadelphia, Bethlehem & New England Railroad Co. & Bethlehem Steel Corp., Control; Bethtran, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by Bethlehem Steel Corporation and the Philadelphia, Bethlehem and New England Railroad Company of BETHTRAN, Inc. (BETHTRAN). BETHTRAN will become a motor common carrier through its proposed purchase of and merger with Carrier Express, Inc. (MC-181662).

DATE: This exemption will be effective on March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided:

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons concurred in the result. Commissioner Lamboley concurred in the result with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86-6230 Filed 3-20-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub 161)]

Seaboard System Railroad, Inc.; Abandonment in Russell, Macon, Bullock, and Montgomery Counties, AL; Findings

The Commission has found that the public convenience and necessity permit the Seaboard System Railroad, Inc., to abandon its 71.95-mile rail line between milepost SL-755.13 at Mahrt and milepost SL-827.08 at Eastmont, in Russell, Macon, Bullock and Montgomery Counties, AL.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-6229 Filed 3-20-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 10, 1986, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 21, 1986.

Dated: March 14, 1986.

Alfred A. Russell,

Acting Deputy Assistant Administrator,

[FR Doc. 86-6234 Filed 3-20-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 8, 1986, 9:30 a.m., Rm. S4215, A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DG 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC, this 12 day of March, 1986.

Robert W. Searby,

Deputy Under Secretary International Affairs.

[FR Doc. 85-6305 Filed 3-20-86; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a party of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determinations

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:		
Kentucky	KY86-7 (Jan. 3, 1986)	pp. 289-292
New Jersey	NJ86-3 (Jan. 3, 1986)	p. 605 pp. 619-620
New York	NY86-9 (Jan. 3, 1986)	p. 723
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Volume II:		
Arkansas	AR86-5 (Jan. 3, 1986)	pp. 15–17
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Iowa	IA86-5 (Jan. 3, 1986)	pp. 45–47
Illinois	IL86-1 (Jan. 3, 1986)	pp. 63–67, p. 77
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Illinois	IL86-8 (Jan. 3, 1986)	pp. 131–132
Illinois	IL86-9 (Jan. 3, 1986)	p. 137
Illinois	IL86-11 (Jan. 3, 1986)	p. 146
Illinois	IL86-12 (Jan. 3, 1986)	p. 152
Illinois	IL86-13 (Jan. 3, 1986)	p. 162
Illinois	IL86-14 (Jan. 3, 1986)	pp. 172–173, p. 175
Illinois	IL86-15 (Jan. 3, 1986)	pp. 182–183
Illinois	IL86-16 (Jan. 3, 1986)	pp. 192–193, p. 195
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Kansas	KS86-9 (Jan. 3, 1986)	p. 343
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Texas	TX86-9 (Jan. 3, 1986)	p. 868
Texas	TX86-10 (Jan. 3, 1986)	p. 871
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California	CA86-4 (Jan. 3, 1986)	pp. 66, 73 pp. 81, 83
Colorado	CO86-1 (Jan. 3, 1986)	pp. 97–105
Colorado	CO86-4 (Jan. 3, 1986)	pp. 373–374
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Nevada	NV86-2 (Jan. 3, 1986)	p. 236

General Wage Determination Publication

General Wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of March 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-6032 Filed 3-20-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application Numbers D-5598 and D-5776]

Proposed Amendments to Prohibited Transaction Exemption (PTE) 81-6 Involving Lending of Securities by Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed amendments to PTE 81-6.

SUMMARY: This document contains a notice of pendency before the Department of Labor of proposed amendments to PTE 81-6. PTE 81-6 is a class exemption that permits the lending of securities by employee benefit plans to certain broker-dealers and banks which are parties in interest with respect to such plans. The proposed amendments, if adopted, would affect participants, beneficiaries and fiduciaries of plans engaging in the described transactions, broker-dealers and banks affected by the amendments, and certain corporate surety companies.

DATES: Written comments should be received by the Department on or before May 21, 1986.

EFFECTIVE DATE: If adopted, these proposed amendments would be effective as of January 23, 1981, the effective date of PTE 81-6.

ADDRESSES: All written comments (preferably at least three copies) should be sent to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Lending of Securities. The applications pertaining to the exemptive relief proposed herein (Application D-5598 and D-5776) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8882. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 81-6 (46 FR 7527, January 23, 1981). PTE 81-6 provides an exemption from the prohibited transaction restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code.

PTE 81-6 permits an employee benefit plan to lend securities to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or to a bank, provided certain conditions are met. These conditions include a requirement that the lending plan must receive from the borrower collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies, or irrevocable bank letters of credit. In the absence of an exemption, securities lending transactions would be prohibited under circumstances where the borrowing broker-dealer or bank is a party in interest or disqualified person with respect to the plan under section 3(14) of ERISA or section 4975(e)(2) of the Code.

Manufacturers Hanover Trust Company (Manufacturers Hanover) requested the first proposed amendment in an application dated June 29, 1984 (Application No. D-5598). The amendment would add certain broker-dealers which are exempted from registration under the 1934 Act to the categories of securities borrowers with whom plans may engage in transactions

in reliance on the class exemption.

The second proposed amendment was requested by Merrill Lynch, Pierce, Fenner & Smith (Merrill Lynch) in an application dated September 20, 1984 (Application No. D-5776). The amendment would expand the types of permissible collateral under the exemption to include qualifying irrevocable surety bonds.

According to the applicants, all the conditions already contained in PTE 81-6, with the exception of those modified by this proposal, would continue to be met under the proposed amendments. These conditions include a requirement that neither the borrower nor any affiliate has any discretionary authority or control regarding the investment of plan assets involved in the transaction or provides investment advice with respect to those assets. In addition, the plan must receive collateral having a market value of at least 100 percent of that of the borrowed securities, and the level of the collateral must be maintained at 100 percent or higher. Any lending of securities in reliance on the exemption must be made under a written agreement, and each loan must be terminable by the plan at any time.

The Department is proposing the amendments to PTE 81-6 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Information collection requirements contained in PTE 81-6 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB #1210-0065 approved for use through May 31, 1987.

A. Broker-Dealers Exempt from Registration Under the 1934 Act

Manufacturers Hanover acts as trustee for a number of employee benefit plans and other, non-ERISA accounts and also operates a centralized securities lending program. Under this program, securities are loaned at the discretion of Manufacturers Hanover from a pool of available securities to banks and broker-dealers making specific requests for certain loans. Because of the centralized nature of the program, it is difficult to determine in advance whether a broker or dealer is a party in interest in regard to a particular plan.

The proposed amendment would expand the scope of PTE 81-6 to permit Manufacturers Hanover and other market participants to lend securities to broker-dealers who are exempt from registration under section 15(a)(1) of the 1934 Act because they trade principally in Federal Government and Agency securities exempt from registration under section 3(a)(12) of the 1934 Act. The applicant states that the approximately 30 such broker-dealers are generally subject to the other provisions of the 1934 Act, including section 10 thereof which prohibits the use of manipulative or deceptive devices in connection with the purchase or sale of securities.

Approximately twelve of the broker-dealers so exempted from registration are primary reporting dealers in Government securities who report their security positions and other data to the Federal Reserve System on a daily basis.[2] In addition, a number of the exempted broker-dealers are secondary dealers in Government securities who also report their security positions and other data to the Federal Reserve System. Finally, several of the exempted broker-dealers are subsidiaries of larger registered broker-dealers, which are publicly held corporations that must furnish certain information relating to financial responsibility to the Securities and Exchange Commission.

In a letter dated May 28, 1985, the American Bankers Association (the ABA) stated that its members are often approached by potential borrowers which are Government securities dealer subsidiaries of major registered broker-dealers. The ABA indicated that banks, acting as fiduciaries of employee benefit plans, are reluctant to lend securities to such dealers because they are not registered broker-dealers under the 1934 Act. The ABA further indicated that banks would like to make securities loans to such dealers subject to the safeguards of PTE 81-6.

B. Certain Surety Bonds Used as Acceptable Collateral

Paragraph 2 of PTE 81-6 requires that, when a plan lends securities to a party in interest, the borrower must provide collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or a combination of these forms. The plan receives from the borrower collateral either by physical delivery or by book entry in a securities depository which has a market value equal to at least 100 percent of the market value of the loaned securities. Further, under paragraph 6 of the exemption, the collateral must be maintained at no less than 100 percent at all times during the term of a securities loan.

The proposed amendment would expand the kinds of collateral eligible under the exemption to include irrevocable surety bonds issued by insurance companies engaged in the business of issuing such bonds in support of obligations of third persons. The bonds could be issued only by corporate surety companies that are acceptable sureties on Federal bonds under authority granted by the Secretary of the Treasury pursuant to section 6 through 13 of Title 6, United States Code. These companies are authorized to issue surety bonds in the fulfillment of the bonding requirements set forth in section 412 of ERISA.[3] A list of surety companies acceptable on Federal bonds is maintained by the Department of the Treasury and is published annually in Treasury Circular 570.

According to the applicant, a surety bond, like a bank letter of credit, is the functional equivalent of a guaranty. A surety bond evidences the independent obligation of the surety which assures payment to the beneficiary of the bond. The obligation survives any default by, or bankruptcy of, the underlying obligor. Moreover, as in the case of banks, the permissible business and investment activities of sureties are closely regulated by law and the procedures which govern the issuance of surety bonds are designed to ensure that the beneficiaries of the bonds are paid in a timely manner.

The applicant contends that the

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[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406, 408 and 3(14) of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[2] See the preamble to a proposed amendment to class exemption 81-8 (involving short-term investments) for a discussion of reporting dealers (49 FR 27379, July 3, 1984). The amendment was finalized on April 9, 1985 (50 FR 14043).

[3] Section 412(a) of ERISA requires that, with certain exceptions, every fiduciary of an employee benefit plan and every person who handles funds or other property of the plan must be bonded as provided in section 412.

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availability of surety bonds as acceptable collateral under PTE 81–6 will enhance the ability of plans to enter into securities lending transactions. The cost incurred by borrowers in providing the types of collateral currently permitted under the exemption are at times restrictive. The expense of obtaining surety bond coverage will often be less than the cost of providing the same level of an alternative form of collateral. Under the proposal, the borrowing broker-dealer or bank will enter into arrangements with one or more sureties under which the surety will agree to issue surety bonds in favor of the lending plan. At the time of each loan, the borrower will deliver to the plan cash, Government or Agency securities, irrevocable bank letters of credit, irrevocable surety bonds, or any combination thereof.

Merrill Lynch represents that a surety bond issued in favor of a plan under the proposed irrevocable amendment will have the following characteristics. The bond will evidence the irrevocable and unconditional obligation of the surety to make payments to the plan. Further, it will evidence the independent obligation of the surety to the plan, separate and distinct from the primary obligation of the borrower to the plan under the loan agreement. The bond will be payable upon presentation of the bond by the plan to the surety, with no more than a reasonable period of notice required for payment. It will be payable in immediately available funds, without counterclaim, setoff, deduction, defense, abatement, suspension or deferment of any kind. Each surety bond also will provide that, in the event of termination of a loan and failure of the borrower to promptly return the borrowed securities, the plan will be entitled to draw under the bond to the extent of the amount thereof in a manner comparable to that specified in paragraph 8 of PTE 81–6. Paragraph 8 provides, in part, that, if a loan is terminated and the borrower fails to return the borrowed securities or equivalent within a certain time, the plan may purchase securities identical to those borrowed and apply the collateral to the payment of the purchase price.

Based on the foregoing representations and the additional protections already embodied in PTE 81–6, it appears to the Department that sufficient safeguards are present for the protection of plan assets involved in the transactions. Therefore, the Department has decided to propose the amendments requested by the applicants.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed amendments, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced applications at the above address.

Proposed Amendments

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1, the Department proposes to amend PTE 81–6 as set forth below.

1. The first sentence of the exemption is amended to read:

"Effective January 23, 1981 the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank, if:"

2. Paragraph 2 of the exemption is amended to read:

"The plan receives from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies, irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or irrevocable surety bonds issued by a corporate surety company other than the borrower or an affiliate thereof which is authorized to issue the bonds referred to in section 412(a) of the Act, or any combination thereof, having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit or surety bonds, a stated amount, equal to not less than 100 percent of the then market value of the securities lent;"

Signed at Washington, DC, this 17th day of March 1986.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 86–6077 Filed 3–20–86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology/Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/Physical Anthropology.
Date and time: April 7 and 8, 1986 and April 21 and 22, 1986, 9:00 a.m.—5:00 p.m. each day.
Place: Univ. of New Mexico faculty club, Albuquerque, NM (4/7&8), Clarion Hotel, 1500 Canel St., New Orleans, LA (4/21–4/23).
Type of meeting: Closed.
Contact person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550: (202) 357–7804.
Purpose of meeting: To provide advice and recommendations concerning support for archaeology and physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: March 18, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–6288 Filed 3–20–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463. as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Instrumentation.
Date and time: Tuesday, April 8, 1986 from 5:00 p.m. to 9:00 p.m. Wednesday, April 9, 1986 from 8:30 a.m. to 6:00 p.m. and Thursday, April 10, 1986 from 8:30 a.m. to 5:00 p.m.
Place: Asilomar Conference Center, Pacific Grove, California, 93950.
Type of meeting: Closed.
Contact person: John C. Wooley, Program Director, Biological Instrumentation, Room 325E, Telephone: 202/357–7652.
Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: March 18, 1986.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–6289 Filed 3–20–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.
Date and time: April 9, 1986—12:00 noon to 5:00 p.m. April 10 and 11, 1986—8:30 a.m. to 5:00 p.m. each day.
Place: Room 1141, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357–9734, Room 1140, National Science Foundation, Washington, DC 20550.
Purpose of panel: To provide advice and recommendations concerning support for research in ecology.
Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: March 18, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–6290 Filed 3–20–86; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee
Place: Rooms 540, National Science Foundation, 1800 "G" Street, NW., Washington, DC 20550
Date: Thursday April 10 and Friday 11, 1986
Time: 8:30 a.m.–5:00 p.m., both days
Type of meeting: Part Open (Thursday a.m., Friday) Part Closed (Thursday p.m.)
Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357–9794
Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow, at the above stated address.
Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda

Thursday Morning, April 10, 1986 (Open)

8:30 a.m. Organizational matters; adoption of minutes
9:00 a.m. Status Report on Division activities
10:30 a.m. Briefing on Budget for FY 1986 and FY 1987
12:00 noon Working Lunch

Thursday Afternoon, April 11, 1986 (closed)

1:00 p.m. Review and discussion of CMS Section Oversight and Report.
5:00 p.m. Adjourn

Friday, April 11, 1986 (Open)

8:30 a.m. Organizational matters; election of chairman for FY'87
9:00 a.m. DMR Long Range Plans
11:00 a.m. Meeting with NSF Director
12:00 noon Working Lunch
1:00 p.m. Discussion of role and participation of women, minorities and handicapped in materials research
2:00 p.m. Continuation of LRP and Budget Discussion
3:00 p.m. Plans for future MRAC activities
5:00 p.m. Adjourn

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information,

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financial data such as salaries, and personal information concerning individuals associated with the proposals.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: March 18, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–6291 Filed 3–20–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L., 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.

Date and time: April 9–11, 1986, 8:30 a.m.—5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1243, Washington, DC.

Type of meeting: Part Open—Open April 9, 9:00 a.m.—11:00 a.m. Closed April 9, 11:00 a.m.—5:00 p.m. Closed April 10 and 11, 8:30 a.m.—5:00 p.m.

Contact person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7949.

Summary minutes: May be obtained from the contact person as listed.

Purpose of subpanel: To provide advice and recommendations concerning support for research in psychobiology.

Agenda: Open—April 9, 9:00 a.m.—11:00 a.m. General discussion of trends and opportunities in Psychobiology.

Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: March 18, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–6292 Filed 3–20–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Davis-Besse (Restart); Meeting

The ACRS Subcommittee on Davis-Besse (Restart) will hold a meeting on April 9, 1986, Room 1167, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 9, 1986—1:30 P.M. Until the Conclusion of Business

The Subcommittee will continue its review of the Davis-Besse restart.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed; whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 17, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–6282 Filed 3–20–86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on April 9, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 9, 1986—8:30 a.m. Until 12:30 p.m.

The Subcommittee will review recent operating events.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr.

Herman Alderman (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 17, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–6283 Filed 3–20–86; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Types of submission: revision.

2. The title of the information collection: 10 CFR 50.63. Station Blackout.

3. How often the collection is required: One time.

4. Who will be required or asked to report: Nuclear power plant licensees and applicants for operating licenses.

5. An estimate of the number of responses: 125.

6. An estimate of the total number of hours needed to complete the requirement or request: 15,000 hours.

7. An indication of whether section 3504(h), Pub. L. 96–511 applies: No.

8. Abstract: NRC is requesting a clearance for proposed rule 10 CFR 50.63, Station Blackout which requires licensees and applicants for operating licensees to submit information to support the length of time nuclear power plants can withstand a total loss of all alternating current power.

ADDRESSES: Copies of the transmittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT:

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395–7340.

NRC Clearance officer's R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 17th day of March 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–6265 Filed 3–20–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–413]

Duke Power Co., et al; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–35, issued to Duke Power Company, et al, (the licensee), for operation of the Catawba Nuclear Station, Unit 1 located in York County, South Carolina.

The proposed amendment would extend, on a one-time basis, by a maximum of five months until the first refueling outage (currently scheduled on September 28, 1986) those 18-month Technical Specification (TS) surveillances associated with the Engineering Safety Features (ESF) which can only be conducted with Unit 1 in Cold Shutdown or Refueling. Normally, since such refueling outages occur about every 18-months, extension beyond the 18-month surveillance interval required by the Technical Specifications for the ESF testing is usually not necessary. However, due to the extended length of Unit 1 startup program and cycle 1, the licensee must either request an extension or be forced to shutdown prior to the first refueling outage.

The proposed amendment is in accordance with the licensee's request dated February 12, 1986, as supplemented by letters dated March 3, 4, and 11, 1986. The changes would be accomplished by adding a footnote usually stating that this surveillance need not be performed until prior to entering Hot Shutdown, Hot Standby or Startup, as applicable, following the Unit 1 first refueling outage. The footnote would be added to the Surveillance Requirements included in the following categories:

1. ESF Actuation on Safety Injection

This category includes Surveillance Requirements 4.1.2.2c; 4.3.1.1, Table 4.3–1, Item 17; 4.3.2.1; 4.3.2.2; 4.5.1.1.1d.; 4.5.2e.; 4.5.3.1; 4.7.3b.1); 4.7.3b.2); 4.7.4b.1); 4.7.4b.2); 4.7.7d.2) and 4.8.1.1.2g.10)

2. Portions of Diesel Generator Testing

This category includes Suveillance Requirements 4.8.1.1.2g.7) and 4.8.1.1.2g.8)

3. Phase A and B Containment Isolation

This category includes Surveillance Requirements 4.6.1.8d.2); 4.6.3.2a.; 4.7.3b.1); 4.6.2c.; 4.6.3.2b.; 4.6.6.2; 4.7.3b.1) and 4.7.4b.1)

4. ESF Actuation on Loss-of-Offsite Power

This category includes Surveillance Requirements 4.7.4b.2); 4.8.1.1.2g.4); 4.8.1.1.2g.6)a); 4.8.1.1.2g.6)b) and 4.8.1.1.2g.9)

The postponement of Surveillance Requirement 4.6.6.2 for the Containment Valve Injection Water System also requires a one-time exemption from the 24 month maximum surveillance interval required by 10 CFR 50, Appendix J, Section III.C.2.(b) regarding Type C local leak rate tests. This exemption to Appendix J is currently under consideration by the NRC staff.

In accordance with the previous Surveillance Requirements integrated tests are conducted to verify the overall ESF capability. The licensee's application considers that the extension requested is justified based on the fact that other periodic surveillances required by the Technical Specifications on individual components such as diesel generators, pumps, valves, fans and circuits will continue to be performed as required. These periodic surveillances ensure that individual components will remain operable.

Before issuance of the proposed license amendment the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following provides an analysis using the standards of 10 CFR 50.92.

(1) This proposed amendment would not significantly increase the probability or consequences of an accident previously evaluated. The probability of

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previously evaluated accidents is not affected since the proposed changes will only affect ESF components, thus normal plant operation will not be affected. The consequences of a previously evaluated accident will not be significantly increased since the affected ESF components and circuitry will be tested as required by other applicable Technical Specification Surveillance Requirements. This amendment request would only affect the ESF actuation of ESF components by extending the required surveillance by five months. This increase is not viewed as significant when coupled with the other surveillances conducted on the individual components and circuitry.

(2) This proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated since the design and operation of the plant will not be affected.

(3) This proposed amendment would not cause a significant reduction in a margin of safety. The extension of time in which to do the required surveillance would be five additional months beyond that allowed by the Technical Specifications. Coupled with the fact that individual component and circuit tests are conducted on a regular basis as provided in other Technical Specifications, there is not significant reduction in a margin of safety. An increase in safety is gained by the avoidance of an additional cooldown and heatup cycle on the Reactor Coolant System.

Based on the above discussion, the staff proposed to determine that this amdendment, which provides an extension of the 18-month surveillance interval for the testing associated with the ESF, does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S.Nuclear Regulatory Commission, Washington, DC. 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By April 21, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interests may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding; The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the perition without requesting leave of the Board up to fifteen (15) days priur to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following messaged addressed to D.S. Hood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. William L. Porter, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina, 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 12, 1986, and its supplements dated March 3, 4, and 11, 1986 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR.

[FR Doc. 86–6267 Filed 3–20–86; 8:45 am]

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[Docket No. 50–344]

Portland General Electric Co.; Denial of Amendment To Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Facility Operating License No. NPF–1, issued to the Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oregon.

The amendment, as proposed by the licensee, would have modified the Trojan Technical Specifications, Section 4.5.3.1, concerning the surveillance requirements for the Emergency Core Cooling System (ECCS) when the reactor is in the Hot Shutdown Operating Mode. The licensee's application for the amendment was dated March 12, 1985. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on October 9, 1985 (50 FR 41255). All of the requested changes were granted except the requests related to the definition of Containment Integrity (Specification 1.8), which the licensee requested be withdrawn by letter dated August 22, 1985, and the requests related to Section 4.5.3.1.

Notice of the issuance of Amendment No. 114 will be published in the Commission's next regular **Federal Register** notice.

The request to modify Section 4.5.3.1 concerning the surveillance requirements for the ECCS when the reactor is in the Hot Shutdown Operating Mode was denied.

At present Section 4.5.3.1 states "The ECCS subsystem shall be demonstrated Operable per the applicable Surveillance Requirements of 4.5.2". The request proposes to revise this specification to explicitly state which surveilliance requirements (of 4.5.2) are applicable in this Mode. This request was found unacceptable because the licensee has not demonstated a significant need for this proposed revision, and that it could confuse, rather than clarify, present requirements.

The licensee was notified of the Commission's denial of this request by letter dated.

By April 21, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Branch, or maybe delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of any petitions should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James W. Durham, Sr., Vice President, General Counsel and Secretary, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204.

For further details with respect to this action, see (1) the application for amendment dated March 12, 1985, and (2) the Commission's letter to Portland General Electric Company dated March 12, 1986, and the enclosed Safety Evaluation which are available for public inspection at the Commission Public Document Room, 1717 H Street NW., Washington, DC, and at the Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A.

Dated at Bethesda, Maryland, this 12th day of March 1986.

For the Nuclear Regulatory Commission.

Jan A. Norris,

Acting Director, PWR Project Directorate No. 3, Division of PWR Licensing–A.

[FR Doc. 86–6269 Filed 3–20–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–395]

South Carolina Electric & Gas Co., South Carolina Public Service Authority; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina.

The amendment would revise Technical Specification 3/4.4.5, "Steam Generators" and its bases. The revision would allow steam generator tube imperfections to be addressed by the Westinghouse P–STAR evaluation method as an alternative to the current requirement for tube plugging. Under the P–STAR evaluation method, if tube imperfections located within the tubesheet are below the distance P–STAR (the top 1.25" of the tubesheet), and the tube with imperfections has an intact tube directly above it (one row higher in number, same column), then the tube need not be plugged. The licensee's application for amendment was dated January 16, 1986.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 21, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

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proceeding must file a written petition for leave to intervene. If a request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and License Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 16, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Bethesda, Maryland this 14th day of March 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A.

[FR Doc. 86-6266 Filed 3-20-86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23015; File No. SR-AMEX-86-8]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Matching by Traders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to clarify its policy regarding the matching of orders by options traders affiliated with the same member organization.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange policy concerning matching is intended to prevent a single firm or a joint account from obtaining a larger portion of a match by "packing the crowd". The Exchange proposes to clarify the policy regarding when options traders who are affiliated with the same member or member organization may match orders in the trading crowd. The proposed policy is set forth in an information circular which will be distributed to the Amex membership.

In brief, the proposed Circular reconfirms that traders who are in joint account, or who are associated with the same member organization may not match orders. A limited exception to this policy will be made, however, if such traders who are associated with the same member firm have demonstrated that they are not affiliated with one another. If traders are associated with the same member organization but are not affiliated with one another, they would be permitted to match *subject to a limitation:* If two or more such traders are on parity in a trading crowd, they would be entitled to that proportion of the trade which they could obtain if there were only two such affiliated traders. The Exchange will make determinations upon request as to whether such traders are in fact affiliated with one another, using the control test set forth in Exchange Rule 904, which governs aggregation of accounts in the context of position limits.[1]

For example, assume 150 contracts are to be traded and four traders who are associated with the same member firm but are deemed non-affiliates of one another are in a trading crowd with one unrelated trader, and each is bidding for 50 contracts. If all five are on parity, the unrelated trader will receive 50 contracts and the four other traders will share the remaining 100 contracts, each receiving 25 contracts. That is, the four traders affiliated with the same firm will be entitled to only two matches.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by clarifying a policy which is intended to ensure fairness in the execution of orders in the trading crowd. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange's Trading Practices and Procedures Sub-Committee has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 11, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6210 Filed 3-20-86; 8:45 am]

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[1] Exchange Rule 904 sets forth criteria under which accounts will be presumed to be under common control. *See* SEC Release No. 34-22695, dated December 9, 1985, approving SR-AMEX-85-33.

[Release No. 34-23018; File No. SR-CBOE-85-51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change

On December 31, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 under the Act,[2] a proposed rule change to allow CBOE to introduce, in "unusual market conditions," series of individual stock options up to two strike prices intervals above and below the current price of the underlying security. CBOE's rules currently allow CBOE to introduce series of individual stock options only one strike price interval above and below the current market price of the underlying security. Under the proposal, if series were available for a particular option class with strike prices of 95, 100 and 105, and the price of the underlying stock rises to 105 (or falls to 95) under unusual market conditions, the CBOE could introduce new series with strike prices of 110 and 115 (or 90 and 85).[3]

Under exiting CBOE rules, CBOE could only introduce series with a strike price of 110 (or 90) in these circumstances.

CBOE expains that the criteria the Exchange will consider in determining whether unusual market conditions exist for the purposes of this proposal include intra-day and short-term day-to-day price movements of the underlying securities, requests for additional strike prices by customers and market makers, the potential burden on market makers

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] CBOE has classes of options in which it may use different strike price intervals. Thus, stocks trading under $25 per share, may have intervals of two and one-half ponts, or greater, and stocks trading above $50 per share may have intervals of five points. CBOE indicates that the two strike price intervals above the market allowed by the filing refers to intervals in use for that class at the time. Telephone conversaton between Fredric M. Krieger, Associate General Counsel, CBOE, and Alden Adkins, Attorney, Division of Market Regulation, SEC, on March 14, 1986. SEC. For example, if five point intervals are in use for a class, the filing allows CBOE to add strike prices ten points (two five point intervals) above the current market; if 10 point intervals are in use, the filing allows CBOE to add strike prices 20 points (two ten-points intervals) above the current market. While CBOE can change intervals for a class, e.g., from five to ten points, it cannot in essence use two different intervals simultaneously. For example, the proposal does not alllow the addition of strike prices 20 points away from the market in a class that at that time has five-point intervals.

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of maintaining additional strike prices, and the availability in other expiration months of additional strike prices in the same options.[4] The Exchange indicates that it is expected that the Exchange will add prices where "in general volatility has increased," where the stock recently has moved from one strike price through the next strike price, where intra-day price movements "have or are expected to exceed" a strike price interval, or where the value of the closest out-of-the-money option is "in excess of a reasonably low price . . . for effective hedging of positions."[5] CBOE also states that "greater deference" will be given to adding a second out-of-the-money strike price to options on stocks trading in excess of $50.00, because the intervals for such options "were historically 10 points."[6]

The proposed rule change was noticed in Securities Exchange Act Release No. 22789 (January 13, 1986), 51 FR 2615 (January 17, 1986). No comments were received on the proposed rule change.

CBOE states that the proposed rule change is motivated by "recently volatile stock market activity," which can cause stock priced to "move precipitously through existing strike prices." [7] According to CBOE, when stock prices move rapidly, the price of out-of-the-money options increases to take into account this increased volatility.[8] Under the proposal, when a stock exhibits unusual volatility CBOE could add strike prices two intervals above (or below) the current market price of the underlying stock, thus providing a lower priced out-of-the-money option (the series two intervals above the current market) than CBOE can currently provide (series one interval above the current market).

Moreover, CBOE indicates that there is a two-day lag time between the time of announcement of a new strike price and the time it is available for trading. CBOE believes that the proposal will allow CBOE, in unusual market conditions, in essence to anticipate rapid, dramatic price movements by listing series two intervals above (or below) the market. Should the movement materialize, there will be at-the-money series available that might not be available under CBOE's current rules.[9]

The Commission previously has indicated that proposals to allow an increase in the number of series available in an option class need to strike a balance between accommodating the demand of market participants or the need for investment flexibility and causing excessive dilution of liquidity in an increased number of open options series.[10] The Commission believes the CBOE proposal satisfies this test.

First, in light of CBOE's inability to add new strike prices in less than two days, CBOE's proposal may be the only practical means of ensuring the relatively constant availability of at-the-money or near-the-money monthly series of stock options when price volatility increases significantly. Second, the Commission notes that CBOE's proposal permits at most a fairly small absolute increase in the number of stock option series that may be outstanding at one time. As described, CBOE's proposal permits the introduction at any ont time of only one series more than allowed under CBOE's current rules. Third, CBOE's proposal limits the introduction of this additional series to "unusual market conditions" [11] and only allows, but does not require, that the new series be introduced even then.[12]

In sum, the Commission finds that CBOE's proposal should not result in a substantial increase in the number of individual stock options series outstanding, and may ensure the more consistent availability of at-the-money or near-the-money series in volatile markets. For these reasons, the Commission finds that the potential benefits of this proposal in accommodating market participants' investment needs and objectives outweigh the possible adverse effects on market liquidity and dispersion of interest the proposal might cause. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act [13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6211 Filed 3-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14993; File No. 812-5830]

Application and Opportunity for Hearing; The Prudential Variable Contract Account-II

March 17, 1986.

Notice is hereby given that The Prudential Variable Contract Account-11 ("Applicant" or "VCA-11"), a separate account of the Prudential Insurance Company of America ("Prudential"), Prudential Plaza, Newark, New Jersey 07101, filed an application on April 20, 1984, and an amendment thereto on January 22, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 2(a) (41) of the Act and Rules 2a-4 and 22c-1 promulgated thereunder, to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in its portfolio. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of those provisions that are relevant to the application.

The application states that Applicant is registered under the Act as an open-end, diversified management investment company. Prudential is Applicant's investment manager. Applicant states that it was organized for the purpose of

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[4] Letter from Fredric M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, dated March 4, 1986.

[5] *Id.*

[6] *Id.* As noted above, CBOE has indicated that it would not use the proposed change to add, for example, strike prices two 10 point intervals above the market to a class using five point intervals. Note 3, *supra*.

[7] File No. SR-CBOE-85-51, at 3.

[8] *Id*

[9] *Id.* Should the anticipated price movement not materialize, CBOE could delist the new series if no trading has occurred in those series or if no open interest remains in the series. *See* CBOE Rule 5.4.05.

[10] Securities Exchange Act Release No. 21644 (January 9, 1985) 50 FR 2360 approving proposal by the American Stock Exchange, Inc. to introduce series of index options two strike prices above (or below) the current market value of the index, and up to three intervals above (or below) the current index value in usual market conditions.

[11] The Commission is satisfied that the criteria CBOE will consider in determining whether unusual market conditions exist for purposes of this rule, see text accompanying notes 4-6, *supra*, are appropriate. Moreover, the Commission expects the CBOE to maintain a log of those instances in which it determines to invoke this authority.

[12] Finally, as described above, should CBOE list a new series in anticipation of a large price movement that does not materialize, CBOE would be able to delist that series prior to any actual trades occurring in that series Note 9, *supra*.

[13] 15 U.S.C. 78f(1982).

[14] 15 U.S.C. 78s(b)(1)(1982).

[15] 17 CFR 200.30-3(a)(12)(1985).i21Dated: March 14, 1986.

funding certain group variable contracts (the "Contracts") issued by Prudential. Applicant's operations are conducted under the general supervision of a Committee (which, for purposes of the Act, is the functional equivalent of a board of directors). The Contracts are issued in connection with pension and profit-sharing plans which qualify for favorable treatment under various provisions of the Internal Revenue Code of 1954. Generally, participants in the Contracts may transfer amounts held under the Contracts between Applicant and either Prudential Variable Account-10 ("VCA-10"), another separate account invested primarily in equity securities, or a fixed-dollar contract.

Applicant further states that its investment objective is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. Applicant seeks this objective by investing in money market instruments payable in United States dollars. To date, Applicant's assets have been invested solely in money market instruments with a remaining maturity of 60 days or less, and it has used the amortized cost method of valuation to value those securities. Under the amortized cost method of valuation, securities are originally valued at the cost at which they were purchased, and their value is adjusted daily to account for amortization of any premium or for accretion of any discount.

Applicant states that it intends to purchase United States dollar denominated money market instruments with a remaining maturity of one year or less. Applicant proposes to use the amortized cost valuation method for the purpose of valuing these instruments.

According to Applicant, the primary concern that the Commission has expressed about use of the amortized cost valuation method has been that this method of valulation may, in times of sharp increases or decreases in interest rates, result in dilultion of shareholders' interests in investment companies. Applicant states that in order to protect against such dilution, prior exemptions granted by the Commission and Rule 2a-7 under the Act to permit money market funds to use amortized cost valuation contain a series of conditions designed to assure that use of amortized cost valuation will not result in excessive dilution or other unfair results to shareholders. Applicant further states that, in connection with the valuation of its short-term debt securities, it is willing to consent to the imposition of what are in substance the same conditions as those generally imposed by the Commission in prior exemptive orders and Rule 2a-7 under the Act, except for the condition requiring a stable net asset value per share.

According to Applicant, it cannot maintain a stable price per share, one of the conditions contained in the prior exemptive orders and Rule 2a-7, since a participant's VCA-11 accumulation account is expressed in units, the value of which change daily to reflect VCA-11's investment income and any change in the value of securities VCA-11 holds. Applicant states that, under several previous applications, the applicants proposed, and the exemptive orders required, the maintenance of a "shadow accounting" system under which the applicant would establish a unit value of $1.00 to be used solely for purposes of monitoring compliance with the exemptive order. The account in question would then credit on a daily basis additional "shadow units" valued at $1.00 each to participants to reflect the investment income of the account.

Applicant submits that there is no necessary relationship between use of the amortized cost valuation method and the maintenance of a stable price for each share of an investment company. Applicant asserts that inclusion of this condition in prior exemptive orders and Rule 2a-7 came about because money market funds that sought exemptions to permit them to use amortized cost valuation did so to facilitate their ability to maintain a stable price per share for the convenience of their shareholders. Applicant further asserts that the establishment of a "shadow accounting" system does not provide any greater protection to participants in accounts using that system against the dilution of their interests than do the conditions of this application. Applicant submits that the "undervaluation" or "overvaluation" of interests that would be permissible under the conditions set forth below are the same as would be allowed under the "shadow accounting" system. Applicant states that it seeks to use amortized cost valuation for short-term debt obligations held in VCA-11 in order to achieve significant savings in administrative costs, particularly those resulting from the elimination of the necessity to attempt to obtain daily estimates of the market value of the short-term debt obligations contained in VCA-11's portfolio.

Applicant submits that use of amortized cost valuation in connection with its operations is especially unlikely to result in any dilution or other unfair results to shareholders because it is not a money market fund, but rather a particular type of investment vehicle for variable contracts. Applicant asserts that participants in the Contracts will tend to have a longer range investment perspective than shareholders in money market funds, since withdrawals from the contracts may involve the payment of deferred sales charges and adverse federal income tax consequences. Applicant further submits that if transfers to or from VCA-11 do occur when interest rates shift, the conditions sit forth below will provide investors in VCA-11 with the same protection against dilution of their interests as is provided by the conditions in Rule 2a-7, notwithstanding the absence of a stable net asset value.

Applicant therefore requests exemption from the provisions of section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 promulgated thereunder to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations it holds. Applicant states it is willing to consent to the entry of an order by the Commission conditioning the grant of its exemptive request upon the following conditions:

(1) In supervising the operations of Applicant and delegating special responsibilities involving portfolio management to its investment adviser, the VCA-11 Committee undertakes (as a particular responsibility within the overall duty of care owed to participants in VCA-11) to establish reasonably designed procedures, taking into account current market conditions and Applicant's investment objective, to minimize the deviation between Applicant's value per unit, as determined through use of the amortized cost method of valuation, and its value per unit, as determined through use of available market quotations.

(2) Included within the procuedures to be adopted by the VCA-11 Committee shall be the following:

(a) Review by the VCA-11 Committee, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per unit, as determined by using available market quotations, from its amortized cost value per unit, and the maintenance of records of such review. To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the VCA-11 Committee in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from

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yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the amortized cost value per unit exceeds one-half of one percent (0.5%), a requirement that the VCA–11 Committee will promptly consider what action, if any, should be initiated.

(c) If the VCA–11 Committee believes the extent of any deviation from Applicant's amortized cost value per unit may result in material dilution or other unfair results to participants in Applicant, it will take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; or using a net asset value per unit as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of minimizing the deviation between its amortized cost value per unit and its value per unit as determined by using available market quotations, provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year (except that securities held subject to repurchase agreements having a term of one year or less from the date of delivery may have maturity dates in excess of one year from the date of delivery of the repurchase agreement) or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. If the disposition of a portfolio instrument should result in a dollar weighted average portfolio maturity in excess of 120 days, Applicant's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable. The maturity of portfolio securities held by Applicant shall be calculated as set forth in Rule 2a–7 under the Act.

(4) Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in subparagraph (1) above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the VCA–11 Committee's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the VCA–11 Committee's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(5) Applicant's portfolio investments will be limited, including repurchase agreements, to those United States dollar-denominated instruments which the VCA–11 Committee determines present minimal credit risks, and which are of high quality. For this purpose, "high quality" instruments shall mean those instruments which are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the VCA–11 Committee.

(6) If any action is taken pursuant to paragraph 2(c) above, VCA–11 will report such action on Form N–SAR covering the period in which the action was taken and, pursuant to Instruction 77N of Form N–SAR, will attach a statement to the form describing with specificity the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-6208 Filed 3-20-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2231; Amdt. #2]

California; Declaration of Disaster Area

The above-numbered Declaration (51 FR 7514), as amended (51 FR 8610), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated February 27, 1986, to include Calaveras, El Dorado, Mendocino, Placer, Plumas, and San Joaquin Counties and the adjacent Counties of Alpine, Amador, Butte, Colusa, Lassen, Sierra, Sutter, Tehama, Tuolumne, and Yolo in the State of California because of damage from severe storms, landslides, mudslides and flooding beginning on or about February 12, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 24, 1986, and for economic injury until the close of business on September 2, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 28, 1986.

Gerry J. Fico, Jr.,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-6272 Filed 3-20-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2233]

Washington; Declaration of Disaster Loan Area

Cowlitz County in the State of Washington constitutes a disaster area because of a violent rainstorm, flooding and mudslides which occurred February 23–24, 1986. Applications for loans for physical damage may be filed until the close of business on May 12, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223306 for physical damage and for economic injury the number is 639000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 11, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-6273 Filed 3-20-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Noise; Receipt of Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Baton Rouge Metropolitan Airport (BTR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Baton Rouge Metropolitan Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 3, 1986.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps and of the start of its review of the associated noise compatibility program is March 7, 1986. The public comments period ends May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Federal Aviation Administration, Southwest Region, Airports Division, ASW–611C, P.O. Box 1689, Fort Worth, Texas 76101. Telephone: (817) 877–2609 or FTS 734–2609

Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Baton Rouge Metropolitan Airport are in compliance with applicable requirements of Part 150, effective March 7, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 3, 1986. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depict noncompatible land uses as the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation Part 150 promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Baton Rouge Metropolitan Airport submitted to the FAA on July 31, 1985, Noise Exposure Maps, descriptions and other documentation which were produced during a 1984 update of an Airport Noise Control and Land Use Compatibility (ANCLUC) study previously accepted by FAA in October 1982. It was requested that the FAA review this material as the Noise Exposure Maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by Baton Rouge Metropolitan Airport. The specific maps under consideration in the submission are: the Noise Exposure Map and the tabular report of land use impact for 1984 conditions; and the Noise Exposure Map and tabular report of land use impact for 1989. The FAA has determined that these maps for Baton Rouge Metropolitan Airport are in compliance with applicable requirements. This determination is effective on March 7, 1986. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or on interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Baton Rouge Metropolitan Airport, also effective on March 7, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on September 3, 1986.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of

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reducing existing noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Room 617, Washington, DC 20591;
Federal Aviation Administration, Southwest Region Office, Airports Division, ASW–600, P.O. Box 1689, Fort Worth, TX 76101;
Greater Baton Rouge Airport District, Suite 212, Ryan Terminal Building, Baton Rouge, LA 70807.

Questions may be directed to the individual named above under the heading, "For Further Information Contact."

Issued in Forth Worth, Texas, on March 7, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86–6177 Filed 3–20–86; 8:45 am]

BILLING CODE 4910-13-M

Definitions of Small Entity and Significant Economic Impact for Making Determinations Required by the Regulatory Flexibility Act of 1980

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Invitation for public comment on proposed additional definitions of small entity and Significant Economic Impact for making determinations required by the Regulatory Flexibility Act of 1980.

Background and Purpose

Under the Regulatory Flexibility Act of 1980 (RFA), Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. Because FAA's regulations are specific to particular products or services, these industries require standards that apply to specialized products and services defined more precisely than 4-digit Standard Industrial Classification (SIC) categories. But the SBA's final rule on small business size standards (49 FR 5024), is limited to 4-digit SIC codes. Therefore, the SBA size standards are not appropriate to the FAA's needs. In this case the agency is permitted, after consultation with the SBA Office of Advocacy, to establish small business definitions which are more appropriate to the activities of the FAA. Such standards regarding size of firm and value of significant impact have been adopted by the FAA.

FAA's standards for "size" and "significant" economic impact are stated in FAA Order 2100.14 for SIC codes and/or product lines which FAA regulations affect:

Aircraft and aircraft parts manufacturers (3721);
Aircraft engine and engine parts manufacturers (3724);
Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified (3728);
Operators of aircraft for hire (4511);
Airports (4582);
Aircraft repair facilities (4582, 7629, 7699);
Pilot schools (8299); and
Not-for-profit aviation organizations.

In the absence of a small entity "size" definition in the FAA order, FAA officials use the Small Business Administration's (SBA) definition in Title 13 of the Code of Federal Regulations, and if lacking a specific "significant" cost threshold, they use the lowest significant cost threshold listed in Order 2100.14.

FAA is now proposing to amend its definitions of small entity and significant economic impact by incorporating into FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," threshold values for twenty-nine (29) entity types not currently specified in the order.

This is the third notice to appear in the **Federal Register** describing FAA's efforts to specify its size and significant economic impact standards for making Regulatory Flexibility Act determinations. Previous notices were:

(1)Public Notice, July 29, 1982, 47 FR 32825; (2) Public Notice, August 31, 1984, 49 FR 34597.

FAA's first notice proposed definitions of small entity and significant economic impact for several aviation industries, and guidance for making determinations required by the RFA. That notice solicited public comment on the proposed definitions and guidance.

The second notice explained FAA's responses to the public comments and published FAA Order 2100.14, FAA's final guidance for the conduct of regulatory flexibility analyses and reviews. It also defined the criteria for rulemaking officials to determine if a proposed or existing rule has a significant economic impact on a substantial number of small entities.

For Further Information Contact

James R. Olavarria, Regulatory Analysis Branch, APO–210, Systems Analysis Division, Office of Aviation Policy and Plans, Federal Aviation Administration, Department of Transportation, Federal Office Building 10–A, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–426–3070. Additional copies of this notice may be obtained from the same address.

Invitation for Public Comments

Interested persons are invited to submit written comments on these standards as they may desire. Communications should be mailed in duplicate to FAA, APO–210, 800 Independence Avenue SW., Washington, DC 20591. Comments should be received on or before May 5, 1986.

Method of Establishing Size Standards

New standards are now being proposed for twenty-nine entity types. To establish the proposed size thresholds, the FAA followed three steps.

Step 1 Analyze the size distribution of entities in each industry, based on employment. FAA considered the number of firms, the relative sizes of firms, clusters of similar size firms, and the extent to which entities distribute in particular size ranges. FAA arrived at an initial threshold estimation for small size by identifying the number of employees where a distinct boundary was observed between relatively small versus medium or large entity clusters.

Step 2 Analyze the relative concentration of employment among the entities in the industry, and examine the extent of industry dominance by large firms.

Within an industry, relative employment share tends to indicate relative market share. That is, a small percentage of industry wide employment indicates a small market share. Since regulatory costs most adversely affect small entities which have a relatively small market share over which to spread costs, FAA sought threshold levels that would identify small entities as those having both fewer employees and the smallest percentage of industry wide employment.

A concentrated market exists where a small percentage of entities accounts for a large percentage of total industry employment. A relatively high threshold level is sought in concentrated industries because regulatory relief for all but the few very large market dominant entities encourages competition. In highly competitive industries lower thresholds are sought because regulatory costs most adversely affect the smallest entities at entry level.

Major conglomerates are clearly not small size entities, but in industry analyses, they tend to obscure the relative market positions of small and medium size entities. Therefore, the FAA computed total employment percentages for each entity type both including and excluding major conglomerates before arriving at a revised preliminary estimate of a threshold value. This dual analysis helped identify market leaders in each entity type and suggested, within the context of the stepwise analysis, where maximum economies of scale appear to be achieved.

Step 3 Consult with industry experts, particularly in the private sector, to validate the preliminary estimates. The consultations bolstered the confidence FAA has in the data and statistical analyses upon which the preliminary estimates were formulated. This step validated FAA's tentative estimations from the analyses regarding market concentration, market leadership, size in the growth cycle at which mature companies are able to compete most effectively, sizes at which certain types of entities most efficiently can absorb regulatory costs, and sizes at which entities achieve maximum economies of scale. The FAA used this additional validating information to confirm or adjust the preliminary estimated threshold values so they most accurately reflect true market conditions.

The following example of how the three steps were applied in the analysis of one entity type, aircraft seats (SIC 2531), illustrates the general method used to arrive at the proposed size threshold values for all twenty-nine entity types.

Example: *Step One* shows that the distribution of entities in the aircraft seats entity type contains two identifiable clusters of like size entities. (See Table 6, Percentage Distribution of Entity Types by Number of Employees: Aircraft Seats.) A cluster of entities that each employ from 1 person up to 90 people accounts for approximately 44 percent of the entities in the distribution, and a second cluster of entities, each with more than 500 employees accounts for over 28 percent of the entities in the distribution. The remaining entities are evenly distributed in the range between 90 and 500 employees. This clustering suggests an initial estimated threshold between 90 and 500 employees.

Step Two shows (also from Table 6) that over 99 percent of the employment in this entity type is concentrated among entities with over 1000 employees. Since most of these entities are large, diversified aerospace corporations, including all of their employment data in the analysis gives an unrealistic picture of actual market concentration. An analysis excluding this group shows that employment is still concentrated, with over 62 percent of remaining employment contained in entities employing at least 391 people. This step suggests that the market is highly concentrated among firms with more than 390 employees. Therefore, this step suggests a tentative estimated threshold near 390 employees.

Step Three, consultation with knowledgeable industry sources familiar with this entity type, indicated that this market is dominated by a few large entities. Further, the sources identified as market leaders, entities in the 450 to 1,000 employee range. Some smaller specialized firms also have established a market niche in modifications to smaller aircraft.

The Proposed Size Threshold based upon these three steps is 450 employees because there is no cluster of medium size businesses of like size with fewer than 500 employees; employment is concentrated in industries with more than 390 employees (an indication of concentration in market share); and knowledgeable industry sources identified market leaders, which are firms employing more than 450 employees.

Small Size Standards for Twenty-Nine Entity Types

Small entities are proposed to be those businesses which are independently owned and operated and not longer than the threshold level presented for each of the twenty-nine entity types in Table 1.

TABLE 1.—SIZE THRESHOLD VALUES

Standard industrial classification	Entity type	Size threshold
0721	Aerial Agricultural and Pest Control.	30
2399	Parachutes	900
	Aircraft Seat Belts, Except Leather.	1,000
	Aircraft Tiedown Strap Assemblies, Except Leather.	1,000
2531	Aircraft Seats	450
3011	Aircraft Tires and Inner Tubes	1,000
3069	Rubberized Survival Equipment	500
3537	Pallets and Containers	300
3585	Aircraft Environmental Control Equipment.	150
3592	Fuel Control Equipment, Including Carburetors.	750

TABLE 1.—SIZE THRESHOLD VALUES—Continued

Standard industrial classification	Entity type	Size threshold
	Aircraft Pistons and Piston Rings	90
	Aircraft Engine Valves	90
3599	Other Aircraft Valves, N.E.C.	1,000
3647	Aircraft Lighting Systems and Fixtures.	300
3662	Aircraft Communications Equipment.	750
	Aircraft Navigational Equipment	750
3691	Aircraft Batteries	1,000
3694	Engine Starting and Electrical Generating Equipment.	250
	Spark Plugs for Internal Combustion Engines.	1,000
	Voltage Regulators	1,000
3811	Aircraft Flight Instruments	250
3829	Aircraft Fuel System Instruments	1,000
	Aircraft Engine Instruments	200
	Aircraft Measuring Instruments, N.E.C.	450
	Air Traffic Control Equipment	1,000
7622	Aircraft Radio Equipment Repair	30
7319	Aerial Advertising, Including Skywriting.	10
8299	Aircraft Maintenance Technician Schools.	150
7699	Parachute Lofts	90

Explanation of Tables 2–30

Each table shows, for one entity type, the percentage distribution of total employment within the entity type according to predefined employment level intervals. Also shown is the percentage distribution of entities (firms) according to the same intervals. To show the tables in manageable size, only those intervals are shown in the tables in which at least one entity resides. That is, if no entity employs 61 to 90 persons, that interval "61–90" does not appear in the table because it is associated with zero percent employment and zero entities (firms).

Note that while the distributions shown in the tables are structured according to arbitrarily predefined intervals for uniform presentation of results, the proposed thresholds were formulated based upon the actual ordered data for individual firms, not the intervals shown. Therefore the explanation that accompanies each distribution may state an employment number that is more exact than the broad interval in the distribution shown in the table.

TABLE 2.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aerial agricultural and pest control		
Number of employees	Percent of total employment	Percent of entities
1 to 30	3.59	87.36
31 to 60	.67	3.83
61 to 90	.70	1.53
91 to 120	.82	1.53
121 to 150	.96	1.15
151 to 180	.35	.38

TABLE 2.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES—Continued

Aerial agricultural and pest control		
Number of employees	Percent of total employment	Percent of entities
211 to 240	.46	.38
271 to 300	1.36	.77
301 to 330	.71	.38
361 to 390	.83	.38
451 to 500	1.13	.38
501 to 1,000	3.47	.77
>to 1,000	84.74	1.15

Proposed Size Threshold: 30.

Explanation: Regulations and high capital requirements represent a barrier to entry for small entities. A substantial share of this market is captured by 87 percent of the entities. Each entity in the 87 percent employs 30 or fewer people, and they collectively account for over 22 percent of employment when entities with more than 1,000 employees are excluded.

TABLE 3.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Parachutes		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.80	40.00
31 to 60	3.20	20.00
181 to 210	16.00	20.00
501 to 1,000	80.00	20.00

Proposed size threshold: 500.

Explanation: The market consists of commercial aviation applications and military applications. Most of the larger manufacturers serve the military market and as such are not included in the analysis since the FAA does not certificate them. The market is dominated by a few large entities with more than 500 employees each.

TABLE 4.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft seat belts, except leather		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	22.86
91 to 120	.04	11.43
121 to 150	.01	2.86
271 to 300	.03	2.86
451 to 500	.05	2.86
501 to 1,000	.10	2.86
>1,000	99.76	54.28

Proposed Size Threshold: 1,000.

Explanation: Entities which manufacture seat belts are included among airline companies, airframe assemblers, automotive parts manufacturers, medium sized safety equipment manufacturers and small specialized businesses which perform aircraft modifications. Large automotive parts manufacturers and several major airframe manufacturers are industry leaders. Over 54 percent of the entities, including all of the industry leaders have more than 1,000 employees. Market share is concentrated among entities with more than 1,000 employees.

TABLE 5.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft tiedown strap assemblies, except leather		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.06	50.00
121 to 150	.50	25.00
>1,000	99.44	25.00

Proposed Size Threshold: 1,000.

Explanation: No discernable national market exists; this product is manufactured on an in-house basis by entities requiring this product. Entities with fewer than 1,000 employees account for less than 1 percent of the total industry employment.

TABLE 6.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft Seats		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	20.00
31 to 60	.03	15.56
61 to 90	.03	8.89
91 to 120	.01	2.22
151 to 180	.02	2.22
181 to 210	.02	2.22
211 to 240	.05	4.44
241 to 270	.03	2.22
271 to 300	.09	6.67
391 to 420	.04	2.22
451 to 500	.11	4.44
501 to 1,000	.33	8.89
>1,000	99.22	20.00

Proposed Size Threshold: 450.

Explanation: The industry is very vertically integrated, particularly among manufacturers of commercial aircraft, as many of the airframe manufacturers make their own seats. Specialized seat manufacturers outfit some commuter aircraft, but this is an extremely small market. Employment is concentrated among the market leaders, which have more than 450 employees.

TABLE 7.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft tires and inner tubes		
Number of employees	Percent of total employment	Percent of entities
>1,000	100.00	100.00

Proposed Size Threshold: 1,000.

Explanation: A very small number of entities employ less than 1,000, while the market is dominated by a few large rubber companies. Virtually all of industry employment is in entities with more than 1,000 employees. There is a high degree of market concentration with economies of scale achieved at sizes larger than 1,000 employees.

TABLE 8.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Rubberized survival equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.16	19.35
31 to 60	.69	25.81
61 to 90	.56	12.90
181 to 210	.71	6.45
211 to 240	.39	3.23
241 to 270	.44	3.23
501 to 1,000	4.77	12.90
>1,000	92.28	16.13

Proposed Size Threshold: 500.

Explanation: This market is dominated by large, diversified entities. All identified market leaders have more than 950 employees, although there may be some medium sized entities with between 500 and 950 employees. Over 97 percent of the industry employment is concentrated among entities with over 500 employees.

TABLE 9.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Pallets and containers		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.13	21.88
31 to 60	.37	15.63
61 to 90	.23	6.25
91 to 120	.20	3.13
151 to 180	.25	3.13
181 to 210	.33	3.13
241 to 270	.41	3.13
271 to 300	.48	3.13
501 to 1000	7.80	18.75
>1,000	89.78	21.88

Proposed Size Threshold: 300.

Explanation: This industry supplies cargo handling equipment to the commercial aviation industry. The market is quite substantial and includes participation entities of all sizes. The market is competitive. Smaller entities hold their own against larger competitors, with all market leaders employing more than 500 persons. Economies of scale are minimal in this entity type. Entities with more than 300 employees account for over 97 percent of the industry employment, while there is a clearly identifiable group of entities with fewer than 300 employees.

TABLE 10.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft environmental control equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	11.76
31 to 60	.10	17.65
61 to 90	.19	17.65
91 to 120	.09	5.88
121 to 150	.12	5.88
241 to 270	.20	5.88
501 to 1000	1.27	11.76
>1,000	98.01	23.53

Proposed Size Threshold: 150.

Explanation: Most aircraft heating and cooling equipment is manufactured by airframe manufacturers as part of their own aircraft. However, some entities produce package units or make modifications to small aircraft in order to enhance environmental control features. These non-airframe, heating and cooling equipment manufacturers often employ small numbers. Entities with more than 150 employees account for over 98 percent of the industry employment. No entity among a clearly recognized group with 150 or fewer employees is considered dominant in the field.

TABLE 11.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Fuel control equipment, including carburetors		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	13.79
31 to 60	.01	6.90
61 to 90	.03	10.34
91 to 120	.01	3.45
121 to 150	.02	3.45
181 to 210	.05	6.90
271 to 300	.03	3.45
361 to 390	.04	3.45
>1,000	99.80	48.28

Proposed Size Threshold: 750.

Explanation: Fuel control equipment includes carburetors and fuel injection systems for reciprocating engines and fuel mixture regulators for jet engines. The latter are such an integral part of the engine that there are very few component manufacturers other than the engine original equipment manufacturers. Market participation in the former is more distributed and competitive. Entities with more than 750 employees account for over 99 percent of industry employment. Data on medium sized entities indicates that market share falls off for companies with fewer than 1,000 employees. Economies of scale for non-original equipment manufacturers are thought to be achieved near 750 employees.

TABLE 12.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft pistons and piston rings		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.37	60.00
31 to 60	.24	10.00
61 to 90	.32	10.00
>1,000	99.08	20.00

Proposed Size Threshold: 50.

Explanation: Aircraft equipped with reciprocating engines are primarily small aircraft and rotorcraft. These engines are relatively small and the piston and piston ring technology used is similar to that used in automotive and light truck applications. Therefore many of the same entities participate in both the automotive and aerospace markets. As a result there is extreme diversity of firm sizes and a highly competitive market in this entity type. Many small component manufacturers with 50 or fewer employees compete against large engine original equipment manufacturers. Approximately 70 percent of the identified entities employ 50 or fewer persons.

TABLE 13.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft engine valves		
Number of employees	Percent of total employment	Percent of entities
1 to 30	45.65	83.33
31 to 60	54.35	16.67

Proposed Size Threshold: 50.

Explanation: This entity type is similar in market characteristics to manufacturers of aircraft pistons and piston rings, described above, and contains many of the same entities. All of the entities identified, not including original equipment manufacturers, have 50 or fewer employees.

TABLE 14.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Other aircraft engine valves not elsewhere classified		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.00	8.16
31 to 60	.02	10.20
61 to 90	.03	8.16
91 to 120	.02	4.08
121 to 150	.06	8.16
151 to 180	.02	2.04
181 to 210	.04	4.08
331 to 360	.03	2.04
361 to 390	.04	2.04
421 to 450	.09	4.08
501 to 1,000	.16	4.08
>1,000	99.48	42.86

Proposed Size Threshold: 1,000.

Explanation: This entity type manufactures a variety of pneumatic and hydraulic valves used primarily in mechanical control functions on aircraft. There is one group of very large diversified manufacturers and another group of small specialized component manufacturers. The principal market for the latter group is in component modifications. The larger entities dominate the market. Entities with more than 1,000 employees account for more than 42 percent of the entities and 99 percent of the employment.

TABLE 15.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft lighting fixtures and systems		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.06	30.77
31 to 60	.05	7.69
61 to 90	.05	3.85
91 to 120	.06	3.85
121 to 150	.09	3.85
151 to 180	.09	3.85
181 to 210	.11	3.85
271 to 300	.17	3.85
501 to 1,000	.66	7.69
>1,000	98.66	30.77

Proposed Size Threshold: 300.

Explanation: This entity type includes manufacturers of both interior and exterior lighting systems. A few specialized entities and airframe original equipment manufacturers dominate this specialized market. Several entities with employment over 300 are among the market leaders, while many of the smaller size entities are primarily engaged in minor product modifications rather than original equipment manufacture. Entities employing more that 300 persons account for over 99 percent of industry employment.

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TABLE 16.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft communications equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	16.36
31 to 60	.04	10.91
61 to 90	.02	3.64
91 to 120	.03	3.64
121 to 150	.04	3.64
181 to 210	.05	3.64
211 to 240	.06	3.64
271 to 300	.04	1.82
301 to 330	.04	1.82
391 to 420	.06	1.82
501 to 1,000	.59	9.09
>1,000	99.04	40.00

Proposed Size Threshold: 750.

Explanation: This entity type is a segment of the broader avionics industry. It includes some of the leading electronics, aerospace, and computer manufacturers in the United States as well as high technology communications firms. While the market is not especially concentrated, most participants are large, diversified corporations. The trend toward market concentration by large size entities has accelerated in recent years as larger aerospace firms have acquired some of the leading medium-size entities. Economies of scale are achieved at relatively large sizes because of high capital requirements for market entry, the requirement for a strong and widespread reputation for technical excellence, and the high cost of regulatory compliance. Entities with employment over 750 account or more than 40 percent of the entities and more than 99 percent of the industry employment. Those with employment under 750 have had difficulty remaining competitive as independently owned and operated entities.

TABLE 17.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft navigational equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	12.33
31 to 60	.01	8.22
61 to 90	.01	5.48
91 to 120	.00	1.37
121 to 150	.03	6.85
181 to 210	.03	4.11
211 to 240	.03	4.11
241 to 270	.02	2.74
271 to 300	.02	2.74
361 to 390	.02	1.37
451 to 500	.02	1.37
501 to 1000	.15	6.85
>1000	99.54	42.47

Proposed Size Threshold: 750.

Explanation: This entity type is a segment of the broader avionics industry. It includes some of the leading electronics, aerospace, and computer manufacturers in the United States. While the market is not very concentrated, most entities are large, diversified corporations. The trend toward market concentration by large size entities has accelerated in recent years as larger aerospace firms have acquired some of the leading medium-size entities. Economies of scale are achieved at relatively large sizes because of high capital requirements for market entry, the requirement for a strong and widespread reputation for technical excellence, and the high cost of regulatory compliance. There are some small, single product line entities, but they often have difficulty establishing the necessary reputation and eventually sell their patent rights to larger companies. Entities with employment over 750 account for more than 42 percent of the entities and more than 99 percent of the industry employment. Entities employing under 750 have had difficulty being competitive as independently owned and operated entities.

TABLE 18.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft batteries		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	20.00
151 to 180	.05	20.00
>1,000	99.94	60.00

Proposed Size Threshold: 1,000.

Explanation: In this limited market, a small number of firms manufacture aircraft storage batteries. Market share is concentrated among large diversified corporations, while a few small entities tend to compete successfully by dealing in specialized applications. Entities with employment over 1,000 account for 60 percent of the entities and over 99 percent of industry employment.

TABLE 19.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Engine starting and electrical generating equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.02	27.27
31 to 60	.01	4.55
61 to 90	.03	9.09
91 to 120	.02	4.55
121 to 150	.03	4.55
241 to 270	.10	9.09
421 to 450	.08	4.55
501 to 1,000	.28	9.09
> 1,000	99.43	27.27

Proposed Size Threshold: 250.

Explanation: This entity type includes manufacturers of starting motors, ignition coils, generators, alternators and related products. As with most engine rlated equipment, engine original equipment manufacturers make up a large segment of the industry. The market is relatively competitive since much smaller entities have been able to compete successfully with the conglomerates which are industry leaders. A group of similar size entities employing 250 of fewer have a disproportionately low marker share based on employment share.

TABLE 20.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Spark plugs for internal combustion engines		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.03	25.000
121 to 150	.88	25.00
>1,000	99.09	50.00

Proposed Size Threshold: 1,000.

Explanation: The aviation market is very limited because the product is used only for small aircraft. As with other types of reciprocating engine equipment, the technology base is the same as that used in automotive applications. The market is extemely concentrated and dominated by two firms, each with over 1,000 employees. A few smaller firms are active with very small market share.

TABLE 21.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Voltage regulators		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.04	75.00
>1,000	99.96	25.00

Proposed Size Threshold: 1,000.

Explanation: Large engine original equipment manufacturers dominate this highly concentrated market.

TABLE 22.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft flight instruments		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	19.74
31 to 60	.02	7.89
61 to 90	.02	6.58
121 to 150	.04	6.58
151 to 180	.01	1.32
181 to 210	.03	3.95
211 to 240	.02	2.63
241 to 270	.03	2.63
271 to 300	.02	1.32
361, to 390	.02	1.32
391 to 420	.02	1.32
501 to 1,000	.21	6.58
>1,000	99.55	38.16

Proposed Size Threshold: 250.

Explanation: While most producers manufacture both instruments (avionics) and non-electronic instruments (airspeed indicators, altimeters, cabin pressure guages, and others), the tendency among large diversified companies has been toward concentration in the avionics market. The larger non-electronic flight instrument market is substantially more competitive. Smaller companies have achieved economies of scale in the production of a single product line. Additionally, smaller entities have been able to make small cosmetic changes in standard instruments through the FAA administered Parts Manufacturer Approval (PMA) and Supplemental Type Certificate procedures. This ability has allowed smaller entities to compete without incurring significant research or product development costs. Entities with employment over 1,000 account for more than 38 percent of entities and more than 99 percent of employment. Successful medium size companies have achieved economies of scale in the range of 250 to 400 employees, and there is a concentration of employment share for medium size entities among those with more than 250 employees.

TABLE 23.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft Fuel System Instruments		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.02	12.50
31 to 60	.02	3.13
61 to 90	.05	6.25
91 to 120	.03	3.13
121 to 150	.09	9.37
151 to 180	.06	3.13
211 to 240	.07	3.13
241 to 270	.07	3.13
271 to 300	.17	6.25
361 to 390	.11	3.13
391 to 420	.12	3.13
>1,000	99.17	43.75

Proposed Size Threshold: 1,000.

Explanation: This entity type includes manufacturers of fuel flow measuring instruments, fuel level indicators, fuel system controls, and related electronic instruments The manufacturers are characteristic of avionics manufacturers. The market is not very concentrated, but leading firms tend to be relatively large manufacturers of a wide range of scientific and industrial instrumentation. Since the need for a strong national reputation, high capital requirements and regulations are obstacles to smaller non-diversified entities, few small entities are in this entity type. Entities in this industry with fewer than 1000 employees have had difficulty remaining competitive as independently owned and operated businesses. Entities with more than 1000 employees account for over 43 percent of the entities and over 93 percent of industry employment.

TABLE 24.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft engine instruments		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	27.59
31 to 60	.01	3.45
61 to 90	.05	10.34
91 to 120	.02	3.45
181 to 210	.04	3.45
211 to 240	.04	3.45
271 to 300	.05	3.45
361 to 390	.07	3.45
501 to 1,000	.11	3.45
>1,000	99.59	37.93

Proposed Size Threshold: 200.

Explanation: These manufacturers of engine controls, tachometers, EGT controls, intake and exhaust temperature probes, etc. produce both electronic instruments and hydraulic and pneumatic devices. The electronics manufacturers are similar to those in the avionics industry. Their market is concentrated. The manufacturers of hydraulic and pneumatic devices are in a very competitive market because product differentiation is difficult and price competition is an important factor. Smaller entities have achieved economies of scale in the production of single product lines.

TABLE 25.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft measuring instruments not elsewhere classified		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.04	26.67
31 to 60	.05	6.67
61 to 90	.03	3.33
121 to 150	.21	10.00
151 to 180	.08	3.33
181 to 210	.09	3.33
271 to 300	.13	3.33
451 to 500	.23	3.33
501 to 1,000	.30	3.33
>1,000	98.83	36.67

Proposed Size Threshold: 450.

Explanation: This industry manufactures a wide range of both electronic and non-electronic instrumentation. Its structural characteristics are similar to those entity types which manufacturer flight instruments, fuel system instruments and engine instruments; a mixed structure. Some industry segments are concentrated and others are competitive. Entities with more than 450 employees account for over 43 percent of the entities and 99 percent of industry employment, and entities employing between 450 to 1,000 persons account for over 46 percent of all employment by entities with no more than 1,000 employees.

TABLE 26.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Air traffic control equipment		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	5.26
61 to 90	.07	15.79
91 to 120	.03	5.26
121 to 150	.04	5.26
151 to 180	.05	5.26
181 to 210	.05	5.26
211 to 240	.07	5.26
501 to 1,000	.18	5.26
>1,000	99.51	47.37

Proposed Size Threshold: 1,000.

Explanation: This entity type is a segment of the broader avionics industry. It includes some of the leading electronics, aerospace, and computer manufacturers in the United States as well as high technology communications firms. While the market is not especially concentrated, most participants are large, diversified corporations. The trend toward market concentration by large size entities has accelerated in recent years as larger aerospace firms have acquired some of the leading medium-size entities. Economies of scale are achieved at relatively large sizes because of high capital requirements for market entry, the requirement for a strong and widespread reputation for technical excellence, and the high cost of regulatory compliance. Entities with employment over 1,000 account for more than 47 percent of the entities and more than 99 percent of the industry employment. Those with employment under 1,000 have had difficulty remaining competitive as independently owned and operated entities.

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TABLE 27.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aircraft radio equipment repair		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.13	64.09
31 to 60	.11	10.51
61 to 90	.09	5.40
91 to 120	.09	3.65
121 to 150	.08	2.62
151 to 180	.04	1.02
181 to 210	.08	1.31
211 to 240	.02	.44
241 to 270	.03	.58
271 to 300	.04	.58
301 to 330	.04	.58
331 to 360	.05	.58
361 to 390	.02	.29
391 to 420	.04	.44
421 to 450	.03	.29
451 to 500	.10	.88
501 to 1,000	.07	.58
>1,000	98.97	6.26

Proposed Size Threshold: 30.

Explanation: This entity type is two tiered. A tier of large size entities includes repair stations that are part of large corporations, government fleets or airline companies. The other tier includes repair stations which employ fewer than 450 persons and serve primarily the general aviation market. Approximately 45 percent of employment in this smaller tier is in entities employing fewer than 150 persons, including a preponderance of small "mom and pop" operations. Industry wide, approximately 64 percent of the entities each employ no more than 30 persons.

TABLE 28.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aerial advertising, including skywriting		
Number of employees	Percent of total employment	Percent of entities
1 to 30	9.30	95.46
>1,000	90.70	4.54

Proposed Size Threshold: 10.

Explanation: This very small and specialized entity type performs two kinds of aerial advertising—skywriting and banner towing. Skywriting is a vanishing art, with only a small number of entities still active. Banner towing is the major segment of aerial advertising. Most firms are very small and have few aircraft. Entities employing fewer than 10 persons account for over 60 percent of the entities and less than 30 percent of industry employment.

TABLE 29.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Aerial advertising, including skywriting		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.01	8.54
31 to 60	.07	12.20
61 to 90	.01	1.22
91 to 120	.05	3.66
151 to 180	.02	1.22
181 to 210	.06	2.44
211 to 240	.07	2.44
241 to 270	.11	3.66
271 to 300	.21	6.10
301 to 330	.05	1.22
331 to 360	.05	1.22
391 to 420	.12	2.44
451 to 500	.07	1.22
501 to 1,000	1.54	17.07
>1,000	97.57	35.37

Proposed Size Threshold: 150.

Explanation: There are five general categories of aircraft maintenance technician schools: State sponsored programs, university programs, community college programs, vocational-technical school programs, and private aerotechnical schools. Programs range in size from small "mom and pop" operations at small airports to large aerotechnical institutes. All leading aerotechnical programs employ at least 100 persons. Because a large segment of this entity type includes large universities, community colleges, and state governments which offer programs, even some of the large leading private maintenance technician programs would be at a competitive disadvantage in their ability to absorb regulatory costs, when compared to the larger diversified institutions.

TABLE 30.—PERCENTAGE DISTRIBUTION OF ENTITY TYPES BY NUMBER OF EMPLOYEES

Parachute lofts		
Number of employees	Percent of total employment	Percent of entities
1 to 30	.04	60.00
31 to 60	.02	4.00
61 to 90	.03	4.00
91 to 120	.04	4.00
121 to 150	.06	4.00
181 to 210	.15	8.00
> to 1,000	99.66	16.00

Proposed Size Threshold: 90.

Explanation: Parachute lofts are certificated by FAA under 14 CFR Part 149 to provide parachute rigging, repair, alteration, and maintenance services for civilian aircraft. Parachute manufacturers may also provide rigging services, but are not required to obtain a certificate under this same regulation. The U.S. military market is one of the largest for parachute rigging services. Entities serving only the military do not require FAA certification. The market is two tiered—the larger national market and the smaller local market. Nationally, the largest companies are defense contractors and/or equipment manufacturers. FAA certificates very few of these entities as parachute lofts, although some are certificated as parachute manufacturers. The local market exists to serve sport parachutists. The sport business tends to go to the most convenient local loft. Not counting the small number of very large entities with over 1000 employees, including U.S. government agencies, over 75 percent of the remaining employment is in entities employing 90 to 210 persons. Those entities employing fewer than 90 persons are generally independently owned and operated companies which compete primarily in the local sport market.

Effects of Proposed Size Threshold Values

Table 31 shows the estimated total number of entities of each type and the estimated number and percent of entities that FAA would consider small under the proposed standards. The data available to FAA on firms having fewer that 20 employees are especially poor. FAA invites any *independently owned and operated* firm with fewer than twenty employees which must comply with any existing FAA regulations or will have to comply with any proposed FAA regulation to submit its name and number of employees and type of business to the address listed under "INVITATION FOR PUBLIC COMMENTS" above for review.

TABLE 31.—EFFECTS OF PROPOSED SMALL ENTITY THRESHOLD VALUES

SIC	Entity type	Total number of entities	Number and percent of entities considered small under proposed definitions
0721	Aerial Agricultural and Pest Control	296	221(75%)
2399	Parachutes	12	3(25%)
	Aircraft Seat Belts, Except Leather	58	15(26%)
	Aircraft Tie Down Strap Assemblies, Except Leather	5	2(40%)
2531	Aircraft Seats	78	27(35%)
3011	Aircraft Tires and Inner Tubes	4	0(0%)
3069	Rubberized Survival Equipment	46	20(43%)
3537	Pallets and Containers	40	15(38%)
3585	Aircraft Environmental Control Equipment	20	9(45%)
3592	Fuel Control Equipment, Including Carburetors	36	14(39%)
	Aircraft Pistons and Piston Rings	12	6(50%)
	Aircraft Engine Valves	7	6(86%)
3599	Other Aircraft Valves, N.E.C.	53	24(45%)
3647	Aircraft Lighting Systems and Fixtures	38	13(34%)
3662	Aircraft Communications Equipment	80	26(32%)
	Aircraft Navigational Equipment	105	33(31%)
3691	Aircraft Batteries	5	2(40%)
3694	Engine Starting and Electrical Generating Equipment	24	11(46%)
	Spark Plugs for Internal Combustion Engines	4	1(25%)
	Voltage Regulators	4	3(75%)
3811	Aircraft Flight Instruments	102	32(31%)
3829	Aircraft Fuel System Instruments	44	16(36%)
	Aircraft Engine Instruments	41	11(27%)
	Aircraft Measuring Instruments, Not Elsewhere Classified	30	13(43%)
	Air Traffic Control Equipment	23	8(35%)
7622	Aircraft Radio Equipment Repair	765	420(55%)
7319	Aerial Advertising, Including Skywriting	23	14(61%)
8299	Aircraft Maintenance Technician Schools	92	19(21%)
7999	Parachute Lofts	27	17(63%)

Data Sources

The sources of data used in establishing the size standards include: The *Standards Industrial Classification Manual*, which is used as a guide in defining industries; Dun and Bradstreet, *Market Identifer (DMI) Files; FAA Index of Parts Manufacturer Approval (PMA)*, a compilation of all companies certified by the FAA to produce replacement parts or design modifications for installation on a particular aircraft; *FAA Index of Articles Certified Under the Technical Standard Order System (TSO)*, which contains a detailed listing of all aeronautical products subject to FAA Technical Standard Orders and the manufacturers which hold TSO approval; *FAA Advisory Circular AC#147-2W, Directory of FAA Certified Aviotion Maintenance Technician Schools*, which lists all such schools under the authority of FAR, Part 147; *FAA; Advisory Circular AC#140-7D, FAA Certified Maintenance Agencies Directory*, which lists repair stations certified under FAR, Part 145 and parachute lofts certified under FAR, Part 149; *FAA Airmen and Aircraft Registry (AAR)*, a comprehensive, computerized listing of certified airmen and aircraft; *Aircraft Registration Master File (ARMF)*, which provides information on certificated aircraft and the uses to which aircraft are put; the FAA's own files of articles and correspondence; and information provided by trade associations.

Method of Establishing Cost Threshold Values

The FAA has used the same criteria to develop the proposed cost threshold values that it used previously (See FAA's first notice for detailed discussion) to develop the threshold values stated in FAA Order 2100.14. These are summarized below.

The threshold value for each entity type is equal to one percent of the annual cost of doing business for the 34th percentile small entity. FAA estimated the threshold value by identifying the 34th percentile small entity, calculating and verifying its annualized cost, and calculating the threshold value as 1 percent of the annualized cost.

To identify the 34th percentile small entity, FAA created lists of small entities rank ordered by size. Each list included all identified entities with employment equal to or less than the small entity size threshold. Subsidiary companies were not included because they are not independently owned and operated, a requisite condition in the definition of small entity, as set forth in the Regulatory Flexibility Act.

Next, annual costs of doing business were calculated using sales and profitability data:

Cost=Sales−(Sales×Profit Margin).

Sales figures used to calculate annual costs of doing business were either actual reported sales or estimates statistically derived. To derive estimates for each entity type, FAA generated a curve by plotting expected sales by employment. The curve is the least squares regression fit of actual sales and employment data. Profit margins used in the calculation are median values for the four-digit SIC within which an entity type is classified.

In each entity type, FAA compared the actual sales data for the thirty-fourth percentile small entity with the fitted value on the curve. Where the actual value deviated significantly, indicating an anomolous case within the entity type, the fitted value was used to compute the cost. Otherwise the actual sales data were used.

The following example of how the method of establishing cost thresholds was applied to one entity type, aircraft seats (SIC 2531), illustrates the general method used to arrive at the proposed cost threshold values for all twenty-nine entity types.

Example: Based upon the size threshold value, this entity type has 27 small entities. Therefor, the ninth smallest size entity is closest to the thirty-fourth percentile (33.3 percentile) and is the entity size on which the cost threshold is based. This entity employs 25 people.

Assessment of the available sales data for the entity type showed that a log-log regression estimate yielded a good fit of the sales and employment data. The equation of the fitted curve, plotting sales versus employees is:

$\text{Sales}=111{,}635\ (\text{employees})^{.80}$

The correlation coefficient (R^2) equals .70. The value indicates that the fitted curve is a good benchmark for estimating expected sales versus employment values for this entity type. Sales data were not available to the FAA for the thirty-fourth percentile small entity, therefore the fitted value provides the best estimate. The fitted value is $1,466,062.

The annual cost of doing business was calculated using sales and profitability data. The profit margin for SIC 2531 equals .03.

Cost=Sales−(Sales×Profit Margin).=$1,466,062−($1,466,062×.03)=$1,422,060.

The cost threshold equals one percent of the annual cost:

Cost Threshold=$1,422,060×.01=$14,220.

The specific application of the methodology to each entity type varied depending upon the availability and characteristics of the data. The detailed sources and explanations for the calculation of threshold values for all of the entity types are available for inspection at FAA Headquarters. For appointment to inspect sources, call Leonard Oberlander, Regulatory Analysis Branch, APO-210, (202) 426-3070.

Significant Economic Impact Standards

The figures in Table 32 approximately equal one percent of the total annual cost of the 34th percentile small entity in each entity type. The figures are in 1983 dollars. To convert them to current dollars, FAA proposes multiplying them by the ratio of the current implicit GNP price deflator to that for December 1983. (Implicit price deflators for GNP may be found in the *Survey of Current Business*.) Note that no threshold annualized cost levels have been presented for Aircraft Tires and Inner Tubes (SIC 3011) and Storage Batteries (SIC 3691). There is not a sufficient number of small entities for FAA to apply a significant cost threshold in either of these two industries.

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TABLE 32.—Threshold Significant Regulatory Costs

[In December 1983 dollars]

Standard industrial classification	Entity type	Threshold annualized cost levels
0721	Aerial agricultural and pest control.	$1,800
2399	Parachutes	800
	Aircraft seat belts, except leather.	7,400
	Aircraft tie down strap assemblies, except leather.	4,700
2531	Aircraft seats	14,200
3011	Aircraft tires and inner tubes	
3069	Rubberized survival equipment	23,100
3537	Pallets and containers	10,800
3585	Aircraft environmental control equipment.	15,800
3592	Fuel control equipment, including carburetors.	16,800
	Aircraft pistons and piston rings.	2,800
	Aircraft engine valves	2,600
3599	Other aircraft valves, n.e.c	35,500
3647	Aircraft lighting systems and fixtures.	10,800
3662	Aircraft communications equipment.	9,900
	Aircraft navigational equipment	20,600
3691	Aircraft batteries	
3694	Engine starting and electrical generating equipment.	11,900
	Spark plugs for internal combustion engines.	2,900
	Voltage regulators	23,800
3811	Aircraft flight instruments	11,300
3829	Aircraft fuel system instruments	35,900
	Aircraft engine instruments	1,800
	Aircraft measuring instruments, n.e.c.	4,900
	Air traffic control equipment	30,400
7622	Aircraft radio equipment repair	1,200
7319	Aerial advertising, including skywriting.	4,700
8299	Aircraft maintenance technician schools.	22,400
7999	Parachute lofts	900

Issued at Washington, DC, on March 5, 1986.

Marvin L. Olson,

Acting Director, Office of Aviation Policy and Plans.

[FR Doc. 86-6180 Filed 3-20-86 8:45 am]

BILLING CODE 4910-13-M

Reestablishment of the Air Traffic Procedures Advisory Committee

Notice is given of the reestablishment of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee. This advisory committee was established on the recommendation of a task group that was formed by the Secretary of Transportation on January 28, 1975. The task group's recommendation called for the establishment of a standing group to review all air traffic control procedures and practices. The Administrator of the FAA is the sponsor of the committee. The membership will include experts from the Government, the aviation industry, and those representing the viewpoints of other elements of the aviation community. Non-Federal members of the committee do not become Government employees. They serve without compensation and at their own expense. The committee will make recommendations for standardizing, clarifying, and upgrading present air traffic control procedures and practices and recommend new or revised procedures necessary to accommodate new air traffic control concepts.

Public Interest

The Secretary of Transportation has determined that the reestablishment and continued use of the committee is necessary in the public interest in connection with performance of duties imposed on the FAA by law. Meetings of the committee will be open to the public except as provided for in section 10(d) of the Advisory Committee Act.

Issued in Washington, DC, on March 17, 1986.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 86-6175 Filed 3-20-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 142—Air Traffic Control Radar Beacon System/Mode S (ATCRBS/Mode S) Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 142 on Air Traffic Control Radar Beacon System/Mode S (ATCRBS/Mode S) Airborne Equipment to be held on April 15-16, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Meeting Held on December 3-4, 1985; (3) Briefing on FAA Data Link Program; (4) Report of the Editorial Working Group; (5) Discuss Format of Committee Report; (6) Review Second Draft Report on Minimum Operational Performance Standards for Mode S Data Link; (7) Pilot Factors Working Group Report; (8) Develop Future Work Program; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 14, 1986.

S.B. Poritzky,

Designated Officer.

[FR Doc. 86-6179 Filed 3-20-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; MIC Property and Casualty Insurance Corporation

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1985 Revision, on page 27121 to reflect this addition:

MIC Property and Casualty Insurance Corporation. Business Address: 3044 West Grand Boulevard, Detroit, MI 48202. Underwriting Limitation [b]: *$2,193,000.* Surety Licenses [c]: All except AL, CA, DE, HI, IL, ME, MA, NH, NC, OR, RI, VT, WY. Incorporated In: Michigan. Federal Process Agents.[d]

Certificates of Authority expire on June 30 year year, unless revoked sooner. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20228.

Dated: February 25, 1986.

W.E. Douglas,

Commisioner, Financial Management Service.

[FR Doc. 86-6181 Filed 3-20-86; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Income Taxes: Age 65 Exemptions and Zero Bracket Deductions; Eligibility Determinations and Social Security Administration Files

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: This document announces that the Internal Revenue Service will use Social Security Administration date of birth files to determine the eligibility for and the proper amount of additional exemptions claimed on Forms 1040 and 1040A by taxpayers and their spouses for being age 65 or over. These files will also be used to determine the eligibility and the proper zero bracket amount for taxpayers with unearned income who could be claimed as dependents on their parent's tax returns.

FOR FURTHER INFORMATION CONTACT: Ruby Alston, Program Analyst, Returns Processing and Accounting Division, Office of Assistant Commissioner (Returns and Information Processing), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, 202-566-4089, not a toll-free call.

Announcement

The additional exemption for taxpayer or spouse age 65 or more specified in Internal Revenue Code section 151 is allowed as a deduction in computing taxable income. The deduction is available to eligible taxpayers age 65 or over at the end of the taxable year by filing Form 1040 or 1040A, U.S. Individual Income Tax Returns.

The zero bracket amount specified by Internal Revenue Code section 63 cannot be used by taxpayers with unearned income of $1,000 or more, who could be claimed as a dependent by another taxpayer.

To determine eligibility and amount of allowable age 65 exemptions and zero bracket deductions, the Internal Revenue Service will use Social Security Administration date of birth files to match against Forms 1040 and 1040A. If a taxpayer or spouse has improperly claimed the additional age exemption or the zero bracket deduction, he/she will be notified of a proposed tax adjustment to his/her tax return.

Fredric F. Perdue,

Director, Returns Processing and Accounting Division.

[FR Doc. 86-6263 Filed 3-20-86; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Amendment

On March 14, 1983, notice was published at page 10791 of the **Federal Register** (48 FR 10791) by the United States Information Agency pursuant to Pub. L. 89-259 relating to the exhibit "China: 7,000 Years of Discovery." A new exhibition site, at the Boston Museum of Science beginning on or about June 1, 1985, to on or about December 1, 1985, was added to the itinerary published in the original notice by amendment published in the **Federal Register** on May 23, 1985 (50 FR 21309).

An additional exhibition site has been added to the amended itinerary. The exhibit will be on display at the Southwest Museum of Science and Technology, Dallas, Texas, beginning on or about June 1, 1986 to on or about December 31, 1986.

Public notice of this amendment to the notice is ordered to be published in the **Federal Register.**

Dated: March 17, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86-6200 Filed 3-20-86; 8:45 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 55
Friday, March 21, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: 1:30 p.m., Tuesday, April 1, 1986.

PLACE: Room 458, 1111 20th Street, NW., Washington, DC 20036.

SUBJECT: Ascertainment of best accounting method for the distribution of the cable copyright fund. The question arises from the Tribunal decision to create the basic, 3.75% and syndex funds.

STATUS: Open.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

Dated: March 18, 1986.

Edward W. Ray,
Chairman.

[FR Doc. 86-6357 Filed 3-19-86; 1:07 pm]

BILLING CODE 1410-09-M

2

COUNCIL ON ENVIRONMENTAL QUALITY

March 18, 1986.

TIME AND DATE: 10:00 a.m., Tuesday, April 1, 1986.

PLACE: Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC.

MATTERS TO BE CONSIDERED:

1. The Department of Energy will brief the Council on the Nuclear Waste Policy Act, with particular emphasis on the environmental assessments requirements.
2. Other business.

A. Alan Hill,
Chairman.

[FR Doc. 86-6278 Filed 3-18-86; 4:10 PM]

BILLING CODE 3125-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published March 20, 1986.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202) 377-6677.

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Monday, March 24, 1986, at 11:00 a.m., has been changed to start at 4:00 p.m.

Dated: March 19, 1986.

Jeff Sconyers,
Secretary.

[FR Doc. 86-6337 Filed 3-19-86; 11:42 AM]

BILLING CODE 6720-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 18, 1986.

Change in Previously Announced Agenda

TIME AND DATE: Originally scheduled for March 20, 1986; now scheduled for 10:00 a.m., Wednesday, April 16, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission originally scheduled the following item for a meeting, but will now hear oral argument on the item:

1. Secretary of Labor on behalf of Michael Hogan and Robert Ventura v. Emerald Mines Corp., Docket No. PENN 83-141-D. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-6335 Filed 3-19-86; 11:33 am]

BILLING CODE 6735-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 18, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Magma Copper Company, Docket No. WEST 83-17-M. (Issues include whether the administrative law judge erred in finding a violation of 30 CFR 57.19-128(a)(1982), a mandatory safety standard dealing with wire rope.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-6336 Filed 3-19-86; 11:33 am]

BILLING CODE 6735-01-M

6

LEGAL SERVICES CORPORATION

TIME AND DATE: The meeting will commence at 9:00 a.m., Saturday, March 29, 1986, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. 1986 Consolidated Operating Budget
3. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date issued: March 19, 1986.

Timothy H. Baker,
Secretary.

[FR Doc. 86-6380 Filed 3-19-86; 3:53 pm]

BILLING CODE 6820-35-M

7

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Friday, March 28, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Case handling procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC., 19 March 1986.

By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor Relations Board.

[FR Doc. 86-6338 Filed 3-19-86; 11:43 am]

BILLING CODE 7545-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 24, 1986.

A closed meeting will be held on Tuesday, March 25, 1986, at 2:30 p.m. An open meeting will be held on Thursday, March 27, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 25, 1986, at 2:30 p.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Amendment of order instituting administrative proceeding of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Opinion.

The subject matter of the open meeting scheduled for Thursday, March 27, 1986, at 10:00 a.m., will be:

1. Consideration of whether to adopt an amendment to Rule 17Ac2-1, and revisions to Form TA-1, utilized for registration as a transfer agent; a new SEC Supplement to Form TA-1 to require information about persons associated with an independent, non-issuer transfer agent; and a new Rule 17Ac2-2 requiring transfer agents to complete new Form TA-2, an annual report regarding the nature and scope of a transfer agent's business activities. For further information, please contact Randy G. Goldberg at (202) 272-2365.

2. Consideration of whether to issue a release that would approve a proposed rule change of Depository Trust Company ("DTC") revising DTC's fee schedule for major DTC services. For further information, please contact Jerry Greiner at (202) 272-2066.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Dougherty at (202) 272-3077.

Dated: March 18, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-6383 Filed 3-19-86; 3:55 pm]

BILLING CODE 8010-01-M

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federal register

Friday
March 21, 1986

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects to Strenghten and Develop the U.S. Fishing Industry; Notice

VOL 51
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 60235-6035]

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For FY86, Saltonstall-Kennedy funds are available to assist persons in carrying out research and development projects which address any aspect of a U.S. fishery involving the U.S. fishing industry (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infra-structures. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications it will fund.

DATE: Applications should be sent to the applicable regional or Washington office of the National Marine Fisheries Service by May 27, 1986. (For addresses, see Section E.2.)

FOR FURTHER INFORMATION CONTACT: Phyllis S. Bentz, S–K Program Manager, National Marine Fisheries Service, Washington, DC 20235, Telephone: 202–634–7451.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c-2–713c-3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use at least 60 percent of these funds each year to make available grants to assist persons in carrying out research and development projects which address any aspect of United States fisheries, including, but not limited to, harvesting, processing, and marketing. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

There is no guarantee that sufficient funds will be available to make awards for all approved projects. For FY 86, $8 million was appropriated for the S–K program. Approximately $1.06 million has been committed to fund the second year of FY 85 multi-year projects, and about $7 million may be used to fund new fisheries research and development projects, subject to availability.

II. Funding Priorities

Fisheries research, development, and utilization proposals should relate to one or more of the priority areas in the Regional and National sections. The NMFS will also consider other proposals (note exceptions which follow); however, funding will be available only if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will *not* be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to fish aggregating devices; and (6) extension activities such as newsletters or technology transfer unless identified as a necessary part of a specific project.

The NMFS has identified fisheries and priorities on a regional basis in conjunction with commercial and recreational fishing industry groups, other organizations, and governmental entities having an interest in the development and use of fisheries in the region.

Some priorities were found to relate to several, and in a few instances, all fisheries or regions and are listed as national priorities. In these cases, the application should address the relative extent to which multiple fisheries resources would be addressed.

The funding priorities conform to the NMFS S–K Long Range Plan, which identifies problems and opportunities for S–K funding.

Priorities for FY 86 funding within specific fisheries are listed below, along with a summary of activities funded in FY 85. In some cases the priorities indicate that proposals should build upon or take into account past or current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from the applicable regional or Washington office. (For addresses, see Section E.2.)

A. Northeast Region

1. *Squid, Mackerel and Butterfish:* Projects funded in FY 85 cover both domestic and export market development activities for mixed species such as squid, mackerel, butterfish, hakes, herring, ocean catfish, ocean pout, pollock, skates, and bluefish (both recreationally and commercially caught). Included are consumer education, training of food-service distributors, testing of innovative product forms utilizing undervalued species, and preparation of export information. Also funded was a study of the technical and economic factors related to freezer trawlers.

For FY 86, the NMFS seeks projects which will complement these activities or address other developmental impediments. Specifically, the NMFS will give priority for funding to projects that:

a. Examine means to locate and harvest fishery resources which have identifiable capacity for significant production.

b. Conduct in-plant demonstrations of new or innovative processing equipment to allow processors to evaluate opportunities to make greater use of nontraditional species of fish. Projects must assess the technical and economic feasibility of using the equipment.

c. Conduct economic feasibility analyses on harvesting and processing of non-traditional species.

d. Identify chemical indicators for decomposition in current and potential squid products.

e. Execute regional domestic and/or export marketing programs, including product development activities, in cooperation with States, media, industry and other interests.

f. Investigate the development of new mackerel products for domestic and/or foreign markets.

g. Examine means to increase recreational harvest of mackerel by party boats and headboats in the Mid-Atlantic area.

h. Test/demonstrate various separator trawls in the Northwest Atlantic fisheries to reduce by-catch of juveniles and non-target species.

2. *Atlantic Demersal Finfish:* A major effort to evaluate existing techniques and potentially new methods to process and use fish waste was funded in FY 85. Also funded were projects involving: the study of the economic feasibility of a vertically integrated surimi and analog plant, using whiting and red hake, located proximate to major markets; continuation of on-board training activities to expand quality handling techniques to vessels which cannot at this time realistically adopt the preferred bleeding and boxing system. Relating to this and other fisheries, a project was funded to evaluate a model for implementation of a State underwritten mutual insurance association for vessel insurance.

In FY 86, priority will be given to projects which:

a. Evaluate the technical and economic feasibility of shifting fishing effort to other species, such as hake, and resolve associated problems.

b. Evaluate existing techniques or develop new methods to process and use fish wastes and determine technical and economic feasibility of their application through in-plant demonstrations. Efforts should supplement, and not duplicate on-going fish waste studies, e.g. those of the Northeast Fish Waste Task Force and the New England Fisheries Development Foundation.

c. Conduct regional domestic and/or export marketing programs to develop new markets for Atlantic demersal finfish species, e.g. cod, haddock, yellowtail flounder, winter and summer flounder, grey sole, silver and red hake, wolffish, cusk, etc.

d. Evaluate and demonstrate economic returns at each level of processing and distribution associated with maintenance of high quality products.

e. Develop, modify, test, and/or evaluate harvesting methods that will enhance conservation measures.

3. *Coastal, Estuarine and Great Lakes Fisheries:* Projects funded in FY 85 focused on: developing new markets for underutilized species of freshwater fish and fish products in the Great Lakes area and other States having commercial fisheries dependent upon harvesting underutilized species of freshwater fish; a coordinated consumer education, domestic and export marketing program for the Mid-Atlantic Region; the expansion of a fishing vessel and processing plant quality project in the Northeast to the retail segment of the industry; and a clam waste processing project to model the use of natural processes to improve the quality of plant production wastes.

Priorities for FY 86 funding will focus on:

a. Expansion of domestic and/or foreign markets for underutilized fishery products. This may include new product development, test marketing, and promotion of non-food application of rough fish.

b. Demonstrate/implement marketing strategies developed for the charter boat/headboat industry, including integration into tourism.

c. Examine and demonstrate the potential for developing recreational fishing as a new industry in coastal communities.

B. Southeast Region

Both commercial and recreational projects should be concentrated on shifting current harvesting activity from fully or over utilized fisheries to alternate fisheries, or should contribute to solutions for the specific problem areas identified in the following sections. Proposals will have to contain appropriate economic analysis where the output' [illegible] icability and priority depend upon the product, process, or concept being economically viable.

1. *Latent Southeast Resources:* A major initiative funded during FY 85 focused on product and market concept development, exploratory fishing, handling, storage and transportation studies, and foreign and domestic market investigations. Also funded were projects: to produce a Southeastern Seafood Product Quality Code based on industry recommendations and supported by existing pertinent regulatory documentation; to develop guidelines for the emerging tuna fishery in the Southeast with emphasis on product quality and economic profile; and to assess the biological and commercial significance of bigeye scad fishery in the U.S. Virgin Islands. Activities were continued to develop and implement a comprehensive long range educational program to make underutilized species more desirable to marine recreational fishermen in the Southeast.

FY 86 proposals should contribute to the increased, continued harvest and sales of any species of finfish which is underutilized, including the herring like species. Specifically, proposals should:

a. Assess the commercial significance of stocks.

b. Develop, evaluate, and demonstrate new technology for the commercial harvest of midwater schooling species in deeper offshore waters.

c. Develop, evaluate, and demonstrate new technology for on-board or shoreside handling, grading, and storage systems which support commercial activity.

d. Develop new commercial products or processes which provide evidence of market and economic feasibility.

e. Develop indices of chemical metabolites/end products that form during harvesting, processing, or storage in small pelagic species which reflect changes in quality as perceived by sensory methods.

f. Investigate use of multiple species in surimi-based products.

g. Conduct market research and develop export or domestic markets for latent resources or freshwater catfish and crayfish.

h. Develop technology for sorting fish by species or size in the harvesting operations so as to avoid unwanted by-catch and the need for on-board sorting and grading. Proposals for research on specific species such as butterfish will be considered from qualified researchers, but demonstration projects without a substantial research and development component will not be considered.

i. Develop a profile of traditional marine recreational fishing in the Southeast to assist public and private sector organizations in stimulating economic development based on marine recreational fishing. This profile should synthesize and summarize existing information on fishing patterns, target species, demographic characteristics of anglers, trip expenditure information, and other pertinent data.

j. Evaluate access and infrastructure needs of the U.S. Virgin Islands and Puerto Rico to support increased marine recreational fishing activity.

k. Develop and implement strategies to integrate marine recreational fishing into tourism industry programs giving special emphasis to the needs of charter and headboat fishing businesses.

l. Develop and implement programs to increase the use of underutilized sportcaught species.

2. *Menhaden:* Projects were funded in FY 85 which continue research on the use of high pressure carbon dioxide to extract and refine fish oil, and which address the effect of fish oil on plasma lipids.

In FY 86 proposals should:

a. Address human food or other high value uses of menhaden. Areas of work should concentrate on the use of menhaden surimi or mince in product or process development (ongoing projects should result in menhaden surimi being available for use by successful applicants).

b. Provide for determining consumer acceptance and relative value.

c. Address potential domestic as well as export markets.

d. Conduct a study to characterize the amino acid profile of menhaden fish meal based on a statistically sound data base.

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[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna and shellfish, which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

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3. *Shrimp:* A project was funded in FY 85 to develop a method to determine net drained weight of block frozen shrimp which will be used to identify short weights and fraud in shrimp shipments. Also funded was a project relating to the entire Gulf and South Atlantic commercial fishing fleet to develop an industry vessel safety code, coupled with risk finance alternatives for vessel owners subscribing to the code.

In FY 86 funding priority will be given to proposals designed to stabilize the shrimp industry at its current economic value. Proposals can address quality issues including inspection of imports and an assessment of the relative value of different alternatives to bisulfites. Proposals must build upon or take into account past or current work in the areas. Proposals dealing with other problems threatening the continued viability of the shrimp industry will also be given consideration including risk management, the reduction of insurance costs, and the dissemination of information about and the adoption of Trawl Efficiency Devices (TED's) by the commercial shrimp industry. Proposals should supplement and not duplicate on-going risk management studies.

4. *Molluscan Shellfish:* Through the development of shellfish water quality standards, a project funded in FY 85 will recommend techniques to control incidences of viral illnesses and new management procedures to maintain the safeness of molluscan shellfish. Proposals must build upon or take into account past or current work in all of these areas.

In FY 86 priority will be given to proposals which:

a. Address the development of product forms/products which reduce public health concerns associated with raw products.

b. Develop better predictive indices of fecal contamination or pollutant loads for existing shellfish growing areas.

c. Develop and demonstrate better field procedures to detect and measure human pathogenic viruses, i.e., hepatitis A., Norwalk, and rotaviruses, in oysters, including the correlation of virus levels with bacterial indicators. Proposals should build on, and not duplicate any past work.

d. Develop new technology to address depuration or allied techniques to kill or eliminate enteric viruses. Proposals must build upon or take into account past or current work in all of these areas.

C. Southwest Region

The Southwest Region is comprised of two distinct geographic areas—the U.S. Pacific Islands and the California coast. The island fisheries differ significantly in many instances from the mainland fisheries. Accordingly, we have established a list of funding priorities for each of the geographic areas.

1. U.S. Pacific Islands

Projects funded in FY 85 will allow for infrastructure development in Guam, and also for analysis of possible processing facility development in a number of islands. Other projects funded will focus on enhanced fishery production from reseeding island reef areas with juvenile trochus and giant clams and development of effective artificial reef technologies for high energy environments. Also funded were experimental fishing projects which focus on albacore in waters Southwest of American Samoa, and on demonstration of effective pole and line fishing for tuna in the local waters of Kosrae.

In the U.S. Pacific Islands, priority consideration will be given in FY 86 to projects which contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Marina Island and the Trust Territories of the Pacific Islands. All proposals should be consistent with the cultural and social perspectives of the island people.

Projects related to fish aggregation devices (FADs) will not be funded during this cycle. The key problem affecting FADs throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a 1983 mooring design study sponsored by the South Pacific Commission, the NMFS has funded FAD projects in Yap and American Samoa. Until these projects are evaluated in the latter part of 1986, the use of S–K funds for FAD research will not be considered until FY 87.

Proposals which address problems in the following areas will be given priority for funding in FY 86:

a. *Industry Development:* Projects to continue development of shoreside fisheries facilities and seafood marketing outlets by providing business management expertise, quality control systems, and marketing assistance. Projects should have the ultimate goal of creating self-sustaining business enterprises or creating new marketing opportunities.

b. *Tuna:* Projects which investigate the potential production of sashimi grade tuna and improve pole-and-line bait fishing. Particular attention should be given to upgrade the handling and quality of tuna for sashimi markets.

c. *Other Pelagic Species:* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus upon developing local and overseas market outlets. Particular attention should be focused on maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing, and storage methods.

d. *Bottomfish:* Projects to expand harvesting opportunities and develop marketing channels (local and export) for these species. Projects for bottomfish development in areas where the resources may be distressed and unable to withstand added fishing pressure will not be funded.

e. *Vessel Support Facilities:* Proposals for continued design, engineering and construction of fishing vessel support facilities. Proposals requesting construction funds much identify matching fund commitments equal to the level of requested Federal S–K funding. Proposals should demonstrate a need by local fishermen.

f. *Recreational Fisheries:* Projects which assess opportunities for development of chartered sport fishing ventures in Pacific Island areas. Such projects should consider potential tie-in with local tourism development. Services and facilities available and needed for sport fishing development should be identified.

g. *Artificial Reefs:* Projects which investigate the technical feasibility and cost effectiveness of developing or adapting artificial reef technology to tropical waters for recreational and commercial fishing.

2. California

a. *West Coast Groundfish/California:* In FY 85 the NMFS funded projects: to continue domestic marketing of Pacific whiting; to develop export markets for whiting and other groundfish species; to establish a prototype seafood retail training school; to develop an operating model to analyze changing economic conditions (landings, prices, etc.) in the fishing industry on the West Coast; and to develop a model to link marine recreational fishing tackle sales to changes in species abundance.

Pacific whiting and shortbelly rockfish continue to be the highest priority groundfish species for commercial development in FY 86. However, innovative projects that address the priorities identified below will be considered for any groundfish species. Specifically, priority for funding in FY 86 will be given to projects that:

(1) Demonstrate innovative fishing techniques which improve production, reduce marine mammal and bird mortality, and shift effort from fully utilized species.

(2) Investigate alternative product forms.

(3) Demonstrate quality assurance and control technologies.

(4) Investigate cost effective methods that improve handling, processing and/or waste disposal technologies. Proposals should supplement, and not duplicate, on-going fish waste studies, e.g., those of the Northeast Fish Waste Task Force and the New England Fisheries Development Foundation.

(5) Develop a forecast of California marine recreational fishing activity for 1990. The forecast should identify causes for changes and should be based on statewide information through 1985.

(6) Investigate and develop bone-softening processing technology for shortbelly rock fish and jack mackerel.

(7) Investigate and develop domestic and export markets for underutilized groundfish species.

b. *Albacore Tuna:* Projects funded in FY 85 address several facets of albacore marketing ranging from general applications in institutional markets to specific applications in Pacific coast retail trade. Priority for FY 86 funding will be given to projects which:

(1) Identify and/or introduce alternatives to canned tuna product forms.

(2) Demonstrate quality control measures that improve market acceptance of fresh and frozen products.

(3) Identify harvesting techniques and locations.

(4) Develop effective handling and new packaging methods for promoting increased home consumption of sport caught tuna.

c. *West Coast Coastal Pelagics:* No projects unique to this fishery were funded in FY 85. However, some of the groundfish projects also relate to West Coast coastal pelagics. Examples are the marine recreational fisheries economic model and the prototype seafood retail school.

In FY 86, priority will be given to projects that:

(1) Investigate technologies to develop new product forms.

(2) Develop new domestic and export markets for presently underutilized species.

(3) Evaluate sport catch consumption patterns and develop alternatives for greater utilization of sport caught species that are presently discarded.

D. Northwest Region

The Northwest fishing industry requires a development program which focuses on fully utilizing groundfish found in the Exclusive Economic Zone off Oregon, Washington and Alaska.

1. *West Coast Groundfish (Oregon, Washington and Alaska):* The NMFS funded projects in FY 85 that will: Develop a technique to optically detect parasites to easily segregate infested products which are subject to regulatory action; investigate and eliminate several factors causing a soft textural condition in sablefish; investigate the serious problems of texture and rapid spoilage that inhibit the use of Pacific whiting in traditional forms of product presentation; apply state-of-the-art and emerging technologies to wash fish flesh efficiently and effectively to produce a generic intermediate fish protein material for a wide range of uses; continue existing promotional activities for the Oregon and Washington charterboat industries which will focus on non-salmonid species; market charterboat services with the travel and tourism industries within these States; increase consumer awareness of pollock through a variety of promotional activities and implementation of a marketing strategy; and create fishing vessel safety instruction and videotapes based on a safety manual currently being drafted.

The FY 86 priorities expressed below will promote further development and continue to strengthen the base of the Region's industry.

a. Develop new product forms for groundfish resources which have economic potential and will increase domestic consumption of groundfish resources. Specific projects might include: development of uses for minced groundfish; development of specific products for use in Federal procurement programs (e.g., USDA School Lunch and Department of Defense Military Feeding Programs); and an examination of various packaging alternatives.

b. Develop improved processing and harvesting technologies which increase efficiency, productivity, and competitiveness of the region's groundfish industry. Specific projects might include: development and demonstration of methods to remove parasites from processed fish products, and evaluation of gear technologies to generate information to minimize the by-catch of traditional resources and maximize catch and quality of groundfish.

c. Continue to develop a safety training program for fishing vessels; develop video tapes for safety training; and develop a safety program for processing facilities.

d. Conduct export promotion activities including development of export market analyses, export promotional material, and export trade missions, seminars, and trade shows. These activities should focus on specific groundfish product forms.

e. Demonstrate an at-sea quality assurance system for trawler/processor vessels. The demonstration should reflect the risk associated with the process and product.

f. Identify and evaluate consumer preferences and biases for target species, angling methods, and supporting facilities in marine recreational fisheries. Continue development of an advanced marketing program coordinating industry efforts with the travel and tourism industry to increase the awareness of, opportunity, and participation in marine recreational fisheries for non-salmonid species. These target species may include lingcod, black rockfish, and true cod.

E. Alaska Region

Alaska Groundfish: Projects funded in FY 1985 address diversification of pollock product forms, improved pollock processing technologies and use of pollock as ingredients in other finished products; increase consumer awareness and use of Alaska pollock through retail advertising and promotional testing, and education of foodservice operators (especially school and healthcare); and continue efforts to teach fishermen in Alaska techniques for handling, storing, and distributing ocean whitefish through demonstrations and workshops.

Proposals which address impediments to full use of Alaska grounfish in the following areas will be given priority for funding in FY 1986:

1. Harvesting

a. Develop and conduct demonstrations of new technology that promote improved quality of fish delivered to processing facilities.

b. Develop new information on techniques and gear design for minimizing bycatch of certain fish and shellfish species in trawl fisheries.

c. Develop resource profiles of groundfish species not currently utilized by U.S. industry.

2. Processing Activities

a. Develop new product forms having technical and economic potential for increasing use of groundfish. Product development may include the use of minced fish or surimi.

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b. Develop technology to increase efficiencies of fish processing lines.

c. Develop industry knowledge and understanding of opportunities for groundfish by-product utilization and marketing.

d. Develop studies on vacuum packaged seafoods, including shelf-life, microbiological evaluations and packaging.

3. Marketing Activities

a. Develop well-focused consumer and institutional marketing projects that increase awareness of Alaska groundfish products. All projects in this area must have measurable objectives.

b. Develop refinements of industrial marketing efforts promoting food industry utilization of Alaska pollock products.

4. Recreational Fisheries

Priority consideration will also be given to projects that assist in development of recreational fisheries. Proposals may include, but are not limited to assessing utilization of groundfish species by the charter boat industry, analysis of the potential increase in recreational fisheries for halibut, and the relationships of recreational charter business to major local and regional tourist industries.

F. National

Proposals which address topics that are not species specific, but apply to multiple fisheries involving multiple regions will be evaluated as "national" proposals by the NMFS Office of Utilization Research.

In FY 85, the NMFS funded national projects which addressed issues cross-cutting a number of fisheries and regions. Specifically, NMFS funded projects which: Address strategies to reduce fishing vessel insurance costs and improve vessel safety; develop and implement a standard system for seafood inclusion in the Universal Product Code; create public service announcements promoting seafood consumption; develop nutritional information and support materials; manage Seafood U.S.A. exhibitions at major international food shows; develop retail and foodservice video training programs; compare inspection programs for fish and fishery products in selected foreign countries and conduct an economic analysis on what appears to be the most viable option for the U.S. industry; develop a market research program for U.S. fishing tackle manufacturers; and continue implementation of artificial reef technology to develop marine recreational fishing opportunities.

In FY 86, priority wil be given to projects applicable to multiple fisheries and regions as indicated below.

1. Marine Recreational Fishing Industry

a. Prepare a report on economic activity associated with marine recreational fishing. A report was prepared in 1983, based upon 1980 information, making projections through 1985. The validity of the forecast should be ascertained; causes for changes in economic activity should be determined; and a forecast for 1990, based on information through 1985, should be established.

b. Analyze the types of fishing gear used in recreational fisheries, including the type and quantity of imports and competitiveness of U.S. tackle manufacturers.

2. Standards and Regulations

a. Develop international standards for frozen squid. These should be compatible with all species of squid available to U.S. harvesters, and support positions of the United States in the *Codex Alimentarius* in developing standards to protect consumers and facilitate trade.

b. Identify conditions and risks related to the processing/trade/consumption of various classes of fishery products (e.g., fresh fish, ready-to-eat shrimp, molluscan shellfish, canned fish) and assess current food regulations relative to risk assessments addressing: (a) Public health; and (b) quality maintenance/determination. Regulations include: 21 CFR Part 110 (Current Good Manufacturing Practice in Manufacturing, Processing, Packing or Holding Human Food); Federal Standard 369 (Sanitation Standards for Fish Plants); 21 CFR Part 123 (Frozen Raw Breaded Shrimp); 21 CFR Part 161 (Fish and Shellfish); 50 CFR Part 260 (Inspection and Certification); and 50 CFR Parts 261–267 (United States Standards for Grades).

3. New Product Forms

a. Identify the central quality and edibility characteristics of surimi-based end products. This should include proposing test methods for measuring these characteristics, and developing model end product specifications.

b. Determine the nutritional composition of natural products (e.g., king crab, snow crab, scallops, shrimp, lobster) for which analog products may likely be substituted; and the level and quantity of specific nutrients likely to be required to establish nutritional equivalency in surimi-based products. This should include analysis of products made from surimi containing 0% and 10% natural king crab, snow crab, scallops, shrimp and lobster.

c. Identify indices of decomposition and develop methods for use by industry and regulatory personnel in the field (non-laboratory) for evaluating decomposition in: (1) Surimi-based products, and (2) fresh fishery products.

d. Develop new fish-style products from surimi and/or minced fish.

e. Determine the technical feasibility of applying hyperfiltration technology to recover protein materials from wash water used in surimi processing, characterize the recovered materials and evaluate their potential uses.

f. Determine the feasibility of obtaining and measuring biomedically important compounds from seafood or seafood waste materials. Proposals should indicate how work will supplement and not duplicate on-going efforts, e.g. those of the Northeast Fish Waste Task Force and the New England Fisheries Development Foundation. Proposals should also build on the longstanding efforts of Sea Grant in this area.

4. Marketing

Develop materials focusing on current seafood and health nutrition developments. Development should be coordinated with industry and other promotional efforts in this area.

5. Education, Training and Information

Develop training materials focusing on seafood processing personnel involved in quality control and production. In particular, proposals should address, where possible, the production of educational materials in a videotape format. The focus of materials should be on hygienic and technological practices in handling, processing and storage; and evaluation of good manufacturing practices and final product quality.

6. Marine Insurance

Identify, examine, and apply new options and strategies to build upon current S–K fishing vessel safety and insurance projects. These should aim at reducing or managing fishing vessel risk and associated insurance costs.

7. Harvesting Investment Strategies

Organize a forum to identify and evaluate private sector approaches to link vessel investment strategies with fisheries resource availability.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance

with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[8]

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers (note that this does not include Sea Grant institutional personnel) are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For FY 86, the NMFS may have an estimated $7.0 million available to fund new fishery research and development projects. Although grants or cooperative agreements will generally be awarded for a period of one year, multi-year projects will be considered if certain criteria are met. However, multi-year projects are the exception and not the norm.

To qualify as a multi-year award, a project must, in addition to the criteria elaborated under "Administrative Requirements" and other applicable sections, meet the following criteria: (1) The technology to be developed must require more than a single year to research, develop and demonstrate; (2) The products or services to be developed require more than a single year to research, design and demonstrate and/or market; (3) Single year funding would otherwise result in *significant* discontinuity in project implementation; (4) Projects must indicate completed objectives, tasks, or products for the end of each funding cycle. The burden of proof for meeting these criteria rests with the applicant. No projects will be funded beyond three consecutive years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives were met during the prior year.

In the FY 85 funding cycle, the NMFS funded eight multi-year proposals. These include major initiatives in the areas of development of a Universal Product Code for fisheries products; fishing vessel safety and insurance; seafood retail training; resolution of processing waste disposal problems; management of U.S. exhibits at foreign food shows; research on fish oils on plasma lipids; shellfish quality and marketing standards; and boat launching ramps on Guam.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be provided by October 1986.

C. Cost-Sharing Requirements

The NMFS must provide at least 50 percent of the total cost of the project, but will provide no more than 80 percent of total project costs. The non-Federal share may include funds received from private sources or from State or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the costs of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Puerto Rico and the U.S. Virgin Islands under the provisions of 48 U.S.C. 1469a. The total project costs and the percentage of cost-sharing required will be determined as described below.

1. Determining Total Project Costs

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant, cooperative agreement, or contract award between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circulars. In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the

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[8] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) the title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

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fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

2. Determining the Level of Cost Sharing Required

The percentage of the total project costs that must be provided from non-Federal sources follows:

a. *20 percent:* For projects that would benefit the general public as well as the fishing industry but offer no unique advantage to specific industry sectors, the non-Federal cost share will be no less than 20 percent of the total project cost, and no greater than 50 percent. These projects would ordinarily involve research on the safety of fishery products or other activities for which members of the fishing industry would not necessarily receive direct benefits.

b. *30 percent:* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share will be no less than 30 percent of the total project cost. Most applications will be in this category.

c. *40 percent:* For projects which involve significant fishing industry participation, entail a limited risk, and in which the prospects for immediate future gain for the project are significant, the non-Federal cost share will be no less than 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Applications must identify the specific priorities to which they are responding. If an application is not in response to a priority, it should be so stated. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to developing and strengthening the U.S. fishing industry and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by line item with appropriate justification. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

1. Cover Sheet

An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices, NMFS Washington Office or Department of Commerce Regional Administrative Support Centers (RASC); addresses are listed under the "Application Submission and Deadline" section which follows.

2. Project-Summary

Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing)

c. Project duration: (beginning and ending dates)

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Specific priority(ies) to which project responds.

g. Project objective.

h. Summary of work to be performed. For continuing projects the applicant will briefly describe progress to date in addition to work proposed with the additional funds.

i. Total Federal funds requested (initial and total amount and percentage of total project costs).

j. Project costs to be provided from non-Federal Government sources (initial and total amount and percentage of total project costs).

k. Total project costs.

3. Project Description

Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. *Identification of Problem(s):* For new projects, describe how existing conditions prevent the U.S. fishing industry from developing a fishery or using existing fisheries. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, (4) the specific priorities to which the proposal responds, and, (5) how the problem(s) prevent the fishing industry from using the fishery resources. If the application is for the continuation of an existing S–K funded project, describe progress to date and explain why continued funding is necessary.

b. *Project Goals and Objectives:* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance:* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant:* Describe (1) the level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities:* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline:* This section requires the applicant to prepare a general narrative fully describing the work to be performed which will achieve the previously articulated goals and objectives. A chart which outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included.

The narrative should include information which responds to the following questions:

(1) How will the project be structured?

(2) What major products, (e.g., research, services, or activities) will be produced and what is the specific nature of these products?

(3) What supporting work activities (be as specific as possible) will be undertaken to produce major products, services?

(4) Who will be responsible for carrying out various work activities? (Highlight work which will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evaluate final products or services, and how will it be integrated into the project?

The milestone chart should graphically illustrate the major products, research, services and/or activities, supporting work activities and associated timeline; and the individual responsible for various work activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide as much detail as possible. Applications lacking sufficient detail may be eliminated from further consideration.

g. *Project Management:* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, and their level of involvement in the project. If any tasks will be conducted through subcontracts, provide copies of any agreements between the applicant and the proposed subcontractors which describe the specific tasks they will perform. Since open and free competition is encouraged, contracts in excess of $10,000 are subject to competitive bids and documentation of the process. If a subcontractor is chosen prior to application submission, the competitive process used must be documented. If an award is made, all proposed sole source contracts in excess of $5,000 and all competitively bid contracts in excess of $10,000 are subject to prior approval by the Grants Officer. If no subcontractor has been chosen, indicate this.

h. *Project Impacts:* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

i. *Evaluation of Project Impacts:* The procedures for evaluating the relative success or failure of a project in achieving its goals should be clearly delineated within each proposal. It is the responsibility of applicants to identify the best methodology for evaluating project effectiveness.

Evaluation procedures in each proposal should contain the following:

(1) The project objectives should be stated in a substantive, measurable way.

(2) Specific methods should be defined that will be used to evaluate (a) the success or failure of the project; and (b) how the project contributed to fisheries development.

(3) The benefits of the project should be clearly defined. Depending on the nature of the benefits, the evaluation methodology should be able to accurately assess the benefits. For example, if statistical procedures are to be used, their specific application and use in the project evaluation should be described.

(4) Where benefits might be termed "intangible," methods should be defined to measure results. For example, in the case of consumer education or market promotion programs, will post awareness surveys be conducted?

j. *Project costs:* Costs must be provided in a detailed budget. No cost sharing can come from another Federal source. Costs must be allocated to the Federal share and matching share provided by the applicant. Applicant's matching costs are to be divided into cash and in-kind contributions. A standard budget form is available from the offices listed in Section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, an applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual outyear costs) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget.

(1) Personnel.

(a) Identify salaries by position and percentage of time of each individual dedicated to the project.

(b) Fringe Benefits. Indicate benefits associated with personnel working on the projects.

(2) Consultants and Contract Services. Identify all consultant and/or contractual service costs by specific task in relation to the project.

(3) Travel and Transportation.

(a) Identify major travel and transportation costs, number of people traveling and purpose of travel.

(b) Itemize costs, including approximate air fare, per diem rates, and/or any additional fees associated with the trip, such as conference fees, registration fees, etc.

(4) Equipment, Space or Rental Costs.

(a) Identify equipment purchases or rental costs with the intended use.

(b) Identify space rental costs with specific uses.

(5) Other Costs.

(a) Consumable office supplies. Include cost for pens, paper, typewriter ribbons, etc.

(b) Postage and Shipping. Include postage for correspondence, material produced under grant as well as air freight, truck or rail shipping of bulk materials to be used in conferences and workshops.

(c) Printing costs. Include costs associated with producing materials in conjunction with the project.

(d) Final Audit. Include costs of having a special audit of the project performed. This cost should not be included if an organizational audit will be used in place of a special audit for the project.

(e) Telephone and Telegraph. Identify estimated calls and monthly bills.

(f) Utilities. Identify costs of utilities and percentage of use in conjunction with performance of project.

(g) Additional costs. Indicate any additional costs associated with the project whcih are allowable under OMB circular A–122.

4. Project Consolidation

Applicants may submit two or more projects under one proposal but must identify project costs, including adminstrative costs, separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. Supporting Documentation

This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower

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ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. Deadline

The NMFS will accept applications for funding under this program between March 20, 1986 and May 27, 1986. An application will be accepted if the application is received by any of the offices listed below on or before May 27, 1986.

2. Submission of Applications to NMFS Reviewing Offices

Applicants must submit one signed original and two (2) copies of the complete application. *Applications are not to be bound in any manner.*

a. Applications relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota): Regional Director, National Marine Fisheries Service, P.O. Box 1109, Gloucester, MA 01930, Telephone No: (617) 281-3600

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands): Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No: (813) 893-3142

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands, Northern Mariana Islands): Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No: (213) 548-2575

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota): Regional Director, National Marine Fisheries Service, Bin C15700, 7600 Sand Point Way, NE., Seattle, Washington 98115, Telephone No: (206) 527-6150

Alaska Region (Alaska): Regional Director, National Marine Fisheries Service, P.O. Box 1668, 709 West Ninth Street, Juneau, AK 99802, Telephone No: (907) 586-7221

b. Applications addressing national priorities should be sent to: Director, Office of Utilization Research, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235, Telephone: (202) 634-7111

c. Questions of an administrative nature should be referred to the offices listed below:

Northeast: NOAA RAS/EC32, Eastern Administrative Support Center, 253 Monticello Avenue, Norfolk, Virginia 23510

Southeast: NOAA RAS/CC31, Central Administrative Support Center, Federal Bldg. Room 1756, 601 East 12th Street, Kansas City, Missouri 64106

Northwest/Southwest/Alaska: NOAA RAS/WC33, Western Administrative Support Center, BIN C15700, 7600 Sandpoint Way, NE, Seattle, Washington 98115

Washington: NOAA RAS/DC33, National Capital Administrative Support Center, NBOC1 Room 106, 11420 Rockville Pike, Rockville, Maryland 20852

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which office should evaluate the proposed work. This will normally be the office where the application is filed.

1. Consultation With Interested Parties

The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. The regional and Washington Offices of NMFS will make project descriptions available in the following manner:

a. *Public review and comment.* Regional applications may be inspected at the office to which they are submitted. All applications will be available for inspection at the NMFS Office of Industry Services, 3300 Whitehaven Street, NW., Room 324, Washington, DC from June 3, 1986 to June 13, 1986. Written comments will be accepted at a regional or the Washington office until June 13, 1986.

b. *Consultation with members of the fishing industry.* The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

c. *Consultation with Government agencies.* Applications will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, RASC Grants/Contracts Offices and, as appropriate, Department of Commerce and other Federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

2. Technical Evaluation

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for resolving an impediment and possibilities of securing productive results (20 points).

b. Soundness of design/technical approach for resolving an impediment (20 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating project. A specific evaluation methodology should be proposed as outlined in Section III. D.3.j (20 points).

e. Justification and allocation of the budget in terms of the work to be performed (20 points).

3. Formal Industry Review

After the technical evaluation, each reviewing office will solicit comments from the fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. This review may be carried out by correspondence or involve formal meetings of industry representatives. Considered in the review, along with the technical evaluation, will be the significance of the problem addressed in the project. The reviewers will rank each project in terms of importance or need for funding, and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated, the reviewing offices will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries, who will determine the number of projects to be funded based on the recommendations provided, consistency of projects with the identified fisheries objectives, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS Program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by RASC Grants Officers. Projects may not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligations of the Applicant

An Applicant must—

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. The NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports will be submitted to the individual specified as the Technical Monitor in the funding agreement. The content of these reports will include, at a minimum:

a. A summary of work conducted which includes a description of specific accomplishments and milestones achieved;

b. The degree to which goals or objectives were achieved as originally projected;

c. Where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is awarded, submit an original and two copies of a final report within 90 days after completion of each project to the NMFS Technical Monitor. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. The content of the evaluation should include, at a minimum:

a. Description of the original project goals and objectives, and the context in which the project was to benefit the fishing industry. This description should address the following questions:

(1) What were the original project goals and objectives?

(2) To what extent were goals measurable or quantifiable?

(3) Were modifications made to project goals and objectives and, if so, what was the cause for the modifications?

(4) Were the goals and objectives attained? How? If not, why?

b. Description of the specific accomplishments (information, products, or services) of the project and the relationship of these to the project's goals and objectives:

(1) List the specific information, products, or services produced by the project.

(2) Describe the relationship of the products and services to the original project goals and objectives.

(3) Describe the extent to which the products or services meet the needs of the fishing industry.

(4) Describe the value of the products or services by themselves or in concert with other activities.

c. Description of how the project benefited the fishing industry. This description should address the following questions:

(1) To what extent did the industry have access to the products or services produced by the project?

(2) To what extent have the fishing industry and associated infrastructure (universities, financial institutions, etc.) used the project's products or services to satisfy a need or lessen business or other risks?

(3) To what extent are the project's results likely to be used by the industry in the future?

(4) To what extent are project results likely to be used by others in the future to provide benefits to the fishing industry?

d. Description of the specific economic or other benefits the fishing industry received as a result of its use of the products or services of the project or as a result of others using the products or services. This description should address the following questions:

(1) Are clear economic benefits demonstrable?

(a) If economic benefits are demonstrable, how? (e.g. increased landings, production, sale and/or value of fishery products, increased exports, greater vessel or gear efficiency, etc.)

(b) If not, why? (Were the results too intangible? A function of greater elapsed time interval? Other?)

(2) Nature of benefits:

(a) What were the benefits of the projects?

(b) Are benefits one-time or continuing?

(c) To what extent are benefits measurable vs. intangible?

(d) Are benefits direct or indirect?

(e) Are the benefits the result of a "negative" finding?

e. Description of the actual need for Federal assistance in the project.

7. If a project is funded by grant or cooperative agreement, an applicant must comply with Office of Management and Budget (OMB) Circulars, and Treasury Circulars. Copies are available from the RASC Offices listed above.

8. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications printed with grant funds to the Office of Industry Services, NMFS, Washington, DC 20235.

B. Obligations of the National Marine Fisheries Service

The NMFS will:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Washington or Regional Offices for clarification or explanation of any information appearing in this notice.

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3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the FY 87 solicitation at the time it is published in the Federal Register.

C. RASC Grants Officer Responsibility

The RASC Grants Officer is responsible for the administrative processing of NOAA Federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Officer. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, State and Federal laws.

VI. Classification

This notice is not subject to Executive Order 12291.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned OMB #0648–0135.

This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–6109 Filed 3–20–86; 8:45 am]

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federal register

Friday
March 21, 1986

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 26

Determination of World Price for Rice; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to (1) prescribe a formula by which the Secretary of Agriculture will derive the prevailing world market price, adjusted to U.S. quality and location, for the 1985 through 1990 crops of rice, (2) provide a mechanism by which such price will be announced periodically, and (3) invite public comment on the proposals. These actions are required by sections 101(i)(1)(B)(ii) and 101A(a)(5)(B) of the Agricultural Act of 1949, as amended.

DATE: Comments must be received on or before April 7, 1986, in order to be assured for consideration.

ADDRESS: Mail comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Eugene S. Rosera, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3740 South Building, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–5954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major". It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title-Rice Production Stabilization, Number 10.065, and Title-Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

I have determined that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The public is invited to comment on the impact of this proposed rule on small entities, and I will review this determination in light of those comments.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 101(i)(1)(B)(ii) and section 101A(a)(5)(B) of the Agricultural Act of 1949, as amended, provide that the Secretary of Agriculture shall prescribe by regulation (1) a formula to define the prevailing world market price for rice; and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for rice.

The prevailing world market price for rice, as determined in accordance with the formula set forth in this proposed rule, shall be utilized under several provisions of the rice program for the 1985 through 1990 crops of rice which are designed to make domestically produced rice more competitive in the world market.

For example, the prevailing world market price for rice shall be used in the determination of the level at which a producer of the 1985 through 1990 crops of rice may repay a price support loan. In addition, beginning April 15, 1986, the Secretary shall make payments to producers of 1985 crop rice who have not sold or delivered such rice under a sales contract and who were either eligible to obtain a loan on such rice but did not obtain such a loan or who were ineligible to obtain a loan on such rice. Such payments shall be determined based upon the difference between the loan level established for the 1985 crop and the prevailing world market price.

Finally, during the period beginning August 1, 1986 and ending July 31, 1991, whenever the prevailing world market price for a class of rice is below the current loan repayment rate for that class of rice, the Commodity Credit Corporation, in order to make rice available in world markets at competitive prices, is required to issue negotiable marketing certificates. The value of the certificate is to be based on the difference between the loan repayment rate for the class of rice and the prevailing world market price for the class of rice as determined by the Secretary.

There is no currently available, recognized index or formula used by the U.S. or other rice exporting countries for determining the prevailing world market price for rice. World trade in rice encompasses a wide range of qualities, classes, and transaction variables, including the valuation of milled as compared to rough rice and the value of broken kernels as compared to whole kernels. Therefore, it has been determined that a wide range of information should be used in determining the world market price.

Under the proposed rule, the prevailing world market price for a class of rice shall be determined based upon a review of the prices at which rice is being traded in the world market and a weighting of such prices through the use of information such as supply and demand changes, tender results, and other relevant price indicators. The prevailing world market price thus derived shall be adjusted to reflect U.S. equivalent values for U.S. grade No. 2, 4 percent broken kernels, for long, medium, and short grain rice at free-on-board (FOB) vessel positions, U.S. port. A more detailed formula is not being proposed due to the lack of recognized indices of prices and the variables of quality, class, and location which impact greatly on the price of rice in the world market.

The prevailing world market price of rice thus determined reflects U.S. equivalent values of milled rice FOB, U.S. port, whereas rice price support loans are made and repaid on a rough rice basis. It is proposed, therefore, that the prevailing world market price for rice be adjusted to the basis on which rice price support loans are made and repaid (hereinafter referred to as the "adjusted world price, loan rate basis"). The prevailing world market price for a class of rice, U.S. equivalent value, shall be adjusted to obtain (1) a price FOB mill position of such class of rice; (2) the value of the whole kernels in such rice; (3) the unit market value of such whole kernels; (4) the market value of whole kernels in 100 pounds of rough rice; and (5) the total world market value of the rough rice.

The resulting estimated world market price, rough rice basis, shall then be adjusted to a whole kernel loan rate basis.

Under the proposed rule, the adjusted world price for rice, loan rate basis,

shall be announced, to the extent practicable, each Friday beginning April 11, 1986 on or after 3:00 p.m. Eastern time.

Interested persons are invited to submit written comments on both the proposed formula for determining the adjusted world price and the proposed mechanism for periodically announcing such price. Comments must be received by April 7, 1986, date which is 15 days after the date of publication of this proposed rule in order to be assured of consideration. The comment period is being limited to 15 days to allow adequate time to review such comments and make appropriate revisions to this proposed rule prior to April 15, 1986, the statutory date on which rice producers shall be allowed to repay 1985-crop loans at the world price.

List of Subjects in 7 CFR Part 26

Rice, World market price.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 26, as proposed in the Federal Register of March 11, 1986 (51 FR 8332), be amended by adding a new Subpart B—Determination of World Market Price for Rice.

PART 26—[AMENDED]

Subpart B—Determination of World Market Price for Rice

Sec.
26.10 Applicability.
26.11 Determination of the prevailing world price for a class of rice.
26.12 Adjustment of world price to loan rate basis.

Authority: Secs. 601, 602, Pub. L. 99–198 (7 U.S.C. 1441 et seq.)

Subpart B—Determination of World Market Price for Rice

§ 26.10 Applicability

This subpart sets forth the procedures for determining the prevailing world market price for a class of rice (adjusted to United States quality and location) and the mechanism for periodically announcing such price as required by sections 101(i)(1)(B)(ii) and 101A(a)(5)(B) of the Agricultural Act of 1949, as amended.

§ 26.11 Determination of the prevailing world market price for a class of rice.

(a) The prevailing world market price for a class of rice shall be determined by the Secretary of Agriculture based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, results of tender offers, and other relevant price indicators, and shall be expressed in U.S. equivalent values (free-on-board (FOB) vessel, U.S. port of export) per hundredweight as follows:

(1) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(2) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(3) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice;

(b) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (a) of this section. Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable market information.

§ 26.12 Adjustment of world price to loan rate basis.

(a) The prevailing world market price for a class of rice adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price, loan rate basis"), which is determined in accordance with paragraph (b) of this section, shall be applicable to the programs of the Department of Agriculture for the 1985 through 1990 crops of rice as provided in sections 101(i)(1)(B)(ii) and 101A(a)(5)(B) of the Agricultural Act of 1949, as amended.

(b) The adjusted world price, loan rate basis, for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with § 26.11 and adjusted to U.S. quality and location as follows:

(1) The prevailing world market price for a class of rice (U.S. equivalent value) determined in accordance with § 26.11 shall be adjusted to reflect an FOB mill position by deducting from such calculated price an amount which is equal to the estimated national average costs associated with (i) the use of bags for the export of U.S. rice and (ii) the transfer of such rice from a mill location to FOB vessel (U.S. port of export) with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, and stevedoring.

(2) The price determined in accordance with paragraph (b)(1) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the market value of such broken kernels. The market value of broken kernels shall be based upon its estimated domestic market value.

(3) The price determined in accordance with paragraph (b)(2) of this section shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(4) The price determined in accordance with paragraph (b)(3) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(5) The price determined in accordance with paragraph (b)(4) of this section shall be adjusted to reflect the total market value of rough rice by—

(i) adding to such price (A) the market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and (B) the market value of broken kernels contained in the rough rice, computed by multiplying the estimated domestic market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice; and

(ii) deducting from such price an estimated cost of milling rough rice.

(6) The price determined in accordance with paragraph (b)(5) of this section shall be adjusted to a whole kernel loan rate basis by deducting the estimated domestic market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(c) The adjusted world prices for rice, loan rate basis, shall be determined by

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the Secretary of Agriculture and shall be announced, to the extent practicable, on or after 3:00 p.m. Eastern time each Friday beginning April 11, 1986, continuing through the last Friday of July 1991, but may be announced more frequently, as determined by the Secretary. In the event that Friday is a non-workday, the determination will be announced the next workday. The effective period of the announced prices will be specified in each announcement.

Signed at Washington, D.C., on March 19, 1986.

Richard E. Lyng,
Secretary.

[FR Doc. 86-6405 Filed 3-20-86; 8:59 am]

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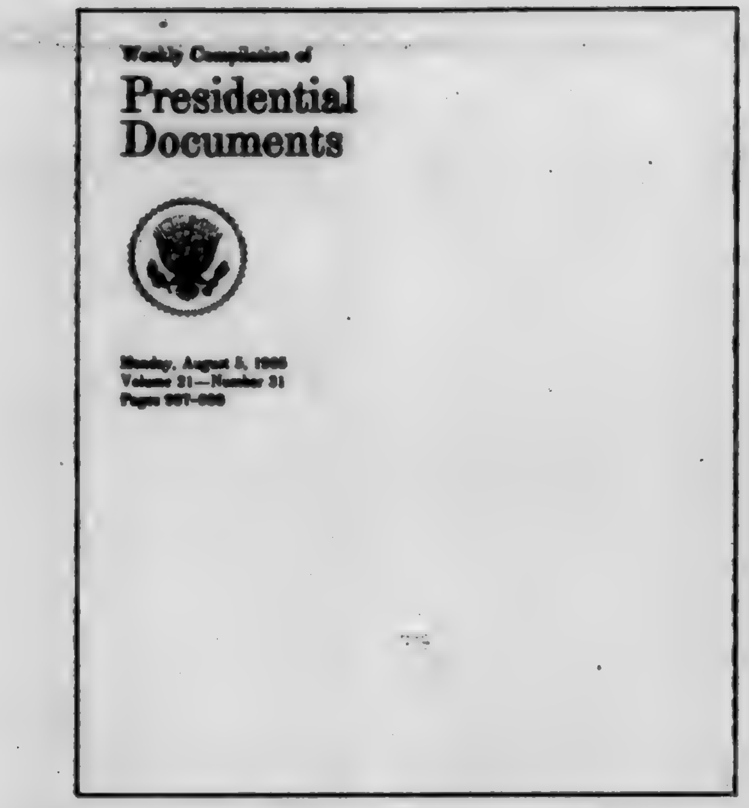
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Veterans Administration
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National Oceanic and Atmospheric Administration

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
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RESERVATIONS: Elizabeth Stout,
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WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
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Federal Register
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Monday, March 24, 1986

Presidential Documents

Title 3—

The President

Presidential Determination No. 86-7 of March 11, 1986

Economic Support Fund and Military Assistance

Memorandum for the Honorable George P. Shultz, Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million for recipients of unearmarked Economic Support Fund assistance under Chapter 4 of Part II of the Act from funds earmarked for a Tied Aid Credit Program under section 206 of the ISDCA without regard to such earmark; and

I hereby authorize the furnishing of such assistance.

You are requested to report this determination to the Congress immediately. None of the assistance provided for herein shall be furnished until after such report has been made.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, March 11, 1986.

[FR Doc. 86-6507
Filed 3-20-86; 3:26 pm]
Billing code 3195-01-M

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Presidential Documents

Presidential Determination No. 86-6 of March 13, 1986

Determination To Authorize the Furnishing of Immediate Military Assistance to Chad

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a) of the Foreign Assistance Act, as amended ("the Act"), I hereby determine that:

1) an unforeseen emergency exists which requires immediate military assistance to Chad; and

2) the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $10,000,000 in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to Chad under the provisions of Chapters 2 and 5 of Part II of the Act.

This determination shall be reported to Congress immediately and published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, March 13, 1986.

[FR Doc. 86-6508
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Presidential Documents

Proclamation 5449 of March 20, 1986

National Agriculture Day, 1986

By the President of the United States of America

A Proclamation

For more than a century, American agriculture has led the world in the development and use of technological advances that raise our standard of living. In fact, the production of food and fiber is our largest and most basic industry.

Our farms, ranches, orchards, vineyards, and nurseries; the businesses that supply them; and those who transform and transport their raw commodities or sell the final products, provide us with the world's most abundant and varied supply of food and clothing. American agriculture also helps feed tens of millions of people in other countries. Moreover, the activities of the 23 million Americans employed in agriculture generate one-fifth of our gross national product and one-fifth of our Nation's jobs.

Maintaining such production—nearly one-twelfth of the world's output of major agriculture commodities—requires careful stewardship of natural resources and capital, flexibility in responding to the vagaries of weather and the vicissitudes of the international marketplace, unparalleled mastery of many skills, and the continuous support of research institutions.

To honor the immense and varied contributions made to our economy and our national life by the men and women working in American agriculture, and to foster a greater understanding of the importance of this sector of our economy, the Congress of the United States, by Public Law 99–207 approved December 23, 1985, has designated March 20, 1986, as "National Agriculture Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 20, 1986, as National Agriculture Day, and I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86–6563
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Rules and Regulations

Federal Register
Vol. 51, No. 56
Monday, March 24, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 86-302]

Movement of Fruits and Vegetables From Hawaii to Alaska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of enforcement of regulations.

SUMMARY: Certain fruits and vegetables have been allowed on occasion to move from Hawaii to Alaska contrary to the Hawaiian fruits and vegetables regulations. This document gives notice that the provisions of the regulations applicable to these fruits and vegetables will now be enforced.

EFFECTIVE DATE: March 15, 1986.

FOR FURTHER INFORMATION CONTACT: William Forster, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION: The following fruits and vegetables have been allowed on occasion to move from Hawaii to Alaska contrary to the provisions of the Hawaiian fruits and vegetables regulations (contained in 7 CFR 318.13 *et seq.* and referred to below as the regulations):

avocado
bittermelon
bittermelon shoots
breadfruit
cacao fruit
cantaloupe
chayote shoots
cherimoya
cherry
citrus
eggplant
grapes
guava
loquat
lufa
lychee
mangoes
mountain apple
nectarine
ohelo berrie
papaya
passion fruit
peaches
pepper
plums
pumpkin shoots
sand pear
soursop
squash shoots
star apple
stringbean shoots
tomato
unchoy
yardlong bean shoots

Under the regulations, mangoes with seeds are prohibited from moving from Hawaii into or through Alaska. Also, under the regulations, mangoes without seeds and the other articles listed above are allowed to be moved from Hawaii into or through Alaska only if they meet certain treatment requirements and are in compliance with other provisions of the regulations. These requirements have been established to help prevent the spread of the Mediterranean fruit fly, the oriental fruit fly, the melon fly, the sweetpotato scarabee, the sweetpotato stem borer, and the mango seed weevil.

This document gives notice that the applicable provisions of the regulations will now be enforced. Consequently, mangoes with seeds may no longer be moved from Hawaii into or through Alaska. Also, mangoes without seeds and the other articles listed above may no longer be moved from Hawaii into or through Alaska, unless in accordance with the regulations.

The Department has determined that unless compliance with the regulations is achieved, movement of these articles from Hawaii to Alaska, and from there to other parts of the continental United States, could cause infestations of the pests specified above.

Done at Washington, D.C., this 14th day of March, 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-6384 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8079]

Illegal Activity Cash

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to illegal activity cash. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect certain persons subject to jeopardy or termination assessments and provide the guidance necessary for Internal Revenue Service personnel who must administer the Act.

DATE: The regulations are effective March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Ewan D. Purkiss of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 6867 of the Internal Revenue Code of 1954, as added by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Under section 6867, if an individual in physical possession of cash in excess of $10,000 does not claim the cash as the individual's or as that of another person whose identity is readily ascertainable (and who acknowledges ownership of the cash), then for purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments) it will be presumed that the cash represents gross income of an individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

Section 6867(d) provides that cash includes cash equivalents. The term "cash equivalents" means foreign currency, any bearer obligation, and any medium of exchange that is of a type frequently used in illegal activities and that is specified in regulations prescribed by the Commissioner. The temporary regulations specify that coins, precious metals, jewelry, precious stones, and postage stamps are cash equivalents.

Executive Order 12291; Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this

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temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not rquired for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Ewan D. Purkiss of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sec. 301.6867–1T also issued under 26 U.S.C. 6867(d)(2)(C)(ii).

Par. 2. A new § 301.6867–1T is added to read as follows:

§ 301.6867–1T Illegal activity cash (temporary).

For purposes of section 6867—

(a) *Cash.* The term "cash" includes any cash equivalents.

(b) *Cash equivalent*—(1) *In general.* The term "cash equivalent" includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities and that is listed in paragraph (b)(2) of this section.

(2) *Specific cash equivalents.* The following are also cash equivalents:

(i) Coins,
(ii) Precious metals,
(iii) Jewelry,
(iv) Precious stones, and
(v) Postage stamps.

(3) *Value of cash equivalents.* Any cash equivalent will be taken into account at its fair market value except in the case of a bearer obligation, which will be taken into account at its face amount.

(c) *Effective date.* The provisions of this section are effective March 24, 1986.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue the Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of this section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: March 6, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.
March 6, 1986.

[FR Doc. 86-6408 Filed 3-21-86; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8080]

Classification of Investment Trusts With Multiple Classes of Ownership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on Procedure and Administration relating to the classification for federal tax purposes of investment trusts with multiple classes of ownership. The regulations are designed to clarify the application of the classification rules to an investment trust with multiple classes of ownership interests. These regulations provide guidance to taxpayers and Internal Revenue Service personnel.

DATE: The regulations are effective on April 28, 1984, and with respect to trusts, any interests in which are initially issued on or after April 28, 1984.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1984, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 of the Internal Revenue Code of 1954 (49 FR 18741). The proposed amendments related to the definition of the term "trust" for federal tax purposes. A public hearing was held on July 31, 1984. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 301.7701–4(c) of the Regulations on Procedure and Administration provides guidance as to the classification for federal tax purposes of certain "investment" trusts. Before its amendment by this Treasury decision, those regulations (the "prior regulations") classified an entity of the type known as a "fixed investment trust" as a trust or as an association (taxable as a corporation), depending upon whether the governing instrument created a power to vary the investment of the certificate holders. The prior regulations did not address whether an investment trust that permitted investors to choose among different classes of ownership interests with varying investment attributes would be classified as a trust for federal tax purposes.

In general, a trust for federal tax purposes is limited to a trust created simply to conserve or protect property for the trust beneficiaries. Ordinarily, the beneficiaries of the trust do no more than accept its benefits and are not its creators or voluntary planners. Certain "investment" trusts, however, are recognized as serving the traditional custodial purposes of an ordinary trust even though interests therein are voluntarily acquired by the beneficiaries. Thus, investment trusts have been treated as trusts for federal tax purposes where employed simply to hold investment assets, albeit for the benefit of voluntary investors. *Commissioner* v. *Chase National Bank,* 122 F. 2d 450 (2d Cir. 1941).

Historically, the issue of whether an investment trust serves the mere custodial purpose of holding investment assets has focused on whether the beneficiaries' investment was fixed or could instead be varied under the terms of the trust agreement. The existence of a power to vary the beneficiaries' investment, even though only contingent in form, is sufficient to "turn the venture into a 'business.' " *Commissioner* v. *North American Bond Trust,* 122 F. 2d 545, 546 (2d Cir. 1941), *cert. denied,* 314 U.S. 701 (1942). Thus, the prior regulations limited trust classification to

"fixed investment trusts" where there was no power under the trust agreement to vary the investment of the certificate holders.

Recently, new forms of investment trusts have been created that involve not only voluntary acquisition of interests by investors but also different classes of beneficial interests with varying investment attributes. These so-called "multiple class trusts" vest no discretionary power in the trustee over investment of the trust assets and thus assertedly satisfy the fixed investment requirement of the prior regulations. At the time the prior regulations were first promulgated, however, the entities commonly known as fixed investment trusts had only one class of investment certificates. The certificates represented undivided interests in the trust property, and were, in form, receipts for the securities held by the trust.[1] Thus, where the trustee had no power to vary investment, fixed investment trust was little more than a depository arrangement, formed to hold a pool of specific investment assets. Although the trust device permitted individual investors to diversify investment risk, the arrangement in substance provided a form of direct, if common, ownership of the trust assets. This use of a trust to hold investment assets and thereby facilitate direct investment by a pool of investors is consistent with the custodial purposes that have traditionally limited trust classification.

Multiple class trusts depart from the traditional form of fixed investment trust in that the interest of the beneficiaries are not undivided, but diverse. The existence of varied beneficial interests may indicate that the trust is not employed simply to hold investment assets, but serves a significant additional purpose of providing investors with economic and legal interests that could not be acquired through direct investment in the trust assets. Such use of an investment trust introduces the potential for complex allocations of trust income among investors, with correspondingly difficult issues of how such income is to be allocated for tax purposes. These issues are properly foreign to the taxation of trust income, where rules have not developed to accommodate the varied forms of commercial investment, and no comprehensive economic substance requirement governs the allocation of income for tax purposes.

Based on the above considerations, proposed amendments to prior § 301.7701–4 would have denied trust classification to investment trusts with multiple classes of ownership. Generally, the final regulations retain this rule. However, in response to public comment, the proposed regulations have been modified to provide that trust classification may be appropriate for a multiple class trust if the trust is formed to serve the traditional custodial purposes of a fixed investment trust and the existence of multiple classes of beneficial interests is incidental to such purposes.

Thus, under the standard contained in the final regulations, the classification of multiple class trusts depends on the purposes for which the trust is formed, and the significance of multiple classes of ownership interests in relation to those purposes. A fixed investment trust with multiple classes of ownership interests, that otherwise possesses the characteristics of a trust, would be classified as a trust if the trust is employed to facilitate direct investment in the assets of the trust, and the existence of multiple classes of ownership interests is incidental to such purpose. Whether the existence of multiple classes of ownership interests is incidental to the use of an investment trust as a vehicle to facilitate direct investment, or instead reflects a purpose to provide investors with diverse interests in the trust assets, generally depends on the extent to which the investment attributes of interests in the trust diverge from direct ownership of the trust assets. The extent of such divergency may, in turn, be reflected by the extent to which the interests of the investors in a multiple class trust could be reproduced without resort to multiple classes of ownership. For example, the creation of a subordinated and preferred class of interests in a trust holding real estate mortgages may be incidental to the purpose of the trust to facilitate direct investment in the mortgages, where the subordinated interest is retained as a security device by the originator of the mortgages, and is in lieu of a direct guarantee to investors. The final regulations provide additional examples of the classification of investment trusts with multiple classes of ownership interests. Further guidance as to the application of the new standard will be provided through the administrative rulings process.

The final regulations apply only to investment trusts, and hence have no applicability to trusts that would be classified as "ordinary trusts" under existing § 301.7701–4(a) or "business to trusts" under existing § 301.7701–4(b). Moreover, the final regulations are not intended to affect existing standards for classification of fixed investment trusts with a single class of ownership interests.

On May 17, 1984, the Internal Revenue Service announced that the final regulations would not apply to certain state and local government financing arrangements the substance of which is the issuance of a series of separate debt obligations directly by the governmental unit (Announcement 84–62, 1984–24 I.R.B. 29). The Internal Revenue Service will treat those financing arrangements in accordance with that announcement.

One commentator suggested that the proposed amendments to the regulations constituted legislative regulations for which the Service was required to prepare a Regulatory Flexibility Analysis and a Regulatory Impact Analysis. The Service, however, has concluded that these regulations are interpretative regulations not subject to those requirements.

Finally, certain commentators raised other issues that the Service considers to be beyond the scope of the classification issues that these regulations address.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not subject to Executive Order 12291 and the Treasury-OMB implementation of that Order, dated April 29, 1983, because the final rule is not a major legislative rule. Accordingly, a Regulatory Impact Analysis is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Stuart G. Wessler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing

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[1] "The investor [in a fixed trust] . . . has a beneficial undivided interest in specific deposited securities or property. . . . In the fixed trust . . . only one class of security is issued—the certificate of beneficial interest which is, in form, a receipt issued by the trustee for the deposited property." Investment Trusts and Investment Companies, H.R. Doc. 567, 76th Cong., 3d Sess. 8-9 (1940) (footnote omitted).

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the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.7701–4 is amended by revising paragraph (c) to read as follows:

§ 301.7701–4 Trusts.

* * * * *

(c) *Certain investment trusts*—(1) An "investment" trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. *See Commissioner v. North American Bond Trust,* 122 F. 2d 545 (2d Cir. 1941), *cert. denied,* 314 U.S. 701 (1942). An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, will be classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders. An investment trust with multiple classes of ownership interests will ordinarily be classified as an association or a partnership under § 301.7701–2; however, an investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

(2) The provisions of paragraph (c)(1) of this section may be illustated by the following examples:

Example (1): A corporation purchases a portfolio of residential mortgages and transfers the mortgages to a bank under a trust agreement. At the same time, the bank as trustee delivers to the corporation certificates evidencing rights to payments from the pooled mortgages; the corporation sells the certificates to the public. The trustee holds legal title to the mortgages in the pool for the benefit of the certificate holders but has no power to reinvest proceeds attributable to the mortgages in the pool or to vary investments in the pool in any other manner. There are two classes of certificates. Holders of class A certificates are entitled to all payments of mortgage principal, both scheduled and prepaid, until their certificates are retired; holders of class B certificates receive payments of principal only after all class A certificates have been retired. The different rights of the class A and class B certificates serve to shift to the holders of the class A certificates, in addition to the earlier scheduled payments of principal, the risk that mortgages in the pool will be prepaid so that the holders of the class B certificates will have "call protection" (freedom from premature termination of their interests on account of prepayments). The trust thus serves to create investment interests with respect to the mortgages held by the trust that differ significantly from direct investment in the mortgages. As a consequence, the existence of multiple classes of trust ownership is not incidental to any purpose of the trust to facilitate direct investment, and accordingly, the trust is classified as an association of a partnershp under § 301.7701–2.

Example (2): Corporation M is the originator of a portfolio of residential mortgages and transfers the mortgages to a bank under a trust agreement. At the same time, the bank as trustee delivers to M certificates evidencing rights to payments from the pooled mortgages. The trustee holds legal title to the mortgages in the pool for the benefit of the certificate holders, but has no power to reinvest proceeds attributable to the mortgages in the pool or to vary investments in the pool in any other manner. There are two classes of certificates. Holders of class C certificates are entitled to receive 90 percent of the payments of principal and interest on the mortgages; class D certificate holders are entitled to receive the other ten percent. The two classes of certificates are identical except that, in the event of a default on the underlying mortgages, the payment rights of class D certificate holders are subordinated to the rights of class C certificate holders. M sells the class C certificates to investors and retains the class D certificates. The trust has multiple classes of ownership interests, given the greater security provided to holders of class C certificates. The interests of certificate holders, however, are substantially equivalent to undivided interests in the pool of mortgages, coupled with a limited recourse guarantee running from M to the holders of class C certificates. In such circumstances, the existence of multiple classes of ownership interests is incidental to the trust's purpose of facilitating direct investment in the assets of the trust. Accordingly, the trust is classified as a trust.

Example (3): A promoter forms a trust in which shareholders of a publicly traded corporation can deposit their stock. For each share of stock deposited with the trust, the participant receives two certificates that are initially attached, but may be separated and traded independently of each other. One certificate represents the right to dividends and the value of the underlying stock up to a specified amount; the other certificate represents the right to appreciation in the stock's value above the specified amount. The separate certificates represent two different classes of ownership interest in the trust, which effectively separate dividend rights on the stock held by the trust from a portion of the right to appreciation in the value of such stock. The multiple classes of ownership interests are designed to permit investors, by transferring one of the certificates and retaining the other, to fulfill their varying investment objectives of seeking primarily either dividend income or capital appreciation from the stock held by the trust. Given that the trust serves to create investment interests with respect to the stock held by the trust that differ significantly from direct investment in such stock, the trust is not formed to facilitate direct investment in the assets of the trust. Accordingly, the trust is classified as an association or a partnership under § 301.7701–2.

Example (4): Corporation N purchases a portfolio of bonds and transfers the bonds to a bank under a trust agreement. At the same time, the trustee delivers to N certificates evidencing interests in the bonds. These certificates are sold to public investors. Each certificate represents the right to receive a particular payment with respect to a specific bond. Under section 1286, stripped coupons and stripped bonds are treated as separate bonds for federal income tax purposes. Although the interest of each certificate holder is different from that of each other certificate holder, and the trust thus has multiple classes of ownership, the multiple classes simply provide each certificate holder with a direct interest in what is treated under section 1286 as a separate bond. Given the similarity of the interests acquired by the certificate holders to the interests that could be acquired by direct investment, the multiple classes of trust interests merely facilitate direct investment in the assets held by the trust. Accordingly, the trust is classified as a trust.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: March 3, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86-6404 Filed 3-21-86; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Overpayments

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Interest, administrative costs of collection, court costs, and marshal fees are charged to veterans or eligible persons with outstanding overpayments of educational assistance allowance. The pertinent section of the Code of Federal Regulations governing charges to entitlement of a veteran or eligible person has not stated whether a charge against entitlement will be made for the amount of accrued interest, administrative costs of collection, court costs and marshal fees when such an overpayment is discharged in bankruptcy, is waived or is compromised. This amended regulation provides that an unrecovered portion of interest, administrative costs of collection, court costs or marshal fees will not result in a charge against a veteran's or eligible person's entitlement. This will be done by first deducting the amount of any such outstanding costs.

EFFECTIVE DATE: March 4, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 45629 and 45630 of the Federal Register of November 1, 1985, there was published a proposal to amend 38 CFR 21.1045 to provide a method for calculating the charge to entitlement when an overpayment of educational assistance allowance is discharged in bankruptcy, is waived and is not recovered, or is compromised.

Interested people were given 33 days to submit comments, suggestions or objections. The VA (Veterans Administration) received no comments, suggestions or objections. Accordingly, the agency is making the proposal final.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 4, 1986.

Everett Alvarez, Jr.,
Acting Administrator.

PART 38—[AMENDED]

38 CFR Part 21 is amended by revising § 21.1045, paragraph (h) to read as follows:

§ 21.1045 Entitlement charges.

* * * * *

(h) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived, and is not recovered, or is compromised. (38 U.S.C. 1661)

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, admininstrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by:

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, admininstrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (h)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, admininstrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment (38 U.S.C. 1671)

* * * * *

[FR Doc. 86-6331 Filed 3-21-86; 8:45 am]

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38 CFR Part 21

Veterans Education; Waiver of Two-Year Operation Requirement

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law generally requires a course to be in operation for two years before it can be approved for VA (Veterans Administration) training. The law contains several exceptions to this general rule and permits waivers by regulation in certain instances. This regulatory change liberalizes the pertinent regulation to make a waiver easier to obtain for a course offered pursuant to a contract with the Department of Transportation at a Coast Guard station.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: On Pages 34722 and 34723 of the Federal Register of August 27, 1985, there was published a notice of intent to amend Part 21 to permit the waiver of the two-year operation requirement for certain courses offered under contract with the Department of Transportation at Coast Guard stations. Interested people were given 28 days to submit comments, suggestions or objections. The VA received two letters. Both were from executives of educational organizations.

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One writer stated that he had "no problem" with the proposal. The other writer had several comments.

His letter stated that the VA should define what the word "course" meant in the proposal. He stated that the VA was going beyond the intent of the Congress in applying the two-year operation requirement to any course that can be applied to a degree. He stated further that the incident of abuse the two-year operation requirement is supposed to correct has never been made public. He opposed the proposal because he believed that to support it would be tantamount to agreeing that the VA has authority to regulate in this area.

It is true that sometimes the word "course" appears in the Code of Federal Regulations in the sense of a unit subject such as History 101 or Basic Welding, and at other times it is used to refer to all the unit subjects in a program of education. However, in this the Code of Federal Regulations is mirroring the use of the term in the law. In this instance the VA believes the law means one or more unit subjects leading to an objective. The agency does not believe that it should define "course" one way or the other in the absence of an amendment to the law which would provide separate terms for the two uses of the word.

Contrary to the writer's assertions, the law requires that the two-year operation requirement be applied in some instances to courses that lead to a degree. It is clear from the legislative history that the Congress intended that the application be made. The incident of abuse to which the writer refers was made public in the Senate report which accompanied the pertinent legislation and in the course of public hearings which were held on the subject during the 1970's.

38 U.S.C. 1789(a) states,

> "The Administrator shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an educational institution when such course has been in operation for less than two years."

Subsection (b) of that section provides several exceptions to that general rule including one in (b)(4) for any course which is offered by a nonprofit educational institution of college level and which is recognized for credit toward a standard college degree, and another exception in (b)(6) for—

"Any course offered by an educational institution under a contract with the Department of Defense that: (A) Is given on, or immediately adjacent to, a military base; (B) is available only to active duty military personnel and/or their dependents and (C) has been approved by the State approving agency of the State in which the base is located.

The Administrator may waive the requirements of clause (6) of this subsection, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government."

However, subsection (c) of that section states that in certain instances the exception to the two-year operation requirement provided in (b)(4) for courses leading to a standard college degree is not to be applied. Subsection (c) states—

"Notwithstanding the provisions of subsection (b) (1), (2), (3), or (4) of this section, the provisions of subsection (a) shall apply to any course offered by a branch or extension of—

(1) a public or other tax-supported institution where the branch or extension is located outside of the area of the taxing jurisdiction providing support to such institution; or

(2) a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting distance of such institution.

The Administrator may waive the requirements of this subsection, in whole, or in part, if the Administrator determines, pursuant regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government."

Hence, if a proprietary, nonprofit institution of higher learning which has its main campus in Los Angeles contracts with the Department of Transportation to offer courses leading to a baccalaureate degree at Coast Guard stations in North Carolina, the two-year operation requirement found in subsection (a) must be applied in the absence of a liberalizing regulation. Subsection (b)(6) is not broad enough and subsection (c) cancels the exception found in subsection (b)(4).

Subsection (c) was added to section 1789 in the Veterans' Education and Employment Assistance Act of 1976 (Pub. L. 94–502). The Senate report (94–1243) which accompanied this legislation was available to the public. It states in part:

"The basic rationale of the current exceptions to the two-year rule has come under serious question in recent years. Certain institutions, both public and proprietary, have suddenly developed many branch campuses throughout the United States . . . .

The increase in veteran enrollments in schools establishing multi-branch campuses has often been spectacular. In one instance a small institution of higher learning (accredited by a regional accrediting association), which had only a handful of veterans enrolled at its single campus, in less than a year developed branch campuses (which often were rented rooms in local motels) in over 40 States and increased their veteran-student population to over 13,000."

The report goes on to quote from testimony given by VA officials at hearings during 1976. The report then states:

"While the Committee does not undertake to assess either the quality of the instruction offered at all of these branch campuses or the motives of all those who promote such arrangements, the situation does present great potential for abuse, and in several instances that potential appears to have been realized.

At a minimum, the Committee concurs with the Veterans' Administration's testimony concerning the validity of the legislative premise which gives special exceptions to degree-granting institutions."

The report then states that this is the reason that subsection (c) was added to the law.

The VA believes, therefore, that there is ample reason to apply the two-year operation requirement to some courses which lead to a degree. The reasons are found in the law. The incident of abuse which the specific subsection of law requiring that application is designed to correct was made public at the time the subsection was added to the United States Code. Furthermore, the Administrator is empowered by law to waive the requirements in certain instances.

In this case the Administrator believes it to be in the interest of the Federal Government to enable Coast Guard members to use their GI Bill benefits to attend courses offered at their station when the courses are offered pursuant to a contract between an educational institution and the Department of Transportation. Consequently, the proposed amendment to the regulation governing the waiver of the two-year operation requirement is made final without change.

The VA has determined that this amended regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), sections 601–612. Therefore, pursuant to 5 U.S.C. 605(b) this regulation is exempt from the initital and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because only a few educational institutions offer courses under contract with the Department of Transportation on or immediately adjacent to Coast Guard stations. Many of these are not small entities. Therefore, the number of affected small entities will not be substantial.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.11.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraphs (g)(1) introductory text and (g)(1)(i) of § 21.4251 to read as follows:

§ 21.4251 Period of operation of course.

* * * * *

(g) *Waivers*

* * * * *

(1) The Director of the VA field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense or the Department of Transportation on or immediately adjacent to a military base or Coast Guard station located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel or Coast Guard personnel, their dependents, civilian employees of the base or station, persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it or any combination of these classes of people. (38 U.S.C. 1789(b))

* * * * *

[FR Doc. 86–6333 Filed 3–21–86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Subsistence Allowance Payment Rates

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The amount of monthly subsistence allowance paid to veterans in a vocational rehabilitation program under chapter 31 was increased by 10 percent effective October 1, 1984 under Pub. L. 98–543, the "Veterans' Benefits Improvement Act of 1984". In addition the provisions of 38 CFR 21.260(b) are changed to clarify that payment of subsistence allowance for a veteran being provided nonpay work experience in a Federal agency may be made on less than a full-time basis.

EFFECTIVE DATE: This amendment is effective October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, Assistant Director for Policy and Program Development, Vocational Rehabilitation and Counseling Service (282), Department of Veterans Benefits, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389–2886.

SUPPLEMENTARY INFORMATION: On pages 38862 and 38863 of the Federal Register of September 25, 1985, the VA published a proposed amendment to 38 CFR 21.260 concerning an increase in the monthly subsistence allowance paid to veterans participating in a vocational rehabilitation program authorized under 38 U.S.C. chapter 31. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed amendment. No comments, suggestions were received, and the amendment is hereby adopted as final without change.

The final regulation has been found to be nonmajor under E.O. 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effect on the economy.

The Administrator hereby certifies that this final rule will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The-reasons for this certification are that, the amendments simply make the regulation consistent with recent statutory changes. Thus, no regulatory burdens are imposed on small entities by this regulation.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs, loan programs, reporting requirements, schools, veterans, vocational education, vocational rehabilitation.

Aproved: February 27, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraph (b) of § 21.260 to read as follows:

§ 21.260 Subsistence allowance.

* * * * *

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective October 1, 1984.

Type of program	Monthly rate of subsistence allowance			
	No dependents	One dependent	Two dependents	Additional amount for each dependent over two
Institutional:[1]				
Full-time	$310	$384	$452	$33
¾ time	233	288	339	25
½	155	193	227	17
Nonpay on-job training in a Federal agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop, independent instructor: Full-time only	310	384	452	33

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Type of program	Monthly rate of subsistence allowance			
	No dependents	One dependent	Two dependents	Additional amount for each dependent over two
Nonpay work experience in a Federal agency:				
Full-time	310	384	452	33
¾ time	233	288	339	25
½ time	155	193	227	17
Farm cooperative; apprenticeship or other on-job training: ¹ Full-time only	271	327	377	24
Combination (institutional and OJT) (Full-time only):				
Institutional greater than ½ time	310	384	452	33
OJT greater than ½ time ²	271	327	377	24
Non-farm cooperative (Full-time only):				
Institutional	310	384	452	33
On-job	271	327	377	24
Improvement of rehabilitation potential: Full-time only	310	384	452	33
Independent living; Extended evaluation:				
Full-time	310	384	452	33
¾ time	233	288	339	25
½ time	155	193	227	17
¼ time	78	96	113	8

[1] Measurement of rate of pursuit (§§ 21. 4270–21.4275).

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1508(h), Pub. L. 98–543) (October 1, 1984)

* * * * *

[FR Doc. 86–6332 Filed 3–21–86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A–3–FRL–2988–6]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Container Corporation of America

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Container Corporation of America. The Order requires the company to bring air emissions from its graphic arts facility in Montgomery County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) by December 31, 1985. Because of the Administrator's approval, compliance with the Order by December 31, 1985 will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on March 24, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107 (215) 597–6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, are available for public inspection and copying (for appropriate charges) during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: On March 28, 1985 the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 50 No. 58, a notice proposing approval of a Delayed Compliance Order (DCO) issued by the Pennsylvania Department of Environmental Resources to Containers Corporation of America. The basis for EPA's conclusions supporting the issuance of the DCO are set forth in that notice. The notice asked for public comments by April 25, 1985 on the EPA proposal.

No public comments were received in response to the notice. The delayed compliance order issued to Container Corporation of America is hereby approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Container Corporation of America on a schedule to bring its graphic arts facility in Montgomery County into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, § 129.67, a part of the federally-approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Container Corporation of America to delay compliance with SIP regulations covered by the Order until December 31, 1985. The company was unable to comply with these regulations prior to the completion date called for by the DCO because low solvent coatings were still being developed. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place Container Corporation of America on a federally enforceable schedule under the Clean Air Act requiring compliance with the applicable requirements of the Implementation Plan.

List of Subject in 40 CFR Part 65

Air pollution control.

Dated: March 10, 1986.

Lee M. Thomas

Adminstrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

PART 65—DELAYED COMPLIANCE ORDER

2. By adding the following entry to the table in § 65.431 to read as follows:

§ 65.431 EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Container Corporation of America.	Upper Providence Township, Montgomery County.	....	Mar. 28, 1985.	Section 129.67 of Title 25.	Dec. 31, 1985.

[FR Doc. 86–6367 Filed 3–21–86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–2, 201–11, 201–23, 201–24, 201–30, 201–32, and 201–33

[FIRMR Amdt. 7]

Management of Federal Automatic Data Processing Equipment Obsolescence

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation prescribes policies and procedures regarding management of obsolescence in the Federal automatic data processing equipment (ADPE) inventory. The purpose is to address aging ADPE inventory problems. The intent is to provide additional guidance to help agencies recognize the economic and technical obsolescence of Federal ADPE in order to target system replacement opportunities and thereby increase economy and efficiency of automatic data processing in the Government.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch (KMPP), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) Basic policies were promulgated in January 1981 to provide guidance and a regulatory foundation upon which agencies can institute programs to replace economically outdated systems within the competitive acquisition process. The Comptroller General, in his December 15, 1980 report (AFMD–81–9), concluded ". . . that agencies inhibited by obsolescent computer systems should replace the equipment, when economically justified, as expeditiously as possible under the current competitive acquisition process." While the report contained recommendations directed to heads of Federal agencies, it also recommended ". . . that GSA issue guidance to the agencies outlining the criteria to be used and the cost comparisons to be made in determining economic obsolescence." On March 22, 1982, GSA circulated for agency review and comment proposed FPR and FPMR amendments addressing obsolescence and other issues. On April 23, 1982, a further explanation of the proposed obsolescence provisions was provided to agencies. (Sharing provisions contained in the March 22, 1982, proposal have been implemented in FIRMR Amendment 4 dated June 1985 (50 FR 27142, July 1, 1985.) In February, 1985, GSA published a paper entitled "Assessing ADPE Obsolescence in Major Federal Systems."

(2) Notice of proposed rulemaking regarding this action was published in the **Federal Register** (50 FR 24785, June 13, 1985). All comments received have been considered.

(3) As a result of public comments received on the proposed regulation, the portion regarding technology updates has not been promulgated. This action does not preclude GSA from assisting Federal agencies in individual cases where expeditious replacement is appropriate to achieve economy and efficiency. In any event, the rules of full and open competition must be followed when replacing outdated ADPE.

(4) The regulation provides for obsolescence reviews that are intended to identify outdated ADPE that should be replaced with newer, more economical ADPE.

(5) Clarification is provided that the present value discount factor be specifically included in the analysis for obsolescence.

(6) In an additional initiative, except for excess ADP Fund equipment, the screening period for excess and exchange/sale ADPE is reduced from 90 calendar days to 60 calendar days thereby accelerating the reuse and disposal process.

(7) Explanations for the changes being made by this issuance are shown below:

a. Part 201–2, Definitions of Words and Terms, is amended by adding two definitions to § 201–2.001, Definitions, that are essential to the treatment of issues relating to the obsolescence and reuse of ADPE: They are:

1. "Match list;"
2. "Outdated ADPE;" and

b. Part 201–11, Competition, is amended by adding § 201–11.002–2, Follow-on acquisitions under other than full and open competition, to ensure that the special justification provisions of FAR 6.302–1(a)(2)(ii) regarding follow-on contracts are not used to perpetuate any contract which involves obsolete ADPE.

c. Part 201–23, Delegation of Authority, is amended by changing § 201–23.104–1, Automatic data processing equipment (ADPE), to require a delegation of procurement authority for requirements for outdated ADP equipment at the same threshold level as that for only one responsible source or a specific make and model specification for ADPE.

d. Part 201–24, Acquisition Policies, is amended by adding § 201–24.206, Acquisition of outdated ADPE, to establish a general policy regarding the acquisition of outdated ADPE. Outdated ADPE shall not generally be a source of supply for the Government unless that ADPE is determined to be the lowest overall cost source.

e. Part 201–30, Management of ADP Resources, is amended, as follows:

1. Part 201–30.009, Analysis of alternatives for satisfying a requirement, is amended to require that newer functionally-similar ADPE alternatives be reviewed when the continued use of currently installed outdated ADPE is being considered as a viable alternative.

2. Section 201–30.009–2, Analysis for obsolescence, is added to provide policy guidance to agency managers in conducting an obsolescence review. It sets forth the cost factors that should be considered in the obsolescence review analysis. It also provides guidance as to when obsolescence reviews should be conducted on a priority basis.

f. Part 201–32, Contracting for ADP Resources, is amended as follows:

1. Section 201–32.203 is revised to provide that one of the other factors to be considered in determining the lowest overall cost for ADP equipment systems is whether the proposed ADPE is current technology and not outdated.

2. Section 201–32.206 is also revised to provide that the outdated ADPE acquisition policy provisions be applied to orders for outdated ADPE from GSA nonmandatory ADP schedules.

g. Part 201–33, Reuse of ADP Equipment, is revised to provide agency guidance on the reuse of outdated ADPE in conjunction with the treatment of the same subject in other FIRMR parts. Part 201–33 is amended as follows:

1. Section 201–33.003, Reutilization of excess ADPE, is revised to advise agencies that they should determine whether their ADP requirements can be efficiently and economically satisfied from the reuse program. Requests for reuse of outdated ADPE are subject to the provisions of § 201–33.012. Outdated ADPE will not generally be offered for agency screening for reuse.

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2. Section 201–33.011, Reporting excess or exchange/sale ADPE, is revised to change the screening period for excess and exchange/sale ADPE from 90 calendar days to 60 calendar days. It is also changed to require agencies, when reporting "outdated" ADPE, to annotate the SF 120 accordingly.

3. A new § 201–33.012, Reuse of outdated ADPE, is added to this part to provide regulatory coverage on the reporting and reuse of outdated ADPE.

(8) The General Services Administration has determined that this rule is no a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or not net cost effect on society.

List of Subjects in 41 CFR Parts 201–2, 201–11, 201–23, 201–24, 201–30, 201–32, and 201–33.

Competition, Computer technology, Government records management, Government property management, Government procurement, Information resources activities, and Telecommunications.

PART 201–2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for Part 201–2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–2.001 is amended to add (alphabetically) definitions to read as follows:

§ 201–2.001 Definitions.

* * * * *

"Match list" means a GSA maintained list of agency requested outdated ADPE that will be screened against reported outdated ADPE.

* * * * *

"Outdated ADPE" means any ADPE that is over eight years old (based on the initial commercial installation date of the equipment) and is no longer in current production.

* * * * *

PART 201–11—COMPETITION

1. The table of contents of Part 201–11 is amended by adding an entry for § 201–11.002–2; and the authority citation for Part 201–11 continues to read as follows:

201–11.002–2 Follow-on acquisitions under other than full and open competition.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–11.002–2 is added to read as follows:

§ 201–11.002–2 Follow-on acquisitions under other than full and open competition.

The special justification provisions of FAR 6.302–1(a)(2)(ii) regarding follow-on contracts shall not be used to perpetuate any contract for obsolete automatic data processing equipment (ADPE), or for ADPE used primarily to execute software that requires general redesign to satisfy mission needs in an economic and efficient manner. For these purposes, obsolete ADPE means ADPE for which an analysis under § 201–30.009–2 shows that cost savings are obtainable with newer ADPE technology.

PART 201–23—DELEGATIONS OF AUTHORITY

1. The authority citation for Part 201–23 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–23.104–1 is amended by revising paragraph (c)(2) to read as follows:

§ 201–23.104–1 Automatic data processing equipment (ADPE).

* * * * *

(c) * * *

(2) $250,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $100,000 for:

(i) Requirements available from only one responsible source;

(ii) Requirements using specific make and model specifications; or

(iii) Requirements for outdated ADPE or requirements that include one or more components of outdated ADPE when the outdated component's purchase price or rental charges exceed the applicable threshold in this paragraph (c)(2).

PART 201–24—ACQUISITION POLICIES

1. The table of contents for Part 201–24 is amended by revising the entry for § 201–24.206; and the authority citation for Part 201–24 continues to read as follows:

201–24.206 Acquisition of outdated ADPE.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–24.206 is revised to read as follows:

§ 201–24.206 Acquisition of outdated ADPE.

(a) The acquisition of (1) outdated ADPE and (2) ADPE that is no longer being installed by the commercial (non-government) market to satisfy requirements for commercially available, general purpose ADPE, most often does not achieve lowest overall cost, price and other factors considered over the system/item life. This is due to factors such as higher price/performance ratios, lower reliability, decreased functionality, and higher energy consumption.

(b) Outdated ADPE and ADPE that is no longer being installed by the commercial (non-government) market shall not be acquired unless it is determined to be the lowest overall cost source for fulfilling the Government's need, price and other factors considered over the system/item life. None of the following actions shall be taken unless they achieve lowest overall cost, price and other factors considered, over the system/item life:

(1) Reuse of Government excess outdated ADPE. (See § 201–33.012.)

(2) Specification of outdated ADPE as a mandatory requirement in a Government solicitation.

(3) Award of a contract for delivery of outdated ADPE, including options to acquire additional optional quantities.

PART 201–30—MANAGEMENT OF ADP RESOURCES

1. The table of contents for Part 201–30 is amended by revising the entry for § 201–30.009–2; and the authority citation for Part 201–30 continues to read as follows:

201–30.009–2 Analysis of obsolescence.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–30.009 is amended by revising the introductory text of paragraph (a), adding paragraph (b) and removing paragraph (c), to read as follows:

§ 201–30.009 Analysis of alternatives for satisfying a requirement.

(a) A comparative cost analysis shall be performed for each identified requirement or when planning (see § 201–16.002) indicates the possible existence of outdated ADPE. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. The alternatives to be considered shall include, but are not limited to the following:

* * * * *

(b) Where the analysis includes evaluation of the continued use of outdated ADPE, the analysis shall also evaluate the newer functionally-similar ADPE alternatives. Identifiable and quantifiable costs that are directly related to the costs of obsolescence (e.g., maintenance and operation, energy consumption, floor space, personnel, and other applicable factors) shall be considered (see § 201–30.009–2(a)).

3. Section 201–30.009–2 is revised to read as follows:

§ 201–30.009–2 Analysis for obsolescence.

(a) An obsolescence review is a limited comparative cost analysis performed to determine whether total overall systems life cost savings are obtainable with newer ADPE technology, relative to operation of outdated ADPE (either the CPU or other components of the total mainframe ADP system). The analysis shall include (but not necessarily be limited to) consideration of the following items for both the existing outdated ADPE and the replacement ADPE as appropriate:

(1) System acquisition costs: Purchase price of replacement system or net lease cost of replacement system including emulators and simulators;

(2) System operating costs:

(i) Maintenance and operations costs (preventive maintenance and unscheduled downtime),

(ii) Energy cost (operating and cooling of central processing units (CPUs) and peripherals), and

(ii) Timesharing service to supplement capacity lost due to downtime;

(3) Hidden costs of equipment operation:

(i) Personnel (e.g., operators, programmers, and systems analysts) costs such as unscheduled personnel overtime and manual labor to replace normally automated functions, and

(ii) Floor space costs (CPUs, peripherals, and personnel);

(4) Auxiliary hardware costs:

(i) Uninterruptable power supplies,

(ii) Front end data communication processors,

(iii) Peripheral equipment controllers,

(iv) Communication adapters, and

(v) Hardware optimizers;

(5) Conversion cost, if applicable;

(6) Administrative costs of the acquisition process; and

(7) Present value of money (see § 201–24.206(b)).

(b) Agency ADP managers should give obsolescence reviews priority and should evaluate their ADPE resources for obsolescence regularly to determine whether the cost of operating outdated ADPE is greater than the cost of acquiring and operating technologically newer ADPE. Indicators of obsolescence include:

(1) Maintenance services or parts are becoming unavailable or are no longer provided by the original equipment manufacturer (OEM);

(2) An operating system is not or will no longer be supported by the OEM;

(3) Records indicate a degradation in equipment reliability affecting the supported mission;

(4) Maintenance costs are accounting for an increasingly higher portion of overall operating costs;

(5) Energy consumption, including necessary environmental control, is relatively high; and

(6) Non-compatibility with recent and more cost-effective software enhancements, such as automatic documentation, date dictionaries, coding optimizers, and extensive software libraries.

(c) When the cost of operating outdated ADPE is greater than the cost of acquiring and operating technologically newer ADPE, agencies should replace the equipment as expeditiously as possible under the current competitive acquisition process.

PART 201–32—CONTRACTING FOR ADP RESOURCES

1. The authority citation for Part 201–32 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 481(c).

2. Section 201–32.203 is amended by adding a new paragraph (h) and redesignating and revising paragraphs (h) and (i) as (i) and (j) respectively to read as follows:

§ 201–32.203 Factors to be considered in determining lowest overall cost for ADP equipment systems.

* * * * *

(h) The proposed ADPE represents current technology and is not outdated.

(i) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(j) The potential for supporting other agencies through the ADP sharing program.

3. Section 201–32.206 is amended by revising paragraph (a)(2) to read as follows:

§ 201–32.206 Use of GSA nonmandatory ADP schedule contracts.

(a) * * *

(2) An order against a GSA nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–32.206 (but see § 201–11.002–2 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory ADP schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory ADP schedule contract shall not preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. In addition, the availability of those items under a GSA nonmandatory ADP schedule contract shall not preclude or otherwise detract from procuring the items (including peripheral equipment or items for augmenting an existing system) from a number of different sources if this action will be in the best interest of the Government. Any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment) shall not be used unless specifically justified. Also, any outdated ADPE ordered from a GSA nonmandatory ADP schedule must meet the acquisition policy provisions set forth in § 201–24.206.

* * * * *

PART 201–33—REUSE OF ADP EQUIPMENT

1. The table of contents for Part 201–33 is amended by adding § 201–33.012; and the authority citation for Part 201–33 continues to read as follows:

201–33–012 Reuse of outdated ADPE.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–33.003 is revised to read as follows:

§ 201–33.003 Reutilization of excess ADPE.

Federal agencies shall determine whether their ADP requirements can be efficiently and economically satisfied by using excess or exchange/sale ADPE. Agency procedures shall include screening of availability lists. To obtain maximum reutilization and to minimize the procurement of new ADPE, excess and exchange/sale ADPE shall be made available for transfer to other Federal agencies in accordance with the provisions of this Part 201–33. Excess auxiliary or accessorial items with a

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unit original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies in accordance with the provisions of FPMR Subpart 101–43.3. Any need for excess ADPE expressed by a Federal agency, including the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations, shall take precedence over disposal, provided such a need is made known to GSA prior to shipment or delivery in case of donation or prior to removal of the property from Government control in case of sale. Outdated ADPE will not be offered by GSA for agency screening; reuse shall be subject to the provisions of § 201–33.012.

3. Section 201–33.011 is amended by revising paragraphs (a), (c), and (d)(6) to read as follows:

§ 201–33.011 Reporting excess or exchange/sale ADPE.

* * * * *

(a) The SF 120 shall be submitted to the above address by the holding agency at least 60 calendar days before the anticipated release date as determined by the holding agency. This report is exempt from reports control in accordance with FRMR Subpart 101–45.6. Excess ADPE in the hands of Government contractors may be reported on an appropriate contractor inventory appended to an SF 120, provided that the reporting format includes an adequate commercial description and other appropriate data required by paragraph (b) of this section.

* * * *

(c) By the time Government-owned ADPE becomes excess to an agency's needs it may be outdated in relation to new technology, or the supplier may no longer produce the equipment or develop and maintain software necessary for the operation of equipment. Accordingly, information such as the availability of software packages, engineering drawings, maintenance manuals and other technical literature relating to Government-owned ADPE shall be included on the SF 120. The SF 120 shall include the notation "Outdated ADPE" when the ADPE meets the definition set forth in § 201–2.001.

(d) * * *

(6) The name and telephone number of the contracting officer. Until this information is received, the equipment will not be entered into exchange/sale screening. Exchange/sale reports received with inadequate screening time (in noncompliance with the 60 day requirement in this § 201–33.011), will be disapproved and entered into screening as excess ADPE. If there is any change to a cash or exchange offer subsequent to the submission of an SF 120, a revised SF 120 indicating the new cash or exchange offer shall be promptly submitted to GSA. Agencies will be advised promptly, in writing, of the date the original or revised SF 120 is received by GSA. Such equipment shall not be sold or exchanged prior to written authorization from GSA. (SF 120 is illustrated in Appendix E of the looseleaf edition of the FIRMR.)

4. Sections 201–33.012 is added to read as follows:

§ 201–33.012 Reuse of outdated ADPE.

(a) Outdated ADPE may be used to satisfy requirements only if it is the lowest overall cost means of fulfilling the Government need, price, and other factors considered over the system/item life. Requesting agencies shall conduct an obsolescence review in accordance with § 201–30.009–2 before they make a request to reuse outdated ADPE including exchange/sale and excess ADPE. GSA will not list outdated ADPE on availability lists. GSA will normally process the SF 120 for excess ADPE that is outdated directly to the GSA regions for surplus disposal after review as provided in paragraph (b) of this section. GSA will review the SF 120 for exchange/sale ADPE that is outdated prior to processing as provided in paragraph (b) of this § 201–33.012.

(b) Agencies may initiate action to request transfer and reuse of outdated ADPE in accordance with the following procedures.

(1) Under certain limited circumstances reuse of outdated ADPE will provide the lowest overall cost solution to satisfying an ADP requirement. When an agency determines it has such a requirement, it shall provide a description of the ADPR and a copy of the obsolescence review to GSA (KMA), Washington, DC 20405. This GSA office will review the justification and either (i) approve the request and advise GSA (KHE) to authorize transfer to the agency as an exception to normal procedures if such equipment is reported or (ii) advise the requesting agency of GSA denial of the reuse. When GSA (KMA) approves the request, GSA (KHE) will hold the request on a "match list" for review against incoming SF 120's and advise the requesting agency. When a match is made, the requesting agency will be authorized to submit an SF 122 to GSA in lieu of surplus disposal or reimbursable sale of the outdated ADPE. Agency requests will expire on the first anniversary of placement on the "match list" unless the requesting agency submits an extension request to GSA (KHE) stating that the equipment is still required. The extension shall expire after six additional months.

(2) If the SF 120 submission is for exchange/sale ADPE is outdated, GSA will notify the agencies on the "match list" of the amount of the exchange reimbursement anticipated to the holding agency. Requesting agencies shall, in response, determine whether the outdated ADPE will still provide the lowest overall cost solution when the reimbursement from the requesting agency to the holding agency is taken into account.

Note.—GSA publishes a listing of outdated ADPE periodically in a FIRMR bulletin published in Appendix B of the looseleaf edition of the FIRMR.

Dated: January 21, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–6313 Filed 3–21–86; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42 and 47

[CGD 86–016]

Combination Load Lines

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule corrects an unintended inequity in the present load line regulations. Some unmanned deck cargo barges which operate in both the Great Lakes and the ocean (dual service) are limited in how deeply the barge may be loaded by two different stability requirements rather than by the use of the geometric freeboard tables applicable to the vast majority of vessels. Currently there is no specified method to display these different stability limitations on barges in ocean service. The current practice is to use a single International (oceans) load line mark corresponding to the ocean stability limitation. This places an unfair burden on these dual service barges because similar barges which operate exclusively on the Great Lakes are allowed to load to a deeper draft during the summer, using the Great Lakes summer load line mark. This interim final rule allows the use of the equivalent of a Great Lakes summer load line mark on these dual service stability limited deck cargo barges.

EFFECTIVE DATE: April 23, 1986.

ADDRESSES: Written comments should be sent to Commandant (G–CMC) (CGD86–016), U.S. Coast Guard Headquarters, Washington, DC 20593. The comments and materials referenced in this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–GMC), Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mrs. June E. Keller, Office of Merchant Marine Safety (G–MTH–5), Room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426–2187.

SUPPLEMENTARY INFORMATION: Canonie Offshore Company, a Muskegon, Michigan company, brought an inequity in the load line marking requirements as applied to their barges which operate in both International (oceans) and Great Lakes service to the attention of the Coast Guard.

The load line mark represents the minimum freeboard (distance between the waterline and the main deck) at which a vessel may operate. Most deck cargo barges are assigned a freeboard based on the geometric characteristics of the barge (i.e., length, hull form, bow height, etc.). Due to their design, some deck cargo barges are assigned greater freeboards than those corresponding to the geometric characteristics in order to meet the stability requirements.

Deck cargo barges which operate in both International (oceans) and Great Lakes service normally receive a single International load line, applicable for all locations. The mark is based on the geometric freeboard or the freeboard dictated by the stability requirements for barges in ocean service (15 foot-degrees of intact stability righting energy (46 CFR 174.015(a)(1)), whichever provides the greater freeboard.

An International load line mark based on stability requirements for ocean service would limit the barge's load carrying capacity while on the Great Lakes in summer to less than that which would be allowed if it operated on the Great Lakes exclusively and was thus allowed to display a load line mark based on stability requirements for Great Lakes summer service (10 foot-degrees of intact stability righting energy (46 CFR 174.015(a)(2)).

There was no intent to prohibit stability limited unmanned deck cargo barges operating in both International and Great Lakes service from operating at the maximum load carrying capacity permitted other deck cargo barges operating solely on the Great Lakes. The problem had not been brought to our attention previously. The U.S. Coast Guard generally permits vessels to operate under different stability requirements in different areas. The seasonal load line marks must distinguish which stability standard is applicable according to geographic location and season.

The Coast Guard has resolved the current inequity by allowing the use of a Tropical (T) load line mark to represent Great Lakes summer service on these dual service stability limited barges. The (T) mark has been chosen because its application most closely parallels that of the Great Lakes summer season (April 16 through September 30) for vessels operating exclusively on the Great Lakes. The (T) mark on a vessel with an International load line applies in the Great Lakes for almost the same period, excluding only April 16 through April 30. A different unique load line mark to cover the seasonal period was not possible because the mark must be recognized by the International Load Line Convention. The use of the (T) mark on these barges will be limited to the Great Lakes.

The rule is being placed in a new part 47 in anticipation of consolidating other rules involving combination load lines in one location in a future rulemaking (CGD–86–013). A conforming amendment is also made to 46 CFR 42.03–5. The Coast Guard anticipates that this final rule will retain its interim status until publication of a final rule for CGD–86–013.

The Coast Guard finds good cause to publish an interim final rule without opportunity for notice and comment for the following reasons: (1) These regulations will resolve an unintended inequity in the current load line regulations; (2) There are no adverse safety or economic effects; and (3) The summer season on the Great Lakes for these vessels starts on 1 May. Delay in publication of the interim final rule may not allow eligible vessels to take advantage of this provision for the 1986 season. The Coast Guard finds that an opportunity for prior notice and public comment is unnecessary and contrary to the public interest.

Even though this is being published as an interim final rule, the Coast Guard welcomes comments thereon. Persons submitting comments should include their names and address, identify this rule (CGD86–016), and the specific section of the rule to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope.

Drafting Information: The principal persons involved in drafting this document are Mrs. June E. Keller, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Office of the Chief Counsel.

Regulatory Evaluation: This interim final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this interim final rule has been found to be so minimal that further evaluation is unnecessary. This interim final rule will be beneficial to the owners of the affected vessels, because the cargo carrying capacity of these barges will be increased on the Great Lakes during the summer months by approximately 5 percent. It is expected that only a small number of vessels would be affected because barges which have load lines are normally designed so their load carrying capacity is not limited by stability requirements.

Regulatory Flexibility Act: Since the impact of this interim final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: The proposed rulemaking will not result in any increase in information collection requirements for these types of vessels.

List of Subjects

46 CFR Part 42

Coast Guard, Penalties, Vessels, Marine safety, Foreign trade, Treaties, Navigation (water).

46 CFR Part 47

Coast Guard, Vessels, Navigation (water), Marine safety.

For the reasons set out in the preamble, Subchapter E of Title 46, Code of Federal Regulations is amended as follows.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

1. The authority citation for Part 42 is revised to read as follows and all other authority citations within the part are removed.

Authority: 46 App. U.S.C. 86; 86a; 49 CFR 1.46(46).

2. In § 42.03–5 paragraph (a)(3) is revised to read as follows:

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§ 42.03-5 U.S.-flag vessels subject to the requirements of this subchapter.

(a) * * *

(3) All U.S.-flag vessels authorized to engage in foreign or international voyages may also engage in domestic voyages by sea and, as permitted by § 45.9 of this part and Part 47 of this subchapter, in Great Lakes voyages without additional load line marks and/or certificates. Where additional load line marks and certificates are provided to specifically cover "Special Service, Coastwise" or "Great Lakes" operation, such vessels are subject to the applicable provisions of Parts 44 and 45 of this subchapter.

* * * * *

3. Part 47 is added to read as follows:

PART 47—COMBINATION LOAD LINES

Subpart A—General

47.100 Purpose.
47.110 Definitions used in this part.

Subpart B—E [Reserved]

Subpart F—International and Great Lakes Service; Stability Limited Deck Cargo Barges

47.600 Description of service.
47.610 Conditions of assignment.
47.620 Loads line marks.
47.630 Restrictions.
47.640 Form of certificate.

Subpart G—[Reserved]

Authority: 46 App. U.S.C. 86; 88a; 49 CFR 1.46(b).

Subpart A—General

§ 47.100 Purpose.

(a) The purpose of the regulations in this part is to set forth simplified alternative marking schemes for those vessels operating in more than one service. Operating requirements for a given vessel could vary depending on the service, the season of the year, stability requirements, manning requirements and tonnage requirements. The conditions of assignment, restrictions applicable, form of the certificate and the load line marks are described.

§ 47.110 Definitions used in this part.

(a) "International service" means:

(1) A voyage by sea between a port under the jurisdiction of the United States and a port of a foreign country, its colonies, territories, or protectorates, or conversely (a voyage exclusively on the Great Lakes is excepted); or

(2) A voyage that proceeds beyond 20 nautical miles from the territorial sea baseline.

(b) "Great Lakes service" means a voyage from a United States port or place on the Great Lakes to another United States port or place on the Great Lakes or to a Canadian port or place on the Great Lakes, or conversely. In concurrence with related Canadian regulations, the waters of the St. Lawrence River west of a rhumb line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along 63° W. Longitude from Anticosti Island to the north shore of the St. Lawrence River shall be considered as part of the Great Lakes. In addition, the Victoria Bridge, Montreal, Canada, is the dividing line between fresh water and salt water in the St. Lawrence River.

Subpart B—E [Reserved]

Subpart F—International and Great Lakes Service; Stability Limited Deck Cargo Barges

§ 47.600 Description of service.

This subpart applies to deck cargo barges operating in International and Great Lakes service and meeting the conditions of assignment in § 47.610 of this subpart.

§ 47.610 Conditions of assignment.

Owners or operators of deck cargo barges which are draft limited by the intact stability requirements of 46 CFR 174.015 (a)(1) and (a)(2) may elect to be assigned load lines under this subpart in order to load to a draft corresponding to the intact stability requirement of 10 foot-degrees (46 CFR 174.015(a)(2)) while engaging in Great Lakes service during the summer season.

§ 47.620 Load line marks.

(a) A plimsoll mark (disc and line through center) applicable to International service must be placed at the draft corresponding to 15-degrees of righting energy as calculated in fulfilling the requirements of 46 CFR 174.015(a)(1).

(b) The seasonal ladder representing summer, winter, and winter North Atlantic seasons must be as shown in Figure 1 below.

(c) An equivalent Great Lakes summer seasonal line must be placed on the seasonal ladder at the draft corresponding to 10 foot-degrees of righting energy as calculated in fulfilling the requirements of 46 CFR 174.015(a)(2) and be marked with a (T).

(d) The fresh water mark may be omitted by request of the owner or operator.

§ 47.630 Restrictions.

(a) The mark (T) applies only to Great Lakes service from May 1 through September 30.

(b) Notations are to be placed on the face of the load line certificate to the effect that:

(1) The barge must be operated in compliance with the draft vs. cargo vertical center of gravity tables in the U.S. Coast Guard approved stability letter, and

(2) The mark (T) is applicable only for Great Lakes service from May 1 through September 30 as per 46 CFR 45.9

§ 47.640 Form of certificate.

The form of the certificate is as specified in § 42.50-5(b) of this subchapter with the exception that the illustrated load line marks are as shown in Figure 1 below.

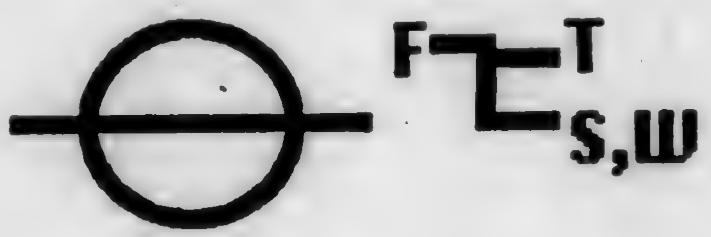

Figure 1. Load Line Marks

Subpart G—[Reserved]

W.J. Ecker,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.
March 17, 1986.

[FR Doc. 86-6172 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76, and 78

Oversight of the Radio and TV Broadcast

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73, 74, 76, and 78 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts and contemporize as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: March 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: .

List of Subjects

47 CFR Part 73

Radio Broadcasting.

47 CFR Part 74

Radio Broadcasting, Television Broadcasting.

47 CFR Parts 76 and 78

Cable Television.

Order

In the matter of Oversight of the Radio and TV Broadcasting Rules.

Adopted: March 4, 1986.
Released March 7, 1986.
By the Acting Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast, Cable TV and Cable TV Relay Service rules. Modifications are made herein to update, delete, clarify or correct FCC regulations as described in the following amendment summaries:

(a) Section 73.68 was amended in the *Report and Order* in MM Docket 85-90 in November 1985.[1] One of the revisions changed paragraph (e) to (d). The paragraph, prior to the redesignation, ended by stating ". . . . and all other data obtained pursuant to this paragraph (e) of this section."

The rule writer failed to change the reference to "this paragraph (e) of this section" to (d).

Correction is made herein to simply state ". . . . and all other data obtained pursuant to this paragraph." (See appendix item 2).

(b) Section 73.69, Antenna monitors, cross references in paragraph (a)(2), § 73.53 "(c)(9)." Paragraph (c)(9) was changed to (b)(9) in an Order effective August 12, 1985. 50 FR 32414, August 12, 1985. The cross reference is corrected via this *Order*. (See appendix item 3).

(c) In an *Order* adopted in August 1985,[2] Section 73.182, Engineering standards of allocation, was amended, in part, by redesignating paragraphs (o) through (y) as (1) through (v). A cross reference to § 73.182, paragraph (w), remains in § 73.183(b). It is changed to read § 73.182(t) via this Order.

Also, in paragraph (n) of § 73.182, paragraph "(w)" of this same § 73.182 is again cross referenced; it is changed to correctly read paragraph (t). (See appendix items 4 and 5).

(d) In Subject C, Part 73, the rule for noncommercial FM stations, § 73.508, Standards of good engineering practice, states that all NCE FM stations (with over 10 watts output power) will be subject to the provisions of the technical standards found in Subpart B, commercial FM stations.

In the requirements regarding transmitter location found in § 73.315 of Subpart B, the rule states that a minimum field strength of 3.16 mV/m (or 70 dB above one mV/m (dBu) over the community of license is required. Questions have been raised by consulting engineers regarding applicability of this requirement to noncommercial FM stations.

It does not apply. The application form for construction permit for noncommercial stations is quite clear in this matter, requiring only a map exhibit showing the 1 mV/m contour.

In order to avoid continuing confusion, changes will be made in Section 73.315 to remove further obfuscation. (See appendix item 6).

(e) Section 73.702, Assignment and use of frequencies, was amended in the *Report and Order* in MM Docket 84-706 by revising paragraph (f),[3] The revision allowed International Broadcast stations located in Region 3 to use the 7100-7300 kHz frequency band.

The revision of paragraph (f) of this rule section was later modified, in October 1985,[4] as result of a petition for reconsideration of the *Report and Order.*

In the drafting of the rule amendment, in the *Report and Order*, new text was added to paragraph (f) as a footnote. It was this "footnote" which was further amended in the M.O. & O. In codifying the change, the footnote was lost in the text's transmission from the **Federal Register** to Title 47, Code of Federal Regulations.

This Order adds the lost "footnote" to paragraph (f), designating it as subparagraph (2)(i) thereto, and reformats the entire paragraph into a more orderly textual form by separating the whole into subparagraphs (f) (1), (2), (2)(i) and (3). (See appendix item 7).

(f) Section 399 of the Communications Act of 1934, as amended, prohibits editorializing by noncommercial educational broadcast stations. Prior to the section's amendment by Pub. L. 97-35, in August 1981,[5] it contained paragraph (a) and paragraph (b) with several subparagraphs thereto. The public law amended the section to its present single, unlettered paragraph.

A reference to "section 399(a), Communications Act," stated in § 73.1930, is revised herein to conform to the 1981 change in the Act by removing the incorrect paragraph "(a)" designation. (See appendix item 8).

(g) In the *Order*[6] which conformed the FCC rules to the amendments to section 311(c)(3) of the Communications Act, pursuant to Congressional action in 1982,[7] amendments were made in § 73.3525, Agreements for removing application conflicts. In part, the amendments removed paragraph (b) and redesignated paragraphs (c) through (i) as (b) through (h).

The newly designated paragraph (e) contains a cross reference to old paragraph (d) which was changed to paragraph (c). Failure to change this cross reference from (d) to (c) is remedied herein.

Further, a cross reference in newly denoted paragraph (b) refers to "(c)(2)," which will be changed to read "subparagraph (2) of this paragraph." (See appendix item 9).

(h) Some 15 years ago, the operators rules for AM radio[8] allowed "routine

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[1] 50 FR 47051, November 14, 1985.

[2] *Order*. 50 FR 32414, August 12, 1985.

[3] *Report and Order* in MM Docket 84-706, Frequency Assignments for the International Broadcast Service, 50 FR 15146, April 17, 1985.

[4] *Memorandum Opinion and Order* in Docket 84-706, 50 FR 42528, October 21, 1985.

[5] Pub. L. 97-35, 95 Stat. 357, 730, August 31, 1981.

[6] *Order*, FCC 83-152, 48 FR 17590, April 25, 1983.

[7] Communications Amendments Act of 1982, Pub. L. 97-259, 96 Stat. 1087, Section 116(a).

[8] 47 CFR 73.93.

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operation of the transmitting apparatus at a standard [sic] broadcast station with power of 10 kW or less and nondirectional antenna [to be] performed by an operator other than a radiotelephone first class operator. . . ." However, the licensee was required, in this event, to "either employ one or more operators, holding a valid radiotelephone first-class operator license, as a full-time member of the station staff or, in the alternative, *contract in writing for the services, on a part-time basis, of one or more such operators.* (Emphasis added)

In addition, the licensee was required to keep "a signed copy of the [contract] agreement . . . in the files of the station . . . and made available for inspection by any authorized representative of the Commission."

In § 73.3613, Filing of contracts, subparagraph (d)(4) states that licensees must keep available for FCC inspection, "contracts with chief operators *or other engineering personnel.*" (Emphasis added)

These "other engineering personnel" stated in this section are the contract first-class radiotelephone operators described above. Such requirements were eliminated with the licensed operator deregulation proceedings in the past decade. This reference to "other engineering personnel" is therefore removed.

The retention-in-station-file requirement, "contract with chief operators," will remain in § 73.3613(d)(4), pursuant to the chief operator rule, § 73.1870(b)(3) which states, in part: "agreement with chief operators serving on a contract basis must be in writing with a copy kept in the station files."

When § 73.3613, was revised, effective July 22, 1985 an amendment to the rule removed subparagraphs (a) (2), (5) and (6) and marked them [Reserved]. It is our practice, wherever possible, to keep rule texts free of such meaningless designations. Via this Order the designations "[Reserved]" found in subparagraphs (a) (2), (5) and (6) are removed, and the succeeding subparagraphs are redesignated by moving them up in numerical, sequential order. (See appendix item 10).

(i) The *Report and Order* in MM Docket 85–36, a "Review of Technical and Operational Requirements," deleted paragraph (a) of § 74.561, Frequency tolerance, and designated it "[Reserved]." The retained rule text is in the single remaining paragraph (b).

Since this has now become a one-paragraph rule, paragraph designations are superfluous. Therefore, the (b) designation is excised and its text becomes the single, undesignated rule text of § 74.561. The text, paragraph "(a) [Reserved]" is also removed. (See appendix item 11).

(j) Two cross references in Part 74 are incorrect, as stated, due to changes made in the referenced rule.

In Section 74.801, Definitions, a cross reference to § 76.5(11) is made. This paragraph in § 76.5 was revised to read (ee) in an *Order* effective August 12, 1985. (50 FR 32414, August 12, 1985.) The cross reference in § 74.801 is corrected.

In § 74.832, Licensing requirements and procedures (for low power auxiliary stations), paragraph (a)(3) refers to § 76.5 (w) and (x) Paragraph (x) was long ago removed, so no longer applies; paragraph (w) was redesignated paragraph (r) in the *Order* mentioned above, effective in August, 1985. The § 76.5(x) cross reference is removed from § 74.832 (since it no longer exists) and the reference to paragraph (w) is corrected to read 76.5(r). (See appendix items 12 and 13).

(k) The station ID requirements for FM translator and booster stations are stated in § 74.1283. There is a cross reference in paragraph (b) of the section referring to "the provisions of § 73.287. . . ." This reference is corrected to read "§ 73.1201," which reflects the change made some years ago when station ID rules, formerly in the AM, FM, and TV subparts were placed in this one rule section in subpart H of Part 73. (See appendix item 14).

(l) In Mass Media Docket 84–1296, the Commission undertook to conform its cable rules to the provisions of the Cable Communications Policy Act of 1984.

One of the changes adopted in the Report and Order [9] added a note to § 76.5, Definitions, following paragraph (a). It was designated "Note 2," and the existing note following paragraph (a) was denoted "Note 1."

A later amendment was made to § 76.5 in October 1985, wherein Note 1 was removed. The writer, failing to account for the addition of Note 2 the previous May, directed the removal of "the Note" in § 76.5. This inexact note removal directive resulted in Note 2 being inadvertently removed and Note 1 retained, thereby effecting the opposite of the desired goal of the October rule amendment. Herein, we will delete Note 1 (the original plan) and replace Note 2 designating it simply as "Note" since it now stands alone following paragraph (a). (See appendix item 15).

(m) Section 76.64, Carriage of STV programs and telecommunications services on the vertical blanking interval, cross references the provisions of five Part 76 rule sections. One of the referenced sections is § 76.63 which was removed from the rules in the CATV syndicated program exclusivity proceeding in 1980.[10] Reference to it is removed from § 76.64 herein. (See appendix item 16).

(n) The *Report and Order* in Mass Media Docket 85–61, changed the FCC's rules regarding equal employment opportunities in the cable industry.[11] The action was necessitated by passage of the Cable Communications Policy Act of 1984. Included in the rules' modifications adopted in the *Report and Order* was a new Subpart E in Part 76 entitled "Equal Employment Opportunity Requirements." This new subpart replaced § 76.311 which formerly held the equal employment requirements for cable systems.

The requirements for equal employment opportunities in Part 78, the Cable TV Relay Service (CARS) are found in § 78.75 which simply directs the rule user to "See § 76.311. . . ."

This directive must be changed to the new Subpart E, Part 76, and is accomplished herein. (See appendix item 17).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amemdments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, That pursuant to section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74, 76, and 78 of the FCC Rules and Regulations are amended as set forth in

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[9] *Report and Order,* MM Docket 84–1296. 50 FR 18637, May 2, 1985.

[10] *Memorandum Opinion and Order,* Dockets 20988 and 21284, adopted July 22, 1980. 79 FCC 2d 652.

[11] 50 FR 40830, October 7, 1985.

the attached appendix, effective upon publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

Appendix

PARTS 73, 74, 76, AND 78 [AMENDED]

47 CFR Parts 73, 74, 76 and 78 are amended as follows:

1. The authority citation for Parts 73, 74, 76 and 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.68 is amended by revising paragraph (d)(4) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(d) * * *

(4) Request for modification of license shall be submitted to the FCC in Washington, DC, within 30 days of the date of sampling system modification or replacement. Such request shall specify the transmitter plate voltage and plate current, common point current, base currents and their ratios, antenna monitor phase and current indications, and all other data obtained pursuant to this paragraph.

* * * * *

3. 47 CFR 73.69 is amended by revising paragraph (a)(2) to read as follows:

§ 73.69 Antenna monitors.

(a) * * *

(2) The antenna monitor installed at a station operating a directional antenna by remote control, using extension meters to read and log the monitor indications or when the monitor is installed in the antenna field at a distance from the transmitter, must be designed and authorized for such use in accordance with the provisions of § 73.53(b)(9).

* * * * *

4. 47 CFR 73.182 is amended by revising paragraph (n) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(n) Objectionable interference from a station on an adjacent channel shall be considered to exist to a station when, at the normally protected contour of a desired station, the field strength of the ground wave of an undesired station operating on an adjacent channel (or the root-sum-square value of the field strengths of two or more such undesired stations operating on the same adjacent channel) exceeds a value specified in paragraph (t) of this section.

* * * * *

5. 47 CFR 73.183 is amended by revising paragraph (b), except the note, to read as follows:

§ 73.183 Groundwave signals.

* * * * *

(b) In determining interference based upon field strength measurements, it is necessary to do the following: First, establish the outer boundary of the protected service area of the desired station in the direction of the station that may cause interference to it. Second, at this boundary, measure the interfering signal from the undesired station. The ratio of the desired to the undesired signal given in § 73.182(t) should be applied to the measured signals and if the required ratio is observed, no objectionable interference is foreseen. When measurements of both the desired and undesired stations are made in one area to determine the point where objectionable interference from groundwave signals occur or to establish other pertinent contours, several measurements of each station shall be made within a few miles of this point or contour. The effective field of the antennas in the pertinent directions of the stations must be established and all measurements must be made in accordance with § 73.186.

* * * * *

6. 47 CFR 73.315 is amended by adding a Note to follow paragraph (a) to read as follows:

§ 73.315 Transmitter location.

(a) * * *

Note.—The requirements of paragraph (a) of this section do not apply to noncommercial educational FM broadcast stations.

* * * * *

7. 47 CFR 73.702 is amended by revising paragraph (f) to read as follows:

§ 73.702 Assignment and use of frequencies.

* * * * *

(f) Frequencies assigned by the FCC shall be within the following bands which are allocated exclusively to the international broadcast service;

(1) 5,950–6,200 kHz; 9,500–9,775 kHz; 11,700–11,975 kHz; 15,100–15,450 kHz; 17,700–17,900 kHz; 21,450–21,750 kHz; 25,600–26,100 kHz.

(2) In addition, the following band is allocated exclusively to the international broadcast service in Region 3: 7,100–7,300 kHz. Assignments in this frequency band will be limited to international broadcast stations located in the area designated as Region 3 by No. 395 of the International Radio Regulations and authorized only to transmit to zones and areas of reception situated outside Region 2 as defined in No. 394 of the International Radio Regulations. In addition, during the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi, except in the case where a transmitter power of less than 100 kW is used. In this case, antenna gain on restricted azimuths shall not exceed that which is determined in accordance with equation below. Stations desiring to operate in this band must submit sufficient antenna performance information to ensure compliance with these restrictions. Permitted Gain for Transmitter powers less than 100 kW:

$$Gi = 2.15 + 10 \log \left(\frac{100}{Pa} \right) \text{dBi}$$

Where:

Gi = maximum gain permitted with reference to an isotropic radiator.

Pa = Transmitter power employed in kW.

(3) The carrier frequencies assignable shall begin 5 kHz above the frequency specified above for the beginning of each band and shall be in sucessive steps of 5 kHz to and including 5 kHz below the frequency specified as the end of each band.

* * * * *

8. 47 CFR 73.1930 is amended by revising paragraph (b) to read as follows:

§ 73.1930 Political editorials.

* * * * *

(b) Inasmuch as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (section 399, Communications Act), the provisions of paragraph (a) of this section, do not apply to such stations.

9. 47 CFR 73.3525 is amended by revising paragraphs (b)(6) and (e) to read as follows:

§ 73.3525 Agreements for removing application conflicts.

* * * * *

(b) * * *

(6) Where the FCC orders that further opportunity be afforded for other persons to apply for the facilities sought

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to be withdrawn, no application of any party to the agreement will be acted upon by the FCC less than 30 days from the last day of publication of the notice specified in subparagraph (2) of this paragraph. Any applications for a broadcast station on the same frequency in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, filed within the 30-day period following the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), or otherwise timely filed, will be entitled to comparative consideration with other pending mutually exclusive applications. If the application of any party to which the new application may be in conflict has been designated for hearing, any such new application will be entitled to consolidation in the proceeding.

* * * * *

(e) Where an affidavit filed pursuant to paragraph (c) of this section states that consideration has been paid or promised, the affidavit shall set forth in full all relevant facts, including, but not limited to, the material listed in paragraph (a) of this section for inclusion in affidavits.

* * * * *

§ 73.3613 [Amended]

10. 47 CFR 73.3613 is amended by removing paragraphs (a)(2) [Reserved], (a)(5) [Reserved] and (a)(6) [Reserved] and redesignating paragraph (a)(3) and (a)(4) as (a)(2) and (a)(3) respectively.

§ 74.561 [Amended]

11. 47 CFR 74.561, Frequency tolerance, is amended by removing the designations (a) [Reserved] and (b) and retaining the text of (b) as the single, undesignated paragraph of this section.

12. 47 CFR 74.801 is amended by revising the definition of Cable television system operator to read as follows:

§ 74.801 Definitions.

Cable television system operator. A cable television operator is defined in 76.5(ee) of the rules.

* * * * *

13. 47 CFR 74.832 is amended by revising paragraph (a)(3) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(3) A cable television system operator who operates a cable system that produces a program material for origination or access cablecasting, as defined in § 76.5(r).

* * * * *

14. 47 CFR 74.1283 is amended by revising paragraph (b) to read as follows:

§ 74.1283 Station identification.

* * * * *

(b) FM Broadcast booster stations shall be identified by their primary stations by the broadcasting of the primary station's call letters and location, in accordance with the provisions of § 73.1201 of this chapter.

* * * * *

15. 47 CFR 76.5 is amended by revising the Note following paragraph (a) to read as follows:

§ 76.5 Definitions.

(a) * * *

Note.—The provisions of Subparts D and F of this Part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985.

* * * * *

16. 47 CFR 76.64 is revised to read as follows:

§ 76.64 Carriage of subscription television programs and telecommunications services on the vertical blanking interval.

The provisions of §§ 76.55, 76.57, 76.59 and 76.61 do not require carriage of any subscription TV program or any telecommunications service transmitted on the vertical blanking interval.

17. 47 CFR 76.75 is revised to read as follows:

§ 76.75 Equal employment opportunities.

See Subpart E, Part 76 of this chapter.

[FR Doc. 86-5800 Filed 3-21-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 40211-4050]

Foreign Fishing; Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason allocation of reserve.

SUMMARY: NOAA issues this notice to allocate 51,030 metric tons (mt) of Atlantic mackerel reserve to the total allowable level of foreign fishing (TALFF). This action is allowed by regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The intended effect of the allocation is to promote full utilization of the optimum yield by all harvesters of this fishery.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 extension 273.

SUPPLEMENTARY INFORMATION: Final initial specifications for the Atlantic mackerel, squid, and butterfish fisheries for the fishing year 1985–1986 became effective for Atlantic mackerel on May 14, 1985 (50 FR 20103) and for squid and butterfish on May 15, 1985 (50 FR 20215). The Atlantic mackerel specifications established a 51,050–mt reserve. Regulations at 50 CFR 655.23 provide a mechanism to allocate all or part of the Atlantic mackerel reserve to TALFF during each fishing year. A complete discussion of these procedures is found in the supplementary information section of the notice of proposed allocation of reserve (51 FR 5747, February 18, 1986) and is not repeated here. No comments were received during the 15–day comment period provided by the notice of proposed allocation. Therefore, the Secretary of Commerce allocates the 51,030 mt of reserve to TALFF, which now will total 102,100 mt. In the proposed allocation table an amount of 20 mt was listed in the reserve; this was incorrect. On January 9, 1986 (51 FR 959) NOAA transferred 20 mt of mackerel reserve to TALFF without adjusting the numerical specifications table. NOAA therefore corrects that error with this notice.

Bycatch TALFF specifications for *Loligo, Illex,* and butterfish will also increase, each by one percent of the mackerel reallocation (510 mt), as follows: *Lo ligo*—from 7,725 mt to 8,235 mt, *Illex*—from 3,900 mt to 4,410 mt, and butterfish-from 1, 145 mt to 1,655 mt.

The following table lists the sum of all adjustments because of this final notice of At lantic mackerel increase to TALFF. The table represents the latest specifications for the 1985–1986 fishing year for Atlantic mackerel, squid, and butterfish for the maximum optimum yield (Max OY), allowable catch (AC), allowable biological catch (ABC) (NOTE: The proposed squid ABCs as published February 18, 1986, were incorrect; the amounts below represent the correct amounts), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), Reserve, (if any), and total allowable level of foreign fishing (TALFF).

1985–1986 FISHING YEAR SPECIFICATIONS

[In metric tons]

	Squid		Butterfish	Atlantic mackerel
	Lo ligo	Illex		
Max OY	44,000	30,000	[1] 16,000	225,300
AC				225,300
ABC	33,000	25,000	[1] 16,000	
IOY	30,735	20,410	12,655	225,300
DAH	22,500	16,000	11,000	[2] 123,200
DAP	20,500	11,500	11,000	13,000
JVP	2,000	4,500		100,000
Reserve	0	0	0	0
TALFF	8,235	4,410	1,655	102,100

[1] Up to the figure given.
[2] Includes 10,200 mt for recreational catch.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 655

Fisheries.

(16 U.S.C. 1801 *et seq*)

Dated: March 18, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-6370 Filed 3-21-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 56
Monday, March 24, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Changes to the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on several changes to the procedural and operational details of the Raisins Diversion Program (RDP). The changes would: (1) Broaden the category of producer applicants receiving priority for program participation; (2) add authority for subjecting those approved applicants, who fail to follow through with their intention to remove vines, to legal and administrative sanctions; (3) clarify that order requirements are applicable to raisin handlers when redeeming diversion certificates just as though the raisins were acquired as new crop raisins; and (4) allow the Raisin Administrative Committee (Committee) to release to the handler the entire tonnage represented by diversion certificates. These changes were recommended by the Committee, which works with the U.S. Department of Agriculture (USDA) in administering the marketing order to improve RDP operations.

DATES: Comments must be received by April 3, 1986.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Agricultural Marketing Service, USDA, Washington, DC 20250, Telephone: (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under Secretary's Memorandum No. 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued under this order impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities, if present at all, is not significant.

These proposals would amend Subpart Administrative Rules and Regulations (7 CFR 989.102—989.176; 50 FR 3879) by revising § 989.156 (d), (h), and (p), adding a new sentence to § 989.156(k), and changing the heading of § 989.156(g). The changes are intended to foster smoother more efficient diversion program operations. This subpart is operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This proposed rule provides for a comment period of less than 30 days. A longer comment period would be contrary to the public interest. The final rule, if issued, needs to be made effective by April 15, 1986, in order to provide producers with adequate notice of the changes and the opportunity to withdraw prior to June 1, 1986. Under § 989.156(r) of the RDP rules and regulations, successful applicants have 10 days to withdraw from the program if they disagree with any program changes. June 1 is the date specified in § 989.156(h) of the RDP rules and regulations by which successful applicants must have removed their grapes or vines under the RDP.

The RDP, which was implemented for the first time in 1985, gives producers the means of voluntarily reducing the quantity of grapes grown for drying while receiving the equivalent quantity of raisins represented on diversion certificates to sell to handlers as though the raisins were produced in the current crop year. Since the establishment of the RDP, the raisin industry has been working to bring raisin supplies more in line with demand. In 1985, 60,000 tons of raisins were diverted from production. The Committee has designated over 100,000 tons of Natural Seedless raisins for the 1986 diversion program because raisin supplies are expected to again exceed market demand and normal carryover needs by that amount.

The first change would revise § 989.156(d) to allow producers, who agree to remove vines from a partial production unit, to receive the same priority as those who remove vines from an entire production unit. This change would encourage vine removal, which is the most effective way currently known for accomplishing program objectives.

The second change would add legal and administrative remedies to § 989.156(h) for those approved applicants who fail to follow through with their intention to remove vines as specifically stated on their application. Such producers shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of § 989.156, and may be denied the opportunity to participate in future programs. This would discourage

approved applicants from changing from vine removal to diversion by another method. In an oversubscription situation, when a lottery system is required, producers who indicate vine removal on their diversion applications but later decide to divert by another means would avoid the lottery system and deny other producers the opportunity to participate in the program. These measures are necessary to foster compliance and more effectively enforce the provisions of the diversion program.

The third change is in § 989.156(p) and would clarify that order requirements that are applicable to handlers when diversion certificates are redeemed. It is the Committee's intention to clarify that the raisin tonnage represented on diversion certificates be treated in the same manner as new crop raisins and to protect the interests of reserve pool equity holders. This includes any reserve pool obligations, payment of assessments, storing of reserve tonnage, and remedies in the event of handlers' failure to deliver reserve tonnage raisins. These requirements are applicable to reserve raisins released to handlers under the diversion program.

The last change is in § 989.156(k). It would allow the Committee to release to handlers the entire amount on the diversion certificate when certificates are redeemed. The current provisions only allow the Committee to release the free tonnage portion on the certificates to handlers. One year's program experience has shown that diversion certificates could be redeemed before free and reserve percentages have been computed and announced. Releasing the entire amount of reserve tonnage, regardless of whether free and reserve percentages are established, would allow handlers to treat the reserve raisins represented by diversion certificates the same as if a crop was produced and delivered to the handler.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Paragraphs (d), (h), (k) and (p) of § 989.156 are revised, and the heading of paragraph (g) is revised to read as follows:

Subpart—Administrative Rules and Regulations

§ 989.156 Raisin diversion program

* * * * *

(d) *Priority of applications and allocation of tonnage.* Those producer applicants indicating that the vines of the producing units or portions thereof will be removed, shall receive priority over other applicants when reserve tonnage under the program is to be allocated. Grafting vines of one varietal type to another varietal type does not constitute removal under the program. If the production volume in such applications exceeds the amount of diversion tonnage available under the program, a lottery will be held to allocate such diversion tonnage among the applicants. In conducting any lottery under this section, the Committee may group producer applications on a handler-by-handler basis, and separate lotteries will be held for each such group. The diversion tonnage of raisins available for each such group in each lotttery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. To the extent diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications. If reserve tonnage exists under the program after the allocation of diversion tonnage has been made to all eligible producer applicants who remove vines, all other applications shall be considered. If the production volume in such applications exceeds the amount of reserve raisin tonnage remaining under the program, a lottery will be held to allocate the remaining diversion tonnage in the manner described above.

* * * * *

(g) *Verification.*

* * * * *

(h) *Compliance.*—(1) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before maturity, removing the vines, or any other method which prevents the grapes from maturing and being harvested. Grafting vines of one varietal type to another varietal type does not constitute removal of the vines under the program.

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit or portion thereof designated in the application not later than June 1 of the crop year when a raisin diversion program is implemented.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit or portion thereof by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

* * * * *

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored by the Committee if presented to it for redemption on or before February 15 of the crop year for which they were issued.

* * * * *

(p) *Handling of reserve pool tonnage released when diversion certificates are redeemed.* Handlers shall comply with the applicable provisions of the order and administrative rules and regulations for the reserve pool tonnage released under the raisin diversion program in the same manner as raisins acquired from producers. Such provisions shall include, but not be limited to, reporting,

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satisfying reserve pool obligations, payment of assessments, storing reserve tonnage, and the remedies in the event of failure to deliver reserve tonnage raisins.

* * * * *

Dated: March 17, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division.

[FR Doc. 86-6280 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would: (1) Increase the minimum net worth requirement applicable to contracting warehousemen, (2) increase the maximum net worth requirement by adjusting the per bushel/hundredweight rate used to determine such requirement, (3) provide for the payment of application and inspection fees by warehousemen seeking initial approval to enter into a storage agreement with CCC and, (4) provide for the proration of the first year's contract fee if the initial contract approval date does not coincide with the annual renewal date.

CCC is also requesting comments regarding a proposed change in the annual renewal date for the Uniform Grain Storage Agreement (UGSA) and the Uniform Rice Storage Agreement (URSA) renewal from July 1 to April 1, beginning in 1987.

DATE: Comments must be received on or before April 23, 1986 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, U.S. Department of Agriculture, Agriculture Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4018 or 447-7433.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962, South Building, P.O. Box 2415, Washington DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." This action has been classified "not major" since implemention of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, financial institution requirements, and Federal contracting requirements during the past few years necessitate updating the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

The number of grain warehouse bankruptcies over the past several years has steadily increased. In fiscal year 1980 there were only 4 grain warehouse bankruptcies. This number has increased every year with 67 grain warehouse bankruptcies being recorded in fiscal year 1985. These bankruptcies, as well as changes in the marketing operations of warehousemen who are buying and selling the same products they also store, has increased the risk of loss to CCC and other depositors of grain in warehouses. The use of "delayed price" and "deferred payment" contracts as a marketing tool also has contributed to the possibility of increased losses to CCC and other grain depositors. Therefore, in order to reduce CCC's vulnerability to losses as a result of warehouse failures, it is proposed that the minimum net worth requirement for the approval of a warehouse to store CCC commodities be raised from $25,000 to $50,000 and the per bushel/hundredweight net worth ratio used to compute minimum net worth also be increased.

CCC also proposes to require the payment of application and inspection fees by grain and rice warehousemen seeking initial approval to enter into a UGSA or URSA. Such fees would be at the same rate as charged under the United States Warehouse Act (USWA) for initial approval which is $10 per 10,000 bushels of storage capacity or fraction thereof, but in no case less than $100 nor more than $1,000. This fee would be used to partially defray the cost to CCC of examining the warehouse and determining the financial acceptability of the warehouseman, as well as other administrative expenses which are incurred by CCC in determining whether a warehouseman should be approved to enter into a UGSA or URSA with CCC.

CCC presently collects the full annual contract fee from warehousemen for the first contract year of the UGSA or URSA irrespective of when the contract is entered into during the contract year. It is proposed that the annual contract fee be prorated according to the number of full months for which the contract is to be effective.

CCC is also requesting comments regarding a proposed change in the annual contract renewal date from July 1 to April 1. The July 1 annual renewal date has caused problems for producers who harvest their grain in May and June and store their grain in commercial warehouses. These producers must select a commercial warehouse to store their harvested grain without knowing the storage and handling rates for the next contract year. An April 1 contract renewal date would eliminate this problem. If such a change is implemented, the 1986-87 contract year will be nine months rather than twelve months. Contract fees would be adjusted accordingly.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, and Warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation for 7 CFR Part 1421, Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

2. In § 1421.5552, paragraph (a)(3) is revised to read as follows:

§ 1421.5552 Basic Standards.

* * * * *

(a) * * *

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

* * * * *

3. Section 1421.5555, paragraph (b) is revised as follows:

§ 1421.5555 Exceptions.

* * * * *

(b) A warehouseman who has a net worth of at least $50,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

4. The heading to § 1421.5558 is revised and § 1421.5558 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 1421.5558 Contract and Application and Inspection Fees.

(a) * * *

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(b) The amount of the contract and application and inspection fees shall be determined and announced annually by the Executive Vice President, CCC.

Signed at Washington, D.C., on March 19, 1986.

Milt J. Hertz,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-6388 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AGL-4]

Proposed Establishment of Transition Area—Paxton, IL

Correction

In FR Doc. 86-5204 beginning on page 8334 in the issue of Tuesday, March 11, 1986, make the following correction: On page 8335, in the third column, in the fifth line of the amendment to § 71.181, "radial" is misspelled.

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 51191-5191]

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NOAA proposes to establish procedures to license operators of private land remote-sensing space systems in the United States under Title IV of the Land Remote-Sensing Commercialization Act of 1984, Pub. L. 98-365, 15 U.S.C. 2401 *et seq.* (the Act). NOAA believes the procedures in this Notice of Proposed Rulemaking (NPR) adequately protect the basic U.S. interests articulated by the Act, promoting national security, fulfilling international obligations, including the supervision required by Article VI of the Outer Space Treaty, and ensuring that access to unenhanced data is provided on a non-discriminatory basis. At the same time, the procedures in this NPR are intended to facilitate licensing and thereby aid in the development of a U.S. land-remote sensing industry.

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Interested persons are invited to review the NPR and to submit comments on the proposed regulations.

DATES: Comments on the NPR must be received by May 23, 1986.

ADDRESSES: Comments should be sent to Peggy Harwood, NOAA, National Environmental Satellite, Data, and Information Service, FB-4, Room 2051, Washington, D.C. 20233. Phone (301) 763-4522.

FOR FURTHER INFORMATION CONTACT: Peggy Harwood at the address and telephone given above or John Milholland, NOAA, Office of General Counsel at (202) 254-7512.

SUPPLEMENTARY INFORMATION: Title IV of the Act requires that any person subject to the jurisdiction or control of the United States who intends to operate a private remote-sensing space system must obtain a license from the Secretary of Commerce. The authority to issue licenses has been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and redelegated to the Assistant Administrator for the National Environmental Satellite, Data, and Information Service (NESDIS).

The Act sets forth detailed criteria for licensing decisions, and further refinement of the criteria by regulation is not generally necessary or useful. where, however, the Act is less specific, e.g., as it relates to national security considerations, NESDIS believes that further refinement is not feasible at this time as discussed later under section III. C.

Consequently, the NPR sets forth primarily procedural requirements for obtaining a license. NESDIS intends to establish as simple a process as possible consistent with ensuring that its review of applications will protect the limited U.S. interests articulated by the Act.

I. The Application Process (Subpart B)

Licensing procedures involve the following stages:

A. Pre-application consultation (Section 960.4)

Consultation is discretionary on the part of the applicant but early communication is encouraged to promote cooperation and avoid delay. If prospective applicants request consultation, NESDIS must comply; the address for filing a written request is provided.

B. Filing Applications (Section 960.5 & 960.6)

No particular form of application is specified, but any application must be signed by the appropriate official (section 960.5(b)) and must contain the information specified in section 960.6. This section requires only information strictly necessary to make the determinations required by section 401(b) of the Act and § 960.11 of the regulations. These determinations relate primarily to national security interests and international obligations and to ensuring that unenhanced data is available on a non-discriminatory basis. Section 960.8 sets forth procedures for treating the information submitted as confidential to the extent permitted under the Freedom of Information Act.

C. Initial Agency Review (Section 960.9)

NESDIS and the relevant federal agencies will have up to 21 days to review an application for sufficiency of information and request additional detail if needed. The Act provides for a review period of 120 days from receipt for a complete application (section 960.9(d)).

D. Insurance of License (Sections 960.10 thru 960.12)

It is anticipated that the Assistant Administrator will make a determination "as soon as practicable" within the statutory time limit of 120 days from receipt of a complete application. (section 960.10(a)). The criteria for approval reflect the primary concerns of the Act, national security, international obligations, and non-discriminatory access to unenhanced data. The provisions contained in the license itself are dictated in large part by the requirements of section 402(b) of the Act.

II. Enforcement Procedures (Subpart C)

Section 403(a) of the Act gives the Administrator various powers to ensure compliance with the Act, these regulations and the license. These powers include the power to modify, suspend, or terminate the license, impose civil penalties up to $10,000 per violation, and seize objects, records or reports when there is probable cause to believe they were, are, or are likely to be used in a violation. Section 402(a) of the Act entitles the licensee to an adjudication on the record including an agency hearing with respect to any such adverse action.

NOAA has developed detailed procedures generally applicable to a wide range of NOAA enforcement programs. These procedures, set forth in 15 CFR Part 904, are incorporated in relevant part in these regulations. The procedures for the assessment of civil penalties (15 CFR 904 subpart B) and the procedures for holding agency hearings (15 CFR 904 subpart C) are incorporated in full. Section 403(a)(1) of the Act authorizes the Administrator, after notifying the licensee, to require immediate termination of activities under a license if he or she determines that the licensee "has substantially failed" to comply with the Act, these regulations, or the terms and conditions of the license. The NOAA-wide permit sanction procedures in 15 CFR 904 subpart D are followed in principle, but not detail, in section 960.14 of these regulations.

Section 403(a)(2) of the Act authorizes the Administrator to inspect the equipment, facilities, or financial records of a licensee; setion 402(b)(7) specifies that the licensee must agree to such inspection as a condition of the license. Under section 960.12(e) of these regulations inspection may take place either prior to launch to verify that the specifications of the licensed system conform to those in the application, or during operations under the license to ensure compliance with it. Such inspection can occur at "any reasonable time."

III. Specific Issues

Reviewers may wish to address the following issues raised by the NPR.

A. Scope of Regulations

Section 402 of the Act requires that persons "subject to the jurisdiction or control of the United States" must obtain a license under Title IV of the Act in order to operate a private remote-sensing space system. The Act does not apply to foreign entities operating solely from foreign territory. There may be instances, however, where foreign operators will carry out some activities in the U.S. or in conjunction with U.S. entities, such as using U.S. launch vehicles. Section 960.2 of the regulations provides guidance on the type of activities which could subject a non-U.S. operator to U.S. jurisdiction or control for licensing purposes under the Act. The basic principle behind this section is that foreign companies competing with U.S. firms in the remote-sensing market should do so on an equal basis. On the other hand, the U.S. generally avoids extra-territorial application of its laws. Furthermore, trying to impose restrictions on foreign operators to ensure equality with U.S. firms could discourage such operators from dealing with U.S. companies, particularly where the foreign operator intends to sell data primarily in foreign markets. U.S. policy is not promoted by insisting on unenforceable licensing conditions or on losing U.S. business without any

practical gain. This section attempts to balance these competing interests.

It may be noted that use of a U.S. launch vehicle or platform does not by itself require a license but is a factor to be considered with other U.S.-based activities.

B. Value-Added Activities

Section 402(b)(9) of the Act requires an operator who intends to engage in "value-added activities" to notify NESDIS and provide a plan to ensure non-discriminatory access to the "unenhanced data" generated by the system. This section directs NESDIS to define what constitutes a "value-added activity" by regulation.

Under section 104(4) of the Act "unenhanced data" includes both unprocessed and minimally processed signals and film products. Section 104(4) defines some processes that are "minimal" (rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response) and some that are not (conclusions, manipulations, or calculations derived from signals or film products or the combination of the signals or film products with other data or information).

Clearly, any "minimal processing" does not constitute a "value-added activity" even though it may add to the usefulness of the product and even increase its market value. Conversely, what may be called "enhancement activities" generally are "value-added activities" although presumably there is some distinction or there would be no need for further definition.

The regulations distinguish between activities which alter or replace the "measured values" of "unenhanced data" and those which don't. "Measured values" are simply the numbers, shades, or colors assigned in some standardized system to represent the amount of radiation sensed in spectral band. Increasing the marketability alone, for example by enlarging or reducing a photo image, is not a "value-added activity".

Finally, the regulations confirm that private operators who intend to engage in remote-sensing activities to further their own commercial activities, such as oil exploration or timber management, must ensure non-discriminatory access to the useful unenhanced data that they generate. The definition specifies that an operator can engage in a "value-added activity" even though no resale is contemplated. Consequently, such operators must furnish the required plan and ensure equal access to the unenhanced data by other users (see also section 960.11(b)). This requirement is consistent with section 601(a) of the Act.

The Act defines in detail the elements of non-discriminatory access (Section 104(3)) and the regulations do not elaborate on these elements.

C. Further Definition of National Security and Foreign Policy Concerns

NESDIS recognizes that some prospective applicants may want greater certainty as to when NESDIS would deny or condition a license to protect national security or foreign policy interests. The relevant factors are reflected in the information requirements of section 960.6 but individual judgments are made in context affected by rapidly changing technology and must be made on a case-by-case basis.

D. Enforcement Procedures

In most cases the rights of licensees are fully defined by the procedures which have been developed by NOAA for its other regulatory programs. These procedures are contained in 15 CFR Part 904, the appropriate sections of which are incorporated in subpart C of these regulations.

A unique statutory authority not reflected in Part 904 is provided by section 403(a)(1) of the Act: the Administrator may immediately terminate activities under a license if he or she determines that the licensee has "substantially failed to comply with" the Act, these regulations, or the license. NESDIS does not further define what constitutes a "substantial" failure.

IV. Other Actions Associated With the Rulemaking

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The proposed regulations establish the procedures for licensing private operators of land remote-sensing space systems in accordance with the criteria established by the Act. The regulations will not result in any direct, or major indirect, economic or environmental effect. They are intended to promote the U.S. land remote-sensing industry by facilitating the licensing process and by ensuring that foreign companies competing with U.S. companies in the remote-sensing market do so on an equal basis to the maximum extent practicable.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This proposed rule is essentially procedural and establishes a process intended to minimize any adverse impact on any entity—large or small—which may need a license to operate a remote-sensing space system. Because of the large size and cost of land remote-sensing projects, small businesses are unlikely to be able to amass the capital necessary to enter the field. The only involvement of small business concerns is likely to be as contractors or subcontractors who do not require a license. The General Counsel of the Department of Commerce has, therefore, certified that this regulation will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act of 1980 (Pub. L. 96-511)

The regulations contain certain information requirements which have not been reviewed by the Office of Management and Budget. These information requirements are being reviewed at this time and comments on them should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce, NOAA. The regulations impose the minimal information requirements to allow informed decisions in implementing NOAA's licensing responsibilities under Title IV of the Act. Very few applications are expected.

D. National Environmental Policy Act

Publication of the proposed regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

V. Final Rules

NOAA will issue final rules after the comments received in response to the Notice have been evaluated.

List of Subjects in 15 CFR Part 960

Scientific equipment, Space transportation and exploration.

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Dated: November 18, 1985.

William P. Bishop,

Acting Assistant Administrator.

Accordingly, a new Part 960 of Title 15 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 960—PRIVATE LAND REMOTE-SENSING SPACE SYSTEMS

Subpart A—General

Sec.
960.1 Purpose.
960.2 Scope.
960.3 Definitions.

Subpart B—Application Process

960.4 Pre-application consultation.
960.5 General.
960.6 Information to be submitted with application.
960.7 Amendment, withdrawal, and termination of an application.
960.8 Confidentiality of information.
960.9 Review procedures.
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Authority: 15 U.S.C. 2401, et seq.

Subpart A—General

§ 960.1 Purpose.

These regulations establish the minimum practicable procedures and informational requirements to license and supervise the operation of a private remote-sensing space system under Title IV of the Land Remote-Sensing Commercialization Act of 1984 (The Act). They are intended to facilitate the development of private operational remote-sensing space systems in the United States while carrying out the purposes of the Act, which include in particular:

(a) To preserve and promote the national security of the United States;

(b) To ensure that data from private operational remote-sensing space systems will be sold on a non-discriminatory basis; and

(c) To fulfill the international obligations of the United States.

§ 960.2 Scope.

The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates a private remote-sensing space system either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person, affiliate, or subsidary is subject to the jurisdiction or control of the United States if such person is:

(a) A U.S. Citizen;

(b) A corporation, partnership, association or other entity organized or existing under the laws of the United States;

(c) Any other private space system operator having substantial connections with the United States or deriving substantial benefits from U.S. law that support its international operations. Relevant connections include using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this subsection.

Example 1. A non-U.S. corporation launches an operational remote-sensing space system using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no spacecraft command ground station in the U.S. although it has technicians and suppervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

Example 2. A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction or control and requires a license.

Example 3. A company's operation is the same as in Example 2 except that it launches its remote-sensing space system on a non-U.S. launch vehicle from foreign territory.

The company is still subject to U.S. jurisdiction or control and requires a license.

Where ground activities in the U.S. are less extensive than those described above, such as mere operation of a command and data acquisition facility or a small retail distribution outlet, the Administrator will decide on an individual basis whether the operator is subject to U.S. jurisdiction or control for purposes of Title IV. In such cases, the use of a U.S. launch vehicle and/or platform may be significant although such use alone is not a sufficient connection.

Interested persons with questions may request a formal, binding opinion from the Administrator concerning the application of these regulations to their operation. Informal opinions by private operators of launch vehicles or other government agencies should not be relied upon.

§ 960.3 Definitions.

For the purposes of these regulations, the following terms have the following meanings:

Act means the Land Remote-Sensing Commercialization Act of 1984 (Pub. L. 98–365, 15 U.S.C. 4201 *et seq.*);

Administrator means the Administrator of NOAA, or his designee;

Affiliate means any person: (a) Which owns or controls more than 5% interest in the applicant or licensee, or (b) which is under common ownership or control with the applicant or licensee;

Application means any written request submitted under this part for: (a) Issuance of a license for the operation of a private remote-sensing space system; (b) transfer or renewal of any such license; or (c) an amendment to any such license as a result of a substantial change in any of the specified terms and conditions of the license;

Basic data set means data collected by any licensed private remote-sensing space system that: (a) Has been selected to be maintained by the United States Government in a public archive, and (b) shall remain distinct from any inventory of data that a system operator may maintain for sales and for other purposes. Section 602 of the Act ("Archiving of Data") sets forth the Government's interest and criteria for determining the "basic data set;"

Experimental data means data collected by the United States Government in experimental remote-sensing programs;

Measured values mean the assigned numbers, shades or colors, which represent, in some standardized system, an amount of electromagnetic radiation sensed in a spectral band.

NESDIS means the National Environmental Satellite, Data, and Information Service;

NOAA means the National Oceanic and Atmospheric Administration;

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity organized or existing under the laws of any nation.

Remote-sensing space system means any instrument or device or combination thereof and any related ground based facilities capable of sensing the Earth's surface from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras shall not be considered remote-sensing space systems.

Subsidiary means an entity whose controlling interest is held by the applicant or licensee.

Unenhanced data means unprocessed or minimally processed signals or film products collected from a licensed remote-sensing space system. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or the combination of the signals or film products with other data or information.

Value-added activity means any activity that substantially changes the information content of the unenhanced data by altering or replacing the measured values of an unenhanced data product or by combining unenhanced signals or film products with other data or information. Converting assigned values from one unit of measurement to another does not constitute a value-added activity and increasing the marketability or the price of an unenhanced data product does not by itself constitute a value-added activity. The product derived may be for sale, for any other form of distribution, or for the internal use of the system operator activity.

Subpart B—Application Process

§ 960.4 Pre-application consultation.

(a) Applicants are encouraged to consult with NOAA and other relevant federal agencies at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation at the time a license application is being prepared may prove useful in defining informational requirements and in expediting review.

(b) *Consultation.* The Administrator shall consult upon request with any prospective applicant to assist the applicant in: (1) Properly preparing the application, and (2) contacting other Government agencies involved in the application review process in order to discuss the prospective application.

(c) *Request.* A prospective applicant who wishes to have a pre-application consultation should make such request in writing to the Assistant Administrator, National Environmental Satellite, Data, and Information Service, Washington, DC 20233.

§ 960.5 General.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Washington, DC 20233.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed as follows:

(1) For a corporation: By a principal executive officer at least at the level of vice-president.

(2) For a partnership or a sole proprietorship: by a general partner or proprietor, respectively; or

(3) For an association or other entity: by a principal executive officer.

(c) *Number of copies.* Eight (8) copies of each application must be submitted.

§ 960.6 Information to be submitted with application.

The following information on the applicant, and its affiliates and subsidiaries shall be provided by the applicant:

(a) The name, mailing address, telephone number and citizenship of the applicant and any affiliates or subsidiaries, and of each director or owner of greater than five (5) percent interest.

(b) A copy of the charter or instrument by which the applicant was formed and authorized to do business. If the applicant is a corporation its charter shall be certified by the Secretary of State or other appropriate authority of the jurisdiction in which incorporated.

(c) The name, address, and telephone number of a person upon whom service of all documents may be made.

(d) Adequate operational information regarding the applicant's remote-sensing space system on which to base review to ensure compliance with national security and international requirements including.

(1) The date of intended commencement of operations and the expected duration of such operations;

(2) The method of launch, and the name and location of the operator of the launch vehicle and the lanuch site;

(3) The range of orbits and altitudes requested for authorized operation;

(4) The range of spatial resolution or instantaneous field of view requested; and

(5) The spectral bands requested for authorized operation.

(e) The applicant's intended data acquisition and distribution plans, including:

(1) Plans for data transmission to the ground;

(2) Method of data distribution including scheduling plans and procedures;

(3) Location of major data distribution outlets;

(4) Data reproduction policy;

(5) Pricing policy;

(6) The names and addresses of any parties that will engage in the marketing of data on a contractual basis with the applicant, or its affiliates and subsidiaries; and

(7) Any other information necessary to satisfy the requirements of section 601 of the Act.

(f) Any plans that the applicant, or any affiliate or subsidiary may have for engaging in value-added activities, including a plan and pricing policy for ensuring non discriminatory access to unenhanced data.

(g) All existing or anticipated agreements regarding system operation between the applicant, its affiliates and subsidiaries, and any foreign nation, entity or consortium.

(h) Proposed method of disposition of any remote-sensing satellites owned or operated by the applicant.

In the case of an application for an amendment to an existing license, only modifications or additions to previously submitted information need be provided.

§ 960.7 Amendment, withdrawal, and termination of an application.

(a) If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is completed, the applicant must promptly file an amendment that contains the corrected or additional information. The applicant should follow the procedures specified in section 960.5 for an original filing.

(b) If the Administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Suspend the time deadlines prescribed in the Act and these regulations for processing the application, pending review of the amendment; or

(2) Require the applicant to submit a new license application.

(c) An applicant may withdraw an application at any time before the license application review is completed by delivering or mailing a written notice of withdrawal to the Administrator.

(d) The Administrator shall terminate review of a license application if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

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(2) The applicant, after written notice by the Administrator pursuant to § 960.9(c), does not provide adequate additional information to complete the application within the time stated in the written notice and the Administrator elects to disapprove the application under § 960.10(b).

§ 960.8 Confidentiality of information.

(a) Any person who submits information pursuant to this part, considered to be a trade secret, or commercial or financial information that is privileged or confidential, may request in writing that the information be given confidential treatment. Such request should:

(1) Be submitted at the time of submission of the information; and

(2) State the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurence of a certain event, or permanently).

(b) Information for which confidential treatment is requested must be clearly marked with a legend such as "Proprietary Information" or "Confidential Treatment Requested." Where such marking proves impracticable, a cover sheet containing such legend must be securely attached.

(c) If a request for confidential treatment is received after the information itself is received, NESDIS will try to associate the request with copies of the information, but cannot guarantee that such efforts will be effective.

(d) Any request for confidential treatment may include a written justification, stating why the information is a trade secret, or commercial or financial information that is privileged or confidential, and describing:

(1) The commercial or financial nature of the information;

(2) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(3) The nature and extent of the competitive harm that would result from public disclosure of the information;

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) Request for disclosure.

(1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the informtion, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person is strongly encouraged to deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statment is sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the fourth working day after being notified under paragraph (e)(3) of this section . Such statment may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the applicant file further information, analysis, or explanation.

(d) If the Administration requires further information under paragraph (c) of this section, the time limitations prescribed by sectin 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application. If an agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days agter receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the

Administrator shall decide the matter and serve notice of the decision on the applicant. This decison shall be considered final agency action.

§ 960.11 Criteria for approval or denial.

Before approving an application and issuing a license or an amendment to a license, the Administrator shall find in writing that:

(a) The licensee will operate the system in a manner consistent with national security and the international obligations of the U.S.;

(b) The licensee will make available unenhanced data to all potential users on a non-discriminatory basis in accordance with sections 104(3) and 601 of the Act and, if the licensee or any affiliate or subsidiary will engage in any value-added activities, the plan required by section 402(9)(B) of the Act clearly separates all such value-added activities, whether conducted by the license itself or by any affiliate or subsidiary, from other activities involved in operating the system and ensures that any unenhanced data generated by the system will be made available to all potential users on a non-discriminatory basis;

(c) The licensee will make available to the Administrator all unenhanced data which the Administrator may request for a basic data set pursuant to section 602 of the Act; and

(d) If the space system will utilize a space platform owned or operated by the licensee, the licensee has agreed to dispose of such platform in a satisfactory manner.

In making the findings required by paragraph (a) of this section, the Administrator shall be entitled to rely upon the written recommendations of the Departments of Defense and State described in § 960.9(e).

§ 960.12 Contents of license.

Each license issued by the Administrator for the operation of a remote-sensing space system shall specify:

(a) The name and address of the person to whom the license is being issued, and the name and address of the agent for service of documents, if different;

(b) The effective date of the license and its duration;

(c) The characteristics of the system approved, including specifically:

(1) The range of orbits and altitudes authorized for operation;

(2) The range of spatial resolution or instantaneous field of view authorized; and

(3) The spectral bands authorized.

(d) Terms and conditions necessary to ensure:

(1) Compliance with any national security concerns and any international obligations specified by the Departments of Defense and State respectively; and

(2) Adherence to the approved plans for the licensee to make unenhanced data available to all potential users on a nondiscriminatory basis;

(e) That the licensee will make available to the Administrator any data requested for a basic data set on reasonable terms and conditions;

(f) That the licensee will notify the Administrator of any agreement which it intends to enter into with any foreign nation or entity or any consortium involving a foreign nation or entity at least 30 days before concluding such an agreement;

(g) That the licensee will allow the Administrator or other appropriate federal official access at any reasonable time to any facility or site of the licensee or any contrator of the licensee:

(1) To verify that the space system conforms to representations made in the license applicaiton; or

(2) To monitor activities of the licensee under the license and ensure compliance with the terms of the license;

(h) That the licensee will surrender the license and terminate all operations immediately upon notification that the Administrator has determined under section 403(a)(1) of the Act that the licensee has substantially failed to comply with any condition listed in this section;

(i) If the space system will utilize a civilian U.S. Government platform, that the licensee will reach an agreement with the appropriate agency to reimburse the Government for all related costs and to ensure that the use of the platform will not interfere with the government's mission;

(j) Appropriate provisions governing the disposition of any space platforms owned or operated by the licensee, including at a minimum sufficient advance notification to the Administrator of such disposition to allow review and approval of the procedures proposed.

(k) The conditions that require an amendment of the licensee including any change:

(1) In ownership of the licensee;

(2) In citizenship of: The president, proprietor, or other chief executive officer of the licensee and, if the licensee is a corporation, the chairman of the board of directors, or if the licensee is a partnership, a general or limited partner;

(3) In the operations of the licensee that would result in sensing activities outside the range of orbits and altitudes, the range of spatial resolution or instantaneous field of vision, or the spectral bands approved under paragraph (c) of this section, except in case of an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote-sensing space system itself, in which cases the license shall attempt to obtain oral approval from the Administrator.

Subpart C—Enforcement Procedures

§ 960.13 General.

Section 403(a) of the Act authorizes the Administrator to take actions adverse to a licensee if the licensee fails to comply with the Act, these regulations, or any terms, conditions or restrictions in the license. These adverse actions are:

(a) License sanctions, including modification, suspension, and termination of any license;

(b) Civil penalties not to exceed $10,000 for each day of operation in violation of a license, regulation, or the Act; and

(c) Seizure of any object, record, or report if there is probable cause to believe that such object, record, or report is being or is likely to be used to commit a violation.

This subpart establishes uniform rules and procedures for these adverse actions.

§ 960.14 License sanctions.

(a) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, any regulation, or any license condition or restriction, the Administrator may issue the licensee a Notice of License Sanction (NOLS) proposing to:

(1) Revoke the license;

(2) Suspend the license for a specified period of time or until certain stated requirements are met, or both;

(3) Modify the license, to aid future enforcement efforts; or

(4) Terminate the license.

The NOLS will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, or license allegedly violated;

(iii) The nature and duration of the proposed sanction; and

(iv) The effective date of the sanction, which is 30 days after the date of the NOLS unless the Administrator requires

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immediate termination of some or all licensed activities under paragraph (c) or unless the licensee requests a hearing under paragraph (b) of this section.

The NOLS also may propose to assess a civil penalty in accordance with § 960.15.

(b) Within 30 days after receipt of the NOLS, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the Address specified in the NOLS. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) If the Administrator determines that the licensee has substantially failed to comply with any provision of the Act, these regulations, or with term, condition, or restriction of the license, the NOLS will include a finding to this effect and may require immediate termination of some or all licensed operations. Any request for a hearing under paragraph (b) of this section will not delay immediate termination under this paragraph.

§ 960.15 Civil penalties.

Section 403(a)(3) of the Act authorizes the Administrator to assess civil penalties of up to $10,000 for any violation of any requirement of the Act, these regulations or any term or condition of a license. Each day of operation in violation constitutes a separate violation. Such penalties will be assessed in accordance with the procedures set forth at 15 CFR Part 904, Subpart B.

§ 960.16 Seizure.

(a) If the Administrator determines that there is probable cause to believe that any object, record, or report was used, is being used or is likely to be used in violation of the Act, these regulations or the requirements of any license, the Administrator may seize any such item and issue the licensee a Notice of Seizure (NOS) containing:

(1) A description of the object, record, or report seized;

(2) A concise statement of the facts believed to show use or possible use in a violation; and

(3) A specific reference to the provisions of the Act, regulation, or license allegedly vilolated.

Within 30 days after receipt of a NOS, the licensee may request a hearing by serving a written and dated request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the notice. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C. For good cause shown, the Administrator may in his or her sole discretion return the seized item pending the outcome of the hearing.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 602]

LR-19-80

Unisex Annuity Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income. Questions have arisen concerning the gender distinction in the existing tables and the outdated mortality experience upon which those tables are based. These regulations would affect taxpayers receiving amounts as annuities under annuity, endowment, or life insurance contracts for which they have paid premiums or other consideration and provide them with the guidance needed to determine the amount includible in gross income with respect to such contracts. This document also contains proposed regulations relating to the computations necessary to determine the amount excludable from an employee's gross income by allocation of contributions when the actual employer contributions are not known. This document also proposes to remove certain regulations relating to defined benefit plans that provided benefits for employees who were either self-employed or a shareholder-employee.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 8, 1986. The amendments to §§ 1.72–4, 1.72–5, 1.72–6, 1.72–7, 1.72–9, and 1.72–11 are proposed to be effective on July 1, 1986, and to apply to amounts received as an annuity after June 30, 1986. In addition, the proposed amendments to § 1.72–6 include transitional rules applicable to amounts received under contracts in which an amount is invested before July 1, 1986. The amendments to § 1.403 (b)–1 (d)(4)(iv) are proposed to be effective for taxable years beginning after July 1, 1986. The removal of §§ 1.401(a)–18 and 1.401(j) –1 through –6 is proposed to be effective for plan years beginning after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing concerning the proposed amendments relating to the annuity tables to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-19-80], Washington, DC 20224.

Send comments and requests for a public hearing concerning IRC section 403(b) to Commissioner of Internal Revenue, Attention: CC:LR:T:EE-114-82, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

For further information concerning the proposed amendments relating to the annuity tables contact: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3238 (not a toll-free call).

For further information concerning IRC SECTIONS 401(a)(18), 401(j) or 403(b) CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T:EE-114-82). Telephone 202-566-3422 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602). The proposed amendments would update and gender-neutralize the annuity tables used to determine the exclusion ratio applicable to amounts received as annuities under annuity, endowment, or life insurance contracts. Section 72 permits a taxpayer to exclude from gross income that part of any amount received as an annuity which bears the same ratio to such amount as the investment in the contract as of the annuity starting date bears to the expected return under the contract as of such date. If the expected return depends in whole or in part on the life expectancy of one or more individuals, the statute requires that the expected return be computed with reference to actuarial tables prescribed by the Secretary of the Treasury. Soon after section 72 was enacted in 1954, the Secretary published regulations containing tables based on 1937 individual annuitant mortality and distinguished by gender. The effect of

this gender distinction is that women are not entitled to exclude from gross income as high a proportion of the amount received as an annuity as men of the same age.

Revised Annuity Tables

These proposed amendments provide new tables that eliminate the gender distinction and are based on more recent mortality experience. The proposed tables are based, as are the tables currently in effect, on individual annuitant mortality. The 1983 experience table used to produce the annuity tables proposed in this document was developed by the Society of Actuaries and reflects application of improvement factors to a 1973 individual-annuitant experience table. See Report of the Committee to Recommend a New Mortality Basis for Individual Annuity Valuation (Derivation of the 1983 Table a) Vol. XXXIII, Transactions of the Society of Actuaries 675, 708 (1981). In addition, the proposed unisex tables assume that the population mix of males and females at each age is the same as that of individual annuitants. The individual-annuitant gender mix reflected in the proposed tables is based on the same Society of Actuaries study.

The Service and Treasury would appreciate any comments on these proposed amendments that focus on whether the assumptions used to develop the tables are appropriate for determining life expectancies of taxpayers receiving amounts taxable under section 72, especially those taxpayers who can be expected to use the section 72 annuity tables (rather than, for example, the three-year recovery rule of section 72(d)) to compute an exclusion ratio under section 72(b) and 72(c). In particular, the Service and Treasury would be interested in data, undifferentiated by gender, on the mortality experience of taxpayers receiving amounts to which section 72 applies.

Section 72 Transitional Rule

The exclusion ratio with respect to amounts received as an annuity after June 30, 1986, would generally be computed using the updated annuity tables proposed in this document. Two transitional rules are provided, however. The first applies to amounts received under a contract in which no amount was invested after June 30, 1986, and provides that the tables in the existing regulations would apply. The second transitional rule applies to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986. The second transitional rule is optional and would allow a taxpayer either to compute one exclusion ratio using the updated annuity tables, or to compute separate exclusion ratios with respect to the amounts invested in the contract before July 1, 1986, and the amounts invested after June 30, 1986. If the separate computation option were chosen, the tables in the existing regulations would be used to compute the exclusion ratio with respect to portions of the payments under the contract attributable to amounts invested in the contract before July 1, 1986, and the updated tables would be used to compute the exclusion ratio with respect to portions of payments under the contract attributable to amounts invested after June 30, 1986. The amount excludable from gross income would be the sum of the amounts determined by applying the two exclusion ratios to the amount received as an annuity.

The regulations provide that the transitional rules do not apply to an annuity contract with an annuity starting date occurring after June 30, 1986, if the contract provides, at the option of the annuitant or of any other person, for any form of payment or settlement that permits receipt of amounts under the contract in a form other than a life annuity. The transitional rules may not be used, for example, if the contract permits the taxpayer to withdraw the investment in the contract before the annuity starting date, to receive a lump sum in full discharge of the obligation under the contract, or to receive an annuity for a period certain (without regard to life expectancy) or its substantial equivalent. In effect, a contract that provides for these options is treated for purposes of the transitional rules as if the entire investment in the contract were made on the annuity starting date. Thus, the taxpayer must apply the updated, gender-neutral annuity tables proposed in this document to the entire investment in such a contract if the annuity starting date occurs after June 30, 1986.

Removal of Section 401(j) Regulations

Sections 401(a)(18) and 401(j) provided requirements that applied to defined benefit plans that provided benefits for employees who were either self-employed, within the meaning of section 401(c)(1), or a shareholder-employee within the meaning of former section 1379(d). Sections 237(b) and 238(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) repealed these sections. Under section 241(a) of TEFRA these amendments were effective for plan years beginning after 1983. The regulation sections under these repealed Code sections (§§ 1.401(a)–18 and 1.401(j)–6) are, therefore, proposed to be removed from the Code of Federal Regulations. Thus, for plan years beginning after December 31, 1983, these defined benefit plans would no longer be subject to these benefit limitations. These sections, and the regulations would, however, continue to apply to determine whether plan benefits satisfied the requirements for plan years beginning prior to January 1, 1984.

Amendment of Section 403(b) Regulations

Section 1.403 (b)–1 (d)(4) provides the computations necessary to determine the amount excludable from an employee's gross income under section 403(b) when the actual employer contributions made on behalf of an employee to a defined benefit plan are not known. The tables in that section have been removed and gender-neutral tables inserted in lieu thereof. The new tables use an interest rate of 6 percent and the mortality table found in Treas. Reg. § 20.2031–7 of the Estate Tax Regulations. Accordingly, Rev. Rul. 67–78, 1967–1 C.B. 94, which supplemented Table I at § 1.403 (b)–1 (d)(4)(iv), is made obsolete. The new tables are proposed to be effective for taxable years beginning after May 23, 1986.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

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notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of the regulations under section 72 is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the section 401 and 403 regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1 and 602 are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.72–4, 1.72–5, 1.72–6, 1.72–7, 1.72–9, and 1.72–11 also issued under 26 U.S.C. 72(c).

Par. 2. Section 1.72–4 is amended by revising paragraphs (a), (d), and (e) to read as follows:

§ 1.72–4 Exclusion ratio.

(a) *General rule.* (1) (i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (*a*) certain employee annuities described in section 72(d) and § 1.72–13, or (*b*) certain annuities described in section 72(o) and § 1.122–1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72–6 by the expected return under such contract as found under § 1.72–5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72–2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72–6. In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the exclusion ratio for purposes of this paragraph (a) is determined in accordance with § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(i).

(ii) The exclusion ratio for the particular contract is then applied to the total amount received as an annuity during the taxable year by each recipient. See, however, paragraph (e)(3) of § 1.72–5. Any excess of the total amount received as an annuity during the taxable year over the amount determined by the application of the exclusion ratio to such total amount shall be included in the gross income of the recipient for the taxable year of receipt.

(2) The principles of subparagraph (1) may be illustrated by the following example:

Example. Taxpayer A purchased an annuity contract providing for payments of $100 per month for a consideration of $12,650. Assuming that the expected return under this contract is $16,000 the exclusion ratio to be used by A is $12,650–16,000 or 79.1 percent (79.06 rounded to the nearest tenth). If 12 such monthly payments are received by A during his taxable year, the total amount he may exclude from his gross income in such year is $949.20 ($1,200x79.1 percent). The balance of $250.80 ($1,200 less $949.20) is the amount to be included in gross income. If A instead received only five such payments during the year, he should exclude $395.50 (500x79.1 percent) of the total amounts received.

For an example of the computation of the exclusion ration in cases where two annuity elements are acquired for a single consideration, see paragraph (b)(2) of § 1.72–6.

(3) The exclusion ratio shall be applied only to amounts received as an annuity within the meaning of that term under paragraph (b) (2) and (3) of § 1.72–2. Where the periodic payments increase in amount after the annuity starting date in a manner not provided by the terms of the contract at such date, the portion of such payments representing the increase is not an amount received as an annuity. For the treatment of amounts not received as an annuity, see section 72(e) and § 1.72–11. For special rules where paragraph (b)(3) of § 1.72–2 applies to amounts received, see paragraph (d)(3) of this section.

(4) After an exclusion ratio has been determined for a particular contract, it shall be applied to any amounts received as an annuity thereunder unless or until one of the following occurs:

(i) The contract is assigned or transferred for a valuable consideration (see section 72(g) and paragraph (a) of § 1.72–10);

(ii) The contract matures or is surrendered, redeemed, or discharged in accordance with the provisions of paragraph (c) or (d) of § 1.72–11;

(iii) The contract is exchanged (or is considered to have been exchanged) in a manner described in paragraph (e) of § 1.72–11.

* * * * *

(d) *Exceptions to the general rule.* (1) Where the provisions of section 72 would otherwise require an exclusion ratio to be determined, but the investment in the contract (determined under § 1.72–6) is an amount zero or less, no exclusion ratio shall be determined and all amounts received under such a contract shall be includible in the gross income of the recipient for the purposes of section 72.

(2) Where the investment in the contract is equal to or greater than the total expected return under such contract found under § 1.72–5, the exclusion ratio shall be considered to be 100 percent and all amounts received as an annuity under such contract shall be excludable from the recipient's gross income. See, for example, paragraph (f)(1) of § 1.72–5. In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(2) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(ii).

(3)(i) If a contract provides for payments to be made to a taxpayer in the manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be considered to be equal to the expected return under such contract and the resulting exclusion ratio (100%) shall be applied to all amounts received as an annuity under such contract. For any taxable year, payments received under such a contract shall be considered to be amounts received as an annuity only to the extent that they do not exceed the portion of the investment in the contract which is properly allocable to that year and hence excludable from gross income as a return of premiums or other consideration paid for the contract. The portion of the investment in the contract which is properly allocable to any taxable year shall be determined by dividing the investment in the contract (adjusted for any refund feature in the manner described in paragraph (d) of § 1.72–7) by the applicable multiple (whether for a term certain, life, or lives) which would otherwise be used in determining the expected return for such a contract under § 1.72–5. The multiple shall be adjusted in accordance with the provisions of the table in paragraph (a)(2) of § 1.72–5, if any adjustment is necessary, before making the above computation. If payments are to be made more frequently than annually and the number of payments to be made in the taxable year in which the annuity begins are less than the number of payments to be made each year thereafter, the amounts considered received as an annuity (as otherwise determined under this subdivision) shall not exceed, for such taxable year (including a short taxable year), an amount which bears the same ratio to the portion of the investment in the contract considered allocable to each taxable year as the number of payments to be made in the first year bears to the number of payments to be made in each succeeding year. Thus, if payments are to be made monthly, only seven payments will be made in the first taxable year, and the portion of the investment in the contract allocable to a full year of payments is $600, the amounts considered received as an annuity in the first taxable year cannot exceed $350 ($600 × 7/12). See subdivision (iii) of this subparagraph for an example illustrating the determination of the portion of the investment in the contract allocable to one taxable year of the taxpayer.

(ii) If subdivision (i) of this subpargraph applies to amounts received by a taxpayer and the total amount of payments he receives in a taxable year is less than the total amount excludable for such year under subdivision (i) of this subparagraph, the taxpayer may elect, in a succeeding taxable year in which he receives another payment, to redetermine the amounts to be received as an annuity during the current and and succeeding taxable years. This shall be computed in accordance with the provisions of subdivision (i) of this subparagraph except that:

(*a*) The difference between the portion of the investment in the contract allocable to a taxable year, as found in accordance with subdivision (i) of this subparagraph, and the total payments actually received in the taxable year prior to the election shall be divided by the applicable life expectancy of the annuitant (or annuitants), found in accordance with the appropriate table in § 1.72–9 (and adjusted in accordance with paragraph (a)(2) of § 1.72–5), or by the remaining term of a term certain annuity, computed as of the first day of the first period for which an amount is received as an annuity in the taxable year of the election; and

(*b*) The amount determined under (*a*) of this subdivision shall be added to the portion of the investment in the contract allocable to each taxable year (as otherwise found). To the extent that the total periodic payments received under the contract in the taxable year of the election or any succeeding taxable year does not equal this total sum, such payments shall be excludable from the gross income of the recipient. To the extent such payments exceed the sum so found, they shall be fully includable in the recipient's gross income.

See subdivision (iii) of this subparagraph for an example illustrating the redetermination of amounts to be received as an annuity and subdivision (iv) of this subparagraph for the method of making the election provided by this subdivision.

(iii) The application of the principles of paragraph (d)(3) (i) and (ii) of this section may be illustrated by the following example:

Example. Taxpayer A, a 64 year old male, files his return on a calender year basis and has a life expectancy of 15.6 years on June 30, 1954, the annuity starting date of a contract to which § 1.72–2(b)(3) applies and which he purchased for $20,000. The contract provides for variable annual payments for his life. He receives a payment of $1,000 on June 30, 1955, but receives no other payment until June 30, 1957. He excludes the $1,000 payment from his gross income for the year 1955 since this amount is less than $1,324.50, the amount determined by dividing his investment in the contract ($20,000) by his life expectancy adjusted for annual payments, 15.1 (15.6–0.5), as of the original annuity starting date. Taxpayer A may elect, in his return for the taxable year 1957, to redetermine amounts to be received as an annuity under his contract as of June 30, 1956. For the purpose of determining the extent to which amounts received in 1957 or thereafter shall be considered amounts received as an annuity) to which a 100 percent exclusion ratio shall apply) he shall add $118.63 to the $1,324.50 originally determined to be receivable as an annuity under the contract, making a total of $1,443.13. This is determined by dividing the difference between what was excludable in 1955 and 1956, $2,649 (2 × $1,324.50) and what he actually received in those years ($1,000) by his life expectancy adjusted for annual payments, 13.9 (14.4–0.5), as of his age at his nearest birthday (66) on the first day of the first period for which he received an amount as an annuity in the taxable year of election (June 30, 1956). The result, $1,443.13, is excludable in that year and each year thereafter as an amount received as an annuity to which the 100% exclusion ratio applies. It will be noted that in this example the taxpayer received amounts less than the excludable amounts in two successive years and deferred making his election until the third year, and thus was able to accumulate the portion of the investment in the contract allocable to each taxable year to the extent he failed to receive such portion in both years. Assuming that he received $1,500 in the taxable year of his election, he would include $56.87 in his gross income and exclude $1,443.13 therefrom for that year.

(iv) If the taxpayer chooses to make the election described in subdivision (ii) of this subparagraph, he shall file with his return a statement that he elects to make a redetermination of the amounts excludable from gross income under his annuity contract in accordance with the provisions of paragraph (d)(3) of § 1.72–4. This statement shall also contain the following information:

(*a*) The original annuity starting date and his age on that date,

(*b*) The date of the first day of the first period for which he received an amount in the current taxable year,

(*c*) The investment in the contract originally determined (as adjusted for any refund feature), and

(*d*) The aggregate of all amounts received under the contract between the date indicated in (*a*) of this subdivision and the day after the date indicated in (*b*) of this subdivision to the extent such amounts were excludable from gross income.

He shall include in gross income any amounts received during the taxable year for which the return is made in accordance with the redetermination made under this subparagraph.

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(v) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(3) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iii). This application may be illustrated by the following example:

Example. B, a male calendar year taxpayer, purchases a contract which provides for variable annual payments for life and to which § 1.72–2(b)(3) applies. The annuity starting date of the contract is June 30, 1990, when B is 64 years old. B receives a payment of $1,000 on June 30, 1991, but receives no other payment until June 30, 1993. B's total investment in the contract is $25,000. B's pre-July 1986 investment in the contract is $12,000. If B makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amounts received as an annuity and excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. In the separate computations, B first determines the applicable portions of the total payment received which are allocable to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The portion of the payment received allocable to the pre-July 1986 investment in the contract is $480 ($12,000/$25,000 × $1,000). The portion of the payment received allocable to the post-June 1986 investment in the contract is $520 ($13,000/$25,000 × $1,000).

Second, B determines the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract allocable to the taxable year by dividing the pre-July 1986 and post-June 1986 investments in the contract by the applicable life expectancy multiple. The life expectancy multiple applicable to pre-July 1986 investment in the contract is B's life expectancy as of the original annuity starting date adjusted for annual payments and is determined under Table I of § 1.72–9 (15.1 (15.6–0.05)). The life expectancy multiple applicable to post-June 1986 investment in the contract is determined under Table V of § 1.72–9 (20.3 (20.8–0.5)). Thus, the pre-July 1986 investment in the contract allocable to each taxable year is $794.70 ($12,000–15.1), and the post-June 1986 investment in the contract so allocable is $640.39 ($13,000–20.3). Because the applicable portions of the total payment received in 1991 under the contract ($480 allocable to the pre-July 1986 investment in the contract and $520 allocable to the post-June 1986 investment in the contract) are treated as amounts received as an annuity and are excludable from gross income to the extent they do not exceed the portion of the corresponding investment in the contract allocable to 1991 ($794.70 Pre-July 1986 investment in the contract and $640.39 post-June 1986 investment in the contract), the entire amount of each applicable portion of the total payment is excludable from gross income. B may elect, in the return filed for taxable year 1993, to redetermine amounts to be received as an annuity under the contract as of June 30, 1992. The extent to which the amounts received in 1993 or thereafter shall be considered amounts received as an annuity is determined as follows:

Pre-July 1986 investment in the contract allocable to taxable years 1991 and 1992 ($794.70 × 2)	$1,589.40
Less: Portion of total payments allocable to pre-July 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	480.00
	1,109.40
Divided by: Life expectancy multiple applicable to pre-July 1986 investment in the contract for B, age 66 (14.4—0.5)	13.9
	79.81
Plus: Amount originally determined with respect to pre-July 1986 investment in the contract	794.70
Pre-July 1986 amount	874.51
Post-June 1986 investment in the contract allocable to taxable years 1991 and 1992 ($640.39 × 2)	$1,280.78
Less: Portion of total payments allocable to post-June 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	520.00
	760.78
Divided by: Life expectancy multiple applicable to post-June 1986 investment in the contract for B, age 66 (19.2—0.5)	18.7
	40.68
Plus: Amount originally determined with respect to post-June 1986 investment in the contract	640.39
Post-June 1986 amount	681.07

(vi) The method of making an election to perform the separate computations illustrated in paragraph (d)(3)(v) of this section is described in § 1.72–6(d)(6).

(e) *Exclusion ratio in the case of two or more annuity elements acquired for a single consideration.* (1)(i) Where two or more annuity elements are provided under a contract described in paragraph (a)(2) of § 1.72–2, an exclusion ratio shall be determined for the contract as a whole and applied to all amounts received as an annuity under any of the annuity elements. To obtain this ratio, the investment in the contract determined in accordance with § 1.72–6 shall be divided by the aggregate of the expected returns found with respect to each of the annuity elements in accordance with § 1.72–5. For this purpose, it is immaterial that payments under one or more of the annuity elements involved have not commenced at the time when an amount is first received as an annuity under one or more of the other annuity elements.

(ii) The exclusion ratio found under subdivision (i) of this subparagraph does not apply to:

(*a*) An annuity element payable to a surviving annuitant under a joint and survivor annuity contract to which section 72(i) and paragraphs (b)(3) and (e)(3) of § 1.72–5 apply, or to

(*b*) A contract under which one or more of the constituent annuity elements provides for payments described in paragraph (b)(3) of § 1.72–2.

For rules with respect to a contract providing for annuity elements described in (*b*) of this subdivision, see subparagraph (2) of this paragraph.

(2) If one or more of the annuity elements under a contract described in paragraph (a)(2) of § 1.72–2 provides for payments to which paragraph (b)(3) of § 1.72–2 applies:

(i) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does not apply, an exclusion ratio shall be determined by dividing the portion of the investment in the entire contract which is properly allocable to all such elements (in the manner provided in paragraph (b)(3)(ii) of § 1.72–6) by the aggregate of the expected returns thereunder and such ratio shall be applied in the manner described in subdivision (i) of subparagraph (1); and

(ii) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the entire contract shall be reduced by the portion thereof found in subdivision (i) of this subparagraph and the resulting amount shall be used to determine the extent to which the aggregate of the payments received during the taxable year under all such elements is excludable from gross income. The amount so excludable shall be allocated to each recipient under such elements in the same ratio that the total of payments he receives each year bears to the total of the payments received by all such recipients during the year. The exclusion ratio with respect to the amounts so allocated shall be 100 percent. See paragraph (f)(2) of § 1.72–5 and paragraph (b)(3) of § 1.72–6.

(iii) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (e) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iv).

Par. 3. Section 1.72–5 is amended by revising paragraphs (a), (b), and (e), and

adding a new paragraph (g) to read as follows:

§ 1.72–5 Expected return.

(a) *Expected return for but one life.* (1) If a contract to which section 72 applies provides that one annuitant is to receive a fixed monthly income for life, the expected return is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table I or V (whichever is applicable) of § 1.72–9 under the age (as of annuity starting date) and, if applicable, sex of the measuring life (usually the annuitant's). Thus, where a male purchases a contract before July 1, 1986, providing for an immediate annuity of $100 per month for his life and, as of the annuity starting date (in this case the date of purchase), the annuitant's age at his nearest birthday is 66, the expected return is computed as follows:

Monthly payment of $100×12 months equals annual payment of	$1,200
Multiple shown in Table 1, male, age 66	14.4
Expected return (1,200×14.4)	17,280

If, however, the taxpayer had purchased the contract after June 30, 1986, the expected return would be $23,040, determined by multiplying 19.2 (multiple shown in Table V, age 66) by $1,200.

(2) (i) If payments are to be made quarterly, semiannually, or annually, an adjustment of the applicable multiple shown in Table 1 or V (whichever is applicable) may be required. A further adjustment may be required where the interval between the annuity starting date and the date of the first payment is less than the interval between future payments. Neither adjustment shall be made, however, if the payments are to be made more frequently than quarterly. The amount of the adjustment, if any, is to found in accordance with the following table:

If the number of whole months from the annuity starting date to the first payment date is—	0-1	2	3	4	5	6	7	8	9	10	11	12
And the payments under the contract are to be made:												
Annually	+0.5	+0.4	+0.3	+0.2	+0.1	0	0	−0.1	−0.2	−0.3	−0.4	−0.5
Semiannually	+.2	+.1	0	0	−.1	−.2						
Quarterly	+.1	0	−.1									

Thus, for a male, age 66, the multiple found in Table I, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 14.5 (14.4+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 14.2 (14.4−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 14.9 (14.4+0.5). If the annuitant in the example shown in subparagraph (1) of this paragrpah were to receive an annual payment of $1,200 commencing 12 full months after his annuity starting date, the amount of the expected return would be $16,680 ($1,200×13.9 [14.4−0.5]). Similarly, for an annuitant, age 50, the multiple found in Table V, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 33.2 (33.1+0.1); for semi-annual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 32.9 (33.1−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 33.6 (33.1+0.5).

(ii) Notwithstanding the table in subdivision (i) of this subparagraph, adjustments of multiples for early or other than monthly payments determined prior to February 19, 1956, under the table prescribed in paragraph 1(b)(4) of T.D. 6118 (19 FR 9897, C.B. 1955–1, 699), approved December 30, 1954, need not be redetermined.

(3) If the contract provides for fixed payments to be made to an annuitant until death or until the expiration of a specified limited period, whichever occurs earlier, the expected return of such temporary life annuity is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table IV or VIII (whichever is applicable) of § 1.72–9 for the age (as of the annuity starting date) and, if applicable, sex of the annuitant and the nearest whole number of years in the specified period. For example, if a male annuitant, age 60 (at his nearest birthday), is to receive $60 per month for five years or until he dies, whichever is earlier, and there is no post-June 1986, investment in the contract, the expected return under such a contract is $3,456, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720
Multiple shown in Table IV for male, age 60, for term of 5 years	4.8

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Expected return for 5 year temporary life annuity of $720 per year ($720×4.8)	$3,456

If the annuitant purchased the same contract after June 30, 1986, the expected return under the contract would be $3,528, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720.00
Multiple shown in Table VIII for annuitant, age 60, for term of 5 years	4.9
Expected return for 5-year temporary life annuity of $720 per year ($720×4.9)	$3,528.00

The adjustment provided by subparagraph (2) of this paragraph shall not be made with respect to the multiple found in Table IV or VIII (whichever is applicable).

(4) If the contract provides for payments to be made to an annuitant for the annuitant's lifetime, but the amount of the annual payments is to be decreased after the expiration of a specified limited period, the expected return is computed by considering the contract as a combination of a whole life annuity for the smaller amount plus a temporary life annuity for an amount equal to the difference between the larger and the smaller amount. For example, if a male annuitant, age 60, is to receive $150 per month for five years or until his earlier death, and is to receive $90 per month for the remainder of his lifetime after such five years, the expected return is computed as if the annuitant's contract consisted of a whole life annuity for $90 per month plus a five year temporary life annuity of $60 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table I for male, age 60	18.2
Expected return for whole life annuity of $1,080 per year	$19,656
Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,456
Total expected return	$23,112

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $29,664, computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table V for annuitant, age 60	24.2
Expected return for whole life annuity of $1,080 per year	$26,136
Plus: Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,528
Total expected return	$29,664

If payments are to be made quarterly, semiannually, or annually, an appropriate adjusment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(5) If the contract described in subparagraph (4) of this paragraph provided that the amount of the annual payments to the annuitant were to be increased (instead of decreased) after the expiration of a specified limited period, the expected return would be computed as if the annuitant's contract consisted of a whole life annuity for the larger amount minus a temporary life annuity for an amount equal to the difference between the larger and smaller amount. Thus, if the annuitant described in subparagraph (4) of this paragraph were to receive $90 per month for five years or until his earlier death, and to receive $150 per month for the remainder of his lifetime after such five years, the expected return would be computed by subtracting the expected return under a five year temporary life annuity of $60 per month from the expected return under a whole life annuity of $150 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $150×12 months equals annual payment of	$1,800
Multiple shown in Table 1 (male, age 60)	18.2
Expected return for annuity for whole life of $1,800 per year	$32,760
Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3))	$3,456
Net expected return	$29,304

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $40,032, computed as follows:

Monthly payments of $150×12 months equals annual payments of	$1,800
Multiple shown in Table V (age 60)	24.2
Expected return for annuity for whole life of $1,800 per year	$43,560
Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,528
Net expected return	$40,032

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annunity should be made in accordance with subparagraph (2) of this paragraph.

(b) *Expected return under joint and survivor and joint annunities.* (1) In the case of a joint and survivor annuity contract involving two annuitants which provides the first annuitant with a fixed monthly income for life and, after the death of the first annuitant, provides an identical monthly income for life to a second annuitant, the expected return shall be determined by multiplying the total amount of the payments to be received annually by the multiple obtained from Table II or VI (whichever is applicable) of § 1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the living annuitants. For example, a husband purchases a joint and survivor annuity contract providing for payments of $100 per month for life and, after his death, for the same amount to his wife for the remainder of her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 expected return is computed as follows:

Monthly payments of $100×12 month equals annual payment of	$1,200
Multiple shown in Table II (male, age 70, female, age 67)	19.7
Expect return ($1,200×19.7)	$23,640

If the annuitants purchased the same contract after June 30, 1986, the expected return would be $26,400, computed as follows:

Monthly payments of $100×12 equals annual payment of	$1,200
Multiple shown in Table VI (ages 70, 67)	22.0
Expected return ($1,200×22.0)	$26,400

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table II or VI (whichever is applicable) should be made in accordance with paragraph (a)(2) of this section.

(2) If a contract of the type described in subparagraph (1) of this paragraph provides that a different (rather than an identical) monthly income is payable to the second annuitant, the expected return is computed in the following manner. The applicable multiple in Table II or VI (whichever is applicable) is first found as in the example in subparagraph (1) of this paragraph. The multiple applicable to the first annuitant is then found in Table I or V (whichever is applicable) as through the contract were for a single life annuity. The multiple from Table I or V is then subtracted from the multiple obtained from Table II or VI and the resulting mutiple is applied to the total payments to be received annually under the contract by the second annuitant. The result is the expected return with respect to the second annuitant. The portion of the expected return with respect to payments to be made during the first annuitant's life is then computed by applying the multiple found in Table I or V to the total annual payments to be received by such annuitant under the contract. The expected returns with respect to each of the annuitants separately are then aggregated to obtain the expected return under the entire contract.

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 per month for his life and, after his death, payments to his wife of $50 per month for her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. There is no post-June 1986 investment in the

Multiple from Table II (male, age 70, female, age 67)	19.7
Multiple from Table I (male, age 70)	12.1
Difference (multiple applicable to second annuitant)	7.6
Portion of expected return, second annuitant ($600×7.6)	$4,560
Portion of expected return, first annuitant ($1,200×12.1)	$14,520
Expected return under the contract	$19,080

The expected return thus found, $19,080, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract in this example is $14,310, the exclusion ratio is $14,310÷$19,080; or 75 percent. The amount excludable from each monthly payment made to the husband is 75 percent of $100, or $75, and the remaining $25 of each payment received by him shall be included in his gross income. After the husband's death, the amount excludable by the second annuitant (the surviving wife) would be 75 percent of each monthly payment of $50, or $37.50, and the remaining $12.50 of each payment shall be included in her gross income.

Example (2). If the same contract were purchased after June 30, 1986, the expected return would be $22,800, computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table V (age 70)	16.0
Difference (multiple applicable to second annuitant)	6.0
Portion of expected return, second annuitant (600×6.0)	$3,600
Plus: Portion of expected return, first annuitant ($1,200×16.0)	$19,200
Expected return under the contract	$22,800

If the investment in the contract is $14,310, the exclusion ratio is $14,310÷$22,800, or 62.8 percent. Thus, the husband would exclude $62.80 of each $100 payment received by him. After his death, his wife would exclude 62.8 percent, or $31.40 each $50 monthly payment.

Example (3). If amounts were invested in the same contract both before July 1, 1986, and after June 30, 1986, and the election described in § 1.72–6 (d) (6) were made, two exclusion ratios would be determined pursuant to § 1.72–6 (d). Assume that the husband's total investment in the contract is $14,310 and that $7,310 is the pre-July 1986 investment in the contract. The pre-July 1986 exclusion ratio would be $7,310÷$19,080, or 38.3 percent. The post-June 1986 exclusion ratio would be $7,000÷$22,800, or 30.7 percent. The husband would exclude $69.00 ($38.30 + $30.70) of the $100 monthly payment received by him. The remaining $31.00 would be included in his gross income. After the husband's death, the amount excludable by his wife would be $34.50 (38.3 percent of $50 plus 30.7 percent of $50). The remaining $15.50 would be included in gross income.

The same method is used if the payments are to be increased after the death of the first annuitant. Thus, if the payments to be made until the husband's death were $50 per month and his widow were to receive $100 per month thereafter until her death, the 7.6 multiple in example (1) above would be applied to the $100 payments, yielding an expected return with respect to this portion of the annuity contract of $9,120 ($1,200 × 7.6). An expected return of $7,260 ($600 × 12.1) would be obtained with respect to the payments to be made to the husband, yielding a total expected return under the contract of $16,380 ($9,120 plus $7,260). If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiplies found in Tables I and II or Tables V and VI (whichever are applicable) should be made in accordance with paragraph (a)(2) of this section.

(3) In the case of a joint and survivor annuity contract in respect of which the first annuitant died in 1951, 1952, or 1953, and the basis of the surviving annuitant's interest in the contract was determinable under section 113(a)(5) of the Internal Revenue Code of 1938, such basis shall be considered the "aggregate of premiums or other consideration paid" by the surviving annuitant for the contract. (For rules governing this determination, see 26 CFR (1939) 39.22(b)(2)–2 and 39.113(a)(5)–1 (Regulations 118).) In determining such an annuitant's investment in the contract, such aggregate shall be reduced by any amounts received under the contract by the surviving annuitant before the annuity starting date, to the extent such amounts were excludable from his gross income at the time of receipt. The expected return of the surviving annuitant in such cases shall be determined in the manner prescribed in paragraph (a) of this section, as though the surviving annuitant alone were involved. For this purpose, the appropriate multiple for the survivor shall be obtained from Table I as of the annuity starting date determined in accordance with paragraph (b)(2)(i) of § 1.72–4.

(4) If a contract involving two annuitants provides for fixed monthly payments to be made as a joint life annuity until the death of the first annuitant to die (in other words, only as long as both remain alive), the expected return under such contract shall be determined by multiplying the total of the annuity payments to be received annually under the contract by the multiple obtained from Table IIA or VIA (whichever is applicable) of § 1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants. If, however, payments are to be made under the contract quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table IIA or VIA shall be made in accordance with paragraph (a)(2) of this section.

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(5) If a joint and survivor annuity contract involving two annuitants provides that a specified amount shall be paid during their joint lives and a different specified amount shall be paid to the survivor upon the death of whichever of the annuitants is the first to die, the following preliminary computation shall be made in all cases preparatory to determining the expected return under the contract:

(i) From Table II or VI (whichever is applicable), obtain the multiple under both of the annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(ii) From Table IIA or VIA (whichever is applicable), obtain the multiple applicable to both annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(iii) Apply the multiple found in subdivision (i) of this subparagraph to the total of the amounts to be received annually after the death of the first to die; and

(iv) Apply the multiple found in subdivision (ii) of this subparagraph to the difference between the total of the amounts to be received annually before and the total of the amounts to be received annually after the death of the first to die.

If the original annual payment is in excess of the annual payment to be made after the death of the first to die, the expected return is the sum of the amounts determined under subdivisions (iii) and (iv) of this subparagraph. This may be illustrated by the following examples:

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 a month for as long as both he and his wife live, and, after the death of the first to die, payments to the survivor of $75 a month for life. As of the annuity starting date, his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return under the contract is computed as follows:

Multiple from Table II (male age 70, female age 67)	19.7
Multiple from Table IIA (male age 70, female age 67)	9.3
Portion of expected return ($900×19.7—sum per year after first death)	$17,730
Portion of expected return ($300×9.3—amount of change in sum at first death)	$2,790
Expected return under the contract	$20,520

The total expected return in this example, $20,520, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$20,520, or 87.2 percent. The amount excludable from each monthly payment made while both are alive is 87.2 percent of $100, or $87.20, and the remaining $12.80 of each payment shall be included in gross income. After the death of the first to die, the amount excludable by the survivor shall be 87.2 percent of each monthly payment of $75, or $65.40, and the remaining $9.60 of each payment shall be included in gross income.

Example (2). Assume the same facts as in example (1), except that the contract is purchased after June 30, 1986.

The expected return under the contract is computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table VIA (ages 70, 67)	12.4
Portion of expected return ($900×22.0—sum per year after first death)	$19,800
Plus: Portion of expected return ($300×12.4—amount of change in sum at first death)	$3,720
Expected return under the contract	$23,520

Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$23,520, or 76.1 percent. The amount excludable from each monthly payment made while both are alive would be 76.1 percent of $100, or $76.10, and the remaining $23.90 of each payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be 76.1 percent of each monthly payment of $75, or $57.08, and the remaining $17.92 of each payment would be included in gross income.

Example (3). Assume the same facts as in examples (1) and (2), except that the total investment in the contract is $17,887, and that the pre-July 1986 investment in the contract is $8,000. Assume also that one of the annuitants makes the election described in § 1.72–6(d)(6). Separate computations shall be performed pursuant to § 1.72–6(d) to determine the amount excludable from gross income. The pre-July 1986 exclusion ratio would be $8,000÷$23,520, or 34 percent. The post-June 1986 exclusion ratio would be $9,887÷$23,520, or 42 percent. The amount excludable from each monthly payment made while both are alive would be $76 ((.34×100)+(.42×100)), and the remaining $24 of each $100 payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be $57.00 of each monthly payment of $75 ((.34×75)+(.42×75)), and the remaining $18.00 of each payment would be included in gross income.

If the original annual payment is less than the annual payment to be made after the death of the first to die, the expected return is the difference between the amounts determined under subdivisions (iii) and (iv) of this subparagraph. If, however, payments are to be made quarterly, semiannually, or annually under the contract, the multiples obtained from both Tables II and IIA or Tables VI and VIA (whichever are applicable) shall first be adjusted in a manner prescribed in paragraph (a)(2) of this section.

(6) If a contract provides for the payment of life annuities to two persons during their respective lives and, after the death of one (without regard to which one dies first), provides that the survivor shall receive for life both his own annuity payments and the payments made formerly to the deceased person, the expected return shall be determined in accordance with paragraph (e)(4) of this section.

(7) If paragraph (b)(3) of § 1.72–2 applies to payments provided under a contract and this paragraph applies to such payments, the principles of this paragraph shall be used in making the computations described in paragraph (d)(3) of § 1.72–4. This may be illustrated by the following examples, examples (1) through (3) of which assume that there is no post-June 1986 investment in the contract:

Example (1). Taxpayer A, a male age 63, pays $24,000 for a contract which provides that the proceeds (both income and return of capital) from eight units of an investment fund shall be paid monthly to him for his life and that after his death the proceeds from six such units shall be paid monthly to B, a female age 55, for her life. The portion of the investment in the contract allocable to each taxable year of A is $955.20 and that allocable to each taxable year of B is $715.40. This is determined in the following manner:

Multiple from Table II (male, age 63, and female, age 55)	28.1
Number of units to be paid, in effect, as a joint and survivor annuity	×6
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	168.6
Multiple from Table I (male, age 63)	16.2
Number of units to be paid, in effect, as a single life annuity	×2
Number of total annual unit payments anticipatable with respect to A alone	32.4
Total number of unit payments anticipatable	201
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units to A while he continues to live	×8
Portion of the investment in the contract allocable to each taxable year of A	$955.20
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units payable to B for her life after A's death	×6
Portion of the investment in the contract allocable to each taxable year of B	$716.40

For the purpose of the above computation it is immaterial whether or not A lives to or beyond the life expectancy shown for him in Table I.

Example (2). Assume that Taxpayer A in example (1) receives payments for five years which are at least as large as the portion of the investment in the contract allocable to such years, but in the sixth year he receives a total of only $626.40 rather than the $955.20 allocable to such year. A is 69 and B is 61 at the beginning of the first monthly period for which an amount is payable in the seventh taxable year. A makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the sixth year and the amount actually received in that year is $328.80 ($955.20 less $626.40). In this case, 139.2 unit payments are anticipatable (on an annual basis), since the appropriate multiple from Table II of § 1.72–9, 23.2, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (6×23.2). A's appropriate multiple from Table I of § 1.72–9 for the two units which will cease to be paid at his death is 12.6, and the total number of unit payments anticipatable (on an annual basis) is, therefore, 164.4 (2×12.6 plus 139.2). Dividing the difference previously found ($328.80) by the total number of unit payments thus determined (164.4) indicates that A will have an additional allocation of the investment in the contract of $16 to the seventh and every succeeding full taxable year (8 units×$2), and B will have an additional allocation of the investment in the contract of $12 (6 units×$2) to each taxable year in which she receives 12 monthly payments subsequent to the death of A. The total allocable to each taxable year of A is, therefore, $971.20, and that allocable to each taxable year of B will be $728.40.

Example (3). If, in example (2), A had died at the end of the fifth year, in the sixth year B would have received a payment of $469.80 (that portion of the $626.40 that A would have received which is in the same ratio that 6 units bear to 8 units) and would thus have reeived $246.60 less than the portion of the investment in the contarct originally determined to be allocable to each of her taxable years. In these circumstances, B would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $246.60 difference by her life expectancy as of the first day of the first period for which she received an amount as an annuity in the seventh year of the annuity contract, and adding the result to her originally determined allocation of $716.40.

Example (4). On July 1, 1986, Taxpayer C, age 60, pays $28,000 for a contract which provides that the proceeds (both income and return of capital) from 10 units of an investment fund shall be paid monthly to C for C's life and that after C's death the proceeds from 4 such units shall be paid monthly to D, age 57, for D's life. The portion of the investment in the contract allocable to each taxable year of C is $1,037.00 and that allocable to each taxable year of D is $414.80. This is determined as follows:

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.8
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.2
Total number of unit payments anticipatable	270
Portion of investment in the contracts allocable to unit payments ($28,000÷270) on an annual basis	103.70
Number of units payable to C while C continues to live	×10
Portion of the investment in the contract allocable to each taxable year of C	$1,037.00
Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis	$103.70
Number of units payable to D for D's life after C's death	×4
Portion of the investment in the contract allocable to each taxable year of D	$414.80

For purposes of the above computation it is immaterial whether or not C lives to or beyond the life expectancy shown in Table V.

Example (5). Assume the same facts as in example (4), except that C's total investment in the contract is $28,000, and C's pre-July 1986 investment in the contract is $16,000. If C makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amount excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The annuitant shall apply the appropriate pre-July 1986 and post-June 1986 life expectancy multiples to the applicable portions of the units to be paid as a joint and survivor annuity, and as a single life annuity.

Pre-July 1986 Computation (all references to unit payments are to the pre-July 1986 applicable portion of such payments):

Multiple from Table II (male, age 60, female, age 57)	27.6
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	110.40
Multiple from Table I (male, age 60)	18.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	109.20
Total number of unit payments anticipatable	219.6
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	$72.86
Number of units payable to C while C continues to live	×10
Portion of pre-July 1986 investment in the contract allocable to each taxable year of C	728.60
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	72.86
Number of units payable to D for D's life after C's death	×4
Portion of pre-July 1986 investment in the contract allocable to each taxable year of D	$291.44

Post-June 1986 Computation (fall references to unit payments are to the post-June 1986 applicable portion of such payments):

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.80
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.20
Total number of unit payments anticipatable	270

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Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	$44.44
Number of units payable to C while C continues to live	×10
Portion of post-June 1986 investment in the contract allocable to each taxable year of C	$444.40
Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	44.44
Number of units payable to D for D's life after C's death	×4
Portion of post-June 1986 investment in the contract allocable to each taxable year of D	$177.78
Total computation:	
Total portion of the investment in the contract allocable to each taxable year of C ($728.60+$444.40)	$1,173.00
Total portion of the investment in the contract allocable to each taxable year of D ($291.44+$177.78)	$469.22

Example (6). Assume that taxpayer C in example (4) receives payments for four years which are at least as large as the portion of the investment in the contract allocable to such years, but in the fifth year receives a total of only $600 rather than the $1,037 allocable to such year. C is 65 and D is 62 at the beginning of the first monthly period for which an amount is payable in the sixth taxable year. C makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the fifth year and the amount actually received in that year is $437 ($1,037—$600). In this case, 106.4 unit payments are anticipatable with respect to the joint and survivor annuity element, since the appropriate multiple from Table VI of § 1.72–9, 26.6, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (4 × 26.6). C's appropriate multiple from Table V of § 1.72–9 for the six units which will cease to be paid at C's death is 20.0, and the number of unit payments anticipatable with respect to C alone is 120 (6 × 20). The total number of unit payments anticipatable is, therefore, 226.4 (120 plus 106.4). Dividing the difference previously found ($437) by the total number of unit payments thus determined (226.4) indicates that C will have an additional allocation of the investment in the contract of $19.30 to the sixth and every succeeding full taxable year (10 units × $1.93), and D will have an additional allocation of the investment in the contract of $7.72 (4 units × $1.93) to each taxable year in which D receives 12 monthly payments subsequent to the death of C. The total allocable to each taxable year of C is, therefore, $1,056.30, and that allocable to each taxable year of D will be $422.52.

Example (7). If, in example (6), C had died at the end of the fourth year, in the fifth year D would have received a payment of $240 (that portion of the $600 that C would have received which is in the same ratio that 4 units bear to 10 units) and would thus have received $174.80 less than the portion of the investment in the contract allocable to each of D's taxable years. In these circumstances, D would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $174.80 difference by D's life expectancy as of the first day of the first period for which D received an amount as an annuity in the sixth year of the annuity contract, and adding the result to D's originally determined allocation of $414.80.

* * * * *

(e) *Expected return where two or more annuity elements providing for fixed payments are acquired for a single consideration.* (1) In the case of a contract described in paragraph (a)(2) of § 1.72–2, which provides for specified payments to be made under two or more annuity elements, the expected return shall be found for the contract as a whole by aggregating the expected returns found with respect to each annuity element. If individual life annuity elements are involved (including joint and survivor annuities where the primary annuitant died before January 1, 1954) expected return for each of them shall be determined in the manner prescribed in paragraph (a) of this section. If joint and survivor annuity elements are involved, the expected return for such elements shall be determined under the appropriate subparagaph of paragraph (b) of this section. If terms certain or amounts certain are involved, the expected returns for such elements shall be determined under paragraph (c) or (d) of this section, respectively.

(2) The aggregate expected return found in accordance with the rules set forth in subparagraph (1) of this paragraph shall constitute the expected return for the contract as a whole. The investment in the contract shall be divided by the amount thus determined to obtain the exclusion ratio for the contract as a whole. This exclusion ratio shall be applied to all amounts received as a annuity under the contract by any recipient (in accordance with the provisions of § 1.72–4), except in the case of amounts received by a surviving annuitant under a joint and survivor annuity element to which the provisions of section 72(i) and paragraph (b)(3) of this section would apply if it were a separate contract. See subparagraph (3) of this paragraph.

(3) In the case of a contract providing two or more annuity elements, one of which is a joint and survivor annuity element of the type described in section 72(i) and paragraph (b)(3) of this section, the general exclusion ratio for the contract as a whole, for the purpose of computations with respect to all the other annuity elements shall be determined in accordance with the principles of subparagraphs (1) and (2) of this paragraph. A special exclusion ration shall thereafter be determined for the surviving annuitant receiving payments under the annuity element described in section 72(i) and paragraph (b)(3) of this section by using the investment in the contract and the expected return determined in accordance with the provisions of paragraph (b)(3) of this section.

(4) In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of § 1.72–5, the expected return is to be computed as though there were two joint and survivor annuities under the same contract, in the following manner. First, the multiple appropriate to the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants involved shall be found in Table II or VI (whichever is applicable) of § 1.72–9 and adjusted, if necessary, in the manner described in paragraph (a)(2) of this section. Second, the multiple so found shall be applied to the sum of the payments to be made each year to both annuitants. The result is the expected return for the contract as a whole.

(5) For rules relating to expected return where two or more annuity elements are acquired for a single consideration and one or more of such elements does not specify a fixed payment for each period, see paragraph (f) of this section.

* * * * *

(g) *Expected return with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, an expected return is computed using the multiples in Tables I through IV of § 1.72–9 with respect to the pre-July 1986 investment in the contract and a second expected return is computed using the multiples in Tables V through VIII of § 1.72–9 with respect to the post-June 1986 investment in the contract.

Par. 4. Section 1.72–6 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1.72–6 Investment in the contract.

* * * * *

(b) *Allocation of the investment in the contract where two or more annuity elements are acquired for a single consideration.* (1) In the case of a contract described in § 1.72–2(a)(2) which provides for two or more annuity elements, the investment in the contract determined under paragraph (a) shall be allocated to each of the annuity elements in the ratio that the expected return under each annuity element bears to the aggregate of the expected returns under all the annuity elements. The exclusion ratio for the contract as a whole shall be determined by dividing the investment in the contract (after adjustment for the present value of any or all refund features) by the aggregate of the expected returns under all the annuity elements. This may be illustrated by the following examples:

Example (1). If a contract provides for annuity payments of $1,000 per year for life (with no refund feature) to both A and B, a male and female, respectively, each 70 years of age as of the annuity starting date, such contract is acquired for consideration of $19,575 (without regard to whether paid by A, B, or both), and there is no post-June 1986 investment in the contract, the investment in the contract shall be allocated by determining the exclusion ratio for the contract as a whole in the following manner:

Expectancy of A under Table 1 and § 1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000	$11,600
Expectancy of B computed in a similar manner ($1,000×14.5 [15.0—0.5])	14,500
Total expected return	26,100

The exclusion ratio for both A and B is then $19,575÷$26,100, or 75 percent. A and B shall each exclude from gross income three-fourths ($750) of each $1,000 annual payment received and shall include the remaining one-fourth ($250) of each $1,000 annual payment received in gross income.

Example (2). Assume the same facts as in example (1) except that of the total investment in the contract of $19,575, the pre-July 1986 investment in the contract is $10,000. If the election described in § 1.72–6(d)(6) is made with respect to the contract, the investment in the contract shall be allocated by determining an exclusion ratio for the contract as a whole based on separately computed exclusion ratios with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract in the following manner:

Expectancy of A under Table I and § 1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000	$11,600
Plus: Expectancy of B under Table I and § 1.72–5(a)(2), 14.5 (15.0–0.5), multiplied by $1,000	$14,500
Pre-July 1986 expected return	$26,100
lus: Expectancy of A under Table V and § 1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000	$15,500
Expectancy of B under Table V and § 1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000	$15,500
Post-June 1986 expected return	$31,000
Pre-July 1986 exclusion ratio ($10,000÷$26,100)	38.3
Post-June 1986 exclusion ratio ($9,575÷31,000)	30.9

A and B shall each exclude from gross income $692 (38.3 percent of $1,000+30.9 percent of $1,000) of each $1,000 payment and include the remaining $308 in gross income

(2) In the case of a contract providing for specified annual annuity payments to be made to two persons during their joint lives and the payment of the aggregate of the two individual payments to the survivor for his life, the investment in the contract shall be allocated in accordance with the provisions of subparagraph (1) of this paragraph. For this purpose, the investment in the contract (without regard to the fact that differing amounts may have been contributed by the two annuitants) shall be divided by the expected return determined in accordance with paragraph (e)(4) of § 1.72–5. The resulting exclusion ratio shall then be applied to any amounts received as an annuity by either annuitant.

(3) In the case of a contract providing two or more annuity elements, one or more of which provides for payments to be made in a manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be allocated to the various annuity elements in the following manner.

(i) If all the annuity elements provide for payments to be made in the manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be allocated on the basis of the amounts received by each recipient by apportioning the amount determined to be excludable under that section to each recipient in the same ratio as the total of the amounts received by him in the taxable year bears to the total of the amounts received by all recipients during the same period; and

(ii) If one or more, but not all, of the annuity elements provide for payments to be made in a manner described in paragraph (b)(3) of § 1.72–2:

(*a*) With respect to all annuity elements to which that section does not apply, the investment in the contract for all such elements shall be the portion of the investment in the contract as a whole (found in accordance with the provisions of this section) which is properly allocable to all such elements; and

(*b*) With respect to all annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the contract for all such elements shall be the investment in the contract as a whole (found in accordance with the provisions of this section) as reduced by the portion thereof determined under (*a*) of this subdivision.

For the purpose of determining, pursuant to (*a*) of this subdivision, the portion of the investment in the contract as a whole properly allocable to a particular annuity element, reference shall be made to the present value of such annuity element determined in accordance with paragraph (e)(1)(iii) (*b*) of § 1.101–2.

(iii) In the case of a contract to which paragraph (d) of this section applies, this paragraph (b) is applied in the manner prescribed in paragraph (d) and, in particular, paragraph (d)(5)(v) of this section.

* * * * *

(d) *Pre-July 1986 and post-June 1986 investment in the contract.* (1) This paragraph (d) applies to an annuity contract If—

(i) The investment in the contract includes a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract (both as defined in § 1.72–6(d)(3));

(ii) The use of a multiple found in Tables I through VIII of § 1.72–9 is required to determine the expected return under the contract; and

(iii) The election described in paragraph (d)(6) of this section is made with respect to the contract.

(2) In the case of annuity contract to which this paragraph (d) applies—

(i) All computations required to determine the amount excludable from gross income shall be performed separately with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in the contract;

(ii) The multiples in Tables I through IV shall be used for computations involving the Pre-July 1986 investment in the contract and the multiples in Tables V through VIII shall be used for computations involving the post-June 1986 investment in the contract; and

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(iii) The amount excludable from gross income shall be the sum of the amounts determined under the separate computations required by paragraph (d)(2)(i) of this section.

(3) For purposes of the regulations under section 72, the pre-July 1986 investment in the contract and post-June 1986 investment in the contract are determined in accordance with the following rules:

(i) (A) If the annuity starting date of the contract occurs before July 1, 1986, the pre-July 1986 investment in the contract is the total investment in the contract as of the annuity starting date;

(B) If the annuity starting date of the contract occurs after June 30, 1986, and the contract does not provide for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is the investment in the contract computed as of June 30, 1986, as if June 30, 1986, had been the later of the annuity starting date of the contract or the date on which an amount is first received thereunder;

(C) If the annuity starting date of the contract occurs after June 30, 1986, and the contract provides, at the option of the annuitant or of any other person (including, in the case of an employee's annuity, an option exercisable only by, or with the consent of, the employer), for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is zero (i.e., the total investment in the contract is post-June 1986 investment in the contract).

(ii) The post-June 1986 investment in the contract is the amount by which the total investment in the contract as of the annuity sarting date exceeds the pre-July 1986 investment in the contract.

(iii) For purposes of paragraph (d)(3)(i) of this section, a disqualifying form of payment or settlement is any form of payment or settlement (whether or not selected) that permits the receipt of amounts under the contract in a form other than a life annuity. For example, each of the following options provides for a disqualifying form of payment or settlement:

(A) An option to receive a lump sum in full discharge of the obligation under the contract.

(B) An option to receive an amount under the contract after June 30, 1986, and before the annuity starting date.

(C) An option to receive an annuity for a period certain.

(D) An option to receive payments under a refund feature (within the meaning of paragraphs (b) and (c) of this section) that is substantially equivalent to an annuity for a period certain.

(E) An option to receive a temporary life annuity (within the meaning of § 1.72–5 (a)(3)) that is substantially equivalent to an annuity for a period certain.

An option to receive alternative forms of life annuity is not a disqualifying option for purposes of paragraph (d)(3)(i) of this section. Thus, if the sole options provided under a contract are a single life annuity and a joint and survivor life annuity, paragraph (d)(3)(i) (C) of this section does not apply to such contract.

(iv) For purposes of paragraph (d)(3)(iii) of this section, a refund feature is substantially equivalent to an annuity for a period certain if its value determined under Table VII of § 1.72–9 exceeds 50 percent. Similarly, a temporary life annuity is substantially equivalent to an annuity for a period certain if the multiple determined under Table VIII of § 1.72–9 exceeds 50 percent of the maximum duration of the annuity.

(4) In any separate computation under this paragraph (d), only the applicable portion of other amounts (such as the total expected return under the contract, or the total amount guaranteed under the contract as of the annuity starting date) shall be taken into account if the use of the entire amount in such computation is inconsistent with the use in the computation of only a portion of the investment in the contract. For example, such use is generally inconsistent if the computation requires a comparison of the investment in the contract and such other amount for the purpose of using the greater (or lesser) amount or the difference between the two. For purposes of the first sentence of this paragraph (d)(4), the applicable portion is the amount that bears the same ratio to the entire amount as the pre-July 1986, investment in the contract or the post-June 1986 investment in the contract, whichever is applicable, bears to the total investment in the contract as of the annuity starting date.

(5) *Application to particular computations.* (i) In the case of a contract to which this paragraph (d) applies, the exclusion ratio for purposes of § 1.72–4 (a) is the sum of the exclusion ratios seperately computed in accordance with this paragraph (d). The exclusion ratio with respect to the pre-July 1986 investment in the contract is determined by dividing the pre-July 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples of Tables I through IV of § 1.72–9. Similarly, the exclusion ratio with respect to the post-June 1986 investment in the contract is determined by dividing the post-June 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples in Tables V through VIII of § 1.72–9.

(ii) The applicability of § 1.72–4(d)(2) to a contract to which this paragraph (d) applies shall be determined separately with respect to the post-June 1986 investment in the contract and the pre-July 1986 investment in the contract and in each such determination only the applicable portion of the total expected return under the contract shall be taken into account. If § 1.72–4(d)(2) applies with respect to either such investment in the contract, the separately computed exclusion ratio shall be considered to be the applicable portion of 100 percent.

(iii) If § 1.72–4(d)(3) applies to a contract to which this paragraph (d) applies—

(A) The applicable portions (as defined in paragraph (d) (4) of this section) of payments received under the contract for a taxable year shall be separately computed;

(B) The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract shall be separately allocated to the taxable year; and

(C) The separate applicable portions of the payments received under the contract for the taxable year shall be considered to be amounts received as an annuity (for which the exclusion ratio is 100 percent) only to the extent they do not exceed the portions of the corresponding investments in the contract which are properly allocable to that year.

See the example in § 1.72–4(d)(3)(v).

(iv) If § 1.72–4(e) applies to a contract to which this paragraph (d) applies, the exclusion ratio shall be separately computed with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of the separate computations under § 1.72–4(e)(2)(ii), only the applicable portion of payments received shall be taken into account and the exclusion ratio (100%) shall be applied to the separately computed portion allocated to each participant.

(v) If paragraph (b)(3) of this section applies to a contract to which this paragraph (d) applies, separate allocations are required with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract.

For purposes of the separate computations required to determine the portion of the investment in the contract properly allocable to a particular annuity element, only the applicable portion of the present value of the annuity element determined in accordance with § 1.101–2(e)(1)(iii)(b) is taken into account.

(vi) If § 1.72–7 applies to a contract to which this paragraph (d) applies, separate computations are required to determine the adjustment to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of such separate computations, only the applicable portions of the amounts described in § 1.72–7(b)(3)(ii),(c)(1)(vii)(*b*), and (d)(1)(ii) are taken into account. Similarly, in the case of computations with respect to the guarantee of a specified amount under § 1.72–7(d)(1), only the applicable portion of such amount is taken into account.

(6) This paragraph (d) applies to a contract only if the first taxpayer to receive an amount as an annuity under the contract elects to perform separate computations with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in contract. If two or more annuitants receive an amount as an annuity under the contract at the same time (such as under a joint-and-last-survivorship annuity contract), an election by one of the annuitants is treated as an election by each of the annuitants. The election is made by attaching a statement to the first return filed by the taxpayer for the first taxable year in which an amount is received as an annuity under the contract. The statement must indicate that the taxpayer is electing to apply the provisions of paragraph (d) of § 1.72–6, and must also contain the name, address, and taxpayer identification number of each annuitant under the contract, and the amount of the pre-July 1986 investment in the contract.

(7) If the investment in the contract includes a post-June 1986 investment in the contract and the election described in paragraph (d)(6) of this section is not made—

(i) The amount excludable from gross income shall be determined without regard to the separate computations described in this paragraph (d); and

(ii) Only the multiples found in Tables V through VIII shall be used in determining the amount excludable from gross income.

Par. 5. Section 1.72–7 is amended by revising paragraphs (b), (c), (d), and (e), and adding a new paragraph (f) to read as follows:

§ 1.72–7 Adjustment in investment where a contract contains a refund feature.

* * * * *

(b) *Adjustment of investment for the refund feature in the case of a single life annuity.* Where a single life annuity contract to which section 72 applies contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(1) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract to the extent such amount reduces the guaranteed amount. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(2) Consult Table III or VII (whichever is applicable) of § 1.72–9 for the appropriate percentage under the whole number of years found in subparagraph (1) of this paragraph and the age (as of the annuity starting date) and, if applicable, sex of the annuitant.

(3) Multiply the percentage found in subparagraph (2) of this paragraph by whichever of the following is the smaller: (i) The investment in the contract found in accordance with § 1.72–6 or (ii) the total amount guaranteed as of the annuity starting date.

(4) Subtract the amount found in subparagraph (3) of this paragraph from the investment in the contract found in accordance with § 1.72–6.

The resulting amount is the investment in the contract adjusted for the present value of the refund feature without discount for interest and is to be used in determining the exclusion ratio to be applied to the payments received as an annuity. The percentage found in Tables III or VII shall not be adjusted in a manner described in paragraph (a)(2) of § 1.72–5. These principles may be illustrated by the following examples:

Example (1). On January 1, 1954, a husband, age 65, purchased for $21,053, an immediate installment refund annuity payable $100 per month for life. The contract provided that in the event the husband did not live long enough to recover the full purchase price, payments were to be made to his wife until the total payments under the contract equaled the purchase price. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract, unadjusted	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053 divided by $1,200)	17.5
Rounded to nearest whole number of years	18
Percentage located in Table III for age 65 (age of the annuitant as of the annuity starting date) and 18 (the number of whole years) (percent)	30
Subtract value of the refund feature to the nearest dollar (30 percent of $21,053)	$6,316
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$14,737

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed as follows:

Cost of the annuity contract (investment in the contract, unadjusted	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053 ÷ $1,200)	17.5
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $21,053)	$3,158
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$17,895

Example (3). Assume the same facts as in example (1), except that the pre-July 1986 investment in the contract is $10,000 and the post-June 1986 investment in the contract is $11,053. If the annuitant makes the election described in § 1.72–6(d)(6), separate computations must be performed pursuant to § 1.72–6(d) to determine the adjusted investment in the contract. The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract adjusted for the purpose of determining the exclusion ratios are, respectively, $7,000 and $9,395, determined as follows:

Pre-July 1986 investment in the contract (unadjusted)	$10,000
Pre-July 1986 portion of the amount to be received annually ($10,000/$21,053 × $1,200)	$570.00
Number of years for which payment guaranteed ($10,000 ÷ $570)	17.50
Rounded to nearest whole number of years	18
Percentage in Table III for age 65 and 18 years (percent)	30

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Subtract value of refund feature to nearest dollar (30 percent of $10,000)	$3,000
Pre-July 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$7,000
Post-June 1986 investment in the contract (unadjusted)	$11,053
Post-June 1986 portion of the amount to be received annually ($11,053/$21,053×$1,200)	$630
Number of years for which payment guaranteed ($11,053÷$630)	17.54
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $11,053)	$1,658
Post-June 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$9,395

If, in the above examples, the guaranteed amount had exceeded the investment in the contract (or applicable portion thereof), the percentage found in Table III or VII (whichever is applicable) should have been applied to the lesser of these amounts since any excess of the guaranteed amount over the investment in the contract (as found under § 1.72–6) would not have constituted a refund of premiums or other consideration paid. In such a case, however, a different multiple might have been obtained from Table III or VII (whichever is applicable) since the number of years for which payments were guaranteed would have been greater.

(c) *Adjustment of investment for the refund feature in the case of a joint and survivor annuity.* (1) Where a joint and survivor annuity contract described in paragraph (b) (1) or (6) of § 1.72–5 contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(i) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract. the number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(ii) Consult Table III or VII (whichever is applicable) of § 1.72–9 for the appropriate percentages under the whole number of years found in subdivision (i) of this subparagraph and the age (as of the annuity starting date) and, if applicable, sex of each annuitant. If Table III applies and the annuitants are not of the same sex, substitute for the female annuitant a male annuitant 5 years younger, or for the male annuitant a female annuitant 5 years older, so that Table III will be entered in both cases with the ages of annuitants of the same sex.

(iii) Find the sum of the two percentages found in accordance with subdivision (ii) of this subparagraph.

(iv) To the age of the elder of the two annuitants (as determined under subdivision (ii) of this subparagraph if Table III applies), add the number of years (indicated in the table below) opposite the number of years by which such annuitants' ages differ:

Number of years difference in age (2 male annuitants or 2 female annuitants if Table III applies)	Addition to elder age in years
0 to 1, inclusive	9
2 to 3, inclusive	8
4 to 5, inclusive	7
6 to 8, inclusive	6
9 to 11, inclusive	5
12 to 15, inclusive	4
16 to 20, inclusive	3
21 to 27, inclusive	2
28 to 42, inclusive	1
Over 42	0

(v) Consult Table III or VII (whichever is applicable) for the appropriate percentage under the whole number of years found in subdivision (i) of this subparagraph and the age and, if applicable, sex of the elder annuitant as adjusted under subdivision (iv) of this subparagraph.

(vi) Subtract the percentage obtained in subdivision (V) of this subparagraph from the sum of the percentages found under subdivision (iii) of this subparagraph. If the result is less than one, subdivisions (vii) and (viii) of this subparagraph shall be disregarded and no adjustment made to the investment in the contract.

(vii) Multiply the percentage found in subdivision (vi) of this subparagraph by whichever of the following is the smaller: (*a*) the investment in the contract found in accordance with § 1.72–6 or (*b*) the total amount guaranteed as of the annuity starting date.

(viii) Subtract the amount found in subdivision (vii) of this subparagraph from the investment in the contract found in accordance with § 1.72–6.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). Prior to July 1, 1986, Taxpayer A, a 70-year old male, purchases a joint and last survivor annuity for $33,050. The contract provides for payments of $100 a month to be paid first to himself for life and then to B, his 40-year old daughter, if she survives him. The contract further provides that in the event both die before ten years' payments have been made, payments will be continued to C, a beneficiary, or to C's estate, until ten years' payments have been made. If there is no post-June 1986 investment in the contract, the investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract unadjusted)	$33,050
Guaranteed amount ($1,200×10)	$12,000
Percentage in Table III for male, age 70 (or female, age 75) for duration of the guarantee (10)	21
Percentage in Table III for female, age 40 (or male, age 35) for duration of the guarantee (10)	2
Sum of percentage obtained	23
Difference in years of age between two males, aged 70 and 35 (or 2 females, aged 75 and 40)	35
Addition, in years, to older age	1
Percentage in Table III for male one year older than A	22
Difference between percentages obtained (23 percent less 22 percent)	1
Value of the refund feature to the nearest dollar (1 percent of $12,000)	$120
Investment in the contract adjusted for present value of the refund feature	$32,930

Example (2). The facts are the same as in example (1), except that the total investment in the contract was made after June 30, 1986, and A is 73 years of age. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract, unadjusted)	$33,050
Guaranteed amount ($1,200×10)	$12,000
Percentage in Table VII for age 73 for duration of the guarantee (10)	14
Percentage in Table VII for age 40 for duration of the guarantee (10)	1
Sum of percentages obtained	15
Difference in years of age between two annuitants	33
Addition, in years, to older age	1
Percentage in Table VII for annuitant one year older than A	16
Difference between percentages obtained (16 percent less 15 percent)	1
Value of the refund feature to the nearest dollar (1 percent of $12,000)	$120
Investment in the contract adjusted for present value of the refund feature	$32,930

(d) *Adjustment of investment in the contract where paragraph (b)(3) of § 1.72–2 applies to payments.* (1) If paragraph (b)(3) of § 1.72–2 applies to payments to be made under a contract and this section also applies because of the provision for a refund feature, an adjustment shall be made to the investment in the contract in accordance with this paragraph before making the computations required by paragraph (d)(3) of § 1.72–4 and paragraph (b)(7) of § 1.72–5. In the case of the guarantee of a specified amount, the adjustment shall be made by applying the appropriate multiple from Table III or VII (whichever is applicable), as otherwise determined under this section, to the investment in the contract or the guaranteed amount, whichever is the lesser. The guarantee period shall be found by dividing the amount guaranteed by an amount determined by placing the payments received during the first taxable year (to the extent such payments reduce the guaranteed amount) on an annual basis. Thus, if monthly payments are first received by a taxpayer on a calendar year basis in August, his total payments (to the extent that they reduce the guaranteed amount) for the taxable year would be divided by 5 and multiplied by 12. The guaranteed amount would then be divided by the result of this computation to obtain the guarantee period. If the contract merely guarantees that proceeds from a unit or units of a fund shall be paid for a fixed number of years or the life (or lives) of an annuitant (or annuitants), whichever is the longer, the fixed number of years is the guarantee period. The appropriate percentage in Table III or VII shal be applied to whichever of the following is the smaller: (i) the investment in the contract; or (ii) the product of the payments received in the first taxable year, placed on an annual basis, multiplied by the number of years for which payment of the proceeds of a unit or units is guaranteed.

(2) The principles of this paragraph may be illustrated by the following examples:

Examples (1). Taxpayer A, a 50-year-old male purchases for $25,000, a contract which provides for variable monthly payments to be paid to him for his life. The contract also provides that if he should die before receiving payments for fifteen years, payments shall continue according to the original formula to his estate or beneficiary until payments have been made for that period. Beginning with the month of September, A receives payments which total $450 for the first taxable year of receipt. This amount, placed on an annual basis, is $1,350 ($450 divided by 4, or $112.50; $112.50 multiplied by 12, or $1,350). If there is no post-June 1986 investment in the contract, the guaranteed amount is considered to be $20,250 ($1,350×15), and the multiple from Table III (found in the same manner as in paragraph (b) of this section), 9 percent, applied to $20,250 (since this amount is less than the investment in the contract), results in a refund adjustment of $1,822.50. The latter amount, subtracted from the investment in the contract of $25,000, results in an adjusted investment in the contract of $23,177.50. If A dies before receiving payments for 15 years and the remaining payments are made to B, his beneficiary, B shall exclude the entire amount of such payments from his gross income until the amounts so received by B, together with the amounts received by A and excludable from A's gross income, equal or exceed $25,000. Any excess and any payments thereafter received by B shall be fully includible in gross income.

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The applicable multiple found in Table VII is 3 percent. When this is applied to the guaranteed amount of $20,250, it results in a refund adjustment of $607.50. The adjusted investment in the contract is $24,392.50. ($25,000−$607.50).

(e) *Adjustment of the investment in the contract where more than one annuity element is provided for a single consideration.* In the case of contracts to which paragraph (b) of § 1.72–6 applies for the purpose of allocating the investment in the contract to two or more annuity elements which are provided for a single consideration, if one or more of such elements involves a refund feature, the portion of the investment in the contract properly allocable to each such element shall be adjusted for the refund feature before aggregating all the investments in order to obtain the exclusion ratio which is to apply to the contract as a whole.

Example (1). If taxpayer A, an insured 70 years of age, upon maturity of an endowment policy which cost him a net amount of $86,000, elected a dual settlement consisting of (1) monthly payments for his life aggregating $4,146 per year with 10 years' payments certain, and (2) monthly payments for his 60 year old brother, B, aggregating $2,820 per year with 20 years' payments certain, the exclusion ratio to be used by both A and B if there is no post-June 1986 investment in the contract would be determined in the following manner:

A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table 1 of 12.1)	$50,166.60
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table 1 of 18.2)	$51,324.00
Sum of expected returns to be used in determining exclusion ratio	$101,490.60
Percentage of total expected return attributable to A's expectancy of the ($50,166.60−$101,490.60)	49.4
Percentage of total expected return attributable to B's expectancy of the ($51,324−$101,490.60)	50.6
Portion of investment in the contract allocable to A's annuity (49.4 percent of $86,000)	$42,484.00
Portion of investment in the contract allocable to B's annuity (50.6 percent of $86,000)	$43,516.00
Value of the refund feature with respect to A's annuity (percentage from Table III for male, age 70, and duration 10, or 21 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract $41,460)	$8,707.00
A's allocable portion of the investment in the contract adjusted for refund feature ($42,484 less $8,707.00)	$33,777.00
Value of the refund feature with respect to B's annuity (percentage from Table III for male, age 60, and duration 20, or 25 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,516)	$10,879.00
B's allocable portion of the investment in the contract adjusted for refund feature ($43,516 less $10,879.00)	$32,637.00
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$66,414.00
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $66,414, divided by the total expected return from above, $101,490.60) (percent)	65.4

Example (2). Assume the same facts as in example (1) except that the total investment in the contract was made after June 30, 1986. The exclusion ratio to be used by both A and B would be 56.9 percent, determined as follows:

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A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table V of 16.0)	$66,336.00
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table V of 24.2)	$68,244.00
Sum of expected returns to be used in determining exclusion ratio	$134,580.00
Percentage of total expected return attributable to A's expectancy of life ($66,336.00÷$134,580.00)	49.3
Percentage of total expected return attributable to B's expectancy of life ($68,244.00÷$134,580.00)	50.7
Portion of investment in the contract allocable to A's annuity (49.3 percent of $86,000)	$42,398.00
Portion of investment in the contract allocable to B's annuity (50.7 percent of $86,000)	$43,602.00
Value of the refund feature with respect to A's annuity (percentage from Table VII for age 70 and duration 10, or 11 percent, multiplied by lesser of the guaranteed amount and allocable portion of investment in the contract, $41,460)	$4,560.60
A's allocable portion of the investment in the contract adjusted for refund feature ($42,398 less $4,560.60)	$37,837.40
Value of the refund feature with respect to B's annuity (percentage from Table VII for age 60 and duration 20, or 11 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,602)	$4,796.22
B's allocable portion of the investment in the contract adjusted for refund feature ($43,602 less $4,796.22)	$38,805.78
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$76,643.18
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $76,643.18, divided by the total expected return from above, $134,580.00) (percent)	56.9

(f) *Adjustment of investment in the contract with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this section is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(vi).

Par. 6. Section 1.72–9 is amended by revising the introductory text preceding the tables and the concluding text following the tables and adding new Tables V, VI, VIA, VII, and VIII to read as follows:

§ 1.72–9 Tables.

The following tables are to be used in connection with computations under section 72 and the regulations thereunder. Tables I, II, IIA, III, and IV are to be used if the investment in the contract does not include a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). Tables V, VI, VIA, VII, and VIII are to be used if the investment in the contract includes a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). See § 1.72–6(d)(3) for rules treating the entire investment in a contract as post-June 1986 investment in a contract if the annuity starting date of the contract is after June 30, 1986, and the contract provides for a disqualifying form of payment of settlement, such as an option to receive a lump sum in full discharge of the obligation under the contract. In addition, see § 1.72–6(d) for special rules concerning the tables to be used and the separate computations required if the investment in the contract includes both a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract and the election described in § 1.72–6(d)(6) is made with respect to the contract.

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TABLE V - ORDINARY LIFE ANNUITIES
ONE LIFE - EXPECTED RETURN MULTIPLES

AGE	MULTIPLE	AGE	MULTIPLE	AGE	MULTIPLE
5	76.6	42	40.6	79	10.0
6	75.6	43	39.6	80	9.5
7	74.7	44	38.7	81	8.9
8	73.7	45	37.7	82	8.4
9	72.7	46	36.8	83	7.9
10	71.7	47	35.9	84	7.4
11	70.7	48	34.9	85	6.9
12	69.7	49	34.0	86	6.5
13	68.8	50	33.1	87	6.1
14	67.8	51	32.2	88	5.7
15	66.8	52	31.3	89	5.3
16	65.8	53	30.4	90	5.0
17	64.8	54	29.5	91	4.7
18	63.9	55	28.6	92	4.4
19	62.9	56	27.7	93	4.1
20	61.9	57	26.8	94	3.9
21	60.9	58	25.9	95	3.7
22	59.9	59	25.0	96	3.4
23	59.0	60	24.2	97	3.2
24	58.0	61	23.3	98	3.0
25	57.0	62	22.5	99	2.8
26	56.0	63	21.6	100	2.7
27	55.1	64	20.8	101	2.5
28	54.1	65	20.0	102	2.3
29	53.1	66	19.2	103	2.1
30	52.2	67	18.4	104	1.9
31	51.2	68	17.6	105	1.8
32	50.2	69	16.8	106	1.6
33	49.3	70	16.0	107	1.4
34	48.3	71	15.3	108	1.3
35	47.3	72	14.6	109	1.1
36	46.4	73	13.9	110	1.0
37	45.4	74	13.2	111	.9
38	44.4	75	12.5	112	.8
39	43.5	76	11.9	113	.7
40	42.5	77	11.2	114	.6
41	41.5	78	10.6	115	.5

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
5	83.7	83.2	82.8	82.4	82.0	81.6	81.2	80.9	80.6	80.3
6	83.2	82.7	82.3	81.8	81.4	80.9	80.5	80.2	79.9	79.6
7	82.8	82.3	81.8	81.4	80.9	80.4	80.0	79.6	79.3	79.0
8	82.4	81.8	81.4	80.9	80.3	79.9	79.4	79.0	78.7	78.3
9	82.0	81.4	80.9	80.3	79.8	79.3	78.8	78.4	78.1	77.7
10	81.6	80.9	80.4	79.9	79.3	78.8	78.3	77.8	77.5	77.0
11	81.2	80.5	80.0	79.4	78.8	78.3	77.8	77.3	76.9	76.4
12	80.9	80.2	79.6	79.0	78.4	77.8	77.3	76.7	76.3	75.8
13	80.6	79.9	79.3	78.7	78.1	77.5	76.9	76.3	75.9	75.4
14	80.3	79.6	79.0	78.3	77.7	77.0	76.4	75.8	75.4	74.9
15	80.0	79.3	78.6	77.9	77.3	76.6	76.0	75.4	74.9	74.4
16	79.7	79.0	78.3	77.6	76.9	76.2	75.6	75.0	74.5	73.9
17	79.5	78.7	78.0	77.3	76.6	75.9	75.2	74.6	74.0	73.4
18	79.3	78.5	77.8	77.1	76.4	75.6	74.9	74.3	73.7	73.1
19	79.1	78.3	77.6	76.8	76.1	75.3	74.6	73.9	73.3	72.7
20	78.9	78.1	77.4	76.6	75.8	75.0	74.3	73.6	73.0	72.3
21	78.7	77.9	77.1	76.3	75.5	74.8	74.0	73.3	72.6	71.9
22	78.5	77.7	76.9	76.1	75.3	74.5	73.7	73.0	72.3	71.6
23	78.4	77.6	76.8	76.0	75.2	74.3	73.6	72.8	72.1	71.4
24	78.3	77.4	76.6	75.8	74.9	74.1	73.3	72.5	71.8	71.1
25	78.1	77.2	76.5	75.6	74.7	73.9	73.1	72.3	71.6	70.8
26	78.0	77.1	76.3	75.4	74.6	73.7	72.9	72.0	71.3	70.5
27	77.9	77.0	76.2	75.4	74.5	73.6	72.8	71.9	71.2	70.4
28	77.8	76.9	76.1	75.2	74.3	73.4	72.6	71.7	71.0	70.2
29	77.7	76.8	76.0	75.1	74.2	73.3	72.4	71.5	70.8	69.9
30	77.7	76.8	75.9	75.0	74.1	73.2	72.3	71.5	70.7	69.8
31	77.6	76.6	75.8	74.9	74.0	73.1	72.2	71.3	70.5	69.7
32	77.5	76.5	75.7	74.8	73.9	72.9	72.0	71.1	70.4	69.5
33	77.5	76.5	75.7	74.8	73.8	72.9	72.0	71.1	70.3	69.4
34	77.4	76.4	75.6	74.6	73.7	72.8	71.9	71.0	70.1	69.3
35	77.3	76.3	75.5	74.5	73.6	72.7	71.7	70.8	70.0	69.1
36	77.3	76.3	75.5	74.5	73.6	72.7	71.7	70.8	70.0	69.1
37	77.2	76.3	75.4	74.5	73.5	72.6	71.6	70.7	69.9	69.0
38	77.1	76.2	75.3	74.4	73.4	72.5	71.5	70.6	69.7	68.9
39	77.2	76.2	75.3	74.4	73.4	72.5	71.5	70.6	69.7	68.8
40	77.1	76.1	75.2	74.3	73.3	72.4	71.4	70.5	69.6	68.7
41	77.0	76.0	75.2	74.2	73.2	72.3	71.3	70.4	69.5	68.6
42	77.0	76.1	75.2	74.2	73.2	72.3	71.3	70.4	69.5	68.6
43	77.0	76.0	75.1	74.1	73.2	72.2	71.2	70.3	69.4	68.4
44	77.0	76.0	75.1	74.1	73.2	72.2	71.2	70.3	69.4	68.4
45	76.9	75.9	75.0	74.1	73.1	72.1	71.1	70.2	69.3	68.3
46	76.9	75.9	75.0	74.1	73.1	72.1	71.1	70.2	69.3	68.3
47	76.9	75.9	75.1	74.1	73.1	72.1	71.1	70.2	69.3	68.3
48	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.1	69.2	68.2
49	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.2	68.2
50	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.2	68.2
51	76.8	75.8	75.0	74.0	73.0	72.0	71.0	70.0	69.1	68.2
52	76.8	75.8	74.9	74.0	73.0	72.0	71.0	70.0	69.1	68.2
53	76.8	75.8	74.9	73.9	73.0	72.0	71.0	70.0	69.1	68.1
54	76.8	75.8	74.9	73.9	72.9	72.0	71.0	70.0	69.1	68.1
55	76.8	75.8	74.9	73.9	72.9	71.9	70.9	70.0	69.1	68.1
56	76.8	75.8	74.9	73.9	72.9	71.9	70.9	69.9	69.0	68.0
57	76.7	75.7	74.8	73.9	72.9	71.9	70.9	69.9	69.0	68.0
58	76.7	75.7	74.8	73.8	72.8	71.8	70.9	69.9	69.0	68.0
59	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
60	76.7	75.7	74.8	73.8	72.8	71.8	70.9	69.9	69.0	68.0
61	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
62	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	69.0	68.0

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
63	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
64	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
65	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
66	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
67	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
68	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
69	76.6	75.6	74.7	73.8	72.8	71.8	70.8	69.8	68.9	67.9
70	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
71	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
72	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
73	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
74	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
75	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
76	76.6	75.6	74.8	73.8	72.8	71.8	70.8	69.8	68.9	67.9
77	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
78	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
79	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
80	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.9	67.9
81	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
82	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
83	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
84	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
85	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
86	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
87	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
88	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
89	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
90	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
91	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
92	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
93	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
94	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
95	76.6	75.6	74.7	73.7	72.7	71.7	70.8	69.8	68.9	67.9
96	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
97	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
98	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
99	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
100	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
101	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
102	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
103	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
104	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
105	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
106	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
107	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
108	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
109	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
110	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
111	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
112	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
113	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
114	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
115	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
15	73.8	73.3	72.8	72.5	72.1	71.7	71.3	70.9	70.7	70.3
16	73.3	72.8	72.3	71.9	71.5	71.0	70.6	70.2	70.0	69.6
17	72.8	72.3	71.8	71.4	70.9	70.4	70.0	69.6	69.3	68.9
18	72.5	71.9	71.4	70.9	70.4	69.9	69.5	69.1	68.7	68.4
19	72.1	71.5	70.9	70.4	69.9	69.4	68.9	68.4	68.1	67.7
20	71.7	71.0	70.4	69.9	69.4	68.9	68.3	67.9	67.5	67.1
21	71.3	70.6	70.0	69.5	68.9	68.3	67.8	67.3	66.9	66.5
22	70.9	70.2	69.6	69.1	68.4	67.9	67.3	66.8	66.4	65.9
23	70.7	70.0	69.3	68.7	68.1	67.5	66.9	66.4	65.9	65.4
24	70.3	69.6	68.9	68.4	67.7	67.1	66.5	65.9	65.4	64.9
25	70.0	69.3	68.6	68.0	67.3	66.7	66.0	65.4	64.9	64.4
26	69.8	69.0	68.3	67.6	66.9	66.3	65.6	65.0	64.5	63.9
27	69.6	68.8	68.1	67.4	66.7	66.0	65.3	64.7	64.1	63.5
28	69.4	68.6	67.8	67.1	66.4	65.7	65.0	64.3	63.7	63.1
29	69.1	68.3	67.5	66.8	66.1	65.3	64.6	63.9	63.3	62.7
30	69.0	68.2	67.4	66.7	65.9	65.1	64.4	63.7	63.1	62.4
31	68.8	68.0	67.1	66.4	65.6	64.8	64.1	63.3	62.7	62.0
32	68.6	67.8	66.9	66.2	65.4	64.6	63.8	63.0	62.4	61.7
33	68.5	67.7	66.8	66.1	65.2	64.4	63.6	62.8	62.2	61.4
34	68.4	67.5	66.6	65.9	65.0	64.2	63.4	62.6	61.9	61.1
35	68.2	67.3	66.4	65.7	64.8	64.0	63.1	62.3	61.6	60.9
36	68.2	67.3	66.4	65.6	64.7	63.9	63.0	62.2	61.5	60.7
37	68.0	67.1	66.2	65.4	64.5	63.7	62.8	62.0	61.2	60.4
38	67.9	67.0	66.1	65.3	64.4	63.5	62.6	61.8	61.0	60.2
39	67.9	66.9	66.0	65.2	64.3	63.4	62.5	61.7	60.9	60.1
40	67.7	66.8	65.9	65.1	64.2	63.3	62.4	61.5	60.7	59.9
41	67.6	66.7	65.8	64.9	64.0	63.1	62.2	61.3	60.5	59.7
42	67.6	66.7	65.7	64.9	64.0	63.1	62.1	61.2	60.5	59.6
43	67.5	66.5	65.6	64.8	63.9	62.9	62.0	61.1	60.3	59.4
44	67.5	66.5	65.6	64.7	63.8	62.8	61.9	61.0	60.2	59.3
45	67.4	66.4	65.5	64.6	63.7	62.7	61.8	60.9	60.1	59.2
46	67.4	66.4	65.4	64.6	63.6	62.7	61.8	60.8	60.0	59.1
47	67.4	66.4	65.4	64.6	63.6	62.7	61.7	60.8	60.0	59.0
48	67.2	66.3	65.3	64.4	63.5	62.5	61.6	60.6	59.9	58.9
49	67.2	66.3	65.3	64.4	63.5	62.5	61.5	60.6	59.8	58.8
50	67.2	66.2	65.3	64.4	63.4	62.5	61.5	60.6	59.7	58.8
51	67.2	66.2	65.2	64.4	63.4	62.4	61.5	60.5	59.7	58.7
52	67.2	66.2	65.2	64.3	63.4	62.4	61.4	60.5	59.6	58.7
53	67.2	66.2	65.2	64.3	63.3	62.4	61.4	60.4	59.6	58.6
54	67.1	66.1	65.2	64.3	63.3	62.3	61.4	60.4	59.5	58.6
55	67.1	66.1	65.1	64.2	63.3	62.3	61.3	60.3	59.5	58.5
56	67.1	66.1	65.1	64.2	63.2	62.3	61.3	60.3	59.4	58.5
57	67.0	66.0	65.1	64.2	63.2	62.2	61.2	60.2	59.4	58.4
58	67.0	66.0	65.0	64.1	63.1	62.2	61.2	60.2	59.3	58.3
59	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.3	58.3
60	67.0	66.0	65.0	64.1	63.1	62.2	61.2	60.2	59.3	58.3
61	66.9	65.9	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.3
62	67.0	66.0	65.0	64.1	63.1	62.1	61.1	60.2	59.3	58.3
63	66.9	65.9	64.9	64.0	63.0	62.1	61.1	60.1	59.2	58.2
64	66.9	65.9	64.9	64.1	63.1	62.1	61.1	60.1	59.2	58.2
65	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.2
66	66.9	66.0	65.0	64.1	63.1	62.1	61.1	60.1	59.2	58.2
67	66.9	65.9	64.9	64.0	63.1	62.1	61.1	60.1	59.2	58.2
68	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.2	58.2
69	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
70	66.8	65.8	64.8	63.9	62.9	61.9	61.0	60.0	59.1	58.1
71	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
72	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
73	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
74	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
75	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
76	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
77	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
78	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
79	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
80	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
81	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
82	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
83	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.1	58.1
84	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
85	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
86	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
87	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
88	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
89	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
90	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
91	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
92	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
93	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
94	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
95	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.0	59.1	58.1
96	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
97	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
98	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
99	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
100	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
101	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
102	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
103	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
104	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
105	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
106	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
107	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
108	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
109	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
110	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
111	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
112	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
113	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
114	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
115	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
25	63.8	63.3	62.9	62.5	62.0	61.7	61.3	61.0	60.7	60.4
26	63.3	62.8	62.4	61.9	61.4	61.1	60.7	60.3	60.0	59.7
27	62.9	62.4	61.9	61.4	60.9	60.6	60.1	59.7	59.4	59.1
28	62.5	61.9	61.4	60.9	60.4	60.0	59.5	59.1	58.8	58.4
29	62.0	61.4	60.9	60.4	59.9	59.4	58.9	58.5	58.1	57.7
30	61.7	61.1	60.6	60.0	59.4	58.9	58.5	58.0	57.6	57.2
31	61.3	60.7	60.1	59.5	58.9	58.5	57.9	57.4	57.0	56.6
32	61.0	60.3	59.7	59.1	58.5	58.0	57.4	56.9	56.5	56.0
33	60.7	60.0	59.4	58.8	58.1	57.6	57.0	56.5	56.0	55.5
34	60.4	59.7	59.1	58.4	57.7	57.2	56.6	56.0	55.5	55.0
35	60.1	59.3	58.7	58.0	57.3	56.8	56.1	55.5	55.0	54.5
36	59.9	59.1	58.5	57.8	57.1	56.5	55.8	55.2	54.7	54.1
37	59.6	58.9	58.2	57.4	56.7	56.1	55.4	54.8	54.2	53.6
38	59.4	58.6	57.9	57.1	56.4	55.8	55.0	54.4	53.8	53.2
39	59.2	58.4	57.7	56.9	56.2	55.5	54.8	54.1	53.5	52.8
40	59.0	58.2	57.5	56.7	55.9	55.2	54.5	53.7	53.1	52.4
41	58.8	58.0	57.2	56.4	55.6	54.9	54.2	53.4	52.8	52.1
42	58.7	57.8	57.1	56.3	55.4	54.7	54.0	53.2	52.5	51.8
43	58.5	57.6	56.9	56.0	55.2	54.5	53.7	52.9	52.2	51.5
44	58.4	57.5	56.8	55.9	55.1	54.3	53.5	52.7	52.0	51.2
45	58.2	57.4	56.6	55.7	54.9	54.1	53.3	52.4	51.7	50.9
46	58.2	57.3	56.5	55.6	54.7	54.0	53.1	52.3	51.6	50.7
47	58.1	57.2	56.4	55.5	54.6	53.8	53.0	52.1	51.4	50.6
48	57.9	57.0	56.2	55.3	54.4	53.6	52.7	51.9	51.1	50.3
49	57.9	57.0	56.1	55.2	54.3	53.5	52.6	51.8	51.0	50.1
50	57.8	56.9	56.1	55.1	54.2	53.4	52.5	51.6	50.9	50.0
51	57.8	56.8	56.0	55.1	54.1	53.3	52.4	51.5	50.7	49.9
52	57.7	56.8	55.9	55.0	54.1	53.2	52.3	51.4	50.6	49.7
53	57.7	56.7	55.9	54.9	54.0	53.1	52.2	51.3	50.5	49.6
54	57.6	56.6	55.8	54.8	53.9	53.1	52.1	51.2	50.4	49.5
55	57.5	56.6	55.7	54.8	53.8	53.0	52.0	51.1	50.3	49.4
56	57.5	56.5	55.7	54.7	53.8	52.9	52.0	51.0	50.2	49.3
57	57.4	56.5	55.6	54.6	53.7	52.8	51.9	50.9	50.1	49.2
58	57.4	56.4	55.5	54.6	53.6	52.7	51.8	50.8	50.0	49.1
59	57.3	56.3	55.5	54.5	53.6	52.7	51.7	50.7	49.9	49.0
60	57.3	56.4	55.5	54.5	53.5	52.7	51.7	50.8	49.9	49.0
61	57.3	56.3	55.4	54.4	53.5	52.6	51.6	50.7	49.8	48.9
62	57.3	56.3	55.4	54.5	53.5	52.6	51.6	50.7	49.8	48.8
63	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
64	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
65	57.2	56.2	55.4	54.4	53.4	52.5	51.5	50.6	49.7	48.7
66	57.2	56.2	55.3	54.4	53.4	52.5	51.5	50.5	49.7	48.7
67	57.2	56.2	55.3	54.3	53.3	52.5	51.5	50.5	49.6	48.6
68	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.5	49.6	48.6
69	57.1	56.1	55.2	54.3	53.3	52.4	51.4	50.4	49.5	48.5
70	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.5	48.5
71	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.4	49.5	48.5
72	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.4	49.5	48.5
73	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.5	48.5
74	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
75	57.0	56.0	55.1	54.2	53.2	52.3	51.3	50.3	49.4	48.4
76	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
77	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.4
78	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.4
79	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
80	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
81	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
82	57.0	56.0	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
83	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
84	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
85	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
86	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
87	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
88	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
89	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
90	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
91	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
92	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
93	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
94	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
95	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
96	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
97	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
98	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
99	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
100	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
101	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
102	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
103	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
104	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
105	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
106	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
107	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
108	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
109	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
110	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
111	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
112	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
113	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
114	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
115	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
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AGES	35	36	37	38	39	40	41	42	43	44
35	53.9	53.5	53.0	52.5	52.2	51.8	51.4	51.1	50.7	50.5
36	53.5	53.1	52.6	52.1	51.7	51.2	50.8	50.5	50.1	49.8
37	53.0	52.6	52.0	51.6	51.1	50.6	50.2	49.8	49.4	49.2
38	52.5	52.1	51.6	50.9	50.5	50.0	49.6	49.2	48.8	48.5
39	52.2	51.7	51.1	50.5	50.1	49.6	49.1	48.7	48.2	47.9
40	51.8	51.2	50.6	50.0	49.6	49.0	48.5	48.1	47.6	47.2
41	51.4	50.8	50.2	49.6	49.1	48.5	47.9	47.5	47.0	46.6
42	51.1	50.5	49.8	49.2	48.7	48.1	47.5	47.1	46.5	46.1
43	50.7	50.1	49.4	48.8	48.2	47.6	47.0	46.5	46.0	45.5
44	50.5	49.8	49.2	48.5	47.9	47.2	46.6	46.1	45.5	45.1
45	50.2	49.5	48.8	48.1	47.5	46.8	46.2	45.6	45.0	44.6
46	50.0	49.3	48.5	47.8	47.2	46.5	45.8	45.3	44.6	44.1
47	49.8	49.1	48.3	47.5	46.9	46.2	45.5	44.9	44.2	43.8
48	49.5	48.8	48.0	47.2	46.6	45.8	45.1	44.5	43.8	43.3
49	49.3	48.6	47.8	47.0	46.3	45.6	44.8	44.2	43.5	42.9
50	49.1	48.4	47.6	46.8	46.1	45.3	44.6	43.9	43.2	42.6
51	49.0	48.2	47.4	46.6	46.0	45.1	44.3	43.6	42.9	42.3
52	48.9	48.1	47.2	46.4	45.7	44.9	44.1	43.4	42.6	42.0
53	48.7	47.9	47.1	46.2	45.5	44.7	43.8	43.1	42.4	41.7
54	48.6	47.8	46.9	46.1	45.3	44.5	43.6	42.9	42.1	41.4
55	48.5	47.7	46.8	45.9	45.1	44.3	43.4	42.7	41.9	41.2
56	48.3	47.5	46.6	45.8	45.0	44.1	43.2	42.5	41.7	41.0
57	48.2	47.4	46.5	45.6	44.8	43.9	43.1	42.3	41.5	40.7
58	48.1	47.3	46.4	45.5	44.7	43.8	42.9	42.1	41.3	40.5
59	48.0	47.2	46.3	45.3	44.5	43.6	42.7	42.0	41.1	40.3
60	48.0	47.2	46.2	45.3	44.5	43.6	42.7	41.9	41.0	40.2
61	47.9	47.1	46.1	45.2	44.4	43.4	42.5	41.7	40.8	40.0
62	47.9	47.0	46.1	45.2	44.3	43.4	42.5	41.7	40.8	40.0
63	47.8	46.9	46.0	45.0	44.2	43.3	42.3	41.5	40.6	39.8
64	47.8	46.9	46.0	45.0	44.2	43.2	42.3	41.4	40.5	39.7
65	47.7	46.9	45.9	45.0	44.1	43.2	42.2	41.4	40.5	39.6
66	47.7	46.8	45.9	44.9	44.1	43.1	42.2	41.3	40.4	39.5
67	47.7	46.8	45.8	44.9	44.0	43.0	42.1	41.2	40.3	39.5
68	47.6	46.7	45.8	44.8	43.9	43.0	42.0	41.2	40.2	39.4
69	47.6	46.7	45.7	44.7	43.8	42.9	41.9	41.1	40.1	39.3
70	47.5	46.6	45.6	44.7	43.8	42.8	41.9	41.0	40.0	39.2
71	47.5	46.6	45.6	44.7	43.8	42.8	41.8	41.0	40.0	39.1
72	47.5	46.6	45.6	44.7	43.8	42.8	41.8	41.0	40.0	39.1
73	47.5	46.6	45.6	44.6	43.7	42.8	41.8	40.9	39.9	39.1
74	47.4	46.6	45.6	44.6	43.7	42.7	41.7	40.9	39.9	39.0
75	47.4	46.5	45.5	44.5	43.7	42.7	41.7	40.8	39.8	39.0
76	47.4	46.5	45.6	44.6	43.7	42.7	41.7	40.8	39.8	39.0
77	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.8	38.9
78	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.9
79	47.3	46.4	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.9
80	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.8	39.8	38.9
81	47.3	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
82	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
83	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
84	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
85	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.6	38.7
86	47.3	46.4	45.4	44.4	43.6	42.6	41.6	40.7	39.7	38.8
87	47.3	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
88	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.7	39.7	38.8
89	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
90	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
91	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.7	38.8
92	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
93	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
94	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
95	47.4	46.5	45.5	44.5	43.6	42.6	41.6	40.7	39.7	38.8
96	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
97	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
98	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
99	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
100	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.7	38.8
101	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
102	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
103	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
104	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
105	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
106	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
107	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
108	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
109	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
110	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
111	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
112	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
113	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
114	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
115	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
45	44.0	43.6	43.1	42.6	42.3	41.9	41.6	41.3	41.0	40.7
46	43.6	43.1	42.7	42.1	41.7	41.4	41.0	40.7	40.3	40.0
47	43.1	42.7	42.2	41.6	41.2	40.8	40.4	40.1	39.7	39.4
48	42.6	42.1	41.6	41.1	40.6	40.2	39.8	39.4	39.0	38.7
49	42.3	41.7	41.2	40.6	40.1	39.7	39.3	38.8	38.5	38.1
50	41.9	41.4	40.8	40.2	39.7	39.2	38.8	38.3	37.9	37.5
51	41.6	41.0	40.4	39.8	39.3	38.8	38.3	37.8	37.4	37.0
52	41.3	40.7	40.1	39.4	38.8	38.3	37.8	37.3	36.9	36.4
53	41.0	40.3	39.7	39.0	38.5	37.9	37.4	36.9	36.4	35.9
54	40.7	40.0	39.4	38.7	38.1	37.5	37.0	36.4	35.9	35.4
55	40.4	39.7	39.1	38.4	37.7	37.1	36.6	36.0	35.5	34.9
56	40.2	39.5	38.8	38.0	37.4	36.8	36.2	35.6	35.0	34.5
57	39.9	39.2	38.5	37.7	37.1	36.4	35.8	35.2	34.6	34.1
58	39.7	39.0	38.3	37.5	36.8	36.1	35.5	34.8	34.2	33.7
59	39.5	38.7	38.0	37.2	36.5	35.8	35.1	34.5	33.9	33.3
60	39.4	38.6	37.9	37.0	36.3	35.6	34.9	34.3	33.6	33.0
61	39.2	38.4	37.6	36.8	36.1	35.3	34.6	34.0	33.3	32.6
62	39.1	38.3	37.5	36.7	35.9	35.2	34.5	33.8	33.1	32.4
63	38.9	38.1	37.3	36.4	35.7	34.9	34.2	33.5	32.8	32.1
64	38.8	38.0	37.2	36.3	35.5	34.8	34.0	33.3	32.6	31.8
65	38.7	37.9	37.1	36.2	35.4	34.6	33.9	33.1	32.4	31.6
66	38.6	37.8	37.0	36.1	35.3	34.5	33.7	32.9	32.2	31.4
67	38.5	37.7	36.9	36.0	35.1	34.3	33.5	32.8	32.0	31.2
68	38.4	37.6	36.8	35.8	35.0	34.2	33.4	32.6	31.8	31.0
69	38.3	37.5	36.6	35.7	34.8	34.1	33.2	32.4	31.6	30.9
70	38.2	37.4	36.5	35.6	34.7	33.9	33.1	32.3	31.5	30.7
71	38.2	37.3	36.5	35.5	34.7	33.9	33.0	32.2	31.4	30.6
72	38.2	37.3	36.4	35.5	34.6	33.8	33.0	32.1	31.3	30.5
73	38.1	37.2	36.4	35.4	34.6	33.7	32.9	32.0	31.2	30.4
74	38.1	37.2	36.3	35.4	34.5	33.6	32.8	31.9	31.1	30.3
75	38.0	37.1	36.2	35.3	34.4	33.5	32.7	31.8	31.0	30.1
76	38.0	37.1	36.2	35.3	34.4	33.5	32.7	31.8	31.0	30.1
77	37.9	37.0	36.1	35.2	34.3	33.4	32.6	31.7	30.8	30.0
78	37.9	37.0	36.1	35.1	34.3	33.4	32.5	31.7	30.8	29.9
79	37.8	37.0	36.1	35.1	34.2	33.3	32.5	31.6	30.7	29.9
80	37.9	37.0	36.1	35.1	34.3	33.4	32.5	31.6	30.8	29.9
81	37.8	36.9	36.1	35.1	34.2	33.3	32.4	31.5	30.7	29.8
82	37.8	37.0	36.1	35.1	34.2	33.3	32.4	31.5	30.7	29.8
83	37.8	36.9	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.8
84	37.8	36.9	36.0	35.0	34.1	33.3	32.4	31.5	30.6	29.7
85	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.6	29.7
86	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.6	29.7
87	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.7
88	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
89	37.7	36.8	35.9	34.9	34.0	33.1	32.3	31.4	30.5	29.6
90	37.7	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
91	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
92	37.7	36.8	35.9	35.0	34.1	33.2	32.3	31.4	30.5	29.6
93	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
94	37.7	36.8	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
95	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
96	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
97	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
98	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
99	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
100	37.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
101	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
102	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
103	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
104	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
105	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
106	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
107	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
108	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
109	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
110	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
111	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
112	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
113	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
114	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
115	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
55	34.5	34.0	33.5	33.1	32.7	32.4	32.0	31.7	31.4	31.1
56	34.0	33.5	33.0	32.5	32.1	31.8	31.4	31.1	30.7	30.5
57	33.5	33.0	32.5	32.0	31.5	31.2	30.8	30.5	30.1	29.8
58	33.1	32.5	32.0	31.5	31.0	30.6	30.2	29.9	29.5	29.2
59	32.7	32.1	31.5	31.0	30.5	30.1	29.6	29.3	28.9	28.5
60	32.4	31.8	31.2	30.6	30.1	29.7	29.2	28.8	28.4	28.0
61	32.0	31.4	30.8	30.2	29.6	29.2	28.7	28.3	27.8	27.4
62	31.7	31.1	30.5	29.9	29.3	28.8	28.3	27.8	27.3	27.0
63	31.4	30.7	30.1	29.5	28.9	28.4	27.8	27.3	26.8	26.4
64	31.1	30.5	29.8	29.2	28.5	28.0	27.4	27.0	26.4	26.0
65	30.9	30.2	29.5	28.9	28.2	27.7	27.1	26.6	26.0	25.5
66	30.7	30.0	29.3	28.6	27.9	27.4	26.7	26.2	25.6	25.1
67	30.5	29.8	29.0	28.3	27.6	27.1	26.4	25.9	25.3	24.7
68	30.3	29.5	28.8	28.1	27.4	26.8	26.1	25.5	24.9	24.4
69	30.1	29.3	28.6	27.8	27.1	26.5	25.8	25.2	24.5	24.0
70	29.9	29.1	28.3	27.6	26.8	26.2	25.5	24.9	24.2	23.6
71	29.8	29.0	28.2	27.4	26.7	26.0	25.3	24.7	24.0	23.4
72	29.7	28.9	28.1	27.3	26.5	25.9	25.1	24.5	23.8	23.1
73	29.5	28.7	27.9	27.1	26.4	25.7	24.9	24.3	23.5	22.9
74	29.4	28.6	27.8	27.0	26.2	25.5	24.7	24.1	23.3	22.7
75	29.3	28.5	27.6	26.9	26.0	25.3	24.5	23.9	23.1	22.4
76	29.3	28.4	27.6	26.8	26.0	25.2	24.4	23.8	23.0	22.3
77	29.1	28.3	27.4	26.6	25.8	25.1	24.2	23.5	22.8	22.1
78	29.1	28.2	27.4	26.5	25.7	25.0	24.1	23.4	22.6	21.9
79	29.0	28.1	27.3	26.4	25.6	24.9	24.0	23.3	22.5	21.8
80	29.0	28.2	27.3	26.4	25.6	24.8	24.0	23.3	22.4	21.7
81	28.9	28.1	27.2	26.3	25.5	24.7	23.9	23.1	22.3	21.6
82	28.9	28.0	27.2	26.3	25.4	24.7	23.8	23.1	22.2	21.5
83	28.9	28.0	27.1	26.3	25.4	24.6	23.8	23.0	22.2	21.4
84	28.8	28.0	27.1	26.2	25.3	24.6	23.7	22.9	22.1	21.3
85	28.8	27.9	27.0	26.1	25.3	24.5	23.6	22.9	22.0	21.2
86	28.8	27.9	27.0	26.1	25.3	24.5	23.6	22.8	22.0	21.2
87	28.8	27.9	27.0	26.1	25.2	24.5	23.6	22.8	21.9	21.2
88	28.7	27.9	27.0	26.1	25.2	24.4	23.5	22.8	21.9	21.1
89	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
90	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
91	28.7	27.8	26.9	26.0	25.1	24.4	23.5	22.7	21.8	21.0
92	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.7	21.8	21.0
93	28.6	27.7	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
94	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	21.0
95	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.8	21.0
96	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.6	21.7	20.9
97	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.7	20.9
98	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
99	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
100	28.7	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
101	28.6	27.8	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
102	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
103	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
104	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
105	28.6	27.7	26.8	25.9	25.0	24.2	23.4	22.6	21.7	20.9
106	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
107	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
108	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
109	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
110	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
111	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
112	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
113	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
114	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
115	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
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AGES	65	66	67	68	69	70	71	72	73	74
65	25.1	24.7	24.3	23.9	23.5	23.1	22.8	22.6	22.3	22.0
66	24.7	24.2	23.8	23.4	22.9	22.6	22.3	22.0	21.7	21.4
67	24.3	23.8	23.3	22.9	22.4	22.0	21.7	21.4	21.1	20.8
68	23.9	23.4	22.9	22.4	21.9	21.5	21.2	20.8	20.5	20.2
69	23.5	22.9	22.4	21.9	21.5	21.0	20.7	20.3	20.0	19.6
70	23.1	22.6	22.0	21.5	21.0	20.5	20.1	19.8	19.4	19.1
71	22.8	22.3	21.7	21.2	20.7	20.1	19.7	19.4	19.0	18.6
72	22.6	22.0	21.4	20.8	20.3	19.8	19.4	19.0	18.6	18.2
73	22.3	21.7	21.1	20.5	20.0	19.4	19.0	18.6	18.1	17.7
74	22.0	21.4	20.8	20.2	19.6	19.1	18.6	18.2	17.7	17.3
75	21.8	21.2	20.5	19.9	19.3	18.7	18.3	17.8	17.3	16.9
76	21.6	21.0	20.4	19.7	19.1	18.5	18.0	17.5	17.0	16.6
77	21.4	20.7	20.1	19.4	18.8	18.2	17.7	17.2	16.7	16.2
78	21.2	20.6	19.9	19.2	18.6	17.9	17.4	16.9	16.4	15.9
79	21.1	20.4	19.7	19.0	18.4	17.7	17.2	16.6	16.1	15.6
80	21.0	20.3	19.6	18.9	18.3	17.6	17.0	16.5	15.9	15.4
81	20.9	20.1	19.4	18.7	18.0	17.4	16.8	16.2	15.7	15.1
82	20.8	20.1	19.3	18.6	17.9	17.2	16.6	16.1	15.5	14.9
83	20.7	20.0	19.2	18.5	17.8	17.1	16.5	15.9	15.3	14.7
84	20.6	19.9	19.1	18.4	17.7	17.0	16.3	15.7	15.1	14.6
85	20.5	19.7	19.0	18.3	17.5	16.8	16.2	15.6	15.0	14.4
86	20.5	19.7	19.0	18.2	17.5	16.7	16.1	15.5	14.9	14.3
87	20.4	19.7	18.9	18.1	17.4	16.7	16.0	15.4	14.8	14.1
88	20.4	19.6	18.8	18.1	17.3	16.6	15.9	15.3	14.6	14.0
89	20.3	19.5	18.7	18.0	17.2	16.5	15.8	15.2	14.5	13.9
90	20.3	19.5	18.7	18.0	17.2	16.4	15.8	15.1	14.5	13.8
91	20.2	19.5	18.7	17.9	17.2	16.4	15.7	15.1	14.4	13.8
92	20.2	19.4	18.7	17.9	17.1	16.3	15.7	15.0	14.4	13.7
93	20.2	19.4	18.6	17.8	17.0	16.3	15.6	14.9	14.3	13.6
94	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.3	13.6
95	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.3	13.6
96	20.1	19.3	18.5	17.7	16.9	16.2	15.5	14.8	14.1	13.5
97	20.1	19.3	18.5	17.7	16.9	16.1	15.5	14.8	14.1	13.4
98	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.1	13.4
99	20.0	19.2	18.4	17.7	16.9	16.1	15.4	14.7	14.0	13.4
100	20.1	19.3	18.5	17.7	16.9	16.2	15.5	14.8	14.1	13.4
101	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.1	13.4
102	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.0	13.3
103	20.0	19.2	18.4	17.6	16.8	16.1	15.4	14.7	14.0	13.3
104	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
105	20.1	19.3	18.5	17.7	16.9	16.1	15.4	14.7	14.0	13.3
106	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	14.0	13.3
107	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
108	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
109	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
110	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
111	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
112	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
113	20.0	19.2	18.4	17.6	16.8	16.1	15.4	14.7	14.0	13.3
114	20.0	19.2	18.4	17.6	16.8	16.0	15.4	14.7	14.0	13.3
115	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	75	76	77	78	79	80	81	82	83	84
75	16.4	16.1	15.7	15.4	15.1	14.9	14.6	14.4	14.2	14.0
76	16.1	15.8	15.3	15.0	14.7	14.5	14.1	13.9	13.7	13.5
77	15.7	15.3	14.9	14.5	14.2	13.9	13.6	13.4	13.2	12.9
78	15.4	15.0	14.5	14.2	13.8	13.5	13.2	13.0	12.7	12.5
79	15.1	14.7	14.2	13.8	13.4	13.2	12.8	12.5	12.3	12.0
80	14.9	14.5	13.9	13.5	13.2	12.9	12.5	12.2	11.9	11.7
81	14.6	14.1	13.6	13.2	12.8	12.5	12.1	11.8	11.5	11.2
82	14.4	13.9	13.4	13.0	12.5	12.2	11.8	11.5	11.2	10.9
83	14.2	13.7	13.2	12.7	12.3	11.9	11.5	11.2	10.9	10.6
84	14.0	13.5	12.9	12.5	12.0	11.7	11.2	10.9	10.6	10.2
85	13.8	13.3	12.7	12.2	11.7	11.4	10.9	10.6	10.2	9.9
86	13.6	13.1	12.6	12.1	11.6	11.2	10.7	10.4	10.0	9.7
87	13.5	13.0	12.4	11.9	11.4	11.0	10.6	10.2	9.8	9.4
88	13.4	12.9	12.3	11.8	11.3	10.9	10.4	10.0	9.6	9.2
89	13.3	12.7	12.1	11.6	11.1	10.7	10.2	9.8	9.4	9.0
90	13.2	12.7	12.0	11.5	11.0	10.6	10.1	9.6	9.2	8.9
91	13.1	12.6	11.9	11.4	10.9	10.5	9.9	9.5	9.1	8.7
92	13.0	12.5	11.9	11.3	10.9	10.3	9.8	9.4	9.0	8.6
93	12.9	12.4	11.7	11.2	10.7	10.2	9.7	9.3	8.9	8.4
94	12.9	12.4	11.7	11.2	10.6	10.2	9.6	9.2	8.8	8.3
95	12.9	12.4	11.7	11.1	10.6	10.1	9.6	9.1	8.7	8.3
96	12.8	12.2	11.6	11.0	10.4	10.0	9.4	9.0	8.5	8.1
97	12.8	12.2	11.5	10.9	10.4	9.9	9.4	8.9	8.5	8.0
98	12.7	12.1	11.5	10.9	10.3	9.9	9.3	8.8	8.4	7.9
99	12.7	12.1	11.4	10.8	10.3	9.8	9.2	8.8	8.3	7.9
100	12.7	12.1	11.5	10.9	10.3	9.8	9.3	8.8	8.3	7.9
101	12.7	12.1	11.4	10.8	10.3	9.8	9.2	8.7	8.3	7.8
102	12.6	12.1	11.4	10.8	10.2	9.7	9.2	8.7	8.2	7.7
103	12.6	12.0	11.3	10.7	10.2	9.7	9.1	8.6	8.1	7.7
104	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.6	8.1	7.6
105	12.6	12.0	11.3	10.7	10.2	9.7	9.1	8.6	8.1	7.6
106	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.6
107	12.5	11.9	11.2	10.6	10.0	9.5	9.0	8.5	8.0	7.5
108	12.5	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
109	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
110	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
111	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	8.0	7.5
112	12.5	11.9	11.2	10.7	10.1	9.6	9.0	8.5	8.0	7.5
113	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
114	12.6	12.0	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
115	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	85	86	87	88	89	90	91	92	93	94
85	9.6	9.3	9.1	8.8	8.6	8.5	8.3	8.1	8.0	7.9
86	9.3	9.1	8.8	8.6	8.3	8.2	8.0	7.8	7.7	7.6
87	9.1	8.8	8.6	8.3	8.0	7.9	7.7	7.5	7.4	7.3
88	8.8	8.6	8.3	8.0	7.8	7.6	7.4	7.2	7.0	7.0
89	8.6	8.3	8.0	7.8	7.5	7.3	7.1	6.9	6.7	6.6
90	8.5	8.2	7.9	7.6	7.3	7.1	6.9	6.7	6.5	6.4
91	8.3	8.0	7.7	7.4	7.1	6.9	6.7	6.5	6.3	6.2
92	8.1	7.8	7.5	7.2	6.9	6.7	6.5	6.3	6.1	6.0
93	8.0	7.7	7.4	7.0	6.7	6.5	6.3	6.1	5.9	5.7
94	7.9	7.6	7.3	7.0	6.6	6.4	6.2	6.0	5.7	5.6
95	7.8	7.5	7.2	6.9	6.5	6.3	6.1	5.9	5.6	5.5
96	7.7	7.3	7.0	6.7	6.3	6.1	5.9	5.6	5.4	5.3
97	7.6	7.2	6.9	6.6	6.2	6.0	5.7	5.5	5.3	5.1
98	7.5	7.1	6.8	6.5	6.1	5.9	5.6	5.4	5.1	5.0
99	7.4	7.1	6.7	6.4	6.0	5.8	5.5	5.3	5.0	4.9
100	7.4	7.1	6.7	6.4	6.0	5.8	5.5	5.2	5.0	4.8
101	7.3	7.0	6.6	6.3	5.9	5.6	5.4	5.1	4.9	4.7
102	7.3	6.9	6.5	6.2	5.8	5.5	5.3	5.0	4.8	4.6
103	7.2	6.8	6.4	6.1	5.7	5.4	5.2	4.9	4.7	4.5
104	7.1	6.7	6.4	6.0	5.6	5.4	5.1	4.8	4.5	4.4
105	7.1	6.7	6.4	6.0	5.6	5.4	5.1	4.8	4.5	4.4
106	7.1	6.7	6.3	5.9	5.5	5.3	5.0	4.7	4.4	4.3
107	7.0	6.6	6.2	5.8	5.5	5.2	4.9	4.6	4.3	4.1
108	7.0	6.6	6.2	5.9	5.5	5.2	4.9	4.6	4.3	4.1
109	6.9	6.5	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
110	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
111	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
112	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
113	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
114	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	4.0
115	6.9	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9

TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	95	96	97	98	99	100	101	102	103	104
95	5.4	5.1	5.0	4.8	4.7	4.7	4.6	4.4	4.3	4.2
96	5.1	4.9	4.7	4.6	4.5	4.4	4.3	4.2	4.0	3.9
97	5.0	4.7	4.6	4.5	4.3	4.3	4.1	4.0	3.9	3.8
98	4.8	4.6	4.5	4.3	4.2	4.1	4.0	3.8	3.7	3.6
99	4.7	4.5	4.3	4.2	4.0	4.0	3.8	3.7	3.5	3.4
100	4.7	4.4	4.3	4.1	4.0	3.9	3.8	3.6	3.5	3.3
101	4.6	4.3	4.1	4.0	3.8	3.8	3.6	3.5	3.3	3.2
102	4.4	4.2	4.0	3.8	3.7	3.6	3.5	3.3	3.2	3.0
103	4.3	4.0	3.9	3.7	3.5	3.5	3.3	3.2	3.0	2.9
104	4.2	3.9	3.8	3.6	3.4	3.3	3.2	3.0	2.9	2.7
105	4.2	3.9	3.7	3.6	3.4	3.3	3.1	3.0	2.8	2.7
106	4.1	3.8	3.6	3.4	3.3	3.2	3.0	2.8	2.7	2.6
107	4.0	3.7	3.5	3.3	3.1	3.1	2.9	2.7	2.5	2.4
108	4.0	3.7	3.5	3.3	3.1	3.0	2.8	2.7	2.5	2.3
109	3.9	3.6	3.4	3.2	3.0	2.9	2.7	2.5	2.4	2.2
110	3.8	3.5	3.4	3.2	3.0	2.9	2.7	2.5	2.3	2.1
111	3.8	3.5	3.3	3.1	2.9	2.9	2.7	2.5	2.3	2.1
112	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1
113	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.2	2.0
114	3.8	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.2	2.0
115	3.7	3.4	3.2	3.0	2.8	2.7	2.5	2.3	2.1	1.9

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TABLE VI - ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	105	106	107	108	109	110	111	112	113	114	115
105	2.6	2.4	2.3	2.2	2.1	2.1	2.0	2.0	1.9	1.9	1.8
106	2.4	2.3	2.1	2.1	1.9	1.9	1.8	1.8	1.7	1.7	1.6
107	2.3	2.1	2.0	1.9	1.8	1.7	1.6	1.6	1.5	1.5	1.4
108	2.2	2.1	1.9	1.8	1.7	1.6	1.6	1.5	1.5	1.4	1.3
109	2.1	1.9	1.8	1.7	1.5	1.4	1.4	1.3	1.3	1.2	1.1
110	2.1	1.9	1.7	1.6	1.4	1.4	1.3	1.2	1.2	1.1	1.0
111	2.0	1.8	1.6	1.6	1.4	1.3	1.2	1.2	1.1	1.0	.9
112	2.0	1.8	1.6	1.5	1.3	1.2	1.2	1.1	1.0	.9	.8
113	1.9	1.7	1.5	1.5	1.3	1.2	1.1	1.0	.9	.8	.7
114	1.9	1.7	1.5	1.4	1.2	1.1	1.0	.9	.8	.7	.6
115	1.8	1.6	1.4	1.3	1.1	1.0	.9	.8	.7	.6	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
5	69.5	69.0	68.4	67.9	67.3	66.7	66.1	65.5	64.8	64.1
6	69.0	68.5	68.0	67.5	66.9	66.4	65.8	65.1	64.5	63.8
7	68.4	68.0	67.5	67.0	66.5	66.0	65.4	64.8	64.2	63.5
8	67.9	67.5	67.0	66.6	66.1	65.5	65.0	64.4	63.8	63.2
9	67.3	66.9	66.5	66.1	65.6	65.1	64.6	64.0	63.4	62.8
10	66.7	66.4	66.0	65.5	65.1	64.6	64.1	63.6	63.0	62.5
11	66.1	65.8	65.4	65.0	64.6	64.1	63.6	63.1	62.6	62.1
12	65.5	65.1	64.8	64.4	64.0	63.6	63.1	62.7	62.2	61.7
13	64.8	64.5	64.2	63.8	63.4	63.0	62.6	62.2	61.7	61.2
14	64.1	63.8	63.5	63.2	62.8	62.5	62.1	61.7	61.2	60.7
15	63.4	63.1	62.9	62.6	62.2	61.9	61.5	61.1	60.7	60.2
16	62.7	62.4	62.2	61.9	61.6	61.3	60.9	60.5	60.1	59.7
17	61.9	61.7	61.5	61.2	60.9	60.6	60.3	59.9	59.6	59.2
18	61.2	61.0	60.7	60.5	60.2	60.0	59.7	59.3	59.0	58.6
19	60.4	60.2	60.0	59.8	59.5	59.3	59.0	58.7	58.4	58.0
20	59.6	59.4	59.2	59.0	58.8	58.6	58.3	58.0	57.7	57.4
21	58.8	58.7	58.5	58.3	58.1	57.9	57.6	57.3	57.1	56.8
22	58.0	57.9	57.7	57.5	57.3	57.1	56.9	56.6	56.4	56.1
23	57.2	57.0	56.9	56.7	56.5	56.4	56.1	55.9	55.7	55.4
24	56.3	56.2	56.1	55.9	55.8	55.6	55.4	55.2	55.0	54.7
25	55.5	55.4	55.2	55.1	55.0	54.8	54.6	54.4	54.2	54.0
26	54.6	54.5	54.4	54.3	54.1	54.0	53.8	53.7	53.5	53.3
27	53.8	53.7	53.6	53.4	53.3	53.2	53.0	52.9	52.7	52.5
28	52.9	52.8	52.7	52.6	52.5	52.4	52.2	52.1	51.9	51.7
29	52.0	51.9	51.8	51.7	51.6	51.5	51.4	51.3	51.1	51.0
30	51.1	51.0	51.0	50.9	50.8	50.7	50.6	50.4	50.3	50.2
31	50.2	50.2	50.1	50.0	49.9	49.8	49.7	49.6	49.5	49.3
32	49.3	49.3	49.2	49.1	49.0	49.0	48.9	48.8	48.6	48.5
33	48.4	48.4	48.3	48.2	48.2	48.1	48.0	47.9	47.8	47.7
34	47.5	47.5	47.4	47.4	47.3	47.2	47.1	47.0	47.0	46.9
35	46.6	46.6	46.5	46.5	46.4	46.3	46.3	46.2	46.1	46.0
36	45.7	45.7	45.6	45.6	45.5	45.4	45.4	45.3	45.2	45.1
37	44.8	44.7	44.7	44.6	44.6	44.5	44.5	44.4	44.3	44.2
38	43.9	43.8	43.8	43.7	43.7	43.6	43.6	43.5	43.5	43.4
39	42.9	42.9	42.9	42.8	42.8	42.7	42.7	42.6	42.6	42.5
40	42.0	42.0	42.0	41.9	41.9	41.8	41.8	41.7	41.7	41.6
41	41.1	41.1	41.0	41.0	41.0	40.9	40.9	40.8	40.8	40.7
42	40.2	40.1	40.1	40.1	40.1	40.0	40.0	39.9	39.9	39.8
43	39.2	39.2	39.2	39.2	39.1	39.1	39.1	39.0	39.0	39.0
44	38.3	38.3	38.3	38.3	38.2	38.2	38.2	38.1	38.1	38.1
45	37.4	37.4	37.4	37.3	37.3	37.3	37.3	37.2	37.2	37.2
46	36.5	36.5	36.5	36.4	36.4	36.4	36.4	36.3	36.3	36.3
47	35.6	35.6	35.5	35.5	35.5	35.5	35.5	35.4	35.4	35.4
48	34.7	34.7	34.6	34.6	34.6	34.6	34.6	34.5	34.5	34.5
49	33.8	33.8	33.7	33.7	33.7	33.7	33.7	33.7	33.6	33.6
50	32.9	32.9	32.8	32.8	32.8	32.8	32.8	32.8	32.7	32.7
51	32.0	32.0	31.9	31.9	31.9	31.9	31.9	31.9	31.9	31.8
52	31.1	31.1	31.1	31.0	31.0	31.0	31.0	31.0	31.0	30.9
53	30.2	30.2	30.2	30.2	30.1	30.1	30.1	30.1	30.1	30.1
54	29.3	29.3	29.3	29.3	29.3	29.2	29.2	29.2	29.2	29.2
55	28.4	28.4	28.4	28.4	28.4	28.4	28.4	28.3	28.3	28.3
56	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5
57	26.7	26.7	26.7	26.6	26.6	26.6	26.6	26.6	26.6	26.6
58	25.8	25.8	25.8	25.8	25.8	25.8	25.8	25.7	25.7	25.7
59	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9
60	24.1	24.1	24.1	24.1	24.1	24.0	24.0	24.0	24.0	24.0
61	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2
62	22.4	22.4	22.4	22.4	22.4	22.4	22.3	22.3	22.3	22.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	5	6	7	8	9	10	11	12	13	14
63	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5
64	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7
65	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9
66	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5
69	16.8	16.8	16.8	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.2
72	14.6	14.6	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5
73	13.9	13.9	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
15	59.8	59.3	58.8	58.2	57.6	57.0	56.4	55.8	55.1	54.5
16	59.3	58.8	58.3	57.8	57.2	56.7	56.1	55.5	54.8	54.2
17	58.8	58.3	57.8	57.3	56.8	56.3	55.7	55.1	54.5	53.9
18	58.2	57.8	57.3	56.9	56.4	55.9	55.3	54.7	54.2	53.5
19	57.6	57.2	56.8	56.4	55.9	55.4	54.9	54.4	53.8	53.2
20	57.0	56.7	56.3	55.9	55.4	54.9	54.5	53.9	53.4	52.8
21	56.4	56.1	55.7	55.3	54.9	54.5	54.0	53.5	53.0	52.4
22	55.8	55.5	55.1	54.7	54.4	53.9	53.5	53.0	52.5	52.0
23	55.1	54.8	54.5	54.2	53.8	53.4	53.0	52.5	52.1	51.6
24	54.5	54.2	53.9	53.5	53.2	52.8	52.4	52.0	51.6	51.1
25	53.8	53.5	53.2	52.9	52.6	52.2	51.9	51.5	51.1	50.6
26	53.0	52.8	52.5	52.3	52.0	51.6	51.3	50.9	50.5	50.1
27	52.3	52.1	51.8	51.6	51.3	51.0	50.7	50.3	50.0	49.6
28	51.5	51.3	51.1	50.9	50.6	50.3	50.0	49.7	49.4	49.0
29	50.8	50.6	50.4	50.2	49.9	49.7	49.4	49.1	48.8	48.4
30	50.0	49.8	49.6	49.4	49.2	49.0	48.7	48.4	48.1	47.8
31	49.2	49.0	48.9	48.7	48.5	48.3	48.0	47.8	47.5	47.2
32	48.4	48.2	48.1	47.9	47.7	47.5	47.3	47.1	46.8	46.5
33	47.6	47.4	47.3	47.1	47.0	46.8	46.6	46.3	46.1	45.8
34	46.7	46.6	46.5	46.3	46.2	46.0	45.8	45.6	45.4	45.2
35	45.9	45.8	45.7	45.5	45.4	45.2	45.1	44.9	44.7	44.4
36	45.0	44.9	44.8	44.7	44.6	44.4	44.3	44.1	43.9	43.7
37	44.2	44.1	44.0	43.9	43.8	43.6	43.5	43.3	43.2	43.0
38	43.3	43.2	43.1	43.0	42.9	42.8	42.7	42.5	42.4	42.2
39	42.4	42.4	42.3	42.2	42.1	42.0	41.9	41.7	41.6	41.4
40	41.6	41.5	41.4	41.3	41.2	41.1	41.0	40.9	40.8	40.6
41	40.7	40.6	40.5	40.5	40.4	40.3	40.2	40.1	40.0	39.8
42	39.8	39.7	39.7	39.6	39.5	39.4	39.4	39.3	39.1	39.0
43	38.9	38.9	38.8	38.7	38.7	38.6	38.5	38.4	38.3	38.2
44	38.0	38.0	37.9	37.9	37.8	37.7	37.7	37.6	37.5	37.4
45	37.1	37.1	37.0	37.0	36.9	36.9	36.8	36.7	36.6	36.5
46	36.2	36.2	36.2	36.1	36.1	36.0	35.9	35.8	35.8	35.7
47	35.3	35.3	35.3	35.2	35.2	35.1	35.1	35.0	34.9	34.9
48	34.5	34.4	34.4	34.4	34.3	34.3	34.2	34.2	34.1	34.0
49	33.6	33.5	33.5	33.5	33.4	33.4	33.4	33.3	33.2	33.2
50	32.7	32.7	32.6	32.6	32.6	32.5	32.5	32.4	32.4	32.3
51	31.8	31.8	31.8	31.7	31.7	31.7	31.6	31.6	31.5	31.5
52	30.9	30.9	30.9	30.9	30.8	30.8	30.8	30.7	30.7	30.6
53	30.0	30.0	30.0	30.0	30.0	29.9	29.9	29.9	29.8	29.8
54	29.2	29.2	29.1	29.1	29.1	29.1	29.0	29.0	29.0	28.9
55	28.3	28.3	28.3	28.3	28.2	28.2	28.2	28.2	28.1	28.1
56	27.4	27.4	27.4	27.4	27.4	27.3	27.3	27.3	27.3	27.2
57	26.6	26.6	26.5	26.5	26.5	26.5	26.5	26.5	26.4	26.4
58	25.7	25.7	25.7	25.7	25.7	25.6	25.6	25.6	25.6	25.6
59	24.9	24.8	24.8	24.8	24.8	24.8	24.8	24.8	24.7	24.7
60	24.0	24.0	24.0	24.0	24.0	23.9	23.9	23.9	23.9	23.9
61	23.2	23.2	23.1	23.1	23.1	23.1	23.1	23.1	23.1	23.0
62	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.2	22.2	22.2
63	21.5	21.5	21.5	21.5	21.5	21.4	21.4	21.4	21.4	21.4
64	20.7	20.7	20.7	20.6	20.6	20.6	20.6	20.6	20.6	20.6
65	19.9	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8
66	19.1	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0
67	18.3	18.3	18.3	18.3	18.2	18.2	18.2	18.2	18.2	18.2
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.4	17.4
69	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	15.9	15.9	15.9	15.9
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	15	16	17	18	19	20	21	22	23	24
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
25	50.2	49.7	49.2	48.6	48.1	47.5	46.9	46.2	45.6	44.9
26	49.7	49.2	48.7	48.2	47.7	47.1	46.5	45.9	45.3	44.6
27	49.2	48.7	48.3	47.8	47.3	46.7	46.2	45.6	45.0	44.3
28	48.6	48.2	47.8	47.3	46.8	46.3	45.8	45.2	44.6	44.0
29	48.1	47.7	47.3	46.8	46.4	45.9	45.4	44.8	44.3	43.7
30	47.5	47.1	46.7	46.3	45.9	45.4	44.9	44.4	43.9	43.3
31	46.9	46.5	46.2	45.8	45.4	44.9	44.5	44.0	43.5	42.9
32	46.2	45.9	45.6	45.2	44.8	44.4	44.0	43.5	43.0	42.5
33	45.6	45.3	45.0	44.6	44.3	43.9	43.5	43.0	42.6	42.1
34	44.9	44.6	44.3	44.0	43.7	43.3	42.9	42.5	42.1	41.6
35	44.2	44.0	43.7	43.4	43.1	42.7	42.4	42.0	41.6	41.1
36	43.5	43.3	43.0	42.7	42.4	42.1	41.8	41.4	41.0	40.6
37	42.8	42.5	42.3	42.1	41.8	41.5	41.2	40.8	40.5	40.1
38	42.0	41.8	41.6	41.4	41.1	40.8	40.6	40.2	39.9	39.5
39	41.3	41.1	40.9	40.7	40.4	40.2	39.9	39.6	39.3	39.0
40	40.5	40.3	40.1	39.9	39.7	39.5	39.2	39.0	38.7	38.4
41	39.7	39.5	39.4	39.2	39.0	38.8	38.5	38.3	38.0	37.7
42	38.9	38.8	38.6	38.4	38.3	38.1	37.8	37.6	37.4	37.1
43	38.1	38.0	37.8	37.7	37.5	37.3	37.1	36.9	36.7	36.4
44	37.3	37.2	37.0	36.9	36.7	36.6	36.4	36.2	36.0	35.8
45	36.5	36.3	36.2	36.1	36.0	35.8	35.6	35.5	35.3	35.1
46	35.6	35.5	35.4	35.3	35.2	35.0	34.9	34.7	34.5	34.4
47	34.8	34.7	34.6	34.5	34.4	34.3	34.1	34.0	33.8	33.6
48	34.0	33.9	33.8	33.7	33.6	33.5	33.4	33.2	33.1	32.9
49	33.1	33.0	33.0	32.9	32.8	32.7	32.6	32.4	32.3	32.2
50	32.2	32.2	32.1	32.1	32.0	31.9	31.8	31.7	31.5	31.4
51	31.4	31.4	31.3	31.2	31.2	31.1	31.0	30.9	30.8	30.6
52	30.6	30.5	30.5	30.4	30.3	30.3	30.2	30.1	30.0	29.9
53	29.7	29.7	29.6	29.6	29.5	29.5	29.4	29.3	29.2	29.1
54	28.9	28.9	28.8	28.8	28.7	28.6	28.6	28.5	28.4	28.3
55	28.1	28.0	28.0	27.9	27.9	27.8	27.8	27.7	27.6	27.5
56	27.2	27.2	27.1	27.1	27.0	27.0	26.9	26.9	26.8	26.7
57	26.4	26.3	26.3	26.3	26.2	26.2	26.1	26.1	26.0	25.9
58	25.5	25.5	25.5	25.4	25.4	25.4	25.3	25.3	25.2	25.1
59	24.7	24.7	24.6	24.6	24.6	24.5	24.5	24.5	24.4	24.3
60	23.9	23.8	23.8	23.8	23.8	23.7	23.7	23.6	23.6	23.5
61	23.0	23.0	23.0	23.0	22.9	22.9	22.9	22.8	22.8	22.7
62	22.2	22.2	22.2	22.1	22.1	22.1	22.1	22.0	22.0	21.9
63	21.4	21.4	21.3	21.3	21.3	21.3	21.3	21.2	21.2	21.2
64	20.6	20.6	20.5	20.5	20.5	20.5	20.5	20.4	20.4	20.4
65	19.8	19.8	19.7	19.7	19.7	19.7	19.7	19.6	19.6	19.6
66	19.0	19.0	18.9	18.9	18.9	18.9	18.9	18.9	18.8	18.8
67	18.2	18.2	18.2	18.2	18.2	18.1	18.1	18.1	18.1	18.1
68	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.3	17.3	17.3
69	16.7	16.7	16.7	16.6	16.6	16.6	16.6	16.6	16.6	16.6
70	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.8	15.8
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.1	15.1	15.1
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.4	14.4	14.4
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.7	13.7
74	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.4	12.4	12.4	12.4	12.4	12.4	12.4
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.1
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.5
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	25	26	27	28	29	30	31	32	33	34
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
35	40.7	40.2	39.7	39.2	38.6	38.0	37.4	36.8	36.2	35.5
36	40.2	39.7	39.3	38.7	38.2	37.7	37.1	36.5	35.9	35.2
37	39.7	39.3	38.8	38.3	37.8	37.3	36.7	36.2	35.6	34.9
38	39.2	38.7	38.3	37.9	37.4	36.9	36.3	35.8	35.2	34.6
39	38.6	38.2	37.8	37.4	36.9	36.4	35.9	35.4	34.9	34.3
40	38.0	37.7	37.3	36.9	36.4	36.0	35.5	35.0	34.5	34.0
41	37.4	37.1	36.7	36.3	35.9	35.5	35.1	34.6	34.1	33.6
42	36.8	36.5	36.2	35.8	35.4	35.0	34.6	34.1	33.7	33.2
43	36.2	35.9	35.6	35.2	34.9	34.5	34.1	33.7	33.2	32.8
44	35.5	35.2	34.9	34.6	34.3	34.0	33.6	33.2	32.8	32.3
45	34.8	34.6	34.3	34.0	33.7	33.4	33.0	32.7	32.3	31.8
46	34.1	33.9	33.7	33.4	33.1	32.8	32.5	32.1	31.8	31.4
47	33.4	33.2	33.0	32.8	32.5	32.2	31.9	31.6	31.2	30.8
48	32.7	32.5	32.3	32.1	31.8	31.6	31.3	31.0	30.7	30.3
49	32.0	31.8	31.6	31.4	31.2	30.9	30.7	30.4	30.1	29.8
50	31.3	31.1	30.9	30.7	30.5	30.3	30.0	29.8	29.5	29.2
51	30.5	30.4	30.2	30.0	29.8	29.6	29.4	29.2	28.9	28.6
52	29.7	29.6	29.5	29.3	29.1	28.9	28.7	28.5	28.3	28.0
53	29.0	28.9	28.7	28.6	28.4	28.2	28.1	27.9	27.6	27.4
54	28.2	28.1	28.0	27.8	27.7	27.5	27.4	27.2	27.0	26.8
55	27.4	27.3	27.2	27.1	27.0	26.8	26.7	26.5	26.3	26.1
56	26.7	26.6	26.5	26.3	26.2	26.1	26.0	25.8	25.6	25.4
57	25.9	25.8	25.7	25.6	25.5	25.4	25.2	25.1	24.9	24.8
58	25.1	25.0	24.9	24.8	24.7	24.6	24.5	24.4	24.2	24.1
59	24.3	24.2	24.1	24.1	24.0	23.9	23.8	23.6	23.5	23.4
60	23.5	23.4	23.4	23.3	23.2	23.1	23.0	22.9	22.8	22.7
61	22.7	22.6	22.6	22.5	22.4	22.4	22.3	22.2	22.1	22.0
62	21.9	21.9	21.8	21.7	21.7	21.6	21.5	21.4	21.3	21.2
63	21.1	21.1	21.0	21.0	20.9	20.8	20.8	20.7	20.6	20.5
64	20.3	20.3	20.2	20.2	20.1	20.1	20.0	20.0	19.9	19.8
65	19.6	19.5	19.5	19.4	19.4	19.3	19.3	19.2	19.1	19.1
66	18.8	18.8	18.7	18.7	18.6	18.6	18.5	18.5	18.4	18.4
67	18.0	18.0	18.0	17.9	17.9	17.9	17.8	17.8	17.7	17.6
68	17.3	17.3	17.2	17.2	17.2	17.1	17.1	17.0	17.0	16.9
69	16.5	16.5	16.5	16.5	16.4	16.4	16.4	16.3	16.3	16.2
70	15.8	15.8	15.8	15.7	15.7	15.7	15.6	15.6	15.6	15.5
71	15.1	15.1	15.1	15.0	15.0	15.0	15.0	14.9	14.9	14.9
72	14.4	14.4	14.4	14.3	14.3	14.3	14.3	14.2	14.2	14.2
73	13.7	13.7	13.7	13.7	13.7	13.6	13.6	13.6	13.6	13.5
74	13.1	13.0	13.0	13.0	13.0	13.0	13.0	12.9	12.9	12.9
75	12.4	12.4	12.4	12.4	12.3	12.3	12.3	12.3	12.3	12.2
76	11.8	11.8	11.7	11.7	11.7	11.7	11.7	11.7	11.6	11.6
77	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.0	11.0
78	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.4
79	10.0	10.0	9.9	9.9	9.9	9.9	9.9	9.9	9.9	9.9
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.3	9.3	9.3
81	8.9	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8
82	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.4	6.4	6.4	6.4	6.4	6.4
87	6.1	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.6	4.6
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	35	36	37	38	39	40	41	42	43	44
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
45	31.4	30.9	30.5	30.0	29.4	28.9	28.3	27.7	27.1	26.5
46	30.9	30.5	30.0	29.6	29.1	28.5	28.0	27.4	26.9	26.3
47	30.5	30.0	29.6	29.2	28.7	28.2	27.7	27.1	26.6	26.0
48	30.0	29.6	29.2	28.7	28.3	27.8	27.3	26.8	26.3	25.7
49	29.4	29.1	28.7	28.3	27.9	27.4	26.9	26.5	25.9	25.4
50	28.9	28.5	28.2	27.8	27.4	27.0	26.5	26.1	25.6	25.1
51	28.3	28.0	27.7	27.3	26.9	26.5	26.1	25.7	25.2	24.7
52	27.7	27.4	27.1	26.8	26.5	26.1	25.7	25.3	24.8	24.4
53	27.1	26.9	26.6	26.3	25.9	25.6	25.2	24.8	24.4	24.0
54	26.5	26.3	26.0	25.7	25.4	25.1	24.7	24.4	24.0	23.6
55	25.9	25.7	25.4	25.1	24.9	24.6	24.2	23.9	23.5	23.2
56	25.2	25.0	24.8	24.6	24.3	24.0	23.7	23.4	23.1	22.7
57	24.6	24.4	24.2	24.0	23.7	23.5	23.2	22.9	22.6	22.2
58	23.9	23.7	23.5	23.3	23.1	22.9	22.6	22.4	22.1	21.7
59	23.2	23.1	22.9	22.7	22.5	22.3	22.1	21.8	21.5	21.2
60	22.5	22.4	22.2	22.1	21.9	21.7	21.5	21.2	21.0	20.7
61	21.8	21.7	21.6	21.4	21.2	21.1	20.9	20.6	20.4	20.2
62	21.1	21.0	20.9	20.7	20.6	20.4	20.2	20.0	19.8	19.6
63	20.4	20.3	20.2	20.1	19.9	19.8	19.6	19.4	19.2	19.0
64	19.7	19.6	19.5	19.4	19.3	19.1	19.0	18.8	18.6	18.5
65	19.0	18.9	18.8	18.7	18.6	18.5	18.3	18.2	18.0	17.9
66	18.3	18.2	18.1	18.0	17.9	17.8	17.7	17.6	17.4	17.3
67	17.6	17.5	17.4	17.3	17.3	17.2	17.1	16.9	16.8	16.7
68	16.9	16.8	16.7	16.7	16.6	16.5	16.4	16.3	16.2	16.1
69	16.2	16.1	16.1	16.0	15.9	15.8	15.8	15.7	15.6	15.4
70	15.5	15.4	15.4	15.3	15.3	15.2	15.1	15.0	14.9	14.8
71	14.8	14.8	14.7	14.7	14.6	14.5	14.5	14.4	14.3	14.2
72	14.1	14.1	14.1	14.0	14.0	13.9	13.8	13.8	13.7	13.6
73	13.5	13.5	13.4	13.4	13.3	13.3	13.2	13.2	13.1	13.0
74	12.8	12.8	12.8	12.7	12.7	12.7	12.6	12.6	12.5	12.4
75	12.2	12.2	12.2	12.1	12.1	12.1	12.0	12.0	11.9	11.8
76	11.6	11.6	11.6	11.5	11.5	11.5	11.4	11.4	11.3	11.3
77	11.0	11.0	11.0	10.9	10.9	10.9	10.8	10.8	10.8	10.7
78	10.4	10.4	10.4	10.4	10.3	10.3	10.3	10.2	10.2	10.2
79	9.8	9.8	9.8	9.8	9.8	9.8	9.7	9.7	9.7	9.6
80	9.3	9.3	9.3	9.3	9.2	9.2	9.2	9.2	9.1	9.1
81	8.8	8.8	8.7	8.7	8.7	8.7	8.7	8.7	8.6	8.6
82	8.3	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.1	8.1
83	7.8	7.8	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.6
84	7.3	7.3	7.3	7.3	7.3	7.2	7.2	7.2	7.2	7.2
85	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.7
86	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.3	6.3
87	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.9
88	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.2	5.2	5.2	5.2
90	5.0	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9
91	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6
92	4.4	4.4	4.4	4.3	4.3	4.3	4.3	4.3	4.3	4.3
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	45	46	47	48	49	50	51	52	53	54
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.6	.5	.6

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
55	22.7	22.3	21.9	21.4	20.9	20.4	19.9	19.4	18.8	18.3
56	22.3	21.9	21.5	21.1	20.6	20.1	19.6	19.1	18.6	18.0
57	21.9	21.5	21.1	20.7	20.3	19.8	19.3	18.8	18.3	17.8
58	21.4	21.1	20.7	20.3	19.9	19.5	19.0	18.5	18.0	17.5
59	20.9	20.6	20.3	19.9	19.5	19.1	18.7	18.2	17.7	17.3
60	20.4	20.1	19.8	19.5	19.1	18.7	18.3	17.9	17.4	17.0
61	19.9	19.6	19.3	19.0	18.7	18.3	17.9	17.5	17.1	16.7
62	19.4	19.1	18.8	18.5	18.2	17.9	17.5	17.1	16.8	16.3
63	18.8	18.6	18.3	18.0	17.7	17.4	17.1	16.8	16.4	16.0
64	18.3	18.0	17.8	17.5	17.3	17.0	16.7	16.3	16.0	15.6
65	17.7	17.5	17.3	17.0	16.8	16.5	16.2	15.9	15.6	15.3
66	17.1	16.9	16.7	16.5	16.3	16.0	15.8	15.5	15.2	14.9
67	16.5	16.3	16.2	16.0	15.8	15.5	15.3	15.0	14.7	14.5
68	15.9	15.8	15.6	15.4	15.2	15.0	14.8	14.6	14.3	14.0
69	15.3	15.2	15.0	14.9	14.7	14.5	14.3	14.1	13.8	13.6
70	14.7	14.6	14.5	14.3	14.2	14.0	13.8	13.6	13.4	13.2
71	14.1	14.0	13.9	13.8	13.6	13.5	13.3	13.1	12.9	12.7
72	13.5	13.4	13.3	13.2	13.1	12.9	12.8	12.6	12.4	12.3
73	13.0	12.9	12.8	12.7	12.5	12.4	12.3	12.1	12.0	11.8
74	12.4	12.3	12.2	12.1	12.0	11.9	11.8	11.6	11.5	11.3
75	11.8	11.7	11.7	11.6	11.5	11.4	11.3	11.1	11.0	10.9
76	11.2	11.2	11.1	11.0	10.9	10.9	10.8	10.6	10.5	10.4
77	10.7	10.6	10.6	10.5	10.4	10.3	10.3	10.2	10.0	9.9
78	10.1	10.1	10.0	10.0	9.9	9.8	9.8	9.7	9.6	9.5
79	9.6	9.6	9.5	9.5	9.4	9.3	9.3	9.2	9.1	9.0
80	9.1	9.0	9.0	9.0	8.9	8.9	8.8	8.7	8.7	8.6
81	8.6	8.5	8.5	8.5	8.4	8.4	8.3	8.3	8.2	8.1
82	8.1	8.1	8.0	8.0	8.0	7.9	7.9	7.8	7.8	7.7
83	7.6	7.6	7.6	7.5	7.5	7.5	7.4	7.4	7.3	7.3
84	7.2	7.1	7.1	7.1	7.1	7.0	7.0	7.0	6.9	6.9
85	6.7	6.7	6.7	6.7	6.6	6.6	6.6	6.5	6.5	6.5
86	6.3	6.3	6.3	6.3	6.2	6.2	6.2	6.2	6.1	6.1
87	5.9	5.9	5.9	5.9	5.9	5.8	5.8	5.8	5.8	5.7
88	5.6	5.5	5.5	5.5	5.5	5.5	5.5	5.4	5.4	5.4
89	5.2	5.2	5.2	5.2	5.2	5.1	5.1	5.1	5.1	5.1
90	4.9	4.9	4.9	4.9	4.9	4.8	4.8	4.8	4.8	4.8
91	4.6	4.6	4.6	4.6	4.6	4.5	4.5	4.5	4.5	4.5
92	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.2	4.2	4.2
93	4.1	4.1	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
94	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.5	3.5
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.3	3.3	3.3
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.1	3.1
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.7	1.7	1.7
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	55	56	57	58	59	60	61	62	63	64
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	65	66	67	68	69	70	71	72	73	74
65	14.9	14.5	14.1	13.7	13.3	12.9	12.5	12.0	11.6	11.2
66	14.5	14.2	13.8	13.4	13.1	12.6	12.2	11.8	11.4	11.0
67	14.1	13.8	13.5	13.1	12.8	12.4	12.0	11.6	11.2	10.8
68	13.7	13.4	13.1	12.8	12.5	12.1	11.7	11.4	11.0	10.6
69	13.3	13.1	12.8	12.5	12.1	11.8	11.4	11.1	10.7	10.4
70	12.9	12.6	12.4	12.1	11.8	11.5	11.2	10.8	10.5	10.1
71	12.5	12.2	12.0	11.7	11.4	11.2	10.9	10.5	10.2	9.9
72	12.0	11.8	11.6	11.4	11.1	10.8	10.5	10.2	9.9	9.6
73	11.6	11.4	11.2	11.0	10.7	10.5	10.2	9.9	9.7	9.4
74	11.2	11.0	10.8	10.6	10.4	10.1	9.9	9.6	9.4	9.1
75	10.7	10.5	10.4	10.2	10.0	9.8	9.5	9.3	9.1	8.8
76	10.3	10.1	9.9	9.8	9.6	9.4	9.2	9.0	8.8	8.5
77	9.9	9.7	9.5	9.4	9.2	9.0	8.8	8.6	8.4	8.2
78	9.4	9.2	9.1	9.0	8.8	8.7	8.5	8.3	8.1	7.9
79	8.9	8.8	8.7	8.6	8.4	8.3	8.1	8.0	7.8	7.6
80	8.5	8.4	8.3	8.2	8.0	7.9	7.8	7.6	7.5	7.3
81	8.0	8.0	7.9	7.8	7.7	7.5	7.4	7.3	7.1	7.0
82	7.6	7.5	7.5	7.4	7.3	7.2	7.1	6.9	6.8	6.7
83	7.2	7.1	7.1	7.0	6.9	6.8	6.7	6.6	6.5	6.4
84	6.8	6.7	6.7	6.6	6.5	6.4	6.4	6.3	6.2	6.0
85	6.4	6.4	6.3	6.2	6.2	6.1	6.0	5.9	5.8	5.7
86	6.0	6.0	5.9	5.9	5.8	5.8	5.7	5.6	5.5	5.4
87	5.7	5.6	5.6	5.6	5.5	5.4	5.4	5.3	5.2	5.2
88	5.3	5.3	5.3	5.2	5.2	5.1	5.1	5.0	5.0	4.9
89	5.0	5.0	5.0	4.9	4.9	4.8	4.8	4.7	4.7	4.6
90	4.7	4.7	4.7	4.6	4.6	4.6	4.5	4.5	4.4	4.4
91	4.5	4.4	4.4	4.4	4.3	4.3	4.3	4.2	4.2	4.1
92	4.2	4.2	4.1	4.1	4.1	4.1	4.0	4.0	3.9	3.9
93	3.9	3.9	3.9	3.9	3.9	3.8	3.8	3.8	3.7	3.7
94	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6	3.5	3.5
95	3.5	3.5	3.5	3.5	3.4	3.4	3.4	3.4	3.3	3.3
96	3.3	3.3	3.3	3.3	3.3	3.2	3.2	3.2	3.2	3.1
97	3.1	3.1	3.1	3.1	3.1	3.1	3.0	3.0	3.0	3.0
98	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.8	2.8
99	2.8	2.8	2.8	2.7	2.7	2.7	2.7	2.7	2.7	2.6
100	2.6	2.6	2.6	2.6	2.6	2.5	2.5	2.5	2.5	2.5
101	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.3	2.3
102	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2
103	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0	2.0
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.5
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.6	.6	.6	.6	.6
114	.6	.6	.6	.6	.6	.6	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	75	76	77	78	79	80	81	82	83	84
75	8.6	8.3	8.0	7.7	7.4	7.1	6.8	6.5	6.2	5.9
76	8.3	8.0	7.8	7.5	7.2	6.9	6.7	6.4	6.1	5.8
77	8.0	7.8	7.5	7.3	7.0	6.8	6.5	6.2	5.9	5.7
78	7.7	7.5	7.3	7.0	6.8	6.6	6.3	6.0	5.8	5.5
79	7.4	7.2	7.0	6.8	6.6	6.3	6.1	5.9	5.6	5.4
80	7.1	6.9	6.8	6.6	6.3	6.1	5.9	5.7	5.5	5.2
81	6.8	6.7	6.5	6.3	6.1	5.9	5.7	5.5	5.3	5.1
82	6.5	6.4	6.2	6.0	5.9	5.7	5.5	5.3	5.1	4.9
83	6.2	6.1	5.9	5.8	5.6	5.5	5.3	5.1	4.9	4.7
84	5.9	5.8	5.7	5.5	5.4	5.2	5.1	4.9	4.7	4.6
85	5.6	5.5	5.4	5.3	5.2	5.0	4.9	4.7	4.6	4.4
86	5.4	5.3	5.1	5.0	4.9	4.8	4.7	4.5	4.4	4.2
87	5.1	5.0	4.9	4.8	4.7	4.6	4.4	4.3	4.2	4.1
88	4.8	4.7	4.6	4.5	4.4	4.3	4.2	4.1	4.0	3.9
89	4.5	4.5	4.4	4.3	4.2	4.1	4.0	3.9	3.8	3.7
90	4.3	4.2	4.2	4.1	4.0	3.9	3.8	3.8	3.7	3.5
91	4.1	4.0	4.0	3.9	3.8	3.7	3.7	3.6	3.5	3.4
92	3.9	3.8	3.7	3.7	3.6	3.6	3.5	3.4	3.3	3.2
93	3.7	3.6	3.6	3.5	3.4	3.4	3.3	3.2	3.2	3.1
94	3.5	3.4	3.4	3.3	3.3	3.2	3.2	3.1	3.0	3.0
95	3.3	3.2	3.2	3.2	3.1	3.1	3.0	3.0	2.9	2.8
96	3.1	3.1	3.0	3.0	3.0	2.9	2.9	2.8	2.8	2.7
97	2.9	2.9	2.9	2.9	2.8	2.8	2.7	2.7	2.6	2.6
98	2.8	2.8	2.7	2.7	2.7	2.6	2.6	2.6	2.5	2.5
99	2.6	2.6	2.6	2.6	2.5	2.5	2.5	2.4	2.4	2.3
100	2.5	2.5	2.4	2.4	2.4	2.4	2.3	2.3	2.3	2.2
101	2.3	2.3	2.3	2.3	2.2	2.2	2.2	2.2	2.1	2.1
102	2.2	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0
103	2.0	2.0	2.0	2.0	1.9	1.9	1.9	1.9	1.9	1.8
104	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.7	1.7
105	1.7	1.7	1.7	1.7	1.6	1.6	1.6	1.6	1.6	1.6
106	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4
107	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.3	1.3	1.3
108	1.3	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.8	.8	.8	.8
112	.8	.8	.8	.7	.7	.7	.7	.7	.7	.7
113	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	85	86	87	88	89	90	91	92	93	94
85	4.2	4.1	3.9	3.8	3.6	3.4	3.3	3.2	3.0	2.9
86	4.1	3.9	3.8	3.6	3.5	3.3	3.2	3.1	2.9	2.8
87	3.9	3.8	3.6	3.5	3.4	3.2	3.1	3.0	2.8	2.7
88	3.8	3.6	3.5	3.4	3.2	3.1	3.0	2.9	2.8	2.6
89	3.6	3.5	3.4	3.2	3.1	3.0	2.9	2.8	2.7	2.6
90	3.4	3.3	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5
91	3.3	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5	2.4
92	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5	2.4	2.3
93	3.0	2.9	2.8	2.8	2.7	2.6	2.5	2.4	2.3	2.3
94	2.9	2.8	2.7	2.6	2.6	2.5	2.4	2.3	2.3	2.2
95	2.8	2.7	2.6	2.5	2.5	2.4	2.3	2.2	2.2	2.1
96	2.6	2.6	2.5	2.4	2.4	2.3	2.2	2.2	2.1	2.0
97	2.5	2.5	2.4	2.3	2.3	2.2	2.2	2.1	2.0	2.0
98	2.4	2.4	2.3	2.2	2.2	2.1	2.1	2.0	2.0	1.9
99	2.3	2.2	2.2	2.1	2.1	2.0	2.0	1.9	1.9	1.8
100	2.2	2.1	2.1	2.0	2.0	1.9	1.9	1.9	1.8	1.8
101	2.1	2.0	2.0	1.9	1.9	1.8	1.8	1.8	1.7	1.7
102	1.9	1.9	1.9	1.8	1.8	1.8	1.7	1.7	1.6	1.6
103	1.8	1.8	1.8	1.7	1.7	1.7	1.6	1.6	1.5	1.5
104	1.7	1.7	1.6	1.6	1.6	1.5	1.5	1.5	1.5	1.4
105	1.6	1.5	1.5	1.5	1.5	1.4	1.4	1.4	1.4	1.3
106	1.4	1.4	1.4	1.4	1.4	1.3	1.3	1.3	1.3	1.2
107	1.3	1.3	1.3	1.3	1.2	1.2	1.2	1.2	1.2	1.2
108	1.2	1.2	1.2	1.1	1.1	1.1	1.1	1.1	1.1	1.1
109	1.1	1.1	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
110	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
111	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
112	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
113	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	95	96	97	98	99	100	101	102	103	104
95	2.0	2.0	1.9	1.8	1.8	1.7	1.6	1.6	1.5	1.4
96	2.0	1.9	1.9	1.8	1.7	1.7	1.6	1.5	1.5	1.4
97	1.9	1.9	1.8	1.7	1.7	1.6	1.6	1.5	1.4	1.3
98	1.8	1.8	1.7	1.7	1.6	1.6	1.5	1.5	1.4	1.3
99	1.8	1.7	1.7	1.6	1.6	1.5	1.5	1.4	1.4	1.3
100	1.7	1.7	1.6	1.6	1.5	1.5	1.4	1.4	1.3	1.3
101	1.6	1.6	1.6	1.5	1.5	1.4	1.4	1.3	1.3	1.2
102	1.6	1.5	1.5	1.5	1.4	1.4	1.3	1.3	1.2	1.2
103	1.5	1.5	1.4	1.4	1.4	1.3	1.3	1.2	1.2	1.1
104	1.4	1.4	1.3	1.3	1.3	1.3	1.2	1.2	1.1	1.1
105	1.3	1.3	1.3	1.2	1.2	1.2	1.2	1.1	1.1	1.0
106	1.2	1.2	1.2	1.2	1.1	1.1	1.1	1.1	1.0	1.0
107	1.1	1.1	1.1	1.1	1.1	1.0	1.0	1.0	1.0	.9
108	1.0	1.0	1.0	1.0	1.0	1.0	1.0	.9	.9	.9
109	1.0	.9	.9	.9	.9	.9	.8	.8	.8	.8
110	.9	.9	.9	.8	.8	.8	.8	.8	.8	.8
111	.8	.8	.8	.8	.8	.7	.7	.7	.7	.7
112	.7	.7	.7	.7	.7	.7	.7	.7	.6	.6
113	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIA - ANNUITIES FOR JOINT LIFE ONLY
TWO LIVES - EXPECTED RETURN MULTIPLES

AGES	105	106	107	108	109	110	111	112	113	114	115
105	1.0	1.0	.9	.9	.8	.7	.7	.6	.6	.5	.5
106	1.0	.9	.9	.8	.8	.7	.7	.6	.6	.5	.5
107	.9	.9	.8	.8	.7	.7	.7	.6	.6	.5	.5
108	.9	.8	.8	.8	.7	.7	.6	.6	.5	.5	.5
109	.8	.8	.7	.7	.7	.7	.6	.6	.5	.5	.5
110	.7	.7	.7	.7	.7	.6	.6	.6	.5	.5	.5
111	.7	.7	.7	.6	.6	.6	.6	.5	.5	.5	.5
112	.6	.6	.6	.6	.6	.6	.5	.5	.5	.5	.5
113	.6	.6	.6	.5	.5	.5	.5	.5	.5	.5	.5
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEAHS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0	0	0	0
26	0	0	0	0	0	0	0	0	0	0
27	0	0	0	0	0	0	0	0	0	0
28	0	0	0	0	0	0	0	0	0	0
29	0	0	0	0	0	0	0	0	0	0
30	0	0	0	0	0	0	0	0	0	0
31	0	0	0	0	0	0	0	0	0	0
32	0	0	0	0	0	0	0	0	0	0
33	0	0	0	0	0	0	0	0	0	0
34	0	0	0	0	0	0	0	0	0	0
35	0	0	0	0	0	0	0	0	0	0
36	0	0	0	0	0	0	0	0	0	0
37	0	0	0	0	0	0	0	0	0	1
38	0	0	0	0	0	0	0	0	0	1
39	0	0	0	0	0	0	0	0	1	1
40	0	0	0	0	0	0	0	1	1	1
41	0	0	0	0	0	0	0	1	1	1
42	0	0	0	0	0	0	1	1	1	1
43	0	0	0	0	0	0	1	1	1	1
44	0	0	0	0	0	1	1	1	1	1
45	0	0	0	0	0	1	1	1	1	1
46	0	0	0	0	1	1	1	1	1	1
47	0	0	0	0	1	1	1	1	1	1
48	0	0	0	0	1	1	1	1	1	1
49	0	0	0	1	1	1	1	1	1	2
50	0	0	0	1	1	1	1	1	1	2
51	0	0	0	1	1	1	1	1	2	2
52	0	0	0	1	1	1	1	1	2	2
53	0	0	1	1	1	1	1	2	2	2
54	0	0	1	1	1	1	1	2	2	2
55	0	0	1	1	1	1	2	2	2	2
56	0	0	1	1	1	1	2	2	2	3
57	0	0	1	1	1	2	2	2	3	3
58	0	1	1	1	1	2	2	2	3	3
59	0	1	1	1	1	2	2	3	3	4
60	0	1	1	1	2	2	2	3	3	4

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
61	0	1	1	1	2	2	3	3	4	4
62	0	1	1	2	2	2	3	4	4	5
63	0	1	1	2	2	3	3	4	5	5
64	0	1	1	2	2	3	4	4	5	6
65	0	1	2	2	3	3	4	5	6	6
66	1	1	2	2	3	4	5	5	6	7
67	1	1	2	3	3	4	5	6	7	8
68	1	1	2	3	4	5	6	7	8	9
69	1	1	2	3	4	5	6	7	8	10
70	1	2	3	4	5	6	7	8	9	11
71	1	2	3	4	5	6	8	9	10	12
72	1	2	3	4	6	7	8	10	11	13
73	1	2	4	5	6	8	9	11	13	14
74	1	3	4	5	7	9	10	12	14	16
75	1	3	4	6	8	9	11	13	15	17
76	2	3	5	7	9	10	12	15	17	19
77	2	4	5	7	9	12	14	16	18	21
78	2	4	6	8	10	13	15	18	20	23
79	2	4	7	9	11	14	17	19	22	25
80	2	5	7	10	13	15	18	21	24	27
81	3	5	8	11	14	17	20	23	26	29
82	3	6	9	12	15	19	22	25	28	32
83	3	7	10	13	17	20	24	27	31	34
84	4	7	11	15	19	22	26	30	33	37
85	4	8	12	16	20	24	28	32	36	40
86	4	9	13	18	22	27	31	35	39	42
87	5	10	15	20	24	29	33	37	41	45
88	5	11	16	21	26	31	36	40	44	48
89	6	12	18	23	28	33	38	43	47	50
90	7	13	19	25	31	36	41	45	49	53
91	7	14	21	27	33	38	43	48	52	55
92	8	15	22	29	35	40	45	50	54	58
93	9	17	24	31	37	43	48	52	56	60
94	9	18	26	33	39	45	50	54	58	62
95	10	19	27	35	41	47	52	57	60	64
96	11	20	29	36	43	49	54	59	62	66
97	11	21	30	38	45	51	56	61	64	68
98	12	23	32	40	47	53	58	63	66	69
99	13	24	34	42	49	56	60	65	68	71
100	14	26	36	44	52	58	63	67	70	73
101	14	27	38	47	54	60	65	69	72	75
102	15	29	40	49	56	62	67	71	74	77
103	17	31	42	52	59	65	69	73	76	78
104	18	33	45	55	62	67	72	75	78	80
105	19	36	48	58	65	70	74	77	80	82
106	21	39	51	61	68	73	77	79	82	84
107	23	42	55	64	71	75	79	81	84	86
108	25	45	58	67	73	78	81	83	85	87
109	28	49	62	71	76	80	83	85	87	88
110	31	52	66	74	79	82	85	87	88	89
111	34	57	70	77	82	85	87	88	90	91
112	37	61	73	80	84	87	88	90	91	92
113	41	66	77	83	86	88	90	91	92	93
114	45	70	80	85	88	90	92	93	93	94
115	50	76	83	88	90	92	93	94	94	95

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TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	1
21	0	0	0	0	0	0	0	0	0	1
22	0	0	0	0	0	0	0	0	1	1
23	0	0	0	0	0	0	0	1	1	1
24	0	0	0	0	0	0	0	1	1	1
25	0	0	0	0	0	0	1	1	1	1
26	0	0	0	0	0	0	1	1	1	1
27	0	0	0	0	0	1	1	1	1	1
28	0	0	0	0	1	1	1	1	1	1
29	0	0	0	0	1	1	1	1	1	1
30	0	0	0	1	1	1	1	1	1	1
31	0	0	0	1	1	1	1	1	1	1
32	0	0	1	1	1	1	1	1	1	1
33	0	0	1	1	1	1	1	1	1	1
34	0	1	1	1	1	1	1	1	1	1
35	0	1	1	1	1	1	1	1	1	1
36	1	1	1	1	1	1	1	1	1	1
37	1	1	1	1	1	1	1	1	1	1
38	1	1	1	1	1	1	1	1	1	2
39	1	1	1	1	1	1	1	1	2	2
40	1	1	1	1	1	1	1	2	2	2
41	1	1	1	1	1	1	2	2	2	2
42	1	1	1	1	1	2	2	2	2	2
43	1	1	1	1	2	2	2	2	2	3
44	1	1	1	2	2	2	2	2	3	3
45	1	1	2	2	2	2	2	3	3	3
46	1	2	2	2	2	2	3	3	3	3
47	1	2	2	2	2	2	3	3	3	4
48	2	2	2	2	2	3	3	3	4	4
49	2	2	2	2	3	3	3	4	4	4
50	2	2	2	3	3	3	3	4	4	5
51	2	2	3	3	3	3	4	4	5	5
52	2	2	3	3	3	4	4	5	5	5
53	2	3	3	3	4	4	5	5	5	6
54	3	3	3	4	4	4	5	5	6	7
55	3	3	4	4	4	5	5	6	7	7
56	3	3	4	4	5	5	6	7	7	8
57	3	4	4	5	5	6	6	7	8	8
58	4	4	5	5	6	6	7	8	9	9
59	4	5	5	6	6	7	8	9	9	10
60	4	5	6	6	7	8	9	10	10	11

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	11 YEAHS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
61	5	6	6	7	8	9	10	10	11	13
62	5	6	7	8	9	10	11	12	13	14
63	6	7	8	9	10	11	12	13	14	15
64	7	8	8	9	10	12	13	14	15	17
65	7	8	9	10	12	13	14	15	17	18
66	8	9	10	12	13	14	15	17	18	20
67	9	10	11	13	14	15	17	18	20	22
68	10	11	13	14	15	17	19	20	22	24
69	11	12	14	15	17	19	20	22	24	26
70	12	14	15	17	19	20	22	24	26	28
71	13	15	17	18	20	22	24	26	28	30
72	15	17	18	20	22	24	26	28	30	32
73	16	18	20	22	24	26	28	31	33	35
74	18	20	22	24	26	28	31	33	35	37
75	19	22	24	26	28	31	33	35	38	40
76	21	24	26	28	31	33	36	38	40	43
77	23	26	28	31	33	36	38	41	43	45
78	25	28	31	33	36	38	41	43	46	48
79	28	30	33	36	38	41	44	46	48	51
80	30	33	36	38	41	44	46	49	51	53
81	32	35	38	41	44	47	49	51	54	56
82	35	38	41	44	47	49	52	54	56	58
83	38	41	44	47	49	52	54	57	59	61
84	40	44	47	49	52	55	57	59	61	63
85	43	46	49	52	55	57	59	62	63	65
86	46	49	52	55	57	60	62	64	66	67
87	49	52	55	57	60	62	64	66	68	69
88	51	54	57	60	62	64	66	68	70	71
89	54	57	60	62	65	67	68	70	72	73
90	56	59	62	64	67	69	70	72	74	75
91	59	62	64	67	69	71	72	74	75	76
92	61	64	66	69	71	72	74	75	77	78
93	63	66	68	70	72	74	75	77	78	79
94	65	68	70	72	74	75	77	78	79	80
95	67	69	72	74	75	77	78	79	81	82
96	69	71	73	75	77	78	80	81	82	83
97	70	73	75	77	78	80	81	82	83	84
98	72	74	76	78	79	81	82	83	84	85
99	74	76	78	79	81	82	83	84	85	86
100	75	78	79	81	82	83	84	85	86	86
101	77	79	81	82	83	84	85	86	87	87
102	79	81	82	83	84	85	86	87	88	88
103	80	82	83	85	86	87	87	88	89	89
104	82	84	85	86	87	88	88	89	90	90
105	84	85	86	87	88	89	89	90	90	91
106	85	86	87	88	89	90	90	91	91	92
107	87	88	88	89	90	91	91	92	92	93
108	88	89	90	90	91	92	92	93	93	93
109	89	90	91	92	92	93	93	93	94	94
110	90	91	92	92	93	93	94	94	94	95
111	92	92	93	93	94	94	95	95	95	96
112	93	93	94	94	95	95	95	96	96	96
113	94	94	95	95	95	96	96	96	96	97
114	95	95	95	96	96	96	97	97	97	97
115	95	96	96	96	97	97	97	97	97	98

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TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	1
9	0	0	0	0	0	0	0	0	1	1
10	0	0	0	0	0	0	0	1	1	1
11	0	0	0	0	0	0	1	1	1	1
12	0	0	0	0	0	0	1	1	1	1
13	0	0	0	0	0	1	1	1	1	1
14	0	0	0	0	1	1	1	1	1	1
15	0	0	0	1	1	1	1	1	1	1
16	0	0	1	1	1	1	1	1	1	1
17	0	0	1	1	1	1	1	1	1	1
18	0	1	1	1	1	1	1	1	1	1
19	1	1	1	1	1	1	1	1	1	1
20	1	1	1	1	1	1	1	1	1	1
21	1	1	1	1	1	1	1	1	1	1
22	1	1	1	1	1	1	1	1	1	1
23	1	1	1	1	1	1	1	1	1	1
24	1	1	1	1	1	1	1	1	1	1
25	1	1	1	1	1	1	1	1	1	1
26	1	1	1	1	1	1	1	1	1	1
27	1	1	1	1	1	1	1	1	1	2
28	1	1	1	1	1	1	1	1	2	2
29	1	1	1	1	1	1	1	2	2	2
30	1	1	1	1	1	1	2	2	2	2
31	1	1	1	1	1	2	2	2	2	2
32	1	1	1	1	2	2	2	2	2	2
33	1	1	1	2	2	2	2	2	2	2
34	1	1	2	2	2	2	2	2	2	3
35	1	2	2	2	2	2	2	2	3	3
36	2	2	2	2	2	2	2	3	3	3
37	2	2	2	2	2	2	3	3	3	3
38	2	2	2	2	2	3	3	3	3	4
39	2	2	2	2	3	3	3	3	4	4
40	2	2	3	3	3	3	3	4	4	4
41	2	3	3	3	3	3	4	4	4	5
42	3	3	3	3	3	4	4	4	5	5
43	3	3	3	4	4	4	4	5	5	6
44	3	3	4	4	4	4	5	5	6	6
45	3	4	4	4	5	5	5	6	6	7
46	4	4	4	5	5	5	6	6	7	7
47	4	4	5	5	5	6	6	7	7	8
48	4	5	5	5	6	6	7	7	8	9
49	5	5	5	6	6	7	8	8	9	10
50	5	5	6	6	7	8	8	9	10	10
51	5	6	6	7	8	8	9	10	11	11
52	6	7	7	8	8	9	10	11	11	12
53	7	7	8	8	9	10	11	12	13	14
54	7	8	8	9	10	11	12	13	14	15
55	8	9	9	10	11	12	13	14	15	16
56	9	9	10	11	12	13	14	15	16	18
57	9	10	11	12	13	14	15	17	18	19
58	10	11	12	13	14	16	17	18	19	21
59	11	12	13	15	16	17	18	20	21	22
60	12	14	15	16	17	18	20	21	23	24

TABLE VII - PERCENT VALUE OF REFUND FEATURE

DURATION OF GUARANTEED AMOUNT

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
61	14	15	16	17	19	20	22	23	25	26
62	15	16	18	19	20	22	23	25	27	28
63	16	18	19	21	22	24	25	27	29	30
64	18	19	21	23	24	26	28	29	31	33
65	20	21	23	25	26	28	30	31	33	35
66	21	23	25	27	28	30	32	34	35	37
67	23	25	27	29	31	32	34	36	38	40
68	25	27	29	31	33	35	37	38	40	42
69	28	29	31	33	35	37	39	41	43	44
70	30	32	34	36	38	40	42	43	45	47
71	32	34	36	38	40	42	44	46	47	49
72	35	37	39	41	43	45	46	48	50	51
73	37	39	41	43	45	47	49	51	52	54
74	40	42	44	46	48	50	51	53	54	56
75	42	44	46	48	50	52	54	55	57	58
76	45	47	49	51	53	54	56	58	59	60
77	47	50	51	53	55	57	58	60	61	62
78	50	52	54	56	57	59	61	62	63	64
79	53	55	56	58	60	61	63	64	65	66
80	55	57	59	60	62	63	65	66	67	68
81	58	59	61	63	64	66	67	68	69	70
82	60	62	63	65	66	68	69	70	71	72
83	62	64	66	67	68	70	71	72	73	74
84	65	66	68	69	70	71	72	73	74	75
85	67	68	70	71	72	73	74	75	76	77
86	69	70	72	73	74	75	76	77	77	78
87	71	72	73	75	76	76	77	78	79	80
88	73	74	75	76	77	78	79	80	80	81
89	74	76	77	78	79	79	80	81	81	82
90	76	77	78	79	80	81	81	82	83	83
91	78	79	79	80	81	82	83	83	84	84
92	79	80	81	82	82	83	84	84	85	85
93	80	81	82	83	83	84	85	85	86	86
94	81	82	83	84	84	85	86	86	86	87
95	82	83	84	85	85	86	86	87	87	88
96	83	84	85	86	86	87	87	88	88	88
97	84	85	86	86	87	87	88	88	88	89
98	85	86	87	87	88	88	89	89	89	89
99	86	87	87	88	88	89	89	90	90	90
100	87	88	88	89	89	90	90	90	91	91
101	88	88	89	90	90	90	91	91	91	92
102	89	89	90	90	91	91	91	92	92	92
103	90	90	91	91	91	92	92	92	93	93
104	91	91	91	92	92	92	93	93	93	93
105	91	92	92	92	93	93	93	94	94	94
106	92	93	93	93	93	94	94	94	94	95
107	93	93	94	94	94	94	95	95	95	96
108	94	94	94	94	95	95	96	96	95	96
109	94	95	95	95	95	95	96	96	96	96
110	95	95	95	96	96	96	96	96	96	96
111	96	96	96	96	96	96	97	97	97	97
112	96	96	96	97	97	97	97	97	97	97
113	97	97	97	97	97	97	97	98	98	98
114	97	97	97	98	98	98	98	98	98	98
115	98	98	98	98	98	98	98	98	98	98

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TABLE VII - PERCENT VALUE OF REFUND FEATURE
DURATION OF GUARANTEED AMOUNT

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
5	0	1	1	1	1	1	1	1	1	1
6	0	1	1	1	1	1	1	1	1	1
7	1	1	1	1	1	1	1	1	1	1
8	1	1	1	1	1	1	1	1	1	1
9	1	1	1	1	1	1	1	1	1	1
10	1	1	1	1	1	1	1	1	1	1
11	1	1	1	1	1	1	1	1	1	1
12	1	1	1	1	1	1	1	1	1	1
13	1	1	1	1	1	1	1	1	1	1
14	1	1	1	1	1	1	1	1	1	1
15	1	1	1	1	1	1	1	1	1	1
16	1	1	1	1	1	1	1	1	1	1
17	1	1	1	1	1	1	1	1	1	1
18	1	1	1	1	1	1	1	1	1	2
19	1	1	1	1	1	1	1	1	2	2
20	1	1	1	1	1	1	1	2	2	2
21	1	1	1	1	1	1	2	2	2	2
22	1	1	1	1	1	2	2	2	2	2
23	1	1	1	2	2	2	2	2	2	2
24	1	1	2	2	2	2	2	2	2	2
25	1	2	2	2	2	2	2	2	2	3
26	2	2	2	2	2	2	2	2	3	3
27	2	2	2	2	2	2	2	3	3	3
28	2	2	2	2	2	2	3	3	3	3
29	2	2	2	2	2	3	3	3	3	4
30	2	2	2	3	3	3	3	3	4	4
31	2	2	3	3	3	3	3	4	4	4
32	2	3	3	3	3	3	4	4	4	5
33	3	3	3	3	3	4	4	4	5	5
34	3	3	3	3	4	4	4	5	5	5
35	3	3	3	4	4	4	5	5	5	6
36	3	4	4	4	4	5	5	5	6	6
37	4	4	4	4	5	5	6	6	6	7
38	4	4	5	5	5	6	6	7	7	8
39	4	5	5	5	6	6	7	7	8	8
40	5	5	5	6	6	7	7	8	8	9
41	5	5	6	6	7	7	8	9	9	10
42	6	6	6	7	7	8	9	9	10	11
43	6	7	7	8	8	9	9	10	11	12
44	7	7	8	8	9	10	10	11	12	13
45	7	8	8	9	10	10	11	12	13	14
46	8	9	9	10	11	11	12	13	14	15
47	9	9	10	11	12	12	13	14	15	16
48	9	10	11	12	13	14	15	16	17	18
49	10	11	12	13	14	15	16	17	18	19
50	11	12	13	14	15	16	17	18	20	21
51	12	13	14	15	16	17	19	20	21	22
52	13	14	15	17	18	19	20	21	23	24
53	15	16	17	18	19	20	22	23	24	26
54	16	17	18	19	21	22	23	25	26	28
55	17	18	20	21	22	24	25	27	28	30
56	19	20	21	23	24	26	27	29	30	32
57	20	22	23	25	26	28	29	31	32	34
58	22	24	25	27	28	30	31	33	34	36
59	24	25	27	28	30	32	33	35	36	38
60	26	27	29	31	32	34	35	37	38	40
61	28	29	31	33	34	36	37	39	40	42
62	30	32	33	35	36	38	40	41	42	44
63	32	34	35	37	39	40	42	43	45	46
64	34	36	38	39	41	42	44	45	47	48
65	37	38	40	42	43	45	46	47	49	50
66	39	41	42	44	45	47	48	50	51	52
67	41	43	45	46	48	49	50	52	53	54
68	44	45	47	48	50	51	52	54	55	56
69	46	48	49	51	52	53	54	56	57	58
70	48	50	51	53	54	55	57	58	59	60
71	51	52	54	55	56	57	59	60	61	62
72	53	54	56	57	58	59	60	61	62	63
73	55	57	58	59	60	61	62	63	64	65
74	57	59	60	61	62	63	64	65	66	67
75	59	61	62	63	64	65	66	67	68	69
76	62	63	64	65	66	67	68	69	69	70
77	64	65	66	67	68	69	70	70	71	72
78	66	67	68	69	70	70	71	72	73	73
79	67	68	69	70	71	72	73	73	74	75
80	69	70	71	72	73	74	74	75	76	76
81	71	72	73	74	74	75	76	76	77	78
82	73	74	74	75	76	77	77	78	78	79
83	74	75	76	77	77	78	79	79	80	80
84	76	77	77	78	79	79	80	80	81	81
85	78	78	79	79	80	81	81	82	82	83
86	79	80	80	81	81	82	82	83	83	84
87	80	81	81	82	83	83	83	84	84	85
88	82	82	83	83	84	84	85	85	86	86
89	83	83	84	84	85	85	85	86	86	87
90	84	84	85	85	86	86	86	87	87	87
91	85	85	86	86	87	87	87	88	88	88
92	86	86	87	87	87	88	88	88	88	89
93	87	87	87	88	88	88	88	89	89	89
94	87	88	88	88	88	89	89	89	90	90
95	88	88	89	89	89	90	90	90	91	91
96	89	89	89	90	90	90	91	91	91	91
97	89	90	90	90	91	91	91	91	92	92
98	90	90	91	91	91	91	92	92	92	92
99	91	91	91	92	92	92	92	92	93	93
100	91	92	92	92	92	92	93	93	93	93
101	92	92	92	93	93	93	93	93	94	94
102	92	93	93	93	93	94	94	94	94	94
103	93	93	93	94	94	94	94	94	94	95
104	94	94	94	94	94	95	95	95	95	95
105	94	94	95	95	95	95	95	95	95	95
106	95	95	95	95	95	95	96	96	96	96
107	95	96	96	96	96	96	96	96	96	96
108	96	96	96	96	96	96	96	96	97	97
109	96	96	96	97	97	97	97	97	97	97
110	97	97	97	97	97	97	97	97	97	97
111	97	97	97	97	97	97	98	98	98	98
112	97	97	98	98	98	98	98	98	98	98
113	98	98	98	98	98	98	98	98	98	98
114	98	98	98	98	98	98	98	98	98	98
115	98	98	98	98	98	98	98	98	98	98

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TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

	TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY									
AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
5	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
6	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
7	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
8	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
9	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
10	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
11	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
12	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
13	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
14	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
15	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
16	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
17	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
18	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
19	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
20	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
21	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
22	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
23	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
24	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
25	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
26	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
27	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
28	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
29	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
30	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
31	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
32	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
33	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
34	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
35	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
36	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
37	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
38	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
39	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
40	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
41	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
42	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
43	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
44	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
45	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
46	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
47	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
48	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
49	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.8
50	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
51	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
52	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
53	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
54	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.9	8.8	9.8
55	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
56	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
57	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
58	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.7	9.7
59	1.0	2.0	3.0	4.0	4.9	5.9	6.8	7.8	8.7	9.6

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

	TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY									
AGE	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	6 YEARS	7 YEARS	8 YEARS	9 YEARS	10 YEARS
60	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.8	8.7	9.6
61	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.7	8.7	9.6
62	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
63	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
64	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.4
65	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.3
66	1.0	2.0	2.9	3.9	4.8	5.8	6.7	7.6	8.4	9.3
67	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.4	9.2
68	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.3	9.1
69	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.4	8.2	9.0
70	1.0	2.0	2.9	3.9	4.8	5.6	6.5	7.3	8.1	8.9
71	1.0	2.0	2.9	3.8	4.7	5.6	6.5	7.3	8.1	8.8
72	1.0	2.0	2.9	3.8	4.7	5.6	6.4	7.2	8.0	8.7
73	1.0	2.0	2.9	3.8	4.7	5.5	6.3	7.1	7.9	8.6
74	1.0	1.9	2.9	3.8	4.6	5.5	6.3	7.0	7.7	8.4
75	1.0	1.9	2.9	3.8	4.6	5.4	6.2	6.9	7.6	8.3
76	1.0	1.9	2.8	3.7	4.6	5.4	6.1	6.8	7.5	8.1
77	1.0	1.9	2.8	3.7	4.5	5.3	6.0	6.7	7.3	7.9
78	1.0	1.9	2.8	3.7	4.5	5.2	5.9	6.6	7.2	7.7
79	1.0	1.9	2.8	3.6	4.4	5.1	5.8	6.4	7.0	7.5
80	1.0	1.9	2.8	3.6	4.4	5.1	5.7	6.3	6.8	7.3
81	1.0	1.9	2.8	3.6	4.3	5.0	5.6	6.1	6.6	7.0
82	1.0	1.9	2.7	3.5	4.2	4.9	5.4	6.0	6.4	6.8
83	1.0	1.9	2.7	3.5	4.1	4.8	5.3	5.8	6.2	6.5
84	1.0	1.8	2.7	3.4	4.1	4.6	5.2	5.6	6.0	6.3
85	1.0	1.8	2.6	3.3	4.0	4.5	5.0	5.4	5.7	6.0
86	1.0	1.8	2.6	3.3	3.9	4.4	4.8	5.2	5.5	5.7
87	.9	1.8	2.5	3.2	3.8	4.3	4.7	5.0	5.3	5.5
88	.9	1.8	2.5	3.1	3.7	4.1	4.5	4.8	5.0	5.2
89	.9	1.8	2.5	3.1	3.6	4.0	4.3	4.6	4.8	4.9
90	.9	1.7	2.4	3.0	3.4	3.8	4.1	4.4	4.5	4.7
91	.9	1.7	2.4	2.9	3.3	3.7	4.0	4.2	4.3	4.4
92	.9	1.7	2.3	2.8	3.2	3.5	3.8	4.0	4.1	4.2
93	.9	1.7	2.3	2.7	3.1	3.4	3.6	3.8	3.9	4.0
94	.9	1.6	2.2	2.7	3.0	3.3	3.5	3.6	3.7	3.8
95	.9	1.6	2.2	2.6	2.9	3.1	3.3	3.4	3.5	3.6
96	.9	1.6	2.1	2.5	2.8	3.0	3.2	3.3	3.3	3.4
97	.9	1.6	2.1	2.4	2.7	2.9	3.0	3.1	3.2	3.2
98	.9	1.5	2.0	2.4	2.6	2.8	2.9	3.0	3.0	3.0
99	.9	1.5	2.0	2.3	2.5	2.6	2.7	2.8	2.8	2.8
100	.9	1.5	1.9	2.2	2.4	2.5	2.6	2.6	2.6	2.7
101	.8	1.4	1.8	2.1	2.3	2.4	2.4	2.5	2.5	2.5
102	.8	1.4	1.8	2.0	2.1	2.2	2.3	2.3	2.3	2.3
103	.8	1.4	1.7	1.9	2.0	2.1	2.1	2.1	2.1	2.1
104	.8	1.3	1.6	1.8	1.9	1.9	1.9	1.9	1.9	1.9
105	.8	1.3	1.5	1.7	1.7	1.8	1.8	1.8	1.8	1.8
106	.8	1.2	1.4	1.5	1.6	1.6	1.6	1.6	1.6	1.6
107	.7	1.1	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	.7	1.1	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	.7	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	.7	.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.6	.8	.9	.9	.9	.9	.9	.9	.9	.9
112	.6	.7	.8	.8	.8	.8	.8	.8	.8	.8
113	.6	.6	.7	.7	.7	.7	.7	.7	.7	.7
114	.5	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
5	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
6	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
7	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
8	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
9	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
10	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
11	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
12	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
13	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
14	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
15	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
16	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
17	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
18	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
19	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	19.9
20	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
21	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
22	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	19.9
23	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
24	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
25	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	19.9
26	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.9
27	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.9
28	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.8
29	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	19.8
30	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.8	19.8
31	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.8	19.8
32	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	19.8
33	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	19.8
34	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	19.8
35	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	19.7
36	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.8	19.7
37	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.7	19.7
38	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.8	18.7	19.7
39	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.7	18.7	19.6
40	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.7	19.6
41	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.6	19.6
42	10.9	11.9	12.8	13.8	14.8	15.7	16.7	17.6	18.6	19.5
43	10.9	11.9	12.8	13.8	14.8	15.7	16.7	17.6	18.6	19.5
44	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.6	18.5	19.4
45	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.5	18.5	19.4
46	10.9	11.8	12.8	13.7	14.7	15.6	16.6	17.5	18.4	19.3
47	10.8	11.8	12.8	13.7	14.7	15.6	16.5	17.5	18.4	19.3
48	10.8	11.8	12.7	13.7	14.6	15.6	16.5	17.4	18.3	19.2
49	10.8	11.8	12.7	13.7	14.6	15.5	16.4	17.4	18.3	19.2
50	10.8	11.7	12.7	13.6	14.6	15.5	16.4	17.3	18.2	19.1
51	10.8	11.7	12.7	13.6	14.5	15.4	16.3	17.2	18.1	19.0
52	10.8	11.7	12.6	13.6	14.5	15.4	16.3	17.2	18.0	18.9
53	10.7	11.7	12.6	13.5	14.4	15.3	16.2	17.1	18.0	18.8
54	10.7	11.6	12.6	13.5	14.4	15.3	16.2	17.0	17.9	18.7
55	10.7	11.6	12.5	13.4	14.3	15.2	16.1	16.9	17.8	18.6
56	10.7	11.6	12.5	13.4	14.3	15.1	16.0	16.8	17.6	18.4
57	10.6	11.5	12.4	13.3	14.2	15.1	15.9	16.7	17.5	18.3
58	10.6	11.5	12.4	13.3	14.1	15.0	15.8	16.6	17.4	18.1
59	10.6	11.4	12.3	13.2	14.0	14.9	15.7	16.4	17.2	17.9
60	10.5	11.4	12.3	13.1	13.9	14.7	15.5	16.3	17.0	17.7

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	11 YEARS	12 YEARS	13 YEARS	14 YEARS	15 YEARS	16 YEARS	17 YEARS	18 YEARS	19 YEARS	20 YEARS
61	10.5	11.3	12.2	13.0	13.8	14.6	15.4	16.1	16.8	17.5
62	10.4	11.3	12.1	12.9	13.7	14.5	15.2	15.9	16.6	17.2
63	10.3	11.2	12.0	12.8	13.6	14.3	15.0	15.7	16.3	17.0
64	10.3	11.1	11.9	12.7	13.4	14.1	14.8	15.5	16.1	16.7
65	10.2	11.0	11.8	12.5	13.2	13.9	14.6	15.2	15.8	16.3
66	10.1	10.9	11.6	12.4	13.1	13.7	14.4	14.9	15.5	16.0
67	10.0	10.8	11.5	12.2	12.9	13.5	14.1	14.7	15.2	15.6
68	9.9	10.6	11.4	12.0	12.7	13.3	13.8	14.3	14.8	15.3
69	9.8	10.5	11.2	11.8	12.4	13.0	13.5	14.0	14.4	14.8
70	9.6	10.3	11.0	11.6	12.2	12.7	13.2	13.7	14.0	14.4
71	9.5	10.2	10.8	11.4	11.9	12.4	12.9	13.3	13.6	13.9
72	9.4	10.0	10.6	11.2	11.7	12.1	12.5	12.9	13.2	13.5
73	9.2	9.8	10.4	10.9	11.4	11.8	12.1	12.5	12.7	13.0
74	9.0	9.6	10.1	10.6	11.0	11.4	11.7	12.0	12.3	12.5
75	8.8	9.4	9.9	10.3	10.7	11.0	11.3	11.6	11.8	12.0
76	8.6	9.1	9.6	10.0	10.3	10.6	10.9	11.1	11.3	11.4
77	8.4	8.9	9.3	9.7	10.0	10.2	10.5	10.6	10.8	10.9
78	8.2	8.6	9.0	9.3	9.6	9.8	10.0	10.2	10.3	10.4
79	7.9	8.3	8.7	9.0	9.2	9.4	9.5	9.7	9.8	9.8
80	7.7	8.0	8.3	8.6	8.8	9.0	9.1	9.2	9.3	9.3
81	7.4	7.7	8.0	8.2	8.4	8.5	8.6	8.7	8.8	8.8
82	7.1	7.4	7.6	7.8	8.0	8.1	8.2	8.2	8.3	8.3
83	6.8	7.1	7.3	7.4	7.5	7.6	7.7	7.8	7.8	7.8
84	6.5	6.7	6.9	7.0	7.1	7.2	7.3	7.3	7.3	7.4
85	6.2	6.4	6.6	6.7	6.7	6.8	6.8	6.9	6.9	6.9
86	5.9	6.1	6.2	6.3	6.4	6.4	6.4	6.5	6.5	6.5
87	5.6	5.8	5.9	5.9	6.0	6.0	6.0	6.1	6.1	6.1
88	5.3	5.4	5.5	5.6	5.6	5.6	5.7	5.7	5.7	5.7
89	5.1	5.1	5.2	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	4.8	4.9	4.9	4.9	5.0	5.0	5.0	5.0	5.0	5.0
91	4.5	4.6	4.6	4.6	4.7	4.7	4.7	4.7	4.7	4.7
92	4.3	4.3	4.3	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.0	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.8	3.8	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
5	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
6	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
7	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
8	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
9	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
10	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
11	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8
12	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
13	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
14	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
15	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
16	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
17	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
18	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
19	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
20	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
21	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
22	20.9	21.9	22.8	23.8	24.8	25.8	26.8	27.7	28.7	29.7
23	20.9	21.9	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.7
24	20.9	21.8	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.6
25	20.9	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
26	20.9	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
27	20.9	21.8	22.8	23.8	24.7	25.7	26.7	27.6	28.6	29.5
28	20.8	21.8	22.8	23.7	24.7	25.7	26.6	27.6	28.6	29.5
29	20.8	21.8	22.8	23.7	24.7	25.7	26.6	27.6	28.5	29.5
30	20.8	21.8	22.7	23.7	24.7	25.6	26.6	27.5	28.5	29.4
31	20.8	21.8	22.7	23.7	24.6	25.6	26.6	27.5	28.4	29.4
32	20.8	21.7	22.7	23.7	24.6	25.6	26.5	27.5	28.4	29.3
33	20.8	21.7	22.7	23.6	24.6	25.5	26.5	27.4	28.4	29.3
34	20.7	21.7	22.7	23.6	24.6	25.5	26.4	27.4	28.3	29.2
35	20.7	21.7	22.6	23.6	24.5	25.5	26.4	27.3	28.2	29.2
36	20.7	21.6	22.6	23.5	24.5	25.4	26.3	27.3	28.2	29.1
37	20.7	21.6	22.6	23.5	24.4	25.4	26.3	27.2	28.1	29.0
38	20.6	21.6	22.5	23.4	24.4	25.3	26.2	27.1	28.0	28.9
39	20.6	21.5	22.5	23.4	24.3	25.2	26.1	27.0	27.9	28.8
40	20.6	21.5	22.4	23.3	24.3	25.2	26.1	27.0	27.8	28.7
41	20.5	21.4	22.4	23.3	24.2	25.1	26.0	26.9	27.7	28.6
42	20.5	21.4	22.3	23.2	24.1	25.0	25.9	26.8	27.6	28.5
43	20.4	21.3	22.2	23.2	24.0	24.9	25.8	26.6	27.5	28.3
44	20.4	21.3	22.2	23.1	24.0	24.8	25.7	26.5	27.3	28.2
45	20.3	21.2	22.1	23.0	23.9	24.7	25.6	26.4	27.2	28.0
46	20.2	21.1	22.0	22.9	23.8	24.6	25.4	26.2	27.0	27.8
47	20.2	21.1	21.9	22.8	23.6	24.5	25.3	26.1	26.8	27.6
48	20.1	21.0	21.8	22.7	23.5	24.3	25.1	25.9	26.6	27.4
49	20.0	20.9	21.7	22.6	23.4	24.2	25.0	25.7	26.4	27.1
50	19.9	20.8	21.6	22.4	23.2	24.0	24.8	25.5	26.2	26.9
51	19.8	20.7	21.5	22.3	23.1	23.8	24.6	25.3	25.9	26.6
52	19.7	20.6	21.4	22.1	22.9	23.6	24.3	25.0	25.7	26.3
53	19.6	20.4	21.2	22.0	22.7	23.4	24.1	24.7	25.3	25.9
54	19.5	20.3	21.0	21.8	22.5	23.2	23.8	24.4	25.0	25.6
55	19.3	20.1	20.8	21.6	22.2	22.9	23.5	24.1	24.6	25.2
56	19.2	19.9	20.6	21.3	22.0	22.6	23.2	23.7	24.3	24.7
57	19.0	19.7	20.4	21.1	21.7	22.3	22.8	23.4	23.8	24.3
58	18.8	19.5	20.2	20.8	21.4	21.9	22.5	22.9	23.4	23.8
59	18.6	19.3	19.9	20.5	21.1	21.6	22.0	22.5	22.9	23.2

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	21 YEARS	22 YEARS	23 YEARS	24 YEARS	25 YEARS	26 YEARS	27 YEARS	28 YEARS	29 YEARS	30 YEARS
60	18.4	19.0	19.6	20.2	20.7	21.2	21.6	22.0	22.4	22.7
61	18.1	18.7	19.3	19.8	20.3	20.7	21.1	21.5	21.8	22.1
62	17.8	18.4	18.9	19.4	19.9	20.3	20.6	21.0	21.2	21.5
63	17.5	18.1	18.5	19.0	19.4	19.8	20.1	20.4	20.6	20.8
64	17.2	17.7	18.1	18.6	18.9	19.3	19.5	19.8	20.0	20.2
65	16.8	17.3	17.7	18.1	18.4	18.7	18.9	19.2	19.3	19.5
66	16.5	16.9	17.3	17.6	17.9	18.1	18.3	18.5	18.7	18.8
67	16.1	16.4	16.8	17.1	17.3	17.5	17.7	17.9	18.0	18.1
68	15.6	16.0	16.3	16.5	16.7	16.9	17.1	17.2	17.3	17.4
69	15.2	15.5	15.7	16.0	16.1	16.3	16.4	16.5	16.6	16.7
70	14.7	15.0	15.2	15.4	15.5	15.7	15.8	15.8	15.9	15.9
71	14.2	14.4	14.6	14.8	14.9	15.0	15.1	15.2	15.2	15.2
72	13.7	13.9	14.1	14.2	14.3	14.4	14.4	14.5	14.5	14.5
73	13.2	13.3	13.5	13.6	13.7	13.7	13.8	13.8	13.8	13.8
74	12.6	12.8	12.9	13.0	13.0	13.1	13.1	13.1	13.2	13.2
75	12.1	12.2	12.3	12.4	12.4	12.5	12.5	12.5	12.5	12.5
76	11.5	11.6	11.7	11.8	11.8	11.8	11.8	11.9	11.9	11.9
77	11.0	11.1	11.1	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.4	10.5	10.5	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	9.9	9.9	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.5	9.5	9.5	9.5	9.5	9.5
81	8.8	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.3	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.8	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
5	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
6	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
7	30.8	31.8	32.8	33.8	34.8	35.8	36.7	37.7	38.7	39.7
8	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.7
9	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.6
10	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
11	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
12	30.8	31.8	32.8	33.7	34.7	35.7	36.7	37.6	38.6	39.6
13	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.6	38.6	39.5
14	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.6	38.6	39.5
15	30.8	31.7	32.7	33.7	34.7	35.6	36.6	37.6	38.5	39.5
16	30.8	31.7	32.7	33.7	34.6	35.6	36.6	37.5	38.5	39.4
17	30.7	31.7	32.7	33.7	34.6	35.6	36.5	37.5	38.5	39.4
18	30.7	31.7	32.7	33.6	34.6	35.6	36.5	37.5	38.4	39.4
19	30.7	31.7	32.6	33.6	34.6	35.5	36.5	37.4	38.4	39.3
20	30.7	31.7	32.6	33.6	34.5	35.5	36.4	37.4	38.3	39.3
21	30.7	31.6	32.6	33.6	34.5	35.5	36.4	37.4	38.3	39.2
22	30.6	31.6	32.6	33.5	34.5	35.4	36.4	37.3	38.2	39.2
23	30.6	31.6	32.5	33.5	34.4	35.4	36.3	37.3	38.2	39.1
24	30.6	31.5	32.5	33.5	34.4	35.3	36.3	37.2	38.1	39.0
25	30.6	31.5	32.5	33.4	34.3	35.3	36.2	37.1	38.1	39.0
26	30.5	31.5	32.4	33.4	34.3	35.2	36.2	37.1	38.0	38.9
27	30.5	31.4	32.4	33.3	34.2	35.2	36.1	37.0	37.9	38.8
28	30.5	31.4	32.3	33.3	34.2	35.1	36.0	36.9	37.8	38.7
29	30.4	31.4	32.3	33.2	34.1	35.0	35.9	36.8	37.7	38.6
30	30.4	31.3	32.2	33.1	34.1	35.0	35.8	36.7	37.6	38.5
31	30.3	31.2	32.2	33.1	34.0	34.9	35.8	36.6	37.5	38.3
32	30.3	31.2	32.1	33.0	33.9	34.8	35.6	36.5	37.4	38.2
33	30.2	31.1	32.0	32.9	33.8	34.7	35.5	36.4	37.2	38.0
34	30.1	31.0	31.9	32.8	33.7	34.6	35.4	36.2	37.1	37.9
35	30.1	31.0	31.8	32.7	33.6	34.4	35.3	36.1	36.9	37.7
36	30.0	30.9	31.7	32.6	33.5	34.3	35.1	35.9	36.7	37.4
37	29.9	30.8	31.6	32.5	33.3	34.1	34.9	35.7	36.5	37.2
38	29.8	30.7	31.5	32.3	33.2	34.0	34.7	35.5	36.2	37.0
39	29.7	30.5	31.4	32.2	33.0	33.8	34.5	35.3	36.0	36.7
40	29.6	30.4	31.2	32.0	32.8	33.6	34.3	35.0	35.7	36.4
41	29.4	30.2	31.0	31.8	32.6	33.3	34.1	34.7	35.4	36.0
42	29.3	30.1	30.9	31.6	32.4	33.1	33.8	34.4	35.1	35.7
43	29.1	29.9	30.7	31.4	32.1	32.8	33.5	34.1	34.7	35.3
44	28.9	29.7	30.5	31.2	31.9	32.5	33.2	33.8	34.3	34.9
45	28.8	29.5	30.2	30.9	31.6	32.2	32.8	33.4	33.9	34.4
46	28.5	29.3	30.0	30.6	31.3	31.9	32.4	33.0	33.5	33.9
47	28.3	29.0	29.7	30.3	30.9	31.5	32.0	32.5	33.0	33.4
48	28.1	28.7	29.4	30.0	30.6	31.1	31.6	32.1	32.5	32.9
49	27.8	28.4	29.0	29.6	30.2	30.7	31.1	31.5	31.9	32.3
50	27.5	28.1	28.7	29.2	29.7	30.2	30.6	31.0	31.4	31.7
51	27.2	27.8	28.3	28.8	29.3	29.7	30.1	30.4	30.7	31.0
52	26.8	27.4	27.9	28.4	28.8	29.2	29.5	29.8	30.1	30.3
53	26.5	27.0	27.4	27.9	28.3	28.6	28.9	29.2	29.4	29.6
54	26.1	26.5	27.0	27.4	27.7	28.0	28.3	28.5	28.7	28.9
55	25.6	26.1	26.5	26.8	27.1	27.4	27.6	27.8	28.0	28.1
56	25.2	25.6	25.9	26.2	26.5	26.7	26.9	27.1	27.2	27.3
57	24.7	25.0	25.3	25.6	25.8	26.0	26.2	26.3	26.5	26.5
58	24.1	24.4	24.7	25.0	25.2	25.3	25.5	25.6	25.7	25.7
59	23.6	23.8	24.1	24.3	24.4	24.6	24.7	24.8	24.9	24.9
60	23.0	23.2	23.4	23.6	23.7	23.8	23.9	24.0	24.0	24.1

TABLE VIII - TEMPORARY LIFE ANNUITIES[1]
ONE LIFE - EXPECTED RETURN MULTIPLES
[See footnote at end of tables]

TEMPORARY PERIOD - MAXIMUM DURATION OF ANNUITY

AGE	31 YEARS	32 YEARS	33 YEARS	34 YEARS	35 YEARS	36 YEARS	37 YEARS	38 YEARS	39 YEARS	40 YEARS
61	22.3	22.5	22.7	22.8	23.0	23.1	23.1	23.2	23.2	23.3
62	21.7	21.8	22.0	22.1	22.2	22.3	22.3	22.4	22.4	22.4
63	21.0	21.1	21.3	21.4	21.4	21.5	21.5	21.6	21.6	21.6
64	20.3	20.4	20.5	20.6	20.6	20.7	20.7	20.7	20.8	20.8
65	19.6	19.7	19.8	19.8	19.9	19.9	19.9	19.9	19.9	20.0
66	18.9	19.0	19.0	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.2	18.2	18.3	18.3	18.3	18.3	18.3	18.3	18.4	18.4
68	17.4	17.5	17.5	17.5	17.5	17.6	17.6	17.6	17.6	17.6
69	16.7	16.7	16.8	16.8	16.8	16.8	16.8	16.8	16.8	16.8
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3
72	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6
73	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

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[1] The multiples in this table are not applicable to annuities for a term certain; for such cases see paragraph (c) of § 1.72-5.

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If the terms of the contract (a) involve a life or lives, (b) are such that the above tables cannot be correctly applied, and (c) the amounts received thereunder are at least partly "amounts received as an annuity" under a contract to which section 72 applies, the taxpayer may submit with his return an actuarial computation based upon the applicable annuity table (described below) with ages set back one year, showing the appropriate factors applied in his case, subject to the approval of the Commissioner upon examination of such return. The applicable annuity table is the 1937 Standard Annuity Table (if the investment in the contract does not include a post-June 1986 investment in the contract) or the gender-neutral version of the 1983 Basic Table (if the investment in the contract includes a post-June 1986 investment in the contract). In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the actuarial computation shall be based on both tables in accordance with the principles of § 1.72–6(d). Computations involving factors to compensate for the effects of contingencies other than mortality, such as marriage or remarriage, re-employment, recovery from disability, or the like, will not be approved.

Par. 7. Section § 1.72–11 is amended by revising paragraph (c) to read as follows:

§ 1.72–11 Amounts not received as annuity payments.

* * * * *

(c) *Amounts received in the nature of a refund of the consideration under a contract and in full discharge of the obligation thereof.* (1) Any amount received under a contract to which section 72 applies, if it is at least in part a refund of the consideration paid, including amounts payable to a beneficiary after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain or with a minimum amount which must be paid in any event, shall be considered an amount received in the nature of a refund of the consideration paid for such contract. If such an amount is in full discharge of an obligation to pay a fixed amount (whether in a lump sum or otherwise) or to pay amounts for a fixed number of years (including amounts described in paragraph (b)(3)(i) of § 1.72–2), it shall be included in the gross income of the recipient only to the extent that it, when added to amounts previously received under the contract which were excludable from gross income under the law applicable at the time of receipt, exceeds the aggregate of premiums or other consideration paid. See section 72(e)(2)(A). This paragraph shall not apply if the total of the amounts to be paid in discharge of the obligation can in any event exceed the total of the annuity payments which would otherwise fully discharge the obligation. For rules to be applied in such a case, see paragraph (e) of this section.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, a male employee, retired on December 31, 1954, at the age of 60. A life annuity of $75 per month was payable to him beginning January 31, 1955. The annuity contract guaranteed that if A did not live for at least ten years after his retirement his beneficiary, B, would receive the monthly payments for any balance of such ten year period which remained at the date of A's death. Under section 72, A was deemed to have paid $3,600 toward the cost of the annuity. A lived for five years after his retirement receiving a total of $4,500 in annuity payments. After A's death, B began receiving the monthly payments of $75 beginning with the January 31, 1960 payment. B will exclude such payments from his gross income throughout 1960, 1961, and 1962, and will exclude only $18 of the first payment in 1963 from his gross income for that year. Thereafter, B will include the entire amount of all such payments in his gross income for the taxable year of receipt. This result is determined as follows:

A's investment in the contract (unadjusted)		$3,600
Multiple from Table III of § 1.72–9 for male, age 60, where duration of guaranteed amount is 10 years (percent)	11	
Subtract value of the refund feature to the nearest dollar (11 percent of $3,600)		396
Investment in the contract adjusted for the present value of the refund feature without discount for interest		3,204
Aggregate of premiums or other consideration paid		3,600
A's exclusion ratio ($3,204÷$16,380 [$900×18.2]) (percent)	19.6	
Subtract amount excludable during five years A received payments (19.6 percent of $4,500 [$900×5])		882
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)		2,718

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is $36\frac{18}{75}$ ($2,718÷$75) and B will exclude the payments from his gross income for three years, then exclude only $18 of the first payment for the fourth year from his gross income, and thereafter include the entire amount of all payments he receives in his gross income.

Example (2). The facts are the same as in example (1), except that B, the beneficiary, elects to receive $50 per month for his life in lieu of the payments guaranteed under the original contractual obligation. Since such amounts will be received as an annuity and may, because of the length of time B may live, exceed the amount guaranteed, they are not amounts to which this paragraph applies. See paragraph (e) of this section.

Example (3). The facts are the same as in example (1), except that B, the beneficiary, elects to receive the remaining guaranteed amount in installments which are larger or smaller than the $75 per month provided until, under the terms of the contract, the guaranteed amount is exhausted. The rule of subparagraph (1) of this paragraph and the computation illustrated in example (1) apply to such installments since the total of such installments will not exceed the original amount guaranteed to be paid at A's death in any event.

Example (4). C pays $12,000 for a contract providing that he is to be paid an annuity of $1,000 per year for 15 years. His exclusion ratio is therefore 80 percent ($12,000-$15,000). He directs that the annuity is to be paid to D, his beneficiary, if he should die before the full 15 year period has expired. C dies after 5 years and D is paid $1,000 in 1980. D will include $200 ($1,000−$800 [80 percent of $1,000]) in his gross income for the taxable year in which he receives the $1,000 since section 72(e) and this section do not apply to the annuity payments made in accordance with the provisions and during the term of the contract. D will continue with the same exclusion ratio used by C (80 percent).

Example (5). In 1954, E paid $50,000 into a fund and was promised an annual income for life the amount of which would depend in part upon the earnings realized from the investment of the fund in accordance with an agreed formula. The contract also specified that if E should die before ten years had elapsed, his beneficiary, F, would be paid the amounts determined annually under the formula until ten payments had been received by E and F together. E died in 1960, having received five payments totaling $30,000. Assuming that $22,000 of this amount was properly excludable from E's gross income prior to his death, F will exclude from his gross income the payments he receives until the taxable year in which his total receipts from the fund exceed $28,000 ($50,000−$22,000). F will include any excess over the $28,000 in his gross income for that taxable year. Thereafter, F will include in his gross income the entire amount of any payments made to him from the fund.

Example (6). Assume the facts are the same as in example (1), except that the total investment in the contract is made after June 30, 1986, that A is to receive payments under the life annuity contract beginning on January 31, 1987, and that B will begin to receive the monthly payments on January 31, 1992. B will exlcude the $75 monthly payments from gross income throughout 1992, 1993, and 1994. B will exclude only the first two monthly payments and $21 of the third monthly payment in 1995. This is determined as follows:

A's investment in the contract (unadjusted)		$3,600
Multiple from Table VII, age 60, 10 years (percent)		4
Subtract value of the refund feature (4 percent of $3,600		$144
Investment in the contract adjusted for the present value of the refund feature without discount for interest		$3,456
Aggregate of preimuns or other consideration paid		$3,600.00
A's exclusion ration ($3,456÷$21,780 [$900×24.2]) (percent)		15.9
Subtract amount excludable during five years A received payments (15.9 percent of $4,500 [$900×5])		$715.50
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)		$2,884.50

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is $38\frac{23}{50}$ ($2,884.50÷75) and B will exclude the payments from gross income for three years, then exclude only the first two monthly payments and $34.50 of the third. Thereafter B shall include the entire amount of all payments received in gross income.

(3) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received in full discharge of the obligation is the same person as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the tax, for taxable years beginning before January 1, 1964, attributable to the receipt of a lump sum to which this paragraph applies, see paragraph (g) of this section.

* * * * *

§ 1.403 [Amended]

Par. 8. Section 1.403(b)–1 (d)(4) is amended by adding the words "to a defined benefit plan" following the words "employer contributions" in the first sentence.

Par. 9. Section 1.403(b)–1 (d)(4)(ii) is amended by removing the words "the employee's sex and the".

Par. 10. Section 1.403(b)–1 (d)(4) is amended by revising Tables I and II and paragraph (d)(4)(iv) to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*—(1) * * *

(4) *Determination of excludable amounts by allocation of contributions.* * * *

(iv) The lesser of the number of years of service credited through the end of the taxable year or the number of years that the plan has been in existence at such time.

TABLE I.—VALUE AT NORMAL RETIREMENT AGES OF ANNUITY OF $1.00 PER ANNUM PAYABLE IN EQUAL MONTHLY INSTALLMENTS DURING THE LIFE OF THE EMPLOYEE

[For taxable years beginning after July 1, 1986]

Ages	Values
40	11.49
41	11.40
42	11.31
43	11.22
44	11.12
45	11.01
46	10.91
47	10.79
48	10.68
49	10.56
50	10.43
51	10.30
52	10.18
53	10.04
54	9.89
55	9.75
56	9.60
57	9.44
58	9.28
59	9.13
60	8.96
61	8.79
62	8.62
63	8.44
64	8.25
65	8.06
66	7.88
67	7.70
68	7.50
69	7.29
70	7.10
71	6.88
72	6.68
73	6.46
74	6.25
75	6.03
76	5.82
77	5.61
78	5.40
79	5.20
80	4.99

Note.—If the normal form of retirement benefit under the plan is other than a straight life annuity, the value from Table I above should be divided by the figure set forth below opposite the normal form of retirement benefit provided by the plan:

Annuity for 5 years certain and life thereafter	0.97
Annuity for 10 years certain and life thereafter	0.90
Annuity for 15 years certain and life thereafter	0.80
Annuity for 20 years certain and life thereafter	0.70
Life annuity with installment refund	0.80
Life annuity with cash refund [1]	0.75

[1] The term "cash refund" refers to refund of accumulated employer contributions, and does not refer to refund of employee contributions only, often referred to as "modified cash refund".

TABLE II.—LEVEL ANNUAL CONTRIBUTION WHICH WILL ACCUMULATE TO $1.00 AT END OF NUMBER OF YEARS

[For taxable years beginning after July 1, 1986]

Number of years	Amounts
1	$1.0000
2	.4808
3	.3080
4	.2219
5	.1705
6	.1363
7	.1121
8	.0940
9	.0801
10	.0690
11	.0601
12	.0527
13	.0465
14	.0413
15	.0368
16	.0330
17	.0296
18	.0267
19	.0241
20	.0219
21	.0198
22	.0180
23	.0164
24	.0150
25	.0137
26	.0125
27	.0114
28	.0105
29	.0096
30	.0088
31	.0081
32	.0075
33	.0069
34	.0063
35	.0058
36	.0053
37	.0049
38	.0045
39	.0042
40	.0039
41	.0036
42	.0033
43	.0030
44	.0028
45	.0026
46	.0024
47	.0022
48	.0020
49	.0019
50	.0017

§ 1.401(a)–18 [Removed]

Par. 11. Section 1.401(a)–18 is removed.

§ 1.401(j)–1 through 1.401(j)–6 [Removed]

Par. 12. Sections 1.401(j)–1 through 1.401(j)–6 are removed.

PART 601—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority for Part 602 continues to read as follows:

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Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.72–6. . . [ ]".

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 86-6294 Filed 3-19-86; 10:39 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[LR-19-80]

Unisex Annuity Tables; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

DATES: The public hearing will be held on Wednesday, May 21, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, May 5, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-19-80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 72 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register**.

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, May 5, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue:

Paul A. Francis,
Acting Director, Legislation and Regulations Division.

[FR Doc. 86-6293 Filed 3-19-86; 10:39 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50545; FRL-2989-5]

Pentachloroethane; Proposed Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of TSCA that would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentachloroethane (CAS Number 76–01–7) for any use. EPA believes that this action is necessary because pentachloroethane may be hazardous to human health, and any use of pentachloroethane may result in significant human exposure. The notice will furnish EPA with the information needed to evaluate an intended use, and the opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

DATE: Written comments should be submitted by May 23, 1986.

ADDRESS: Comments should bear the docket control number OPTS–50545 and should be addressed to: TSCA Public Information Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. This determination is made by rule after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general provisions applicable to SNURs (40 CFR Part 721, Subpart A). EPA is proposing that these general provisions apply to this SNUR, except as provided in proposed § 721.497(b)(1). The general provisions are discussed in detail in the cited **Federal Register** document, and interested persons should refer to that document for further information.

III. Summary of This Proposed Rule

EPA is proposing to designate any use of pentachloroethane as a significant new use of the substance. This proposed rule would require persons who intend to manufacture, import, or process pentachloroethane for this significant new use to notify EPA at least 90 days before such manufacture, import, or processing.

The notice is generally subject to the same statutory requirements and procedures as a premanufacture notice (PMN) submitted under section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of section 5(b) and (d)(2),

and the exemptions authorized by section 5(h). Once EPA has received a significant new use notice, EPA may take regulatory action pursuant to section 5(e), 5(f), 6, or 7 to control the substance. If no action is taken, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

IV. Discussion of the Chemical Substance

A. Production and Use Data

The primary use of pentachloroethane has been as an intermediate in the production of tetrachloroethylene. Reporting for the TSCA Chemical Substances Initial Inventory showed that 1977 U.S. manufacture and import of pentachloroethane was between 10 and 50 million pounds.

The high toxicity of pentachloroethane, as well as the development of a new process for the manufacture of tetrachloroethylene has resulted in a rapid decline in demand for pentachloroethane. In 1984, EPA's Office of Toxic Substances surveyed those persons who reported production of pentachloroethane for the TSCA inventory. All firms who reported manufacturing or importing pentachloroethane for the TSCA inventory reported that they no longer manufactured or imported the substance as of the date of the survey.

EPA recognizes that it is possible that a new manufacturer or importer of pentachloroethane may have entered the marketplace between the time of the TSCA inventory reporting and the date this SNUR is proposed, and that there may be an ongoing use for pentachloroethane that EPA is not aware of. Those "new" manufacturers or importers would not have been identified in the 1984 survey, because EPA only contacted those persons who reported for the TSCA inventory. In the event that an ongoing use is identified, EPA will modify the significant new use trigger to account for any ongoing uses identified.

B. Health Effects

Results of a National Toxicology Program (NTP) carcinogenesis bioassay on technical grade pentachloroethane published in April 1983, demonstrated limited evidence that pentachloroethane is carcinogenic in laboratory animals. Under the conditions of the bioassay, pentachloroethane was carcinogenic for male and female $B6C3F_1$ mice, inducing hepatocellular carcinomas in both sexes, and adenomas in females. NTP stated that the substance under test was not carcinogenic in F344/N rats, but added that the decreased survival of dosed rats may have reduced the sensitivity for a carcinogenic response.

The NTP held a Peer Review Panel and determined that the kidney was a target organ for short chain chlorinated hydrocarbons in male F344/N rats. Alerted to this, NTP reevaluated the kidneys of male rats from the pentachloroethane carcinogenesis bioassay, and found rare tubular cell adenomas, one carcinoma, and one adenocarcinoma. Because these data were discovered subsequent to peer review of the bioassay, these findings were added as a note attached to the bioassay report. Because of this finding, EPA views that pentachloroethane may also present a carcinogenic hazard for male F344/N rats by causing uncommon kidney tumors.

EPA published Proposed Guidelines for Carcinogen Risk Assessment in the **Federal Register** of November 23, 1984 (49 FR 46294). These proposed guidelines define as possible human carcinogen agents exhibiting: ". . . (a) definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate. . . ."

A limited review of the results of the NTP carcinogenesis bioassay on pentachloroethane indicates that the substance has been found to induce a definitive malignant tumor response in male and female mice, and may therefore be a possible human carcinogen according to the Agency's proposed guidelines for carcinogen risk assessment.

Results from the NTP bioassay also demonstrate that pentachloroethane may be capable of causing rare renal adenomas in male rats. Studies on the chronic effects of pentachloroethane have demonstrated pathological changes in the lungs, liver, and kidneys of test animals. Two of the metabolites of pentachloroethane, trichloroethylene and tetrachloroethylene, both have evidence of carcinogenicity in animals. For these reasons, EPA has concluded that exposure to the chemical may present a risk of injury to human health.

C. Past and Current Exposure Data

EPA has little data on actual numbers of persons who have been exposed to pentachloroethane, or at what levels. Current exposures are limited to those resulting from any residues of previously manufactured or imported pentachloroethane in the environment.

D. Regulatory Background

Pentachloroethane is not subject to any Federal regulation that limits exposure to humans or the environment. Excluding this proposed SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human exposure to pentachloroethane originating from its manufacture, import, processing, and use and to protect human beings from potentially adverse exposures before they occur.

V. Reasons for Proposing This Rule

Pentachloroethane is a possible human carcinogen and is not currently manufactured, imported, processed, or used for commercial purposes. Pentachloroethane is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use of pentachloroethane, and the related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to pentachloroethane at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to propose that any use of pentachloroethane be designated a significant new use of this chemical substance. Persons intending to manufacture, import, or process pentachloroethane for any use would be required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to pentachloroethane before they can ocur. Because EPA is concerned about potential exposure during the entire life-cycle of pentachloroethane, the Agency is proposing that § 721.5(a)(2) would be modified for this rule to require any manufacturer, importer, or processor who intends to distribute

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pentachloroethane in commerce to submit a notice.

VI. Alternatives

Before proposing this SNUR, EPA considered alternative regulatory actions.

1. One alternative would be to promulgate a section 8(a) reporting rule for this substance. Under such a rule, EPA could require any person to report to EPA before manufacturing, importing, or processing pentachloroethane. However, in this particular instance, the use of section 8(a) rather than SNUR authority has drawbacks. Small businesses would be exempt from reporting under section 8(a). Considering the toxicity of pentachloroethane, even relatively small manufacture, import, or processing activities could result in adverse exposures to this chemical. In addition, if EPA received a report under section 8(a) indicating that a person intended to manufacture, import, or process this substance, the Agency could not take immediate action under section 5(e) or (f) as it can under a SNUR, and therefore would not be able to act quickly to protect against an adverse exposure to this substance. Rather, in a situation such as this EPA would have to consider regulating the substance under TSCA section 6 or requesting under section 9 that another agency regulate it, each of which would require a lengthy separate action before the exposure could be controlled.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacturing, importing, processing, or use operations at this time to perform a reasoned evaluation of the health or environmental effects of these activities. Therefore, the Agency cannot state with certainty that these activities would present an unreasonable risk and cannot, at this time, regulate pentachloroethane under section 6.

VII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than after the promulgation of a final rule. If uses begun during the proposal period of the SNUR were not considered significant new uses, it would be extremely difficult for the Agency to establish significant new use notice requirements. Any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final.

EPA recognizes that this interpretation of section 5 may disrupt the commercial activities of persons who begin the manufacture, import, or processing of pentachloroethane for the proposed significant new use during the proposal period. However, this proposal puts them on notice of the potential disruption, and they proceed at their own risk.

VIII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential risks that may be posed by a significant new use of pentachloroethane, EPA encourages significant new use notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential to humans or the environment when utilized for an intended use.

Significant new use notices submitted with such test data would improve EPA's ability to make a reasoned evaluation of the health and environmental effects of pentachloroethane. Test data should be developed in accordance with TSCA Good Laboratory Practices Standards at 40 CFR Part 792, published in the **Federal Register** of November 29, 1983 (48 FR 53923).

In addition to health and environmental effects test data, EPA encourages significant new use notice submitters to develop and submit relevant exposure data on this substance. Notices submitted with such exposure data would improve EPA's ability to make an evaluation of the human exposure potential when pentachloroethane is utilized for an intended significant new use. EPA encourages persons to consult with the Agency before selecting a testing protocol.

As an alternative to testing, potential notice submitters may wish to consider the use of engineering controls and/or personal protective equipment to reduce exposure to and release of this substance.

Finally, EPA urges persons to submit information on potential benefits of this substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

The Agency has evaluated the potential costs of establishing reporting requirements for pentachloroethane. The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. The estimated cost to the Agency for issuing the SNUR is $10,500 to $20,500. The Agency will also incur enforcement costs, but these costs cannot be quantified at this time.

After promulgation of the SNUR, the Agency believes there are two possible courses of action for a person who intends to manufacture, import, or process pentachloroethane for a significant new use: (1) File a significant new use notice with information describing the method of controlling exposures that would mitigate health and environmental concerns; or, (2) not initiate the significant new use.

In some circumstances it may be cost-effective for a person to file a significant new use notice with data that show there exist means of controlling exposures (e.g., personal protective equipment or engineering controls) that would mitigate EPA's health concerns. In this case, the company incurs the costs of filing a SNUR notice ($1,400 to $8,000) and possibly the cost of utilizing exposure controls that, without the existence of the SNUR, would not have been used. These costs cannot be quantified at this time, since industrial processes and exposure controls vary among companies. The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing and the cost of regulatory follow-up, if any. If a person decided to submit a significant new use notice, EPA would incur estimated costs of $7,100 to review the notice and $8,700 to modify the SNUR assuming EPA's concerns were adequately addressed.

A person may find the cost of controlling exposures too expensive to justify the manufacture, import, or processing of pentachloroethane for a significant new use. This outcome does not result in any direct costs, but the prospective manufacture, importer, or processor may lose benefits that would have been derived from such manufacturer, import, or processing of pentachloroethane. EPA cannot quantify these potential lost benefits because EPA cannot reasonably anticipate the future level of use of this chemical

substance, the profit margins of these uses, and other related factors.

The Agency has not attempted to quantify the benefits of this proposed rule or of the outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before adverse effects can occur.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50545). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. Economic Analysis of Proposed Significant New Use Rule for Pentachloroethane. Economics and Technology Division, U.S.E.P.A., 1985.
2. Chemical Hazard Information Profile on Pentachloroethane. Existing Chemical Assessment Division, U.S.E.P.A., 1982.
3. National Toxicology Program Carcinogenesis Bioassay on Pentachloroethane. 1983.
4. Other relevant factual information and support documents.

The Agency will accept materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, D.C.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 50 significant new use notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, import, processing, or use of pentachloroethane, EPA believes that few manufacturers, importers, or processors will submit significant new use notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070-0038. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked: Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 14, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.497 to read as follows:

§ 721.497 Pentachloroethane.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentachloroethane, CAS Number 76-01-7, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Special provisions.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved].

(Approved by the Office of Management and Budget under OMB control number 2070-0038.)

[FR Doc. 86-6360 Filed 3-21-86; 8:45 am]

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40 CFR Part 721

[OPTS-50539; FRL-2982-5]

Methylammonium n-Methyldithiocarbamate; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-84-1042 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by May 23, 1986.

ADDRESS: Since some comments are expected to contain confidential business information (CBI), all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, D.C. 20460.

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Comments should include the docket control number OPTS-50539. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above. For further information regarding the submission of comments containing CBI, see Unit XII of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll Free: (800-424-9065). In Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5 (a)(1) of TSCA which are interpreted at 40 CFR Part 720 puiblished in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5(e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.188 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Pary 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicalbe to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of Spetember 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.433.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed rule is identified as methylammonium n-methyl dithiocarbamate, CAS number 21160-95-2. It was the subject of PMN P-84-1042. EPA is proposing to designate the following as significant new uses of this substance: (1) Any use other than as described in the PMN for this substance; (2) any method of disposal associated with the PMN use of the substance other than in a landfill meeting all Federal, State, and local requirements; (3) any manner or method of manufacture, import, or processing associated with the PMN use of the substance without establishing a program whereby persons who may be exposed to the substance wear impervious gloves, eye protection, and protective clothing; such persons are informed of the hazards of the substance; and, containers of the substance distributed in commerce are labeled.

IV. Background

On August 7, 1984, EPA received a PMN which the Agency designated as P-84-1042. EPA announced receipt of the PMN in the **Federal Register** of August 24, 1984 (49 FR 33718).

The notice submitter claimed the following as confidential business information (CBI): Submitter identity, production volume, impurities and by products, use, and process information. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceding shall be made in such manner as to preserve confidentially to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its chemical name and PMN number.

Based upon the physical and chemical properties of the substance along with test data submitted in the PMN, the Agency has determined that the substance may be absorbed via the lungs, skin, and gastrointestinal tract. The Agency is concerned that the substance may be carcinogenic, mutagenic, teratogenic, and neurotoxic.

Based on analogy to three structurally similar dithiocarbamates, selenium diethyldithiocarbamate, bis (2-hydroxyethly) dithiocarbamic acid, potasium salt, and ethylcarbamate, which have been shown to cause cancer in laboratory animals, the Agency has determined that the substance may be carcinogenic. Based on analogy to a known carcinogen, the Agency has determined that an inpurity may be carcinogenic.

Based on submitted mutagenicity data, the substance is expected to be a human mutagen. Further, based on available test data on two impurities, they are expected to be mutagenic in humans.

The Agency has determined that the substance may cause developmental effects based on its structural similarity to sodium diethyldithiocarbamate and sodium methyldithiocarbamate. Tests have shown that these compounds produced significant effects in the estrus cycle, ejaculatory response, and litter size in mammals.

Based on submitted test data, the Agency has determined that the substance may promote acute central nervous system depression. By analogy to sodium diethyldithiocarbamate, the substance could potentially inhibit dopamine beta hydroxylase which could lead to numerous nervous system effects.

During review of the PMN, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA segulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment and environmental controls will significantly reduce exposures and potential risks to workers and other persons. A section 5(e) consent order requiring the use of appropriate controls was regotiated with the notice submitter. The order became effective February 9, 1985. The significant new uses defined in § 721.433 reflect the terms of the consent order issued by the Agency for this substance.

By issuing a section 5(e) consent order which allows controlled commercial

manufacture, import, and processing of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, the section 5(e) consent order protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) ordes apply only to the notice submitter. When the notice submitter commenced commercial manufacture of the substance and submitted a Notice of Commencement of Manufacture to EPA, the Agency added the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.433 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would affort EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P-84-1042 that are potentially hazardous.

V. Determination of Proposed significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses (such as uses not consistent with the terms of the section 5(e) order), and the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P-84-1042. Based on these considerations, EPA proposes to define the significant new uses of P-84-1042 as set forth in paragraph (a)(2) of the proposed § 721.433.

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to meeting the requirements in § 721.17, persons who manufacture, import, or process P-84-1042 maintain the following records for 5 years from their creation: (1) Determination that gloves are impervious; (2) names used for the substance and the dates of use; (3) names of persons informed of the hazards of the substance, the means by which they were informed, and the dates they were informed; (4) dates of shipment of containers of the substance and identity of persons to whom they were shipped; and, (5) information on disposal including the dates waste material was disposed of, the location of the disposal site, the volume of the disposed material, and the method of disposal.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them. The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in a complete discussion of this issue should read the proposed SNUR for P-83-370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions To Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about the worker exposure and environmental release during manufacture and processing of the substance, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacture or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

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VIII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began manufacture of the substance, the submitter sent EPA a Notice of Commencement of Manufacture and the substance was added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance which is the subject of this SNUR was added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to a promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the Federal Register.

IX. Determining When a Use Is a Significant New Use

EPA is proposing a significant new use which includes CBI, that is, any use other than that described in PMN P-84-1042. The Agency is also proposing that this significant new use would remain confidential in the final rule. EPA believes it is appropriate to keep the significant new use confidential to protect the interests of the original notice submitter. Therefore, EPA is proposing to reveal this significnt new use only to a manufacturer, importer, or processor who has shown a *bona fide* intent to manufacture, import, or process the substance under the procedures in § 721.433(b)(1). This will enable the manufacturer, importer, or processor to determine whether a SNUR notice will be necessary.

To determine whether its intended use of the substance is a significant new use, a manufacturer, importer, or processor of the substance would have to describe its intended use of the substance in a *bona fide* submission under § 721.433(b)(1). If the use described in the *bona fide* submission would be a significant new use, the Agency would so inform the submitter but would not reveal the use described in P-84-1042. If the use described in the *bona fide* submission were the use described in P-84-1042, the Agency would so inform the submitter. Thus, the *bona fide* submitter could determine whether a significant new use notice would be necessary.

By using this procedure, the Agency will disclose CBI only to the extent necessary to implement the SNUR.

X. Test Data and Other Information

EPA recognises that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential hazards that may be posed by this substance, EPA believes that a reasoned evaluation of the risks posed by these uses would require additional data on oncogenicity, mutagenicity, teratogenicity, and neurotoxicity. These data might be generated by a 2-year rodent bioassay, a 2-generation reproductive assay, a 2-species teratology study, repeated exposure and neuropathy testing with correlative functional observation; and acute exposure neurotoxicity testing. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for these concerns. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below.

A. Costs

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's cost of issuing and enforcing the SNUR. It is estimated that this cost to EPA is about $43,600. The Agency would also incur enforcement costs, although the Agency cannot quantify these costs at this time.

EPA believes that, subsequent to promulgation of the SNUR, there are three possible outcomes for firms that would manufacture, import, or process P-84-1042: (1) Conduct their activities within the limits of the SNUR (e.g., use only for the use identified in P-84-1042; attach warning labels; use protective equipment), which would not necessitate the filing of a SNUR notice; (2) submit a SNUR notice describing the intention to manufacture, import, or process P-84-1042 for a significant new use; or, (3) choose not to manufacture, import, or process P-84-1042 due to the existence of the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a company's activities stay within the limits of the SNUR, it will not have to submit a SNUR notice. In order to comply with the SNUR provisions, a company may incur some costs. A discussion of these costs follows.

The cost of protective equipment such as gloves and goggles varies from company to company. Many companies already have this type of equipment on hand for use by employees due to the use of many different chemicals, including organic solvents. For those companies the costs associated with protective equipment should be considered as normal costs of business, and not as costs attributable to this EPA regulation. On the other hand, other companies may not have protective equipment on hand. If these companies wanted to use P-84-1042, they would have to purchase gloves and goggles.

There are many kinds of gloves available for purchase. Specific types of gloves are chosen on the basis of factors such as cost, type of chemical exposure, and duration of exposure.

While the SNUR requires that the gloves be impervious to the PMN substance, it does not specify what kind of gloves one should wear. For analytical purposes, EPA assumes the use of nitrile rubber gloves and chemical goggles. EPA also assumes, for analytical purposes, that workers will be exposed up to 75 days a year during manufacturing and up to 180 days a year during processing.

Nitrile gloves cost $2.04 per pair, while chemical goggles cost $4.75. EPA assumes daily replacement of gloves, and that goggles would be replaced every 4 months. Since exposure during manufacturing, processing, and use will occur throughout the year, EPA assumes that such workers would require 3 pairs of goggles per year.

Thus, for each manufacturing worker exposed to P-84-1042 for 45 days a year, the calculated glove cost is approximately $19/year, and the goggles cost is $14.25/year for a total of $103.25 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate, the present value of the $103.25 is $634.

During processing, where a worker would be potentially exposed for up to 180 days a year, the gloves costs would total $367.20, and the goggle cost would be $14.25, for a total of $381.45 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate the present value of the $381.45 is $2,343.85.

It should be stressed that it is unlikely that a company handling a substance such as P-84-1042 would have no personal protective equipment on hand. In addition, there are various chemicals in the workplace that will help to degrade the gloves. Thus, it would be unfair to assign all costs of protective equipment to this rule. The costs cited above probably overstate the potential direct costs of this rule.

Because of the nature of this substance, the Agency does not expect products containing it to have been commercialized yet. Therefore, the requirement that warning statements be attached to products containing P-84-1042 is not expected to cause new labels to be produced; so, it is not expected to increase labeling costs beyond routine labeling costs of a firm.

If an entirely new label has to be made, however, the development cost of the label will be between $135–$500. The annualized cost of labeling is $88. Other labeling costs will be minimal.

The Agency cannot exactly specify the cost of complying with the disposal provisions of the SNUR. The disposal costs will vary by disposal method employed. If an entire drum of P-84-1042 was taken to a landfill the cost might be $30–$75. A 55-gallon drum holds about 450 pounds of chemicals.

This SNUR specifies certain recordkeeping requirements. The present value of costs associated with recordkeeping requirements over a 10-year period (assuming a 10 percent discount rate) is $1,520; the annualized cost is $225.

Outcome 2

In some circumstances it might be cost-effective for a company to file a SNUR notice with data which shows that its means of controlling exposures could mitigate EPA's concerns. In this case, the company incurs the costs of filing a SNUR notice, which has been estimated at $1,400–$8,000 and, possibly, the costs of some exposure controls which would ordinarily not be used without the existence of the SNUR. The SNUR notice submitter may also incur some reductions in profits due to delays in manufacture, import, or processing and the costs of regulatory follow-up, if any.

Another alternative under this outcome would be to submit a SNUR notice with the results of the various toxicological tests previously mentioned. The cost of this testing, however, is viewed as being prohibitively expensive unless P-84-1042 generates profits of several million dollars. EPA does not expect this alternative to occur.

EPA will incur enforcement costs once the SNUR has been promulgated.

Outcome 3

Some companies could find the cost of controlling exposure and releases too expensive to justify production, processing, or use. Under this outcome, a company would not incur any direct costs as a result of the SNUR. The company and society could then lose benefits that would have been derived from the manufacturing, processing, or use of the substance. However, the original PMN submitter intends to produce P-84-1042 under the conditions of the section 5(e) consent order. This indicates to EPA that some uses of the substance will return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and, if necessary, the control of unreasonable risk before significant health effects can occur. This is especially true in the case of P-84-1042 due to the number of different potential health effects of the substance, that is, cancer, reproductive effects, and neurotoxicity. The proposal and promulgation of the SNUR provides this benefit of reduced health risks during manufacture, processing, and use of P-84-1042. And, the use of personal protective equipment will give workers protection against a number of other potentially dangerous chemicals.

The PMN submitter will benefit from the SNUR since potential competitors or other manufacturers who manufacture or use P-84-1042 will be subject to the same treatment.

The Agency's complete economic analysis is available in the public file.

XII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

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XIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50539). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The economic support document for the section 5(e) consent order.
6. The hazard assessment.
7. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., SW., Washington, DC.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XI of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this regulation might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: March 14, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.433 to read follows:

§ 721.433 Methylammonium n-methyldithiocarbamate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its CAS number and chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 21160–95–2, methylammonium n-methyldithiocarbamate.

(2) The significant new uses are:

(i) Use other than as described in Premanufacture Notice P–84–1042.

(ii) Any method of disposal associated with the use of the substance described in Premanufacture Notice P–84–1042 other than in a landfill meeting all Federal, State, and local requirements.

(iii) Any manner or method of manufacture, import, or processing associated with the use of the substance described in Premanufacture Notice P–84–1042 without establishing a program whereby:

(A) Person employed by or under the control of the manufacturer, importer, or processor who may be dermally exposed to the substance must wear:

(*1*) Gloves which are determined by the manufacturer, importer, or processor to be impervious to the substance under the conditions of exposure, including the duration of exposure. The manufacturer, importer, or processor makes this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications includes consideration of permeability, penetration, and potential chemical and mechanical degradation by the substance and associated chemical substances.

(*2*) Chemical safety goggles or equivalent eye protection.

(*3*) Clothing which covers any other exposed area of the arms, legs, or torso.

(B) All persons required to wear protective clothing or equipment are informed of the following in writing, and by presenting the information as part of a training program in safety meetings at which attendance is recorded: that they should avoid contact; that contact with skin may be harmful; that chemicals similar in structure to the substance have been found to cause cancer and reproductive effects in laboratory animals; that the substance may produce effects on the nervous system; and, to protect themselves they should wear safety goggles or equivalent eye protection, impervious gloves, and protective clothing while handling this substance.

(C)(*1*) A label is affixed to each container of the substance or formulation containing the substance that may be distributed in commerce which includes a warning statement which consists, at a minimum, of the following language:

WARNING: Avoid contact. Contact with skin may be harmful. Chemicals similar in structure to [insert appropriate name] have been found to cause cancer and reproductive effects in laboratory animals. [Insert appropriate name] may produce effects on the nervous system. To protect yourself you must wear safety goggles or equivalent eye protection, impervious gloves, and protective clothing while handling this material.

(*2*) The first word on the label is capitalized, and the type size of the first word is no smaller than 6 point type for a label 5 square inches or less in area, 10 point type for a label above 5 but no greater than 10 square inches in area, 12 point type for a label above 10 but no greater than 15 square inches in area, 14 point type for a label above 15 but no greater than 30 square inches in area. The type size of the remainder of the warning statement is no smaller than 6 point type. All required label text is of sufficient prominence, and is placed with such conspicuousness relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Determining whether a use is a significant new use.* (i) A person who intends to manufacture, import, or process the substance identified in paragraph (a)(1) of this section may submit to EPA the use for which the person intends to manufacture, import, or process the substance and ask EPA whether that use is a significant new use under paragraph (a)(2)(i) of this section.

(ii) EPA will answer such an inquiry only if it determines that the person has a *bona fide* intent to manufacture, import, or process the substance. To establish a *bona fide* intent to manufacture, import, or process the substance, the person must submit to EPA the information required under § 721.6(b).

(iii) EPA will review the information submitted by the person under this paragraph (b)(1) to determine whether the person has a *bona fide* intent to manufacture, import, or process the substance. If EPA determines that the person has a *bona fide* intent to manufacture, import, or process the substance, EPA will tell the person whether the use for which the person intends to manufacture, import, or process the substance is a significant new use under paragraph (a)(2)(i) of this section.

(iv) A disclosure to a person with a *bona fide* intent to manufacture, import, or process the substance that a use is or is not a significant new use under this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(v) EPA will answer an inquiry as to whether a use is a significant new use under this section within 30 days after receipt of a complete submission under this paragraph (b)(1).

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragrpah (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Determinations that gloves are impervious.

(ii) Names used for the substance and accompanying dates of use.

(iii) Names of persons informed as required by paragraph (a)(2)(iii)(B) of this section, the dates they were informed, and the means by which they were informed.

(iv) Dates of shipment of containers labeled as required by paragraph (a)(2)(iii)(C) of this section, and the identities of persons to whom they were shipped.

(v) Information on disposal of the substance including the dates waste materials were disposed of, the location of the disposal site, the volume of the disposed material, and the method of disposal.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 86–6361 Filed 3–21–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–349–N]

Medicare Program; Reasonable Charge Limitations; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This notice extends the period for public comment on a Notice of Proposed Rulemaking (NPRM) published on February 18, 1986 (51 FR 5726). That NPRM proposed rules that would state the circumstances under which HCFA would consider establishing special reasonable charge payment limits for services (including supplies and equipment) reimbursed under Part B of the Medicare program, as well as the procedures HCFA would follow in establishing these limits. The limits would be either a specific dollar amount, or a special method to be used in determining maximum reasonable charges to be allowed for a particular service or category of service. The proposed rule also specified procedures for public participation in establishing limits, and that procedures for exceptions would be included in each notice of limits, as appropriate.

The NPRM provided an opportunity for public comment through March 20, 1986. The comment period has been extended through April 4, 1986. This will give the public an additional 15 days to comment on the proposal.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 4, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–349–N, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey
Building, 200 Independence Ave., SW.,
Washington, DC, or

Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

In commenting, please refer to file code BERC–349–N. Comments will be available for public inspection as they are recieved, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Ronald Wren, (301) 594–7107.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medical—Supplementary Medical Insurance)

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Dated: March 20, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 20, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-6530 Filed 3-20-86; 4:58 pm]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 86-6]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of No Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule published on February 18, 1986 (50 FR 5734) in Docket No. 86-6 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due April 3, 1986.

ADDRESS: Petitions for review (original and 15 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission, Office of Energy, and Environmental Impact has determined that the Commission's proposed rule in Docket No. 86-6 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 86-6 the Commission proposes to substantially revise its service contract regulations. This action would reaffirm that a shipper cannot commit all or a fixed portion of its cargo without the resulting arrangement becoming a Loyalty Contract and would clarify statutory concepts, among other things, relating to parties to the contracts. The rule would provide for additional filings, and would also refine procedures invblving the essential terms of publication and statements, contingency clauses, termination, and rejection of filings by the Commission.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection or request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

John Robert Ewers,

Secretary.

By the Commission.

[FR Doc. 86-6307 Filed 3-21-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF AGRICULTURE

48 CFR Parts 401, 406, 413, 414, 415, 422, 433, 436

[Agriculture Acquisition Circular No. 1]

Acquisition Regulation; Competition in Contracting and Miscellaneous Changes

AGENCY: Office of Operations, Department of Agricutlure.

ACTION: Notice of proposed rule making.

SUMMARY: This notice invites written comments on a proposed amendment to the Department of Agriculture's Acquisition Regulation (AGAR). The revisions are intended to update the AGAR as a result of the Competition in Contracting Act of 1984 (CICA). Pub. L. 98-369. There are other changes intended to clarify existing subject matter and to add new coverage requested by USDA contracting activities. A detailed listing of the proposed changes is provided in the **SUPPLEMENTARY INFORMATION** section.

DATE: Written comments must be received on or before May 8, 1986.

ADDRESS: Requests for a copy of the proposed rule and respondents' comments should be sent to the U.S. Department of Agriculture, Office of Operations, Procurment Division (Room 1575, South Building), Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, United States Department of Agriculture, Washington, D.C., (202) 447-6924.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
  A. Executive Order 12291.
  B. Regulatory Flexibility Act.
  C. Paperwork Reduction Act
III. Public Comments

I. Background

The primary purpose of this rulemaking is to revise the AGAR, as necessary, to implement the Federal Acquisition Regulation's (FAR) changes as a result of the Competition in Contracting Act of 1984, Pub. L. 98-369. The purpose of the Act and the FAR coverage, as implemented herein, is to increase the use of full and open competition in the acquisition of property and services. The FAR and related AGAR coverage provides for full and open competition by soliciting sealed bids or requesting competitive proposals, or use of other competitive procedures, unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition.

The principal effects of this proposed rule are as follows:

(a) Table of contents is revised to agree with the FAR reoganization of subchapter and part title changes;

(b) Section 402.601 is amended to remove the advocate for competition responsibility from the Director, Office of Operations;

(c) Section 401.603-1 is revised to recognize the USDA contracting officer warrant system.

(d) Section 401.671 adds contract ratification procedures;

(e) Subpart 401.70 is added to recognize procurement management reviews as a necessary Departmental activity;

(f) Section 406.302-70 provides guidance to contracting activities using authority under Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318);

(g) Section 413.505-70 is revised to clarify proper use of form AD-744;

(h) Part 414 is revised to reflect title change and to remove protest procedures (procedures are moved to Part 433);

(i) Subpart 415.3 is removed since negotiating authorities are no longer used;

(j) Subpart 422.10 is removed since parent FAR coverage was previously deleted;

(k) Part 433 is revised to comport with, and implement, CICA changes, particularly to incorporate protest procedures;

(l) Section 436.3 is amended to change "formal advertising" reference to "sealed bidding."

(m) Sections 414.404-1 and 415.105 are added to authorize HCA's to determine whether invitations for bids may be cancelled, and if so whether negotiations may proceed to complete the procurement.

II. Procedural Requirements

A. Review Under Executive Order 12291

Procurement rules are normally exempt from review under Executive Order 12291, entitled "Federal Regulations," based on a determination that they generally relate only to the management of an agency function and do not have any major economic impact. The Office of Management and Budget, OMB, has decided however that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98-369, warrant review. Accordingly, this proposed rule is being submitted to OMB for review in accordance with Executive Order 12291 and OMB Bulletin 85-7.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or record-keeping requirements are imposed on the public by this proposed rule making. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR amendment set forth in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 401, 406, 413, 414, 415, 422, 433 and 436

Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the address set forth above.

Issued in Washington, D.C., March 18, 1986.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 86-6341 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-98-M

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Notices

Federal Register
Vol. 51, No. 56
Monday, March 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

AGENCY: Committee on Administration.

Date: Monday, March 31, 1986.

Time: 2:30 p.m.

Location: Department of Commerce, Room 5859, 14th Street and Constitution Avenue NW., Washington, DC

Agenda: Philip Harter's study and draft recommendations on federal agencies' use of alternative dispute resolution techniques.

Contact: Charles Pou, Jr., 202–254–7065.

Public Participation: Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.

[FR Doc. 86–6358 Filed 3–21–86; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 3032S]

Privacy Act; System of Records; Debt Collection Act of 1982

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising its System of Records maintained by the Federal Crop Insurance Corporation (FCIC), USDA/FCIC–1 through 9. This action is necessary to recognize organizational changes regarding renaming the person from whom individuals may request information relative to this system of records; to correct the listing of FCIC office locations; to delete three obsolete systems of records; and to implement a new routine use to report information to collection or servicing contractors, as authorized by the Debt Collection Act of 1982. The intended effect of this notice is to list correct addresses, rename the individual responsible for providing information contained in the system, delete three obsolete systems, and add a routine use of the system to enable FCIC to provide information to effectively collect and service commercial debts.

EFFECTIVE DATE: On or before April 23, 1986. Comments must be received by the contact person listed below on or before April 23, 1986, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–9714.

SUPPLEMENTARY INFORMATION: USDA hereby amends its system of records, USDA/FCIC–1 through 9, published in 43 FR 51294, November 2, 1978, by: correcting the addresses of FCIC offices; providing the correct person from whom information may sought throughout the system of records; deleting three systems no longer used by FCIC; amending the "Routine use of records maintained in its system, including categories of users and the purposes of such uses" to permit referral of information with respect to delinquent debts owed to FCIC to credit reporting, consumer reporting, and collection agencies; and adding a new section "Disclosures pursuant to 5 U.S.C. 552a(b)(12)," to permit referral of information to consumer reporting agencies.

By this action FCIC will (1) be able to report delinquent consumer debts and all commercial debts to credit reporting agencies; (2) clarify its authority to turn debtor files over to collection agencies for the collection of administrative commercial debts; and (3) amend the system of records to remove obsolete sections and correct office listings and contacts.

The three systems of records being deleted are: USDA/FCIC–2, Inspector's Report (FCIC–26); USDA/FCIC–4, Contact Report File, USDA/FCIC; and USDA/FCIC–9, Listing of Indemnities Paid, USDA/FCIC. The reasons for their deletion are stated below.

1.

USDA/FCIC–2

Inspector's Report (FCIC–26), USDA/FCIC

This system contains a listing of policyholders whose land productivity and/or farming practices were found to warrant a change in their actuarial classification, or individuals who have filed applications for insurance with the total anticipated liability which substantially exceeds the average for the area.

With increased coverage under the Actual Production History (APH) insurance program currently being offered and the increasing size of farms, this system is no longer applicable ahd has been discontinued.

2.

USDA/FCIC–4

Contact Report File, USDA/FCIC

This system contains Contact Report Forms (FCI–18) prepared by FCIC sales representatives during a sales presentation to a prospective policyholder.

FCIC is no longer involved in direct selling contact with prospective policyholders. This contact is now made by agents under an Agency Sales and Services Contract with a private commercial insurance company; therefore, the system is obsolete.

3.

USDA/FCIC–9

Listing of Indemnities Paid, USDA/FCIC

This systems of records contained the names of policyholders who were paid an indemnity, the policy number, and total amount of indemnities paid for the crop year. The listing of indemnities paid to all policyholders within a county was posted in the County Courthouse in accordance with the Federal Crop Insurance Act, as amended. This provision is no longer contained in the Act; therefore, the practice has been discontinued.

The systems of records maintained by FCIC are amended to correct the listing of offices of FCIC and the contact from whom information regarding the system may be obtained, and to provide for the referral of information with respect to delinquent debts owed to FCIC to credit reporting, consumer reporting, and collection agencies.

Further, USDA revises and republishes the full text of FCIC's systems of records to read as set forth below.

Signed at Washington, D.C., on March 18, 1986.

Richard E. Lyng,
Secretary.

USDA/FCIC–1

SYSTEM NAME:

Accounts Receivable, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131. A copy is also maintained in the applicable Field Operations Office for the State(s), and the Service Office for the county(ies) of the Federal Crop Insurance Corporation, as well as the ASCS County Offices of the United States Department of Agriculture. Addresses of these field offices may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to the Federal Crop Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of a master list of indebtedness by county and individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosures may be made from this system with respect to delinquent debts to a credit reporting agency consistent with the provisions of 31 U.S.C. 3701, 3702, 3711–3720A, and the Federal Claims Collection Standards, 4 CFR 102.2.

(4) Referral to a collection agency, when FCIC determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies.

(5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or 31 U.S.C. 3701(a)(3).

(7) Referral of commercial credit information, which is filed in the system, to a commercial credit reporting agency for it to make the information publicly available. 7 CFR 3.35, 50 FR 7725 (February 26, 1985).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printouts, magnetic tape, microfiche, and also in a card index in county ASCS offices.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Reocrds are maintained until the indebtedness is paid. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office. Addresses of locations where records are maintained may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. The request for information should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number, if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the Director, Field Operations Division, FCIC, Washington, D.C. 20250.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual debtor.

USDA/FCIC–3

SYSTEM NAME:

Crop Insurance Actuarial Listing, USDA/FCIC.

SYSTEM LOCATION:

Field Actuarial Offices: Davis, California; Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; and Topeka, Kansas.

Field Operations Offices: Davis, California; Harrisburg, Pennsylvania; Columbia, Missouri; Springfield, Illinois; Indianapolis, Indiana; Des Moines, Iowa; Manhattan, Kansas; St. Paul, Minnesota; Jackson, Mississippi; Billings, Montana; Lincoln, Nebraska;

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Raleigh, North Carolina; Bismarck, North Dakota; Columbia, South Carolina; Huron, South Dakota; Nashville, Tennessee; College Station, Texas; and Spokane, Washington.

Also, service offices of the Federal Crop Insurance Corporation. Addresses of each such field office may be obtained from the telephone directories under United States Government, Department of Agriculture, Federal Crop Insurance Corporation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who produce specific crop(s) in the county.

CATEGORIES OF RECORDS IN THE SYSTEM:

The systems contains the name and address of the owner or operator of a farm, ASCS farm serial number, allotment or planted acres of the crop, and the actuarial classification for the crop(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Information in the system of records is on file and available to the public for inspection in the service office for the county.

(4) Dislosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by State, county, crop, and name of owner/operator of ASCS farm serial number.

SAFEGUARDS:

Records are available for public inspection in the service office for the county. These offices are locked during non-working hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office. The addresses of the individual service office may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250. A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) and county(ies) where farm(s) is located, (3) whether owner or operator, and (4) ASCS farm serial number.

RECORD ACCESS PROCEDURE:

An individual may obtain information as to procedures for gaining access to a record in this system which pertains to such individual by submitting a written request to the Director, Field Operations Division, FCIC, Washington, DC 20250.

CONTESTING RECORD PROCEDURES:

Same as access above.

RECORD SOURCE CATEGORIES:

Information in this system comes from county ASCS offices, data obtained from producers and from Corporation records of producers's insurance experience.

USDA/FCIC–5

SYSTEM NAME:

Rejected applications, USDA/FCIC.

SYSTEM LOCATION:

Field Operations Offices: Davis, California; Harrisburg, Pennsylvania; Columbia, Missouri; Springfield, Illinois; Indianapolis, Indiana; Des Moines, Iowa; Manhattan, Kansas; St. Paul, Minnesota; Jackson, Mississippi; Billings, Montana; Lincoln, Nebraska; Raleigh, North Carolina; Bismarck, North Dakota; Columbia, South Carolina; Huron, South Dakota; Nashville, Tennessee; College Station Texas; and, Spokane, Washington. Also individual service offices of the Federal Crop Insurance Corporation. The address of each Field Operations Office may be obtained from the local telephone directory under the "United States Government, Department of Agriculture, Federal Crop Insurance Corporation."

CATEGORIES OF INDIVIDUALS COVERD BY THE SYSTEM:

Producers whose applications for insurance have been rejected.

CATEGORIES OF RECORDS IN THE SYSTEM:

System consists of the rejected application, related materials and correspondence received between the applicant and Federal Crop Insurance Corporation offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statate or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in the service and field operations offices involved.

RETRIEVABILITY:

Records are indexed by individual names and crop years.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are normally retained for 3 years following the crop year in which the file was prepared. Records for disposal are delivered to custodial services as waste paper.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to such individual from the service office for the county. The addresses of the individual service office may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) any county(ies) where farm(s) is located, and (3) crop year in which application for insurance was rejected.

RECORD ACCESS PROCEDURE:

Any individual may obtain information as to the procedures for gaining access to a record in this system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from prosepctive insureds and employees of the Federal Crop Insurance Corporation.

USDA/FCIC–6

SYSTEM NAME:

Insurance Contract Analysis, USDA/FCIC.

SYSTEM LOCATION:

Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri, 64131. Field Actuarial Offices in Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; Topeka, Kansas; Harrisburg, Pennsylvania; and, Davis, California. Field Operations offices in 18 different locations, and individual service offices of the Federal Crop Insurance Corporation. Addresses of each field office may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have, or have had in the past, insurance with the Federal Crop Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, crops insured by crop years, the amount of premium paid by the insured, the amount of indemnity paid to the insured, the cause of loss, loss ration of each crop insured under the policy, the number of years of no loss, the wheat bushel balance for premium discount purposes, the total number of years a premium discount was earned, and the number of years an indemnity was paid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation of potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in bound books and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county and policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after a policy is cancelled, except indefinite retention applies where the loss ratio for an individual crop was 1.20 or greater. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the service office for the county. Addresses of locations where records are maintained may be obtained from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. The request for information should contain (1) Individual's name and address (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number, if known.

RECORD ACCESS PROCEDURE:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system is a summary of data obtained from insured producers.

USDA/FCIC–7

SYSTEM NAME:

Insurance Contract Files, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131 and/or various service offices throughout the United States. To obtain addreses of the service offices, contact: Director, Field Operations Division, Washington, D.C. 20250.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual farmers who participate in the Federal Crop Insurance program are included in this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a complete file containing all basic insurance documents; i.e., the application for insurance, the annual acreage report, inspection reports, claim forms, miscellaneous correspondence, etc. Selected data obtained from the basic insurance documents is also maintained on magnetic tape.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charges with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in individual file folders and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county, and policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained for 3 years following cancellation of the policy, except where there is an outstanding debt the file is retained 5 years following the year of the debt. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Director, Field Operations Division, FCIC, Washington, DC 20250. Addresses of locations where records are maintained may also be obtained from the above office.

A request for information should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number(s), if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individual insured, Federal Crop Insurance Corporation and investigative personnel.

USDA/FCIC–8

SYSTEM NAME:

List of Ineligible Producers, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131; Field Actuarial Offices, offices of Field Operations Office Directors; and, each service office of the Federal Crop Insurance Corporation. Addresses of each such field office may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been determined as not eligible for Federal Crop Insurance on a specific crop(s) due to excessive losses, questionable farming practices, or who have contracts voided due to suspected or apparent fraud.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains only lists of names of producers and prior policy numbers, if any, for a specific state and county.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders by county, and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Director, Field Operations Division, FCIC, Washington, D.C. 20250. Addresses of locations where records are maintained may also be obtained from the above office.

A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number(s), if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from reports of inspections made by FCIC personnel of producer's operations and from records of previous insuring experience.

[FR Doc. 86-6387 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

Feed Grain Donation for the Crow Creek Reservation Indian Tribe in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Crow Creek Sioux Indian Tribe of the Crow Creek Indian Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Crow Creek Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or inferfere with normal marketing of agricultural commodities.

Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 15, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on March 18, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-6340-Filed 3-21-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Appeals Handbook—FSH 1509.12; Availability

AGENCY: Forest Service; USDA.

ACTION: Notice of Availability.

SUMMARY: The Forest Service announces the availability of Forest Service Handbook 1509.12, the Appeals Handbook. Part of the Agency's directive system, the handbook contains procedural guidelines for use by National Forest System line officers, resource staff, and appeals coordinators to process administrative appeals of decisions by forest officers.

ADDRESS: Single copies of the Appeals Handbook are available to the public upon request to: USDA-Forest Service, P.O. Box 2417, Washington, DC 20013, Attn: InS-Program Support Group, Rm. 0341 South.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Hauser, Program Analyst, NFS, (202) 382-9346.

Dated: March 14, 1986.

R. Max Peterson,

Chief.

[FR Doc. 86-6389 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Hearing on the Protection of Handicapped Newborns

Notice if hereby given pursuant to the provisions of the Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing of the U.S. Commission on Civil Rights will be held on April 29, 1986, at 9:00 a.m., at the U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC.

The purpose of the hearing is to hear testimony about civil rights issues affecting handicapped newborns.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government with respect to the discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC., March 19, 1986.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 86-6381 Filed 3-21-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-507]

Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of certain fresh Atlantic groundfish as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 5.82 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain fresh Atlantic groundfish from Canada that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on

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entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of certain fresh Atlantic groundfish (groundfish). For purposes of this investigation, the following programs are found to confer subsidies:

A. Federal Programs

1. Fishing Vessel Assistance Program;
2. Department of Fisheries and Oceans (DFO) Promotions Branch;
3. Assistance for the Construction of Ice-making and Fish Chilling Facilities;
4. Certain Types of Investment Tax Credits;
5. Program for Export Market Development;
6. Regional Development Incentive Program;
7. Industrial and Regional Development Program;
8. Fisheries Improvement Loan Program;
9. DFO Grants to Fishermen and Fish Processors from SRCPP Funds;
10. Preferential User Fees to Fishermen under the Small Craft Harbour Program; and
11. Government Equity Infusions into National Sea Products Limited and Fishery Products International Limited.

B. Joint Federal-Provincial Programs

1. Agricultural and Rural Development Agreements;
2. Prince Edward Island (P.E.I.) Comprehensive Development Plan;
3. General Development Agreements;
4. Transitional Programs;
5. Economic and Regional Development Agreements; and
6. Interest-Free Loans to National Sea Products Limited.

C. Provincial Programs

1. New Brunswick: Loans from the Fisheries Development Board;
2. New Brunswick: Fish Unloading Systems and Ice-making Programs;
3. New Brunswick: Insurance Premium Prepayment Program;
4. New Brunswick: Interest Rate Rebates;
5. New Brunswick: Technical Services;
6. Newfoundland: Grants for Purchasing and Constructing Boats;
7. Newfoundland: Grants for Rebuilding and Repair of Fishing and Coastal Vessels;
8. Newfoundland: Grants to Cover Operating Expenses;
9. Newfoundland: Loans from the Fisheries Loan Board;
10. Newfoundland: Loan Guarantees from the Fisheries Loan Board;
11. Newfoundland: Operation of Fisheries Facilities and Services;
12. Newfoundland: Construction and Repair of Fisheries Facilities;
13. Newfoundland: Enhancement of Fishing Operations;
14. Newfoundland: Marketing Assistance;
15. Nova Scotia: Fishing Vessel Construction Program;
16. Nova Scotia: Loans from the Fisheries Loan Board;
17. Nova Scotia: Industrial Development Division Grants;
18. Nova Scotia: Market Development Assistance;
19. P.E.I.: Fishing Vessel Subsidy Program;
20. P.E.I.: Near and Offshore Vessel; Assistance Program;
21. P.E.I.: Engine Conversion Program;
22. P.E.I.: Commercial Fishermen's Investment Incentive Program;
23. P.E.I.: Assistance for the Construction of Ice-making and Fish Chilling Facilities;
24. P.E.I.: Fish Box Pool Program;
25. P.E.I.: Technical Upgrading Program;
26. P.E.I.: Fresh Fish Marketing Program;
27. Fishing Industry Technology Program;
28. P.E.I.: Technology Improvements Program;
29. P.E.I.: Onboard Fishing Handling Systems Program;
30. Quebec: Vessel Construction Assistance Program;
31. Quebec: Gear Subsidy Program:
32. Quebec: Insurance Premium Subsidy Program;
33. Quebec: Large Vessel Construction Program;
34. Quebec: Loans from the Ministry of Agriculture, Fisheries and Food;
35. Quebec: Grants for Engine Purchases;
36. Quebec: Grants for Fish Transport and Seafood Processing Tanks;
37. Quebec: Grants to Processing Enterprises for Capital Equipment; and
38. Quebec: Ice-making and Fish Chilling Assistance.

We determine the estimated net subsidy to be 5.82 percent *ad valorem*.

Case History

On August 5, 1985, we received a petition in proper form from the North Atlantic Fisheries Task Force on behalf of the United States groundfish industry which harvest and produces for sale Atlantic groundfish in fresh form. The North Atlantic Fisheries Task Force is an unincorporated association representing fisherman, fishermen's cooperatives, and processors located in the northeastern United States. A majority of the members of the Task Force are producers, wholesalers, or trade or business associations whose members are producers or wholesalers of groundfish.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 26, 1985, we initiated this investigation (50 FR 35281). We stated that we expected to issue a preliminary determination by October 29, 1985.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On September 19, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of certain fresh whole Atlantic groundfish. At the same time, it determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain fresh Atlantic groundfish fillets from Canada (50 FR 38904).

We presented a questionnaire concerning the allegations contained in the petition to the government of Canada in Washington, DC, on September 9, 1985. On November 8, 1985, we received a response to our questionnaire containing information submitted by the government of Canada, the governments of the provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Quebec, and three Canadian firms (Fishery Products International Limited, National Sea Products Limited, and United Maritime Fisherman (Co-op). We received supplementary information throughout November and December 1985.

On October 7, 1985, based upon a request made by the petitioner and in accordance with section 703(c)(1)(A) of the Act, we postponed the deadline date for the preliminary determination to no later than January 2, 1986 (50 Fed. Reg. 41921). On the basis of information contained in the response, we made a preliminary determination on January 2, 1986 (51 Fed. Reg. 1010).

From January 13 to February 10, 1986, we verified the information submitted in response to our questionnaire. At the request of petitioner, we held a hearing on February 18, 1986. We received pre-hearing briefs on February 12, 1986, and post-hearing briefs on February 26, 1986. Written comments on the verification reports were submitted by petitioner on March 7, 1986.

In accordance with § 355.38 of the Commerce Regulations, several Canadian firms claiming not to have benefitted from subsidies applied for exclusion from any possible countervailing duty order. On October 8, 1985, we informed representatives of the Canadian government of the applications, and requested questionnaire responses from each of the firms applying for exclusion. We also informed the Canadian officials that, for the exclusion requests to be considered, the Department would require that both the federal and the appropriate provincial governments submit formal certifications attesting to the non-receipt of benefits by the firms in question. Both the questionnaire responses and government certifications were due no later than November 8, 1985. We received responses to the questionnaire during the period November 8–15, 1985. However, in a letter dated November 6, 1985, the Canadian government informed the Department that it was not feasible for the federal and certain provincial governments to comply with the certification requirement. On November 27, 1985, we notified the Canadian government that, due to the volume of requests for exclusion and the difficulty of verifying the responses of firms requesting exclusion, the current policy of the Import Administration is to accept and verify exclusion requests in countervailing duty investigations only if the respondent government provides certification that the firm or firms are not receiving subsidies. Given that we had not previously denied an exclusion request on the basis of a government's refusal or inability to provide certification, we extended the certification deadline until December 6, 1985, to allow the Canadian federal and the appropriate provincial governments to comply with this requirement. However, we stated that, if we did not receive the certifications by that date, we would not consider the exclusion requests. On December 4, 1985, the Canadian government notified the Department that it would be unable to provide the certifications. Therefore, we denied the requests for exclusion.

Standing Issue

Section 702(b)(1) of the Act requires that a petition be filed "on behalf of" a U.S. industry. As we have previously stated, neither the Act nor the Commerce Regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case.

In the course of this investigation, we heard from a number of members of the domestic industry producing fresh groundfish fillets who unconditionally oppose the petition. These firms primarily opposed the case on whole, fresh groundfish, which they do not, by and large, produce. This opposition did not reach such a level as would lead us to believe that a majority of either industry opposes the petition on the like product each produces. We also received a submission from the Task Force for the Survival of American Fishermen, Processing Plants and Jobs, a group claiming to account for a major proportion of groundfish fillet production in the United States, and a significant amount of domestic landings of whole groundfish. The group has stated its opposition to the investigation of filleted *and* whole groundfish, but it is opposed to terminating the investigation just on groundfish fillets. The group has provided no information on the volume of domestic landings for which it accounts, nor has it provided sufficient evidence that it accounts for a major proportion of the domestic whole groundfish industry. Accordingly, we believe that the opponents of the petition have not demonstrated affirmatively that the petition was not filed on behalf of the domestic industry. This conclusion is not based upon any exclusion from consideration, as part of the domestic industries, of those firms which may also import from Canada the like product which they allegedly produce.

Scope of Investigation

The products covered by this investigation are certain fresh Atlantic groundfish, which cover fresh whole and fresh fillets of Atlantic groundfish, including cod, haddock, pollock, hake, and flatfish (including filunder and sole). These species are generally referred to collectively as "groundfish" because they live on or near the seabed. The term "fresh" includes fish that are chilled, but excludes fish that have been frozen. Whole fish include fish which are whole, or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed. Fillets (including fish steaks) include fish, other than frozen blocks, which are otherwise processed (whether or not heads, viscera, fins, scales, or any combination thereof have been removed). These products are currently provided for in items 110.1585, 110.1593, 110.3560, 110.5000, 110.5545, 110,5565, and 110,7033 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing duty Order,* which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is the government of Canada's 1985 fiscal eyar (April 1, 1984—March 31, 1985).

With respect to the calculations of benefits from grant programs, we allocated grants for fishing vessels over 18 years (the average useful life of vessels, barges, tugs, and similar water transportation equipment), for private wharves and slipways over 16 years (the average useful life of ship and boat building dry docks and land improvements), for fish boxes over four years (the average useful life of specialized materials handling devices), and for all other assets over 12 years (the average useful life of assets used in the manufacture of food and other sundry products). Because we used aggregate data for subsidy programs in this case, we used as the discount rate the long-term corporate bond rate in Canada, as published by the Bank of Canada.

With respect to the benchmark interest rates used to calculate benfits from loan programs, for long-term fixed-rate loans, we used the long-term corporate bond rate in Canada. For long-

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term variable-rate loans, because we had no variable-rate long-term loans to use as a benchmark, we relied on a short-term interest rate which in this case is the 90-day prime corporate paper rate as reported by the Bank of Canada. And for short-term loans, we also used the 90-day prime corporate paper rate. For those programs in which respondents were unable to segregate benefits to the producers of the subject merchandise from benefits to the producers of other fresh fish and shellfish, we allocated benefits to all producers of fish and shellfish over the f.o.b. value of production in Atlantic Canada of fish and shellfish. All dollar amounts referred to represent Canadian dollars.

Based on our analysis of the petition, the responses to our questionnaire, our verification, and comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Canada of certain fresh Atlantic groundfish under the following programs:

A. Federal Programs

1. Fishing Vessels Assistance Program (FVAP)

Under the administration of the Economic Programs Branch of the DFO, the government of Canada operates the FVAP. Although the program was terminated on December 20, 1985, its operation remains in effect through March 31, 1986. This program provided grants to any provincial agency, Canadian corporation or resident citizen to construct, modify, or convert and re-equip fishing vessels. All construction, modification, or conversion was to be done in Canada.

The regulations for this program authorized funding of up to 60 percent of the cost of constructing a vessel, to a maximum of $750,000. The funding limit for modification or conversion of a vessel was $400,000. However, during our review period, financial assistance was limited to 25 percent of the cost of construction of a vessel, not to exceed $125,000 for steel hull vessels or $100,000 for other vessels. Grants for modifications or conversions could not exceed 25 percent of the vessel's replacement cost.

Because grants under this program were limited to vessels used by commercial fishermen, we determine that they were limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act, and are countervailable.

To calculate the benefit from this program, we allocated the grants received in Atlantic Canada in fiscal years 1968 through 1985 over 18 years. Applying our grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.715 percent *ad valorem*.

2. DFO Promotions Branch

The marketing of the DFO are the responsibility of the Marketing Directorate. The Directorate has two branches: the Market Intelligence and Industry Service Branch, and the Promotions Branch. The Market Intelligence and Industry Services Branch is discussed in section III. A.2 of this notice. The function of the Promotions Branch is to promote fish products generically. Specifically, the Promotions Branch has run advertising campaigns, published and distributed promotional materials, developed and tested new recipes, organized an educational program for retailers, and funded promotion displays at fairs and exhibitions, including "Boston Seafood '85," and the "Dallas Solo Fish Show." The majority of the Promotions Branch's activities are directed at the Canadian domestic market. However, funding of promotional displays at the Boston Fair and Dallas Show provided a benefit to exporters of fish to the United States during the review period. Because promotional activities at these shows benefited only exports to the United States, we determine that the expenses incurred for participation are countervailable export subsidies.

To calculate the benefit from this program, we divided the amount expended on promotional displays by the f.o.b. value of exports of fish and shellfish from Canada to the United States during the review period. This resulted in an estimated net subsidy of 0.001 percent *ad valorem*.

3. Assistance for the Construction of Ice-making and Fish Chilling Facilities

Under the administration of the Inspection Branch of the DFO, this program provided grants for the construction and equipping of commercial ice-making facilities used by the fishing industry in amounts up to 50 percent of a project's cost, with a ceiling of $25,000. In 1977, the ceiling was raised to $50,000. The program began in 1973, and terminated in 1980.

Because grants provided under this program were limited to a specific enterprise or industry, or group of enterprises or industries, we determine the program to be countervailable. We recognize that this program terminated in 1980. However, according to our grant methodology, grants bestowed between 1973 and 1980 confer benefits during the review period. To calculate the benefit from this program, we allocated the grants received in Atlantic Canada in fiscal years 1974 through 1980 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.059 percent *ad valorem*.

4. Certain Types of Investment Tax Credits (ITC)

There are four categories of ITCs in Canada: two are directed at encouraging capital investment in certain regions of the country; one is designed to stimulate scientific research; and the fourth is aimed at promoting the purchase of certain types of transportation equipment. The first category of ITC is for investment in "qualified property," such as new plant and equipment used for manufacturing or processing. The basic ITC for investment in qualified property is seven percent. An additional three or 13 percent is available for qualified property used in certain regions.

The second category of ITC is for investment in "certified property." The distinguishing factor between "certified property" and "qualified property" is that the former must be located in prescribed regions characterized by high levels of unemployment and low per capita income. The ITC rate for certified property is 50 percent.

The third category of ITC is for scientific research. Eligible expenditures under this category include the cost of capital equipment used for scientific research and expenses attributable to scientific research. A basic 20 percent ITC rate is available for qualifying scientific research expenditures. For small Canadian-controlled private corporations, the rate is 35 percent. For all other corporations, the rate is 30 percent, if the expenditure is made in certain regions. The fourth category of ITC is for investment in "qualified transportation equipment."

We verified that the basic seven percent rate for "qualified property" is not limited to a specific industry or region. We, therefore, determine that it is not countervailable. However, because the additional rates of three and 13 percent for qualified property can only be claimed on assets used in certain regions, we determine that those additional benefits are countervailable. The 50 percent ITC rate for "certified property" can also only be claimed on assets used in specific regions. Thus, we determine that the additional benefit above the basic rate of seven percent is countervailable.

We verified that the fishing industry did not benefit from scientific research ITCs. Therefore, we determine that these ITCs were not used. We verified that the ITC for transportation equipment is not available for investment in fishing vessels. Consequently, we determine that this type of ITC was not used.

Our standard methodology to calculate the benefit from a tax program would be to consider the benefit to be the amount of tax credits claimed on the tax return filed during the review period. However, information from tax returns filed in 1984 is not available. Thus, we are using, as best information available, those tax credits claimed in 1983. Dividing the amount of countervailable ITCs attributable to Atlantic Canada's fishing industry by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.162 percent *ad valorem*.

815. Program for Export Market development (PEMD)

PEND is administered by the Department of External Affairs and is available to all businesses in the manufacturing or service sectors which export. PEMD facilitates the development of export markets for Canadian products by providing assistance for project bidding, market identification, export consortia, sustained export market development, participation in trade fairs abroad, and bringing in foreign buyers. PEMD assistance is in the form of interest-free loans with repayment terms dependent upon the success of the export promotion activity. If sales result from the export promotion, the funds must be repaid at a rate of two percent of sales generated for a period of three years up to the amount of assistance provided. We verified the amount of PEMD loans provided to the Atlantic fishing industry. However, respondents were unable to segregate the loans provided solely for the export promotion of groundfish.

Since PEMD loans are provided for export activities, we determine that assistance provided under the program confers benefits which constitute export subsidies. Because the repayment terms on PEMD loans are indefinite, we are considering all the loans attributable to the Atlantic Canada fishing industry outstanding in the beginning of the review period as short-term loans with zero interest, rolled over each year. To calculate the benefit, we multiplied the amount outstanding at the beginning of the review period by our short-term interest benchmark. We then divided the benefit by the f.o.b. value of exports to the United States of fish and shellfish during the review period. We calculated an estimated net subsidy of 0.001 percent *ad valorem*.

6. Regional Development Incentive Program (RDIP)

The RDIP, which was the predecessor of the Industrial and Regional Development Program (see section I.A.7. of this notice), was administered by the Department of Regional Economic Expansion (DREE) for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities were chronically low. The program provided development incentives (usually grants) to manufacturers whose capital investment projects for establishing new facilities or expanding or modernizing existing facilities would create jobs and economic opportunities in areas designated as economically disadvantaged.

Because paid benefits were limited to companies located within specific regions in Canada, we determine that grants provided through the RDIP program of DREE are countervailable.

Although the program was terminated in 1983, RDIP grants were still provided to the fishing industry through 1985. To calculate the benefits from RDIP, we allocated the grants received in Atlantic Canada in fiscal years 1974 through 1985 over 12 years. Applying the grant methodology, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.447 percent *ad valorem*.

7. Industrial and Regional Development Program (IRDP)

Under the administration of the Department of Regional and Industrial Expansion (DRIE), IRDP was established in 1983 as the successor to RDIP. Its purpose is to increase industrial development and improve the overall economic climate in Canada. To accomplish this goal, grants are provided for four purposes: (1) to encourage the development of new products and new processes and to increase industrial productivity and industrial competitiveness; (2) to assist in the establishment of new production facilities in less developed areas; (3) to increase industrial productivity through the improvement, modernization and expansion of existing manufacturing and processing operations; and (4) for marketing purposes.

Each of Canada's 260 census districts is classified into one of four tiers on the basis of the economic development of the region. The most economically disadvantaged five percent of the population is included in Tier IV; the districts in which the next 15 percent of the population (in terms of economic disparity) resides are classified as Tier III; the districts in which the next 30 percent of the population resides are classified as Tier II; and the districts in which the remaining 50 percent of the population resides are classified as Tier I. The Yukon and Northwest Territories are always classified in Tier III.

Those districts classified as Tier IV are authorized to receive the highest share of assistance under IRDP (as a percentage of assistance per approved project); those in Tier I, the lowest. Also, grants for the establishment of new facilities, and for modernization and expansion are no longer provided to companies located in census districts classified as Tier I.

Despite the fact that the criteria for assignment to a tier may be neutral, the program nevertheless authorizes benefits to vary from tier to tier, and thus, from region to region. Therefore, we determine that this grant program provides regional subsidies and is countervailable.

IRDP grants were received by fresh fish producers only in the 1985 fiscal year. To determine the level of benefit under this program, we compared the level of assistance provided to companies involved in fresh fish production in Atlantic Canada to the average level of assistance provided to companies in Tier I. We took the difference and allocated it over 12 years. Applying the grant methodology and dividing the f.o.b. value of production in Atlantic Canada of the subject merchandise during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

8. Fisheries Improvement Loan Progam (FILP)

The FILP, established in 1955 under the Fisheries Improvement Loans Act, is currently administered by the Economic Programs Branch of the DFO in accordance with the Fisheries Improvement Loans Regulations. Under the program, the Minister of Fisheries and Oceans guarantees loans made by chartered banks and other designated commercial lenders to commercial fishermen for fisheries improvement projects. These projects include the

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purchase, construction, and repair of alteration of fishing vessels, equipment, water supply systems, or other structures related to a primary fishing enterpirse. The maximum amount of guaranteed loans that a borrower may have outstanding is $150,000. The interest rates charged on loans guaranteed by the government are variable and are equal to the prime lending rate of the lending bank plus one percent. The maximum term of any loan is set at 15 years. There are no fees charged for the guarantees.

Respondents contend that because loans under this program are provided on terms similar to those found under the Farm Improvement Loans Act, the loans to the fishing industry should not be considered to be limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm program or the fishing program are linked in any way to an overall government lending policy to provide loans and loan guarantees on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately.

Loans under the farm loan program were found to be not countervailable in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 Fed. Reg. 25097) because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the FILP are limited to one specific industry, the fishing industry.

In addition to determining whether the FILP is limited to a specific enterprise or industry, or group of enterprises or industries, we must also determine whether the loans and loan guarantees given under the program are on terms inconsistent with commercial considerations.

With respect to the loan guarantees, there are no private commercial sources for loan guarantees in Canada. There are, however, fees charged for loan guarantees under other federal and provincial programs. Under the Federal Enterprise Development Program, private lenders pay the government a fee of one percent per annum on the outstanding balance of loans guaranteed under that program. Under the Newfoundland Deficiency Guarantee Program, the government of Newfoundland's Department of Finance also charges a one percent fee per annum. Therefore, we are using, as best information available, the guarantee fee charged under those programs as our benchmark to determine whether loan guarantees provided under the FILP are on terms inconsistent with commercial considerations. As stated earlier, there are no fees charged on loan guarantees under the FILP. Therefore, we determine that loan guarantees provided under this program are countervailable because they are limited to the fishing industry and are made on terms inconsistent with commercial considerations.

To calculate the benefit under this program, we took the difference between our benchmark guarantee fee (one percent) and the charge for guarantee fees under this program (zero). We applied the difference to the amount of loans outstanding in Atlantic Canada during the review period. Dividing the result by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.043 percent *ad valorem* for loan guarantees provided under this program.

With respect to loans under this program, in order for commercial banks to have their loans guaranteed by the federal government, they must charge an intesest rate of prime plus one percent. To determine whether the interest rate mandated by the government provides an additional benefit to commercial fishermen, we compared the interest rate provided to fishermen under the FILP to the commercial interest rate which commercial fishermen would have had to pay absent this program. Comparing the appropriate benchmark described in the Analysis of Programs section of this notice to the interest rate charged under the program, we determine that the FILP loans are not made on terms inconsistent with commercial considerations. We therefore determine that loans made under this program are not countervailable.

9. DFO Grants to Fishermen and Fish Processors From SRCPP Funds

The DFO has provided grants to fishermen and fish processors. The funding source of these grants was the Special Recovery Capital Projects Program (SRCPP). SRCPP, which was announced in the 1983/84 budget of the government of Canada, was terminated on April 10, 1985. SRCPP was intended to be an anti-recessionary public works program with a budget of 2.4 billion dollars. SRCPP involved the injection of substantial amounts of new funds into the capital budgets of 13 federal departments and agencies in Canada which funded projects located throughout the country. These federal departments and agencies identified those projects under their program jurisdictions which could be implemented quickly with additional funds. Projects were then selected to receive SRCPP monies.

To determine whether countervailable benefits were provided under SRCPP, we looked at the use of the funds and not their source. This is because SRCPP did not create new programs but only accelerated existing programs already administered by seperate government agencies and departments.

The DFO received SRCPP funds which were used for a number of programs. Some SRCPP funds were used to improve small craft harbors (*see* section 1.A.10. of this notice.) DFO also used SRCPP funds to construct government-owned and operated marine service centers, bait storage depots, fish unloading systems, and ice-making facilities. These government-owned facilities are not yet operational, and therefore, we are unable to determine if the goods and services offered through these facilities are provided on preferential terms. We will examine these programs in any section 751 review that may be requested, if this investigation results in a countervailing duty order.

In addition, DFO used SRCPP monies to provide individual grants to fish processors and commercial fishermen for ice-making and storage facilities and fish unloading systems in Nova Scotia and New Brunswick. We determine these grants to be countervailable because they are limited to a specific enterprise or industry, or group of enterprises or industries within Canada.

To calculate the benefit from these DFO grants, we allocated the grants received in Atlantic Canada in fiscal years 1984 and 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.079 percent *ad valorem*.

10. Preferential User Fees to Fishermen Under the Small Craft Harbour Program

In 1973, the management of Canada's commercial fishing and recreational harbors was consolidated within the DFO by the Fishing and Recreational Harbours Act. Under this program, the Small Craft Harbours Directorate of the DFO has the responsibility for operating and maintaining over 2,000 small craft harbors, which range from modern active facilities to minor installations serving isolated communities. The program also received SRCPP funds to upgrade harbor installations.

The regulations of the program provide the berthage fees to be charged to users of the harbors. Under the

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regulations, the berthage fees charged to commercial fishermen are less than those charged to other commercial vessels and recreational boaters. Commercial fishing vessels are charged seven cents per meter of length of vessel per day; other commercial vessels are charged 49 cents per meter per day.

We determine the program to be countervailable because the preferential user fees for harbor facilities are limited to commercial fishermen. To calculate the benefit under this program, we took the difference between the amount of berthage fees paid by commercial fishermen and the amount they would have had to pay if they were charged the same rate as all other commercial vessels. Dividing that difference by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.046 percent *ad valorem*.

11. Government Equity Infusions Into National Sea Products Limited and Fisheries Products International Limited

Petitioner alleges that the government of Canada made equity infusions into National Sea Products Limited, Fishery Products International Limited and United Maritime Fishermen Co-op, and that these equity infusions may have been on terms inconsistent with commercial considerations.

We have verified that the government of Canada and the Province of Nova Scotia made equity investments in National Sea Products Limited (NSP). The government of Canada and the province of Newfoundland made equity investments in Fishery Products International Limited (FPIL). No equity was purchased by the federal or provincial governments in United Maritime Fishermen Co-op. Therefore, we have limited our review to NSP and FPIL.

The provision of equity by the government of Canada and the provinces of Newfoundland and Nova Scotia was part of the restructuring of several major harvesters and processors into NSP and FPIL. The three major companies involved in the restructuring of FPIL were Fishery Products Limited, The Lake Group Limited, and John Penny and Sons Limited of Newfoundland. The restructuring of NSP involved primarily NSP itself and the acquisition of certain assets from H.B. Nickerson & Sons Limited. The restructuring of these firms and the creation of NSP and FPIL occurred in 1983 and 1984, respectively.

During the late 1970's, the five major companies rapidly increased their debt, principally through loans from commercial banks. By the early 1980's, with a downturn in the industry, the position of the companies became an item of concern to the commercial banks, and subsequently to the federal government, because their especially high debt-to-equity ratios began to affect the economic underpinnings of the companies and the Atlantic Canada fishing industry. In 1983, the federal government established a restructuring team in response to the depressed economic conditions of the industry. The federal restructuring team determined that the financial structure of the major companies was ill-suited to the economic conditions which faced the fishing industry, and that the principal challenge to the companies was to increase shareholders' equity to ensure the companies' economic viability. They also believed that liquidation would result in extremely serious disruptions to employment and financial institutions in Atlantic Canada. The government of Canada states that, based on the long-term prospects of this industry and the financial forecasts prepared for NSP and FPIL, equity participation by the government appeared to be a sound investment.

We have consistently held that government provision of equity does not *per se* confer a countervailable benefit.. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. Therefore, we must determine whether the government equity infusions made at the time of each of these reorganizations were consistent with commercial considerations. To make these determinations, we analyzed (a) the companies' financial statements, (b) the financial forecasts submitted by the government of Canada, and (c) the terms of the restructuring.

With respect to FPIL, we determine that it was unequityworthy at the time of its organization. Although one private investor exchanged debt for an equivalent amount of equity in FPIL at the time of the government's infusion, we do not consider that transaction to be an appropriate gauge by which to measure the reasonableness of the government's infusion because at the time it seems that the one private investor's only change for recouping the money it had already loaned to FPIL was to help it reorganize.

Our determination rests primarily on the poor financial conditions of the companies merged into FPIL during 1981 through 1983 and on our analysis of the projected future profitability of the company. The predecessor companies, viewed generally, had low profits or lost money on their operations during the period from 1981 through 1983 (even prior to the payment of interest expenses). The primary source of projected future operations presented by respondents consists of a study performed by an independent consulting firm. The projected financial performance of FPIL according to this study, and our own analysis of the general perception of the industrial environment at the time of restructuring, lead us to believe that a reasonable investor acting in a manner consistent with commercial considerations would not have invested in FPIL at the same time that the government of Canada and the province of Newfoundland invested. The projected increase in retained earnings over five years is not large and is accompanied by a deterioration in the financial structure and working capital position of the company. The government estimates of future catches on which these projections were based are subject to great uncertainty. Government action on enterprise allocations and the effect of such a program were both uncertain. By respondents' own admission, although private investors had been sought, none were willing to invest in the restructured company under the conditions in the Atlantic fishing industry at that time. Therefore, based upon our analysis, we determine that equity infusions in 1983 by the government of Canada and the province of Newfoundland into FPIL were made on terms inconsistent with commercial considerations.

We also determine that equity infusions in 1984 by the government of Canada and the province of Nova Scotia into NSP were made on terms inconsistent with commercial considerations. The equity infusions into NSP by the governments of Canada and Nova Scotia consisted of the purchase of preferred shares, including "second preferred shares." A private investor purchased second preferred shares in combination with a larger amount of common stock. The government of Canada argues that the price paid for the second preferred shares was consistent with commercial considerations because there was a private investor willing to purchase them at the same price.

For purposes of this determination, we find that it is not possible to determine the actual value placed on each portion of this transaction by the private investor. Our determination is not based on whether NSP is equityworthy in general. Rather, analysis of these preferred shares purchased by the government indicates that the expected

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return on them is below that which would be required by a private investor. Therefore, investment in this preferred stock was inconsistent with commercial considerations. Thus, we determine that these infusions confer benefits which constitute a subsidy.

To calculate the benefit of the equity infusion into FPIL, we followed our normal rate of return shortfall methodology. The benchmark rate of return was the national average rate of return on equity. For NSP, we compared the benchmark rate of return to the rate of return on the government shares. The benchmark rate of return was arrived at by using the actual return for another class of preferred stock ("term difficulty preferred shares") purchased at the same time by a private investor. We made an adjustment on the rate of return of the term difficulty preferred shares to account for their tax-free status by taking the difference between the return on tax-free bonds and long-term commercial bonds, and adding that difference to the return on the private investor's term difficulty preferred shares. Adding the benefits from the two equity infusions, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 1.876 percent *ad valorem.*

B. Joint Federal-Provincial Programs

1. Agricultural and Rural Development Agreements (ARDA)

The Agricultural and Rural Development Act allowed the federal government to enter into agreements with the provincial governments to promote economic development and to alleviate conditions of social and economic disadvantage in certain rural areas. The focus of these agreements was alternative land use, soil and water conservation, and economic development in rural development regions. Funding for projects in these areas was evenly split between the federal and provincial government. These agreements were negotiated with all provinces in Canada, except Prince Edward Island, which in 1969 signed its own Comprehensive Development Plan with the federal government. Of the ARDAs signed with the Atlantic provinces, the Newfoundland and Nova Scotia ARDAs provided specific benefits to the fishing industry located in rural development regions.

The Newfoundland ARDA provided funds for a water supply project to furnish water to fresh fish and herring plants. Although this project was not completed under ARDA, it was later funded and completed under a General Development Agreement subsidiary agreement. Using the design report for the project as best information available, we estimate that 21 percent of the funds under this project benefitted the fresh fish plants. As best information available, we are using the project proposal as our source for the total amount of assistance provided under the project. We are also assuming the financial assistance provided under the project occurred in 1978. The Nova Scotia ARDA provided grants for bait freezing units in certain rural development regions. The grants for these units were disbursed in 1975. Respondents were unable to segregate the benefits provided solely to groundfish production under both the Newfoundland and Nova Scotia ARDAs.

Since the benefits under the Newfoundland and Nova Scotia ARDAs were limited to companies located in specific regions, we determine that the grants provided under the ARDAs is countervailable. We recognize that this program terminated in 1975, with funding continuing until 1978. However, using our grant methodology, grants bestowed in fiscal years 1975 through 1978 continue to confer a benefit during the review period. To calculate the benefit from these programs, we allocated the grants over 12 years.

Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish during the review period for the Newfoundland ARDA grant, and fish and shellfish during the review period for the Nova Scotia ARDA grants, we calculated an estimated net subsidy of 0.005 percent *ad valorem.*

2. P.E.I. Comprehensive Development Plan

The P.E.I. Comprehensive Development Plan (the Plan) was agreed to in 1969 by the federal and provincial governments. The Plan operated until 1984. The federal statutory authority for the Plan was the Fund for Rural Economic Development. The Plan provided for joint federal-provincial government cooperation on devising and implementing economic development programs. The programs instituted by the Plan focused on fisheries, agriculture, tourism, forestry, industrial development, land use, educational facilities and transportation. The federal government was responsible for 75 to 90 percent of funding under the Plan.

The response claimed that none of the programs under the plan benefitted the harvesters or processors of groundfish. However, during verification, it could not be established that the fishery projects did not benefit the harvesters or processors of groundfish. Furthermore, respondents were unable to segregate the benefits going solely to groundfish production. The following projects provided financial assistance to the fishing industry in P.E.I. under the fishery program of the Plan: (1) Landing and handling, (2) resource harvesting, (3) product handling, (4) processing and quality control, (5) silage, (6) cold storage, (7) fishermen's incentives, (8) plant quality, and (9) ice-making facilities. As best information available, we are using information provided by the P.E.I. regional office of the federal Department of Fisheries and Oceans to establish the funding levels of these programs.

Because the federal share of grant money under the Plan was limited to companies within a specific region (i.e., the province of P.E.I.), we determine the federal share to be countervailable. However, since the provincial funds were not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable. To calculate the benefit from this program, we allocated the federal share of grants received in fiscal years 1973 through 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.039 percent *ad valorem.*

3. General Development Agreements (GDA)

GDAs provide the legal basis for departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with all the provinces in 1974, except P.E.I., which had signed the Comprehensive Development Plan in 1969. Five-year GDAs were signed with the Yukon in 1977 and with the Northwest Territories in 1979.

Pursuant to GDAs, subsidiary agreements were signed. The subsidiary agreements were generally between particular federal and provincial govenment departments (e.g., the Department of Fisheries). These agreements established various individual programs, delineated administrative procedures and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government program (i.e., extension

services), developing infrastructure, providing for economic development assistance for certain regions within the province, and creating programs for specific industries. We verified that subsidiary agreements in Newfoundland, New Brunswick and Nova Scotia provided financial assistance to the fishing industry.

Under the Newfoundland and New Brunswick subsidiary agreements, funds were provided for the construction of marine service centers. We determine the building of government-owned and operated marine service centers not to be countervailable. We are unable to determine if the services offered through these facilities are provided on preferential terms. This issue will be closely examined in any section 751 review that may be requested, if this investigation results in a countervailing duty order.

In Newfoundland, two subsidiary agreements provided funding to the fishing industry for inshore fisheries development and special fish plant water systems. We determine these two subsidiary agreements to be countervailable because they provided direct financial assistance that was limited to a specific enterprise or industry, or group of enterprises or industries. We verified the federal amount of funds disbursed under the two subsidiary agreements. To establish the total level of funding, we are using, at best information available, a federal government publication on GDAs which states that federal expenditures under the Newfoundland subsidiary agreements represents 90 percent of total expenditures.

In the course of verification, it was discovered that New Brunswick grants were provided to the fishing industry under two subsidiary agreements directed at specific regions within the province. These were the Northeast New Brunswick and Developing Regions subsidiary agreements. Under these two subsidiary agreements, grants were disbursed for bait sheds, salt sheds, quality control, computer installation, fish handling machinery, ice machines, processing up-grading and ice-making storage facilities. Respondents were unable to segregate the grants under the two subsidiary agreements which went solely to groundfish production. Because the provincial and federal funds provided under the subsidiary agreements in New Brunswick were limited to companies within a specific region, we determine funds provided under these agreements to be countervailable. Because there was no information in the questionnaire response on the amount of funding provided under this program, we are using, as best information available, the amounts indicated in the annual reports of the Community Improvement Corporation (the administering authority) to determine the total level of funding for the Northeast New Brunswick subsidiary agreement. For the Developing Regions subsidiary agreement, we are using as best information available, a listing of federal expenditures provided by the provincial office of DRIE. We are using, as best information available, a federal publication on GDAs which states that federal expenditures uder the New Brunswick subsidairy agreements represent 80 percent of total expenditures.

In Nova Scotia, the Strait of Canso subsidiary agreement provided for a water supply project designed to improve the fresh water supply to a fish processor. Because there was no information in the questionnaire response on the amount of funding provided under this program, we are using, as best information available, the total estimated project cost as shown by "Schedule A" of the agreement. Because the provincial and federal funds provided under this subsidiary agreement were limited to a company within a certain region, we determine the grants to be countervailable.

To calculate the benefits under the fishery subsidiary agreements described above, we allocated the grants received in fiscal years 1973 through 1984 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.181 percent *ad valorem.*

4. Transitional Programs

Between the termination of the GDAs and the beginning of Economic and Regional Development Agreements, three programs were founded solely by the federal government. They were the Southeast New Brunswick Development Initiative, the Quebec Development Plan, and the Fisheries Development Program for Coastal Labrador (which is discussed in section IV.B.1. below).

The Southeast New Brunswick Development Initiative began in 1981 and will end in 1986. The federal Department of Fisheries and Oceans administers the Initiative. Under the Initiative, grants are provided to fish processors for the upgrading of fish processing and transportation equipment. Respondents were unable to segregate the benefits going solely to groundfish production. Because the grants under the Initiative are limited to companies within certain regions, we determine them to be countervailable.

The Quebec Development Plan began in 1983 and is expected to last until 1998. Under the Plan, grants have been provided for expansion of the commercial fishing fleet and improvement of commercial fishing vessels. The Plan is administered by the federal Department of Fisheries and Oceans. Because the grants under the Plan are limited to companies within certain regions, we determine them to be countervailable.

To calculate the benefit under these transitional programs, we allocated all the grants received over 12 or 18 years, as appropriate. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.080 percent *ad valorem.*

5. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments. We verified that three subsidiary agreements relating to development of the fisheries industry were signed with P.E.I., New Brunswick and Nova Scotia.

Under the P.E.I. subsidiary agreement, four programs were founded by the federal government: resource development, harvesting, infrastructure and pilot projects. In addition, three programs were funded by the provincial government: quality enhancement, quality improvement and product utilization. At verification, conflicting documentation was provided regarding the total monies disbursed under the subsidiary agreement. We are using, as best information available, the 1984–1985 ERDA Review Report to establish the aggregate amount of funding. Because these programs provided funds to a specific enterprise or industry, or group of enterprises or industries, we find the grants to be countervailable.

We verified that funds under the New Brunswick fishery subsidiary agreement expended for administrative costs and programs were not related to the production of groundfish. Therefore, we determine the funds provided under these programs were not used. We verified that no funds were disbursed

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under the Nova Scotia subsidiary agreement as of March 31, 1985.

To calculate the benefit under the P.E.I. fishery subsidiary agreement, we allocated the total value of all federal and provincial funds received in fiscal year 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.007 percent *ad valorem.*

6. Interest-Free Loans to National Sea Products

We found during verification that National Sea Products had three interest-free loans from government sources. The sources of these loans were the federal Department of Industry, Trade & Commerce, the Newfoundland Industrial Development Corporation, and the Nova Scotia Resources Development Board. Since we are unable to determine the extent to which interest-free loans may be provided by each of these sources to other industries, we find these loans to be limited to a specific enterprise or industry, or group of enterprises or industries, and hence countervailable since they are on terms inconsistent with commercial considerations. For two of the loans, we are using our long-term methodology because the interest rate is fixed for the life of the loans. For the third loan, we are using our short-term loan methodology since the interest rate is scheduled to change during the term of the loan. We divided the benefit from these loans by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period to calculate an estimated net subsidy of 0.018 percent *ad valorem.*

C. Provincial Programs

1. New Brunswick: Loans from the Fisheries Development Board (NBFDB)

The predecessor to the Fisheries Development Board was the Fisheries Loan Development Board (FLDB), originally established in 1946 by the Fisherman's Loan Act (FLA). The purpose of the FLDB under the FLA was to improve and develop the fishing industry in the province. The FLA allowed the FLDB to make loans for the building or purchase of boats, the purchase of new engines and fishing gear, or any other expenditure which the Board deemed proper. Interest rates charged for loans under the FLA were not to exceed five percent and were fixed for the term of the loan. The term was not to exceed 15 years and for each approved application to buy a boat or engine, a deposit of 30 percent of the estimated cost was required.

Effective March 1, 1978, the FLA was replaced by the Fisheries Development Act (FDA). The latter replaced the FLDB with the NBFDB, Under the FDA, the Minister of Fisheries, upon recommendation from the NBFDB, could provide financial assistance in the form of direct loans to a person or company in the fishing industry. The term for all loans under the current FDA regulations is set at a maximum of 25 years with a minimum downpayment of five percent of the value of the loan.

Respondents contend that, because loans under the NBFDB are provided on terms similar to those charged on loans provided by the New Brunswick Farm Adjustment Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately. Loans under the Farm Adjustment Board program were found to be not countervailable in *Swine, supra,* because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the NBFDB are limited to one specific industry, the fishing industry. Comparing the appropriate long- and short-term benchmark interest rates described above to the various fixed and variable interest rates charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

We were unable to verify much of the information provided in the questionnaire response relating to the actual terms and conditions of these loans. We therefore are using, as best information available, information contained in the relevant regulations and annual reports of the Department of Fisheries.

To determine the term for loans provided under the program, we used, as best information availabe, the regulations under the FLA, which state that the maximum allowable term of a loan was 15 years. Our calculations are therefore based on loans provided from 1970–1985. We treated loans given from 1970–1980 and 1983–1985 as fixed rate loans, and applied our long-term loan methodology outlined in the Subsidies Appendix. Loans given in 1981 and 1982 were variable-rate long-term loans. To calculate the benefits from the variable rate loans, we took the difference between the benchmark interest rate and the interest rate in effect during the review period and applied that difference to the amount of principal outstanding on these loans during the review period. Adding the benefits and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.259 percent *ad valorem.*

2. New Brunswick: Fish Unloading Systems and Icemaking Program (FUSIP)

The New Brunswick Department of Fisheries, through the NBFDB, administers a fish chilling grant program under the authority of the Fisheries Development Act of 1977 and New Brunswick Regulation 84–166. This is the only fish chilling assistance program available in New Brunswick. During verification, we confirmed that neither the Fish Unloading Systems and Icemaking Facilities Board nor a program we referred to in our notice of initiation as "Assistance for Icemaking and Fish Chilling Facilities" exists.

FUSIP provides grants for fish chilling facilities for both boats and plants to improve the quality of landed fish and fish products. Eligible applicants include both owners of fishing vessels and fish processing facilities. Assistance is provided on the basis of 50 percent of the total cost of the ice-making facility or equipment to a maximum of $15,000 per application.

Because benefits under this program are available exclusively to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is counteravailable. To calculate the benefit from this program, we allocated all grants received in fiscal years 1981 through 1985 over 12 years. Applying our grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.010 percent *ad valorem.*

3. New Brunswick: Insurance Premium Prepayment Program

To provide vessel insurance for recipients of loans through the NBFDB, the Department of Fisheries purchases insurance on behalf of the recipient and includes the costs in the annual premium paid on the loan for the vessel. These insurance prepayment loans, which are provided in accordance with the Fisheries Development Act of 1977

and Regulation 84–166, are available at the same interest rates as those charged under the NBFDB. These loans, however, must be paid within one year. This program is available only for vessels financed through the NBFDB, discussed in section I.C.I. above, and is not available to fishermen financing boats through commercial lending institutions.

Loans under this program are available exclusively to commercial fishermen, and are therefore limited to a specific enterprise or industry, or group of enterprises or industries. Comparing the interest rates charged on these loans to the appropriate benchmark described in the "Analysis of Programs" section of this notice, we also determine that these loans are provided on terms inconsistent with commercial considerations, and are therefore countervailable. To calculate the benefit from this program, we used our methodology for short-term loans. Because we were unable to verify the interest rate reported in the response, we used, as best information available, the lowest quarterly provincial lending rate for 1985, as supplied by the New Brunswick Department of Finance to represent the interest rate charged under this program. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated subsidy of 0.004 percent *ad valorem.*

4. New Brunswick Interest Rate Rebates

Information contained in the New Brunswick Department of Fisheries 1984 Annual Report (Annual Report) indicates that the province provides interest rate rebates to commercial fishermen. Under this program, the government rebates either 25 or 50 percent of the interest charged on NBFDB loans that were provided from March 1, 1978, to December 6, 1979. Although this rebate program was repealed on December 6, 1979, loans provided during that period that are still outstanding are eligible for the rebate.

Because benefits under this program are available only to commercial fisherman, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is contervailable since such rebates are inconsistent with commercial considerations.

To calculate the benefit from this program, we divided the interest rebates provided during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period. On this basis, we calculated an estimated net subsidy of 0.018 percent *ad valorem.*

5. New Brunswick: Technical Services

Information contained in the Annual Report indicates that the Technical Services Branch of the New Brunswick Department of Fisheries provides assistance to the fishing industry under three programs. Under the Aquatic Resources Program, the Department funds aquacluture projects such as development of commercially viable aquaculture environments and testing the adaptability of certain species. Under the Fishing Vessel and Gear program, the Department will place various types of new equipment free-of-charge on board their fishing vessels for projects such as development of new types of fishing trawlers, long-lining systems and reinforcing equipment for rough weather fishing. Under the Infrastructure Program, research projects for aquaculture and hatchery facilities development, and improvement projects for construction of haul-out ramps and marine service center facilities are funded.

Because aquaculture projects pertain to species which are not the subject of this investigation, we determine that the Aquatic Resources Program does not confer benefits upon exports of the subject merchandise. Projects under the Infrastructure Program do not benefit the fishing industry specifically, but provide benefits to all users of marine facilities, including pleasure boats and marine transportation facilities. We therefore find that the Infrastructure Program is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries. However, because benefits under the Fishing Vessel and Gear Program are limited to the fishing industry, we consider the program to be countervailable. We treated the value of the machinery provided as a grant.

According to our grant methodology, we would normally take financial data for the last 12 years (the average useful life of equipment in the fishing industry) and allocate grants in each year over a 12-year period. However, because financial data were unavailable for years other than the 1983–84, we used, as best information available, the total grants disbursed as reported in the 1983–84 Annual Report as representing the amount disbursed during the review period, and have expensed the full amount in the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.015 percent *ad valorem.*

6. Newfoundland: Grants for Purchasing and Constructing Boats

Under the direction of the Fisheries Loan Board (FLB), an agency in the Ministry of Fisheries, and pursuant to the Fishing Ships (Bounties) Act of 1970, the government of Newfoundland operates two programs which provide grants for purchasing and constructing fishing vessels: the Fishing Ship Bounty Program and the Small Fishing Boat Bounty Program. (This and the following program were referred to in our notice of initiation as the Newfoundland Fishing Vessel Assistance Plan.)

Grants are provided to commercial fishermen for the construction and purchase of fishing vessels. There are stringent eligibility requirements, which include: a) that the applicant be a resident of Newfoundland; b) that the vessel be newly built in Newfoundland and be used primarily in the fishing industry; and c) that the vessel be built or purchased in accordance with permits requiring compliance with technical specifications. Fishing vessels between 35 and 65 feet qualify for grants under the Fishing Ships Bounty Program; vessels less than 35 feet qualify under the Small Boat Bounty Program. The right to receive the grant accrues upon completion of the ship and final survey. Those who receive grants must undertake to use the vessel primarily in fishing for a period of five years.

Because grants under these programs are available only for vessels used by commercial fishermen, we determine that these programs are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable.

To calculate the benefit from these programs, we allocated the grants received in fiscal years 1967 through 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.150 percent *ad valorem.*

7. Newfoundland: Grants for the Rebuilding and Repair of Fishing and Coastal Vessels (RRFCV)

Under the direction of the FLB and pursuant to the Fishing and Coastal Vessels Rebuilding and Repairs Act of 1970, the government of Newfoundland operates the RRFCV. This program provides grants for the reconstruction of ships measuring 35 feet or more, covering up to 35 percent of approved costs of repair or rebuilding. The vessels must be older than eight years and in excess of ten tons underdeck. Any work

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approved by the FLB must be performed in Newfoundland shipyards. To be eligible, a ship owner must be a resident of Newfoundland for at least one year. As in the grant programs for the construction of new ships, rebuilding and repair must meet the technical specifications laid down by the regulations. The FLB may provide grants for both fishing vessels and commercial vessels that are engaged in coastal trade. In actuality, however, grants are rarely disbursed for reconstructing coastal transport vessels and, in recent years, no money has been disbursed on these types of vessels.

Because grants under this program are, in fact, provided almost solely for vessels used by the commercial fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

To calculate the benefit from this program, we allocated the grants received in fiscal years 1968 through 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.069 percent *ad valorem*.

8. Newfoundland: Grants to Cover Operating Expenses

The province of Newfoundland has provided grants to National Sea Products to cover current operating expenses of its Burgeo Plant. The funds were provided under an agreement which was signed in 1982, disbursed funds from 1982 through 1985, and expired in 1985.

Because this program was limited to a specific enterprise, we determine that it is countervailable. To calculate the benefit, since this program was a recurring grant program, we allocated the amount of funds received in our review period over the f.o.b. value of production in Atlantic Canada of fish. This resulted in an estimated net subsidy of 0.096 percent *ad valorem*.

9. Newfoundland: Loans from the Fisheries Loan Board

Under the direction of the FLB and pursuant to the Fisheries Loan Act of 1970, the government of Newfoundland provides long-term loans for the development and improvement of the fishing industry. Commercial fishermen who are residents of Newfoundland and who have had fishing experience during the previous two seasons and earned 75 percent of their income from the harvesting industry during the previous two seasons are eligible. The loans are given for the purchase, construction and repair of ships measuring up to 65 feet, the purchase of new engines and fishing gear, the construction of plants and purchase of plant equipment, and for other types of capital expenditures. Interest rates, which are set by regulation, are fixed for the term of the loan. The current interest rate charged is tied to the prime rate charged by the Bank of Montreal less three percent. Maximum terms of repayment range from ten years for equipment to 12 years for wooden ships; downpayments of ten to 15 percent of the loan amount are required. The maximum loan amount is $50,000.

Respondents contend that, because loans under this program are provided on terms similar to those charged on loans provided by the Newfoundland Farm Loan Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately. Loans under the Farm Loan Board program were found to be not countervailable in *Swine, supra*, because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the Fisheries Loan Board program are limited to one specific industry, the fishing industry. Comparing the appropriate benchmark described in the "Analysis of Programs" section of this notice to the interest rate charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

To calculate the benefit, we used the long-term loan methodology outlined in the Subsidies Appendix. We were unable to verify information in the response on the average number of years loans were outstanding. Therefore, as best information available, we are assuming a 12-year loan term, which is the maximum authorized by the FLB for wooden ships. We used, as best information available, the amount of loans disbursed in each of the past 12 years, and applied our long-term loan methodology. We used the appropriate benchmark described in the "Analysis of Programs" section of this notice. We also treated loans written-off during the review period as grants expensed in that year. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.245 percent *ad valorem*.

10. Newfoundland: Loan Guarantees from the FLB

The FLB will guarantee 20 percent of the aggregate amount of chartered banks' term loans to fishermen for the purchase or construction of fishing vessels. There is no charge for the guarantees. Because these loan guarantees are provided exclusively to the fishing industry and at no charge, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, that they are provided on terms inconsistent with commercial considerations, and are therefore countervailable.

To calculate the benefit from this program, we used as a benchmark, the guarantee fee described above in section I.A.8. of this notice on the FILP. Taking the balance of guaranteed loans outstanding during the review period, multiplying by the benchmark guarantee fee of one percent, and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.013 percent *ad valorem*.

11. Newfoundland: Operation of Fisheries Facilities and Services

Based on information contained in the Public Accounts for the Department of Fisheries, we have found that the government of Newfoundland provides grants to Newfoundland commercial fishermen under the Longline Program, a program designed to encourage them to use longlines in their operations. Because grants under this program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would take financial data for the last 12 years, and allocate grants in each year over a 12 year period. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, 1984–85, and expensed this amount in the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

12. Newfoundland: Construction and Repair of Fisheries Facilities

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants to local commercial fishermen committees to purchase materials necessary for building and repairing fisheries and marine facilities. A large percentage of expenditures go to infrastructure projects available to all boat users. However, some grants go strictly to fisheries facilities. Because these grants are provided only to commercial fishermen, we determine that assistance for fisheries facilities is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would take financial data for the last 12 years, and allocate grants in each year over a 12 year period. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for fisheries facilities in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.009 percent *ad valorem*.

13. Newfoundland: Enhancement of Fishing Operations

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland awards funding for special research and development projects aimed at improving the techniques used in the Newfoundland fishing industry. In 1983–84, the only year for which information was available, grants went to research on longline use and research for improving the overall quality of fish products by establishing universal standards of fresh fish quality. Because we have no information on other research and development projects funded by the government of Newfoundland, nor information on the availability of research results, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for research in offshore fishing operations in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

14. Newfoundland: Marketing Assistance

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants for marketing assistance, designed to encourage consolidation of marketing by small processors to offset the market advantages exercised by the larger processing companies. Because grants under this program are provided only to fish processors, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Because financial data were unavailable for any years other than 1983–84, we used, as best information available, the total grants disbursed for marketing assistance in 1983–84 as representing the amount disbursed during the review period, and expensed this amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem*.

15. Nova Scotia: Fishing Vessel Construction Program (FVCP)

The FVCP was designated to assist individuals, companies, and associations in the fishing industry to construct and operate fishing vessels. The FVCP was in effect from November 22, 1977, through March 31, 1980. The Department of Fisheries of Nova Scotia (DFNS) assessed applications for assistance on the basis of the contribution that construction and operation of the vessels would have on the fishing industry of Nova Scotia. Vessels eligible for assistance had to be operated as fishing boats, have a length not exceeding 64 feet, 11 inches, and be built and registered in Canada. Eligible applicants had to agree to keep their vessels registered in Canada and to engage in fishing for five years. Depending on the size of the vessel and the availability of federal subsidies, the amount of the FCVP grant ranged from zero to 35 percent of the vessel's cost.

Because grants under this program were available only for certain vessels used by commercial fishermen, we determine that this program was limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

We recognize that this program terminated in 1980. However, according to our grant methodology, grants bestowed from 1978 through 1980 continue to confer benefits during the review period. To calculate the benefit from this program, we allocated the grants received in fiscal years 1978 through 1980 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.014 percent *ad valorem*.

16. Nova Scotia: Loans from the Fisheries Loan Board (NSFLB)

The NSFLB, established by the Fisheries Development Act (FDA), administers a loan program designed to provide loans and loan guarantees to commercial fisherman in order to encourage, sustain, improve, and develop the fishing industry of Nova Scotia. Under the regulations pursuant to the FDA, loans are to be made to commercial fisherman for the purpose of building, purchasing, or upgrading boats, developing aquaculture, and assisting the fishing industry generally. In fact, loans made by the NSFLB over the past 12 years have been used primarily for the purchase or upgrading of fishing vessels. To be eligible for a loan from the NSFLB, a commercial fisherman must have at least two years commercial fishing experience within the last five years and be engaged primarily in commercial fishing. Interest rates on approved loans are fixed at eight percent on the first $150,000, 11 percent on the second $150,000, and the current government borrowing rate for loans over $300,000. Interest rates are fisced for the term of the loan. Depending on whether the loan is used to upgrade or to purchase vessels, the repayment period for the loans ranges between five and 12 years. A 20 percent downpayment for each loan is required.

Repondents contend that, because loans under the NSFLB are provided on terms similar to those charged on loans provided by the Nova Scotia Farm Loan Board, loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries. We disagree.

There is no evidence that loans under the farm and fishing programs are linked in any way to an overall provincial lending policy to provide loans on comparable terms to the various qualifying groups. Thus, we must look at each of these programs separately.

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Loans provided by the Farm Loan Board program were found to be not countervailable in *Swine, supra*, because they were available on similar terms to all industries in the agricultural sector. In contrast, loans under the NSFLB are limited to one specific industry, the fishing industry.

Comparing the appropriate benchmark described in the "Analysis of Programs" section of this notice to the interest rate charged under this program, we also determine that these loans were made on terms inconsistent with commercial considerations.

To calculate the benefit, we used the long-term loan methodology outlined in the Subsidies Appendix. We treated loans written off during the review period as grants expensed in that year. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.375 percent *ad valorem*.

17. Nova Scotia: Industrial Development Division (IDD) Grants

The Industrial Development Division (IDD) of the Nova Scotia Department of Fisheries administers assistance programs designed as incentives for development of the fishing industry of Nova Scotia. Grants may be provided on a 50 percent cost-sharing basis to a maximum of $15,000 per location per fiscal year. An applicant must be a licensed commercial fisherman, processing company, or fishermen's organization. Eight separate programs affecting the fishing industry in Nova Scotia are currently administered by the IDD. (These include three programs referred to individually in our notice of initiation as Icemaking and Fish Chilling Facilities, Gutting Machine, and Plant Development Programs.) Each program is designed to encourage technological innovations and to improve the quality of the fishing industry as a whole. The following is a list of the programs and the general purpose of each:

- *IDD Safety Program.* Technical and financial assistance is provided to improve safety on vessels and in processing plants.
- *IDD Quality Improvement Program.* Technical and financial assistance is available for equipment on vessels and in plants that will improve the quality of fish and fish products. Equipment eligible for grants includes: fiberglass or plastic containers, on board insulation, refrigeration, and gutting machines. Grants are also available for plant development.
- *IDD Increased Productivity Program.* Technical and financial assistance is available to improve the productivity and efficiency of fish harvesting and fish plant operations. Unloading equipment, bait sheds, and deck equipment are examples of some items covered by this program.
- *IDD Harbor Facilities Program.* Assistance is available for constructing and improving private harbor facilities such as private wharves, gear sheds, slipways, and haulouts.
- *IDD Infrastructure Program.* Financial assistance is provided to enable processing plants and private wharves to access fresh water supplies and electrical services.
- *IDD Fleet Development Program.* Assistance is available for developing improved vessel design.
- *IDD Technology Development for Fishing Vessels Program.* Assistance is available for the development of onboard equipment. Equipment used to harvest less commonly harvested species and fuel economy equipment are included under the program.
- *IDD Technology Development for Fish Gear Program.* This program is designed to assist the commercial fisherman to purchase safer, more efficient fishing gear.

Because each of the IDD programs outlined above provides assistance exclusively for the fishing industry, we determine that these programs are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable.

To calculate the benefit from these programs, we allocated the grants received since the inception of the program (1977) through fiscal year 1985 over 12, 16 or 18 years appropriate. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.81 percent *ad valorem*.

18. Nova Scotia: Market Development Assistance

Under the Marketing Development Division of the Department of Fisheries, the Market Development Service (MDS) functions to promote fish products generically through the use of mall displays, cooking demonstrations, and distribution of recipe pamphlets and other promotional material. The majority of MDS's activities are directed at the Canadian domestic market. However, amounts spent to cover the costs of the publishing and distribution in the United States of posters and recipe pamphlets promoting Nova Scotia seafood provided a benefit to exporters of fish to the United States during the review period. Because these activities promoted exports to the United States, we determine that the expenses incurred are countervailable.

Dividing the amount spent on promotional activities on exports to the United States by the f.o.b. value of exports of fish and shellfish from Canada to the United States during the reveiw period, we calculated an estimated net subsidy of 0.008 percent *ad valorem*.

19. P.E.I.: Fishing Vessel Subsidy Program (FVSP)

Under recommendation of the P.E.I. Treasury Board, the P.E.I. Minister of Fisheries in 1978 established the FVSP. This program, which provided grants for the acquisition of new vessels, was in effect from 1978 to 1984. Participation in the program was open to all P.E.I. individuals, partnerships or firms engaged in commercial fishing who had not participated in either the federal or provincial vessel subsidy programs during the previous eight years. Vessel size was limited to between 30 and 75 feet, and only those vessels constructed in P.E.I. shipyards were eligible. Participating fisherman received a payment equal to 15 percent of the total cost of the new vessel and engine, plus all other new fixed equipment required on board the vessel, up to a maximum of $3,000. In 1983, the regulations were amended to increase the maximum assistance level to $3,500 for vessel purchases and also to provide grants of 15 percent of the cost, to a maximum of $2,000, for equipment purchased in P.E.I. and installed in new fishing vessels constructed off-island. The latter amendment was to provide assistance to commercial fishermen who wished to install P.E.I. supplied diesel engines in their new vessels but were ineligible for assistance through the Engine Conversion Program (see section I.C.21. of this notice).

Because grants under this program were available only to vessels and equipment used by commercial fishermen, we determine that this program was limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

We recognize that this program terminated in 1984. However, using our grant methodology, grants bestowed from 1978 through 1984 continue to confer benefits during the review period. To calculate the benefit, we allocated those grants for equipment installed in fishing vessels over 12 years, and for fishing vessel construction over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish

and shellfish during the review period, we calculated an estimated net subsidy of 0.015 percent *ad valorem*.

20. P.E.I.: Near and Offshore Vessel Assistance Program (NOVAP)

The NOVAP was established in 1982. Similar to the vessel subsidy program described above, NOVAP provides grants for offshore vessels as well as near-shore vessels. Assistance is provided for 25 percent of the capital costs, to a maximum of $60,000, if the vessel is eligible for federal assistance, and 35 percent, to a maximum of $80,000, if ineligible. Commercial fishermen must agree to provide catch and other data and keep the vessel in the P.E.I. fishing industry for a period of 10 years. Because P.E.I. boatyards are unable to supply larger vessels, the commercial fisherman is free to purchase from any domestic or foreign supplier. Payment of the grant is made to the vessel owner upon satisfactory inspection by the DFL and presentation of paid receipts for the eligible amounts.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit, we allocated the grants received in fiscal years 1983 to 1985 over 18 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.004 percent *ad valorem*.

21. P.E.I.: Engine Conversion Program

The Engine Conversion Program provides grants to commercial fishermen to help defray the initial costs of conversion from gasoline to diesel engines. Participation is voluntary and is available to all P.E.I. commercial fishermen with a commercial fishing license who own vessels powered by gasoline engines. Only one diesel engine conversion grant will be made per commercial fishing vessel over the life of the vessel and, as of May 21, 1982, only those diesel engines purchased from P.E.I. suppliers were eligible for assistance.

The assistance covers 25 percent of the capital cost to a maximum of $2,500 for new diesel engines installed in existing vessels with gasoline engines at least a year old. The applicant must certify that the diesel engine and related equipment will be used for commercial fishing for a minimum of five years. Payment of the grant is made to the applicant upon presentation of paid receipts for the eligible equipment and a satisfactory inspection by the DFL.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1983 through 1985 over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.006 percent *ad valorem*.

22. P.E.I.: Commercial Fishermen's Investment Incentive Program (CFIIP)

The CFIIP, which was instituted in 1983, provides interest reduction grants to all P.E.I. commercial fishermen who are holders of *bona fide* fishing permits. Eligible projects include new or used capital asset purchases, acquisition of fishing enterprises and fishing privileges, repairs to capital items and working capital loans.

Interest reduction grants are paid on loans secured from recognized commercial lending institutions. Upon obtaining the loan, the commercial fisherman is eligible to apply for an interest rebate of no more than four percent per annum if the lending rate is at or above 12 percent. When the lending rate falls below 12 percent, the interest rebate is reduced. The amount of the reduction is equal to the difference between the lending rate and 12 percent. The effective minimum rate to the fisherman under the program is therefore eight percent (*e.g.*, if the secured loan has an interest rate of 11 percent, the rebate is reduced to three percent; which reduces the rate to the prescribed minimum of eight percent). Eligibility is limited to the life of the loan or the first five years, whichever is less. The maximum aggregate of loans to individual fishing enterprises cannot exceed $30,000 at any one time. The grant is paid to the commercial fisherman upon receipt of an itemized statement from the recognized lending institution and with the certification that the borrower has paid the amount of interest due. For fishermen who were eligible to receive an interest reduction grant in 1984, payment was deferred until 1985. Grant payments were then disbursed in 1985 for the eligible amounts in both years.

Because grants under this program are available only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Dividing the interest reduction grants received during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.003 percent *ad valorem*.

23. P.E.I.: Assistance for the Construction of Icemaking and Fish Chilling Facilities (ACIFCF)

This program, established in 1974 and administered by the Department of Fisheries and Labor (DFL), provided financial assistance for the construction of storage rooms, the purchase of icemakers, temperature control equipment, and for associated installation costs. The program was available to all inshore facilities located within P.E.I. and was formally terminated in 1983. Originally, the level of assistance was to provide for 35 percent of the cost of required construction, equipping or modification of ice-making and refrigeration facilities. This was reduced to 25 percent in 1979 and 1980. In 1981, benefits were increased to 75 percent of the total cost, up to a maximum of $75,000. Funding for the program from 1981 until its termination was provided by the P.E.I. Comprehensive Development Plan (see section I.B.2. of this notice).

Because grants under this program were available only to inshore fish processing facilities used by the fishing industry, we determine that benefits under this program were limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. We recognize that this program terminated in 1983. However, according to our grant methodology, grants bestowed from 1974 through the program's termination confer benefits during the review period.

In our preliminary determination, we based our findings on information submitted in the response stating that, of all companies which had received grants under this program, only seven exported certain fresh Atlantic groundfish to the United States during the review period. However, we were unable to verify this statement. We therefore are using, as best information available, all grants received by fishermen's cooperatives and by companies holding fresh fish export licenses during the review period. We allocated these grants over 12 years. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated

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an estimated net subsidy of 0.003 percent *ad valorem.*

24. P.E.I. Fish Box Pool Program (FBPP)

In 1975, the DFL instituted the FBPP to provide commercial fishermen with safer and more sanitary containers in which to transport their catch. These tote boxes, constructed of heavy duty plastic, were purchased by the DFL in bulk and made available to P.E.I. commercial fishermen at cost. The commercial fishermen had the option of either purchasing the boxes outright or taking out a five-year, five percent interest loan from the DFL to finance the purchase. Loans were provided under this program until 1979. In 1980, the DFL sold fish boxes to fishermen on a cash basis only. The program terminated in 1980.

In our preliminary determination, we stated that this program had been terminated. However, during verification, we obtained information which indicated that six loans under this program were still outstanding.

Because these loans were available only to commercial fishermen, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because we have no information on the interest rates charged on certain loans, nor information on principal repayments for certain other loans, as best information available, we also determine that loans were provided on terms inconsistent with commercial considerations. Hence, they are countervailable.

To calculate the benefit from this program, because of the lack of information provided on interest rates or payment terms, and given the small value of loans outstanding, we are treating the outstanding balance as a grant and expensing the total during the review period. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.002 percent *ad valorem.*

25. P.E.I. Technical Upgrading Program

Based on information contained in the Department of Fisheries and Labor Annual Report (P.E.I. Annual Report), we found that the government of P.E.I. operates the Technical Upgrading Program. This program provides funding to commercial fishermen and processors to attend industry meetings and receive specialized training.

Because grants under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of grants reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated subsidy of 0.001 percent *ad valorem.*

26. P.E.I. Fresh Fish Marketing Program

Based on the information contained in the P.E.I. Annual Report, we found that the government of P.E.I. operates the Fresh Fish Marketing Program. Under this program, the DFL, in association with P.E.I. groundfish processors, entered into a contract arrangement with a New England marketing firm to market fresh P.E.I. groundfish in the New England market. Because this program promotes exports, we determine that assistance under this program confers benefits which constitute export subsidies.

To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of financial assistance reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production of exports of the subject merchandise to the United States during the review period, we calculated an estimated net subsidy of 0.090 percent *ad valorem.*

27. P.E.I. Fishing Industry Technology Program

Based on information contained in the P.E.I. Annual Report, the government of P.E.I. operates the Fishing Industry Technology Program. This program was initiated to assess opportunities for application of computer technology in the P.E.I. fishing industry. During 1984, a grant was provided to a major fish processor in Kings County for software development and training to upgrade its existing computer system. The software was designed to give better control on yield of fillets on groundfish species.

Because benefits under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of grants reported in the 1983 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of the subject merchandise during the review period, we calculated an estimated net subsidy of 0.012 percent *ad valorem.*

28. P.E.I. Technology Improvements Program

Based on information contained in the P.E.I. Annual Report, we found that the government of P.E.I. operates the Technology Improvements Program. This program provides financial assistance to processing firms for leasing particular machinery on a trial basis to assess the suitability and economic benefit to the firm's operations. During the 1984 fishing season, three plants participated in the program. Two of the machines tested were a groundfish filleting line and a skinning machine. In addition, three fish unloading systems were purchased by the DFL and were leased to the industry on a trial basis during 1984.

Because grants under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because we have no information on the terms of the assistance provided, nor on the leasing arrangements entered into, we determine that the provision of these benefits is inconsistent with commercial considerations, and is therefore countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period, we used, as best information available, the total value of assistance reported in the 1983 P.E.I. Annual Report as representing the amount of a grant disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.002 percent *ad valorem.*

29. P.E.I. Onboard Fish Handling Systems Program

Based on information contained in the P.E.I. Annual Report, the government of P.E.I. operates the Onboard Fish Handling Systems Program. The government provides assistance to commercial vessel owners at the rate of 25 percent of the installed capital cost, to a maximum of $10,000, for onboard fish gutting machinery and fish cooling units. According to the 1984 P.E.I. Annual Report, two grants were given to vessel owners in 1982. No applications for assistance were received in 1983 or 1984.

Because benefits under this program are provided exclusively to the fishing industry, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. To calculate the benefit from this program, because information was unavailable on expenditures during the review period or for prior years, we used, as best information available, the total value of grants reported in the 1984 P.E.I. Annual Report as representing the amount disbursed during the review period. Dividing that amount by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.001 percent *ad valorem.*

30 Quebec: Vessel Construction Assistance Program (VCAP)

Under the direction of the Ministry of Agriculture, Fisheries and Food (MAFF), the government of Quebec operates the VCAP. This program, which was established in 1972 and originally administered by the Ministry of Industry, Commerce and Tourism, provides grants to commercial fishermen to reimburse a portion of the cost of a boat. Only boats measuring between 25 and 35 feet that are constructed with materials from Quebec and equipped with storage containers which correspond to the regulations of the Quebec Standards Bureau qualify under the VCAP. If the commercial fisherman sells the boat within five years without MAFF authorization, a prorated portion of the grant must be repaid.

Because grants under this program are available only for vessels used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1981 through 1985 over 18 years. Grants were first provided under this program in 1972. However, no information on the grants bestowed from 1972 through 1980 was available. Therefore, for each of those years, we used, as best information available, the average value of the grants bestowed during the period 1981–1985, and allocated those grants over 18 years as well. Applying the grant methodology and dividing by f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subisdy of 0.028 percent *ad valorem.*

31. Quebec: Gear Subsidy Program (GSP)

Under the direction of MAFF, the government of Quebec operates the GSP. This program, which was established in 1972 and originally administered by the Ministry of Industry, Commerce and Tourism, provides grants to commercial fishermen to reimburse 25 percent of the purchase price of hooks, leaders, lines and metallic shellfish traps. To be eligible for this program, fishermen must purchase materials from Quebec suppliers for the construction of the gear.

Because benefits under this program are available only for gear used by commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. To calculate the benefit from this program, we allocated the grants received in fiscal years 1981 through 1985 over 12 years. Grants were first provided under this program in 1972. However, no information on the grants bestowed from 1972 through 1980 was available. Therefore, for each of those years, we used, as best information available, the average value of the grants bestowed during fiscal years 1981–1982 as representing the value of grants bestowed from 1972 through 1980, and allocated those grants over 12 years as well. We used the average for only these two years because in 1982 certain gear purchases became ineligible. Grants in years prior to 1980 are more accurately reflected by the average for fiscal years 1981–1982. Applying the grant methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.041 percent *ad valorem.*

32. Quebec: Insurance Premium Subsidy Program (IPSP)

Under the direction of MAFF, the government of Quebec operates the IPSP. This program, established in 1981, provides reimbursements to eligible participants equal to 50 percent of the cost of fishing vessel insurance. Benefits are available to professional harvesters who own fishing vessels and to fishing corporations whose members conduct fishing operations. If the harvester transfers or sells the boat or if the insurance is prematurely cancelled, a prorated portion of the grant must be repaid to MAFF.

Respondents contend that benefits provided under the IPSP do not constitute countervailable benefits because there is no preferential treatment for the fishing industry. They claim that the fishing industry is considered just one of the "agro-alimentary" industries overseen by MAFF, and that programs providing similar benefits are available for 58 crops.

The programs referred to by the respondents are administered by the Regie des Assurances Agricoles du Quebec (the Regie), in accordance with the Crop Insurance Act. Under that Act, the government of Quebec may issue regulations establishing insurance schemes for mixed farming and commercial crops. Funding for the insurance schemes is provided jointly by the government of Quebec and the participating farmers on an equal basis. Only those crops for which specific regulations have been enacted are covered by an insurance scheme run by the Regie; coverage is not available for all crops, nor is it available to other industries in the agriculture sector (*e.g.*, livestock). By definition, benefits under the Crop Insurance Act are limited to a specific group of industries.

Similarly, under the IPSP, benefits are limited exclusively at the fishing industry. There is no evidence that this program is part of a broader government of Quebec policy to provide comparable benefits to all industries in the "agro-industrial" sector. Therefore, we determine this program to be limited to a specific enterprise or industry, or group of enterprises or industries, and to be countervailable. Dividing the value of the premium reimbursements to the fishing industry during the review period by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.043 percent *ad valorem.*

33. Quebec: Large Vessel Construction Program

Based on information contained in the Annual Report of the Ministry of Agriculture, Fisheries and Food, the government of Quebec also provides grants for the construction of boats measuring more than 35 feet. Originally, grants covered 35 percent of construction costs, but in 1984 individual grants were increased to 50 percent of costs. A commercial fisherman is required to demonstrate that 75 percent of earned income derives from fishing and undertake to use the vessel in fishing operations for a minimum of five years. Because grants under this

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program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 18 years, the average useful life of boats, and allocate grants in each year over an 18 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, and expensed the full amount to the year of receipt. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.144 percent *ad valorem*.

34. Quebec: Loans From the Ministry of Agriculture, Fisheries and Food

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec offers loans to commercial fishermen for the construction of new vessels, repair of used vessels and equipment, and consolidation of debt. Because benefits under this program are available only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because information was not provided on the terms or interest rates of these loans, we also determine that these loans were provided on terms inconsistent with commercial considerations, and are, therefore, countervailable.

No financial data were available on the amounts of loans disbursed in any year other than 1983–84. Therefore, to calculate the benefit from this program, we used, as best information available, the amount of funds disbursed in 1983–84 as representing a short-term interest-free loan provided during the review period. We used as our benchmark the 90-day prime corporate paper rate. Dividing the benefit by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.045 percent *ad valorem*.

35. Quebec: Grants for Engine Purchases

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec provides grants to commercial fishermen for the purchase of engines for boats measuring less than 35 feet. Because grants under this program are provided only to commercial fishermen, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

Using our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed in 1983–84 as representing the amount disbursed during the review period, and expensed the full amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.021 percent *ad valorem*.

36. Quebec: Grants for Fish Transport and Seafood Processing Tanks

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, the government of Quebec provides financial assistance for fish transport and the purchase of processing tanks. Grants over 50 percent of the acquisition costs of approved tanks and reservoirs. Because this program provides benefits exclusively to the fishing industry, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years over than 1983–84, we used, as best information available, the total grants disbursed under this program in 1983–84 as representing the amount disbursed during the review period. We then expensed the full amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.029 percent *ad valorem*.

37. Quebec: Grants to Processing Enterprises for Capital Equipment

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, we found that the government of Quebec will assume 20 percent of the cost of eligible capital equipment for processing firms wishing to modernize their plants in conformance with construction and operation standards set forth in the Agricultural, Marine and Food Products Act. Because these grants are available only to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable.

According to our grant methodology, we would normally take financial data for the last 12 years, the average useful life of equipment, and allocate grants in each year over a 12 year period. However, because financial data were unavailable for years other than 1983–84, we used, as best information available, the total grants disbursed under this program in 1983–84 as representing the amount disbursed during the review period and expensed the full amount to the review period. Applying this methodology and dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.109 percent *ad valorem*.

38. Quebec: Ice-Making and Fish Chilling Assistance

Based on information contained in the Annual Report for the Ministry of Agriculture, Fisheries and Food, we found that the government of Quebec operates ice-making equipment and cold-storage warehouses to provide commercial fishermen and processing firms with an inexpensive source of fish chilling operations. The government produces ice which the annual report states is then sold to processing plants at a price equal to its production costs, and to Quebec fishermen at a price equal to 53 percent of production costs. It also offers space in cold storage warehouses operated by the Equipment Management Division to processing firms during temporary shortfalls in commercial cold storage space.

Because these benefits are provided only to the fishing industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. In addition, because information was not provided on rates charged for similar services, we find that these goods and services are provided at preferential rates, and are countervailable. To calculate the benefit from this program, we used, as best information available, the cost of the government of providing these services as representing the amount of the benefit. Furthermore, because financial data were unavailable for years other than 1983–84, we used expenditures in 1983–84 as representing

expenditures during the review period. We expensed this amount to the review period. Dividing by the f.o.b. value of production in Atlantic Canada of fish and shellfish during the review period, we calculated an estimated net subsidy of 0.077 percent *ad valorem*.

III. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in Canada of fresh Atlantic groundfish under the following programs:

A. Federal Programs

1. Atlantic Fisheries Management Program

The Atlantic Fisheries Management Program is a federal program for the conservation and restoration of Canada's fisheries resources. The program's functions include: setting total allowable catches, licensing fisheries and vessels, administering biological conservation measures, managing fleet quotas, performing research and surveillance, and monitoring domestic and foreign fleets. The program does not provide any financial assistance to the groundfish industry. Resource management, like the government's regulation of other business activities, is a legitimate government function undertaken to ensure the orderly conduct of business in the general public interest.

Research under the program falls into three general categories: resource assessment, habitat assessment, and aquaculture and resource development. The results of the research are published in publicly available technical and scientific journals.

Because no financial assistance is provided under the program, the research results are publicly available, and the research is not targeted to assist a particular industry, we determine that the program is not countervailable.

2. DFO Marketing Intelligence and Industry Services Branch

As previously discussed in section I.A.3., the Marketing Intelligence and Industry Services Brandh (MIIS) is part of the DFO's Marketing Directorate. MIIS provides market analyses, market research and forecasts and policy advice to DFO management. Its reports are used by the DFO, as well as other government agencies, industry, universities, international organizations, bankers, and the general public. Because MIIS provides no financial assistance to the groundfish industry and because it market reports are publicly available, we determine that no countervailable benefits are provided under MIIS.

3. Enterprise Development Program (EDP)

EDP, which was established in 1977 and terminated in 1983, was administered by the Federal Department of Industry, Trade and Commerce. The purpose of EDP was to increase productivity in the manufacturing and processing sectors by encouraging innovations in the production process. EDP provided loans and grants to manufacturers (individuals, firms, or corporations engaged in a manufacturing or processing activity) and term loan insurance to banks lending to manufacturers or processors.

The groundfish industry received both grants and term loan insurance, but no loans. We verified that term loan insurance and grants provided under EDP were not limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that assistance given to the groundfish industry under this program is not countervailable.

4. Section 146 of the Unemployment Insurance Act

Under the Unemployment Insurance Act, unemployment insurance is provided to all individuals working under a contract of service. Section 146 of that Act authorizes the Canada Employment and Immigration Commission to operate and establish a scheme of unemployment insurance for self-employed fishermen. Fishermen that work under a contract of service are covered under the general provisions of the Act.

Part V of the Unemployment Regulations provides the regulations covering self-employed fishermen (the Fishermen's Regulations). Under the Fishermen's Regulations, the buyer of the catch is considered the employer of the fisherman. All the provisions of the Act and the general regulations apply to self-employed fishermen except where modified by the Fishermen's Regulations.

In order for the self-employed fishermen's unemployment insurance program to be deemed a subsidy, it is necessary that the insurance be provided on preferential terms to a specific enterprise or industry, or group of enterprises or industries. We find that self-employed fishermen do not receive unemployment insurance on preferential terms.

The employee and employer premiums (as a percentage of earnings) paid under the general unemployment program and the program for self-employed fishermen are the same. The number of weeks a self-employed fisherman must work and the number of weeks a worker under the general unemployment program must work to qualify for unemployment insurance is the same. The benefit levels for each are set at 60 percent of their average insurable earnings, although the self-employed fisherman may take the average of his ten highest earning weeks if he has 15 or more weeks of fishing. The number of initial benefit weeks is calculated on a one-to-one basis for workers covered under the general unemployment program; for every one week of employment the worker qualifies for one week of benefits. The number of initial benefit weeks for self-employed fishermen is calculated on a six to five ratio; *i.e.*, for every six weeks of employment the self-employed fisherman earns five weeks unemployment insurance. The number of extended benefit weeks available to the self-employed fisherman and a worker covered under the general unemployment program is the same, although a self-employed fisherman is not eligible to receive benefits between May 15th and November 1st.

Thus, while the terms of unemployment insurance for self-employed fishermen and general contract workers are similar in many aspects, they are not identical. In those areas where they differ, some terms appear to benefit contract workers vis-a-vis self-employed fishermen (calculation of initial benefit weeks and the duration of extended benefits), whereas the use of the ten highest earnings weeks for calculating the level of benefits appears to benefit self-employed fishermen vis-a-vis contract workers.

Comparing the terms of unemployment insurance provided under the Fishermen's Regulations for self-employed fishermen to those provided under the Unemployment Insurance Act and Regulations, we determine that unemployment insurance provided to self-employed fishermen is not provided on preferential terms and therefore is not countervailable.

5. Import Duty Remission Under the Machinery Program

Petition alleges that fishermen and processors have import duties remitted on machinery not available from Canadian Manufacturers, and that this program may be administered in such a manner as to *de facto* limit the program to a specific industry or group of industries. This program is governed by the Financial Administration Act and

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was established in 1968. The Machinery Program covers machines such as construction equipment, metal working machinery, and general purpose machinery such as hydraulic pumps, and pulp, paper and plastics machinery. The remission of duty is authorized by the Governor-in-Council on the recommendation of the Minister of Regional Industrial Expansion. The Machinery and Equipment Advisory Board (MEAB) advises the Minister on the eligibility of imported machines for remission of duty. To qualify for approval, the remission of duty must be in the public interest and reasonably equivalent machinery must not be available in Canada. We verified that only applications for machinery available for production in Canada were rejected.

Since all applications covering machinery not available in Canada were approved, we found no evidence of governmental discretion in the administration of this program and, therefore, no *de facto* limitation on use of the program. Since the types of machinery eligible for remission of import duties are available for use to a wide range of industries, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is not countervailable.

6. Fishing Vessel Insurance Plan

Established in 1953 and administered by the Economic Programs Branch of the DFO, the Fishing Vessel Insurance Plan insures commercial fishermen against abnormal losses. The plan covers losses or damage caused by perils at sea, accidents in loading, discharging or handling cargo, accidents occurring on dry-docks, explosions on shipboard, and the negligence of master, officers, crew or pilots, provided that any loss or damage has not resulted from lack of due diligence.

The purpose of this program is to ensure that marine insurance is available throughout Canada. Although the DFO offers insurance in remote areas of Atlantic Canada where certain private insurers elect not to operate due to the relatively high expenses associated with maintaining offices in inaccessible regions. The DFO is able to avoid these expenses because there is already some form of DFO presence in most regions (for licensing or inspection services). The premium rates are established as a percentage of the appraised and insured value of the hull and machinery. They are adjusted annually by taking the sum of indemnities paid in the preceding five-year period and dividing by the sum of the total insured value at the end of each of the preceding five years.

This program was preliminarily determined to be countervailable because information had not been provided on premium rates charged for identical or similar insurance.

At verification, we found that FVIP premiums are comparable to premiums charged by private insurers and in many instances, are actually higher. In recent years, many commercial fishermen have switched from the FVIP to private insurers to obtain lower premium rates. Therefore, we determine that the FVIP does not offer insurance at preferential rates and, consequently, does not confer a countervailable benefit.

7. Federal Assistance for Bait Services Program

The Bait Services Program was established by the Dominion of Newfoundland before it became a province of Canada in 1949. The federal government agreed to take over this program as a condition of Newfoundland becoming part of Canada. The program is presently administered by the federal DFO. The Bait Services program provides commercial fishermen with a source of bait independent of the local processors. We verified that the Bait Service sells bait at prices identical to those charged by private suppliers to unrelated purchasers. Since the prices charged by the government are not preferential when compared to the prices charged by private suppliers to unrelated purchasers, we determine that this program is not countervailable.

B. Provincial Programs

1. New Brunswick: Marketing and Promotion Activities

The New Brunswick Department of Commerce and Technology (DCT) offers three separate programs to small, newly-established companies to assist in their development, marketing, and export activities. These programs are Trade Services, Marketing Services, and Production Services. Technical/Marketing Assistance was eliminated at the end of 1980 and its functions have been absorbed by the production services section. There are no provincial rules or regulations that specifically provide for the various marketing and export programs; all are activities performed by the Department of Commerce and Technology under the direction of its Minister and the Deputy Administrator of the Department. Funding for the programs is authorized by the Financial Administration Act of October 1984.

Participation in these programs is voluntary and open to all small, newly-established companies in New Brunswick. None of the three programs is designed to deal exclusively with export promotion and, of the three programs available, the only one utilized by producers of groundfish was Trade Services.

These programs provide assistance in attending trade shows and missions which might be of use to manufacturers and processors in the province. These activities are available for both export and domestic marketing. The DCT shares the costs on a 50–50 basis for attending a trade show if the manufacturer can show that it is financially solvent, has the production capability to supply a product, and will follow up on any trade leads uncovered. The manufacturer or processor must be a resident of the province of New Brunswick. In fiscal year 1985, less than four percent of the total monies allocated for Trade Services was expended on the promotion of the subject merchandise. The remaining funds were utilized by various other industries within the province.

The Marketing Services section makes marketing professionals available to help companies establish proper marketing techniques. It also provides financial assistance for expanding marketing programs. The program is available throughout the province to all small, newly-established companies who may need marketing assistance. DCT marketing professionals work with the company in implementing a proper marketing scheme and, if financial assistance is needed, provide funds on a 50–50 cost sharing basis to expand into new marketing projects.

Production Services are available to all small, newly-established companies to provide technical advice and assistance in solving problems associated with the development of their products. Although most assistance was of an advisory nature, some financial assistance was also provided on a 50–50 cost sharing basis.

Because the services performed by the DCT are available to all industries within the province, for both domestic and export promotion, we determine that receipt of assistance is not contingent on exportation, nor is it limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we find that New Brunswick marketing and promotion activities are not countervailable.

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2. New Brunswick: Training Services

Based on information contained in the New Brunswick Department of Fisheries Annual Report, we found that the government of New Brunswick operates the Training Services Program. Courses for commercial fishermen include electronic navigation, refrigeration, hydraulics, engineering and various levels of fishermen competency. Other courses are offered in conjunction with Transport Canada to provide certification in areas such as Ferry Steamship Master, Small Pleasure Craft Master and various levels of Engineering Competency. Assistance is also provided by the school to various groups organized throughout the province. Because the benefits under this program are not provided to a specific enterprise or industry, or group of enterprises or industries, we conclude that benefits under this program are not countervailable.

3. Newfoundland: Exemptions from Sales and Gasoline Taxes

Under the direction of the Tax Administration Branch of the Ministry of Finance, the government of Newfoundland offers exemptions from the application of the Retail Sales Tax Act and the Gas Tax Act, both enacted in 1978. The sales tax applies a flat rate of 12 percent on the consumption of tangible personal property. Its purpose is to tax only the final consumer of retail products. Pursuant to this purpose, the regulations enumerate specific exemptions in all areas of commercial production, including production of primary products: agriculture, fish, forestry, and minerals; and manufacturing and processing. Vessels or boats purchased by commercial fishermen, farm equipment and supplies, all productive capital equipment purchased for use in manufacturing, and all tangible personal property to be processed, fabricated, or manufactured for purpose of resale, are exempt.

The gas tax is an *ad valorem* tax based on 22 percent of the average retail price of fuel and is used to provide funds for highway repair. Exemptions apply to all uses of gas that are not related to the use of a motor vehicle on a public roadway. We verified that the gas tax exemptions are used by a broad spectrum of industries. Therefore, we determine that benefits provided under these programs are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

4. Newfoundland: Newfoundland and Labrador Development Corporation (NLDC)

A 1972 agreement between the government of Newfoundland and the federal government created the NLDC as a crown corporation to promote small- and medium-size businesses by providing loans and equity investments to all commercial sectors. Until March 1984, the program received partial federal funding. Since then, it has been solely under provincial responsibility, although any operating losses are shared on an equal basis by Newfoundland and the federal government. Besides fishing, the NLDC has assisted enterprises in manufacturing, mining, forestry, agriculture, services, and tourism. Interest rates are established once a month at one percent or more above the cost of funds charged by the government to all crown corporations. The rate is fixed during the term of a loan. We verified that this rate is consistently higher than the prime rate charged by chartered banks. The maximum repayment period is 15 years, and is based on the average useful life of the asset. We verified that the dividend rate on equity investments is normally higher than the average market rate. The NLDC also offers business and technical information on an informal basis in response to anyone's inquiries.

Because a wide range of industries receive financing from the NLDC and because loans and equity investments are not provided on terms inconsistent with commercial considerations, we determine that this program meets neither of the two tests in section 771(5)(B)(i) of the Act, and is not countervailable.

5. Newfoundland: Rural Development Loan Program (RDLP)

Under the direction of the Rural Development Authority and pursuant to the Newfoundland Department of Rural Development Act of 1973, the government of Newfoundland operates the RDLP. The Rural Development Authority is comprised of three ministers: the Minister of Rural Development, the Minister of Forestry and Agriculture, and the Minister of Fisheries, as well as three to five other appointed members. The RDLP promotes the development of small industries and rural enterprises by providing loans to both emerging and existing businesses. "Rural" is interpreted to embrace all of Newfoundland including St. Johns, the capital of Newfoundland. Loans are at fixed interest rates for a maximum of $25,000. Maximum repayment periods are 15 years for buildings, ten years for new capital equipment, and three years for used equipment. Security is required for all loans. The regulations authorize loans for many purposes including the purchase and repair of equipment, the purchase, construction, and renovation of buildings, land purchases, and working capital needs. The only producers specifically excluded from the program are fish harvesters who already receive loans from the Fisheries Loan Board.

We verified that loans are provided to any industry in primary resource production, manufacturing, processing, services and tourism. Therefore, we determine that benefits provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, or to particular regions within the province and are not countervailable.

6. Newfoundland: Loan Deficiency Guarantee Program

The government of Newfoundland's Ministry of Finance, pursuant to the Crown Guarantee and Loan Act of 1973, has guaranteed short-term working capital loans to eligible fishing companies since 1977. We verified that under this program, guarantees have been provided to a variety of industries including fishing, mining, agriculture, pulpwood harvesting and sawmilling. All loans that are guaranteed must be secured, and a guarantee fee of between 0.5 and 1.0 percent is charged on the loans. Because the guarantees provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable.

7. Newfoundland: Market Development Information Service

This service, offered by the Support services Branch of the Newfoundland Department of Fisheries, provides information on all aspects of the fishing industry to anyone who inquires. As such, we determine that the service provided under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

8. Newfoundland: Construction of Fisheries Access Roads

Based on information contained in the Public Accounts for the Department of Fisheries, the government of Newfoundland offers grants to local fishermen's committees for the construction of access roads. The

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construction is usually undertaken by the Department of Transportation and Communication. All access roads constructed with government funding must be accessible to the public. Newfoundland's road network is not very extensive, so most new roads are necessary additions to the province's infrastructure. Because these roads are open to and used by the public and are used by more than a group of industries, we determine that assistance for road construction provided by the Department of Fisheries does not confer a countervailable benefit.

9. Newfoundland: Market and Product Development Program (MAPD)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland since 1978, has offered grants to any Newfoundland manufacturer, processor, or consulting service to develop new market opportunities and new product lines. A grant may cover up to 50 percent of a project's total cost to a maximum of $50,000. We verified that a wide variety of industries have participated in this program. Therefore, we determine that benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

10. Newfoundland: Rural Development Assistance Program (RDAP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides funds to municipalities in all areas of Newfoundland to undertake development projects which stimulate economic growth in the municipality and region. Grants are aimed at assessment and promotion of economic opportunities. "Rural" is interpreted to embrace all of Newfoundland, including St. Johns, the capital of the province. Because benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, or to particular regions within the province, we determine that they are not countervailable.

11. Newfoundland: Small Business Program

Based on information contained in the Public Accounts for the Department of Development, we found that the P. H. Gardiner Institute for Small Business Studies at the Memorial University of Newfoundland offers the services of its students to help small businesses in any industry prepare feasibility studies, financial statements, accounting systems, marketing studies and other related business activities. The program is designed to assist those small businesses which need advice yet cannot afford commercial rates. Consequently, the only eligibility requirement is a demonstrated inability to pay. Because benefits conferred under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that they are not countervailable.

IV. Programs Determined Not To Be Used

Based on our verification, we determine that producers or exporters in Canada of certain fresh Atlantic groundfish did not use the following programs:

A. Federal Programs

1. Community-Based Industrial Adjustment Program (CIAP)

CIAP was established in 1981 and terminated in 1984. The program was one part of the Industrial and Labor Adjustment Program which was administered by the Department of Industry, Trade and Commerce. The objective of CIAP was to encourage businesses to undertake capital projects in certain designated communities affected by serious industrial dislocations. CIAP financial assistance took the form of grants of up to 75 percent of the consulting costs associated with CIAP projects or loans to cover capital costs and preproduction expenses.

B. Joint Federal-Provincial Programs

1. Fisheries Development Program for Coastal Labrador

This program, which is administered jointly by DRIE and DFO, began in 1981 and is scheduled to terminate in 1987. Its purpose is to improve the quality of fish landed and increase the efficiency of fish processors within the coastal Labrador region of the province of Newfoundland. We verified that no products subject to this investigation are exported from coastal Labrador.

C. Provincial Programs

1. New Brunswick Fuel Subsidy for Fishermen

Based on information contained in the New Brunswick Department of Fisheries 1983 Annual Report, we found that the government of New Brunswick operated the Fuel Subsidy Program. This special program provided five cents per litre to commercial fishermen for fuel used in their fishing vessels during the 1982 fishing season. We found no evidence of any government expenditures under this program subsequent to fiscal year 1983.

2. New Brunswick: Winterization of Fish Plants Program

In 1979, the Department of Fisheries provided a grant to a processor of herring to winterize its plant. We verified that no grants for that purpose were provided to processors of fresh Atlantic groundfish subject to this investigation.

3. Newfoundland: Secondary Processing Interest Subsidy Program (SPISP)

Under the direction of the Department of Fisheries, the government of Newfoundland operates the SPISP. This program was initiated in 1976 to provide interest subsidies to secondary processors of fish for the purchase of machinery and equipment. The program is designed to encourage increased production of fish products processed beyond the whole fish and filleting stage of processing. We verified that no fresh fish producers received benefits under this program during the review period.

4. Newfoundland: Ocean Industries Development Program (OIDP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides funding for the development of research and technology, marketing strategies, and manufacturing and processing techniques in ocean-related industries. The Ocean Industry Development Subsidiary Agreement between the governments of Newfoundland and Canada authorized initiation of the program in 1984. The Department of Development has steered most of the funding into industries which are currently developing the Hibernia offshore oil fields. We verified that no fishing or processing operations have received benefits under this program.

5. Newfoundland: Ocean Industry Capital Assistance Program (OICAP)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland provides assistance to ocean-related manufacturing and technical service industries. We verified that the eligibility requirements for OICAP specifically exclude firms in the primary products sector and that no fish harvesters or processors received benefits under the program.

6. Newfoundland: Newfoundland Oceans Research and Development Corporation (NORDCO)

Based on information contained in the Public Accounts for the Department of Development, we found that the government of Newfoundland offers assistance for research programs concerned with gathering intelligence related to ice and cold water technology. This program seeks to make the exploration and production of mineral resources more feasible by ameliorating the problems associated with ice and cold water. No benefits were provided to the producers of the products under investigation under this program.

7. Quebec: Tax Abatement Program (TAP)

Under the direction of the Fonds de Reliance Industrielle and in accordance with Chapter S–34 of the Act Respecting Fiscal Incentives to Industrial Development (Nov. 1980), the government of Quebec operates the TAP. This program is available to those manufacturing businesses not engaged in initial processing operations in a resource-based industry that are willing to make capital investments in one of two regional zones. These two zones embrace all of the province of Quebec except Montreal. It provides certificates allowing a firm to deduct from taxes payable 25 percent of the value of allowable capital investments, or a maximum of 50 percent of the year's income taxes due, up to a limit of $500,000. This program was terminated in 1981. However, firms participating in the program while it was in effect had the option to claim their earned tax credits during the five years following the issuance of the certificates. We verified that no producers of the subject merchandise claimed tax credits under this program on income tax returns filed during the review period.

8. Quebec: Aide a la Promotion des Exportations (APEX)

Under the direction of the Ministry of Foreign Trade, the government of Quebec operates the APEX. Established in 1972 by the Ministry of Industry, Commerce and Tourism, this program provides grants to cover partial expenses for new export market development programs and attendance at trade fairs. Export markets are defined as those outside the province of Quebec. We verified that benefits under this program were not provided to any exporters to the United States of the subject merchandise during the review period.

9. Quebec: Technological Assistance Service for Business Program (TASBP)

Under the direction of MAFF, the government of Quebec operates the TASBP. This service, which is available to all companies or individuals in industries related to the processing, distribution, and research and development of food products, provides financial assistance, up to 50 percent of total costs, for the development of new products and methods. This service also provides technological counselling on an informal basis to firms in all sections of the food industry. We verified that none of the merchandise subject to this investigation benefitted from financial assistance under this program during the review period.

10. Quebec: Societe de Developement Industriel (SDI) Expansion Program

Under this program, the government of Quebec provided grants as interest cost reimbursement to Quebec firms which increased direct exports by 20 percent over those of the previous years. As stated above, exports are defined as sales outside the province of Quebec. SDI would disburse grants over a five-year period to a participating exporter commensurate with its export performance. Although the program was terminated in 1981, payments are still made to those firms who entered the program in 1980 and 1981. We verified that no firms producing the subject merchandise received grants during the review period. SDI also operates three additional export assistance programs: 1) a consortium program, 2) a new market development program for firms seeking to sell outside the Province, and 3) an export financing program. We verified that no firms producing the subject merchandise received benefits under these programs.

V. Programs Determined Not To Exist

Based on our verification, we determine that the following programs do not exist:

1. New Brunswick: Fish Chilling Assistance Program

This is a program of the federal government. *See* section 1.A.3. of this notice.

2. Newfoundland: Bait Services Program

This is a program of the federal government. *See* section III.A.7. of this notice.

3. Newfoundland: Production Machinery and Processing Technology Program

We verified that this program, alleged by petitioner to provide financial and technical assistance for the design of plant layouts and the development and acquisition of machinery, is the same as the Secondary Processing Interest Subsidy Program. *See* section IV.C.2. of this notice.

4. P.E.I. Fish Chilling Assistance Program

This is a program of the federal government. *See* section I.A.3. of this notice.

5. P.E.I. Fishermen's Holding Unit Program

This is a program of the federal government. *See* section I.B.2. of this notice.

6. Quebec: Joint Federal-Provincial Development Program

This is a program of the federal government. *See* section I.B.4. of this notice.

Petitioner's Comments

Comment 1: Petitioner contends that the Department erred by selecting a short-term loan interest rate as the benchmark for FILP and loans provided by the New Brunswick Fisheries Development Board. Petitioner maintains that most of the loans provided under these programs are long-term and the appropriate benchmark is the long-term corporate bond rate.

DOC Position: The loans given under the two programs mentioned above are long-term variable rate loans. Therefore, the most accurate measure of the benefit to the recipient is obtained by comparing these loans to commercially available loans with variable interest rates. As we did not have long-term variable rate loans as benchmarks, we treated these loans as if they were short-term, one-year loans rolled over each year.

Comment 2: Petitioner contends that the benchmark selected by the Department in the preliminary determination fails to measure correctly the extent of the subsidy provided by the equity infusion into NSP. Petitioner maintains that, in the comparison of the government's rate of return to the rate of return on shares issued to Toronto-Dominion Bank, the Department overvalued the right of the government shares to a future stock dividend. Petitioner maintains that the right to a common stock dividend six years in the future entails a large risk factor not taken into account when current market price is used to value the anticipated return. Petitioner further maintains that the benchmark selected by the Department, the rate of return on stocks issued to Toronto-Dominion Bank,

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undervalues the rate of return required by a commercial investor. The Toronto-Dominion stock is an unusual, tax-exempt type of financing which does not meet the Department's criteria of a comparable commercial investment. Because the purchase by Toronto-Dominion was conditioned on the purchase by the government, it is not an accurate measure of what an investor would require without a concurrent purchase by the government. Finally, petitioner maintains that an equity infusion of $105 million into FPIL, which was approved by the federal government in October 1985, should be taken into account by the Department.

DOC Position: Although petitioner maintains that the right to a stock dividend in the future entails a large risk factor in comparison to the current value of the stock, no methodology for the measurement of their risk factor or of its effect on the value of the stock dividend is suggested. Indeed, any adjustment for the additional risk would be difficult to estimate and inexact, and if a long-term investment outlook is assumed, would not be large. In our determination of a benchmark, we took the spread between a taxed bond and a tax-free bond and added that onto the return of the Toronto-Dominion difficulty preferred shares, to account for the fact that the term-difficulty preferred shares are tax exempt. With this modification, we believe that the term-difficulty preferred shares reflect the most accurate benchmark of a comparable commercial investment in this case.

We did not examine the issue of an additional equity infusion into FPIL because the infusion took place after the review period.

Comment 3: Petitioner contends that the use of an *ad valorem* subsidy rate improperly gauges the real benefit provided to the fresh groundfish industry in two ways: (1) The estimated sales value provided in the response overstates the value of landings of fresh whole fish, and (2) the allocation of benefits to the groundfish sector over production of all fish and shellfish distorts the subsidy conferred on the production of the subject merchandise. In addition, petition contends that the use of a per pound net subsidy calculation conforms with Department policy and avoids valuation difficulties (See *Lamb Meat from New Zealand*, 50 Fed. Reg. 37708 (*Lamb*) and *Swine*, supra). Finally, they argue that the use of national data understates the subsidy to the Atlantic Canada groundfish industry, since Atlantic Canada has received disproportionately higher benefits than the nation as a whole.

DOC Position: At verification, we learned that what we referred to in our preliminary decision as the value of landings was in fact the f.o.b. value of production. While mislabeled in our preliminary determination, we believe that this is the correct value over which benefits should be allocated. As stated in the "Scope of Investigation" section of this notice, the product designated as "fresh whole fish" goes through the production line where the fish can be processed by removal of heads, viscera, fins, or any combination thereof. Also, by definition, fillets (including fish steaks) are processed. Therefore, we believe that the value of production, and not the value of landings (*i.e.*, the value of fish as it is landed off the vessel) is the proper value over which to allocate benefits.

With respect to the use of a per pound subsidy rate, the facts in *Lamb* and *Swine* were quite different from those in this case. In the two cited cases, we were dealing with coverting one animal (hogs or lamb) into one product (pork meat or lamb meat). Conversion from animal to product was very simple. In this case, we are dealing with a variety of species each having a different yield, being processed into numerous fish products.

In order to assess duties accurately on a per pound basis, we would have to calculate a separate subsidy rate for each species and for each product thereof. Information on the record does not enable us to do so. Regarding petitioner's contention on valuation difficulties, we have been informed by U.S. Customs that collecting cash deposits on an *ad valorem* basis can be done.

Finally, with respect to the allocation of benefits over the appropriate denominator, because we are dealing with data, we have allocated benefits over the appropriate production value of the group receiving benefits. If we look at a program providing benefits to the Atlantic fishing industry, for example, it is correct to divide by the f.o.b. value of production for Atlantic Canada. In those cases where, in the preliminary determination, benefits to one group were allocated over the value of production of a different group, corrections have been made and are reflected in this determination.

Comment 4: Petitioner contends that Canada's seasonal unemployment program for self-employed fishermen is countervailable on the grounds that it bestows a benefit upon the production of groundfish and that the subsidy is specifically available to the Canadian fishing industry. Petitioner argues that: (1) The self-employed fishermen's program constitutes a specific statutory exception to Canada's unemployment insurance act: (2) the self-employed fishermen's provisions are inconsistent with the insurance scheme provided under the general act; (3) the unique features of the program, including the method by which it is financed leave no doubt that the program is separate; and (4) the benefit provider under the program is disproportionate.

DOC Position: Unemployment insurance, like social security or welfare, is the government provision of a service. Since unemployment insurance is the provision of a service by the government of Canada, we must determine whether the provision of unemployment insurance to self-employed fishermen under the Fishermen's Regulations is provided on preferential terms. When we compared the system of unemployment insurance for self-employed fishermen to the general unemployment system, we determined that the government of Canada did not extend unemployment insurance to self-employed fishermen on preferential terms. (*See* section III.A.4. of this notice).

The purpose of unemployment insurance is to provide benefits to workers who are unemployed. We, therefore, realize that workers in certain industries such as those working in seasonal or cyclical industries, will receive a higher ratio of return (in terms of benefits received to premiums paid) than the average worker who remains fully employed throughout the year. The government does not extend preferential terms to the provision of unemployment insurance. Self-employed fishermen make premium payments at the same rate when employed and receive benefits on the same general terms when unemployed as to participants in the general unemployment insurance program in Canada.

Comment 5: Petitioner contends that under the Small Craft Harbours program benefits provided to improve infrastructure are countervailable because the infrastructure is used almost exclusively by fishermen and fish processors. Further, petitioner contends that small craft harbors are not part of Canada's transportation infrastructure. Petitioner contends that the program benefits two specific industries, commercial fishing and recreational boating, and that activities such as the construction and maintenance of wharves, gear storage facilities and power outlets are not inherently governmental activities. Finally, petitioner argues that the

facilities are not made available on equal terms to any potential user, but rather, that licensed Canadian commercial fishing vessels are given preferential rates for services such as berthage at government-owned docks and are provided a countervailable subsidy.

DOC Position: To determine whether the provision of infrastructure provides a countervailable subsidy, we must determine whether (1) the government limits who can move into the area where the infrastructure has been built; (2) the infrastructure is used by more than a specific enterprise or industry, or group of enterprises or industries; and (3) industries have equal access to, or receive benefits from the infrastructure on the basis of neutral criteria. We also stated in *Carbon Steel Wire Rod from Saudi Arabia.* (50 FR 4206) that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government actions do not confer a countervailable benefit.

The government of Canada is responsible for the administration and operation of all the harbors in the country. In 1973, the administration of the smaller harbors was moved to the jurisdiction of the Small Craft Harbours Directorate. No government limitation has been placed on the use of the harbors. Users of the harbors include fishermen, recreational boaters, commercial transport vessels, coastal boats, ferries, seaplanes, tourists, and boats and ships seeking shelter from storms. We therefore find that the small craft harbors are used by more than a specific industry or group of industries and that the only limitation on the use of these harbors is due to the inherent characteristics of the facilities. However, we do find the program to be countervailable, to the extent that commercial fishing vessels are provided with preferential rates for harbor services.

Comment 6: Petitioner maintains that the Atlantic Fisheries Management Program underwrites extensively research projects that provide direct and indirect benefits to the fishing industry. Petitioner argues that the basis for DOC's preliminary determination, that the research results under the program are publicly available, ignores the express holding of the Court of International Trade in *Agrexco Agricultural Export Co., Ltd.* v. *United States (Agrexco).*

DOC Position: In *Agrexco,* the court stated that it was immaterial whether government research was disseminated to all groups, in determining whether a subsidy was provided. Instead, the court stated that Commerce should determine whether the research and development is targeted to assist a particular industry. We believe that our determination that DFO research is not countervailable, does not conflict with *Agrexco.*

Much of DFO research is done in support of Canada's international fishing responsibilities, negotiations, and agreements. Other research is done to support and to provide advice on domestic fishing and marine policy. A review of the research conducted, sponsored, and published by DFO includes such areas as "Resource Prospects for Canada's Atlantic Fishing 1985–1990," "Larval Crab (Decapoda: Brachyura) Zoeas and Megalopas of the Scotia Shelf," and "Analysis of Lake and Drainage Area Counts and Measures for Selected Watersheds Across Ontario's Shield Region." We do not believe that the scope of research conducted by DFO is targeted to assist a particular industry.

Comment 8: Petitioner maintains that the federal Bait Services Program is not run on a commercial basis, because the federal government expends substantial sums toward the program's annual operating expenses in order to keep the program afloat. Petitioner argues that the absorption of such operating losses proves that provision of bait is at a preferential price.

DOC Position: For the provision of a government good or service to be countervailable, it must be provided on preferential terms. To determine if this program provides bait at preferential prices, we compared prices of bait sold under the program with the price of bait charged by commercial bait suppliers. We verified that the price charged under the Bait Services Program is the same as that charged by commercial bait suppliers.

Respondents' Comments

Comment 1: Respondents argue that if a grant program is in existence for more than one year, grants under the program should be considered "recurring" and the grant amount expensed in the year of receipt. They further contend that if the estimated net subsidy for an individual program is *de minimis* the benefits under the program must be expensed in the year of receipt.

DOC Position: We disagree. Simply because a program provides grants to different recipients in more than one year does not make the grants given under the program "recurring." Recurring benefits are benefits which the *same* recipient can participate receiving year after year. Such benefits are expensed in the year of receipt.

The *de minimis* threshold is applicable only after the estimated net subsidy rates for all programs are added together. Each program is not required to cross the *de minimis* threshold. We established this test to ensure that countervailable grants which could be *de minimis* in a given year if allocated over time, and thus, could lead to a negative determination, would be countervailed.

Comment 2: Respondents contend that the federal FILP and numerous provincial fishery loan and loan guarantee programs are not countervailable because the relevant government operates loan and loan guarantee programs for farmers or small businessmen on comparable terms. They further contend that there is evidence that the farm and fishery loan programs are linked in their genesis and continuing operation, and, therefore, the government has made loans and loan guarantees available to a wide range of industries. Respondents further contend that if we find the fishing loan and loan guarantee program to be countervailable, the appropriate benchmarks should be those charged under the farm program.

DOC Position: We have determined that the fishery laon and loan guarantee programs are countervailable. On a case-by-case analysis of interest rates, administration of funds, evidence of government policy to treat industries equally, and the purpose of the program as stated in enabling legislation, we have concluded that the fishery loan programs are not integrally linked with other loan programs available to other sectors or industries. Furthermore, although other government loan programs may exist for the agricultural sector, these programs are not an alternative source of funds for fishermen. Therefore, we have used a commercial rate of interest as the benchmark because it is most representative of what a fisherman would otherwise have to pay for a loan in Canada.

Comment 3: Respondents argue that benefits provided under the IRDP are not countervailable because the designation of regions for benefits is based on neutral economic criteria. Respondents cite *Certain Steel Products from the Federal Republic of Germany,* (47 FR 39345) (*German Steel*) to support their position. Respondents also argue that IRDP benefits are provided to encourage economic development and expansion in all regions of Canada, and

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are provided to a wide variety of industries in every province in Canada.

DOC Position: We find no merit in the argument that according to our past determinations the provision of regional benefits based on neutral criteria is not countervailable. In our *German Steel* determination, assistance provided as part of a national policy to relieve unemployment was provided on identical terms across Germany; regional designations were merely for administrative convenience. Therefore, we did not find this program to be a regional subsidy. IRDP provides grants, in order to encourage economic development and expansion, to different regions at different funding levels according to the tier designation of the region. The level of funding available to an eligible applicant is determined by geographic region. Thus, the region an applicant is in is determinative of the level of assistance and not simply an administrative convenience.

Comment 4: Respondents contend that, because RDIP provides grants to industries located throughout most of Canada, the Department erroneously concluded that development incentives provided under RDIP are limited to a specific group of enterprises or industries. Furthermore, respondents argue that section 771(5) of the Act does not support a regionality test, and that such a test should not be used to determine the existence of subsidies in this investigation.

DOC Position: We have consistently held that benefits provided on a regional basis are, by their very nature, provided to a specific group of enterprises or industries. In *Certain Softwood Products from Canada,* (48 FR 24159), we found RDIP to be countervailable because the designation of areas eligible for assistance was based on administrative discretion. Therefore, we found RDIP benefits limited to companies located within specific regions. We disagree with respondents' contention that the Department erred by determining RDIP countervailable, and we reaffirm the decision made in the above-referenced determination.

Comment 5: Respondents assert that the ITC program is a boardly-based tax incentive available to all taxpayers in Canada and that ITCs over 7 percent are not limited to specific regions. They claim that a taxpayer anywhere in Canada or abroad can make use of ITCs over 7 percent and that the benefit bestowed accrues to the taxpayer irrespective of where the investment is located. Thus, they claim there is no regional targeting under the ITC. Respondents also claim that due to the interaction between ITCs and the depreciation system in Canada, the net benefit to the taxpayer claiming an ITC may not equal the full amount of the credit.

DOC Position: Although the taxpayer who claims an ITC at a rate above seven percent need not be located in a particular region, the acquired asset used as a basis for claiming an ITC must be used in a particular region. The Canadian Income Tax Act clearly requires that to claim an ITC on an asset, at a rate higher than seven percent, the asset must be used in a prescribed region. Therefore, the higher ITC rates are limited to a group of enterprises or industries which use assets in certain regions. Thus, the higher ITC rates are countervailable.

While it may be true that all taxpayers in Canada may be benefitting from ITCs (as tax shelters, for example), it is also very likely that the regions where higher ITC rates are available are also benefitting from higher levels of investment due to the ITC rate structure which spurs investment in those regions.

Regarding the interaction between ITCs and the depreciation system in Canada, we recognize that the after tax benefit to the taxpayer may, in some cases, not equal the full amount of the credit. However, it is the Department's policy to disregard secondary tax effects on countervailable subsidies. Any offsets to a countervailable subsidy are strictly limited by section 771(6) of the Act.

Comment 6: Respondents content that, because GDAs and ERDAs were signed with all the provinces, the agreements are not limited to a specific group of enterprises or industries. They argue that it is incorrect to require each subsidiary agreement to pass the specificity test. Moreover, they contend that because assistance is directed to infrastructure projects, virtually all sectors of the economy benefit.

DOC Position: The Department recognizes that all the provinces (with the exception of P.E.I. under the GDAs) have signed GDAs and ERDAs with the federal government. However, there are no GDA or ERDA programs *per se.* GDAs and ERDAs do not establish government programs, nor do they provide for the administration and funding of government programs. GDAs and ERDAs are merely legal agreements under which departments of the federal and provicial governments may cooperate in establishing and administering joint economic development programs in spheres of dual or conflicting jurisdiction. The implementation, administration and funding of industry-and regional-specific programs occur exclusively through subsidiary agreements. Therefore, we have decided that in determining whether subsidiary agreement programs are limited to a specific enterprise or industry, or group of enterprises or industries, the proper level of analysis is the subsidiary agreement.

Because we are analyzing each subsidiary agreement separately to determine if it meets the specificity test, it is irrelevant if some subsidiary agreements have funded infrastructure projects.

Comment 7: Respondents argue that ARDA assistance conferred benefits on a wide range of agriculture and rural economic development activities in Canada and is, consequently, generally available. They further contend that, because ARDA agreements are available to all provinces, assistance is not targeted to any particular region.

DOC Position: We disagree. See our discussion in Section I.B.1.

Comment 8: Respondents contend that, because the government utilized detailed financial analyses which forecasted encouraging future prospects for the industry in general, and for FPIL and NSP in particular, its opinion that these companies were equityworthy was commercially reasonable and its investment was consistent with commercial considerations. Respondents state that the companies' actual performance subsequent to the restructuring confirms the soundness of the government's investment. Furthermore, respondents contend that the fact that private investors purchased the same shares as the government attests to the investments' commercial reasonableness.

DOC Position: We disagree. See our discussion in Section I.A.11.

Comment 9: Respondents contend that the Department incorrectly used the 1977 Class Life Asset Depreciaiton Range System of the United States Internal Revenue Service (the IRS tables) rather than Canadian Income Tax Regulations in its determination of the allocation period used for calculating the benefits of non-recurring grants.

DOC Position: In the Subsidies Appendix we stated that although we would prefer to use the estimated economic useful life of an asset as the allocation period, the IRS tables, which reflect reasonable accounting useful like, provide the best practicable means of consistently determining useful life. If we were to use different countries' tax tables for different cases, we might find different subsidy margins due solely to the different periods of allocation. Rather than this anomalous result, we

believe it is just as reasonable, and makes for more consistent results, to use the U.S. IRS tables to determine the period over which to allocate benefits. Our belief is reinforced in this case, where the Canadian Income Tax Regulations estimate the useful life of boats at seven years. Such a short estimated useful life for fishing vessels implies that the Canadian Income Tax Regulations may not be a true indicator of the estimated useful life of an asset in Canada but may serve other purposes (*i.e.,* providing for accelerated depreciation). During verification of various loan programs, we noted that the loan terms for fishing vessels ranged from 15 to 25 years. This indicates that the Canadian Income Tax Regulations may be understating the useful life of assets in the fishing industry. Therefore, we determine that the IRS tables provide the best practicable means of consistently and objectively determining useful life.

Comment 10: Respondents contend that the activities of the promotions branch of the DFO Marketing Directorate are legitimate government functions as identified in *Certain Fresh Cut Flowers from Mexico,* (49 FR 15007) (*Cut Flowers*). They also argue that the promotion branch's attendance at the Boston and Dallas seafood fairs was a courtesy gesture and not a marketing activity.

DOC Position: The *Cut Flowers* determination characterizes the organizing and directing of trade shows abroad as a legitimate government function. Specific product promotion, however, rather than constituting a legitimate government function, is the assumption of an industry's advertising cost by the government. At verification, we obtained a photograph of the Canadian display at the Boston Seafood fair. The photograph clearly shows that Canadian cod and haddock were advertised during the Boston fair. Such promotional activities are outside the scope of *Cut Flowers.*

Comment 11: Respondents maintain that assistance provided to improve fish chilling facilities prevents fish spoilage and ensures a minimum quality of fish, and, as such, constitutes a legitimate government function similar to the meat inspection service held not to be countervailable in *Lamb, supra.*

DOC Position: We agree that the maintenance of health and hygiene standards through government inspection services is a legitimate function of government. In this instance, however, the Canadian Federal and certain provincial governments are providing grants to the fishing industry to purchase capital equipment used in the production of the subject merchandise.

Comment 12: Respondents argue that if the Department calculates two subsidy rates, one for whole fish and a separate rate for fillets, it must apply the "upstream subsidy" analysis of section 771A of the Act to determine whether subsidies provided to harvesters of whole fish benefit the production of fillets.

DOC Position: Because we have calculated one rate for both whole fish and fillets, we need not consider this argument.

Comment 13: Respondents argue that subsidies provided to the fishing industry do not constitute benefits to a specific industry or group of industries ane are therefore, not countervailable. They contend that harvesters of fresh Atlantic groundfish make up a distinct industry which is included within the larger group of salt water fishing industries and that groundfish processors are also a separate industry within the group of fish products industries. Therefore, they contend that subsidies available to the group of fish products industries and salt water fishing industries are available to more than a specific group of enterprises or industries. Respondents also analogize the fishing industry to the agricultural sector, asserting that the fishing industry, similar to the agricultural sector, consists of more than a group of industries.

DOC Position: We disagree. The fisheries programs investigated conferred benefits on two specific industries, the salt water fishing industry and the seafood products industry, and as such, these programs were available to no more than a group of industries. Furthermore, the fishing industry is not analogous to the agricultural sector. The agricultural sector consists of a vast number of distinct inductries which, *inter alia,* produce: fruits, vegetables, grains, tree nuts, tobacco, nursery products, ornamental floriculture, dairy products, meat products, eggs; raise: cattle, hogs, sheep, goats, poultry, horses, furbearing animals and rabbits; and provide: crop planting and harvesting services. The salt water fishing and seafood products industries do not include the same varied and diverse range of productive activities as does the agricultural sector.

Comment 14: Respondents argue that the unemployment insurance system is a universal system which does not benefit any specific industry uniquely or disproportionately. They point out that the beneft rate is the same for fishermen and other workers, and that premiums are paid at the same rate for fishermen as for other workers. Respondents contend that fishermen are generally governed by the Unemployment Insurance Act (U.I.), with minor modifications to account for the circumstances of nominal self-employment and the seasonality of the fishery. They also argue that, due to unpredictable circumstances of fish unavailability and fishery closures, fishermen are subject to the risk of involuntary unemployment just as other workers. Finally, respondents argue that U.I. benefits are not a grant on the production of groundfish because they pay fishermen not to fish, and actually increase the costs of the fishing industries.

DOC Position: We determined that the terms of this program for self-employed fishermen were not preferential when compared to Canada's general unemployment program. See our discussion in Sectin III.A.4.

Comment 15: Respondents maintain that it is well recognized that if the government either provides infrastructure or funds infrasturcture projects; there is no subsidy because any benefits are available to and used by all industries on a non-preferrential basis. Thus, respondents argue that under the SCRPP, infrastructure projects such as highway construction, airport construction and runway repair were funded and that these projects did not selectively benefit any specific group of industries or enterprises. Respondents assert that the Department should analyze the SCRPP program in its entirety and not each separate project funded from SCRPP moneys.

DOC Position: As stated above, in examining the SCRPP, we looked at the use of funds and not their source. We find the grant to fishermen administered by the DFO to be countervailable because it is limited to a specific industry. The fact that the DFO receives it funds under the Budget of Canada or the National Treasury, does not mean that we look at all programs authorized by the Canadian Budget and funded from the National Treasury in determining whether DFO grants to fishermen are limited to a specific industry or group of industries. Similarly, the fact that some departments used additional SCRPP funds to accelerate the building of airports or highways, does not mean that a grant program for fishermen is not countervailable.

Comment 16: Respondents also argue that under the Small Craft Harbours program, Canada maintains its transportation infrastructure and that no

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specific industry or enterprise is benefitted.

DOC Position: We agree that infrastructure facilities do not provide countervailable benefits if they are available to and used by all potential users on a non-preferential basis. However, in examining the Small Craft Harbours programs, we found that fishermen paid preferential users fees and therefore, that they received a countervailable benefit.

Comment 17: Respondents argue that the government of the Nova Scotia's Industrial Development Division administers a wide variety of programs designed to promote safety and improve working conditions in the fishing industry, to minimize risk associated with the introduction of technological innovations, and to raise the quality standards applicable to the fishing industry as a whole. As such, respondents contend that these programs do not reduce the overhead associated with production operations or contribute significantly to capital improvements, and that they are therefore, not countervailable.

DOC Position: We verified that under this program the government disbursed funds which were used by fishermen to invest in a wide range of capital equipment including fishing vessels, fishing gear, and storage and handling containers. Recipients also received grants covering costs of projects such as the construction of private wharves, bait storage facilities and gear sheds. These grants provide countervailable benefits under the countervailing duty law. Respondents' contention that government funding of these projects does not reduce overhead or contribute to capital improvement is untenable.

Comment 18: Respondents contend that programs providing grants for the purchase, construction and modernization of fishing vessels are not countervailable because, both in intent and effect, the grants provided benefitted boat builders, not fishermen. They state that as the legislative history indicates, the vessel assistance programs were designed to assist the Canadian shipbuilding industry, and not the fishermen. they further state that vessel assistance grants simply compensate for the "artificially inflated prices" realized by Canadian shipbuilders. Finally, with respect to vessels constructed by fishermen themselves, respondents argue that because the fishermen must use locally-produced materials, the entire amount of the grant received by the fishermen is passed on to the suppliers of the locally-sourced construction materials. Respondents are joined in these arguments by an economic consultant, working on behalf of the American Seafood Distributors Association (ASDA).

DOC Position: We disagree. Respondents have not provided any conclusive evidence to support either their argument on intent, or on effect. With respect to intent, respondents have provided two isolated excerpts from legislative disucassions on vessel grants, one from 1974 and one from 1978. We cannot conclude from either excerpt that the intent of the government was to provide benefits to the shipbuilding industry. One only needs to examine the enabling federal and provincial legislation to realize that the intent of the various governments was to benefit fishermen. Benefits are only available for vessels engaged in commercial fishing activities. If the governments intended to benefit the shipbuilding industry, why were only fishing vessels eligible for coverage? Respondents acknowledge in their pre-hearing brief that the government represented this program as benefitting fishermen. In fact, in a February 7, 1986, press release, the Canadian Minister of Fisheries and Oceans, when announcing the federal FVIP termination, stated that "when the program was introduced, there were very few sources of capital for fishermen who wished to build new boats. That has now changed and banks, trust companies, credit unions and provincial loan boards all provide funds for this purpose." The logical conclusion from this statement is that the government intended to provide funding to enable professional fishermen to purchase or construct fishing vessels.

With respect to the argument on effect, other than a limited number of price quotations on foreign built vessels, respondents and the ASDA rely on an economic study conducted in 1979 for the DFO. This study, which concluded that fishermen do not benefit from vessel subsidies, had as one of its stated purposes, "in the face of the threatening U.S. countervail suit, to recommend an alternative to help fishermen." The author of that study stated that "due to the lack of available data and knowledge about the nature of the shipbuilding industry and, indeed, about the fishermen themselves, much effort has been expended on analysis which is purely descriptive in nature." With respect to the price elasticity of demand, the author states that "to estimate the price elasticity of demand, one needs to know the various quantities which buyers will purchase at different prices, *ceteris paribus.* The only prices that could be obtained were the estimated costs of vessels, quoted by the builders of subsidized vessels. The changes brought about by the subsidy program could be determined if one knew the prices of vessels before and after the subsidy came into effect. We only have the latter." And, with respect to the price elasticity of supply, she further states, "one needs to know something about the quantities and prices of the inputs which are used in the production of vessels. How these inputs are combined to produce a given output is also helpful information. There is no such data available on the Nova Scotia boatbuilding yard." She concludes by stating, "the data that are available are very sparse, difficult to locate, and totally inadequate for the purpose of analyzing government subsidy programs." Based on these statements by the author herself, we do not believe that respondents have presented any credible evidence to support their contention that grants under these vessel programs benefit shipbuilders, not fishermen. Nor has any evidence been provided to demonstrate that subsidies are passed through to suppliers of locally-sourced construction materials.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, financial statements and annual reports.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain fresh Atlantic groundfish from Canada which are entered, or withdrawn from warehouse, for consumption on or after January 9, 1986, the date of publication of our preliminary determination in the Federal Register. The liquidation of all entries, entered or withdrawn from warehouse, for consumption will continue to be suspended, and as of the date of publication of this notice in the Federal Register, the Customs Service should require a cash deposit or bond for each such entry in the amount of 5.82 percent *ad valorem.* This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705 of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 45 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on groundfish from Canada entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Paul Freedenberg,
Assistant Secretary for Trade Administration.
March 14, 1986.

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BILLING CODE 3510-DS-M

[A-351-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether certain carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee, in compliance with filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld fittings are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioner was unable to obtain price information from price quotes or sale offers. Consequently, petitioner based United States price on the customs value for butt-weld pipe fittings under 14 inches in diameter imported from Brazil during the period January through October 1985. Petitioner made no adjustment for foreign inland freight.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. As petitioner was unable to obtain Brazilian cost data for the appropriate sizes of seamless pipe, petitioner averaged the unit prices for the average improted Brazilian seamless pipe. Production factors were averaged as well, and were based on three high-volume common finished fittings representative of the market. Two average constructed values were calculated due to the uncertainty of the applicable tariff category.

Petitioner used U.S. production and packing costs for the three representative products.

Adjustments were made for known differences in corresponding Brazilian costs, as well as for the statutory minimums for general expenses and profits.

Based on the conparison of United States price and the constructed foreign market value, petitioner alleges average dumping margins ranging from 50.0 to 54.5 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative proctective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Brazil are causing material injury, ot threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise,

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it will proceed according to the statutory procedures.

March 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-6320 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally,the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating and antidumping duty investigation to determine whether certain carbon steel butt-weld fittings from Japan are being, or are likley to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioners based United States price on price quotes stated to be discounts offered off domestic list prices in the United States. Petitioner then made deductions from the net price for U.S inland freight, broker fees, customs duties, ocean freight and insurance. Petitioners based foreign market value on home market price lists for all three known Japanese manufacturers. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 18.2 to 165.3 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 17, 1986.

[FR Doc. 86-6321 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-602]

Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 10, 1986, and we will make ours on or before August 4, 1986.

EFFECTIVE DATE: March 24, 1986

FOR FURTHER INFORMATION CONTACT Mary S. Clapp, Office of Investigations Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 377-1769

SUPPLEMENTARY INFORMATION:

The Petition

On February 24, 1986, the U.S. Butt-Weld Fittings Committee filed a petition in compliance with filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten

material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel butt-weld pipe fittings from Taiwan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain carbon steel butt-weld fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, as currently provided for under item 610.8800 of the *Tariff Schedules of the United States, Annotated, (TSUSA).*

United States Price and Foreign Market Value

Petitioner based United States price on a C.I.F. price list, from a Taiwanese manufacturer. Petitioner assumed that these prices did not include the applicable customs duty on butt-weld pipe fittings from Taiwan. Petitioner estimated Taiwanese inland freight, ocean freight and insurance.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. Petitioner constructed a value for each of four representative fittings. The cost of materials and fabrication were calculated based on a U.S. producer's cost of production factors with some adjustments to reflect Taiwanese prices for those factors. Such factors included the cost of seamless steel pipe, electricity, direct labor, supervisory labor, fringe benefits, depreciation, storage, repairs and supplies. Petitioner added the statutory minimums of ten percent of the costs for general expenses and eight percent of the costs and general expenses for profit. Packing costs were added and were based on the actual expenses incurred by a U.S. producer. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 71.1 to 108.1 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 10, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Taiwan are causing material injury, or threaten material injury, to a Unitd States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 17, 1986.

[FR Doc. 86-6322 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-05]

Tool Steel From the Federal Republic of Germany; Correction to Early Determination of Antidumping Duty

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Correction to Early Determination of Antidumping Duty.

SUMMARY: On July 25, 1984, the Department of Commerce published an early determination of antidumping duty on tool steel from the Federal Republic of Germany. The Department is correcting certain errors in the calculations. The Department is also changing its position responding to Comment 1 of the original notice.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1984, the Department of Commerce ("the Department") published an early determination of antidumping duty on tool steel from the Federal Republic of Germany (49 FR 29995). The early determination covered one company, ARBED Saarstahl GmbH. We subsequently found errors in the calculations and are correcting those errors. We provided an opportunity for comment on the recalculations. We are also changing our position responding to Comment 1 in the early determination as a result of a remand order of the Court of International Trade in *Al Tech Specialty Steel Co.* v. *United States*, Court No. 84-8-01192, and as a result of comments we received during the remand.

We have made the following corrections to our calculations. Our usual practice in calculating foreign market value using a weight-average of prices is to limit weight-averaging of a model or type to a one-month period. Therefore, we have recalculated the foreign market value by limiting the period for weight-averaging to one month.

Using the monthly figures, for some U.S. sales we no longer have contemporaneous home market sales above the cost of production. For those sales we have now used constructed value (as described in the early determination) as the basis for foreign market value. We have made adjustments to constructed value, where applicable, for early payment discounts.

We have also included adjustments for differences in the physical characteristics of the merchandise where we had inadvertently omitted such adjustments.

In our original cost of production calculations, we disallowed the company's reported interest expense allocation. Instead of completely denying the claimed allocation we have now reallocated interest expenses over all production in accordance with our usual practice. We also have now used the company's actual general expenses and eliminated profit from our cost of production analysis. Finally, we have corrected errors in the transcription of certain cost of production figures.

In compliance with the remand we have changed our position responding to Comment 1 of the early determination. In Comment 1 the petitioners contended that, in computing the cost of production and constructed value, the Department should have included an amount for those subsidies on the manufacture and production of tool steel which the West

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German company received from the federal and state governments.

Saarstahl contended that the subsidies are irrelevant to an antidumping proceeding and should not be considered. Further, there was no evidence that the government assistance benefitted Saarstahl's tool steel operations.

Our new position is that the purpose of section 773(b) of the Tariff Act of 1930 is to determine whether a company is selling at less than the cost of production, based on the actual costs. In this case it is inappropriate to add subsidies to actual expenses recorded in the company's books and records.

We also received comments from Saarstahl during the remand on our proposed corrections. Saarstahl argued that the Department's corrections reflected changes in methodology, not mere corrections in computation. Legally, the Department could not change methodology after publication of a final notice.

In response, we take the position that the Department has inherent authority to correct errors of inadvertence or mistake (*Melamine Chemicals, Inc.* v. *United States*, 592 F. Supp 1338 (Ct. Int'l Trade 1984)). When we found mistakes, we corrected them. The corrections were not made to revise policy or choice of methodology, but to remedy inadvertently erroneous decisions.

Corrected Early Determination

Based on our recalculations, the margin for Saarstahl for the period January 12, 1983 through July 19, 1983 is 19.13 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the above percentage. The Department will issue corrected appraisement instructions directly to the Customs Service.

Further, as provided in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 19.13 percent, based on the above margin, shall be required on all entries of tool steel from the Federal Republic of Germany produced and exported by Saarstahl and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review for this firm.

This notice is in accordance with section 736(c) of the Tariff Act of 1930 (19 U.S.C. 1673e(c)) and § 353.49 of the Commerce Regulations (19 CFR 353.49).

Dated: March 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-6391 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Robert Elsner (P63A)

On January 13, 1986, notice was published in the **Federal Register** (51 FR 1420) that an application had been filed by Robert Elsner, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775-1080 to take beached/stranded harbor seals (*Phoca vitulina*) by sacrifice for cardiovascular studies, and ring seals (*Phoca Hispida*) by captive maintenance for radio and acoustic tagging studies and by sacrifice for cardiovascular studies.

Notice is hereby given that on March 14, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries.
National Marine Fisheries Service. 3300 Whitehaven Street NW., Washington, DC; Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6324 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification No. 3; Northwest and Alaska Fisheries Center (P77#9)

Notice is hereby given that Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard, East, Seattle, Washington 98112, has requested a modification to Permit No. 464 issued on April 19, 1984 (50 FR 16283), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting authorization to take northern elephant seals (*Mirounga angustirostris*) by changing the pre-Ketamine intramuscular injection to atropine sulfate as a preventive measure for hyper-secretion of fluid in the lungs, to chemically stimulate respiration with an intravenous injection of Doxapram HCL if necessary and increase the number of animals that may be killed or injured prior to the suspension of research activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries.
National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: March 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6325 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings/Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene separate public meetings, April 6-11, 1986, at the Eureka Inn, Seventh and F Streets, Eureka, CA as follows:

Groundfish Select Group and Groundfish Advisory Subpanel

The Groundfish Select Group will convene April 6, at 10 a.m. to develop recommendations for second trimester management measures and other matters. The Groundfish Advisory Subpanel will convene at 2 p.m. to review plan amendments, second trimester management measure proposals and other matters.

Scientific and Statistical Committee (SSC), Salmon Advisory Subpanel (SAS), and Salmon Plan Development Team (SPDT)

The SSC, SAS, and SPDT will convene April 7 at 1 p.m. to consider matters on the Council agenda. The Council will convene a public hearing at 8 p.m. to review public comments on the proposed options for the 1986 ocean salmon seasons.

Council

On April 8, the Council meeting will convene at 9 a.m., with a closed session (not open to the public) to discuss litigation and personnel matters. The open session will convene at 10 a.m., and will hear recommendations from the SSC, the SAS, the public, the states, and Indian tribes on management options for the 1986 ocean troll, recreational, and tribal fisheries and tentatively adopt options for the SPDT analysis.

On April 9, the Council will review groundfish management issues and take action on second trimester management measures and the groundfish plan amendment package. There will be a public comment period at 3 p.m.

On April 10, the Council will hear comments and take action on salmon plan amendment issues; hear the analysis and comments of the SPDT, SSC, SAS, public, and states on the 1986 salmon management options and adopt final management measures for submission to the Secretary of Commerce. This meeting may carry over to April 11 to complete agenda items. Detailed agendas of all meetings will be available for the public on March 28. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: March 18, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-6323 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Extension of Previously Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of title 17 of the United States Code, the Semiconductor Chip Protection Act (SCPA) of 1984, to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines setting forth procedures for issuance of such orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517-9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

Following these procedures, 14 interim orders have been granted. Of those orders, 13 were issued for a period of 1 year. In order to permit a timely review of the progress that has been made toward establishing legal measures for the protection of semiconductor chips in those countries, comments are solicited. Based upon those comments the Commissioner will determine whether a public hearing will be required before taking further action to extend these orders or to recommend the issuance of a Presidential Proclamation under section 902 of the SCPA.

DATE: Comments must be received by the Commissioner of Patents and Trademarks before 5:00 P.M. on April 16, 1986.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

Materials submitted will be available for public inspection in Room 11C28, Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983 and before November 8, 1985, the effective date of the SCPA, were eligible for protection provided that they were registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C 902. The owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party or a stateless person wherever domiciled, or the mask work must be first commercially exploited in the United States, or the mask work must come within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United

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States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection. Section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A), or

(B) enacting legislation that would be in compliance with subparagraph (A) (B) or section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress. . ., the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

Following these procedures, the following interim orders, listed in order of their publication, were issued:

Country	Fed. Reg.	Expiration Date
Japan	50 FR 24088	June 6, 1986.
Sweden	50 FR 25618	June 13, 1986.
Australia	50 FR 26818	June 21, 1986.
The United Kingdom	50 FR 26818	Nov. 8, 1987.
The Netherlands	50 FR 26818	Sept. 12, 1986.
Canada	50 FR 27649	June 27, 1986.
Belgium	50 FR 37892	Sept. 12, 1986.
Denmark	50 FR 37892	Sept. 12, 1986.
France	50 FR 37892	Sept. 12, 1986.
Federal Republic of Germany.	50 FR 37892	Sept. 12, 1986.
Greece	50 FR 37892	Sept. 12, 1986.
Ireland	50 FR 37892	Sept. 12, 1986.
Italy	50 FR 37892	Sept. 12, 1986.
Luxembourg	50 FR 37892	Sept. 12, 1986.

The order for the Netherlands, originally scheduled to expire on June 21, 1985, was extended until September 12, 1986, (*See* 50 FR 37892) to expire at the same time as the order issued for other member States of the European Community.

In the time since those interim orders were issued, a number of important events have taken place. The World Intellectual Property Organization (WIPO) has embarked on the process of establishing a new international treaty for the protection of integrated circuit chips. All States for whom interim orders have been issued were active participants in the first meeting of the WIPO Committee of Experts on Intellectual Property in Respect of Integrated Circuits, held in Geneva, November 26 to 29, 1985, and a report of that meeting has been issued. The European Community has issued a Directive to its members requiring that they implement legislation to protect the design or topography of integrated circuits. And quite importantly, the Japanese "Law Concerning the Circuit Layout of a Semiconductor Integrated Circuit" has come into effect. Also, important studies have been completed by the Government of Sweden and the Canadian Parliamentary Subcommittee on Copyright Revision recommending the enactment of special provisions in their copyright laws to provide for chip protection. Copies of the relevant portions of these documents available to the Patent and Trademark Office are included as an appendix to this notice.

In view of the rapid international developments in respect of the protection of this new technology and the public interest in encouraging its continued development, we are opening this public review of progress to enable us to determine whether to extend existing interim orders under section 914 or to recommend the issuance of a Presidential proclamation under section 902 to further encourage international progress toward comity in mask work protection. Accordingly, any additional information is solicited from any interested party. To be considered, such comments must be received by 5:00 P.M., April 9, 1986, by the Commissioner of Patents and Trademarks. Comments received will be available for public inspection in Room 11C28, Crystal Plaza Building 3, Jefferson Davis Highway, Arlington, Virginia, the Office of the Assistant Commissioner for External Affairs.

Dated: March 19, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

Committee of Experts on Intellectual Property in Respect of Integrated Circuits

Geneva, November 26 to 29, 1985

Draft Treaty

Memorandum of the Director General

Introduction

1. The program of WIPO for the 1984-1985 biennium, under the title "Computer Programs, Including Integrated Circuits," provides that "The International Bureau will continue to study the usefulness and feasibility of an international treaty providing for the protection of computer programs (including *integrated circuits*) against unauthorized exploitation for a limited period of time . . ." (document AB/XIV/2, Annex A, item PRG.03(2), emphasis added). This text was proposed by the Director General of WIPO in June 1983, and WIPO's Governing Bodies approved it in September 1983.

2. In the intervening two years, several things became evident. One is that computer programs and integrated circuits should be considered separately rather than jointly, particularly because in several countries, including the United States of America—which is pioneering in that field—computer programs are regarded "as works" in the sense that that word is used in copyright law, whereas integrated circuits are not regarded as a subject matter of copyright. In the United States of America and Japan, the two countries which, together and at the present time, produce some 80% of the world's microchips, the protection of intellectual property in integrated circuits is provided for by new laws. Those new laws provide for *sui generis* protection, that is, protection that is neither copyright nor patent. The International Bureau has published the English text and a French translation of the United States law on the protection of integrated circuits ("The Semiconductor Chip Protection Act of 1984") in the March 1985 issue of the WIPO periodicals "Industrial Property" and

"La Propriété industrielle" and will publish the English and French translations of the Japanese law on integrated circuits ("An Act concerning the Circuit Layout of An Integrated Circuit" of 1985) in the September 1985 issue of the said periodicals. Any government or organization to which the present document is officially transmitted may obtain, on request and free of charge, from the International Bureau a copy of any of the said issues of those periodicals.

3. Another thing that became evident is that, should the tendency for recognizing computer software as a subject matter of copyright be confirmed and spread, it might not be necessary to secure protection on the international level by a new treaty since multilateral copyright treaties exist, and, once a country considers computer software as a "work," it is obliged to grant protection, under those treaties, to the computer software of foreigners whose countries are bound by those Conventions. Until the need for a special treaty on the protection and/or international registration of computer software becomes clear, it is not intended to pursue the "study of the usefulness and feasibility of an international treaty providing for the protection of computer programs" (*loc. cit.*).

4. It has also become evident that the situation of integrated circuits is completely different. The laws of the above-mentioned two countries on integrated circuits do not pretend that either the Copyright Conventions (the Berne Convention for the Protection of Literarcy and Artistic Works or the Universal Copyright Convention) or the Paris Convention for the Protection of Industrial Property would secure protection for the United States or Japanese integrated circuits in other countries or that the United States of America or Japan would have to protect integrated circuits of nationals of other countries by virtue of any of the said Conventions. The reason, obviously, is that integrated circuits are dealt with in the laws of those two countries neither as works eligible for copyright protection nor as inventions eligible for patent (or utility model) protection.

5. This is why, from a legal point of view, a new treaty is necessary. It is necessary also from a practical point of view since it is certain that integrated circuits are the objects of intensive international trade and for that trade to be orderly it should not be lawful for anyone to copy and use integrated circuits created by others without the latter's authorization. The matter is of interest not only to Japan and the United States of America, since both production and marketing of integrated circuits are important factors in the economy of many other countries and will become increasingly so in the near future.

6. This is why the present document proposes the consideration of the conclusion of a multilateral treaty on the protection of intellectual property related to integrated circuits. A draft of such a treaty is included in this paper. As far as the International Bureau knows, it is the first draft treaty ever produced by anyone in this field. It will, therefore, doubtless be in need of improvement. It should be regarded as a basis for a first discussion in an international committee of experts among representatives both of governments and of intergovernmental and non-governmental organizations. In the light of those discussions, the International Bureau intends to produce a second, improved draft, which would then go to another meeting of a committee of experts. It is hoped that after that, the second, meeting of experts, the matter could go to a diplomatic conference for the adoption and signature of the treaty. This should happen in 1986 or, latest, 1987, since solid and widespread international protection is a matter of great urgency.

7. It is to be noted that the proposed text has been drafted so as to allow any country to protect the intellectual property concerning integrated circuits not necessarily by a *sui generis* law: a national law that would provide for copyright or patent protection would also be compatible with the draft treaty.

DRAFT

Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

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Notes on Article 1

Ad(i): According to Article 7, any State member of WIPO or of the United Nations could become a party to the Treaty.

Ad(ii): The definition is flexible enough to allow any national law to vest the right in the employer if the layout or the design of the integrated circuit is the creation of an employee.

Ad(iii): The term "Director General" is used in Articles 6(2), 7(2), 9 (1) and (2), 10(1)(b) and 11 (1), (2), (3) and (4).

Additional Question: During the preparation of the draft, the question arose whether it would be desirable or necessary to expressly provide in the treaty that the design or layout of an integrated circuit is protected not only in its "final" form (that is, the form which is used for mass production) but also in any of its preceding. "intermediate" forms. It is believed that such a clarification is not necessary since even an "intermediate" design or layout is a design or layout and, therefore, falls under protection. But if this view is not shared, the Article containing definitions could include an item along the following lines: "['design'] ['layout'] includes both the final and any intermediate [design] [layout.]"

Article 1—Definitions

For the purposes of this Treaty:

(i) "Contracting State" means a State party to the Treaty,

(ii) "Proprietor" means the natural person who, or legal entity which, according to the applicable national law, is to be regarded as the beneficiary of the protection of the proprietory rights mentioned in Article 3,

(iii) "Director General" means the Director General of the World Intellectual Property Organization.

Notes on Article 2

The substantive provisions of the draft Treaty consist of the obligation to grant national treatment of foreigners (Article 2) and of provisions that limit the freedom of the national legislator in that the national law must, at least, grant certain rights (Article 3) for, at least, a certain duration (Article 5) and that it must not make the protection conditional upon formalities that would go beyond certain limits (Article 4). In other words, the Treaty provides for minimum rights, a minimum term of protection and a maximum of formalities. This is why the Article under consideration (Article 2), which provides for national treatment, states that national treatment is "subject to Articles 3 to 5," that is, the said minimums and maximum.

Article 2—National Treatment

Subject to Articles 3 to 5, each Contracting State shall grant to nationals or residents of the other Contracting States the same protection that it grants to its own nationals with respect to original integrated circuits.

Notes on Article 3

Ad paragraph (1)(a). This subparagraph enumerates the acts that, in connection with integrated circuits, can be lawfully performed only with the authorization of the proprietor. That the rights are exclusive follows from the fact that they require the proprietor's authorization (paragraph (1)(a)) and from the fact that the granting of non-voluntary licenses is expressly excluded (paragraph (1)(b)).

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The rights are minimum rights. Any national law may make further acts subject to the proprietor's authorization, but the acts that are mentioned in paragraph (1) must be subjected to the proprietor's authorization.

There are three kinds of such acts: (i) reproducing or copying, (ii) incorporation in a physical object or proiduct, (iii) importing, selling, or otherwise distributing. Any of those acts requires the proprietor's authorization if it is for commercial purposes.

ad item (i): One can hesitate between "reproducing" and "copying." The two terms are within square brackets to show that they are alternatives; one of them should be chosen.

One can also hesitate between "design" and "layout." In the opinion of some, "layout" confers better the notion of three dimensions ("topography"); but "design" is, by no means, limited to two dimensions (neither is, by the way, layout limited to three dimensions). The two expressions are offered as alternatives between which one should be chosen, unless one would wish to use both ("design or layout").

It is on purpose that the draft treaty contains no difinition of "integrated circuit." It is assumed that everyone knows what the expression means. After all, most patent laws do not define "invention" either. Furthermore, the definitions used in the only existing two laws (the US and the Japanese) illustrate how difficult it is to make a definition and how involved and complex they can become. In an international treaty, it would be difficult to agree on such details. Furthermore, any detailed definition risks becoming incomplete or obsolete with the development of technology. A treaty containing a definition would then have to be revised, and it is well known that any revision of a multilateral treaty is a difficult and long process.

The words "substantial portion or essential elements" want to make it clear that reproduction or copying, to be unlawful, need not relate to the totality of the design or layout; it is unlawful also if it relates to parts quantitatively ("substantial portion") and/or qualitatively ("essential elements") important (from a commercial viewpoint).

ad item (ii): One can hesitate between "physical object" or "product." The first seems to be more general, and this is to its advantage. The second carries a certain connotation of mass production and, therefore, seems to be more limited. One should chose between the two expressions or find a third solution. The typical product, the typical physical incorporation, is, or course, the microchip.

Article 3—Minimum Rights Protected

(1)(a) Any Contracting State shall consider unlawful at least the following acts if performed without the authorization of the proprietor and if performed for commerical purposes:

(i) [reproducing] [copying] [the design] [the layout] of an integrated circuit, or a substantial portion or essential elements thereof,

(ii) incorporating [the design] [the layout] of an integrated circuit, or a substantial portion or essential elements thereof, in a [physical object] [product],

(iii) importing, selling or otherwise distributing [physical object] [products] that are [reproductions] [copies] of, or that incorporate, [the design] [the layout] of an integrated circuit or a substantial portion or essential elements thereof, where [the physical objects] [the products] were made without the authorization of the proprietor.

(b) The authorization referred to in subparagraph (a) may not, under any circumstances, be replaced by a non-voluntary license.

ad item (iii): It is recalled that the qualification appearing in the heading of subparagraph (a)—namely, that the act must be for commercial purposes—applies here too. Consequently, and for example, a foreign tourist who crosses a country's frontier with a pocket radio containing a microchip does not require the proprietor's authorization for such "importation" since, typically, he pursues no commercial purpose.

Ad paragraph (2): While item (i) covers injunctions or "orders to cease and desit," item (ii) covers damages. Since some persons may doubt whether damages can be calculated as the equivalent of royalties that would (probably) have had to have been paid had an authorization been asked for, the expression "or reasonable royalties" has also been used.

Ad paragraph (3): Some of the acts referred to in paragraph (1)(a) need not be submitted, by the national law, to the authorization of the proprietor under certain circumstances. These possible exceptions to the right of authorization are enumerated in this paragraph. Item (i) concerns teaching and research, even when the teaching or research is for profit (commercial) (if it is for non-commercial purposes, paragraph (1)(a) already excludes the obligation of protection). The same is true for item (ii) which, otherwise, deals with the further development of another person's design or layout and with what is called "reverse engineering." Item (iii) deals typically with the exhaustion of rights after the first sale and with a possible much broader exception, namely, impunity when the sale, etc., was "in good faith." The International Bureau is not quite sure what this expression—used in some laws—exactly means or covers, but the expression does appear in the text (albeit within square brackets) to trigger discussion and clarification. Does "good faith" mean subjective ignorance of the law, or of the facts of the situation, or of both, etc.?

Ad paragraph (4): This paragraph is intended to correspond to Article *5ter* of the Paris Convention. It is a reasonable exception that should apply also when the protection is not by patents (to which the Paris Convention applies) but is *sui generis* or copyright.

(2) Any unlawful act under paragraph (1)(a) shall give rise, at the request of the proprietor, at least

(i) to an order to discontinue such acts and

(ii) to the payment of damages or reasonable royalties.

(3) Notwithstanding paragraphs (1) and (2), any Contracting State may consider lawful the following acts in the following cases:

(i) the (reproducing) (copying) referred to in paragraph (1)(a)(i), where it is for the purposes of teaching or research,

(ii) the (reproducing) (copying) or incorporating referred to in paragraph (1)(a) (i) and (ii), where it is for the purposes of the creation of another (design) (layout) of an integrated circuit, which (design) (layout) is, in itself, original.

(iii) the importing, selling or otherwise distributing referred to in paragraph (1)(a)(iii), where it is done (in good faith or) in respect of specific products that have been put on the market by or with the consent of the proprietor.

(4) Where the product incorporating the design of the integrated circuit or a substantial portion or essential elements thereof is part of a land vehicle, vessel, aircraft or spacecraft registered in a Contracting State, and when the land vehicle, vessel, aircraft or spacecraft of which the said (physical object) (product) is a part enters, temporarily or accidentally, the territory, waters or airspace of another Contracting State, the latter State shall not consider such event as an importation in the sense of paragraph (1)(a)(iii).

Notes on Article 4

Ad paragraph (1). This paragraph enumerates the formalities upon which protection may be made conditional by any national law. It is largely inspired by the *sui generis* laws of the United States and Japan. In subparagraph (a), the words "*international* public authority" leave the door open for a possible, future, international register. Such a register could become desirable if all or most countries would follow the US and Japanese examples and would require deposit and registration since, then, the proprietor would have to go to the trouble, cost and risks of fulfilling (different) formalities in all (possibly, numerous) countries in which he wishes to be protected. Whether international registration—if it should ever be established—is a substitute for national registration is another question: the Treaty would not oblige any Contracting State to accept international registration *in lieu* of national registration; any Contracting State could still require the use of its national register.

Ad paragraph (2). This provision makes it clear that the formalities described in paragraph (1) are a maximum. It goes without saying that any country is free to have no formalities whatsoever. This freedom is even necessary for such Berne Union countries that would wish to place integrated circuits under their copyright laws.

Article 4—Maximum Formalities

(1)(a) Any Contracting State may make protection conditional upon the filing of a copy of [the design] [the layout] of the integrated circuit with a national or international public authority and the registration of the proprietor's claim to protection by such authority, provided that the time allowed for effecting such filing shall be at least two years from the date on which the proprietor first exploits commercially [the design] [the layout] of an integrated circuit or the [physical objects] [products] that incorporate that design. Registration may be subjected to the payment of a fee.

(b) Any Contracting State may, instead of the copy of [the design] [the layout] referred to in subparagraph (a), require the filing of other material allowing the identification of [the design] [the layout], and it may also require the filing of samples of the products incorporating [the design] [the layout].

(2) No Contracting State shall make protection conditional upon the fulfillment of any formality other than those referred to in paragraph (1).

Notes on Article 5

This Article establishes a minimum term of protection and is believed to be compatible with the two existing *sui generis* laws, those of the United States of America and Japan (as always, they are mentioned in chronological order).

The term is a minimum. Any national law may provide for a longer term. If a country chooses to give patent, rather than *sui generis*, protection, its law will in most cases satisfy the conditions of this Article since the duration (15 to 20 years) will be generally longer than ten years and will not expire before ten years for the first commercial exploitation (the Article does not say when the protection must start). And, if a country chooses to give copyright, rather than *sui generis*, protection, its law will in most cases satisfy the conditions of this Article since the duration (life or publication *plus* 25 or 50 years) will be so long that it will only very rarely expire before ten years from the first commercial exploitation. However, if one wants be sure that, in all cases, the minimum term required by this Article will not expire in countries that have patent or copyright protection for integrated circuits, the Article should contain further provisions to cover also those situations.

Article 5—Minimum Term of Protection

The protection provided for in Article 3 shall last at least ten years counted from either of the following two dates:

(i) the date of the registration of the proprietor's claim to protection.

(ii) the date on which the proprietor first exploits commercially (the design) (the layout) of an integrated circuit or the (physical objects) (products) that incorporate that (design) (layout).

Notes on Article 6

This is a usual provision for revision. The only question that is left without answer in the draft is whether revision requires unanimity (no negative vote) or may be decided by a majority and, if so, whether the majority should be a qualified (e.g., two thirds) majority.

Article 6—Revision of the Treaty

(1) This Treaty may be revised from time to time by a Conference of the Contracting States.

(2) The Director General shall convene a revision conference at the request of at least two thirds of the Contracting States.

Notes on Article 7

Ad paragraph (1). Since the Treaty envisages also, if not principally, a situation in which national laws provide for *sui generis* protection, there would be no reason to allow only those countries to adhere that are party to the Paris Convention or the Berne Convention. Consequently, it allows, for all practical purposes, any country to adhere.

Ad paragraph (2). It is usual, for treaties negotiated under the aegis of WIPO, to entrust the depository functions to the Director General of WIPO.

Article 7—Becoming Party to the Treaty

(1) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(i) by signature followed by the deposit of an instrument of ratification, or

(ii) by the deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Notes on Article 8

Ad paragraph (1). There is no reason not to put the Treaty into force as soon as it is multilateral, that is, it has three parties. A higher number is usual when a treaty creates a Union with Governing Bodies, a budget and other administrative features. But this is not the case here: the Contracting States would not be required to pay contributions to WIPO, there would be no Union, no income or expenditure of the (non-existent) Union, and no regular meetings of the Contracting States that would entail costs. The very small costs of any occasional meetings of Contracting States could be financed from the "miscellaneous" budget item of WIPO.

Ad paragraph (2). This is a provision of the usual kind.

Article 8—Entry Into Force of the Treaty

(1) This Treaty shall enter into force three months after three States have deposited their instruments of ratification or accession.

(2) Any State which is not among those referred to in paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated by the State at the time of the depositing of its instrument of ratification or accession.

Notes on Article 9

This is an article of the usual kind.

Article 9—Denuniciation of the Treaty

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunication shall take effect one year after the day on which the Director General has received the notification.

Notes on Article 10

This is an article of the usual kind except that, as far as WIPO is concerned (but not as far as the United Nations or most other Specialized Agencies are concerned), Arabic and Chinese would, for the first time, be "equally authentic" languages. This seems to be justified because of the development of WIPO's membership in the last years.

Article 10—Signature and Languages of the Treaty

(1)(a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being eqully authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the General Assembly of the World Intellectual Property Organization may designate.

(2) This Treaty shall remain open for signature at Geneva until [six months after its adoption].

Notes on Article 11

This is an article of the usual kind.

Article 11—Depositary Functions and Notifications

(1) The original of this Treaty shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty to the Governments of all the States referred to in Article 7(1) and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall notify the Governments of the States referred to in Article 7(1) of:

(i) signatures under Article 10;

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(ii) deposits of instruments of ratification or accession under Article 7(2);

(iii) the date of entry into force of this Treaty under Article 8(1);

(iv) denunciations received under Article 9.

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Committee of Experts on Intellectual Property in Respect of Integrated Circuits

Geneva, November 26 to 29, 1985

Report

Adopted by the Committee of Experts

I. Introduction

1. Convened by the Director General of the World Intellectual Property Organization (WIPO) as part of the 1984/85 program of the International (Paris) Union for the Protection of Industrial Property (see document AB.XIV/2, Annex A, item PRG. 03(2)), the Committee of Experts on Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Committee of Experts") met in Geneva from November 26 to 29, 1985.

2. The following States were represented at the session: Argentina, Australia, Austria, Beligum, Brazil, Bulgaria, Canada, China, Denmark, Finland, France, Germany, (Federal Republic of), Greece, Hungary, India, Ireland, Israel, Italy, Japan, Morocco, Netherlands, Nigeria, Norway, Pakistan, Republic of Korea, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America (30).

3. Repesentatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Commission of the European Communities (CEC) and the European Patent Organization (EPO) as well as the following international non-governmental organizations participated as observers: the British Computer Society (BCS), the Committee of National Institutes of Patent Agents (CNIPA), the Computer and Business Equipment Manufacturers Association (CBEMA), the Electronic Industries Association of Japan (EIAJ), the European Electronic Component Manufacturers Association (EECA), the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), the International Association for the Protection of Industrial Property (AIPPI), the International Chamber of Commerce (ICC), the International Federation of Industrial Property Attorneys (FICPI), the International League for Competition Law (LIDC), the International Patent and Trademark Association (IPTA), the International Publishers Association (IPA), the Union of European Practitioners in Industrial Property (UEPIP), the Union of Industries of the European Community (UNICE).

4. The list of participants appears in the annex to this report.

5. Dr. Arpad Bogsch, Director General of WIPO, opened the session.

6. The Committee of Experts unanimously elected Mr. A.H. Olsson (Sweden) as Chairman and Messrs. Z. Kitagawa (Japan) and V. Myasnikov (Soviet Union) as Vice-Chairmen. Mr. J. Erstling (WIPO) acted as Secretary of the Committee.

7. Discussions were based on a Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, prepared by the International Bureau of WIPO (document IPIC/CE-I/2, hereinafter referred to as "the Draft Treaty"). The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and does not reflect all the observations made; however, the main observations and principal conclusions of the discussions are reported below.

II. General Observations

8. The participants engaged in a general discussion of the Draft Treaty and of the desirability of an international system for the protection of integrated circuits. As a whole, the participants stressed the need for such a system, based on the principle of national treatment, and thanked the International Bureau for its initiative in preparing the Draft Treaty, which was generally considered to be a solid basis for a first discussion of the subject.

9. The Delegation of Brazil mentioned the existence of Law No. 7232, which regulated the informatics sector in its country. It noted its Government's commitments to the principles of protection of intellectual property rights and stated that a balance should be sought between the privilege given to the owner of those rights and the public interests of the society that granted the privilege, thereby avoiding the abuses that might arise from the exercise of the exclusive rights conferred on the owner of the intellectual property title. The protection of intellectual property rights should not impede the technological development of the countries that afforded the protection. In respect of the subject matter under discussion, the Delegation stated that integrated circuits were of the upmost value to modern industry; while it recognized that the protection of integrated circuits was a subject of importance, it stated that clarification was necessary concerning the principles and parameters which had served as guidance to the International Bureau in preparing the Draft Treaty. It stated that there were very important technical matters which required expounding in order that a truly meaningful discussion of the Draft Treaty could be engaged in.

10. The Delegation of the Netherlands expressed the hope that it would be possible to conclude an international treaty within a reasonable period of time. It called attention to the Draft Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products, prepared by the Commission of the European Communities, and pointed out that it was very important that the provisions of an international treaty be compatible with the future Council Directive. The Delegation expressed its satisfaction that originality was chosen in the Draft Treaty as a requirement for protection, but suggested that the requirement be more explicitly mentioned. The Delegation also suggested that the Draft Treaty contain a clear definition of the object of protection.

11. The Delegation of Denmark informed the Committee of Experts that new national provisions concerning the protection of the layout of semiconductor integrated circuits were being formulated in close cooperation with the other Nordic countries. The new provisions were, moreover, being framed in such a way that they could meet the requirements expected to flow from a Council Directive within the EEC. Although no final decision had been taken as to the legal structure of those provisions, it was expected that they would provide for *sui generis* protection embodied the Copyright Act within the framework of neighboring rights. With respect to the Draft Treaty, the Delegation expressed its support for a new multilateral instrument based on the principle of national treatment; it had noted that there was a tendency to seek international protection for integrated circuits on the basis of reciprocity, but did not think that such a course would be a prosperous one in the long run. It consequently expressed the hope that a new multilaterial treaty would , in a year or two, be adopted by a diplomatic conference within the framework of WIPO.

12. The Delegation of Finland indicated its acceptance of the main principles contained in the Draft Treaty, and expresed the view that any international arrangement for the protection of integrated circuits should allow the States to choose between copyright, patent and *sui generis* protection. In Finland, work was in progress on the preparation of *sui generis* system of protection for intergrated circuits, which was intended to be incorporated in the copyright legislation under neighboring rights; in view of those national legislative developments, the Delegation was of the view that the convocation of this Committee of Experts was most timely. The Delegation drew the attention of the Committee of experts to four specific points in the Draft Treaty: it indicated that it would be in favor of trying to explore the possibility of defining the object of protection, which would be included either in the Treaty or in an explanatory document and which should stress the functional, rather than the technical or structural, aspects of that object; it expressed the need to provide further clarification concerning reverse engineering; it wished to study the possibilities of restricting the effects of the provisions on exhaustion of rights; and it wished to consider the possibility of an optional notice of protection.

13. The Delegation of the United Kingdom explained that the copyright legislation of its country currently protected functional articles, including integrated circuits; however, that legislation was under review. Therefore, it was important to the United Kingdom that a treaty on integrated circuit protection be flexible in order to cope with the various possibilities of protection, in particular as certain aspects of that protection (for example, protection against the direct copying of a circuit design drawing in another drawing) would probably continue to be governed by copyright law. The Delegation expressed its broad sympathy with the aims of the Draft Treaty since that Treaty would permit the desired flexibility, but considered that it should be compatible with any Directive of the European Communities which emerged from the discussions in Brussels.

14. The Delegation of the Federal Republic of Germany noted the necessity to provide for protection of integrated circuits on a worldwide level, expressed its satisfaction with the clarity of the Draft Treaty and indicated its acceptance of the Treaty's principles. It called attention, however, to the problem of creating separate systems of *sui generis* protection for all new technologies, and questioned whether it would not be advisable to create a system of protection on a wider level, similar to the protection against unfair competition, prohibiting the unlawful appropriation of the works of others.

15. The Delegation of the Soviet Union supported the efforts of the International Bureau of WIPO to elaborate a treaty on the protection of integrated circuits. It expressed the view that the draft under discussion required further specification and concretization. In particular, as the purpose of the Treaty was to provide protection for the non-patentable elements of integrated circuits, the Delegation felt that it was necessary to specify in greater detail the criteria for integrated circuit protection. Furthermore, basic definitions of some of the terminology used, such as "layout" and "original," were necessary in order to exclude the possibility of the Treaty being interpreted in conflicting ways in the various Contracting States. In the opinion of the Soviet Union, such deficiencies in the Draft Treaty could be overcome.

16. The Delegation of Australia expressed its support for a multilateral approach to integrated circuit protection, which it considered to be a far sounder basis for such protection than the principle of reciprocity. The Delegation expressed its agreement with the flexible approach to protection adopted by the Draft Treaty and stated that it strongly wished such flexibility to be maintained. The Delegation indicated that integrated circuit designs were already subject to protection under Australian copyright law, and that it would be a matter of concern if Australia were required to make exceptions to its general law in order to become party to the Treaty. In order to prevent such possibility, the Delegation wondered whether the statement of intention to provide for a flexible system of protection, which was included in the explanatory memorandum, should not be embodied in the text of the Treaty.

17. The Delegation of Japan expressed its general support for the Draft Treaty and said that it would be an extremely hard task to find a good definition for the term "integrated circuit." Therefore, the Delegation suggested that the term be left undefined in the Treaty and that, if a definition were deemed necessary, it be included in a memorandum accompanying the Treaty or in an explanatory note, rather than in the Treaty itself. The Delegation also indicated its preference not to use the term "semiconductor" in the text of the Treaty since that term was subject to becoming technologically obsolete, and indicated that the term "layout" or "layout design" was preferable to the term "design" since the latter could give rise to confusion with design law concepts.

18. The Delegation of the United States of America called attention to the need for integrated circuit protection so as not to hinder progress in integrated circuit technology, and was of the view that there should be an international commitment to recognize and respect the property rights in original layouts or designs of integrated circuits under appropriate conditions. The Delegation thus gave its support to the basic principles of the Draft Treaty. In order to improve or clarify that text, the Delegation raised the following points: the subject matter of the Treaty (integrated circuits) should be defined; certain terms, such as "commercial exploitation" and "design" or "layout," should also be defined; the standard of "originality" should be specified; the relationship between the Draft Treaty and existing patent and copyright treaties should be clarified; the scope of the exclusive rights and permissible limitations, especially the right of importation and the limitations regarding the defenses of innocent infringement and reverse engineering, should also be clarified; a provision for an optional notice of protection having evidentiary significance should be added; the commencement of the term of protection and the assurance of a right to reasonable compensation starting from either commercial exploitation or registration should be more clearly specified; the Treaty revision process should be regulated in greater detail; and provision for consultation procedures to encourage the negotiation and settlement of different opinions about treaty obligations should be considered. The Delegation indicated that, in its view, the Draft Treaty was fully compatible with the United States Semiconductor Chip Protection Act, which became effective on November 8, 1984.

It reported to the Committee of Experts that, after nearly one year of experience under the Act's registration system, 1,158 registrations for mask works had been filed, of which 507 were from foreign mask work owners. It explained that foreign applicants for protection were granted several bases under the Act on which registration could be made; one basis was first commercial exploitation in the United States of America; another basis was a presidential proclamation under Section 902(a)(2) of the Act; still another basis was an administrative order by the U.S. Patent and Trademark Office in accordance with Section 914 of the Act. The Delegation noted that the grant of interim protection under Section 914 was premised upon a finding that the

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foreign nation in question was progressing, either by enactment of a statute or by treaty negotiation, towards a legal regime of integrated circuit protection generally similar to that found in the Act, that its nationals and persons controlled by them were not engaging in and had not recently engaged in semiconductor chip misappropriation or the sale of products containing infringing chip components, and that issuing the order would promote the overall goals of the Act and of international comity with respect to the protection of integrated circuits. The Delegation informed the Committee of Experts that the United States Congress had been impressed by the fundamental unfairness of integrated circuit piracy, which usurped the efforts of others without adding to technological progress, and that a central mission of the United States Act was thus to encourage the international protection of integrated circuits.

19. The Delegation of Austria emphasized that there was an urgent and important need for integrated circuit protection and that the preferable solution to such protection on the international level was a multilateral one. It indicated its support of the Draft Treaty and, as Austria was still undecided as to which system of protection it would adopt, expressed its appreciation for the flexibility contained in the Treaty.

20. The Delegation of Belgium declared its support for the elaboration of an international treaty within the framework of WIPO and called attention to the need to coordinate WIPO's efforts with those of the Commission of the European Communities in its preparations for a Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products. The Delegation of Belgium informed the Committee of Experts that, while pure copyright protection for integrated circuits had been rejected, its country had not yet chosen the precise legal route that it wished to follow; nevertheless, it indicated that registration procedures were not a part of Belgian legal tradition. The Delegation underlined the necessity of including an open and global definition of the object of protection in the Draft Treaty.

21. The Delegation of Norway stated that, as was the case in the other Nordic countries, draft provisions for the protection of integrated circuits were being drawn up, and indicated that those provisions would provide for *sui generis* protection incorporated in the copyright law under neighboring rights. The Delegation thus expressed its view that this was an opportune moment for a discussion of a treaty on the international protection of integrated circuits.

22. The Delegation of Italy informed the Committee of Experts that a draft law had been elaborated in its country, which would provide for *sui generis* protection. The Delegation further declared its support for the realization of an international treaty and expressed the wish to see it develop rapidly. It indicated that the preparatory work for the Treaty should be undertaken independently but in parallel with the work of the Commission of the European Communities. In addition, the Delegation expressed the desire to include in the Treaty a definition of the object of protection; moreover, it proposed that a new meeting of the Committee of Experts be convened as quickly as possible.

23. The Delegation of India stated that its country was trying to develop an integrated circuit industry and was striving for 40% growth during the next five years. It was, therefore, concerned about the implications of the Draft Treaty on the development of new technologies within developing countries such as India. For example, it questioned whether a duration of protection of 10 years might not be too long in view of the effective life of most modern semiconductor products and was not clear as to whether originality was an adequate indicator of protectability as well as to the level of complexity at which an integrated circuit design was to be protected. The Delegation of India therefore felt that clarification of these and other issues was necessary in order to appreciate the advantages and disadvantages of the Treaty and in order to determine the applicability of the Treaty to a developing country environment.

24. The Delegation of France declared that it was in favor of the establishment of an international system of protection for integrated circuits and that it supported the Draft Treaty prepared by the International Bureau. In the view of that Delegation, an international instrument of protection would avoid having to resort to the rule of reciprocity, which was sometimes difficult to implement. In respect of protection at the international level, France was therefore devoting the greatest attention to the possibility of establishing protection based on the principle of national treatment within the framework of the Draft Treaty proposed by WIPO. With regard to the legal situation under French law, it was indicated that French industry essentially wished to obtain full protection for its investments, in view of the considerable dangers posed by servile and quasi-servile copying. A system based on the grant of private rights conditioned upon novelty, inventive step or originality—the latter notion capable of being defined, in the Delegation's opinion, as the synthesis of the two former notions—would thus not necessarily respond to the needs of industry. Such reflections, in the opinion of the Delegation, should lead France to the elaboration of a *sui generis* law somewhat analogous to the American law, and work had already begun in that direction. The Delegation of France indicated that its country envisaged providing for the protection of any new, final or intermediate, topography of an integrated circuit. In that context, the requirement of deposit for evidentiary purposes would probably be retained as a condition for protection.

25. The Delegation of Israel stated that it welcomed the Draft Treaty as an excellent basis for discussion, in particular as its country was very active in the field of integrated circuit design and exploitation. The Delegation emphasized that a treaty on the protection of integrated circuits required clarity and flexibility and should be definitive in its terminology. In order to give effect to the aims of the Draft Treaty, a certain degree of clarification was therefore required, for example, with respect to the subject matter of protection, the concept of originality, the question of compatibility with other treaties, and the meaning of exploitation, innocent infringement and reverse engineering. The Delegation also indicated that discussions were presently taking place in its country to examine whether the existing national legislation already covered the subject of integrated circuit protection, or whether an amendment to that legislation or a new law was required.

26. The Delegation of Canada expressed its recognition of the need for a treaty. A Parliamentary Committee recommendation was under review that protection for integrated circuits be provided outside the copyright law, but no definite commitment on any particular codified approach to protection had as yet been adopted; the Delegation, therefore, stressed the importance of flexibility in the Treaty. In addition, it noted that there would be need for discussion of the following: providing a definition of an integrated circuit in an explanatory note to the Treaty; taking up the question of whether non-voluntary licenses of a strictly limited nature ought to be permitted, for example, in order to prevent abuses of monopoly power; reviewing the provisions on exhaustion of rights and innocent infringement; and studying the questions of optional marking provisions, of compulsory registration and of the number of parties required to bring the Treaty into effect.

27. The Delegation of Hungary expressed the view that, while the form of protection may differ among the States party to an international treaty on the protection of integrated circuits there should be a common understanding as to the philosophy of protection. In Hungary, although integrated circuits as such were not protected, all intermediate parts and all phases leading to the production of integrated circuits were protected. As this system led to certain inefficiencies, thought was being given to protecting integrated circuits as a whole. Therefore, the Delegation supported the Draft Treaty because it allowed protection by all available means and did not limit itself simply to one form of protection.

28. The Delegation of Switzerland indicated that the protection of integrated circuits was considered of great importance for its country, and that a draft copyright law had been sent back to the Federal Council by the Council of States because the draft did not comprise the protection of certain achievements, among which the protection of integrated circuits could be included. In addition, a provision concerning protection of achievements was foreseen within the framework of the revision of the provisions concerning unfair competition, which could apply to integrated circuits. The Delegation of Switzerland therefore emphasized that the Treaty to be adopted would have to be sufficiently flexible and open in order to accommodate the various solutions being envisaged in the different countries.

29. The Delegation of China stated that integrated circuits constituted a rapidly developing field of modern technology and that, for such development to continue, it was necessary to protect the right of the integrated circuit designer but was also necessary to permit other designers to develop even better integrated circuits. Therefore, an international treaty should constitute a basic document with concrete details being left for national legislation. Nevertheless, it was important that the concepts and ideas contained in the Draft Treaty (for example, "layout," "design," "essential elements," "substantial portion") be stated clearly. Furthermore, recent technical developments had to be taken into account; for example, it was probably not necessary to use the term "mask work" since integrated circuits may now be made without masks.

30. The Delegation of Sweden stated that, while it was strongly in favor of international multilateral protection and supported the general structure of the Draft Treaty, it wished to raise some basic points, including the relationship between the Treaty and the Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention"), and the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention"), and the possibility of requiring Contracting States to communicate applicable legislation to WIPO, which would distirbute those texts to the other Contracting States.

31. The Representative of the CEC commented upon the Draft Proposal for a Council Directive on the Legal Protection of Topographies of Semiconductor Products, with respect to which all efforts were being made for a speedy adoption. The Representative stressed the necessity of complementarity between the Draft Treaty and the Proposal for a Council Directive. As far as the Representative of the CEC was aware, both instruments in their present drafting were completely compatible.

32. The Representative of Unesco drew attention to substantive questions concerning the legal nature of the envisaged protection and the need for legal consistency. In particular, he wondered whether it would not be advisable to be more precise, to consider explicitly the relationship with copyright and with patent law and to specify the object of protection.

33. The Representative of UNICE underlined that effective and easily enforceable protection of integrated circuits was highly desirable. In respect of international protection, he recalled that reliance on the patent and copyright conventions was problematic and that resort to bilateral arrangements was impractical. What was thus to be strived for was a treaty that complied with the existing legislation of today but that attempted to foresee the legislation of many countries of tomorrow. While the Representative of UNICE supported the Draft Treaty, he felt that definitions should be provided for the object of protection as well as for the term "layout" and that the concept of originality as mentioned in the Treaty should be clarified.

34. According to the Representative of UEPIP, the basis of protection of integrated circuits was situated between copyright and patent protection. Neither the Paris Convention nor the Berne Convention, which protected functional and non-functional forms, respectively, were adapted to the new technologies that merited the elaboration of a new international instrument, the object of which would be the protection of substantial achievements against servile copying. Such an instrument could protect, in particular, integrated circuits, industrial designs and computer software, as well as all collaboration between man and machine; in other words, the Representative indicated that it would consist of a "technical or functional copyright."

35. The Representative of FICPI endorsed the view that a most efficient means of meeting the urgent need for protection of integrated circuits at the international level was through a special treaty. A major difficulty in the elaboration of such a treaty, however, was the question of definitions. In that respect, the Representative of FICPI agreed with the Delegation of Japan that the provision of a precise definition should perhaps be left open, but that any definition that might be accepted must take into account essential developments in the field. The Representative of FICPI also expressed the view that special protection for integrated circuits should not preempt the possibility of double protection where applicable. The Representative expressed agreement in principle with the adoption of the criterion of originality, but stated that consideration should be given to examining the extent to which the commercial use of an integrated circuit by a third party in situations such as reverse engineering should be considered lawful. With respect to mandatory registration provisions, the Representative of FICPI felt that the Treaty must maintain a flexible approach and suggested that, in the long run, harmonization with respect to registration requirements might be desirable.

36. The Representative of IPTA fully supported the creation of an international system for the protection of integrated circuits and stressed the importance of such a system being capable of reflecting rapidly evolving technological developments, particularly in the areas of computer-aided design and computer-aided engineering. Furthermore, in the opinion of the Representative of IPTA, the concept of reverse engineering, which is a fundamental aspect of integrated circuit

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development, should be taken fully into account.

37. The Representative of the BCS highlighted the necessity of a multilateral treaty to provide a framework for national treatment and to counter the resort to reciprocity in the international protection of integrated circuits. He stressed the importance of flexibility in the Draft Treaty's approach to protection and pointed to the WIPO Model Law on the Protection of Computer Software and to the Vienna Agreement for the Protection of Type Faces and their International Deposit as examples of flexible international texts. The Representative expressed the need to provide definitions for terms such as "integrated circuit design and layout" and "commercial exploitation"; however, he emphasized that the search for adequate definitions, which was a difficult task, should not jeopardize the realization of an international instrument. Furthermore, he felt that the limitations on protection should be clarified and that protection should not extend to any concept, process, system or technique embodied in the integrated circuit layout other than the layout itself. Finally, the Representative of the BCS pointed out that the criterion of originality in respect of the grant of protection should be understood from a copyright point of view.

38. The Representative of AIPPI declared that he was in favor of the study of an international treaty; however, he drew attention to the necessity of avoiding a multitude of special treaties. In addition, he expressed the desire for great flexibility in order to guarantee the coordination of international texts and permit the adaptation of national laws. According to the Representative of AIPPI, questions concerning the definition of an integrated circuit, the possibility of prohibiting copies of essential elements of integrated circuits, of the use in good faith of copies, of reverse engineering and of the exhaustion of rights merited examination in depth.

III. Discussion of the Draft Treaty

General

39. The Delegation of Brazil drew the attention of the Committee of Experts to the fact that the Secretariat should explain what were the parameters and principles in respect of intellectual property rights that had inspired the International Bureau to elaborate the Draft Treaty. Furthermore, in the Delegation's opinion, there were underlying technical aspects that should be clarified prior to engaging in a discussion of the proposed Treaty. All those aspects should be made available in writing to the Member States of WIPO in order that full appreciation of the Draft Treaty could be made. The Secretariat should explain what was the intended balance between those who would enjoy proprietory rights and the interests of the society that granted the privilege of protection. In the Delegation's view, the aim of the Treaty should be to prevent piracy, not to grant monopolies that could prevent the acquisition of foreign technology and hamper the development of domestic technology, particularly in developing countries.

[From here onwards, as is traditional in summary reports, the delegations are not identified.]

Article 1: Definitions

40. While recognizing that it was not easy to agree on definitions, the majority of the participants who spoke on the matter were of the view that the provision of additional definitions would help clarify the Treaty and that one should attempt to draft some. In particular, it was thought that consideration should be given to the elaboration of an introductory provision defining the object of protection of the Treaty as well as to the definition of certain key terms, in particular, "integrated circuit," "layout," "design" (or "layout-design" or "topography"), "commercial exploitation" and "original." Several other delegations, however, were of the view that definitions were not indispensable, as shown by other important international instruments in the field of intellectual property, including the Paris Convention. If definitions were to be elaborated, however, the delegations emphasized that they should be sufficiently broad and flexible in order to give enough freedom to national laws and in order to ensure that the scope of protection of the Treaty would not be surpassed by rapid technological advances. Furthermore, the view was expressed that, if the incorporation of certain definitions into the text itself of the Treaty would give rise to problems that might jeopardize the speedy realization of a system of international protection, one should consider the possibility of including agreed statements, in the nature of definitions, in a memorandum or explanatory note that would accompany the Treaty.

41. During the meeting, written proposals for definitions were made by the Delegations of the United States of America (document IPIC/CE/I/5, defining "layout," "integrated circuit," "original," "commercial exploitation," as well as the subject matter of the Treaty) and the Soviet Union (document IPIC/CE/I/6, defining "layout"), and by the Representative of UNICE (document IPIC/CE/I/4, defining "topography," "integrated circuit" and "originality"). Those proposals were examined following the discussion of the substantive provisions of the Draft Treaty (see paragraphs 90 to 93, below).

Article 2: National Treatment

42. All participants who took the floor gave strong support to the principle of national treatment. Questions were raised, however, as to the appropriateness of including the word "original" in Article 2, where it was somewhat hidden. The view was expressed that if the notion "original" were to be maintaind, it should rather appear in a provision defining the subject matter of the Treaty, or in a general statement of the Treaty's object of protection. One delegation said that the Treaty should contain provisions not only on the rights but also on the obligations of the owner of the rights in order to achieve an appropriate balance between the two, and proposed adding the following clause at the end of the Article: ". . . provided that the conditions and formalities imposed upon nationals are compiled with."

43. With respect to the application of the principle of national treatment, the question was raised whether the requirement should be based on the treatment granted to residents instead of on the treatment granted to nationals of a Contracting State. It was replied that the protection granted in application of the principle was traditionally of the highest standard, which was usually that accorded to nationals.

Condition of Originality

44. The question was discussed whether originality should be an internationally required condition of protection. While most of the participants who spoke on the matter considered that originality should constitute a requirement of protection and that the concept should be referred to in the Treaty, several delegations expressed the view that it would be preferable for the Treaty to remain silent in that regard in order to permit the Contracting States greater flexibility in adopting national systems of protection. As an alternative, the suggestion was made to make protection conditional on either originality or novelty, following the example of Article 7 of the Vienna Agreement for the Protection of Type Faces and Their International Deposit. It was noted that the meaning of "originality," as used in connection with integrated circuits, did not seem to be exactly the same as when it was used in a copyright law (the United States Semiconductor Chip Protection Act was an example). One delegation observed that layout-designs that were novel were necessarily original, and that layout-designs that were original were often novel, so that, in the field under examination, the terms were practically interchangeable. It was emphasized, however, that, regardless of the criterion used, the purpose of the Treaty was to establish minimum rights and maximum formalities that could be adopted on an international level in order to prevent piracy in integrated circuits. The type of system adopted on the national level, therefore, need not be defined in the Treaty, provided that the national system complied with the Treaty's requirements as to minimum rights, minimum duration of protection and maximum formalities.

Article 3: Minimum Rights Protected

45. One delegation said that the Treaty should establish a better balance between the commercial interests of the proprietor of integrated circuits and the public interests of the society that granted the privilege of protection. To that end, it proposed the deletion of paragraph (1)(b) and the addition of the following: "1. Any Contracting State has the right to provide in its national law, where the exploitation of an integrated circuit is required by reasons of public interest, for the possibility of exploitation, at any time, of the integrated circuit by the government of that country or third persons authorized by it. 2 Any Contracting State of the Union has the right to adopt legislative measures to prevent abuses, such as failure to work, resulting from the exercise of the rights granted to the proprietor. The said legislative measures should include, among others, the grant of non-voluntary licenses and revocation of the privilege granted." The Delegation further pointed out that, in its view, the word "minimum" should be deleted from the title of the Article since the Treaty should establish the rights granted to the proprietor and considerations in respect of the minimum and maximum extent of those rights were thus not appropriate. Most other delegations, however, agreed that Article 3, represented a proper balance between private and public interests and thereby could encourage the stimulation of creativity and transfer of technology in the field of integrated circuit technology.

Article 3(1)(a)

46. It was felt by certain delegations that, from a drafting point of view, it would be preferable to express the provisions of paragraph (1)(a) in terms of a positive grant of rights rather than a negative prohibition of unlawful acts. The point was raised, however, that a positive grant might, in fact, prove to be more limitative than an enumeration of prohibitions. In addition, one delegation proposed the inclusion of the phrase "as defined by the specific national legislation" after the word "unlawful" as well as the deletion of the words "at least."

47. In terms of other drafting choices, most delegations appeared to prefer the term "reproduction" to "copying," at least in part because reproduction seemed to cover more clearly the change from two dimensions to three, or vice versa.

48. With respect to the choice between "physical object" or "product," a number of delegations seemed to opt in favor of "physical object," or proposed replacing both with a term such as "semiconductor product" in order clearly to express the intention that what was being referred to was, indeed, such product. It was underlined, moreover, that a distinction should be made between a semiconductor chip and the product incorporating such a chip, for example, a television set.

49. Concerning the choice between "design" or "layout," no clear preference seemed to emerge from the discussions; suggestions were made by several delegations to adopt alternative terms such as "layout-design" or "topography" and by one delegation to adopt the alternative "mask work." In addition, some delegations felt that the phrase "substantial portion or essential elements" could benefit from clarification.

50. In respect of the French-language version of the Draft Treaty, the suggestion was made to change the word "illicites" in paragraph (1)(a) to "illégaux" in order to guarantee coverage of both international and unintentional acts.

51. The question was raised of the appropriateness of providing that only acts performed for commercial purposes were to be considered unlawful under the Treaty. In the view of some delegations, acts performed for non-commercial purposes could also cause substantial economic damage and, therefore, the purpose of the act should be considered irrelevant. Other delegations, however, indicated their view that the right to prohibit certain acts was aimed at the elimination of commercial abuses and that acts performed for purely private purposes should be excluded from the scope of the Treaty. The suggestion was thus made by certain delegations to clarify the concept of commercial purposes accordingly. Moreover, the suggestion was made to clarify that use of an integrated circuit design for purposes unrelated to the objective of the design (for example, as a wallpaper design) would not be an unlawful act under the Treaty.

52. The question was also raised as to the necessity of maintaining subparagraph (1)(a)(ii) since, in the view of some delegations, the act of incorporation was included within the meaning of the term "reproducing," which was already prohibited in subparagraph (1)(a)(i). The opinion was expressed, however, that subparagraph (1)(a)(ii) was a preparatory act to the prohibitions contained in subparagraph (1)(a)(iii) and that, since the prohibited acts in the three subparagraphs could be performed by three different parties, the maintenance of subparagraph (1)(a)(ii) was perhaps advisable. If the subparagraph were to be retained, the technical appropriateness of the term "incorporating" should, in the view of one delegation, be examined. According to that delegation, subparagraph (1)(a)(ii) should be drafted as follows: "utilizing the topography or an original substantial portion or essential elements thereof to manufacture a semiconductor product."

53. In respect of subparagraph (1)(a)(iii), some delegations considered that the terminology and intent of the provision could be clarified by enumerating other specific acts, such as "offering for sale," "hiring out" or "leasing."

54. One delegation pointed to the fact that a company in a Contracting State could import a product without having knowledge that the product incorporated a copy of the integrated circuit protected under the applicable national law. That company, as well as the Contracting State, should not be penalized inasmuch as it was almost impossible to engage in a control of all components of some imported devices. The penalties should be imposed on the exporting company when a copied integrated circuit that was protected by the applicable national law was incorporated in an exported product. In the delegation's view, the Draft Treaty should thus be amended accordingly.

Article 3(1)(b)

55. Most delegations that expressed a view said that the Treaty should not

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exclude the possibility of non-voluntary licenses but should allow such licenses in well-defined, specific and limited cases, in particular as a measure against possible abuses of the rights otherwise granted by the Treaty.

56. One delegation suggested allowing use of the design of an integrated circuit against remuneration for the purposes of the State or in the public interest, without any time limit, and also to include a provision on the revocation rights. In view of the proposal for Article 3 referred to in paragraph 45 of this Report, the delegation proposed the deletion of Article 3(1)(b).

57. Another delegation expressed the view that non-voluntary licenses should not be permitted except where very special circumstances justified them, for example, where certain provisions of a law had a retroactive effect.

58. A suggestion was made to examine the relationship between Article 5A of the Paris Convention and any provision concerning non-voluntary licenses in the Draft Treaty.

59. The Director General said that the Draft did not contain a proposal for compulsory licenses because the situation was quite different from that in the Paris Convention and the Berne Convention: the duration of protection was much shorter and the provisions on reverse engineering allowed a degree of free use of the protected subject matter unparalleled in those Conventions. He concluded by saying that since no delegation seemed to be absolutely opposed to the provisons on compulsory licensing, the next draft would contain such provisions.

Article 3(2)

60. Several delegations expressed the view that this provision could be ommitted from the Draft Treaty, since the question of sanctions was typically a matter for regulation by national law. Three delegations were concerned that their countries would not be able to become party to the Treaty if remedies were mandatory.

61. According to another view, this paragraph should be removed from Article 3 and drafted in a more general fashion by stating, for example, that each Contracting State would have to provide for adequate measures to ensure effective protection against unlawful acts. The sanctions in the Draft could then be mentioned as mere examples.

62. It was observed that, in any case, reasonable royalties should not be mentioned in the Draft Treaty as an alternative to damages.

Article 3(3)

63. The question was examined whether the limitations on minimum protection contained in this paragraph should be mandatory rather than optional (as under the present Draft). In support of a mandatory character, it was stated in particular that the limitation in respect of "reverse engineering," contained in item (ii), should be uniform in all Contracting States. On the other hand, attention was drawn to the difficulty of achieving agreement on a uniform standard for the said exception as well as to the desire that the Treaty be sufficiently flexible in order to accommodate various approaches in national laws with respect to limitations.

64. With respect to item (i), it was observed that this provision might be too broad, since it concerned teaching and research for all purposes. One should consider limiting the scope of the provision to cases of teaching and research for non-profit purposes.

65. With respect to item (ii), several delegations stressed that the exception of so-called "reverse engineering"—although in principle justified—should not be as broad as proposed in the present Draft. In particular, the exception should not cover the incorporating of copied integrated circuit designs in physical object or product. The exception of "reverse engineering" should rather be limited to the reproduction of the design for the purposes of analysis and evaluation. A later design that consisted of two or more earlier designs should not be able to benefit from the reverse engineering exception; the authorization of the proprietors of the compiled designs should be required before the later design could be put into practice. According to another view, the reverse engineering exception should encompass only the situation where a later design resulted from the extraction and use of the circuits, logic flow, ideas and methodology embodied in the earlier design. One delegation suggested that it might be difficult to determine whether any given act was "for the purposes of the creation of another [design] [layout]" and that, accordingly, an exception for acts done for experimental purposes might be preferable. Another delegation, however, noted that the provision in the Draft Treaty was very positive.

66. In respect of item (iii), it was generally held that the two cases covered by this provision, namely, that of distribution, in good faith, of products reproducing or incorporating the design of an integrated circuit, on the one hand, and the exhaustion of rights where the product has been put on the market by, or with the consent of, the proprietor, on the other, should be dealt with in two separate provisions. With respect to the exhaustion of rights, it was suggested that this should be admitted only if the first sale had occurred in a Contracting State.

Article 3(4)

67. It was observed that this provision should make it clear whether only the microchip or also products (for example, television sets) that contain microchips would be covered.

68. One delegation suggested replacing the words "importation in the sense of paragrapy (1)(a)(iii)" at the end of the paragraph with "constituting an unlawful act."

Article 4: Maximum Formalities

69. One delegation proposed that the word "maximum" be deleted from the title of the Article.

70. Attention was drawn to the fact that the mandatory registration of circuit layouts provided for by the Japanese Act Concerning the Circuit Layout of a Semiconductor Integrated Circuit (hereinafter referred to as the "Japanese Act") required the filing of drawings, photographs *and* other materials. The question arose whether that filing requirement was compatible with the alternative filing provided for in Article 4(1)(a) and (b) of the Draft Treaty.

71. As regards Article 4(1)(b), the suggestion was made to add the words "or in addition to" after the words "instead of" in the first line. Moreover, the expression "copy" in Article 4(1)(a) and (b) needed to be clarified, in order to make clear that drawings or photographs could also be registered.

72. Attention was also drawn to Section 21 of the Japanese Act, according to which, *inter alia,* the transfer of the layout right required registration. Here again, the question arose whether such a provision was compatible with the Draft Treaty.

73. As regards the expression "product" in the penultimate line of paragraph (1)(b), one delegation stated that in this case only semiconductor chips were meant and that goods containing such chips, for example, television sets, were excluded. It further stressed that the same was true with regard to the use of that expression in Article 3(1)(a)(ii), (1)(a)(iii) and (3).

74. The question was raised whether the formalities permitted under Article 4 of the Draft Treaty could be applied by a country that was bound by the Berne Convention and that afforded copyright

protection to integrated circuits. One delegation considered that such a country did not have the freedom to make protection conditional upon the fulfillment of certain formalities and proposed, to prevent any misunderstanding, that a new paragraph so stating be inserted in Article 4.

75. With respect to the expression "exploits commercially" in paragraph (1)(a), it was stated that the decisive condition should be whether an integrated circuit or product incorporating it had been offered to the public. Moreover, commercial exploitation—or, rather, a public offer—should be taken into account only where it had occurred in a Contracting State of the Treaty.

76. Some delegations questioned whether the Treaty should even permit mandatory registration systems, since such systems could not by their very nature in this instance be used to determine novelty or originality. A multiplicity of such systems could be burdensome to small businesses. However, it was noted that the United States of America and Japan already had such systems in place.

77. One delegation suggested that the Treaty should contain a provision on optional marking or notice of protection (for example, the letter "M" between asterisks: *M*).

78. Several delegations suggested that the use of a notice, in the agreed form, should have the same effect as in the Universal Copyright Convention, that is, it should make it unnecessary to comply with any other formality.

79. In respect of the administrative authority with which registration had to be effected, it was observed that, in a scheme of regional cooperation, a regional authority could be entrusted with this task and that this possibility should be referred to in the Draft Treaty.

80. The words "or international public authority" in Article 4(1)(a) were understood as referring to the future possibility of establishing an international system of registration of integrated circuit layouts, and did not mean or imply that an international registry would have to be established. One delegation, however, proposed deleting the reference to an "international public authority," first, because such an authority did not exist and, second, because, in its view, registration by a national or regional authority could not be replaced with registration by an international public authority as provided. It pointed out that if it were felt that a mechanism of this sort should be envisaged, other alternatives would have to be examined, such as the Patent Cooperation Treaty (PCT).

81. The question was raised whether there should be an international priority right based on an application for registration in a Contracting State.

82. It was suggested that one should further study whether the Treaty should allow the requiring of material, additional to what was mentioned in the Draft, to be furnished at the moment of registration. On the other hand, it should also be studied whether one should not merge subparagraphs (a) and (b) and merely speak about "material allowing the identification of the layout-design." The observation was made that a provision would be needed according to which critical parts of material to be registered that represented trade secrets could be omitted from the register. In addition, one delegation expressed the view that the requirements for registration should be left to the national authorities and that a precondition to the granting of the privilege should be registration by a national authority. In any event, it was important, according to that delegation, that the material required should enable the authority to determine whether the mask work complied with the degree of novelty or originality upon which the claimed protection was conditioned. The delegation further noted that it did not agree with the grace period proposed in the Draft Treaty.

83. One delegation raised questions about the possibility of establishing additional formal requirements for providing protection in accordance with national legislation and of rendering more precise the material that would allow the identification of the layout of an integrated circuit.

84. The question was also raised as to what would be the rights and obligations of a Contracting State, particularly in respect of formalities and duration or protection, if such State adhered to the new Treaty, if, in its national law, it protected layout-designs as works under the copyright law and if such State were a party to the Berne Convention or the Universal Copyright Convention. The Director General said that his views on that question would be expressed in the preparatory paper for the next session of the Committee of Experts.

85. In conformity with its observation concerning the title of Article 4 (see paragraph 69, above), one delegation proposed the deletion of paragraph (2).

Article 5: Minumum Term of Protection

86. One delegation proposed, as alternatives additional to Article 5(i) and (ii) of the Draft Treaty, the date of filing referred to in Article 4(1)(a) and 4(1)(b), and proposed further to add the words "whichever shall be the earlier" after the words "two dates" in the second line of Article 5. Several participants suggested that Article 5 should not only deal with the minimum duration and the earliest possible end of protection, but that it should also specify the event from which protection must start (for example, the first fixing or encoding of the design, layout or topography, which practically would amount to the time of creation).

87. Some delegations found the proposed 10-year minimum too long and proposed that it be reduced to five years on the ground that the rapid development of technology made new microchips rapidly obsolete.

88. On a question whether the Treaty would permit perpetual protection, the Director General said that this was the case and, if that were an undesirable feature, one would have to provide for a maximum term of protection. Such a provision was unknown in existing intellectual property treaties.

89. In respect of the expression "first commercial exploitation," the suggestion was made to use the expression "first public offer."

Definitions (Continuation of Discussions)

90. Following the discussions of Articles 2, 3, 4 and 5, the question of definitions was again discussed, on the basis the three documents referred to above (see paragraph 41). The point was raised by one delegation that, since the proposals could not fully be appreciated, further discussion of them should be envisaged at the next session of the Committee of Experts.

91. In view of the fact that the proposal of the United States of America used the expression "layout design," the proposal of the Soviet Union the expression "layout" and the proposal by UNICE the expression "topography," it was agreed that the question of the appropriate term to be used should be further studied.

92. As regards the definition of "layout design" (in the proposal of the United States of America) and "topography" (in the proposal of UNICE), attention was drawn to the importance of defining the expression "layer." With respect to the definition of "integrated circuit" in the proposal of the United States of America, it was observed that such a circuit could have either several functions or only one function; therefore, the last word of that definition should be in the singular. It was further mentioned that the said

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definition comprised products that did not have a semiconductor layer or any semiconductor material at all.

93. With respect to the definition of "original," the question was raised whether that definition should include an element referring to a step or improvement achieved by the creation, in addition to the condition that "original" meant something which had not been copied. The step or improvement was, in particular, important if the expression "original" was to be used in order to define the result of legitimate reverse engineering. On the other hand, it was underlined that a definition of originality was not helpful and that national copyright law usually did not contain such a definition, since this was a question which typically had to be decided in the light of the circumstances prevailing in a given case, that is, if necessary, by the courts. Finally, it was observed that a definition of originality might not be required if the Treaty would permit Contracting States to make protection conditional on either originality or on novelty, following the example of Article 7 of the Vienna Agreement for the Protection of Type Faces and Their International Deposit.

Article 6: Revision of the Treaty

94. No observations were made in respect of the draft of this Article.

Article 7: Becoming Party to the Treaty

95. No observations were made in respect of the draft of this Article.

Article 8: Entry into Force of the Treaty

96. Several delegations stated that the minimum number of ratifications or accessions for the initial entry into force of the Treaty provided for in the Draft should be higher than three. Two delegations proposed that the number be one third of the States members of WIPO and that the period between the deposit of the last required instrument of ratification or accession and entry into force be 12 (rather than three) months. One of those delegations pointed out that the importance of integrated circuits for modern industry required the attention of the international community as a whole when a multilateral treaty was being envisaged under the aegis of WIPO; therefore, it considered that a meaningful number of States should be required for the Treaty to enter into force.

97. Several delegations, however, expressed the view that the international protection that would be guaranteed by the Treaty was urgent, and that this should be taken into account when the conditions for the entry into force of the Treaty were fixed.

Provisions for Developing Countries

98. Two delegations stated that it was necessary to include in the future treaty a set of provisions giving preferential treatment for developing countries. Such provisions were also being discussed in the framework of the ongoing revision of the Paris convention. The envisaged new Treaty should, in addition, reflect the special interests of developing countries. The need for a fair balance between the interests of the proprietors of technology and the technology importing countries should be recognized by the Treaty.

Consultation Procedures

99. The Delegation of the United States of America introduced its proposal for "Consultation Procedures in Relation to the Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits" (document IPIC/CE/I/3).

100. Several delegations said that they had studied the proposal with interest, but since it raised a number of important questions of international law, which required further consultations with the competent authorities of their respective countries, and since the proposal was only received during this session, it should not be considered now. They added that their further consideration of the proposal would have to include a study of the relevant procedures in the framework of the General Agreement on Tariffs and Trade (GATT).

101. Three delegations said that they were not in favor of, or had serious reservations concerning, a provision on consultation procedures.

102. One delegation said that a procedure similar to that under Article 28 of the Paris Convention could be a model. If could not agree, however, to the establishment of a supranational jurisdiction that could be used to create obligations not clearly established in the text of the Treaty, the enforcement of which should be the responsibility of the domestic jurisdiction.

Further Procedure

103. The Committee of Experts noted the following statement made by the Director General: "I am prepared to consult with a few consultants on the technical issues, to use the term of the Indian Delegation, in order to prepare either a separate paper or a separate chapter in a paper which will be submitted eventually to the next session of this Committee of Experts. I shall, among other consultants, in any case write to the Brazilian and the Indian Governments to appoint persons who would serve as consultants for this matter. The aim of the exercise, as I understand it, is to elucidate as clearly as possible all the technical issues which are involved and which will have a great bearing on such matters as the subject matter of the Treaty and the definitions, such as integrated circuits, design, layout-design, originality, reverse engineering and all the other aspects which are not the primary speciality of lawyers, but rather those who make or use the microchips."

104. The Committee of Experts also noted a statement by the Director General according to which the next session of the Committee of Experts would probably take place during the summer (of the Northern Hemisphere) of 1986.

105. *This report was unanimously adopted by the Committee of Experts in its meeting of November 29, 1985.*

ANNEXE/ANNEX—LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. Etats/States

(dans l'ordre alphabétique des noms français des Etats)/(in the alphabetical order of the French names of the States)

Allemagne (Republique Federale D')/ Germany (Federal Republic of)

Ingwer KOCH, Regierungsdirektor, Federal Ministry of Justice, Bonn
Jügen SCHADE, Head of Section, International Industrial Property Law, German Patent Office, Munich

Argentine/Argentina

Norma S. FASANO (Ms.), First Secretary, Permanent Mission, Geneva

Australie/Australia

Lauren G. HONCOPE (Ms.), Principal Legal Officer, Intellectual Property, Business Affairs Division, Attorney-General's Department, Barton, A.C.T.

Autriche/Austria

Robert DITTRICH, Director, Ministry of Justice, Vienna
Gudrun MAYER-DOLLINER (Mrs.), Hofrat, Austrian Patent Office, Ministry of Commerce, Trade and Industry, Vienna

Belgique/Belgium

Dominique VANDERGHEYNST, Secrétaire d'administration, Office de la propriété industrielle, Ministère des Affaires économiques, Bruxelles

Bresil/Brazil

Carlos Ignacio ZAMITTI MAMMANA, Director, Institute of Microelectronics, Technological Center for Informatics, Campinas, São Paulo
Clédio R. TREIGUER, Director, Technological Documentation and Information Center, National Institute of Industrial Property, Ministry of Industry and Trade, Rio de Janeiro
Oscar Luiz MONTEIRO DE FARIAS, Assistant for Informatics, National Institute of Industrial Property, Ministry of Industry and Trade, Rio de Janeiro
Paulo Roberto FRANÇA, Third Secretary, Permanent Mission, Geneva

Bulgarie/Bulgaria

Evelina STEFANOVA (Mme), Spécialiste en matière de brevets, Institut d'inventions et de rationalisations, Comité d'Etat pour la science et le progrès technique, Sofia

Canada

Howard P. KNOPF, Policy Advisor, Department of Consumer and Corporate Affairs, Hull (Quebec)
Peter A. VAN BRAKEL, Deputy Director, International Financial and Investment Affairs Division, Department of External Affairs, Ottawa

Chine/China

HE RU YING, Principal Director, Third Examination Department, Patent Office of the People's Republic of China, State Economic Commission, Beijing
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Danemark/Denmark

Johannes Norup-NIELSEN, Legal Adviser, Ministry of Cultural Affairs, Copenhagen
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Hans Jakob RIIS-VESTERGAARD, Head of Section, Patent and Trademark Office, Ministry of Industry, Copenhagen
Mogens KOKTVEDGAARD, Professor, Ministry of Cultural Affairs, Copenhagen

Etats-Unis D'Amerique/United States of America

Ralph OMAN, Register of Copyrights, United States Copyright Office, Library of Congress, Washington, D.C.
Harvey WINTER, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State, Washington, D.C.
Michael KEPLINGER, Attorney, Office of Legislation and International Affairs, United States Patent and Tradmark Office, Department of Commerce, Washington, D.C.
Dorothy SCHRADER (Ms.), Associate Register of Copyrights for Legal Affairs, United States Copyright Office, Library of Congress, Washington, D.C.
Michael J. REMINGTON, Chief Counsel, Subcommittee of Courts, Civil Liberties and the Administration of Justice, Committee of the Judiciary, United States House of Representatives, Washington, D.C.
Virginia WEINMAN (Mrs.), American Electronics Association, Palo Alto

Finlande/Finland

Jukka LIEDES, Special Adviser, Ministry of Education, Helsinki
Satu LAHTINEN (Miss), Government Secretary, Ministry of Education, Helsinki
Marja-Leena MANSALA (Mrs.), Secretary, State Copyright Committee, Ministry of Education, Helsinki
K. Miika TARHIO, Secretary, State Copyright Committee, Ministry of Education, Helsinki
Stig HENRIKSSON, Head, Legal Department, Confederation of Finnish Industries, Helsinki

France

Jean JONQUERES, Conseiller à la Cour de cassation, Paris
Benjamine VIDAUD (Mlle), Attachée à la Direction, Institut national de la propriété industrielle (INPI), Paris

Grece/Greece

Nicolas COUNINIOTIS, Représentant permanent adjoint, Mission permanente, Genève

Hongrie/Hungary

György PÁLOS, Director, Bureau for the Protection of Authors' Rights, Budapest

Inde/India

Gautam SONI, Additional Director, Department of Electronics, Ministry of Science and Technology, New Delhi
Skand Ranjan TAYAL, First Secretary, Permanent Mission, Geneva

Irlande/Ireland

Anne COLEMAN-DUNNE (Mrs.), Patent Office, Department of Industry, Trade, Commerce and Tourism, Dublin

Israel

Michael OPHIR, Deputy Commissioner of Patents, Patent Office, Ministry of Justice, Jerusalem

Italie/Italy

Marco G. FORTINI, Ministre plénipotentiaire, Délégué aux accords pour la propriété intellectuelle, Ministère des Affaires étrangères, Rome
Corrado POMPI, Fonctionnaire d'Etat, Office central des brevets, Ministère de l'Industrie, du Commerce et de l'Artisanat, Rome

Japon/Japan

Zentaro KITAGAWA, Professor, Faculty of Law, Kyoto University, Kyoto
Yoshihiro MASUDA, First Secretary, Permanent Mission, Geneva
Sachio KAMOGAWA, First Secretary, Permanent Mission, Geneva
Yusaku NAKATA, Staff Specialist for Technology Control, General Affairs Division, Machinery and Information Industries Bureau, Ministry of International Trade and Industry, Tokyo

Maroc/Morocco

Mohammed Saïd BENRYANE, Deuxième secrétaire, Mission permanente, Genève

Nigeria

Titilayo Ashiat OSINUGA (Mrs.), Legal Adviser, Federal Ministry of Trade, Lagos
Ezekiel Oladele JEGEDE, Registrar of Patents, Designs and Trade Marks, Federal Ministry of Trade, Lagos

Norvege/Norway

Jon BING, Associate Professor, Norwegian Research Center for Computer and Law, Oslo

Pakistan

Zamir AKRAM, Second Secretary, Permanent Mission, Geneva

Pays-Bas/Netherlands

Erik C. NOOTEBOOM, Legal Adviser, Industrial Property Matters, Ministry of Economic Affairs, The Hague

Republique de Coree/Republic of Korea

Kang Hoo LEE, Attaché, Permanent Mission, Geneva

Royaume-Uni/United Kingdom

Derek M. HASELDEN, Senior Examiner, Industrial Property and Copyright Department, Department of Trade and Industry, London

Suede/Sweden

A. Henry OLSSON, Director, Ministry of Justice, Stockholm
Jan-Eric BODIN, Head of Division, Royal Patent and Registration Office, Ministry of Industry, Stockholm
Karin MÖKBORD (Mrs.), Legal Adviser, Ministry of Justice, Stockholm

Suisse/Switzerland

Jean BORLOZ, Chef de division, Office fédéral de la propriété intellectuelle, Berne
Walter MOSER, Adjoint scientifique, Office fédéral de la propriété intellectuelle, Berne
Jean-Marie SOUCHE, Collaborateur juridique, Office fédéral de la propriété intellectuelle, Berne

Union Sovietique/Soviet Union

Vladimir MYASNIKOV, Director, Main Department, USSR State Committee for Science and Technology, Moscow
V.V. VARFOLOMEEV, Chief Engineer, All-Union Scientific Research Institute for State Patent Examination (VNIIGPE), Moscow

II. Organisations Intergouvernementales/ Intergovernmental Organizations

Organisation des Nations Unies Pour L'Education, la Science et la Culture (UNESCO)/United Nations Educational, Scientific and Cultural Organization (UNESCO)

Yves GAUBIAC, Division du droit d'auteur, Paris

Commission des Communautes Europeennes (CCE)/Commission of the European Communities (CEC)

Robert J. COLEMAN, Chef de division, Direction générale du marché intérieur et des affaires industrielles, Bruxelles
Bernhard POSNER, Administrateur principal, Direction, générale du marché intérieur et des affaires industrielles, Bruxelles

Organisation Europeenne des Brevets (OEB)/ European Patent Organisation (EPO)

Gert D. KOLLE, Head, Department for International Affairs I, Munich

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III. Organisations non Gouvernementales/non-governmental Organizations

Association des Industries de L'Electronique du Japon (EIAJ)/Electronic Industries Association of Japan (EIAJ)

Kiyoshi NAKAMURA, Associate Chief Engineer, Electron Device Group, NEC Corporation, Kanagawa
Kazuaki OGASAWARE, Manager, Engineering Department, Electronic Industries Association of Japan, Tokyo

Association Europeenne des Fabricants de Composants Electroniques (EECA)/European Electronic Component Manufacturers Association (EECA)

Robin J. BOXALL, European Patent Attorney, Patent Department, Philips Electronics, London
Arno KOERBER, Senior Director, Contracts and Patents, Siemens AG, Munich

Association Internationale Pour la Promotion de L'Enseignement et de la Recherche en Propriete Intellectuelle (ATRIP)/International Associaiton for the Advancement of Teaching and Research in Intellectual Property (ATRIP)

Ivan CHERPILLOD, Docteur en droit, Centre du droit de l'entreprise, Université de Lausanne, Lausanne

Association Internationale Pour la Protection de la Propriete Industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI)

Thierry MOLLET-VIEVILLE, Membre du Bureau, Avocat à la Cour, Paris
Philippe GUILGUET, Vice-président, Groupe français, Consultant, Paris

British Computer Society (BCS)

Robert J. HART, Chairman, Copyright Committee, Manager, Intellectual Property Development, Plessey Telecommunications and Office Systems Ltd., Liverpool
Bryan NIBLETT, Professor Emeritus, Department of Mathematics and Computer Science, University College of Swansea, Swansea

Chambre de Commerce Internationale (CCI)/International Chamber of Commerce (ICC)

Frederick T. BOEHM, Staff Counsel, Copyright and Trademark Matters, International Business Machines Corporation, Purchase (New York)
Janette M.W. BURAAS (Mme), Représentante de la CCI aux Nations Unies (Genève), Genève

Comite des Instituts Nationaux des Agents de Brevets (CNIPA)/Committee of National Institutes of Patent Agents (CNIPA)

John U. NEUKOM, Director of Patents, United Kingdom Atomic Energy Authority, London
Jan E.M. GALAMA, Director, Corporate Patents and Trademarks, Philips International B.V. Eindhoven
Werner VON WILLICH, Patent Attorney, Munich

Computer and Business Equipment Manufacturers Associaiton (CBEMA)

Frederick T. BOEHM, Staff Counsel, Copyright and Trademark Matters, International Business Machines Corporation, Purchase (New York)

Federation Internationale des Conseils en Propriete Industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Heinz BARDEHLE, President of Honor, Patent Attorney, Munich
Knud RAFFNSE, Vice President, Study and Works Commission, Patent Attorney, Copenhagen
Jean LECCA, Commission sur la protection juridique du logiciel et des circutis intégrés, Conseil en brevets, Paris

International Patent and Trademark Association (IPTA)

Ronald S. LAURIE, Attorney, Townsend and Townsend, San Francisco

Ligue Internationale du Droit de la Concurrence (LIDC)/International League for Competition Law (LIDC)

Jean-François LEGER, Conseil en brevets, Genève

Union des Industries de la Communaute Europeenne (UNICE)/Union of Industries of the European Community (UNICE)

Jan E.M. GALAMA, Director, Corporate Patents and Tradmarks, Philips International B.V., Eindhoven
Robert J. HART, Manager, Intellectual Property Development, Plessey Telecommunications and Office Systems Ltd., Liverpool
Michel COLOMBE, Responsable, Service de la propriété industrielle, Bull S.A., Paris

Union des Praticiens Europeens en Propriete Industrielle (UPEPI)/Union of European Practitioners in Industrial Property (UEPIP)

Jean LECCA, Vice-président, Conseil en brevets, Paris
Hans-Erich BOHMER, European Patent Attorney, Aidlingen-Dachtel (Federal Republic of Germany)

Union Internationale des Editeurs (UIE)/International Publishers Association (IPA)

Joseph A. KOUTCHOUMOW, Secrétaire géneral, Genève

IV. Bureau International de l'Organisation Mondiale de la Proprieto Intellectuelle (OMPI)/International Bureau of the World Intellectual Property Organization (WIPO)

Arpad BOGSCH, Directeur général/Director General
Klaus PFANNER, Vice-directeur général/Deputy Director General
Ludwig BAEUMER, Directeur, Division de la propriété industrielle/Director, Industrial Property Division
Jay ERSTLING, Chef de la Section de l'information sur le droit de la propriété industrielle, Division de la propriété industrielle/Head, Industrial Property Law Information Section, Industrial Property Division
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V. Bureau/Officers

Président/Chairman: A.H. OLSSON (Suède/Sweden)
Vice-présidents/Vice-Chairman:
Z. KITAGAWA (Japon/Japan)
V.A. MYASNIKOV, (Union soviétique/Soviet Union)
Secrétaire/Secretary: J. ERSTLING (OMPI/WIPO)

Government of Canada, Gouvernement du Canada; Government Response to the Report of the Sub-Committee on the Revision of Copyright

February 1986.

Mr. Gabriel Fontaine,
Chairman Sub-Committee on the Revision of Copyright, Standing Committee on Communications and Culture, Room 319, Confederation Building, House of Commons, Ottawa, Ontario, K1A OA6

Re: "Charter of Rights for Creators"

Dear Mr. Fontaine: Pursuant to Standing Order 70(16), we are writing to you in your capacity as Chairman of the Sub-Committee on the Revision of Copyright to provide you with the Government's comprehensive and positive response to the Sub-Committee's report "A Charter of Rights for Creators"

Canada's Copyright Act has not been revised in 62 years. The intervening years have witnessed the advent of radio, television, photocopiers, audio and video tape recorders, computers, satellites and a host of information storage and retrieval devices. All of these have become common instruments for the use and exploitation of intellectual property. Thus, technology change has rendered the present law unsatisfactory not only to creators, but also to the industries using copyright material and to consumers as well.

In November 1984, this government characterized copyright revision as an urgent priority matter. In the economic statement of the Minister of Finance, the Government announced that revision was to proceed urgently following extensive consultation.

In January 1985, the White Paper on copyright, *From Gutenberg to Telidon*, together with all matters of revision, were referred for study and report to the Standing Committee on Communications and Culture. An all-party Sub-Committee on the Revision of Copyright was immediately formed. In the course of the year, the Sub-Committee received over 300 written briefs and heard 111 witnesses at public hearings in Ottawa, Montreal and Toronto. Writers, artists, librarians, lawyers, publishers, the handicapped, musicians, dancers, cable companies, broadcasters and computer representatives were among those who participated in the broad-based consultation process.

The approach of the Sub-Committee recognizes the creators' special contribution to Canadian society and that they must be rewarded for the constantly increasing number and variety of uses of their works. Copyright legislation must reflect the legal recognition of the exclusive right of a creator to determine the use of a work and to share in the benefits produced by that use. We are pleased to say that the Government generally endorses this approach, as evidenced by the detailed response to the report.

One Sub-Committee member has presented a minority report centering upon a concern for potential increases in the outflow of royalities from Canada as a result of new protection being provided. This minority report and other particular concerns with respect to copyright revision are now the subject of futher examination. For example, new copyright legislation must recognize the balance between the legitimate interests of creators to be paid for the use of their works and the needs of users to have access to those works.

Copyright revision is one of our Government's highest priorities. Canadians' self-expression and future cultural development are largely dependent on the vitality of our publishing, film, recording and broadcasting industries but, above all, on Canadian creators for whom we must provide encouragement and protection. We must therefore create in Canada a climate where culture can thrive. Furthermore, we must respond to the challenges created by new technologies. For Canada to compete in an increasingly competitive international environment, it is necessary that effective protection be given to our creators in the computer and informatics sectors.

The Sub-Committee proposals will assist us in meeting these challenges. We wish especially to thank all five members for their extensive work and research and their significant contribution to this process of revision. We also wish to thank the staff of the Sub-Committee and all interested groups and individuals who have submitted briefs or appeared before the Sub-Committee for copyright revision.

Consequently, we will be proceeding with drafting of revisions to copyright legislation, based on the Government's response to the report of the Sub-Committee, for early introduction in the House of Commons.

Yours sincerely,

Michel Côté,
Minister of Consumer and Corporate Affairs.

Marcel Masse,
Minister of Communications.

DETAILED RECOMMENDATIONS OF THE SUB-COMMITTEE ON THE REVISIONS OF COPYRIGHT AND GOVERNMENT RESPONSE TO THE SUB-COMMITTEE RECOMMENDATIONS

A Charter of Rights for Creators

Sub-Committee's Recommendation

1. The Copyright Act should be expanded to include new property rights which reflect modern forms of creative activity and the various ways of communicating the fruits of that activity.

Government's Response

The government is strongly in favour of this objective of modernizing the existing Act and keeping it up to date in the future.

Sub-Committee's Recommendations

2. The revised law should recognize moral rights as an integral part of copyright.

3. All remedies for infringement of an economic right should be available for infringement of a moral right.

4. The term or protection for moral rights should be the same as the term of protection for economic rights.

5. The new Act should provide a moral right to authorize the use of any protected work in association with products, services, causes or institutions.

6. The revised Act should provide a moral right to prevent any modification of the original of an artistic work, including an element of a limited edition thereof, even in the absence of evidence of prejudice to the author's honour or reputation.

7. The right should be limited in order to permit the physical relocation of the work, the alteration of a structure containing the work, and legitimate restoration and preservation activities.

8. Unimpeded negotiations concerning the use and assignment of rights should be preferred whenever possible over compulsory arrangments, prohibitions and other predetermined outcomes.

Government's Response

The government agrees in principle with these recommendations.

However, recommendation 5 will not extend to works for which a blanket licence has been granted by a collective society of copyright owners so as not to oblige users to obtain a second authorization for works that such societies have been assigned to administer.

In addition, with regard to recommendation 8, a provision will be incorporated in the Act to limit the term of licences and of the assignment of rights so as to protect creators from abuses.

Subcommittee's Recommendations

9. The Crown in the right of Canada and in the right of every province should be subject to the provisions of the Copyright Act. Any exception to the above rule should be included in statutes dealing with emergency powers rather than in the Copyright Act.

10. Statutes, regulations and judicial decisions of courts and tribunals at all levels of jurisdiction should be in the public domain.

11. There should be no copyright in government works except as follows:

(a) a moral right of integrity to ensure the accuracy of works in the nature of standards should be provided;

(b) works produced by a Crown agency, such as the Canadian Broadcasting Corporation or the National Film Board, the purpose of which is to entertain rather than to assist in policy debate and evaluation, should be protected; and

(c) custom-made statistics and statistical works in restricted circulation should be protected if it is found desirable to continue the practice of making these works available to particular users on a cost-recovery basis.

12. Provincial public documents should have the same copyright status as federal ones and consultations should take place between the two levels of government on this issue.

13. Written submissions to Parliament, legislatures or to public bodies of inquiry should be in the public domain from the time of their receipt.

Government's Response

The government agrees in principle with recommendations 9, 10 and 13 and has begun consultation on this subject with the provincial governments.

The government feels that recommendations 11 and 12 raise a number of issues that ought to be examined in greater depth. A number of categories of works produced by the government and its agencies, other than those identified by the Subcommittee, might require protection.

As for recommendation 13, it will be necessary to ensure that this will not entail the removal of rights—particularly moral rights—that are not needed for the purpose of achieving the objectives sought by this recommendation.

Subcommittee's Recommendations

14. The revised law should recognize that corporate and co-operative entities can hold and exercise full rights, including moral rights.

15. First ownership of copyright should be vested in an employer in the case of works created by employees in the course of employment subject, as now, to any agreement to the contrary.

16. The revised law should clarify the meaning of "employee."

17. The copyright in commissioned engravings, photographs and portraits should vest in the author.

Government's Response

The government agrees with these recommendations. However, it will study whether the term "employee" should be defined in the Act, as suggested by the Subcommittee in recommendation 16.

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Writing and Publishing

Subcommittee's Recommendation

18. In view of the originality involved in their preparation, editions of literary, dramatic, musical and artistic works should be protected against unauthorized reproduction for 25 years from publication. Protection should be extended on a reciprocal basis to those countries with similar protection.

Government's Response

This recommendation is accepted in principle. However, the conditions and the procedure for the extension of the legislation to foreign editions will be defined in the Act.

Subcommittee's Recommendations

19. Translation should be expressly included in the revised law as proper subject matter of copyright protection, without prejudice to the rights of the owner of the copyright in the underlying work.

20. Blank forms should not be specifically excluded from protection, but should be subject to the same criteria as other works.

21. Maps, charts and plans should be treated as artistic works.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

22. Importation protection should be maintained for all copyright subject matter.

Government's Response

The government accepts this recommendation in principle.

Sub-Committee's Recommendations

23. A mechanism should be developed to compensate authors for the public lending of the works by libraries. The scheme should be independent of copyright law.

24. A specific right of reprographic reproduction should not be introduced.

25. No exception should be provided for reproduction by libraries.

Government's Response

The government agrees in principle with these recommendations.

Sub-Committee's Recommendations

26. The revised law should not provide for a compulsory licence to translate literary works.

27. The reproduction, public performance and printing compulsory licences should not be retained in the revised law.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

28. Provision should be made in the revised law for the Copyright Appeal Board to issue non-exclusive licences where a copyright owner cannot be located.

Government's Response

The government agrees with this recommendation. Such licences will be issed subject to the conditions stated in *From Gutenberg to Telidon*, particularly the following conditions:

—Proof, to the satisfaction of the Board, that a reasonable effort has been made to locate the copyright owner;

—Payment of royalties approximating what would be negotiated in the marketplace;

—Proof that the work against which the licence is sought has been published.

The Visual Arts

Sub-Committee's Recommendations

29. Consideration should be given to a new designation of "artistic works" in general and to "engravings" in particular.

30. The original of an artistic work should include separately identifiable reproductions of that work in a limited edition.

31. "Works of choreography," "works of performance" and "pantomimes" should be placed in a separate category of protected subject matter. Such works should not need to develop a dramatic plot or sequence in order to be protected.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

32. Work on the revision of the Industrial Design Act should be accelerated.

33. Pending revision of the Industrial Design Act, section 46 of the Copyright Act should be immediately amended to eliminate the availability of copyright to protect industrial articles incorporating functional designs.

Government's Response

The government accepts these recommendations.

Sub-Committee's Recommendations

34. The revised law should recognize a right to exhibit the original of an artistic work in public. This right should also extend to artistic works which are part of a limited edition.

35. Droit de suite should not be introduced at this time in the new Act. Ongoing study should be undertaken to evaluate fully the implications of the right.

36. Ownership of copyright in a photograph should vest in the person who composed the photograph.

37. There should be no specific exception from copyright liability for the benefit of photofinishers.

Government's Response

The government agrees in principle with these recommendations.

Musical Works

Sub-Committee Recommendations

38. The category of musical work should be defined in an illustrative manner.

39. The full range of economic and moral rights should apply to musical works, including the new moral right of endorsement.

40. The revised law should not contain an exception for fairs and exhibitions from the payment of royalties for the public performance of music.

41. The revised Act should provide an exception from copyright liability for the public performance of a musical work during a religious service.

Government Response

The government agrees with these recommendations in principle.

Recommendation 38 will be considered when defining the concept of fixation of a work.

Recommendation 39 will be subject to the reservation made in our response to recommendation 5.

Sub-Committee Recommendation

42. The revised law should not retain the compulsory license for the making of sound recordings.

Government Response

The government accepts this recommendation in principle but will ensure that it is implemented in a flexible manner and will adopt the appropriate transition mechanism if required.

Sub-Committee Recommendations

43. The revised law should not contain a general exception for the public performance of copyright works by means of jukeboxes, radios, television sets and playback machines.

44. The revised law should contain an exception from copyright liability for performances of protected works by

means of radios, television sets and playback machines that incidentally take place in public.

Government Response

The government accepts these recommendations.

Audio-Visual Works

Sub-Committee Recommendations

45. The new Act should provide for a distinct category of protected subject matter to be called "audio-visual works".

46. Audio-visual works should be defined to include any work in which an image appears to be in motion, with or without sound, on any material support.

47. Audio-visual works should be defined to include pre-programmed works where the movement of the picture may be the result of a player's interaction with a computer program.

48. The new Act should define the phrase "in public" as regards the right to perform in public so as to include situations where individuals share living quarters by reason of their work, education, vacation or detention.

49. "Performance in public" should be defined to include those performances effected by means of a video jukebox even where such performances can be viewed only by one person at any given time.

50. The new Act, in defining "publication", should take into account the various methods of making a work available to the public other than by issuance of copies of that work.

51. Audio-visual works should be protected for the shorter of 50 years following publication or 75 years following fixation.

Government Response

The government agrees with these recommendations in principle. The suggested definitions will be considered when developing the Act.

Computers

Sub-Committee Recommendations

52. A new right to input any protected work into a computer should be provided in the revised law.

53. There should be no right of display in the revised law.

54. Fixation should be defined as all means capable of capturing a work, including capture in computer media, but excluding capture in a medium as volatile as a computer's main storage or display screen.

55. With respect to the right of reproduction, a material form should be one that has a certain degree of permanence.

56. Where a work created with the assistance of a computer is original the copyright in that work should be owned by the person responsible for its making and not by the owner of the copyright in the original program.

57. Ownership in compilations produced by computer data storage and retrieval systems should be vested in the individual or entity primarily responsible for the arrangements undertaken for making the compilation.

58. Computer programs should be protected by the revised law as a separate category of subject matter with the full regime of protection on the basis of reciprocity.

59. The Act should provide an exception to the right of reproduction to permit the making of a back-up copy.

60. The term of protection for computer programs should be the life of the author plus 50 years.

61. The government should study the possibility of providing an exception to permit the reproduction of a substantial part of a pre-existing program as a non-substantial part of another program.

62. Mask works fixed in semi-conductor chips should be protected by new legislation outside the *Copyright Act*.

63. The mask works to be protected are a series of related images that represent the three-dimensional pattern of circuits and components fixed in a semi-conductor chip.

Government Response

The government agrees with these recommendations in principle.

The issue of the right of display mentioned in recommendation 53, however, will be studied in further detail.

Recommendation 54 will be considered when defining the concept of fixation.

With regard to recommendation 58, the government agrees in principle that computer programs should benefit from the full regime of protection. However, it will give national treatment to foreign computer programs.

The government has studied the possibility of providing the exception suggested in recommendation 61 but has decided against it.

Finally, mask works fixed in semi-conductor chips will be protected in the Copyright Act but will be distinguished from traditional works.

Neighbouring Rights

A. Sound Recordings

Sub-Committee Recommendations

64. A sound recording should be protected as a separate category of copyright subject matter.

65. The revised law should provide the full regime of copyright protection to sound recordings. Public performance, transmission and retransmission rights should be extended only to nationals of those foreign countries which provide similar protection to Canadians.

66. The owner of the copyright in a sound recording should be the individual or entity principally responsible for the arrangements undertaken for its making.

67. The performance of a sound recording during a religious service should not constitute an infringement of copyright.

68. The revised law should not contain an exception for the public performance of sound recordings by means of jukeboxes, radios, television sets and playback machines.

69. The revised law should contain an exception from copyright liability for uses of sound recordings that incidentally take place in public.

70. Sound recordings should be protected for the shorter of 50 years following publication or 75 years following fixation.

Government Response

The government agrees with these recommendations in principle.

However, since these products are different from traditional creative works they will be included in the Act under a separate category although they will benefit from certain of the rights applicable to such works. There rights are known as neighbouring rights.

Apart from the right of reproduction recognized for sound recordings under the present Act, regardless of their national origin, the new Act will grant them public performance, transmission and retransmission rights. The conditions and mechanism for extending these new rights to sound recordings of foreign origin as suggested in recommendation 65 will, however, be defined in the Act.

B. Performer's Performances

Sub-Committee Recommendations

71. The performances of performers should be a new category of subject matter with the necessary regime of protection.

72. The protection of performers' performances should be extended to

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nationals of those foreign countries which provide similar protection to Canadians.

73. Performers should be the first owners of the copyright in their performances.

74. Performer's performances should be protected for a term of at least 20 years from the time of fixation of the performance.

Government Response

The government agrees with these recommendations in principle.

As with sound recordings, however, the Act will assign performances to a separate category from that of traditional creative works as such.

The rights to be granted to performers under the Act will be defined at a later date as will the conditions and mechanism for extending these rights to nationals of foreign countries as suggested in recommendations 72.

Recommendations 73 will be subject to recommendation 15, on which we have already commented.

C. Broadcasts

Sub-Committee Recommendations

75. Broadcasts should be protected under the revised Act.

76. The rights attaching to broadcast should be—

(a) A right of reproduction;
(b) A right of transmission;
(c) A right to authorize each of the above; and
(d) A right of retransmission.

77. The rights should be provided to foreign broadcasters on the basis of reciprocity.

78. Broadcasts should be protected for a period of 25 years from the date of their fixation.

79. It should not be a copyright infringement to use incidentally an artistic work without authorization in a broadcast.

80. Exceptions should be provided for the making of ephemeral recording by broadcasters.

(a) pursuant to CRTC regulations, or
(b) in order to permit the broadcasts of the program in a different time zone provided that the recording is erased after eight days.

81. A broadcaster should not be required to identify the authors of works broadcast except where the identification is incorporated in the work itself.

Government Response

The government agrees with these recommendations in principle.

Broadcasts, however, will be assigned to a separate category together with sound recordings and performers' performances.

The conditions and mechanism for extending the rights granted under the Act to foreign broadcasters, as suggested in recommendation 77, will be defined in the Act.

In line with the routine practices of broadcasters, recommendation 80 concerning ephemeral recordings will be amended to cover not only the situations described in paragraphs (a) and (b) of the recommendation but also the situations described in *From Guteberg to Telidon;* thus,

—Broadcasters and cable or satellite systems will be able to pre-record works for transmission as long as such transmission has been authorized;
—The duration of the exception will be extended to 6 months after initial transmission;
—Upon the expiry of the prescribed period, recording may be kept only for research and study purposes.

Fair Dealing

Sub-Committee Recommendations

82. The present fair dealing provisions should not be replaced by the substantially wider "fair use" concept.

83. The nature of fair dealing as a defence to an action for infringement should not be changed.

84. The purposes for which fair dealing can be a defence should be retained but should be revised to indicate that research must be private to qualify and to indicate that all media of news reporting are covered.

85. Factors to be considered by the court may be listed but should be illustrative only and not priorized.

86. Fair dealing should not apply to unpublished works.

Government Response

The government agrees with these recommendations in principle.

The Act will, however, grant the benefit of the fair dealing exception for research purposes, private or otherwise, for unpublished works deposited with archival or conservation institutions.

Finally, the government will examine the possible impact of these recommendations on research practices in general.

Requests for Special Consideration

Sub-Committee Recommendation

87. The revised law should permit the production of special media materials without the authorization of the copyright owner but with payment to be made in accordance with tariffs established by the Copyright Appeal Board.

The government partly accepts this recommendation, which will not be accompanied by the obligation to pay royalties. This measure is suggested by the appropriate recommendations in the *Obstacles* report.

Sub-Committee Recommendations

88. The revised law should provide an exception to permit an archival institution to make a copy of a work which is not otherwise available and which is already in its collection, for the purpose of preserving the archival copy of that work.

89. An exception should be provided to permit an archival institution to make a copy of a work for another archival institution where the latter has received a request for a copy of a work from an individual researcher for the purpose of private research. The making and issuance of copies under this exception should not constitute publication.

90. The revised law should provide an exception to permit teachers and students, in the normal course of teaching activities to:

(a) Perform a work in public;
(b) Transmit and retransmit a work within the confines of a single educational institution.

91. An exception should be provided to allow for the reproduction of a work as part of questions to be asked, or answered, in an examination.

Government Response

The government accepts these recommendations.

Renting Right

Sub-Committee Recommendation

92. A new renting right attaching to all categories of protected subject matter should be provided in the revised law.

Government Response

The government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

Home Copying

Sub-Committee Recommendations

93. Home copying should be permitted under the revised law subject to the payment of compensation in the form of a royalty on the material support and on the machine used to reproduce the work.

94. The mechanism for establishing the amount of royalties should be the filing of tariffs for approval by the Copyright Appeal Board.

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95. Payment should be made by the manufacturers or importers directly to the collectives.

96. Where works are protected on a reciprocal basis, the owners of copyright in those works should participate in the compensation system on a reciprocal basis.

Government Response

The Government recognizes the merit of the Sub-Committee's objective to compensate creators but will have to examine the best way to implement it.

Retransmission

Sub-Committee Recommendations

97. A retransmission right should be provided in the revised law.

98. Where works are protected on a reciprocal basis, the owners of copyright should benefit from a retransmission right on a reciprocal basis.

99. The government should examine the desirability of bringing all broadcasting and retransmission activities under an expanded definition of a transmission right.

100. The right of retransmission should be defined in general terms and should not depend on current technology.

101. Common carriers should be exempted from copyright liability.

102. The right of retransmission to be provided in the revised law should be limited by a compulsory license, with tariffs to be established by the Copyright Appeal Board.

103. The Copyright Appeal Board should determine the total economic value of all retransmission activities in Canada.

104. The Board should set a tariff based on that evaluation and whatever other criteria that the Board deems relevant but should not consider the number and composition of the signals carried by an individual retransmission system.

105. In assessing the economic value of retransmission activites, the Copyright Appeal Board should assign a lower value to the retransmission of local signals.

106. Local signals should be defined as those reaching the broadcaster's target market by whatever means.

107. The target market of the broadcaster should be determined by reference to such factors as the content of the programming involved, the marketing activity of the broadcaster, and the origin of the broadcaster's advertising revenues.

108. Retransmission systems should be considered within the scope of a broadcaster's target market irrespective of the broadcaster's success in deriving income from it, as long as the broadcaster's own behaviour demonstrates an intent to benefit from it financially.

109. Small cable systems serving small and isolated communities should be shielded from any material impact arising from the introduction of a retransmission right.

Government Response

The government agrees with the principles outlined in recommendations 97, 100, 101, 102 and 109. Recommendation 109, however, will extend not only to cable systems but also to those using other technologies to serve such communities.

As for the scope, implementation and operation of the system, when the new legislation is in place, the government intends to proceed as follows:

1. Local signals, which remain to be defined, will be excluded from the new system.

2. The Copyright Appeal Board will study the matter and report to the government on the system to be adopted.

3. The system will be implemented on a date to be set by proclamation.

4. The tariffs set by the Copyright Appeal Board will be subject to a right of review by the Governor in Council.

Collectives

Sub-Committee Recommendations

110. The collective exercise of copyright should be encouraged.

111. The Copyright Appeal Board should be vested with the authority to regulate all collectives.

112. Membership in collectives should continue to be voluntary.

113. Creators should continue to be allowed to grant exclusive licenses to collectives.

Government Response

The government agrees with these recommendations in principle.

The issue raised in recommendation III, however, will be examined at the same time as recommendations 114 to 126 regarding the Copyright Appeal Board.

Copyright Appeal Board

Sub-Committee Recommendations

114. The Copyright Appeal Board should be re-named the Copyright Board.

115. The Board should not be granted powers to intervene in the administration of collectives.

116. The Board's jurisdiction should be limited to hearing evidence only where a proposed tariff is in dispute.

117. The Board's jurisdiction should be limited to setting rates.

118. The Board should be granted the usual powers of a court of record, including the authority to issue subpoenas and require the production of documents.

119. Dealings with the Board should be with the Board directly, and not through the responsible Minister.

120. Previously approved rates should remain in effect until such time as the Board has approved new rates.

121. The Board's decisions should be subject to appeal to the Federal Court on matters of law.

122. The Board should be composed of five permanent members, appointed for a fixed renewable term by the Governor in Council.

123. Members should be removable only for cause.

124. Members of the Board should have legal, financial or copyright expertise.

125. The Board should be supported by its own staff and outside professional assistance as required.

126. The Board should be an independent body reporting to Parliament through the responsible Minister.

Government Response

The government generally agrees with the recommendations.

The conditions that will apply to the Board—its jurisdiction, powers, organization and operations—remain, however, to be articulated.

Registration

Sub-Committee Recommendations

127. A voluntary system of copyright registration should be maintained.

128. In an application for copyright registration, more information, supported by an affidavit, should be provided to the Registrar as to the identification and nature of the work and as to how the applicant derived title.

129. Fees for registration should be set at a level which will ensure that the system is administered on a cost recovery basis.

130. Requirements for registration of a work consisting of multiple parts should be clarified.

131. The legal effect of a certificate of registration should be to establish two rebuttable presumptions: that copyright subsists in the work and that the person named as owner on the certificate of

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registration is the owner of the copyright in the work.

Government Response

- The government agrees with the recommendations in principle.

Infringement and Remedies

Sub-Committee Recommendations

132. The definition of what constitutes copyright infringement should be reviewed.

133. The existing system of civil remedies should be used as the basis for revision.

134. A system of statutory damages should be introduced.

135. The protection afforded by Schedule C of the Customs Tariff should be retained.

136. The criminal offences under the existing Act should be retained and the monetary penalties increased to one million dollars.

137. Study should be made of the feasibility of extending prejudgment procedures presently available only in one or the other of Canada's legal systems, to both systems.

Government Response

The government agrees with these recommendations in principle.

The protection mechanism mentioned in recommendation 135, however, will be developed at a later date.

The offenses and penalties mentioned in recommendation 136 may be structured so a to treat minor infringements differently from major ones.

Sweden

Copyright and Computer Technology

Committee on the Revision of the Copyright Law

1 Introduction

In this report, "Copyright and Computer Technology", the Committee on the Revision of the Copyright Law submits proposals for certain amendments to the Copyright Act which are considered desirable in view of the impact of computer technology.

The introductory part of the report contains a fairly detailed description of computer technology and of how it relates to input and output of material into or out of computer systems, as well as a technical description of how computer programs are created. This part also contains a summary of the work which has been conducted in recent years by the intergovernmental organizations in this field.

The consideration deal substantially with three major issues, viz. (a) copyright problems relating to storage, retrieval and creation of works etc. by means of computers, as well as the protection for data bases, (b) the protection of computer programs and, (c) the protection of integrated circuits (semiconductor chips).

2 Storage and Retrieval etc. of Works by Means of Computers

As regards storage and retrieval of works by means of computer technology the considerations are to a large extent based on the 1982 WIPO/UNESCO Recommendation on these issues. This part of the report discusses how the exclusive rights under copyright law would apply in these cases, viz. when works as such, or abstracts or single information items are stored in a computer system. The report subscribes to the internationally accepted view that input of protected material into a computer amounts to reproduction under copyright law. As regards data bases as such they could be either compilations (in case they contain a selection of protected works) or a collection of information or other items structured in such a way as to make the base itself a protected work. If the base is not elaborated in such a way that it can be considered as the result of intellectual creativity, it could enjoy protection under a specific provision in the Copyright Act which grants ten-year protection against reproduction to "catalogues, tables or other such products containing a large number of information items."

As regards output of protected material from a computer, including such use of a data base itself, the report states that such output is an act of reproduction of the work in case physical copies are produced, and as a type of public performance or public display in cases where the output is shown on a screen which is made available to the public under the criteria of the Copyright Act in this respect. In view of the fact that frequently copies are made when a work is made available on a screen, the report also considers the introduction of a rule of presumption to the effect that the output of a work on a screen should, in the absence of proof to the contrary, be considered as an act of reproduction. Such a rule is, however, considered as going too far and no proposal is submitted in this respect.

The report contains an analysis of how various specific provisions in the Copyright Act would apply to the use of computers. The first issue to be discussed is the concept "publication" in relation to works used in a computer system. As regards such works it is frequently difficult to determine *when* the copies of the work have been made available to the public so as to meet the criteria for publication and also *which copies* could be considered as published. The report discusses whether the definition of "publication" should be amended so as to take care of this situation, but no such amendment is proposed.

As regards other specific provisions in the Copyright Act, particularly the various provisions governing limitations to exclusive rights, the report discusses these problems in detail but no specific amendments are proposed.

3 Protection of Computer Programs

The second part of the report dealing with substantive copyright law contains considerations and proposals concerning computer programs.

No proposal is made for including a definition of "computer programs" in the Copyright Act itself but the report contains a detailed discussion on this issue, on the basis, inter alia, of the definitions in foreign laws and of definitions proposed by a Working Group which met in Canberra in April 1984.

In its report the Committee unequivocally takes the view that computer programs are to be considered as a type of literary works under the Copyright Act and enjoy protection under the Act provided that they are the result of an act of intellectual creativity. This should be clarified by inserting in the Act a mention of such programs as a category of protected works. The protection applies to the program regardless of the material support in which it is embodied and regardless of its character of source code of object code. Obviously the protection applies, in conformity with established copyright law principles, only to the form in which the creator has put his ideas but not to, e.g., ideas or algorithms as such contained in the program.

The question is also raised whether programs which do not reach the level of originality required for copyright protection could nevertheless enjoy protection under the previously mentioned special provision governing protection of collections of large number of information items. The Committee considers, however, that in principle this provision is not applicable to computer programs.

Basically the protection which computer programs would thus enjoy under copyright law covers most of the practical need for such protection. The right-owner would enjoy an exclusive right in respect of all kinds of

reproduction and also in respect of, e.g., adaptation of the program. Situations may, however, occur when the copyright protection would not be entirely sastisfactory, e.g. in cases when a protected program is used in a way which would not amount to a reproduction or when the ideas contained in a program are used for the creation of a new program in a way which would be considered as contrary to honest practice but which would not be a violation of copyright law. The Committee concludes, however, that the time is not ripe for the introduction of provisions governing such specific protection.

The Committee then discusses certain particular aspects of the application of copyright law to computer programs, and certain amendments to the Act are proposed in this respect.

The Copyright Act contains a provision which admits the making of single copies of protected works for private purposes. For a number of reasons, in particular the vulnerability of computer programs in this respect, the Committee considers that the availability of such private copying of programs should be prohibited.

Another issue dealt with in the report concerns the need for a program user to make certain copies or adaptations of the program in the course of lawful use. A provision to take care of this need is proposed and is framed on the lines of certain corresponding provisions in other countries. The provision has the nature of a rule of presumption applying, unless othewise agreed, to such cases where a license is granted for the right to use a computer program, including the case when a lawful copy is bought by someone in the open market on the obvious assumption that he is allowed to use it in a computer. In such cases this lawful user has a right to make such copies and in the copies make such adaptions as are necessary for the utilization admitted, and also copies which are deemed necessary for the purpose of back-up and safeguarding in case of accidents. Such copies may not be used for other purposes and shall be destroyed at the latest when the right to utilize the program expires.

The Copyright Act contains a basic provision granting the author an exclusive right to control the distribution to the public of copies of his work. There are, however, far-reaching limitations to this right implying, inter alia, that published copies of literary and to a certain extent also musical works and works of art may be further distributed to the public. Computer programs are, as mentioned above, considered as a type of literary works and would, in the absence of other provisions, be governed by those provisions concerning exhaustion of the distribution right. The Committee considers, however, that such a solution would not be satisfactory. It is proposed that authorization by the right-owner should be required of rental or lending to the public of copies of computer programs in a machine-readable form.

Works created within the framework of the activities of public authorities are under Swedish copyright law bascially outside the scope of copyright protection. It is now proposed that computer programs should enjoy such protection also in cases when they are created by such public authorities.

In addition to the foregoing points the report considers a number of issues related to computer programs. Among them may be mentioned the transfer of rights in such programs when created in employment situations. These considerations do not, however, result in concrete proposals for amendments to the Copyright Act.

4 Protection of Integrated Circuits (Chips)

An important part of the report deals with the intellectual property law protection of integrated circuits.

Following an explanation of the technical procedures used for the production of semiconductor chips and of the contents of the United States Semiconductor Chip Protection Act of 1984 the Committee considers whether the present Swedish Copyright Act grants any protection to the design of the electronic circuitry in such chips. The conclusion is that such designs can in principle be a kind of works enjoying protection under the Act. The main basis for this conclusion is that the concept "work" in the Act is described in a general and comprehensive way and is expressly intended to cover expressions of creativity which were not even considered at the time when the law was enacted. Furthermore the underlying purpose of a work is entirely irrelevant for the question of protection. Whether and to what extent the copyright protection would apply to the various physical expressions of the particular circuitry design is a different matter, where some hesitation might exist as to the applicability of copyright protection.

This conclusion about the copyright nature of the designs for integrated circuits has a bearing only on the principle. There exist no court cases, however, and consequently the applicability of the Copyright Act is not secured for all practical cases. As just mentioned the same uncertainty applies to how far the exclusive rights under copyright law would cover the practical need for protection. The Committee considers that such an uncertainty is not acceptable in this economically very important area where moreover the Swedish high technology industry has important interests at stake. The Committee consequently proposes a specific provision governing protection of designs for integrated circuits. This provision is to a very large extent based on the provisions in the U.S. Act of 1984 and is designed to meet the special aspects of the protection of such circuitries. This special protection is intended to exist in addition to the copyright protection which may exist. This would probably mean in practice that protection is sought under these special provisions rather than under the more uncertain protection under copyright law.

The proposed special protection is included as an article, 49 a, in the Copyright Act but has the nature of a sui generis, formality-free ten-year protection for circuitry design against copying and against the transfer of it into material support in any form whatsoever and also against making the circuitry design available to the public without the consent of the right-owner. A tentative translation of the proposed provision is included in an *Annex* to this English Summary.

The explanatory notes to the various paragraphs in the proposed Article 49 a underline certain important points.

Under *paragraph 1* the subject matter for protection is the "design for the patterns of the circuitry in a semiconductor chip product" (in short "circuitry design"). This concept is intended to correspond basically to the concept "mask works" in the United States Semiconductor Chip Protection Act. The protection applies to the design, i.e. the form, and not to ideas, concepts, algorithms etc.

A certain degree of originality or creative effort is required for protection. This is indicated by the use of the word "created" in the text. Such creation could be either the production of an entirely new and original design or a kind of compilation of elements from "libraries" of pre-existing standardized design parts. No novelty criterion applies. Consequently it could theoretically happen that identical or similar circuitry designs are created. This possibility is, however, considered as merely hypothetical because of the complexity of such designs.

The paragraph also describes the exclusive rights which the creator of the circuitry design enjoys. One such right

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applies to the making of copies of the design directly or indirectly regardless of the way in which such copies are made or the technique used. The right consequently covers also such situations where the circuitry design is transferred into a silicon chip, whether this transfer is made by means of a mask or in another way, e.g. when the design is stored in a data base or in a computer program and is then transferred into the chip, e.g. by means of electronic ray technique.

Another basic right granted to the creator of the circuitry design is the right to control the distribution to the public of copies of the design by means of sale, leasing, or in any other way. This right applies not only to the "first sale" but to all subsequent such acts. The right applies not only to copies of the original design but also to this design in a modified or adapted form.

The protection is automatic and requies no registration and no "mask work notice". To require formalities would cause problems in relation to the obligations under the Berne Convention for such circuitry designs as may enjoy copyright protection. The absence of formalities is not considered to weaken the protection in any way. For all practical purposes the designs are easily recognizable by experts and the fact that infringements occur could consequently be proved by expert evidence. The explanatory notes indicate, however, that it might nevertheless be feasible to attach some sort of a notice to the circuitry designs to serve as a reminder about the protection and to secure protection abroad. It is recommended that any notice should have the same features as the U.S. "mask work notice" in order to secure international uniformity in this respect.

The period of protection is ten years to be computed from the end of the year in which the circuitry design was created. In case of e.g., adaptation of an original circuitry a new period commences for the adapted version to be computed in the same way.

Paragraph 2 contains a limitation on the exclusive right of reproduction and implies basically that copies may be made for the purpose of teaching on and analysis of the protected circuitry design. This corresponds to the provisions governing "reverse engineering" in the U.S. Act. Copies made for such purposes must not be used for other purposes.

The specific protection under Article 49 a does not contain any moral rights, nor does it allow copying for private purposes. However, if an integrated circuit contains a computer program the proposed specific limitation of the availability of private copying of such programs comes into play.

Paragraph 3 contains a limitation on the right to authorize or to prohibit distribution to the public of copies of the circuitry design. The provision implies that products, e.g. pocket calculators and watches, which contain circuitry designs and which have been distributed to the public with the consent of the creator of the design may be further distributed without authorization by the right-owner. This is a kind of "first sale" exhaustion of the distribution right.

Paragraph 4 is basically only a reference to certain provisions in the copyright law part of the Copyright Act which deal with the transfer of rights. The references are explained in the translation.

Paragraph 5 states a very important principle, viz, that copyright law may be invoked if the circuitry design or part of it is protected under copyright law. Inter alia because a reference in this respect is made only to paragraph 1 of this Article the provision governing reverse engineering would apply also to such circuitry designs as enjoy copyright protection. It has not been considered feasible to make a distinction in this respect between various categories of circuitries.

Invoking copyright law also implies, inter alia, that moral rights apply, that the period of protection is longer and also that the international copyright obligations would apply.

In addition it should be mentioned that the inclusion in the Copyright Act of the specific provisions governing the protection of circuitry design means that, e.g., the sanctions provided for in relation to copyright infringements apply also to infringements of the rights under these specific provisions. Consequently wilful or grossly negligent infringements may be punishable by fines or imprisonment up to two years. Furthermore compensation for damages shall be paid and this also in case of lesser negligence. The court may order, e.g., the destruction of infringing copies. The sanctions apply also in case of import into the country, for the purpose of distribution to the public, of copies of protected material produced abroad under such circumstances that such production in Sweden would have been unlawful.

Article 61 as amended according to the proposal contains the basic principle that the specific protection of circuitry designs applies only to such designs of Swedish origin and to such designs which have been first published in this country. Article 62, as presently worded, however, authorizes the Government to provide for the application of the Copyright Act in relation to other countries on the basis of retroactivity. It is envisaged that such a Government decision will make the new provisions in Article 49 a applicable also to other countries which grant basically similar protection to Swedish circuitry designs.

The provision governing the entry into force of the new provisions makes them applicable also to works and circuitry designs created before their entry into force.

Annex

Tentative Translation of the Proposed Articles in the Copyright Act Dealing With the Specific Protection of Integrated Circuits

Article 49a

The person who has created the design for the patterns of the circuitry in a semiconductor chip product has an exclusive right to

1. authorize or prohibit acts implying the making of copies of that design

2. the transfer of the design on to or into a material support

3. the making available of that design to the public, in the original form or in an amended form, by means of sale, lending, leasing or any other kind of distribution of copies to the public. This right subsists to the end of the tenth year from that during which the design was created.

Copies of the circuitry design may, irrespective of the provisions in paragraph 1 or elsewhere in this Act, be made solely for teaching or analysis of the design. Copies thus made must not be used for other purposes.

Copies of items which contain a circuitry design and which have been distributed to the public with the consent of the creator of the design may be further distributed to the public.

The provisions contained in Articles *27* (concerning the general admissibility of transfer of rights under the Copyright Act) and 28 (stating that the person who acquires a right in a work may not, unless otherwise provided, make changes in the work or further transfer the right) apply also to the transfer of rights under this Article.

Protection under copyright law may, regardless of the provisions in paragraph 1, be invoked if the circuitry design or part of it is protected under copyright.

Article 61 is to be amended as follows

The provisions of Article 49a apply to circuitry designs created by Swedish citizens or by persons who have their habitual residence in Sweden, as well as to such designs as have first been published in Sweden.

The proposed provisions governing the entry into force of, inter alia, Article 49a make this Article applicable also to circuitry designs which have been created before the entry into force of the new provisions.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 775 final

Brussels, 23 December 1985

Proposal for a

Council Directive

On the Legal Protection of Original Topographies of Semiconductor Products

(Submitted to the Council by the Commission)

Proposal for a

Council Directive

On the Legal Protection of Original Topographies of Semiconductor Products

The Council of the European Committees,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100 and 118 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas the functins of semiconductor products depend in large part on the topographies of such products and whereas the development of such topographies requires the investment of considerable resources, human, technical and financial, while topographies of such products can be copied at a fraction of the cost needed to develop them independently;

Whereas semiconductor products are playing an increasingly important role in a broad range of industries and semiconductor technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas topographies of semiconductor products are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas certain existing differences in the legal protection of semiconductor products offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards semiconductor products and such differences could well become greater as Member States introduce new legislation on this subject;

Whereas existing differences having such effects need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the common market to a substantial degree need not be removed or prevented from arising;

Whereas the export to non-member States of semiconductor products manufactured within the Community will depend in large part on those States extending substantially on the basis of reciprocity adequate legal protection to the topographies of such products; therefore to safeguard such exports a Community measure is needed to provide such legal protection in accordance with developing international standards; whereas the basis on which topographies of semiconductor products developed by persons outside the Community are to be protected within the Community should accordingly be such as to favour the extension of legal protection in those countries to topographies of semiconductor products developed by nationals and residents of the Member States; and whereas this basis is thus a matter of significance to the Community as a whole and, if necessary, should be decided at Community level;

Whereas the Community's legal framework on the protection of original topographies of semiconductor products can accordingly in the first instance be limited to certain basic principles by provisions specifying who and what should be protected, the exclusive rights on which protected persons should be able to rely to authorise or prohibit certain acts and for how long the protection should last;

Whereas other matters can for the time being be decided in accordance with national law, in particular, whether Member States rely on the provisions of copyright laws or on provisions enacted specifically for the purpose of protecting topographies of semiconductor products or on a combination of these provisions, whether registration or deposit is required as a condition for the subsistence of protection and, with the exception of a provision applicable to innocent infringers, whether and on what conditions third parties may obtain licenses in respect of protected topographies;

Whereas, however, this flexibility in the Community framework for the time being needs to be balanced by provisions designed to prevent new obstacles arising to trade between Member States in semiconductor products, in particular as regards marking of such products and, as soon as circumstances permit, a common registration and deposit procedure in the event that more than one Member State makes the subsistence of protection conditional on the fulfillment of such conditions;

Whereas protection of original topographies of semiconductor products under copyright laws or some specific form of protection should be without prejudice to the application in appropriate cases of some other forms of protection;

Whereas further measures designed to facilitate reliance on laws granting protection to original topographies of semiconductor products in the Community can be considered at a later stage, while the application of common basic principles by all Member States in accordance with the provisions of this Directive is an urgent necessity;

Has Adopted This Directive:

Chapter 1—Definitions

Article 1

For the Purpose of This Directive,

(a) a "semiconductor product" means the final or an intermediate form of any product,

(1) consisting of a body of material which includes a layer of semiconducting material; and

(2) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a pre-determined three-dimensional pattern; and

(3) intended to perform, exclusively or in part, an electronic function.

(b) the "topography" of a semiconductor product means a series of related images, however fixed or encoded,

(1) representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and

(2) in which series, each image has the pattern or part of the pattern of the surface of the semiconductor product in its final or any intermediate form.

(c) "commercial exploitation" of the topography of a semiconductor product means to make available to the public by sale, rental, leasing or any other method of commercial distribution the topography or a semiconductor product manufactured by using the topography.

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Chapter 2—Protection of Original Topographies of Semiconductor Products

Article 2

1. The Member States shall protect the topographies of semiconductor products by conferring exclusive rights in accordance with the provisions of this Directive.

2. Exclusive rights may be conferred by the provisions of national copyright laws, by provisions enacted for the specific purpose of protecting the topographies of semiconductor products, or by a combination of these provisions.

3. However, the topography of a semiconductor product shall not be protected unless it satisfies the condition that it be original in the sense that it is the result of its creator's own intellectual effort. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall not be considered original unless the combination of such elements, taken as a whole, is original and not commonplace.

Article 3

1. Protection shall apply at least in favour of natural persons who are the creators of the original topographies of semiconductor products and who are nationals of and resident in a Member State and their successors in title.

2. However, where Member States provide for registration in accordance with Article 4, they may alternatively provide that protection shall apply at least to persons registering original topographies who are either nationals and residents of a Member State or companies and firms within the meaning of Article 58 of the Treaty.

3. Member States shall extend protection to persons who do not qualify for protection under paragraphs 1 or 2 in accordance with decisions to be adopted by the Council acting by qualified majority on a proposal from the Commission.

4. Paragraphs 1, 2 and 3 shall be without prejudice to Member States' obligations under international agreements.

Article 4

1. The Member States may provide that protection shall no longer apply to the topography of a semiconductor product unless it has been registered with a public authority within two years of its first commercial exploitation. Member States may require in addition to such registration that material identifying, describing or exemplifying the topography or any combination thereof has been despesited with a public authority.

2. Member States may subject registration and deposit in accordance with paragraph 1 to the payment of fees not exceeding their administrative costs.

3. Conditions prescribing the fulfillment of additional formalities shall not be admitted.

Article 5

1. The exclusive rights referred to in Article 2 shall include the rights to authorize any of the following acts:

(a) reproduction of the topographies in whole or in part;

(b) the sale, rental or leasing, or the offering for sale, rental or leasing, or any other method of commercial distribution, or the importation of the topographies or of semiconductor products manufactured by using the topographies.

2. The exclusive right to authorize reproduction of the topographies shall not apply to reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

3. The exclusive rights to authorize the acts specified in paragraph 1 shall not extend to any such act in relation to an original topography created on the basis of an analysis and evaluation of another topography carried out in conformity with paragraph 2.

4. The exclusive right to authorize the acts specified in paragraph 1(b) shall not apply to any such act:

(a) committed after the topography or the semiconductor product has been put on the market in a Member State by the person entitled to authorize its marketing or with his consent; or

(b) committed by a person who has purchased a semiconductor product without reasonable grounds to believe that its manufacture infringed the exclusive right specified in paragraph 1(a).

5. Where paragraph 4(b) applies, the Member States may subject the acts specified in paragraph 1(b) to the payment of royalties.

6. The exclusive right to authorize importation of a semiconductor product manufactured by using a protected topography shall not extend to products which are part of a land vehicle, vessel, aircraft or spacecraft which enters temporarily or accidentally the territory, waters or airspace of a Member State.

Article 6

1. The exclusive rights to which reference is made in Article 2 shall come to an end on a date at least ten years from the date on which the topography is first commercially exploited or, where registration is a condition for the subsistence of protection, from the date on which the topography is first commercially exploited or the date on which it is registered, whichever is the later.

2. The exclusive rights shall come to an end not late than fifteen years from the date on which the topography is first fixed or encoded. This provision shall be without prejudice to rights conferred by the Member States in fulfillment of their obligations under the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention and to corresponding rights conferred on a Member State's nationals or persons resident on its territory.

Article 7

The protection granted to the topographies of semiconductor products in accordance with Article 2 shall not extend to any concept, process, system or technique embodied in the topography other than the topography itself.

Article 8

Where the legislation of Member States provides the semiconductor products manufactured using protected topographies may be distinctively marked, the mark to be used shall be a capital T in a circle as follows:

Chapter 3—Continued Application of Other Legal Provisions

Article 9

The provisions of this Directive are without prejudice to any legal provisions protecting the topographies of semiconductor products other than those referred to in Article 2(2).

Chapter 4—Final Provisions

Article 10

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to comply with this Directive by 1 October 1987.

2. Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at. __________
For the Council __________
The President __________

[FR Doc. 86-6207 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirement To Include Braided Luggage of Man-Made Fibers Produced or Manufactured in the Republic of Korea

March 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea, have agreed to further amend the existing export visa requirement to include man-made fiber braided luggage in Category 670pt. (T.S.U.S.A. number 706.3420), which will also be visaed as "670-U". This coverage is in addition to the coverage of luggage of man-made fibers in T.S.U.S.A. numbers 706.4152 and 706.4144, as described in the CITA directive of November 16, 1984 (49 FR 45985). The visa stamp is not being changed and the official of the Government Republic of Korea authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective for Category 670pt. (T.S.U.S.A. number 706.3420), produced or manufactured in Korea and exported on and after April 1, 1986. Merchandise in this category exported before April 1, 1986 will not be denied entry for lack of a visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (42 FR 55709), as amened on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

March 19, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on April 1, 1986, man-made fiber textile products in Category 670pt. (T.S.U.S.A. number 706. 3420), produced or manufactured in the Republic of Korea and exported on and after April 1, 1986 will be required to be visaed as Category 670-U in addition to man-made fiber textile products in Category 670pt. (T.S.U.S.A. numbers 706.4152 and 706.4144), Merchandise in Category 670pt. (T.S.U.S.A. number 706.3420), which has been exported before April 1, 1986, shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1)

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6390 Filed 3-21-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products From the Polish People's Republic Effective on January 1, 1986; Correction

March 19, 1986.

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52984) announcing the aggregate, group, and individual category limits for cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The limit established for Category 635 in the directive to the Commissioner to Customs which followed that notice should have been 84,902 dozen.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6372 Filed 3-27-86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Meeting of Steering Committee on Methylene Chloride

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission staff will be working with a steering committee to assist industry, consumer interest representatives, and other interested parties in developing programs and efforts to reduce consumer exposure to methylene chloride. This notice announces the first meeting of the steering committee.

DATE: The meeting will be on March 27, 1986, at 10:00 a.m.

ADDRESS: The meeting will be in Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Sandra Eberle or Abbie Gerber, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6957.

SUPPLEMENTARY INFORMATION:

Background

Because of a recent report of animal tests conducted by the National Toxicology Program, the Consumer Product Safety Commission has been concerned about whether exposure to the vapors given off by household substances containing methylene chloride, particularly paint strippers and spray paints, presents a risk of cancer to consumers. While the Commission has not yet resolved the issue of the potential carcinogenicity of methylene chloride vapor, it has become apparent in meetings of the Commission and its staff with industry and consumer groups that there was a mutual recognition of a need to take voluntary action to reduce consumers' exposure to methylene chloride.

On February 27, 1986, the Consumer Product Safety Commission voted, unanimously, to continue a three-pronged voluntary program to reduce consumer exposure to methylene chloride. This program will be coordinated by a steering committee, whose organization and activities are described below. The Commission also voted to initiate a rulemaking proceeding to determine whether products containing methylene chloride are "hazardous substances," as defined by the Federal Hazardous Substances

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Act, due to a carcinogenic risk from inhaling the vapors of this chemical.[1]

Steering Committee

As described above, the Commission's staff will be working with a steering committee to assist industry and consumer representatives in developing appropriate precautionary labeling, consumer education programs, and product reformulation efforts, which could be adopted by industry to reduce consumer exposure to methylene chloride. The screening committee will be chaired by the National Paint and Coatings Association and co-chaired by the Consumer Federation of America and the staff of the Consumer Product Safety Commission. The first meeting of the steering committee will take place on Thursday, March 27, 1986, beginning at 10:00 a.m. in Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

The meeting is open to the public. Persons who would like to attend should contact Sandra Eberle or Abbie Gerber, at the address or telephone number provided above, who can also provide information on accommodations, a tentative agenda of the meeting, and other information.

Dated: March 21, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-6562 Filed 3-21-86; 10:55 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: April 27–May 1, 1986 (Detailed agenda follows).

ADDRESS: Holiday Inn—Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

Sunday 27 April 1986

- 11:00 a.m.–4:00 p.m.
  - Registration
- 12:00 noon–1:00 p.m.
  - Executive Committee Meeting
- 1:00 pm.–2:30 p.m.
  - "Get Acquainted" Luncheon (DACOWITS Members Only)
  - MilRep Luncheon (MilReps and Liaison Officers Only)
- 2:15 p.m.–3:15 p.m.
  - Chairwoman's Procedural Session for DACOWITS Members
- 3:15 p.m.–4:15 p.m.
  - OSD Overview
- 4:15 p.m.–5:15 p.m.
  - Service Overview (DACOWITS Members & MILREPS Only)
  - Subcommittee
    - 1—Army
    - 2—Navy
    - 3—USMC
- 5:30 p.m.–6:30 p.m.
  - Subcommittee Meetings (Orientation)
- 7:00 p.m.–8:30 p.m.
  - "No Host" Social Buffet

Monday, 28 April 1986

- 8:00 a.m.–9:00 a.m.
  - Service Overview (DACOWITS Members & MILREPS Only)
  - Subcommittee
    - 1—USAF
    - 2—USCG
    - 3—Army
- 10:00 a.m.–10:35 a.m.
  - Official Opening—Pentagon
- 10:45 a.m.–11:30 a.m.
  - OSD Official Coffee—Pentagon
- 1:30 p.m.–2:30 p.m.
  - Service Overview (DACOWITS Members & MILREPS Only)
  - Subcommittee
    - 1—Navy
    - 2—USMC
    - 3—USAF
- 2:30 p.m.–3:30 p.m.
  - Service Overview (DACOWITS Members & MILREPS Only)
  - Subcommittee
    - 1—USCG
    - 2—Army
    - 3—Navy
- 3:30 p.m.–4:30 p.m.
  - Service Overview (DACOWITS Members & MILREPS Only)
  - Subcommittee
    - 1—USMC
    - 2—USAF
    - 3—USCG
- 4:45 p.m. –6:00 p.m.
  - Subcommittee Meetings (Evaluation and Disposition of Service Responses)
- 7:00 p.m.–10:30 p.m.
  - Official Department of Defense Reception and Dinner (By Invitation Only)

Tuesday, 29 April 1986

- 9:00 a.m.–10:00 a.m.
  - Service Overview (Wrap-up)
- 10:00 a.m.–11:00 a.m.
  - Briefing: Direct Combat Probability Coding Review
- 11:00 a.m.–11:45 a.m.
  - Briefing: Navy Temporary Additional Duty Policies
- 12:00 noon–1:30 p.m.
  - Official Department of Defense Luncheon (By Invitation Only)
- 1:45 p.m.–2:45 p.m.
  - Briefing: USMC Female Officer Review
- 2:45 p.m.–5:00 p.m.
  - Subcommittee Meetings
- 7:30 p.m.–8:30 p.m.
  - Reception—Marine Corps Museum (By Invitation Only)
- 8:45 p.m.–9:45 p.m.
  - Parade—Marine Corps Barracks (By Invitation Only)

Wednesday, 30 April 1986

- 9:00 a.m.–9:30 a.m.
  - Presentation by Members of the Public
- 9:30 a.m.–12:00 noon
  - Subcommittee Meetings
- 12:00 noon–2:00 p.m.
  - "No Host" Luncheon
- 2:15 p.m.–6:00 p.m.
  - Subcommittee Meetings

Thursday, 1 May 1986

- 8:00 a.m.–11:00 a.m.
  - General Business Session Adjournment
- 11:00 a.m–12:00 noon
  - Executive Committee Meeting

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

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[1] Acting Chairman Carol Dawson and Commissioners Saundra Brown Armstrong, Anne Graham, and Terrence Scanlon voted to begin the rulemaking, and Commissioner Stuart M. Statler voted against it, preferring instead to declare methylene chloride a hazardous substance immediately under section 2(p) of the Federal Hazardous Substances Act. Separate opinions of Commissioners Armstrong, Scanlon, and Statler are available from the Commission's Office of the Secretary.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the Official Department of Defense Luncheon or Dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 11, 1986.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 9:00 am. to 9:30 a.m. on Wednesday, 30 April 1986, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Executive Secretariat with a copy of the presentation or 60 copies of the statement by 16 April 1986.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Executive Secretary to consider, as feasible.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, 1 May 1986.

March 19, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-6347 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 17, April 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6348 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

Foreign Assistance; Determination

Pursuant to section 515(c)(1) of the Foreign Assistance Act of 1961 relating to overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, Phillip C. Gast, Lieutenant General, USAF, Director, Defense Security Assistance Agency has determined that United States national interests require that more than six members of the Armed Forces be assigned under section 515 of that Act to carry out international security assistance programs in Venezuela, and therefore waive the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specifically authorized by the Congress.

The total number of seven military personnel authorized for the United States Military Group (USMILGP), Venezuela shall be effective thirty days to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6349 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Closed Meeting

ACTION: Notice of closed meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on April 16 and 17, 1986, at 735 Jackson Place NW., Washington DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Fedeal Advisory Committee Act," and section 552b(c)(1) and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

Agenda: The Commission will meet to continue its consideration of defense management and organization issues and its preparation of further reports to the President on the defense acquisition process.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1899 L Street NW, Suite 400, Washington, DC 20036, Telephone: (202) 466-7080 or (202) 395-3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 19, 1986.

[FR Doc. 86-6346 Filed 3-21-86; 8:45 am]

BILLING CODE 3810-01-M

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U.S Court of Military Appeals Code Committee Meeting

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on April 1, 1986, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001. The agenda for this meeting will include various matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001; telephone (202) 272–1448.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–6350 Filed 3–21–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Health Care Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Secretary of the Navy Health Care Advisory Committee will meet April 8 and 9, 1986, from 9 a.m. to 4 p.m. and April 10, 1986, from 9 a.m. to noon, at Medal of Honor Hall, Naval Medical Command, 23rd and C Streets NW., Washington, DC. All sessions will be open to the public.

The purpose of the meeting is to provide guidance concerning the utilization of limited resources in the Navy Medical Department. The agenda for the meeting will consist of a series of briefings from the Office of the Surgeon General concerning key issues facing Navy medicine today.

For further information concerning this meeting, contact Captain Joseph J. Smith, MC, USN, (202) 653–1730.

Dated: March 18, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–6312 Filed 3–21–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 9–10, 1986, 9:00 a.m. until conclusion of business each day.

ADDRESS: National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, D.C. 20036 (202/634–6160).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, D.C. 20036 (202/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of P.L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) NACIE Budget—fiscal years1986 and 1987.

(2) NACIE activities for remainder of fiscal year 1986.

(3) Other business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 2000 L Street NW., Suite 574, Washington, D.C. 20036.

Date: March 19, 1986. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 86–6379 Filed 3–21–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. 9(i)(3)–86]

Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Statutory interpretation.

SUMMARY: On February 7, 1986, Bonneville Power Administration (BPA) published a notice of proposed legal interpretation of section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839f(i)(3). (*See* 51 FR 4787 (Feb. 7, 1986.) Section 9(i)(3) imposes an obligation upon the BPA Administrator, to the extent practicable, to give priority to marketing services for capability from projects under construction on the effective date of the Northwest Power Act if the capability has been offered for sale to BPA at cost, including a reasonable rate of return, and the offer is not accepted within one year. BPA invited comments to its proposed legal interpretation and considered these comments in its decisionmaking on the following final legal interpretation. This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's marketing services.

Responsible Officials: James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. Thomas M. Noguchi, Director, Division of Customer Service, is the official responsible for implementing section 9(i)(3).

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the above address, 503–230 3478. Oregon callers outside Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 W. Fort Street, Rm. 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provisions

Section 9(i)(1) of the Northwest Power Act, 16 U.S.C. 839f(i)(1), imposes an obligation on the BPA Administrator, to the extent practicable, and at the request and expense of Pacific Northwest customers of BPA, to acquire electric power required by these customers as replacement power and to dispose or assist in the disposal of power that these customers propose to sell, if such disposition does not conflict with the Administrator's other marketing obligations, the policies of the Northwest Power Act, and other applicable laws. Section 9(i)(2) of the Act, 16 U.S.C. 839f(i)(2), authorizes the BPA Administrator to prescribe policies and conditions for the independent acquisition or disposition of electric power by direct service industrial customers. Section 9(i)(3) provides:

> The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year. 16 U.S.C. 839f(i)(3).

B. Scope of Interpretation

This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's marketing services. This interpretation is not intended to address other legal issues or policy questions which may not involve section 9(i)(3) or other BPA programs and policies.

C. Public Comment Procedures

On February 7, 1986, BPA published a "Notice of Proposed Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act; Request for Comments." (51 FR 4787, February 7, 1986.) In the notice, BPA requested written comments from the public on the definitions and interpretation contained in the notice. BPA received comments from sixteen parties, including publicly-owned utilities, investor-owned utilities, and organizations representing these utility groups and direct service industrial customers. The following parties submitted written comments: J. Anderson, H. Wallingford, Hydropool, Basin Electric Power Cooperative, The Washington Water Power Company, Snohomish County Public Utility District No. 1, Puget Sound Power & Light Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Public Utility District No. 1 of Chelan County as representative for the Public Generating Pool, Pacific Northwest Generating Company, Public Utility Commissioner of Oregon, Sacramento Municipal Utility District, and the Public Power Council representing 115 preference customers of BPA. This legal interpretation has taken full consideration of the comments of these interested parties. These comments are addressed in BPA's Record of Decision, dated March 5, 1986, which is available upon request from the Public Involvement Office.

II. Legal Interpretation

A. Definitions

This section contains definitions of terms used in the legal interpretation for which there is no specific definition in the Northwest Power Act. These definitions are a part of the interpretation. In this interpretation terms specifically defined in the Northwest Power Act retain the meaning set forth in the Act.

1. *Project capability:* "Project capability" is the actual or planned electric power capability, or portions thereof, of a generating facility. Project capability is not output or plant ownership.

2. *Under construction:* A project is "under construction" if BPA determines there was a firm commitment to build and operate a generating facility. This commitment may be, but is not necessarily, evidenced by binding contracts for the purchase of generation equipment or machinery, site development, or construction placement, including foundation work, fabrication, or equipment installation.

3. *Offered for sale:* Project capability is "offered for sale" if there is a bona fide offer, capable of acceptance and valid for one year, which includes, but is not limited to, the following essential terms: (a) identification of project capability offered pursuant to section 6 of the Northwest Power Act; (b) the cost of the capability offered; (c) the quantity of capability offered; (d) the term of the proposed sale; (e) identification of the manner of acceptance; and (f) designation of the point of delivery from which BPA can take delivery of the power into its system.

4. *Power Marketing program:* BPA's "power marketing program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's power marketing program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's power marketing program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Northwest Power Act and to assist in the marketing of the region's surplus firm power to the Southwest.

B. Interpretation

1. *Qualification for the section 9(i)(3) priority.*

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a. Project capability qualifies for the section 9(i)(3) priority if it is from a project:

(1) Of a Pacific Northwest utility customer of BPA;

(2) Located within or without the Pacific Northwest; and

(3) Under construction by a Pacific Northwest utility customer on December 5, 1980;

if the capability was offered for sale to BPA at cost, including a reasonable rate of return; and BPA has rejected the offer, or has not accepted the offer within one year from the date of the offer.

b. The acquisition by BPA of the offered project capability during the term of the offer, or at any time thereafter, renders inapplicable, or extinguishes, the section 9(i)(3) priority. The acquisition of the offered project capability is subject to acquisition and environmental statutory requirements.

c. In any decision to acquire project capability, or to provide a section 9(i)(3) priority, BPA shall determine:

(1) Whether the costs reflected in the offered price are associated with the project capability; and

(2) The appropriateness of the costs and the reasonableness of the rate of return included in the offered price.

2. *Relationship of the section 9(i)(3) priority to BPA's marketing services.* Project capability which qualifies for the section 9(i)(3) priority shall have a priority, in the event that there are competing requests, to BPA marketing services, including transmission, storage, and load factoring, at established rates or charges, which BPA is making available to other Pacific Northwest utility customers under policies and project capability otherwise qualifies.

The section 9(i)(3) priority does not confer independently any substantive right to services not otherwise being offered by BPA, or require any modification of any of BPA's marketing services for the reason that the statute grants a priority to the services as BPA may offer. Priority shall be provided to the extent practicable, and the services shall be provided unless BPA determines that such services cannot be furnished without substantial interference with BPA's power marketing program, applicable operating limitations, or existing contractual obligations. BPA shall not breach existing contracts or other lawful obligations to provide services. Section 9(i)(3) implicitly recognizes that the type and amount of services BPA provides are separate questions to be addressed in other BPA policies.

Issued in Portland, Oregon, on March 7, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

[FR Doc. 86-6377 Filed 3-21-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

Correction

In FR Doc. 86-5837 appearing on page 9099 in the issue of Monday, March 17, 1986, make the following correction:

In the third column, under SUPPLEMENTARY INFORMATION, sixth line, "10 days" should read "30 days".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Project No. 9771-000, et al.]

Hydroelectric Applications (Trafalgar Power, Inc., et al.); Application Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9771-000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Red Mill.

f. Location: On the Claverack Creek in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 19-foot-high and 176-foot-long concrete dam with a spillway crest elevation of 172 feet msl; (2) an existing 10-acre reservoir with a storage capacity of 166 acre-feet at 172 feet msl; (3) an existing 12-foot-wide gated intake structure 100 feet long; (4) a proposed penstock 3.5 feet in diameter ad approximately 20 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 100 kW; (6) a proposed tailrace; (7) a new 4.8-kV transmission line approximately 200 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 450,000 kWh under a hydraulic head of 12 feet. The existing facilities are owned by Mr. Joseph H. Ptaszek.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The workd proposed under the preliminary permit would inlcude economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $24,000.

2 a. Type of Application: Prelimiinary Permit.

b. Project No.: 9779-000.

c. Date Filed: December 30, 1985.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Niverville.

f. Location: On the Valatie Kill River in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high and 125-foot-long concrete dam with a spillway crest elevation of 288 feet msl; (2) an existing 365-acre reservoir with a storage capacity of 3285 acre-feet at 288 feet msl; (3) an existing intake structure under repair; (4) a proposed powerhouse to contain one turbine/generator with an installed capacity of 95 kW; (5) a new 4.8-kV transmission line approximately 220 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 400,000 kWh operating under a hydraulic head of 16.5 feet. The existing facilities are owned by the Kinderhook Lake Corporation.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminiary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would inlcude economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $23,000.

3 a. Type of Application: Preliminary Permit

b. Project No.: 9775-000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Mellenville

f. Location: On the Agawamuck Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high and 120-foot-long masonry dam with spillway crest elevation of 300 feet msl; (2) an existing 1-acre reservoir of negligible storage capacity at 300 feet msl; (3) an existing 6-foot-wide gated intake structure; (4) a proposed penstock 2.5 feet in diameter and approximately 75 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 50 kW; (6) a proposed tailrace; (7) a new 4.8-kV transmission line approximately 200 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 225,000 kWh operating under a hydraulic head of 20 feet. The existing facilities are owned by the Town of Claverack.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environment impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $22,000.

4 a. Type of Application: Preliminary Permit

b. Project No.: 9773-000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Ancram Mills

f. Location: On the Roeliff Jansen Kill River in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high and 93-foot-long concrete dam with spillway crest elevation of 460 feet msl; (2) an existing 6-acre reservoir with a storage capacity of 67 acre-feet at 460 feet msl; (3) an existing intake structure to be rehabilitated; (4) a proposed penstock 5 feet in diameter and approximately 200 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 420 kW; (6) a proposed tailrace; (7) a new 13.8-kV transmission line approximately 1000 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 1.8 million kWh under a hydraulic head of 30 feet. The existing facilities are owned by the Kimberly Clark Corporation.

k. Purpose of Project: Project power will be sold to the Central Hudson Gas & Electric Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environment impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $42,000.

5 a. Type of Application: Preliminary Permit

b. Project No.: 9503-000

c. Date Filed: October 1, 1985

d. Applicant: Tongue River Hydro Partners II

e. Name of Project: Tongue River

f. Location: On Tongue River in Sheridan County, Wyoming within the Bighorn National Forest

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Louis Rosenman, Attorney at Law, 1350 New York Avenue, #600, Washington, D.C. 20005, (202) 783-2100.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 150-foot-long, concrete diversion structure at elevation 6,400 feet; (2) an 8-foot-diameter, 12,000-foot-long tunnel; (3) a 72-inch-diameter, 5,000-foot-long steel penstock; (4)a surge tank; (5) a powerhouse containing a single generating unit with a rated capacity of 36,000 kW, producing an estimated average annual energy output of 155.5 GWh (6) a 20-foot-long, 10-foot-wide concrete tailrace; and (7) a 9-mile-long, 64-kV transmission line tying into an existing Montana-Dakota Utility line.

A preliminary permit, if issued does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $145,000.

k. Purpose of Project: Project power would be sold to Montana-Dakota Utility Company

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit

b. Project No.: 9777-000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Upper Stockport

f. Location: On the Claverack Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)-934-4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17.5-foot-high and 250-foot-long concrete dam with spillway crest elevation of 50 feet msl; (2) a proposed 18.5-acre reservoir with a storage capacity of 166 acre-feet at 50 feet msl; (3) a proposed intake structure; (4) a proposed capacity of 340 kW; (5) a new 13.8-kV transmission line approximately 200 feet

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long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1.4 million kWh under a hydraulic head of 17 feet. The existing facilities are owned by Marie Grasso and Albert William LaFave.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $52,000.

7 a. Type of Application: Preliminary Permit

b. Project No.: 9776–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Lower Stottville

f. Location: On the Claverack Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)–934–4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 23.7-foot-high and 150-foot-long concrete dam with spillway crest elevation of 68 feet msl; (2) an existing 6-acre reservoir with a storage capacity of 72 acre-feet at 68 feet msl; (3) an existing 25-foot-wide and 20-foot-long gated intake structure; (4) an existing 5-foot-diameter penstock 100 feet long; (5) a proposed powerhouse to contain one turbine/generator with an installed capacity of 340 kW; (6) a new tailrace; (7) a new 13.8-kV transmission line approximately 1600 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 1.4 million kWh operating under a hydraulic head of 20 feet. The existing facilities are owned by Anthony J. Scott and Karl and Mary Wahlers.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $36,000.

8 a. Type of Application: Preliminary Permit

b. Project No.: 9774–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Bingham Mills

f. Location: On the Roeliff Jansen Kill River in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603)–934–4202.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 25-foot-high and 218-foot-long dam with spillway crest elevation of 166 feet msl; (2) a proposed 33-acre reservoir with a storage capacity of 397-acre-feet at 166 feet msl; (3) an existing 25-foot-wide and 15-foot-long cyclopean concrete intake structure; (4) a proposed penstock 8 feet in diameter and approximately 500 feet long; (5) a proposed powerhouse to contain one turbine/generator for an installed capacity of 1400 kW; (6) a proposed tailrace; (7) a new 2.3-kV transmission line approximately 3500 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 6 million kWh operating under a hydraulic head of 50 feet. The owner of the existing facilities is Vernon et. al. Saulpaugh.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $62,000.

9 a. Type of Application: Preliminary Permit

b. Project No.: P–9549–000

c. Date Filed: October 21, 1985

d. Applicant: Public Service Company of New Hampshire

e. Name of Project: Franklin Development

f. Location: Winnipesaukee River, Merrimack County, New Hampshire

g. File Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Mr. Ralph S. Johnson, Vice President, Public Service Company of New Hampshire, P.O. Box 330, 1000 Elm Street, Manchester, NH 03105, (603) 669–4000.

i. Comment Date: April 24, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed concrete gravity dam, 150 feet long, 22 feet high and having a crest elevation of 400 feet mean sea level; (2) a proposed reservoir of 9 acres surface area and no storage capacity at a normal level; (3) a proposed 12-foot-diameter penstock 3,750 feet in length; (4) a proposed 32-foot-long, 50-foot-wide concrete powerhouse to house a proposed 5.5 MW capacity turbine generator operating at a hydraulic head of 84 feet; (5) a proposed 360 kW capacity turbine/generator to be located at the dam and operating at a hydraulic head of 22 feet; (6) a proposed 250-foot-long, 34.5 kV transmission line; and (7) appurtentant facilities.

The estimated annual energy production is 21,000,000 kWh. Project power would be sold to Applicant's customers.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license

to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $1,484,500.

10 a. Type of Application: Minor License

b. Project No.: 9100–000

c. Date Filed: April 9, 1985

d. Applicant: James M. Knott

e. Name of Project: Riverdale Mills

f. Location: On the Blackstone River in Worcester County, Village of Riverdale, Massachusetts

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: James M. Knott, 130 Riverdale Street, Northbridge, MA 01534, (617) 234–6715.

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 142-foot-long and 14-foot-high concrete and steel dam with crest elevation of 262.35 feet mean sea level owned by the Applicant; (2) an impoundment with a surface area of 11.8 acres; (3) existing sluicegates; (4) an existing 8-foot-high and 16-foot-wide sluiceway, 115 feet long; (5) an existing 150-kW unit within a mill building; (6) an existing 231-foot-long tailrace; and (7) other appurtenances. The Applicant estimates an average annual generation of 919,800 kWh. The Applicant plans to install 2 additional similar generating units in the future using existing facilities. The project is not operating at present.

k. Purpose of Project: Project energy would be used in the Applicant's Riverdale Mills Corporation manufacturing activities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11 a. Type of Application: Preliminary Permit

b. Project No.: 9749–000

C. Date Filed: December 27, 1985

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Oneonta Hydropower Project

f. Location: On the Susquehanna River near Oneonta, Otsego County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437–2547
Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797–5800

i. Comment Date: April 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam approximately 200 feet long and 10 feet high; (2) an existing 10-acre reservoir with 80 acre-feet of storage at an elevation of 1095 msl (the use of flashboards 2 feet high will be investigated); (3) a proposed intake structure, to be constructed from the existing works, up to 50 feet in width; (4) a proposed powerflume 50 feet in width and length containing either one 1,100-kW submerged bulb turbine-generator or two 550-kW submerged bulb turbine-generators; (5) a proposed tailrace channel 50 feet wide, 10 feet deep, and 100 feet long; (6) a proposed 13.8-kV transmission line 100 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 5.0 MWh. The project energy would be sold to New York State Electric and Gas Company. The dam owner is the City of Oneonta, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $21,000.

12 a. Type of Application: Preliminary Permit

b. Project No.: 9767–000

c. Date Filed: December 30, 1985

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Philmont-High Falls

f. Location: On Agawamuck Creek in Columbia County, New York

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Street, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: April 28, 1986.

j. Description of Project:

The proposed project would consist of: (1) An existing 24-foot-high and 160-foot-long stone masonry dam with a spillway crest elevation of 495 feet msl; (2) a second existing 4-foot-high and 70-foot-long stone masonry dam at 470 feet msl; (3) an existing 16.5-acre reservoir with a storage capacity of 178-acre-feet at 495 feet msl; (4) a proposed gated intake structure; (5) a proposed penstock 2 feet in diameter and 750 feet long; (6) a proposed powerhouse to contain one turbine/generator for an installed capacity of 375 kW; (7) a proposed tailrace; (8) a new 13.8–kV transmission line approximately 650 feet long; and (9) appurtenant facilities. The estimated average annual energy produced by the project would be 1.5 million kWh operating under a hydraulic head of 150 feet. The existing facilities are owned by the Village of Philmont.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $36,000.

13 a. Type of Application: Preliminary Permit

b. Project No.: 9682–000

c. Date Filed: December 13, 1985

d. Applicant: Earl P. Ellis and Associates

e. Name of Project: Snyder Falls Creek

f. Location: In Chugach National Forest, on Snyder Falls Creek, in the Greater Anchorage Borough, Alaska

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Contact Person: Earl P. Ellis, 690 West Lake Ridge Drive, Eagle River, AK 99577

i. Comment Date: April 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion structure at elevation 1,300 feet; (2) a 3,600-foot-long, 20-inch-diameter pipe; (3) a powerhouse containing a generator with a capacity of 1,200 kW and an average annual generation of 5.7 GWh; and (4) a 6.8-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $75,000. No new roads would be constructed or

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drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Cordova Electric Cooperation, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2

14 a. Type of Application: Preliminary Permit

b. Project No.: 9698-000

c. Date Filed: December 17, 1985

d. Applicant: Lima Hydro Limited Partnership

e. Name of Project: Lima Hydro Project

f. Location: On the Red Rock River at Lima Dam in T.13S., R.6 W., Section 32 near Lima, Beaverhead County, Montana

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Rhett Hurless, P.O. Box 3474, Bozeman, MT 59772, (406) 586-7017

i. Comment Date: April 24, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 54-foot-high dam owned by Water Users Irrigation Company; (2) a 6,400 acre reservoir with a storage capacity of 84,050 acre-feet at normal water surface elevation 6,582 feet; (3) a 450-foot-long, 54-inch diameter penstock; (4) a powerhouse containing three generating units with a total capacity of 530 kW; and (5) a 7-mile-long transmission line. Applicant estimates the average annual energy production to be 1.85 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $17,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

15 a. Type of Application: Preliminary Permit

b. Project No.: 9627-000

c. Date Filed: November 19, 1985

d. Applicant: Clearwater Hydro

e. Name of Project: East Lynn

f. Location: Twelvepole Creek, Wayne County, West Virginia

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Charles Gresham, Clearwater Hydro, Route 1, Box 255, Hiawatha Road, Morristown, TN 37814, (615) 475-2125 or 581-6616.

i. Comment Date: April 28, 1986.

j. Description of Project: The proposed project would utilize the East Lynn Dam and Lake owned by the U.S. Army Corps of Engineers and would consist of: (1) An existing gate/intake structure which would house two proposed submersible turbine/generators with combined capacity of 800 kW; and (2) appurtenant facilities. The estimated annual energy production of the project is 2,700,000 kWh. The estimated hydraulic head is 80 feet. Project power would be sold to Appalachian Power Company.

k. Proposed Scope and Cost of studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $19,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit

b. Project No: 9786-000

c. Date Filed: December 30, 1985

d. Applicant: Arktech, Inc.

e. Name of Project: George 3

f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho, Township 11N and Range 43E

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Contact Person: Michael Arkoosh, P.O. Box 93, Gooding, ID 83330, (208) 934-8464.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9665, Date Filed: 12-3-85

k. Description of Project: The proposed project would consist of: (1) A headgate on the river bank at elevation 5,920 feet; (2) a 3-mile-long canal; (3) a 400-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 3,547 kW and an average annual generation of 21,160 MWh; and (5) a 0.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $96,500. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of the Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C and D2.

17 a. Type of Application: Preliminary Permit

b. Project No: 9665-000

c. Date Filed: December 3, 1985

d. Applicant: Henrys Fork Conservationists II

e. Name of Project: Henry Fork II

f. Location: In Targhee National Forest, on Henrys Fork, in Fremont County, Idaho

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Contact Person: Louis Rosenman, 1333 New Hampshire Avenue, NW, Suite 1190, Washington, DC 20036, (202) 783-2100.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9786, Date Filed: 12-30-85

k. Description of Project: The proposed project would consist of: (a) 10-foot-high diversion dam at elevation 5,920 feet; (2) 3-mile-long canal; (3) a 400-foot-long, 96-inch-diameter penstock; (4) a powerhouse containing a generating unit with a capacity of 3,550 kW and an average annual generation of 21.16 GWh; and (5) a 2.5-mile-long Transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of the Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

18 a. Type of Application: Major License Under 5 MW

b. Project No: 5790-001

c. Date Filed: November 23, 1983

d. Applicant: New York State Energy Research and Development Authority

e. Name of Project: Mechanicville Project

f. Location: On the Champlain Barge Canal of the Hudson River in the Towns of Halfmoon and Mechanicville, Saratoga and Rensselaer Counties, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

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h. Contact Person: Ms. Jacquelyn L. Jerry, New York State Energy Research and Development Authority, Two Rockefeller Plaza, Albany, New York 12223 (518) 465-6251

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 6032, Date Filed: January 23, 1982.

k. Description of Project: The proposed project would consist of: (1) The existing 952-foot-long, 15-foot-high Mechanicville Lock and Dam in three sections consisting of: a 692-foot-long ogee-shaped spillway section, a 143-foot-long auxiliary spillway section, and a 117-foot-long sluice gate structure section; (2) a reservoir having a surface area of 385 acres, a storage capacity of 2,716 acre-feet, and a normal water surface elevation of 55.3 feet NGVD; (3) a proposed 60-foot-wide, 110-foot-long intake channel; (4) a proposed powerhouse containing two generating units having a total installed capacity of 4.95-MW; (4) a proposed 65-foot-wide, 650-foot-long tailrace; (5) a proposed 1,150-foot-long, 34.5-kV transmission line; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 56,100,000-kWh. The existing lock and dam and existing project facilities are owned by the New York State Department of Transportation and Niagara Mohawk Power Corporation.

l. Purpose of Project: All power produced would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

19 a. Type of Application: Preliminary Permit

b. Project No.: P-9868-000

c. Date Filed: January 6, 1986

d. Applicant: Essex Hydro Associates

e. Name of Project: Blackwater Dam

f. Location: On the Blackwater River in Merrimack County, New Hampshire

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Contact Person: Mr. Thomas A. Tarpey, Essex Hydro Associates, 99 North State, Concord, NH 03301, (603) 224-8333.

i. Comment Date: April 28, 1986.

j. Competing Application: Project No. 9313, Date Filed July 2, 1985

k. Description of Project: The proposed project would utilize the existing Blackwater Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: two alternative penstock schemes—Alternative 2, and 3: use of a proposed 10-foot-diameter and 1,500 foot long steel penstock; Alternative 3—a proposed 12-foot-diameter and 11,800 foot long steel penstock; (2) a proposed powerhouse to contain one turbine/generator with a proposed installed capacity of either 250 kW for Alternative 1, 2100 kW for Alternative 2 or 5500 kW for Alternative 3; (3) a proposed tailrace; (4) a new 23 kV transmission line approximately 3 miles long; and (5) appurtenant facilities. The estimated average annual energy production would be either 1,200,000 kWh for Alternative 1 5,665,000 kWh for Alternative 2 or 12,768,000 kWh for Alternative 3 with a new hydraulic head of either 10 feet for Alternative 1, 60 feet for Alternative 2, or 160 feet for Alternative 3.

l. Purpose of Project: All power produced would be sold to one of New Hampshire's three public utility systems.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2

n. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $128,500.

20 a. Type of Application: Transfer of License (Minor)

b. Project No.: 2608-000

c. Date Filed: January 21, 1986

d. Applicants: Premoid Corporation, Agawam Canal Co., Inc. and the James River Paper Company, Inc.

e. Name of Project: West Springfield Project

f. Location: On the Westfield River, a tributary of the Connecticut River, in the Town of West Springfield, Hampden County, Massachusetts

g. Filed Pursuant to: Section 9 of the Federal Power Act.

h. Contact Person: Mr. John D. Potter, James River Corporation, Premoid Division, Front Street, West Springfield, MA 01089, (413) 736-4554.

i Comment Date: April 28, 1986.

j. Description of Project: On September 10, 1976, a minor license was issued to the Premoid Corporation and Agawam Canal Company, Inc. to operate and maintain the West Springfield Project No. 2608. Premoid Corporation and Agawam Canal Company, Inc. intend to sell the project to James River Paper Company, Inc, a private Virginia cororation qualified to do business in the State of Massachusetts. For that reason, Premoid Corporation and Agawam Canal Company, Inc. have filed a request that the project license be transferred to James River Paper Company, Inc.

k. This notice also consists of the following standard paragraphs: B and C.

21 a. Type of Application: Partial Transfer of License (Major)

b. Project No.: P-5073-005

c. Date Filed: December 19, 1985

d. Applicant: Everett E. Whitman and Benton Falls Associates

e. Name of Project: Benton Falls

f. Location: On the Sebasticook River in Kennebec County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act §§ 791(a)—825(r)

h. Contact Person: Mr. Lee M. Goodwin, Wickwire, Gravin & Gibbs, P.C., 1133 21st Street, NW. Suite 500, Washington, D.C. 20036, (202) 887-5200.

i Comment Date: April 28, 1986.

j. Description of Project: On March 8, 1984, a major license was issued to Everett E. Whitman to construct, operate, and maintain the Benton Falls Project No. 5073. Everett E. Whitman intends to sell part of its interest in the project to the Benton Falls Associates. For that reason, Everett E. Whitman and Benton Falls Associates filed a request that the project license be transferred to Everett E. Whitman and Benton Associates.

k. This notice also consists of the following standard paragraphs: B and C.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established to the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the intial development application. No competing applications or notices of

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intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and § 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 19, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6314 Filed 3-21-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2960]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Unleaded Gasoline and Vapor Recovery Inspections (EPA ICR #0097). (These activities have been cleared separately in the past; there are no changes.)

Abstract: EPA requires inspections of a sample of gasoline stations to establish compliance with the unleaded gasoline regulations, the Federal Trade Commission's octane posting requlations, and the federal and federally-approved State and local regulations which require installation and use of vapor recovery equipment. Before these inspections, information about ownership of the station is asked of the attendant, owner, or manager by the inspector.

Respondents: Gas station owners and managers.

Title: National Emission Standard for Hazardous Air Pollutants (NESHAP) Development for Ethylene Oxide Emissions Sources (EPA ICR #1288). (This is a request for a new survey.)

Abstract: All ethylene oxide (EO) sterilizers and fumigators other than hospitals will be surveyed for data on EO emissions and control costs. The data will be used to estimate the health risk to the United States population, based on human exposure modeling, and to calculate the potential cost to the industry if a NESHAP were developed.

Respondents: Users of ethylene oxide sterilizers and fumigators, other than hospitals.

Office of Administration and Resources Management

Title: General Regulations of Assistance (EPA ICR #0938). This is a request to renew a formerly approved ICR; no change in proposed.)

Abstract: EPA collects information from grant recipients and applicants to assist in making awards, and to determine how recipients spend federal funds.

Respondents: States, local governments, federally recognized Indian tribal governments, trainees, and researchers.

Office of Policy, Planning, and Evaluation

Title: Survey of Consumer Inconvenience in Using Stage II Controls (EPA ICR #1266). (This is a new survey.)

Abstract: EPA will collect data from users of gasoline to determine if they perceive any inconvenience in using the current pollution control equipment on gasoline pumps, and the amount of money they would be willing to pay to avoid its use. The Agency will use the data to assist in making a policy on the regulation of gasoline marketing.

Respondents: California drivers who are familiar with current pollution control equipment.

Office of Water

Title: Estimate of Municipal Wastewater Treatment Facility Requirements—Needs Survey (EPA ICR #0318). (This is a revision of a formerly approved ICR.)

Abstract: EPA collects technical information and construction cost estimates from publicly-owned wastewater treatment facilities. EPA uses the data to prepare the Needs Survey, a biennial report to Congress. Using this report, Congress develops formulas for the allotment of funds.

Respondents: States and territories.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0154; Pesticide Dealers and Applicators, was approved 3/6/86 (OMB #2070-0024; expires 3/31/89).

EPA ICR #0163; TSCA Inspection-Related Forms, was approved 3/6/86 (OMB #2070-0007; expires 3/31/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

Wayne Leiss (ICR #0097 and ICR #1288), or Rick Otis (ICR #0318, ICR #0938, and ICR #1266), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: March 17, 1986

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-6222 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59214; FRL-2969-8]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 8, 1986.

ADDRESS: Written comments, identified by the document control number

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"OPTS-59214]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-30

Close of Review Period. April 20, 1986.
Manufacturer. Confidential.
Chemical. 2-ethoxyethyl cyanoacetate.
Use Production. (G) Polymeric curing agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

T 86-31

Close of Review Period. April 20, 1986.
Manufacturer. Confidential.
Chemical. N-butyl cyanoacetate.
Use Production. (G) Adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: March 17, 1986.

Denise Devoe,
Acting Director, Information Management Division.

[FR Doc. 86-6384 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51615; (FRL-2989-9)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-634—June 4, 1986.
P 86-635—June 7, 1986.
P 86-636, 86-637, 86-638, 86-639, 86-640, 86-641, 86-642, 86-643, 86-644, 86-645 and 86-646—June 8, 1986.
P 86-647, 86-648, 86-649, 86-650 and 86-651—June 9, 1986.
P 86-652 and 86-653—June 10, 1986.

Written comments by:

P 86-634—May 5, 1986.
P 86-635—May 8, 1986.
P 86-636, 86-637, 86-638, 86-639, 86-640, 86-641, 86-642, 86-643, 86-644, 86-645 and 86-646—May 9, 1986.
P 86-647, 86-648, 86-649, 86-650 and 86-651—May 10, 1986.
P 86-652 and 86-653—May 11, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51615]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room. E-201, 401 M Street SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794); Office of Toxic Substances, Environmental Protection Agency, Room. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-634

Importer. Confidential.
Chemical. (G) 1,3,2-dioxaphosphorinane, 5,5-disubstituted-2-substituted-, 2-oxide.
Use/Import. (S) Industrial and consumer flame for use in plastic applications particularly polymethyl methacrylate. Import range: Confidential.
Toxicity Data. Acute oral: 925 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-635

Manufacturer. Confidential.
Chemical. (G) Silane modified styrenated acrylate methacrylate.
Use/Production. (G) Resin use in industrial coatings. Prod.range: 212,000-250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 40 workers, up to 8 hrs/da, up to 31 da/yr.
Environmental Release/Disposal. 12 to 104 kg/batch released to land.

P 86-636

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Perfluorelastomer.
Use/Production. (G) sealing parts, tubing and laminates. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 12 workers.
Environmental Release/Disposal. Release to land. Disposal by biological treatment system and approved landfill.

P 86-637

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Epoxy containing acrylic polymer.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 14 workers.
Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

P 86-638

Manufacturer. E.I. du Pont de Nemours and Company Inc.
Chemical. (G) Epoxy containing acrylic polymer.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 13 workers.
Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

P 86-639

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-640

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-641

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-642

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl esters.
Use/Import. (S) Industrial vehicles for coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Minimal
Environmental Release/Disposal. No data submitted.

P 86-643

Manufacturer. Confidential.
Chemical. (G) Polymeric isocyanate prepolymer.
Use/Production. (G) Polyurethane foam. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to .02 hr/da, up to 250 da/yr.
Environmental Release/Disposal. 25 kg/batch released to to air. Disposal by incineration.

P 86-644

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-645

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-646

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium aluminum hydroxy anion.
Use/Production. (S) Industrial oil well drilling fluid additive and viscosifier for water based fluids other than drilling fluids. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers:
Environmental Release/Disposal. Less than 1 kg/day released to water. Disposal by navigable waterway and on-site waste treatment plant.

P 86-647

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-648

Manufacturer. Confidential.
Chemical. (G) Polyurea urethane acrylate.
Use/Production. (G) Used in formulation an industrial specialty polymeric material having an open use. Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 0 to 90 kg/batch released to land. Disposal by incineration and landfill

P 86-649

Manufacturer. Confidential.
Chemical. (G) Alkoxylated diol diacrylate.
Use/Production. (G) Radiation curing coatings; an open, non-dispersive use. Prod. range: 10,000-50,000 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight, Eye—Slight; Ames test: Negative.
Exposure. Manufacture: dermal, a total of 8 workers, up to 6 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release.

P 86-650

Manufacturer. Confidential.
Chemical. (G) Methacrylic ester.
Use/Production. (S) For use in acrylic resin formulations. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-651

Manufacturer. Confidential.
Chemical. (G) Diurea compound.
Use/Production. (S) For use as a sag control agent in resinous systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-652

Manufacturer. AZS Corporation.
Chemical. (G) 1,2-propanediol, 2,5-furandione, 1,2-ethanediol, 1,3-isobenzofurandione, aliphatic glycol, 1,4-benzenedicarboxylic acid.
Use/Production. (S) Site-limited and industrial cross linkable base for use in fiber reinforced products and aggregate filled composites. Prod. range: 280,000-500,000.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 1.0 hr/da, up to 12 da/yr.
Environmental Release/Disposal. 24 kg/batch released to water. Disposal by publicly owned treatment works (POTW) and biological treatment system.

P 86-653

Manufacturer. Confidential.
Chemical. (G) Mixed glycol and oligoesters of aromatic and aliphatic dicarboxylic acids.
Use/Production. (S) Component for polyurethane foam insulating material. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 4 hrs/da, up to 22 da/yr.

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Environmental Release/Disposal. 5 to 30 kg/batch released to control technology. Disposal by incineration.

Dated: March 17, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-6362 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59757; FRL-2989-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-96, 86-97 and 86-98—March 27, 1986.
Y 86-99, 86-100 and 86-101—March 31, 1986.
Y 86-102—April 1, 1986.
Y 86-103—April 2, 1986.

FOR FURTHER INFORMATON CONTACT:
Wendy Cleland-Hamnett,
Premanufacture Notice Managememnt Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-96

Manufacturer. Confidential.

Chemical. (G) Alkyl-substituted acrylate copolymer ammonium salt.

Use/Production. (G) Open, non-dispersive, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y86-97

Manufacturer. Confidential.

Chemical. (G) Alkyl-substituted acrylate copolymer.

Use/Production. (G) Open, non-dispersive, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-98

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Polyester resin for photocopy. Import range: Confidential.

Toxicity Data. Acute oral: >9.35 g/kg; Irritation: Skin-Slight, Eye-Slight; Intradermal (Skin): Low; Ames test: Not mutagenic.

Exposure. Processing: dermal, inhalation and ocular.

Environmental Release/Disposal. Less than 0.1% of dust released to air. Disposal by authorized disposal company.

Y 86-99

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-100

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86-101

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Butyl acrylate, methyl methacrylate, carboxylated acrylate polymer.

Use/Production. (S) Pressure sensitive adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-102

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) An alkyd resin to be used in an open non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-103

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Resin for coating and inks and a modifier for coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: March 17, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-6365 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50651; FRL-2991-5]

Receipt of Applications for Experimental Use Permits; Genetically Engineered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received two applications from the University of California for EPA experimental use permits (EUPs) for two genetically engineered microbial pesticides. These are among the first genetically engineered biological agents to be proposed for EUPs under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136c. The Agency has determined that these applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on these applications.

DATE: Written comments must be received on or before April 23, 1986.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP-50651 and be submitted to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person bring comments to: Rm. 236, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed tests and all written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 37, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received two applications from the University of California, Berkeley, CA 94720 for EUPs. One of the applications was assigned EPA file symbol 55269-EUP-R and proposed the application of the genetically engineered product UCBPP1.1 (*Pseudomonas syringae*, Strain Cit7dellb, in an aqueous solution containing no more than 3 x 10^9 colony forming units (CFUs) per ml) to potato plants for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. 1.2 x 10^{13} CFUs (4.0 liters) will be applied to approximately 0.15 acres for each of 3 years for a total of 3.6 x 10^{13} CFUs (12 liters). The second application was assigned EPA file symbol 55269-EUP-E and proposed the application of the product UCBPP2.1 (*Pseudomonas syringae*, Strain TLP2dell, in an aqueous solution containing no more than 3 x 10^9 CFUs per ml) also to potato plants for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. 1.2 x 10^{13} CFUs (4.0 liters) will be applied to approximately 0.15 acre for each of 3 years, for a total of 3.6 x 10^{13} CFUs (12 liters). The field testing will be conducted at a single test site at the University of California's Tulelake Experiment Station at Tulelake, California. The treated areas for both EUPs will not exceed 0.3 acres and the potatoes and treated plants will be destroyed or used for research purposes during or following the field trial. Treatments are scheduled to begin in early May, 1986 and early August, 1986. The applications propose that the permits be issued for 3 years, beginning May 1, 1986 and ending May 1, 1989.

Proposed labeling states:

> "Toxicological properties not fully investigated, applicators should wear full protective clothing including goggles and respirator, apply only during calm weather to avoid drift, do not enter treated areas unprotected for 12 hours after application, dispose of unused material and rinse water by autoclaving and for use only in accordance with the terms and conditions of the Experimental Use Permit."

The proposed EUP programs include collection of data on the dissemination and survival of the bacteria in the environment and monitoring of bacterial populations on plants, in the soil, and in or on bees and other insects associated with the treated potato plants during the proposed field trials.

Following review of the University of California applications and any comments received in response to this notice, EPA will decide whether to issue or deny the EUPs and, if issued, undet what conditions the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6499 Filed 3-21-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New
Title: Measurement of Positive Response Levels of Essential Workers Under Stress of Emergency Situations

Abstract: For Emergency Preparedness planning FEMA needs to be able to predict the positive response levels of essential workers under stress of emergency situations. The attached instruments is designed to measure behavior under stress. It is to be used to test a representative sample of 1466 essential workers to measure their positive response levels under stress.

Type of Respondents: Individuals or households State or Local Governments Businesses or other for-profit Non-profit institutions
Number of Respondents: 1,466
Burden Hours: 388.5

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Walter A. Girstantas, Director,

Administrative Support.

[FR Doc. 86-6326 Filed 3-21-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-01092.

Title: Port of San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission
Zim-American Israeli Shipping Co., Inc. (Zim)

Synopsis: The proposed agreement provides that in return for utilizing the Port of San Francisco as its published, regularly scheduled Northern California port of call, Zim will pay less than 100%

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of port tariff charges for wharfage, dockage and demurrage. During the ten year term of the agreement Zim guarantees 31 vessel calls annually.

Agreement No.: 024-010904.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)
Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit the parties to resolve disputes and apportion responsibility for claims, judgements, payments and expenses arising from injury to SSA employees which result in claim against SSA or the Port. It would supersede any provision to the contrary in any existing leases, contracts or agreements between the parties. It would also apply only to SSA personal injury claims and any future claims which relate to an event or occurrence which arises on or during the period from January 1, 1986 through December 31, 1988. The parties have requested a shortened review period.

Dated: March 19, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.

[FR Doc. 86-6339 Filed 3-21-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Interagency Committee on Smoking and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1) announcement is made of the following national advisory body scheduled to assemble during the month of June 1986.

Interagency Committee on Smoking and Health

June 4, 1986; 9:00 a.m.–3:00 p.m., Hubert H. Humphrey Building Room 503A, 200 Independence Avenue, SW., Washington, DC 20201

Open

Contact: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1575.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services and the Assistant Secretary for Health on a wide range of smoking and health issues.

Agenda: The entire meeting will be open to the public. It will include a discussion of the smoking and health issue with emphasis on the role of free cigarette sampling and other related marketing techniques.

Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from the contact person listed above.

Dated: March 13, 1986.

John Bagrosky,
Executive Secretary.

[FR Doc. 86-6386 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 85E-0382]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tambocor; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that the agency had determined the regulatory review period for Tambocor. This document corrects an editorial error.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-4602 appearing on page 7497 in the issue of Tuesday, March 4, 1986, the following correction is made on page 7497:

In the third column, first complete paragraph, the last sentence is corrected to read "Based on this approval, Riker Laboratories, Inc., now seeks patent term restoration."

Dated: March 18, 1986.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.

[FR Doc. 86-6310 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0053]

Stericon Laboratories, Inc.; Premarket Approval of Crystalens ™ Saline Spray

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Stericon Laboratories, Inc., San Jose, CA, for premarket approval, under the Medical Device Amendments of 1976, of Crystalens ™ Saline Spray for use with soft (hydrophilic contact lenses. Crystalens ™ Saline Spray is indicated for sue in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 23, 1986.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HRA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On September 6, 1985, Stericon Laboratories, Inc., San Jose, CA 95120, submitted to CDRH an application for premarket approval of Crystalens ™ Saline Spray. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 24, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard F. Lippman (HFZ-460), address above.

The labeling of Crystalens™ Saline Spray states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft

contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the contact lens manufacturer or PMA holder. Such notice informs new users of soft contact lenses of appropriate solutions for use in the care of soft contact lenses, and avoids the use of inappropriate products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (2 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 23, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 14, 1986.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 86-6318 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 678772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 50 FR 26053, June 24, 1985), is amended as follows:

1. To reflect the following changes in the Office of Program Support and the Office of Biosafety: (a) Transfer of CDC library services from the Management Analysis and Services Office to the Information Resources Management Office; (b) transfer of nonelectronic documentary security from the Personnel Management Office to the Information Resources Management Office; (c) transfer of responsibility for domestic and international travel policies and procedures from the Financial Management Office to the Management Analysis and Services Office; and (d) assignment of the responsibility for environmental assessments of CDC activities and facilities from the Center for Environmental Health to the Office of Biosafety; and

2. To change the title "Executive Officer" to "Director, Office of Program Support" in the functional statements for the Office of Administrative and Management Services, National Institute for Occupational Safety and Health, and the Office of Administrative Services, Center for Infectious Diseases.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. After the heading and statements for the *Office of Program Support (HCA5),* make the following changes:

(a) Under the heading *Financial Management Office (HCA53),* delete item (11) and renumber items (12) and (13) as items (11) and (12);

(b) Under the heading *Information Resources Management Office (HCA54),* change item (10) to read: (10) develops and coordinates the implementation of information security programs;

(c) Under the heading *Management Analysis and Services Office (HCA58),* in item (1), delete the words library services; renumber items (2) and (3) as items (3) and (4), and insert the following as item (2): (2) serves as the focal point for domestic and international travel policy, procedures, and interpretation;

(d) Under the heading *Personnel Management Office (HCA57),* in item (4), change the words "performance evaluation" to "performance management"; and change item (11) to read: (11) conducts CDC's personnel security program.

2. Under the heading *Office of Biosafety (HCA1),* delete the statement in its entirety and insert the following:

Office of Biosafety (HCA1), Under the direction of CDC's Assistant Director for Science: (1) Develops and implements a CDC-wide program for the identification and control of biological, chemical, radiological, and physical hazards to protect CDC employees and the surrounding community; (2) issues permits for importation and distribution of etiologic agents, hosts, and vectors, and regulates packaging of etiologic agents shipped in interstate commerce; (3) plans, directs, and coordinates environmental and occupational safety and health programs at CDC; (4) conducts environmental assessments of CDC activities and facilities; (5) plans, directs, and coordinates the physical security program at CDC facilities; (6) provides a comprehensive program of occupational medical services for CDC employees; (7) serves as a World Health Organization Collaborating Center for Applied Biosafety Programs and Training.

3. Under the heading *National Institute for Occupational Safety and Health (HCC), Office of Administrative and Management Services (HCC11),* in item (8), change the title Executive Officer to Director, Office of Program Support.

4. Under the heading *Center for Infectious Diseases (HCR), Office of Administrative Services (HCR13), in* item (6), change the title Executive Officer to Director, Office of Program Support.

Dated: March 14, 1986.

Wilford J. Forbush,
Director, Office of Management.

[FR Doc. 86-6385 Filed 3-21-86; 8:45 am]

BILLING CODE 4160-18-M

VOL 51 ISS 56 MR 24 1986 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability and Public Hearings Draft; Southern Rio Grande Plan Amendment/Environmental Impact Statement (SRGPA/EIS)

AGENCY: Bureau of Land Management (BLM), Las Cruces District, Las Cruces/Lordsburg Resources Area, New Mexico Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a Draft Plan Amendment/Environmental Impact Statement to consider a proposed State of New Mexico land exchange (73,560 acres of offered State land in the White Sands Missile Range and 5,000 acres in the Organ Mountains for 10,000 acres of selected public land east of Las Cruces, New Mexico) and other land tenure adjustments for Dona Ana County, New Mexico.

DATE: Written comments on the Draft SRGPA/EIS should be sent to the Las Cruces/Lordsburg Resource Area no later than July 2, 1986.

ADDRESS: Comments should be sent to: William J. Harkenrider, Jr., Area Manager, Las Cruces/Lordsburg Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James, SRGPA/EIS Team Leader (same as above address), Telephone: (505) 525-8228 or FTS 571-8353.

SUPPLEMENTARY INFORMATION: Copies of the Draft SRGPA/EIS have been distributed to a mailing list of identified interested parties. A limited number of additional copies are available at the Las Cruces/Lordsburg Area Office, 1800 Marquess Street, Las Cruces, New Mexico 88005. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico, at public and university libraries in Alamogordo, Carrizozo, Las Cruces, Socorro and Truth or Consequences, New Mexico, and in El Paso, Texas.

Public Hearings: Public hearings will be held at 1:30 p.m. and 7:30 p.m. on June 4, 1986, at the BLM Las Cruces District Office Conference Room, 1800 Marquess Street, Las Cruces, New Mexico.

During the public hearings, oral comments on the content of the Draft SRGPA/EIS will be limited to 10 minutes and should be accompanied with written text. Anyone wishing to register for the public hearings to present oral comments should contact Marvin M. James, SRGPA/EIS Team Leader at the Las Cruces/Lordsburg Resource Area Office, phone (505) 525-8228, prior to June 4, 1986.

Dated: March 17, 1986.

Charles W. Luscher,

State Director.

[FR Doc. 86-6369 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-FB-M

[AA-6708-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Ounalashka Corporation for approximately 8 acres. The lands involved are in T. 72 S., R. 117 W., and T. 73 S., R. 118 W., Seward Meridian, in the vicinity of Unalaska, Alaska.

A notice of the decisions will be published once a week for four (4) consecutive weeks in The Anchorage Times and once in the Aleutian Eagle. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until April 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-6375 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-JA-M

Emergency Closure of Public Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

SUMMARY: Notice is hereby given that effective immediately the following described public lands within the Roswell District are closed to all uses and publics except those having written authorization in their possession by authorizing officer:

New Mexico Principal Meridian

SW¼ of Section 1 and NW¼ of Section 12 of T. 21 S., R. 19 E., N.M.P.M.

The area described above contains 320 acres of public land, more or less. The area which is closed to all uses and publics are identified on maps available upon request from the following Bureau of Land Managment Offices: Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, NM 88201; or Carlsbad Resource Area Office, 101 E. Mermod, P.O. Box 1778, Carlsbad, NM 88220.

The purpose of this closure is to prevent possible adverse affects to public land users, because of conditions existing on the property, and for protection of public health and safety.

The authority for this closure is 43 CFR 8346.1. Penalties for any person who fails to comply with this closure are a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months (43 CFR 8360-7 Penalties). This closure will remain in effect until such time as the described above no longer poses any possible adverse affect to public land users.

Dated: March 14, 1986.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 86-6376 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Services' clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Application for Federal Bird Marking and Salvage Permit.

Abstract: The Migratory Bird Treaty Act requires persons who wish to engage in migratory bird banding, marking and salvage activities to obtain a permit. The information requested enables the Service to determine the applicant's eligibility and ensures that such permits are issued to qualified persons.

Service Form Number: 3-481.

Frequency: On occasion.

Description of Respondents: Individuals or households, State and Federal Government employees who wish to trap and mark wild birds.

Annual Responses: 450.

Annual Burden Hours: 225.

Acting Service Clearance Officer: James E. Pinkerton, 202-653-7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 5, 1986.

Walter O. Stieglitz,

Acting Associate Director—Wildlife Resources.

[FR Doc. 86-6334 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Advisory Committee on Water Data for Public Use; Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU) will be held April 22-23, 1986, at the Ramada Hotel, 6815 Menaul Boulevard, NE., Albuquerque, New Mexico. The Committee consists of individuals and representatives of water-resources oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community in plans, policies, and procedures related to water-data programs. The Director of the U.S. Geological Survey (USGS) is the Chairman of the Committee.

The meeting will convene at 8:30 a.m. on Tuesday, April 22, 1986. Some specific items on the agenda include: (1) The USGS Water Quality Assessment Program; (2) Ground-Water Data Management Activities; and (3) Coordination of Water Research. The meeting will adjourn at 2:30 p.m. on Wednesday, April 23, 1986.

The meeting wil be open to the public, and anyone wishing to attend or desiring more information should contact Edgar A. Imhoff, Chief, Officer of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092. His telephone number is (703) 648-5016. Verbatim transcripts of the meeting will be available for inspection at Mr. Imhoff's office in Reston, Virginia, approximately 4 weeks after the meeting. A report summarizing the meeting will also be available form the Office of Water Data Coordination subsequent to the meeting.

Dated: March 14, 1986.

Edgar A. Imhoff,

Chief, Officer of Water Data Coordination.

[FR Doc. 86-6353 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Rock Creek Watershed, TN, Lands Unsuitable for Surface Mining and Reclamation Operations: Availability of Draft Petition Evaluation Document and Draft Environmental Impact Statement, Comment and Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of availability of the draft combined petition evaluation document/environmental impact statement (PED/EIS) for the Rock Creek watershed in Bledsoe and Hamilton Counties, Tennessee, lands unsuitable for surface coal mining and reclamation operations petition. Notice of public hearing to receive comments on the Rock Creek draft PED/EIS.

SUMMARY: OSMRE has prepared a draft combined PED/EIS addressing the petition to designate lands within the Rock Creek watershed as unsuitable for surface coal mining and reclamation operations. The document evaluates the allegations raised in the petition, and considers the impacts of alternative unsuitability decisions for the Rock Creek watershed on the human environment, the economy, and the supply of coal. Copies of the PED/EIS are being made available today. Public comment on PED/EIS is solicited and public hearing will be held as described below.

DATES: Written comments on the PED/EIS must be received at the address given below under "**ADDRESSES**" on or before May 19, 1986, at 5:00 p.m. local time. Comments may also be presented at a public hearing starting at 1:00 p.m. and 7:00 p.m. on May 8, 1986, at the address given below.

ADDRESSES: Public hearing on the draft PED/EIS will be held at the Bledsoe County Courthouse in Pikeville, Tennessee, on Thursday, May 8, 1986, beginning at 1:00 p.m. and 7:00 p.m. local time.

Written comments on the draft PED/EIS must be mailed or hand delivered to Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902, to the attention of Willis L. Gainer. All comments will be on file and available for inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement (telephone: 615/673-4348 or FTS 854-4348) at the address listed above.

PED/EIS availability: Copies of the draft PED/EIS are available for inspection at the Bledsoe and Hamilton County Courthouses and at the OSMRE office listed above. In addition, copies of the document may be obtained, while supplies last, at the above listed office.

SUPPLEMENTARY INFORMATION: The public hearing on the draft PED/EIS has been scheduled for the date and address listed above. Anyone who wishes to comment will be given the opportunity to do so, but initial comments will be limited to 15 minutes of oral testimony. Time limits may be extended at the discretion of the presiding officials. Persons wishing to present testimony are encouraged to contact OSMRE at the address given below. OSMRE would appreciate receiving a written copy of the testimony four days prior to the public hearing.

The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony is encouraged as this will facilitate the job of the court reporter. The public hearing will commence at the times identified above and will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of the scheduled speakers.

OSMRE encourages the public to comment on the content of the draft PED/EIS. In particular, OSMRE solicits comments which identify errors, omissions, or alternatives not yet considered. Whenever possible, public comments should be supported by technical data or other source material. All comments from the public on the draft PED/EIS will be considered during preparation of the final document.

Dated: March 17, 1986.

H. Leonard Richeson,

Acting Assistant, Program Operations.

[FR Doc. 86-6342 Filed 3-21-86; 8:45 am]

BILLING CODE 4310-05-M

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INTERSTATE COMMERCE COMMISSION

Motor Carrier Application To Consolidate, Merge or Acquire Control Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 13344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2 If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

Decided: March 18, 1986.

MC-F-17275. filed March 7, 1986. Schiavone Transportation Corp. (STC) (254 College Street, New Haven, CT 06510)—Continuance in Control—New York Airport Services Corp. (NYAS) (230 Old Gate Lane, Milford, CT 07460). Representative: Palmer, S. McGee, Jr.; Day, Berry & Howard; City place, 185 Asylum Street; Hartford, CT 06103-3499. STC, a noncarrier, seeks authority to continue in control of NYAS which has recently been granted authority in No. MC-184935. STC also owns Connecticut Limousine Service (MC-123748) and Connecticut American Charters, Inc. (MC-109665). STC and Schiavone Carrier Corp. (SCC), also a noncarrier, are controlled by The Schiavone Corporation, a noncarrier controlled by Joel Schiavone. SCC controls Grey Line New York Tours Corp. (MC-109697), Walters Transit Corp. (MC-46879), and Carey Transportation Inc. (MC-36031). All of these entities have some common officers and directors.

James H. Bayne,

Secretary.

[FR Doc. 86-6329 Filed 3-21-86; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86-22)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting Systems (ASRS).

DATES: Date and time: April 15, 1986, 9:00 a.m. to 5:00 p.m.; April 16, 1986, 8:00 a.m. to 12:00 p.m.

ADDRESS: Ames Research Center, Building 200, Director's Committee Room, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Reynard, Ames Research Center, Moffett Field, CA 94035, (415/694-6467).

SUPPLEMENTARY INFORMATION: The Subcommittee on ASRS Operations was established to review the ASRS Operations and NASA Operations and NASA actions taken in response to Subcommittee recommendations. The Subcommittee, chaired by Mr. John Winant, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 90 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda:

April 15, 1986

9 a.m.—Chairperson's Opening Remarks.

9:20 a.m.—Operations Report.

10:30 a.m.—Research Report.

1 p.m.—Discussion of Federal Aviation Administration Issues.

2 p.m.—Discussion of Report Volume Increases, Processing and Consequences.

3 p.m.—Re-evaluation of the Identification of Aircraft Make and Model.

4 p.m.—Discussion of Policy regarding ASRS Publications and Other Output.

5 p.m.—Adjourn.

April 16, 1986

8 a.m.—Technology Transfer of ASRS Design.

9 a.m.—Advisory Subcommittee Membership.

10:15 a.m.—Advisory Subcommittee Evaluation Plan and Schedule.

11 a.m.—Open Discussion.

12 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 18, 1986.

[FR Doc. 6309 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice 86-24]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATES: Date and time: April 9, 1986, 1 p.m. to 5 p.m.; April 10, 1986, 8 a.m. to 5 p.m.; April 11, 1986, 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room Nos. as noted in the agenda below, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. This committee

is chaired by Dr. Artur Mager and is composed of 34 members. The committee operates both through a number of informal subcommittees and as a whole. The session on April 11, 1986, from 8:30 a.m. to 9:30 a.m., of the Remote Sensing Subcommittee and each of the sessions of three subcommittees—Communications Subcommittee, Information Systems Subcommittee, and the Microgravity Subcommittee—on April 11, 1986, from 8:30 a.m. to 10:30 a.m., will be closed to the public. During these sessions the subcommittees will discuss and evaluate candidates being considered for membership. Throughout these sessions the qualifications of candidates will be candidly discussed and appraised. Since these sessions will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that they should be closed to the public.

Type of meeting: Open—except for 4 closed sessions as noted in the agenda below.

Agenda

Remote Sensing Subcommittee

April 9, 1986. Room 226B

1 p.m. Discussion, Review, and Redrafting of Remote Sensing Research and Development (R&D) Policy Paper.

5 p.m. Adjourn.

April 10, 1986. Room 226A

10:30 a.m. Formulation of Recommendation on Landsat Act Amendments.

2 p.m. Briefing on Remote Sensing for Public Health (by the Director, Life Sciences Division).

3:30 p.m. Formulation of Approach for Long-Range Applications Plan.

5 p.m. Adjourn.

April 11, 1986. Room 226A

8:30 a.m. Closed Session on Membership.

9:30 a.m. Discussion of FY88 Planning and Budget Strategy.

10:30 a.m. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Communications Subcommittee

April 10, 1986. Room 226B

10:30 a.m. Discussion of Long-Range Planning and Summer Study.

3 pm. Discussion of FY88 Planning and Budget Strategy.

5 p.m. Adjourn.

April 11, 1986, Room 226B

8:30 a.m. Closed Session on Membership.

10:30 am. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Information Systems Subcommittee

April 10, 1986, Suite 770, Capitol Gallery Building

10:30 a.m. Discussion of FY88 Planning and Budget Strategy.

12 p.m. Depart NASA Headquarters to visit Information Processing Facilities at the Goddard Space Flight Center.

5 p.m. Adjourn.

April 11, 1986, Suite 770, Capitol Gallery Building

8:30 a.m. Closes Session on Membership.

10:30 a.m. Wrap-up Discussions and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Microgravity Subcommittee

April 10, 1986. Room 305, Capitol Gallery Building

10:30 Background Discussion with New Members of the Subcommittee.

11 a.m. Discussion of Documentation of Program Achievements ("Nuggets").

1 p.m. Discussion FY88 Planning and Budget Strategy.

3 p.m. Discussion of Long-Range Planning.

5 p.m. Adjourn.

April 11, 1986, Room 305, Capitol Gallery Building

8:30 a.m. Closed Session on Membership.

10:30 a.m. Wrap-up Discussion and Review of Subcommittee Report.

11 a.m. Adjourn for Reconvening of the Full Committee.

Full Committee

April 10, 1986, Room 226A

8 a.m. Opening Remarks by the Chairperson.

8:30 a.m. Update on Program Status, Congressional Testimony, etc., by the executive Secretary.

9 a.m. Discussion of FY88 Planning and Budget Issues with Dr. Edelson.

9:45 a.m. Dr. Edelson's Request for SAAC Formulation and Recommendations of an Applications Long-Range Plan.

10:15 a.m. Recess Full Committee to Convene Subcommittee Meetings.

April 11, 1986, Room 226A

11:15 a.m. Discussion of Subcommittee Reports

12:30 p.m. Adjourn Full Committee

2 p.m. Convene Meeting of Subcommittee Chairperson to Review SAAC Report to the NAC.

5 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 19, 1986.

[FR Doc. 86-6359 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-23)]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Advisory Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Informal Subcommittee.

DATES: Date and time: May 8, 1986, 8:30 a.m. to 5:00 p.m.; May 9, 1986, 8:30 a.m. to 4:40 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Activities Building, 21000 Brookpark Road, Cleveland, Ohio 44135.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Code R, National Aeronautics and Space Administration, Washington, DC 20546; Telephone: (Area Code 202/453-2727).

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST).

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the SSTAC and the Aeronautics Advisory Committee (AAC) and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 21 members. Total anticipated attendance is 75 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Subcommittee members and other participants).

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Type of Meeting: Open.

Agenda

May 8, 1986

8:30 a.m.—Chairperson's Remarks.
9 a.m.—Overview of NASA/OAST.
9:45 a.m.—Space Technology Overview.
11 a.m.—Parallel Program Review Sessions.
5:00 p.m.—Adjourn.

May 9, 1986

8:30 a.m.—Continuation of Parallel Program Review Sessions.
3 p.m.—Summary Session.
4:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 18, 1986.

[FR Doc. 86-6310 Filed 3-21-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: April 17–18, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

Date: April 21–22, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

Date: April 28–29, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after October 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-6344 Filed 3-21-86; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATE: Comments on this information collection must be submitted by April 21, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Extension of a currently approved public use report with revisions is requested. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504 (h).

Title: Basic State Grant Application Narrative Format.
Frequency of Collection: Average of one response per 1.67 years
Respondents: State governments and regional consortia of state governments

Use: Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and published criteria to provide the Endowment with information on past performance of applicant agencies; and to provide information needed for routine liaison with the state agencies.

Estimated Number of Respondents: 30.

Estimated Hours for Respondents to Provide Information: 413.

D.K. Stephens,

Asst. Director for Administration, National Endowment for the Arts.

[FR Doc. 86-6345 Filed 3-21-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–45 to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company (licensees) which authorizes operation of the Perry Nuclear Power

Plant, Unit 1 (the facility), at reactor core power levels not in excess of 3579 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition limiting operation to five percent of full power (178 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Perry Unit 1 is a boiling water reactor located near Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

The license is effective as of the date of issuance. The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on February 13, 1981 (46 FR 12372).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–45, with Technical Specifications (NUREG–1162) and the Environmental Protection Plan; (2) the reports of the Advisory Committee on Reactor Safeguards, dated July 13, 1982 and March 17, 1986; (3) the Commission's Safety Evaluation Report, dated May 1982 (NUREG–0887), and Supplements 1 through 9; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1982 (NUREG–0884).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of Facility Operating License NPF–45 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 9 (NUREG–0887) and the Final Environmental Statement (NUREG–0884) may be purchased at current rates from the Superintendent of Documents, US Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982 or by calling (202) 275–2060 or (202) 275–2171.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-6397 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co., Hope Creek Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of 10 CFR Part 50 to Public Service Electric and Gas Company (the Applicant) for the Hope Creek Generating Station, located in Salem County, New Jersey.

Enviornment Assessment

A. Deferral of Certain Radiation Monitors at Fuel Load

Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having fully operational portions of a radiation monitoring system as described in Hope Creek FSAR section 11.5. The specific relief requests and supporting evaluations are identified in submittals from PSE&G dated September 10 and December 26, 1985, and February 12 and 25, 1986. The relief requests proposed alternative methods for providing the radiation monitoring function for identified radiation monitors and associated hardware that would not be functional at fuel load.

The applicant's request for exemption and the basis therefore are contained in letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to provide the applicant with the ability to load fuel and perform Power Ascension Testing without having fully operational the completed radiation monitoring system (RMS) as described in Hope Creek FSAR section 11.5. This will provide the applicant with greater pre-operational flexibility and therefore expedite the start of power operation.

Environmental Impact of the Proposed Action. The proposed temporary relief would permit implementing the RMS in accordance with the proposed alternative temporary system as described in submittals dated September 10, December 26, 1985, and February 12, 1986. Requiring that the RMS as described in Hope Creek FSAR section 11.5 be fully functional at fuel load would result in hardship for the applicant, without a compensating increase in safety. The applicant has proposed using temporary radiation monitoring system to ensure offsite doses remain acceptable low. The probability of an accident has not been increased and the post-accident radiologial releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupations exposure. Likewise the relief does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiologial environmental impacts associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Deferral of Traversing—Incore—Probe Preoperational Test at Fuel Load

Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having a Traversing-Incore-Probe (TIP) system preoperationally tested at fuel load. Preoperational testing of the TIP system will be complete by initial criticality. The specific relief requests and supporting evaluations are identified in submittals from PSE&G dated November 29, 1985, and January 15, 1986 and February 10 and 25, 1986.

Regulatory Guide 1.68, Revision 2, Appendix A. Paragraph 5.y requires that the TIP system be calibrated as necessary and proper operation verified. In complying with this regulatory guide, the Hope Creek Generating Station (HCGS) Technical Specifications 3.3.7.7 requires that the TIP system be operable when used for the aforementioned

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calibration or monitoring. TIP system operability is nomally demonstrated during preoperational testing of the system hardware and electronics.

The TIP is a power generation system. It serves no safety function as it is not taken for in the FSAR for a design basis accident nor does if function to mitigate any expected or abnormal transient incidents. The Technical Specification 3.3.7.7 requirement has been incorporated to require that use of the TIP system is suspended when it is inoperable. Prior to initial criticality, there is no Technical Specification requirement for the TIP system to perform its intended function i.e., monitor, minimum critical power ratio (MCPR), average planar linear heat generation rate (APLHGR), linear heat generation rate (LHGR) or the maximum fraction of limiting power density (MFLPD). Since the TIP system does not provide a precise indication at low power levels which would allow a reliable calibration of the Low Power Range Monitor gains, the TIP system cannot be used for calibration prior to initial criticality. As a result, the applicant has requested an exemption from the requirement to have the TIP system operable prior to achieving initial criticality.

The applicant's request for exemption and the basis are contained in a letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order for the applicant to be able to load fuel without having a preoperationally tested TIP system. Calibration and preoperational testing of the TIP system will be complete prior to initial criticality. This action is based upon the inability of the TIP system to allow a precise indication at low power levels such that a reliable calibration of the Low Power Range Monitor (LPRM) gains could be performed.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of the TIP system until prior to achieving initial criticality.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impact associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

C. Deferral of the Offgas System Preoperational Test at Fuel Load

Identification of Proposed Action. The proposed action would provide relief to the applicant with regard to having an Offgas System preoperationally tested at fuel load. Preoperational testing of the Offgas System will be complete prior to fully tensioning the reactor pressure vessel (RPV) head closure bolts. The specific exemption request and supporting evaluations are identified in the PSE&G submittals dated November 29, 1985, January 15, 1986 and February 10 and 25, 1986.

The Code of Federal Regulations Title 10 Part 20 (10 CFR 20), 10 CFR 50 Appendix A, General Design Criteria (GDC) 60 and 64 require the control of releases of radioactive materials to the environment. Complying with these regulations, Hope Creek Generating Station (HCGS) Technical Specification 3.11.2.1 requires that the dose rate due to radioactive materials released in gaseous effluents from the site to areas at and beyond the site boundary be limited to specified values at all times. To meet this requirement, Technical Specification 3.11.2.4 requires that gaseous radwaste treatment system, which includes the Offgas System, be operable whenever the Steam Jet Air Ejectors (SJAEs) are operating. Offgas System operability is normally demonstrated during preoperational testing of the system hardware and electronics with the acceptance criteria for the testing specified in the preoperational test specification.

The applicant states that the Offgas System is not required until after the RPV closure bolts are fully tensioned since the Main Steam Isloation Valves (MSIVs) will be closed thereby prohibiting steam admission to the turbine/consenser. SJAEs may be tested or operated on auxiliary steam prior to bolt tensioning in order to fulfill Technical Specification surveillance and test requirements. Therefore, no offgas constituents will enter the condenser or SJAEs nor be available for offsite release.

The applicant's request for exemption and the basis are contained in letter dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to allow the applicant to load fuel without having completed preoperational testing of the Offgas System. Preoperational testing of the Offgas System will be complete prior to fully tensioning the RPV head bolts.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of the Offgas System until fully tensioning the RPV closure bolts. This exemption is based upon the MSIVs being closed thereby prohibiting steam admission to the turbine/condenser. Therefore no offgas constituents will enter the condenser or SJAEs nor be available for offsite release.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not effect non-radiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

D. Deferral of Standby Diesel Generator "D" Preoperational Testing at Fuel Load

Identification of Proposed Action. The proposed action would exempt the applicant from having to complete the Standby Diesel Generator (SDG) "D" preoperationaly testing prior to fuel load. The applicant alternatively proposes to complete the SDG–D preoperational testing prior to initial criticality. The specific exemption

request and supporting evaluation is contained in the applicants submittal dated February 25, 1986.

Need for the Proposed Action. The exemption is required in order to provide the applicant with the ability to load fuel without having completed preoperational testing of SDG–D. Preoperational testing of SDG–D will be completed prior to initial criticality.

Environmental Impact of the Proposed Action. The exemption would allow the applicant to defer completing preoperational testing of SDG–D until initial criticality. During initial fuel loading and precritical testing, the reactor will remain at essentially ambient temperatures and atmosphee conditions. Under these conditions, radioactive species will be produced, therefore, there are no environmental impacts associated with the proposed action.

The staff concludes that the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact.Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action. The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental inpact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of Hope Creek Generating Station operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources. These actions in the granting of the exemption above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Hope Creek Generating Station, dated December 1984.

Agencies and Persons Consulted. The NPC staff reviewed the licensee's requests that support the requested exemption above. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested exemption.

Based upon the foregoing environmental assessment, we conclude that the requested actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemption as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For The Nuclear Regulatory Commission.

Anthony Bournia,

Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-6396 Filed 3-21-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-07022; License No. 29-13613-02; EA 86-17]

Radiation Technology, Inc.; Conditional Rescission of Order Suspending the License

I

Radiation Technology, Incorporated, Lake Denmark Road, Rockaway, New Jersey 07866 (the licensee) is the holder of a byproduct material license issued by the Nuclear Regulatory Commission (the Commission or NRC) pursuant to 10 CFR Part 30. The license, which was issued on November 18, 1970, most recently renewed on August 17, 1981, and due to expire on August 31, 1986, authorizes the licensee to perform certain activities using byproduct material in accordance with criteria specified therein. This authorization includes, among other activities, the use of specified radioactive sources, not to exceed 12,000 curies per source and 2,000,000 curies total, for service irradiation in the licensee's Radiation Technology (RT) Model 2102 service irradiator.

II

An Order Suspending the License (Effective Immediately) was issued on March 3, 1986. The Order suspended all operations authorized by License No. 29–13613–02 and required that the licensee place and maintain all sources in their fully shielded position at the bottom of the irradiator pools, and conduct only those licensed activities required to maintain the facility in a safe condition.

The Order was based on the finding, during several NRC inspections, that licensee personnel had defeated required safety interlocks associated with the RT–2102 irradiator in violation of Commission requirements, including 10 CFR 20.203 and Conditions 17 and 18 of its license. Consequently, the NRC lacked reasonable assurance that the facility would be operated in a manner that assured that the health and safety of the public, including licensee employees, would be protected. The Order was made immediately effective pending the completion of an ongoing Commission investigation of these matters.

III

On March 6, 1986, licensee representatives met with NRC Region I staff to discuss planned improvements to the licensee's management controls as described in a letter to the NRC dated March 4, 1986. At that meeting the licensee requested the license suspension be lifed based on the improvements set forth in the March 4, 1986 submittal. During the March 6, 1986 meeting, the staff responded to the licensee's March 4 submittal and outlined those aspects which were inadequate. Subsequently, on March 10, 1986, the licensee provided the NRC with a more detailed description of its plans for addressing the NRC's concerns in the areas of procedural compliance, staff competence, electrical and mechanical system reliability, and clarification of license provisions.

IV

The licensee in its March 10, 1985 letter described improvements to upgrade its radiation safety program which included the hiring of two knowledgeable and qualified independent radiological safety consultants to (1) supervise the daily safety operations at the facility, and (2) provide oversight of those operations. Although the licensee remains responsible for all activities under its license, I have determined that these consultants have been given sufficient authority by the licensee to make necessary safety decisions, including shutdown of the facility, when necessary and appropriate. Accordingly, I have concluded that public health and safety will not be endangered by rescinding the Order Suspending the License (Effective Immediately). My decision is contingent, however, on the licensee's acceptance of and adherence to the conditions described in this

Order. Failure to comply with those conditions may result in reinstatement of the suspension ordered on March 3, 1986.

V

In view of the foregoing, and pursuant to sections 81, 161b and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, the suspension of licensed activities imposed by the Order Suspending License (Effective Immediately) is hereby rescinded pending further order of the Commission subject to the following conditions:

A 1. Prior to the first use of licensed material following issuance of this Order, the Region shall receive a copy of the licensee's contract with Hydro Nuclear Services, Inc. so that the NRC can verify that the consultant's authority and responsibilities are in compliance with this order. The consultant shall have the authority to override any production schedule and/or directive and suspend all operations at the Rockaway facility should conditions arise that would cause or threaten to cause plant activities to be conducted in noncompliance with accepted radiological safety practices or NRC regulatory requirements including NRC license conditions. The consultant shall notify the Commission immediately if for any reason their ability to safely supervise daily operation of the facility is compromised.

Nothing in this Order relieves the licensee of its responsibilities under the license to safely operate the facility and direct its shutdown if problems are identified.

2. All licensed activities conducted under authorization of the license shall be supervised by the licensee's independent consultant (designated in the March 10 letter to be Hydro Nuclear Services, Inc.) in accordance with the statements, representations and procedures included in section 1.0 (Management Controls) and section 2.0 (Demonstration of Third and Fourth Party Independence) of the licensee's letter to the NRC dated March 10, 1986. At least one of the Hydro Nuclear Services, Inc. employees named in the March 10, 1986 letter, or other person approved by NRC Region I, in writing, shall be physically present at the licensee's Rockaway facility at all times when licensed material is in use. At any time when at least one of these named individuals is not present at the licensed facility, all licensed material shall remain in safe storage and the licensee may perform only activities necessary to maintain the facility in a safe condition. The independent consultant responsible for daily operation and supervision shall provide the licensee's Board of Directors a written report every seven days summarizing the licensee's activities, any problems identified, and corrective actions taken. A copy shall be sent simultaneously to the Regional Administrator, Region I.

3. Prior to the first use of licensed material following issuance of this Order, the licensee shall assure that each person who will be performing any of the supervisory functions required by Section V.A.2 has received specific instructions in the RT–2102 irradiator system design and operation, or the R&D irradiator as appropriate, all control and safety devices, environmental controls (i.e., temperature and ozone), appropriate emergency response actions, and notification as described in section 7.0 (Training) of the licensee's letter to the NRC dated March 10, 1986.

4. Prior to the first use of licensed material following issuance of this Order, the licensee shall instruct all personnel at the Rockaway facility in the organizational changes made and in the role and authority of each of the independent consultants. Each person who actually manipulates the controls of the irradiators shall be provided with a copy of this Order and the licensee's letter to the NRC dated March 10, 1986.

5. One of the individuals named in section V.A.2 of this Order shall be physically present in the control room of the RT–2102 irradiator or at the controls of the R&D pool irradiator hoist during each startup or shutdown operation of the R&D irradiator until each operator has been observed and evaluated through three complete startup and shutdown (or operation) cycles. Following the three cycles of operation, the operator shall either be certified as qualified to operate the irradiator or removed from such duties and a retraining and requalification plan prepared and implemented. Records of the certification and any retraining and requalification shall be made and maintained for inspection by the Commission.

6. At least once in each calendar week (Monday through Sunday), Michael J. Slobodien, or other approved fourth party auditor, shall conduct an unannounced audit of the Rockaway facility to examine the operation of the interim operations organization and implement the quality assurance program for radiological safety in accordance with section 6.0 (Quality Assurance Program) of the licensee's letter to the NRC dated March 10, 1986. The first such visit shall be conducted within seven days following commencement of operations. Written results of the audits shall be submitted to the licensee's Board of Directors, with a copy sent simultaneously to the Regional Administrator, Region I, within seven days of the conclusion of the audit. Should Mr. Slobodien terminate his services, or be terminated by the licensee, the Regional Administrator shall be immediately notified. Unless another individual is substituted for Mr. Slobodien after prior approval of NRC Region I, at the beginning of the eighth day following his last audit of the facility all licensed material shall be placed in safe storage and the licensee may perform only those activities necessary to maintain the facility in a safe condition.

7. The licensee shall develop a written surveillance and preventive maintenance program for all components and systems important to safe operation of the facility and take all other actions described in section 5.0 (Surveillance System) of the licensee's letter to the NRC dated March 10, 1986. The written plan shall specifically identify each component or system important to safe operation of the facility and shall be submitted to the Commission by June 30, 1986 with a request to amend the license to include the plan.

8. The licensee shall develop a comprehensive written plan for documenting and controlling physical changes and repairs to the RT–2102 and R&D pool irradiators. This plan shall include drawing control, written approval of each physical change of components or systems important to safe operation of the facility, and an as-built inspection of each repair and/or change by an individual who has not performed the change or repair. This plan shall be submitted to the Commission by July 31, 1986 with a request to amend the license to include it.

9. All notifications required by this Order shall be made by telephone to the NRC Region I Office at 215–337–5000 during normal business hours and at 301–951–0550 during other hours. Each such notification shall be confirmed in writing the next business day. Written reports and notifications shall be addressed to the Regional Administrator, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

10. The licensee shall operate the RT–2102 irradiator using the conveyor interlock system described in the licensee's letters to the NRC dated January 9, January 15, and February 7, 1986.

B. Except as specifically provided by section V.A of this Order, the licensee shall possess and use licensed material in accordance with the existing license, as renewed on August 17, 1981 and most recently amended on August 9, 1985, and the statements, representations, and procedures contained in the licensee's letter to the NRC dated March 10, 1986.

C. The Regional Administrator, Region I, may relax or rescind any of the above provisions upon demonstration of good cause by the licensee.

This Conditional Rescission of Order Suspending License is effective upon written consent to its terms by the licensee. The licensee's consent to the terms of this Order shall be submitted to NRC Region I.

Dated at Bethesda, Maryland, this 13th day of March 1986.

For The Nuclear Regulatory Commission.

James M. Taylor,
Director, Office of Inspection and Enforcement.

[FR Doc. 86–6394 Filed 3–21–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–397]

Washington Public Power Supply System, WPPSS Nuclear Project No. 2; Exemption

I

Washington Public Power Supply System (WPPSS or the Licensee) is the holder of Facility Operating License No. NPF–21 which authorizes the operation of the WPPSS Nuclear Project No. 2 (WNP–2 or the facility) at steady-state power levels not in excess of 3323 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensee's site in Benton County, Washington.

II

On February 14, 1973, the Commission published Appendix J to 10 CFR 50, "Reactor Containment Leakage Testing for Water-Cooled Power Reactors" (38 FR 4386). Revisions to Appendix J were published in the **Federal Register** on September 22, 1980 (45 FR 62789). Paragraph II.G of Appendix J defines "Type B Tests", in parts as those intended to detect local leaks and measure leakage across pressure-containing or leakage-limiting boundaries for primary reactor containment whose design incorporates resilient seals, gaskets or sealant compounds. Paragraph III.D.2(a) of Appendix J states in part, "Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than two years." Facility Technical Specification 4.6.1.2.d also requires Type B tests to be performed at intervals no greater than 24 months (with specified exceptions not applicable to this action).

By letter dated January 17, 1986, the licensee requested an exemption from the 24 month requirement for the type B test of the drywell head "O" ring seals. The licensee also requested amendment of related Technical Specification 4.6.1.2.d, to permit the type B test of these seals to be extended beyond the 24 month limit. The licensee's request is prompted by the requirement the reactor be shut down and a major shield plug be removed in order to perform this test. Instead of performing the test within the prescribed 24 month period (which expires March 19, 1986), the licensee proposes to perform the test during a refueling outage which is expected to commence within a few weeks following the March 19th date (between April 15 and May 15, 1986).

III

In support of this request the licensee states the twenty-four month test interval is based on exposure to service conditions for a period of that duration, and that due to plant outages, and conduct of the power ascension program during this initial fuel cycle, the "O" ring seals have not been exposed to the normal service operating environment for the full two year period. The licensee estimates the cumulative duration of outages and reduced power operation (resulting in a less severe operating environment since the last test in 1984) is approximately six months. Based on this, the licensee states a test concurrent with the Spring 1986 refueling outage would satisfy the intent of the two year interval specified in Appendix J.

As for the timing of the Spring 1986 outage, the licensee states it is difficult to predict exactly when the facility will shut down for the planned refueling because an effort is made to coordinate operations with those of the Bonneville Power Administration (BPA). BPA operations, however, are affected by hydroelectric capacity, and this in turn is influenced by spring runoff conditions. Nonetheless, taking into account the uncertainties, the licensee estimates the refueling outage would commence sometime between April 15 and May 15, 1986.

The licensee states that granting the exemption is in the public interest since it would eliminate the need for a specal plant outage solely for the leak test, and the attendant loss of power generation capacity during a period of high demand (prior to the Spring runoff). In addition, the licensee states granting the exemption will contribute to the goal of maintaining personnel radiation exposures as low as reasonably achievable.

In reviewing the licensee's basis for this request, it is noted the regulations provide that type B tests ". . . shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than two years." It is thus seen that in addition to prescribing a surveillance interval experience had demonstrated to be appropriate and conservative for these tests, the wording of the regulation was selected based on the typical refueling interval of twelve to eighteen months. The two year limit was included to provide operational flexibility with respect to a nominal 18 month refueling interval, while placing a finite upper limit on that flexibility. The regulations, therefore, are based not only on technical requirements, but also on the normal or typical schedule of an operating facility.

While such a premise is appropriate for plants that have completed one or more operating cycles, it is less appropriate for facilities during the first operating cycle (i.e. prior to the first refueling). This is because such facilities frequently identify problems during the first cycle which require plant shutdown for corrective action; and this, of course, extends the duration of the cycle. Such has been the case for this facility. On December 20, 1983, the facility received an operating license permitting operation at up to 5% of rated thermal power (166 MWt). On March 19, 1984, the licensee completed the type B test of the drywell head "O" ring seals. Amendment No. 1 to the facility license, which permitted full power operation (3323 MWt), was issued on April 13, 1984; and, following completion of the power ascension tests, the facility achieved commercial operation on December 13, 1984. In early 1985, the facility experienced difficulty sustaining full power operation. This was due to vibration problems with one of the reactor recirculation pumps.

Although a refueling outage had originally been planned for the April-May period of 1985, delays experienced during power ascension testing and the power level limit imposed by the problems with one reactor recirculation pump combined to limit the fuel burnup achieved by that date. Therefore, based

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on the presence of sufficient reactivity in the fuel to permit operation for a substantial additional period without refueling, the licensee postponed the refueling activity. Nonetheless, because significant maintenance was necessary, the licensee initiated a reactor shutdown in early May 1985. This maintenance shutdown continued until June 29, 1985.

Discussions with the licensee indicate consideration was given to performing the type B test of the drywell head "O" ring seals at the time of this maintenance shutdown. This option, however, was rejected because no other task scheduled to be performed during the outage required removal of the shield plug, and because removal of the shield plug and performance of the test at times other than during refueling outages would not be consistent with "as low as reasonably achievable" radiation exposure considerations. Accordingly, the licensee decided to postpone the test until the next refueling outage.

The two month maintenance outage in mid-1985, combined with reduced fuel burnup due to operation at a reduced power level (not exceeding 72%) since that time, however, has now served to extend the possible operating cycle beyond the two year limit. This, of course, has led to the situation which prompts the present exemption request.

The licensee justifies the extension of the test interval by stating: (1) the two year criterion is based upon exposure of components to service conditions for such a period, and (2) that due to extended outages the "O" ring seals have not been exposed to service conditions for this full period. By "service conditions", the licensee is referring to the environmental conditions to which the seal material is exposed during operation of the reactor at power, which may cause the seal material to degrade. These include temperature, pressure, humidity, ionizing radiation, age, etc.

As indicated earlier, the required test interval stated in Appendix J is primarily established based on accumulated operating experience. Further, experience to date has shown such an interval, based on typical refueling outage frequencies, or two years, to be acceptable. In addition, however, it is noted this experience typically involves exposure of the sealing components and materials to full service conditions over the full duration of an operating cycle. The licensee's request, therefore, is in essence a request that the two year limit be waived and the facility be allowed to perform the leak test following exposure of the seal to full or near-full service conditions for a cumulative duration not exceeding that of a full operating cycle.

Regarding exposure of the seal to service conditions for the full operating cycle, we have examined the monthly operating reports issued by the facility for the period from initial criticality through November, 1985. This examination indicates the reactor generated 20,581 GWh of thermal energy during this 20-month period. This is approximately 47% of the 43,694 GWh of thermal energy that theoretically could have been generated if the reactor had operated at full power for 18 months, or 56% of the energy that could have been generated at full power in fifteen months. From the fact the reactor has generated less than half the thermal energy possible under existing regulatory limits (based on 18-months of full power operation), it is clear the seals theoretically could be exposed to full service conditions for an additional nine months of full power operation without exceeding the exposure permitted by the regulations. More realistically, even allowing for fifteen months of full power operation in an 18-month operating cycle, 6.6 months of full power operation would remain before reaching the service conditions possible with 15 months of operation. It is noted that this additional 6.6 months of operation (measured from December 1985) would allow operation until mid-May, 1986. Based on the present limit on reactor power (72%—a value which is unlikely to be changed prior to refueling), the plant could actually operate through July, 1986 before equaling the exposure to service conditions associated with fifteen months of full power operation.

Based on the above considerations, the Commission concludes permitting the licensee to postpone the type B test of the drywell head "O" ring seals beyond the normal twenty-four month limit specified in Appendix J until a refueling outage scheduled to commence no later than May 15, 1986, will not subject the drywell head "O" ring to service conditions more severe than those already permitted by the regulations.

Because requiring literal confomance with the two-year test requirement of Appendix J in this instance would cause a loss of electrical power generating capactity during a period of high demand (prior to the spring runoff), we also conclude granting the requested exemption is in the public interest.

Finally, because requiring literal conformance with the two-year test requirement would cause personnel radiation exposure not required by technical considerations of safety, we conclude granting the requested exemption conforms to the Commission's policy of maintaining radiation exposures as low as reasonably achievable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption, namely that application of the regulation in the particular circumstances would result in undue hardship and other costs that are significantly in excess of those contemplated when the regulation was adopted and that are significantly in excess of those incurred by others similarly situated. If the plant were forced to shut down by March 19, 1986, solely to comply with the Appendix J regulation, an undue hardship and financial burden would result from the loss of power generation during a period of high demand (prior to the spring runoff) that would be significantly in excess of that contemplated when the regulation was adopted. When the regulation was adopted, it was contemplated that the testing would be accomplished during the normally anticipated and scheduled refueling outages. Since the Commission has previously granted similar exemptions, e.g., Browns Ferry Unit 2, Brunswick Unit 1, and TMI Unit 1 under similar circumstances, the cost and hardship imposed on WNP–2 by failing to grant the exemption would be considerably in excess of that incurred by others similarly situated. Therefore the Commission hereby approves the following exemption request:

With respect to the type B test of the drywell head "O" ring seals at the subject facility, which, pursuant to the regulations, is due to be performed no later than March 19, 1986, exemption is granted from the provision of section III.D.2 of Appendix J to 10 CFR 50 requiring such tests to be performed at intervals not greater than two years. The exemption is granted subject to the following conditions:

(1) The licensee is to commence shutdown for the first refueling outage no later than May 15, 1986, and

(2) The licensee is to perform this test prior to startup following the first refueling outage.

It is further determined the exemption does not authorize a change in effluent

types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination and as reflected in the Environmental Assessment and Finding of No Significant Impact prepared pursuant to 10 CFR 51.2 and 51.30 through 51.32, it is concluded the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

For further details with respect to this action, see the licensee's request dated January 17, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland Public Library, Swift and Northgate, Richland, Washington 99352. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 6258 dated March 10, 1986).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86–6395 Filed 3–21–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–440, 50–441]

Cleveland Electric Illuminating Co., et al., (Perry Nuclear Power Plant, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation has taken action with regard to two Petitions for action under 10 CFR 2.206 with respect to the Perry Nuclear Power Plant, Units 1 and 2.

By Petition dated February 3, 1986, the Ohio Citizens for Responsible Energy (OCRE) requested that the Commission take certain actions with regard to the Perry plant prior to issuing an operating license or permitting fuel loading of the facility. Specifically, the Petition requested that, prior to licensing of Unit 1, the plant be thoroughly inspected for damage resulting from an earthquake on January 31, 1986; that post-earthquake functional testing of all plant systems be completed; that a comprehensive investigation of the earthquake and reevaluation of local seismicity be conducted by the NRC, the licensee, and other scientific entities; that the Appeal Board complete a hearing and issue a decision on OCRE's seismic design contention, and that installation of any required seismic upgrading on the Perry plant be completed. OCRE asserted as grounds for its request that the magnitude of the January 31st earthquake indicates that the FSAR analysis of site area seismicity needs to be redone and that conclusions in the FSAR and the staff's SER are erroneous.

By Petition dated February 4, 1986, the Western Reserve Alliance (WRA) requested that the Commission take immediate action to suspend the construction of the Perry plants, Units 1 and 2, require an independent design and construction verification program to assess the integrity and implementation of the Perry quality assurance (QA) programs, and review and require an audit of an application of Centerior Energy Corporation (CEC) seeking the approval of the Securities and Exchange Commission (SEC) to acquire all outstanding shares of the Cleveland Electric Illuminating Company (CEI) and Toledo Edison and of mergers by which this will be effectuated.

The WRA asserted as grounds for its request that construction be suspended, that the seismic design of the Perry plant is inadequate, and as grounds for its request that an independent design and construction verification program be undertaken that CEI and its contractors have failed to implement an acceptable QA program that meets the requirements of 10 CFR Part 50, Appendix B. Included with the WRA Petition were 48 allegations of various construction problems. The Petition further asserted that the application of CEC before the SEC should be audited because it will adversely impact the ability of CEC, CEI and Toledo Edison to meet the requirements of 10 CFR Part 140.

Upon consideration of the Petitions, the Director, Office of Nuclear Reactor Regulation, has determined to deny OCRE's and WRA's Petitions, with the exception of OCRE's requests for inspection of the Perry facility for damage resulting from the January 31 earthquake and an investigation of the earthquake and evaluation of local seismicity. The Staff has conducted an extensive investigation of the effects of the earthquake upon the Perry structure and equipment, and is reevaluating the geology and seismology of the Perry site. The Director has determined that no adequate basis exists to require the other measures requested by the Petitioners.

The reasons for this decision are fully described in the "Director's Decision Under 10 CFR 2.206" (DD 86–04) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public document room for Perry Nuclear Plant located at Perry Public Library, 3753 Main Street, Perry, Ohio 44081. Copies of the Petitions are also available for public inspection at those locations. A copy of the Director's Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 18th day of March 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86–6393 Filed 3–21–86; 8:45 am]

BILLING CODE 7590-01-M

Low-Level Radioactive Waste Policy Amendments Act of 1985; Availability of Draft Technical Position in Low-Level Waste Program

Correction

In FR Doc. 86–5686 beginning on page 8922 in the issue of Friday, March 14, 1986, the subject heading should have read as set forth above.

BILLING CODE 1505-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of the Services Policy Advisory Committee

The U.S. Trade Representative has taken steps to renew the Services Policy Advisory Committee. This Committee will be renewed pursuant to section 135(c)(1) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); Section 4(d) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 121888.

The Services Committee will advise, consult with, and make recommendations to the U.S. Trade Representative on policy issues related to trade in services.

The Committee will meet at irregular intervals at the call of the U.S. Trade Representative. The frequency of committee meetings will be approximately three or four times per year, depending upon the needs of the U.S. Trade Representative.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600—

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17th Street, NW., Room 103,
Washington, DC 20506, (202) 395-6120.

Signed,

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 6330 Filed 3-21-86; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23017; File No. SR-MSRB-86-6]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Information Concerning Associated Persons

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 13, 1986, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

(Italics indicate new language. Brackets indicate deletions.)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule G-7. Information Concerning Associated Persons

(a) No change.

(b) (i)-(ii) No change.

(iii) [all educational institutions attended] (starting with high school) and whether degree from each was received;] *a complete, consecutive statement of employment and personal history for at least the immediately preceding ten years, including full time and part time employment, self-employment, military service, unemployment, or full-time education. For each period of employment, the position held at the time of leaving said employment;*

[(iv) a complete, consecutive statement of all business connections for at least the immediately preceding ten years, including the reason for leaving each prior employment, the position held at each prior employment, and whether employment was part time or full time;]

[(v)] (*iv*) a record of all residential addresses for at least the immediately preceding [ten] *five* years;

(vi) through (vii) renumbered (*v*) through (*vi*). No substantive change.

[(viii)] (*vii*) a record of any permanent or temporary injunction entered against such person [or against any broker, dealer, or municipal securities dealer with which such person was associated in any capacity at the time such injunction was entered] pursuant to which such person [or such broker, dealer or municipal securities dealer] was enjoined from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, [or as an affiliated person or employee of any investment company, bank, or insurance company,] or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with purchase or sale of any security;

(ix) through (xi) renumbered as (*viii*) through (*x*). No substantive change.

A completed Form U-4 or similar form prescribed by the Commission or a registered securities association for municipal securities brokers and municipal securities dealers other than bank dealers or, in the case of a bank dealer, *a completed Form MSD-4 or similar form prescribed* by the appropriate regulatory agency for such bank dealer, containing the foregoing information, shall satisfy the requirements of this paragraph.

(c) through (i) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section (b) of Board rule G-7 specifies the information which brokers, dealers and municipal securities dealers must obtain and retain regarding associated persons. The rule may be satisfied by maintaining a completed Form U-4 (Uniform Application for Securities Industry Registration or Transfer), provided such form contains all of the information required in Board rule G-7(b). Recently, however, the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrators Association ("NASAA") amended Form U-4 with the permission of the Commission. The revisions, with minor exceptions, were incorporated by the Commission into its recent amendments to SEC rule 17a-3(a)(12) regarding mandatory application information. These amendments eliminated certain items of information, which are required to be kept by Board rule G-7(b).

The proposed rule change would conform the requirements of Board rule G-7(b) to the recent amendments of SEC rule 17a-3 so that maintenance of a Form U-4, completed in its entirety, shall continue to satisfy the requirements of the rule.

The proposed rule change also would incorporate the provision, consistent with the Board's longstanding position, that maintaining a completed Form MSD-4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) shall satisfy the requirements of the rule.

The proposed rule change affects the following information:

1. *Education and business affiliations:* Rule G-7(b) requires that information be retained concerning an associated person's education, starting with high school, and that information be retained of all business connections over the previous 10 years, including the reason for leaving, position held, and whether the job was full or part time. The proposed rule change would combine these two information categories and require the candidate to account for all time over the past 10 years. The amended rule does not require a candidate to disclose the reasons for leaving previous employment.

2. *Residence:* Rule G-7(b) requires information on residences for the immediately preceding 10 years. The proposed rule change would shorten this time period to five years.

3. *Injunctions:* Rule G-7(b) requires information concerning injunctions, whether permanent or temporary, entered against the candidate or any broker, dealer, or municipal securities dealer with whom that person has been associated in any capacity. The proposed rule change would require that only injunctions entered against the associated person in connection with any investment-related activity be retained and does not require the associated person to disclose injunctions applicable to a firm with which the person has been associated, provided the injuction did not affect the associated person.

It should be noted that the NASD now permits a previously submitted Form U-4 to be updated by submission of a partially completed Form U-4 which does not contain the personal data, residential history, and employment and personal history sections otherwise provided in a full filing. The Board has determined, however, that maintenance of a Form U-4 would satisfy the requirements of Board rule G-7 only in the event that such form contains all of the information required by rule G-7(b); maintenance of a partial Form U-4, therefore, would not satisfy the requirements of Board rule G-7(b).

The Board has adopted the proposed rule change pursuant to section 15B(b)(C) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed to foster cooperation and coordination with persons engaged in regulating . . . transactions in municipal securities. . . .

The proposed rule change also is adopted pursuant to section 15B(b)(2(A) of the Act which empowers and requires the Board to adopt standards of operational capability and professional qualification and section 15B(b)(2)(G) of the Act which empowers and directs the Board to prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records are to be preserved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission; and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

March 14, 1986.

[FR Doc. 86-6354 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23027; File No. PHLX 86-5]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Transaction Value Charge

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Stock Exchange ("PHLX") files as a rule change the following interpretation with respect to the meaning and administration of its Transaction Value Charge, also known as T.F., payable to the Exchange by members and member firms.

Philadelphia Stock Exchange, Inc. (PHLX), Transaction Value Charge ("T.F."), Interpretive Release.

This release is issued by direction of the PHLX Board of Governors to restate the administration and applicability of the PHLX T.F.

The T.F. is a fee, payable to the Exchange by members and member firms, based upon the contract value per month of transactions effected upon the Exchange. The T.F. rates currently in effect, are as follows:

(a) Twelve cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month not over ten million dollars in contract value;

(b) Ten cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month over ten million dollars in contract value but not over fifty million dollars in contract value;

(c) Eight cents per thousand dollars of contract value or fraction thereof on that portion of transactions per month over fifty million dollars in contract value.

The T.F. is applicable in the manner and at the rates set forth above to the following types of transactions:

(a) A T.F. is payable by members or member firms on their non-specialist equity and options transactions. When an equity clearing firm clears such equity transactions for its client, (other than in a specialist margin account established for its client at the Stock Clearing Corporation of Philadelphia) the T.F. shall be paid by the clearing firm.

(b) A T.F. is payable on all equity trades cleared in proprietary margin accounts carried for members by Stock Clearing Corporation of Philadelphia.

(c) A T.F. is payable by Registered Options Traders on their market-making transactions.

(d) A T.F. is not payable by self-clearing equity specialists on their specialist transactions.

(e) A T.F. is not payable by options specialists on their specialist transactions.

(f) A T.F. is payable by an equity clearing firm on equity specialist transactions cleared on behalf of a client.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

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sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

As part of the normal budgetary process, the Board of Governors received a report from the Finance Committee on its overall review of Exchange fees. In conducting its review, the latter committee appointed a Subcommittee to review certain member concerns.

In summary, two equity clearing firms had requested that they not be assessed a T.F. for equity specialist transactions cleared on behalf of their clients because self-clearing equity specialists who clear through Stock Clearing Corporation of Philadelphia (SCCP) do not pay this fee. In the alternative, they requested that if they are to continue to pay this fee for specialist transactions, a comparable fee should be paid by self-clearing specialists. A market maker on the options floor had suggested that option specialists be required to pay a T.F., a charge paid by Registered Options Traders (ROT's).

The Subcommittee's recommendation to the Finance Committee was that the current fee structure is equitable and no changes should be made at this time.

The Subcommittee believes that the clearing firms have mischaratereized the issue. The question is not whether the Exchange discriminates against clearing firms by charging them a T.F. Rather the question is whether or not a T.F. is fairly charged to such firms. Under the Act, the Exchange is permitted to charge different types of members different fees as long as the fees are reasonable and are equitably allocated among its members.

Even so, the Subcommittee looked at the issue of competition and concluded that the clearing firms were not competitively disadvantaged. An equity specialist makes a business decision of whether it will clear its transactions directly, as a member of SCCP, or clear its transactions directly, as a member of SCCP, or clear its transactions through a clearing firm which is a member of SCCP. That a fair number of equity specialist have chosen to clear firm business is viable and that a T.F. is not an unreasonable burden on competition. The Subcommittee also noted that clearing firms have the option of establishing equity specialist accounts for their customers at SCCP, and thereby not being charged a T.F.

Since the issue raised by the clearing firms is whether or not the fee at issue is equitably allocated to them, the Subcommittee looked at the services provided by the equity floor, the costs of providing these services, and the allocation of these costs among various types of businesses which operate on the equity floor. It noted that a positive cash flow is needed to support the growth and development of the equity floor. The Subcommittee also noted that clearing firms, which derive income from the equity floor, would not be contributing to the support of that floor at all if they were not charged a T.F. While in the past year, the equity floor operated at a modest profit, the equity floor faces substantial additional expenses in connection with automation, surveillance and NMS initiatives. The Subcommittee concluded that the Exchange needed the revenue currently provided by the clearing firms which pay a T.F. to continue providing and to improve equity floor services. It considered the proposal that specialists and clearing firms both pay a T.F. at a lower level per transaction which would generate the revenue needed. However, it concluded that this method would be less equitable since equity specialists, unlike clearing firms, have affirmative and negative responsibilities which require large capital investment and staffing requirements. Also, equity specialists pay fees which clearing firms do not pay (*e.g.*, post rental fees). Because clearing firms do have customers and are profiting from their services to such customers, the Subcommittee noted that the Finance Committee has previously reasoned that they are analogous to retail firms which pay a T.F.

In connection with the issue raised by the market maker on the options floor, the Subcommittee concluded that option specialists should not pay a T.F., but it should continue to be charged to market makers because: first, the specialist as the primary market maker has a higher obligation to conduct a fair and orderly market than do ROT's; and second, the specialist organization is subject to a higher level of operating costs then ROT's and pay other fees.

The Finance Committee concurred with the findings of its Subcommittee. The Committee also concluded it was intended that all equity trades cleared in proprietary margin accounts carried by SCCP should be subject to a T.F. The Board of Governors accepted the recommendations and conclusions of the Finance Committee. The Board also considered it timely to restate its interpretation of the applicability of T.F. and to file the same as a rule change.

(b) The interpretation on the applicability of the T.F. is consistent with section 6(b)(4) of the Act in providing for the equitable allocation of reasonable dues, fees and other charges among members and users of its facilities. Determinations of whether or not member firms are subject to the charge are based upon the varying obligations and rules in differing types of business operations recognized and conducted in the securities industry. In this context it is fair to assess charges for access to and use of Exchange facilities for varying categories of member firm operations.

B. Self-Regulatory Organizations Statement on Burden on Competition

PHLX does not perceive any burden on competition as a result of the proposed rule change. The administration of the T.F. does not have as its object unreasonable restraint or the injury of competitors. Its applications and exemptions have been adopted for business reasons consistent with the financial support of the equity floor and the responsibilities and activities of specialists and not with the intent to discriminate between brokers or dealers. If there be any perceived effect upon competition it is reasonable and not substantially adverse. The interpretation is consistent with the Act in that it does not permit unfair discrimination between brokers or dealers (Section 6(b)(5)) or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act (Section 6(b)(8)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the interpretation which is the subject of this rule change were not solicited. Comments were, however, previously received on portions thereof. These comments and the issues raised have been summarized and responded to in Section I.A. of his notice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or Institute proceedings to determine whether the

proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 17, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-6355 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14996; File No. 812-6250]

Paribas Bank of Canada; Application

March 17, 1986.

Notice is hereby given that Paribas Bank of Canada ("Applicant") c/o Philip Werner, Esq., Wender Murase & White, 400 Park Avenue, New York, New York 10022, filed an application on December 5, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicant from all provisions of the Act so that it may publicly offer U.S. dollar-denominated short-term notes ("Notes") in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the provisions referred therein and in the application.

According to the application, Applicant, a wholly-owned subsidiary of Banque Paribas, a French banking corporation and a subsidiary of Compagnie Financiere de Paribas ("Paribas"), commenced operations as a foreign bank subsidiary under the Canadian Bank Act in January, 1982. Applicant offers corporate banking services through its head office in Toronto and its branch in Montreal, including commercial lending, deposit-taking, discounting trade bills, issuing letters of credit and foreign exchange trading. As of October 31, 1984, its total assets were equivalent to U.S. $169,392,000, with authorized capital stock consisting of 198,000 shares of common stock and 2,000 perference shares, both having a par value of Can. $100 per share, and paid up capital of Can. $20,000,000. Applicant represents that various aspects of its business, including deposit reserves and insurance, permissible powers, loan volume and dividend policy, are subject to regulation under the Canadian Bank Act. Furthermore, it is subject to various reporting and accounting requirements and to the supervision of the Canadian Inspector General of Banks, the regulatory authority charged with the administration of the Canadian Bank Act.

The Applicant states that Paribas is a holding company incorporated under the laws of France as an *etablissement financier* or "financial institution". It is further stated that Paribas ranks 32nd in size among banking organizations in the world, with its largest asset being Banque Paribas, the 81st largest commercial bank in the world, in each case on the basis of total assets. As of December 31, 1984, Paribas had total consolidated assets equivalent to approximately U.S. $55 billion, total consolidated deposits equivalent to approximately U.S. $46 billion, and equity capital equivalent to approximately U.S. $1.9 billion. Paribas is made subject to the restrictions imposed on bank holding companies under the Bank Holding Company Act of 1956, as amended ("BHCA"), pursuant to the International Banking Act of 1978 ("IBA"). The application further states that under the BHCA and IBA, Paribas is subject to regulation by the Board of Governors of the Federal System with respect to, among other things, the types of activities in the United States in which it may engage.

Applicant states that it proposes to issue and sell Notes in the United States commercial paper market in order to broaden its sources of finance as well as to provide it with an alternative means of obtaining United States dollars. Payment of principal of, and interest, if any, on the Notes would be unconditionally guaranteed by Paribas. Applicant represents that the Notes will arise out of, or the proceeds of the Notes (to the extent not applied to the repayment of the Notes) will be used for, "current transactions" of the Applicant, and the Notes will have other characteristics such as to qualify them for the exemption from registration under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant represents that it will not issue or sell any Notes until it has received an opinion of its United States counsel or a "no-action" letter issued by the Staff of the Commission to the effect that the Notes would be entitled to such exemption.

Applicant also represents that the proposed issue of Notes and any future issue in the United States of its debt securities shall have received, prior to issuance, on the basis of the guarantee thereof by Paribas, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organizations and that applicant's United States counsel shall have certified that such rating has been received. However, no such rating will be obtained if, in the opinion of Applicant's United States counsel, having taken into account the doctrine of intergration, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act.

According to Applicant, the Notes will be issued and sold in minimum denominations of $100,000 directly and/or through one or more major commercial paper dealers. Applicant states that it will secure an undertaking from each such dealer that the Notes will be sold to institutional investors and other entities and individuals who normally purchase commercial paper and will not be offered for sale to the general public. Applicant will provide each such dealer with sufficient information to prepare, and will undertake to insure that each dealer will provide each offeree of the Notes with, a memorandum ("offering memorandum") which describes the business of Paribas and Applicant and contains the most recently published financial statements of Paribas and Applicant audited in accordance with French and Canadian auditing practices, respectively. In addition, it is represented that the offering memorandum will include brief paragraphs highlighting the material differences between generally accepted accounting principles applicable to United States financial institutions and (i) French accounting principles applicable to French financial

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institutions and use by Paribas and (ii) Canadian accounting principles applicable to Canadian banks and used by the Applicant, as well as any other information that would be required by the prior order granted to Paribas discussed below. Applicant asserts that the offering memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material adverse changes in the business or financial status of Paribas or Applicant.

The application states that the Notes will be direct liabilities of Applicant, and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness (except indebtedness preferred by operation of law), including deposit liabilities, of Applicant and superior to rights of shareholders. The guarantee by Paribas as to payment of principal of and interest on the Notes will rank *pari passu* with all other unsecured unsubordinated indebtedness (except indebtedness preferred by operation of law) of Paribas and superior to rights of shareholders.

Applicant states that in connection with the issuance and sale of the Notes the Applicant will appoint a bank or trust company in the United States as authorized agent to issue on behalf of the Applicant the Notes sold in the United States. Applicant further states that Paribas and Applicant will each expressly submit to the jurisdiction of New York State and United States Federal courts sitting in The City of New York for the purpose of any suit, action or proceeding brought on the Notes or the guarantees, and in that connection, will each appoint an agent located in New York City (which may be Banque Paribas' New York Branch) to accept service of process in respect of any such action. Applicant further states that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the Notes and the guarantees have been paid.

Applicant states that it may, from time to time, offer and sell in the United States debt securities other than the Notes. According to Applicant, in the case of any such offering in the United States, the payment of principal of, premium, if any, and interest on any such debt securities will be unconditionally guaranteed by Paribas. Applicant undertakes to provide to any person to which it offers its debt securities in the United States (and undertakes to assure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made) disclosure documents which are at least as comprehensive in their description of Applicant and Paribas as those which may be used by United States issuers in United States offerings of such securities. Such documents will contain the financial statements of Applicant and Paribas and will be updated periodically to reflect material adverse changes in the business or financial status of Applicant or Paribas. The application also states that Applicant and Paribas will each expressly submit to the jurisdiction of the New York State and United States Federal courts sitting in the City of New York with respect to any suit, action or proceeding brought on the debt securities or the guarantees of Paribas, and in that connection, will each appoint an agent located in New York City (which may be Banque Paribas' New York Branch) to accept service of process in respect of any such action. Such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of such debt securities and such guarantees have been paid.

Applicant notes that the Commission has also exempted Paribas Finance Inc., a wholly-owned Delaware subsidiary of Banque Paribas, from the provisions of the Act, thereby entitling it to sell debt securities in the United States bearing the unconditional guarantee of Paribas (Investment Company Act Release No. 12948, January 6, 1983). Applicant asserts that, although it is a Canadian chartered bank offering corporate banking services and is therefore not a mere vehicle for the sale of securities of Paribas as is Paribas Finance, the analysis of its application should be the same as that for Paribas and Paribas Finance because all of its proposed Notes or other debt securities (together, the "Securities") will be unconditionally guaranteed by Paribas. Applicant asserts that, as in the case of the application of Paribas and Paribas Finance, the unconditional guarantee of Paribas has the effect that the holders of securities would look to Paribas as the ultimate obligor. For these reasons, Applicant asserts, the purchase of securities issued and sold by Applicant would be the equivalent of purchasing obligations of Paribas.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-6358 Filed 3-21-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0216]

Engle Investment Co.; License Surrender

Notice is hereby given that Engle Investment Company, 135 West 50th Street, New York, New York 10020, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Engle Investment Company was licensed by the Small Business Administration on January 15, 1963.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on February 26, 1986, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 14, 1986.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-6352 Filed 3-21-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on April 7, 1986, at the Four Seasons Hotel, 791 W. Georgia Avenue, in Vancover, British Columbia, at 1:00 p.m. This meeting will discuss proposed amendments to the 1978 Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, and fishery developments as they affect the International North Pacific Fisheries Commission. This session will be open to the public.

The Advisory Committee will also meet from 3:00 p.m. to 5:00 p.m. April 7, 1986. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the meeting of the International North Pacific Fisheries Commission to be held in Vancouver, B.C. April 8–9, 1986. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the meeting, and these consideration must necessarily involve review of classified matters. Accordingly the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(d) and 5 U.S.C. 552(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert Ford, Pacific Fisheries Officer, OES/OFA, Room 5806, U.S. Department of State, Washington, D.C. 20520. Mr. Ford can be reached by telephone at (202) 647-2009.

Dated: March 20, 1986.

R. Tucker Scully,

Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 86-6509 Filed 3-21-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412, and 414 During the Week Ending March 14, 1986

Answers May Be Filed Within 21 Days From the Date of Filing

Date filed	Docket No.	Parties	Subject	Proposed effective date
Mar. 10, 1986	43858, R-1 & R-2	Members of International Air Transport Association	Australia-Europe excursion fares	Apr. 1, 1986.
Do	43859, R-1-R-11	do	Amends/increases fares within Europe	Do.
Do	43864, R-1-R-39	do	1986-87 intra-Europe fares structure	Do.
Mar. 13, 1986	43865	do	French Proportional Fares to/from France	Do.
Do	43866	do	Adjustment factor—Lebanon	Mar. 29, 1986.
Do	43867	do	Rate increase from Yugoslavia/Lebanon	Feb. 1, 1986, Apr 1, 1986.
Do	43868	do	Increase Greece-Africa fares for tax	Apr. 1, 1986.
Do	43869, R-1-R-15	do	South Pacific fares	Do.
Mar. 14, 1986	43871, R-1-R-19	do	Cargo Service Resolutions	Oct. 1, 1986.
Mar. 10, 1986	43858, R-1 & R-2	Members of International Air Transport Association	Australia-Europe excursion fares	Apr. 1, 1986.
Do	43859, R-1-R-11	do	Amends/increases fares within Europe	Do.
Do	43864, R-1-R-39	do	1986-87 intra-Europe fares structure	Do.
Mar. 13, 1986	43865	do	French Proportional Fares to/from France	Do.
Do	43866	do	Adjustment factor—Lebanon	Mar. 29, 1986.
Do	43867	do	Rate increase from Yugoslavia/Lebanon	Feb. 1, 1986, Apr. 1, 1986.
Do	43868	do	Increase Greece-Africa fares for tax	Apr. 1, 1986.
Do	43869, R-1-R-15	do	South Pacific fares	Do.
Mar. 14, 1986	43871, R-1-R-19	do	Cargo Service Resolutions	Oct. 1, 1986.
Mar. 10, 1986	43860	Pan American World Airways, Inc., c/o David M. O'Connor, 1660 L Street, N.W., #901, Washington, D.C. 20036. Application of Pan American World Airways, Inc. pursuant to Sections 412 and 414 of the Act, requests approval of an agreement between Pan Am and the General Department of International Air Services (Aeroflot Soviet Airlines (Aeroflot)).		
Mar. 14, 1986	43837	Trans World Airlines, Inc., c/o James T. Lloyd, Preston, Thorgrimson, Ellis & Holman, 1735 New York Avenue, N.W. Suite 500, Washington, D.C. 20006.. Ozark Holdings, Inc. and Ozark Air Lines, Inc., c/o Thom G. Field, Neale, Newman, Bradshaw & Freeman, Suite 1-130, 1949 E. Sunshine, One Corporate Centre, Springfield, Missouri 65804. Joint Application of Trans World Airlines, Inc., Ozark Holdings, Inc. and Ozark Air Lines, Inc. apply pursuant to Section 408 of the Act to allow TWA to acquire control of Ozark.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-6402 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-62-M

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VOL 51 ISS 56 MR 24 1986 UMI

Coast Guard

[CGD 86-017]

Coast Guard Academy Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Wednesday, April 14 and 16, 1986. The session on Monday will be held from 10:45 to 11:45 a.m. Another open session will be held on Wednesday from 10:15 to 11:15 a.m. The agenda for this meeting consists of the following items:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275.

Issued in Washington, DC, on March 14, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-6374 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[AC No. 120-XX]

Availability of Proposed Advisory Circular of Advanced Training Devices (Airplane Only)

AGENCY: Federal Aviation Administration.

ACTION: Request for comments on proposed Advisory Circular (AC) 120-XX, Advanced Training Devices (Airplane Only).

SUMMARY: The proposed advisory circular (AC) provides information, guidelines, and criteria regarding the evaluation and use of airplane Advanced Training Devices (ATD) that may be used in training programs or for airman training or checking under Part 135 of the Federal Aviation Regulations (FAR). The proposed AC includes the required equipment validation tests and tolerances for ATD's as well as a listing of the maneuvers and procedures that may be approved to be conducted in an ATD in lieu of an airplane when accomplished in accordance with an operator's FAA approved FAR Part 135 training program.

DATE: Comments must be received on or before May 23, 1986.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Training and Technical Standards Branch, AFS-260, 800 Independence Avenue, SW, Washington, DC 20591. Comments may be inspected at this address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cook, AFS-260, at the above address, telephone (202) 426-3460.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Comments should be identified as pertaining to AC-120-XX and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Training and Technical Standards Branch and the National Simulator Program Office before issuing the final AC.

Discussion

Over the past three decades the Federal Aviation Administration (FAA) has made extensive provisions in its regulations to encourage the use of flight simulators. Continuing efforts in this regard have been hindered by the previous lack of a comprehensive and systematic analysis of simulator and/or training device uses in pilot training, checking, or certification. In recognition of these problems a recently completed research project has provided the information to conclude that a non-motion, non-visual training device which meets a certain level of fidelity in given area may be appropriately used for some pilot training or checking activities under Title 14 of the Code of Federal Regulations (CFR). The proposed AC contains procedures and criteria for application of this training device under FAR Part 135.

Issued in Washington, D.C., on March 8, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86-6306 Filed 3-21-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 19, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

United States Customs Service

OMB Number: 1515-0104
Form Number: None
Type of Review: Revision
Title: Declaration of Foreign Shipper or Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes
Clearance Officer: Vince Olive, (202) 566-8181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545-0013
Form Number: IRS Form 56
Type of Review: Revision
Clearance Officer: Garricik Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

John Poore,

Departmental Reports Management Office.

[FR Doc. 86-6398 Filed 3-21-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 19, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0058
Form Number: ATF F 698 (5120.25)
Type of Review: Extension
Title: Application by Proprietor of Bonded Winery or Bonded Wine Cellar
Clearance Officer: Robert G. Masarsky, (202) 566-7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

John Poore,

Departmental Reports Management Office.

[FR Doc. 86-6399 Filed 3-21-86; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Docket No. 86-7; Delegation Order 26]

Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, and by Treasury Order No. 129 (Rev. No. 2), dated April 22, 1955, it is ordered as follows:

A. During a vacany in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Dean S. Marriott, Senior Deputy Comptroller for Bank Supervision;

(2) Robert J. Herrmann, Deputy Comptroller for the Southeastern District;

(3) Michael Patriarca, Deputy Comptroller for Multinational Banking; and

(4) John F. Downey, Chief National Bank Examiner.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptroller for the Districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to carry out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 25 is hereby repealed.

Dated: March 18, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-6369 Filed 3-21-86; 8:45 am]

BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 86-3]

Authority Delegations to the Deputy Director

Pursuant to the authority vested in me as Director of the United States Information Agency by the Convention on Cultural Property Implementation Act (Title III of Pub. L. 97-446, hereinafter referred to as the "Act") and by Executive Order No. 12555 of March 10, 1986, I hereby delegate to the Deputy Director:

Section 1. *Functions Conferred on the Director by the Act.*

a. The functions conferred by section 306(e)(2) of the Act relating to the convening of Cultural Property Advisory Committee meetings;

b. The functions conferred by section 306(i)(1)(A) of the Act relating to the designation of officers and employees of the United States to receive information submitted in confidence by the private sector;

c. The functions conferred by section 306(i)(2) of the Act relating to the issuance of rules governing the disclosure of information submitted in confidence to the Cultural Property Advisory Committee by officers and employees of the United States Government;

Section 2. *Functions Conferred on the Director by the Executive Order.*

a. The functions conferred by section 303(a)(1) of the Act concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements;

b. The functions conferred by section 303(d) of the Act with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement;

c. The functions conferred by section 303(e) of the Act relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement;

d. The functions conferred by section 303(f) of the Act relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization;

e. The functions conferred by section 303(g)(1)(B) of the Act relating to the notification of Presidential action and the furnishing of reports to the Congress;

f. The functions conferred by section 304(b) of the Act to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3);

g. The functions conferred by section 304(c)(3) of the Act to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural

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Property Advisory Committee by the President prior to extensions of emergency import restrictions;

h. The functions conferred by sections 306(f)(6) and 306(g) of the Act relating to the receipt of reports prepared by the Cultural Property Advisory Committee; and

i. The functions conferred by section 306(h) of the Act relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings;

Section 3. *Functions Involving Consultations by Others with the Director.*

The functions conferred by section 305 of the Act and by sections 2 and 3 of the Executive Order relating to consultations by the Secretary of State and the Secretary of Treasury with the Director; and

Section 4. *Functions Involving the Participation of the Director.*

The functions under section 2 of the Executive Order involving the participation of the Director in the exercise of the functions delegated to the Secretary of State by Executive Order.

The functions delegated in section 2 of this Delegation Order must be exercised in consultation with the Secretary of State and the Secretary of Treasury or their designees.

Notwithstanding any other provision of this Order, (1) the Director may at any time exercise any function delegated herein, and (2) Delegation Order No. 84–4 of March 5, 1984 shall remain in effect.

These functions may be redelegated. This Delegation Order takes effect immediately.

Dated: March 18, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86–6371 Filed 3–21–86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 56
Monday, March 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

Item
Equal Employment Opportunity Commission 1
Federal Deposit Insurance Corporation 2
Federal Energy Regulatory Commission 3
Federal Mine Safety and Health Review Commission 4,5
Federal Reserve System 6
National Transportation Safety Board 7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 31, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Revisions of the Commission's Regulations on Employee Responsibilities and Conduct

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued March 19, 1986.

Dated: March 19, 1986.

Cynthia C. Matthews,

Executive Secretariat.

[FR Doc. 86–6510 Filed 3–20–86; 3:36 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:10 p.m. on Tuesday, March 18, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,457–L
The First National Bank of Midland, Midland, Texas

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: March 19, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–6438 Filed 3–20–86; 11:12 am]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

March 19, 1986.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: March 26, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 832nd Meeting—March 26, 1986, Regular Meeting (10:00 a.m.)

CAP–1.
  Project No. 9315–002, Sheep Falls Associates
CAP–2.
  Project Nos. 8820–002 and 8822–002, City of New York, NY
CAP–3.
  Project No. 9250–001 Montana Natural Energy, Inc.
CAP–4.
  Project No. 9477–001, Pan Pacific Hydro, Incorporated
CAP–5.
  Project No. 9716–001, Hydrodynamics, Inc.
CAP–6.
  Project No. 9147–000, Baltic Associates
  Project No. 9522–001, Swift River/Hafslund Company
CAP–7.
  Project No. 7360–003, Panther Power Partnership
  Project No. 9620–001, Panther Power Company
CAP–8.
  Project No. 6967–003, California Hydroelectric
CAP–9.
  Project No. 6758–003, Holden Village, Inc.
CAP–10.
  Project No. 2374–001, Watervliet Paper Company
CAP–11.
  Omitted
CAP–12.
  Project Nos. 4796–008 and 012, Niagara Mohawk Power Corporation and Glen Park Associates
  Project No. 4939–001, Brownville Power Company
CAP–13.

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Docket Nos. ER86–362–000, ER85–698–001, ER85–634–001, ER85–607–001, ER85–621–001, ER85–648–001 and ER85–763–001, New York State Electric & Gas Corporation

CAP–14.
Docket No. ER86–273–000, Kansas City Power & Light Company

CAP–15.
Docket No. ER86–277–000, Central and South West Services, Inc.

CAP–16.
Docket No. ER86–282–000, Utah Power and Light Company

CAP–17.
Docket No. ER86–76–002, Commonwealth Edison Company

CAP–18.
Docket No. ER84–679–005, Florida Power Corporation

CAP–19.
Docket No. EL85–37–001, Marjorie Linder Cooley v. Clifton Power Corporation

CAP–20.
Docket No. ER86–170–002, New England Power Company

CAP–21.
Omitted

CAP–22.
Docket No. ER85–608–001, Public Service Company of New Mexico

CAP–23.
Docket Nos. ER85–461–005, and ER85–521–002, Kansas Gas and Electric Company

CAP–24.
Docket No. ER86–2041–000, Bonneville Power Administration

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA83–4–001, Duke Power Company

CAM–2.
Docket No. FA84–12–001, Pennsylvania Power & Light Company

CAM–3.
Omitted

CAM–4.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Riverside Pipeline Company)

CAM–5.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company)

CAM–6.
Docket No. GP85–51–000, State of Texas, section 108 determination, Mitchell Energy Corporation, Bertha Collins #2 Well, FERC JD No. 85–26032

CAM–7.
Docket No. RO85–12–000, Dorchester Gas Corporation

CAM–8.
Docket No. RA83–8–001, Asamera Oil (U.S.) Inc.

CAM–9.
Docket No. RO85–6–000, Exxon Company, U.S.A.

CAM–10.
Docket Nos. IS85–9–000 and OR 85–1–000, Kuparuk Transportation Company

Consent Gas Agenda

CAG–1.
Docket Nos. TA86–1–53–004, TA84–1–53–016, TA83–1–53–005, TA82–1–53–003, TA81–1–53–007 and RP82–8–004, K N Energy, Inc.

CAG–2.
Docket Nos. TA86–1–52–003 and TA86–1–52–004, Western Gas Interstate Company

CAG–3.
Docket Nos. TA86–1–33–006 (PGA86–1b), 007 and 008, El Paso Natural Gas Company

CAG–4.
Docket No. RP86–35–002, Great Lakes Gas Transmission Company

CAG–5.
Docket No. RP86–45–001, El Paso Natural Gas Company

CAG–6.
Docket No. RP86–52–000, Kentucky West Virginia Gas Company

CAG–7.
Docket No. RP86–50–000, Arkla Energy Resources, a Division of Arkla, Inc.

CAG–8.
Docket No. RP85–194–005, Panhandle Eastern Pipe Line Company

CAG–9.
Docket No. RP83–30–043, Transcontinental Gas Pipe Line Company

CAG–10.
Omitted

CAG–11.
Docket Nos. TA86–3–42–000, TA86–4–42–000 and 001 (PGA86–4), Transwestern Pipeline Company

CAG–12.
Docket Nos. TA86–4–324–000, 001 and TA85–2–34–000, Florida Gas Transmission Company

CAG–13.
Docket Nos. TA86–4–5–000, 001 and RP86–33–001, Midwestern Gas Transmission Company

CAG–14.
Docket Nos. TA86–3–32–000 and 001, Colorado Interstate Gas Company

CAG–15.
Omitted

CAG–16.
Docket Nos. TA86–3–7–000 and 001, Southern Natural Gas Company

CAG–17.
Docket No. TA86–1–52–002, Western Gas Interstate Company

CAG–18.
Docket Nos. TA86–2–9–003 (PGA86–2a) and TA86–2–9–004 (PGA86–2b), Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–19.
Docket Nos. TA86–2–36–000 and 001 (PGA86–2), Ringwood Gathering Company

CAG–20.
Omitted

CAG–21.
Docket Nos. TA86–2–8–000 and 001 (PGA86–2), South Georgia Natural Gas Company

CAG–22.
Docket Nos. TA86–4–51–000 and 001, Great Lakes Gas Transmission Company

CAG–23.
Omitted

CAG–24.
Docket Nos. TA85–2–11–003, TA86–1–11–002 and TA86–2–11–002, United Gas Pipe Line Company

CAG–25.
Docket No. RP86–22–001, ANR Pipeline Company

CAG–26.
Docket No. RP86–27–001, Midwestern Gas Transmission Company

CAG–27.
Docket No. RP85–141–007, Texas Gas Transmission Corporation

CAG–28.
Docket Nos. RP84–108–007 and 007, Texas Eastern Transmission Corporation

CAG–29.
Docket Nos. RP86–16–002 and RP86–17–002, Northwest Pipeline Corporation

CAG–30.
Docket Nos. RP84–15–000, TA83–2–47–000, TA84–1–47–000, TA84–2–47–000, TA85–1–47–000 and TA86–1–47–000, MIGC, Inc.
Docket Nos. RP84–7–000 and GP85–20–000, Colorado Interstate Gas Company

CAG–31.
Docket No. RP83–109–000, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., complainant, v. Chevron, U.S.A. Inc., Gulf Oil Corporation, Pan-Canadian Petroleum Company, J.E. Stack, Jr., System Fuels, Inc., Texaco, Inc., Tomlinson Interests, Inc., Mobil Oil Exploration & Producing Southeast, Inc., Sun Exploration & Production Company, Forest Oil Corporation, The Stone Petroleum Corporation, Mislatex Minerals Corporation, Hanover Petroleum Corporation and Floyd Kimble d/b/a Red Hill Development, respondents

CAG–32.
Docket No. RI78–60–002, Neleh Gas & Oil Corporation

CAG–33.
Docket No. G–7063–001, Cities Service Oil and Gas Corporation
Docket No. CI85–523–000, Peake Operating Company

CAG–34.
Omitted

CAG–35.
Docket No. CP86–6–000, Northern Natural Gas Company, a Division of HNG Internorth, Inc.

CAG–36.
Docket No. CP86–167–000, Colorado Interstate Gas Company and Ralston Processing Associates, Inc.

CAG–37.
Omitted

CAG–38.
Docket No. CP86–112–000, United Gas Line Pipe Line Company

CAG–39.
Omitted

CAG–40.
Omitted

CAG–41.
Docket No. RP86–57–000, Northwest Pipeline Corporation

CAG–42.
Docket No. RP85–178–008, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–43.
Docket No. RI86–1–001, Cenergy Exploration Company

I. Licensed Project Matters

P–1.
Reserved

II. Electric Rate Matters

ER–1.
Docket No. QF85–504–000, Luz Solar Partners II, Ltd.

ER–2.
Docket No. QF84–135–001, Union Camp Corporation

Miscellaneous Agenda

M–1.
Reserved

M–2.
Reserved

M–3.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (the Board of Trustees of the University of Illinois)

M–4.
Docket No. RM85–1–000 (Parts A–D), regulation of gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)

M–5.
Docket No. RM85–1–000 (Parts A–D), regulation of gas pipelines after partial wellhead decontrol (North Central Public Service Company)

M–6.
Omitted

M–7.
(A) Docket Nos. RM85–1–144, 145 and 147 through 152 (Parts A–D) regulation of natural gas pipelines after partial wellhead decontrol (Panhandle Producers and Royalty Owners Association, Mesa Petroleum Company, Atlanta Gas Light Company, ANR Pipeline Company, the Costal Corporation and Colorado Interstate Gas Company, Natural Gas Pipeline Company of America, Southern Natural Gas Company, Interstate Natural Gas Association of America, Texas Eastern Transmission Corporation and the State of Louisiana)
(B) Docket Nos. RM85–1–160 and 161 (Parts A–D) regulation of natural gas pipelines after partial wellhead decontrol (Michigan Consolidated Gas Company and the Maryland People's Counsel)
(C) Docket Nos. RM85–1–156, 158, 163, 164, 165, 166, 167 and 168 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Associated Gas Distributors, Interstate Natural Gas Association, Michigan Consolidated Gas Company, Transcontinental Gas Pipe Line Corporation, the Process Gas Consumers Group, the American Iron and Steel Institute, the Georgia Industrial Group, Southern Natural Gas Company and American Gas Association)

I. Pipeline Rate Matters

RP–1.
(A) Docket No. RP86–53–000, Transwestern Pipeline Company
(B) Docket No. RP86–54–000, Florida Gas Transmission Company

RP–2.
(A) Docket No. TA82–1–21–021, Columbia Gas Transmission Corporation
(B) Docket Nos. CP86–258–000 and 001, Columbia Gas Transmission Corporation

RP–3.
Docket Nos. TA86–3–33–000 and 001, El Paso Natural Gas Company

RP–4.
Omitted

II. Producer Matters

CI–1.
Docket No. CP83–452–047, Columbia Gas Transmission Corporation
Docket No. CI86–19–003, Amoco Production Company
Docket No. CI85–685–001, Exxon Corporation
Docket No. CI85–632–002, Tenngasco Corporation and Tenngasco Exchange Corporation
Docket No. CI85–633–003, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd. and Tenneco West, Inc.
Docket No. CI86–229–000, Diamond Shamrock Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership
Docket No. CI86–237–000, the Louisiana Land and Exploration Company and Lloxy Holdings, Inc.
Docket No. CI85–29–006, Odeco Oil & Gas Company
Docket No. CI86–33–001, Sun Exploration and Production Company

III. Pipeline Certificate Matters

CP–1.
Docket No. TC82–43–000, K N Energy, Inc.

CP–2.
Docket No. TC79–8–000, Transcontinental Gas Pipe Line Corporation

CP–3.No. RP86–14–004, Columbia Gulf Transmission Company
Docket No. RP86–15–004, Columbia Gas Transmission Corporation

CP–4.
Omitted

CP–5.
Omitted

CP–6.
Docket Nos. CP84–519–000 and 001, Rural Energy Systems, Inc.

CP–7.
Docket No. CP86–265–000, Transcontinental Gas Pipe Line Corporation

CP–8.
Docket No. CP84–342–002, Southern Natural Gas Company

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–6456 Filed 3–20–86; 12:42 p.m.]

BILLING CODE 6717–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 19, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the already announced items, the Commission will consider and act upon the following:

2. Wilfred Bryant v. Dingess Mine Service, etc., Docket No. WEVA 85–43–D. (Consideration of a petition for interlocutory review filed by Mullins Coal Co.).

Note.—The previously announced item No. 2, consideration of Commission Procedural Rule 44, 29 CFR 2700.44, will be considered Item No. 3 in closed session.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86–6452 Filed 3–20–86; 12:02 pm]

BILLING CODE 6735–01–M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 19, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the already announced item, the Commission will consider and act upon the following:

2. Commission Procedural Rule 44, 20 CFR 2700.44, dealing with the temporary reinstatement of miners, in light of *Southern Ohio Coal Co.* v. *Donovan*, 774, F.2d 693 (6th Cir. 1985), *reh'g denied*, 781 F.2d 57 (1976).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86–6453 Filed 3–20–86; 12:02 pm]

BILLING CODE 6735–01–M

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FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, March 28, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–6515 Filed 3–20–86; 3:55 pm]

BILLING CODE 6210–01–M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Wednesday, April 2, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Explosion and Fire on Board the U.S. Chemical Tankship PUERTO RICAN in the Pacific Ocean near San Francisco, California, October 31, 1984.

2. *Marine Accident Report:* Sinking of the U.S. Fishing Vessel SANTO ROSARIO about 35 Nautical Miles East of New Smyrna Beach, Florida, July 23, 1985.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

March 19, 1986.

[FR Doc. 86–6400 Filed 3–19–86; 4:38 pm]

BILLING CODE 7533–01–M

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federal register

Monday
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Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 263, 270, and 271

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), on Site Storage, etc.; Final Rule

40 CFR Part 262

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), Waste Minimization; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 270, and 271

[SWH-FRL-2969-2(b)]

Hazardous Waste Management System: General; Identification and Listing of Hazardous Waste; Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; EPA Administered Permit Programs; Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). Based in large measure on the existing hazardous waste regulatory program, the proposed rules represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum.

EPA is today promulgating final regulations for these generators which modify certain aspects of the proposal. These modifications relate to the "small quantity generator" provisions of § 261.5 and the use of the multi-copy manifest in lieu of the proposed single copy system. Exemptions from exception and biennial reporting as well as from the manifest system for certain reclamation shipments and from certain of the requirements applicable to on-site accumulation have been retained in the final rules. The effect of this rule would be to subject generators of between 100 kg and 1000 kg of hazardous waste in a calendar month to the hazardous waste regulatory program.

DATES: *EFFECTIVE DATE:* September 22, 1986.

Compliance Dates: The Part 262 standards will become applicable to 100–1000 kg/mo generators on September 22, 1986.

The Part 264 and 265 standards will become applicable to 100–1000 kg/mo generators treating, storing, or disposing of hazardous waste on-site using non-exempt management practices on March 24, 1987.

For off-site facilities managing wastes from 100–1000 kg/mo generators, the Part 264 or 265 standards will apply to the wastes from generators of 100–1000 kg/mo on September 22, 1986.

For off-site facilities managing wastes exclusively from generators of less than 1000 kg/mo, the requirement to obtain interim status as a hazardous waste facility for wastes from 100–1000 kg/mo generators will become applicable on September 22, 1986.

Off-site facilities managing waste from both large quantity generators and generators 100–1000 kg/mo will need to modify their Part A permit applications (as well as Part B if already submitted) by September 22, 1986 to reflect these newly regulated wastes from 100–1000 kg/mo generators.

ADDRESSES: The public docket for this rulemaking is located in Rm S–212–C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The RCRA Docket is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), the Small Business Hotline, (800) 368–5888, or Robert Axelrad, (202) 382–5218, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background and Summary of Final Rule
  A. The Hazardous and Solid Waste Amendments of 1984
    1. Codification Rule
    2. Minimum Rulemaking Requirements
    3. March 31, 1986 Hammer Provisions
    4. August 1, 1985 Proposal
  B. Summary of Final Rule
III. Response to Comments and Anaylsis of Issues
  A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators
  B. Applicability Issues
    1. Definition of "Small Quantity Generator"
    2. Generator Category Determination
      a. Counting Amendment to section 261.5
      b. Generators of Acutely Hazardous Waste
      c. Generators of Non-Acutely Hazardous Waste in Quantities of Less than 100 kg/mo
      d. Determination of Generator Status
  C. Part 262 Generator Responsibilities
    1. Notification and Identification Number Requirements—section 262.12
    2. The Hazardous Waste Manifest System—Part 262, Subpart B
      a. Number of Copies and Use of Manifest
      b. Manifest Exemption for Certain Reclamation Shipments
      c. Waste Minimization
    3. Recordkeeping and Reporting—Part 262, Subpart D
      a. Recordkeeping—section 262.40
      b. Exception Reports—section 262.42
      c. Biennial Reports—section 262.41
    4. On-site Accumulation—section 262.34
      a. Time and Quantity Limitations
      b. Standards Applicable to On-site Accumulation
        i. Standards for Preparedness and Prevention—Part 265, Subpart C
        ii. Standards for Contingency Plans, Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements
        iii. Standards for Accumulation in Containers—Part 265, Subpart I
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I. Authority

These regulations are being promulgated under authority of section 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, and 3019, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6939, 6991, and 6993.

II. Background and Summary of Final Rule

A. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed Pub. L. 98–616, titled The Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program and will impact a very large number of businesses in the United States. Further, Congress has established in these amendments ambitious schedules for the imposition of the requirements that EPA must promulgate.

With respect to regulation of small quantity generators (*i.e.*, generators of less than 1000 kg of hazardous waste in a calendar month) the HSWA added a new subsection (d) to Section 3001 of RCRA designed to modify EPA's current regulatory exemption of wastes generated by small quantity generators from full Subtitle C regulation (40 CFR 261.5). Section 3001(d) directs EPA to develop a comprehensive set of standards which will apply to hazardous wastes produced by small quantity generators of between 100 and 1000 kg of hazardous waste in a calendar month ("generators of 100–1000 kg/mo"). EPA is required to promulgate final standards no later than March 31, 1986. Today's final rule satisfied this requirement. In addition, section 3001(d) imposes certain minimum requirements on these generators prior to that date and requires EPA to complete a number of studies before April 1987.

1. Codification Rule

On July 15, 1985, EPA published in the **Federal Register** a Final Rule which codified a number of legislatively mandated provisions contained in the HSWA (see 50 *FR* 28702–28755, July 15, 1985). Among those provisions is the requirement of section 3001(d)(3) that effective 270 days from the date of enactment, all off-site shipments of hazardous waste from generators of greater than 100 kg but less than 1000 kg of hazardous waste during a calendar month must be accompanied by a copy of the Uniform Hazardous Waste Manifest, signed by the generator, and containing the following information:

- The name and address of the generator of the waste;
- The U.S. Department of Transportation (DOT) description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);
- The number and type of containers;
- The quantity of waste being transported; and
- The name and address of the facility designated to receive the waste.

The information required by this provision (codified at 40 CFR 261.5(h)(3)) corresponds to Items 3, 9, 11, 12, 13, 14, and 16, of EPA form 8700–22 and accompanying instructions promulgated on March 20, 1984 (49 *FR* 10490). These information requirements conform to DOT shipping requirements designed to provide necessary information to handlers of hazardous materials (*e.g.*, transporters and emergency response personnel).[1] The interim manifest requirement applies only until the effective date of the regulations being promulgated today. These final rules will supersede the existing manifest requirements for these generators.

The HSWA provisions, together with existing regulations, distinguish three main classes of small quantity generators for regulatory purposes: (1) Those generating between 100 and 1000 kg of non-acutely hazardous waste per calendar month; (2) those generating up to 100 kg of non-acutely hazardous waste per calendar month; and (3) those generating acutely hazardous wastes in quantities currently set forth in § 261.5(e). These classes of small quantity generator are distinguished in the July 1985 "Codification Rule". Until the effective date of today's final rules, under the regulatory system imposed by 40 CFR 261.5 implementing section 3001(d) of the HSWA, a small quantity generator in the first group (*i.e.*, producing between 100 and 1000 kg of non-acutely hazardous waste in a calendar month) is subejct to the following requirements:

(1) He must determine if his waste is hazardous under 40 CFR 262.11 (§ 261.5(h)(1));

(2) He may conditionally accumulate hazardous waste on-site provided he does not exceed the quantity limitation contained in § 261.5(h)(2);

(3) After August 5, 1985, he must partially complete and sign a single copy of the Uniform Hazardous Waste Manifest to accompany any off-site shipment of hazardous waste (§ 261.5(h)(3)); and

(4) He must treat or dispose of his hazardous waste on-site, or ensure delivery to an off-site treatment, storage, or disposal facility. The on-site or off-site facility must be either: (i) Permitted by EPA pursuant to Section 3005 of RCRA or by a State having an authorized permit program under Part 271; (ii) in interim status under Parts 270 and 265; (iii) permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or (iv) a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to reuse, recycling or reclamation (§ 261.5(h)(4)).

As discussed in the remainder of this preamble, 100–1000 kg/mo generators will be regulated under Part 262–266 and Parts 270 and 124 when today's rules become effective, to the extent that rules apply.

Generators of less than 100 kg of hazardous waste in a calendar month will remain conditionally exempt from most of the hazardous waste program, as provided in § 261.5(g). For example, generators of less than 100 kg are not required to comply with any manifesting provisions. No additional requirements apply to this class of hazardous waste generator under the existing rules unless the quantity limitations contained in § 261.5(g) are exceeded.

Generators that produce acutely hazardous waste and do not exceed the quantity limitations for such waste under § 261.5(e) will also be conditionally exempt from regulation. No additional requirements apply to this class of generators unless the quantity limitations contained in § 261.5(e) are exceeded, at which point the acutely hazardous waste becomes subject to the full generator requirements of 40 CFR Part 262.

2. Minimum Rulemaking Requirements

Section 3001(d)(1) of the HSWA requires EPA to promulgate, by March 31, 1986, standards under sections 3002, 3003, and 3004, for hazardous wastes generated by a generator in a total quantity greater than 100 but less than 1000 kilograms in a calendar month. Standards developed under this section must be sufficient to protect human health and the environment but *"may vary from the standards applicable to hazardous waste generated by larger quantity generators"* [emphasis added] (section 3001(d)(2)). EPA is further authorized to promulgate standards for generators of less than 100 kg/mo of hazardous waste if the Administrator determine it is necessary to do so to protect human health and the environment (section 3001(d)(4)).

At a minimum, standards issued pursuant to section 3001(d)(1) must require that all treatment, storage, and disposal of hazardous wastes from

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[1] While 100–1000 kg/mo generators are not now required to complete the entire manifest under Federal law, many States operating their own hazardous waste programs may already require additional information on the manifest or require use of the State's version of the Uniform Hazardous Waste Manifest.

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generators of between 100 and 1000 kg of hazardous waste in a calendar month occur at a facility with interim status or a permit issued under section 3005 of RCRA. The standards must also allow generators of between 100 and 1000 kg of hazardous waste during a calendar month to store waste on-site for up to 180 days without being required to obtain a RCRA permit. If a generator must ship or haul his waste greater than 200 miles, that generator may store up to 6000 kg of hazardous wastes for up to 270 days without a permit (section 3001(d)(6)). These minimum requirements are embodied in today's final rule.

In addition, the Agency has interpreted the statute to require that, at a minimum, EPA's regulations must provide for continuation of the August 1985 requirement that off-site shipments of hazardous waste from 100–1000 kg/mo generators be accompanied by a single copy of the Uniform Hazardous Waste Manifest containing at least the information specified in section 3001(d)(3). See H.R. Report No. 198, 98th Cong, 1st Sess. 25–28 (1983); S. Rep. No. 284, 98th Cong. 1st Sess. 8 (1983); H.R. Rep. No. 133, 98th Cong., 2nd Sess., 101–103 (1984).

The Agency believes that at a minimum Congress intended that the Agency's regulations incorporate the partial Uniform Hazardous Waste Manifest requirements in order to provide notice of the hazardous nature of the waste to transporters and facilities. In addition, the Agency is specifically authorized to expand the manifest requirements if necessary to protect human health and the environment. See section 3001(d)(3). As discussed in Unit III.C.2. of today's preamble, EPA has concluded that additional manifest requirements are necessary to ensure protection of human health and the environment.

3. March 31, 1986 Hammer Provisions

If EPA had failed to promulgate standards for hazardous waste generators producing greater than 100 kg but less than 1000 kg in a calendar month by March 31, 1986, these generators would have been subject to certain legislatively stipulated provisions.

The promulgation of today's final rule prior to March 31, 1986, however, effectively voids the hammer provisions of the HSWA with respect to small quantity generators. Consequently, the requirements promulgated today are the only requirements which 100–1000 kg/mo generators must comply with. As discussed in Unit IV, the Part 262 requirements applicable to 100–1000 kg/mo generators that manage waste off-site will take effect six months from today while the requirements of Parts 264 and 265 applicable to generators that manage waste on-site will take effect twelve months from today.

It should be noted that the HSWA specifically states that the requirements of this Section should not be construed to be determinative of the requirements appropriate for small quantity generators in developing a regulatory program. The hammer provisions of HSWA, therefore, do not dictate the content of these final rules for generators of 100–1000 kg/mo.

4. August 1, 1985 Proposal

On August 1, 1985, EPA proposed rules that would apply to generators of 100–1000 kg/mo of hazardous waste. The proposed rules represented the Agency's efforts to balance the need for regulation of this group of generators in a manner that would protect human health and the environment with the need to minimize the impacts of such regulation on small firms.

The proposed rules modified the existing standards for generators and treatment, storage, and disposal facilities to reflect the generally smaller quantities of waste and small business nature of many of these firms. In essence, EPA concluded that some relief from the administrative and paperwork requirements embodied in the Part 262 Generator Standards was appropriate for generators of 100–1000 kg/mo of hazardous waste.

EPA proposed to remove 100–1000 kg/mo generators from the existing § 261.5 small quantity generator provision, thus subjecting them to Part 262. In addition, the Agency proposed specific amendments to Part 262 to relieve these generators of some of the requirements of that Part. Under the proposed rules, generators of 100–1000 kg/mo would have been required under Part 262 to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a single copy of the Uniform Hazardous Waste Manifest to accompany the waste from the generation site.

The proposed requirements for generators of 100–1000 kg/mo were intended to be less stringent than those applicable to large quantity generators in two significant respects. First, under the proposed rules, generators of 100–1000 kg/mo would not have been required to comply with the full manifest system required of larger hazardous waste generators that ship waste off-site for treatment, storage, or disposal. Instead, the Agency proposed a "single copy" manifest system intended to serve as a "notification" to subsequent handlers of the waste (*i.e.*, transporters and facilities) that the material is a hazardous waste and to provide essential information to those handlers as well as emergency personnel. EPA proposed to specifically exempt these generators from the existing manifest requirements pertaining to number and distribution of manifest copies as well as from the recordkeeping and reporting requirements associated with the full manifest system (*i.e.*, use and retention of manifest copies and exception and biennial reporting). EPA also proposed to exempt 100–1000 kg/mo generators from all of the manifest requirements under certain circumstances where the waste is reclaimed under contractual arrangements where either the generator or a reclaimer retains ownership of the material throughout the generation, transportation, and reclamation of the waste. Under such circumstances, EPA believed that the manifest would be unnecessary, provided that specific conditions are met.

A second significant difference for 100–1000 kg/mo generators was the proposed requirements affecting accumulation (*i.e.*, short-term storage) of hazardous waste on-site prior to shipment of waste off-site or management on-site in a treatment, storage, or disposal facility. The proposed rules implemented the statutory requirement to allow generators of 100–1000 kg/mo to accumulate (*i.e.*, store) waste on-site in tanks or containers for up to 180 days (or 270 days if they must ship their waste over 200 miles for treatment or disposal), without obtaining interim status or a permit. In addition, the proposed rules provided that these generators would need to comply with specific storage requirements which were reduced somewhat from those applicable to large quantity generators. Unlike large quantity generators, those producing between 100–1000 kg/mo would not be required to prepare a written contingency plan or have formalized personnel training programs. They would, however, be subject to a reduced set of specific requirements for contingency and emergency procedures, and for ensuring that their employees are fully cognizant of those procedures as well as proper hazardous waste handling methods. Generators of 100–1000 kg/mo that accumulate wastes in tanks or containers would, however, be subject to the same requirements of existing Subparts I and J of Part 265 applicable to larger generators as well as to the preparedness and prevention standards contained in Subpart C of Part 265.

EPA also proposed that those 100–1000 kg/mo generators who treat, store, or dispose of their hazardous waste in on-site facilities and who do not qualify for the 180- or 270-day exclusion would be subject to the full set of Parts 264 and 265 facility standards currently applicable to other hazardous waste treatment, storage, and disposal facilities, including the need to obtain interim status and a RCRA permit. EPA saw no basis for reducing the technical standards for these generators since the potential hazards to human health and the environment appeared to be equivalent to those from other fully regulated treatment, storage, and disposal facilities. However, because of the major impact which these facility requirements would be likely to have on many of these firms, the Agency proposed to delay the effective date of this portion of the regulations an additional six months (*i.e.*, 1 year from the date of publication in the **Federal Register** of the final rules) to allow these firms additional time to either arrange for off-site management or to up-grade their on-site practices for compliance with the full set of Parts 264 and 265 facility standards.

B. Summary of Final Rule

Today's final rule adopts most of the provisions of the proposed rules for generators of 100–1000 kg/mo. Today's final rule subjects generators of 100–1000 kg/mo to regulation under Parts 262, 263, 264, 265, and 266 of the hazardous waste regulations by removing these generators from the conditional exclusion provisions of § 261.5. However, the Agency has decided not to formally redefine a "small quantity generator" as one who generates no more than 100 kg of non-acutely hazardous waste since the Agency has concluded that such a redefinition would increase, rather than reduce, confusion. Consequently, the term "small quantity generator" will continue to apply to all generators of less than 1000 kg of hazardous waste in a calendar month.

As a result of today's final rule subjecting generators of 100–1000 kg/mo to the Part 262 requirements, these generators will be required to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a multi-part "round-trip" Uniform Hazardous Waste Manifest to accompany the waste to its final destination; and
- Maintain copies of manifests for three years;

EPA is today finalizing a number of the proposed modifications to the Part 262 requirements applicable to generators of 100–1000 kg/mo. These generators will not be required to submit biennial reports or file exception reports if a copy of the manifest is not returned by the destination facility. In addition, the proposed modifications to the accumulation provisions of § 262.34 exempting these generators from the requirements to prepare a formal contingency plan and conduct formal personnel training are also being finalized, as is the proposed exemption from all manifest requirements for wastes reclaimed under certain contractual arrangements. The Agency is also exempting 100–1000 kg/mo generators from the 50′ buffer zone requirements for container storage of ignitable or reactive wastes during periods of on-site accumulation.

The most significant departure from the proposed rules is the Agency's determination that the multiple copy manifest system does not impose a significant burden and that, in fact, the multiple copy manifest system is essential to ensure protection of human health and the environment. Therefore, the modifications to the existing manifest system proposed for 100–1000 kg/mo generators are not being adopted in today's final rule. The reasons for this change are discussed in detail in Unit III.C. of this preamble.

III. Response to Comments and Analysis of Issues

This Section of the preamble addresses the comments received on the August 1, 1985, proposed rules ("Proposal") and describes the Agency's position on the major issues raised in the proposal and during the comment period.

A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators

As discussed in the preamble to the Proposal, EPA's approach in developing standards for 100–1000 kg/mo generators was one of balancing the two competing goals inherent in section 3001(d)—protecting human health and the environment and avoiding unreasonable burdens on the large number of small businesses affected by the standards. In assuring protection of human health and the environment, the Agency deemed it appropriate and consisent with Congressional intent to consider the "relative risk" posed by the small aggregate amounts of waste generated by the 100–1000 kg/mo generators. Given the lower relative risk that these generators pose compared to larger generators in terms of quantity of waste, varying the standards from those applicable to large quantity generators would still assure protection of human health and the environment.

EPA also evaluated the potential impact of full Subtitle C regulations with respect to both administrative and technical considerations, and concluded that the technical requirements were more essential than the administrative requirements to the general goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. In addition, Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily-prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities.

Most persons who commented on EPA's approach to regulation in this area supported the concept of reducing

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burdens on small businesses and of fashioning the degree of relief provided from the level of risk involved; however, several commenters disagreed on the level of risk posed by waste from 100–1000 kg/mo generators. One commenter argued that the "relative risk" approach was not technically sound because the synergistic and antagonistic properties of waste streams were not considered, and mismanagement of even small quantities of waste, if not controlled or regulated, would eventually have the same impact as larger amounts of waste. One commenter pointed out that the relative risk approach is difficult to justify on a regional or local basis, where 100–1000 kg generators may contribute much more than the 0.3 percent nationwide contribution, and their proximity to populations as compared to large quantity generators should have been considered. Several commenters also asserted that Congress has judged the hazardousness of a given waste to be imparted by its inherent properties, not by its quantity.

As EPA explained in the Proposal, the Agency believes it to be both appropriate and consistent with Congressional intent to consider the relative risk posed by the smaller quantities of waste generated by 100–1000 kg/mo generators. Although it did evaluate several Congressionally-specified factors, such as waste characteristics, the Agency found that the only useful factor in drawing meaningful distinctions between large quantity generators and 100–1000 kg/mo generators was the quantity of waste generated. Thus, the Agency considered both the inherent properties and the quantities of waste generated in developing standards to assure protection of human health and the environment.

The Agency is aware that there can be concentrations of 100–1000 kg/mo generators in populated areas, and that their 0.3 percent nationwide contribution can be increased accordingly in some cases; however, overall the quantities of waste capable of being leaked or spilled during storage or transportation, as compared to that of large quantity generators, still poses relatively less risk. Moreover, the only type of relief being provided is where the technical standards deemed necessary to protect human health and the environment are not compromised in substance. The Agency believes that, by retaining all technical standards for storage, transportation, and treatment required of large quantity generators and by modifying some requirements of an administrative nature for the 100–1000 kg/mo generators, a fair balance between the goals of reducing burdens and protecting health and the environment is reached. The Agency does not believe that exempting the 100–1000 kg/mo generators from these administrative requirements will significantly increase the risks from storage, transportation, or disposal of the waste. In addition, as discussed below, the Agency's decisions to require the multiple-copy manifest, which will allow "tracking" of the waste to ensure proper disposal, will further reduce any potential risks.

Another group of commenters criticized EPA's approach in that it did not consider bases for providing relief in addition to that proposed. For example, several commenters asserted that 100–1000 kg/mo generators use less sophisticated waste management practices than large quantity generators, due in large part to economic constraints. This, along with the lesser relative risks, they asserted, dictates imposing less costly regulatory requirements, such as eliminating on-site storage permitting requirements for longer periods of time and larger quantities than EPA proposed.

While EPA did consider differences in waste management practices that would distinguish 100–1000 kg/mo generators from large quantity generators, it found that both classes use many of the same waste management practices (see 50 *FR* 31285 (Col. 1) (August 1, 1985). The comments received on this subject do not provide evidence indicating otherwise. The Agency has recognized that the 100–1000 kg/mo generators generally have less manpower and fewer economic resources available to them, and that this would affect their ability to comply with the full regulatory requirements applicable to large quantity generators. However, Congress has already provided for on-site storage for longer periods of time to allow for more economical shipments. In addition, as discussed below, EPA is modifying certain facility requirements for on-site accumulation to simplify the requirements for contingency plans, emergency procedures, and personnel training (contained in Part 265, Subpart D and § 265.16). These requirements are being modified because they would be unduly burdensome and the underlying environmental objectives can be achieved in their modified form. However, full Parts 264–265 requirements would apply to generators that store their waste in tanks or containers for very long periods of time (*i.e.*, longer than 180 or 270 days) because the quantity of waste present, over time, becomes significant. Similarly, the potential for release of hazardous waste to the environment becomes significant where 100–1000 kg/mo generators engage in waste management in surface impoundments, waste piles, landfills, or land treatment facilities. Thus, in order to fulfill its mandate to protect human health and the environment, EPA has rejected any suggestions to reduce the Parts 264 and 265 facility standards.

B. Applicability Issues

1. Definition of "Small Quantity Generator"

In the August 1, 1985 proposal, EPA proposed to amend 40 CFR 261.5 to redefine a small quantity generator as one who generates no more than specified quantities of acutely hazardous waste and no more than 100 kg of other hazardous waste in a calendar month. The effect of the proposed redefinition would have been to remove 100–1000 kg/mo generators from the § 261.5 exemption for small quantity generators and subject them, instead, to Parts 262–266, 270, and 124 of the hazardous waste regulatory program. Under the proposed rules, generators of 100–1000 kg/mo would have been one of two classes of large quantity generator. The Agency also proposed changes to Part 262 that would specifically exempt these 100–1000 kg/mo generators from a number of the otherwise applicable administrative requirements.

A number of commenters expressed concern about the proposed redefinition of the small quantity generator provision to exclude generators of 100–1000 kg/mo. In particular, they stated that many of these generators were only now becoming aware of their status as regulated hazardous waste generators and that, for the most part, they recognized themselves as "small quantity generators". Changing these generators to large quantity generators, it was felt, would add to confusion and reduce the likelihood of compliance. It was also pointed out that many of the education materials being used to acquaint these generators with the RCRA requirements, including many of EPA's own materials, referred to this class of generator as "small quantity generators". Commenters suggested several specific labels to differentiate the various classes of generators, including such terms as "small *de minimis*", "very small quantity generators" or "extremely small quantity generators".

In proposing to remove the 100–1000 kg/mo generators from § 261.5, the Agency was attempting to address the complexity and confusion caused by having multiple classes of small quantity generator subject to significantly different standards. The Agency is sympathetic to the concerns of these commenters and in no way intended the redefinition to add to the confusion which many of these firms may experience in becoming subject to the bulk of the RCRA regulatory program for the first time. For the reasons discussed below, EPA has decided not to alter the existing definition of "small quantity generator" but is making modifications to § 261.5 that will provide a more explicit labeling scheme for regulatory purposes.

Section 261.5 has historically addressed those hazardous waste generators that were conditionally exempt from most of the hazardous waste regulatory program. Until the HSWA of 1984 and the subsequent codification of its early enactment provisions on July 15, 1985, only two major classes of small quantity generator existed: those generating or accumulating acutely hazardous wastes below certain quantity cutoffs and those generating or accumulating below 1000 kg of most hazardous wastes. Furthermore, both classes were largely exempt from the standards applicable to large quantity generators.

However, with the addition of a new class of small quantity generator designated by Section 3001(d) of HSWA (*i.e.*, those generating between 100 kg and 1000 kg of hazardous waste in a calendar month) that would be subject to most of the standards applicable to large quantity generators, continued use of the term "small quantity generator" would have no regulatory significance and would lead to confusion for the previously exempt class of generators.

The proposed redefinition was intended to distinguish between small quantity generators that were conditionally exempt from regulation under § 261.5 (*i.e.*, <100 kg/mo) and those that would be subject to most of the requirements applicable to large quantity generators (*i.e.*, 100–1000 kg/mo). By removing the 100–1000 kg/mo generator from § 261.5 and referring to these generators by their actual quantity limitations, the Agency intended to provide a more explicit, and therefore less confusing, regulatory scheme.

The Agency does not believe that the commenters' suggestion of retaining the term "small quantity generator" solely for 100–1000 kg/mo generators or creating new labels for different categories of small quantity generators will reduce confusion; such labels would probably cause more confusion, especially where states have established their own small quantity generator definitions and exclusion levels. In fact, as a result of these comments, the Agency believes that the term small quantity generator is no longer sufficiently precise for most regulatory purposes.

For this reason, the Agency is making three regulatory changes affecting the use of the term "small quantity generator". First, the Agency is adding a definition of "small quantity generator" to Section 260.10 as follows:

> "Small quantity generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

This definition *conforms to the existing definition of the term* and is being added to § 260.10 to alleviate any potential confusion over the definition of "small quantity generator".

Second, EPA is finalizing the proposed removal of generators of 100–1000 kg/mo from the conditional exclusion provisions of § 261.5 and will instead refer to these generators in the regulatory language as generators of 100–1000 kg/mo. This will retain the original premise of the redefinition which was to segregate in the regulations those generators that are predominantly exempt from regulation (*i.e.* generators of less than 100 kg/mo of hazardous waste and generators of acutely hazardous waste in less than specified quantities) from those who are more fully regulated (*i.e.* 100–1000 kg/mo generators). Since the 100–1000 kg/mo generators are no longer excluded from most of the Part 262 regulations by inclusion in § 261.5, the applicable portions of Parts 262–266, 270, and 124 will apply to these generators, as proposed.

Finally, the Agency is also modifying references to the term "small quantity generator" in § 261.5 and in other parts of the regulations to provide more explicit descriptions of the various classes of small quantity generator. Thus, generators of less than 100 kg/mo of hazardous waste or less than specified quantities of acutely hazardous waste will also be referred to by their quantity cutoffs or as generators who are conditionally exempt under Section 261.5. Section 261.5 will now be titled "Special Requirements for Hazardous Wastes Generated by Conditionally Exempt Small Quantity Generators."

The removal of the term "small quantity generator" from most regulatory use will in no way preclude continued use of the term "small quantity generator" for general reference and educational purposes. The Agency recognizes the widespread use of the term "small quantity generator" by States, trade associations, Congress and others and has no intention of interfering with the continued use of that term by anyone choosing to use it to refer to the broad class generating less than 1000 kg in a calendar month. EPA will also continue to use the term "small quantity generator" in describing the collective group of generators below 1000 kg/mo but will use the terms "generators of less than 100 kg/mo" and "100–1000 kg/mo generator" for regulatory purposes. For example, in discussing methodology for counting quantities in order to determine generator status, it would be appropriate to refer to the small quantity generator class since it includes both the 100–1000 kg/mo generators and generators of less than 100 kg/mo.

2. Generator Category Determination

In the Proposal, the Agency discussed a number of issues relevant to making a determination of which generator category a given firm belonged to at any given point in time in order to determine what requirements that establishment was actually subject to. Among the issues covered were which wastes need not be included in quantity determinations (*e.g.*, spent lead-acid batteries destined for reclamation and used oil) and how to count wastes for purposes of determining generator status (*e.g.*, counting of wastes reclaimed on-site). The comments received on these proposed rules raised a variety of additional issues with respect to what types of activities and wastes were intended to be covered by the proposed rules, and whether the rules were applicable to "episodic generators" who might be fully regulated in one month but conditionally exempt the next. These issues are discussed below. In addition to the explanation provided in this preamble, the Agency intends to develop detailed, plain-English guidance and education materials to help the 100–1000 kg/mo generators understand and comply with the hazardous waste regulations.

a. Counting Amendment to § 261.5: In an effort to help clarify for small hazardous waste generators which wastes must be counted in determining their generator category, the Agency proposed an amendment to § 261.5.

The proposed amendment stated that for purposes of making quantity determinations under § 261.5, a generator need not count wastes which are specifically exempted from

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regulation (see, e.g., § 261.4, or § 264.1(g) (2), (4), (5) and (6)) or which were not subject to substantive regulation under Parts 263, 264, 265, and the on-site accumulation provisions of § 262.34 were not subject to counting for purposes of determining generator status. Wastes that were subject to the provisions of § 261.6 (b) and (c) (recyclable materials), however, would be required to be counted in making quantity determinations. The proposal was designed to ensure that wastes that are not regulated are not counted. In addition, the counting amendment was intended to eliminate the multiple counting of wastes that are reclaimed and then reused many times during the calendar month. In this situation, the waste would only be counted once, even though it is reused and subsequently becomes a hazardous waste again after such reuse.

While the proposed amendment was intended to make it clear that any hazardous waste that is excluded or exempted from substantive regulation need not be included in the quantity determinations, a number of commenters either misunderstood the scope of the amendment or believed that additional clarification was necessary for the amendment to be understood. Although virtually all commenters on the proposed amendment supported the concept, several recommended specific changes to improve the clarity of the provision. Consequently, the Agency is today finalizing a slightly modified version of the amendment to § 261.5 to clarify which wastes are counted in making generator category determinations.

One commenter correctly noted that the amendment, as written, would not apply to generators of 100–1000 kg/mo since the amendment referred only to the quantity determinations under § 261.5. Since, under the rules being promulgated today, 100–1000 kg/mo generators will no longer be subject to the conditional exclusion provisions of § 261.5, the counting amendment would not have applied to these generators as proposed. Since this was contrary to the Agency's intent that the § 261.5(c) amendment be used by all generators in determining their generator status, the final regulatory language of this provision is modified to indicate that the amendment applies to quantity determinations under Parts 261–266 and 270 of the hazardous waste rules.

A second modification to this provision will make it clear that wastes which are not regulated under Parts 262–266 and 270 are not counted in making quantity determinations.

The majority of commenters on this provision asked for clarification on which wastes or processes were actually intended to be exempted from counting since the references to broad regulatory provisions or concepts such as "subject to substantive regulations" left many readers uncertain as to what the Agency considered to be "substantive regulation". For purposes of this provision, the term "substantive regulation" includes regulations which are directly related to the storage, transportation, treatment, or disposal of hazardous wastes. Regulations which would not be considered "substantive" for purposes of this provision would be requirements to notify and obtain an EPA identification number or to file a biennial report.

As a general guide, the following materials are included in the general category of exempted or excluded wastes that would not be counted in making quantity determinations for purposes of determining hazardous waste generator status:

- Any waste excluded from regulation under § 261.4. For example, wastes discharged to publicly owned treatment works (POTWs) and commingled with domestic sewage are not considered to be solid wastes when discharged, under § 261.4(a). Therefore, they are excluded from regulation under Subtitle C of RCRA and not counted for purposes of making quantity determinations (unless they are stored or treated in regulated units prior to being discharged). Such wastes are regulated instead under the Clean Water Act.[2]
- Any waste exempt from regulation under § 261.6 or wastes that are not stored or transported prior to being reclaimed. For example, under § 261.6(a)(3)(ii), spent lead-acid batteries that are returned to a battery manufacturer for regeneration are exempt from regulation under Parts 262–266, 270, and 124, and, therefore, are not counted in the quantity determination.

Also, used oil exhibiting a characteristic of hazardous waste, unless mixed with other hazardous wastes, is also currently exempt under § 261.6(a) and is not counted for purposes of making quantity determinations. EPA recently proposed to list used oil as a hazardous waste and proposed special management standards for used oil that is recycled. (See 50 *FR* 49164, November 29, 1985.) These proposals, if finalized, will continue to exclude used oil from the quantity determinations of Parts 261–266 and 270. Under the proposed rules for used oil, generators would count their used oil separately from their other hazardous wastes against a separate small quantity generator cutoff that would be established for recycled oil. Under those proposed rules, generators would be subject to less stringent standards for their recycled used oil than for their other hazardous wastes, provided they do not mix other hazardous wastes with their used oils or dispose of the used oil rather than recycle it. Used oil which is disposed of, or mixed with other hazardous wastes, would be regulated like any other hazardous waste and counted separately against the 100 kg/mo cutoff being promulgated today for other hazardous waste generators.

- Any waste reclaimed on-site if it is not accumulated prior to recycling in such a way as to become subject to the accumulation provisions of § 262.34 or the permitting requirements for storage facilities under Parts 264 or 265 (*i.e.* if it is not accumulated or stored prior to reclamation on-site). Under the hazardous waste rules, the actual process of reclaiming wastes is not subject to regulation under Parts 262–265 and 270 and 124 of the hazardous waste regulations.

Only the accumulation, transportation, long term storage, or the management of residues or sludges resulting from the reclamation process are actually subject to regulation. For example, wastes which are continuously reclaimed in a still or solvent cleaning machine on-site without intervening storage and which are reused on-site are not regulated and are not required to be counted in determining generator status.

- Wastes exempt from regulation under §§ 264.1 or 265.1, provided they are also not subject to the substantive standards in 40 CFR Parts 262 and 263. For example, wastes treated in elementary neutralization units, wastewater treatment units or totally enclosed treatment facilities as these units are defined in §260.10 are exempt from regulation under Parts 264 and 265.
- Wastes exempt from certain regulations under § 261.4(c). For example, wastes stored in a product or raw material storage tank are not subject to regulation under Parts 262–265, 270, 271, and 124, or to the RCRA 3010 notification requirements, and hence, are not counted.

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[2] Waste discharged to a public sewer system is exempted from RCRA to avoid duplicative regulation since such wastes are regulated under the Clean Water Act. While disposal of hazardous wastes in this manner is not a violation of RCRA, the general pretreatment standards under the Clean Water Act contained in 40 CFR 403.5 prohibit the introduction of wastes into POTWs that would interfere with the operation of the treatment plant or subsequent POTW sludge management.

Therefore, generators are required to count for purposes of determining generator status any waste that is subject to the substantive regulations. Wastes are only counted once, however. A number of commenters claimed that although EPA discussed this in the preamble to the proposed rules, this point was not made clear in the actual regulatory language. The Agency agrees, and thus has added § 261.5(d)(3) to make it clear that a generator need not count the hazardous waste generated and then reclaimed and reused at the site of generation if the hazardous waste has already been included in the monthly totals. The Agency also is modifying § 261.5(d)(2) to make it clear that you only count the residue from treatment where the original hazardous waste was not counted.

The following examples may help to illustrate the regulatory scheme:

(Example 1) Manufacturer A uses solvent in a degreasing process yielding 500 kg of spent solvent in a month. If the solvent is to be reclaimed (*e.g.*, distilled) on-site and is not sorted or accumulated prior to reclamation, it will qualify as a solid (and hazardous) waste but it will not be counted in the generator's monthly totals. The 90 kg of still bottoms from the distillation process are also hazardous waste and must be counted since they were not included in the monthly total. Consequently, 'A' will not be a generator of 100–1000 kg during the month in question.

If the solvent is stored or accumulated prior to distillation, the 500 kg of the spent solvent will qualify as a hazardous waste and will be counted in 'A's hazardous waste totals for the month in which it was generated. The still bottoms will also qualify as hazardous waste, but will not be counted because the spent solvents have already been counted once. The regenerated solvent, on the other hand, will not be a solid or hazardous waste. It will remain unregulated, just like the virgin material.

(Example 2) Manufacturer A generates 120 kg of hazardous spent solvent in one month which he distills without intervening storage. The regenerated solvent is then reused. Neither the spent solvent nor the regenerated solvent is counted and "A" is not a 100–1000 kg/mo generator. Alternatively, "A" distills the spent solvent, but stores it for less than 180 days before reclamation, and reuses the regenerated solvent until spent again, and then distills it once again. The spent solvent would be counted because it was stored before reclamation, but it would only be counted once. "A" is now a 100–1000 kg/mo generator. If the spent solvent were stored for more than 180 days before reclamation, "A" would need a storage permit.

(Example 3) "A" generates 500 kg of hazardous spent solvent in one month and stores it in an earthen basin which is an impoundment, not a tank. The spent solvent is then discharged to a POTW. "A" must count the total quantity of spent solvent, as the impoundment is not a wastewater treatment unit by definition (§ 260.10), and hence, "A" is a 100–1000 kg/mo generator.

(Example 4) An automotive services center generates spent lead-acid batteries, which it sends to a battery breaker. The service center does not count the spent batteries in its monthly total because they are exempt from regulation until they reach the battery breaker. (See § 266.80(a).)

b. Generators of Acutely Hazardous Waste: Section 3001(d)(7) of HSWA states that the requirements applicable to generators of acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) are not affected by the HSWA amendments.[3] Thus, today's regulatory amendments will not alter those requirements applicable to generators of acutely hazardous wastes and these generators will remain subject to the exclusion limits and requirements contained in § 261.5(e). The same counting rules as those described above are applicable.

c. Generators of Non-acutely Hazardous Waste in Quantities of Less than 100 kg/mo: Section 3001 of HSWA gives EPA authority to promulgate regulations for generators of less than 100 kg of hazardous waste per month if the Administrator determines that such standards are necessary to protect human health and the environment. The Agency is not required to promulgate such regulations and it did not propose to further extend coverage of the hazardous waste program to this class of hazardous waste generator in the August 1, 1985 proposal.

In the Proposal, the Agency stated that it had no data to indicate that additional regulation of generators of less than 100 kg/mo of non-acutely hazardous waste would provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only .07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicated that very few incidents involved quantities below 100 kg. Consequently, none of the regulations promulgated today, with one exception, alter the existing § 261.5 provisions applicable to generators of less than 100 kg/mo. As discussed under the on-site accumulation provisions later in this preamble, the Agency has decided to modify § 261.5(g) to subject generators of less than 100 kg/mo who exceed the accumulation limit of 1000 kg to the modified standards for generators of 100–1000 kg/mo rather than to full regulation.

d. Determination of Generator Status: A number of commenters asked for clarification of the requirements that would apply to generators that do not generate hazardous waste at a uniform rate. Such "episodic generators" may generate, for example, less than 100 kg of hazardous waste one month, quantities of 100–1000 kg other months, or may periodically exceed 1000 kg in a single month.

Several commenters requested clarification of what standards would apply to these episodic generators under different circumstances. Various circumstances for which clarification was requested were raised; for example:

(1) A generator that exceeds the 100 kg/mo exclusion level periodically as a result of special operations such as tank cleaning;

(2) A generator that usually generates between 100 and 1000 kg/mo, but exceeds 1000 kg in one month;

(3) A generator that exceeds 1000 kg/mo several times and accumulates all waste in a single tank;

(4) A generator that periodically exceeds 1000 kg/mo and separates the "under 1000 kg/mo" waste from the "over 1000 kg/mo" waste.

The Agency has always taken the position that a generator may be subjected to different standards at different times, depending upon his generation rate in a given calendar month (See, *e.g.*, 45 *FR* 76620, November 19, 1980). Thus, a generator of less than 100 kg in one calendar month would be deemed a conditionally exempt generator in that month, subject only to the requirements of § 261.5; however, if in the next calendar month, he generates more than 100 kg but less than 1000 kg of any regulated hazardous waste, he is subject to all of the standards being promulgated today, as his generator status has changed. Furthermore, if he generates more than 1000 kg in any calendar month, he is deemed to be a large quantity generator, subject to all applicable standards. Thus, any non-exempts waste that is generated during a calendar month in which the 1000 kg/mo cutoff is exceeded is subject to full regulation until it is removed from the

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[3] At this time, only one acute hazardous waste, dioxin, is listed outside of § 261.33(e).

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generator's site. If such fully regulated waste is mixed or combined with waste exempt or excluded from regulation or waste that is subject to reduced regulation under today's final rule, then all of the waste is subject to full regulation until the total mixture is removed from the generator's site. If, on the other hand, the generator stores separately that waste generated during a month in which less than 1000 kg (but more than 100 kg) of hazardous waste is generated, from waste generated during a month in which more than 1000 kg is generated, the former is subject to today's reduced requirements, while the latter is subject to full regulation.

Therefore, generators who expect to periodically exceed the 1000 kg/mo cutoff for the reduced requirements being promulgated today should be prepared to ship their waste off-site if they wish to avoid being subject to full regulation.

Several commenters have suggested alternative schemes for determining applicable standards, all of which the Agency must reject. One commenter suggested that generators would determine their generator status on the basis of a "moving average" over a 12 month period. If, for example, a generator exceeded 1000 kg/mo for several months but averaged between 100 and 1000 kg over the course of the year, he would be subject to the reduced standards being promulgated today for 100–1000 kg/mo generators. The major problem with this approach is that generators would not be able to determine what standards they were subject to until as much as a year after they should have been complying with a specific set of requirements. For example, a generator who generates over 1000 kg the first month but who expects his moving average to fall below 1000 kg after 12 months could avoid preparing a contingency plan or complying with the other requirements of Part 262 applicable to large generators. This would also present enforcement problems, since it would be unclear which standards apply at any given point. Thus, the Agency believes that such an approach would not significantly reduce the implementation difficulties it was designed to address.

The second approach suggested was establishment of a uniform time and quantity cutoff for all generators, applying the same standards to the same quantities, regardless of monthly generation rates. Under this approach, all generators would be allowed to utilize the 180- and 270-day storage periods, provided the 6000 kg "cap" was not exceeded for all accumulated hazardous wastes so that the reduced standards of Part 262 for 100–1000 kg/mo generators would be extended to all generators who do not exceed 6000 kg on-site.

While this approach would be simpler to administer, it would be inconsistent with the approach that Congress has directed the Agency to take in developing standards for generators who produce different quantities of waste. While the Agency is authorized to consider such factors as small business impacts and management capabilities for 100–1000 kg/mo generators, it is not explicitly authorized to do so for larger generators. The Agency may not ignore in this rulemaking the fact that the statute has established generation rate as a factor in determining whether business impacts may be considered. Thus, as discussed further in Unit III.C.4., below, the Agency may not extend to all generators the same time and quantity limitations applicable to 100–1000 kg/mo generators.

C. Part 262 Generator Responsibilities

EPA is today finalizing amendments to Section 261.5 that will subject hazardous waste generators of 100–1000 kg/mo to the Part 262 generator standards and simplify a number of those requirements. This section of the preamble discusses the proposed amendments to Part 262 to relieve 100–1000 kg/mo generators of some of the administrative burden of complying with the hazardous waste regulatory program, the comments received on each proposal and the Agency's decision with respect to each of the proposed amendments.

The specific Part 262 requirements that EPA is amending for application to 100–1000 kg/mo generators are as follows:

- § 262.20 (General Manifest Requirements) is amended to exempt generators of 100–1000 kg/mo from all manifest requirements if their hazardous waste is reclaimed under certain contractual agreements provided the generator complies with specific recordkeeping requirements set forth in this section. Some modifications to this amendment are being made in response to comments.
- § 262.34 (Accumulation Time) is amended to extend the period of on-site storage allowed for 100–1000 kg/mo generators without the need to obtain interim status or a RCRA permit from 90 days to 180 (or 270) days for quantities not to exceed 6000 kg. In addition, § 262.34 is amended to specify the requirements that would apply to such on-site storage by these generators.
- A new § 262.44 to Subpart D of Part 262 is added to exempt generators of 100–1000 kg/mo from the requirements to file and maintain records of biennial and exception reports. This exemption does not apply to records pertaining to hazardous waste determinations under § 262.40(d) and the extension of retention periods under § 262.40(c).

1. Notification and Identification Number Requirements—§ 262.12

In the August 1 proposal, EPA proposed that generators of 100–1000 kg/mo be subject to § 262.12, which provides that generators not excluded under § 262.10 or the provisions of § 261.5: (1) Must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without receiving an EPA Identification Number; (2) must obtain an EPA identification number (and may do so by completing and submitting EPA form 8700–12); and (3) must not offer their hazardous waste to transporters or to treatment, storage, and disposal facilities that have not received an EPA identification number.

The majority of commenters on the requirement to obtain and use an EPA identification number supported the Agency's proposal not to exempt 100-1000 kg/mo generators from this provision. EPA believes that a centralized data base of firms subject to regulation under RCRA is essential for effective compliance monitoring and enforcement, as well as for characterizing the regulated community to provide information to Congress and to make resource projections. Use of a unique identifying number is necessary to effectively manage any large data base. Several commenters added that requiring identification numbers for all generators who are subject to substantial regulation minimizes confusion in the regulated community.

Commenters who opposed the requirement cited the Agency's cost estimate of $40.00 per generator to obtain a U.S. EPA Identification Number, the complexity of the application form, and the lack of a specific statutory requirement for Identification Numbers. However, the Agency does not believe that the requirement to obtain a U.S. EPA Identification Number is overly burdensome to these generators, given the important function which this requirement fulfills.

Some commenters who opposed the requirement cited the complexity of the EPA Form 8700–12, "Notification of Hazardous Waste Activity." The Agency does not believe that the form is overly complex. EPA Regional Offices

have already received over 28,000 applications for U.S. EPA ID numbers from generators of less than 1000 kg/mo. In some cases, these applications were prompted by requirements from transporters and facilities that handle waste from these generators. In other cases, States require identification numbers for generators of less than 1000 kg/mo. While the Agency is unaware of any instances of 100–1000 kg/mo generators being unable to complete the form, EPA has initiated a major education program through trade associations, States, and grants to local governments and others, which would widely disseminate information that will help generators comply with today's rule. The Agency has also prepared a supplemental instruction sheet to provide additional information to generators of less than 1000 kg/mo who apply for U.S. EPA Identification Numbers. These instructions will contain the EPA waste codes for wastes commonly produced by these generators. This information will allow many generators to complete the application without additional information or research. In addition, generators may call the RCRA/Superfund Hotline or the Small Business Hotline for information and assistance. These numbers are provided at the beginning of today's notice.

Some commenters suggested establishing a telephone system for obtaining identification numbers. EPA considered this kind of system in the proposal and concluded that the lack of a signed record from the waste handler would allow a high potential for confusion and misrepresentation. The Agency still believes this to be true and no commenter was able to suggest a mechanism for avoiding this.

One commenter suggested that EPA modify the application form to require generators to indicate whether they generate less than 100 kg/mo, 100–1000 kg/mo, or more than 1000 kg/mo. EPA recently modified the form to require generators to indicate whether they generate more than 1000 kg/mo or less than 1000 kg/mo of hazardous wastes.

The Agency does not believe that there is any justification for exempting "infrequent generators" from the Identification Number requirement, as suggested by one commenter. EPA believes that all 100–1000 kg/mo generators should be known to the Agency, however infrequently they fit into the category, to allot follow-up if any problems arise. Also, use of an EPA Identification Number when wastes are shipped off-site helps enforcement authorities to keep track of waste shipments.

The Agency believes that the EPA Identification Number requirement, as proposed, is the best system for ensuring that the Agency has adequate information about these new members of the regulated community. Consequently, EPA is not modifying § 262.12 for generators of 100–1000 kg/mo.

2. The Hazardous Waste Manifest System—Part 262, Subpart B

This Unit discusses the proposed modifications to the hazardous waste manifest system for 100–1000 kg/mo generators for wastes shipped off-site. The issues raised in the comments on the Proposal include the "single" versus "multiple" copy or "round-trip" manifest, the proposed exemption from manifesting for wastes shipped under certain reclamation agreements, and the applicability of the manifest waste minimization certification provisions of the HSWA.

a. Number of Copies and Use of the Manifest: The Proposal for generators of 100–1000 kg/mo of hazardous waste contained several modifications to the Uniform Hazardous Waste Manifest system. The proposed rules would have exempted 100–1000 kg/mo generators from the following requirements: 1) to compete a multiple copy manifest form (§ 262.22), 2) to retain a copy for the generators' records (§ 262.23(a)(3)), and 3) provide multiple copies of the manifest to the waste transporter (§ 262.23(b)). The effect of these proposed modifications to the manifest system would have been to exempt these generators from the "roundtrip" or "tracking" function of the manifest system (*i.e.*, establishment of a paper trail for enforcement purposes) while continuing to require that a single copy of a fully completed manifest accompany the waste shipment as a means to provide notice to subsequent handlers that the waste is hazardous. No modifications were proposed to the requirements to fully complete the manifest form, and to use established systems for obtaining forms from the appropriate State, except for a proposed elimination of the manifest document number from the required information.

These modifications to the manifest system were intended to minimize impacts on small business while still meeting the underlying goal of HSWA to protect human health and the environment. By reducing some of the paperwork requirements associated with the full manifest system, EPA believed that both of those goals could be served. In particular, EPA believed that the requirement for these generators to obtain an EPA identification number, complete a single copy of the manifest for all off-site shipments and for facilities to keep these manifests in its files created a significant legal obligation that the waste would be managed at approved hazardous waste management facilities, as required under the HSWA. The Agency believed that this legal obligation would not be significantly enhanced by requiring the use, distribution, and retention of multiple copies of the manifest form.

In requesting public comment on the issue of the "single copy" manifest system, EPA pointed out that it was not fully convinced that the relief being offered was significant enough to offset the potential confusion which the single copy system might cause, or to offset the loss of the "tracking" function of the manifest as an enforcement mechanism. EPA received extensive negative comment on the proposed amendments which have convinced the Agency that the multiple copy manifest system should be adopted in the final rules.

Many commenters asserted that exempting 100–1000 kg/mo generators from the "round-trip" hazardous waste manifest system (*i.e.* return of a signed copy by the designated facility to the generator as proof that the shipment arrived) would not significantly reduce administrative burden. Most commenters who represented both small and large businesses, State agencies and firms in the waste management industry believed that the information requested on the manifest was not particularly difficult to provide, and they did not object to the proposed requirements to provide essentially full manifest information. Many commenters argued that requiring full manifest information was appropriate for all generators, and that the preparation of multiple copies of the manifest presented no incremental burden over a single copy system since manifests are generally obtained in carbon sets, requiring no real additional effort. These commenters also pointed out that retention of a copy for the generator's files poses a minimal burden due to the limited number of shipments most 100–1000 kg/mo will need to make under the extended accumulation periods being promulgated today for these generators (See Unit III.C.4.). Given the limited number of shipments most generators will need to make to treatment or disposal facilities in a year (*i.e.* 2–4), commenters asserted that filing a manifest copy and replacing it with a copy signed and returned by the designated facility was simply not

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burdensome. Furthermore, virtually all commenters, many of whom represented small business, also indicated that retention of a copy of the manifest containing signatures of the transporter and facility would be done in any case, and was essential to demonstrate that a business had met its legal responsibilities in cases where the waste is mishandled by subsequent handlers.

Another major concern of many commenters with respect to the single copy manifest system was the confusion that would result from having two different manifest systems in place for 100–1000 kg/mo generators and for generators of over 1000 kg. While some commenters representing small businesses believed that the single copy manifest system was workable and provided a real reduction in administrative burden, virtually all other members of the waste management and regulated community argued for a uniform manifest system. Many commenters representing larger corporations and firms with multiple facilities argued that a single uniform system would be the least confusing and least burdensome system. In addition, many commenters believed that different State and Federal requirements would make it extremely burdensome for many small businesses to determine which manifest system applied to them. States, waste haulers, and facilities would also have the added burden of trying to verify the generator status of those utilizing a single copy form and because of the difficulty in administering a dual system, they would simply require that all generators comply with the full system.

One commenter also argued that the Agency's proposed single copy manifest was inconsistent with Congressional intent since the hammer provisions of Section 3001(d)(8), which included a requirement for return of a signed manifest by the facility to the generator, were intended by Congress to serve as the minimum regulatory standards. However, the Agency can find no evidence in either the statute or the legislative history that would lead the Agency to this conclusion. The plain language of the hammer provision states ". . . nothing in this section shall be construed to be determinative of those standards appropriate for small quantity generators", and Section 3001(d)(6) explicitly sets out the "minimum" standards that must be included in the regulations. In addition, the legislative history of Section 3001(d) indicates that the provisions of subsection (d)(6) were to be regarded as statutory minimums rather than the hammer provisions of subsection (d)(8). See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 101, 103–104 (1984). Thus, the statute and legislative history provide extensive evidence that Congress gave EPA broad authority to establish whatever standards it deemed appropriate for these generators, and to vary the hazardous waste standards to minimize burden, consistent with protection of human health and the environment.

A number of commenters raised concerns with respect to the ineffectiveness of the single copy manifest system in ensuring that waste shipments are properly tracked from generator to transporter to facility. Under the proposed manifest system, a generator would be required to complete a single copy of the manifest and to give it to the transporter who in turn would be required to sign it and turn it over to the designated facility upon delivery of the waste shipment. The Agency felt that this chain created a substantial legal obligation that the waste would be managed at a Subtitle C facility. However, a number of commenters asserted that such a system would serve only to encourage unscrupulous transporters to either alter manifest information or simply dump the waste illegally, since the generator or others do not have any record of his accepting the waste shipment. A number of States were concerned that the absence of multiple copies of the manifest in the records of the generator, transporter, and facility would completely eliminate the ability of EPA or the States to enforce the requirement that the waste be managed at Subtitle C facilities. Further, these commenters felt that, whether or not the Agency takes an aggressive enforcement posture with respect to 100–1000 kg/mo generators, the mere existence of the multiple signed copies of a manifest serve as an essential incentive to properly manage the waste.

The Agency finds persuasive the arguments presented by commenters that requiring only the single copy manifest does not offer significant regulatory relief. The Agency has also concluded, based on public comment, that the single copy system may be insufficient to meet the statutory mandate to promulgate rules for 100–1000 kg/mo generators which are sufficient to protect human health and the environment.

The difference in burden between a single copy of the manifest and a multiple copy of the manifest, both containing essentially full information, appears to be negligible, so there is no real reduction in burden from the single copy system. Retention of a manifest copy by the generator is also minimally burdensome and is in the generator's best interest. The absence of a round-trip or multiple copy manifest could encourage, rather than protect against, mismanagement of these wastes. Most importantly, requiring the generator to retain a copy for his records and provide multiple copies of the manifest to the transporter provides an essential incentive for all parties to fulfill their responsibilities under RCRA. Thus, the Agency has decided not to adopt the single-copy manifest system, as proposed.

Consequently, generators of 100–1000 kg/mo will be subject to all of the requirements of Subpart B of Part 262 with respect to the Uniform Hazardous Waste Manifest except for certain waste reclamation shipments as provided in Section 262.20, discussed below. In addition, these generators will be subject to the recordkeeping provisions of Subpart D of Part 262 with respect to manifest copies but will not be subject to the associated exception and biennial reporting requirements, as discussed in Unit III.C.3, below.

b. Manifest Exemption for Certain Reclamation Shipments: In the Proposal, EPA proposed to exempt generators of 100–1000 kg/mo from all of the manifest requirements of Part 262, Subpart B, provided the waste was reclaimed under certain specific conditions, including:

1. The generator would be required to have a written agreement with a recycling facility to collect and reclaim a specified waste and to deliver regenerated material back to the generator at a specified frequency;
2. The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer of the waste;
3. Either the generator or the reclaimer must retain title to the material at all times; and
4. The generator and transporter/reclaimer must comply with specific recordkeeping requirements.

Specific regulatory requirements which would have to be met in lieu of the manifest requirements were proposed as follows:

1. A copy of the reclamation agreement is kept in the files of both the reclaimer and the generator for a period of at least three years;
2. The reclaimer/transporter records (for example, on a log or shipping document) the following information (which would be required of

transporters in a proposed amendment to § 263.20):
   - The name, address and EPA identification number of the generator;
   - The quantity of waste accepted;
   - All DOT required shipping information;
   - The date the waste is accepted by the transporter;
3. The above record accompanies the waste as it is shipped from generator to recycling facility; and
4. The reclaimer/transporter keeps these records for at least three years.

In proposing this exemption, EPA indicated that such agreements satisfied the Agency's concerns that subsequent handlers of the waste would have sufficient notification and knowledge of the hazardous nature of the wastes being handled and that the wastes would be tracked properly from the generator to the reclaimer and would not be mismanaged. In addition, the Agency believed that such an exemption would encourage beneficial recycling activities and would avoid discouraging current operations of this nature by not imposing paperwork obligations that have no corresponding environmental benefit. The Agency requested comment on the proposed manifest exemption and sought comment on other situations that might warrant reduced manifest requirements.

While some commenters opposed the proposed manifest exemption as providing an opportunity for "sham recycling", most commenters suggested that the exemption be expanded to cover all recycling situations or to cover a broader scope of activity than that proposed. Some commenters felt that the narrow nature of the exemption would afford some segments of the recycling industry an unfair competitive advantage. One commenter suggested that the exemption apply to reclamation agreements with firms that collect wastes for recycling but do not reclaim the wastes at their own facility, but rather, ship them via a licensed hazardous waste hauler to a separately owned and operated reclamation facility. This commenter argued that the same degree of protection would be afforded under these circumstances as under the proposed system since the waste would still be transported and reclaimed at licensed or permitted facilities. Other commenters argued that the exemption should also apply to legitimate recycling situations where ownership of the material may in fact change hands, such as cases where reclaimed material is not returned to the original generator but is instead sold to a third party. One commenter argued that the mere existence of a contract provides sufficient notice to subsequent handlers of the nature of the waste and that adequate economic incentives exist in any recycling situation to ensure proper management.

The proposed restrictions on applicability of the manifest exemption were intended to serve the same functions that the manifest system does. The most important of these, the "tracking" function of the manifest, must be replaced with adequate contractual relationships and commercial incentives if the exemption is to meet the test of protecting human health and the environment while reducing administrative burden.

The Agency has considered various ways in which to expand the applicability of the exemption, including those suggested by commenters, and has concluded that unless the following proposed restrictions are retained, the exemption would allow unscrupulous persons to easily avoid the hazardous waste management system:

First, the Agency believes that the requirement that the generator and reclaimer have a written agreement for collection and reclamation of a specified waste and for redelivery of regenerated material at a specified frequency is essential. Such an arrangement (usually called a "tolling" arrangement) provides tracking and accounting of waste in place of the manifest system in waste disposal situations. A simple reclamation contract without return of regenerated material to the generator would provide no tracking of the waste, since the generator would have no incentive to check on subsequent waste handling after he turns it over to the transporter or reclaimer. In addition, allowing the exemption in any contractual situation would make no distinction between recycling activities and off-site waste disposal activities, where normally there are also contractual obligations. Requiring return of regenerated material as part of the contractual relationship places the proper incentive on the reclaimer to actually reclaim material for delivery to the generator (otherwise he would be in breach of the contract) and on the generator to scrutinize the practices of the reclaimer. Unlike off-site waste disposal, the generator would have some vested economic interest in ensuring proper management of the waste.

Second, the Agency believes that the vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer. This requirement precludes third parties not bound by the reclamation agreement (*i.e.*, independent transporters) from entering the closed loop created by the tolling arrangement. This is necessary to ensure that the waste is not mismanaged. Even if a generator were to ship his waste via a licensed hazardous waste hauler, he would have no assurance that the waste would actually be delivered to the reclamation facility with which he has contracted. In such a third-party transporter situation, where the transporter has no vested interest in proper handling and management of the waste, the Agency would deem it necessary to impose additional significant recordkeeping requirements on all handlers of the waste, and possibly impose additional requirements on the generator. This would defeat the purpose of the manifest exemption, and may even impose greater burden than the manifest itself.

Third, the proposed recordkeeping requirements are an essential ingredient to providing the "paper trail" no longer provided by the manifest system.

While the Agency originally considered the retention of ownership requirement to be another essential element due the vested interest it created (*i.e.*, continuing legal responsibility for the material), a second look at this requirement, in light of comments received, has convinced EPA that it is unnecessary. The requirements of tolling and that the reclaimer and transporter be the same entity appear to adequately address the same concerns underlying the ownership requirement. While the vested interest in proper management of the waste may be theoretically increased if ownership is retained by the reclaimer or generator, it does not appear to add significantly to the economic interest created by the tolling arrangement. In addition, the concern that third parties would break the chain between generator and reclaimer is addressed by the requirement that the reclaimer and transporter be one entity. Moreover, the retention of ownership requirement may result in needless restriction on the type of commercial arrangements allowed between generators and reclaimers (*e.g.*, where a reclaimer buys the waste from the generator and sells regenerated material back to the generator or to other parties). Therefore, the Agency is deleting the ownership requirement from the final rule.

A number of commenters suggested that the Agency be more explicit in the regulation with respect to the periods of retention of the contractual agreements and the transportation logs since the proposed rule did not specify when the

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3-year recordkeeping period was to begin. Consequently, the Agency is modifying the regulatory language of this amendment to specify that a copy of the reclamation agreement must be kept in the generator and reclaimer/transporter's files for 3 years after the expiration of the agreement. A copy of the collection log or shipping paper for each shipment must be kept in the transporter's files for a period of 3 years after the date of the shipment.

Several commenters also requested clarification on the applicability of the proposed exemption to waste mixtures where most, but not all, of the constituents were reclaimed. In the specific example cited, the Agency was asked to clarify whether spent cartridge filters used in dry cleaning operations would qualify for the exemption, even though only a portion of the waste constituents are actually reclaimed. The Agency believes such waste mixtures should also qualify for the manifest exemption, provided that the other conditions of the exemption are met. There is no basis for distinguishing between, for example, bulk spent solvents that have impurities removed by a reclaimer, which impurities must be subsequently managed as hazardous waste, and waste constituents in a mixture that may not be reclaimed and must be disposed of as a hazardous waste by the reclaimer. In both cases, the manifest exemption for shipments to the reclaimer would not affect the responsibility of the reclaimer to properly manage the residues from the reclamation process.

Another commenter requested clarification on whether the requirement that reclaimed material be returned to the generator limited the exemption to those situations where the generator received back the *same* waste sent for reclamation. The requirement that the generator receive regenerated material back from the reclaimer was intended to ensure that the generator maintain a vested interest in ensuring that the reclamation facility was in fact engaged in bona fide recycling. However, the Agency recognizes that most reclamation is conducted through commingling of relatively small quantities of recyclable materials from a number of generators. The manifest exemption only requires that the generator receive regenerated material back from the reclaimer, not that it be the identical material as was shipped to the reclaimer. The only requirement for receiving regenerated material back is that it be of the *same type or product specification* as the material originally shipped for reclamation. While the Agency recognizes that this requirement will limit the exemption to situations where the generator purchases reclaimed solvent from one source, we do not agree with those commenters who believe this provides an unfair competitive advantage to firms with reclamation facilities. While the manifest exemption may reduce the paperwork burden for some firms who have waste materials collected on a frequent basis, the Agency does not believe that it provides such a reduction in burden that companies qualifying for the exemption would be able to reduce costs significantly.

Other commenters asserted that the proposed exemption would be appropriate for generators of more than 1000 kg/mo who recycle their wastes under the same circumstances. While the Agency recognizes that some of the regulatory amendments being promulgated today for generators of 100–1000 kg/mo could be considered for larger generators, to do so would require extensive review of the existing hazardous waste management system and case-by-case determinations as to the appropriateness of specific requirements. Furthermore, the elements that the Agency must consider in adopting rules for small quantity generators, including the economic impacts of full regulation on small businesses, are not necessarily relevant to the rules applicable to larger quantity generators. Therefore, the Agency is promulgating the manifest exemption today only for 100–1000 kg/mo generators.

c. Waste Minimization: Under section 3002(b) of HSWA, all generators must certify on the manifest required under subsection (a)(5) that they have in place a program to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable. Generators must also certify that their current method of management is the most practicable method available to minimize present and future threat to human health and the environment.

On July 15, 1985, EPA published a rule codifying a number of interim HSWA requirements (50 FR 28702). A revised Uniform Hazardous Waste Manifest Form (EPA Form 8700–22) was included in the Appendix to Part 262, and contained a revised certification statement incorporating the waste minimization provision. In the Codification Rule, EPA explained that the waste minimization provision did not apply to small quantity generators generating less than the quantities of acutely hazardous waste specified in § 261.5 or to generators of less than 1000 kg of other hazardous waste, unless the generator accumulated quantities which exceeded 1000 kg, and thus became subject to Part 262. The waste minimization requirements were not applicable to these generators because section 3002(b) refers to "the manifest required by [section 3002] subsection (a)(5)" and the interim manifest provisions are imposed by section 3001(d), not 3002(a)(5). However, because section 3001(d) of RCRA requires EPA to establish standards for 100–1000 kg/mo generators under sections 3002, 3003, and 3004, the waste minimization certification requirements would apply to 100–1000 kg/mo generators upon promulgation of such standards. Since EPA did not propose to exempt 100–1000 kg/mo generators from the waste minimization certification requirements of section 3002(b) when it proposed rules for 100–1000 kg/mo generators on August 1, 1985, these generators would be required to certify compliance with the waste minimization provision when the standards under today's rule become effective.

EPA believes that requiring 100–1000 kg/mo generators to comply with the waste minimization certification provision imposes little or no additional administrative or technical burden and could, in fact, have real environmental benefit. However, since the Agency did not provide the public with an opportunity to comment on the appropriateness of this provision for 100–1000 kg/mo generators, EPA is publishing a separate notice elsewhere in today's **Federal Register** which explicitly requests comment on the potential burden which this requirement could impose on generators of 100–1000 kg/mo. The specific reasons for proposing to apply the waste minimization certification provision to these generators are described in detail in that notice. As noted in the other **Federal Register** notice, EPA will accept public comment on this provision for 30 days. If, after consideration of the comments, EPA determines that no exemption from the waste minimization certification requirement is warranted at this time, 100–1000 kg/mo generators will need to comply with the requirement by operation of law as of the date that the other Part 262 requirements take effect (*i.e.*, six months from today).

3. Recordkeeping and Reporting—Part 262, Subpart D

In the proposed rules for generators of 100–1000 kg/mo, EPA attempted to

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significantly reduce the recordkeeping and reporting burden on these generators, consistent with the statutory goals of protecting human health and the environment while reducing impacts on small business to the extent feasible. Specific proposed modifications to the recordkeeping and reporting requirements of Subpart D of Part 262 included:

- A proposed exemption from the recordkeeping requirements of § 262.40(a) for manifest retention and § 262.40(b) dealing with retention of Biennial and Exception Reports;
- A proposed exemption from the reporting requirements of § 262.41 (Biennial Reports) and § 262.42 (Exception Reports).

This section of the preamble addresses the comments received on these proposed modifications to recordkeeping and reporting requirements and the Agency's final decision in each of these areas.

a. Recordkeeping—§ 262.40: As noted in Unit III.C.2. of today's preamble, EPA received extensive comment on the proposed single copy manifest system which proposed to eliminate the need for retention of manifest copies as well as requirements for the use of a multiple copy manifest when shipping waste off-site. A large number of commenters were generally supportive of efforts to reduce recordkeeping requirements to the maximum extent feasible, and many felt that no recordkeeping requirements whatsoever should be imposed on 100–1000 kg/mo generators. However, many of these same commenters, when discussing the proposed single copy manifest, pointed out that most generators would opt to retain a copy of the manifest for their own records, in order to have a record of their waste management shipments, regardless of whether it was required by EPA. While some of these commenters did not want the retention of manifest copies to be required, they nevertheless felt such recordkeeping to be prudent. Other commenters believed that retention of manifest copies should be required, and that such a requirement does not impose an unreasonable burden since, as noted above, virtually all generators would retain a copy for their records in any case. These commenters also asserted that the existence of a copy of the manifest in the generator's records, containing the signature of the transporter and ultimately the signature of the designated facility when the manifest copy was returned, was essential.

The Agency agrees with these commenters that retention of manifest copies should be required. Existence of such records may be the only defense a generator would have in enforcement actions or other litigation if the single manifest were to be changed by the transporter or if the waste is mismanaged. The existence of these records would allow a generator to demonstrate to enforcement personnel, should a problem in transporting or subsequent handling arise, that the generator had done his best to ensure proper management by fulfilling his generator responsibilities. While such proof would not eliminate any liabilities the firm may otherwise have under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), it could reduce the danger of the generator being considered the primary responsible party in a Superfund action. Also, as one commenter pointed out, given the large number of States, transporters and treatment, storage, and disposal facilities that would insist upon use of the full manifest system, it would not be appropriate for EPA to, in effect, encourage generators to deliver their only copy of the manifest to a transporter.

EPA agrees with those commenters that believe that retention of a copy of a manifest, signed by the designated facility and the transporter, does not pose an unreasonable burden for 100–1000 kg/mo generators, who will most likely be shipping only 2–4 shipments per year. This is particularly true in light of the generally universal agreement on the need for generators to retain a copy for their own protection. EPA also believes that retention of manifest copies provides the necessary incentive for all wastes handlers to execute their responsibilities in the manner required by state and Federal waste management requirements. Therefore, the Agency is not exempting 100–1000 kg/mo generators from the requirement to retain a copy of each manifest in their files for a period of three years from the date of shipment or until a signed copy of the manifest is returned by the designated facility and is substituted for the original manifest for a period of three years.

b. Exception Reports—§ 262.42: As discussed in the proposal, EPA proposed to exempt 100–1000 kg/mo generators from the requirement to file an exception report with EPA if the generator did not receive a signed copy of the manifest back from the designated facility within forty-five days of acceptance of the waste shipment by a hazardous waste transporter (§ 262.42). The proposed exemption from this requirement was based simply on the lack of manifest copies under the proposed single copy manifest system. Under the proposed rule, a copy of the manifest was not required to be returned to the generator by the facility, so that there would have been no basis for a generator to make a determination as to whether or not his shipment actually arrived at the designated facility, and thus no basis for an exception report.

In deciding to return to a full manifest system for 100–1000 kg/mo generators, the Agency deemed it appropriate to evaluate whether also requiring exception reporting would impose an unnecessary administrative burden on these generators in light of the environmental benefit that would be gained. First, the Agency considered the responsibilities that would be imposed on the generators, which would include establishment of an internal tracking system, through filing or by computer, to allow the generator to determine whether a return copy of the manifest is overdue. In addition, the generator must contact the transporter and/or permitted facility to determine the status or location of the waste and manifest, and if unsuccessful, must file a report with a copy of the manifest and a cover letter describing his efforts to locate the waste and the results of his efforts. Several commenters objected to imposition of these requirements and argued that this is the very type of paperwork requirement that Congress intended EPA to scrutinize before applying to small businesses.

Second, the Agency considered the extent to which such reporting is necessary to protect health and the environment. Many commenters contended that the exception reports were essential to alert EPA and the States to lost shipments, and the Agency agrees that the exception report requirement is an important link in the full manifest scheme.[4] However, the Agency has received very few exception reports since the requirement was adopted, leading it to believe that the tracking function of the multiple-copy manifest system is also working as a self-policing mechanism, ensuring that

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[4] One commenter cited legislative history as support for its argument that the modified exception reporting requirement of section 3001(d)(6) must be included in the regulations because Congress deemed it to be a minimum requirement. The legislative history of this provision indicates, however, that this was considered to be a minimum requirement only in the event that EPA did not promulgate final regulations by March 31, 1986, and that EPA is authorized to vary the manifesting and reporting requirements as long as the notice requirement is met. See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 103 (1984).

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wastes reach their proper destination. In addition, the smaller relative risks associated with the smaller quantities of waste generated by 100–1000 kg/mo generators do not necessitate the same degree of double-checking needed for large quantity generator shipments.

In balancing the utility of the exception reporting requirements with the need to minimize the administrative and paperwork burden on small businesses, the Agency has concluded that its decision to require the multiple copy manifest system for 100–1000 kg/mo generators will provide sufficient assurance that waste shipments reach their proper destination, and that the incremental environmental benefits that may be gained by imposing the exception reporting requirement on these generators are outweighed by the associated administrative burdens. The capabilities of small businesses to develop and maintain internal tracking and follow-up systems are limited, and could prove to be very burdensome, especially where such follow-up reporting is seldom necessary. Consequently, while the Agency is today requiring generators of 100–1000 kg/mo to use a multi-part manifest form and requiring designated facilities to return a signed copy to the generator, the Agency has decided not to require generators of 100–1000 kg/mo to comply with the exception reporting provisions of Part 262. However, this exemption should not be construed as relieving the generators of the responsibility of assuring that their wastes are managed at Subtitle C facilities. This obligation, along with CERCLA liability should the waste ultimately be mismanaged, remains. Therefore, while EPA is today exempting generators of 100–1000 kg/mo from the *requirement* to file an exception report under § 262.42, it is specifically *encouraging* generators to perform the necessary follow-up to ensure that their waste shipments reach the designated facility. Should a shipment turn out to be truly lost, it will be in the generator's interest to send a copy of the manifest along with a brief explanatory note to EPA or the authorized State Agency in order to reduce the likelihood that the generator would be held solely responsible in an enforcement or Superfund action.

c. Biennial Reports—§ 262.41: Section 262.41 requires a generator who ships waste off-site to submit a biennial (*i.e.*, every other year) report to the Regional Administrator by March 1 of each even numbered year setting out the quantities of wastes generated during the previous odd numbered calendar year and the disposition of the wastes generated.

EPA proposed to exempt generators of 100–1000 kg/mo from the requirement to complete, file, and retain copies of a biennial report. The Agency's rationale for this exemption was based on four points. First, the extent of error in State summary reports used to compile nationwide waste generated by all small quantity generators. As a result, the value of the data from reports that would be filed by 100–1000 kg/mo generators would not signficantly add to the value of the reports and the burden imposed would far outweigh the benefits to be gained. Second, the Agency explained that the large number of reports it would receive would far outweigh the agency's administrative ability to make use of the reports. Third, under the proposed single copy manifest system, generators would not have had the manifest copies that serve as the basis for preparation of biennial reports. Finally, the Agency explained that information on wastes generated by 100–1000 kg/mo generators would still be available from reports required to be filed by treatment, storage, and disposal facilities.

Several States submitted comments which generally favored retention of the biennial report requirement for 100–1000 kg/mo generators. Although generators would have available to them the manifest information needed to prepare biennial reports under today's final rule imposing the multiple copy manifest, the remaining reasons for proposing this exemption remain valid. In addition, EPA received extensive comment supporting the proposed exemption from biennial reporting requirements as an appropriate means of reducing administrative burden without sacrificing protection of human health and the environment. The Agency agrees that this exemption is appropriate.

One State specifically suggested that EPA require biennial reporting from all generators who generate more than 6000 kg or 12,000 kg in a calendar year and specifically requested clarification of the application of biennial report requirements to "episodic generators" (*i.e.*, generators that produce quantities of hazardous waste that place them in different generator categories from month to month). The Agency does not believe any benefit would be gained by establishing a new generator category based upon a yearly generation rate. Doing so would only add further confusion to an already complex regulatory scheme, and would be inconsistent with the month-to-month approach already established by statute and regulation. Also, episodic generators must comply with the biennial report requirements for those months in which they are "large quantity generators"; that is, they must submit reports on their hazardous waste activities for those months in which their generator activities have changed and as long as the fully regulated waste remains on-site.

Thus, the Agency is today finalizing the proposed exemption from the biennial report requirements of § 262.41 for generators of 100–1000 kg/mo, including an exemption from the provisions of this section requiring a description of efforts taken during the reporting year to minimize waste generation.

4. On-site Accumulation—§ 262.34

As discussed in Unit I.B.I. of today's preamble, generators of 100-1000 kg/mo are no longer conditionally excluded in Section 261.5 from the bulk of the hazardous waste regulatory program. Instead, these generators, like other regulated hazardous waste generators, are subject to the requirements of Parts 262–266, 270, and 124, to the extent those requirements apply. for generators of 100–1000 kg/mo, however, these requirements have been modified in certain instances to reflect their small business nature as well as specific statutory directives.

Section 262.34 contains the requirements for generators that accumulate hazardous waste on-site. Under § 262.34(a), a generator may accumulate hazardous waste on-site in tanks or containers in any quantity for up to 90 days without the need to have interim status or obtain a storage permit under RCRA (or comply with Parts 264 or 265) provided the generator complies with the limited requirements of § 262.34. These requirements specify that: (i) the date upon which the period of accumulation begins is clearly marked on the tank or container; (ii) the tank or container is labeled with the words "Hazardous Waste"; (iii) the generator complies with Subparts C and D of 40 CFR Part 265 (Preparedness and Prevention and Contingency Plan and Emergency Procedures, respectively); and iv) the generator complies with Subpart I of 40 CFR Part 265 if the waste is placed in containers or with Subpart J of 40 CFR Part 265 if the waste is placed in tanks, and he complies with the personnel training requirements of § 265.16.

The proposed rules for generators of 100–1000 kg/mo would have added a number of modifications to the § 262.34 provisions, for 100–1000 kg/mo generators. This section of the preamble discusses those proposed amendments and the issues raised by commenters to the proposed rules.

a. Time and Quantity Limitations: Section 3001(d)(6) directs EPA, in developing regulations for 100–1000 kg/mo generators, to allow storage of hazardous waste on-site without the need for interim status or a RCRA permit for up to 180 days. In addition, EPA is directed to allow these generators to store up to 6000 kg of hazardous waste for a period of 270 days without the need for interim status or a permit if the generator must ship or haul his waste greater than 200 miles. While no specific quantity cutoff was established for 180 day accumulation in section 3001(d) a de facto limitation of 6000 kg exists. (This is due to the fact that a 100–1000 kg/mo generator could produce no more than 6000 kg in a 180 day period without exceeding 1000 kg/mo at least once during that period, and thus become fully regulated under Part 262 instead of under the modified standards being proposed today for 100–1000 kg/mo generators.) EPA is today amending § 262.34 to allow for such on-side accumulation in tanks and containers by 100–1000 kg/mo generators for up to 180 days (or 270 days for long-distance transport) without the need to obtain interim status or a RCRA permit, in accordance with Section 3001(d)(6) of the HSWA, provided the requirements of § 262.34 are met.

A significant number of commenters suggested variations on the proposed time and quantity limitations for on-site accumulation. A number of States supported the application of the existing 90 day accumulation period to these generators in order to maintain consistency and reduce confusion. Still other commenters argued that the time limit for accumulation for 100–1000 kg/mo generators should be extended to a full year in order to allow economical shipments, provided the 6000 kg cutoff was not exceeded. Some commenters even favored unlimited accumulation time and quantity for these generators.

Because the time and quantity limitations are established in RCRA section 3001(d)(6), the Agency believes that it carries a heavy burden in varying these limitations. Except for emergency circumstances, as discussed below, the Agency does not believe that this burden has been met.

While the 6000 kg cap arguably applies only to the 270-day storage period, the Agency believes that the better interpretation is that the 6000 kg cap applies to both storage periods. As noted above, a maximum of 6000 kg of hazardous waste could be accumulated during a 180-day period if the generator never generated more than 1000 kg in any given calender month. Consequently, any quantity in excess of 6000 kg would mean that the generator was subject to full regulation at least one month during the 6-month period. Therefore, it is logical to apply the accumulation "cap" of 6000 kg to both storage for 180 as well as 270 days. In addition, as explained in the August 1 proposal, the total quantity of 6000 kg remains the same whether or not the waste is accumulated on-site for 180 or 270 days and the Agency could see no substantive difference in potential risk. Finally, EPA believed that the high cost of transportation would dictate that the waste be managed at the closest facility, regardless of the presence or absence of regulatory criteria.

One State commenter felt that the lack of specific criteria for allowing 270-day accumulation could have the effect of encouraging continued reliance on land disposal as there will be decreasing numbers of viable land disposal facilities in the future, and the remaining facilities will increasingly be located more than 200 miles away from the generator. This commenter suggested that EPA allow accumulation for only 180 days for wastes that are destined for disposal but allow accumulation for 270 days for wastes which will be treated or recycled. EPA does not believe that it has authority to make such a distinction since Congress has already established the condition that must be met for accumulation for 270 days: where the waste must be shipped over 200 miles. If the closest facility is a disposal facility located greater than 200 miles from the generator, to allow this generator only 180 days would directly conflict with the plain language of the statute.

Another commenter expressed concern over the enforcement of 180- or 270-day accumulation periods in the absence of any specific criteria. This commenter felt that an inspector would have no way of ascertaining whether wastes which have been stored longer than 180 days but less than 270 days are destined for management at a disposal facility or a treatment or recycling facility that is located further than 200 miles away. This commenter was particularly concerned that the lack of multiple copies of the manifest would eliminate the ability of the inspector to at least make a judgment based on the generator's previous waste shipments.

The Agency has decided not to establish specific criteria for determining if a generator may accumulate hazardous wastes on-site for 180 or 270 days. EPA believes that such criteria would not serve any useful purpose. Under today's final rule, however, generators would retain copies of manifests which could be used to ascertain the location of the facility which the generator has utilized for previous shipments. Therefore, manifest copies (or reclamation agreements) will be available as a means to check the actual location of the destination facility. In addition, the Agency was concerned that establishing criteria for demonstrating that the closest facility was greater than 200 miles from the generation site would be unnecessarily confusing and could have the perverse effect of causing waste to go to less desirable management practices (*e.g.*, where a disposal facility is located within 200 miles while a recycling facility is located over 200 miles from the generator, the generator could be forced to utilize the less desirable disposal facility). The absence of specific criteria will not pose an unreasonable obstacle to enforcement of the accumulation provisions. Thus, EPA is finalizing § 262.34(e) as proposed.

It should be noted that generators that have multiple waste streams which are managed at different facilities may actually be subject to different accumulation time limitations for the different waste streams. A generator may accumulate some wastes for 180 days if they will be managed at a facility under 200 miles away and other wastes for 270 days provided the generator never accumulates a total quantity of hazardous waste on site that exceeds 6000 kg and provided the generator complies with all applicable accumulation provisions.

Today's rules also apply the existing provisions of § 262.34(b) requiring compliance with Parts 264, 265, and 270 to 100–1000 kg/mo generators that exceed the time limitations in proposed § 262.34(d) and (e). Under the existing rules, and under the rules promulgated today, generators that exceed a time or quantity limitation must comply with the interim status requirements and obtain a storage permit. These requirements, as they would apply to 100–1000 kg/mo generators, are contained in new § 262.34(f).

An additional component of the proposed § 262.34(f) amendments would have allowed an additional 30-day accumulation period for generators of 100–1000 kg/mo at the discretion of the Regional Administrator where he determines that such an extension is warranted due to temporary, unforeseen, and uncontrollable circumstances. This amendment was based on an identical provision currently applicable to large quantity

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generators. While most commenters on this amendment were supportive of the emergency extension provision, one commenter argued that the storage periods specified in the statute were clearly the maximum periods allowed. The Agency believes that Congress never intended for the Agency to promulgate rules so inflexible that they could not take into account, and accommodate, *legitimate* emergency circumstances. In addition, the Agency assumes that the emergency extension provision is consistent with Congressional intent since it did not explicitly preclude such an extension when it adopted section 3001(d)(6). Therefore, the Agency is promulgating this provision as proposed.

Several commenters requested the Agency to clarify the applicability of the "satellite provision" of 40 CFR 262.34. This provision allows generators to accumulate up to 55 gallons of non-acutely hazardous waste in "satellite" areas where the waste is generated in industrial processes without complying with the 90-day accumulation standards. See 49 FR 49568 (Dec. 20, 1984). Satellite areas are those places (under the control of the operator of the process generating the waste) where wastes are generated in the industrial process and must initially accumulate prior to removal to a central area. Within three days of accumulating over 55 gallons, the generator is required to comply with all applicable RCRA requirements for further management of any waste in excess of 55 gallons. When the satellite rule was promulgated, generators of less than 1000 kg/mo of non-acutely hazardous waste (or less than 1 kg/mo of acutely hazardous waste) were not subject to any of the requirements of the satellite accumulation rule. See 49 *FR* 49568–49570. This is because these generators were exempt from most of the hazardous waste management regulations, including Part 262. However, under today's rule, only generators of less than 100 kg/mo will remain exempt from the regulations. Therefore, 100–1000 kg/mo generators may accumulate up to 55 gallons of non-acutely hazardous waste in satellite areas without meeting the storage requirements being promulgated today, so long as the requirements of § 262.34(c) are met. Of course, as soon as the 55 gallon limit has been exceeded in any satellite area, any excess waste is subject to all applicable RCRA requirements within 3 days. This means that the 180/270 day on-site accumulation provision for 100–1000 kg/mo generators applies to any excess waste three days after the 55 gallon limit has been exceeded.

Two commenters who operate off-shore drilling facilities requested clarification on the applicability of this provision to off-shore facilities and central collection points located on-shore. These commenters cited their desire to avoid manifesting or using transporters with EPA Identification numbers in shipping wastes from off-shore facilities to on-shore collection areas.

The satellite provision was intended to provide for extended accumulation of waste in specific areas of generation to allow for more economical transporting of waste within one site. The applicability of this provision does not address the extent to which a generator must comply with Parts 262 and 263 when it is shipping wastes off-site. EPA does not deem off-shore facilities and on-shore collection facilities to be "on-site", or the same site, as defined by 40 CFR 260.10. To the extent that each facility has various points of waste generation, the satellite provision would apply; however, as in any off-site hazardous waste shipment, the requirements of Parts 262 and 263 must be met when wastes generated at each off-shore facility are transported to an on-shore collection or storage facility.

b. Standards Applicable to On-site Accumulation: EPA proposed to modify certain of the requirements for on-site accumulation by 100–1000 kg/mo generators in order to simplify the requirements for contingency plans and emergency procedures, and personnel training (contained in Part 265, Subpart D, and § 265.16). The specific amendments to § 262.34 would be contained in new paragraphs (d), (e), and (f), specifying the particular requirements applicable to on-site accumulation by generators of 100–1000 kg/mo. No modifications were proposed to the standards for storage in containers and tanks (Part 265, Subparts I and J) or to the requirements for preparedness and prevention contained in Subpart C of Part 265. EPA indicated that it believed these standards were appropriate and necessary and not unduly burdensome. Several commenters have objected to the apparent inconsistency between application of the existing accumulation provisions of § 261.5 and § 262.34 and the proposed standards under Section 3001(d) of the HSWA. Under the existing rules for conditionally exempt small quantity generators under § 261.5 and the accumulation provisions of § 262.34, generators who either generate quantities above specific cutoffs *or who accumulate quantities above those cutoffs over any period of time* become subject to additional requirements. Thus, if the proposed rules were to be finalized, generators of less than 100 kg/mo who accumulated over 1000 kg/mo would be subject to full regulation under Part 262, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Also, if more than 1 kg of acutely hazardous waste were accumulated, full Part 262 standards would apply, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Conversely, generators of 100–1000 kg/mo would be allowed to accumulate up to 6000 kg for up to 180 or 270 days and be subject to the specially reduced standards being promulgated today rather than full Part 262 regulation.

A number of commenters pointed out that generators who fall into different generator categories could be subject to different standards for essentially the same quantities of the same wastes. For example, a generator of just over 1000 kg/mo would be subject to full regulation as would a generator of just under 1000 kg/mo who happens to accumulate above 1000 kg. These regulations include full contingency planning and personnel training (as well as exception and biennial reporting). At the same time, a generator of between 100 and 100 kg per month may accumulate up to 6000 kg and be subject to the special standards being promulgated today, including reduced contingency planning and personnel training requirements and exemptions from exception and biennial reporting. Thus, 6000 kg of hazardous waste could be subject to lesser standards than quantities closer to 1000 kg/mo. Substantial confusion may also result in determining which storage standards apply, when, and for how long. The confusion is particularly troubling for so called "episodic generators" that may move from one generator category to another from month to month. (See Unit III.B.2.e.)

A number of commenters suggested a variety of alternatives schemes for eliminating the inequity and the confusion, including applying the reduced storage standards proposed for 100–1000 kg/mo generators to all quantities of waste accumulated up to 6000 kg., regardless of the source of the waste. These commenters believed that such a scheme would greatly simplify compliance and enforcement since quantity of waste would be the only criteria needed in determining what storage standards should apply.

The Agency agrees that, in theory, an approach that uniformly applies the same requirements to the same quantities of waste has some merit. However, as discussed above, Congress has directed EPA to consider varying the standards for 100–1000 kg/mo generators only, and to consider their small business nature in determining which standards are appropriate for on-site accumulation. EPA is directed to relieve these generators of unnecessary burden, to the extent feasible, and consistent with protection of human health and the environment. Given that Congress has not extended such economic considerations to large generators, EPA is not authorized to vary applicable storage standards, if they are necessary to protect human health and the environment. EPA has already determined that the existing storage standards applicable to generators of more than 1000 kg/mo are necessary to reduce risks sufficiently. Therefore, EPA is retaining the existing standards for these generators.

With regard to generators of less than 100 kg/mo, EPA has more flexibility because they fall within the "small business" category that Congress was concerned about. The Agency decided in the proposed rules not to modify the accumulation provision for generators of less than 100 kg/mo because such a generator would need to accumulate waste for at least 10 months before exceeding 1000 kg. However, it appears to be inconsistent with Congressional intent that small businesses producing less than 100 kg/mo should be subject to more stringent accumulation standards than 100–1000 kg/mo generators for quantities between 1000 kg and 6000 kg. Therefore, EPA is today finalizing an amendment to § 261.5 that will subject generators of less than 100 kg/mo to the same provisions of § 262.34(d) as are applicable to generators of 100–1000 kg/mo, when they accumulate waste in quantities greater than 1000 kg but less than 6000 kg.

i. Standards for Preparedness and Prevention—Part 265, Subpart C: Under § 262.34(a), generators who accumulate hazardous waste on-site must comply with the requirements of Subpart C of Part 265 which contains requirements for facility preparedness and prevention. In the Proposal, EPA indicated its intention to apply all of the existing provisions of this Subpart, without modification.

The requirements for preparedness and prevention are as follows:

- Section 265.31 requires that facilities be maintained and operated to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment;
- Section 265.32 specifies that facilities must be equipped with certain kinds of equipment (*i.e.*, an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment including fire extinguishers and water at adequate volume and pressure to supply fire control system) *unless* none of the wastes handled at the facility require a particular kind of equipment;
- Section 265.33 requires that this equipment be tested and maintained, as necessary, to assure its proper functioning;
- Section 265.34 requires that all persons involved in hazardous waste handling operations have immediate access to either internal or external alarm or communications equipment, unless such a device is not required under § 265.32;
- Section 265.35 requires the owner or operator of the facility to maintain sufficient aisle space to allow the unobstructed movement of personnel and equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes; and
- Section 265.37 requires the owner or operator to attempt to make certain arrangements with police, fire departments, State emergency response teams, and hospitals, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations. Further, if State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

The Agency did not propose any amendments to Subpart C because they are appropriate and necessary and not unduly burdensome. The requirements all involve common sense principles for preparedness and prevention which hazardous waste handlers can and should address in order to ensure safe handling of hazardous wastes. Also, since the requirements are structured such that specific equipment and procedures are required only on an "as needed" basis, the existing regulation provides complete flexibility for hazardous waste generators to tailor their preparedness and prevention activities to the specific kinds of wastes handled at the facility.

Most commenters believed that these requirements provided sufficient flexibility for 100–1000 kg/mo generators to tailor their preparedness activities to their specific waste management activities and needs. While EPA requested comment on the possibility of imposing more specific but less numerous requirements in order to alleviate potential uncertainty over which procedures are appropriate for particular types of wastes, the Agency has decided that the broad principles embodied in Subpart C are preferable to the specific suggestions made by commenters. For example, one commenter felt that the requirement to make arrangements with state and local authorities, as needed, would confuse many generators and suggested that EPA substitute a simpler requirement that a generator simply request a visit from the fire department. EPA believes, however, that such a specific requirement would not provide sufficient preparedness in some cases, while in others it may be overly burdensome, as where no ignitable or flammable wastes are managed at that site.

A number commenters were concerned that the requirement to document refusals to make appropriate arrangements by state and local authorities and health care facilities would prove to be extremely burdensome to small businesses, particularly since refusals are seldom likely to be made in writing. EPA did not intend to convey a need for generators to obtain written refusals from every entity that declined to visit the facility. For purposes of this requirement, EPA will consider a signed and dated letter from the generator to the state or local entity which attempts to make such arrangements to be sufficient documentation of an attempt to make the appropriate arrangements.

One commenter believed that the requirement to make arrangements with appropriate state and local emergency service facilities was unnecessary where generators maintain their own fire, security, and emergency health care personnel at some of their larger facilities and that such facilities should be allowed to fulfill this requirement without making outside arrangements. While the Agency did not intend to preclude the use of on-site emergency personnel to provide preparedness in the case of emergencies, EPA does not agree that such arrangements alone will always be sufficent to comply with the requirements of Subpart C where the nature of the waste management operations at that facility could result in emergencies also requiring the involvement of State and local emergency services.

This commenter was also concerned that EPA's broad definition of "facility"

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could require that preparedness and prevention measures be maintained throughout every portion of the generator's property instead of just those areas where waste is accumulated. EPA has never intended its broad definition of "facility" (see 50 FR 28712) to be used in application of the preparedness and prevention regulations; rather, the definition of "facility" in § 260.10 is used. Applying this narrower definition makes clear that the preparedness and prevention regulations only require the generator to take those precautions and maintain that equipment necessary to ensure that they are adequately prepared to respond to emergencies relating to the hazardous waste operations of the facility. If special equipment or precautions are not needed for this purpose in areas of a facility where hazardous wastes are not managed, then a generator is not expected to maintain them in those areas. At the same time, however, other precautions, such as adequate aisle space, may be needed in areas outside of the immediate waste accumulation area in order to ensure adequate access to emergency equipment in the event of a fire, explosion, or release of hazardous waste or hazardous waste constituents.

For the reasons discussed above, the Agency does not believe that modifications to Subpart C of Part 265 are appropriate for generators of 100–1000 kg/mo and is, therefore, applying the existing Subpart C requirements to these generators.

ii. Standards for Contingency Plans and Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements: Under § 262.34(a), generators who accumulate waste on-site must comply with certain requirements in Part 265, Subpart D, pertaining to contingency plans and emergency procedures and personnel training requirements. These requirements are contained in § 265.16. The § 265.16 requirements are intended to ensure that personnel are adequately prepared to manage hazardous waste and to respond to any emergencies that are likely to arise. EPA considered applying these same requirements to 100–1000 kg/mo generators since, for the most part, the requirements embody common sense principles that are necessary and appropriate for facilities managing hazardous waste. However, these requirements appeared to be unnecessarily burdensome in some cases (*e.g.* requiring formal classroom training and written, detailed contingency plans) and costly and could have unnecessarily severe impacts on many small businesses. The Agency therefore proposed a simpler set of requirements for generators of 100–1000 kg/mo to reduce the administrative burden on small businesses while still protecting human health and the environment.

EPA proposed and requested public comment on the following requirements for 100–1000 kg/mo generators that would be contained in a new § 262.34(d):

- At all times, an "emergency coordinator" (E.C.), (*i.e.*, someone familiar with these requirements), must be on-site (or on call). The coordinator may also designate someone to act in his place.
- The generator must post certain information next to the telephone, including: the name and telephone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or when the generator (or E.C.) has knowledge of a spill of hazardous waste that could reach surface water or otherwise threaten human health or the environment, the generator would have to notify the National Response Center and file a report with the EPA Regional Administrator as provided by proposed § 262.34(c)(3)(E).

EPA believed these requirements to be adequate to protect public health and the environment from fires, leaks, spills, or other releases from generators of 100–1000 kg/mo who are accumulating waste on-site prior to shipment off-site.

While many commenters supported the reduced contingency plan, emergency procedures, and personnel training requirements as proposed, a number of commenters did not agree with the proposed modifications. Several commenters believed that relaxing the standards for on-site accumulation for 100–1000 kg/mo generators would not be appropriate given the increased quantities of waste which can be accumulated (*i.e.*, 6000 kg) and the generally less sophisticated waste management expertise of smaller firms. Some commenters suggested various approaches including requiring full Subpart D compliance for all quantities accumulated above specific limits, such as 1000 kg or 3000 kg. Other commenters argued that the reduced standards were appropriate not only for generators of 100–1000 kg/mo, but also to larger generators and suggested that the reduced standards apply to all accumulated quantities between 1000 kg and 6000 kg.

Since the Agency recognized in the proposed rules that applying standards to 100–1000 kg/mo generators accumulating waste on-site in quantities up to 6000 kg was of some concern, it was careful to modify the standards only where administrative requirements not essential to the substantive functioning of the standards were involved. Thus, the standards, as modified, are sufficient to protect human health and the environment from release of wastes accumulated by 100–1000 kg/mo generators.

EPA does not believe it is appropriate to apply the reduced standards to wastes accumulated by generators of more than 1000 kg/mo. As previously discussed, EPA's authority to consider areas in which to reduce burdens extends to small quantity generators. Also, as discussed in Unit III.A. above, the relative risks posed by wastes accumulated by large quantity generators are greater. Thus, generators of greater than 1000 kg/mo must comply with the requirements of Subpart D of Part 265 if wastes are accumulated on-site prior to shipment off-site.

A number of commenters also suggested several modifications to the proposed standards. Some commenters were concerned that the requirement that each business designate an emergency coordinator to be on call at all times would impose an undue burden because this would require that the emergency coordinator be trained in emergency response procedures. One commenter believed that the term "emergency coordinator" would be confusing since it implies that the individual must have a high degree of training in risk assessment and abatement.

The intent of this requirement was simply to ensure that each generation facility had at least one person available at all times who could be contacted and would know what steps to take in the event that an emergency should arise. EPA envisioned that for most small businesses, the owner or manager already fulfills this requirement by being available 24 hours a day in case an emergency, such as a fire or burglary, occurs at that facility. EPA does not intend that generators must hire and train a new employee for this task. Viewed in this light, this requirement is reasonable and not unduly burdensome. In addition, there is no reason why small businesses would confuse the term "emergency coordinator" with the more formal On-Scene Coordinators at Superfund clean-up sites.

With regard to the proposed personnel training requirement that a generator ensure that all employees be made thoroughly familiar with waste handling and emergency procedures, several commenters were in favor of more stringent personnel training requirements. One commenter noted that personnel training is necessary to manage tanks properly and to prevent tank contamination and recommended that the Agency adopt more stringent personnel training requirements if more than 15 drums or 7,500 pounds (approximately 3400 kg) are accumulated on-site. Another commenter objected to allowing 100–1000 kg/mo generators, who typically have fewer resources and less expertise than large quantity generators, to accumulate 6000 kg on-site with reduced personnel training standards, and suggested that personnel training plans be required whenever more than 3000 kg are accumulated on-site. This commenter suggested that criteria such as the nature of the waste and the history of spills and releases from the generator be established to allow EPA or State agencies to require a generator of 100–1000 kg/mo to establish and implement a personel training plan.

In the absence of any justification provided by commenters, the Agency does not believe that establishing an intermediate limit on accumulation, after which more formal personnel training requirements apply, would result in any significant increase in protection to human health and the environment. While EPA agrees that risks involved increases as waste is accumulated, it believes that the requirements adopted are adequate to protect against the risks from fires, leaks, spills, or other releases. The proposed requirements embody the same principles contained in the existing personnel training requirements, but rely less on the preparation of written plans in order to reduce the burdens on 100–1000 kg/mo generators.

One commenter suggested that if a 100–1000 kg/mo generator at any time is required to prepare a personnel training plan because he generated more than 1000 kg in any one month, he should be required to maintain the personnel training plan for at least the following six months even though he produces no more than 1000 kg/mo during that period. The commenter suggested that this requirement would impose little burden because the plan would already be in existence and would only need to be implemented. The Agency is not adopting this suggestion. No rationale was offered by this or other commenters regarding any additional protection that this approach would provide. In addition, the Agency disagrees with the conclusion that little burden would be imposed in maintaining a plan. For example, the generator would be required to update job titles, job descriptions, job qualifications, names of employees in each position, and *standards for the introductory and* continuing training needed for persons in each position. Furthermore, even if not required by regulations to maintain and follow their plans, many of the generators of 100–1000 kg/mo who were previously generators of more than 1000 kg/mo will nevertheless continue to use their plans as the basis for their personnel training program.

Another commenter in favor of more stringent personnel training requirements argued that the approach proposed by EPA is too broad and unenforceable, and that the Agency should require employees to sign a document stating the "what, when, and were of employee training." The Agency believes that such an approach would add considerable burden to the generator without providing any subtantial additional degree of protection, particularly since the "what, when, and where" are not explicitly prescribed under either the current rules or today's amendments.

Two commenters argued that 100–1000 kg/mo generators should be exempt from all personnel training requirements on the basis that personnel training would be too costly and burdensome for most small businesses and because less than 1000 kg/mo would be "too small to endanger the environment or public health". The Agency does not agree that 100–1000 kg/mo generators should be exempt from all personnel training requirements. While the Agency agrees that the risk to human health and the environment posed by 100–1000 kg/mo generators is less than the risk posed by large quantity generators, some risk is still present. The Agency has, therefore, proposed less stringent rules for 100–1000 kg/mo generators, which will mitigate this risk while minimizing the regulatory burden upon these generators.

A number of commenters suggested that the Agency limit the scope of the training requirement since it is inappropriate to require that all employees of a generator receive personnel training, regardless of their job responsibilities. According to these commenters, some firms, particularly large companies, may have clerical and office staff as well as some part-time and temporary personnel "who will never be involved or even remotely associated with the firm's handling of hazardous waste", and requiring these employees to be thoroughly familiar with hazardous waste management techniques would be a poor use of the firm's resources. One commenter suggested that this requirement be applied only to those employees who handle hazardous waste as part of their job.

The Agency agrees that it would not make sense to require training in topics not germane to an employee's areas of responsibility since this would add considerable burden to some firms without corresponding environmental or health benefits. Thus, the Agency has amended the regulations to clarify this issue. The rule promulgated today states that generators "must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their job responsibilities during normal facility operations and emergencies," just as for large quantity generators subject to § 265.16, implicit in the regulations is the requirement that the type and amount of training necessary for each employee stems from his specific responsibilities. Employees who handle hazardous wastes as part of their normal job responsibilities or are likely to handle wastes in an emergency situation must be thoroughly familiar with proper waste handling and emergency procedures. Employees who work in or adjacent to areas where hazardous wastes are generated, handled, or stored but do not handle hazardous wastes, must still be trained to be thoroughly familiar with basic emergency procedures. Part-time or temporary employees must also receive appropriate training.

iii. Standards for Accumulation in Containers—Part 265, Subpart I: Section 262.34 requires that in order to accumulate hazardous waste on-site without a permit, the generator must meet certain requirements. If the waste is stored in containers, the generator must comply with Subpart I of Part 265 (§§ 265.170 thru 265.177) which contains the following general requirements applicable to the management of hazardous waste storage containers:

- They must be kept in good condition and any leaking containers replaced (§ 265.171);
- The containers must be compatible with the hazardous waste stored in them (§ 265.172);

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- Containers holding hazardous waste must always be closed during storage (except when necessary to add or remove wastes) and must not be handled in a way that would cause them to rupture or leak (§ 265.173);
- Containers must be inspected at least weekly to check for leaks and any signs of corrosion (§ 265.174);
- Containers holding ignitable or reactive wastes must be placed at least 50 feet from the facility's property line § 265.176); and
- Incompatible wastes must not be placed in the same container so as to cause fires, leaks, or other discharge of hazardous waste or hazardous waste constituents (§§ 265.177 and 265.17(b)).

In addition, § 262.34(a)(2) requires that the date upon which each period of storage begins is clearly marked on each container and § 262.34(a)(3) requires that each container be marked with the words "Hazardous Waste".

Since these requirements embody common sense "good housekeeping" requirements necessary to avoid releases into the environment, EPA proposed no modifications to these standards for 100–1000 kg/mo generators. Comments received generally indicate that these requirements were not unduly burdensome and would be appropriate for 100–1000 kg/mo generators. The one major concern raised by a number of commenters, however, is the requirement that a buffer zone of at least 50′ from the property boundary be maintained for reactive or ignitable wastes. Since many smaller generators are located in urban areas, it is not uncommon for these generators to be located on lots that would not permit the maintenance of a 50-foot buffer zone.

EPA agrees with commenters that this requirement would put many small businesses in a situation in which it would be impossible to comply. Since the Agency has already proposed to modify the buffer zone requirement to increase flexibility in such situations (49 FR 43290, June 5, 1984), it would make sense for the Agency to exempt 100–1000 kg/mo generators from the 50-foot buffer zone requirement until the Agency promulgates final storage standards. Whether the Agency ultimately decides to apply the proposed standards to these generators or to propose a more tailored set of standards, it would be inconsistent with the directives contained in HSWA Section 3001(d) to consider impacts on small business to include, in the interim, the existing buffer zone requirement. Therefore, as an interim measure, the Agency is exempting 100–1000 kg/mo generators from the § 265.176 requirement that containers holding ignitable or reactive wastes must be placed at least 50 feet from the property boundary. Of course, 100–1000 kg/mo generators should endeavor to store ignitable or reactive wastes as far from the property boundary as is practicable.

With the exception of the modified buffer zone requirement, EPA is incorporating by reference the requirements of Subpart I of Part 265 into § 262.34(d).

iv. Standards for On-site Accumulation in Tanks—Part 265, Subpart J: As in Subpart I, Subpart J contains general standards that must be followed by generators storing hazardous waste in tanks under § 262.34:

- Wastes must not be placed in tanks if they could cause ruptures, leaks, corrosion, or otherwise cause the tank to fail (§ 265.192(b));
- Uncovered tanks must be operated with at least 60 centimeters (2 feet) of freeboard or a secondary containment dike or trench to prevent overfilling spillage (§ 265.192(c));
- Where waste is continuously fed into a tank, the tank must be equipped with a waste feed cutoff or bypass system to stop the inflow to the tank (§ 265.192(d));
- At least once each operating day, a generator must inspect, where present, discharge control equipment (*e.g.*, waste feed cut-off systems and drainage systems), data gathered from monitoring equipment (*e.g.*, pressure and temperature gauges), and the level of waste in the tank to assure compliance with the above freeboard requirements (§ 265.194 (a)(1), (a)(2), and (a)(3));
- At least weekly, a generator must further inspect the construction materials of the tank and the area immediately surrounding the tank to detect corrosion or obvious signs of leakage (§ 265.194 (a)(4) and (a)(5));
- Special requirements apply to ignitable or reactive waste, and incompatible waste that are more or less analogous to those in Subpart I. The major difference is in the requirements for ignitable or reactive waste which, when stored in a covered tank, must be in compliance with buffer zone requirements contained in Tables 2–1 through 2–6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code." These requirements are based on the hazardous characteristics of all combustible and flammable liquids and, as such, are applicable to any type and size of tank. While the Agency is modifying the buffer zone requirements for containers, as discussed in the previous section, the Agency did not receive any comments indicating that compliance with the NFPA code with respect to tanks would be impossible for small quantity generators. Therefore, the existing buffer zone requirements for tanks will apply to generators of 100–1000 kg/mo.

The requirements of Subpart J are meant not only to protect human health and the environment, but are in the generator's best interest by reducing the likelihood of damages or injuries caused by leaks and spills. The Agency did not propose to modify these standards for 100–1000 kg/mo generators, and no commenters raised any objections to application of the existing Subpart J requirements to 100–1000 kg/mo generators. Thus, the Agency has no reason to believe that the existing tank requirements present a problem for these generators, and is including them in this rule.

As discussed in detail in the Proposal, the Agency is developing new management standards for tank storage that may require secondary containment for accumulation tanks. These proposed amendments to Subpart J (50 FR 26444, June 26, 1985) could impose additional costs if applied to generators of 100–1000 kg/mo who accumulate hazardous waste in tanks. In the Proposal, the Agency requested and received public comment on a variety of options related to the proposed tank amendments. However, the Agency has not yet completed its evaluation of this issue and has not issued any final amendments to Subpart J. Accordingly, the Agency is today applying to generators of 100–1000 kg/mo only those Subpart J requirements currently required under § 262.34. Application of any modified tank standards to generators of 100–1000 gk/mo will be evaluated in the final tank rule after consideration of all comments received on both the August 1 Proposal and the tank proposal of June 26, 1985.

The requirements of existing Subpart J of Part 265 are, therefore, incorporated by reference in § 262.34(d), and are applicable to generators of 100–1000 kg/mo.

5. International Shipments

On March 13, 1986, EPA proposed regulations under § 3017 of HSWA regarding exports of hazardous waste (See 51 FR 8744). The proposed regulations would prohibit export of hazardous waste unless certain requirements are met. These requiremens include advance written notification to EPA of any plans to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the consent to the manifest accompanying each waste shipment, and conformance of the shipment to such consent. EPA also proposed a manifest pursuant to 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Under 40 CFR 261.5 and today's final rule all generators, including those generating less than 100 kg/mo, would qualify as exporters under the export proposal. Although the Agency is not aware of any exports by generators of less than 1000 kg/mo, and hence, did not propose to change the applicability of the export requirements to these generators, the Agency has requested comment from generators of less than 1000 kg/mo on whether the Agency should partially or totally exempt them from the proposed export requirements. Thus, generators affected by today's final rule should be aware that they may be subject to additional regulatory requirements in exporting hazardous waste, and that they have the opportunity to submit comments regarding the applicability of those requirements to the public docket established for the export proposal.

D. Transportation Issues

The existing standards for transporters of hazardous waste are contained in 40 CFR Part 263, and are applicable to any form of hazardous waste transportation that requires the use of a hazardous waste manifest (§ 263.10(a)). These standards pertain to compliance with the manifest system, recordkeeping, and actions to be taken in response to spills or discharges of hazardous waste. Taken in conjunction with U.S. Department of Transportation (DOT) requirements under the Hazardous Materials Transportation Act (HMTA) regarding labeling, marking, packaging and placarding (incorporated in 40 CFR Part 262, Subpart C), such standards are deemed by the Agency to be those necessary to protect human health and the environment during the transportation of hazardous waste.

In directing EPA to develop standards for generators of 100–1000 kg/mo, Section 3001(d)(7) of RCRA, as amended, specifically states that "nothing in this subsection shall be construed to affect or impair the validity of regulations pursuant to the Hazardous Materials Transportation Act." Consequently, EPA did not propose any substantive amendments to applicable DOT requirements or to Part 263. However, several minor amendments are necessary to bring the transporter standards into conformance with today's final standards for 100–1000 kg/mo generators.

In addition, commenters on the proposed rules raised a number of transportation-related issues. The Agency is finalizing proposed § 263.20(h) to specify certain recordkeeping requirements for transporters (who are also reclaimers) accepting unmanifested hazardous waste from generators utilizing the § 262.20(e) exemption for wastes reclaimed under contractual agreements. While one commenter argued that these recordkeeping requirements were too burdensome, the Agency does not agree. The manifest exemption is an entirely voluntary arrangement that substantially reduces the paperwork for both generators and transporters. The transporter need not maintain the prescribed records if he chooses instead to comply with the manifest system. A number of commenters were concerned about the lack of established transportation networks for the collection and transportation of less than full truckloads of hazardous waste. Three commenters stated that EPA should take steps to encourage such networks, and suggested various alternatives. Two commenters suggested that EPA encourage the establishment of collection centers for waste from 100–1000 kg/mo generators by extending the current 10-day period for transportation to 21 days and accelerating the issuance of storage permits for facilities which serve as collection and transfer stations for small quantity generator waste. One of these commenters specifically suggested that development of a class permit concept for these facilities might be a viable solution.

EPA agrees that the development of networks and centralized collection centers will help to increase compliance with these regulations. However, commenters have not adequately demonstrated a need for longer transportation time than the 10 days currently provided. Nor does EPA believe that the establishment of an expedited permit process for these facilities is feasible. Both of these issues are discussed in greater detail in the following section on facility standards. It should be noted here, however, that such networks can be established at any time within the confines of the applicable regulations.

Some commenters expressed concern about EPA's discussion in the proposed rules of self-transportation of hazardous wastes, stating that all of the standards for hazardous waste transportation should be imposed on such generators. In the proposal, EPA explained that self-transportation of hazardous waste by generators was not precluded by the regulations, provided the generator obtained a U.S. EPA ID number and complied with the provisions of Part 263 and the applicable portions of Department of Transportation regulations. EPA did not intend to create the impression that self-transportation could be conducted without compliance with the full Part 263 standards for hazardous waste transportation.

Other commenters supported the concept of licensing transporters to assume the responsibilities of the generator with respect to manifesting. As EPA explained in the Proposal, transporters may currently assume most of the generators' manifesting responsibilities except for signing the certification statement. One commenter believed that the transporter of a hazardous waste shipment should assume liability for the waste if that transporter completed the manifest and removed the waste from the generator's establishment. EPA may not alter the liabilities established by statutes such as CERCLA, which applies the concept of joint and several liability to all handlers of a hazardous substance. In addition, EPA believes that removing RCRA liability from generators would remove an important incentive for them to ensure that their wastes are properly transported and managed. EPA, therefore, is taking no action that would alter a generator's liability under current regulations and statutes.

Two States requested an amendment to § 262.20(e) to allow generators of 100–1000 kg/mo to transport waste to a temporary collection site of a hazardous waste clean-up program or Amnesty Day without the need to complete a manifest. They stated that the requirement to complete a manifest may discourage some establishments from participating. Under most "Amnesty Day" programs of which the Agency is aware, homeowners are encouraged to bring their unwanted household hazardous wastes to a central collection point where they are sorted, packaged, and subsequently transported to an approved hazardous waste management facility. In some cases, small quantity generators have been allowed to discard their wastes through similar programs.

Section 261.4(b)(1) exempts household waste from all of the hazardous waste requirements of RCRA. Thus, no manifesting is required for transport of wastes that are exempt from regulation under § 261.5. However, because quantities of hazardous wastes from generators of 100–1000 kg/mo could pose a substantial risk if improperly

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managed, the Agency has decided to impose manifest requirements on these generators, except in the case of certain reclamation agreements. The existence of a State-approved collection center does not, on its own, provide assurance that the waste would be transported or handled properly prior to or during transportation to such a facility, or indeed, that the shipment would ever reach such a facility. Consequently, development of some recordkeeping and transportation requirements would be needed which would offset any potential savings of such an exemption.

E. Part 264/265 Facility Standard Issues

The requirements for facilities that treat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. (See HSWA section 3005(e)). The Part 264 standards establish the minimum standards to be incorporated into a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Section 261.5(b) previously exempted generators of 100–1000 kg/mo of hazardous waste from the facility requirements of Parts 264 and 265 that cover the on-site treatment, storage, or disposal of hazardous waste, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste and no more than 1000 kg of hazardous waste were accumulated at any time. Under the rules promulgated today, this exemption will continue to apply only to generators of less than 100 kg/mo of hazardous waste. Generators of 100–1000 kg/mo of hazardous waste will be subject to full regulation under Parts 264 and 265 if they accumulate hazardous waste on-site for greater than 180 (or 270) days, exceed the 6000 kg accumulation limit, engage in waste treatment in other than tanks, or manage their waste in surface impoundments, waste piles, landfills, or land treatment facilities. In addition, those State-approved municipal or industrial waste facilities that manage wastes only from generators of 100–1000 kg/mo will also no longer be exempted from the Part 264 and 265 permit requirements. In the proposed rule, the Agency requested comments concerning the application of the uniform Part 264 and 265 requirements to generators of 100–1000 kg/mo and to the treatment, storage, and disposal facilities that accept waste from the generators.

1. Activities Requiring Permits

Under today's final rules, 100–1000 kg/mo generators will be required to obtain a permit if they treat or dispose of hazardous waste on-site (except for treatment in tanks or containers during the 180/270 day accumulation period in conformance with Subparts J or I of Part 265, respectively) or accumulate hazardous waste on-site in tanks or containers for more than 180 (or 270) days.

A number of commenters agreed with the need to manage wastes from generators of 100–1000 kg/mo at fully permitted facilities. They argued that no special exemptions or requirements should be applied to the management of waste from these generators because the characteristics of the waste, not the source of the waste, poses the threat to human health and the environment.

Two commenters opposed the requirement for generators of 100–1000 kg/mo who accumulate waste on-site for longer than 180 (or 270) days to obtain RCRA permit, and argued that the accumulation time limit before permitting is required should be extended. One of the commenters also maintained that determining the maximum quantity of hazardous waste that may be accumulated at a non-permitted facility should be based on the degree of hazard posed by the waste and the generator's capacity to transport the waste off-site. The EPA disagrees with both of these positions. As noted in Unit III.C.4.a. of today's preamble, the HSWA of 1984 clearly limit Agency discretion in this matter. The Agency carries a heavy burden in extending the time limits established under section 3001(d)(6), and except for emergency circumstances, the Agency does not believe there to be sufficient justification for extending the limits Congress has established.

Another commenter opposed any permitting requirement due to the economic burden that would be placed on a small number of generators. While some generators of 100–1000 kg/mo may be burdened financially by the requirements promulgated today, Congress has already judged that outside of the accumulation limits allowed for in Section 3001(d)(6), disposal of wastes from these generators at permitted facilities is necessary to protect human health and the environment. In addition, since the rules allow generators to manage their hazardous wastes off-site, they are able to avoid the cost of acquiring a RCRA permit, if they so choose.

Several commenters suggested exemptions from the RCRA permitting requirements or reduced permit requirements for on-site waste treatment. Some commenters stated that there is a need to encourage on-site treatment to reduce the amount of wastes sent off-site and that the permitting requirements may hamper the ability of generators to treat wastes at their facilities.

The Agency disagrees that on-site treatment should be encouraged by exempting those generators of 100–1000 kg/mo from the RCRA permitting requirements. To the extent that these generators are conducting the same treatment/storage or treatment/disposal as other permitted facilities, their on-site treatment activities pose a potential risk to human health and the environment. Therefore, reduced or eliminated permitting requirements would be inappropriate.

Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or I of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus, the same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (90 days for over 1000 kg/mo generators and 180/270 days for 100–1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards. Therefore, generators of 100–1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 270 days).

Two commenters suggested that a mechanism should be created to tailor RCRA permits to the circumstances of individual facilities. For example, one commenter specifically asked for a simplified and streamlined permit for the incineration of spent paint spray

booth filters. The Agency accepts the need to consider individual circumstances when drafting RCRA permits. However, in order to protect human health and the environment, the Agency must impose certain minimum permit requirements for each waste management facility. Additional provisions may be incorporated into a permit to account for unique circumstances at individual facilities (see § 270.32). At the present time, the Agency has decided not to take any action regarding the tailoring of regulatory requirements for permitting specific types of waste management activities for generators of 100–1000 kg/mo. At a future date, the Agency may consider altering the regulatory requirements for specific waste types or handling practices that pose a low potential for harm to human health and the environment.

Two commenters discussed the need for establishing regional collection centers for the temporary storage of wastes from generators of 100–1000 kg/mo before being sent to treatment, storage, or disposal facilities. One of these commenters suggested that the collection centers may also offer waste identification and packaging services and could be sponsored by State or local governments. Both commenters contended that regional collection centers will be needed because most waste shipments from generators of 100–1000 kg/mo will be too small to justify the expense of direct transportation to TSDFs in less than truckload quantities. The commenters further stated that these collection centers should not be required to meet the full RCRA permit requirements for storage facilities.

While the rules promulgated today may increase the cost of waste transportation services for many generators of 100–1000 kg/mo, generators of 100–1000 kg/mo are allowed to accumulate hazardous waste at their facilities for 180 (or 270) days, thereby reducing the need for frequent shipment off-site and off-site collection centers. Nevertheless, if regional collection and storage facilities are established, these centers will probably accumulate significant volumes of various types of hazardous waste. The storage of large amounts of hazardous waste, regardless of its point of origin, poses the potential for harm to human health and the environment. Therefore, the Agency believes that the requirements for storage and disposal facilities as described in Parts 264 and 265 must also apply to regional collection facilities. Furthermore, wastes shipped from a generator of more than 100 kg/mo to a collection center must be properly identified, manifested, packaged, labeled, marked, placarded, and transported in accordance with Parts 262 and 263 and applicable regulations promulgated under the Hazardous Materials Transportation Act.

One commenter proposed that generators of 100–1000 kg/mo be exempted from the full corrective action for continuing releases provisions of RCRA section 3004(u), which apply to all solid waste management units at a Subtitle C facility seeking or issued a permit. EPA disagrees with the suggestion. Section 3004(u) applies to releases to all media; however, the Agency believes that action is required only where necessary to protect human health and the environment. Section 3004(u) requires that all permits issued to Subtitle C facilities after November 1984 shall include schedules of compliance and financial assurance for completing any necessary corrective actions for releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which such waste was placed in such unit. The clear statutory directive precludes a reading of the statute that limits an owner's or operator's responsibilities to waste placed in units during his or her tenure or for releases from solid waste management units that are not "regulated units."

The corrective action requirements will apply only to the few generators of 100 to 1000 kg/mo who choose to seek permits. Thus, the potential burden of corrective action must be accepted by those who choose to manage their hazardous waste on-site. Should such a generator become subject to the corrective action provisions, the Agency is considering the advisability of taking into account the firm's ability to pay when establishing a compliance schedule and thereby reduce the burden to generators of 100–1000 kg/mo. Nonetheless, the goal of these rules is to reduce the risk to human health and the environment from uncontrolled releases of hazardous waste. The risks associated with such releases depend on the nature of each individual release, not on the quantity of hazardous waste generated by the facility. There is no rational basis for distinguishing between generators of 100 to 1000 kg/mo and larger quantity generators when determining whether a release, once it occurs, poses an imminent threat to human health and the environment and needs to be cleaned up.

2. Applicability of Permitting Requirements to Recycled Wastes

Several commenters addressed the issue of recycled wastes. One commenter stated that generators of 100–1000 kg/mo who recycle the generated products should not be required to meet full Parts 264 and 265 facility standards. The commenter argued that since recyclable wastes are frequently handled as if they were original products, they should not be subject to regulation. This approach has already been considered by the Agency and rejected (See 50 FR 614, 617 (January 4, 1985). At the time, EPA indicated that wastes often have little independent economic value, but are recycled to avoid disposal costs. Unless the wastes are extremely valuable (as in the case of precious metal-containing wastes), there is little incentive to avoid leaks and spills. EPA sees no reason to reconsider the issue at this time.

Two other commenters sought clarification concerning whether the proposed rule requires on-site waste recycling operations to be permitted under Parts 264 and 265. While the actual recycling operation is generally not subject to permitting, the rule does, indeed, require (or will require) permitting for certain recycling activities and for storage associated with recycling activities. Generators of 100–1000 kg/mo of recyclable materials must obtain a permit or interim status if all of the following conditions are met:

(1) The material is a solid waste. Whether or not a material qualifies as a solid waste depends upon both what the material is and how it is being recycled. See §§ 261.2 and 261.4(a).

(2) The solid waste is a hazardous waste. Generally, the waste must be listed or exhibit one of four characteristics. See §§ 261.3 and 261.4(b).

(3) The hazardous waste is not exempt from regulation under § 261.6. Exempted materials include industrial ethyl alcohol that is reclaimed and scrap metal.

(4) The non-exempt hazardous waste is stored on-site for more than 180 days (or 270 days if it is to be transported at least 200 miles). See § 262.34(d).

If the solvent is stored in anticipation of reclamation for more than 180 days, however, the generator must obtain a permit or interim status. See § 262.34(f). In addition, use constituting disposal and burning for energy recovery would also be recycling activities requiring a permit.

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3. Permit By Rule

Two commenters argued that generators of 100–1000 kg/mo should be allowed to obtain a RCRA "permit by rule" (under § 270.62) and by-pass the Parts 264 and 265 permitting process. Permits by rule have been granted by EPA to facilities already regulated and permitted under other Federal laws, provided that the facilities are in compliance with their permits and other specified requirements. For example, ocean disposal barges or vessels are granted permits by rule under RCRA § 270.60(a) for ocean dumping because those activities are already permitted under the authority of the Marine Protection, Research, and Sanctuaries Act, as amended U.S.C. 1420 *et seq.*

The commenters are requesting EPA to apply permits by rule in such a manner that could effectively exempt generators of 100–1000 kg/mo from Federal requirements. They have suggested that the proposed rule requiring full Part 264 and 265 standards for generators of 100–1000 kg/mo would be too burdensome. One commenter noted that a permit by rule would allow for relief from full RCRA requirements and thus allow for continued waste treatment/minimization activities on-site. The second commenter explained that 100–1000 kg/mo generators are already regulated under State and local environmental programs. This commenter suggested that permits by rule should be issued for generators of 100–1000 kg/mo who are in compliance with "adequate State and local environmental programs and permits."

EPA does not believe that it is appropriate to effectively exempt these generators from Parts 264 and 265. First of all, Congress explicitly directed EPA to require that wastes from these generators be managed at Subtitle C facilities. Second, EPA believes that compliance with the permitting process is essential to provide protection of human health and the environment. EPA disagrees that State and local regulatory programs for generators of 100–1000 kg/mo are sufficient to maintain proper protection of human health and the environment, since most State programs do not now require that such waste be managed at Subtitle C facilities. Of course, States with authorized RCRA programs may adopt equivalent (or broader or more stringent) requirements and administer State programs for these generators.

4. Modifications to Part A Permit Applications

One commenter questioned whether requiring revisions to Part A and Part B permits for facilities handling waste from generators of 100–1000 kg/mo will be too time-consuming and may delay the implementation of the proposed rule.

EPA is aware that the rule promulgated today will require changes in the Part A applications for off-site facilities that manage wastes from 100–1000 kg/mo generators. As explained in the preamble to the proposed rule, off-site interim status facilities managing wastes from both fully regulated large quantity generators and generators of 100–1000 kg/mo may be required to modify their Part A permit applications under § 270.72 to account for wastes from 100–1000 kg/mo generators if those wastes are currently being managed as exempt pursuant to § 261.5 and are not currently identified on the Part A application. Thus, facilities that receive wastes from generators of 100–1000 kg/mo only, which previously were not required to fill out Part A forms under § 270.41 are now required to do so. Similarly, facilities that receive wastes from generators of 100–1000 kg as well as large quantity generators, must modify their permits to reflect the wastes received from 100–1000 kg/mo generators.

The Agency does not believe that the proposed changes requiring facilities receiving wastes from generators of 100–1000 kg/mo to add new information to Part A applications or requiring facilities to begin filing Part A applications will be overly time-consuming.

One commenter sought to clarify that facilities that only handle hazardous waste from generators who generate no more than 100 kg/mo will still operate under a blanket exemption from Part 264 and Part 265.

Under the Hazardous and Solid Waste Amendments of 1984, generators of less than 100 kg/mo and those treatment, storage, or disposal facilities that serve those generators will continue to operate under the conditional exemption from Part 264 and Part 265 that is contained in in Section 261.5.

IV. Delayed Effective Dates

EPA proposed that the effective date of the regulatory requirements for 100–1000 kg/mo generators be six months from the date of promulgation of the rules. It was also proposed that the effective date of the Parts 264 and 265 facility standards for generators that manage waste on-site be delayed an additional six months, to become effective one year from the date of promulgation.

Of the four comments received on this issue, one opposed any delay in effective dates beyond March 31, 1986, on grounds that it is one of the hammer provisions and would not be in the best interest of enforcement. Another commenter suggested a one year delay for all of the requirements. The Agency does not agree with either commenter. First, the plain language of section 3001(d)(9) states that the last sentence of section 3010(b), which allows for a less than six month effective date under certain circumstances, shall not apply to standards issued under section 3001(d). Thus, the language of the statute appears to preclude an effective date of less than six months. Although it is arguable that the statute and its legislative history indicate some intent that the regulations become effective immediately,[5] the Agency believes that a better reading of the statute requires a delay in the effective date of the rules for at least six months.

Second, the Agency believes that a six month effective date for the generator requirements is essential from a policy perspective in order to allow these small businesses to become familiar with the hazardous waste regulations, obtain an EPA Identification number, and find hazardous waste transporters and Subtitle C management facilities. Finally, EPA has determined that the six month effective date is consistent with the statutory directive to promulgate rules for these generators that attempt to minimize the burden on small business. Thus, EPA believes that allowing six months for these generators to comply with most of the provisions of the newly applicable hazardous waste management system is a reasonable response to the directives of section 3001(d). As discussed below, the Agency does not believe, however, that a full year is needed for compliance with rules other than those relating to on-site waste management.

With regard to the additional six month delay for compliance with on-site management standards, one commenter supported the proposal while another opposed it as legally unjustifiable and not protective of public health. This commenter asserted that the effective

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[5] While the Agency does not believe that the hammer provisions in section 3001(d)(8) dictate the content of the final rules, it is arguable that a March 31, 1986 effective date was intended. The fact that Congress required final rules to be promulgated by March 31, 1986, under section 3001(d)(8), in conjunction with a statement in the Conference Report that the section 3010(b) six month delay in effective dates does not apply to 3001(d)(1) regulations (see H.R. Rep. No. 1133, 98th Cong. 2d Sess. 101 (1984)) raises some question regarding the applicability of the six month delay of section 3010(b). Since the plain meaning of the statutory language in section 3001(d)(9) is so clear, however, the Agency does not believe that the legislative history should prevail.

dates for on-site and off-site activities should be the same.

EPA disagrees that the effective dates for compliance must be the same for on-site and off-site management activities. The same concerns regarding undue burdens that would be imposed by an immediate effective date for the full set of regulations led the Agency to conclude that a reasonable period of time was necessary for on-site compliance with Parts 264 and 265.

Generators of 100–1000 kg/mo who engage in on-site management activities will generally have to change their waste management practices in more dramatic ways than those generators who simply ship their wastes for management off-site. Most will modify their current practices in one of the following ways: (1) By adopting on-site management practices exempt from Parts 264 and 265, (2) by shifting to off-site management practices, or (3) by adjusting any non-exempt on-site practices so they comply with the full Parts 264 and 265 facility standards. The delayed effective date will permit these generators to effect the necessary changes in a safe and effective manner. Under the final rule, 100–1000 kg/mo generators will have an additional six months to qualify for interim status and come into compliance with the Part 265 interim status facility standards if they manage their wastes on-site, as opposed to off-site. The interim status facility standards include a number of requirements that call for substantial time and investment, especially the requirement for implementation of a ground-water monitoring program. The installation, operation and maintenance of the monitoring system to determine impact on ground-water quality includes installation of wells, which will require some time to be constructed. In the meantime, there will be some protection to health and the environment by the need for approval by States for these generators to manage municipal or industrial (non-hazardous) solid waste.

Generators who manage their waste off-site will not need this additional time to comply with today's rule. In many cases, their current waste management practices will be allowed under this rule. Even if they must arrange for new off-site management, six months should be sufficient time for this transition.

Therefore, the Agency is retaining the proposed effective dates.

V. Impact on Authorized States

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames, however; the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Today's final rule is promulgated pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement the standards in authorized States until they revise their programs to adopt these rules and the revisions are approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 *FR* 21678, May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within one year from the date of today's promulgation of EPA's regulations if only regulatory changes are all that are necessary, or within two years if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce them as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to States in their efforts to implement their programs rather than take separate action under Federal authority.

States that submit official applications for final authorization less than 12 months after today's promulgation of EPA's regulations could be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

VI. CERCLA Impacts

Today's final rule does not change existing CERCLA requirements relating to releases of reportable quantities of CERCLA hazardous substances. Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it automatically becomes a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Section 103 of CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Reponse Center (NRC) (at (800)

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424–8802 or (202) 426–2675) of the release. (See 50 FR 13456–13522, April 4, 1985).

The term "hazardous substance" includes all substances designated in § 302.4(a) of the April 4, 1985 final rule (50 FR 13474), as well as unlisted hazardous wastes exhibiting the RCRA characteristics of ignitability, corrosivity, reactivity, and extraction procedure toxicity. (See § 302.4(b) of the April 4, 1985 final rule.)

All persons who release a reportable quantity of a CERCLA hazardous substance into the environment, including small quantity generators, are subject to notification provisions of section 103 of CERCLA (see 40 CFR 302.6(a) and (b)). However, as stated in CERCLA section 103(f)(1), no notification shall be required under CERCLA sections 103(a) and (b) for any release of a hazardous substance which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center (NRC).

VII. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 *FR* 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted.

The Administrator has determined that today's final rule is not a major rule, because it has total estimated costs of less than $100 million per year, and has no significant adverse economic effects. These conclusions, are based on an economic analysis of today's proposal. This analysis involved developing cost estimates of both current waste management practices used by 100–1000 kg/mo generators and practices required by today's final rule. Some of these estimates were firm-specific and others were waste stream-specific. These costs were used along with estimates of the changes in waste management practices likely to result from today's final rule to estimate the annual incremental compliance costs to 100–1000 kg/mo generators ($46.9 milllion). These costs were added to the estimated government costs of implementing the regulation of $12 million for a total social cost of $58.9 million.

A. Estimates of Per Firm Costs

1. Part 262 Generator Standards

The estimated incremental compliance costs attributable to Part 262 requirements can be divided into an initial, one-time, cost of $2267 per firm, and an annual recurring cost of $222 per firm. These costs will be incurred by all 100–1000 kg/mo generators that would be subject to the requirements of today's regulation with two exceptions—generators disposing of their wastes by sending them to POTW's and generators that have their waste reclaimed under certain contractural agreements. Generators sending wastes to POTW's will incur no Part 262 related costs as a result of the regulation (unless the waste is accumulated prior to discharge; see 3.a. of this Unit). Generators using reclamation agreements would incur a cost of $1694 initially and no annual costs.

2. Transportation Costs

Under today's rule, generators of 100–1000 kg/mo will be required to either contract with an authorized hazardous waste transporter or haul the hazardous waste to a hazardous waste management facility that has a permit from the Agency or an authorized State, or is in interim status. Incremental transport costs depend on current generator practices, the distance which wastes are transported, the quantity of wastes transported, and the number of times wastes are loaded and transported each year.

In many cases, there will be no incremental transportation costs due to these regulations because current waste management practices involve waste transportation. Where this is not the case, average incremental costs that would be imposed on 100–1000 kg/mo generators for the transportation of their hazardous waste are estimated to be between $838 per year (for generators that ship 600 kg of waste a short distance twice yearly) and $1862 per year (for generators that ship 6000 kg of waste a longer distance twice yearly).

3. Treatment, Storage and Disposal Costs

a. On-Site Accumulation: Under today's final rule, generators of 100–1000 kg/mo would be allowed to store hazardous waste on-site without a permit or interim status for up to 180 days, or for up to 270 days if the waste is to be shipped over 200 miles.

Generators of 100–1000 kg/mo who store hazardous waste on-site, within the 180-day (or 270-day) period specified under the provisions of the storage exemption, will have to comply with Part 265, Subpart C (Preparedness and Prevention), a reduced set of requirements in Subpart D (Contingency Plan and Emergency Procedures), and limited requirements for personnel training (Section 265.16 of Subpart B). The incremental compliance costs for facilities that choose this management option are divided into an initial start-up cost of $1447 and an annual cost of $53.

Generators that store hazardous waste on-site within the 180-day (or 270-day) period may also incur costs related to storage container (Subpart I) and storage tank (Subpart J) requirements. The incremental costs for these requirements depend on a number of factors, including the current practices of the generator, the generator's storage capacity, and the composition of the hazardous waste being stored. The range of incremental costs, as a result, is fairly large. For container storage, initial incremental costs range from practically zero to $1854 and annual costs range from $404 to $447. The corresponding incremental cost estimates for the existing rules for tanks are $155 for initial costs, and $770 for annual costs.

b. Treatment and Disposal: After analyzing the cost of on-site treatment and disposal for 100–1000 kg/mo generators relative to off-site costs, the Agency has determined that in nearly all cases, the least expensive hazardous waste management alternatives available to these generators involve off-site activities. The small quantities of waste generated by these establishments simply do not permit them to operate expensive on-site management facilities on an economically efficient basis. The costs of off-site commercial treatment and disposal upon which this conclusion is based are derived from a composite of various existing sources of data on commercial waste management prices. They range from $150 to $250 per metric ton (for secure landfills) to $200 to $1200 per metric ton (for either treatment or incineration), depending on the characteristics of the wastes.

B. Estimates of Nationwide Incremental Cost Burden on Generators of 100–1000 kg/mo

The aggregate costs for today's rule were developed by comparing the costs of current (baseline) management practices with hazardous waste management practices which are required by the rule. The Agency has determined, based on this analysis, that the annual incremental compliance cost for this proposal would be approximately $46.9 million.

On a per metric ton basis, the average incremental compliance cost over all wastes is about $180. Because of differences in baseline practices, and, hence, the cost of compliance, the incremental costs vary substantially among different wastes. In fact, the baseline method of waste management by these generators is adequate to comply with the regulations in many cases. Others will have to change waste management practices in order to comply. Much of the $46.9 million in compliance cost, is focused on a few types of wastes (spent solvents dry cleaning filtration residues, acids, and

alkalies, and ignitable wastes) that constitute a large proportion of the wastes generated by these generators.

C. Estimates of the Economic Impacts of Today's Final Rule

An analysis of the effects of compliance costs on the sales and profitability of 289 model plants indicates that in over 80 percent of plants the incremental costs are less than 10 percent of profits. A few of the plants, particularly in service industries, show incremental costs of greater than 10 percent of profits. Nearly three quarters of the models most affected by the proposal have annual revenues of less than $500,000. Some of these establishments are low profit or nonprofit by design, such as public or private golf courses, hospitals, and other public institutions.

Only six plants have incremental compliance costs which exceed 1 percent of sales and 25 percent of profits. For each of these model plants, a more detailed evaluation was conducted to determine whether these plants would be likely to close. This analysis indicated that plant closings as a result of this regulation would be unlikely.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires the Agency to evaluate the impacts of regulations on small businesses, small organizations and small governmental jurisdictions. The Regulatory Impact Analysis for today's final rule includes such an evaluation. The Administrator has determined that this regulation will not have a significant impact on a substantial number of small firms.

Today's proposed regulations are expected to primarily affect small firms. Therfore, the Regulatory Flexibility Act requirement concerning effects on small businesses is addressed to a large extent by the overall economic analysis performed in conjunction with this rulemaking.

Throughout the development of today's final rule, the Agency's goal has been promulgation of requirements that would be the least burdensome to small businesses and also meet the Congressional mandate of protecting human health and the environment. In our effort to design regulations that would meet this goal, we have worked closely with small business organizations, trade associations, State and local governments, EPA's Small Business Ombudsman in the Office of Small and Disadvantaged Business Utilization, and the Federal Small Business Administration to assess the needs and capabilities of small businesses. EPA believes that this rule is a balanced approach to regulating hazardous waste from these generators while considering their small business nature.

For purposes of this analysis, "small entities" were defined as firms comprised of fewer than 50 employees for all of the sectors except manufacturing (<100 employees). In many cases, these classifications are approximations because the Small Business Administration establishes size standards in terms of sales levels, and the size standards vary within sectors. For example, most small entity size standards for manufacturing industries range between 500 and 1000 employees.

The results of this analysis indicate that less than 10 percent of small entities within the impacted industries will be affected by the regulations. Most small businesses will not be affected by these regulations because they: 1) Do not generate hazardous waste, 2) generate less than 100 kg/mo, or 3) generate over 1000 kg/mo and are already subject to hazardous waste regulations.

Even though only a relatively small percentage of potentially affected small businesses will probably be affected, the more important issue to analyze is whether or not a large number of those which are affected will be severely impacted. Three commonly accepted tests were used to measure whether or not businesses would be severely impacted:

(1) Annual compliance costs will increase the relevant production costs for small entities by more than five percent;

(2) Capital costs of compliance will represent a significant portion of the capital available to small entities,

(3) The costs of the regulation will likely result in closure of small entities.

To analyze the significance of compliance costs on small businesses, data were developed for 25 different types and sizes of model plants representing those most likely to be severely impacted by the proposed regulations. Compliance costs were computed for these model plants based on the economic analysis described in the previous section of this preamble.

In general, these regulations will not cause significant impacts on small firms. None of the model plants established for this analysis show cost increases of more than five percent as a direct result of compliance costs. The regulations require no significant capital outlays and thus should not affect capital requirements or availability. Even the most severely impacted model plants would not close under the assumptions of this exercise and would continue to operate at a profit.

In summary, it appears that the impact on small firms will not cause a significant number of hardships. There will be isolated cases, involving on-site management or transportation over long distances, where compliance costs for some individual firms may be severe. In the case of on-site management, however, the Agency believes that most 100–1000 kg/mo generators will switch to off-site practices rather than face the high costs of obtaining interim status or a permit. Furthermore, approximately 70 percent of these generators are in metropolitan areas, and would thus be able to reduce transportation costs by allowing transporters to consolidate shipments by picking up waste from more than one generator at a time.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0028 (Notification) and 2050–0039 (Manifest).

List of Subjects

40 CFR Part 261

Intergovernmental relations, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Intergovernmental relations, Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 263

Intergovernmental relations, Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 14, 1986.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended, as follows:

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PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.10 is amended by adding a new definition, alphabetically, as follows:

§ 260.10 Definitions.

* * * * *

"Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

4. Section 261.1 is amended by revising paragraph (a)(1) to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under Parts 262 through 266 and 270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

* * * * *

5. Section 261.5, is revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to § 262.11, § 262.12, § 262.40(c), and § 262.41 is not included in the quantity determinations of this Part and Parts 262 through 266 and 270 and is not subject to any of the requirements of those Parts. Hazardous waste that is subject to the requirements of § 261.6 (b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this Part and is subject to the requirements of Parts 262 through 266 and 270.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) Hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Subpart E of Part 266 of this chapter if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

6. In Section 261.33 the introductory text of paragraph (f) is revised to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof

* * * * *

(f) The commercial chemical products, manfacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in § 261.5 (a) and (g).

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

7. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

8. Section 262.20 is amended by adding new paragraph (e) to read as follows:

§ 262.20 General requirements.

* * * * *

(e) The requirements of this Subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

9. Section 262.34 is amended by revising the introductory text to paragraph (a) and by adding new paragraphs (d), (e), and (f).

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

* * * * *

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(2) The generator complies with the requirements of paragraph (a)(1) except the generator need not comply with § 265.176.

(3) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section and the requirements of Subpart C of Part 265; and

(4) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(3)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include the following information:

(1) The name, address, and U.S. EPA Identification Number of the generator;

(2) Date, time, and type of incident (*e.g.*, spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR

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Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

10. In Subpart D of Part 262, add the following new § 262.44:

Subpart D—Recordkeeping and Reporting

* * * * *

§ 262.44 Special Requirements for Generators of between 100 and 1000 kg/mo.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this subpart, except for the recordkeeping requirements in paragraphs (a), (c), and (d) in § 262.40 and the requirements of § 262.43.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

11. The authority citation for Part 263 continues to read as follows:

Authority: Sections 2002(a), 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912(a), 6922, 6923, 6924, and 6925).

12. In § 263.20, paragraph (h) is added to read as follows:

§ 263.20 The manifest system.

* * * * *

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of § 263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in § 262.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

13. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6930, and 6974).

14. Section 270.1 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(i) Generators who accumulate hazardous waste on-site for less than the time periods provided in 40 CFR 262.34.

* * * * *

15. Section 270.10 is amended by adding paragraph (e)(1)(iii) to read as follows:

§ 270.10 General application requirements.

* * * * *

(e) * * *

(1) * * *

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of Regulation	Federal Register reference
*	*	*
Mar. 24, 1986	Regulations for Generators of 100–1000 kg/mo of Hazardous Waste.	51 FR (insert page number)
*	*	*

[FR Doc. 86-6224 Filed 3-21-86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL 2969-2(a)]

Hazardous Waste Management System: Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposal rule and request for comment.

SUMMARY: Elsewhere in today's **Federal Register**, the U.S. Environmental Protection Agency (EPA) is promulgating a final rule for generators of 100–1000 kilograms of hazardous waste in a calendar month (100–1000 kg/mo generators) under Sections 3002, 3003, and 3004 of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

This rule discusses the HSWA requirement that all generators certify on the Uniform Hazardous Waste Manifest that they have a program in place to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable.

Since EPA did not previously seek public comment on the appropriateness of this requirement for generators of 100–1000 kg/mo, the Agency is today requesting comment on the applicability of the waste minimization certification provision to small quantity generators of 100–1000 kg/mo.

DATE: Comments will be accepted on this proposal until April 23, 1986.

ADDRESSES: Please mail comments on this proposal to the Docket Clerk, Office of Solid Waste, WH-562, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Communications should identify the regulatory docket "Waste Minimization Certification." The RCRA Docket is located in room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, and is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Michaelle D. Wilson, (202) 382-4792, Office of Solid Waste (WH-562B) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are proposed under the authority of sections 3001(d) and 3002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922.

II. Waste Minimization Certification Requirement

On November 8, 1984, the President signed the Hazardous and Solid Waste Amendments of 1984 (HSWA). Section 3002(b) of HSWA requires that generators certify on the manifest required under [section 3002] subsection (a)(5) that they have in place a program to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable. Generators must also certify that their current method of management is the most practicable method available to minimize present and future threat to human health and the environment.

Section 3001(d) of HSWA directs EPA to promulgate standards under sections 3002, 3003, and 3004 for waste produced by generators of 100–1000 kilograms of hazardous waste in a calendar month (100–1000 kg/mo generators). Section 3001(d) also specifies certain interim requirements that took effect on August 5, 1985, and that will remain in effect until the effective date of the final rule published elsewhere in today's **Federal Register**.

On July 15, 1985, EPA published a rule which codified these, as well as other, interim HSWA requirements (50 FR 28702). A revised Uniform Hazardous Waste Manifest Form (EPA Form 8700-22) was included in the Appendix to Part 262 containing a revised certification statement incorporating the waste minimization provision. In the Codification Rule, EPA explained that the waste minimization provision did not apply to small quantity generators generating less than 1000 kg/mo of hazardous waste or the quantities of acutely hazardous waste specified in § 261.5(e), unless the generator accumulated waste which exceeded these quantities at any time and thus became subject to Part 262 (50 FR 28733).

The waste minimization certification requirement was not applicable to these small quantity generators because section 3002(b) refers to the manifest required by section 3002, subsection (a)(5), and the interim manifest requirements for 100–1000 kg/mo generators are imposed by section 3001(d), not section 3002(a)(5). However, because section 3001(d) of RCRA requires EPA to establish standards for 100–1000 kg/mo generators under sections 3002, 3003, and 3004, these generators would be subject to the manifest required by section 3002, subsection (a)(5). Thus the waste minimization certification requirements would apply to 100–1000 kg/mo generators upon promulgation of such standards.

EPA proposed standards for 100–1000 kg/mo generators on August 1, 1985 (50 FR 31278). The proposed rules did not address the waste minimization certification requirements of section 3002(b). Since EPA did not propose to exempt 100–1000 kg/mo generators in the August 1, 1985, proposal, and since this provision of section 3002 is self-executing, these generators would be subject to the waste minimization certification requirement on the effective date of the regulations for 100–1000 kg/mo generators promulgated under section 3002 and published elsewhere in today's **Federal Register**.

The Agency believes it appropriate to allow the waste minimization certification requirement to take effect with the rest of the Part 262 standards for 100–1000 kg/mo generators because EPA believes that the requirement imposes negligible burden. The waste minimization provision of section 3002(b) does not require that the generators take any action to change storage or disposal practices or establish a program for waste treatment or disposal. Rather, it only requires that the generator give some thought as to whether the most environmentally protective waste management technique is being practiced, given the generator's individual economic and waste management circumstances. EPA has already pointed out in the codification rule:

> "The amendment does not authorize EPA to interfere with or to intrude into the production process by requiring standards for waste minimization; rather, it specifically provides that the substantive determinations of "economically practicable" and "practicable method currently available" are to be made by the generator in light of his own particular circumstances. Thus, from an enforcement perspective, the Agency will be concerned primarily with compliance with the certification signatory requirement. Each generator subject to the waste minimization requirement should make a good faith effort to minimize the amount and toxicity of waste generated and to select a means of treatment, storage, or disposal most likely to minimize the present and future threat to human health and the environment." [50 FR 28734.]

In addition, the legislative history accompanying the HSWA explicitly states that the certification statement

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does not ". . . create civil or criminal consequences [and that] . . . judgments made by the generators are not subject to external regulatory action." S. Rep. No. 284, 98th Cong., 1st. Sess. 67 (1983).

The interim manifest requirements that went into effect on August 5, 1985, already require 100–1000 kg/mo generators to sign the general certification of accuracy statement contained on the manifest. The certification statement consists of two parts: The first deals with the completeness and accuracy of the information contained on the manifest and the second with the waste minimization certification. Only one signature is actually required, regardless of whether the minimization provision applies, and the generator would not be required to keep any additional records as a result of the certification. Moreover, EPA has exempted 100–1000 kg/mo generators from the biennial report requirement, which, in effect, exempts these generators from the section 3002(a)(6) requirement to submit biennial reports on waste minimization. As the Manifest certification requirement merely encourages generators to consider alternative waste management practices that may be more environmentally protective and more economically advantageous from the generator's perspective, the Agency believes that little or no additional administrative or technical burden would be placed on 100–1000 kg/mo generators. In addition, the Agency believes that there is real benefit to be gained from the certification in terms of protection of human health and the environment, since generators may choose to switch their waste management practices after considering alternatives.

Therefore, EPA is today requesting public comment on whether the requirement to certify on the manifest to waste minimization is appropriate or whether it poses a significant and inappropriate burden on 100–1000 kg/mo generators. A 30 day comment period is provided. After consideration of the comments, the Agency will publish a **Federal Register** notice if it determines that an exemption from the waste minimization certification requirement is appropriate for these generators. If EPA determines that no exemption is appropriate, the waste minimization certification requirement will go into effect by operation of law at the time that the requirements contained in the final rule for 100–1000 kg/mo generators found elsewhere in today's **Federal Register** take effect; that is, six months from the date of promulgation.

The Agency is currently preparing a report to Congress on the feasibility and desirability of establishing standards for waste minmization. This report is required under HSWA, and is due by October 1, 1986. Should the Agency decide at some point in the future to propose specific waste minimization standards for hazardous waste generators, the Agency will specifically consider the impact of those proposed regulations on 100–1000 kg/mo generators, as mandated by the HSWA.

III. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will: (1) Have an effect on the economy of $100 million or more; (2) significantly increase costs or prices to industry; or (3) diminish the ability of U.S.-based companies to compete in domestic or export markets. The Administrator has determined that this proposal is not a major rule because it would not result in increased costs to 100–1000 kg/mo generators.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This proposed rule will not impose any information collection requirements.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b) that this proposed rule would not have a significant impact on a substantial number of small entities because it would not result in increased compliance costs for 100–1000 kg/mo generators.

List of Subjects in 40 CFR Part 262

Intergovernmental relations, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Recordkeeping and reporting requirements.

Dated: March 14, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–6223 Filed 3–21–86; 8:45 am]

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4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	18.00	Oct. 1, 1985
1200-End, 6 (6 Reserved)	6.50	Jan. 1, 1986
7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
900-999	14.00	Jan. 1, 1985
1000-1059	12.00	Jan. 1, 1986
*1060-1119	9.50	Jan. 1, 1986
1120-1199	8.50	Jan. 1, 1986
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.00	Jan. 1, 1986
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	14.00	Jan. 1, 1986
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
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12 Parts:		
1-199	8.00	Jan. 1, 1985
*200-299	22.00	Jan. 1, 1986
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	16.00	Jan. 1, 1985
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1986
200-1199	14.00	Jan. 1, 1986
1200-End	8.00	Jan. 1, 1986
15 Parts:		
0-299	7.00	Jan. 1, 1986
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
*0-149	9.00	Jan. 1, 1986
150-999	10.00	Jan. 1, 1986
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	20.00	Apr. 1, 1985
240-End	14.00	Apr. 1, 1985
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150-399	19.00	Apr. 1, 1985
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	18.00	Apr. 1, 1985
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800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
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200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	13.00	Apr. 1, 1985
1700-End	9.00	Apr. 1, 1985
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600-End	4.75	Apr. 1, 1985
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200-End	13.00	Apr. 1, 1985
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29 Parts:		
0-99	11.00	July 1, 1985
100-499	5.00	July 1, 1985
500-899	19.00	July 1, 1985
900-1899	7.00	July 1, 1985
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200-699	6.00	July 1, 1985
700-End	13.00	July 1, 1985
31 Parts:		
0-199	8.50	July 1, 1985
200-End	11.00	July 1, 1985

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210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
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1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
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400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
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500-End	14.00	Jan. 1, 1985
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60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1986
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1200-End	8.00	Jan. 1, 1986
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400-End	12.00	Jan. 1, 1985
16 Parts:		
*0-149	9.00	Jan. 1, 1986
150-999	10.00	Jan. 1, 1986
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	20.00	Apr. 1, 1985
240-End	14.00	Apr. 1, 1985
18 Parts:		
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150-399	19.00	Apr. 1, 1985
400-End	7.00	Apr. 1, 1985
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400-499	16.00	Apr. 1, 1985
500-End	18.00	Apr. 1, 1985
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100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
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500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
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23	14.00	Apr. 1, 1985
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200-499	19.00	Apr. 1, 1985
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§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	22.00	Apr. 1, 1985
§§ 1.1201-End	22.00	Apr. 1, 1985
2-29	15.00	Apr. 1, 1985
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300-499	11.00	Apr. 1, 1985
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600-End	4.75	Apr. 1, 1985
27 Parts:		
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100-499	5.00	July 1, 1985
500-899	19.00	July 1, 1985
900-1899	7.00	July 1, 1985
1900-1910	21.00	July 1, 1985
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30 Parts:		
0-199	16.00	July 1, 1985
200-699	6.00	July 1, 1985
700-End	13.00	July 1, 1985
31 Parts:		
0-199	8.50	July 1, 1985
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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